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WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
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3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC
(two briefings)

WHEN: October 19 at 9:00 am and 1:30 pm

WHERE: Office of the Federal Register, 7th Floor Conference Room, 800 North Capitol Street NW, Washington, DC (3 blocks north of Union Station Metro)

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Contents

Federal Register

Vol. 58, No. 192

Wednesday, October 6, 1993

Agricultural Marketing Service
RULES
Milk marketing orders:
New York-New Jersey, 51982

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Commodity Credit Corporation
See Food and Nutrition Service
See Forest Service
See Soil Conservation Service

Air Force Department
NOTICES
Environmental statements; availability, etc.:
Base realignments and closures—
McGuire AFB, NJ, 52102

Animal and Plant Health Inspection Service
RULES
Plant-related quarantine, domestic:
Oriental fruit fly, 51982
Witchweed, 51979

Antitrust Division
NOTICES
National cooperative research notifications:
Portland Cement Association, 52120

Army Department
See Engineers Corps
NOTICES
Meetings:
U.S. Military Academy, Board of Visitors, 52103
Procurement:
Freight and personal property carriers; new payment system affecting invoicing procedures, 52103

Commerce Department
See Export Administration Bureau
See Minority Business Development Agency
See National Oceanic and Atmospheric Administration
See National Technical Information Service

Commodity Credit Corporation
RULES
Loan and purchase programs:
Upland and extra long staple cotton; bale packaging materials specifications (1993), 51986

Commodity Futures Trading Commission
NOTICES
Meetings; Sunshine Act, 52138

Consumer Product Safety Commission
NOTICES
Meetings; Sunshine Act, 52138

Customs Service
NOTICES
Commercial gauger, and commercial laboratory accreditations:
Approval—
Marine Chemist Service, Inc., 52134
Pressed and toughened (specially tempered) glassware; testing; comments solicitation, 52135

Defense Department
See Air Force Department
See Army Department
See Engineers Corps
RULES
Individuals with Disabilities Education Act (IDEA); implementation; early intervention services for infants and toddlers with disabilities and Section 6 schools, 51996
Security:
Defense child care services personnel; criminal history background checks, 52010
NOTICES
Civilian health and medical program of uniformed services (CHAMPUS):
Tidewater managed care demonstration project (TRICARE), 52094
Meetings:
Ballistic Missile Defense Advisory Committee, 52102

Education Department
RULES
Postsecondary education:
Student assistance general provisions—
Federal loan, work-study, and grant programs; regulatory relief for institutions and individuals who suffered financial harm from the Midwest flood of 1993, 52194

Employment and Training Administration
PROPOSED RULES
Aliens on H–1B visas temporarily employed in specialty occupations; labor condition applications and requirements for employers, 52152

Employment Standards Administration
See Wage and Hour Division

Energy Department
See Federal Energy Regulatory Commission

Engineers Corps
NOTICES
Environmental statements; availability, etc.:
Yazoo Backwater Area, LA, 52103

Environmental Protection Agency
RULES
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update, 52018

NOTICES
Agency information collection activities under OMB review, 52106
Pesticide programs:
Inert ingredients in pesticide products—
Name disclosure, 52106
Reports; availability, etc.:
High capacity fossil fuel-fired plants; draft student handbook and statement of intent to develop training and certification programs for operators, 52106

Equal Employment Opportunity Commission
NOTICES
Meetings; Sunshine Act, 52138

Executive Office of the President
See Presidential Documents

Export Administration Bureau
RULES
Export licensing:
Commerce control list, and nuclear non-proliferation—
Computers, 52169
Commodity control list—
National security-controlled entries; revision, 52166
Special licensing procedures:
Computers, 52168

Farm Credit Administration
RULES
Farm credit system:
Information release by directors, officers, and employees, 51993

Federal Aviation Administration
RULES
Class B airspace
Correction, 52140
PROPOSED RULES
Airworthiness directives:
Airbus Industrie, 52041

Federal Communications Commission
RULES
Practice and procedure:
Metric conversion
Correction, 52021

Federal Election Commission
PROPOSED RULES
Contribution and expenditure limitations and prohibitions:
Campaign funds; conversion to personal use, 52040

Federal Emergency Management Agency
RULES
Flood insurance; communities eligible for sale:
Illinois et al., 52019
NOTICES
Disaster and emergency areas:
Kansas, 52108
Minnesota, 52108
Missouri, 52109

Federal Energy Regulatory Commission
NOTICES
Electric rate, small power production and interlocking directorate filings, etc.:
LG&E-Westmoreland Rensselaer, 52103
Natural Gas Policy Act:
State jurisdictional agencies tight formation recommendations; preliminary findings—
Texas Railroad Commission, 52104
Applications, hearings, determinations, etc.:
Moraine Pipeline Co., 52104
Murphy Exploration & Production Co., 52104
Panhandle Eastern Pipe Line Co., 52105
Texas Eastern Transportation Corp., 52105

Federal Railroad Administration
NOTICES
Exemption petitions, etc.:
Burlington Northern Railroad et al., 52133

Federal Reserve System
NOTICES
Meetings; Sunshine Act, 52139
Applications, hearings, determinations, etc.:
Centura Banks, Inc., et al., 52109
City Holding Co., 52109
Crestar Financial Corp. et al., 52110
Norwest Corp. et al., 52110
Walton, S. Robson, et. al., 52111

Fish and Wildlife Service
RULES
Endangered and threatened species:
Kodachrome bladderpod, 52027
Red wolves; CFR correction, 52031
PROPOSED RULES
Endangered and threatened species:
Kodachrome pepper-grass, 52058
San Joaquin Valley Orcutt grass, etc. (eight plants from California), 52063
Winkler cactus, 52059
NOTICES
Endangered and threatened species permit applications, 52118

Food and Drug Administration
RULES
Food additives:
Paper and paperboard components—
Dimethylamine-epichlorohydrin copolymer, 51994
PROPOSED RULES
Food for human consumption:
Bottled water; quality standards, 52042
Medical devices:
Clinical investigators disqualification, 52144
Intraocular lenses; investigational exemptions, 52142
NOTICES
Debarment orders:
Desai, Kanubhai C., 52111

Food and Nutrition Service
NOTICES
Food distribution program:
Nutrition program for elderly; adjusted assistance level, 52075

Forest Service
NOTICES
Appeal exemptions; timber sales:
Dixie National Forest, UT, 52075
Environmental statements; availability, etc.:
Lostine wild and scenic river management plan; Wallowa-Whitman National Forest, OR, 52077

Tongass National Forest, AK, 52076
Meetings:
Grand Island Advisory Commission, 52077
National Urban and Community Forestry Advisory Council, 52077

Health and Human Services Department
See Food and Drug Administration
See Health Care Financing Administration
See Health Resources and Services Administration

Health Care Financing Administration
NOTICES
Clinical laboratories improvement:
Laboratories exemption (1988); Washington State, 52112

Health Resources and Services Administration
NOTICES
Meetings; advisory committees:
November, 52116

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See Minerals Management Service
See National Park Service
See Reclamation Bureau

International Trade Commission
NOTICES
Meetings; Sunshine Act, 52138

Interstate Commerce Commission
RULES
Practice and procedure:
Fee billing and debt collection, 52027
NOTICES
Railroad operation, acquisition, construction, etc.:
San Joaquin Valley Railroad Co., 52119

Justice Department
See Antitrust Division
NOTICES
Agency information collection activities under OMB review, 52119

Labor Department
See Employment and Training Administration
See Occupational Safety and Health Administration
See Wage and Hour Division

Land Management Bureau
NOTICES
Environmental statements; availability, etc.:
Bedell flat pipelines right-of-way, NV, 52116
Realty actions; sales, leases, etc.:
Oregon, 52116
Utah, 52117

Minerals Management Service
PROPOSED RULES
Outer Continental Shelf; oil, gas, and sulphur operations:
Oil spill financial responsibility; offshore facilities including State submerged lands and pipelines, 52050

Minority Business Development Agency
NOTICES
Business development center program applications:
Idaho et al., 52092

National Archives and Records Administration
NOTICES
Nixon Presidential historical materials; opening of materials, 52121

National Highway Traffic Safety Administration
RULES
Motor vehicle safety standards:
Lamps, reflective devices, and associated equipment—
Reflective material use on large trucks and trailers for conspicuity increase, 52021

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Gulf of Alaska groundfish, 52032
Pacific Coast groundfish, 52031
Fishery conservation and management:
Bering Sea and Aleutian Islands groundfish, 52033
PROPOSED RULES
Fishery conservation and management:
Gulf of Mexico reef fish, 52063, 52073
Northeast multispecies, 52073

National Park Service
NOTICES
Meetings:
Elwha River ecosystem and native anadromous fisheries restoration; availability and workshop, 52119

National Technical Information Service
NOTICES
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Custom Industrial Analysis Laboratories, 52094

Nuclear Regulatory Commission
PROPOSED RULES
Plants and materials; physical protection:
Security personnel at Category I licensee fuel cycle facilities; annual physical fitness performance testing, 52035

Occupational Safety and Health Administration
NOTICES
State plans; standards approval, etc.:
Michigan, 52120

Physician Payment Review Commission
NOTICES
Meetings, 52121

Presidential Documents
PROCLAMATIONS:
Special observances:
Child Health Day (Proc. 6602), 52205
EXECUTIVE ORDERS
Labor-Management Partnerships (EO 12871), 52201
ADMINISTRATIVE ORDERS
Jordan; assistance (Presidential Determination No. 93–39 of September 17, 1993), 51973
Liberia; economic support for regional peacekeeping (Presidential Determination No. 93–41 of September 29, 1993), 51977
Mexico; assistance (Presidential Determination No. 93–40 of September 28, 1993), 51975

Public Health Service
See Food and Drug Administration

See Health Resources and Services Administration

Reclamation Bureau
NOTICES
Environmental statements; availability, etc.:
Cachuma Project, CA, 52118

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
American Stock Exchange, Inc., 52122
National Association of Securities Dealers, Inc., 52124
New York Stock Exchange, Inc., 52126
Applications, hearings, determinations, etc.:
Guardian Park Ave. Fund, 52128

Soil Conservation Service
NOTICES
Hydric soils of United States; list availability, 52078

Thrift Supervision Office
RULES
Savings associations:
Directors and senior executive officers; agency disapproval authority
Correction, 52140

Transportation Department
See Federal Aviation Administration
See Federal Railroad Administration
See National Highway Traffic Safety Administration
PROPOSED RULES
Disadvantaged business enterprise participation in agency programs; airport concessions, 52050
NOTICES
Agency information collection activities under OMB review, 52128

Treasury Department
See Customs Service
See Thrift Supervision Office
NOTICES
Agency information collection activities under OMB review, 52133, 52134

Veterans Affairs Department
RULES
Adjudication; pensions, compensation, dependency, etc.:
Zero percent disability evaluations, 52017
NOTICES
Privacy Act:
Systems of records, 52136
Real property; enhanced-use leases:
West Palm Beach VA Medical Center development, 52137

Wage and Hour Division
PROPOSED RULES
Aliens on H–1B visas temporarily employed in specialty occupations; labor condition applications and requirements for employers, 52152

Separate Parts in This Issue

Part II
Department of Health and Human Services, Food and Drug Administration, 52142

Part III
Department of Labor, Employment and Training Administration and Wage and Hour Division, 52152

Part IV
Department of Commerce, Export Administration Bureau, 52166

Part V
Department of Education, 52194

Part VI
The President, 52199

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free Electronic Bulletin Board service for Public Law numbers and Federal Register finding aids is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Administrative Orders:
Presidential Determinations:
No. 93–39 of September 17, 1993 51973
No. 93–40 of September 28, 1993 51975
No. 93–41 of September 29, 1993 51977
Executive Orders:
12871 52201
Proclamations:
6602 52205

7 CFR
301 (2 documents) 51979, 51982
1002 51982
1427 51986

10 CFR
Proposed Rules:
73 52035

11 CFR
Proposed Rules:
100 52040
113 52040

12 CFR
574 52140
618 51993

14 CFR
71 52140
91 52140
Proposed Rules:
39 52041

15 CFR
773 (2 documents) 52166, 52168
778 52166
799 (2 documents) 52166, 52169

20 CFR
Proposed Rules:
655 52152

21 CFR
176 51994
Proposed Rules:
103 52042
812 (2 documents) 52142, 52144
813 52142

29 CFR
Proposed Rules:
507 52152

30 CFR
Proposed Rules:
253 (2 documents) 52059

32 CFR
80 51996
86 52010

34 CFR
668 52194
674 52194
675 52194
676 52194
682 52194
690 52194

38 CFR
3 52017
4 52017

40 CFR
300 52018

44 CFR
64 52019

47 CFR
87 52021

49 CFR
571 52021
1002 52027
1017 52027
1018 52027
1312 52027
1313 52027
1314 52027
Proposed Rules:
23 52050

50 CFR
17 (2 documents) 52027, 52031
663 52031
672 52032
675 52033
Proposed Rules:
17 (3 documents) 52058, 52059, 52063
641 (2 documents) 52063, 52073
651 52073

Federal Register
Vol. 58, No. 192
Wednesday, October 6, 1993

Presidential Documents

Title 3—

The President

Presidential Determination No. 93–39 of September 17, 1993

Assistance to Jordan

Memorandum for the Secretary of State

I. Pursuant to the authority vested in me by section 614(a) of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2364(a)) (the "Act"), I hereby:

(1) determine that it is important to the security interests of the United States to furnish to Jordan, through funds appropriated during fiscal year 1993, up to $20 million of assistance under Chapter 1 of Part I and Chapters 4 and 8 of Part II of the Act, and up to $1 million of assistance under Chapter 5 of Part II of the Act, without regard to section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1993 (Public Law 102–391) or any other provision of law within the scope of section 614 of the Act;

(2) determine that it is vital to the national security interests of the United States to furnish to Jordan up to $9 million in assistance under Section 23 of the Arms Export Control Act from Foreign Military Financing funds previously allocated to Jordan without regard to section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1993 (Public Law 102–391) or any other provision of law within the scope of section 614 of the Act; and

(3) authorize the furnishing of such assistance.

II. In addition, by virtue of the authority vested in me by section 573 of the Foreign Operations, Export Financing and Related Programs Appropriations Act, 1993 (Public Law 102–391), I hereby determine and certify that the provision to Jordan of the assistance described in paragraph I above is in the national interest of the United States.

You are authorized and directed to transmit this determination to the Congress and to publish it in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, September 17, 1993.

[FR Doc. 93–24713
Filed 10–4–93; 2:29 pm]
Billing code 4710–10–M

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Presidential Documents

Presidential Determination No. 93–40 of September 28, 1993

Transfer of $424,000 in FY 1993 Foreign Military Financing Funds to the Economic Support Fund Account for Assistance to the Government of Mexico

Memorandum for the Secretary of State

Pursuant to the authority vested in me by section 610(a) of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2261) (the "Act"), I hereby determine that it is necessary for the purposes of the Act that $424,000 of funds made available for section 23 of the Arms Export Control Act for the cost of direct loans be transferred to, and consolidated with, funds made available for Chapter 4 of Part II of the Act.

I hereby authorize the use of fiscal year 1993 of the aforesaid $424,000 in the funds made available above under Chapter 4 of Part II of the Act for assistance to the Government of Mexico to mitigate the economic hardship associated with the government's prior efforts to repatriate Chinese nationals.

You are authorized and directed to report this determination immediately to the Congress and to publish it in the **Federal Register.**

William J. Clinton

THE WHITE HOUSE,
Washington, September 28, 1993.

[FR Doc. 93–24714
Filed 10–4–93; 2:30 pm]
Billing code 4710–10–M

Presidential Documents

Presidential Determination No. 93–41 of September 29, 1993

Determination To Authorize the Transfer of Economic Support Fund to the Peacekeeping Operations Fund To Support Regional Peacekeeping for Liberia

Memorandum for the Secretary of State

Pursuant to the authority vested in me by sections 552(c)(1) and 610(a) of the Foreign Assistance Act of 1961, as amended (the "Act"), I hereby determine that:

(i) as a result of an unforeseen emergency, the provision of assistance under chapter 6 of Part II of the Act in amounts in excess of funds otherwise available for such assistance is important to the national interests of the United States; and

(ii) that it is necessary for the purposes of the Act that $6.83 million of funds made available for the purposes of Section 23 of the Arms Export Control Act be transferred to, and consolidated with, funds made available for Part II, chapter 5, of the Act, and then transferred to, and consolidated with, funds made available for Part II, chapter 6 of the Act.

You are hereby authorized and directed to report this determination immediately to Congress.

This determination shall be published in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, September 29, 1993.

[FR Doc. 93–24722
Filed 10–4–93; 2:55 pm]
Billing code 4710–10–M

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Rules and Regulations

Federal Register
Vol. 58, No. 192
Wednesday, October 6, 1993

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 93-075-1]

Witchweed Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the list of suppressive areas under the witchweed quarantine and regulations by adding and deleting areas in North Carolina and South Carolina. These changes affect 7 counties in North Carolina and 2 counties in South Carolina. These actions are necessary in order to impose certain restrictions on the interstate movement of regulated articles to prevent the artificial spread of witchweed and to delete unnecessary restrictions on the interstate movement of regulated articles.

DATES: Interim rule effective October 6, 1993. Consideration will be given only to comments received on or before December 6, 1993.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 93-075-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are encouraged to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Terry McGovern, Operations Officer, Plant Protection and Quarantine, APHIS, USDA, room 646, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8247.

SUPPLEMENTARY INFORMATION:

Background

Witchweed (*Striga spp.*), a parasitic plant that feeds off the roots of its host, causes degeneration of corn, sorghum, and other grassy crops. It is found in the United States only in parts of North Carolina and South Carolina.

The witchweed quarantine and regulations (contained in 7 CFR 301.80 through 301.80-10, and referred to below as the regulations) quarantine the States of North Carolina and South Carolina and restrict the interstate movement of certain witchweed hosts in the quarantined States for the purpose of preventing the artificial spread of witchweed.

Regulated areas for witchweed are designated as either suppressive areas or generally infested areas. Restrictions are imposed on the interstate movement of regulated articles from both types of areas in order to prevent the artificial movement of witchweed into noninfested areas. However, the eradication of witchweed is undertaken as an objective only in areas designated as suppressive areas. Currently, there are no areas designated as generally infested areas.

Designation of Areas as Suppressive Areas

We are amending § 301.80-2a of the regulations, which lists generally suppressive and infested areas, by adding areas in Craven, Cumberland, Greene, Pender, and Pitt Counties in North Carolina, and areas in Horry County in South Carolina to the list of suppressive areas.

The rule portion of this document lists the suppressive areas added for each county in North Carolina. Nonfarm areas, if any, are listed first; farms are then listed alphabetically. Additions and deletions to the list of suppressive areas in South Carolina are extensive, so the South Carolina portion of § 301.80-2a is revised in its entirety.

We are taking this action because surveys conducted by the United States Department of Agriculture (USDA) and State agencies of North Carolina and South Carolina have established that these areas meet one or more of the following conditions specified in § 301.80-2(a) of the regulations:

1. Witchweed has been found in these areas.
2. There is reason to believe that witchweed is present in these areas.
3. It is deemed necessary to regulate these areas because of their proximity to infestation.
4. These areas cannot be separated for quarantine enforcement purposes from infested localities.

Designation of these areas as regulated areas imposes controls on the movement of regulated articles from these areas and prevents the spread of witchweed to noninfested areas.

Removal of Areas From List of Regulated Areas

We are also amending § 301.80-2a by removing areas in Craven, Cumberland, Greene, Pender, Sampson, and Wayne Counties in North Carolina and Dillon and Horry Counties in South Carolina from the list of suppressive areas.

We are taking this action because we have determined that witchweed no longer occurs in these areas; therefore, there is no longer a basis for listing these areas as suppressive areas for the purpose of preventing the artificial spread of witchweed. This action removes unnecessary restrictions on the interstate movement of regulated articles from these areas.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that a situation exists which warrants the publication of this rule without prior opportunity for public comment. Because of the possibility that witchweed could spread artificially to noninfested areas of the United States, it is necessary to act immediately to control its spread by adding specified areas to the list of suppressive areas in North Carolina and South Carolina. Also, where witchweed no longer occurs, immediate action is needed to delete unnecessary restrictions on the interstate movement of regulated articles.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon publication in the **Federal Register**. We will consider comments that are received within 60

days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

This interim rule affects the interstate movement of regulated articles from specified areas in North Carolina and South Carolina. Based on information compiled by the U.S. Department of Agriculture, we have determined that approximately 280,907 small entities move these regulated articles interstate from North Carolina and South Carolina. This rule affects only 95 of these entities, however, by removing 75 entities from regulation and by placing 20 new entities under regulation.

We have determined that the 75 deregulated entities will each realize an annual savings of $60 to $70 in regulatory and control costs, for a combined savings of $4500 to $5250.

We estimate that the rule will cost each of the 20 newly-regulated entities about $60 annually. They will each need to invest about $20 per year in order to comply with the witchweed quarantine. Additionally, they will each lose access to interstate markets as a result of the rule, subsequently losing about $40 in annual income.

In the instances where this interim rule removes specified areas from the list of suppressive areas, this rule will enable freer movement of goods and services across State lines. Consumers will benefit from lower prices and better access to products from the 75 entities removed from the list of suppressive areas. Overall, we expect that this rule will enhance the ability of small entities to market products interstate.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This document contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 is amended to read as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 301.80–2a, the list of suppressive areas in North Carolina is amended by adding, in alphabetical order, the following areas in Craven, Cumberland, Greene, Pender, and Pitt Counties:

§ 301.80–2a Regulated areas; generally infested and suppressive areas.

* * * * *

North Carolina

(1) * * *

(2) * * *

* * * * *

Craven County. The Chapman, Idel M., farm located .3 mile off west side of State Secondary Road 1459 and 0.1 mile north of its junction with State Secondary Road 1463

* * * * *

Cumberland County.

* * * * *

The Barefoot, Bobby, farm located on the south side of State Secondary Road 1708 and its western junction with State Secondary road 1609.

* * * * *

Greene County.

* * * * *

The Lane, Sylvester, farm located 3.8 miles east of Snow Hill, on both sides of State Secondary Road 1400 and 2.8 miles southeast of its junction with U.S. Highway 13.

* * * * *

The Williams, Minnie farm located on the north side of State Secondary Road 1417 and 0.8 mile east of its junction with State Secondary Road 1413.

The Wilson, Sudie, farm located on the east side of State Secondary Road 1004 at its junction with State Secondary Road 1405 and 0.6 mile south of its junction with North Carolina Highway 903.

* * * * *

Pender County.

* * * * *

The Marshall, Milvin, farm located on the north side of State Secondary Road 1103 and 0.6 mile east of the southern junction of this road and State Secondary Road 1104.

* * * * *

The Squires, Nelson, farm located 0.4 mile south of the junction of State Secondary Road 1211 and State Secondary Road 1212 on the west side of 1211.

* * * * *

Pitt County.

* * * * *

The Cannon, James, farm located 5.4 miles northeast of Grifton on the west side of State Secondary Road 1918 and 0.1 mile north of its junction with State Secondary Road 1917.

* * * * *

3. In § 301.80–2a, the list of suppressive areas in North Carolina is amended by removing the following areas in Craven, Cumberland, Greene, Pender, Sampson, and Wayne Counties:

a. In Craven County, The Nelson, Joseph, Estate and The Tripp, Dudley, farm.

b. In Cumberland County, The McKeithan, Sarah E., farm and The McLaurin, Burnice, farm.

c. In Greene County, The Dunn, Joe, Estate farm.

d. In Pender County, The Fensel, F.P., farm; The Keith, James R., farm; The Lanier, Admah, farm; and The Larkins, Maggie, estate.

e. In Sampson County, The Jackson, Tony, farm and The Weeks, Glenn, farm.

f. In Wayne County, The Jones, Mary, farm.

4. In § 301.80–2a, the list of suppressive areas in South Carolina is revised to read as follows:

§ 301.80–2a Regulated areas; generally infested and suppressive areas.

* * * * *

South Carolina

(1) *Generally infested areas.* None.

(2) *Suppressive areas.*

Berkeley County. The Magnigault, Clarence, farm located on the northwest corner of the junction of State Secondary Road 907 with U.S. Highway 52, this junction being 1.8 miles north of the junction of U.S. Highway 52 and U.S. Highway 17A, this junction being 1 mile northwest of the junction of U.S. Highways 52 and 17a with the Tail Race Canal.

Dillon County. That area bounded by a line beginning at a point where State Secondary Highway 22 intersects the South Carolina-North Carolina State line and extending south along said highway 22 to its junction with State Secondary Highway 45, then southwest along highway 45 to its junction with the Little Pee Dee River, then northerly along that river to its junction with Interstate 95, then southeast along Interstate 95 to its junction with Poccosin Swamp, then northwest along Poccosin Swamp to its junction with the Dillon-Marlboro County line, then northeast along the county line to its junction with the South Carolina-North Carolina State line, then southeast along the State line to the point of beginning.

The Church, Emerson, farm located on the south side of State Secondary Highway 155 and two miles west of the junction of highway 155 with State Primary Highway 41, this junction being 0.6 mile south of the junction of highway 41 and State Secondary Highway 74.

The Elvington, Clifton, Estate located on both sides of a dirt road and 0.5 mile west of the junction of the dirt road and State Primary Highway 41, this junction being 0.4 mile south of the junction of highway 41 and State Secondary Highway 34.

The Elvington, James C., farm located on both sides of a dirt road and 0.2 mile west of the junction of the dirt road and State Primary Highway 41, this junction being 0.4 mile south of the junction of highway 41 and State Secondary Highway 34.

The Elvington, William, farm located on both sides of a dirt road and 0.2 mile northeast of the junction of the dirt road and State Secondary Highway 74, this junction being 1.7 miles south of the junction of highway 74 and State Primary Highway 41.

The Fore, Ernest, farm located on the southeast side of State Primary Highway 41 and 0.2 mile south of the junction of highway 41 and State Secondary Highway 34, this junction being 0.6 mile south of the junction of highway 41 and State Secondary Highway 74.

The Fore, John, farm located on the east side of State Primary Highway 524 and 1.7 miles south of the junction of highway 524 and U.S. Highway 301, this junction being 0.3 mile north of the junction of highway 301 and State Primary Highway 690.

The Smith, A.C., farm located on the south side of State Secondary Highway 155 and 2.3 miles west of the junction of highway 155 and State Primary Highway 41, this junction being 0.6 mile south of the junction of highway 41 and State Secondary Highway 74.

Horry County. That area bounded by a line beginning at a point where U.S. Highway 76 intersects the South Carolina-North Carolina State line, then south along highway 76 to its junction with State Secondary Highway 44, then south along highway 44 to its junction with State Secondary Highway 19, then south along highway 19 to its junction with Honey Camp Branch, then southwest along Honey Camp Branch to its junction with Lake Swamp, then east along Lake Swamp to its junction with Prince Mill Swamp, then south along Prince Mill Swamp to its junction with State Secondary Highway 309, then southwest along highway 309 to its junction with State Secondary Highway 45, then southwest along highway 45 to its junction with State Secondary Highway 129, then northwest along highway 129 to its junction with U.S. Highway 501, then northwest along highway 501 to its junction with the Little Pee Dee River, then northeast along the Little Pee Dee River to its junction with the Lumber River, then northeast along Lumber River to its junction with the South Carolina-North Carolina State line, then southeast along the State line to the point of beginning.

That area bounded by a line beginning at the junction of U.S. Highway 19, State Primary Highway 91, and State Primary Highway 90, then east along highway 90 to its junction with State Secondary Highway 1029, then south along highway 1029 to its junction with a dirt road known as the Telephone Road, then extending northwest along a line to the beginning of the south branch of Jones Big Swamp, then northerly along Jones Big Swamp to its junction with State Primary Highway 90, then east along highway 90 to the south branch of Mills Swamp, then north along Mills Swamp to its junction with the Waccamaw River, then east along Waccamaw River to its junction with State Primary Highway 9, then southeast along highway 9 to the point of beginning.

The Allsbrook, J.R., farm located on the south side of a dirt road and 0.2 mile east of the junction of the dirt road with State Secondary Highway 19, this junction being 1.1 miles south of the junction of highway 19 and State Secondary Highway 139.

The Chestnut, J.B., farm located on the east side of a dirt road and 0.8 mile east of its junction with a second dirt road, this junction being 0.5 mile south of the junction of the second dirt road with State Primary Highway 90, this junction being 0.8 mile south of the junction of highway 90 with State Secondary Highway 31.

The Cooper, Thomas B., farm located northeast of a dirt road and 0.75 mile northwest of the junction of this dirt road with rural paved road No. 109, this junction being 2.25 miles northeast of the junction of road 109 with rural paved road No. 79.

The Cox, Nancy T., farm located on the northwest corner of the junction of two dirt road, this junction being 0.8 mile northeast of the junction of State Secondary Road 105 and State Secondary Road 377. One of the dirt roads is an extension of State Secondary Road 105.

The Cox, Velma, farm located on the east side of a dirt road and 0.5 mile south of its junction with State Secondary Highway 911, this junction being 0.8 mile southwest of the junction of highway 911 with State Secondary Highway 568.

The Edge, Nina L., farm located on the south side of a dirt road 0.7 mile east of its junction with a second dirt road, this junction being 0.5 mile south of the junction of the second dirt road with State Primary Highway 90, this junction being 0.8 mile south of the junction of highway 90 with State Secondary Highway 31.

The Graham, Mammie, farm located on the east side of a dirt road and 0.2 mile south of the junction of the dirt road with State Secondary Highway 309, this junction being 1.5 miles west of the junction of highway 309 and State Secondary Highway 19.

The Harden, John, farm located on the northwest side of a dirt road and 0.4 mile northeast of the junction of this dirt road with the junction of State Secondary Roads 105 and 377.

The Holmes, Marie T., farm located on the west side of a dirt road and 0.7 mile northwest of the junction of this dirt road with State Primary Highway 90, this junction being 3.2 miles south of the junction of highway 90 and State Secondary Road 31.

The Inman, Rosetta, farm located 0.1 mile north of the junction of State Primary Highways 111 and 1233, this junction being 1.2 miles southeast of the junction of highway 111 and State Primary Highway 57.

The Livingston, W.S., farm located on the south side of a dirt road and 0.6 mile east of its junction with a second dirt road, this junction being 0.5 mile south of the junction of the second dirt road and State Primary Highway 90, this junction being 0.8 mile south of the junction of highway 90 and State Secondary Highway 31.

The Martin, Daniele E., farm located on the east side of State Primary Highway 90 and 0.9 mile northeast of the junction of highway 90 with State Secondary Highway 377.

The Royals, Lathan, farm located on the west side of State Secondary Highway 139 and 0.8 mile northwest of the junction of highway 139 and State Secondary Highway 66, this junction being 0.2 mile northeast of the junction of highway 66 with State Secondary Highway 873.

The Stevens, Cora G., farm located on the north side of a dirt road and 0.3 mile northeast of its junction with State Secondary Highway 112, this junction being 1.2 miles east of the junction of highway 112 with State Secondary Highway 139.

The Stevens, James, farm located on the south side of a dirt road and 0.3 mile northeast of its junction with State Secondary Highway 112, this junction being 1.2 miles east of the junction of highway 112 with State Secondary Highway 139.

The Thomas, James D., farm located on the west side of a dirt road and 1.0 mile northwest of the junction of the dirt road with State Primary Highway 90, this junction being 3.2 miles south of highway 90 with State Secondary Highway 31.

The Thomas, Fred, farm located on the west side of a dirt road and 0.1 mile northwest of the junction of the dirt road with State Primary Highway 90, this junction being 3.2 miles south of the junction of

highway 90 and State Secondary Highway 31.

The Thomas, Hubert, farm located on the west side of a dirt road and 0.3 mile northwest of the junction of the dirt road with State Primary Highway 90, this junction being 3.2 miles south of the junction of highway 90 and State Secondary Highway 31.

The Thomas, J.R., farm located on the west side of a dirt road and 0.2 mile northwest of the junction of the dirt road with State Primary Highway 90, that junction being 3.2 miles south of the junction of highway 90 and State Secondary Highway 31.

The Todd, Mack, farm located on the west side of State Secondary Highway 19 and 0.5 mile north of the junction of State Secondary Highways 19 and 97, this junction being 1.1 miles north of the junction of highway 19 and State Secondary Highway 65.

The Vaugh, Ruth, farm located on the east side of a dirt road and 0.7 mile northwest of this dirt road and its junction with State Primary Highway 90, this junction being 3.2 miles south of the junction of highway 90 and State Secondary Highway 31.

The Warren, Kevin, farm located on the west side of a dirt road and 0.2 mile north of its junction with State Primary Highway 90, this junction being 0.5 mile east of the junction of highway 90 with State Secondary Highway 377.

Marion County. The entire county.

Done in Washington, DC, this 29th day of September 1993.

Patricia Jensen,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–24487 Filed 10–5–93; 8:45 am]

BILLING CODE 3410–34–P

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7 CFR Part 301

[Docket No. 91–149–6]

Oriental Fruit Fly; Removal of Quarantined Area

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the Oriental fruit fly regulations by removing the quarantine on a portion of San Diego County, CA, and by removing restrictions on the interstate movement of regulated articles from that area. The regulations, including the quarantine of a portion of San Diego County, were established to prevent the spread of the Oriental fruit fly into noninfested areas of the United States. We have determined that the Oriental fruit fly has been eradicated from San Diego County. The interim rule was necessary to remove an unnecessary regulatory burden on the public.

EFFECTIVE DATE: November 5, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Operations Officer, Domestic and Emergency Operations, Plant Protection and Quarantine, APHIS, USDA, room 640, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8247.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective on June 29, 1993, and published in the **Federal Register** on July 8, 1993 (58 FR 36589–36590, Docket No. 91–149–5), we amended the Oriental fruit fly regulations in 7 CFR 301.93 by removing the quarantine on a portion of San Diego County, CA, and by removing restrictions on the interstate movement of regulated articles from that area. This portion of San Diego County, CA, had been quarantined due to the possibility that the Oriental fruit fly could be spread from this area to noninfested areas of the United States. Once that situation no longer existed, the Animal and Plant Health Inspection Service took action to remove this unnecessary regulatory burden on the public.

Comments on the interim rule were required to be received on or before September 7, 1993. We did not receive any comments. The facts presented in the interim rule still provide a basis for the rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12291 and the Regulatory Flexibility Act, Executive Orders 12372 and 12778, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR 301.93–3 and that was published at 58 FR 36589–36590 on July 8, 1993.

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff; 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

Done in Washington, DC, this 29 day of September 1993.

Patricia Jensen,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–24488 Filed 10–5–93; 8:45 am]

BILLING CODE 3410–34–P

Agricultural Marketing Service

7 CFR Part 1002

[DA–93–22]

Milk in the New York-New Jersey Marketing Area; Amendments to Classification and Accounting Rules and Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This document approves the tentative amendments to the classification and accounting rules and regulations issued by the Market Administrator of the New York-New Jersey marketing order after consideration of information received at a public meeting.

EFFECTIVE DATE: October 1, 1993.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–2357.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a final rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action would not have a significant economic impact on a substantial number of small entities. This action implements the rules under which recent amendments to the New York-New Jersey order will be administered.

This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect, and it will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Agricultural Marketing Agreement Act of 1937 (the Act)

provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to provisions of § 1002.46 of the order, as amended, regulating the handling of milk in the New York-New Jersey marketing area (7 CFR part 1002), the Market Administrator of said order on July 22, 1993, issued tentative amendments to the classification and accounting rules and regulations.

The tentative amendments to the rules and regulations are based upon information received at a public meeting held on June 22, 1993, at Albany, New York. A notice of such meeting was mailed to all known interested persons on May 28, 1993. Following the meeting, interested persons were given until June 30, 1993, to file briefs. No briefs were filed.

A copy of the stenographic record of the public meeting concerning such amendments to the rules and regulations and the tentative amendments to the rules and regulations were each forwarded by the Market Administrator to the Secretary for approval. Upon consideration of such tentative amendments in the light of the stenographic record, said amendments to the classification and accounting rules and regulations are hereby approved.

Pursuant to 5 U.S.C. 553, it is found and determined that good cause exists not to engage in further public procedures because such further procedures would be unnecessary and contrary to the public interest, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because:

(1) Pursuant to actual notice, a public meeting was held concerning these amendments, and interested persons were given an opportunity to comment through the filing of briefs. No Briefs were received.

(2) A copy of the tentative amendments to the accounting rules and regulations was mailed on July 22, 1993, to all handlers operating pool plants and other interested parties, thus affording such persons a reasonable time to prepare for the effective date herein specified;

(3) Amendments to the marketing order, as amended, to which such amended rules and regulations apply were effective July 1, 1993; and

(4) The said amended rules and regulations are required by provisions of the order, as amended, to be effective on the first day of the month following their approval.

Accordingly, the said amendments to the classification and accounting rules and regulations shall be effective on and after October 1, 1993.

The tentative amendments issued by the Market Administrator and approved by the Secretary are set forth below.

List of Subjects in 7 CFR Part 1002

Milk marketing orders.

For the reasons set forth in the preamble, part 1002 of title 7 of the Code of Federal Regulations is amended to read as follows:

PART 1002—MILK IN THE NEW YORK-NEW JERSEY MARKETING AREA

1. The authority citation for 7 CFR part 1002 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 1002.102 is revised to read as follows:

§ 1002.102 Milk and milk products.

Milk, Fluid milk products, Fluid cream products, and other milk products containing or produced from skim milk and/or butterfat are as defined pursuant to prevailing standards of identity. (21 CFR parts 131, 133, and 135)

3. Section 1002.140 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1002.140 Method.

* * * * *

(a) On the basis of the skim milk and butterfat in fluid milk products (skim milk equivalent and butterfat in concentrated fluid milk products) and products included in § 1002.41(c)(1) which are held at a plant, moved from a plant, dumped at a plant, destroyed or lost under extraordinary circumstances, or used at the plant to produce products other than fluid milk products or products included in § 1002.41(c)(1);

(b) On the basis of the fluid skim milk equivalent and butterfat content of milk products, other than fluid milk products and products included in § 1002.41(c)(1), which are reprocessed, converted, or combined with another product during the month or for which the handler fails to establish a disposition.

4. Section 1002.141 is amended by revising the section heading and paragraphs (a), (b), (d), (e), and (f) to read as follows:

§ 1002.141 Preliminary accounting for other than fluid milk products and products included in § 1002.41(c)(1) at pool plants.

(a) Separately tabulate the total pounds of each milk product, other than a fluid milk product or product included in § 1002.41(c)(1), contained in opening inventory and received at the plant.

(b) Separately tabulate the total pounds of each milk product, other than a fluid milk product or product included in § 1002.41(c)(1), contained in closing inventory at or moved from the plant.

* * * * *

(d) If the sum of the tabulation in paragraph (b) of this section exceeds the sum of the tabulation in paragraph (a) of this section, the excess shall be considered as milk products manufactured and shall be subject to further accounting as a product produced in the current month.

(e) When a milk product other than a fluid milk product or product included in § 1002.41(c)(1) manufactured during the month is reprocessed, converted, or combined with another product during the same month, the fluid milk products, products included in § 1002.41(c)(1), and other source milk used in the first instance shall be considered to have been used directly in the product resulting from such reprocessing, conversion, or combining.

(f) When skim milk powder or other concentrated milk products manufactured in a month are used in the same month to fortify a fluid milk product or a product included in § 1002.41(c)(1), the skim milk equivalent of that portion of such products which is in excess of the volume included in the fortified product shall be determined and accounted for in accordance with § 1002.246 (b) and (c).

5. Section 1002.143 is amended by revising paragraph (a)(5) to read as follows:

§ 1002.143 Skim milk and butterfat accounted for at a pool plant.

(a) * * *

(5) In the skim milk equivalent of skim milk powder and other concentrated milk products determined pursuant to § 1002.246 (b) and (c) to be in excess of the volume included in the fluid milk products and products included in § 1002.41(c)(1) accounted for in paragraph (a) (1) and (2) of this section. In the event that the skim milk in fluid milk products or products included in § 1002.41(c)(1) is classified in more than one class, the tabulation should be subdivided to show the quantity of skim milk in each class. The total of all skim milk so tabulated shall be known as the skim milk accounted for at the plant.

* * * * *

6. Section 1002.160 is revised to read as follows:

§ 1002.160 Procedure for allocation of skim milk and butterfat classified.

The allocation procedure is set forth in §§ 1002.40(c) and 1002.45.

7. Section 1002.180 is revised to read as follows:

§ 1002.180 Assignment at a plant which is not a pool plant, another order plant nor a producer-handler plant under any other order.

The allocation procedure is set forth in § 1002.44(d).

8. Section 1002.220 is amended by revising paragraphs (b) and (c) to read as follows:

§ 1002.220 Method of accounting for closing inventories.

* * * * *

(b) As Class II in the form of packaged products included in § 1002.41(c)(1) and in bulk concentrated fluid milk products at a pool plant.

(c) As Class III in the form of bulk fluid milk products (other than bulk concentrated fluid milk products) and bulk products included in § 1002.41(c)(1) at a pool plant or such products in bulk or packaged form at a plant not defined in § 1002.8 (b) or (d).

9. Section 1002.230 is revised to read as follows:

§ 1002.230 Butterfat tests.

In the absence of information establishing the butterfat content of a milk product, prevailing standards of identity shall be used. When skim milk powder is used for reconstitution or fortification of fluid milk products or products included in § 1002.41(c)(1), it will be considered to contain no butterfat. (21 CFR parts 131, 133, and 135)

10. Section 1002.231 is revised to read as follows:

§ 1002.231 Milk solids not fat tests.

In the absence of information establishing the milk solids not fat content of a milk product, prevailing standards of identity shall be used. (21 CFR parts 131, 133, and 135)

11. Section 1002.232 is amended by revising paragraph (b) to read as follows:

§ 1002.232 Weights.

* * * * *

(b) Other products.

Product	Weight per gallon (pounds)
Dairy farmer milk	8.60
Cultured milk drinks	8.60
Flavored milk drinks	8.00
Evaporated milk	9.10
Sweetened condensed milk	10.80
Sweetened condensed skim milk	11.20
Liquid yogurt	8.00
Kefir	8.00
Milkshake drinks	8.00
Frozen dessert mix (except chocolate)	9.10
Frozen dessert mix (chocolate)	9.25
Frozen dessert mix (ice milk)	9.10
Frozen dessert mix (sherbet)	9.10
Whipped topping mixture	8.65

12. Section 1002.233 is revised to read as follows:

§ 1002.233 Weights and equivalents of concentrated skim milk and skim milk powder.

In the absence of information establishing the weight or skim milk equivalent of concentrated skim milk and skim milk powder, the following table shall be used:

Concentrated skim milk

A	B	C	D
Percent total solids in the mixture	Weight per gallon (pounds)	Product skim equiv. factor	Class III skim equiv. factor
24.5 but less than 25.5	9.22	2.851	1.915
25.5 but less than 26.5	9.26	2.965	2.033
26.5 but less than 27.5	9.30	3.079	2.151
27.5 but less than 28.5	9.34	3.193	2.269
28.5 but less than 29.5	9.38	3.307	2.387
29.5 but less than 30.5	9.42	3.421	2.505
30.5 but less than 31.5	9.47	3.535	2.623
31.5 but less than 32.5	9.51	3.649	2.741
32.5 but less than 33.5	9.55	3.763	2.859
33.5 but less than 34.5	9.59	3.877	2.977
34.5 but less than 35.5	9.63	3.991	3.095
35.5 but less than 36.5	9.68	4.105	3.213
36.5 but less than 37.5	9.72	4.219	3.331
37.5 but less than 38.5	9.76	4.333	3.449
38.5 but less than 39.5	9.81	4.447	3.567
39.5 but less than 40.5	9.85	4.561	3.685
40.5 but less than 41.5	9.90	4.675	3.803
41.5 but less than 42.5	9.94	4.789	3.921
42.5 but less than 43.5	9.99	4.903	4.039
43.5 but less than 44.5	10.04	5.017	4.157
44.5 but less than 45.5	10.08	5.131	4.275
45.5 but less than 46.5	10.13	5.245	4.393
46.5 but less than 47.5	10.18	5.359	4.511
47.5 but less than 48.5	10.23	5.473	4.629
48.5 but less than 49.5	10.28	5.587	4.747
49.5 but less than 50.5	10.32	5.701	4.865

Concentrated skim milk

A	B	C	D
Percent total solids in the mixture	Weight per gallon (pounds)	Product skim equiv. factor	Class III skim equiv. factor
50.5 but less than 51.5	10.37	5.815	4.983
51.5 but less than 52.5	10.42	5.929	5.101
52.5 but less than 53.5	10.47	6.043	5.219
53.5 but less than 54.5	10.53	6.157	5.337
54.5 but less than 55.5	10.58	6.271	5.455

For solids contents not listed, the following formula shall be used:

Weight per Gallon=[100/(100−(%SNF * .38556))] * 8.3341

Product skim equivalent factor=% SNF/8.77

Class III skim equivalent factor=Product skim equivalent factor−(8.63/weight per gallon)

Skim milk powder

A	B	C	D
Percent total solids in the mixture	Weight per gallon (pounds)	Product skim equiv. factor	Class III skim equiv. factor
		11.000	10.360

13. A new section 1002.234 is added to read as follows:

§ 1002.234 Weights and equivalents of concentrated milk and milk powder.

In the absence of information establishing the weight or skim milk equivalent of concentrated milk and milk powder, the following formula shall be used:

Weight per Gallon=[100/(100+((%BF * .04811)−(%SNF * .38556)))] * 8.3341

Product skim equivalent factor=% SNF/8.77

Class III skim equivalent factor=Product skim equivalent factor−(8.63/weight per gallon)

Milk powder

A	B	C	D
Percent total solids in the mixture	Weight per gallon (pounds)	Product skim equiv. factor	Class III skim equiv. factor
		11.000	10.360

14. Section 1002.241 is amended by revising paragraph (a) to read as follows:

§ 1002.241 Skim milk and butterfat in standardized milk.

(a) The butterfat content of milk established to have been standardized shall be the same as the butterfat in the milk, cream, and skim milk used to make such standardized milk less the butterfat in any fluid milk product or fluid cream product removed to effect standardization.

* * * * *

15. Section 1002.243 is amended by revising the section heading and paragraph (b) to read as follows:

§ 1002.243 Skim milk and butterfat contained in cream, storage cream, half and half, and skim milk.

* * * * *

(b) Determine the total amount of butterfat in the product on the basis of butterfat tests. In the absence of information establishing the butterfat content, determine the butterfat content by the application of § 1002.230.

* * * * *

16. Section 1002.245 is revised to read as follows:

§ 1002.245 Skim milk and butterfat contained in cultured and flavored milk drinks and in milkshake drinks.

(a) If the weight and the fat test of the product have been established on the basis of available information:

(1) Determine the total amount of fat in the product on the basis of fat tests and the weight of the product.

(2) Determine the total weight of the nonmilk ingredients other than water contained in the product and the fat content of such nonmilk ingredients.

(3) Determine the butterfat content of the product by subtracting from the total fat content of the product, the fat content of the nonmilk products used.

(4) Determine the skim milk content of the product by subtracting from the total weight of the product, the butterfat content of the product and total weight of the nonmilk ingredients other than water used in the manufacture of the product.

(b) In the absence of information establishing weights or tests, the weight of the product shall be determined in accordance with § 1002.232(b):

(1) The butterfat content shall be considered to be the same as the butterfat content of the milk products used in the manufacture of the product.

(2) The skim milk content shall be determined by deducting from the total weight of the product the butterfat determined to be contained therein pursuant to paragraph (b)(1) of this section.

17. Section 1002.246 is revised to read as follows:

§ 1002.246 Skim milk equivalent of a concentrated milk product and milk powder.

(a) The skim milk equivalent of a concentrated milk product and milk powder in other source milk receipts shall be determined by multiplying the pounds of concentrated milk product or milk powder by the appropriate product skim equivalent factor pursuant to §§ 1002.233 or 1002.234.

(b) When a concentrated milk product or milk powder is used to fortify fluid milk products or products included in § 1002.41(c)(1), the skim milk equivalent of that portion of such product which is in excess of the volume included in the fortified fluid milk product or product included in § 1002.41(c)(1) shall be determined by multiplying the pounds of concentrated milk product or milk powder by the appropriate Class III skim equivalent factor pursuant to §§ 1002.233 or 1002.234. The skim milk equivalent so determined shall be accounted for as a Class III disposition. Skim milk powder used to fortify fluid milk products and products included in § 1002.41(c)(1) will be considered to contribute no butterfat to the product so fortified.

(c) When concentrated milk or milk powder is reconstituted, the amount by which the skim milk equivalent of the concentrated milk or milk powder exceeds the pounds of reconstituted milk produced, shall be accounted for as a Class III disposition.

18. Section 1002.247 is amended by revising the section heading and replacing the word "nondairy" with the word "nonmilk" in paragraphs (c)(1) and (c)(2), to read as follows:

§ 1002.247 Skim milk equivalent and butterfat content of other manufactured products.

* * * * * *

19. Section 1002.260 is amended by revising the section heading, the introductory text, and the introductory text of paragraph (a) to read as follows:

§ 1002.260 Procedure for establishing fluid milk products, products included in § 1002.41(c)(1), and products included in § 1002.41(c)(4) (i) through (iv) dumped.

Fluid milk products, products included in § 1002.41(c)(1), and products included in § 1002.41(c)(4) (i) through (iv) processed by the disposing handler that are dumped may be classified as Class III only to the extent that the following procedure is followed:

(a) The market administrator is given prior notice and the opportunity to verify the fluid milk products, products included in § 1002.41(c)(1), and products included in § 1002.41(c)(4) (i) through (iv) processed by the disposing handler to be dumped.

* * * * *

Dated: September 30, 1993.

Patricia Jensen,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–24417 Filed 10–5–93; 8:45 am]

BILLING CODE 3410–02–P

Commodity Credit Corporation

7 CFR Part 1427

RIN 0560–AD44

1993 Specifications for Cotton Bale Packaging Materials

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule amends the regulations with respect to the price support loan programs for upland and extra long staple cotton which are conducted by the Commodity Credit Corporation (CCC) in accordance with The Agricultural Act of 1949 (the 1949 Act), as amended. The amendments made by this interim rule will provide greater clarity, enhance the administration of CCC programs by providing uniformity between CCC price support programs, eliminate obsolete provisions, and more appropriately reflect loan eligibility quality requirements for the 1993 and subsequent year crops.

DATES: Effective on October 6, 1993. Comments must be received on or before November 5, 1993 in order to be assured of consideration.

ADDRESSES: Submit comments to Director, Cotton, Grain, and Rice Price Support Division, Agricultural Stabilization and Conservation Service (ASCS), United States Department of Agriculture (USDA), P.O. Box 2415, Washington, DC 20013–2415; telephone 202–720–7641.

FOR FURTHER INFORMATION CONTACT: Philip Sharp, Program Specialist, Cotton, Grain, and Rice Price Support Division, ASCS, USDA, P.O. Box 2415, Washington, DC 20013–2415; telephone 202–720–7988.

SUPPLEMENTARY INFORMATION:

Executive Order 12291 and Departmental Regulation 1512–1

This rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation 1512–1 and it has been determined "nonmajor." It has been determined that the provisions of this interim rule will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this interim rule since the CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of these determinations.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are: Commodity Loans and Purchases—10.051.

Executive Order 12778

This interim rule has been reviewed in accordance with Executive Order 12778, Civil Justice Reform. The provisions of this interim rule do not preempt State laws and are not retroactive. Before any judicial action may be brought with respect to the provisions of this interim rule, administrative appeal remedies at 7 CFR part 780 must be exhausted.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Paperwork Reduction Act

The amendments to 7 CFR part 1427 set forth in this interim rule do not contain any new or revised information collection requirements that require clearance through the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35. The information collection requirements contained in the current regulations at 7 CFR part 1427 have been approved through August 31, 1994, by the OMB under the provisions of 44 U.S.C. chapter 35, and assigned OMB Nos. 0560–0074, 0560–0087, and 0560–0029. Public reporting burden for these collections is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of the information collection requirements, including suggestions for reducing the burden, to the Department of Agriculture, Clearance Office, OIRM, AG Box 7630, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB Nos. 0560–0074, 0560–0087, and 0560–0129), Washington, DC 20503.

Background

The 1949 Act sets forth the statutory authority for CCC price support programs. CCC price support programs are intended to stabilize market prices and provide interim financing and assistance to producers in the orderly marketing of eligible commodities.

This interim rule amends regulations found at 7 CFR part 1427 to provide rules for administering CCC price support programs for the 1993 through 1995 crop years.

This rule has been reviewed pursuant to Executive Order 12778. To the extent State and local laws are in conflict with these regulatory provisions, it is the intent of CCC that the terms of these

regulations prevail. The provisions of this interim rule are not retroactive and prior to any judicial action in a court of competent jurisdiction, administrative review under 7 CFR part 780 must be exhausted.

On March 31, 1993, the Cotton Marketing Advisory Committee (committee) appointed by the Secretary of Agriculture, adopted a recommendation to the Secretary concerning changes to the system of classification of upland cotton beginning with the 1993 crop year. For 1992 and prior crop years, a component of the classification for upland cotton was based on the combination of color of the cotton and content of leaf in the ginned cotton. The committee recommended that the sign component of color and leaf be separated into separate classification components. The recommendation was approved by the Secretary effective with the 1993 crop year. Accordingly, upland cotton will now be classed separately for color grade and leaf grade.

In addition, for 1992 and prior crop years, the presence of extraneous matter in the ginned upland cotton could result in the overall reduction in the grade of such cotton. Because of the separation of color grade and leaf grade it will no longer be necessary to reduce the grade of the cotton for extraneous matter. Accordingly, this interim rule amends §§ 1427.1(b)(2), 1427.5(b)(1)(iii), and 1427.5(b)(1)(v)(A) to incorporate these changes.

For many years, CCC has approved individuals to act as loan clerks to assist producers in preparing CCC price support loan documents. Generally, these individuals represent businesses to which the producer sold their cotton after the cotton was redeemed from price support loan. Because of the increase in loan deficiency payment applications, several loan clerks requested that CCC also approve such clerks to assist producers in preparing loan deficiency payment documents. CCC has agreed to allow clerks to assist producers in the preparation of such documents.

Accordingly, this interim rule removes the definition of "loan clerk" and adds the definition of "cotton clerk" in § 1427.3 to clarify that cotton clerks approved by CCC may assist producers in preparing both loan and loan deficiency documents, amends § 1427.6(a)(3) to provide that cotton clerks may disburse price support loans, amends § 1427.13 to include loan deficiency payments and correct typographical errors, and amends § 1427.15 to include the provisions for loan deficiency payments.

Each year the Joint Cotton Industry Bale Packaging Committee (JCIBPC) sponsored by the National Cotton Council in cooperation with the American Textile Manufactures Institute, approves specifications for cotton bale packaging to be used as industry guidelines. Accordingly, this interim rule amends § 1427.5(b)(2)(iii) to change the referenced year from 1992 to 1993 for the Specifications for Cotton Bale Packaging Materials published by the JCIBPC.

This interim rule amends § 1427.5(b)(2)(iv)(A) to correct an error which requires ginners to show the tare weight of each bale on the gin bale tag. This change allows ginners to provide warehousemen the tare weight of the bale without actually entering the tare weight on the gin bale tag.

This interim rule amends § 1427.5(c)(2)(iii)(D) to correct an error. This change clarifies that agents designated by the producer on a CCC–605 to act on behalf of the producer may designate a subsequent agent by a single endorsement of the agent.

This interim rule amends § 1427.5(c)(3) to correct an error and provide that cotton delivered to CCC approved cooperatives shall not be eligible to receive loan deficiency payments if the producer-member who delivered the cotton does not retain the right to share in the proceeds from the marketing of the cotton.

This interim rule amends § 1427.5(d) to correct an error by removing the requirement that cotton received as payment of fixed or standing rent is ineligible for loan or loan deficiency payment. The general eligibility requirements at § 1427.5 make this provision redundant.

This interim rule amends § 1427.6(c) to reference § 1427.5 for eligibility requirements for clarity.

This interim rule amends § 1427.7(a) to correct a typographical error.

This interim rule amends § 1427.7(b) to correct an error and to clarify that if upland or ELS cotton loans are extended for an additional 8-month period the producer shall pay to CCC, if forfeited to CCC, all storage costs associated with the storage of the forfeited cotton and one dollar per bale.

This interim rule amends § 1427.8(d) to correct an error by removing the reference to AMS Form A–1.

This interim rule amends § 1427.9 to correct errors by clarifying the classification requirements. In addition, for 1992 and prior crop years, CCC required that the cotton be classed not more than 15 days before the date the warehouse receipt was issued. CCC has determined that this provision is not necessary and is an undue burden on the producer. Accordingly, § 1427.9 is amended to remove the requirement that cotton must be classed not more than 15 days prior to the date the warehouse receipt was issued.

This interim rule amends §§ 1427.11(f)(2) and 1427.11(g)(3) to correct an error by clarifying that alterations in the gross weight will be accepted if the warehouse receipt bears CCC approved wording and to correct typographical errors.

This interim rule amends § 1427.12 to correct an error by clarifying that lien waivers must be obtained before disbursement of CCC price support loans if there are any liens or encumbrances on the cotton tendered as collateral.

Loan and loan deficiency payment proceeds are subject to offset or provided according to §§ 1427.14(b) and 1427.168(b). Accordingly, this interim rule amends §§ 1427.14 and 1427.168 by removing paragraph (a) in each section references to offsets applicable to farm-storage facilities or dying equipment loans.

This interim rule amends § 1427.17 to correct an error by removing the reference to cotton classification memoranda.

7 CFR part 1421 of this chapter provide the regulations governing CCC price support loans and loan deficiency payments for wheat, feed grains, rice, and oilseeds. For these commodities, CCC has determined that producers who violate the terms and condition of the loan note and security agreements or the loan deficiency payment application will cause harm or damage to CCC in that funds may be disbursed to producers for a quantity of the commodity which is not in existence or for a quantity on which the producer is not eligible. In the past these provisions have not applied to cotton, however, recent instances of incorrect certification by a few producers has pointed out this discrepancy. Accordingly, in an effort to further program integrity and to be consistent with the provisions applicable to other commodities this interim rule amends § 1427.18 and adds § 1427.175 to add liquidated damages that are applicable if a county committee determines that the producer has violated the terms or conditions of their loan note or loan deficiency payment application.

This interim rule also amends § 1427.18 to correct an error by clarifying the manner by which CCC will determine the value of loan collateral delivered or acquired by CCC that is not eligible to be forfeited to CCC in settlement of the loan.

This interim rule amends the introductory text of § 1427.19(b) to correct an error by removing references to classification memoranda.

This interim rule amends § 1427.23(b)(3) to add reference to Form CCC–709 used in requesting a loan deficiency payment on gin direct cotton that had been inadvertently omitted.

This interim rule amends §§ 1427.160(c) and 1427.160(d) to correct an error by clarifying that approved cooperative marketing associations must, unless otherwise authorized by CCC, request seed cotton loans at a central county office designated by the applicable State committee and to correct a typographical error.

This interim rule amends § 1427.163(b) to correct an error by clarifying that if a seed loan disbursement check is negotiated, repayment shall include interest.

This interim rule amends § 1427.165(b) to correct an error by removing references to AMS Forms 1 and 3.

This interim rule amends § 1427.168 by removing paragraph (c). This has been incorporated in § 1427.172(b)(3).

This interim rule amends § 1427.172(b)(3) to incorporate the provisions removed from § 1427.168 which requires that proceeds of a warehouse stored loan or loan deficiency payment on the lint cotton ginned from the seed cotton loan collateral must be used to satisfy the outstanding seed cotton loan.

This interim rule amends § 1427.172(b)(4) to correct an error by clarifying that an approved cooperative must repay the seed cotton loan before the applicable lint cotton can be pledged for loan or before a loan deficiency payment can be approved.

List of Subjects in 7 CFR Part 1427

Cotton, Loan programs—agriculture, Packaging and containers, Price support programs, Reporting and recordkeeping requirements, Surety bonds, Warehouses.

Accordingly 7 CFR part 1427 is amended as follows:

PART 1427—COTTON

1. The authority citation for 7 CFR part 1427 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1425, 1444, and 1444–2; 15 U.S.C. 714b and 714c.

2. Section 1427.1 is amended by:

A. Revising paragraphs (b)(2)(i), (b)(2)(ii), and (b)(2)(iii), and

B: Adding paragraph (b)(2)(iv) to read as follows:

§ 1427.1 Applicability.

* * * * *

(b) * * *

(2) * * *

(i) Grade, staple, and leaf,

(ii) Micronaire,

(iii) Strength, and

(iv) Bark and other extraneous matter.

* * * * *

3. Section 1427.3 is amended by removing the definition of *Loan clerk* and adding the definition of *Cotton clerk* to read as follows:

§ 1427.3 Definitions.

* * * * *

Cotton clerk means a person approved by CCC to assist producers in preparing loan and loan deficiency documents.

* * * * *

4. Section 1427.5 is amended by:

A. Revising paragraph (a),

B. Revising the introductory text of paragraph (b)(1)(iii),

C. Revising paragraph (b)(1)(iii)(A),

D. Adding paragraph (b)(1)(iii)(D),

E. Revising paragraph (b)(1)(v)(A),

F. Revising paragraphs (b)(2)(iii), (b)(2)(iii)(A), and (b)(2)(iv)(A),

G. Revising paragraph (c)(2)(iii)(D) and (c)(3), and

H. Revising paragraph (d) to read as follows:

§ 1427.5 General eligibility requirements.

(a) In order to receive price support for a crop of cotton, a producer must execute a note and security agreement or loan deficiency payment application on or before May 31 of the year following the year in which such crop is normally harvested. A Form A loan must be signed by the producer or producer's agent and mailed or delivered to the county office or an authorized LSA within 15 calendar days after the producer signs the Form A loan and within the period of loan availability. A producer, except for a cooperative, must request price support and loan deficiency payments:

(1) At the county office which, in accordance with part 719 of this title, is responsible for administering programs for the farm on which the cotton was produced, or

(2) From an authorized LSA.

(b)(1) * * *

(iii) For upland cotton, be a grade, staple length, leaf, micronaire, strength, and bark specified in:

(A) The schedule of premiums and discounts for grade, staple, and leaf,

* * * * *

(D) The schedule of bark discounts.

* * * * *

(v) * * *

(A) Upland cotton must not have a strength reading of 18 grams per tex, rounded to whole grams, or below.

* * * * *

(2) * * *

(iii) Be packaged in materials which meet specifications adopted by the Joint Cotton Industry Bale Packaging Committee (JCIBPC) sponsored by the National Cotton Council of America, for bale coverings and bale ties which are identified and approved by the JCIBPC as experimental packaging materials in the June 1993 Specifications for Cotton Bale Packaging Materials. Heads of bales must be completely covered.

(A) Copies of the June 1993 Specifications for Cotton Bale Packaging Materials published by the JCIBPC which are incorporated by reference are available upon request at the county office and at the following address: Joint Cotton Industry Bale Packaging Committee, National Cotton Council of America, P.O. Box 12285, Memphis, Tennessee 38112. Copies may be inspected at the South Agriculture Building, room 3623, 14th and Independence Ave. SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

* * * * *

(iv) * * *

(A) Who has entered the tare weight of the bale (bagging and ties used to wrap the bale) on the gin bale tag or otherwise furnish warehousemen the tare weight, and

* * * * *

(c) * * *

(2) * * *

(iii) * * *

(D) Allows agents so designated by the producer to designate a subsequent agent by endorsement of the form by the agent.

* * * * *

(3) If price support is made available to producers through an approved marketing cooperative in accordance with part 1425 of this chapter, the beneficial interest in the cotton must always have been in the producer-member who delivered the cotton to the cooperative or its member cooperative, except as otherwise provided in this section. Cotton delivered to such a cooperative shall not be eligible to receive a loan or a loan deficiency payment if the producer-member who delivered the cotton does not retain the right to share in the proceeds from the marketing of the cotton as provided in part 1425 of this chapter.

(d) If the person tendering cotton for a loan or a loan deficiency payment is a landowner, landlord, tenant, or sharecropper, such cotton must represent such person's separate share of the crop and must not have been acquired by such person directly or indirectly from a landowner, landlord, tenant, or sharecropper.

* * * * *

5. Section 1427.6 is amended by:

A. Revising paragraph (a)(3), and

B. Revising paragraph (c) to read as follows:

§ 1427.6 Disbursement of price support loans.

(a) * * *

(3) An approved cotton clerk who has entered into a written agreement with CCC on Form CCC–810.

* * * * *

(c) The loan documents shall not be presented for disbursement unless the commodity covered by the mortgage or pledged as security is eligible in accordance with § 1427.5. If the commodity was not an eligible commodity at the time of disbursement, the total amount disbursed under the loan, and charges plus interest shall be refunded promptly.

6. Section 1427.7 is amended by:

A. Revising the introductory text of paragraph (a), and

B. Revising the introductory text of paragraph (b) to read as follows:

§ 1427.7 Maturity of loans.

(a) Form A cotton loans and Form G loans to cotton cooperative marketing associations mature on demand by CCC and no later than the last day of the 10th calendar month from the first day of the month in which the loan or loan advance is disbursed, except that:

* * * * *

(b) If a producer's cotton price support loan is extended for 8 months in accordance with paragraphs (a) (1) and (2) of this section and the loan collateral is:

* * * * *

7. Section 1427.8 is amended by revising paragraph (d) to read as follows:

§ 1427.8 Amount of loan.

* * * * *

(d) CCC will not increase the amount of the loan made with respect to any bale of cotton as a result of a redetermination of the quantity or quality of the bale after it is tendered to CCC, except that if it is established to the satisfaction of CCC that a bona fide error was made with respect to the weight of the bale or the classification for the bale, such error may be corrected.

8. Section 1427.9 is amended by:

A. Revising paragraph (a),

B. Revising paragraph (b),

C. Revising paragraph (c),

D. Removing paragraph (e), and

E. Redesignating paragraph (f) as paragraph (e) and revising redesignated paragraph (e) to read as follows:

§ 1427.9 Classification of cotton.

* * * * *

(a) An AMS cotton classification or other entity's classification acceptable by CCC showing the classification of a bale must be based upon a representative sample drawn from the bale in accordance with instructions to samplers drawing samples under the Smith-Doxey program.

(b) If the producer's cotton has not been classed or sampled in a manner acceptable by CCC, the warehouse shall sample such cotton and forward the samples to the Cotton Classing Office or other entity approved by CCC serving the district in which the cotton is located. Such warehouse must be licensed by AMS or be an entity approved by CCC to draw samples for submission to the Cotton Classing Office or other entity approved by CCC.

(c) If a sample has been submitted for classification, another sample shall not be drawn and forwarded to a Cotton Classing Office or other entity approved by CCC except for a review classification.

* * * * *

(e) If a review classification is obtained, the loan value of the cotton represented thereby will be based on such review classification.

9. Section 1427.11 is amended by:

A. Revising paragraph (f)(2), and

B. Revising paragraph (g)(3) to read as follows:

§ 1427.11 Warehouse receipt and insurance.

* * * * *

(f) * * *

(1) * * *

(2) The tare shown on the receipt shall be the tare furnished to the warehouse by the ginner or entered by the ginner on the gin bale tag. A warehouse receipt reflecting an alteration in gross, tare, or net weight will not be accepted by CCC unless it bears, on the face of the receipt, the following legend or similar wording approved by CCC, duly executed by the warehouse or an authorized representative of the warehouse:

Corrected (gross, tare, or net) weight
(Name of warehouse)
By (Signature or initials)
Date

* * * * *

(g) * * *

(3) If the receipt does not show that receiving charges have been paid or waived, CCC shall reduce the loan amount by the amount of the receiving charges specified in the storage agreement between the warehouse and CCC. However, except for bales stored in the States of Alabama, Florida, Georgia, North Carolina, South Carolina, and Virginia, if receiving charges due on the bale include a charge, if any, for a new set of ties for compressing flat bales tied with ties which cannot be reused, the warehouse receipt must show such receiving charges and state: "Receiving charges due include charge for new set of ties", or similar notation, and CCC shall reduce the loan amount by the amount of the receiving charges shown on the warehouse receipt (this will be the amount payable by CCC if it pays for receiving, notwithstanding the provisions of the storage agreement).

* * * * *

10. Section 1427.12 is revised to read as follows:

§ 1427.12 Liens.

If there are any liens or encumbrances on the cotton tendered as collateral for a price support loan, waivers that fully protect the interest of CCC must be obtained before disbursement even though the liens or encumbrances are satisfied from the loan proceeds. No additional liens or encumbrances shall be placed on the commodity after the loan is approved.

11. Section 1427.13 is amended by:

A. Revising paragraph (a),

B. Revising paragraph (b), and

C. Revising paragraph (c) to read as follows:

§ 1427.13 Fees, charges and interest.

(a) A producer shall pay a nonrefundable loan service fee to CCC or, if applicable, to an authorized LSA, at a rate determined by CCC. Any such fee shall be in addition to any cotton clerk fee paid to a cotton clerk in accordance with paragraph (b) of this section. The amount of such fees is available in State and county offices and are shown on the note and security agreement.

(b) Cotton clerks may only charge fees for the preparation of loan or loan deficiency payment documents at the rate determined by CCC.

(1) Such fees may be deducted from the loan or loan deficiency payment proceeds instead of the fees being paid in cash.

(2) The amount of such fees is available in State and county offices and

is shown on the note and security agreement.

(c) Interest which accrues with respect to a loan shall be determined in accordance with part 1405 of this chapter. All or a portion of such interest may be waived with respect to a quantity of upland cotton which has been redeemed in accordance with § 1427.19 at a level which is less than the principal amount of the loan plus charges and interest.

* * * * *

12. Section 1427.14 is revised to read as follows:

§ 1427.14 Offsets.

If the producer is indebted to CCC or to any other agency of the United States and such indebtedness is listed on the county claim control record, amounts due the producer under regulations in this subpart shall be applied to such indebtedness as provided in part 3 of this title and part 1403 of this chapter.

13. Section 1427.15 is revised to read as follows:

§ 1427.15 Special procedure where funds are advanced.

(a) This special procedure is provided to assist persons or firms which, in the course of their regular business of handling cotton for producers, have made advances to eligible producers on eligible cotton to be placed under loan or to receive a loan deficiency payment. A person, firm, or financial institution which has made advances to eligible producers on eligible cotton may also obtain reimbursement for the amounts advanced under this procedure.

(b) This special procedure shall apply only:

(1) To loan or LDP documents covering cotton on which a person or firm has advanced to the producers, including payments to prior lienholders and other creditors, the note amounts shown on the Form A loan, except for:

(i) Authorized cotton clerk fees.

(ii) The research and promotion fee to be collected for transmission to the Cotton Board by CCC, and

(iii) CCC loan service charges, and

(2) If such person or firm is entitled to reimbursement from the proceeds of the loans or loan deficiency payments for the amounts advanced and has been authorized by the producer to deliver the loan or loan deficiency payment documents to a county office for disbursement of the loans or loan deficiency payments.

(c)(1) All loan or loan deficiency payment documents shall be mailed or delivered to the appropriate county office and shall show the entire proceeds of the loans or loan deficiency payments, except for CCC loan service charges and research and promotion fee, for disbursement to:

(i) The financial institution which is to allow credit to the person or firm which made the loan or loan deficiency payment advances or to such financial institution and such person or firm as joint payees, or

(ii) The person, firm, or financial institution which made the loan or loan deficiency payment advances to the producers.

(2) When received in a county office warehouse receipts and loan documents must reflect not more than 60 days accrued storage, or the loan amount must be reduced by the excess storage as specified in § 1427.11.

(3) The documents shall be accompanied by Form CCC–825, Transmittal Schedule of Loan and Loan Deficiency Payment Documents, in original and two copies, numbered serially for each county office by the person, firm, or financial institution which made the loan or loan deficiency payment advance. The Form CCC–825 shall show the amounts invested by the person, firm, or financial institution in the loans or loan deficiency payments.

(4) Upon receipt of the loan or loan deficiency payment documents and Form CCC–825, the county office will stamp one copy of the Form CCC–825 to indicate receipt of the documents and return this copy to the person, firm, or financial institution.

(d) County offices will review the loan or loan deficiency payment documents prior to disbursement and will return to the person, firm, or financial institution any documents determined not to be acceptable because of errors or illegibility. County offices will disburse the loans or loan deficiency payments for which loan or loan deficiency payment documents are acceptable by issuance of one check to the payee indicated on the applicable form and will mail the check to the address shown for such payee on the applicable form with a copy of Form CCC–825. The Form CCC–825 will show the date of disbursement by a county office and amount of interest earned by the person, firm, or financial institution.

(e) The person, firm, or financial institution shall be deemed to have invested funds in the loans or loan deficiency payment as of the date loan or loan deficiency payment documents acceptable to CCC were delivered to a county office or, if received by mail, the date of mailing as indicated by postmark or the date of receipt in a county office if no postmark date is shown. Patron postage meter date stamp will not be recognized as a postmark date.

(f) Interest will be computed on the total amount invested by the person, firm, or financial institution in the loan or loan deficiency payment represented by accepted documents from and including the date of investment of funds by the person, firm, or financial institution to, but not including, the date of disbursement by a county office.

(1) Interest will be paid at the rate in effect for CCC loans as provided in part 1405 of this chapter.

(2) Interest earned by the person, firm, or financial institution on the investment in loans disbursed during a month will be paid by county offices after the end of the month.

14. Section 1427.17 is revised to read as follows:

§ 1427.17 Custodial offices.

Forms CCC–Cotton A and CCC–Cotton A–1, collateral warehouse receipts and related documents will be maintained in custody of the local county office, authorized LSA, or any financial institution defined in § 1427.3 and approved by CCC, whichever disbursed the loan evidenced by such documents.

15. Section 1427.18 is amended by:

A. Removing the comma and the word "and" at the end of paragraph (a)(1)(iv) and inserting a semicolon,

B. Redesignating paragraph (a)(1)(v) as paragraph (a)(1)(vi),

C. Adding a new paragraph (a)(1)(v),

D. Revising paragraph (a)(2),

E. Revising paragraph (d), and

F. Adding paragraphs (e) through (i) to read as follows:

§ 1427.18 Liability of the producer.

(a)(1) * * *

(v) Liquidated damages in accordance with paragraph (e) of this section, and

* * * * *

(2) Notwithstanding any provision of the note and security agreement, if a producer has made any such fraudulent representation or if the producer has disposed of, or moved, the loan collateral without prior written approval from CCC, the value of such collateral delivered to or acquired by CCC shall be equal to the sales price of the cotton less any costs incurred by CCC in completing the sale.

* * * * *

(d) If more than one producer executes a note and security agreement or loan deficiency payment application with CCC, each such producer shall be jointly and severally liable for the violation of the terms and conditions of the note and security agreement or loan deficiency payment application and the regulations set forth in this part. Each such producer shall also remain liable

for repayment of the entire loan or loan deficiency payment amount until the loan is fully repaid without regard to such producer's claimed share in the cotton pledged as collateral for the loan or for which the loan deficiency payment was made. In addition, such producer may not amend the note and security agreement or loan deficiency payment application with respect to the producer's claimed share in such cotton, or loan proceeds, after execution of the note and security agreement or loan deficiency payment application by CCC.

(e) The producer and CCC agree that it will be difficult, if not impossible, to prove the amount of damages to CCC if a producer makes any fraudulent representation in obtaining a loan or loan deficiency payment or in maintaining, or settling a loan or disposing of or moving the loan collateral without the prior written approval of CCC. Accordingly, if the county committee determines that the producer has violated the terms or conditions of Form CCC–Cotton A, Form CCC–Cotton AA, or Form CCC–709, as applicable, the producer shall pay to CCC as liquidated damages an amount computed by multiplying the quantity applicable to the violation by:

(1) For the first offense, if the county committee determines the producer acted in good faith when the violation occurred, 20 percent of the loan rate applicable to the loan note or the loan deficiency payment rate;

(2) For the second offense, if the county committee determines the producer acted in good faith when the violation occurred, 50 percent of the loan rate applicable to the loan note or the loan deficiency payment rate;

(3) For any offense other than the first or second offense including any offense for which the county committee cannot determine the producer acted in good faith when the violation occurred, 50 percent of the loan rate applicable to the loan note or the loan deficiency payment rate.

(f) For first and second offenses, if the county committee determines that a producer acted in good faith when the violation occurred, the county committee shall:

(1) Require repayment of the loan principal applicable to the loan quantity affected by the violation or for loan deficiency payment, the loan deficiency payment amount applicable to the loan deficiency quantity involved with the violation, and charges plus interest applicable to the amount repaid; and

(2) Assess liquidated damages in accordance with paragraph (e) of this section. If the producer fails to pay such amount within 30 calendar days from the date of notification, the county committee shall:

(i) Cancel the applicable liquidated damages assessed in accordance with paragraph (e) of this section;

(ii) Call the applicable loan involved in the violation and require repayment of any market gain previously realized for the applicable loan, or for loan deficiency payment, require repayment of the loan deficiency payment and charges plus interest.

(g) For cases other than first or second offense or any offense for which the county committee cannot determine good faith when the violation occurred, the county committee shall:

(1) Assess liquidated damages in accordance with paragraph (e) of this section;

(2) Call the applicable loan involved in the violation and require repayment of any market gain previously realized for the applicable loan, or for loan deficiency payment, require repayment of the loan deficiency payment and charges plus interest.

(h) If the county committee determines that the producer has committed a violation in accordance with paragraph (e) of this section, the county committee shall notify the producer in writing that:

(1) The producer has 15 calendar days to provide evidence and information regarding the circumstances which caused the violation, to the county committee, and

(2) Administrative actions will be taken in accordance with paragraph (f) or (g) of this section.

(i) If the loan is called in accordance with this section, the producer may not repay the loan at the lower of the loan repayment rate in accordance with § 1427.19 and may not utilize the provisions of part 1470 of this chapter with respect to such loan.

16. Section 1427.19 is amended by revising the introductory text of paragraph (b) to read as follows:

§ 1427.19 Repayment of price support loans.

* * * * *

(b) A producer or agent or subsequent agent authorized on Form CCC–605, may redeem one or more bales of cotton pledged as collateral for a loan by payment to CCC of an amount applicable to the bales of cotton being redeemed determined in accordance with this section. CCC, upon proper payment for the amount due, shall release the warehouse receipts applicable to such cotton. The producer may also request that the warehouse receipts be forwarded to a bank for payment, in which case:

* * * * *

17. Section 1427.23 is amended by revising paragraph (b)(3) to read as follows:

§ 1427.23 Cotton loan deficiency payments.

* * * * *

(b) * * *

(3) File a request for payment for a quantity of eligible cotton in accordance with § 1427.5(a) on CCC Form CCC–Cotton AA, Form CCC–709, or other form approved by CCC;

* * * * *

18. Section 1427.160 is amended by revising paragraphs (c) and (d) to read as follows:

§ 1427.160 General statement.

* * * * *

(c) A producer must, unless otherwise authorized by CCC, request price support at the county office which, in accordance with part 719 of this title, is responsible for administering programs for the farm on which the cotton was produced. An approved cooperative marketing association must, unless otherwise authorized by CCC, request price support at a central county office designated by the State committee. All note and security agreements and related documents necessary for the administration of the seed cotton loan program shall be determined by CCC and are available at State and county offices.

(d) Price support loans shall not be available with respect to any commodity produced on land owned or otherwise in the possession of the United States if such land is occupied without the consent of the United States.

19. Section 1427.163 is amended by revising paragraph (b) to read as follows:

§ 1427.163 Disbursement of loans.

* * * * *

(b) Disbursement of each loan will be made by the county office of the county which is responsible for administering programs for the farm on which the cotton was produced except that approved cooperatives designated by producers to obtain loans in their behalf may obtain disbursement of loans at a central county office designated by the State committee. Service charges shall be deducted from the loan proceeds. The producer or the producer's agent shall not present the loan documents for disbursement unless the cotton is in existence and in good condition. If the cotton is not in existence and in good condition at the time of disbursement, the producer or the agent shall

immediately return the check issued in payment of the loan or, if the check has been negotiated, the total amount disbursed under the loan, and charges plus interest shall be refunded promptly.

20. Section 1427.165 is amended by revising paragraph (b) to read as follows:

§ 1427.165 Eligible seed cotton.

* * * * *

(b) The quality of cotton which may be pledged as collateral for a loan shall be the estimated quality of lint cotton in each lot of seed cotton as determined by the county office, except that if a control sample of the lot of cotton is classed by an Agricultural Marketing Service (AMS), Cotton Classing Office or other entity approved by CCC, the quality for the lot shall be the quality shown on the applicable documentation issued for the control sample.

* * * * *

21. Section 1427.168 is revised to read as follows:

§ 1427.168 Offsets.

If the producer is indebted to CCC or any other agency of the United States and such indebtedness is listed on the county claim control record, amounts due the producer under regulations in this subpart shall be applied to such indebtedness as provided in part 3 of this title and part 1403 of this chapter.

22. Section 1427.172 is amended by:

A. Revising paragraph (b)(3), and

B. Revising introductory text of paragraph (b)(4) and revising paragraphs (b)(4)(i) and (b)(4)(ii) to read as follows:

§ 1427.172 Settlement.

* * * * *

(b) * * *

(3) A producer, except a cooperative, may obtain a warehouse stored loan or loan deficiency payment in accordance with this part, on the lint cotton, but:

(i) The loan, interest, and charges on the seed cotton must be satisfied out of the proceeds of the warehouse stored loan.

(ii) The loan deficiency payment must be applied towards the loan amount, interest, and charges on the outstanding seed cotton loan.

(4) An approved cooperative must repay the seed cotton loan, interest, and charges before pledging the cotton for a warehouse stored loan or before a loan deficiency payment can be approved on the lint cotton. If approved cooperatives authorized by producers to obtain loans in their behalf remove seed cotton from storage prior to obtaining approval to move such cotton, such removal shall constitute conversion of such cotton unless the cooperative:

(i) Notifies the county office in writing the following morning by mail or otherwise that such cotton has been moved and is on the gin yard;

(ii) Furnishes CCC an irrevocable letter of credit if requested; and

* * * * *

23. Section 1427.175 is added to read as follows:

§ 1427.175 Liability of the producer.

(a)(1) If a producer makes any fraudulent representation in obtaining a loan or in maintaining, or settling a loan or disposes of or moves the loan collateral without the prior written approval of CCC, such loan shall be payable upon demand by CCC. The producer shall be liable for:

(i) The amount of the loan;

(ii) Any additional amounts paid by CCC with respect to the loan;

(iii) All other costs which CCC would not have incurred but for the fraudulent representation or the unauthorized disposition or movement of the loan collateral;

(iv) Applicable interest on such amounts,

(v) Liquidated damages in accordance with paragraph (e) of this section, and

(vi) With regard to amounts due for a loan, the payment of such amounts may not be satisfied by the forfeiture of loan collateral to CCC.

(2) Notwithstanding any provision of the note and security agreement, if a producer has made any such fraudulent representation or if the producer has disposed of, or moved, the loan collateral without prior written approval from CCC, the value of such collateral delivered to or acquired by CCC shall be equal to the sales price of the cotton less any costs incurred by CCC in completing the sale.

(b) If the amount disbursed under a loan, or in settlement thereof, exceeds the amount authorized by this part, the producer shall be liable for repayment of such excess, plus interest. In addition, the commodity pledged as collateral for such loan shall not be released to the producer until such excess is repaid.

(c) If the amount collected from the producer in satisfaction of the loan is less than the amount required in accordance with this part, the producer shall be personally liable for repayment of the amount of such deficiency plus applicable interest.

(d) If more than one producer executes a note and security agreement with CCC, each such producer shall be jointly and severally liable for the violation of the terms and conditions of the note and security agreement and the regulations set forth in this part. Each such producer shall also remain liable for repayment of the entire loan amount until the loan is fully repaid without regard to such producer's claimed share in the cotton pledged as collateral for the loan. In addition, such producer may not amend the note and security agreement with respect to the producer's claimed share in such cotton, or loan proceeds, after execution of the note and security agreement by CCC.

(e) The producer and CCC agree that it will be difficult, if not impossible, to prove the amount of damages to CCC for if a producer makes any fraudulent representation in obtaining a loan or in maintaining, or settling a loan or disposing of or moving the loan collateral without the prior written approval of CCC. Accordingly, if the county committee determines that the producer has violated the terms or conditions of the note and security agreement, the producer shall pay to CCC as liquidated damages an amount computed by multiplying the quantity applicable to the violation by:

(1) For the first offense, if the county committee determines the producer acted in good faith when the violation occurred, 20 percent of the loan rate applicable to the loan note;

(2) For the second offense, if the county committed determines the producer acted in good faith when the violation occurred, 50 percent of the loan rate applicable to the loan note;

(3) For any offense other than the first or second offense including any offense for which the county committee cannot determine the producer acted in good faith when the violation occurred, 50 percent of the loan rate applicable to the loan note.

(f) For first and second offenses, if the county committee determines that a producer acted in good faith when the violation occurred, the county committee shall:

(1) Require repayment of the loan principal applicable to the loan quantity affected by the violation, and charges plus interest applicable to the amount repaid; and

(2) Assess liquidated damages in accordance with paragraph (e) of this section. If the producer fails to pay such amount with 30 calendar days from the date of notification, the county committee shall:

(i) Cancel the applicable liquidated damages assessed in accordance with paragraph (e) of this section;

(ii) Call the applicable loan involved in the violation.

(g) For cases other than first or second offense or any offense for which the county committee cannot determine

good faith when the violation occurred, the county committee shall:

(1) Assess liquidated damages in accordance with paragraph (e) of this section;

(2) Call the applicable loan involved in the violation.

(h) If the county committee determines that the producer has committed a violation in accordance with paragraph (e) of this section, the county committee shall notify the producer in writing that:

(1) The producer has 15 calendar days to provide evidence and information to the county committee regarding the circumstances which caused the violation, and

(2) Administrative actions will be taken in accordance with paragraph (f) or (g) of this section.

Signed in Washington, DC, on September 29, 1993.

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 93–24528 Filed 10–5–93; 8:45 am]

BILLING CODE 3410–05–P

FARM CREDIT ADMINISTRATION

12 CFR Part 618

RIN 3052–AB39

General Provisions; Releasing Information

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA), by the Farm Credit Administration Board (Board) adopts a final rule amending its regulation governing the release of information by Farm Credit System (System) directors, officers and employees. The FCA's final collateral evaluation regulations, published on November 20, 1992, conflict with the requirements of the regulation concerning release of appraisal information. The amendments to the regulation would allow information concerning borrowers and loan applicants to be given by a Farm Credit institution for the confidential use of authorized representatives of any State certifying and licensing agency, in contemplation of State certification and licensure of a System employee as a real estate appraiser.

EFFECTIVE DATE: The regulation shall become effective upon expiration of 30 days after this publication in the **Federal Register** during which either or both Houses of Congress are in session. Notice of the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Dennis K. Carpenter, Senior Policy Analyst, Regulation Development Division, Office of Examination, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: In connection with the FCA's final collateral evaluation regulations (part 614, subpart F), the FCA received public comments noting that application requirements of some State appraiser certifying and licensing agencies conflict with requirements of § 618.8320 relating to the release of information regarding borrowers and loan applicants. See 57 FR 54683, November 20, 1992. The commenters asserted that several State certifying and licensing agencies established in compliance with title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA) require that applicants agree to provide the agencies copies of appraisal reports they have prepared, which may include borrower information, in support of their applications. Compliance with such an application requirement by a System employee would cause the employee to violate paragraph (a) of § 618.8320 of existing regulations, which requires that letters and statements relative to the property of borrowers and loan applicants be held in strict confidence by directors, officers, and employees of every bank and association. Paragraph (a) identifies reports of inspectors and appraisers as documents that are prohibited from being exhibited or quoted, subject to exceptions identified by paragraph (b) of § 618.8320. Existing § 618.8320(b) does not authorize the release of appraisal reports for the purposes for which the State certifying and licensing agencies are requiring the information. Proposed amendments to the regulation were published in the **Federal Register** (57 FR 53453) on November 10, 1992.

The comment period for the proposed amendments to § 618.8320 closed on December 10, 1992. The FCA received one letter commenting on the proposed regulations. The Farm Credit Council (Council), on behalf of its membership, provided comments which generally supported the proposed amendments. Additionally, the Council offered suggestions for further clarification of the proposed amendments.

The Council commented that it is unreasonable to expect System entities to be able to determine whether a State's certification and licensing program makes reasonable provisions for protecting the confidentiality of borrower information. FCA disagrees and provides the following as clarification of its expectations.

The proposed § 618.8320(b)(10) requires each Farm Credit institution to determine that the State certification and licensing program makes reasonable provisions for protecting the confidentiality of the borrower information contained in the appraisal report. The FCA proposed this paragraph to ensure that borrower confidentiality is not compromised. The FCA believes that confidentiality of certain borrower information contained in an appraisal report should be protected and that Farm Credit institutions should review the State's certification and licensing program to determine that reasonable provisions for protecting confidentiality have been included before releasing such information. A determination of "reasonable provisions" might include an assessment of specific information required by the State's certification and licensing program and whether or not the State's program provides that confidentiality of records will be maintained. Such assurances might be included in specific policies and procedures of the State agency addressing the maintenance of the information or a letter from the State agency describing the handling of the information as confidential.

The System institution should take appropriate steps to protect the confidentiality of any borrower information that is not essential to the State's evaluation of the application. Appropriate steps might include redacting identifying borrower information that is not essential to the State's evaluation of the application.

The Council also requested further clarification of the word "certifies" in proposed § 618.8320(b)(10). As used in the proposed regulation, the word "certifies" refers to written documentation that verifies that appraisal information is being provided in connection with an employee's application for State certification and licensing for a real estate appraiser. Such written documentation should be maintained in a general or other appropriate file of the institution and should include a copy or listing of the information provided to the State agency and certification by the institution that the information is being provided in connection with an employee's application for State certification and licensure.

After reviewing the Council's comments, the FCA adopts the

regulation in final without change, with additional direction and clarification provided by this preamble.

List of Subjects in 12 CFR Part 618

Agriculture, Archives and records, Banks, banking, Insurance, Reporting and recordkeeping requirements, Rural areas, Technical assistance.

For the reasons stated in the preamble, part 618 of chapter VI, title 12 of the Code of Federal Regulations is amended to read as follows:

PART 618—GENERAL PROVISIONS

1. The authority citation for part 618 continues to read as follows:

Authority: Secs. 1.5, 1.11, 1.12, 2.2, 2.4, 2.5, 2.12, 3.1, 3.7, 4.12, 4.13A, 4.25, 4.29, 5.9, 5.10, 5.17 of the Farm Credit Act; 12 U.S.C. 2013, 2019, 2020, 2073, 2075, 2076, 2093, 2122, 2128, 2183, 2200, 2211, 2218, 2243, 2244, 2252.

Subpart G—Releasing Information

2. Section 618.8320 is amended by redesignating paragraph (b)(10) as new paragraph (b)(10)(i) and by adding a new paragraph (b)(10)(ii) to read as follows:

§ 618.8320 Data regarding borrowers and loan applicants.

* * * * *

(b) * * *

(10)(i) * * *

(ii) Information concerning borrowers contained in an appraisal report may be given by a Farm Credit institution to any State agency certifying and licensing real estate appraisers provided that the Farm Credit institution:

(A) Certifies that the information is required in connection with an employee's application for certification and licensure and that the institution has taken appropriate steps to protect the confidentiality of any borrower information that is not essential to the State's evaluation of the application; and

(B) Determines that the State certification and licensing program makes reasonable provisions for protecting the confidentiality of the borrower information contained in the appraisal report.

* * * * *

Dated: September 28, 1993.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 93–24469 Filed 10–5–93; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 176

[Docket No. 90F–0225]

Indirect Food Additives: Paper and Paperboard Components

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of dimethylamine-epichlorohydrin copolymer as a sizing agent in the manufacture of paper and paperboard products intended for use in contact with food. This action responds to a food additive petition filed by Albright and Wilson Americas.

DATES: Effective October 6, 1993; written objections and requests for a hearing by November 5, 1993.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9500.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of July 30, 1990 (55 FR 30983), FDA announced that a food additive petition (FAP 0B4215) had been filed by Albright and Wilson Americas, c/o Delta Analytical Corp., 7910 Woodmont Ave., suite 1000, Bethesda, MD 29814 (former address 1414 Fenwick Lane, Silver Spring, MD 20910), proposing that § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) be amended to provide for the safe use of dimethylamine-epichlorohydrin copolymer as a sizing agent in the manufacture of paper and paperboard intended for use in contact with food.

In its evaluation of the safety of the petitioned additive, FDA has reviewed the safety of the additive itself and the starting materials used to manufacture the additive. Although the additive (dimethylamine-epichlorohydrin copolymer) itself has not been shown to cause cancer, it has been found to contain minute amounts of unreacted epichlorohydrin, a carcinogenic reactant used in the manufacture of the additive. Residual amounts of reactants and manufacturing aids, such as epichlorohydrin, are commonly found as contaminants in chemical products, including food additives.

I. Determination of Safety

Under section 409(c)(3)(A) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A)), the so-called "general safety clause" of the statute, a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the additive is safe for that use. The concept of safety embodied in the Food Additives Amendment of 1958 is explained in the legislative history of the provision: "Safety requires proof of a reasonable certainty that no harm will result from the proposed use of the additive. It does not—and cannot—require proof beyond any possible doubt that no harm will result under any conceivable circumstance" (H. Rept. 2284, 85th Cong., 2d sess. 4 (1958)). This definition of safety has been incorporated into FDA's food additive regulations (21 CFR 170.3(i)). The anticancer, or Delaney, clause of the act (section 409(c)(3)(A)) provides further that no food additive shall be deemed to be safe if it is found to induce cancer when ingested by man or animal.

In the past, FDA has refused to approve the use of an additive that contained or was suspected of containing even minor amounts of a carcinogenic chemical, even though the additive as a whole has not been shown to cause cancer. The agency now believes, however, that developments in scientific technology and experience with risk assessment procedures make it possible for FDA to establish the safety of additives that contain carcinogenic chemicals but that have not themselves been shown to cause cancer.

In the preamble to the final rule permanently listing D&C Green No. 6, published in the **Federal Register** of April 2, 1982 (47 FR 14138), FDA explained the basis for approving the use of a color additive that has not been shown to cause cancer, even though it contains a carcinogenic impurity. Since that decision, FDA has approved the use of other color additives and food additives on the same basis.

An additive that has not been shown to cause cancer, but that contains a carcinogenic impurity, may properly be evaluated under the general safety clause of the statute using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the proposed use of the additive.

The agency's position is supported by *Scott* v. *FDA*, 728 F.2d 322 (6th Cir. 1984). That case involved a challenge to FDA's decision to approve the use of D&C Green No. 5, which contains a carcinogenic chemical but has itself not been shown to cause cancer. Relying heavily on the reasoning in the agency's decision to list this color additive, the U.S. Court of Appeals for the Sixth Circuit rejected the challenge to FDA's action and affirmed the listing regulation.

II. Safety of the Petitioned Use

FDA estimates that the petitioned use of the additive dimethylamine-epichlorohydrin copolymer will result in levels of exposure to the additive of no greater than 85 parts per billion in the daily diet. FDA does not ordinarily consider chronic toxicological testing to be necessary to determine the safety of an additive whose use will result in such low exposure levels (Refs. 1 and 2), and the agency has not required such testing here.

A. The Impurity, Epichlorohydrin

Because dimethylamine-epichlorohydrin copolymer, which contains epichlorohydrin, has not been shown to cause cancer, the anticancer provision does not apply. However, FDA has further evaluated the safety of the additive under the general safety clause, considering all available data and using risk assessment procedures to estimate the upper-bound limit of lifetime risk presented by the carcinogenic chemical, epichlorohydrin, that may be present as an impurity in the additive.

The risk assessment procedures that FDA used in this evaluation are similar to the methods that it has used to examine the risk associated with the presence of minor carcinogenic impurities in various other food and color additives that contain carcinogenic impurities (see 49 FR 13018 at 13019, April 2, 1984). The risk evaluation of the carcinogenic impurity, epichlorohydrin, has two aspects: (1) Assessment of the exposure to the impurity from the proposed use of the additive, and (2) extrapolation of the risk observed in the animal bioassay to the conditions of probable exposure to humans.

Based on the fraction of the daily diet that may be in contact with paper food-contact surfaces containing dimethylamine-epichlorohydrin copolymer and on the level of epichlorohydrin that may be present in the additive, FDA estimated the worst-case exposure to epichlorohydrin from the petitioned use of the additive in the manufacture of paper and paperboard contacting aqueous and fatty foods to be 1.6 micrograms per person per day (µg/person/day) (Ref. 3). The agency used data from a Japanese carcinogenesis bioassay (Ref. 4) on epichlorohydrin fed to rats via their drinking water to estimate the upper-bound limit of lifetime human risk from exposure to this chemical stemming from the proposed use of the additive. The results of the bioassay demonstrated that epichlorohydrin was carcinogenic under the conditions of the study. The test material caused significantly increased incidences of stomach papillomas and carcinomas in the rats.

The Center for Food Safety and Applied Nutrition reviewed this bioassay and other relevant data available in the literature and concluded that the findings of carcinogenicity were supported by this information on epichlorohydrin. The center further concluded that an estimate of the upper-bound lifetime human risk from potential exposure to epichlorohydrin resulting from the proposed use of the additive could be calculated from the bioassay.

The agency used a quantitative risk assessment procedure (linear proportional model) to extrapolate from the dose used in the study with rats to the very low doses encountered under the proposed conditions of use. This procedure is not likely to underestimate the actual risk from very low doses and may, in fact, exaggerate it because the extrapolation models are designed to estimate the maximum risk consistent with the data. For this reason, the estimate can be used with confidence to determine to a reasonable certainty whether any harm will result from the proposed conditions of use of the food additive.

Based on a worst-case exposure of 1.6 µg/person/day, FDA estimates that the upper-bound limit of individual lifetime risk from potential exposure to epichlorohydrin resulting from the use of dimethylamine-epichlorohydrin copolymer is 7.2×10^{-8}, or 7.2 in 100 million (Ref. 5). Because of the numerous conservatisms in the exposure estimate, actual lifetime averaged individual daily exposure to epichlorohydrin is expected to be substantially less than the estimated daily intake, and therefore, the calculated upper-bound risk would be less. Thus, the agency concludes that there is a reasonable certainty of no harm from exposure to epichlorohydrin that might result from the proposed use of the additive.

B. Need for Specifications

The agency has also considered whether a specification is necessary to control the amount of epichlorohydrin in the food additive. The agency finds that a specification is not necessary for the following reasons: (1) Because of the low level at which epichlorohydrin may be expected to remain as an impurity following production of the additive, the agency would not expect this impurity to become a component of food at other than extremely small levels; and (2) the upper-bound limit of lifetime risk from exposure to this impurity, even under worst-case assumptions, is very low, less than 7.2 in 100 million.

III. Conclusion on Safety

FDA has evaluated the data in the petition and other relevant material and concludes that the proposed use of the additive in paper and paperboard products in contact with aqueous and fatty foods is safe. Based on this information, the agency has also concluded that the additive will have the intended technical effect. Therefore, § 176.170 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

IV. Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

V. Objections

Any person who will be adversely affected by this regulation may at any time on or before November 5, 1993, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each

numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objection received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

VI. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Carr, G. M., "Carcinogen Testing Programs," in "Food Safety: Where are We?," Committee on Agriculture, Nutrition, and Forestry, U.S. Senate, p. 59, July 1979.

2. Kokoski, C. J., "Regulatory Food Additive Toxicology," in "Chemical Safety Regulation and Compliance," edited by F. Homburger, J. K. Marquis, and S. Karger, New York, NY, pp. 24–33, 1985.

3. Memorandum from the Food and Color Additive Review Section (HFF–415) to the Indirect Additives Branch (HFF–335), concerning FAP 0B4215—Albright and Wilson Americas—exposure to the additive and its components, October 10, 1990.

4. Konishi, Y. et al., "Forestomach Tumors Induced by Orally Administered Epichlorohydrin in Male Wistar Rats," Gann 71: 922–923, 1980.

5. Memorandum from Quantitative Risk Assessment Committee, Center for Food Safety and Applied Nutrition, concerning epichlorohydrin, FAP 0B4215, June 6, 1991.

List of Subjects in 21 CFR Part 176

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 176 is amended as follows:

PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

1. The authority citation for 21 CFR part 176 is revised to read as follows:

Authority: Secs. 201, 402, 406, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 CFR U.S.C. 321, 342, 346, 348, 379(e)).

2. Section 176.170 is amended in the table in paragraph (a)(5) by revising the entry for "Dimethylamine-epichlorohydrin copolymer * * *" under the heading "Limitations" to read as follows:

§ 176.170 Components of paper and paperboard in contact with aqueous and fatty foods.

* * * * *

(a) * * *

(5) * * *

List of Substances	Limitations
Dimethylamine-epichlorohydrin copolymer in which not more than 5 mole-percent of dimethylamine may be replaced by an equimolar amount of ethylenediamine and in which the ratio of total amine to epichlorohydrin does not exceed 1:1. The nitrogen content of the copolymer shall be 9.4 to 10.8 weight percent on a dry basis and a 10 percent by weight aqueous solution of the final product has a minimum viscosity of 5.0 centipoises at 25°C, as determined by LVT-series Brookfield viscometer using a No.1 spindle at 60 r.p.m. (or by other equivalent method)..	For use only: 1. As a retention aid employed before the sheet-forming operation in the manufacture of paper and paperboard and limited to use at a level not to exceed 1 percent by weight of the finished paper and paperboard. 2. At the size press at a level not to exceed 0.017 percent by weight of the finished paper and paperboard.

* * * * *

Dated: September 30, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–24473 Filed 10–5–93; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 80

Provision of Early Intervention Services to Eligible Infants and Toddlers With Disabilities and Their Families, and Special Education and Related Services to Children With Disabilities Within the Section 6 School Arrangements

AGENCY: Office of the Secretary, DoD.

ACTION: Interim final rule.

SUMMARY: This interim final rule provides guidance implementing the Individuals with Disabilities Education Act (IDEA), as amended, in the Section 6 Schools and for eligible infants and toddlers in the United States.

DATES: This part is effective October 6, 1993. Written comments on this interim final rule must be received by November 5, 1993.

ADDRESSES: Forward comments to the Office of Section 6 Schools, Crystal Gateway #2, suite 1500, 1225 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Dr. Hector O. Nevarez, Director, Section 6 Schools, on (703) 746–7875/7874.

SUPPLEMENTARY INFORMATION: It has been determined that this interim final rule complies with: (1) Executive Order 12291, "Federal Regulation" because the interim final rule does not:

(a) Have an annual effect on the economy of $100 million or more.

(b) Cause a major increase in costs or prices for consumers, individual

industries, Federal, State, or local government agencies, or geographic regions; or

(c) Have a significant adverse effect on competition, employment, investment, productivity, or innovation;

(2) Public Law 96–354, "Regulatory Flexibility Act," does not apply because the interim final rule does not have a significant economic impact on a substantial number of small entities. The primary effect of this interim final rule will be a reduction in administrative costs and other burdens resulting from the simplification and clarification of policies.

(3) Public Law 96–511, "Paperwork Reduction Act," does not apply because the interim final rule does not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520).

This interim final rule is issued to provide guidance, required by statute, with respect to (1) the implementation of the IDEA, as amended, in the DoD Section 6 Schools and (2) the provision of early intervention services to infants and toddlers who, but for their age, would be entitled to enroll in such Section 6 Schools. This interim final rule is intended to provide that guidance as soon as possible in school year 1993–94. The DoD invites public comments on this interim final rule. It shall consider those comments in deciding whether, and, if so, how, to amend this interim final rule.

List of Subjects in 32 CFR Part 80

Education of individuals with disabilities, Individuals with disabilities, Infants and children.

Accordingly, title 32, chapter I, subchapter C, is amended to add part 80 to read as follows:

PART 80—PROVISION OF EARLY INTERVENTION SERVICES TO ELIGIBLE INFANTS AND TODDLERS WITH DISABILITIES AND THEIR FAMILIES, AND SPECIAL EDUCATION AND RELATED SERVICES TO CHILDREN WITH DISABILITIES WITHIN THE SECTION 6 SCHOOL ARRANGEMENTS

Sec.

80.1 Purpose.
80.2 Applicability and scope.
80.3 Definitions.
80.4 Policy.
80.5 Responsibilities.
80.6 Procedures.
Appendix A to Part 80—Procedures for the Provision of Early Intervention Services for Infants and Toddlers With Disabilities, Ages 0–2 (inclusive), and Their Families
Appendix B to Part 80—Procedures for Special Education Programs (Including Related Services) and for Preschool Children and Children With Disabilities (3–21 years Inclusive)
Appendix C to Part 80—Hearing Procedures

Authority: 20 U.S.C. 1400 *et seq.*; 20 U.S.C. 241; 20 U.S.C. 241 note.

§ 80.1 Purpose.

This part:

(a) Establishes policies and procedures for the provision of early intervention services to infants and toddlers with disabilities (birth to age 2 inclusive) and their families, and special education and related services to children with disabilities (ages 3–21 inclusive) entitled to receive special educational instruction or early intervention services from the Department of Defense under Pub. L. 81–874, sec. 6, as amended; Pub. L. 97–35, sec. 505(c); the Individuals with Disabilities Education Act, Pub. L. 101–476, as amended; Pub. L. 102–119, sec. 23; and consistent with 32 CFR parts 285 and 310, and the Federal Rules of Civil Procedures (28 U.S.C.).

(b) Establishes policy, assigns responsibilities, and prescribes procedures for:

(1) Implementation of a comprehensive, multidisciplinary program of early intervention services for infants and toddlers ages birth through 2 years (inclusive) with disabilities and their families.

(2) Provision of a free, appropriate education including special education and related services for preschool children with disabilities and children with disabilities enrolled in the Department of Defense Section 6 School Arrangements.

(c) Establishes a Domestic Advisory Panel (DAP) on Early Intervention and Education for Infants, Toddlers, Preschool Children and Children with Disabilities, and a DoD Coordinating Committee on Domestic Early Intervention, Special Education and Related Services.

(d) Authorizes the publication of DoD Regulations and Manuals, consistent with DoD 5025.1–M [1], and DoD forms consistent with DoD 5000.12–M [2] and DoD Directives 8910.1 [3] to implement this part.

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[2] See footnote 1 to § 80.1 (c).

[3] See footnote 1 to § 80.1 (c).

§ 80.2 Applicability and scope.

This part:

(a) Applies to the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Unified and Specified Commands, the Inspector General of the Department of Defense, the Defense Agencies, and the DoD Field Agencies (hereafter referred to collectively as "the DoD Components").

(b) Encompasses infants, toddlers, preschool children, and children receiving or entitled to receive early intervention services or special educational instruction from the DoD on installations with Section 6 School Arrangements, and the parents of those individuals with disabilities.

(c) Applies only to schools operated by the Department of Defense within the Continental United States, Alaska, Hawaii, Puerto Rico, Wake Island, Guam, American Samoa, the Northern Mariana Islands, and the Virgin Islands.

§ 80.3 Definitions.

(a) *Assistive technology device.* Any item, piece of equipment, or product system, whether acquired commercially or off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities.

(b) *Assistive technology service.* Any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device. This term includes:

(1) Evaluating the needs of an individual with a disability, including a functional evaluation of the individual in the individual's customary environment.

(2) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by individuals with disabilities.

(3) Selecting designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing of assistive technology devices.

(4) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing educational and rehabilitative plans and programs.

(5) Training or technical assistance for an individual with disabilities, or, where appropriate, the family of an individual with disabilities.

(6) Training or technical assistance for professionals (including individuals providing educational rehabilitative services), employers, or other

individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of an individual with a disability.

(c) *Attention deficit disorder (ADD).* As used to define students, encompasses attention-deficit hyperactivity disorder and attention deficit disorder without hyperactivity. The essential features of this disorder are developmentally inappropriate degrees of inattention, impulsiveness, and hyperactivity.

(1) A diagnosis of ADD may be made only after the child is evaluated by appropriate medical personnel, and evaluation procedures set forth in this part (appendix B to this part) are followed.

(2) A diagnosis of ADD, in and of itself, does not mean that a child requires special education; it is possible that a child diagnosed with ADD, as the only finding, can have his or her educational needs met within the regular education setting.

(3) For a child with ADD to be eligible for special education, the Case Study Committee, with assistance from the medical personnel conducting the evaluation, must then make a determination that the ADD is a chronic or acute health problem that results in limited alertness, which adversely affects educational performance. Children with ADD who are eligible for special education and medically related services will qualify for services under "Other Health Impaired" as described in Criterion A, paragraph (g) (1) of this section.

(d) *Autism.* A developmental disability significantly affecting verbal and non-verbal communication and social interaction generally evident before age 3 that adversely affects educational performance. Characteristics of autism include irregularities and impairments in communication, engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term does not include children with characteristics of the disability of serious emotional disturbance.

(e) *Case Study Committee (CSC).* A school-based committee that determines a child's eligibility for special education, develops and reviews a child's individualized education program (IEP), and determines appropriate placement in the least restrictive environment. A CSC is uniquely composed for each child. Participants on a CSC must include:

(1) The designated representative of the Section 6 School Arrangement, who is qualified to supervise the provision of special education. Such representative may not be the child's special education teacher.

(2) One, or more, of the child's regular education teachers, if appropriate.

(3) A special education teacher.

(4) One, or both, of the child's parents.

(5) The child, if appropriate.

(6) A member of the evaluation team or another person knowledgeable about the evaluation procedures used with the child.

(7) Other individuals, at the discretion of the parent or the Section 6 School Arrangement, who may have pertinent information.

(f) *Child-find.* The ongoing process used by the Military Services and a Section 6 School Arrangement to seek and identify children (from birth to 21 years of age) who show indications that they might be in need of early intervention services or special education and related services. Child-find activities include the dissemination of information to the public and identification, screening, and referral procedures.

(g) *Children with disabilities ages 5–21 (inclusive).* Those children ages 5–21 years (inclusive), evaluated in accordance with this part, who are in need of special education as determined by a CSC and who have not been graduated from a high school or who have not completed the requirements for a General Education Diploma. The terms "child" and "student" may also be used to refer to this population. The student must be determined eligible under one of the following four categories:

(1) *Criterion A.* The educational performance of the student is adversely affected, as determined by the CSC, by a physical impairment; visual impairment including blindness; hearing impairment including deafness; orthopedic impairment; or other health impairment, including ADD, when the condition is a chronic or acute health problem that results in limited alertness; autism; and traumatic brain injury requiring environmental and/or academic modifications.

(2) *Criterion B.* A student who manifests a psychoemotional condition that is the primary cause of educational difficulties; a student who exhibits maladaptive behavior to a marked degree and over a long period of time that interferes with skill attainment, classroom functioning or performance, social-emotional condition, and who as a result requires special education. The term does not usually include a student whose difficulties are primarily the result of:

(i) Intellectual deficit;

(ii) Sensory or physical impairment;

(iii) Attention deficit hyperactivity disorder;

(iv) Antisocial behavior;

(v) Parent-child or family problems;

(vi) Disruptive behavior disorders;

(vii) Adjustment disorders;

(viii) Interpersonal or life circumstance problems; or

(ix) Other problems that are not the result of a severe emotional disorder.

(3) *Criterion C.* The educational performance of the student is adversely affected, as determined by the CSC, by a speech and/or language impairment.

(4) *Criterion D.* The measured academic achievement of the student in math, reading, or language is determined by the CSC to be adversely affected by underlying disabilities (including mental retardation and specific learning disability), including either an intellectual deficit or an information processing deficit.

(h) *Consent.* This term means that:

(1) The parent of an infant, toddler, child, or preschool child with a disability has been fully informed, in his or her native language, or in another mode of communication, of all information relevant to the activity for which permission is sought.

(2) The parent understands and agrees in writing to the implementation of the activity for which his or her permission is sought. The writing must describe that activity, list the child's records that will be released and to whom, and acknowledge that the parent understands consent is voluntary and may be prospectively revoked at any time.

(3) The parent of an infant, toddler, preschool child or child must consent to the release of records. The request for permission must describe that activity, list each individual's records that will be released and to whom, and acknowledge that the parent understands that consent is voluntary and may be prospectively revoked at any time.

(4) The written consent of a parent of an infant or toddler with a disability is necessary for implementation of early intervention services described in the individualized family service plan (IFSP). If such parent does not provide consent with respect to a particular early intervention service, then the early intervention services for which consent is obtained shall be provided.

(i) *Deaf.* A hearing loss or deficit so severe that the child is impaired in processing linguistic information through hearing, with or without

amplification, to the extent that his or her educational performance is adversely affected.

(j) *Deaf-blind.* Concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational problems that they cannot be accommodated in special education programs solely for children with deafness or children with blindness.

(k) *Developmental delay.* A significant discrepancy in the actual functioning of an infant or toddler when compared with the functioning of a nondisabled infant or toddler of the same chronological age in any of the following areas of development: Physical development, cognitive development, communication development, social and emotional development, and adaptive development as measured using standardized evaluation instruments and confirmed by clinical observation and judgment. A significant discrepancy exists when the one area of development is delayed by 25 percent or 2 standard deviations or more below the mean or when two areas of development are each delayed by 20 percent of 1½ standard deviations or more below the mean. (Chronological age should be corrected for prematurity.)

(l) *Early intervention program coordination services.* Case management services that include integration and oversight of the scheduling and accomplishment of evaluation and delivery of early intervention services to an infant or toddler with a disability and his or her family.

(m) *Early intervention services.* Developmental services that:

(1) Are provided under the supervision of a military medical department.

(2) Are provided using Military Health Service System resources at no cost to the infant or toddler's parents (but incidental fees (e.g., child care fees) that are normally charged to infants, toddlers, and children without disabilities or their parents may be charged).

(3) Are designed to meet the developmental needs of an infant or toddler with a disability in any one or more of the following areas: Physical development, cognitive development, communication development, social or emotional development, or adaptive development.

(4) Meet the standards developed by the Assistant Secretary of Defense for Health Affairs (ASD(HA)).

(5) Include the following services: Family training, counseling, and home visits; special instruction; speech pathology and audiology; occupational therapy; physical therapy; psychological services; early intervention program coordination services; medical services only for diagnostic or evaluation purposes; early identification, screening, and assessment services; vision services; and social work services. Also included are assistive technology devices and assistive technology services; health services necessary to enable the infant or toddler to benefit from the above early intervention services; and transportation and related costs that are necessary to enable an infant or toddler and the infant's or toddler's family to receive early intervention services.

(6) Are provided by qualified personnel, including: Special educators; speech and language pathologists and audiologists; occupational therapists; physical therapists; psychologists; social workers; nurses; nutritionists; family therapists; orientation and mobility specialists; and pediatricians and other physicians.

(7) To the maximum extent appropriate, are provided in natural environments, including the home and community settings in which infants and toddlers without disabilities participate.

(8) Are provided in conformity with an IFSP.

(n) *Evaluation.* Procedures used to determine whether an individual (birth through 21 inclusive) has a disability under this part and the nature and extent of the early intervention services and special education and related services that the individual needs. These procedures must be used selectively with an individual and may not include basic tests administered to, or used with, all infants, toddlers, preschool children or children in a school, grade, class, program, or other grouping.

(o) *Family training, counseling, and home visits.* Services provided, as appropriate, by social workers, psychologists, and other qualified personnel to assist the family of an infant or toddler eligible for early intervention services in understanding the special needs of the child and enhancing the infant or toddler's development.

(p) *Free appropriate public education.* Special education and related services for children ages 3–21 years (inclusive) that:

(1) Are provided at no cost (except as provided in paragraph (vv)(1) of this section) to parents or child with a disability and are under the general supervision and direction of a Section 6 School Arrangement.

(2) Are provided at an appropriate preschool, elementary, or secondary school.

(3) Are provided in conformity with an Individualized Education Program.

(4) Meet the requirements of this part.

(q) *Frequency and intensity.* The number of days or sessions that a service will be provided, the length of time that the service is provided during each session, whether the service is provided during each session, and whether the service is provided on an individual or group basis.

(r) *Health services.* Services necessary to enable an infant or toddler, to benefit from the other early intervention services under this part during the time that the infant or toddler is receiving the other early intervention services. The term includes:

(1) Such services as clean intermittent catheterization, tracheostomy care, tube feeding, the changing of dressings or osteotomy collection bags, and other health services.

(2) Consultation by physicians with other service providers on the special health care needs of infants and toddlers with disabilities that will need to be addressed in the course of providing other early intervention services.

(3) The term does not include the following:

(i) Services that are surgical in nature or purely medical in nature.

(ii) Devices necessary to control or treat a medical condition.

(iii) Medical or health services that are routinely recommended for all infants or toddlers.

(s) *Hearing impairment.* A hearing loss, whether permanent or fluctuating, that adversely affects an infant's, toddler's, preschool child's, or child's educational performance.

(t) *High probability for development delay.* An infant or toddler with a medical condition that places him or her at substantial risk of evidencing a developmental delay before the age of 5 years without the benefit of early intervention services.

(u) *Include; such as.* Not all the possible items are covered, whether like or unlike the ones named.

(v) *Independent evaluation.* An evaluation conducted by a qualified examiner who is not employed by the DoD Section 6 Schools.

(w) *Individualized education program (IEP).* A written statement for a preschool child or child with a disability (ages 3–21 years inclusive) developed and implemented in accordance with this part (Appendix B to this part).

(x) *Individualized family service plan (IFSP).* A written statement for an infant or toddler with a disability and his or her family that is a multidisciplinary assessment of the unique needs of the infant or toddler and concerns and the priorities of the family, and an identification of the services appropriate to meet such needs, concerns, and priorities.

(y) *Individuals with disabilities.* Infants and toddlers with disabilities, preschool children with disabilities, and children with disabilities ages birth to 21 years (inclusive) who are either entitled to enroll in a Section 6 School Arrangement or would, but for their age, be so entitled.

(z) *Infants and toddlers with disabilities.* Individuals from birth to age 2 years (inclusive), who need early intervention services because they:

(1) Are experiencing a developmental delay, as measured by appropriate diagnostic instruments and procedures, of 25 percent (or 2 standard deviations below the mean), in one or more areas, or 20 percent (or 1½ standard deviations below the mean), in two or more of the following areas of development: cognitive, physical, communication, social or emotional, or adaptive development.

(2) Are at-risk for a developmental delay; i.e., have a diagnosed physical or mental condition that has a high probability of resulting in developmental delay; e.g., chromosomal disorders and genetic syndromes.

(aa) *Intercomponent.* Cooperation among the DoD Components and programs so that coordination and integration of services to individuals with disabilities and their families occur.

(bb) *Medically related services.* (1) Medical services (as defined in paragraph (bb) of this section) and those services provided under professional medical supervision that are required by a CSC either to determine a student's eligibility for special education or, if the student is eligible, the special education and related services required by the student under this part in accordance with 32 CFR part 345.

(2) Provision of either direct or indirect services listed on an IEP as necessary for the student to benefit from the educational curriculum. These services may include: Medical; social work; community health nursing; dietary; psychiatric diagnosis; evaluation, and follow up; occupational therapy; physical therapy; audiology; ophthalmology; and psychological testing and therapy.

(cc) *Medical services.* Those evaluative, diagnostic, therapeutic, and supervisory services provided by a licensed and credentialed physician to assist CSCs and to implement IEPs. Medical services include diagnosis, evaluation, and medical supervision of related services that by statute, regulation, or professional tradition are the responsibility of a licensed and credentialed physician.

(dd) *Mental retardation.* Significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a preschool child's or child's educational performance.

(ee) *Multidisciplinary.* The involvement of two or more disciplines or professions in the provision of integrated and coordinated services, including evaluation and assessment activities, and development of an IFSP or IEP.

(ff) *Native language.* When used with reference to an individual of limited English proficiency, the language normally used by such individuals, or in the case of an infant, toddler, preschool child or child, the language normally used by the parent of the infant, toddler, preschool child or child.

(gg) *Natural environments.* Settings that are natural or normal for the infant or toddler's same age peers who have no disability.

(hh) *Non-section 6 school arrangement or facility.* A public or private school or other institution not operated in accordance with 32 CFR part 345. This term includes section 6 special contractual arrangements.

(ii) *Nutrition services.* These services include:

(1) Conducting individual assessments in nutritional history and dietary intake; anthropometric, biochemical and clinical variables; feeding skills and feeding problems; and food habits and food preferences.

(2) Developing and monitoring appropriate plans to address the nutritional needs of infants and toddlers eligible for early intervention services.

(3) Making referrals to appropriate community resources to carry out nutrition goals.

(jj) *Orthopedic impairment.* A severe physical impairment that adversely affects a child's educational performance. The term includes congenital impairments (such as club foot and absence of some member), impairments caused by disease (such as poliomyelitis and bone tuberculosis), and impairments from other causes such as cerebral palsy, amputations, and fractures or burns causing contracture.

(kk) *Other health impairment.* Having an autistic condition that is manifested by severe communication and other developmental and educational problems; or having limited strength, vitality, or alertness due to chronic or acute health problems that adversely affect a child's educational performance as determined by the CSC, such as: ADD, heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle call anemia, hemophilia, epilepsy, lead poisoning, leukemia, and diabetes.

(ll) *Parent.* The biological father or mother of a child; a person who, by order of a court of competent jurisdiction, has been declared the father or mother of a child by adoption; the legal guardian of a child; or a person in whose household a child resides, provided that such person stands in loco parentis to that child and contributes at least one-half of the child's support.

(mm) *Personally identifiable information.* Information that includes the name of the infant, toddler, preschool child, child, parent or other family member; the home address of the infant, toddler, preschool child, child, parent or other family member; another personal identifier, such as the infant's, toddler's, preschool child's, child's, parent's or other family member's social security number; or a list of personal characteristics or other information that would make it possible to identify the infant, toddler, preschool child, child, parent, or other family member with reasonable certainty.

(nn) *Preschool children with disabilities.* These are students, ages 3–5 years (inclusive), who need special education services because they:

(1) Are experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures in one or more of the following areas: Cognitive development, physical development, communication development, social or emotional development, and adaptive development; and

(2) Who, by reason thereof, need special education and related services.

(oo) *Primary referral source.* The DoD Components, including child care centers, pediatric clinics, and parents that suspect an infant, toddler, preschool child or child has a disability and bring that infant, toddler, preschool child or child to the attention of the Early Intervention Program or school CSC.

(pp) *Public awareness program.* Activities focusing on early identification of infants and toddlers with disabilities, including the

preparation and dissemination by the military medical department to all primary referral sources of information materials for parents on the availability of early intervention services. Also includes procedures for determining the extent to which primary referral sources within the Department of Defense, especially within DoD medical treatment facilities, and physicians disseminate information on the availability of early intervention services to parents of infants or toddlers with disabilities.

(qq) *Qualified.* With respect to instructional personnel, a person who holds at a minimum a current and applicable teaching certificate from any of the 50 States, Puerto Rico, or the District of Columbia, or has met other pertinent requirements in the areas in which he or she is providing special education or related services not of a medical nature to children with disabilities. Providers of early intervention services and medically related services must meet standards established by the ASD(HA).

(rr) *Related services.* This includes transportation, and such developmental, corrective, and other supportive services (including speech pathology and audiology; psychological services; physical and occupational therapy; recreation, including therapeutic recreation and social work services; and medical and counseling services), including rehabilitation counseling (except that such medical services shall be for diagnostic and evaluative purposes only)) as may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in preschool children or children. The following list of related services is not exhaustive and may include other developmental, corrective, or supportive services (such as clean intermittent catheterization), if they are required to assist a child with a disability to benefit from special education, as determined by a CSC.

(1) *Audiology.* This term includes:

(i) Audiological, diagnostic, and prescriptive services provided by audiologists who have a Certificate of Clinical Competence—Audiology (CCC–A) and pediatric experience. Audiology shall not include speech therapy.

(ii) Identification of children with hearing loss.

(iii) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention designed to ameliorate or correct that loss.

(iv) Provision of ameliorative and corrective activities, including language and auditory training, speech-reading (lip-reading), hearing evaluation, speech conservation, the recommendation of amplification devices, and other aural rehabilitation services.

(v) Counseling and guidance of children, parents, and service providers regarding hearing loss.

(vi) Determination of the child's need for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

(2) *Counseling services.* Services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel to help a preschool child or child with a disability to benefit from special education.

(3) *Early identification.* The implementation of a formal plan for identifying a disability as early as possible in the individual's life.

(4) *Medical services.* Those evaluative, diagnostic, therapeutic, and supervisory services provided by a licensed and credentialed physician to assist CSCs in determining whether a child has a medically related disability condition that results in the child's need for special education and related services and to implement IEPs. Medical services include diagnosis, evaluation, and medical supervision of related services that, by statute, regulation, or professional tradition, are the responsibility of a licensed and credentialed physician.

(5) *Occupational therapy.* Therapy that provides developmental evaluations and treatment programs using selected tasks to restore, reinforce, or enhance functional performance. It addresses the quality and level of functions in areas such as behavior, motor coordination, spatial orientation; visual motor and sensory integration; and general activities of daily living. This therapy, which is conducted by a qualified occupational therapist, provides training and guidance in using special equipment to improve the patient's functioning in skills of daily living, work, and study.

(6) *Parent counseling and training.* Assisting parents in understanding the special needs of their preschool child or children and providing parents with information about child development and special education.

(7) *Physical therapy.* Therapy that provides evaluations and treatment programs using exercise, modalities, and adaptive equipment to restore, reinforce, or enhance motor performance. It focuses on the quality of movement, reflex development, range of motion, muscle strength, gait, and gross motor development, seeking to decrease abnormal movement and posture while facilitating normal movement and equilibrium reactions. The therapy, which is conducted by a qualified physical therapist, provides for measurement and training in the use of adaptive equipment and prosthetic and orthotic appliances. When best efforts to obtain a qualified physical therapist fail, therapy may be conducted by a qualified physical therapist assistant under the clinical supervision of a qualified physical therapist.

(8) *Psychological services.* Services listed in paragraphs (rr)(8)(i) through (rr)(8)(iv) of this section that are provided by a qualified psychologist:

(i) Administering psychological and educational tests and other assessment procedures.

(ii) Interpreting test and assessment results.

(iii) Obtaining, integrating, and interpreting information about a preschool child's or child's behavior and conditions relating to his or her learning.

(iv) Consulting with other staff members in planning school programs to meet the special needs of preschool children and children, as indicated by psychological tests, interviews, and behavioral evaluations.

(v) Planning and managing a program of psychological services, including psychological counseling for preschool children, children, and parents. For the purpose of these activities, a qualified psychologist is a clinical psychologist licensed in a State of the United States who has a degree in clinical psychology and additional pediatric training and/or experience.

(9) *Recreation.* This term includes:

(i) Assessment of leisure activities.

(ii) Therapeutic recreational activities.

(iii) Recreational programs in schools and community agencies.

(iv) Leisure education.

(10) *School health services.* Services provided, pursuant to an IEP, by qualified school health nurse, or other qualified person, that are required for a preschool child or child with a disability to benefit from special education.

(11) *Social work counseling services in schools.* This term includes:

(i) Preparing a social and developmental history on a preschool child or child identified as having a disability.

(ii) Counseling the preschool child or child with a disability and his or her family on a group or individual basis, pursuant to an IEP.

(iii) Working with problems in a preschool child's or child's living

situation (home, school, and community) that adversely affect his or her adjustment in school.

(iv) Using school and community resources to enable the preschool child or children to receive maximum benefit from his or her educational program.

(12) *Speech pathology.* This term includes the:

(i) Identification of preschool children and children with speech or language disorders.

(ii) Diagnosis and appraisal of specific speech or language disorders.

(iii) Referral for medical or other professional attention to correct or ameliorate speech or language disorders.

(iv) Provision of speech and language services for the correction, amelioration, and prevention of communicative disorders.

(v) Counseling and guidance of preschool children, children, parents, and teachers regarding speech and language disorders.

(13) *Transportation.* This term includes transporting the individual with a disability and, when necessary, an attendant or family member or reimbursing the cost of travel ((e.g., mileage, or travel by taxi, common carrier or other means) and related costs (e.g., tolls and parking expenses)) when such travel is necessary to enable a preschool child or child to receive special education (including related services) or an infant or toddler and the infant's or toddler's family to receive early intervention services. Transportation services include:

(i) Travel to and from school and between schools, including travel necessary to permit participation in educational and recreational activities and related services.

(ii) Travel from school to a medically related service site and return.

(iii) Travel in and around school buildings.

(iv) Travel to and from early intervention services.

(v) Specialized equipment (including special or adapted buses, lifts, and ramps) if required to provide special transportation for an individual with a disability.

(vi) If necessary, attendants assigned to vehicles transporting an individual with a disability when that individual requires assistance to be safely transported.

(ss) *Section 6 school arrangement.* The schools (pre-kindergarten through grade 12) operated by the Department of Defense within the CONUS, Alaska, Hawaii, Puerto Rico, Wake Island, Guam, American Samoa, the Northern Mariana Islands, and the Virgin Islands. Section 6 School Arrangements are operated under DoD Directive 1342.21.[4]

(tt) *Separate facility.* A school or a portion of a school, regardless of whether it is used by the Section 6 School Arrangement, that is only attended by children with disabilities.

(uu) *Serious emotional disturbance.* The term includes:

(1) A condition that has been confirmed by clinical evaluation and diagnosis and that, over a long period of time and to a marked degree, adversely affects educational performance and that exhibits one or more of the following characteristics:

(i) An inability to learn that cannot be explained by intellectual, sensory, or health factors.

(ii) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.

(iii) Inappropriate types of behavior under normal circumstances.

(iv) A tendency to develop physical symptoms or fears associated with personal or school problems.

(v) A general, pervasive mood of unhappiness or depression.

(2) Schizophrenia, but does not include children who are socially maladjusted, unless it is determined that they are otherwise seriously emotionally disturbed.

(vv) *Service provider.* Any individual who provides services listed in an IEP or an IFSP.

(ww) *Social work services.* This term includes:

(1) Preparing a social or developmental history on an infant, toddler, preschool child or child with a disability.

(2) Counseling with the infant, toddler, preschool child or child and family in a group or individual capacity.

(3) Working with individuals with disabilities (0–21 inclusive) in the home, school, and/or community environment to ameliorate those conditions that adversely affect development or educational performance.

(4) Using school and community resources to enable the child to receive maximum benefit from his or her educational program or for the infant, toddler, and family to receive maximum benefit from early intervention services.

(xx) *Special education.* Specially designed instruction, at no cost to the parent, to meet the unique needs of a preschool child or child with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings, and instruction in physical education. The term includes speech pathology or any other related service, if the service consists of specially designed instruction, at no cost to the parents, to meet the unique needs of a preschool child or child with a disability, and is considered "special education" rather than a "related service." The term also includes vocational education if it consists of specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability.

(1) *At no cost.* With regard to a preschool child or child eligible to attend Section 6 School Arrangements, specially designed instruction and related services are provided without charge, but incidental fees that are normally charged to nondisabled students, or their parents, as a part of the regular educational program may be imposed.

(2) *Physical education.* The development of:

(i) Physical and motor fitness.

(ii) Fundamental motor skills and patterns.

(iii) Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports).

(iv) A program that includes special physical education, adapted physical education, movement education, and motor development.

(3) *Vocational education.* This term means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career requiring other than a baccalaureate or advanced degree.

(yy) *Special instruction.* This term includes:

(1) Designing learning environments and activities that promote the infant's, toddler's, preschool child's or child's acquisition of skills in a variety of developmental areas, including cognitive processes and social interaction.

(2) Planning curriculum, including the planned interaction of personnel, materials, and time and space, that leads to achieving the outcomes in the infant's, toddler's, preschool child's or child's IEP or IFSP.

(3) Providing families with information, skills, and support related to enhancing the skill development of the infant, toddler, or preschool child or child.

(4) Working with the infant, toddler, preschool child or child to enhance the infant's, toddler's, preschool child's or child's development and cognitive processes.

[4] See footnote 1 to § 80.1 (c).

(zz) *Specific learning disability.* A disorder in one or more of the basic psychological processes involved in understanding or in using spoken or written language that may manifest itself as an imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. The term includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not include preschool children or children who have learning problems that are primarily the result of visual, hearing, or motor disabilities, mental retardation, emotional disturbance, or environmental, cultural, or economic differences.

(aaa) *Speech and language impairments.* A communication disorder, such as stuttering, impaired articulation, voice impairment, or a disorder in the receptive or expressive areas of language that adversely affects a preschool child's or child's educational performance.

(bbb) *Superintendent.* The chief official of a Section 6 School Arrangement responsible for the implementation of this part on his or her installation.

(ccc) *Transition services.* A coordinated set of activities for a student, designed within an outcome-oriented process, which promotes movement from school to post-school activities, including post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. The coordinated set of activities shall be based upon the individual student's needs, taking into account the student's preferences and interests, and shall include instruction, community experiences, the development of employment and other post-school adult living objectives, and when appropriate, acquisition of daily living skills and functional vocational evaluation.

(ddd) *Traumatic brain injury.* An injury to the brain caused by an external physical force or by an internal occurrence, such as stroke or aneurysm, resulting in total or partial functional disability or psychosocial maladjustment that adversely affects educational performance. The term includes open or closed head injuries resulting in mild, moderate, or severe impairments in one or more areas, including cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem solving; sensory; perceptual and motor abilities; psychosocial behavior; physical function; and information processing and speech. The term does not include brain injuries that are congenital or degenerative or brain injuries that are induced by birth trauma.

(eee) *Vision services.* Services necessary to ameliorate the effects of sensory impairment resulting from a loss of vision.

(fff) *Visual impairment.* A sensory impairment including blindness that, even with correction, adversely affects a preschool child or child's educational performance. The term includes both partially seeing and blind preschool children and children.

§ 80.4 Policy.

It is DoD policy that:

(a) All individuals with disabilities ages 3 to 21 years receiving or entitled to receive educational instruction from the Section 6 School Arrangements shall be provided a free, appropriate education under this part in accordance with the IDEA, Pub. L. 101–476, as amended; the IDEA Amendments of 1991, Pub. L. 102–119, section 23; and DoD Directive 1342.21.

(b) All individuals with disabilities ages birth through 2 years (inclusive) and their families are entitled to receive early intervention services under this part, provided that such infants and toddlers would be eligible to enroll in a Section 6 School Arrangement but for their age.

§ 80.5 Responsibilities.

(a) The Assistant Secretary of Defense for Personnel and Readiness shall:

(1) Ensure that all infants and toddlers with disabilities (birth through 2 years inclusive) who but for their age would be eligible to attend the Section 6 Arrangement Schools, and their families are provided early intervention services in accordance with Pub. L. 101–476, as amended, and in conformity with the procedures in appendix A to this part.

(2) Ensure that preschool children and children with disabilities ages 3–21 years (inclusive) receiving educational instruction from Section 6 School Arrangements are provided a free appropriate public education and that the educational needs of such preschool children and children with disabilities are met using the procedures established by this part.

(3) Ensure that educational facilities and services provided by Section 6 School Arrangements for preschool children and children with disabilities are comparable to educational facilities and services for non-disabled students.

(4) Maintain records on special education and related services provided to children with disabilities, consistent with 32 CFR part 310.

(5) Ensure the provision of all necessary diagnostic services and special education and related services listed on an IEP (including those supplied by or under the supervision of physicians) to preschool children and children with disabilities who are enrolled in Section 6 School Arrangements.

In fulfilling this responsibility, the Assistant Secretary of Defense (Personnel and Readiness), (ASD(P&R)), or designee, may use intercomponent arrangements, or act through contracts with private parties, when funds are authorized and appropriated.

(6) Develop and implement a compressive system of personnel development, in accordance with 20 U.S.C. 1413(a)(3), for all professional staff employed by a Section 6 School Arrangement. This system shall include:

(a) Inservice training of general and special educational instructional and support personnel,

(b) Implementing innovative strategies and activities for the recruitment and retention of medically related service providers.

(c) Detailed procedures to assure that all personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained, and

(d) Effective procedures for acquiring and disseminating to teachers and administrators of programs for children with disabilities significant information derived from educational research, demonstration, and similar projects, and

(e) Adopting, where appropriate, promising practices, materials, and technology.

(7) Provide technical assistance to professionals in Section 6 School Arrangements involved in, or responsible for, the education of preschool children or children with disabilities.

(8) Ensure that child-find activities are coordinated with other relevant components and are conducted to locate and identify every individual with disabilities.

(9) Issue guidance implementing this part.

(10) Undertake evaluation activities to ensure compliance with this part through monitoring, technical assistance, and program evaluation.

(11) Chair the DOD Coordinating Committee on Domestic Early Intervention, Special Education, and Related Services, which shall be composed of representatives of the Secretaries of the Military Departments, the Assistant Secretary of Defense for

Health Affairs (ASD(HA)), the General Counsel of the Department of Defense (GC, DOD), and the Director, Section 6 Schools.

(12) Through the DOD Coordinating Committee on Domestic Early Intervention, Special Education, and Related Services, monitor the provision of special education and related services and early intervention services furnished under this part, and ensure that related services, special education, and early intervention services are properly coordinated.

(13) Ensure that appropriate personnel are trained to provide mediation services in cases that otherwise might result in due process proceedings under this part.

(14) Ensure that transition services from early intervention services to regular or special education and from special education to the world of work are provided.

(15) Ensure that all DOD programs that provide services to infants and toddlers and their families (e.g., child care, medical care, recreation) are involved in a comprehensive intercompenent system for early intervention services.

(16) Ensure, whenever practicable, that planned construction not yet past the 35 percent design phase and new design begun after the date of this part or renovation of school or child care facilities includes consideration of the space required for the provision of medically related services and early intervention services.

(17) The Domestic Advisory Panel shall:

(i) Consist of members appointed by the ASD(P&R) or Principal Deputy ASD(P&R). Membership shall include at least one representative from each of the following groups:

(A) Individuals with disabilities.

(B) Parents, including minority parents of individuals with disabilities from various age groups.

(C) Section 6 School Arrangements special education teachers.

(D) Section 6 School Arrangements regular education teachers.

(E) Section 6 School Arrangements Superintendent office personnel.

(F) The Office of Director, Section 6 Schools.

(G) The Surgeons General of the Military Departments.

(H) The Family Support Programs of the Military Departments.

(I) Section 6 School Arrangements School Boards.

(J) Early Intervention service providers on installations with Section 6 School Arrangements.

(K) Other appropriate personnel.

(ii) Meet as often as necessary.

(iii) Perform the following duties:

(A) Review information and provide advice to ASD(P&R) regarding improvements in services provided to individuals with disabilities in Section 6 Schools and early intervention programs.

(B) Receive and consider the views of various parent, student, and professional groups, and individuals with disabilities.

(C) When necessary, establish committees for short-term purposes composed of representatives from parent, student, family and other professional groups, and individuals with disabilities.

(D) Review the findings of fact and decision of each impartial due process hearing conducted pursuant to this part.

(E) Assist in developing and reporting such information and evaluations as may aid Section 6 Schools and the Military Departments in the performance of duties under this part.

(F) Make recommendations, based on program and operational information, for changes in the budget, organization, and general management of the special education program, and in policy and procedure.

(G) Comment publicly on rules or standards regarding the education of individuals with disabilities.

(H) Assist in developing recommendations regarding the transition of toddlers with disabilities to preschool services.

(b) The Assistant Secretary of Defense for Health Affairs in consultation with the ASD(P&R), the GC, DoD, and the Secretaries of the Military Departments, shall:

(1) Establish staffing and personnel standards for personnel who provide early intervention services and medically related services.

(2) Develop and implement a comprehensive system of personnel development in accordance with 20 U.S.C. 1413–(a)(3), including the training of professionals, paraprofessionals and primary referral sources, regarding the basic components of early intervention services and medically related services. Such a system may include:

(i) Implementing innovative strategies and activities for the recruitment and retention of early intervention service providers.

(ii) Ensuring that early intervention service providers and medically related service providers are fully and appropriately qualified to provide early intervention services and medically related services, respectively.

(iii) Training personnel to work in the military environment.

(iv) Training personnel to coordinate transition services for infants and toddlers with disabilities from an early intervention program to a preschool program.

(3) Develop and implement a system for compiling data on the numbers of infants and toddlers with disabilities and their families in need of appropriate early intervention services, the numbers of such infants and toddlers and their families served, the types of services, and other information required to evaluate the implementation of early intervention programs.

(4) Resolve disputes among the DoD Components arising under appendix A to this part.

(c) The *Secretaries of the Military Departments* shall:

(1) Provide quality assurance for medically related services in accordance with personnel standards and staffing standards under DoD Directive 6025.13[5] developed by the Assistant Secretary of Defense for Health Affairs (ASD(HA)).

(2) Plan, develop, and implement a comprehensive, coordinated, intercomponent, community-based system of early intervention services for infants and toddlers with disabilities (birth through 2 inclusive) and their families who are living on an installation with a Section 6 School Arrangement, using the procedures established by this part and guidelines from the ASD(HA) on staffing and personnel standards.

(3) Undertake activities to ensure compliance with this part through technical assistance, program evaluation, and monitoring.

(d) The *Director, Directorate for Industrial Security Clearance Review (DISCR)* shall ensure the provision of impartial due process hearings under appendix C to this part.

§ 80.6 Procedures.

(a) Procedures for the provision of early intervention services for infants and toddlers with disabilities and their families are in appendix A to this part. Provision of early intervention services includes establishing a system of coordinated, comprehensive, multidisciplinary, intercomponent services providing appropriate early intervention services to all eligible infants and toddlers with disabilities and their families.

(b) Procedures for special educational programs (including related services) for preschool children and children with

[5] See footnote 1 to § 80.1 (c).

disabilities (3–21 years inclusive) are in appendix B to this part.

(c) Procedures for adjudicative requirements required by Pub. L. 101–476, as amended, and Pub. L. 102–119 are in appendix C to this part. These procedures establish adjudicative requirements whereby the parents of an infant, toddler, preschool child or child with a disability and the military department concerned or Section 6 School System are afforded an impartial due process hearing on early intervention services or on the identification, evaluation, and educational placement of, and the free appropriate public education provided to, such infant, toddler, preschool child or child, as the case may be.

Appendix A to Part 80—Procedures for the Provision of Early Intervention Services for Infants And Toddlers With Disabilities, Ages 0–2 Years (Inclusive), and Their Families

A. Requirements for a System of Early Intervention Services

1. A system of coordinated, comprehensive, multidisciplinary, and interagency programs providing appropriate early intervention services to all infants and toddlers with disabilities and their families shall include the following minimum components:

a. A timely, comprehensive, multidisciplinary evaluation of the functioning of each infant and toddler with a disability and the priorities and concerns of the infant's or toddler's family to assist in the development of the infant or toddler with a disability.

b. A mechanism to develop, for each infant and toddler with a disability, an IFSP and early intervention services coordination, in accordance with such service plan.

c. A comprehensive child-find system, coordinated with the appropriate Section 6 School Arrangement, including a system for making referrals to service providers that includes timeliness and provides for participation by primary referral sources, such as the CDC and the pediatric clinic.

d. A public awareness program including information on early identification of infants and toddlers with disabilities and the availability of resources in the community to address and remediate these disabilities.

e. A central directory that includes a description of the early intervention services and other relevant resources available in the community.

B. Each Military Medical Department Shall Develop and Implement a System To Provide for:

1. The administration and supervision of early intervention programs and services, including the identification and coordination of all available resources.

2. The development of procedures to ensure that services are provided to infants and toddlers with disabilities and their families in a timely manner.

3. The execution of agreements with other DoD components necessary for the implementation of this appendix. Such agreements must be coordinated with the ASD(HA) and the GC, DoD, in consultation with the ASD(P&R).

4. The collection and reporting of data required by ASD(HA).

5. A multidisciplinary assessment of the unique strengths and needs of the infant or toddler and the identification of services appropriate to meet such needs.

6. A family-directed assessment of the resources, priorities, and concerns of the family and the identification of the supports and services necessary to enhance the family's capacity to meet the developmental needs of its infant or toddler with a disability.

C. Each Military Medical Department Shall Develop and Implement a Program To Ensure That an IFSP is Developed for Each Infant or Toddler With a Disability and the Infant's or Toddler's Family According to the Following Procedures:

1. The IFSP shall be evaluated once a year and the family shall be provided a review of the plan at 6-month intervals (or more often where appropriate), based on the needs of the infant or toddler and family.

2. Each initial meeting and each annual meeting to evaluate the IFSP must include the following participants:

a. The parent or parents of the infant or toddler.

b. Other family members, as requested by a parent, if feasible to do so.

c. An advocate, if his or her participation is requested by a parent.

d. The Early Intervention Program Services Coordinator who has been working with the family since the initial referral of the infant or toddler or who has been designated as responsible for the implementation of the IFSP.

e. A person or persons directly involved in conducting the evaluation and assessments.

f. Persons who will be providing services to the infant, toddler, or family, as appropriate.

3. The IFSP shall be developed within a reasonable time after the assessment. With the parent's consent, early intervention services may start before the completion of such an assessment under an IFSP.

4. The IFSP shall be in writing and contain:

a. A statement of the infant's or toddler's present levels of physical development, cognitive development, communication development, social or emotional development, and adaptive development, based on acceptable objective criteria.

b. A statement of the family's resources, priorities, and concerns for enhancing the development of the family's infant or toddler with a disability.

c. A statement of the major outcomes expected to be achieved for the infant or toddler and the family, and the criteria, procedures, and timelines used to determine the degree to which progress toward achieving the outcomes is being made and whether modifications or revisions of the outcomes or services are necessary.

d. A statement of the specific early intervention services necessary to meet the unique needs of the infant or toddler and the family, including the frequency, intensity, and the method of delivering services.

e. A statement of the natural environments in which early intervention services shall be provided.

f. The projected dates for initiation of services and the anticipated duration of such services.

g. The name of the Early Intervention Program Service Coordinator.

h. The steps to be taken supporting the transition of the toddler with a disability to preschool services or other services to the extent such services are considered appropriate.

5. The contents of the IFSP shall be fully explained to the parents by the Early Intervention Program Service Coordinator, and informed written consent from such parents shall be obtained before the provision of early intervention services described in such plan. If the parents do not provide such consent with respect to a particular early intervention service, then the early intervention services to which such consent is obtained shall be provided.

D. Procedural Safeguards for the Early Intervention Program

1. The procedural safeguards include:

a. The timely administrative resolution of complaints by the parent(s), including hearing procedures (appendix C to this part).

b. The right to protection of personally identifiable information under 32 CFR part 310.

c. The right of the parent(s) to determine whether they, their infant or toddler, or other family members will accept or decline any early intervention service without jeopardizing the delivery of other early intervention services to which such consent is obtained.

d. The opportunity for the parent(s) to examine records on assessment, screening, eligibility determinations, and the development and implementation of the IFSP.

e. Written prior notice to the parent(s) of the infant or toddler with a disability whenever the Military Department concerned proposes to initiate or change or refuses to initiate or change the identification, evaluation, placement, or the provision of appropriate early intervention services to the infant and toddler with a disability.

f. Procedures designed to ensure that the notice required in paragraph D.1.e. of this appendix fully informs the parents in the parents' native language, unless it clearly is not feasible to do so.

g. During the pendency of any proceeding under appendix C to this part 80, unless the Military Department concerned and the parent(s) otherwise agree, the infant or toddler shall continue to receive the early intervention services currently being provided, or, if applying for initial services, shall receive the services not in dispute.

Appendix B to Part 80—Procedures for Special Educational Programs (Including Related Services) for Preschool Children and Children With Disabilities (3–21 Years Inclusive)

A. Identification and Screening

1. Each Section 6 School Arrangement shall locate, identify, and, with the consent of a parent of each preschool child or children, evaluate all preschool school children or children who are receiving or are entitled to receive an education from Section 6 School Arrangements and who may need special education and/or related services.

2. Each Section 6 School Arrangement shall:

a. Provide screening, through the review of incoming records and the use of basic skills tests in reading, language arts, and mathematics, to determine whether a preschool child or child may be in need of special education and related services.

b. Analyze school health data for those preschool children and children who demonstrate possible disabling conditions. Such data shall include:

(1) Results of formal hearing, vision, speech, and language tests.

(2) Reports from medical practitioners.

(3) Reports from other appropriate professional health personnel as may be necessary, under this part, to aid in identifying possible disabling conditions.

c. Analyze other pertinent information, including suspensions, exclusions, other disciplinary actions, and withdrawals, compiled and maintained by Section 6 School Arrangements that may aid in identifying possible disabling conditions.

3. Each Section 6 School Arrangement, in cooperation with cognizant authorities at the installation on which the Section 6 School Arrangement is located, shall conduct ongoing child-find activities that are designed to identify all infants, toddlers, preschool children, and children with possible disabling conditions who reside on the installation or who otherwise either are entitled, or will be entitled, to receive services under this part.

a. If an element of the Section 6 School Arrangement, a qualified professional authorized to provide related services, a parent, or other individual believes that an infant, toddler, preschool child or child has a possible disabling condition, that individual shall be referred to the appropriate CSC or early intervention coordinator.

b. A Section 6 School Arrangement CSC shall work in cooperation with the Military Departments in identifying infants, toddlers, preschool children and children with disabilities (birth to 21 years inclusive).

B. Evaluation Procedures

1. Each CSC will provide a full and comprehensive diagnostic evaluation of special educational, and related service needs to any preschool child or child who is receiving, or entitled to receive, educational instruction from a Section 6 School Arrangement, operated by the Department of Defense under Directive 1342.21, and who is referred to a CSC for a possible disability. The evaluation will be conducted before any action is taken on the development of the IEP or placement in a special education program.

2. Assessment materials, evaluation procedures, and tests shall be:

a. Racially and culturally nondiscriminatory.

b. Administered in the native language or mode of communication of the preschool child or child, unless it clearly is not feasible to do so.

c. Validated for the specific purpose for which they are used or intended to be used.

d. Administered by qualified personnel, such as a special educator, school psychologist, speech therapist, or a reading specialist, in conformity with the instructions provided by the producers of the testing device.

e. Administered in a manner so that no single procedure is the sole criterion for determining eligibility and an appropriate educational program for a disabled preschool child or child.

f. Selected to assess specific areas of educational strengths and needs, not merely to provide a single general intelligence quotient.

3. The evaluation shall be conducted by a multidisciplinary team and shall include a teacher or other specialist with knowledge in the areas of the suspected disability.

4. The preschool child or child shall be evaluated in all areas related to the suspected disability. When necessary, the evaluation shall include:

a. The current level of academic functioning, to include general intelligence.

b. Visual and auditory acuity.

c. Social and emotional status, to include social functioning within the educational environment, and within the family.

d. Current physical status, including perceptual and motor abilities.

e. Vocational transitional assessment (for children ages 14–21 years (inclusive)).

5. The appropriate CSC shall meet as soon as possible after the preschool child's or child's formal evaluation to determine whether he or she is in need of special education and related services. The preschool child's or child's parents shall be invited to the meeting and afforded the opportunity to participate in such a meeting.

6. The school CSC shall issue a written report that contains:

a. A review of the formal and informal diagnostic evaluation findings of the multidisciplinary team.

b. A summary of information from the parents, the preschool child or child, or other persons having significant previous contact with the preschool child or child.

c. A description of the preschool child's or child's current academic progress, including a statement of his or her learning style.

d. A description of the nature and severity of the preschool child's or child's disability(ies).

7. A preschool child or child with a disability shall receive an individual comprehensive diagnostic evaluation every 3 years, or more frequently if conditions warrant, or if the preschool child's or child's parent, teacher, or related service provider requests an evaluation. The scope and nature of the reevaluation shall be determined individually, based upon the preschool child's or child's performance, behavior, and needs when the reevaluation is conducted, and be used to update or revise the IEP.

C. Individualized Education Program (IEP)

1. Section 6 School Arrangements shall ensure that an IEP is developed and implemented for each preschool child or child with a disability enrolled in a Section 6 School Arrangement or placed on another institution by a Section 6 School Arrangement CSC under this part.

2. Each IEP shall include:

a. A statement of the preschool child's or child's present levels of educational performance.

b. A statement of annual goals, including short-term instructional objectives.

c. A statement of the specific special educational services and related services to be provided to the preschool child or child (including the frequency, number of times per week/month and intensity, amount of times each day) and the extent to which the preschool child or child may be able to participate in regular educational programs.

d. The projected anticipated date for the initiation and the anticipated length of such activities and services.

e. Appropriate objective criteria and evaluation procedures and schedules for determining, on an annual basis, whether educational goals and objectives are being achieved.

f. A statement of the needed transition services for the child beginning no later than age 16 and annually thereafter (and when determined appropriate for the child, beginning at age 14 or younger) including, when appropriate, a statement of DoD Component responsibilities before the child leaves the school setting.

3. Each preschool child or child with a disability shall be provided the opportunity to participate, with adaptations when appropriate, in the regular physical education program available to students without disabilities unless:

a. The preschool child or child with a disability is enrolled full-time in a separate facility; or

b. The preschool child or child with a disability needs specially designed physical education, as prescribed in his or her IEP.

4. If specially designed physical education services are prescribed in the IEP of a preschool child or child with a disability, the Section 6 School Arrangement shall provide such education directly, or shall make arrangements for the services to be provided through a non-Section 6 School Arrangement or another facility.

5. Section 6 School Arrangements shall ensure that a preschool child or child with a disability, enrolled by a CSC in a separate facility, receives appropriate, physical education in compliance with this part.

6. The IEP for each preschool child or child with a disability shall be developed and reviewed at least annually in meetings that include the following participants:

a. The designated representative of the Section 6 School Arrangement, who is qualified to supervise the provision of special

education. Such representative may not be the preschool child's or child's special education teacher.

b. One, or more, of the preschool child's or child's regular teachers, if appropriate.

c. The preschool child's or child's special education teacher or teachers.

d. One, or both, of the preschool child's or child's parents.

e. The child, if appropriate.

f. For a preschool child or child with a disability who has been evaluated, a member of the evaluation team or another person knowledgeable about the evaluation procedures used with that student and familiar with the results of the evaluation.

g. Other individuals, at the reasonable discretion of the parent(s) or the school.

7. Section 6 School Arrangements shall:

a. Ensure that an IEP meeting is held, normally within 10 working days, following a determination by the appropriate CSC that the preschool child or child is eligible to receive special education and/or related services.

b. Address the needs of a preschool child or child with a current IEP who transfers from a school operated by the DoD in accordance with 32 CFR part 347 [1] or from a Section 6 School Arrangement to a Section 6 School Arrangement, by:

(1) Implementing the current IEP; or

(2) Revising the current IEP with the consent of a parent; or

(3) Initiating, with the consent of a parent, an evaluation of the preschool child or child, while continuing to provide appropriate services through a current IEP; or

(4) Initiating, with the consent of the parent, an evaluation of the preschool child or child without the provision of the services in the current IEP; or

(5) Initiating mediation, and if necessary, due process procedures.

c. Afford the preschool child's or child's parent(s) the opportunity to participate in every IEP or CSC meeting about their preschool child or child by:

(1) Providing the parent(s) adequate written notice of the purpose, time, and place of the meeting.

(2) Attempting to schedule the meeting at a mutually agreeable time and place.

8. If neither parent can attend the meeting, other methods to promote participation by a parent, such as telephone conversations and letters, shall be used.

9. A meeting may be conducted without a parent in attendance if the Section 6 School Arrangement is unable to secure the attendance of the parent. In this case, the Section 6 School Arrangement must have written records of its attempts to arrange a mutually acceptable time and place.

10. If the parent(s) attends the IEP meeting, the Section 6 School Arrangement shall take necessary action to ensure that at least one of the parents understands the proceedings at the meeting, including providing an interpreter for a parent who is deaf or whose native language is other than English.

[1] Copies of DoD Directive 1342.6 may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

11. The Section 6 School Arrangement shall give a parent a copy of the preschool child's or child's IEP.

12. Section 6 School Arrangements shall provide special education and related services, in accordance with an IEP, provided that the Department of Defense, its constituent elements, and its personnel, are not accountable if a preschool child or child does not achieve the growth projected in the IEP.

13. Section 6 School Arrangements shall ensure that an IEP is developed and implemented for each preschool child or child with a disability whom the CSC places in a non-Section 6 School or other facility.

D. Placement Procedures and Least Restrictive Environment

1. The placement of a preschool child or child in any special education program by the Section 6 School Arrangement shall be made only under an IEP and after a determination has been made that such student has a disability and needs special education and/or related services.

2. The Section 6 School Arrangement CSC shall identify the special education and related services to be provided under the IEP.

3. A placement decision may not be implemented without the consent of a parent of the preschool child or child, except as otherwise provided in accordance with this part.

4. The placement decision must be designed to educate a preschool child or child with a disability in the least restrictive environment so that such student is educated to the maximum extent appropriate with students who do not have disabilities. Special classes, separate schooling, or other removal of preschool children or children with disabilities from the regular educational environment shall occur only when the nature or severity of the disability is such that the preschool child or child with disabilities cannot be educated satisfactorily in the regular classes with the use of supplementary aids and services, including related services.

5. Each educational placement for a preschool child or child with a disability shall be:

a. Determined at least annually by the appropriate CSC.

b. Based on the preschool child or child's IEP.

c. Located as close as possible to the residence of the parent who is sponsoring the preschool child or child for attendance in a Section 6 School Arrangement.

d. Designed to assign the preschool child or child to the school such student would attend if he or she were not a student with a disability, unless the IEP requires some other arrangement.

e. Predicated on the consideration of all factors affecting the preschool child's or child's well-being, including the effects of separation from parent(s).

f. To the maximum extent appropriate, designed so that the preschool child or child participates in school activities, including meals and recess periods, with students who do not have a disability.

E. Children With Disabilities Placed in Non-Section 6 School Arrangements

1. Before a Section 6 School Arrangement CSC, with the concurrence of the Section 6 School Arrangement Superintendent concerned, places a preschool child or child with a disability in a non-Section 6 School or facility, the Section 6 School CSC shall conduct a meeting in accordance with this part to initiate the development of an IEP for such student.

2. Preschool children and children with disabilities eligible to receive instruction in Section 6 School Arrangements who are referred to another school or facility by the Section 6 School CSC have all the rights of students with disabilities who are attending the Section 6 School Arrangement.

a. If a Section 6 School Arrangement CSC places a preschool child or child with a disability in a non-Section 6 School Arrangement or facility as a means of providing special education and related services, the program of that facility, including nonmedical care, room, and board, as set forth in the student's IEP, must be at no cost to the student or the student's parents.

b. A Section 6 School Arrangement CSC may place a preschool child or child with a disability in a non-Section 6 School Arrangement or facility only if required by an IEP. An IEP for a student placed in a non-Section 6 school is not valid until signed by the Section 6 School Arrangement Superintendent, or designee, who must have participated in the IEP meeting. The IEP shall include determinations that:

(1) The Section 6 School Arrangement does not currently have, and cannot reasonably create, an educational program appropriate to meet the needs of the student with a disability.

(2) The non-Section 6 School Arrangement or facility and its educational program conform to this part.

3. A Section 6 School Arrangement is not responsible for the cost of a non-Section 6 School Arrangement placement when placement is made unilaterally, without the approval of the cognizant CSC and the superintendent, unless it is directed by a hearing officer under appendix C of this part or a court of competent jurisdiction.

F. Procedural Safeguards

1. Parents shall be given written notice before the Section 6 School Arrangement CSC proposes to initiate or change, or refuses to initiate or change, either the identification, evaluation, or educational placement of a preschool child or child receiving, or entitled to receive, special education and related services from a Section 6 School Arrangement, or the provision of a free appropriate public education by the Section 6 School Arrangement to the child. The notice shall fully inform a parent of the procedural rights conferred by this part and shall be given in the parent's native language, unless it clearly is not feasible to do so.

2. The consent of a parent of a preschool child or child with a disability or suspected of having a disability shall be obtained before any:

a. Initiation of formal evaluation procedures;

b. Initial special educational placement; or

c. Change in educational placement.

3. If a parent refuses consent to any formal evaluation or initial placement in a special education program, the Section 6 School Arrangement Superintendent may initiate an impartial due process hearing, as provided in appendix C of this part to show why an evaluation or placement in a special education program should occur without such consent. If the hearing officer sustains the Section 6 School Arrangement CSC position in the impartial due process hearing, the appropriate CSC may evaluate or provide special education and related services to the preschool child or child without the consent of a parent, subject to the parent's due process rights.

4. A parent is entitled to an independent evaluation of his or her preschool child or child at the Section 6 School Arrangement's expense, if the parent disagrees with the findings of an evaluation of the student conducted by the school and the parent successfully challenges the evaluation in an impartial due process hearing.

a. If an independent evaluation is provided at the expense of a Section 6 School Arrangement, it must meet the following criteria:

(1) Conform to the requirements of this part.

(2) Be conducted, when possible, within the area where the preschool child or child resides.

(3) Meet applicable DoD standards governing persons qualified to conduct an evaluation.

b. If the final decision rendered in an impartial due process hearing sustains the evaluation of the Section 6 School Arrangement CSC, the parent has the right to an independent evaluation, but not at the expense of the Department of Defense or any DoD Component.

5. The parents of a preschool child or child with a disability shall be afforded an opportunity to inspect and review all relevant educational records concerning the identification, evaluation, and educational placement of such student, and the provision of a free appropriate public education to him or her.

6. Upon complaint presented in a written petition, the parent of a preschool child or child with a disability or the Section 6 School System shall have the opportunity for an impartial due process hearing provided by the Department of Defense as prescribed by appendix C of this part.

7. During the pendency of any impartial due process hearing or judicial proceeding on the identification, evaluation, or educational placement of a preschool child or child with a disability receiving an education from a Section 6 School Arrangement or the provision of a free appropriate public education to such a student, unless the Section 6 School Arrangement and a parent of the student agree otherwise, the student shall remain in his or her present educational placement, subject to the disciplinary procedures prescribed in this part.

8. If a preschool child or child with a disability, without a current IEP, who is entitled to receive educational instruction from a Section 6 School Arrangement is applying for initial admission to a Section 6 School Arrangement, that student shall enter that Arrangement on the same basis as a student without a disability.

9. The parent of a preschool child or child with a disability or a Section 6 School Arrangement employee may file a written communication with the Section 6 School Arrangement Superintendent about possible general violations of this part or Pub. L. 101–476, as amended. Such communications will not be treated as complaints under appendix C of this part.

G. Disciplinary Procedures

1. All regular disciplinary rules and procedures applicable to students receiving educational instruction in the Section 6 School Arrangements shall apply to preschool children and children with disabilities who violate school rules and regulations or disrupt regular classroom activities, subject to the provisions of this section.

2. The appropriate CSC shall determine whether the conduct of a preschool child or child with a disability is the result of that disability before the long-term suspension (10 consecutive or cumulative days during the school year) or the expulsion of that student.

3. If the CSC determines that the conduct of such a preschool child or child with a disability results in whole or part from his or her disability, that student may not be subject to any regular disciplinary rules and procedures; and

a. The student's parent shall be notified in accordance with this part of the right to have an IEP meeting before any change in the student's special education placement. (A termination of the student's education for more than 10 days, either cumulative or consecutive, constitutes a change of placement.)

b. The Section 6 School Arrangement CSC or another authorized school official shall ensure that an IEP meeting is held to determine the appropriate educational placement for the student in consideration of his or her conduct before the tenth cumulative day of the student's suspension or an expulsion.

4. A preschool child or child with a disability shall neither be suspended for more than 10 days nor expelled, and his or her educational placement shall not otherwise be changed for disciplinary reasons, unless in accordance with this section, except that:

a. This section shall be applicable only to preschool children and children determined to have a disability under this part.

b. Nothing contained herein shall prevent the emergency suspension of any preschool child or child with a disability who endangers or reasonably appears to endanger the health, welfare, or safety of himself or herself, or any other student, teacher, or school personnel, provided that:

(1) The appropriate Section 6 School Arrangement CSC shall immediately meet to determine whether the preschool child's or child's conduct results from his or her disability and what change in special education placement is appropriate for that student.

(2) The child's parent(s) shall be notified immediately of the student's suspension and of the time, purpose, and location of the CSC meeting and their right to attend the meeting.

(3) A component is included in the IEP that addresses the behavioral needs of the student.

(4) The suspension of the student is only effective for the duration of the emergency.

Appendix C to Part 80—Hearing Procedures

A. Purpose

This appendix establishes adjudicative requirements whereby the parents of infants, toddlers, preschool children, and children who are covered by this part and, as the case may be, the cognizant Military Department or Section 6 School System are afforded impartial due process hearings and administrative appeals on the early intervention services or identification, evaluation, and educational placement of, and the free appropriate public education provided to, such children by the Department of Defense, in accordance with Pub. L. 101–476, as amended, 20 U.S.C. 1401 *et seq.*; Pub. L. 81–874, sec. 6, as amended, 20 U.S.C. 241; Pub. L. 97–35, sec. 505(c), 20 U.S.C. 241 note; and Pub. L. 102–119, sec. 23, 20 U.S.C. 241(a).

B. Administration

1. The Directorate for Industrial Security Clearance Review (DISCR) shall have administrative responsibility for the proceedings authorized by this appendix.

2. This appendix shall be administered to ensure that the findings, judgments, and determinations made are prompt, fair, and impartial.

3. Impartial hearing officers, who shall be DISCR Administrative Judges, shall be appointed by the Director, DISCR, and shall be attorneys who are independent of the Section 6 School System or the Military Department concerned in proceedings conducted under this appendix. A parent shall have the right to be represented in such proceedings, at no cost to the government, by counsel and by persons with special knowledge or training with respect to the problems of individuals with disabilities. DISCR Department Counsel normally shall appear and represent the Section 6 School System in proceedings conducted under this appendix, when such proceedings involve a preschool child or child. When an infant or toddler is involved, the Military Department responsible under this part for delivering early intervention services shall either provide its own counsel or request counsel from DISCR.

C. Mediation

1. Mediation can be initiated by either a parent or, as appropriate, the Military Department concerned or the Section 6 School System to resolve informally a disagreement on the early intervention services for an infant or toddler or the identification, evaluation, educational placement of, or the free appropriate public education provided to, a preschool child or child. The cognizant Military Department,

rather than the Section 6 School System, shall participate in mediation involving early intervention services. Mediation shall consist of, but not be limited to, an informal discussion of the differences between the parties in an effort to resolve those differences. The parents and the appropriate school or Military Department officials may attend mediation sessions.

2. Mediation must be conducted, attempted, or refused in writing by a parent of the infant, toddler, preschool child or child whose early intervention or special education services (including related services) are at issue before a request for, or initiation of, a hearing authorized by this appendix. Any request by the Section 6 School System or Military Department for a hearing under this appendix shall state how this requirement has been satisfied. No stigma may be attached to the refusal of a parent to mediate or to an unsuccessful attempt to mediate.

D. Practice and Procedure

1. *Hearing*

a. Should mediation be refused or otherwise fail to resolve the issues on the provision of early intervention services or a free, appropriate public education to a disabled infant, toddler, preschool child or child or the identification, evaluation, or educational placement of such an individual, the parent or either the school principal, on behalf of the Section 6 School System, or the military medical treatment facility commander, on behalf of the Military Department having jurisdiction over the infant or toddler, may request and shall receive a hearing before a hearing officer to resolve the matter. The parents of an infant, toddler, preschool child or child and the Section 6 School System or Military Department concerned shall be the only parties to a hearing conducted under this Appendix.

b. The party seeking the hearing shall submit a written request, in the form of a petition, setting forth the facts, issues, and proposed relief, to the Director, DISCR. The petitioner shall deliver a copy of the petition to the opposing party (that is, the parent or the school principal, on behalf of the Section 6 School System, or the military medical treatment facility commander, on behalf of the Military Department), either in person or by first-class mail, postage prepaid. Delivery is complete upon mailing. When the Section 6 School System or Military Department petitions for a hearing, it shall inform the other parties of the deadline for filing an answer under paragraph D.1.c. of this appendix, and shall provide the other parties with a copy of this part.

c. An opposing party shall submit an answer to the petition to the Director, DISCR, with a copy to the petitioner, within 15 calendar days of receipt of the petition. The answer shall be as full and complete as possible, addressing the issues, facts, and proposed relief. The submission of the answer is complete upon mailing.

d. Within 10 calendar days after receiving the petition, the Director, DISCR, shall assign a hearing officer, who then shall have jurisdiction over the resulting proceedings. The Director, DISCR, shall forward all pleadings to the hearing officer.

e. The questions for adjudication shall be based on the petition and the answer, provided that a party may amend a pleading if the amendment is filed with the hearing officer and is received by the other parties at least 5 calendar days before the hearing.

f. The Director, DISCR, shall arrange for the time and place of the hearing, and shall provide administrative support. Such arrangements shall be reasonably convenient to the parties.

g. The purpose of a hearing is to establish the relevant facts necessary for the hearing officer to reach a fair and impartial determination of the case. Oral and documentary evidence that is relevant and material may be received. The technical rules of evidence shall be relaxed to permit the development of a full evidentiary record, with the Federal Rules of Evidence (28 U.S.C.) serving as a guide.

h. The hearing officer shall be the presiding officer, with judicial powers to manage the proceeding and conduct the hearing. Those powers shall include the authority to order an independent evaluation of the child at the expense of the Section 6 School System or Military Department concerned and to call and question witnesses.

i. Those normally authorized to attend a hearing shall be the parents of the individual with disabilities, the counsel and personal representative of the parents, the counsel and professional employees of the Section 6 School System or Military Department concerned, the hearing officer, and a person qualified to transcribe or record the proceedings. The hearing officer may permit other persons to attend the hearing, consistent with the privacy interests of the parents and the individual with disabilities, provided the parents have the right to an open hearing upon waiving in writing their privacy rights and those of the individual with disabilities.

j. A verbatim transcription of the hearing shall be made in written or electronic form and shall become a permanent part of the record. A copy of the written transcript or electronic record of the hearing shall be made available to a parent upon request and without cost. The hearing officer may allow corrections to the written transcript or electronic recording for the purpose of conforming it to actual testimony after adequate notice of such changes is given to all parties.

k. The hearing officer's decision of the case shall be based on the record, which shall include the petition, the answer, the written transcript or the electronic recording of the hearing, exhibits admitted into evidence, pleadings or correspondence properly filed and served on all parties, and such other matters as the hearing officer may include in the record, provided that such matter is made available to all parties before the record is closed under paragraph D.1.m. of this appendix.

l. The hearing officer shall make a full and complete record of a case presented for adjudication.

m. The hearing officer shall decide when the record in a case is closed.

n. The hearing officer shall issue findings of fact and render a decision in a case not later than 50 calendar days after being assigned to the case, unless a discovery request under section D.2. of this appendix is pending.

2. *Discovery*

a. Full and complete discovery shall be available to parties to the proceeding, with the Federal Rules of Civil Procedure (28 U.S.C.) serving as a guide.

b. If voluntary discovery cannot be accomplished, a party seeking discovery may file a motion to accomplish discovery, provided such motion is founded on the relevance and materiality of the proposed discovery to the issues. An order granting discovery shall be enforceable as is an order compelling testimony or the production of evidence.

c. A copy of the written or electronic transcription of a deposition taken by the Section 6 School System or Military Department concerned shall be made available free of charge to a parent.

3. *Witnesses; Production of Evidence*

a. All witnesses testifying at the hearing shall be advised that it is a criminal offense knowingly and willfully to make a false statement or representation to a Department or Agency of the United States Government as to any matter within the jurisdiction of that Department or Agency. All witnesses shall be subject to cross-examination by the parties.

b. A party calling a witness shall bear the witness' travel and incidental expenses associated with testifying at the hearing. The Section 6 School System or Military Department concerned shall pay such expenses when a witness is called by the hearing officer.

c. The hearing officer may issue an order compelling the attendance of witnesses or the production of evidence upon the hearing officer's own motion or, if good cause be shown, upon motion of a party.

d. When the hearing officer determines that a person has failed to obey an order to testify or to produce evidence, and such failure is in knowing and willful disregard of the order, the hearing officer shall so certify.

e. The party or the hearing officer seeking to compel testimony or the production of evidence may, upon the certification provided for in paragraph D.3.d. of this section, file an appropriate action in a court of competent jurisdiction to compel compliance with the hearing officer's order.

4. *Hearing Officer's Findings of Fact and Decision*

a. The hearing officer shall make written findings of fact and shall issue a decision setting forth the questions presented, the resolution of those questions, and the rationale for the resolution. The hearing officer shall file the findings of fact and decision with the Director, DISCR, with a copy to the parties.

b. The Director, DISCR, shall forward to the Director, Section 6 Schools or the Military Department concerned and the Domestic Advisory Panel copies, with all personally identifiable information deleted, of the

hearing officer's findings of fact and decision or, in cases that are administratively appealed, of the final decision of the DISCR Appeal Board.

c. The hearing officer shall have the authority to impose financial responsibility for early intervention services, educational placements, evaluations, and related services under his or her findings of fact and decision.

d. The findings of fact and decision of the hearing officer shall become final unless a notice of appeal is filed under section F.1. of this appendix. The Section 6 School System or Military Department concerned shall implement a decision as soon as practicable after it becomes final.

E. Determination Without Hearing

1. At the request of a parent of the infant, toddler, preschool child or child when early intervention or special educational (including related) services are at issue, the requirement for a hearing may be waived, and the case may be submitted to the hearing officer on written documents filed by the parties. The hearing officer shall make findings of fact and issue a decision within the period fixed by paragraph D.1.n. of this appendix.

2. The Section 6 School System or Military Department concerned may oppose a request to waive the hearing. In that event, the hearing officer shall rule on the request.

3. Documents submitted to the hearing officer in a case determined without a hearing shall comply with paragraph D.1.g. of this appendix. A party submitting such documents shall provide copies to all other parties.

F. Appeal

1. A party may appeal the hearing officer's findings of fact and decision by filing a written notice of appeal with the Director, DISCR, within 5 calendar days of receipt of the findings of fact and decision. The notice of appeal must contain the appellant's certification that a copy of the notice of appeal has been provided to all other parties. Filing is complete upon mailing.

2. Within 10 calendar days of the filing of the notice of appeal, the appellant shall submit a written statement of issues and arguments to the Director, DISCR, with a copy to the other parties. The other parties shall submit a reply or replies to the Director, DISCR, within 15 calendar days of receiving the statement, and shall deliver a copy of each reply to the appellant. Submission is complete upon mailing.

3. The Director, DISCR, shall refer the matter on appeal to the DISCR Appeal Board. It shall determine the matter, including the making of interlocutory rulings, within 60 calendar days of receiving timely submitted replies under section F.2. of this Appendix. The DISCR Appeal Board may require oral argument at a time and place reasonably convenient to the parties.

4. The determination of the DISCR Appeal Board shall be a final administrative decision and shall be in written form. It shall address the issues presented and set forth a rationale for the decision reached. A determination denying the appeal of a parent in whole or in part shall state that the parent has the right under Pub. L. 101–476, as amended, to bring a civil action on the matters in dispute in a district court of the United States without regard to the amount in controversy.

5. No provision of this part or other DoD guidance may be construed as conferring a further right of administrative review. A party must exhaust all administrative remedies afforded by this appendix before seeking judicial review of a determination made under this appendix.

G. Publication and Indexing of Final Decisions

The Director, DISCR, shall ensure that final decisions in cases arising under this appendix are published and indexed to protect the privacy rights of the parents who are parties in those cases and the children of such parents, in accordance with 32 CFR part 310.

Dated: September 30, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–24414 Filed 10–5–93; 8:45 am]

BILLING CODE 5000–04–M

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32 CFR Part 86

[DoD Instruction 1402.5]

Criminal History Background Checks on Individuals in Child Care Services

AGENCY: Department of Defense.

ACTION: Interim final rule.

SUMMARY: This interim final rule is being issued to implement section 231 of the "Crime Control Act of 1990," Public Law 101–647, as amended by section 1094(a) of the "National Defense Authorization Act for Fiscal Years 1992 and 1993," Public Law 102–190 (codified at 42 U.S.C. 13041). This rule establishes policy and uniform procedures for conducting criminal history background checks of prescribed DoD personnel and applicants who are or, if hired, would be involved in a provision of child care services, pursuant to the statutory authorities cited above.

DATES: Effective January 19, 1993. Written comments must be received by November 5, 1993.

ADDRESSES: Forward comments to: Office of Family Policy, Support and Services, Office of the Assistant Secretary of Defense (Personnel and Readiness), 4015 Wilson Blvd., Ballston Center Tower 3, room 911, Attention: Dr. JanaLee L. Sponberg, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Dr. JanaLee L. Sponberg, at telephone number (703)–696–4555.

SUPPLEMENTARY INFORMATION: This interim final rule is issued to comply with a statutory requirement and to permit DoD Components to issue consistent implementing guidance. The Department of Defense invites public comments on this interim final rule. It shall consider those comments in deciding whether, and, if so, how to amend this rule.

Executive Order 12291, "Federal Regulation"

It is hereby determined that 32 CFR part 86 is not a major rule. The rule does not:

(1) Have an annual effect on the economy of $100 million or more;

(2) Cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or

(3) Have a significant adverse effect on competition, employment, investment, productivity, or innovation.

Public Law 96–354, "Regulatory Flexibility Act"

It is hereby certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because this guidance instructs the Department to conduct the required criminal history background checks for the small businesses. The primary effect on small businesses will be a reduction in administrative costs and other burdens resulting from the simplification and clarification of certain policies and at the elimination of policy differences among the Federal agencies promulgating this interim final rule.

Public Law 96–511, "Paperwork Reduction Act"

It is hereby certified that 32 CFR part 86 does not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520).

List of Subjects in 32 CFR Part 86

Child Care; Security.

Accordingly, title 32, subchapter B, is amended to add part 86 to read as follows:

PART 86—CRIMINAL HISTORY BACKGROUND CHECKS ON INDIVIDUALS IN CHILD CARE SERVICES

Sec.

86.1 Purpose.
86.2 Applicability.
86.3 Definitions.
86.4 Policy.
86.5 Responsibilities.
86.6 Procedures.
Appendix A to Part 86—Criminal History Background Check Procedures

Appendix B to Part 86—Criteria For Criminal History Background Check Disqualifications
Appendix C to Part 86—State Information

Authority: 42 U.S.C. 13041.

§ 86.1 Purpose.

This part: (a) Implements Public Law 101–647, section 231 and Public Law 102–190, section 1094.

(b) Requires procedures for existing and newly hired individuals and includes a review of personnel and security records to include a Federal Bureau of Investigation (FBI) fingerprint check and State Criminal History Repositories (SCHR) checks of residences listed on employment or certification applications.

(c) Establishes policy, assigns responsibilities, and prescribes procedures for criminal history background checks for all existing and newly hired individuals involved in the provision of child care services as Federal employees, contractors, or in Federal facilities to children under the age of 18. The checks are required of all individuals in the Department of Defense involved in providing child care services defined in Public Law 101–647, and for policy reasons, those categories of individuals not expressly governed by the statute.

(d) Allows the Department to provisionally hire such individuals before the completion of a background check. However, at all times while children are in the care of that individual, the child care provider must be within sight and under the supervision of a staff person whose background check has been successfully completed. Healthcare personnel shall comply with guidance provided in the Memorandum from the Assistant Secretary of Defense for Health Affairs (ASD(HA)) [1], April 20, 1992.

(e) Includes all individuals providing child care services to children in accordance with 32 CFR part 310, Federal Personnel Manual (FPM) [2], 32 CFR part 154, DoD Directive 6400.1 [3], DoD Instruction 6060.2 [4], DoD Instruction 6400.2 [5], DoD Directive 1400.13 [6], 32 CFR part 68, DoD Directive 6025.11 [7], DoD Directive 1015.1 [8], and 32 CFR part 212.

§ 86.2 Applicability.

This part applies to the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Unified and Specified Commands, the Inspector General of the Department of Defense, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "the DoD Components").

§ 86.3 Definitions.

Terms used in this part are defined as follows.

(a) *Appropriated Fund (APF) Employees.* Personnel hired by DoD Components with appropriated funds as defined in the FPM, Chapter 731. This includes temporary employees, 18 years old or older, who work with children.

(b) *Care provider.* As defined in Public Law 101–647, section 231 and Public Law 102–190, section 1094. Providers included are current and prospective individuals hired with APF and nonappropriated funds (NAF) for education, treatment or healthcare, child care or youth activities, individuals employed under contract who work with children and those who are certified for care. Care providers are individuals working within programs that include alphabetically: Child Development Programs, DoD Dependents Schools, DoD-Operated or -Sponsored Activities, DoD Section 6 School Arrangements, Foster Care, Private Organizations on DoD Installations, and Youth Programs. Background checks are required for all civilian and military providers (except military health care providers) involved in child care services who have regular contact with children.

(c) *Child.* An unmarried person, whether natural child, adopted child, foster child, stepchild, or ward, who is a family member of a military member or DoD civilian or their spouse, and who is under the age of 18 years; or is incapable of self support because of a mental or physical incapacity and for whom treatment is authorized in a medical facility of the Military Services, ad defined in DoD Directive 6400.1.

(d) *Child abuse and/or neglect.* The physical injury, sexual maltreatment, emotional maltreatment, deprivation of necessities, or other maltreatment of a child. The term encompasses both acts and omissions on the part of a responsible person, as defined in DoD Directive 6400.1.

(e) *Child care services.* DoD personnel and contractors who are involved in any of the following: "Child protective services (including the investigation of child abuse and neglect reports), social services, health and mental health care, child (day) care, education (whether or not directly involved in teaching), foster care, residential care, recreational or rehabilitative programs, and detention, correctional, or treatment services," as defined in Public Law 101–647, section 231.

(f) *Child Development Center (CDC).* An installation facility or part of a facility used for child care operated under the oversight of Component's Child Development Programs (CDPs) and as defined in DoD Instruction 6060.2.

(g) *Child Development Programs (CDPs).* Programs for dependents of DoD personnel provided in CDCs, family child care (FCC) homes, and alternative child care options. The care provided is on a full-day, part-day, or hourly basis. Care is designed to protect the health and safety of children and promote their physical, social, emotional, and intellectual development, as defined in DoD Instruction 6060.2.

(h) *Child sexual abuse.* Employment, use, persuasion, inducement, enticement, or coercion of any child to engage in, or having a child assist any other person to engage in, any sexually explicit conduct (or any simulation of such conduct) or the rape, molestation, prostitution, or any other such form of sexual exploitation of children, or incest with children. All sexual activity between an offender and a child, when the offender is in a position of power over the child, is considered sexual maltreatment, as defined in DoD Instruction 6400.2.

(i) *Criminal history background check.* An investigation based on fingerprints and other identifying information obtained by a law enforcement officer conducted through the Federal Bureau of Investigation-Identification Division (FBI–ID) and SCHR of all States that an employee or prospective employee list as current and former residences on an employment application initiated through the personnel programs of the applicable Federal Agencies, as defined in Public Law 101–647 or through the personnel program of a given government contractor.

(j) *Defense Clearance and Investigations Index (DCII).* The central DoD record of investigative files and adjudicative actions such as clearances and access determinations, revocations,

[1] Copies may be obtained from OASD(HA) Room 3E346, The Pentagon, Washington, DC 220301–1200.

[2] Copies may be obtained from a Federal Depositary Library, or a Federal Agency Personnel Office.

[3] Copies may be obtained from the National Technical Information Service, 5285 Port Royal, Springfield, VA 22161.

[4] See footnote 3 to § 86.1(e).

[5] See footnote 3 to § 86.1(e).

[6] See footnote 3 to § 86.1(e).

[7] See footnote 3 to § 86.1(e).

[8] See footnote 3 to § 86.1(e).

and denials concerning military, civilian, and contract personnel.

(k) *DoD Dependents Schools (DoDDS).* Schools operated by the Department of Defense for minor dependents of military members or DoD civilians assigned to duty in foreign countries, as defined in DoD Directive 1400.13.

(l) *DoD-operated or -sponsored activity.* A contracted entity authorized by appropriate DoD officials to perform child care, education, treatment, or supervisory functions on DoD-controlled property. Examples include but are not limited to CDPs, FCC Programs, Medical Treatment Facilities, DoDDS, DoD Section 6 Schools, and Youth Programs.

(m) *DoD Section 6 Schools.* The educational arrangements made for the provision of education to eligible dependent children by the Department of Defense under Public Law 81–874, section 6, as defined in 32 CFR part 68, in the Continental United States, Alaska, Hawaii, Puerto Rico, Wake Island, Guam, American Samoa, the Northern Mariana Islands, and the Virgin Islands.

(n) *Family Child Care (FCC).* Quarters-based child care provided in Government-owned or -leased quarters, in which care is provided on a regular basis for compensation, usually for more than 10 hours a week per child, to one or more (up to six) children, including the provider's own children under 8 years of age, as defined in DoD Instruction 6060.2

(o) *Foreign National Employees Overseas.* Non-U.S. citizens hired by the Department of Defense for employment on an overseas installation.

(p) *Foster care.* A voluntary or court-mandated program that provides 24-hour care and supportive services in a family home or group facility for children who cannot be properly cared for by their own family.

(q) *Government-contracted care providers.* An individual or a group of individuals hired under a Government contract to provide instruction, child care services, healthcare, or youth services. FCC providers are not considered contracted Government employees for this part.

(r) *Healthcare personnel.* Personnel involved in the delivery of healthcare to children under the age of 18 on a frequent and regular basis. See ASD(HA) memorandum dated April 20, 1992.

(1) *Medical and dental care staff.* Physicians, dentists, nurse practitioners, clinical social workers, clinical psychologists, physicians' assistants, physical therapists, and speech pathologists.

(2) *Clinical support staff.* Clinical providers not granted defined clinical privileges to include residents, registered nurses, licensed practical nurses, nursing assistants, play therapists, and technicians, and defined in DoD Directive 6025.11.

(s) *Installation Records Check (IRC).* An investigation conducted through the records of all installations of an individual's identified residences for the preceding 2 years before the date of the application. This record check shall include, at a minimum, police (base and/or military police, security office, or criminal investigators or local law enforcement) local files check, Drug and Alcohol Program, Family Housing, Medical Treatment Facility for Family Advocacy Program to include Service Central Registry records and mental health records, and any other record checks as appropriate, to the extent permitted by law.

(t) *National Agency Check (NAC).* As defined in 32 CFR part 154.

(u) *National Agency Check and Inquiries (NACI).* As defined in the FPM, Chapters 731 and 736.

(v) *Nonappropriated Fund Instrumentalities (NAFI) Employees.* Personnel hired by the DoD Components, compensated from NAFI funds as defined in DoD Directive 1015.1. This includes temporary employees, 18 years old or older, who work with children.

(w) *Private Organizations on DoD Installations.* A nongovernmental entity authorized by the Department of Defense to perform child care services, education, or supervisory functions with children on DoD-controlled property, as defined in 32 CFR part 212. Examples include religious groups and associations, such as scouts.

(x) *Respite care.* Provides short-term child care and supportive services in a family home or group facility for children to relieve stress, prevent child abuse, and promote family unity for a parent, foster parent, guardian, or family member.

(y) *Regular contact.* Responsible for a child or with access to children on a frequent basis as defined by the Component.

(z) *Specified volunteer position.* A position, designated by the DoD Component Head or designee, such as installation commander, requiring an installation record check because of the nature of the volunteer work in child care services.

(aa) *State Criminal History Repository (SCHR).* The State's central record of investigative files. State information, including addresses, phone numbers, costs and remarks, is listed in appendix C to this part.

(bb) *Supervision.* Refers to having temporary responsibility for children in child care services, and temporary or permanent authority to exercise direction and control by an individual over an individual whose required background checks have been initiated but not completed.

(cc) *Temporary employees.* This category includes nonstatus appointments to a competitive service position for a specified period, not to exceed a year. This includes summer hires, student interns, and NAFI flexible category employees.

(dd) *Volunteer activities.* Activities where individuals offer assistance on an unpaid basis in child and youth programs or other activities on DoD installations. Examples include sports programs, religious programs, scouting programs, and preschools sponsored by private parent cooperatives or other associations conducted on the installation.

(ee) *Volunteers.* Individuals who offer program assistance on an unpaid basis.

(ff) *Youth programs.* DoD-sponsored activities, events, services, opportunities, information, and individual assistance responsive to the recreational, developmental, social, psychological, and cultural needs of eligible children and youth. Includes before and after school programs as well as holiday and summer camps.

§ 86.4 Policy.

It is Department of Defense policy to:

(a) Establish a standardized and comprehensive process for screening applicants for positions involving child care services on DoD installations and in DoD activities.

(b) Provide fair, impartial, and equitable treatment before an individual may be deemed suitable to serve as an employee, a certified care provider, a specified volunteer position, or as an individual employed under contract in activities covered by this part, 32 CFR part 310, Federal Personnel Manual (FPM), 32 CFR part 154, DoD Directive 6400.1, DoD Instruction 6060.2, DoD Instruction 6400.2, DoD Directive 1400.13, 32 CFR part 68, DoD Directive 6025.11, DoD Directive 1015.1, and 32 CFR part 212 by conducting a thorough review of all appropriate records as described in this part.

(c) Protect children by denying or removing from employment, contract, or volunteer status any applicant or current employee who is determined unsuitable to provide child care services because derogatory information is contained in a suitability investigation.

(d) Ensure than an individual is advised of proposed disciplinary action, decertification, or refusal to hire by the hiring authority or designee if disqualifying derogatory information is contained in a suitability investigation. The individual is given the opportunity to challenge the accuracy and completeness of reported information.

(e) Foster cooperation among the DoD Components, other Federal Agencies, State and county agencies, and other civilian authorities in conducting criminal history background checks.

§ 86.5 Responsibilities.

(a) The *Assistant Secretary of Defense for Personnel and Readiness* shall: (1) Develop policy for conducting criminal history background checks on individuals seeking positions involving child care services.

(2) Monitor compliance with this part.

(3) Coordinate oversight of criminal history background checks as specified under this part.

(b) The *Heads of the DoD Components* shall: (1) Develop procedures to ensure compliance with the requirements of this part, in accordance with appendix A to this part.

(2) Provide oversight of process and procedures to conduct criminal history background checks to include assignment of proponency.

(3) Provide technical support and resources as required.

(4) Coordinate participation of specific organizations within the DoD Component involved in the conduct of the checks.

(5) Ensure that applicants and employees are made aware of their rights under 32 CFR part 310 including the right to challenge accuracy of records.

(6) Maintain the records of all individuals hired, certified, or employed under contract for positions that involve child care services for 2 years following termination of their service.

(7) Establish a mechanism to evaluate all adverse information resulting from criminal history background checks, using the criteria in appendix B to this part. Final suitability decisions are made by the DoD Component Head or designee.

§ 86.6 Procedures.

The records of all existing employees and applicants for positions in child care services are reviewed by the Component designee according to the procedures prescribed in appendix A to this part.

Appendix A to Part 86—Criminal History Background Check Procedures

This appendix establishes the procedures for conducting criminal history background checks on existing and newly hired individuals required by Public Law 101–647, section 231 and Public Law 102–190, section 1094. Background checks are required for all civilian providers involved in child care services who have regular contact with children. The categories of providers include current and prospective individuals hired with APF and NAFI funds for education, treatment or healthcare, child care or youth activities, and individuals employed under contract involved in the provision of child care services. In addition to the mandates of Public Law 102–190, section 1094, the Department of Defense requires that military members (except healthcare personnel), foster or respite care providers, FCC providers and family members, and specified volunteers shall have checks specified in this part.

A. Conducting Checks

Component designees shall notify existing and newly hired individuals and contractors of the requirement for a review of personnel and security records to include an FBI fingerprint check and SCHR checks of residences listed on employment and security applications.

1. *Fingerprint Check.* Law enforcement personnel shall forward completed forms through channels to the Office of Personnel Management (OPM) or Defense Investigative Service (DIS) for processing of FBI fingerprint forms.

2. *State Criminal History Repository (SCHR) Check.* DoD Installation-level personnel offices, in collaboration with law enforcement and security personnel, shall process State criminal history background checks for employment and shall ordinarily communicate in writing with each State identified in appendix B to part 86, providing full identifying information on each applicant and request confirmation that the individual has not been convicted in that State of a sex crime, an offense involving a child victim, a drug felony, or a violent crime. The DoD Component Heads may establish alternate procedures for conducting SCHR checks; e.g., a computerized, written, or telephonic check. The DoD Components are not required to wait longer than 60 days from the date of the request for a response from the SCHR personnel before taking action on a particular application. Authorities will depend on FBI fingerprint check validation if States do not respond.

3. *Installation Record Checks (IRC).* Consists of a local record check on an individual for a minimum of 2 years before the date of the application. This record check shall include, at a minimum, police (base and/or military police, security office, criminal investigators, or local law enforcement) local files checks, Drug and Alcohol Program, Family Housing, Medical Treatment Facility for Family Advocacy Program Service Central Registry records and mental health records, and any other record checks as appropriate to the extent permitted by law. A Service DCII may be conducted. The IRC shall be conducted by DoD Component personnel at the installation level. An IRC will be completed on individuals with a DoD affiliation such as living or working on an installation or is active duty member or family member. Individuals without DoD affiliation have no installation system of records to check and an IRC is not completed. Upon favorable completion of the IRC, an individual may be selected and provide child care services under line of sight supervision until the required background checks are completed.

B. Applicants

1. Appropriated Fund (APF) Applicants

a. Except as otherwise provided in this subsection, the DoD Components shall process APF applicants using currently established procedures for completing background checks described in 32 CFR part 310. APF applicants must complete a SF–171, "Application for Federal Employment," and attach an SF–87, "Fingerprint Chart," completed by a law enforcement officer; and an SF–85P, "Questionnaire for Public Trust Positions" (Annotate Block "B" with code 03), for conduct of a NACI. The package shall be forwarded to the OPM.

b. The DoD Components shall assign responsibility for conducting the criminal history background checks through the SCHR to personnel offices working with law enforcement or investigative agencies. They shall conduct checks in all States that an employee or prospective employee lists as current and former residences in an employment or security application. It is deemed unnecessary to conduct checks before 18 years of age because juvenile records are unavailable. If no response is received from the State(s) within 60 days, determinations based upon the FBI report may be made. Responses received after this determination has been made must be provided to the determining authority.

c. Under Public Law 102–190, section 1094, the DoD Components may employ an individual pending completion of successful background checks described in Public Law 101–647, section 231. If an individual is so employed, at all times while children are in the care of that individual, he or she must be within sight and under the supervision of an individual whose background checks have been completed, with no derogatory reports.

d. Once it is clear that no derogatory information exists, line of sight supervision is terminated by the designee. If a derogatory report exists, Component personnel procedures shall prescribe appropriate action consistent with the criteria contained in this part.

2. Nonappropriated Fund Instrumentalities (NAFI) Applicants

a. Except as otherwise provided in this subsection, the DoD Components shall process NAFI applicants following established procedures for completing background checks. NAFI applicants must complete a DD Form 398–2 "Department of Defense National Agency Questionnaire," with reason for request identified as OTHER and annotated as CHILD CARE, and FD Form 258, "FBI Applicant Fingerprint Card." Fingerprints shall be taken by the local law enforcement organization personnel and

together with the DD Form 398–2 shall be forwarded to: Defense Investigative Service, Personnel Investigations Center, P.O. Box 1083, Baltimore, MD 21203–1083.

b. The DoD Components shall follow the procedures in the FPM, Chapter 731 and 736 and in paragraph B.1.b.,c., and d. of this appendix to obtain fingerprints for the FBI, conduct criminal history background checks through the SCHR, and maintain employment of individuals pending the successful completion of the background checks.

3. Foreign National Employees Overseas

Foreign national employees overseas, while not expressly included within the law, are subject to the following record checks or those equivalent in scope to checks conducted on U.S. citizens:

a. Host-government law enforcement and security agency checks at the city, State (province), and national level, whenever permissible by the laws of the host government.

b. Defense Central Investigative Index (DCII).

c. FBI checks (when information exists regarding residence by the individual in the United States for 1 year or more since age 18).

d. When permissible by the laws of the host government, host-government checks are requested directly by the employing Service or agency. As an alternative, the DoD Components may request that overseas Military Service investigative elements obtain appropriate host-government checks. Where host-nations' arrangements preclude comparable criminal history checks, foreign nationals will not be eligible for employment in child care services.

4. Temporary Employees

This category includes summer hires, student interns, and NAFI flexible category employees. Background checks for these individuals are processed according to funding source; i.e., for APF employees (to OPM) or NAFI employees (to DIS). Installation designated points of contact shall notify applicants of report disposition.

5. Healthcare Personnel

This category includes civilian personnel involved in the delivery of healthcare. Within the context of such medical care, line of sight supervision must be viewed through the prism of existing medical quality assurance, clinical privileging, and licensure directives, which require pre-employment screens, enhanced surveillance of new employees, and ongoing monitoring of the performance of all healthcare providers. These programs are inherent to both quality medical care and patient safety and are adequate and equivalent mechanisms for the sight and supervision requirements in paragraph B.1.c. and d. of this appendix. It should be noted that these quality assurance programs are not sufficient in and of themselves under Public Law 101–647, section 231. Therefore, the required FBI fingerprint check and the SCHR check must be completed as expeditiously as possible.

C. Current Employees

All currently employed individuals covered by this part shall have the FBI fingerprint and criminal history background check as described in Public Law 101–647, section 231. If the results of such checks, to include the SCHR, cannot be confirmed through an examination of available local records, action shall be initiated in accordance with paragraph B.1. of this appendix for APF employees and paragraph B.2. of this appendix for NAFI employees, and with paragraph D. of this appendix for individuals employed under contract. The SCHR checks are conducted in all cases in accordance with paragraph A.2. of this appendix. For the purposes of this part, no IRC is required for individuals employed before June 1991.

D. Government Contract Employees

1. Sponsoring activities are responsible for ensuring that the requirements in this part are included in the statement of work for all child care programs to be contracted. The contracting officer is responsible for performing any action necessary to verify that services provided by the contractor conform to contract quality requirements. Component designees for requiring activities shall ensure that the statement of work, at a minimum:

a. States that the contractor must ensure its employees have proper criminal history background checks as outlined in this part.

b. States that actual checks are performed by the Government.

c. Includes procedures that the contractor must follow to obtain checks for its employees; for example, identify the office where employees report for processing, identify proper forms to be completed, etc. Also, identify the DoD Component for billing purposes, and identify the appropriate security point of contact or installation commander as the authorized recipient of background check results.

d. States that employees may be permitted to work before completion of background checks, provided the employee is within sight of an individual who has successfully completed a background check.

e. States that employees have the right to obtain a copy of the background check report, whom they should contact for the copy and whom to contact for procedures to challenge the accuracy and completeness of the information in the report.

f. Requires that contractor employees who have previously received a background check must provide proof of the check or obtain a new one.

2. Requirements for child care services must be submitted to the contracting officer sufficiently in advance of the required performance start date to provide time for obtaining background checks. Sponsoring activities' designees shall coordinate with the contracting officer as soon as possible after a requirement for child care services becomes known.

3. Procedures for obtaining responses for background checks are the same as those for NAFI employees and response to derogatory information will occur through the appropriate designee and contractor. An IRC will be performed if the individual is a military member or family member, or has worked or lived on a military installation within 5 years.

E. Other Providers

Criminal history background checks with the FBI and the States are not required. Duplication of previous background checks are not required for personnel where official records demonstrate that an adequate check has already been conducted. This category includes the following:

1. *Military Members.* These are active duty individuals (other than healthcare personnel) who seek to provide child care services as part of a normal duty assignment or are involved during off-duty hours. For these members an IRC and a current security clearance meet the requirements of this part. In the absence of a current security clearance, a name check of the DCII must be conducted. When military members are employed in an APF or a NAFI position they will abide by background check requirements listed in paragraphs B.1. and B.2. of this appendix.

2. *Foster and Respite Care Providers and Family Members.* These are individuals who seek to provide foster care or respite child care within Government-owned or -leased quarters. The care provider, all other adults, and each child, age 12 and older, residing within the applicant's household must receive an IRC. In addition, the Component designee must also obtain a name check of the DCII on all adults.

3. *FCC Providers and Family Members.* These are individuals who seek licensing to provide child care within government-owned or -leased quarters. The care provider, all other adults, and each child, age 12 and older, residing within the applicant's household receive an IRC. In addition, the Component designee must obtain a name check of the DCII on all adults.

4. *Specified Volunteers.* Installation commanders shall designate those positions that are determined to be "specified." Individuals working in specified volunteer positions will have an IRC check because of the nature of their work in child care services. The opportunity for contact may be extensive, frequent, or over a period of time. They include, but are not limited to, positions involving extensive interaction alone, extended travel, and/or overnight activities with children. An IRC is required for volunteers who are active-duty, a family member, or a DoD civilian overseas. A volunteer is allowed to work upon completion of a favorable IRC. Background checks are not required for volunteers whose services will be of shorter duration than is required to perform the background checks and who are under line of sight supervision by an individual who has successfully completed a background check. The Components are required to provide additional implementing guidance.

F. Employment Application Requirement

Public Law 101–647, section 231 requires that each application for employment shall include a question asking whether the individual has ever been arrested for or charged with a crime involving a child, and

if so, requires a description of the disposition of the arrest or charge. The forms identified in paragraphs B.1.a. and B.2.a. of this appendix are signed by the applicant under penalty of perjury, with the applicable Federal punishment for perjury stated on the respective forms.

1. An applicant's signature indicates an understanding of the employer's obligation to require a record check as a condition of employment. Information on background checks shall be maintained in accordance with applicable Component implementing regulations.

2. Payment for the conduct of any criminal history background check is the responsibility of the requesting Service or agency.

3. The results of the background check are forwarded to the Component designee at the sending installation for appropriate action. A derogatory report would include, but not be limited to, the following applicable crimes: Any charge or conviction for a sex crime, an offense involving a child victim, a substance abuse felony, or a violent crime.

4. The hiring authority or designee is responsible for notifying the individual of a derogatory report. The individual may obtain a copy of the criminal history report and has the right to challenge the accuracy and completeness of any information contained in the report through the Privacy Program described in 32 CFR part 310. The individual may provide information concerning positive mitigating factors for any adverse information presented.

5. Employees whose criminal history background checks result in nonselection for employment or service shall be informed by the Component designee of the right to an administrative appeal under 32 CFR part 310. The individual may appeal with a specific request such as amendments to the records or request to file statement disagreeing with information in the record. If the employee's request for record information is refused, the individual is informed of his or her right to an administrative appeal. As appropriate, Component designees shall inform individuals of other avenues available to resolve matters of concern such as an administrative or negotiated grievance procedures. If the employee remains dissatisfied, he or she may seek a review. The Department of Defense recognizes the privacy interests and rights of all applicants and employees, and its own responsibility in ensuring a safe and secure environment for children within DoD activities or private organizations on DoD installations.

G. Record Re-Verification

This procedure consists of an IRC and a DCII name check and is required by the Component designee at a minimum every 5 years for all employees providing child care services and covers the time period since the completion of the last background check. NAFI employees who change duty stations will complete a new investigation when considered for employment. A new investigation is required by the Department of Defense if a break in service results in a time-lapse of more than 2 years. FCC, foster care and respite care providers, and their family members will complete an IRC annually.

H. Supervision

Refers to temporary responsibility for children in child care services, and relates to oversight for temporary or permanent authority to exercise direction and control by an individual over an individual whose required background checks have been initiated but not completed. Use of video equipment is acceptable provided it is monitored by an individual who has successfully completed a background check. Supervision procedures pending completion of background checks for healthcare personnel suggest that the Surgeons General shall require close clinical supervision and full compliance with existing DoD Directives, Instructions, and other guidance (issued by the Department of Defense and the Military Department concerned) on quality assurance, risk management, licensure, employee orientation, and credentials certification. These policies rely on process and judgment, and meet the intent of the "direct sight supervision" provision, affording local commanders a flexible and reasonable alternative.

I. *Programs.* Requirements cover all DoD-operated activities and private organizations on DoD installations and include, but are not limited to:

1. Child Development Programs.
a. Child development centers, part-day preschools, and enrichment programs.
b. Family child care.
c. Contracted Services, whether personal or non-personal services.
2. Youth Programs.
3. Dependents Schools operated by the Department of Defense.
4. Medical treatment facilities.
5. Other contracted services.
6. Private organizations on DoD installations.
7. Volunteer activities.

J. Background Check Matrix

This identifies the requirements of this part for background checks by category of personnel. These checks are initiated through the personnel offices in collaboration with law enforcement and security personnel. (Reminder: An IRC may only be completed on an individual who is a military member or family member, or who lives or works on a military installation.)

1. Appropriated Fund (APF) Employees. FBI, SCHR, and IRC. (SF–171, SF–87, and SF–85P).

2. Non-appropriated Fund Instrumentalities (NAFI) Employees. FBI, SCHR, and IRC. (DD Form 398–2 and FD Form 258).

3. Foreign National Employees Overseas. IRC and local government check.

4. Temporary Employees. FBI, SCHR, and IRC.

5. Current Employees. FBI and SCHR.

6. Government Contract Employees. FBI, SCHR, and IRC.

7. Other Providers.

a. Military Members. Military members will have an IRC and, if no current security clearance exists, a name check of the DCII. Checks are not required for military healthcare personnel.

b. Foster and Respite Care Providers and Family Members (age 12 and older). IRC and Service DCII (for adults).

c. Family Child Care Providers and Family Members (age 12 and older). IRC and Service DCII (for adults).

d. Specified Volunteers. IRC.

Appendix B to Part 86—Criteria For Criminal History Background Check Disqualification

The ultimate decision to determine how to use information obtained from the criminal history background checks in selection for positions involving the care, treatment, supervision, or education of children must incorporate a common sense decision based upon all known facts. Adverse information is evaluated by the DoD Component Head or designee who is qualified at the appropriate level of command in interpreting criminal history background checks. All information of record both favorable and unfavorable will be assessed in terms of its relevance, recentness, and seriousness. Likewise, positive mitigating factors should be considered. Final suitability decisions shall be made by that commander or designee. Criteria that will result in disqualification of an applicant require careful screening of the data and include, but are not limited to, the following:

A. Mandatory Disqualifying Criteria

Any conviction for a sexual offense, a drug felony, a violent crime, or a criminal offense involving a child or children.

B. Discretionary Criteria

1. Acts that may tend to indicate poor judgment, unreliability, or untrustworthiness in working with children.

2. Any behavior; illness; or mental, physical, or emotional condition that in the opinion of a competent medical authority may cause a defect in judgment or reliability.

3. Offenses involving assault, battery, or other abuse of a victim, regardless of age of the victim.

4. Evidence or documentation of substance abuse dependency.

5. Illegal or improper use, possession, or addiction to any controlled or psychoactive substances, narcotic, cannibas, or other dangerous drug.

6. Sexual acts, conduct, or behavior that, because of the circumstances in which they occur, may indicate untrustworthiness, unreliability, lack of judgment, or irresponsibility in working with children.

7. A wide range of offenses such as arson, homicide, robbery, fraud, or any offense involving possession or use of a firearm.

8. Evidence that the individual is a fugitive from justice.

9. Evidence that the individual is an illegal alien who is not entitled to accept gainful employment for a position.

10. A finding of negligence in a mishap causing death or serious injury to a child or dependent person entrusted to their care.

C. Suitability Considerations

In making a determination of suitability, the evaluator shall consider the following

additional factors to the extent that these examples are considered pertinent to the individual case:

1. The kind of position for which the individual is applying or employed.
2. The nature and seriousness of the conduct.
3. The recentness of the conduct.
4. The age of the individual at the time of the conduct.
5. The circumstances surrounding the conduct.
6. Contributing social or environmental conditions.
7. The absence or presence of rehabilitation or efforts toward rehabilitation.
8. The nexus of the arrests in regard to the job to be performed.

D. Questions

1. All applications, for each of the categories of individuals identified in § 86.3, will include the following questions: "Have you ever been arrested for or charged with a crime involving a child? Have you ever been asked to resign because of or been decertified for a sexual offense? And, if so, "provide a description of the case disposition." For FCC, foster care, and respite care providers, this question is asked of the applicant regarding all adults, and all children 12 years and older, who reside in the household.

2. All applications shall state that the form is being signed under penalty of perjury. In addition, a false statement rendered by an employee may result in adverse action up to and including removal from Federal service.

3. Evaluation of criminal history background checks is made and monitored by qualified personnel at the appropriate level designated by the Component. Final suitability decisions are made by the designee.

Appendix C to Part 96—State Information

All SCHR checks should be accompanied by the following: 1. State form, if required. If no State form is required, the request should be on letterhead, beginning with the statement that the check is in accordance with Public Law 101–647. The request must include full identifying information, such as: Name, date of birth, social security number, complete addresses, etc.

2. Fingerprint set if required. Some State laws require a fingerprint set either on a State form or forms used by the agency.

3. Release statement signed by the applicant or employee. If required by the State, the release must be notarized.

4. Payment for the SCHR check.

5. Self-addressed, stamped envelope.

The following is an updated listing of State addresses, fees, and other information:

Address	Fee	Remarks
State of Alabama, Alabama Dept. of Public Safety, Attn: ABI Division, 5002 Washington Ave., Montgomery, AL 36130.	$25	Name check, COMM: 205–242–4372.
State of Alaska, Alaska Dept. of Public Safety, Information Systems Section, 5700 Tudor Road, Anchorage, AK 99507.	20	Fingerprints required, reason for request required (comply with Pub. L.), name and address authorized request and receive SCHRC, COMM: 907–269–5511.
State of Arizona, Arizona Criminal Justice, Dept. of Public Safety, Information Systems Division, PO Box 6638, Phoenix, AZ 80550.	No check	Limited release, call/write, write for information. COMM: 602–223–2229.
State of Arkansas, Arkansas State Police, PO Box 5901, Little Rock, AR 72215.	No fee	Name check, written consent required, COMM: 501–221–8233.
State of California, Dept. of Justice, Bureau of Criminal Justice, Identification and Information Bureau, PO Box 903417, Sacramento, CA 94203–4170.	27	Fingerprints required, COMM: 916–739–2786.
State of Colorado, Crime Information Center, Colorado Bureau of Investigation, 690 Kipling Street, #3000, Lakewood, CO 80215.	4.50	Write/call for form, name check, COMM: 303–239–4222/4229.
State of Connecticut, Dept. of State Police, Bureau of Investigation, Building 4, 294 Colony Street, Meriden, CT 06450.	No fee	Name check, written consent required, copy of Pub. L. required, COMM: 203–238–6155.
State of Delaware, Delaware State Police-SBI, State Bureau of Investigation, PO Box 430, Dover, DE 19903.	25	Fingerprints required, COMM: 302–739–5871.
Washington, DC, Identification and Records Division, Metropolitan Police Dept., Room 2076, 300 Indiana Avenue, NW., Washington, DC 20001.	No fee	Name check, wittten request required, COMM: 202–727–4245.
State of Florida, Florida Dept. of Law Enforcement, PO Box 1489, Tallahassee, FL 32302.	10	Name check, check to: Dept. of Law Enforcement, COMM: 904–488–6236.
State of Georgia, Georgia Criminal Information Center, PO Box 370748, Decatur, GA 30037–0748.	15	Write or call for form, notary and fingerprints required, COMM: 404–244–2644.
State of Hawaii, Criminal Justice Data Center, 465 South King Street, Room 101, Honolulu, HI 96813.	No fee	Name check, COMM: 808–587–3100.
State of Idaho, Idaho Dept. of Law Enforcement, Criminal Identification Bureau, 6064 Corporal Lane, Boise, ID 83704.	5	Name check, written consent required, payment to: Dept. of Law Enforcement, COMM: 208–327–7130.
State of Illinois, Bureau of Identification, 260 North Chicago Street, Joliet, IL 60431–1060.	14	Write or call for form, name check, COMM: 815–740–5184.
State of Indiana, Indiana State Police, 100 North Senate Avenue, Room 312, Indianapolis, IN 46204.	7	Write or call for form, name check, COMM: 317–232–8266.
State of Iowa, Commissioner Paul H. Wieck II, Iowa Dept. of Public Safety, Wallace State Office Building, Des Moines, IA 50319.	6	Release within State, COMM: 515–281–5138.
State of Kansas, Kansas Bureau of Investigation, 1620 Southwest Tyler, Topeka, KS 66612.	10	Write or call for form, name check, $5 per name, over two names, COMM: 913–232–6000.
State of Kentucky, Kentucky State Police Records, State Office Building, 1250 Louisville Road, Frankfort, KY 40601.	4	Write or call for form, name check, COMM: 502–227–8700x214.
State of Louisiana, Louisiana State Police, Department of Public Safety, PO Box 66614, Baton Rouge, LA 70896.	13	Write or call for form, fingerprints required, COMM: 502–925–6095.
State of Maine, State Bureau of Investigation, Department of Public Safety, Maine State Police, 36 Hospital Street, Augusta, ME 04333.	No fee	Name check, reason for check required; i.e., comply with Pub. L., COMM: 207–624–7009.
State of Maryland, Criminal Justice Information Service, Central Repository, Building G4, 1201 Reistertown Road, Pikesville, MD 21208.	18	Write or call for form, name check, COMM: 410–764–4501.
State of Massachusetts, Executive Office of Public Safety, Criminal History Systems Board, 1010 Commonwealth Avenue, Boston, MA 02215.	No fee	Write or call for form, name check, COMM: 617–727–0090x12.
State of Michigan, Michigan State Police, FOI Unit, 7150 Harris Drive, Lansing, MI 48913.	No check	No release, COMM: 517–322–5531.

Address	Fee	Remarks
State of Minnesota, Criminal Justice Information Systems, Bureau of Criminal Apprehension, Minnesota Dept. of Public Safety, 1246 University Avenue, St. Paul, MN 55104.	8	Name check, written consent required, COMM: 612–642–0670.
State of Mississippi, Department of Public Safety, ATTN: Identification Bureau, PO Box 958, Jackson, MS 39225.	No fee	Write or call for form, name check, COMM: 607–987–1212.
State of Missouri, Criminal Records Division, State Highway Patrol, Department of Public Safety, PO Box 568, Jefferson City, MO 65102.	5	Write or call for form, name check COMM: 314–751–3313.
State of Montana, Identification Bureau, Department of Justice, 303 North Roberts, Helena, MT 59620–1418.	5	Name check, COMM: 406–444–3625.
State of Nebraska, Nebraska State Patrol, PO Box 94907, State House Station, ATTN: CID, Lincoln, NE 68509–4907.	10	Name check, COMM: 402–471–4545.
State of Nevada, Nevada Highway Patrol, 555 Wright Way, Carson City, NV 89711.	15	Write or call for form, fingerprints required, COMM: 702–687–5300.
State of New Hampshire, New Hampshire State Policy HQ, Criminal Records, 10 Hazen Drive, Concord, NH 03305.	10	Write or call for form, name check, COMM: 603–271–2538.
State of New Jersey, Division of State Police, Records and ID Section, PO Box 7068, West Trenton, NJ 08625–0068.	12	Copy of Pub. L. required, name check, COMM: 609–882–2000.
State of New Mexico, Department of Public Safety, Records Bureau, PO Box 1628, Sante Fe, NM 87504–1628.	5	Write or call for form, name check, notary required, COMM: 505–827–9181.
State of New York, Division of Criminal Justice Services, Executive Park Tower, Stuyvesant Plaza, Albany, NY 12203.	No check	No release at current time, state requires an agreement with agency to process, COMM: 518–485–7685.
State of North Carolina, Division of Criminal Information, Bureau of Investigation, 407 North Blount Street, Raleigh, NC 27601–1009.	14	Fingerprint form required, copy of Pub. L. required, call/write for form, COMM: 919–662–4500.
State of North Dakota, Bureau of Criminal Information, PO Box 1054, Bismark, ND 58502.	20	Name check, written consent required, COMM: 702–221–6180.
State of Ohio, Bureau of Criminal Information, PO Box 365, London, OH 43140.	15	Write or call for form, written consent required, fingerprints required, COMM: 614–852–2556.
State of Oklahoma, Oklahoma Law Enforcement, Criminal History Information, ATTN: Criminal History, PO 11497, Oklahoma City, OK 73136.	10	Write or call for form, name check, COMM: 405–848–6724.
State of Oregon, Criminal ID, State Police, 155 Cottage Street, NE, Salem, OR 97310.	10	Name check, COMM: 503–378–3070.
State of Pennsylvania, Records and ID Division, Pennsylvania State Police, Dept. HQ, 1800 Elmerton Avenue, Harrisburg, PA 17110.	10	Write or call for form, name check, 10 COMM: 717–783–5592.
State of Rhode Island, Rhode Island State Police, PO Box 185, North Scituate, RI 02857.	No fee	Name check, written consent required, COMM: 401–647–3311.
State of South Carolina, State Law Enforcement Division, ATTN: Criminal Records, PO Box 21398, Columbia, SC 29221–1398.	10	Name check, COMM: 803–737–4205, DSN: 734–1110.
State of South Dakota, Division Criminal Investigation, Attorney General's Office, East Highway 34, Pierre, SD 57501–5070.	15	Write or call for form, fingerprints required, COMM: 605–773–3334.
State of Tennessee, Tennessee Criminal Information Center, Tennessee Bureau of Investigation, PO Box 100940, Nashville, TN 37210.	23	Write or call for form, fingerprints required, COMM: 615–741–3241.
State of Texas, Texas Crime Records Division, Texas Dept. of Public Safety, PO Box 15999, Austin, TX 78761–5999.	15	Fingerprints required, written consent required, COMM: 512–465–2079.
State of Utah, Bureau of Criminal Identification, Utah Dept. of Public Safety, 4501 South 2700 West, Salt Lake City, UT 84119.	No fee	Write or call for form, name check, copy of law required, COMM: 801–965–4571.
State of Vermont, Vermont Criminal Information Center, Dept. of Public Safety, PO Box 189, Waterbury, VT 05676.	No fee	Name check, written consent required, COMM: 802–244–8786.
Commonwealth of Virginia, Virginia Records Management Div., Dept. of State Police, PO Box 850761, Richmond, VA 23261–5076.	10	Write or call for form, name check, COMM: 804–674–2024.
State of Washington, Washington, State Patrol, Identification Section, PO Box 42633, Olympia, WA 98504–2633.	10	Write or call for form, name check, COMM: 206–753–0230/7272.
West Virginia State Police, Dept. of Public Safety, 725 Jefferson Road, South Charleston, WV 25309.	5	Write or call for form, name check, COMM: 304–746–2180.
State of Wisconsin, Crime Information Bureau, Dept. of Justice, ATTN: Records Data Unit, PO Box 2718, Madison, WI 53701–2718.	2	Write or call for form, name check, COMM: 608–266–7314.
State of Wyoming, Division of Criminal Investigation, 316 West 22nd Street, Cheyenne, WY 82002.	15	Write or call for form, fingerprints required, written consent required, COMM: 307–777–7181.

Dated: October 1, 1993.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–24503 Filed 10–5–93; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 3 and 4

RIN 2900–AG10

Zero Percent Disability Evaluations

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) has amended its adjudication regulations and its schedule for rating disabilities to authorize the assignment of a zero percent evaluation for any disability in the rating schedule when minimum requirements for compensable evaluation are not met. This amendment is intended to clarify the VA's

interpretation of the intent of the regulation.

EFFECTIVE DATE: October 6, 1993.

FOR FURTHER INFORMATION CONTACT: John L. Roberts, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–3005.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 17, 1993, at pages 28808 through 28809, VA published a proposed rule to authorize the assignment of a zero percent evaluation for any disability in the rating schedule when minimum requirements for compensable evaluation are not met. Interested parties were invited to submit written comments on or before June 16, 1993. Since no comments were received, the final rule is adopted as proposed.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual impact on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance numbers are 64.104 and 64.109.

List of Subjects

38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

38 CFR Part 4

Handicapped, Pensions, Veterans.

Approved: August 26, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR parts 3 and 4 are amended as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A, continues to read as follows:

Authority: 105 Stat. 386; 38 U.S.C. 501(a), unless otherwise noted.

2. Section 3.357 is revised to read as follows:

§ 3.357 Civil service preference ratings.

For the purpose of certifying civil service disability preference only, a service-connected disability may be assigned an evaluation of "less than ten percent." Any directly or presumptively service-connected disease or injury which exhibits some extent of actual impairment may be held to exist at the level of less than ten percent. For disabilities incurred in combat, however, no actual impairment is required.

PART 4—SCHEDULE FOR RATING DISABILITIES

Subpart A—General Policy in Rating

3. The authority citation for part 4 continues to read as follows:

Authority: 72 Stat. 1125; 38 U.S.C. 1155.

4. Section 4.31 is revised to read as follows:

§ 4.31 Zero percent evaluations.

In every instance where the schedule does not provide a zero percent evaluation for a diagnostic code, a zero percent evaluation shall be assigned when the requirements for a compensable evaluation are not met.

[FR Doc. 93–24376 Filed 10–5–93; 8:45 am]

BILLING CODE 8320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–4785–1]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of the LaBounty Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region VII announces the deletion of the LaBounty site from the National Priorities List (NPL). The NPL constitutes appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) which the EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended. The reason this action is being taken is that Superfund Remedial Activities have been completed. EPA and the State of Iowa have determined that no further cleanup by the Responsible Party is appropriate under CERCLA. Moreover, EPA and the State have determined that CERCLA activities conducted at the site to date have been protective of public health, welfare and the environment.

EFFECTIVE DATE: October 6, 1993.

FOR FURTHER INFORMATION CONTACT: Paul W. Roemerman, Remedial Project Manager, Superfund Branch, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Ave., Kansas City, KS 66101, (913) 551–7694.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is the LaBounty Site, Charles City, Floyd County, Iowa.

A notice of intent to delete for this site was published August 10, 1993 (58 FR 42519). The closing date for comments was thirty (30) days after the notice was published. EPA did not receive any comments on the proposed deletion.

Based upon a review of monitoring data from the site, EPA in consultation with the State of Iowa has determined that the site does not pose a significant risk to human health or the environment. The contaminant levels in the Cedar River have been reduced below the levels set by the State of Iowa. The site shall be monitored by the Responsible Party in accordance with the Operation and Monitoring Plan approved by EPA.

Future reviews of monitoring data will be conducted, in conjunction with the State of Iowa, at a minimum of every five years, or until such time when no hazardous substances, pollutants or contaminants remain at the site above levels that allow for unrestricted use and unlimited exposure.

The EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by

the Hazardous Substance Response Fund (Fund). Pursuant to § 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed Remedial Actions if conditions at the site warrant such action. Deletion from the NPL does not affect responsible party liability or impede EPA efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Air pollution control, Chemicals, Environmental protection, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Supferfund, Water pollution control, Water supply.

William W. Rice,

Acting Regional Administrator.

For the reasons set out in the preamble 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 42 U.S.C. 9601–9657; 33 U.S.C. 1321(c)(2); E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp.,p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp.,p. 193.

Appendix B—[Amended]

2. Table 1 of appendix B to part 300 is amended by removing the Site "LaBounty Dump, Charles City, Iowa" and revising the total number of sites from 1,078 to read 1,077.

[FR Doc. 93–24535 Filed 10–5–93; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7585]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed in the third column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: Post Office Box 457, Lanham, MD 20706, (800) 638–7418.

FOR FURTHER INFORMATION CONTACT: James Ross MacKay, Acting Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, 500 C Street, SW., room 417, Washington, DC 20472, (202) 646–2717.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM). The date of the flood map, if one has been published, is indicated in the fourth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012(a), requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard areas shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Federal Insurance Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U. S. C. 601 et seq., because the rule creates no additional burden, but lists those communities eligible for the sale of flood insurance.

Regulatory Impact Analysis. This rule is not a major rule under Executive Order 11291, Federal Regulation, February 17, 1981, 3 CFR, 1981 Comp., p. 127. No regulatory impact analysis has been prepared.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date of authorization/cancellation of sale of flood insurance in community	Current effective map date
New eligibles—Emergency Program:			
Illinois:			
Gorham, Village of Jackson County	170954	August 2, 1993	January 26, 1979.

State and location	Community No.	Effective date of authorization/cancellation of sale of flood insurance in community	Current effective map date
Jackson County Unincorporated Areas	170927	August 4, 1993	August 8, 1980.
Tennessee: Pittman Center, Town of Sevier County	470378	August 24, 1993	December 7, 1979
Iowa: Moorland, City of Webster County	190784	August 20, 1993	October 29, 1976.
Georgia: Jasper, City of Pickens County	130375	August 27, 1993	April 11, 1975.
New Hampshire: Errol, Town of Coos County	330206	August 31, 1993	January 17, 1975.
New eligible—Regular Program:			
Iowa: Pottawattamie County Unincorporated Areas	190232	August 3, 1993	April 4, 1983.
South Carolina: Bluffton, Town of Beaufort County	450251	August 24, 1993	December 18, 1986.
Missouri: Grand Falls Plaza, Town of Newton County [1]	290904	August 26, 1993	—
Oklahoma: Lahoma, Town of Garfield County	400294	August 27, 1993	September 27, 1991.
Reinstatements—Regular Program:			
Nebraska: Avoca, Village of Cass and Otoe Counties	310247	Aug. 3, 1979—Emerg.; Aug. 3, 1979—Reg.; May 17, 1989—Susp.; August 20, 1993—Rein.	September 18, 1986.
West Virginia: Jefferson County Unincorporated Areas	540065	December 15, 1975—Emerg.; October 15, 1980—Reg.; October 15, 1980—Susp.; October 24, 1980—Rein.; August 2, 1993—Susp.; August 30, 1993—Rein.	August 2, 1993.
Withdrawal—Regular Program:			
Minnesota: Lake Shore, City of Cass County	270062	November 11, 1976—Emerg. June 22, 1984—Reg.; August 3, 1993—With..	—
Regular Program Conversions			
Region I			
Vermont: Jericho, Town of Chittenden County	500037	August 2, 1993, Suspension Withdrawn..	August 2, 1993.
Region II			
New York:			
Gates, Town of Monroe County	360416	.....do	August 2, 1993.
Middletown, Town of Delaware County	360209	.....do	August 2, 1993.
Watertown, City of Jefferson County	360354	.....do	August 2, 1993.
Watertown, Town of Jefferson County	360355	.....do	August 2, 1993.
Region III			
Pennsylvania:			
Bethlehem, Township of Northampton County	420980	.....do	August 2, 1993.
Delaware, Township of Northumberland County	421010	.....do	August 2, 1993.
Swatara, Township of Dauphin County	420398	.....do	August 2, 1993.
Region V			
Minnesota: Chisago County Unincorporated Areas	270682	.....do	August 2, 1993.
Region VI			
Oklahoma: Lindsay, City of Garvin County	400245	.....do	August 2, 1993.
Region I			
Connecticut: Berlin, Town of Hartford County	090022	August 16, 1993, Suspension Withdrawn..	May 3, 1993.
Maine:			
Glenburn, Town of Penobscot County	230106	.....do	August 16, 1993.
Guilford, Town of Piscataquis County	230117	.....do	August 16, 1993.
Region III			
Pennsylvania: Washington, Township of Westmoreland County	422196	.....do	August 16, 1993.
Region V			
Wisconsin: Eau Claire County Unincorporated Areas	555552	.....do	August 16, 1993.
Indiana:			
Brook, Town of Newton County	180180	.....do	August 16, 1993.
Hamlet, Town of Starke County	180241	.....do	August 16, 1993.
Hamilton, Town of Steuben County	180080	.....do	August 16, 1993.
Remington, Town of Jasper County	180101	.....do	August 16, 1993.

[1] The Town of Grand Falls Plaza has adopted Newton County's Flood Insurance Study dated April 17, 1985, with accompanying Flood Insurance Rate Map for flood insurance purposes.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension, Rein.—Reinstatement.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Issued: September 28, 1993.

Donald L. Collins,

Acting Administrator, Federal Insurance Administration.

[FR Doc. 93–24538 Filed 10–5–93; 8:45 am]

BILLING CODE 6718–21–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 87

[FCC 93–184]

Metric Conversion

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to the final rule (FCC 93–184), that was published Wednesday, August 25, 1993 (58 FR 44892). This rule related to the metric conversion of Federal Communications Commission regulations.

EFFECTIVE DATE: September 24, 1993.

FOR FURTHER INFORMATION CONTACT: David Wilson, Office of Engineering and Technology, (202) 653–8138.

SUPPLEMENTARY INFORMATION:

Background

The final rule that is the subject of this correction was released by the Federal Communications Commission on May 7, 1993, and was published in the **Federal Register** on August 25, 1993. This final rule contained changes to 47 CFR 87.187 that were inaccurate on August 25, 1993, due to other changes made to that section on May 26, 1993 (58 FR 30127).

Need for Correction

As published, the final rule contains errors that are misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication on August 25, 1993, of the final rule (FCC 93–184), is corrected as follows:

§ 87.187 [Corrected]

Paragraph 1. On page 44954, in the second column, in amendatory instruction 2., in the 1st line, "(2) and (aa)" are corrected to read "(bb) and (cc)".

Para. 2. On page 44954, in the second column, in 47 CFR 87.187, the paragraph designation "(z)" is corrected to read "(bb)".

Para. 3. On page 44954 in the second column, in 47 CFR 87.187, the paragraph designation "(aa)" is corrected to read "(cc)".

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–24337 Filed 10–5–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 80–6; Notice 8]

RIN 2127–AE86

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: This notice responds to petitions for reconsideration of the final rule published on December 10, 1992, establishing a visibility enhancement scheme for large trailers, and amends Standard No. 108 pursuant to these petitions and to Supplemental Notices of Proposed Rulemaking (SNPRMs) that were published on January 22, and April 22, 1993. In response to the petitions for reconsideration, Standard No. 108 is amended to change the mounting height of conspicuity material from 1.25 m to the 375 mm—1525 mm range originally proposed, to reduce the width of the stripe required on rear underride guards from 50 mm to 38 mm, and to clarify requirements relating to horizontal location and to platform trailers with bulkheads and those without underride guards. All other petitions are denied. In response to the SNPRMs the final rule provides that trailers which are equipped with a conspicuity treatment conforming to S5.7, need not be equipped with the reflex reflectors required by Table 1. Also, the rule modifies Figure 29's requirements for specific intensity per unit area values for retroreflective sheeting, and those of S5.7.2.1 for reflex reflectors. These amendments relieve a regulatory burden on manufacturers of these trailers.

DATES: The final rule is effective November 5, 1993.

FOR FURTHER INFORMATION CONTACT: Patrick Boyd, Office of Rulemaking (202–366–6346).

SUPPLEMENTARY INFORMATION:

Background of This Notice

On December 10, 1992, NHTSA published a final rule amending Federal Motor Vehicle Safety Standards No. 108 *Lamps, Reflective Devices and Associated Equipment* to add paragraph S5.7 *Conspicuity Systems*. The rule (Notice 6, 57 FR 58406) implemented a notice of proposed rulemaking (NPRM) published on December 4, 1991 (Notice 4, 56 FR 63474). Under the rule, trailers manufactured on or after December 1, 1993, which have an overall width of 80 inches or more and a GVWR of more than 10,000 pounds (except trailers manufactured exclusively for use as offices or dwellings), must be equipped with a conspicuity treatment of either retroreflective sheeting or reflex reflectors.

The comments responding to the NPRM suggested two modifications that appeared merited, but could not be adopted in the final rule because they were beyond the scope of the proposal. On January 22, 1993, NHTSA published a supplemental notice of proposed rulemaking (SNPRM) proposing a modification of the final rule to implement those comments (Notice 7, 58 FR 5699). The SNPRM was republished with a minor modification on April 22, 1993 (Notice 7A, 58 21553).

A discussion of the notices follows.

Petitions for Reconsideration of the December 1992 Rule

Petitions for reconsideration were received from the American Trucking Associations (ATA), the Truck Trailer Manufacturers Association (TTMA), the Insurance Institute for Highway Safety (IIHS), Advocates for Highway and Auto Safety (Advocates), and S.A. Heenan. In response to issues raised by the petitioners, further comments to the docket were submitted by Paul Olsen, CTI, the National Association of Trailer Manufacturers (NATM), Heckney and Sons, and United Van Lines. Comments relating to issues in the final rule were also received from Mirage Carriage Works, Sundowner Trailers and Wells Cargo.

There were eight principal issues raised by the petitions for reconsideration, which are discussed below.

1. Color or Retroreflective Sheeting

The final rule required the sides and rear of a trailer to be marked with retroreflective sheeting applied in red/white segments. ATA petitioned that the side segments be entirely in white, and presented three reasons in support.

1. Use of the same color(s) of material on both the side and rear will confuse approaching drivers. NHTSA disagrees. As it has explained previously, the agency does not consider strips of white alone to be sufficiently distinct from common highway markings. Further, the 28 to 53 foot length of the side treatment on the trailers is surely sufficiently greater than the 8-foot continuous rear stripe to distinguish the side from the rear at distances calling for a driver to take evasive action. Typically, the rear stripe will be accompanied by underride guard and upper corner treatments to further distinguish the rear, and the trailer will be equipped with distinctive clearance and identification lamps as well. For those reasons, NHTSA concludes that the requirement for red/white markings on both the side and rear will not confuse drivers.

2. Red reflectors on the front sides of trailers are prohibited by Federal Motor Carrier Safety Regulation 49 CFR 393.26. This is incorrect. The Motor Carrier Safety Regulation only prohibits red lamps and reflectors on the front of motor vehicles, and does not prohibit a red conspicuity treatment on the side of the trailer at the front.

3. Red side conspicuity material is prohibited by the State of New Jersey. NHTSA has discussed this matter with appropriate motor vehicle agency officials in New Jersey, and has found that there is no practical impediment to implementation of the red/white scheme in that State. Although the motor vehicle code may be interpreted as prohibiting a red/white color scheme, the State's policy is, in fact, to allow retrofit of trailers with the Federal conspicuity treatment. With respect to new trailers, effective December 1, 1993, the issue is moot. Under the preemption provisions of the National Traffic and Motor Vehicle Safety Act, no State will be able to maintain in effect any law that might prohibit an affected trailer manufacturer from complying with the conspicuity treatment specified in S5.7.

For the reasons given above, NHTSA denies the petition by ATA for reconsideration of the color requirements for conspicuity materials.

2. Configuration of Retroreflective Materials

IIHS and Advocates petitioned for a larger amount of retroreflective material to be applied to the trailer sides. In addition, ATA and TTMA petitioned for elimination of requirements for material to be applied to rear underride guards and to bulkheads of platform trailers. These two petitioners also asked for clarification of the height and slant requirements for the "horizontal" side strips. Finally, TTMA asked that side curtain trailers be excluded from the conspicuity requirements.

1. The side perimeter should be outlined in full. It is the belief of IIHS and Advocates that motor vehicle safety would be enhanced with full side outlining, greatly exceeding the partial side outlining of Alternative 2 of the NPRM. NHTSA agrees that it is true that adding more material increases the light return and the sight threshold distance. However, it also adds to costs imposed upon the manufacturer which may be expected to be passed on to the consumer. The final rule expresses NHTSA's conclusion that enhancement of side conspicuity is adequately addressed by requiring only a broken single stripe of material. This is consistent with UMTRI's research findings that a single broken side stripe provided adequate sight distance for the side. NHTSA also believes that the reduction in the amount of material required from that which was proposed will encourage voluntary retrofitting of trailers not subject to the final rule, resulting in an even greater safety benefit on the nation's highways. Therefore, NHTSA is denying the petitions by IIHS and Advocates on this issue.

2. Rear underride guards should be excluded from conspicuity treatment. The petitions for elimination of the treatment of underride guards were posited on the arguments that not all trailers are equipped with them, and those that are in place are susceptible to damage. These issues were considered thoroughly in the development of the final rule. NHTSA anticipates that some underride guards will degrade in service but that this represents only a minority, and does not provide a reason for not applying the material in the first instance. There are simple steps that manufacturers can take to protect the material, such as mounting it in the inside of a steel channel bumper or placing small metal beads above and below the bumper stripe. Thus, NHTSA denies the petitions for excluding the underride guards. However, the agency is amending Standard No. 108 to allow a minimum width of 38 mm rather than 50 mm to facilitate protective designs and to encourage retrofit of existing trailers that may have underride guards narrower than 50 mm.

3. Platform trailers with bulkheads and side curtain trailers should be excluded from conspicuity markings. As for exclusion of platform trailers with bulkheads, NHTSA considered this possibility as well in formulation of the final rule. The agency does not agree with the argument of some petitioners that motorists approaching from the rear will be confused by an image in which conspicuity treatment on the bulkhead is about 40 feet ahead of the treatment of the rest of the rear. The slight foreshortening of the upper white stripes may produce a slightly shorter image than that of a van trailer of similar height, but the image will still create a partial outline whose perceived rate of change of size will provide a cue aiding judgment of closing speed. Therefore, the agency denies the petitions to exclude platform trailers with bulkheads from the conspicuity requirements. However, NHTSA is amending S5.7.1.4.1 to clarify that Element 2 of the rear marking is not required for container chassis or platform trailers without bulkheads, and that Element 3 of the rear marking is not required for trailers without underride protection devices.

NHTSA has also considered previously the question of side curtain trailers, and decided that an exclusion was not called for; the material may be placed on the frame if necessary. TTMA's petition on this issue is denied.

4. The mounting height for conspicuity materials is excessively restrictive. Several petitioners were concerned with the mounting height for conspicuity materials that was adopted by the final rule. The NPRM had proposed a range from 15 to 60 inches above the road surface, while the final rule was much narrower, specifying as close to 1.25 m as practicable. With this change, NHTSA meant to increase flexibility and to avoid the need for exceptions for classes of trailers. However, it has been brought to NHTSA's attention that the lower body surfaces of beverage trailers, drop side moving van trailers, and large non-commercial utility and livestock trailers are closer to the ground than those of van and platform trailers. Although it would be practicable to place the conspicuity treatment at the 1.25 m height adopted in the final rule, manufacturers and users would like to locate the conspicuity treatment to follow the lower body profile to maximize advertising space and to improve aesthetics. NHTSA has carefully considered these petitions. There is no practical effect on light entrance angles and the agency does not believe that there are any safety reasons

mitigating against allowing the mounting height range originally proposed. Accordingly, NHTSA grants the petitions for reconsideration of the mounting height of 1.25 m and is adopting the metric equivalent of the 15 to 60 inches originally proposed. The modified mounting height is "as close to 375 mm to 1525 mm as practicable."

5. "Horizontal" needs to be defined. Retroreflective sheeting is to be mounted horizontally, and TTMA asked for a definition of "horizontal." The word is intended to be descriptive rather than to connote a specific geometric tolerance, in other words, as horizontal as practicable. The structure of the side of a trailer is generally horizontal. The natural placement of stripes would be parallel to the floor of a solid-sided trailer and on the most horizontal member of an open sided trailer. To forestall a possible spate of inconsequentiality petitions on the point, NHTSA is amending the requirement to read "as horizontal as practicable."

3. Exclusion of Trailers With GVWRs Less Than 26,000 lbs

Petitions on this issue arrived too late to be considered as petitions for reconsideration, and, in accordance with agency procedures, have been considered as petitions for rulemaking. Petitions were received from NATM, Mirage Carriage Works, Sundowner Trailers, and Wells Cargo. They requested exclusion of trailers with GVWRs less than 26,000 pounds from this requirement on the basis that such vehicles do not experience the types of accidents associated with heavier commercial trailers.

NHTSA disagrees with this argument. Trailers of this size are expected to be used on rural roads and in local delivery service where backing across roads and making U turns are common, and where enhanced conspicuity will assist in accident avoidance maneuvers conducted by approaching drivers. The petitions for rulemaking are therefore denied.

4. Brightness

IIHS petitioned for an increase in the required brightness of retroreflective sheeting. S.A. Heenan asked for a change in the way the standard specifies the brightness of reflex reflectors.

1. Retroreflective sheeting should be brighter. According to IIHS, the UMTRI study of appropriate specifications for material brightness is flawed because it did not incorporate correction factors for dirty windshields and headlamps, and the presence of rain and fog. It cited conversations with Paul Olsen, the principal investigator of the UMTRI study, in confirmation of its comments. However, Mr. Olsen disagreed, in written comments to the docket, with the IIHS' characterization of his views. Mr. Olsen had recognized these factors but did not represent them explicitly because there were no accepted correction factors based on hard data. Instead, he used pessimistic levels of the factors which were quantified by data in order to create a reasonable worst case which included the combined effect of several detrimental factors. He assumed for the UMTRI recommendation that the conspicuity material was 10 years old, and dirty to the point of a 70 percent loss of brightness, that the treated trailer was turned 30 degrees from the approaching vehicle, that the approaching vehicle was a truck, that the driver had a worse reaction time than the 95th percentile, and that the roadway was wet (adding to the stopping distance, which, under ordinary circumstances, is already greater for a truck than for a passenger car). These factors resulted in a recommendation which Mr. Olsen characterized as "very conservative." As NHTSA stated in the preamble to the NPRM, the brightness values are four times greater than the minimum brightness that UMTRI measured as adequate under good conditions, for the purpose of accommodating weather, dirt, and other deleterious effects.

A report has been written by Tansley and Petrusic of Carleton University, Canada, that also criticizes the brightness values adopted by the agency. NHTSA's specification is based on UMTRI's recommendation for a 740-foot stopping-sight distance (SSD) to allow for the worst case situation of a truck traveling 70 mph on a wet road. The Canadian report uses the measure of decision-sight distance (DSD) at 60 mph to conclude that the conspicuity treatment should be visible at not less than 1150 feet (or, at 70 mph, not less than 1400 feet).

Both DSD and SSD are criteria developed by the American Association of State Highway and Transportation Officials (AASHTO) for the design of highway signs. DSD was developed for situations in which it is undesirable for drivers to stop, such as at construction zones incorporating lane closures. DSD allows time for the driver to evaluate the problem, find a gap in adjacent traffic, adjust speed, and merge into another lane. The distances dictated by DSD are considerably longer than those required by SSD because of the potential complexity of the merge maneuver. SSD is appropriate for a situation in which a driver must stop for a truck blocking the road ahead. NHTSA believes that the SSD criteria employed by UMTRI were the appropriate basis for determining the material brightness requisite for safety. The effectiveness of conspicuity treatments tested in the Vector study do not support DSD as the regulatory criterion, and their effectiveness is consistent with expectations based on SSD.

For the reason discussed above, NHTSA denies the IIHS petition for a reconsideration of the brightness requirements.

2. Brightness of reflex reflectors should be determined in a different manner. The second brightness issue was raised by S.A. Heenan, of Cortina Tool and Molding Co., a manufacturer of reflex reflectors. Mr. Heenan asked that brightness be rated in light return per length of reflector grouping (with the manufacturer specifying the grouping details) rather than in light return per reflector with a maximum reflector spacing.

The final rule for the reflex reflector option specified reflectors consistent with the requirements of Standard No. 108 (SAE J594f) except for enhanced performance at greater light entrance angles. The maximum spacing between reflectors within a grouping (analogous to a color segment length of sheeting material) is 100 mm so that a reflex reflector array will produce the same minimum light return as that required for sheeting material, and will create a similar appearance at night. Mr. Heenan, however, believes that the 100 mm spacing is too restrictive and that the same light return per length of array could be achieved by different combinations of brightness and spacing. He also argues that his customers, who may not be comfortable with the metric system, will be burdened if mounting an integer number of reflectors per foot does not correspond to the minimum requirement.

NHTSA agrees with Mr. Heenan that different combinations of brightness and spacing will produce an equivalent image at night as long as the reflector spacing is not too great. However, allowing a manufacturer to choose any design spacing up to 150 mm would require new compliance marks to indicate the design spacing. While NHTSA has considered adding another compliance option, it believes that Standard No. 108 already provides sufficient flexibility in this area. Standard No. 108 contains a dual set of requirements to accommodate both reflex reflectors and sheeting material, and NHTSA does not consider it desirable to add more complexity. Since reflex refelectors capable of meeting the

existing requirements are expected to be about 2 inches square in size, mounting them at intervals not greater than 100 mm does not seem to be burdensome enough to justify allowing a second reflector option that would create a new marking system.

If trailer manufacturers are uncomfortable with the metric system, they may choose to mount reflectors at intervals of 3 15/16ths inches with the same result. It is impossible to avoid requirements that do not translate into even feet when the Departmental policy is to use metric units as primary units.

For the foregoing reasons, Mr. Heenan's petition for reconsideration of the spacing of reflex reflectors is denied.

5. Application to Trucks

IIHS petitioned that the applicability of the conspicuity system requirements in S5.7 be extended to trucks and truck tractors. It cited accident statistics in support of its request. Because the NPRM and final rule did not include trucks and truck tractors, NHTSA cannot at this time proceed to amend the final rule to include these categories of vehicles without contravening the Administrative Procedure Act which requires adequate notice of rulemaking actions. Therefore, the IIHS petition is denied. However, NHTSA considers that this is an appropriate candidate for study and possible future action on enhancing the visibility of trucks and truck tractors, and will review the data available, including the data submitted by IIHS.

6. Benefit Computations

Without requesting reconsideration of the rule on the basis of its comment, IIHS faulted NHTSA for not considering medical cost savings as a direct benefit as the agency had done with property damage savings.

Typically, NHTSA has prescribed only property damage savings (and sometimes travel delay savings) as a direct balance against regulatory costs. However, NHTSA explicitly considers medical expenses as well as other economic losses caused by injury and death in determining the appropriate societal cost to prevent "equivalent fatalities." This policy has the effect of lumping medical costs (which may be as quantifiable as property damage costs) with more ambiguous "soft" costs such as lost market and household productivity. The results of NHTSA's calculations of a rule's "cost per equivalent fatality prevented" are presented (with appropriate comments and discussion) in its regulatory evaluations. These values are not discussed in the preambles to the agency's rules because, without a fairly extensive clarifying discussion, a straightforward presentation of the values can mislead readers into believing that the agency places an absolute dollar value on human life.

7. Procedural Correctness of Final Rule

Advocates petitioned for reconsideration of the final rule on the basis that the agency combined elements of Alternative 1 and Alternative 2 rather than choosing one of them. It specifically objected to the elimination of the side outlining elements of Alternative 2. It also claimed that there is insufficient "evidence" in the rulemaking record to support the final rule because "the regulatory decision ignores the favorable findings of the earlier Vector Enterprises study on the benefits of perimeter delineation of van-type trailer sides and instead bases its final rule on the insufficient research effort" of UMTRI.

Advocates' petition is denied. The NPRM provided an adequate opportunity for comment on trailer marking requirements and it was a logical outgrowth of the proposal for NHTSA to fashion a final rule combining elements of both the marking schemes for which comment was sought. Although Vector suggested full outlining of the sides with 4-inch tape, its actual study was conducted using 2-inch tape and a single side stripe, without outlining the side perimeter. The only "findings" by Vector are those using this treatment, essentially the treatment that NHTSA adopted.

8. Use of Reflex Reflectors in Conspicuity Treatments

Advocates complained of the option in the final rule that allows use of reflex reflectors to provide conspicuity treatment. It claims that "reflex reflectors will be prone to much more rapid degradation from damage and obscuration by road grime, snow, and ice than reflective sheeting."

Although hard plastic reflectors have less impact resistance than sheeting material, NHTSA has no reason to believe that they are any more subject to being obscured by dirt or weather than sheeting material. Reflex reflectors can provide the same essential safety function as retroreflective sheeting, and they have been used as motor vehicle equipment for at least 50 years.

Advocates also claimed that conspicuity treatments using reflectors create an image less recognizable as a trailer than treatments using sheeting material. It quotes the UMTRI report in support of this argument. However, after reviewing this argument and the UMTRI report, NHTSA notes that the UMTRI discussion cited by Advocates relates to conspicuity patterns, not devices. There were no reflex reflectors used in this aspect of the study, and UMTRI simply used the words " reflex reflectors" as a shorthand expression for certain extremely discontinuous patterns of sheeting material shaped like dots.

NHTSA therefore finds no basis for granting the petition for reconsideration of the use of reflex reflectors as an alternative to retroreflective sheeting, and denies the petition.

The SNPRMs

Comments were received from ATA, TTMA, IIHS, Advocates, 3M, Reflexite, Grote, and Truck Safety Equipment Institute (TSEI).

1. Performance of Retroreflectiye Sheeting

Brightness of retroreflective material is expressed in "specific intensity per unit area" or "SIA". SIA is specified in Standard No. 108's Figure 29 at observation angles of 0.2 degree and 0.5 degree, and light entrance angles of −4 degrees and 30 degrees. Several commenters, including 3M, TSEI and Peterson Manufacturing, voiced a need for values at an entrance angle of 45 degrees. The value suggested was 60, as contained in SAE J1967. This appeared to be based upon the characteristics of the retroreflective material used in the Vector study (see Notice 4, the NPRM, for a discussion of the study). The SNPRMs proposed that Figure 29 be amended to add a value of 60 at an entrance angle of 45 degrees and an observation angle of 0.2 degree for DOT–C2 white retroreflective material. An appropriate value was also proposed for 0.5 degree, as were values for red retroreflective materials. The proposal extended to DOT–C3 and DOT–C4 materials as well.

Stimsonite commented to the NPRM that the ratio of red to white brightness of retroreflective material is constant for changes in observation angle. This means that the value of 10 SIA adopted for DOT–C2 red material at 0.5 degree and entrance angles of −4 degrees and 30 degrees should be 15, and not 10 as adopted. NHTSA proposed an appropriate amendment of Figure 29 to ensure consistency.

The intent of the conspicuity rule is to require the same light return from reflex reflector conspicuity systems as required from systems of retroreflective material. Thus, the agency proposed corresponding changes to S5.7.2.1(b) and (c) to establish values at 45 degrees for red and white reflex reflectors. The value of 75 millicandelas/lux at a light

entrance angle of 45 degrees for red reflex reflectors and the value of 300 millicandelas/lux for white reflex reflectors at the same angle creates the same light return from three reflex reflectors as was proposed for 300 mm of 50 mm wide sheeting material at a light entrance angle of 45 degrees. After the publication of the January SNPRM, a caller brought to NHTSA's attention that the agency had failed to include reflex reflectors, and the SNPRM was republished in April to include them.

The commenters supported the proposal, and S5.7 is amended as proposed, for the reasons stated above.

2. Redundancy of Reflex Reflectors

Some commenters to the NPRM stated that the requirements for conspicuity materials obviate the need for some existing lamps and reflectors. UPS asked that clearance lamps be eliminated, while TTMA requested the elimination of identification lamps and reflex reflectors for trailers equipped with conspicuity treatment. The American Petroleum Institute suggested adding side marker lamps as well to the list of the items to be eliminated. On the other hand, Trucklite and Grote opposed elimination of any lamps and reflectors, believing that each has a safety function to perform.

The agency did not propose elimination of identification, clearance, or marker lamps for trailers equipped with conspicuity materials. The conspicuity treatment is intended to augment lighting devices, not substitute for them. Trucklite pointed out that, even granting the benefits of conspicuity treatment, safety depends on the light output of lamps in extreme weather conditions, when the trailer is dirtier than normal, or when the headlamps of an approaching vehicle are faulty.

However, the agency believed there could be some duplication of safety mission between the reflex reflectors required by the standard and the conspicuity treatment required by paragraph S5.7. Table I of Standard No. 108 requires that large trailers be equipped with 2 amber reflex reflectors located at the side front, 2 red reflex reflectors located at the side rear, and 2 red reflex reflectors on the rear. If the overall length of the trailer is 30 feet or more, intermediate side reflex reflectors, amber in color, must be added. Under Table II, reflex reflectors may be mounted at any height between 15 and 60 inches. Thus, rear and side reflex reflectors could be considered redundant, even though amber reflex reflectors on the front and midpoint of large trailers would be replaced with red conspicuity treatment.

NHTSA therefore proposed that new trailers manufactured with a conspicuity treatment that meets S5.7 need not be equipped with reflex reflectors as required by Table I. The agency asked for comments on whether this proposed change should apply only to vehicles whose conspicuity treatment consists entirely of reflex reflectors.

ATA, TTMA, 3M and Reflexite supported the proposal. In response to NHTSA's question, Grote and TSEI commented that the option should be restricted to trailers equipped with a conspicuity treatment consisting of reflex reflectors. The weathering capability of sheeting, according to these commenters, is unknown. Further, damage to sheeting could go unnoticed while damage to reflex reflectors is obvious. Therefore, maintaining dual conspicuity systems is in the interests of safety. However, 3M, a principal manufacturer of sheeting material, cited the material's durability and impact resistance. ATA pointed out that many of the reflectors are only stamped discs of sheeting material.

NHTSA does not agree with comments that question the durability of retroreflective sheeting. Research performed by UMTRI confirms its long term performance. Standard No. 108 incorporates contemporary industry standards for both retroreflective sheeting and reflex reflectors as the basis for the minimum Federal standards for these products. The standards differ in test methods, such as the weathering tests which call for 3-years outdoor exposure of reflex reflector plastics, but 2200 hours of accelerated weathering of sheeting material using a carbon-arc lamp. However, there appear to be no safety reasons to prefer one test method over the other when both products deliver the essential performance of retroreflection and reasonable durability.

Advocates also disagreed with the proposal, citing lack of research on the functional relationship between reflectors and conspicuity material. NHTSA believes that research is unnecessary to demonstrate the relationship. Reasonably, when two or three reflect reflectors (or small discs of sheeting material) are placed adjacent to a conspicuity array reflecting at least 20 times the light, their images become insignificant additions to the large array.

NHTSA has therefore concluded that trailer manufacturers using either reflex reflectors or retroreflective sheeting for their conspicuity treatment ought not to be required to provide as well the reflex reflectors required by Standard No. 108, and is amending Standard No. 108 to so provide.

Miscellaneous Issues

Reflexite suggested adding a brightness specification at an observation angle of 0.1 degree in addition to the 0.2 and 0.5 degrees specified in the final rule. NHTSA does not believe that this is required for safety. At the 740 foot viewing distance cited in the UMTRI study on brightness, the observation angle for the typical car headlamp height and driver eye height is greater than 0.14 degree. Thus, any increased brightness at less than 0.14 degree would not even be visible to the typical driver at what NHTSA considers to be an adequately far distance.

ATA suggested that the agency use SAE J1967 rather than ASTM D 4956–90 to specify the qualities of retroreflective sheeting because it includes an immersion test using car wash detergent, and diesel and another reference fuel. NHTSA will consider this comment as a suggestion for future rulemaking to incorporate the fluid resistance test of SAE J1967. However, an UMTRI study sponsored by NHTSA demonstrated that retroreflective sheeting commonly used on trucks withstood road exposure, specifically including chemicals used in washing trucks.

The agency has received questions regarding the applicability of the conspicuity requirement to remanufactured trailers. As a general rule, remanufactured trailers must comply with the same FMVSS as new trailers, unless it meets the exceptions provided by 49 CFR 571.7(e).

Effective Date

The effective date of the amendments to Standard No. 108 effected by this notice is November 5, 1993. On March 2, 1993, NHTSA changed the effective date when the amendments of December 10, 1992, will be added to the text of the standard as it appears in the Code of Federal Regulations (Notice 6A, 58 FR 11974). This change had no substantive effect since paragraph S5.7 containing substantive requirements for conspicuity treatments retained the originally stated date of December 1, 1993, for mandatory compliance with the requirements. Because December 1, 1993, is the general effective date for the conspicuity requirements of S5.7 that are modified herein in a manner that relieves a restriction upon manufacturers, it is found for good cause shown that an effective date earlier than 180 days after issuance of this final rule is in the public interest.

Rulemaking Analyses

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has considered the impacts of this rulemaking action and has determined that it is not major within the meaning of Executive Order 12291 "Federal Regulation," nor is it significant under Department of Transportation regulatory policies and procedures. The regulatory impacts of this notice are so minimal that preparation of a full regulatory evaluation is not warranted. NHTSA estimates that the potential cost savings that could be realized by elimination of superfluous reflect reflectors will be a total of $1.7 million a year. A Regulatory Evaluation was prepared for the original final rule regarding conspicuity and is available for examination by the public in the docket.

Regulatory Flexibility Act

The agency has also considered the effects of this rulemaking action in relation to the Regulatory Flexibility Act. I certify that this rulemaking action would not have a significant economic effect upon a substantial number of small entities. Although trailer manufacturers are generally small businesses within the meaning of the Regulatory Flexibility Act, the agency estimates that compliance cost savings to the trailer buyer who chooses to eliminate reflectors will average $10 to $13 per trailer. Further, small organizations and governmental jurisdictions will not be significantly affected as the price of the new trailers equipped with conspicuity treatment will be negligibly impacted. Accordingly, no Regulatory Flexibility Analysis has been prepared.

Executive Order 12612 (Federalism)

This rulemaking action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 on "Federalism." It has been determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for purposes of the National Environmental Policy Act. The rule will not have a significant effect upon the environment. Retroreflective material is non-toxic. There will be a materials saving from manufacturing fewer reflex reflectors. The rule will not have an effect upon fuel consumption.

Civil Justice

This rule does not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 105 of the Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

1. The authority citation for part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.108 [Amended]

2. Section 571.108 is amended by adding Paragraph S5.1.29, and revising paragraphs S5.7.1.4.1, S5.7.1.4.1(a), S5.7.4.1(c), S5.7.1.4.2(a), S7.2.1(b) and S7.2.1(c) to read as follows:

§ 571.108 Motor Vehicle Safety Standard No. 108 Lamps, Reflective Devices, and Associated Equipment.

* * * * *

S5.1.1.29 A trailer equipped with a conspicuity treatment in conformance with paragraph S5.7 of this standard need not be equipped with the reflex reflectors required by Table I of this standard if the conspicuity material is placed at the locations of the reflex reflectors required by Table I.

* * * * *

S5.7.1.4.1 *Rear.* Retroreflective sheeting shall be applied to the rear of each trailer as follows, except that Element 2 is not required for container chassis or for platform trailers without bulkheads, and Element 3 is not required for trailers without underride protection devices:

(a) Element 1: A strip of sheeting, as horizontal as practicable, in alternating colors across the full width of the trailer, as close to the extreme edges as practicable, and as close as practicable to not less than 375 mm and not more than 1525 mm above the road surface at the stripe centerline with the trailer at curb weight.

* * * * *

(c) Element 3: A strip of sheeting in alternating colors across the full width of the horizontal member of the rear underride protection device. Grade DOT C2 material not less than 388 mm wide may be used.

* * * * *

S5.7.1.4.2 *Side* * * *

(a) A strip of sheeting, as horizontal as practicable, in alternating colors, originating and terminating as close to the front and rear as practicable, as close as practicable to not less than 375 mm and not more than 1525 mm above the road surface at the stripe centerline with the trailer at curb weight, except that at the location chosen the strip shall not be obscured in whole or in part by other motor vehicle equipment or trailer cargo. The strip need not be continuous as long as not less than half of the length of the trailer is covered and the spaces are distributed as evenly as practicable.

S5.7.2.1 * * *

(b) Each red reflex reflector shall also provide, at an observation angle of 0.2 degree, not less than 300 millicandelas/lux at any light entrance angle between 30 degrees left and 30 degrees right, including an entrance angle of 0 degree, and not less than 75 millicandelas/lux at any light entrance angle between 45 degrees left and 45 degrees right.

(c) Each white reflex reflector shall also provide at an observation angle of 0.2 degree, not less than 1250 millicandelas/lux at any light entrance angle between 30 degrees left and 30 degrees right, including an entrance angle of 0 degree, and not less than 300 millicandelas/lux at any light entrance angle between 45 degrees left and 45 degrees right.

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3. Figure 29 at the end of § 571.108 is revised as follows:

FIGURE 29.—MINIMUM PHOTOMETRIC PERFORMANCE OF RETROFLECTIVE SHEETING IN CANDELLA/LUX/SQUARE METER

Entrance angle	Observation angle				Grade
	0.2 Degree		0.5 Degree		
	White	Red	White	Red	
−4 degree	250	60	65	15	DOT–C2
30 degree	250	60	65	15	DOT–C2
45 degree	60	15	15	4	DOT–C2
−4 degree	165	40	43	10	DOT–C3
30 degree	165	40	43	10	DOT–C3
45 degree	40	10	10	3	DOT–C3
−4 degree	125	30	33	9	DOT–C4
30 degree	125	30	33	8	DOT–C4
45 degree	30	8	8	2	DOT–C4

Issued on September 30, 1993.

Howard M. Smolkin,

Executive Director.

[FR Doc. 93–24517 Filed 10–5–93; 8:45 am]

BILLING CODE 4910–69–M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1002, 1017, 1018, 1312, 1313 and 1314

[Ex Parte No. 508]

Fee Billing and Collection

AGENCY: Interstate Commerce Commission.

ACTION: Lifting of stay of effective date.

SUMMARY: On February 9, 1992 at 58 FR 7748, the Commission published final rules in this proceeding which were to be effective on April 3, 1993. Due to technical difficulties with the development of the computerized fees and billing system which support the fee billing and collection program, it was necessary to stay the effective date of these rules until further notice at 58 FR 17788, April 6, 1993. That system is now operational; therefore, the stay is being lifted.

DATES: The rules are effective on October 1, 1993.

FOR FURTHER INFORMATION CONTACT: Anthony Jacobik, Jr., (202) 927–5827. [TDD for hearing impaired: (202) 927–5721].

Decided: October 1, 1993.

By the Commission, Chairman McDonald.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–24651 Filed 10–5–93; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB83

Endangered and Threatened Wildlife and Plants; Final Rule to Determine a Utah Plant, of Lesquerella Tumulosa (Kodachrome Bladderpod), as an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines a Utah plant species, *Lesquerella tumulosa* (Kodachrome bladderpod), to be an endangered species. *L. tumulosa* is endemic to lower elevations of the Paria River drainage in Kane County in southern Utah, where it grows on soils derived from the Carmel geological formation. *L. tumulosa* exists in only one population that consists of about 20,000 plants. Its habitat is impacted by off-road vehicles and mineral development. This determination that *L. tumulosa* is an endangered species provides the plant protection under the Endangered Species Act.

EFFECTIVE DATE: November 5, 1993.

ADDRESSES: The complete file of this rule is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, 2060 Administration Building, 1745 West 1700 South, Salt Lake City, Utah 84104.

FOR FURTHER INFORMATION CONTACT: John L. England at the above address (801/975–3630).

SUPPLEMENTARY INFORMATION:

Background

The Kodachrome bladderpod was discovered in 1966 by Rupert Barneby at a site in the Kodachrome Basin, Paria River drainage, northern Kane County, Utah. The plant has undergone several taxonomic revisions. Barneby (1966) described the plant as *Lesquerella hitchcockii* ssp. *tumulosa*, comparing the taxon with *Lesquerella hitchcockii* ssp. *rubicundula* (now *Lesquerella rubicundula)* from the nearby Paunsagunt Plateau. Reveal (1970), in a taxonomic treatment of the *Lesquerella hitchcockii* complex, elevated *L. h.* ssp. *tumulosa* to species rank as *Lesquerella tumulosa*. Rollins and Shaw (1973) submerged *L. tumulosa* in *L. rubicundula*. Finally, Welsh and Reveal (1977) and Welsh et al. (1987) re-established *L. tumulosa* based on its distinctive morphology, ecological requirements, and spatial separation from other similar plants.

Welsh et al. (1987) treated *L. tumulosa* as a species and distinguished it from its close relative, *L. rubicundula*. *L. tumulosa* has very small linear leaves and a distinctive pulvinate growth form arising from a many-branched caudex, whereas *L. rubicundula* has spatulate leaves and a caespitose growth form arising from a simple to few-branched caudex. *L. tumulosa* is restricted to very xeric shale outcrops at about 1,740 m (5,700 feet) elevation; *L. rubicundula* grows on more mesic limestone soils at about 2,040 m (6,700 feet) elevation and higher. *L. tumulosa* is restricted to a small area in the Kodachrome Basin; *L. rubicundula* is restricted to a limited area on the Paunsagunt Plateau. There are no known intermediate populations between these two species.

Lesquerella tumulosa is a perennial herbaceous plant. It has a densely pulvinate caespitose growth from a many-branched caudex, and forms hemispheric clumps or cushions. The caudex branches are clothed with numerous marcescent leaves and leaf bases. The stems are 1 to 4 cm (0.4 to 1.6 in) in length and have mainly basal

leaves. The leaves are 2 to 10 mm (0.1 to 0.4 in) long and about 1 mm (0.05 in) wide and are pubescent with stellate hairs. Leaves are not differentiated into a blade and petiole. The flowers of *L. tumulosa* have spatulate, yellow petals 5 to 7 mm (0.2 to 0.3 in) long. The fruit is an ovoid silicle about 3 mm (0.1 in) long, and contains 2 to 4 seeds (Barneby 1966; Reveal 1970; Welsh and Reveal 1977; Welsh et al. 1987).

Lesquerella tumulosa grows on sparsely vegetated white shale knolls in thin, poorly developed soils that are derived from the Winsor member of the Carmel geologic formation (Welsh and Reveal 1977; Welsh 1978; Franklin 1990). Plant species commonly associated with *L. tumulosa* include: *Pinus edulis* (pinyon pine), *Juniperus osteosperma* (Utah juniper), *Purshia tridentata* (bitterbrush), *Cryptantha flava* (yellow cryptantha), *Stipa hymenoides* (Indian ricegrass), *Eriogonum corymbosum* (wild buckwheat), *Asclepias cryptoceras* (pallid milkweed), *Hymenopappus filifolius* (hyaline herb), and *Oenothera caespitosa* (morning-lily).

Lesquerella tumulosa is restricted to one population of about 20,000 plants that have a total range of about 4 km (2.5 mi). It is only found in the Kodachrome flats area of the Paria River drainage in northern Kane County, south-central Utah (Franklin 1990). The small population size of *L. tumulosa* and restricted habitat make the species vulnerable to human-caused and natural environmental disturbances. Some of its habitat has been destroyed by gravel aggregate removal (Welsh 1978), and an active gravel quarry is located on *L. tumulosa habitat*. Off-road vehicle use, mineral exploration, and mining claim assessment work also are threats to the habitat of this species.

Lesquerella tumulosa occurs only on public lands owned and managed by the State of Utah and the Bureau of Land Management. Most plants (90 percent) of this species occur on a single section of State land.

Section 12 of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et. seq.*), directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Fish and Wildlife Service (Service) published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the report as a petition to list the taxa named therein under section 4(c)(2) of the Act (petition acceptance is now governed by section 4(b)(3)(A) of the Act), and its intention to review the status of those plants.

Lesquerella tumulosa was proposed by the Service for listing as endangered along with some 1,700 other vascular plant taxa on June 16, 1976 (41 FR 24523). General comments received in relation to the 1976 proposal were summarized and published on April 26, 1978 (43 FR 17909). The 1978 amendments to the Act required that all proposals over 2 years old be withdrawn, though proposals published before the date of enactment of the 1978 amendments could not be withdrawn before the end of a 1-year grace period beginning on the date of enactment. On December 10, 1979, the Service published a notice of withdrawal of that portion of the June 16, 1976, proposal that had not been made final (44 FR 70796). That proposal included *L. tumulosa*.

The July 1975 notice was updated by a December 15, 1980, notice (45 FR 82480) which included *L. tumulosa* as a category 1 species. Category 1 comprises taxa for which the Service has significant biological information to support proposing them for listing as endangered or threatened species.

The Service published a Notice of Review on September 27, 1985 (50 FR 39526), replacing the 1980 Notice of Review and the 1983 supplement. This Notice of Review reclassified *L. tumulosa* from category 1 to category 2, because the Service received a status survey report which indicated that the population of *L. tumulosa* was much larger than previously reported (Hreha 1982). The Service deemed it prudent at that time to further review the status of *L. tumulosa* before proposing to list the species as either endangered or threatened. On February 21, 1990, the Service published a new Notice of Review (55 FR 6184) replacing the previous notices. This notice maintained *L. tumulosa* in category 2. In 1991, the Service received significant additional information based on extensive field work (Franklin 1990) that indicated *L. tumulosa* should be listed as endangered.

Section 4(b)(3)(B) of the 1982 amendments to the Act requires the Secretary of the Interior to make findings on certain petitions within 1 year of their receipt. Section 2(b)(1) amendments further require that all petitions pending as of October 13, 1982, be treated as having been newly submitted on that date. The 1975 Smithsonian report was accepted as a petition, and the plant taxa in the Service's 1980 and 1985 notices are treated as though they are petitioned. Beginning on October 13, 1983, and each successive year, the Service has made 1-year findings that the petition to list *L. tumulosa* was warranted but precluded by other listing actions of higher priority. The Service published a proposed rule on November 3, 1992 (57 FR 49671), proposing endangered status for this species. That proposal constituted the final 1-year finding for *L. tumulosa*.

Summary of Comments and Recommendations

In the November 3, 1992, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices concerning this proposed action were published in The Salt Lake Tribune, the Deseret News, and the Southern Utah News requesting public comments.

Seven comments were received during the comment period of November 3, 1992, through January 4, 1993. Six comments generally supported the proposed listing of *L. tumulosa* as endangered. One commenter opposed the proposal but provided no substantive rationale. One commenter stated that a recent survey (Welsh and Thorne 1992) had identified additional populations of this species and that the new information should be considered prior to a final decision on the listing. The survey referenced addressed several plant species, but it did not address *L. tumulosa*.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Lesquerella tumulosa* (Barneby) Reveal are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Recent inventories of this species have documented a single, small population with a limited range (Franklin 1990). The population is on State and Federal lands and is vulnerable to surface disturbance associated with industrial

development within its habitat (Welsh 1978). An active gravel quarry is present on the habitat of this species, and the remainder is subject to leasing for oil and gas mining. Portions of the habitat have been destroyed by prospecting and excavating gravel and clay.

Lesquerella tumulosa also is vulnerable to off-road vehicles. A new paved road constructed in 1991–1992 provides increased access to the remaining plants, and road travel has increased since its construction. Service biologists estimate that off-road vehicle traffic will increase by about 50 percent in the next decade because of the ease of access afforded by this new paved road.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* None known. However, its limited distribution makes *L. tumulosa* vulnerable to vandalism.

C. *Disease or predation.* Sheep and cattle grazing may have adversely impacted *L. tumulosa* populations. However, the current level of grazing by domestic livestock, if maintained, is not expected to significantly impact the species.

D. *The inadequacy of existing regulatory mechanisms.* There are no Federal, State, or local laws or regulations that address this species specifically or that directly provide for the protection of its habitat. The Bureau of Land Management is aware of *L. tumulosa* and is considering it in environmental planning of its habitat area until the Service makes a final determination concerning its status under the Act. No Federal agencies are under current legal obligation for the conservation of *L. tumulosa.*

About 90 percent of the remaining plants are located on State land. The Utah State Land Board is authorized, by State law, to provide conservation planning for federally listed endangered and threatened plant species, but no such recognition is granted to nonlisted species. Most of the *L. tumulosa* population is on one section of land owned by the State of Utah.

E. *Other natural or manmade factors affecting their continued existence.* The total population of *L. tumulosa* is about 20,000 individuals (Franklin 1990). The population of this species is at a level which may not be demographically stable in the long-term. The existence of only one population for this species makes it particularly vulnerable to extinction from any catastrophic event. The effects of past habitat degradation on the species are unknown but may already affect its future existence.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by *L. tumulosa* in determining to make this rule final. Based on this evaluation, the preferred action is to list *Lesquerella tumulosa* as an endangered species. This species is a rare local endemic plant. Its limited habitat is being exploited for mineral extraction and other development activities. It has sustained damage by off-road vehicles, and this damage is increasing. The population size of this species is small and its range is limited. It is vulnerable to environmental disturbances which, when combined with other impacts, may result in population extinction. A status of "threatened" would not be appropriate because threatened does not reflect the present biological condition and vulnerability of this species. A listing as threatened would only indicate that an endangered status would be likely within the foreseeable future. For the reasons given below, it is not considered prudent to designate critical habitat.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable that the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat for *L. tumulosa* is not prudent for this species at this time because possible adverse consequences from vandalism would likely outweigh the minimal benefits accruing from critical habitat designation.

As noted under Factor "A," *L. tumulosa* occupies extremely limited habitat. Designation of critical habitat would result in publication of a detailed description and map of this habitat in the **Federal Register**, exposing the species to the potential and probable threat of collection and vandalism. Lacking mobility, plants are more vulnerable to vandalism than animals. One person could easily vandalize the single small *L. tumulosa* population. Moreover, few additional benefits would be provided to the species by the critical habitat designation that would not already be provided by listing the species as endangered. Any Federal action that would impact the plant's habitat would be addressed through Section 7 consultation. Section 9(a)(2)(B) of the Act makes it unlawful to remove and reduce to possession any endangered species of plant from areas under Federal jurisdiction or to maliciously damage or destroy such species on any such area. These provisions are difficult to enforce, however, and publication of critical habitat descriptions and maps would only increase the species' vulnerability. The Bureau of Land Management is aware of the occurrence of *L. tumulosa* on Federal lands and of their obligations under the Act.

The Utah Natural Heritage Program of the Department of Natural Resources is similarly aware of the location of this species on State of Utah lands. Listing the plant as federally endangered would ensure its consideration in planning conducted by the State of Utah. Protection of habitat also would be accomplished through the recovery process.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service after listing. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

A significant portion of the known population of *L. tumulosa* is on Federal lands under the jurisdiction of the Bureau of Land Management. The Bureau of Land Management, in addition, is responsible for the leasing of minerals under Federal jurisdiction. Federal agencies are responsible for ensuring that Federal land uses and

actions are not likely to jeopardize the continued existence of *L. tumulosa*.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. In addition, for endangered plants, the 1988 amendments (Pub. L. 100–478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of endangered plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few, if any, trade permits would ever be sought or issued for *L. tumulosa* because the species is not common in cultivation or in the wild. Requests for copies of the regulations on listed plants and inquiries regarding prohibitions and permits may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, room 432, 4401 North Fairfax Drive, Arlington, Virginia 22203 (703/358–2104).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Barneby, R.C. 1966. New sorts of *Lesquerella*, *Euphorbia*, and *Viguiera* from Kane County, Utah. Leaflets of Western Botany. 10:313–317.

Franklin, M.C. 1990. Report for 1989 challenge cost share project USDI Bureau of Land Management, target species: *Xylorhiza cronquistii* (Cronquist woodyaster), *Lesquerella tumulosa* (Kodachrome bladderpod), *Lepidium montanum* var. *stellae* (Kodachrome pepper-grass). Utah Natural Heritage Program, Salt Lake City. 11 pp.

Hreha, A.M. 1982. Status report on *Lesquerella tumulosa* (Barneby) Reveal. Prepared for U.S. Fish and Wildlife Service. Meiiji Resource Consultants, Layton, Utah. 21 pp.

Reveal, J.L. 1970. Comments on *Lesquerella hitchcockii*. Great Basin Naturalist 30:94–98

Rollins, R.C. and E.A. Shaw. 1973. The genus *Lesquerella* in North America. Harvard University Press, Cambridge, Massachusetts. 288 pp.

Welsh, S.L. 1978. Status report: *Lesquerella tumulosa*. U.S. Fish and Wildlife Service, Denver, Colorado. 6 pp.

Welsh, S.L. and J.L. Reveal. 1977. Utah Flora: Brassicaceae (Cruciferae). Great Basin Naturalist 37:279–365.

Welsh, S.L. and K.H. Thorne. 1992. Report of Bureau of Land Management Sensitive Plant Species, Western Kane County, Utah. Unpublished report prepared for the Bureau of Land Management, Salt Lake City, Utah. iv + 56 pp.

Welsh S.L., N.D. Atwood, S. Goodrich, and L.C. Higgins. 1987. A Utah Flora. Great Basin Naturalist Memoirs 9:1–894.

Author

The primary author of this proposed rule is John L. England, U.S. Fish and Wildlife Service, Salt Lake City, Utah (801/975–3630; see **ADDRESSES** above). Harold M. Tyus, Denver Regional Office, Denver, Colorado (303/236–7398) served as editor.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Public Law 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under Brassicaceae, to the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
•	•	•	•	•		•
Brassicaceae—Mustard family:						
•	•	•	•	•		•
Lesquerella tumulosa	Kodachrome bladderpod	U.S.A. (UT)	E	519	NA	NA
•	•	•	•	•		•

Dated: September 23, 1993.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

[FR Doc. 93–24383 Filed 10–5–93; 8:45 am]

BILLING CODE 4310–55–P

50 CFR Part 17

Endangered and threatened wildlife and plants; determination of experimental population status for an introduced population of red wolves in North Carolina and Tennessee

CFR Correction

In title 50 of the Code of Federal Regulations, parts 0 to 199, revised as of October 1, 1992, make the following corrections:

On page 170 in § 17.84, paragraphs (c)(1), (c)(4), (c)(5)(iii), (c)(6), (c)(9), (c)(10), and (c)(11) should be revised, and paragraph (c)(5)(iv) should be added to read as follows:

§ 17.84 Special rules—vertebrates.

* * * * *

(c) * * *

(1) The red wolf populations identified in paragraphs (c)(9)(i) and (c)(9)(ii) of this section are nonessential experimental populations.

* * * * *

(4)(i) Any person may take red wolves found in the area defined in paragraph (c)(9)(i) of this section in defense of that person's own life or the lives of others, *Provided* That such taking shall be immediately reported to the refuge manager, as noted in paragraph (c)(6) of this section.

(ii) Any person may take red wolves found in the area defined in paragraph (c)(9)(ii) of this section, *Provided* That such taking is incidental to lawful recreational activities or in defense of that person's own life or the lives of others, and that such taking is reported immediately to the Park Superintendent.

(iii) Any livestock owner may harass red wolves found in the area defined in paragraph (c)(9)(ii) of this section actually pursuing or killing livestock on private properties, *Provided* That all such harassment is by methods that are not lethal or physically injurious to the red wolf and is reported immediately to the Park Superintendent.

(iv) Any livestock owner may take red wolves found in the area defined in paragraph (c)(9)(ii) of this section to protect livestock actually pursued or being killed on private properties after efforts to capture depredating red wolves by project personnel have proven unsuccessful, *Provided* That all such taking shall be immediately reported to the Park Superintendent.

(5) * * *

(iii) Take an animal that constitutes a demonstrable but non-immediate threat to human safety or that is responsible for depredations to lawfully present domestic animals or other personal property, if it has not been possible to otherwise eliminate such depredation or loss of personal property, *Provided* That such taking must be done in a humane manner, and may involve killing or injuring the animal only if it has not been possible to eliminate such threat by live capturing and releasing the specimen unharmed on the refuge or Park;

(iv) Move an animal for genetic purposes.

(6) Any taking pursuant to paragraphs (c) (3) through (5) of this section must be immediately reported to either the Refuge Manager, Alligator River National Wildlife Refuge, Manteo, North Carolina, telephone 919/473–1131, or the Superintendent, Great Smoky Mountains National Park, Gatlinburg, Tennessee, telephone 615/436–1294. Either of these persons will determine disposition of any live or dead specimens.

* * * * *

(9)(i) The Alligator River National Wildlife Refuge reintroduction site is within the historic range of the species in North Carolina, in Dare and Tyrrell Counties; because of their proximity, Beaufort, Hyde, and Washington Counties are also included in the experimental population designation.

(ii) The red wolf also historically occurred on lands that now comprise the Great Smoky Mountains National Park. The Park encompasses properties within Haywood and Swain Counties in North Carolina, and Blount, Cocke, and Sevier Counties in Tennessee. Graham, Jackson, and Madison Counties in North Carolina, and Monroe County in Tennessee, are also included in the experimental designation because of the close proximity of these counties to the Park boundary.

(iii) Except for the three island propagation projects and these small reintroduced populations, the red wolf is extirpated from the wild. Therefore, there are no other extant populations with which the refuge or Park experimental populations could come into contact.

(10) The reintroduced populations will be monitored closely for the duration of the project, generally by use of radio telemetry as appropriate. All animals will be vaccinated against diseases prevalent in canids prior to release. Any animal that is determined to be sick, injured, or otherwise in need of special care, or that moves off Federal lands, will be immediately recaptured by Service and/or Park Service and/or designated State wildlife agency personnel and given appropriate care. Such animals will be released back to the wild on the refuge or Park as soon as possible, unless physical or behavioral problems make it necessary to return the animals to a captive-breeding facility.

(11) The status of the Alligator River National Wildlife Refuge project will be reevaluated by October 1, 1992, to determine future management status and needs. This review will take into account the reproductive success of the mated pairs, movement patterns of individual animals, food habits, and overall health of the population. The duration of the first phase of the Park project is estimated to be 10 to 12 months. After that period, an assessment of the reintroduction potential of the Park for red wolves will be made. If a second phase of reintroduction is attempted, the duration of that phase will be better defined during the assessment. However, it is presently thought that a second phase would last for 3 years, after which time the red wolf would be treated as a resident species within the Park. Throughout these periods, the experimental and nonessential designation of the animals will remain in effect.

* * * * *

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

[Docket No. 921253–2353; ID. 082993E]

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Fishing restrictions; request for comments.

SUMMARY: NMFS announces an increase in vessel trip limits for bocaccio, a component of the Sebastes complex of rockfish in the groundfish fishery off Oregon and California. This action is authorized under the Pacific Coast

Groundfish Fishery Management Plan (FMP). The increase is designed to keep the catch as close as possible to the 1993 harvest guideline while providing fishermen the opportunity to fully utilize the entire harvest guideline.

DATES: Effective from 0001 hours (local time) October 6, 1993, until modified, superseded, or rescinded. Comments will be accepted through October 21, 1993.

ADDRESSES: Submit comments to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN–C15700, Seattle, Washington 98115–0070; or Dr. Gary Matlock, Acting Director, Southwest Region, National Marine Fisheries Service, 501 West Ocean Blvd, suite 4200, Long Beach, California 90802–4213.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206–526–6140; or Rodney McInnis at 310–980–4040.

SUPPLEMENTARY INFORMATION: The FMP and its implementing regulations (56 FR 736, January 8, 1991) provide for rapid changes to specific management measures that have been designated "routine." Trip landing and frequency limits for the Sebastes complex are among those management measures that have been designated as routine at 50 CFR 663.23(c)(1)(B). Implementation and further adjustment of those measures may occur after consideration at a single Pacific Fishery Management Council (Council) meeting. A cumulative trip limit is the maximum amount that may be taken and retained, possessed, or landed per vessel in a specified period of time, without a limit on the number of landings or trips.

Effective January 1, 1993, no more than 50,000 pounds (22,680 kilograms (kg)) cumulative of the Sebastes complex could be taken and retained, possessed or landed per vessel in a 2-week period coastwide. Of this 50,000 pounds (22,680 kg), no more than 10,000 pounds (4,536 kg) cumulative could be bocaccio taken and retained south of Cape Mendocino, California (40° 30′ 00″ N. latitude).

Under the current trip limit only 671 metric tons (mt) of bocaccio have been landed through August 14, 1993. At the current catch rate, only 88 percent of the 1,540 mt harvest guideline is projected to be taken in 1993. Consequently, at its September meeting, the Council recommended that the 10,000-pound (4,536 kg) cumulative trip limit for bocaccio be increased to 15,000 pounds (6,804 kg) cumulative per 2-week period on October 6, 1993, the beginning of the next 2-week period. The increase is designed to keep the catch as close as possible to the 1993 harvest guideline while providing fishermen the opportunity to fully utilize the entire harvest guideline. The RD concurred with the Council's recommendation. All other provisions for bocaccio and the Sebastes complex announced at 58 FR 2990 (January 7, 1993) remain in effect, including the trip limit for the Sebastes complex which is repeated below. This action does not change the trip limit for yellowtail rockfish which also is a component of the Sebastes complex.

Secretarial Action

The Secretary of Commerce (Secretary) concurs with the Council's recommendation and announces the following change to the management measures for bocaccio announced at 58 FR 2990 (January 7, 1993):

Coastwide, no more than 50,000 pounds (22,380 kg) cumulative of the Sebastes complex may be taken and retained, possessed, or landed per vessel in a 2-week period. Of this 50,000 pounds (22,680 kg), no more than 15,000 pounds (6,804 kg) cumulative of bocaccio may be taken and retained south of Cape Mendocino, California.

Classification

The determination to take this action is based on the most recent data available. The aggregate data upon which the determination is based are available for public inspection at the Office of the Director, Northwest Region (see ADDRESSES) during business hours until October 20, 1993.

This action is taken under the authority of 50 CFR 663.23(c)(1)(i)(B), and section III.C.1. of the Appendix to 50 CFR part 663.

This action is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 663

Administrative practice and procedure, Fisheries, Fishing, and Recordkeeping and reporting requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 1, 1993.

Richard H. Schaefer,

Director of Office of Fisheries Conservation and Management, and National Marine Fisheries Service.

[FR Doc. 93–24550 Filed 10–5–93; 8:45 am]

BILLING CODE 3510–22–M

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50 CFR Part 672

[Docket No. 921107–3068; I.D. 092993A]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for pollock in statistical area 61 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the total allowable catch (TAC) for pollock in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), October 3, 1993, until 12 midnight, A.l.t., December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the GOA (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

In accordance with § 672.20(c)(1)(ii)(B), the 1993 pollock TAC for statistical area 61 is established by the final 1993 initial specifications (58 FR 16787, March 31, 1993) as 24,087 metric tons (mt). The fourth quarterly allowance of that TAC for statistical area 61 becomes available at noon, October 1, 1993.

The Director of the Alaska Region, NMFS (Regional Director), has determined, in accordance with § 672.20(c)(2)(ii), that the 1993 pollock TAC in statistical area 61 soon will be reached. The Regional Director established a directed fishing allowance of 23,587 mt, and has set aside the remaining 500 mt as bycatch to support other anticipated groundfish fisheries. The Regional Director has determined that the directed fishing allowance has been reached. Consequently, directed fishing for pollock in statistical area 61 is prohibited, effective from 12 noon, A.l.t., October 3, 1993, until 12 midnight, A.l.t., December 31, 1993.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

Classification

This action is taken under § 672.20, and is in compliance with E.O. 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 30, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–24492 Filed 10–1–93; 8:46 am]

BILLING CODE 3510–22–M

50 CFR Part 675

[Docket No. 921185; I.D 093093B]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for pollock by the inshore component in the Bering Sea subarea (BS) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the allowance of the total allowable catch (TAC) of pollock for the inshore component in the BS.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), October 3, 1993, until 12 midnight, A.l.t., December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

In accordance with § 675.20(a)(2), the final 1993 initial specifications for groundfish in the BSAI (58 FR 8703, February 17, 1993), and a subsequent reserve release (58 FR 44136, August 19, 1993), established the allowance of pollock TAC for vessels catching pollock for processing by the inshore component in the BS as 420,875 metric tons (mt).

The Director of the Alaska Region, NMFS (Regional Director), has determined, in accordance with § 675.20(a)(8), that the allowance of pollock TAC for the inshore component in the BS soon will be reached. Therefore, the Regional Director has established a directed fishing allowance of 415,875 mt, with 5,000 mt to be taken as incidental catch in directed fishing for other species in the BS. Consequently, NMFS is prohibiting directed fishing for pollock by vessels catching pollock for processing by the inshore component in the BS, effective from 12 noon A.l.t., October 3, 1993, until 12 midnight, A.l.t., December 31, 1993.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under § 675.20 and complies with E.O. 12291.

List of Subjects in 50 CFR 675

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 1, 1993.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–24543 Filed 10–1–93; 3:37 pm]

BILLING CODE 3510–22–M

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Proposed Rules

Federal Register
Vol. 58, No. 192
Wednesday, October 6, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

RIN 3150–AD30

Annual Physical Fitness Performance Testing for Tactical Response Team Members, Armed Response Personnel, and Guards at Category I Licensees

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations for Tactical Response Team members, armed response personnel, and guards at fuel cycle facilities possessing formula quantities of strategic special nuclear material (Category I licensees). This action is necessary to ensure that these personnel are able to perform their assigned duties under conditions of strenuous tactical engagements. Tactical Response Team members, armed response personnel, and guards at these facilities would be required to participate in a continuing physical fitness program and, according to new criteria, pass an annual performance test. As an alternative to the fitness program and the performance test previously proposed, the licensee will be permitted to develop a content-based site specific test, to be administered quarterly, and to justify that this test duplicates the response duties that are expected of Tactical Response Team members, armed response personnel, and guards in the event of a strenuous tactical engagement.

DATES: The comment period expires on December 20, 1993. Comments received after this date will be considered if it is practical to do so, but assurance of consideration can be given only for comments received on or before this date.

ADDRESSES: Mail written comments to: The Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Comments may also be delivered to 11555 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:15 p.m. on Federal workdays. Copies of the regulatory analysis, the environmental assessment and finding of no significant impact, the Paperwork Reduction Act statement submitted to OMB, and any comments received will be available for examination and copying at the NRC Public Document Room at 2120 L Street NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Harry S. Tovmassian, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–3634.

SUPPLEMENTARY INFORMATION:

Background

On November 10, 1988 (53 FR 45447), the Commission published final amendments to 10 CFR 73.46 that require a Category I licensee to establish and train Tactical Response Teams (TRT),[1] conduct periodic tactical exercises, and make available a force of guards[2] or armed response personnel[3] to provide assistance to the TRT, as necessary.

At the time of the 1988 rulemaking, no need for specific physical fitness performance testing criteria was identified. However, observations of Category I licensee guard performance during a 1988 DOE Central Training Academy course prompted the NRC to examine, through the California State University at Hayward (CSUH), the physical fitness levels of Tactical Response Team members, armed response personnel, and guards at Category I licensees. CSUH found that of 77 subjects tested, 26 percent had a poor level of cardiovascular fitness and another 29 percent were below average. Furthermore, 26 percent of the individuals tested were classified as obese because of high body fat levels. Overall, the CSUH test results indicated that a potentially significant number of guards may not have a sufficient cardiovascular reserve for a TRT response situation, particularly if they must exert themselves at a high intensity in order to reach the scene of an incident or their designated post during a critical situation. Therefore, the NRC concluded that criteria for physical fitness performance testing of TRT members, armed response personnel, and guards as well as the specification of a minimum continuing physical fitness training program are needed to ensure an adequate level of fitness. Accordingly, on December 13, 1991 (56 FR 65024), the Commission published proposed amendments to 10 CFR Part 73 that contained additional requirements relative to the physical fitness qualifications of Tactical Response Team members, armed response personnel, and guards. The **Federal Register** Notice also included the requirements for day firing qualification courses for those personnel. The Commission has decided to publish the day firing qualification requirements as a final rule and to republish the physical fitness related requirements as a proposed rule as a result of the analysis of public comment (see Summary of Public Comments).

The amendments proposed in 1991 would have required TRT members, armed response personnel, and guards to participate in annual physical fitness performance testing and in a continuing physical fitness training program to ensure that the individuals achieve and maintain the required fitness level. Individuals would have been required to receive a physical examination by a licensed physician, and be provided with written certification that there are no medical contraindications to participation in the physical fitness training program or the annual performance testing, prior to participation in either program. In addition, the amendments proposed in 1991 would have required licensees to assess the general fitness of each participant every 4 months and to make modifications to the individual's training regime, as necessary.

In the amendments proposed in 1991, the minimum physical fitness training

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[1] "Tactical Response Team" means the primary response force for each shift which can be identified by a distinctive item of uniform, armed with specified weapons, and whose other duties permit immediate response.

[2] "Guard" means a uniformed individual armed with a firearm whose primary duty is the protection of special nuclear material against theft, the protection of a plant against radiological sabotage, or both.

[3] "Armed Response Personnel" means persons, not necessarily uniformed, whose primary duty in the event of attempted theft of special nuclear material or radiological sabotage shall be to respond, armed and equipped, to prevent or delay such actions.

program needed to achieve the necessary fitness levels was separated into two elements. The first element included the training of individuals through cardiovascular training activities such as running, bicycling, rowing, swimming, or cross-country skiing. Individuals would be tested prior to assignment as a TRT member and each year thereafter using the performance criteria of a 1-mile run in 8.5 minutes or less and a 40-yard dash starting from a prone position in 8.0 seconds or less. Likewise, individuals to be assigned as armed response personnel and guards would be required to participate in the physical fitness training program. However, the performance criteria for these individuals would be a ½ mile run in 4 minutes and 40 seconds or less and a 40-yard dash starting from a prone position in 8.5 seconds or less. The fitness levels required of TRT members, whose duties are to perform offensive combative tasks, have been established by a 1982 DOE study.[4] The fitness levels required of armed response personnel and support guards, whose duties are to perform defensive combative tasks, were also established by the study.[4]

The second element of the physical fitness training program involved musculoskeletal training, i.e., exercises that develop strength, flexibility, and endurance in the major muscle groups. Although musculoskeletal training would be an integral part of the physical fitness training program, performance criteria were not specified because to date there have been no studies that establish the levels of strength, flexibility, and endurance required of TRT members, armed response personnel, and guards under conditions of strenuous tactical engagement. However, the effectiveness of the musculoskeletal training would be included in a licensee's assessment program and the results used to make appropriate modifications to an individual's training regime.

Two documents have been prepared which may be used by licensees in developing physical fitness training programs and by physicians responsible for the required medical examinations of personnel participating in the programs. The first, "Physical Fitness Training Reference Manual for Security Force Personnel at Fuel Cycle Facilities Possessing Formula Quantities of Strategic Special Nuclear Material," NUREG/CR–5690,[5] provides information on designing and conducting a physical fitness training program. The second, "Medical Screening Reference Manual for Security Personnel at Category I Fuel Cycle Facilities Possessing Formula Quantities of Strategic Special Nuclear Material," NUREG/CR–5689, is intended for use by the examining physicians. These documents have been placed in the Public Document Room and are available for public inspection and copying.

[4] Telfair, W.D., et al., United States Department of Energy Physical Standards Validation Study, Professional Management Associates, Inc., September 30, 1982.

Summary of Public Comments

The comment period for the proposed rule published December 13, 1991 (56 FR 65024) expired on March 13, 1992. Three letters of comment were received on the proposed requirements for both day firing qualifications and physical fitness programs. Since the requirements for day firing qualification are being published separately as a final rule, the comment summary below addresses only the comments on the proposed physical fitness training program and annual performance testing requirements. The comments and their resolution, as incorporated in this proposed rule, are as follows:

1. *Comment.* One commenter stated that the Commission has not adequately established the need for the continuing physical fitness training program and the annual performance testing.

Response. The Commission disagrees with this comment and reiterates that observations of licensee guard performance at Central Training Academy exercises alerted the NRC to the fact that guards may not be physically fit to perform their response duties in spite of the existing requirement that they "shall have no physical weakness or abnormality that would adversely affect their performance of assigned security job duties." Based upon the unacceptable consequences of the failure to adequately respond to security related emergencies, the Commission believes that criteria, which objectively determine that Tactical Response Team members, armed response personnel, and guards have an adequate level of physical fitness to perform their duties, as well as a physical fitness training program are needed.

[5] Copies of NUREGs may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is also available for inspection or copying at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

As a result of this comment, however, the Commission reexamined its position as to whether or not other alternatives existed that provide the same level of assurance that Tactical Response Team members, armed response personnel, and guards could adequately perform their assigned duties. The Commission has decided that an acceptable alternative to the approach specified in proposed 10 CFR 73.46(b) (10) and (11) would be for licensees to develop site-specific content-based physical fitness performance tests for NRC approval. The site-specific tests would duplicate the response duties a guard may need to perform during strenuous tactical engagements. These tests would be administered on a quarterly basis and would be used for qualifying Tactical Response Team members, armed response personnel, and guards. Therefore, a new proposed paragraph, 10 CFR 73.46(b) (12), has been added to allow this type of test instead of the physical fitness training program and annual performance tests specified in proposed 10 CFR 73.46(b) (10) and (11).

2. *Comment.* One commenter stated, without providing any rationale, that the aerobic exercise requirement seems excessive and therefore either the frequency or intensity of the training sessions required in 10 CFR 73.46(b)(10)(i)(A) should be reduced.

Response. The Commission disagrees with the commenter's contention. The proposed rule specifies that the aerobic portion of the physical fitness training sessions be at least 20 minutes in duration at 75 percent of maximum heart rate three times per week. The physical fitness training program is designed to follow the recommendations of the American College of Sports Medicine to achieve a level of fitness that helps Tactical Response Team members, armed response personnel, and guards maintain the requisite physical fitness for effective job performance and enables them to pass the applicable annual physical fitness performance tests. Therefore, neither the intensity nor the frequency of the aerobic requirement has been modified.

3. *Comment.* One commenter stated that individuals that served in "static response positions," such as operators of central or secondary alarm stations, or guards at exit and entry portals, should be exempted from the performance testing criteria because the rule states that the exercise program must be consistent with the environment in which individuals must perform their duties.

Response. The Commission agrees that individuals whose assignments do

not include strenuous response duties should not be required to participate in the physical fitness training program or annual performance testing. Therefore, the proposed rule has been modified to include an exemption for these employees, provided that these individuals are not assigned temporary response guard duties.

4. *Comment.* One commenter recommended, without providing any rationale, that different training regimes be specified for each type of position (i.e., TRT member, armed response person, and guard).

Response. The Commission did not specify a training regime to be followed by participants in the continuing physical fitness training program. The proposed rule provides the elements that must be part of the program in 10 CFR 73.46(b)(10)(i). The program must have elements devoted to aerobics and to the strength, flexibility, and endurance of large muscle groups. The Commission expects its licensee to develop, and modify as necessary, a training regime for each participant, depending upon a number of factors. These factors may include fitness level, recent medical history, and security responsibilities. The Commission believes that the language of this provision is sufficiently flexible to allow different training regimes for each type of position as well as for different individuals within each position. In fact, the text of 10 CFR 73.46(b)(10)(ii) included in this proposed rule states that "Individual exercise programs must be modified to be consistent with the needs of each participating Tactical Response Team member, armed response person, and guard, and consistent with the environments in which they must be prepared to perform their duties."

5. *Comment.* One commenter stated that the proposed requirement in 10 CFR 73.46(b)(10)(ii) for a fitness assessment every 4 months should be modified to read "assessments three times each year" to allow for individuals who are on vacation, sick leave, etc., when the 4 months elapse.

Response. The Commission believes that this is a valid concern. However, the modification as suggested by the commenter is vague and may result in an abuse of the rule. For example, a licensee could perform assessments once every week for 3 successive weeks then none for over 11 months and still be in compliance with the recommended modification. Therefore, the following sentence has been added to 10 CFR 73.46(b)(10)(ii) in the revised rule: "Individuals who exceed 4 months without being assessed for general fitness, due to excused time off from work, must be assessed within 15 calendar days of returning to duty as a response guard."

6. *Comment.* One commenter stated that neither the method for performing the assessment required in 10 CFR 73.46(b)(10)(ii), nor any criterion for determining the acceptability of the results of the assessment, is specified. With regard to the methods used, this commenter questioned the requirement for a physical assessment by "medical personnel" and suggested that a questionnaire-type documentation of an individual's recent medical history and fitness-related activities may be sufficient. This commenter stated that frequent medical evaluations would be unnecessarily repetitive.

Response. In regard to the commenter's question on the methods used for the trimester assessments, the proposed rule would not require a "physical assessment by medical personnel." What would be required is a recent health history, measures of cardiovascular fitness, percent of body fat, flexibility, muscular strength, and endurance. Specific measures are not required so that licensees have the flexibility to develop their own programs. The Commission believes that the trimester assessments are important because they will identify deficiencies in individual training regimes and provide a timely mechanism for modification. Concerning the commenter's assertion that no criteria are provided for the acceptability of the assessment results, it should be noted that neither the existence nor absence of acceptance criteria relieves the licensee from the responsibility to assess the effectiveness of his program and make any necessary modifications to individual training regimes. It will be up to each licensee to determine how its fitness staff will evaluate the needs of the program participants.

7. *Comment.* One commenter stated that the requirement, in proposed § 73.46(b)(10)(ii), for an assessment to determine the effectiveness of the continuing physical fitness training program implies the existence of some acceptance criteria and corrective actions. The commenter further stated that the requirement should be deleted, because no criteria or corrective actions have been provided. Barring sudden changes in an individual's medical status, the annual physical examination should be sufficient to ensure the capability of Tactical Response Team members, armed response personnel, and guards to perform their duties.

Response. As noted in the previous response, it is the licensees responsibility to determine how the trimester assessments will be conducted. Corrective actions for individuals whose fitness level is deemed to be unacceptable will vary depending upon the individual and the degree to which physical fitness has degenerated. These measures might include reclassifying the individual from a minimally supervised regime to a directly supervised or individually monitored regime. In other cases, the training regime itself might be modified to address specific deficiencies discovered. In any event, the corrective action taken is also the responsibility of the licensee, who should rely upon a qualified program director to plan the action and obtain the appropriate medical advice when necessary. With respect to the comment that the yearly physical examination is sufficient to ensure that the continuing physical fitness program has been effective, it should be noted that the yearly physical examination serves a different purpose and is not relied upon to assess the adequacy of the program. The purpose of the annual physical examination is to assure that Tactical Response Team members, armed response personnel, and guards are healthy enough to participate in the continuing physical fitness training program and to be tested against the performance criteria without undue hazard to themselves.

8. *Comment.* One commenter stated that the amount of time allowed for implementation should be increased from 180 days to 1 year.

Response. The Commission believes that a 1-year implementation period is reasonable because licensees may need to purchase or lease facilities or equipment, or acquire qualified personnel to administer their programs. Therefore, this proposed rule has been amended to incorporate this comment.

9. *Comment.* One commenter stated that the costs of a supervised or monitored physical fitness training program are excessive and unwarranted because the improvement in security guard performance is not quantifiable.

Response. The physical fitness performance criteria were developed as a result of the DOE Physical Standards Validation Study. The fitness levels required of Tactical Response Team members, armed response personnel, and guards, whose duties are to perform defensive combative tasks and offensive combative tasks, were established by the 1982 DOE study. The Commission specifies the elements that should be part of the physical fitness training program and not the program itself. These elements when taken together are considered the minimum required to

allow Tactical Response Team members, armed response personnel, and guards to achieve and maintain the fitness level required to successfully perform the physical fitness performance test each year and are necessary to ensure that Tactical Response Team members, armed response personnel, and guards can perform their response duties. The costs associated with implementing the elements can vary depending upon how the licensee designs the program. The Commission believes that this program is needed to ensure that Tactical Response Team members, armed response personnel, and guards at Category I licensees are sufficiently fit to perform their assigned duties under conditions of strenuous tactical engagement. Also, to allow licensees to better control their costs, the proposed rule contains a new paragraph, 10 CFR 73.46(b)(12), which allows licensees to have quarterly site specific content-based performance tests instead of a formal physical fitness training program and annual performance tests. Quarterly testing has the advantage of reducing the possibility of degradation of a individual's fitness level as compared to annual qualification tests. Therefore, no further modifications have been made in the rule.

10. *Comment.* One commenter recommended that licensee responsibility be limited to validating that their personnel meet or exceed the physical fitness performance testing criteria, but not be required to provide a training program.

Response. Under an alternative proposed in 10 CFR 73.46(b)(12) a licensee would not be required to have a physical fitness training program, provided Tactical Response Team members, armed response personnel, and guards pass site specific content-based physical fitness performance tests. However, licensees may still wish to provide a training program to ensure that their personnel are fit enough to undergo the qualification testing.

11. *Comment.* One commenter questioned why the requirement for a medical examination 30 days prior to performance testing, which was previously in appendix B to part 73 and deleted in 1988, was restored in this rule. The commenter does not state whether or not the requirement should be modified or deleted.

Response. Previous requirements for timing of physical examinations are unrelated to the proposed 10 CFR 73.46(b)(11)(iii), which states that each guard undergo a physical examination within 30 days of participating in the physical fitness performance testing. The underlying issue of this requirement is the well-being of the individual being tested. The Commission believes that it is prudent to obtain a minimum level of assurance that an individual has no medical contraindications to physical fitness performance testing which may require a maximum effort on the part of the individual being tested. The 30-day limit is a common industry practice and is equivalent to the requirement in 10 CFR part 1046 which applies to DOE security personnel.

Criminal Penalties

The Commission notes that these amendments are issued under sections 161 b and i of the Atomic Energy Act of 1954, as amended. Therefore, violation of these regulations may subject a person to criminal sanctions under section 223 of the Atomic Energy Act.

Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, that this rule, if adopted, will not be a major Federal action significantly affecting the quality of the human environment, and therefore, an environmental impact statement is not required. The proposed rule will not adversely affect either the safety of the operations carried out by licensees possessing formula quantities of strategic special nuclear material nor the routine release of, or exposure to, radioactivity. These amendments would specify (1) annual performance testing criteria and a minimum physical fitness training program or (2) a quarterly administered site specific content-based physical fitness performance test to assure that Tactical Response Team members, armed response personnel, and guards can adequately perform their duties under conditions of strenuous tactical engagement.

The environmental assessment and finding of no significant impact on which this determination is based is available for inspection at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. Single copies of the environmental assessment and finding of no significant impact are available from Mr. Harry Tovmassian, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 492–3634.

Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This rule has been submitted to the Office of Management and Budget for review and approval of the paperwork requirements.

The public reporting burden for this collection of information is estimated to average 41 hours per licensee respondent, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch (MNBB–7714), U.S. Nuclear Regulatory Commission, Washington, DC 20555; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–3019, (3150–0002), Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

The Commission has prepared a regulatory analysis on this proposed amendment. The analysis examines the costs and benefits of the alternatives considered by the Commission and provides a decision rationale for the chosen approach. The analysis is available for inspection in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. Single copies of the regulatory analysis may be obtained from Ms. Carrie Brown, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 504–2382.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rulemaking, if adopted, will not have a significant economic impact upon a substantial number of small entities. The proposed rule would affect two Category I licensees. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act, 15 U.S.C. 632, or the Small Business Size Standards set out in regulations issued by the Small Business Administration in 13 CFR part 121. Thus, this rule does not fall within the purview of the act.

Backfit Analysis

The Commission has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule because

these amendments do not impose requirements on existing 10 CFR part 50 licensees. Therefore, a backfit analysis is not required for this proposed rule.

List of Subjects in 10 CFR Part 73

Criminal penalties, Hazardous materials—transportation, Incorporation by reference, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the Commission is proposing to adopt the following amendments to 10 CFR part 73.

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

1. The authority citation for 10 CFR part 73 continues to read as follows:

Authority: Secs. 53, 161, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2201); sec. 201, as amended, 204, 88 Stat. 1242, as amended, 1245 (42 U.S.C. 5841, 5844).

Section 73.1 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 73.37(f) also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789 (42 U.S.C. 5841 note). Section 73.57 is issued under sec. 606, Pub. L. 99–399, 100 Stat. 876 (42 U.S.C. 2169).

2. In § 73.46 paragraphs (b)(4) and paragraph (i) are revised and new paragraphs (b)(10), (b)(11), and (b)(12) are added to read as follows:

§ 73.46 Fixed site physical protection systems, subsystems, components, and procedures.

* * * * *

(b) * * *

(4) The licensee may not permit an individual to act as a Tactical Response Team member, armed response person, or guard unless the individual has been trained, equipped, and qualified to perform each assigned security duty in accordance with appendix B of this part, "General Criteria for Security Personnel." Tactical Response Team members, armed response personnel, and guards shall be trained, equipped, and qualified for use of their assigned weapon in accordance with paragraphs (b)(6) and (b)(7) of this section. In addition, Tactical Response Team members, armed response personnel, and guards shall be trained and qualified in accordance with either paragraphs (b)(10) and (b)(11) or paragraph (b)(12) of this section. Upon the request of an authorized representative of the NRC, the licensee shall demonstrate the ability of the physical security personnel, whether licensee or contractor employees, to carry out their assigned duties and responsibilities. Each Tactical Response Team member, armed response person, and guard, whether a licensee or contractor employee, shall requalify in accordance with appendix B of this part. Tactical Response Team members, armed response personnel, and guards shall also requalify in accordance with paragraph (b)(7) of this section at least once every 12 months. The licensee shall document the results of the qualification and requalification. The licensee shall retain the documentation of each qualification and requalification as a record for 3 years after each qualification and requalification.

* * * * *

(10) In addition to the medical examinations and physical fitness requirements of paragraph I.C of appendix B of this part, each Tactical Response Team member, armed response person, and guard, except as provided in paragraph (b)(10)(v) of this section, shall participate in a physical fitness training program on a continuing basis.

(i) The elements of the physical fitness training program must include, but not necessarily be limited to, the following:

(A) Training sessions of sufficient frequency, duration, and intensity to be of aerobic benefit, e.g., normally a frequency of three times per week, maintaining an intensity of approximately 75 percent of maximum heart rate for 20 minutes;

(B) Activities that use large muscle groups, that can be maintained continuously, and that are rhythmical and aerobic in nature, e.g., running, bicycling, rowing, swimming, or cross-country skiing; and

(C) Musculoskeletal training exercises that develop strength, flexibility, and endurance in the major muscle groups, e.g., legs, arms, and shoulders.

(ii) The licensee shall assess Tactical Response Team members, armed response personnel, and guards for general fitness once every 4 months to determine the effectiveness of the continuing physical fitness training program. Assessments must include a recent health history, measures of cardiovascular fitness, percent of body fat, flexibility, muscular strength, and endurance. Individual exercise programs must be modified to be consistent with the needs of each participating Tactical Response Team member, armed response person, and guard and consistent with the environments in which they must be prepared to perform their duties. Individuals who exceed 4 months without being assessed for general fitness due to excused time off from work must be assessed within 15 calendar days of returning to duty as a Tactical Response Team member, armed response person, or guard.

(iii) Within 30 days prior to participation in the physical fitness training program, the licensee shall give Tactical Response Team members, armed response personnel, and guards a medical examination including a determination and written certification by a licensed physician that there are no medical contraindications, as disclosed by the medical examination, to participation in the physical fitness training program.

(iv) Licensees may temporarily waive an individual's participation in the physical fitness training program on the advice of the licensee's examining physician, during which time the individual may not be assigned duties as a Tactical Response Team member.

(v) Guards whose duties are to staff the central or secondary alarm station and those who control exit or entry portals are exempt from the physical fitness training program specified in paragraph (b)(10) of this section, provided that they are not assigned temporary response guard duties.

(11) In addition to the physical fitness demonstration contained in paragraph I.C of appendix B of this part, Tactical Response Team members, armed response personnel, and guards shall meet or exceed the requirements in paragraphs (b)(11)(i) through (b)(11)(v) of this section, except as provided in paragraph (b)(11)(vi) of this section, initially and at least once every 12 months thereafter.

(i) For Tactical Response Team members the criteria are a 1-mile run in 8 minutes and 30 seconds or less, and a 40-yard dash starting from a prone position in 8 seconds or less. For armed response personnel and guards that are not members of the Tactical Response Team the criteria are a one-half mile run in 4 minutes and 40 seconds or less and a 40-yard dash starting from a prone position in 8.5 seconds or less. The test may be taken in ordinary athletic attire under the supervision of licensee designated personnel. The licensee shall retain a record of each individual's performance for 3 years.

(ii) Incumbent Tactical Response Team members, armed response personnel, and guards shall meet or exceed the qualification criteria within 12 months of NRC approval of the licensee's revised Fixed Site Physical

Protection Plan. New employees hired after the approval date shall meet or exceed the qualification criteria prior to assignment as a Tactical Response Team member, armed response person, or guard.

(iii) Tactical Response Team members, armed response personnel, and guards shall be given a medical examination including a determination and written certification by a licensed physician that there are no medical contraindications, as disclosed by the medical examination, to participation in the physical fitness performance testing. The medical examination must be given within 30 days prior to the first administration of the physical fitness performance test, and on an annual basis thereafter.

(iv) The licensee shall place Tactical Response Team members, armed response persons, and guards, who do not meet or exceed the qualification criteria, in a monitored remedial physical fitness training program and relieve them of security duties until they satisfactorily meet or exceed the qualification criteria.

(v) Licensees may temporarily waive the annual performance testing for an individual on the advice of the licensee's examining physician, during which time the individual may not be assigned duties as a Tactical Response Team member.

(vi) Guards whose duties are to staff the central or secondary alarm station and those who control exit or entry portals are exempt from the annual performance testing specified in paragraph (b)(11) of this section, provided that they are not assigned temporary response guard duties.

(12) The licensee may elect to comply with the requirements of this paragraph instead of the requirements of paragraphs (b)(10) and (b)(11) of this section. In addition to the physical fitness qualifications of paragraph I.C of appendix B of this part, each licensee subject to the requirements of this section shall submit to the NRC for approval site-specific, content-based, physical fitness performance tests which will—when administered to each Tactical Response Team member, armed response person, or guard—duplicate the response duties these individuals may need to perform during a strenuous tactical engagement.

(i) The test must be administered to each Tactical Response Team member, armed response personnel, and guard once every 3 months. The test must specifically address the physical capabilities needed by armed response personnel during a strenuous tactical engagement at the licensed facility. Individuals who exceed 3 months without having been administered the test due to excused time off from work must be tested within 15 calendar days of returning to duty as a Tactical Response Team member, armed response person, or guard.

(ii) Within 30 days prior to the first administration of the physical fitness performance test, and on an annual basis thereafter, Tactical Response Team members, armed response personnel, and guards shall be given a medical examination including a determination and written certification by a licensed physician that there are no medical contraindications, as disclosed by the medical examination, to participation in the physical fitness performance test.

(iii) Guards whose duties are to staff the central or secondary alarm station and those who control exit or entry portals are exempt from the performance test specified in paragraph (b)(12) of this section, provided that they are not assigned temporary response guard duties.

* * * * *

(i) *Implementation schedule for revisions to physical protection plans.*

(1) By [90 DAYS AFTER THE EFFECTIVE DATE OF THE FINAL RULE] each licensee shall submit a revised Fixed Site Physical Protection Plan to the NRC for approval. The revised plan must describe how the licensee will comply with the requirements of paragraphs (b)(10) and (b)(11) of this section or the requirements of (b)(12) of this section. Revised plans must be mailed to the Director, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

(2) Each licensee shall implement the approved plan pursuant to paragraphs (b)(10) and (b)(11) of this section or (b)(12) of this section within 1 year after NRC approval of the revised Fixed Site Physical Protection Plan.

Dated at Rockville, Maryland, this 30th day of September, 1993.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 93–24502 Filed 10–5–93; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL ELECTION COMMISSION

[Notice 1993–23]

11 CFR Parts 100 and 113

Expenditures; Personal Use of Campaign Funds

AGENCY: Federal Election Commission.

ACTION: Extension of comment period and notice of hearing request.

SUMMARY: On August 30, 1993, the Federal Election Commission published a Notice of Proposed Rulemaking regarding the personal use of campaign funds. The Commission has decided to extend the comment period on these proposed rules to November 13, 1993. The Commission also invites persons who would be interested in testifying at a public hearing on the proposed rules to inform the Commission of their interest before the end of the comment period.

DATES: Comments and requests to testify must be received on or before November 13, 1993.

ADDRESSES: Comments and requests to testify must be in writing and addressed to: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463, (202) 219–3690 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: On August 30, 1993, the Federal Election Commission published a Notice of Proposed Rulemaking in the **Federal Register.** 58 FR 45463. The Notice sought comments on proposed rules governing the personal use of campaign funds. The comment period on these rules was originally scheduled to end on September 29, 1993.

The Commission has received two requests for an extension of the comment period. One request noted the difficulty of the issues involved in this rulemaking, and urged the Commission to extend the comment period to October 29, 1993. The other request suggested that many Members of Congress may have been unable to submit comments before the original deadline due to the press of legislative business, and asked for an additional 45 day comment period in order to give Members an additional opportunity to comment.

In order to give all interested parties ample opportunity to comment on the complicated issues involved in this rulemaking, the Commission is granting

the request for an additional 45 day comment period. The new deadline for comments on the Commission's Notice of Proposed Rulemaking on the personal use of campaign funds is November 13, 1993. Comments should be submitted on or before that date to the address limited above.

The Commission has also received a request to testify at a public hearing on the proposed rules. The Commission generally grants requests to hold hearings when enough persons express an interest in testifying at a hearing to make the hearing worthwhile. The Commission invites persons who would be interested in testifying at such a hearing to inform the Commission of their interest before the end of the comment period. Persons planning to submit written comments on the proposed rules should indicate their interest when they submit their written comments. Those who have already submitted comments should submit a letter indicating their interest by November 13, 1993.

Dated: September 30, 1993.

Scott E. Thomas,

Chairman, Federal Election Commission.

[FR Doc. 93-24507 Filed 10-5-93; 8:45 am]

BILLING CODE 6715-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93-NM-120-AD]

Airworthiness Directives; Airbus Industrie Model A310-200 and A310-300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to all Airbus Industrie Model A310-200 and A310-300 series airplanes, that currently requires inspections and tests to detect broken or missing vespel bushes in the flap universal joint assemblies, and replacement of universal joint bushes, if necessary. This action would add a terminating modification for the currently required inspections and tests. This proposal is prompted by the development of a modification that will improve the integrity of the flap universal joints. The actions specified by the proposed AD are intended to prevent rupture of the flap universal joints, subsequent partial loss of lift in one wing, and reduced controllability of the airplane.

DATES: Comments must be received by December 1, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 93-NM-120-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Stephen Slotte, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2797; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93-NM-120-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 93-NM-120-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

On July 22, 1991, the FAA issued AD 91-16-05, Amendment 39-7095 (56 FR 37462, August 7, 1991), applicable to all Airbus Industrie Model A310-200 and A310-300 series airplanes, to require repetitive visual inspections and electrical continuity tests to detect broken or missing vespel bushes in the flap universal joint assemblies, and replacement of universal joint bushes, if necessary. That action was prompted by reports of abnormal angular backlash found in some flap drive shaft-universal joint assemblies, due to loose, broken, or missing vespel bushes in the universal joint forkends. The requirements of that AD are intended to prevent rupture of the flap universal joints, subsequent partial loss of lift in one wing, and reduced controllability of the airplane.

Since the issuance of that AD, the manufacturer has developed a modification that will improve the integrity of the flap universal joints. This modification entails replacing the cylindrical vespel SP 21 bushes with flanged Rose Uniflon bushes, and replacing the pivot pins with chrome-plated, super-finished pins. Accomplishment of this modification will prevent rupture of the flap universal joints, which can lead to problems associated with the addressed unsafe condition. Its installation will eliminate the need for repetitive inspections and tests of the components.

Airbus Industrie has issued Service Bulletin A310-27-2059, dated March 1, 1993, that describes procedures for replacing the cylindrical vespel SP 21 bushes with flanged Rose Uniflon bushes, and replacing the pivot pins with chrome-plated, super-finished pins. (This service bulletin references Lucas/Liebherr Service Bulletin 551-27-M551-02, dated November 2, 1992, for additional service information.)

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same

type design registered in the United States, the proposed AD would supersede AD 91-16-05 to require modification of the flap universal joint assemblies. The installation of this modification would terminate the currently required repetitive visual inspections and electrical continuity tests of the flap universal joint assemblies. The modification would be required to be accomplished in accordance with the Airbus Industrie service bulletin described previously.

This proposed action is based on the FAA's determination that long-term continued operational safety will be better assured by actual modification of the flap universal joint assemblies to remove the source of the problem, rather than by repetitive inspections. Long-term inspections may not be providing the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous repetitive inspections, has led the FAA to consider placing less emphasis on special procedures and more emphasis on design improvements. The proposed modification requirement is in consonance with these considerations.

The FAA estimates that 25 airplanes of U.S. registry would be affected by this AD. It takes approximately 5 work hours per airplane to accomplish the inspection and tests currently required by AD 91-16-05, and the average labor cost is $55 per work hour. Based on these figures, the total cost impact associated with the requirements of AD 91-16-05 on U.S. operators is estimated to be $6,875, or $275 per airplane, per inspection and testing cycle.

It is estimated that it would take approximately 47 work hours per airplane to accomplish the modification proposed in this new AD action, and that the average labor rate is $55 per work hour. Required parts would cost approximately $1,000 per airplane. Based on these figures, the total additional cost impact associated with the proposed AD on U.S. operators is estimated to be $89,625, or $3,585 per airplane.

The cost figures discussed above assume that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39-7095 (56 FR 37462, August 7, 1991), and by adding a new airworthiness directive (AD), to read as follows:

Airbus Industrie: Docket 93-NM-120-AD. Supersedes AD 91-16-05, Amendment 39-7095.

Applicability: All Models A310-200 and A310-300 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent rupture of the flap universal joints, subsequent partial loss of lift in one wing, and reduced controllability of the airplane, accomplish the following:

(a) Prior to the accumulation of 5,500 total landings, or within 350 hours time-in-service after September 11, 1991 (the effective date of AD 91-16-05, Amendment 39-7095), whichever occurs later, and thereafter at intervals not to exceed 3,500 landings, perform repetitive visual inspections and electrical continuity tests of the flap system universal joint assemblies, in accordance with Airbus Industrie Service Bulletin A310-27-2054, Revision 2, dated November 9, 1990.

(b) If any universal joint bushes are missing or broken, prior to further flight, replace the bushes with new bushes in accordance with Airbus Industrie Service Bulletin A310-27-2054, Revision 2, dated November 9, 1990. After replacement, repeat the inspections required by paragraph (a) of this AD at intervals not to exceed 3,500 landings.

(c) Within 3,500 landings after the effective date of this AD, modify the flap universal joint assemblies (Airbus Industrie Modification 10091D20285) in accordance with Airbus Industrie Service Bulletin A310-27-2059, dated March 1, 1993. Accomplishment of this modification constitutes terminating action for the inspection and test requirements of this AD.

(d) Modification of the flap universal joint assemblies (Airbus Industrie Modification 10091D20285) in accordance with Airbus Industrie Service Bulletin A310-27-2059, dated March 1, 1993, constitutes terminating action for the inspection and test requirements of this AD.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on September 29, 1993.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-24394 Filed 10-5-93; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 103

[Docket No. 93N-0200]

Quality Standards for Foods With No Identity Standards; Bottled Water

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the quality standard for bottled water to require that bottled water be

free of coliform bacteria. This action is in response to a rulemaking by the Environmental Protection Agency (EPA) amending the National Primary Drinking Water Regulation (NPDWR) for coliform bacteria in public drinking water. FDA is also addressing other matters concerning the microbiological quality of bottled water and is requesting comments on whether the agency should establish quality standard regulations for other microorganisms that may be present in bottled water and may pose a health risk.

DATES: Written comments by December 6, 1993. The agency is proposing that any final rule that may issue based upon this proposal become effective 180 days after the date of publication of the final rule in the **Federal Register**.

ADDRESSES: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Henry S. Kim, Center for Food Safety and Applied Nutrition (HFS–306), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4681.

SUPPLEMENTARY INFORMATION:

I. Background

EPA promulgates NPDWR's to protect the public from the adverse health effects of contaminants in public drinking water. In addition, at the time that it promulgates NPDWR's, EPA promulgates maximum contaminant level goals (MCLG's), which are health goals that are based solely on considerations of protecting the public from the adverse health effects of drinking water contamination.

NPDWR's, which are enforceable standards, consist of either a maximum contaminant level (MCL) or a treatment technique regulation for each contaminant. EPA sets MCL's for contaminants as close as feasible (with the use of the best technology or other means available, taking cost into consideration) to the MCLG, the level at which no known or anticipated adverse health effects occur and that provides an adequate margin of safety. When it is not feasible to establish an MCL for a specific contaminant, EPA can establish a treatment technique requirement for removal or reduction of that contaminant from drinking water to protect the public health from the adverse health effects of that contaminant.

In the **Federal Register** of June 29, 1989 (54 FR 27544), EPA published a final rule amending its NPDWR for coliform bacteria. EPA revised the MCL for total coliform bacteria (total coliforms), including *Escherichia coli (E. coli)* and other fecal coliforms, in public drinking water. In addition, it established an MCLG of zero for total coliforms, including *E. coli* and other fecal coliforms. This rulemaking was based upon a proposal that EPA had published in the **Federal Register** of November 3, 1987 (52 FR 42224).

Section 410 of the Federal Food, Drug, and Cosmetic Act (the act (21 U.S.C. 349) requires that, whenever EPA prescribes interim or revised NPDWR's under section 1412 of the Public Health Service Act (The Safe Drinking Water Act (SDWA) (42 U.S.C. 300f through 300j–9)), FDA is to consult with EPA and within 180 days after the promulgation of such drinking water regulations "* * * either promulgate amendments to regulations under this chapter applicable to bottled drinking water or publish in the **Federal Register** * * * reasons for not making such amendments." FDA has consulted with EPA and is proposing to amend the quality standard for bottled water to require that bottled water be free of coliform bacteria.

II. EPA Standards

Under section 1412(b) of the SDWA, as amended in 1986, EPA was required to promulgate NPDWR's for 83 contaminants by June 19, 1989 (see 52 FR 42224 at 42225, November 3, 1987). A group of related bacteria known as "total coliforms" is one of the 83 contaminants that EPA was required to regulate.

A. MCLG for Total Coliforms

In its November 3, 1987, proposal (52 FR 42224 at 42226) to amend the NPDWR for coliform bacteria in drinking water, EPA stated that public health officials and professionals have used total coliforms for decades as the major criterion to assess the microbiological quality of drinking water. Coliform bacteria are usually present in water contaminated with human or animal feces and are often associated with outbreaks of diseases (Refs. 1 and 2). Moreover, according to EPA, although the presence of coliform bacteria in drinking water indicates that fecal pathogens may also be present, the detection of fecal coliform organisms, in particular *E. coli*, provides more definitive evidence of fecal pollution than the detection of total coliforms.

EPA noted in its November 3, 1987, proposal (54 FR 42224 at 42227) that the data in the available literature do not support a quantitative relationship between coliform densities and either pathogen density or the potential for waterborne disease outbreaks. In its June 29, 1989, final rule (54 FR 27544 at 27548), EPA stated that it was not aware of any data in the literature that support a coliform density value below which there are no anticipated adverse health effects with an adequate margin of safety. EPA further stated that waterborne disease outbreaks and the presence of specific waterborne pathogens have been associated with coliform densities from less than 1 per 100 milliliters (mL) to very high levels. Therefore, to reduce fecal pathogens to minimal levels, EPA established an MCLG of zero for total coliforms in drinking water, including *E. coli* and other fecal coliforms.

B. MCL for Total Coliforms

1. Intent is to Lower Risk of Waterborne Disease Outbreaks

In its final rule of June 29, 1989 (54 FR 27544 at 27547), EPA concluded that despite existing drinking water regulations, the number of actual outbreaks and cases of waterborne disease was unacceptably high. For example, EPA noted that between 1971 and 1983, 427 outbreaks with over 100,000 cases of waterborne disease have been reported. However, because EPA believed that a large number of waterborne disease outbreaks and cases was not reported, it concluded that the actual number of outbreaks was much higher than the recorded number of outbreaks.

EPA, therefore, established several regulatory measures in its final rule of June 29, 1989 (54 FR 27544 at 27549), to further reduce the risk of waterborne illness. In addition to the revised MCL for total coliforms, it established monitoring requirements, including sanitary surveys for systems collecting fewer than 5 samples per month, State review of sample citing plans, testing for total coliforms in routine and repeat samples, and testing for either fecal coliforms or E. coli if a sample tests positive for total coliforms. Furthermore, in a separate final rule that was also published in the **Federal Register** of June 29, 1989 (54 FR 27486), EPA established filtration and disinfection treatment requirements for systems using surface water sources and stated that it intended to adopt additional disinfection requirements for systems using ground water sources.

2. MCL Based on Presence-Absence of Coliforms

Before amending its NPDWR on June 29, 1989 (54 FR 27544), EPA based compliance for total coliforms in

drinking water on two MCL's (a single-sample MCL and a monthly average MCL) that specified a number of coliform bacteria detected in the sample, calculated as coliform density. The two MCL's varied according to the method used (Multiple Tube Fermentation (MTF) technique or Membrane Filter (MF) technique) and the sample volume (50 mL or 500 mL for MTF technique and 100 mL for MF technique). However, in its proposal of November 3, 1987 (52 FR 42224 at 42229), EPA stated that basing compliance with the MCL on a monthly average density calculation had been criticized because the variability of coliform counts greatly reduces the precision of this calculation (i.e., there is a large standard deviation). EPA further stated that basing compliance on the presence or absence of coliform bacteria rather than on coliform bacteria density would provide the following advantages: ease of detection; less influence of sample transit time; and greater mathematical precision in analytical findings because the calculation difficulties implicit in the statistical methodology of coliform density calculations would be eliminated. Therefore, under the amended NPDWR (54 FR 27544, June 29, 1989), EPA bases compliance with the MCL on the presence or absence of coliforms rather than on an estimate of coliform density.

In determining compliance with the revised MCL, EPA permits use of any one of the following four analytical methods: (1) The MTF technique, (2) the MF technique, (3) the Presence/Absence (P/A) Coliform test, and (4) the Minimal Media *ortho*-nitrophenyl-β-D-galactopyranoside, 4-methylumbelliferyl-β-D-glucuronide technique (Minimal Media ONPG-MUG technique), sometimes referred to as the Autoanalysis Colilert System. EPA recommends that, when the presence of heterotrophic bacteria in water samples interferes with the MTF technique, the MF technique, or the P/A Coliform test, water systems use the Minimal Media ONPG-MUG technique which is less prone to interference. In addition, EPA requires that a 100 mL standard sample volume be used, regardless of the method used for determining the presence or absence of coliforms in drinking water.

3. Interference by Heterotrophic Bacteria

In amending the NPDWR for coliform bacteria (54 FR 27544 at 27547, June 29, 1989), EPA acknowledged that the presence of heterotrophic bacteria, a broad class of microorganisms comprised of many innocuous bacteria as well as virtually all pathogens, including opportunistic (secondary) pathogens, can interfere with total coliforms analyses. Therefore, the amended NPDWR requires that water systems invalidate any sample (unless coliform bacteria are detected) that exhibits evidence of interference when analyzing for total coliforms (e.g., a turbid culture in the absence of gas production using the MTF technique; a confluent growth or a colony number that is "too numerous to count" using the MF technique; or a turbid culture in the absence of an acid reaction using the P/A Coliform test). The amended NPDWR also requires that water systems collect another sample from the same location that the original sample was collected within 24 hours of being notified of the interference problem and have it be analyzed using an analytical method less prone to interference, e.g., the Minimal Media ONPG-MUG technique.

4. Size of System Determines Numbers of Positive Samples Permitted

EPA's amended NPDWR for total coliforms is designed to provide quality drinking water on a consistent basis. Thus the size of the population served by a particular water system determines the required number of monthly samples for total coliforms analysis. Furthermore, the required number of samples per month determines the maximum number or percentage of the required number of monthly samples that can be positive for the presence of coliform bacteria. Thus, for systems serving a population of 33,000 or less, for which less than 40 samples per month are required, no more than one sample can be positive for total coliforms. For systems serving a population greater than 33,000, for which 40 or more samples per month are required, no more than 5.0 percent of the samples can be positive for total coliforms.

In proposing to amend its NPDWR for total coliforms (52 FR 42224 at 42236, November 3, 1987), EPA recognized that some municipal systems have problems with the persistent presence of coliforms in the distribution system even after treatment with disinfectants. EPA noted that the protection of coliforms provided by slimes, encrustations, tubercles, and sediments associated with the piping may be a cause for this persistent coliform presence. However, EPA also noted that this problem apparently is not associated with fecal or pathogenic contamination or with waterborne disease. Furthermore, based on its statistical analysis, EPA stated that when 95 percent of 60 water samples are coliform-negative, there is a 95 percent confidence level that the fraction of water with coliform is less than 10 percent. EPA believes that, at this level of confidence, the quality of the water is reasonably safe (52 FR 42224 at 42228). Therefore, under the amended NPDWR, EPA allows a specified number or percentage of monthly samples to be coliform positive and concluded that the revised MCL it established for total coliforms is as close to the MCLG of zero as is feasible.

III. The FDA Proposal

A. The Agency's Approach to the Bottled Water Quality Standard Established Under Section 410 of the Act

Under section 401 of the act (21 U.S.C. 341), FDA may promulgate a regulation establishing a standard of quality for a food under its common or usual name when, in the judgment of the agency, such action will promote honesty and fair dealing in the interest of consumers. On November 26, 1973 (38 FR 32558), FDA established a quality standard for bottled water which is set forth in § 103.35 (21 CFR 103.35).

Producers of bottled water are responsible for ensuring, through appropriate manufacturing techniques and sufficient quality control procedures, that all bottled water products introduced or delivered for introduction into interstate commerce comply with the quality standard. Bottled water that is of a quality that is below the prescribed standard is required by § 103.35(f) to be labeled with a statement of substandard quality. Moreover, any bottled water containing a substance at a level that causes the food to be adulterated under section 402 (21 U.S.C. 342) of the act is subject to regulatory action, even if the bottled water bears a label statement of substandard quality.

FDA has traditionally fulfilled its obligation under section 410 of the act to respond to EPA's issuance of NPDWR's by amending the quality standard for bottled water to maintain compatibility with EPA's drinking water regulations. In general, FDA believes that, with few exceptions, the EPA standards for contaminants in drinking water are appropriate as allowable levels for contaminants in the quality standard for bottled water when bottled water may be expected to contain the same contaminants. FDA has generally not duplicated the efforts of EPA in judging the adequacy of NPDWR's for the protection of the public health, nor has it duplicated EPA's efforts in

judging the adequacy of National Secondary Drinking Water Regulations (NSDWR's) for control of aesthetic characteristics affecting consumer acceptance of drinking water. It would be redundant for FDA to reevaluate the drinking water standards prescribed by EPA, the agency with primary responsibility for these contaminants. Further, because bottled water is increasingly used in some households as a replacement for tap water, consumption patterns considered by EPA for tap water can be used as an estimate for the maximum expected consumption of bottled water by some individuals. Therefore, FDA's view is that in cases where bottled water is subject to the same source contaminants as tap water (e.g., when bottled water is produced with the same source waters used by public water systems), allowable levels for contaminants set to ensure the safety of bottled water, and levels set to ensure its aesthetic quality, should normally correspond to the levels set by EPA as the NPDWR's and NSDWR's for tap water.

B. Provisions for Coliform Bacteria

1. Current Provisions in the Quality Standard

The current requirements in the quality standard for bottled water applicable to coliform bacteria, as set forth in § 103.35(b), provide that: (1) No more than 1 of the 10 analytical units representing a sample have a most probable number (MPN) of 2.2 or more coliforms per 100 mL, and that no analytical unit have an MPN of 9.2 or more coliforms per 100 mL, when determined by the MTF technique; or (2) no more than 1 of the 10 analytical units representing a sample have 4.0 or more coliforms per 100 mL, and that the average coliform density for the 10 analytical units shall not exceed 1 coliform per 100 mL, when determined by the MF technique.

2. Current Good Manufacturing Practices for Bottled Water

The current good manufacturing practice (CGMP) regulations for bottled water, as set forth in part 129 (21 CFR part 129), require that the water to be bottled be obtained from an approved source that is properly located, protected, and operated; be of a safe, sanitary quality; and be in compliance at all times with the applicable laws and regulations of the government agency or agencies having jurisdiction (§ 129.35). Furthermore, § 129.37 requires that the product water-contact surfaces of all multiservice containers, utensils, pipes, and equipment used in the transportation, processing, handling, and storage of product water be clean and adequately sanitized. Additionally, § 129.80(f) requires that bottlers sample and inspect containers of bottled water to ascertain that they are free from contamination.

3. Justification for Requiring That Coliforms not be Present in Bottled Water

FDA tentatively concludes that EPA's MCLG of zero for total coliforms in public drinking water is desirable as an allowable level for these bacteria in bottled water because the presence of coliform bacteria in bottled water (as determined by a positive test for total coliforms) indicates that fecal pathogens that can cause disease outbreaks may be present. EPA's revised MCL, which is established as close to the MCLG of zero as is feasible, allows a specified number or percentage of drinking water samples to be positive for total coliforms primarily because of the persistent presence of coliforms in some distribution systems. However, because water bottlers do not use such distribution systems to deliver finished bottled water products, FDA tentatively finds that an allowance for the presence of coliforms in any samples of bottled water is not appropriate.

FDA recognizes that some bottlers use source waters obtained from public water systems for bottling, and that if these source waters are from systems in which coliforms are persistent, they may contain some coliforms. Nevertheless, the CGMP regulations (part 129) require that source waters for bottling be of a safe, sanitary quality (§ 129.35(a)(1)). Therefore, whenever bottlers encounter coliform contamination in their bottled waters, a finding that suggests contaminated source water or insanitary conditions in the plant, FDA considers it reasonable and appropriate, for quality as well as for public health purposes, that they test the source water for the presence of coliforms. If coliforms are present, the bottlers can, in accordance with § 129.80(a) treat the source water to remove the coliforms to produce bottled waters that are free of coliform contamination in compliance with the quality standard regulations.

Based on available bottled water survey information, FDA believes that bottlers can produce bottled water products that are free of coliform contamination. In a 1987 survey of bottled water sold in Massachusetts (Ref. 3), the Massachusetts Department of Public Health analyzed 71 samples of domestic and imported bottled water for total coliforms using the MF technique. The results showed that 70 samples had less than 1 coliform per 100 mL, while the remaining one sample had 1 coliform per 100 mL. In a 1990 survey of bottled water to obtain information on domestic and imported bottled waters with regard to manufacturing practices, quality criteria, and labeling practices (Ref. 4), FDA analyzed 48 domestic and 62 imported bottled water samples for the presence of coliform bacteria using either the MTF technique or the MF technique. All samples had an MPN below the current quality standard of 2.2 coliforms per 100 mL.

4. Proposed Revisions to the Microbiological Quality Standard

As discussed above, FDA tentatively concludes that bottled water that is free of coliform bacteria is desirable to reduce the risk of disease outbreaks caused by the presence of fecal pathogens. In addition, based on available bottled water survey information, FDA believes that most bottlers can produce bottled waters that are free of coliform contamination. Therefore, FDA is proposing to revise the microbiological quality standard in § 103.35(b)(1) to provide that coliform bacteria not be present in bottled water. Further, FDA is proposing to establish new § 103.35(b)(1)(i) and (b)(1)(ii) to incorporate by reference the analytical methods that EPA has established for determining compliance with the quality standard. Specifically, proposed 103.35(b)(1)(i) cites the MTF technique, the MF technique, and the P/A Coliform test, and proposed § 103.35(b)(1)(ii) cites the Minimal Media ONPG-MUG technique.

To maintain consistency with EPA standards as well as to provide uniform samples for purposes of compliance testing, FDA is proposing in § 103.35(b)(1) to adopt 100 mL as the sample volume to be analyzed, regardless of the analytical method used for determining compliance with the quality standard. If FDA adopts the proposed regulation, the presence of coliform bacteria in any sample analyzed for the purpose of ascertaining the compliance of a particular lot or a production run with the quality standard will establish that the lot or run does not meet the requirements of the standard and will subject the lot or run to the substandard quality labeling provisions of § 103.35(f).

Based on EPA's requirement that water systems invalidate test results for drinking water samples (unless coliforms are detected) that show evidence of interference from heterotrophic bacteria when analyzed with the MTF technique, the MF technique, or the P/A Coliform test,

FDA is proposing in § 103.35(b)(1) to invalidate a sample for compliance purposes (unless total coliforms are detected) when any analytical unit analyzed for total coliforms by any one of the methods cited in the proposed § 103.35(b)(1)(i) provides evidence of interference from heterotrophic bacteria. Further, FDA is proposing to establish a new paragraph 103.35(b)(1)(iii) that describes the evidence of interference from heterotrophic bacteria that EPA characterized for drinking water samples when using the methods cited in the proposed § 103.35(b)(1)(i). Therefore, under the proposal, whenever such interference (as described in the proposed paragraph 103.35(b)(1)(iii)) is encountered, another sample from the same lot will have to be analyzed for compliance using the Minimal Media ONPG-MUG technique cited in the proposed § 103.35(b)(1)(ii) which is less susceptible to interference from heterotrophic bacteria.

Finally, FDA is proposing to remove the entry in § 103.35(b)(2) because the existing provisions in that section requiring that no more than one analytical unit of a sample shall have 4 or more coliform organisms per 100 mL, and that the arithmetic mean of the coliform density of the sample shall not exceed one coliform organism per 100 mL, when using the MF method, are not applicable under this proposed rule.

5. Effect of Related Provisions of CGMP for Bottled Water

The CGMP regulations for bottled water, in § 129.35(a)(3)(i), require analysis of source water obtained from other than a public water system as often as necessary, but at least once each week, for microbiological contaminants. Further, to ensure that a plant's production complies with applicable standards, § 129.80(g)(1) requires analysis, at least weekly, of a representative sample from a batch or segment of a continuous production run for each type of bottled drinking water produced during a day's production. The CGMP regulations also require in § 129.80(a) sampling and analysis, as often as necessary, of source water taken after processing but before bottling, to ensure the uniformity and effectiveness of the processes performed by the plant.

If this proposal becomes a final rule, these sampling and testing requirements will continue to apply for total coliforms. However, each lot of bottled water will have to comply with the quality standard for microbiological contaminants. Compliance with the minimum weekly CGMP testing requirements of part 129 will not exempt a firm from regulatory action if any lot of bottled water products does not meet the microbiological quality standard for bottled water.

Under § 184.1563(c) (21 CFR 184.1563(c)), bottlers can use ozone as a disinfectant for bottled water products that meet the quality standard regulations contained in § 103.35. Consequently, should FDA finalize this proposal requiring that bottled water be free of coliform bacteria, and should bottlers encounter coliform bacteria in their source water or in their product, bottlers will have to remove the coliform bacteria before ozonation. However, based on available bottled water survey information, FDA believes that most bottlers are using source waters that are free of coliform contamination to produce coliform free bottled water products. FDA, therefore, believes that this proposal will not affect bottler's use of ozone under the conditions prescribed in § 184.1563(c). FDA requests comments on whether this proposal will cause bottlers that are using ozone as a disinfectant to further treat their water to remove coliforms before ozone can be used and on the cost of such treatment to bottlers.

IV. Proposed Recodification of 21 CFR 103.35

In the **Federal Register** of January 5, 1993 (58 FR 393), FDA proposed to establish a standard of identity for bottled water in § 165.110(a) (21 CFR 165.110(a)). In addition, FDA proposed to move the standard of quality for bottled water from § 103.35 to § 165.110 because § 103.5(c) (21 CFR 103.5(c)) states that, should a standard of identity be established for any of the foods defined by a standard of quality in part 103, the standard of quality will be recodified as part of the standard of identity. Therefore, should the agency finalize the January 5, 1993 (58 FR 393) proposal, the provision on the microbiological quality of bottled water contained in paragraphs 103.35(b), (b)(1), and (b)(2) will be recodified respectively as paragraphs 165.110(b)(2), (b)(2)(i), and (b)(2)(ii).

V. Other Issues Concerning the Microbiological Quality of Bottled Water

A. Heterotrophic Bacteria In Bottled Water

In a 1990 bottled water workshop sponsored by the Office of Technology Assessment and the Subcommittee on Oversight and Investigations of the Committee on Energy and Commerce, U.S. House of Representatives (Ref. 5), some bottled water experts expressed concern about the presence of heterotrophic bacteria in bottled water because they believe that consumption of bottled waters containing high levels of heterotrophic bacteria poses a health risk (Refs. 6 and 7). Moreover, in a 1991 congressional hearing on bottled water (Ref. 8), the Subcommittee on Oversight and Investigations of the House of Representatives expressed concern about the high levels of heterotrophic bacteria detected in some bottled water samples that were analyzed as part of FDA's 1990 bottled water survey (Ref. 4). In response to these concerns, FDA is presenting the following discussion on its approach to evaluating the quality and safety of bottled water products that contain high levels of heterotrophic bacteria, and on the actions that it will consider taking when high levels of heterotrophic bacteria are found in bottled water.

The concept of establishing a standard plate count limit for heterotrophic bacteria in bottled water has previously been considered by the agency. In a proposal of January 8, 1973 (38 FR 1019), to establish a quality standard for bottled water, FDA proposed a standard plate count limit of 500 heterotrophic bacteria per mL. In the final rule (38 FR 32558, November 26, 1973) based on that proposal, FDA noted that several comments objected to the standard plate count limit of 500 heterotrophic bacteria per mL contending that such a limit does not have any bearing on the quality or safety of bottled water, is equivalent to requiring a sterile product, and is unduly restrictive when compared with the levels of microorganisms permitted or commonly encountered in other foods. FDA also noted that other comments argued that bottled water should be commercially sterile because microorganisms could multiply in bottled water and often could be pathogenic to the young, old, and debilitated.

In response to these comments, FDA stated that source waters for bottling can be treated to greatly reduce the total number of microorganism and to remove or destroy pathogenic organisms. FDA further stated that, although treated source water that is sealed in a bottle without any residual chemical disinfectant can be expected to contain a few microorganisms that are natural to the water and that can be expected to multiply during storage, no microbial spoilage or contamination occurs. FDA concluded in the final rule that a standard plate count limit for heterotrophic bacteria in bottled water was not necessary in light of the proposed requirements presented in a separate proposal to establish CGMP regulations for bottled water, which also

published in the Federal Register of November 26, 1973 (38 FR 32563). In that document, FDA proposed to require that bottled water be monitored for pathogenic organisms, and that bottled water be processed, bottled, held and transported under sanitary conditions to ensure the safety of the product. FDA issued a final rule based on the proposal to establish the CGMP regulations for bottled water on March 12, 1975 (40 FR 11566).

FDA still believes that, when bottled waters are free of microorganisms that are of public health significance (i.e., indicated by the absence of coliforms) and are bottled under sanitary conditions in compliance with the CGMP regulations (part 129), the presence of heterotrophic bacteria that are part of the natural flora in those bottled waters normally will not pose a health risk because these organisms do not colonize the digestive tract of humans (Ref. 7).

However, in some instances, FDA believes that a heterotrophic bacteria level of 10,000 or more per mL in a bottled water product may be a cause for concern because it could indicate either possible insanitary conditions in the plant or inadequately treated water from a contaminated water source (Ref. 9). Conversely, FDA would not necessarily view a level in excess of 10,000 heterotrophic bacteria per mL in a bottled water product with concern in cases where the agency can establish that the bottler has taken appropriate steps to ensure that the finished product does not contain pathogenic organisms (i.e., as indicated by the absence of coliforms), and that the bottled water product has been produced in accordance with part 129. When these criteria are met, FDA believes that the heterotrophic bacteria are part of the natural flora of the bottled water and are innocuous.

Therefore, whenever FDA encounters heterotrophic bacteria levels of 10,000 or greater per mL in samples of bottled water (e.g., in survey samples that the agency may periodically collect or in analyses for total coliforms as interfering organisms), it will consider conducting a follow-up inspection at domestic bottlers to determine whether the bottler is operating in accordance with the requirements of the bottled water quality standard in § 103.35 and the CGMP regulations in part 129.

In the case of imported bottled water products with 10,000 heterotrophic bacteria or more per mL, FDA may decide to review the available information on the product in question pertaining to the manufacturer's compliance with § 103.35 and part 129. In particular the agency will consider information that addresses the proper protection of the source water, the testing to verify that pathogenic microorganisms are absent (i.e., as indicated by the absence of coliforms) in the product water, and the observance and documentation of appropriate sanitary practices during production, transportation, and storage of bottled water products. If, after review of all available information, FDA still has concern about a bottled water product that contains high levels of heterotrophic bacteria, the agency will consider recommending detention and refusal of entry for the product. If, however, such information is not available to the agency, to ensure the protection of the public from potential adverse health effects of high levels of heterotrophic bacteria in bottled water, FDA tentatively concludes that it has no alternative than to recommend detention and refusal of entry for the product.

FDA requests comments on whether the above approach by the agency is appropriate to protect the public from potential health risks of heterotrophic bacteria in bottled water, or whether the agency should establish a standard plate count limit for heterotrophic bacteria in bottled water. Interested persons who believe that FDA should establish a standard plate count limit should address what that limit should be, and how and to what degree a given standard plate count limit would reduce illnesses associated with bottled water. FDA also requests information on the costs to bottlers of compliance with such a limit. Based on the comments that FDA receives, it may retain the approach discussed above, it may consider alternative approaches to take when it finds high levels of heterotrophic bacteria in bottled water, or it may consider proposing to establish a microbiological quality standard for heterotrophic bacteria in bottled water.

B. Request for Comments Concerning Need for Quality Standard to Address Other Pathogenic Organisms

Bottled water, unlike public drinking water, usually contains no residual disinfectant such as chlorine to control the growth of any bacterial population that may be present after bottling. Ozone and ultraviolet radiation, the principal disinfectants used in bottled water production, may decrease but rarely eliminate the natural bacterial population present in the source water (Ref. 6). Moreover, bottled water products may be held for a long period of time before consumption. Therefore, if certain kinds of bacteria (*e.g., Pseudomonas aeruginosa (P. aeruginosa)*) that can grow in substrates that are extremely poor in nutrients are present at the time of bottling, the bottled water product can be a suitable environment for growth and limited proliferation of those organisms. Indeed, *P. aeruginosa* has reportedly been detected in studies that examined the bacterial quality of bottled water (Refs. 6 and 7). Further, in its 1990 bottled water survey, FDA detected large numbers of *P. aeruginosa* in two bottled water samples (9.6 x 106 colony forming units/mL (CFU/mL) and 4.3 x 103 CFU/mL) that complied with the coliform standard by containing less than 2.2 MPN of total coliforms (Ref. 4).

P. aeruginosa, considered a ubiquitous inhabitant in surface waters and soil, is an opportunistic bacteria that is pathogenic to the young, old, and immunocompromised (Refs. 10 and 11). Although most *P. aeruginosa* infections have been associated with contaminated hospital environments and medical equipment (Refs. 10, 12, 13, and 14), outbreaks of mild to severe gastroenteritis have been associated with ingestion of food or water contaminated with *P. aeruginosa* (Refs. 10, 12, 13, 15, and 16). Furthermore, because the sources for *P. aeruginosa* contamination in water may include fecal wastes of humans and animals associated with humans (Refs. 10 and 11), the presence of *P. aeruginosa* in bottled water may indicate either contamination of the source water used for bottling or insanitary conditions at the plant.

As stated above, bottled water is different from public drinking water in that it usually does not contain residual disinfectant and may be held for long periods before consumption. Consequently, to ensure its safety, different microbiological requirements may be appropriate for bottled water than for public drinking water. FDA requests comments on whether the agency should establish a microbiological quality standard for *P. aeruginosa* in bottled water. Interested persons should address whether the presence of *P. aeruginosa* in bottled water produced in compliance with the applicable quality standard and CGMP regulations may pose a health risk to individuals. Moreover, interested persons who believe that a standard should be established should address what that standard would be.

Interested persons are also requested to provide information on how and to what degree a standard for *P. aeruginosa* would reduce illnesses associated with bottled water and information on the

costs to bottlers for compliance with such a standard. Should FDA receive information that provides convincing evidence that *P. aeruginosa* contamination in bottled water may pose a significant health risk, the agency will consider adopting a quality standard for *P. aeruginosa* in bottled water.

The agency also requests comments on the need to establish microbiological standards for any other pathogens, opportunistic pathogens, or indicator organisms that may be present in bottled water. FDA notes that the microbiological standards for European mineral waters, in addition to specifying the absence of coliforms, require that samples of natural mineral water be free of *P. aeruginosa*, faecal streptococci, and sporulated sulfite-reducing anaerobes (Refs. 17, 18, and 19). In addition to providing a substantive technical basis (including information on the number of infections associated with ingestion of contaminated bottled water) for any additional requirements suggested for the microbiological quality standard, the agency requests that interested persons include information that allows the agency to assess the economic impact, including costs that such requirements may impose on water bottlers (e.g., costs of analytical methods for detection of microorganisms and treatment techniques for the removal of microorganism) and benefits. Further, FDA requests that interested persons address whether the CGMP regulations for bottled water are adequately protective (i.e., will compliance with the CGMP regulations ensure that bottled water products are free from contamination by microorganisms that are of potential concern).

In a final rule of June 29, 1989 (54 FR 27486), EPA established treatment technique requirements to remove or inactivate the cysts of the parasite *Giardia lamblia* in surface water and ground water under the influence of surface water. EPA stated that the treatment technique requirements would also protect against the potential adverse health effects of exposure to enteric viruses, *Legionella*, and heterotrophic bacteria, as well as many other pathogenic organisms that are removed by the treatment technique requirements. FDA, in response to EPA's rulemaking, is considering the need to establish comparable disinfection and filtration treatment requirements during processing and bottling of bottled drinking water (part 129). Therefore, FDA requests comments on whether it should establish treatment requirements for bottled water to protect against *Giardia lamblia* cysts and other pathogenic microorganisms, and on whether it is appropriate or necessary for the agency to establish requirements in the bottled water quality standard to control other microorganisms (e.g., *P. aeruginosa*, *Aeromonas* hydrophila, faecal streptococci, sporulated sulfite-reducing anaerobes) that may be present in bottled water and that may pose a health risk.

VI. Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

VII. Economic Impact

FDA has examined the economic implications of this proposed rule as required by the Regulatory Flexibility Act and Executive Order 12291. The Regulatory Flexibility Act requires relief for small businesses where feasible. The agency finds that this proposed rule is not a major rule as defined by Executive Order 12291. In compliance with the Regulatory Flexibility Act (Pub. L. 96–354), FDA certifies that the proposed rule will not have a significant adverse impact on a substantial number of small businesses.

FDA believes that bottlers are currently producing bottled water products from which coliform bacteria are generally absent when samples of the products are analyzed using methods described in this proposal, and that, if this proposed rule becomes final, bottlers may incur negligible costs in order to comply with this regulation. The agency believes that the results of the surveys (Refs. 3 and 4) that reported that bottled water products were almost universally being produced with less than 1 coliform per 100 mL could not have been achieved if bottled water products were not, with rare exception, free of coliform bacteria. Under the CGMP regulations for bottled water (part 129), bottlers are required to test for coliforms. This proposed rule will not affect the frequency of coliform testing conducted by bottlers. Because the agency believes that bottlers will not have to alter any of their current practices or equipment for compliance with this regulation, and that bottled water products are already generally free of coliforms, the costs of this proposed rule are expected to be low. For the same reason, the quantifiable benefits may also be low. The rule will, however, provide a legally enforceable standard that needs to be met to assure the continued safety of bottled water.

VIII. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Craun, G., "Impact of the Coliform Standard on the Transmission of Disease," in "Evaluation of the Microbiology Standards for Drinking Water," C. Hendricks, Ed. U.S. EPA, EPA 570/9–78–00C. Washington, DC, 1978.

2. EPA, Office of Drinking Water, "Drinking Water Criteria Document for Total Coliforms," PB 86–118148, National Technical Information Service, 5285 Port Royal Rd., Springfield, VA 22161, 1984.

3. Massachusetts Department of Public Health, Division of Food and Drugs, "Survey of Bottled Water Sold in Massachusetts," Jamaica Plain, MA 02130, 1987.

4. FDA FY 90 Bottled Water Survey, 1990.

5. Proceedings of the Bottled Water Workshop, a Report Prepared for the use of the Subcommittee on Oversight and Investigations of the Committee on Energy and Commerce, U.S. House of Representatives. U.S. Government Printing Office, Washington, DC, pp. 72–94, 127–132, September 13 and 14, 1990.

6. Rosenberg, F. A., "The Bacterial Flora of Bottled Waters and Potential Problems Associated With the Presence of Antibiotic-Resistant Species," Proceedings of the Bottled Water Workshop, September 13–14, 1990, A Report Prepared for the Use of the Subcommittee on Oversight and Investigations of the Committee on Energy and Commerce, U.S. House of Representatives, December 1990, pp. 72–84.

7. Geldreich, E. E., "Bottled Water: Microbial Quality of Alternative Water Supply," Proceedings of the Bottled Water Workshop, September 13–14, 1990, A Report Prepared for the Use of the Subcommittee on Oversight and Investigations of the Committee on Energy and Commerce, U.S. House of Representatives, pp. 85–94, December 1990.

8. Bottled Water Regulation. Hearing before the Subcommittee on Oversight and Investigations of the Committee on Energy and Commerce, House of Representatives, 102d Congress, 1st sess., U.S. Government Printing Office, Washington, DC, pp. 89–94, April 10, 1991.

9. FDA, memorandum from Joseph M. Madden to Curtis E. Coker, Heterotrophic Plate Counts for Bottled Waters, April 11, 1991.

10. Hoadley, A. W., "Potential Health Hazards Associated with *Pseudomonas aeruginosa*," in "Bacterial Indicators/Health Hazards Associated with Water," A. W. Hoadley and B. J. Dutka, Eds,. ASTM STP635, American Society for Testing and

Materials, Philadelphia, PA, pp. 80–114, 1977.

11. Guidelines for Drinking-Water Quality, Vol. 2. "Health Criteria and Other Supporting Information," World Health Organization, Geneva, p. 8, 1984.

12. Bryan, F. L., Other Bacteria, in "Food-Borne Infections and Intoxications," Hans Riemann and Frank L. Bryan, Eds., Academic Press, New York, San Francisco, London, pp. 262–264, 1979.

13. Stiles, M. E., Less Recognized or Presumptive Foodborne Pathogen Bacteria, in "Foodborne Bacterial Pathogens," Michael P. Doyle, Ed., New York: Marcel Dekker, Inc., pp 690–691, 1989.

14. Gilardi, G. L., " *Pseudomonas* and Related Genera," in "Manual of Clinical Microbiology," W. J. Hauser, K. L. Herrmann, H. D. Isenberg, and H. J. Shadomy, Eds., American Society for Microbiology, Washington, DC, pp 431–432, 1991.

15. Ensign, P. R., and Hunter, C. A., "An Epidemic of Diarrhea in the Newborn Nursery Caused by Milk-borne Epidemic in the Community," Journal of Pediatrics 29:620, 1946.

16. Weber, G., H. P. Werner, and H. Matschnigg, "Death Cases in Newborns Caused by *Pseudomonas aeruginosa* Contaminated Drinking Water," Zentralblant for Bakteriologie P. Mikrobiologie, und Hygiene. Series A, Medical Microbiology, Infections Disease, Uriology, Paristology Abt. 1, Orig. B, 216:210–214, 1971.

17. Codex Alimentarius Vol. K, "Recommended International Code of Hygienic Practice for the Collecting, Processing and Marketing of Natural Mineral Waters," Food and Agriculture Organization of the United Nations, World Health Organization, Rome, 1990.

18. "Council Directive of 15 July 1980 on the Approximation of the Laws of the Member States Relating to the Exploitation and Marketing of Natural Mineral Waters," *Official Journal of the European Communities*, L229, 23:1–10, 1980.

19. Codex Alimentarius Commission, "Conversion of the Codex European Regional Standard for Natural Mineral Waters to a World-wide Codex Standard (Step 3 of the Codex Procedure)," Food and Agriculture Organization of the United Nations, World Health Organization, Rome, February, 1993.

IX. Comments

Interested persons may, on or before December 6, 1993, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

X. Effective Date

The agency is proposing to make any final rule based on this proposal effective 180 days following the date of publication of the final rule in the **Federal Register**. The agency is requesting comments on the proposed effective date. All comments concerning the effective date should be accompanied by data to support or justify any change in the proposed effective date.

List of Subjects in 21 CFR Part 103

Beverages, Bottled water, Food grades and standards, Incorporation by reference. Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 103 be amended as follows:

PART 103—QUALITY STANDARDS FOR FOODS WITH NO IDENTITY STANDARDS

1. The authority citation for 21 CFR part 103 continues to read as follows:

Authority: Secs. 201, 401, 403, 409, 410, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 349, 371, 379e).

2. Section 103.35 is amended by revising paragraph (b) to read as follows:

§ 103.35 Bottled Water.

* * * * * *

(b) *Microbiological quality.* Bottled water shall meet the following standard of microbiological quality:

(1) Coliform bacteria shall not be present in any analytical unit derived from samples of bottled water when analytical units of 100 mL are analyzed by any one of the methods specified in paragraphs (b)(1)(i) and (b)(1)(ii) of this section. However, whenever a test result obtained from any analytical unit, when using a method described in paragraph (b)(1)(i) of this section, indicates evidence of interference from heterotrophic bacteria (as described in paragraph (b)(1)(iii) of this section), FDA will consider the sample invalid unless total coliforms are detected. Whenever such interference is encountered, another sample from the same lot shall be analyzed using the method described in paragraph (b)(1)(ii) of this section, i.e., the Minimal Media ortho-nitrophenyl-β-D-galactopyranoside, 4-methylumbelliferyl-β-D-glucuronide method (Minimal Media ONPG-MUG method), which is less susceptible to interference from heterotrophic bacteria than the methods described in paragraph (b)(1)(i) of this section.

(i) Analyses to determine compliance with the requirements of paragraph (b)(1) of this section shall be conducted in accordance with applicable sections of either the Multiple-Tube Fermentation technique (either the 10-tube technique with a 10 mL portion of the analytical unit per tube or the 5-tube technique with a 20 mL portion of the analytical unit per tube may be used), the Membrane Filter technique, or the Presence/Absence Coliform test which are incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These three methods are contained in "Standard Methods for the Examination of Water and Wastewater" 18th ed. (1992), American Public Health Association, American Water Works Association, and the Water Pollution Control Federation. Copies of these publications may be obtained from the Publication Office, American Public Health Association, 1051 15th St. NW., Washington, DC 20005, or may be examined at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(ii) Analyses to determine compliance with the requirements of paragraph (b)(1) of this section, when interference from heterotrophic bacteria (described in paragraph (b)(1)(iii) of this section) is indicated, shall be conducted in accordance with the Minimal Media *ortho*-nitrophenyl-β-D-galactopyranoside, 4-methylumbelliferyl-β-D-glucuronide method (Minimal Media ONPG-MUG method), also referred to as the Autoanalysis Colilert System. The method is described in the article by Edberg et al., "National Field Evaluation of a Defined Substrate Method for the Simultaneous Detection of Total Coliforms and *Escherichia coli* from Drinking Water: Comparison with Presence-Absence Techniques," published in Applied Environmental Microbiology, Vol. 55, pp 1003-1008, April 1989, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of this publication may be obtained from the American Water Works Association Research Foundation, 6666 West Quincy Ave., Denver, CO 80235, or may be examined at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(iii) When using the methods described in paragraph (b)(1)(i) of this section, interference from heterotrophic bacteria is indicated by: a turbid culture in the absence of gas production when using the Multiple-Tube Fermentation technique; confluent growth or a colony number that is "too numerous to count" when using the Membrane Filter technique; or a turbid culture in the absence of an acid reaction when using the Presence/Absence Coliform test.

(2) [Reserved]

* * * * *

Dated: September 16, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–24515 Filed 10–5–93; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 253

Oil Spill Financial Responsibility for Offshore Facilities Including State Submerged Lands and Pipelines

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of extension of public comment period.

SUMMARY: This notice extends, by 60 days, the comment period for an advance notice of proposed rulemaking (ANPR) that the Minerals Management Service published in the **Federal Register** on August 25, 1993. The ANPR is concerned with financial responsibility requirements for offshore facilities pursuant to the Oil Pollution Act of 1990. It describes issues relating to the development of regulations to ensure that parties responsible for offshore facilities have sufficient financial resources to ensure the payment of oil spill cleanup costs and associated damages.

DATES: The comment period is extended to December 24, 1993. Comments should be received or postmarked by that date.

ADDRESSES: Comments should be mailed or hand delivered to the Department of the Interior, Minerals Management Service, Mail Stop 4700, 381 Elden Street, Herndon, VA 22070–4817, Attention: John Mirabella, Chief, Engineering and Standards Branch.

FOR FURTHER INFORMATION CONTACT: William S. Cook, Chief, Inspection and Enforcement Branch, telephone (703) 787–1591 or FAX (703) 787–1575.

Dated: September 30, 1993.

Thomas Gernhofer,

Associate Director for Offshore Minerals Management.

[FR Doc. 93–24547 Filed 10–5–93; 8:45 am]

BILLING CODE 4310–MR–M

30 CFR Part 253

Oil Spill Financial Responsibility for Offshore Facilities Including State Submerged Lands and Pipelines

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of public meetings.

SUMMARY: This notice announces two public meetings that the Minerals Management Service (MMS) will conduct to acquire information and data pertinent to the development of regulations implementing financial responsibility requirements of the Oil Pollution Act of 1990 (OPA). An advance notice of proposed rulemaking on this matter was published in the **Federal Register** on August 25, 1993. It describes issues relating to the development of regulations to ensure that parties responsible for offshore facilities have sufficient financial resources to ensure the payment of oil-spill cleanup costs and associated damages.

DATES: The meetings are scheduled as follows:

1. November 2, 1993, 8:30 a.m. to 5 p.m., New Orleans, Louisiana.

2. November 4, 1993, 8:30 a.m. to 5 p.m., Houston, Texas.

ADDRESSES:

1. New Orleans meeting: MMS Regional Office, 1420 S. Clearview Parkway, New Orleans, Louisiana 70123–2394.

2. Houston meeting: Doubletree Hotel at Allen Center, 400 Dallas Street at Bagby, Houston, Texas 77002.

FOR FURTHER INFORMATION CONTACT: Jeff Zippin, Chief, Inspection, Compliance and Training Division; Minerals Management Service; 381 Elden Street; Herndon, Virginia 22070–4817; telephone (703) 787–1576.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in public meetings to address the following issues:

- Types and locations of "offshore facilities" subject to OPA financial responsibility requirements;
- Methods available to evidence OPA financial responsibility;
- Interaction of States/Territories and Federal Government to enforce OPA financial responsibility;
- Protection for the responsible parties, the guarantors, and other financial participants; and
- Effects on the local and national economic conditions of OPA financial responsibility requirements.

Additional meetings on these matters are tentatively being considered for other locations. Announcement of the addresses and dates of any additional meetings will be made at a later time.

PRESENTATIONS: Presentations by interested parties should focus on the following:

- Proposals and suggestions for addressing the financial responsibility requirements.
- Economic impacts on affected parties of the financial responsibility requirements.

REGISTRATION: There will be no registration fee for these meetings. Participants need not register prior to arrival at the meetings. However, prior notification to Richard Giangerelli, Minerals Management Service, Mail Stop 4800, 381 Elden Street, Herndon, Virginia 22070–4817; or telephone (703) 787–1574, FAX (703) 787–1599, is requested in order to access the probable number of participants. Seating is limited and will be on a first-come-first-seated basis.

Dated: September 30, 1993.

Thomas Gernhofer,

Associate Director for Offshore Minerals Management.

[FR Doc. 93–24548 Filed 10–5–93; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 23

[Docket No. 64]; Notice No. 93–20]

RIN 2105–AB99

Participation by Disadvantaged Business Enterprises in Airport Concessions

AGENCY: Office of the Secretary (DOT).

ACTION: Proposed rule.

SUMMARY: This NPRM proposes to implement recent changes to the Airport and Airway Improvement Act (AAIA) of 1982, as amended. The proposed rule would allow airport sponsors to count new forms of disadvantaged business enterprise (DBE) participation toward the overall goals of a DBE concession plan. These new forms include purchases from DBE's of goods and services used in the operation of a concession, as well as management contracts and subcontracts with DBE's. The NPRM would amend the DOT's DBE regulations to make these and several other changes.

DATES: Comments must be received on or before November 22, 1993.

ADDRESSES: Comments to this notice may be mailed, in triplicate, to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–10), Docket No. 64j, 800 Independence Avenue, SW., Washington, DC 20591. Comments delivered must be marked Docket No. 64j. Comments may be examined in room 915F weekdays between 8:30 a.m. and 5 p.m. except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Irene H. Mields, Airport and Environmental Law Division (AGC–601), Office of the Chief Counsel, (202) 267–3199, or David S. Micklin, Office of Civil Rights (ACR–4), (202) 267–3270, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they desire. Comments relating to the economic effects that might result from adoption of the proposals contained in this notice are invited. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 64j." The postcard will be dated and time stamped and returned to the commenter.

All communications received on or before the closing date for comments will be considered by the Secretary before taking action on the proposed rule. The proposal contained in the notice may be changed in light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with DOT personnel concerning this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–430, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–3464. Requests must identify the notice number of this NPRM. Persons interested in being placed on the mailing list for future NPRM's also should request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes application procedures.

Summary of Proposed Rule

On April 30, 1992, the Department issued a final rule implementing section 511(a) of the AAIA (57 FR 18400). These regulations, designated subpart F of 49 CFR part 23, established requirements for the participation of DBE's in airport concessions. The requirements apply to sponsors that have received a grant for airport development authorized under the AAIA. Primary airports are required by the rule to prepare and implement a written DBE concession plan, while nonprimary airports are required to take outreach steps to encourage DBE's to participate as concessionaires whenever there is a concession opportunity.

Subpart F, as issued on April 30, 1992, references certain sections in the Department's overall DBE rule, 49 CFR part 23, since they are applicable to the DBE concession program. These include § §23.7, "Discrimination prohibited;" 23.45(g)(5) (factors to consider in setting overall goals); 23.51, "Certification of the eligibility of minority business enterprises;" 23.51(c) (circumstances that eliminate need for submission of Schedule A or B); 23.61 (definition of "DBE"); 23.69, "Challenge procedure;" 23.53, "Eligibility standards;" 23.53(d) (joint ventures awarded through set-asides); 23.55, "Appeals of denials of certification as an MBE;" and 23.41(f), "Exemptions."

On December 9, 1992, the Department published an NPRM which would revise 49 CFR part 23 as a whole (See 57 FR 58288.). The amended rule would reflect program changes since 1980, when the initial rule was published. It also would reflect 12 years of experience in implementing the program. If adopted, various sections would be renumbered, as well as substantially changed.

These proposed changes to 49 CFR part 23, if made, would require some revision of subpart F, either as proposed in this NPRM, or as it may be issued in the form of a Final Rule. In the interim, the references in this NPRM will be to the sections as they appear in existing 49 CFR part 23.

Since the December 9, 1992, NPRM to amend 49 CFR part 23 includes some changes that will impact substantially on sections now referenced in the NPRM to amend subpart F, the Department specifically seeks comments on the following sections in the proposed overall revision, as they apply to the DBE concession program. Commenters who commented on the December 9, 1992, NPRM, from the standpoint of the DBE Federally-assisted contracting program, should review that NPRM again—this time in regard to the DBE concession program.

The relevant sections include: 23.1 (b) and (c) in "Purpose;" 23.5, "Definitions" of "Contract," "Contractor," "Department" or "DOT," "Disadvantaged Business Enterprise," "Joint venture," "Noncompliance," "Operating Administration," "Primary Recipient," "Recipient," "Secretary," "Set-aside," "Small Business Administration or SBA," "Small Business Concern," (as it applies to off-airport DBE's that sell goods or services to on-airport concessions and as it applies to DBE's holding management contracts or subcontracts on airports), and "Socially and economically disadvantaged individuals;" 23.7, "Discrimination prohibited" (as modified to apply to concessions); 23.9, "Exemptions and interpretations;" 23.11, "Reporting requirement;" 23.27 (c)(8) and (d) (application forms and reporting of changes in circumstances); 23.27(e) (1) through (3) (recertification reviews); 23.27 (f) and (g) (statewide unified certification program); 23.29 (a) and (b) "Certification standards;" 23.29(d), "Social and economic disadvantage (except for requirement that a net worth exceeding $750,000 alone rebuts the presumption of social and economic disadvantage); 23.29(e), (section 8(a) certifications, as modified by size standards in subpart F);" 23.39 (f) through (i) (additional sections on certification standards); 23.31(b) (factors to consider in setting overall goals); subpart C, "Certification, Compliance and Enforcement Procedures" (except for 23.61); and Appendix A, "DBE Certification Form."

Although the above proposed sections differ somewhat from those in existing 49 CFR part 23, in general they reflect the basic principles of the DBE program as it has been implemented since 1980. The Department proposes to apply these provisions to the DBE concession program.

Regarding the proviso in § 23.29(d)(1) concerning a net worth of $750,000 and its negative impact on a DBE owner's status as a socially and economically disadvantaged individual, the Department is not proposing application of this standard in the DBE concession program. Under section 511(a)(17) of the AAIA, the Secretary may establish the size standards that will qualify DBE concessionaires as small business concerns.

Since DBE's often must compete with non-DBE "mega" firms for concessions, the Department concluded in 1992 that the size standards for DBE concessionaires should be raised. The new standards were published on April 30, 1992, as an appendix to the DBE concession requirements set forth in subpart F of 49 CFR part 23. With the exception of banks, pay telephones, and car rental agencies, concessionaires now may earn as much as $30 million per year in gross receipts averaged over the 3 years preceding their bid for concession space. Car rentals may earn a maximum of $40 million per year.

The SBA net worth standard was established to apply to firms with gross receipts far below those established for concessions and is not workable in this context. In effect, the net worth limitation would negate the Department's concession standard, so the Department is not proposing to apply this limitation.

Following issuance of subpart F, section 511(a) of the AAIA was amended by the Airport and Airway Safety, Capacity, Noise Improvement, and Intermodal Transportation Act of 1992 (Pub. L. 102–581). The amendment added a reference to businesses that provide "ground transportation, baggage carts, automobile rentals, or other consumer services" to the public, thereby clarifying that these concessions, as well as those that sell goods, are covered. Since the current rule, through Departmental interpretation, is applicable to both types of concessions, no change to the rule is needed to implement the amendment to section 511(a).

The 1992 amendments to the AAIA also amended section 511 by adding paragraph (h), as follows:

(h) Administration of DBE Assurance—

(1) Management Contracts—In administering subsection (a)(17) of this section, an airport owner or operator is authorized to meet the overall percentage goal established under such subsection by including businesses operated through management contracts and subcontracts. The dollar amount of a management contract and subcontract with a DBE firm shall be added to the total DBE participation in airport concessions and to the base from which the airport's overall percentage goal is calculated. The dollar amount of management contracts and subcontracts with non-DBE firms and the gross revenues of business activities to which management contracts and subcontracts pertain shall not be added to this base.

(2) Purchase of Goods and Services—Except as provided in subsection (h)(3), an airport owner or operator may meet the overall percentage goal established under subsection (a)(17) of this section by including the purchase from DBE's of goods or services used in businesses conducted on the airport, provided that good faith efforts shall be made by the airport owner or operator and the businesses conducted on the airport to explore all available options to achieve, to the maximum extent practical, compliance with such goal through direct ownership arrangements, including, but not limited to, joint ventures and franchises.

(3) Provision for Car Rental Firms—(A) In complying with subsection (a)(17) of this section, an airport owner or operator shall include the revenues of car rental firms on the airport in the base from which the overall percentage goal set forth in such subsection is calculated.

(B) An airport owner or operator may require a car rental firm to meet any requirement imposed under subsection (a)(17) of this section through the purchase or lease of goods or services from DBE's. In the event that an airport owner or operator requires the purchase or lease of goods or services from DBE's, a car rental firm shall be permitted to meet such requirement by including purchases or leases of vehicles from any vendor that qualifies as a small business concern (as defined by the Secretary by regulation) owned and controlled by socially and economically disadvantaged individuals (as defined under section 505(d)(2)(B)).

(C) Nothing in this subsection or subsection (a)(17) of this section shall require a car rental firm to change its corporate structure to provide for direct ownership arrangements in order to meet the requirements of such subsection or subsection (a)(17).

(4) General Provisions—(A) Nothing in this subsection or subsection (a)(17) shall preempt any State or local law, regulation, or policy enacted by the governing body of an airport owner or operator, or the authority of any State or local government or airport owner or operator to adopt or enforce any law, regulation, or policy relating to DBE's.

(B) An airport owner or operator shall be permitted to afford opportunities for small business concerns owned and controlled by socially and economically disadvantaged individuals to participate through direct contractual agreement with such concerns.

(5) Exclusion of Air Carrier Services—Air carriers in providing passenger or freight-carrying services and other businesses that conduct aeronautical activities at an airport shall not be included in the overall percentage goal set forth in subsection (a)(17) of this section for participation of small business concerns at the airport.

With the exception of paragraph (3)(A), the provisions of section 511(h) are discussed further herein, in conjunction with the specific sections proposed to amend subpart F. No amendment is necessary to implement paragraph (3)(A), since subpart F already requires the gross receipts from car rental firms to be included in the base from which the overall goals of a DBE concession plan are calculated.

Section by Section Analysis

Section 23.89 Definitions

In a matter unrelated to the AAIA amendments, the Department proposes to amend the definition of "affiliation." Currently, the rule incorporates the definition used by the Small Business Administration (SBA) in 13 CFR part 121. Under § 121.401(l), affiliation may arise through a joint venture agreement, requiring the parties thereto to count the gross receipts earned by both in making a size determination.

The Department believes that joint venture agreements can offer DBE's a viable means of participating in the program when a lease, sublease, or other arrangement is not feasible. Since many of the major concessionaires, with whom DBE's may form joint ventures, are very large, such an arrangement would frequently put the DBE over the size standard.

Sections 511(a) and 511(h)(3)(B) of the AAIA delegate authority to the Secretary to designate the size standards. The Department chose to use the SBA's definition of "affiliation" in implementing section 511(a), but was not bound by the statute to do so. The NPRM proposes to retain the SBA's definition of "affiliation," except that § 121.401(l) of the SBA regulations 13 CFR part 121, "Affiliation under joint venture agreements," would not apply to the definition used in subpart F.

A minor change is proposed to the definition of "concession" to conform to the language of section 511(h)(5), which excludes air carrier services.

The NPRM proposes to adopt a new definition of "management contract or subcontract" in order to facilitate implementation of section 511(h)(1) of the AAIA. That term would mean "an agreement with a sponsor or a derivative subagreement under which a firm operates a business activity, the assets of which are owned by the sponsor." To qualify under the definition, the business activity must be located at an obligated airport and be engaged in the

sale of consumer goods or services to the public.

For the reasons discussed above, the NPRM proposes to modify the definition of "socially and economically disadvantaged individuals" to specify that the $750,000 limitation on net worth does not apply to this subpart.

Section 23.93 Requirements for Airport Sponsors

This section would be amended to make the nondiscrimination provisions applicable to management contracts or subcontracts and to agreements for the purchase or lease of goods and services.

Section 23.95 Elements of Disadvantaged Business Enterprise (DBE) Concession Plan

Under proposed § 23.95(a)(6)(i), a sponsor that calculates its overall goals as a percentage of the estimated gross receipts from all concessions is permitted to add the estimated dollar value of a management contract or subcontract with a DBE to the total of DBE participation and to the base from which the goal is calculated. The dollar value of management contracts and subcontracts with non-DBE's is not added to the base.

Proposed § 23.95(a)(6)(ii) permits these sponsors to include in the overall goal and the base, the estimated dollar value of goods or services that a non-DBE concessionaire will purchase from DBE's and use in operating the concession. In accordance with section 511(h)(2) of the AAIA, credit for these purchases is subject to satisfying certain good faith efforts requirements, a provision that is discussed below in connection with § 23.95(j).

Finally, these sponsors may include in the goal and the base, the estimated dollar value of goods or services that a non-DBE car rental firm will purchase or lease from a DBE, including the purchase or lease of vehicles, and use in operating the concession. Section 511(h)(3) of the AAIA does not establish a good faith efforts test (discussed below under § 23.95(j)) as a condition of including these costs in the goal.

Under proposed § 23.95(a)(8)(ii), a sponsor that calculates the overall goals as a percentage of the total number of concessions may add the number of management contracts and subcontracts with DBE's to the total DBE participation and the base from which the goal is calculated. Management contracts and subcontracts with non-DBE's are not added to the base.

Section 23.95(b), "Goal Methodology," would be amended to require information on these new forms of DBE participation that the sponsor expects to count toward its goals.

A new § 23.95(d) would be added to the rule entitled "Counting DBE Participation Toward Meeting the Goals" to accommodate the new DBE participants discussed above under § 23.95(a). This section also would formalize Departmental policy on crediting DBE participation toward concession goals under joint venture agreements.

Additionally, proposed § 23.95(d) would incorporate the "commercially useful function" provision from § 23.47(d) of part 23, which currently applies only to DOT-assisted contractors. While the requirement to perform a commercially useful function would be made applicable to any DBE eligible under subpart F, it would be particularly useful in evaluating firms which provide services or supplies, and which subsequently enter into subcontracts. Guidance is included in § 23.47(d) for determining whether a subcontracting practice meets the standard for a commercially useful function.

The Department invites commenters to provide examples of typical or well-recognized purchasing and leasing practices, which may be useful to include in any final rule.

With the addition of the new DBE participants to the program, sponsors may expect to receive an increased number of applications for DBE certification. While the Department believes that it is very important to ensure that only eligible DBE's benefit from the program, it seeks to minimize administrative requirements.

Thus, § 23.95(g)(6) proposes to allow sponsors to give full faith and credit to a certification made by another DOT recipient when the certified firm is a management contractor or subcontractor or a provider of goods or services located off airport property. The term "full faith and credit" would mean that the certifying agency, not the accepting agency, assumes ultimate responsibility for the validity of the certification.

In the event that the Federal Aviation Administration (FAA) comes to believe that such a certification is defective, it could contact the certifying agency or, if that agency is not an FAA recipient, the Federal Highway Administration or Federal Transit Administration would be asked to inquire into the matter.

The Department invites comments on this proposal and solicits other suggestions for reducing regulatory requirements. In particular, the Department solicits comments on the feasibility of adopting a self-certification procedure in limited circumstances. Under this procedure, a sponsor would be permitted to accept without further review the eligibility information submitted by an applicant.

Use of the procedure could be limited to special categories of contracts, such as to providers of goods or services, or to contracts of less than a designated dollar value, or to some combination of these factors. The Department does not propose to apply self-certification to concessionaires.

Additionally, the Department solicits comments on whether a sponsor should be permitted to accept a certification made by a local or state agency that receives no DOT funding, but which uses the same eligibility criteria as employed under the DOT's DBE program. The Department is aware of several agencies that fall into this category.

Proposed § 23.95(j)(2) implements the good faith efforts requirement set forth in § 511(h)(2) of the AAIA. As a condition of counting the purchases of goods and services toward DBE goals, the sponsor and concessionaire making the purchase would be required to make good faith efforts to explore all available options to achieve, to the maximum extent practical, DBE participation through direct ownership arrangements, including, but not limited to, joint ventures and franchises. Good faith efforts would include, but not be limited to, those which sponsors currently must make to achieve their overall DBE goals.

Section 23.97 Obligations of Concessionaires and Competitors

The "Provision for Car Rental Firms" found in sections 511(h)(3) (B) and (C) of the AAIA is incorporated into § 23.97 of the proposed rule. Section 511(h)(3)(C) provides that "Nothing in the [AAIA] shall require a car rental firm to change its corporate structure to provide for direct ownership arrangements in order to meet the requirements of the [AAIA]." Although the legislation does not define what is meant by a change to corporate structure, Senator Wendell Ford addressed this point, as follows:

> Section 511(h)(3)(C) of AAIA, as amended, provides that nothing in the law on DBE assurance 'shall require a car rental firm to change its corporate structure to provide for direct ownership arrangements.' For example, a car rental firm is not required, but is permitted, by the DBE assurance sections 511(a)(17) and 511(h) of the AAIA, as amended, to transfer corporate assets or engage in joint ventures, partnerships, or subleases. I would like to repeat that this language has been agreed to by both the car rental industry and the airports.

138 Cong. Rec. S 17843 (October 8, 1992) (statement of Sen. Ford).

In an extension of his remarks on the floor of the House of Representatives on October 2, Representative James L. Oberstar submitted a similar statement for the Congressional Record on October 8, 1992 (138 Cong. Rec. E 3501). Representative William F. Clinger submitted the same statement to the Congressional Record, as an extension of his remarks. (138 Cong. Rec. E 3257.)

The proposed rule defines "change to corporate structure" so as to be consistent with the sense of Congress, as described above.

Section 23.97(c) incorporates the provision in section 511(h)(4)(B) of the AAIA, which permits a sponsor to afford DBE firms opportunities to participate as prime concessionaires through direct contractual relationships with the sponsor. Inclusion of this provision does not represent a change to the rule. Section 23.89 currently states under the definition of a "concessionaire" that a concession may be operated under a lease, as well as a sublease or other agreement.

Section 23.109 Compliance and Enforcement

This section would be expanded to include a new paragraph on complaint processing. The NPRM provides that any person who believes that there has been a violation of subpart F may file a written complaint in accordance with FAA regulations 14 CFR part 13, "Investigative and Enforcement Procedures." Complaints meeting the requirements in part 13 will be docketed and processed as formal complaints.

The FAA is required to utilize the procedures set forth in part 13 to investigate alleged violations of the AAIA, including the DBE provisions of sections 511(a) and 511(h). (See 14 CFR 13.1 and 13.3.) The complaint procedures in § 23.73 of 49 CFR part 23, which are based on title VI of the Civil Rights Act of 1964, are not used by the agency in processing DBE complaints.

This section implements section 519 of the AAIA, which empowers the FAA Administrator to take enforcement action against noncomplying recipients in regard to violations of the AAIA, including DBE provisions.

Section 23.111 Effect of Subpart

This section would be expanded to incorporate the provisions of section 511(h)(4) of the AAIA, which enables sponsors to adopt or enforce DBE programs under state or local authority. The rule would also make clear that in the event of a conflict between the requirements of subpart F and such local program, the sponsor must, as a condition of remaining eligible for Federal financial assistance, take such steps as may be necessary to comply with the requirements in subpart F.

Proposed § 23.111(c), concerning set-asides, is virtually identical to a provision which the Department has proposed to use for construction and other DOT-assisted contracting. The proposal appeared in an NPRM to amend 49 CFR part 23, published on December 9, 1992 (see 57 FR 58288 at 59309, § 23.35(f)). Like the December 9 NPRM, subpart F would neither prohibit nor authorize the use of set-asides. Subpart F would clarify that sponsors are prohibited from using group-specific set-asides (e.g., a set-aside solely for a particular group of disadvantaged individuals, as opposed to a set-aside for all DBE firms).

Appendix A to Subpart F—Size Standards for the Airport Concession Program

While subpart F currently designates small business size standards for concessionaires, the Department must decide on standards to be used for the new DBE participants, including management contractors and subcontractors and providers of goods and services. As noted, the AAIA delegates authority to the Secretary to establish these standards.

Although the Department is not required to use the SBA standards, the NPRM proposes to adopt these standards for management contractors and providers of goods and services other than automobile dealerships. Unlike concessionaires, these businesses generally are not required to make a substantial capital investment in a leasehold facility. Thus, these firms will not encounter the hardships associated with "graduating" from the program after exceeding the SBA standard that ordinarily would befall concessionaires. Moreover, this turnover would allow more DBE's to enter and benefit from the program.

On the other hand, the Department believes that SBA's size standard for automobile dealerships, currently set at a maximum of $11.5 million (average annual gross receipts over preceding 3 years), is on the low side. Thus, the Department solicits comments as to what an appropriate standard might be.

Economic Summary

Executive Order 12291 established the requirement that, within the extent permitted by law, a Federal regulatory action may be undertaken only if the potential benefits to society for the regulation outweigh the potential costs to society. In response to this requirement, and in accordance with Department of Transportation policies and procedures, the FAA has estimated the anticipated benefits and costs of this rulemaking action. The results are summarized in this section.

The proposed rule would implement recent changes to the airport grants program by allowing airport sponsors to count additional activities as Disadvantaged Business Enterprises towards the overall goals of a DBE concession plan. The proposed rule would allow purchases from DBE's of goods and services used in the operation of a concession, as well as management contracts and subcontracts with DBE's.

Under current procedures, the extent of DBE participation is ordinarily determined by dividing the gross receipts attributable to DBE enterprises by the total receipts generated by those activities in which DBE's may participate (i.e., airport concessions). In particular instances, the FAA has allowed goal setting to be based on the number of concessions. In other words, all receipts from concessions, including proceeds received from non-DBE enterprises, are added to the base from which the overall goal is calculated.

The result is that airport sponsors which have few current opportunities for DBE participation have considerable difficulty meeting the statutory goal of at least 10 percent DBE participation. They face two problems: (1) They cannot increase the number of new DBE concessions; and (2) they cannot require current lessees to involve sublessees, joint venturers, or franchisees. This has the effect of keeping the level of DBE participation below 10 percent.

Under the proposal, airports would have an opportunity to increase the amount of DBE participation through the direct purchase of goods and services from DBE firms. The dollar amount of the direct purchases of goods and services from DBE's and management contracts or subcontracts with DBE's would be added to the total DBE participation in airport concessions as well as to the base—the same method used to calculate DBE participation under current procedures. However, the dollar amount of management contracts and subcontracts with non-DBE firms as well as the dollar amount of direct purchases from non-DBE firms would not be added to the base.

Under the proposal, airport sponsors would be able to count direct purchases made by non-DBE concessionaires toward their goals provided that they made "good faith efforts" to explore all available options to achieve compliance through direct ownership arrangements,

including subleases, joint ventures, and franchises. This "good faith efforts" test would not apply to the goods or services purchased or leased by non-DBE car rental firms from a DBE firm due to the special problems direct ownership arrangements pose for car rental agencies.

Finally, sponsors would be allowed to give "full faith and credit" to certifications made by other DOT recipients when the DBE firm is a management contractor or subcontractor or a provider of goods or services. The purpose of the certification process is to determine if an applicant does in fact satisfy both the size and ownership requirements for DBE status. The term "full faith and credit" means that the certifying agency (e.g., a recipient of Federal Highway Administration funding) would assume ultimate responsibility for the validity of the certification. The FAA is considering other ways to lower certification costs, such as permitting self-certification for smaller enterprises (which may be located off-site) and by extending the "full faith and credit" provision to include certifications made by non-DOT agencies (e.g., local governments). The public is invited to submit comments on reducing these costs.

The expansion in the potential kinds of activities eligible for DBE participation would increase the range of firms that could be certified as DBE's. If firms engaging in these activities were generally smaller than firms that are currently eligible for DBE participation, the number of certifications made by airport sponsors could increase, which could add to their overhead costs (i.e., time spent investigating potential DBE's to validate their eligibility). The FAA solicits information from the public regarding the expected impact of the proposal, if any, on the types of business arrangements that airport sponsors and concessionaires would likely choose for satisfying DBE goals.

This proposal is expected to promote economic efficiency. The expansion in the types of business operations that can be counted toward satisfying DBE goals as well as changes in the method airport sponsors may use for calculating DBE goal attainment described above should afford these sponsors greater flexibility. Sponsors would be able to involve DBE's in more facets of their overall business using a broader array of financial vehicles. They would presumably have a greater opportunity to minimize the risks of failure for both themselves and the DBE's. Both airport operators and concessionaires would have access to a wider range of business relationships with DBE's, thereby affording them an opportunity to better control their risks. These risks tend to be higher in business partnerships, such as joint ventures.

A key advantage of these alternative business arrangements is that they would reduce potential losses incurred by airport sponsors and non-DBE concessionaires in the event of the failure of a DBE. All partners in joint ventures are financially liable for any business losses. Small businesses have traditionally experienced a considerably higher rate of failure than larger business enterprises, especially in the early years. If a non-DBE concessionaire has made a good faith but unsuccessful search for a viable DBE to joint venture, sublease, or franchise, the non-DBE still will have an opportunity to help meet the goals through the purchase of goods and services from DBE's. In addition, the non-DBE would be spared the legal costs of establishing a business partnership with a DBE that may not be ready for the competition of airport concession activity.

Similarly, an airport can augment its capacity to reach its goals through management contracts and subcontracts. Under appropriate circumstances, these offer a triple benefit: (1) They enlarge the pool of available DBE's; (2) some management contracts result in greater economic benefit to the airport than a concession arrangement; and (3) since the airport exercises greater control over management contracts than over concessions, in some situations the airport is in a better position to avert business failures. The FAA concludes that the proposal has some potential for reducing the costs of complying with the DBE Program.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The RFA requires agencies to review rules which may have a "a significant economic impact on a substantial number of small entities." Small entities include businesses, nonprofit organizations, and governmental jurisdictions.

The proposal affects airports classified under Standard Industrial Classification (SIC) 4582. The FAA's small entity size standards criterion defines a small airport as one owned by a county, city, town or other jurisdiction having a population of 49,999 or less. There are currently 418 primary non-military airports that are subject to the provisions of part 23. According to 1980 Census data, 108 of the 418 primary non-military airports are owned by jurisdictions with populations of less than 50,000.

The proposed rule amendment is of a cost relieving nature and would therefore afford cost savings to airport sponsors. The impacts on the costs of complying with the DBE Program borne by individual airport sponsors are expected to be quite small, however. The FAA solicits comments from the operators of small airports (as defined above) so that the potential for differential impacts can be determined.

International Trade Impact

The proposed rulemaking action would affect only domestic airports. There is not expected to be any impact on international trade because these airports obviously do not compete with their foreign counterparts.

Issued this 17th day of September, 1993, at Washington, DC.

Federico Peña,

Secretary of Transportation.

List of Subjects in 49 CFR Part 23

Airport concessions, Disadvantaged business enterprise, Government contracts, Minority businesses, Reporting and recordkeeping requirements, Transportation.

The Proposal

Accordingly, the DOT proposes to amend subpart F of part 23 of the Regulations of the Office of the Secretary of Transportation (49 CFR part 23) as follows:

1. The title of subpart F would be revised to read as follows:

Subpart F—Participation by Disadvantaged Business Enterprise in Airport Concessions

PART 23—[AMENDED]

2. The authority citation for part 23 would be revised to read as follows:

Authority: Sec. 905 of the Regulatory Revitalization and Regulatory Reform Act of 1978 (45 U.S.C. 803); sec. 520 of the Airport and Airway Improvement Act of 1982, as amended (49 U.S.C. App. 2219); sec. 19 of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1615); sec. 106(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (49 U.S.C. App. 1601 note); sec. 505(d), sec. 511(a)(17), and sec. 511(h) of the Airport and Airway Improvement Act, as amended (49 U.S.C. App. 2204(d), 2210(a)(17), and 2210(h)); title 23 of the U.S Code (relating to highways and traffic safety, particularly sec. 324 thereof); title VI of the Civil Rights Act (42 U.S.C. 2000d *et seq.*); Executive Order 12265; Executive Order 12138.

3. In § 23.89, the introductory text of the definitions of "affiliation" and

"concession," and the definition of "socially and economically disadvantaged individuals" would be revised, and a definition of "management contractor or subcontract" would be added alphabetically to read as follows:

§ 23.89 Definitions.

Affiliation has the same meaning the term has in regulations of the Small Business Administration, 13 CFR part 121, except that the provisions of § 121.401(l), "Affiliation under joint venture agreements," shall not apply to the definition used in this subpart. Except as otherwise provided in 13 CFR part 121 and in this section, concerns are affiliates of each other when, either directly or indirectly

* * * * *

Concession means a for-profit business enterprise, located on an airport subject to this subpart, that is engaged in the sale of consumer goods or services to the public under an agreement with the sponsor, another concessionaire, or the owner of a terminal, if other than the sponsor. Businesses which conduct an aeronautical activity are not considered concessionaires for purposes of this subpart. Aeronautical activities include scheduled and nonscheduled air carriers, air taxis, air charters, and air couriers, in providing passenger or freightcarrying services; fixed base operators; flight schools; and sky-diving, parachute-jumping, flying guide services, and helicopter or other air tours.

* * * * *

Management contract or subcontract means an agreement with a sponsor or a derivative subagreement under which a firm operates a business activity, the assets of which are owned by the sponsor. The managing agent generally receives, as compensation, a flat fee or a percentage of the gross receipts or profit from the business activity. For purposes of this subpart, the business activity operated by the managing agent must be located at an airport subject to this subpart and be engaged in the sale of consumer goods or services to the public.

* * * * *

Socially and economically disadvantaged individuals has the same meaning the term has in § 23.61, except that for purposes of this subpart, the presumption of social and economic disadvantage shall not be considered to be rebutted solely on the basis that the net worth of the owner of a firm presumed to be disadvantaged exceeds $750,000.

* * * * *

4. In § 23.93, paragraph (a)(1) and (a)(3)(i) would be revised to read as follows:

§ 23.93 Requirements for airport sponsors.

(a) *General requirements.* (1) Each sponsor shall abide by the nondiscrimination requirements of § 23.7 with respect to the award and performance of any concession agreement, management contract or subcontract, purchase or lease agreement, or other agreement covered by this subpart.

(2) * * *

(3) * * *

(i) "This agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR part 23, subpart F. The concessionaire agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR part 23, subpart F.

* * * * *

§ 23.95 [Amended]

5. Section 23.95 would be amended by revising paragraphs (a) and (b)(2), adding paragraph (b)(5), revising paragraph (c), adding paragraph (f)(6), revising paragraph (g)(4), and revising paragraph (i) to read as follows: § 23.95 Elements of Disadvantaged Business Enterprise (DBE) concession plan.

(a) *Overall annual DBE goals.*

(1) The sponsor shall establish an overall goal for the participation of DBE's in concessions for each 12-month period covered by the plan. The goals shall be based on the factors listed in § 23.45(g)(5).

(2) Sponsors shall calculate the overall DBE goal as a percentage of one of the following bases:

(i) The estimated gross receipts that will be earned by all concessions operating at the airport during the goal period.

(ii) The total number of concession agreements operating at the airport during the goal period.

(3) The plan shall indicate which base the sponsor proposes to use in calculating the overall goals.

(4) Airport sponsors may establish an overall annual goal exceeding 10 percent.

(5) To the extent practicable, sponsors shall seek to obtain DBE participation in all types of concession activities and not concentrate participation in one category or a few categories to the exclusion of others.

(6) Sponsors that employ the procedures of paragraph (a)(2)(i) of this section may add the following amounts to the total of DBE participation and to the base from which the overall percentage goal is calculated:

(i) The estimated dollar value of a management contract or subcontract with a DBE. (The dollar value of management contracts and subcontracts with non-DBE firms are not added to the base from which the overall percentage goal is calculated.)

(ii) Subject to the conditions set forth in paragraph (c)(1)(iv) of this section, the estimated dollar value of goods and services that a non-DBE concessionaire will purchase from DBE's and use in operating the concession.

(iii) The estimated dollar value of goods or services that a non-DBE car rental firm will purchase or lease from DBE's, including purchases or lease of vehicles, and use in operating the concession.

(7) Sponsors that employ the procedures of paragraph (a)(2)(i) of this section shall also;

(i) Use the net payment to the airport for banks and banking services, including automated teller machines (ATM) and foreign currency exchanges, in calculating the overall goals.

(ii) Exclude from the overall goal calculation any portion of a firm's estimated gross receipts that will not be generated from a concession activity.

Example. A firm operates a restaurant in the airport terminal which services the traveling public and under the same lease agreement, provides in-flight catering service to the air carriers. The projected gross receipts from the restaurant are included in the overall goal calculation, while the gross receipts to be earned by the in-flight catering service are excluded.

(iii) State in the plan which concession agreements, if any, do not provide for the sponsor to know the value of the gross receipts earned. For such agreements, the sponsor shall use net payment to the airport and combine these figures with estimated gross receipts from other agreements, for purposes of calculating overall goals.

(8)(i) Sponsors that will employ the procedures of paragraph (a)(2)(ii) of this section shall submit a rationale as required by § 23.99.

(ii) In calculating overall goals, these sponsors may add the number of management contracts and subcontracts with DBE's to the total of DBE participation and to the base from which the overall percentage goal is

calculated. Management contracts and subcontracts with non-DBE's shall not be included in this base.

(b) *Goal methodology.*

(1) * * *

(2) The plan shall provide information on other projected expenditures with DBE firms that the sponsor proposes to count toward meeting overall goals, including:

(i) Name of each DBE firm (if known).

(ii) Type of business arrangement (e.g. management contract, vehicle purchases, cleaning services).

(iii) Estimated value of funds to be credited toward the overall goals.

(iv) Identification of entity purchasing or leasing the goods or services from the DBE (i.e., the sponsor or name of non-DBE concessionaire).

(3) * * *

(4) * * *

(5) The plan shall include a narrative description of the types of efforts the sponsor intends to make, in accordance with paragraph (i) of this section, to achieve the overall annual goals.

(c) *Counting DBE participation toward meeting the goals.*

(1) If the sponsor is covered by paragraph (a)(2)(i) of this section, DBE participation shall be counted toward meeting the overall goals and any contract goals set under this subpart as follows:

(i) A sponsor or concessionaire may count toward its goal the total dollar value of the gross receipts earned by a certified DBE under a concession agreement.

(ii) A sponsor or concessionaire may count toward its goal a portion of the total dollar value of gross receipts earned by a joint venture under a concession agreement, equal to the percentage of the ownership and control of the DBE partner in the joint venture.

(iii) A sponsor or concessionaire may count toward its goal the total dollar value of a management contract or subcontract with a certified DBE (but not the value of the gross receipts of the business activity to which the management contract or subcontract pertains).

(iv) Except as provided in paragraph (c)(1)(v) of this section, a sponsor or non-DBE concessionaire may count toward its goal the total dollar value of purchases from certified DBE's of goods and services used in the concession, provided that the sponsor and concessionaire have complied with the good faith effort requirements set forth in paragraph (i)(2) of this section.

(v) A non-DBE car rental firm may count toward a contract goal set under § 23.97(b), the total value of the purchase or lease of goods and services from a certified DBE, including purchases or leases of vehicles, that are used in the concession. A sponsor may count these same expenditures toward its overall goal.

(vi) A sponsor or concessionaire may count toward its goals only expenditures to DBE's that perform a commercially useful function, as defined in § 23.47(d), in the work of the contract.

(2) If the sponsor is covered by paragraph (a)(2)(ii) of this section, DBE participation shall be counted toward meeting the overall goals and any contract goals set under this subpart as follows:

(i) A sponsor or concessionaire may count toward its goal each concession agreement with a certified DBE.

(ii) A sponsor may count toward its goal each management contract or subcontract with a certified DBE.

(iii) A sponsor or concessionaire may count toward its goal only those agreements in which the DBE firm performs a commercially useful function, as defined in

§ 23.47(d), in the work of the contract.

* * * * *

(f) * * *

(6) The following additional guidelines apply to the certification of management contractors and subcontractors and to providers of goods or services located off airport property.

(i) A sponsor may give full faith and credit to the certification made by another DOT recipient.

(ii) *Reserved.*

(g) * * *

(4) Joint ventures described in § 23.53 (c) and (d) are eligible for certification as DBE's under this subpart.

(h) * * *

(i) *Good faith efforts.* (1) The sponsor shall make good faith efforts to achieve the overall goals of the approved plan. The efforts shall include:

(i) Locating and identifying DBE's who may be interested in participating as concessionaires;

(ii) Notifying DBE's and other organizations of concession opportunities and encouraging them to compete, when appropriate;

(iii) Informing competitors for concession opportunities of any DBE requirements during pre-solicitation meetings;

(iv) Providing information concerning the availability of DBE firms to competitors to assist them in meeting DBE requirements; and

(v) When practical, structuring contracting activities so as to encourage and facilitate the participation of DBE's.

(2) As a condition of counting the purchase of goods and services toward DBE goals in accordance with paragraph (c)(1)(iv) of this section, the sponsor and concessionaire shall make good faith efforts to explore all available options to achieve, to the maximum extent practical, DBE participation through direct ownership arrangements, including, but not limited to, joint ventures and franchises. For purposes of this paragraph (i)(2), good faith efforts shall include, but not be limited to, those listed in paragraph (i)(1) of this section, which are made applicable, as appropriate, to concessionaires referenced in this section.

§§ 23.97, 23.99, 23101, 23.103 [Redesignated as 23.99, 23.101, 23.103, 23.97, respectively.]

6. Sections 23.97, 23.99, 23.101 and 23.103 are redesignated as follows:

Old section	New section
23.97	23.99
23.99	23.101
23.101	23.103
23.103	23.97

7. Newly designated § 23.97 would be amended by redesignating paragraphs (a) and (b) as (a)(1) and (a)(2) respectively; by adding a heading for (a); and by adding new paragraphs (b) and (c) to read as follows:

§ 23.97 Obligations of concessionaires and competitors.

(a) General.

* * * * *

(b) *Provision for car rental firms.* (1) A sponsor may require a car rental firm to meet any requirement imposed under this subpart through the purchase or lease of goods or services from DBE's. In the event the sponsor requires the purchase or lease of goods or services from DBE's, a car rental firm shall be permitted to meet such requirement by including purchases or leases of vehicles from any vendor that qualifies as a DBE, as defined in this subpart.

(2) Nothing in this subpart shall require a car rental firm to change its corporate structure to provide for direct ownership arrangements in order to meet the requirements of this subpart. For purposes of this subpart, a change in corporate structure shall include a transfer of corporate assets or execution of a joint venture, partnership, or sublease agreement.

(c) *DBE's as prime concessionaires.* A sponsor is permitted to afford DBE firms opportunities to participate as prime concessionaires through direct contractual agreements with the sponsor.

8. Section 23.109 would be revised to read as follows:

§ 23.109 Compliance and enforcement.

(a) *Complaints.* Any person who believes that there has been a violation of this subpart may personally or through a representative, file a written complaint in accordance with FAA regulations 14 CFR part 13. The complaint must be submitted to the Federal Aviation Administration, Office of the Chief Counsel, Attention: Enforcement Docket (AGC–10), 800 Independence Avenue, SW., Washington, DC 20591. Complaints which meet the requirements of 14 CFR part 13, shall be docketed and processed as formal complaints.

(b) *Compliance procedures.* In the event of noncompliance with this subpart by a sponsor, the FAA Administrator may take any action provided for in Section 519 of the Airport and Airway Improvement Act of 1982, as amended.

9. Section 23.111 would be amended by revising the heading; redesignating paragraph (a) as (a)(1) and paragraph (b) as (a)(2); designating the introductory text as paragraph (a); and adding new paragraphs (b) and (c) to read as follows:

§ 23.111 Effect of subpart.

(a) * * *

(b) Nothing in this subpart shall preempt any State or local law, regulation, or policy enacted by the governing body of a sponsor, or the authority of any State or local government or sponsor to adopt or enforce any law, regulation, or policy relating to DBE's. In the event that a State or local law, regulation, or policy conflicts with the requirements of this subpart, the sponsor shall, as a condition of remaining eligible to receive Federal financial assistance from the DOT, take such steps as may be necessary to comply with the requirements of this subpart.

(c) Nothing in this subpart prohibits a sponsor with its own legal authority to employ set-asides from using a DBE set-aside in the award of a concession. This subpart does not provide independent legal authority to employ set-asides. Sponsors shall not use group-specific set-asides in concessions.

10. Appendix A to subpart F would be amended by revising the heading as set forth below and adding a second category to the table as follows:

Appendix A to Subpart F—Size Standards for the Airport Concession Program

* * * * *

Other Participants	
Management contractors:	
Parking lots	$3.5
Other	3.5
Automotive dealerships	To be defined.
Other providers of goods or services.	As defined in 13 CFR Part 121.

[FR Doc. 93–24265 Filed 10–5–93; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB83

Endangered and Threatened Wildlife and Plants; Withdrawal of the Proposed Rule to Determine Lepidium montanum var. stellae (Kodachrome Pepper-grass) as an Endangered Species.

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; withdrawal.

SUMMARY: The U.S. Fish and Wildlife Service (Service) withdraws the proposed rule (57 FR 49671; November 3, 1992) to list a Utah plant, *Lepidium montanum* var. *stellae* (Kodachrome pepper-grass), to be an endangered species. Additional field research has provided new information on the abundance and distribution of *Lepidium montanum* var. *stellae*. It is now known to have a much larger population size, and it is more widely distributed. Hence, the Kodachrome pepper-grass is relatively secure from threats to its existence because of its larger numbers and greater range. The Service has determined that this species is not likely to become either endangered or threatened throughout all or a significant portion of its range in the foreseeable future, and it does not qualify for protection under the Endangered Species Act.

ADDRESSES: The file of this proposal is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, 2060 Administration Building, 1745 West 1700 South, Salt Lake City, Utah 84104.

FOR FURTHER INFORMATION CONTACT: John L. England at the above address, telephone (801) 975–3620.

SUPPLEMENTARY INFORMATION:

Background

The Fish and Wildlife Service (Service) published a proposed rule to determine *Lepidium montanum* var. *stellae* (Kodachrome pepper-grass) to be an endangered species on November 3, 1992 (57 FR 49671). This proposal was supported by biological information indicating the species was extremely limited in numbers (less than 1,000 plants) and that it was found only in restricted microhabitats (Franklin 1990). Because of this small population, a restricted distribution, and imminent threats to this known population (57 FR 49671), Service biologists and others (Welsh 1978) believed that it should be afforded protection of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*).

The Service published the proposed rule to determine *Lepidium montanum* var. *stellae* an endangered species using the best available information. Nine comments were received during the comment period. Six commenters supported the listing on the basis of the information supporting the proposed rule. One commenter opposed listing but provided no substantive rationale. The Bureau of Land Management and the State of Utah recommended that the Service conduct an additional review of *L. montanum* var. *stellae* before the promulgation of a final rule because a recent survey had documented additional populations of the plant. These populations were previously identified as the relatively common *L. montanum* var. *jonesii* and *L. montanum* var. *montanum*, but were subsequently identified as *L. montanum* var. *stellae* in the recent survey (Welsh and Thorne 1992).

The Service and Bureau of Land Management conducted a survey during the spring of 1993. This joint survey confirmed the additional populations of *Lepidium montanum* var. *stellae* found by Welsh and Thorne (1992), and additional data and estimates were obtained (Armstrong and England 1993). The range of *L. montanum* var. *stellae* was found to extend about 100 km (60 mi) in an area of central Kane County, Utah. Plants were common, but discontinuously distributed on highly gypsiferous soils of the Carmel and Moenkopi formations. Its population size was estimated to be in excess of 100,000 individuals (Armstrong and England 1993).

Finding and Withdrawal

Recent rare plant surveys have shown a much larger population size and distribution for *Lepidium montanum* var. *stellae* (Welsh and Thorne 1992). In addition to the population in the Kodachrome Basin, it occurs on the Skutumpah Bench and in the Johnson Wash drainage; all in Kane County, Utah. The known population size of *L.*

montanum var. *stellae* has been increased by a hundredfold, from 1,000 to over 100,000 plants, and its known range of 100 km (60 mi) greatly exceeds the range described in the previous distributional information used by the Service in its proposed rule (Welsh and Thorne 1992; Armstrong and England 1993).

The Service previously determined that potential mineral development and recreational activity posed a threat to *L. montanum* var. *stellae* populations. Although some threat still exists to individual plants of this species, the number and size of the populations and their extensive range provides insulation from such threats.

The Service has reviewed the status of *L. montanum* var. *stellae* relative to the five factors in section 4(a) of the Act and has determined that it is not likely to become either endangered or threatened throughout all or a significant portion of its range in the foreseeable future, and it does not qualify for protection under the Act. Therefore, in compliance with section 4(b)(6)(B)(ii) of the Endangered Species Act (Act) of 1973, as amended, the Service finds that there is not sufficient evidence to justify the proposed listing action and withdraws its proposed rule of November 3, 1992 (57 FR 49671), to list *Lepidium montanum* var. *stellae* as an endangered species. As a result of this determination, the Service will remove this species from category 1 in the next plant notice of review and place it in category 3C indicating that it has proved to be more abundant than previously believed.

References Cited

Armstrong, L. and J.L. England. 1993. Status survey for *Lepidium montanum* var. *stellae*. Bureau of Land Management and the U.S. Fish and Wildlife Service, Salt Lake City, Utah. 3 pp.

Franklin, M.C. 1990. Report for 1989 challenge cost share project USDI Bureau of Land Management, target species: *Xylorhiza cronquistii* (Cronquist woodyaster), *Lesquerella tumulosa* (Kodachrome bladderpod), *Lepidium montanum* var. *stellae* (Kodachrome pepper-grass). Utah Natural Heritage Program, Salt Lake City. 11 pp.

Welsh, S.L. and K.H. Thorne. 1992. Report of Bureau of Land Management Sensitive Plant Species, Western Kane County, Utah. Unpublished report prepared for the Bureau of Land Management, Salt Lake City, Utah. iv+56 pp.

Authors

The primary authors of this notice are John L. England, U.S. Fish and Wildlife Service, Salt Lake City, Utah (801/975–3630), and Harold M. Tyus, U.S. Fish and Wildlife Service, Denver Regional Office, Denver, Colorado (303/236–7398).

Authority

The Authority for this action is section 4(b)(6)(B)(ii) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*)

Dated: September 23, 1993.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

[FR Doc. 93–24382 Filed 10–5–93; 8:45 am]

BILLING CODE 4310-55-P

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50 CFR Part 17

RIN 1018–AC09

Endangered and Threatened Wildlife and Plants; Proposal To Determine the Plant Pediocactus Winkleri (Winkler Cactus) To Be an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to determine *Pediocactus winkleri* (Winkler cactus) an endangered species. *P. winkleri* is endemic to a specific soil type in lower elevations of the Fremont River and Muddy Creek drainages of south-central Utah. Six populations of *P. winkleri* cactus are known. These populations total about 3,500 plants that grow on about 80 hectares (200 acres) of habitat. *P. winkleri* is threatened by plant collecting and by habitat disturbances due to mining, recreation, and livestock. Listing *P. winkleri* as an endangered species would provide protection under the authority of the Endangered Species Act of 1973, as amended.

DATES: Comments from interested parties must be received by December 6, 1993. Public hearing requests must be received by November 22, 1993.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, 2060 Administration Building, 1745 West 1700 South, Salt Lake City, Utah 84104. Comments and materials received will be available for public inspection, by appointment, during normal business hours.

FOR FURTHER INFORMATION CONTACT: John L. England (see **ADDRESSES** section above) at (801) 975–3630.

SUPPLEMENTARY INFORMATION:

Background

Pediocactus winkleri Heil (Winkler cactus) was discovered by Agnes Winkler in the early 1960's. It was first described in the scientific literature by Dr. Kenneth Heil from specimens he collected in the vicinity of Notom, Utah, during 1977 and 1978 (Heil 1979). *Pediocactus* includes *P. winkleri* and seven other species (Arp 1972; Heil et al. 1981; Benson 1982). These extant species of *Pediocactus* appear to be relics of a larger and more widespread genus whose distribution may have been fractured by climatic changes (Benson 1982).

P. winkleri is a small globose cactus with stems 2.5 to 6.4 cm (1 to 2.5 in) long, and up to 5.1 cm (2 in) in diameter. It has spine clusters of 9 to 11 small radial spines with fine, woolly hairs at the base. The peach or pink colored flowers of *P. winkleri* are urn shaped, 1.8 to 2.5 cm (0.7 to 1 in) long and 1.8 to 3.8 cm (0.7 to 1.5 in) in diameter. The fruit is barrel shaped with shiny black seeds (Heil 1979; Heil et al. 1981; Welsh et al. 1987).

P. winkleri occurs in six populations that total about 3,500 plants (Heil 1984; Neese 1987; Kass 1990; U.S Fish and Wildlife Service 1990). *P. winkleri* is a plant of *Atriplex* (saltbush)-dominated desert shrub communities, and it usually grows on the tops and sides of rocky alkaline hills or benches (Heil 1984). It grows in soils that have a silt or clay component and that are primarily derived from the Dakota geologic formation (Neese 1987).

The range of *P. winkleri* forms a narrow arc which extends from Notom in central Wayne County to Hartnet Draw in southwestern Emery County, Utah. The range of the plant extends for about 48 km (30 mi), but Service biologists estimate that the actual area occupied by the plant is about 80 hectares (200 acres). About 500 plants grow on Capitol Reef National Park (Park), but the remainder grow on lands managed by the Bureau of Land Management (BLM) that lie just east of the Park.

The range of *P. winkleri* approaches populations of the listed endangered cactus *P. despainii* (San Rafael cactus). *P. despainii* and *P. winkleri* are presently classified as separate species, but phylogenetically, these two plants may be closely related. It is possible that future taxonomic revisions of *Pediocactus* may classify both plants as subspecies of *P. winkleri*, the first of the two species to be described in the scientific literature (Heil 1979; Welsh and Goodrich 1980). However, attempts to artificially hybridize the two species in domestic gardens have not been successful (Kenneth Heil, San Juan College, New Mexico, pers. comm., 1993), suggesting that the present

taxonomic classification of this species is accurate.

In this proposed listing action, the Service recognizes *P. winkleri* as a species distinct from *P. despainii*. If these species are later recognized as subspecies, their designation as endangered species will remain valid because section 3(15) of the Endangered Species Act (Act), as amended (16 U.S.C. 1531 *et seq.*), permits the listing of subspecies.

Federal Government actions relating to this species began with section 12 of the Endangered Species Act of 1973 which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered endangered, threatened, or extinct. This report, House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) formally accepting the report as a petition under section 4(c)(2) of the Act (now section 4(b)(3)) and acknowledging its intention to review the taxa for possible listing.

P. winkleri was not included in the 1975 notice, but it was included as a new candidate in a notice published in the **Federal Register** of December 15, 1980 (45 FR 82480). *P. winkleri* was included as a category 1 species, i.e., it was considered a species for which the Service had substantial information on its biological vulnerability and threats to its existence to support a proposal to list it as an endangered or threatened species.

Section 4(b)(3)(B) of the 1982 amendments to the Act required the Secretary of the Interior to make a finding within 1 year of receiving a listing petition as to whether the listing is warranted, warranted but precluded by other pending proposals of higher priority, or not warranted. In the case of a "warranted but precluded" finding, another finding is required each year thereafter until the petitioned taxa are either proposed for listing or a final "not warranted" finding is made.

Section 2(b)(1) of the 1982 amendments further required that all petitions pending as of October 13, 1982, be treated as having been newly submitted on that date. To facilitate making the necessary annual "warranted but precluded" findings on several thousand plant taxa, the Service made an administrative decision to treat all the plant candidates in category 1 and category 2 at that time as if their listings had been petitioned on October 13, 1982. This included species such as *P. winkleri* which were included as candidates in the 1980 notice of review but which were never the subject of a petition. As a result of the administrative decision to treat these species as petitioned, *P. winkleri* was included in annual warranted but precluded petition findings, the first published on October 13, 1983, and then in each successive year thereafter.

In a 1983 supplemental notice (48 FR 53640), the Service changed the status of *P. winkleri* from category 1 to category 2 as a result of a careful review of status information. Category 2 comprises taxa for which the Service has information indicating the appropriateness of a proposal to list the taxa as endangered or threatened, but for which more substantial data are needed on biological vulnerability and threats.

On September 27, 1985, the Service published a notice of review (50 FR 39526) replacing the 1980 notice and its 1983 supplement. This notice of review included *P. winkleri* as a category 1 species, a change resulting from a status survey for *P. winkleri* (Heil 1984) which documented vulnerability and threats to this species. The Service published its last notice of review on February 21, 1990 (55 FR 6184), which included *P. winkleri* as a category 1 species.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *P. winkleri* Heil (Winkler cactus) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The small, restricted populations of *P. winkleri* make it highly vulnerable to human-caused environmental disturbances. Although the exact size of historical range of this species is unknown, its known habitat has been adversely affected by off-road vehicles and trampling by livestock (Heil 1984, 1987; Neese 1987; Bruce MacBryde, U.S. Fish and Wildlife Service, pers. comm., 1990). The plant shrinks into the ground during portions of the year, and this shrinking affords it some protection from light trampling by humans and soft-wheeled vehicles. However, the plant forms buds at ground level in autumn that persist over the winter and become flowers the following spring (Heil et al. 1981). These flowering buds are very vulnerable to surface disturbance, and if damaged, reproductive capacity of the plant is lost or diminished.

One of the larger populations of *P. winkleri* is located on sparsely vegetated slopes of the oystershell reef near Notom, Utah, an area used as an off-road vehicle recreation area. Off-road vehicle use and livestock trampling has destroyed plants in this population and has had negative impacts on its habitat within the Park (Heil 1984, Heil 1987, Neese 1987). The remaining habitat of *P. winkleri* outside of the Park also is experiencing impacts from off-road vehicle activity.

Livestock trampling has affected all the *P. winkleri* populations in and near the Park (the Park is not closed to livestock grazing). Human foot traffic and vehicular traffic off established roadways within the Park also is affecting the *P. winkleri* population there (Heil 1987).

P. winkleri habitat may contain uranium ore and gypsum deposits. Surface disturbance by annual assessment work on mineral claims for uranium, gypsum, and other minerals has the potential for adversely impacting this species and its habitat. In addition, mineral extraction poses a great threat to the plant in some areas.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

P. winkleri is an attractive small cactus, especially when it is in flower. It is sought by collectors, and it has been commercially exploited for horticultural purposes. In the Notom area, it is estimated that about 80 percent of the plants have been taken by plant collectors in the last 10 years.

Cactus collectors are very active in the Colorado Plateau, and they often go from the habitat of one species of *Pediocactus* to the next so they can collect a complete set (Heil, pers. comm., 1992; McBryde, pers. comm., 1992).

C. Disease or Predation

The effect of livestock grazing on *P. winkleri* is unknown. Because of its small size and the shortness of its spines, this species of cactus is less protected from animals than other, spinier cactus species. The effects of livestock grazing on desert vegetation may produce indirect impacts on *P. winkleri* populations. This species is susceptible to infestations of beetle larvae (Service 1990).

D. The Inadequacy of Existing Regulatory Mechanisms

No Federal or State laws or regulations directly protect *P. winkleri* or its habitat. This plant is found scattered over desolate country, and this makes protecting it from collectors very difficult, even in the Park. Livestock grazing continues in the Park and in other areas with a resultant continued loss of plants.

The species is listed in Appendix 1 of The Convention of International Trade in Endangered Species of Wild Fauna and Flora (CITES). CITES import permits and export permits are required for international trade in Appendix I species and permits generally are not allowed for primarily commercial shipments.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

The very low population size and restricted habitat of *P. winkleri* makes the species vulnerable to human disturbances to its habitat. These disturbances also can exacerbate catastrophic climatic disturbances to the plant. It is not known if its populations are at levels which would ensure their continued long-term existence. However, its numbers are sufficiently small that future losses may soon result in loss of population viability.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *P. winkleri* as an endangered species. In making this determination, the Service has decided that listing this species as endangered would be more appropriate than listing this species as threatened because *P. winkleri* is in danger of extinction throughout all or a significant portion of its range. With less than 3,500 known plants in 6 known locations, further taking by plant collectors could significantly lower its numbers. Surface disturbances are impacting the ecosystem in which the species occurs and are likely to increase in the future, especially recreational off-road vehicle use. The plant is very rare, and only about 500 plants occur within the Park, where it is subject to general collecting prohibition. For the reasons given below, it would not be prudent to propose critical habitat.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary of the Interior propose critical habitat at the time a species is proposed to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *P. winkleri*.

As noted in Factor B, "Summary of Factors Affecting the Species", *P. winkleri* is threatened by taking, an activity only regulated by the Act with respect to endangered plants in cases of removal and reducing to possession from areas under Federal jurisdiction; malicious damage or destruction to endangered plants on Federal lands; and removal, cutting, digging up, or damaging or destroying of endangered plants in knowing violation of any State law or regulation, including State criminal trespass law. Such provisions are difficult to enforce, and publication of critical habitat descriptions and maps (a requirement if critical habitat is determined) would make *P. winkleri* more vulnerable to taking and increase enforcement problems. Therefore, it would not be prudent to determine critical habitat for *P. winkleri*.

All appropriate parties have been notified of the location and importance of protecting habitat of this species. Protection of *P. winkleri* habitat will be addressed through the recovery process and through Section 7(a) of the Act, as amended, which requires Federal Agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal Agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal Agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal Agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal Agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal Agency must enter into formal consultation with the Service.

Most of the population of *P. winkleri* is on Federal lands that are managed by the BLM, with the remainder on the Park, which is managed by the National Park Service. Both of these Federal Agencies would be responsible for insuring that all activities and actions on lands they manage are not likely to jeopardize the continued existence of *P. winkleri*.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general prohibitions and exceptions that apply to all endangered plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. In addition, the Act prohibits the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying endangered plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances.

Because of horticultural interest in *P. winkleri*, trade permits may be sought but few, if any, trade permits for plants of wild origin would ever be issued. Plants of cultivated origin are available and permits may, under certain circumstances, be issued for trade in those. Requests for copies of the regulations on listed plants and inquiries regarding prohibitions and permits may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive,

room 432, Arlington, Virginia 22203, telephone (703) 358–2104.

On July 29, 1983, *P. winkleri* was included in Appendix I of CITES. The effect of this action is that both export and import permits are generally required before international shipment of this species may occur. Such shipment is strictly regulated by CITES party nations to prevent effects that may be detrimental to the species' survival. Generally, the import or export cannot be allowed if it is for primarily commercial purposes. If plants are certified as artificially propagated, however, international shipment requires only export documents under CITES, and commercial shipments may be allowed.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible.

Therefore, comments or suggestions regarding any aspect of this proposal are hereby solicited from the public, other governmental agencies, the scientific community, industry, or other interested parties. Comments are particularly sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *P. winkleri*;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulation on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service, Salt Lake City, Utah (see **ADDRESSES** section above).

National Environmental Policy Act

The Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Author

The primary author of this proposed rule is John L. England, Botanist, U.S. Fish and Wildlife Service, Salt Lake City, Utah, telephone (801) 975–3630 (see **ADDRESSES** above).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. § 17.12(h) is amended by adding the following, in alphabetical order under Cactaceae, to the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
• •	•	•	•	•	•	
Cactaceae—Cactus family:						
• •	•	•	•	•	•	
Pediocactus winkleri	Winkler cactus	U.S.A. (UT)	E	.....	NA	NA
• •	•	•	•	•	•	

Dated: September 24, 1993.
Richard N. Smith,
Acting Director, Fish and Wildlife Service.
[FR Doc. 93–24384 Filed 10–5–93; 8:45 am]
BILLING CODE 4310–55–P

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50 CFR Part 17

RIN 1018–AC00

Endangered and Threatened Wildlife and Plants; Public Hearing and Extension of Public Comment Period on Proposed Endangered Status for Four Plants and Threatened Status for Four Plants From Vernal Pools From the Central Valley of California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public hearing and extension of public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service), pursuant to the Endangered Species Act of 1973, as amended (Act), announces a public hearing and extension of comment period on the proposed determination of endangered status for *Orcuttia inaequalis* (San Joaquin Valley Orcutt grass), *Orcuttia pilosa* (hairy Orcutt grass), *Orcuttia viscida* (Sacramento Orcutt grass), and *Tuctoria greenei* (Green's tuctoria) and threatened status for *Castilleja campestris* ssp. *succulenta* (fleshy owl's-clover), *Chamaesyce hooveri* (Hoover's spurge), *Neostapfia colusana* (Colusa grass), and *Orcuttia tenuis* (slender Orcutt grass). During the public hearing, the Service will allow all interested parties to present oral testimony on the proposed rule. Written comments on the proposal will be accepted until November 18, 1993.

DATES: The public hearing will be held from 6 to 8 p.m. on November 3, 1993, in Sacramento, California. The Service will accept written comments on the proposed rule until November 18, 1993. Any comments received after the closing date may not be considered in the final decision on this proposal.

ADDRESSES: The public hearing will be held at the Hyatt Regency Hotel, 1209 "L" Street, Sacramento, California. Written comments and materials concerning this proposal should be sent to the Sacramento Field Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, room E–1803, Sacramento, California 95825–1846. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ken Fuller (see **ADDRESSES** section) or at 916–978–4866.

SUPPLEMENTARY INFORMATION:

Background

Castilleja campestris ssp. *succulenta*, *Chamaesyce hooveri*, *Neostapfia colusana*, *Orcuttia inaequalis*, *Orcuttia pilosa*, *Orcuttia tenuis*, *Orcuttia viscida*, and *Tuctoria greenei* are annual species restricted to vernal pools and swales in the Central Valley of California. These 8 plants are found sporadically in 14 counties. These plants face ongoing threats from one or more of the following: commercial, residential or agricultural development, flood control projects, hydrological changes in vernal pool and swale habitat, overgrazing, competition from nonnative weeds, landfill projects, road developments, and inadequate regulatory mechanisms. A proposal to list these eight plants was published in the **Federal Register** on August 5, 1993 (58 FR 41700).

Section 4(b)(5)(E) of the Act (16 U.S.C. 1531 *et seq.*) requires that a public hearing be held if it is requested within 45 days of the publication of the proposed rule. In response to the proposed rule, William Hazeltine, Environmental Consultant, Oroville, California, requested a public hearing in a letter dated August 16, 1993. As a result, the Service has scheduled a public hearing on November 3, 1993, from 6 to 8 p.m. at the Hyatt Regency Hotel, in Sacramento, California. Parties wishing to make statements for the record should bring a copy of their statements to the hearing. Oral statements may be limited in length, if the number of parties present at the hearing necessitates such a limitation. There are no limits to the length of written comments or materials presented at the hearing or mailed to the Service. Written comments carry the same weight as oral comments. The comment period closes on November 18, 1993. Written comments should be submitted to the Service in the **ADDRESSES** section.

Author

The primary author of this notice is Ken Fuller (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1361–1407; 16 U.S.C.. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Dated: September 28, 1993.
William E. Martin,
Acting Regional Director.
[FR Doc. 93–24499 Filed 10–5–93; 8:45 am]
BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 641

[Docket No. 93094–3248; ID 090993A]

RIN 0648–AE58

Reef Fish Fishery of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: NMFS issues this proposed rule to implement Amendment 5 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). Amendment 5 would impose a 3-year moratorium on additional participants in the Gulf of Mexico reef fish fishery who may use fish traps; require each fish trap or string of traps to be marked with a floating buoy; require that fish traps be returned to port at the completion of the tending vessel's trip; increase the minimum allowable size of red snapper, currently 13 inches (33.0 centimeters (cm)), in one-inch increments every other year commencing January 1, 1994, until the minimum allowable size is 16 inches (40.6 cm), effective January 1, 1998; require all finfish, other than bait and oceanic migratory species, possessed in the exclusive economic zone (EEZ) to be maintained with head and fins intact through landing; close Riley's Hump, southwest of Dry Tortugas, Florida, to all fishing during May and June each year; create special management zones (SMZs) in the EEZ off Alabama in which fishing for reef fish would be limited to hook-and-line gear having no more than three hooks per line and spearfishing gear; and add the establishment or modification of SMZs, and the gear allowed in each, to the management measures that may be adjusted via a framework procedure.

In addition, NMFS proposes to amend the regulations to add the boundary between the Gulf of Mexico EEZ and the Atlantic Ocean EEZ; remove the procedures for obtaining permits by persons fishing from structures; clarify

the provisions relating to endorsements on permits; remove the specific data to be submitted on written reports; prohibit the attempted purchase, barter, trade, or sale of reef fish caught under the bag limits; add two general prohibitions that are necessary for effective enforcement; clarify an exception to the requirement for fish to be maintained with head and fins intact when such reef fish are held on board the harvesting vessel for consumption at sea; remove unnecessary language regarding the conditions for possessing more than one day's bag limit; clarify that the bag limits for reef fish may apply not only aboard a vessel that fishes in the EEZ, but also aboard a fishing vessel that possesses reef fish in the EEZ; and otherwise correct and clarify the regulations and conform them to current usage. The intended effects of this rule are to reduce fishing mortality of the reef fish resources so that they may be protected and rebuilt, to enhance enforceability of the regulations, and to otherwise clarify the regulations.

DATES: Written comments must be received on or before November 15, 1993.

ADDRESSES: Comments on the proposed rule should be sent to Robert Sadler, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702.

Requests for copies of Amendment 5, which includes a supplemental environmental impact statement/regulatory impact review/initial regulatory flexibility analysis (SEIS/RIR/IRFA) on this action, and for copies of a minority report submitted by four members of the Gulf of Mexico Fishery Management Council (Council), should be sent to the Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, suite 331, Tampa, FL 33609.

FOR FURTHER INFORMATION CONTACT: Robert Sadler, 813–893–3161.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the FMP. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 641 under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

Management Measures in Amendment 5

Moratorium on Fish Trapping

The use of fish traps in the Gulf of Mexico may be expanding, in terms of number of participants and geographical range, with little or no data available to assess catch composition or ecological effects of trap deployment. Although the number of reef fish vessels is temporarily capped by the current moratorium on new permits in the fishery, Amendment 5 proposes to freeze participation in the fish trap part of the fishery at current levels and participants until the Council obtains better information on the trap fishery's ecological impacts.

Amendment 5 proposes that a fish trap endorsement on a reef fish permit not be issued or renewed unless the vessel for which the endorsement is requested and its current owner have a record of the landing of reef fish from fish traps in the EEZ of the Gulf of Mexico during 1991 or 1992, as reported on fishing vessel logbooks received by the Science and Research Director on or before November 19, 1992. NMFS' permit data indicate that of the approximately 283 vessels that hold permits that authorize the use of fish traps, approximately 128 had reported landings of reef fish from fish traps before the cutoff date, and therefore would be able to continue to fish traps if Amendment 5 is implemented. Fish trap endorsements would not be transferable upon sale of the permitted vessel, but an owner could transfer an endorsement to another vessel owned by the same entity.

Buoys on Fish Traps

Currently, fish traps may be marked by a buoy that is submerged until automatically released with a timed pop-up device. The use of such devices makes it difficult to enforce the prohibition on use of fish traps in the stressed area. Amendment 5 would require a surface buoy for each trap, or each end of a string of traps, thus enhancing enforcement and surveys of fish trapping effort.

Tending Traps

Currently, the construction requirements for fish traps and the limitation of 100 traps per vessel are difficult to enforce, in part because traps may be left at sea between trips. In addition, leaving traps at sea between trips contributes to lost traps and "ghost fishing" of such traps. To address these problems, Amendment 5 would require that all traps be returned to port on completion of each trip.

Increase Red Snapper Minimum Size Limit

Red snapper are currently overfished and are under a rebuilding program. To assist in the rebuilding program and to increase the yield per recruit, Amendment 5 proposes incremental increases in the minimum allowable size limit for red snapper, commencing January 1, 1994. At that time, the current minimum size limit of 13 inches (33.0 cm), total length, would be increased to 14 inches (35.6 cm). On January 1, 1996, the minimum size limit would be increased to 15 inches (38.1 cm), and on January 1, 1998, it would be increased to 16 inches (40.6 cm).

The three-step incremental schedule for increasing the minimum size limits would provide advance notice for planning purposes and would minimize adverse socioeconomic impacts to the commercial and recreational fishing sectors. There were relatively strong year classes of red snapper in 1989 and 1990. Fish in both of these year classes will be above the increased minimum allowable size limits proposed in Amendment 5. Accordingly, the proposed increases are not likely to prevent harvest of total allowable catches in 1994 and succeeding years.

Head and Fins Intact

Minimum size limits are in effect for certain species of reef fish. Minimum size limits are in terms of total length, except for amberjack, which is in terms of fork length. In either case, head and caudal fin must be attached in order to determine compliance with the minimum size limits. Accordingly, the regulations require that a reef fish for which there is a minimum size limit must be maintained through landing with head and fins intact.

The head and fins are being removed from some reef fish that are subject to minimum size limits, and such reef fish are being mixed with other finfish for which there are no size limits. Since species identification is difficult when head and fins have been removed, enforcement of the minimum size limits is adversely affected and quota monitoring may be adversely affected.

Amendment 5 would require that all finfish possessed in the EEZ, and all finfish taken from the EEZ, be maintained with head and fins intact through landing. Thus, species subject to a minimum size limit may be ascertained and length measurements taken when appropriate. Amendment 5 proposes exceptions for the oceanic migratory species, namely, billfish, shark, swordfish, and tuna species, all of which are regulated by NMFS, and for bait. However, the regulations at 50 CFR 644.21(c) require that billfish, that is, sailfish, white marlin, blue marlin, and longbill spearfish, must have head, fins, and bill intact through landing. Accordingly, in this proposed rule, only shark, swordfish, tuna species, and bait are excepted from the requirement that all finfish must be maintained with

head and fins intact through landing. Shark, swordfish, and tuna species are readily distinguishable, and most commercial bait is in strips or pieces. Thus, these specific exceptions are not expected to cause problems ascertaining the species subject to minimum size limits.

Mutton Snapper Spawning Aggregation Closure

Schools of medium-sized mutton snapper aggregate for spawning in Riley's Hump, an area in the Gulf of Mexico EEZ approximately 60 miles west of Key West, Florida. The peak spawning months are May and June. In that area during spawning, the species is especially vulnerable to harvest. Targeting mutton snapper in other areas during their spawning aggregations is believed to have led to a decline in abundance of mutton snapper in those areas.

In response, the Gulf Council is proposing a closure of the Riley's Hump mutton snapper aggregation area during May and June of each year. Closure of spawning aggregation areas has been effective in managing other fisheries. It has been implemented in the reef fish fishery off Puerto Rico and the U.S. Virgin Islands.

Special Management Zones (SMZs) off Alabama

The Alabama Department of Conservation and Natural Resources has a Corps of Engineers permit for three offshore tracts located in the EEZ generally southeast of the mouth of Mobile Bay. Under the permit, low profile, unmarked artificial reefs (ARs) may be constructed within the tract. Recreational fishermen, charter vessel fishermen, and a few full-time commercial fishermen have established a total of more than 5,000 individual ARs in the tracts. Sixty to 70 percent of the ARs have been constructed by persons in the charter vessel or headboat business. In addition, the State has established ARs consisting of liberty ships, barges, bridge rubble, and toppled oil platforms. The tracts total approximately 820 square miles (2124 square kilometers (km)), composed of Tract A, 100 square miles (259 square km), Tract B, 360 square miles (932 square km), and Tract C, 360 square miles (932 square km).

Fishing on the ARs has traditionally been by rod and reel. More recently, commercial bandit rigs have been used. Except for the southern tip of Tract C, the tracts are inside the longline and buoy gear restricted area, so that such gear may not be used to fish for reef fish in almost all of the tracts.

During 1992, when a 1,000-pound (453.6-kg) trip limit applied to the commercial harvest of red snapper, numerous vessels with bandit rigs, and some with jigging rigs, reportedly harvested red snapper from the ARs in these tracts. Presumably, these vessels targeted the ARs because of their proximity to ports, which allowed more frequent trips during the short period that the trip limit was in place. Red snapper trip limits were utilized in 1993 and will be in effect in 1994.

The Council determined that the ARs cannot support a major commercial effort, such as occurred in 1992, but can support small, localized commercial effort by the fishermen who contributed to the construction of the ARs. These fishermen reportedly carefully regulate their harvest, fishing each reef at infrequent intervals to conserve the population and to allow fish to grow to larger sizes.

Amendment 5 states that the large number of ARs in the tracts, where natural reefs are virtually absent, and the fishing practices reportedly used on the ARs by persons constructing and fishing them, has resulted in a large standing stock of reef fish in the tracts, especially of red snapper. A study of the area suggests that the ARs are responsible for increased production of red snapper, rather than mere congregation. Other, more general, studies are inconclusive as to production versus congregation of reef fish on ARs. The reported conservative fishing practices on and increased production of the ARs are consistent with the Council's program for rebuilding the stock of red snapper.

Alabama requested that the tracts be given status as SMZs, consistent with the State's artificial reef program, with gear restrictions to prevent pulse overfishing under trip limits, i.e., unusually rapid rate of harvest. Accordingly, Amendment 5 proposes that the tracts be designated as SMZs in which fishing for reef fish is restricted to hook-and-line gear having no more than three hooks per line and spearfishing gear, considered to be the equivalent of one hook. Amendment 5 concludes that the proposed gear limitations in the SMZs would prevent pulse overfishing and would preserve the ARs for the use of the fishermen for whom they were constructed.

Amendment 5 also proposes to modify the seaward boundary of the longline and buoy gear restricted area so that all of Tract C is included in the restricted area. Longline and other gear with more than three hooks per line would be allowed in the SMZs to fish for species other than reef fish, but persons aboard vessels using such gear would be limited to incidental catches of reef fish not exceeding the bag limits for those reef fish for which there are bag limits and to 5 percent of all fish aboard for other reef fish. Such limitations in the SMZs are consistent with the limitations currently applicable to the use of longline or buoy gear in other parts of the longline and buoy gear restricted area.

The coordinates of the SMZs proposed in this rule differ slightly from those contained in Amendment 5. The original Alabama AR tracts were created in accordance with Corps of Engineers permits that specified the tracts in terms of loran readings. The conversion of those loran readings to geographical coordinates has changed based on survey results. The coordinates in this proposed rule are the original loran readings as plotted on the current chart, and were determined by the Coast and Geodetic Survey, National Ocean Service, NOAA. The coordinates in this proposed rule have been coordinated with the Alabama Department of Conservation and Natural Resources.

Framework Procedure for Future SMZs

Amendment 5 proposes the following framework regulatory amendment procedure for designation of future SMZs. The intent is to provide an abbreviated process whereby SMZs may be established on a more timely basis.

The holder of a Corps of Engineers permit for an AR or fish attraction device (FAD) may request the Council to designate the AR or FAD, and an appropriate surrounding area, as an SMZ in which fishing gear is regulated so as to be compatible with the most effective use of the area. A monitoring team, composed of members of the Council staff, members of the Fishery Operations Branch, Southeast Regional Office, and the Southeast Fisheries Science Center, NMFS, and other members appointed by the Council, would evaluate and report each request considering the following criteria: (1) Fairness and equity of proposed rules; (2) conservation of the resource; (3) avoidance of excessive shares; (4) consistency with the objectives of the FMP, the Magnuson Act, and other applicable law; (5) consideration of the natural bottom in and surrounding potential SMZs and impacts on historical uses; (6) environmental impacts and cumulative impacts on the environment of each SMZ, after consideration of the environmental assessment prepared by the Corps of Engineers in issuing the permit for the reef site.

The Council's Advisory Panel (AP) and/or Scientific and Statistical Committee (SSC) would review the monitoring team's report and associated documents and advise the Council. The Council Chairman could also schedule one or more public hearings near the area affected.

After reviewing the monitoring team's report, supporting data, AP/SSC advice, public comments, and other relevant information, the Council could recommend to the Director, Southeast Region, NMFS (RD), that an SMZ with appropriate restrictions on fishing be approved. Such a recommendation would be accompanied by all relevant background data.

If the RD rejected the Council's recommendation, he would provide the Council with his reasons for rejection. If the RD concurred with the Council's recommendation, he would draft and forward an appropriate proposed rule for publication in the **Federal Register**. A reasonable period for public comment, consistent with the urgency of the need to implement the management measures, would be provided before final action was taken.

Availability of Amendment 5

Additional background and rationale for the measures discussed above are contained in Amendment 5, the availability of which was announced in the **Federal Register** (58 FR 48502, September 16, 1993).

Comments Requested

While NMFS is inviting comments on all of the measures in Amendment 5, comments are specifically invited on the following concerns which have been raised regarding the proposed SMZs. (1) What are the effects of establishing areas totaling approximately 820 square miles (2,124 square km) in which fishing under the commercial allocations for reef fish would be severely limited? (2) What are the effects of the three hooks per line limit on recreational and commercial user groups? (3) What are the effects on the rebuilding plan of increasing the availability of red snapper to the recreational fishery, particularly the recreational fishery off Alabama? (4) Are the proposed SMZs consistent with the criteria under the proposed framework procedure for adding SMZs and, if not, should they be consistent?

Minority Report

A minority report signed by four Council members raised numerous objections to most of the management measures in Amendment 5 based on alleged unfairness to and negative impacts on the commercial fishery. Copies of the minority report are available (see **ADDRESSES**). The final rule will address the concerns of the minority report and respond to comments on the proposed rule received by NMFS during the 45-day public comment period.

Additional Measures Proposed by NMFS

In addition to the measures contained in Amendment 5, NMFS proposes the following changes.

For ease of reference, NMFS proposes to include in the purpose and scope section of the regulations (50 CFR 641.1) the boundary between the Gulf of Mexico EEZ and the Atlantic Ocean EEZ. Specification of the boundary is essentially as it is codified at 50 CFR 601.11(c). In addition, that portion of the boundary near Dry Tortugas, and the extent of state waters around Dry Tortugas, would be added to figures 4 and 5, which show the seaward limits of the stressed area and of the longline and buoy gear restricted area, respectively.

NMFS has not issued any permits for fishing from structures. Under the current moratorium on reef fish permits, and the moratorium on fish trap endorsements proposed in Amendment 5, no permits for fishing from structures would be issued. Accordingly, NMFS proposes to remove from the regulations the provisions for permits for persons fishing from structures.

For uniformity of treatment, NMFS proposes to make the provisions regarding applications for, display of, and revocation of permits applicable to endorsements on such permits.

For simplicity, NMFS proposes to remove from the regulatory text specification of data that are to be submitted in written reports by owners/operators of fishing vessels and by dealers. The specific data to be reported are contained with the required reporting forms.

As an aid to enforcement of the current prohibition on purchase, barter, trade, or sale of reef fish possessed under the bag limits, NMFS proposes also to prohibit attempts to purchase, barter, trade, or sell such reef fish.

NMFS proposes to add prohibitions regarding (1) false statements to an authorized officer concerning the taking, catching, harvesting, landing, purchase, sale, possession, or transfer of a reef fish; and (2) interference, obstruction, delay, or prevention of an investigation, search, seizure, or disposition of seized property in connection with enforcement of the Magnuson Act. These additions would aid in enforcement of the regulations.

In the preamble to the final rule that implemented the requirement that a reef fish be maintained with head and fins attached through landing, NMFS stated, "The regulations are not intended to preclude consumption aboard a vessel of legal-sized reef fish taken under the bag limits." (55 FR 2083, January 22, 1990). NMFS has found that this exception is not clearly stated in the regulations. Accordingly, NMFS proposes that legal-sized finfish that do not have head and fins intact may be possessed in the EEZ aboard the harvesting vessel in a quantity not exceeding any applicable bag limit and not exceeding 1.5 pounds (680 gm) per person on board, providing the vessel is equipped to cook such reef fish on board. NMFS believes that (1) 1.5 pounds per person is sufficient to provide one meal for each person on board; and (2) this clarification is in accord with the intent of the Council, as expressed in Amendment 1 to the FMP.

In the charter vessel and headboat exception to the general rule prohibiting possession of more than one daily bag limit of reef fish (50 CFR 641.24(c)), there is a condition that the charter vessel or headboat must have two licensed operators aboard "as required by the U.S. Coast Guard for trips of over 12 hours." The requirement for two licensed operators aboard is explicitly stated in Coast Guard regulations that are applicable to some, but not all, of the vessels included in the terms "charter vessel" and "headboat" in these regulations. The Council, however, has concluded that having two licensed operators aboard on trips of over 24 hours is an appropriate condition for the exception. Accordingly, the phrase "as required by the U.S. Coast Guard for trips of over 12 hours" is proposed to be removed.

To ensure uniform enforcement of the bag limits for reef fish, NMFS proposes to clarify that the limits apply not only to a person aboard a vessel that fishes in the EEZ, but also to a person aboard a fishing vessel that possesses reef fish in the EEZ. This clarification would prevent a person aboard a fishing vessel from possessing reef fish in the EEZ under the guise of having caught them outside the EEZ, but would not prevent the possession of reef fish in the EEZ aboard a non-fishing vessel, such as a refrigerated transport carrying reef fish in interstate trade.

Classification

Section 304(a)(1)(D)(ii) of the Magnuson Act requires the Secretary of Commerce (Secretary) to publish

regulations proposed by a Council within 15 days of receipt of an FMP amendment and regulations. At this time, the Secretary has not determined that Amendment 5, which this proposed rule would implement, is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the data, views, and comments received during the comment period.

This proposed rule is exempt from the procedures of E.O. 12291 under section 8(a)(2) of that order. It is being reported to the Director, Office of Management and Budget, with an explanation of why it is not possible to follow the procedures of that order.

The Assistant Administrator for Fisheries, NOAA, has initially determined that this proposed rule is not a "major rule" requiring the preparation of a regulatory impact analysis under E.O. 12291. This proposed rule, if adopted, is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Council prepared a regulatory impact review (RIR) as part of Amendment 5, which concludes that this rule, if adopted, would have the effects summarized as follows. The requirement to return all fish traps upon completion of a trip would have a negative economic impact on trap fishermen and a positive effect on enforcement of the fish trap requirements that were established to conserve reef fish resources. The RIR does not reach a conclusion as to which is the larger effect. The proposed moratorium on fish trap permits is deemed to have zero short-term net economic effects. In the long term, the effects depend primarily on the moratorium's contribution to the Council's management programs currently under development, such as license limitation or limited entry. The proposed SMZs off Alabama would reduce net profitability of commercial vessels to an extent that would exceed the apparent gains to recreational vessels and, therefore, in the long term has potentially a negative economic outcome. The RIR also concludes that the small amount of effort that would be displaced by implementation of the SMZs would be more than compensated for by increased effort from the remaining users. The proposed framework procedure for establishing future SMZs in the Gulf of Mexico would have no measurable effects on fishery participants. Specific effects of future SMZs would be evaluated in accordance with the framework procedure. Requiring all finfish to be landed with heads and fins intact, increasing the size limit for red snapper, and closing Riley's Hump during the mutton snapper spawning season would most likely have small net positive benefits to society. Additional analysis and discussion are contained in the RIR, a copy of which is available (see **ADDRESSES**).

The Council prepared an initial regulatory flexibility analysis (IRFA) as part of the RIR, which concludes that, if implemented, the measures in this proposed rule, considered individually, would not have a significant economic impact on small entities, but, considered collectively, would have a significant economic impact on a substantial number of small entities. Additional analysis and discussion are contained in the IRFA, a copy of which is available (see **ADDRESSES**).

The Council prepared a final supplemental environmental impact statement (SEIS) for Amendment 5 that discusses the impacts on the environment of the reef fish fishery and the impacts that would result from implementation of the amendment. The final SEIS will be filed with the Environmental Protection Agency (EPA). EPA will publish a notice of availability of the final SEIS for a 30-day comment period ending before a final agency decision on approving Amendment 5.

The Council has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of Alabama, Florida, Louisiana, and Mississippi. Texas does not have an approved coastal zone management program. These determinations have been submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act.

This proposed rule involves, but does not change, collection-of-information requirements subject to the Paperwork Reduction Act, specifically, fishing vessel reports, fishing vessel permits, and dealer/processor reports. These requirements were previously approved by the Office of Management and Budget under OMB Control Numbers 0648–0016, 0648–0205, and 0648–0013, respectively. The public reporting burdens for these collections of information, estimated to average 10–18, 15, and 10 minutes per response, respectively, are not changed by this rule. Send comments regarding this burden or any other aspect of these collections of information, including suggestions for reducing this burden, to Edward E. Burgess, Southeast Region, NMFS (see **ADDRESSES** above), and to the Office of Information and Regulatory Affairs, Office of Management and Budget, (Attention NOAA Desk Officer), Washington, DC 20503.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 641

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 30, 1993.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 641 is proposed to be amended as follows:

PART 641—REEF FISH FISHERY OF THE GULF OF MEXICO

1. The authority citation for part 641 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 641.1, paragraph (b) is revised to read as follows:

§ 641.1 Purpose and scope.

* * * * *

(b) This part governs conservation and management of reef fish in the Gulf of Mexico EEZ, except that §§ 641.5 and 641.25 also apply to fish from adjoining state waters. The boundary between the Gulf of Mexico EEZ and the Atlantic Ocean EEZ begins at the intersection of the outer boundary of the EEZ and 83°00′W. longitude, proceeds north to 24°35′N. latitude (near Dry Tortugas), east to Marquesas Key, then through the Florida Keys to the mainland.

3. In § 641.4, paragraph (b)(2)(xiv) is removed; paragraphs (a)(1), (a)(4), (b)(1), (b)(2) introductory text, (b)(2)(xi), (b)(2)(xiii)(B), (b)(2)(xiii)(C), (h), (i), and (k) are revised; and new paragraph (o) is added to read as follows:

§ 641.4 Permits and fees.

(a) * * *

(1) As a prerequisite to selling reef fish and to be eligible for exemption from the bag limits specified in

§ 641.24(b), an owner or operator of a vessel that fishes in the EEZ must obtain an annual vessel permit.

* * * * *

(4) To possess or use a fish trap in the EEZ, an annual vessel permit for reef fish and a fish trap endorsement must be issued to the vessel and must be on board the vessel. In addition, a color code for marking the vessel and trap buoys must be obtained from the Regional Director.

* * * * *

(b) * * *

(1) An application for a vessel permit must be submitted and signed by the owner or operator of the vessel. The application must be submitted to the Regional Director at least 30 days prior to the date on which the applicant desires to have the permit made effective.

(2) A permit applicant must provide the following information:

* * * * *

(xi) A sworn statement by the applicant certifying that more than 50 percent of his or her earned income was derived from commercial fishing, that is, sale of the catch, or charter or headboat operations, during either of the two calendar years preceding the application;

* * * * *

(xiii) * * *

(B) The applicant's desired color code for use in identifying his or her vessel and buoys (white is not an acceptable color code); and

(C) A statement that the applicant will allow an authorized officer reasonable access to his or her property (vessel, dock, or structure) to examine fish traps for compliance with these regulations.

* * * * *

(h) *Display.* A permit or endorsement issued under this section must be carried on board the fishing vessel and such vessel must be identified as provided for in § 641.6. The operator of a fishing vessel must present the permit or endorsement for inspection upon request of an authorized officer.

(i). *Sanctions and denials.* A permit or endorsement issued pursuant to this section may be revoked, suspended, or modified, and a permit or endorsement application may be denied, in accordance with the procedures governing enforcement-related permit sanctions and denials found at subpart D of 15 CFR part 904.

* * * * *

(k) *Replacement.* A replacement permit or endorsement may be issued. An application for a replacement permit or endorsement will not be considered a new application. A fee, the amount of which is stated with the application form, must accompany each request for a replacement.

* * * * *

(o) *Moratorium on fish trap endorsements.* The provisions of this paragraph (o) are effective for 3 years commencing on the effective date of this rule.

(1) A fish trap endorsement will not be issued or renewed unless the vessel for which the endorsement is requested and its current owner have records of landings of reef fish from fish traps in the EEZ of the Gulf of Mexico during 1991 or 1992, as reported on fishing vessel logbooks received by the Science and Research Director on or before November 19, 1992, except as provided in paragraph (o)(2) of this section.

(2) An owner of a vessel with a fish trap endorsement may transfer the endorsement to another vessel owned by the same entity by returning the existing endorsement with an application for an endorsement for the replacement vessel.

(3) A fish trap endorsement is not transferable upon purchase of a vessel with a fish trap endorsement, the provisions of paragraph (1)(3) of this section regarding purchase of a vessel with a reef fish permit notwithstanding.

(4) A fish trap endorsement that is not renewed or that is revoked will not be reissued.

4. In § 641.5, paragraphs (b), (c), (d), (f), (g), and (i) are revised to read as follows:

§ 641.5 Recordkeeping and reporting.

* * * * *

(b) *Vessels fishing with fish traps.* The owner or operator of a vessel for which a fish trap endorsement has been issued under § 641.4, or the owner or operator of a vessel that uses a fish trap in adjoining state waters, must maintain a fishing record on a form available from the Science and Research Director. These forms must be submitted to the Science and Research Director so as to be received not later than 7 days after the end of each fishing trip. If no fishing occurred during a month, a report so stating must be submitted on one of the forms to be received not later than 7 days after the end of each month. Information to be reported is indicated on the form and its accompanying instructions.

(c) *Vessels not fishing with fish traps.* The owner or operator of a vessel for which a reef fish permit has been issued under § 641.4, or the owner or operator of a vessel that harvests reef fish in adjoining state waters, and who is selected by the Science and Research Director, must maintain a fishing record on a form available from the Science and Research Director. These forms must be submitted to the Science and Research Director on a monthly basis (or more frequently, if requested by the Science and Research Director) so as to be received not later than 7 days after the end of the reporting period. If no fishing occurred during a reporting period, a report so stating must be submitted on one of the forms to be received not later than 7 days after the end of the reporting period. Information to be reported is indicated on the form and its accompanying instructions.

(d) *Dealers and processors.* Any person who receives reef fish by way of purchase, barter, trade, or sale from a fishing vessel or person that fishes for or lands reef fish from the EEZ or adjoining state waters, and who is selected by the Science and Research Director, must maintain a record of reef fish received on a form available from the Science and Research Director. These forms must be submitted to the Science and Research Director on a monthly basis (or more frequently, if requested by the Science and Research Director) so as to be received not later than 7 days after the end of the reporting period. If no fish were received during a reporting period, a report so stating must be submitted on one of the forms to be received not later than 7 days after the end of the reporting period. Information to be reported is indicated on the form and its accompanying instructions.

* * * * *

(f) *Charter vessels.* The owner or operator of a charter vessel that fishes for or lands reef fish under the bag limits in the Gulf of Mexico EEZ or in adjoining State waters, and who is selected by the Science and Research Director, must maintain a daily fishing record for each trip on forms provided by the Science and Research Director. These forms must be submitted to the Science and Research Director on a weekly basis so as to be received not later than 7 days after the end of each week (Sunday). Information to be reported is indicated on the form and its accompanying instructions.

(g) *Headboats.* The owner or operator of a headboat that fishes for or lands reef fish under the bag limits in the Gulf of Mexico EEZ or in adjoining State waters, and who is selected by the Science and Research Director, must maintain a daily fishing record for each trip, or a portion of such trips as specified by the Science and Research Director, on forms provided by the Science and Research Director. These

forms must be submitted to the Science and Research Director at least monthly so as to be received not later than 7 days after the end of each month. Information to be reported is indicated on the form and its accompanying instructions.

* * * * *

(i) *Additional data and inspection.* Additional data will be collected by authorized statistical reporting agents, as designees of the Science and Research Director, and by authorized officers. An owner or operator of a fishing vessel and a dealer or processor are required upon request to make reef fish or parts thereof available for inspection by the Science and Research Director or an authorized officer.

5. In § 641.6, the section heading and paragraphs (a) through (e) are revised to read as follows:

§ 641.6 Vessel and gear identification.

(a) *Official number.* A vessel for which a permit has been issued under § 641.4 must display its official number—

(1) On the port and starboard sides of the deckhouse or hull and on an appropriate weather deck so as to be clearly visible from an enforcement vessel or aircraft;

(2) In block arabic numerals in contrasting color to the background;

(3) At least 18 inches (45.7 cm) in height for fishing vessels over 65 feet (19.8 m) in length and at least 10 inches (25.4 cm) in height for all other vessels; and

(4) Permanently affixed to or painted on the vessel.

(b) *Color code.* In addition, a vessel for which a fish trap endorsement has been issued under § 641.4 must display its color code—

(1) On the port and starboard sides of the deckhouse or hull and on an appropriate weather deck so as to be clearly visible from an enforcement vessel or aircraft;

(2) In the form of a circle at least 20 inches (50.8 cm) in diameter; and

(3) Permanently affixed to or painted on the vessel.

(c) *Duties of operator.* The operator of each fishing vessel specified in paragraph (a) or (b) of this section must—

(1) Keep the official number and color code clearly legible and in good repair; and

(2) Ensure that no part of the fishing vessel, its rigging, fishing gear, or any other material aboard obstructs the view of the official number and color code from an enforcement vessel or aircraft.

(d) *Fish traps.* A valid identification tag, available from the Regional Director, must be affixed to each fish trap used or possessed in the EEZ and to each fish trap aboard a vessel for which a fish trap endorsement has been issued under § 641.4. Such tag shows the specific tag number (normally 1 through 100, or less), the permit number, and the month and year through which the permit and tag are valid.

(e) *Buoys.* Each buoy used to mark a fish trap, or each end of a string of traps, must display the designated color code and permit number so as to be easily distinguished, located, and identified.

* * * * *

6. In § 641.7, paragraphs (a), (b), (g), (i), (k), (l), and (s) are revised and new paragraphs (w) through (aa) are added to read as follows:

§ 641.7 Prohibitions.

* * * * *

(a) Falsify information specified in § 641.4(b)(2) on an application for a vessel permit, or information on an application for an endorsement on a permit.

(b) Fail to display a permit or endorsement, as specified in § 641.4(h).

* * * * *

(g) Possess a finfish without its head and fins intact, as specified in § 641.21(b).

* * * * *

(i) Use or possess in the EEZ a fish trap that does not conform to the requirements for escape windows, panels and access doors with degradable fasteners, mesh sizes, and buoys, as specified in § 641.22 (b)(1), (b)(2), (b)(3), and (b)(7).

* * * * *

(k) Fish or possess in the EEZ more than 100 fish traps per vessel, as specified in § 641.22(b)(5).

(l) Pull or tend a fish trap, except during the hours specified in § 641.22(b)(6)(i); tend, open, pull, or otherwise molest or have in possession another person's fish trap, except as specified in § 641.22(b)(6)(ii); or fail to retrieve all fish traps and return them to port on each trip, as specified in § 641.22(b)(6)(iii).

* * * * *

(s) Purchase, barter, trade, or sell, or attempt to purchase, barter, trade, or sell, a reef fish possessed under the bag limits, as specified in § 641.24(g).

* * * * *

(w) Use or possess in the EEZ a fish trap without a fish trap endorsement, as specified in § 641.4(a)(4).

(x) During May and June, fish in Riley's Hump, as specified in § 641.23(c).

(y) In a special management zone, fish for reef fish with prohibited or unauthorized fishing gear, or, after having fished in a special management zone for species other than reef fish, exceed the possession and landing limits for reef fish; as specified in § 641.23(d).

(z) Make any false statement, oral or written, to an authorized officer concerning the taking, catching, harvesting, landing, purchase, sale, possession, or transfer of a reef fish.

(aa) Interfere with, obstruct, delay, or prevent by any means an investigation, search, seizure, or disposition of seized property in connection with enforcement of the Magnuson Act.

7. In § 641.21, paragraph (a) (1) and (b) are revised to read as follows:

§ 641.21 Harvest limitations.

(a) * * *

Red snapper—

(i) Effective through December 31, 1993—13 inches (33.0 cm) total length;

(ii) Effective January 1, 1994, through December 31, 1995—14 inches (35.6 cm) total length;

(iii) Effective January 1, 1996, through December 31, 1997—15 inches (38.1 cm) total length;

(iv) Effective January 1, 1998—16 inches (40.6 cm) total length.

* * * * *

(b) *Head and fins intact.* (1) Except as specified in paragraphs (b)(2), (b)(3), and (b)(4) of this section, a finfish possessed in the EEZ in the Gulf of Mexico must have its head and fins intact and such finfish taken from the EEZ must have its head and fins intact through landing. Such finfish may be eviscerated, gilled, and scaled but must otherwise be maintained in a whole condition.

(2) Shark, swordfish, and tuna species are exempt from the requirements of paragraph (b)(1) of this section.

(3) Bait is exempt from the requirements of paragraph (b)(1) of this section.

(i) For the purpose of this paragraph (b)(3), bait means—

(A) Packaged, headless fish fillets that have the skin attached and are frozen or refrigerated,

(B) Headless fish fillets that have the skin attached and are held in brine; or

(C) Small pieces no larger than 3 cubic inches (7.6 cubic cm) or strips no larger than 3 inches by 9 inches (7.6 cm by 22.9 cm) that have the skin attached and are frozen, refrigerated, or held in brine.

(ii) Paragraph (b)(3)(i) of this section notwithstanding, a finfish or part thereof possessed in or landed from the EEZ that is subsequently sold, purchased, traded, or bartered or attempted to be sold, purchased, traded,

or bartered as a finfish species, rather than as bait, is not bait.

(4) Legal-sized finfish possessed for consumption at sea aboard the harvesting vessel are exempt from the requirements of paragraph (b)(1) of this section provided—

(i) Such finfish do not exceed any applicable bag limit;

(ii) Such finfish do not exceed 1.5 pounds (680 gm) of finfish parts per person on board; and

(iii) The vessel is equipped to cook such finfish on board.

* * * * *

8. In § 641.22, paragraphs (b)(2)(i), (b)(2)(ii), (b)(2)(iii) introductory text, (b)(5) and (b)(6) are revised and new paragraph (b)(7) is added to read as follows:

§ 641.22 Gear restrictions.

* * * * *

(b) * * *

(2) * * *

(i) A panel or access door must be located opposite each side of the trap that has a funnel.

(ii) The opening covered by each panel or access door must be 144 square inches (929 square cm) or larger, with one dimension of the area equal to or larger than the largest interior axis of the trap's throat (funnel) with no other dimension less than 6 inches (15.2 cm).

(iii) The hinges and fasteners of each panel or access door must be constructed of one of the following degradable materials:

* * * * *

(5) *Effort limitation.* The maximum number of traps that may be assigned to, possessed, or fished in the EEZ by a vessel is 100.

(6) *Tending traps.* (i) A reef fish trap may be pulled or tended only during the period from official (civil) sunrise to official (civil) sunset.

(ii) A reef fish trap may be tended only by a person (other than an authorized officer) aboard the vessel for which the fish trap endorsement has been issued under § 641.4 to fish such trap, or aboard another vessel if such vessel has on board written consent of the owner or operator of the vessel with the fish trap endorsement. Such written consent is valid solely for the removal of fish traps from the EEZ, and harvest of fish incidental to such removal, when vessel or equipment breakdown prevents the vessel with the fish trap endorsement from retrieving its traps.

(iii) The operator of a vessel from which a fish trap is deployed in the EEZ must retrieve all the vessel's fish traps and return them to port on each trip. A fish trap that is not returned to port on a trip, and its attached line and buoy, may be disposed of in any appropriate manner by the Secretary (including an authorized officer). If an owner of such trap or the operator of the responsible vessel can be ascertained, the owner and/or operator is subject to appropriate civil penalties.

(7) *Buoys.* A buoy that floats on the surface must be attached to each fish trap, or to each end of a string of traps, used in the EEZ.

9. In § 641.23, new paragraphs (c) and (d) are added to read as follows:

§ 641.23 Area limitations.

* * * * *

(c) *Riley's Hump seasonal closure.* From May 1 through June 30 each year, Riley's Hump, southwest of Dry Tortugas, Florida, is closed to all fishing. Riley's Hump is enclosed by rhumb lines joining the following points in the order listed:

Point	Latitude	Longitude
A	24°32.2′ N	83°08.7′ W.
B	24°32.2′ N	83°05.2′ W.
C	24°28.7′ N	83°05.2′ W.
D	24°28.7′ N	83°08.7′ W.
A	24°32.2′ N	83°08.7′ W.

(d) *Special management zones (SMZs).* (1) The following artificial reefs and surrounding areas are established as SMZs:

(i) *Alabama—A:* The area is bounded by rhumb lines connecting the following points in the order listed:

Point	Latitude	Longitude
A	30°02.5′ N	88°07.7′ W.
B	30°02.6′ N	87°59.3′ W.
C	29°55.0′ N	87°55.5′ W.
D	29°54.5′ N	88°07.5′ W.
A	30°02.5′ N	88°07.7′ W.

(ii) *Alabama—B:* The area is bounded by rhumb lines connecting the following points in the order listed:

Point	Latitude	Longitude
A	29°59.6′ N	87°47.7′ W.
B	30°03.8′ N	87°32.2′ W.
C	29°33.5′ N	87°32.2′ W.
D	29°51.4′ N	87°47.0′ W.
A	29°59.6′ N	87°47.7′ W.

(iii) *Alabama—C:* The area is bounded by rhumb lines connecting the following points in the order listed:

Point	Latitude	Longitude
A	29°47.5′ N	87°46.7′ W.
B	29°28.5′ N	87°32.0′ W.
C	29°15.75′ N	87°31.5′ W.
D	29°26.3′ N	87°45.0′ W.
A	29°47.5′ N	87°46.7′ W.

(2) In an SMZ specified in paragraph (d)(1) of this section, fishing for reef fish is limited to hook-and-line gear with three or less hooks per line and spearfishing gear. For the purpose of this paragraph (d)(2), fishing for reef fish means possessing reef fish aboard or landing reef fish from—

(i) A vessel that is operating as a charter vessel or headboat;

(ii) A recreational vessel, that is, a vessel that is not in a commercial fishery; or

(iii) A vessel that has been issued a permit under § 641.4 when the reef fish aboard or landed from the vessel exceed a bag limit specified in § 641.24(b), for a species that has a bag limit, or exceed 5 percent by weight of all fish aboard, for other reef fish.

(3) A person aboard a vessel that uses in an SMZ gear other than hook-and-line gear with three or fewer hooks per line and spearfishing gear to fish for species other than reef fish may not possess reef fish in excess of the bag limits specified in § 641.24(b), for those species that have a bag limit, and in excess of 5 percent by weight of all fish aboard, for other reef fish, and may not land from a trip on which fishing was conducted in an SMZ, reef fish in excess of those limits.

10. In § 641.24, in paragraph (c)(1), the phrase "as required by the U.S. Coast Guard for trips of over 12 hours" is removed; and paragraphs (a) and (g) are revised to read as follows:

§ 641.24 Bag and possession limits.

(a) *Applicability.* (1) Bag limits apply to a person—

(i) Who fishes from a fixed structure in the EEZ; or

(ii) Aboard a vessel that fishes in the EEZ, or aboard a fishing vessel that possesses reef fish in the EEZ,

(A) Without a permit specified in § 641.4 on board,

(B) With trawl gear or entangling net gear on board,

(C) With a longline or buoy gear on board when such vessel is fishing or has fished on its present trip in the longline and buoy gear restricted area specified in § 641.23(b),

(D) That is operating as a charter vessel or headboat, or

(E) For a species for which the quota specified in § 641.25 has been reached and closure has been effected.

(2) For the purpose of paragraph (a)(1)(ii)(B) of this section, a vessel is considered to have trawl gear on board

when trawl doors and a net are on board. Removal from the vessel of all trawl doors or all nets constitutes removal of trawl gear.

(3) For the purpose of paragraph (a)(2)(ii)(C) of this section, a vessel is considered to have a longline on board when a power-operated longline hauler, a cable of diameter and length suitable for use in the longline fishery, and gangions are on board. Removal of any one of these three elements, in its entirety, constitutes removal of a longline.

* * * * *

(g) *Sale.* A reef fish possessed under the bag limits specified in paragraph (b) of this section may not be purchased, bartered, traded, or sold, or attempted to be purchased, bartered, traded, or sold.

§ 641.27 [Amended]

11. In § 641.27, in paragraph (a), the reference to "641.24(a)(2)(ii)" is revised to read "641.24(a)(1)(ii)(B)".

12. Section 641.28 is revised to read as follows:

§ 641.28 Adjustment of management measures.

In accordance with the procedures and limitations of the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico, the Regional Director may—

(a) Establish or modify for species or species groups in the reef fish fishery the following: target dates for rebuilding overfished species, total allowable catch, bag limits, size limits, vessel trip limits, closed seasons or areas, gear restrictions, and quotas; and

(b) Establish or modify special management zones and the gear restrictions applicable in each.

13. In Appendix A to Part 641, in Table 2, the reference location and coordinates for Point 16 are revised and new Point 16A is added in numerical order to read as follows:

TABLE 2.—SEAWARD COORDINATES OF THE LONGLINE AND BUOY GEAR RESTRICTED AREA

Point No. and reference location[1]	North latitude	West longitude
• • • • •		
16 Southeast corner of SMZ C	29°15.75'N	87°31.5'W.
16A South-southeast of Mobile Bay	29°25.1'N	87°43.5'W.
• • • • •		

[1] Nearest identifiable landfall, boundary, navigational aid, or submarine area.

14. In Appendix A to Part 641, Figure 4 and Figure 5 are revised to read as follows:

BILLING CODE 3510-22-M

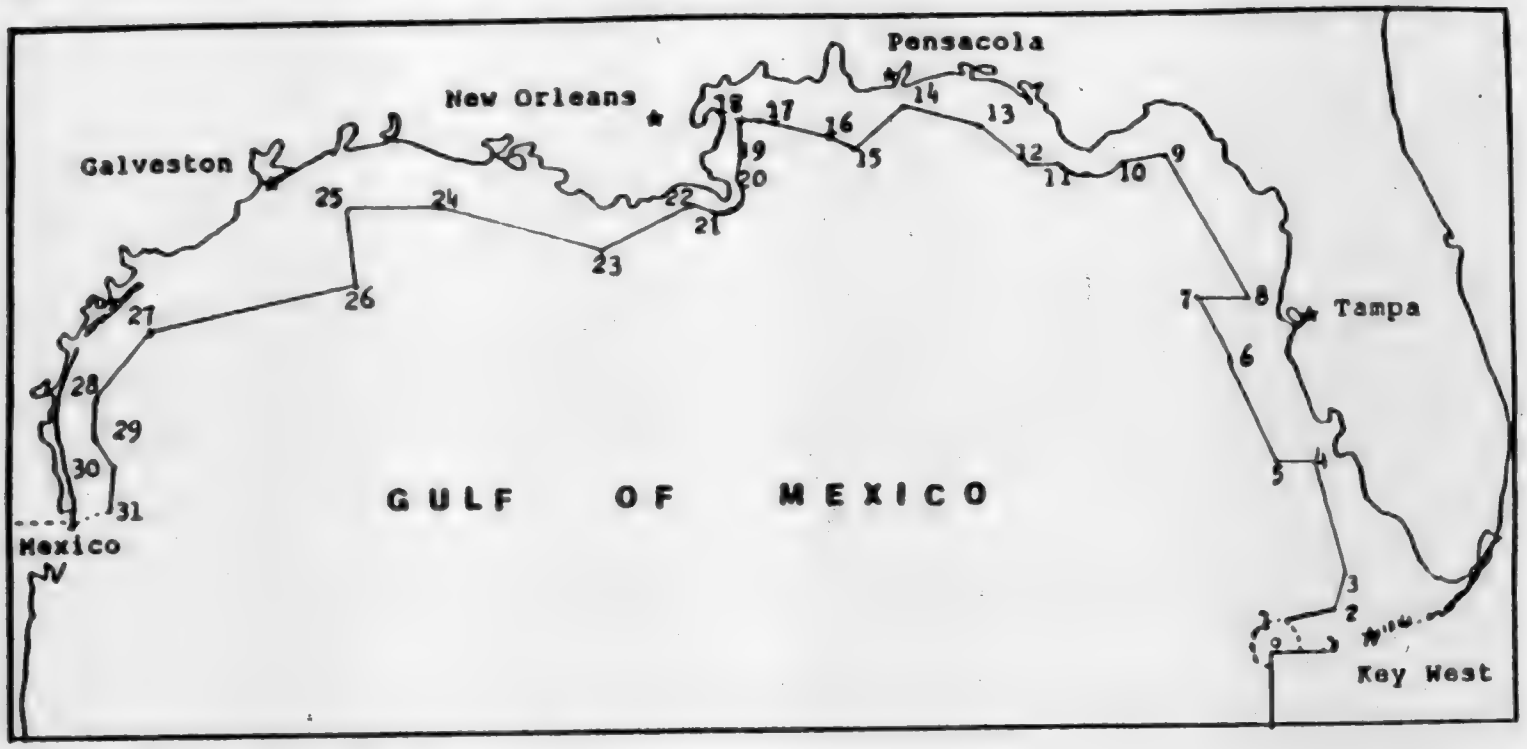

Figure 4. Seaward Limits of the Stressed Area.

Figure 5. Seaward Limits of the Longline and Buoy Gear Restricted Area.

[FR Doc. 93-24496 Filed 10-1-93; 3:37 pm]
BILLING CODE 3510-22-C

50 CFR Part 641

Reef Fish Fishery of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of an amendment to a fishery management plan and request for comments.

SUMMARY: NMFS announces that the Gulf of Mexico Fishery Management Council (Council) has submitted Amendment 7 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico for review by the Secretary of Commerce (Secretary). Written comments are requested from the public.

DATES: Written comments must be received on or before December 2, 1993.

ADDRESSES: Comments should be sent to the Southeast Regional Office, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702. Copies of Amendment 7, which includes an environmental assessment/regulatory impact review, and a minority report submitted by three Council members objecting to the measures relating to dealer permits and recordkeeping, may be obtained from the Council at 5401 W. Kennedy Boulevard, suite 331, Tampa, FL 33609.

FOR FURTHER INFORMATION CONTACT: Robert A. Sadler, 813–893–3161.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act) requires that a council-prepared fishery management plan or amendment be submitted to the Secretary for review and approval, disapproval, or partial disapproval. The Magnuson Act also requires that the Secretary, upon receiving an amendment, immediately publish a notice that the amendment is available for public review and comment. The Secretary will consider public comment in determining approvability of the amendment.

Amendment 7 proposes to:

(1) Require dealers who purchase Gulf of Mexico reef fish from fishing vessels to obtain Federal permits and maintain records of such purchases;

(2) Restrict sale/purchase of reef fish from the exclusive economic zone to permitted vessels/dealers;

(3) Allow the transfer of a fish trap endorsement with the transfer of the vessel's reef fish permit to an immediate family member; and

(4) Allow the transfer or revision of a red snapper endorsement on a reef fish vessel permit upon the disability or death of a vessel owner or, in certain circumstances, an operator.

Proposed regulations to implement Amendment 7 are scheduled for publication within 15 days.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 1, 1993.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–24549 Filed 10–5–93; 8:45 am]

BILLING CODE 3510–22–M

50 CFR Part 651

[I.D. #092293]

Northeast Multispecies Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of an amendment to a fishery management plan and request for comments.

SUMMARY: NOAA announces that the New England Fishery Management Council has submitted Amendment 5 to the Fishery Management Plan for the Northeast Multispecies Fishery (FMP) for Secretarial review and is requesting comments from the public.

DATES: Comments will be accepted through November 29, 1993.

ADDRESSES: Send comments to Richard B. Roe, Regional Director, NMFS, 1 Blackburn Drive, Gloucester, MA 01930. Clearly mark the outside of the envelope "Comments on Multispecies Amendment." Copies of the Amendment, Supplemental Environmental Impact Statement, and Regulatory Impact Review/Initial Regulatory Flexibility Analysis are available upon request from Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway, Saugus, MA 01906.

FOR FURTHER INFORMATION CONTACT: Jack Terrill, Fishery Policy Analyst, 508–281–9252.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) (Magnuson Act) requires that each fishery management council submit any fishery management plan or plan amendment it prepares to the Secretary of Commerce (Secretary) for review and approval or disapproval. The Magnuson Act also requires that the Secretary, upon receiving the plan or amendment, must immediately make a preliminary evaluation of whether the amendment is sufficient to warrant continued review, and publish a notice that the plan or amendment is available for public review and comment. The Secretary has determined that two of the measures are not consistent with the Magnuson Act and thus has disapproved those measures as explained below. The Secretary will consider the public comments in determining whether to approve the remaining provisions of the amendment.

The remaining provisions proposed in Amendment 5 are: A moratorium on most new entrants into the multispecies finfish fishery; limitations on upgrading of vessel size and engine horsepower; exceptions to the moratorium for vessels using less than 4,500 rigged hooks or fishing under a possession limit; an effort reduction program where vessels fish using a combination of blocks of time out of the fishery and time spent at the dock (Fleet Days-at-Sea (DAS)) unless they elect to take an allocations of actual Individual DAS that vessels may fish for multispecies finfish; exceptions to the effort reduction program for vessels 45 feet (13.7 m) and less in length, vessels fishing less than 4,500 hooks, vessels fishing sink gillnet gear, and vessels at sea for less than a day; possession-limit-only restriction on vessels fishing with sea scallop dredges; a requirement to purchase and install a Vessel Tracking System unit (VTS) for vessels fishing Individual DAS and vessels that have historically fished with a scallop dredge and otter trawl; a card monitoring or call-in system for other vessels in the Fleet DAS reduction program; a minimum mesh size in the Southern New England/Mid-Atlantic area; an increase in the minimum mesh size in the Gulf of Maine/Georges Bank area; exceptions to the mesh size regulations for vessels fishing less than the possession limit, and for vessels fishing with purse seine or midwater trawl gear; minimum fish sizes; a prohibition on pair trawling; seasonal mesh requirements in the Stellwagen Bank/Jeffreys Ledge area; a suspension of Closed Area I except for fixed gear; a modification of Closed Area II in area and time; a closure of an area in the vicinity of the Nantucket Lightship which occurs when a research trawl survey index is reached; a requirement that vessels fishing for northern shrimp use a finfish excluder device; permits for vessel operators and dealers; mandatory reporting for permitted

vessels and dealers; and framework measures to adjust the effort control and other measures. This proposed amendment also includes definitions of overfishing for ocean pout, pollock, red hake, white hake, and windowpane flounder. The intent of this amendment is to reduce the fishing mortality rate in order to eliminate the overfished condition of the stocks of multispecies finfish.

Disapproved Amendment 5 measures are: a haddock possession limit of 5,000 pounds (2,268 kg), and an exemption to the regulations for vessels fishing for winter flounder in state waters. The haddock possession limit was found to be inconsistent with National Standard 1 of the Magnuson Act by not preventing overfishing. The possession limit was determined to be too high to have any appreciable effect at reducing fishing mortality. The winter flounder exemption was found to be inconsistent with National Standard 1 because it is poorly defined, does not provide adequate information to determine that it would prevent overfishing, may have led to increased mortality of winter flounder and other multispecies, and would compound the difficulties in enforcing the FMP's other measures.

The receipt date for this amendment is September 30, 1993. Proposed regulations to implement this amendment are scheduled to be published within 15 days of the receipt date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 1, 1993.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–24544 Filed 10–1–93; 3:37 pm]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 58, No. 192
Wednesday, October 6, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Nutrition Program for the Elderly; Adjusted Level of Assistance From October 1, 1992 to September 30, 1993

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the adjusted level of per-meal assistance for the Nutrition Program for the Elderly (NPE) for Fiscal Year 1993. The initial level of assistance of $.5780 is adjusted to $.6206 for each eligible meal in accordance with section 311(a)(4) of the Older Americans Act of 1965, as amended by section 310 of the Older Americans Act Amendments of 1992.

EFFECTIVE DATE: October 1, 1992.

FOR FURTHER INFORMATION CONTACT: Philip K. Cohen, Program Administration Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302–1594 or telephone (703) 305–2660.

SUPPLEMENTARY INFORMATION:

Classification

This program is listed in the Catalog of Federal Domestic Assistance under Nos. 10.550 and 10.570 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983.)

This notice imposes no new reporting or recordkeeping provisions that are subject to Office of Management and Budget review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act.

Legislative Background

On September 30, 1992, the President signed Public Law 102–375, the Older Americans Act Amendments of 1992. Section 310 of this law amended section 311(a)(4) of the Older Americans Act of 1965 (the Act) to require the Secretary of Agriculture to maintain a per-meal level of assistance for NPE of $.6206 for Fiscal Year 1993. Section 311(c)(2) of the Act was amended to provide that the final reimbursement claims must be adjusted so as to utilize the entire program appropriation for the fiscal year for per-meal support.

Congress appropriated funds for NPE for Fiscal Year 1993 in the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1993 (Pub. L. 102–341), enacted on August 14, 1992, prior to enactment of the Older Americans Act Amendments of 1992. Therefore, the Fiscal Year 1993 NPE appropriation was established on the basis of the minimum per-meal rate in effect at that time, i.e., $.5676, rather than the rate structure that was subsequently established on September 30, 1992 by the 1992 amendments to section 311 of the Act.

The Department expected that the Fiscal Year 1993 NPE Appropriation of $142,912,000 would prove insufficient to sustain the legislatively stipulated rate of $.6206. Therefore, based on its projection of the number of meals to be claimed during the fiscal year, and in light of constitutional and statutory prohibitions on obligating or spending funds in excess of the available appropriation, the Department established an initial per-meal reimbursement rate of $.5780, the highest rate which it believed the appropriation would support. This initial level of per-meal assistance was announced in the December 11, 1992 **Federal Register** (57 FR 58784).

Rate Adjustment

The Department's meal service projection for Fiscal Year 1993 assumes a .9 percent increase in meal service over the previous year. Meal counts for the first quarter of Fiscal Year 1993 very closely tracked this projection. However, second quarter data reveal a decline which more than compensates for the slight increase of the first quarter. The Department has concluded that the Fiscal Year 1993 NPE appropriation will support an upward adjustment of the initially announced rate of $.5780, but that it will not permit an adjustment up to the legislatively stipulated level of $.6206. However, the Department has determined that sufficient funds can be reprogrammed from other accounts to provide the balance necessary to support all meals claimed in Fiscal Year 1993 at the legislative level. Therefore, the Department has decided to supplement the NPE appropriation in this manner so that it can adjust the Fiscal Year 1993 per-meal rate to $.6206. This adjusted rate applies to all eligible meals served during the year, including those served prior to this announcement. Since the reprogramming process enables the Department to transfer to NPE precisely the amount necessary to support all meals at this rate, further adjustments to the Fiscal Year 1993 rate are not anticipated.

Dated: June 18, 1993.

Christopher J. Martin,

Acting Administrator.

[FR Doc. 93–24506 Filed 10–5–93; 8:45 am]
BILLING CODE 3410–30–U

Forest Service

Exemption of the Main Canyon Summit/Sweetwater/Pine Lake Salvage Sales and Recovery Project, Dixie National Forest, UT

AGENCY: Forest Service, USDA.

ACTION: Notice of exemption from appeal.

SUMMARY: This is notification that decisions to implement timber salvage harvest, treatment of infested trees which are non-merchantable, and reforestation activities to rehabilitate and recover natural resources from recent mountain pine beetle attacks on the Main Canyon Summit/Sweetwater/Pine Lake project area of the Escalante Ranger District on the Dixie National Forest are exempted from appeal per provisions of 36 CFR 217.4(a)(11).

DATES: Effective October 6, 1993.

FOR FURTHER INFORMATION CONTACT: Kevin R. Schulkoski, District Ranger, Escalante Ranger District, Dixie National Forest, P.O. Box 246, Escalante, Utah 84726, (801) 826–5400.

SUPPLEMENTARY INFORMATION: Several years of drought in southern Utah have reduced soil moisture and weakened already stressed ponderosa pine, increasing their susceptibility to attack by mountain pine beetle. Consequently, mountain pine beetle populations have dramatically increased over the past 2–3 years. As part of the effort to rehabilitate and recover timber resources damaged by the increasing beetle populations, the Escalante Ranger District has developed a proposal to salvage insect infected trees, to further disrupt their life cycle by cutting and burning infected non-merchantable trees, and to reforest damaged areas. A District Interdisciplinary Team (IDT) has completed the National Environmental Protection Act (NEPA) process to identify issues, develop alternatives and to analyze the effects of implementing the proposed recovery activities. This process has resulted in the completion of a categorical exclusion documenting the analysis of the proposed action. The project area is located on the west side of the District in Garfield County, between Escalante Canyon and Pine Lake. The project area totals an estimated 600 acres with 85 acres proposed for recovery and rehabilitation. Mortality has increased substantially over the last 2 years as the insect population increases. The infestation centers are within stands of ponderosa pine which will support continued population increases. This would result in substantial losses in timber value, visual quality, wildlife habitat and forest health. The District is proposing to salvage harvest insect infected trees and to further disrupt their breeding cycle and decrease beetle populations by cutting and burning non-merchantable trees which are infected. There is no road construction proposed for the salvage harvest operation. Management direction for the Main Canyon/Pine Lake/Sweetwater area is established in the Land and Resource Plan (LRMP) for the Dixie National Forest. The LRMP provides for the removal of salvage timber from lands within the project area. In addition, the to LRMP describes standards and guidelines which must be observed when harvesting timber to protect soil, water, wildlife, visual quality and other resources. The proposed action for the Main Canyon Summit/Sweetwater/Pine Lake Salvage and Recovery Project is consistent with the standards, guidelines, objectives and management direction provided in the LRMP.

The IDT consisting of a forester, silviculturist, wildlife biologist and landscape architect have analyzed the insect situation and have suggested the rehabilitation and recovery process described in the proposed action. These activities will: (1) Help break up the insect breeding cycle; (2) prevent further deterioration of visual quality along Forest Highway 17 and Forest Road 132; (3) prevent further reductions in forest health and wildlife habitat: (4) recover valuable timber that would otherwise deteriorate; (5) reforest those areas which have been left without tree cover as a result of insect caused mortality and (6) prevent increases in fire hazards and fuel loading. Through the salvage timber sales, breeding insects can be removed, fuel treatments can be accomplished, and Knutson-Vandenberg (K–V) funds can be generated for use to restore forest resources that have been damaged by the increasing beetle populations.

The District Ranger has determined, through scoping and environmental analysis, that there is good cause to expedite this project. The decision for the analysis area is scheduled to be issued in mid-September, 1993. If the project is delayed because of appeals (delays up to 150 days are possible), it is likely that the salvage harvest could not be implemented during the 1993 normal operating season. This would result in a loss of volume and value of the timber due to deterioration. Delays resulting from appeals could cause a loss of 30 percent of the timber volume and 50 percent of the value, and potentially make the salvage sale uneconomical for timber purchasers. In addition, a delay in the project would likely reduce the probability of successful area rehabilitation including reforestation, fuel reduction, and control of local insect populations. Overall, delays from appeals would jeopardize the objectives of the rehabilitation and recover project.

Pursuant to 36 CFR 217.4(a)(11), it is my decision to exempt from appeals the decision relating to salvage harvest, removal of infected nonmerchantable trees, and restoration of lands affected by mountain pine beetle in the Main Canyon Summit/Sweetwater/Pine Lake project area on the Escalante Ranger District, Dixie National Forest. The categorical exclusion discloses the effects of the proposed action on the environment and addresses the issues resulting from the proposal.

Dated: September 30, 1993.

Gray F. Reynolds,

Regional Forester, Intermountain Region, USDA, Forest Service.

[FR Doc. 93–24554 Filed 10–5–93; 8:45 am]

BILLING CODE 3410–11–M

Control Lake Timber Harvest; Tongass National Forest, Ketchikan Area; Prince of Wales, AK Notice of Intent To Prepare an Environmental Impact Statement

SUMMARY: The Department of Agriculture, Forest Service, will prepare an Environmental Impact Statement (EIS) to provide timber to the Ketchikan Pulp Company 50-year Timber Sale Contract or the Ketchikan Area Independent Timber Sale Program. The Record of Decision will disclose how the Forest Service has decided to provide harvest units, roads, and associated timber harvesting facilities. The proposed action is to harvest an estimated 187 million board feet of timber on an estimated 7,000 acres. The proposed timber harvest is located within Tongass Forest Plan Management Areas K08, K14, and K15 on Prince of Wales Island, Alaska, on the Thorne Bay Ranger District of the Ketchikan Area of the Tongass National Forest.

DATES: Comments concerning the scope of this project should be received by November 5, 1993.

ADDRESSES: Please send written comments and suggestions concerning the scope of this project to David D. Rittenhouse, Forest Supervisor, Tongass National Forest, Ketchikan Area, Attn: Control Lake EIS, Federal Building, Ketchikan, AK 99901.

FOR FURTHER INFORMATION CONTACT: Questions about the proposal and EIS should be directed to David Arrasmith, Planning Staff Officer, Tongass National Forest, Ketchikan Area, Federal Building, Ketchikan, Alaska 99901, telephone (907) 225–3101.

PUBLIC PARTICIPATION: Public participation will be an integral component of the study process and will be especially important at several points during the analysis. The first is during the scoping process. The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies and individuals and organizations that may be interested in, or affected by, the proposed activities. The scoping process will include: (1) identification of potential issues; (2) identification of issues to be analyzed in depth; and, (3) elimination of insignificant issues or those which have been covered by a previous environmental review. Public scoping meetings are scheduled in Alaska at Klawock, October 18, 1993; Thorne Bay, October 19, 1993; and Ketchikan, October 20, 1993. Written scoping comments are also being solicited through a scoping package that has been sent to the project mailing list.

For the Forest Service to best use the scoping input, comments should be received by November 5, 1993.

Based on results of scoping and the resource capabilities within the project area, alternatives to the proposed action, including a "no action" alternative, will be developed for the Draft Environmental Impact Statement (DEIS). The DEIS is projected to be filed with the Environmental Protection Agency (EPA) in June 1994. Public comment on the DEIS will be solicited for a minimum of 45 days from the date the notice of availability appears in the **Federal Register**. Subsistence hearings, as provided for in section 8 of the Alaska National Interest Lands Conservation Act (ANILCA), are planned during this 45-day comment period.

It is very important that those interested in this project comment on the DEIS. To be most helpful, comments should be as specific as possible.

PERMITS: Permits required for implementation include the following:

1. U.S. Army Corps of Engineers
   - —Approval of the discharge of dredged or fill materials into waters of the United States under Section 404 of the Clean Water Act
   - —Approval of the construction of structures or work in navigable waters of the United States under Section 10 of the Rivers and Harbors Act of 1899
2. Environmental Protection Agency
   - —National Pollutant Discharge Elimination System (402) Permit
   - —Review Spill Prevention Control and Countermeasure Plan
3. State or Alaska, Department of Natural Resources
   - —Tideland Permit and Lease or Easement
4. State of Alaska, Department of Environmental Conservation
   - —Solid Waste Disposal Permit
   - —Certfication of Compliance with Alaska Water Quality Standards (401 Certification)

RESPONSIBLE OFFICIAL: David D. Rittenhouse, Forest Supervisor, Ketchikan Area, Tongass National Forest, Federal Building, Ketchikan, Alaska 99901, is the responsible official. The responsible official will consider the comments, responses, disclosure of environmental consequences, and applicable laws, regulations, and policies in making the decision and stating the rationale in the Record of Decision.

Dated: September 29, 1993.

Anne Huebner,

Acting Forest Supervisor.

[FR Doc. 93–24498 Filed 10–5–93; 8:45 am]

BILLING CODE 3410–11–M

Lostine Wild and Scenic River Management Plan, Wallowa-Whitman National Forest, Wallowa County, Oregon

AGENCY: Forest Service, USDA.

ACTION: Notice of availability.

SUMMARY: On July 7, 1993, Wallowa-Whitman Acting Forest Supervisor, William R. Gast, made a decision to adopt into the Forest Plan the Lostine Wild and Scenic River Management Plan which required an amendment to the Wallowa-Whitman Forest Plan.

This management plan outlines use levels, development levels, resource protection measures, and outlines a general management direction for the river corridor. This amendment is necessary to implement the Wild and Scenic Rivers Act which required the Forest Service to develop a management plan for the Lostine River. Interim direction was identified in the Forest Plan as Management Area 7 (Wild and Scenic Rivers). The environmental assessment documents the analysis of alternatives to managing the Lostine Wild and Scenic River in accordance with the Wild and Scenic Rivers Act.

This decision is subject to appeal pursuant to Forest Service regulations 36 CFR part 217. Appeals must be filed within 45 days from the date of publication in the Baker City Herald. Notices of Appeals must meet the requirement of 36 CFR 217.9.

The environmental assessment for the Lostine Wild and Scenic River Management Plan is available for the public review at the Wallowa-Whitman National Forest Supervisor's Office in Baker City, Oregon.

EFFECTIVE DATE: Implementation of this decision shall not occur within 7 days following publication of the legal notice of the decision in the Baker City Herald.

FOR FURTHER INFORMATION CONTACT: For further information, contact Marty Gardner, Wallowa-Whitman National Forest, P.O. Box 907, Baker City, Oregon 97814 or phone (503)–523–6391.

Dated: September 22, 1993.

John W. Austin,

Acting Forest Supervisor.

[FR Doc. 93–24500 Filed 10–5–93; 8:45 am]

BILLING CODE 3410–11–M

Grand Island Advisory Commission Meeting

AGENCY: Forest Service, USDA.

ACTION: Grand Island Advisory Commission meeting.

SUMMARY: The Grand Island Advisory Commission will meet on October 21, 1993 at 8 a.m. at the Comfort Inn on M–28 East in Munising, Michigan. An agenda for the one day meeting will consist of an update on the Draft Environmental Impact Statement from the Planning Team, feasibility group report, and the beginning of the development plan process.

Interested members of the public are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions about this meeting to Dennis Jones, Public Service Team Leader, Hiawatha National Forest, 2727 N. Lincoln Road, Escanaba, MI 49829, (906) 786–4062.

Dated: September 28, 1993.

William F. Spinner,

Forest Supervisor.

[FR Doc. 93–24460 Filed 10–5–93; 8:45 am]

BILLING CODE 3410–11–M

National Urban and Community Forestry Advisory Council; Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The National Urban and Community Forestry Advisory Council will met in Washington, DC, October 14–15, 1993, 8:30 a.m. to 4:30 p.m. The Council is comprised of 15 members appointed by the Secretary of Agriculture. The purpose of the meeting is for the Council to present the National Urban and Community Forestry Action Plan to the Secretary of Agriculture and members of Congress. They will also make a final decision on awards of the challenge cost-share program. The meeting will be Chaired by William Kruidenier of the International Society of Arboriculture and is open to the public. Time will be provided at the beginning of each major agenda topic for public input. Time to speak must be requested in advance from the committee staff. However, Council discussion is limited to Forest Service staff and Council members. Persons who wish to bring urban and community forestry matters to the attention of the Council may file written statements with the Council staff before or after the meeting.

DATES: The meeting will be held October 14–15, 1993.

ADDRESSES: The meeting will be held at the Auditor's building, 201 14th Street SW., Washington, DC 20250.

Send written statements and/or requests for agenda items to Brian McGuire, National Urban and Community Forestry Advisory Council, c/o Forest Service—Cooperative Forestry, USDA, P.O. Box 96090, Washington, DC 20090–6090, or phone (202) 205–1689.

FOR FURTHER INFORMATION CONTACT: Brian McGuire, Cooperative Forestry Staff, (202) 205–1689.

Dated: September 29, 1993.

Michael T. Rains,

Acting Deputy Chief, State and Private Forestry.

[FR Doc. 93–24468 Filed 10–5–93; 8:45 am]

BILLING CODE 3410–11–M

Soil Conservation Service

Changes in Hydric Soils of the United States

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of change.

SUMMARY: Pursuant to 7 CFR 12.31(a)(3(i), the Soil Conservation Service, United States Department of Agriculture gives notice of a change in the Hydric Soils of the United States as listed in the third edition of the Hydric Soils of the United States, Miscellaneous Publication 1491, U.S. Department of Agriculture, Soil Conservation Service, June 1991.

For further Information Contact: Maurice J. Mausbach, National Leader, Technical Soil Services, Soil Survey Division, Soil Conservation Service, P.O. Box 2890, Washington, DC 20013–2890, Telephone (202) 720–1812.

SUPPLEMENTARY INFORMATION: The third edition of the Hydric Soils of the United States was published June 1991, and a notice of change published in the **Federal Register**, October 11, 1991, vol. 56, no. 198, page 51371. Changes to this document were made in 1992 and published in the **Federal Register**, August 19, 1992, Vol. 57, No. 161, page 37517. The changes published herein reflect soils added and deleted since the 1991 publication.

The national list of hydric soils changes as additional soil series are recognized and defined and/or properties of existing soil series are updated based on additional data. These changes reflect refinements in knowledge of the soils of the United States. New soil series are recognized as soils are mapped in previously unmapped areas. These new series have always met hydric soil criteria, whether recognized as series or not, and thus represent an insignificant change in acreage of hydric soils. Soils that are removed from the list are mostly dry phases of existing hydric soils. These dry phases would not have met wetland hydrology criteria, thus represent an insignificant change in acreage of wetlands.

The list of hydric soils is computer generated using the hydric soil criteria and a database of properties of each soil series in the United States. The database is also used to generate interpretations of how soils perform for many land uses. Therefore, some changes in the list of hydric soils result from adding phases for a hydric soil to refine another interpretation. This split or addition of a hydric phase causes an increase in the number of hydric soils, but does not affect the acres of the hydric soil. Data for all soil series are in the Soil Interpretations Record and may be reviewed by contacting a local office of the Soil Conservation Service in the appropriate State.

Dated: September 28, 1993.

Richard W. Arnold,

Director, Soil Survey Division.

SOILS ON THE OCTOBER 91 HYDRIC LIST, BUT NOT ON THE JANUARY 93 HYDRIC LIST (THE "HYDRIC CRITERIA NUMBER" COLUMN INDICATES WHAT CAUSED THE SOIL TO BE INCLUDED IN THE HYDRIC LIST. SEE THE "CRITERIA FOR HYDRIC SOILS" TO DETERMINE THE MEANING OF THIS COLUMN.)

[Revised January 31, 1993]

Series and subgroup	Temperature	Drainage class	High water table		Perm. within 20 inches	Flooding			Hydric criteria No.	Capability	
			Depth	Months		Frequency	Duration	Months		Critical phase criteria	Class and subclass
Olustee (FL0048) Ultic Haplaquods.	Thermic	P	0.5–1.5	Mar–Sep	<6.0	None				All	3W
Pledger (TX0304) Typic Pelluderts.	Thermic	MW	>6.0		<6.0	Rare-Common.	Brief	Jan–Dec		Rare Freq Occas	2W 5W 2W
Prebish, Stony [4] (MN0563)											
Ravendale (CA1027) Entic Chromoxererts.	Mesic	MW	>6.0		<6.0	Rare-Occasional.	Brief-Long.	Jan–Apr		0–2%	6S
Sapelo (GA0049) Ultic Haplaquods.	Thermic	SP	0.5–1.5	Nov–Apr	<6.0	None				All	3W
Saugatuck (MI0045) Aeric Haplaquods.	Mesic	SP	0.5–2.0	Nov–May.	<6.0	None				All	4W

SOILS ON THE OCTOBER 91 HYDRIC LIST, BUT NOT ON THE JANUARY 93 HYDRIC LIST (THE "HYDRIC CRITERIA NUMBER" COLUMN INDICATES WHAT CAUSED THE SOIL TO BE INCLUDED IN THE HYDRIC LIST. SEE THE "CRITERIA FOR HYDRIC SOILS" TO DETERMINE THE MEANING OF THIS COLUMN.)—Continued

[Revised January 31, 1993]

Series and subgroup	Temperature	Drainage class	High water table		Perm. within 20 inches	Flooding			Hydric criteria No.	Capability	
			Depth	Months		Frequency	Duration	Months		Critical phase criteria	Class and subclass
Talquin (FL0248) Entic Haplaquods.	Thermic	P	0.5–1.5	Mar–Sep	≥6.0	None				All	4W
Tooles (FL0468) Arenic Albaqualfs.	Thermic	P	0.5–1.0	Feb–Sep	≥6.0	None				All	3W
Altoona (WI0263)[4]											
Bivans (FL0378) Typic Albaqualfs.	Hypertermic	SP	1.0–1.5	Jun–Sep	<6.0	None				0–5% 5–8% 8–12%	3W 4W 6W
Boulogne (FL0498) Typic Haplaquods.	Thermic	P	0.5–1.5	Mar–Sep	<6.0	None				All	3W
Chaires (FL0251) Alfic Haplaquods.	Thermic	P	0.5–1.5	Mar–Sep	≥6.0	None				All	4W
Dusler (MN0160) Aeric Glossaqualfs.	Frigid	SP	1.5–3.0	Oct–Jun	<6.0	None				All	2W
Flemington (FL0017) Typic Albaqualfs.	Hyperthermic.	SP	1.0–1.5	Jun–Sep	<6.0	None				0–5% 5–8% 8–12%	3W 4W 6W
Fredon (NJ0038) Aeric Haplaquepts.	Mesic	SP	0.5–1.5	Oct–Jun	<6.0	None-Occasional.	Brief	Jan–Apr		0–3% 3–8%	3W 3W
Gansner, Ponded[4] (CA1438)											
Lynne (FL0009) Ultic Haplaquods.	Hyperthermic.	P	0.5–1.5	Jul–Sep	≥6.0	None				All	3W
Oakhurst (TX0896) Vertic Albaqualfs.	Thermic	MW	>6.0		<6.0	None				1–3% 3–5% 5–8%	3E 4E 6E

[1] Some soil interpretation records representing phase of this series are not hydric.
[2] Some phases of this soil are not frequently flooded of long duration.
[3] Some drainage classes for this soil are not hydric.
[4] This soil record has been removed from the database since it last appeared in the hydric list.

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[Revised January 31, 1993]

Series and subgroup	Temperature	Drainage class	High water table		Perm. within 20 inches	Flooding			Hydric criteria No.	Capability	
			Depth	Months		Frequency	Duration	Months		Critical phase criteria	Class and subclass
Adder (WI0491) Terric Medisaprists.	Mesic	VP	+1–1.0	Sep–Jun	<6.0	Frequent	Long	Oct–Jun	1,3,4	Drained Undrained	4W 5W
Ajax (ID1703) Cumulic-Haplaquolls.	Frigid	P	0.5–1.5	Mar–Jul	<6.0	Occasional	Brief	Jan–Jun	283	All	5W
Albaton, Dry (IA0107) Vertic Fluvaquents.	Mesic	VP	+4.–2.0	Nov–Jul	<6.0	Frequent	Brief	Mar–Oct	2B3,3	All	6W
Alvodest, Somewhat Poorly Drained (OR1467) Natric Camborthids[1].	Mesic	SP	+.5–3.0	Dec–Apr	<6.0	Rare			3	All	7W
Anan (AK0362) Typic Cryaquents.	Cryic	VP,P	0.5–1.0	Jan–Dec	<6.0	Frequent	Long	Jul–Nov	2B3,4	0–2%	6W
Auganaush (MN0635) Mollic Ochraqualfs.	Frigid	P	1.0–3.0	Nov–Jun	<6.0	None			2B3	Drained Undrained	2W 4W
Balize, Drained (LA0195) Typic Hydraquents.	Thermic	P	0.5–1.5	Jan–Dec	<6.0	Rare			2B3	All	4W
Bardwell, Winter Flooding (KY0192) Fluventic Hapludolls[2].	Thermic	W	3.0–6.0	Feb–Mar	<6.0	Frequent	Long	Dec–May.	4	0–6% 6–12% 12–20% 20–25%	3W 2E 4E 6E
Bayvi, Limestone Substratum (FL0563) Cumulic Haplaquolls.	Thermic	VP	0–1.0	Jan–Dec	<6.0	Frequent	V Brief	Jan–Dec	2B3	All	8W
Bear Lake, Very Poorly Drained (ID1699) Typic Calciaquolls.	Frigid	VP	+2–1.0	Dec–Aug	<6.0	Frequent	V Long	Dec–Sep	2B3,3,4	0–1%	5W
Bellslake (ID6023) Fluvaquentic Humaquepts.	Frigid	VP	+1.–1.5	Oct–Aug	<6.0	Frequent	V Long	Dec–Jun	2B3,3,4	All	5W
Bemis, Stony (ME0139) Aeric Cryaquepts.	Cryic	P	0–1.0	Sep–Jun	<6.0	None			2B3	All	7S
Berner (MN0628) Terric Borosaprists.	Frigid	VP	+1.–2.0	Nov–Jun	<6.0	None			1	Drained Undrained	4W 6W
Bigsag (MT1077) Typic Halaquepts.	Frigid	P	1.0–3.0	Dec–Jun	<6.0	Rare-Occasional.	Brief-Long.	Mar–May.	2B3	Rare Occas	7W 7W
Bigsandy, Saline (MT1335) Typic Fluvaquents.	Frigid	P	1.0–2.0	Dec–Jun	<6.0	Occasional	Long	Apr–Jun	2B3	All	7W
Blackcreek (MT1361) Typic Haplaquepts.	Frigid	P	1.0–4.0	Apr–Jul	<6.0	Rare			2B3	0–2%	5W

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[Revised January 31, 1993]

Series and subgroup	Temperature	Drainage class	High water table		Perm. within 20 inches	Flooding			Hydric criteria No.	Capability	
			Depth	Months		Frequency	Duration	Months		Critical phase criteria	Class and subclass
Blacklake (MT1360) Histic Haplaquands.	Frigid	VP	+2–1.0	Jan–Dec	<6.0	None			2B3,3	0–1%	5W
Boley (OK0362) Aeric Fluvaquents.	Thermic	P	0–1.0	Nov–Jun	<6.0	Frequent	V Brief-Brief.	Apr–Sep	2B3	All	5W
Borah (ID1639) Aquic Calcixerolls[1].	Frigid	P	1.0–2.0	Apr–Aug	<6.0	Occasional	Brief	Apr–May	2B3	All	5W
Boulder Lake, Poorly Drained (NV2551) Aquic Chromoxererts.	Frigid	P	+.5–1.5	Dec–Jan	<6.0	None			2B3, 3	All	6W
Brandsvold (NM0625) Typic Argiaquolls.	Frigid	P	1.0–3.0	Mar–Jun	<6.0	None			2B3	All	2W
Brinnum, Alkali (NV2573) Typic Halaquepts[1].	Mesic	VP	0.5–1.5	Sep–May	<6.0	Occasional	Long	Oct–May	2B3	0–2%	5W
Canburn, Stratified Substratum (UT1825) Cumulic Hapaquolls.	Frigid	P	1.0–2.0	Apr–Jul	<6.0	Occasional	V Brief	Jul–Sep	2B3	0–2%	3W
Capitola (WI0423) Mollic Ochraqualfs.	Frigid	P, VP	+1–1.0	Oct–Jun	<6.0	None			2B3, 3	Drained Undrained	3W 6W
Cathro, Frequently Flooded (MI0108) Terric Borosaprists.	Frigid	VP	+2–1.0	Jan–Dec	<6.0	Frequent	Brief-V Long.	Mar–May.	1, 3	All	8W
Chaires, Hydric (FL0121) Alfic Haplaquods[1].	Thermic	P	0–0.5	Mar–Sep	≥6.0	None			2B1	All	4W
Cheniere, Frequently Flooded (LA0202) Typic Udipsamments[1,2].	Thermic	SE	≥6.0		<6.0	Frequent	Long	Jan–Dec	4	Freq	5W
Chichagof (AK0348) Histic Cryaquepts.	Cryic	VP	0–1.0	Jan–Dec	<6.0	Occasional	V Brief	Oct–Apr	2B3	All	7W
Chippewa, Friable Substratum (NY0522) Typic Fragiaquepts.	Mesic	P, VP	+.5–0.5	Nov–May.	<6.0	None			2B3, 3	All	7S
Chunilna (AK0352) Typic Cryaquands.	Cryic	VP	0–1.5	Apr–Sep	<6.0	None			2B3	0.7%	6W

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[Revised January 31, 1993]

Series and subgroup	Temperature	Drainage class	High water table		Perm. within 20 inches	Flooding			Hydric criteria No.	Capability	
			Depth	Months		Frequency	Duration	Months		Critical phase criteria	Class and subclass
Citypoint (WI0441) Typic Borosaprists.	Frigid	VP	+1–1.0	Nov–Jun	<6.0	None			1	All	7W
Clara (FL0560) Spodic Psammaquents.	Thermic	P	0–1.0	Jun–Dec	6.0	None-Common.	Brief	Jan–Mar	2B1	None, Rare. Common ..	4W 6W
Clara (FL0561) Spodic Psammaquents.	Thermic	VP	+2–0	Jan–Dec	≥6.0	None			2B1, 3	All	6W
Clear Lake, Map>16 (CA2484) Typic Pelloxererts[1].	Thermic	P	+1–6.0	Dec–Mar	<6.0	Rare			2B3, 3	MAP>16 ...	
Clearwater, Depressional (MN0670) Typic Haplaquolls.	Frigid	VP	+1–1.0	Jan–Dec	<6.0	None-Rare ...			2B3, 3	Drained .... Undrained	3W 6W
Cohoctah, Low Precipitation (MI0279) Fluvaquentic Haplaquolls.	Mesic	P, VP	+1–3.0	Nov–Jul	<6.0	Common	Brief-Long.	Apr–Nov	2B3, 3, 4	All	6W
Colvin, Occasionally Flooded (ND0417) Typic Calciaquolls.	Frigid	P	0–1.0	Mar–Jun	<6.0	Occasional ...	Brief	Mar–Jun	2B3	All	3W
Cormant (MN002) Mollic Psammaquents.	Frigid	P	0.5–2.5	Apr–Jul	≥6.0	None			282	All	4W
Cradlebaugh (NV2678) Duric Haplaquolls[1].	Mesic	P	1.0–2.0	Dec–May.	<6.0	Occasional ...	Brief	Dec–Mar	2B3	SLI SAL-ALK. STR SAL-ALK	6W 7W
Dawsil (WI0490) Terric Borosaprists.	Frigid	VP	+1–1.0	Sep–Jun	<6.0	None			1	ALL	7W
Degarmo, Wet (OR1386) Cumulic Haplaquolls[1].	Frigid	P	1.0–4.0	Mar–Sep	<6.0	Frequent	Brief	Mar–Jun	2B3	All	5W
Dosa (CA2426) Aquic Chromoxererts.	Mesic	SP	+5–2.5	Dec–Apr	<6.0	None			2A,3	0–2%	5W
Downata, Ponded (ID1785) Cumulic Haplaquolls.	Frigid	VP	+1–1.5	Jan–Jun	<6.0	Frequent	Brief	Jan–Jun	2B3,3	All	5W
Duckston, Ponded (NC0269) Typic Psammaquents.	Thermic	P	+1.–0	Jan–Dec	≥6.0	Non-Common.	Brief	Jan–Dec	2B1,3	All	7W
Eagleton (MT1345) Cumulic Haplaquolls.	Frigid	P	1.0–2.0	Nov–Jan	<6.0	Occasional ...	Brief	Apr–Jun	2B3	All	5W

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[Revised January 31, 1993]

Series and subgroup	Temperature	Drainage class	High water table		Perm. within 20 inches	Flooding			Hydric criteria No.	Capability	
			Depth	Months		Frequency	Duration	Months		Critical phase criteria	Class and subclass
Edina, Ponded (MO0343) Typic Argialbolls.	Mesic	P	+5–1.0	Nov–Apr	<6.0	None			2b3,3	All	3W
Edwards, Sandy Substratum (MI0616) Limnic Medisaprists.	Mesic	VP	+1–1.0	Sep–Jun	<6.0	None			1,3	All	5W
Egglake (MN0654) Mollic Ochraqualfs.	Frigid	P	1.0–3.0	Oct–Jul	<6.0	None			2B3	All	2W
Fredon, Poorly Drained (NJ0138) Aeric Haplaquepts[1].	Mesic	P	0–0.5	Oct–Jun	<6.0	None-Occasional.	Brief	Jan–Apr	2B3	0–3% Drained. Undrained	3W 4W
Frost, Ponded (LA0087) Typic Glossaqualfs.	Thermic	P	+2–0	Jan–Dec	<6.0	Frequent	V Long	Jan–Dec	2B3,3	All	7W
Galt, Cool (CA2475) Typic Chromoxererts[1].	Thermic	MW	+1–0.5	Dec–Mar	<6.0	None-Rare			3	Map 15–18	3W
Gothenburg, Sandy (NE0392) Typic Psammaquents.	Mesic	P	0–2.0	Nov–Jun	≥6.0	Common	Brief	Jan–Jun	2B2	All	7W
Granby, Clayey Substratum (MI0623) Typic Haplaquolls.	Mesic	P,VP	+1–1.0	Nov–Jun	≥6.0	None			2B2,3	Drained undrained.	4W 5W
Haggerty, Clayey Surface (LA0203) Aeric Ochraquults.	Thermic	SP	0–1.5	Nov–Jun	<6.0	Rare-Common.	V Long	Nov–Jun	2A,4	Freq Rare,SICL Rare,SIC Occas, SICL. Occas, SIC	5W 2W 3W 4W
Halleck, Thick Surface (NV2669) Cumulic Haplaquolls[1 2].	Frigid	P	1.5–2.5	Feb–Jul	<6.0	Frequent	Long	Mar–Jun	4	Freq	5W
Haslie (MN0629) Limnic Borosaprists.	Frigid	VP	0–1.0	Nov–Jul	<6.0	None			1	Drained Undrained	4W 6W
Haslie, Ponded (MN0630) Limnic Borosaprists.	Frigid	Vp	+2–0	Jan–Dec	<6.0	None			1,3	All	8W
Hedman (MN0661) Typic Calciaquolls.	Frigid	P	0–2.0	Apr–Jul	<6.0	None			2B3	Drained Undrained	2W 4W
Hedman, Depressional (MN0662) Typic Calciaquolls.	Frigid	VP	+2–0.5	Apr–Jul	<6.0	None			2B3, 3	Drained Undrained	3W 6W

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[Revised January 31, 1993]

Series and subgroup	Temperature	Drainage class	High water table		Perm. within 20 inches	Flooding			Hydric criteria No.	Capability	
			Depth	Months		Frequency	Duration	Months		Critical phase criteria	Class and subclass
Herdcamp (SD0489) Typic Haplaquolls.	Mesic	VP	0–1.0	Apr–Oct	<6.0	Frequent	Brief	Mar–Nov	2B3	All	6W
Hershal, Occasionally Flooded (OR1473) Cumulic Haplaquolls.	Mesic	P	0.5–1.5	Mar–Jun	<6.0	Occasional	Brief	Mar–Jun	2B3	All	3W
Hosford (FL0571) Cumulic Humaquepts.	Thermic	VP	0–0.5	Dec–Sep	<6.0	None			2B2	2–8% 8–12%	6W 7W
Hulderman (NV2655) Duric Haplaquolls[2].	Mesic	P	1.5–2.0	Mar–Jun	<6.0	Frequent	Long	Mar–Jun	4	NIRR	7W
Iksgiza (AK0371) Histic Pergelic Cryaquepts.	Cryic	P	0–1.5	Jan–Dec	<6.0	None			2B3	0–7% 7–30%	5W 6W
Isanti, Depressional (MN0651) Typic Haplaquolls.	Frigid	VP	+1–1.0	Oct–Jun	<6.0	None			2B3.3	Drained Undrained	4W 6W
Jacktone, Ponded (CA2466) Typic Pelloxererts[1].	Thermic	SP	+1–0	Dec–Apr	<6.0	Occasional	Long	Dec–Apr	2A,3	All	3W
Jacktone, Ponded, Protected (CA2467) Typic Pelloxererts[1].	Thermic	SP	+1–0	Dec–Apr	<6.0	Rare			2A,3	All	3W
Jebavy (MI0617) Aeric Haplaquods.	Mesic	P	+1–1.0	Oct–Jun	≥6.0	None			3B1.3	Drained Undrained	4W 5W
Jebavy, Sandy Surface (MI0633) Aeric Haplaquods.	Mesic	P	+1–1.0	Oct–Jun	≥6.0	None			2B1.3	Drained Undrained	4W 5W
Joseph, Occasionally Flooded (WA1926) Aquic Xerofluvents[2].	Mesic	MW	3.0–5.0	Dec–Jun	≥6.0	Frequent	Long	Dec–Jun	4	Freq	6W
Kanona, Poorly Drained (NY0058) Aric Haplaquepts[1].	Mesic	P	0–0.5	Dec–Jun	<6.0	None			2B3	Undrained Drained	3W 3W
Kechumstuk (AK0378) Histic Cryaquepts.	Crytic	VP	0–1.0	Jan–Dec	<6.0	None-Rare			2B3	0–2%	5W
Kechumstuk, Gravelly Substratum (AK0379) Histic Cryaquepts.	Crtic	VP	0–1.0	Jan–Dec	<6.0	None-Rare			2B3	0–2%	5W

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[Revised January 31, 1993]

Series and subgroup	Temperature	Drainage class	High water table		Perm. within 20 inches	Flooding			Hydric criteria No.	Capability	
			Depth	Months		Frequency	Duration	Months		Critical phase criteria	Class and subclass
Keyes, Terrace (CA2471) Abruptic Durixeralfs [1].	Thermic	MW	+1–1.5	Dec–Mar	<6.0	None			3	2–5% 5–15%	4S 4E
Kezan, Overwash (NE0383) Mollic Fluvaquents.	Mesic	P	1.0–3.0	Nov–Jun	<6.0	Common	Brief	Mar–Jul	2B3	Occas Channeled, Freq.	4W 5W
Kindanina (AK0872) Pergelic Cryaquepts.	Cryic	P	0–1.5	Jan–Dec	<6.0	None			2B3	0–7% 7–30% 30–35%	5W 6W 7W
Kolda, Drained (NV2672) Typic Haplaquolls.	Mesic	VP	+1–2.0	Apr–Jun	<6.0	None			2B3,3	All	5W
Kolda, Ponded (NV2673) Typic Haplaquolls.	Mesic	VP	+3–0	Jan–Dec	<6.0	None			2B3,3	All	5W
Kratka, Stratified Substratum (MN0640) Typic Haplaquolls.	Frigid	P	1.0–5.0	Apr–Jul	<6.0	None			2B3	All	3W
Kratka, Stratified Substratum, Depressional (MN0641) Typic Haplaquolls.	Frigid	VP	+1–1.0	Apr–Jul	<6.0	None			2B3,3	Drained Undrained	4W 6W
Lamoose, Calcareous (MT1325) Typic Haplaquolls.	Frigid	P	0.5–2.0	Apr–Jul	<6.0	None-Rare			2B3	0–2%	5W
Lamson, Maat <50, Mucky Surface (NY0679) Aeric Haplaquepts.	Mesic	P, VP	+1–0.5	Dec–May.	<6.0	None			2B3,3	All	5W
Langless (ID1756) Typic Calciaquolls.	Mesic	P	1.0–1.5	Oct–Jun	<6.0	Frequent	V Long	Oct-Jun	2B3,4	0–2%	5W
Laugenour, Flooded (CA2485) Aeric Fluvaquents [1].	Thermic	P	1.0–2.0	Dec–Mar	<6.0	Frequent	V Long	Dec–Mar	2B3,4	Map>16	4W
Leafriver, High PPT (MN0652) Histic Humaquepts.	Frigid	VP	+1–1.0	Nov–Jul	<6.0	None			2B3,3	Undrained Drained	6W 4W
Leaksville (NC0118) Typic Albaqualfs.	Thermic	P	0–1.0	Dec–Mar	<6.0	None			2B3	All	3W
Leon, Depressional (FL0501) Aeric Haplaquods.	Thermic	VP	+2–0	Jan–Sep	<6.0	None			2B3,3	All	7W

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[Revised January 31, 1993]

Series and subgroup	Temperature	Drainage class	High water table		Perm. within 20 inches	Flooding			Hydric criteria No.	Capability	
			Depth	Months		Frequency	Duration	Months		Critical phase criteria	Class and subclass
Leon, Hydric (FL0093) Aeric Haplaquods.	Thermic	P	0–0.5	Feb–Sep	<6.0	None	.....	.....	2B3	All	4W
Leon, Hydric (FL0564) Aeric Haplaquods.	Thermic	P	0–0.5	Jun–Feb	<6.0	None	.....	.....	2B3	All	4W
Limerick, Sandy Substratum (VT0122) Typic Fluvaquents.	Mesic	P	0–1.5	Nov–May.	<6.0	Frequent	Brief	Nov–May.	2B3	Drained .... Undrained	3W 4W
Lodgepole, Ponded (NE0414) Typic Argiaquolls.	Mesic	SP	+2–1.0	Mar–Jul	<6.0	None	.....	.....	2A,3	All	5W
Logan, Commonly Flooded (UT1872) Typic Calciaquolls[1].	Mesic	P	1.0–1.5	Apr–Jun	<6.0	Common	Brief	Mar–May.	2B3	All	5W
Madalin, Gravelly Substratum (NY0518) Mollic Ochraqualfs.	Mesic	P, VP	+.5–0	Nov–Jun	<6.0	None	.....	.....	2B3,3	SICL, SIL, SIC. MK	4W 5W
Malin, Rarely Flooded (OR1495) Fluvaquentic Haplaquolls.	(Mesic)	P	+1–4.0	Mar–Jun	<6.0	Rare	.....	.....	2B3,3	ALL	4W
Marcus (CA0360) Vertic Haplaquepts.	Thermic	VP,P	1.0–3.0	Dec–Mar	<6.0	None-rare	.....	.....	2B3	Mod Alkali Str Alkali ..	4W 6W
Marcuse, Sodic Overwash (CA1495) Vertic Haplaquepts.	Thermic	P	1.0–3.0	Dec–Mar	<6.0	None-rare	.....	.....	2B3	ALL	4W
Mariel (OR1515) Sapric Borohemists.	Frigid	VP	+2.–0.5	Jan–Dec	<6.0	.....	.....	.....	1,3	ALL	5W
Markey, Commonly Flooded (MI0635) Terric Borosoprists.	Frigid	VP	+1–1.0	Nov–Jun	<6.0	Common	Brief	Mar–Nov	1	ALL	6W
Markey, Frequently Flooded (MI0619) Terric Borosaprists.	Frigid	VP	0–2.0	Nov–Jun	<6.0	Common	Long	Mar–Jun	1	ALL	6W
Markey, MAAT<44 (MI0629) Terric Borosaprists.	Frigid	VP	+1–1.0	Nov–Jun	<6.0	None	.....	.....	1	Undrained Drained	5W 4W
Massena, Poorly Drained (NY0020) Aeric Haplaquepts[1].	Mesic	P	0–1.0	Nov–May.	<6.0	None	.....	.....	2B3	0-8% Drained. 8-15% ..... 0-8% Undrained	3W 3E 4W

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[Revised January 31, 1993]

Series and subgroup	Temperature	Drainage class	High water table		Perm. within 20 inches	Flooding			Hydric criteria No.	Capability	
			Depth	Months		Frequency	Duration	Months		Critical phase criteria	Class and subclass
Mazie (ID1350) Typic Unibraqualfs.	Frigid	VP	0–1.5	Feb–Jun	<6.0	Frequent	Long	Feb–May.	2B3,4	ALL	5W
Meadowbrook, Limestone Substratum, Flooded (FL0567) Grossarenic Ochraqualfs[1].	Thermic	VP	0–0.5	Jun–Dec	≥6.0	Common	Long	Jul–Nov	2B1,4	ALL	5W
Merryville (LA0206) Typic Glossaqualfs.	Thermic	P	0–1.5	Dec–Apr	<6.0	Rare Occasional.	Brief-Long.	Dec–Apr	2B3	Rare Occas	3W 4W
Minter, Ponded (AL0149) Typic Ochraqualfs.	Thermic	P	+3–1.0	Jan–Dec	<6.0	Non-frequent	Brief-Long.	Dec–Apr	2B3,3,4	ALL	7W
Misteguay (MI0611) Aeric Haplaquepts.	Mesic	P	0–1.0	Oct–May	<6.0	Rare-Common.	Brief-V Long.	Oct–Jun	2B3,4	Rare, drained. Freq, Drained. Occas, drained. Undrained	3W 3W 3W 5W
Mollville, Loamy Substratum (TX1252) Typic Glossaqualfs.	Thermic	P	+.5–1.0	Nov–Jun	<6.0	None			2B3,3	ALL	4W
Monarda, Rubbly (ME0136) Aeric Haplaquepts.	Frigid	P	0–1.5	Oct–Jun	<6.0	None			2B3	ALL	7S
Mullers (SC0147) Aeric Fluvaquents[2].	Thermic	SP	0.5–1.5	Nov–May.	<6.0	Frequent	Long	Dec–Apr	4	FREQ	6W
Naconiche (TX1236) Cumulic Humaquepts.	Thermic	VP	0–1.0	Jan–Dec	<6.0	Frequent	Long-V Long.	Jan–Dec	2B3,4	ALL	7W
Newlang (WI0472) Humaqueptic Psammaquents.	Mesic	P,VP	+1–1.0	Nov–Jun	<6.0	Occasional	Brief	Apr–Jun	2B,3	Drained Undrained	4W 6W
Niblack (AK0368) Lithic Cryosaprists.	Cryic	VP	0–1.0	Jan–Dec	>6.0	None			1	0–45%	7W
Niklavar (AK0357) Typic Cryaquents.	Cryic	VP	1.0–2.0	Apr–Oct	<6.0	Occasional	Brief-Long.	Apr–Oct	2B3	0–3%	4W
Normal (IL0447) Argiaquic Argialbolls.	Mesic		1.0–3.0	Mar–Jun	<6.0	None			2B3	0–2% 2–4%	2W 2E
OAKY (FL0108) Mollic Albaqualfs.	Thermic	P	0.5–1.5	Mar–Sep	<6.0	None			2B3	None	4W
OKAW, Nonflooded (IL0445) Typic Albaqualfs.	Mesic	P,VP	+.5–1.0	Mar–Jun	<6.0	None			2B3,3	0–2%	3W

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[Revised January 31, 1993]

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			Depth	Months		Frequency	Duration	Months		Critical phase criteria	Class and subclass
Overcup (AR0131) Vertic Albaqualfs.	Thermic	P	0–1.0	Dec–Apr	<6.0	None			2B3	0–1% 1–30% 0–3%	3W 3E 3W
Ozamis, Saline (OR1384) Fluvaquentic Haplaquolls[1].	Mesic	P	1.0–4.0	Mar–Jun	<6.0	Rare			2B3	All	5W
Pamlico, Loamy Substratum, Ponded (NC0270) Terric Medisaprists.	Thermic	VP	+2.–0	Jan–Dec	<6.0	Rare			1,3	All	7W
Perrine, Drained (FL0572) Typic Fluvaquents.	Hyperthermic.	P	0–1.0	Jun–Nov	<16.0	None			2B3	All	3W
Perry (LA0091) Vertic Haplaquepts.	Thermic	P	0–2.0	Dec–Jun	<6.0	Common	Brief-V Long.	Dec–Jun	2B3,4	Occas Freq	4W 5W
PIT, Overwash (CA2440) Chromic Pelloxererts.	Mesic	P	+.5–3.0	Dec–May.	<6.0	Rare			2B3,3	All	5W
PIT, Partially Drained (CA2441) Chromic Pelloxererts.	Mesic	P	0.5–4.0	Dec–May.	<6.0	Rare			2B3	All	4W
PIT, Rarely Flooded (CA2348) Chromic Pelloxererts.	Mesic	P	+.5–3.0	Dec–May.	<6.0	Rare			2B3,3	All	5W
Ponycreek (WI0434) Humaqueptic Psammaquents.	Frigid	P,VP	+1–1.0	Nov–Jun	<6.0	None			2B3.3	Undrained Drained	6W 4W
Pottsburg, Hydric (FL0098) Grossarenic Haplaquods[1].	Thermic	P	0–0.5	Feb–Sep	≤6.0	None-Occasional.	V Brief	Feb–Sep	2B1	All	4W
Racing (OR1512) Typic Cryaquods.	Cryic	P	+1.–1.0	Jan–Dec	<6.0	Occasional	Brief	Nov–Apr	2B3,3	All	6W
Rawhide (FL0110) Typic Argiaquolls.	Thermic	VP	+2–0	Jun–Apr	<6.0	None-Common.	Long	Jun-Apr	2B3,3,4	All	7W
Rawhide, Limestone Substratum (FL0113) Typic Argiaquolls.	Thermic	VP	+2–0	Jun–Apr	<6.0	None-Common.	Long	June–Apr.	2B3,3,4	All	7W
Raynham, Calcareous Substratum (VT0121) Aeric Haplaquepts.	Mesic	P, SP	0–2.0	Nov–May.	<6.0	None-Rare			2B3	Drained Undrained	3W 4W

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[Revised January 31, 1993]

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			Depth	Months		Frequency	Duration	Months		Critical phase criteria	Class and subclass
Reese, None-Rarely Flooded (NV2566) Aeric Halaquepts [1].	Mesic	P	1.0–3.0	Mar–Jul	<6.0	None-Rare			2B3	All	6S
Reese, Ponded (NV2567) Aeric Halaquepts [1].	Mesic	P	+1–2.0	Nov–Aug	<6.0	Rare-			2B3,3	All	6W
Rodney (IA0605) Mollic Fluvaquents.	Mesic	P	1.0 3.0	Nov Jul	<6.0	Rare-Occasional.	Brief	Feb–Nov	2B3	Rare Occas	1 2W
Roscommon, Nonponded (MI0422) Mollic Psammaquents.	Frigid	P	01.0	Sep–Jun	≥6.0	None			2B2	All	4W
Rubylake (NV2645) Mollic Fluvaquents [1].	Mesic	P	1.0–2.0	Mar–Jun	<6.0	Rare			2B3	All	5W
Rutlege (SCO148) Typic Humaquepts.	Thermic	VP	0–0.5	Dec–May.	≥6.0	None-Common.	Brief	Dec–May.	2B2	Drained Undrained	4W 5W
Rutlege, Ponded (SCO149) Typic Humaquepts.	Thermic	VP	+2–1.0	Dec–May.	≥6.0	None			2B2, 3	Drained Undrained	4W 7W
Sabattis (NY0401) Histic Humaquepts.	Frigid	P, VP	0–1.0	Nov–May.	<6.0	None			2B3	Undrained Drained	4W 3W
Sabattis, Stony (NY0405) Histic Humaquepts.	Frigid	P, VP	0–1.0	Nov–May.	<6.0	None			2B3	STV, BYV STX, BYX	6S 7S
Sahkahtay (MN0669) Mollic Ochraqualfs.	Frigid	P	0.5–1.5	Apr–Jun	<6.0	None			2B3	Drained Undrained	3W 4W
Sailboat, Cool (CA2478) Aquic Xerofluvents [1].	Thermic	SP	3.0–5.0	Dec–Mar	<6.0	Frequent	Long	Dec–Mar	4	MAP>16	4W
Samsula, Flooded (FL0112) Terric Medisaprists.	Hyper-Thermic.	VP	0 –0.5	Mar-Sep	≥6.0	Frequent	Brief-Long.		1	All	7W
Sapelo, Hydric (GA0100) Ultic Haplaquods [1].	Thermic	P	0–0.5	Nov–Apr	<6.0	None			2B3	All	4W
Satilla (GA0067) Thapto-Histic Fluvaquents.	Thermic	VP	0–1.5	Nov–May.	<6.0	None-Common.	Long	Dec–Apr	2B3, 4	None, Rare. Freq 7W	4W
Settlement, Stratified Substratum (NV5407) Aeric Halaquepts.	Mesic	P	1.0–2.5	Feb–Jun	<6.0	Frequent	Long	Mar–Jun	2B3, 4	All	7W

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[Revised January 31, 1993]

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			Depth	Months		Frequency	Duration	Months		Critical phase criteria	Class and subclass
Settlemeyer, Wet (NV2677) Fluvaquentic Haplaquolls[1].	Mesic	P	1.0–2.5	Feb–Jul	<6.0	Rare			2B3	All	6W
Shigh (OR1484) Aeric Albaquults.	Isomesic	P	0.5–1.0	Nov–Apr	<6.0	None			2B3	All	6E
Springerton (IL0428) Typic Haplaquolls.	Mesic	P	+.5–2.0	Feb-Jun	<6.0	Non-Rare			2B3, 3	All	2W
Stockton, Cool (CA2482) Typic Pelloxererts[1].	Thermic	SP	+1 –1.0	Dec–Mar	<6.0	Occasional	Brief	Jan–Mar	2A,3	Map>16	3W
Stockton, Map>16 (CA2481) Typic Pelloxererts[1].	Thermic	SP	+1 –1.0	Dec–Mar	<6.0	None-Rare			2A,3	Map>16	3W
Stockton, Ponded (CA2469)Typic Pelloxererts[1].	Thermic	SP	+1 –0	Nov–Mar	<6.0	Occasional	Long	Dec-Apr	2A,3	All	3S
Stockton, Ponded, Protected (CA2468) Typic Pelloxererts[1].	Thermic	SP	+1 –0	Nov–Mar	<6.0	None-Rare			2A,3	All	3S
Strathcona (MN0633) Typic Calciaquolls.	Frigid	P	1.0–3.0	Apr–Jul	<6.0	None			2B3	Drained Undrained	2W 4W
Strathcona, Depressional (MN0634) Typic Calciaquolls.	Frigid	VP	+1.–1.0	Jan–Dec	<6.0	None			2B3,3	Drained Undrained	3W 6W
Swedegrove (MN0673) Typic Haplaquolls.	Mesic	P	1.0–3.0	Nov–Jul	<6.0	None			2B3	All	2W
Talmoon (MN0592) Mollic Ochraqualfs.	Frigid	P	1.0–3.0	Nov–Jun	<6.0	None			2B3	All	2W
Talmoon, Stratified Substratum (MN0664) Mollic Ochraqualfs.	Frigid	P	1.0–3.0	Nov–Jun	<6.0	None			2B3	All	2W
Tanacross (AK0383) Histic Pergelic Cryaquepts.	Cryic	P	0–1.0	Jan–Dec	<6.0	None-Rare			2B3	0–3%	5W
Tennille (FL0084) Lithic Psammaquents.	Thermic	P	0.5–1.5	Mar–Sep	≥6.0	None			2B2	All	4W

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[Revised January 31, 1993]

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Tennille, Hydric (FL0088) Lithic Psammaquents.	Thermic	P	0–0.5	Jun–Mar	≥6.0	None-Common.	Brief	Jan–Mar	2B2	None, Rare. Common	5W 6W
Tetlin (AK0381) Pergelic Cryaquepts.	Cryic	P	0–3.5	Jan–Dec	<6.0	None			2B3	3–7% 7–30% 30–50%	5W 6E 7E
Tiocano (TX1254) Udic Pellusterts.	Hyperthermic.	SP	+1–2.0	Sep–May.	<6.0	None			2A,3	All	4W
Toba (NV2658) Aquic Calciorthids[2].	Mesic	P	1.5–2.0	Mar–Jun	<6.0	Frequent	Long	Mar–Jun	4	Freq	5W
Totness (SC0144) Typic Psammaquents.	Thermic	?	0–1.0	Nov–Apr	≥6.0	Frequent	Brief-Long.	Nov–May.	2B2,4	All	6W
Tughill, Bouldery (NY0431) Histic Humaquepts.	Frigid	VP	+1–0.5	Nov–Jun	<6.0	None			2B3,3	All	7S
Turrah (MT0625) Cumulic Haplaquolls.	Frigid	P	1.0–3.0	May–Jul	<6.0	None-Rare			2B3	All	5W
Wareham (MA0052) Humaqueptic Psammaquents[3].	Mesic	SP,P	0.5–1.5	Sep–Jun	≥6.0	None			2B2	All	3W
Warman (MN0639) Typic Haplaquolls.	Frigid	P	1.0–2.0	Apr–Jun	<6.0	None			2B3	All	3W
Waucedah, Clayey Substratum (MI0485) Histic Humaquepts.	Frigid	P,VP	+2–1.0	Jan–Dec	<6.0	Frequent	Brief-V Long.	Mar–May.	2B3,3,4	All	5W
Wekoda, Flooded (CA2456) Aquic Chromoxererts[1,2].	Thermic	P	1.5–3.0	Dec–Apr	<6.0	Frequent	Long	Dec–Apr	4	Freq	4W
Welch, Ponded (NV2572) Cumulic Haplaquolls[1].	Frigid	VP	+1–1.5	Nov–Jun	<6.0	None			2B3,3	All	5W
Wickiup (OR0200) Aquic Cryorthents.	Cryic	P	0–2.5	Mar–Oct	≥6.0	None			2B2	All	6W
Wizard (OR1331) Aquic Vitrixerands.	Frigid	SP	0–2.0	Apr–Jun	<6.0	None			2A	All	6E
Uniongrove (MN0674) Typic Haplaquolls.	Mesic	P	1.0–3.0	Nov–Jul	<6.0	None			2B3	All	2W

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[Revised January 31, 1993]

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			Depth	Months		Frequency	Duration	Months		Critical phase criteria	Class and subclass
Vassalboro (ME0142) Typic Borofibrists.	Frigid	VP	0–0.5	Sep–Jul	<6.0	None-Rare			1	All	8W
Waldron, Loamy Substratum (M00213) Aeric Fluvaquents[2].	Mesic	SP	1.0–3.0	Nov–May.	<6.0	Frequent	Long	Dec–May.	4	Freq,Long	5W
Watab (MN0284) Arenic Ochraqualfs.	Frigid	P	0.5–2.0	Mar–Jun	≥6.0	None			2B2	All	3W
Wheatbelt (MT1353) Udorthentic Pellusterts.	Frigid	P	+.5–1.0	Apr–Sep	<6.0	None			2B3,3	0–1%	6W
Yearian (ID1531) Typic Haplaquolls.	Frigid	P	0.5–1.5	Apr–Jun	<6.0	Occasional	Brief	Apr–Jun	2B3	0–4%	5W
Yearian, Sloping (ID1800) Typic Haplaquolls.	Frigid	P	1.0–1.5	Jan–Jun	<6.0	None			2B3	All	5W
Yogaville (VA0379) Fluvaquentic Haplaquolls.	Thermic	P	0–1.0	Dec–May.	<6.0	Common	V Brief-Brief.	Dec–May.	2B3	Occas, drained. Occas, undrained. Freq, drained. Freq, undrained	2W 4W 3W 6W
ZeeGee (ID1697) Typic Haplaquolls.	Frigid	P	0.5–1.5	Mar–Jul	<6.0	Occasional	Brief	Apr–Jun	2B3	All	5W
Zipp, Loamy Substratum, Flooded (IN0550) Typic Haplaquepts.	Mesic	VP	+.5–1.0	Dec–May.	<6.0	Frequent	Brief	Dec–May.	2B3,3	All	3W

[1] Some soil interpretation records representing phases of this series are not hydric.
[2] Some phases of this soil are not frequently flooded of long duration.
[3] some drainage classes for this soil are not hydric.

[FR Doc. 93–24470 Filed 10–5–93; 8:45 am]
BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Minority Business Development Agency

Business Development Center Applications: Northwest Native American Business Development Center (Northwest NABDC)

AGENCY: Minority Business Development Agency, DOC.

ACTION: Notice.

SUMMARY: In accordance with Executive order 11625, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its Native American Program. The total cost of performance for the first budget period (12 months) from February 1, 1994 to January 31, 1995 is estimated at $205,000. The NABDC will operate in the Washington, Oregon, and Idaho Geographic Service Area.

The funding instrument for the NABDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The Native American program provides business development services to the Native American business community to help establish and maintain viable Native American businesses. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of Native American individuals and firms; to offer a full range of management and technical assistance to minority entrepreneurs; and to serve as

a conduit of information and assistance regarding Native American business.

Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of Native American businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the numbers of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant with the highest point score will not necessarily receive the award.

Quarterly reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as an NABDC's performance, the availability of funds and Agency priorities.

DATES: The closing date for applications is November 10, 1993. Applications must be postmarked on or before November 10, 1993.

The mailing address for submission is: San Francisco Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, room 1280, San Francisco, California 94105. Telephone: 415/744–3001.

A pre-application conference to assist all interested applicants will be held at the following address and time: San Francisco Regional office, Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, room 1280, San Francisco, California 94105 on October 27, 1993 at 10 a.m.

FOR FURTHER INFORMATION CONTACT: Xavier Mena, Regional Director, San Francisco Regional Office at 415/744–3001.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372, "Intergovernmental Review of Federal programs," is not applicable to this program. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–0006. Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address.

Pre-Award Costs

Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Outstanding Account Receivable

No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, a repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy

All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management, honesty or financial integrity.

Award Termination

The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are unsatisfactory performance of NABDC work requirements, and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements

A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications

All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

Nonprocurement Debarment and Suspension

Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

Drug Free Workplace

Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants) and the related section of the certification form prescribed above applies."

Anti-Lobbying

Persons (as defined at 15 CFR Part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form which applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000.

Anti-Lobbying Disclosures

Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B.

Lower Tier Certifications

Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered

transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by an tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

11.801 American Indian Program
(Catalog of Federal Domestic Assistance)

Dated: September 29, 1993.

Xavier Mena,

Regional Director, San Francisco Regional Office.

[FR Doc. 93–24556 Filed 10–5–93; 8:45 am]

BILLING CODE 3510–21–M

National Technical Information Service

Prospective Grant of Exclusive Patent License

This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Technical Information Service (NTIS), U.S. Department of Commerce, is contemplating the grant of an exclusive license in the United States to practice the invention embodied in U.S. Patent No. 5,098,573 (Ser. No. 7–730,014), titled "Binary Concentration and Recovery Process," to Custom Industrial Analysis (CIA) Laboratories, having a place of business in St. Joseph, MO. The patent rights in this invention have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. While the primary purpose of this notice is to announce NTIS' intent to grant an exclusive license to practice Patent No. 5,098,573, it also serves to publish said patent's availability for licensing in accordance with law. The prospective exclusive license may be granted unless, within ninety days from the date of this published notice, NTIS receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The present invention describes a binary process for the concentration and recovery of contaminants from an aqueous environment by submerging lipids inside a thin non-porous polymeric film enclosure in an aqueous environment to concentrate the contaminants in the lipids and polymeric film; and, recovering contaminants or impurities from the first part or from other contaminated lipids or biogenic extracts by submerging the polymeric film enclosed materials in a solvent medium.

A copy of the above-identified patent may be purchased from the Commissioner of Patents and Trademarks, Box 9, Washington, DC 20231 for $3.00 (payable by check or money order).

Inquiries, comments and other materials relating to the contemplated license must be submitted to Neil L. Mark, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151. Properly filed competing applications received by the NTIS in response to this notice will be considered as objections to the grant of the contemplated license.

Douglas J. Campion,

Acting Director, Office of Federal Patent Licensing.

[FR Doc. 93–24464 Filed 10–5–93; 8:45 am]

BILLING CODE 3510–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)

AGENCY: Office of the Secretary, DoD.

ACTION: Notice of the second phase of the TRICARE Tidewater Managed Care Demonstration Project.

SUMMARY: Notice was previously given in the **Federal Register** (57 FR 40177–40181) of September 2, 1992, that a demonstration project will be conducted by the three military services, under the provisions of title 10, United States Code, section 1092, to test a different method for financing and delivery health care services under the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS). This demonstration project is also authorized by section 712(b) of the National Defense Authorization Act for Fiscal Years 1992 and 1993, Public Law 102–190. The first phase for the delivery of services under the demonstration, hereafter referred to as TRICARE, began on October 1, 1992, for all beneficiaries who reside in the designated zip codes identified in Table 1, hereafter referred to as the Tidewater region or Tidewater service area of Virginia (which incorporates Naval Hospital Portsmouth, Virginia; McDonald Army Community Hospital at Fort Eustis; The First Medical Group, Langley AFB). The current CHAMPUS Fiscal Intermediary (FI) contract has been modified under the authority of 10 United States Code, section 1079(n). An ongoing evaluation of the demonstration is being conducted by the Center for Naval Analyses (CNA) in conjunction with the Office of the Assistant Secretary of Defense (Health Affairs). This notice is to announce the second phase of the project to begin 30 days from the date of this notice and to make some modifications to the previous notice published September 2, 1992. TRICARE is a Tri-service Managed Care initiative under the direction of the commanders of the three military treatment facilities (MTFs) and administered by the TRICARE project office. TRICARE will be responsible for the administration of all CHAMPUS funds in the Tidewater area except mental health services. Mental Health services will be folded under TRICARE at the time of the completion of the current Contracted Provider Arrangement mental health services contract. Direct health care funds will be retained by the respective services and individual MTF commanders. The Navy has been appointed by the Assistant Secretary of Defense (Health Affairs) to act as the Executive Agent. The TRICARE Project provides alternatives for the financing and delivery of health care services under CHAMPUS. It represents structural reform, centered on the principles of managed care and the coordination of the military-civilian health care partnership. The demonstration relies on a coordinated consortium of private companies, the three military services, and other Federal health care delivery organizations to deliver medical care to all eligible beneficiaries residing in the Tidewater region of Virginia. The objectives of the demonstration are to enhance beneficiary access to care, curb health care cost growth, strengthen quality assurance activities, and impróve coordination between the military and civilian components of the Military Health Services System (MHSS).

DATES: November 5, 1993, eligible health care beneficiaries in the Tidewater region of Virginia, when offered, may elect to enroll in a managed care option called TRICARE Prime. TRICARE Extra was available on October 1, 1992, and standard CHAMPUS (TRICARE Standard) is still available for beneficiaries who choose neither of the previous two managed care options.

FOR FURTHER INFORMATION CONTACT: Captain W.T.T. Hood, U.S. Navy, TRICARE Office, 5425 Robin Hood Road, suite 203, Norfolk, VA 23513, telephone (804) 677-6440.

SUPPLEMENTARY INFORMATION: Under the TRICARE demonstration, CHAMPUS eligible beneficiaries in the Tidewater Region of Virginia, as qualified and within the parameters identified below, will be able to choose among three options. They may enroll in the managed care option (TRICARE Prime); they may use the preferred provider network on a case-by-case basis (TRICARE Extra); or they may remain in the standard CHAMPUS benefit plan, called TRICARE Standard. All active duty will be considered enrolled in TRICARE Prime. All current laws and regulations applicable to active duty members remain in effect. Medicare eligible beneficiaries may enroll in certain features of TRICARE Prime, when offered, or use the preferred provider network; however, care rendered by civilian providers will be handled exclusively under the Medicare Program and subject to Medicare rules, procedures, and reimbursement rates. Non-active duty, non-Medicare, non-CHAMPUS eligible beneficiaries, such as certain former spouses, some categories of dependents, and Secretarial designees, who enroll in TRICARE Prime will be entitled to use of the Health Care Finder services to assist in locating providers. All beneficiaries who do not enroll in TRICARE Prime or use network providers remain free to use any military hospital on a space available basis, as presently authorized. Enrollees in TRICARE Prime will obtain the majority of their care within the network and pay reduced CHAMPUS cost shares when they receive care from civilian providers. Authorization from TRICARE will be required by TRICARE Prime enrollees who want to use health care providers outside the network. Also, authorization will be required from the primary care manager by TRICARE Prime enrollees who need any specialty care. Beneficiaries will have the greatest freedom of choice, for the most part, by choosing the TRICARE Standard option. All current CHAMPUS rules still apply under this option. TRICARE Standard beneficiaries will face standard CHAMPUS cost sharing requirements, except that their coinsurance percentages will be lower when they use the preferred provider network (TRICARE Extra).

The Office of Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS) has modified the CHAMPUS Mid-Atlantic Fiscal Intermediary's contract with Blue Cross and Blue Shield of South Carolina (BCBS/SC), a private health insurance company headquartered in Columbia, South Carolina. BCBS/SC has established the initial portion of the required preferred provider network, comprised of health care providers and institutions that offer discounts off the normal CHAMPUS rates and are both CHAMPUS and, when possible and necessary, Medicare Participating Providers. BCBS/SC will continue to refine and maintain the network and will continue to process CHAMPUS claims for all beneficiaries who reside in the Tidewater region. All negotiated CHAMPUS rates for both professional services and in-patient procedures will be applicable to services provided to active duty members and other under the supplemental program, unless a lower rate has been previously negotiated. The negotiated charges for individual professional services under the terms of the demonstration, shall be included with all billed charges for purposes of establishing the prevailing charge.

The enrollment system, which will be available 30 days from the date of this notice, represents one of four cornerstones of TRICARE Prime. This option will enable the military treatment facility commanders to identify beneficiaries who rely upon the more closely coordinated military and civilian provider systems as their source of health care and to marshal resources most effectively to meet their health care needs.

Another cornerstone includes the primary care manager (PCM) process and the Health Care Finder (HCF) functions. TRICARE Prime enrollees will have a PCM as a regular point-of-service for most health care needs. The PCM will refer patients for needed specialty care to an MTF or civilian network provider. In this regard, the PCM will be complemented by the TRICARE Service Center (TSC), an administrative office to support the specialty referral process. TRICARE Standard enrollees will be encouraged to use the services of the TSC, including the preferred provider network. The HCF function will be provided at centers established at each military hospital within the designated service area. BCBS/SC has established a service center near Naval Hospital Portsmouth. HCFs will continue to help beneficiaries obtain appointments for services in the most appropriate setting, whether in a military facility or with civilian providers, facilitate beneficiary access to care, and help ensure optimal use of military hospitals. For the most part, the MTFs will be considered the most preferred providers. The service centers will also serve as a source of information and will assist beneficiaries with resolution of claims problems. The use of the service centers has been available since October 1, 1992. These centers will be available to assist in the enrollment process of beneficiaries in the TRICARE Prime managed care option. Marketing material will be provided before the enrollment process is initiated.

The third cornerstone of TRICARE is the preferred provider network, comprised of a wide array of qualified health care providers. The civilian preferred provider will agree to follow established rules and procedures for sound utilization management, maintain close coordination with the military facility, provide affordable and high quality care. Providers who agree to be PCMs must follow the rules and procedures of the TRICARE Prime to include all aspects of being a participating provider, to refer patients to specialty care only when necessary, to consider the MTFs the most preferred providers, and to provide education on preventive measures and health lifestyles to beneficiaries as appropriate.

The fourth cornerstone of TRICARE is the comprehensive quality management program that will attempt to balance optimization of resources with high quality care across the Tidewater region. The new CHAMPUS Regional Review Center, the Medical Society of Virginia Review Organization (MSVRO), will use national standards for utilization review and peer review of selected cases. TRICARE will ensure adherence to all rules applicable to this program. A separate CHAMPUS National Quality Monitoring Contract will oversee the review process.

TRICARE Prime

This is a voluntary, enrollment option offered as an alternative to standard CHAMPUS. TRICARE Prime provides enhanced CHAMPUS benefits to all enrolled beneficiaries. 30 days from the date of this notice, the TRICARE Prime will be offered to the initial category of beneficiaries who reside throughout the TRICARE service area. The benefits package available to enrollees will contain the same benefits as are available under standard CHAMPUS, plus benefit enhancements offered by TRICARE. These enhancements will include such services as periodic examinations and preventive care procedures not covered under standard CHAMPUS. They are identified in table 2. The mental health cost shares will be

applicable at the expiration of the current contract for mental health services. The medical benefits will be uniform across all areas of the Tidewater region. This plan requires an annual enrollment fee, in lieu of the normal CHAMPUS deductible, that will apply for the entire year (See table 3). Medicare-eligible beneficiaries, and other non-CHAMPUS eligible beneficiaries, who wish to enroll in TRICARE Prime are exempt from the enrollment fee and from all restrictions regarding use of providers. CHAMPUS eligible beneficiaries who select TRICARE Prime and who use the preferred provider network will have the added benefit of not having to file claims forms, and they will not be balance billed for their care. They will be given the opportunity to register a preference for assignment to a PCM. A PCM may be an individual provider, a group practice, a clinic, a treatment site, or other designation. Beneficiary preference in assignment of a particular PCM will be honored subject to the availability of the choices. CHAMPUS eligible beneficiaries who enroll in TRICARE Prime must follow TRICARE's rules for seeking non-emergency medical care and other applicable rules. Failure to do so will result in denial of payment for the medical services received. If payment is denied for failure to follow TRICARE rules, the patient will be responsible for the full cost of the care they received. Appeals will be resolved by the TRICARE office and written procedures will be provided before the enrollment process begins. TRICARE Prime enrollees will agree to stay in the program for a full year, unless they move out of an area. Patients who are enrolled and who are not happy with a particular provider will be given the opportunity, in coordination with the TRICARE Service Center, to choose another one within the network once during the enrollment period. With special permission from TRICARE, a beneficiary may disenroll, but then cannot re-enroll until the next open season. Enrollment will be offered in a phased manner. Open season for dependents of active duty personnel whose sponsors are in the pay grades of E–4 or below begin 30 days from the date of this notice. Then, after a sufficient period of time, but not later than the winter of 1993, enrollment will be offered in a progressive manner to the next category of beneficiaries, dependents of active duty personnel whose pay grades are E–5 and above. Enrollment may be offered to remaining eligible beneficiaries after a period of time which will allow an assessment of network capability. Enrollment of all family members will be strongly encouraged, but enrollment will be on an individuals basis. The enrollment fees will be collected annually from CHAMPUS eligible beneficiaries who choose to enroll, and this fee will be in lieu of the normal CHAMPUS deductible. The FI will be responsible for the collection of the enrollment fees. The enrollment fees are not refundable. However, under the circumstance when an active duty dependent is involuntarily moved from the TRICARE service area, pursuant to a government directed move, a pro-rated credit may be given toward the standard deductible in the fiscal intermediary region to where the beneficiary moved. Other unusual circumstances that may warrant a credit may be reviewed and authorized on a case-by-case basis by TRICARE. The proration will be based on a quarterly amount and credited toward the standard deductible for the fiscal year in which the move took place. In cases where an enrollee moves to another managed care site that has the same benefit structure, the beneficiary may maintain their enrollment status in the new site. If they decide not to maintain their enrollment status in the new site, a prorated credit will be applied to their standard CHAMPUS deductible, as identified above. Notices for re-enrollment will be sent in sufficient time to allow for payment of the annual enrollment fee. If the enrollment fee is not received by the expiration date, which will be the anniversary of the date of the initial enrollment, the beneficiary will be disenrolled automatically. A beneficiary will be considered enrolled: (1) When a PCM has been assigned, (2) appropriate entries have been made in the Composite Health Care System (CHCS) and Defense Enrollment and Eligibility Reporting System (DEERS), (3) the beneficiary is notified in writing of his/her enrollment with an effective date, and (4) appropriate fees have been paid. Enrollment will be effective on the first day of the month, after completion of the above. Under unusual circumstances, TRICARE may authorize enrollment retroactive the first day of the month in which the enrollment application was submitted. The following specific rules for TRICARE Prime enrollees apply: (1) Except for emergency care, enrollees must obtain all primary care from the PCM or another provider to whom the enrollee is referred by TRICARE. (2) For any necessary specialty care and all inpatient care of other than emergencies, the PCM, enlisting the HCF, will assist in making an appropriate referral. All such non-emergency specialty and inpatient care must be approved with authorization from the PCM or HCF. The priority for specialty or inpatient care will be the local MTF. If the local MTF is unavailable for the services needed, the enrollee will be required to obtain the services at another TRICARE service area MTF. Access issues such as waiting times and geographic barrier will be considered in requiring treatment at another MTF. If needed services are available from the civilian portion of the network, the enrollee will be required to obtain the services from the network. Again, access issues such as waiting times and geographic barriers will be considered. In the event the needed services cannot be obtained through any of the above sources, the enrollee will receive approval from TRICARE to obtain the services from a CHAMPUS authorized civilian provider of the enrollee's choice, who is not affiliated with the TRICARE Prime network. Enrolled beneficiaries who desire care while outside of the TRICARE service area will require authorization, except for emergencies. If an authorization was not obtained prior to the delivery of services, a claim will be denied.

TRICARE Extra

This option was available from October 1, 1992. CHAMPUS beneficiaries who do not choose TRICARE Prime will be able to continue to participate in this preferred provider option. Beneficiaries who receive care from one of the network preferred providers will be entitled to a reduced level of cost-sharing. Changes from the previous **Federal Register** notice for the cost sharing under this option are identified in table 3. Under this option, patients will be covered for the same medical services as under standard CHAMPUS, and they will get discounts for office visits and hospital inpatient care by using providers who are members of the preferred provider network. Dependents of active duty service members, as an example, will pay 15 percent of the CHAMPUS negotiated reimbursement rate for a doctor's office visit in the contractor network instead of 20 percent required under standard CHAMPUS. Retirees and their families will pay 20 percent rather than 25 percent for office visits. For inpatient care, retirees will be required to pay $200 per day (or 25 percent of the negotiated reimbursement rate), whichever is less, plus 20 percent of inpatient professional fees, instead of the current 25 percent. (See table 3) TRICARE Extra offers greater freedom of

choice than TRICARE Prime because patients do not have to enroll. CHAMPUS patients can elect to use this option on a case-by-case basis. Standard CHAMPUS deductibles continue to apply and rules regarding NAS requirements continue. As in TRICARE Prime, beneficiaries have the added benefit of not having to file claims forms for care received through the preferred provider network.

TRICARE Standard

This plan refers to standard CHAMPUS. TRICARE Standard will continue to be available in the Tidewater region to CHAMPUS beneficiaries who choose not to enroll or use the preferred provider network. All current rules and procedures continue to apply under this option.

The CHAMPUS Expanded Home Health Care—Case Management Demonstration is included in this project since TRICARE has been named the fourth demonstration site. This is a separate demonstration that will operate in tandem with other TRICARE initiatives. Details of this demonstration were given in the **Federal Register** on June 3, 1988 (53 FR 20359).

Duration

The TRICARE Demonstration project will continue for a minimum of three years from the start of the project on October 1, 1992. The modifications will remain in place for the duration of the BCBS/SC Mid-Atlantic Fiscal Intermediary contract and will be included in the successor contract.

Exclusions to the TRICARE Demonstration Project

The following are not covered under the demonstration:

—Mental Health care benefits will remain under the control of Tidewater Mental Health Contracted Provider Arrangement (CPA) Demonstration Project. All rules that are in place will continue to apply until the current contract expires. At which time, TRICARE will fold the new mental health program into this demonstration and the identified cost sharing (table 3) will be implemented.

—The Children With Disabilities Program is not affected by the selection of the enrollment options.

—Beneficiaries eligible under the Civilian Health and Medical Program of the Veterans Administration (CHAMPVA) are not covered under this demonstration.

All current CHAMPUS rules, unless this notice specifically provide otherwise, will continue to apply.

This notice reflects the changes under this demonstration which is expected to start 30 days from the date of this notice.

Dated: October 1, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

TRICARE Catchment Area ZIP Codes; 1993

ZIP Code	City/Town/Area
23001	Achilles
23003	Ark
23011	Barhansville
23013	Bavon
23016	Beaverlett
23017	Bellamy
23018	Bena
23020	Blakes
23021	Bohannon
23025	Cardinal
23031	Saluda
23032	Church View
23035	Cobbs Creek
23037	West Point
23043	Deltaville
23044	Deltaville
23045	Diggs
23050	Dutton
23056	Foster
23061	Gloucester
23062	Gloucesterpt
23064	Grimstead
23066	Gwynn
23068	Hallieford
23070	Hardyville
23071	Hartfield
23072	Hayes
23076	Hudgins
23079	Jamaica
23080	James Store
23081	Williamsburg
23085	King & Qn C
23089	Lanexa
23090	Lightfoot
23091	LTL Plymouth
23092	Locust Hill
23107	Maryus
23108	Shacklefords
23109	Mathews
23110	Mattaponi
23114	Miles
23118	Mobjack
23119	Moon
23122	Naxera
23125	New Point
23127	Norge
23128	North
23130	Onemo
23131	Ordinary
23133	Peary
23136	Pinero
23137	Plain View
23138	Port Haywood
23142	Redart
23149	Saluda
23154	Schley
23155	Severn
23156	Shacklefords
23157	Shadow
23158	Shanghai
23163	Susan
23165	Syrinega
23168	Toano
23169	Topping
23175	Remlik
23176	Wake
23178	Ware Neck
23179	Warner
23180	Water View
23181	West Point
23183	White Marsh
23184	Wicomico
23185	Williamsburg
23186	Williamsburg
23187	Williamsburg
23188	Williamsburg
23190	Woods XRDS
23191	Zanoni
23304	Battery Park
23314	Carrollton
23315	Carrsville
23320	Chesapeake
23321	Chesapeake
23322	Chesapeake
23323	Deep Creek
23324	Chesapeake
23325	Chesapeake
23326	Chesapeake
23327	Chesapeake
23328	Chesapeake
23361	Hampton
23363	Hampton
23397	Isle Wight
23424	Rescue
23430	Smithfield
23432	Suffolk
23433	Suffolk
23434	Suffolk
23435	Suffolk
23436	Suffolk
23437	Holland
23438	Whaleyville
23439	Suffolk
23450	Va Beach
23451	Va Beach
23452	Va Beach
23453	Va Beach
23454	Va Beach
23455	Va Beach
23456	Va Beach
23457	Blackwater
23458	Va Beach
23459	Ft Story
23460	Va Beach
23461	Va Beach
23462	Va Beach
23463	Va Beach
23464	Va Beach
23465	Va Beach
23466	Va Beach
23467	Va Beach
23468	Va Beach
23479	Va Beach
23481	Carrsvile
23487	Windsor

23501 Norfolk
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TRICARE Prime Enhanced Benefits

There is no preauthorization required for the following services. The following services are expected of good comprehensive clinical practice. There is no co-payment expected nor is the provider expected to unbundle the services for an additional fee or inconvenience the patient by rescheduling the following services unnecessarily.

Routine history and physical examinations are no longer recommended for health promotion disease prevention in individuals who are not being monitored as a part of a therapeutic plan for chronic disease. In counterdistinction, the Preventive Services Task Force recommends that a variety of age and sex specific services be combined into periodic health promotion disease prevention surveillance examinations. These services are reflected below.

Services	Frequency or age interval
Lab, X-ray, Mammography	Screening blood lead level: once age 12 mos–6 yrs. Rubella antibodies: females, once age 12–18. Non-fasting total blood cholesterol: Every five yrs over 18. Fecal occult blood testing: Annually age 50 & over. Mammogram: Baseline age 40; every two yrs age 40–50; annually age 50 & over.
Pap smears	Annually over age 18 or younger, if sexually active
Eye exams/refractions	By primary care provider: red reflex, corneal light reflex, inspection: newborn–3 mos; 6 mos–12 mos: red reflex, corneal light reflex, inspection, differential occlusion, fixed and follow with each eye; Age 3–4: baseline optometric examination for amblyopia and/or strabismis; annual eye exams: age 5–17; every three yrs over age 18
Immunizaitons	DPT: 2 mos; 4 mos; 6 mos. DTaP (acellular) 15–18 mos; once age 4–6. OPV: 2 mos; 4 mos; 15–18 mos; once age 4–6. MMR: age 15 mos and once age 4–6 or 11–12; once after age 19 unless evidence of immunity. Td: once age 14–16; every 10 yrs thereafter. Pneumococcal vaccine: persons at increased risk due to other medical condition. HIB: age 2, 4, 6, & 15 mos. PPD: 12 mos; after close contact with person with suspected TB. Hepatitis B: see schedule below for infants; once age 11–19 if not immunized as an infant.
Periodic health promotion disease prevention exams over 24 mos of age.	One eval. and followup during following age intervals: 2–4; 5–11; 12–17; 18–39; 40–64. Blood pressure during part of above exams. Clinical breast exam annually age 40 & above. Clinical testicular exam annually age 18 & over. Rectal prostate exam annually age 18 & over.
Blood pressure	Every two years age 18 & over.
Hearing screening	Otoacoustic emissions (OAE) screening: infant-before leaving hospital; Once age 2–5; Once age 6–10; Once age 12–17; Once age 40–59; Once age 60–65.
Sigmoidoscopy or colonoscopy	Once every 3–5 yrs over age 50.
Serologic screening of all pregnant women for HBsAg (hepatitis B surface antigen).	Infants born to HBsAg-negative mothers receive HBG vaccine before discharge; second dose at 1–2 mos of age; third dose at 6–18 mos of age.

Services	Frequency or age interval
	Infants born to HBsAg-positive mothers immunize with HBIG preferably within 12 hrs of birth. Second and third doses at 1 and 6 months of age. Serologic status should be checked at 9 mos and fourth dose administered to infants who are HBsAg-negative with titers of anti-HBs <10 mIU/mL. Re-test one month later for anti-HBs. Up to two additional doses may be considered for those who fail to respond.
Patient & parent education and counseling: Dietary assessment and nutrition; Physical activity and exercise; Cancer surveillance; Sexual practices; Substance abuse; Injury prevention; Promoting dental health; Stress and bereavement.	These are expected components of good clinical practice that are integrated into the office visit at no additional charge.

TRICARE Managed Care Program

Benefits and Beneficiary Payments Under TRICARE Prime Plan

(See Note 1 Below)

I. Outpatient Services

Enrollment fee	TRICARE prime
Applies to all outpatient services	$0 dependents of E–4 and below. $35 dependents of E–5 and above. $50 retirees and others. (double above amounts for family enrollment).

Standard CHAMPUS benefits	Beneficiary cost sharing
Type of Service:	
Physician Services:	
Office visits; outpatient office based medical and surgical care; consultation, diagnosis and treatment by a specialist; allergy tests and treatments; osteopathic manipulation; medical supplies used within the office including casts, dressings, and splints	—Dependents of E–4 and below—$5 copay/visit —Dependents of E–5 and above—$10 copay/visit. —Retirees and others—$15 copay/visit.
Laboratory and X-Ray Services:	
(No copayment if included in provider's office visit)	—Dependents of E–4 and below—$5 copay/visit. —Dependents of E–5 and above—$10 copay/visit. —Retirees and others—$10 copay/visit.
Ambulance Services:	
When medically necessary as defined by the CHAMPUS Policy Manual and the service is a covered benefit	—Dependents of E–4 and below—$5 occurrence. —Dependents of E–5 and above—$10 occurrence. —Retirees and others—$15 occurrence.
Ambulatory Surgery (Same Day):	
Authorized hospital-based or free-standing ambulatory surgical center that is CHAMPUS certified. (not performed in a physician's office)	—Dependents of E–4 and below—$15 copay. —Dependents of E–5 and above—$25 copay. —Retirees and others—$75 copay.
Immunizations:	
Immunizations required for active duty family members whose sponsors have permanent change of station orders to overseas locations	—Dependents of E–4 and below—$5 copay/visit. —Dependents of E–5 and above—$10 copay/visit.
Emergency Services:	
Emergency and urgently needed care obtained on an outpatient basis, both network and non-network and in and out of service area	—Dependents of E–4 and below—$35/ER visit. —Dependents of E–5 and above—$50/ER visit. —Retirees and others—$60/ER visit.
Durable Medical Equipment, Prosthetic Devices, and Medical Supplies Prescribed by an Authorized Provider Which are Covered Services:	—Dependents of E–4 and below—10%. —Dependents of E–5 and above—15% —Retirees and others—20%. (of the negotiated reimbursement rate).
If dispensed for use outside of the office or after the home visit	
Home Health Care:	
Part-time skilled nursing care, physical, speech & occupational therapy when medically necessary and which are covered benefits	—Dependents of E–4 and below—$5 copay/visit. —Dependents of E–5 and above—$10 copay/visit. —Retirees and others—$15 copay/visit.
Family Health Services:	
Family planning and well baby care (up to 24 months of age). The exclusions in the CHAMPUS Policy Manual will apply	—Dependents of E–4 and below—$5 copay/visit. —Dependents of E–5 and above—$10 copay/visit. —Retirees and others—$15 copay/visit.
Prescription Drugs	—Dependents of E–4 and below—$4/Rx. —Dependents of E–5 and above—$4/Rx.

Standard CHAMPUS benefits	Beneficiary cost sharing
	—Retirees and others—$8/Rx. (up to 30-day supply).
Outpatient Mental Health: One hour of therapy, no more than two times each week (when medically necessary).	—Dependents of E–4 and below—$10 copay/visit (for individual visits). —Dependents of E–5 and above—$20 copay/visit (for individual visits). —Retirees and others—$25 copay/visit (for individual visits). —Dependents of E–4 and below—$5 copay/visit (for group visits). —Dependents of E–5 and above—$10 copay/visit (for group visits). —Retirees and others—$10 copay/visit (for group visits).
Partial Hospitalization for Alcoholism Treatment: Up to 21 days for rehabilitation on a limited hour per day basis. Does not count toward the limits for days of mental health inpatient care.	

II. Inpatient Services (See Note 2)

Standard CHAMPUS byqenefits	Beneficiary cost sharing
Type of Service: Hospitalization: Semiprivate room (and when medically necessary, special care units), general nursing, and hospital service. Includes inpatient physician and their surgical services, meals including special diets, drugs and medications while an inpatient, operating and recovery room, anesthesia, laboratory tests, x-rays and other radiology services, necessary medical supplies and appliances, blood and blood products services. Unlimited services with authorization, as medically necessary	—Dependents of active duty—$9.30/day or $25 (whichever is more). —Retirees and others—$125 per day or 25% of the hospital's billed charges (whichever is less) with a 10-day cap on inpatient cost sharing per episode, plus 20% of separately billed professional charges.
Maternity: Hospital and professional services (prenatal, post natal). Unlimited services with authorization, as medically necessary	
Skilled Nursing Facility Care: Semiprivate room, regular nursing services, meals including special diets, physical, occupational and speech therapy, drugs furnished by the facility, necessary medical supplies, and appliances. Unlimited services with authorization, as medically necessary	
Mental Illness: With authorization, up to 30 days per fiscal year for adults (age 19+), up to 45 days per fiscal year for children under age 19. For Residential Treatment Facilities (RTC) care, up to 150 day limit/year. (See CHAMPUS policy manual for further restrictions)	—Dependents of active duty—$9.30/day or $25 (whichever is more). —Retirees and others—$100 per day copay, or 20% cost share of total charges (based on the negotiated rate), whichever is less for institutional services. 15% copay or cost share on professional charges.
Partial Hospitalization: With authorization, up to 60 days per fiscal year or per admission	
Alcoholism: With authorization, 7 days for detoxification and 21 days for rehabilitation per 365 days. Maximum of one rehabilitation program per year and three per lifetime. Detoxification and rehabilitation days count toward limit for mental health benefits	

Note 1: The beneficiary copayments (i.e., beneficiary payments expressed as a specified amount) in this chart are effective for FY 1993, and will be updated for inflation each fiscal year by the national CPI–U medical index (the medical component of the Urban Consumer Price Index). Beneficiary cost shares (i.e., beneficiary payments as expressed as a percentage of the providers' fees) will not be similarly updated. CHAMPUS annual deductibles under TRICARE Standard will not be similarly updated. The beneficiary is responsible for the full cost of noncovered services and nonemergency services obtained outside the network without prior authorization.

Note 2: The beneficiary cost sharing for inpatient care for active duty dependents will be adjusted periodically to reflect the cost of an inpatient stay in an MTF.

TRICARE Care Program

Benefits and Beneficiary Payments Under TRICARE Extra

I. Outpatient Services

Annual deductible	TRICARE extra
Applies to all outpatient services	Standard CHAMPUS deductibles apply as defined by the CHAMPUS Policy Manual.

Standard CHAMPUS benefits	Beneficiary cost sharing
Type of Service:	
Physician Services:	
Office visits; outpatient office based medical and surgical care; consultation, diagnosis and treatment by a specialist; allergy tests and treatments; osteopathic manipulation; medical supplies used within the office including casts, dressings, and splints.	—Dependents of active duty members—15%. —Retirees and others—20% (of the negotiated reimbursement rate).
Laboratory and X-Ray Services:	
Ambulance Services:	
When medically necessary as defined by the CHAMPUS Policy Manual and the service is a covered benefit.	
Emergency Services:	
Emergency and urgently needed care obtained on an outpatient basis, both network and non-network and in and out of service area.	
Routine PAP Smears:	
Frequency to depend on physician recommendations based on the published guidelines of the American College of Obstetricians and Gynecology.	
Durable Medical Equipment, Prosthetic Devices, and Medical Supplies Prescribed by an Authorized Provider Which are Covered Services:	
If dispensed for use outside of the office or after the home visit	—Dependents of active duty members—15%. —Retirees and others—20% (of the negotiated reimbursement rate).
Home Health Care:	
Part-time skilled nursing care, physical, speech & occupational therapy when medically necessary and which are covered benefits.	
Family Health Services:	
Family planning and well baby care (up to 24 months of age). The exclusions in the CHAMPUS Policy Manual will apply.	
Prescription Drugs	(Deductibles are waived when network pharmacies are used.)
Eye Examinations:	
One routine examination per year covered for family members of active duty sponsors.	—15% of the negotiated reimbursement rate.
Immunizations:	
Immunizations required for active duty family members whose sponsors have permanent change of station orders to overseas locations.	
Ambulatory Surgery (Same Day)	
Authorized hospital-based or free-standing ambulatory surgical center that is CHAMPUS certified. (Not performed in a physician's office).	—Dependents of active duty members—$25 copay/visit. —Retirees and others—20% of the negotiated rate/visit.
Outpatient Mental Health:	
One hour of therapy, no more than two times each week (when medically necessary).	—Dependents of active duty members cost share—15% of the negotiated reimbursement rate. —Retirees and others cost share—20% of the negotiated reimbursement rate.
Partial Hospitalization for Alcoholism Treatment:	
Up to 21 days for rehabilitation on a limited hour per day basis. Does not count toward the limits for days of mental health inpatient care.	

II. Inpatient Services

Standard CHAMPUS benefits	Beneficary cost sharing
Type of Service:	
Hospitalization:	
Semiprivate room (and when medically necessary, special care units), general nursing, and hospital service. Includes inpatient physician and their surgical services, meals including special diets, drugs and medications while an inpatient, operating and recovery room, anesthesia, laboratory tests; x-rays and other radiology services, necessary medical supplies and appliances, blood and blood products services. Unlimited services with authorization, as medically necessary.	—Dependents of active duty—$9.30/day or $25 (whichever is more). —Retirees and others—$200 per day or 25% of the hospital's billed charges (whichever is less) plus 20% cost share of separately billed professional charges (of the negotiated rate). (See Notes 1 and 2).
Maternity:	
Hospital and professional services (prenatal, postnatal).	
Unlimited services with authorization as medically necessary.	

II. INPATIENT SERVICES—Continued

Standard CHAMPUS benefits	Beneficary cost sharing
Skilled Nursing Facility Care: Semiprivate room, regular nursing services, meals including special diets, physical, occupational and speech therapy, drugs furnished by the facility, necessary medical supplies, and appliances. Unlimited services with authorization, as medically necessary.	
Mental Illness: With authorization, up to 30 days per fiscal year for adults (age 19+), up to 45 days per fiscal year for children under age 19. For Residential Treatment Facilities (RTC) care, up to 150 day limit/year. (See CHAMPUS policy manual for further restrictions).	—Dependents of active duty—$9.30/day or $25 (whichever is more). —Retirees and others—20% cost share of total charges (based on the negotiated rate), for institutional services, plus 20% cost share on separately billed professional charges (based on the negotiated rate).
Partial Hospitalization: With authorization, up to 60 days per fiscal year or per admission.	
Alcoholism: With authorization, 7 days for detoxification and 21 days for rehabilitation per 365 days. Maximum of one rehabilitation program per year and three per lifetime. Detoxification and rehabilitation days count toward limit for mental health benefits.	

Note 1: The beneficiary copayments (i.e., beneficiary payments expressed as a specified amount) in this chart are effective for FY 1993, and will be updated for inflation each fiscal year by the national CPI–U medical index (the medical component of the Urban Consumer Price Index). Beneficiary cost shares (i.e., beneficiary payments as expressed as a percentage of the providers' fees) will not be similarly updated. CHAMPUS annual deductibles under TRICARE Standard will not be similarly updated. The beneficiary is responsible for the full cost of noncovered services and nonemergency services obtained outside the network without prior authorization.

Note 2: The beneficiary cost sharing for inpatient care for active duty dependents will be adjusted periodically to reflect the cost of an inpatient stay in an MTF.

Mental Health and Alcoholism Services

These services and associated cost sharing will continue to be under the current Contract Provider Arrangement (CPA) Norfolk Demonstration Project until the expiration of the contract when the new cost sharing schedule will be implemented. All applicable rules and procedures will continue to apply until superceded by a successor program.

[FR Doc. 93–24504 Filed 10–5–93; 8:45 am]
BILLING CODE 5000–04–M

Ballistic Missile Defense Advisory Committee

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Ballistic Missile Defense (BMD) Advisory Committee will meet in closed session in Washington, DC, on October 19 and 20, 1993.

The mission of the BMD Advisory Committee is to advise the Secretary of Defense and Deputy Secretary of Defense through the USD(A) on all matters relating to ballistic missile defense acquisition, system development, and technology.

In accordance with section 10(d), as amended (5) U.S.C., app II, (1982)), it has been determined that this BMD Advisory Committee meeting concerns matters listed in 5 U.S.C., 552(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Dated: October 1, 1993.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–24505 Filed 10–5–93; 8:45 am]
BILLING CODE 5000–04–M

Department of the Air Force

Intent To Prepare an Environmental Impact Statement for Realignment of McGuire AFB, NJ

Under the 1993 Defense Base Closure and Realignment Commission recommendations the United States Air Force (Air Force) will prepare an environmental impact statement (EIS) to assess the potential environmental impacts of the realignment to McGuire Air Force Base, New Jersey, 19 KC–10 aircraft, and associated support units. The aircraft (active and reserve) will be realigned from Barksdale AFB, LA.

This EIS will also address the potential impacts of an additional eight KC–10 aircraft, for a total of 27 and associated military construction and facility siting of associated support activities.

To provide a forum for the community to make oral comments, a scoping meeting is scheduled for October 21, 1993 at 7 p.m. in the New Horizon Township Municipal Complex, Hachamich and Main Streets, Cookstown, NJ. Notice of the time and location of the meeting will be made available to public officials, the community and the local news media. The purpose of this meeting is to identify the environmental issues and concerns that should be analyzed to (1) support the base realignment, (2) solicit comments on the Proposed Action and (3) solicit potential alternatives for consideration in developing the McGuire EIS. The Air Force will consider all reasonable alternatives offered by any Federal, state or local government agency and any federally-sponsored or private entity.

To ensure the Air Force will have sufficient time to consider public comments on environmental issues to be included in the EIS, comments should be forwarded to the address listed below at anytime during the environmental impact analysis process.

Please direct written comments or requests for further information concerning the McGuire AFB Realignment EIS to: Mr. John R. Accornero, HQ AMC/CEVP, 507 A Street, Scott AFB, IL 62225–5022, (618) 256–8332.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 93–24546 Filed 10–5–93; 8:45 am]
BILLING CODE 3910–01–W

Department of the Army

Board of Visitors, United States Military Academy

AGENCY: United States Military Academy, DOD.

ACTION: Notice of open meeting.

In accordance with Section 10(a)(2) of the federal advisory Committee Act (Pub. L. 92–463), announcement is made of the following meeting:

Name of Committee: Board of Visitors, United States Military Academy.

Date of Meeting: 28–30 October 1993.

Place of Meeting: West Point, New York.

Start Time of Meeting: Approximately 2 p.m.

Proposed Agenda: Annual Report Preparation; Report on Summer Activities; visit to Preparatory School; Update reports on Gender Integration; Performance of Graduates; Faculty Transition.

All proceedings are open. For further information contact Lieutenant Colonel Stephen R. Furr, United States Military Academy, West Point, NY 10996–5000.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 93–24466 Filed 10–5–93; 8:45 am]

BILLING CODE 3710-08-M

New Payment System Affecting Invoicing Procedures for All Freight and Personal Property Carriers

AGENCY: Defense Finance and Accounting Service, DOD.

ACTION: Notice.

SUMMARY: 58 FR 42518, subject as above, announced that the Defense Finance and Accounting Service was implementing a new payment system that would affect invoicing procedures for all freight and personal property carriers. The comment "The date of the final rule will be within 60 days following the last day of the comment period" is no longer valid and has therefore been removed. The comment period ended on 9 September 1993.

Comments have been received and revisions incorporated in the Carrier Billing Procedures for freight and personal property carriers. In addition, rules for billing for Guaranteed Traffic shipments have been added. Carriers may obtain copies of the updated billing procedures from the Defense Finance and Accounting Service-Indianapolis Center.

DATES: November 5, 1993.

ADDRESSES: Defense Finance and Accounting Service-Indianapolis Center, ATTN: DFAS-IN-TA (Mail Stop #5), 8899 East 56th Street, Indianapolis, IN 46249–0606.

FOR FURTHER INFORMATION CONTACT: Mr. Randy Jones, (317) 543–7814. Same address as above.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 93–24463 Filed 10–5–93; 8:45 am]

BILLING CODE 3710-08-M

Corps of Engineers

Intent To Prepare a Supplemental Environmental Impact Statement (SEIS) for the Yazoo Basin Reformulation Study, Yazoo Backwater Area

AGENCY: U.S. Army Corps of Engineers, Vicksburg District, DOD.

ACTION: Notice of intent.

SUMMARY: The proposed action includes three authorized projects within the Yazoo Backwater Area: The Yazoo area, the Carter area, and the Rocky Bayou area. The project study area includes Humphreys, Issaquena, Sharkey, Washington, and Yazoo Counties, Mississippi, and Madison Parish, Louisiana.

FOR FURTHER INFORMATION CONTACT: Mr. Gary L. Young, U.S. Army Corps of Engineers, Vicksburg District, CELMK–PD–Q, 2101 North Frontage Road, Vicksburg, Mississippi 39180–5191, (601) 631–5425

SUPPLEMENTARY INFORMATION: 1. Proposed Action: The proposed action would provide flood damage protection to rural residences and agricultural properties. The SEIS will supplement the Final EIS Yazoo Area Pump Project Yazoo Backwater Area, Mississippi, filed with the Environmental Protection Agency on 7 April 1983. Prior work in the Backwater Area was authorized by the Flood Control Act of 18 August 1941.

2. Alternatives: Alternatives to be evaluated include: No action, nonstructural alternatives, pump station, and levee system. Detailed studies of the authorized projects for the Carter and Rocky Bayou areas are not anticipated at this time.

3. a. A scoping meeting will be held in the project vicinity during November 1993. A public notice will be published to inform the general public of the location, time, and date of the scoping meeting.

b. Significant issues include: Bottomland hardwoods, wetlands, endangered species, waterfowl, fisheries, water quality, cultural resources, socioeconomic conditions, etc. Additional alternatives, environmental issues, and consultation requirements may be identified during the scoping process.

c. The Environmental Protection Agency; U.S. Fish and Wildlife Service; Soil Conservation Service; Mississippi Department of Environmental Quality; Mississippi Department of Wildlife, Fisheries and Parks; and U.S. Forest Service will be invited to participate as cooperating agencies.

4. A Reformulation Study Report, including the SEIS, will be available for review by the general public in 1997.

Gregory D. Showalter,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 93–24465 Filed 10–5–93; 8:45 am]

BILLING CODE 3710-GX-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. QF91–138–001]

LG&E-Westmoreland Rensselaer; Application for Commission Recertification of Qualifying Status of a Cogeneration Facility

September 30, 1993.

On September 22, 1993, LG&E-Westmoreland Rensselaer (Applicant), c/o LG&E Power Inc., 12500 Fair Lakes Circle, Suite 260, Fairfax, Virginia 22033–3822, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the topping-cycle cogeneration facility is located in Rensselaer, New York. The facility consists of a combination turbine generator, a supplementary fired heat recovery boiler and an extraction/condensing steam turbine generator. Steam generated by the facility is used by BASF Corporation for the manufacture of specialty chemicals and for space heating. The primary energy source is natural gas. The maximum net electric power production capacity of the facility is 79 MW.

The certification of the facility was originally issued to Hadson Power Partners of Rensselaer on September 18, 1991, [56 FERC ¶ 62,192 (1991)]. The instant recertification is requested by the Applicant to reflect an ownership change. All other facility characteristics remain unchanged as described in the previous certification.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed within 30 days after the date of publication of this notice in the **Federal Register** and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24481 Filed 10–5–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD93–15007T Texas–150]

State of Texas; NGPA Determination by Jurisdictional Agency Designating Tight Formation

September 30, 1993.

Take notice that on September 27, 1993, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Wilcox Formation, Wilcox 12,300 San Interval, Falcon Lake E Field, underlying a portion of Zapata County, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The designated area is in Railroad Commission District No. 4 and consists of portions of the following surveys:

A.J. Nolen Survey, Abstract 534, Section 616
A.J. Nolen Survey, Abstract 536, Section 188
J. Santo Gutierrez, Abstract 32, Section 20

The notice of determination also contains Texas' findings that the referenced portion of the Wilcox Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24480 Filed 10–5–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–1–103–000]

Moraine Pipeline Co.; Proposed Changes in FERC Gas Tariff

September 30, 1993.

Take notice that on September 24, 1993, Moraine Pipeline Company (Moraine) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Fifth Revised Sheet No. 4, to be effective October 1, 1993.

Moraine states that the purpose of the filing is to implement the Annual Charges Adjustment (ACA) charge necessary for Moraine to recover from its customers annual charges assessed it by the Commission pursuant to part 382 of the Commission's Regulations. The rate authorized by the Commission to be effective October 1, 1993 is .26¢ per Mcf. Under Moraine's billing basis of 14.73 psia at 1,000 Btu, this rate converts to .26¢ per Mcf.

Moraine states that it delayed filing its ACA revision pending Commission action on its Request for Waiver of Payment of Annual Charges filed August 10, 1993 at Docket No. RM87–3. The Commission has not yet acted on Moraine's waiver request. Moraine states that its filing is without prejudice to its waiver request referencing Docket No. CP93–351–000. Moraine further states that it will be going out of existence, now scheduled for December 1, 1993.

Moraine states that a copy of the filing is being mailed to Moraine's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before October 7, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24483 Filed 10–5–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–732–000]

Murphy Exploration & Production Co.; Petition for Declaratory Order

September 30, 1993.

Take notice that on September 21, 1993, Murphy Exploration & Production Company (Murphy), 200 Peach Street, P.O. Box 7000, El Dorado, Arkansas 71731–7000, filed in Docket No. CP93–732–000 a petition pursuant to section 16 of the Natural Gas Act (NGA) and Rule 207(a)(2) of the Commission's Rules of Practice and Procedure (18 CFR 385.207(a)(2)), for a declaratory order disclaiming Commission jurisdiction over certain facilities and the services provided through them, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Murphy seeks a declaratory order from the Commission finding that facilities to be acquired from Texas Eastern Transmission Corporation (Texas Eastern) would be facilities used for the gathering of natural gas and thereby exempt from Commission jurisdiction pursuant to Section 1(b) of the NGA. Murphy indicates that the facilities are the subject of Texas Eastern's abandonment application filed in Docket No. CP93–733–000.

Murphy describes the facilities as Texas Eastern's Line Nos. 59 and 59–A, which are 12-inch laterals, and include the associated metering facilities. It is stated that Line 59 is 23,232 feet in length and connects Murphy's oil and gas production platform in Ship Shoal Block 134 to the transmission facilities of Tennessee Gas Pipeline Company (Tennessee) in Ship Shoal Block 120, offshore Louisiana. It is further stated that Line 59–A connects Murphy's oil and gas platform in Ship Shoal Block 135 to Line 59, and is 1,584 feet in length.

Murphy states that it would operate the facilities as non-jurisdictional gathering facilities. Murphy submits that the facilities would be non-jurisdictional for the following reasons, *inter alia.*

- Murphy is engaged in the domestic and international exploration and production of oil and gas.
- Both lines are located in the center of active producing fields and connect directly to producing wells.

• Both lines carry non-dehydrated gas and are located upstream of any processing facilities. Line 59–A is located upstream of any compression facilities.

• The sole purpose of the facilities, once abandoned and transferred to Murphy, would be to gather gas produced and owned by Murphy for delivery to Tennessee's transmission facilities.

Murphy further states that it is the sole working interest owner in the wells from which the facilities gather gas; there is no production owned by third-party shippers along or within approximately 3.5 miles of the facilities; and, therefore, there are no shippers on the facilities other than Murphy.

Any person desiring to be heard or to make any protest with reference to said petition should on or before October 21, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 384.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24477 Filed 10–5–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–172–001]

Panhandle Eastern Pipe Line Company; Proposed Changes in FERC Gas Tariff

September 30, 1993.

Take notice that on September 27, 1993, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Substitute Original Tariff Sheet No. 24 which is proposed to become effective September 23, 1993.

Panhandle states that this filing is being made in compliance with ordering paragraph (C) of the Commission's September 22, 1993 Order Accepting and Suspending Tariff Sheets Subject To Refund And Conditions And Establishing A Technical Conference in the above referenced docket.

Panhandle states that copies of the filing has been served on all customers affected by this filing, their respective state commission and all parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before October 7, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24482 Filed 10–5–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–733–000]

Texas Eastern Transmission Corporation; Application

September 30, 1993.

Take notice that on September 21, 1993, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP93–733–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon two 12-inch natural gas pipeline laterals, and associated metering facilities, which were authorized under its blanket certificate issued in Docket No. CP82–535–000, all as more fully set forth in the application on file with the Commission and open to public inspection.

Texas Eastern proposes to abandon by sale to Murphy Exploration & Production Company (Murphy) Line Nos. 59 and 59–A, which were constructed in 1984.[1] It is stated that Line 59 is 4.4 miles in length and was constructed to connect gas reserves from the Ship Shoal Block 134 area to a pipeline in Ship Shoal Block 120, offshore Louisiana, owned by Tennessee Gas Pipeline Company. Also, it is stated that Line 59–A is 0.3 miles in length and gathers gas reserves produced in Ship Shoal Blocks 135, 136, and 120 to a point in Ship Shoal Block 135, where it connects to Line 59.

Texas Eastern states that the facilities were used to transport natural gas which it purchased from Odeco Oil and Gas Company (Odeco),[2] under an October 6, 1983, gas purchase agreement. Texas Eastern states that the purchase agreement dedicated to Texas Eastern the natural gas reserves located at or near Ship Shoal Blocks 134, 135, 136, and 120. Texas Eastern further states that the purchase agreement has been terminated and, subsequently, interruptible transportation service has been provided for Murphy under its Rate Schedule IT–1. Texas Eastern submits that the transfer of facilities to Murphy would give Murphy a least cost alternative to installing new offshore facilities and would relieve it of ongoing operation and maintenance expenses. Texas Eastern states that none of its customers would be adversely affected by the proposal.

Texas Eastern indicates that the facilities would be sold for $1 million as compared to an original cost of $3.6 million.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 21, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to

[1] Murphy has filed a related petition in Docket No. CP93–732–000 for a declaratory order disclaiming jurisdiction over the facilities to be acquired from Texas Eastern.

[2] Odeco has since merged with and changed its name to Murphy.

intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Texas Eastern to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93-24479 Filed 10-5-93; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4783-4]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before November 5, 1993.

FOR FURTHER INFORMATION CONTACT: For further information, or to obtain a copy of this ICR, contact Sandy Farmer at EPA, (202) 260-2740.

SUPPLEMENTARY INFORMATION:

Office of Prevention, Pesticides and Toxic Substances

Title: Trade Secret Clearance Justification for Pesticides. (EPA ICR No: 0613.05; OMB No: 2070-0053) This is a request for extension of the expiration date of a currently approved collection.

Abstract: The Freedom of Information Act (FOIA) provides for release to the public of health and safety data on chemical pesticides, unless such products are exempt from being disclosed under section 10(d) (1)(A), (B),or (C) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA).

Upon receipt of a FOIA request by the public for health and safety data on a pesticide, EPA sends to the owner of the chemical product (the respondent) a copy of the data request, a cover letter, a set of instructions for responding and a nine part questionnaire. The respondent reviews the health and safety data on the pesticide to determine whether to authorize the release to the public of the requested data, or to provide evidence to the EPA substantiating the claim(s) of confidentiality for the requested material. Claims of confidentiality must be supported by submitting to the Agency the completed nine-part questionnaire. The questionnaire asks for specific information on quality control processes, method of testing a pesticide product, what information should be tagged confidential, and why and for how long; it also asks questions regarding any protection undertaken by the respondent to guard against unwanted disclosure and previous assertion(s) of confidentiality made to EPA and other Federal agencies or courts.

The EPA needs this information to determine whether health and safety data on chemical pesticides should remain confidential or be made public.

Burden Statement: The estimated annual reporting burden for this collection of information is estimated to average 21 hours per respondent. This estimate includes the time needed to review instructions, complete the questionnaire, submit the necessary information for confidential claim and review the collection of information.

Respondents: Pesticide owners of FOIA requested data.

Estimated Number of Respondents: 90.

Estimated Number of Responses Per Respondent: 1.

Estimated Total Annual Burden on Respondents: 1,890 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM 223Y), 401 M Street, SW., Washington, DC 20460.

and

Matthew Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: September 30, 1993.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 93-24536 Filed 10-5-93; 8:45 am]

BILLING CODE 6560-50-F

[OPP-00366; FRL-4648-4]

Disclosure of Names of Pesticide Product Inert Ingredients; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: The Environmental Protection Agency (EPA) is announcing the availability of a revised list of pesticide product inert ingredients and their Chemical Abstract Service (CAS) numbers. This list updates the list announced in the **Federal Register** on January 15, 1992 (57 FR 1732).

ADDRESSES: A copy of the list may be obtained in person at Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA., or by calling the EPA Office of Pesticide Programs Public Docket at (703) 305-5805, or by writing to: OPP Public Docket (H7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC, 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Clare Grubbs, Acting Chief, Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC, 20460. Office location and telephone number: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA., (703-305-5805).

List of Subjects

Environmental protection.

Dated: September 23, 1993.

Allan S. Abramson,

Acting Director, Field Operations Division, Office of Pesticide Programs.

[FR Doc. 93-24433 Filed 10-5-93; 8:45 am]

BILLING CODE 6560-50-F

[IL-64-2-5807; FRL-4786-2]

Availability of Draft Student Handbook and Statement of Intent To Develop Training and Certification Programs for Operators of High Capacity Fossil Fuel-Fired Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of draft student handbook and of EPA's intent to develop training and certification programs for operators of high capacity fossil fuel-fired plants as required under section 129 of the Clean Air Act (Act).

SUMMARY: This action announces the availability of a draft student handbook prepared as part of a training program

for operators of high capacity fossil fuel-fired plants and the intent of the EPA to also develop a model State certification program for these operators, as required under section 129 of the Act.

The purpose of this action is to request public comment on the draft student handbook and on the EPA's intent to develop the training and certification programs.

DATES: Comments. Comments must be received on or before December 6, 1993.

ADDRESSES: Written comments should be addressed to: Emission Standards Division, U.S. Environmental Protection Agency, MD–13, Research Triangle Park, North Carolina 27711, Attention: Mr. James Eddinger.

A copy of the draft student handbook may be obtained by contacting Mr. James Eddinger, Industrial Studies Branch, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5426.

FOR FURTHER INFORMATION CONTACT: For information concerning specific aspects of this notice, contact Mr. James Eddinger, Industrial Studies Branch, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5426.

SUPPLEMENTARY INFORMATION: The following outline is provided to aid in locating information in this notice.

I. Introduction
II. Model Training and Certification Programs
III. Additional Certification Programs

I. Introduction

Section 129(d) of the Act requires the EPA to develop and promote a model State program for the training and certification of solid waste incineration unit operators and high-capacity fossil fuel-fired plant operators. In August 1993, the EPA submitted to all State air pollution control agencies the model State training programs that the EPA developed for operators of municipal waste combustors (MWC's) and medical waste incinerators (MWI's) pursuant to this requirement.

The EPA has made training an integral part of the operating practice standards promulgated for MWC's under section 129 of the Act. On February 11, 1991, the EPA promulgated these standards for MWC's with unit capacities greater than 225 Megagrams per day (250 tons per day) (56 FR 5488). The standards also require certification of the chief facility operator and the shift supervisors by the American Society of Mechanical Engineers (ASME) or an equivalent State-approved certification program. The model State training program for MWC's was developed to provide a level of understanding which is adequate to successfully complete the requirements of the ASME standard for certification of operators of such facilities.

The EPA is also working with the ASME in developing a certification program for MWI operators. This ASME certification program is nearly complete. The EPA will likely make training an integral part of the proposed operating standards for MWI's when they are published in the future. The proposed MWI standards would also likely require certification of the operator and the operator's supervisor by the ASME or an equivalent State-approved certification program. The model state training program developed by the EPA for MWI's is also intended to provide a level of understanding which is adequate to successfully complete the requirements of the upcoming ASME standard for certification of operators of MWI facilities.

This notice addresses the EPA's plans regarding development of a model State program for the training and certification of high capacity fossil fuel-fired plant operators pursuant to section 129(d) of the Act. The EPA intends to investigate options for encouraging the States to implement training and certification requirements for these operators.

II. Model Training and Certification Programs

In October 1992, the EPA initiated development of a training program for operators of high capacity fossil fuel-fired plants. The EPA considers the term high-capacity fossil fuel-fired plants to mean boilers (i.e., devices that combust fossil fuel to produce steam or hot water) with capacities greater than 10 million BTU's per hour heat input. The training course is designed so that it will fulfill requirements leading to boiler operator certification. The group of high capacity fossil fuel-fired plants (boilers) covered in this training course are those defined under 40 CFR 60, subparts Da (Electric Utility Steam Generating Units), Db (Industrial, Commercial, and Institutional Steam Generating Units), and Dc (Small Industrial, Commercial, and Institutional Steam Generating Units). This group of boilers covers the size range from 10 million BTU's per hour heat input to the largest utility boilers.

The training program being developed for boiler operators is intended to provide the operator with a basic understanding of the principles of fuel combustion and air pollution control and to identify, in a general sense, good operating practices. The program is intended as a supplement to, rather than a substitute for, site-specific "hands-on" training of the operator. The objectives of the training program are: To instruct operators in the basic principles of proper operation and maintenance of boilers and air pollution control systems; to give the operators an appreciation for their role in minimizing air pollution; and to increase the operators' awareness of regulatory requirements.

The development program for the training course emphasized the gathering of available operating information for all types of boilers, both existing and new, and for all types of control equipment in reducing air emissions from boilers. The objective is to document for each type of boiler and control equipment the significant operating parameters that directly influence air emissions and how control of these operating parameters may be used as an emission control technique.

The training program will consist of a student handbook which is not only intended for use during the course but also as a reference for operators after completion of the course, and an instructor guide which will provide the basic materials for use by the instructor of the training course. The instructor guide will include the course description and agenda, course goals, lesson plans, copies of an initial test and a final examination, and audio-visual aids.

The draft student handbook, available for review and comment, consists of the following chapters:

1. Introduction;
2. Water and Steam Circuit;
3. Fuel, Air and Gas Circuit;
4. Fossil Fuels;
5. Combustion Principles;
6. Air Pollution Fundamentals;
7. Natural Gas Fired Boilers;
8. Oil Fired Boilers;
9. Pulverized Coal Fired Boilers;
10. Stoker Fired Boilers;
11. Fluidized Bed Boilers;
12. Gas Turbine/HRSG Combined Cycle;
13. Package Boilers;
14. Normal Operation;
15. Automatic Control Systems;
16. Instrumentation;
17. Electrical Theory;
18. Turbine Generator;
19. Preventative Maintenance;
20. Safety;
21. Air Pollutants of Concern;
22. Environmental Regulations;
23. Continuous Emissions Monitoring;
24. Particulate Control;

25. NOx Control;
26. SOx Control;
27. Water Pollution and Control;
28. Solid Wastes;
29. Solid Waste Control; and
30. Glossary.

Future activities for developing this training course include revision of the student handbook based on comments received from this action, development of the instructor guide, a test offering of the course, revision of the training materials based on the test course, and publication of a final student handbook and instructor guide. The schedule for completing the final documents is September 30, 1994.

It is the EPA's intention to develop a model State certification program for high capacity fossil fuel-fired plants which will outline the scope of requirements and components that a State agency should consider and include in developing or approving a certification program for boiler operators. Examples of components that will be considered for inclusion in this model certification program are: the levels of operators to be certified, requirements for on-the-job experience, levels of certifications, and provisions for a "bank" of questions to implement written examinations. The schedule for completing this model State certification program is September 30, 1994.

The operator training materials that will be completed by September 30, 1994 include testing materials that indicate a student's satisfactory completion of the training course. The EPA will provide the final student and instructor manuals to the States so they can use them immediately to initiate implementation of operator training and to serve as a partial basis for developing and implementing a certification program for high capacity fossil fuel-fired plant operators.

III. Additional Certification Programs

In August 1992, to ensure the availability of at least one appropriate national certification program, the EPA requested the ASME to develop and manage a nationwide certification program for boiler operators. As a result, the ASME Board of Safety Codes & Standards and the Council on Codes & Standards approved the formation of an Ad Hoc Committee in November 1992. The purpose of this committee is to develop a proposed scope, committee organization, and committee procedures for the development of the standard and certification. The ASME certification program is anticipated to be completed in late 1996.

As discussed above, the EPA will provide the final student and instructor manuals and a model State certification program to the States by September 30, 1994 so they can implement operator training or certification programs prior to finalization of the ASME certification program. The training materials discussed above will be amended if necessary when the ASME certification program is sufficiently developed, to ensure that where appropriate, the training course is coordinated with the ASME certification requirements.

The ASME has previously developed certification programs for operators of MWC's and MWI's. The EPA is directly involved now in the development of the MWI operator certification program by serving on the developmental committee and providing technical assistance. In terms of the boiler operator certification program, the EPA's intention is to work in a similar manner with the ASME in its development by again serving on the various developmental committees and by providing technical assistance.

Dated: September 30, 1993.

Robert Brenner,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 93–24537 Filed 10–5–93; 8:45 am]

BILLING CODE 6560–60–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1000–DR]

Kansas; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Kansas, (FEMA–1000–DR), dated July 22, 1993, and related determinations.

EFFECTIVE DATE: September 29, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Kansas dated July 22, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 22, 1993:

Crawford and Cherokee Counties for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–24539 Filed 10–5–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1000–DR]

Kansas; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Kansas (FEMA–1000–DR), dated July 22, 1993, and related determinations.

EFFECTIVE DATE: September 29, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is reopened and amended to be June 28, 1993, and continuing.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–24540 Filed 10–5–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–993–DR]

Minnesota; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Minnesota, (FEMA–993–DR), dated June 11, 1993, and related determinations.

EFFECTIVE DATE: September 28, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Minnesota dated June 11, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 11, 1993:

Dodge, Fillmore, Kandiyohi, and Pope for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–24541 Filed 10–5–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–995–DR]

Missouri; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Missouri, (FEMA–995–DR), dated July 9, 1993, and related determinations.

EFFECTIVE DATE: September 28, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Program, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Missouri dated July 9, 1993, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 9, 1993:

Greene County for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–24542 Filed 10–5–93; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL RESERVE SYSTEM

Centura Banks, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 29, 1993.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Centura Bank, Inc., Rocky Mount, North Carolina; to merge with First Charlotte Financial Corporation, Charlotte, North Carolina, and thereby indirectly acquire First Charlotte Bank and Trust Company, Charlotte, North Carolina.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. First Colonial Bankshares Corporation, Chicago, Illinois; to acquire 100 percent of the voting shares of GNP Bancorp, Inc., Mundelein, Illinois, and thereby indirectly acquire New Century Bank, Mundelein, Illinois.

2. First Colonial Bankshares Corporation, Chicago, Illinois; to acquire 100 percent of the voting shares of Hi-Bancorp, Inc., Highwood, Illinois, and thereby indirectly acquire Bank of Highwood, Highwood, Illinois.

3. NEB Corporation, Fond du Lac, Wisconsin; to acquire 100 percent of the voting shares of Cascade Bancorporation, Inc., Venice, Florida, and thereby indirectly acquire State Bank of Cascade, Cascade, Wisconsin.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Banterra Corp., Eldorado, Illinois; to acquire up to 24.99 percent of the voting shares of First of Murphysboro Corp., Murphysboro, Illinois, and thereby indirectly acquire First Bank & Trust Company of Murphysboro, Murphysboro, Illinois.

Board of Governors of the Federal Reserve System, September 29, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–24509 Filed 10–5–93; 8:45 am]

BILLING CODE 6210–01–F

City Holding Company; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 25, 1993.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. City Holding Company, Charleston, West Virginia; to engage *de novo* through its subsidiary, City Financial Corporation, Charleston, West Virginia, in securities brokerage and investment advisory services on a combined basis pursuant to §§ 225.25(b)(4)(i), (ii), (iii), (iv), (v), (vi), and 225.25(b)(15)(i) and (ii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 29, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–24508 Filed 10–5–93; 8:45 am]

BILLING CODE 6210–01–F

Crestar Financial Corporation, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than October 29, 1993.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Crestar Financial Corporation, Richmond, Virginia; to acquire Providence Savings and Loan Association, F.A., Vienna, Virginia, and thereby engage in operating a savings and loan association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. First Sterling Bancorp, Inc., Sterling, Illinois; to to acquire 46 percent of the voting shares of D.D. Development of Sterling Limited Partnership, Sterling, Illinois, and thereby engage in providing housing to low income and developmentally disabled residents pursuant to § 225.25(b)(6) of the Board's Regulation Y. These activities will be conducted in Whiteside County, Illinois.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. National City Bancshares, Inc., Evansville, Indiana; through the proposed acquisition of Lincolnland Bancorp, Inc., Dale, Indiana, to acquire Ayer-Wagoner-Deal Insurance Agency, Inc., Rockport, Indiana, which operates as an insurance agency, offering life, casualty, property, homeowners, business, disability, and automobile insurance through several insurance companies or underwriters, in a place where the bank holding company or a subsidiary of the bank holding company has a lending office that has a population of less than 5,000 persons, pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 29, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–24510 Filed 10–5–93; 8:45 am]

BILLING CODE 6210–01–F

Norwest Corporation, et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; and Acquisitions of Nonbanking Companies

The companies listed in this notice have applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed companies have also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 29, 1993.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; and GST Co., Minneapolis, Minnesota; have applied to acquire First United Bank Group, Inc., Albuquerque, New Mexico, and thereby indirectly acquire Ford Bank Group, Inc., Lubbock, Texas; Fort Bank Group Holdings, Inc., Lubbock, Texas; First National Bank, Borger, Texas; First National Bank in Canyon, Canyon, Texas; First National Bank of Central Texas, Waco, Texas; First National Bank of Plainview, Plainview, Texas; First National Bank of Post, Post, Texas; First National Bank of West Texas, Lubbock, Texas; First State Bank, Crane, Texas; Yoakum State Bank, Denver City, Texas; United New Mexico Financial Corporation, Albuquerque, New Mexico; United New Mexico Bank, Vaughn, New Mexico; United New Mexico Bank, N.A., Socorro, New Mexico; United New Mexico Bank, Deming, New Mexico; United New

Mexico Bank, Hobbs, New Mexico; United New Mexico Bank, Alamogordo, New Mexico; United New Mexico Bank, Carlsbad, New Mexico; United New Mexico Bank, Albuquerque, New Mexico; United New Mexico Bank, Gallup, New Mexico; United New Mexico Bank, Roswell, New Mexico; United New Mexico Bank, N.A., Las Cruces, New Mexico; and United New Mexico Bank, N.A., Portales, New Mexico. In connection with this application, GST has applied to become a bank holding company by merging with First United Bank Group, Inc., Albuquerque, New Mexico.

In connection with this application, Norwest Corporation has applied to acquire, through its subsidiary, Norwest Investment Services, Inc., Des Moines, Iowa, the discount brokerage business, other investment services business and safekeeping business of First United Bank Group, Inc., Albuquerque, New Mexico, and thereby engage in the discount brokerage business, including full-service brokerage, government securities, limited underwriting activities, and the sale of fixed and variable annuities pursuant to § 225.25(b)(15); and to acquire, through its subsidiary, Norwest Mortgage, Inc., the mortgage servicing and production business of the bank subsidiaries of First United Bank Group, Inc., Albuquerque, New Mexico, and thereby engage in residential mortgage lending activities, including loan origination and servicing pursuant to § 225.25(b)(1) of the Board's Regulation Y. In addition, Norwest Corporation and GST Co. have applied to acquire United New Mexico Credit Life Insurance Company, Phoenix, Arizona, and thereby engage in underwriting, as reinsurer, of credit life and credit accident and health insurance written in connection with extensions of credit by the bank holding company's subsidiary banks pursuant to § 225.25(b)(8)(i); and United New Mexico Trust Company, Albuquerque, New Mexico, and thereby engage in performing functions or activities that may be performed by a trust company pursuant to § 225.25(b)(3) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 29, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–24511 Filed 10–5–93; 8:45 am]

BILLING CODE 6210–01–F

S. Robson Walton, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 25, 1993.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. S. Robson Walton, to acquire an additional 2.0 percent for a total of 26.90 percent; John T. Walton, to acquire 2.0 percent for a total of 26.90 percent; and Jim C. Walton, to acquire 2.0 percent for a total of 26.90 perent of the voting shares of Arvest Bank Group, Inc., Bentonville, Arkansas.

Board of Governors of the Federal Reserve System, September 29, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-24512 Filed 10-5-93; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 93N-0191]

Kanubhai C. Desai; Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order under section 306(a)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 335(a)(2)) permanently debarring Dr. Kanubhai C. Desai, 730 Mill St. #F–3, Belleville, NJ 17109, from providing services in any capacity to a person that has an approved or pending drug product application. FDA bases this order on a finding that Dr. Desai was convicted of a felony under Federal law for conduct relating to the regulation of a drug product under the act. Dr. Desai has failed to request a hearing and, therefore, has waived his opportunity for a hearing concerning this action.

EFFECTIVE DATE: October 6, 1993.

ADDRESSES: Application for termination of debarment to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Tamar S. Nordenberg, Center for Drug Evaluation and Research (HFD–366), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–2041.

SUPPLEMENTARY INFORMATION:

I. Background

Dr. Kanubhai C. Desai, the former Director of Par Pharmaceutical, Inc.'s (Par) Quality Control Laboratory, was convicted and sentenced on March 19, 1993, for one count of obstruction of an agency proceeding, a Federal felony offense under 18 U.S.C. 1505. The basis for this conviction was the finding that, in order to prevent FDA officials from discovering the failing results of chemical tests, Dr. Desai unlawfully destroyed records which the officials were authorized to inspect.

In a certified letter received by Dr.Desai on June 23, 1993, FDA offered Dr. Desai an opportunity for a hearing on the agency's proposal to issue an order under section 306(a) of the act debarring Dr. Desai from providing services in any capacity to a person that has an approved or pending drug product application. FDA based the proposal to debar on its finding that Dr. Desai was convicted of a felony under Federal law for conduct relating to the regulation of Par's drug products. Dr. Desai did not request a hearing. His failure to request a hearing constitutes a waiver of his opportunity for a hearing and a waiver of any contentions concerning his debarment.

II. Findings and Order

Therefore, the Deputy Commissioner for Operations, under section 306(a) of the act, and under authority delegated to her (21 CFR 5.20), finds that Dr. Kanubhai C. Desai has been convicted of a felony under Federal law for conduct relating to the regulation of a drug product (21 U.S.C. 335a(a) (2) (B)).

As a result of the foregoing findings, Dr. Kanubhai C. Desai is permanently debarred from providing services in any capacity to a person with an approved

or pending drug product application under section 505, 507, 512, or 802 of the act (21 U.S.C. 355, 357, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262), effective (*insert date of publication in the* **Federal Register**) (21 U.S.C. 335a(c)(1)(B) and (c)(2)(A)(ii) and 21 U.S.C. 321(ee)). Any person with an approved or pending drug product application who knowingly uses the services of Dr. Desai in any capacity, during his period of debarment, will be subject to civil money penalties. If Dr. Desai, during his period of debarment, provides services in any capacity to a person with an approved or pending drug product application, he will be subject to civil money penalties. In addition, FDA will not accept or review any abbreviated human drug application from Dr. Desai during his period of debarment.

Any application by Dr. Desai for termination of debarment under section 306(d)(4) of the act should be identified with Docket No. 93N–0191 and sent to the Dockets Management Branch (address above). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j). Publicly available submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 21, 1993.

Jane E. Henney,

Deputy Commissioner for Operations.

[FR Doc. 93–24471 Filed 10–5–93; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

[HSQ–209–N]

Medicare, Medicaid, and CLIA Programs; Clinical Laboratory Improvement Amendments of 1988 Exemption of Laboratories Licensed by the State of Washington

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: Section 353(p) of the Public Health Service Act provides for the exemption of laboratories from the requirements of the Clinical Laboratory Improvement Amendments of 1988 (CLIA) when the State in which they are located has requirements equal to or more stringent than CLIA's. This notice grants exemption from CLIA requirements to laboratories located within the State of Washington that possess a valid license under the Medical Test Site Licensure Law, Chapter 70.40 of the Revised Code of Washington (RCW). The background and legislative authority, the requirements for granting CLIA exemption, the evaluation of the State's request for exemption, information about validation inspections, the required administrative actions, and the term of approval are set forth in this notice.

EFFECTIVE DATE: The provisions of this notice are effective October 6, 1993 until October 6, 1994.

FOR FURTHER INFORMATION CONTACT: Val Coppola, (410) 597–5892.

SUPPLEMENTARY INFORMATION:

I. Background and Legislative Authority

Section 353 of the Public Health Service Act (PHS Act), as amended by the Clinical Laboratory Improvement Amendments of 1988 (CLIA), requires any laboratory that performs tests on human specimens to meet requirements established by the Department of Health and Human Services (HHS). Under the provisions of the sentence following section 1861(s)(14) and paragraph 1861 (s)(16) of the Social Security Act any laboratory that also wants to be paid for services furnished to Medicare beneficiaries must meet the requirements of section 353 of the PHS Act. Subject to specified exceptions, laboratories must have a current and valid CLIA certificate to test human specimens and to be eligible for payment from the Medicare or Medicaid program. Regulations implementing section 353 of the PHS Act are contained in 42 CFR part 493.

Section 353(p) of the PHS Act provides for the exemption of laboratories from CLIA requirements in a State that applies requirements that are equal to or more stringent than those of CLIA. The statute does not specifically require the promulgation of criteria for the exemption of laboratories in a State. The decision to grant CLIA exemption to laboratories within a State is at the discretion of HCFA, acting on behalf of the Secretary of HHS.

42 CFR part 493 subpart E implements section 353(p) of the PHS Act. Section 493.513 provides that HCFA may exempt from CLIA requirements, for a period not to exceed six years, all State licensed or approved laboratories in a State if the State meets specified conditions. Section 493.513(k) provides that we will publish a notice in the **Federal Register** announcing the names of States whose laboratories are exempt from meeting the requirements of part 493.

II. Requirements for Granting CLIA Exemption

In order to determine whether HCFA should grant CLIA exemption to laboratories within a State, we conduct a detailed and in-depth comparison of State and CLIA requirements. We evaluate whether the State meets the requirements at § 493.513. In summary, the State must:

- Have laws in effect that provide for requirements that are equal to or more stringent than CLIA requirements;
- Have an agency that licenses or approves laboratories that meet State requirements that meet or exceed CLIA requirements, and would, therefore, meet the condition level requirements of the CLIA regulations;
- Meet the requirements and be approved in accordance with § 493.515, Federal review of laboratory requirements of State laboratory programs;
- Demonstrate that it has enforcement authority and administrative structures and resources adequate to enforce its laboratory requirements;
- Permit HCFA or HCFA agents to inspect laboratories within the State;
- Require laboratories within the State to submit to inspections by HCFA or HCFA agents as a condition of licensure;
- Agree to pay the cost of the validation program administered by HCFA and the cost of the State's pro rata share of the general overhead to develop and implement CLIA as specified in §§ 493.645(b) and 493.646; and
- Take appropriate enforcement action against laboratories found by HCFA or HCFA agents not to be in compliance with requirements comparable to condition level requirements.

As specified in our regulations at 42 CFR 493.515, our review of a State laboratory program includes (but is not necessarily limited to) an evaluation of:

- Whether the State's requirements for laboratories are equivalent to or more stringent than the condition level requirements;
- The State's inspection process requirements to determine:
  + The comparability of the full inspection and complaint inspection procedures to those of HCFA;
  + The State's enforcement procedures for laboratories found to be out of compliance with its requirements; and
  + The ability of the State to provide HCFA with electronic data and reports with the adverse or corrective actions resulting from proficiency testing (PT) results that constitute unsuccessful participation in HHS-approved PT

programs and with other data HCFA determines to be necessary for validation and assessment of the State's inspection process requirements;

• The State's agreement with HCFA to:

+ Notify HCFA within 30 days of the action taken against any CLIA-exempt laboratory that has had its licensure or approval withdrawn or revoked or been in any way sanctioned;

+ Notify HCFA within 10 days of any deficiency identified in a CLIA-exempt laboratory in cases when the deficiency poses an immediate jeopardy to the laboratory's patients or a hazard to the general public;

+ Notify each laboratory licensed by the State within 10 days of HCFA's withdrawal of the exemption;

+ Provide HCFA with written notification of any changes in its licensure (or approval) and inspection requirements;

+ Disclose any laboratory's PT results in accordance with a State's confidentiality requirements;

+ Take the appropriate enforcement action against laboratories found by HCFA not to be in compliance with requirements comparable to condition level requirements and report these enforcement actions to HCFA;

+ Notify HCFA of all newly licensed laboratories, including the specialties and subspecialties, for which any laboratory performs testing, within 30 days; and

+ Provide HCFA, as requested, inspection schedules for validation purposes.

III. Evaluation of the Washington State Request for CLIA Exemption

The State of Washington has applied to HCFA for exemption of its laboratories from CLIA requirements.

We have evaluated the Washington State CLIA exemption application and all subsequent submissions for equivalency against the three major categories of CLIA rules: the implementing regulations, the enforcement regulations, and the deeming/exemption requirements.

We evaluated the Washington State application to verify the State's assurance of compliance with the following subparts of part 493.

Subpart E—Accreditation by a Private, Nonprofit Accreditation Organization or Exemption Under An Approved State Laboratory Program

The HCFA and the Centers for Disease Control and Prevention (CDC) reviewers have examined the Washington State application and all subsequent submissions against the exemption requirements a State must meet in order to be granted CLIA exempt status (§ 493.513, and the applicable parts of §§ 493.515, 493.517, 493.519, and 493.521). The State has complied with the applicable CLIA requirements for exemption under this subpart.

Subpart H—Participation in Proficiency Testing for Laboratories Performing Tests of Moderate or High Complexity, or Both

The regulations of Washington State for PT are currently more stringent than those of CLIA, as all laboratories are required to participate in PT for tests not waived. However, CLIA requirements will become more stringent. Currently, CLIA allows a phase-in for certain PT requirements (§ 493.801) and will impose no sanctions for the first year. The Washington Administrative Code (WAC) or implementing regulations will be the same as CLIA PT requirements as of January 1, 1994, the effective date of the CLIA PT requirements.

We also reviewed, in depth, the provisions of the WAC relating to cytology. We found Washington's requirements, which were revised to meet CLIA's, to be essentially equal to our regulations. The cytology workload limits specified by Washington State are identical to those in the CLIA regulations.

Subpart J—Patient Test Management for Moderate or High Complexity Testing, or Both

The applicable standards of the WAC have been revised to equal the CLIA requirements at § 493.1101 through § 493.1111 concerning patient test management.

Subpart K—Quality Control for Tests of Moderate or High Complexity, or Both

Currently, the WAC requirements on quality control for tests of moderate or high complexity are more stringent than CLIA requirements as all testing that is not waived must meet all quality control (QC) requirements. However, under § 493.1202(c), CLIA requirements allow a phase-in of QC requirements for specified moderately complex tests until September 1, 1994. The applicable WAC requirements have been revised to adopt the CLIA QC requirements on September 1, 1994, and will then be equal to CLIA QC requirements.

Washington State has maintained some variations from CLIA in the State's interpretive guidelines, rather than in its WAC. When taken as a whole, we found the directions to inspectors in guidelines that interpret three elements of the Federal regulations to be equivalent to those established by HCFA and CDC, taken as a whole. These variations allow licensed laboratories in Washington to have additional options through which they may meet equivalent requirements of the State.

• A licensed laboratory in Washington State may also attain compliance with the State's requirement that is equivalent to that found in § 493.1205(e)(1) when it receives and retains documentation from the manufacturer that expiration dates for reagents, solutions, culture media, control materials, calibration materials and other supplies have been extended to a longer specified date in a specific lot number.

• The requirement to perform calibration verification in the WAC is equivalent to the CLIA requirements under § 493.1217. The State's interpretative guidelines indicate that the assayed material acceptable for use in verification of calibration could include previous lot numbers of calibrators run as unknowns or standards that are appropriate for the instrument as stipulated by the instrument vendor. The guidelines also list examples of alternative methods that a laboratory may use to comply with the calibration verification requirement when assayed materials are not available.

• The requirement in the WAC that corresponds to § 493.1227(a)(1) may be met by laboratories using coagulase, catalase, beta-lactamase and oxidase reagents as follows: If the manufacturer does not state a frequency for QC, the laboratory must perform QC daily. If the laboratory has documentation that no problems have been detected with QC of these reagents over a six-month period or longer, depending upon the number of tests performed or number of lot numbers used, weekly QC for catalase, coagulase, beta-lactamase and oxidase reagents may be accepted. If the laboratory has frozen aliquots of reagents for testing, each new vial should be checked before it is put into use. Also, weekly QC for direct antigen systems may be accepted if the laboratory has documentation that no problems have been detected with QC of the system over a six-month or longer period of performing daily QC, depending on the number of tests performed or number of lot numbers used. However, if the manufacturer's instructions say that QC should be done daily, the laboratory must adhere to the manufacturer's instructions.

Overall and taken as a whole, Washington State QC requirements are equivalent to CLIA requirements.

Subpart M—Personnel for Moderate and High Complexity Testing

The WAC has been revised to adopt CLIA standards for personnel qualifications and responsibilities of CLIA to include the phase-in provisions of CLIA personnel qualifications.

Subpart P—Quality Assurance for Moderate or High Complexity Testing, or Both

The applicable standards of the WAC have been revised to equal the CLIA requirements at §§ 493.1701 through 493.1721 concerning quality assurance.

Subpart Q—Inspection

Washington State has also revised the applicable standards of the WAC to equate to CLIA requirements at §§ 493.1775 through 493.1780 concerning inspection of laboratories.

Subpart R—Enforcement Procedures

HCFA and CDC reviewed documentation of the State's enforcement authority, its administrative structure and the resources used to enforce its standards for completeness.

The State appropriately applies limitations and revocations of its licenses for laboratories as well as intermediate sanctions such as on-site monitoring of laboratories and imposition of civil money penalties.

The State has provided HCFA with the mechanism it currently uses to monitor the PT performance of its laboratories and has formally requested access to the HCFA PT data system at the State's expense to continue PT monitoring electronically. Washington State has indicated the actions it takes for unsuccessful PT participation, which equal CLIA enforcement policy. The State has provided appropriate documentation demonstrating that its enforcement policies and procedures are equivalent to those of CLIA.

IV. Validation Inspections

The Federal validation inspections of CLIA-exempt laboratories, as specified in § 493.517, will be conducted on a representative sample basis as well as in response to substantial allegations of noncompliance (complaint inspections). The outcome of those validation inspections will be HCFA's principal tool for verifying that the laboratories located in and licensed by the State are in compliance with CLIA requirements. This Federal monitoring is an on-going process. The State of Washington will provide HCFA with survey findings for each laboratory selected for validation.

The CLIA exemption of laboratories located in and licensed by the State may be removed if HCFA determines the outcome and comparability review of validation inspections are not acceptable as described under § 493.521 or if the State fails to pay the required fee every two years as required under § 493.646.

V. Laboratory Data

In accordance with § 493.513(d)(2)(iii), Washington State will provide HCFA with changes to a laboratory's specialties or subspecialties based on the State's survey. The State will also provide HCFA with changes in a laboratory's certification status, such as a change from a regular certificate to a certificate of waiver.

VI. Required Administrative Actions

CLIA is intended to be a totally user-fee funded program. The registration fee paid by the laboratories is intended to cover the cost of the development and administration of the program. However, once a State's application for exemption is approved, HCFA may not charge a fee to laboratories in the State. The State's share of the costs associated with CLIA must be collected from the State.

42 CFR 493.645 specifies that HHS will assess fees that a State must pay for the following:

- Costs of Federal inspection of laboratories in the State to verify that standards are enforced in an appropriate manner. The average cost per validation survey nationally is multiplied by the number of surveys that will be conducted.
- Costs incurred for Federal investigations and surveys triggered by complaints that are substantiated. We will bill the State on an semi-annual basis. We anticipate that most of these surveys will be referred to the State and that there will be little Federal activity in this area.
- The State's proportionate share of general overhead costs to develop and implement CLIA. The amount of this share consists of the costs of certification/enforcement procedures, billing and data systems, training and public information, fiscal and administrative services, FDA's Reviews for Quality Control of manufacturers' equipment for the laboratory community, CDC's overhead including development of standards, analyses, and studies, and indirect costs for all.

In order to estimate the State's proportionate share of the general overhead costs to develop and implement CLIA we determined the ratio of laboratories in the State to the total number of laboratories nationally. Approximately 1.6 percent of the registered laboratories are in Washington State. In that the general overhead costs apply equally to all laboratories, we determined that 1.6 percent of the cumulative overhead costs should be borne by the State of Washington.

Washington has agreed to pay us the State's pro rata share of the overhead costs and anticipated costs of actual validation and complaint investigation surveys. A final reconciliation for all laboratories and all expenses will be made. We will reimburse the State for any overpayment or bill it for any balance.

VI. Approval

HCFA grants CLIA exemption for all specialties and subspecialties to all laboratories located in and licensed by the State of Washington effective October 6, 1993 to October 6, 1994.

VII. Regulatory Impact Statement

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any notice such as this that meets one of the E.O. 12291 criteria for a "major rule"; that is, that would be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Also, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a notice such as this would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all laboratories to be small entities. Individuals and States are not included in the definition of small entity.

Additionally, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any notice such as this that may have a

significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we consider a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

This notice announces the exemption of laboratories licensed by the State of Washington from the requirements of the Clinical Laboratory Improvement Amendments of 1988 (CLIA). This exemption is conditioned upon the State establishing that the quality of laboratory services meets standards substantially equivalent to those of the CLIA program. The State also has established that it has a program to monitor and evaluate compliance with the standards. The effect of the exemption from CLIA requirements is to place laboratories under State regulation, rather than Federal regulation, with no discernible difference in the operations of the programs. Consequently, we anticipate no effect on the quality or availability of services.

There may be an impact on the costs of laboratory services in Washington. As stated above, CLIA is intended to be a totally user-fee funded program, with the fees paid by the laboratories covering the costs of the development and administration of the program. However, if a laboratory is located in a State that has had its licensure and inspection program approved by HHS, the State is responsible for paying HCFA any CLIA associated fees. Individual laboratories in that State are exempt from CLIA's requirements and need not apply to HCFA for certification, pay any Federal CLIA certificate fee(s), or undergo the routine onsite CLIA compliance survey for which HCFA is responsible. However, the laboratories must comply with State requirements concerning certification, pay certificate fees, and meet State survey and inspection requirements. The manner in which the State assesses fees could have some minimal impact on facilities and recipients of services within the State.

In order for Washington to receive approval for exemption of its laboratories, it agreed to pay HCFA for the following:

- The costs of Federal inspections of State-exempt laboratories on a sample basis to "validate" that the Washington licensing program is applying standards at least equal to the CLIA standards.
- The costs incurred for investigations of complaints against the laboratories under the Washington program if the complaint is substantiated.
- The costs of Washington's pro rata share of general overhead to develop and implement CLIA.

The annual costs of validation inspections will be based on the Federal costs to perform surveys of 5 percent of those State laboratories subject to validation inspections. This sample size will give us assurance that practices in Washington are, in fact, equivalent to those of the Federal CLIA program.

With respect to complaint investigation surveys, we expect that most of these surveys will be referred to the State, and there will be little Federal activity in this area. The State will incur a cost only in the event of substantiated complaints and our experience with related programs indicates a very low volume of substantiated complaints.

The State's proportionate share of the general overhead costs would be determined by comparing the number of laboratories in Washington to the total number of laboratories nationally. Approximately 1.6 percent (2,364) of all registered laboratories are in Washington, and we have used this percentage to allocate that percentage of overhead and startup costs to Washington as their exemption fee.

In computing the overhead and start up costs portion of the exemption fee, we considered actual incurred and some projected expenses for fiscal years (FYs) 1992–1994. We took into account program costs for the Centers for Disease Control and Prevention (CDC) and the Food and Drug Administration (FDA), as well as HCFA costs, because some of these agencies' program activities will always have potential impact on all program participants, including State exempt laboratories. The HCFA program categories included in the chargeable base and for which an exempt State may be billed a portion of the costs include:

- Certification and Enforcement Procedures—Included are the cost of development of the regulations and surveyor guidelines that are pertinent to all participants.
- Billing and Data Systems—Included are charges for data entry and systems development contracts.
- Fiscal and Administrative Services—Included are costs for the portion of regional and central office staff responsible for contract and budget negotiation, support and monitoring.
- Training and Public Information—Included are charges incurred because HCFA provides the training for surveyors (including those in Washington), as well as provides other services such as telephone hot-lines and printing educational materials.
- Indirect Costs—This category includes a percentage of HCFA's overhead expenses.

Excluded from the computation of the chargeable costs are expenses for the State survey program and regional office surveys, program functions performed for those not applying for exemptions.

Because a State is not required to address whether, or how, they plan to recoup the costs of administering its laboratory program when applying for CLIA exemption, we are unable to state exactly what impact our approval of Washington's laboratory program will have on laboratories, Medicare users of laboratory services, or non-Medicare users of laboratory services. By applying for CLIA exemption, the State has agreed to pay the costs identified above. If the State were to choose to pass on the costs associated with obtaining this exemption equally to the individual laboratories, it would result in an average increase in costs per laboratory of less than $300.

Therefore, it is clear that this notice does not meet any of the E.O. 12291 criteria. Hence, this notice is not a major rule under E.O. 12291, and a regulatory impact analysis is not required.

Based on the illustration of the amounts involved, this notice would not have a significant economic impact on a substantial number of small entities. We have provided the computation to illustrate the potential average cost to laboratories. The laboratories, in turn, could pass on the costs to users of laboratory services. Medicare beneficiaries would be protected from any increased costs because laboratory services are paid on a fee schedule. Non-Medicare users of laboratory services could be asked to bear additional costs, although we do not believe the amounts would be significant based on the potential average cost to laboratories. For these reasons, we have determined, and the Secretary certifies, that this notice does not result in a significant impact on a substantial number of small entities and does not have a significant effect on the operations of a substantial number of small rural hospitals. Therefore, we are not preparing analyses for either the RFA or section 1102(b) of the Act.

Dated: July 14, 1993.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 93–24532 Filed 10–5–93; 8:45 am]

BILLING CODE 4120–01–P

Health Resources and Services Administration

Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of November 1993.

Name: Subcommittee on Process of the Advisory Commission on Childhood Vaccines (ACCV).

Date and Time: November 8, 1993, 9 a.m.–5 p.m.

Place: Conference Room C, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

The meeting is open to the public.

Purpose: This Subcommittee is responsible for seeking, receiving, and analyzing systematic feedback (from interested parents' groups, petitioners' attorneys, etc.) on the implementation of the Vaccine Injury Compensation Program (VICP) and for making recommendations to the full Commission for appropriate changes in the system in order to improve the processes and procedures used by the various parties involved in the VICP.

Agenda: The Subcommittee will review and clarify and make recommendations on expert witness and attorney fee issues discussed at its September 21, 1993 meeting. The Subcommittee will formulate recommendations for the ACCV meeting to be held on December 1–2, 1993.

Public comment will be permitted prior to the lunch break and at the end of the meeting. Oral presentations will be limited to 5 minutes per public speaker. Persons interested in providing an oral presentation should submit a written request, along with a copy of their presentation by November 1 to Mr. Bryan K. Johnson, Division of Vaccine Injury Compensation, Bureau of Health Professions, Health Resources and Services Administration, Room 702, 6001 Montrose Road, Rockville, Maryland 20852, Telephone (301) 443–6593.

Requests should contain the name, address, telephone number, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The allocation of time may be adjusted to accommodate the level of expressed interest. The Division of Vaccine Injury Compensation will notify each presenter by mail or telephone of their assigned presentation time. Persons who do not file an advance request for presentation, but desire to make an oral statement, may sign up in Conference Room C before 10 a.m. These persons will be allocated time as time permits.

Anyone requiring information regarding the subject Commission should contact Mr. Matthew B. Barry, Principal Staff Liaison, Division of Vaccine Injury Compensation, Bureau of Health Professions, Room 702, 6001 Montrose Road, Rockville, Maryland 20852, Telephone (301) 443–6593.

Agenda Items are subject to change as priorities dictate.

Dated: September 30, 1993.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 93–24516 Filed 10–5–93; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–5101–10–XFKL; N–51666]

Extension of Public Comment Period for the Draft Bedell Flat Pipelines Rights-of-Way Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Extension of the public comment period for the Draft Bedell Flat Pipelines Rights-of-Way Environmental Impact Statement to October 22, 1993.

SUMMARY: The U.S. Bureau of Land Management has extended the public comment period for the Draft Environmental Impact Statement (EIS) on the Bedell Flat pipelines rights-of-way. The EIS analyzes the impacts of a proposal by Washoe County, Nevada, for pipeline rights-of-way across public land to accommodate a portion of the facilities needed for Washoe County's project to transport water from eastern Honey Lake Valley, Nevada, through Bedell Flat to Lemmon Valley, Nevada.

DATES: The comment period has been extended from September 22, 1993 to October 22, 1993.

ADDRESSES: Please address written comments to: James M. Phillips, Lahontan Area Manager, U.S. Bureau of Land Management, 1535 Hot Springs Rd., suite 300, Carson City, NV 89706–0638.

FOR FURTHER INFORMATION CONTACT: David Loomis, EIS Project Manager, U.S. Bureau of Land Management, 1535 Hot Springs Road, suite 300, Carson City, NV 89706–0638; (702) 885–6149.

SUPPLEMENTARY INFORMATION: Copies of the Draft EIS are available for review at public libraries in Washoe County, Nevada and Lassen County, California; the Nevada State Library in Carson City; and the libraries of the University of Nevada, Reno; the University of Nevada, Las Vegas; and Lassen Community College in Susanville, California. Public reading copies are available for review at the following BLM locations:

Nevada State Office, 850 Harvard Way, Reno, Nevada 89520.
California State Office, 2800 Cottage Way, room E–2841, Sacramento, California 95825.
Carson City District Office, 1535 Hot Springs Road, suite 300, Carson City, Nevada 89706.
Susanville District Office, 705 Hall Street, Susanville, California 96130.
Eagle Lake Resource Area, 471–850 Johnstonville Drive, Susanville, California 96130.

Dated: September 29, 1993.

Billy R. Templeton,

Nevada State Director.

[FR Doc. 93–24459 Filed 10–5–93; 8:45 am]

BILLING CODE 4310–HC–M

[OR 50237; OR–080–03–4212–05; GP3–433]

Realty Action; Proposed Recreation and Public Purposes Act Classification

September 27, 1993.

The following described public land has been examined and determined to be suitable for classification for lease under the authority of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.):

Willamette Meridian, Oregon

T. 6 S., R. 3 E.,
Sec. 7, SE¼NW¼ excepting therefrom a tract of land as described in instrument recorded October 13, 1949, in Book 424, page 723,
E½SW¼, W½SE¼;
Sec. 18, W½E½, E½W½;
Sec. 19, W½NE¼, E½NW¼, SE¼;
Sec. 30, E½;
Sec. 31, E½;
Sec. 32, W½W½;
T. 7 S., R. 3 E.,
Sec. 6, Lots 1 and 2, S½NE¼, SE¼;
Sec. 7, Lots 5 and 6, N½NE¼, SE¼NE¼, NE¼SE¼;
Sec. 8, SW¼NW¼, SW¼, W½SE¼;
Sec. 13, SW¼;
Sec. 14, Lots 1–8, inclusive;
Sec. 15, S½N½, S½ excepting therefrom two tracts of land as described in instruments recorded April 1, 1936, in Book 231, page 269, and February 3, 1944, in Book 320, page 60;
Sec. 16, S½N½, S½ excepting therefrom a tract of land as described in instrument recorded October 26, 1944, in Book 333, page 610;
Sec. 17, N½, N½SE¼.

The above-described lands contain 4,441.93 acres in Clackamas County.

The subject lands are proposed to be leased to a local or state governmental agency for the "Molalla River Recreation Area". The land and the improvement would continue to be managed by the Bureau of Land Management. The purpose for leasing the land would be to keep this portion of the Molalla River free from mining claim conflicts for the benefit of the outdoor recreation uses.

including recreational mining activities. This portion of the Molalla River has long been a popular area for swimming, fishing, camping, picnicking, sightseeing, and recreation mining. Issuance of the lease would ensure that these activities would continue without the usual conflicts with mining claimants. The public would be well served by issuing a lease for these lands as proposed. The lease would be consistent with current BLM land use planning and will be in the public interest.

The lease, when granted, will be subject to the following:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulation of the Secretary of the Interior.

2. Proposed lease would have a term of 25 years.

3. The reversionary requirements of 43 CFR 2741.9.

Detailed information concerning this action is available for review at the Salem District Office, 1717 Fabry Road SE., Salem, Oregon 97306.

Upon publication of this notice in the **Federal Register**, the land will be segregated from all other forms of appropriation under the public land laws, including the mining laws, except the mineral leasing laws and for lease under the Recreation and Public Purposes Act. The segregation shall automatically terminate: (1) In 18 months from the date of this publication in the **Federal Register** if no application for lease has been filed on the lands so classified; or (2) upon publication in the **Federal Register** of an opening order.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Salem District Office, at the above address. Any adverse comments will be reviewed by the Salem District Manager, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior.

Elena C. Daly,

Clackamas Area Manager.

[FR Doc. 93–24467 Filed 10–5–93; 8:45 am]

BILLING CODE 4310–33–M

[UT–942–4212–13; UTU–68277]

Notice of Issuance of Land Exchange Conveyance Document; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Exchange of public and private lands.

SUMMARY: This action informs the public of the conveyance of 478.16 acres of public land out of Federal ownership. This action will also open 480.00 acres of reconveyed land to appropriation under the public land laws.

FOR FURTHER INFORMATION CONTACT: Michael L. Crocker, Bureau of Land Management, Utah State Office, 324 South State Street, P.O. Box 45155, Salt Lake City, Utah 84145–0155, 801–539–4118.

SUPPLEMENTARY INFORMATION: 1. The United States has issued an exchange conveyance document to Douglas E. Larson and Charles M. Larson for the surface estate of the following described land pursuant to Section 206 of the Act of October 21, 1976 (90 Stat. 2756; 43 U.S.C. 1716):

Salt Lake Meridian

T. 8 S., R. 5 W.,
Sec. 18, lots 3, 4, E½SW¼;
Sec. 19 lots 1, 2, 4, 5,
W½NE¼NW¼SW¼, SE¼NW¼SW¼,
E½W½.
Containing 478.16 acres.

2. In exchange for the lands listed in paragraph 1, the United States received the surface estate of the following described land:

Salt Lake Meridian

T. 8 S., R. 6 W.,
Sec. 9, E½E½;
Sec. 12, E½W½;
Sec. 15, E½W½.
Containing 480.00 acres.

3. At 7:45 a.m., on November 5, 1993, the lands described in paragraph 2 will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 7:45 a.m. on November 5, 1993, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

4. The purpose of this exchange was to acquire three parcels of land that are located along the Pony Express Trail. The entire Pony Express Trail (California to Missouri) was designated as a National Historic Trail by Congress in 1992.

Ted D. Stephenson,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 93–24478 Filed 10–5–93; 8:45 am]

BILLING CODE 4310–DQ–M

[UT–020–03–4210–04; U–70295]

Notice of Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, sale of public lands in Utah County, Utah.

SUMMARY: The Bureau of Land Management proposes a direct, non-competitive sale of 40 acres in Utah County to the adjoining landowner.

This notice provides a public comment period and segregates the lands described from entry under the public land laws and location under the mining laws, but not the mineral leasing laws or the material sale laws.

DATES: Comments must be received no later than November 22, 1993.

ADDRESSES: Comments should be sent to the District Manager, BLM Salt Lake District, 2370 South 2300 West, Salt Lake City, Utah 84119.

FOR FURTHER INFORMATION CONTACT: Michael G. Nelson, Realty Specialist, BLM Salt Lake District Office, (801) 977–4300.

SUPPLEMENTARY INFORMATION: The following described lands have been found suitable for disposal pursuant to the provisions of section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2756, 43 U.S.C. 1701, 1713): at not less than the estimated fair market value of $9000.

Salt Lake Meridian, Utah

T. 5 S., R. 1 W., SLM
Section 29, SE¼SE¼.

The land will be sold by direct sale to Cedar Valley Farms no less than 60 days after date of publication of this notice in the **Federal Register**. If the land is not sold within 90 days after the date of this sale, the land will become available for purchase over the counter on a first come basis until it is sold.

In accordance with the regulations in 43 CFR 2711.1–2(d), the lands described above are hereby segregated from entry under the public land laws, including the mining laws, but not the mineral leasing laws or material sale laws. The segregation of the above described lands shall terminate upon issuance of a patent or other document of conveyance to such lands, upon publication of a notice in the **Federal Register** of termination of the segregation or 270 days from the date of this publication, whichever occurs first.

The public is hereby notified that comments may be submitted to the District Manager at the address shown above within the comment period identified above. Any adverse comments will be evaluated by the

District Manager who may modify or vacate this realty action and issue a final determination. In the absence of any action by the State Director, this notice of realty action will become the final determination of the Department of the Interior and a sale can be held after 60 days from the publication of this notice.

Deane H. Zeller,

District Manager.

[FR Doc. 93–24555 Filed 10–5–93; 8:45 am]

BILLING CODE 4310–DQ–M

Bureau of Reclamation

Proposed Renewal of Master Water Service Contract, Cachuma Project Santa Barbara County, California

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare a draft environmental impact statement/ environmental impact report and notice of scoping meetings.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended, and section 21002 of the California Environmental Quality Act (CEQA), the Bureau of Reclamation (Reclamation), the Cachuma Project Authority (Authority), and the Santa Barbara County Water Agency (Agency) propose to prepare a joint environmental impact statement/ environmental impact report (EIS/EIR) for renewing a contract providing water service to several agencies from the Cachuma Project, Santa Barbara County, California.

DATES: Comments are requested concerning the scope of analysis of the draft EIS/EIR. Comments are also requested concerning Reclamation's intent to prepare a joint document with the Authority and the Agency. Any person may participate in the scoping process by submitting written comments to Mr. Bob May, Bureau of Reclamation, at the address listed below. Written comments are to be postmarked no later than November 24, 1993. Three public scoping meetings have been scheduled. The meetings are designed to solicit public input to assist Reclamation and local water agencies in determining the suitability of a combined EIS/EIR and the scope of the EIS/EIR. The public will be asked to identify issues and concerns related to the proposed contract renewal. The meetings will be held on Monday, November 15, 1993, at 7:30 p.m. and Tuesday, November 16, 1993, at 2 p.m. and 7 p.m. and Wednesday, November 17, 1993, at 7 p.m.

ADDRESSES: Written comments should be addressed to Mr. Bob May at 2666 North Grove Industrial Drive, suite 106, Fresno, CA 93727–1551. The scoping meetings will be held at the following locations:

- Monday November 15, 1993, at the Solvang Veterans Memorial Building, Vets Wing, 1745 Mission Drive, Solvang, CA 93460
- Tuesday November 16, 1993, at Santa Barbara County Planning Commission Hearing Room, 123 E. Anapamu Street, Santa Barbara, CA 93101;
- Wednesday November 17, 1993, at the City of Lompoc, City Hall Council Chambers, 100 Civic Center Plaza, Lompoc, CA 93438;

FOR FURTHER INFORMATION CONTACT: Mr. Bob May, Bureau of Reclamation, FRO–425, Fresno Project office, 2666 North Grove Industrial Drive, suite 106, Fresno, CA 93727–1551, telephone: (209) 487–5116 (TDD 209/487–5933), Mr. Chris Dahlstrom, Project Coordinator, Cachuma Project Authority, 3301 Laurel Canyon Road, Santa Barbara, CA 93105–2017, telephone: (805) 569–1391, and Mr. Robert Almy, Manager, Santa Barbara County Water Agency, 122 W. Figueroa Street, suite B, Santa Barbara, CA 93101, telephone: (805) 568–3540.

SUPPLEMENTARY INFORMATION: The EIS/ EIR will consider the effects of renewing a master contract under which water service has been provided to the following Cachuma Project member units: The City of Santa Barbara; Goleta Water District; Montecito Water District; Summerland County Water District; Carpenteria County Water District; and the Santa Ynez River Water Conservation District, Improvement District No. 1. The Cachuma Project has been the principal water supply for the above member units since it was constructed by Reclamation in 1955. The original Cachuma Project Master Contract (No. I75r–1802) was executed September 12, 1949. Initial water deliveries began on May 15, 1955 and this contract will expire May 15, 1995.

The proposed action to be evaluated in the EIS/EIR is the continuation of water deliveries to the member units from the Cachuma Project by means of a renewed water service contract or repayment contract. The contract is governed by the Act of Congress of June 17, 1902, and all Reclamation acts amendatory thereof or supplementary thereto. The contract was written pursuant to section 9(c)(2) and 9(e) of the Reclamation Project Act of 1939. The authority for contract renewal is pursuant to the Act of July 2, 1956, 70 Stat. 483 (1956 Act) and the Act of June 21, 1963, 77 Stat. 68 (1963 Act).

Alternatives, including the no action alternative, will be evaluated in the environmental documentation, and will be further developed during the scoping process. The alternatives selected for evaluation may consider the following issues: Water quantity, water pricing, water delivery practices, contract duration, water transfer/exchanges, environmental considerations including water quantity, water quality, instream flows, water conservation, improved efficiency, groundwater management, and fish and wildlife resources.

The draft EIS/EIR is expected to be completed and available for review and comment late in 1994.

Note: Anyone requiring special services should contact Mr. Bob May at the above phone number. please call as far in advance of the meetings as possible, and no later than November 10, 1993, to enable Reclamation to meet your needs. If a request cannot be honored, the requester will be notified.

Dated: September 30, 1993.

Donald R. Glaser,

Deputy Commissioner.

[FR Doc. 93–24553 Filed 10–5–93; 8:45 am]

BILLING CODE 4310–94–M

Fish and Wildlife Service

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

Applicant: EG&G Energy Measurements, Inc., Las Vegas, NV; PRT–683011

The applicant requests amendment of their permit to collect and preserve up to 15 specimens each of California jewelflower (*Caulanthus californicus*), Kern mallow (*Eremalche dernensis*) and San Joaquin wooly threads (*Lembertia congdonii*) in Kern County, California, for the purposes of validating new distributions and teaching identification to individuals who will conduct population surveys of these species for the enhancement of survival of the species.

Applicant: California Dept. of Transportation, Santa Anna, CA; PRT–783010

The applicant requests a permit to survey for Least Bell's vireo (*Vireo belli pusillus*) to determine the presence or absence of the species on State roadways or properties in southern California. The applicant also plans to

remove predator species from observed vireo nests.

Applicant: Woodland Park Zoological Garden, Seattle, WA; PRT–782998

The applicant requests a permit to import one wild-born female western lowland gorilla (*Gorilla gorilla gorilla*) from the Metropolitan Toronto Zoo, Toronto, Ontario, Canada, to enhance the propagation and survival of the species.

Applicant: The Hawthorne Corporation, Grayslake, IL, PRT–783218

The applicant requests a permit to import two pairs of captive-born tigers (*Panthera tigris*) from Germany. These tigers are the progeny of the applicant's own tigers that are currently performing in Germany. The tigers will be imported for purposes of captive-breeding. In the future, the applicant will export and re-import these animals for the same purposes.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, VA 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: October 1, 1993.

Susan Jacobsen,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 93–24551 Filed 10–5–93; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

Restoration of the Elwha River Ecosystem and Native Anadromous Fisheries

AGENCY: Department of the Interior, National Park Service.

ACTION: Notice of availability and request for comments; Notice of open house/public workshop.

SUMMARY: With this notice, the National Park Service announces the availability for review and comment of a Draft Report entitled, The Elwha Report: Restoration of the Elwha River Ecosystem and Native Anadromous Fisheries. This report is required by The Elwha River Ecosystem and Fisheries Restoration Act, Public Law 102–495. The National Park Service also announces an Open House/Public Workshop will be held in Port Angeles, Washington, at the Port Angeles High School library, 304 East Park Avenue, on October 18, from 4 p.m. to 8 p.m. Questions will be answered and written and verbal comments will be accepted at this workshop. The Report will be delivered to Congress by January 31, 1994.

DATES: Comments must be received by November 8, 1993.

ADDRESSES: Comments must be submitted in writing to: Dr. Brian Winter, Team Leader, Elwha Restoration Interagency Team, Olympic National Park, 600 East Park Avenue, Port Angeles, Washington 98362–6757.

FOR FURTHER INFORMATION CONTACT: Dr. Winter, same address as above, or telephone (206) 526–6172.

SUPPLEMENTARY INFORMATION: Copies of the Draft Report will be available in most Olympic Peninsula and Puget Sound area public libraries.

Dated: September 28, 1993.

Maureen Finnerty,

Superintendent, Olympic National Park.

[FR Doc. 93–24558 Filed 10–5–93; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31993 (Sub-No. 1)]

San Joaquin Valley Railroad Co.—Acquisition and Lease Exemption—Southern Pacific Transportation Company

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10505, the Commission exempts from the prior approval requirements of 49 U.S.C. 11343–45 the purchase by San Joaquin Valley Railroad Co. (SJVR) of 206.77 miles of rail line in Fresno, Tulare, Kern, and Kings Counties, CA, owned by Southern Pacific Transportation Company (SP) and SJVR's lease of the underlying rights-of-way. The transactions involve: (1) The Exeter Branch, between milepost 206.15, near Fresno, and milepost 308.64, at Famoso; (2) the Coalinga Branch, between milepost 240.15, at Goshen Junction, and milepost 282.23, near Huron; (3) the Stratford Branch, between milepost 263.44, at Rossi, and milepost 271.69, at Stratford; (4) the Visalia Branch, between milepost 246.01, at Goshen Junction, and milepost 262.67, at Exeter; (5) those segments of the Clovis Branch between milepost 206.15, near Fresno, and milepost 206.99, and between mileposts 212.50 and 223.15, near Clovis; (6) the Richgrove Branch, between milepost 295.01, at Richgrove, and milepost 299.17, at Jovista; (7) the Visalia Electric Branch, between milepost 0.00, at Exeter, and the end of the line at milepost 1.13, near Citro Junction; (8) the Arvin Branch, between milepost 316.80, at Magunden, and milepost 333.55, at Arvin; and (9) the Oil City Branch, between milepost 308.74, at Oil Junction, and milepost 312.50, at Maltha. SJVR is purchasing SP's undivided one-half interest in the Arvin and Oil City Branches. The exemption is subject to standard employee protective conditions.

DATES: The exemption is effective on October 8, 1993. Petitions to stay or reopen must be filed by October 7, 1993.

ADDRESSES: Send pleadings referring to Finance Docket No. 31993 (Sub-No. 1) to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423, and (2) Fritz R. Kahn, Klein & Bagileo, Suite 120, 1101 30th Street, NW., Washington, DC 20007.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. [TDD for hearing impaired (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD service (202) 927–5721].

Decided: September 30, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–24648 Filed 10–5–93; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) and the Paperwork

Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;
(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;
(3) How often the form must be filled out or the information is collected;
(4) Who will be asked or required to respond, as well as a brief abstract;
(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;
(6) An estimate of the total public burden (in hours) associated with the collection; and,
(7) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Lewis Arnold, on (202) 514–4305. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Lewis Arnold, DOJ Clearance Officer, SPS/JMD/5031 CAB, Department of Justice, Washington, DC 20530.

New Collection

(1) Immigration and Naturalization Service Applicant Survey
(2) G–942. Immigration and Naturalization Service
(3) On occasion
(4) Individuals or households, Federal agencies or employees.

This data collection is needed to ensure compliance with Federal laws and regulations which mandate equal opportunity in the recruitment of applicants for Federal employment.

(5) 75,000 annual respondents at .07 hours per respondent
(6) 5,250 annual burden hours
(7) Not applicable under section 3504(h)

Public comment on these items is encouraged.

Dated: September 30, 1993.

Lewis Arnold,

Department Clearance Officer, Department of Justice.

[FR Doc. 93–24476 Filed 10–5–93; 8:45 am]

BILLING CODE 4410–10–M

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Portland Cement Assoc.

Notice is hereby given that, on August 30, 1993, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Portland Cement Association ("PCA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the Canadian Medusa Cement Limited, Owen Sound, Ontario, CANADA has joined the PCA, and National Cement Company, Inc., has changed its name to National Cement Company of Alabama, Inc., Birmingham, AL. In addition, two affiliate members, Northern California Cement Promotion Group and Southern Cement Promotion Council have merged to form California Cement Promotion Council, Danville, CA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PCA intends to file additional written notification disclosing all changes in membership.

On January 7, 1985, PCA filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on February 5, 1985, 50 FR 5015.

The last notification was filed with the Department on May 27, 1993. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act of June 16, 1993, 58 FR 33284.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–24520 Filed 10–5–93; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Michigan State Standards; Approval

Background

Part 1953 of title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) (hereinafter called the Act) by which the Regional Administrator for the Occupational Safety and Health (hereinafter called the Regional Administrator), under delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4), will review and approve standards promulgated pursuant to a State plan, which has been approved in accordance with section 18(c) of the Act and 29 CFR part 1902, On October 3, 1973, notice was published in the **Federal Register** (38 FR 27338) of the approval of the Michigan plan and the adoption of subpart T part 1952 containing the decision.

The Michigan plan provides for the adoption of Federal standards as State standards by reference. OSHA regulations (29 CFR 1953.22 and 23) require that States respond to the adoption of new or revised permanent Federal standards by State promulgation of comparable standards within six months of OSHA publication in the **Federal Register**, and within 30 days for emergency temporary standards. Although adopted Federal standards or revisions to standards must be submitted for OSHA review and approval under procedures set forth in part 1953, they are enforceable by the State prior to Federal review and approval.

By notice published in the Michigan Register and incorporated as part of the plan, Michigan has adopted State standards comparable to:

1. Occupational Exposure to Hazardous Chemicals in Laboratories, 29 CFR 1910.1450 as published in the **Federal Register**, Volume 55, No. 21 dated January 25, 1992.

2. Hazardous Waste Operations and Emergency Response, 29 CFR 1910.120 as published in the **Federal Register**, Volume 55, No. 72 dated April 13, 1990.

These standards were promulgated after notice was published offering an opportunity for public comments and/or requests for public hearings. These standards were adopted by reference according to the provision of Michigan

Act 154 of 1974, as amended, effective January 1, 1975.

Decision

Having reviewed the State submission in comparison with Federal standards, it has been determined that the State standards are identical to comparable Federal standards.

Location of Supplement for Inspection and Copying

A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, 230 S. Dearborn Street, room 3244, Chicago, Illinois 60604; State of Michigan, Department of Public Health, 3423 North Logan Street, Lansing, Michigan 48909; and the Directorate of Federal-State Operations, room N3700, 200 Constitution Avenue, NW., Washington, DC 20210.

Public Participation

Under 29 CFR 1953.2(c) of this chapter, the Assistant Secretary may prescribe alternative procedures to expedite the review process, or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Michigan State Plan as a proposed change and makes the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards are identical to the Federal standards which were promulgated in accordance with Federal law including meeting requirements for public participation.

2. The standard was adopted in accordance with the procedural requirements of State law and further participation would be unnecessary.

This decision is effective October 6, 1993.

(Sec. 18, Pub. L. 91–596, 84 Stat. 1608 (29 U.S.C. 667)

Signed at Chicago, Illinois this 9th day of August.

Michael G. Connors,

Regional Administrator.

[FR Doc. 93–24531 Filed 10–5–93; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Nixon Presidential Historical Materials; Opening of Materials

AGENCY: National Archives and Records Administration.

ACTION: Notice of opening of materials.

SUMMARY: This notice announces the opening of additional files from the Nixon Presidential historical materials. Notice is hereby given that, in accordance with section 104 of title I of the Presidential Recordings and Materials Preservation Act ("PRMPA", 44 U.S.C. 2111 note) and § 1275.42(b) of the PRMPA Regulations implementing the Act (36 CFR part 1275), the agency has identified, inventoried, and prepared for public access Nixon Presidential historical materials relating to POW/MIA matters and other previously restricted documents.

DATES: The National Archives intends to make the materials relating to POW/MIA matters and other previously restricted documents described in this notice available to the public beginning November 10, 1993. In accordance with 36 CFR 1275.44, any person who believes it necessary to file a claim of legal right or privilege concerning access to these materials should notify the Archivist of the United States in writing of the claimed right or privilege before November 8, 1993.

ADDRESSES: The materials will be made available to the public in the Central Research Room at the National Archives Building located at 7th and Pennsylvania Avenue, NW., Washington, DC.

Petitions asserting claims of legal rights or privilege must be sent to the Archivist of the United States, National Archives and Records Administration, Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT: Clarence F. Lyons, Jr., Acting Director, Nixon Presidential Materials Staff, (703) 756–6498.

SUPPLEMENTARY INFORMATION: The materials to be opened total approximately 1.6 cubic feet.

National Security Council Files (1.5 cubic feet)

Documents which have been identified, reviewed, and declassified relating to POW/MIA matters located in the National Security Council files among the Nixon Presidential materials will be made available to the public on November 10, 1993.

Previously Restricted Materials (less than .1 cubic foot)

A number of documents which were previously withheld from public access have been reviewed and declassified under the Mandatory Review provisions of Executive Order 12356 and will be made available to the public on November 10, 1993. Public access to some of the items will be restricted as outlined in 36 CFR 1275.50 or 1275.52 (PRMPA Regulations).

Dated: September 29, 1993.

Trudy Huskamp Peterson,

Acting Archivist of the United States.

[FR Doc. 93–24557 Filed 10–5–93; 8:45 am]

BILLING CODE 7515–01–M

PHYSICIAN PAYMENT REVIEW COMMISSION

Commission Hearing

AGENCY: Physician Payment Review Commission.

ACTION: Notice of hearing.

SUMMARY: The Physician Payment Review Commission has scheduled a hearing for Monday, November 29 and Tuesday, November 30, 1993, to give interest groups the opportunity to comment on the issues the Commission plans to address in its next annual report to Congress. Much of the Commission's work in the coming months will focus on issues related to health system reform in addition to ongoing work on Medicare and Medicaid. A list of topics included in the Commission's work plan can be obtained from the Commission office. This hearing is structured to enable the Commission to consider the views of groups affected by its work before it completes its analyses and develops recommendations for the 1994 report.

If your organization wishes to testify, please contact Lauren LeRoy or Anne Schwartz at 202/653–7220 no later than Tuesday, October 12, 1993. When you request to testify, please indicate which topics you expect to cover in your testimony. Because of the limited time available, not all groups will be invited to appear. All groups, however, will have the opportunity to present their views in writing for the record.

The hearing will be held at the Washington Marriott Hotel, 1221 22nd Street NW., Washington, DC. Organizations and individuals will be notified by Friday, October 15 whether they have been selected to appear at the hearing. The hearing schedule will be available for the public on November 1, 1993 and will be mailed at that time.

ADDRESSES: The Commission is located at 2120 L Street, NW., in suite 510, Washington, DC. The telephone number is 202/653–7220.

FOR FURTHER INFORMATION CONTACT: Lauren LeRoy, Deputy Director, or Anne Schwartz, at 202/653–7220.

SUPPLEMENTARY INFORMATION: Two hundred (200) copies of your

organization's testimony or written statement (including a one-page executive summary) must be submitted to the Commission's office no later than 5 p.m. on Tuesday, November 16, 1993.

Paul B. Ginsburg,

Executive Director.

[FR Doc. 93-24560 Filed 10-5-93; 8:45 am]

BILLING CODE 8020-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-32989; File No. SR-Amex-92-11]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Amending the Minor Rule Violation Fine System Under Rule 590 and Minor Rule Violation Enforcement and Reporting Plan

September 29, 1993.

I. Introduction

On April 22, 1992, as subsequently amended on February 16 and August 16, 1993, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend its minor rule violation fine system contained in Amex Rule 590 to give the Exchange's Minor Floor Violation Disciplinary Committee the authority to fine floor members for certain minor rule violations and to add certain violations of the Exchange's rules to its Minor Rule Violation Plan ("Plan").[3] On February 16, 1993, the Amex submitted to the Commission Amendment No. 1 to the proposal.[4] On August 16, 1993, the Amex submitted to the Commission Amendment No. 2 to the proposal.[5]

The proposed rule change was published for comment in Securities Exchange Act Release No. 32604 (July 8, 1993), 58 FR 37980 (July 14, 1993). No comments were received on the proposal.

II. Background

In 1984, the Commission adopted amendments to paragraph (c) of Securities Exchange Act Rule 19d-1 to allow self-regulatory organizations ("SROs") to submit, for Commission approval, plans for the abbreviated reporting of minor rule violations.[6] Subsequently, the Commission approved an Amex proposal for a minor rule violation disciplinary system and for the abbreviated reporting of minor rule violations pursuant to Rule 19d-1(c) under the Act.[7] Accordingly, the Amex is relieved of the current reporting requirements of section 19(d)(1) with respect to disciplinary action taken pursuant to the Exchange's Plan.[8]

The Amex's existing Plan, as embodied in Amex Rule 590, authorizes the Exchange, in lieu of commencing a disciplinary proceeding before a hearing panel, to impose a fine not to exceed $2,500 on any individual or $5,000 on any member organization, for a minor rule violation of certain specified Exchange rules.[9] The Amex's Plan permits any person to contest the Exchange's imposition of the fine through the submission of a written answer, at which time the matter will become a disciplinary proceeding subject to Article V, section 1(b) of the Exchange's Constitution, and, where applicable, the reporting provisions of paragraph (c)(1) of Rule 19d-1 under the Act.

III. Description of the Proposal

Currently, under part 1 of Amex Rule 590, the Exchange's Enforcement Department is authorized, after a matter has been referred to it, to impose fines ranging from $500 to $2,500 against individuals and from $1,000 to $5,000 against member firms, for a series of substantive minor rule violations listed in the rule.[10] The member or member organization may plead guilty and pay the fine or contest the charge and request a hearing before an Exchange Disciplinary Panel.[11]

The Amex proposes several amendments to Rule 590. First, the Exchange proposes to create a new Committee composed of Floor members, the Minor Floor Violation Disciplinary Committee ("Disciplinary Committee"), giving it the authority to review certain minor floor violations and to fine floor members under Rule 590.[12] Currently, the Exchange's Committee on Specialist and Registered Trader Performance ("Performance Committee") is delegated authority by the Board of Governors ("Board") to review specialist and registered trader performance and to take certain actions in an effort to improve inadequate performance. Among the actions it can take are the following: Sending admonitory letters; prohibiting specialist units from applying for allocations for specified periods of time; recommending to the Allocations Committee that securities be

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1991).

[3] The Exchange has also requested approval, under Rule 19d-1(c)(2), 17 CFR 240.19d-1(c)(2), to amend its Rule 19d-1 minor rule violation enforcement and reporting plan to include the amendments contained in this proposal. See letter from Geraldine M. Brindisi, Corporate Secretary, Amex, to Mary Revell, Branch Chief, Commission, dated April 21, 1992. The Commission approved the Amex's Plan in Securities Exchange Act Release No. 21918 (April 3, 1985), 50 FR 14068 (April 9, 1985) (File No. 4-260) relieving the Amex of the current reporting requirements imposed under section 19(d)(1) of the Act and Amex Rule 590 in Securities Exchange Act Release No. 27543 (December 15, 1989), 54 FR 53223 (December 27, 1989) (File No. SR-Amex-89-06).

[4] See letter from Geraldine M. Brindisi, Corporate Secretary, Amex, to Diana Luka-Hopson, Branch Chief, Commission, dated February 12, 1993. Amendment No. 1 gives the Exchange's Minor Floor Violation Disciplinary Committee the authority to fine floor members for certain minor floor violations.

[5] See letter from Geraldine M. Brindisi, Corporate Secretary, Amex, to Diana Luka-Hopson, Branch Chief, Commission, dated August 13, 1993. Amendment No. 2 makes technical, non-substantive changes and clarifies the Exchange's proposal.

[6] See Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23838 (June 8, 1984). See infra note 8 for a discussion of periodic reporting under a minor rule plan.

[7] See Securities Exchange Act Release No. 21918 (April 3, 1985), 50 FR 14068 (April 9, 1985) (File No. 4-260).

[8] Pursuant to paragraph (c)(1) of Rule 19d-1, an SRO is required to file promptly with the Commission notice of any "final" disciplinary action taken by the SRO. Pursuant to paragraph (c)(2) of Rule 19d-1, any disciplinary action taken by the SRO for violation of an SRO rule that has been designated a minor rule violation pursuant to the plan shall not be considered "final" for purposes of section 19(d)(1) of the Act if the sanction imposed consists of a fine not exceeding $2,500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his or her administrative remedies. By deeming unadjudicated minor violations as not final, the Commission permits the SRO to report violations on a periodic (quarterly), as opposed to immediate, basis.

[9] Although the Amex's Board of Governors makes the initial determination of whether an Exchange rule violation is "minor" for purposes of inclusion in new Rule 590, this determination is subject to Commission review pursuant to sections 19 (b)(1) and (d)(1) of the Act and Rules 19b-4 and 19d-1(c)(2) thereunder. The Commission notes that Rule 590 fines in excess of $2,500 are not considered assessed pursuant to the Plan and, accordingly, must be reported on an immediate basis to the Commission under section 19(d)(1) of the Act.

[10] Part 2 of Rule 590 provides for a fine system for floor decorum violations; Part 3 authorizes fines for the late filing of reports required to be submitted to the Exchange.

[11] See Amex Constitution, Article V, section 1(b) and Amex Rule 590 (c) and (d).

[12] The Disciplinary Committee would be composed of a total of twenty-one floor members. When this Committee convenes to review minor floor violations, a Chairman would be selected from a roster of three floor Governors, three specialists would be selected from a roster of six specialists, three floor brokers would be selected from a roster of six floor brokers and three traders would be selected from a roster of six traders. Telephone conversation between Bruce Ferguson, Associate General Counsel, Legal and Regulatory Policy Division, Amex and Diana Luka-Hopson, Branch Chief, Division of Market Regulation, Commission, on September 28, 1993.

reallocated; and referring the matter to the Exchange's Enforcement Department for further action.

With respect to certain minor floor violations that it reviews, the Amex states that its Performance Committee does not have an adequate way to deal effectively with the problem of recurring violations. According to the Exchange, where there have been prior violations, an admonitory letter is generally viewed as inadequate, while the Performance Committee's other remedies are often seen as too severe to impose in the case of minor rule violations. The Amex states that giving fining authority to this new Disciplinary Committee will allow the Exchange to maintain the non-disciplinary nature of the Performance Committee.

Under the proposal, certain minor floor violations would be added to part 1 of Rule 590, with the Disciplinary Committee being authorized to impose a fine under the rule with respect to specified violations [13] and the Enforcement Department being authorized to impose a fine under the rule for other specified violations.[14] The Exchange's current due process procedures will apply to both the Disciplinary Committee and the Enforcement Department's actions, with the member or member organization being able to plead guilty and pay the fine or contest the charge and request a hearing before an Exchange Disciplinary Panel. If a fine imposed by the Disciplinary Committee is contested, the Disciplinary Panel would be composed of three members of the Disciplinary Committee, none of whom would have participated in the initial decision to impose the fine.[15] Any person that contests a fine imposed under Rule 590 would be required to pay a $100 fee to contest the fine. The fee would be assessed at the conclusion of any Disciplinary hearing if the person is found guilty of the alleged rule violation.[16]

The Exchange also proposes to add ten additional violations of Exchange rules to Rule 590. The Enforcement Department would be given the additional power to impose fines for:

(1) Violation of principal/agent prohibition;

(2) failure to follow proper procedure when establishing a long term investment account; and

(3) failure to properly mark or identify and represent upstairs orders. The Disciplinary Committee would be given the power to impose fines for:

(1) Failure to comply with the Commission's firm quote rule and honoring 10-up market for customer option orders;

(2) Failure to quote option markets within the maximum quote spread differentials;

(3) Failure to comply with option solicitation procedures;

(4) Violation of off-floor trading prohibition;

(5) Failure to comply with Exchange's Auto-Ex policy relating to signing on and off the Auto-Ex system;

(6) Failure to properly mark or identify and represent floor orders as required under Exchange rules; and

(7) Violation of the Exchange's delayed opening policy.

The Amex believes that the Rule 590 fine system has worked well in practice, providing for convenient and quick resolution of minor rule violations. The Amex believes that allowing the newly established Minor Floor Violation Disciplinary Committee to impose fines under Rule 590 will provide it with a very meaningful deterrent to deal more efficiently with these minor floor violations. The Exchange states that the proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(6) in particular in that it is intended to assure that Exchange members and member firms are appropriately disciplined for rule violations.

IV. Commission Findings

In adopting Rule 19d–1, the Commission noted that the Rule was an attempt to balance the informational needs of the Commission against the reporting burdens of the SROs.[17] In promulgating paragraph (c) of the Rule, the Commission was attempting further to reduce those reporting burdens by permitting, where immediate reporting was unnecessary, quarterly reporting of minor rule violations. The Rule is intended to be limited to rules which relate to areas that can be adjudicated quickly and objectively.

The Commission believes that the Amex proposal to add the rules subject to this proposal to the Plan meet this criteria and should be added to Rule 590. In particular, the Commission believes that the Amex rules proposed to be included in Rule 590 are easily determined and amenable to quick, objective determinations of compliance. Efficient and equitable enforcement of violations of these Amex rules should not entail the complicated factual and interpretative inquires associated with more sophisticated Exchange disciplinary actions. The Commission also believes that the Amex proposal to create a new Disciplinary Committee to review specified minor rule violations should help to make its disciplinary system more efficient in prosecuting violations of those rules.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of sections 6(b) (1), (6) and (7), 6(d)(1) and 19(d).[18] The Amex proposal is consistent with section 6(b)(6) requirement that the rules of an exchange provide that its members and persons associated with its members shall be appropriately disciplined for violations of the rules of the exchange. In this regard, the proposal provides an efficient procedure for appropriate disciplining of members in those instances when a rule violation is either technical and objective or minor in nature. Moreover, because the Plan provides procedural rights to the person fined and permits a disciplined person to request a full hearing on the matter, the proposal provides a fair procedure for the disciplining of members and persons associated with members which is consistent with the requirements of sections 6(b)(7) and 6(d)(1) of the Act.

The Commission also believes that the proposal provides an alternate means by which to deter violations of Amex rules included in the Plan, thus furthering the purposes of section 6(b)(1) of the Act. An exchange's ability to enforce effectively compliance by its members and member organizations with Commission and exchange rules is central to its self-regulatory functions. Inclusion of a rule in an exchange's minor rule violation plan should not be interpreted to mean it is an unimportant rule. On the contrary, the Commission recognizes that inclusion of rules under a minor rule violation plan not only may reduce reporting burdens of an SRO but also may make its disciplinary system more efficient in prosecuting violations of these rules. The Commission believes that adding the

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[13] In addition to imposing fines, the Disciplinary Committee will also have the authority to send admonitory letters and refer matters to the Enforcement Department for further action.

[14] The proposed list of minor floor violations for which the Disciplinary Committee will have fining authority is set forth in proposed paragraph (h) of Rule 590. The current list of rule violations for which the Enforcement Department has fining authority under paragraph (g), Rule 590, is also being expanded with the addition of three new violations.

[15] See proposed Amex Rule 590, Commentary .04.

[16] See proposed Amex Rule 590, Commentary .03.

[17] See Securities Exchange Act Release No. 13726 (July 6, 1977), 42 FR 36411 (July 14, 1977).

[18] 15 U.S.C. 78f(b) (1), (6) and (7), 78f(d)(1) and 78s(d) (1988).

rules subject to this proposal to Rule 590 will enhance, rather than reduce, the Amex's enforcement capabilities regarding these rules in cases where initiation of a full disciplinary proceeding may be more costly and time consuming in view of the minor nature of the particular violation. In this regard, the Commission notes that the Amex retains the discretion to bring a full disciplinary proceeding for violations of the rules listed in Rule 590 and the Commission expects the Amex to do so when appropriate for the particular violations(s) involved, as for repeat or habitual offenders.

Finally, the Commission notes that the Amex proposes to establish a forum fee. The Commission believes it is reasonable to shift a portion of the costs associated with appeal proceedings to those members seeking review of a fine. The Commission believes that the imposition of the fee is reasonable because it is charged only on members who unsuccessfully appeal a fine and the fee serves as a vehicle for the Exchange to recoup a portion of its costs in processing appeals of minor disciplinary matters. Moreover, because the fee is relatively low, the Commission does not believe that the fee should deter members from appealing fines imposed pursuant to the Plan. The Commission, therefore, believes that the proposal appropriately balances the Exchange's's interest in the efficient administration of its review proceedings with a member's interest in the fair and equitable resolution of a fine on appeal.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[19] that the proposed rule change (SR–Amex–92–11) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–24514 Filed 10–5–93; 8:45 am]

BILLING CODE 8010–01–M

[19] 15 U.S.C. 78s(b)(2) (1988).

[20] 17 CFR 200.30–3(a)(12)(1991).

[Release No. 34–32988; File No. SR–NASD–93–15]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving And Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to Proposed Rule Change Relating to Listing Standards for Hybrid Securities

September 29, 1993.

On March 23, 1993, the National Association of Securities Dealers, Inc. ("NASD" or "Association") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt specific listing standards to accommodate hybrid securities products that are not otherwise covered under existing NASD listing criteria.

The proposed rule change appeared in the **Federal Register** on June 4, 1993.[3] No comments were received on the proposed rule change. The NASD amended the proposal on September 24, 1993.[4] This order approves the proposal as amended.

During the past several years, the NASD and the national securities exchanges have developed separate listing standards to accommodate innovative securities which are not readily categorized under traditional listing guidelines.[5] These securities include: Common stock warrants, foreign currency warrants, index warrants, and special purpose securities not readily categorized as equity or debt. For example, in June 1992, the Commission approved amendments to the NASD's rules to accommodate the listing and trading of index warrants through the NASD Automated Quotation ("NASDAQ") system.[6]

Under the proposal, the NASD will designate as a NASDAQ/National Market System ("NMS") security any security not otherwise covered by the existing listing criteria, provided the issue of the hybrid security and the security offering meet certain requirements.[7] The new criteria will apply to major issuers having assets of $100 million and stockholders' equity of at least $10 million. Additionally, issuers will be required to have had pre-tax income of at least $750,000 and net income of at least $400,000 in the most recently completed fiscal year or in two of the last three most recently completed fiscal years.[8] Issuers not meeting the earnings criteria will be required to have assets in excess of $200 million and stockholders' equity of $10 million or, alternatively, assets in excess of $100 million and stockholders' equity of $20 million.

The NASD proposal would also require a minimum public distribution of 1,000,000 trading units with a minimum of 400 holders. When trading is expected to occur in larger than average trading units (i.e., $1,000 principal amount), a minimum of 100 holders will be sufficient. The aggregate market value of issues listed under this proposal must be at least $4 million.[9] Moreover, an issuer of hybrid securities product must be a company in good standing with the NASD or the NYSE.[10]

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1993).

[3] See Securities Exchange Act Release No. 32378 (May 27, 1993), 58 FR 31770.

[4] The NASD on September 24, 1993 filed Amendment No. 1 with the Commission to clarify the application of the Non-Quantitative Designation Criteria for NASDAQ/NMS securities in connection with the proposed hybrid listing standards. In particular, this amendment provides that an issuer of a hybrid securities product must be listed on NASDAQ/NMS or the NYSE or be an affiliate of a company listed on the NASDAQ/NMS or NYSE. In addition, Amendment No. 1 also provides the NASD with flexibility concerning the application of its corporate governance provisions to hybrid securities that are issued by sovereign entities. See letter from Thomas R. Gira, Senior Attorney, NASD, to Richard Zack, Branch Chief, Branch of Options Regulation, Division of Market Regulation, SEC, dated September 24, 1993 ("Amendment No. 1").

[5] See Securities Exchange Act Release Nos. 27753 (March 1, 1990), 55 FR 8624 (March 8, 1990) (order approving File No. SR–Amex–89–29); 28217 (July 18, 1990), 55 FR 30056 (order approving File No. SR–NYSE–90–30); 29229 (May 23, 1991), 56 FR 24852 (order approving File No. SR–NYSE–91–05); 28528 (October 11, 1990), 55 FR 42114 (order approving File No. SR–CSE–90–11); 28662 (November 30, 1990), 55 FR 50428 (order approving File No. SR–CBOE–90–29; 30087 (December 17, 1991), 56 FR 66465 (order approving File No. SR–PSE–91–48); 30294 (January 27, 1992), 57 FR 4224 (order approving File No. SR–BSE–91–07; and 30466 (March 11, 1992), 57 FR 9301 (order approving File No. SR–Phlx–92–01).

[6] See Securities Exchange Act Release No. 30773 (June 3, 1992), 57 FR 24835.

[7] Specifically, the proposed rule change adds paragraph (d) to Section 2 of Part III of Schedule D to the NASD's By-Laws regarding listing standards for hybrid securities products.

[8] See Paragraph (a)(1) of Section 2 of Part III of Schedule D to the NASD's By-Laws.

[9] The proposal also provides that the aggregate market value or principal amount of a hybrid security must be at least $1 million in order for the security to remain eligible for designation as a NASDAQ/NMS security. This maintenance requirement is intended to help ensure that there is sufficient public float in a hybrid security to support trading in the security.

[10] For example, if the issuer is listed on NASDAQ/NMS, the issuer must be a company in good standing with the NASD, meaning it must be in compliance with Sections 4 and 5 of Part III of Schedule D of the Association's By-Laws. Similarly, if the issuer is listed on the New York Stock Exchange, Inc. ("NYSE"), the issuer must be in good standing with the NYSE (i.e., Sections 102 and

Under the proposal as amended, the issuer of a hybrid security designated pursuant to Section 2(d) of Part III of Schedule D to the By-Laws must be listed on NASDAQ/NMS or the NYSE or be an affiliate of a company listed on the NASDAQ/NMS or the NYSE.[11]

Prior to the commencement of trading any of these hybrid securities, the NASD will evaluate the nature and complexity of the issue and, when appropriate, distribute a circular to the membership. This circular will provide guidance with regard to member firm compliance responsibilities when handling transactions in such securities.[12] In determining whether such a membership circular is necessary, the NASD will consider such characteristics of the issue as unit size and term; cash-settlement, exercise or call provisions; characteristics that may effect payment of dividends and/or appreciation potential; whether the securities are primarily of retail or institutional interest; and such other features of the issue that might entail special risks not normally associated with securities currently trading over the NASDAQ system. In addition, the NASD proposal also amends the Policy of the NASD's Board of Governors issued under Article III of the NASD's Rules of Fair Practice to highlight members' obligations to deal fairly with their customers when making recommendations or accepting orders concerning new financial products.[13]

The proposed hybrid listing standard guidelines are not intended to accommodate the listing of securities that raise significant new regulatory issues and, therefore, would require a separate rule filing submitted pursuant to section 19(b) of the Act and Rule 19b–4 thereunder.[14] Consistent with this approach for listing hybrid securities products, the NASD represents that it will consult with the Commission on a case-by-case basis concerning the appropriateness of designating a security as a NASDAQ/NMS security pursuant to proposed paragraph (d) of Section 2. The NASD believes that the proposed amendments to the listing standards will provide increased flexibility for issuers proposing to list innovative hybrid securities products that often possess attributes or features of more than one category of currently listed securities.

The Commission finds that the NASD's proposal to provide listing standards for new and innovative types of hybrid securities that cannot be categorized under the Association's existing listing standards is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 15A(b)(6).[15] Specifically, the Commission believes that the proposal is consistent with the section 15A(b)(6) requirement that the rules of a registered securities association be designed to promote just and equitable principles of trade and not to permit unfair discrimination between customers, issuers, brokers, or dealers.

Over the past several years, the Commission has approved similar hybrid listing standards for the national securities exchanges to accommodate new products.[16] The Commission believes that the NASD's proposal to establish listing criteria for new hybrid products addresses the special concerns raised by these new investment products. The proposed quantitative listing standards should ensure that only substantial companies capable of meeting their financial obligations are eligible to have their new products listed on the Exchange.[17] This is an important consideration in light of the contingent financial obligations which may be created by these instruments, and should serve to protect investors by ensuring that the companies listing their new products have sufficient financial means to meet their settlement obligations. In addition, issuers are not permitted to forego their corporate governance responsibilities merely because the securities being issued are not traditional equity or debt.[18]

The Commission also finds that the dissemination of a membership circular (with advance notice and review by the Commission) as determined by the NASD on a case-by-case basis for hybrid securities will address additional sales practice concerns raised by such new products.[19] These novel products, by combining features of debt, equity, and securities derivative products, may be more risky and complex than straight stock, bond, or equity products. The Commission believes, therefore, that the portion of the proposed rule change requiring the Exchange to evaluate the nature and complexity of each issue in order to determine whether to distribute a membership circular indicating member firm compliance responsibilities, prior to trading securities admitted to listing under

802 of the NYSE's Listed Company Manual). In addition, if the issuer is an affiliate of a company listed on NASDAQ/NMS or the NYSE, the affiliated company must be in good standing with the NASD or the NYSE. See Amendment No. 1 supra note 4.

[11] The NASD intends that issuers of hybrid securities be in full compliance with any corporate governance or responsibility requirements imposed by virtue of being designated a NASDAQ/NMS security or listed on the NYSE. Accordingly, the NASD amended its original proposal to provide that issuers of hybrid securities designated pursuant to Section 2(d) of Part III of Schedule D to the By-Laws must be listed on NASDAQ/NMS or the NYSE or be an affiliate of a company listed on NASDAQ/NMS or the NYSE. In addition, the NASD also proposed that Section 5 of Part III of Schedule D to the By-Laws (non-quantitative designation criteria for listing NMS securities) be applied to sovereign issuers of hybrid securities on a case-by case basis (the amendment provides the NASD with the flexibility to determine, in consultation with the SEC, which corporate responsibility provisions should apply to the issuer). Section 5 provides that NASDAQ/NMS issuers must, among other things, distribute annual reports to shareholders, establish an audit committee (a majority of which shall be independent directors), hold annual shareholder meetings, and maintain at least two independent directors on its Board of Directors. See Amendment No. 1 supra note 4.

[12] The circular, if warranted, may address such matters as appropriate customer suitability standards or whether trading in the product is limited to options approved accounts in addition to highlighting any special risks of the product.

[13] In particular, the Board emphasizes the heightened obligations of members for fair dealing with customers when making recommendations or accepting orders for new financial products. As new products are introduced from time to time, it is important that members make every effort to familiarize themselves when each customer's financial situation, trading experience, and ability to meet the risks involved with such products and to make every effort to make customers aware of the pertinent information regarding the products. Members are obligated to comply with specific guidelines, set forth by the NASD, for qualifying accounts to trade these products and for supervising the accounts thereafter.

[14] The Commission notes that securities that have raised significant new regulatory issues have warranted a rule filing. See e.g., Debt Exchangeable for Common Stock ("DECS") [see Securities Exchange Act Release No. 32950 (September 23, 1993) (approval of file no SR–NYSE–93–32)]; Telecommunications Portfolio Market Index Target Term Securities ("MITTS") [see Securities Exchange Act Release No. 32840 (September 2, 1993), 58 FR 4785]; Equity Linked Notes ("ELNs") [see Securities Exchange Act Release No. 32343 (August 23, 1993), 58 FR 45140]; and Standard & Poor's Depositary Receipts ("SPDRs") [see Securities Exchange Act Release No. 31591 (December 11, 1992), 57 FR 60253].

[15] 15 U.S.C. 78o–3(b)(6) (1982).

[16] See supra note 5.

[17] See supra notes 7 and 8 and accompanying text.

[18] Specifically, the issuer of a hybrid security on NASDAQ/NMS must be either listed on NASDAQ/NMS or the NYSE in order to ensure full compliance with the corporate governance standards of the NASD under Section 5 of Part III of Schedule D. In addition, the NASD, in consultation with the SEC, will have limited discretion to forego corporate governance provisions in connection with hybrid securities issued by sovereign issuers. See Amendment No. 1 supra note 4.

[19] The Commission expects, and the NASD has agreed, to provide a draft of the membership circular for the Commission's review prior to its dissemination to members. Telephone conversation between Thomas R. Gira, Senior Attorney, NASD, and Jeffrey P. Burns, Attorney, Branch of Options Regulation, Division of Market Regulation, SEC, on September 29, 1993.

section 2(d) of Part III of Schedule D to the NASD's By-Laws, will provide the NASD with the ability to address any potential sales practice problems and questions that may arise in connection with these new issues. Moreover, the Commission believes that the distribution of this circular should help to ensure that only customers with an understanding of the specific risks attendant to the trading of particular hybrid securities products trade these products.

The Commission believes that the proposed rule change is consistent with the requirements of section 15A(b)(6) of the Act because it relates only to those securities which are similar to products currently listed for trading by the Association. If a new product raises novel or significant regulatory issues, the NASD must then file a proposed rule change so that the Commission would have an opportunity to review the regulatory structure for the product.

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** because as discussed above, the NASD's proposal is similar to prior national securities exchange proposals approved by the Commission to provide listing criteria for hybrid securities.[20] The Commission did not receive any comments on this as well as any other hybrid listing standard proposals. Moreover, the amendment ensures that issuers of hybrid securities meet appropriate corporate governance standards. Accordingly, the Commission believes it is in the public interest to approve Amendment No. 1 on an accelerated basis.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[21] that the proposed rule change (SR–NASD–93–15) is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–24486 Filed 10–5–93; 8:45 am]

BILLING CODE 8010–01–M

[20] See supra note 5.

[21] 15 U.S.C. 78s(b)(2) (1982).

[22] 17 CFR 200.30–3(a)(12) (1993).

[Release No. 34–32994; File No. SR–NYSE–92–37]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Amendment to Rule 13 (Definitions of Orders) to Permit Entry of a "Limit-at-the-Close Order"

September 30, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 23, 1992, as subsequently amended on September 8, 1993,[1] and on September 29, 1993,[2] the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] See letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Diana Luka-Hopson, Commission, dated September 3, 1993. Amendment No. 1 modifies these proposed procedures to conform the proposal with amendments to the auxiliary closing procedures which the Commission recently approved as part of an on-going pilot program for expiration days. See Securities Exchange Act Release No. 32868, (September 10, 1993) ("September 1993 Approval Order"). For a more complete description of the auxiliary closing procedures as amended on September 10, 1993, see notes 2 and 4 infra.

[2] See letter from Donald Siemer, NYSE, To Diana Luka-Hopson, Commission, dated September 29, 1993. Amendment No. 2 modifies the proposed procedures to conform the proposal with the recent extension of the NYSE's auxiliary closing procedures for "expiration Fridays" to "QIX expiration days." "Expiration Friday" refers to the trading day, usually the third Friday of the month, when some stock index futures, stock index options and options on stock index futures expire or settle concurrently. "QIX" expiration days are days on which end-of-calendar quarter index options expire. Amendment No. 2 provides that the term "expiration days" as used herein refers to expiration Fridays and QIX expiration days cumulatively. The auxiliary closing procedures for monthly expiration Fridays have been in place on a pilot basis since November, 1986. The pilot procedures have been extended each year since then. See Securities Exchange Act Release No. 26293 (November 17, 1988), 53 FR 47599; No. 26408 (December 29, 1988), 54 FR 343 (approving File No. SR–NYSE–88–37); No. 27448 (November 16, 1989), 54 FR 48343 (approving File No. SR–NYSE–89–38); No. 28564 (October 22, 1990), 55 FR 43427 (approving File No. SR–NYSE–90–49); No. 29871 (October 28, 1991), 56 FR 30004 (approving File No. SR–NYSE–91–31); Securities Exchange Act Release No. 31386 (October 20, 1992), 57 FR 52814 (order approving File No. SR–NYSE–92–30); and September 1993 Approval Order, *Id.* On March 30, 1993, the Commission approved an NYSE proposal to extend, on a pilot basis, the auxiliary closing procedures to QIX expiration days. See Securities Exchange Act Release No. 32066 (March 30, 1993), 58 FR 17630 (April 5, 1993).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would amend Exchange Rule 13 to provide that "limit-at-the-close" ("LOC") orders may be entered to offset published imbalances of "market-at-the-close" ("MOC") orders pursuant to such procedures as the Exchange may establish from time to time. The proposed rule change would be implemented on a 15 month pilot basis.[3] It would permit LOC orders to be entered in the so-called expiration Friday pilot stocks plus any additional QIX pilot stocks (cumulatively, "LOC pilot stocks") on any day that an MOC imbalance of 50,000 shares or more is published by the Exchange.[4] The Exchange intends to initiate the pilot using five of the LOC pilot stocks, which will be chosen on a basis of market activity and trading interest that suggests that LOC orders would be a useful investment vehicle. Under the proposal, LOC orders on expiration days would be irrevocable except in cases of legitimate error.[5] As the Exchange gains experience with the use of LOC orders, the pilot will be expended to other LOC pilot stocks.

[3] See letter from Donald Siemer, Director, Rule Development, Market Surveillance, NYSE, to Diana Luka-Hopson, Branch Chief, Market Regulation, Commission, dated August 25, 1993.

[4] Pursuant to the NYSE's MOC procedures, the NYSE publishes MOC order imbalances of 50,000 shares or more: (1) In the so-called expiration Friday "pilot stocks" on expiration Fridays; (2) in the "end-of-calendar quarter pilot stocks" on QIX expiration days; and (3) on all other trading days, in the expiration Friday pilot stocks, in any other stock being added to or replaced in a major index, and in any other stock when notified by a specialist that such an MOC imbalance exists and the dissemination is approved by a Floor Official. The expiration Friday pilot stocks are the 50 most highly capitalized Standard & Poor's ("S&P") 500 stocks and any component stocks of the Major Market Index that are not included in this group of 50. The end-of-calendar quarter pilot stocks are the fifty highest weighted S&P 500 stocks, any component stocks of the Major Market Index not included in this group, and the ten highest weighted stocks of the S&P MidCap 400 Index.

On expiration days, MOC order imbalances of 50,000 shares or more in the appropriate pilot stocks are published as soon as practicable after 3:40 p.m., and MOC orders may not be cancelled after 3:40 except in cases of legitimate error. See September 1993 Approval Order, supra note 1. On non-expiration days, MOC order imbalances of 50,000 are published as soon as practicable after 3:45 p.m. and there are no restrictions on the cancellation of MOC orders. See Securities Exchange Act Release No. 31291 (October 6, 1992) 57 FR 47149 (order approving File No. SR–NYSE–92–12).

[5] See supra note 2.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Exchange Rule 13 to provide that LOC orders may be entered to offset published imbalances of MOC orders pursuant to such procedures regarding time of order entry and order cancellation as the Exchange may establish from time to time. The Exchange is proposing at the outset of the pilot to establish a 3:55 p.m. cut-off time for the entry of LOC orders, and to prohibit cancellations of LOC orders, except to correct a legitimate error, after 3:40 p.m. on expiration days. For all other trading days, cancellations of LOC orders (except to correct errors) would be prohibited after 3:55 p.m. As proposed, LOC orders would be orders entered for execution at the closing price, on the Exchange, of the stock named pursuant to such procedures as the Exchange may from time to time establish.

The Exchange proposes to implement the proposed rule change on a pilot basis for the LOC pilot stocks. The pilot will be initiated with five of these stocks to be selected based on a level of market activity and trading interest that suggests that LOC orders would be a useful investment vehicle. As the Exchange gains experience with the use of LOC orders, the pilot will be expanded to other LOC pilot stocks. The Exchange will modify its automated order routing system to accept the new LOC order type before initiating the pilot. The Exchange will notify the Commission when the pilot begins.

The procedures would provide that LOC orders in the stocks included in the pilot could be entered only to offset an imbalance of MOC orders as published on any trading day. The current imbalance publication procedures for MOC orders require that any MOC order imbalance of 50,000 shares or more in one of the expiration Friday pilot stocks, or in the end-of-calendar quarter pilot stocks on QIX expiration days, will be published on the tape as soon as practicable after 3:40 p.m. and as soon as practicable after 3:45 p.m. for all other trading days. LOC orders would be irrevocable once entered on expiration days (except in cases of legitimate error).

LOC orders would be prioritized relative to other LOC orders by time of entry, but would go behind all other orders on the specialist's book at that price. LOC orders at the closing price would *not* be guaranteed an execution. They would be executed after conventional limit orders at that price and then executed according to time priority based on time of entry for all LOC orders at that price. LOC orders at a price that is better than the closing price would be guaranteed an execution (as are conventional limit orders at a better price than the closing price).

With respect to expiration Fridays, the Exchange believes that the pilot to permit the use of LOC orders on a limited basis as described herein should be viewed as an interim measure to help address the prospect of excess market volatility that may be associated with an imbalance of MOC orders at the close. The Exchange will continue to work with the Commission, its staff, other self-regulatory organizations, its member organizations and other key constituents to arrive at the most appropriate means to ensure that orders on expiration Fridays are executed in a way that maximizes public investor confidence in the fairness and orderliness of the NYSE market. Because of its concern that large imbalances of MOC orders may have a significant impact on closing prices, the Exchange continues to urge that the settlement of all derivative products should be based on opening prices so that pre-opening procedures on the NYSE may be followed, as required, to ensure that there is sufficient time to reach an appropriate pricing equilibrium.

2. Statutory Basis

The basis under the Act for this proposed rule change is section 6(b)(5), which requires that the rules of the Exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–92–37 and should be submitted by October 27, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–24513 Filed 10–5–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19745; 811–2078]

The Guardian Park Ave. Fund; Application for Deregistration

September 29, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: The Guardian Park Ave. Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on August 19, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 25, 1993, and should be accompanied by proof of service on Applicant, in the form of an affidavit, or, for lawyers, a certification of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 201 Park Avenue South, Mail Stop 9C, New York, New York 10003.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Attorney, or Michael V. Wible, Special Counsel, at (202) 272–2060, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end, diversified, management investment company incorporated in Delaware in 1970 and reorganized as a Massachusetts business trust in April 1989. On June 29, 1970, Applicant registered as an investment company pursuant to section 8(a) of the Act. On August 27, 1970, Applicant filed a registration statement pursuant to section 8(b) of the Act. On that same date, Applicant filed a registration statement under the Securities Act of 1933. Applicant's registration statement became effective on September 3, 1971 and Applicant's initial public offering of its shares commenced on June 1, 1972. Applicant's shares have also been sold to the following separate accounts of the Guardian Insurance and Annuity Company, Inc., which are registered under the Act as unit investment trusts: Guardian Variable Account I, Guardian Variable Account 2 and Guardian/Value Line Separate Account.

2. On October 8, 1992, Applicant's board of trustees approved an Agreement and Plan of Reorganization (the "Reorganization") between Applicant and the Park Avenue Portfolio (the "Portfolio"), a Massachusetts business trust that is registered as an open-end diversified management investment company and is authorized to issue its shares of beneficial interest in separate series. Proxy materials relating to the Reorganization were distributed to Applicant's shareholders on or about November 10, 1992. Applicant's shareholders approved the Reorganization at a special shareholders meeting on December 30, 1992.

3. Concurrently, the Portfolio's board of trustees, which is comprised of the same individuals as Applicant's board of trustees, voted to create and designate a new series (the "New Series") of the Portfolio named "The Guardian Park Avenue Fund," on behalf of which the Portfolio agreed to participate in the Reorganization.

4. By reason of their having a common investment adviser, and common directors and officers, Applicant and the Portfolio have been "affiliated persons" as that term is defined in the Act. Applicant relied on the rule 17a-8 exemption to comply with section 17(a) of the Act. Each of the boards of trustees of Applicant and the Portfolio unanimously determined that participation in the Reorganization by each of the Applicant and the Portfolio was in the best interests of the Applicant, the Portfolio, and their respective shareholders, and that the interests of the shareholders of the Applicant and the Portfolio, respectively, would not be diluted as a result of the Reorganization. Each board's findings, and the basis upon which they were made, were recorded in the minutes of its meeting held on October 8, 1992.

5. Under the Reorganization, Applicant transferred its business and assets and assigned its liabilities to the New Series of the Portfolio, and the New Series acquired all such business and assets, assumed all such liabilities and issued to Applicant shares of beneficial interest of the New Series that was equivalent to and had an aggregate value equal to the shares of Applicant that were outstanding immediately prior to such transactions (i.e., 13,500,310.903 shares, having an aggregate net asset value of $360,323,298 and a net asset value per share of $26.69). Applicant then distributed the shares of the New Series it received to its shareholders of record at that time *pro rata* in exchange for their shares of the Applicant such that each shareholder received a number of shares of the New Series equal to the number of shares of the Applicant then held by each such shareholder, and Applicant was completely liquidated.

6. All expenses related to the reorganization, approximately $9,000, were borne by Applicant's investment adviser, Guardian Investor Services Corporation.

7. Applicant has dissolved its existence under Massachusetts law by filing a Notice of Dissolution and Termination of Trust with the Office of the Massachusetts Secretary of State and the Clerk of the City of Boston.

8. As of the date of the application, Applicant had no assets or liabilities. Applicant has no shareholders and is not a party of any litigation or administrative proceeding. Applicant is not engaged in, and does not propose to engage in, any business activities other than those necessary for the winding-up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–24485 Filed 10–5–93; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms, and Recordkeeping Requirements

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of

Transportation to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

DATES: September 23, 1993.

ADDRESSES: Written comments on the DOT information collection requests should be forwarded, as quickly as possible, to Edward Clarke, Office of Management and Budget, New Executive Office Building, room 3228, Washington, DC 20503, (202) 395–7340. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB official of your intent immediately.

FOR FURTHER INFORMATION CONTACT: Copies of the DOT information collection requests submitted to OMB may be obtained from Susan Pickrel or Annette Wilson, Information Management Division, M–34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–4735.

SUPPLEMENTARY INFORMATION: Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register**, listing those information collection requests submitted to OMB for approval or renewal under that Act. OMB reviews and approves agency submissions in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms and the reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Items Submitted to OMB for Review

The following information collection requests were submitted to OMB on September 23, 1993:

DOT No: 3804
OMB No: New
Administration: Federal Aviation Administration
Title: Management Plan for Explosive Detection Systems Certification Testing
Need for Information: The Commission on Aviation Security and Terrorism presented a series of recommendations intended to improve the U.S. civil aviation security system which is administered by the FAA's Assistant Administrator for Civil Aviation Security. One of the recommendations was to undertake a vigorous effort to marshal the necessary expertise to develop and test effective explosive detection systems (EDS). The FAA has prepared a management plan which outlines the framework for explosive detection systems certification testing. As required by the management plan, manufacturers seeking FAA certification for their candidate EDS must submit complete descriptive data and their test results to the FAA prior to receiving permission to ship their equipment to the FAA Technical Center for certification testing.
Proposed Use of Information: The FAA certification test team will review the qualification data package and a decision will be made whether to proceed with the certification process or to return the data package to the vendor. The primary objectives of the evaluation are to: (1) Ensure that the vendor has provided all data required by the instructions; and (2) verify that the vendor data substantiates that the EDS could meet the criteria.
Frequency: One time
Burden Estimate: 1,504 hours
Respondents: Manufacturers of explosive detection equipment
Form(s): None
Average Burden Hours Per Response: 752 hours reporting

DOT No: 3805
OMB No: 2120–0039
Administration: Federal Aviation Administration
Title: Air Carrier/Commercial Operators—FAR 135
Need for Information: FAR 135 prescribes rules designed to ensure passenger safety in the air carrier/commercial operator industry. These include requirements to obtain an operating certificate and operations specifications from the FAA.
Proposed Use of Information: The information collected on FAA Form 8000–6 will be used to certify FAR 135 operators and to monitor compliance with the regulations.
Frequency: On occasion
Burden Estimate: 347,772 hours
Respondents: FAR 135 operators
Form(s): FAA Form 8000–6
Average Burden Hours Per Response: 7 hours and 26 minutes reporting; 32 hours and 21 minutes recordkeeping

DOT No: 3806
OMB No: 2130–0519
Administration: Federal Railroad Administration
Title: Bad Order and Home Shop Card
Need for Information: Section 49 CFR part 215 requires each railroad to inspect freight cars and take the necessary remedial actions when defects are found. When it is deemed necessary to move a defective car for repair purposes, a carrier is required to attach a bad order tag describing each defect to each side of the car.
Proposed Use of Information: The information will be used by Federal and certified State inspectors to determine if defective cars posing an immediate hazard are being moved in trains. In addition, the repair tag record is retained for 90 days to confirm that proper repairs were made at the designated location.
Frequency: On occasion
Burden Estimate: 8,000 hours
Respondents: Railroads
Form(s): None
Average Burden Hours Per Response: 20 hours recordkeeping

DOT No: 3807
OMB No: 2130–0530
Administration: Federal Railroad Administration
Title: Locomotive Engineers' Activities Diary
Need for Information: The FRA is researching the significance of various fatigue factors in human-error railroad accidents.
Proposed Use of Information: The information will be used to understand how scheduling practices affect sleep, circadian rhythms, and fatigue levels of locomotive crews and to recommend improvements in crew management procedures.
Frequency: One time
Burden Estimate: 1,177 hours
Respondents: Locomotive engineers
Form(s): None
Average Burden Hours Per Response: 2 hours and 21 minutes reporting

DOT No: 3808
OMB No: 2127–0518
Administration: National Highway Traffic Safety Administration
Title: 49 CFR 571.218, Motorcycle Helmets
Need for Information: Federal Motor Vehicle Safety Standard 218 requires motorcycle manufacturers to label helmets with the manufacturer's name, model, size, month and year of manufacturer, and the symbol DOT, constituting the manufacturer's certification that the helmet conforms to Federal safety standards.
Proposed Use of Information: The information will be used to identify manufacturers in case of defects and to inform the consumer that the helmet meets Federal safety standards.
Frequency: On occasion
Burden Estimate: 4,950 hours
Respondents: Businesses

Form(s): None

Average Burden Hours Per Response: 12 seconds
DOT No: 3809
OMB No: 2127–0045
Administration: National Highway Traffic Safety Administration
Title: 49 CFR Part 556, Petitions for Inconsequentiality
Need for Information: This regulation establishes procedures for manufacturers to petition NHTSA for an exemption from the notice and remedy requirements of the National Traffic and Motor Vehicle Safety Act due to the inconsequentiality of the defect or noncompliance as it relates to motor vehicle safety.
Proposed Use of Information: The information will be used by NHTSA to determine whether a defect or noncompliance should be treated as inconsequential.
Frequency: On occasion
Burden Estimate: 30 hours
Respondents: Businesses/organizations
Form(s): None
Average Burden Hours Per Response: 2 hours reporting
DOT No: 3810
OMB No: 2127–0547
Administration: National Highway Traffic Safety Administration
Title: 49 CFR Part 544—Insurer Reporting Requirements—Motor Vehicle Theft Law Enforcement Act of 1984
Need for Information: Section 615 of the Anti-Car Theft Act of 1992 requires insurance companies and rental/leasing companies to provide information to NHTSA on comprehensive insurance premiums charged by insurers of motor vehicles due to vehicle thefts and distribution of stolen vehicle parts.
Proposed Use of Information: The information will be used by NHTSA in exercising its statutory authority to help reduce comprehensive insurance premiums charged by insurers of motor vehicles due to motor vehicle theft.
Frequency: Annually
Burden Estimate: 180,380 hours
Respondents: Businesses/organizations
Form(s): None
Average Burden Hours Per Response: 60 hours reporting
DOT No: 3811
OMB No: New
Administration: U.S. Coast Guard
Title: Security for Passenger Vessels and Passenger Terminals
Need for Information: This information collection is needed by the Coast Guard to ensure that security standards for passenger vessels and passenger terminals making voyages on the high seas of 24 hours or more are in place. The proposed security standards are necessary to deter or mitigate the results of terrorism and other unlawful acts against passenger vessels and passenger terminals.
Proposed Use of Information: This information will be used by the Coast Guard to evaluate the effectiveness of security measures on passenger vessels and passenger terminals. The security plan and its various components are critical to the Coast Guard's passenger vessel security strategy. This plan will outline measures passenger vessels or terminals will use to deter and respond to unlawful acts.
Frequency: On occasion
Burden Estimate: 155,124 hours
Respondents: Vessel and terminal operators
Form(s): None
Average Burden Hours Per Response: 26 hours reporting; 911 hours recordkeeping
DOT No: 3812
OMB No: New
Administration: U.S. Coast Guard
Title: Response Resource Inventory Data Collection
Need for Information: This information collection survey is needed by the Coast Guard to create and maintain a database on the amount and location of oil spill equipment that exist in the United States.
Proposed Use of Information: The data collected from this survey will be used by the Coast Guard to establish a centralized response equipment inventory database to: (1) Allow for better organization in case of an oil spill emergency; (2) decrease the amount of time needed to respond to a spill; and (3) allow oil spill response organizations to use this information for their contingency planning resources in the event of a coastal oil spill.
Frequency: On occasion
Burden Estimate: 1,491 hours
Respondents: Oil spill response organizations
Form(s): None
Average Burden Hours Per Response: 3 hours and 2 minutes reporting
DOT No: 3813
OMB No: New
Administration: U.S. Coast Guard
Title: Five-Year Term of Validity
Need for Information: This information collection is needed to ensure that merchant mariners who are applying for and/or renewing their licenses, certificates of registry (COR), and merchant mariner documents (MMD) are in compliance with the Oil Pollution Act of 1990.
Proposed Use of Information: This information collection will be used by the Coast Guard licensing officer to determine if the merchant mariner is qualified to receive or continue to hold a license, COR or MMD.
Frequency: Every 5 years
Burden Estimate: 77,490 hours
Respondents: Merchant mariners
Form(s): None
Average Burden Hours Per Response: 4 hours and 18 minutes reporting
DOT No: 3814
OMB No: 2115–0135
Administration: U.S. Coast Guard
Title: Display of Plans
Need for Information: This information collection is needed to ensure that certain categories of commercial vessels post or display specific emergency arrangement plans on board their vessels. The availability of this information is crucial in minimizing danger to those on board, damage to the vessel, and the safety of the port and the environment.
Proposed Use of Information: This information will be used by shipboard personnel during routine duty and by Coast Guard marine inspectors to help ensure all information is correct and up to date.
Frequency: On occasion
Burden Estimate: 447 hours
Respondents: Owners and operators of commercial vessels
Form(s): None
Average Burden Hours Per Response: 30 minutes recordkeeping
DOT No: 3815
OMB No: 2115–0563
Administration: U.S. Coast Guard
Title: Non-Destructive Testing Proposal and Results for Pressure Vessel Cargo Tanks on Unmanned Barges
Need for Information: This information collection is needed to ensure that cargo tanks on vessels that are 30 years or older, carrying liquid bulk dangerous cargo, are subjected to non-destructive testing at 10 year intervals as required by 46 U.S.C. 3703.
Proposed Use of Information: The results of the non-destructive test will be used by the Coast Guard to determine the condition and suitability of the tank for continued service.
Frequency: Every 10 years
Burden Estimate: 39 hours
Respondents: Barge owners
Form(s): None
Average Burden Hours Per Response: 13 hours reporting
DOT No: 3816
OMB No: 2115–0526
Administration: U.S. Coast Guard
Title: International Oil Pollution Prevention Certificate

Need for Information: This information collection is needed to ensure that ships who are engaged in international voyages are in compliance with the requirements of MARPOL 73/78 and the International Convention for the Prevention of Pollution from Ships.
Proposed Use of Information: This information collection will be used by Coast Guard inspectors to issue International Oil Pollution Prevention Certificates to those vessels in compliance with U.S. regulations and MARPOL 73/78.
Frequency: Every 4 or 5 years
Burden Estimate: 125 hours
Respondents: Shipowners/operators engaged in international voyages
Form(s): CG–5352, CG–5352A, CG–5352B
Average Burden Hours Per Response: 20 minutes reporting
DOT No: 3817
OMB No: 2115–0549
Administration: U.S. Coast Guard
Title: Requirements for the Use of Liquefied Petroleum Gas and Compressed Natural Gas as Cooking Fuel on Passenger Vessels
Need for Information: This information requirement is needed to ensure that passenger vessels that use liquefied propane gas and compressed natural gas cooking appliances have two placards posted on board containing the operating instructions and safety precautions in the use of the gas cooking appliance and gas system.
Proposed Use of Information: The information provided by the placards will be used by any person operating the cooking appliance and gas system to ensure it is being operated in a safe manner.
Frequency: On occasion
Burden Estimate: 1,425 hours
Respondents: Passenger vessel owners or operators
Form(s): None
Average Burden Hours Per Response: 1 hour reporting
DOT No: 3818
OMB No: 2115–0038
Administration: U.S. Coast Guard
Title: Private Aids to Navigation Application and Application for Class I Private Aids to Navigation on Artificial Island and Fixed Structures
Need for Information: This information collection is needed to ensure that owners of private aids mark their aids-to-navigation in accordance with current regulations. Coast Guard will also use this information to advise the public of new or changed private aids-to-navigation in their geographical location.
Proposed Use of Information: This information will be used by the Coast Guard to ensure that the private aid is adequately marked for navigational purposes. Once Coast Guard approves the location and characteristics of the private aid, this information will be disseminated to the public via radio broadcasts and nautical publications.
Frequency: On occasion
Burden Estimate: 3,054 hours
Respondents: Owners of private aids to navigation
Form(s): CG–2554, CG–4142
Average Burden Hours Per Response: 1 hour and 30 minutes reporting
DOT No: 3819
OMB No: 2115–0016
Administration: U.S. Coast Guard
Title: Characteristics of Liquid Chemicals Proposed for Bulk Water Movement
Need for Information: This information collection is needed to enforce the laws and regulations for the safe transportation of hazardous materials on board tank vessels.
Proposed Use of Information: Coast Guard will use this information to evaluate and determine the kind and degree of precaution which must be taken to protect the vessel, operating personnel and the general public who reside along the proposed route.
Frequency: On occasion
Burden Estimate: 300 hours
Respondents: Chemical manufacturers
Form(s): CG–4355
Average Burden Hours Per Response: 3 hours reporting
DOT No: 3820
OMB No: 2115–0010
Administration: U.S. Coast Guard
Title: Recreational Boating Accident Report
Need for Information: This information collection is needed by the Coast Guard to fulfill its statutory obligation in maintaining a national uniform marine casualty reporting system on recreational boating accidents.
Proposed Use of Information: Coast Guard will use the data collected from the reporting system to identify possible manufacturer defects in boats or equipment, develop boat manufacturer standards, develop safe boating education programs, and publish statistics on casualties.
Frequency: On occasion
Burden Estimate: 4,232 hours
Respondents: Operators of recreational boats
Form(s): CG–3865
Average Burden Hours Per Response: 35 minutes reporting
DOT No: 3821
OMB No: 2115–0007
Administration: U.S. Coast Guard
Title: Application for Vessel Inspection and Waiver
Need for Information: This information collection is needed to provide the Coast Guard with basic information necessary to plan and schedule inspections of U.S. vessels for certification. This requirement will also allow vessel owners and operators an opportunity to apply for a waiver from the inspection requirement based on national defense considerations.
Proposed Use of Information: This information will be used by the Coast Guard to schedule and plan vessel inspections and to analyze the waiver requests.
Frequency: On occasion
Burden Estimate: 1,703 hours
Respondents: Owners/operators of U.S. vessels
Form(s): CG–2633, CG–3752
Average Burden Hours Per Response: 15 minutes reporting
DOT No: 3822
OMB No: 2120–0008
Administration: Federal Aviation Administration
Title: Certification and Operations: Air Carriers and Commercial Operators of Large Aircraft
Need for Information: FAR Part 121 prescribes the terms, conditions, and limitations as are necessary to ensure safety in air transportation.
Proposed Use of Information: The information will be used by the FAA to determine if the operator is complying with the requirements of FAR Part 121, and operating in accordance with minimum safety standards.
Frequency: On occasion
Burden Estimate: 3,260,712 hours
Respondents: Air carriers and commercial operators
Form(s): FAA Form 8400–6, FAA Form 8070–1
Average Burden Hours Per Response: 3 hours and 42 minutes reporting
DOT No: 3823
OMB No: 2135–0003
Administration: Saint Lawrence Seaway Development Corporation
Title: Transit Declaration
Need for Information: A seaway transit declaration form is required by 33 CFR 401.74 to be forwarded to the SLSDC or the Seaway Authority of Canada by the representative of a vessel, other than a pleasure craft of not more than 350 tons, within 14 days after the vessel first enters the Seaway on any outbound or downbound voyage.

Proposed Use of Information: The information will be used by the U.S. and Canadian entities to assess toll charges and collection of cargo data.
Frequency: On occasion
Burden Estimate: 1,250 hours
Respondents: Shipping agents, individuals
Form(s): S/VM 429–01–80
Average Burden Hours Per Response: 30 minutes reporting
DOT No: 3824
OMB No: 2135–0002
Administration: Saint Lawrence Seaway Development Corporation
Title: Application for Vessel Preclearance
Need for Information: The information is required by 33 CFR 401.24 to ensure safe and efficient transit of both the U.S. and Canadian locks and to guaranty any tolls or charges incurred by the vessels.
Proposed Use of Information: The information will be used by the SLSDC to determine whether vessels are properly fitted in a manner to allow safe transit. The information provides insurance details to cover possible damage to Corporation facilities and indicates guaranty for payment of tolls or charges incurred by the vessel.
Frequency: On occasion
Burden Estimate: 1,000 hours
Respondents: Shipping agents
Form(s): S/VM 429–01–80
Average Burden Hours Per Response: 1 hour reporting
DOT No: 3825
OMB No: 2115–0557
Administration: U.S. Coast Guard
Title: Advance Notice of Vessel Arrival and Departure, Waivers from Advance Notice of Vessel Arrival and Departure
Need for Information: This information request is needed to ensure that certain vessels bound for ports or places in the U.S. give advance notices of their arrival and departure in accordance with the Ports and Waterways Safety Act.
Proposed Use of Information: This information requirement will be used by the Coast Guard Captain of the Port for: (1) Vessel traffic control; (2) denying entry to unsafe vessels; (3) targeting vessels for boarding and examination; (4) planning oil and hazardous substance spills; (5) counterterrorism, and firefighting contingencies; and (6) controlling the port entry of vessels which may constitute a threat to the safety or security of U.S. ports.
Frequency: On occasion
Burden Estimate: 52,475 hours
Respondents: Operators and vessel owners
Form(s): None
Average Burden Hours Per Response: 10 minutes reporting
DOT No: 3826
OMB No: 2120–0060
Administration: Federal Aviation Administration
Title: General Aviation and Air Taxi Activity and Avionics Survey
Need for Information: The FAA needs up-to-date information on the use and the characteristics of general aviation and air taxi aircraft.
Proposed Use of Information: The data will be used by the FAA to assess safety measures, to determine the economic impact of regulatory changes, and to formulate long-term programs and policies.
Frequency: Annually
Burden Estimate: 4,750 hours
Respondents: Sampling of general aviation aircraft operators
Form(s): FAA Form 1800–54
Average Burden Hours Per Response: 15 minutes reporting
DOT No: 3827
OMB No: 2106–0043
Administration: Office of the Secretary
Title: 14 CFR Part 215, Use and Change of Names of Air Carriers, Foreign Air Carriers, and Commuter Air Carriers
Need for Information: The information is needed to ensure that carriers do not advertise or operate in any name other than that for which they are authorized.
Proposed Use of Information: The information will enable DOT and the public to identify the specific carriers offering or operating services.
Frequency: As necessary
Burden Estimate: 355 hours
Respondents: U.S. certificated air carriers, U.S. commuter air carriers, foreign air carriers
Form(s): None
Average Burden Hours Per Response: 4 hours and 48 minutes reporting
DOT No: 3828
OMB No: 2115–0578
Administration: U.S. Coast Guard
Title: Various Forms and Posting Requirements under 46 CFR Subchapter T, "Small Passenger Vessels (under 100 gross tons)"
Need for Information: This information collection is needed to ensure that inspections of small passenger vessels are conducted for the safety of individuals and property on board. Reporting and posting requirements are necessary to ensure the safe operation of these vessels; and in case of an emergency, that proper procedures are followed.
Proposed Use of Information: The information will be used to ensure that the Coast Guard is made aware of significant maintenance or repair work done on small passenger vessels. Plan submissions are required for new and existing vessels that require significant modifications. Submittal of these plans will ensure that structure, arrangement, stability and outfitting are satisfactory for the intended service.
Frequency: On occasion
Burden Estimate: 417,092 hours
Respondents: Small passenger vessel owners
Form(s): CG–841, CG–854, CG–948, CG–949, CG–3752, CG–5256
Average Burden Hours Per Response: 8 minutes reporting; 5 hours and 0 minutes recordkeeping
DOT No: 3829
OMB No: New
Administration: U.S. Coast Guard
Title: Vessel Identification System (VIDS) Information Collection Requirements
Need for Information: This information is needed by the Coast Guard to meet statutory requirements of 46 U.S.C. Chapter 125, in establishing a national vessel identification system for recreational vessel owners.
Proposed Use of Information: This information collection will be used by the Coast Guard, law enforcement agencies (federal and local) and insurance companies for investigating vessel thefts and claims. It will also enable States, participating in VIDS, to give their lending institutions the capability to grant preferred mortgage status.
Frequency: Daily (automatic computer driven upload of data)
Burden Estimate: 2,057 hours
Respondents: State agencies participating in VIDS
Form(s): None
Average Burden Hours Per Response: 10 minutes reporting
DOT No: 3830
OMB No: 2138–0039
Administration: Research and Special Programs Administration
Title: Reporting Required for the International Civil Aviation Organization (ICAO)
Need for Information: As a member of the United Nations, the U.S. must fulfill its treaty obligations by supplying financial data to ICAO on U.S. carriers.
Proposed Use of Information: DOT acts as a conduit between U.S. air carriers (Groups II and III) and ICAO for supplying the U.S. portion of ICAO's worldwide aviation database. The

information will be used by airlines, manufacturers of aerospace products, airport authorities, trade associations and aviation consultants.

Frequency: Annual

Burden Estimate: 28 hours

Respondents: U.S. air carriers

Form(s): RSPA Form EF (supplemental)

Average Burden Hours Per Response: 18 minutes reporting

Issued in Washington, DC on September 23, 1993.

Cynthia C. Rand,

Director of Information, Resource Management.

[FR Doc. 93–24518 Filed 10–5–93; 8:45 am]

BILLING CODE 4910–62–P

Federal Railroad Administration

Petition for Exemption or Waiver of Compliance

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received requests for exemptions from or waivers of compliance with a requirement of its safety standards. The individual petitions are described below, including the party seeking relief, the regulatory provisions involved, and the nature of the relief being requested.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number PB–93–5) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Communications received before November 1, 1993 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) in room 8201, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

The individual petitions seeking an exemption or waiver of compliance are as follows:

Burlington Northern Railroad (BN) (Waiver Petition Docket Number PB–93–5)

The BN seeks a waiver of compliance with certain conditions of the Power Brakes and Drawbars Standards 49 CFR part 232 for six trains. BN is requesting the requirements for the 1,000 mile test and inspection, section 232.12(b), be waived on Train Numbers 001, 002, 003, 004, 011 and 012 operating daily in each direction between Chicago, Illinois, and Seattle, Washington. BN has collected data on these trains since June 1, 1992, and feel that the failure and repair statistics show that operation from initial terminal to destination without intermediate tests does not undermine safety. The railroad proposes a 3 month test on the 6 trains, during which time they will continue to inspect the trains at Havre, Montana, and Minneapolis, Minnesota. Trains found to have defects at these locations would be handled as follows:

1. Cars found with unsafe safety standards will be repaired, those safe to move will be taken to destination as outlined in 49 CFR 215.9.
2. Safety appliances will be repaired.
3. Cars with air brakes cut-out enroute or those found inoperative will be recorded and left in the train. Cars will be repaired after they have been unloaded. At no time will a train be allowed to leave the intermediate terminal with less than 85 percent of the trains air brakes operative.

BN states that Association of American Railroads tests conducted in 1982 and 1985 showed that brake systems do not deteriorate in 1,000 miles to the degree that an inspection is necessary. These tests indicated trains could operate 5,000 miles before deterioration began. Since the time of the AAR tests, a number of improvements have been made in train brake systems such as stabilized control valves, mandatory automatic slack adjusters on all new and rebuilt cars and an improved single car test required on all cars when on a repair track. These all contribute to a more reliable brake system.

Waccamaw Coast Line Railroad Company (WCLR) (Waiver Petition Docket Number RSGM 93–18)

The WCLR seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards 49 CFR part 223 for one locomotive. The WCLR recently purchased an EMD Model F–7A locomotive from Canadian National Railroad. The locomotive will be used primarily on excursion/dinner trains between Conway and Myrtle Beach, South Carolina. The railroad has previously been granted waivers from part 223 for two locomotives under Docket Number RSGM–91–8. The railroad states there has never been vandalism relating to glazing.

Dakota Southern Railway Company (DSRC) (Waiver Petition Docket Number RSGM 93–20)

The DSRC seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards 49 CFR part 223 for 1 locomotive and 1 caboose. The DSRC was previously granted waiver RSGM 89–26 for 7 locomotives operating on their approximately 187 miles of track in rural south central South Dakota. There have been no incidents of vandalism since the railroad began operations in 1987. The railroad states that the cost of installing FRA certified glazing would be a financial burden.

Issued in Washington, DC on September 30, 1993.

Phil Olekszyk,

Deputy Associate Administrator for Safety.

[FR Doc. 93–24530 Filed 10–5–93; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

September 29, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512–0079

Form Numbers: ATF F 1534(500.8)

Type of Review: Extension

Title: Power of Attorney

Description: ATF F 1534(5000.8) delegates the authority to a specific individual to sign documents on behalf of an applicant or principal. 26

U.S.C. 6061 authorizes that individuals signing returns, statements or other documents required to be filed by industry members, under the provisions of the Internal Revenue Code or the Federal Alcohol Administration Act are to have that authority on file with ATF
Respondents: Individual or households, Businesses or other for- profit, Small businesses or organizations
Estimated Number of Respondents: 5,000
Estimated Burden Hours Per Respondent: 18 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 3,000 hours
OMB Number: 1512–0492
Form Numbers: ATF REC 5000/24
Type of Review: Extension
Title: Alcohol, Tobacco and Firearms Tax Returns, Claims and Related Documents
Description: ATF Form 5000.24 is completed by persons who owe tax on distilled spirits, beer, wine, cigars, cigarettes, cigarette papers and tubes, snuff, and smoking tobacco (pipe). The return is prescribed by law for the collection of these taxes. ATF uses the form to identify the taxpayer, the premises and period covered by the tax return, taxpayer's ability, and adjustments affecting the amount paid
Respondents: Individual or households, State or local governments, businesses or other for-profit, small businesses or organizations
Estimated Number of Respondents: 506,189
Estimated Burden Hours Per Respondent: 1 hour
Frequency of Response: Other
Estimated Total Reporting Burden: 1 hour
Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 93–24526 Filed 10–5–93; 8:45 am]

BILLING CODE 4810–31–P

Public Information Collection Requirements Submitted to OMB for Review

September 29, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515–0041
Form Number: CF 6509B
Type of Review: Extension
Title: U.S. Customs Declaration
Description: The CF 6059B facilitates the clearance of persons and their goods upon arrival in the territory of the United States by requiring basic information necessary to determine Customs exception states and if any duties or taxes are due. The form is also used for the enforcement of Customs and other Federal agencies laws and regulations
Respondents: Individuals or households, small businesses or organizations
Estimated Number of Respondents: 39,000,000
Estimated Burden Hours Per Respondent: 3 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 1,950,000 hours
Clearance Officer: Ralph Meyer (202) 927–1552, U.S. Customs Service, Paperwork Management Branch; room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 93–24527 Filed 10–5–93; 8:45 am]

BILLING CODE 4820–02–P

Customs Service

[T.D. 93–81]

Approval of Marine Chemist Service, Inc., as a Customs Commercial Gauger and Accredited Laboratory

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of the approval of Marine Chemist Service, Inc., as a Customs approved commercial gauger, and as a accredited laboratory to perform certain petroleum and organic chemical analyses.

SUMMARY: Marine Chemist Service, Inc. has been given Customs gauger approval and laboratory accreditations under § 151.13 of the Customs Regulations (19 CFR 151.13). Specifically, the Norfolk, VA site is approved to gauge imported petroleum, petroleum products, organic chemicals and vegetable and animal oil; and is accredited to perform the following tests: API Gravity, sediment and water, water by distillation, sediment by extraction, distillation characteristics, Reid vapor pressure, Saybolt universal viscosity and percent weight of sulfur. The Newport News, VA site is accredited to perform the following tests: Xylene content of mixed xylenes, percent composition by weight of benzene, toluene and xylenes, percent by weight of lead and identification and percent composition by weight of organic chemicals.

SUPPLEMENTARY INFORMATION: Part 151 of the Customs Regulations provides for the acceptance at Customs Districts of laboratory analyses and gauging reports for certain products from Customs accredited commercial laboratories and approved gaugers. Marine Chemist Service, Inc., with facilities in Newport News, Virginia and Norfolk, Virginia, has applied to Customs for commercial gauger approval and for certain laboratory accreditations. Customs has determined that Marine Chemist Service, Inc. meets all the requirements for approval as a commercial gauger and accredited laboratory.

Therefore, in accordance with § 151.13(f) of the Customs Regulations, Marine Chemist Service, Inc.'s Norfolk, VA site is approved to gauge the products named above in all Customs districts; and the Norfolk, VA and the Newport News, VA sites are accredited to perform the laboratory analyses listed above.

EFFECTIVE DATE: September 20, 1993.

FOR FURTHER INFORMATION CONTACT: Ira S. Reese, Chief, Technical Branch, Office of Laboratories and Scientific Services, U.S. Customs Service, 1301 Constitution Ave., NW., Washington, DC 20229 (202) 927–1060.

Dated: September 29, 1993.

John B. O'Loughlin,

Director, Office of Laboratories and Scientific Services.

[FR Doc. 93–24561 Filed 10–5–93; 8:45 am]

BILLING CODE 4820–02–P

[T.D. 93-80]

Testing of Pressed and Toughened (Specially Tempered) Glassware

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice on the testing of pressed and toughened (specially tempered) glassware.

SUMMARY: Customs has completed a review of the comments submitted by interested parties on the testing of certain articles of glass to ascertain if they have been "pressed and toughened (specially tempered)." These articles are normally imported under Item numbers 7013.29.05, 7013.32.10, 7013.39.10, and 7013.99.20 of the Harmonized Tariff Schedule of the United States (HTSUS).

FOR FURTHER INFORMATION CONTACT: Mr. Robert L. Zimmerman, Jr., Office of Laboratories & Scientific Services, (202) 927-1060.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Customs Service published a request for comments on a proposed method for the testing of "pressed and toughened (specially tempered)" glassware in the **Federal Register** (Vol. 58, No. 106, June 4, 1993). These articles are normally imported under Subheading numbers 7013.29.05, 7013.32.10, 7013.39.10, and 7013.99.20 of the Harmonized Tariff Schedule of the United States (HTSUS). The notice contained a description of a proposed method. Articles of "safety glass, consisting of toughened (tempered) * * * glass" normally imported under Heading 7007 of the HTSUS, e.g., architectural plate glass, vehicle windshields, were not within the purview of the notice. The U.S. Customs Service received responses from four interested parties as a result of the June 4, 1993, Notice. The issues discussed in these responses will be addressed herein.

Issue 1—Use of polarized light to determine tempering. Due to the nature of this test, it can only be conducted on transparent and translucent articles. Three respondents endorsed this part of the test. However, two of the three placed qualifications on their endorsement. The remaining respondent stated that the stresses imparted to an article due to tempering are visible through a polariscope, but the respondent offered no specific recommendation on the test.

The qualifications placed on the method were:

(1) The polariscopic test should be the only test, and

(2) The test is only useful for qualitative purposes to disqualify the article if none of, or only a part of, the sample is found to be tempered. The respondent goes on to state "[o]nly with an accurate determination of the magnitude of tempering is it possible to determine if the item in question is tempered or 'specially tempered.' All items, opaque or transparent, should be subjected to the more rigorous center punch test."

The first qualification is found to be non-persuasive since the polariscopic test will determine that an article is tempered, but it will not determine that the article has been toughened. The courts have stated that the purpose of the tempering process is to impart a measure of durability to the article. Therefore a meaningful test for durability is necessary. The test for durability (or toughness) is the thermal shock test.

Regarding the second qualification, Customs agrees, as stated above, that the polarized light alone is insufficient to classify an article as "toughened (specially tempered)". However, the best test for durability, i.e., "magnitude of tempering" is not the center punch test; it is the thermal shock test. The center punch test is discussed further in Issue 3.

Customs finds that the use of polarized light to determine that a transparent or a translucent article has been full-surface tempered is accurate and will remain a part of the overall test method.

Issue 2—Thermal Shock test. Three of the four respondents agreed that the change in the parameters of the thermal shock test are warranted. As stated above, the dissenting respondent recommends that, for transparent and translucent glass, only the polariscopic test is necessary. This issue was discussed above. It is the general opinion of both Customs and the other three respondents that the new parameters will make the thermal shock test more meaningful.

During the course of the development of this method, several alternatives have been offered concerning the thermal shock test parameters. Various temperature differentials have been suggested; e.g., 105 °C, 135 °C, 145 °C. The concept of having various temperature differentials depending on the object, i.e., 105 °C for stemware and tumblers and 120 °C for tableware and ovenware, has been proffered. Over the course of the development of this method, several recommended temperature differentials have been considered by Customs. These differentials have been both above and below the 135 °C differential currently stated in the method. After reviewing the technical data made available through the responses to the several **Federal Register** Notices and from Customs own in-house experimentation, Customs believes that a single differential of 135 °C is best for the purpose of determining that a glass article has been made "durable" for tariff purposes. This differential is simple to use and is acceptable by the majority of those involved with the development of this method.

Therefore, Customs has found the respondents who suggested parameters other than a 135 °C temperature difference to be nonpersuasive. The 135 °C thermal difference parameter will be adopted.

Issue 3—The Center Punch Test. (Ascertaining that the toughness, i.e., durability, imparted to the article is due to "specially tempering" the article). Four (4) points of discussion were raised: (1) Again the basic question of keeping or deleting the center punch test, (2) the interpretation of the results, (3) the substitution of a polarized light test for this test for transparent and translucent articles, and (4) the substitution of a diamond blade saw test for opaque articles for the center punch test. Two respondents recommended deleting the test, one endorsed the test, and the remaining respondent offered no specific opinion as to the disposition of the test.

As stated in the May 4, 1992, **Federal Register** Notice: "To prove that an article has been toughened is not sufficient to satisfy the conditions set forth in the HTSUS. A test is necessary to demonstrate that it has been toughened via a tempering process. As the courts have stated, the purpose for tempering the glassware is to make it more durable. In other words, a sufficient degree of stress must have been imparted to the glassware via a tempering process to make it durable. Customs believes that if the article passes both the thermal shock test for durability and exhibits evidence that it has been tempered, then the article can be described as 'toughened (specially tempered)' for Customs purposes."

For transparent and translucent glassware, Customs (as stated above) has confirmed that the polarized light method is sufficient to determine that an article has been tempered. Therefore the Center Punch Test for transparent and translucent glassware is discontinued as of the publication of this Notice.

Regarding the interpretation of the results of the Center Punch test that may have to remain in use for opaque ware,

Customs agrees that this exercise is, at best, subjective. This is the primary reason Customs have been seeking an alternate method for determining that an article has been tempered. One respondent has proposed the use of a Cutting Test using a diamond-rimmed, circular saw blade in lieu of the Center Punch test. This respondent claims that: "* * * cutting opaque glassware with a diamond-rimmed disk saw will immediately show whether the article has been tempered. If an article saws cleanly in half (in two pieces), it has not been tempered. A tempered article will almost immediately fracture into a number of jagged pieces when placed under the saw."

Customs has conducted some preliminary experiments using a diamond-rimmed saw blade. This work has produced encouraging results. For this reason Customs is proposing replacing the Center Punch test for opaque glassware with the following test procedure for opaque glassware. It should be stated that Customs plans to subject only opaque articles to the Cutting Test.

Cutting Test for Opaque Glassware

I. Apparatus

D. Tile Saw (or Similar Table Mounted Circular Saw)

A tile saw having a cutting head which can be adjusted laterally and vertically and which is equipped with an 8 to 12 inch diameter diamond-rimmed blade designed for wet cutting is adequate for testing glassware articles

III. Analysis Procedures

E. Cutting Test for Opaque Glassware

- Adjust the cutting head of the tile saw vertically and laterally, as necessary, to accommodate the glassware article.
- Be sure that the water supply to both sides of the diamond-rimmed blade is adequate.
- Turn on the saw.
- While holding or otherwise securing the glassware article to prevent twisting and binding during the cutting, slowly move the article into contact with the blade.
- Proceed with the cutting.
- Interpretation of the Cutting Test for Opaque Glassware: Annealed (non-tempered) glassware will readily accept the diamond-rimmed blade and will be easily and cleanly cut in half should you proceed that far with the cutting. Tempered glassware, on the other hand, will almost immediately break into pieces when cut. Breakage occurs as the forces applied by the cutting blade overcome the compressive stress that was locked into the article's surface during the tempering process.

Conclusion

Effective as of the date of publication of this Notice in the **Federal Register**, Customs will conduct the analysis of transparent and translucent glassware, falling under the purview of the aforementioned HTSUS item numbers, using the 3 following procedures: Macroscopic Analysis, Polariscopic Examination and Thermal Shock Test. These procedures were published at FR 31786 (Volume 58, No. 106), on June 4, 1993.

In addition, Customs is seeking comments from interested parties on the Cutting Test for Opaque Glassware. Comments should be submitted within 30 days of the date of publication of this Notice. During the 30 day response period, Customs will continue its assessment of the cutting test. Immediately upon the close of the response period, Customs will evaluate the submissions and the data from its tests and publish an updated method for opaque glassware.

Dated: September 30, 1993.

John B. O'Loughlin,

Director, Office of Laboratories and Scientific Services.

[FR Doc. 93-24562 Filed 10-5-93; 8:45 am]

BILLING CODE 4820-02-P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; Amendment of System of Records

AGENCY: Department of Veterans Affairs.

ACTION: Notice; publication of notice of amendment of routine use.

SUMMARY: As required by the Privacy Act of 1974, 5 U.S.C. 552a(e), notice is hereby given that the Department of Veterans Affairs (VA) is considering amending the system of records entitled "Patient Medical Records—VA" (24 VA 136) which is set forth on pages 938–942 of the **Federal Register** publication, "Privacy Act Issuances," 1991 Comp., Volume II; and amended at 57 FR 28003, June 23, 1992; 57 FR 45419, October 1, 1992; and 58 FR 29853, May 24, 1993.

DATES: Interested persons are invited to submit written comments, suggestions, or objections regarding the proposed routine use amendment to the Secretary of Veterans Affairs (271A), 810 Vermont Avenue, NW, Washington, DC 20420. All relevant material received before November 5, 1993, will be considered. All written comments received will be available for public inspection only in room 170 of the above address only between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays) until November 15, 1993. If no comment is received during the 30-day review period allowed for public comment or unless otherwise published in the **Federal Register** by VA, the routine use amendment in this system is effective September 24, 1993.

FOR FURTHER INFORMATION CONTACT: Celia Winter, Program Specialist, Medical Administration Service (161B), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 535–7437.

SUPPLEMENTARY INFORMATION: On October 1, 1992 (57 FR 45419) routine use number 39 was proposed to the system of records, "Patient Medical Records" (24 VA 136). The purpose of the routine use was to permit the disclosure of individual identifiers for nonservice-connected veterans to other Federal agencies for income verification. The routine use, as published, specifies the social security number of "veterans and the dependents of veterans." Since the spouse of a veteran is not always a dependent of the veteran, the "spouse of the veteran" is specifically added to the routine use in this amendment. The social security number of the veteran's spouse is required for the veteran's eligibility determination and income verification because the spouse's income is included in the veteran's gross family income.

Approved: September 24, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

Notice of System of Records

In the system identified as 24 VA 136, "Patient Medical Records—VA" appearing on pages 938–942 of the **Federal Register** publication, "Privacy Act Issuances," 1991 Comp., Volume II; and amended at 57 FR 28003, June 23, 1992; 57 FR 45419, October 1, 1992; and 58 FR 29853, May 24, 1993, the following routine use is amended:

24 VA 136

SYSTEM NAME:

Patient Medical Records—VA.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

39. Identifying information, including social security number, concerning veterans, spouse(s) of veterans, and the dependent(s) of veterans, may be

disclosed to other Federal agencies for purposes of conducting computer matches to obtain information to determine or verify eligibility of certain veterans who are receiving medical care under Title 38, U.S.C.

* * * * *

[FR Doc. 93–24490 Filed 10–5–93; 8:45 am]
BILLING CODE 8320–01–M

The Enhanced-Use Development of the VAMC West Palm Beach, Fl

AGENCY: Department of Veterans Affairs.
ACTION: Notice of designation.

SUMMARY: The Secretary of the Department of Veterans Affairs is designating the West Palm Beach, FL Veterans Affairs Medical Center for an Enhanced-Use development. The Department intends to enter into a long-term lease of real property with the City of Riviera Beach. The city will construct and operate a public safety facility on the site, and will, as consideration for the lease, provide specified facilities and services to the Department at no cost.

FOR FURTHER INFORMATION CONTACT: Jacob Gallum, Office of Asset and Enterprise Development (089), 810 Vermont Avenue NW., Washington, DC, 20420, (202) 535–8556.

SUPPLEMENTARY INFORMATION: 38 U.S.C. 8161 *et seq.* specifically provides that the Secretary may enter into an enhanced-use lease, if the Secretary determines that at least part of the use of the property under the lease will be to provide appropriate space for an activity contributing to the mission of the Department; the lease will not be inconsistent with and will not adversely affect the mission of the Department; and the lease will enhance the property. This project meets these requirements.

Approved: September 21, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

[FR Doc. 93–24489 Filed 10–5–93; 8:45 am]
BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 192
Wednesday, October 6, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, October 19, 1993.

PLACE: 2033 K St., NW., Washington, DC, Lower Level Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

—Prohibition on Insider Trading, final rule 1.59
—Quarterly review, 4th quarter, FY 1993

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, Secretary of the Commission.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 93–24652 Filed 10–4–93; 11:50 am]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 a.m., Tuesday, October 19, 1993.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, (202) 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 93–24653 Filed 10–4–93; 11:50 am]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:45 a.m., Tuesday, October 19, 1993.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Review of Enforcement Activities.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 93–24654 Filed 10–4–93; 11:50 am]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Tuesday, October 19, 1993.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule Enforcement Review.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 93–24655 Filed 10–4–93; 11:50 am]
BILLING CODE 6351–01–M

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, Octobe. 7, 1993.

LOCATION: Room 440, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

MATTER TO BE CONSIDERED:

Architectural Glazing Petition, CP 92–1

The staff will brief the Commission on petition CP 92–1 from O'Keeffe, Inc. requesting the Commission to extend the coverage of the Architectural Glazing Standard by removing the current exemption for wired glass used in "fire doors" and by revising the scope of the standard to include ceramic glass substitutes.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD 20207 (301) 504–0800.

Dated: September 30, 1993.

Sheldon D. Butts,
Deputy Secretary.
[FR Doc. 93–24692 Filed 10–4–93; 2:49 pm]
BILLING CODE 6355–01–M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE–93–31]

TIME AND DATE: 2:00 p.m., October 14, 1993.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: Open to the public.

1. Agenda for future meeting
2. Minutes
3. Ratification List
4. Inv. No. 731–TA–642 (Final) (Ferrosilicon from Egypt)—briefing and vote.
5. Outstanding action jackets: None

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

CONTACT PERSON FOR MORE INFORMATION: Donna R. Koehnke, Secretary, (202) 205–2000.

Issued: October 1, 1993.

Donna R. Koehnke,
Secretary.
[FR Doc. 93–24712 Filed 10–4–93; 2:50 pm]

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 2 p.m. (Eastern Time) October 19, 1993.

PLACE: Conference Room on the Ninth Floor of the EEOC Office Building, 1801 "L" Street, NW., Washington, DC 20507.

STATUS: Part of the Meeting will be open to the public and part of the Meeting will be closed.

MATTERS TO BE CONSIDERED:

Open Session

1. Announcement of Notation Votes
2. Report to the Commission: Office of Legal Counsel
3. Enforcement Guidance on Coverage of Federal Reserve Banks
4. Enforcement Guidance on the Extraterritorial Application of, and Coverage of Foreign Employers Under Title VII and the Americans with Disabilities Act
5. Enforcement Guidance on the Effect of Section 112 of the Civil Rights Act of 1991 on the Supreme Court Decision in *Lorance* v. *AT&T Technologies, Inc.* and Charges Involving Seniority Systems.

Closed Session

1. Litigation Authorization: General Counsel Recommendations
2. Agency Adjudication and Determination on the Record of Federal Agency Discrimination Complaint Appeals

Note: Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 663–7100 (voice) and (202) 663–4077 (TTD) at any time for information on these meetings.

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer on (202) 663–4070.

Dated: October 4, 1993.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 93–24738 Filed 10–4–93; 3:58 pm]

BILLING CODE 6750–06–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Tuesday, October 12, 1993.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: October 4, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–24737 Filed 10–4–93; 3:57 pm]

BILLING CODE 6210–01–P

Corrections

Federal Register
Vol. 58, No. 192
Wednesday, October 6, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 71 and 91

[Airspace Docket No. 91-AWA-3]
RIN 2120-AE43

Alteration of the Denver Class B Airspace Area; CO

Correction

In rule document 93-22796 beginning on page 48722 in the issue of Friday, September 17, 1993, in the third column, in the second full paragraph, in (1), in the first line, "Vally" should read "Valley".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 574

[93-87]

RIN 1550-AA36

Agency Disapproval of Directors and Senior Executive Officers of Savings Associations and Savings and Loan Holding Companies

Correction

In rule document 93-20688 beginning on page 45421 in the issue of Monday, August 30, 1993, make the following correction:

§ 574.9 [Corrected]

On page 45428, in the first column, in § 574.9(a)(5)(i)(B), in the third line, "'s pt" should read "'s prompt".

BILLING CODE 1505-01-D

federal register

Wednesday
October 6, 1993

Part II

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 812 and 813
Investigational Device Exemptions; Proposed Rules

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 812 and 813

[Docket No. 91N–0292]

Investigational Device Exemptions; Intraocular Lenses

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to remove the regulations on investigational exemptions for intraocular lenses (IOL's). An IOL is an implant intended to surgically replace the natural lens of the human eye. FDA believes that it is no longer necessary to maintain particularized regulations on IOL investigations because approved IOL's are now widely available and investigations of IOL's can be conducted under the investigational device regulations applicable to medical devices generally. Because the investigational IOL regulations to be removed contain provisions for disqualification of clinical investigators and because disqualification provisions are needed for device investigations generally, elsewhere in this issue of the **Federal Register** FDA is proposing procedures for disqualification of clinical investigators for inclusion in the current general investigational device regulations.

DATES: Written comments by December 6, 1993. FDA proposes that any final rule that may issue based on this proposal become effective 30 days after of its publication in the **Federal Register**.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–4765.

SUPPLEMENTARY INFORMATION:

I. Background

FDA has two regulations on investigational use of medical devices. Part 812 (21 CFR part 812) covers investigational devices generally and part 813 (21 CFR part 813) applies only to IOL's. The existence of a separate regulation for investigational use of IOL's is due to provisions of the Medical Device Amendments of 1976 (1976 amendments) (Pub. L. 94–295) that addressed IOL's.

In the **Federal Register** of April 6, 1976 (41 FR 14570), IOL's were deemed to be new drugs and subject to investigational drug requirements. This action was taken in an effort to control the incidence of reported complications associated with IOL use, such as endothelial corneal dystrophy, dislocation, uveitis and material degradation. Prior to this announcement, there was no oversight of clinical use of IOL's by FDA.

Subsequent to this announcement, the 1976 amendments to the Federal Food, Drug, and Cosmetic Act (the act) were enacted on May 28, 1976. Under section 520(1)(3)(D)(iii) of the act (21 U.S.C. 360j(1)(3)(D)(iii)), (Transitional Provisions for Devices Considered as New Drugs or Antibiotic Drugs), a device which FDA previously declared to be a new drug in a **Federal Register** notice after March 31, 1976, was subject to two new provisions: (1) The device required an approved premarket approval application (PMA) or investigational device exemption (IDE) 18 months after the May 28, 1976, enactment date; (2) during the time between the enactment date and IDE or PMA approval, FDA could restrict the interim use of such devices to qualified physicians in accordance with section 520(g) of the act, Exemptions for Devices for Investigational Use. If the devices were restricted under section 520(g), the Act provided that the requirements would be made applicable "in such a manner that the device shall be made reasonably available to physicians meeting appropriate qualifications prescribed by the Secretary." As required by the 1976 amendments, FDA published in the **Federal Register** of August 20, 1976 (41 FR 35282), proposed IDE regulations that would have applied to all medical devices, including IOL's. Comments received on the proposal persuaded FDA of the need to extend the comment period on the proposed IDE regulations. However, due to concerns over IOL safety, and due to Congress' intent that FDA make IOL's subject to investigational device controls promptly, the Commissioner of Food and Drugs (the Commissioner) decided to take immediate action to "assure that these lenses are shipped and used only in accordance with appropriate investigational controls" (42 FR 58874, November 11, 1977). Accordingly, in the **Federal Register** of November 11, 1977, FDA promulgated a final rule on IDE requirements for IOL's (42 FR 58874). The preamble to this regulation stated that:

> When the general investigational device regulations are published in final form and become effective, the Commissioner will rescind those portions of these regulations applicable to investigational studies of intraocular lenses that are adequately covered by the general regulations (42 FR 58876).

FDA published the final IDE regulations applicable to medical devices generally on January 18, 1980 (45 FR 3732), and announced its decision not to revoke the IOL regulations at that time because sponsors, investigators, institutional review boards (IRB's), and FDA were thoroughly familiar with part 813. "Subjecting IOL investigators to a new part 812 (21 CFR part 812) rather than to part 813 would not afford greater protection than now exists and could disrupt ongoing investigations" (45 FR 3732 at 3739). Thus, FDA issued part 812 and retained part 813.

To ensure that IOL's were reasonably available, FDA permitted sponsors of IOL's to conduct "adjunct" studies which permitted much broader use of investigational IOL's than is permitted with other investigational devices. FDA began phasing out adjunct studies in 1986, when it concluded that enough models of IOL's had been approved to ensure that IOL's were reasonably available (Ref. 1). Adjunct studies were completely phased out by 1990. By eliminating the adjunct phase of IOL studies, FDA encouraged earlier completion of investigations, earlier submission of PMA's, and reduced size of clinical investigations. With the elimination of the adjunct phase of IOL studies, investigations of IOL's no longer have this distinguishing characteristic that may once have justified separate regulatory treatment. FDA has now approved over 1,000 IOL models.

In light of the fact that investigational IOL no longer need disparate treatment, FDA has reexamined the need to retain part 813 and has concluded that maintaining a regulatory distinction between the IOL studies and other medical device studies is no longer justified. It is true that the IOL regulations contain some provisions that are not reflected in the IDE regulations. For example, the application for investigational device exemption under § 813.20 requires certain information not generally required in part 812, such as a more detailed description of the ingredients, properties, and operation of the device. Also, the investigational plan required under part 813 requires the submission of more information

than part 812. However, the agency believes that these and other differences are relatively insignificant because the agency will continue to demand high quality submissions, complete information, and ethical and professional conduct of sponsors and investigators sufficient to justify the granting and continuance of an IDE. With respect to IDE submissions for IOL's, FDA expects that submissions will continue to include essentially the same information now required specifically under part 813.

The dual regulatory schemes under parts 812 and 813 have common goals: (1) To encourage medical device research and development; and (2) to protect the rights, safety, and welfare of human subjects. The research community, including investigators and IRB's, and FDA have acquired greater familiarity and experience using and implementing the IDE regulations. The agency believes that the continued existence of similar, but not identical, regulatory requirements is unnecessary and occasionally confusing.

FDA emphasizes that requiring IOL studies to comply with part 812 does not lessen human subject protection because informed consent by subjects is, and would continue to be, governed by 21 CFR part 50. Furthermore, the role of the IRB under part 813 is similar to that of an IRB under part 56 (21 CFR part 56). Also, the agency attempts, to the extent possible, for its regulations governing clinical investigations of FDA-regulated products (e.g., drugs, biologics, and devices) to be consistent under the bioresearch monitoring regulations. Because part 813 contains provisions for IRB's that are slightly different from part 56, revocation of part 813 would support FDA's objective of uniform regulation of investigational products. Part 56 contains the general regulations that FDA promulgated on this subject (46 FR 8958 at 8975, January 27, 1981).

Thus, to eliminate confusion within the clinical research community and to provide uniformity to investigational device studies, FDA is proposing to remove the IOL regulations in their entirety; and to remove § 812.2(c)(8) to exempt IOL's from part 812 when the IOL is the subject of an approved PMA under section 515 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360e).

The IOL regulations include provisions for the disqualification of clinical investigators. Similar provisions do not currently exist in part 812. In 1980, when the agency promulgated the IOL regulations, FDA expected to finalize an agency wide proposed rule on clinical investigator disqualification, which appeared in the **Federal Register** of August 8, 1978 (43 FR 35186). That document would have applied to all investigational device studies. However, a general final rule on clinical investigator disqualification was never published, although FDA did incorporate many provisions of the August 8, 1978, proposal into its regulations on investigational drugs (43 FR 35186) (52 FR 8798, March 19, 1987). FDA is now carrying out its original intent to have in place clinical investigator disqualification procedures for investigational devices generally. Elsewhere in this issue of the **Federal Register**, FDA is proposing provisions for the disqualification of clinical investigators under part 812.

II. Economic Impact

This proposal would remove existing regulations on investigational exemptions for IOL's. Investigations of IOL's can be conducted under the IDE regulations in part 812 applicable to medical devices generally. FDA believes there will be no increased costs to IOL sponsors and investigators to comply with part 812 rather than part 813. The requirements are essentially the same, although the IOL regulations contain some provisions not reflected in the IDE regulations. FDA expects, therefore, that submissions for IOL's will continue to include essentially the same information now required specifically under part 813 and therefore that there will be no change in costs. The benefits of this action are that it will further implement FDA's plan for consistent bioresearch monitoring regulations for all FDA regulated products, and will result in a single regulation for investigational exemptions for medical devices, rather than two similar regulations which may be unnecessarily confusing. These benefits cannot be quantified in monetary terms. Therefore, FDA certifies that this proposed rule requires neither a regulatory impact analysis, as specified in Executive Order 12291, nor a regulatory flexibility analysis as defined in the Regulatory Flexibility Act (Pub. L. 96–354).

III. Comments

Interested persons may, on or before December 6, 1993, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

IV. Reference

The following reference has been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Report on IOL Adjunct Study, Office of Device Evaluation, Center for Devices and Radiological Health, FDA, December 1986.

List of Subjects

21 CFR Part 812

Health records, Medical devices, Medical research, Reporting and recordkeeping requirements.

21 CFR Part 813

Medical devices, Medical research, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that chapter I of title 21 of the Code of Federal Regulations, be amended in 21 CFR parts 812 and 813 as follows:

PART 812—INVESTIGATIONAL DEVICE EXEMPTIONS

1. The authority citation for 21 CFR part 812 continues to read as follows:

Authority: Secs. 301, 501, 502, 503, 505, 506, 507, 510, 513–522, 530–542, 701, 702, 704, 706, 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331, 351, 352, 353, 355, 356, 357, 360, 360c–360l, 360gg–360ss, 371, 372, 374, 376, 381); secs. 215, 301, 351 of the Public Health Service Act (41 U.S.C. 216, 241, 262).

§ 812.2 [Amended]

2. Section 812.2 *Applicability* is amended by removing paragraph (c)(8).

PART 813—[REMOVED AND RESERVED]

3. Part 813, consisting of §§ 813.1 through 813.170, is removed and reserved.

Dated: September 29, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–24474 Filed 10–5–93; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 812

[Docket No. 92N-0306]

Investigational Device Exemptions; Disqualification of Clinical Investigators

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to revise its medical device regulations to include provisions for the disqualification of clinical investigators. The agency is proposing this change to further implement its plan for consistent bioresearch monitoring regulations for all products regulated by FDA and to improve the remedies available to deal with clinical investigator misconduct.

DATES: Written comments by November 5, 1993. FDA proposes that any final rule that may issue based on this proposal become effective 30 days after its publication in the **Federal Register**.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20859, 301-594-4765.

SUPPLEMENTARY INFORMATION:

I. Background

FDA has long intended to have a clinical investigator disqualification procedure available for medical device investigations. Although the investigational device exemption (IDE) regulations (21 CFR part 812) allow regulatory action against a study sponsor due to a noncompliant investigator, such as terminating the sponsor's IDE or imposing additional restrictions under the IDE, the IDE regulations do not expressly provide for clinical investigator disqualification. The proposed IDE regulation, published in the **Federal Register** of August 20, 1976 (41 FR 35282 at 35311), contained disqualification provisions for clinical investigators in proposed § 812.119 that were not included in the final IDE regulation published on January 18, 1980 (45 FR 3749), that applies to device investigations generally. Disqualification provisions were included, however, in part 813 (21 CFR part 813) on investigational exemptions for intraocular lenses § 813.119 (42 FR 58889, November 11, 1977). The preamble to the final IDE regulation, published in the **Federal Register** of January 18, 1980 (45 FR 3732 at 3749), noted that proposed § 812.119 was being deleted and would be addressed in FDA's final agency-wide regulations on the obligations of clinical investigators, which had been proposed in the **Federal Register** of August 8, 1978 (43 FR 35186).

FDA believes that amending part 812 to include provisions for investigator disqualification would further the agency's overall plan to implement consistent bioresearch monitoring regulations for all products regulated by FDA and would give FDA an additional regulatory tool to deal with violations by investigators with the IDE regulations. This tool has been a useful part of the regulatory program for investigational new drugs for 30 years and is currently set forth in 21 CFR 312.70.

FDA's general intent is that its regulations on clinical investigations be compatible with the Department of Health and Human Services' regulations and FDA's bioresearch monitoring program, including its rules on protection of human subjects (part 50 (21 CFR part 50)); standards for institutional review boards (part 56 (21 CFR part 56)); and good laboratory practices for nonclinical laboratory studies (part 58 (21 CFR part 58)). Part 50 became a final rule in 1980 (45 FR 36390, May 30, 1980); part 56 became a final rule in 1981 (46 FR 8975, January 27, 1981); and part 58 became a final rule in 1978 (43 FR 60013, December 22, 1978). The agency also issued a proposed rule in the **Federal Register** of September 27, 1977 (42 FR 49612), on obligations of sponsors and monitors, which, among other things, proposed new part 52. Instead of publishing a final rule, the agency decided to issue in the **Federal Register** of February 17, 1988 (53 FR 4723), a guideline on monitoring. Also, as mentioned above, in the **Federal Register** of August 8, 1978 (43 FR 35186), FDA proposed regulations on obligations of clinical investigators of FDA regulated products generally and included selected provisions of proposed part 54, which is applicable only to drugs, in the investigational new drug applications final rule (known as the IND rewrite) that was published in the **Federal Register** of March 19, 1987 (52 FR 8798).

Because the agency intends to make its regulations governing clinical investigations consistent, and because the IDE rule in part 812 does not provide for disqualification of clinical investigators, FDA is now proposing to amend part 812 to include such provisions. This remedy will give the agency an effective means of dealing with individual violations of the IDE regulations in a more focused manner. At present, FDA's principal remedies in cases of clinical investigator misconduct are termination of the IDE, imposition of restrictions under the IDE, or bringing administrative or judicial enforcement actions. Disqualification of a noncompliant investigator will often be a more suitable remedy for some forms of misconduct.

This proposed rule is an extension of existing § 813.119, which applies to investigations of intraocular lenses, to all clinical investigations under the IDE regulations. FDA believes that the proposed regulation is substantively consistent with the regulation governing disqualification of clinical investigators of investigational new drugs (§ 312.70), even though the proposed regulation follows the format of the existing intraocular lens clinical investigator disqualification regulation (§ 813.119). FDA believes it more appropriate to follow the existing device regulation format for these regulations. FDA invites comments, however, on whether the regulations for drugs and devices should be identical, or virtually identical. FDA is giving notice that, if comments persuade the agency to revise the proposed rule to follow § 312.70 precisely or closely, e.g., due to familiarity with § 312.70 among investigators and industry, the agency may issue a final rule that parallels § 312.70. FDA is, therefore, keenly interested in comments on this issue.

II. Discussion of Proposed Amendments

The proposed amendments to part 812 consist of disqualification provisions similar to those contained in § 813.119. This proposal consists of the following provisions:

A. Purposes

Proposed § 812.119(a) identifies the purposes of disqualification of an investigator who has violated the regulations, which are to: (1) Preclude the investigator from conducting clinical investigations subject to requirements under the Federal Food, Drug, and Cosmetic Act (the act) for prior submission to FDA, until such time as it becomes likely that he will abide by such regulations or that such violations will not recur; and (2) exclude the consideration of any clinical investigations which have been conducted in whole or in part by the investigator, in support of applications for an investigational exemption or for premarket approval from FDA, until

such time as it becomes likely that he will abide by the regulations (unless it can be adequately demonstrated that such violations did not occur during or affect the validity or acceptability of a particular investigation). However, the determination that a clinical investigation may not be considered in support of an application for exemption or premarket approval does not relieve the applicant for such an application of any obligation under any other applicable regulation to submit the results of the investigation to FDA.

B. Grounds for Disqualification

Proposed § 812.119(b) establishes that the Commissioner of Food and Drugs (the Commissioner) may disqualify an investigator upon finding that the investigator caused false information to be submitted to FDA, or to the sponsor of a study with the understanding that information may be submitted to FDA, or: (1) That the investigator violated any of the regulations set forth in part 812; and (2) that the violation or violations adversely affected the integrity of the clinical investigation, the rights of the human subjects, and/or the safety of the subjects.

C. Informal Conference or Written Explanation

Proposed § 812.119(c) provides the investigator with an opportunity to respond to notification from FDA which states that there are grounds which, in the agency's opinion, may justify disqualification of the investigator. The investigator may respond to the notice at an informal conference or in writing. The written notice to the investigator will specify a time period within which the investigator should respond.

If FDA accepts the investigator's explanation for his noncompliance with the regulations, the disqualification process will be terminated and the investigator will be notified in writing of this decision. If the investigator's explanation for the noncompliance is not accepted by the agency, FDA will inform the investigator in writing of the reason for the nonacceptance.

D. Notice of and Opportunity for a Hearing on Proposed Disqualification

Proposed § 812.119(d) provides that, whenever the Commissioner has information indicating that grounds exist which may justify disqualification of an investigator, and the investigator has failed to offer an acceptable explanation for the noncompliance, the Commissioner may issue to the investigator a written notice proposing that the investigator be disqualified. An opportunity for a hearing automatically attaches.

E. Offer of Consent Agreement

Proposed § 812.119(e) provides the investigator with an opportunity to enter into a consent agreement with FDA in lieu of completing the disqualification proceeding.

F. Hearing and Final Order on Disqualification

Proposed § 812.119(f) provides the mechanisms by which a hearing and final order will be conducted. A hearing on the disqualification of an investigator is to be conducted in accordance with the requirements for a regulatory hearing as set forth in 21 CFR part 16.

If the Commissioner, after a regulatory hearing, or if a hearing has been waived, makes the findings required for disqualification required by proposed § 812.119, the Commissioner will issue a final order disqualifying the investigator. The order shall include a statement of the basis for that determination and shall prescribe any actions to be taken with regard to ongoing regulated clinical investigations being conducted by the investigator. The Commissioner will also notify (with a copy of the order) the investigator of the action, as well as the sponsor of each clinical investigation subject to requirements for prior submission to FDA that was or is being conducted by the investigator.

Alternatively, if the Commissioner determines not to make the findings required for disqualification, the Commissioner shall issue a final order terminating the disqualification proceedings. This order shall, likewise, include a statement of the basis for that determination. Upon issuing a final order, the Commissioner shall notify the investigator and provide a copy of the order.

G. Actions Upon Disqualification

Proposed § 812.119(g) explains what effect disqualification has upon the clinical investigations conducted by an investigator. It states that no clinical investigation subject to a requirement for prior submission to FDA will be authorized by the agency if the investigation is to be conducted, in whole or part, by a disqualified investigator.

As for ongoing clinical investigations being performed by the investigator, the Commissioner must consider the nature of the study, the number of subjects involved, the risks to the subjects from suspension of the investigation, and the need for involvement of an acceptable investigator. Based upon this information, the Commissioner may direct, in the final order disqualifying an investigator, that one or more of the following actions be taken for each such clinical investigation:

(1) The clinical investigation may be terminated or suspended in its entirety unless the investigator is reinstated under proposed § 812.119 or another investigator accepts responsibility for the clinical investigation.

(2) No new subject shall be allowed to participate or be asked to participate in the investigation unless the investigator is reinstated or another investigator accepts responsibility for the clinical investigation.

(3) Any human subject who has previously been allowed to participate in the investigation and who remains under the supervision of the investigator, but who is no longer receiving the test device or having it used involving him or her (i.e., a person having followup monitoring by the investigator, or acting as a control), shall continue to be monitored by the investigator, but the human subject shall not receive another device, or have it used involving him or her, until the investigator is reinstated or another investigator accepts responsibility for the clinical investigation.

(4) Any human subject who has been allowed to participate in the investigation and who, but for suspension of the clinical investigation, would continue to receive the device or have it used involving him or her, may not receive it or have it used until the investigator is reinstated or another investigator accepts responsibility for the clinical investigation; unless the disqualified investigator states in writing that it is contrary to the health of the subject to discontinue use of the test device until the investigator is reinstated or another investigator can assume responsibility for the clinical investigation. In this latter case, FDA may impose any further conditions that the Commissioner considers appropriate to protect the rights and safety of the subjects.

(5) A subject may continue to receive or use the test device for the time period and under the conditions specified by the Commissioner in the final order disqualifying an investigator without a written request from the investigator whenever the Commissioner determines that discontinuing further use until the investigator is reinstated or another investigator can assume responsibility for the clinical investigation would create a life-threatening problem.

With regard to other clinical investigations conducted by the disqualified investigator, any

investigation done by an investigator before or after disqualification may be presumed by FDA to be unacceptable. Each application for an investigation exemption or for premarket approval, whether approved or not, containing or relying upon any clinical investigation performed by the investigator may be examined to determine whether the investigation was or would be essential to a regulatory decision regarding the application. If it is determined that the investigation was or would be essential, FDA will also determine whether the investigation is acceptable notwithstanding the disqualification of the investigator. The person relying on the investigation may be required to establish that the clinical investigation was not affected by the circumstances which led to disqualification of the investigator, e.g., by submitting validating information. If the clinical investigation is determined to be unacceptable, it will be eliminated from consideration in support of the application, and this elimination may serve as new information justifying the termination or withdrawal of approval of the application.

Furthermore, no clinical investigation begun by an investigator after the date of his disqualification will be considered in support of any application for an exemption or premarket approval application (PMA), except a clinical investigation begun by an investigator after he or she has been reinstated. The determination that a clinical investigation may not be considered in support of an application for an exemption or PMA does not, however, relieve the applicant of any obligation under any other applicable statute or regulation to submit the results of the clinical investigation to FDA.

H. Public Disclosure of Information Regarding Disqualification or a Consent Agreement

Proposed § 812.119(h) provides that, upon issuance of a final order disqualifying an investigator or upon entry of a consent agreement, FDA may notify all or any interested persons. This notice may be given whenever the agency, in its discretion, believes that the notice would further the public interest or would promote compliance with the regulations set forth in part 812, or other laws applicable to the conduct of clinical investigations or investigators. This notice, if given, will include a copy of the consent agreement or final order issued. The notice with respect to a consent agreement will state that the investigator has agreed to certain restrictions involving clinical investigations. The notice with respect to disqualification will state that the disqualification constitutes a determination by the Commissioner that the investigator is not eligible to conduct clinical investigations subject to the requirements for prior submission to FDA, and that the results of any clinical investigations conducted by the clinical investigator may not be considered by FDA in support of any application for an exemption or PMA. Any notice issued under proposed § 812.119 will further state that it is given because of the professional relations between the investigator and the person notified, and FDA is not advising that any action be taken by the person notified.

A determination that an investigator has been disqualified and the administrative record for the determination are available to the public upon request, subject to the provisions in part 20 (21 CFR part 20). A consent agreement under proposed § 812.119(e) is available to the public upon request.

Furthermore, whenever FDA has reason to believe that an investigator may be subject to disqualification, the agency may, in its discretion, so notify the sponsor of any ongoing clinical investigation in which that investigator is participating. This notification will occur simultaneously with or subsequent to the agency's proposal to disqualify the investigator, unless safety considerations warrant earlier notification of the sponsor.

I. Alternative or Additional Actions to Disqualification or a Consent Agreement

Proposed § 812.119(i) explains that disqualification of an investigator under subpart E of part 812 would be independent of, and neither in place of, nor a precondition to, other proceedings or actions authorized by the act. FDA may, at any time, through the Department of Justice, institute any appropriate judicial proceedings (civil or criminal) and any other appropriate regulatory action, in addition to or in place of, and prior to, simultaneously with, or subsequent to, disqualification. The agency may also refer pertinent matters to another Federal, State, or local government agency for such action as that agency determines to be appropriate.

J. Suspension or Termination of an Investigator by a Sponsor

Proposed § 812.119(j) provides that the sponsor of an investigational study may at any time remove an investigator from further participation in the study, whether or not FDA has begun any action to disqualify the investigator. The sponsor need not use either the grounds or the procedures for disqualification set forth in subpart E of part 812. If a sponsor removes an investigator from a study, the sponsor shall notify FDA in writing and, where the removal is due to noncompliance with the regulations, give the reasons for such removal as soon as possible, but in no event later than 15 days after such removal.

K. Reinstatement of a Disqualified Investigator

Proposed § 812.119(k) establishes the requirements of investigator reinstatement. An investigator who has been disqualified may be reinstated as eligible to conduct clinical investigations subject to requirements for prior submission to FDA, or as acceptable to be the source of clinical investigations to be submitted to FDA, if the Commissioner determines, upon an evaluation of a written submission from the investigator, that the investigator can adequately assure that he will conduct such studies in compliance with the regulations.

A guideline for the reinstatement of any disqualified investigator is available upon request from the Health Assessment Policy Staff (HFY–20), Office of Health Affairs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

A disqualified investigator who wishes to be reinstated must present in writing to the Commissioner reasons why he or she believes he or she should be reinstated and a detailed description of the corrective actions the investigator has taken or intends to take to assure that the acts or omissions that led to the disqualification will not occur. The Commissioner may condition reinstatement upon the submission of an acceptable protocol for a specific clinical investigation providing for additional corrective actions or special undertakings by a sponsor, an institution, an institutional review committee, or another investigator to review in detail the investigator's compliance with agency requirements, or the investigator's being found in compliance with the applicable FDA regulations upon an inspection.

If an investigator is reinstated, the Commissioner will notify the investigator and all persons who were notified of the disqualification of the investigator. A determination that an investigator has been reinstated is disclosable to the public under part 20.

III. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or

cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Economic Impact

The potential costs of this proposed rule are those that are to be incurred from compliance with requirements for reporting to the agency by the affected clinical investigators and sponsors, and are estimated to be $12,250 annually. This amount includes the estimated annual reporting burden of 75 hours (see section V. of this document) charged at an average annual salary of $30 per hour per person (clerical and professional salaries combined). No more than 10 such responses, costing no more than $1,000 each in time and resources, are expected annually. The estimate of $12,250 also includes the potential cost of responding to the agency's written notice of clinical investigator noncompliance, through informal conference or written explanation (see § 812.119(c)). This proposed rule specifies the procedures to be followed for the disqualification of noncompliant clinical investigators where this is necessary to protect the integrity of a clinical investigation or the rights or safety of human subjects. These potential benefits of the rule to the public health cannot be quantified in monetary terms.

The agency does not anticipate any other significant additional costs of compliance. Therefore, FDA certifies that this proposed rule requires neither a regulatory impact analysis, as specified in Executive Order 12291, nor a regulatory flexibility analysis as defined in the Regulatory Flexibility Act (Pub. L. 96–354).

V. Paperwork Reduction Act of 1980

This proposed rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The title, description, and respondents of the information collections are shown below with an estimate of the periodic reporting burden.

Title: Investigational Device Exemptions; Disqualification of Clinical Investigators; NPRM.

Description: The Food and Drug Administration (FDA) is proposing to revise its medical device regulations to include provisions for the disqualification of clinical investigators. The agency is proposing this change to further implement its plan for uniform bioresearch monitoring regulations for all products regulated by FDA and to improve the remedies available to deal with clinical investigator misconduct. Because the agency intends to make its regulations governing clinical investigations consistent, and because the investigational device exemption rule in part 812 does not provide for disqualification of clinical investigators, FDA is now proposing to amend part 812 to include such provisions.

Description of Respondents: Businesses and small businesses and organizations.

Estimated Annual Burden for Reporting

21 CFR Section	Number of Respondents	Number Responses Per Respondent	Total Annual Responses	Hours Per Response	Total Burden Hours
812.119(g)(2)(iv)(B)	3	1	3	5	15
812.119(j)	10	1	10	1	10
812.119(k)	5	1	5	10	50
Total Annual Burden Hours:	75				

As required by the Paperwork Reduction Act, FDA is submitting to OMB a request that it approve these information collection requirements. Organizations or individuals desiring to submit comments for consideration by OMB on these information collection requirements should address them to FDA's Dockets Management Branch (address above) and to the Office of Information and Regulatory Affairs, OMB, rm. 3003, New Executive Office Bldg., Washington, DC 20503, Attn: Desk Officer for FDA.

VI. Comments

Interested parties may, on or before December 6, 1993, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 812

Health records, Medical devices, Medical research, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 812 be amended as follows:

PART 812—INVESTIGATIONAL DEVICE EXEMPTIONS

1. The authority citation for 21 CFR part 812 is revised to read as follows:

Authority: Secs. 301, 501, 502, 503, 505, 506, 507, 510, 513–522, 530–542, 701, 702, 704, 706, 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331, 351, 352, 353, 355, 356, 357, 360, 360c-360l, 360gg-360ss, 371, 372, 374, 376, 381); secs. 215, 301, 351 of the Public Health Service Act (42 U.S.C. 216, 241, 262).

2. New § 812.119 is added to subpart E to read as follows:

§ 812.119 Disqualification of investigators.

(a) *Purposes.* The purpose(s) of disqualification of an investigator who has failed to comply with any of the regulations set forth in this part, or other regulations in this chapter governing the conduct of investigators, may be one or both of the following:

(1) To preclude the investigator from conducting clinical investigations subject to requirements under the act for prior submission to FDA until it becomes likely that the investigator will abide by the regulations or that the violations will not recur. The determination to disqualify an investigator does not necessarily constitute a finding or recommendation that the investigator is not qualified to practice or teach medicine or should be subject to other sanctions by other persons such as licensing boards or employers.

(2) To preclude the consideration of any clinical investigations in support of applications for an investigational exemption or for premarket approval from FDA, which investigations have

been conducted in whole or in part by the investigator, until it becomes likely that the investigator will abide by the regulations or that the violations will not recur or that it can be adequately demonstrated that such violations did not occur during or affect the validity or acceptability of a particular investigation or investigations. The determination by FDA that a clinical investigation may not be considered in support of an application for exemption or premarket approval does not, however, relieve the applicant for such an application of any obligation under any other applicable regulation to submit the results of the investigation to FDA.

(b) *Grounds for disqualification.* The Commissioner of Food and Drugs (the Commissioner) may disqualify an investigator upon finding that:

(1) The investigator caused false information to be submitted to FDA, or to the sponsor of a study with the understanding that information may be submitted to FDA; or

(2) The investigator failed to comply with any of the regulations set forth in this part or other regulations in this chapter regarding the conduct of investigators; and

(3) The noncompliance materially affected the integrity of the clinical investigation, the rights of the human subjects, and/or the safety of the subjects.

(c) *Informal conference or written explanation.* (1) Whenever FDA has information indicating that grounds exist under this part which in the agency's opinion may justify disqualification of an investigator, FDA shall issue to the investigator a written notice describing the noncompliance and offer to the investigator an opportunity to respond to the notice at an informal conference or in writing. The written notice to the investigator will specify a time period within which the investigator should respond.

(2) If the investigator offers an explanation for the noncompliance, either by written communication or at an informal conference that is accepted by FDA, the disqualification process will be terminated and the investigator will be notified in writing of this decision.

(3) If the investigator offers an explanation for the noncompliance that is not accepted by the agency, FDA will inform the investigator in writing of the reason for the nonacceptance.

(d) *Notice of and opportunity for a hearing on proposed disqualification.* Whenever the investigator has failed to either offer an acceptable explanation for the noncompliance stated in the written notice under paragraph (c) of this section, or to otherwise respond to the notice, and the Commissioner determines that grounds exist under paragraph (b) of this section which, in the Commissioner's opinion, may justify disqualification of an investigator, the Commissioner may issue to the investigator a written notice proposing that the investigator be disqualified.

(e) *Offer of consent agreement.* The notice for an informal conference or to offer a written explanation under paragraph (c) of this section, or the notice of opportunity for a hearing under paragraph (d) of this section, or both, may offer the investigator an opportunity to enter into a consent agreement with FDA in lieu of completing the disqualification proceeding.

(f) *Hearing and final order on disqualification.* (1) A hearing on the disqualification of an investigator shall be conducted in accordance with the requirements for a regulatory hearing as set forth in part 16 of this chapter.

(2) If the Commissioner, after the regulatory hearing or after the time for requesting a hearing expires without a request being made, upon an evaluation of the administrative record of the disqualification proceeding, makes the findings required in paragraph (b) of this section, the Commissioner shall issue a final order disqualifying the investigator. The order shall include a statement of the basis for that determination and shall prescribe any actions (set forth in paragraph (g) of this section) to be taken with regard to ongoing regulated clinical investigations being conducted by the investigator. Upon issuing a final order, the Commissioner shall notify (with a copy of the order) the investigator of the action, as well as sponsor of each clinical investigation subject to requirements for prior submission to FDA that was or is being conducted by the investigator.

(3) If the Commissioner, after a regulatory hearing or after the time for requesting a hearing expires without a request being made, upon an evaluation of the administrative record of the disqualification proceeding, determines not to make the findings required in paragraph (b) of this section, the Commissioner shall issue a final order terminating the disqualification proceedings. This order shall include a statement of the basis for that determination. Upon issuing a final order, the Commissioner shall notify the investigator and provide a copy of the order.

(g) *Actions upon disqualification.* (1) No clinical investigation subject to a requirement for prior submission to FDA will be authorized by the agency if the investigation is to be conducted, in whole or part, by a disqualified investigator.

(2) The Commissioner, after considering the nature of each ongoing clinical investigation subject to a requirement for prior submission to FDA that is being performed by the investigator, the number of subjects involved, the risks to the subjects from suspension of the investigation, and the need for involvement of an acceptable investigator, may direct, in the final order disqualifying an investigator under paragraph (f)(2) of this section, that one or more of the following actions be taken for each such clinical investigation:

(i) The clinical investigation may be terminated or suspended in its entirety unless the investigator is reinstated under paragraph (k) of this section or another investigator accepts responsibility for the clinical investigation.

(ii) No new subject shall be allowed to participate or be asked to participate in the investigation unless the investigator is reinstated under paragraph (k) of this section, or another investigator accepts responsibility for the clinical investigation.

(iii) Any human subject who has previously been allowed to participate in the investigation and who remains under the supervision of the investigator, but who is no longer receiving the test device or having it used involving him or her (i.e., one having followup monitoring by the investigator, or one acting as a control), shall continue to be monitored by the investigator, but the human subject shall not receive another device, or have it used involving him or her, until the investigator is reinstated under paragraph (k) of this section or another investigator accepts responsibility for the clinical investigation.

(iv) Any human subject who has been allowed to participate in the investigation and who, but for suspension of the clinical investigation, would continue to receive the device or have it used involving him or her, may not receive it or have it used until either:

(A) The investigator is reinstated under paragraph (k) of this section or another investigator accepts responsibility for the clinical investigation; or

(B) The disqualified investigator states in writing that it is contrary to the health of the subject to discontinue use of the test device until the investigator is reinstated under paragraph (k) of this

section or another investigator can assume responsibility for the clinical investigation. In such a case, FDA may impose any further conditions that the Commissioner considers appropriate to protect the rights and safety of the subjects.

(v) A subject may continue to receive or use the test device for the time period and under the conditions specified by the Commissioner in the final order disqualifying an investigator without a written request from the investigator whenever the Commissioner determines that discontinuing further use until the investigator is reinstated under paragraph (k) of this section or another investigator can assume responsibility for the clinical investigation would create a life-threatening problem.

(3) Once an investigator has been disqualified, each application for an investigation exemption or for premarket approval, whether approved or not, containing or relying upon any clinical investigation performed by the investigator may be examined to determine whether the investigation was or would be essential to a regulatory decision regarding the application. If it is determined that the investigation was or would be essential, FDA will also determine whether the investigation is acceptable notwithstanding the disqualification of the investigator. Any investigation done by an investigator before or after disqualification may be presumed to be unacceptable, and the person relying on the investigation may be required to establish that the clinical investigation was not affected by the circumstances which led to disqualification of the investigator, e.g., by submitting validating information. If the clinical investigation is determined to be unacceptable, it will be eliminated from consideration in support of the application, and this elimination may serve as new information justifying the termination or withdrawal of approval of the application.

(4) No clinical investigation begun by an investigator after the date of his disqualification will be considered in support of any application for an exemption or premarket approval application (PMA), except a clinical investigation begun by an investigator after he or she has been reinstated under paragraph (k) of this section. The determination that a clinical investigation may not be considered in support of an application for an exemption or PMA does not, however, relieve the applicant of any obligation under any other applicable statute or regulation to submit the results of the clinical investigation to FDA.

(h) *Public disclosure of information regarding disqualification or a consent agreement.* (1) Upon issuance of a final order disqualifying an investigator or upon entry of a consent agreement as described in paragraph (e) of this section, FDA may notify all or any interested persons. This notice may be given whenever the agency, in its discretion, believes that the notice would further the public interest or would promote compliance with the regulations set forth in this part or other laws applicable to the conduct of clinical investigations or investigators. This notice, if given, will include a copy of the consent agreement or final order issued under this part. The notice with respect to a consent agreement will state that the investigator has agreed to certain restrictions involving clinical investigations. The notice with respect to disqualification will state that the disqualification constitutes a determination by the Commissioner that the investigator is not eligible to conduct clinical investigations subject to the requirements for prior submission to FDA, and that the results of any clinical investigations conducted by the clinical investigator may not be considered by FDA in support of any application for an exemption or PMA. Any notice issued under this section will further state that it is given because of the professional relations between the investigator and the person notified, and FDA is not advising that any action be taken by the person notified.

(2) A determination that an investigator has been disqualified and the administration record for the determination are available to the public upon request, subject to the provisions in 21 CFR part 20. A consent agreement under paragraph (e) of this section is available to the public upon request.

(3) Whenever FDA has reason to believe that an investigator may be subject to disqualification, the agency may, in its discretion, so notify the sponsor of any ongoing clinical investigation in which that investigator is participating. This notification will occur simultaneously with or subsequent to the agency's proposal to disqualify the investigator under paragraph (f) of this section, unless safety considerations warrant earlier notification of the sponsor.

(i) *Alternative or additional actions to disqualification or a consent agreement.* Disqualification of an investigator under this subpart is independent of, and neither in place of nor a precondition to, other proceedings or actions authorized by the act. FDA may, at any time, through the Department of Justice, institute any appropriate judicial proceedings (civil or criminal) and any other appropriate regulatory action, in addition to or in place of, and prior to, simultaneously with, or subsequent to, disqualification. The agency may also refer pertinent matters to another Federal, State, or local government agency for such action as that agency determines to be appropriate.

(j) *Suspension or termination of an investigator by a sponsor.* The sponsor of an investigational study may at any time remove an investigator from further participation in the clinical investigation, whether or not the Commissioner has commenced any action to disqualify the investigator. The sponsor need not utilize either the grounds or the procedures for disqualification set forth in this subpart. If a sponsor removes an investigator from a clinical investigation, the sponsor shall notify FDA in writing and, where the removal is due to noncompliance with the requirements of this part, or any other FDA regulation governing the conduct of investigators, give the reasons for such removal as soon as possible, but in no event later than 15 days after such removal.

(k) *Reinstatement of a disqualified investigator.* (1) An investigator who has been disqualified may be reinstated as eligible to conduct clinical investigations subject to requirements for prior submission to FDA, or as acceptable to be the source of clinical investigations to be submitted to FDA, if the Commissioner determines, upon an evaluation of a written submission from the investigator, that the investigator can adequately assure that he or she will conduct such studies in compliance with the requirements set forth in this part and other FDA regulations governing the conduct of investigators. A guideline for the reinstatement of any disqualified investigator is available upon request from the Health Assessment Policy Staff (HFY-20), Office of Health Affairs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

(2) A disqualified investigator who wishes to be so reinstated shall present in writing to the Commissioner reasons why he or she believes he or she should be reinstated and a detailed description of the corrective actions the investigator has taken or intends to take to assure that the acts or omissions that led to the disqualification will not occur. The Commissioner may condition reinstatement upon the submission of an acceptable protocol for a specific clinical investigation providing for additional corrective actions or special undertakings by a sponsor, an institution, an institutional review

committee, or another investigator to review in detail the investigator's compliance with agency requirements, or the investigator being found in compliance with the applicable FDA regulations upon an inspection.

(3) If an investigator is reinstated, the Commissioner will notify the investigator and all persons who were notified under paragraph (h) of this section of the disqualification of the investigator. A determination that an investigator has been reinstated is disclosable to the public under part 20 of this chapter.

Dated: September 29, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–24475 Filed 10–5–93; 8:45 am]

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federal register

Wednesday
October 6, 1993

Part III

Department of Labor

Employment and Training Administration

20 CFR Part 655

Wage and Hour Division

29 CFR Part 507

Applications and Requirements for Employers Using Aliens in Specialty Occupations and as Fashion Models; Proposed Rule

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

RIN 1205–AA89

Wage and Hour Division

29 CFR Part 507

RIN 1215–AA69

Labor Condition Applications and Requirements for Employers Using Aliens on H–1B Visas in Specialty Occupations and as Fashion Models

AGENCY: Employment and Training Administration, Labor, and Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Proposed rule.

SUMMARY: This rule is being proposed to clarify provisions of the Immigration and Nationality Act (INA) as it relates to the temporary employment in the United States (U.S.) of nonimmigrants admitted under H–1B visas. This proposed rule also contains amendments which reflect the Department's enforcement policies which have been developed based on its operating experience since the H–1B program's inception. Additionally, this rule is proposed to clarify the Department's administration and enforcement, such as by defining terms not previously defined, clarifying that the Department has authority to perform investigations without a specific complaint, establishing special procedures for "job contractors," modifying the labor condition application (LCA) form and content, and explaining the Department's enforcement of the wages required to be paid to H–1B nonimmigrants.

DATES: Public comments are invited. Comments shall be received by November 5, 1993 in order to expedite the Department's ability to provide more specific guidance to the regulated community through issuance of a final rule.

ADDRESSES: Comments may be mailed to John R. Fraser, Acting Assistant Secretary, 200 Constitution Ave., NW., room S3510, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: On 20 CFR part 655, subpart H, and 29 CFR part 507, subpart H, contact Patrick Stange, Division of Foreign Labor Certifications, U.S. Employment Service, Employment and Training Administration, Department of Labor, 200 Constitution Avenue, NW., room N–4456, Washington, DC 20210. Telephone: (202) 219–5263 (this is not a toll-free number).

On 20 CFR part 655, subpart I, and 29 CFR part 507, subpart I, contact Solomon Sugarman, Wage and Hour Division, Employment Standards Administration, Department of Labor, 200 Constitution Avenue, NW., room S–3502, Washington, DC 20210. Telephone: (202) 219–7605 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

On November 29, 1990, the Immigration and Nationality Act (8 U.S.C. 1101 *et seq.*) (INA or Act) was amended by the Immigration Act of 1990 (IMMACT), Public Law 101–649, 104 Stat. 4978. On December 12, 1991, the INA was further amended by the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991 (MTINA), Public Law 102–232, 105 Stat. 1733. These amendments assign responsibility to the Department of Labor (Department or DOL) for the implementation of several provisions of the Act relating to the entry of certain categories of employment-based immigrants, and to the entry and temporary employment of certain categories of nonimmigrants. One of the major provisions of the Act governs the entry temporarily of foreign "professionals" to work in "specialty occupations" in the U.S. under H–1B visas. 8 U.S.C. 1182(n) and 1184(c).

The H–1B category of specialty occupations consists of those occupations which require the theoretical and practical application of a body of highly specialized knowledge and the attainment of a bachelor's or higher degree (or its equivalent) in the specific speciality as a minimum for entry into the occupation in the U.S. 8 U.S.C. 1184(i)(1). In addition, a nonimmigrant in a specialty occupation must possess full state licensure to practice in the occupation (if required), completion of the required degree, or experience equivalent to the degree and recognition of expertise in the specialty. 8 U.S.C. 1184(i)(2). The category of "fashion model" requires that the nonimmigrant be of distinguished merit and ability. 8 U.S.C. 1101(a)(15)(H)(i)(b).

II. Issues

During the 1980s, as the economy grew and new jobs were being created, the influx of large numbers of nonimmigrants to the United States (U.S.) caused relatively little public concern. However, cyclical factors (the recent recession and relatively modest recovery to date) combined with structural changes (the downsizing of industries with relatively highly-skilled workforces) and the experience so far gained in administering the H–1B program have caused the Department of reexamine the rules implementing it. Such reevaluation is warranted based on concerns that the large number of aliens provided H–1B visas to work in the U.S. during a sustained period of high unemployment may be adversely affecting the employment opportunities of U.S. workers. Large numbers of employers continue to seek approval to hire foreign workers under the permanent and temporary immigration programs, including the H–1B program. In addition, through our enforcement and administration of the H–1B program, the Department has become aware of program issues that need further clarification and believes that the public would benefit from articulation of enforcement policies that have been developed as the program has been implemented.

To address these problems, the Department is proposing to revise existing regulations for the H–1B program.

The Department invites written comment from interested parties on these proposed changes. Officials from the Employment and Training Administration (ETA) and the Wage and Hour Division (WH) are responsible for reviewing all comments and recommendations that are submitted by the public in this rulemaking.

The following are the changes that the Department is proposing:

A. Limiting the Scope of the Labor Condition Application

1. Validity Period

Under section 214(g)(4) of the Immigration and Nationality Act, the period of authorized admission as an H–1B nonimmigrant may not exceed 6 years. Section ____.750 of the interim final H–1B regulations published at 57 FR 1316 (January 13, 1992) provides that a certified labor condition application shall be valid for the period of employment indicated on Form ETA 9035; however, in no event can the validity period of a labor condition application (LCA) exceed 6 years.

The Department is proposing to bring the validity period of LCAs filed into conformity with Immigration and Naturalization Service's (the Service) regulations at 8 CFR 214.2(h)(9)(iii)(B) by reducing the validity period of a labor condition application from 6 years to 3 years. The Service's regulations limit the validity of an approved

petition to 3 years or the expiration of the validity period of the labor condition application, whichever comes sooner. It is therefore proposed that the LCA validity period will be no more than 3 years also. The validity period will begin with the starting date entered by the employer in the "Period of Employment" section of Item 7 on the LCA or the date ETA certifies the LCA, whichever is later. Any LCA previously filed with and certified by ETA will be "grandfathered" so that those LCAs remain valid for up to six years or the ending date of employment as certified.

ETA's and INS' data show that certain employers have requested certification for large numbers of job openings for which corresponding visa petitions have not been filed.

For example, one employer requested ETA certification of over 11,000 job openings but, to date, only 84 visa petitions have been filed with INS against these LCAs. The Department's proposed regulation is an attempt to curb this type of activity, which provides no advantage to an employer but can mislead U.S. workers regarding the actual number of job openings available within an employer's organization. The statute and Departmental regulations require that the employer identify, among other things, the number of H–1B nonimmigrants being sought as an important element of notice to the employer's U.S. workers, directly or through their bargaining representative, as well as its notice to the public. LCAs which indicate need for an artificially larger number of H–1B nonimmigrants can mislead U.S. workers and impede the Department's ability to manage the H–1B LCA process consistent with the statutory scheme.

Accordingly, it is proposed that § ____.750(a) be amended to incorporate this change.

2. Geographical and Occupational Scope

The Department is presently not receiving a true indication of the valid openings for which employers anticipate the need for H–1B nonimmigrants. ETA's operating experience indicates that some employers have been filing LCAs with "laundry lists" of every conceivable occupation and area where an H–1B nonimmigrant might be needed, in many cases on a single labor condition application. When this practice is coupled with the potential 6-year validity period of the applications, the information disclosed to the Department and the public can be substantially misleading with respect to the amount of hiring activity that is actually occurring pursuant to this program. The Department is therefore proposing to limit an individual labor condition application to a single occupation and to geographic areas only within the jurisdiction of a single ETA regional office. As a result of this proposal, the Department believes that employers will be more likely to file LCAs for the actual number of job openings for which H–1B workers are sought, ETA will be able to better manage and collect data on the H–1B program, INS can exercise more control over the petitions filed against a labor condition application, and the Department will be better positioned to carry out enforcement activities under this program. The Department requests comments on this proposal with specific reference to whether and to what extent this change should promote the objective of receiving applications which represent a more accurate picture of actual job openings for which H–1B nonimmigrants are being sought, and whether the change might occasion any unintended operational consequences.

Accordingly, it is proposed that § ____.730(c)(2) be amended to incorporate this change.

B. Prevailing Wage Update

Under the interim final H–1B regulations, employers are required to obtain current prevailing wage information every 24 months throughout the period of employment of the H–1B nonimmigrant(s).

In the context of the proposed reduction in the validity period of a labor condition application, the Department considered leaving the prevailing wage update requirement unchanged (i.e., every 24 months or upon the filing of a new labor condition application). However, given a proposed maximum 3-year validity period of the application, where an employer is filing a new labor condition application to extend the period of employment beyond the initial 3 years, the employer could have to obtain prevailing wage information twice within a year: once, 24 months from the filing of the initial application and again upon the filing of the new application prior to the 3-year deadline. The Department is proposing instead what it considers a more sensible and reliable approach under which an employer will be required to obtain current prevailing wage information midway through the potential validity period of the application (at least every 18 months), as long as H–1B nonimmigrants are employed pursuant thereto.

Accordingly, it is proposed that § ____.730(e)(1)(ii) be amended to require that an employer obtain current prevailing wage information prior to filing of a new labor condition application and by no later than 18 months after the application is filed, as long as H–1B nonimmigrants are employed pursuant thereto.

C. Notification to H–1B Nonimmigrants

Section 212(n)(1)(C) of the INA requires that an employer seeking to hire an H–1B nonimmigrant shall, at the time of filing the application, notify the bargaining representative of the filing of the labor condition application or, if there is no bargaining representative, post notice of filing in conspicuous locations at the place of employment. See 8 U.S.C. 1182(n)(1)(C). The interim final regulations at § ____.730(h)(1) implement this statutory requirement.

In the course of investigations under this program, the Wage and Hour Division has found that some employers have made false statements regarding wages and worksites and have failed to fulfill the obligations attested on the applications (for example, by not paying the H–1B nonimmigrants the rate specified). The Department is proposing that, in addition, employers be required to provide to each H–1B nonimmigrant a copy of the labor condition application. Such notification would be required no later than the date the H–1B nonimmigrant reports to the place of employment.

This requirement would increase protections for H–1B nonimmigrants by making them aware of the terms and conditions of employment attested to by the employer. By being required to provide each H–1B nonimmigrant with such notification, employers would be more likely to fulfill their obligations (e.g., pay the required rate), and H–1B nonimmigrants would be better able to understand and monitor their employment conditions and file complaints, if appropriate, with the Wage and Hour Division, alleging a misrepresentation of a material fact in the labor condition application or a failure to comply with the terms thereof. No new documentation requirement is being imposed on the employer. However, any affirmative action taken by the employer to record the date, time, and place of compliance with this requirement will be considered by the Department in determining whether the employer fulfilled its obligation as required.

Accordingly, it is proposed that § ____.730(h)(1) be amended by adding a new paragraph to state that each H–1B nonimmigrant shall be provided with a copy of the labor condition application under which the H–1B

nonimmigrant was admitted and is to be employed.

D. Identification of Prevailing Wage Rate and Source

Under the H–1B interim final regulations, employers must file with ETA a completed and dated original labor condition application and one copy. No documentation of the attestation elements must be submitted to ETA.

Employers have an affirmative obligation to obtain some form of prevailing wage information and the failure to do so is a violation of H–1B program requirements. The Department's administrative and enforcement experience in this program indicates that a number of employers have failed to obtain prevailing wage information. Therefore, the Department is proposing that employers be required to identify (on the LCA) the prevailing wage rate and the source utilized to obtain the wage information. This imposes no additional burden on an employer acting in compliance with the program's requirements, and would provide additional impetus for compliance by those who are not. ETA will continue to certify an LCA where all items on the LCA have been completed and information submitted on the form is not obviously inaccurate. However, an LCA that fails to contain this additional information or which indicates a prevailing wage data source not consistent with regulatory requirements would be rejected.

Accordingly, it is proposed that § ____.730 be amended by adding a new paragraph (c)(1)(vi) to state that for each area of intended employment, the labor condition application shall state the prevailing wage rate for the occupation and the source of such wage data. In addition, the LCA form has been modified to reflect this change.

E. Strike or Lockout Labor Condition Statement

Section 212(n)(1)(B) of the INA requires that an employer seeking to hire H–1B nonimmigrants must file an application with the Secretary stating that "[t]here is not a strike or lockout in the course of a labor dispute in the occupational classification at the place of employment." The Department's interim final H–1B regulations at § ____.730(g) provide that:

> [a]n employer seeking to employ H–1B nonimmigrants shall state on Form ETA 9035 that there is not at that time a strike or lockout in the course of a labor dispute in the occupational classification at the place of employment. A strike or lockout which occurs after the labor condition application is filed by the employer with DOL is covered by INS regulations at 8 CFR 214.2(h)(16) (new 8 CFR 214.2(h)(17)).

The Department has become aware that this provision does not address the potentially abusive situation in which an employer with a certified labor condition application could petition for additional H–1B nonimmigrants (and thus use H–1B nonimmigrants to break a strike or to weaken the bargaining position of U.S. workers) in the event of a labor dispute subsequent to the filing and certification of the application. Such use of H–1B nonimmigrants to weaken U.S. workers' bargaining position could be achieved by employers hiring H–1B nonimmigrants directly or obtaining such workers from job contractors. Therefore, to prevent this potential abuse, the Department proposes to amend the regulations, in § ____.730(g) consistent with the regulations for the similar program for H–1A nonimmigrant registered nurses, to prohibit employers from using a certified labor condition application to file visa petitions with INS for an occupation in which a strike, lockout, or work stoppage in the course of a labor dispute occurs at the employer's work site. Further, to prevent employers from obtaining H–1B nonimmigrants from job contractors in the event of a labor dispute, the Department proposes, through new § ____.735 to prohibit job contractors from referring H–1B nonimmigrants to work at worksites in occupations that are involved in a strike, lockout, or work stoppage in the course of a labor dispute. The proposed Form ETA 9035 is modified so that employers are required to attest that they will not use the labor condition application in support of any petition filed with INS for H–1B nonimmigrants if a strike, lockout, or work stoppage in the course of a labor dispute involves the occupation covered by the LCA at the place of employment at any time during its validity period after the labor condition is certified. The Department also proposes to amend the regulations to require employers to notify DOL within 3 days of the start of a strike, lockout, or work stoppage in the course of a labor dispute at any worksite that is specified on a certified labor condition application. Upon receiving such a notification, the Department will undertake the necessary fact finding to determine whether or not the Secretary shall issue a strike determination to the INS pursuant to the Service's regulations at 8 CFR 214.2(h)(17).

F. H–1B Wages

1. In-kind Wages

Operating experience indicates that some employers provide "in-kind" perquisites for their foreign workers. These perquisites can include, but are not necessarily limited to, the following: allowances to compensate for the maintenance of two residences, allowances to a spouse who is ineligible to obtain work authorization in the U.S., dependents' educational expenses, housing expenses, automobile expenses, food reimbursement, travel reimbursement, international income tax equalization, family resettlement expenses, and family orientation expenses.

A discussion of in-kind payments in the preamble to the interim final rule dated January 13, 1992, indicated that the Department considers full payment of wages "cash-in-hand" to be required, and that no credit toward the required wage rate can be taken by an employer in the form of the value of in-kind perquisites provided. The Department invited comments regarding whether wage credit should be allowed in certain limited circumstances. Sixteen commenters (8 pro and 8 con) responded. The commenters supporting the proposal to allow in-kind credit acknowledged that the Department would need to clarify non-cash forms of perquisites and fringe benefits. The commenters opposing the proposal advocated that such perquisites are for the benefit of the employer and no consideration should be given including the value of these perquisites in meeting the wage requirements of the program.

After carefully considering the comments, and reviewing the Department's experience in administering and enforcing the program's wage requirement, the Department has concluded that the status quo is the correct position; that wage credit for in-kind perquisites will not be permitted in light of the negative impact of such wage credits on workers, the public, and the Department's investigative staff. The Department has decided that the regulations at § ____.730 should state even more explicitly that no credit for any in-kind perquisite is allowed towards meeting the wage requirement of the program. This position is consistent with other Departmental immigration programs (such as ETA's alien certification program for permanent immigrants) and better assures that U.S. workers will not be adversely impacted.

2. Cash Payments To Be Characterized as Wages

The Department's investigative experience has shown that H–1B nonimmigrants are receiving various types of cash payments, including recurring transportation payments, air fare reimbursement, daily home-to-work transportation expense reimbursement, and bonuses. Questions have arisen regarding some employers' characterization of these payments as "wages" for purposes of determining whether the employer has satisfied its wage requirement and, if not, for purposes of computing back wage liability.

Being responsive to employer concerns for clarity regarding their obligations and liabilities and to reflect enforcement policies developed in response, the Department proposes to articulate standards for considering bonuses and similar payments in satisfying the wage requirement. The Department is proposing that such remunerations can be characterized or credited as wages only when all of the following conditions are met:

The payment is reported by the employer to the Internal Revenue Service as a "wage" for tax purposes;

The payment is remuneration to be paid in terms of amount per hour, day, month, or year (consistent with the definition of wages in the current regulation); and

The payment is not an expense allowance or reimbursement for expenses incurred in the performance of the employee's duties for the employer.

The Department has considered other formulations as possible determinants of whether any particular cash payment is creditable as wages. In particular, the Department considered the adoption of the Fair Labor Standards Act "regular rate" rule (see 29 CFR part 788). After careful deliberation, however, the Department concluded that the proposed criteria would better serve the Congressional purposes regarding wage protections by stating clear and reasonable standards on which both employers and workers can rely in devising pay plans in compliance with the H–1B wage requirements.

Under the proposed criteria, a sign-up bonus would not be creditable as wages, even during the week it is paid, since it is not remuneration for work during a particular period of time. But a production bonus tied to a certain period of time may be counted as wages for the period during which the work/production was performed. Similarly, a completion bonus already paid at the end of a year (or other period of time) may be counted as wages allocated back over the completed period. However, amounts paid as expense allowances or expense reimbursements would not be creditable, and reimbursement for air fare or other such expenses incurred in reaching the U.S. work site would not be creditable.

Accordingly, section § ____.730 is proposed to be amended to incorporate these changes.

3. Allowable Deductions From Wages

The Department's investigative experience shows that deductions from H–1B nonimmigrants' wages other than those legally required (e.g., Social Security, Federal taxes) are occurring. Such deductions from an H–1B nonimmigrant's wages are shown in a variety of ways, including as advances, loans, or fees which reimburse the employer for expenditures including wage advances; personal loans; costs related to obtaining the employee's H–1B visa (such as INS and attorney fees); costs to transport the workers to and from the work site(s) within the U.S. The Department has concluded and through enforcement policy established that it is impermissible for employers to utilize wage deductions to shift their own business expenses to their H–1B nonimmigrants or to circumvent the requirement for payment of wages when due.

Therefore, the Department is proposing a clarification of the rule, reflecting its established enforcement policy, to articulate clear standards for permissible deductions. These standards accommodate deductions that are required by law, such as income tax. In addition, the employer could make deductions that meet all of the following criteria:

The deduction is pursuant to a written, voluntary authorization from the worker pursuant to the worker's request;

The deduction is principally for the benefit of the employee;

The deduction does not recoup a business expense or any costs incurred because they are required by the employer;

The deduction occurs against the wages of domestic workers as well as H–1B nonimmigrants where the employer has such domestic workers; and

The deduction amount cannot exceed the limits imposed by the garnishment provisions found in section 303 of the Consumer Credit Protection Act (29 CFR part 870) (15 U.S.C. 1673).

These criteria do not regulate in any way the manner in which an employee may utilize his or her earnings from employment in the U.S., except that costs incurred by an H–1B nonimmigrant that are required by the employer (for example, a uniform required by the employer) or which legitimately reflect a business expense of the employer would constitute impermissible wage deductions under these criteria.

These criteria are intended to not impede legitimate financial transactions between employers and their employees pursuant to voluntary agreements such as for wage deductions for health or life insurance, or even for advances on wages provided however that these are truly voluntary and do not constitute a transfer of business costs from the employer to the employee.

The Department is requesting public comment specifically regarding an employer's responsibility to bear the costs to transport H–1B nonimmigrants to the U.S. from their home country or another country where the individual is arriving from; and for their return transportation at the end of their employment.

Accordingly, section $____.730 is proposed to be amended to incorporate these changes.

G. Clarifying the Prevailing Wage 5% Provision

The H–1B program's "required wage rate" is the higher of either the "actual" wage or the "prevailing" wage. Acknowledging Congressional intent as expressed in the Conference Report, the interim final regulations base "prevailing" wage determinations on the procedures in the current permanent alien labor certification program. H.R. Conf. Rep. No. 101–955, p. 122, reprinted in 1990 U.S. Code Cong. & Admin. News 6787. The permanent program regulations at 20 CFR 656.40(a)(2)(i) state that "Since it is not always feasible to determine such an average rate of wages (i.e., prevailing wage) with exact precision, the wage set forth in the application shall be considered as meeting the prevailing wage standard if it is within 5 percent of the average rate of wages." This same provision regarding a 5% variable appears in the interim final regulation for the H–1B program, at $____.730(e)(1)(ii)(C).

The Department's experience in administering and enforcing the H–1B program has revealed some confusion and uncertainty regarding the effect of the regulatory language regarding a 5% variable. Some employers have asserted the view that where the prevailing wage, rather than the actual wage, is the minimum amount required to be paid, the employer is required to pay no more than 95% of the prevailing wage,

whether to initially comply with H–1B program requirements or in back wages upon being found in violation. In a few cases, inconsistent technical assistance has been provided by Departmental representatives in response to employers' inquiries regarding a 5% variable. To resolve such uncertainties and inconsistencies, the Department is proposing to reflect its established enforcement policy in the regulations to the effect that the 5% variable be utilized as follows: If the required wage rate is the prevailing wage and if an employer pays a rate that is no less than 95% of that rate, no violation will be cited and no back wages will be assessed. However, if the employer is found to have paid less than 95% of the prevailing rate, a violation will be cited and back wages will be assessed and due based on 100% (not 95%) of the prevailing rate.

This 5% variable exists only in the "prevailing" wage context and has no impact on the "actual" wage portion of the required wage rate principle. Where the required wage rate is the actual wage because it is higher than the prevailing wage, the full actual wage must be paid by the employer; no 5% variable is applicable.

Accordingly, § ____.730 is proposed to be amended.

H. Treatment of Job Contractors

In the preamble to the revised interim final rule of January 13, 1992 (57 FR 1318), the Department indicated that job contractors are treated like any other employer. The Department's objective in this approach—under which "job shop" employers would be held to the same regulatory standards as all other employers—was to prevent such employers from importing H–1B nonimmigrants and contracting them out to companies at "discount" wages, thereby adversely affecting the wages and working conditions of similarly employed U.S. workers. In implementing this approach at the inception of the program, the Department was attempting to devise a reasonable and appropriate means for achieving the purposes of the program in the absence of specific guidance in the statute and the legislative history regarding how program requirements would apply to job contractors.

After obtaining considerable programmatic experience regarding the operations and effects of job contractors using H–1B nonimmigrants, the Department is proposing to clarify how labor condition applications should be completed by job contractors and amend the regulations to create certain additional standards for such employers. These standards are patterned in large part on those in the H–1A nonimmigrant, registered nurses' program, which is similar to the H–1B program in purpose and operation.

The Department is proposing a distinct definition for "job contractor." First, a job contractor is an employer whose workforce (including H–1B nonimmigrants) perform their duties in whole or in part at worksite(s) not owned, operated, or controlled by the employer. Further, a job contractor is distinguished from an employer of employees whose duties require them to travel from site-to-site to perform their assignments that are all in a day's work, e.g., computer service, copying machine service, etc. (such latter employer being subject to the regular requirements of the H–1B program) by consideration of factors such as: (1) Indicia of an employment relationship (e.g., supervision of performance) between the H–1B nonimmigrants and the worksite entity (which, it should be noted, cannot legally employ such workers without filing appropriate LCAs and visa petition(s)); (2) whether the worksite entity furnishes the H–1B nonimmigrants with the tools necessary to perform the duties or to provide the services contracted for; and (3) whether the H–1B nonimmigrant is considered to be "on travel" in the conventional sense (e.g., is not provided with travel expenses, allowance, or reimbursement).

If the employer filing the LCA meets this definition of a job contractor, the information to be provided on the labor condition application in item 7 (occupational information) must pertain to the location(s) (city and state) of any and all worksite entities. For a worksite or an occupation that was not known to the job contractor at the time the LCA was filed, the employer must file a new LCA for the new location.

A job contractor filing an LCA must indicate thereon the location(s) at which the H–1B employer will actually work (and for which the prevailing wage must be determined), not the employer's headquarters or office location if different. If the contractor wishes to relocate the H–1B nonimmigrant to work at any location not listed on an approved LCA, an appropriate LCA must be filed and approved (and the appropriate prevailing wage determined) before any H–1B nonimmigrant may be employed at that location.

If the employer filing the LCA is a job contractor, the employer's obligations under the proposed rule are different from those of other employers with regard to three other matters: the determination of the actual wage, the bar on interference with a strike or lockout, and the requirement for notice to employees.

The interim final regulation defines actual wage as the rate paid by the employer to workers at the place of employment with experience and qualifications similar to those of the H–1B nonimmigrant's. Place of employment is defined as the worksite or physical location where work is performed. Commenters requested clarification and expressed concern about the feasibility of an employer complying with this actual wage requirement when the employer is not the only employer operating at the worksite or does not control the worksite. Commenters indicated that worksite entities might consider their wage scale(s) proprietary information and would be reluctant to release it to job contractor(s) or competitors. One commenter stated that such disclosure may potentially present antitrust violations. Considering these comments and programmatic experience, the Department does not propose that a job contractor needs to take into consideration wages paid to workers not directly employed by it. However, a job contractor cannot reduce the wages of an H–1B nonimmigrant should such a worker be temporarily employed at a place of employment where the wages are lower than another place of employment. Therefore, it is proposed that the regulations clarify that a job contractor must determine its actual wage based on the wage rate paid by that job contractor to all other employees with similar experience and qualifications in the occupation in question.

The Department does not propose to change the current regulations with regard to the prevailing wage or working conditions, both of which are to be determined for the area within which the worksite is located. Thus a job contractor is required to determine the prevailing wage for the occupational classification in the area of intended employment (i.e., the area that encompasses the actual place where the work is to be performed). The job contractor must also provide working conditions to the H–1B nonimmigrants that do not adversely affect the working conditions of other workers employed in the area of intended employment, which encompasses the worksite where the work is to be performed. Neither the comments nor the Department's programmatic experience indicate a need to modify the regulations on these requirements which are in accordance

with the statute and Congressional intent.

The Department proposes to amend the regulations with regard to strike/lockout and employee notification.

The current regulatory language pertaining to a strike/lockout addresses such action at the place of employment at the time the employer files the LCA. Thus, the regulation does not address the situation in which a job contractor might place an H–1B nonimmigrant at a worksite where workers in the same occupational classification(s) as the H–1B nonimmigrant are in a strike/lockout status. In the Department's view, such action by a job contractor—acting in concert with a worksite employer to break a strike or facilitate a lockout—would be contrary to the Congressional intent to protect the collective bargaining rights of U.S. workers. The Department is proposing an amendment to make the H–1B regulation consistent with the regulations for similar nonimmigrant programs administered and enforced by DOL (see 20 CFR 655.310(h); 20 CFR 655.510(e)). During the validity period of an LCA, a job contractor may not be permitted to place an H–1B nonimmigrant at a worksite where in the occupational classification of the H–1B nonimmigrant are in the course of a strike/lockout. Further, as discussed in Section E, above, if a strike/lockout occurs among the job contractor's employees during the validity of the LCA, the job contractor will be required to give written notice to ETA within three days of the occurrence.

The current regulatory language pertaining to employee notice requires that, prior to filing the LCA, the employer must provide notice to the employee's bargaining representative or if there is no such representative, must post the notice in the employer's establishment in the area of intended employment for 10 days. Thus, the regulation does not address the common situation in which a job contractor sends H–1B nonimmigrants to a worksite where U.S. workers—not employed by the job contractor—were afforded no prior notice of the impending use of nonimmigrants. In order to better achieve the Congressional intent that U.S. workers be notified, the Department is proposing that the regulation be amended to require that on or before sending an H–1B nonimmigrant to a worksite a job contractor notify the bargaining representative for workers in the occupation in which the H–1B nonimmigrant will be placed. If there is no such bargaining representative, the Department is proposing that the job contractor post notices at such location for 10 days on or before any H–1B nonimmigrant begins to work there.

Accordingly, § ____.715 is proposed to be amended and § ____.735 is proposed to be added.

I. Defining "Aggrieved" and "Interested" Parties

The current interim final rule contains no definitions for two terms, "aggrieved party or organization" and "interested party," which are significant to the enforcement process prescribed by Congress. The Department delayed the promulgation of these definitions in order to obtain experience in administering and enforcing the H–1B program. The Department now proposes—based on that experience, as well as on Congressional intent and statutory structure—to define these terms so as to promote effective enforcement.

In section 212(n)(2) of the INA, Congress directed the Department to establish a process to respond to complaints from "aggrieved" parties and to provide opportunities for administrative hearings for "interested" parties following investigative determinations. In addition, Congress required that "interested" parties be afforded access to certain documentation to be maintained by employers. The legislative history reflects Congress' intention that the Department's enforcement process would be the means for protecting both U.S. and foreign workers; no comprehensive pre-admission screening or review process was established. The Department has concluded that, in order to comply with the Congressional mandate for effective enforcement, the terms "aggrieved" and "interested" party should be broadly defined in a manner consistent with their common meaning.

"Aggrieved party or organization" will be defined as one whose operations or interests are potentially adversely affected by the alleged violation(s). Based on the Department's experience regarding the scope and nature of adverse effects of violations, as well as the sources for reliable, actionable allegations of violations, the definition of the term "aggrieved party or organization" will encompass not only private sector persons and organizations (e.g., workers, their representatives, competitors of the allegedly violating employer), but also government agencies and officials (e.g., Department of State consular officers, State Employment Security Agency officials).

"Interested party" will be defined to include persons and entities who are potentially affected by the employer's action or the investigative determination at issue. The Department is not proposing that such an individual need be adversely affected. By using the term "interested" (rather than "aggrieved") to identify the party for whom hearing opportunities and access to employer documentation would be required, Congress clearly mandated a broader class of persons for these rights than for investigations in response to complaints. The Department's broad definition, based on the Department's experience, encompasses both private and public parties.

Accordingly, § ____.715 is proposed to be amended to incorporate this change.

J. Sanction of Violations in the Absence of Complaints

The Department is reconsidering its earlier determination to limit its investigation of possible labor condition application violations to those where complaints have been filed by aggrieved parties. It is proposing to amend the regulations to provide for "directed" investigations, i.e., investigations which the Department may conduct on its own initiative.

The proposed change would in no way contravene the Congressional intent that the program be complaint-driven. Labor condition applications, as required under the INA, will continue to be accepted and certified unless incomplete or obviously inaccurate. The proposed change will facilitate enforcement by removing a regulatorily-imposed restriction on the Department's investigative authority, so that the program's purposes can be better served.

Directed investigation and enforcement would be appropriate where the Department becomes aware of a possible violation of a labor condition application, whether in the course of an investigation of another employer, in the course of an investigation under another statute, as the result of the receipt of public information or from some other source. Under the current regulations, the Department cannot investigate such possible violations in the absence of a complaint. See §§ ____.800(b) and ____.805(a) (1993).

This proposed change would bring the H–1B program in line with the regulations and practice under the H–1A nonimmigrant nurses' program. See 20 CFR 655.400(b) and 655.405(a). Under the H–1A program, which has statutory enforcement language similar to the H–1B program, investigations are conducted as a result of a complaint or otherwise. *Id.*; see also U.S.C. 1182 (m) and (n).

When the proposed rule was published in this rulemaking, based on its review of the legislative history, the Department questioned its authority to conduct directed investigations under the H–1B program, because discussion of the enforcement aspects of the H–1B program in the legislative history spoke of it as being "complaint-driven." However, examination of those statements shows that they consistently were made for the purpose of limiting DOL pre-acceptance review and investigation of the labor condition application; the statements were not directed to the scope of the Department's authority to investigate the LCA after it has been certified.

In addition to being consistent with the Department's regulations and practice under the similar H–1A program, directed enforcement in the H–1B program clearly is not prohibited by and can be supported under an analysis of the language of the statute. Section 212(n)(2)(A) of the INA directs the Secretary to establish a process for the receipt, investigation, and disposition of complaints. 8 U.S.C. 1182(n)(2)(A). Section 212(n)(2)(B) states that, "[u]nder such process [established pursuant to subparagraph (A)], the Secretary shall provide, within 30 days after such a complaint is filed, for a determination as to whether or not a reasonable basis exists to make a finding described in subparagraph (C)." 8 U.S.C. 1182(n)(2)(B). Unlike subparagraph (B), subparagraphs (C) and (D) of section 212(n)(2), which provide for notice and opportunity for a hearing for failure to meet a condition, for sanctions, and for back pay orders, do not refer back to "such process" as must be established pursuant to subparagraph (A). 8 U.S.C. 1182(n)(2) (C) and (D).

Thus, subparagraphs (C) and (D) stand on their own as processes for sanctioning employers which violate labor condition applications. Such employers may be placed in the subparagraphs (C) and/or (D) notice and hearing processes either as a result of a complaint and investigation under subparagraphs (A) and (B) or as a result of some other action, such as an investigation undertaken by the Department on its own accord. As indicated above, this is essentially the same statutory framework under which the Department investigates and sanctions H–1A program violations in the absence of a complaint. See 8 U.S.C. 1182(m)(2)(E) (ii), (iii), (iv), and (v).

In addition to making enforcement more consistent across these programs, the Department believes that directed enforcement for H–1B labor condition applications would enhance compliance under the program and protection of U.S. and foreign workers. Such protection is consistent with a general Congressional principle in enacting immigration laws—to provide for the admission of foreign workers only under terms and conditions of employment that do not adversely affect the wages and working conditions of similarly employed U.S. workers. See, e.g., 8 U.S.C. 1182(a)(5)(A), 1182(m)(2)(A)(ii), 1182(n)(1)(A), and 1188(a)(1)(B). It is not consistent with that principle for the Department to ignore information or evidence on possible H–1B violations received other than through a complaint.

Comments are specifically requested on this proposed change.

III. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, as amended, (44 U.S.C. 3501 *et seq.*) the reporting provisions that are included in this regulation have been submitted to the Office of Management and Budget (OMB) and have been assigned OMB Control No. 1205–0310.

The Employment and Training Administration estimates that over 50,000 employers per year will submit labor condition applications. The public reporting burden for this collection of information is expected to increase, based on the Department's operating experience, from an average of one hour per response, to one and one-quarter hours per response, including the time for reviewing instructions, searching existing information/data sources, gathering and maintaining the information/data needed, and preparing the application. The reporting burden is expected to increase due to the proposed requirement that employers provide notice to H–1B nonimmigrants of the terms and conditions of employment. The employer will be required to attest that it has provided, or will provide, to each H–1B nonimmigrant a copy of the LCA under which they are employed no later than the date the H–1B nonimmigrant reports to work at the place of employment. This is the only proposed amendment contained in this proposed rule which is expected to increase the reporting burden per response.

Written comments on the collection of information requirements should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Employment and Training Administration, Washington, DC 20503.

Changes to Form ETA 9035 as a result of the proposed regulatory changes are summarized below. Additionally, based on operating experience, a few technical changes were made to the Form ETA 9035 to clarify the labor condition application process and requirements. Included among the changes made to the form are the following:

a. Items 7 (a) and (b) have been amended consistent with the proposal to limit the scope of a labor condition application to one occupation.

b. Item 8(c) has been amended to clarify that the strike/lockout labor condition statement is a continuing obligation and that the employer must attest that, if a strike occurs in the occupation at the place of employment after the labor condition application is certified, the employer will not use the certified LCA in support of petition filings with INS for H–1B nonimmigrants to work in the occupation and place affected by the strike.

c. A new item 7(e), "Prevailing Wage Rate and Its Source" has been added.

d. Item 8(d) has been amended to include the requirement that each H–1B nonimmigrant be provided with a copy of the LCA approved by the Department and used to support the petition for entry (or renewal) of the aliens.

e. Item 8(d)(ii), and the corresponding instruction item, have been revised to make it clear that, in the absence of a bargaining representative, notice of filing must be posted for 10 days in at least two conspicuous places at each location where H–1B nonimmigrants will work.

f. At the request of the INS, a "Date" line has been added to the government endorsements section. This change will allow ETA officials to indicate the date the labor condition application was certified and to accommodate employers filing labor condition applications where the period of employment commences at some future date.

g. The statement regarding the ability to file complaints, required under the notice labor condition statement, has been pre-printed on the form.

IV. Summary

Comments are invited on issues raised in this notice. At the time final regulations are promulgated, the Department will consider all comments from all **Federal Register** publications pertaining to DOL's administration and enforcement of the H–1B program.

Regulatory Impact and Administrative Procedure

E.O. 12291

The rule does not have the financial or other impact to make it a major rule

and, therefore, the preparation of a regulatory impact analysis is not necessary. See Executive Order 12291, 3 CFR, 1981 Comp., Page 127, 5 U.S.C. 601 note.

Regulatory Flexibility Act

The Department of Labor has notified the Chief Counsel for Advocacy, Small Business Administration, and made the certification pursuant to the Regulatory Flexibility Act at 5 U.S.C. 605(b), that the rule does not have a significant economic impact on a substantial number of small entities.

Catalog of Federal Domestic Assistance Number

This program is not yet listed in the Catalog of Federal Domestic Assistance.

List of Subjects

20 CFR Part 655

Administrative practice and procedure, Agriculture, Aliens, Crewmembers, Employment, Enforcement, Fashion models, Forest and forest products, Guam, Health professions, Immigration, Labor, Longshore work, Migrant labor, Nurse, Penalties, Registered nurse, Reporting and recordkeeping requirements, Specialty occupation, Students, Wages.

29 CFR Part 507

Administrative practice and procedures, Aliens, Employment, Enforcement, Fashion models, Immigration, Labor, Penalties, Reporting and recordkeeping requirements, Specialty occupation, Wages, Working conditions.

Adoption of the Joint Rule

The agency-specific adoption of the joint rule, which appears at the end of the common preamble, appears below.

Signed at Washington, DC, this 29th day of September, 1993.

Robert B. Reich,

Secretary of Labor.

Accordingly, part 655 of chapter V of title 20, and part 507 of chapter V of title 29 of the Code of Federal Regulations, are amended as follows:

TITLE 20—EMPLOYEES' BENEFITS

PART 655—TEMPORARY EMPLOYMENT OF ALIENS IN THE UNITED STATES

1. The authority citation for part 655 is revised to read as follows:

Authority: Section 655.0 issued under 8 U.S.C. 1101(a)(15)(H) (i) and (ii), 1182 (m) and (n), 1184, 1188, and 1288(c); 29 U.S.C. 49 *et seq.*; sec. 3(c)(1), Pub. L. 101–238, 103 Stat. 2099, 2103 (8 U.S.C. 1182 note); sec. 221(a), Pub. L. 101–649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note); and 8 CFR 214.2(h)(4)(i).

Section 665.00 issued under 8 U.S.C. 1101(a)(15)(H)(ii), 1184, and 1188; 29 U.S.C. 49 *et seq.*; and 8 CFR 214.2(h)(4)(i).

Subparts A and C issued under 8 U.S.C. 1101(a)(15)(H)(ii)(b) and 1184; 29 U.S.C. 49 *et seq.*; and 8 CFR 214.2(h)(4)(i).

Subpart B issued under 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184, and 1188; and 29 U.S.C. 49 *et seq.*

Subparts D and E issued under 8 U.S.C. 1101(a)(15)(H)(i)(a), 1182(m), and 1184; 29 U.S.C. 49 *et seq.*; and sec. 3(c)(1), Pub. L. 101–238, 103 Stat. 2099, 2103 (8 U.S.C. 1182 note).

Subparts F and G issued under 8 U.S.C. 1184 and 1288(c); and 29 U.S.C. 49 *et seq.*;

Subparts H and I issued under 8 U.S.C. Subparts H and I issued under 8 U.S.C. 1101(a)(15)(H)(i)(b), 1182(n), and 1184; 29 U.S.C. 49 *et seq.*; and sec. 303(a)(8), Pub. L. 102–232, 105 Stat. 1733, 1748 (8 U.S.C. 1182 note).

Subparts J and K issued under 29 U.S.C. 49 *et seq.*; and sec 221(a), Pub. L. 101–649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note).

TITLE 29—LABOR

CHAPTER V—WAGE AND HOUR DIVISION, DEPARTMENT OF LABOR

PART 507—ENFORCEMENT OF H–1B LABOR CONDITION APPLICATIONS

2. The authority citation for part 507 continues to read as follows:

Authority: 8 U.S.C. 1101(a)(15)(H)(i)(b), 1182(n), and 1184, and 29 U.S.C. 49 *et seq.*; and Pub. L. 102–232, 105 Stat. 1733, 1748 (8 U.S.C. 1182 note).

3. In § ____.715, the definition of "aggrieved party" is added to read as follows:

§ ____.715 Definitions.

* * * * *

Aggrieved party means a person or entity whose operations or interests are adversely affected by the employer's alleged non-compliance with the labor condition application and includes, but is not limited to:

(1) A worker, whose job, wages, or working conditions are adversely affected by the employer's alleged non-compliance with the labor condition application;

(2) A bargaining representative for workers whose jobs, wages, or working conditions are adversely affected by the employer's alleged non-compliance with the labor condition application;

(3) A government agency which has a program that is impacted by the employer's alleged non-compliance with the labor condition application; and

(4) A competitor adversely affected by the employer's alleged non-compliance with the labor condition application.

* * * * *

4. In § ____.715, in the definition of "Independent authoritative source survey", the phrase "24-month" is removed the second time it appears and the phrase "18-month" is added in lieu thereof; in the definition of "Required wage rate", the number "24" is removed and the number "18" is added in lieu thereof; and the definitions of "Interested party" and "Job contractor" are added to read as follows:

§ ____.715 Definitions.

* * * * *

Interested party means a person or entity who is affected by the actions of an H–1B employer or about the outcome of a particular investigation; and includes any person, organization, or entity who has notified the Department of his interest or concern in the Administrator's determination.

Job contractor means an employer whose employees perform their duties in whole or in part at worksites that are owned, operated, and controlled not by the job contractor, but by an entity with which the job contractor, has a contractual relationship and which displays indicia of an employment relationship with the job contractor's employees (*e.g.*, assignment of tasks; day to day supervision of performance; evaluation of performance).

* * * * *

5. In § ____.730, in the introductory text of paragraph (c)(1), the word "classification(s)" is removed and the word "classification" is added in lieu thereof; in paragraph (c)(1)(i), the word "occupations(s)" is removed and the word "occupation" is added in lieu thereof; a new paragraph (c)(1)(vi) is added and paragraph (c)(2) is revised, to read as follows:

§ ____.730 Labor condition application.

* * * * *

(c) * * *

(1) * * *

(vi) The prevailing wage for the occupation in the area of intended employment and the source relied upon by the employer to determine that wage.

(2) *Multiple positions, occupations, or places of employment.* The employer shall file a labor condition application for each occupation in which the employer intends to employ one or more H–1B nonimmigrants. An employer may file a single labor condition application for more than one place of employment only if all places of employment covered by the application are located within the jurisdiction of a single ETA regional office and the employer specifies such places on the labor condition application. Where the employer

intends to employ an H–1B nonimmigrant in various places under the jurisdiction of more than one ETA regional office, the employer must file an application with each such ETA regional office.

* * * * *

6. In § ____.730, in paragraphs (e)(1)(iv), (e)(2)(iii)(B), and (e)(2)(iv), the word "occupation(s)" is removed each time it appears and the word "occupation" is added in lieu thereof; in the introductory text of paragraph (e)(1)(ii), in paragraph (e)(1)(iv), and in paragraph (e)(2)(iv), the number "24" is removed and the number "18" is added in lieu thereof; in the introductory text of paragraph (e)(2)(iii)(C)(*2*), the phrase "24-month" is removed the second time it appears and the phrase "18-month" is added in lieu thereof; the introductory text of paragraph (e)(1)(ii)(C) is revised and new paragraphs (e)(1)(v) and (e)(1)(vi) are added, to read as follows:

§ ____.730 Labor condition application.

* * * * *

(e) * * *

(1) * * *

(ii) * * *

(C) If the job opportunity is in an occupation which is not covered by paragraph (e)(1)(ii) (A) or (B) of this section, the prevailing wage shall be the average rate of wages, that is, the rate of wages paid to workers similarly employed in the area of intended employment. Since it is not always feasible to determine such an average rate of wages with exact precision, the wage set forth in the application shall be considered as meeting the prevailing wage standard if it is within 5 percent of the average rate of wages. See paragraph (e)(3) of this section. The prevailing wage rate under this paragraph (e)(1)(ii)(C) of this section shall be based on the best information available. The Department believes that the following prevailing wage sources are, in the order of priority, the most accurate and reliable:

* * * * *

(V) Employers are required to calculate the required wage rate in accordance with the following provisions:

(A) *Payment of full wages when due.* The employer shall pay the H–1B nonimmigrant the full required wage when due. No credit toward the required wage can be claimed by the employer for perquisites such as housing, automobile allowances, and airfare transportation.

(B) *Cash payments.* Cash payments, such as production bonuses, shall be considered in satisfying the wage rate only where such payments:

(*1*) Are reported by the employer to the Internal Revenue Service as wages;

(*2*) Are paid in terms of amount per hour, day, month or year; and

(*3*) Do not constitute an allowance or reimbursement for expenses incurred by the H–1B nonimmigrant in the performance of duties in the course of employment.

(vi) *Deductions.* Deductions shall not reduce the H–1B nonimmigrant's wages below the required rate unless such deductions:

(A) Are made pursuant to a written, voluntary authorization from the H–1B nonimmigrant pursuant to the H–1B nonimmigrant's request;

(B) Are principally for the H–1B nonimmigrant's benefit;

(C) Do not recoup a business expense or any costs incurred because they are required by the employer;

(D) Are made against the wages of domestic workers as well as H–1B nonimmigrants where the employer has such domestic workers; and

(E) Do not exceed the limits imposed by section 303 of the Consumer Credit Protection Act. 15 U.S.C. 1673.

7. In § ____.730, in paragraph (e)(3), the following sentence is added before the last sentence of the paragraph:

§ ____.730 Labor condition application.

* * * * *

(e) * * *

(3) * * * No prevailing wage violation will be found if the employer paid a wage that is equal to or more than 95 percent of the prevailing wage as required by paragraph (e)(1)(ii)(C) of this section. If the employer paid a wage that is less than 95 percent of the prevailing wage, the employer will be required to pay 100 percent of the prevailing wage.

* * *

8. In § ____.730, new paragraphs (g)(1)(i) and (g)(1)(ii) are added to read as follows:

§ ____.730 Labor condition application.

* * * * *

(g) * * *

(1) * * *

(i) *Notice of strike or lockout.* In order to remain in compliance with the no strike or lockout labor condition statement, if a strike or lockout of workers in the same occupational classification as the H–1B nonimmigrant occurs at the place of employment during the validity of the labor condition application, the employer, within three days of the occurrence of the strike or lockout, shall submit to ETA, by U.S. mail or private carrier, written notice of the strike or lockout. The labor condition application shall not be used in support of any petition filings for H–1B nonimmigrants to work in the same occupation at the place of employment until ETA determines that the strike or lockout has ended.

(ii) *ETA notice to INS.* Upon receiving from an employer a notice described in paragraph (g)(1)(i) of this section, ETA shall examine the documentation, and may consult with the union at the employer's place of business or other appropriate entities. If ETA determines that the strike or lockout is covered under INS's "*Effect of strike*" regulation for "H" visaholders, ETA shall certify to INS, in the manner set forth in that regulation, that a strike or other labor dispute involving a work stoppage of workers in the same occupational classification as the H–1B nonimmigrant is in progress at the place of employment. See 8 CFR 214.2(h)(17).

* * * * *

9. In § ____.730, the introductory text of paragraph (h)(1) is revised to read as follows:

§ ____.730 Labor condition application.

* * * * *

(h) * * *

(1) The fourth labor condition statement is established when paragraph (h)(1)(i) and either paragraph (h)(1)(ii)(A) or (h)(1)(ii)(B) of this section are met.

* * * * *

10. In § ____.730, paragraph (h)(1)(i) is redesignated as new paragraph (h)(1)(ii)(A); paragraph (h)(1)(ii) is redesignated as new paragraph (h)(1)(ii)(B); paragraph (h)(1)(ii)(A) is redesignated as new paragraph (h)(1)(ii)(B)(*1*); paragraph (h)(1)(ii)(B) is redesignated as new paragraph (h)(1)(ii)(B)(*2*); paragraph (h)(1)(ii)(C) is redesignated as new paragraph (h)(1)(ii)(B)(*3*), and a new paragraph (h)(1)(i) is added to read as follows:

§ ____.730 Labor condition application.

* * * * *

(h) * * *

(1) * * *

(i) The employer shall, no later than the date the H–1B nonimmigrant reports to work at the place of employment, provide the H–1B nonimmigrant with a copy of the labor condition application submitted to the Department.

* * * * *

11. In § ____.730, in the introductory text of newly designated (h)(1)(ii)(B), the word "classification(s)" is removed and the word "classification" is added in lieu thereof; the word "occupation(s)" is removed and the word "occupation" is added in lieu thereof; and the last sentence is revised to read as follows:

§ ____.730 Labor condition application.

* * * * *

(h) * * *

(1) * * *

(ii) * * *

(B) * * * The posting of exact copies of the labor condition application shall be sufficient to meet the requirements of this paragraph (h)(1)(ii)(B) of this section.

12. A new § ____.735 is added to read as follows:

§ ____.735 Special provisions for job contractors.

(a) A job contractor seeking to employ H–1B nonimmigrants shall satisfy all the requirements of the labor condition application as provided in this rule and shall also comply with the following provisions:

(1) *The first labor condition statement: wages. A job contractor shall comply with* § ____.730(e) of this subpart in its entirety but with the following provisos:

(i) Actual wage shall be the wages which the job contractor pays its own employees, wherever they may be located, who have similar experience and qualifications as the H–1B nonimmigrant for the specific employment in question. The actual wage shall not be based on the wages of employees not employed by the job contractor.

(ii) Prevailing wage shall be determined based on the area where the place of employment is located, *i.e.*, the worksite or physical location where the H–1B nonimmigrant actually performs the work.

(2) *The second labor condition statement: working conditions.* A job contractor shall comply with § ____.730(f) of this subpart in its entirety but with the following proviso: The working conditions referred to in § ____.730(f) are those existing in the area of intended employment where the worksite is located.

(3) *The third labor condition statement: no strike or lockout.* A job contractor shall comply with § ____.730(g) in its entirety but with the following provisos:

(i) A job contractor shall attest that there is not at the time the labor condition application is filed a strike or lockout in the course of a labor dispute in the same occupational classification as the H–1B nonimmigrant in the job contractor's workforce.

(ii) A job contractor shall not place, lease, or otherwise contract out an H–1B nonimmigrant, during the entire period of the labor condition application's validity, to any place of employment where there is a strike or lockout in the course of a labor dispute in the same occupational classification as the H–1B nonimmigrant.

(4) *The fourth labor condition statement: notice.* A job contractor shall comply with § ____.730(h) of this subpart in its entirety but with the following provisos:

(i) The job contractor shall, no later than the date the H–1B nonimmigrant reports to work at the employer's place of employment or at the worksite, whichever is first, provide the H–1B nonimmigrant with a copy of the labor condition application submitted to the Department.

(ii)(A) A job contractor shall attest that it has provided notice of filing no later than the date the labor condition application is filed to the bargaining representative of the job contractor's employees in the occupational classification in which the H–1B nonimmigrant will be employed; or

(B) If there is no bargaining representative, has provided notice of filing in conspicuous locations in the job contractor's establishment; and

(iii)(A) A job contractor shall provide notice of filing to the bargaining representative, if any, at each place of employment where it places, leases, or otherwise contracts out an H–1B nonimmigrant no later than on or before the date that the job contractor's H–1B nonimmigrants begin to work at each place of employment; or

(B) If there is no such bargaining representative at any such place of employment, the job contractor shall post notice of filing in conspicuous locations at the place of employment no later than the date that the job contractor's H–1B nonimmigrants begin to work at each place of employment.

(b) Where the provisions of this section are inconsistent with any provision in these regulations, this section shall take precedence over those provisions.

13. In § ____.740, paragraph (a)(2)(i) is revised to read as follows:

§ ____.740 Labor condition application determinations.

* * * * *

(a) * * *

(2) * * *

(i) When the Form ETA 9035 is not properly completed. Examples of a Form ETA 9035 which is not properly completed include instances where the employer has failed to check all the necessary boxes; or where the employer has failed to state the occupational classification, number of nonimmigrants sought, wage rate, period of intended employment, place of intended employment, or prevailing wage and its source; or where the application does not contain the signature of the employer or the employer's authorized agent or representative.

* * * * *

14. In § ____.740, in paragraph (a)(2)(ii), the last sentence is revised to read as follows:

§ ____.740 Labor condition application determinations.

(a) * * *

(2) * * *

(ii) * * * Examples of other obvious inaccuracies include stating a wage rate of $1.00 per hour (which would be below the FLSA minimum wage), identifying multiple occupations a single labor condition application, or identifying places of employment within the jurisdiction on more than one ETA regional office on a single labor condition application.

15. In § ____.750, in paragraph (a), the word "six" is removed each time it appears and the work "three" is added in lieu thereof.

16. In § ____.760, in paragraph (a)(3) and in paragraph (a)(4), the word "occupation(s)" is removed and the word "occupation" is added in lieu thereof.

17. In § ____.800, in paragraph (b), the phrase "pursuant to a complaint" is removed and the phrase "either pursuant to a complaint or otherwise" is added in lieu thereof.

18. In § ____.805, in the introductory text of paragraph (a), the phrase "pursuant to a complaint" is removed and the phrase "either pursuant to a complaint or otherwise" is added in lieu thereof; and in paragraph (b), the word "occupation(s)" is removed and the word "occupation" is added in lieu thereof.

Note: These appendices do not appear in the Code of Federal Regulations.

BILLING CODE 4510–27–M; 4510–30–M

Appendix 1—Form ETA 9035

Labor Condition Application for H-1B Nonimmigrants

DRAFT

U.S. Department of Labor
Employment and Training Administration
U.S. Employment Service

OMB Approval No.: 1205-0310

1. Full Legal Name of Employer	5. Employer's Address (No., Street, City, State, and ZIP Code)
2. Federal Employer I.D. Number	
3. Employer's Telephone No. ( )	6. Address Where Documentation is Kept (If different than item 5)
4. Employer's FAX No. ( )	

7. OCCUPATIONAL INFORMATION (Use attachment if additional space is needed)

(a) Three-digit Occupational Group Code (From Appendix B): _____ (b) Job Title (Check Box if Part-Time): _____ ☐

(c) No. of H-1B Nonimmigrants	(d) Rate of Pay	(e) Prevailing Wage Rate and its Source	(f) Period of Employment From	To	(g) Location(s) Where H-1B Nonimmigrants Will Work (see instructions)

8. EMPLOYER LABOR CONDITION STATEMENTS (Employers are required to develop and maintain documentation supporting labor condition statements 8(a) and 8(d). Employers are further required to make available for public examination a copy of the labor condition application and necessary supporting documentation within one (1) working day after the date on which the application is filed with DOL. Check **each** box to indicate that the employer will comply with **each** statement.)

☐ (a) H-1B nonimmigrants will be paid at least the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question or the prevailing wage level for the occupation in the area of employment, whichever is higher.

☐ (b) The employment of H-1B nonimmigrants will not adversely affect the working conditions of workers similarly employed in the area of intended employment.

☐ (c) On the date this application is signed and submitted, there is not a strike, lockout or work stoppage in the course of a labor dispute in the occupation in which H-1B nonimmigrants will be employed at the place of employment, and, if such a strike occurs after this application is submitted, the application will not be used in support of petition filings with INS for H-1B nonimmigrants to work in the same occupation at the place of employment.

☐ (d) A copy of this application has been, or will be, provided to each H-1B nonimmigrant employed pursuant to this application, and, as of this date, notice of this application has been provided to workers employed in the occupation in which H-1B nonimmigrants will be employed: (check appropriate box)

☐ (i) Notice of this filing has been provided to the bargaining representative of workers in the occupation in which H-1B nonimmigrants will be employed; or

☐ (ii) There is no such bargaining representative; therefore, a notice of this filing has been posted and was, or will remain, posted for 10 days in at least two conspicuous locations where H-1B nonimmigrants will be employed.

9. DECLARATION OF EMPLOYER. Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the information provided on this form is true and correct. In addition, I declare that I will comply with the Department of Labor regulations governing this program and, in particular, that I will make this application, supporting documentation, and other records, files and documents available to officials of the Department of Labor, upon such official's request, during any investigation under this application or the Immigration and Nationality Act.

Name and Title of Hiring or Other Designated Official _____ Signature _____ Date _____

Complaints alleging misrepresentation of material facts in the labor condition application and/or failure to comply with the terms of the labor condition application may be filed with any office of the Wage and Hour Division of the United States Department of Labor.

AN APPLICATION CERTIFIED BY DOL MUST BE FILED IN SUPPORT OF AN H-1B VISA PETITION WITH THE INS.

FOR U.S. GOVERNMENT AGENCY USE ONLY: By virtue of my signature below, I acknowledge that this application is hereby certified and will be valid from _____ through _____.

Signature and Title of Authorized DOL Official _____ ETA Case No. _____ Date _____

Subsequent DOL Action: Suspended _____ (date) Invalidated _____ (date) Withdrawn _____ (date)

The Department of Labor is not the guarantor of the accuracy, truthfulness or adequacy of a certified labor condition application.

Public reporting burden for this collection of information is estimated to average 1½ hour per response, including the time for reviewing instructions searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of IRM Policy, DOL, Room N-1301, 200 Constitution Avenue, N.W., Washington, DC 20210; and to the OMB, Paperwork Reduction Project (1205-0310), Washington, DC 20503.

DO NOT SEND THE COMPLETED FORM TO EITHER OF THESE OFFICES

ETA 9035 (Jan. 1992)

DRAFT

INSTRUCTIONS FOR COMPLETING FORM ETA 9035 - LABOR CONDITION APPLICATION FOR H-1B NONIMMIGRANTS

IMPORTANT: READ CAREFULLY BEFORE COMPLETING FORM

Print legibly in ink or use a typewriter. Sign and date one form in original signature. Citations below to "regulations" are citations to identical provisions at 20 CFR 655, subparts H and I, and to 29 CFR 507, subparts H and I.

To knowingly furnish any false information in the preparation of this form and any supporting documentation thereto, or to aid, abet or counsel another to do so is a felony, punishable by $10,000 fine or five years in the penitentiary, or both (18 U.S.C. 1001). Other penalties apply as well to fraud or misuse of this immigration document (U.S.C. 1546) and to perjury with respect to this form (18 U.S.C. 1546 and 1621).

Employers seeking to hire H-1B nonimmigrants in specialty occupations or as fashion models of distinguished merit and ability must submit the completed and dated original Form ETA 9035 (or a facsimile) and one copy of the completed original Form ETA 9035 to the regional certifying officer in the Department of Labor (DOL), Employment and Training Administration (ETA) regional office having jurisdiction over the State in which the position is located. See 20 CFR 655.720 for ETA regional office addresses. An application which is complete and has no obvious inaccuracies will be certified by DOL and returned to the employer, who may then file it in support of its petition with the Immigration and Naturalization Service.

Item 1. Full Legal Name of Employer. Enter full legal name of business, firm or organization, or, if an individual, enter name used for legal purposes on documents.

Item 2. Federal Employer I.D. Number. Enter employer's Federal Employer Identification Number (EIN) assigned by the Internal Revenue Service.

Item 3. Employer's Telephone No. Self-explanatory.

Item 4. Employer's FAX No. Self-explanatory.

Item 5. Employer's Address. Self-explanatory.

Item 6. Address Where Documentation is Kept. Self-explanatory.

Item 7. Occupational Information. Enter the information requested under the appropriate subheading. If necessary, continue on an attachment.

Item 7(a). Three-Digit Occupational Group Code. Enter the three-digit code from Appendix B which most clearly describes the job to be performed. (DOL purposes only.)

Item 7(b). Job Title. Enter the common name or payroll title of the job being offered. Check box to the right of the blank if position is part-time. A separate labor condition application shall be filed for each occupation in which H-1B nonimmigrants will be employed.

Item 7(c). Number of H-1B Nonimmigrants. Enter the number of H-1B nonimmigrants that will be hired in the three-digit occupational code stated in item 7(a).

Item 7(d). Rate of Pay. Enter the salary to be paid in terms of the amount per hour, week, year, etc. If a wage range is listed for this item, the salary for each H-1B nonimmigrant shall be maintained in support of the application.

Item 7(e). Prevailing Wage Rate and its Source. Enter the prevailing wage rate in terms of the the amount per hour, week, year, etc., and the State Employment Security Agency, published wage survey, or other source utilized by the employer to determine the prevailing wage for the occupational classification in which H-1B nonimmigrants will be employed; e.g. "Michigan State Employment Security Agency," or "Bureau of Labor Statistics Occupational Compensation Survey, Denver, Colorado, Metropolitan Area."

Item 7(f). Period of Employment. Enter the starting and ending dates during which the H-1B nonimmigrants will be employed.

Item 7(g). Locations Where H-1B Nonimmigrants Will Work. Enter the city and State of site or location where the work will actually be performed.

Item 8. Employer Labor Condition Statements. The employer must attest by checking off the conditions listed in (a) through (d) and by signing the application form. Employers must develop and maintain documentation to support labor condition statements 8(a) and 8(d). Documentation in support of a labor condition application shall be retained at the employer's principal place of business or worksite and made available to DOL upon such official's request. See **20 CFR 655.730** for guidance on the documentation that must support each labor condition statement.

Item 8(a). The employer must attest that H-1B nonimmigrants will be paid wages which are at least the higher of the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question or the prevailing wage level for the occupational classification in the area of intended employment.

Item 8(b). The employer must attest that the employment of H-1B nonimmigrants in the occupations named will not adversely affect the working conditions of workers similarly employed in the area of intended employment.

Item 8(c). The employer must attest that on the date the application is signed and submitted, there is not a strike, lockout or work stoppage in the course of a labor dispute in the named occupation at the worksite and that, if such a strike occurs after this application is submitted, the application will not be used in support of petition filings with INS for H-1B nonimmigrants to work in the same occupation at the place of employment.

Item 8(d). The employer must attest that as of the date of filing, notice of the labor condition application has been provided to workers employed in the named occupation. The application may be provided to the workers through the bargaining representative, or where there is no such bargaining representative, notice of the filing must be posted in conspicuous places where H-1B nonimmigrants will be employed. Further, the employer must attest that each H-1B nonimmigrant employed pursuant to the application will be provided with a copy of the application. The notification shall be provided no later than the date the H-1B nonimmigrant reports to work at the place of employment.

Item 9. Declaration of Employer. One copy of this form must bear the original signature of the employer. By signing this form, the employer is attesting to the accuracy of the labor condition statements listed in items 8(a) through (d) and to compliance with these conditions. False statements are subject to Federal criminal penalties, as stated above. Failure to meet a condition of the application regarding strikes or lockouts, substantial failure to meet a condition of the application regarding notification of the bargaining unit representative, employees, or H-1B nonimmigrants, willful failure to meet a condition of the application regarding wages or working conditions, or misrepresentation of a material fact may result in additional penalties.

BILLING CODE 4510-27-C; 4510-30-C

Appendix 2—DOT Three-Digit Occupational Group Codes for Professional, Technical and Managerial Occupations and Fashion Models

THREE-DIGIT OCCUPATIONAL GROUPS
PROFESSIONAL, TECHNICAL AND MANAGERIAL OCCUPATIONS
AND FASHION MODELS

DRAFT

OCCUPATIONS IN ARCHITECTURE, ENGINEERING AND SURVEYING

001 ARCHITECTURAL OCCUPATIONS
002 AERONAUTICAL ENGINEERING OCCUPATIONS
003 ELECTRICAL/ELECTRONIC ENGINEERING OCCUPATIONS
005 CIVIL ENGINEERING OCCUPATIONS
006 CERAMIC ENGINEERING OCCUPATIONS
007 MECHANICAL ENGINEERING OCCUPATIONS
008 CHEMICAL ENGINEERING OCCUPATIONS
010 MINING AND PETROLEUM ENGINEERING OCCUPATIONS
011 METALLURGY AND METALLURGICAL ENGINEERING OCCUPATIONS
012 INDUSTRIAL ENGINEERING OCCUPATIONS
013 AGRICULTURAL ENGINEERING OCCUPATIONS
014 MARINE ENGINEERING OCCUPATIONS
015 NUCLEAR ENGINEERING OCCUPATIONS
017 DRAFTERS
018 SURVEYING/CARTOGRAPHIC OCCUPATIONS
019 OTHER OCCUPATIONS IN ARCHITECTURE, ENGINEERING AND SURVEYING

OCCUPATIONS IN MATHEMATICS AND PHYSICAL SCIENCES

020 OCCUPATIONS IN MATHEMATICS
021 OCCUPATIONS IN ASTRONOMY
022 OCCUPATIONS IN CHEMISTRY
023 OCCUPATIONS IN PHYSICS
024 OCCUPATIONS IN GEOLOGY
025 OCCUPATIONS IN METEOROLOGY
029 OTHER OCCUPATIONS IN MATHEMATICS AND PHYSICAL SCIENCES

COMPUTER-RELATED OCCUPATIONS

030 OCCUPATIONS IN SYSTEMS ANALYSIS AND PROGRAMMING
031 OCCUPATIONS IN DATA COMMUNICATIONS AND NETWORKS
032 OCCUPATIONS IN COMPUTER SYSTEM USER SUPPORT
033 OCCUPATIONS IN COMPUTER SYSTEMS TECHNICAL SUPPORT
039 OTHER COMPUTER-RELATED OCCUPATIONS

OCCUPATIONS IN LIFE SCIENCES

040 OCCUPATIONS IN AGRICULTURAL SCIENCES
041 OCCUPATIONS IN BIOLOGICAL SCIENCES
045 OCCUPATIONS IN PSYCHOLOGY
049 OTHER OCCUPATIONS IN LIFE SCIENCES

OCCUPATIONS IN SOCIAL SCIENCES

050 OCCUPATIONS IN ECONOMICS
051 OCCUPATIONS IN POLITICAL SCIENCE
052 OCCUPATIONS IN HISTORY
054 OCCUPATIONS IN SOCIOLOGY
055 OCCUPATIONS IN ANTHROPOLOGY
059 OTHER OCCUPATIONS IN SOCIAL SCIENCES

OCCUPATIONS IN MEDICINE AND HEALTH

070 PHYSICIANS AND SURGEONS
071 OSTEOPATHS
072 DENTISTS
073 VETERINARIANS
074 PHARMACISTS
076 THERAPISTS
077 DIETITIANS
078 OCCUPATIONS IN MEDICAL AND DENTAL TECHNOLOGY
079 OTHER OCCUPATIONS IN MEDICINE AND HEALTH

OCCUPATIONS IN EDUCATION

090 OCCUPATIONS IN COLLEGE AND UNIVERSITY EDUCATION
091 OCCUPATIONS IN SECONDARY SCHOOL EDUCATION
092 OCCUPATIONS IN PRESCHOOL, PRIMARY SCHOOL, AND KINDERGARTEN EDUCATION
094 OCCUPATIONS IN EDUCATION OF PERSONS WITH DISABILITIES
096 HOME ECONOMISTS AND FARM ADVISERS
097 OCCUPATIONS IN VOCATIONAL EDUCATION
099 OTHER OCCUPATIONS IN EDUCATION

OCCUPATIONS IN MUSEUM, LIBRARY, AND ARCHIVAL SCIENCES

100 LIBRARIANS
101 ARCHIVISTS
102 MUSEUM CURATORS AND RELATED OCCUPATIONS
109 OTHER OCCUPATIONS IN MUSEUM, LIBRARY AND ARCHIVAL SCIENCES

OCCUPATIONS IN LAW AND JURISPRUDENCE

110 LAWYERS
111 JUDGES
119 OTHER OCCUPATIONS IN LAW AND JURISPRUDENCE

OCCUPATIONS IN RELIGION AND THEOLOGY

120 CLERGY
129 OTHER OCCUPATIONS IN RELIGION AND THEOLOGY

OCCUPATIONS IN WRITING

131 WRITERS
132 EDITORS, PUBLICATION, BROADCAST, AND SCRIPT
139 OTHER OCCUPATIONS IN WRITING

OCCUPATIONS IN ART

141 COMMERCIAL ARTISTS: DESIGNERS AND ILLUSTRATORS, GRAPHIC ARTS
142 ENVIRONMENTAL, PRODUCT AND RELATED DESIGNERS
149 OTHER OCCUPATIONS IN ART

OCCUPATIONS IN ENTERTAINMENT AND RECREATION

152 OCCUPATIONS IN MUSIC
159 OTHER OCCUPATIONS IN ENTERTAINMENT AND RECREATION

OCCUPATIONS ADMINISTRATIVE SPECIALIZATIONS

160 ACCOUNTANTS, AUDITORS, AND RELATED OCCUPATIONS
161 BUDGET AND MANAGEMENT SYSTEMS ANALYSIS OCCUPATIONS
162 PURCHASING MANAGEMENT OCCUPATIONS
163 SALES AND DISTRIBUTION MANAGEMENT OCCUPATIONS
164 ADVERTISING MANAGEMENT OCCUPATIONS
165 PUBLIC RELATIONS MANAGEMENT OCCUPATIONS
166 PERSONNEL MANAGEMENT OCCUPATIONS
168 INSPECTORS AND INVESTIGATORS, MANAGERIAL AND PUBLIC SERVICE
169 OTHER OCCUPATIONS IN ADMINISTRATIVE OCCUPATIONS

MANAGERS AND OFFICIALS

180 AGRICULTURE, FORESTRY, AND FISHING INDUSTRY MANAGERS AND OFFICIALS
181 MINING INDUSTRY MANAGERS AND OFFICIALS
182 CONSTRUCTION INDUSTRY MANAGERS AND OFFICIALS
183 MANUFACTURING INDUSTRY MANAGERS AND OFFICIALS
184 TRANSPORTATION, COMMUNICATION, AND UTILITIES INDUSTRY MANAGERS AND OFFICIALS
185 WHOLESALE AND RETAIL TRADE MANAGERS AND OFFICIALS
186 FINANCE, INSURANCE AND REAL ESTATE MANAGERS AND OFFICIALS
187 SERVICE INDUSTRY MANAGERS AND OFFICIALS
188 PUBLIC ADMINISTRATION MANAGERS AND OFFICIALS
189 MISCELLANEOUS MANAGERS AND OFFICIALS

MISCELLANEOUS PROFESSIONAL, TECHNICAL, AND MANAGERIAL OCCUPATIONS

195 OCCUPATIONS IN SOCIAL AND WELFARE WORK
199 MISCELLANEOUS PROFESSIONAL, TECHNICAL AND MANAGERIAL OCCUPATIONS

SALES PROMOTION OCCUPATIONS

297 FASHION MODELS

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BILLING CODE 4510–27–C; 4510–30–C

federal register

Wednesday
October 6, 1993

Part IV

Department of Commerce

Bureau of Export Administration

15 CFR Parts 773, 778, and 779
Commerce Control List; Interim Rule and Final Rules

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 773, 778, and 799

[Docket No. 930951-3251]

Expansion of General License GFW Eligibility for "Digital Computers" Controlled by ECCN 4A03A; Revision of Nuclear Non-Proliferation Controls in ECCNs 4A01A, 4A02A, and 4A03A; and Amendment of Nuclear Non-Proliferation Special Country List

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Interim rule and request for comments.

SUMMARY: The Bureau of Export Administration (BXA) maintains the Commerce Control List (CCL), which identifies those items subject to Department of Commerce export controls. This interim rule increases the General License GFW eligibility level for digital computers controlled by ECCN 4A03A from a CTP (composite theoretical performance) of 20 Mtops (million theoretical operations per second) or less to a CTP less than 195 Mtops. General License GFW is available for exports to most destinations in Country Groups T and V (except the People's Republic of China, Iran, Syria, and the South African military and police).

A validated export license continues to be required for exports of all computers controlled by ECCN 4A03A to Country Groups Q, S, W, Y, and Z, and the People's Republic of China, Iran, Syria, and the South African military and police. Exporters should also be aware that the Department of the Treasury maintains embargoes against other destinations, such as Iraq and the Federal Republic of Yugoslavia (Serbia and Montenegro).

This interim rule also raises the levels at which nuclear nonproliferation controls apply to digital computers controlled by ECCNs 4A01A, 4A02A, and 4A03A and revises the Nuclear Nonproliferation Special Country List.

This rule is expected to result in a significant reduction in the number of export license applications that will have to be submitted for computers controlled by 4A03A, thereby reducing the paperwork burden on exporters.

DATES: This rule is effective October 6, 1993. Comments must be received by November 5, 1993.

ADDRESSES: Written comments (six copies) should be sent to Willard Fisher, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, room 4054, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Joseph Young, Office of Technology and Policy Analysis, Telephone: (202) 482-0706.

SUPPLEMENTARY INFORMATION:

Background

This interim rule increases the General License GFW eligibility level for digital computers controlled by ECCN 4A03A, raises the levels at which nuclear nonproliferation controls apply to digital computers controlled by ECCN 4A03A, and revises the list of countries in Supplement No. 4 to part 778.

The General License GFW eligibility level for digital computers controlled by ECCN 4A03A is increased from a CTP (composite theoretical performance) of 20 Mtops (million theoretical operations per second) or less to a CTP less than 195 Mtops. This action is taken by the United States Government in view of the changed world situation, the rapid evolution of computer technology, and the increasing availability of high performance computers.

In international negotiations with our partner in the supercomputer regime, which will take place in October, we will propose raising the supercomputer definition from 195 to 2,000 Mtops. At the completion of those negotiations and with the raising of the supercomputer definition, we will raise the GFW level to 500 Mtops. In negotiations with our COCOM partners this fall, we will propose raising the decontrol level for sales to COCOM proscribed destinations to 500 Mtops, as well. As with the current liberalization, we do not expect these proposed changes to affect controls to the embargoed destinations or to those countries identified by the Secretary of State as supporting acts of international terrorism.

General License GFW was originally established for commodities described in the Advisory Notes in the Commerce Control List that indicate a likelihood of approval for Country Groups Q, W, and Y. However, GFW is also used for commodities not covered by such Advisory Notes when so indicated in the GFW paragraph under the Requirements heading of an entry.

Subject to the restrictions in § 771.2(c), items eligible for General License GFW may be exported to most destinations in Country Groups T and V. General License GFW is not available for exports to Iran, Syria, the People's Republic of China, or the South African military or police and a validated license continues to be required for exports of all computers controlled by ECCN 4A03A to these destinations.

A validated export license also continues to be required for exports of all computers controlled by ECCN 4A03A to Country Groups Q, S, W, Y, and Z. Exporters should also be aware that the Department of the Treasury's Office of Foreign Assets Control maintains an embargo on other destinations, such as Iraq and the Federal Republic of Yugoslavia (Serbia and Montenegro).

Foreign policy-based validated license requirements remain in effect for exports to Iran or Syria of all computers controlled by ECCNs 4A03A and 4A94F. All other foreign policy-based validated license requirements also remain in effect.

This interim rule also raises the levels at which nuclear nonproliferation controls apply to digital computers controlled by ECCNs 4A01A, 4A02A, and 4A03A. Previously, nuclear nonproliferation controls applied to: (1) Supercomputers for countries listed in Supplement Nos. 2 and 8 to part 773, (2) computers with a CTP exceeding 41 Mtops for countries listed in Supplement No. 3 to part 773, and (3) computers with a CTP exceeding 12.5 Mtops for all other destinations. This rule revises nuclear nonproliferation controls to apply to computers with a CTP of 195 Mtops or more for countries listed in Supplement No. 4 to part 778 (as revised by this rule).

Finally, this rule revises the special country list in Supplement No. 4 to part 778 to include the following countries: Afghanistan, Albania, Algeria, Andorra, Angola, Burma, Comoros, Djibouti, Guyana, India, Iran, Iraq, Israel, Libya, Mauritania, Mozambique, Niger, Oman, Pakistan, St. Kitts, Tanzania, the United Arab Emirates, Vanuatu, Zambia, and Zimbabwe.

Rulemaking Requirements

1. This rule is consistent with Executive Orders 12291 and 12661.

2. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control numbers 0694-0005, 0694-0010, 0694-0013, and 0694-0073.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be

given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. The provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in the effective date, are inapplicable because this regulation involves a military or foreign affairs function of the United States. Section 13(b) of the EAA does not require that this rule be published in proposed form because this rule does not impose a new control. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

However, because of the importance of the issues raised by these regulations, this rule is issued in interim form and comments will be considered in the development of final regulations. Accordingly, the Department encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views.

The period for submission of comments will close November 5, 1993. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the person submitting the comments and will not consider them in the development of final regulations. All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the Bureau of Export Administration Freedom of Information Records Inspection Facility, room 4525, Department of Commerce, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in part 4 of title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Margaret Cornejo, Bureau of Export Administration Freedom of Information Officer, at the above address or by calling (202) 482–5653.

List of Subjects

15 CFR Part 778

Exports, Nuclear energy, Reporting and recordkeeping requirements

15 CFR Part 799

Exports, Reporting and recordkeeping requirements

Accordingly, parts 778 and 799 of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

1. The authority citation for 15 CFR part 778 is revised to read as follows:

Authority: Pub. L. 90–351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended (extended by Pub. L. 103–10, 107 Stat. 40); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978; E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990), as continued by Notice of September 25, 1992 (57 FR 44649, September 28, 1992); and E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 11, 1992 (57 FR 53979, November 13, 1992).

2. The authority citation for 15 CFR part 799 continues to read as follows:

Authority: Pub. L. 90–351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; sec. 101, Pub. L. 93–153, 87 Stat. 576 (30 U.S.C. 185), as amended; sec. 103, Pub. L. 94–163, 89 Stat. 877 (42 U.S.C. 6212), as amended; secs. 201 and 201(11)(e), Pub. L. 94–258, 90 Stat. 309 (10 U.S.C. 7420 and 7430(e)), as amended; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); sec. 208, Pub. L. 95–372, 92 Stat. 668 (43 U.S.C. 1354); Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended (extended by Pub. L. 103–10, 107 Stat. 40); sec. 125, Pub. L. 99–64, 99 Stat. 156 (46 U.S.C. 466c); E.O. 11912 of April 13, 1976 (41 FR 15825, April 15, 1976); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978; E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990), as continued by Notice of September 25, 1992 (57 FR 44649, September 28, 1992); and E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 11, 1992 (57 FR 53979, November 13, 1992).

PART 778—[AMENDED]

3. Supplement No. 4 to part 778 (Nuclear Non-Proliferation—Special Country List) is amended by removing "Argentina", "Bahrain", "Brazil", "Chile", "Kuwait", "Malawi", "Qutar", "Saudi Arabia", "South Africa", "Syria", and "Yemen Arab Republic".

PART 799—[AMENDED]

4. In supplement No. 1 to § 799.1 (the Commerce Control List), Category 4 (Computers), ECCN 4A01A is amended by revising the Requirements section to read as follows:

4A01A Electronic computers and related equipment, as follows, and "assemblies" and specially designed components therefor.

Requirements

Validated License Required: QSTVWYZ

Units: Computers and peripherals in number; parts and accessories in $ value

Reason for Control: NS, MT, NP, FP (see Notes)

GLV: $5,000 for 4A01.a only; $0 for 4A01.b

GCT: Yes, except MT (see Notes) and except supercomputers as defined in § 776.11(a) of this subchapter (no supercomputer restriction for Japan)

GFW: No

Notes: 1. MT controls apply to 4A01.a.

2. NP controls apply to computers with a CTP of 195 Mtops or more to countries listed in supplement No. 4 to part 778 of this subchapter.

3. FP controls apply to all destinations, except Japan, for supercomputers (see § 776.11 of this subchapter).

* * * * *

5. In supplement No. 1 to § 799.1 (the Commerce Control List), Category 4 (Computers), ECCN 4A02A is amended by revising the Requirements section to read as follows:

4A02A "Hybrid computers", as follows, and "assemblies" and specially designed components therefor.

Requirements

Validated License Required: QSTVWYZ

Unit: Computers and peripherals in number; parts and accessories in $ value

Reason for Control: NS, MT, NP, FP (see Notes)

GLV: $5,000

GCT: Yes, except MT (see Notes) and except supercomputers as defined in § 776.11(a) of this subchapter (no supercomputer restriction for Japan)

GFW: No

Notes: 1. MT controls apply to hybrid computers combined with specially designed "software", for modeling, simulation, or design integration of complete rocket systems and unmanned air vehicle systems described in § 787.7 of this subchapter.

2. NP controls apply to computers with a CTP of 195 Mtops or more to countries listed in Supplement No. 4 to Part 778 of this subchapter.

3. FP controls apply to all destinations, except Japan, for supercomputers (see § 776.11 of this subchapter).

* * * * *

6. In supplement No. 1 to § 799.1 (the Commerce Control List), Category 4 (Computers), ECCN 4A03A is amended by revising the heading of the entry and by revising the Requirements section to read as follows:

4A03A "Digital computers", "assemblies", and related equipment therefor, as described in this entry, and specially designed components therefor.

Requirements

Validated License Required: QSTVWYZ

Unit: Computers and peripherals in number; parts and accessories in $ value

Reason for Control: NS, MT, NP, FP (see Notes)

GLV: $5,000

GCT: Yes, except MT and FP, and except supercomputers as defined in § 776.11(a) of this subchapter (no supercomputer restriction for Japan); see Notes

GFW: Yes, except MT and FP, for equipment in Advisory Note 4 and for computers with a CTP less than 195 Mtops (see Notes)

Notes: 1. MT controls apply to digital computers used as ancillary equipment for test facilities and equipment that are controlled by 9B05 or 9B06.

2. NP controls apply to computers with a CTP of 195 Mtops or more to countries listed in Supplement No. 4 to Part 778 of this subchapter.

3. FP controls apply to computers for computerized fingerprint equipment to all destinations except Australia, Japan, New Zealand and members of NATO.

4. FP controls apply to all destinations, except Japan, for supercomputers (see § 776.11 of this subchapter).

5. FP controls apply to Iran and Syria for computers controlled by 4A03A or 4A94F (i.e., computers with a CTP of 6 Mtops or greater). See § 785.4(d)(1) of this subchapter.

* * * * *

Dated: September 30, 1993.

Iain S. Baird,

Acting Assistant Secretary for Export Administration.

[FR Doc. 93–24426 Filed 10–4–93; 8:54 am]

BILLING CODE 3510–DT–P

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15 CFR Part 773

[Docket No. 930952–3252]

Special License Procedures; Revisions to Eligibility Requirements for Computers

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Export Administration Regulations (EAR) provide for a variety of "special licenses" that allow a broader range of activities than an individual validated license. These include the Distribution License, Project License, and Service Supply License, among others. The range of goods that can be exported under these procedures is broad, restricted only by a short list of exclusions. This rule revises the exclusion list to raise substantially the level of computers that can be exported under special licenses.

Systems defined as "supercomputers" are allowed under special licenses only to 12 designated countries. That restriction has not changed. In another rule published in this separate part of the **Federal Register**, nuclear nonproliferation controls on computers are revised to apply only to systems with a composite theoretical performance (CTP) of 195 MTOPS or above (million theoretical operations per second), and only to a short list of destinations. For those destinations subject to nuclear controls, special licenses may now be used for computers with a CTP less than 195 MTOPS. For countries that are neither among the 12 that may receive supercomputers nor subject to nuclear controls, special licenses may be used for any computers that are not "supercomputers." The effect of this change will be to greatly expand the usefulness of special licenses and reduce the number of individual validated licenses that will be required.

EFFECTIVE DATE: October 6, 1993.

FOR FURTHER INFORMATION CONTACT: Deborah Kappler, Office of Export Licensing, Bureau of Export Administration, Department of Commerce; Telephone: (202) 482–5400.

SUPPLEMENTARY INFORMATION:

Background

Supplement No. 1 to part 773 of the EAR (15 CFR part 773) lists items that are not eligible for export under special licenses. For computers, paragraph (a) of the Supplement prohibits exports of supercomputers, except to Canada, Australia, Japan, and nine European countries. Supercomputers are defined in § 770.2 of the EAR. Paragraphs (l)(1) and (2) of the Supplement place restrictions on computers that are subject to nuclear non-proliferation controls. A change in nuclear controls for computers requires a revision of the special license restrictions.

Nuclear non-proliferation controls now apply only to computers with a CTP of 195 MTOPS or above that are destined for a country listed in supplement No. 4 to part 778. As a result, countries that are eligible for special licenses and are not in supplement No. 4 may receive computers under the Distribution License, subject only to the limit on supercomputers. Those countries within supplement No. 4 may receive computers under the Distribution License if the CTP is less than 195 MTOPS.

Rulemaking Requirements

1. This rule is consistent with Executive Orders 12291 and 12661.

2. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control numbers 0694–0002, 0694–0005, 0694–0006, 0694–0013, 0694–0015, and 0694–0073.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. The provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in the effective date, are inapplicable because this regulation involves a military or foreign affairs function of the United States. Section 13(b) of the EAA does

not require that this rule be published in proposed form because this rule does not impose a new control. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Willard Fisher, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Part 773

Exports, Reporting and recordkeeping requirements.

Accordingly, part 773 of the Export Administration Regulations (15 CFR parts 730–799) is amended as follows:

1. The authority citation for 15 CFR part 773 continues to read as follows:

Authority: Pub. L. 90–351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended, Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended; E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978; E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990), as continued by Notice of September 26, 1991 (56 FR 49385, September 27, 1991); and E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 14, 1991 (56 FR 58171, November 15, 1991).

PART 773—[AMENDED]

2. In supplement no. 1 to part 773, paragraphs (l)(1) and (l)(2) are revised to read as follows:

Supplement No. 1 to Part 773—Commodities Excluded From the Special License Procedures

* * * * *

(l) * * *

(1) Electronic computers (other than supercomputers restricted by paragraph (a) of this supplement) may be exported under the Distribution License to destinations in supplement No. 4 to part 778 of this subchapter if they have a Composite Theoretical Performance (CTP) of less than 195 MTOPS (million theoretical operations per second).

Note: Computers that are not destined for countries in Supplement No. 4 to part 778 of this subchapter are *not* subject to nuclear non-proliferation controls. Such shipments under the Distribution License are restricted only by the supercomputer provisions of paragraph (a) of this Supplement.

(2) Computers subject to nuclear non-proliferation controls may be approved under the Project License procedure and Service Supply License on a case-by-case basis. Project License applicants should specify the types and sizes of computers and describe how they will be used in the project.

(3) * * *

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Dated: September 30, 1993.

Iain S. Baird,

Acting Assistant Secretary for Export Administration.

[FR Doc. 93–24427 Filed 10–4–93; 8:54 am]

BILLING CODE 3510–DT–P

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15 CFR Part 799

[Docket No. 930950–3250]

Commerce Control List: Revisions to Categories 3, 4, 5, and 6 Based on COCOM Review, Expansion of Favorable Consideration Treatment for Country Group Q, and Expansion of General License GFW Eligibility for Category 5 Telecommunications Items

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration (BXA) maintains the Commerce Control List (CCL), which identifies those items subject to Department of Commerce export controls. This final rule revises certain entries controlled for national security reasons in Categories 3, 4, 5, and 6 to conform with changes in the International Industrial List (IL) maintained by governments participating in the Coordinating Committee for Multilateral Export Controls (COCOM). The IL describes strategic items that are subject to multilateral export controls that restrict the availability of such items to controlled countries (i.e., Country Groups Q, W, Y, and Z and the People's Republic of China).

This rule also adds new Advisory Notes to Categories 1 through 9 that expand the number of items eligible for favorable consideration treatment for Country Group Q (i.e., Bulgaria, Latvia, Mongolia, and Romania).

In addition, this rule expands the number of items eligible for export under General License GFW to include all commodities that are controlled under any of the following telecommunications entries in Category 5: 5A02A, 5A03A, 5A04A, 5A05A, 5A06A, 5B01A, 5B02A, and 5C01A.

This rule is expected to result in a significant decrease in the number of applications for certain items (e.g., chips and semiconductors), thereby reducing the paperwork burden on exporters.

EFFECTIVE DATE: October 6, 1993.

FOR FURTHER INFORMATION CONTACT: For questions of a technical nature, the following persons in the Office of Technology and Policy Analysis are available:

Category 1: Jeff Tripp—(202) 482–1309
Category 2: Surendra Dhir—(202) 482–5695
Category 3: Jerald Beiter—(202) 482–1642
Category 4: Joseph Young—(202) 482–0706
Category 5: Dale Jensen—(202) 482–0730
Category 6: Joseph Chuchla—(202) 482–1641
Categories 7 and 9: Bruce Webb—(202) 482–3806
Category 8: Steve Clagett—(202) 482–3550

SUPPLEMENTARY INFORMATION:

Background

This final rule revises a number of national security-controlled entries on the Commerce Control List (CCL) to conform with COCOM changes in the International Industrial List (IL), adds new Advisory Notes to Categories 1 through 9 to expand the number of items eligible for favorable consideration treatment for Country Group Q (i.e., Bulgaria, Latvia, Mongolia, and Romania), expands the number of items eligible for export under General License GFW to include most national security controlled telecommunications equipment in Category 5 (i.e., commodities described in 5A02A, 5A03A, 5A04A, 5A05A, 5A06A, 5B01A, 5B02A, or 5C01A), and makes editorial changes or corrections in certain entries and Advisory Notes on the CCL.

The following Export Control Commodity Numbers (ECCNs) on the CCL are revised to conform with recent COCOM changes in the IL.

3A01A—Amended to revise controls on certain general purpose integrated circuits (e.g., "microprocessor microcircuits", EEPROMs, SRAMs, field programmable gate arrays and field programmable logic arrays, and Fast Fourier Transform processors), travelling wave tubes, mixers and converters, acoustic wave devices, and high energy devices (e.g., batteries and "superconductive" electromagnets or solenoids)

3A02A—Amended to revise controls on recording equipment (e.g., digital instrumentation magnetic tape data recorders, equipment designed to convert digital video magnetic tape recorders for use as digital instrumentation data recorders, and waveform digitizers and transient recorders)

3B01A—Amended by: (1) Removing certain "stored program controlled" multifuctional focused ion beam systems and (2) revising controls on "stored program controlled" lithography equipment (i.e., align and expose step and repeat equipment for wafer processing)

3C02A—Amended by revising control language in 3C02.a to cover positive resists for semiconductor lithography specially adjusted (optimized) for use at wavelengths below 370 nm

3E02A—Amended to add technology for the "development" or "production" of substrates of films of diamond for electronic components

4A01A—Amended to increase the control level from a temperature of 343 K (70 C) or above to 358 K (85 C) or above

4A03A—Amended to increase the "maximum bit transfer rate" ("MBTR") for disk drives from 25 Mbit/s to 47 Mbit/s

6A01A—Amended by: (1) Revising the Note preceding 6A01.a.1.a to indicate that the entry does not control acoustic emergency beacons or pingers specially designed for relocating or returning to an underwater position and (2) adding a new 6A01.a.2.d that controls heading sensors previously described in 6A01.a.2.b.4 and heading sensors having an accuracy of better than ±0.5° having an adjustable or removable depth sensing device that permits operation at depths exceeding 35 m

6A02A—Amended by: (1) Removing certain "space-qualified" solid-state detectors having a peak response in the wavelength range not exceeding 10 nm; (2) adding a Technical Note in 6A02.a.3 to clarify the term "focal plane arrays"; (3) removing certain non-"space-qualified" single-element or non-focal-plane multi-element semiconductor photodiodes or phototransistors having a peak response in the wavelength range exceeding 30,000 nm; (4) removing certain "multispectral imaging sensors" designed for airborne operation that have an Instantaneous-Field-of-View of less than 2.5 milliradians, and (5) revising 6A02.d.2 to control certain non-"space-qualified" cryocoolers with a cooling source temperature below 218 K (−55° C)

6A04A—Amended by revising 6A04.a.4 to limit controls on beam steering mirrors to those maintaining a flatness of lambda/2 or better

6A08A—Amended by: (1) Revising the Note preceding 6A02.a to indicate that nothing in this entry controls meteorological (weather) radar; (2) revising the Note following 6A02.f to remove the paragraph stating that 6A02.f does not control meteorological radar; and (3) revising the Note following 6A08.i to indicate that 6A08.i does not control certain ground radar equipment specially designed for enroute air traffic control and "software" specially designed for the "use" thereof

6B04A—Amended by: (1) Adding a paragraph controlling equipment other than optical surface scattering measurement equipment having an unobscured aperture of more than 10 cm and specially designed for the non-contact optical measurement of a non-planar optical surface figure (profile) to an "accuracy" of 2 nm or less (better) against the required profile and (2) adding a Note at the end of 6B04 indicating that this entry does not control microscopes

6C02A—Amended by adding cadmium zinc telluride (CdZnTe)

6E03A—Amended by changing the unit for measuring resolution from line pairs per millimeter to line pairs per milliradian

This rule adds new Advisory Notes to CCL Categories 1 through 4 and Categories 6 through 9 to identify the items that are now eligible for favorable consideration treatment to Country Group Q (i.e., Bulgaria, Latvia, Mongolia, and Romania). In the telecommunications notes in Category 5, Advisory Note 17 is amended to provide favorable consideration treatment for exports of optical fiber cables and optical fiber transmission equipment or systems that permit telecommunications transmissions between points in Country Group Q. Such transmissions between controlled destinations were previously permitted only between points in Country Group W.

A new Advisory Note is added to Category 3 to provide administrative exceptions treatment for exports to Country Groups Q, W, and Y and the People's Republic of China of storage integrated circuits controlled by ECCN 3A01.a.4.a or a.4.b.

In Category 4, the administrative exceptions level for exports to Country Groups Q, W, Y and the People's Republic of China of disk drives and solid state storage equipment controlled by ECCN 4A03.c and input/output control units controlled by 4A03.f is raised from a "maximum bit transfer rate" ("MBTR") not exceeding 36 Mbit/s to a "MBTR" not exceeding 110 Mbit/s.

This rule also amends the Technical Note at the end of Category 4 that provides guidance on calculating "composite theoretical performance" by revising the Note on calculating theoretical performance (TP) for a single "computing element" (CE).

In the telecommunications notes in Category 5, Advisory Note 3, which provides administrative exceptions treatment for exports to the People's Republic of China of telecommunications transmission equipment controlled by ECCN 5A02.a, .b, or .d, is amended to indicate that an additional 2 Mbit/s may be added to the 168 Mbit/s limit on the "total digital transfer rate" to provide for operation, maintenance and service communications. Advisory Note 12 in Category 5 (telecommunications) is amended to specify that components and accessories controlled by ECCN 5A05A are eligible for administrative exceptions treatment to Country Groups Q, W, Y and the People's Republic of China.

The Notes for Category 6 are revised to increase the number of items in ECCNs 6A02A, 6B04A, 6C02A, and 6C04A that are eligible for administrative exceptions treatment to Country Group W. Administrative exceptions treatment is also provided for exports of reasonable quantities of items controlled by ECCN 6B04.b to Country Groups Q, Y and the People's Republic of China for civil end-uses.

This rule also makes a number of editorial clarifications and corrections. ECCN 3E01A is amended by revising the GTDR paragraph in the Requirements section to clarify that General License GTDR may not be used to export technology controlled by 3E01A that is subject to missile technology controls. Certain minor editorial changes are made in ECCNs 5E02A, 5A11A, and 6A07A. ECCNs 6A05A and 6C04A are amended by revising the GFW paragraphs in the Requirements section of each entry to correctly reference the applicable Advisory Notes. In Category 5, under the heading "Notes for Telecommunications", this rule makes editorial changes to Advisory Notes 5, 6, 8, 10, 15, 16, and 19 through 22.

Rulemaking Requirements

1. This rule is consistent with Executive Orders 12291 and 12661.

2. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control numbers 0694–0005, 0694–0007, and 0694–0010. This rule also contains collections of information that have been approved under control numbers 0694–0013 and 0694–0078. Public burden for the collections approved under control number 0694–0013 is estimated to average 2 hours per year for the signed statement from the importing agency or end-user's representative and 1 hour per year for addition information describing the equipment to be exported, its application, and all end-users and their activities. Public burden for the collections approved under control number 0694–0078 is estimated to average 15 minutes per year for repair facility records, 15.25 hours per year for

preparing reports on inspections of telecommunications systems, 15.25 hours per year for complying with licensing conditions as contractually agreed between the licensee and operators on each end of the telecommunications link, and 30.25 hours per year for preparing telecommunications system plans. Send comments regarding these burden estimates or any other aspect of the data requirements, including suggestions for reducing this burden, to the Office of Security and Management Support, Bureau of Export Administration, U.S. Department of Commerce, Washington, DC 20230; and to the Office of Management and Budget, Washington, DC 20503—Attn: Paperwork Reduction Project (0694–0013 or 0694–0078).

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5.The provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in the effective date, are inapplicable because this regulation involves a military or foreign affairs function of the United States. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Willard Fisher, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Part 799

Exports, Reporting and recordkeeping requirements.

Accordingly, part 799 of the Export Administration Regulations (15 CFR parts 730–799) is amended as follows:

PART 799—[AMENDED]

1. The authority citation for 15 CFR part 799 continues to read as follows:

Authority: Pub. L. 90–351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; sec. 101, Pub. L. 93–153, 87 Stat. 576 (30 U.S.C. 185), as amended; sec. 103, Pub. L. 94–163, 89 Stat. 877 (42 U.S.C. 6212), as amended; secs. 201 and 201(11)(e), Pub. L. 94–258, 90 Stat. 309 (10 U.S.C. 7420 and 7430(e)), as amended; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); sec. 208, Pub. L. 95–372, 92 Stat. 668 (43 U.S.C. 1354); Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended (extended by Pub. L. 103–10, 107 Stat. 40); sec. 125, Pub. L. 99–64, 99 Stat. 156 (46 U.S.C. 466c); E.O. 11912 of April 13, 1976 (41 FR 15825, April 15, 1976); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978; E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990), as continued by Notice of September 25, 1992 (57 FR 44649, September 28, 1992); and E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 11, 1992 (57 FR 53979, November 13, 1992).

Supplement No. 1 to § 799.1—[Amended]

Make the following amendments to Supplement No. 1 to § 799.1 (Commerce Control List):

1. In Category 1 (Materials), under the heading "Notes for Category 1" following ECCN 1E96G, redesignate the Advisory Note as Advisory Note 1 and add a new Advisory Note 2 to read as follows:

Notes for Category 1

Advisory Note 1: * * *

Advisory Note 2: Licenses will receive favorable consideration for exports to satisfactory end-users in Country Group Q of the items controlled by Category 1 for national security reasons, *except:*

a. "Composite" structures or laminates controlled by 1A02.a, when specially designed for stealth or space applications, or by 1A02.b;

b. Filament winding machines controlled by 1B01.a;

c. Tape-laying machines controlled by 1B01.b;

d. "Fibrous or filamentary materials" controlled by 1C10.a, 1C10.c, 1C10.d, or 1C10.e;

e. "Software" specially designed and technology "required" for the equipment or materials described in this Advisory Note that are controlled for national security reasons by Category 1D or 1E.

2. In Category 2 (Materials Processing), under the heading "Notes for Category 2" following ECCN 2E96G, Advisory Note 3, Advisory Note 4, and Advisory Note 5 are redesignated as Advisory Note 5, Advisory Note 3, and Advisory Note 4, respectively, and a new Advisory Note 6 is added immediately following newly designated Advisory Note 5 to read as follows:

Notes for Category 2

* * * * *

Advisory Note 6: Licenses will receive favorable consideration for exports to satisfactory end-users in Country Group Q of the items controlled by Category 2 for national security reasons, *except:*

a. "Numerical control" units, "numerically controlled" machine tools with a positioning accuracy of 2 micrometers or better, and components, specially designed parts or assemblies therefor, controlled by 2B01, 2B08, or 2B09;

b. Non-"numerically controlled" machine tools for generating optical quality surfaces controlled by 2B02;

c. Equipment specially designed for the deposition, processing and in-process control of inorganic overlays, coatings and surface modifications controlled by 2B05;

d. Coating technology for non-electronic devices controlled by 2E03.d;

e. "Software" specially designed and technology "required" for the equipment described in this Advisory Note 6.a, .b, or .c that are controlled by 2D or 2E.

3. In Category 3 (Electronics Design, Development and Production), the Notes immediately following the heading "A. Equipment, Assemblies and Components" are revised and ECCNs 3A01A and 3A02A are amended by revising the List of Items Controlled in each entry to read as follows:

A. Equipment, Assemblies and Components

Note 1: The control status of equipment, devices and components described in Category 3A, other than those described in 3A01.a.3 to a.10 or 3A01.a.12, that are specially designed for or have the same functional characteristics as other equipment is determined by the control status of the other equipment.

Note 2: The control status of integrated circuits described in 3A01.a.3 to a.9 or 3A01.a.12 that are unalterably programmed or designed for a specific function for other equipment is determined by the control status of the other equipment.

N.B. When the manufacturer or applicant cannot determine the control status of the other equipment, the control status of the integrated circuits is determined in 3A01.a.3 to a.9 or 3A01.a.12. If the integrated circuit is a silicon-based "microcomputer microcircuit" or a microcontroller microcircuit described in 3A01.a.3 having an operand (data) word length of 8 bits or less, the control status of the integrated circuit is determined in 3A01.a.3.

3A01A Electronic devices and components.

* * * * *

List of Items Controlled

a. General purpose integrated circuits, as follows:

Note 1: The control status of wafers (finished or unfinished), in which the function has been determined, is to be evaluated against the parameters of 3A01.a.

Note 2: Integrated circuits include the following types:
"Monolithic integrated circuits";
"Hybrid integrated circuits";
"Multichip integrated circuits";
"Film type integrated circuits", including silicon-on-sapphire integrated circuits;
"Optical integrated circuits".

a.1. Integrated circuits, designed or rated as radiation hardened to withstand either of the following:

a.1.a. A total dose of 5×10^5 Rads (Si), or higher; *or*

a.1.b. A dose rate upset of 5×10^8 Rads (Si)/s or higher;

(For integrated circuits designed or rated against neutron or transient ionizing radiation, see the ITAR.)

a.2. Integrated circuits described in 3A01.a.3 to a.10 or 3A01.a.12, as follows:

a.2.a. Rated for operation at an ambient temperature above 398 K (+125° C);

a.2.b. Rated for operation at an ambient temperature below 218 K (−55° C); *or*

a.2.c. Rated for operation over the entire ambient temperature range from 218 K (−55° C) to 398 K (+125° C);

Note: 3A01.a.2 does not apply to integrated circuits for civil automobile or railway train applications.

a.3. "Microprocessor microcircuits", "microcomputer microcircuits" and microcontroller microcircuits, having any of the following:

Note: 3A01.a.3 includes digital signal processors, digital array processors and digital coprocessors.

a.3.a. An external data bus width exceeding 32 bit or an arithmetic logic unit with an access width exceeding 32 bit;

a.3.b. A clock frequency exceeding 40 MHz;

a.3.c. An external data bus width of 32 bit or more and capable of executing 12.5 million instructions per second (MIPS) or more; *or*

Technical Note: If MIPS are not specified, the inverse of the average instruction cycle time (in microseconds) should be used.

a.3.d. More than one data or instruction bus or serial communication port for external interconnection in a parallel processor with a transfer rate exceeding 2.5 Mbyte/s;

a.4. Electrically erasable programmable read-only memories (EEPROMs), static random-access memories (SRAMs), and storage integrated circuits manufactured from a compound semiconductor, as follows:

a.4.a. Electrically erasable programmable read-only memories (EEPROMs) with a storage capacity:

a.4.a.1. Exceeding 16 Mbit per package for flash memory types; *or*

a.4.a.2. Exceeding either of the following limits for all other EEPROM types:

a.4.a.2.a. 4 Mbit per package; *or*

a.4.a.2.b. 1 Mbit per package and having a maximum access time of less than 80 ns;

a.4.b. Static random-access memories (SRAMs) with a storage capacity:

a.4.b.1. Exceeding 4 Mbit per package; *or*

a.4.b.2. Exceeding 1 Mbit per package and having a maximum access time of less than 20 ns;

a.4.c. Storage integrated circuits manufactured from a compound semiconductor;

a.5. Analog-to-digital and digital-to-analog converter integrated circuits, as follows:

a.5.a. Analog-to-digital converters having any of the following:

a.5.a.1. A resolution of 8 bits or more, but less than 12 bits, with a total conversion time to maximum resolution of less than 10 ns;

a.5.a.2. A resolution of 12 bits with a total conversion time to maximum resolution of less than 200 ns; *or*

a.5.a.3. A resolution of more than 12 bits with a total conversion time to maximum resolution of less than 2 microseconds;

a.5.b. Digital-to-analog converters with a resolution of 12 bits or more, and a "settling time" of less than 10 ns;

a.6. Electro-optical or "optical integrated circuits" for "signal processing" having all of the following:

a.6.a. One or more internal "laser" diodes;

a.6.b. One or more internal light detecting elements; *and*

a.6.c. Optical waveguides;

a.7. Field programmable gate arrays having either of the following:

a.7.a. An equivalent usable gate count of more than 30,000 (2 input gates); *or*

a.7.b. A typical "basic gate propagation delay time" of less than 0.4 ns;

a.8. Field programmable logic arrays having either of the following:

a.8.a. An equivalent usable gate count of more than 30,000 (2 input gates); *or*

a.8.b. A toggle frequency exceeding 133 MHz;

a.9. Neural network integrated circuits;

a.10. Custom integrated circuits for which either the function is unknown, or the control status of the equipment in which the integrated circuits will be used is unknown to the manufacturer, having any of the following:

a.10.a. More than 144 terminals;

a.10.b. A typical "basic gate propagation delay time" of less than 0.4 ns; *or*

a.10.c. An operating frequency exceeding 3 GHz;

a.11. Digital integrated circuits, other than those described in 3A01.a.3 to a.10 or 3A01.a.12, based upon any compound semiconductor and having either of the following:

a.11.a. An equivalent gate count of more than 300 (2 input gates); *or*

a.11.b. A toggle frequency exceeding 1.2 GHz;

a.12. Fast Fourier Transform (FFT) processors having any of the following characteristics:

a.12.a. A rated execution time for a 1,024-point complex FFT of less than 1 ms;

a.12.b. A rated execution time for an N-point complex FFT of other than 1,024 points of less than $N \log_2 N$/10,240 ms, where N is the number of points; *or*

a.12.c. A butterfly throughput of more than 5.12 MHz;

b. Microwave or millimeter wave devices:

b.1. Electronic vacuum tubes and cathodes, as follows:

(For frequency agile magnetron tubes, see ITAR Category 11.)

Note: 3A01.b.1 does not control tubes designed or rated to operate in the Standard Civil Telecommunications Bands at frequencies not exceeding 31 GHz.

b.1.a. Travelling wave tubes, pulsed or continuous wave, as follows:

b.1.a.1. Operating at frequencies higher than 31 GHz;

b.1.a.2. Having a cathode heater element with a turn on time to rated RF power of less than 3 seconds;

b.1.a.3. Coupled cavity tubes, or derivatives thereof, with an "instantaneous bandwidth" of more than 7 percent or a peak power exceeding 2.5 kW;

b.1.a.4. Helix tubes, or derivatives thereof, with any of the following characteristics:

b.1.a.4.a. An "instantaneous bandwidth" of more than one octave, and average power (expressed in kW) times frequency (expressed in GHz) of more than 0.5;

b.1.a.4.b. An "instantaneous bandwidth" of one octave or less, and average power (expressed in kW) times frequency (expressed in GHz) of more than 1; *or*

b.1.a.4.c. "Space qualified";

b.1.b. Crossed-field amplifier tubes with a gain of more than 17 dB;

b.1.c. Impregnated cathodes for electronic tubes, with either of the following:

b.1.c.1. A turn on time to rated emission of less than 3 seconds; *or*

b.1.c.2. Producing a continuous emission current density at rated operating conditions exceeding 5 A/cm²;

b.2. Microwave integrated circuits or modules containing "monolithic integrated circuits" operating at frequencies exceeding 3 GHz;

Note: 3A01.b.2 does not control circuits or modules for equipment designed or rated to operate in the Standard Civil Telecommunications Bands at frequencies not exceeding 31 GHz.

b.3. Microwave transistors rated for operation at frequencies exceeding 31 GHz;

b.4. Microwave solid state amplifiers:

b.4.a. Operating at frequencies exceeding 10.5 GHz and having an "instantaneous bandwidth" of more than half an octave; *or*

b.4.b. Operating at frequencies exceeding 31 GHz;

b.5. Electronically or magnetically tunable band-pass or band-stop filters having more than 5 tunable resonators capable of tuning across a 1.5:1 frequency band (f_{max}/f_{min}) in less than 10 microseconds with either:

b.5.a. A band-pass bandwidth of more than 0.5 percent of center frequency; *or*

b.5.b. A band-stop bandwidth of less than 0.5 percent of center frequency;

b.6. Microwave assemblies capable of operating at frequencies exceeding 31 GHz;

b.7. Mixers and converters designed to extend the frequency range of equipment described in 3A02.c, 3A02.e or 3A02.f beyond the control limits stated therein;

c. Acoustic wave devices, as follows, and specially designed components therefor:

c.1. Surface acoustic wave and surface skimming (shallow bulk) acoustic wave devices (i.e., "signal processing" devices employing elastic waves in materials), having any of the following:

c.1.a. A carrier frequency exceeding 2.5 GHz;

c.1.b. A carrier frequency of 2.5 GHz or less, *and*:

c.1.b.1. A frequency side-lobe rejection exceeding 55 dB;

c.1.b.2. A product of the maximum delay time and the bandwidth (time in microseconds and bandwidth in MHz) of more than 100; *or*

c.1.b.3. A dispersive delay of more than 10 microseconds; *or*

c.1.c. A carrier frequency exceeding 1 GHz and a bandwidth of 250 MHz or more;

c.2. Bulk (volume) acoustic wave devices (i.e., "signal processing" devices employing elastic waves) which permit the direct processing of signals at frequencies exceeding 1 GHz;

c.3. Acoustic-optic "signal processing" devices employing interaction between acoustic waves (bulk wave or surface wave) and light waves which permit the direct processing of signals or images, including spectral analysis, correlation or convolution;

d. Electronic devices or circuits containing components, manufactured from "superconductive" materials specially designed for operation at temperatures below the "critical temperature" of at least one of the "superconductive" constituents, with any of the following:

d.1. Electromagnetic amplification:

d.1.a. At frequencies equal to or less than 31 GHz with a noise figure of less than 0 5 dB; *or*

d.1.b. At frequencies exceeding 31 GHz;

d.2. Current switching for digital circuits using "superconductive" gates with a product of delay time per gate (in seconds) and power dissipation per gate (in watts) of less than 10^{-14} J; *or*

d.3. Frequency selection at all frequencies using resonant circuits with Q-values exceeding 10,000;

e. High energy devices, as follows:

e.1. Batteries, as follows:

Note: 3A01.e.1 does not control batteries with volumes equal to or less than 26 cm³ (e.g., standard C-cells or UM-2 batteries).

e.1.a. Primary cells and batteries having an energy density exceeding 480 Wh/kg and rated for operation in the temperature range from below 243 K (−30° C) to above 343 K (70° C);

e.1.b. Rechargeable cells and batteries having an energy density exceeding 150 Wh/kg after 75 charge/discharge cycles at a discharge current equal to C/5 hours (C being the nominal capacity in ampere hours) when operating in the temperature range from below 253 K (−20° C) to above 333 K (60° C);

Technical Note: Energy density is obtained by multiplying the average power in watts (average voltage in volts times average current in amperes) by the duration of the discharge in hours to 75 percent of the open circuit voltage divided by the total mass of the cell (or battery) in kg.

e.1.c. "Space qualified" and radiation hardened photovoltaic arrays with a specific power exceeding 160 W/m² at an operating temperature of 301 K (28° C) under a tungsten illumination of 1 kW/m² at 2,800 K (2,527° C);

e.2. High energy storage capacitors, as follows:

e.2.a. Capacitors with a repetition rate of less than 10 Hz (single shot capacitors) having all of the following:

e.2.a.1. A voltage rating equal to or more than 5 kV;

e.2.a.2. An energy density equal to or more than 250 J/kg; *and*

e.2.a.3. A total energy equal to or more than 25 kJ;

e.2.b. Capacitors with a repetition rate of 10 Hz or more (repetition rated capacitors) having all of the following:

e.2.b.1. A voltage rating equal to or more than 5 kV;

e.2.b.2. An energy density equal to or more than 50 J/kg;

e.2.b.3. A total energy equal to or more than 100 J; *and*

e.2.b.4. A charge/discharge cycle life equal to or more than 10,000;

e.3. "Superconductive" electromagnets or solenoids specially designed to be fully charged or discharged in less than one second, having all of the following:

Note: 3A01.e.3. does not control "superconductive" electromagnets or solenoids specially designed for Magnetic Resonance Imaging (MRI) medical equipment.

e.3.a. Energy delivered during the discharge exceeding 10 kJ in the first second;

e.3.b. Inner diameter of the current carrying windings of more than 250 mm; *and*

e.3.c. Rated for a magnetic induction of more than 8 T or "overall current density" in the winding of more than 300 A/mm²;

e.4. Circuits or systems for electromagnetic energy storage, containing components manufactured from "superconductive" materials specially designed for operation at temperatures below the "critical temperature" of at least one of their "superconductive" constituents, having all of the following:

e.4.a. Resonant operating frequencies exceeding 1 MHz;

e.4.b. A stored energy density of 1 MJ/m³ or more; *and*

e.4.c. A discharge time of less than 1 ms;

e.5. Flash discharge type X-ray systems, and tubes therefore, having all of the following:

e.5.a. A peak power exceeding 500 MW;

e.5.b. An output voltage exceeding 500 kV; *and*

e.5.c. A pulse width of less than 0.2 microsecond;

f. Rotary input type shaft absolute position encoders having either of the following:

f.1. A resolution of better than 1 part in 265,000 (18 bit resolution) of full scale; or

f.2. An accuracy better than ±2.5 seconds of arc.

Related ECCN: * * * .

3A02A General purpose electronic equipment.

* * * * *

List of Items Controlled

a. Recording equipment, as follows, and specially designed test tape therefor:

a.1. Analog instrumentation magnetic tape recorders, including those permitting the recording of digital signals (e.g., using a high density digital recording (HDDR) module), having any of the following:

a.1.a. A bandwidth exceeding 4 MHz per electronic channel or track;

a.1.b. A bandwidth exceeding 2 MHz per electronic channel or track and having more than 42 tracks; *or*

a.1.c. A time displacement (base) error, measured in accordance with applicable IRIG or EIA documents, of less than ±0.1 microsecond;

a.2. Digital video magnetic tape recorders having a maximum digital interface transfer rate exceeding 180 Mbit/s, *except* those specially designed for television recording using a signal format standardized or recommended by the CCIR or the IEC for civil television applications;

a.3. Digital instrumentation magnetic tape data recorders employing helical scan techniques or fixed head techniques, having either of the following characteristics:

a.3.a. A maximum digital interface transfer rate exceeding 175 Mbit/s; *or*

a.3.b. "Space qualified";

Note: 3A02.a.3 does not control analog magnetic tape recorders equipped with HDDR conversion electronics and configured to record only digital data.

a.4. Equipment, with a maximum digital interface transfer rate exceeding 175 Mbit/s, designed to convert digital video magnetic tape recorders for use as digital instrumentation data recorders;

a.5. Waveform digitizers and transient recorders with both of the following characteristics:

a.5.a. Digitizing rates equal to or more than 200 million samples per second and a resolution of 10 bits or more; *and*

a.5.b. A continuous throughput of 2 Gbits/s or more;

Technical Note: For those instruments with a parallel bus architecture, the continuous throughput rate is the highest word rate multiplied by the number of bits in a word. Continuous throughput is the fastest data rate the instrument can output to mass storage without the loss of any information while sustaining the sampling rate and analog-to-digital conversion.

b. "Frequency synthesizer" "assemblies" having a "frequency switching time" from one selected frequency to another of less than 1 ms;

c. "Signal analyzers", as follows:

c.1. Capable of analyzing frequencies exceeding 31 GHz;

c.2. "Dynamic signal analyzers" with a "real-time bandwidth" exceeding 25.6 kHz, *except* those using only constant percentage bandwidth filters (also known as octave or fractional octave filters);

d. Frequency synthesized signal generators producing output frequencies, the accuracy and short term and long term stability of which are controlled, derived from or disciplined by the internal master frequency, and having any of the following:

d.1. A maximum synthesized frequency exceeding 31 GHz;

d.2. A "frequency switching time" from one selected frequency to another of less than 1 ms; *or*

d.3. A single sideband (SSB) phase noise better than—(126+20 $\log_{10}F - 20 \log_{10}f$) in dBc/Hz, where F is the off-set from the operating frequency in Hz and f is the operating frequency in MHz;

Note: 3A02.d does not control equipment in which the output frequency is either produced by the addition or subtraction of two or more crystal oscillator frequencies, or by an addition or subtraction followed by a multiplication of the result.

e. Network analyzers with a maximum operating frequency exceeding 31 GHz;

Note: 3A02.e does not control "swept frequency network analyzers" with a maximum operating frequency not exceeding 40 GHz and which do not contain a data bus for remote control interfacing.

f. Microwave test receivers with both of the following:

f.1. A maximum operating frequency exceeding 31 GHz; *and*

f.2. The capability of measuring amplitude and phase simultaneously;

g. Atomic frequency standards having either of the following characteristics:

g.1. Long term stability (aging) less (better) than 1×10^{-11}/month; *or*

g.2. "Space qualified";

Note: 3A02.g.1 does not control non-"space qualified" rubidium standards.

h. Emulators for microcircuits controlled by 3A01.a.3 or 3A01.a.9.

Note: 3A02.h does not control emulators designed for a "family" that contains at least one device not controlled by 3A01.a.3 or 3A01.a.9.

4.In Category 3 (Electronics Design, Development and Production), ECCN 3B01A is amended by revising the List of Items controlled to read as follows:

3B01A Equipment for the manufacture or testing of semiconductor devices or materials, as follows, and specially designed components and accessories therefor.

* * * * *

List of Items Controlled

a. "Stored program controlled" equipment for epitaxial growth, as follows:

a.1. Capable of producing a layer thickness uniform to less than ±2.5% across a distance of 75 mm or more;

a.2. Metal organic chemical vapour deposition (MOCVD) reactors specially designed for compound semiconductor crystal growth by the chemical reaction between materials controlled by 3C03 or 3C04;

a.3. Molecular beam epitaxial growth equipment using gas sources;

b. "Stored program controlled" equipment designed for ion implantation, having any of the following:

b.1. An accelerating voltage exceeding 200 keV;

b.2. Specially designed and optimized to operate at accelerating voltages of less than 10 keV;

b.3. Direct write capability; *or*

b.4. Capable of high energy oxygen implant into a heated semiconductor material "substrate";

c. "Stored program controlled" anisotropic plasma dry etching equipment, as follows:

c.1. With cassette-to-cassette operation and load-locks, and having either of the following:

c.1.a. Magnetic confinement; *or*

c.1.b. Electron cyclotron resonance (ECR);

c.2. Specially designed for equipment controlled by 3B01.e and having either of the following:

c.2.a. Magnetic confinement; *or*

c.2.b. Electron cyclotron resonance (ECR);

d. "Stored program controlled" plasma enhanced CVD equipment, as follows:

d.1. With cassette-to-cassette operation and load-locks, and having either of the following:

d.1.a. Magnetic confinement; *or*

d.1.b. Electron cyclotron resonance (ECR);

d.2. Specially designed for equipment controlled by 3B01.e and having either of the following:

d.2.a. Magnetic confinement; *or*

d.2.b. Electron cyclotron resonance (ECR);

e. "Stored program controlled" automatic loading multi-chamber central wafer handling systems, having interfaces for wafer input and output, to

which more than two pieces of semiconductor processing equipment are to be connected, to form an integrated system in a vacuum environment for sequential multiple wafer processing;

Note: 3B01.e does not control automatic robotic wafer handling systems not designed to operate in a vacuum environment.

f. "Stored program controlled" lithography equipment, as follows:

f.1. Align and expose step and repeat equipment for wafer processing using photo-optical or X-ray methods, having any of the following:

f.1.a. A light source wavelength shorter than 400 nm; *or*

f.1.b. Capable of producing a pattern with a minimum resolvable feature size of 0.7 micrometers or less when calculated by the following formula:

$$MRF = \frac{(\text{an exposure light source wavelength in } \mu m) \times (\text{K factor})}{\text{numerical aperture}}$$

where the K factor =0.7.

MRF=minimum resolvable feature size.

f.2. Equipment specially designed for mask making or semiconductor device processing using deflected focussed electron beam, ion beam or "laser" beam, with any of the following:

f.2.a. A spot size smaller than 0.2 micrometer;

f.2.b. Capable of producing a pattern with a feature size of less than 1 micrometer; *or*

f.2.c. An overlay accuracy of better than ±0.20 micrometer (3 sigma);

g. Masks or reticles, as follows:

g.1. For integrated circuits controlled by 3A01;

g.2. Multi-layer masks with a phase shift layer;

h. "Stored programme controlled" test equipment, specially designed for testing semiconductor devices and unencapsulated dice, as follows:

h.1. For testing S-parameters of transistor devices at frequencies exceeding 31 GHz;

h.2. For testing integrated circuits capable of performing functional (truth table) testing at a pattern rate of more than 40 MHz;

Note: 3B01.h.2 does not control test equipment specially designed for testing:

a. "assemblies" or a class of "assemblies" for home or entertainment applications;

b. Uncontrolled electronic components, "assemblies" or integrated circuits.

h.3. For testing microwave integrated circuits at frequencies exceeding 3 GHz;

Note: 3B01.h.3 does not control test equipment specially designed for testing microwave integrated circuits operating solely in the Standard Civil Telecommunication Bands at frequencies not exceeding 31 GHz.

h.4. Electron beam systems designed for operation at 3 keV or below, or "laser" beam systems, for the non-contactive probing of powered-up semiconductor devices, with both of the following:

h.4.a. Stroboscopic capability with either beam-blanking or detector strobing; *and*

h.4.b. An electron spectrometer for voltage measurement with a resolution of less than 0.5 V;

Note: 3B01.h.4 does not control scanning electron microscopes, *except* when specially designed and instrumented for the non-contactive probing of powered-up semiconductor devices.

5. In Category 3 (Electronics Design, Development and Production), ECCN 3C02A is amended by revising the List of Items Controlled to read as follows:

3C02A Resist materials, and "substrates" coated with controlled resists.

* * * * *

List of Items Controlled

a. Positive resists for semiconductor lithography specially adjusted (optimized) for use at wavelengths below 370 nm;

b. All resists, for use with electron beams or ion beams, with a sensitivity of 0.01 microcoulomb/mm² or better;

c. All resists, for use with X-rays, with a sensitivity of 2.5 mJ/mm² or better;

d. All resists optimized for surface imaging technologies, including silyated resists.

Technical Note: Silyation techniques are defined as processes incorporating oxidation of the resist surface to enhance performance for both wet and dry developing.

6. In Category 3 (Electronics Design, Development and Production), ECCN 3E01A is revised and ECCN 3E02A is amended by revising the List of Items Controlled to read as follows:

3E01A Technology according to the General Technology Note for the "development" or "production" of equipment or materials controlled by 3A01, 3A02, 3B01, 3C01, 3C02, 3C03, or 3C04.

Requirements

Validated License Required: QSTVWYZ

Unit: $ value

Reason for Control: NS and MT (see Notes)

GTDR: Yes, except MT (see Notes)

GTDU: No

Note 1: MT controls apply to technology specially designed for the "development" or "production" of items described in 3A01.a.1.

Note 2: 3E01 does not control technology for the "development" or "production" of:

a. Microwave transistors operating at frequencies below 31 GHz;

b. Integrated circuits controlled by 3A01.a.3 to a.12, having both of the following characteristics:

1. Using technology of one micrometer or more, *and*

2. Not incorporating multi-layer structures.

N.B.: This Note does not preclude the export of multilayer technology for devices incorporating a maximum of two metal layers and two polysilicon layers.

3E02A Other technology for the "development" or "production" of commodities described in this entry.

* * * * *

List of Items Controlled

Technology for the "development" or "production" of the following commodities:

a. Vacuum microelectronic devices;

b. Hetero-structure semiconductor devices such as high electron mobility transistors (HEMT), hetero-bipolar transistors (HBT), quantum well or super lattice devices;

c. "Superconductive" electronic devices;

d. Substrates of films of diamond for electronic components.

7. In Category 3 (Electronics Design, Development and Production), under the heading "Notes for Category 3", Advisory Notes 1 and 3 are revised and new Advisory Notes 4 and 5 are added to read as follows:

Notes for Category 3

Advisory Note 1: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Group W of the items controlled by Category 3 for national security reasons, *except* equipment controlled by 3B01.a.2, 3B01.a.3, 3B01.f.1, or 3B01.f.2, and "software" specially designed and technology "required" therefor controlled by 3D or 3E.

Advisory Note 2: * * *

Advisory Note 3: Licenses are likely to be approved, as administrative exceptions, for

exports to satisfactory end-users in Country Groups Q, W, Y, and the People's Republic of China of items controlled by 3A01.a.4.a or a.4.b.

Advisory Note 4: Licenses will receive favorable consideration for exports to satisfactory end-users in Country Group W of equipment controlled by 3B01.f.2 and "software" specially designed and technology "required" therefor controlled by 3D or 3E.

Advisory Note 5: Licenses will receive favorable consideration for exports to satisfactory end-users in Country Group Q of items controlled by Category 3 for national security reasons, except equipment controlled by 3B01.a.2, 3B01.a.3, 3B01.f.1, or 3B01.f.2, and "software" specially designed and technology "required" therefor controlled by 3D or 3E.

8. In Category 4 (Computers), ECCN 4A01A is amended by revising the heading of the entry and by revising the "List of Items Controlled" to read as follows:

4A01A Electronic computers and related equipment, as described in this entry, and "assemblies" and specially designed components therefor.

* * * * *

List of Items Controlled

Electronic computers and related equipment, as follows, and "assemblies" and specially designed components therefor:

a. Specially designed to have either of the following characteristics:

a.1. Rated for operation at an ambient temperature below 228 K (−45° C) or above 358 K (85° C);

Note: The temperature limits in 4A01.a.1. do not apply to computers specially designed for civil automobile and railway train applications.

a.2. Radiation-hardened to exceed any of the following specifications:

a.2.a. Total Dose 5 x 10^5 Rads (Si);

a.2.b. Dose Rate Upset 5 x 10^8 Rads (Si)/sec; *or*

a.2.c. Single Event Upset 1 x 10^{-7} Error/bit/day;

Note: Equipment designed or rated for transient ionizing radiation is controlled by the ITAR.

b. Having characteristics or performing functions exceeding the limits in the "information security" entries in Category 5.

Related ECCNs: * * *

9. In Category 4 (Computers), ECCN 4A03A is amended by revising the "List of Items Controlled" to read as follows:

4A03A "Digital computers", "assemblies", and related equipment therefor, as described in this entry, and specially designed components therefor.

* * * * *

List of Items Controlled

Note 1: 4A03 includes vector processors, array processors, logic processors, and equipment for "image enhancement" or signal processing".

Note 2: The control status of the "digital computers" or related equipment described in 4A03 is governed by the control status of other equipment or systems provided:

a. The "digital computers" or related equipment are essential for the operation of the other equipment or systems;

b. The "digital computers" or related equipment are not a "principal element" of the other equipment or systems; *and*

N.B. 1: The control status of "signal processing" or "image enhancement" equipment described in 4A03.g and specially designed for other equipment with functions limited to those required for the other equipment is determined by the control status of the other equipment even if it exceeds the "principal element" criterion.

N.B. 2: For the control status of "digital computers" or related equipment for telecommunications equipment, see the telecommunications entries in Category 5.

c. The technology for the "digital computers" and related equipment is governed by 4E.

Note 3: "Digital computers" or related equipment are not controlled by 4A03 provided:

a. They are essential for medical applications;

b. The equipment is substantially restricted to medical applications by nature of its design and performance;

c. The equipment does not have "user-accessible programmability" other than that allowing for insertion of the original or modified "programs" supplied by the original manufacturer;

d. The "composite theoretical performance" of any "digital computer" that is not designed or modified but essential for the medical application does not exceed 20 million composite theoretical operations per second (Mtops); *and*

e. The technology for the "digital computers" or related equipment is governed by 4E.

"Digital computers", "assemblies", and related equipment therefor, as follows, and specially designed components therefor:

a. Designed for combined recognition, understanding and interpretation of image or continuous (connected) speech;

b. Designed or modified for "fault tolerance";

Note: For the purposes of 4A03.b, "digital computers" and related equipment are not considered to be designed or modified for "fault tolerance", if they use:

1. Error detection or correction algorithms in "main storage";

2. The interconnection of two "digital computers" so that, if the active central processing unit fails, an idling but mirroring central processing unit can continue the system's functioning;

3. The interconnection of two central processing units by data channels or by use of shared storage to permit one central processing unit to perform other work until the second central processing unit fails, at which time the first central processing unit takes over in order to continue the system's functioning; *or*

4. The synchronization of two central processing units by "software" so that one central processing unit recognizes when the other central processing unit fails and recovers tasks from the failing unit.

c. "Digital computers" having a "composite theoretical performance" ("CTP") exceeding 12.5 million theoretical operations per second (Mtops);

d. "Assemblies" specially designed or modified to enhance performance by aggregation of "computing elements", as follows:

d.1. Designed to be capable of aggregation in configurations of 16 or more "computing elements"; *or*

d.2. Having a sum of maximum data rates on all data channels available for connection to associated processors exceeding 40 MBytes/s;

Note 1: 4A03.d applies only to "assemblies" and programmable interconnections not exceeding the limits in 4A03.c, when shipped as unintegrated "assemblies". It does not apply to "assemblies" inherently limited by nature of their design for use as related equipment controlled by 4A03.e to 4A03.k.

Note 2: 4A03.d does not control "assemblies" specially designed for a product or family of products whose maximum configuration does not exceed the limits of 4A03.c.

e. Disk drives and solid state storage equipment:

e.1. Magnetic, erasable optical or magneto-optical disk drives with a "maximum bit transfer rate" ("MBTR") exceeding 47 Mbit/s;

e.2. Solid state storage equipment, other than "main storage" (also known as solid state disks or RAM disks), with a "maximum bit transfer rate" ("MBTR") exceeding 80 Mbit/s;

f. Input/output control units designed for use with equipment controlled by 4A03.e;

g. Equipment for "signal processing" or "image enhancement" having a "composite theoretical performance" ("CTP") exceeding 8.5 million theoretical operations per second (Mtops);

h. Graphics accelerators or graphics coprocessors exceeding a "3–D Vector Rate" of 400,000 or, if supported by 2–D vectors only, a "2–D vector rate" of 600,000;

Note: The provisions of 4A03.h do not apply to work stations designed for and limited to:

1. Graphic arts (e.g., printing, publishing); *and*

2. The display of two-dimensional vectors.

i. Color displays or monitors having more than 12 resolvable elements per mm in the direction of the maximum pixel density;

Note 1: 4A03.i does not control displays or monitors not specially designed for electronic computers.

Note 2: Displays specially designed for air traffic control (ATC) systems are treated as specially designed components for ATC systems under Category 6.

j. Equipment performing analog-to-digital or digital-to-analog conversions exceeding the limits in 3A01.a.5;

k. Equipment containing "terminal interface equipment" exceeding the limits in 5A02.c;

Note: For the purposes of 4A03.k, "terminal interface equipment" includes "local area network" interfaces, modems and other communications interfaces. "Local area network" interfaces are evaluated as "network access controllers".

10. In Category 4 (Computers), following ECCN 4E96G, under the heading "Notes for Category 4", Advisory Notes 1, 3, 4, 5, and 6 are revised and a new Advisory Note 7 is added to read as follows:

Notes for Category 4

* * * * *

Advisory Note 1: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Group W of items controlled by Category 4 for national security reasons, except:

a. Computers controlled by 4A01 or 4A02;

b. "Digital computers" controlled by 4A03.c having a "CTP" exceeding 41 Mtops and specially designed components therefor;

c. Computers controlled by 4A04, and specially designed related equipment, "assemblies" and components therefor;

d. "Software" specially designed and technology "required" for the equipment described in .a, .b, or .c of this Advisory Note that are controlled by 4D or 4E.

* * * * *

Advisory Note 3: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Groups QWY and the People's Republic of China of "digital computers" controlled by 4A03.c, or specially designed components therefor, and "software" controlled by 4D01, provided that:

a. They will be operated by civil end-users for civil applications;

b. They have been primarily designed and used for non-strategic applications;

c. The "CTP" of the "digital computers" does not exceed 20 Mtops;

d. They do not contain any related equipment controlled for national security reasons;

e. When exported as enhancements, the enhanced "digital computer" does not exceed the limit in this Advisory Note 3.c;

f. They are not exported as enhancements to computers designed within Country Groups QWY or the People's Republic of China;

Note: This does not preclude the enhancement of such computers when they are used by civil end-users in civil applications.

g. Any controlled "software" is the minimum required for the "use" of the approved "digital computers";

h. Exports of items covered by this Advisory Note 3 shall be subject to the following restrictions:

1. The equipment will be used primarily for the specific non-strategic application for which the export has been approved; *and*

2. The equipment will not be used for the design, development, or production of items controlled for national security reasons.

Advisory Note 4: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Groups QWY and the People's Republic of China of equipment controlled by 4A03.e or .f provided that:

a. The "maximum bit transfer rate" ("MBTR") does not exceed 110 million bit/s;

b. The equipment is exported as part of a computer system or as an enhancement to a previously exported system;

c. License applications for exports of items covered by this Advisory Note are subject to a 30-day COCOM notification period prior to export if the "maximum bit transfer rate" ("MBTR") of the equipment exceeds 65 Mbit/s; *and*

d. Exports of items covered by this Advisory Note shall be subject to the following restrictions:

1. The equipment will be used primarily for the specific non-strategic application for which the export has been approved; *and*

2. The equipment will not be used for the design, development or production of items controlled for national security reasons.

Advisory Note 5: Licenses will receive favorable consideration for exports to satisfactory end-users in Country Group W of the following:

a. "Hybrid computers" controlled by 4A02, when not combined with specially designed "software" for modelling simulation or design integration for complete rocket systems and unmanned air vehicle systems;

b. Computers controlled by 4A04, and specially designed related equipment, "assemblies" and components therefor;

c. "Software" specially designed and technology "required" for the equipment described in this Advisory Note 5.a or .b that are controlled by 4D or 4E.

Advisory Note 6: Licenses will receive favorable consideration for exports to satisfactory end-users in Country Groups QWY and the People's Republic of China of "digital computers" or related equipment therefor controlled by 4A03.c, .e, .f, or .g, or "software" controlled by 4D01, provided that:

a. They will be operated by civil end-users for civil applications;

b. They have been primarily designed and used for non-strategic applications;

c. They do not exceed any of the following limits:

1. "CTP" of the "digital computers"—23 Mtops;

2. "Maximum bit transfer rate" ("MBTR") of disk drives or input/output control units controlled by 4A03.e or 4A03.f - 110 Mbit/s; *or*

3. "CTP" of the "signal processing" or "image enhancement" equipment—12.5 Mtops;

d. They do not contain any other related equipment controlled for national security reasons;

e. When exported as enhancements, the enhanced "digital computer" does not exceed the limit in this Advisory Note 6.c;

f. They are not shipped as enhancements to computers designed within Country Groups QWY or the People's Republic of China;

g. Any controlled "software" is the minimum required for the "use" of the approved "digital computers" and related equipment;

h. Exports of items covered by this Advisory Note 6 shall be subject to the following restrictions:

1. A signed statement must be submitted by a responsible representative of the end-user(s) or the importing agency describing the end-use and certifying that:

a. The "digital computers" or related equipment will:

1. Be used only for civil applications; *and*

2. Not be reexported or otherwise disposed of without prior written authorization from the Office of Export Licensing;

b. Responsible Western representatives of the supplier will:

1. Have the right of access to the "computer using facility" and all equipment, wherever located, during normal working hours and at any other time the equipment is operating; *and*

2. Be furnished information demonstrating continued authorized application of the equipment; and

3. Be notified of any significant change of application or of other facts, on which the license was based;

2. The following information must be clearly stated on an export application for equipment controlled by this Advisory Note:

a. A full description of the equipment and its intended application and workload; and

b. A complete identification of all end-users and their activities.

Advisory Note 7: Licenses will receive favorable consideration for exports to satisfactory end-users in Country Group Q of all items controlled by Category 4 for national security reasons, *except:*

a. Computers controlled by 4A01 or 4A02;

b. "Digital computers" controlled by 4A03.c having a "CTP" exceeding 41 Mtops, and specially designed components therefor;

c. Computers controlled by 4A04, and specially designed related equipment, "assemblies" and components therefor;

d. "Software" specially designed and technology "required" for the equipment described in this Advisory Note 7.a, .b, or .c, controlled by 4D or 4E for national security reasons.

11. In Category 4 (Computers), following Advisory Note 7, the heading

"Information on How to Calculate Composite Theoretical Performance (CTP)" and the Technical Note following the heading are revised to read as follows:

Information on How to Calculate "Composite Theoretical Performance" ("CTP"):

Technical Note: "Composite theoretical performance" (CTP).

Abbreviations Used in This Technical Note

CE "computing element" (typically an arithmetic logical unit)
FP floating point
XP fixed point
t execution time
XOR exclusive OR
CPU central processing unit
TP theoretical performance (of a single CE)
CTP "composite theoretical performance" (multiple CEs)
R effective calculating rate

Execution time 't' is expressed in microseconds, and "CTP" is expressed in Mtops (millions of theoretical operations per second).

"CTP" is a measure of computational performance given in millions of theoretical operations per second (Mtops). In calculating the "Composite Theoretical Performance" ("CTP") of an aggregation of "Computing Elements" ("CEs"), the following three steps are required:

1. Calculate the effective calculating rate (R) for each "computing element" ("CE");

2. Apply the word length adjustment to this rate, resulting in a Theoretical Performance (TP) for each "computing element" ("CE"). Select the maximum resulting value of TP;

3. If there is more than one "computing element" ("CE"), combine the Theoretical Performances (TPs) resulting in a "Composite Theoretical Performance" ("CTP") for the configuration.

Note 1: For aggregations of multiple "computing elements" ("CEs") that have both shared and unshared memory subsystems, the calculation of "CTP" is completed hierarchically, in two steps: first, aggregate the groups of "computing elements" ("CEs") sharing memory, second calculate the "CTP" of the groups using the calculation method for multiple "computing elements" ("CEs") not sharing memory.

Note 2: This aggregation should not be applied to computers connected through a decontrolled "local area network".

Note 3: "Computing elements" ("CEs") that are limited to input/output and peripheral functions (e.g., disk drive, communication and video display controllers) are not aggregated into the "CTP" calculation.

The following table shows the method of calculating the Effective Calculating rate (R) for each "Computing Element" ("CE"):

For computing elements (CEs) implementing:	Effective calculating Rate, R
XP only (R_{xp})	$1 \div 3 * (t_{xp\ add})$. If no add is implemented use: $1 \div (t_{xp\ mult})$. If neither add nor multiply is implemented use the fastest available arithmetic operation as follows: $1 \div 3 * t_{xp}$.
FP only (R_{fp})	See Notes X and Z. Max $1 \div T_{fp\ add}$, $1 \div t_{fp\ mult}$.
Both FP and XP (R) ..	See Notes X and Y. Calculate both R_{xp}, R_{fp}. $1 \div 3 * t_{log}$.
For simple logic processors not implementing any of the specified arithmetic operations.	Where t_{log} is the execution time of the XOR, or for logic hardware not implementing the XOR, the fastest simple logic operation.
For special logic processors not using any of the specified arithmetic or logic operations.	See Notes X and Z. $R = R_t * WL/64$. Where R is the number of results per second, WL is the number of *bits* upon which the logic operation occurs, and 64 is a factor to normalize to a 64 bit operation.

Note X: For "CEs" that perform multiple arithmetic operations of a specific type in a single cycle (e.g., two additions per cycle), the execution time t is given by:

$$t = \frac{\text{cycle time}}{\text{the number of arithmetic operations per machine cycle.}}$$

"Computing elements" ("CEs") that perform different types of arithmetic operations in a single machine cycle are to be treated as multiple separate "computing elements" ("CEs") performing simultaneously (e.g., a "CE" performing an addition and a multiplication in one cycle is to be treated as two "CEs", the first performing an addition in one cycle and the second performing a multiplication in one cycle).

If a single "computing element" ("CE") has both scalar function and vector function, use the shorter execution time value.

Note Y: If no FP add or FP multiply are implemented, but the "CE" performs FP divide:

$$R_{f_p} = \frac{1}{t_{f_p\ divide;}}.$$

If the divide is not implemented, the fp reciprocal should be used.

If none of the specified instructions is implemented, the effective floating point (FP) rate is 0.

Note Z: In simple logic operations, a single instruction performs a single logic manipulation of no more than two operands of given lengths.

In complex logic operations, a single instruction performs multiple logic manipulations to produce one or more results from two or more operands.

Rates should be calculated for all supported operand lengths, using the fastest executing instruction for each operand length based on:

1. Register-to-register. Exclude extraordinarily short execution times generated for operations on a predetermined operand or operands (for example, multiplication by 0 or 1).

If no register-to-register operations are implemented, continue with (2).

2. The faster of register-to-register memory or memory-to-register operations; if these also do not exist, then continue with (3).

3. Memory-to-memory.

In each case above, use the shortest execution time certified by the manufacturer.

TP for each supported operand length WL: Adjust the effective rate R (or R_t) by the word length adjustment L as follows:

$$TP = R * L, \text{ where } L = (1/3 + WL/96).$$

Note: The word length WL used in these calculations is the operand length in bits. (If an operation uses operands of different lengths, select the largest word length.)

The combination of a mantissa ALU and an exponent ALU of a floating point processor or unit is considered to be one "computing element" ("CE") with a Word Length (WL) equal to the number of bits in the data representation (typically 32 or 64) for purposes of the "Composite Theoretical Performance" ("CTP") calculation.

This adjustment is not applied to specialized logic processors that do not use XOR instructions. In this case TP = R.

Select the maximum resulting value of TP for:

Each XP-only "CE" (R_{xp});
Each FP-only "CE" (R_{fp});
Each combined FP and XP "CE" (R);
Each simple logic processor not implementing any of the specified arithmetic operations; *and*
Each special logic processor not using any of the specified arithmetic or logic operations.

"CTP" for aggregations of "CEs", including CPUs:

For a CPU with a single "CE", "CTP" = TP (for CEs performing both fixed and floating point operations, TP = max (TP_{fp}, TP_{xp})).

For aggregations of multiple "CEs" operating simultaneously:

Note 1: For configurations that do not allow all of the "CEs" to run simultaneously, the configuration of permissible "CEs" that provides the largest "CTP" should be used. The TP of each contributing "CE" is to be calculated at its maximum value theoretically possible before the "CTP" of the combination is derived.

Note 2: A single integrated circuit chip or board assembly may contain multiple "CEs".

Note 3: Simultaneous operations are assumed to exist when the computer manufacturer claims concurrent, parallel or simultaneous operation or execution in a manual or brochure for the computer.

"CTP" = $TP_1 + C_2 * TP_2 + \ldots + C_n * TP_n$, where TP_1 is the highest of the TPs, and C_i is a coefficient determined by the strength of the interconnection between "CEs", as follows:

For multiple "CEs" sharing memory:

$C_2 = C_3 = C_4 = \ldots = C_n = 0.75$.

Note: "CEs" share memory if they access a common segment of solid state memory. This memory may include cache storage, main storage, or other internal memory. Peripheral memory devices such as disk drives, tape drives, or RAM disks are not included.

For multiple "CEs" not sharing memory, interconnected by one or more data channels:

$$C_i = \frac{8 * S_i}{(WL_i * TP_i)}$$

(i = 2, ..., n) where S_i = sum of the maximum data rates (in units of MByte/sec.) for all data channels connected to the i^{th} "CE" or group of "CEs" sharing memory.

Note: This does not include channels dedicated to transfers between one individual processor and its most immediate memory or related equipment.

WL_i is the operand length for which TP_i was obtained, and the factor 8 normalizes S_i (measured in bytes per second) and WL (given in bits).

Note: If C_i exceeds 0.75, the formula for a "CE" or group of "CEs" sharing direct addressable memory applies (i.e., C_i cannot exceed 0.75).

12. In Category 5 (Telecommunications and "Information Security"), Subcategory I "Telecommunications", ECCN 5A01A is amended by revising the heading of the entry to read as follows:

5A01A Any type of telecommunications equipment having any of the characteristics, functions or features described in this entry.

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13. In Category 5 (Telecommunications and "Information Security"), Subcategory I "Telecommunications", ECCN 5A02A is revised to read as follows:

5A02A "Telecommunication transmission equipment", or systems and specially designed components and accessories therefor, having any of the characteristics, functions or features described in this entry.

Requirements

Validated License Required: QSTVWYZ

Unit: Equipment in number; parts and accessories in $ value

Reason for Control: NS

GLV: $5,000

GCT: Yes

GFW: Yes

List of Items Controlled

Note: "Telecommunication transmission equipment"

a. Categorized as follows, or combinations thereof:

1. Radio equipment (e.g., transmitters, receivers and transceivers);
2. Line terminating equipment;
3. Intermediate amplifier equipment;
4. Repeater equipment;
5. Regenerator equipment;
6. Translation encoders (transcoders);
7. Multiplex equipment (statistical multiplex included);
8. Modulators/demodulators (modems);
9. Transmultiplex equipment (see CCITT Rec. G.701);
10. "Stored program controlled" digital cross-connection equipment;
11. "Gateways" and bridges;
12. "Media access units"; and

b. Designed for use in single or multi-channel communication via:

1. Wire (line);
2. Coaxial cable;
3. Optical fiber cable;
4. Electromagnetic radiation.

"Telecommunication transmission equipment" or systems and specially designed components and accessories therefor, having any of the following characteristics, functions or features:

a. Employing digital techniques, including digital processing of analog signals, and designed to operate at a "digital transfer rate" at the highest multiplex level exceeding 45 Mbit/s or a "total digital transfer rate" exceeding 90 Mbit/s;

Note: 5A02.a does not control equipment specially designed to be integrated and operated in any satellite system for civil use.

b. Being "stored program controlled" digital cross connect equipment with a "digital transfer rate" exceeding 8.5 Mbit/s per port;

c. Being equipment containing:

c.1. Modems using the "bandwidth of one voice channel" with a "data signalling rate" exceeding 19,200 bit/s;

c.2. "Communication channel controllers" with a digital output having a "data signalling rate" exceeding 64,000 bit/s per channel; or

c.3. "Network access controllers" and their related common medium having a "digital transfer rate" exceeding 33 Mbit/s;

Note: If any uncontrolled equipment contains a "network access controller", it cannot have any type of telecommunications interface except those described in, but not controlled by, 5A02.c.

d. Employing a "laser" and having any of the following characteristics:

d.1. Having a transmission wavelength exceeding 1,000 nm;

d.2. Employing analog techniques and having a bandwidth exceeding 45 MHz;

d.3. Employing coherent optical transmission or coherent optical detection techniques (also called optical heterodyne or homodyne techniques);

d.4. Employing wavelength division multiplexing techniques; *or*

d.5. Performing "optical amplification";

e. Being radio equipment operating at input or output frequencies exceeding:

e.1. 31 GHz for satellite-earth station applications; *or*

e.2. 26.5 GHz for other applications;

Note: 5A02.e.2 does not control equipment for civil use when conforming with an ITU allocated band between 26.5 GHz and 31 GHz.

f. Being radio equipment:

f.1. Employing quadrature-amplitude-modulation (QAM) techniques above level 4 if the "total digital transfer rate" exceeds 8.5 Mbit/s;

f.2. Employing quadrature-amplitude-modulation (QAM) techniques above level 16 if the "total digital transfer rate" is equal to or less than 8.5 Mbit/s; *or*

f.3. Employing other digital modulation techniques and having a "spectral efficiency" greater than 3 bit/sec/Hz;

Note: 5A02.f.2 does not control equipment specially designed to be integrated and operated in any satellite system for civil use.

g. Being radio equipment operating in the 1.5 to 87.5 MHz band and having either of the following characteristics:

g.1.a. Automatically predicting and selecting frequencies and "total digital transfer rates" per channel to optimize the transmission; *and*

g.1.b. Incorporating a linear power amplifier configuration having a capability to support multiple signals simultaneously at an output power of 1 kW or more in the 1.5 to 30 MHz frequency range or 250 W or more in the 30 to 87.5 MHz frequency range, over an "instantaneous bandwidth" of one octave or more and with an output harmonic and distortion content of better than −80 dB; *or*

g.2. Incorporating adaptive techniques providing more than 15 dB suppression of an interfering signal;

h. Being radio equipment employing "spread spectrum" or "frequency agility" (frequency hopping) techniques having any of the following characteristics:

h.1. User programmable spreading codes; *or*

h.2. A total transmitted bandwidth that is 100 or more times the bandwidth of any one information channel and in excess of 50 kHz;

i. Being digitally controlled radio receivers having more than 1,000 channels, which:

i.1. Search or scan automatically a part of the electromagnetic spectrum;

i.2. Identify the received signals or the type of transmitter; *and*

i.3. Have a "frequency switching time" of less than 1 ms;

j. Providing functions of digital "signal processing" as follows:

j.1. Voice coding at rates of less than 2,400 bit/s;

j.2. Employing circuitry that incorporates "user-accessible programmability" of digital "signal processing" circuits exceeding the limits of 4A03.g;

k. Being underwater communications systems having any of the following characteristics:

k.1. An acoustic carrier frequency outside the range of 20 to 60 kHz;

k.2. Using an electromagnetic carrier frequency below 30 kHz; *or*

k.3. Using electronic beam steering techniques.

14. In Category 5 (Telecommunications and "Information Security"), Subcategory I "Telecommunications", ECCN 5A03A is revised to read as follows:

5A03A "Stored program controlled" switching equipment and related signalling systems having any of the characteristics, functions or features described in this entry, and specially designed components and accessories therefor.

Requirements

Validated License Required: QSTVWYZ

Unit: Equipment in number; parts and accessories in $ value

Reason for Control: NS

GLV: $5,000

GCT: Yes

GFW: Yes

List of Items Controlled

"Stored program controlled" switching equipment and related signalling systems having any of the following characteristics, functions or features; and specially designed components and accessories therefor:

Note: Statistical multiplexors with digital input and digital output that provide switching are treated as "stored program controlled" switches.

a. "Common channel signalling";

Note: Signalling systems in which the signalling channel is carried in and refers to no more than 32 multiplexed channels forming a trunk line of no more than 2.1 Mbit/s, and in which the signalling information is carried in a fixed, time division multiplexed channel without the use of labelled messages, are not considered to be "common channel signalling" systems.

b. Containing "Integrated Services Digital Network" (ISDN) functions and having either of the following:

b.1. Switch-terminal (e.g., subscriber line) interfaces with a "digital transfer rate" at the highest multiplex level exceeding 192,000 bit/s, including the associated signalling channel (e.g., 2B+D); *or*

b.2. The capability that a signalling message received by a switch on a given channel that is related to a communication on another channel may be passed through to another switch;

Note: 5A03.b does not preclude:

a. The evaluation and appropriate actions taken by the receiving switch.

b. Unrelated user message traffic on a D channel of ISDN.

c. Multi-level priority and pre-emption for circuit switching;

Note: 5A03.c does not control single-level call pre-emption.

d. "Dynamic adaptive routing";

e. Routing or switching of "datagram" packets;

f. Routing or switching of "fast select" packets;

Note: The restrictions of 5A03.e and 5A03.f do not apply to networks restricted to using only "network access controllers" or to "network access controllers" themselves.

g. Designed for automatic hand-off of cellular radio calls to other cellular switches or automatic connection to a centralized subscriber data base common to more than one switch;

h. Packet switches, circuit switches and routers with ports or lines exceeding either:

h.1. A "data signalling rate" of 64,000 bit/s per channel for a "communications channel controller"; *or*

Note: 5A03.h.1 does not preclude the multiplexing over a composite link of communications channels not controlled by 5A03.h.1.

h.2. A "digital transfer rate" of 33 Mbit/s for a "network access controller" and related common media;

i. "Optical switching";

j. Employing "Asynchronous Transfer Mode" (ATM) techniques;

k. Containing stored program controlled digital crossconnect equipment with "digital transfer rate" exceeding 8.5 Mbit/s per port.

15. In Category 5 (Telecommunications and "Information Security"), Subcategory I "Telecommunications", ECCN 5A04A is amended by revising the heading of the entry and the Requirements section to read as follows:

5A04A Centralized network control having the characteristics described in this entry.

Requirements

Validated License Required: QSTVWYZ

Unit: Equipment in number; parts and accessories in § value

Reason for Control: NS

GLV: $5,000

GCT: Yes

GFW: Yes

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16. In Category 5 (Telecommunications and "Information Security"), Subcategory I "Telecommunications", ECCN 5A05A is revised to read as follows:

5A05A Optical fiber communication cables, optical fibers and specially designed components and accessories therefor.

Requirements

Validated License Required: QSTVWYZ

Unit: Meters

Reason for Control: NS

GLV: $3,000

GCT: Yes

GFW: Yes

List of Items Controlled

Optical fiber communication cables, optical fibers and specially designed components and accessories therefor, as follows:

a. Optical fibers or cables of more than 50 m in length having either of the following characteristics:

a.1. Designed for single mode operation; *or*

a.2. For optical fibers, capable of withstanding a proof test tensile stress of 2×10^9 N/m² or more;

Technical Note: Proof Test: On-line or off-line production screen testing that dynamically applies a prescribed tensile stress over a 0.5 to 3 m length of fiber at a running rate of 2 to 5 m/s while passing between capstans approximately 150 mm in diameter. The ambient temperature is a nominal 293 K and relative humidity 40%.

N.B.: Equivalent national standards may be used for executing the proof text.

b. Components and accessories specially designed for the optical fibers or cables controlled by 5A05.a, except connectors for use with optical fibers or cables with a repeatable coupling loss of 0.5 dB or more;

c. Optical fiber cables and accessories designed for underwater use.

Note: For fiber optic hull penetrators or connectors, see 8A02.c.

17. In Category 5 (Telecommunications and "Information Security"), Subcategory I "Telecommunications", ECCN 5A06A is revised to read as follows:

5A06A Phased array antennas, operating above 10.5 GHz, containing active elements and distributed components, and designed to permit electronic control of beam shaping and pointing, except those for landing systems with instruments meeting ICAO standards (microwave landing systems (MLS)).

Requirements

Validated License Required: QSTVWYZ

Unit: Equipment in number; parts and accessories in $ value

Reason for Control: NS

GLV: $5,000

GCT: Yes

GFW: Yes

18. In Category 5 (Telecommunications and "Information Security"), Subcategory I "Telecommunications", ECCN 5B01A is amended by revising the heading of the entry and the Requirements section to read as follows:

5B01A Equipment, and specially designed components and accessories therefor, specially designed for the "development", "production", or "use" of equipment, materials, or functions controlled by the entries in the telecommunications section of Category 5 for national security reasons.

Requirements

Validated License Required: QSTVWYZ

Unit: Equipment in number; parts and accessories in $ value

Reason for Control: NS

GLV: $5,000

GCT: Yes

GFW: Yes

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19. In Category 5 (Telecommunications and "Information Security"), Subcategory I "Telecommunications", ECCN 5B02A is revised to read as follows:

5B02A Other equipment.

Requirements

Validated License Required: QSTVWYZ

Unit: Equipment in number; parts and accessories in $ value

Reason for Control: NS

GLV: $5,000

GCT: Yes

GFW: Yes

List of Items Controlled

a. Bit error rate (BER) test equipment designed or modified to test the equipment controlled by 5A02.a;

b. Data communication protocol analyzers, testers, and simulators for functions controlled by 5A02.a;

c. Stand alone "stored program controlled" radio transmission media simulators/channel estimators specially designed for testing equipment controlled by 5A02.e.

20. In Category 5 (Telecommunications and "Information Security"), Subcategory I "Telecommunications", ECCN 5C01A is revised to read as follows:

5C01A Preforms of glass or of any other material optimized for the manufacture of optical fibers controlled by 5A05.

Requirements

Validated License Required: QSTVWYZ

Unit: $ value

Reason for Control: NS

GLV: $3,000

GCT: Yes

GFW: Yes

21. In Category 5 (Telecommunications and "Information Security"), Subcategory I "Telecommunications", ECCN 5E02A is amended revising the heading of the entry to read as follows:

5E02A Specific technologies as described in this entry.

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22. In Category 5 (Telecommunications and "Information Security"), Subcategory I "Telecommunications", under the heading "Notes for Telecommunications", Advisory Notes 3, 5, 6, 8, 10, 12, 15, 16, 17, 19, 20, 21, and 22 are revised to read as follows:

Notes for Telecommunications:

* * * * *

Advisory Note 3: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in the People's Republic of China of the following communications, measuring or test equipment:

a. "Telecommunications transmission equipment" controlled by 5A02.a, 5A02.b, or 5A02.d provided that:

1. It is intended for general commercial traffic in a civil communication system;

2. It is designed for operation at a "digital transfer rate" at the highest multiplex level of 140 Mbit/s or less and at a "total digital transfer rate" of 168 Mbit/s or less;

N.B.: An additional 2 Mbit/s for operation, maintenance and service communications may be added to the "total digital transfer rate" of 168 Mbit/s.

3. For equipment controlled by 5A02.d, the transmission wavelength must not exceed 1,370 nm and optical fiber must be used as the communication medium;

4. It is to be installed under the supervision of the seller in a permanent circuit; *and*

5. It is to be operated by the civilian authorities of the importing country;

b. Measuring or test equipment controlled by 5B01.c, 5B02.a or 5B02.b that is necessary for the use (i.e., installation, operation and maintenance) of equipment exported under the conditions of this Advisory Note, provided that:

1. It is designed for use with communication transmission equipment operating at a "digital transfer rate" of 140 Mbit/s or less, and at a "total digital transfer rate" of 168 Mbit/s or less; and

2. It will be supplied in the minimum quantity required for the transmission equipment eligible for administrative exception treatment.

N.B.1: Where possible, built-in test equipment (BITE) will be provided for installation or maintenance of transmission equipment eligible for administrative exception treatment under this Advisory Note rather than individual test equipment.

N.B.2: The license application must include the locations of the connection points, types of equipment being connected and transmission rates.

N.B.3: Licenses for export of equipment covered by this Note are subject to a 30 day COCOM notification before the license is issued under the provisions of this Note.

Advisory Note 4: * * *

Advisory Note 5: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in the People's Republic of China of the following, provided that the associated multiplex equipment is designed for operation at a "digital transfer rate" at the highest multiplex level of 140 million bit/s or less:

a. Digital microwave radio relay equipment controlled by 5A02.a or 5A02.f, for fixed civil installations, operating at fixed frequencies not exceeding 23.6 GHz, with a "total digital transfer rate" not exceeding 168 Mbit/s;

b. Ground communication radio equipment for use with temporarily fixed services operated by civil authorities and designed to be used at fixed frequencies not exceeding 23.6 GHz;

c. Radio transmission media simulators/channel estimators controlled by 5B02.c, designed for testing equipment described in this Advisory Note 5.a or .b.

Advisory Note 6: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in the People's Republic of China of equipment controlled by 5A03.a or "software" for "common channel signalling" controlled by 5D01 or 5D03.c, provided that:

a. The "common channel signalling" is restricted to quasi-associated or associated mode of operation according to CCITT Red Book, Volume X, fascicle X.1;

b. No functions, other than those described in the following recommendations in the Red Book of CCITT: Q.701 to Q.709, Q.721 to Q.725, Q.791 and Q.795, are included;

N.B.: Only functions described in paragraph 2 of Q.795 are to be included. These Q.795 functions may not provide centralized network control having all of the following characteristics:

a. Is based on a network management protocol; *and*

b. Does both of the following:

1. Receives data from the nodes; *and*

2. Processes these data in order to:

a. Control traffic; *and*

b. Directionalize paths.

c. No form of "Integrated Services Digital Network" (ISDN) is provided;

d. Equipment or "software" is restricted to that necessary for intra-city applications or, for "Private Automatic Branch Exchanges", within a radius of 100 km;

N.B. 1: Where a recognized city contains more than one subordinate entity or city, the larger unified boundary prevails. In no case is the boundary larger than that of Beijing.

N.B. 2: A suburban entity that does not belong to a city, but is located within a circle with a diameter of 50 km and with a city in the middle, can be considered as part of a city.

e. No means are provided that will allow "common channel signalling" via analog transmission links;

f. All the applicable conditions enumerated in this Advisory Note 6.a to .e are accomplished by:

1. Omission or physical removal of equipment or coding;

2. Over-writing with non-functioning statements; *or*

3. Reasonably non-reversible modifications.

Advisory Note 7: * * *

Advisory Note 8: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in the People's Republic of China of repair facilities or "software" controlled by 5B01.c or 5D01 for the repair of "stored program controlled" communication switching equipment or systems, provided that:

a. The repair facilities:

1. Are specially designed equipment for repair;

2. Are to be used to repair controlled equipment authorized for export as an administrative exception under Advisory Note 6 (Notes for Telecommunications) or equipment that is not controlled for national security reasons;

3. Are shipped in reasonable quantities necessary for the types and quantities of exported equipment being serviced;

4. Do not provide local production facilities; *and*

5. Do not provide for testing of individual electronic components;

b. The repair does not upgrade the equipment or "software";

c. All the records of repair activity are kept by a representative of the Western supplier; *and*

d. The information to accompany each license application shall include:

1. A complete list of equipment to be provided; *and*

2. A clear identification of the users and their activities.

N.B.: Nothing in this Advisory Note 8 shall be construed as overriding controls in other ECCNs contained in the Commerce Control List.

Advisory Note 9: * * *

Advisory Note 10: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in the People's Republic of China of minimum quantities of semiconductor "lasers" designed and intended for use with a civil optical fiber communication system that would be either not controlled for national security reasons or eligible for administrative exceptions treatment under Advisory Note 3 (Notes for Telecommunications), having an output wavelength not exceeding 1,370 nm and a CW power output not exceeding 100 mW.

Advisory Note 11: * * *

Advisory Note 12: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Groups QWY and the People's Republic of China of cables, fibers and specially designed components and accessories therefor controlled by 5A05, provided that:

a. Quantities are normal for the envisaged end-use; *and*

b. They are for a specified civil end-use.

* * * * *

Advisory Note 15: Licenses will receive favorable consideration for exports to satisfactory end-users in Country Groups Q and W of technology controlled by the telecommunications entries in Category 5, and of instrumentation, test equipment, components and specially designed "software" therefor, and materials and components controlled by the telecommunications entries in Category 5 or by entries in other Categories on the Commerce Control List, for the modification or "production" of telecommunications equipment or systems eligible for administrative exceptions treatment under Advisory Note 1 in the Notes for Telecommunications (Category 5), provided that:

N.B.: Technology for general purpose computers is not eligible for treatment under this Advisory Note, i.e., it remains governed by Category 4.

a. The characteristics of the telecommunications equipment or systems are limited to those eligible for administrative exceptions treatment under Advisory Note 1 in the Notes for Telecommunications (Category 5);

b. Modification of the telecommunications equipment or systems is not permitted if any aspect of the design would result in exceeding the performance thresholds or features of Advisory Note 1 in the Notes for Telecommunications (Category 5);

c. Testing of large scale integrated (LSI) circuits or those with higher component densities is limited to go/no go tests;

N.B.: Advisory Note 15.c does not preclude exports of equipment or technology that would be possible in accordance with the provisions of other Categories on the Commerce Control List.

d. The specially designed "software" is that necessary to use the transferred technology, instrumentation and test equipment;

e. All "software" shall be exported in machine executable form only;

f. "Development" technology is not included;

g. The contract includes explicit conditions to ensure that:

1. The "production" technology or "production" equipment is not exported or reexported, either directly or indirectly, to another proscribed destination;

2. The supplier or licensor may appoint a representative who is entitled to verify that the "production" technology and "production" equipment or systems serve their intended use;

3. Any modification of the capabilities or functions of the produced equipment must be approved by the supplier or licensor;

4. The supplier's or licensor's personnel have right of access to all the facilities directly involved in the "production" of the telecommunications equipment or systems;

5. The "production" technology, "production" equipment and produced equipment or systems will be for civil end-use only and not for reexport to proscribed destinations other than Country Groups Q and W;

h. System integration testing will be performed by the supplier or licensor, if it requires test tools that would provide the licensee with the capability to recover source code or upgrade the system beyond the performance thresholds or features of Advisory Note 1 in the Notes for Telecommunications (Category 5);

i. End-use reporting of the installed telecommunication equipment or systems will be provided in accordance with the provisions of Advisory Note 1 in the Notes for Telecommunications (Category 5).

N.B. 1: No export under the favorable consideration provisions of this Advisory Note shall establish a precedent for the approval of exports under entries in other Categories on the Commerce Control List.

N.B. 2: For each license application for export pursuant to this Advisory Note, the exporter must submit the following assurances to be obtained from the importer:

a. An Import Certificate issued by the importer's national authorities;

b. An assurance that the importer will make available information as requested by the Department of Commerce; *and*

c. An assurance that the importer will allow on-site inspection if requested by the Department of Commerce.

Advisory Note 16: Licenses will receive favorable consideration for the export to satisfactory end-users in Country Groups QWY and the People's Republic of China of radio relay communications equipment, specially designed components and accessories, specially designed test equipment, "software" and technology for the "use" of equipment or materials therefor, controlled by the telecommunications entries in this Category, provided that:

a. It is for fixed installation and civil application;

b. It is designed for operation at a total "digital transfer rate" not exceeding 156 Mbit/s;

c. The equipment does not employ either of the following:

1. Quadrature Amplitude Modulation (QAM) techniques above level 64; *or*

2. Other digital modulation techniques with a "spectral efficiency" exceeding 6.3 bit/s/Hz;

d. It operates at fixed frequencies not exceeding 9 GHz;

e. License applications for export under the provisions of this Advisory Note provide the following information:

1. A complete list of the equipment or system to be provided;

2. Specific end-use information including intended application; *and*

3. The location of the equipment.

Advisory Note 17: Licenses will receive favorable consideration for the export to satisfactory end-users in Country Groups QWY and the People's Republic of China of optical fiber cables and optical fiber transmission equipment or systems controlled by 5A02 or 5A05, provided that:

a. The equipment or systems are intended for general commercial international traffic in an international civil submarine optical fiber telecommunication system linking the importing country with a COCOM member country;

b. It is to be installed in a permanent circuit under the supervision of the COCOM member country licensee;

c. No means are to be provided for the transmission of traffic between points in one or more proscribed countries other than those in Country Group Q or W;

d. The total length of optical fiber cable to be installed within the proscribed country, excluding cable in territorial waters, does not exceed 10 km or the shortest distance that is practical for installation;

e. The "digital transfer rate" at the highest multiplex level does not exceed 565 Mbit/s;

f. The "laser" transmission wavelength does not exceed 1,550 nm;

g. The equipment is not controlled by 5A02.d.2 to d.5 or by the "information security" entries in Category 5;

h. Controlled spare parts shall remain under the supervision of the COCOM member country licensee;

i. The COCOM member country licensee or his designated representative, who shall be from a non-proscribed country, shall have the right of access to all the equipment;

j. There will be no transfer of controlled technology;

k. Supervision of systems installation and of maintenance shall be performed by the licensee or the licensee's designated representative, who shall be from a non-proscribed country, using only personnel from non-proscribed countries; *and*

N.B. 1: Supervision of maintenance includes preventive maintenance at periodic intervals and intervention for major malfunctions.

N.B. 2: This does not require that only nationals from the exporting country should install the system.

l. Upon request, the licensee shall carry out an inspection to establish that:

1. The system is being used for the intended civil purpose;

2. All the equipment exported under the provisions of this Advisory Note is being used for the stated purpose and is still located at the installation sites. The licensee shall report the findings from the inspection to the Office of Export Licensing within one month after completing the inspection.

Advisory Note 18: * * *

Advisory Note 19: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Groups QWY and the People's Republic of China of fiber optic telecommunications transmission systems or equipment controlled by 5A02.a and 5A02.d.1, fiber optic cables controlled by 5A05, or coaxial cable telecommunications transmission systems controlled by 5A02.a, and the test equipment, specially designed components, accessories, "software" and technology, necessary for the "use" thereof, provided that:

a. They are intended for international telecommunications links dedicated to international civil traffic between the following locations:

1.a. *From the following countries:* Austria, Belgium,the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Norway, Poland, Portugal, the Slovak Republic, Spain, Sweden, Switzerland, Turkey, or the United Kingdom;

b. *To the following cities as listed by country:* Albania (Tirana), Armenia (Yerevan), Azerbaijan (Baku), Bulgaria (Sophia, Varna), Byelorus (Minsk), Georgia (Tbilisi), Kazakhstan (Alma-Ata), Kyrgyzstan (Bishkek), Moldova (Chisinau), Romania (Bucharest, Constanza), Russia (Moscow, Novorossiisk, Rostov-on-Don, St. Petersburg, Volgograd), Tajikistan (Dushanbe), Turkmenistan (Ashgabat), Ukraine (Kiev, Odessa, Sebastopol), Uzbekistan (Tashkent) *or:*

2.a. *From the following countries:* Australia, Canada, Hong Kong, Japan, New Zealand, South Korea, or the United States;

b. *To the following cities as listed by country:* People's Republic of China (Shanghai, Guangzhou), Russia (Khabarovsk, Nakhodka, Vladivostok, Yuzhno-Sadhalinsk), Vietnam (Hanoi, Ho Chi Minh City);

N.B.: No traffic shall be carried between points in proscribed countries, except in the Czech Republic, Estonia, Latvia, Lithuania, Poland, and the Slovak Republic.

b.1. No portion of the system is installed in the region:

a. East of 38° longitude East;

b. West of 130° longitude East; *and*

c. North of 45° latitude North;

2. *Except*, portions of the system may be installed in the region:

a. South of 50° latitude North;

b. West of 58° longitude East; *and*

c. Southwest of the great circle arc connecting 50° North/50° East and 45° North/58° East;

c. They are designed to operate at a "digital transfer rate" at the highest multiplex level of 623 Mbit/s or less;

d. The "laser" transmission wavelength does not exceed 1,590 nm;

e. The equipment, if employing synchronous transmission techniques, must conform to one of the approved SONET or SDH standards or recommendations (i.e. ANSI or CCITT);

f. Supervision of systems installation and maintenance of controlled transmission equipment must be performed by the licensee or the licensee's designated representative, who must be from a non-proscribed country. Any portion of the installation of controlled transmission equipment that would require the transfer of controlled technology must be performed by the licensee or the licensee's designated representative using only personnel from non-proscribed countries;

N.B. 1: Supervision of maintenance includes preventive maintenance at periodic intervals and intervention for major malfunctions.

N.B. 2: This is not meant to require that only nationals from the exporting country should install the system.

g. Controlled test equipment and controlled spare parts must remain under the supervision of the COCOM member country licensee;

N.B.: The supervision of the test equipment and spare parts by the licensee may be affected by stock inventory procedures and does not require the permanent on-site presence of a representative of the licensee.

h. The COCOM member country licensee or his designated representative who must be from a non-proscribed country must have the right of access to all the equipment;

i. Upon request of the government of the exporting country, the licensee must carry out an inspection to establish that:

1. The system is being used for the intended civil purpose; *and*

2. All the equipment exported under the provisions of this Advisory Note is being used for the stated end purpose and is still located at the installation sites. The licensee shall report the findings from the inspection to the Office of Export Licensing within one month after completing the inspection;

j. The license application must include a system plan containing equipment quantities and approximate locations for the proposed system. After final installation, unless already provided, the applicant must provide to the licensing authorities the final location of the installed equipment to the greatest degree of precision available and a map of the final cable route.

N.B. 1: License applications for the export of fiber optic telecommunications transmission systems or equipment are subject to 30-day COCOM notification before the license is issued under the provisions of this Advisory Note 19.

N.B. 2: License applications for the export of coaxial cable telecommunications transmission systems or equipment are subject to a 45-day COCOM notification before the license is issued under the provisions of this Advisory Note 19.

N.B. 3: Destinations other than those listed in subparagraph (a) of this Advisory Note 19 may be approved after a 45-day COCOM review. Applications for other destinations must be accompanied by a detailed justification for the additional link. Approved destinations for international telecommunications links will be included in sub-paragraph (a) of this Advisory Note 19.

Advisory Note 20: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Groups QWY and the People's Republic of China of fiber optic telecommunication transmission systems or equipment controlled by 5A02.a and 5A02.d.1, digital radio equipment or systems controlled by 5A02.a and 5A02.f.1, coaxial cable telecommunications transmission equipment or systems controlled by 5A02.a, or fiber optic cables controlled by 5A05 and the test equipment, specially designed components, accessories, "software" and technology, necessary for the use thereof, provided that:

a. They are intended for:

1. Intra-city or inter-city links within Albania, Armenia, Azerbaijan, Bulgaria, Byelorus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Mongolia, Romania, Russia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, or Vietnam;

N.B.: Intra-city links provide service within a local service area that must not extend beyond a circle with a diameter of 50 km and with the city in the middle.

2. Inter-city links between cities in Albania, Armenia, Azerbaijan, Bulgaria, Byelorus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Mongolia, Romania, Russia, Tajikistan, Turkmenistan, Ukraine, or Uzbekistan;

b. They are designed to operate at a "digital transfer rate" at the highest multiplex level of 156 Mbit/s or less;

c. The "laser" transmission wavelength does not exceed 1,590 hm;

d. The radio transmission system does not employ Quadrature Amplitude Modulation (QAM) techniques above level 16;

e. The equipment or systems are designed and intended to be used for fixed civil applications directly connected to the civilian network;

f. The equipment, if employing synchronous transmission techniques, must conform to one of the approved "SONET" or "SDH" standards or recommendations (i.e., ANSI or CCITT);

g. Supervision of systems installation and of maintenance of controlled transmission equipment must be performed by the licensee or the licensee's designated representative, who must be from a non-proscribed country. Any portion of the installation of controlled transmission equipment that would require the transfer of controlled technology must be performed by the licensee or the licensee's designated representative using only personnel from non-proscribed countries;

N.B. 1: Supervision of maintenance includes preventive maintenance at periodic intervals and intervention for major malfunctions.

N.B. 2: This is not meant to require that only nationals from the exporting country should install the system.

h. Controlled test equipment and controlled spare parts must remain under the supervision of the COCOM member country licensee;

N.B.: The supervision of the test equipment and spare parts by the licensee may be effected by stock inventory procedures and does not require the permanent on-site presence of a representative of the licensee.

i. The COCOM member country licensee or his designated representative, who must be from a non-proscribed country, must have the right of access to all the equipment;

j. Upon request of the government of the exporting country, the licensee must carry out an inspection to establish that:

1. The system is being used for the intended civil purpose; *and*

2. All the equipment exported under the provisions of this Advisory Note is being used for the stated end purpose and is still located at the installation sites. The licensee shall report the findings from the inspection to the Office of Export Licensing within one month after completing the inspection;

k. The license application must include a system plan containing equipment quantities and approximate locations for the proposed system. After final installation, unless already provided, the applicant must provide to its licensing authorities the final location of the installed equipment to the greatest degree of precision available and a map of the final cable route.

N.B. 1: License applications for the export of fiber optic or radio telecommunications transmission systems or equipment for intra-city systems are subject to a 45 day COCOM notification before the license is issued under the provisions of this Advisory Note.

N.B. 2: License applications for the export of coaxial cable telecommunications transmission systems or equipment for intra-city systems are subject to a 45 day COCOM notification before the license is issued under the provisions of this Advisory Note.

N.B. 3: License applications for the export of telecommunications transmission systems or equipment for inter-city links are subject to a 45 day COCOM notification before the license is issued under the provisions of this Advisory Note. Consideration will be given to:

a. The use of specific carrier media in specific locations;

b. The concentration of strategic facilities, including military sites, along the proposed route(s);

c. Evidence which would indicate that the end-use(s) are directly related to significant strategic activities, including intelligence or diversion; *and*

d. The political/strategic situation in the importing country at a given time.

Advisory Note 21: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Groups QWY and the People's Republic of China of systems or equipment controlled by 5A03.a or 5A03.b, or "software" for "common channel signalling" controlled by 5D01 or 5D03.c, and test equipment, specially designed components, accessories and technology, necessary for the "use" thereof, provided that:

a. They are intended for fiber optic, radio, or coaxial cable international telecommunication links fulfilling the provisions of Advisory Note 19.a and b.;

b. The "common channel signalling" (CCS) is restricted to associated mode of operation. Signalling channels and all related traffic channels must be carried on the same transmission system. Only international traffic between the locations listed in Advisory Note 19.a is permitted (i.e. calls originating in a proscribed country will not be rerouted to any proscribed destination);

c. No general service of "Integrated Service Digital Network" (ISDN) is provided by the proscribed country gateway switch, *except:*

1. The ISDN user part (ISUP) may be used on the international signalling link;

2. ISDN service may be provided for specified subscribers on the proscribed countries gateway switch;

d. Supervision of systems installation and of maintenance of controlled equipment and "software" must be performed by the licensee or the licensee's designated representative, who must be from a non-proscribed country. Any portion of the installation of controlled equipment and "software" that would require the transfer of controlled technology must be performed by the licensee or the licensee's designated representative using only personnel from non-proscribed countries;

N.B. 1: Supervision of maintenance includes preventive maintenance at periodic intervals and intervention for major malfunctions.

N.B. 2: This is not meant to require that only nationals from the exporting country should install the system.

e. Controlled test equipment and controlled spare parts must remain under the supervision of the COCOM member country licensee;

N.B.: The supervision of the test equipment and spare parts by the licensee may be effected by stock inventory procedures and does not require the permanent on-site presence of a representative of the licensee.

f. All "common channel signalling" equipment, including spares, is operational in such a form that any removal from or manipulation on the end in a proscribed country is immediately recognized (e.g. through remote maintenance and monitoring procedures) by the operator (i.e., an operator from one of the countries listed in Advisory Note 19.a.1.a or a.2.a);

g. The licensee or operator (i.e., an operator from one of the countries listed in Advisory Note 19.a.1.a or a.2.a) takes immediate action to ensure that non-operational equipment is repaired or replaced within a week of the failure;

h. The COCOM member country licensee or the designated representative of the

licensee. who must be from a non-proscribed country, must have the right of access to all the equipment;

i. Proscribed country nationals are not given tools or training allowing them to modify the approved configuration or divert equipment or "software" to non-approved uses;

j. Upon request of the government of the exporting country, the licensee or operator (i.e., an operator from one of the countries listed in Advisory Note 19.a.1.a or a.2.a) must carry out an inspection to establish that:

1. The system is being used for the intended civil purpose; *and*

2. All the equipment exported under the provisions of this Advisory Note is being used for the stated end purpose and is still located at the installation sites. The licensee shall report the findings from the inspection to the Office of Export Licensing within one month after completing the inspection;

k. The operator (i.e., an operator from one of the countries listed in Advisory Note 19.a.1.a or a.2.a) informs the exporting government immediately of any sign of misuse or diversion of "common channel signalling" hardware or "software" on the other end of the international link, or of any failure of the operator at the other end (i.e., the operator from one of the countries listed in Advisory Note 19.a.1.b or a.2.b) to allow the operator to comply with the terms of the export license;

l. Contractual agreements between the licensee and the operators on both ends of the link require that the operator at the other end of the international link (i.e., the operator from one of the countries listed in Advisory Note 19.a.1.b or a.2.b) complies fully with all the conditions stipulated in the export license and that, in the event of failure by the latter to comply, the operator who is from one of the countries listed in Advisory Note 19.a.1.a or a.2.a will inform the authorities of such country and the government of the exporting country.

N.B. 1: License applications for the export of systems, equipment, or "software" for "common channel signalling" intended for new fiber optic international telecommunication links are subject to a 30 day COCOM notification before the license is issued under the provisions of this Note.

N.B. 2: License applications for ISDN services for specified subscribers, or systems, equipment or "software" for "common channel signalling" intended for new non-fiber optic international telecommunications links or existing links are subject to a 30 day COCOM notification before the license is issued under the provisions of this Note. License applications for these items must contain a full description of the "common channel signalling" configuration, equipment, and "software".

Advisory Note 22: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Groups QWY and the People's Republic of China of equipment controlled by 5A03.d, 5A03.e, or 5A03.f, "software" controlled by 5D03.c that provides features described in 5A03.d, 5A03.e, or 5A03.f, specially designed components and accessories therefor, and test equipment, "software" and technology necessary for the "use" thereof, provided that:

a. The equipment or "software" will be used for a specified civil end-use by a civil end-user only;

b. The equipment or "software" does not perform circuit switching or circuit switching functions;

c. Supervision of systems installation and of maintenance of controlled equipment or "software" must be performed by the licensee or the licensee's designated representative, who must be from a non-proscribed country. Any portion of the installation of controlled equipment or "software" that would require the transfer of controlled technology must be performed by the licensee or the licensee's designated representative using only personnel from non-proscribed countries.

N.B. 1: Supervision of maintenance includes preventive maintenance at periodic intervals and intervention for major malfunctions.

N.B. 2: This is not meant to require that only nationals from the exporting country should install the system.

N.B. 3: This does not apply if the equipment or "software" is designed for installation by the user without further substantial support by the supplier.

d. The COCOM member country licensee or the designated representative of the licensee, who must be from a non-proscribed country, must have the right of access to all the equipment and may carry out inspections;

e. Upon request of the government of the exporting country, the licensee must carry out an inspection to establish that:

e.1. The system is being used for the intended civil purpose; *and*

e.2. All the equipment exported under the provisions of this Advisory Note is being used for the stated end purpose and is still located at the installation site. The licensee shall report the findings from the inspection to the Office of Export Licensing within one month after completing the inspection.

N.B.: Licenses for exports of items covered by this Advisory Note are subject to a 30 day COCOM notification before the license is issued under the provisions of this Note. The notification will include the equipment or "software" locations and the network topology.

23. In Category 5, Subcategory I "Information Security", ECCN 5A11A is amended by revising the heading of the entry and by revising the List of Items Controlled to read as follows:

5A11A Systems, equipment, application specific "assemblies", modules or integrated circuits for "information security", as described in this entry, and other specially designed components therefor.

* * * * *

List of Items Controlled

Systems, equipment, application specific "assemblies", modules or integrated circuits for "information security", as follows, and other specially designed components therefor:

a. Designed or modified to use "cryptography" employing digital techniques to ensure "information security";

b. Designed or modified to perform cryptanalytic functions;

c. Designed or modified to use "cryptography" employing analog techniques to ensure "information security", *except*:

c.1. Equipment using "fixed" band scrambling not exceeding 8 bands and in which the transpositions change not more frequently than once every second;

c.2. Equipment using "fixed" band scrambling exceeding 8 bands and in which the transpositions change not more frequently than once every ten seconds;

c.3. Equipment using "fixed" frequency inversion and in which the transpositions change not more frequently than once every second;

c.4. Facsimile equipment;

c.5. Restricted audience broadcast equipment;

c.6. Civil television equipment;

d. Designed or modified to suppress the compromising emanations of information-bearing signals;

Note: 5A11.d does not control equipment specially designed to suppress emanations for health or safety reasons.

e. Designed or modified to use cryptographic techniques to generate the spreading code for "spread spectrum" or hopping code for "frequency agility" systems;

f. Designed or modified to provide certified or certifiable "multilevel security" or user isolation at a level exceeding Class B2 of the Trusted Computer System Evaluation Criteria (TCSEC) or equivalent;

g. Communications cable systems designed or modified using mechanical, electrical or electronic means to detect surreptitious intrusion.

24. In Category 6 (Sensors), ECCNs 6A01A and 6A02A are revised to read as follows:

6A01A Acoustics.

Requirements

Validated License Required: QSTVWYZ.

Unit: $ value.

Reason for Control: NS.

GLV: $3,000.

GCT: Yes.

GFW: Yes, for 6A01.a.1.b.4 only (see Advisory Note 1.2 to Category 6).

List of Items Controlled

a. Marine acoustic systems, equipment and specially designed components therefor, as follows:

a.1. Active (transmitting or transmitting-and-receiving) systems,

equipment or specially designed components therefor, as follows:

Note: 6A01.a.1 does not control:

a. Depth sounders operating vertically below the apparatus, not including a scanning function exceeding ± 10°, and limited to measuring the depth of water, the distance of submerged or buried objects or fish finding;

b. Acoustic beacons, as follows:

1. Acoustic emergency beacons; *or*

2. Pingers specially designed for relocating or returning to an underwater position.

a.1.a. Wide-swath bathymetric survey systems for sea bed topographic mapping:

a.1.a.1. Designed:

a.1.a.1.a. To take measurements at an angle exceeding 10° from the vertical; *and*

a.1.a.1.b. To measure depths exceeding 600 m below the water surface; *and*

a.1.a.2. Designed:

a.1.a.2.a. To incorporate multiple beams any of which is less than 2°; *or*

a.1.a.2.b. To provide data accuracies of better than 0.5% of water depth across the swath averaged over the individual measurements within the swath;

a.1.b. Object detection or location systems having any of the following characteristics:

a.1.b.1. A transmitting frequency below 10 kHz;

a.1.b.2. Sound pressure level exceeding 224 dB (reference 1 micropascal at 1 m) for equipment with an operating frequency in the band from 10 kHz to 24 kHz inclusive;

a.1.b.3. Sound pressure level exceeding 235 dB (reference 1 micropascal at 1 m) for equipment with an operating frequency in the band between 24 kHz and 30 kHz;

a.1.b.4. Forming beams of less than 1° on any axis and having an operating frequency of less than 100 kHz;

a.1.b.5. Designed to withstand pressure during normal operation at depths exceeding 1,000 m and having transducers:

a.1.b.5.a. Dynamically compensated for pressure; *or*

a.1.b.5.b. Incorporating other than lead zirconate titanate as the transduction element; *or*

a.1.b.6. Designed to operate with an unambiguous display range exceeding 5,120 m;

a.1.c. Acoustic projectors, including transducers, incorporating piezoelectric, magnetostrictive, electrostrictive, electrodynamic or hydraulic elements operating individually or in a designed combination, having any of the following characteristics:

Note 1: The control status of acoustic projectors, including transducers, specially designed for other equipment is determined by the control status of the other equipment.

Note 2: 6A01.a.1.c does not control electronic sources that direct the sound vertically only, or mechanical (e.g., air gun or vapor-shock gun) or chemical (e.g., explosive) sources.

a.1.c.1. An instantaneous radiated acoustic power density exceeding 0.01 mW/mm²/Hz for devices operating at frequencies below 10 kHz;

a.1.c.2. A continuously radiated acoustic power density exceeding 0.001 mW/mm²/Hz for devices operating at frequencies below 10 kHz;

Technical Note: Acoustic power density is obtained by dividing the output acoustic power by the product of the area of the radiating surface and the frequency of operation.

a.1.c.3. Designed to withstand pressure during normal operation at depths exceeding 1,000 m; *or*

a.1.c.4. Side-lobe suppression exceeding 22 dB;

a.1.d. Acoustic systems, equipment and specially designed components for determining the position of surface vessels or underwater vehicles designed:

a.1.d.1. To operate at a range exceeding 1,000 m with a positioning accuracy of less than 10 m rms (root mean square) when measured at a range of 1,000 m; *or*

a.1.d.2. To withstand pressure at depths exceeding 1,000 m;

Note: 6A01.a.1.d includes equipment using coherent "signal processing" between two or more beacons and the hydrophone unit carried by the surface vessel or underwater vehicle, or capable of automatically correcting speed-of-sound propagation errors for calculation of a point.

a.2. Passive (receiving, whether or not related in normal application to separate active equipment) systems, equipment and specially designed components therefor, as follows:

a.2.a. Hydrophones (transducers) with any of the following characteristics:

a.2.a.1. Incorporating continuous flexible sensors or assemblies of discrete sensor elements with either a diameter or length less than 20 mm and with a separation between elements of less than 20 mm;

a.2.a.2. Having any of the following sensing elements:

a.2.a.2.a. Optical fibers;

a.2.a.2.b. Piezoelectric polymers; *or*

a.2.a.2.c. Flexible piezoelectric ceramic materials;

a.2.a.3. A hydrophone sensitivity better than −180 dB at any depth with no acceleration compensation;

a.2.a.4. When designed to operate at depths not exceeding 35 m, a hydrophone sensitivity better than −186 dB with acceleration compensation;

a.2.a.5. When designed for normal operation at depths exceeding 35 m, a hydrophone sensitivity better than −192 dB with acceleration compensation;

a.2.a.6. When designed for normal operation at depths exceeding 100 m, a hydrophone sensitivity better than −204 dB; *or*

a.2.a.7. Designed for operation at depths exceeding 1,000 m;

Technical Note: Hydrophone sensitivity is defined as twenty times the logarithm to the base 10 of the ratio of rms output voltage to a 1 V rms reference, when the hydrophone sensor, without a pre-amplifier, is placed in a plane wave acoustic field with an rms pressure of 1 micropascal. For example, a hydrophone of −160 dB (reference 1 V per micropascal) would yield an output voltage of 10^{-8} V in such a field, while one of −180 dB sensitivity would yield only 10^{-9} V output. Thus, −160 dB is better than −180 dB.

a.2.b. Towed acoustic hydrophone arrays with any of the following:

a.2.b.1. Hydrophone group spacing of less than 12.5 m;

a.2.b.2. Hydrophone group spacing of 12.5 m to less than 25 m and designed or able to be modified to operate at depths exceeding 35 m;

Technical Note: Able to be modified in 6A01.a.2.b.2 means having provisions to allow a change of the wiring or interconnections to alter hydrophone group spacing or operating depth limits. These provisions are: spare wiring exceeding 10% of the number of wires, hydrophone group spacing adjustment blocks or internal depth limiting devices that are adjustable or that control more than one hydrophone group.

a.2.b.3. Hydrophone group spacing of 25 m or more and designed to operate at depths exceeding 100 m;

a.2.b.4. Heading sensors controlled by 6A01a.2.d;

a.2.b.5. Non-metallic strength members or longitudinally reinforced array hoses;

a.2.b.6. An assembled array of less than 40 mm in diameter;

a.2.b.7. Multiplexed hydrophone group signals; *or*

a.2.b.8. Hydrophone characteristics specified in 6A01.a.2.a;

a.2.c. Processing equipment specially designed for towed acoustic hydrophone arrays with either of the following:

a.2.c.1. A Fast Fourier or other transform of 1,024 or more complex points in less than 20 ms with no "user-accessible programmability"; *or*

a.2.c.2. Time or frequency domain processing and correlation, including spectral analysis, digital filtering and

beamforming using Fast Fourier or other transforms or processes with "user accessible programmability";

a.2.d. Heading sensors having an accuracy of better than ± 0.5°; *and*

a.2.d.1. Designed to be incorporated within the array hosing and to operate at depths exceeding 35 m or having an adjustable or removable depth sensing device in order to operate at depths exceeding 35 m; *or*

a.2.d.2. Designed to be mounted external to the array hosing and having a sensor unit capable of operating with 360° roll at depths exceeding 35 m;

b. Terrestrial geophones capable of conversion for use in marine systems, equipment or specially designed components controlled by 6A01.a.2.a;

c. Correlation-velocity sonar log equipment designed to measure the horizontal speed of the equipment carrier relative to the sea bed at distances between the carrier and the sea bed exceeding 500 m.

6A02A Optical Sensors.

Requirements

Validated License Required: QSTVWYZ.

Unit: Number; $ value for parts and accessories.

Reason for Control: NS, FP, MT (see Notes).

GLV: $3,000, except $0 for 6A01.a.1, a.2, a.3, and c.

GCT: Yes, except MT and FP (see Notes).

GFW: Yes (Advisory Note 2.3 to Category 6 only).

Notes

1. FP controls for regional stability apply to items controlled by 6A02.a.1, a.2, a.3, and c (see § 776.16(b) of this subchapter).

2. FP controls for human rights apply to all destinations except Australia, Japan, New Zealand, and members of NATO for police-model infrared viewers controlled by 6A02.c (see § 776.14 of this subchapter).

3. MT controls apply to optical detectors described in 6A02.a.1, a.3, and a.4 that are specially designed or rated as electromagnetic (including "laser") and ionized-particle radiation resistant.

List of Items Controlled

a. Optical detectors, as follows:

Note: 6A02.a does not control germanium or silicon photodevices.

a.1. "Space-qualified" solid-state detectors having any of the following:

a.1.a.1. A peak response in the wavelength range exceeding 10 nm, but not exceeding 300 nm; *and*

a.1.a.2. A response of less than 0.1% relative to the peak response at a wavelength exceeding 400 nm;

a.1.b.1. A peak response in the wavelength range exceeding 900 nm, but not exceeding 1,200 nm; *and*

a.1.b.2. A response "time constant" of 95 ns or less; *or*

a.1.c. A peak response in the wavelength range exceeding 1,200 nm, but not exceeding 30,000 nm;

a.2. Image intensifier tubes and specially designed components therefor, as follows:

a.2.a. Image intensifier tubes having all of the following:

a.2.a.1. A peak response in wavelength range exceeding 400 nm, but not exceeding 1,050 nm;

a.2.a.2. A microchannel plate for electron image amplification with a hole pitch (center-to-center spacing) of less than 25 micrometers; *and*

a.2.a.3.a. An S–20, S–25 or multialkali photocathode; *or*

a.2.a.3.b. A GaAs or GaInAs photocathode; a.2.b. Specially designed components as follows:

a.2.b.1. Fiber optic image inverters;

a.2.b.2. Microchannel plates having both of the following characteristics:

a.2.b.2.a. 15,000 or more hollow tubes per plate; *and*

a.2.b.2.b. Hole pitch (center-to-center spacing) of less than 25 micrometers; *or*

a.2.b.3. GaAs or GaInAs photocathodes;

a.3. Non-"space-qualified" "focal plane arrays", having any of the following:

Technical Note: Linear or two-dimensional multi-element detector arrays are referred to as "focal plane arrays".

a.3.a.1. Individual elements with a peak response within the wavelength range exceeding 900 nm, but not exceeding 1,050 nm; *and*

a.3.a.2. A response "time constant" of less than 0.5 ns;

a.3.b.1. Individual elements with a peak response in the wavelength range exceeding 1,050 nm, but not exceeding 1,200 nm; *and*

a.3.b.2. A response "time constant" of 95 ns or less; *or*

a.3.c. Individual elements with a peak response in the wavelength range exceeding 1,200 nm, but not exceeding 30,000 nm;

Note 1: 6A02.a.3 includes photoconductive arrays and photovoltaic arrays.

Note 2: 6A02.a.3 does not control silicon "focal plane arrays", multi-element (not to exceed 16 elements) encapsulated photoconductive cells or pyroelectric detectors using any of the following:

a. Lead sulphide;

b. Triglycine sulphate and variants;

c. Lead-lanthanum-zirconium titanate and variants;

d. Lithium tantalate;

e. Polyvinylidene fluoride and variants;

f. Strontium barium niobate and variants; *or*

g. Lead selenide.

a.4. Non-"space-qualified" single-element or non-focal-plane multi-element semiconductor photodiodes or phototransistors having both of the following:

a.4.a. A peak response in the wavelength range exceeding 1,200 nm, but not exceeding 30,000 nm; *and*

a.4.b. A response "time constant" of 0.5 ns or less;

b. "Multispectral imaging sensors" designed for remote sensing applications, having either of the following characteristics:

b.1. An Instantaneous-Field-Of-View (IFOV) of less than 200 microradians; *or*

b.2. Specified for operation in the wavelength range exceeding 400 nm, but not exceeding 30,000 nm; *and*

b.2.a. Providing output imaging data in digital format; *and*

b.2.b.1. "Space-qualified"; *or*

b.2.b.2. Designed for airborne operation, using other than silicon detectors, and having an IFOV of less than 2.5 milliradians;

c. Direct view imaging equipment operating in the visible or infrared spectrum, incorporating either of the following:

c.1. Image intensifier tubes controlled by 6A02.a.2.a; *or*

c.2. Focal plane arrays controlled by 6A02.a.3;

Technical Note: "Direct view" refers to imaging equipment operating in the visible or infrared spectrum, that presents a visual image to a human observer without converting the image into an electronic signal for television display, and that cannot record or store the image photographically, electronically, or by any other means.

Note: 6A02.c does not control the following equipment incorporating other than GaAs or GaInAs photocathodes:

a. Industrial or civilian intrusion alarm, traffic or industrial movement control or counting systems;

b. Medical equipment;

c. Industrial equipment used for inspection, sorting or analysis of the properties of materials;

d. Flame detectors for industrial furnaces;

e. Equipment specially designed for laboratory use.

d. Special support components for optical sensors, as follows:

d.1. "Space-qualified" cryocoolers;

d.2. Non- "space-qualified" cryocoolers, with a cooling source temperature below 218 K (−55° C), as follows:

d.2.a. Closed cycle type with a specified Mean-Time-To-Failure (MTTF), or Mean-Time-Between-Failures (MTBF), exceeding 2,500 hours;

d.2.b. Joule-Thomson (JT) self-regulating minicoolers with bore (outside) diameters of less than 8 mm;

d.3. Optical sensing fibers:

d.3.a. Specially fabricated either compositionally or structurally, or modified by coating, to be acoustically, thermally, inertially, electromagnetically or nuclear radiation sensitive; *or*

d.3.b. Modified structurally to have a "beat length" of less than 50 mm (high birefringence).

Related ECCNs: * * *

25. In Category 6 (Sensors), ECCN 6A04A is revised and the Requirements section of ECCN 6A05A is revised to read as follows:

6A04A Optics.

Requirements

Validated License Required: QSTVWYZ.

Unit: Equipment in "number"; cable in "feet"; components in "$ value".

Reason for Control: NS.

GLV: $3,000.

GCT: Yes.

GFW: See Note for limits on eligibility.

Note: GFW eligibility is limited to countries listed in Supplement Nos. 2 and 3 to Part 773 and to the following items (see Advisory Note 4.2):

a. Optical mirrors controlled by 6A04.a.1, a.2., or a.4;

b. Optical components controlled by 6A04.b;

c. Optical filters controlled by 6A04.d.1.a; and

d. Optical control equipment controlled by 6A04.e.2 or e.4.

List of Items Controlled

a. Optical mirrors (reflectors), as follows:

a.1. "Deformable mirrors" with either continuous or multi-element surfaces, and specially designed components therefor, capable of dynamically repositioning portions of the surface of the mirror at rates exceeding 100 Hz;

a.2. Lightweight monolithic mirrors with an average "equivalent density" of less than 30 kg/m^2, and a total weight exceeding 10 kg;

a.3. Lightweight "composite" or foam mirror structures with an average "equivalent density" of less than 30 kg/m^2, and a total weight exceeding 2 kg;

a.4. Beam steering mirrors more than 100 mm in diameter or length of major axis that maintain a flatness of lambda/2 or better (lambda is equal to 633 nm) with a control bandwidth exceeding 100 Hz;

b. Optical components made from zinc selenide (ZnSe) or zinc sulphide (ZnS) with transmission in the wavelength range exceeding 3,000 nm but not exceeding 25,000 nm and either of the following:

b.1. Exceeding 100 cm^3 in volume; *or*

b.2. Exceeding 80 mm in diameter or length of major axis and 20 mm in thickness (depth);

c. "Space-qualified" components for optical systems, as follows:

c.1. Lightweighted to less than 20% "equivalent density" compared with a solid blank of the same aperture and thickness;

c.2. Substrates, substrates with surface coatings (single-layer or multi-layer, metallic or dielectric, conducting, semiconducting or insulating) or with protective films;

c.3. Elements or assemblies of mirrors designed to be assembled in space into an optical system with a collecting aperture equivalent to or larger than a single optic 1 meter in diameter;

c.4. Manufactured from "composite" materials having a coefficient of linear thermal expansion equal to or less than 5×10^{-6} in any coordinate direction;

d. Optical filters, as follows:

d.1. For wavelengths longer than 250 nm, comprised of multi-layer optical coatings and having either of the following:

d.1.a. Bandwidths equal to or less than 1 nm Full Width Half Intensity (FWHI) and peak transmission of 90% or more; *or*

d.1.b. Bandwidths equal to or less than 0.1 nm FWHI and peak transmission of 50% or more;

Note: 6A04.d.1 does not control optical filters with fixed air gaps or Lyot-type filters.

d.2. For wavelengths longer than 250 nm, and having all of the following:

d.2.a. Tunable over a spectral range of 500 nm or more;

d.2.b. Instantaneous optical bandpass of 1.25 nm or less;

d.2.c. Wavelength resettable within 0.1 ms to an accuracy of 1 nm or better within the tunable spectral range; *and*

d.2.d. A single peak transmission of 91% or more;

d.3. Optical opacity switches (filters) with a field of view of 30° or wider and a response time equal to or less than 1 ns;

e. Optical control equipment, as follows:

e.1. Specially designed to maintain the surface figure or orientation of the "space-qualified" components controlled by 6A04.c.1 or c.3;

e.2. Having steering, tracking, stabilization or resonator alignment bandwidths equal to or more than 100 Hz and an accuracy of 10 microradians or less;

e.3. Gimbals having a maximum slew exceeding 5°, a bandwidth equal to or more than 100 Hz, and either of the following:

e.3.a.1. Exceeding 0.15 m, but not exceeding 1 m, in diameter or major axis length;

e.3.a.2. Capable of angular accelerations exceeding 2 radians/s^2; *and*

e.3.a.3. Having angular pointing errors equal to or less than 200 microradians; *or*

e.3.b.1. Exceeding 1 m in diameter or major axis length;

e.3.b.2. Capable of angular accelerations exceeding 0.5 radians/s^2; *and*

e.3.b.3. Having angular pointing errors equal to or less than 200 microradians;

e.4. Specially designed to maintain the alignment of phased array or phased segment mirror systems consisting of mirrors with a segment diameter or major axis length of 1 m or more;

f. "Fluoride fiber" cable, or optical fibers therefor, having an attenuation of less than 4 dB/km in the wavelength range exceeding 1,000 nm, but not exceeding 3,000 nm.

6A05A "Lasers", components and optical equipment, as follows.

Requirements

Validated License Required: QSTVWYZ.

Unit: Number; $ value for parts and accessories.

Reason for Control: NS, NP (see Note).

GLV: $3,000.

GCT: Yes.

GFW: Yes (Advisory Notes 5.3 and 5.4 to Category 6 only).

Note: NP controls apply to all destinations, except countries listed in Supplement No. 2 to Part 773 of this subchapter, for lasers described in 6A05.a.1.c, a.2, a.4.c, a.6, a.7.b, c.1.b, c.2.c.2, c.2.c.3, c.2.d.2, and d.2.

* * * * *

26. In Category 6 (Sensors), ECCN 6A07A is amended by revising the heading of the entry and by revising the List of Items Controlled and ECCN 6A08A is revised to read as follows:

6A07A Gravity meters (gravimeters) and gravity gradiometers, as described in this entry.

* * * * *

List of Items Controlled

a. Gravity meters for ground use having a static accuracy of less (better) than 10 microgal;

Note: 6A07.a does not control ground gravity meters of the quartz element (Worden) type.

b. Gravity meters for mobile platforms for ground, marine, submersible, space or airborne use having:

b.1. A static accuracy of less (better) than 0.7 milligal; *and*

b.2. An in-service (operational) accuracy of less (better) than 0.7 milligal

with a time-to-steady-state registration of less than 2 minutes under any combination of attendant corrective compensations and motional influences;

c. Gravity gradiometers.

6A08A Radar systems, equipment and assemblies, and specially designed components therefor.

Requirements

Validated License Required: QSTVWYZ.

Unit: $ value.

Reason for Control: NS, MT, and FP (see Notes).

GLV: $5,000.

GCT: Yes, except MT (see Notes).

GFW: No.

Notes: 1. MT controls apply to items that are designed for airborne applications and that are usable in the systems described in § 778.7(a) of this subchapter.

2. FP controls apply to Iran, and Syria for items described in 6A08.g.

List of Items Controlled

Note: 6A08 does not control:

a. Secondary surveillance radar (SSR);

b. Car radar designed for collision prevention;

c. Displays or monitors used for Air Traffic Control (ATC) having no more than 12 resolvable elements per mm;

d. Meteorological (weather) radar.

Radar systems, equipment and assemblies having any of the following characteristics, and specially designed components therefor:

a. Operating at frequencies from 40 GHz to 230 GHz and having an average output power exceeding 100 mW;

b. Having a tunable bandwidth exceeding ± 6.25% of the center operating frequency;

Technical Note: The center operating frequency equals one half of the sum of the highest plus the lowest specified operating frequencies.

c. Capable of operating simultaneously on more than two carrier frequencies;

d. Capable of operating in synthetic aperture (SAR), inverse synthetic aperture (ISAR) or sidelooking airborne (SLAR) radar mode;

e. Incorporating "electronically steerable phased array antennae";

f. Capable of heightfinding non-cooperative targets;

Note: 6A08.f does not control precision approach radar equipment (PAR) conforming to ICAO standards.

g. Designed specially for airborne (balloon or airframe mounted) operation and having Doppler signal processing for the detection of moving targets;

h. Employing processing of radar signals using:

h.1. "Radar spread spectrum" techniques; *or*

h.2. "Radar frequency agility" techniques;

i. Providing ground-based operation with a maximum "instrumented range" exceeding 185 km;

Note: 6A08.i does not control:

a. Fishing ground surveillance radar;

b. Ground radar equipment specially designed for enroute air traffic control and "software" specially designed for the "use" thereof, provided:

1. It has a maximum "instrumented range" of 500 km or less;

2. It is configured so that radar target data can be transmitted only one way from the radar site to one or more civil ATC centers;

3. It contains no provisions for remote control of the radar scan rate from the enroute ATC center; *and*

4. It is to be permanently installed.

N.B.: The "use" "software" must be limited to "object code" and the minimum amount of "source code" necessary for installation, operation or maintenance.

j. "Laser" radar or Light Detection and Ranging (LIDAR) equipment, as follows:

j.1. "Space-qualified"; *or*

j.2. Employing coherent heterodyne or homodyne detection techniques and having an angular resolution of less (better) than 20 microradians;

Note: 6A08.j does not control LIDAR equipment specially designed for surveying or for meteorological observation.

k. Having signal processing sub-systems using "pulse compression" with:

k.1. A "pulse compression" ratio exceeding 150; *or*

k.2. A pulse width of less than 200 ns; *or*

l. Having data processing sub-systems with:

l.1. "Automatic target tracking" providing, at any antenna rotation, the predicted target position beyond the time of the next antenna beam passage;

Note: 6A08.l.1 does not control conflict alert capability in air traffic control systems, or marine or harbor radar.

l.2. Calculation of target velocity from primary radar having non-periodic (variable) scanning rates;

l.3. Processing for automatic pattern recognition (feature extraction) and comparison with target characteristic data bases (waveforms or imagery) to identify or classify targets; *or*

l.4. Superposition and correlation, or fusion, of target data from two or more "geographically dispersed" and "interconnected radar" sensors to enhance and discriminate targets.

Note: 6A08.l.4 does not control systems, equipment and assemblies used for marine traffic control.

27. In Supplement No. 1 to § 799.1 (the Commerce Control List), Category 6 (Sensors), ECCN 6B04A is revised to read as follows:

6B04A Optics.

Requirements

Validated License Required: QSTVWYZ.

Unit: Number.

Reason for Control: NS.

GLV: $5,000.

GCT: Yes.

GFW: Yes (Advisory Note 4.3 to Category 6 only).

List of Items Controlled

a. Equipment for measuring absolute reflectance to an accuracy of ±0.1% of the reflectance value;

b. Equipment other than optical surface scattering measurement equipment, having an unobscured aperture of more than 10 cm, specially designed for the non-contact optical measurement of a non-planar optical surface figure (profile) to an "accuracy" of 2 nm or less (better) against the required profile.

Note: 6B04A does not control microscopes.

28. In Category 6 (Sensors), ECCN 6C02A is amended by revising the List of Items Controlled and ECCN 6C04A is amended by revising the Requirements section to read as follows:

6C02A Optical Sensors.

* * * * *

List of Items Controlled

a. Elemental tellurium (Te) of purity levels equal to or more than 99.9995%;

b. Single crystals of cadmium telluride (CdTe), cadmium zinc telluride (CdZnTe) or mercury cadmium telluride (HgCdTe) of any purity level, including epitaxial wafers thereof;

Technical Note: Purity verified in accordance with ASTM F574–83 standard or equivalents.

c. "Optical fiber preforms" specially designed for the manufacture of high birefringence fibers controlled by 6A02.d.3.

6C04A Optics.

Requirements

Validated License Required: QSTVWYZ.

Unit: $ value.

Reason for Control: NS.

GLV: $1,500.

GCT: Yes.

GFW: Yes (Advisory Note 4.2 to Category 6 only).

* * * * *

29. In Category 6 (Sensors), ECCN 6E03A is amended by revising the List of Items Controlled to read as follows:

6E03A Other technology.

* * * * *

List of Items Controlled

a. *Optics.*

a.1. Optical surface coating and treatment technology required to achieve uniformity of 99.5% or better for optical coatings 500 mm or more in diameter or major axis length and with a total loss (absorption and scatter) of less than 5×10^{-3};

a.2. Optical fabrication technologies, as follows:

a.2.a. For serially producing optical components at a rate exceeding 10 m^2 of surface area per year on any single spindle and with:

a.2.a.1. An area exceeding 1 m^2; *and*

a.2.a.2. A surface figure exceeding lambda/10 rms at the designed wavelength;

a.2.b. Single point diamond turning techniques producing surface finish accuracies of better than 10 nm rms on non-planar surfaces exceeding 0.5 m^2;

Note: See also ECCN 2E03.d in Category 2, Materials Processing.

b. *Lasers.*

b.1. Technology for optical filters with a bandwidth equal to or less than 10 nm, a field of view (FOV) exceeding 40° and a resolution exceeding 0.75 line pairs per milliradian;

b.2. "Technology" "required" for the "development", "production" or "use" of specially designed diagnostic instruments or targets in test facilities for SHPL testing or testing or evaluation of materials irradiated by SHPL beams;

c. *Magnetometers.* Technology "required" for the "development" or "production" of fluxgate "magnetometers" or fluxgate "magnetometer" systems having a noise level:

c.1. Less than 0.05 nT rms per root Hz at frequencies of less than 1 Hz; *or*

c.2. 1×10^{-3} nT rms per square root Hz at frequencies of 1 Hz or more.

30. In Category 6 (Sensors), the notes under the heading "Notes for Category 6" that follow ECCN 6E96G are revised to read as follows:

Notes for Category 6

Acoustics

Advisory Note 1.1: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Group W of equipment controlled by 6A01.b or 6A01.c, and "software" specially designed and technology "required" therefor controlled by 6D or 6E.

Advisory Note 1.2: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Groups QWY and the People's Republic of China of equipment controlled by 6A01.a.1.b.4 for use in civil research or civil exploration work.

Advisory Note 1.3: Licenses will receive favorable consideration for exports to satisfactory end-users in Country Group Q of equipment controlled by 6A01.b or 6A01.c and "software" specially designed and technology "required" therefor controlled by 6D or 6E.

Optical Sensors

Advisory Note 2.1: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Group W of items controlled by 6A02 or 6C02, and "software" specially designed and technology "required" therefor controlled by 6D or 6E, *except:*

a. Optical sensors and associated equipment controlled by 6A02.a.1, 6A02.a.2., or 6A02.a.3 and "software" specially designed and technology "required" therefor controlled by 6D or 6E;

b. Equipment controlled by 6A02.c, and "software" specially designed and technology "required" therefor controlled by 6D or 6E, other than non-ruggedized equipment operating in the visible spectrum, containing image intensifier tubes controlled by 6A02.a.2.a.3.a, for civil certified end-uses by civil end-users.

Advisory Note 2.2: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in the People's Republic of China of image intensifier tubes incorporating microchannel-plates, not specially designed for cameras controlled by 6A03.

N.B.: Advisory Note 2.2 does not apply to tubes incorporating a gallium arsenide (or similar semiconductor) photocathode.

Advisory Note 2.3: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Groups QWY and the People's Republic of China of reasonable quantities of non-ruggedized image intensifier tubes controlled by 6A02.a.2.a.3.a for bona fide medical use.

Advisory Note 2.4: Licenses will receive favorable consideration for exports to satisfactory end-users in Country Group W of items controlled by 6A02 not eligible for export as administrative exceptions under Advisory Note 2.1 for Category 6, and "software" specially designed and technology "required" therefor controlled by 6D or 6E.

Advisory Note 2.5: Licenses will receive favorable consideration, for exports to satisfactory end-users in Country Groups QWY and the People's Republic of China of reasonable quantities of image intensifier tubes controlled by 6A02.a.2.a.3.a that are non-ruggedized and intended for equipment listed in the Note to 6A02.c.

Advisory Note 2.6: Licenses will receive favorable consideration for exports to satisfactory end-users in Country Group Q of items controlled by 6A02 and 6C02, and "software" specially designed and technology "required" therefor controlled by *6D or 6E*, except optical sensors and associated equipment controlled by 6A02.a.1, 6A02.a.2, 6A02.a.3 or 6A02.c and "software" specially designed and technology "required" therefor controlled by 6D or 6E

Cameras

Advisory Note 3.1: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Group W of cameras controlled by 6A03.a.1 or 6A03.a.5, and "software" specially designed and technology "required" therefor controlled by 6D or 6E.

Advisory Note 3.2: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Groups QWY and the People's Republic of China of mechanical framing cameras controlled by 6A03.a.2 designed for civil purposes (i.e., non-nuclear use) with a framing speed of not more than 2 million frames per second.

Advisory Note 3.3: Licenses will receive favorable consideration for exports to satisfactory end-users in Country Group Q of cameras controlled by 6A03.a.1 or 6A03.a.5, and "software" specially designed and technology "required" therefor controlled by 6D or 6E.

Optics

Advisory Note 4.1: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Group W of equipment controlled by 6B04 and materials controlled by 6C04 and "software" specially designed and technology "required" therefor controlled by 6D or 6E.

Advisory Note 4.2: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Groups QWY and the People's Republic of China of the following items for installation and use at ground-based bona fide academic or civilian astronomical research sites or in international air- or space-based bona fide academic or civilian astronomical research projects. For the end-use stated in this Advisory Note, the following limits apply:

a. One optical mirror controlled by 6A04.a.1;

b. Three optical mirrors controlled by 6A04.a.2;

c. Three optical mirrors controlled by 6A04.a.4;

d. Three optical components controlled by 6A04.b;

e. Ten optical filters controlled by 6A04.d.1.a;

f. One piece of optical control equipment controlled by 6A04.e.2 for each operational mirror;

g. Four pieces of optical control equipment controlled by 6A04.e.4;

h. Three "substrate blanks" controlled by 6C04.a;

i. A reasonable quantity of the bulk fluoride glass controlled by 6C04.e.2;

j. A reasonable quantity of the materials controlled by 6C04.f.

N.B.: The quantity limitations listed in Advisory Note 4.2 refer to specific projects.

Advisory Note 4.3: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Groups QWY and the People's Republic of China of equipment controlled by 6B04.b for stated bona fide civil end-uses.

Advisory Note 4.4: Licenses will receive favorable consideration for exports to

satisfactory end-users in Country Group W of items controlled by 6A04, and "software" specially designed and technology "required" therefor controlled by 6D or 6E.

Advisory Note 4.5: Licenses will receive favorable consideration for exports to satisfactory end-users in Country Group Q of equipment controlled by 6B04 and materials controlled by 6C04 and "software" specially designed and technology "required" therefor controlled by 6D or 6E.

Lasers

Advisory Note 5.1: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Group W of:

a. "Tunable" pulsed flowing-dye "lasers" having all of the following, and specially designed components therefor:

1. An output wavelength less than 800 nm;

2. A "pulse duration" not exceeding 100 ns; *and*

3. A peak output power not exceeding 15 MW;

b. CO_2 or CO/CO_2 "lasers" having an output wavelength in the range from 9,000 to 11,000 nm and having a pulsed output not exceeding 2 J per pulse and a maximum rated average single or multimode output power not exceeding 5 kW;

c. Equipment controlled by 6B05 and materials controlled by 6C05;

d. "Software", controlled by 6D, that is specially designed and technology, controlled by 6E, that is "required" for the equipment described in paragraphs .a, .b, or .c of this Advisory Note 5.1.

Advisory Note 5.2: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in the People's Republic of China of:

a. "Tunable" pulsed flowing-dye "lasers" having all of the following, and specially designed components therefor:

1. An output wavelength less than 600 nm;

2. A "pulse duration" not exceeding 100 ns; *and*

3. A peak output power not exceeding 15 MW;

b. CO_2 or CO/CO_2 "lasers" having an output wavelength in the range from 9,000 to 11,000 nm and having a pulsed output not exceeding 2 J per pulse and a maximum rated average single or multimode output power not exceeding 5 kW.

Advisory Note 5.3: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Groups QWY and the People's Republic of China of "lasers", for civil applications, as follows:

a. Neodymium-doped (other than glass), pulse-excited, "Q-switched lasers" controlled by 6A05.c.2.c.2.b having:

1. A pulse duration equal to or more than 1 ns; *and*

2. A multiple-transverse mode output with a "peak power" not exceeding 400 MW;

b. Neodymium-doped (other than glass) "lasers" controlled by 6A05.c.2.c.3.b or 6A05.c.2.c.4.b:

1. Having:

a. An output wavelength exceeding 1,000 nm, but not exceeding 1,100 nm; *and*

b. An average or CW output power not exceeding 2 kW; *and*

2. Being:

a. Pulse-excited, non-"Q-switched" multiple-tranverse mode; *or*

b. Continuously excited, multiple-tranverse mode;

c. CO_2 "lasers" controlled by 6A05.a.4:

1. Being in CW multiple-tranverse mode; *and*

2. Having a CW output power not exceeding 15 kW;

d. CO "lasers" having a CW maximum rated single or multimode output power not exceeding 10 kW.

Advisory Note 5.4: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Groups QWY and the People's Republic of China of optical equipment controlled by 6A05.g when intended for use with "lasers" that are not controlled or controlled "lasers" that have been approved for export.

Advisory Note 5.5: Licenses will receive favorable consideration for exports to satisfactory end-users in Country Group Q of:

a. "Tunable" pulsed flowing-dye "lasers" having all of the following, and specially designed components therefor:

1. An output wavelength less than 800 nm;

2. A "pulse duration" not exceeding 100 ns; *and*

3. A peak output power not exceeding 15 MW;

b. CO_2 or CO/CO_2 "lasers" having an output wavelength in the range from 9,000 to 11,000 nm and having a pulsed output not exceeding 2 J per pulse and a maximum rated average single or multimode output power not exceeding 5 kW;

c. Equipment controlled by 6B05 and materials controlled by 6C05;

d. "Software", controlled by 6D, that is specially designed and technology, controlled by 6E, that is "required" for the equipment described in paragraph a., b., or c. of this Advisory Note 5.5.

Magnetometers

Advisory Note 6.1: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Group W of items controlled by 6A06, and "software" specially designed and technology "required" therefor that are controlled by 6D or 6E.

Advisory Note 6.2: Licenses will receive favorable consideration for exports to satisfactory end-users in Country Group Q of items controlled by 6A06, and "software" specially designed and technology "required" therefor controlled by 6D or 6E.

Gravimeters

Advisory Note 7.1: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Group W of items controlled by 6A07 or 6B07, and "software" specially designed and technology "required" therefor that are controlled by 6D or 6E.

Advisory Note 7.2: Licenses will receive favorable consideration for exports to satisfactory end-users in County Group Q of items controlled by 6A07 or 6B07, and "software" specially designed and technology "required" therefor that are controlled by 6D or 6E.

Radar

Advisory Note 8.1: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Group W, for purposes such as air traffic control, of radar equipment controlled by 6A08 or 6B08, and "software" specially designed and technology "required" therefor that are controlled 6D or 6E.

Advisory Note 8.2: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Groups QWY and the People's Republic of China of Air Traffic Control (ATC) "software" application "programs" controlled by 6D03.d.1, provided that:

a. The number of "system tracks" does not exceed 700;

b. The number of primary radar inputs does not exceed 32; *and*

c. The "software" is further limited to "object code" and the minimum amount of "source code" necessary for installation, operation or maintenance.

Advisory Note 8.3: Licenses will receive favorable consideration for exports to satisfactory end-users in Country Group Q, for purposes such as air traffic control, of radar equipment controlled by 6A08 or 6B08, and "software" specially designed and technology "required" therefor that are controlled 6D or 6E.

31. In Category 7 (Navigation and Avionics), under the heading "Notes for Category 7" that follows ECCN 7E94F, a new Advisory Note 3 is added immediately following Advisory Note 2 to read as follows:

Notes for Category 7

* * * * *

Advisory Note 3: Licenses will receive favorable consideration for exports to satisfactory end-users in Country Group Q of items controlled for national security reasons by Category 7, *except:*

a. Inertial navigation systems controlled by 7A03, and "software" specially designed and technology "required" therefor that are controlled by 7D or 7E;

b. Technology controlled by 7E for accelerometers and gyros controlled by 7A01 and 7A02;

c. Technology controlled by 7E04.a.4.

32. In Category 8 (Marine Technology), under the heading "Notes for Category 8" that follows ECCN 8E96G, a new Advisory Note 4 is added immediately following Advisory Note 3 to read as follows:

Notes for Category 8

* * * * *

Advisory Note 4: Licenses will receive favorable consideration for exports to satisfactory end-users in Country Group Q of items controlled for national security reasons by Category 8, *except:*

a. Submersible vehicles controlled by 8A01.a, 8A01.b, 8A01.c, or 8A01.d;

b. Submersible systems or equipment controlled by 8A02.a, 8A02.b, 8A02.c, 8A02.i, or 8A02.j;

c. "Software" specially designed and technology "required" for the submersible vehicles, systems or equipment described in

this Advisory Note 4.a or .b that are controlled by 8D or 8E;

d. Other technology for submersible vehicles, systems or equipment controlled by 8E02.

33. In Category 9 (Propulsion Systems and Transportation Equipment), under the heading "Advisory Notes for Category 9" that follows ECCN 9E96G, a new Advisory Note 4 is added immediately following Advisory Note 3 to read as follows:

Advisory Notes for Category 9

* * * * *

Advisory Note 4: Licenses will receive favorable consideration for exports to satisfactory end-users in Country Group Q of items controlled for national security reasons by Category 9, *except:*

a. Commercial communication satellites not excepted from control by 9A04.a;

b. Test facilities or equipment controlled by 9B01, 9B02, 9B03, 9B05, or 9B08;

c. "Software" specially designed and technology "required" for the equipment described in this Advisory Note 4.a or .b that are controlled by 9D or 9E;

d. Other technology controlled by 9E03.a, and "software" specially designed therefor that is controlled by 9D.

34. Supplement No. 3 to § 799.1 is amended:

a. By revising the definitions of the following terms: "accuracy", "asynchronous transfer mode", "deformable mirrors", "fibrous and filamentary materials", "information security", "matrix", "maximum bit transfer rate", "media access unit", "microcomputer microcircuit", "personalized smart card", and "signal processing"; and

b. By adding in alphabetical order the definitions of the following terms: "ATM", "basic scientific research", "CE", "CTP", "FMU", "focal plane array", "ISDN", "MBTR", "required", "SDH", and "SONET" to read as follows:

Supplement No. 3 to § 799.1—Definitions

Accuracy (Cat. 2 and 6)—"Accuracy" is usually measured in terms of inaccuracy. It is defined as the maximum deviation, positive or negative, of an indicated value from an accepted standard or true value.

* * * * *

Asynchronous transfer mode (ATM) (Cat. 5)—A transfer mode in which the information is organized into cells; it is asynchronous in the sense that the recurrence of cells depends on the required or instantaneous bit rate. (CCITT Recommendation I.113)

ATM (Cat. 5)—See "Asynchronous transfer mode".

* * * * *

Basic scientific research (GTN)—Experimental or theoretical work undertaken principally to acquire new knowledge of the fundamental principles of phenomena or observable facts, not primarily directed towards a specific practical aim or objective.

* * * * *

CE—See "computing element".

* * * * *

CTP—See "composite theoretical performance".

* * * * *

Deformable mirrors (Cat. 6)—

(a) Mirrors:

(1) Mirrors having a single continuous optical reflecting surface that is dynamically deformed by the application of individual torques or forces to compensate for distortions in the optical waveform incident upon the mirror; or

(2) Mirrors having multiple optical reflecting elements that can be individually and dynamically repositioned by the application of torques or forces to compensate for distortions in the optical waveform incident upon the mirror.

(b) Deformable mirrors are also known as adaptive optic mirrors.

* * * * *

Fibrous or filamentary materials (Cats. 1 and 8)—The term "fibrous and filamentary materials" includes:

a. Continuous monofilaments;

b. Continuous yarns and rovings;

c. Tapes, fabrics, random mats and braids;

d. Chopped fibers, staple fibers and coherent fiber blankets;

e. Whiskers, either monocrystalline or polycrystalline, of any length;

f. Aromatic polyamide pulp.

* * * * *

FMU—See "flexible manufacturing unit".

Focal plane array (Cat. 6)—A linear or two-dimensional planar layer, or combination of planar layers, of individual detector elements, with or without readout electronics, that work in the focal plane.

N.B.: This definition does not include a stack of single detector elements or any two, three, or four element detectors provided time delay and integration is not performed within the element.

* * * * *

Information security (Cat. 5)—All the means and functions ensuring the accessibility, confidentiality or integrity of information or communications, excluding the means and functions intended to safeguard against malfunctions. This includes "cryptography", "cryptanalysis", protection against compromising emanations and computer security.

N.B.: "Cryptanalysis": the analysis of a cryptographic system or its inputs and outputs to derive confidential variables or sensitive data, including clear text. (ISO 7498–2–1988 (E), paragraph 3.3.18)

* * * * *

ISDN—See "Integrated Services Digital Network".

* * * * *

Matrix (Cat. 1, 2, 8, and 9)—A substantially continuous phase that fills the space between particles, whiskers or fibers.

* * * * *

Maximum bit transfer rate (MBTR) (Cat. 4)—Of solid state storage equipment: the number of data bits per second transferred between the equipment and its controller. Of a disk drive: the internal data transfer rate calculated as follows:

"MBTR" (bits per second)=B×R×T, where:

B=Maximum number of data bits per track available to read or write in a single revolution;

R=Revolutions per second;

T=Number of tracks that can be used or written simultaneously.

MBTR—See "maximum bit transfer rate".

* * * * *

Media access unit (Cat. 5)—Equipment that contains one or more communication interfaces ("network access controller", "communications channel controller", modem or computer bus) to connect terminal equipment to a network.

* * * * *

Microcomputer microcircuit (Cat. 3)—A "monolithic integrated circuit" or "multichip integrated circuit" containing an arithmetic logic unit (ALU) capable of executing a series of general purpose instructions from an external storage.

N.B. 1: The "microprocessor microcircuit" normally does not contain integral user-accessible storage, although storage present on-the-chip may be used in performing its logic function.

N.B. 2: This definition includes chip sets that are designed to operate together to provide the function of a "microprocessor microcircuit".

* * * * *

Personalized smart card (Cat. 5)—A smart card containing a microcircuit, in accordance with ISO/IEC 7816, that has been programed by the issuer and cannot be changed by the user.

* * * * *

Required: As applied to "software", refers to only that portion of "software" which is peculiarly responsible for achieving or exceeding the control performance levels, characteristics, or function. Such "required" "software" may be shared by different products.

* * * * *

SDH—See "Synchronous digital hierarchy".

* * * * *

Signal processing (Cat. 3, 4, and 5)—The processing of externally derived information-bearing signals by algorithms such as time compression, filtering, extraction, selection, correlation, convolution or transformations between domains (e.g., fast Fourier transform or Walsh transform).

* * * * *

SONET—See "synchronous optical network".

* * * * *

Dated: September 30, 1993.

Iain S. Baird,

Acting Assistant Secretary for Export Administration.

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federal register

Wednesday
October 6, 1993

Part V

Department of Education

34 CFR Part 668, et al.

Student Assistance General Provisions; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 668, 674, 675, 676, 682, and 690

Student Assistance General Provisions, Federal Perkins Loan, Federal Work-Study, Federal Supplemental Educational Opportunity Grant, Federal Family Education Loan, and Federal Pell Grant Programs

AGENCY: Department of Education.

ACTION: Notice of relief from regulatory provisions.

SUMMARY: The Secretary of Education announces regulatory relief from specific regulations governing the Federal Perkins Loan, Federal Work-Study (FWS), Federal Supplemental Educational Opportunity Grant (FSEOG), Federal Family Education Loan (FFEL), and Federal Pell Grant programs, for the 1993–94 award year, to assist institutions and individuals who suffered financial harm from the Midwest floods of 1993.

EFFECTIVE DATE: This notice takes effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Kathy S. Gause, Program Specialist, Grants Branch, Policy Development Division, Policy, Training, and Analysis Service, U.S. Department of Education, 400 Maryland Avenue, SW. (Regional Office Building 3, room 4018), Washington, DC 20202–5447. Telephone (202) 708–4690. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Many institutions of higher education, student financial aid applicants, and recipients have been adversely affected by the flooding in the Midwest. The President signed the Emergency Supplemental Appropriations for Relief from the Major, Widespread Flooding in the Midwest Act of 1993 (Pub. L. 103–75) on August 12, 1993. The Act allows the Secretary to reallocate any excess funds under the Federal Perkins Loan and the FWS programs from the 1992–93 award year to assist individuals who suffered financial harm as a result of the Midwest floods of 1993. The Department has the authority to reallocate these funds to institutions until the end of this fiscal year on September 30, 1993. Institutions were informed of the application procedures for obtaining reallocated funds to assist Midwest flood victims in a letter to financial aid administrators (CB–93–15) dated August 1993.

The Emergency Supplemental Appropriations Act, however, does not expressly authorize the reallocation of funds returned under the FSEOG Program. The Higher Education Act of 1965, as amended (HEA), in section 413D permits the Secretary, in accordance with regulations, to reallocate excess FSEOG funds returned by an institution to other institutions. Under current FSEOG regulations (34 CFR 676.4), the Secretary reallocates funds on a pro rata basis, i.e., the amount of an institution's fair-share shortfall as a percentage of the fair-share shortfalls of all participating institutions with an unmet FSEOG request. The Secretary has decided to promulgate standards to allow excess funds under the FSEOG Program from the 1992–93 award year to be reallocated during the 1993–94 award year to assist students adversely affected by the Midwest floods. The funds will be reallocated to institutions that enrolled students adversely affected by the floods and submitted applications in the format required by the Secretary in a letter to financial aid administrators (CB–93–15) dated August 1993. If the total funds requested exceed the total funds available, the funds will then be reallocated on a pro rata basis only among these institutions to provide assistance to students whose financial need has increased as a result of the 1993 Midwest floods.

The Secretary recognizes the severe impact the flooding has had on institutions and their students located in the designated natural disaster areas. Many institutions and individuals adversely affected by the flooding are facing immediate problems concerning the disbursement and repayment of student loans.

The title IV student financial aid programs affected by this notice are the FFEL Program (consisting of the Federal Stafford Loan Program, the Federal Supplemental Loans for Students (SLS) Program, the Federal PLUS Program, and the Federal Consolidation Loan Program); the Federal Pell Grant Program; and the Federal Perkins Loan, FWS, and FSEOG programs (known collectively as the campus-based programs). To assist both institutions and individuals, this notice also provides certain other regulatory relief to institutions in their administration of these student financial aid programs.

The Secretary has already provided certain regulatory relief to lenders and guaranty agencies in the FFEL Program under section 432(a)(6) of the HEA and 34 CFR 682.406(b) and 682.413(f). The guaranty agency directors were informed of this relief in a letter dated July 21, 1993.

Covered Individuals

This notice is intended to assist institutions and individuals that have been adversely affected by the Midwest floods of 1993. In regard to the Midwest floods, this notice will apply to institutions that were unable to maintain normal operations because they were located in the designated flood disaster counties in the states of Illinois, Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, or Wisconsin on the date on which the President declared the existence of a major disaster. This notice of relief also applies only to individuals who suffered financial harm from the disaster and at the time the Midwest flood of 1993 occurred, were residing, attending an institution of higher education, or employed in the counties designated as disaster areas (or, in the case of an individual who is a dependent student, whose parent or stepparent suffered financial harm from such disaster and resided or was employed in such an area at that time). This notice of regulatory relief will be applicable for awards made and collection activities conducted during the 1993–94 award year (the period from July 1, 1993–June 30, 1994). The following counties have been designated as flood disaster areas:

Flood Disaster Areas

State	Counties
Illinois	Adams, Alexander, Boone, Calhoun, Carroll, Hancock, Henderson, Henry, Jackson, Jersey, Jo Daviess, Lake, Madison, McHenry, Mercer, Monroe, Pike, Randolph, Rock Island, St. Clair, Stephenson, Union, Whiteside, Winnebago, Greene, Knox, Morgan, Ogle, Scott, Waren, Brown, Cass, Fulton, Mason, Schuyler, Massac, Pope, Pulaski, Cook.

State	Counties
Iowa	All counties.
Kansas	Dickinson, Doniphan, Douglas, Geary, Harvey, Johnson, Leavenworth, Ottawa, Riley, Saline, Wyandotte, Pottawatomie, Osborne, Wabaunsee, Lincoln, Marshall, Ellsworth, Jefferson, Rush, Russell, Sedgwick, Sumner, Atchison, Brown, Clay, Cloud, Jackson, Nemaha, Jewell, Republic, McPherson, Morris, Edwards, Ellis, Lane, Lyon, Marion, Ness, Rooks, Stafford, Washington, Osage, Reno, Pawnee, Rice, Shawnee, Mitchell.
Minnesota	Big Stone, Blue Earth, Brown, Carver, Chippewa, Clay, Cottonwood, Dakota, Faribault, Goodhue, Houston, Jackson, Le Sueur, Lincoln, Lyon, Martin, McLeod, Murray, Nicollet, Nobles, Pipestone, Ramsey, Redwood, Renville, Rock, Scott, Sibley, Stevens, Swift, Traverse, Washington, Watonwan, Yellow Medicine, Becker, Lac qui Parle, Wabasha, Aitkin, Grant, Mahnomen, Meeker, Norman, Polk, Rice, Waseca, Steele, Winona, Freeborn, Kittson, Marshall, Mower, Roseau, Otter Tail, Wright.
Missouri	Andrew, Atchison, Barry, Bates, Boone, Buchanan, Callaway, Camden, Carroll, Cape Girardeau, Charlton, Clark, Clay, Cole, Cooper, Daviess, Franklin, Gasconade, Gentry, Harrison, Holt, Howard, Jackson, Jefferson, Lafayette, Lewis, Lincoln, Marion, McDonald, Miller, Moniteau, Montgomery, Newton, Nodaway, Osage, Perry, Pike, Platte, Pulaski, Ralls, Ray, Saline, Shelby, St. Charles, St. Louis, St. Louis City, Ste. Genevieve, Stone, Warren, Worth, Adair, Caldwell, Johnson, Livingston, Macon, Pemiscot, Pettis, Putnam, Scott, Scotland, Audrain, Cass, Clinton, DeKalb, Grundy, Hickory, Jasper, Knox, Linn, Mercer, Morgan, Randolph, City of Kansas City, Benton, Henry, New Madrid, Sullivan, Schuyler, Maries, Mississippi, Monroe, St. Clair, Caldwell, Crawford, Wayne, Stoddard, St. Francois.
Nebraska	Adams, Buffalo, Cass, Hall, Kearney, Lancaster, Phelps, Sarpy, Seward, Washington, Boyd, Butler, Clay, Colfax, Cuming, Douglas, Hamilton, Fillmore, Nemaha, Otoe, Pawnee, Platte, Polk, Richardson, Saunders, Stanton, York, Dawson, Gage, Jefferson, Dodge, Franklin, Frontier, Gosper, Sherman, Chase, Hayes, Johnson, Dundy, Furnas, Harlan, Merrick, Saline, Boone, Burt, Howard, Nuckolls, Thayer, Webster, Greeley, Nance, Custer.
North Dakota	Barnes, Burleigh, Cass, Dickey, Emmons, Grant, Hettinger, Kidder, La Moure, Logan, McIntosh, Morton, Ransom, Richland, Sargent, Sioux, Stutsman, Benson, Grand Forks, Griggs, McLean, Mercer, Nelson, Oliver, Ramsey, Sheridan, Stark, Steele, Traill, Walsh, Wells, Cavalier, Eddy, Burke, Pembina, Rolette, Towner, Divide, Williams.
South Dakota	Bon Homme, Brookings, Clay, Davison, Hanson, Hutchinson, Kingsbury, Lake, Lincoln, McCook, Miner, Minnehaha, Moody, Sanborn, Turner, Union, Yankton, Brown, Charles Mix, Codington, Day, Deuel, Douglas, Grant, Hamlin, Marshall, Roberts, Spink, Aurora, Campbell, Clark, Corson, Edmunds, Hand, Beadle, Jerauld, McPherson, Gregory.
Wisconsin	Adams, Buffalo, Calumet, Chippewa, Clark, Columbia, Crawford, Dane, Dodge, Dunn, Eau Claire, Fond du Lac, Grant, Green, Green Lake, Iowa, Jackson, Jefferson, Juneau, Kenosha, La Crosse, Lafayette, Lincoln, Marathon, Marquette, Milwaukee, Outagamie, Pierce, Portage, Price, Racine, Rock, Rusk, Sauk, St. Croix, Trempealeau, Vernon, Waupaca, Waushara, Winnebago, Wood, Richland, Monroe, Menominee, Shawano.

Note: For further updates to the list of designated disaster areas, institutions may contact the Department on its toll-free number at 1–800–433–3243 between 9 a.m. and 5:30 p.m., Eastern time, Monday through Friday. Individuals who use a telecommunications device for the deaf (TDD) may call 1–800–730–8913 between 9 a.m. and 5:30 p.m., Eastern time, Monday through Friday.

The Secretary provides the following enforcement relief from the regulations governing the student financial aid programs under title IV of the HEA:

I. 34 CFR Part 668—Student Assistance General Provisions

A. 34 CFR 668.19 Financial Aid Transcript

Under current regulations, before a student who previously attended another eligible institution may receive any title IV, HEA program funds, the institution to which the student is transferring must make an effort to obtain the student's financial aid transcript. The Secretary is waiving the requirement to obtain financial aid transcripts before disbursing funds for individuals covered by this notice for the 1993–94 award year. If the financial aid transcript is not available as a result of damage caused by the Midwest floods, the institution may disburse title IV funds. Any institution affected by this situation must document in the student's file that the financial aid transcript is unavailable due to damage stemming from the natural disaster. In addition, the student will still be expected to provide statements concerning all prior financial aid received and the institution will be expected to retain this information in the student's file.

B. 34 CFR 668.51–668.61—Subpart E Selection of Applicants for Verification

The Secretary is waiving verification requirements under 34 CFR 668.51–668.61 during the 1993–94 award year for those applicants who are selected for verification and whose records were lost or destroyed because of the Midwest floods. The institution must document in the student's file that the records are unavailable due to damage stemming from the natural disaster. For these students, Verification Status Code "S" may be used to report a Federal Pell Grant disbursement on the SAR.

II. 34 CFR Part 690—Federal Pell Grant Program

34 CFR 690.83 Submission of Reports

The Secretary modifies the deadline in 34 CFR 690.83(a)(1)(i) that an institution submit all SAR Payment Vouchers for an award year by September 30 following the end of the award year in which the grant is made. The Secretary will extend this reporting date, on a "case-by-case" basis, for institutions affected by the Midwest floods.

III. 34 CFR Parts 674 and 676—Federal Perkins Loan and FSEOG Programs

A. Federal Perkins Loan Program

1. 34 CFR 674.31 Promissory Note

Under 34 CFR 674.31(b)(2), the terms of a student's promissory note require that repayment of a loan must begin six (6) or nine (9) months after a borrower ceases to be at least a half-time regular student and that the repayment period normally ends 10 years later. The Secretary is modifying this provision that specifies the commencement of a borrower's repayment period to provide that any borrower who was in an "in-school" status at the time the natural disaster occurred and was unable to complete course requirements or enroll in classes due to the flooding will continue to be in an "in-school" status until such time as the borrower withdraws, or until the end of the 1993–94 award year, whichever is earlier. The institution must document this reason for continued "in-school" status in the student's file.

2. 34 CFR 674.42 Contact With the Borrower

The Secretary will not require an institution to comply with the

provisions of 34 CFR 674.42(b) that require an institution to make contact with the borrower during an initial or post-deferment grace period if that grace period coincides with the Midwest floods. These requirements shall be suspended for a period of time not to exceed the earlier of either the date on which the institution is able to resume normal contact with the borrower or January 1, 1994. An institution must document the reason for suspension of these activities in the borrower's file.

3. 34 CFR 674.41–674.50 Subpart C—Due Diligence

The Secretary will not enforce 34 CFR part 674 subpart C—Due Diligence. An institution may suspend the collection activities for borrowers already in default at the time of the natural disaster. These requirements shall resume on January 1, 1994. An institution must document the reason for suspension of these activities in the borrower's file.

4. 34 CFR 674.34–674.37 Deferment of Repayment

The Secretary modifies the provisions for hardship deferment in 34 CFR 674.34(i), 674.35(e), and 674.36(e) and authorizes an institution to grant an administrative hardship deferment to a borrower who is in repayment at the time of the natural disaster but who is unable to continue to repay the loan due to the disaster. Interest will accrue during any period of administrative hardship deferment. 34 CFR 674.37 requires that a borrower submit a written request for deferment. Under this administrative hardship deferment, a borrower may request this deferment orally and will not be required to submit a deferment documentation form to be considered eligible for this deferment. The administrative hardship deferment may be granted for a period of time not to exceed the earlier of either the date on which the institution is able to resume normal due-diligence activities or June 30, 1994. Documentation must be maintained according to the governing regulations.

B. FSEOG Program

34 CFR 676.4 Allocation and Reallocation

For the 1993–94 award year, FSEOG funds returned by institutions from the 1992–93 award year will be reallocated to institutions that enrolled students adversely affected by the 1993 Midwest floods and submitted applications in the format required by the Secretary. If the total funds requested exceed the total amount of funds available, the funds will then be reallocated on a pro rata basis only among these institutions to provide assistance to students whose financial need has increased as a result of the floods.

IV. 34 CFR Part 682—Federal Family Education Loan (FFEL) Program

A. 34 CFR 682.604 Processing the Borrower's Loan Proceeds and Counseling Borrowers

To assist affected individuals, the Secretary modifies the requirement in 34 CFR 682.604(c)(3) (i) and (ii) and 682.604(e)(4) that loan proceeds be delivered to the borrower within 45 days of the institution's receipt of the check but will instead permit the institution to deliver loan proceeds to the borrower up to 120 days from the institution's receipt of the check. Documentation must be maintained according to the governing regulations. The Department still expects delivery of a borrower's loan proceeds as soon as possible.

Also, because some institutions may have to delay opening or have ceased operation for an undetermined period of time, the Secretary authorizes lenders not to disburse loan checks to institutions or to parent PLUS borrowers in the affected areas until the lenders receive revised disbursement schedules from the affected institutions. The Secretary instructs guaranty agencies and lenders to revise information on loan periods, graduation dates, and so forth, on the loan applications related to these disbursements as the information becomes available. This change means that a borrower need not reapply for the loan. This change also will allow a student to receive his or her loan proceeds according to a schedule that fits the institution's new academic schedule.

B. 34 CFR 682.605 Determining the Date of a Student's Withdrawal

The Secretary modifies the requirement in 34 CFR 682.605(b) to permit an institution affected by the disaster to determine that the student has withdrawn within 90 days (instead of 45) after the expiration of the academic term for an institution that uses academic terms, except that 60 days (instead of 30) after the first day of the next scheduled term may be used in the case of a summer break, and 50 days (instead of 25) after the student's last date of attendance may be used for an institution that measures academic progress in clock hours, but does not use a semester, trimester, or quarter system.

C. 34 CFR 682.607 Payment of a Refund to a Lender

The Secretary modifies the deadlines by which an affected institution shall pay a refund that is due to a lender, within 60 days after the student's withdrawal as determined under 34 CFR 682.605(b) (1)–(3) or within 30 days in the case of a student who does not return to the institution at the expiration of an approved leave of absence under 34 CFR 682.605(c). Instead, the Secretary will require the institution to pay a refund to the lender within 120 days (instead of 60) after the student's withdrawal or within 60 days (instead of 30) after the last day of the leave of absence.

D. 34 CFR 682.610 Records, Reports, and Inspection Requirements for Participating Schools

The Secretary modifies the deadline in 34 CFR 682.610(c) that an institution complete and submit required Student Status Confirmation Reports (SSCRs) to the Secretary or guaranty agency within 30 days of the institution's receipt of the report but will instead require completion and submission of these reports within 90 days. Reports of changes of borrower status if the institution does not expect to submit its next SSCR within the next 60 days may also be submitted within 90 days (instead of 30 days).

Waiver of Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act, 20 U.S.C. 1232(b)(2)(A), and the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, the severe impact of the ongoing flooding in the Midwest has caused a national emergency that has been recognized by the Congress. The Secretary, recognizing the severe devastation of the Midwest flood victims, finds that soliciting further public comment with respect to this notice of relief from regulatory requirements is impracticable and contrary to the public interest under 5 U.S.C. 553(b)(B).

Executive Order 12291

This notice has been reviewed in accordance with Executive Order 12291. It is not classified as major because it does not meet the criteria for major regulations established in that order.

Regulatory Flexibility Act Certification

The Secretary certifies that this notice will not have a significant economic impact on a substantial number of small

entities. The small entities affected by this notice are small institutions of postsecondary education. This notice provides temporary regulatory relief and will not increase institutions' workload or costs associated with administering the title IV, HEA programs. It will therefore not have a significant economic impact on the entities affected.

Assessment of Educational Impact

The Secretary has determined that this document does not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

(Catalog of Federal Domestic Assistance Numbers: 84.032 Federal Family Education Loan Program; 84.038 Federal Perkins Loan Program; 84.007 Federal Supplemental Educational Opportunity Grant Program; 84.033 Federal Work-Study Program; 84.063 Federal Pell Grant Program)

Dated: September 29, 1993.

Richard W. Riley,

Secretary of Education.

[FR Doc. 93–24454 Filed 10–5–93; 8:45 am]

BILLING CODE 4000–01–P

federal register

Wednesday
October 6, 1993

Part VI

The President

Executive Order 12871—Labor-Management Partnerships

Proclamation 6602—Child Health Day, 1993

Federal Register
Vol. 58, No. 192
Wednesday, October 6, 1993

Presidential Documents

Title 3—

The President

Executive Order 12871 of October 1, 1993

Labor-Management Partnerships

The involvement of Federal Government employees and their union representatives is essential to achieving the National Performance Review's Government reform objectives. Only by changing the nature of Federal labor-management relations so that managers, employees, and employees' elected union representatives serve as partners will it be possible to design and implement comprehensive changes necessary to reform Government. Labor-management partnerships will champion change in Federal Government agencies to transform them into organizations capable of delivering the highest quality services to the American people.

By the authority vested in me as President by the Constitution and the laws of the United States, including section 301 of title 3, United States Code, and in order to establish a new form of labor-management relations throughout the executive branch to promote the principles and recommendations adopted as a result of the National Performance Review, it is hereby ordered:

Section 1. THE NATIONAL PARTNERSHIP COUNCIL. (a) *Establishment and Membership.* There is established the National Partnership Council ("Council"). The Council shall comprise the following members appointed by the President:

(1) Director of the Office of Personnel Management ("OPM");

(2) Deputy Secretary of Labor;

(3) Deputy Director for Management, Office of Management and Budget;

(4) Chair, Federal Labor Relations Authority;

(5) Federal Mediation and Conciliation Director;

(6) President, American Federation of Government Employees, AFL–CIO;

(7) President, National Federation of Federal Employees;

(8) President, National Treasury Employees Union;

(9) Secretary-Treasurer of the Public Employees Department, AFL–CIO; and

(10) A deputy Secretary or other officer with department- or agency-wide authority from two executive departments or agencies (hereafter collectively "agency"), not otherwise represented on the Council.

Members shall have 2-year terms on the Council, which may be extended by the President.

(b) *Responsibilities and Functions.* The Council shall advise the President on matters involving labor-management relations in the executive branch. Its activities shall include:

(1) supporting the creation of labor-management partnerships and promoting partnership efforts in the executive branch, to the extent permitted by law;

(2) proposing to the President by January 1994 statutory changes necessary to achieve the objectives of this order, including legislation consistent with the National Performance Review's recommendations for the creation of a flexible and responsive hiring system and the reform of the General Schedule classification system;

(3) collecting and disseminating information about, and providing guidance on, partnership efforts in the executive branch, including results achieved, to the extent permitted by law;

(4) utilizing the expertise of individuals both within and outside the Federal Government to foster partnership arrangements; and

(5) working with the President's Management Council toward reform consistent with the National Performance Review's recommendations throughout the executive branch.

(c) *Administration.* (1) The President shall designate a member of the Council who is a full-time Federal employee to serve as Chairperson. The responsibilities of the Chairperson shall include scheduling meetings of the Council.

(2) Council shall seek input from nonmember Federal agencies, particularly smaller agencies. It also may, from time to time, invite experts from the private and public sectors to submit information. The Council shall also seek input from companies, nonprofit organizations, State and local governments, Federal Government employees, and customers of Federal Government services, as needed.

(3) To the extent permitted by law and subject to the availability of appropriations, OPM shall provide such facilities, support, and administrative services to the Council as the Director of OPM deems appropriate.

(4) Members of the Council shall serve without compensation for their work on the Council, but shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law, for persons serving intermittently in Government service.

(5) All agencies shall, to the extent permitted by law, provide to the Council such assistance, information, and advice as the Council may request.

(d) *General.* (1) I have determined that the Council shall be established in compliance with the Federal Advisory Committee Act, as amended (5 U.S.C. App. 2).

(2) Notwithstanding any other executive order, the functions of the President under the Federal Advisory Committee Act, as amended, except that of reporting to the Congress, that are applicable to the Council, shall be performed by the Director of OPM, in accordance with guidelines and procedures issued by the Administrator of General Services.

(3) The Council shall exist for a period of 2 years from the date of this order, unless extended.

(4) Members of the Council who are not otherwise officers or employees of the Federal Government shall serve in a representative capacity and shall not be considered special Government employees for any purpose.

Sec. 2. IMPLEMENTATION OF LABOR-MANAGEMENT PARTNERSHIPS THROUGHOUT THE EXECUTIVE BRANCH. The head of each agency subject to the provisions of chapter 71 of title 5, United States Code shall:

(a) create labor-management partnerships by forming labor-management committees or councils at appropriate levels, or adapting existing councils or committees if such groups exist, to help reform Government;

(b) involve employees and their union representatives as full partners with management representatives to identify problems and craft solutions to better serve the agency's customers and mission;

(c) provide systematic training of appropriate agency employees (including line managers, first line supervisors, and union representatives who are

Federal employees) in consensual methods of dispute resolution, such as alternative dispute resolution techniques and interest-based bargaining approaches;

(d) negotiate over the subjects set forth in 5 U.S.C. 7106(b)(1), and instruct subordinate officials to do the same; and

(e) evaluate progress and improvements in organizational performance resulting from the labor-management partnerships.

Sec. 3. NO ADMINISTRATIVE OR JUDICIAL REVIEW. This order is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right to administrative or judicial review, or any other right, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

William J. Clinton

THE WHITE HOUSE,
October 1, 1993.

[FR Doc. 93–24751
Filed 10–4–93; 5:00 pm]
Billing code 3195–01–M

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Presidential Documents

Proclamation 6602 of October 4, 1993

Child Health Day, 1993

By the President of the United States of America

A Proclamation

Our children are our future. Therefore, making sure that our children are healthy must be a national concern. For 65 years, Presidents of the United States have proclaimed one day every year as "Child Health Day," a time to focus on the health and well-being of our Nation's children. Over the years, we have recognized again and again that it is better to try to guarantee the health of our children than to attempt to restore their health once it has been jeopardized. A healthy childhood charts a path for a healthy adult life. Prevention is, therefore, primary. Through preventive measures, we help children avoid the pain and suffering of disease and disability; we stop unnecessary spending; and we decrease the number of childhood deaths.

We possess the ability to prevent many childhood diseases and injuries, and we must use this ability. Every child needs access to primary health care. The necessary immunizations against nine different contagious diseases must be given to children at the recommended ages. Injuries, the greatest threat to our children's well-being, can be reduced by introducing into our daily routines various safety measures. For example, the use of car seats, seat belts, and bicycle helmets helps to guard against hazards to which children are especially vulnerable. There are dangers in the home, as well, such as careless storage of poisons and unlocked staircase gates. Paying attention to our children and to potential risks to their safety can help to safeguard them in our homes.

We can prevent our children from making unhealthy choices, both by the rules we set for them and by the rules we follow ourselves. Many of the behaviors that will affect their health—choices about what to eat; the dangers of smoking, drinking, using illegal drugs, or irresponsible sexual behavior; how to handle their feelings and the pressure of their peers—will be learned from the models they see around them. We have an opportunity, as well as a responsibility, to shape the future for our children. In our personal lives, that responsibility extends to those whose lives we touch in our families and in our communities.

The Congress, by joint resolution approved May 18, 1928, as amended (36 U.S.C. 143), has called for the designation of the first Monday in October as "Child Health Day" and has requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim Monday, October 4, 1993, as Child Health Day. On that day and every day throughout the year, I urge all Americans to renew their commitment to protecting and developing our most valuable asset—our children.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of October, in the year of our Lord nineteen hundred and ninety-three, and of the Independence of the United States of America the two hundred and eighteenth.

William J. Clinton

[FR Doc. 93-24784
Filed 10-5-93; 10:44 am]
Billing code 3195-01-P

Reader Aids

Federal Register

Vol. 58, No. 192

Wednesday, October 6, 1993

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202–523–5227
Public inspection desk	523–5215
Corrections to published documents	523–5237
Document drafting information	523–3187
Machine readable documents	523–3447

Code of Federal Regulations

Index, finding aids & general information	523–5227
Printing schedules	523–3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523–6641
Additional information	523–5230

Presidential Documents

Executive orders and proclamations	523–5230
Public Papers of the Presidents	523–5230
Weekly Compilation of Presidential Documents	523–5230

The United States Government Manual

General information	523–5230

Other Services

Data base and machine readable specifications	523–3447
Guide to Record Retention Requirements	523–3187
Legal staff	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (PLUS)	523–6641
TDD for the hearing impaired	523–5229

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FEDERAL REGISTER PAGES AND DATES, OCTOBER

51211–51664.....1
51665–51756.....4
51757–51972.....5
51973–52206.....6

CFR PARTS AFFECTED DURING OCTOBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Administrative Orders:

Notices:
September 30, 1993.....51563

Executive Orders:

11145 (Continued by EO 12869).....51751
11183 (Continued by EO 12869).....51751
11287 (Continued by EO 12869).....51751
11776 (Continued by EO 12869).....51751
12002 (See EO 12867).....51747
12131 (Continued by EO 12869).....51751
12196 (Continued by EO 12869).....51751
12214 (See EO 12867).....51747
12216 (Continued by EO 12869).....51751
12291 (Revoked by EO 12866).....51735
12345 (Continued by EO 12869).....51751
12367 (Continued by EO 12869).....51751
12382 (Continued by EO 12869).....51751
12498 (Revoked by EO 12866).....51735
12675 (Revoked in part EO 12869).....51751
12687 (Revoked by EO 12869).....51751
12696 (Revoked by EO 12869).....51751
12700 (See EO 12869).....51751
12720 (Revoked by EO 12869).....51751
12730 (See EOs 12867, 12868).....51747, 51749
12735 (Revoked by EO 12867; See EO 12868).....51747, 51749
12774 (Superseded by EO 12869).....51751
12775 (See notice of September 30).....51563
12779 (See notice of September 30).....51563
12792 (Revoked by EO 12869).....51751
12813 (Revoked by EO 12869).....51751
12853 (See notice of September 30).....51563
12866.....51735
12867.....51747
12868.....51749
12869.....51751
12870.....51753
12871.....52201

Proclamations:

6598.....51559
6599.....51561
6600.....51721
6601.....51723
6602.....52205

Presidential Determinations:

No. 93–39 of September 17, 1993.....51973
No. 93–40 of September 28, 1993.....51975
No. 93–41 of September 29, 1993.....51977

5 CFR

532.....51211
591.....51565

Proposed Rules:

2502.....51255
2504.....51256

7 CFR

2.....51211
246.....51566
301.....51979, 51982
1002.....51982
1211.....51568
1427.....51982
1477.....51757
1478.....51757

Proposed Rules:

1413.....51934

9 CFR

Proposed Rules:

317.....51581
318.....51581

10 CFR

72.....51762

Proposed Rules:

73.....52035

11 CFR

Proposed Rules:

100.....52040
113.....52040

12 CFR

574.....52140
618.....51993

14 CFR

23.....51970

39.....51212, 51215, 51770, 51771
71.....51773, 52140
91.....51966, 52140
97.....51774, 51776

Proposed Rules:
39.....51583, 51585, 51587, 51589, 51793, 52041
71.....51256, 51257
91.....51938
121.....51938, 51944
125.....51938
129.....51944
135.....51938, 51944

15 CFR
773.....52166, 52168
778.....52166
799.....52166, 52169

17 CFR
250.....51488
259.....51488

Proposed Rules:
250.....51508

18 CFR
35.....51217, 51777
38.....51777
292.....51777
293.....51777
375.....51222
382.....51777

Proposed Rules:
35.....51259

20 CFR

Proposed Rules:
655.....52152

21 CFR
176.....51994
864.....51570

Proposed Rules:
103.....52042
812.....52142, 52144
813.....52142

23 CFR

Proposed Rules:
660.....51794

24 CFR
888.....51410
905.....51952
965.....51952

Proposed Rules:
905.....51261
990.....51261

26 CFR
1.....51571
602.....51571

28 CFR
2.....51779
11.....51223
51.....51225

29 CFR

Proposed Rules:
507.....52152
1609.....51266

30 CFR
917.....51225

Proposed Rules:
253.....52059

31 CFR

Proposed Rules:
103.....51269

32 CFR
40.....51780
80.....51996
86.....52010
199.....51227
706.....51241

33 CFR
2.....51726
3.....51726
100.....51242
165.....51243
175.....51576
181.....51576

Proposed Rules:
126.....51906
127.....51906
187.....51920

34 CFR
642.....51518
645.....51518
646.....51518
668.....52194
674.....52194
675.....52194
676.....52194
682.....52194
690.....52194

Proposed Rules:
668.....51712

38 CFR
3.....52017
4.....52017
21.....51780, 51781

Proposed Rules:
3.....51798
17.....51799

40 CFR
61.....51784
300.....52018
258.....51536
271.....51244
372.....51785
721.....51672, 51694

Proposed Rules:
52.....51591, 51593
89.....51595

42 CFR
435.....51408
436.....51408
440.....51408

Proposed Rules:
440.....51288
441.....51288

43 CFR
37.....51550

Proposed Rules:
4700.....51297

44 CFR
64.....51576, 52019

Proposed Rules:
67.....51598

46 CFR
160.....51576

Proposed Rules:
10.....51408
12.....51408
67.....51298

47 CFR
1.....51246
15.....51247
73.....51250, 51578, 51579, 51787
74.....51250
87.....52021
90.....51251

Proposed Rules:
15.....51299
73.....51603, 51799
90.....51299

49 CFR
107.....51524
171.....51524
172.....51524
173.....51524
174.....51524
175.....51524
176.....51524
177.....51524
178.....51524
179.....51524
180.....51524
571.....51788, 52021
1002.....52027
1017.....52027
1018.....52027
1312.....52027
1313.....52027
1314.....52027

Proposed Rules:
23.....52050
390.....51800
1063.....51603
1105.....51800
1121.....51800
1152.....51800

50 CFR
17.....52027, 52031
229.....51788
301.....51253
642.....51579, 51789
663.....52031
672.....51791, 52032
675.....51253, 52033

Proposed Rules:
17.....51302, 51604, 52058, 52059, 52063
52.....51270, 51279
641.....52063, 52073
651.....52073

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470).

H.R. 2295/P.L. 103–87

Making appropriations for foreign operations, export financing, and related programs for the fiscal year ending September 30, 1994, and making supplemental appropriations for such programs for the fiscal year ending September 30, 1993, and for other purposes. (Sep. 30, 1993; 107 Stat. 931; 46 pages)

H.J. Res. 267/P.L. 103–88

Making continuing appropriations for the fiscal year 1994, and for other purposes. (Sep. 30, 1993; 107 Stat. 977; 4 pages)

H.R. 3019/P.L. 103–89

Performance Management and Recognition System Termination Act (Sep. 30, 1993; 107 Stat. 981; 5 pages)

H.R. 168/P.L. 103–90

To designate the Federal building to be constructed between Gay and Market Streets and Cumberland and Church Avenues in Knoxville, Tennessee, as the "Howard H. Baker, Jr. United States Courthouse". (Oct. 1, 1993; 107 Stat. 986; 1 page)

H.R. 873/P.L. 103–91

Gallatin Range Consolidation and Protection Act of 1993 (Oct. 1, 1993; 107 Stat. 987; 7 pages)

H.J. Res. 220/P.L. 103–92

To designate the month of August as "National Scleroderma Awareness Month", and for other purposes. (Oct. 1, 1993; 107 Stat. 994; 1 page)

S. 184/P.L. 103–93

Utah Schools and Lands Improvement Act of 1993 (Oct. 1, 1993; 107 Stat. 995; 6 pages)

Last List October 5, 1993

Public Laws

103d Congress, 1st Session, 1993

Pamphlet prints of public laws, often referred to as slip laws, are the initial publication of Federal laws upon enactment and are printed as soon as possible after approval by the President. Legislative history references appear on each law. Subscription service includes all public laws, issued irregularly upon enactment, for the 103d Congress, 1st Session, 1993.

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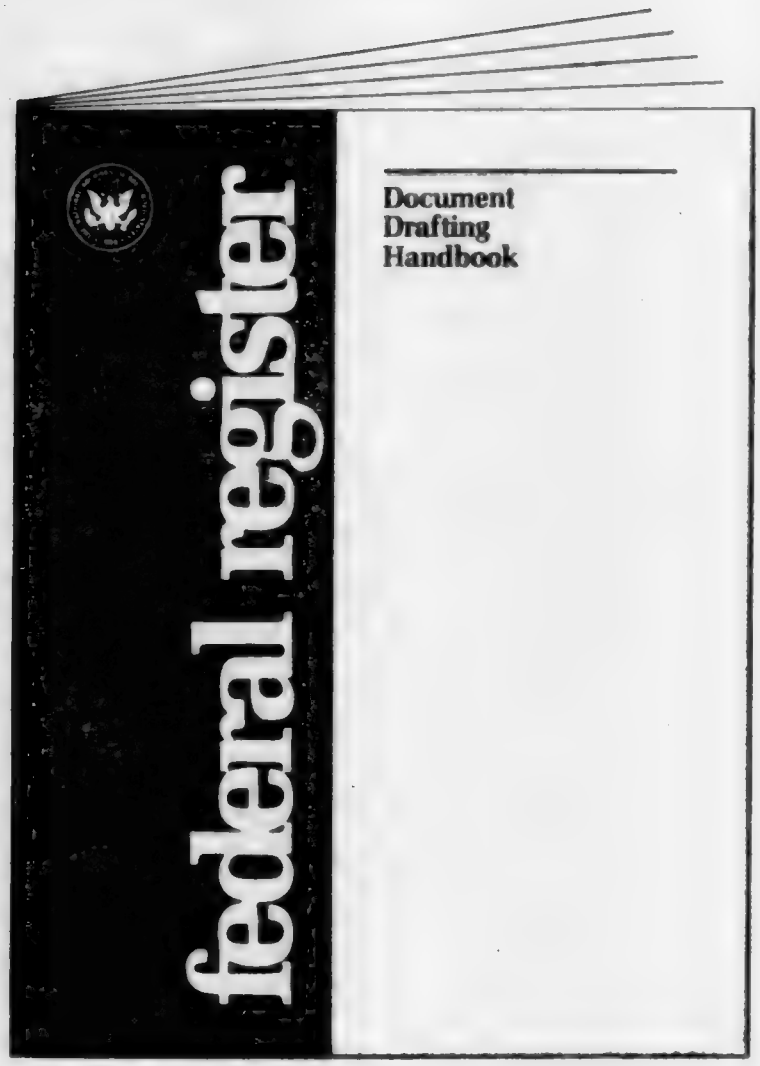

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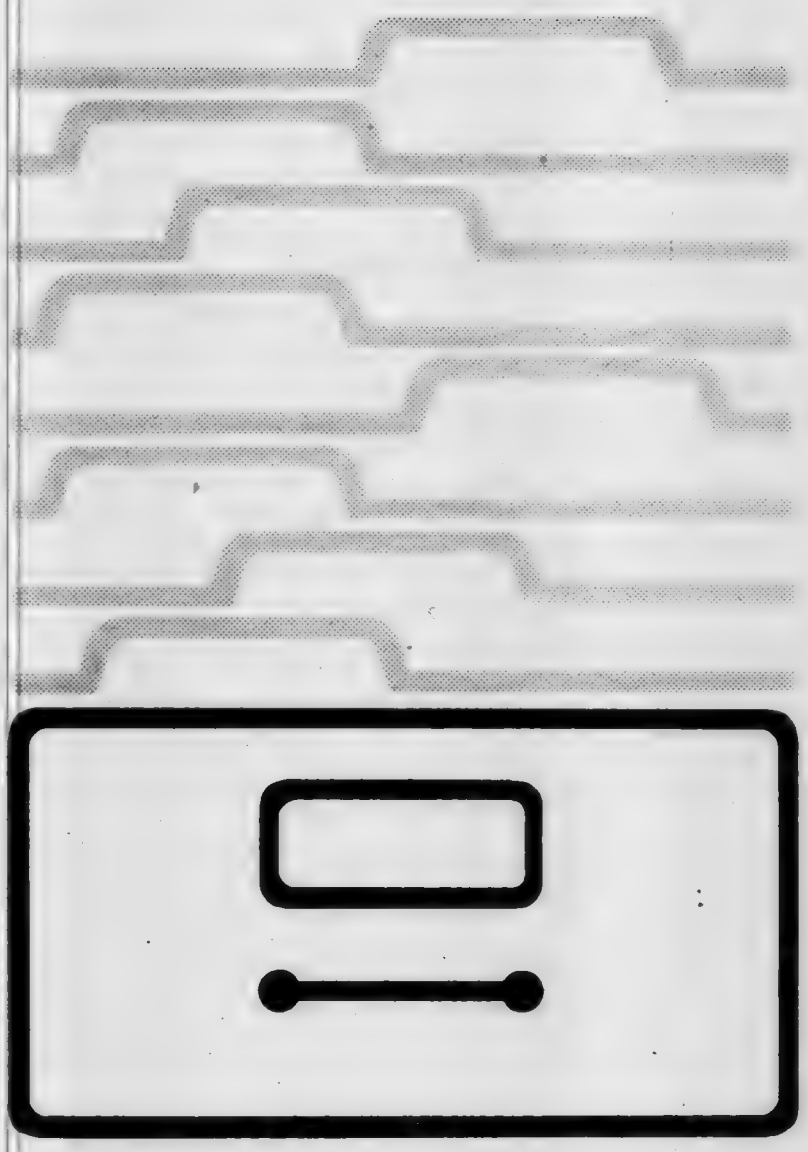

Guide to Record Retention Requirements

in the Code of Federal Regulations (CFR)

GUIDE: Revised January 1, 1992

SUPPLEMENT: Revised January 1, 1993

The GUIDE and the SUPPLEMENT should be used together. This useful reference tool, compiled from agency regulations, is designed to assist anyone with Federal recordkeeping obligations.

The various abstracts in the GUIDE tell the user (1) what records must be kept, (2) who must keep them, and (3) how long they must be kept.

The GUIDE is formatted and numbered to parallel the CODE OF FEDERAL REGULATIONS (CFR) for uniformity of citation and easy reference to the source document.

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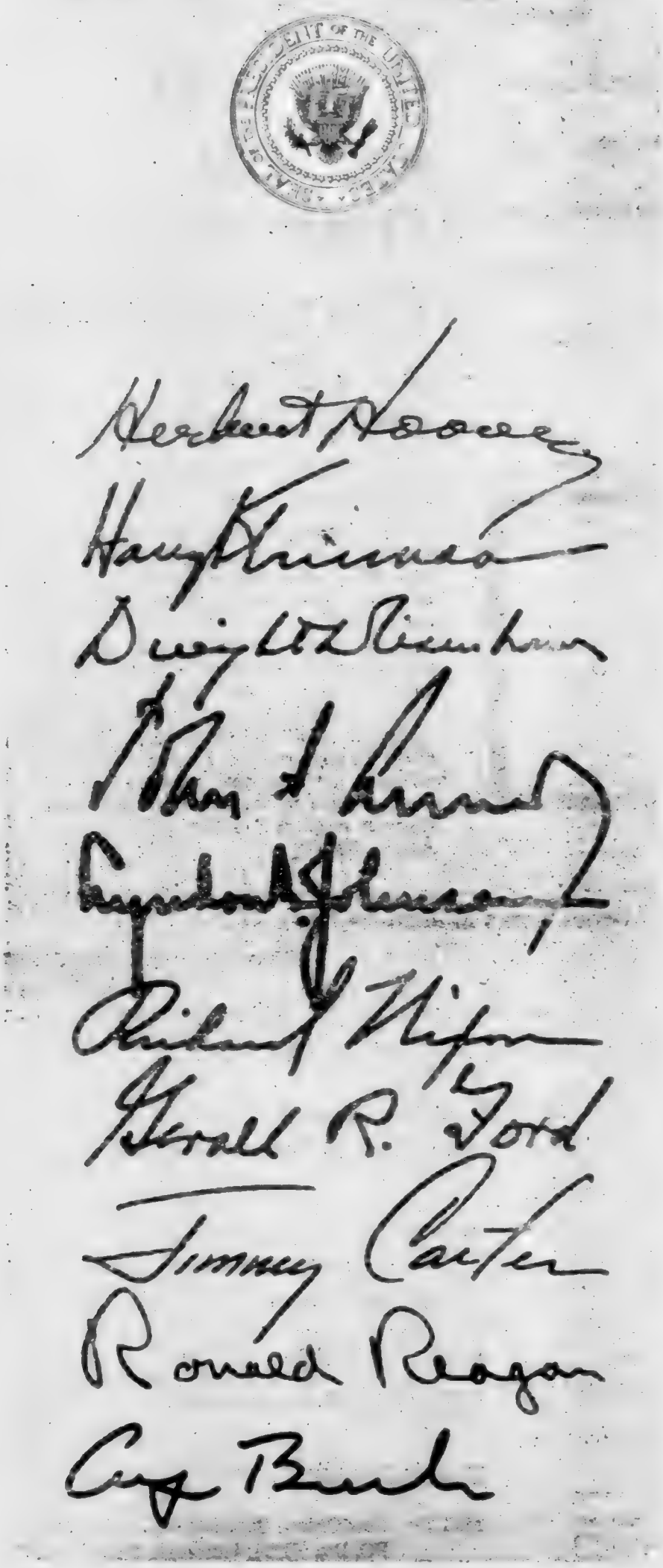

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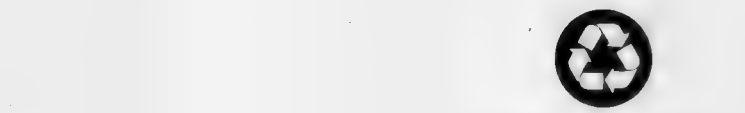

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Contents

Federal Register

Vol. 58, No. 193

Thursday, October 7, 1993

Agricultural Marketing Service
RULES
Cotton research and promotion order:
Supplemental assessment rates, 52215

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Food and Nutrition Service
See Foreign Agricultural Service
See Forest Service
NOTICES
Agricultural commodities, overseas donations; types and quantities, 52258

Alcohol, Tobacco and Firearms Bureau
RULES
Alcoholic beverages:
Wine; production materials and processes authorization and alcohol tolerance change on labels of wine under 7 percent alcohol by volume, 52222

Animal and Plant Health Inspection Service
PROPOSED RULES
Interstate transportation of animals and animal products (quarantine):
Chicken disease caused by salmonella enteritidis; hearing, 52240

Antitrust Division
NOTICES
National cooperative research notifications:
Massachusetts Institute of Technology, 52327

Army Department
See Engineers Corps

Blind or Severely Disabled, Committee for Purchase From People Who Are
See Committee for Purchase From People Who Are Blind or Severely Disabled

Centers for Disease Control and Prevention
NOTICES
Meetings:
HIV prevention community planning process, 52314
Prevention of HIV Infection Advisory Committee, 52314
Self-contained breathing apparatus in hot environment, wearing; physiological effects study; NIOSH meeting, 52314

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration
See Travel and Tourism Administration
NOTICES
Agency information collection activities under OMB review, 52261
Senior Executive Service:
Performance Review Boards; membership, 52261

Commission of Fine Arts
NOTICES
Meetings, 52261

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Agency information collection activities under OMB review, 52261

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Costa Rica, 52276
Pakistan, 52277
Special access and special regime programs; participation:
Fashion Enterprises, Inc., 52277

Commodity Futures Trading Commission
NOTICES
Contract market proposals:
Chicago Board of Trade—
Flexible options proposal, 52278
New York Mercantile Exchange—
New York Harbor No. 2 heating oil, 52279

Consumer Product Safety Commission
NOTICES
Settlement agreements:
Regency Merchandise, Inc., 52280
Yuchius Morality, Inc., 52282, 52283

Customs Service
PROPOSED RULES
Articles imported from U.S. insular possessions; duty-free treatment
Correction, 52246

Defense Department
See Defense Logistics Agency
See Engineers Corps
See Navy Department
NOTICES
Agency information collection activities under OMB review, 52283, 52284
Meetings:
DOD Government-Industry Technical Data Committee, 52284
Telecommunications Service Priority System Oversight Committee, 52285
Travel per diem rates, civilian personnel; changes, 52285

Defense Logistics Agency
NOTICES
Government Bill of Lading (GBL) distribution reduction test termination, 52283

Drug Enforcement Administration
PROPOSED RULES
Manufacturers, distributors, and dispensers of controlled substances; registration, etc.:
Administrative hearing regulations, 52246

NOTICES
Schedules of controlled substances; production quotas:
Schedules I and II—
1993 proposed aggregate, 52327

Education Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Federal Perkins loan program, 52370

Employment and Training Administration
NOTICES
Adjustment assistance:
Bethlehem Steel Corp., 52328
Horizon Potash Corp., 52329
Nerco Oil & Gas, Inc., 52329

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Grant and cooperative agreement awards:
Fred Hutchinson Cancer Center, 52292
Meetings:
Federal Fleet Conversion Task Force, 52292

Engineers Corps
NOTICES
Regulatory guidance letters, 52290

Environmental Protection Agency
RULES
Air quality implementation plan; approval and promulgation; various States:
Montana, 52237
NOTICES
Municipal solid waste landfill permit programs; adequacy determinations:
California, 52300
Kansas, 52302
Mississippi, 52304
North Carolina, 52305
Oregon, 52308

Executive Office of the President
See Presidential Documents

Federal Aviation Administration
RULES
Airworthiness directives:
de Havilland, 52220
PROPOSED RULES
Airworthiness directives:
Boeing, 52243
McDonnell Douglas, 52240

Federal Communications Commission
PROPOSED RULES
Common carrier services:
Local exchange carrier expanded interconnection costs and revenues, allocation between State and Federal jurisdictions; joint board establishment, 52254
Television broadcasting:
Experimental, auxiliary, and special broadcast and other program distribution services; instructional television fixed service; purpose and permissible services, 52256
NOTICES
Agency information collection activities under OMB review, 52311
Rulemaking proceedings; petitions filed, granted, denied, etc., 52311, 52312

Federal Energy Regulatory Commission
NOTICES
Electric rate, small power production, and interlocking directorate filings, etc.:
Alabama Power Co. et al., 52293
Environmental statements; availability, etc.:
Rochester Gas & Electric Corp., 52293
Applications, hearings, determinations, etc.:
Black Hills Corp., 52294
Bonneville Power Administration, 52294
Colorado Interstate Gas Co., 52296
Columbia Gas Transmission Corp., 52296
Mississippi River Transmission Corp., 52297
National Fuel Gas Supply Corp., 52297
Northern Natural Gas Co., 52298
Northwest Pipeline Corp., 52297
Questar Pipeline Co., 52298
Raton Gas Transmission Co., 52298
Sabine Pipe Line Co., 52299
Sumas International Pipeline Inc., 52299
Texas Gas Transmission Corp., 52300
Wisconsin Power & Light Co., 52300

Federal Maritime Commission
PROPOSED RULES
Maritime carriers in foreign commerce:
Conditions unfavorable to shipping, actions to adjust or meet—
United States/foreign trade, 52248

Federal Reserve System
NOTICES
Meetings; Sunshine Act, 52343
Applications, hearings, determinations, etc.:
Finn, Catherine, et al., 52312
Gloucester County Bankshares, Inc., et al., 52312
Moore, Ronald L., et al., 52313
Security Capital Corp., 52313
Union Planters Corp., 52313

Fine Arts Commission
See Commission of Fine Arts

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
Serum gonadotropin, etc., 52222
Food additives:
Calcium disodium EDTA, 52221
NOTICES
Food additive petitions:
Sandoz AG, 52315

Food and Nutrition Service
NOTICES
Meetings:
Maternal, Infant, and Fetal Nutrition National Advisory Council, 52260

Foreign Agricultural Service
NOTICES
Import quotas and fees:
Chocolate crumb from Australia; country of origin quota adjustment, 52260

Forest Service
NOTICES
Environmental statements; availability, etc.:
Modoc and Lassen Counties, CA, 52258
Sequoia National Forest, CA, 52259

General Services Administration
NOTICES
Meetings:
Business Advisory Board, 52314

Geological Survey
NOTICES
Grant and cooperative agreement awards:
Etak, Inc., 52320
Unisys Corp., 52321

Health and Human Services Department
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health
See Social Security Administration

Health Resources and Services Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Acquired Immune Deficiency Syndrome (AIDS) and human immunodeficiency virus (HIV)—
Outpatient early intervention services, 52315

Indian Affairs Bureau
NOTICES
Tribal-State Compacts approval; Class III (casino) gambling:
Sisseton-Wahpeton Sioux Tribe, SD, 52384
Squaxin Island Tribe, WA, 52382

Interior Department
See Geological Survey
See Indian Affairs Bureau
See Land Management Bureau
See Surface Mining Reclamation and Enforcement Office

International Trade Administration
NOTICES
Antidumping:
Color television receivers, except for video monitors, from—
Korea, 52262
Roller chain, other than bicycle, from—
Japan, 52264, 52267, 52268
Cheese quota; foreign government subsidies:
Quarterly update, 52268
Countervailing duties:
Miniature carnations from—
Colombia, 52269
Roses and other cut flowers from—
Colombia, 52272
Export trade certificates of review, 52275

International Trade Commission
NOTICES
Import investigations:
Anti-theft deactivatable resonant tags and components, 52323
In-line roller skates with ventilated boots and with axle aperture plugs and component parts, 52321, 52322, 52323
Sputtered carbon coated computer disks and products containing same, including disk drives, 52323
Static random access memories, components, and products containing same, 52321

Interstate Commerce Commission
NOTICES
Environmental statements; availability, etc.:
Southern Pacific Transportation Co. et al., 52324
Railroad operation, acquisition, construction, etc.:
Housatonic Transportation Co., 52325
Sunshine Mills, Inc., 52325
Railroad services abandonment:
Camp Lejeune Railroad Co., 52324

Justice Department
See Antitrust Division
See Drug Enforcement Administration
NOTICES
Pollution control; consent judgments:
Bliss, Russel Martin, et al., 52325
Walerko Tool & Engineering Corp., 52326

Labor Department
See Employment and Training Administration

Land Management Bureau
RULES
Public land orders:
California, 52238
New Mexico, 52238
NOTICES
Environmental statements; availability, etc.:
Creston/Blue Gap Area, WY; infill development, 52319
Oil and gas leases:
Wyoming, 52320
Survey plat filings:
New Mexico, 52320
Withdrawal and reservation of lands:
Oregon, 52320

National Highway Traffic Safety Administration
NOTICES
Meetings:
Research and development programs, 52341

National Institutes of Health
NOTICES
Grants and cooperative agreements; availability, etc.:
Recombinant toxin to treat cancer; scientific and commercial development, 52318
Meetings:
Research Grants Division Behavioral and Neurosciences Special Emphasis Panel, 52319
Women's Health Initiative Program Advisory Committee, 52319

National Oceanic and Atmospheric Administration
NOTICES
Committees; establishment, renewal, termination, etc.:
Sea Grant Review Panel, 52275

National Science Foundation
NOTICES
Meetings:
Biochemistry and Molecular Structure and Function Advisory Panel, 52330
Cell Biology Advisory Panel, 52330

Computer and Information Science and Engineering Advisory Committee, 52330
Genetics and Nucleic Acids Advisory Panel, 52331
Meetings; Sunshine Act, 52343

Navy Department
NOTICES
Environmental statements; availability, etc.:
Naval Station, Mayport, FL; aircraft carrier facilities development, 52291
Meetings:
Naval Research Advisory Committee, 52291

Nuclear Regulatory Commission
NOTICES
Agency information collection activities under OMB review, 52331
Environmental statements; availability, etc.:
Virginia Electric & Power Co., 52331
Operating licenses, amendments; no significant hazards considerations; biweekly notices; correction, 52333
Applications, hearings, determinations, etc.:
Portland General Electric Co., 52333
Portland General Electric Co., et al., 52334

Presidential Documents
PROCLAMATIONS
Special observances:
German-American Day (Proc. 6604), 52389
Mental Illness Awareness Week (Proc. 6603), 52387
ADMINISTRATIVE ORDERS
Government agencies and employees:
Executive branch management reform (Memorandum of October 1, 1993), 52393
Negotiated rulemaking (Memorandum of September 30, 1993), 52391
Israel; loan guarantees (Presidential Determination No. 93–44 of September 30, 1993), 52209
Laos; military drawdown to locate and repatriate POWs and MIAs (Presidential Determination No. 93–45 of September 30, 1993), 52211
Refugees admissions numbers (Presidential Determination No. 94–1 of October 1, 1993), 52213
Somalia; drawdown of commodities and services from DOD to support establishment of a police force (Presidential Determination No. 93–43 of September 30, 1993), 52207

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health

Railroad Retirement Board
NOTICES
Agency information collection activities under OMB review, 52335

Resolution Trust Corporation
NOTICES
Coastal Barrier Improvement Act; property availability:
Inland Pacific, CA, et al., 52335

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
Philadelphia Stock Exchange, Inc., 52337, 52339
Self-regulatory organizations; unlisted trading privileges:
Chicago Stock Exchange, Inc., 52336
Cincinnati Stock Exchange, Inc., 52336
Philadelphia Stock Exchange, Inc., 52336

Social Security Administration
RULES
Social security benefits:
Disability determinations—
Respiratory system listing, 52346

Surface Mining Reclamation and Enforcement Office
RULES
Permanent program and abandoned mine land reclamation plan submissions:
Wyoming, 52232
PROPOSED RULES
Definitions; anthracite, etc., 52374

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Federal Aviation Administration
See National Highway Traffic Safety Administration

Travel and Tourism Administration
NOTICES
Meetings:
Travel and Tourism Advisory Board, 52276

Treasury Department
See Alcohol, Tobacco and Firearms Bureau
See Customs Service

Separate Parts In This Issue

Part II
Department of Health and Human Services, Social Security Administration, 52346

Part III
Department of Education, 52370

Part IV
Department of Interior, Office of Surface Mining Reclamation and Enforcement, 52374

Part V
Department of Interior, Bureau of Indian Affairs, 52382

Part VI
Department of Interior, Bureau of Indian Affairs, 52384

Part VII
The President, 52385

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Administrative Orders:
Memorandums:
September 30, 1993.....52391
October 1, 1993.....52393
Presidential Determinations:
No. 93–43 of September 30, 1993.....52207
No. 93–44 of September 30, 1993.....52209
No. 93–45 of September 30, 1993.....52211
No. 94–1 of October 1, 1993.....52213
Proclamations:
6603.....52387
6604.....52389

7 CFR
1205.....52215

9 CFR
Proposed Rules:
82.....52240

14 CFR
39.....52220
Proposed Rules:
39 (2 documents).....52240, 52243

19 CFR
Proposed Rules:
7.....52246
10.....52246
148.....52246

20 CFR
404.....52346
416.....52346

21 CFR
172.....52221
522.....52222
Proposed Rules:
1301.....52246
1311.....52246

27 CFR
24.....52222

30 CFR
950.....52232
Proposed Rules:
700.....52374
701.....52374
705.....52374
706.....52374
715.....52374
716.....52374
785.....52374
825.....52374
870.....52374

40 CFR
52.....52237

43 CFR
Public Land Orders:
6998.....52238
6999.....52238

46 CFR
Proposed Rules:
585.....52248

47 CFR
Proposed Rules:
36.....52254
74.....52256

Federal Register
Vol. 58, No. 193
Thursday, October 7, 1993

Presidential Documents

Title 3—

The President

Presidential Determination No. 93–43 of September 30, 1993

Presidential Waiver on Furnishing Assistance to the United Nations To Support the Reestablishment of Police Forces in Somalia

Memorandum for the Secretary of State [and] the Secretary of Defense

Pursuant to the Authority vested in me by sections 552(c)(2) and 614(a)(1) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2348a(c)(2) and 2364(a)(1) (the "Act"), I hereby determine that:

(1) as a result of an unforeseen emergency, the provision of assistance under Chapter 6 of Part II of the Act in amounts in excess of funds otherwise available for such assistance is important to the national interests of the United States;

(2) such unforeseen emergency requires the immediate provision of assistance under Chapter 6 of Part II of the Act; and

(3) it is important to the security interests of the United States to provide commodities and services from the inventory and resources of the Department of Defense, of an aggregate value not to exceed $25 million, and to furnish up to $2 million in Economic Support Funds (ESF), to the United Nations for purposes of providing assistance towards the reestablishment of police, prisons, or other law enforcement forces of Somalia, without regard to section 518 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1993 (Public Law 102–391), and sections 620(q) and 660 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2151 *et seq.*), or any other provision of law within the scope of section 614.

Therefore, I hereby direct the drawdown of commodities and services from the inventory and resources of the Department of Defense of an aggregate value not to exceed $25 million, for the United Nations in support of peacekeeping operations related to the reestablishment of police forces in Somalia, and the furnishing of up to $2 million in ESF to the United Nations for these purposes.

The Secretary of State is authorized and directed to report this determination to the Congress and to arrange for its publication in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, September 30, 1993.

[FR Doc. 93–24821
Filed 10–5–93; 1:32 pm]
Billing code 4710–10–M

Editorial note: For the statement by the Press Secretary on Somalia, see issue 39, page 1885 of the *Weekly Compilation of Presidential Documents.*

Presidential Documents

Presidential Determination No. 93-44 of September 30, 1993

Loan Guarantees to Israel Program

Memorandum for the Secretary of State

As required by section 226(d) of the Foreign Assistance Act of 1961, as amended ("the Act"), I have determined that $437 million in loan guarantee authority must be deducted from the amounts authorized for fiscal year 1994 in section 226(b) of the Act.

You are authorized and directed to transmit this determination to the Congress and to arrange for its publication in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, September 30, 1993.

[FR Doc. 93-24822
Filed 10-5-93; 1:33 pm]
Billing code 4710-10-M

Presidential Documents

Presidential Determination No. 93–45 of September 30, 1993

POW/MIA Military Drawdown for Laos

Memorandum for the Secretary of State [and] the Secretary of Defense

Pursuant to the authority vested in me by section 575A of the Foreign Operations Export Financing, and Related Programs Appropriations Act, 1993 (Public Law 102–391) (the "Act"), I hereby determine that it is necessary to draw down defense articles from the stocks of the Department of Defense, defense services, and military education and training for Laos for the purposes set forth in the Act, namely: to support efforts to locate and repatriate members of the United States Armed Forces and civilians employed directly or indirectly by the United States Government who remain unaccounted for from the Vietnam War; to ensure the safety of United States Government personnel engaged in such cooperative efforts; and, to support United States Department of Defense-sponsored humanitarian projects associated with POW/MIA efforts.

Therefore, I hereby authorize and direct the drawdown of up to $11.8 million of such defense articles from the stocks of the Department of Defense, defense services, and military education and training for Laos, for the purposes and under the authorities of section 575A of the Act.

The Secretary of State is authorized and directed to report this determination to the Congress, and to arrange for its publication in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, September 30, 1993.

[FR Doc. 93–24823
Filed 10–5–93; 1:34 pm]
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Presidential Documents

Presidential Determination No. 94–1 of October 1, 1993

Determination of FY 1994 Refugee Admissions Numbers and Authorizations of In-Country Refugee Status Pursuant to Section 207 and 101(a)(42), Respectively, of the Immigration and Nationality Act, and Determination Pursuant to Section 2(b)(2) of the Migration and Refugee Assistance Act, as Amended

Memorandum for the Secretary of State

In accordance with Section 207 of the Immigration and Nationality Act ("the Act") (8 U.S.C. 1157), and after appropriate consultation with the Congress, I hereby make the following determinations and authorize the following actions:

The admission of up to 121,000 refugees to the United States during FY 1994 is justified by humanitarian concerns or is otherwise in the national interest; provided, however, that this number shall be understood as including persons admitted to the United States during FY 1994 with Federal refugee resettlement assistance under the Amerasian immigrant admissions program, as provided below.

The 120,000 funded admissions shall be allocated among refugees of special humanitarian concern to the United States as described in the documentation presented to the Congress during the consultations that preceded this determination and in accordance with the following regional allocations; provided, however, that the number allocated to the East Asia region shall include persons admitted to the United States during FY 1994 with Federal refugee resettlement assistance under Section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988, as contained in Section 101(e) of Public Law 100–202 (Amerasian immigrants and their family members); provided further that the number allocated to the former Soviet Union shall include persons admitted who were nationals of the former Soviet Union, or in the case of persons having no nationality, who were habitual residents of the former Soviet Union, prior to September 2, 1991:

Africa	7,000
East Asia	45,000
Former Soviet Union/Eastern Europe	55,000
Near East/South Asia	6,000
Latin America/Caribbean	4,000
Unallocated (funded)	3,000

The 3,000 unallocated federally funded numbers shall be allocated as needed. Unused admissions numbers allocated to a particular region within the 120,000 federally funded ceiling may be transferred to one or more other regions if there is an overriding need for greater numbers for the region or regions to which the numbers are being transferred. You are hereby authorized and directed to consult with the judiciary committees of the Congress prior to any such use of the unallocated numbers or reallocation of numbers from one region to another.

Pursuant to Section 2(b)(2) of the Migration and Refugee Assistance Act of 1962, as amended, 22 U.S.C. 2601(b)(2), I hereby determine that assistance to or on behalf of persons applying for admission to the United States

as part of the overseas refugee admissions program will contribute to the foreign policy interests of the United States and designate such persons for this purpose.

The 1,000 privately funded admissions are not designated for any country or region and may be used for refugees of special humanitarian concern to the United States from any region provided that private resources are available to fund the reasonable cost of their admission and resettlement.

An additional 10,000 refugee admissions numbers shall be made available during FY 1994 for the adjustment to permanent resident status under Section 209(b) of the Act (8 U.S.C. 1159(b)) of aliens who have been granted asylum in the United States under Section 208 of the Act (8 U.S.C. 1158), as this is justified by humanitarian concerns or is otherwise in the national interest. An estimated 7,000 aliens were granted asylum during FY 1993 under Section 208 of the Act.

In accordance with Section 101(a)(42) of the Act (8 U.S.C. 1101(a)(42)) and after appropriate consultation with the Congress, I also specify that, for FY 1994, the following persons may, if otherwise qualified, be considered refugees for the purpose of admission to the United States within their countries of nationality or habitual residence:

a. Persons in Vietnam.

b. Persons in Cuba.

c. Persons in Haiti.

d. Persons in the former Soviet Union.

You are authorized and directed to report this Determination to the Congress immediately and to publish it in the **Federal Register**.

William J. Clinton

cc: The Attorney General
The Secretary of Health and Human Services

THE WHITE HOUSE,
Washington, October 1, 1993.

[FR Doc. 93-24843
Filed 10-6-93; 1:51 pm]
Billing code 4710-10-M

Rules and Regulations

Federal Register
Vol. 58, No. 193
Thursday, October 7, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1205

[CN–93–002]

RIN 0581–AA63

Amendment to the Cotton Board Rules and Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service is amending the Cotton Board Rules and Regulations by lowering the value assigned to imported cotton for the purpose of calculating supplemental assessments collected for use by the Cotton Research and Promotion Program. The amended value reflects the 1992 calendar year average of monthly average prices received by U.S. farmers for Upland cotton.

EFFECTIVE DATE: This rule is effective on November 8, 1993.

FOR FURTHER INFORMATION CONTACT: Craig Shackelford, (202) 720–2259.

SUPPLEMENTARY INFORMATION: This amendment to the Cotton Board Rules and Regulations has been reviewed in accordance with Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under Executive Order 12291 since it does not meet the criteria for a major regulatory action contained in that Order.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 12 of the Act, any person subject to an order may file with the Secretary a petition stating that the order, any provision of the plan, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such person is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the District Court of the United States in any district in which the person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling, provided a complaint is filed within 20 days from the date of the entry or the ruling.

There are an estimated 10,000 importers who are presently subject to rules and regulations issued pursuant to the Cotton Research and Promotion Order. This rule will affect importers of cotton and cotton-containing products. The majority of these importers are small businesses under the criteria established by the Small Business Administration. This rule will lower the assessments paid by the importers under the Cotton Research and Promotion Order. The AMS Administrator has determined that this final rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*) the information collection and recordkeeping requirements contained in this subpart have been previously approved by OMB and assigned control number 0581–0093.

The Cotton Research and Promotion Act Amendments of 1990 enacted by Congress under Subtitle G of Title XIX of the Food, Agriculture, Conservation and Trade Act of 1990 on November 28, 1990, contained two provisions that authorized changes in the funding procedures for the Cotton Research and Promotion Program. These provisions are: (1) The assessment of imported cotton and cotton products; and (2) termination of the right of producers to demand a refund of assessments.

An amended Cotton Research and Promotion Order was approved by producers and importers voting in a referendum held July 17–26, 1991. Proposed rules implementing the amended Order were published in the **Federal Register** on December 17, 1991, (56 FR 65450). The final implementing rules were published on July 1 and 2, 1992 (57 FR 29181) and (57 FR 29431), respectively.

This rule reduces the value assigned to imported cotton in the Cotton Board Rules and Regulations 7 CFR 1205.510 (b)(2). This value is used to calculate supplemental assessments on imported cotton and the cotton content of imported products.

Supplemental assessments are the second part of a two part assessment. The first part of the assessment is levied on the weight of cotton produced or imported at a rate of $1 per bale of cotton which is equivalent to 500 pounds or $1 per 226.8 kilograms.

Supplemental assessments are levied at a rate of five tenths of one percent of the value of domestically produced cotton, imported cotton, and the cotton content of imported products. The agency adopted the use of the average price received by U.S. farmers for Upland cotton as a benchmark for the value of domestically produced cotton. The source for this statistic is "Agricultural Prices", a publication of the National Agricultural Statistics Service of the Department of Agriculture. Use of the average price figure in the calculation of supplemental assessments on imported cotton and the cotton content of imported products yields an assessment that approximates assessments paid on domestically produced cotton.

The current value of imported cotton as published in the **Federal Register** (57 FR 29431) for the purpose of calculating supplemental assessments on imported cotton is $1.384 per kilogram. Using the Average Price Received by U.S. farmers for Upland cotton for the calendar year 1992, which is $0.526 per pound, the new value of imported cotton would be $1.160 per kilogram.

An example of the assessment formula and how the various figures are obtained is as follows:

One bale is equal to 500 pounds.
One kilogram equals 2.2046 pounds.
One pound equals 0.453597 kilograms.

One dollar per bale assessment converted to kilograms

A 500 pound bale	=	226.8 kg. (500×.453597)
$1 per bale assessment	=	$ 0.002000 per pound (1÷500)
	=	0.004409 per kg. (1÷226.8)

Supplemental assessment of 5/10 of one percent of the value of the cotton converted to kilograms

Average price received or average value	=	$ 0.526 per pound
	=	1.160 per kg. (0.526×2.2046)
5/10 of one percent of the average price in kg.	=	0.005798 per kg. (1.1596×.005)

Total assessment per kilogram

$1 per bale equivalent assessment	=	$ 0.004409 per kg.
Supplemental assessment	+	0.005798 per kg.
Total assessment per kg.	=	$ 0.010207

Since the value of cotton is the basis of the supplemental assessment calculation and the figures shown in the right hand column of the Import Assessment Table 1205.510 (b)(3) are a result of such a calculation, these figures were revised. These figures indicate the total assessment per kilogram due for each Harmonized Tariff Schedule (HTS) number subject to assessment.

The U.S. Customs Service informed the agency prior to the publishing of the proposed rule that several numbers listed in the Import Assessment Table are no longer used because of recent statistical changes made to the HTS numbers. The agency consulted with Customs again prior to publishing this final rule and again was informed that changes had been made to two more of the HTS numbers subject to assessment. This rule incorporates these changes into the assessment table. Other changes to the table are made due to the reclassification of textile and apparel products and are identified with asterisks.

Three comments were received regarding the proposed rule published in the **Federal Register** (58 FR 32066) June 8, 1993. All three expressed general support for the proposal. Two of the comments described how renumbering causes a disruption in assessment collection on HTS classifications that were intended to be assessed but due to renumbering were not assessed.

During the first 10 months of collecting assessments on imported cotton several HTS numbers were changed by Customs at various times. Customs collections reports for cotton research and promotion assessments show that for 12 selected HTS classification numbers subject to assessments in August 1992 and subsequently renumbered by May 1993 assessment collections had dropped approximately $35,000 a month. Such renumbering may occur because of subdivision of HTS provisions at the statistical level or from the reclassification of the articles under a different tariff heading or subheading necessitated by various actions such as Customs classification rulings, legislation, and Presidential proclamations. However, articles covered by the superseded HTS provisions are readily identifiable in the renumbered tariff provisions. Whenever such changes occur in the future, AMS will publish them in the regulations as soon as possible in order to avoid disruption in assessment collection.

One comment suggested the addition and deletion of certain HTS numbers in the import assessment table. Two numbers have been added to the table based on this comment and are identified in the table by a superscript (A). The comment provided a list of 127 HTS numbers from the assessment table for deletion. These numbers were deleted from the list and did not appear in the proposed rule import assessment table. A list of these deleted numbers is available upon request.

The conversion factors listed in the center column of the table represent the raw cotton equivalent that the agency has assigned to each HTS number. The agency changed these numbers where necessary to account for changes in the cotton content of products due to reclassification of products and where additional information has been obtained regarding the cotton content of HTS classifications.

Several nonsubstantive changes have been made in these regulations for the purpose of clarity.

List of Subjects in 7 CFR Part 1205

Advertising, Agricultural research, Cotton, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 1205 is amended as follows:

PART 1205—COTTON RESEARCH AND PROMOTION

1. The authority citation for part 1205 continues to read as follows:

Authority: 7 U.S.C. 2101–2118.

2. Section 1205.510(b) (2) and (3) are revised to read as follows:

§ 1205.510 Levy of assessments.

* * * * *

(b) * * *

(2) The 12 month average of monthly average prices received by U.S. farmers will be calculated annually. Such average will be used as the value of imported cotton for the purpose of levying the supplemental assessment on imported cotton and will be expressed in kilograms. The value of imported cotton for the purpose of levying this supplemental assessment is $1.160 per kilogram.

(3) The following table contains the Harmonized Tariff Schedule (HTS) classification numbers and corresponding conversion factors and assessments. The left column of the table indicates the HTS classifications of imported cotton and cotton-containing products subject to assessment. The center column indicates the conversion factor for determining the raw fiber content for each kilogram of the HTS. HTS numbers for raw cotton have no conversion factors in the table. The right column indicates the total assessment per kilogram of the article assessed. Any line item entry of cotton appearing on Customs entry documentation in which the value of the cotton contained therein is less than $220.99 will not be subject to assessments as described in this section.

IMPORT ASSESSMENT TABLE

[Raw Cotton Fiber]

HTS classification	Conversion factor	Cents/kg.
5201001000	0.0000	1.0207
5201002000	0.0000	1.0207
5201002010	0.0000	1.0207
5201002020	0.0000	1.0207
5201002050	0.0000	1.0207
5204110000	1.1111	1.1341
5204200000	1.1111	1.1341
5205111000	1.1111	1.1341
5205112000	1.1111	1.1341
5205121000	1.1111	1.1341
5205122000	1.1111	1.1341
5205131000	1.1111	1.1341
5205132000	1.1111	1.1341
5205141000	1.1111	1.1341
5205210000	1.1111	1.1341
5205220000	1.1111	1.1341
5205230000	1.1111	1.1341
5205240000	1.1111	1.1341
5205250000	1.1111	1.1341
5205310000	1.1111	1.1341
5205320000	1.1111	1.1341
5205330000	1.1111	1.1341
5205340000	1.1111	1.1341
5205410000	1.1111	1.1341
5205420000	1.1111	1.1341
5205440000	1.1111	1.1341
5205450000	1.1111	1.1341

IMPORT ASSESSMENT TABLE—Continued
[Raw Cotton Fiber]

HTS classification	Conversion factor	Cents/kg.
5206120000	0.5556	0.5671
5206130000	0.5556	0.5671
5206140000	0.5556	0.5671
5206220000	0.5556	0.5671
5206230000	0.5556	0.5671
5206240000	0.5556	0.5671
5206310000	0.5556	0.5671
5207100000	1.1111	1.1341
5207900000	0.5556	0.5671
5208112020	1.1455	1.1692
5208112040	1.1455	1.1692
5208112090	1.1455	1.1692
5208114020	1.1455	1.1692
5208114060	1.1455	1.1692
5208114090	1.1455	1.1692
5208118090	1.1455	1.1692
5208124020	1.1455	1.1692
5208124040	1.1455	1.1692
5208124090	1.1455	1.1692
5208126020	1.1455	1.1692
5208126040	1.1455	1.1692
5208126060	1.1455	1.1692
5208126090	1.1455	1.1692
5208128020	1.1455	1.1692
5208128090	1.1455	1.1692
5208130000	1.1455	1.1692
5208192020	1.1455	1.1692
5208192090	1.1455	1.1692
5208194020	1.1455	1.1692
5208194090	1.1455	1.1692
5208196020	1.1455	1.1692
5208196090	1.1455	1.1692
5208224040	1.1455	1.1692
5208224090	1.1455	1.1692
5208226020	1.1455	1.1692
5208226060	1.1455	1.1692
5208228020	1.1455	1.1692
5208230000	1.1455	1.1692
5208292020	1.1455	1.1692
5208292090	1.1455	1.1692
5208294090	1.1455	1.1692
5208296090	1.1455	1.1692
5208298020	1.1455	1.1692
5208312000	1.1455	1.1692
5208321000	1.1455	1.1692
5208323020	1.1455	1.1692
5208323040	1.1455	1.1692
5208323090	1.1455	1.1692
5208324020	1.1455	1.1692
5208324040	1.1455	1.1692
5208325020	1.1455	1.1692
5208330000	1.1455	1.1692
5208392020	1.1455	1.1692
5208392090	1.1455	1.1692
5208394090	1.1455	1.1692
5208396090	1.1455	1.1692
5208398020	1.1455	1.1692
5208412000	1.1455	1.1692
5208416000	1.1455	1.1692
5208418000	1.1455	1.1692
5208421000	1.1455	1.1692
5208423000	1.1455	1.1692
5208424000	1.1455	1.1692
5208425000	1.1455	1.1692
5208430000	1.1455	1.1692
5208492000	1.1455	1.1692
5208494020	1.1455	1.1692
5208494090	1.1455	1.1692
5208496010	1.1455	1.1692
5208496090	1.1455	1.1692
5208498090	1.1455	1.1692
5208512000	1.1455	1.1692
5208516060	1.1455	1.1692
5208518090	1.1455	1.1692
5208523020	1.1455	1.1692
5208523040	1.1455	1.1692
5208523090	1.1455	1.1692
5208524020	1.1455	1.1692
5208524040	1.1455	1.1692
5208524060	1.1455	1.1692
5208525020	1.1455	1.1692
5208530000	1.1455	1.1692
5208592020	1.1455	1.1692
5208592090	1.1455	1.1692
5208594090	1.1455	1.1692
5208596090	1.1455	1.1692
5209110020	1.1455	1.1692
5209110030	1.1455	1.1692
5209110090	1.1455	1.1692
5209120020	1.1455	1.1692
5209120040	1.1455	1.1692
5209190020	1.1455	1.1692
5209190040	1.1455	1.1692
5209190060	1.1455	1.1692
5209190090	1.1455	1.1692
5209210090	1.1455	1.1692
5209220020	1.1455	1.1692
5209220040	1.1455	1.1692
5209290040	1.1455	1.1692
5209290090	1.1455	1.1692
5209313000	1.1455	1.1692
5209316020	1.1455	1.1692
5209316030	1.1455	1.1692
5209316050	1.1455	1.1692
5209316090	1.1455	1.1692
5209320020	1.1455	1.1692
5209320040	1.1455	1.1692
5209390020	1.1455	1.1692
5209390040	1.1455	1.1692
5209390060	1.1455	1.1692
5209390080	1.1455	1.1692
5209390090	1.1455	1.1692
5209413000	1.1455	1.1692
5209416020	1.1455	1.1692
5209416040	1.1455	1.1692
5209420020	1.0309	1.0522
5209420040	1.0309	1.0522
5209430020	1.1455	1.1692
5209430040	1.1455	1.1692
5209490020	1.1455	1.1692
5209490090	1.1455	1.1692
5209516030	1.1455	1.1692
5209516050	1.1455	1.1692
5209520020	1.1455	1.1692
5209590020	1.1455	1.1692
5209590040	1.1455	1.1692
5209590090	1.1455	1.1692
5210114020	0.6873	0.7015
5210114040	0.6873	0.7015
5210116020	0.6873	0.7015
5210116040	0.6873	0.7015
5210116060	0.6873	0.7015
5210118020	0.6873	0.7015
5210120000	0.6873	0.7015
5210192090	0.6873	0.7015
5210214040	0.6873	0.7015
5210216020	0.6873	0.7015
5210216060	0.6873	0.7015
5210218020	0.6873	0.7015
5210314020	0.6873	0.7015
5210314040	0.6873	0.7015
5210316020	0.6873	0.7015
5210318020	0.6873	0.7015
5210414000	0.6873	0.7015
5210416000	0.6873	0.7015
5210418000	0.6873	0.7015
5210498090	0.6873	0.7015
5210514040	0.6873	0.7015
5210516020	0.6873	0.7015
5210516040	0.6873	0.7015
5210516060	0.6873	0.7015
5211110090	0.6873	0.7015
5211120020	0.6873	0.7015
5211190020	0.6873	0.7015
5211190040	0.6873	0.7015
5211190060	0.6873	0.7015
5211210030	0.4165	0.4251
5211210050	0.6873	0.7015
5211220020	0.6873	0.7015
5211290090	0.6873	0.7015
5211320020	0.6873	0.7015
5211390040	0.6873	0.7015
5211390060	0.6873	0.7015
5211490020	0.6873	0.7015
5211490090	0.6873	0.7015
5211590020	0.6873	0.7015
5212146090	0.9164	0.9354
5212156020	0.9164	0.9354
5212216090	0.9164	0.9354
5309214010	0.2864	0.2923
5309214090	0.2864	0.2923
5309294010	0.2864	0.2923
5311004000	0.9164	0.9354
5407810010	0.5727	0.5846
5407810030	0.5727	0.5846
5407912020	0.4009	0.4092
5408312020	0.4009	0.4092
5408329020	0.4009	0.4092
5408349020	0.4009	0.4092
5408349090	0.4009	0.4092
5509530030	0.5556	0.5671
5509530060	0.5556	0.5671
5513110020	0.4009	0.4092
5513110040	0.4009	0.4092
5513110060	0.4009	0.4092
5513110090	0.4009	0.4092
5513120000	0.4009	0.4092
5513130020	0.4009	0.4092
5513210020	0.4009	0.4092
5513310000	0.4009	0.4092
5514120020	0.4009	0.4092
5516420060	0.4009	0.4092
5516910060	0.4009	0.4092
5516930090	0.4009	0.4092
5601210010	1.1455	1.1692
5601210090	1.1455	1.1692
5601300000	1.1455	1.1692
5602109090	0.5727	0.5846
5602290000	1.1455	1.1692
5602906000	0.5260	0.5369
5604900000	0.5556	0.5671
5607902000	0.8889	0.9073
5608901000	1.1111	1.1341
5608902300	1.1111	1.1341
5609001000	1.1111	1.1341
5609004000	0.5556	0.5671
5701102010	0.0556	0.0568

IMPORT ASSESSMENT TABLE—Continued
[Raw Cotton Fiber]

HTS classification	Conversion factor	Cents/kg.
5701102090	0.1111	0.1134
5701901010	1.0444	1.0660
5702109020	1.1000	1.1228
5702312000	0.0778	0.0794
5702411000	0.0722	0.0737
5702412000	0.0778	0.0794
5702421000	0.0778	0.0794
5702422090	0.0778	0.0794
5702491020	1.0333	1.0547
5702491080	1.0333	1.0547
5702913000	0.0889	0.0907
5702991010	1.1111	1.1341
5702991090	1.1111	1.1341
5703900000	0.4489	0.4582
5801220000	1.1455	1.1692
5801230000	1.1455	1.1692
5801250010	1.1455	1.1692
5801250020	1.1455	1.1692
5801260020	1.1455	1.1692
5802190000	1.1455	1.1692
5802300030	0.5727	0.5846
5804290020	1.1455	1.1692
5806200000	0.3534	0.3607
5806310000	1.1455	1.1692
5806400000	0.4296	0.4385
5808103010	0.5727	0.5846
5808900010	0.5727	0.5846
5811002000	1.1455	1.1692
6001106000	1.1455	1.1692
6001210000	0.8591	0.8769
6001220000	0.2864	0.2923
6001910010	0.8591	0.8769
6001910020	0.8591	0.8769
6001920020	0.2864	0.2923
6001920030	0.2864	0.2923
6001920040	0.2864	0.2923
6002203000	0.8681	0.8861
6002206000	0.2894	0.2954
6002420000	0.8681	0.8861
6002430010	0.2894	0.2954
6002430080	0.2894	0.2954
6002920000	1.1574	1.1814
6002930040	0.1157	0.1181
6002930080	0.1157	0.1181
6101200010	1.0094	1.0303
6101200020	1.0094	1.0303
6102200010	1.0094	1.0303
6102200020	1.0094	1.0303
6103421020	0.8806	0.8988
6103421040	0.8806	0.8988
6103421050	0.8806	0.8988
6103421070	0.8806	0.8988
6103431520	0.2516	0.2568
6103431540	0.2516	0.2568
6103431550	0.2516	0.2568
6103431570	0.2516	0.2568
6104220040	0.9002	0.9188
6104220060	0.9002	0.9188
6104320000	0.9207	0.9398
6104420010	0.9002	0.9188
6104420020	0.9002	0.9188
6104520010	0.9312	0.9505
6104520020	0.9312	0.9505
6104622010	0.8806	0.8988
6104622015	0.8806	0.8988
6104622025	0.8806	0.8988
6104622030	0.8806	0.8988
6104622060	0.8806	0.8988
6104632010	0.3774	0.3852

IMPORT ASSESSMENT TABLE—Continued
[Raw Cotton Fiber]

HTS classification	Conversion factor	Cents/kg.
6104632025	0.3774	0.3852
6104632030	0.3774	0.3852
6104632060	0.3774	0.3852
6104692030	0.3858	0.3938
6105100010	0.9850	1.0054
6105100020	0.9850	1.0054
6105100030	0.9850	1.0054
6105202010	0.3078	0.3142
6105202030	0.3078	0.3142
6106100010	0.9850	1.0054
6106100020	0.9850	1.0054
6106100030	0.9850	1.0054
6106202010	0.3078	0.3142
6106202030	0.3078	0.3142
6107110010	1.1322	1.1556
6107110020	1.1322	1.1556
6107120010	0.5032	0.5136
6107210010	0.8806	0.8988
6107220015	0.3774	0.3852
6107220025	0.3774	0.3852
6107910040	1.2581	1.2841
6108210010	1.2445	1.2703
6108210020	1.2445	1.2703
6108310010	1.1201	1.1433
6108310020	1.1201	1.1433
6108320010	0.2489	0.2541
6108320015	0.2489	0.2541
6108320025	0.2489	0.2541
6108910005	1.2445	1.2703
6108910015	1.2445	1.2703
6108910025	1.2445	1.2703
6108910030	1.2445	1.2703
6108920030	0.2489	0.2541
6109100005	0.9956	1.0162
6109100007	0.9956	1.0162
6109100009	0.9956	1.0162
6109100012	0.9956	1.0162
6109100014	0.9956	1.0162
6109100018	0.9956	1.0162
6109100023	0.9956	1.0162
6109100027	0.9956	1.0162
6109100037	0.9956	1.0162
6109100040	0.9956	1.0162
6109100045	0.9956	1.0162
6109100060	0.9956	1.0162
6109100065	0.9956	1.0162
6109100070	0.9956	1.0162
6109901007	0.3111	0.3175
6109901009	0.3111	0.3175
6109901049	0.3111	0.3175
6109901050	0.3111	0.3175
6109901060	0.3111	0.3175
6109901065	0.3111	0.3175
6109901090	0.3111	0.3175
6110202005	1.1837	1.2082
6110202010	1.1837	1.2082
6110202015	1.1837	1.2082
6110202020	1.1837	1.2082
6110202025	1.1837	1.2082
6110202030	1.1837	1.2082
6110202035	1.1837	1.2082
6110202040	1.1574	1.1814
6110202045	1.1574	1.1814
6110202065	1.1574	1.1814
6110202075	1.1574	1.1814
6110900022	0.2630	0.2684
6110900024	0.2630	0.2684
6110900030	0.3946	0.4028
6110900040	0.2630	0.2684

IMPORT ASSESSMENT TABLE—Continued
[Raw Cotton Fiber]

HTS classification	Conversion factor	Cents/kg.
6110900042	0.2630	0.2684
6111201000	1.2581	1.2841
6111202000	1.2581	1.2841
6111203000	1.0064	1.0272
6111205000	1.0064	1.0272
6111206010	1.0064	1.0272
6111206020	1.0064	1.0272
6111206030	1.0064	1.0272
6111206040	1.0064	1.0272
6111305020	0.2516	0.2568
6111305040	0.2516	0.2568
6112110050	0.7548	0.7704
6112120010	0.2516	0.2568
6112120030	0.2516	0.2568
6112120040	0.2516	0.2568
6112120050	0.2516	0.2568
6112120060	0.2516	0.2568
6112390010	1.1322	1.1556
6112490010	0.9435	0.9630
6114200005	0.9002	0.9188
6114200010	0.9002	0.9188
6114200015	0.9002	0.9188
6114200020	1.2860	1.3126
6114200040	0.9002	0.9188
6114200046	0.9002	0.9188
6114200052	0.9002	0.9188
6114200060	0.9002	0.9188
6114301010	0.2572	0.2625
6114301020	0.2572	0.2625
6114303030	0.2572	0.2625
6115190010	1.0417	1.0633
6115922000	1.0417	1.0633
6115932020	0.2315	0.2363
6116101300	0.3655	0.3731
6116101720	0.8528	0.8705
6116926420	1.0965	1.1192
6116926430	1.2183	1.2435
6116926440	1.0965	1.1192
6116928800	1.0965	1.1192
6116939010	0.1218	0.1243
6117800010	0.9747	0.9949
6117800035	0.3655	0.3731
6201121000	0.948	0.9676
6201122010	0.8953	0.9138
6201122050	0.6847	0.6989
6201122060	0.6847	0.6989
6201134030	0.2633	0.2688
6201921000	0.9267	0.9459
6201921500	1.1583	1.1823
6201922010	1.0296	1.0509
6201922021	1.2871	1.3137
6201922031	1.2871	1.3137
6201922041	1.2871	1.3137
6201922051	1.0296	1.0509
6201922061	1.0296	1.0509
6201931000	0.3089	0.3153
6201933511	0.2574	0.2627
6201933521	0.2574	0.2627
6201990061	0.2574	0.2627
6202121000	0.9372	0.9566
6202122010	1.1064	1.1293
6202122025	1.3017	1.3286
6202122050	0.8461	0.8636
6202122060	0.8461	0.8636
6202134005	0.2664	0.2719
6202134020	0.3330	0.3399
6202921000	1.0413	1.0629
6202921500	1.0413	1.0629
6202922026	1.3017	1.3286

IMPORT ASSESSMENT TABLE—Continued
[Raw Cotton Fiber]

HTS classification	Conversion factor	Cents/kg.
6202922061	1.0413	1.0629
6202922071	1.0413	1.0629
6202931000	0.3124	0.3189
6202935011	0.2603	0.2657
6202935021	0.2603	0.2657
6203122010	0.1302	0.1329
6203221000	1.3017	1.3286
6203322010	1.2366	1.2622
6203322040	1.2366	1.2622
6203332010	0.1302	0.1329
6203392010	1.1715	1.1958
6203394060	0.2603	0.2657
6203422010	0.9961	1.0167
6203422025	0.9961	1.0167
6203422050	0.9961	1.0167
6203422090	0.9961	1.0167
6203424005	1.2451	1.2709
6203424010	1.2451	1.2709
6203424015	0.9961	1.0167
6203424020	1.2451	1.2709
6203424025	1.2451	1.2709
6203424030	1.2451	1.2709
6203424035	1.2451	1.2709
6203424040	0.9961	1.0167
6203424045	0.9961	1.0167
6203424050	0.9238	0.9429
6203424055	0.9238	0.9429
6203424060	0.9238	0.9429
6203431500	0.1245	0.1271
6203434010	0.1232	0.1258
6203434020	0.1232	0.1258
6203434030	0.1232	0.1258
6203434040	0.1232	0.1258
6203492010	0.1245	0.1271
6203493045	0.2490	0.2542
6204132010	0.1302	0.1329
6204192000	0.1302	0.1329
6204193090	0.2603	0.2657
6204221000	1.3017	1.3286
6204223030	1.0413	1.0629
6204223040	1.0413	1.0629
6204223050	1.0413	1.0629
6204223060	1.0413	1.0629
6204223065	1.0413	1.0629
6204292040	0.3254	0.3321
6204322010	1.2366	1.2622
6204322030	1.0413	1.0629
6204322040	1.0413	1.0629
6204423010	1.2728	1.2991
6204423030	0.9546	0.9744
6204423040	0.9546	0.9744
6204423050	0.9546	0.9744
6204423060	0.9546	0.9744
6204522010	1.2654	1.2916
6204522030	1.2654	1.2916
6204522040	1.2654	1.2916
6204522070	1.0656	1.0877
6204522080	1.0656	1.0877
6204533010	0.2664	0.2719
6204594060	0.2664	0.2719
6204622010	0.9961	1.0167
6204622025	0.9961	1.0167
6204622050	0.9961	1.0167
6204624005	1.2451	1.2709
6204624010	1.2451	1.2709
6204624020	0.9961	1.0167
6204624025	1.2451	1.2709
6204624030	1.2451	1.2709
6204624035	1.2451	1.2709

IMPORT ASSESSMENT TABLE—Continued
[Raw Cotton Fiber]

HTS classification	Conversion factor	Cents/kg.
6204624040	1.2451	1.2709
6204624045	0.9961	1.0167
6204624050	0.9961	1.0167
6204624055	0.9854	1.0058
6204624060	0.9854	1.0058
6204624065	0.9854	1.0058
6204633510	0.2546	0.2599
6204633530	0.2546	0.2599
6204633532	0.2437	0.2487
6204633540	0.2437	0.2487
6204692510	0.2490	0.2542
6204692540	0.2437	0.2487
6204699044	0.2490	0.2542
6204699046	0.2490	0.2542
6204699050	0.2490	0.2542
6205202015	0.9961	1.0167
6205202020	0.9961	1.0167
6205202025	0.9961	1.0167
6205202030	0.9961	1.0167
6205202035	1.1206	1.1438
6205202046	0.9961	1.0167
6205202050	0.9961	1.0167
6205202060	0.9961	1.0167
6205202065	0.9961	1.0167
6205202070	0.9961	1.0167
6205202075	0.9961	1.0167
6205302010	0.3113	0.3177
6205302030	0.3113	0.3177
6205302040	0.3113	0.3177
6205302050	0.3113	0.3177
6205302070	0.3113	0.3177
6205302080	0.3113	0.3177
6205902040	0.1245	0.1271
6206100040	0.1245	0.1271
6206303010	0.9961	1.0167
6206303020	0.9961	1.0167
6206303030	0.9961	1.0167
6206303040	0.9961	1.0167
6206303050	0.9961	1.0167
6206303060	0.9961	1.0167
6206403010	0.3113	0.3177
6206403030	0.3113	0.3177
6206900040	0.2490	0.2542
6207110000	1.0852	1.1077
6207190010	0.3617	0.3692
6207210010	1.1085	1.1314
6207210030	1.1085	1.1314
6207220000	0.3695	0.3771
6207911000	1.1455	1.1692
6207913010	1.1455	1.1692
6207913020	1.1455	1.1692
6208210010	1.0583	1.0802
6208210020	1.0583	1.0802
6208220000	0.1245	0.1271
6208911010	1.1455	1.1692
6208911020	1.1455	1.1692
6208913010	1.1455	1.1692
6208920010	0.1273	0.1299
6208920030	0.1273	0.1299
6209201000	1.1577	1.1817
6209203000	0.9749	0.9951
6209205030	0.9749	0.9951
6209205035	0.9749	0.9951
6209205040	1.2186	1.2438
6209205045	0.9749	0.9951
6209205050	0.9749	0.9951
6209303020	0.2463	0.2514
6209303040	0.2463	0.2514
6210104015	0.2291	0.2338

IMPORT ASSESSMENT TABLE—Continued
[Raw Cotton Fiber]

HTS classification	Conversion factor	Cents/kg.
6210401010	0.0391	0.0399
6210401020	0.4556	0.465
6211111010	0.1273	0.1299
6211111020	0.1273	0.1299
6211112010	1.1455	1.1692
6211112020	1.1455	1.1692
6211320007	0.8461	0.8636
6211320010	1.0413	1.0629
6211320015	1.0413	1.0629
6211320030	0.9763	0.9965
6211320060	0.9763	0.9965
6211320070	0.9763	0.9965
6211320080	0.9763	0.9965
6211330010	0.3254	0.3321
6211330030	0.3905	0.3986
6211330035	0.3905	0.3986
6211330040	0.3905	0.3986
6211420010	1.0413	1.0629
6211420020	1.0413	1.0629
6211420025	1.1715	1.1958
6211420050	1.1715	1.1958
6211420060	1.0413	1.0629
6211420070	1.1715	1.1958
6211420080	1.1715	1.1958
6211430010	0.2603	0.2657
6211430030	0.2603	0.2657
6211430040	0.2603	0.2657
6211430050	0.2603	0.2657
6211430060	0.2603	0.2657
6211430066	0.2603	0.2657
6211430090	0.2603	0.2657
6212101020	0.2412	0.2462
6212102010	0.9646	0.9846
6212102020	0.2412	0.2462
6212200020	0.3014	0.3076
6212900030	0.1929	0.1969
6213201000	1.1809	1.2053
6213202000	1.0628	1.0848
6213901000	0.4724	0.4822
6214900010	0.9043	0.9230
6216000800	0.2351	0.2400
6216001220	0.6752	0.6892
6216001720	0.6752	0.6892
6216003800	1.2058	1.2308
6216003910	1.2058	1.2308
6216003920	1.2058	1.2308
6216004100	1.2058	1.2308
6217100010	1.0182	1.0393
6217100030	0.2546	0.2599
6301300010	0.8766	0.8947
6301300020	0.8766	0.8947
6302100010	1.1689	1.1931
6302211020	0.8182	0.8351
6302211040	0.8182	0.8351
6302212010	1.1689	1.1931
6302212020	0.8182	0.8351
6302212030	1.1689	1.1931
6302212040	0.8182	0.8351
6302212090	0.8182	0.8351
6302222010	0.4091	0.4176
6302222020	0.4091	0.4176
6302311020	0.8182	0.8351
6302311090	0.8182	0.8351
6302312010	1.1689	1.1931
6302312020	0.8182	0.8351
6302312030	1.1689	1.1931
6302312040	0.8182	0.8351
6302312055	0.8182	0.8351
6302312090	0.8182	0.8351

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

HTS classification	Conversion factor	Cents/kg.
6302322020	0.4091	0.4176
6302322040	0.4091	0.4176
6302402010	0.9935	1.0141
6302511000	0.5844	0.5965
6302512000	0.8766	0.8947
6302513000	0.5844	0.5965
6302514000	0.8182	0.8351
6302600010	1.1689	1.1931
6302600020	1.0520	1.0738
6302600030	1.0520	1.0738
6302910005	1.0520	1.0738
6302910015	1.1689	1.1931
6302910025	1.0520	1.0738
6302910035	1.0520	1.0738
6302910045	1.0520	1.0738
6302910050	1.0520	1.0738
6302910060	1.0520	1.0738
6303110000	0.9448	0.9644
6303910000	0.6429	0.6562
6303920000	0.2922	0.2982
6304111000	1.0629	1.0849
6304190500	1.0520	1.0738
6304191000	1.1689	1.1931
6304191500	0.4091	0.4176
6304192000	0.4091	0.4176
6304910020	0.9351	0.9545
6304920000	0.9351	0.9545
6505901540	1.1810	1.2054
6505902060	0.9935	1.0141
6505902545	0.5844	0.5965

* * * * *

Dated: September 30, 1993.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 93-24596 Filed 10-6-93; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93-NM-41-AD; Amendment 39-8682; AD 93-17-11]

Airworthiness Directives; de Havilland, Inc., Model DHC-8-100 and -300 Series Airplanes; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects a typographical error that appeared in an airworthiness directive (AD), applicable to certain de Havilland, Model DHC-8-100 and -300 series airplanes. As published, the applicability statement of this AD contained an error in the listing of certain affected airplane serial numbers. This action corrects the typographical error in the applicability statement to ensure that only the airplanes subject to the addressed unsafe condition are specified.

DATES: Effective October 8, 1993.

The incorporation by reference of certain publications listed in the regulations was previously approved by the Director of the Federal Register as of September 8, 1993 (58 FR 47209).

ADDRESSES: The service information referenced in this AD may be obtained from de Havilland, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jon Hjelm, Aerospace Engineer, Airframe Branch, ANE-172, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581; telephone (516) 791-6220; fax (516) 791-9024.

SUPPLEMENTARY INFORMATION: On August 31, 1993, the FAA issued AD 93-17-11, amendment 39-8682 (58 FR 47209, September 8, 1993), to require an inspection of the horizontal stabilizer midspar attachment bolts to detect cracks at the radius transition between the bolt head and shank, and replacement of cracked bolts. That action was prompted by reports of defects found on several bolts that attach the horizontal stabilizer midspar to the top of the vertical fin. The actions specified by that AD are intended to prevent reduced strength and fail-safe capability of the structural attachment of the horizontal stabilizer to the airplane.

Recently, the FAA has become aware of the fact that the AD (final rule) as published in the **Federal Register** contained an error in its applicability statement. In specifying the affected serial numbers of Model DHC-8-100 series airplanes, one group was incorrectly listed as "serial numbers 317 through 334 inclusive." That grouping should have been listed as "317 through 344 inclusive." The correct numbers appeared in the notice that preceded the final rule.

The FAA has determined that it is appropriate to take action to correct this typographical error in the applicability statement of AD 93-17-11 in order to ensure that all affected airplanes are subject to the requirements of that AD.

Action is taken herein to correct the typographical error and to correctly add the AD as an amendment to § 39.13 of the Federal Aviation Regulations (FAR). The effective date of the rule remains October 8, 1993.

Although the rule is unchanged in all other respects, it is being reprinted in its entirety for the convenience of affected operators.

Since this action only corrects a typographical error, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by correctly adding amendment 39-8682, airworthiness directive (AD) 93-17-11, as follows:

93-17-11 De Havilland, Inc.: Amendment 39-8682. Docket 93-NM-41-AD.

Applicability: Model DHC-8-100 series airplanes, serial numbers 003 through 315 inclusive, 317 through 344 inclusive, and 346 through 349 inclusive; and Model DHC-8-300 series airplanes, serial numbers 100 through 319 inclusive, 321 through 337 inclusive, 339, 341, and 342; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced strength and fail-safe capability of the structural attachment of the horizontal stabilizer to the airplane, accomplish the following:

(a) Within 250 landings after the effective date of this AD, perform a one-time magnetic particle inspection of the horizontal stabilizer midspar attachment bolts to detect cracks at the radius transition between the bolt head and shank in accordance with de Havilland Alert Service Bulletin S.B. A8-55-18, dated February 5, 1993.

(b) If any crack is found in a bolt, prior to further flight, replace both midspar attachment bolts with serviceable bolts in accordance with de Havilland Alert Service Bulletin S.B. A8-55-18, dated February 5, 1993.

(c) As of the effective date of this AD, no person shall install a midspar attachment bolt, part number MS21250–10070, on any airplane unless, prior to installation, the bolt has been inspected using magnetic particle techniques to detect cracks in accordance with de Havilland Alert Service Bulletin S.B. A8–55–18, dated February 5, 1993.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The inspection and replacement shall be done in accordance with de Havilland Alert Service Bulletin S.B. A8–55–18, dated February 5, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from de Havilland, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on October 8, 1993.

Issued in Renton, Washington, on October 1, 1993.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–24711 Filed 10–6–93; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

[Docket No. 92F–0449]

Food Additives Permitted for Direct Addition to Food for Human Consumption; Calcium Disodium EDTA

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of calcium disodium EDTA to promote color retention for cooked, canned pink beans and red beans. This action is in response to a petition filed by Hanover Foods Corp.

DATES: Effective October 7, 1993; written objections and requests for a hearing by November 8, 1993.

ADDRESSES: Written objections may be sent to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Nega Beru, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9523.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of March 17, 1993 (58 FR 14403), FDA announced that a food additive petition (FAP 3A4347) had been filed on behalf of Hanover Foods Corp., P.O. Box 334, Hanover, PA 17331, proposing that § 172.120 *Calcium disodium EDTA* (21 CFR 172.120) be amended to provide for the safe use of calcium disodium EDTA to promote color retention in additional varieties of beans. The petitioner limited its request to pink beans and red beans.

FDA has evaluated data in the petition and other relevant material and concludes that the proposed food additive use of calcium disodium EDTA is safe and that § 172.120(b)(1) should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before November 8, 1993 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 172

Food additives, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 172 is amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR part 172 is revised to read as follows:

Authority: Secs. 201, 401, 402, 409, 701, 721 of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 321, 341, 342, 348, 371, 379e).

2. Section 172.120 is amended in paragraph (b)(1) by alphabetically adding two new entries to the table to read as follows:

§ 172.120 Calcium disodium EDTA.

* * * * *

(b) * * *

(1) * * *

Food	Limitation (parts per million)	Use
* * *	*	*
Pink beans (cooked canned).	165	Promote color retention.
* * *	*	*
Red beans (cooked canned).	165	Promote color retention.
* * *	*	*

Dated: September 29, 1993.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 93–24587 Filed 10–6–93; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Serum Gonadotropin and Chorionic Gonadotropin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Intervet, Inc. The supplemental NADA provides for the use of freeze dried serum gonadotropin and chorionic gonadotropin (P.G. 600®) to be reconstituted for subcutaneous injection for induction of estrus in healthy weaned sows experiencing delayed return to estrus.

EFFECTIVE DATE: October 7, 1993.

FOR FURTHER INFORMATION CONTACT: James F. McCormack, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20857, 301–594–1602.

SUPPLEMENTARY INFORMATION: Intervet, Inc., P.O. Box 318, 405 State St., Millsboro, DE 19966, filed supplemental NADA 140–856 that provides for the use of freeze dried serum gonadotropin and chorionic gonadotropin (P.G. 600®) to be reconstituted for subcutaneous injection for induction of estrus in healthy weaned sows experiencing delayed return to estrus. The supplemental NADA is approved as of August 30, 1993, and the regulations are amended in 21 CFR 522.1079(c) to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this approval for food producing animals qualifies for 3 years of marketing exclusivity beginning on August 30, 1993, because the supplemental application contains reports of new clinical investigations essential to the application and conducted or sponsored by the applicant. The 3 years of marketing exclusivity applies only to the new claim (induction of estrus in healthy weaned sows) for which the supplemental application was approved.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. Section 522.1079 is amended by revising paragraphs (c)(2) and (c)(3) to read as follows:

§ 522.1079 Serum gonadotropin and chorionic gonadotropin.

* * * * *

(c) * * *

(2) *Indications for use.* (i) *Gilts.* For induction of fertile estrus (heat) in healthy prepuberal (noncycling) gilts.

(ii) *Sows.* For induction of estrus in healthy weaned sows experiencing delayed return to estrus.

(3) *Limitations.* For subcutaneous use only.

(i) *Gilts.* For use only in gilts over 5 1/2 months of age and weighing at least 85 kilograms (187 pounds).

(ii) *Sows.* Delayed return to estrus is most prevalent after the first litter. The effectiveness has not been established after later litters. Delayed return to estrus often occurs during periods of adverse environmental conditions, and sows mated under such conditions may farrow smaller than normal litters.

Dated: September 30, 1993.

Richard H. Teske,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 93–24589 Filed 10–6–93; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 24

[T.D. ATF–350; RE: Notice No. 740]

RIN: 1512–AA89

Materials and Processes Authorized for the Production of Wine and for the Treatment of Juice, Wine and Distilling Material; Revised Alcohol Tolerance on Labels of Wine Under 7 Percent Alcohol by Volume (90F–260T)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule establishes an updated list of materials and processes authorized for the production of wine and for the treatment of juice, wine and distilling material. The use of these materials and processes has been found to be acceptable in accordance with good commercial practice in the production, cellar treatment, and finishing of wine. ATF is also revising its regulations to change the alcohol tolerance which is allowed on wine labels where the wine contains less than 7 percent alcohol by volume.

EFFECTIVE DATE: November 8, 1993.

FOR FURTHER INFORMATION CONTACT: Robert White or Jim Hunt, Coordinators, Wine and Beer Branch, Bureau of

Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226 (202–927–8230).

SUPPLEMENTARY INFORMATION:

Background

Since 1981, ATF has been reviewing the wine treating materials and processes which were previously prescribed in title 27, Code of Federal Regulations, part 240, subpart ZZ, and which are currently prescribed in title 27, Code of Federal Regulations, part 24, subpart L. This review was undertaken in an effort to revise the regulations in this subpart to include newly developed materials and processes in use by the wine industry and to delete materials and processes which are considered to be no longer acceptable in "good commercial practice" among wine producers, such as materials and processes no longer in use in the U.S. or elsewhere.

Notice No. 543, published in the **Federal Register** of September 24, 1984 (49 FR 37527), proposed the addition or deletion of, and, in some instances, revised usage levels for, materials and processes intended for use in the production and cellar treatment of wine. In the same issue of the **Federal Register** in which Notice No. 543 appeared, ATF published T.D. ATF–182 (49 FR 37510). This Treasury decision promulgated regulations which updated the materials and processes authorized for use in the production and treatment of wine, juice, and distilling material, established a procedure for providing agency sanction of experimentation with newly developed materials and processes, and revised the procedure for adding, altering, or deleting materials and processes employed in the treatment of wine, juice, and distilling material.

Following the issuance of Notice No. 543, ATF published in the **Federal Register** of March 7, 1986 [51 FR 8098], a notice (Notice No. 584) proposing extensive revisions to the regulations in part 240 for the production of wine. The purpose of the proposed revisions was to simplify, to modernize, and, where possible, to liberalize the wine regulations to achieve a reduced regulatory burden and a resource savings for the regulated wine industry and the Federal Government. Notice No. 584 also proposed the recodification of the regulations in part 240 into a new part 24.

On June 19, 1990, ATF published in the **Federal Register** (55 FR 24974) a Treasury decision (T.D. ATF–299) which totally revised the wine regulations and recodified part 240 into a new Part 24. As part of this overall recodification, the Treasury decision revised the wine treating material regulations in §§ 240.1051, 240.1051a, and 240.1051b and recodified these sections into 24.246, 24.247, and 24.248. These regulation changes updated the lists of materials and processes authorized for use in the production of wine and in the treatment of wine, juice and distilling material. The preamble of the Treasury decision contained a listing of the commenters to Notice Nos. 543 and 584 and a detailed summary of the comments received with the exception of the comments on sulfites. Further action concerning the maximum permissible level of sulfites in wine was not taken due to the proposal (53 FR 51065) by the Food and Drug Administration (FDA) to lower the maximum level of sulfiting agents in wine from 350 parts per million (ppm) to 275 ppm. ATF is still awaiting final action by FDA before proceeding further in this area.

Since T.D. ATF–299 was published, there have been requests to use several new wine treating materials and processes as well as requests to change the limitations on some currently approved wine treating materials and processes. In addition, ATF has for some time been considering the delisting of several wine treating materials because we did not feel that these materials were currently being used by wine producers.

Consequently, on June 3, 1992, ATF published a notice of proposed rulemaking, Notice No. 740, in the **Federal Register** (57 FR 23357) which requested public comment on the following specific proposals:

(1) Delisting of ammonium carbonate as a yeast nutrient for the fermentation of wine;

(2) Delisting of the proteolytic enzymes to reduce or to remove heat labile proteins;

(3) Reduction of the pH limitation from 3.0 to 2.5 for ion exchange;

(4) Increasing the residual level of copper which can be contained in finished wine from 0.2 to 0.5 part per million when copper sulfate is added to wine to remove hydrogen sulfide and/or mercaptans;

(5) Allowing the use of dimethyl dicarbonate (DMDC) in finished wine in the process of being bottled at a level not to exceed 200 parts per million; also allowing the use of DMDC in bulk wine being held for bottling between the time of the final "bottle polish" filtration and the actual filling of the bottles if the total quantity of DMDC in the wine at no time exceeds 200 ppm;

(6) Allowing the use of polyvinylpolypyrrolidone (PVPP) to remove excess color from wine and/or juice at a level not to exceed 60 pounds of PVPP per 1,000 gallons of wine or juice. All PVPP must be filtered out of the treated wine;

(7) Allowing the use of tartaric acid to reduce the pH of juice and/or wine where ameliorating material is used in the production of grape wine;

(8) Delisting of carbohydrase (*alpha*-Amylase), carbohydrase (*beta*-Amylase), and carbohydrase (Glucoamylase, Amyloglucosidase) enzymes to convert starches to fermentable carbohydrates;

(9) Delisting the use of hydrogen peroxide to remove color from the juice of red and black grapes;

(10) Allowing the use of pasteurized milk to clarify white wine;

(11) Allowing the use of low Brix juice produced by thermal gradient processing in the production of wine;

(12) Allowing the additional use of calcium carbonate (with or without calcium salts of tartaric and malic acids) to reduce excess natural acidity in high acid juice prior to or during fermentation;

(13) Allowing the additional use of potassium carbonate and/or potassium bicarbonate to reduce excess natural acidity in high acid juice prior to or during fermentation;

(14) Allowing the unrestricted use of oxygen and compressed air in juice and wine rather than restricting their use to baking or maturing wine and aeration of sherry as currently authorized in § 24.246.

In addition, ATF asked for comments concerning its proposal to revise 27 CFR 24.257(a)(4) to change the alcohol tolerance which is allowed on wine labels where the wine contains less than 7 percent alcohol by volume. The new tolerance proposed was plus or minus .75 percent by volume rather than the currently stated 10 percent of the alcohol content stated on the label.

Public Comments

ATF received 17 comments concerning its various proposals in Notice No. 740 during the 30-day comment period. A summary of the comments on each proposal is shown below, along with ATF's decision on each proposal.

Ammonium Carbonate

Three persons commented on the proposal to remove ammonium carbonate from the list of authorized wine treating materials in 27 CFR 24.246. All three commenters, including the Wine Institute, recommended removing this material from the authorized list since ammonium carbonate is not currently being used as

a yeast nutrient to facilitate fermentation of nutrient-deficient musts. Since ammonium carbonate is not currently in use by the wine industry, we are removing this material from the authorized list in 27 CFR 24.246.

Proteolytic Enzymes

ATF received seven comments in response to our proposal to delist the proteolytic enzymes. ATF proposed delisting these enzymes because we did not feel they were currently being used by the wine industry for the intended technical effect of reducing or removing heat labile proteins. All seven commenters who responded to this proposal strongly opposed delisting the proteolytic enzymes. One commenter stated that he used proteolytic enzymes during the processing of his 1991 vintage in an attempt to reduce heat labile proteins in Sauvignon blanc. According to this commenter, this variety and others often develop high protein levels. The commenter stated that it is occasionally difficult to heat stabilize these wines without using excessive amounts of bentonite, the other listed agent for this purpose. According to this commenter, the development of these enzymes by their manufacturers is ongoing, and refinements and improvements are being made which offer hope for improvements in wine processing in a natural manner.

The Wine Institute commented that while commercial proteases currently available may not have been specifically designed to remove heat labile proteins from wines, a few of the Wine Institute's members find them essential and extremely important, especially in the production of late harvest wines where heat stability by traditional means is difficult. Since proteolytic enzymes continue to be used in wine production to reduce or remove heat labile proteins, the Wine Institute requests that they not be delisted.

After reviewing the comments on the proteolytic enzymes, ATF has determined that they continue to be used by the wine industry for the technical effect of reducing or removing heat labile proteins. Consequently, these enzymes will continue to be listed as authorized wine treating materials in 27 CFR 24.246.

Ion Exchange

One commenter to Notice No. 584 suggested that the limitation for reduction of pH by ion exchange be changed from the currently prescribed pH of 3.0 to pH 2.5. The reason given for requesting this change was that "many times it is necessary to go below pH 3 to remove potassium."

In response to this proposal, ATF received two favorable comments and one opposed to the proposal. The Wine Institute favors this proposal since juices and wine with high potassium can be stabilized with hydrogen ion exchange, and there are occasions when the pH 3.0 limitation is restrictive. Further, the Wine Institute contends that this change should be allowed for all wines and juices rather than be restricted to other than *Vitis vinifera* wines and juices only. According to this commenter, wines and juices derived from *Vitis vinifera* grapes are the ones most likely to require this kind of treatment.

The commenter who opposes this proposal states that there is no need to go to this pH value in order to remove potassium from juice or wine as claimed by the one commenter. He states that the proposed pH value of 2.5 is well below the natural pH values of wines and therefore should not be adopted.

After doing additional research on this issue, ATF has decided on a pH limitation for ion exchange of 2.8 rather than the proposed 2.5. ATF does not feel that there is a need to go below pH 2.8 to remove potassium. In addition, the pH 2.8 level seems appropriate since the natural pH values of wines do not go below this level. If, for some exceptional reason, a proprietor feels that it is imperative to go below pH 2.8, the proprietor can submit a request to ATF under 27 CFR 24.250, along with a full explanation as to why it is necessary to go below pH 2.8. ATF may approve such a request on a case by case basis if there is sufficient justification for such approval.

Copper Sulfate

Regulations in 27 CFR 24.246 prescribe a residual level limitation of 0.2 part per million of copper in wine when copper sulfate is added to wine to remove hydrogen sulfide and/or mercaptans. This limitation does not take into consideration the level of copper present in untreated wine prior to the addition of copper sulfate. Studies of the use of copper sulfate in the treatment of wine (e.g., Thoukis, George, Chemistry of Wine Stabilization: A Review, IN: Chemistry of Winemaking, A.D. Webb, Ed., American Chemical Society, Washington, DC, 1974) reveal that the treated wine is stable with residual copper levels not exceeding 0.5 part per million. An increase from 0.2 to 0.5 part per million in residual copper, if authorized, would provide winemakers added flexibility in the use of copper sulfate and would eliminate the need to employ additional treatment to reduce the residual copper to 0.2 part per million.

ATF received five comments in favor of this proposal and none opposed. All of the commenters feel that the current residual copper limit is too low and that the proposed increase reflects good commercial practice. The commenters stated that the proposed change would eliminate the need to employ additional treatment to reduce the residual copper to 0.2 ppm and would increase winemaking flexibility in correcting odors in both still and sparkling wine.

One commenter stated that this proposal should be adopted since cupric ions are often complexed or removed from solution reactions by proteins and other species in wine. This commenter states that the removal of sulfides and thiols (mercaptans) can only be achieved if free cupric ions are present and in some wines these levels are necessary.

Another commenter states that he is in favor of this proposal for a number of reasons. Mercaptans and hydrogen sulfides are produced in wines during fermentation. The aromas and flavors caused by these compounds can vary from minor detractions in wine quality to extremely offensive. Copper sulfate additions can change a flawed wine into a very good wine.

This commenter states that one of the main contributors to sulfide compounds in wine is yeast metabolism of elemental sulfur during fermentation. The source of elemental sulfur is residual from mildew control in the vineyards. Currently, winemakers have the option of using other, non sulfur containing compounds for mildew control in the vineyard. If this option were for some reason to become unavailable, the alternative would be to use more sulfur in the vineyard, thus resulting in potentially more sulfide production during fermentation and an increased need for higher levels of copper sulfate additions to correct the defect. This commenter states that at one time he could remove the excess copper with a cyanide compound to meet the legal requirements for residual copper. However, this is no longer an option. Consequently, from a winemaking standpoint, having allowable levels of residual copper of up to 0.5 ppm is much more preferable than the alternatives which are flawed wine or moldy grapes.

After reviewing the comments, ATF agrees that there is a need to increase the residual level of copper which can be contained in finished wine from 0.2 to 0.5 parts per million (0.5 mg/L).

Consequently, ATF is revising the reference or limitation column in 27 CFR 24.246 for copper sulfate to reflect this change.

Dimethyl Dicarbonate (DMDC)

In June of 1988, ATF received an application from a winery to use dimethyl dicarbonate (DMDC) in wine. The winery application stated that DMDC has proven useful in wine as a cold beverage sterilant effective against yeast, bacteria and molds. DMDC acts by inactivating enzymes in the micro-organisms present in the wine. DMDC hydrolyzes in the wine forming principally carbon dioxide and methanol.

The application further stated that compared to other stabilization methods, such as flash pasteurization and chemical methods, DMDC is more effective in controlling problematic micro-organisms and does not lead to the development of resistant strains. Additionally, DMDC has no effect on the taste, color or odor of wine, unlike flash pasteurization or other chemical preservatives.

The winery application was submitted under former 27 CFR 240.1053 (Application for use of new treating material or process). This section of regulations has since been recodified and can now be found in 27 CFR 24.250. All required information was submitted with the application except for documentary evidence of the U.S. Food and Drug Administration's (FDA's) approval of the material for its intended purpose in the amounts proposed for the particular treatment contemplated.

In the October 21, 1988, issue of the **Federal Register**, 53 FR 41325, FDA published a final rule amending the food additive regulations by adding 21 CFR 172.133 to provide for the safe use of DMDC as a yeast inhibitor in wines. The effective date was October 21, 1988.

FDA's final rule states, in part, that DMDC (CAS Reg. No. 4525–33–1) may be safely used in wine in accordance with the following conditions:

(a) The additive meets the following specifications:

(1) The additive has a purity of not less than 99.8 percent as determined by the titration method specified in 21 CFR 172.133(a)(1).

(2) The additive contains not more than 2,000 parts per million (0.2 percent) dimethyl carbonate as determined by a method entitled "Gas Chromatography Method for Dimethyl Carbonate Impurity in Dimethyl Dicarbonate," which is incorporated by reference in accordance with 5 U.S.C. 552(a).

(b) The additive is used or intended for use as an inhibitor of yeast in wine under normal circumstances of bottling where the viable yeast count has been reduced to 500 per milliliter or less by current good manufacturing practices such as flash pasteurization or filtration. The additive may be added to wine in an amount not to exceed 200 parts per million (ppm).

Upon receiving notification of FDA's approval of DMDC for use in wine, ATF approved the winery application to use DMDC in all standardized wines subject to all FDA restrictions on its use. ATF has been approving similar applications to use DMDC on a case by case basis pending final action on its use.

ATF has received an additional inquiry from the wine industry concerning the use of DMDC in bulk wine being held for bottling between the time of the final "bottle polish" filtration and the actual filling of the bottles.

ATF contacted FDA concerning this request and received the following reply. FDA has no objection to the use of DMDC to treat wines being held in tanks between the time of the final "bottle polish" filtration and the actual filling of the bottles as long as the requirements in 21 CFR 172.133 are complied with.

Furthermore, as long as the addition of DMDC to wine in a closed storage tank is the last processing step before bottling, FDA has determined that this use of DMDC constitutes "normal circumstances of bottling" as specified in § 172.133. Although the wine to be treated with DMDC in this manner must be finished and must not undergo any additional manufacturing processes, FDA has determined that the finished wine treated with DMDC may be blended with another wine as long as the 200 parts per million (ppm) overall limitation on the addition of DMDC to wine is not exceeded.

ATF received seven comments on the use of DMDC in wine and all seven comments favored its use. One commenter stated that DMDC is effective at killing any residual yeast which may have reached the bottle. The key concept is DMDC's ability to "kill" yeast rather than merely inhibiting their growth. Secondly, DMDC does not alter the organoleptic qualities of the wine since, within hours of its use it hydrolyses into small amounts of carbon dioxide and methyl alcohol, both of which are naturally occurring substances in wine.

Another commenter states that the use of dimethyl dicarbonate provides wineries with a safe, efficient and effective means of controlling the growth of yeast in wine. Consequently, this commenter urges its addition to the authorized wine treating material list in 27 CFR 24.246.

An additional commenter states that ATF could improve the section relating to the holding of wines prior to bottling by placing a limit on the total DMDC addition to any bottled wine of, for example, 400 mg/L. This commenter states that this limit would be twice the approved level for a single addition and repeated additions should only be necessary if the wine being held is recontaminated or held for much longer than usual times. The commenter states that unless such a limit is made, wines with significantly higher methanol contents could result from repeated applications within the regulated use.

ATF feels that the above commenter has misinterpreted the 200 parts per million (200 mg/L) limitation on the use of DMDC in wine. The 200 parts per million limitation is a cumulative total of DMDC which can be added to wine. In no case can DMDC be added again to wine if the cumulative total of DMDC which has already been added to the wine is 200 parts per million. Consequently, if wines are properly treated with DMDC in accordance with the 200 parts per million cumulative limitation, these wines should not have significantly higher methanol contents.

The final commenter on DMDC, the Wine Institute, stated that its members support the proposals concerning the use of DMDC. In addition, the Wine Institute stated that it agrees with the cumulative concentration limitation of 200 parts per million, and further supports the use of DMDC for all wines, including dealcoholized wines. Furthermore, the Wine Institute requested that ATF urge the Food and Drug Administration to approve the food additive petition filed by Mobay Corporation for the use of DMDC for all wines.

On January 26, 1993, FDA published a final rule in the **Federal Register** (58 FR 6088), effective on the same date, which amended the food additive regulations to provide for the safe use of DMDC as a yeast inhibitor in dealcoholized and low alcohol wines. FDA regulations at 21 CFR 172.133 now state that DMDC (CAS Reg. No. 4525–33–1) may be safely used in wine, dealcoholized wine, and low alcohol wine. This additional approval of the use of DMDC in dealcoholized and low alcohol wines is conditioned on its being used as an inhibitor of yeast in dealcoholized wine and in low alcohol wine under normal circumstances of bottling where the viable yeast count has been reduced to 500 per milliliter or

less by current good manufacturing practices such as flash pasteurization or filtration. The additive may be added to dealcoholized wine or low alcohol wine in an amount not to exceed 200 parts per million (ppm).

After reviewing all the comments received concerning DMDC, including the recent FDA approval of DMDC in dealcoholized and low alcohol wines, ATF has decided to approve its use in wine, dealcoholized wine, and low alcohol wine at a maximum cumulative level of 200 parts per million as long as all the requirements contained in FDA regulations at 21 CFR 172.133 are complied with. This new wine treating material is being added to the authorized list in ATF regulations at 27 CFR 24.246.

Polyvinylpolypyrrolidone (PVPP)

Several years ago, ATF received an application from a winery to use polyvinylpolypyrrolidone (PVPP) to remove excess color from "blush" type wines. The application requested that up to 60 pounds of PVPP per 1,000 gallons (7.16 g/L) of wine be authorized for use. The winery submitting the application felt that PVPP has an advantage over some currently approved color removal methods in that it has less effect on the vinous character of the wine than some of the other methods. The winery stated that PVPP is a well known material which leaves no treatment residues in the wine, as it is completely insoluble in wine. PVPP simply attracts the undesirable components of the wine to itself. The winery stated that all PVPP will be filtered out of the treated wine.

Before and after samples of "blush" wine treated with up to 60 pounds of PVPP per 1,000 gallons of wine were analyzed by the ATF laboratory. The laboratory evaluation data revealed no significant change in the wine other than the visible color change and the reduction of the spectrophotometric measurement resulting from the PVPP treatment. The analysis also indicated that all PVPP had been removed from the treated wine.

After analyzing the application, including the laboratory results of the before and after samples of the treated wine, ATF approved the winery application to use up to 60 pounds of PVPP per 1,000 gallons of wine for the purpose of removing color from red or black wine or red or black juice. Our approval was contingent on the winery following the prescribed conditions listed in Food and Drug Administration (FDA) regulations at 21 CFR 173.50 with the exception that PVPP may be used as a stabilizing agent and to remove color from red or black wine and red or black juice rather than just as a clarifying agent.

ATF has been approving applications from other wineries to use PVPP to remove color from juice/wine on a case-by-case basis pending final action on this issue through the rulemaking process. Accordingly, ATF proposed in Notice No. 740 that PVPP be allowed for use in the production of wine to remove color from red or black wine or juice at a maximum level of 60 pounds per 1,000 gallons (7.19 g/L). PVPP had already been approved by ATF for use in wine production to clarify and to stabilize wine at a maximum level of 6.7 pounds per 1,000 gallons (0.8 g/L).

ATF received three comments to Notice No. 740 concerning PVPP. All three comments were in favor of the proposal. However, one commenter stated that the PVPP limit should be eliminated entirely since the agent is insoluble and there is no risk of a soluble residue. This commenter states that PVPP is an adsorbent and not actually a "clarifying agent." PVPP is used for the adsorptive reduction of phenol concentration. He states that the first listed use of PVPP (to clarify and to stabilize wine) is simply a subset of the second use (to remove color from red or black wine or juice) in which the coloring components (also phenols) are removed. This commenter indicates that there is no need for both descriptions.

In addition, this same commenter states that the application of dense-bed contacting technologies using this agent cannot be accomplished at even the proposed levels (60 lb/1000 gal), even though the effective proportions of agent to wine would be equivalent to less than 10 lb/1000 gal when the aggregate volume of wine is considered. The use of such levels of agent permit the lowering of phenolic components that do not have a strong affinity for PVPP. Furthermore, this commenter states that the use of dense-bed treatments would also permit the regeneration of the agent and reduce the quantity of waste materials associated with the treatment.

And finally, the Wine Institute commented that it supports the use and concentration levels proposed for PVPP. In addition, this commenter states that the use of PVPP provides greater flexibility to winemakers in the treatment of red and black juices for the control of color in the production of "blush" type wines.

ATF agrees that the use of PVPP to clarify and to stabilize wine can be considered a subset of the second stated use which is to remove color from red or black wine or juice. Consequently, ATF is combining these two uses into one which will state that PVPP can be used to clarify and to stabilize wine and to remove color from red or black wine or juice. The reference or limitation column for PVPP in 27 CFR 24.246, as proposed in Notice No. 740, is also being changed to eliminate the paragraph listed immediately to the right of the first use of PVPP and to make the second paragraph listed immediately to the right of the second use of PVPP apply to all uses. In addition, after reviewing all the comments on PVPP, ATF has decided to retain the 60 lbs/1,000 gals. (7.19 g/L) limitation as proposed in the notice.

ATF will give further consideration to the comment concerning dense-bed contacting technologies using PVPP. If, after further review, ATF decides there is merit to this comment, we may include this comment as a proposal in a future notice of proposed rulemaking.

Use of Acid To Correct Natural Deficiencies (§ 24.182)

ATF proposed in Notice No. 740 to revise § 24.182(a) to allow the use of tartaric acid to reduce the pH of juice or wine where amelioration material is used in the production of grape wine. This would provide wineries with an alternative method to reduce pH if they do not wish to use the ion exchange method. Currently, wineries cannot add tartaric acid to their juice or wine if they are going to ameliorate their wine. This proposal would allow wineries who have ameliorated, or who are going to ameliorate, their wine to use tartaric acid to lower their pH. However, if tartaric acid is used to reduce the pH, Notice No. 740 proposed an added requirement that the fixed acid level of the juice be measured prior to the addition of any tartaric acid to determine the maximum quantity of ameliorating material allowed.

ATF requested comments on whether the use of tartaric acid to reduce the pH of grape juice/wine where ameliorating material is used is in accordance with good commercial practice. ATF also requested comments on what limit should be placed on the reduction of pH of the juice/wine if this proposal were to be adopted. ATF tentatively proposed that the pH cannot be reduced below 3.0 when adding tartaric acid to ameliorated grape juice or wine (ATF tentatively proposed a pH 2.5 limit for ion exchange which has subsequently been changed to 2.8). ATF also requested comments on whether a pH 3.0 limit would be consistent with good commercial practice and whether there should be a different limit for *Vitis vinifera* wine versus wine made from other grapes.

In response to this proposal concerning the use of tartaric acid in ameliorated wines, ATF received four comments. Two were in support of the proposal, one was in support under certain conditions, and one was opposed to the proposal.

One of these commenters stated that the use of tartaric acid should be permitted provided that the ameliorating material is grape juice or grape wine. Another commenter stated that he was opposed to the proposal. This commenter stated that wines (or juices) which have been or are going to be ameliorated should not be acidulated. He indicates that one ameliorates to correct deficiencies, e.g., insufficient sugar content. One also ameliorates to reduce excesses, e.g., excess acid (water is added to dilute the acid; then sugar is added to bring the sugar level back up). This commenter states that adding acid after adding water to dilute the acid would seem to allow the producer to stretch the total amount of wine. This would consequently give the producer an unfair economic advantage. This commenter indicates that an alternative solution would be to allow the winemaker to add tartaric acid only if no water has been added as ameliorating material.

After reviewing the comments on tartaric acid, ATF has decided to adopt the proposal to allow the reduction of the pH of grape juice/wine to not below pH 3.0 where ameliorating material is used in the production of grape wine. This change is for both *Vitis vinifera* wine and for wine made from other grapes.

ATF is adopting this proposal on tartaric acid because of the problem posed by wines having both high acidity and high pH. In such a case, the wine needs to be ameliorated to reduce the high acidity. The wine also will need to have tartaric acid added to reduce the pH, unless the winery can afford to use the ion exchange process for this purpose. The amelioration credit must be calculated prior to the pH adjustment with tartaric acid. Consequently, the amelioration credit will not be increased due to the pH adjustment. Tartaric acid is therefore being approved for use in ameliorated grape wine (or juice) for the purpose of reducing the pH down to not below pH 3.0, not for the purpose of correcting natural deficiencies in ameliorated wine/juice.

ATF also proposed in Notice No. 740 to revise § 24.182(b) to make this paragraph clearer. Several persons had questioned the meaning of § 24.182(b) in regard to the quantity of acids which can be added either prior to or during fermentation. Some proprietors had interpreted the first sentence of § 24.182(b) to mean that any amount of acids can be added to juice/wine prior to or during fermentation. These proprietors pointed out that the limitation on the quantity of fixed acid in the finished wine is not stated until the second sentence which prescribes the types of acids which can be added to wine after fermentation is completed. The limitation prescribed is that the fixed acid level of the finished wine (calculated as tartaric acid) may not exceed 9.0 grams per liter. An exception to this limitation for high solids wine is also stated in this paragraph. Prior regulations on this subject may have been clearer because, at that time, a comma was used to divide what is now the first two sentences of § 24.182(b).

Since in prior regulations these first two sentences were just one extremely long sentence, it was easier to see that the limitation on the quantity of fixed acid in the finished wine included any acid added to correct natural deficiencies whether the acid was added prior to, during, or after fermentation.

ATF received no comments in response to this proposal to clarify § 24.182(b). Consequently, since it appears that § 24.182(b) is ambiguous as currently written, ATF is revising this paragraph to make clear that all acid added to wine to correct natural deficiencies, whether added before, during, or after fermentation, is to be included when determining whether the fixed acid level of the finished wine (calculated as tartaric acid) exceeds the prescribed limitation.

Carbohydrase Enzymes

In Notice No. 740, ATF requested comments on whether the following carbohydrase enzymes should be removed from the wine treating material list in 27 CFR 24.246: *alpha*-Amylase, *beta*-Amylase, Glucoamylase, and Amyloglucosidase. Currently, these enzymes are listed both in the wine treating material list and in 27 CFR 24.247 (Materials authorized for the treatment of distilling material). ATF asked whether these enzymes are being used by wine producers in the treatment of wine/juice for the stated purpose of converting starches to fermentable carbohydrates or whether these enzymes are only being used in the treatment of distilling material.

ATF received no comments in support of delisting these particular carbohydrase enzymes. On the other hand, ATF received three comments in favor of retaining these carbohydrase enzymes in the list of authorized wine treating materials in 27 CFR 24.246. One commenter stated that these carbohydrase enzymes have utility in the wine industry and, therefore, should not be deleted as approved processing materials for the treatment of wine or juice.

The Wine Institute stated that these enzymes are currently being used by wine producers and have been used for years when the presence of excessive levels of starch impede normal processing of must and juice. Further, these enzymes provide winemakers with flexibility in converting residual starch materials to fermentable carbohydrates and incidentally allow increased filterability of treated juices and wines. In conclusion, the Wine Institute stated that these enzymes are necessary in wine production and should not be delisted.

After reviewing the comments concerning these carbohydrase enzymes, ATF has determined that such enzymes are still being used by the wine industry for the purpose of converting starches to fermentable carbohydrates. Consequently, ATF is retaining these enzymes as authorized wine treating materials in 27 CFR 24.246.

Hydrogen Peroxide

In T.D. ATF–299, ATF stated that hydrogen peroxide was not being removed from the list of authorized wine treating materials at that time because it was still being used by a few wineries to remove color from the juice of red and black grapes. However, we stated that ATF continues to have some reservations about the chemical changes resulting from the use of hydrogen peroxide to decolorize juice. One problem which has been brought up by several industry members is that hydrogen peroxide is a strong oxidizing agent which will add carbonyl groups, convert ketones and aldehydes to acids, break chains, interrupt resonance structures of many phenolic molecules, and give rise to quinoid structures which can quickly polymerize.

In addition, the Wine Institute, which represents hundreds of wineries, stated in a previous comment that they do not consider the use of hydrogen peroxide to remove color from the juice of red and black grapes to be in accordance with good commercial practice. Therefore, in Notice No. 740, ATF requested comments from all interested parties concerning whether the use of hydrogen peroxide to decolorize grape juice is considered to be in accordance with good commercial practice.

ATF received three comments concerning hydrogen peroxide and all three commenters favored the delisting of this material from the authorized

wine treating material list in 27 CFR 24.246. One commenter stated that hydrogen peroxide should be removed from the regulations since it has little relevance to common winemaking practice. Another commenter stated that they did not believe that the use of hydrogen peroxide to remove color from red or black grapes was in accordance with good commercial practice. The third commenter stated that they support the delisting of hydrogen peroxide for the reasons stated in Notice No. 740.

After reviewing the comments regarding the use of hydrogen peroxide to remove color from the juice of red and black grapes, ATF has decided that such use is not in accordance with good commercial practice. Consequently, hydrogen peroxide is being delisted from the wine treating material list in 27 CFR 24.246.

Pasteurized Milk

ATF has approved several applications from wineries under 27 CFR 24.249 to experiment with the use of pasteurized milk as a fining agent for white wine. We have allowed white wine to be fined with up to 2.0 liters of pasteurized milk per 1,000 liters of wine (0.2 percent V/V). Within this limitation, we have allowed the wineries to sell the treated wine or to use it in any commercial purpose. We have received several favorable responses from these wineries concerning their experimentation with pasteurized milk to fine white wine. Consequently, in Notice No. 740, ATF requested comments from all interested persons concerning whether the use of pasteurized milk to fine white wine is considered to be in accordance with good commercial practice.

ATF received five comments regarding the use of pasteurized milk as a fining agent for white wine. Four commenters were in favor of its use for this purpose whereas one commenter opposed such use.

One commenter stated that since milk is the natural product from which casein is derived, he feels that the use of pasteurized milk to fine white wine should be considered to be in accordance with good commercial practice.

Another commenter stated that since 1988 they have been using milk fining to enhance the transformation of white wine into a delicious beverage. This commenter stated that the use of milk is not an original idea. According to him, milk has been used on Chardonnay wine in the Burgundy region of France for many years. Since this Chardonnay is world renowned, this commenter stated that his winery also decided to use milk to fine their Chardonnay. He states that milk fining can be thought of as a variation on a theme, a substitute for casein, which is a dry milk protein commonly used in California.

This commenter states that milk fining has become an important and integral winemaking tool which can impart many positive attributes. It is also easy to use as it can be added directly to wine, unlike casein, which requires a hydration step. This commenter feels that the acceptance of milk fining recognizes a traditional winemaking practice of France and is therefore in accordance with good commercial practice.

An additional commenter, the Wine Institute, stated that they support the proposal to allow the use of pasteurized milk to clarify white wines. They state that they assume that the proposal allows pasteurized whole or skim milk as a treatment material. In addition, the Wine Institute proposes that the use of milk be expanded to allow for its use with sherry and other fortified white wines. This commenter indicates that milk does an excellent job of lightening the color of sherry without the use of carbon.

The one commenter opposing the use of pasteurized milk as a fining agent in white wine stated that milk should not be approved since it has no obvious advantage over casein preparations yet would introduce minerals at significant concentrations. This commenter states that he is seriously concerned that the introduction of appreciable levels of calcium ions could lead to the development of a calcium tartrate instability in wines.

After reviewing all the comments on the use of pasteurized milk to fine white wine, ATF has decided to approve this material as a fining agent with the limitation that the amount used shall not exceed 2.0 liters of pasteurized whole or skim milk per 1,000 liters of white grape wine or sherry (0.2 percent V/V). ATF has decided to allow the use of this material as a fining agent in all white grape wines, to include sherry and other similar white grape wines, rather than restricting its use to white wine only. This expansion of the use of pasteurized milk as a fining agent will give winemakers added flexibility in producing their wines and is in accordance with several industry members' comments.

In regard to one commenter's concern about the possible development of calcium tartrate instability in wines treated with pasteurized milk, ATF believes that such instability is not a serious problem since experimentation by several wineries over a period of seven or eight years has shown no evidence of calcium instability.

Thermal Gradient Processing Applied to Grape Juice

ATF has approved a winery application to apply thermal gradient technology, currently used for wine, to grape juice. The process involves taking a typical Brix juice and separating it into a low sugar fraction and a high sugar fraction. Both the low Brix and high Brix fractions will be used in wine production. While the high Brix fraction has a Brix level usually associated with concentrate, the winery stated that it is simply high Brix juice. The winery stated the high Brix juice would not be diluted with water for use in wine production.

The ATF Laboratory conducted tests, including organoleptic tests, on the low Brix juice and determined that a significant distinction could be made between low Brix juice produced by thermal gradient technology and low Brix juice produced by adding water to the juice. Consequently, we approved the winery application.

In Notice No. 740, ATF proposed to expand the use of thermal gradient processing in 27 CFR 24.248 to include the production of low Brix juice for use in wine production. ATF requested comments from all interested parties concerning whether the use of thermal gradient processing to produce low Brix juice is considered to be in accordance with good commercial practice when the juice is used in the production of wine.

Two comments were received that were in full support of this proposal whereas one comment was received that was somewhat opposed to the proposal. One of the commenters who was in full support of this proposal stated that the use of low Brix juice produced by thermal gradient processing in the production of wine would allow the production of a wine that is low in alcohol without having to remove alcohol or dilute the wine after fermentation.

The commenter who was somewhat opposed to this proposal stated that there needs to be a clearer definition of what is meant by "low Brix juice" before it can even be considered. This commenter stated that if it is to be compared to water additions its use should be restricted to those regions and wine styles in which water addition is permitted.

After reviewing the comments on this proposal, ATF has decided to approve the use of thermal gradient processing for the purpose of separating juice into

low Brix and high Brix juice fractions in the production of wine. The low Brix fraction is not considered a dilution but rather a separation. If water other than what was originally present is used in this process, then such water would have to be considered part of the amelioration material where amelioration is allowed. In regard to the high Brix juice fraction derived from this process, such fraction cannot be diluted with water for use in wine production.

Calcium Carbonate, Potassium Carbonate and/or Potassium Bicarbonate To Reduce Acidity in Juice

Currently, calcium carbonate (with or without calcium salts of tartaric and malic acids) and potassium carbonate and/or potassium bicarbonate are authorized by 27 CFR 24.246 to be used to reduce the excess natural acids in high acid wine. Recently, we received a request to use these wine treating materials earlier in the process by adding them, separately or in combination, to juice for the purpose of reducing the excess natural acidity in high acid juice prior to or during fermentation. Some winemakers state that the earlier in the process you reduce the acid, the better off you are.

In Notice No. 740, ATF proposed adding this additional use for these wine treating materials to 27 CFR 24.246. The reference or limitation column for these materials was left unchanged to read that the natural or fixed acids shall not be reduced below 5 parts per thousand (5 g/L).

ATF received three comments in favor of allowing the additional use of calcium carbonate, potassium carbonate and/or potassium bicarbonate to reduce excess natural acidity in high acid juice prior to or during fermentation. No comments were received which were opposed to this additional use of these materials. One commenter stated that the use of carbonates to reduce excess natural acidity prior to or during fermentation is good commercial practice.

Another commenter stated that these materials are currently in use (and have been for many years) for this application, even though apparently, illegally. This commenter states that it is the preferred method of treatment for these salts. This commenter further states that the addition of tartaric and/or malic acid is required in certain situations where the joint precipitation of the calcium salts of these acids is desired but limited by the low levels of one of them. In addition, this commenter stated that the existing and proposed limits related to fixed acids are too low in his experience and could easily be raised to 6.0 or 7.0 g/L while still being within the levels ever expected in good commercial practice.

After reviewing the comments received concerning these wine treating materials, ATF has decided to approve their use in high acid juice as proposed in Notice No. 740. The reference or limitation column in 27 CFR 24.246 will continue to read that the natural or fixed acids shall not be reduced below 5 parts per thousand (5 g/L).

Oxygen and Compressed Air

Currently, the wine treating material regulations at § 24.246 authorize the use of oxygen and compressed air in the baking or maturing of wine and the aeration of sherry. The "Reference or limitation" column of this regulation states that oxygen and compressed air may be used provided it does not cause changes in the wine other than those occurring during the usual storage in wooden cooperage over a period of time. We have recently been asked by a winemaker to allow the use of oxygen and compressed air in juice in order to oxidize the pigments in the juice so the pigments can be more easily removed in order to produce "blush" type wines. This request has led us to reevaluate the purpose for the restrictions on the use of oxygen and compressed air in § 24.246.

As a result of this reevaluation process, ATF proposed in Notice No. 740 to remove the restrictions on oxygen and compressed air and to simply state that these materials may be used in juice and wine.

ATF received three comments in support of this proposal and one comment which mentions the proposal but does not express support or opposition to the proposal. One commenter states that they see no reason for the current restrictions on the use of oxygen or compressed air in winemaking. Another commenter states that the present restriction on oxygen and compressed air should be eliminated since there is commonly a need to re-aerate juices prior to yeast inoculation for normal cell viability and fermentation performance. This commenter states that this is especially so in juices that have not had sulphur dioxide added or those with ascorbic acid added.

Another commenter states that in the production of authentic sherry the use of oxygen and compressed air is not needed. This commenter further states that the use of oxygen and compressed air and other similar procedures are only used to produce imitations of the original sherry.

After viewing the above comments, ATF has decided to approve the removal of the restrictions on the use of oxygen and compressed air and to simply state that oxygen and compressed air may be used in juice and wine.

Revised Alcohol Tolerance on Labels of Wines Under 7 Percent Alcohol by Volume

The Federal Alcohol Administration Act (FAA) regulations contain labeling requirements for wines with an alcohol content of 7 percent by volume and above. The requirements for labeling wines under 7 percent alcohol by volume are in the Internal Revenue Code (IRC) wine regulations. During the revision of the IRC wine regulations, ATF determined that there was no specific provision for an alcohol tolerance on labels for wines under 7 percent by volume. The tolerances in alcohol content provided for in former 27 CFR 240.579 were those allowed under 27 CFR part 4, and, therefore, were not applicable to wine having less than 7 percent alcohol by volume.

A notice of proposed rulemaking (Notice No. 584) for the revision and recodification of the IRC wine regulations was published in the **Federal Register** on March 7, 1986. In that notice, ATF proposed an alcohol label tolerance for wines under 7 percent alcohol by volume of plus or minus 10 percent of the alcohol content stated on the label. At the time, wines under 7 percent alcohol by volume were wine cooler products with an alcohol content of 5 to 7 percent, which would have allowed for an alcohol tolerance of .5 to .7 percent by volume. One comment was submitted on this proposal stating that it might be preferable to have an alcohol tolerance of 1 percent, but the comment seemed to be more of an opinion rather than an objection to the wine label alcohol tolerance proposed.

On June 19, 1990, ATF published T.D. ATF–299 in the **Federal Register** adopting the proposal in Notice No. 584 to allow a tolerance of plus or minus 10 percent of the alcohol content stated on the label for wines under 7 percent alcohol by volume. Soon after the final rule was published, ATF was advised that the alcohol tolerance for wines under 7 percent alcohol by volume was too low and it would be very difficult to meet this tolerance for wine cooler products at 5 percent alcohol by volume and nearly impossible for the new light wine cooler products with an alcohol content of 2 to 3 percent by volume. A petition was submitted to allow a label

tolerance for alcohol content of 1 percent by volume.

After carefully considering the evidence submitted by the petitioner and other information concerning an alcohol tolerance for wines under 7 percent, ATF agrees that the alcohol tolerance of 27 CFR 24.257(a)(4) allowing a plus or minus 10 percent of the alcohol content stated on the label for wines under 7 percent alcohol by volume should be increased. However, since wines 7 to 14 percent alcohol by volume in the FAA Act regulations are allowed an alcohol tolerance of 1.5 percent by volume from that stated on the label, ATF decided that an alcohol tolerance of 1 percent for wines under 7 percent alcohol by volume might be considered too high.

Therefore, ATF proposed in Notice No. 740 a label alcohol tolerance of .75 percent for wines under 7 percent alcohol by volume. ATF received two comments in favor of the proposal and one comment suggesting an alternative to the proposal. One of the two commenters favoring the proposal states that the proposed tolerance of plus or minus .75 percent by volume, rather than the currently stated 10 percent of the alcohol content stated on the label, is welcomed. This commenter further states that it is very difficult to produce, on a commercial scale, wines of very low alcohol content within the confines of the current rule.

The commenter who suggested an alternative to the proposal states that she believes ATF should establish two new categories, each with a separate tolerance level. For wines with an alcohol content of less than 4 percent by volume, this commenter suggested an alcohol tolerance of .75, and for wines with an alcohol content less than 7 percent and greater than 4 percent, she suggested an alcohol tolerance of .5. This commenter stated that this two tier tolerance level based on alcohol content should be within the technological capabilities of wine producers and would substantially lessen the variation in alcohol content among products developed and promoted based on their lower alcohol content.

After reviewing the comments, ATF has decided to adopt the plus or minus .75 percent by volume alcohol tolerance level which was proposed in Notice No. 740. ATF believes that this tolerance level is within the capabilities of all wine producers and that consumers will be sufficiently protected against high variations in alcohol content of low alcohol products.

Harmonization of Regulations

ATF received a comment to Notice No. 740 from the National Association of Beverage Importers (NABI) concerning the harmonization of regulations between the U.S. and the European Community (EC). This commenter stated that they welcome the modernization of the regulation governing the materials and processes authorized for the production of wine and for the treatment of juice, wine and distilling materials. However, because NABI members are importers and exporters of alcohol beverages all over the world, NABI supports efforts of harmonization of the regulations that govern alcohol products. NABI therefore strongly requests that ATF attempt to harmonize their proposed regulations with those of the U.S.'s major trading partners (the European Community), before the regulations are finalized. This commenter states that harmonized regulations between trading partners enhance the two-way trade of the products in question.

In response to the NABI comment, ATF does not feel that there is any reason to believe that the changes being made by this Treasury decision will have a negative impact on harmonization efforts.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation is liberalizing in nature and will allow large and small winemakers more flexibility when producing their wines. Accordingly, a regulatory flexibility analysis is not required because the final rule is not expected (1) to have significant secondary, or incidental effects on a substantial number of small entities; or (2) to impose, or otherwise cause a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Executive Order 12291

It has been determined that this document is not a major regulation as defined in E.O. 12291 and a regulatory impact analysis is not required because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pubic Law 96–511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because no requirement to collect information is imposed.

Drafting Information

The principal author of this document is Robert L. White, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms. ATF Wine Technical Advisor Richard M. Gahagan and ATF Chemist Randolph H. Dyer have provided significant technical assistance in the evaluation and review of data pertinent to the preparation of this document.

List of Subjects in 27 CFR Part 24

Administrative practice and procedure, Authority delegations, Claims, Electronic funds transfers, Excise taxes, Exports, Food additives, Fruit juices, Labeling, Liquors, Packaging and containers, Reporting requirements, Research, Scientific equipment, Spices and flavorings, Surety bonds, Transportation, Warehouses, Wine and vinegar.

Authority and Issuance

27 CFR Part 24—Wine is amended as follows:

PART 24—WINE

Paragraph 1. The authority citation for part 24 continues to read as follows:

Authority: 26 U.S.C. 5001, 5008, 5041, 5042, 5044, 5061, 5062, 5081, 5111–5113, 5121, 5122, 5142, 5143, 5173, 5206, 5214, 5215, 5351, 5353, 5354, 5356–5357, 5361, 5362, 5364–5373, 5381–5388, 5391, 5392, 5551, 5552, 5661, 5662, 5684, 6065, 6091, 6109, 6301, 6302, 6311, 6651, 6676, 7011, 7302, 7342, 7502, 7503, 7606, 7805, 7851; 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 2. Section 24.182 is amended to revise paragraphs (a) and (b) to read as follows:

§ 24.182 Use of acid to correct natural deficiencies.

(a) *General.* Acids of the kinds occurring in grapes or other fruit (including berries) may be added within the limitations of § 24.246 to juice or wine in order to correct natural deficiencies; however, no acid may be added to juice or wine which is ameliorated to correct natural deficiencies except that in the production of grape wine, tartaric acid may be used to reduce the pH of the

juice or wine. If tartaric acid is used to correct the pH of grape juice or wine, the fixed acid level of the juice shall be measured prior to the addition of any tartaric acid to determine the maximum quantity of ameliorating material allowed. In addition, when using tartaric acid to reduce the pH of ameliorated grape juice or wine, the pH cannot be reduced below 3.0.

(b) *Grape wine.* Tartaric acid or malic acid, or a combination of tartaric acid and malic acid, may be added prior to or during fermentation, to grapes or juice from grapes. In addition, after fermentation is completed, citric acid, fumaric acid, malic acid, lactic acid or tartaric acid, or a combination of two or more of these acids, may be added to correct natural deficiencies. However, the use of these acids, either prior to, during or after fermentation, may not increase the fixed acid level of the finished wine (calculated as tartaric acid) above 9.0 grams per liter. In cases where the wine contains 8.0 or more grams of total solids per 100 milliliters of wine, acids may be added to the extent that the finished wine does not contain more than 11.0 grams per liter of fixed acid (calculated as tartaric acid).

* * * * *

Par. 3. Section 24.246 is amended in the table by removing the entry for ammonium carbonate, and hydrogen peroxide; by revising the entry for calcium carbonate, copper sulfate, oxygen and compressed air, polyvinylpolypyrrolidone (PVPP), potassium carbonate and/or potassium bicarbonate and tartaric acid; and by adding the entry for dimethyl dicarbonate and milk (pasteurized whole or skim) to read as follows:

§ 24.246 Materials authorized for treatment of wine and juice.

* * * * *

Materials	Use	Reference or limitation
* * *	* * *	* * *
Calcium carbonate (with or without calcium salts of tartaric and malic acids).	To reduce the excess natural acids in high acid wine, and in juice prior to or during fermentation.	The natural or fixed acids shall not be reduced below 5 g/L. 21 CFR 184.1069 and 184.1099, and 184.1191 (GRAS).
	A fining agent for cold stabilization	The amount used shall not exceed 30 lbs/1000 gals. (3.59 g/L) of wine.
* * *	* * *	* * *
Copper sulfate	To remove hydrogen sulfide and/or mercaptans from wine.	The quantity of copper sulfate added (calculated as copper) shall not exceed 0.5 part copper per million parts of wine (0.5 mg/L) with the residual level of copper not to be in excess of 0.5 part per million (0.5 mg/L). 21 CFR 184.1261 (GRAS).
* * *	* * *	* * *
Dimethyl dicarbonate	To sterilize and to stabilize wine, dealcoholized wine, and low alcohol wine.	Must meet the conditions prescribed by FDA in 21 CFR 172.133. DMDC may be added to wine, dealcoholized wine, and low alcohol wine in a cumulative amount not to exceed 200 parts per million (ppm).
* * *	* * *	* * *
Milk (pasteurized whole or skim)	Fining agent for white grape wine or sherry	The amount used shall not exceed 2.0 liters of pasteurized milk per 1,000 liters of white grape wine or sherry (0.2 percent V/V).
* * *	* * *	* * *
Oxygen and compressed air	May be used in juice and wine	None.
Polyvinylpolypyrrolidone (PVPP)	To clarify and to stabilize wine and to remove color from red or black wine or juice.	The amount used to treat the wine, including the juice from which the wine was produced, shall not exceed 60 lbs/1,000 gals. (7.19 g/L) and shall be removed during filtration. PVPP may be used in a continuous or batch process. The finished wine shall retain vinous character and shall have color of not less than 0.6 Lovibond in a one-half inch cell or not more than 95 percent transmittance per "AOAC Method 11.003–11.004 (14th Ed.). 21 CFR 173.50.
* * *	* * *	* * *
Potassium carbonate and/or potassium bicarbonate.	To reduce excess natural acidity in wine, and in juice prior to or during fermentation.	The natural or fixed acids shall not be reduced below 5 parts per thousand (5 g/L). 21 CFR 184.1619 and 184.1613 (GRAS).
* * *	* * *	* * *
Tartaric acid	To correct natural acid deficiencies in grape juice/wine and to reduce the pH of grape juice/wine where ameliorating material is used in the production of grape wine.	Use as prescribed in 27 CFR 24.182 and 24.192. 21 CFR 184.1099 (GRAS).
* * *	* * *	* * *

Par. 4. Section 24.248 is amended in the table by revising item 6 under the "reference or limitation" heading for ion exchange and by revising the entry for thermal gradient processing to read as follows:

§ 24.248 Processes authorized for the treatment of wine, juice, and distilling material.

* * * * *

Processes	Use	Reference or limitation
•	•	•
Ion exchange	• • •	• • • 6. Treatment does not reduce the pH of the juice or wine to less than pH 2.8 nor increase the pH to more than pH 4.5.
•	•	•
Thermal gradient processing	To separate wine into low alcohol and high alcohol wine fractions.	The fractions derived from such processing shall retain vinous character. Such treatment shall not increase the alcohol content of the high alcohol fraction to more than 24 percent by volume. The addition of water other than that originally present in the wine prior to processing will render standard wine "other than standard."
	To separate juice into low Brix and high Brix juice fractions.	The low Brix fraction derived from such processing may be used in wine production. The high Brix fraction derived from such processing shall not be diluted with water for use in wine production.
•	•	•

Par. 5. Section 24.257(a)(4) is revised to read as follows:

§ 24.257 Labeling wine containers.

(a) * * *

(4) The alcohol content as percent by volume or the alcohol content stated in accordance with 27 CFR part 4. For wine with less than 7 percent alcohol by volume stated on the label there is allowed an alcohol content tolerance of plus or minus .75 percent by volume; and

* * * * *

Signed: August 23, 1993.

Stephen E. Higgins,

Director.

Approved: September 20, 1993.

Ronald K. Noble,

Assistant Secretary (Enforcement).

[FR Doc. 93–24586 Filed 10–6–93; 8:45 am]

BILLING CODE 4810–10–31–U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 950

Wyoming Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing approval with an exception and a required amendment of a proposed amendment to the Wyoming permanent regulatory program (hereinafter, the "Wyoming program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment, submitted July 8, 1992, pertains to wildlife monitoring. The proposed amendment revises the Wyoming program to be consistent with the corresponding Federal standards and to incorporate the additional flexibility afforded by the revised Federal rules.

EFFECTIVE DATE: October 7, 1993.

FOR FURTHER INFORMATION CONTACT: Guy V. Padgett, Telephone: (307) 261–5776.

SUPPLEMENTARY INFORMATION:

I. Background on the Wyoming Program

On November 26, 1980, the Secretary of the Interior conditionally approved the Wyoming program. General background information on the Wyoming program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Wyoming program can be found in the November 26, 1980, **Federal Register** (45 FR 78637). Subsequent actions concerning Wyoming's program and program amendments can be found at 30 CFR 950.11, 950.12, 950.15 and 950.16.

II. Submission of Amendment

On July 8, 1992, Wyoming submitted a proposed amendment to its program pursuant to SMCRA (Administrative Record No. WY–18–1). Wyoming proposes to amend the following Department of Environmental Quality—Land Quality Division (DEQ/LQD) rules and regulations relating to coal exploration and coal mining and reclamation operations at chapter II, section 3(b)(iv)(B), chapter IV, section 3(o)(iv), and appendix B.

OSM published a notice, in the September 11, 1992, **Federal Register** (57 FR 41714), announcing receipt of the proposed amendment and in the same notice, opened the public comment period and provided opportunity for a public hearing on its substantive adequacy. The public comment period closed on October 13, 1992. A public hearing was not held because no one requested to testify.

During its review of the amendment, OSM identified four issues included under the following topics: 640 acre limitation, adjacent area monitoring, reporting requirements, and monitoring time-frames. OSM notified Wyoming of these issues by letter dated November 9, 1992, (Administrative Record No. WY–18–9). Wyoming responded in a letter dated January 11, 1993, to all of the issues raised by OSM (Administrative Record No. WY–18–11).

In a March 22, 1993, **Federal Register** (58 FR 15319), OSM announced receipt of the additional information from Wyoming and reopened the public comment period for the proposed amendment (Administrative Record No. WY–18–12). The public comment period closed on April 16, 1993.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the OSM Director's findings concerning the amendment submitted by Wyoming on July 8, 1992, and subsequently clarified on January 11, 1193.

1. LQD Rules, Chapter II, Section 3(b)(iv)(B) and Chapter IV, Section 3(o)(iv): Monitoring Methods

Wyoming proposes to amend LQD Rules at chapter II, section 3(b)(iv)(B) to require permit information on how the applicant will utilize monitoring methods as specified in Appendix B to protect and enhance: (1) Threatened and endangered species of plants and animals listed by the Secretary under the Endangered Species Act of 1973 and their critical habitats, (2) species identified through the consultation process, and (3) important habitats. Also at chapter IV, section 3(o)(iv), Wyoming proposes to require the operator to perform periodic wildlife surveys, in the level and detail and for those areas as determined by the administrator, in accordance with appendix B.

The counterpart Federal regulations at 30 CFR 780.16(b)(3)(i) and 784.21(b)(3)(i) require the applicant to provide protective measures for fish and wildlife resources. In the preamble to 30 CFR 780.16(b)(3)(i) in the December 11, 1987, **Federal Register** (52 FR 47356), OSM emphasized that the protective measures provided as examples under this section are not an exclusive list to be considered by the applicant. The regulatory authority may also require the applicant to undertake other protective measures such as biological monitoring.

Wyoming's proposed rules make explicit that wildlife monitoring is required in accordance with appendix B for the protection of wildlife resources. Therefore the Director finds that Wyoming's proposed rules at chapter II, section 3(b)(iv)(B) and chapter IV, section 3(o)(iv), are consistent with and no less effective than the Federal regulations at 30 CFR 780.16(b)(3)(i) and 784.21(b)(3)(i) and is approving them.

2. LOD Rules Appendix B: Wildlife Monitoring Requirements for Surface Coal Mining Operations

In its appendix B, Wyoming proposes to set procedures for wildlife monitoring on surface coal mining operations. The appendix includes monitoring requirements and methodologies under five separate sections: A. Big Game Seasonal Habitat, B. Upland Game Bird Brood Counts and Lek Attendance Surveys, C. Raptor Production, D. Migratory Birds of High Federal Interest, and E. Federally Listed Threatened and Endangered Species.

During its review of appendix B, OSM identified the following concerns:

a. Introduction: 640-Acre Limitation and Adjacent Areas

In the introduction to appendix B (first paragraph, last two sentences) Wyoming originally proposed to allow an exception to its wildlife monitoring measures so that the monitoring procedures specified in the appendix would only be applicable to surface coal mines disturbing 640 acres or more of land. Wyoming also proposed that, where landowner constraints prevent access to adjoining lands, monitoring would not be required unless it could be reasonably conducted from a distance.

The Federal rules at 30 CFR 780.16(a) and 784.21(a) and Wyoming's rules at chapter II, section 3(a)(vi)(E) (underground rules at chapter VII reference surface rules) require that fish and wildlife resource information be collected for the permit area and adjacent areas. Additionally, the Federal rules at 30 CFR 780.16(b)(2) and 784.21(b)(2) and Wyoming's rules at chapter IV, section 3(o) (underground rules at chapter VII reference surface rules) specifically require that a protection and enhancement plan be provided that addresses those wildlife resources identified.

Further, the Federal rules at 30 CFR 780.16(b)(3)(i) and 784.21(b)(3)(i) require that protective measures must be used during the active mining phase. The Wyoming rules at chapter II, section 3(b)(iv)(B) and proposed appendix B are counterparts to these Federal regulation requirements. Wyoming's rules, in addition to the federally mandated requirements, require monitoring to insure protection and enhancement of fish and wildlife resources.

As discussed in the preamble to 30 CFR 780.16(b)(3)(i) (52 FR 47356), OSM emphasized that the protective measures provided as an example under this section are not intended to be an exclusive list of the protective measures to be considered by the applicant. Other protective measures such as biological monitoring may also be considered. Therefore, Wyoming's proposal to make wildlife monitoring mandatory is consistent with Federal program requirements.

However, as originally proposed, Wyoming's monitoring requirements would preclude the requirements for wildlife monitoring on mines that disturb less than 640 acres. The proposed rules would in effect have the potential to exempt some mines from the need to provide protective measures such as biological monitoring (wildlife monitoring). Additionally, Wyoming would provide that no monitoring is required where landowner constraints prevent access to adjoining lands unless the monitoring could be reasonably conducted from a distance. Both the Federal and State rules require that the enhancement plan and protective measures consider and include the permit area and adjacent areas. When adjacent areas are surveyed and are decided to be a critical part of the enhancement plan, they cannot be excluded.

In its January 11, 1993, letter, Wyoming proposed to revise this portion of its appendix to require that operators disturbing less than 640 acres of land may request a reduced level of monitoring through submittal of an alternative wildlife monitoring plan to be reviewed and approved by the regulatory authority prior to implementation. Additionally, the State deleted the language that would waive monitoring if landowner constraints prevent access.

With these changes, the Director finds that this portion of Wyoming's proposed appendix B will afford assurance that protective measures during mining operations will take place in a manner that is no less effective than the Federal regulation requirements at 30 CFR 816.97(b) and 817.97(b), and is approving it.

b. Section C: Raptor Production—Nest Status and Production Success—Wildlife Monitoring Time-frames

During the public comment period, the USFWS recommended the initiation of raptor surveys in mid-February to help prevent conflict situations from arising (Administrative Record No. WY–18–6). Additional clarification was obtained from USFWS on October 10, 1992 (Administrative record No. WY–18–13). The USFWS was concerned that, under appendix B, wildlife surveys would not be undertaken soon enough in the year to mitigate the adverse impacts of a mining operation on nesting golden eagles. USFWS asserted that, although golden eagles initiate nesting activities in February, the surveys proposed under appendix B would not occur until March. Under the proposal, if eagles are nesting when the survey is conducted, mitigation of the impacts from the mining operation on the nesting activity would be limited to avoiding the nesting site with a designated buffer zone. If nesting occurs in a highwall adjacent to an active mining operation and eggs have been

laid, mining activities might be required to cease until the nest is inactive. However, if an operator discovers the eagles when they are establishing the nest, the USFWS can attempt to relocate the nest or harass the birds away from the area. Therefore, the sooner the operator is aware of the nesting activity, the better the chances are of avoiding potential conflicts.

OSM notified Wyoming of the USFWS concerns and, as a result, in the January 11, 1993, letter, Wyoming modified the proposed language at section C., Raptor Production, to require that surveys of golden eagles and great horned owls be conducted in mid-February to mid-March and all other raptors from March to mid-May. This modification resolves the USFWS concern.

The Director finds that Wyoming's proposed appendix B with the exception noted at Finding 2.c. is no less effective than the Federal program requirements and is approving it.

c. Section E: Reporting Requirements

Under section E, Wyoming proposed that all observations of threatened and endangered species, except migrating and wintering bald eagles or migrating peregrine falcons, must be reported promptly to the USFWS office in Cheyenne, Wyoming. The Federal rule requirements at 30 CFR 816.97(b) and 817.97(b) require the operator to promptly report to the regulatory authority any State or federally-listed endangered or threatened species within the permit area of which the operator becomes aware. Upon notification, the regulatory authority shall consult with appropriate State and Federal fish and wildlife agencies and, after consultation, shall identify whether, and under what conditions, the operator may proceed.

Wyoming's Rule at chapter IV, section 3(o)(i)(E) (underground rules at chapter VII reference surface rules) also requires prompt reporting to the regulatory authority of any species or critical habitat or such species listed as threatened or endangered, or any golden or bald eagle nest in or adjacent to the permit area, which was not reported or investigated in the permit application.

As initially proposed, the reporting requirements of section E would (1) exclude reporting of migrating and wintering bald eagles or migrating peregrine falcons and (2) improperly direct reporting to the USFWS rather than the State regulatory authority. In its January 11, 1993, letter, Wyoming proposed to revise its reporting requirement to direct reporting to the regulatory authority rather than the USFWS. Wyoming, however did not propose to remove the language "except migrating and wintering bald eagles or migrating peregrine falcons."

The Director finds that Wyoming's proposed appendix B, to the extent that it would not require the reporting of migrating and wintering bald eagles or migrating peregrine falcons, is less effective than the Federal program requirements and is not approving this exclusion. Wyoming is required to amend its program to remove the language "except migrating and wintering bald eagles or migrating peregrine falcons" from this portion of appendix B.

IV. Summary and Disposition of Comments

Public Comments

The Director solicited public comment on the proposed amendment and provided opportunity for a public hearing. No comments were received, and the scheduled public hearing was not held because no one requested an opportunity to provide testimony.

Agency Comments

Pursuant to section 503(b) of SMCRA and implementing regulations at 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Wyoming program. A summary of the comments, and the Director's responses to them, appear below:

1. The U.S. Department of Interior (USDI)—Bureau of Indian Affairs, U.S. Army Corps of Engineers, U.S. Department of Agriculture—Forest Service—Rocky Mountain Region, USDI—Geological Survey, USDI—Bureau of Mines, and USDI—Bureau of Reclamation, responded with no comment (Administrative Record Nos. WY–18–5a, WY–18–4d, WY–18–4e, WY–18–4b, WY–18–4a, and WY–18–4f).

2. The U.S. Department of Labor—Mine Safety and Health Administration (MSHA)—Washington, DC Office responded that their review found that none of the proposed modifications conflict with the regulations or policies of the MSHA (Administrative Record No. WY–18–4c).

3. The U.S. Department of Labor—Mine Safety and Health Administration—Coal Mine Safety and Health District 9 commented that these proposed changes did not appear to be in conflict with any current MSHA regulations that pertain to refuse piles and impoundments (Administrative Record No. WY–18–5b).

4. U.S. Department of Interior, Bureau of Land Management (BLM) commented that it had no suggested changes to the proposed regulations. However, the BLM did suggest that OSM compare and cross reference the proposed rule changes with the minimum coal data adequacy standards that were developed for the regional coal teams/areas to assure consistency between these documents (Administrative Record No. WY–18–7). OSM does not agree that potential inconsistency could result since the minimum coal data adequacy standards apply only to the Federal Coal Leasing process prior to initiation of a mine operation. The standard proposed by Wyoming would be initiated at the time the operation begins. Findings of the coal data adequacy standards along with additional baseline and resource information data required of an operator in the application will assure consistency and updating of those previous findings.

5. The U.S. Department of Interior—U.S. Fish and Wildlife Service (USFWS or the Service) provided substantial comments on October 8, 1992 (Administrative Record No. WY–18–6). The comments made are summarized and discussed in the following subsections:

a. The USFWS asserts that OSM, not the State, has lead responsibility for consulting with the Service under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (ESA). See page 82, LQD Rules chapter IV, section 3(o)(i)(E). Therefore, the USFWS recommends that the section cited above be revised to denote that the State program Administrator will consult with the Service under the ESA through OSM, and that the Service and OSM shall identify whether and under what conditions the operator may proceed. USFWS pointed out that this same deficiency occurs on page 83, LQD Rules chapter IV, section 3(o)(iii), and in appendix B, page 251, section E., "Federally Listed Threatened and Endangered Species."

To clarify who is responsible for consultation with the service, OSM notes the following: Section 7(a)(2) of the ESA states that "each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species * * *". Consultation on permitting actions is conducted by the Wyoming Department of Environmental Quality, OSM, or the appropriate Federal land management agency with the USFWS in Cheyenne, Wyoming. Several different factors

determine which agency will be responsible for the consultation with the USFWS, as discussed below:

Permitting Actions Involving Leased Federal Coal

Under the Cooperative Agreement with Wyoming at Federal regulations 30 CFR 950.20, for operations involving leased Federal coal, OSM retains responsibility for compliance with the ESA. When species listed as threatened or endangered or their critical habitat are encountered during a mining operation, the approved Wyoming regulations at LQD Rules, chapter IV, section 3(i)(E), and chapter IV, section 3(iii), require the operator to contact the Regulatory Authority (RA). The RA must then consult with the Wyoming Game and Fish Department (WGFD) and the USFWS to determine under what conditions the operation may proceed. These approved regulations correspond with the Federal regulations at 30 CFR 816.97(b). The preamble to the approval of 30 CFR 816.97 states that section 816.97 "[i]s intended to satisfy OSM's responsibility under the ESA and to provide protection for endangered or threatened species * * *" (48 FR 30317).

After being contacted by the RA, if the USFWS determines that the operation may affect a listed species or critical habitat that has not been previously consulted on, the USFWS would re-initiate consultation with OSM under Section 7 of the ESA. This process is described in the Interagency Cooperation Regulations found at 50 CFR 402. If the USFWS did not re-initiate Section 7 consultation and a mine plan modification was necessary to mitigate the impacts to the species, OSM would then make a decision on re-initiation of Section 7 consultation after reviewing the revision. OSM routinely reviews Federal permits for compliance with the ESA whenever a mining plan modification is reviewed.

Permitting Actions on Non-Federal Lands

The Memorandum of Understanding (MOU) between OSM and the USFWS of February 7, 1983, establishes the procedures for coordination between the two agencies under the provisions of SMCRA and the ESA. The MOU, at page 4, specifically states that the approval of a State program does not "federalize" the State permitting process and, therefore, the State does not have responsibility to conduct section 7 consultation under the ESA. However, OSM's approval of the State program does require formal consultation with the USFWS to determine if the program will affect threatened or endangered species. The MOU specifically states, at page 5 that, "[p]rior to permit approval, the regulatory authority must find in writing, * * * [t]hat the mining operation would not affect the continued existence of threatened or endangered species or result in the destruction of their critical habitats."

The Federal regulations at 30 CFR 773.15(c) (10) require the regulatory authority to make a finding that the operation in question would not affect the continued existence of endangered or threatened species or result in a destruction or adverse modification of their critical habitats for Federally listed species for all permit applications and significant revisions. Wyoming's LQD Rules at chapter IV, section 3(o)(iii), require a finding that the surface mining operation in question is not likely to jeopardize the continued existence of endangered or threatened species listed by the State or the Secretary, in violation of the Endangered Species Act. The Wyoming regulations require denial of an application if the application is not complete. In the approval of the State program, the Secretary determined that Wyoming's permit application review provisions were as stringent as the Federal regulations because Wyoming was judging the complete application against all applicable regulations including the plan for protecting threatened or endangered species (45 FR 78668).

As discussed in Finding 2.c., Wyoming's program requires an operator to contact the RA when threatened or endangered species are encountered on the permit area. The RA then contacts the WGFD and the USFWS to determine under what conditions the operation may continue. OSM has the lead role in continuing to monitor the State's program to ensure that no threatened or endangered species or its critical habitat is jeopardized. OSM's oversight of the State program ensures that the operator's and the State's actions comply with the ESA.

Permitting Actions on Federal Lands

Under the Cooperative Agreement with Wyoming, OSM's primary role is one of coordination between the RA and the Federal agency with jurisdiction or responsibility over the Federal lands affected by the proposed operation. The Federal land management agency responsible for the surface rights (Bureau of Land Management, U.S. Forest Service, etc.) is responsible for the Section 7 consultation on their lands affected by the proposed operation.

Wyoming is responsible for issuing surface mining permits for surface mining operations conducted on Federal lands within its borders. OSM has the responsibility for forwarding permit revisions and renewal information to the Federal land management agency, but no adequacy determinations are made by OSM.

b. The USFWS expressed concern that the wildlife monitoring requirements be utilized for all surface coal mines, not just mines that disturb 640 acres or more of land. See Appendix B, page 245, paragraph 1. OSM agrees, as discussed at Finding 2.a., and has required Wyoming to include monitoring requirements for mines that disturb 640 acres or less.

c. The USFWS recommended that, in cases where landowner constraints prevent access to adjoining lands, as much information as possible should be obtained by aerial surveys. The USFWS also recommended, that the State Program Administrator closely monitor operators who take advantage of this provision to ensure that the operator does not use it as a excuse to reduce the extent of wildlife monitoring. See appendix B, page 245, paragraph 1. OSM agrees with USFWS recommendation, as discussed in Finding 2.a., and has requested the State to require monitoring of all adjoining lands.

d. The USFWS recommended that, to prevent a conflict situation from arising, raptor nest surveys for golden and bald eagles and great horned owls should be initiated in mid-February and continue through March. For other raptors, the USFWS recommended that nest surveys be initiated in mid-March and continue through May. The USFWS also recommended that these dates and the raptor species to be inventoried be further refined in the raptor mitigation plan developed for each mine. See Appendix B, Section C, Raptor Production. OSM agrees with the USFWS recommendations, as discussed in Finding 2.b., and has requested the State to require a wider span of dates for surveys.

e. The USFWS commented on appendix B, Permit Term Mitigation Plan and the Migratory Birds of High Federal Interest Plan, that refer to coordination between the operator and the USFWS. The proposed wildlife monitoring guidelines require that both plans be approved by the USFWS prior to permit approval. OSM agrees with the recommendations by the USFWS that these plans should be handled on a case-by-case basis during their review and approval of the plans as clearly defined in appendix B at the above

referenced sections. OSM assumes that this is the current process and that it will continue.

f. The USFWS noted that the Service's Wyoming State Office in Cheyenne should be contacted to verify procedures to use to conduct black-footed ferret searches instead of the Service's Regional Endangered Species Office. OSM advises Wyoming to contact the USFWS to coordinate this matter.

State Historic Preservation Office (SHPO) and Advisory Council on Historic Preservation (ACHP) Comments

As required by 30 CFR 732.17(h)(4), OSM provided the proposed amendment to the SHPO and ACHP for comment. No comments were received from the ACHP or the Wyoming Division of Parks and Cultural Resources—State Historic Preservation Office.

Environmental Protection Agency Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to provisions of a State program amendment which relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

On October 1, 1992, the EPA concurred with Wyoming's proposed amendment. The EPA stated, "EPA concurs with the proposed amendment as we find that it demonstrates the legal authority, administrative capability, and the technical conformity with controlling National Pollutant Discharge Elimination System regulations necessary to maintain water quality standards promulgated under the authority of the Clean Water Act (CWA), as amended (33 U.S.C. 1251 *et seq.*). We wish to note, however, that with regard to Chapter IV, section (ii), stream buffer zone, EPA's interpretation of waters of the United States at 40 CFR 122.2 includes perennial, intermittent, and ephemeral streams. All discharges of pollutants (including waste and fill material) to these waters must be in compliance with sections 402 and 404 of the CWA" (Administrative Record No. WY–18–8). EPA's comments regarding LQD Rules, chapter IV, section 3(o)(ii), are noted. However, Wyoming has not proposed to modify those rules in this amendment and therefore, those rules are not subject to review.

V. Director's Decision

Based on the above findings, the Director approves Wyoming's proposed program amendment as submitted July 8, 1992, and January 11, 1993, with the exception of the provision set forth at Finding 2.c. concerning the reporting of migrating and wintering bald eagles or migrating peregrine falcons. The Director is requiring a program amendment at 30 CFR 950.16 as discussed in Finding 2.c.

The Federal regulations at 30 CFR part 950 codifying decisions concerning the Wyoming program are being amended to implement this decision. The Director is approving these regulations with the provision that they will be fully promulgated in a form identical to that submitted to and reviewed by OSM. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undo delay. Consistency of State and Federal standards is required by SMCRA.

VI. Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary of the Interior. Federal regulations at 30 CFR 732.17(a) require that any alteration of an approved State program must be submitted to OSM for review as a program amendment. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. Thus, any changes to the State program are not enforceable by the State as part of the approved State program until approved by the Director. In the oversight of the Wyoming program, the Director will recognize only statutes, regulations, and other materials approved by the Director, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Wyoming of only such provisions.

VII. Procedural Determinations

Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 (Reduction of Regulatory Burden) for actions related to approval or conditional approval of State regulatory programs, actions, and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 12550) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731 and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic

impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR 950

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 1, 1993.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T, the Code of Federal Regulations is amended as set forth below.

PART 950—WYOMING

1. The authority citation for part 950 continues to read as follows:

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

2. Section 950.15 is amended by adding paragraph (p) to read as follows:

§ 950.15 Approval of regulatory program amendments.

* * * * *

(p) With the exception of the LQD Rule at appendix B, section E, concerning exceptions from reporting migrating and wintering bald eagles or migrating peregrine falcons, the following provisions of the laws, rules and regulations of the Wyoming Department of Environmental Quality—Land Quality Division relating to coal exploration and coal mining and reclamation operations, as submitted on July 8, 1992, and as modified and clarified on January 11, 1993, are approved effective October 7, 1993: LQD Rules, chapter II, section 3(b)(iv)(B), chapter IV, section 3(o)(iv), and appendix B, "Wildlife Monitoring Requirements for Surface Coal Mining Operations."

3. In Section 950.16, paragraph (aa) is added to read as follows:

§ 950.16 Required program amendments.

* * * * *

(aa) By December 6, 1993, Wyoming shall submit revisions to the LQD Rules at appendix B, section E, to remove the language "[e]xcept migrating and wintering bald eagles or migrating peregrine falcons".

[FR Doc. 93–24622 Filed 10–6–93; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AD–FRL–4785–8]

Approval and Promulgation of State Implementation Plans; Establishment of Due Date for Sulfur Dioxide SIP for the Secondary NAAQS for East Helena, MT

AGENCY: Environmental Protection Agency (EPA).

ACTION: Deadline for SIP submittal.

SUMMARY: EPA hereby gives notice that it is approving the request by the State of Montana for the full three years allowed by section 172(b) of the Clean Air Act, as amended in 1990, (Act) for submittal of the State Implementation Plan (SIP) for the East Helena area to attain and maintain the sulfur dioxide (SO_2) secondary National Ambient Air Quality Standard (NAAQS).

DATES: The SIP revision for the East Helena area for the secondary SO_2 NAAQS will be due November 15, 1993.

FOR FURTHER INFORMATION CONTACT: Meredith Bond, U.S. Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, (303) 293–1764

SUPPLEMENTARY INFORMATION:

I. Background

By operation of law upon enactment of the 1990 Clean Air Act Amendments ("1990 Amendments"), the East Helena area was designated nonattainment with respect to the primary and secondary SO_2 NAAQS on November 15, 1990. Section 191 of the Clean Air Act provides that any state lacking an approved SIP for an area designated nonattainment with respect to the national primary ambient air quality standard for SO_2 must submit a plan meeting the requirements of the amended Act within 18 months of enactment of the amendments. The Act is silent as to a specific deadline for submittal of a plan for the secondary SO_2 NAAQS. Section 172(b), however, provides generally that the Administrator shall establish a schedule for plan submission for the secondary NAAQS, but that such schedule may extend no longer than three years from the date of nonattainment designation. Hence, the schedule for submitting the secondary SO_2 NAAQS SIP could extend no longer than November 15, 1993.

In the General Preamble for the Implementation of Title I of the 1990 Amendments (57 FR 13498, April 16, 1992), the Administrator did establish a SIP submittal schedule for those areas designated nonattainment with respect to both the primary and secondary SO_2 NAAQS. The preamble states, "[a]lthough the law allows up to three years for SIP submittal, because the level of control (for the secondary SO_2 NAAQS) is no more difficult to establish than for the primary NAAQS, and absent compelling justification by a State, EPA will require SIPs for those areas within 18 months of nonattainment designation." 57 FR 13546. In other words, the secondary SO_2 NAAQS SIP was to be submitted at the same time as the SIP for the primary SO_2 NAAQS unless justification was provided for a later submittal.

The State of Montana has provided justification that, for the East Helena area, the assumption that the secondary SO_2 NAAQS and primary SO^2 NAAQS require the same level of control does not hold true. The State has provided evidence that attainment of the secondary SO_{22} three-hour NAAQS will require significant emission reductions, beyond what is required for attainment of the primary SO_2 24-hour and annual NAAQS. Montana plans to conduct additional modeling to determine more precisely what emission reductions are necessary for attaining the secondary SO_2 NAAQS.

II. Justification Evidence

The ASARCO Incorporated (Asarco) primary lead smelter is the only major source of SO_2 emissions in the East Helena area. The company, in accordance with EPA and State guidance, commissioned dispersion modeling studies which predict the ambient impacts of SO_2 emissions from the Asarco smelter. The modeling studies were conducted for the typical emissions scenario as well as an emissions scenario which demonstrates compliance with the primary SO_2 NAAQS. The control strategies employed in this latter scenario consist of production and process limitations that Asarco plans to put into place with the primary SO_2 NAAQS SIP.

The modeling results show that emissions must be reduced 35 percent further (beyond those reductions to achieve the primary SO_2 NAAQS, as in the second scenario discussed above) in order to achieve compliance with the secondary SO_2 NAAQS. These substantial emissions reductions cannot reasonably be achieved through production or process changes. If production were reduced by 35 percent from current levels, Asarco estimates that annual revenue would be reduced

by more than $12.4 million. Asarco contends that such a radical reduction in revenue would make the continued operation of the East Helena plant economically infeasible. The only other alternative would be to install new pollution control equipment.

Although EPA cannot confirm the projected level of revenue loss, we believe that the economic impact on both the industry and the community of East Helena would be significant. Therefore, EPA agrees with the State and Asarco that the only feasible way to meet the secondary SO_2 NAAQS, based on the available modeling results, would be to install new air pollution control equipment or new process technology.

This evidence demonstrates that the control measures required to meet the secondary SO_2 NAAQS in East Helena, MT, are much more extensive than those needed to meet the primary SO_2 NAAQS. EPA believes that the State has provided sufficient grounds for granting the full three years allowed under section 179(b) of the Act for submittal of this SIP.

III. Requirements for SIP

This notice granting the full three years for submittal of the East Helena, MT, secondary SO_2 NAAQS SIP requires Montana to submit a SIP revision no later than November 15, 1993. If the State does not submit a complete SIP by November 15, 1993, EPA may make a finding of failure to submit a SIP by the required date at that time. Any control strategies adopted and implemented as part of this SIP revision must provide for attainment and maintenance of the secondary SO_2 NAAQS as expeditiously as practicable.

IV. Final Action

This notice does not constitute a final agency action that is ripe for judicial review. EPA's action is a first step in an administrative process that will not be sufficiently concrete for judicial resolution until additional action is taken by EPA on a plan submittal by the State of Montana..

The 60-day time period for filing a petition for review of this action under section 307(b) of the CAA is tolled until EPA makes the action ripe by taking additional action in reliance on it, such as imposing sanctions on the State of Montana for failure to submit a SIP revision or promulgating approval of a SIP revision. A time limitation on petitions for judicial review can only run against challenges ripe for review.

List of Subjects in 40 CFR Part 52

Air pollution control, Sulfur dioxide.

Authority: Sections 101, 107, 110, 172(b) and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7401, 7407, 7410, 7502 and 7610(a)).

Dated: September 24, 1993.

Jack W. McGraw,

Acting Regional Administrator.

[FR Doc. 93–24559 Filed 10–6–93; 8:45 am]

BILLING CODE: 6560–60–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6998

[CA–040–4210–06; CAS 052887]

Partial Revocation of Public Land Order No. 2460; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a public land order insofar as it affects 440 acres of public land withdrawn for the Temblor National Cooperative Land and Wildlife Management Area. The land is no longer needed for this purpose. The revocation is needed to allow the land to be exchanged under section 206 of the Federal Land Policy and Management Act of 1976. This action will open the land to the non-mineral public land laws unless closed by overlapping withdrawals or temporary segregations of record. The land has been and will remain open to mining and mineral leasing.

EFFECTIVE DATE: November 8, 1993.

FOR FURTHER INFORMATION CONTACT: Viola Andrade, BLM, California State Office, 2800 Cottage Way, Sacramento, California, 95825, 916–978–4820.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Public Land Order No. 2460, which withdrew public land for the Temblor National Cooperative Land and Wildlife Management Area, is hereby revoked insofar as it affects the following described land:

San Bernardino Meridian

T. 11 N., R. 24 W.,
Sec. 8, SE¼NE¼ and E½SE¼;
Sec. 9, S½NW¼, SW¼, and W½SE¼.

The area described contains 440 acres in Kern County.

2. At 10 a.m. on November 8, 1993, the land will be opened to the operation of the non-mineral public land laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on November 8, 1993, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Dated: September 27, 1993.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 93–24684 Filed 10–6–93; 8:45 am]

BILLING CODE 4310–40–M

43 CFR Public Land Order 6999

[NM–010–4210–06; NMNM 86711]

Withdrawal of Public Lands and Federal Minerals for Azabache Station, Big Bead Mesa, and Jones Canyon Archeological Sites; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 800 acres of public lands from surface entry and mining, and 240 acres of federally reserved mineral interests underlying private surface estate from mining, for a period of 20 years, for the Bureau of Land Management to protect the archeological, historical, geological, and recreational values of Azabache Station, Big Bead Mesa, and Jones Canyon sites. The lands have been and remain open to mineral leasing.

EFFECTIVE DATE: October 7, 1993.

FOR FURTHER INFORMATION CONTACT: Debby Lucero, BLM Rio Puerco Resource Area, 435 Montano NE, Albuquerque, New Mexico 87107, 505–761–8700.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described public lands are hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2 (1988)), but not from leasing under the mineral leasing laws, to protect three Bureau of Land Management archeological sites:

New Mexico Principal Meridian

T. 15 N., R. 4 W.,
Sec. 25, W½.
T. 16 N., R. 5 W.,
Sec. 15, W½NE¼.
T. 19 N., R. 2 W.,
Sec. 26, NW¼, and E½SW¼;
Sec. 27, NE¼.

The areas described aggregate 800 acres in McKinley and Sandoval Counties.

2. Subject to valid existing rights, the federally reserved mineral interests in the following described lands are hereby withdrawn from mining under the United States mining laws (30 U.S.C. Ch. 2 (1988)), but not from leasing under the mineral leasing laws, to protect a Bureau of Land Management archeological site:

New Mexico Principal Meridian

T. 19 N., R. 2 W.,
Sec. 26, W½SW¼;
Sec. 27, SE¼.

The area described contains 240 acres in Sandoval County.

3. The surface estate of the land described in paragraph 2 is non-Federal. If the United States subsequently acquires this land, the land will be subject to the terms and conditions of this withdrawal.

4. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

5. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: September 27, 1993.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 93–24685 Filed 10–6–93; 8:45 am]

BILLING CODE 4310–FB–M

Proposed Rules

Federal Register
Vol. 58, No. 193
Thursday, October 7, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 82

[Docket 91–016–4]

Chicken Disease Caused by Salmonella Enteritidis; Public Hearing

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule; notice of public hearing.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service is hosting a public hearing on the proposed rule on chicken disease caused by *Salmonella enteritidis* that we published in the **Federal Register** on August 2, 1993. The public hearing will be held in Sacramento, CA, on October 21, 1993.

DATES: The hearing will be held from 1:30 p.m. until 3:30 p.m. on Thursday, October 21, 1993.

ADDRESSES: The public hearing will be held in the Regency C room, Hyatt Regency, 1209 L Street, Sacramento, CA. The Hyatt Regency in Sacramento can be reached at (916) 443–1234.

FOR FURTHER INFORMATION CONTACT: Dr. John Mason, Director, Salmonella Enteritidis Control Program, Veterinary Services, APHIS, USDA, room 205, Presidential Building, 6525 Belcrest Road, Hyattsville, MD 20782, (301) 436–4363.

SUPPLEMENTARY INFORMATION: This public hearing is being held on the proposed rule on chicken disease caused by *Salmonella enteritidis* (Docket No. 91–016–1, 58 FR 41048–41061), published August 2, 1993. The comment period on the proposed rule ends November 15, 1993 (as extended in the **Federal Register** of September 28, 1993, 58 FR 50527). The rule proposes to make the following major changes to the current *Salmonella enteritidis* (SE) regulations: (1) Exempting certain flocks from the testing requirements of the regulations, if the flocks are participating in certain voluntary *Salmonella* testing programs; (2) removing requirements for testing blood and internal organ samples from Test Flocks; (3) adding requirements to test Study Flocks for SE by testing egg samples; (4) adding requirements to trap and test rodents; (5) substituting the terms SE-positive status (Environment) and SE-positive status (Eggs) for the terms Test status and Infected status, and (6) allowing SE-Positive houses and flocks to be released from regulation only through depopulation, cleaning, and disinfection, not through negative testing.

The public hearing will be held on Thursday, October 21, 1993, in the Regency C room, Hyatt Regency, 1209 L Street, Sacramento, CA. The Hyatt Regency in Sacramento can be reached at (916) 443–1234.

A representative of the Animal and Plant Health Inspection Service (APHIS) will preside at the public hearing. Any interested person may appear and be heard in person, by attorney, or by other representative. Persons who wish to speak at the public hearing will be asked to sign in with their name and organization, to establish a record for the hearing.

The public hearing will begin at 1:30 p.m. and is scheduled to end at 3:30 p.m. local time. However, the hearing may be terminated at any time after it begins if all persons desiring to speak have been heard. We ask that anyone who reads a statement provide two copies to the presiding officer at the hearing.

If the number of speakers at the hearing warrants it, the presiding officer may limit the time for each presentation so that everyone wishing to speak has the opportunity.

The purpose of the hearing is to give interested persons an opportunity for oral presentation of data, views, and arguments. Questions about the content of the proposed rule may be part of the commenters' oral presentations. However, neither the presiding officer nor any other representative of APHIS will respond to comments at the hearing, except to clarify or explain provisions of the proposed rule.

Done in Washington, DC, this 4th day of October 1993.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 93–24665 Filed 10–6–93; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–115–AD]

Airworthiness Directives; McDonnell Douglas Model DC–9 and Model DC–9–80 Series Airplanes, Model MD–88 Airplanes, and C–9 (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9 and Model DC–9–80 series airplanes, and C–9 (military) airplanes, that currently requires inspections to detect cracking in the skin and doublers around the upper anticollision light cutout, and repair, if necessary. This action would expand the applicability to include additional Model DC–9–80 series airplanes and Model MD–88 airplanes, and would require the performance of stress coining procedures on the plate nut clearance holes. This proposal is prompted by a report that stress coining procedures were not performed on the plate nut clearance holes of the upper anticollision light doublers during production of certain airplanes. The actions specified by the proposed AD are intended to prevent crack growth in the doublers, which could result in damage to the adjacent structure, and subsequent loss of cabin structural integrity.

DATES: Comments must be received by December 3, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–115–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801–1771, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1–L5B. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425.

FOR FURTHER INFORMATION CONTACT: Dorenda D. Baker, Aerospace Engineer, Airframe Branch, ANM–122L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5231; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–115–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–115–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On February 1, 1988, the FAA issued AD 85–19–03 R2, Amendment 39–5844 (53 FR 3738, February 9, 1988), which is applicable to Model DC–9 and Model DC–9–80 series airplanes, and C–9 (military) airplanes, having fuselage numbers 1 through 1371. That AD requires repetitive inspections, at intervals of 3,500 landings, to detect cracking in the skin and doublers around the upper anticollision light cutout, and repair, if necessary. That AD also provides for the performance of stress coining procedures on the plate nut clearance holes in the upper anticollision light cutout as optional terminating action for the repetitive inspection requirement. That AD action was prompted by reports of cracks in the upper anticollision light doubler. The requirements of that AD are intended to detect and correct such cracking in a timely manner, so as to prevent the consequent failure of the upper anticollision light doubler. Such failure could result in significant damage to the adjacent structure and subsequent loss of cabin structural integrity.

Additionally, on August 6, 1990, the FAA issued AD 90–18–03, Amendment 39–6701 (55 FR 34704, August 24, 1990), which is applicable to all Model DC–9 and DC–9–80 series airplanes, Model MD–88 airplanes, and C–9 (military) airplanes. That AD requires various inspections and structural modifications that are intended to prevent degradation in the structural capabilities of the affected airplanes. That AD action was prompted by incidents involving fatigue cracking, corrosion, and stress corrosion cracking in transport category airplanes that are approaching or have exceeded their economic design goal. Among other things, AD 90–18–03 includes requirements to perform repetitive inspections, at intervals of 4,500 landings, to detect cracking in the upper anticollision light doubler, and to modify the anticollision light doubler. Those specific requirements apply to all Model DC–9–10, –20, –30, –40, and –50 series airplanes and C–9 airplanes, but only to certain Model DC–9–80 series airplanes and MD–88 airplanes, namely, those having fuselage numbers 1248 through 1371.

Since the issuance of those AD's, the FAA has received a report indicating that the stress coining procedures on the plate nut clearance holes in the upper anticollision light doublers have not been accomplished in production on Model DC–9–80 series airplanes and Model MD–88 airplanes having fuselage numbers 1372 through 2402. These stress coining procedures would have served as a preventative modification to preclude cracking in the upper anticollision light doublers on the fuselage. Without the stress coining, these additional airplanes are subject to the same unsafe condition addressed by AD 85–19–03–R2, as well as the applicable portions of AD 90–18–03. Crack growth in the doublers, if not detected and corrected in a timely manner, could result in damage to the adjacent structure and subsequent loss of cabin structural integrity.

The FAA has reviewed and approved McDonnell Douglas DC–9 Service Bulletin 53–186, Revision 6, dated May 13, 1993 (for Model DC–9–10, –20, –30, –40, and –50 series airplanes, and C–9 airplanes); and McDonnell Douglas MD–80 Service Bulletin 53–216, Revision 3, dated April 23, 1993 (for Model DC–9–80 series airplanes and Model MD–88 airplanes). These service bulletins describe procedures for performing repetitive eddy current inspections to detect cracking in the skin and doublers around the upper anticollision light cutout on the fuselage, and repairing of cracked doublers. The service bulletins also describe procedures for stress coining the plate nut clearance holes in the anticollision light doublers. Although the basic procedural instructions contained in these revisions of the service bulletins differ very little from the previously issued versions, other items in the service bulletins have been revised, such as:

1. The effectivity listing of Service Bulletin 53–216 has been revised to include additional airplanes (those having fuselage numbers 1372 through 2042);
2. The description of certain cracking and specific repair scenarios has been revised;
3. Certain procedural information and illustrations have been reorganized; and
4. The manpower information has been updated.

The FAA recognizes that conflicting requirements currently exist between AD 85–19–03 R2 and AD 90–18–03, relative to their repetitive inspection requirements. The former AD requires inspections of the upper anticollision light doubler area at intervals of 3,500 landings, while the latter AD requires the same inspections at intervals of

4,500 landings. The FAA has determined that 4,500 landings is the appropriate inspection interval, and that action must be taken to resolve these conflicting AD requirements.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 85–19–03 R2 to require repetitive eddy current inspections to detect cracking in the skin and doublers around the upper anticollision light cutout on the fuselage, and repair of cracked doublers. These inspections would be required to be performed on all affected airplanes, through fuselage number 2402, at intervals not to exceed 4,500 landings.

This proposal would also supersede those portions of AD 90–18–03, that currently require repetitive inspections and eventual modification of the plate nut clearance holes in the upper doublers. This proposed action would expand the applicability of those requirements to include additional affected Model DC–9–80 series airplanes and Model MD–88 airplanes. The additional airplanes are those having fuselage numbers 1372 through 2042.

The actions proposed in this AD would be required to be accomplished in accordance with the service bulletins described previously.

The FAA has determined that long term continued operational safety will be better assured by actual modification of the airframe to remove the source of the problem, rather than by repetitive inspections. Long term inspections may not be providing the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous repetitive inspections, has led the FAA to consider placing less emphasis on special procedures and more emphasis on design improvements. The proposed requirement for stress coining procedures is in consonance with these considerations.

There are approximately 1,500 Model DC–9 and Model DC–9–80 series airplanes, Model MD–88 airplanes, and C–9 (military) airplanes of the affected design in the worldwide fleet. Of this number, approximately 745 are of U.S. registry. The FAA estimates that approximately 440 U.S.-registered airplanes currently are affected by AD 85–19–03 R2 and AD 90–18–03, while approximately 305 additional U.S.-registered airplanes would be affected by the requirements of this new proposed AD action.

The costs associated with the proposed inspection requirements would entail 10 work hours per airplane per inspection, at an average labor rate of $55 per work hour. Based on these figures, the total cost impact of these inspection requirements on U.S. operators is estimated to be $550 per airplane per inspection cycle. For operators currently affected by AD 85–19–03 R2 and AD 90–18–03, there would be no new costs associated with these proposed inspections requirements. For some of those operators, the economic burden would actually be less, since the interval for repetitive inspections would be increased from the previous 3,500 landings to the proposed 4,500 landings. For the 305 newly affected airplanes, the total cost impact of the proposed inspection requirement would be $167,750 per inspection cycle.

The costs associated with the stress coining procedure that would be required by this proposed AD action entail approximately 4.6 work hours per airplane, at an average labor rate of $55 per work hour. The cost of required parts is expected to be negligible. Based on these figures, the total cost impact of the proposed stress coining procedure requirements on U.S. operators is estimated to be $188,485, or $253 per airplane. Of this total amount, $77,165 represents the additional costs applicable to the 305 newly affected airplanes.

The "total cost" figures discussed above assume that no operator has yet accomplished any of the requirements of this proposed AD action.

Additionally, the number of required work hours discussed above is presented as if the accomplishment of the actions proposed in this AD were to be conducted as "stand alone" actions. However, in actual practice, these actions for the most part would be accomplished coincidentally or in combination with normally scheduled airplane inspections and other maintenance program tasks. Therefore, the actual number of necessary additional work hours would be minimal in many instances, as would the costs associated with special airplane scheduling.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–5844 (53 FR 3738, February 9, 1988) by adding a new airworthiness directive (AD), to read as follows:

McDonnell Douglas: Docket 93–NM–115–AD. Supersedes AD 85–19–03 R2, Amendment 39–5844.

Applicability: Model DC–9–10, –20, –30, –40, and –50 series airplanes; Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) series airplanes; Model MD–88 airplanes; and C–9 (military) airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

Note 1: Inspections, repairs, or modifications (stress coining) accomplished prior to the effective date of this amendment in accordance with McDonnell Douglas DC–9 Service Bulletin 53–186, original issue through Revision 6; or McDonnell Douglas DC–9 Service Bulletin 53–216, original issue through Revision 3; are considered acceptable for compliance with the applicable action specified in this amendment.

To prevent crack growth in the doubler, which could result in damage to the adjacent structure, accomplish the following:

(a) For all Model DC–9–10, –20, –30, –40, and –50 series airplanes, and C–9 (military) airplanes: Prior to the accumulation of 30,000 total landings or within 4,500 landings after the effective date of this AD, whichever occurs later, perform an eddy current inspection to detect cracking in the skin and doublers around the upper anticollision light cutout on the fuselage, in accordance with McDonnell Douglas DC–9 Service Bulletin 53–186, Revision 6, dated May 13, 1993.

(1) If no cracking is detected, accomplish the requirements of paragraphs (a)(1)(i) and (a)(1)(ii) of this AD.

(i) Repeat that inspection thereafter at intervals not to exceed 4,500 landings until the stress coining procedures required by paragraph (a)(1)(ii) of this AD are accomplished; and

(ii) Prior to the accumulation of 100,000 total landings or within 4 years after September 24, 1990 (the effective date of AD 90–18–03, Amendment 39–6701), whichever occurs later, stress coin the plate nut clearance holes in accordance with Condition I, Phase 2, of the accomplishment instructions of McDonnell Douglas DC–9 Service Bulletin 53–186, Revision 6, dated May 13, 1993. Accomplishment of this stress coining procedure constitutes terminating action for the repetitive inspection requirement of paragraph (a) of this AD.

(2) If any cracking is detected as a result of any inspection required by this paragraph, prior to further flight, accomplish the requirements of paragraph (a)(2)(i) or (a)(2)(ii) of this AD, as applicable.

(i) For cracks specified as Condition II and Condition III in McDonnell Douglas DC–9 Service Bulletin 53–186, Revision 6, dated May 13, 1993: Repair in accordance with McDonnell Douglas DC–9 Service Bulletin 53–186, Revision 6, dated May 13, 1993; McDonnell Douglas SB 09530186; or McDonnell Douglas DC–9 Service Sketch 3626C. Accomplishment of any one of these repair procedures constitutes terminating action for the requirements of this AD.

(ii) For cracks specified as Condition IV in McDonnell Douglas DC–9 Service Bulletin 53–186, Revision 6, dated May 13, 1993: Repair in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(b) For Model DC–9–81, DC–9–82, and DC–9–83 series airplanes having fuselage numbers 909 through 1247 inclusive: Prior to the accumulation of 30,000 total landings or within 4,500 landings after the effective date of this AD, whichever occurs later, perform an eddy current inspection to detect cracking in the skin and doublers around the upper anticollision light cutout on the fuselage, in accordance with McDonnell Douglas DC–9 Service Bulletin 53–186, Revision 6, dated May 13, 1993.

Note 2: Although fuselage numbers 909 through 1247 include Model DC–9–30 and –50 series airplanes, those airplanes are addressed in paragraph (a) of this AD, and as such, operators of those airplanes must accomplish the requirements of paragraph (a) of this AD.

(1) If no cracking is detected, accomplish the requirements of paragraphs (b)(1)(i) and (b)(1)(ii) of this AD.

(i) Repeat that inspection thereafter at intervals not to exceed 4,500 landings until the stress coining procedures required by paragraph (b)(1)(ii) of this AD are accomplished; and

(ii) Prior to the accumulation of 75,000 total landings or within 4 years after September 24, 1990 (the effective date of AD 90–18–03, Amendment 39–6701), whichever occurs later, stress coin the plate nut clearance holes in accordance with Condition I, Phase 2, of the accomplishment instructions of McDonnell Douglas DC–9 Service Bulletin 53–186, Revision 6, dated May 13, 1993. Accomplishment of this stress coining procedure constitutes terminating action for the repetitive inspection requirements of paragraph (b) of this AD.

(2) If any cracking is detected as a result of any inspection required by this paragraph, prior to further flight, accomplish the requirements of paragraph (b)(2)(i) or (b)(2)(ii) of this AD, as applicable.

(i) For cracks specified as Condition II and Condition III in McDonnell Douglas DC–9 Service Bulletin 53–186, Revision 6, dated May 13, 1993: Repair in accordance with McDonnell Douglas DC–9 Service Bulletin 53–186, Revision 6, dated May 13, 1993; McDonnell Douglas SB 09530186; or McDonnell Douglas DC–9 Service Sketch 3626C. Accomplishment of any one of these repair procedures constitutes terminating action for the requirements of this AD.

(ii) For cracks specified as Condition IV in McDonnell Douglas DC–9 Service Bulletin 53–186, Revision 6, dated May 13, 1993: Repair in accordance with a method approved by the Manager, Los Angeles ACO, FAA, Transport Airplane Directorate.

(c) For Model DC–9–81, DC–9–82, DC–9–83, and DC–9–87 series airplanes, and Model MD–88 airplanes, having fuselage numbers 1248 through 2042 inclusive: Prior to the accumulation of 30,000 total landings or within 4,500 landings after the effective date of this AD, whichever occurs later, perform an eddy current inspection to detect cracking in the skin and doublers around the upper anticollision light cutout on the fuselage, in accordance with McDonnell Douglas MD–80 Service Bulletin 53–216, Revision 3, dated April 23, 1993.

(1) If no cracking is detected, accomplish the requirements of paragraphs (c)(1)(i) and (c)(1)(ii) of this AD.

(i) Repeat that inspection thereafter at intervals not to exceed 4,500 landings until the stress coining procedures required by paragraph (b)(1)(ii) of this AD are accomplished; and

(ii) Prior to the accumulation of 75,000 total landings or within 4 years after September 24, 1990 (the effective date of AD 90–18–03, Amendment 39–6701), whichever occurs later, stress coin the plate nut clearance holes in accordance with Condition I, Phase 2, of the accomplishment instructions of McDonnell Douglas MD–80 Service Bulletin 53–216, Revision 3, dated April 23, 1993. Accomplishment of this stress coining procedure constitutes terminating action for the repetitive inspection requirement of paragraph (c) of this AD.

(2) If any cracking is detected as a result of any inspection required by this paragraph, prior to further flight, accomplish the requirements of paragraph (c)(2)(i) or (c)(2)(ii) of this AD, as applicable.

(i) For cracks specified as Condition II and Condition III in McDonnell Douglas DC–9 Service Bulletin 53–216, Revision 3, dated April 23, 1993: Repair in accordance with McDonnell Douglas DC–9 Service Bulletin 53–216, Revision 3, dated April 23, 1993; McDonnell Douglas SB 09530186; or McDonnell Douglas DC–9 Service Sketch 3626C. Accomplishment of any one of these repair procedures constitutes terminating action for the requirements of this AD.

(ii) For cracks specified as Condition IV in McDonnell Douglas DC–9 Service Bulletin 53–216, Revision 3, dated April 23, 1993: Repair in accordance with a method approved by the Manager, Los Angeles ACO, FAA, Transport Airplane Directorate.

(d) This AD supersedes that portion of AD 90–18–03, Amendment 39–6701, which requires inspection and modification in accordance with the following McDonnell Douglas service bulletins:

DC–9 Service Bulletin 53–186
MD–80 Service Bulletin 53–216

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO, FAA, Transport Airplanes Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on October 1, 1993.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–24620 Filed 10–6–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 93–NM–142–AD]

Airworthiness Directives; Boeing Model 767 Series Airplanes Equipped With Pratt and Whitney PW4000 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, that

currently requires repetitive inspections, tests, adjustments, and functional checks of the thrust reverser system and of selected engine wiring. This action would add a requirement for installation of a terminating modification on airplanes equipped with certain Pratt and Whitney engines, repetitive operational checks of the installation, and repair of any discrepancy found. This proposal is prompted by the identification of a modification that ensures that the level of safety inherent in the original type design of the thrust reverser system is further enhanced. The actions specified by the proposed AD are intended to prevent deployment of a thrust reverser in flight and subsequent reduced controllability of the airplane.

DATES: Comments must be received by December 3, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–142–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Richard Simonson, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2683; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–142–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–142–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On October 27, 1992, the FAA issued AD 92–24–03, Amendment 39–8408 (57 FR 53258, November 9, 1992), applicable to certain Boeing Model 767 series airplanes, to require repetitive inspections, tests, adjustments, and functional checks of the thrust reverser system and of selected engine wiring. That action was prompted by a number of possible discrepancies identified in the thrust reverser control system, which, in certain scenarios, could contribute to an uncommanded deployment. The requirements of that AD are intended to prevent deployment of a thrust reverser in flight, which could result in the reduced controllability of the airplane.

Since the issuance of that AD, Boeing has developed a modification for Model 767 series airplanes equipped with Pratt and Whitney PW4000 series engines, which, when accomplished, will ensure that the level of safety inherent in the original type design of the thrust reverser system is further enhanced. The FAA has determined that the installation of these additional features will further reduce the likelihood of an inflight thrust reverser deployment.

The FAA has reviewed and approved Boeing Service Bulletin 767–78–0062, Revision 2, dated June 3, 1993, that describes procedures for installation of an additional thrust reverser system locking feature (denoted as a "sync-lock"), which will reduce the possibility of an uncommanded in-flight deployment of the thrust reversers. Accomplishment of that installation includes revising certain wiring, replacing selected circuit breakers, changing the microswitch pack, replacing the microswitch pack disconnect bracket, and adding electrical components. The sync-lock is controlled independently of the existing electro-mechanical safety features of the thrust reverser system. This additional locking feature has been certified by the FAA and is installed on new-production Model 767 series airplanes equipped with Pratt and Whitney PW4000 series engines. The FAA has determined that installation of the sync-lock in accordance with the service bulletin is necessary in order to positively address the identified unsafe condition with regard to these airplanes.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 92–24–03 to continue to require repetitive inspections, tests, adjustments, and functional checks of the thrust reverser system and of selected engine wiring. This AD would add a requirement for installation of an additional thrust reverser system locking feature (sync-lock). Installation of the sync-lock would terminate the requirement for repetitive inspections, tests, adjustments, and functional checks of the thrust reverser system and of selected engine wiring. The sync-lock installation would be required to be accomplished in accordance with the service bulletin described previously.

This AD would also require that the integrity of the sync-lock installation be verified by periodic operational checks of the installation, and repair of any discrepancy found. The locks are the devices that prevent inadvertent in-flight deployment of the thrust reverser. Operational checks are necessary in order to detect latent failures of the components and are necessary to ensure the integrity of the thrust reverser system. These operational checks include integrity tests of the thrust reverser sync lock. These procedures and any necessary repairs would be required to be accomplished in accordance with certain procedures described in the Boeing 767 Maintenance Manual. The FAA may revise the intervals at which these checks would be required at a later date based on sync-lock service experience.

There are approximately 88 Model 767 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 26 airplanes of U.S. registry would be affected by this proposed AD and that it would take approximately 480 work hours per airplane to accomplish the proposed

modification, and 1 work hour to accomplish the proposed operational checks, at an average labor rate of $55 per work hour. Required parts would be provided by the manufacturer at no cost to operators. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $687,830, or $26,455 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8408 (57 FR 53258, November 9, 1992), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 93–NM–142–AD. Supersedes AD 92–24–03, Amendment 39–8408.

Applicability: All Model 767 series airplanes equipped with Pratt and Whitney PW4000 series engines; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

Note 1: Paragraphs (a) and (b) of this AD restate the requirements of AD 92–24–03, Amendment 39–8408, paragraphs (a) and (b). As allowed by the phrase, "unless accomplished previously," if the requirements of AD 92–24–03 have been accomplished previously, paragraphs (a) and (b) of this AD do not require that they be repeated.

Note 2: Paragraph (c)(1) of this AD restates the requirement for an initial and repetitive inspections, tests, adjustments, and functional checks contained in paragraph (c)(1) of AD 92–24–03. Therefore, for operators who have previously accomplished at least the initial inspection in accordance with AD 92–24–03, paragraph (c)(1) of this AD requires that the next scheduled inspection be performed within 3,000 flight hours after the last inspection performed in accordance with paragraph (c)(1) of AD 92–24–03.

Note 3: Paragraph (c)(2) of this AD restates the requirement for an initial and repetitive checks of the grounding wire contained in paragraph (c)(2) of AD 92–24–03. Therefore, for operators who have previously accomplished at least the initial inspection in accordance with AD 92–24–03, paragraph (c)(2) of this AD requires that the next scheduled inspection be performed within 1,500 flight hours after the last inspection performed in accordance with paragraph (c)(2) of AD 92–24–03.

To ensure the integrity of the fail safe features of the thrust reverser system, accomplish the following:

(a) Within 7 days after August 23, 1991 (the effective date of AD 91–18–51), accomplish the following:

(1) Deactivate both left and right thrust reversers in accordance with Section 78–31–1 of Boeing Document D630T002, "Boeing 767 Dispatch Deviation Guide," Revision 9, dated May 1, 1991.

(2) Add the following to the Limitations Section of the FAA-approved Airplane Flight Manual (AFM). This may be accomplished by placing a copy of this AD in the AFM.

"Reduce by five percent the available accelerate-stop distance resulting from the Airplane Flight Manual takeoff performance analysis when the runway is wet or contaminated."

(b) Within 60 days after November 8, 1991 (the effective date of AD 91–22–09, Amendment 39–8069), modify the thrust reverser system in accordance with Boeing Service Bulletin 767–78–0051, dated October 9, 1991. Once this modification is accomplished, the thrust reverser system shall be re-activated and the AFM limitation required by paragraph (a)(2) of this AD may be removed.

(c) Accomplish the actions specified in paragraphs (c)(1) and (c)(2) of this AD at the times specified in those paragraphs.

(1) Prior to the accumulation of 3,000 flight hours since manufacture, or within 30 days after November 24, 1992 (the effective date of AD 92–24–03), whichever occurs later, perform all inspections, tests, adjustments, and functional checks of the thrust reverser control and indication system and engine wiring specified in Boeing Service Bulletin 767–78–0046, Revision 1, dated September 17, 1992, in accordance with the procedures described in that service bulletin.

(i) Repeat those actions thereafter at intervals not to exceed 3,000 flight hours.

(ii) Whenever maintenance action is taken that could disturb any portion of the thrust reverser control system, the functional test or tests relative to the system shall be performed in accordance with the Boeing 767 Maintenance Manual. After this test(s) is accomplished, the repetitive inspections, tests, adjustments and functional tests required by paragraph (c)(1)(i) of this AD shall continue.

Note 4: The Boeing 767 Maintenance Manual should include Revision 78–646, Chapter 78, dated September 2, 1992.

(2) Prior to the accumulation of 1,500 flight hours since manufacture, or within 30 days after November 24, 1992 (the effective date of AD 92–24–03), whichever occurs later, perform a check of the grounding wire for the thrust reverser directional control valve (DCV) in accordance with Section III, paragraph B., of Boeing Service Bulletin 767–78–0046, Revision 1, dated September 17, 1992. Thereafter, repeat this check at the times specified in paragraph (c)(2)(i) and (c)(2)(ii) of this AD.

(i) At intervals not to exceed 1,500 flight hours; and

(ii) Whenever maintenance action is taken that could disturb the DCV grounding circuit.

(d) If any of the inspections, tests, adjustments, and/or functional checks required by paragraph (c) of this AD cannot be performed successfully as specified in the service bulletin, prior to further flight, deactivate the associated thrust reverser in accordance with Section 78–31–1 of Boeing Document D630T002, "Boeing 767 Dispatch Deviation Guide," Revision 9, dated May 1, 1991. The thrust reverser shall remain deactivated until all inspections, tests, adjustments, and functional tests required by paragraph (c) of this AD are completed successfully.

(e) Within 3 years after the effective date of this AD, install an additional thrust reverser system locking feature (sync-lock) in accordance with Boeing Service Bulletin 767–78–0062, Revision 2, dated June 3, 1993. Installation of this additional locking feature constitutes terminating action for the requirements of paragraph (c) of this AD.

(f) Within 1,000 hours time-in-service after accomplishing the modification required by paragraph (e) of this AD, or within 1,000 hours time-in-service after the effective date of this AD, whichever occurs later; and thereafter at intervals not to exceed 1,000 hours time-in-service: Perform integrity tests of the thrust reverser synchronous shaft locks to detect latent failures of the components

and to ensure the integrity of the thrust reverser system in accordance with Task 78–34–13–705–007–NOO, Item 2, "Thrust Reverser Sync Lock Integrity Test," pages 501 and 502, dated February 10, 1993, and pages 503–505, dated August 10, 1993, of the Boeing 767 Maintenance Manual. Prior to further flight, repair any discrepancy found in accordance with procedures described in the Boeing 767 Maintenance Manual.

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(h) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on October 1, 1993.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–24621 Filed 10–6–93; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 7, 10 and 148

RIN 1515–AB14

Duty-Free Treatment of Articles Imported From U.S. Insular Possessions

AGENCY: U.S. Customs Service, Treasury.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This document corrects a previously published proposed rulemaking document by setting forth certain information which was inadvertently omitted from that earlier document. The omitted information concerned the estimated information collection burden as provided for under the Paperwork Reduction Act of 1980.

DATES: Comments on the collection of information referred to in this document must be received on or before November 8, 1993.

SUPPLEMENTARY INFORMATION:

Background

On July 27, 1993, Customs published a document in the **Federal Register** (58 FR 40095) setting forth proposed amendments to the Customs Regulations regarding duty-free treatment of articles imported from insular possessions of the United States other than Puerto Rico. Included under the Supplementary Information portion of that document was a heading entitled "Paperwork Reduction Act" which addressed the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) regarding the collection of information requirements contained in the proposed regulatory texts. However, the specific figures regarding the estimated reporting and/or recordkeeping burden on the public were inadvertently omitted from the published document. In order to correct this omission, the entire and complete "Paperwork Reduction Act" portion of the document is set forth below.

Paperwork Reduction Act

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229.

The collection of information in these proposed regulations is in § 7.3. This information conforms to requirements in General Note 3(a)(iv), HTSUS, and is used by Customs to determine whether goods imported from insular possessions are entitled to duty-free entry under that General Note. The likely respondents are business organizations including importers, exporters, and manufacturers.

Estimated total annual reporting and/or recordkeeping burden: 113 hours.

The estimated average annual burden per respondent/recordkeeper is 11.3 hours.

Estimated number of respondents and/or recordkeepers: 10.

Estimated annual frequency of responses: 31.

Dated: September 30, 1993.

Harvey B. Fox,

Director, Office of Regulations and Rulings.

[FR Doc. 93–24691 Filed 10–6–93; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1301 and 1311

Registration of Manufacturers and Importers of Controlled Substances

AGENCY: Drug Enforcement Administration (DEA).

ACTION: Notice of proposed rulemaking.

SUMMARY: DEA proposes to amend its regulations to eliminate the requirement of an administrative hearing relating to objections to the registration of certain manufacturers and importers of controlled substances. The current regulations require that DEA hold a hearing whenever such is requested by another applicant or registrant. The proposed change would provide for a hearing only when the Administrator determines that a hearing is necessary to receive factual evidence and/or expert testimony with respect to issues raised by the application or objections thereto.

DATES: Written comments and objections must be received on or before November 22, 1993.

ADDRESSES: Comments and objections should be submitted in quintuplicate to the Administrator, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: Julie C. Gallagher, Associate Chief Counsel, Diversion & Regulatory Section , Office of Chief Counsel, Drug Enforcement Administration, Washington, DC 20537, telephone (202) 307–8010.

SUPPLEMENTARY INFORMATION: Two sections of the DEA regulations, specifically 21 CFR 1301.43(a) and 1311.42(a), relate to the registration of bulk manufacturers and importers of Schedule I and II controlled substances, respectively. These regulations provide for the publication of notices of application and require that the Administrator hold a hearing when requested to do so by any current bulk manufacturer of the substance(s) to be imported or manufactured, or by any other applicant for a similar registration. The regulations are not required by the Controlled Substances Act (21 U.S.C. 801, *et seq.*), or the Controlled Substances Import and Export Act (21

U.S.C. 951, *et seq.*). The antecedents of these notice, comment and hearing provisions are found in 21 U.S.C. 823(a)(1) which proves, as a means of controlling diversion, for "limiting the importation and bulk manufacture of such controlled substances to a number of establishments which can produce an adequate and uninterrupted supply of these substances under adequately competitive conditions for legitimate medical, scientific, research and industrial purposes." Pursuant to the subject regulations, manufacturers may object to the registration of additional manufacturers or importers as adversely affecting diversion or competition in a highly regulated environment.

These regulations have been in existence for more than two decades. In that time, no Administration has every denied registration to an applicant on the basis of increased danger of diversion or adverse impact upon domestic competition. To the contrary, the Administrators to whom these issues have been presented have found that registration of additional manufacturers would not have an adverse impact upon this agency's efforts to control diversion and that such registration would have a salutary effect upon competition among bulk manufacturers. The record of these proceedings notwithstanding, currently registered manufacturers use the regulatory hearing requirement to deter others from applying or to delay entry of competitors into their marketplace. As often as not, a company whose new application is opposed by a current manufacturer retaliates by opposing the annual renewal of the other's registration. This abuse of the regulatory hearing requirement adversely affects competition by delaying new registrations and results in the unnecessary expenditure of the DEA resources needed to hear and review these cases.

Accordingly, the Director of the Office of Diversion Control is proposing to delete the mandatory hearing requirement from these regulations. The requirement of notice and the opportunity to comment upon and oppose applications will be retained, while hearings will be held only when the Administrator determines that such would materially assist him in resolving issues raised by those persons opposing issuance of a registration.

The Director hereby certifies that this proposed rule will have no significant impact upon those entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The registrants and applicants who use, or are affected by, the hearing covered by these regulations are typically not small entities.

The proposed regulation is not a major rule for purposes of Executive Order (E.O.) 12291 of February 17, 1981. Pursuant to sections 3(c)(3) and 3(e)(2)(C) of E.O. 12291, this proposed rule has been submitted for review by the Office of Management and Budget. This action has been analyzed in accordance with the principles and criteria in E.O. 12612, and it has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects

21 CFR Part 1301

Administrative practice and procedure, Drug traffic control and security measures.

21 CFR Part 1311

Administrative practice and procedure, Drug traffic control, Exports and imports.

Therefore, pursuant to the authority vested in the Attorney General by 21 U.S.C. 821 and 871(b), as delegated to the Administrator of the Drug Enforcement Administration and redelegated to the Director, Office of Diversion Control by 28 CFR 0.100 and 0.104, the Director, Office of Diversion Control hereby proposes that parts 1301 and 1311 of title 21, Code of Federal Regulations be amended as follows:

PART 1301—[AMENDED]

1. The authority citation for part 1301 continues to read as follows:

Authority: 21 U.S.C. 821, 822, 823, 824, 871(b), 875, 877.

2. Section 1301.43, paragraph (a), is revised to read as follows:

§ 1301.43 Application for bulk manufacture of Schedule I and II substances.

(a) In the case of an application for registration or reregistration to manufacture in bulk a basic class of controlled substances listed in Schedule I or II, the Administrator shall, upon the filing of such application, publish in the **Federal Register** a notice naming the applicant and stating that such applicant has applied to be registered as a bulk manufacturer of a basic class of narcotic or nonnarcotic controlled substance, which class shall be identified. A copy of said notice shall be mailed simultaneously to each person registered as a bulk manufacturer of that basic class and to any other applicant therefor. Any such person may, within 30 days from the date of publication of the notice in the **Federal Register**, file with the Administrator written comments on or objections to the issuance of the proposed registration. The Administrator may, in his sole discretion, hold a hearing for the purpose of receiving factual evidence regarding any one or more of the issues raised by the commentors or objectors. If the Administrator decides to hold a hearing, he shall cause a notice of hearing to be published in the **Federal Register**. Any interested person may participate in such hearing by filing a notice of appearance with the Hearing Clerk, Office of Administrative Law Judges, in accordance with procedures outlined in the notice of hearing. A hearing pursuant to this section may be consolidated with a hearing held pursuant to § 1301.44 or § 1301.45.

* * * * *

3. Section 1301.54, paragraph (a), is revised to read as follows:

§ 1301.54 Request for hearing or appearance; waiver.

(a) Any person entitled to a hearing pursuant to §§ 1301.42 through 1301.45 and desiring a hearing shall, within 30 days after the date of receipt of the order to show cause, file with the Administrator a written request for a hearing in the form prescribed in § 1316.47 of this chapter.

* * * * *

PART 1311—[AMENDED]

1. The authority citation for part 1311 continues to read as follows:

Authority: 21 U.S.C. 952, 956, 957, 958, unless otherwise noted.

2. Section 1311.42, paragraph (a), is revised to read as follows:

§ 1311.42 Application for importation of Schedule I and II substances.

(a) In the case of an application for registration or reregistration to import a controlled substance listed in Schedule I or II, under the authority of section 1002(a)(2)(B) of the Act (21 U.S.C. 952(a)(2)(B)), the Administrator shall, upon the filing of such application, publish in the **Federal Register** a notice naming the applicant and stating that such applicant has applied to be registered as an importer of a Schedule I or II controlled substance, which substance shall be identified. A copy of said notice shall be mailed simultaneously to each person registered as a bulk manufacturer of that controlled substance and to any other applicant therefor. Any such person may, within 30 days from the date of publication in the **Federal Register**, file with the Administrator written

comments on or objections to the issuance of the proposed registration. The Administrator may, in his sole discretion, hold a hearing for the purpose of receiving factual evidence regarding any one or more of the issues raised by the commentors or objectors. If the Administrator decides to hold a hearing, he shall cause a notice of hearing to be published in the **Federal Register**. Any interested person may participate in such hearing by filing a notice of appearance with the Hearing Clerk, Office of Administrative Law Judges, in accordance with procedures outlined in the notice of hearing. A hearing pursuant to this section may be consolidated with a hearing held pursuant to §§ 1311.43 or 1311.44 of this part.

* * * * *

Dated: May 21, 1993.

Gene R. Haislip,

Director, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 93–24666 Filed 10–6–93; 8:45 am]

BILLING CODE 4410–09–M

FEDERAL MARITIME COMMISSION

46 CFR Part 585

[Docket No. 93–20]

Regulations To Adjust or Meet Conditions Unfavorable to Shipping in the Foreign Trade of the United States

AGENCY: Federal Maritime Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Maritime Commission proposes to amend its rules at 46 CFR part 585, "Regulations To Adjust or Meet Conditions Unfavorable to Shipping in the Foreign Trade of the United States." The proposed rule would update the Commission's existing regulations and would reflect amendments to section 19 of the Merchant Marine Act, 1920, which clarified certain Commission authorities, granted the Commission certain information-gathering powers, and extended the range of sanctions available to the Commission in proceedings under that statute.

DATES: Comments due on or before November 8, 1993.

ADDRESSES: Send comments (original and 15 copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573, (202) 523–5725.

FOR FURTHER INFORMATION CONTACT: Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573 (202) 523–5740.

SUPPLEMENTARY INFORMATION:

I. Background

Section 19 of the Merchant Marine Act, 1920, 46 U.S.C. app. 876 ("section 19"), authorizes the Federal Maritime Commission ("Commission" or "FMC") to take regulatory action to correct unfavorable shipping conditions in U.S. foreign oceanborne commerce. Specifically, paragraph (1)(b) of section 19 directs the Commission

> * * * [t]o make rules and regulations affecting shipping in the foreign trade not in conflict with law in order to adjust or meet general or special conditions unfavorable to shipping in the foreign trade, whether in any particular trade or upon any particular route or in commerce generally, including intermodal movements, terminal operations, cargo solicitation, forwarding and agency services, non-vessel-operating common carrier operations and other activities and services integral to transportation systems, and which arise out of or result from foreign laws, rules, or regulations or from competitive methods or practices employed by owners, operators, agents or masters of vessels of a foreign country.

Id. app. 876(1)(b).

The Commission's regulations governing section 19 proceedings are set forth at 46 CFR Part 585—Regulations To Adjust or Meet Conditions Unfavorable to Shipping in the Foreign Trade of the United States. The regulations describe, among other things, who may file petitions for relief under section 19, 46 CFR 585.4, how such petitions are filed, *id.* 585.5, the prescribed contents of petitions, *id.* 585.6, how petitions may be amended or dismissed, *id.* 585.7, and the types of conditions that are generally presumed to be actionable under Section 19, *id.* 585.3. These regulations were last amended or otherwise updated in 1989 to reflect the addition of authority to impose specific forms of sanctions made applicable by section 1002 of the Foreign Shipping Practices Act of 1988, 46 U.S.C. app. 1710a ("FSPA").

Since then, however, Section 19 has been amended by section 103 of Public Law 101–595, 104 Stat. 2979 ("Section 19 Amendments"), to clarify and expand the powers of the Commission to address unfavorable shipping conditions, particularly those which affect intermodal, shoreside and other ocean transportation activities. The other principle features of the section 19 Amendments are: clear recognition of the right of any person to request section 19 relief; the addition of certain information-gathering authorities; the availability of discovery tools in proceedings; and incorporation of the expanded range of available remedies first made applicable by the FSPA.

The Commission proposes to amend and update its rules in order to reflect the Section 19 Amendments. The proposed rule substantially incorporates and continues the fourteen sections contained in existing Part 585. However, some editorial and conforming changes have been made in the current rules. In addition, a number of new sections are added in order to implement new statutory authorities, and the rules are restructured to make for a more logical presentation. The following table provides a comparison of each section of the proposed rule with the corresponding section of existing part 585.

Proposed rule section		Existing rule section
§ 585.101	Purpose	§ 585.1 Purpose.
§ 585.102	Scope	§ 585.2 Scope.
§ 585.103	Definitions	[None]
§ 585.104	Confidentiality	[None]
§ 585.105	Consultation	§ 585.8 Initial action to meet apparent conditions unfavorable—Resolution through diplomatic channels.
§ 585.201	Information orders	[None]
§ 585.202	Type of information	§ 585.11 Production of information
§ 585.203	Failure to provide information	§ 585.12 Production of information—Failure to produce.
§ 585.301	Findings	§ 585.3 Findings—Conditions unfavorable to shipping in the foreign trade of the United States.
§ 585.401	Who may file	§ 585.4 Petition for section 19 relief—General—Who may file.
§ 585.402	Filing of petitions	§ 585.5 Petitions—How filed.

Proposed rule section		Existing rule section
§ 585.403	Contents of petitions	§ 585.6 Petitions—Contents.
§ 585.404	Amendment or dismissal of petitions	§ 585.7 Petitions—Amendment or dismissal of.
§ 585.501	Participation of interested persons	§ 585.10 Participation of interested persons.
§ 585.502	Discovery	[None]
§ 585.503	Subpoenas	[None]
§ 585.504	Witness fees	[None]
§ 585.505	Failure to supply information	[None]
§ 585.506	Enforcement of orders	[None]
§ 585.507	Postponement, discontinuance or suspension of action	§ 585.13 Postponement, discontinuance or suspension of action.
§ 585.508	Publication, contents and effective date of regulation	§ 585.14 Content and effective date of regulation.
§ 585.601	Actions to correct unfavorable conditions	§ 585.9 Actions to meet conditions unfavorable to shipping in the foreign trade of the United States.
§ 585.602	Penalty	[None]

The following section-by-section discussion identifies the particular changes in the existing rules as well as the new provisions of part 585.

II. Section-By-Section Discussion

The proposed rule restructures part 585 into six subparts in order to accommodate the new sections of the rules and to make for a more orderly and logical presentation of the rules' provisions. General provisions that apply to the entire part 585 appear in subpart A. Subpart B implements information-gathering authorities. Subpart C enumerates those conditions that will be found to be unfavorable to shipping. Subpart D contains provisions governing the filing of section 19 petitions. Subpart E sets forth the provisions that govern proceedings initiated by the Commission under section 19. Subpart F describes the corrective actions that may be taken as well as penalties that may be imposed.

Subpart A—General Provisions

This subpart contains provisions that apply generally to the rules throughout part 585. It has new sections on definitions, confidentiality and consultation.

Section 585.101 Purpose

This section incorporates without change the statement of purpose that appears at § 585.1 of the current regulations.

Section 585.102 Scope

This section incorporates without change the statement of scope found at § 585.2 of the current regulations.

Section 585.103 Definitions

This section is new. It includes new definitions of terms used in the statute and these rules.

Section 585.103(a) Act

The term "Act" refers to the Merchant Marine Act, 1920, as amended by Public Law 101–595.

Section 585.103(b) Person

This definition is based in part on section 19(5) of the Act, which indicates that any person may file a petition for relief and provides examples of entities included within the meaning of "person." It also derives in part from current § 585.4 which describes those "persons" who may file a petition for relief. The definition is intended to be expansive and the enumeration of particular persons is not intended to limit the definition.

Section 585.103(c) Voyage

This definition is identical to the definition of voyage that appears at 46 CFR 588.2(g) governing actions under the FSPA. The definition would provide a basis for calculating the per-voyage fee provided for by the FSPA and the Section 19 Amendments.

Section 585.104 Confidentiality

This section is new. It is based upon section 19(8) of the Act and follows the language of the statute. Its placement in Subpart A, General Provisions, reflects the fact that the Act makes it applicable to information provided "under the terms of this section" (i.e., section 19). It would thus apply to both rulemaking proceedings and information-gathering activities.

Section 585.105 Consultation

This section incorporates both the provisions of existing § 585.8 and new authority.

Section 585.105(a) Consultation With Other Agencies

This section is new. It is based upon section 19(12) of the Act and follows the language of the statute. Its placement in Subpart A, General Provisions, reflects the fact that section 19(12) is applicable to any action taken under section 19, whether rulemaking or information-gathering.

Section 585.105(b) Request for Resolution Through Diplomatic Channels

This section substantially incorporates the language of current § 585.8 regarding requests to the Secretary of State for diplomatic assistance. A stylistic improvement has been made in the first sentence, substituting the words "that the Secretary" for the words "he or she" and in the second sentence substituting the word "such" for the words "his or her."

Subpart B—Production of Information

This subpart implements section 19(6) of the Act, which grants the Commission authority to gather information in order to further the purposes of section 19(1)(b). This authority is distinct from the subpoena and discovery authorities granted under section 19(7) in connection with rulemaking proceedings.

Section 585.201 Information Orders

This section is new. It is based upon the authority and utilizes the language of sections 19(6)(a), (b) and (c) of the Act.

Section 585.202 Type of Information

This section serves the purpose of illustrating the type of information that may be required. However, it does not limit in any way the kind of information that may be required by a Commission information order.

Paragraph (a) of this section incorporates the description appearing at § 585.11 of the current regulations of the type of information that may be required from owners, operators or charterers of vessels. A reference to passengers has been added to reflect section 19's coverage of ocean transportation of passengers as well as cargo. See Petition for Investigation of, and for Section 19 Relief from, Italian Subsidies for Carnival Cruise Lines Passenger Vessels, ____F.M.C. ____, 26 S.R.R. 990, 1001 n.18 (1993); *American*

Association of Cruise Passengers, Inc. v. *Carnival Cruise Lines, Inc.*, 911 F.2d 786 (D.C. Cir. 1990).

Paragraphs (b) and (c) are new. They describe the type of information that may be required from other persons, including shippers, shippers' associations, non-vessel-operating common carriers, ocean freight forwarders and marine terminal operators.

Section 585.203 Failure to Provide Information

This section establishes sanctions for failure to provide required information. Paragraph (a) is new and provides for a civil penalty of up to $5,000 per day for failure to provide information. It is based upon and utilizes the statutory language of section 19(6)(d) of the Act.

Paragraph (b) provides for the making of adverse findings where there has been a failure to provide information. It incorporates, with one change, the provision that appears at § 585.12 of the current regulations. The change clarifies that the Commission will make inferences based on failure to provide information, rather than deem such a failure an "admission" (which implies fault) that conditions unfavorable to shipping exist.

Subpart C—Conditions Unfavorable to Shipping

This subpart contains provisions specifying those conditions that may be found unfavorable to shipping. As discussed below, paragraph (e) dealing with intermodal operations is new.

Section 585.301 Findings

This section incorporates without change the statement of those conditions which may be found to be unfavorable to shipping that appears at § 585.3 of the current regulations. In addition, this section adds a new paragraph (d) (§ 585.301(d)), which states that restrictions or burdens upon intermodal operations and other activities integral to ocean transportation may be found to be a condition unfavorable to shipping. The language of new paragraph (d) derives from the changes made in section 19(1)(b) by the Section 19 Amendments. The Section 19 Amendments added a reference to "* * * intermodal movements, terminal operations, cargo solicitation, forwarding and agency services, non-vessel-operating common carrier operations, and other activities and services integral to transportation systems * * *" 46 U.S.C. app. 876(1)(b).

It is thus clear that Congress intended to make section 19 applicable to activities that are integral to ocean shipping and that practices or policies that hinder those activities can constitute an unfavorable condition. This is further clarified by the legislative history of the Section 19 Amendments. For example, the Committee Report states that

> * * * the bill amends current law to clarify that the Federal Maritime Commission's rulemaking and investigatory powers extend to intermodal movements, terminal operations, and other activities integral to shipping.

H.R. Rep. No. 501, 100th Cong., 2d Sess. 6 (1988).

Similarly, the Report of the Senate Commerce Committee states that a purpose of the legislation was to clarify the Commission's authority to address intermodal and other shipping-related activities. The Report states:

> The bill, as reported, specifically includes intermodal movements and certain land-based activities within the scope of section 19 of the Merchant Marine Act, 1920 * * *

S. Rep. No. 420, 101st Cong., 2d Sess. 2 (1990); *id.* at 7. See also H.R. Rep. No. 440, 101st Cong., 2d Sess. 4, 8 (1990). Paragraph (d) would thus codify the Congressional determination (reflected in both the language and legislative history of the Section 19 Amendments) that practices which adversely affect intermodal transportation may be found to be a condition unfavorable to shipping.

This codification in paragraph (e) is also supported by Commission precedents holding that practices and policies which adversely affect intermodal operations may amount to an unfavorable shipping condition. See, e.g., Inquiry into Laws, Regulations and Policies of Korea Affecting Shipping in the United States/Korean Trade, ____ F.M.C. ____, 24 S.R.R. 112 (1987), 24 S.R.R. 895 (1988); Actions to Adjust Or Meet Conditions Unfavorable to Shipping in the United States/Taiwan Trade, ____F.M.C. ____, 24 S.R.R. 866 (1988).

Subpart D—Petitions for Relief

This subpart sets forth provisions that apply to petitions filed pursuant to section 19. For the most part, it carries forward existing sections with only a few technical changes.

Section 585.401 Who May File

This section is based upon § 585.4 of the current regulations. The only change to the existing section is the deletion of the elaboration of the term "person." Such elaboration is unnecessary in light of the definition of person at proposed § 585.103(b). As indicated in the discussion of the definition of person, the Act expressly recognizes certain entities who are among those likely to request action under section 19. However, as noted above, the enumeration of certain entities is not exhaustive of the term.

Section 585.402 Filing of Petitions

This section incorporates without change the statement regarding filing of petitions which appears at § 585.5 of the current regulations.

Section 585.403 Contents of Petitions

This section incorporates the statement regarding the contents of petitions which appears at § 585.6 of the current regulations, with changes that reflect the scope of section 19 protections recognized in the Section 19 Amendments, including land-based maritime functions.

Section 585.404 Amendment or Dismissal of Petitions

This section incorporates the requirements regarding amendment or dismissal of petitions which appear at § 585.7 of the current regulations, but has been amended to reflect the Commission's flexibility to deal with petitions that may not fully meet the requirements of proposed § 585.403. Thus, the rule states that the Commission "may" rather than "will" dismiss a petition for failure to timely cure any deficiency. This provision comports with past Commission practice. It is, however, also to be noted that petitions that fail to set forth the information called for in § 585.403 may not provide a sufficient basis for Commission action, either to make findings that conditions unfavorable to shipping exist or to fashion appropriate sanctions to meet or adjust such conditions.

Subpart E—Proceedings

This subpart contains provisions that relate to the commencement, prosecution and conclusion of proceedings under section 19. It implements significant provisions of the section 19 Amendments which allow for discovery and enforcement of discovery. It also incorporates sections of the existing regulations.

Section 585.501 Participation of Interested Persons

This section incorporates without change the provision for participation of interested persons that appears at § 585.10 of the current regulations.

Section 585.502 Discovery

This section is new. It is based upon the authority and utilizes the statutory language of section 19(7)(a) of the Act.

Section 585.503 Subpoenas

This section is new. It is based upon the authority and utilizes the statutory language of section 19(7)(b) of the Act.

Section 585.504 Witness Fees

This section is new. It is based upon the authority and utilizes the statutory language of section 19(7)(c) of the Act.

Section 585.505 Failure to Supply Information

This section is new. It is based upon the authority and utilizes the statutory language of section 19(7)(d) of the Act. It should be noted that the penalties specified are for failure to provide information in section 19 rulemaking proceedings. Separate statutory penalties are established in section 19(6)(d) of the Act for failure to provide information required to be produced in response to information-gathering orders issued under section 19(6).

Section 585.506 Enforcement of Orders

This section is new. It provides for enforcement of Commission information orders in federal district court. It is based upon the authority and utilizes the statutory language of section 19(7)(e) of the Act.

Section 585.507 Postponement, Discontinuance, or Suspension of Action

This section incorporates the provisions for postponement, discontinuance, or suspension of action which appear at § 585.13 of the current regulations. A technical change is made in the second sentence to continue the parallelism of the first sentence by adding the words "or suspend."

Section 585.508 Publication, Contents and Effective Date of Regulation

This section incorporates without change the provisions for publication, contents and effective date which appear at § 585.14 of the current regulations.

Subpart F—Corrective Actions

This subpart specifies the actions that may be taken to correct unfavorable shipping conditions, and implements new statutory authorities.

Section 585.601 Actions To Correct Unfavorable Conditions

This section is substantially the same as § 585.9 of the current regulations, which has now been essentially codified by sections 19(9) and 19(10) of the Act. Paragraphs (b), (c), (d) and (e) make certain changes to the existing regulation to more closely reflect the language of the statute and to make other minor restructuring and editorial changes.

In addition, paragraph (d) is revised to reflect the Commission's action in Docket No. 92–33, Marine Terminal Facilities Agreements—Exemption, exempting certain marine terminal facilities agreements from filing under section 5 of the Shipping Act of 1984, 46 U.S.C. app. 1704. In exempting such agreements from the 1984 Act's filing requirements, the Commission acted merely to alleviate the administrative burden such filings entailed for both the marine terminal industry and the agency. However, as the Commission noted in the explanatory text accompanying the final rule, the exemption carried with it "no diminution of the Commission's present degree of regulatory oversight * * * [T]he exemption applies only to filing and notice requirements, and does not relieve the parties to marine terminal facilities agreements from other requirements of the 1916 and 1984 Acts." 58 FR 5627, 5630 (Jan. 22, 1993). It is equally true that the filing exemption does not affect the applicability of substantive provisions of other statutes, including sanctions authorized by section 19(c) of the 1920 Act.

A new paragraph (g) is added to reflect the authority added by section 19(10)(a) of the Act, requiring the collectors of customs, upon request by the Commission, to collect any per-voyage fees imposed by the Commission under section 19(9)(d). The remaining paragraphs are renumbered accordingly.

Section 585.602 Penalty

This section is new. It is based upon and follows the language of section 19(11) of the Act.

III. Proposed Rule

The proposed rule is intended to establish a clearer framework for proceedings and actions under section 19 and to update the section 19 Rules to reflect the statutory authorities and language contained in Public Law 101–595. Interested persons are invited to submit written comments to the Secretary, Federal Maritime Commission, on this proposed rule.

The Chairman of the Federal Maritime Commission has determined that the proposed rule, if adopted, is not a "major rule" as defined in Executive Order 12291 dated February 17, 1981, because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Chairman of the Federal Maritime Commission has determined that the Paperwork Reduction Act (44 U.S.C. 3504) does not apply because this regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects in 46 CFR Part 585

Administrative practice and procedure, Maritime carriers.

Therefore, pursuant to section 4 of the Administrative Procedure Act (5 U.S.C. 553), section 1002 of the Foreign Shipping Practices Act of 1988 (46 U.S.C. app. 10002), and section 19 of the Merchant Marine Act, 1920 (46 U.S.C. app. 876), the Federal Maritime Commission hereby proposes to revise part 585 of title 46, Code of Federal Regulations, to read as follows:

Part 585—Regulations To Adjust or Meet Conditions Unfavorable to Shipping in the Foreign Trade of the United States

Subpart A—General Provisions

Sec.

585.101 Purpose.
585.102 Scope.
585.103 Definitions.
585.104 Confidentiality.
585.105 Consultation.

Subpart B—Production of Information

585.201 Information orders.
585.202 Type of information.
505.203 Failure to provide information.

Subpart C—Conditions Unfavorable To Shipping

585.301 Findings.

Subpart D—Petitions For Section 19 Relief

585.401 Who may file?
585.402 Filing of petitions.
585.403 Contents of petitions.
585.404 Amendment or dismissal of petitions.

Subpart E—Proceeding

585.501 Participation of interested persons.
585.502 Discovery.
585.503 Subpoenas.
585.504 Witness fees.
585.505 Failure to supply information.
585.506 Enforcement of orders.

585.507 Postponement, discontinuance or suspension of action.
585.508 Publication, contents and effective date of regulation.

Subpart F—Corrective Actions

585.601 Actions to correct unfavorable conditions.
585.602 Penalty.

Authority: 5 U.S.C. 553; sec. 19(1)(b), (5), (6), (7), (8), (9), (10), (11) and (12) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876(1)(b), (5), (6), (7), (8), (9), (10), (11) and (12); Reorganization Plan No. 7 of 1961, 75 Stat. 840; and sec. 10002 of the Foreign Shipping Practices Act of 1988, 46 U.S.C. app. 1710a.

Subpart A—General Provisions

§ 585.101 Purpose.

It is the purpose of the regulations of this part to declare certain conditions resulting from governmental actions by foreign nations or from the competitive methods or practices of owners, operators, agents, or masters of vessels of a foreign country unfavorable to shipping in the foreign trade of the United States and to establish procedures by which persons who are or can reasonably expect to be adversely affected by such conditions may petition the Federal Maritime Commission for the issuance of regulations under the authority of section 19 of the Merchant Marine Act of 1920. It is the further purpose of the regulations of this part to afford notice of the general circumstances under which the authority granted to the Commission under section 19 may be invoked and the nature of the regulatory actions contemplated.

§ 585.102 Scope.

Regulatory actions may be taken when the Commission finds, on its own motion or upon petition, that a foreign government has promulgated and enforced or intends to enforce laws, decrees, regulations or the like, or has engaged in or intends to engage in practices which presently have or prospectively could create conditions unfavorable to shipping in the foreign trade of the United States, or when owners, operators, agents or masters of foreign vessels engage in or intend to engage in, competitive methods or practices which have created or could create such conditions.

§ 585.103 Definitions.

When used in this part:

(a) *Act* means the Merchant Marine Act, 1920, as amended by Public Law 101–595.

(b) *Person* means individuals, corporations, partnerships and associations existing under or authorized by the laws of the United States or of a foreign country, and includes any common carrier, tramp operator, bulk operator, shipper, shippers' association, importer, exporter, consignee, ocean freight forwarder, marine terminal operator, or any component of the Government of the United States.

(c) *Voyage* means an inbound or outbound movement between a foreign country and the United States by a vessel engaged in the United States oceanborne trade. Each inbound or outbound movement constitutes a separate voyage.

§ 585.104 Confidentiality.

Notwithstanding any other law, the Commission may refuse to disclose to the public a response or other information provided under the terms of this part.

§ 585.105 Consultation.

(a) *Consultation with other agencies.* The Commission may consult with, seek the cooperation of, or make recommendations to other appropriate agencies prior to taking any action under this part.

(b) *Request for resolution through diplomatic channels.* Upon the filing of a petition, or on its own motion when there are indications that conditions unfavorable to shipping in the foreign trade of the United States may exist, the Commission may notify the Secretary of State that such conditions apparently exist, and may request that the Secretary seek resolution of the matter through diplomatic channels. If request is made, the Commission will give every assistance in such efforts, and the Commission may request the Secretary to report the results of such efforts at a specified time.

Subpart B—Production of Information

§ 585.201 Information orders.

In furtherance of the purposes of this part—

(a) The Commission may, by order, require any person (including any common carrier, tramp operator, bulk operator, shipper, shippers' association, ocean freight forwarder, or marine terminal operator, or an officer, receiver, trustee, licensee, agent, or employee thereof) to file with the Commission a report, answers to questions, documentary material, or other information which the Commission considers necessary or appropriate;

(b) The Commission may require a report or answers to questions to be made under oath;

(c) The Commission may prescribe the form and the time for response to a report or answers to questions.

§ 585.202 Type of information.

In order to aid in the determination of whether conditions unfavorable to shipping in the foreign trade of the United States exist, or in order to aid in the formulation of appropriate regulations subsequent to a finding that conditions unfavorable to shipping in the foreign trade of the United States exist, the Commission may, when it deems necessary or appropriate, and without further proceedings, order any:

(a) Owner, operator, or charterer in the affected trade to furnish any or all of the following information:

(1) Statistics for a representative period showing passengers or cargo carried to and from the United States in the affected trade on vessels owned, operated or chartered by it, by type, source, value, and direction;

(2) Information for a representative period on the activities of vessels owned, operated, or chartered, which shall include sailings to and from United States ports, costs incurred, taxes or other charges paid to authorities, and subsidies or other payments received from foreign authorities;

(3) Information for a specified future period on the prospective activities of vessels which it owns, operates or charters or plans to own, operate or charter, to and from United States ports, which shall include projected sailings, anticipated costs, taxes or other charges to be paid to authorities, and expected subsidies or other payments to be received from foreign authorities; and

(4) Such other information that the Commission considers relevant to discovering or determining the existence of general or special conditions unfavorable to shipping in the foreign trade of the United States.

(b) Shipper, shippers' association, ocean freight forwarder, or non-vessel-operating common carrier in the affected trade to furnish any or all of the following information:

(1) Information for a representative period showing shipments made, type of cargo, commodity, carrier and vessel on which shipment was made, including furnishing copies of bills of lading and other shipping documents;

(2) Information relating to the application for, grant of, or securing of waivers or other exemption from requirements imposed by foreign governments that cargo move on national-flag, conference, or non-conference vessels;

(3) Amount of brokerage, freight forwarder compensation or other charges collected or paid in connection with shipments in the affected trade; and

(4) Such other information that the Commission considers relevant to discovering or determining the existence of general or special conditions unfavorable to shipping in the foreign trade of the United States.

(c) Any marine terminal operator to furnish any or all of the following information:

(1) Marine terminal facilities agreements, whether or not on file with the Commission, into which it has entered with any ocean carrier in the affected trade;

(2) Information for a representative period showing the difference between the rates agreed to for use of its facilities by any ocean carrier serving the affected trade pursuant to an agreement authorizing preferential treatment or lease terms and those rates which would otherwise have applied to such services or leases.

§ 585.203 Failure to provide information.

(a) A person who fails to file a report, answer, documentary material, or other information required under this subpart shall be liable to the United States Government for a civil penalty of not more than $5,000 for each day that the information is not provided.

(b) The Commission may, when there is a failure to produce any information ordered produced under § 585.201, make appropriate findings of fact and inferences, including the inference that conditions unfavorable to shipping in the foreign trade of the United States do exist.

Subpart C—Conditions Unfavorable to Shipping

§ 585.301 Findings.

For the purposes of this part, conditions created by foreign governmental action or competitive methods of owners, operators, agents or masters of foreign vessels are found unfavorable to shipping in the foreign trade of the United States, if such conditions:

(a) Impose upon vessels in the foreign trade of the United States fees, charges, requirements, or restrictions different from those imposed on other vessels competing in the trade, or preclude vessels in the foreign trade of the United States from competing in the trade on the same basis as any other vessel;

(b) Reserve substantial cargoes to the national flag or other vessels and fail to provide, on reasonable terms, for effective and equal access to such cargo by vessels in the foreign trade of the United States;

(c) Are discriminatory or unfair as between carriers, shippers, exporters, importers, or ports or between exporters from the United States and their foreign competitors and which cannot be justified under generally accepted international agreements or practices and which operate to the detriment of the foreign commerce or the public interest of the United States;

(d) Restrict or burden carriers' intermodal movements or shore-based maritime activities, including terminal operations and cargo solicitation; forwarding and agency services; non-vessel-operating common carrier operations; or other activities and services integral to transportation systems; or

(e) Are otherwise unfavorable to shipping in the foreign trade of the United States.

Subpart D—Petitions for Section 19 Relief

§ 585.401 Who may file?

Any person who has been harmed by, or who can reasonably expect harm from, existing or impending conditions unfavorable to shipping in the foreign trade of the United States, may file a petition for relief under the provisions of this part.

§ 585.402 Filing of petitions.

All requests for relief from conditions unfavorable to shipping in the foreign trade shall be by written petition. An original and fifteen copies of a petition for relief under the provisions of this part shall be filed with the Secretary, Federal Maritime Commission, Washington, DC 20573.

§ 585.403 Contents of petitions.

Petitions for relief from conditions unfavorable to shipping in the foreign trade of the United States shall set forth the following:

(a) A concise description and citation of the foreign law, rule, regulation, practice or competitive method complained of;

(b) A certified copy of any law, rule, regulation or other document involved and, if not in English, a certified English translation thereof;

(c) Any other evidence of the existence of such practice or competitive method;

(d) A clear description, in detail, of the harm already caused or which may reasonably be expected to be caused petitioner, including:

(1) Statistics for the representative period showing the type and amount of revenue loss or operating cost increase suffered or projected, such as a present or prospective cargo loss if harm is alleged on that basis. Such statistics shall include figures which permit comparison or computation of the proportional effect of the harm alleged. For example, when the harm alleged is loss of cargo, supporting evidence shall include the total cargo carried or projected in the trade for the period;

(2) Statistics or other evidence for the representative period showing increased costs, inferior services or other harm to cargo or other non-vessel interest if injury is claimed on that basis; and

(3) A statement as to why the period is representative.

(e) A recommended regulation, the promulgation of which will, in the view of the petitioner, adjust or meet the alleged conditions unfavorable to shipping in the foreign trade of the United States.

§ 585.404 Amendment or dismissal of petitions.

Upon the failure of a petitioner to comply with the provisions of this part, the petitioner will be notified by the Secretary and afforded reasonable opportunity to amend its petition. Failure to timely amend the petition may result in its dismissal. For good cause shown additional time for amendment may be granted.

Subpart E—Proceedings

§ 585.501 Participation of interested persons.

In the event that participation of interested persons is deemed necessary by the Commission, notice will be published in the **Federal Register** and interested persons will then be allowed to participate in this proceeding by the submission of written data, views or arguments, with or without opportunity to present same orally.

§ 585.502 Discovery.

The Commission may authorize a party to a proceeding to use depositions, written interrogatories, and discovery procedures that, to the extent practicable, are in conformity with the rules applicable in civil proceedings in the district courts of the United States.

§ 585.503 Subpoenas.

In proceedings under this part, the Commission may by subpoena compel the attendance of witnesses and the production of books, papers, documents, and other evidence.

§ 585.504 Witness fees.

In proceedings under this subpart, witnesses are, unless otherwise

prohibited by law, entitled to the same fees and mileage as in the courts of the United States, subject to funds being provided by appropriations Acts.

§ 585.505 Failure to supply information.

For failure to supply information ordered to be produced or compelled by subpoena in proceedings under this part, the Commission may—

(a) After notice and an opportunity for hearing, suspend tariffs of a common carrier or that common carrier's right to use the tariffs of conferences of which it is a member; or

(b) Assess a civil penalty of not more than $5,000 for each day that the information is not provided.

§ 585.506 Enforcement of orders.

In proceedings under this part, when a person violates an order of the Commission or fails to comply with a subpoena, the Commission may seek enforcement by a United States district court having jurisdiction over the parties.

§ 585.507 Postponement, discontinuance, or suspension of action.

The Commission may, on its own motion or upon petition, postpone, discontinue, or suspend any and all actions taken by it under the provisions of this part. The Commission shall postpone, discontinue or suspend any or all such actions if the President informs the Commission that postponement, discontinuance or suspension is required for reasons of foreign policy or national security.

§ 585.508 Publication, content and effective date of regulation.

The Commission shall incorporate in any regulations adopted under the rules of this part a concise statement of their basis and purpose. Regulations shall be published in the **Federal Register**. Except where conditions warrant and for good cause, regulations promulgated under the rules of this part shall not become effective until at least 30 days after the date of publication.

Subpart F—Corrective Actions

§ 585.601 Actions to correct unfavorable conditions.

Upon submission of a petition filed under the rules of this part, or upon its own motion, the Commission may find that conditions unfavorable to shipping in the foreign trade of the United States do exist, and may, without further proceedings, issue regulations which may:

(a) Impose equalizing fees or charges;

(b) Limit sailings to and from United States ports or the amount or type of cargo carried;

(c) Suspend, in whole or in part, tariffs filed with the Commission for carriage to or from United States ports, including a common carrier's right to use tariffs of conferences in United States trades of which it is a member for any period the Commission specifies;

(d) Suspend, in whole or in part, an ocean common carrier's right to operate under an agreement, including any agreement authorizing preferential treatment at terminals or preferential terminal leases, whether filed with the Commission or not filed with the Commission pursuant to the exemptions granted in 46 CFR part 572; or any agreement filed with the Commission authorizing space chartering, or pooling of cargo or revenues with other ocean common carriers;

(e) Impose a fee, not to exceed $1,000,000 per voyage;

(f) Request the collector of customs at the port or place of destination in the United States to refuse the clearance required by section 4197 of the Revised Statutes, 46 U.S.C. app. 91, to a vessel of a foreign carrier which is or whose government is identified as contributing to the unfavorable conditions described in subpart C;

(g) Request the collector of customs at the port or place of destination in the United States to collect any fees imposed by the Commission under paragraph (e) of this section;

(h) Request the Secretary of the department in which the Coast Guard is operating to deny entry, for purposes of oceanborne trade, of any vessel of a foreign carrier which is or whose government is identified as contributing to the unfavorable conditions described in subpart B, to any port or place in the United States or the navigable waters of the United States, or to detain any such vessel at the port or place in the United States from which it is about to depart for any other port or place in the United States; or

(i) Take any other action the Commission finds necessary and appropriate to adjust or meet any condition unfavorable to shipping in the foreign trade of the United States.

§ 585.602 Penalty.

A common carrier that accepts or handles cargo for carriage under a tariff that has been suspended under § 585.505 or § 585.601 of this Part, or after its right to use another tariff has been suspended under those sections, is subject to a civil penalty of not more than $50,000 for each day that it is found to be operating under a suspended tariff.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 93–24643 Filed 10–6–93; 8:45 am]

BILLING CODE 6730–01–W

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 36

[CC Docket No. 80–286; FCC 93–379]

Establishment of a Joint Board

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission asked the CC Docket No. 80–286 Joint Board to determine whether separations changes are needed in light of switched transport expanded interconnection and, if so, to undertake the limited task of preparing recommended separations revisions designed to identify local exchange carrier expanded interconnection costs and revenues, and allocate them between the state and federal jurisdictions. The intended effect of this action is to identify changes in the separations rules that may be needed to ensure reasonable jurisdictional allocations of costs.

DATES: Interested parties are to file comments on or before November 1, 1993, and reply comments on or before December 1, 1993.

ADDRESSES: Parties should send comments and reply comments to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. In addition, parties should file two copies of any such pleadings with the Policy and Program Planning Division, Common Carrier Bureau, room 544, 1919 M Street, NW., Washington, DC. Two copies of the comments are to be filed with all CC Docket No. 80–286 Federal-State Joint Board Commissioners, staff members, and other persons listed in the Federal-State Joint Board Service List below. Parties should also file one copy of any documents filed in this proceeding with the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800.

FOR FURTHER INFORMATION CONTACT: Suzanne M. Tetreault, (202) 632–6374, or Linda H. Haller, (202) 632–1298.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's notice of proposed rulemaking, adopted August

3, 1993, and released September 2, 1993. The full text of this notice is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC 20554. The complete text of this notice may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800.

Summary of the Order

1. In order to ensure a proper jurisdictional allocation of local exchange carrier (LEC) costs when expanded interconnection for switched transport is implemented, the Commission made the same referral to the Federal-State Joint Board with respect to expanded interconnection for switched transport that it made last year with respect to special access expanded interconnection.[1] Specifically, the Commission asked the CC Docket No. 80–286 Joint Board to determine whether separations changes are needed in light of switched transport expanded interconnection to ensure reasonable jurisdictional allocations and, if so, to undertake the limited task of preparing recommended separations revisions designed to identify LEC expended interconnection costs and revenues, and allocate them between the state and federal jurisdictions. The Commission stated that it did not intend the Joint Board to consider broader separations issues in this context. The Commission directed parties to file their comments on this issue directly with the Joint Board.

2. The Third Notice of Proposed Rulemaking in this proceeding, which concerns expanded interconnection separations issues, is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules. See generally 47 CFR 1.1202, 1.1203, and 1.1206(a).

3. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties are to file comments with the CC Docket No. 80–286 Joint Board concerning this Third Notice of Proposed Rulemaking on or before November 1, 1993, and reply comments on or before December 1, 1993. To file formally in this proceeding, parties must file an original and five copies of all comments and reply comments. Parties that want each Commissioner to receive personal copies of their comments must file an original plus nine copies. Parties should send comments and reply comments to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. In addition, parties should file two copies of any such pleadings with the Policy and Program Planning Division, Common Carrier Bureau, room 544, 1919 M Street, NW., Washington, DC. Two copies of the comments are to be filed with all CC Docket No. 80–286 Federal-State Joint Board Commissioners, staff members, and other persons listed in the Federal-State Joint Board Service List below. Parties should also file one copy of any documents filed in this proceeding with the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, room 239, 1919 M Street, NW., Washington, DC.

4. The Commission certifies that the Regulatory Flexibility Act of 1980 does not apply to the Third Notice of Proposed Rulemaking concerning separations issues because any separations rule changes, if promulgated, would not have a significant economic impact on a substantial number of small business entities, as defined by section 601(3) of the Regulatory Flexibility Act. The LECs providing interstate access services directly subject to the separations rules are large corporations, or affiliates of such corporations. The Secretary shall send a copy of this Notice of Proposed Rulemaking, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with ¶ 603(a) of the Regulatory Flexibility Act, Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

Ordering Clauses

5. *It is further ordered,* That the separations issues described above are referred to the Federal/State Joint Board in CC Docket No. 80–286 for the preparation of a Recommended Decision.

6. *It is further ordered,* That notice is hereby given of the proposed changes regarding part 36 of our Rules, 47 CFR part 36, as described above, and that comment is invited on these proposals.[2]

List of Subjects in 47 CFR Part 36

Communications common carriers, Telephone.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Federal-State Joint Board Service List

Honorable James H. Quello, Chairman, Federal Communications Commission, 1919 M Street, NW., room 802, Stop 0106, Washington, DC 20554

Thomas McCabe, Florida Public Service Commission, 101 East Gaines Street, Fletcher Building, Tallahassee, Florida 32399–0850

Honorable Dennis J. Nagel, Commissioner, Iowa Utilities Board, Lucas State Office Bldg., Des Moines, Iowa 50319

Sandra Makeeff, Iowa Utilities Board, Lucas State Office Bldg., Des Moines, Iowa 50319

Honorable Lilo K. Schifter, Commissioner, Maryland Public Service Commission, 6 St. Paul Centre, Baltimore, Maryland 21202

Ann Dean, Maryland Public Service Commission, 6 St. Paul Centre, Baltimore, Maryland 21202

Honorable Sharon L. Nelson, Chairman, Washington Utilities and Transportation Commission, Chandler Plaza Building, 1300 South Evergreen Park Drive, SW., Olympia, Washington, 98504–7250

Teresa Pitts, Washington Utilities and Transportation Commission, Chandler Plaza Building, 1300 South Evergreen Park Drive, SW., Olympia, Washington 98504–7250

Honorable Andrew C. Barrett, Commissioner, Federal Communications Commission, 1919 M Street, NW., room 844, Stop 0103, Washington, DC 20554

Honorable Ervin S. Duggan, Commissioner, Federal Communications Commission, 1919 M Street, NW., room 832, Stop 0104, Washington, DC 20554

Ronald Choura, Chairman, Federal-State Joint Board Staff, Michigan Public Service Commission, 6545 Mercantile Way, Lansing, Michigan 48910

Sam Loudenslager, Arkansas Public Service Commission, 1000 Center Street, P.O. Box C–400, Little Rock, Arkansas 72203

Dean Evans, California Public Service Commission, 505 Van Ness Avenue,

[1] See Expanded Interconnection with Local Telephone Company Facilities, Report and Order FCC 92–440, 57 FR 54323 (11/18/92), 7 FCC Rcd 7369 (1992).

[2] These actions are taken pursuant to sections 1, 4 (i) and (j), 201–205, 210, 220, and 410(c) of the Communications Act, 47 U.S.C. 151, 154 (i) and (j), 201–205, 220, and 410(c).

room 4004, San Francisco, California 94102

Elton Calder, Georgia Public Service Commission, 162 State Office Bldg., 244 Washington Street, SW., Atlanta, Georgia 30334

Joel B. Shifman, Maine Public Utilities Commission, State House Station #18, Augusta, Maine 04333

Paul Pederson, Missouri Public Service Commission, P.O. Box 360, Jefferson City, Missouri 65102

Michael P. Gallagher, New Jersey Board of Public Utilities, 2 Gateway Center, Newark, New Jersey 07102

Fred Sistarenik, New York Public Service Commission, 3 Empire State Plaza, Albany, New York 12223

Mary Steel, North Carolina Utilities Commission, Box 29510, Raleigh, North Carolina 27626–0510

Rowland Curry, Texas Public Utility Commission, 7800 Shoal Creek Blvd., suite 400N, Austin, Texas 78757

Jay Atkinson, Accounting and Audits Division, Common Carrier Bureau, Federal Communications Commission, 2000 L Street, NW., room 812, Stop 1600E5, Washington, DC 20554

Deborah A. Dupont, Accounting and Audits Division, Common Carrier Bureau, Federal Communications Commission, 2000 L Street, NW., room 257, Stop 1600E2, Washington, DC 20554

Charles W. Needy, Accounting and Audits Division, Common Carrier Bureau, Federal Communications Commission, 2000 L Street, NW., room 257, Stop 1600E5, Washington, DC 20554

Gary Seigel, Accounting and Audits Division, Common Carrier Bureau, Federal Communications Commission, 2000 L Street, NW., room 812, Stop 1600E5, Washington, DC 20554

Robert Loube, Public Service Commission of the District of Columbia, 450 Fifth St., NW., Washington, DC 20001

Charles Gray, National Association of Regulatory Utility Commissioners, 1102 ICC Building, Constitution Ave. & 12th St., NW., P.O. Box 684, Washington, DC 20044

[FR Doc. 93–24564 Filed 10–6–93; 8:45 am]
BILLING CODE 6712–01–M

47 CFR Part 74

[MM Docket No. 93–106, DA 93–1161]

Experimental, Auxiliary, and Special Broadcast and Other Program Distribution Services; Instructional Television Fixed Service, Purpose and Permissible Service

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rule making; extension of time.

SUMMARY: This Order extends, for a second time, the deadline for filing reply comments in response to the Notice of Proposed Rule Making in MM Docket No. 93–106, 58 FR 26728 (May 5, 1993), to October 28, 1993. In the Notice, we sought comment on the use of channel loading by licensees in the Instructional Television Fixed Service. A compromise agreement to the channel loading proposal, entered into by the Wireless Cable Association International, Inc. (WCA) and several ITFS licensees, was filed with the Commission on August 19, 1993, the deadline for filing reply comments. An extended reply comments period will allow interested parties to comment exclusively on the compromise agreement and any issues directly related to the elements of the compromise.

DATES: Reply comments are due by October 28, 1993.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Anne Lucey, Mass Media Bureau, Video Services Division, Distribution Services Branch, (202) 632–6357.

SUPPLEMENTARY INFORMATION: This is the Commission's Order Granting Extension of Time in MM Docket No. 93–106, adopted on September 27, 1993 and released on September 28, 1993.

The complete text of this Order is available for inspection and copying during normal business hours in the FCC Reference Center, room 239, at the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554, and may also be purchased from the Commission's copy contractor, International Transcription Service, at (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Order Granting Extension of Time

1. This action seeks comment on a compromise proposed in connection with the Notice of Proposed Rule Making in MM Docket No. 93–106, 58 FR 26728 (May 5, 1993), in which the Commission proposed to amend Section 74.931 (a) and (e)(2), 47 CFR 74.931 (a), (e)(2), on an interim basis to permit an Instructional Television Fixed Service (ITFS) licensees to satisfy its minimum formal educational and ITFS programming obligations by "channel loading." Channel loading would permit a multiple-channel ITFS licensee leasing excess capacity to transmit all of the requisite weekly, per-channel programming over fewer than all of its authorized channels. The reply comment period, initially set to expire on July 29, 1993, was extended to August 19, 1993 in response to a request by the Wireless Cable Association International, Inc. (WCA),[1] which indicated the imminence of a compromise agreement in connection with the NPRM. See Order, 58 FR 42522 (August 10, 1993).

2. On August 19, 1993, WCA submitted a compromise agreed to by WCA, the National ITFS Association (NIA),[2] and "ITFS Parties."[3] The compromise contains five elements, all of which, the parties note, must be adopted in order to remain a supportable agreement. First, the agreement provides that each ITFS licensee will be required to preserve for immediate use or ready recapture at least 40 hours per channel per week for the transmission of ITFS programming. These rights cannot be abridged by contract. Second, each ITFS licensee, according to the compromise, will be required to actually transmit at least the minimum required ITFS programming of 20 hours per week for each channel licensed to it (12 hours per channel per week for the first two years, as currently permitted). However, each ITFS licensee will be permitted to "load" this 20-hour per channel per week programming on fewer than all of the channels for which

[1] WCA's members include licensees in the operation of virtually every wireless cable system in the United States, including ITFS and Multipoint Distribution Service (MDS), as well as programming networks and wireless cable equipment manufacturers.

[2] NIA is a national association of more than 60 educators in 26 states and the District of Columbia which utilize ITFS to provide educational services to students enrolled in for-credit courses in elementary, secondary, college, post-graduate and career training.

[3] Although not a formal organization, a group of educators, which filed joint comments to the NPRM, refers to itself as "ITFS Parties." Comprising that group are: American Council on Education, American Association of Community Colleges, Alliance for Higher Education, Arizona Board of Regents for Benefit of the University of Arizona, Board of Regents of the University of Wisconsin System, Iowa Public Broadcasting Board, Regents of the University of New Mexico and Board of Education of the City of Albuquerque, South Carolina Educational Television Commission, State of Wisconsin—Educational Communications Board, and the University of Maine System.

the ITFS licensee is authorized to operate. All of the minimum amount of programming, the 20 hours per channel per week, even if loaded, must be transmitted on channels licensed to the ITFS licensee. Third, as to satisfaction of the minimum recapture requirement, hours 21 through 40, ITFS licensees are required to retain the right, upon the currently required one-year notice, to transmit multiple programs simultaneously. Transmission of that programming, if the ITFS licensee so elects, may be over any MDS or ITFS channel in the "system."[4] Fourth, compliance with these terms will establish that the applicant/licensee has established need for its channels under § 74.902(d), 47 CFR 74.902(d), and will entitle the applicant/licensee to an initial or renewed license. Further, the compromise states, no demerit will be suffered by an applicant proposing channel loading which is also engaged in a comparative selection process. Nor will channel loading or system-wide scheduling have adverse consequences for a renewal application. Finally, this compromise, according to the terms of the agreement, will not serve as a basis for future efforts to seek reallocation of non-loaded ITFS spectrum for commercial use, and the parties to the compromise agree not to seek any such reallocation. Issues not addressed by the compromise include safeguards initially proposed by several educators as necessary to the implementation of channel loading and how such a scheme would be treated in the context of a four-channel waiver request.

3. The Commission has reached no determination as to the proposed compromise. We believe that granting a limited extension of time to file further reply comments on the compromise agreement would serve the public interest. Parties are requested to limit their comments to the elements of the compromise and to any issues directly related to those provisions. A copy of the compromise agreement will be available for public inspection during regular business hours in the FCC Reference Center, room 239, 1919 M Street, NW., Washington, DC 20554.

4. Accordingly, *it is ordered, that,* Pursuant to authority delegated to the Mass Media Bureau under § 0.283 of the Commission's Rules, 47 CFR 0.283, the time for filing comments in response to the compromise agreement is extended to October 28, 1993.

5. For further information concerning this proceeding, contact Anne Lucey, Distribution Services Branch, Mass Media Bureau, (202) 632–6357.

Federal Communications Commission.

William H. Johnson,

Deputy Chief, Mass Media Bureau.

[FR Doc. 93–24563 Filed 10–6–93; 8:45 am]

BILLING CODE 6712–01–M

[4] A system is composed of several ITFS and MDS channels whose licensees opt to cooperate to form a system in a given market.

Notices

Federal Register
Vol. 58, No. 193
Thursday, October 7, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Types and Quantities of Agricultural Commodities Available for Donation Overseas Under Section 416(b) of the Agricultural Act of 1949, as Amended, in Fiscal Year 1993

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: This Notice sets forth the determination that an additional quantity of butter/butteroil is made available for donation overseas under section 416(b) of the Agricultural Act of 1949, as amended, during fiscal year 1993.

FOR FURTHER INFORMATION CONTACT: Mary T. Chambliss, Director, Program Analysis Division, Office of the General Sales Manager, FAS, USDA, (202) 720–3573.

SUPPLEMENTARY INFORMATION: It has previously been determined that a total of 100,000 metric tons of butter/butteroil may be made available for donation under section 416(b) during fiscal year 1993. This determination was published in the **Federal Register** on January 5, 1993. The purpose of this Notice is to inform the public that such previous determination is revised by adding 45,000 metric tons of butter/butteroil, of which 40,000 metric tons must be butter.

Determination

Accordingly, a total of 145,000 metric tons of butter/butteroil may be made available for donation overseas pursuant to section 416(b) during fiscal year 1993.

The total kinds and quantities of commodities that may be made available for donation are as follows:

	Commodity	Quantity (metric tons)
Grains	Corn	981,000
	Wheat	1,800,000
	Sorghum	70,000
Dairy products	Total	2,851,000
	Butter/butteroil [1].	145,000
	Total	145,000

[1] At least 80,000 metric tons must be butter.

Done at Washington, DC, this 30th day of September 1993.

Mike Espy,

Secretary of Agriculture.

[FR Doc. 93–24599 Filed 10–6–93; 8:45 am]

BILLING CODE 3410–10–M

Forest Service

Noxious Weed Control

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Notice is hereby given that the Forest Service will prepare an environmental impact statement to eradicate approximately 30 acres of noxious weeds within Modoc and Lassen Counties in Northeastern California. The 12 target weeds are Scotch Thistle, Musk Thistle, Yellowspine Thistle, Plumeless Thistle, Yellow Starthistle, Dalmatian Toadflax, Common Crupina, Leafy Spurge, Marlahan Mustard, Squarrose Knapweed, Spotted Knapweed and Diffuse Knapweed. The proposed control methods are manual removal and chemical use. The proposed herbicides are 2,4-D, Dicamba, Hexasinone, Glyphosate, Triclopyr and Picloram. These herbicides are distributed under a number of various trade names and strengths. The agency invites written comments and suggestions on the proposed project.

DATES: Comments concerning the project must be received by November 15th, 1993.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to Diane K. Henderson, Forest Supervisor, Modoc National Forest, 441 N. Main St., Alturas, CA 96101.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and environmental impact statement to Susan Stokke, Project Leader, Modoc National Forest, 441 N. Main St., Alturas, CA 96101, (916) 233–5811.

SUPPLEMENTARY INFORMATION: There are 12 noxious weeds which are either receiving intensive control or are under eradication in or near the Modoc National Forest. All but two are listed in California as "A" rated weed pests which means they are of limited distribution in California and are subject to eradication, quarantine, or other holding actions at the State/County level. The other two weeds, Yellow Starthistle and Marlahan Mustard, are not "A" weeds, but have limited distribution in Modoc and Lassen Counties; and are therefore dealt with as "A" pests in these counties. All 12 of these noxious weeds are exotic pests, not native to California and thus replace the native species when they invade the different plant communities.

In 1991, 21 acres of noxious weeds were treated on the Modoc National Forest in Modoc County and 4 acres in Lassen County. The infestations are scattered over the counties, with a 1 acre treatment being about as much ever treated in one area.

Chemical methods include the use of backpack sprayers, truck mounted power sprayers, or aerial applications. The chemicals (herbicides) would be in either liquid or granular form. The use of helicopters for aerial application is used to minimize resource damage in areas where there is limited access.

To obtain the maximum benefit (greatest reduction of weeds) from the application of the herbicides, the selection of the proper herbicide and then the application at the proper time by the correct method are of the utmost importance.

In preparing the environmental impact statement, the Forest Service will identify and consider a range of alternatives. One of these will be to not approve the proposal. Other alternatives will consider manual treatment, mechanical treatment, and ground application as opposed to aerial application.

Diane K. Henderson, Forest Supervisor, Pacific Southwest Region, Modoc National Forest, Alturas, California, is the responsible official.

Public participation will be especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7). The Forest Service will be seeking

information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the draft environmental impact statement (DEIS). The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.

The Modoc County Agriculture Department will be invited to participate as a cooperating agency to eradicate and supervise the eradication of these 12 noxious weeds.

The DEIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by January 1994. At that time EPA will publish a notice of availability of the DEIS in the **Federal Register.**

The comment period on the draft environmental impact statement will be 45-day minimum from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register.**

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the November 15, 1993, comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

After the comment period ends on the draft EIS, the comments will be analyzed and considered by the Forest Service in preparing the final environmental impact statement. The final EIS is scheduled to be completed by April 1994. In the final EIS the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the EIS, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to appeal under 36 CFR part 217.

Dated: September 28, 1993.

Diane K. Henderson,

Forest Supervisor.

[FR Doc. 93–24699 Filed 10–6–93; 8:45 am]

BILLING CODE 3410–11–M

Sirretta Peak Trail, Sequoia National Forest; Notice of Intent

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent, Cannell Meadow Ranger District, Sequoia National Forest.

SUMMARY: The Forest Service will prepare an Environmental Impact Statement (EIS) for the identification and analysis of alternate trail routes, primarily to accommodate off-highway vehicle (OHV) travel, in the Sirretta Peak area on the Cannell Meadow Ranger District, Sequoia National Forest, Tulare County, California. The Sequoia National Forest Land and Resource Management Plan (Forest Plan) has been prepared. An amendment to the Forest Plan may be necessary to implement this project.

DATES: To be most helpful in the preparation of the Draft EIS, comments should be received in writing by October 25, 1993.

ADDRESSES: Submit written comments and suggestions to Gene Blankenbaker, District Ranger, Cannell Meadow Ranger District, P.O. Box 6, Kernville, California 93238.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and EIS to Cheryl Bauer, District Recreation Manager or to Sue Porter, Recreation Planner, Cannell Meadow Ranger District, P.O. Box 6, Kernville, California 93238, telephone (619) 379–5646.

SUPPLEMENTARY INFORMATION: The Sirretta Peak Trail project area lies approximately 15 air miles northeast of Kernville, on the Kern Plateau. The project area lies east of the Mosquito Road (22S29) and west of Sirretta Meadows and Trout Creek; it includes parts of Townships 22 and 23 South, and Ranges 33 and 34 East, Mount Diablo Base and Meridian.

Until 1984, motorcycle riders were able to ride a loop down either the Woodpecker (34E08) or Dark Canyon (34E11) trails to Woodpecker Meadow then take the Sirretta Trail (34E12) southwest to the Cannell Trail (33E32) up to the Sherman Pass Vista and the Sherman Pass Trail (34E09) that connects with the other trails on the east side of the Kern Plateau. On September 28, 1984, legislation pending in Congress, designating an addition to the Dome Land Wilderness, was enacted into law (Pub. L. 98–425) that placed all of the Woodpecker and Dark Canyon trails and the Sirretta Trail east of Trout Creek in the Dome Land Wilderness.

The Sequoia National Forest Land and Resource Management Plan designated the remaining portion of the Sirretta Trail as non-motorized. These two actions effectively removed this loop from the OHV user's riding experience.

The OHV user community administratively appealed the decision to adopt the Forest Plan and subsequently participated in a mediation process along with 15 other parties representing the spectrum of forest users. During the negotiation of the Mediated Settlement Agreement (MSA), the group agreed that "all interested parties and the Sequoia National Forest shall explore locations for alternate trails, primarily to accommodate OHV travel, in the Sirretta Peak . . . area" (MSA, page 93).

The objective of this project, therefore, is to find that alternate route,

if at all possible, while staying within certain specified constraints. Alternatives would range from no new trail to a total of seven miles of new trail. Three of the alternatives would require an adjustment to the area designated as non-motorized. Implementation of any of these three alternatives would require an amendment to the Forest Plan.

Sandra H. Key, Forest Supervisor, Sequoia National Forest (900 West Grand Avenue, Porterville, CA 93257), is the responsible official.

Public participation will be especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7). The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the draft environmental impact statement (DEIS). The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a previous environmental review.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.

The draft EIS (DEIS) is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by January 1994. At that time EPA will publish a notice of availability of the DEIS in the **Federal Register**.

The comment period on the DEIS will be 45 days from the date that EPA's Notice of Availability appears in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions, *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the DEIS stage, but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F. 2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the DEIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the DEIS. Comments may also address the adequacy of the DEIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

After the comment period for the draft EIS ends, the comments received will be analyzed and considered by the Forest Service in the preparation of the final EIS. The final EIS is scheduled to be completed by April 1994.

Dated: September 30, 1993.

Sandra H. Key,

Forest Supervisor.

[FR Doc. 93–24678 Filed 10–6–93; 8:45 am]

BILLING CODE 3410–11–M

Food and Nutrition Service

National Advisory Council on Maternal, Infant and Fetal Nutrition; Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Council meeting:

Name: National Advisory Council on Maternal, Infant and Fetal Nutrition

Date and Time: October 20–22, 1993, 9 a.m.

Place: Food and Nutrition Service, 3101 Park Center Drive, 4th Floor Conference Room, Alexandria, Virginia 22302.

Purpose of Meeting: The Council will continue its study of the Special Supplemental Food Program for Women, Infants and Children (WIC) and the Commodity Supplemental Food Program (CSFP).

Agenda: The agenda items will include the following: formulation of recommendations for the Councils 1994 report to the President and Congress; and discussion of general program operations. Recommendations for the report will address administrative and legislative changes for the WIC and CSF Programs.

Meetings of the Council are open to the public. Members of the public may participate, as time permits. Members of the public may file written statements with the Council before or after the meeting.

Persons wishing additional information about this meeting should contact Tama Eliff, Supplemental Food Programs Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 540, Alexandria, Virginia 22302. Telephone: (703) 305–2730.

Dated: September 24, 1993.

George A. Braley,

Acting Administrator.

[FR Doc. 93–24577 Filed 10–6–93; 8:45 am]

BILLING CODE 3410–30–M

Foreign Agricultural Service

Import Limitation; Country of Origin Quota Adjustment

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice of country of origin adjustment for certain chocolate crumb from Australia.

SUMMARY: This notice adjusts the country of origin for the quota quantity of chocolate crumb containing over 5.5 percent of butterfat (except for retail) assigned to Australia.

EFFECTIVE DATE: October 12, 1993.

FOR FURTHER INFORMATION CONTACT: Richard P. Warsack, Dairy Import Quota Manager, Import Policies and Trade Analysis Division, Foreign Agricultural Service, Room 5531 South Building, Department of Agriculture, Washington, DC 20250–1000 or telephone at (202) 720–2916.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be "nonmajor" since it will not have any of the significant effects specified in those documents. Furthermore, to the extent, if any, that the provisions of the Regulatory Flexibility Act (5 U.S.C. 601) apply to this notice, the Administrator, Foreign Agricultural Service, hereby certifies that this notice will not have a significant economic impact on a substantial number of small entities. The adjustment of the country of origin from which the quota article specified herein may be entered does not restrict the ability of importers to import this quota article, but only permits the unused quota quantity of the article allocated to Australia to be imported from other countries.

Notice

Subchapter IV of chapter 99 of the Harmonized Tariff Schedule of the United States (HTS) contains import limitations imposed on certain dairy products, including certain chocolate crumb. U.S. Note 3(a)(iii) of subchapter IV of chapter 99 of the HTS permits the reallocation of the quota quantity of a dairy article listed in chapter 99 among the countries of origin specified for a given article if it is determined that the quota quantity assigned to a particular country is not likely to be entered from that country within a given calendar year. I hereby determine that it is not likely that the quantity of chocolate crumb containing over 5.5 percent butterfat specified in HTS subheading 9904.10.63 for Australia will be entered from that country during calendar year 1993.

Notice is hereby given that the 1993 unused quota quantity for chocolate crumb containing over 5.5 percent butterfat specified in HTS subheading 9904.10.63 for Australia may be imported from Australia, Ireland, the Netherlands, New Zealand and the United Kingdom for the remainder of the 1993 quota year.

The entire quota quantity for HTS subheading 9904.10.63 will revert to Australia on January 1, 1994.

Issued at Washington, DC, this 30th day of September 1993.

Richard B. Schroeter,

Administrator.

[FR Doc. 93–24597 Filed 10–6–93; 8:45 am]

BILLING CODE 3410–10–M

COMMISSION OF FINE ARTS

Meeting

The Commission of Fine Arts' next meeting is scheduled for 21 October 1993 at 10 a.m. in the Commission's offices in the Pension Building, Suite 312, Judiciary Square, 441 F Street, NW., Washington, DC 20001 to discuss various projects affecting the appearance of Washington, DC, including buildings, memorials, parks, etc.; also matters of design referred by other agencies of the government.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, DC, 29 September 1993.

Donald B. Myer,

Assistant Secretary for Charles H. Atherton, Secretary.

[FR Doc. 93–24578 Filed 10–6–93; 8:45 am]

BILLING CODE 6330–01–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Agency Information Collection Activities

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related form may be obtained by contacting the agency representative at the phone number listed below. Comments and suggestions on the requirements should be made directly to the agency representative and the Office of Management and Budget Office of Information and Regulatory Affairs, Washington, DC 20503, telephone 202–395–7340.

Title: A Survey of the Relationship Between Participating JWOD Agencies and Small Businesses.

Frequency: One time only.

Affected Public: Nonprofit agencies participating in the JWOD Program.

Reporting Burden: Responses—152; Burden hours—608.

Recordkeeping Burden: none.

Abstract: As part of a larger study, the survey will document the relationship between participating nonprofit JWOD agencies and small businesses. Data will be used to respond to criticism about unfair competition, educate Congress and others, and help agencies expand their working relationships with small businesses. Respondents are participating nonprofit JWOD agencies.

Agency Representative: Rebecca L. Smith, 703–603–7740.

Dated: September 30, 1993.

Beverly L. Milkman,

Executive Director.

[FR Doc. 93–24616 Filed 10–6–93; 8:45 am]

BILLING CODE 6820–33–M

DEPARTMENT OF COMMERCE

Office of the Secretary

Performance Review Boards; Membership

Below is a listing of individuals who are eligible to serve on the Performance Review Board in accordance with the Office of the Secretary Senior Executive Service (SES) Performance Appraisal System:

Hugh L. Brennan
Iain S. Baird
Gilbert Colon
Anthony A. Das
David L. Edgell
Barbara S. Fredericks
James V. Hackney
Robert F. Kugelman
Melissa A. Moss

H. James Reese,

Executive Secretary, Office of the Secretary Performance Review Board.

[FR Doc. 93–24679 Filed 10–6–93; 8:45 am]

BILLING CODE 3510–BS–M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Economic Analysis
Title: Institutional Remittances to Foreign Countries (BE–40)
Form number: Agency—BE–40; OMB—0608–0002
Type of request: Extension of the expiration date of a currently approved collection
Burden: 414 respondents; 1296 reporting hours
Average hours per response: 1.5 hours
Needs and uses: The survey is required in order to obtain comprehensive initial data concerning the transfer (gifts, grants, donations, etc.) by private nonprofit U.S. institutions to foreign countries. The data are needed primarily to compile the U.S. international accounts.
Affected public: Non-profit Institutions
Frequency: Quarterly for institutions transferring $1 million or more each year, annually for all others.
Respondent's obligation: Voluntary
OMB desk officer: Paul Bugg, 395–7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 482–3271, Department of Commerce, room H5327, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Paul Bugg, OMB Desk Officer, room 3228, New Executive Office Building, Washington, DC 20503.

Dated: October 1, 1993.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 93–24700 Filed 10–6–93; 8:45 am]

BILLING CODE 3510–CW–M

International Trade Administration

[A–580–008]

Color Television Receivers From the Republic of Korea; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration/ Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests by the petitioners, a domestic party, and certain respondents, the Department of Commerce is conducting an administrative review of the antidumping duty order on color television receivers from the Republic of Korea. The review covers exports of this merchandise to the United States during the period April 1, 1991, through March 31, 1992. Based on our review of these exports, we preliminarily find the existence of dumping margins.

We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: October 7, 1993.

FOR FURTHER INFORMATION CONTACT: Matt Gaisford or Zev Primor, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–5253.

SUPPLEMENTARY INFORMATION:

Background

The United Electrical Workers of America, Independent, International Brotherhood of Electrical Workers, International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, AFL–CIO, and Industrial Union Department, AFL–CIO (the Unions), the petitioners in this proceeding, Zenith Electronics Corporation (Zenith), a domestic interested party, and two respondents, Goldstar Co., Ltd. (Goldstar) and Daewoo Electronics Co., Ltd. (Daewoo), requested an administrative review of the antidumping duty order on color television receivers (CTVs), complete or incomplete, from Korea (49 FR 18336, April 30, 1984) in accordance with 19 CFR 353.22(a). On May 22, 1992, the Department of Commerce (the Department) published a notice of initiation of this review which covers seven manufacturers/exporters for the period April 1, 1991, through March 31, 1992 (57 FR 21769). The Department is now conducting this review pursuant to section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

The review covers seven manufacturers/exporters for the period April 1, 1991, through March 31, 1992. On August 3, 1992, we received questionnaire responses from Daewoo, Goldstar, and Samwon Electronics, Inc., (Samwon). Two companies, Tongkook General Electronics, Inc., and Cosmos Electronics Manufacturing Korea, Ltd., did not respond to our requests for information. When a company fails to provide the information requested in a timely manner, the Department considers the company uncooperative and generally assigns to that company the higher of (a) the highest rate assigned to any company in any previous review, including the less-than-fair-value investigation (LTFV), or (b) the highest rate for a responding company with shipments during the period of review (POR). Therefore, we have used the highest rate from the LTFV investigation or any prior review as the best information available (BIA) in determining the margins for these two companies for this review, because this rate is higher than the highest rate in the current review. Two other companies, Samsung Electronics Co., Ltd., and Quantronics Manufacturing Korea, Ltd., responded to the Department that they had no sales during the POR.

On September 18, 1992, the Department accepted petitioners' allegations that Daewoo's home market sales were below the cost of production (COP). We issued a COP questionnaire to Daewoo on October 14, 1992. Daewoo responded to the COP questionnaire on November 4, 1992. From December 7, 1992 through December 17, 1992, the Department conducted a verification of Goldstar's, Samwon's, and Daewoo's questionnaire responses including Daewoo's COP response.

Scope of Review

The products covered by this review include color television receivers, complete and incomplete, from the Republic of Korea. The order covers all CTVs regardless of tariff classification. During the POR, the subject merchandise was classified under Harmonized Tariff Schedule (HTS) item numbers 8528.10.60 and 8528.20.00. The HTS item numbers are provided for convenience and Customs purposes only. The written description remains dispositive as to the scope of the product coverage.

United States Price

We based U.S. price on purchase price (PP), where sales were made directly to unrelated parties prior to importation into the United States, in accordance with section 772(b) of the Tariff Act, and on exporter's sales price (ESP), where sales to the first unrelated purchaser took place after importation into the United States, in accordance with section 772(c) of the Tariff Act. For PP sales, we made adjustments for Korean wharfage, ocean freight, Korean inland freight, Korean brokerage and handling, EIAK export fee, U.S. container delivery, marine insurance, import duties, U.S. brokerage, U.S. customs processing fee, U.S. harbor maintenance fee, duty drawback and commissions.

In calculating ESP, we made adjustments for Korean wharfage, Korean inland freight, ocean freight, Korean brokerage and handling, U.S. import duties, U.S. brokerage, EIAK export fee, commissions, return commissions, marine insurance, U.S. customs processing fee, U.S. harbor maintenance fee, U.S. container delivery, direct warranty (service center), direct warranty (supplied parts), U.S. credit cost, U.S. royalty, duty drawback, U.S. delivery costs, U.S. presale warehousing, rebates and indirect selling expenses. Indirect selling expenses include indirect selling expenses incurred in the United States and Korea, return set loss (parts), return set loss (sales), inventory carrying costs and indirect advertising.

Further, on March 19, 1993, the United States Court of Appeals for the Federal Circuit, in affirming the decision in *Zenith Electronics Corp.* v. *United States*, Appeals 92–1043, –1044, –1045, –1046 (Fed. Cir. March 19, 1993), ruled that section 772(d)(1)(C) of the Tariff Act provides for an addition to U.S. price to account for taxes which the exporting country would have assessed on the merchandise had it been sold in the home market, and that section 773(a)(4)(B) of the Tariff Act does not allow circumstance-of-sale adjustments to foreign market value (FMV) for the difference in taxes. Accordingly, we have changed our practice and will no longer calculate a hypothetical tax on the U.S. product, but will add to the U.S. price the absolute amount of tax on the comparison merchandise sold in the country of exportation. By adding the amount of home market tax to U.S. price, absolute dumping margins are not

inflated or deflated by differences between taxes included in FMV and those added to U.S. price.

In addition, we will propose a change in 19 CFR 353.2(f)(2) to provide that we will calculate weighted-average dumping margins by dividing the aggregated dumping margins, calculated as described above, by the aggregated U.S. prices net of taxes. This change would result in weighted-average dumping margin rates which are neither inflated nor deflated on account of our methodology of accounting for taxes paid in the home market but rebated or not collected by reason of exportation. We are in the process of drafting this proposed change, and we will begin the rulemaking process as soon as possible.

Foreign Market Value

In accordance with section 773(a)(1)(A) of the Tariff Act, we used home market prices to unrelated purchasers in calculating FMV for Goldstar, Daewoo and Samwon. We used constructed value (CV) in accordance with section 773(a)(2) of the Tariff Act for Daewoo for home market sales of one model.

As noted above, petitioners alleged that Daewoo sold CTVs in the home market at prices below their COP. We considered the allegation sufficient to warrant an investigation of possible home market sales below the COP. As a result of the investigation, we found less than 10 percent of the sales of most models below cost. Therefore, these sales have not been eliminated from the home market data base. However, for one model we did find between 10 percent and 90 percent of sales were made at prices below the COP and over an extended period of time. Furthermore, no evidence was presented to indicate that below-cost COP prices would permit recovery of all costs within a reasonable period of time in the normal course of trade. Therefore, we disregarded the below COP sales of that model. Subsequently, where we were not able to find contemporaneous sales of that model in the home market to compare with sales of its comparison model in the United States, either within the same month of the U.S. sales or 90 days before or 60 days after that month the Department based FMV on CV, as described in section 773(e) of the Tariff Act.

To calculate FMV, we made adjustments for discounts and rebates, inland freight, direct selling expenses, differences in the physical characteristics of the merchandise, and differences in packing costs. In making the adjustment for differences in the physical characteristic of the merchandise, we used the information as submitted by respondents.

For comparisons to PP sales, we made adjustments for home market indirect selling expenses, limited to the amount of net commissions incurred on U.S. sales in accordance with 19 CFR 353.56(b)(1).

For comparisons to ESP sales, we also made adjustments for indirect selling expense incurred in the home market. We limited the amount deducted for indirect selling expenses incurred in the home market by the amount of indirect selling expenses incurred on U.S. sales in accordance with 19 CFR 353.56(b)(2).

Preliminary Results of Review

As a result of our review, we preliminarily determine the weighted-average dumping margins for the period April 1, 1991, through March 31, 1992, to be:

Manufacturer/exporter	Margin percentage
Daewoo Electronics Co., Ltd	0.46
Goldstar Electronics Co., Ltd	0.00
Samwon Electronics, Inc	0.53
Cosmos Electronics Manufacturing Korea	16.57
Quantronics Manufacturing Korea, Ltd	[1] 3.63
Samsung Electronics Co., Ltd	[1] 0.37
Tangkook General Electronics, Inc	16.57

[1] No shipments; rate from previous review.

Case briefs and/or written comments from interested parties may be submitted no later than 30 days after the date of publication of this notice. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed no later than 37 days after the date of publication of this notice.

Within 10 days of the date of publication of this notice, interested parties to this proceeding may request a disclosure and/or a hearing. The hearing, if requested, will take place no later than 44 days after publication of this notice. Persons interested in attending the hearing should contact the Department for the date and time of the hearing.

The Department will subsequently publish the final results of this administrative review, including the results of its analysis of issues raised in any such written comments or a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate appraisement instructions directly to Customs Service upon completion of this review.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed companies will be those rates established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise.

On March 25,1993, the Court of International Trade (CIT), in *Floral Trade Council* v. *United States*, Slip Op. 93–79, and *Federal-Mogul Corporation* v. *United States*, Slip Op. 93–83, decided that once an "all others" rate is established for a company, it can only be changed through an administrative review. The Department has determined that in order to implement these decisions, it is appropriate to reinstate the original "all others" rate from the LTFV investigation (or that rate as amended for correction of clerical errors or as a result of litigation) in proceedings governed by antidumping duty orders. In proceedings governed by antidumping findings, unless we are able to ascertain the "all others" rate from the Treasury LTFV investigation, the Department has determined that it is appropriate to adopt the "new shipper" rate established in the first final results of administrative review published by the Department (or that rate as amended for correction of clerical errors or as a result of litigation) as the "all others" rate for the purposes of establishing cash deposits in all current and future administrative reviews.

Because this proceeding is governed by an antidumping duty order, the "all others" rate for the purposes of this review will be 13.90 percent, the "all others" rate established in the LTFV investigation (49 FR 7620, March 1, 1984).

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties

prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act and 19 CFR 353.22.

Dated: September 30, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–24701 Filed 10–6–93; 8:45 am]

BILLING CODE 3510–DS–P

[A–588–028]

Roller Chain, Other Than Bicycle, From Japan Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: In response to a request from the American Chain Association, the petitioner in this proceeding, the Department of Commerce has conducted an administrative review of the antidumping finding on roller chain, other than bicycle, from Japan. The review covers four manufacturers/exporters of this merchandise to the United States and the period April 1, 1991 through March 31, 1992.

We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received, we have revised the results from those presented in our preliminary results.

EFFECTIVE DATE: October 7, 1993.

FOR FURTHER INFORMATION CONTACT: Tom Prosser or Wendy J. Frankel, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–1130.

SUPPLEMENTARY INFORMATION:

Background

On February 25, 1993, the Department of Commerce (the Department) published in the **Federal Register** (58 FR 11397) the preliminary results of its administrative review of the antidumping finding on roller chain, other than bicycle, from Japan (38 FR 9226; April 12, 1973). The Department has now completed this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of the Review

Imports covered by the review are shipments of roller chain, other than bicycle, from Japan. The term "roller chain, other than bicycle," as used in this review includes chain, with or without attachments, whether or not plated or coated, and whether or not manufactured to American or British standards, which is used for power transmission and/or conveyance. Such chain consists of a series of alternately-assembled roller links and pin links in which the pins articulate inside the bushings and the rollers are free to turn on the bushings. Pins and bushings are press fit in their respective link plates. Chain may be single strand, having one row of roller links, or multiple strand, having more than one row of roller links. The center plates are located between the strands of roller links. Such chain may be either single or double pitch and may be used as power transmission or conveyer chain.

This review also covers leaf chain, which consists of a series of link plates alternately assembled with pins in such a way that the joint is free to articulate between adjoining pitches. This review further covers chain model numbers 25 and 35. Roller chain is currently classified under the Harmonized Tariff Schedule (HTS) subheadings 7315.11.00 through 7619.90.00. HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers Hitachi Metals Techno Ltd. (Hitachi), Izumi Chain Manufacturing Co., Ltd. (Izumi), Pulton Chain Co., Ltd. (Pulton), and R.K. Excel (Excel), for the period April 1, 1991 through March 31, 1992. On July 6, 1992, the American Chain Association (ACA), the petitioner in this proceeding, submitted a timely withdrawal of its request for review for Sugiyama Chain Co., Ltd. (Sugiyama). Accordingly, we terminated our review of Sugiyama.

Pursuant to a preliminary injunction and order issued by the Court of International Trade (CIT), we have suspended our review of two additional manufacturer/exporters, Daido Kogyo Co., Ltd./Daido Corporation and Enuma Chain Manufacturing Co., Ltd./Daido Corporation. *Daido Corporation* v. *United States*, 807 F.Supp. 1571 (CIT, November 25, 1992). These companies will be reviewed separately, and their final results will be published in a later notice.

Analysis of Comments Received

Comment 1

Petitioner asserts that the Department must recalculate the Japanese value-added tax (VAT) adjustment for all three companies, in accordance with the opinion of the CIT in *Federal-Mogul Corp.* v. *United States*, Slip. Op. 93–7 (February 4, 1993).

Petitioner argues that the Japanese VAT rate should be multiplied by net U.S. and home market prices, and that the Department should ensure that the amount added to each U.S. sale is less than or equal to the amount added to comparable home market sales.

Izumi contends that this tax issue has not yet been the subject of a final decision by the Court of Appeals for the Federal Circuit, and argues that the Department should continue to calculate the VAT adjustment as it did for the preliminary results.

Department's Position

We agree in part with petitioner. On March 19, 1993, the United States Court of Appeals for the Federal Circuit, in affirming the decision in *Zenith Electronics Corp.* v. *United States* (*Zenith Electronics* v. *United States*), Appeals 92–043, –1044, –1045, 1046 (Fed. Cir. March 19, 1993), ruled that section 772(d)(1)(C) of the Tariff Act provides for an addition to U.S. price to account for taxes which the exporting country would have assessed on the merchandise had it been sold in the home market, and that Section 773(a)(4)(B) of the Tariff Act does not allow circumstance-of-sale adjustments to foreign market value (FMV) for differences in taxes. Accordingly, we have changed our practice and will no longer calculate a hypothetical tax on the U.S. product, but will, for the time being, add to the U.S. price the absolute amount of tax on the comparison merchandise sold in the country of exportation. By adding the amount of home market tax to U.S. price, absolute dumping margins are not inflated or deflated by differences between taxes included in FMV and those added to U.S. price (*Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Steel Flat Products From Argentina; et al.*; 58 FR 37062, July 9, 1993).

In addition, we will propose a change in 19 CFR 353.2(f)(2) to provide that we will calculate weighted-average dumping margins by dividing the aggregated dumping margins, calculated as described above, by the aggregated U.S. prices net of taxes.

This change would result in weighted-average dumping margin rates

which are neither inflated nor deflated on account of our methodology of accounting for taxes paid in the home market but rebated or not collected by reason of exportation. We are in the process of drafting this proposed change, and we will begin the rulemaking process as soon as possible.

Comment 2

Citing section 353.45(a) of the Department's regulations, petitioner argues that the Department must determine whether certain home market sales made by Izumi to a related party were made at arm's length. Petitioner contends that the Department should create a computer program to test whether the sales to the related party were arm's-length transactions, arguing that if a substantial portion of these sales were not made at arm's length, then the transactions must be disregarded in the calculation of FMV.

Citing section 353.45(b) of the Department's regulations, petitioner also argues that even if the sales at issue appear to be arm's-length transactions, the Department may decide to calculate FMV based on the subsequent resale prices of the related party.

Petitioner additionally claims that the Department cannot complete the administrative review of Izumi without determining whether any roller chain sold to related parties in the home market was subsequently resold to customers in the United States. Petitioner submits that the Department should require the related party in question to certify that no roller chain purchased from Izumi was resold to the United States during the 1991–992 administrative review period. Citing *Roller Chain, Other Than Bicycle, From Japan*, 55 FR 42602 (October 22, 1990), and *Roller Chain, Other Than Bicycle, From Japan*, 55 FR 42608 (October 22, 1990), petitioner contends that the Department must either obtain further information concerning these issues or reject the home market portion of Izumi's response and assign a margin based on the best information available (BIA).

Izumi asserts that it accurately reported all sales for export to the United States during the period of review. Izumi also argues that there is no record evidence to support petitioner's allegation that Izumi's home market sales listing is inaccurate or that any sales to its home market customers were intended for export.

Citing *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France; et al., Final Results of Administrative Review*, 57 FR 28360 (June 24, 1992), Izumi asserts that the Department has rejected allegations in the past when they lack supporting evidence. Citing *China National Arts & Crafts* v. *United States*, 15 CIT 417, 771 F.Supp. 407 (August 15, 1991), Izumi claims that mere speculation cannot form a reasonable basis for a determination. Izumi contends that making sales to a related company demonstrates nothing, and that the Department's regulations specifically allow for the use of sales to related parties if such sales are made at arm's length.

Izumi claims that none of the home market sales in question could have become exporter's sales price (ESP) sales because there are no U.S. importers or other parties which are related to Izumi according to the definitions of an exporter found in section 771(13) of the Tariff Act.

In addition, Izumi states that none of the home market sales at issue could have been purchase price (PP) sales because there is no evidence that it knew, or should have known, that any of its home market sales were intended for export. Citing *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof, from the Federal Republic of Germany*, 56 FR 31692 (July 11, 1991), Izumi asserts that the Department cannot conclude that the home market sales to a related party are PP sales absent evidence that Izumi knew, or should have known, that any of its home market sales were intended for export.

Izumi contends that petitioner's demand for certification by the related home market customer is irrelevant because Izumi had no knowledge of the destination of the merchandise sold to the related party, and Izumi had no control over the merchandise once it had been sold. Citing *Television Receivers, Monochrome and Color, from Japan; Final Results of Administrative Review*, 58 FR 11211 (February 24, 1993), Izumi claims that it cannot be considered the exporter without evidence that it had knowledge that the merchandise would be subsequently sold to the United States.

Izumi also claims that there is no basis for the application of a rate based solely on BIA. Izumi argues that it has submitted complete and timely responses to the Department's questionnaire and supplemental requests for information, and that it has done nothing to impede the Department's review. Citing *Roller Chain, Other Than Bicycle, From Japan*, 57 FR 56319 (November 27, 1992), and *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France; et al., Final Results of Administrative Review*, 57 FR 28360 (June 24, 1992), and other cases, Izumi asserts that the Department should (1) disregard home market sales to related parties which are not arm's-length transactions in the calculation of FMV, (2) base FMV on constructed value (CV) where no contemporaneous home market sales to unrelated purchasers are available, and (3) use BIA as the basis for FMV only where no contemporaneous home market sales or CV data are available.

Department's Position

We agree with petitioner in part. Petitioner is correct in that the Department must be satisfied that certain home market sales made by Izumi to a related party were made at arm's length. We also agree that if these sales were not made at arm's length, then the transactions must be disregarded in our calculation of FMV. It is our practice to use sales to related customers only where we determine such sales are made at arm's length, *i.e.*, at prices comparable to prices at which the firm sold identical merchandise to unrelated customers. We have created a computer program to test whether the sales to the related party in question were arm's-length transactions, and we have determined that these sales were not made at arm's length. As a result, we have disregarded these sales in our calculation of FMV.

We disagree with petitioner's claim that the Department cannot complete the administrative review of Izumi without determining whether any roller chain sold to the related party in the home market was subsequently resold to the United States. We also disagree with petitioner's claim that the Department should require the related party in question to certify that no roller chain purchased from Izumi was resold to the United States during the 1991–992 administrative review period. Izumi has certified that the information it submitted, including its home market and U.S. sales listings and its sales and distribution systems, is complete and accurate. Because there are no U.S. importers or parties which are related to Izumi, according to the definitions of an exporter found in section 771(13) of the Tariff Act, Izumi correctly points out that the only way these home market sales could ultimately be viewed as PP sales is if Izumi knew, or should have known, that any of its home market sales were intended for export. There is no information on the record on which to conclude that merchandise sold to related parties in the home market was subsequently resold to the United States, or that Izumi knew or should

have known the ultimate destination of the sales at issue.

Finally, petitioner's argument that we must either obtain additional information or apply BIA is misplaced. The 1988–989 review, cited by petitioner in support of this argument, was one in which we stated that there was no basis on which to calculate FMV. Because this review may be completed with data already on the record (home market sales to unrelated parties and CV), there is no need for additional information. We have disregarded home market sales to related parties in the calculation of FMV because they were not made at arm's length. Furthermore, we have based FMV on CV where no contemporaneous home market sales to unrelated purchasers are available. All of Izumi's FMVs were derived from either contemporaneous home market sales or CV.

Comment 3

Petitioner argues that Excel's home market technical service costs should be treated as indirect selling expenses because the questionnaire response does not clearly indicate whether all of the expenses were incurred during the period of review and whether the expenses were incurred exclusively on roller chain transactions. Petitioner further argues that certain fixed costs included in Excel's technical services claim should be treated as indirect selling expenses.

Excel submits that its allocation methodology (dividing technical service expenses incurred during the period by total sales during the period) is reasonable and identical to that used in prior reviews. Excel also claims that all of the technical service costs were directly related to sales.

Department's Position

We agree in part with petitioner. We are satisfied that the methodology used by Excel to allocate home market technical service expenses (on the basis of sales value) is reasonable. In addition, we have treated the travel portion of Excel's technical service costs as a direct selling expense, because these expenses would not have been incurred absent the sale of subject merchandise. We agree with petitioner, however, that fixed costs associated with technical services (salaries, benefits, and automobile depreciation), following our longstanding practice, should be treated as indirect selling expenses, and we have adjusted our calculations accordingly.

Comment 4

Citing section 353.56(a)(2) of the Department's regulations, petitioner claims that the Department should revise Excel's home market direct advertising claim so as to treat the expenses associated with direct media advertising and calendars, stickers, and posters as indirect selling expenses. Petitioner further claims that if the Department cannot make these adjustments based on information in the record, then the entire home market advertising claim should be treated as an indirect expense.

Petitioner maintains that the examples of direct media advertising provided by Excel in its questionnaire response are examples of institutional advertising, which is targeted broadly to benefit the overall firm rather than a specific product, and therefore should not be deducted from FMV as a direct expense.

Citing *Certain Small Business Telephone Systems and Subassemblies Thereof from Japan*, 57 FR 4949 (February 11, 1992), petitioner argues that the Department has treated home market advertising costs as indirect expenses where respondents have failed to identify the medium in which the advertisements were placed.

In addition, petitioner notes that the English phrase "Made in Japan" appears in small script on one of Excel's home market advertising examples. Petitioner argues that such a phrase suggests that the advertisement in question may not have been directed at Japanese home market customers.

Petitioner submits that there is no evidence that the calendars, stickers, and posters were provided to Excel's customers' customers. Petitioner claims that such promotional merchandise is given away by salesmen to their own customers, and petitioner argues that the costs associated with such items should be treated as indirect selling expenses.

Excel asserts that the advertising samples in its questionnaire response specifically advertise chain, as opposed to the other products manufactured by Excel. Excel contends that its questionnaire response identifies the media in which the advertisements at issue were placed. Excel additionally contends that it only submitted home market advertising expenses for sales of roller chain.

Excel states that it chose to have all promotional materials for chain, regardless of market, printed in English. Excel argues that a single printing is economical, and that using the English phrase "Made in Japan" fosters an impression of quality to customers in Japan. Excel also argues that many Japanese companies use English in their logos for the Japanese market, including the "Made in Japan" phrase.

Excel asserts that the expenses in question are for advertising and sales promotion directed at second-level customers or end-users. According to Excel, promotional items such as calendars, stickers, watches, and tee-shirts are promotional devices for the end-user and retailer markets. In addition, Excel argues that it answered every question concerning advertising in the Department's May 22, 1992, questionnaire, and that neither the petitioner nor the Department requested additional information.

Department's Position

We disagree with petitioner. Excel manufactures merchandise other than roller chain, specifically, rims, wheels, and hinges, yet the advertisements referred to by petitioner as examples of institutional advertising actually include the word "chain". We view these advertisements as product-specific, rather than institutional, and have accepted the associated expenses as direct expenses.

Petitioner is incorrect in claiming that Excel failed to identify the medium in which Excel's advertisements appeared. Excel listed each type of advertising it used in Appendix B–5f–2 of its July 27, 1992, questionnaire response.

We are satisfied with Excel's explanations concerning the use of English in its home market advertisements. It is not uncommon for Japanese companies to use English in their home market advertising, as noted by Excel, and there is no additional information on the record from which to conclude that Excel's home market advertising was not directed at the customers of Excel's customers.

We are also satisfied with Excel's explanations concerning the ultimate targeting of its promotional materials. There is no information on the record from which to conclude that the promotional materials at issue were not directed at end-users. We have, therefore, accepted Excel's advertising and sales promotion expenses as direct expenses.

Final Results of the Review

As a result of our analysis of the comments received, we determine that the following weighted-average margins exist for the April 1, 1991 through March 31, 1992 period:

Manufacturer/exporter	Margin (percent)
Hitachi Metals Techno, Ltd	[1] 12.68
Izumi	0.38
Pulton Chain	0.00
RK Excel (Takasago)	0.03

[1] No shipments during the period. Rate is from the last period in which there were shipments.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between USP and FMV may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of roller chain, other than bicycle, from Japan entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rates for Izumi, Pulton Chain, and RK Excel will be zero (0.00) because the margins for these firms are *de minimis*. The cash deposit rate for Hitachi will be 12.68 percent; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in previous reviews or the original less-than-fair-value (LTFV) investigation, the cash deposit rate will continue to be the rate published in the most recent final results or determination for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in this review, earlier reviews, or the LTFV investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of this review, earlier reviews, or the LTFV investigation, whichever is the most recent; (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be the "new shipper" rate established in the first review conducted by the Department in which a "new shipper" rate was established, as discussed below.

On May 25, 1993, the CIT in *Floral Trade Council* v. *United States*, Slip Op. 93–79, and *Federal-Mogul Corporation and the Torrington Company* v. *United States*, Slip Op. 93–83, decided that once an "all others" rate is established for a company it can only be changed through an administrative review. The Department has determined that in order to implement these decisions, it is appropriate to reinstate the "all others" rate from the LTFV investigation (or that rate as amended for correction or clerical errors as a result of litigation) in proceedings governed by antidumping duty orders. In proceedings governed by antidumping findings, unless we are able to ascertain the "all others" rate from the Treasury LTFV investigation, the Department has determined that it is appropriate to adopt the "new shipper" rate established in the first final results of administrative review published by the Department (or that rate as amended for correction or clerical errors as a result of litigation) as the "all others" rate for the purposes of establishing cash deposits in all current and future administrative reviews.

Because this proceeding is governed by an antidumping finding, and we are unable to ascertain the "all others" rate from the Treasury LTFV investigation, the "all others" rate for the purposes of this review would normally be the "new shipper" rate established in the first notice of final results of administrative review published by the Department (46 FR 44488, September 4, 1981). However, a "new shipper" rate was not established in that notice. Therefore, the "all others" rate of 15.92 percent comes from *Roller Chain, Other Than Bicycle, from Japan, Final Results of Administrative Review of Antidumping Finding*, 48 FR 51801 (November 14, 1983), the first review conducted by the Department in which a "new shipper" rate was established.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of the APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: September 24, 1993.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–24702 Filed 10–6–93; 8:45 am]

BILLING CODE 3510–05–P

[A–588–028]

Roller Chain, Other Than Bicycle, From Japan Amended Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of amended final results of antidumping duty administrative review.

SUMMARY: We are amending our final results of administrative review of the antidumping finding on roller chain, other than bicycle, from Japan with respect to one firm, RK Excel, to correct ministerial errors.

EFFECTIVE DATE: October 7, 1993.

FOR FURTHER INFORMATION CONTACT: Tom Prosser or Wendy Frankel, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–1130.

SUPPLEMENTARY INFORMATION:

Background

On November 27, 1992, the Department of Commerce (the Department) published in the **Federal Register** (57 FR 56319) the final results of its April 1, 1990 through March 31, 1991, administrative review of the antidumping finding on roller chain, other than bicycle, from Japan (38 FR 9226; April 12, 1973).

RK Excel, a respondent in this proceeding, submitted timely comments concerning certain alleged clerical and ministerial errors in the Department's calculation of RK Excel's final dumping margin. Specifically, RK Excel alleges that the Department inadvertently used a supplemental model-match concordance as a replacement for, rather than in conjunction with, the concordance submitted with RK Excel's questionnaire response. RK Excel argues that as a result of this alleged error, a margin based on the best information

available (BIA) was applied to the U.S. sales lacking contemporaneous home market sales.

In addition, RK Excel observes that a BIA rate was applied to U.S. sales of model GR50SO because no contemporaneous matches of the most similar home market model could be found. RK Excel claims that the failure to find a match was due exclusively to a typographical error whereby the most similar home market model was listed as GB525SM0Z4 rather than GB525SMOZ4 (i.e., a zero was inadvertently used, rather than the letter "O").

Amended Final Results of Review

Based on our analysis of the comments received from RK Excel, we have corrected the ministerial errors noted above and we have amended our final results for the April 1, 1990 through March 31, 1991 period with respect to RK Excel. The amended weighted-average margin for RK Excel is 0.41 percent.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between U.S. price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service. Because the Department has issued final results of review for a subsequent period, this amendment does not affect cash deposit rates for exports of the subject merchandise from Japan.

This notice is in accordance with sections 751(f) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(f)), and 19 CFR 353.28.

Dated: September 7, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–24703 Filed 10–6–93; 8:45 am]

BILLING CODE 3510-DS-P

[A–588–028]

Roller Chain, Other Than Bicycle, From Japan Court of International Trade Decision

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

SUMMARY: On May 19, 1993, the United States Court of International Trade (CIT) affirmed the Department of Commerce's redetermination on remand of the final results of the fifth and sixth administrative reviews of the antidumping duty order on roller chain, other than bicycle, from Japan (55 FR 42602, October 22, 1990, and 55 FR 42608, October 22, 1990). *Sugiyama Chain Co., Ltd.; I&OC of Japan Co., Ltd., and HKK Chain Corporation of America* v. *United States*, (Slip Op. 93–77, May 19, 1993) (*Sugiyama*). The results covered the periods April 1, 1987, through March 31, 1988, and April 1, 1988, through March 31, 1989.

EFFECTIVE DATE: October 7, 1993.

FOR FURTHER INFORMATION CONTACT: Michelle Frederick or Louis Apple, Office of Antidumping Investigations, International Trade Administration, U.S. Department of Commerce, Washington, D.C., 20230; telephone (202) 482–0186 or 482–1769, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 30, 1992, the CIT in *Sugiyama Chain Co., Ltd.; I&OC of Japan Co., Ltd., and HKK Chain Corporation of America* v. *United States*, Slip Op. 90–67 (June 30, 1992), remanded the final results of the fifth and sixth administrative reviews of the antidumping duty order on roller chain, other than bicycle, from Japan (55 FR 42602, October 22, 1990, and 55 FR 42608, October 22, 1990) to the Department for reconsideration. On August 25, 1992, the Court amended its remand ordering the Department to: 1) revise the final results to show channel-specific dumping margins for those distributors that were investigated; and 2) reexamine the selection of home market models for comparisons with purchase price sales and exporter's sales price transactions. On October 16, 1992, the Department submitted its redetermination on remand to the CIT.

In its decision in *Timken Co.* v. *United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), the United States Court of Appeals for the Federal Circuit held that, pursuant to 19 U.S.C. 1516a(e), the Department must publish a notice of a court decision which is not "in harmony" with a Department determination, and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's decision in *Sugiyama* on May 19, 1993, which affirmed the Department's redetermination, constitutes a decision not in harmony with the Department's affirmative final results. Publication of this notice fulfills the *Timken* requirement.

Accordingly, Commerce will continue the suspension of liquidation of the subject merchandise. Further, absent an appeal, or, if appealed, upon a "conclusive" court decision affirming the CIT's opinion, the Department will amend the final affirmative results of roller chain, other than bicycle, from Japan to reflect the amended margins of the Department's redetermination on remand, which were affirmed by the CIT.

Dated: September 29, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–24704 Filed 10–6–93; 8:45 am]

BILLING CODE 3510-DS-P

Quarterly Update to Annual Listing of Foreign Government Subsidies on Articles of Quota Cheese

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Publication of quarterly update to annual listing of foreign government subsidies on articles of quota cheese.

SUMMARY: The Department of Commerce, in consultation with the Secretary of Agriculture, has prepared a quarterly update to its annual list of foreign government subsidies on articles of quota cheese. We are publishing the current listing of those subsidies that we have determined exist.

EFFECTIVE DATE: October 1, 1993.

FOR FURTHER INFORMATION CONTACT: Patricia W. Stroup or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–0983.

SUPPLEMENTARY INFORMATION: Section 702(a) of the Trade Agreements Act of 1979 ("the TAA") requires the Department of Commerce ("the Department") to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of quota cheese, as defined in section 701(c)(1) of the TAA, and to publish an annual list and quarterly updates of the type and amount of those subsidies.

The Department has developed, in consultation with the Secretary of Agriculture, information on subsidies (as defined in section 702(h)(2) of the TAA) being provided either directly or indirectly by foreign governments on articles of quota cheese. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amounts of each subsidy for which information is currently available.

The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of quota cheese to submit such information in writing to the Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

This determination and notice are in accordance with section 702(a) of the TAA.

Dated: September 28, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

APPENDIX.—QUOTA CHEESE SUBSIDY PROGRAMS

Country	Program(s)	Gross[1] subsidy	Net[2] subsidy
Belgium	European Community (EC) Restitution Payments	39.4¢/lb	39.4¢/lb.
Canada	Export Assistance on Certain Types of Cheese	27.1¢/lb	27.1¢/lb.
Denmark	EC Restitution Payments	55.9¢/lb	55.9¢/lb.
Finland	Export Subsidy	88.4¢/lb	88.4¢/lb
France	EC Restitution Payments	55.9¢/lb	55.9¢/lb.
Germany	EC Restitution Payments	59.3¢/lb	59.3¢/lb.
Greece	EC Restitution Payments	0.0¢/lb	0.0¢/lb.
Ireland	EC Restitution Payments	53.7¢/lb	53.7¢/lb.
Italy	EC Restitution Payments	88.4¢/lb	88.4¢/lb.
Luxembourg	EC Restitution Payments	39.4¢/lb	39.4¢/lb.
Netherlands	EC Restitution Payments	42.1¢/lb	42.1¢/lb.
Norway	Indirect (Milk) Subsidy	17.1¢/lb	17.1¢/lb.
	Consumer Subsidy	37.8¢/lb	37.8¢/lb.
		54.9¢/lb	54.9¢/lb.
Portugal	EC Restitution Payments	41.4¢/lb	41.4¢/lb.
Spain	EC Restitution Payments	45.8¢/lb	45.8¢/lb.
Switzerland	Deficiency Payments	134.7¢/lb	134.7¢/lb.
U.K.	EC Restitution Payments	40.6¢/lb	40.6¢/lb.

[1] Defined in 19 U.S.C. 1677(5).
[2] Defined in 19 U.S.C. 1677(6).

[FR Doc. 93–24705 Filed 10–6–93; 8:45 am]
BILLING CODE 3510–DS–P

[C–301–601]

Miniature Carnations From Colombia; Preliminary Results of Countervailing Duty Administrative Review and Intent Not To Terminate Suspended Investigation

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review and intent not to terminate suspended investigation.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the agreement suspending the countervailing duty investigation on miniature carnations from Colombia. The review covers the period Jaunary 1, 1988 through December 31, 1990 and seven programs. On January 31, 1991, the Government of Colombia (GOC) requested termination of the suspended investigation based on abolishment of the programs for a period of at least three consecutive years, in accordance with 19 CFR 355.(a)(1) and 355.25(b)(1). Therefore, we examined the programs to determine if each program had been abolished for a period of at least three years. We preliminarily determine that the GOC and the signatories/exporters of miniature carnations have complied with the terms of the suspension agreement. However, we preliminarily determine that the GOC has not eliminated each program for a period of at least three consecutive years. Therefore, we preliminarily determine that the GOC has not met all the requirements for termination of the suspended countervailing duty investigation on miniature carnations as outlined in the Commerce Regulations.

For the purpose of revoking a countervailing duty order or terminating a countervailing duty suspension agreement based on three consecutive years of elimination of all subsidies pursuant to 19 CFR 355.25(a)(1), it is the Department of Commerce current policy that administrative reviews must be requested and conducted for each of three consecutive years. See Memorandum from Joseph A. Spetrini, Deputy Assistant Secretary for Compliance, to Alan M. Dunn, Assistant Secretary for Import Administration, of December 14, 1992, which fully describes this issue. Although this case predates the above policy, consecutive administrative reviews were requested and conducted for miniature carnations, covering the calendar years 1988, 1989, and 1990. We invite interested parties to comment on these results.

EFFECTIVE DATE: October 7, 1993.

FOR FURTHER INFORMATION CONTACT: Robert Bolling or Melissa Skinner, Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–3793.

SUPPLEMENTARY INFORMATION:

Background

On January 17, 1991, the Department published a notice of "Opportunity to Request an Administrative Review" (56 FR 1793). On January 31, 1991, the GOC requested a termination administrative review of the agreement suspending the countervailing duty investigation covering miniature carnations (52 FR 1353; January 13, 1987) under 19 CFR 355.25(a)(1) and 355.25(b)(1). On March 5, 1991, the Department initiated this review, covering the period January 1, 1988 through December 31, 1990 (56 FR 9196). The Department is now

conducting this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act), and 19 CFR 355.22 and 355.25.

Scope of Review

Imports covered by this review are shipments of miniature carnations from Colombia. During the review period the merchandise covered by this suspension agreement was classifiable under Harmonized Tariff Schedule (HTS) item number 0603.10.30. The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 1, 1988 through December 31, 1990, and seven programs: (1) Tax Reimbursement Certificate Program; (2) The Fund for the Promotion of Export Loans (working- and fixed-capital); (3) Plan Vallejo; (4) Free Industrial Zones; (5) Export Credit Insurance; (6) Countertrade; and (7) Research and Development. We visited three producers/exporters of the subject merchandise, Floramerica, Inc. (Floramerica), Minispray, Inc. (Minispray), and Agropecuria Cuernavaca (Cuernavaca) (collectively, the three companies) to verify the accuracy of the government responses.

Analysis of Programs

(1) Tax Reimbursement Certificate Program

The Certificado de Reembolso Tributario (CERT) or Tax Reimbursement Certificate program permits exporters to receive a full or partial rebate on indirect taxes based on the value of their exports of specific products to specific destinations. Decree 107, issued by the Colombian Government in January 1987, set the level of CERT payments at zero percent for exports of the subject merchandise to the United States and Puerto Rico. Shipments to the rest of the world were eligible for CERT payments of nine percent. In July 1988, the Ministry of Economic Development issued Decree 1374, which maintained a zero percent rate for shipments of the subject merchandise to the United States and Puerto Rico and reduced the rate for the rest of the world to five percent.

CERT payments are received in the following manner: the exporter applies for CERTs after exportation of the merchandise by preparing a form for the commercial bank to present to the Banco de la Republica (Central Bank). The form indicates the destination and the date of shipment of the merchandise. The commercial bank acts as an intermediary between the exporter and the Central Bank. Other shipment information, such as the port of exportation, is included in this document. After receipt of this form from the commercial bank, the Central Bank verifies the accuracy of the information. After the Central Bank verifies the information and approves the application, it disburses the payment.

Under the terms of the suspension agreement, producers and exporters will not apply for, or receive, tax certificates or other rebates, remissions, or exemptions under the CERT program for exports of the subject merchandise to the United States. At verification, we examined the GOC's accounting records and found that this program was not used by the exporters of the subject merchandise for exports to the United States during the period of review (POR). In addition, we examined the three companies' accounting records which indicated that the companies did not use the program during the POR. Therefore, we preliminarily determine that this program did not confer any countervailable benefits upon exports of the subject merchandise to the United States during the POR. Moreover, since 1987, when the GOC restructured the CERT program, exports of the subject merchandise to the United States are no longer eligible to receive countervailable benefits (*i.e.*, zero rate certificates).

Therefore, we also preliminarily determine that the GOC has eliminated the subsidy on the merchandise by abolishing this program for the merchandise for a period of at least three consecutive years.

(2) The Fund for the Promotion of Export Loans

The Fund for the Promotion of Export Loans (PROEXPO) provides working capital (short-term) and fixed capital (long-term) financing to the export sector of the Colombian economy. Most loans that PROEXPO makes are short-term (less than a year). PROEXPO loans are administered through commercial banks or finance corporations. Exporters must apply to a commercial bank or finance corporation for a PROEXPO loan. The bank or corporation assesses the creditworthiness of the borrower and the purpose of the loan and acts as a financial intermediary by providing a portion of the PROEXPO loan.

After the loan is approved by the financial institution, a copy of the loan document is forwarded to PROEXPO. The exporter is given one year to repay the loan to the fund through the commercial bank. The commercial bank guarantees repayment of the loan to PROEXPO. If the exporter is unable to repay the loan, the commercial bank pays PROEXPO and then recovers payment or security from the exporter.

PROEXPO also distributes long-term loans which are administered through commercial banks and finance corporations. Long-term loans are based on the cost of the fixed asset that will be purchased with the loan amount.

When the suspension agreement was signed, the Department established short-term and long-term benchmark interest rates. The short-term benchmark interest rate was 22.5 percent, and the long-term benchmark interest rate was 21.0 percent. In 1987, the GOC passed PROEXPO Resolution 11/87 governing working capital (short-term) financing. This resolution established that interest rates on working capital loans would be at the higher of the Department's short-term benchmark interest rate of 22.5 percent or the Depositos a Termino Fijo (DTF) interest rate (a time deposit rate that varies according to market forces), payable at the end of each quarter. Subsequently, in 1988, the GOC passed PROEXPO Resolution 9/88 which established that interest rates on working capital loans would be at the higher of 25 percent or the DTF interest rate, payable at the end of each quarter. In 1987, the GOC passed PROEXPO Resolution 4/87 governing fixed capital (long-term) financing. This resolution established that interest rates on fixed capital loans would be at the Department's long-term benchmark interest rate of 21.0 percent. Also, in 1987, the GOC passed PROEXPO Resolution 13/87 which established that interest rates on fixed capital (long-term) loans would be at the higher of 25 percent or the DTF rate, payable at the end of each quarter.

Under the terms of the suspension agreement, producers and exporters will not apply for, or receive, for exports of the subject merchandise to the United States, any short- or long-term export financing provided by PROEXPO other than that offered on non-preferential terms and at or above the established Department benchmark interest rate. At verification, we examined the appropriate GOC accounting records and found that PROEXPO charged interest rates on its short-term and long-term loans above the established Department benchmark interest rate for the subject merchandise during the POR. In addition, we found that the loans were issued on non-preferential terms. Finally, we examined the three companies' accounting records which confirmed that the companies received PROEXPO loans for the subject merchandise on non-preferential terms and at interest rates at or above the established Department benchmark rate

for exports of the subject merchandise to the United States during the POR. Therefore, we preliminarily determine that this program did not confer any countervailable benefits upon exports of the subject merchandise to the United States during the POR. Although no loans at preferential rates were received by exporters of the subject merchandise, the program itself has not been abolished. Rather, the above scenario characterizes non-use of the program. Therefore, we preliminarily determine that the GOC has not eliminated the subsidy on the merchandise by abolishing this program for the merchandise for a period of at least three consecutive years.

(3) Plan Vallejo

Plan Vallejo was established in 1967 under government Decree 444. Its purpose is to exempt exporters from certain indirect taxes and customs duties assessed on imported capital equipment used to produce finished products for export. The Instituto Colombiano de Comercio Exterior (INCOMEX) administers the Plan Vallejo program.

Under Decree 444, Plan Vallejo has two types of exemptions and commitments. Article 173(c) exempts exporters from customs duties and surcharges on imports, and defers payment of the value-added tax until export of the finished product. In order to receive these benefits, the exporter must commit to export a minimum of 70 percent of the merchandise produced with imported capital goods. Article 174 exempts exporters from customs duties and surcharges on imports, and defers payment of the value-added tax until export of the finished product. In order to receive these benefits, the exporter commits to export a minimum of 1.5 times the value of the imported capital good.

INCOMEX has a special committee which evaluates all Plan Vallejo applications. After an application is approved, in order to assure that the commitment is met, the exporter provides a monetary guarantee to INCOMEX equal to 20 percent of the FOB value of the imported capital good. The guarantee can be cash or bond. The penalty for not fulfilling the export commitment is a charge double the amount of the original exemptions.

Under the terms of the suspension agreement, producers and exporters will not apply for or receive any benefits from duty and tax exemptions for capital equipment under Plan Vallejo for exports of the subject merchandise to the United States. At verification, we examined the GOC's accounting records and confirmed that this program was not used by the exporters of the subject merchandise for exports to the United States during the POR. Also, GOC officials stated that, during the POR, no flower producers applied for Plan Vallejo benefits. In addition, we examined the three companies' accounting records and found no indication of the program being used during the review periods. Therefore, we preliminarily determine that this program did not confer any countervailable benefits upon exports of the subject merchandise to the United States during the POR. However, we also preliminarily determine that the GOC has not eliminated the subsidy on the merchandise by abolishing this program for the merchandise for a period of at least three consecutive years, because the program has not been abolished.

(4) Free Industrial Zones

In December 1985, Law 109 established Free Industrial Zones (FIZs) for industrial and service sector purposes. Certain regions in Colombia are designated as FIZs. There are currently six FIZs in Colombia (Manuel Carvajal Sinisterra, Cartagena, Santa Marta, Barranquilla, Cucuta, and Buenaventura). No FIZs have been designated for agricultural activities and the GOC does not anticipate creation of agricultural zones. At verification, we examined documentation at the GOC that indicated that flower producers were not located in any FIZs. Therefore, we preliminarily determine that this program did not confer any countervailable benefits upon exports of the subject merchandise to the United States during the POR. We also preliminarily determine that the GOC has eliminated the subsidy on this merchandise by abolishing this program for the merchandise for a period of at least three consecutive years.

(5) Export Credit Insurance

Decree 444, issued in 1967, established the Export Credit Insurance program. However, regulations implementing the program were not issued until 1969. Under the Export Credit Insurance program a company may receive insurance to cover certain commercial expenses (transportation, custom duties, insurance expenses, etc.) that it would have difficulty covering as a result of the insolvency of its foreign client. Resolution 12, issued in 1987, identifies parties which are eligible to participate in this program. Article 1 of Resolution 12 specifies several commodities that are ineligible for the program: coffee in certain forms, crude leathers, oil and by-products, precious and semi-precious stones, gold, perishable goods, and others. The subject merchandise is classified under the "perishable goods" category which renders all exports of the subject merchandise ineligible for the program.

Under the terms of the suspension agreement, producers and exporters shall notify the Department in writing prior to applying for any benefit from the Export Credit Insurance program for exports of the subject merchandise to the United States. At verification, we examined a list of all insurance policies issued in 1990 by the GOC. We found no evidence that exporters of the subject merchandise participated in the Export Credit Insurance Program during the POR. Therefore, we preliminarily determine that this program did not confer any countervailable benefits upon exports of the subject merchandise to the United States during the POR. We also preliminarily determine that the GOC has eliminated the subsidy on this merchandise by abolishing this program for the merchandise for a period of at least three consecutive years.

(6) Countertrade

Law 48 of 1983 established a special system for three types of exchange arrangements: (1) Countertrade; (2) compensation offsets; and (3) three-way trade. During verification, GOC officials stated that in 1986, Decree 1459 terminated the exchange system and there has been no follow-up legislation which would re-establish the exchange system. We reviewed documentation that stated that this program had been terminated on that date. Therefore, we preliminarily determine that this program did not confer any countervailable benefits upon exports of the subject merchandise to the United States during the POR. We also preliminarily determine that the GOC has eliminated the subsidy on the merchandise by abolishing this program for the merchandise for a period of at least three consecutive years.

Other Program

Although not specifically listed in the suspension agreement, we examined the following program detailed in the questionnaire responses:

(7) Research and Development

The flower exporters, on a voluntary basis, allowed the Central Bank to withhold a certain percentage of the CERT rebates earned on exports of the subject merchandise to the United States and other countries from January 1983 (the effective date of the original suspension agreement) through

November 1985, when the rebate rate for miniature carnations subject to the suspension agreement was reduced to zero. In 1985, the GOC issued Resolution 10, which established a fund from the CERT payments that were withheld for the cultivation of and general and technological research on all flowers. No additional payments were made to the fund except interest earned. The resolution requires that any funds expended under this resolution be disbursed in a manner consistent with the suspension agreement.

At verification, we examined GOC accounting records that indicated none of the funds were distributed to any flower producers during the POR and all the research findings will be made public. Therefore, we preliminarily determine that this program did not confer any countervailable benefits upon exports of the subject merchandise to the United States during the POR. We also preliminarily determine that the GOC has eliminated the subsidy on the merchandise by abolishing this program for the merchandise for a period of at least three consecutive years.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the GOC and signatory companies have complied with all the terms of the suspension agreement during the period January 1, 1988 through December 31, 1990. However, we preliminarily determine that the GOC has not eliminated all subsidies on the merchandise by abolishing for the merchandise, for a period of at least three consecutive years, all programs that the Secretary has found countervailable, as required by 19 CFR 355.25(a)(1). Therefore, we preliminarily determine not to terminate the suspended countervailing duty investigation on miniature carnations.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 44 days after the date of publication or the first workday thereafter. Rebuttal briefs and rebuttals to written comments, limited to issues in those comments, must be filed not later than 37 days after the date of publication. The Department will publish the final results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: September 29, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–24706 Filed 10–6–93; 8:45 am]

BILLING CODE 3510–DS–M

[C–301–003]

Roses and Other Cut Flowers From Colombia; Preliminary Results of Countervailing Duty Administrative Review and Intent Not To Terminate Suspended Investigation

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of Countervailing Duty Administrative Review and Intent Not to Terminate Suspended Investigation.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the agreement suspending the countervailing duty investigation on roses and other cut flowers from Colombia. This review covers the period January 1, 1988 through December 31, 1990 and eight programs. On January 31, 1991, the Government of Colombia (GOC) requested termination of the suspended investigation based on abolishment of the programs for a period of at least three consecutive years, in accordance with 19 CFR 355.25(a)(1) and 355.25(b)(1). Therefore, we examined the programs to determine if each program had been abolished for a period of at least three years. We preliminarily determine that the Government of Colombia and the signatories/exporters of roses and other cut flowers have complied with the terms of the suspension agreement. However, we also preliminarily determine that the GOC has not eliminated each program for a period of at least three consecutive years.

Therefore, we preliminarily determine that the GOC has not met all the requirements for termination of the countervailing duty suspended investigation on roses and other cut flowers as outlined in the Commerce Regulations.

For the purpose of revoking a countervailing duty order or terminating a suspended countervailing duty investigation based on three consecutive years of elimination of all subsidies pursuant to 19 CFR 355.25(a)(1), it is the Department of Commerce current policy that administrative reviews must be requested and conducted for each of three consecutive years. See Memorandum from Joseph A. Spetrini, Deputy Assistant Secretary for Compliance, to Alan M. Dunn, Assistant Secretary for Import Administration, of December 14, 1992, which fully describes this issue. However, the request for termination in this case predates the above policy. Therefore, although no review was requested for 1989, we nevertheless have examined a three-year period in order to determine whether termination is appropriate. We invite interested parties to comment on these results.

EFFECTIVE DATE: October 7, 1993.

FOR FURTHER INFORMATION CONTACT: Robert Bolling or Melissa Skinner, Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–3793.

SUPPLEMENTARY INFORMATION:

Background

On January 17, 1991, the Department published a notice of "Opportunity to Request an Administrative Review" (56 FR 1793). On January 31, 1991, the GOC requested a termination administrative review of the suspended countervailing duty investigation covering roses and other cut flowers (48 FR 2158; January 18, 1983) under 19 CFR 355.25(a)(1) and 355.25(b)(1). On March 5, 1991, the Department initiated this review, covering the period January 1, 1988 through December 31, 1990 (56 FR 9197). The Department is now conducting this review in accordance with section 751 of the Traffic Act of 1930, as amended (the Tariff Act), and 19 CFR 355.22 and 355.25.

Scope and Review

Imports covered by this review are shipments of roses and other cut flowers from Colombia. During the review period, the merchandise covered by this suspension agreement was classifiable under Harmonized Tariff Schedule (HTS) item numbers 0603.10.60, 0603.10.70. 0603.10.80, and 0603.90.00. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 1, 1988 through December 31, 1990, and eight programs: (1) Tax Reimbursement Certificate Program; (2) The Fund for the Promotion of Export Loans (working- and fixed-capital); (3) Plan Vallejo; (4) Air Freight Rates; (5) Free Industrial Zones; (6) Export Credit Insurance; (7) Countertrade; and (8) Research and Development. We visited three producers/exporters of the subject merchandise, Floramerica, inc.

(Floramerica), Minispray, Inc. (Minispray), and Agropecuria Cuernavaca (Cuernavaca) (collectively, the three companies) to verify the accuracy of the government responses.

Analysis of Programs

(1) Tax Reimbursement Certificate Program

The Certificado de Reembolso Tributario (CERT) or Tax Reimbursement Certificate program permits exporters to receive a full or partial rebate on indirect taxes based on the value of their exports of specific products to specific destinations. Decree 107, issued by the Colombian Government in January 1987, set the level of CERT payments at zero percent for exports of the subject merchandise to the United States and Puerto Rico. Shipments to the rest of the world were eligible for CERT payments of nine percent. In July 1988, the Ministry of Economic Development issued Decree 1374, which maintained a zero percent rate for shipments of the subject merchandise to the United States and Puerto Rico and reduced the rate for the rest of the world to five percent.

CERT payments are received in the following manner: the exporter applies for CERTs after exportation of the merchandise by preparing a form for the commercial bank to present to the Banco de la Republica (Central Bank). The form indicates the destination and the date of shipment of the merchandise. The commercial bank acts as an intermediary between the exporter and the Central Bank. Other shipment information, such as the port of exportation, is included in this document. After receipt of this form from the commercial bank, the Central Bank verifies the accuracy of the information. After the Central Bank verifies the information and approves the application, it disburses the payment.

Under the terms of the suspension agreement, producers and exporters will not apply for, or receive, tax certificates or other rebates, remissions, or exemptions under the CERT program for exports of the subject merchandise to the United States. At verification, we examined the GOC's accounting records and found that this program was not used by the exporters of the subject merchandise for exports to the United States during the period of review (POR). In addition, we examined the three companies' accounting records which indicated that the companies did not use the program during the POR. Therefore, we preliminarily determine that this program did not confer any countervailable benefits upon exports of the subject merchandise to the United States during the POR. Moreover, since 1987, when the GOC restructured the CERT program, exports of the subject merchandise to the United States are no longer eligible to receive countervailable benefits (*i.e.*, zero rate certificates). Therefore, we also preliminarily determine that the GOC has eliminated the subsidy on the merchandise by abolishing this program for the merchandise for a period of at least three consecutive years.

(2) The Fund for the Promotion of Export Loans

The Fund for the Promotion of Export Loans (PROEXPO) provides working capital (short-term) and fixed capital (long-term) financing to the export sector of the Colombian economy. Most loans that PROEXPO makes are short-term (less than a year). PROEXPO loans are administered through Commercial banks or finance corporations. Exporters must apply to a commercial bank or finance corporation for a PROEXPO loan. The bank or corporation assesses the creditworthiness of the borrower and the purpose of the loan and acts as a financial intermediary by providing a portion of the PROEXPO loan.

After the loan is approved by the financial institution, a copy of the loan document is forwarded to PROEXPO. The exporter is given one year to repay the loan to the fund through the commercial bank. The commercial bank guarantees repayment of the loan to PROEXPO. If the exporter is unable to repay the loan, the commercial bank pays PROEXPO and then recovers payment or security from the exporter.

PROEXPO also distributes long-term loans which are administered through commercial banks and finance corporations. Long-term loans are based on the cost of the fixed asset that will be purchased with the loan amount.

When the suspension agreement was signed, the Department established short-term and long-term benchmark interest rates. The short-term benchmark interest rate was 22.5 percent, and the long-term benchmark interest rate was 21.0 percent. In 1987, the GOC passed PROEXPO Resolution 11/87 governing working capital (short-term) financing. This resolution established that interest rates on working capital loans would be at the higher of the Department's short-term benchmark interest rate of 22.5 percent or the Depositos a Termino Fijo (DTF) interest rate (a time deposit rate that vaires according to market forces), payable at the end of each quarter. Subsequently, in 1988, the GOC passed PROEXPO Resolution 9/88 which established that interest rates on working capital loans would be at the higher of 25 percent or the DTF interest rate, payable at the end of each quarter. In 1987, the GOC passed PROEXPO Resolution 4/87 governing fixed capital (long-term) financing. This resolution established that interest rates on fixed capital loans would be at the Department's long-term benchmark interest rate of 21.0 percent. Also, in 1987, the GOC passed PROEXPO Resolution 13/87 which established that interest rates on fixed capital (long-term) loans would be at the higher or 25 percent or the DTF rate, payable at the end of each quarter.

Under the terms of the suspension agreement, producers and exporters will not apply for, or receive, for exports of the subject merchandise to the United States, any short-or long-term export financing provided by PROEXPO other than that offered on non-referential terms and at or above the established Department benchmark interest rate. At verification, we examine the appropriate GOC accounting records and found that PROEXPO charged interest rates on its short-term and long-term loans above the established Department benchmark interest rate for the subject merchandise during the POR. In addition, we found that the loans were issued on non-preferential terms. Finally, we examined the three companies' accounting records which confirmed that the companies received PROEXPO loans for the subject merchandise on non-preferential terms and at interest rates at or above the established Department benchmark rate for exports of the subject merchandise to the United States during the POR. Therefore, we preliminarily determine that this program did not confer any countervailable benefits upon exports of the subject merchandise to the United States during the POR. Although no loans at preferential rates were received by exporters of the subject merchandise, the program itself has not been abolished. Rather, the above scenario characterizes non-use of the program.

Therefore, we preliminarily determine that the GOC has not eliminated the subsidy on the merchandise by abolishing this program for the merchandise for a period of at least three consecutive years.

(3) Plan Vallejo

Plan Vallejo was established in 1967 under government Decree 444. Its purpose is to exempt exporters from certain indirect taxes and customs duties assessed on imported capital equipment used to produce finished products for export. The Instituto Colombiano de Comercio Exterior

(INCOMEX) administers the Plan Vallejo program.

Under Decree 444, Plan Vallejo has two types of exemptions and commitments. Article 173(c) exempts exporters from customs duties and surcharges on imports, and defers payment of the value-added tax until export of the finished product. In order to receive these benefits, the exporter must commit to export a minimum of 70 percent of the merchandise produced with imported capital goods. Article 174 exempts exporters from customs duties and surcharges on imports, and defers payment of the value-added tax until export of the finished product. In order to receive these benefits, the exporter commits to export a minimum of 1.5 times the value of the imported capital good.

INCOMEX has a special committee which evaluates all Plan Vallejo applications. After an application is approved, in order to assure that the commitment is met, the exporter provides a monetary guarantee to INCOMEX equal to 20 percent of the FOB value of the imported capital good. The guarantee can be cash or bond. The penalty for not fulfilling the export commitment is a charge double the amount of the original exemptions.

Under the terms of the suspension agreement, producers and exporters will not apply for or receive any benefits from duty and tax exemptions for capital equipment under Plan Vallejo for exports of the subject merchandise to the United States. At verification, we examined the GOC's accounting records and confirmed that this program was not used by the exporters of the subject merchandise for exports to the United States during the POR. Also, GOC officials stated that, during the POR, no flower producers applied for Plan Vallejo benefits. In addition, we examined the three companies' accounting records and found no indication of the program being used during the review periods. Therefore, we preliminarily determine that this program did not confer any countervailable benefits upon exports of the subject merchandise to the United States during the POR. However, we also preliminarily determine that the GOC has not eliminated the subsidy on the merchandise by abolishing this program for the merchandise for a period of at least three consecutive years, because the program has not been abolished.

(4) Air Freight Rates

The Departmento Administrativo de la Aeronaurica Civil (DAAC) is the government agency that develops, maintains and regulates air transport and air space activities. DAAC officials stated that Resolution 6333 of September 1981 established a minimum tariff of US$ 0.45/kilo and a maximum tariff of US$ 0.61/kilo on all flowers exported to the United States. The minimum and maximum rates apply to both domestic and foreign carriers. DAAC does not monitor or tightly regulate the rates and it does not retain records of the tariff rates charged by airlines. Resolution 6333 was in effect during the POR.

Section D(3) of the suspension agreement states that the Department may consider rescinding the agreement if the air freight rates paid by cut flower exporters approach the government-mandated maximum rates set by the DAAC because such rates might be indicative of government control rather than the result of the competitive forces. At verification, we examined Floramerica's and Cuernavaca's air freight bills and found that the rates negotiated between the flower producers and the air freight carriers were between the minimum and maximum rates permitted. Therefore, we preliminarily determine that this program did not confer any countervailable benefits upon exports of the subject merchandise to the United States during the POR. However, we also preliminarily determine that the GOC has not eliminated the subsidy on the merchandise by abolishing this program for the merchandise for a period of at least three consecutive years, because a program still exists that establishes minimum and maximum rates.

(5) Free Industrial Zones

In December 1985, Law 109 established Free Industrial Zones (FIZs) for industrial and service sector purposes. Certain regions in Columbia are designed as FIZs. There are currently six FIZs in Colombia (Manuel Carvajal Sinisterra, Cartagena, Santa Marta, Barranquilla, Cucuta, and Buenaventura). No FIZs have been designated for agricultural activities and the GOC does not anticipate creation of agricultural zones. At verification, we examined documentation at the GOC that indicated that flower producers were not located in any FIZs. Therefore, we preliminarily determine that this program did not confer any countervailable benefits upon exports of the subject merchandise to the United States during the POR. We also preliminarily determine that the GOC has eliminated that subsidy on this merchandise by abolishing this program for the merchandise for a period of at least three consecutive years.

(6) Export Credit Insurance

Decree 444, issued in 1967, established the Export Credit Insurance program. However, regulations implementing the program were not issued until 1969. Under the Export Credit Insurance program a company may receive insurance to cover certain commercial expenses (transportation, custom duties, insurance expenses, etc.) that it would have difficulty covering as a result of the insolvency of its foreign client. Resolution 12 issued in 1987, identifies parties which are eligible to participate in this program. Article 1 of Resolution 12 specifies several commodities that were ineligible for the program: coffee in certain forms, crude leathers, oil and by-products, precious and semi-precious stones, gold, perishable goods, and others. The subject merchndise is classified under the "perishable goods" category which renders all exports of the subject merchandise ineligible for the program.

Under the terms of the suspension agreement, producers and exporters shall notify the Department in writing prior to applying for any benefit from the Export Credit Insurance program for exports of the subject merchandise to the United States. At verification, we examined a list of all insurance policies issued in 1990 by the GOC. We found no evidence that exporters of the subject merchandise participated in the Export Credit Insurance Program during the POR. Therefore, we preliminarily determine that this program did not confer any countervailable benefits upon exports of the subject merchandise to the United States during the POR. We also preliminarily determine that the GOC has eliminated the subsidy on this merchandise by abolishing this program for the merchandise for a period of at least three consecutive years.

(7) Countertrade

Law 48 of 1983 established a special system for three types of exchange arrangements: (1) countertrade; (2) compensation offsets; and (3) three-way trade. During verification, GOC officials stated that in 1986, Decree 1459 terminated the exchange system and there has been no follow-up legislation which would re-establish the exchange system. We reviewed documentation that stated that this program had been terminated on that date. Therefore, we preliminarily determine that this program did not confer any countervailable benefits upon exports of the subject merchandise to the United States during the POR. We also

preliminarily determine that the GOC has eliminated the subsidy on the merchandise by abolishing this program for the merchandise for a period of at least three consecutive years.

Other Program

Although not specifically listed in the suspension agreement, we examined the following program detailed in the questionnaire responses:

(8) Research and Development

The flower exporters, on a voluntary basis, allowed the Central Bank to withhold a certain percentage of the CERT rebates earned on exports of the subject merchandise to the United States and other countries from January 1983 (the effective date of the original suspension agreement) through November 1985, when the rebate rate for roses and other cut flowers subject to the suspension agreement was reduced to zero. In 1985, the GOC issued Resolution 10, which established a fund from the CERT payments that were withheld for the cultivation of and general and technological research on all flowers. No additional payments were made to the fund except interest earned. The resolution requires that any funds expended under this resolution be disbursed in a manner consistent with the suspension agreement.

At verification, we examined GOC accounting records that indicated none of the funds were distributed to any flower producers during the POR and all the research findings will be made public. Therefore, we preliminarily determine that this program did not confer any countervailable benefits upon exports of the subject merchandise to the United States during the POR. We also preliminarily determine that the GOC has eliminated the subsidy on the merchandise by abolishing this program for the merchandise for a period of at least three consecutive years.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the GOC and signatory companies have complied with all the terms of the suspension agreement during the period January 1, 1988 through December 31, 1990. However, we also preliminarily determine that the GOC has not eliminated all subsidies on the merchandise by abolishing for the merchandise, for a period of at least three consecutive years, all programs that the Secretary has found countervailable. Therefore, we preliminarily determine that the GOC has not met all the requirements for termination of the suspended countervailing duty investigation on roses and other cut flowers, as required by 19 CFR 355.25(a)(1).

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 44 days after the date of publication or the first workday thereafter. Rebuttal briefs and rebuttals to written comments, limited to issues in those comments, must be filed not later than 37 days after the date of publication. The Department will publish the final results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22

Dated: September 29, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–24707 Filed 10–6–93; 8:45 am]

BILLING CODE 3510–DS–M

Export Trade Certificate of Review

ACTION: Notice of issuance of an amended Export Trade Certificate of Review, Application No. 92–A0009.

SUMMARY: The Department of Commerce has issued an amendment to the Export Trade Certificate of Review granted to the Northern Textile Export Trading Company, Inc. D/B/A Textile Trading Company of America ("NTETC") on October 6, 1992. Notice of issuance of the Certificate was published in the **Federal Register** on October 13, 1992 (57 FR 46843).

FOR FURTHER INFORMATION CONTACT: Jude Kearney, Deputy Assistant Secretary for Service Industries and Finance, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (1993).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

Export Trade Certificate of Review No. 92–00009 was issued to the Northern Textile Export Trading Company, Inc. D/B/A Textile Trading Company of America ("NTETC") on October 6, 1992 (57 FR 46843, October 13, 1992).

NTETC's Export Trade Certificate of Review has been amended to add the following additional companies as "Members" within the meaning of section 325.21 of the Regulations (15 CFR 325.2(1)): Hanora Spinning, Inc. of Woonsocket, RI (Controlling entity: The First Republic Corporation of America, New York, NY) and Dyecraftsmen, Inc. of Taunton, MA.

A copy of the amended certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Dated: October 1, 1993.

Jude Kearney,

Deputy Assistant Secretary for Service Industries and Finance.

[FR Doc. 93–24708 Filed 10–6–93; 8:45 am]

BILLING CODE 3510–DR–P

National Oceanic and Atmospheric Administration

Solicitation for Sea Grant Review Panelists

AGENCY: National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice of solicitation for Sea Grant Review panelists.

SUMMARY: This notice responds to section 209(c) of the National Sea Grant College Program Act, 33 U.S.C. 1128, which requires the Secretary of Commerce to solicit nominations for membership on the Sea Grant Review Panel at least once a year. This advisory committee provides advice on the implementation of the National Sea Grant College Program.

DATES: Resumes should be sent to the address specified and must be received by November 8, 1993.

ADDRESSES: Dr. David B. Duane, Director, National Sea Grant College Program, 1315 East-West Highway, room 11618, (DS), Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Dr. David B. Duane of the National Sea Grant College Program at the address given above; telephone (301) 713–2448, or fax number (301) 713–0799.

SUPPLEMENTARY INFORMATION: Section 209 of the Act establishes a sea grant review panel to advise the Secretary of Commerce, the Under Secretary for Oceans and Atmosphere, and the Director of the National Sea Grant College Program on the implementation of the Sea Grant Program. The panel provides advice on such matters as:

(a) The Sea Grant Fellowship Program;

(b) Applications or proposals for, and performance under, grants and contracts awarded under section 205, and section 3 of the Sea Grant Program Improvement Act of 1976;

(c) The designation and operation of sea grant colleges and sea grant regional consortia; and the operation of the sea grant program;

(d) The formulation and application of the planning guidelines and priorities under section 204 (a) and (c)(1); and,

(e) Such other matters as the Secretary refers to the panel for review and advice.

The Panel is to consist of 15 voting members composed as follows: Not less than eight of the voting members of the panel should be individuals who, by reason of knowledge, experience, or training, are especially qualified in one or more of the disciplines and fields included in marine science. The other voting members shall be individuals who by reason of knowledge, experience, or training, are especially qualified in, or representative of, education, extension services, state government, industry, economics, planning, or any other activity which is appropriate to, and important for, any effort to enhance the understanding, assessment, development, utilization, or conservation of ocean and coastal resources. No individual is eligible to be a voting member of the panel if the individual is (a) the director of a sea grant college, sea grant regional consortium, or sea grant program, (b) an applicant for or beneficiary (as determined by the Secretary) of, any grant or contract under section 205, or (c) a full-time officer or employee of the United States. The Director of the National Sea Grant College Program and one Director of a Sea Grant Program also serve as non-voting members. The positions on the panel will become vacant during 1993. Candidates who are selected to fill these vacancies will be appointed for a 3-year term.

Dated: October 1, 1993.

David B. Duane,

Deputy Assistant Administrator for Extramural Research, OAR.

[FR Doc. 93–24642 Filed 10–6–93; 8:45 am]

BILLING CODE 3510–13–P

Travel and Tourism Administration

Travel and Tourism Advisory Board; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. (App. 1976) notice is hereby given that the Travel and Tourism Advisory Board of the U.S. Department of Commerce will hold a public forum allowing opportunity for presentations on the issues of defense conversion, multi-cultural tourism, and safety and security, from 9:30 a.m. to 1 p.m. on November 3, 1993, and will meet at 9 a.m. on November 4, 1993, in Los Angeles, California.

Established March 19, 1982, the Travel and Tourism Advisory Board consists of 15 members, representing the major segments of the travel and tourism industry and state tourism interests, and includes one member of a travel labor organization, a consumer advocate, an academician and a financial expert.

Members advise the Secretary of Commerce on matters pertinent to the Department's responsibilities to accomplish the purpose of the National Tourism Policy Act (Pub. L. 97–63), and provide guidance to the Under Secretary for Travel and Tourism.

Agenda items are as follows:

I. Call to Order
II. Roll Call
III. USTTA Program and Planning Initiatives
IV. Regional Office Study
V. Safety and Security
VI. Review of Public Forum Issues
VII. Miscellaneous
IX. Adjournment

A very limited number of seats will be available to observers from the public and the press. To assure adequate seating, individuals intending to attend should notify the Committee Control Officer in advance. The public will be permitted to file written statements with the Committee before or after the public forum and meeting. To the extent time is available, the presentation of oral statements will be allowed.

Karen M. Cardran, Committee Control Officer, United States Travel and Tourism Administration, room 1860, U.S. Department of Commerce, Washington, DC 20230 (telephone: 202–482–1904) will respond to public requests for information about the meeting.

Leslie Doggett,

Acting Under Secretary of Commerce for Travel and Tourism.

[FR Doc. 93–24709 Filed 10–6–93; 8:45 am]

BILLING CODE 3510–11–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits and a Guaranteed Access Level for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Costa Rica

September 30, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits and a guaranteed access level.

EFFECTIVE DATE: October 7, 1993.

FOR FURTHER INFORMATION CONTACT: Nicole Bivens Collinson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these levels, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for Categories 347/348 and 443 are being increased by application of swing, reducing the limits for Categories 342/642 and 340/640, respectively, to account for the increases. Also, the Guaranteed Access Level for Categories 347/348 is being increased.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 48022, published on October 21, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist

only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 30, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 15, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Costa Rica and exported during the twelve-month period which began on January 1, 1993 and extends through December 31, 1993.

Effective on October 7, 1993, you are directed to amend further the directive dated October 15, 1992 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Costa Rica:

Category	Adjusted twelve-month limit [1]
340/640	723,279 dozen.
342/642	176,228 dozen.
347/348	1,315,092 dozen.
443	216,140 numbers.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1992.

Also, you are directed to increase the Guaranteed Access Level (GAL) for Categories 347/348 to 1,900,000 dozen. The GALs for Categories 340/640, 342/642 and 443 remain unchanged.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–24695 Filed 10–6–93; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

September 30, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs reducing limits.

EFFECTIVE DATE: October 7, 1993.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6714. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being reduced for carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 56904, published on December 1, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 30, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 25, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 1993 and extends through December 31, 1993.

Effective on October 7, 1993, you are directed to amend further the directive dated November 25, 1992 to reduce the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Pakistan:

Category	Adjusted twelve-month limit [1]
Specific Limits	
340/640	446,285 dozen of which not more than 160,500 dozen shall be in Categories 340–D/640–D [2].
341/641	511,564 dozen.
347/348	553,816 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1992.

[2] Category 340–D: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2025 and 6205.20.2030; Category 640–D: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2030, 6205.30.2040, 6205.90.2030 and 6205.90.4030.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–24696 Filed 10–6–93; 8:45 am]

BILLING CODE 3510–DR–F

Reinstatement to the Special Access and Special Regime Programs

September 30, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs to permit Fashion Enterprises, Inc. to participate in the Special Access and Special Regime Programs.

EFFECTIVE DATE: November 1, 1993.

FOR FURTHER INFORMATION CONTACT: Lori E. Goldberg, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

A notice published in the **Federal Register** on September 21, 1992 (57 FR 43440) announced the suspension of Fashion Enterprises, Inc., from participation in the Special Access and Special Regime Programs for the period November 1, 1992 through October 31, 1995. Based on the receipt of new information concerning Fashion Enterprises, the Committee for the Implementation of Textile Agreements

has determined that Fashion Enterprises shall be reinstated in the Programs, effective on November 1, 1993.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs, effective on November 1, 1993, to start signing the ITA–370P form for export of U.S.-formed fabric for Fashion Enterprises.

Requirements for participation in the Special Access Program are available in **Federal Register** notices 51 FR 21208, published on June 11, 1986; 52 FR 26057, published on July 10, 1987; and 54 FR 50425, published on December 6, 1989.

Requirements for participation in the Special Regime Program are available in **Federal Register** notices 53 FR 15724, published on May 3, 1988; 53 FR 32421, published on August 25, 1988; 53 FR 49346, published on December 7, 1988; and 54 FR 50425, published on December 6, 1989.

Also see proposed requirements in 58 FR 41215 and 58 FR 41245, published on August 3, 1993.

Rita D.Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 30, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on September 15, 1992, by the Chairman, Committee for the Implementation of Textile Agreements (CITA). That directive directs you to deny Fashion Enterprises, Inc., the right to participate in the Special Access and Special Regime Programs for a period of three years, from November 1, 1992 through October 31, 1995. Based on the receipt of new information concerning Fashion Enterprises, CITA has decided to reinstate Fashion Enterprises, Inc., to the Programs.

Effective on November 1, 1993, you are directed to permit Fashion Enterprises the right to participate in the Special Access and Special Regime Programs. Goods presented to U.S. Customs for entry under the Special Access and Special Regime Programs must be accompanied by Form ITA–370P. In addition, beginning on November 1, 1993, you are directed to start signing ITA–370P forms for export of U.S.-formed and cut fabric for Fashion Enterprises.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–24697 Filed 10–6–93; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Chicago Board of Trade's Flexible Options Proposal

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market new rules and rule amendments.

SUMMARY: The Chicago Board of Trade ("CBT" or "Exchange") has submitted, pursuant to section 5a(a)(12)(A) of the Commodity Exchange Act ("Act") and Commission Regulation 1.41(b), various proposed new rules and rule amendments for Commission approval. The proposed rule revisions would allow the trading of "flexible options" on various CBT Treasury futures contracts in which the counterparties could select from a more precise array of exercise styles, expiration dates and strike prices relative to those for standard options. CBT's proposal also includes procedures for trading flexible options, including a request for quote ("RFQ") procedures whereby daily trading in each flexible option is opened by a publicized solicitation of interest in a particular flexible option.

Acting pursuant to the authority delegated by Commission Regulation 140.96, the Director of the Division of Trading and Markets has determined to publish the CBT's flexible options proposal for public comment. The Division of Trading and Markets believes that publication of the proposal is in the public interest and will assist the Commission in considering the views of interested persons.

DATES: Comments must be received on or before October 22, 1993.

FOR FURTHER INFORMATION CONTACT: Stephen A. Sherrod, Financial Instruments Unit Chief, Division of Economic Analysis, or David P. Van Wagner, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254–7303 or (202) 254–8955, respectively.

SUPPLEMENTARY INFORMATION:

I. Description of Proposal

By letters dated August 5, 1993 and September 1, 1993, the CBT submitted proposed new Regulations XX15.01 through XX21.01 and amendments to Regulations XX02.01, XX03.01, XX04.01, XX07.01, XX08.01 and XX13.01 for certain option contracts on Treasury futures[1] pursuant to section 5a(a)(12)(A) of the Act and Commission Regulation 1.41(b).

Under the proposal, parties could execute "flexible options" on Treasury futures with certain option contract terms that are not identical to those of currently-listed "standard" option contracts. Specifically, parties to a flexible option could choose from a more precise array of exercise styles, strike prices and expiration dates than are available in standard futures option contracts. Flexible option contracts could be specified as either European- or American-style exercise. Strike prices for flexible options would have to be within the inclusive range of currently-listed strike prices for standard options. For 30-year bond and 10-year note contracts, however, flexible option strike prices could be set at intervals of 1/32 of a point per futures contract, while for the 5-year and 2-year note contracts, strike prices could be set at intervals of 1/64 of a point per futures contract. In addition, parties could request a quote in 1/4 point intervals relative to the underlying futures contract.

Parties to a flexible option could make the option's expiration date any CBT business day, Monday through Friday, that precedes the latest standard option expiration for the most distantly-listed underlying futures contract month that had previously opened for trading. The last day of trading in a flexible option would be the expiration day. Any standard option rules that are not amended by the CBT's proposal would be applicable tot he proposed flexible option contracts.

The CBT also has proposed procedures governing the opening of trading in flexible options each day. To open each flexible option trading session, a party would submit an RFQ to a pit reporter to solicit quotes for a particular flexible option. An RFQ would specify trading size, strike price, exercise style and expiration date for the indicated flexible option (the premium amount would not have to be specified). There would be various requirements regarding the minimum size of an RFQ. 200 contracts would be the minimum RFQ size in a flexible option that had not been previously opened. Thereafter, 100 contracts would be the minimum, except that position holders could submit and RFQ for less than 100 contracts in order to liquidate an existing flexible option position.

Upon the submission of an RFQ, the RFQ would be "publicized"[2] and there

[1] Specifically, the CBT's option contracts on the 30-year Treasury bond, 10-year Treasury note, 5-year Treasury note and 2-year Treasury note futures contracts.

[2] The terms of each RFQ would be disseminated over the CBT's trading floor message board and

would be a response interval of up to 15 minutes before trading in the particular flexible option could start.

If the RFQ-submitting member requested quotes on both sides of the market for the same flexible option or if two or more RFQs were jointly the first day and the RFQs requested quotes on both sides of the market for the same flexible option, then the best responsive quotes would be determined through open outcry on both sides of the market. At the conclusion of the response time interval, trading in that option would start immediately by open outcry. If the RFQ were for a bid or an offer, but not both, the best quote would be determined through open outcry on the side of the market opposite the RFQ. There would be a priority period of up to two minutes at the conclusion of the response time interval during which the submitting member would have the exclusive right to accept the best responsive quote.[3] Following the priority period, the flexible option series opened would be available through open outcry for the remainder of the trading session.

II. Request for Comments

The Commission requests comments on any aspect of the CBT's flexible options proposal that members of the public believe may raise issues under the Act or Commission regulations. Copies of the CBT's submissions are available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Copies also may be obtained through the Office of the Secretariat at the above address or by telephoning (202) 254–6314.

Any person interested in submitting written data, views, or comments on the proposal should send comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, by the specified date.

Issued in Washington, DC, on October 1, 1993.

Alan L. Seifert,

Deputy Director, Division of Trading and Markets.

[FR Doc. 93–24637 Filed 10–6–93; 8:45 am]

BILLING CODE 6351–01–M

internal computer network for members and to regular vendor systems.

[3] Like the proposed quantity requirements for RFQs, the minimum trading size for members responding to an RFQ would be 200 contracts for a flexible option which had not been previously traded, 100 contracts for a flexible option which had previously traded or a lesser number if a member's responsive bid or offer would close out the member's position in the particular option.

New York Mercantile Exchange; Proposed Amendments to the New York Harbor No. 2 Heating Oil Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the proposed amendments to the New York Harbor No. 2 heating oil futures contract.

SUMMARY: The New York Mercantile Exchange (NYMEX or Exchange) has submitted for the Commission's approval, under section 5a(a)12 of the Commodity Exchange Act and Commission Rule 1.41(b), proposed amendments to its New York Harbor No. 2 heating oil futures contract. The proposed amendments relate to the dyeing and color testing standards for deliverable heating oil and would apply to all newly listed and existing contracts beginning with the January 1994 delivery month. The Acting Director of the Division of Economic Analysis (Division) of the Commission has determined that obtaining public comment on the proposed rule amendments is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act. Accordingly, the Division, pursuant to the authority delegated by Commission Rule 140.96, is hereby providing notice of, and seeking comment on, the proposed rule amendments.

DATES: Comments must be received on or before November 8, 1993.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the New York Harbor No. 2 heating oil futures contract.

FOR FURTHER INFORMATION CONTACT: Please contact Joseph B. Storer of the Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, telephone 202–254–7303.

SUPPLEMENTARY INFORMATION: On September 29, 1993, the Commission approved, pursuant to section 5a(a)(12) of the Commodity Exchange Act (Act), amendments to the NYMEX's New York Harbor No. 2 heating oil futures contract that (1) allow the seller to continue to deliver product which meets the previously existing color standard of a maximum rating of 2.5 without applying any alternative quality tests,[1] (2) allow delivery of heating oil having a rating of 3.0 on the color test if the product passes five other enumerated quality tests (stability, haze rating, carbon residue, ash weight, and corrosion), and (3) require that all product be dyed blue to be deliverable on the futures contract.[2] The amendments were approved only for the October, November, and December 1993 delivery months.

These amendments resulted from new U.S. Environmental Protection Agency (EPA) regulations which mandate that all high-sulfur fuel, including heating oil, be dyed blue to distinguish it from diesel fuel. The EPA regulations went in to effect on October 1, 1993. Because the addition of dye may raise the color rating of heating oil, the amended NYMEX rules make provision for delivery of heating oil with a color rating of 3.0, if the product passes the five other quality tests noted above. According to the Exchange, allowing delivery of this higher color rating will ensure that supplies in storage that previously met the maximum color test rating of 2.5 will continue to be deliverable after being dyed. The requirement that all product be dyed blue was adopted by the Exchange to provide certainty with regard to the nature of the delivered product.

The Exchange is now proposing to make the rules currently in effect for the October, November, and December 1993 delivery months applicable to all newly listed and existing contracts beginning with the January 1994 delivery month. In considering whether to approve the amendments for application to all newly listed and existing contracts beginning with January 1994, the Commission will evaluate the experience with respect to futures deliveries in nearby months under the previously approved rules.

Therefore, the Commission is seeking comments on the proposed amendments from participants in all segments of the heating oil cash and futures markets, especially with regard to their experience with color testing of dyed product and the application of the previously approved amendments to futures deliveries.

[1] The applicable color test refers to a yellow to brown color spectrum (ASTM D1500). The color test ratings range from 0.0 to 8.0 in .5 increments.

[2] During the Commission's review of the amendments applied to the October, November and December 1993 delivery months, the Commission's staff found that the industry had limited experience performing the requisite color test on heating oil which had been dyed blue. Despite this limited experience, information supplied by the Exchange indicated that inspectors would perform the requisite color test without any qualification as to the validity of the test results.

Copies of the proposed amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the amended terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the NYMEX in support of the proposed amendments may by available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment asset forth in 17 CFR 145.5 and 145.9. Request for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested submitting written data, views, or arguments regarding the proposed amendments, or with respect to other materials submitted by the NYMEX in support of the proposed amendments, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC, on October 4, 1993.

Blake Imel,

Acting Director.

[FR Doc. 93–24715 Filed 10–6–93; 8:45 am]

BILLING CODE 6351–01–M

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 94–C0001]

Regency Merchandise, Inc., a Corporation; Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional acceptance of a settlement agreement under the Federal Hazardous Substances Act.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Federal Hazardous Substances Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20 (e)–(h). Published below is a provisionally-accepted Settlement Agreement with Regency Merchandise, Inc., a corporation.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by October 22, 1993.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 94–C0001, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Earl A. Gershenow, Trial Attorney, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0626.

SUPPLEMENTARY INFORMATION: (Attached).

Dated: October 1, 1993.

Sheldon D. Butts,

Deputy Secretary.

Settlement Agreement and Order

1. Regency Merchandise, Inc. (hereinafter, "Regency"), a corporation, enters into this Settlement Agreement (hereinafter, "Agreement") with the staff of the Consumer Product Safety Commission, and agrees to the entry of the Order described herein. The purpose of the Agreement and Order is to settle the staff's allegations that Regency Merchandise knowingly caused the introduction into interstate commerce of certain banned hazardous toys, in violation of section 4(a) of the Federal Hazardous Substances Act, 15 U.S.C. 1263(a).

I. Jurisdiction

2. The Commission has jurisdiction over Regency and the subject matter of this Settlement Agreement pursuant to section 30(a) of the Consumer Product Safety Act (hereinafter, "CPSA"), 15 U.S.C. 2079(a), and sections 2(f)(1)(D), 4(a), and 5(c) of the Federal Hazardous Substances Act (hereinafter, "FHSA"), 15 U.S.C. 1261(f)(1)(D), 1263(a), and 1264(c).

II. The Parties

3. The "staff" is the staff of the Consumer Product Safety Commission, an independent regulatory commission of the United States established pursuant to section 4 of the CPSA, 15 U.S.C. 2053.

4. Regency is a corporation organized and existing under the laws of the State of California, with its principal corporate offices located at 411 S. San Pedro Street, Los Angeles, CA 90013 Regency is engaged in the import and wholesale business. Approximately 60 percent of its business is from the purchase and sale of toys.

III. Allegations of the Staff

5. Between March 1991, and May 1992, Regency caused the introduction into interstate commerce of approximately 4,983 toys intended for use by children under three years of age, which are identified and described below. An asterisk (*) next to the date column below indicates the date the staff collected the toys as part of an establishment inspection of the firm rather than as part of the staff's import surveillance program.

CPSC sample No.	Description	Collect date* entry date	Quantity
M–867–2023	Telephone Car (Hippo), Regency World Trading, Inc	03/24/91	400
M–867–2024	Telephone Car (Cow) Regency World Trading, Inc	03/24/91	400
M–867–2425	Telephone Car (Dog), Regency World Trading, Inc	03/24/91	400
M–867–2026	Telephone Car (Hippo), Regency World Trading, Inc	03/24/91	400
M–867–2027	Animal Car Telephone (Dog), Regency World Trading, Inc	03/24/91	400
M–867–2028	Animal Car Telephone (Rhino), Regency World Trading, Inc	03/24/91	400
P–867–7719	Bear Phone, Manley Toys, Ltd	12/01/91	1200
P–867–7720	Clown Phone, Manley Toys, Ltd	12/01/91	1080
P–867–7841	Funny Buggy (Truck), Hello Modern Toys Industrial	*05/19/92	101
P–867–7842	Funny Buggy (Car), Hello Modern Toys Industrial	*05/19/92	101
P–867–7843	Funny Buggy (Diesel Truck) Hello Modern Toys Industrial	*05/19/92	101

6. The toys identified in paragraph five above are subject to, but failed to comply with, the Commission's Small Parts Regulation, 16 CFR part 1501, in that when tested under the "use and abuse" test methods specified in 16 CFR 1500.51 and 1500.52, (a) one or more parts of each tested toy separated and (b) one or more of the separated parts from each of the tested toys fit completely within the test cylinder, as set forth in 16 CFR 1501.4.

7. Because the separated parts fit completely within the test cylinder as described in paragraph six above, each of the toys identified in paragraph five presents a "mechanical hazard" within the meaning of section 2(s) of the FHSA, 15 U.S.C. 1261(s) (choking, aspiration and/or ingestion of small parts).

8. Each of the toys identified in paragraph five above is a "hazardous substance" pursuant to section 2(f)(1)(D) of the FHSA, 15 U.S.C. 1261(f)(1)(D).

9. Each of the toys identified in paragraph five above is a "banned hazardous substance" pursuant to (a) section 2(q)(1)(A) of the FHSA, 15 U.S.C. 1261(q)(1)(A) (any toy or other article intended for use by children which bears or contains a hazardous substance); and (b) 16 CFR 1500.18(a)(9).

10. Regency knowingly caused the introduction into interstate commerce of the aforesaid banned hazardous toys, in violation of section 4(a) of the FHSA, 15 U.S.C. 1263(a), for which a civil penalty may be imposed pursuant to section 5(c) of the FHSA, 15 U.S.C. 1264(c).

IV. Response of Regency

11. Regency denies the allegations of the staff set forth in paragraphs five through ten above that it has knowingly caused the introduction into commerce of the aforesaid banned hazardous toys, or that it has violated the FSHA as alleged by the staff.

V. Agreement of the Parties

12. The Consumer Product Safety Commission has jurisdiction over Regency and the subject matter of this Settlement Agreement and Order under the following acts: Consumer Product Safety Act, 15 U.S.C. 2051 *et seq.*, and the Federal Hazardous Substances Act, 15 U.S.C. 1261 *et seq.*

13. Upon final acceptance by the Commission of this Settlement Agreement, Regency agrees to pay to the Commission a civil penalty in the amount of Forty Thousand and 00/100 Dollars ($40,000.00), in two (2) equal installment payments of Twenty Thousand and 00/100 ($20,000.00) on or before December 31, 1993, and on or before December 31, 1994, respectively. Payment of the full amount of the civil penalty shall settle fully the staff's allegations set forth in paragraphs five through ten above that Regency violated the FHSA. Any late installment payment shall be charged interest at the federal legal rate of interest in effect during the period that the payment is overdue under the provisions of 28 U.S.C. 1961 (a) and (b). Any late payment over thirty (30) days duration shall make the entire outstanding balance due.

14. The Commission does not make any determination that Regency knowingly violated the FHSA. The Commission and Regency agree that this Agreement is entered into for the purposes of settlement only.

15. Upon final acceptance of this Settlement Agreement by the Commission and issuance of the Final Order, Regency knowingly, voluntarily and completely, waives any rights it may have in this matter (1) to an administrative or judicial hearing, (2) to judicial review or other challenge or contest of the validity of the Commission's actions, (3) to a determination by the Commission as to whether Regency failed to comply with the FHSA as aforesaid, and (4) to a statement of findings of fact and conclusions of law.

16. For purposes of section 6(b) of the CPSA, 15 U.S.C. 2055(b), this matter shall be treated as if a complaint had issued; and, the Commission may publicize the terms of the Settlement Agreement and Order.

17. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, this Settlement Agreement and Order shall be placed on the public record and shall be published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e)–(h). If the Commission does not receive any written request not to accept the Settlement Agreement and Order within 15 days, the Settlement Agreement and Order will be deemed finally accepted on the 16th day after the date it is published in the **Federal Register**.

18. The parties further agree that the Commission shall issue the attached Order incorporated herein by reference; and that a violation of the Order shall subject Regency to appropriate legal action.

19. No agreement, understanding, representation, or interpretation not contained in this Settlement Agreement and Order may be used to vary or to contradict its terms.

20. The provisions of the Settlement Agreement and Order shall apply to Regency and each of its successors and assigns.

Respondent Regency Merchandise, Inc.

Dated: July 19, 1993.

Commission Staff

David Schmeltzer,

Assistant Executive Director, Office of Compliance and Enforcement.

Alan H. Schoem,

Director, Division of Administrative Litigation, Office of Compliance and Enforcement.

Dated: July 22, 1993.

Earl A. Gershenow,

Trial Attorney, Division of Administrative Litigation, Office of Compliance and Enforcement.

Dated: July 22, 1993.

Dennis C. Kacoyanis,

Trial Attorney, Division of Administrative Litigation, Office of Compliance and Enforcement.

Order

Upon consideration of the Settlement Agreement entered into between respondent Regency Merchandise, Inc., a corporation, and the staff of the Consumer Product Safety Commission; and the Commission having jurisdiction over the subject matter and Regency Merchandise, Inc.; and it appearing that the Settlement Agreement is in the public interest, it is

Ordered, that the Settlement Agreement be and hereby is accepted, as indicated below; and it is

Further Ordered, that upon final acceptance of the Settlement Agreement, Regency Merchandise, Inc. shall pay to the Commission a civil penalty in the amount of Forty Thousand and 00/100 Dollars ($40,000.00), in two (2) equal installment payments of Twenty Thousand and 00/100 ($20,000.00) on or before December 31, 1993, and on or before December 31, 1994, respectively. Payment of the full amount of the civil penalty shall settle fully the staff's allegations set forth in paragraphs five through ten in the Settlement Agreement that Regency violated the FHSA. Any late installment payment shall be charged interest at the federal legal rate of interest in effect during the period that the payment is overdue under the provisions of 28 U.S.C. 1961(a) and (b). Any late payment over thirty (30) days duration shall make the entire outstanding balance due.

Provisionally accepted and Provisional Order issued on the 4th day of October, 1993.

By Order of the Commission:

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 93–24693 Filed 10–6–93; 8:45 am]

BILLING CODE 6355–01–M

[CPSC Docket No. 94–C0002]

Yuchius Morality, Inc., a Corporation; Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional acceptance of a settlement agreement under the Federal Hazardous Substances Act.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Federal Hazardous Substances Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e)-(h). Published below is a provisionally-accepted Settlement Agreement with, Yuchius Morality, Inc., a corporation.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by October 22, 1993.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 94–C0002, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207

FOR FURTHER INFORMATION CONTACT: Earl A. Gershenow I. Kramer, Trial Attorney, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0626.

SUPPLEMENTARY INFORMATION: (attached)

Dated: October 1, 1993.

Sheldon D. Butts,

Deputy Secretary.

[CPSC Docket No. 94–C0002]

Yuchius Morality, Inc. a Corporation; Settlement Agreement and Order

1. Yuchius Morality, Inc. (hereinafter, "Yuchius"), a corporation, enters into this Settlement Agreement (hereinafter, "Agreement") with the staff of the Consumer Product Safety Commission, and agrees to the entry of the Order described herein. The purpose of the Agreement and Order is to settle the staff's allegations that Polly Gaz knowingly caused the introduction into interstate commerce of certain banned hazardous toys, in violation of section 4(a) of the Federal Hazardous Substances Act, 15 U.S.C. 1263(a).

I. Jurisdiction

2. The Commission has jurisdiction over Yuchius and the subject matter of this Settlement Agreement pursuant to section 30(a) of the Consumer Product Safety Act (hereinafter, "CPSA"), 15 U.S.C. 2079(a), and sections 2(f)(1)(D), 4(a), and 5(c) of the Federal Hazardous Substances Act (hereinafter, "FHSA"), 15 U.S.C. 1261(f)(1)(D), 1263(a), and 1264(c).

II. The Parties

3. The "staff" is the staff of the Consumer Product Safety Commission, an independent regulatory commission of the United States established pursuant to section 4 of the CPSA, 15 U.S.C. 2053.

4. Yuchius is a corporation organized and existing under the laws of the State of New York, with its principal corporate offices located at 635 W. 27th Street, New York, New York 10001. Yuchius is engaged in the import and wholesale business. Approximately 60 percent of its business is from the purchase and sale of toys.

III. Allegations of the staff

5. Between January, 1991, and February 1991, Yuchius caused the introduction into interstate commerce of approximately 1,620 toys intended for use by children under three years of age, which are identified and described below:

CPSC sample no.	Description	Ship date entry date	Quantity
M–800–1906	Pull Elephant Toy, All Toys Co. Ltd.	*01/24/92	240
M–800–1907	Cooking Set, Manley Toys Limited	*02/05/91	180
M–867–2429	Musical Television, Light Gain Limited	02/10/91	720
M–867–2448	Educational Telephone, Light Gain Limited	02/21/91	480

The asterisk (*) next to the date column above indicates shipping dates because the entry dates are not readily available.

6. The toys identified in paragraph five above are subject to, but failed to comply with, the Commission's Small Parts Regulation, 16 CFR part 1501, in that when tested under the "use and abuse" test methods specified in 16 CFR1500.51 and 1500.52, (a) one or more parts of each tested toy separated and (b) one or more of the separated parts from each of the tested toys fit completely within the test cylinder, as set forth in 16 CFR 1501.4.

7. Because separated parts fit completely within the test cylinder as described in paragraph six above, each of the toys identified in paragraph five presents a "mechanical hazard" within the meaning of section 2(s) of the FHSA, 15 U.S.C. 1261(s) (choking, aspiration and/or ingestion of small parts).

8. Each of the toys identified in paragraph five above is a "hazardous substance" pursuant to section 2(f)(1)(D) of the FHSA, 15 U.S.C. 1261(f)(1)(D).

9. Each of the toys identified in paragraph five above is a "banned hazardous substance" pursuant to (a) section 2(q)(1)(A) of the FHSA, 15 U.S.C. 1261(q)(1)(A) (any toy or other article intended for use by children which bears or contains a hazardous substance); and (b) 16 CFR 1500.18(a)(9).

10. Yuchius knowingly caused the introduction into interstate commerce of the aforesaid banned hazardous toys, in violation of section 4(a) of the FHSA, 15 U.S.C. 1263(a), for which a civil penalty may be imposed pursuant to section 5(c) of the FHSA, 15 U.S.C. 1264(c).

IV. Response of Yuchius

11. Yuchius denies the allegations of the staff set forth in paragraphs five through ten above that it has knowingly caused the introduction into commerce of the aforesaid banned hazardous toys, or that it has violated the FHSA as alleged by the staff.

V. Agreement of the Parties

12. The consumer Product Safety Commission has jurisdiction over Yuchius and the subject matter of this Settlement Agreement and Order under the following acts: Consumer Product Safety Act, 15 U.S.C. 2051 *et seq.*, and the Federal Hazardous Substances Act, 15 U. S. C. 1261 *et seq.*

13. Upon final acceptance by the commission of this Settlement

Agreement, Yuchius agrees to pay to the commission a civil penalty in the amount of Twenty Thousand and 00/100 dollars ($20,000.00), in two (2) equal installment payments of Ten Thousand and 00/100 ($10,000.00) on or before December 31, 1993, and on or before December 31, 1994, respectively. Payment of the full amount of the civil penalty shall settle fully the staff's allegations set forth in paragraphs five through ten above that Yuchius violated the FHSA. The outstanding balance of any late installment payment shall be charged interest at the federal legal rate of interest under the provisions of 28 U.S.C. 1961 (a) and (b). Any late payment over thirty 30 days duration shall make the entire outstanding balance due and payable.

14. The Commission does not make any determination that Yuchius knowingly violated the FHSA. The Commission and Yuchius agree that this Agreement is entered into for the purposes of settlement only.

15. Upon final acceptance of this Settlement Agreement by the Commission and issuance of the Final Order, Yuchius knowingly, voluntarily and completely, waives any rights it may have in this matter (1) to an administrative or judicial hearing, (2) to judicial review or other challenge or contest of the validity of the Commission's actions, (3) to a determination by the Commission as to whether Yuchius failed to comply with the FHSA as aforesaid, and (4) to a statement of findings of fact and conclusions of law.

16. For purposes of section 6(b) of the CPSA, 15 U.S.C. 2055(b), this matter shall be treated as if a complaint had issued; and, the Commission may publicize the terms of the Settlement Agreement and Order.

17. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, this Settlement Agreement and Order shall be placed on the public record and shall be published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e)–(h). If the Commission does not receive any written request not to accept the Settlement Agreement and Order within 15 days, the Settlement Agreement and Order will be deemed finally accepted on the 16th day after the date it is published in the **Federal Register.**

18. The parties further agree that the Commission shall issue the attached Order incorporated herein by reference; and that a violation of the Order shall subject Yuchius to appropriate legal action.

19. No agreement, understanding, representation, or interpretation not contained in this Settlement Agreement and Order may be used to vary or to contradict its terms.

20. The provisions of the Settlement Agreement and Order shall apply to Yuchius and each of its successors and assigns.

Respondent Yuchius Morality, Inc.

Dated: July 19, 1993.

Jack Yu,
President, Yuchius Morality, Inc., 635 W. 27th Street, New York, New York 10001.

Commission Staff

David Schmeltzer,
Assistant Executive Director, Office of Compliance and Enforcement.

Alan H. Schoem,
Acting Director, Division of Administrative Litigation, Office of Compliance and Enforcement.

Dated: July 22, 1993.

Earl A. Gershenow,
Trial Attorney, Division of Administrative Litigation, Office of Compliance and Enforcement.

Dated: July 22, 1993.

Dennis C. Kacoyanis,
Trial Attorney, Division of Administrative Litigation, Office of Compliance and Enforcement.

[CPSC Docket No. 94–C0002]

Yuchius Morality, Inc. a Corporation; Order

Upon consideration of the Settlement Agreement entered into between respondent Yuchius Morality, Inc., a corporation, and the staff of the Consumer Product Safety Commission; and the Commission having jurisdiction over the subject matter and Yuchius Morality, Inc.; and it appearing that the Settlement Agreement is in the public interest, it is

Ordered, that the Settlement Agreement be and hereby is accepted, as indicated below; and it is

Further Ordered, that upon final acceptance of the Settlement Agreement, Yuchius Morality, Inc. shall pay to the Commission a civil penalty in the amount of Twenty Thousand and 00/100 Dollars ($20,000.00), in two (2) equal installment payments of Ten Thousand and 00/100 ($10,000.00) on or before December 31, 1993, and on or before December 31, 1994, respectively. Payment of the full amount of the civil penalty shall settle fully the staff's allegations set forth in paragraphs five through ten of the Settlement Agreement that Yuchius violated the FHSA. The outstanding balance of any late installment payment shall be charged interest at the federal legal rate of interest under the provisions of 28 U.S.C. 1961(a) and (b). Any late payment over thirty (30) days duration shall make the entire outstanding balance due.

Provisionally accepted and Provisional Order issued on the 4th day of October, 1993.

By Order of the Commission:

Sadye E. Dunn,
Secretary, Consumer Product Safety Commission.

Finally accepted and Final Order issued on the _____day of _____, 199__.

[FR Doc. 93–24694 Filed 10–6–93; 8:45 am]
BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Reduction of Government Bill of Lading (GBL) Distribution

AGENCY: Defense Logistics Agency, Department of Defense.

ACTION: Notice of conclusion of GBL test at DLA depots which had reduced carrier copies from 4 to 2.

SUMMARY: This notice announces termination of the GBL test at DLA Distribution Depots. Use of the seven part GBLs will be resumed at the depots. Testing of the seven part form, in lieu of the nine part form, at Defense Contract Management Districts (DCMDs) and Defense Subsistence Offices (DSOs) will continue.

EFFECTIVE DATE: October 7, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Brian Sheridan, Traffic Management Specialist, Transportation Division, Defense Logistics Agency, Department of Defense, Cameron Station, Alexandria, VA, (703) 274–0566.

Phillip E. Jung,
Colonel, USAF, Staff Director, Transportation Office.

[FR Doc. 93–24681 Filed 10–6–93; 8:45 am]
BILLING CODE 3820–01–M

Public Information Collection Requirement Submitted to OMB for Review

AGENCY: DoD.

ACTION: Notice

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C., chapter 35).

Title, applicable form, and OMB control number: Department of Defense

Personnel Security Questionnaire; DD Form 398, DD Form 398 INST, and DD Form 1879; OMB Control Number 0704–0299

Type of request: Revision
Number of respondents: 146,000
Responses per respondent: 1
Annual responses: 146,000
Average burden per response: 3 hours
Annual burden hours: 438,000
Needs and uses: The information collected by the DD Form 398 is used by the Defense Investigative Service to conduct Single Scope Background Investigations (SSBIs), Periodic Reinvestigations (PRs), and Special Investigative Inquiries (SIIs). These provide the basis for determination of a person's eligibility for access to classified information, appointment to a sensitive position, assignment to duties that require a personnel security or trustworthiness determination, continuing eligibility for retention of a security clearance, or assignment to other sensitive duties. The DD Form 398 INST provides guidance for completing the DD Form 398. The DD Form 1879 is used to request an SSBI, PR, or SII, and accompanies the DD Form 398.
Affected public: Individuals or households; Federal agencies or employees
Frequency: On occasion
Respondent's obligation: Voluntary
OMB desk officer: Mr. Edward C. Springer. Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503
DOD clearance officer: Mr. William P. Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, VA 22202–4302

Dated: October 1, 1993.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–24583 Filed 10–6–93; 8:45 am]

BILLING CODE 5000–04–M

Public Information Collection Requirement Submitted to OMB for Review

AGENCY: DoD.

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C., chapter 35).

Title, applicable form, and OMB control number: Department of Defense National Agency Questionnaire; DD Form 398–2, DD Form 398–2 INST; OMB Control Number 0704–0298

Type of request: Revision
Number of respondents: 550,000
Responses per respondent: 1
Annual responses: 550,000
Average burden per response: 2.25 hours
Annual burden hours: 1,237,500
Needs and uses: The information collected by the DD Form 398–2 is used by the Defense Investigative Service to conduct National Agency Checks which provide the basis for determination of a person's eligibility for access to classified information, employment in sensitive positions, and entrance into the Armed Forces. The DD Form 398–2 INST provides guidance for completing the DD Form 398–2.
Affected public: Individuals or households; Federal agencies or employees
Frequency: On occasion
Respondent's obligation: Voluntary
OMB desk officer: Mr. Edward C. Springer. Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503
DOD clearance officer: Mr. William P. Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, VA 22202–4302

Dated: October 1, 1993.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–24584 Filed 10–6–93; 8:45 am]

BILLING CODE 5000–04–M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C., chapter 35).

Title; applicable form, and OMB control number: DoD FAR Supplement, Subpart 225.72, Reporting Contract Performance Outside the United States, and the Clause at 252.225–7026; DD Form 2139; OMB Control Number 0704–0355

Type of request: Extension
Number of respondents: 300
Responses per respondent: 6
Annual responses: 1,800
Average burden per response: .5 hours
Annual burden hours: 900
Needs and uses: The clause at DFARS 252.225–7026, Reporting of Contract Performance Outside the United States, is used in DoD solicitations and contracts with an estimated or actual value exceeding $500,000. The clause requires offerors and contractors to provide information on intended and actual contract performance outside the United States. This information is needed for annual exchanges of data between the United States and foreign countries, and for compliance with the requirements of section 840 of The National Defense Authorization Act for Fiscal Year 1993 (Public Law 102–484).
Affected public: Businesses of other for-profit and Small businesses or organizations
Frequency: On occasion
Respondent's obligation: Mandatory
OMB desk officer: Mr. Peter N. Weiss. Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503
DOD clearance officer: Mr. William P. Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, VA 22202–4302

Dated: October 4, 1993

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–24640 Filed 10–6–93; 8:45 am]

BILLING CODE 5000–04–M

Office of the Secretary

DoD Government-Industry Technical Data Committee; Meeting

AGENCY: Office of the Under Secretary of Defense (Acquisition).

ACTION: Notice.

SUMMARY: Pursuant to section 807 of Public Law 102–120, the National Defense Authorization Act for Fiscal

Years 1992 and 1993, a Government-Industry Technical Data Committee has been formed. The committee will make recommendations to the Secretary of Defense for the final regulations required by subsection (a) of 10 U.S.C. 2320, "Rights in Technical Data."

The next committee meetings are scheduled for October 27 and 28 1993, from 9:30 a.m. to 4 p.m. at The Russell Baker Conference Room, room 1000, 815 Connecticut Ave., NW., Washington, DC 20006–4078. These meetings will be open to the public. For more information, please contact the Committee Executive Secretary, Angelena Moy at (703) 693–5639.

Dated: October 4, 1993.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–24639 Filed 10–6–93; 8:45 am]

BILLING CODE 5000–04–M

Telecommunications Service Priority System Oversight Committee; Meeting

AGENCY: National Communications System, DoD.

ACTION: Notice of meeting change.

Previously announced meeting of the Telecommunications Service Priority (TSP) System Oversight Committee (58 FR 49287) has been changed to convene Wednesday, November 10, 1993, from 9 a.m. to 4:30 p.m. The meeting will be held at Booz-Allen & Hamilton, 8283 Greensboro Drive, McLean, Virginia 22102, room 1169. The agenda remains as follows:

—Opening/Administrative Remarks
—Review June 4, 1993 Meeting Summary and Status of Actions
—TSP Program Office Update
—TSP Ad Hoc Working Group Report
—Review of Action Items
—Old Business/New Business

Anyone interested in attending or presenting additional information to the Committee, please contact the National Communications System TSP Program Office, Bernard Farrell (703) 746–5375 or Susan Flint (703) 692–0040, by October 25, 1993.

Dated: October 1, 1993.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–24582 Filed 10–06–93; 8:45 am]

BILLING CODE 5000–04–M

Per Diem, Travel and Transportation Allowance Committee; Changes in Rates

AGENCY: Per Diem, Travel and Transportation Allowance Committee, DOD.

ACTION: Publication of changes in per diem rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 172. This bulletin lists changes in per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and Possessions of the United States. Bulletin Number 172 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: 1 October 1993.

SUPPLEMENTARY INFORMATION: This document gives notice of changes in per diem rates prescribed by the Per Diem, Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. Distribution of Civilian Personnel Per Diem Bulletins by mail was discontinued effective 1 June 1979. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of change in per diem rates to agencies and establishments outside the Department of Defense.

The text of the Bulletin follows:

BILLING CODE 5000–04–M

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B)	MAXIMUM PER DIEM RATE = (C)	EFFECTIVE DATE
ALASKA:				
ADAK 5/	$ 10	$ 34	$ 44	10-01-91
ANAKTUVUK PASS	83	57	140	12-01-90
ANCHORAGE				
05-15--09-15	174	71	245	05-15-93
09-16--05-14	81	66	147	12-01-92
ANIAK	73	36	109	07-01-91
ATQASUK	129	86	215	12-01-90
BARROW	86	73	159	06-01-91
BETHEL	82	69	151	10-01-93
BETTLES	65	45	110	12-01-90
COLD BAY	110	54	164	07-01-93
COLDFOOT	95	59	154	10-01-92
CORDOVA	66	77	143	12-01-92
CRAIG	67	35	102	07-01-91
DILLINGHAM	76	38	114	12-01-90
DUTCH HARBOR-UNALASKA	113	67	180	05-01-92
EIELSON AFB				
05-15--09-15	100	66	166	05-15-93
09-16--05-14	65	67	132	12-01-92
ELMENDORF AFB				
05-15--09-15	174	71	245	05-15-93
09-16--05-14	81	66	147	12-01-92
EMMONAK	62	61	123	10-01-93
FAIRBANKS				
05-15--09-15	100	66	166	05-15-93
09-16--05-14	65	67	132	12-01-92
FALSE PASS	80	37	117	06-01-91
FT. RICHARDSON				
05-15--09-15	174	71	245	05-15-93
09-16--05-14	81	66	147	12-01-92
FT. WAINWRIGHT				
05-15--09-15	100	66	166	05-15-93
09-16--05-14	65	67	132	12-01-92
HOMER				
05-01--09-30	71	60	131	05-01-93
10-01--04-30	53	62	115	12-01-92
JUNEAU				
05-01--10-01	88	74	162	05-01-92
10-02--04-30	75	73	148	01-01-92
KATMAI NATIONAL PARK	89	59	148	12-01-90

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B)	MAXIMUM PER DIEM RATE = (C)	EFFECTIVE DATE
ALASKA: (CONT'D)				
KENAI-SOLDOTNA				
04-02--09-30	$ 94	$ 68	$162	04-02-93
10-01--04-01	57	66	123	12-01-92
KETCHIKAN				
05-14--10-14	90	77	167	06-01-93
10-15--05-13	68	75	143	10-15-93
KING SALMON 3/	75	59	134	12-01-90
KLAWOCK	75	36	111	07-01-91
KODIAK	71	61	132	01-01-92
KOTZEBUE	133	87	220	05-01-93
KUPARUK OILFIELD	75	52	127	12-01-90
METLAKATLA	79	44	123	07-01-91
MURPHY DOME				
05-15--09-15	100	66	166	05-15-93
09-16--05-14	65	67	132	12-01-92
NELSON LAGOON	102	39	141	06-01-91
NOATAK	133	87	220	05-01-93
NOME	71	67	138	10-01-93
NOORVIK	133	87	220	05-01-93
PETERSBURG	72	64	136	05-01-92
POINT HOPE	99	61	160	12-01-90
POINT LAY 6/	106	73	179	12-01-90
PRUDHOE BAY-DEADHORSE	64	57	121	12-01-90
SAND POINT	75	36	111	07-01-91
SEWARD				
05-01--09-30	107	53	160	05-01-92
10-01--04-30	61	48	109	01-01-92
SHUNGNAK	133	87	220	05-01-93
SITKA-MT. EDGECOMBE	72	69	141	01-01-92
SKAGWAY				
05-14--10-14	90	77	167	06-01-93
10-15--05-13	68	75	143	10-15-93
SPRUCE CAPE	71	61	132	01-01-92
ST. GEORGE	100	39	139	06-01-91
ST. MARY'S	77	59	136	06-01-93
ST. PAUL ISLAND	62	63	125	10-01-93
TANANA	71	67	138	10-01-93
TOK				
04-21--10-31	60	58	118	06-01-93
11-01--04-20	48	57	105	11-01-93

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	M&IE RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
ALASKA: (CONT'D)						
UMIAT	$ 97		$ 63		$160	12-01-90
VALDEZ						
05-01--09-01	98		53		151	05-01-93
09-02--04-30	82		70		152	12-01-92
WAINWRIGHT	90		75		165	12-01-90
WALKER LAKE	82		54		136	12-01-90
WRANGELL						
05-14--10-14	90		77		167	06-01-93
10-15--05-13	68		75		143	10-15-93
YAKUTAT	70		40		110	12-01-90
OTHER 3, 4, 6/	63		48		111	01-01-93
AMERICAN SAMOA	85		47		132	12-01-91
GUAM	155		75		230	05-01-93
HAWAII:						
ISLAND OF HAWAII: HILO	73		61		134	06-01-93
ISLAND OF HAWAII: OTHER	80		71		151	06-01-93
ISLAND OF KAUAI						
04-01--11-30	110		75		185	06-01-93
12-01--03-31	122		76		198	12-01-93
ISLAND OF KURE 1/			13		13	12-01-90
ISLAND OF MAUI						
04-01--11-30	79		71		150	06-01-93
12-01--03-31	96		73		169	12-01-93
ISLAND OF OAHU	105		62		167	06-01-93
OTHER	79		62		141	06-01-93
JOHNSTON ATOLL 2/	21		20		41	10-01-93
MIDWAY ISLANDS 1/			13		13	12-01-90
NORTHERN MARIANA ISLANDS:						
ROTA	68		55		123	01-01-93
SAIPAN	100		69		169	01-01-93
TINIAN	50		55		105	01-01-93
OTHER	20		13		33	12-01-90
PUERTO RICO:						
BAYAMON						
05-01--12-14	93		73		166	09-01-93
12-15--04-30	116		76		192	12-15-93
CAROLINA						
05-01--12-14	93		73		166	09-01-93
12-15--04-30	116		76		192	12-15-93

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B)	MAXIMUM PER DIEM RATE (C) =	EFFECTIVE DATE
PUERTO RICO: (CONT'D)				
FAJARDO (INCL CEIBA, LUQUILLO AND HUMACAO)				
04-16--12-10	$ 65	$ 52	$117	10-01-93
12-11--04-15	110	52	162	12-11-93
FT. BUCHANAN (INCL GSA SERV CTR, GUAYNABO)				
05-01--12-14	93	73	166	09-01-93
12-15--04-30	116	76	192	12-15-93
MAYAGUEZ	85	65	150	08-01-92
PONCE	96	75	171	09-01-93
ROOSEVELT ROADS				
04-16--12-10	65	52	117	10-01-93
12-11--04-15	110	52	162	12-11-93
SABANA SECA				
05-01--12-14	93	73	166	09-01-93
12-15--04-30	116	76	192	12-15-93
SAN JUAN (INCL SAN JUAN COAST GUARD UNITS)				
05-01--12-14	93	73	166	09-01-93
12-15--04-30	116	76	192	12-15-93
OTHER	63	52	115	08-01-92
VIRGIN ISLANDS OF THE U.S.				
06-02--12-19	180	112	292	09-01-93
12-20--06-01	255	120	375	12-20-93
WAKE ISLAND 2/	4	17	21	12-01-90
ALL OTHER LOCALITIES	20	13	33	12-01-90

FOOTNOTES

1/ Commercial facilities are not available. The meal and incidental expense rate covers charges for meals in available facilities plus an additional allowance for incidental expenses and will be increased by the amount paid for Government quarters by the traveler.

2/ Commercial facilities are not available. Only Government-owned and contractor operated quarters and mess are available at this locality. This per diem rate is the amount necessary to defray the cost of lodging, meals and incidental expenses.

3/ On any day when US Government or contractor quarters are available and U.S. Government or contractor messing facilities are used, a meal and incidental expense rate of $19.65 is prescribed to cover meals and

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

incidental expenses at Shemya AFB, Clear AFS, Galena APT and King Salmon APT. This rate will be increased by the amount paid for U.S. Government or contractor quarters and by $4 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

4/ On any day when U.S. Government or contractor quarters are available and U.S. Government or contractor messing facilities are used, a meal and incidental expense rate of $34 is prescribed to cover meals and incidental expenses at Amchitka Island, Alaska. This rate will be increased by the amount paid for U.S. Government or contractor quarters and by $10 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

5/ On any day when U.S. Government or contractor quarters are available and U.S. Government or contractor messing facilities are used, a meal and incidental expense rate of $25 is prescribed instead of the rate prescribed in the table. This rate will be increased by the amount paid for U.S. Government or contractor quarters.

6/ The meal rates listed below are prescribed for the following locations in Alaska: Cape Lisburne RRL, Cape Newenham RRL, Cape Romanzof APT, Fort Yukon RRL, Indian Mtn RRL, Sparrevohn RRL, Tatalina RRL, Tin City RRL, Barter Island AFS, Point Barrow AFS, Point Lay AFS and Oliktok AFS. The amount to be added to the cost of government quarters in determining the per diem will be $3.50 plus the following amount:

	Daily Rate
DOD Personnel	$13
Non-DOD Personnel	$30

BILLING CODE 5000-04-C

Dated: October 4, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93-24641 Filed 10-6-93; 8:45 am]

BILLING CODE 5000-04-M

Corps of Engineers

Department of the Army

Regulatory Guidance Letters Issued by the Corps of Engineers

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice.

SUMMARY: The purpose of this notice is to provide a copy of the Regulatory Guidance Letter (RGL 93-3) to all known interested parties. RGL's are used by the Corps of Engineers as a means to transmit guidance on the regulatory program (33 CFR 320-330) to its division and district engineers. The Corps of Engineers publishes RGL's in the **Federal Register** upon issuance as a means of informing the public of Corps guidance.

FOR FURTHER INFORMATION CONTACT: Mr. Sam Collinson, Regulatory Branch, Office of the Chief of Engineers at (202) 272-1782.

SUPPLEMENTARY INFORMATION: RGL 93-3, Subject: Rescission of Regulatory Guidance Letters (RGL) 90-5, 90-7, and 90-8, is hereby published.

John P. Elmore,

Chief, Operations, Construction and Readiness Division, Directorate of Civil Works.

SUBJECT: Rescission of Regulatory Guidance Letters (RGL) 90-5, 90-7, and 90-8.

1. On 25 August 1993 the final "Excavation Rule" was published in the **Federal Register** (58 FR 45008) and becomes effective on 24 September 1993. This regulation modifies the definition of "Discharge of Dredged Material" to address landclearing activities (see 33 CFR 323.2(d)); modifies the definitions of "Fill Material" and "Discharge of Fill Material" to address the placement of pilings (see 33 CFR 323.2 (e) and (f) and 323.3(c)); and modifies the definition of "waters of the United States" to address prior converted cropland (see 33 CFR 328.(a)(8)).

2. Therefore, RGL 90-5, Subject: "Landclearing Activities Subject to section 404 Jurisdiction"; RGL 90-7, Subject: "Clarification of the Phrase 'Normal Circumstances' as it pertains to Cropped Wetlands"; and RGL 90-8, Subject: "Applicability of section 404 to

Pilings"; are hereby rescinded effective 24 September 1993. Furthermore, although RGL 90–5, Subject: "Landclearing Activities Subject to Section 404 Jurisdiction" expired on 31 December 1992 it should continue to be applied until 24 September 1993.

3. In addition, RGL's 90–5, 90–7, and 90–8 as of 24 September 1993 will no longer be used for guidance since the guidance contained in those RGL's has been superseded by the regulation.

For the Director of Civil Works.

John P. Elmore,

Chief, Operations, Construction and Readiness Division, Directorate of Civil Works.

[FR Doc. 93–24680 Filed 10–6–93; 8:45 am]

BILLING CODE 3710–92–M

Department of the Navy

Intent To Prepare a Programmatic Environmental Impact Statement To Evaluate Facilities Development Necessary To Support Potential Future Aircraft Carrier Homeporting at the Naval Station, Mayport, FL

Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500–1508), the Department of the Navy announces its intent to prepare a Programmatic Environmental Impact Statement (PEIS) to evaluate facilities development necessary to support potential future aircraft carrier homeporting at the Naval Station, Mayport, Florida.

This work involves preparation of environmental documentation required to evaluate the feasibility of and the impacts associated with the possible future homeporting of an additional aircraft carrier at Naval Station, Mayport. This evaluation was generated by section 1011 of the Fiscal Year 1993 National Defense Authorization Act. The Act also provides for development of detailed facility requirements and facility studies for homeporting related projects which will serve as source documents for the PEIS.

The objective of the PEIS is the collection, analysis, and portrayal of data in sufficient detail to allow programmatic level evaluation of potential impacts and availability of assets within the Naval Station, Mayport, Florida area. If, and when, a decision is necessary to implement additional aircraft carrier homeporting, a tier NEPA document will be prepared to discuss specific implementation details.

The alternatives analysis for the PEIS will address berthing an aircraft carrier at berth C–2, the recently completed industrial wharf (Wharf F), and not berthing an aircraft carrier at all (the no-action alternative).

The Navy will initiate a scoping process for the purpose of determining the scope of issues to be addressed and for identifying significant issues relative to this action. The Navy will hold a Public Scoping Meeting on Tuesday, October 26, 1993, beginning at 7 p.m. at the Gymnasium, Fletcher Senior High School, Neptune Beach, Florida. This meeting will be advertised in local newspapers in advance of the meeting.

A formal presentation will precede requests for public comment. Navy representatives will be available at this meeting to receive comments from the public regarding issues of concern. It is important that federal, state, and local agencies and interested individuals take this opportunity to identify environmental concerns that should be addressed during preparation of the PEIS. In the interest of available time, each speaker will be asked to limit their oral comments to five minutes.

Agencies and the public are also invited and encouraged to provide written comment in addition to, or in lieu of, oral comments at the public meeting. To be most helpful, scoping comments should clearly describe specific issues or topics which the commentor believes the PEIS should address. Written statements and/or questions regarding the scoping process should be mailed no later than November 15, 1993, to Commanding Officer, Southern Division, Naval Facilities Engineering Command, P.O. Box 190010, North Charleston, SC 29419–9010 (Attn: Ronnie Lattimore Code 203RL), telephone (803) 743–0888.

Dated: October 4, 1993.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 93–24644 Filed 10–6–93; 8:45 am]

BILLING CODE 3810–AE–M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app. 2), notice is hereby given that the Naval Research Advisory Committee Panel on Littoral Warfare/ Amphibious Warfare will meet on November 2, 3, and 4, 1993. The meeting will be held at the Marine Corps Air Station, Cherry Point, North Carolina. The meeting will commence at 8 a.m. and terminate at 5 p.m. on November 2; commence at 8 a.m. and terminate at 4:30 p.m. on November 3; and commence at 8 a.m. and terminate at 4 p.m. on November 4, 1993. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to provide the Department of the Navy with (1) an assessment of the capabilities and readiness of the U.S. Navy and Marine Corps to effectively conduct littoral and amphibious warfare operations, and (2) recommendations for technological investments that can improve performance while reducing risk to Marine and Naval forces. The agenda will include briefings and discussions related to the projected operating environment for the year 2000; operational concepts; Defense Planning Guidance and scenarios; the threat to U.S. forces operating in the littoral environment; littoral/ amphibious joint doctrine concept development; the joint maritime assessment process; shallow water mine countermeasures; training; combat identification; and logistics support.

These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander R. C. Lewis, USN, Office of the Chief of Naval Research, 800 North Quincy Street, Arlington, VA 22217–5000, Telephone Number: (703) 696–4870.

Dated: October 1, 1993.

Michael P. Rummel,

Lieutenant Commander, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 93–24629 Filed 10–6–93; 8:45 am]

BILLING CODE 3810–AE–M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Naval Research Advisory Committee Panel on Littoral Warfare/ Amphibious Warfare will meet on

November 2, 3, and 4, 1993. The meeting will be held at the Marine Corps Air Station, Cherry Point, North Carolina. The meeting will commence at 8:00 a.m. and terminate at 5:00 p.m. on November 2; commence at 8:00 a.m. and terminate at 4:30 p.m. on November 3; and commence at 8:00 a.m. and terminate at 4:00 p.m. on November 4, 1993. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to provide the Department of the Navy with (1) an assessment of the capabilities and readiness of the U.S. Navy and Marine Corps to effectively conduct littoral and amphibious warfare operations, and (2) recommendations for technological investments that can improve performance while reducing risk to Marine and Naval forces. The agenda will include briefings and discussions related to the projected operating environment for the year 2000; operational concepts; Defense Planning Guidance and scenarios; the threat to U.S. forces operating in the littoral environment; littoral/amphibious joint doctrine concept development; the joint maritime assessment process; shallow water mine countermeasures; training; combat identification; and logistics support.

These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and are in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander R. C. Lewis, USN, Office of the Chief of Naval Research, 800 North Quincy Street, Arlington, VA 22217-5000, Telephone Number: (703) 696-4870.

Dated: September 27, 1993.

Michael P. Rummel

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 93-24630 Filed 10-6-93; 8:34am]

BILLING CODE 3810-AE-F

DEPARTMENT OF ENERGY

Financial Assistance Award; Intent To Award Grant to Fred Hutchinson Cancer Center

AGENCY: Department of Energy.

ACTION: Notice of unsolicited financial assistance award.

SUMMARY: The Department of Energy (DOE) announces that pursuant to 10 CFR 600.14(e)(1) (i) and (ii), it is making a discretionary financial assistance award based on acceptance of an unsolicited application under Grant Number DE–FG01–93EH89382. The primary purpose of the grant is to test the feasibility of establishing scientific collaborations with Russian investigators that will enable the conduct of long-term joint research regarding the radiation doses that could have been received and the possible adverse health effects that may have resulted from the explosion at the Chernobyl Power Station in 1986. This effort will have a total estimated cost of $221,887 to be provided by the DOE.

FOR FURTHER INFORMATION CONTACT: Please write the U.S. Department of Energy, Office of Placement and Administration, ATTN: Faye Warchal, HR–351.24, 1000 Independence Avenue, SW., Washington, DC 20585.

SUPPLEMENTARY INFORMATION: The grant will provide funding to the Fred Hutchinson Cancer Research Center for activities focused in two principal areas: epidemiology and radiation dosimetry. Specifically, this pilot study is designed to: (1) Establish and further develop the working relationships necessary to conduct long-term collaborative research; (2) identify and establish two relatively large cohorts of persons who were likely exposed to radiation from Chernobyl; (3) develop and evaluate methods for estimating radiation doses received by members of the cohorts; (4) develop and evaluate methods for ascertaining and verifying health status; and (5) establish the capability for storing DNA and RNA specimens. It is expected that this pilot phase may lead to full-scale epidemiologic and biologic studies. Such studies may include multiple disease endpoints, including cancer, adverse reproductive outcomes, and possibly genetically determined diseases. In addition, the results of this effort will provide a more scientifically defensible and accurate description of radiation doses that may have been received by persons exposed to the releases of radiation from Chernobyl.

Based on the evaluation of relevance to the accomplishment of a public purpose, it is determined that the proposal represents a beneficial method and approach to establish a foundation for future comprehensive scientific investigations of radiation risk assessment.

Pursuant to 10 CFR 600.14(e)(1) (i) and (ii) the application is meritorious based on a general evaluation considering the requirements of 10 CFR 600.14(d). The proposed project is a pilot program that represents a method or approach which would not be eligible for financial assistance under a recent, current, or planned solicitation and a competitive solicitation would be inappropriate.

Scott Sheffield,

Director, Division "B", Office of Placement and Administration.

[FR Doc. 93-24676 Filed 10-6-93; 8:45 am]

BILLING CODE 6450-01-M

Office of the Secretary

Federal Fleet Conversion Task Force; Notice of Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L 92–463; 86 Stat. 770), notice is hereby given of the following meeting:

Name: Federal Fleet Conversion Task Force.

Date and Time: Friday, October 8, 1993, 10 a.m.–5 p.m.

Location: Dolly Madison House, U.S. Court of Appeals—Federal Circuit, Dolly Madison Room, 717 Madison Place, Washington, DC.

Contact: Mark E. Bower, Office of Domestic and International Policy, U.S. Department of Energy, Mail Stop PO–50, Washington, DC 20585, Phone: (202) 586–3891, Fax: (202) 586–4447.

Purpose of the Task Force: Established by Executive Order 12844, the Task Force is charged with the development of recommendations to:

1. Assure that federal agencies exercise leadership in promoting alternative fuels.

2. Focus federal actions to promote market impetus for the development and manufacturing of alternative fueled vehicles.

3. Aid the expansion of the refueling infrastructure necessary to support growing numbers of privately owned alternative fueled vehicles.

At this meeting, the Task Force will announce the release of its first report setting forth a recommended plan for fleet conversion implementation. Discussion concerning the report and a public comment period will follow. In addition, no later than one year from the date of this order, the Task Force is required to file a report on the status of the fleet conversion effort.

Public participation: The meeting is open to the public. Written statements may be filed with the Task Force either before or after the meeting. Members of the public who wish to make oral statements pertaining to the agenda items should contact Mark Bower at the address or telephone number listed above. Requests must be received five calendar days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. These oral presentations will be limited to five minutes. The Chairman of the Task Force is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. This notice is being published less than 15 days prior to the meeting because the Task Force meeting will be held in conjunction with a White House ceremony announcing the release of the Task Force report.

Minutes: Available for public review and copying approximately 30 days following the meeting at the Public Reading Room, room 1E–190, Forrestal Building, 1000 Independence Ave., SW, Washington, DC between 9 a.m. and 4 p.m., Monday through Friday, except Federal Holidays.

Issued at Washington, DC, on October 4, 1993.

Howard H. Raiken,

Advisory Committee Management Officer.

[FR Doc. 93–24677 Filed 10–6–93; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Project Nos. 2596–002, 2584–003, 2582–002, and 2583–004 New York]

Rochester Gas and Electric Corp.; Availability of Draft Multiple Project Environmental Assessment

September 30, 1993.

In accordance with the National Environmental Policy Act of 1969 and the Federal Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the applications for a subsequent license for the proposed Station No. 160, FERC Project No. 2596–002 Hydroelectric Project; and new licenses for the proposed Station No. 26, FERC Project No. 2584–003; Station No. 2, FERC Project No. 2582–002; and Station No. 5, FERC Project No. 2583–004 Hydroelectric Projects located on the Genesee River in Livingston and Monroe Counties, New York, in the towns of Leicester and Mount Morris and the city of Rochester, and has prepared a draft Multiple Project Environmental Assessment (MPEA) for the proposed projects.

Copies of the MPEA are available for review in the Public Reference Branch, room 3308 the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Comments should be filed within 30 days from the date of this notice and should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. The comments should reference one or more or all of the following projects: Project No. 2596–002; Project No. 2584–003; Project No. 2582–002; and Project No. 2583–004. For further information, please contact Robert Bell, Project Manager, at (202) 219–2806.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24610 Filed 10–6–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. ER93–976–000, et al.]

Alabama Power Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

September 30, 1993.

Take notice that the following filings have been made with the Commission:

1. Alabama Power Company

[Docket No. ER93–976–000]

Take notice that on September 27, 1993, Alabama Power Company, tendered for filing an increase in certain subtransmission and substation rental charges contained in agreements between it and the Tennessee Valley Authority. These changes update charges for substation and subtransmission investments, and expenses incurred in connection with, transmission service in Cherokee Electric Cooperative for the account of the Tennessee Valley Authority. The revised charges are proposed to become effective on November 1, 1993.

Comment date: October 14, 1993, in accordance with Standard Paragraph E at the end of this notice.

2. Northwestern Wisconsin Electric Company

[Docket No. ER93–848–000]

Take notice that on September 27, 1993, Northwestern Wisconsin Electric Company tendered for filing an Amendment to its initial filing in Docket No. ER93–848–000. The Amendment provides certain additional information required by Commission Staff.

NWEC again requests that its proposed Service Agreement be accepted for filing effective September 1, 1983, and requests waiver of the Commission' notice requirements in order for the Service Agreement to be accepted for filing on the date requested.

Comment date: October 14, 1993, in accordance with Standard Paragraph E at the end of this notice.

3. Public Service Company of Oklahoma

[Docket No. ER93–435–000]

Take notice that on September 28, 1993, Public Service Company of Oklahoma (PSO) tendered for filing supplemental information relating to PSO's contract with the City of Collinsville, Oklahoma (Collinsville) filed in Docket No. ER93–435–000 on March 8, 1993.

Copies of the filing were served on Collinsville and the Oklahoma Corporation Commission.

Comment date: October 14, 1993, in accordance with Standard Paragraph E at the end of this notice.

4. Public Service Company of Colorado

[Docket No. ER93–974–000]

Take notice that on September 27, 1993, Public Service Company of Colorado (Public Service) tendered for filing a letter from the Executive Committee of the Western Systems Power Pool (WSPP) approving Public Service's application for membership in the WSPP. Public Service requests that the Commission amend the WSPP Agreement to include it as a member.

Public Service requests an effective date of September 2, 1993, for the proposed amendment. Accordingly, Public Service requests waiver of the Commission's notice requirements for good cause shown. (18 CFR 35.3 and 35.11)

Copies of the filing were served upon the Western Systems Power Pool Executive Committee and state jurisdictional regulators which include the Public Utilities Commission of the State of Colorado and the State of Colorado Office of Consumer Counsel.

Comment date: October 14, 1993, in accordance with Standard Paragraph E at the end of this notice.

5. Puget Sound Power & Light Company

[Docket No. ER93–977–000]

Take notice that on September 27, 1993, Puget Sound Power & Light Company (Puget) tendered for filing an initial rate schedule between the Bonneville Power Administration (Bonneville) and Puget, effective as of

December 31, 1987 (the Agreement). A copy of the filing was served upon Bonneville.

Puget states that the Agreement relates to Bonneville's provision of transmission services to Puget and Puget's payment of transmission losses to Bonneville. Puget requests the Commission to disclaim jurisdiction over the Agreement.

Comment date: October 14, 1993, in accordance with Standard Paragraph E at the end of this notice.

6. PacifiCorp

[Docket No. ER93-975-000]

Take notice that on September 27, 1993, PacifiCorp, tendered for filing in accordance with 18 CFR part 35 of the Commission's Rules and Regulations, Letter Agreement dated August 25, 1993, between PacifiCorp and Moon Lake Electric Association (Moon Lake). This Letter Agreement details the division of responsibility for construction of a 34.5 kV line extension out of Little Mountain substation to serve a new load for Moon Lake's existing customer.

Copies of this filing were supplied to Moon Lake Electric Association, the Public Utility Commission of Oregon, the Wyoming Public Service Commission and the Utah Public Service Commission.

Comment date: October 14, 1993, in accordance with Standard Paragraph E end of this notice.

7. Tampa Electric Company

[Docket No. ER93-973-000]

Take notice that on September 24, 1993, Tampa Electric Company (Tampa Electric) tendered for filing revised Service Schedule A (Emergency Interchange Service) and Service Schedule B (Scheduled/Short-Term Firm Interchange Service) to supersede the existing Schedules A and B under Tampa Electric's contracts for interchange service with City of Lakeland, City of Lake Worth City of New Smyrna Beach Utilities Commission, City of Vero Beach, and Fort Pierce Utilities Authority. Tampa Electric also tendered Service Schedules A and B for inclusion under its contract for interchange service with Oglethorpe Power Corporation.

Tampa Electric requests an effective date of October 1, 1993, for the Service Schedules A and B, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served on each of the affected utilities, as well as on the Public Service Commission of Florida and Georgia.

Comment date: October 14, 1993, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-24609 Filed 10-6-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER93-969-000]

Black Hills Corp.; Filing

October 1, 1993.

Take notice that Black Hills Corporation, which operates its electric utility business under the assumed name of Black Hills Power and Light Company (Black Hills) on September 23, 1993, tendered for filing an economy power sales letter agreement with the Western Area Power Administration.

The reasons for the proposed letter agreement are to allow Black Hills to be in a position to offer economy power sales.

Copies of the filing were provided to the Western Area Power Administration, and the regulatory commission of each of the states of Montana, South Dakota, and Wyoming.

Black Hills has requested that further notice requirement be waived and the letter agreement be allowed to become effective October 1, 1993.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before October 14, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-24604 Filed 10-6-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. EF93-2011-000, EF93-2021-000 and EF93-2041-000]

United States Department of Energy, Bonneville Power Administration; Order Granting Interim Approval of Rates, Noting and Granting Interventions, and Providing Opportunity for Additional Comments

Issued: September 30, 1993.

Before Commissioners: Elizabeth Anne Moler, Chair; Vicky A. Bailey, James J. Hoecker, William L. Massey, and Donald F. Santa, Jr.

Background

On August 2, 1993, the Bonneville Power Administration, in accordance with the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Act),[1] filed with the Commission proposed rates for power sales and transmission service, including rates for nonfirm sales outside the Pacific Northwest region. Bonneville requests interim rate approval effective October 1, 1993. Bonneville projects that the filed rates will produce about $3.6 billion in annual revenues with wholesale power and transmission rates accounting for $3.0 and $0.6 billion, respectively.

The filling includes a variety of rates. In Docket No. EF93-2011-000, Bonneville requests approval for its wholesale power rates and an extension of its Impact Aid Methodology[2] for the period from October 1, 1993 through September 30, 1995. Bonneville also

[1] Sections 7(a) (2) and 7(i)(6), 16 U.S.C. 839e(a)(2) and 839e(i)(6) (1988).

[2] Section 7(m) of the Northwest Act, 16 U.S.C. § 839e(m) (1988), permits Bonneville's Administrator to make Impact Aid payments to local governments within the region with respect to new major transmission facilities that have a substantial impact on such governments. The Northwest Act permits the Administrator to put a payment plan into effect "after considering its effect on rates established pursuant to this section" by the Commission. The Commission first approved the Impact Aid Methodology in United States Department of Energy—Bonneville Power Administration, 34 FERC ¶61,287 (1986), and has similarly approved several subsequent Impact Aid Methodology filings.

requests approval in that docket of its proposed Short-Term Surplus Firm Power Rate SP–93 for the period from October 1, 1993 through September 30, 1998.[3] In Docket No. EF93–2021–000, Bonneville requests approval for its transmission rates for the period from October 1, 1993 through September 30, 1995.[4] In Docket No. EF93–2041–000, Bonneville requests approval of modifications of the Variable Industrial Power Rate VI–91 for the period from October 1, 1993 through September 30, 1995.

Notice of Bonneville's filing was published in the **Federal Register**, 58 FR 42061, with comments, protests, or motions to intervene due on or before August 20, 1993. Puget Sound Power & Light Company, Washington Water Power Company, Public Power Council, the Association of Public Agency Customers, Portland General Electric Company, Public Generating Pool, Pacific Northwest Generating Cooperative, the Northern California Power Agency, and British Columbia Power Exchange Corporation (POWEREX) filed timely motions to intervene. The Northwest Power Planning Council (Planning Council) submitted timely comments. The Northwest Environmental Defense Center, Waterwatch of Oregon, and the Northwest Resource Information Center (collectively, NEDC), Direct Service Industrial Customers, PacifiCorp, and Northwest Irrigation Utilities filed late motions to intervene. Finally, Bonneville filed an answer in opposition to NEDC's untimely motion to intervene.

The Planning Council states that it is trying to resolve with Bonneville an issue related to the Columbia River Basin Fish and Wildlife Program. It states that, if negotiations prove unsuccessful, it may file a motion to intervene. Subsequently, on September 23, 1993, the Planning Council filed a letter in these proceedings in which it states that it has resolved the issue with Bonneville and believes that Bonneville now is in a position to implement the Columbia River Basis Fish and Wildlife Program. The Planning Council further states that it will therefore not file a request for late intervention and will not participate further in these rate proceedings.

POWEREX protests Bonneville's filing, but states that it will comment in detail when the Commission considers granting final confirmation and approval of Bonneville's rates. In its original motion to intervene, NEDC protests interim approval of Bonneville's rates, claiming that Bonneville, in an attempt to keep its overall rate increase low, proposed a 15 percent reduction in its fish and wildlife budget. NEDC asserts that these proposed budget cuts are illegal under the Northwest Act because they circumvent the Planning Council's Fish and Wildlife Program. In its original motion to intervene, NEDC contends that the Commission cannot permit Bonneville's rates to be placed in effect on an interim basis because Bonneville has failed to set rates that are based upon Bonneville's total system costs.

Bonneville responds to NEDC's original intervention with the assertion that the issue of adequate fish and wildlife funding is beyond the scope of the Commission's limited jurisdiction established by the Northwest Act. Bonneville also opposes NEDC's intervention, arguing that NEDC has shown an interest only in an issue beyond the Commission's jurisdiction and that it has not shown good cause for the lateness of its filing.

Subsequent to the Planning Council's September 23, 1993 filing, on September 27, 1993, NEDC submitted a letter clarifying its position in this proceeding. NEDC states that while it continues to believe that the Northwest Act requires Bonneville to fully fund the Planning Council's Fish and Wildlife Program, it desires to support the Council's decision to work with Bonneville. For these reasons, NEDC no longer has any objection to interim approval of Bonneville's rates. NEDC further states that it wishes to continue its status as an intervening party.

Discussion

Under the Northwest Act, the Commission's review of Bonneville's regional power and transmission rates and non-regional nonfirm rates is limited. Commission review of regional power and transmission rates is limited to determining whether Bonneville's proposed rates meet the three specific, limited requirements to section 7(a)(2):

(1) They must be sufficient to assure repayment of the Federal investment in the Federal Columbia River Power System over a reasonable number of years after first meeting the Administrators's other costs,

(2) They must be based upon the Administrator's total system costs, and

(3) Insofar as transmission rates are concerned, they must equitably allocate the costs of the Federal transmission system between Federal and Non-Federal power.[5]

Commission review of Bonneville's on-regional, nonfirm rates is also limited. Review is restricted to determining whether such rates meet the requirements of section 7(k) of the Northwest Act, [6] which requires that they comply with the Bonneville Project Act, the Flood Control Act of 1944, and Federal Columbia River Transmission System Act. Taken together, those statutes require Bonneville to design its non-regional, nonfirm rates:

(1) Having regard to the recovery of the cost of generation and transmission of such electric energy, including the amortization of investments in the power projects within a reasonable period,

(2) So as to encourage the most widespread use of Bonneville power, and

(3) To provide the lowest possible rates to consumers consistent with sound business principles.

Unlike the Commission's statutory authority under the Federal Power Act, the Commission's authority under sections 7(a) and 7(k) of the Northwest Act does not include the power to modify the rates. The responsibility for developing rates in the first instance is vested with Bonneville's Administrator. The rates are then submitted to the Commission for approval or disapproval. In this regard, the Commission's role can be viewed as an appellate one: to affirm or remand the rates submitted to it for review.[7]

Moreover, our review at this interim stage is further limited. In view of the volume and complexity of a Bonneville rate application, such as the one now before the Commission in this filing, and the limited 60-day period in advance of the requested effective date in which to review the application,[8] the

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[3] The proposed wholesale power rates and their associated General Rate Schedule Provisions include: Priority Firm Power Rate PF–93, Industrial Firm Rate IP–93, Special Industrial Power Rate SI–93, Emergency Capacity Rate CE–93, New Resource Firm Power Rate NR–93, Nonfirm Energy Rate NF–93, Share-the-Savings Energy Rate SS–93, and Reserve Power Rate RP–93.

[4] The proposed transmission rate schedules and their associated General Transmission Rate Schedule Provisions include: Formula Power Transmission FPT–93.1, Formula Power Transmission FPT–91.3, Integration of Resources IR–93, Southern Intertie Transmission IS–93, Northern Intertie Transmission IN–93, Eastern Intertie Transmission IE–93, Energy Transmission ET–93, Market Transmission MT–91, Townsend-Garrison Transmission TGT–1, Use-of-Facilities Transmission UFT–93, and Southern Intertie Annual cost AC–93.

[5] 16 U.S.C. 839e(a)(2) (1988). Bonneville must also comply with the financial, accounting, and ratemaking requirements in Department of Energy Order No. RA 6120.2.

[6] 16 U.S.C. 839e(k) (1988).

[7] See *Aluminum Company of America* v. *Bonneville Power Administration*, 903 F.2d 585, 592–593 (9th Cir. 1989), and cases cited therein.

[8] See 18 CFR 300.10(a)(3)(ii) (1993).

Commission generally defers resolution of issues on the merits of Bonneville's application until the order on final confirmation.[9] Thus, the Commission approves the proposed rates, if not patently deficient, on an interim basis and affords the parties an additional opportunity in which to raise issues with regard to Bonneville's filing.

Under Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (1993), the timely, unopposed motions to intervene serve to make the entities filing them parties to this proceeding. We find good cause as well to grant the untimely interventions of PacifiCorp, Northwest Irrigation Utilities, Direct Service Industrial Customers, and NEDC. The first three interventions are unopposed, and NEDC has raised concerns that are not adequately represented by other parties.

In view of NEDC's September 27, 1993, letter, we will not consider at this time NEDC's argument to the effect that Bonneville's rates are illegal *per se* because of Bonneville's budget reductions for fish and wildlife.

The Commission's preliminary review of Bonneville's submittal indicates that it does not contain any patent deficiencies, and that the filed rates comply with statutory standards. Accordingly, the proposed rates merit approval on an interim basis pending their full review for final approval. The Commission, therefore, will grant interim approval and provide an additional period of time for parties to file comments and reply comments on all issues related to final confirmation and approval of Bonneville's rates.

The Commission orders:

(A) The untimely interventions of PacifiCorp, Northwest Irrigation Utilities, Direct Service Industrial Customers, and NEDC are hereby granted.

(B) Bonneville's request for interim approval of its system wholesale power rates, transmission rates, general rate schedule provisions, and impact aid methodology schedule in Docket Nos. EF93–2011–000, EF93–2021–000, and EF93–2041–000 is hereby granted, until the Commission takes final action on either their approval or disapproval.

(C) Within thirty (30) days of the date of this order, all parties who wish to do so may file additional comments regarding final confirmation and approval of Bonnneville's rates. All parties who wish to do so may file reply comments within twenty (20) days thereafter. All timely comments will be considered by the Commission in determining the ultimate disposition of Bonneville's rate proposal.

(D) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Lois D. Cashell,

[FR Doc. 93–24598 Filed 10–6–93; 8:45 am]

BILLING CODE 6717–01–M

[9] See, e.g., U.S. Department of Energy—Bonneville Power Administration, 40 FERC ¶ 61,351 at 62,059–60 (1987).

Colorado Interstate Gas Co.; Proposed Changes in FERC Gas Tariff

[Docket No. RP93–201–000]

October 1, 1993.

Take notice that on September 28, 1993, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Substitute Original Sheet No. 238, and Substitute Original Sheet No. 239, with a proposed effective date of October 1, 1993.

CIG states that the proposed tariff sheets revise the definitions of "Summer Season" and "Winter Season" to remove the month of October from the winter season and include it in the summer season.

CIG states that this change lowers the billing determinants applicant to NNT–1 shippers in the month of October (the first month that Docket No. RP93–99 rates will be in effect) and this results in lower costs to NNT–1 shippers for that month.

CIG further states that the change is a reflection of the uncertainty as to the ultimate form of CIG's accepted Order No. 636 tariff, which was only recently accepted (on September 3). By the Commission's acceptance of the tariff, including the overrun provisions described in section 5.1 of Rate Schedule NNT–1 (Original Sheet No. 89), CIG's customers will have access to the capacity necessary to meet any early season cold snaps, while enjoying the lower billing determinants based on summer season entitlements.

CIG's motion to place rates into effect on October 1, 1993, in Docket No. RP93–99 will reflect this change.

CIG states that copies of the filing have been served upon all the parties in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 8, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24607 Filed 10–6–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ93–7–21–001]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

October 1, 1993.

Take notice that on September 29, 1993, Columbia Gas Transmission Corporation (Columbia), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following proposed changes.

September 1, 1993 Level

Sub Forty-first Revised Sheet No. 26
Sub Thirty-fifth Revised Sheet No. 26.1
Sub Thirty-ninth Revised Sheet No. 26A
Sub Thirty-fifth Revised Sheet No. 26A.1

October 1, 1993 Level

Sub Thirty-sixth Revised Sheet No. 26.1
Sub Thirty-sixth Revised Sheet No. 26A.1

Columbia states the foregoing tariff sheets are being filed in compliance with the Commission's order issued September 24, 1993, in Docket Nos. TQ93–7–000 and TM93–11–21. Such order directed Columbia to refile its PGA tariff sheets to be effective September 1, 1993, to correct the cumulative adjustment to the purchased gas cost demand adjustment rate and the unauthorized winter AEN excess AEN rate in the amount of one-hundredth of one cent ($.0001).

Columbia has reviewed its copy of the PGA–98 tape and determined that the information applicable to the TCRA is included under Code 9, as in previous PGA filings.

Columbia has also included substitute revised tariff sheets to be effective October 1, 1993 in Docket No. TM94–1–21–000 (ACA Filing) to reflect the PGA rate changes.

Columbia states that copies of the filing were served upon the Columbia's jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance

with Rule 211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before October 8, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24611 Filed 10–6–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ94–1–25–000]

Mississippi River Transmission Corp.; Rate Change Filing

October 1, 1993.

Take notice that on September 29, 1993, Mississippi River Transmission Corporation (MRT) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Ninety-Fourth Revised Sheet No. 4 and Fifty-Third Revised Sheet No. 4.1, to be effective October 1, 1993. MRT states that the purpose of the instant filing is to reflect an out-of-cycle purchase gas cost adjustment (PGA).

MRT states that Ninety-Fourth Revised Sheet No. 4 and Fifty-Third Revised Sheet No. 4.1 reflect a decrease of 38.43 cents per MMBtu in the commodity cost of purchased gas from PGA rates contained in the out-of-cycle PGA filing to be effective September 1, 1993 in Docket No. TQ93–16–25–000. MRT also states that since the August 30, 1993 filing date, MRT has experienced changes in purchase and transportation costs for its system supply that could not have been reflected in that filing under current Commission regulations.

MRT states that a copy of this filing has been served on all of MRT's jurisdictional sales customers and to the State Commissions of Arkansas, Illinois and Missouri.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 8, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24612 Filed 10–6–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–202–000]

National Fuel Gas Supply Corp.; Proposed Treatment of Account Nos. 191 and 186

October 1, 1993.

Take notice that on September 29, 1993, National Fuel Gas Supply Corporation (National), tendered for filing its proposed treatment of Account Nos. 191 and 186 Balances, attributable to gas purchase and transportation activities prior to August 1, 1993. National states that its filing is made pursuant to Order No. 636 and Section 21 of the General Terms and Conditions of National's FERC Gas Tariff, as a limited filing under Section 4 of the Natural Gas Act.

National also states that the filing constitutes a compliance with Section 21.1 of its FERC Gas Tariff which requires refunds to be made within 60 days of August 1, 1993, and requests that its filing become effective on September 30, 1993. In addition, National states that it is authorized to recover through a direct bill any underrecovery of such costs.

National further states that copies of this filing were served upon the company's jurisdictional customers and the Regulatory Commission's of the States of New York, Ohio, Pennsylvania, Delaware, Massachusetts, and New Jersey.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with Rules 214 or 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All such motions to intervene or protest should be filed on or before October 8, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24613 Filed 10–6–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–199–000]

Northwest Pipeline Corp.; Proposed Change in FERC Gas Tariff

October 1, 1993.

Take notice that on September 27, 1993, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A, the following tariff sheets, with a proposed effective date of October 27, 1993:

Second Revised Sheet No. 304
First Revised Sheet No. 304–A
Second Revised Sheet No. 304–B
First Revised Sheet No. 304–C
Third Revised Sheet No. 305
Original Sheet No. 306
Sheet Nos. 307 through 310
Second Revised Sheet No. 317
First Revised Sheet No. 317–A
Second Revised Sheet No. 317–B
Second Revised Sheet No. 317–C
First Revised Sheet No. 317–D

Northwest states that the purpose of this filing is to propose changes to the facilities reimbursement provisions of Section 10 of Rate Schedule TI–1 and Section 11 of Rate Schedule TF–1 of the First Revised Volume 1–A of Northwest's FERC Gas Tariff.

Northwest states that a copy of this filing has been served upon all jurisdictional customers and state regulatory commissions in its market area.

Any person desiring to be heard or protest said filing should file a motion to intervene of protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 8, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24605 Filed 10–6–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–200–000]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

October 1, 1993.

Take notice that on September 27, 1993, Northern Natural Gas Company (Northern), tendered for filing in accordance with section 18 of its FERC Gas Tariff, Fourth Revised Volume No. 1, the schedules that set forth the estimated final Deferred ANGTS Balance (ANGTS Balance) and the allocation of such ANGTS Balance to each affected customer.

Northern states that it proposed to establish a mechanism to direct bill or refund, as appropriate with carrying charges, any existing balance in its ANGTS deferred account over a twelve month period upon termination of Northern's current ANGTS Rate Adjustment mechanism.

In accordance with First Revised Sheet No. 261 of Northern's Fourth Revised Volume No. 1, Northern hereby files Schedule A attached to the filing, which sets forth Northern's current estimate of the ANGTS Balance as of October 31, 1993.

Northern states that copies of the filing have been mailed to each of Northern's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 8, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24606 Filed 10–6–93; 8:45 am]

BILLING CODE 6717–01–M

Questar Pipeline Co.; Application

[Docket No. CP93–738–000]

October 1, 1993.

Take notice that on September 24, 1993, Questar Pipeline Company (Questar), 79 South State Street, Salt Lake City, Utah 84111 filed in Docket No. CP93–738–000 an abbreviated abandonment application pursuant to section 7(b) of the Natural Gas Act (NGA) for authority to abandon, by removal, two transportation natural gas receipt points, comprising minor metering facilities, located in Uintah County, Utah, all as more fully set forth in the application that is on file with the Commission and open to public inspection.

Questar proposes to abandon, by removal, two sets of receipt-point metering facilities, including the River Bend M & R Station (Meter Station 112) and the River Bend Unit M & R Station (Meter Station 113), located adjacent to Questar's Main Line No. 40 in Uintah County, Utah. Questar states that the total gross investment associated with the abandonment of the two meter stations is approximately $22,045.

Questar explains that the two receipt points have been used to receive natural gas from CNG Producing Company (CNG) into Questar's transmission system for subsequent transportation. Further, Questar states that the volumes of natural gas previously measured through Meter Stations 112 and 113 and transported for CNG will continue to flow though an existing master-meter station located immediately adjacent to Meter Station 113. Questar clarifies that transportation service will continue to be provided to CNG.

Any person desiring to be heard or to make any protest with reference to said application should, on or before October 22, 1993, file with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in the subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by §§ 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required, or if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Questar to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24600 Filed 10–6–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–748–000]

Raton Gas Transmission Co.; Application

October 1, 1993.

Take notice that on September 29, 1993, Raton Gas Transmission Company (Raton), P.O. Box 308, Raton, New Mexico 87740, filed an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act for an order permitting and approving the abandonment of sales services by Raton and for a certificate of public convenience and necessity authorizing Raton to provide transportation services in interstate commerce, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Raton states that its system consists of 21 miles of 8-inch pipe extending from a connection with Colorado Interstate Gas Company (CIG) near Trinidad, Colorado to a terminus near Raton, New Mexico. It is stated that Raton receives gas supplies from CIG in Colorado and delivers the gas supplies to delivery points in New Mexico. It is also indicated that, pursuant to Order No. 636, CIG has filed in Docket No. RS92–4–000 and the Commission has approved the proposal to restructure CIG's services with an effective date of October 1, 1993. Raton states that, although it was not required by Order No. 636 to restructure its services, consistent with the orders approving CIG's restructuring, it proposes to convert its sales services to transportation services and to incorporate the transportation services to be provided by CIG into the services to be provided by Raton.

Raton requests authorization to abandon its present sales services authorized by a permanent certificate issued in Docket No. CP86–122, and to convert those services to transportation

services. Raton also proposes to convert its tariff from a volumetric Mcf basis to a thermal basis. Raton has submitted, as Exhibit P to its application, Raton's proposed tariff (First Revised Volume No. 1) to replace its current tariff (Original Volume No. 1). It is stated that, in accordance with the stipulation and agreement accepted by the Commission in Docket No. RP91–116–000, Raton would arrange for the transportation of gas through the CIG and Raton systems for delivery to shippers. Raton states that the rates contained in Rate Schedule FT–1 and IT–1 are designed to recover the costs required to render the proposed services, including the service to be provided by CIG in receiving gas and transporting it to the Raton receipt point.

Raton states that reservation charges are to be assessed on the basis of each customer's maximum delivery quantity. Raton states that the base reservation charge and commodity charge for service under Rate Schedule FT–1 is $0.4554 and $0.1485, respectively, per dt equivalent of natural gas. It is stated that the charge under Rate Schedule IT–1 is $0.1485 per dt equivalent of natural gas, plus the applicable CIG charges. It is also stated that the charge of Rate Schedule IT–2 service is the same as the IT–1 charge, but excludes the CIG charge. Raton states that the rates are designed to recover Raton's cost of service (excluding the cost of gas purchased) as approved in Raton's most recent rate filing in Docket No. RP91–116–000.

Raton requests that the Commission grant the authorization on an expedited basis so that Raton can initiate transportation service coinciding with the initiation of Order No. 636 restructured services by CIG.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 22, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by its in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that the issuance of certificate authorization and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Upon the procedure herein provided for, unless otherwise advised, it will be unnecessary for Raton to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24602 Filed 10–6–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–747–000]

Sabine Pipe Line Co.; Request Under Blanket Authorization

October 1, 1993.

Take notice that on September 29, 1993, Sabine Pipe Line Company (Sabine), P.O. Box 4781, Houston, Texas 77210–4781, filed in Docket No. CP93–747–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to use a receipt tap to deliver natural gas to Winnie Pipeline Company (Winnie) in Jefferson County, Texas under its blanket certificate issued in Docket No. CP83–199–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Sabine states that the use of the receipt tap as a sales tap would enable Sabine to provide transportation service pursuant to § 284.221 of the Commission's Regulations under the Natural Gas Act (18 CFR 284.221) for its shippers and allow those shippers access to NGPA section 311(a)(2) storage and transportation services offered by Winnie.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24601 Filed 10–6–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP92–259–004]

Sumas International Pipeline Inc.; Tariff Compliance Filing

September 30, 1993.

Take notice that on September 28, 1993 Sumas International Pipeline Inc. ("SIPI"), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2, the following tariff sheets, with a proposed effective date of November 1, 1993:

First Revised Sheet Number 1
First Revised Sheet Number 5
First Revised Sheet Number 6
First Revised Sheet Number 16
First Revised Sheet Number 19
Original Sheet Numbers 20 through 23 inclusive
First Revised Sheet Number 33
First Revised Sheet Number 34
First Revised Sheet Numbers 44 through 46 inclusive

SIPI states that the above tariff sheets reflect compliance with FERC Order on Compliance in the above docket issued 26 August 1993 with respect to revisions and additions to SIPI's FERC Gas Tariff, Original Volume No. 2 to incorporate both a Capacity Release Mechanism and a Right of First Refusal Process.

SIPI states that copies of the filing has been served upon all of SIPI's customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 12, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will

not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24614 Filed 10–6–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–203–000]

Texas Gas Transmission Corp.; Request for Waiver of Quarterly PGA Filing Requirements

October 1, 1993.

Take notice that on September 29, 1993, Texas Gas Transmission Corporation (Texas Gas) tendered for filing a Request for Waiver of the Quarterly PGA filing requirements under 18 CFR 154.308 of the Commission's Regulations and § 23.10 of the General Terms and Conditions of Texas Gas's FERC Gas Tariff, Original Volume No. 1.

Texas Gas states that its next regular Quarterly PGA is scheduled to be effective November 1, 1993. This is also the date Texas Gas anticipates implementing the Order No. 636 restructuring on its system (Docket No. RS92–24), which would terminate the Purchased Gas Cost Adjustment clause contained in Texas Gas's FERC Gas Tariff.

Texas Gas states that copies of the filing were served upon Texas Gas's jurisdictional sales customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 8, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24615 Filed 10–6–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER93–957–000]

Wisconsin Power & Light Co.; Filing

October 1, 1993.

Take notice that on September 14, 1993, Wisconsin Power & Light Company (Wisconsin) tendered for filing final form tariff sheets resulting from the Commission's order issued in Docket No. ER93–676–000 on August 5, 1993.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 358.214). All such motions or protests should be filed on or before October 14, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24603 Filed 10–6–93; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4782–7]

California: Final Determination of Adequacy of State Municipal Solid Waste Landfill Permit Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination of full program adequacy for California's application.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6945(c)(1)(B), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or small quantity generator hazardous waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). RCRA section 4005(c)(1)(C), 42 U.S.C. 6945(c)(1)(C), requires the Environmental Protection Agency (EPA) to determine whether States have adequate "permit" programs for MSWLFs.

EPA-approved State/Tribal permit programs provide for interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in State/Tribes with approved permit programs can use the site-specific flexibility provided by part 258 to the extent the State/Tribal permit program allows such flexibility.

California applied for a determination of adequacy under section 4005 of RCRA. EPA reviewed California's application and issued for public comment a proposed determination that California's MSWLF permit program is adequate to ensure compliance with the revised MSWLF Criteria. After consideration of all comments received, EPA is today issuing a final determination that California's program is adequate.

EFFECTIVE DATE: The determination of adequacy for California shall be effective on October 7, 1993.

FOR FURTHER INFORMATION CONTACT: U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105, Attn: Ms. Donna J. Orebic, Mail Code H–3–1, telephone (415) 744–2092.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, 42 U.S.C. 6941–6949a, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that MSWLFs comply with the Federal Criteria under part 258. Section 4005 of RCRA, 42 U.S.C. 6945, also requires that EPA determine the adequacy of State municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To facilitate this requirement, the Agency has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR). The rule will provide procedures by which EPA will approve, or partially approve, State/Tribal landfill permit programs.

Prior to promulgation of the STIR, EPA intends to approve State/Tribal MSWLF permit programs based on the statutory authorities and requirements. EPA interprets the statutory requirements for States or Tribes to develop "adequate" programs to impose several minimum standards. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's

revised MSWLF criteria. Next, the State/Tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, EPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions will determine whether a State/Tribe has submitted an "adequate" program based on the interpretation outlined above. EPA expects States/Tribes to meet all of these requirements for all elements of a MSWLF program before it gives full approval to a MSWLF program. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements.

B. State of California

On February 5, 1993, California submitted an application for adequacy determination for the State's municipal solid waste landfill permit program. On June 29, 1993, EPA published a tentative determination of adequacy for California's program. Further background on the tentative determination of adequacy appears at 58 FR 34797, (June 29, 1993).

Along with the tentative determination, EPA announced the availability of the application for public comment and the date of a public hearing on the application. On August 24, 1993, at 10 a.m. EPA held a public hearing. No comments were made at the hearing. EPA received two written comments during the public comment period and one written comment after the close of the public comment period.

One commenter agreed that California should obtain program approval based on the provisions set forth in EPA's tentative adequacy determination, but urged the Agency to promulgate the State Tribal Implementation Rule without further delay. The commenter asserted that, in the absence of a final rule that sets forth specific parameters for the approval and withdrawal process, the legitimacy of solid waste program approvals will remain in doubt. EPA disagrees. EPA is required to determine whether States have adequate permit programs for MSWLFs under RCRA section 4005(c)(1)(C). This statutory authority provides the standard for EPA review of State/Tribal MSWLF permit programs and makes promulgation of the STIR unnecessary for EPA to determine the adequacy of State MSWLF programs. The commenter further asserted that it is unfair for EPA to apply the draft STIR document in a conclusive fashion without proper notice and opportunity for comment in the manner required by the Administrative Procedure Act. EPA did not apply the draft STIR in a conclusive fashion, but provided it to California and used it as guidance to facilitate consideration of California's application. In addition, EPA provided the public an opportunity to comment on the adequacy determination criteria for State/Tribal MSWLF program approvals in the tentative determination to approve California's MSWLF program, 58 FR 34797, 34798 (June 29, 1993). The public comment period extended from June 29, 1993 to August 24, 1993.

One commenter asserted that portions of California's program go beyond what is necessary to achieve compliance with the Federal criteria and that the State was not taking full advantage of the flexibility contained under 40 CFR part 258. The commenter argued specifically that California's interpretation of the term "lateral expansion" is more stringent than the corresponding Federal interpretation of this term. The commenter asserted that waste placed outside the footprint of an existing unit as of the effective date of the Federal criteria would not in all cases be considered a lateral expansion. However, the clear meaning and intent of the revised MSWLF criteria is to require that any horizontal expansion of the waste boundaries of an existing unit that takes place on or after the effective date of the MSWLF criteria must be done in compliance with the location restrictions and design standards of 40 CFR part 258. The EPA discussed the meaning of the term "lateral expansion" in the appendix to the revised criteria, 56 FR 50978, 51041 (October 9, 1991). The EPA is satisfied that the State's program will ensure that lateral expansions of solid waste landfills will be required to meet location and design standards that assure compliance with the revised MSWLF criteria.

This commenter and another stated that California's revised design standards exceed the requirements of the Federal criteria. The EPA does not evaluate whether State MSWLF standards go beyond the Federal MSWLF requirements, but rather if the State standards are adequate to assure compliance with the Federal standards. The Agency is satisfied that the State of California now has design standards which assure that facilities will comply with the revised Federal criteria.

The State of California's MSWLF permit program has the authority to issue permits that incorporate the requirements in the revised Federal MSWLF Criteria to all MSWLFs in the State, with the exception of those located on Tribal Lands. In addition, the EPA has determined that California's permit program contains provisions for public participation, compliance monitoring, and enforcement.

C. Decision

In the tentative determination, EPA proposed to approve specified parts of California's program for which existing State law was adequate to ensure compliance with the Federal criteria. At that time EPA also proposed to approve all of California's program if draft revised requirements submitted by California with its June 9, 1993 amended application were adopted before EPA's final determination and effective on or before the relevant effective dates of the Federal criteria. On August 19, 1993, EPA received the final, adopted revisions to California's MSWLF permit program. After reviewing these revisions, and after consideration of the public comments, I conclude that California's application for adequacy determination meets all of the statutory and regulatory requirements established by RCRA. Accordingly, California is granted a determination of adequacy for all portions of its municipal solid waste landfill permit program.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR part 258 independent of any State/Tribal enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

Today's action takes effect on the date of publication. EPA believes it has good cause under section 553(d) of the Administrative Procedure Act, 5 U.S.C 553(d), to put this action into effect less than 30 days after publication in the **Federal Register**. All of the requirements and obligations in the State's/Tribe's program are already in effect as a matter of State/Tribal law. EPA's action today does not impose any new requirements that the regulated community must begin to comply with. Nor do these requirements become enforceable by EPA as Federal law. Consequently, EPA finds that it does not

need to give notice prior to making its approval effective.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This notice, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of section 4005 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6945.

Dated: September 22, 1993.

John C. Wise,

Acting Regional Administrator.

[FR Doc. 93-24662 Filed 10-6-93; 8:45 am]

BILLING CODE 6560-50-F

[FRL-4786-8]

Kansas; Final Partial Program Determination of Adequacy of State/Tribal Municipal Solid Waste Landfill Permit Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final partial program determination of adequacy on Kansas' application.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that Municipal Solid Waste Landfills (MSWLFs) which may receive hazardous household waste or small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). RCRA section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether States have adequate "permit" programs for MSWLFs, but does not mandate issuance of a rule governing such determinations. The EPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which the EPA will approve, or partially approve, State/Tribal landfill permit programs. The Agency intends to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus the approvals are not dependent on final promulgation of the STIR. Prior to promulgation of the STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State/Tribal permit programs provide for interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in State/Tribes with approved permit programs can use the site-specific flexibility provided by 40 CFR part 258 to the extent the State/Tribal permit program allows such flexibility. The EPA notes that regardless of the approval status of a State/Tribe and the permit status of any facility, the Federal criteria under 40 CFR part 258 will apply to all permitted and unpermitted MSWLF facilities.

Kansas applied for a determination of adequacy under section 4005 of RCRA. The EPA reviewed Kansas' application and made a tentative determination that Kansas' permit program would be adequate to ensure compliance with 40 CFR part 258 contingent upon its adoption of 40 CFR part 258 by reference. After consideration of the one comment received, plus review of Kansas regulations in relation to the EPA regulations promulgated since the application was submitted, the EPA is today issuing a final determination of partial program adequacy for the Kansas landfill permit program.

EFFECTIVE DATE: The determination of adequacy for Kansas shall be effective on October 7, 1993.

FOR FURTHER INFORMATION CONTACT: Ms. Altheà M. Moses, 726 Minnesota Ave., Kansas City, Kansas 66101; (913) 551-7055.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991 the EPA promulgated revised Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that facilities comply with the Federal Criteria under 40 CFR part 258. Subtitle D also requires in section 4005 of RCRA that the EPA determine the adequacy of State municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, the Agency has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

The EPA intends to propose in STIR to allow partial approval if: (1) The Regional Administrator determines that the State/Tribal permit program largely meets the requirements for ensuring compliance with 40 CFR part 258; (2) changes to a limited narrow part(s) of the State/Tribal permit program are needed to meet these requirements; and (3) provisions not included in the partially approved portions of the State/Tribal permit program are a clearly identifiable and separable subset of 40 CFR part 258. As provided in 40 CFR part 258, the EPA's Subtitle D standards will take effect on October 9, 1993. Consequently, any portion of the Federal Criteria which are not included in an approved State/Tribal program by October 9, 1993 would apply directly to the owner/operator. The requirements of the STIR, if promulgated, will ensure that any mixture of State/Tribal and Federal rules that take effect will be fully workable and leave no significant gaps in environmental protection. These practical concerns apply to individual partial approvals granted prior to the promulgation of the STIR. Consequently, the EPA reviewed the program approved today and concluded that the State/Tribal and the Federal requirements mesh reasonably well and leave no significant gaps. Partial approval would allow the Agency to approve those provisions of the State/Tribal permit program that meet the requirements and provide the State/Tribe time to make necessary changes to the remaining portions of its program. As a result owners/operators will be able to work with the State/Tribal permitting agency to take advantage of the flexibility of 40 CFR part 258 for those portions of the program which have been approved.

The EPA will review State/Tribal requirements to determine whether they are "adequate" under section 4005(c)(1)(C) of RCRA. The EPA interprets the requirements for States or Tribes to develop "adequate" programs for permits or other forms of prior approval to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to the EPA's revised MSWLF criteria. Next, the State/Tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and

enforcement as required in section 7004(b) of RCRA. Finally, the EPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

The EPA Regions will determine whether a State/Tribe has submitted an "adequate" program based on the interpretation outlined above. The EPA plans to provide more specific criteria for this evaluation when it proposes the STIR. The EPA expects State/Tribes to meet all of these requirements for all elements of a MSWLF program before it gives full approval to a MSWLF program. The EPA also is requesting State/Tribes seeking partial program approval to provide a schedule for the submittal of all remaining portions of their MSWLF permit programs. The EPA notes that it intends to propose to make submissions of a schedule mandatory in the STIR.

B. The State of Kansas

In the tentative determination at 58 FR 44833 (August 25, 1993) the EPA announced the availability of the application for public comment. There were no requests for a public hearing, consequently no public hearing was held. The only written comment received was from a municipality in favor of the EPA's approval of the Kansas program.

As stated in the tentative determination, Kansas was adopting the Federal Criteria by reference, with some minor, "practical" changes (e.g., all references to "an approved state" were replaced with "the Director"). Kansas indeed adopted those Federal Criteria effective June 1, 1993, by reference, in KAR 28–29–98. The Kansas regulation does not include an exemption from ground water monitoring for small landfills. This is consistent with the current Federal regulations as a result of *Sierra Club* v. *U.S. Environmental Protection Agency*, 992 F.2d 337 (D.C. Cir. 1993), which vacated the exemption found at 40 CFR 258.1(f). In addition, Kansas will be using the flexibility afforded in 40 CFR 258.54(a)(1) and (2), to specify a different list of Appendix I monitoring parameters that are more appropriate for the landfills in Kansas; Appendix II will be the same as the Federal Appendix II.

However, Kansas also had adopted KAR 28–29–99 on July 1, 1993, which gives an extension of the effective dates of their landfill regulations to certain landfills. The Kansas extension was written in an effort to keep pace with the EPA regulations in providing relief for small landfills in complying with 40 CFR part 258 by its effective dates. However, during the period from July 28, 1993, to September 27, 1993, the EPA proposed and published its final rule for the small landfill extension, 40 CFR 258.1(f), 58 FR 51536 (October 1, 1994). The EPA's rule is now more restrictive than the Kansas rule, with the result that the EPA can only approve Kansas as a partial program.

Thus, the EPA is reserving for Federal enforcement the following facilities: (1) New units accepting less than 100 tons per day (tpd) of solid waste; (2) existing units or new units which are listed on the National Priorities List (NPL); and (3) existing units which have accepted less than 100 tpd of solid waste prior to October 9, 1993 and accept greater than 100 tpd of solid waste during the period from October 9, 1993 to April 4, 1993. All such units, in accordance with the Federal requirements at 40 CFR 258.1(f), are subject to a compliance date of October 9, 1993 and are not eligible for a compliance date extension to April 9, 1994.

All other aspects of the Kansas program are determined adequate for approval, and the Kansas program is determined to have adequate enforcement capabilities and public participation and monitoring requirements.

The Kansas landfill permit program is not enforceable on Indian lands.

While the State of Kansas had originally requested full program approval, it has acknowledged that the EPA can only grant partial approval. The State has met the requirements of the State/Tribal Implementation rule for partial program adequacy determination by submitting a schedule to comply with the small landfill compliance extension date rule. The schedule is as follows: (1) Draft regulations, October 15, 1993; (2) public hearing on regulations, January 15, 1994; (3) adopt regulations, February 15, 1994; and (4) regulation effective, April 2, 1994. The EPA has reviewed this schedule and concludes that it is reasonable.

C. Decision

After reviewing the public comments, I conclude that Kansas' application for partial program adequacy determination meets all of the statutory and regulatory requirements established by RCRA for partial program adequacy.

Accordingly, Kansas is granted a partial program determination of adequacy for its municipal solid waste landfill permit program, with the exception that the EPA is reserving for Federal enforcement the following facilities: (1) New units accepting less than 100 tons per day (tpd) of solid waste; (2) existing units or new units which are listed on the National Priorities List (NPL); and (3) existing units which have accepted less than 100 tpd of solid waste prior to October 9, 1993 and accept greater than 100 tpd of solid waste during the period from October 9, 1993 to April 4, 1993. All such units, in accordance with the Federal requirements at 40 CFR 258.1(f), are subject to a compliance date of October 9, 1993 and are not eligible for a compliance date extension to April 9, 1994.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR part 258 independent of any Sate/Tribal enforcement program. As the EPA explained in the preamble to the final MSWLF criteria, the EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by the EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

Today's action takes effect on the date of publication. The EPA believes it has good cause under section 553(d) of the Administrative Procedure Act 5 U.S.C. 553(d), to put this action into effect less than 30 days after publication in the **Federal Register**. All of the requirements and obligations in the State's/Tribe's program are already in effect as a matter of State/Tribal law. The EPA's action today does not impose any new requirements that the regulated community must begin to comply with. Nor do these requirements become enforceable by the EPA as Federal law. Consequently, the EPA finds that it does not need to give notice prior to making its approval effective.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this final approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This notice, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of section 4005 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6946.

Dated: October 1, 1993.

William Rice,

Acting Regional Administrator.

[FR Doc. 93–24660 Filed 10–6–93; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4786–7]

Mississippi: Final Determination of Adequacy of State/Tribal Municipal Solid Waste Permit Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination of adequacy to fully approve the State of Mississippi's municipal solid waste landfill permit program.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). RCRA section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether States have adequate "permit" programs for MSWLFs, but does not mandate issuance of a rule for such determinations. EPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, State/Tribal landfill permit programs. The Agency intends to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of the STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State/Tribal permit programs provide interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in State/Tribes with approved permit programs can use the site-specific flexibility provided by part 258 to the extent the State/Tribal permit program allows such flexibility.

Mississippi applied for a determination of adequacy under section 4005 of RCRA. EPA Region IV reviewed Mississippi's MSWLF application and proposed a tentative determination that Mississippi's MSWLF permit program is adequate to ensure compliance with the revised MSWLF Criteria. After consideration of all comments received regarding the tentative determination of adequacy, EPA is today issuing a final determination that Mississippi's program is adequate.

EFFECTIVE DATE: The determination of adequacy for the State of Mississippi shall be effective on October 7, 1993.

FOR FURTHER INFORMATION CONTACT: EPA Region IV, 345 Courtland Street NE., Atlanta, Georgia 30365, Attn: Ms. Patricia S. Zweig, mail code 4WD-RCRA, telephone 404–347–2091.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that facilities comply with the Federal Criteria under part 258. Subtitle D also requires in section 4005 that EPA determine the adequacy of State municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, the Agency has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

EPA intends to approve State/Tribal MSWLF permit programs prior to the promulgation of STIR. EPA interprets the requirements for States or Tribes to develop "adequate" programs for permits or other forms of prior approval to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the State/Tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, EPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

B. State of Mississippi

On May 6, 1992, the State of Mississippi submitted a final application for adequacy determination of their MSWLF permit program. On August 12, 1993, EPA published a tentative determination of adequacy for all portions of Mississippi's program. Further background on the tentative determination of adequacy appears at 58 FR 42963, (August 12, 1993).

Along with the tentative determination, EPA announced the availability of the application for public comment and the date of the public hearing on the application, if a hearing was requested. There were no requests for a public hearing on the adequacy determination of Mississippi's MSWLF permit program, therefore a hearing was not held.

The State of Mississippi has the authority to issue permits that incorporate the requirements of the revised Federal MSWLF criteria to all MSWLFs in the State, with the exception of those located on Tribal Lands. In addition, the EPA has determined that the State of Mississippi's statutes and administrative regulations provide for a state-wide comprehensive program of solid waste management including specific provisions for public participation, compliance monitoring and enforcement.

When the State of Mississippi receives a permit application for a MSWLF, the State conducts a thorough review of the application to determine if the facility complies with all applicable regulations. The State Permit Board must then conduct a hearing to solicit comments from the public. Upon consideration of the public comments, the Permit Board will render a decision on the permit application. In addition, any interested party may file a written request for a formal appeal hearing before the Permit Board.

Mississippi has adequate authority to enforce compliance with all applicable regulations. Authorized representatives of the State have the authority to enter and inspect any MSWLF facility to determine compliance. The State has the ability to initiate enforcement procedures against those who violate the solid waste laws, regulations or permit conditions. Enforcement actions consist of notices of violations, administrative orders and scheduled hearings before the Commission on Environmental Quality. Any permit may be revoked by the State at any time

when the permittee fails to comply with the terms and conditions of the permit.

Mississippi has the authority to take legal action, including injunctive relief, to restrain any person from endangering human health and the environment from the improper disposal of solid waste. The State has the authority to assess civil penalties against any person who violates any rule or regulation or any condition or limitation of a permit.

C. Public Comment

The EPA received the following public comments on the tentative determination of adequacy for Mississippi's MSWLF permit program.

One commenter supported the approval of the Mississippi MSWLF permit program as meeting or exceeding the Federal criteria, however, the commenter maintained that use of the draft State/Tribal Implementation Rule ("STIR") as guidance is a violation of the Administrative Procedure Act ("APA") requirements that a rule must go through notice and opportunity for comment. EPA does not believe that it is violating any requirements in the APA for notice and comment on a rulemaking. The agency is not utilizing the draft STIR as a regulation which binds either the Agency or the States. Instead, EPA is using the draft STIR as guidance for evaluating State permit programs and maintains its discretion to approve State programs utilizing the draft STIR and/or other criteria which assures compliance with 40 CFR part 258.

In addition, members of the public have an opportunity to comment on the essential criteria by which EPA assures the adequacy of State MSWLF permit programs because the Agency discusses the criteria for approval of a State permit program when it publishes each tentative determination notice in the **Federal Register**. The Agency set forth the minimum requirements for an adequate permit program in the tentative determination notice of approval of the State of Mississippi's MSWLF permit program. 58 FR 42963 (August 12, 1993).

D. Decision

After reviewing the public comments submitted in response to the tentative decision, I conclude that Mississippi's application for adequacy determination meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Mississippi is granted approval for all portions of its MSWLF permit program.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR part 258 independent of any State/Tribal enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

EPA believes it has good cause under section 553(d) of the Administrative Procedure Act, 5 U.S.C 553(d), to put this action into effect less than 30 days after publication in the **Federal Register**. All of the requirements and obligations in the State's/Tribe's program are already in effect as a matter of State/Tribal law. EPA's action today does not impose any new requirements that the regulated community must begin to comply with. Nor do these requirements become enforceable by EPA as Federal law. Consequently, EPA finds that it does not need to give notice prior to making its approval effective.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this notice of adequacy determination from the requirements of section 3 of Executive Order 12291.

Certification Under The Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This notice of adequacy determination, therefore, does not require a regulatory flexibility analysis.

Authority: This notice as to the Final Determination of Adequacy of State/Tribal Municipal Solid Waste Permit Program for the State of North Carolina is issued under the authority of section 4005 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6946.

Dated: October 1, 1993.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 93–24664 Filed 10–6–93; 8:45 am]

BILLING CODE 6560–60–F

[FRL–4786–6]

North Carolina: Final Determination of Adequacy of State/Tribal Municipal Solid Waste Permit Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination of adequacy to fully approve the State of North Carolina's municipal solid waste landfill permit program.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). RCRA section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether States have adequate "permit" programs for MSWLFs, but does not mandate issuance of a rule for such determinations. EPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, State/Tribal landfill permit programs. The Agency intends to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of the STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State/Tribal permit programs provide interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in State/Tribes with approved permit programs can use the site-specific flexibility provided by part 258 to the extent the State/Tribal permit program allows such flexibility.

North Carolina applied for a determination of adequacy under section 4005 of RCRA. EPA Region IV reviewed North Carolina's MSWLF application and proposed a tentative determination that North Carolina's MSWLF permit program is adequate to ensure compliance with the revised MSWLF Criteria. After consideration of all comments received regarding the tentative determination of adequacy, EPA is today issuing a final determination that North Carolina's program is adequate.

EFFECTIVE DATE: The determination of adequacy for the State of North Carolina shall be effective on October 7, 1993.

FOR FURTHER INFORMATION CONTACT: EPA Region IV, 345 Courtland Street NE., Atlanta, Georgia 30365, Attn: Ms.

Patricia S. Zweig, mail code 4WD-RCRA, telephone 404–347–2091.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that facilities comply with the Federal Criteria under part 258. Subtitle D also requires in section 4005 that EPA determine the adequacy of State municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, the Agency has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

EPA intends to approve State/Tribal MSWLF permit programs prior to the promulgation of STIR. EPA interprets the requirements for States or Tribes to develop "adequate" programs for permits or other forms of prior approval to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the State/Tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, EPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

B. State of North Carolina

On April 29, 1993, the State of North Carolina submitted a final application for adequacy determination for their MSWLF permit program. On August 5, 1993, EPA published a tentative determination of adequacy for all portions of North Carolina's program. Further background on the tentative determination of adequacy appears at 58 FR 41765, (August 5, 1993).

Along with the tentative determination, EPA announced the availability of the application for public comment and the date of the public hearing on the application. The EPA Region IV and the State of North Carolina held a public hearing at 7:30 p.m. on September 21, 1993, in Raleigh, North Carolina. A summary of the comments received is contained in the Public Comment section of this notice.

The EPA has reviewed North Carolina's application and has determined that all portions of the States MSWLF permit program will ensure compliance with the revised Federal criteria. In its application, North Carolina demonstrated that the States permit program adequately meets the location restrictions, operating criteria, design standards, and the closure/post-closure, groundwater monitoring and financial assurance provisions of the revised Federal criteria.

The State of North Carolina has the authority to issue permits that incorporate the requirements of the Revised Federal MSWLF Criteria to all MSWLFs in the State, with the exception of those located on Tribal Lands. In addition, the EPA has determined that the State of North Carolina's statutes and administrative regulations provide for a State-wide comprehensive program of solid waste management including specific provisions for public participation, compliance monitoring and enforcement.

When the State of North Carolina receives a permit application for a MSWLF, the State conducts a thorough review of the application to determine if it is complete and that all applicable regulations are satisfied. The State will decide whether the permit should be issued or denied. The State then gives public notice of their intent to issue or deny the permit, and notification of the public comment period and the opportunity for a public hearing. Upon consideration of public comments received, the Permit Board will render a decision on the permit application. In addition, any interested party may file a written request for a formal appeal hearing before the Permit Board.

North Carolina has adequate authority to enforce compliance with all applicable regulations. Authorized representatives of the State have the authority to enter and inspect any MSWLF facility to determine compliance with the State program. The State has the ability to initiate enforcement procedures against those who violate the solid waste laws, regulations or permit conditions. Enforcement actions consist of notices of violations, administrative orders and scheduled hearings before the Commission on Environmental Quality. Any permit may be revoked by the State at any time when the permittee fails to comply with the terms and conditions of the permit. In addition, North Carolina has the authority to take legal action, including injunctive relief, to restrain any person from endangering human health and the environment from the improper disposal of solid waste. The State has the authority to assess civil penalties against any person who violates any rule or regulation or any condition or limitation of a permit.

C. Public Comment

The EPA received the following public comments on the tentative determination of adequacy for North Carolina's MSWLF permit program.

One commenter supported the approval of the North Carolina MSWLF permit program as meeting or exceeding the Federal criteria, however, the commentor maintained that use of the draft State/Tribal Implementation Rule ("STIR") as guidance is a violation of the Administrative Procedure Act ("APA") requirements that a rule must go through notice and opportunity for comment. EPA does not believe that it is violating any requirements in the APA for notice and comment on a rulemaking. The Agency is not utilizing the draft STIR as a regulation which binds either the Agency or the States. Instead, EPA is using the draft STIR as guidance for evaluating State permit programs and maintains its discretion to approve State programs utilizing the draft STIR and/or other criteria which assures compliance with 40 CFR part 258.

In addition, members of the public have an opportunity to comment on the essential criteria by which EPA assures the adequacy of State MSWLF permit programs because the Agency discusses the criteria for approval of a State permit program when it publishes each tentative determination notice in the **Federal Register**. The Agency set forth the minimum requirements for an adequate permit program in the tentative determination notice of approval of the State of North Carolina's MSWLF permit program. 58 FR 41765, (August 12, 1993).

Several commenters expressed concern that EPA would lose oversight of the State program if EPA determines that the State program is adequate. A related concern was raised that the State may change its regulations in the near future. The draft State/Tribal Implementation Rule (STIR), which the Agency is using as guidance in determining the adequacy of State permit programs, has provisions detailing that modifications to a State program may result in EPA requiring

that the State submit a revised application if the modification may have a significant impact on the adequacy of the State program. If a revised application is submitted, EPA will make another adequacy determination on the State program. The STIR also provides criteria and procedures for withdrawal of a determination of adequacy. Therefore, an EPA determination that the State has an adequate program can be revisited in the future under the circumstances set out in the STIR.

Several commenters expressed concern that North Carolina does not provide for public participation in the permitting process for MSWLFs. These commenters were concerned that the public would not be given the opportunity to participate in the review and approval of permit applications for solid waste disposal facilities.

The draft STIR contains specific criteria which requires States to provide an opportunity for public review and comment of permit applications. In order to obtain approval, the Agency requires States to have in their programs, the necessary public participation requirements which will ensure that the public has an opportunity to participate in decisions affecting the management of solid waste disposal facilities located in their community.

While North Carolina previously has not provided public participation on applications for MSWLFs, the State recently adopted new solid waste regulations which include public participation requirements. The new State regulations which will become effective on October 9, 1993, require a public comment period and the opportunity for a public hearing on all MSWLF permit applications. The Agency believes that the public participation criteria presented in North Carolina's MSWLF permit program application are adequate to ensure compliance with the Federal requirements and thus the public will be given an opportunity to participate in the permitting of MSWLFs.

Several commenters expressed concern that the State program did not have requirements for waste reduction, recycling and composting. While EPA as a matter of policy encourages pollution prevention through waste reduction, recycling and other methods, part 258 does not require that a State have such provisions in its MSWLF permit program. EPA believes that the revised MSWLF criteria, which will likely increase the cost of operating landfills in many communities to more fully reflect the true cost of safe waste disposal, will in turn, lead to more responsible waste management practices and thereby further promote source reduction, recycling and resource conservation. This is also the case with another important issue raised during the public comment period, environmental equity/justice. Although neither part 258 nor the State regulations have any specific provisions addressing environmental equity/justice, the public participation requirements in the State regulations ensure that environmental equity/justice issues involving specific landfill sites can be raised during the permitting process.

A few commenters expressed concern as to whether or not the State has adequate staffing to effectively enforce the MSWLF permit program in North Carolina. The number of staff that a State is able to dedicate to the implementation of its program is a consideration in determining whether a State should receive program approval. The Agency did not, however, establish specific organizational or resource requirements due to the State specific nature of operating a solid waste regulatory program. Rather, the Agency intended for States to retain flexibility in determining the best use of their available resources. In addition, the draft STIR requires States to discuss in their application for program adequacy, the staff resources that are available to carry out the program.

In accordance with the staffing provisions contained in the draft STIR, the State of North Carolina has provided in its application for program approval, a discussion of both the number of solid waste staff available and the number of permitted MSWLFs presently in the State. Based upon the Agency's knowledge of the solid waste resources available in other States, North Carolina has demonstrated that it has staff resources comparable to other States. Therefore, the Agency concludes that the State currently has adequate resources available which will allow it to effectively implement the MSWLF permit program.

A number of mixed comments were received regarding the State's current permitting practices for new MSWLFs and the closure of existing MSWLFs. A number of commenters were concerned that the State had intentionally "rushed" to approve new permit applications prior to the effective date of the revised Federal criteria for new MSWLFs, thereby allowing these facilities to avoid the revised criteria. Other commenters felt that the State had encouraged the closure of existing "unlined" MSWLFs prior to the effective date of part 258 so that these facilities would not be subject to the stringent groundwater monitoring, post-closure and corrective action requirements contained in the Federal criteria.

Other commenters, however, were supportive of the State's efforts to approve new MSWLFs and to close existing "unlined" MSWLFs prior to the effective date of the part 258 criteria. Several commenters applauded the State for attempting to bring new MSWLFs, that will be environmentally safer, on-line as soon as possible. These commenters stressed that permitting new MSWLFs as quickly as possible would provide substantial new capacity of MSWLFs which meet the Federal criteria, thereby accelerating the closure of old existing landfills that may be environmentally unsafe. The commenters generally favored the closing of existing "unlined" MSWLFs because of the need for environmentally safe landfills.

According to the Federal criteria, existing MSWLFs may stop receiving waste prior to the effective date of the part 258 criteria and, with the exception of the closure criteria, not be required to comply with the remainder of the Federal regulations. The closure of older unlined MSWLFs results in the waste that had been going to those facilities being now disposed of in more environmentally protective facilities.

In addition, in order to ensure that the capacity needs of the State are met and to provide for the proper disposal of waste as a result of the closing of existing MSWLFs, the Agency believes it is essential for the State to issue permits for new MSWLFs in a timely manner. Although permits for new MSWLFs may be issued prior to the effective date of the Federal criteria, this does not exempt the facility from the requirements of the part 258 criteria once they become effective. For example, if a facility receives a permit and begins construction prior to the effective date of the Federal criteria, the facility would not be required to comply with the part 258 criteria at that time. However, once part 258 becomes effective, the facility will be responsible for complying with the Federal criteria. Therefore, the Agency recommends that facilities receiving permits prior to the effective date of the Federal criteria should prepare to meet the Federal criteria on the effective date.

Several comments were made as to whether the State program provides adequate protection for seismic impact zones when compared to the Federal criteria. The revised State rules have

identical provisions for seismic impact zones as those found in part 258.

Numerous comments were received regarding a variety of individual issues pertaining to specific existing or proposed MSWLFs throughout the State. Commenters had specific concerns such as groundwater contamination, landfill gas migration, the locating of MSWLFs near rivers, et cetera. Other commenters were concerned about the States' ability to regulate large regional MSWLFs and some commenters felt that the part 258 criteria is inadequate for protecting human health and the environment from the effects of solid waste disposal.

While these comments were not directly related to the EPA's determination of adequacy on the State permit program, the Agency acknowledges the commenters' concerns and appreciates their desire to ensure the protection of their local environment. As the Agency discussed in the preamble to the Federal criteria, EPA believes that the revised Federal criteria, as promulgated, provides the appropriate balance between protection of human health and the environment and consideration of the practical capability of the owner/operator of MSWLFs. The Agency would like to point out though, that while part 258 contains the minimum Federal criteria for MSWLFs, nothing in the Federal statutes or regulations preclude States from adopting regulations that are more stringent than the Federal criteria.

Several commenters disagreed with the State practice of permitting MSWLFs near rivers. Although the Federal criteria contain specific provisions to ensure that MSWLFs located in certain environmentally sensitive areas will provide protection of human health and the environment, there are no Federal restrictions with regard to the siting of MSWLFs near rivers. The Federal criteria do however, place restrictions on MSWLFs located in floodplains and wetlands.

The Agency would also like to again emphasize that once the part 258 criteria become effective, all MSWLFs are responsible for maintaining compliance with the Federal criteria in addition to all applicable State regulations. Those MSWLFs not in compliance with the applicable provisions of part 258 after the appropriate effective date are subject to enforcement through citizen suits. For instance, if a MSWLF is found to have groundwater contamination or landfill gas migration, then the facility would be required to take the appropriate actions described in part 258 to remediate the problem.

In many instances, particularly among small rural communities, the cost of managing municipal solid waste has been steadily increasing. These costs likely will continue to increase as the effects of the new Federal regulations are realized. In an attempt to mitigate these costs, many communities are choosing to regionalize with other communities and develop large solid waste disposal facilities to handle their waste needs. This approach allows several communities to share the costs of developing solid waste disposal facilities that meet the Federal criteria. Such large regional MSWLFs may be beneficial to many small communities and may play a major role in reducing the long-term financial impacts of the Federal regulations. While those facilities may require more time and attention from the State in permitting and compliance monitoring per facility, there will be fewer facilities involved. This should enable the State to devote sufficient resources to properly regulate these regional facilities.

D. Decision

After reviewing the public comments submitted in response to the tentative decision, I conclude that North Carolina's application for adequacy determination meets all of the statutory and regulatory requirements established by RCRA. Accordingly, North Carolina is granted approval for all portions of its MSWLF permit program.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR part 258 independent of any State/Tribal enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

Today's action takes effect on October 7, 1993. EPA believes it has good cause under section 553(d) of the Administrative Procedure Act, 5 U.S.C 553(d), to put this action into effect less than 30 days after publication in the **Federal Register**. All of the requirements and obligations in the State's/Tribe's program are already in effect as a matter of State/Tribal law. EPA's action today does not impose any new requirements that the regulated community must begin to comply with. Nor do these requirements become enforceable by EPA as Federal law. Consequently, EPA finds that it does not need to give notice prior to making its approval effective.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Certification Under The Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This notice of adequacy determination, therefore, does not require a regulatory flexibility analysis.

Authority: This notice as to the Final Determination of Adequacy of State/Tribal Municipal Solid Waste Permit Program for the State of North Carolina is issued under the authority of section 4005 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6946.

Dated: October 1, 1993.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 93–24661 Filed 10–6–93; 8:45 am]

BILLING CODE 6560-50-F

[FRL–4786–5]

Oregon: Final Partial Program Determination of Adequacy of Oregon's Municipal Solid Waste Landfill Permit Program and Tentative and Final Full Program Determination of Adequacy of Oregon's Municipal Solid Waste Landfill Permit Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final partial, tentative full, and final full program determination of adequacy on Oregon's application.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that Municipal Solid Waste Landfills (MSWLFs) which may receive hazardous household waste or small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). RCRA section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether States have adequate "permit" programs for MSWLFs, but does not mandate issuance of a rule governing such

determinations. EPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, State/Tribal landfill permit programs. The Agency intends to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of the STIR, adequacy determinations will be made based on statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State/Tribal permit programs provide for interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in States/Tribes with approved permit programs can use the site-specific flexibility provided by part 258 to the extent the State/Tribal permit program allows such flexibility. EPA notes that regardless of the approval status of a State/Tribe and the permit status of any facility, the Federal landfill criteria will apply to all permitted and unpermitted MSWLF facilities.

Oregon applied for a partial program determination of adequacy under section 4005 of RCRA. EPA reviewed Oregon's application and made a tentative determination of adequacy for those portions of the MSWLF permit program that are adequate to ensure compliance with the revised MSWLF Criteria. After reviewing all comments received, EPA today is granting final approval to Oregon's partial program. In addition, Oregon applied for a full program determination of adequacy under section 4005 of RCRA. EPA reviewed Oregon's supplemental application and made a tentative determination that all portions of Oregon's MSWLF permit program are adequate to assure compliance with the revised MSWLF Criteria. Oregon's supplemental application for program adequacy determination is available for public review and comment.

DATES: The determination of partial program adequacy for Oregon shall be effective on October 7, 1993. If there are no adverse comments on full program approval, determination of full program adequacy for Oregon shall be effective December 6, 1993.

All comments on Oregon's supplemental application for full determination of adequacy must be received by the close of business on November 12, 1993.

ADDRESSES: Copies of Oregon's supplemental application for full adequacy determination are available 8:30 a.m. to 4:30 p.m. during normal working days at the following addresses for inspection and copying: Oregon Department of Environmental Quality, 811 SW. 6th Avenue, Portland, OR 97204, Attn: Ms. Jan Whitworth, (503) 229–6434; U.S. EPA Region 10 Library, 1200 Sixth Avenue, Seattle, WA 98101, (206) 553–1289. Written comments should be sent to Ms. Paula vanHaagen, M/S: HW–107, 1200 Sixth Avenue, Seattle, WA 98101, (206) 553–1847.

FOR FURTHER INFORMATION CONTACT: Paula vanHaagen, M/S: HW–107, U.S. EPA, 1200 Sixth Avenue, Seattle, WA 98101, (206) 553–1847.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that facilities comply with the Federal Criteria under part 258. Subtitle D also requires in section 4005 that EPA determine the adequacy of State municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, the Agency has drafted and is in the process of proposing the State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

EPA intends to propose in STIR to allow partial approval if: (1) The Regional Administrator determines that the State/Tribal permit program largely meets the requirements for ensuring compliance with part 258; (2) changes to a limited narrow part(s) of the State/Tribal permit program are needed to meet these requirements; and (3) provisions not included in the partially approved portions of the State/Tribal permit program are a clearly identifiable and separable subset of part 258. As provided in the October 9, 1991, municipal landfill rule, EPA's national Subtitle D standards will take effect in October 1993. Consequently, any portions of the Federal Criteria which are not included in an approved State/Tribal program by October 1993 would apply directly to the owner/operator. The requirements of the STIR, if promulgated, will ensure that any mixture of State/Tribal and Federal rules that take effect will be fully workable and leave no significant gaps in environmental protection. These practical concerns apply to individual partial approvals granted prior to the promulgation of the STIR rule. Consequently, EPA reviewed the program approved today and concluded that the State/Tribal and the Federal requirements mesh reasonably well and leave no significant gaps. Partial approval would allow the Agency to approve those provisions of the State/Tribal permit program that meet the requirements and provide the State/Tribe time to make necessary changes to the remaining portions of its program. As a result, owners/operators will be able to work with the State/Tribal permitting agency to take advantage of the Criteria's flexibility for those portions of the program which have been approved.

EPA will review State/Tribal requirements to determine whether they are "adequate" under section 4005(c)(1)(C) of RCRA. EPA interprets the requirements for States or Tribes to develop "adequate" programs for permits or other forms of prior approval to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the State/Tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, EPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions will determine whether a State/Tribe has submitted an "adequate" program based on the interpretation outlined above. EPA plans to provide more specific criteria for this evaluation when it proposes the State/Tribal Implementation Rule. EPA expects States/Tribes to meet all of these requirements for all elements of a MSWLF program before it gives full approval to a MSWLF program. EPA also is requesting States/Tribes seeking partial program approval to provide a schedule for the submittal of all remaining portions of their MSWLF permit programs. EPA notes that it intends to propose to make submissions of a schedule mandatory in STIR.

As a State's/Tribe's regulations and statutes are amended to comply with the

Federal MSWLF landfill regulations, unapproved portions of a partially approved MSWLF permit program may be approved by the EPA. The State/Tribe may submit a supplemental application to EPA for review and an adequacy determination will be made using the same criteria as for the initial application. This adequacy determination will be published in the **Federal Register** summarizing the Agency's decision and the portion(s) of the State/Tribal MSWLF permit program affected and providing an opportunity to comment for a period of 30 days. The adequacy determination will become effective sixty (60) days following publication if no adverse comments are received. If EPA receives adverse comments on its adequacy determination, another **Federal Register** notice will be published either affirming or reversing the initial decision while responding to the public comments.

On April 19, 1993, Oregon submitted an application to obtain a partial program adequacy determination for Oregon's municipal solid waste landfill permit program. On May 18, 1993, EPA published a tentative determination of adequacy for Oregon's program. Further background on the tentative partial program determination of adequacy appears at 58 FR 28960 (May 18, 1993).

Along with the tentative determination, EPA announced the availability of the application for public review and comment. EPA announced a tentative public hearing if there was sufficient interest expressed within thirty days of publication of the **Federal Register** notice. EPA received no requests for the hearing, and the hearing was cancelled.

As of the date of publication of this notice, EPA is approving all portions of Oregon's MSWLF permit program except the post-closure care requirement in 40 CFR 258.61 and the financial assurance for corrective action requirement in 40 CFR 258.73. Oregon needed legislative action to change their statute to meet these two Federal requirements. The Oregon Legislature amended the statute in Senate Bill 1012, which was signed into law on July 20, 1993. In addition, during the public review process, EPA became aware of an enforcement provision inconsistent with the enforcement guidelines set out in the STIR in 239.8. Oregon Revised Statute section 468.126 requires advance notice in writing to permittees specifying a violation of an air, water, or solid waste permit. Within five days of notification, the permittee can certify compliance, or submit a schedule for compliance to avoid penalties. Once notified of EPA's concern, Oregon sought legislative action to amend the provision. Senate Bill 86, signed into law September 3, 1993, amended Oregon's enforcement provision, adding that advance notice is not required where such notice would disqualify a state program from Federal approval or delegation. Oregon acknowledges that the provision applies to the municipal solid waste permit program.

EPA received three public comments on the tentative determination of partial program adequacy. One commenter maintained that use of the draft STIR as guidance is a violation of the Administrative Procedure Act ("APA") requirements that a rule must go through notice and opportunity for comment. EPA does not believe that it is violating any requirements of the APA. The Agency is not utilizing the draft STIR as a regulation that binds either the Agency or States/Tribes. Instead, EPA is using the draft STIR as guidance for evaluation State/Tribal permit programs and maintains its discretion to approve State/Tribal permit programs utilizing the draft STIR and/or other criteria which assures compliance with 40 CFR part 258.

In addition, members of the public have an opportunity to comment on the criteria by which EPA assures the adequacy of State/Tribal MSWLF permit programs because the Agency discusses the criteria for approval of a permit program when it publishes each tentative determination notice in the **Federal Register**. In the tentative determination notice for approval of the State of South Carolina's permit program, the Agency set forth for public comment the requirements for an adequate permit program. 58 FR 41274, 41275 (August 3, 1993).

One commenter requested EPA to limit state program approvals of variances or exemptions to those that meet the Federal minimum standards. The commenter supports Oregon's statement that no variance, waiver, alternative schedule or alternative procedure would result in requirements less stringent than Subtitle D requirements. The Agency generally concurs with this position. In the Agency's review of state programs, variations from the Federal criteria are examined to see if the Federal minimum requirements are met. Waivers, variances, and alternatives receive special scrutiny.

One commenter supported the determination of partial approval for those parts of the program that meet the Federal requirements and that full approval should be withheld until those parts meet the Federal requirements. The commenter would support full program approval once the necessary changes are made. The Agency appreciates this support for the partial approval process.

As stated in the tentative determination of approval of Oregon's program, the State's program is not enforceable on Indian lands. Oregon has not asserted nor demonstrated jurisdiction within the exterior boundaries of Indian reservations in its application for adequacy determination. Accordingly, this approval does not extend to lands within Indian reservations in Oregon. Until EPA approves a State or Tribal MSWLF permitting program in Oregon for any part of "Indian Country," as defined in 18 U.S.C. 1151, the requirements of 40 CFR part 258 will, after the effective date of the criteria, automatically apply to that area. Thereafter, the requirements of 40 CFR part 258 will apply to all owners/operators of MSWLFs located in any part of "Indian Country" that is not covered by an approved State or Tribal MSWLF permitting program.

Oregon submitted a supplemental application to EPA on September 23, 1993. EPA reviewed the supplemental application and determined it was administratively complete. Furthermore, the application demonstrated that the two elements that previously did not comply with the Federal criteria, the post-closure care period and the requirement for financial assurance for corrective action, have been enacted and Oregon's program now meets the Federal requirements. EPA has determined that Oregon's municipal solid waste permit program will ensure compliance with the revised Federal MSWLF Criteria, subject to public comment. If no adverse comment is received within the comment period, EPA's determination of full program adequacy will be effective 60 days from publication in the **Federal Register**. If EPA receives adverse comments on this determination, another **Federal Register** notice will be published either affirming or reversing the initial decision while responding to the public comments.

B. Decision

After reviewing the public comments, I conclude that Oregon's application for partial program adequacy determination meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Oregon is granted a partial program determination of adequacy for the following areas of its municipal solid waste permit program, effective immediately.

1. General criteria for purpose, scope, and applicability, definitions, and

consideration of other Federal laws (40 CFR 258.1, 258.2, and 258.3);

2. Location restrictions for airport safety, floodplains, wetlands, fault areas, seismic impact zones, unstable areas, and closure of existing municipal solid waste landfill units (40 CFR 258.10, 258.11, 258.12, 258.13, 258.14, 258.15, and 258.16);

3. Operating criteria for excluding hazardous waste, cover material, disease vector control, explosive gases control, air, access, run-on/run-off control, surface water, liquids, and recordkeeping (40 CFR 258.20, 258.21, 258.22, 258.23, 258.24, 258.25, 258.26, 258.27, 258.28, and 258.29);

4. Design criteria (40 CFR 258.40);

5. Ground-water monitoring and corrective action requirements including applicability, ground-water monitoring systems, sampling and analysis, detection monitoring, assessment monitoring, assessment of corrective measures, selection of remedy, and implementation of the corrective action program (40 CFR 258.50, 258.51, 258.53, 258.54, 258.55 258.56, 258.57, and 258.58);

6. Closure (40 CFR 258.60);

7. Financial assurance criteria for applicability and effective date, closure, post-closure care, and allowable mechanisms (40 CFR 258.70, 258.71, 258.72, and 258.74).

In light of the support for Oregon's partial program determination of adequacy and the changes Oregon made to meet the Federal requirements, as set out in 58 FR 28960 (May 18, 1993) and the supplemental application, I conclude that Oregon's application for full program adequacy determination meets all the statutory and regulatory requirements established by RCRA. Oregon is accordingly granted a determination of adequacy for all portions of its municipal solid waste permit program, subject to public comment, effective 60 days after publication of this notice.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of Section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR part 258 independent of any State/Tribal enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

One of today's action takes effect on the date of publication. EPA believes it has good cause under section 553(d) of the Administrative Procedure Act, 5 U.S.C 553(d), to put this action into effect less than 30 days after publication in the **Federal Register**. All of the requirements and obligations in the State's/Tribe's program are already in effect as a matter of State/Tribal law. EPA's action today does not impose any new requirements that the regulated community must begin to comply with. Nor do these requirements become enforceable by EPA as Federal law. Consequently, EPA finds that it does not need to give notice prior to making its approval effective.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this final approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This notice, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of section 4005 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6946.

Dated: September 29, 1993.

Charles Findley,

Acting Regional Administrator.

[FR Doc. 93–24663 Filed 10–6–93; 8:45 am]

BILLING CODE 6560–60–F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

October 1, 1993.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: 3060–0286

Title: Notice of discontinuance, reduction, or impairment of service involving a distress watch

Action: Extension of a currently approved collection

Respondents: Individuals or households, state or local governments, non-profit institutions, and businesses or other for-profit (including small businesses)

Frequency of Response: On occasion reporting requirement

Estimated Annual Burden: 160 responses; 1 hour average burden per response; 160 hours total annual burden

Needs and Uses: The reporting requirement contained in section 80.302 is necessary to ensure that the U.S. Coast Guard is timely informed when a coast station, which is responsible for maintaining a listening watch on a designated marine distress and safety frequency, discontinues, reduces or impairs its communications services. This notification allows the Coast Guard to seek an alternate means of providing radio coverage to protect the safety of life and property at sea or object to the planned diminution of service. The information is used by U.S. Coast Guard district office nearest to the coast station. Once the Coast Guard is aware that such a situation exists, it is able to inform the maritime community that radio coverage has or will be affected and/or seek to provide coverage of the safety watch via alternate means. When appropriate, the Coast Guard may file a petition to deny an application.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–24636 Filed 10–6–93; 8:45 am]

BILLING CODE 6712–01–M

[Report No. 1973]

Petitions for Reconsideration and Clarification of Actions in Rulemaking Proceedings

September 30, 1993.

Petitions for reconsideration and or clarification have been filed in the Commission rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in room 239, 1919 M Street, NW., Washington, DC or may be purchased from the Commission's copy contractor

ITS, Inc. (202) 857–3800. Opposition to these petitions must be filed October 22, 1993. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b) (1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Implementation of sections 11 and 13 of the Cable Television Consumer Protection and Competition Act of 1992.

Horizontal and Vertical Ownership Limits, Cross-Ownership Limitations and Anti-Trafficking Provisions (MM Docket No. 92–264).

Petitions for Reconsideration and or Clarification

Number of Petitions Filed: 2

Petition for Reconsideration

Number of Petitions Filed: 1

Joint Petition for Reconsideration

Number of Petitions Filed: 1

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 93–24565 Filed 10–6–93; 8:45 am]
BILLING CODE 6712–01–M

[Report No. 1974]

Petitions for Reconsideration and Clarification of Actions in Rulemaking Proceedings

October 1, 1993.

Petitions for reconsideration and or clarification have been filed in the Commission rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR § 1.429(e). The full text of these documents are available for viewing and copying in room 239, 1919 M Street, NW. Washington, DC or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857–3800. Opposition to these petitions must be filed October 31, 1993. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Transport Rate Structure and Pricing (CC Docket No. 91–213).

Petition for Reconsideration

Number of Petitions Filed: 1

Petition for Reconsideration and or Clarification

Number of Petitions Filed: 1

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 93–24566 Filed 10–6–93; 8:45 am]
BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

Gloucester County Bankshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 29, 1993.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. Gloucester County Bankshares, Inc., Woodbury, New Jersey; to become a bank holding company by acquiring 100 percent of the voting shares of The Bank of Gloucester County, Woodbury, New Jersey.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Peoples Financial Corp. of Illinois, Inc., Kewanee, Illinois; to acquire 100 percent of the voting shares of Bradford Bancorp, Inc., Bradford, Illinois, and thereby indirectly acquire Bradford Banking Company, Bradford, Illinois.

2. Security Capital Corporation, Milwaukee, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of Security Bank, S.S.B., Milwaukee, Wisconsin, a *de novo* bank.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Mercantile Bancorporation, Inc., and Mercantile Acquisition Corporation IV, both of St. Louis, Missouri; to acquire 100 percent of the voting shares of Metro Bancorporation, Waterloo, Iowa, and thereby indirectly acquire The Waterloo Savings Bank, Waterloo, Iowa.

D. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Barrett Holding Company, Watonga, Oklahoma; to acquire up to 2.24 percent, for a total of 30 percent, of the voting shares of Watonga Bancshares, Inc., Watonga, Oklahoma, and thereby indirectly acquire Watonga State Bank, Watonga, Oklahoma.

2. R. Banking Limited Partnership, Oklahoma City, Oklahoma; to acquire 48.96 percent of the voting shares of BancFirst Corporation, Oklahoma City, Oklahoma, and thereby indirectly acquire BancFirst, Oklahoma City, Oklahoma. In connection with this application, BancFirst Corporation has applied to merge with Coweta Bancshares, Inc., Coweta, Oklahoma, and thereby indirectly acquire Security Bank, Coweta, Oklahoma; and First Stratford Bancorporation, Inc., Stratford, Oklhaoma, and thereby indirectly acquire First American Bank, Stratford, Oklahoma; and Weatherford Bancorporation, Inc., Weatherford, Oklahoma, and thereby indirectly acquire United Community Bank, Weatherford, Oklahoma.

3. Security Corporation, Duncan, Oklahoma; to acquire 100 percent of the voting shares of FirstBank Holding Company, Marietta, Oklahoma, and thereby indirectly acquire FirstBank of Marietta, Marietta, Oklahoma.

Board of Governors of the Federal Reserve System, September 30, 1993.
Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 93-24632 Filed 10-6-93; 8:45 am]
BILLING CODE 6210-01-F

Catherine Finn, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12

CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 26, 1993.

A. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Catherine Finn, Trustee, Dallas, Texas; and Shannon Wood, Trustee, Refugio, Texas; together to acquire an additional 32.3 percent of the voting shares of Howland Bancshares, Inc., Robstown, Texas, for a total of 48.4 percent, and thereby indirectly acquire The Bank of Robstown, Robstown, Texas.

Board of Governors of the Federal Reserve System, September 30, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-24631 Filed 10-6-93; 8:45 am]

BILLING CODE 6210-01-F

Ronald L. Moore, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 21, 1993.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Ronald L. Moore, Strasburg, Colorado; to acquire an additional 1.25 percent for a total of 19.98 percent; Martin L. Moore, Englewood, Colorado, to retain 1.50 percent; Julia L. Moore, Denver, Colorado, to retain 1.50 percent; Rhonda Moore Hertel, Littleton, Colorado, to retain 1.25 percent; and Sandra Moore Loeffler, Castle Rock, Colorado, to retain 1.0 percent of the voting shares of Rice Insurance Agency, Inc., Strasburg, Colorado, and thereby indirectly acquire First National Bank of Strasburg, Strasburg, Colorado.

Board of Governors of the Federal Reserve System, October 1, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-24635 Filed 10-6-93; 8:45 am]

BILLING CODE 6210-01-F

Security Capital Corporation; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 26, 1993.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Security Capital Corporation, Milwaukee, Wisconsin; to engage *de novo* in making and servicing a loan to the Employee Stock Ownership Plan of Security Bank S.S.B. for the purpose of purchasing shares of capital stock of Security Capital Corporation pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 30, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-24633 Filed 10-6-93; 8:45 am]

BILLING CODE 6210-01-F

Union Planters Corporation; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased

competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 29, 1993.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Union Planters Corporation, Memphis, Tennessee; to acquire 100 percent of the voting shares of Mid-South Bancorp, Inc., Franklin, Kentucky, and thereby indirectly acquire First Citizens Bank, Franklin, Tennessee; Peoples Bank of Elk Valley, Fayetteville, Tennessee; Simpson County Bank, Franklin, Kentucky; and Adairville Banking Company, Adairville, Kentucky.

In connection with this application, Applicant has also applied to acquire General Trust Company, Nashville, Tennessee, and thereby engage in performing functions or activities of a fiduciary agency, or custodial nature pursuant to § 225.25(b)(3) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 30, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-24634 Filed 10-6-93; 8:45 am]

BILLING CODE 6210-01-F

GENERAL SERVICES ADMINISTRATION

Business Advisory Board; Meeting

Meeting Notice: Notice is hereby given that the General Services Administration (GSA) Business Advisory Board will meet October 20, 1993, from 10 a.m. to 5:00 p.m. at the offices of the National Institute for Building Sciences, first floor conference center, 1201 L Street, NW., Washington, DC 20005. Notice is required by the Federal Advisory Committee Act, 5 U.S.C. App. 2, and the implementing regulation, 41 CFR 101–6.

The purpose of the meeting is to provide a forum for discussion of factors contributing to the costs of constructing Federal courthouses. The agenda for this meeting will include discussions on: Program definition, Program implementation, Program restrictions and Owner responsibilities as well as other factors which could help to reduce courthouse construction costs.

The meeting will be open to the public.

For further information, contact Fred Hendricks 202 501–1745 of the Public Buildings Service, Office of Design and Construction, GSA–PQS, Washington, DC 20495.

Dated: October 4, 1993.

David L. Bibb,

Acting Commissioner of Public Buildings, General Services Administration.

[FR Doc. 93–24675 Filed 10–6–93; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

HIV Prevention Community Planning Process

The Centers for Disease Control and Prevention (CDC) announces the following change in meeting date.

Federal Register Citation of Previous Announcement: 58 FR 49053—dated September 21, 1993.

Name: CDC's HIV Prevention Community Planning Process: Meeting.

Original Time and Date: 8:30 a.m.–5 p.m., October 14, 1993.

New Date: November 15, 1993.

Summary: Notice is given that the meeting for CDC's HIV Prevention Community Planning Process has been rescheduled. The meeting time, location, and purpose announced in the original notice remain unchanged.

For Further Information Contact the Meeting Organizer: Professional and Scientific Associates, Inc., 2635 Century Parkway, Suite 990, Atlanta, Georgia 30345, telephone (404) 633–6869, fax (404) 633–6477.

Dated: September 29, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–24617 Filed 10–6–93; 8:45 am]

BILLING CODE 4160–18–M

CDC Advisory Committee on the Prevention of HIV Infection (CDC ACPHI): Subcommittee on Monitoring the HIV/AIDS Epidemic: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following subcommittee meeting.

Name: CDC ACPHI Subcommittee on Monitoring the HIV/AIDS Epidemic.

Time and Date: 8:30 a.m.–5 p.m., October 24, 1993.

Place: Holiday Inn Financial District, 750 Kearny Street, San Francisco, California 94108.

Status: Open to the public, limited only by the space available.

Purpose: The purpose of this meeting is to continue to review current behavioral, exposure, infection, and disease surveillance systems and address information needs for monitoring behaviors and exposures to HIV.

Agenda items are subject to change as priorities dictate.

Contract Person for More Informaiton: Connie Granoff, Committee Assistant, Office of the Associate Director for HIV/AIDS, CDC, 1600 Clifton Road, NE., Mailstop E–40, Atlanta, Georgia 30333, telephone 404/639–2918.

Dated: October 1, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–24619 Filed 10–6–93; 8:45 am]

BILLING CODE 4160–18–M

Study of the Physiological Effects of Wearing Self-Contained Breathing Apparatus (SCBA) in a Hot Environment: Meeting

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Study of the Physiological Effects of Wearing Self-Contained Breathing Apparatus (SCBA) in a Hot Environment.

Time and Date: 1 p.m.–4:30 p.m., October 22, 1993.

Place: Division of Safety Research, Large Conference Room, NIOSH, CDC, 3040 University Avenue, Morgantown, West Virginia 26505–2888.

Status: Open to the public, limited only by the space available.

Purpose: The purpose is to obtain individual advice and guidance regarding the technical and scientific merit of a proposed experiment to qualify the effects on lung mechanics and heat balance of simulated wearing of various types of SCBA in a hot, ambient environment. The individual participants will review the proposed study protocol, recommend changes of scientific merit, and provide advice on the conduct of

the study. Viewpoints and suggestions from industry, labor, academia, other government agencies, and the public are invited.

Contract Person for Additional Information: Nina L. Turner, Ph.D., NIOSH, CDC, 944 Chestnut Ridge Road, Mailstop P–119, Morgantown, West Virginia 26505–2888, telephone 304/291–5801.

Dated: September 29, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–24618 Filed 10–6–93; 8:45 am]

BILLING CODE 4160–19–M

Food and Drug Administration

[Docket No. 93F–0309]

Sandoz AG; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Sandoz AG has filed a petition proposing that the food additive regulations be amended to provide for the expanded use of di-*tert*-butylphenyl phosphonite condensation product with biphenyl as an antioxidant/stabilizer for olefin polymers and for rubber articles intended for repeat use in contact with food.

DATES: Written comments on petitioner's environmental assessment by November 8, 1993.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Daniel N. Harrison, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204–0002, 202–254–9500.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 3B4395) has been filed by Sandoz AG, c/o Registration and Consulting Co., Ltd., CH–4452 Hingen/Basel, Switzerland. The petition proposes that the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) be amended to provide for the expanded use of di-*tert*-butylphenyl phosphonite condensation product with biphenyl as an antioxidant/stabilizer for olefin polymers and for rubber articles intended for repeat use in contact with food.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before November 8, 1993, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: September 29, 1993.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 93–24588 Filed 10–6–93; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

[PN 2121]

Availability of Funds for Grants to Provide Outpatient Early Intervention Services With Respect to HIV Disease

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of availability of funds.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that the President's budget for fiscal year (FY) 1994 includes approximately $81.5 million for discretionary grants to provide outpatient early intervention services with respect to human immunodeficiency virus (HIV) disease. These grants are awarded under the provisions of subpart II and subpart III of part C of title XXVI of the Public Health Service (PHS) Act, as amended by the Ryan White Comprehensive AIDS Resources Emergency (CARE) Act of 1990, Public Law 101–381 (42 U.S.C. 300ff–51–300ff–67). This announcement is made prior to an appropriation of Fiscal Year 1994 funds, in order to assure that grants can be awarded in a timely fashion consistent with the needs of the program as well as to provide for distribution of funds throughout the fiscal year. On the basis of the President's budget, it is anticipated that approximately $12.1 million will be available for approximately 40 competing continuation and/or new grants with January 1, 1994 start dates. If the final appropriation permits, a subsequent notice will be issued in the **Federal Register** to announce the availability of funds to support additional new starts, as well as competing and non-competing continuation grants.

The PHS is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting health priorities. This grant program is related to the following priority areas: increase the proportion of HIV-infected persons who are tested; increase the proportion of primary health care providers who provide age-appropriate HIV counseling; and increase the proportion of family planning and primary health care providers who provide a comprehensive HIV program. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (telephone 202–783–3238).

ADDRESSES: Application kits (Form PHS 5161–1 with revised face sheet HHS Form 424, as approved in 7/92 by the Office of Management and Budget (OMB) under control number 0937–0189) may be obtained from, and completed applications should be mailed to, the appropriate PHS Regional Grants Management Officer (RGMO) (see Appendix). The RGMO can also provide assistance on business management issues.

DATES: In order to receive consideration, applications for competing continuation and/or new grants with January 1, 1994 budget start dates should be received by the RGMO by October 1, 1993. Advance

notice of this deadline date was published in the **Federal Register** on August 20, 1993 at 58 FR 44347. Applications will be considered to be "on time" if they are either: (1) Received on or before the established deadline date, or (2) sent on or before the established deadline date and received in time for orderly processing. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailing.) Late applications will not be considered for funding and will be returned to the applicant.

FOR FURTHER INFORMATION CONTACT: For general program information and technical assistance, contact Enrique Fernandez, M.D., HIV Program Director, Division of Programs for Special Populations, Bureau of Primary Health Care (BPHC), at 5600 Fishers Lane, Rockville, Maryland 20857 (telephone 301–443–8113). Questions can also be directed to the PHS regional offices listed in the appendix.

SUPPLEMENTARY INFORMATION:

Number of Awards

It is anticipated that $12.1 million will be available to make awards to approximately 40 competing continuation and/or new applicants for grants with January 1, 1994, budget start dates. The range of project support is approximately $100,000–$500,000. The budget period will be for 12 months. Continuation awards for any future years will be made subject to the availability of funds and satisfactory performance in past budget years toward meeting the goals and objectives of the project.

Eligible Applicants

Eligible applicants are public entities and nonprofit private entities that are: Migrant health centers under section 329 of the PHS Act; community health centers under section 330 of the PHS Act; health care for the homeless grantees under section 340 of the PHS Act; family planning grantees under section 1001 of the PHS Act other than States; comprehensive hemophilia diagnostic and treatment centers; federally-qualified health centers under section 1905(*1*)(2)(B) of the Social Security Act; or public and private nonprofit entities that currently provide comprehensive primary care services to populations at risk of HIV disease.

Funding under this grant program is intended to increase the capacity and accessibility of the specified entities to offer a higher quality and a broader scope of HIV-related early intervention services to a greater number of people in their service areas who are at risk of HIV infection. The program must provide the services specified in the statute (sections 2651, 2661, 2662) and may provide for a set of other optional services.

The required services to be provided under this grant are:

- Comprehensive individual counseling regarding HIV disease according to specific statutory mandates for the content and conduct of pretest counseling, counseling of those with negative test results, counseling of those with positive results, and with attention to the appropriate setting for all counseling;
- Testing individuals with respect to HIV disease, in laboratories certified by the Clinical Laboratories Improvement Amendments, including tests to confirm the presence of the disease, tests to diagnose the extent of the deficiency in the immune system, and tests to provide information on appropriate therapeutic measures for preventing and treating the deterioration of the immune system and for preventing and treating conditions arising from the disease;
- Referral to appropriate providers of health and support services, including, as appropriate to entities funded under parts A and B of title XXVI of the PHS Act, to biomedical research facilities, community-based organizations or other entities that offer experimental treatment for HIV disease, and to grantees under 2671 for the care of pregnant women;
- Other clinical and diagnostic services regarding HIV disease, and periodic medical evaluations of individuals with the disease; and
- Providing therapeutic measures for preventing and treating the deterioration of the immune system and for preventing and treating conditions arising from the disease.

Optional services that may be included if they can be shown to be essential to the delivery of care are:

- Outreach, case management, and counseling for eligibility for other health services.
- Applicants, or providers acting under an agreement with the applicant, must be participating and qualified providers under the State Medicaid plan approved under title XIX of the Social Security Act; a waiver procedure is available from BPHC. Grantees are required to maximize service reimbursements from private insurance, Medicare, other Federal programs, and other third-party payment sources.
- The applicant must agree that the services provided will conform to the assurances and agreements required under the statute that:
- The applicant will participate in an HIV care consortium established pursuant to part B, title XXVI, if such a consortium exists.
- Hemophilia services will be provided through the network of regional comprehensive hemophilia diagnostic and treatment centers.
- The applicant will ensure confidentiality of patient information.
- Testing will be provided only after obtaining a statement that the testing is done after counseling has been conducted and that the decision of the individual to undergo testing is voluntarily made.
- Opportunities for anonymous testing will be provided.
- Individuals seeking services will not have to undergo testing as a condition of receiving other health services.
- A sliding fee schedule with the limits established in the statute will be utilized.
- Funds will not be expended for services covered, or which could reasonably be expected to be covered, under any State compensation program, insurance policy, or under any Federal or State health benefits program, or by an entity that provides health services on a prepaid basis.
- Funds will be expended only for the purposes awarded, and such procedures for fiscal control and fund-accounting, as may be necessary, will be established.
- Counseling programs shall not be designed to directly promote or encourage injecting drug use or sexual activity, homosexual or heterosexual; shall be designed to reduce exposure to, and transmission of, HIV disease by providing accurate information; and shall provide information on the health risks of promiscuous sexual activity and injecting drug use.
- A limit of 5 percent of the grant funds will be imposed for administrative expenses. Funds may not be expended for construction, inpatient care, residential care, or cash payments to recipients of services.
- The HIV Client and Program Profile, which has been formally established as the Minimum Data Set (MDS) for BPHC, will be submitted every 6 months. (Approved under the Paperwork Reduction Act, OMB No. 0915–0158.)

Criteria for Evaluation

New and Competing Continuation Applications

In its review of applications for new and competing continuation projects, BPHC will consider:

- The need in the community, based on the 2-year period preceding the proposed grant period, for additional preventive and primary care services to those at risk for HIV infection, including women, children, and minorities, and to persons with HIV infection; barriers to meeting those needs within the existing service provider system; and other information (e.g., epidemiological and health resources data) that makes a compelling case for the grant requested as specified in section 2653 of the PHS Act.
- The applicant's ability to describe its role within the community in addressing the unmet needs for delivery of HIV primary care services to the targeted populations.
- The degree to which the proposed budget is appropriate to the program plan and the degree to which coordination with other funding sources is documented.
- Comprehensiveness of the existing, plus proposed, scope of counseling and testing, referral, primary care prevention, diagnostic and treatment services, and optional outreach, case management, or eligibility assistance services provided by the applicant; and development of mechanisms to assure continuity of primary care for persons living with HIV infection.
- Extent to which actions taken assure effective collaboration with city/county/State health department HIV prevention activities supported by the Centers for Disease Control and Prevention, and with State Care Consortia funded under section 2613 of the PHS Act; extent to which efforts are consistent with priorities of the HIV Planning Council in the cities funded under Title XXVI of the PHS Act, and with programs funded by other PHS agencies.
- The adequacy and completeness of the program evaluation plan, and the relationship of the evaluation plan to the goals and objectives of the proposed program, so that effectiveness can be measured.
- In addition, for competing continuations: The degree to which the grantee succeeded in accomplishing the goals and objectives in the initial 3-year project period, including the extent to which HIV primary care services were integrated into the applicant's overall primary care program; and a record of compliance with reporting requirements in effect during that period.
- In addition, for new applicants: Demonstrated ability of the applicant organization to carry out the proposed program, including the extent to which the proposed key clinical staff have had prior experience in the provision of clinical care for individuals with HIV infection.

Other Grant Information

The Grant Program to Provide Outpatient Early Intervention Services with Respect to HIV Disease has been determined to be a program which is subject to the provisions of Executive Order 12372, as implemented by 45 CFR part 100. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application packages to be made available under this notice will contain a listing of States which have chosen to set up a review system and will provide a State-point-of-contact (SPOC) in the State for the review. Applicants (other than federally-recognized Indian tribal Governments) should contact their SPOCs as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. The due date for State process recommendations is 60 days after the application deadline date. The BPHC does not guarantee to accommodate or explain State process recommendations it receives after that date.

This program is subject to the Public Health System Reporting Requirements. Reporting requirements have been approved by the Office of Management and Budget—0937–0195. Under these requirements, the community-based nongovernmental applicant must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to provide information to State and local health officials to keep them apprised of proposed health services grant applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental applicants are required to submit the following information to the head of the appropriate State and local health agencies in the area(s) to be impacted no later than the Federal Application receipt due date:

a. A copy of the face page of the application (SF–424).

b. A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies. Grants will be administered in accordance with HHS Regulations in 45 CFR part 92 for State and local governments, or 45 CFR part 74 for other grantees.

The OMB Catalog of Federal Domestic Assistance number for this program is 93.918.

Dated: August 13, 1993.

William A. Robinson,

Acting Administrator.

Appendix

Regional Grants Management Officers

Region I: Mary O'Brien, Grants Management Officer, PHS Regional Office I, John F. Kennedy Federal Building, Boston, MA 02203 (617) 565–1482

Region II: Frank DiGiovanni, Grants Management Officer, PHS Regional Office II, Room 3300, 26 Federal Plaza, New York, NY 10278 (212) 264–4496

Region III: Marty Bree, Grants Management Officer, PHS Regional Office III, P.O. Box 13716, Philadelphia, PA 19101 (215) 596–6657

Region IV: Wayne Cutchens, Grants Management Officer, PHS Regional Office IV, Room 1106, 101 Marietta Tower, Atlanta, GA 30323 (404) 331–2597

Region V: Lawrence Poole, Grants Management Officer, PHS Regional Office V, 105 West Adams Street, 17th Floor, Chicago, IL 60603 (312) 353–8700

Region VI: Joyce Bailey, Grants Management Officer, PHS Regional Office VI, 1200 Main Tower, Dallas, TX 75202 (214) 767–3885

Region VII: Michael Rowland, Grants Management Officer, PHS Regional Office VII, Room 501, 601 East 12th Street, Kansas City, MO 64106 (816) 426–5841

Region VIII: Susan Jaworowski, Grants Management Officer, PHS Regional Office VIII, 1961 Stout Street, Denver, CO 80294 (303) 844–4461

Region IX: Al Tevis, Grants Management Officer, PHS Regional Office IX, 50 United Nations Plaza, San Francisco, CA 94102 (415) 556–2595

Region X: James Tipton, Grants Management Officer, PHS Regional Office X, Mail Stop RX 20, 2201 Sixth Avenue, Seattle, WA 98121 (206) 615–2473

[FR Doc. 93–24592 Filed 10–6–93; 8:45 am]

BILLING CODE 4160–15–P

National Institutes of Health

National Cancer Institute; Opportunity for a Cooperative Research and Development Agreement (CRADA) for the Scientific and Commercial Development of a Recombinant Toxin to Treat Cancer

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice.

SUMMARY: The National Cancer Institute (NCI) seeks a pharmaceutical company that can effectively pursue the scientific and commercial development of a recombinant immunotoxin to treat several types of human cancers. NCI has a monoclonal antibody (anti-Tac) that reacts with human IL2 receptors present on many types of lymphomas and leukemias and activated human T cells. This antibody has been used to make a single chain immunotoxin termed anti-Tac(Fv)-PE38. The agent has been shown to cause the complete regression of human cancers containing the human IL2 receptor growing in immunodeficient mice. It also has the ability to kill activated T cells thought to be responsible for many autoimmune diseases. The selected sponsor will be awarded a CRADA to collaborate in the clinical development of anti-Tac(Fv)PE38 for the treatment of cancers which react with monoclonal antibody anti-Tac.

ADDRESSES: Questions about this opportunity may be addressed to Ira Pastan, M.D., Chief, Laboratory of Molecular Biology, Division of Cancer Biology, Diagnosis and Centers, National Cancer Institute, National Institutes of Health, 9000 Rockville Pike, Building 37, room 4E16, Bethesda, MD 20892, Tel: (301) 496–4797, Fax: (301) 402–1344.

DATES: Statements of interest must be received in writing on or before January 5, 1994.

SUPPLEMENTARY INFORMATION: The NCI is seeking a pharmaceutical or biotechnology company, which, in accordance with the requirements of the regulations governing the transfer of Government-developed agents (37 CFR part 404), can produce the recombinant immunotoxin anti-Tac(Fv)-PE38 for which patents are pending or have been issued to meet the needs of the general public with the best terms for the NCI. Anti-Tac is a monoclonal antibody that reacts with many kinds of lymphomas and leukemias. Anti-Tac(Fv)-PE38 is a single chain immunotoxin in which the combining site of the anti-Tac antibody has been fused to a recombinant form of *Pseudomonas* exotoxin in which the cell binding domain of the toxin has been removed. Anti-Tac(Fv)-PE38 is expressed in *E. coli* using a T7 based expression system. The recombinant protein accumulates within inclusion bodies. Methods have been developed to solubilize the inclusion bodies and purify the recombinant protein. Using anti-Tac(Fv)-PE38, preclinical studies have been carried out which indicate that anti-Tac(Fv)-PE38 can cause complete regression of human tumors growing in mice when given in doses that do not cause significant toxicity in these mice. Anti-Tac(Fv)-PE38 is also very active in killing activated human monocytes and may be useful in treating autoimmune diseases.

In order to bring anti-Tac(Fv)-PE38 to market, it will be necessary to show that the recombinant immunotoxin is a safe and effective therapy. The initial clinical trial will be done at the National Cancer Institute after FDA approval.

The role of the National Cancer Institute, the Division of Cancer Biology, Diagnosis and Centers and the Division of Cancer Treatment includes the following:

1. NCI will provide vectors that encode anti-Tac(Fv)-PE38 and can be used to produce the protein in *E. coli*.

2. NCI will provide human cancer cell lines that can be used to test the activity of anti-Tac(Fv)-PE38.

3. NCI will provide information about how the activity of anti-Tac(Fv)-PE38 can be measured using cultured cell lines or an ELISA assay.

4. NCI will design and conduct a clinical trial with clinical grade anti-Tac(Fv)-PE38 supplied by the CRADA holder. The NCI will measure the toxicity of anti-Tac(Fv)-PE38 in patients, carry out pharmacokinetic studies, carry out studies on the immunogenicity of the recombinant toxin and also record any response during a Phase I trial with the recombinant immunotoxin.

5. If the Phase I trial is completed successfully, the NCI will carry out a Phase II evaluation of the activity of anti-Tac(Fv)-PE38 against selected human cancers containing the anti-Tac antigen. During this trial the NCI will screen cancer samples to assure that the anti-Tac antigen is present before the clinical trial is carried out.

6. Relevant patent rights are available for licensing through the Office of Technology Transfer, NIH. For further information contact: Dan Passeri, National Institutes of Health, OTT, Bethesda, MD 20892, Tel: (301) 496–7735, Fax: (301) 402–0220.

The role of the successful corporate partner under the CRADA will include the following:

1. Provide plan and support for continued clinical development leading to FDA approval for marketing of anti-Tac(Fv)-PE38.

2. Initially generate 5 grams of anti-Tac(Fv)-PE38 suitable for a clinical trial. This will entail effective scale up, improvement, and alteration of existing methods to provide this quantity of drug. The Collaborator must supply all data necessary to meet FDA standards and to obtain an IND, include but not limited to manufacturing data, purity and stability information, animal toxicology studies, and an initial plan of clinical investigation.

3. Provide said pharmaceutical grade drug before August 1, 1994.

4. Provide plans to independently secure future continuing supplies of material to assure continued clinical development of anti-Tac(Fv)-PE38.

5. Provide funds as necessary for personnel to carry out clinical trials, to analyze clinical samples, and to design and make improved forms of anti-Tac(Fv)-PE38.

6. If efficacy is demonstrated in the human trials, the company would be responsible for the large scale production, packaging, marketing and distribution of this recombinant immunotoxin.

Criteria for choosing the cooperating company will include the following:

1. Experience in preclinical and clinical drug development, with specific experience in producing recombinant proteins for human use and conducting trials with recombinant proteins.

2. Experience and ability to produce, package, market and distribute pharmaceutical products in the United States and to provide the product at a reasonable price.

3. Experience in the monitoring, evaluation, and interpretation of the data from investigational agent clinical studies under an IND, and a willingness to cooperate with the NCI in the collection, evaluation, publication and maintenance of data from clinical trials of investigational agents.

4. Willingness to cost share in laboratory studies and clinical trials as outlined above, including production of anti-Tac(Fv)-PE38 in adequate amounts as needed for future clinical trials and marketing.

5. An agreement to be bound by the DHHS rules involving human and animal subjects.

6. The aggressiveness of the development plan, including the appropriateness of milestones and deadlines for preclinical and clinical development.

7. Provisions for equitable distribution of patent rights to any

inventions. Generally the rights of ownership are retained by the organization which is the employer of the inventor, with: (1) A research license to the Government (when a company employee is the sole inventor); and (2) an option to negotiate an exclusive or nonexclusive license to the company on terms that are appropriate (when the Government employee is the sole inventor).

Dated: September 22, 1993.

Reid Adler,

Director, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 93–24574 Filed 10–6–93; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Meetings

Pursuant to Public Law 92–463, notice is hereby given of meetings of the Division of Research Grants Behavioral and Neurosciences Special Emphasis Panel.

The meetings will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications and Small Business Innovation Research Program Applications in the various areas and disciplines related to behavior and neuroscience. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Office of Committee Management, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20892, telephone 301–594–7265, will furnish summaries of the meetings and rosters of panel members.

Meetings to Review Small Business Innovation Research Program Applications

Scientific Review Administrator: Dr. Bob Weller (301) 594–7340
Date of Meeting: November 15, 1993
Place of Meeting: Hyatt Regency, Bethesda, MD
Time of Meeting: 9 a.m.

Meetings to Review Individual Grant Applications

Scientific Review Administrator: Dr. Teresa Levitin (301) 594–7141
Date of Meeting: October 25, 1993
Place of Meeting: Holiday Inn, Bethesda, MD
Time of Meeting: 9 a.m.
Scientific Review Administrator: Dr. Jane Hu (301) 594–7269
Date of Meeting: November 12, 1993
Place of Meeting: Hotel Washington, NW, DC
Time of Meeting: 1 p.m.
Scientific Review Administrator: Dr. Bob Weller (301) 594–7340
Date of Meeting: November 29, 1993
Place of Meeting: Hyatt Regency, Bethesda, MD
Time of Meeting: 9 a.m.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 30, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–24575 Filed 10–6–93; 8:45 am]

BILLING CODE 4140–01–M

Office of the Director; Meeting—Women's Health Initiative Program Advisory Committee

Pursuant to Public Law 92–463, notice is given of the meeting of the Women's Health Initiative Program Advisory Committee (WHIPAC), Office of the Director, on October 20, 1993, in the Chapel/Lecture Hall of THE CLOISTER, Building #60, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 8 a.m. to 4:30 p.m. to review the status and progress in the planning and conduct of the Women's Health Initiative (WHI), and to advise the NIH Director on the comprehensive plan of prevention studies in the WHI. Attendance by the public will be limited to space available.

Dr. William R. Harlan, Associate Director for Disease Prevention, National Institutes of Health, Bethesda, Maryland 20892 (301–496–1508) will provide a summary of the meeting, a roster of committee members, and substantive program information, upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Cynthia Fletcher of TASCON at 301–907–3844 in advance of the meeting.

Dated: September 30, 1933.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–24573 Filed 10–6–93; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–030–93–4111–03]

Intent To Prepare an Environmental Impact Statement and to Conduct Scoping for the Proposed Infill Development of Gas Fields in South-Central Wyoming

September 27, 1993.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare an environmental impact statement (EIS) on the proposed infill development of natural gas fields in south-central Wyoming.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969 as amended, the Bureau of Land Management, Rawlins District Office will be directing the preparation of an EIS to be prepared by a third party contractor on the potential impacts of the proposed further development (approximately 250 additional locations) in several gas fields on federal, state and private lands in the Creston/Blue Gap area in Carbon and Sweetwater Counties, Wyoming.

DATES: Comments on the scoping process will be accepted through November 1, 1993.

ADDRESSES: Comments should be sent to Bureau of Land Management, Bob Tigner, Team Leader, 1300 3rd Street N, P.O. Box 670, Rawlins, WY 82301.

FOR FURTHER INFORMATION CONTACT: Bob Tigner at the Rawlins District Office, phone number (307) 324–7171.

SUPPLEMENTARY INFORMATION: Snyder Oil Corporation (SOCO) and other operators, including Amoco Production Company, Union Pacific Resources Company, and Ensign Oil & Gas Inc. intend to drill additional natural gas development wells in and adjacent to the Barrel Springs, Blue Gap, Fillmore, Creston, and Robbers Gulch Field Areas. It is anticipated that a maximum of 250 additional locations and associated roads and pipelines could be developed within the area. To minimize the extent of ground disturbance, multiple wells may be drilled at a single location.

F. William Eikenberry,

Associate State Director.

[FR Doc. 93–24585 Filed 10–6–93; 8:45 am]

BILLING CODE 4310–22–M

[WY-920-41-5700; WYW86907]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

Pursuant to the provisions of 30 U.S.C. 188(d), and 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease WYW86907 for lands in Big Horn County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW86907 effective June 1, 1993, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Mary Jo Rugwell,

Acting Supervisory Land Law Examiner.

[FR Doc. 93–24686 Filed 10–6–93; 8:45 am]

BILLING CODE 4310–22–M

[NM–940–03–4730–12]

Filing of Plats of Survey; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey described below are scheduled to be officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, on November 1, 1993.

New Mexico Principal Meridian, New Mexico

Remonumentation of the Northwest corner of the State of Texas, Identical with an angle point on the East Boundary of the State of New Mexico under Group 895 NM.

T. 10 N., R. 15 W., Accepted August 17, 1993, for Group 746 NM.
T. 20 N., R. 15 W., Accepted August 27, 1993, for Group 844 NM.
T. 21 N., R. 15 W., Accepted August 27, 1993, for Group 844 NM.
T. 21 N., R. 16 W., Accepted August 25, 1993, for Group 844 NM.
T. 17 S., R. 17 E., Accepted August 30, 1993, for Group 894 NM.
T. 17 S., R. 18 E., Accepted August 30, 1993, for Group 894 NM.
T. 12 S., R. 25 E., Accepted August 27, 1993, for Group 891 NM.

Indian Meridian, Oklahoma

T. 2 N., R. 11 W., Accepted September 8, 1993, for Group 63 OK.

Supplemental

T. 8 N., R. 6 W., Accepted August 30, 1993.

If a protest against a survey, as shown on any of the above plats is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, a notice that they wish to protest prior to the proposed official filing date given above.

A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision.

These plats will be in the open files of the New Mexico State Office, Bureau of Land Management, P.O. Box 27115, Santa Fe, New Mexico 87502–0115. Copies may be obtained from this office upon payment of $2.50 per sheet.

Dated: September 27, 1993.

John P. Bennett,

Chief, Branch of Cadastral Survey/Geo Science.

[FR Doc. 93–24687 Filed 10–6–93; 8:45 am]

BILLING CODE 4310–FB–M

[OR–943–4210–06; GP3–435; OR–49219]

Public Meeting; Galice Creek Recreation Area Proposed Protective Withdrawal; Oregon

AGENCY: Bureau of Land Management.

ACTION: Notice.

SUMMARY: This notice announces the schedule and agenda for a forthcoming public meeting that will provide an opportunity for public involvement regarding the Bureau of Land Management's application for protective withdrawal for the Galice Creek Recreation Area.

EFFECTIVE DATE: November 16, 1993.

FOR FURTHER INFORMATION CONTACT: Donna Kauffman, BLM Oregon/ Washington State Office, P.O. Box 2965, Portland, Oregon 97208, 503–280–7162.

SUPPLEMENTARY INFORMATION: Notice is hereby given that a public meeting will be held to provide an opportunity for public involvement regarding the application by the Bureau of Land Management for a 20-year protective withdrawal as to 290.02 acres of public lands in Josephine County, Oregon.

The meeting will begin at 7 p.m., Tuesday, November 16, 1993, at the Siskiyou National Forest Headquarters Office, 200 N.E. Greenfield Road, Grants Pass, Oregon. The agenda will include (1) an information briefing by the Bureau of Land Management; (2) oral statements by interested parties; and (3) a question and answer period.

The meeting is open to the public. Interested parties may make oral statements at the meeting and/or may file written statements with the Bureau of Land Management, Oregon State Office. Oral statements should be limited to five minutes per party. All statements received will be considered by the Bureau of Land Management before any recommendation concerning the proposed land withdrawal is submitted to the Secretary of Interior for final action under the authority of Section 204 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1714).

Dated: September 23, 1993.

Robert D. DeViney, Jr.,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 93–24688 Filed 10–6–93; 8:45 am]

BILLING CODE 4310–33–M

Geological Survey

Technology Transfer Act of 1986

AGENCY: United States Geological Survey, Interior.

ACTION: Notice of proposed cooperative research and development agreement (CRADA) negotiations.

SUMMARY: The United States Geological Survey (USGS) is planning to enter into a Cooperative Research and Development Agreement (CRADA) with Etak, Inc. The purpose of the CRADA is to pursue joint research on the technology needed to collect, update, manage, and use digital geographic data bases, and to develop a national transportation data base that combines the complementary aspects of existing government and Etak data bases. Any other organization interested in pursuing the possibility of a CRADA for similar kinds of activities should contact the USGS.

ADDRESSES: Inquiries may be addressed to the Deputy Assistant Division Chief,

Office of Research, U.S. Geological Survey, 519 National Center, Reston, Virginia 22092. Telephone 703–648–4637, FAX 703–648–5542.

FOR FURTHER INFORMATION CONTACT: David A. Nystrom, address above.

SUPPLEMENTARY INFORMATION: This notice is to meet the USGS requirement stipulated in the Survey Manual.

Dated: September 15, 1993.

Roy R. Mullen,

Associate Chief, National Mapping Division.

[FR Doc. 93–24682 Filed 10–6–93; 8:45 am]

BILLING CODE 4310–31–M

Technology Transfer Act of 1986

AGENCY: United States Geological Survey, Interior.

ACTION: Notice of proposed cooperative research and development agreement (CRADA) negotiations.

SUMMARY: The United States Geological Survey (USGS) is planning to enter into a Cooperative Research and Development Agreement (CRADA) with Unisys Corporation, Unisys Government Group. The purpose of the CRADA is to research methods for the automated extraction and classification of Digital Line Graph (DLG) base cartographic features and Land Use/Land Cover (LU/LC) features from airborne and satellite image sources. Any other organization interested in pursuing the possibility of a CRADA for similar kinds of activities should contact the USGS.

ADDRESSES: Inquiries may be addressed to the Deputy Assistant Division Chief, Office of Research, U.S. Geological Survey, 519 National Center, Reston, Virginia 22092. Telephone 703–648–4637, FAX 703–648–5542.

FOR FURTHER INFORMATION CONTACT: David A. Nystrom, address above.

SUPPLEMENTARY INFORMATION: This notice is to meet the USGS requirement stipulated in the Survey Manual.

Dated: September 15, 1993.

Roy R. Mullen,

Associate Chief, National Mapping Division.

[FR Doc. 93–24683 Filed 10–6–93; 8:45 am]

BILLING CODE 4310–31–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–348]

Commission Determination Not To Review an Initial Determination Granting a Joint Motion To Terminate the Investigation as to One Respondent on the Basis of a Patent Cross-License Agreement

In the matter of certain in-line roller skates with ventilated boots and in-line roller skates with axle aperture plugs and component parts thereof

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (ALJ) initial determination (ID) in the above-captioned investigation granting a joint motion to terminate the investigation with respect to respondent Brookfield Athletic Co., Inc. (Brookfield) on the basis of a patent cross-license agreement.

ADDRESSES: Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000.

FOR FURTHER INFORMATION CONTACT: Anjali K. Singh, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–3117. Hearing-impaired individuals are advised that information about this matter can be obtained by contacting the Commission's TDD terminal, 202–205–1810.

SUPPLEMENTARY INFORMATION: On February 18, 1993, Rollerblade, Inc. filed a complaint with the Commission alleging unfair acts in violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). The unfair acts alleged in the complaint are the unauthorized importation into the United States, the sale for importation, and the sale within the United States after importation of certain in-line roller skates with ventilated boots, and in-line roller skates with axle aperture plugs and component parts thereof, that allegedly infringe claim 1, 2, 3, 4, 5, 6, 7 or 8 of U.S. Letters Patent 5,171,033, and/or claim 5 of U.S. Letters Patent 5,048,848. On March 18, 1993, the Commission voted to institute an investigation of the complaint and published notice of its investigation in the **Federal Register** (58 FR 16204 (March 25, 1993)).

On August 3, 1993, complainant Rollerblade, Inc. and respondent Brookfield jointly moved for the termination of the investigation with respect to Brookfield on the basis of a patent cross-license agreement (Motion No. 348–31). The Commission investigative attorney supported the motion. On August 27, 1993, the ALJ issued an ID (Order No. 37) granting Motion No. 348–31 and terminating the investigation with respect to Brookfield. No petitions for review, or agency or public comments were received.

This action is taken pursuant to section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and Commission interim rule 210.53(h) (19 CFR 210.53(h)).

Issued: September 27, 1993.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–24567 Filed 10–6–93; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–341]

Commission Determination not to Review an Initial Determination Terminating the Investigation

In the matter of certain static random access memories, components thereof, and products containing same.

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (AL)'s) initial determination (ID) in the above-captioned investigation terminating the investigation.

FOR FURTHER INFORMATION CONTACT: Matthew T. Bailey, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3108.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on September 25, 1992, based on a complaint filed by SGS-Thomson Microelectronics, Inc. (ST) alleging violations of section 337 of the Tariff Act of 1930 in the importation into the United States, the sale for importation into the United States, and the sale within the United States after importation of certain static random access memories, components thereof and products containing same, by

reason of alleged infringement of claims 1 and 4 of U.S. Letters Patent 4,125,854 and claims 1, 2, 3, 6, 7, 8, 11, 12, 15, and 17 of U.S. Letters Patent 4,251,876.

On August 12, 1992, ST and respondent United Microelectronics Corp. (UMC) filed a joint motion to terminate the investigation as to UMC on the basis of a settlement agreement. The settlement agreement has not yet been approved by the Taiwanese government. On August 20, 1993, ST filed a motion to withdraw the complaint and terminate the investigation with regard to the last remaining respondent Micro-Comp Industries (Micro-Comp). Micro-Comp has been found in default.

On August 27, 1992, the presiding ALJ issued an ID granting both the motion to terminate the investigation as to UMC on the basis of the settlement agreement and the motion to withdraw the complaint as to Micro-Comp, thereby terminating the investigation.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and § 210.53(h) of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.53(h).

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–3000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Issued: September 30, 1993.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–24568 Filed 10–6–93; 8:45 am]

BILLING CODE 7020–02–P

[Investigation 337–TA–348]

Initial Determination Terminating Respondents on the Basis of Settlement Agreement

In the matter of certain in-line roller skates with ventilated boots and in-line roller skates with axle aperture plugs and component parts thereof

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above captioned investigation terminating the following respondents on the basis of a settlement agreement: Risport International, Inc., Meran S.R.L., Koflach Sport Gesellschaft m.b.H. & Co., KG.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon parties on October 1, 1993.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

WRITTEN COMMENTS: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such documents must be filed with the Secretary to the Commission, 500 E Street, SW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portions thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, Telephone (202) 205–1802.

Issued: October 1, 1993.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–24569 Filed 10–6–93; 8:45 am]

BILLING CODE 7020–02–P

[Investigation 337–TA–348]

Notice of Initial Determination Terminating Respondents on the Basis of Settlement Agreement

In the matter of certain in-line roller skates with ventilated boots and in-line roller skates with axle aperture plugs and component parts thereof.

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above captioned investigation terminating the following respondents on the basis of a settlement agreement: Roller Derby Skate Corporation, Sport Maska, Inc., Maska U.S. Inc., Variflex, Inc., Roces SRL, Exel Marketing, Inc. and First Team Sports, Inc.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon parties on October 1, 1993.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

WRITTEN COMMENTS: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such documents must be filed with the Secretary to the Commission, 500 E Street, SW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portions thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either

accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, Telephone (202) 205–1802.

By order of the Commission.

Issued: October 1, 1993.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–24750 Filed 10–6–93; 8:45 am]

BILLING CODE 7020-02-P

[Investigation No. 337–TA–350]

Notice of Decision Not To Review an Initial Determination Granting Joint Motion to Terminate Investigation With Respect to Respondent Conner Peripherals, Inc. on the Basis of a Settlement Agreement

In the matter of certain sputtered carbon coated computer disks and products containing same, including disk drives

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 66) issued on September 8, 1993, by the presiding administrative law judge (ALJ) in the above-captioned investigation granting the joint motion of complainant Harry E. Aine ("Aine") and respondent Conner Peripherals, Inc ("Conner") to terminate the investigation with respect to Conner on the basis of a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Marc A. Bernstein, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3087.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation, which concerns allegations of section 337 violations in the importation, sale for importation, and sale after importation of sputtered carbon coated computer disks and products containing such disks, including disk drives, on May 5, 1993. Complainant Aine alleges infringement of claims 23, 24, 25, 26, and 29 of U.S. Letters Patent Re 32,464.

On August 11, 1993, Aine and Conner filed a joint motion to terminate the investigation with respect to Conner on the basis of a settlement agreement. On September 8, 1993, the ALJ issued an ID granting the joint motion and terminating the investigation as to Conner. No petitions for review of the ID were filed. No agency or public comments were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, and Commission interim rule 210.53, 19 CFR § 210.53.

Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

By order of the Commission.

Dated: October 1, 1993.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–24571 Filed 10–6–93; 8:45 am]

BILLING CODE 7020-02-P

[Investigation No. 337–TA–347]

Notice of Commission Determination Not to Review an Initial Determination Finding That a Respondent Has Waived its Right To Appear, To Be Served With Documents, and To Contest the Allegations in Issue in the Investigation

In the matter of Certain anti-theft deactivatable resonant tags and components thereof.

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) issued by the presiding administrative law judge (ALJ) in the above-captioned investigation, finding that respondent Custom Security Industries, Inc. (CSI) has waived its right to appear, to be served with documents, and to contest the allegations in issue in this investigation.

FOR FURTHER INFORMATION CONTACT: Andrea C. Casson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3105.

SUPPLEMENTARY INFORMATION: On August 19, 1993, the ALJ issued an order (Order No. 53) giving CSI until August 27, 1993, to show cause why it should not be found, pursuant to Commission interim rule 210.25, to have waived its right to appear, to be served with documents, and to contest the allegations in issue in this investigation. On August 26, 1993, CSI filed a response in the form of a letter. Upon order of the ALJ, Complainant Checkpoint Systems Inc. (Checkpoint) and the Commission investigative attorney submitted comments to CSI's response, in which they argued that CSI had failed to show adequate cause why it should not be held in default.

On September 8, 1993, the ALJ issued an ID (Order No. 58) finding that CSI had waived the aforementioned rights because it had failed to take file an adequate response to the complaint and notice of investigation, to respond to any discovery requests, to appear at the hearing, and to file any prehearing submissions.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and section 210.53(h) of the Commission's Interim Rules of Practice and Procedure (19 CFR § 210.53(h)).

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

By order of the Commission.

Issued: October 1, 1993.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–24572 Filed 10–6–93; 8:45 am]

BILLING CODE 7020-02-P

[Investigation 337–TA–348]

Receipt of Initial Determination Terminating Respondents on the Basis of Consent Order Agreement

In the matter of certain in-line roller skates with ventilated boots and in-line roller skates with axle aperture plugs and component parts thereof.

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above captioned investigation

terminating the following respondents on the basis of a consent order agreement: European Sports Enterprise Co., Ltd. and Far Great Plastics Industrial Co., Ltd.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon parties on October 4, 1993.

Copies of the initial determination, the consent order agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

WRITTEN COMMENTS: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such documents must be filed with the Secretary to the Commission, 500 E Street, SW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portions thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, Telephone (202) 205–1802.

Issued: October 4, 1993.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–24710 Filed 10–6–93; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

Availability of Environmental Assessments

Pursuant to 42 U.S.C. 4332, the Commission has prepared and made available environmental assessments for the proceedings listed below. Dates environmental assessments are available are listed below for each individual proceeding.

To obtain copies of these environmental assessments contact Ms. Johnnie Davis or Ms. Tawanna Glover-Sanders, Interstate Commerce Commission, Section of Energy and Environment, room 3219, Washington, DC 20423, (202) 927–5750 or (202) 927–6212.

Comments on the following assessment are due 15 days after the date of availability:

AB–12 (Sub-No. 154X), Southern Pacific Transportation Company—discontinuance of service exemption—1.72 miles in Los Angeles County, California. EA available 10/1/93.

Comments on the following assessment are due 30 days after the date of availability:

AB–920 (Sub-No. 128X), Norfolk Southern Railway Company—Abandonment—Between Brickdale and Greenwood in Greeenwood County, SC. EA available 10/1/93.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–24650 Filed 10–6–93; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–290; Sub–No. 121X]

Camp Lejeune Railroad Co.; Abandonment Exemption; in Onslow County, NC

Camp Lejeune Railroad Company (CL) [1] has filed a notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments* to abandon its 5.0-mile line of railroad between milepost CK–8.0, at Marine Junction, and milepost CK–13.00, at Kellum, in Onslow County, NC.

CL has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on November 6, 1993, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 [4] must be filed by October 18, 1993. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by October 27, 1993, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: F. Blair Wimbush, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

CL has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Energy and Environment (SEE) will issue an environmental assessment (EA) by October 12, 1993. Interested persons

[1] CL is a subsidiary of Norfolk Southern Railway Company, which is a unit of Norfolk Southern Corporation.

[2] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit the Commission to review and act on the request before the effective date of this exemption.

[3] See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[4] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

may obtain a copy of the EA by writing to SEE (room 3219), Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: September 24, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–24649 Filed 10–6–93; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 32163]

Housatonic Transportation Co.; Continuance in Control Exemption; Danbury Terminal Railroad Co. and Housatonic Railroad Co., Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission under 49 U.S.C. 10505 exempts Housatonic Transportation Company (HTC), a noncarrier holding company wholly owning Housatonic Railroad Company, Inc., a Class III rail carrier, from the prior approval requirements of 49 U.S.C. 11343, for its continuance in control of Danbury Terminal Railroad Company, a wholly owned subsidiary of HTC, which became a Class III rail carrier through its acquisition and operation of certain rail lines owned by Consolidated Rail Corporation under a notice of exemption in Finance Docket No. 32180 (Sub-No. 1). The exemption is subject to standard employee protective conditions.

DATES: This exemption is effective on November 6, 1993. Petitions to stay must be filed by October 18, 1993, and petitions to reopen must be filed by October 27, 1993.

ADDRESSES: Send pleadings referring to Finance Docket No. 32163 to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423, and (2) Petitioners' representative: Edward J. Rodriguez, P.O. Box 537, Old Saybrook, CT 06475.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. (TDD for hearing impaired: (202) 927–5721.)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD service (202) 927–5721).

Decided: September 21, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden. Vice Chairman Simmons dissented in part with a separate expression. Chairman McDonald approved the recommendation as to the revocation of the exemption, and disapproved as to continuance and control.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–24647 Filed 10–6–93; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32337]

Sunshine Mills, Inc.—Feeder Line Acquisition—Norfolk Southern Railway Company Line Between Corinth, MS, and Haleyville, AL

AGENCY: Interstate Commerce Commission.

ACTION: Notice of acceptance of feeder line application.

SUMMARY: Sunshine Mills, Inc. (Sunshine), has filed an amended [1] feeder railroad development application under 49 U.S.C. 10910 and 49 CFR 1151.3 to acquire the Norfolk Southern Railway Company's (NS) line between milepost IC–528.9, at or near Corinth, MS, and milepost IC–606.8, at or near Haleyville, AL, plus all sidings, stations, switching track, and facilities appurtenant to the line, including all the right, title, and interest of NS in and to the underlying and contiguous real estate. The application is accepted.

DATES: Competing applications by any person seeking to acquire all or any portion of the line sought are due November 8, 1993. Verified statements and comments addressing both the initial and competing applications must be filed by December 6, 1993. Verified replies by applicants and other interested parties must be filed by December 27, 1993.

ADDRESSES: Send pleadings referring to Finance Docket No. 32337 to (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423, (2) William P. Jackson, Jr., Post Office Box 1240, Arlington, VA 22210, and Robert J. Cooney, Three Commercial Place, Norfolk, VA 23510.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon (202) 927–5610. [TDD for hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD service (202) 927–5721.]

Decided: September 30, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–24829 Filed 10–06–93; 8:45 am]

BILLING CODE 7035–01–P

[1] By decision served August 23, 1993, the original application was rejected, in part, with leave to amend. 58 FR 45125 (August 26, 1993).

DEPARTMENT OF JUSTICE

Lodging of Consent Decrees Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act; United States v. Russell Martin Bliss et al.

In accordance with Departmental policy, 28 CFR 50.7, and section 122 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. 9622, notice is hereby given that a proposed consent decree between the United States and defendant Independent Petrochemical Corporation (IPC) was sent for lodging to Senior Judge John F. Nangle of the United States District Court for the Eastern District of Missouri on September 20, 1993, in *United States* v. *Russell Martin Bliss, et al.* (the *Missouri Dioxin Litigation*, Civil Action No. 84–200C–1 (Consolidated) (E.D.Mo.). A similar Decree between the State of Missouri and IPC will also be delivered to the Court under separate cover for lodging.

The *Missouri Dioxin Litigation* is comprised of 23 actions filed by the United States and five actions filed by the State of Missouri under CERCLA and other authorities to obtain remedial relief and cost recovery arising out of the release by oil recycler Russell Martin Bliss of the hazardous substances dioxin and trichlorophenol (TCP) at 28 sites in eastern Missouri. The dioxin and TCP wastes were generated in the late 1960s and early 70s at the Hoffman-Taff plant in Verona,

Missouri, where Hoffman-Taff produced the defoliant Agent Orange and Northeastern Pharmaceutical and Chemical Company (NEPACO) later manufactured hexachlorophene. Defendant IPC brokered an arrangement between NEPACCO and Bliss to dispose of the dioxin and TCP wastes stored in a 7500-gallon tank at the Hoffman-Taff plant known as the "Black Tank." Bliss mixed the dioxin and TCP with waste oil he and his employees collected from area service stations and released or sprayed the dioxin-contaminated oil at sites in the metropolitan St. Louis area. In most instances, Bliss was paid by local businesses or others to spray oil in order to control road dust. Bliss sprayed the town of Times Beach several times. EPA and the State of Missouri later evacuated and relocated Times Beach residents at a cost of approximately $30 million.

IPC has previously been found jointly and severally liable for response costs incurred at 27 of the 28 sites under section 107(a)(3) of CERCLA, 42 U.S.C. 9607(a)(3). The decree between IPC and the United States and the State resolve IPC's liability for response costs incurred in connection with Times Beach and the other sites in the *Missouri Dioxin Litigation*.

Under the consent decree between the United States and IPC, IPC will be liable for:

(1) $114,606,267.05 for response costs incurred through March 31, 1992 (less amounts already paid) and prejudgment interest through December 31, 1992;
(2) $6,577.55 daily prejudgment interest from January 1, 1993 through date of entry, with post judgment interest thereafter; and
(3) future costs based upon annual submissions by EPA.

Under the consent decree between the State and IPC, IPC will be liable for:

(1) $7,230,103.19 for response costs incurred through June 30, 1992 (less amounts already paid) and prejudgment interest through the same date;
(2) $605.70 daily prejudgment interest from June 30, 1993 through date of entry, with post judgment interest thereafter; and
(3) future costs based upon annual submissions by the State.

The settlements with IPC constitute the fourth group of settlements in the *Missouri Dioxin Litigation*. In 1987, the United States settled with IPC's corporation parent, The Charter Company, which was in bankruptcy, for $5 million and the commitment of that defendant to continue litigation against IPC's insurance carriers on behalf of the United States and the State to establish entitlement to coverage. The State also settled separately with The Charter Company for $1 million. In 1990, the United States and the State entered into a settlement with Syntex Corporation, which had purchased the Hoffman-Taff plant through a subsidiary and leased production facilities to NEPACCO, for the payment to the Superfund of $10 million and Syntex's commitment to restore the city of Times Beach and incinerate dioxin from all 28 of the dioxin sites in the *Missouri Dioxin Litigation*. The work to be performed by Syntex under that settlement is valued at approximately $100 million. Also in 1990, the United States and the State settled with the NEPACCO defendants for $227,000.

LIke The Charter Company, IPC is in bankruptcy and has no assets other than its policies of insurance, coverage under which is disputed. Under the terms of the settlement, the United States and the State will submit proofs of claim in IPC's Chapter 11 proceedings in the Middle District of Florida, which IPC will not oppose except as to whether payments of interest by IPC are allowed in the bankruptcy.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to its proposed consent decree with IPC. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Russell Martin Bliss, et al.* (the *Missouri Dioxin Litigation*, Civil Action No. 84–200C–1 (Consolidated) (E.D.Mo.), DOJ Ref. #90–11–2–41D. The proposed consent decree between the United States and IPC may be examined at the office of the United States Attorney for the Eastern District of Missouri at 1114 Market Street, St. Louis, Missouri 63103; the Region VII Office of the Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66106: and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $12.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

The State will receive, for a period of thirty (30) days from the date of this publication, comments relating to its proposed consent decree with IPC. Comments should be addressed to Timothy P. Duggan, Assistant Attorney General, State of Missouri, 8th Floor, Broadway Building, P.O. Box 899, Jefferson City, Missouri 65102, and should refer to *State of Missouri* v. *Russell Martin Bliss, et al.* (the *Missouri Dioxin Litigation*, Civil Action No. 84–200C–1 (Consolidated) (E.D.Mo.). The proposed consent decree between the State and IPC may be examined at the Broadway Building in Jefferson City, Missouri. In requesting a copy of the State's decree, contact the Attorney General's Office at (314) 751–0660.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93–24580 Filed 10–6–93; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree; United States v. Walerko Tool & Engineering Corp.

Notice is hereby given that a Consent Decree in *United States* v. *Walerko Tool & Engineering Corp.*, Civil Action No. S91–411M, was lodged with the United States District Court for the Northern District of Indiana on September 24, 1993. This action was brought under sections 104 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9607. The Consent Decree provides that defendants will pay $125,330 for past response costs incurred by the United States in connection with the Lusher Street Superfund Site in Elkhart, Indiana, and $19,670 in civil penalty for failure to respond in a timely manner to requests for information under CERCLA and the Resource, Conservation and Recovery Act.

For thirty (30) days from the date of publication of this notice, the Department of Justice will receive written comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States* v. *Walerko Tool & Engineering Corp.*, D.O.J. Ref. No. 90–11–3–776.

The Consent Decree may be examined at the Office of the United States Attorney, Northern District of Indiana, 302 Federal Building, 204 S. Main St., South Bend, Indiana 46691, and at the Region 5 office of the U.S. Environmental Protection Agency, 77

W. Jackson Boulevard, Chicago, Illinois 60604.

A copy of the Consent Decree also may be examined at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, telephone number (202) 624–0892. A copy of the Consent Decree may be obtained in person or by mail from the Consent Decree Library. The proposed Consent Decree package consists of a 22 page Consent Decree. A request for a copy of the proposed Consent Decree should be accompanied by a check in the amount of $5.50 (25 cents per page reproduction charge) payable to "Consent Decree Library."

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93–24581 Filed 10–6–93; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—News in the Future Consortium

Notice is hereby given that, on September 15, 1993, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Massachusetts Institute of Technology ("MIT"), on behalf of the News In The Future ("NIF") Consortium, has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following companies have become members of NIF: Editorial L'Espresso, S.p.A., Rome, Italy; Lotus Development Corporation, Cambridge, MA; McCann-Erickson Worldwide, New York, NY; Pulitzer Publishing Company, St. Louis MO; Reed Elsevier plc, London, United Kingdom; Ziff-Davis Publishing, Cambridge, MA.

No other changes have been made in either the membership or planned activity of the group research project. NIF will file additional written notification disclosing all changes in membership.

On May 18, 1993, NIF filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 22, 1993 (58 FR 33,953).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–24579 Filed 10–6–93; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Controlled Substances: Established 1993 Aggregate Production Quota

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of established 1993 aggregate production quotas.

SUMMARY: This notice establishes revised 1993 aggregate production quotas for controlled substances in Schedules I and II, as required under the Controlled Substances Act of 1970.

DATES: This order is effective October 7, 1993.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug & Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537; Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: Section 306 of the Controlled Substances Act (21 U.S.C. 826) requires the Attorney General to establish aggregate production quotas for controlled substances in Schedules I and II each year. This responsibility has been delegated to the Administrator of the DEA pursuant to § 0.100 of title 28 of the Code of Federal Regulations.

On July 27, 1993, a notice of the proposed revised 1993 aggregate production quotas for certain controlled substances in Schedules I and II was published in the **Federal Register** (58 FR 40159). All interested parties were invited to comment on or object to these proposed aggregate production quotas on or before August 26, 1993.

Mallinckrodt Specialty Chemicals Company commented that the proposed revised 1993 aggregate production quota for diphenoxylate is insufficient to provide for the estimated medical, scientific, research and industrial needs for the United States, estimated export requirements, and for the establishment and maintenance of reserve stocks. Mallinckrodt's comment was based on their initial 1993 manufacturing quota, 1992 year-end inventory and actual and projected 1993 sales.

After reviewing the relevant information, the DEA has determined that no increase is necessary for the established 1993 aggregate production quota for diphenoxylate at this time.

Mallinckrodt Specialty Chemicals Company also commented that the proposed revised 1993 aggregate production quotas for codeine (for conversion), hydrocodone, and opium were insufficient to provide for the estimated medical, scientific, research and industrial needs of the United States, estimated export requirements and for the establishment and maintenance of reserve stocks. Mallinckrodt's comments were based on their initial 1993 manufacturing quotas, 1992 year-end inventories and actual and projected 1993 sales.

The DEA has reviewed the involved companies' 1992 year-end inventories, their initial 1993 manufacturing quotas and their actual and projected 1993 sales and has adjusted the revised 1993 aggregate production quotas for codeine (for conversion), hydrocodone, and opium to meet the medical, scientific, research and industrial needs of the United States.

Relative to hydromorphone, Mallinckrodt Specialty Chemicals Company and Knoll Pharmaceutical Company commented that the proposed 1993 aggregate production quota for hydromorphone is insufficient to meet the estimated medical, scientific, research and industrial needs of the United States, estimated export requirements and for the establishment and maintenance of reserve stocks. Mallinckrodt's and Knoll's comments were based on their initial 1993 manufacturing quotas, 1992 year-end inventories and actual and projected 1993 sales and exports. Taking into consideration the involved companies' 1992 year-end inventories, initial 1993 manufacturing quotas and actual and projected 1993 sales and exports, the final 1993 aggregate production quota for hydromorphone was adjusted accordingly.

Regarding levorphanol, Mallinckrodt Specialty Company and Hoffman-LaRoche Inc. commented that the proposed revised 1993 aggregate production quota is insufficient to meet the medical, scientific, research and industrial needs of the United States and for the establishment and maintenance of reserve stocks. Mallinckrodt's and Hoffman-LaRoche's comments were based on their initial 1993 manufacturing quotas, 1992 year-end inventories and actual and projected 1993 sales.

The DEA has reviewed and adjusted the 1993 aggregate production quota for levorphanol. The adjustment was based on the involved companies' 1993 manufacturing quotas and actual and projected 1993 sales.

Hoffman-LaRoche Inc. also commented that the proposed revised 1993 aggregate production quota for lysergic acid and diethylamide was insufficient to meet their 1993 manufacturing needs. The DEA has reviewed their request and adjusted the 1993 aggregate production quota for lysergic acid diethylamide accordingly.

Ganes Chemicals Inc. also commented that the propose revised 1993 aggregate production quotas for pentobarbital and secobarbital were insufficient to provide for the estimated medical, scientific, research and industrial needs of the United States and for the establishment and maintenance of reserve stocks. Ganes' comments were based on their initial 1993 manufacturing quotas, 1992 year-end inventories, and actual and projected 1993 sales.

The DEA has reviewed 1992 year-end inventories, the initial 1993 manufacturing quotas and actual and projected 1993 sales and had adjusted the revised 1993 aggregate production quotas for pentobarbital and secobarbital to meet the medical, scientific, research and industrial needs of the United States.

Concerning fentanyl, Johnson Matthey Inc. commented that the proposed revised 1993 aggregate production quota is insufficient to meet the medical, scientific, research and industrial needs of the United States and for the establishment and maintenance of reserve stocks. Johnson Matthey's comments were based on their initial 1993 manufacturing quota, 1992 year-end inventory and actual and projected 1993 sales.

After reviewing Johnson Matthey's initial 1993 manufacturing quota, 1992 year-end inventory and actual and projected 1993 sales, the DEA has adjusted the revised 1993 aggregate production quota for fentanyl accordingly.

Relative to methylphenidate, CIBA-GEIGY Corporation and MD Pharmaceutical Inc. commented that the proposed revised 1993 aggregate production quota is insufficient to meet the estimated medical, scientific, research and industrial needs of the United States and for the establishment and maintenance of reserve stocks. The comments were based on their initial 1993 manufacturing quotas, 1992 year-end inventories and actual and projected 1993 sales.

The DEA has reviewed the involved companies' 1992 year-end inventories, their initial 1993 manufacturing quotas and their actual and projected 1993 sales and has adjusted the revised 1993 aggregate production quota for methylphenidate to meet the medical, scientific, research and industrial needs of the United States.

Lonza Inc. commented that the proposed revised 1993 aggregate production quotas for amphetamine and phenylacetone were insufficient to meet the estimated medical, scientific and industrial needs of the United States and for the establishment and maintenance of reserve stocks. Lonza's comments were based on their initial 1993 manufacturing quotas, 1992 year-end inventories and actual and projected 1993 sales. Taking into consideration the above factors, the DEA has adjusted the revised 1993 aggregate production quota for amphetamine and phenylacetone accordingly.

Pursuant to Section 3(c)(3) and 3(e)(2)(C) of Executive Order 12291, the Director of the Office of Management and Budget has been consulted with respect to these proceedings.

These actions have been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this matter does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

The Administrator hereby certifies that this action will have no significant impact upon small entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601, et. seq. The establishment of annual aggregate production quotas for Schedules I and II controlled substances is mandated by law and by international commitments of the United States. Such quotas impact predominantly upon major manufacturers of the affected controlled substance.

Therefore, under the authority of the Attorney General by section 306 of the Controlled Substances Act of 1970 (21 U.S.C. 826) and delegated to the Administrator of the DEA by § 0.100 of title 28 of the Code of Federal Regulations, the Administrator of the DEA hereby orders that the 1993 revised aggregate production quotas for Schedules I and II controlled substances, expressed as grams of anhydrous acid or base, he established as follows:

Basic class	Established initial 1993 quotas (in grams)
Schedule I:	
2,5-Dimethoxyamphetamine	15,300,000
Lysergic acid diethylamide	121
Schedule II:	
Amphetamine	238,000
Codeine (for conversion)	10,331,000
Desoxyephedrine	1,000,000
984,000 grams of levodesoxyephedrine for use in a noncontrolled, nonprescription product and 16,000 grams for methamphetamine.	
Dihydrocodeine	367,000
Diphenoxylate	948,000
Fentanyl	90,000
Hydrocodone	7,404,000
Hydromorphone	352,000
Levorphanol	10,400
Methamphetamine (for conversion)	150,000
Methylphenidate	5,000,000
Mixed Alkaloids of Opium	0
Opium (tinctures, extracts, etc. expressed in terms of USP powdered opium)	1,172,000
Oxycodone (for conversion)	600
Oxymorphone	250
Pentobarbital	16,192,000
Phenylacetone (for conversion)	880,000
Secobarbital	587,800

Dated: September 27, 1993.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 93-24593 Filed 10-6-93; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-27,118, etc.]

Bethlehem Steel Corp., Bar, Rod and Wire Division, Johnstown, PA., et al.; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In the matter of Metallurgical & Quality Assurance Group, TA-W-27,118A, Chicago, IL; TA-W-27,118B, Detroit, MI; TA-W-27,118C, Cleveland, OH; TA-W-27,118D, New York, NY; and TA-W-27,118E, Charlotte, NC.

As a result of a U.S. Court of International Trade remand dated February 17, 1993 in *United Steelworkers of America and its Locals 2632, 2335 and 9157* v. *Secretary of Labor*, Court Number (92-09-00603) the Department of Labor did a further investigation and issued a Revised Determination on Reconsideration. The revised notice was issued on May 18, 1993 and is applicable to all workers of the Bar, Rod Wire Division of the subject firm. Workers at the Wire mill were denied certification. The determinations were published in the **Federal Register** on May 25, 1993 (58 FR 30070).

At the request of the company, the Department reviewed the revised certification for workers of Bethlehem Steel Corporation's Johnstown, Pennsylvania plant. New findings show that all of the workers in the Metallurgical & Quality Assurance Group of Bethlehem Corporation's Bar, Rod & Wire Division in Chicago, Illinois; Detroit, Michigan; Cleveland, Ohio; New York, New York and Charlotte, North Carolina were laid off in mid-1992.

The intent of the Department's certification is to include all workers engaged in steelmaking and the production of bar products at the Bar, Rod and Wire Division of Bethlehem Steel Corporation. The amended notice applicable to TA–W–27,118 is hereby issued as follows:

All workers of Bethlehem Steel Corporation, Bar Rod & Wire Division, Johnstown, Pennsylvania and the Metallurgical & Quality Assurance Group in Chicago, Illinois; Detroit, Michigan; Cleveland, Ohio; New York, New York and Charlotte, North Carolina engaged in steelmaking and the production of of bar products who became totally or partially separated from employment on or after March 26, 1991 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

It is further determined that all workers of the wire mill of Bethlehem Steel Corporation, Bar, Rod & Wire Division, Johnstown, Pennsylvania are denied eligibility to apply for adjustment assistance under section 223 of the Trade of 1974.

Signed at Washington, DC, this 28th day of September 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93–24658 Filed 10–6–93; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–28,665]

Horizon Potash Corp., Carlsbad, NM; Notice of Negative Determination Regarding Application for Reconsideration

After being granted a filing extension, the United Steelworkers of America (USW) requested administrative reconsideration of the subject petition for trade adjustment assistance (TAA). The denial notice was signed on July 13, 1993 was published in the **Federal Register** on July 27, 1992 (58 FR 40161).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

A review of the findings shows approximately half of Horizon's potash went to the export market in the relevant time period. Industry experts state that the former Soviet Union, once the largest fertilizer user in the world, has cut consumption by two-thirds since the fall of communism. Industry experts state that reformers in Russia have left farmers on their own.

Neither the loss of export markets or price would provide a basis for a worker group certification.

The Department's denial was based on the fact that the increased import criterion and the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act were not met.

U.S. imports of potash declined in 1992 compared to 1991 and in the 12-month period May through April 1992–93 compared with the same period in 1991–92. The "contributed importantly" test is generally demonstrated through a survey of the workers' firm's customers. The Department's survey showed that most of the respondents did not increase their import purchases while reducing their purchases from Horizon. The one respondent with decreased purchases from Horizon and increased imports was not significant.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 28th day of September 1993.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Service, Unemployment Insurance Service.

[FR Doc. 93–24659 Filed 10–6–93; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–26,041, TA–W–26,041A]

Nerco Oil and Gas, Inc.; Vancouver, WA and Portland, OR; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Revised Determination of Eligibility to Apply for Worker Adjustment Assistance on October 3, 1991, applicable to all workers of the subject firm. The notice was published in the **Federal Register** on October 11, 1991 (56 FR 51405).

At the request of the State Agency, the Department reviewed the subject certification. New findings show that on September 28, 1993, Louisiana Land and Exploration Company purchased Nerco Oil and Gas, Inc., Vancouver, Washington and Portland, Oregon. Accordingly, Louisiana Land and Exploration Company replaces Nerco Oil and Gas, Vancouver, Washington and Portland, Oregon as the employer of the former Nerco Oil and Gas workers.

Accordingly, the Department is amending the certification to show that the Louisiana Land and Exploration Company is the successor-in-interest firm to Nerco Oil and Gas, Vancouver, Washington and Portland, Oregon and that all workers separated on or after the purchase date (September 28, 1993) may apply for adjustment assistance under TA–W–27,445 issued to workers of Louisiana Land & Exploration Company, New Orleans, Louisiana.

The amended notice applicable to TA–W–26,041 and TA–W–26,041A is hereby issued as follows:

All workers of Nerco Oil and Gas Company, Inc., Vancouver, Washington, and Portland, Oregon also known as Louisiana Land and Exploration Company, the successor-in-interest firm, who became totally or partially separated from employment on or after September 28, 1993 are eligible to apply for adjustment assistance under TA–W–27,445 issued to workers of Louisiana Land & Exploration Company, New Orleans, Louisiana.

Signed at Washington, DC, this 29th day of September 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93–24657 Filed 10–6–93; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Biochemistry and Molecular Structure and Function; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting: Advisory Panel for Biochemistry and Molecular Structure and Function—Panel B.

Date and Time: Monday, Tuesday, and Wednesday, October 25, 26, and 27, 1993, 8:30 a.m. to 5 p.m.

Place: The National Science Foundation, 4201 Wilson Boulevard, room 330, Arlington, Virginia 22201.

Type of Meeting: Closed.

Contact Person: Dr. Kamal Shukla, Program Director for Molecular Biophysics, Room 655, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22201.

Purpose of Meeting: To provide advice and recommendations concerning research proposals submitted to the Molecular Biophysics Program of the Division of Molecular and Cellular Biosciences at NSF for financial support.

Agenda: To review and evaluate research proposals submitted to the Molecular Biophysics Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 4, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–24625 Filed 10–6–93; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Biochemistry and Molecular Structure and Function; Meeting

In accordance with the Federal advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting: Advisory Panel for Biochemistry and Molecular Structure and Function in the Division of Molecular and Cellular Biosciences—Panel C.

Date and time: Thursday, Friday, and Saturday, October 28, 29, and 30, 1993, 8:30 a.m. to 5 p.m.

Place: Holiday Inn at Ballston, The Wilson Room, 4610 North Fairfax Drive Arlington, Virginia 22201.

Type of meeting: Closed.

Contact person: Dr. Robert L. Uffen, Program Director for Metabolic Biochemistry, room 655, Division of Molecular and Cellular Biosciences, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22201.

Purpose of meeting: To provide advice and recommendations concerning research proposals submitted to the Metabolic Biochemistry Program of the Division of Molecular and Cellular Biosciences at NSF for financial support.

Agenda: To review and evaluate research proposals submitted to the Metabolic Biochemistry Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 4, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–24628 Filed 10–6–93; 8:45 am]

BILLING CODE 7555–01–M

Committee of Visitors of the Advisory Committee for Computer & Information Science & Engineering; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Computer & Information Science & Engineering

Date and time: October 28–29, 1993; 8:30 a.m. to 5 p.m.

Place: Room 416, National Science Foundation, 1800 G Street, NW., Washington, DC 20550

Type of meeting: Closed.

Contact person: Aubrey Bush, NCRI, National Science Foundation, room 416, Washington, DC 20550 (202–357–9717)

Purpose of meeting: To provide oversight review of the Networking & Communications Research Program.

Agenda: To carry out Committee of Visitors review, including examination of decisions on proposals, reviewer comments, and other privileged materials.

Reason for closing: The meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they were disclosed. It discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b. (c)(4) and (6) of the Government in the Sunshine Act would improperly be disclosed.

Dated: October 4, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–24627 Filed 10–6–93; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Cell Biology; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting: Advisory Panel for Cell Biology (Sub-Panel A) in the Division of Molecular and Cellular Biosciences.

Date and time: October 25–27, 1993; 8:30 a.m. to 5 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, room 340, Arlington, VA 22201. Arlington, Virginia 22201.

Type of meeting: Closed.

Contact person: Dr. Maryanna Henkart, Program Director for Cell Biology (Signal Transduction & Regulation), room 325, National Science Foundation, 1800 G Street, NW., Washington, DC 20550. Telephone: 202/357–7474.

Purpose of meeting: To provide advice and recommendations concerning research proposals submitted to the Cell Biology Program of the Division of Molecular and Cellular Biosciences at NSF for financial support.

Agenda: To review and evaluate research proposals submitted to the Cell Biology Program (Signal Transduction & Regulation) as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 4, 1993
M. Rebecca Winkler,
Committee Management Officer.
[FR Doc. 93–24626 Filed 10–6–93; 8:45 am]
BILLING CODE 7555–01–M

Advisory Panel for Genetics and Nucleic Acids; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting: Advisory Panel for Genetics (Panel A) and Nucleic Acids.

Date and time: October 28–30, 1993 from 8:30 a.m. to 5 p.m.

Place: Inn by the Sea, 7830 Fay Avenue, La Jolla, California.

Type of meeting: Closed.

Contact person: Dr. Philip Harriman, Program Director for Genetics, Division of Molecular and Cellular Biosciences, room 325, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–9687.

Purpose of meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Genetics Program in the Division of Molecular & Cellular Biosciences at NSF as part of the selection process of awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 4, 1993.
M. Rebecca Winkler,
Committee Management Officer.
[FR Doc. 93–24623 Filed 10–6–93; 8:45 am]
BILLING CODE 7555–01–M

Advisory Panel for Genetics and Nucleic Acids; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting: Advisory Panel for Genetics (Panel B) and Nucleic Acids.

Date and time: October 24–26, 1993 from 8:30 a.m. to 5 p.m.

Place: Inn by the Sea, 7830 Fay Avenue, La Jolla, California.

Type of meeting: Closed.

Contact person: Dr. DeLill Nasser, Program Director for Genetics, Division of Molecular and Cellular Biosciences, room 325, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–0112.

Purpose of meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Genetics Program in the Division of Molecular & Cellular Biosciences as NSF as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 4, 1993.
M. Rebecca Winkler,
Committee Management Officer.
[FR Doc. 93–24624 Filed 10–6–93; 8:45 am]
BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget (OMB) Review

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of OMB review of information collection.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* Generic Letter 91–02, "Reporting Mishaps Involving LLW Forms Prepared for Disposal."

3. *The form number if applicable:* Not applicable.

4. *How often the collection is required:* Reports are made only when the licensee or waste processor experiences a mishap that is reportable under the guidelines described in the Generic Letter.

5. *Who will be required or asked to report:* Nuclear power reactor licensees and Agreement State and non-Agreement State waste processors and disposal site operators.

6. *An estimate of the number of responses annually:* 34.

7. *An estimate of the total number of hours needed annually to complete the requirement or request:* 272 hours (an average of 8 hours per response).

8. *An indication of whether section 3504(h), Public Law 96–511 applies:* Not applicable.

9. *Abstract:* Generic Letter 91–02 encourages voluntary reporting (by both waste form generators and processors) of information concerning mishaps to low-level radioactive waste (LLW) forms prepared for disposal. The information is used by NRC to determine whether followup action is necessary to assure protection of public health and safety. The revision reflects a decrease in burden because of a lower number of reports received than had been previously estimated.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

Comments and questions may be directed by mail to the OMB reviewer: Tim Hunt, Office of Information and Regulatory Affairs (3150–0156), NEOB–3019, Office of Management and Budget, Washington, DC 20503.

Comments may also be communicated by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 28th day of September 1993.

For the Nuclear Regulatory Commission.
Gerald F. Cranford,
Designated Senior Official for Information Resources Management.
[FR Doc. 93–24667 Filed 10–6–93; 8:45 am]
BILLING CODE 7590–01–M

[Docket Nos. 50–338 and 50–339]

Virginia Electric and Power Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission is considering issuance of an exemption from the requirements of 10 CFR part 50, appendix A, General Design Criterion-2 (GDC–2) to Virginia Electric and Power Company (the licensee), for the North Anna Power Station, Units No. 1 and No. 2 (NA–1&2) located in Louisa County, Virginia.

Environmental Assessment

Identification of Proposed Action

The proposed exemption would allow temporary relief from the requirements of GDC–2 for NA–1&2 during the Phase 1, Stage 4 service water (SW) system

restoration program. The scope of Stage 4 activities involves restoration of the two 24-inch auxiliary SW supply lines from Lake Anna to the main SW headers. The exemption would permit the temporary removal of the earth which provides missile protection for the auxiliary SW system piping in the yard area north of the turbine building. Implementation of the Stage 4 effort will require a temporary exemption from GDC–2 for a period of time beginning January 3, 1994, and ending October 14, 1994 (i.e., prior to the start of the next scheduled NA–1 refueling outage).

The Need for the Proposed Action

The proposed exemption is needed in order to permit the completion of highly desirable upgrades on the auxiliary SW system without the need for unplanned unit outages or unduly extending the next several scheduled refueling outages. The Phase 1, Stage 4 effort would be performed during dual unit operating conditions and would not require unit outages.

Environmental Impacts of the Proposed Action

The proposed exemption does not involve any measurable environmental impacts during normal operation since the plant configuration is changed only minimally and plant operation is not changed. The likelihood of tornado-generated or other high wind-generated missile damage during the time the exemption would be in effect which would affect equipment required to operate to avoid radiological impact is low. Thus, the proposed exemption would not significantly affect the probability or consequences of potential reactor accidents and would not otherwise affect radiological plant effluents. Consequently, the Commission concludes that there are no significant radiological impacts associated with the proposed exemption.

With regard to potential non-radiological impacts, the proposed exemption involves features located entirely within the owner-controlled area defined in 10 CFR part 20. The Stage 4 refurbishment activities do not affect non-radiological plant effluents and there is no other environmental impact. Therefore, the staff concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

The principal alternative to requesting the temporary exemption for implementation of the Phase 1 Stage 4 SW restoration project would be to comply with the restrictive requirements of GDC–2. However, this alternative would not significantly enhance the protection of the environment, and would result in a significant loss of power generation since a dual unit outage would be required.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the April 1973 Final Environmental Statement for the North Anna Power Station.

Agencies and Persons Consulted

The NRC staff consulted with the State of Virginia regarding the environmental impact of the proposed action.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the staff concludes that the proposed action would not have a significant effect on the quality of the human environment and has determined, therefore, not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to this action, see the application dated July 30, 1993, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street NW., Washington, DC 20555, and at the local public document room located at the Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903–2498.

Dated at Rockville, Maryland, this 30th day of September 1993.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93–24671 Filed 10–6–93; 8:45 am]

BILLING CODE 7590–01–M

Correction to Biweekly Notice; Applications and Amendments to Operating Licenses Involving No Significant Hazards Consideration

In notice document 93–23732 beginning on page 50960, in the issue of Wednesday, September 29, 1993, make the following correction.

In the second column on page 50961, first paragraph beginning "By October 15, 1993, * * *" should be corrected to read "By October 29, 1993, * * *".

Dated at Rockville, Maryland, this 30th day of September 1993.

For the Nuclear Regulatory Commission

Steven A. Varga,

Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93–24670 Filed 10–6–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–344]

Exemption

In the Matter of Portland General Electric Company (Trojan Nuclear Plant).

I

The Portland General Electric Company (PGE or the licensee), is the holder of Facility Operating License No. NPF–1, which authorizes possession and maintenance of the Trojan Nuclear Plant (TNP or plant). The license provides, among other things, that the plant is subject to all rules, regulations, and Orders of the Commission now or hereafter in effect. The facility is a permanently shutdown pressurized water reactor, currently in the process of being decommissioned, and is located at the PGE site in Columbia County, Oregon.

II

The licensee, by letter dated February 2, 1993, informed the NRC that TNP had permanently ceased power operations, all fuel had been removed from the reactor to the fuel pool, and that PGE had begun to develop detailed plans to decommission the facility. The NRC, in License Amendment 190, dated May 5, 1993, modified License NPF–1 to a Possession Only License (POL). The license is conditioned so that TNP is not authorized to operate the reactor or place fuel in the reactor vessel, thus formalizing the commitment of the licensee to permanently cease power operations.

By letter dated June 17, 1993, the licensee requested an exemption from certain safeguards requirements of 10 CFR 73.55 as discussed in Section V which were designed for an operating power reactor facility and are unnecessary for TNP in its defueled condition.

III

The bases of the Licensee for the exemption request are that the reactor has been defueled, the fuel placed in the spent fuel storage pool, and that the reactor cannot be returned to operation because of the provisions of the May 5, 1993, POL. The request is also premised on a TNP Threat Analysis which documents that an act of radiological sabotage will not result in a radiation dose greater than the limits provided in

the Environmental Protection Agency Protective Action Guides (PAGs) and that the proposed TNP Defueled Trojan Security Plan reflects a level of security commensurate with the security threats associated with a permanently shutdown and defueled TNP.

The requirements of 10 CFR 73.55 were promulgated to provide protection of a facility against a design basis sabotage threat in consideration of the conditions associated with an operational power reactor. When compared with an operational power reactor facility, the status of TNP provides a significantly reduced risk from a radiological release as a consequence of sabotage. The range of credible accidents and accident consequences for TNP were limited because of the currently shutdown and defueled condition. The Defueled Security Plan, which remains relevant to the defueled status, provides an adequate basis for an acceptable safeguards program.

IV

The staff, based on its independent evaluation, agrees with the analyses of the licensee and concludes that sufficient bases have been presented for our approval of the exemption request. Documents submitted with the June 17, 1993 exemption request of the licensee, and subsequent July 29, 1993 submittal of changes requested by the NRC staff, with the exception of the Defueled Trojan Nuclear Plant Security Force Training and Qualification Plan (PGE–1059, Revision 0), are classified as Safeguards Information and consequently are not publicly available.

V

Based on Sections III and IV, above, the Commission has determined that pursuant to 10 CFR 73.5, this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security.

Accordingly, the Commission hereby grants an exemption to the Portland General Electric Company from certain requirements of 10 CFR 73.55 as requested in its letter of June 17, 1993. This exemption concerns portions of an onsite physical protection system and security organization which are no longer needed for the Trojan Nuclear Plant in its permanently defueled condition, as determined by the Commission in its review of the revised security and training and qualification plan of the licensee, provided that (1) the reactor is void of all fuel, (2) the fuel is stored in the spent fuel pool, and (3) the TNP Security Plan (Defueled Condition), Revision 0 dated July 26, 1993, and TNP Security Force Training and Qualification Plan (Defueled Condition), Revision 0 dated June 17, 1993 are implemented.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (58 FR 51116).

This exemption is effective upon issuance.

Dated at Rockville, Maryland this 30th day of September 1993.

For the Nuclear Regulatory Commission.

Brian K. Grimes,

Director, Division of Operating Reactor Support, Office of Nuclear Reactor Regulation.

[FR Doc. 93–24668 Filed 10–6–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–344]

Exemption

In the matter of Portland General Electric Company, et al. (Trojan Nuclear Plant).

I

The Portland General Electric Company (PGE or the licensee) is the holder of Possession Only License No. NPF–1, which authorizes possession and maintenance of the Trojan Nuclear Plant TNP or the plant). The license provides, among other things, that the plant is subject to all rules, regulations, and Orders of the Commission now or hereafter in effect.

The facility is a permanently shut down pressurized water reactor and is located at the licensee site in Columbia County, Oregon.

II

On January 27, 1993, the licensee submitted a letter notifying the NRC that PGE decided to permanently cease power operations at TNP. On February 2, 1993, the licensee also submitted a letter to the NRC informing the staff that as of January 27, 1993, all reactor fuel had been moved to the spent fuel pool. In a letter of February 17, 1993, the licensee committed to not move new or spent fuel into the reactor building without prior NRC approval. On March 24, 1993, the NRC issued an order confirming the licensee commitment not to move new or spent fuel into the reactor building without prior NRC approval. On May 5, 1993, the Commission issued Amendment No. 190 for Facility Operating License No. NPF–1, converting the license to a possession only status.

By letter dated March 9, 1993, PGE submitted a request for exemption from certain sections of 10 CFR 50.47, "Emergency Plans," and 10 CFR part 50, appendix E, paragraph, IV, "Content of Emergency Plans." The requested exemption addressed two areas: (1) the discontinuance of the need for offsite planning, and (2) the reduced onsite planning needs of the Trojan Permanently Defueled Emergency Plan. On September 8, 1993, the staff and PGE held a telephone conversation to discuss this exemption request. As a result of this conversation the licensee, by letter dated September 14, 1993, modified the March 9, 1993 exemption request by returning certain requirements to 10 CFR 50.47 and 10 CFR part 50, appendix E, paragraph IV, originally requested for exemption that were still considered applicable to TNP.

III

The justification presented by the licensee for the exemption request is that the reactor has been defueled and the fuel removed from the containment building to the spent fuel pool and the reactor would not be returned to operation because of the February 17, 1993, letter from PGE certifying that fuel would not be moved back into the containment building without prior NRC approval. The licensee indicated that the potential risk to the public was significantly reduced and the range of credible accidents and accident consequences for TNP were limited for the currently configured shutdown and defueled condition. The licensee determined that the most limiting accident for this facility in its permanently shutdown defueled state is a fuel handling accident.

The NRC staff has independently calculated the offsite doses resulting from such a fuel handling accident. The staff analysis shows that the doses at the exclusion area boundary are a small fraction of the Environmental Protection Agency (EPA) Protective Action Guides (PAGs). The doses calculated by the licensee at the exclusion area boundary for the whole body, the thyroid, and the skin were also a small fraction of the EPA PAGs. Under the general guidelines defining emergency classifications in NUREG–0654/FEMA–REP–1, Revision 1, "Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Procedures in Support of Nuclear Power Plants," dated November 1980, for an accident of this nature, the level of severity would not reach a point where offsite protective actions would be warranted.

The NRC staff has reviewed the planning standards of 10 CFR 50.47(b), the requirements of appendix E to 10 CFR part 50, the guidance criteria of

NUREG–0654, and NUMARC/NESP–007, "Methodology for Development of Emergency Action Levels," taking into consideration the current plant status and inherent low risk posed by the TNP. The staff also reviewed the requirements of 10 CFR 50.47(d) for a license authorizing only fuel loading and low power testing; these requirements address the decreased risk associated with low power operation and are generally appropriate for reviewing the offsite needs for emergency plans at TNP in its current status.

The NRC staff, in a letter dated May 18, 1993, requested that the licensee examine a hypothetical accident sequence involving the complete or partial loss of water from the TNP spent fuel pool as a result of a major seismic event near the plant. This beyond design basis postulated accident sequence, described in NUREG–1353, could result in a zirconium fuel cladding fire in some of the recently irradiated spent reactor fuel stored in the pool that could then propagate through the spent fuel pool and result in a significant radioactive release, with possibly significant offsite consequences. The licensee responded to the staff request for additional analysis by letter dated June 17, 1993. The staff conducted a review of the licensee submittal and determined the TNP spent fuel pool will maintain, with an adequate margin, its structural integrity even for an earthquake with a resulting ground acceleration value of 0.5g. The 0.5g value was found to be appropriate for the geographic location of TNP and could be used to evaluate plant vulnerabilities significantly beyond the design basis. Therefore, the staff concluded that there is an extremely low likelihood of a complete or partial loss of water from the TNP spent fuel pool. Furthermore, the staff has also determined that in view of the low likelihood of the event and the time elapsed since shut down of the facility, and the configuration of the fuel in the spent fuel pool, there would be sufficient time after a postulated loss of water and before the initiation of a cladding fire for the licensee to implement actions to preclude the gradual heating up of the spent fuel. The licensee has implemented procedures that provide this additional level of protection using a variety of cooling water sources. The length of time available also provides confidence that additional offsite measures could be taken without pre-planning, if required. Thus, the staff concludes that offsite emergency planning is not now warranted at the Trojan plant.

The licensee has also requested a revision to their physical security plan for the plant. The staff has reviewed the proposed changes to the physical security plan and has determined that the revised plan provides an acceptable level of security to protect the spent fuel pool against a design basis sabotage threat.

Considering the permanently shutdown and defueled status of the facility, the configuration of the stored fuel and the length of time since power operation, the staff concludes that the TNP can discontinue offsite emergency planning. Therefore, an exemption from 10 CFR 50.54(q), which incorporates by reference the standards of 10 CFR 50.47(b) and the requirements of 10 CFR part 50, appendix E, which pertains to operating plants, would allow TNP to discontinue offsite planning activities and reduce the scope of its onsite response by eliminating those onsite activities previously needed to support offsite planning activities. The licensee will identify the actions that they will take to implement the still applicable portions of the planning standards of 10 CFR 50.47(b) and requirements of appendix E in their Permanently Defueled Emergency Plan (PDEP).

The Commission will not consider granting an exemption unless special circumstances are present. In the PGE letter of March 9, 1993, these special circumstances were addressed as follows:

10 CFR 50.12(a)(2)(ii) states, "Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule; * * *"

The degree of emergency planning and preparedness necessary to provide adequate protection of the public health and safety in a permanently shutdown and defueled condition is significantly less than provided for in the existing Radiological Emergency Response Plan that was prepared to meet the requirements of 10 CFR 50.47. PGE has conducted a hazards analysis in support of the Trojan Permanently Defueled Emergency Plan and has concluded that there are no design basis or other credible events that would result in doses beyond the exclusion area boundary that would exceed the Environmental Protection Agency Protective Action Guides. Therefore, requiring PGE to comply with the full range of emergency preparedness requirements specified in 10 CFR 50.47(b) and 10 CFR part 50, appendix E is not necessary to achieve the underlying purpose of the rule. These regulations were established for power operation conditions, as such conditions could result in the potential for an accident with offsite radiological dose consequences. The permanently shutdown and defueled conditions of the Trojan facility renders the possibility of such accidents no longer credible. Therefore, the elimination of offsite emergency response capabilities, planning activities, and a reduction in the scope of onsite responses is warranted.

In view of the fact that power operations at Trojan have permanently ceased, and thus the potential risk associated with activities at Trojan has been significantly reduced, maintenance of offsite emergency response capabilities (e.g., facilities, public notification system), offsite planning activities and the current level of onsite response would represent a misallocation of human and monetary resources. Such resources would be better allocated to maintaining the Trojan Permanently Defueled Emergency Plan and training the appropriate emergency response personnel on the defueled plan.

IV

The staff, based on its independent evaluation, concludes that sufficient bases have been presented for approval of the exemption request. The staff finds that full application of 10 CFR 50.47(b) and appendix E to 10 CFR part 50 at TNP is not necessary to achieve the underlying purpose of the regulations, that is, to provide reasonable assurance that adequate protection can and will be taken in the event of a radiological emergency. Therefore, special circumstances are present that satisfy the requirements of 10 CFR 50.12(a)(2)(ii) given that application of the full regulation is not necessary to achieve the underlying purpose of the rule.

V

Based on our Safety Evaluation, the Commission has determined that, pursuant to 10 CFR 50.12(a)(1), this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security.

Accordingly, the Commission hereby grants an exemption to the portions of 10 CFR 50.54(q) that apply to operating plants and the sections of 10 CFR 50.47(b) and 10 CFR part 50, appendix E stated in the licensee exemption request as revised. The exemption will become effective when the TNP implements an NRC-Approved PDEP. "Implementation" is defined as completion of all needed procedures and training of personnel.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (58 FR 51117).

This exemption will become effective when the Permanently Defueled Emergency Plan is implemented, as discussed above.

Dated at Rockville, Maryland this 30th day of September 1993.

For the Nuclear Regulatory Commission.

Brian K. Grimes,

Director, Division of Operating Reactor Support, Office of Nuclear Reactor Regulation.

[FR Doc. 93–24669 Filed 10–6–93; 8:45 am]

BILLING CODE 7590–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title*: Representative Payee Monitoring

(2) *Form(s) submitted*: G–99a, G–99c

(3) *OMB Number*: 3220–0151

(4) *Expiration date of current OMB clearance*: Three years from date of OMB approval

(5) *Type of request*: Revision of a currently approved collection

(6) *Frequency of response*: On occasion

(7) *Respondents*: Individuals or households

(8) *Estimated annual number of respondents*: 6,000

(9) *Total annual responses*: 6,535

(10) *Average time per response*: .341545 hours

(11) *Total annual reporting hours*: 2,232

(12) *Collection description*: Under section 12(a) of the RRA, the Railroad Retirement Board (RRB) is authorized to select, make payments to, and conduct transactions with an annuitant's relative or some other person willing to act on behalf of the annuitant as a representative payee. The collection obtains information needed to determine if a representative is handling benefit payments in the best interest of the annuitant.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the form and supporting documents can be obtained from Dennis Eagan, the agency clearance officer (312–751–4693). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503.

Dennis Eagan,

Clearance Officer.

[FR Doc. 93–24690 Filed 10–6–93; 8:45 am]

BILLING CODE 7905–01–M

RESOLUTION TRUST CORPORATION

Coastal Barrier Improvement Act; Property Availability; Inland Pacific, San Bernardino County, CA and Ruby Star Ranch, Pima County, AZ

AGENCY: Resolution Trust Corporation.

ACTION: Notice.

SUMMARY: Notice is hereby given that properties known as Inland Pacific, located in San Bernardino County, California, and Ruby Star Ranch, located in Pima County, Arizona, are affected by section 10 of the Coastal Barrier Improvement Act of 1990 as specified below.

DATES: Written notices of serious interest to purchase or effect other transfer of the properties may be mailed or faxed to the RTC until January 5, 1994.

ADDRESSES: Copies of detailed descriptions of the properties, including maps, can be obtained from or are available for inspection by contacting the following persons:

Inland Pacific Property: Mr. V. Jackson Carney, III, Resolution Trust Corporation, c/o Oak Tree/Landmark Land Companies, 2500 Landmark Drive, LaPlace, LA 70068, (504) 466–7469; Fax (504) 651–6057

Ruby Star Ranch Property: Mr. Bruce B. Dunning, Resolution Trust Corporation, Kansas City Field Office, 4900 Main Street; suite 200, Kansas City, MO. 64112, (816) 968–7293; Fax (816) 531–8348

SUPPLEMENTARY INFORMATION: The Inland Pacific property, also known as Sycamore Flats, is located on the west and east sides of Interstate Highway 15, approximately two miles south of Interstate Highway 215, San Bernardino County, California. The property contains habitat for several Federally-listed endangered species and is adjacent to the San Bernardino National Forest. The Inland Pacific property consists of approximately 339 acres of undeveloped land containing a mountainous area with only a small parcel on either side of Interstate Highway 15 being relatively disturbed. It is adjacent to the San Bernardino National Forest and falls within the Cucamonga Peak Natural Area. The property is within one-quarter mile of the Glen Helen Regional Park and within two miles of extensive public water reserves to the northeast.

The Ruby Star Ranch property is located west of the intersection of Hemet Peak and Mission Road, approximately 25 miles southwest of Tucson, Arizona, and is adjacent to lands managed by the Bureau of Land Management. The Ruby Star Ranch property consists of approximately 5,338 acres of undeveloped land containing mountainous areas and a high potential of archeological resources.

The properties are covered properties within the meaning of section 10 of the Coastal Barrier Improvement Act of 1990, Public Law 101–591 (12 U.S.C. 1441a–3).

Written notice of serious interest in the purchase or other transfer of property must be received on or before January 5, 1994 by the Resolution Trust Corporation at the appropriate address stated above.

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the Federal government;
2. Agencies of entities of State or local government; and
3. "Qualified organizations" pursuant to section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3)).

Written notices of serious interest must be submitted in the following form:

NOTICE OF SERIOUS INTEREST

RE: [insert name of property]

Federal Register Publication Date: October 7, 1993

1. Entity name.

2. Declaration of eligibility to submit Notice under criteria set forth in Coastal Barrier Improvement Act of 1990, Public Law 101–591, section 10(b)(2), (12 U.S.C. 1441a–3(b)(2)), including, for qualified organizations, a determination letter from the Internal Revenue Service regarding the organization's status under section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 170(h)(3)).

3. Brief description of proposed terms of purchase or other offer (e.g., price and method of financing).

4. Declaration of entity that it intends to use the property primarily for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes.

5. Authorized Representative (Name/Address/Telephone/Fax).

Dated: October 1, 1993.

Resolution Trust Corporation.
William J. Tricarico,
Assistant Secretary.
[FR Doc. 93–24608 Filed 10–6–93; 8:45 am]
BILLING CODE 6714–01–M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Chicago Stock Exchange, Inc.

October 1, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Northern Technologies International Corp.
Common Stock, $.02 Par Value (File No. 7–11326)
Intercapital California Quality Municipal Securities
Common Stock, $.01 Par Value (File No. 7–11327)
Intercapital New York Quality Municipal Securities
Common Stock, $.01 Par Value (File No. 7–11328)
PanAmerican Beverages, Inc.
Class A Common Stock, $.01 Par Value (File No. 7–11329)
Colonial Properties Trust
Common Stock, $.01 Par Value (File No. 7–11330)
Northern Border Partners L/PL
Common Stock, $.01 Par Value (File No. 7–11331)
Fortune Petroleum Corporation
Common Stock, $.001 Par Value (File No. 7–11332)
Integrated Health Services, Inc.
Common Stock, $.001 Par Value (File No. 7–11333)
Belden, Inc.
Common Stock, $.01 Par Value (File No. 7–11334)
Capital Guaranty Corporation
Common Stock, $.10 Par Value (File No. 7–11335)
Corrpro Companies, Inc.
Common Stock, No Par Value (File No. 7–11336)
Rex Stores Corporation
Common Stock, $.01 Par Value (File No. 7–11337)
Chemical & Mining Co. of Chile, Inc.
American Depositary Shares, rep. 8 Ser. B Share, No Par Value (File No. 7–11338)
Trinitech Systems, Inc.
Common Stock, $.001 Par Value (File No. 7–11339)
Northern Border Partners L.P.
Common Stock, $.01 Par Value (File No. 7–11340)
Ballard Medical Products
Common Stock, $.10 Par Value (File No. 7–11341)
Templeton Emerging Markets Income Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–11342)
DVI, Inc.
Common Stock, $.005 Par Value (File No. 7–11343)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 1, 1993, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.
Jonathan G. Katz,
Secretary.
[FR Doc. 93–24673 Filed 10–6–93; 8:45 am]
BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

October 1, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

American Select Portfolio, Inc.
Common Stock, $.01 Par Value (File No. 7–11344)
Coca-Cola FEMSA, S.A. de C.V.
American Depositary Shares (rep. 10 sh. Ser. L Comm. Stk., 1 new Peso Par Value (File No. 7–11345)
Cohen & Steers Total Return Realty Fund, Inc.
Common Stock, $.001 Par Value (File No. 7–11346)
International Technology Corp.
Depositary Shares (rep. 1/100 sh. Cum. Conv. Exch. Pfd. Stk., $100.00 Par Value) (File No. 7–11347)
Kimco Realty Corp
Depositary Shares (rep. 1/10 sh. 7.75% Ser. A Cum. Red. Pfd. Stk., $1.00 Par Value) (File No. 7–11348)
Morgan Stanley Group, Inc.
Common Stock, $.01 Par Value (File No. 7–11349)
Nuveen Premium Income Municipal Fund 6
Shares of Beneficial Interest, $.01 Par Value (File No. 7–11350)
Sterling Electronics
Common Stock, $.50 Par Value (File No. 7–11351)
Newscorp Overseas Ltd.
8⅝% Cum. Gtd. Pref. shares, Ser. A, $25.00 Par Value (File No. 7–11352)
Ballard Medical Products
Common Stock, $.10 Par Value (File No. 7–11353)
Templeton Emerging Markets Income Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–11354)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 25, 1993, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.
Jonathan G. Katz,
Secretary.
[FR Doc. 93–24674 Filed 10–6–93; 8:45 am]
BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

October 1, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder

for unlisted trading privileges in the following securities:

Buenos Aires Embotelladora S.A.
American Depository Shares (File No. 7–11312)
Templeton Emerging Markets Income Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–11313)
Intercapital Quality Municipal Securities
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–11314)
Intercapital California Quality Municipal Securities
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–11315)
Intercapital New York Quality Municipal Securities
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–11316)
PanAmerican Beverages, Inc.
Class A Common Stock, $.01 Par Value (File No. 7–11317)
Cohen & Steers Total Return Realty Fund, Inc.
Common Stock, $.001 Par Value (File No. 7–11318)
Margaretten Financial Corporation
Depository Shares each representing ¼ of a Share of Cum. Pfd Stock (File No. 7–11319)
Boise Cascade Corporation
$1.58 Depository Shares (File No. 7–11320)
Northern Border Partners L.P.
Common Units Representing Ltd. Partner Interest, $.01 Par Value (File No. 7–11321)
Integrated Health Services, Inc.
Common Stock, $.001 Par Value (File No. 7–11322)
Serenpet, Inc.
Common Stock, No Par Value (File No. 7–11323)
Van Kampen Florida Municipal Opportunity Trust
Sahres Beneficial Interest (File No. 7–11324)
Ballard Medical Products
Common Stock, $.10 Par Value (File No. 7–11325)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 25, 1993, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–24672 Filed 10–6–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32991; File No. SR–PHLX–92–31]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval to a Proposed Rule Change by Philadelphia Stock Exchange, Inc., Relating to an Extension of the Deadlines for Submission of Exercise Advice Memoranda and Notices for Index Option Contracts

September 30, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 14, 1992, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PHLX proposes to amend Exchange Rule 1042A, "Exercise of Option Contracts," to provide that, for American-style industry (narrow-based) index options, the deadline for submitting exercise advices and memoranda to exercise shall be 4:15 p.m. Eastern Time ("ET") or five minutes after the close of trading, and that the deadline for submitting exercise advices and memoranda to exercise National Over-the-Counter Index ("XOC") options shall be 4:20 p.m. ET or five minutes after the close of trading. In addition, the PHLX proposes to amend Floor Procedure Advice ("Advice") G–1, "Exercise Requirement," to extend the daily cut-off time for submitting exercise advice forms for 25 or more American-style stock index options to the Exchange's Surveillance Post to 4:20 p.m. ET or five minutes after the close of trading on the day of the exercise. The Advice, as amended, also requires firms utilizing the electronic Clearing Management and Control System (C/MACS) to transmit index exercise instructions to the Options Clearing Corporation ("OCC") according to the time frames established by the Advice.

The text of the proposal is available at the Office of the Secretary, the PHLX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Currently, Exchange Rule 1042A requires PHLX member organizations to submit a memorandum to exercise any stock index option contract, other than Value Line Index ("VLE") and XOC option contracts, by 4:10 p.m. ET. In addition, for any account exercising 25 or more contracts in the same series on the same business day on behalf of an individual customer, specialist, ROT, or firm, the firm must submit an exercise advice form to the Exchange by 4:10 p.m. ET. Exchange Rule 1042A also requires PHLX members to prepare or

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[1] On January 15, 1993, the PHLX amended its proposal to establish a 4:20 p.m. Eastern Time ("ET") deadline for the submission of index option exercise advice forms for American-style index options. See File No. SR–PHLX–92–31, Amendment No. 1. On July 12, 1993, the PHLX deleted Amendment No. 1 and filed Amendment No. 2, which replaces Amendment No. 1 and amends Exchange Rule 1042A, "Exercise of Option Contracts," and Floor Procedure Advice ("Advice") G–1, "Exercise Requirements," to establish the deadlines for submitting memoranda to exercise and exercise advice forms to the Exchange as 4:15 p.m. ET or five minutes after the close of trading for American-style industry (narrow-based) index options, and 4:20 p.m. or five minutes after the close of trading for options on the National Over-the-Counter Index ("XOC"). See File No. SR–PHLX–92–31. The PHLX also amended its proposal to delete references in the filing to the Utility Index ("UTY") and the PHLX/KBW Bank Index ("BKX"). See Letter from Edith Hallahan, Attorney, Market Surveillance, PHLX, to Yvonne Fraticelli, Staff Attorney, Options Branch, Division of Market Regulation ("Division") Commission, dated January 20, 1993. Finally, the Exchange amended its proposal to make clear that paragraph (i) and (ii) of Exchange Rule 1042A, as amended, apply to narrow-based indexes, and that paragraph (iii) applies to the XOC. See Letter from Edith Hallahan, Special Counsel, Regulatory Services, PHLX, to Richard Zack, Branch Chief, Options Branch, Division, Commission, dated September 1, 1993.

receive a memorandum to exercise any American-style index option contract before the deadline stated in Exchange Rule 1042A and to time-stamp the exercise instructions to confirm the time of receipt or preparation.

The PHLX's exercise advice forms identify the entity exercising, the option series and the number of contracts being exercised. Pursuant to Exchange Rule 1042A(b), index exercise advice forms are not used on the last day of trading prior to the expiration date of that option ("expiration Friday"). On an expiration Friday, paragraph (b) of PHLX Rule 1042A governs.

Currently, the PHLX lists one narrow-based American-style stock index option on the Gold/Silver Index ("XAU") which trades until 4:10 p.m. ET, the same time as the deadline for member firms to (i) receive or prepare memoranda to exercise such options and (ii) submit exercise advice forms to the Exchange (if the account is exercising 25 or more contracts in the same series).[2] Similarly, the PHLX lists options on the XOC, a broad-based index which trades until 4:15 p.m. ET, reflecting an additional five minutes of trading in the corresponding futures. For XOC options, the deadline for receiving or preparing memoranda to exercise and for submitting exercise advice forms (for accounts exercising 25 or more contracts in the same series) is 4:15 p.m. ET.

The Exchange proposes to amend PHLX Rule 1042A to extend the deadline for submitting exercise advice forms and memoranda to exercise PHLX narrow-based American-style index options to 4:15 p.m. ET or five minutes after the close of trading.[3] In addition, the PHLX proposes to amend Exchange Rule 1042A to provide that the deadline for submitting exercise advice forms and memoranda for XOC options shall be 4:20 p.m. ET or five minutes after the close of trading.

The PHLX proposes corresponding changes to Advice G–1. Specifically, the PHLX proposes to amend Advice G–1 to provide that specialists, registered options traders ("ROTs"), customers and firms must submit exercise advice forms for 25 or more American-style index options to the Exchange's Surveillance Post by 4:20 p.m. ET or five minutes after the close of trading on the day of the exercise. In addition, the proposal provides that firms utilizing C/MACS must transmit index exercise instructions to the OCC according to the time frames established by the Advice.

The PHLX believes that extending the exercise notice cutoffs should ensure that market participants are afforded adequate time to make accurate investment decisions, including time to evaluate their final position after closing prices in the various markets have been disseminated. For example, the PHLX notes that execution reports for hedge orders and stocks comprising an index may not be available immediately after the close of trading. In addition, the Exchange believes that the proposal may help to increase liquidity near the close of trading, as market participants will be able to remain in the crowd, focusing on making quality markets in lieu of preparing exercise forms for submission by the close of trading.

The PHLX also believes that allowing an additional five minutes for the submission of exercise advice forms and memoranda is reasonable and should provide the advantages cited above.

Finally, the PHLX proposes several nonsubstantive changes to clarify exchange Rule 1042A. Specifically, the PHLX proposes to delete current paragraph (ii) of Exchange Rule 1042A(a) and incorporate that provision into paragraph (i) for clarity, and to delete paragraph (c) from Exchange Rule 1042A because paragraph (c) repeats the provisions of current paragraph (a)(iii) (proposed paragraph (a)(ii)).

Finally, the PHLX notes that the Chicago Board Options Exchange, Inc. ("CBOE"), the Pacific Stock Exchange, Inc. ("PSE"), and the American Stock Exchange ("Amex") have similarly extended exercise notice cut-offs for index options.[4]

For the above reasons, the PHLX believes that the proposed rule change to establish a 4:15 p.m. ET deadline for the submission of index option exercise advice forms and memoranda for narrow-based American-style index options, and a 4:20 p.m. ET deadline for XOC options, is consistent with section 6 of the Act, in general, and, in particular, with section 6(b)(5), in that the proposal is designed to promote just and equitable principles of trade, and to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has requested that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act in order to conform the PHLX's rules to the rules of the Amex, CBOE, PSE, and the Chicago Mercantile Exchange ("CME").[5]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5) thereunder.[6] Specifically, the Commission believes that the amendments to Exchange Rule 1042A and Advice G–1 which extend the deadline for submitting exercise advice forms and memoranda will benefit market participants by allowing them to make investment decisions based upon the evaluation of their final positions after having completed trading for the day.

The Commission also believes that the proposal will benefit the market in general by fostering higher quality markets at the close of the trading day. First, market makers will not be preoccupied with the process of submitting exercise advice forms prior to the actual close of the market and, therefore, can concentrate more fully on providing a quality market at the close. Second, market participants will be able to determine whether or not their orders

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[2] The PHLX also trades the following index options, which are European-style and, thus, not subject to the exercise advice procedure of Exchange Rule 1024A: options on the VLE, a broad-based or market index, and options on two industry (narrow-based) indexes, the BKX and the UTY.

[3] The Exchange proposes to add the language "or five minutes after the close of trading," in the event trading does not begin and end pursuant to ordinary procedures and time frames. See e.g., CBOE Rule 11.1 (.03) and Securities Exchange Act Release No. 29860 (October 25, 1991), 56 FR 5625 (November 1, 1991) (order approving File No. SR–CBOE–91–28).

[4] See Securities Exchange Act Release Nos. 29860 (October 25, 1991), 56 FR 56254 (order approving File No. SR–CBOE–91–28); 30152 (January 6, 1992), 57 FR 1778 (order approving File No. SR–PSE–91–46); and 31057 (August 19, 1992), 57 FR 38894 (order approving File No. SR-Amex–92–33).

[5] See Amex Rule 980C (establishing a deadline of 4:15 p.m. EST, or five minutes after the close of trading); CBOE Rule 11.1, Interpretations and Policies .03 (establishing a deadline of 3:20 p.m., Central Time ("CT") or five minutes after the close of trading); PSE Rule 7.15 (establishing a deadline of 1:20 p.m., Pacific Time, or five minutes after the close of trading); and CME Rule 550. Under the CME's rules, market participants have an additional five minutes to settle trades after 3:15 p.m. CT.

[6] 15 U.S.C. 78f(6)(5) (1988).

on other related markets were executed, such as orders intended to hedge their options positions. If their hedging transactions in other markets are not executed by 4:15 p.m. ET, for narrow-based American-style index options, or 4:20 p.m. ET, for XOC options, then, under the proposal, market participants will still be able to exercise their options positions and not remain in an unhedged position after the close of trading. Third, the proposal will give market participants additional time to evaluate the closing prices of the stocks that are used to calculate the indexes and determine whether or not to exercise their positions.

In addition, the Commission believes that the proposal to delete current paragraph (ii) of Exchange Rule 1042A(a) and to incorporate that provision into paragraph (i), and to delete paragraph (c) from Exchange Rule 1042A because it repeats existing provisions of the rule will help to clarify the application of the rule.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission finds that the PHLX's proposal to extend the deadline for submitting exercise advice forms and preparing exercise memoranda is similar to the Amex, CBOE, and PSE proposals previously approved by the Commission and raises no new issues.[7] The Commission notes that it received no comments on the previously approved CBOE, Amex, and PSE proposals. In addition, as discussed above, the change will provide a variety of benefits to market participants. Accordingly, the Commission believes that granting accelerated approval of the proposed rule change is appropriate and consistent with Section 6 of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 28, 1993.

It is therefore ordered, Pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–PHLX–92–31) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–24590 Filed 10–6–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32990; International Series Release No. 586; File No. SR–PHLX–92–10]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 1 and 2 to the Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to the Eligibility of Registered Representatives To Sell Foreign Currency Options

September 30, 1993.

On April 10, 1992, as amended on September 14, 1993, and September 28, 1993, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposal to amend Exchange Rule 1024(a)(ii) to allow registered representatives who passed the Series 7 General Securities Representative Examination ("Series 7 Examination") prior to June 1986 to sell PHLX foreign currency options.

The proposed rule change was published for comment in Securities Exchange Act Release No. 30705 (May 14, 1992), 57 FR 21688. No comments were received on the proposed rule change.[3]

Since June 1986, the Series 7 Examination has included questions regarding the trading of listed foreign currency options. For that reason, registered representatives who passed the Series 7 Examination after June 1986 have been eligible to sell foreign currency options on the PHLX. The PHLX proposes to amend Exchange Rule 1024(a)(ii) to establish a procedure which will allow registered representatives who passed the Series 7 Examination prior to June 1986 to sell PHLX foreign currency options. The proposal will apply solely to registered representatives who are associated with PHLX member firms or participant organizations of the PHLX.[4]

The purpose of the proposal is to permit registered representatives qualified by the length and depth of their industry experience to sell foreign currency options without having to pass a separate examination, such as the Series 15 Examination, that relates solely to foreign currency options. The PHLX states that its members and participant organizations have urged the PHLX to increase accessibility to selling foreign currency options because, aside from "housekeeping idiosyncracies," the foreign currency options program is

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[7] See note 5, supra.

[8] 15 U.S.C. 78s(b)(2) (1982).

[9] 17 CFR 200.30–3(a)(12) (1992).

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1992).

[3] On September 14, 1993, the PHLX amended its proposal to establish an application procedure through which registered representatives who passed the Series 7 Examination prior to 1986 may become eligible to sell foreign currency options on the PHLX without passing the Series 15 Examination. Specifically, a registered representative who passed the Series 7 Examination prior to 1986 may submit to the Exchange's Director of Examinations an Exchange-approved form, "Application for Waiver of Series 15 Examination," which requires a description of the registered representative's options experience and certification of that experience by a current or former supervisor with knowledge of the registered representative's options experience. The supervisor must certify that the applicant understands options and has applied his knowledge in the course of trading and monitoring options positions over a period of no less than six months. The Exchange will review the applications and, based on the information provided in the application, the Director of Examinations will determine whether the registered representative demonstrates sufficient knowledge of foreign currency options and the underlying markets to allow the registered representative to sell foreign currency options without taking the Series 15 Examination. See Letter from Gerald D. O'Connell, Vice President, Market Surveillance, PHLX, to Richard Zack, Branch Chief, Options Branch, Division of Market Regulation ("Division"), Commission, dated September 2, 1993 ("Amendment No. 1"). In addition, the PHLX modified the text of proposed Commentary .06 to clarify that the waiver of the Series 15 Examination is not automatic, but is subject to approval based on the information contained in the application. See Letter from Gerald D. O'Connell, Vice President, Market Surveillance, PHLX, to Richard Zack, Branch Chief, Options Regulation, Division, Commission, dated September 28, 1993 ("Amendment No. 2").

[4] See Letter from William W. Uchimoto, General Counsel, PHLX, to Richard Zack, Branch Chief, Options Branch, Division, Commission, dated may 27, 1993.

similar to the equity options program. In this regard, the PHLX notes that foreign currency options trade pursuant to the same auction market regimen and have the same underlying characteristics as equity options with regard to their issuer, clearing guarantees, uniform margin requirements, suitability standards, and the existence of position and exercise limits. While the actual margin requirements and position and exercise limits may differ, the PHLX believes that such differences are easily discernible specification differences rather than core substantive differences.

The PHLX explains that its foreign currency options market has matured to the point that it is now an essential and integral part of the securities business. The PHLX has determined that registered representatives who passed the Series 7 Examination prior to June 1986 are at least as qualified to trade foreign currency options as registered representatives who passed the Series 7 Examination after June 1986.

The PHLX notes that firms will continue to determine the segment of their sales force that will sell foreign currency options and, likewise, that firms will continue to bear the responsibility of assuring that their sales forces are supervised properly by appropriate personnel. In addition, the PHLX has developed an application procedure through which registered representatives who passed the Series 7 Examination prior to 1986 may become eligible to sell foreign currency options on the PHLX without passing the Series 15 Examination. Specifically, a registered representative who passed the Series 7 Examination prior to 1986 may submit to the Exchange's Director of Examinations an Exchange-approved form, "Application for Waiver of Series 15 Examination," which describes the registered representative's options experience and contains the certification of a current or former supervisor with knowledge of the registered representative's options experience which states that the applicant understands options and has applied his knowledge in the course of trading and monitoring options positions over a period of no less than six months. The Exchange will review the applications and, based on the information provided in the application, the Director of Examinations will determine whether the registered representative demonstrates sufficient knowledge of foreign currency options and the underlying markets to allow the registered representative to sell foreign currency options without taking the Series 15 Examination.[5]

The Series 15 Examination will continue to be a prerequisite for registered representatives whose exclusive sales focus is foreign currency options and who have not passed the Series 7 Examination.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of section 6(b)(5) in that the proposal is designed to protect investors and the public interest.

PHLX Rule 1024, "Conduct of Accounts for Options Trading," provides that, prior to soliciting or accepting customers' orders in foreign currency options, account executives of member organizations must complete an examination "prescribed by the Exchange for the purpose of demonstrating an adequate knowledge of foreign currency options and of the markets for the underlying foreign currencies."[6] The Commission agrees with the PHLX's determination that registered representatives who passed the Series 7 Examination prior to June 1986 may be adequately qualified to trade foreign currency options on the PHLX. In this regard, the Commission shares the PHLX's conclusion concerning the common characteristics of foreign currency options and equity options. In particular, foreign currency options trade pursuant to the same auction market regimen and have the same underlying characteristics as equity options with regard to their issuer, applicable clearing guarantees, uniform margin requirements, suitability standards, and the existence of position and exercise limits. Thus, despite the unique nature of the foreign currency options market, the Commission believes that it is reasonable for the PHLX to conclude that registered representatives who passed the Series 7 Examination prior to June 1986 may be qualified to trade foreign currency options.

In this regard, the Commission believes that the application procedure developed by the PHLX should help to ensure that only registered representatives with adequate experience in options trading and knowledge of foreign currency options and the underlying markets will be permitted to waive the Series 15 Examination. The Commission notes, in addition, that under the rules of the National Association of Securities Dealers, Inc. ("NASD"), a registered representative whose employment as a representative or principal has been terminated for a period of two years or more would be required to retake the current Series 7 Examination, which includes questions on foreign currency options.[7] Thus, a registered representative who passed the Series 7 prior to June 1986 and left the industry for a period of two years or more would be required to retake the Series 7 Examination.

In summary, the Commission believes that the procedures for waiver approval, along with the NASD's two-year requirement, will ensure that registered representatives who passed the Series 7 Examination prior to 1986 and who are approved by the Exchange for waiver of the Series 15 Examination should have the knowledge, skills, and abilities to trade foreign currency options. Moreover, the Commission notes that the proposal retains the requirement that registered representatives take the Series 15 examinations if their exclusive sales focus is on foreign currency options, and they have not passed the Series 7 Examination. By enabling additional qualified representatives to trade foreign currency options, the Commission believes that the PHLX's proposal should help the PHLX to maintain the depth and liquidity of its foreign currency options markets, which will benefit market participants.

The Commission finds good cause for approving Amendment Nos. 1 and 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** because the amendments strengthen and clarify the Exchange's proposal. Amendment No. 1 sets forth the specific conditions under which a waiver will be granted. Amendment No. 2 clarifies the text of Commentary .06 by stating specifically that a waiver is not automatic, but is subject to the Exchange's approval based on the information contained in the application. Accordingly, the Commission believes that it is consistent with section 6(b)(5) of the Act to approve Amendment Nos. 1 and 2 to the PHLX's proposal on an accelerated basis.

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 1 and 2. Persons making written

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[5] See Amendment No. 1, *supra* note 3.

[6] See PHLX Rule 1024(a)(ii).

[7] See NASD Manual, Schedule C, Part III(1)(c), "Requirement for Examination on Lapse of Registration." See also Letter from Edith Hallahan, Attorney, Market Surveillance, PHLX, to Sharon Lawson, Assistant Director, Division, Commission, dated April 22, 1993.

submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 28, 1993.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–PHLX–92–10) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.*

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–24591 Filed 10–6–93; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Research and Development Programs Meeting

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: This notice announces a public meeting at which NHTSA will describe and discuss specific research and development projects and requests suggestions for agenda topics.

DATES AND TIMES: The National Highway Traffic Safety Administration will hold a public meeting devoted primarily to presentations of specific research and development projects on October 12, 1993, beginning at 1:30 p.m. and ending at approximately 5 p.m. The deadline for interested parties to suggest agenda topics is 4:15 p.m. on September 17, 1993. Questions may be submitted in advance regarding the Agency's research and development projects. They must be submitted in writing by October 4, 1993 to the address given below. If sufficient time is available, questions received after the October 4 date will be answered at the meeting in the discussion period. The individual, group or company asking a question does not have to be present for the question to be answered. A consolidated list of the questions submitted by October 4 will be mailed to interested personnel by October 6 and will be available at the meeting.

ADDRESSES: The meeting will be held at the Ramada Inn, near Detroit Metro, 8270 Wickham Rd., Romulus, MI 48174. Suggestions for specific R&D topics as described below and questions for the October 12, 1993 meeting relating to the Agency's research and development programs should be submitted to George L. Parker, Associate Administrator for Research and Development, NRD–01, National Highway Traffic Safety Administration, room 6206, 400 Seventh St. SW., Washington, DC 20590. The fax number is 202–366–5930.

SUPPLEMENTARY INFORMATION: NHTSA intends to provide detailed presentations about its research and development programs in a series of quarterly public meetings. The purpose is to make available more complete and timely information regarding the Agency's research and development programs. At the first meeting, on April 6, 1993, NHTSA officials from the Office of Research and Development provided a summary overview of research and development projects in the areas of crashworthiness and crash avoidance. At the second meeting, held on June 23, 1993, NHTSA staff gave detailed presentations about the agency frontal and rollover crash protection research projects, including the topics of structural integrity, door latch integrity, and glass-plastic glazing. The next meeting in this series will be held on October 12, 1993.

NHTSA requests suggestions from interested parties on the specific agenda topics. NHTSA will base its decisions about the agenda on the suggestions it receives by September 17, 1993. Before the meeting, it will publish a notice listing the research and development topics to be discussed. NHTSA asks that the suggestions be taken from the list below and that they be limited to five, in priority order, so that the presentations at the October 12 R&D meeting can be most useful to the audience. The list does not include the topics discussed at the previous meeting on June 23, 1993.

Specific Crashworthiness R&D topics are:
- Dynamic side impact—LTVs
- Hybrid III chest deflection
- Improved safety belt design
- Upgrade fuel system integrity
- Highway traffic injury studies
- Head and neck injury research
- Thorax injury research
- Human injury simulation and analysis
- Crash test dummy component development
- Vehicle aggressivity and fleet compatibility
- Upgrade side crash protection
- Upgrade seat and occupant protection system
- Child safety research
- Electric vehicle safety

Specific Crash Avoidance R&D topics are:
- Vehicle motion environment
- Crash causal analysis
- Heavy truck antilock brake systems
- Long combination vehicle safety
- Drowsy driver monitoring
- Driver workload assessment

Specific topics from the National Center for Statistics and Analysis are:
- New data elements for FARS and NASS
- Special crash investigations program regarding air bag performance
- Pedestrian special NASS data collection project
- Critical Outcome Data Evaluation System (CODES)—Linkage of databases on police accident reporting and medical outcomes.

This meeting is followed on the next day by the regular quarterly NHTSA Technical Industry Meeting, which was announced on August 19, 1993 (58 FR 44206).

Questions regarding research projects that have been submitted in writing in advance will be answered as time permits. A transcript of the meeting, copies of materials handed out at the meeting, and copies of the suggestions offered by commenters will be available for public inspection in the NHTSA Technical Reference Section, room 5108, 400 Seventh Street SW., Washington, DC 20590. Copies of the transcript will then be available at 10 cents a page, upon request to NHTSA Technical Reference Section. The Technical Reference Section is open to the public from 9:30 a.m. to 4 p.m.

NHTSA will provide technical aids to participants as necessary, during the NHTSA Industry Research and Development Meeting. Thus any person desiring assistance of "auxiliary aids" (e.g. sign-language interpreter, telecommunication devices for deaf persons (TTDs), readers, taped texts,

*17 CFR 200.30–3(a)(12) (1992).

braille materials, or large print materials and/or a magnifying device), please contact Barbara Coleman on 202/366–1537 by COB October 4, 1993.

FOR FURTHER INFORMATION CONTACT: Dr. Richard L. Strombotne, Special Assistant for Technology Transfer Policy and Programs, Office of Research and Development, 400 Seventh Street SW., Washington, DC 20590. Telephone: 202–366–4730. Fax number: 202–366–5930.

Issued: September 7, 1993.

George L. Parker,

Associate Administrator for Research and Development.

[FR Doc. 93–24698 Filed 10–6–93; 8:45 am]

BILLING CODE 4910-59-M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 193
Thursday, October 7, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, October 13, 1993.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: October 5, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–24859 Filed 10–5–93; 3:10 pm]

BILLING CODE 6210–01–P

NATIONAL SCIENCE FOUNDATION

National Science Board

DATE AND TIME:

October 14, 1993, 2:00 p.m. Closed Session
October 15, 1993, 8:30 a.m. Closed Session
October 15, 1993, 9:00 a.m. Open Session

PLACE: National Science Foundation, 1800 G Street, NW., Room 540, Washington, DC 20550.

STATUS:

Part of this meeting will be open to the public.

Part of this meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Thursday, October 14, 1993

Closed Session (2:00 p.m.–3:30 p.m.)

1. Minutes of August 1993 Meeting
2. FY 1995 Budget

Friday, October 15, 1993

Closed Session (8:30 a.m.–9:00 a.m.)

3. Grants and Contracts

Open Session (9:00 a.m.–11:00 p.m.)

4. Minutes from August Meeting
5. Acting Director's Report
6. Reports from Committees
7. Astronomy Review
8. Other Business

Marta Cehelsky,

Executive Officer.

[FR Doc. 93–24842 Filed 10–5–93; 2:31 pm]

BILLING CODE 7555–01–M

federal register

Thursday
October 7, 1993

Part II

Department of Health and Human Services

Social Security Administration

20 CFR Parts 404 and 416

Federal Old-Age, Survivors and Disability Insurance and Supplemental Security Income; Listing of Impairments—Respiratory System; Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 416

[Regulations No. 4 and 16]

RIN 0960–AB00

Federal Old-Age, Survivors and Disability Insurance and Supplemental Security Income; Listing of Impairments—Respiratory System

AGENCY: Social Security Administration, HHS.

ACTION: Final rules.

SUMMARY: These amendments revise the criteria in the Listing of Impairments (the listings) that we use to evaluate respiratory impairments for adults and children who claim Social Security benefits or supplemental security income (SSI) payments based on disability under title II and title XVI of the Social Security Act (the Act). The revisions reflect advances in medical knowledge, treatment, and methods of evaluating respiratory impairments.

EFFECTIVE DATE: These rules are effective October 7, 1993.

FOR FURTHER INFORMATION CONTACT: Cassandra Bond or Alicia Matthews, Legal Assistants, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1794 or 965–1713.

SUPPLEMENTARY INFORMATION: The Act provides, in title II, for the payment of disability benefits to workers insured under the Act. Title II also provides for the payment of child's insurance benefits for persons who became disabled before age 22 and widow's and widower's insurance benefits based on disability for widows, widowers and surviving divorced spouses of insured individuals. In addition, the Act provides, in title XVI, for SSI payments to persons who are disabled and have limited income and resources. For workers insured under title II, for children of workers insured under title II who become disabled before age 22, for widows, widowers and surviving divorced spouses claiming widow's or widower's insurance benefits based on disability under title II, and for adults claiming SSI benefits based on disability, "disability" means inability to engage in any substantial gainful activity. For children under the age of 18 who apply for SSI payments based on disability, "disability" means that the child's physical or mental impairment(s) is of comparable severity to an impairment that would make an adult (a person age 18 or older) disabled. Under both title II and title XVI, "disability" must be by reason of a medically determinable physical or mental impairment or combination of impairments which can be expected to result in death or which has lasted or can be expected to last for a continuous period of at least 12 months.

Under the sequential evaluation process, if the evidence shows that an individual is not engaging in substantial gainful activity and has an impairment(s) that meets the statutory duration requirement, is severe, and meets or equals in severity a listing criteria, the individual is disabled. (In the case of a child applying for SSI, this includes consideration of whether the child's impairment(s) is functionally equivalent to a listed impairment, as defined in § 416.926a.) If the impairment(s) does not meet or equal in severity any listing criteria, no conclusion regarding disability is made. Rather, we evaluate all signs, symptoms, laboratory findings, and other evidence to determine whether the person is disabled. For an adult, we assess residual functional capacity and, based on that assessment, determine whether the claimant retains the capacity to perform past relevant work, or, if not, whether he or she retains the capacity to perform any other work considering his or her residual functional capacity, age, education, and work experience. If not, the adult is disabled. For a child under the age of 18 applying for SSI, we individually assess the child's ability to function to determine whether there is a substantial reduction in the child's ability to function independently, appropriately, and effectively in an age-appropriate manner. If there is such a substantial reduction, the child is disabled.

Medical criteria for evaluating disability and blindness at the third step of the sequential evaluation processes for adults and children are found in the listings which are set out as appendix 1 to subpart P of part 404 of our regulations. The listings include examples of the most commonly occurring medical conditions for persons who file applications for disability benefits. It describes, for each of 13 major body systems, impairments that are considered severe enough to prevent an individual from engaging in any gainful activity, or in the case of a child under the age of 18 applying for SSI, examples of impairments that are severe enough to prevent a child from functioning independently, appropriately, and effectively in an age-appropriate manner. Most of the listed impairments are permanent or are expected to result in death; in some instances, a specific durational requirement is a part of the medical criteria for the impairment (in addition to the 12-month duration requirement that applies to all impairments that are not expected to result in death).

Appendix 1 consists of two parts, part A and part B. The criteria in part A apply to the evaluation of impairments of adults but may, in some cases, be appropriate for evaluating impairments in children under age 18. Part B contains medical criteria for the evaluation of impairments in children under age 18 when the criteria in part A do not give appropriate consideration to the particular effects of the disease processes in childhood. In evaluating disability for a child under age 18, we use part B first. If the criteria in part B do not apply, then we use the medical criteria in part A, when the criteria are appropriate. To the extent possible, we maintain a structural and content relationship between parts A and B (see §§ 404.1525 and 416.925). When part A criteria are repeated in part B, our intent is to eliminate any question about their application to children.

When we revised the listings on December 6, 1985 (50 FR 50068), we indicated that medical advancements in disability evaluation and treatment and program experience would require that the listings periodically be reviewed and updated. Accordingly, we specified termination dates ranging from 4 to 8 years for each of the specific body system listings. These dates currently appear in the introductory paragraphs of the listings. One extension for the termination date for part A of the respiratory system appeared in the **Federal Register** of November 27, 1991 (56 FR 60059), and extended the original date on which the part A listings would no longer be effective from December 6, 1991, to December 7, 1992. A second extension for the termination date for part A of the respiratory system appeared in the **Federal Register** of December 7, 1992 (57 FR 57665), and extended the termination date to June 7, 1993. A third extension for part A of the respiratory system appeared in the **Federal Register** of June 7, 1993 (58 FR 31906), and extended the date on which the listings would no longer be effective to December 6, 1993. We are now updating the respiratory system listings in both 3.00 (part A) and 103.00 (part B), and extending the effective date of these revised listings for 7 years from the date of their publication. Therefore, 7 years after publication of these final rules, these regulations will cease to be effective, unless they are extended by

the Secretary or revised and promulgated again.

We published these regulations in the **Federal Register** (56 FR 52231) as a Notice of Proposed Rulemaking (NPRM) on October 18, 1991. Interested persons, organizations, Government agencies, and other groups were given 60 days to comment. The comment period ended December 17, 1991. We received letters from 11 commenters. These comments are addressed below.

Explanation of the Final Rules

We have updated these final rules to provide criteria for evaluating respiratory impairments at the listing level of severity reflecting state-of-the-art medical science and technology. The basic approach underlying the final respiratory system listings is to place less emphasis on the diagnosis of disease, and to emphasize the impact of the impairment(s) on a person's ability to perform work-related activities or, in the case of a child applying for SSI payments based on disability, on the child's ability to function independently, appropriately, and effectively in an age-appropriate manner.

We revised the respiratory system listings with information we received from individuals recommended by various medical professional groups, including the American Medical Association, the American Thoracic Society, the American Lung Association, the American College of Chest Physicians, the American Society of Internal Medicine, the American College of Physicians, the Cystic Fibrosis Foundation, and the American Nurses Association. We also received information from individual Federal and State representatives who have expertise in evaluating disability claims involving respiratory impairments. We also obtained information from individual pediatric experts to revise the part B listings.

The final listings revise the criteria to encompass disorders for which specific criteria have not been previously published (e.g., sleep-related breathing disorders) and to include state-of-the-art evaluative techniques. All of the techniques (tests, procedures, etc.) cited in the regulations are generally available and are included in the cumulative list of New or Improved Diagnostic Techniques, as published in the **Federal Register** on May 9, 1990, at 55 FR 19357.

The following is a summary of the provisions of the final rules and the changes we have made to the text of the NPRM. Finally, we have made a number of minor editorial changes throughout the rules to correct errors in the NPRM, to make the rules internally consistent, and to conform the style of these listings to our other listings.

Revisions to Part A of Appendix 1

3.00 Preface

In a technical correction, we are deleting the opening statement after the heading because it was redundant. The sentence repeated, almost verbatim, the statement in the third paragraph of the introductory text to appendix 1 that the respiratory system listings will no longer be effective 7 years after publication of the final rules unless extended by the Secretary or revised and promulgated again. In addition, our inclusion of the statement in 3.00 was inconsistent with all of the other listings sections except 12.00, the only other section in part A and part B that repeated the expiration date in its opening text.

3.00A Introduction. We have modified the first paragraph of final 3.00A and made conforming changes to the first paragraph of 103.00A so that both paragraphs explain that the listings for respiratory impairments describe impairments based on symptoms, physical signs, laboratory test abnormalities, and response to a regimen of treatment which may have been prescribed by a treating source. The proposed rules referenced a regimen of therapy; however, for clarity the word "therapy" has been changed to the broader term "treatment" in this paragraph and throughout these regulations. No substantive change is intended by this technical correction.

In addition, as a result of public comments, we deleted the last sentence of the first paragraph of proposed 3.00A which indicated that the functional evaluation of the severity and duration of a respiratory disorder should be performed only after prescribed therapy has been instituted and sufficient time has elapsed for the results to be evaluated. We have, however, added a new second paragraph to 3.00A and 103.00A to indicate that, when there is evidence of medically prescribed treatment, the clinical record must include a description of the treatment prescribed by the treating source and response, in addition to information about the nature and severity of the impairment. This paragraph notes that it is important to document the prescribed treatment and response because this medical management may have improved the individual's functional status.

We added the third paragraph in response to comments which pointed out that some people do not receive treatment, and that some do not have an ongoing relationship with the medical community. The new paragraph explains that an individual who does not receive treatment may or may not be able to show the existence of an impairment that meets the listings. Even if an individual does not show that he or she has an impairment that "meets" the criteria of the listings, the individual may still have impairments that are "equal" in severity to a listed impairment or he or she may be found disabled at the last step of the sequential evaluation process. To be consistent with the adult rules, we also added a third paragraph to final 103.00A of the preface to the childhood listings; the paragraph contains provisions similar to the adult rules.

In the third sentence of the fourth paragraph when we discuss the evidence needed to establish the presence of chronic pulmonary disease, we have added other appropriate imaging techniques after x-ray to recognize there are now other technologies used for imaging. We have made a similar change in the first paragraph of 3.00F1, and in 3.00F3.

We also have included in the sixth paragraph a discussion of the documentation which may be needed with a diagnosis of diffuse interstitial fibrosis or clinical findings suggesting cor pulmonale, such as cyanosis or secondary polycythemia. This documentation may require measurement of carbon monoxide diffusing capacity or arterial blood gases at rest and infrequently during exercise in addition to evidence of the clinical evaluation and chest x-ray or other appropriate imaging techniques and spirometry. We also clarified the discussion of pulmonary vascular disease with its specific documentation requirements to state that right heart catheterization with angiography and/or direct measurement of pulmonary artery pressure may have been done. We further state that when performed, the results should be obtained because the results may be useful in evaluating impairment severity.

The final paragraph of 3.00A is a new paragraph that we added to clarify that the listings can never be used to deny claims. It is a reminder that claimants whose impairments do not "meet" any listing may still be found to have impairments that are "equal" in severity to a listing, and that the listings can only be used to find a person disabled, but not to find a person "not disabled." The new paragraph stresses the importance of an individualized residual functional capacity assessment,

which may or may not result in a finding of disability, whenever a person's severe impairment(s) does not meet or equal the requirements of a listing. To be consistent with the adult rules, we also added a final paragraph to 103.00A of the preface to the childhood listings emphasizing the importance of equivalence determinations and individualized functional assessments when childhood impairments do not meet a listing.

3.00B Mycobacterial, Mycotic, and Other Chronic Persistent Infections of the Lung. The final rules in 3.00B include other chronic persistent infections of the lung, in addition to mycobacterial and mycotic infections. We removed, without replacement, the proposed last sentence of this section, which indicated that chronic pulmonary infection occurring in the setting of immunodeficiency should be evaluated under the criteria for the appropriate underlying disorder because we believe it to be unnecessary. Our adjudicators know that we have separate criteria for the evaluation of impairments of the immune system, including human immunodeficiency virus.

3.00C Episodic Respiratory Disease. In 3.00C, we specify the documentation requirements for episodic respiratory disease. Documentation must include information relating to the adherence to a prescribed therapeutic regimen, thus, again, serving to emphasize the importance of treatment that the claimant is expected to have received. The documentation requirements define the severity of an attack fulfilling the intensity component of the listing criteria, and define hospital admissions as inpatient hospitalizations for longer than 24 hours. Based upon a public comment which questioned the need for spirometric results between attacks of episodic respiratory diseases (asthma, cystic fibrosis, and bronchiectasis), we clarified that this rule pertains only to cases of asthma, as explained in more detail in the public comments section.

3.00D Cystic Fibrosis. Paragraph D is being added to the introductory material in 3.00 to recognize the increasing number of children with cystic fibrosis surviving to adulthood. The adult listings, therefore, explicitly recognize this condition, and in the first sentence, we indicate that this disorder may affect either the respiratory or digestive body systems or both. We provide a description of cystic fibrosis, including information concerning the proper diagnostic approach. In response to public comments, we added a reference to the medical literature which describes the diagnostic test (i.e., the quantitative pilocarpine iontophoresis sweat test). We also add that there are two methods of sweat collection, the Gibson-Cooke and Wescor Macroduct systems; however, to establish the diagnosis of cystic fibrosis, the sweat sodium or chloride content must be analyzed quantitatively using an acceptable laboratory technique. The pilocarpine method, the specifications for which are published by the Cystic Fibrosis Foundation, is an acceptable testing procedure. The pilocarpine method has the lowest false positive and false negative results of any sweat collection technique that is currently available to confirm the diagnosis of cystic fibrosis. The test is available in all Cystic Fibrosis Centers affiliated with the Cystic Fibrosis Foundation, as well as in major university medical centers. In addition, we have identified and included another test for diagnosing cystic fibrosis. It is the genetic test for homozygosity of the cystic fibrosis gene and is known as "CF gene mutation analysis."

In the penultimate sentence, in response to a public comment, we reference the digestive body system as the other nonpulmonary body system which could be affected by cystic fibrosis. We clarified the last sentence to indicate that the combined effects of the involvement of the respiratory and digestive body systems must be considered in case adjudication.

3.00E Documentation of Pulmonary Function Testing. For consistency with the terminology used throughout these regulations, in the title and in the second sentence, we have changed "ventilatory" function testing to "pulmonary" function testing. We have made a similar change in 103.00B. We expanded 3.00E, designated as 3.00D in our prior rules, to include more specific requirements for documentation of pulmonary function tests. The revision is consistent with published standards for test performance approved by the American Thoracic Society in the "American Review of Respiratory Disease," Vol. 136, No. 5: pp. 1285–1298, 1987, and the National Institutes of Health Epidemiology Standardization Project. Criteria are outlined specifying what constitutes an acceptable study. These criteria include the use of the back-extrapolation technique for zero time, the requirement for early onset of peak flow rates, and specific criteria for reproducibility. Performance standards require that at least three acceptable spirograms be obtained, two of which are reproducible. Comprehensive standards are provided for calibration of instruments other than those that generate the spirogram by direct pen linkage to a mechanical displacement-type spirometer. Three levels of calibrations are required for primary flow sensing devices because some of these devices are not linear over the wide range of flow rates which occur in the spirogram. These requirements for accuracy and calibration are consistent with the standards for spirometers endorsed by the American Thoracic Society.

The maximum voluntary ventilation requirement in our prior rules was deleted as a criterion because it was considered to be effort-dependent, infrequently used in clinical practice, and poorly standardized among laboratories. In the prior rules, the major usefulness of the maximum voluntary ventilation requirement was that it provided confirmation of the degree of impairment indicated by the one second forced expiratory volume (FEV_1) when the test was of less than optimal quality. These final listings incorporate specific requirements to ensure the quality of forced expiratory spirometry studies.

We added two new sentences to the second paragraph of 3.00E and 103.00B to indicate first that pulmonary function studies should not be performed unless the claimant's clinical status is stable. The second sentence indicates that wheezing *per se* does not necessarily preclude performance of a pulmonary function test because wheezing is common in asthma, chronic bronchitis, or chronic obstructive pulmonary disease. Also, in the last sentence of this paragraph, we defined "most stable state of health" as "any period in time except during or shortly after an exacerbation."

In response to a public comment, we added language to the last sentence in the fifth paragraph of 3.00E and 103.00B to explain that the calibration tracings, as well as the spirograms, must be presented in a volume-time format at a speed of at least 20 mm/sec and a volume excursion of at least 10 mm/liter to permit independent evaluation.

3.00F Documentation of Chronic Impairment of Gas Exchange. In 3.00F1, we include a detailed description of the specifications for performance of the diffusing capacity of the lungs for carbon monoxide study to evaluate impairment of gas exchange. These listings place greater emphasis on the use of diffusing capacity of the lungs for carbon monoxide study as a measure of gas exchange prior to consideration of purchasing arterial gas analysis and exercise testing. The use of a diffusing capacity of the lungs for carbon monoxide study to estimate gas exchange impairment is based on state-of-the-art information that diffusing capacity is an important indicator of gas exchange and work capacity, and is an

important predictor of mortality in lung disorders. The performance criteria for the test have been standardized by the American Thoracic Society in the "American Review of Respiratory Disease," Vol. 136, No. 5: pp. 1299–1307, 1987, and the standardization of criteria has been incorporated into the listings.

In the last sentence of the first paragraph of 3.00F1, we clarified the language on purchase of a diffusing capacity of the lungs for carbon monoxide study to indicate that purchase of a diffusing capacity of the lungs for carbon monoxide study may be appropriate when there is a question of whether an impairment meets or is equivalent in severity to the listing, and the claim cannot otherwise be favorably decided.

We provide criteria in 3.00F2 for resting arterial blood gas studies. In 3.00F2 and 3.00F3, we also specify that before purchase of arterial blood gas studies at rest or during exercise, a program physician, preferably one with experience in the care of patients with pulmonary disease, must review all clinical and laboratory data in the record to determine whether obtaining the test would present a significant risk to the individual. In 3.00F2, we also state that arterial blood gas studies at rest or on exercise should be purchased only from a laboratory certified by a State or Federal agency.

In the second paragraph of 3.00F2 and 103.00C1, we clarified our language on purchase to indicate that purchase of resting arterial blood gas studies may be appropriate when there is a question whether an impairment meets or is equivalent in severity to a listing and the claim cannot otherwise be favorably decided. To further clarify our intent on the purchase of resting arterial blood gas studies, we added a sentence to the second paragraph of 3.00F2 that indicates if the results of a diffusing capacity of the lungs for carbon monoxide study are greater than 40 percent of predicted normal but less than 60 percent of predicted normal, purchase of resting arterial blood gas studies should be considered.

In 3.00F3, we reorganized the first paragraph as it appeared in the NPRM to indicate that arterial blood gas studies with exercise may be appropriate in cases in which there is documentation of chronic pulmonary disease, but full development, short of exercise testing, is not adequate to establish if the impairment meets or is equivalent in severity to a listing, and the claim cannot otherwise be favorably decided. As a result of this reorganization, we deleted the fourth sentence of the proposed rule because it was redundant in light of the revision to the first sentence. Exercise testing with blood gas analysis should only be done after the diffusing capacity of the lungs for carbon monoxide study has been estimated and the documentation has been found to be inadequate for the evaluation of the severity of functional impairment. In 3.00F3, we deleted the language regarding a FEV_1 greater than 2.5 liters from the second paragraph of the proposed rule because it was medically inaccurate in that this finding is not a sensitive marker for absence of a gas exchange impairment. We have, however, retained language that when an individual has a diffusing capacity of the lungs for carbon monoxide greater than 60 percent of predicted normal, an exercise blood gas study generally would not be needed.

In 3.00F4, we revised the methodology for performance of an exercise test to include use of measurements at two exercise levels if the individual can satisfactorily complete the lower level of exercise at approximately 5 METs. In the third sentence, we reflect the weight in both pounds and kilograms for clarity. We expanded the last sentence of the fifth paragraph to indicate that the statement the laboratory provides concerning why the claimant failed to complete 4 to 6 minutes of steady state exercise, provides information which may be useful for determining whether effort was limited by lack of effort or another impairment which affected the claimant's ability to exercise.

3.00G Chronic Cor Pulmonale and Pulmonary Vascular Disease. In 3.00G, we provide a more detailed description of chronic cor pulmonale and pulmonary vascular disease for which specific new criteria are provided in 3.09. We clarified that the establishment of an impairment attributable to irreversible cor pulmonale secondary to chronic pulmonary hypertension requires documentation by signs and laboratory findings of right ventricular overload or failure. This was the intent of the language which appeared in the NPRM. We also clarified that hypoxemia may accompany heart failure and is also a cause of pulmonary hypertension and also that polycythemia with an elevated red blood cell count and hematocrit may be found in the presence of chronic hypoxemia.

3.00H Sleep-Related Breathing Disorders. We are also adding 3.00H to provide a description of sleep-related breathing disorders, which are not addressed in the prior listings. Reference criteria are provided for the evaluation of these disorders in 3.10. In response to a public comment to provide more detailed information on the effect of sleep apnea on an individual, we have added a sentence recognizing that because daytime sleepiness can affect memory, orientation, and personality, a longitudinal treatment record may be needed to evaluate mental functioning. We also added a sentence to clarify that chronic hypoxemia due to episodic apnea may cause pulmonary hypertension. Daytime somnolence may be associated with disturbance in cognitive vigilance. Impairment of cognitive function may be evaluated under organic mental disorders (12.02). If the sleep disorder is associated with gross obesity, evaluation will be under the applicable obesity listing.

Listings

3.01 Category of Impairments, Respiratory System

3.02 Chronic Pulmonary Insufficiency. Paragraph A of 3.02 and table I now only require one-second forced expiratory volume values rather than both FEV_1 and maximum voluntary ventilation results. The FEV_1 values are substantively unchanged from our prior rules. Table I, however, is constructed so that rounding of reported volume values will not be necessary. For clarity, the heights are shown in centimeters and inches rather than just inches. In addition, in paragraph A, for clarity, we have made a nonsubstantive change from the NPRM and added "due to any cause" after the opening phrase, "Chronic obstructive pulmonary disease." This phrase is also in our prior rules. For consistency, we included it in 103.02A. For clarity, we also added, in parentheses, the cross reference to 3.00E for guidance on determining the height of an individual with marked spinal deformity.

In the first sentence of 3.02B, we added "due to any cause" after "chronic restrictive ventilatory disease" and in 103.03B. In final 3.02, paragraph B has been clarified by adding a cross reference to 3.00E for cases of marked spinal deformity rather than repeating, as we did in the NPRM, the same information that is already contained in the introductory material in 3.00E. Table II is modified so that rounding of reported forced vital capacity values will not be necessary and the heights are shown in both inches and centimeters.

Final 3.02C, provides criteria for evaluating a gas exchange abnormality based on a diffusing capacity of the lungs for carbon monoxide study, arterial blood gas studies at rest or

exercise testing with measurement of arterial blood gas studies. The diffusing capacity of the lungs for carbon monoxide criteria have been modified from the values in our prior rules (less than 9 ml/min/mm Hg, or less than 30 percent of the predicted normal value) to less than 10.5 ml/min/mm Hg, or less than 40 percent of the predicted normal value. This revision represents updated information from the American Thoracic Society correlating these values for diffusing capacity of the lungs for carbon monoxide with work capacity and mortality. ("American Thoracic Society Statement on Evaluation of Impairment/Disability Secondary to Respiratory Disease", "American Review of Respiratory Disease," Vol. 133, No. 6, pp. 1205–09, 1986.) Because of the variation in published predicted values, the listing criteria specify that the source of the predicted values should be reported or, if not published, should be submitted in the form of a table or nomogram.

Paragraph C2 of 3.02 provides criteria for resting arterial blood gas studies. Resting arterial hypoxemia is associated with increased mortality and development of pulmonary hypertension and cor pulmonale. Based upon a public comment that there could be misapplication of this listing, we have included again tables III-A, III-B, and III-C from the prior listing 3.02 to provide for the evaluation of hypoxemia at three altitudes. We have deleted the proposed criteria for evaluating hypoxemia at two altitudes (i.e., less than 4000 feet and 4000 feet and greater). The correction for hypoxemia for carbon dioxide tension is contained in tables III-A, III-B, and III-C. The requirement in paragraph C2 that the two measurements of resting arterial oxygen tension (PO_2) be separated by an interval of three or more weeks within a six-month period in order to meet the requisite level of hypoxemia is based upon the degree of technical and biologic variability of arterial oxygen levels and is consistent with standards used in studies on mortality and performance in persons with chronic lung disease.

Paragraph C3 has been revised based upon public comments to reflect arterial blood gas values of PO_2 and simultaneously determined PCO_2 during steady state exercise with a parenthetical statement defining the exercise level and referencing to tables III-A, III-B, and III-C.

3.03 Asthma. In 3.03, paragraph B provides that hospitalization for longer than 24 hours for control of asthma counts as two asthma attacks for purposes of meeting the frequency requirement of at least one attack every 2 months, or at least six times a year. Paragraph B also states that medical evidence of record over a period of at least 12 consecutive months must be used to determine the frequency of attacks.

3.04 Cystic Fibrosis. Listing 3.04 has been added to establish criteria for evaluating cystic fibrosis in adults because an increasing number of individuals with this disease are now living into adulthood. The listing provides new criteria for the evaluation of the pulmonary manifestations of this disorder. Based upon public comments, we revised 3.04A to include a separate table (table IV) to be used only for the evaluation of cystic fibrosis in adults, as is done in the childhood rules in 103.04A. We also added 3.04C to include those criteria shown in 103.04C because some adults could manifest the findings shown.

3.06 Pneumoconiosis. Listing 3.06 is a cross-reference listing by which pneumoconiosis demonstrated by appropriate imaging techniques can be evaluated under the appropriate criteria in listing 3.02.

3.07 Bronchiectasis. Bronchiectasis, 3.07, is somewhat similar to the clinical aspects of asthma and cystic fibrosis in that the course may be characterized by exacerbations and remissions. Therefore, a new paragraph B is provided to make the criteria for episodes of bronchitis or pneumonia or hemoptysis or respiratory failure consistent with 3.03 (asthma) and 3.04 (cystic fibrosis). Paragraph B indicates that episodes of bronchitis or pneumonia or hemoptysis or respiratory failure requiring physician intervention at least six times a year will meet the requirements of the listing.

3.08 Mycobacterial, Mycotic, and Other Chronic Persistent Infections of the Lung. In response to a public comment, we have combined proposed 3.08 and 3.09 into one reference listing and retitled it as shown above.

3.09 Cor Pulmonale Secondary to Chronic Pulmonary Vascular Hypertension. Because we combined proposed 3.08 and 3.09 into final 3.08, we have renumbered this listing as 3.09. More specific criteria are provided requiring the establishment of an impairment due to chronic cor pulmonale. Additional criteria to those in 4.02 are provided to facilitate adjudication when resting arterial blood gases have been measured and hypoxemia fulfills 3.02C2. Also, we have clarified paragraph B for arterial hypoxemia to cross-refer to 3.02C2 for the evaluation of arterial hypoxemia. We have revised 3.09C to merely reference 4.02 so that this listing will remain current even if future revisions are made to the 4.02 criteria.

3.10 Sleep-related Breathing Disorders. Based upon the reorganization discussed previously, this listing is now designated 3.10 (3.11 in the NPRM). This is a new listing for sleep-related breathing disorders and refers to the persistent functional consequences of this condition. When a sleep-related breathing disorder limits or precludes work activity, the physiologic basis for the impairment may be chronic cor pulmonale, or a disturbance in cognitive performance. Some individuals with this disorder are morbidly obese. Reference listings are provided for the evaluation of these manifestations.

Revisions to Part B of Appendix 1

103.00 Preface

Consistent with our discussion of revisions to part A of appendix 1, we have deleted the language we proposed in the NPRM which repeated in 103.00 the sunset provision for the respiratory listings in part B. This statement in the childhood rules would not only have been redundant of the opening text, but would also have made 103.00 inconsistent with all other listings sections except 12.00, the only other section that repeats the sunset provision in its opening text.

103.00A Introduction. In addition to the changes explained in 3.00A, we added a final sentence to the first paragraph to indicate that reasonable efforts should be made to ensure evaluation of the child's claim by a program physician specializing in childhood respiratory impairments or a qualified pediatrician. We also added introductory material in the third paragraph of 103.00A to provide a discussion that evaluation should include consideration of the adverse effects of respiratory disease in all relevant body systems, and especially on the child's growth and development or mental functioning.

103.00B Documentation of Pulmonary Function Testing. We have retitled 103.00B to be consistent with 3.00E. We removed the reference to 103.10 contained in the NPRM because there was no such listing in the NPRM or in these final regulations. The updated standards for pulmonary function testing and the rationale for including them are essentially the same as those under 3.00E. A statement describing the child's ability to understand directions and the child's effort and cooperation in the testing should still be included as part of the

report. Criteria are outlined specifying what constitutes an acceptable study. These criteria include the use of the back-extrapolation technique for zero time, the requirement for early onset of peak flow rates, and specific criteria for reproducibility. Performance standards require that at least three acceptable spirograms be obtained, two of which are reproducible. Criteria are included for when spirometry should be repeated after administration of an aerosolized bronchodilator. Comprehensive standards are provided for calibration of instruments other than those that generate the spirogram by direct pen linkage to a mechanical displacement-type device. Three levels of calibrations are required for primary flow sensing devices because some of these devices are not linear over the wide range of flow rates which occur in the spirogram.

As a result of a public comment, we eliminated the discussion on rounding and constructed the tables similar to the adult tables.

In response to a public comment, we have added a new seventh paragraph to explain that performance of a pulmonary function test is appropriate only when the child is capable of performing reproducible forced expiratory maneuvers. This capability usually occurs around age 6.

103.00C Documentation of Chronic Impairment of Gas Exchange. This section has been redesignated 103.00C (it was proposed 103.00B2) because we decided to reorganize these rules to be consistent with the rules in part A. In 103.00C1, "Arterial blood gas studies (ABGS)," we provide the documentation requirements for chronic impairment of gas exchange and guidance regarding the performance of blood gas studies. In 103.00C2, we provide guidance on the use of pulse oximetry as a substitute for arterial blood gas testing in children under age 12. The proposed rules had age 3 as the cut-off point, but based upon a public comment and advances in medical science, we increased the age to 12. Based on a public comment, we also added a statement at the end of the first paragraph to indicate that the report of the pulse oximetry test should include a statement on the child's cooperation during the test. The pulse oximetry provision for documenting gas exchange abnormalities is necessary because arterial blood samples are difficult to obtain in children under 12 years of age, and many children being evaluated will require oxygen periodically, during which times blood gas determinations cannot be made. Further, invalid values can result because the procedure is painful and frequently causes crying. Pulse oximetry has been established as a safe and relatively painless procedure. It is more repeatable than ABGS and more accurate than transcutaneous techniques. It is becoming the state-of-the-art procedure for determining gas exchange abnormalities in young children and is as available in hospitals and clinics as are blood gas determinations.

For clarity, in the last sentence of 103.00C1, we indicated that the program physician who determines whether to purchase a resting arterial blood gas study should preferably be one experienced in the care of children (the NPRM indicated patients) with pulmonary disease.

For consistency with the adult rules and based upon a public comment, we added a new paragraph to 103.00C1 and C2 which discusses when purchase of a resting ABGS or oximetry may be appropriate (i.e., when there is a question of whether an impairment meets or is equivalent in severity to a listing, and the claim cannot otherwise be favorably decided).

103.00D Cystic Fibrosis. This section has been redesignated 103.00D (it was 103.00C in the NPRM) because of the reorganization discussed above. Based upon a public comment, we revised the first sentence to indicate that this disorder can affect either the respiratory or digestive body systems or both, as well as impact the child's growth and development. In response to public comments, we have provided additional guidance on tests which can be used for the diagnosis of cystic fibrosis. The quantitative pilocarpine iontophoresis procedure for collection of sweat content must be utilized. We note that the Gibson-Cooke and Wescor Macroduct methods are acceptable. The sweat sodium or chloride content must be analyzed quantitatively using an acceptable laboratory technique. This pilocarpine method, published by the Cystic Fibrosis Foundation, is an acceptable testing procedure as it has the lowest false positive and false negative results of any sweat collection technique that is currently available to confirm the diagnosis of cystic fibrosis. The test is available in all Cystic Fibrosis Centers affiliated with the Cystic Fibrosis Foundation, as well as in major university medical centers. In addition, we are including another diagnostic technique which is a genetic test for homozygosity of the cystic fibrosis gene and is called "CF gene mutation analysis." Most children with suspected cystic fibrosis are referred to these centers for the diagnosis, evaluation, and ongoing management of this disorder. We clarified the last sentence contained in 103.00C of the NPRM to indicate that the combined effects of the involvement of the respiratory and digestive body systems, as well as the impact of the disorder on a child's growth and development should be considered in case adjudication.

103.00E Bronchopulmonary Dysplasia (BPD). This section has been redesignated 103.00E (it was 103.00D in the NPRM) because of the reorganization above. We added new material to the introduction in 103.00E to provide an explanation of bronchopulmonary dysplasia (BPD) and the requirements for establishing the diagnosis. BPD was first reported in 1967 and had a very high mortality rate. Improvements in technology and patient management have resulted in increased survival and recovery of premature infants. Although the majority of infants with BPD do recover, some progress to chronic pulmonary disease, resulting in severe respiratory and related functional impairments.

103.01 Category of Impairments, Respiratory System. The revisions to the part B respiratory listings maintain structural and content comparability with part A to the extent applicable. As in the sections of 103.00, there were a few instances in which we were able to incorporate language from the adult rules into the childhood listings language we proposed in the NPRM, or to make the same or similar revisions in both parts for even greater consistency between parts A and B.

103.02 Chronic Pulmonary Insufficiency. In a technical, nonsubstantive change, we have redesignated the listing we proposed as 103.14 in the NPRM as final 103.02 and revised the final listing in order to preserve structural and content comparability with part A. Thus, final 3.02 and 103.02 now both list impairments that fall under the heading of chronic pulmonary insufficiency, including chronic obstructive and chronic restrictive pulmonary impairments.

We revised final 103.02A from the language in proposed 103.14A to confine its criteria to chronic obstructive pulmonary disease due to any cause, in order to maintain structural and content comparability with 3.02A. For the same reason, we moved table I from 103.03 of the NPRM to final 103.02A. Table I is constructed so that rounding of reported volume values will not be necessary. For clarity, the heights are shown in centimeters and inches. We also added a statement, like the statement in the corresponding adult rule, that the height in the table refers to height without shoes and

added a cross reference to 103.00B for the discussion of measurement of children who have marked spinal deformity. Similarly, we revised the first column heading in table I to indicate that the height is without shoes. None of these revisions is substantive. We have merely incorporated the guidance that was already in proposed 103.00B directly into the listing and the table in order to make them clearer and consistent with the analogous adult rule. Finally, we made minor editorial changes to the language of the provision for clarity and consistency with other provisions.

Final listing 103.02B is now applicable to chronic restrictive ventilatory disease due to any cause, and corresponds to adult 3.02B. As in final 103.02A, we incorporated the guidance on height and a cross reference to 103.00B. Because of the restructuring of the rules, we redesignated table III of proposed 103.14 as table II in final 103.02B and modified it so that rounding of reported forced vital capacity values will not be necessary. The heights are shown in centimeters and inches.

Final 103.02 A and B, as in the NPRM, still provide a means for evaluating chronic pulmonary impairments not covered under 103.03 and 103.04.

Because we divided proposed 103.14 A into two listings (final 103.02 A and B), we redesignated the subsequent paragraphs of the rule. Paragraphs B through G of the proposed rules are, therefore, paragraphs C through H in the final listing. Paragraphs C, D, and E of final 103.02 (paragraphs B, C, and D of proposed 103.14) were developed specifically for the evaluation of children who have experienced respiratory distress in the neonatal period and subsequently develop chronic lung disorders such as BPD. However, other conditions such as congenital or acquired defects of the larynx and trachea, neuromuscular disorders and spinal cord injuries affecting respiration, and central nervous system mediated hypoventilation can also be evaluated under these listings.

We made a technical correction to listings 103.02C and 103.02E5 to make these regulations internally consistent. In these regulations, we changed the word "continuous" to "frequent."

In paragraphs 103.02 E6 and F2, we clarified the language as a result of a public comment that we should define "poor weight gain." We revised final listings 103.02 E6 and F2 to provide criteria for the evaluation of involuntary weight loss or failure to gain weight at an appropriate rate for age. In this way, we not only include children who have stopped gaining weight but also children who do not gain enough weight. We also explicitly provide for the possibility that a child will actually lose weight. Paragraphs F and G of final 103.02 (paragraphs E and F of proposed 103.14) specify other criteria for assessing manifestations of a pulmonary impairment in children, such as recurrent lower respiratory infection, acute respiratory distress, chronic hypoventilation or chronic cor pulmonale. In paragraph F, we clarified that the two hospital admissions within a 6-month period must be required and each must be for more than 24 hours.

Paragraph H of final 103.02 (paragraph G of proposed 103.14) provides criteria for evaluating interference with linear growth as a manifestation of lung disease. In a minor change from the NPRM, we revised the reference from a reference to 100.02 to a more general reference to the growth impairment listings in 100.00. In this way, 103.02H will remain current regardless of any revisions we may make to the listings in 100.00.

103.03 Asthma. Paragraphs A and B of 103.03 ensure greater structural and content relationship with paragraphs A and B of 3.03 in part A. Paragraph A of 103.03 and the values specified in table I (following final 103.02A) provide for the use of pulmonary function testing, and paragraph B of 103.03 provides the clinical criteria for assessing pulmonary insufficiency. These listings are intended to represent the childhood counterparts of the proposed paragraphs A and B of 3.03 in part A. Because we moved table I from proposed 103.03 into final 103.02A, we have revised the text of final 103.03A to indicate the location of table I.

Paragraph C of 103.03 recognizes that some children have persistent symptomatology related to bronchial asthma that may not meet or equal in severity the listing criteria in 103.03 A and B, in part because of their drug regimen. In response to a public comment, we revised 103.03C. We deleted proposed 103.03C2 (barrel or pigeon chest deformity related to underlying pulmonary dysfunction) because these were merely descriptive anatomical deformities subject to various interpretations, and we renumbered proposed 103.03C3 to 103.03C2. We also revised 103.03C to now require one of the two criteria.

Paragraph D to 103.03 provides that a growth impairment related to asthma should be evaluated under the criteria in 100.00.

103.04 Cystic Fibrosis. Paragraph A of 103.04 incorporates and revises the criteria in paragraphs A and B of 103.13 of our prior rules, and revises the FEV_1 values. The values in our rules now being updated were set at 50 percent of predicted normal, and the final values have been set at 60 percent of predicted normal. The higher values in the final rules are more consistent with studies that show good correspondence between clinical scoring systems based on the manifestations of lung disease and FEV_1 values set at the higher standard. Such scoring systems primarily reflect pulmonary status as measured by physical pulmonary findings, including radiographic evidence, nutritional status and level of activity. As a result of this change, forced expiratory pulmonary testing will permit more reliable evaluation of a functional impairment. Consistent with the revision of the FEV_1 threshold necessary to establish a disabling impairment, the extent of clinical evidence needed under paragraph B of 103.04 for children in whom pulmonary function testing cannot be performed will now require that two of three listed manifestations be present, rather than all three as the rules being updated required. Table III is constructed so that rounding of reported volume values will not be necessary and the height is shown in centimeters and inches.

Paragraph C of 103.04 provides for the evaluation of persistent pulmonary infections accompanied by superimposed, recurrent, symptomatic episodes of increased bacterial infection requiring intravenous or nebulization antimicrobial treatment. We added nebulization treatment because that is becoming more widely used.

Paragraph D was added and provides for the evaluation of episodes of bronchitis, pneumonia, hemoptysis, or respiratory failure. This is a technical change which adds to the childhood listings of these manifestations of cystic fibrosis which had been included only in the proposed adult listings.

Paragraph E of 103.04 provides that a growth impairment related to cystic fibrosis should be evaluated under the criteria in 100.00.

Public Comments

Following the publication of the NPRM in the **Federal Register**, we received 11 letters containing comments pertaining to the changes we proposed. The letters came primarily from advocates of the rights of individuals with respiratory disease (including both legal advocates and medical associations).

We have carefully considered all of the comments and have adopted many of the recommendations. These changes are identified in the following discussion of issues that were raised in the comments.

A number of the comments were quite long and detailed. Of necessity, therefore, we have condensed, summarized, or paraphrased them. However, we have tried to express everyone's views adequately and to respond to all of the relevant issues raised. There were also a few comments that we do not address below; this is because they were minor editorial comments pointing out typographical errors, or administrative matters that are not appropriate to the final rules.

For ease of reference, we have organized the comments and responses as follows: We first address general comments, i.e., comments that are either about the rules as a whole or that apply to more than one section of the rules. We then address the remaining comments, which pertain to specific sections of the rules. The section references in the headings below refer to the final rules. In those instances in which we changed the section numbers or headings in the final rules, we provide both the NPRM and final references in the text of the comment and response.

General Issues

Comment: A commenter thought that the proposed 7-year expiration date for these rules was too long and recommended a 5-year period because rapidly developing medical technologies could make these listings obsolete.

Response: We did not adopt the comment because we are not bound to wait 7 years before promulgating new rules. If there are medical advances that should be reflected in our regulations, we can at any time before the expiration of the 7-year period revise all or part of the rules.

Comment: A commenter indicated that the requirement for an evaluation period of at least 12 consecutive months in order to determine the frequency of episodes for asthma, cystic fibrosis, and bronchiectasis was much too stringent.

Response: We did not modify our requirement in listings 3.03 and 103.03 (asthma), 3.04 and 103.04 (cystic fibrosis) and 3.07 (bronchiectasis) for an evaluation period of at least 12 consecutive months. These listings are intended to be used in the most medically severe cases of asthma, cystic fibrosis, and bronchiectasis. Severity for these listings is predicated on the frequency and intensity of episodes. We need an evaluation period of at least 12 months to establish a longitudinal clinical picture because there are a number of factors which may require this much time in order to evaluate the functional impact of the impairment on the individual. For example, the therapeutic adjustments or modifications made in the prescribed treatment and the response are variable because some individuals may not respond initially to a particular regimen and will later need frequent adjustments to their treatment regimen. We also need information on the optimal benefit which has been achieved from the treatment modalities. This cannot be assessed until an effective regimen has been achieved and enough time has elapsed for the regimen to be effective. In addition, there may be a seasonal component contributing to the frequency of attacks, and we want to determine from the longitudinal record whether this is a temporary factor contributing to the exacerbation of an episodic respiratory disease. Nonetheless, if disability can be established at any point in the claims development process, we will do so.

3.00 Preface to Part A

3.00A Introduction. Comment: A few commenters were concerned about the requirement that the functional evaluation of the severity and duration of a respiratory disorder should be performed only after prescribed treatment has been instituted and sufficient time has elapsed for the results to be evaluated. They said that many claimants do not have access to this type of treatment or cannot afford medications. These commenters wanted a definition of "sufficient time" because some respiratory impairments respond more quickly to treatment than others and without such a definition, various interpretations could result. Another commenter noted an inconsistency in the preamble language which explained this change and the actual language in 3.00A. The explanation in the preamble indicated that the evaluation of the severity and duration of a respiratory disorder should be performed only after prescribed treatment has been instituted and expected therapeutic benefits have been achieved. The commenter noted that this language difference would require different documentation and evaluation judgments. One commenter wanted to know how to handle situations in which the treating physician advises the patient to stop smoking, yet the claimant continues to smoke.

Response: We deleted the last sentence of the first paragraph of proposed 3.00A and revised the final rules by adding a new second paragraph in final 3.00A, and for consistency, we made the same addition in 103.00A of part B. In the new second paragraph of final 3.00A and 103.00A, we now indicate that many individuals who have "listing-level" impairments will have received the benefit of medically prescribed treatment and that, whenever there is such evidence, the longitudinal clinical record must include a description of the treatment prescribed by the treating source and the response (which would include evidence of the effects of not smoking), in addition to information about the nature and severity of the impairment. Although we agree that people with impairments of lesser severity than those in the listings may not necessarily receive this kind of treatment, we believe that the listing-level impairments are so severe that many, if not most, individuals with such serious impairments will be placed on some sort of medical treatment. We have added a new third paragraph to recognize that there will be some individuals who, despite the existence of a severe impairment, will not have received ongoing treatment. Such an individual may or may not be able to show the existence of an impairment that meets the criteria of a listing. Even if an individual does not show that his or her impairment meets the criteria of a listing, he or she may have an impairment(s) equivalent in severity to one of the listed impairments or be disabled because of a limited residual functional capacity.

We need a longitudinal record to establish the severity and duration of the impairment, especially for those impairments that may be amenable to treatment. Because, as the commenter noted, some respiratory impairments respond more quickly to treatment than others, it is not possible to provide specific criteria as to what is a sufficient period of time. Our rules allow the adjudicator to decide, on a case-by-case basis, if sufficient evidence is available for a determination or decision.

To underscore our policy that we never deny claims because of failure to meet or equal the listings, we added new paragraphs in final 3.00A and 103.00A which stress the necessity for making an equivalence determination when a claimant's impairment(s) does not meet a listing, and for assessing residual functional capacity (or performing an individualized functional assessment) when a claimant's severe impairment(s) neither meets nor equals in severity any listing.

Finally, the rules on failure to follow prescribed treatment are quite complex,

but have one simple underpinning: They do not come into play unless an individual's treating source has prescribed treatment for the individual which the individual is not following. If the individual's treating source has not prescribed treatment, or the individual does not have a treating source, the principle does not apply.

If the issue arises in which a physician advises a claimant to stop smoking, and he or she does not, a judgment will need to be made on a case-by-case basis to determine if the physician's advice was directly related to or part of the treatment regimen for the respiratory impairment.

Comment: A commenter suggested that pulse oximetry or ear oximetry be included in proposed listings 3.02C2 and 3.10B (now renumbered 3.09) for adults and children over the age of 3 as alternative documentation to arterial blood gas studies.

Response: We did not accept the comment to include oximetry results for adults, but we revised the age limit for children to age 12 because, as stated previously, pulse oximetry in children is becoming the state-of-the-art procedure for determining gas exchange abnormalities in young children. We accept pulse oximetry in a child under age 12 because of technical problems with arterial puncture. However, oximetry provides only a single value for measuring the degree to which oxygen is bound to hemoglobin (oxygen saturation). It is not as complete a measure of gas exchange as arterial blood gas studies. Arterial blood gas studies provide information about other factors such as the amount of carbon dioxide in the blood and metabolic status. The evaluation of all these factors provides a more sensitive and specific indicator of a disabling gas exchange impairment.

3.00B Mycobacterial, Mycotic, and Other Chronic Persistent Infections of the Lung. Comment: A commenter welcomed the broadening of the applicability of the listings to consider chronic persistent lung infections other than mycotic or mycobacterial infections, and recommended that the title of listings 3.08 and 3.09 also include this information.

Response: We agree with the commenter that the title of listings 3.08 and 3.09 should be broadened to include chronic persistent lung infections. In addition, because both these listings contain cross references to listing 3.02 and section 3.00B, we combined them into one listing now numbered 3.08 and retitled it, "Mycobacterial, mycotic, and other chronic persistent infections of the lung."

3.00C Episodic Respiratory Disease. Comment: Two commenters suggested that we clarify the requirement for information documenting adherence to a prescribed therapeutic regimen. They questioned whether therapeutic blood levels of theophylline or other drugs will be required as documentation of adherence to prescribed treatment. They also felt that the requirement for spirometric results obtained between attacks appears to be unnecessary if the listing is satisfied by attacks meeting the severity and frequency criteria described in proposed listing 3.03B.

Response: Therapeutic blood levels of theophylline or other drugs are not required because theophylline is not prescribed in all cases. Many factors other than compliance with medication affect blood levels through alterations in absorption and metabolism. We believe that the treating source should be able to supply this information because if an individual truly has a listing-level impairment, it would be unusual for him or her not to be receiving ongoing treatment from a treating source who has longitudinal evidence on the prescribed treatment and response.

We revised the last sentence of 3.00C because the requirement for spirometric results between attacks pertains only to asthma. We now require spirometry between asthma attacks because spirometry showing reversible bronchospasm between attacks with improvement in the one-second forced expiratory volume post bronchodilator is needed to document the severity of asthma.

3.00D *Cystic Fibrosis. Comment:* One commenter suggested that the pilocarpine techniques should be specified in this section as they are in 103.00C.

Response: We agree and have added appropriate language to 3.00D.

Comment: A commenter requested that we specify that the other body systems which can be affected by cystic fibrosis are the gastrointestinal and cardiovascular systems. This commenter also noted that the references to sweat tests in proposed sections 3.00D and 103.00C were insufficient and suggested we include the Gibson-Cooke method and the Wescor Macroduct system.

Response: We partially agree with the first comment and have modified 3.00D and 103.00D to specifically reference the digestive system. In the childhood rules (103.00D), we also indicate that cystic fibrosis can adversely impact a child's growth and development. We did not reference the cardiovascular body system because the manifestation involved would be cor pulmonale, and that is covered by these listings. We included references to the Gibson-Cooke procedure and the Wescor Macroduct system in 3.00D and 103.00D. We indicate that both methods can be used for sweat collection, but the sweat or chloride content must be analyzed quantitatively using an acceptable laboratory technique.

3.00E Documentation of Pulmonary Function Testing. Comment: One commenter suggested that we address the acceptability of pulmonary function tests in the presence of bronchospasm.

Response: We agree with the commenter and have added language to the second paragraph of 3.00E to indicate that pulmonary function studies should not be performed unless the individual's clinical status is stable, and the individual is not, for example, suffering an episodic respiratory attack, acute respiratory infection or other chronic illnesses. We also provide that wheezing, *per se,* does not preclude testing and is commonly found in asthma between attacks, in chronic bronchitis, and in chronic obstructive pulmonary disease.

Comment: One commenter felt that requiring documentation on the manufacturer and model number of the device used to measure and record the spirogram was excessive. The commenter indicated that if the Agency knows about the acceptability of various devices, it should publish such a notice in the **Federal Register** for notice and comment.

Response: We did not accept the comment because the manufacturer and model number of spirometric devices may be helpful particularly when the adjudicator must review an incompletely labeled or calibrated spirogram, and either through program experience or reference materials available to the adjudicator, he or she can determine if the test results are acceptable. It may then be unnecessary to contact the source which performed the test for additional information if the specific information regarding the spirometer is available. We feel the time required to report the manufacturer and model number is less costly and time consuming than the possible recontact. In addition, as clearly indicated in 3.00E, this evidence "should" be stated. There is not an absolute requirement that the manufacturer and model number be a part of the record in order for the claim to be decided. If all the evidence supports a favorable decision, the claim would not be delayed merely to document this piece of evidence. In addition, this is not a new requirement. It is in section 3.00D of the prior rules,

and there have been no problems with this aspect of documentation. We did not accept the comment that if the Agency knows about the acceptability of various devices, we should publish such a list in the **Federal Register** for notice and comment. We do not certify acceptability of spirometers nor do we maintain a list of acceptable devices. Rather, we provide rules defining what data are acceptable for program purposes, and, in turn, we accept the results of spirometry from any equipment that can provide these data.

Comment: The same commenter felt that the calibration tracings, as well as the spirograms, must have a time scale of at least 20 mm/sec and a volume scale of at least 10 mm/liter to permit independent measurement of the spirogram.

Response: We agree with the comment and have added the language to the last sentence of the fifth paragraphs of 3.00E and 103.00E that the spirogram and the calibrations must be presented in a volume-time format at a speed of at least 20 mm/sec and a volume excursion of at least 10 mm/L to permit independent evaluation.

3.00F Documentation of Chronic Impairment of Gas Exchange. Comment: One commenter requested clarification as to when to consider purchase of a diffusing capacity of the lungs for carbon monoxide or resting arterial blood gas studies. The commenter noted that this section says these tests should be purchased in cases in which "there is documentation of chronic pulmonary disease, but the existing evidence, including properly performed spirometry, is not adequate to establish the level of functional impairment." The commenter questioned whether chronic pulmonary disease specifically refers to those diseases that may result in significant impairment of gas exchange and whether this will result in an increase in the need to purchase diffusing capacity of the lungs for carbon monoxide and arterial blood gas studies. The commenter questioned whether there is a specific sequence of development that is required. He said proposed section 3.00F3 indicates that an exercise arterial blood gas study should be purchased only if full development is not adequate to establish the level of functional impairment and goes on to note that full development means the results of spirometry and measurement of diffusing capacity of the lungs for carbon monoxide and resting arterial blood gas studies have been obtained. This implies that both these studies may be purchased before exercise arterial blood gas studies.

Response: It is not possible to provide an exact sequence which should always be followed in purchasing tests. Chronic pulmonary insufficiency, as designated in listing 3.02, may be the result of many disorders which may alter pulmonary function, including, but not limited to, chronic obstructive pulmonary disease, emphysema, chronic bronchitis, bronchiectasis, pneumoconiosis, infection, cystic fibrosis, asthma, pulmonary infiltrative disorders, and pulmonary resection. The important issue in documentation of severity in these disorders is to have sufficient information to identify those individuals with disabling functional loss. Because each disease process may manifest itself differently, each case needs to be independently evaluated in light of the pertinent evidence already in file and the likelihood that a particular study will provide additional information for accurate adjudication. We have, however, modified the language in 3.00F1 and 3.00F2 to clarify that purchase of a diffusing capacity of the lungs for carbon monoxide and arterial blood gas studies may be appropriate when there is a question of whether an impairment meets or is equivalent in severity to a listing and the claim cannot otherwise be favorably decided. We may purchase exercise arterial blood gas studies if full development is not sufficient to establish if the claim meets or is equivalent in severity to a listing and the claim cannot otherwise be favorably decided. "Full development" can include spirometry, diffusing capacity of the lungs for carbon monoxide or resting arterial blood gas studies, available either through evidence of record or purchase, and all other available evidence, including but not limited to medical history, physical examination, chest x-ray or other appropriate imaging techniques, electrocardiogram, hematocrit or hemoglobin.

Listings

3.02 Chronic Pulmonary Insufficiency. Comment: One commenter indicated that arterial blood gases are simplified in the proposed rules and was concerned about eliminating carbon dioxide (CO_2) tension. The commenter believed that even if two tests are done three weeks apart, the test results can be influenced significantly and easily by such things as a little anxiety, or breath holding. In addition, the commenter explained that a person with a resting PaO_2 of 60–65 could be really hypoxic if the individual were hyperventilating. Although the commenter believed that the use of the diffusing capacity of the lungs for carbon monoxide or arterial blood gas studies are appropriate, the commenter suggested that revisions should be made in 3.02 to include CO_2–O_2 correlations.

Response: We agree with the commenter that the results of an arterial blood gas study could be influenced by such things as a little anxiety or breath holding. To avoid any misapplication, we amended listing 3.02 C2 and C3 to delete the values at two altitudes (designated 3.02C2 a and b in the NPRM). We revised these listings to include again tables III–A, III–B and III–C from our prior 3.02 listings because these criteria are more sensitive indicators of disabling impairment of gas exchange and include correction for hypoxemia for carbon dioxide tension.

Comment: A commenter recommended that listings 3.02 C2 and C3 specify that the values are based on breathing room air.

Response: We agree and have added "breathing room air" to 3.00F2, 3.00F4, 103.00C1 and listings 3.02 C2 and C3.

Comment: One commenter was concerned with the requirement in listing 3.02C2 for resting arterial blood gases in a stable state 3 or more weeks apart. The commenter indicated that getting resting arterial blood gas studies performed in stable state on one occasion is difficult, but it will be even harder to get these results on two occasions. The commenter felt that this requirement precludes the use of medical evidence of record.

Response: We did not adopt the comment. This requirement for results on two different occasions is included in these final rules because repeat testing increases the probability that hypoxemia is chronic. This requirement also ensures that inappropriate decisions will not be made utilizing blood gas values during an acute illness which is not expected to result in a chronic gas exchange impairment. We believe that in some cases evidence of record may contain applicable pre-discharge reports from a hospitalization for an intercurrent acute illness, or out-patient records may have the test results that are applicable, particularly when chronic home oxygen therapy is contemplated.

Comment: Two commenters indicated that the heights listed in tables I and II should be listed in either inches or centimeters, and the English and metric system should not be mixed by using tenths of an inch. They also indicated that because the one-second forced expiratory volume cannot be estimated more closely than to tenths of a liter, the listing requirements should not be shown in hundredths of a liter.

Response: We decided that rather than showing the heights in tables I and II in either inches or centimeters, it would be clearer if we indicated both. We have revised the tables accordingly. We do not agree with the commenter that one-second forced expiratory volume results cannot be estimated more closely than to tenths of a liter because it has been our program experience that many times results are reported beyond a tenth of a liter, and that impairment severity assessment can be made more accurately with these results.

Comment: One commenter suggested that we not permit the purchase of arterial blood gases with exercise and clarify that such tests be evaluated only when obtained as medical evidence of record. The commenter did not feel that this test provided information of greater adjudicative value than other testing methods that are more readily available and less risky to the claimant.

Response: We did not accept the comment because these rules provide that exercise testing should only be purchased in infrequent instances in which the other studies may underestimate the degree of functional loss. Further, our rules in 3.00F3 specify that exercise arterial blood gas measurements should only be purchased after careful review of the medical history, physical examination, chest x-ray or other appropriate imaging techniques, spirometry, diffusing capacity of the lungs for carbon monoxide study, electrocardiogram, hematocrit or hemoglobin, and resting blood gas results by a program physician, preferably one with experience in the care of patients with pulmonary disease, to determine whether obtaining the test would present a significant risk to the individual. The purchase of such tests on infrequent occasions is designed to benefit claimants by providing another means by which a disabling impairment can be established.

Comment: Three individuals noted that proposed listing 3.02C2b should read, "At an altitude of 4000 feet or greater. * * *"

Response: We did not accept the comment because we have removed the altitude criteria of proposed listing 3.02 C2a and C2b and revised the listing to include tables III–A, III–B, and III–C from 3.02 of the prior rules.

Comment: A physician commented that the separation of ventilatory impairments (chronic obstructive and chronic restrictive diseases) into two separate listings tends to be confusing and implies an importance in establishing a diagnosis. To simplify the process, the commenter suggested we have one listing that provides for either a one-second forced expiratory volume equal to table I or a forced vital capacity equal to table II. This person believed that one listing would suffice because someone with chronic obstructive pulmonary disease could be considered as meeting the listings in either table I or table II. The same would be true if the person has a predominantly restrictive disease.

Response: We did not accept this comment because an individual with a predominantly air obstructive impairment that meets table II would nearly always meet table I. (These tables are contained in listing 3.02.) However, an individual with a restrictive impairment that meets table II may not meet table I. We do not want to construct a listing that will disadvantage anyone. In addition, the designations, "one-second forced expiratory volume" and "forced vital capacity," are used in clinical practice and connote different physiologic deficits. For these reasons, we prefer to incorporate the one-second forced expiratory volume and the forced vital capacity in listing 3.02 as we have constructed it.

3.04 Cystic Fibrosis. Comment: Several commenters were concerned that the criteria for adults to qualify for benefits with cystic fibrosis are more stringent than the criteria for children with cystic fibrosis. Under the proposed criteria, a child who is 67 inches tall has to have a one-second forced expiratory volume of 1.6 to meet the childhood listings. An adult 67 inches in height would require a one-second forced expiratory volume of 1.45 to meet the adult listing. The commenters noted that the one-second forced expiratory volume values for adults are those established for the evaluation of adults with chronic pulmonary insufficiency while a separate table just for cystic fibrosis has been established for children. A commenter noted that we did not list any manifestation of cystic fibrosis to aid in the evaluation of adults similar to the childhood manifestations. The commenters urged that more realistic criteria, similar to the criteria proposed for children, be provided for adults.

Response: We agree with the commenters that the criteria for adults with cystic fibrosis could be revised. We revised 3.04A to now include a table (table IV) which will be used solely for the evaluation of adults with cystic fibrosis, similar to the approach used in 103.04A of the childhood listings. We have included the criteria from 103.04C of the childhood listing in the adult listings at 3.04C. In turn, we revised the childhood criteria to include the criteria in 3.04B in the childhood listing (now in 103.04D). We believe that these changes will provide a fair and equitable means for evaluating both adults and children.

3.09 Pulmonale Secondary to Chronic Pulmonary Vascular Hypertension. Comment: A commenter noted that this listing (proposed listing 3.10) requires arterial blood gas studies on at least two occasions, 3 or more weeks apart, but the listing did not set an outside limit for this requirement. The commenter felt a limit should be set or situations may arise when, for example, one study was performed in 1989 and another in 1991, and the listing requirement would be satisfied.

Response: We agree with the comment and have revised the final listing by including a cross reference to listing 3.02C2 which indicates that these studies be within a 6-month period.

3.10 Sleep-Related Breathing Disorders. Comment: A commenter objected to this listing because it merely provides cross references to other listings for cor pulmonale, obesity, and organic brain syndrome to evaluate the manifestations of sleep apnea. The commenter felt that specific criteria should be developed for the evaluation of this disorder that weigh more heavily on the disabling effects of daytime drowsiness. The commenter suggested that it ought to be possible to develop a listing for sleep apnea that relies upon sleep laboratory studies and suggested the listing could perhaps be based upon either the number of instances of arousal due to sleep apnea or the degree of hypoxemia demonstrated during sleep testing.

Response: We did not accept this comment because we are not aware of any data to support a relationship between the findings of sleep studies (number of apneas, arousals, severity of desaturation during sleep) and the individual's remaining daytime functional capacity. There are considerable data available relating functional limitations due to extreme obesity, impaired cardiopulmonary function and hypoxemia while awake. We acknowledge that excessive daytime drowsiness can lead to cognitive and personality changes, as well as affective disturbances which result in impaired daytime functioning. Individuals with excessive daytime drowsiness may have disturbances in orientation, memory and personality and these manifestations can be considered under listing 12.02. However, to make our intent clearer, we modified 3.00H to elaborate that daytime drowsiness may affect memory, orientation, and

personality and that longitudinal treatment records may be needed to evaluate mental functioning.

103.00 Preface to Part B

103.00A Introduction

Comment: One commenter noted that this section emphasizes medical evaluation and does not mention the importance of nonmedical evidence in evaluating impairment severity. The commenter indicated that valuable information about a child's condition can often be given by a parent or other caregiver. This individual also indicated that the requirement that respiratory disorders be evaluated by a specialist at the State agency may send a message that medical evidence provided by nonspecialist treating sources will not be considered important.

Response: The listings contain examples of some of the most common impairments in the disability program. The criteria include specific symptoms, signs, and laboratory findings that are considered to characterize impairments severe enough to prevent a child applying for benefits under the SSI program from functioning independently, appropriately, and effectively in an age-appropriate manner. Claimants may be found disabled based on medical factors alone if their impairment(s) meets or equals the medical criteria in a listing. If the severity of a claimant's impairment(s) does not meet or equal medically the severity of an impairment in the listings, we then, in the case of a child under the SSI program, determine whether the impairment(s) functionally equals the listings and, if not, then perform an individualized functional assessment to determine whether the child has an impairment(s) of comparable severity to one that would disable an adult. Thus, following this sequential evaluation process, nonmedical evidence is considered at all appropriate steps in the process—and especially for children at the equals step and in performing an individualized functional assessment. Nonetheless, to clarify this point, we have expanded the fourth paragraph to emphasize the importance of equivalence determinations and individualized functional assessments. In addition, we clarified the language that concerned the commenter, which was that a child's respiratory disorder will be evaluated, if possible, by a pediatrician or by a specialist in respiratory diseases of children. Our intent for this requirement was to recognize the importance of specialization in childhood respiratory disease, not to send a message that evidence provided by a nonspecialist treating source will not be considered important. To clarify our intent, we have added a statement at the end of the first paragraph in 103.00A to indicate that reasonable efforts should be made to ensure review by a program physician specializing in the evaluation of childhood respiratory disease or by a qualified pediatrician. This language is adapted from section 1614(a)(3)(H) of the Act and merely reflects our current policy.

103.00B and 103.00C Documentation of Pulmonary Function Testing and Documentation of Chronic Impairment of Gas Exchange

Comment: A commenter indicated that the proposed rules did not provide enough detailed information on when to purchase the various pulmonary tests. The commenter indicated that the rules should discuss the value of studies performed during or soon after an acute respiratory illness. Two commenters suggested that providing a minimum age for spirometry would be helpful.

Response: We agree with the commenter that our rules should provide more detailed information on when to purchase the various pulmonary tests. Accordingly, we added a new seventh paragraph to 103.00B and a new second paragraph to 103.00 C1 and C2 which indicates that purchase may be appropriate when there is a question of whether an impairment meets or is equivalent in severity to a listing and the claim cannot otherwise be favorably decided. In addition, in the seventh paragraph of 103.00B, we indicate that purchase of a pulmonary function test is appropriate only when the child is capable of performing reproducible forced expiratory maneuvers, and that this capability usually occurs around age 6.

Comment: A commenter indicated that in cases of cystic fibrosis, pulmonary functioning may be extremely and progressively impaired most of the time. Therefore, children with cystic fibrosis should be excluded from the requirement stated in 103.00B that the criteria in 103.04 (incorrectly referred to as 103.10 in the NPRM) can only be applied during the child's most stable state of health because these children's most stable state of health may occur only upon discharge from a hospital and thereafter begin to deteriorate.

Response: We have modified the language in this section and 3.00E to define "most stable state of health" to mean any period in time except during or shortly after an exacerbation. In addition, in evaluating a child's claim for disability, we consider all available evidence related to the child's impairment so that we have a longitudinal view of the impact of the impairment on the child.

Comment: A commenter suggested that we consider the use of pulse oximetry for older children, and stated that the protocol for the test should require a statement regarding the child's cooperation or behavior.

Response: We agree with the commenter that the use of pulse oximetry should be extended to older children, and we have amended 103.00C2 to indicate that pulse oximetry may be substituted for arterial blood gases in children under 12 years of age. The use of pulse oximetry to assess oxygenation status (rather than obtaining arterial blood gas samples through arterial puncture) has become the standard of care in the pediatric community. Experience has shown that pediatric patients infrequently have arterial gases drawn unless they already have an indwelling arterial line or are in an emergency intensive care setting. We have also added a statement to 103.00C2 that the report of the test should include information on the child's cooperation in performing the test.

Comment: A few commenters suggested that, rather than having an explanation of rounding in 103.00B, we use the same format for recording height, one-second forced expiratory volume and vital capacity as is used in the adult listings in 3.02A and 3.02B. These same commenters suggested that in proposed 103.02 table I, 103.02 table II, and 103.14 table III we show the heights in inches and centimeters because some facilities report both ways.

Response: We agree and have modified the tables accordingly.

103.00D Cystic Fibrosis

Comment: A commenter recommended that we consider adding the stool trypsin test for use in the evaluation of cystic fibrosis in young babies and to confirm gastrointestinal involvement. The commenter indicated that the diagnosis of cystic fibrosis may be based on this test in the "neonate period."

Response: We did not accept the comment because the stool trypsin test is not considered an acceptable diagnostic test for cystic fibrosis. The test can be considered only as a gross screening test for pancreatic insufficiency due to any cause and is, therefore, nonspecific for cystic fibrosis. We have, however, added to 103.00D another diagnostic test, the "CF gene mutation analysis."

Listings

103.02 Chronic Pulmonary Insufficiency (Numbered 103.14 in the NPRM and Titled Chronic Obstructive or Restrictive Pulmonary Disease Due to Any Cause)

Comment: One commenter suggested that we should explain what we mean by "poor weight gain" in 103.02E6 and F2 (designated 103.14D6 and E2 in the NPRM) and also specify if loss of weight could meet these listings requirements.

Response: We agree with the commenter and have clarified 103.02E6 and F2. We deleted "poor weight gain," and, to avoid any ambiguity, we now provide criteria for the evaluation of involuntary weight loss or failure to gain weight at an appropriate rate. In this way, we not only include children who have stopped gaining weight but also children who do not gain enough weight. We also provide for the possibility that a child will actually lose weight.

Comment: A commenter indicated that the requirement in 103.02F (designated 103.14E in the NPRM) for two hospital admissions within a 6-month period seemed to be set at a higher level of severity than the requirement in 103.04C of one episode of infection every 6 months. This commenter believed that requiring hospitalization as a criterion of severity discriminates against children who are uninsured or underinsured.

Response: We do not agree with the comment. The requirement of only one increased bacterial infection under 103.04C (103.04B in the NPRM) within a 6-month period is in relation to cystic fibrosis, which is a condition affecting multiple systems associated with progressive irreversible pulmonary morbidity and death during early to mid-adult life. The occurrence of more than one exacerbation for a child with cystic fibrosis during a 6-month period for recurrent respiratory infection is normally associated with progression and a superimposed underlying persistent pulmonary infection and functional impairment. On the other hand, repeated hospital admissions for lower tract respiratory infection in children with other types of chronic pulmonary disease more commonly reflect acute intermittent episodes that are not related to chronic persistent underlying pulmonary infection. These criteria do not discriminate against any class of children, but only provide criteria to quickly allow the most seriously impaired individuals. This is not to imply that children who do not meet or equal in severity a listing cannot be found disabled at the final step of the sequential evaluation process.

103.03 Asthma

Comment: A legal group commented that the requirement in 103.03C that a child must meet two of the three listed criteria seemed excessive because if a child has asthma as severe as described, it should be enough to meet one of the three listed criteria. Another commenter noted that proposed 103.03C and 103.03C3 should include the use of inhaled steroid as well as oral steroid. The commenter also suggested that administration of intravenous fluids should be equated with intravenous administration of a bronchodilator and antibiotics.

Response: We agree with the commenter that the requirement in proposed 103.03C for two of the three listed criteria could be problematic. We, therefore, have deleted the criterion in proposed 103.03C2 because "barrel or pigeon chest" deformity was merely a description of anatomical deformities which may have led to various interpretations. We also revised the listing to require only one of the two remaining criteria. We did not include the use of inhalant steroids in 103.03C1 or 103.03C2 (103.03C3 in NPRM), because this form of treatment does not in itself imply the required level of severity that is intended by this listing. We did not accept the comment to equate administration of intravenous fluids with intravenous administration of a bronchodilator and antibiotics because the need for intravenous fluids generally is not a serious manifestation of chronic disease. The administration of intravenous fluids is merely a treatment modality for an acute episode of asthma.

103.04 Cystic Fibrosis

Comment: A commenter indicated that the listing for cystic fibrosis is problematic. The commenter indicated that this listing requires very low one-second forced expiratory volume values and totally disregards functioning except in children who cannot have spirometry performed. According to the commenter, the reliance on spirometry results is particularly unwise because of the episodic nature of the progression of the disease over time. The commenter believed that we should evaluate the underlying data rather than relying on proxies which are statistically associated with them. This individual recommended that proposed 103.04A1 should be separated into two different parts and proposed 103.04A2 and A3 be renumbered 3 and 4 (i.e., 1. History of dyspnea on exertion and 2. Accumulation secretions as manifested by repetitive coughing or cyanosis; or * * *). In addition, this person believed that the specification of intravenous treatment in proposed 103.04B (final 103.04C) is unwise given the constantly changing nature of treatment. The commenter said that the same criticism could be made of the decision to rely on the quantitative iontophoretic test for the diagnosis of cystic fibrosis. This individual believed that, not only may there be advances in diagnostic techniques within the next 7 years, but also many SSI eligible children would not have access to the designated test, and no child with an impairment as severe as that required by the criteria in 103.04 should be determined not to meet the listings simply because cystic fibrosis has not been diagnosed by the most accurate technique in existence.

Response: We did not accept the comment about low one-second forced expiratory volume values or proxy values. We use one-second forced expiratory volume results in children with cystic fibrosis because it is the testing procedure that is most widely accepted by pediatric specialists to evaluate pulmonary functional status. The one-second forced expiratory volume value set at 60 percent of predicted normal is not low, but higher than the former value, which was set at 50 percent. The one-second forced expiratory volume value is not a proxy measurement for other underlying impairments but a direct measurement of the respiratory system's ability to perform a vital life function. The 60 percent value selected correlates reasonably well with clinical scoring systems that reflect other manifestations of pulmonary impairment, including activity levels, radiographic findings, and nutritional state. Studies also indicate that very few children with cystic fibrosis and one-second forced expiratory volume values that exceed 60 percent of predicted normal are found to experience significant limitation of activity, malnutrition or other evidence of severe disease. Although medical progress in the management of cystic fibrosis continues, intravenous or inhalant antimicrobial therapy is expected to be a necessary modality for the large majority of children with cystic fibrosis for at least the next 5 years.

As mentioned in our discussion in the comment and response on 3.00D, we have revised the methods for diagnosing cystic fibrosis in 3.00D and 103.00D. We did not accept the comment that 103.04B1 (referred to by the commenter as 103.04A1) be separated into two criteria. The criteria in 103.04B1 refer to

a history of signs and symptoms and 103.04B2 and B3 are criteria for clinical and laboratory findings, respectively. If we separated 103.04B into two criteria, a child could then meet the listing based on a history of signs and symptoms with no definitive clinical and laboratory findings. This would be contrary to statutory and regulatory requirements that disability be established based on signs, symptoms, and laboratory findings. We also do not believe that an earlier expiration date for these listings should be set. As previously stated, if there are medical advances which should be reflected in our listing criteria, we can revise all or portions of our listings at any time before the end of the 7-year expiration date. Finally, as we make clear in these listings, because an individual fails to meet the requirements of a listing does not mean the claim is denied. We have explained this longstanding policy in our final rules (3.00A and 103.00A) and discussed it under our explanation of the final rules.

Additional Change

In a technical change required by these final rules, we revised § 416.926a(d)(3) and (d)(12) to be consistent with the new listings. Paragraph (3) formerly included mechanical ventilation as an example of a life-sustaining device. Inasmuch as final listing 103.02C1, provides for the frequent need for mechanical ventilation, we are removing mechanical ventilation from this functional equivalence example. In its place, we include central venous alimentation catheter as an example of a life-sustaining device. Paragraph 12 formerly included tracheostomy in a child who had not attained age 3 as an example of a consequence of an impairment that would establish functional equivalence to the listings. Inasmuch as final listing 103.02D (proposed listing 103.14C) incorporates tracheostomy in a child who has not attained age 3 into the listings, equivalence in this situation is no longer an issue.

Regulatory Procedures

Executive Order 12291

The Secretary has determined that these are not major rules under Executive Order 12291 because these regulations do not meet any of the threshold criteria for a major rule. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

These regulations impose no new reporting/recordkeeping requirements necessitating clearance by the Office of Management and Budget.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only disability claimants and beneficiaries under title II and title XVI of the Social Security Act.

(Catalog of Federal Domestic Assistance Program Nos. 93.802, Social Security-Disability Insurance; 93.803, Social Security-Retirement Insurance; 93.807, Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-age, survivors, and disability insurance, Reporting and recordkeeping requirements.

20 CFR Part 416

Administrative practice and procedure, Aged, blind, disability benefits, Public assistance programs, Supplemental security income, Reporting and recordkeeping requirements.

Dated: April 8, 1993.

Louis D. Enoff,

Deputy Commissioner of Social Security.

Approved: May 12 1993.

Donna E. Shalala,

Secretary of Health and Human Services.

For the reasons set out in the preamble, parts 404 and 416 of chapter III of title 20 of the Code of Federal Regulations is amended as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950-)

Subpart P—[Amended]

1. The authority citation for Subpart P continues to read as follows:

Authority: Secs. 202, 205(a), (b), and (d) through (h), 216(i), 221(a) and (i), 222(c), 223, 225, and 1102 of the Social Security Act; 42 U.S.C. 402, 405(a), (b), and (d) through (h), 416(i), 421(a) and (i), 422(c), 423, 425, and 1302; sec. 505(a) of Pub. L. 96–265, 94 Stat. 473, secs. 2(d)(2), (5), (6) and (15) of Pub. L. 98–460, 98 Stat. 1797, 1801, 1802, and 1808.

2. Appendix 1 to subpart P (Listing of Impairments) is amended by revising the third paragraph of the introductory text to read as follows:

Appendix 1—[Amended]

* * * * *

The respiratory system listings of part A (3.00) and part B (103.00) will no longer be effective on October 9, 2000, unless extended by the Secretary or revised and promulgated again.

* * * * *

3. Part A of appendix 1 (Listing of Impairments) of subpart P is amended by revising 3.00, Respiratory System, to read as follows

PART A

* * * * *

3.00 Respiratory System

A. *Introduction.* The listings in this section describe impairments resulting from respiratory disorders based on symptoms, physical signs, laboratory test abnormalities, and response to a regimen of treatment prescribed by a treating source. Respiratory disorders along with any associated impairment(s) must be established by medical evidence. Evidence must be provided in sufficient detail to permit an independent reviewer to evaluate the severity of the impairment.

Many individuals, especially those who have listing-level impairments, will have received the benefit of medically prescribed treatment. Whenever there is evidence of such treatment, the longitudinal clinical record must include a description of the treatment prescribed by the treating source and response in addition to information about the nature and severity of the impairment. It is important to document any prescribed treatment and response, because this medical management may have improved the individual's functional status. The longitudinal record should provide information regarding functional recovery, if any.

Some individuals will not have received ongoing treatment or have an ongoing relationship with the medical community, despite the existence of a severe impairment(s). An individual who does not receive treatment may or may not be able to show the existence of an impairment that meets the criteria of these listings. Even if an individual does not show that his or her impairment meets the criteria of these listings, the individual may have an impairment(s) equivalent in severity to one of the listed impairments or be disabled because of a limited residual functional capacity. Unless the claim can be decided favorably on the basis of the current evidence, a longitudinal record is still important because it will provide information about such things as the ongoing medical severity of the impairment, the level of the individual's functioning, and the frequency, severity, and duration of symptoms. Also, the

asthma listing specifically includes a requirement for continuing signs and symptoms despite a regimen of prescribed treatment.

Impairments caused by chronic disorders of the respiratory system generally produce irreversible loss of pulmonary function due to ventilatory impairments, gas exchange abnormalities, or a combination of both. The most common symptoms attributable to these disorders are dyspnea on exertion, cough, wheezing, sputum production, hemoptysis, and chest pain. Because these symptoms are common to many other diseases, a thorough medical history, physical examination, and chest x-ray or other appropriate imaging technique are required to establish chronic pulmonary disease. Pulmonary function testing is required to assess the severity of the respiratory impairment once a disease process is established by appropriate clinical and laboratory findings.

Alterations of pulmonary function can be due to obstructive airway disease (e.g., emphysema, chronic bronchitis, asthma), restrictive pulmonary disorders with primary loss of lung volume (e.g., pulmonary resection, thoracoplasty, chest cage deformity as in kyphoscoliosis or obesity), or infiltrative interstitial disorders (e.g., diffuse pulmonary fibrosis). Gas exchange abnormalities without significant airway obstruction can be produced by interstitial disorders. Disorders involving the pulmonary circulation (e.g., primary pulmonary hypertension, recurrent thromboembolic disease, primary or secondary pulmonary vasculitis) can produce pulmonary vascular hypertension and, eventually, pulmonary heart disease (cor pulmonale) and right heart failure. Persistent hypoxemia produced by any chronic pulmonary disorder also can result in chronic pulmonary hypertension and right heart failure. Chronic infection, caused most frequently by mycobacterial or mycotic organisms, can produce extensive and progressive lung destruction resulting in marked loss of pulmonary function. Some disorders, such as bronchiectasis, cystic fibrosis, and asthma, can be associated with intermittent exacerbations of such frequency and intensity that they produce a disabling impairment, even when pulmonary function during periods of relative clinical stability is relatively well-maintained.

Respiratory impairments usually can be evaluated under these listings on the basis of a complete medical history, physical examination, a chest x-ray or other appropriate imaging techniques, and spirometric pulmonary function tests. In some situations, most typically with a diagnosis of diffuse interstitial fibrosis or clinical findings suggesting cor pulmonale, such as cyanosis or secondary polycythemia, an impairment may be underestimated on the basis of spirometry alone. More sophisticated pulmonary function testing may then be necessary to determine if gas exchange abnormalities contribute to the severity of a respiratory impairment. Additional testing might include measurement of diffusing capacity of the lungs for carbon monoxide or resting arterial blood gases. Measurement of arterial blood gases during exercise is required infrequently. In disorders of the pulmonary circulation, right heart catheterization with angiography and/or direct measurement of pulmonary artery pressure may have been done to establish a diagnosis and evaluate severity. When performed, the results of the procedure should be obtained. Cardiac catheterization will not be purchased.

These listings are examples of common respiratory disorders that are severe enough to prevent a person from engaging in any gainful activity. When an individual has a medically determinable impairment that is not listed, an impairment which does not meet a listing, or a combination of impairments no one of which meets a listing, we will consider whether the individual's impairment or combination of impairments is medically equivalent in severity to a listed impairment. Individuals who have an impairment(s) with a level of severity which does not meet or equal the criteria of the listings may or may not have the residual functional capacity (RFC) which would enable them to engage in substantial gainful activity. Evaluation of the impairment(s) of these individuals will proceed through the final steps of the sequential evaluation process.

B. *Mycobacterial, mycotic, and other chronic persistent infections of the lung.* These disorders are evaluated on the basis of the resulting limitations in pulmonary function. Evidence of chronic infections, such as active mycobacterial diseases or mycoses with positive cultures, drug resistance, enlarging parenchymal lesions, or cavitation, is not, by itself, a basis for determining that an individual has a disabling impairment expected to last 12 months. In those unusual cases of pulmonary infection that persist for a period approaching 12 consecutive months, the clinical findings, complications, therapeutic considerations, and prognosis must be carefully assessed to determine whether, despite relatively well-maintained pulmonary function, the individual nevertheless has an impairment that is expected to last for at least 12 consecutive months and prevent gainful activity.

C. *Episodic respiratory disease.* When a respiratory impairment is episodic in nature, as can occur with exacerbations of asthma, cystic fibrosis, bronchiectasis, or chronic asthmatic bronchitis, the frequency and intensity of episodes that occur despite prescribed treatment are often the major criteria for determining the level of impairment. Documentation for these exacerbations should include available hospital, emergency facility and/or physician records indicating the dates of treatment; clinical and laboratory findings on presentation, such as the results of spirometry and arterial blood gas studies (ABGS); the treatment administered; the time period required for treatment; and the clinical response. Attacks of asthma, episodes of bronchitis or pneumonia or hemoptysis (more than blood-streaked sputum), or respiratory failure as referred to in paragraph B of 3.03, 3.04, and 3.07, are defined as prolonged symptomatic episodes lasting one or more days and requiring intensive treatment, such as intravenous bronchodilator or antibiotic administration or prolonged inhalational bronchodilator therapy in a hospital, emergency room or equivalent setting. Hospital admissions are defined as inpatient hospitalizations for longer than 24 hours. The medical evidence must also include information documenting adherence to a prescribed regimen of treatment as well as a description of physical signs. For asthma, the medical evidence should include spirometric results obtained between attacks that document the presence of baseline airflow obstruction.

D. *Cystic fibrosis* is a disorder that affects either the respiratory or digestive body systems or both and is responsible for a wide and variable spectrum of clinical manifestations and complications. Confirmation of the diagnosis is based upon an elevated sweat sodium concentration or chloride concentration accompanied by one or more of the following: the presence of chronic obstructive pulmonary disease, insufficiency of exocrine pancreatic function, meconium ileus, or a positive family history. The quantitative pilocarpine iontophoresis procedure for collection of sweat content must be utilized. Two methods are acceptable: the "Procedure for the Quantitative Iontophoretic Sweat Test for Cystic Fibrosis" published by the Cystic Fibrosis Foundation and contained in,

"A Test for Concentration of Electrolytes in Sweat in Cystic Fibrosis of the Pancreas Utilizing Pilocarpine Iontophoresis," Gibson, L.E., and Cooke, R.E., *Pediatrics*, Vol. 23: 545, 1959; or the "Wescor Macroduct System." To establish the diagnosis of cystic fibrosis, the sweat sodium or chloride content must be analyzed quantitatively using an acceptable laboratory technique. Another diagnostic test is the "CF gene mutation analysis" for homozygosity of the cystic fibrosis gene. The pulmonary manifestations of this disorder should be evaluated under 3.04. The nonpulmonary aspects of cystic fibrosis should be evaluated under the digestive body system (5.00). Because cystic fibrosis may involve the respiratory and digestive body systems, the combined effects of the involvement of these body systems must be considered in case adjudication.

E. *Documentation of pulmonary function testing.* The results of spirometry that are used for adjudication under paragraphs A and B of 3.02 should be expressed in liters (L), body temperature and pressure saturated with water vapor (BTPS). The reported one-second forced expiratory volume (FEV_1) and forced vital capacity (FVC) should represent the largest of at least three satisfactory forced expiratory maneuvers. Two of the satisfactory spirograms should be reproducible for both pre-bronchodilator tests and, if indicated, post-bronchodilator tests. A value is considered reproducible if it does not differ from the largest value by more than 5 percent or 0.1 L, whichever is greater. The highest values of the FEV_1 and FVC, whether from the same or different tracings, should be used to assess the severity of the respiratory impairment. Peak flow should be achieved early in expiration, and the spirogram should have a smooth contour with gradually decreasing flow throughout expiration. The zero time for measurement of the FEV_1 and FVC, if not distinct, should be derived by linear back-extrapolation of peak flow to zero volume. A spirogram is satisfactory for measurement of the FEV_1 if the expiratory volume at the back-extrapolated zero time is less than 5 percent of the FVC or 0.1 L, whichever is greater. The spirogram is satisfactory for measurement of the FVC if maximal expiratory effort continues for at least 6 seconds, or if there is a plateau in the volume-time curve with no detectable change in expired volume (VE) during the last 2 seconds of maximal expiratory effort.

Spirometry should be repeated after administration of an aerosolized bronchodilator under supervision of the testing personnel if the pre-bronchodilator FEV_1 value is less than 70 percent of the predicted normal value. Pulmonary function studies should not be performed unless the clinical status is stable (e.g., the individual is not having an asthmatic attack or suffering from an acute respiratory infection or other chronic illness). Wheezing is common in asthma, chronic bronchitis, or chronic obstructive pulmonary disease and does not preclude testing. The effect of the administered bronchodilator in relieving bronchospasm and improving ventilatory function is assessed by spirometry. If a bronchodilator is not administered, the reason should be clearly stated in the report. Pulmonary function studies performed to assess airflow obstruction without testing after bronchodilators cannot be used to assess levels of impairment in the range that prevents any gainful work activity, unless the use of bronchodilators is contraindicated. Post-bronchodilator testing should be performed 10 minutes after bronchodilator administration. The dose and name of the bronchodilator administered should be specified. The values in paragraphs A and B of 3.02 must only be used as criteria for the level of ventilatory impairment that exists during the individual's most stable state of health (i.e., any period in time except during or shortly after an exacerbation).

The appropriately labeled spirometric tracing, showing the claimant's name, date of testing, distance per second on the abscissa and distance per liter (L) on the ordinate, must be incorporated into the file. The manufacturer and model number of the device used to measure and record the spirogram should be stated. The testing device must accurately measure both time and volume, the latter to within 1 percent of a 3 L calibrating volume. If the spirogram was generated by any means other than direct pen linkage to a mechanical displacement-type spirometer, the spirometric tracing must show a recorded calibration of volume units using a mechanical volume input such as a 3 L syringe.

If the spirometer directly measures flow, and volume is derived by electronic integration, the linearity of the device must be documented by recording volume calibrations at three different flow rates of approximately 30 L/min (3 L/6 sec), 60 L/min (3 L/3 sec), and 180 L/min (3 L/sec). The volume calibrations should agree to within 1 percent of a 3 L calibrating volume. The proximity of the flow sensor to the individual should be noted, and it should be stated whether or not a BTPS correction factor was used for the calibration recordings and for the individual's actual spirograms.

The spirogram must be recorded at a speed of at least 20 mm/sec, and the recording device must provide a volume excursion of at least 10 mm/L. If reproductions of the original spirometric tracings are submitted, they must be legible and have a time scale of at least 20 mm/sec and a volume scale of at least 10 mm/L to permit independent measurements. Calculation of FEV_1 from a flow-volume tracing is not acceptable, i.e., the spirogram and calibrations must be presented in a volume-time format at a speed of at least 20 mm/sec and a volume excursion of at least 10 mm/L to permit independent evaluation.

A statement should be made in the pulmonary function test report of the individual's ability to understand directions as well as his or her effort and cooperation in performing the pulmonary function tests.

The pulmonary function tables in 3.02 are based on measurement of standing height without shoes. If an individual has marked spinal deformities (e.g., kyphoscoliosis), the measured span between the fingertips with the upper extremities abducted 90 degrees should be substituted for height when this measurement is greater than the standing height without shoes.

F. *Documentation of chronic impairment of gas exchange.*

1. *Diffusing capacity of the lungs for carbon monoxide (DLCO).* A diffusing capacity of the lungs for carbon monoxide study should be purchased in cases in which there is documentation of chronic pulmonary disease, but the existing evidence, including properly performed spirometry, is not adequate to establish the level of functional impairment. Before purchasing DLCO measurements, the medical history, physical examination, reports of chest x-ray or other appropriate imaging techniques, and spirometric test results must be obtained and reviewed because favorable decisions can often be made based on available evidence without the need for DLCO studies. Purchase of a DLCO study may be appropriate when there is a question of whether an impairment meets or is equivalent in severity to a listing, and the claim cannot otherwise be favorably decided.

The DLCO should be measured by the single breath technique with the individual relaxed and seated. At sea level, the inspired gas mixture should contain approximately 0.3 percent carbon monoxide (CO), 10 percent helium (He), 21 percent oxygen (O_2), and the balance nitrogen. At altitudes

above sea level, the inspired O_2 concentration may be raised to provide an inspired O_2 tension of approximately 150 mm Hg. Alternatively, the sea level mixture may be employed at altitude and the measured DLCO corrected for ambient barometric pressure. Helium may be replaced by another inert gas at an appropriate concentration. The inspired volume (VI) during the DLCO maneuver should be at least 90 percent of the previously determined vital capacity (VC). The inspiratory time for the VI should be less than 2 seconds, and the breath-hold time should be between 9 and 11 seconds. The washout volume should be between 0.75 and 1.00 L, unless the VC is less than 2 L. In this case, the washout volume may be reduced to 0.50 L; any such change should be noted in the report. The alveolar sample volume should be between 0.5 and 1.0 L and be collected in less than 3 seconds. At least 4 minutes should be allowed for gas washout between repeat studies.

A DLCO should be reported in units of ml CO, standard temperature, pressure, dry (STPD)/min/mm Hg uncorrected for hemoglobin concentration and be based on a single-breath alveolar volume determination. Abnormal hemoglobin or hematocrit values, and/or carboxyhemoglobin levels should be reported along with diffusing capacity.

The DLCO value used for adjudication should represent the mean of at least two acceptable measurements, as defined above. In addition, two acceptable tests should be within 10 percent of each other or 3 ml CO(STPD)/min/mm Hg, whichever is larger. The percent difference should be calculated as 100×(test 1 − test 2)/average DLCO.

The ability of the individual to follow directions and perform the test properly should be described in the written report. The report should include tracings of the VI, breath-hold maneuver, and VE appropriately labeled with the name of the individual and the date of the test. The time axis should be at least 20 mm/sec and the volume axis at least 10 mm/L. The percentage concentrations of inspired O_2, and inspired and expired CO and He for each of the maneuvers should be provided, and the algorithm used to calculate test results noted. Sufficient data must be provided to permit independent calculation of results (and, if necessary, calculation of corrections for anemia and/or carboxyhemoglobin).

2. *Arterial blood gas studies (ABGS).* An ABGS performed at rest (while breathing room air, awake and sitting or standing) or during exercise should be analyzed in a laboratory certified by a State or Federal agency. If the laboratory is not certified, it must submit evidence of participation in a national proficiency testing program as well as acceptable quality control at the time of testing. The report should include the altitude of the facility and the barometric pressure on the date of analysis.

Purchase of resting ABGS may be appropriate when there is a question of whether an impairment meets or is equivalent in severity to a listing, and the claim cannot otherwise be favorably decided. If the results of a DLCO study are greater than 40 percent of predicted normal but less than 60 percent of predicted normal, purchase of resting ABGS should be considered. Before purchasing resting ABGS, a program physician, preferably one experienced in the care of patients with pulmonary disease, must review all clinical and laboratory data short of this procedure, including spirometry, to determine whether obtaining the test would present a significant risk to the individual.

3. *Exercise testing.* Exercise testing with measurement of arterial blood gases during exercise may be appropriate in cases in which there is documentation of chronic pulmonary disease, but full development, short of exercise testing, is not adequate to establish if the impairment meets or is equivalent in severity to a listing, and the claim cannot otherwise be favorably decided. In this context, "full development" means that results from spirometry and measurement of DLCO and resting ABGS have been obtained from treating sources or through purchase. Exercise arterial blood gas measurements will be required infrequently and should be purchased only after careful review of the medical history, physical examination, chest x-ray or other appropriate imaging techniques, spirometry, DLCO, electrocardiogram (ECG), hematocrit or hemoglobin, and resting blood gas results by a program physician, preferably one experienced in the care of patients with pulmonary disease, to determine whether obtaining the test would presents a significant risk to the individual. Oximetry and capillary blood gas analysis are not acceptable substitutes for the measurement of arterial blood gases. Arterial blood gas samples obtained after the completion of exercise are not acceptable for establishing an individual's functional capacity.

Generally, individuals with a DLCO greater than 60 percent of predicted normal would not be considered for exercise testing with measurement of blood gas studies. The exercise test facility must be provided with the claimant's clinical records, reports of chest x-ray or other appropriate imaging techniques, and any spirometry, DLCO, and resting blood gas results obtained as evidence of record. The testing facility must determine whether exercise testing present a significant risk to the individual; if it does, the reason for not performing the test must be reported in writing.

4. *Methodology.* Individuals considered for exercise testing first should have resting arterial blood partial pressure of oxygen (PO_2), resting arterial blood partial pressure of carbon dioxide (PCO_2) and negative log of hydrogen ion concentration (pH) determinations by the testing facility. The sample should be obtained in either the sitting or standing position. The individual should then perform exercise under steady state conditions, preferably on a treadmill, breathing room air, for a period of 4 to 6 minutes at a speed and grade providing an oxygen consumption of approximately 17.5 ml/kg/min (5 METs). If a bicycle ergometer is used, an exercise equivalent of 5 METs (e.g., 450 kpm/min, or 75 watts, for a 176 pound (80 kilogram) person) should be used. If the individual is able to complete this level of exercise without achieving listing-level hypoxemia, then he or she should be exercised at higher workloads to determine exercise capacity. A warm-up period of treadmill walking or cycling may be performed to acquaint the individual with the exercise procedure. If during the warm-up period the individual cannot achieve an exercise level of 5 METs, a lower workload may be selected in keeping with the estimate of exercise capacity. The individual should be monitored by ECG throughout the exercise and in the immediate post-exercise period. Blood pressure and an ECG should be recorded during each minute of exercise. During the final 2 minutes of a specific level of steady state exercise, an arterial blood sample should be drawn and analyzed for oxygen pressure (or tension) (PO_2), carbon dioxide pressure (or tension) (PCO_2), and pH. At the discretion of the testing facility, the sample may be obtained either from an indwelling arterial catheter or by direct arterial puncture. If possible, in order to evaluate exercise capacity more accurately, a test site should be selected that has the capability to measure minute ventilation, O_2 consumption, and carbon dioxide (CO_2) production. If the claimant fails to complete 4 to 6 minutes of steady state exercise, the testing laboratory should comment on

the reason and report the actual duration and levels of exercise performed. This comment is necessary to determine if the individual's test performance was limited by lack of effort or other impairment (e.g., cardiac, peripheral vascular, musculoskeletal, neurological).

The exercise test report should contain representative ECG strips taken before, during and after exercise; resting and exercise arterial blood gas values; treadmill speed and grade settings, or, if a bicycle ergometer was used, exercise levels expressed in watts or kpm/min; and the duration of exercise. Body weight also should be recorded. If measured, O_2 consumption (STPD), minute ventilation (BTPS), and CO_2 production (STPD) also should be reported. The altitude of the test site, its normal range of blood gas values, and the barometric pressure on the test date must be noted.

G. *Chronic cor pulmonale and pulmonary vascular disease.*

The establishment of an impairment attributable to irreversible cor pulmonale secondary to chronic pulmonary hypertension requires documentation by signs and laboratory findings of right ventricular overload or failure (e.g., an early diastolic right-sided gallop on auscultation, neck vein distension, hepatomegaly, peripheral edema, right ventricular outflow tract enlargement on x-ray or other appropriate imaging techniques, right ventricular hypertrophy on ECG, and increased pulmonary artery pressure measured by right heart catheterization available from treating sources). Cardiac catheterization will not be purchased. Because hypoxemia may accompany heart failure and is also a cause of pulmonary hypertension, and may be associated with hypoventilation and respiratory acidosis, arterial blood gases may demonstrate hypoxemia (decreased PO_2), CO_2 retention (increased PCO_2), and acidosis (decreased pH). Polycythemia with an elevated red blood cell count and hematocrit may be found in the presence of chronic hypoxemia.

P-pulmonale on the ECG does not establish chronic pulmonary hypertension or chronic cor pulmonale. Evidence of florid right heart failure need not be present at the time of adjudication for a listing (e.g., 3.09) to be satisfied, but the medical evidence of record should establish that cor pulmonale is chronic and irreversible.

H. *Sleep-related breathing disorders.*

Sleep-related breathing disorders (sleep apneas) are caused by periodic cessation of respiration associated with hypoxemia and frequent arousals from sleep. Although many individuals with one of these disorders will respond to prescribed treatment, in some, the disturbed sleep pattern and associated chronic nocturnal hypoxemia cause daytime sleepiness with chronic pulmonary hypertension and/or disturbances in cognitive function. Because daytime sleepiness can affect memory, orientation, and personality, a longitudinal treatment record may be needed to evaluate mental functioning. Not all individuals with sleep apnea develop a functional impairment that affects work activity. When any gainful work is precluded, the physiologic basis for the impairment may be chronic cor pulmonale. Chronic hypoxemia due to episodic apnea may cause pulmonary hypertension (see 3.00G and 3.09). Daytime somnolence may be associated with disturbance in cognitive vigilance. Impairment of cognitive function may be evaluated under organic mental disorders (12.02). If the disorder is associated with gross obesity, it should be evaluated under the applicable obesity listing.

3.01 Category of Impairments, Respiratory System.

3.02 *Chronic pulmonary insufficiency.*

A. Chronic obstructive pulmonary disease, due to any cause, with the FEV_1 equal to or less than the values specified in table I corresponding to the person's height without shoes. (In cases of marked spinal deformity, see 3.00E.);

TABLE I

Height without shoes (centimeters)	Height without shoes (inches)	FEV_1 equal to or less than (L, BTPS)
154 or less	60 or less	1.05
155–160	61–63	1.15
161–165	64–65	1.25
166–170	66–67	1.35
171–175	68–69	1.45
176–180	70–71	1.55
181 or more	75 or more	1.65

Or

B. Chronic restrictive ventilatory disease, due to any cause, with the FVC equal to or less than the values specified in Table II corresponding to the person's height without shoes. (In cases of marked spinal deformity, see 2.00E.);

TABLE II

Height without shoes (centimeters)	Height without shoes (inches)	FVC equal to or less than (L, BTPS)
154 or less	60 or less	1.25
155–160	61–63	1.35
161–165	64–65	1.45
166–170	66–67	1.55
171–175	68–69	1.65
176–180	70–71	1.75
181 or more	72 or more	1.85

Or

C. Chronic impairment of gas exchange due to clinically documented pulmonary disease. With:

1. Single breath DLCO (see 3.00F1) less than 10.5 ml/min/mm Hg or less than 40 percent of the predicted normal value. (Predicted values must either be based on data obtained at the test site or published values from a laboratory using the same technique as the test site. The source of the predicted values should be reported. If they are not published, they should be submitted in the form of a table or nomogram); or

2. Arterial blood gas values of PO_2 and simultaneously determined PCO_2 measured while at rest (breathing room air, awake and sitting or standing) in a clinically stable condition on at least two occasions, three or more weeks apart within a 6-month period, equal to or less than the values specified in the applicable table III–A or III–B or III–C:

TABLE III.—A

[Applicable at test sites less than 3,000 feet above sea level]

Arterial PCO_2 (mm. Hg) and	Arterial PO_2 equal to or less than (mm. Hg)
30 or below	65
31	64
32	63
33	62
34	61
35	60
36	59
37	58
38	57
39	56
40 or above	55

TABLE III.—B

[Applicable at test sites 3,000 through 6,000 feet above sea level]

Arterial PCO_2 (mm. Hg) and	Arterial PO_2 equal to or less than (mm. Hg)
30 or below	60

TABLE III.—B—Continued

[Applicable at test sites 3,000 through 6,000 feet above sea level]

Arterial PCO_2 (mm. Hg) and	Arterial PO_2 equal to or less than (mm. Hg)
31	59
32	58
33	57
34	56
35	55
36	54
37	53
38	52
39	51
40 or above	50

TABLE III.—C

[Applicable at test sites over 6,000 feet above sea level]

Arterial PCO_2 (mm. Hg) and	Arterial PO_2 or equal to or less than (mm. Hg)
30 or below	55
31	54
32	53
33	52
34	51
35	50
36	49
37	48
38	47
39	46
40 or above	45

Or

3. Arterial blood gas values of PO_2 and simultaneously determined PCO_2 during steady state exercise breathing room air (level of exercise equivalent to or less than 17.5 ml O_2 consumption/kg/min or 5 METs) equal to or less than the values specified in the applicable table III–A or III–B or III–C in 3.02C2.

3.03 Asthma. With:

A. Chronic asthmatic bronchitis. Evaluate under the criteria for chronic obstructive pulmonary disease in 3.02A;

Or

B. Attacks (as defined in 3.00C), in spite of prescribed treatment and requiring physician intervention, occurring at least once every 2 months or at least six times a year. Each in-patient hospitalization for longer than 24 hours for control of asthma counts as two attacks, and an evaluation period of at least 12 consecutive months must be used to determine the frequency of attacks.

3.04 Cystic fibrosis. With:

A. An FEV_1 equal to or less than the appropriate value specified in table IV corresponding to the individual's height without shoes. (In cases of marked spinal deformity, see 3.00E.);

Or

B. Episodes of bronchitis or pneumonia or hemoptysis (more than blood-streaked sputum) or respiratory failure (documented according to 3.00C), requiring physician intervention, occurring at least once every 2 months or at least six times a year. Each inpatient hospitalization for longer than 24 hours for treatment counts as two episodes, and an evaluation period of at least 12 consecutive months must be used to determine the frequency of episodes;

Or

C. Persistent pulmonary infection accompanied by superimposed, recurrent, symptomatic episodes of increased bacterial infection occurring at least once every 6 months and requiring intravenous or nebulization antimicrobial therapy.

TABLE IV

[Applicable only for evaluation under 3.04A—cystic fibrosis]

Height without shoes (centimeters)	Height without shoes (inches)	FEV_1 equal to or less than (L, BTPS)
154 or less	60 or less	1.45
155–159	61–62	1.55
160–164	63–64	1.65
165–169	65–66	1.75
170–174	67–68	1.85
175–179	69–70	1.95
180 or more	71 or less	2.05

3.05 [Reserved]

3.06 *Pneumoconiosis* (demonstrated by appropriate imaging techniques). Evaluate under the appropriate criteria in 3.02.

3.07 *Bronchiectasis* (demonstrated by appropriate imaging techniques). With:

A. Impairment of pulmonary function due to extensive disease. Evaluate under the appropriate criteria in 3.02;

Or

B. Episodes of bronchitis or pneumonia or hemoptysis (more than blood-streaked sputum) or respiratory failure (documented according to 3.00C), requiring physician intervention, occurring at least once every 2 months or at least six times a year. Each in-patient hospitalization for longer than 24 hours for treatment counts as two episodes, and an evaluation of at least 12 consecutive months must be used to determine the frequency of episodes.

3.08 *Mycobacterial, mycotic, and other chronic persistent infections of the lung* (see 3.00B). Evaluate under the appropriate criteria in 3.02.

3.09 *Cor pulmonale secondary to chronic pulmonary vascular hypertension.* Clinical evidence of cor pulmonale (documented according to 3.00G) with:

A. Mean pulmonary artery pressure greater than 40 mm Hg;

Or

B. Arterial hypoxemia. Evaluate under the criteria in 3.02C2;

Or

C. Evaluate under the applicable criteria in 4.02.

3.10 *Sleep-related breathing disorders.* Evaluate under 3.09 (chronic cor pulmonale), 9.09 (obesity), or 12.02 (organic mental disorders).

* * * * *

4. Part B of appendix 1 (Listing of Impairments) of subpart P is amended by revising 103.00, Respiratory System, to read as follows:

Part B

* * * * *

103.00 Respiratory System

A. *Introduction.* The listings in this section describe impairments resulting from respiratory disorder based on symptoms, physical signs, laboratory test abnormalities, and response to a regimen of treatment prescribed by a treating source. Respiratory disorders, along with any associated impairment(s) must be established by medical evidence. Evidence must be provided in sufficient detail to permit an independent reviewer to evaluate the severity of the impairment. Reasonable efforts should be made to ensure evaluation by a program physician specializing in childhood respiratory impairments or a qualified pediatrician.

Many children, especially those who have listing-level impairments, will have received the benefit of medically prescribed treatment. Whenever there is such evidence, the longitudinal clinical record must include a description of the treatment prescribed by the treating source and response, in addition to information about the nature and severity of the impairment. It is important to document any prescribed treatment and response because this medical management may have improved the child's functional status. The longitudinal record should provide information regarding functional recovery, if any.

Some children will not have received ongoing treatment or have an ongoing relationship with the medical

community, despite the existence of a severe impairment(s). A child who does not receive treatment may or may not be able to show an impairment that meets the criteria of these listings. Even if a child does not show that his or her impairment meets the criteria of these listings, the child may have an impairment(s) equivalent in severity to one of the listed impairments or be disabled because of a substantial reduction in the ability to function independently, appropriately, and effectively in an age-appropriate manner. Unless the claim can be decided favorably on the basis of the current evidence, a longitudinal record is still important because it will provide information about such things as the ongoing medical severity of the impairment, the level of the child's functioning, and the frequency, severity, and duration of symptoms. Also, the asthma listing specifically includes a requirement for continuing signs and symptoms despite a regimen of prescribed treatment.

Evaluation should include consideration of adverse effects of respiratory impairment in all relevant body systems, and especially on the child's growth and development or mental functioning, as described under the growth impairment (100.00), neurological (111.00), and mental disorders (112.00) listings.

It must be remembered that these listings are only examples of common respiratory disorders that are severe enough to prevent a child from functioning independently, appropriately, and effectively in an age-appropriate manner. When a child has a medically determinable impairment that is not listed, an impairment which does not meet a listing, or a combination of impairments no one of which meets a listing, we may make an equivalence determination on medical or functional grounds. Also, with respect to children claiming SSI benefits under title XVI of the Act who have an impairment(s) with a level of severity which does not meet or equal (medically or functionally) the criteria of the listings, we will determine whether the impairment(s) is of comparable severity to one that would disable an adult. In these cases, we will perform an individualized functional assessment to determine whether the child is disabled.

B. *Documentation of Pulmonary Function Testing.* The results of spirometry that are used for adjudication, under the 103.02 A and B, 103.03, and 103.04 of these listings should be expressed in liters (L), body temperature and pressure saturated with water vapor (BTPS). The reported one-second forced expiratory volume (FEV_1) and forced vital capacity (FVC) should represent the largest of at least three satisfactory forced expiratory maneuvers. Two of the satisfactory spirograms should be reproducible for both pre-bronchodilator tests and, if indicated, post-bronchodilator tests. A value is considered reproducible if it does not differ from the largest value by more than 5 percent or 0.1 L, whichever is greater. The highest values of the FEV_1 and FVC, whether from the same or different tracings, should be used to assess the severity of the respiratory impairment. Peak flow should be achieved early in expiration, and the spirogram should have a smooth contour with gradually decreasing flow throughout expiration. The zero time for measurement of the FEV_1 and FVC, if not distinct, should be derived by linear back-extrapolation of peak flow to zero volume. A spirogram is satisfactory for measurement of the FEV_1 if the expiratory volume at the back-extrapolated zero time is less than 5 percent of the FVC or 0.1 L, whichever is greater. The spirogram is satisfactory for measurement of the FVC if maximal expiratory effort continues for at least 6 seconds, or if there is a plateau in the volume-time curve with no detectable change in expired volume (VE) during the last 2 seconds of maximal expiratory effort.

Spirometry should be repeated after administration of an aerosolized bronchodilator under supervision of the testing personnel if the pre-bronchodilator FEV_1 value is less than the appropriate reference value in table I or III, as appropriate. If a bronchodilator is not administered, the reason should be clearly stated in the report. Pulmonary function studies should not be performed unless the clinical status is stable (e.g., the child is not having an asthmatic attack or suffering from an acute respiratory infection or other chronic illness). Wheezing is common in asthma, chronic bronchitis, or chronic obstructive pulmonary disease and does not preclude testing. Pulmonary function studies performed to assess airflow obstruction without testing after bronchodilators cannot be used to assess levels of impairment in the range that prevents a child from performing age-appropriate activities, unless the use of bronchodilators is contraindicated. Post-bronchodilator testing should be performed 10 minutes after bronchodilator administration. The dose and name of the bronchodilator administered should be specified. The values in 103.02 and 103.04 must only be used as criteria for the level of ventilatory impairment that exists during the child's most stable state of health (i.e., any period in time except during or shortly after an exacerbation).

The appropriately labeled spirometric tracing, showing the child's name, date of testing, distance per second on the abscissa and distance per liter (L) on the ordinate, must be incorporated into the file. The manufacturer and model number of the device used to measure and record the spirogram should be stated. The testing device must accurately measure both time and volume, the latter to within 1 percent of a 3 L calibrating volume. If the spirogram was generated by any means other than direct pen linkage to a mechanical displacement-type spirometer, the spirometric tracing must show a recorded calibration of volume units using a mechanical volume input such as a 3 L syringe.

If the spirometer directly measures flow, and volume is derived by electronic integration, the linearity of the device must be documented by recording volume calibrations at three different flow rates of approximately 30 L/min (3 L/6 sec), 60 L/min (3 L/3 sec), and 180 L/min (3 L/sec). The volume calibrations should agree to within 1 percent of a 3 L calibrating volume. The proximity of the flow sensor to the child should be noted, and it should be stated whether or not a BTPS correction factor was used for the calibration recordings and for the child's actual spirograms.

The spirogram must be recorded at a speed of at least 20 mm/sec and the recording device must provide a volume excursion of at least 10 mm/L. If reproductions of the original spirometric tracings are submitted, they must be legible and have a time scale of at least 20 mm/sec and a volume scale of at least 10 mm/L to permit independent measurements. Calculation of FEV_1 from a flow volume tracing is not acceptable, i.e., the spirogram and calibrations must be presented in a volume-time format at a speed of at least 20 mm/sec and a volume excursion of at least 10 mm/L to permit independent evaluation.

A statement should be made in the pulmonary function test report of the child's ability to understand directions, as well as his or her efforts and cooperation in performing the pulmonary function tests.

Purchase of a pulmonary function test is appropriate only when the child is capable of performing reproducible forced expiratory maneuvers. This capability usually occurs around age 6. Purchase of a pulmonary function test may be appropriate when there is a

question of whether an impairment meets or is equivalent in severity to a listing, and the claim cannot otherwise be favorably decided.

The pulmonary function tables in 103.02 and 103.04 are based on measurement of standing height without shoes. If a child has marked spinal deformities (e.g., kyphoscoliosis), the measured span between the fingertips with the upper extremities abducted 90 degrees should be substituted for height when this measurement is greater than the standing height without shoes.

C. *Documentation of chronic impairment of gas exchange.*

1. *Arterial blood gas studies (ABGS).* An ABGS performed at rest (while breathing room air, awake and sitting or standing) should be analyzed in a laboratory certified by a State or Federal agency. If the laboratory is not certified, it must submit evidence of participation in a national proficiency testing program as well as acceptable quality control at the time of testing. The report should include the altitude of the facility and the barometric pressure on the date of analysis.

Purchase of resting ABGS may be appropriate when there is a question of whether an impairment meets or is equivalent in severity to a listing, and the claim cannot otherwise be favorably decided. Before purchasing resting ABGS, a program physician, preferably one experienced in the care of children with pulmonary disease, must review the clinical and laboratory data short of this procedure, including spirometry, to determine whether obtaining the test would present a significant risk to the child.

2. *Oximetry.* Pulse oximetry may be substituted for arterial blood gases in children under 12 years of age. The oximetry unit should employ the basic technology of spectrophotometric plethysmography as described in Taylor, M.B., and Whitwain, J.G., "Current Status of Pulse Oximetry," "Anesthesia," Vol. 41, No. 9, pp. 943–949, 1986. The unit should provide a visual display of the pulse signal and the corresponding oxygen saturation. A hard copy of the readings (heart rate and saturation) should be provided. Readings should be obtained for a minimum of 5 minutes. The written report should describe patient activity during the recording, i.e., sleep rate, feeding, or exercise. Correlation between the actual heart rate determined by a trained observer and that displayed by the oximeter should be provided. A statement should be made in the report of the child's effort and cooperation during the test.

Purchase of oximetry may be appropriate when there is a question of whether an impairment meets or is equivalent in severity to a listing, and the claim cannot otherwise be favorably decided.

D. *Cystic fibrosis* is a disorder that affects either the respiratory or digestive body systems or both and may impact on a child's growth and development. It is responsible for a wide and variable spectrum of clinical manifestations and complications. Confirmation of the diagnosis is based upon an elevated sweat sodium concentration or chloride concentration accompanied by one or more of the following: the presence of chronic obstructive pulmonary disease, insufficiency of exocrine pancreatic function, meconium ileus, or a positive family history. The quantitative pilocarpine iontophoresis procedure for collection of sweat content must be utilized. Two methods are acceptable: the "Procedure for the Quantitative Iontophoretic Sweat Test for Cystic Fibrosis," published by the Cystic Fibrosis Foundation and contained in, "A Test for Concentration of Electrolytes in Sweat in Cystic Fibrosis of the Pancreas Utilizing Pilocarpine Iontophoresis," Gibson, L.E., and Cooke, R.E., "Pediatrics," Vol 23: 545, 1959; or the "Wescor Macroduct System." To establish the diagnosis of cystic fibrosis, the sweat sodium or chloride content must be analyzed quantitatively using an acceptable laboratory technique. Another diagnostic test is the "CF gene mutation analysis" for homozygosity of the cystic fibrosis gene. The pulmonary manifestations of this disorder should be evaluated under 103.04. The nonpulmonary aspects of cystic fibrosis should be evaluated under the listings for the digestive system (105.00) or growth impairments (100.00). Because cystic fibrosis may involve the respiratory and digestive body systems, as well as impact on a child's growth and development, the combined effects of this involvement must be considered in case adjudication.

E. *Bronchopulmonary dysplasia (BPD).* Bronchopulmonary dysplasia is a form of chronic obstructive pulmonary disease that arises as a consequence of acute lung injury in the newborn period and treatment of hyaline membrane disease, meconium aspiration, neonatal pneumonia and apnea of prematurity. The diagnosis is established by the requirement for continuous or nocturnal supplemental oxygen for more than 30 days, in association with characteristic radiographic changes and clinical signs of respiratory dysfunction, including retractions, rales, wheezing, and tachypnea.

103.01 Category of Impairments, Respiratory System

103.02 Chronic pulmonary insufficiency. With:

A. Chronic obstructive pulmonary disease, due to any cause, with the FEV_1 equal to or less than the value specified in Table I corresponding to the child's height without shoes. (In cases of marked spinal deformity, see 103.00B.);

TABLE I

Height without shoes (centimeters)	Height without shoes (inches)	FEV_1 equal to or less than (L, BTPS)
119 or less	46 or less	0.65
120–129	47–50	0.75
130–139	51–54	0.95
140–149	55–58	1.15
150–159	59–62	1.35
160–164	63–64	1.45
165–169	65–66	1.55
170 or more ...	67 or more	.165

Or

B. Chronic restrictive ventilatory disease, due to any cause, with the FVC equal to or less than the value specified in table II corresponding to the child's height without shoes. (In cases of marked spinal deformity, see 103.00B.);

TABLE II

Height without shoes (centimeters)	Height without shoes (inches)	FEV equal to or less than (L, BTPS)
119 or less	46 or less	0.65
120–129	47–50	0.85
130–139	51–54	1.05
140–149	55–58	1.25
150–159	59–62	1.45
160–164	63–64	1.65
165–169	65–66	175
170 or more ...	67 or more	205

Or

C Frequent need for:

1. Mechanical ventilation; or

2. Nocturnal supplemental oxygen as required by persistent or recurrent episodes of hypoxemia;

Or

D. The presence of a tracheostomy in a child under 3 years of age;

Or

E. Bronchopulmonary dysplasia characterized by two of the following:

1. Prolonged expirations; or

2. Intermittent wheezing or increased respiratory effort as evidenced by retractions, flaring and tachypnea; or

3. Hyperinflation and scarring on a chest radiograph or other appropriate imaging techniques; or

4. Bronchodilator or diuretic dependency; or

5. A frequent requirement for nocturnal supplemental oxygen; or

6. Weight disturbance with:

a. An involuntary weight loss (or failure to gain weight at an appropriate rate for age) resulting in a fall of 15 percentiles from established growth curve (on standard growth charts) which persists for 2 months or longer; or

b. An involuntary weight loss (or failure to gain weight at an appropriate rate for age) resulting in a fall to below the third percentile from established growth curve (on standard growth charts) which persists for 2 months or longer;

Or

F. Two required hospital admissions (each longer than 24 hours) within a 6-month period for recurrent lower respiratory tract infections or acute respiratory distress associated with:

1. Chronic wheezing or chronic respiratory distress; or

2. Weight disturbance with:

a. An involuntary weight loss (or failure to gain weight at an appropriate rate for age) resulting in a fall of 15 percentiles from established growth curve (on standard growth charts) which persists for 2 months or longer; or

b. An involuntary weight loss (or failure to gain weight at an appropriate rate for age) resulting in a fall to below the third percentile from established growth curve (on standard growth charts) which persists for 2 months or longer;

Or

G. Chronic hypoventilation ($PaCO_2$ greater than 45 mm Hg) or chronic cor pulmonale as described under the appropriate criteria in 104.02;

Or

H. Growth impairment as described under the criteria in 100.00.

103.03 Asthma. With:

A. FEV_1 equal to or less than the value specified in Table I of 103.02A;

Or

B. Attacks (as defined in 3.00C), in spite of prescribed treatment and requiring physician intervention, occurring at least once every 2 months or at least six times a year. Each inpatient hospitalization for longer than 24 hours for control of asthma counts as two attacks, and an evaluation period of at least 12 consecutive months must be used to determine the frequency of attacks;

Or

C. Persistent low-grade wheezing between acute attacks or absence of extended symptom-free periods requiring daytime and nocturnal use of sympathomimetic bronchodilators with one of the following:

1. Persistent prolonged expiration with radiographic or other appropriate imaging techniques evidence of pulmonary hyperinflation or peribronchial disease; or

2. Short courses of corticosteroids that average more than 5 days per month for at least 3 months during a 12-month period;

Or

D. Growth impairment as described under the criteria in 100.00.

103.04 Cystic fibrosis. With:

A. An FEV_1 equal to or less than the appropriate value specified in Table III corresponding to the child's height without shoes. (In cases of marked spinal deformity, see 103.00B.);

Or

B. For children in whom pulmonary function testing cannot be performed, the presence of two of the following:

1. History of dyspnea on exertion or accumulation of secretions as manifested by repetitive coughing or cyanosis; or

2. Persistent bilateral rales and rhonchi or substantial reduction of breath sounds related to mucous plugging of the trachea or bronchi; or

3. Radiographic evidence of extensive disease, such as thickening of the proximal bronchial airways or persistence of bilateral peribronchial infiltrates;

Or

C. Persistent pulmonary infection accompanied by superimposed, recurrent, symptomatic episodes of increased bacterial infection occurring at least once every 6 months and requiring intravenous or nebulization antimicrobial treatment;

Or

D. Episodes of bronchitis or pneumonia or hemoptysis (more than blood-streaked sputum) or respiratory failure (documented according to 3.00C), requiring physician intervention, occurring at least once every 2 months or at least six times a year. Each inpatient hospitalization for longer than 24 hours for treatment counts as two episodes, and an evaluation period of at least 12 consecutive months must be used to determine the frequency of episodes;

Or

E. Growth impairment as described under the criteria in 100.00.

TABLE III

[Applicable only for evaluation under 103.04A—cystic fibrosis]

Height without shoes (centimeters)	Height without shoes (inches)	FEV_1 equal to or less than (L, BTPS)
119 or less	46 or less	0.75
120–129	47–50	0.85
130–139	51–54	1.05
140–149	55–58	1.35
150–159	59–62	1.55
160–164	63–64	1.85
165–169	65–66	2.05
170 or more	67 or more	2.25

* * * * *

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart I—[Amended]

1. The authority citation for Subpart I continues to read as follows:

Authority: Secs. 1102, 1614(a), 1619, 1631(a) and (d)(1), and 1633 of the Social Security Act; 42 U.S.C. 1302, 1382c(a), 1382(h), 1383(a) and (d)(1), and 1383b.

2. Paragraphs (d)(3) and (d)(12) of § 416.926a are revised to read as follows:

§ 416.926a Equivalence for children.

* * * * *

(d) *Examples of impairments of children that are functionally equivalent to the listings.* * * *

* * * * *

(3) Frequent need for a life-sustaining device (e.g., central venous alimentation catheter), at home or elsewhere.

* * * * *

(12) Gastrostomy in a child who has not attained age 3.

* * * * *

[FR Doc. 93–24238 Filed 10–6–93; 8:45 am]
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federal register

Thursday
October 7, 1993

Part III

Department of Education

Federal Perkins Loan Program; Notice

DEPARTMENT OF EDUCATION

Federal Perkins Loan Program

AGENCY: Department of Education.

ACTION: Notice of deadline for submission of institutional agreement for participation in the Federal Perkins Loan Program Expanded Lending Option.

SUMMARY: "Dear Colleague Letter CB–93–12(LD)," dated August 1993, announced the Expanded Lending Option of the Federal Perkins Loan Program and transmitted, to all eligible institutions, the "Institutional Agreement For Participation In The Federal Perkins Loan Program Expanded Lending Option (ELO)" (ELO Participation Agreement). This notice establishes the deadline for submission of the ELO Participation Agreement by those eligible institutions that elect to participate in the Federal Perkins Loan Program ELO in the 1993–94 award year (the period from July 1, 1993 through June 30, 1994).

SUPPLEMENTARY INFORMATION: The Federal Perkins Loan Program provides low-interest loans to financially needy students attending institutions of higher education to help them pay their educational costs. The Higher Education Amendments of 1992 created the ELO as part of the Federal Perkins Loan Program, making the ELO available for the 1993–94 award year for institutions of higher education that participate in the Federal Perkins Loan Program.

To be eligible to participate in the Federal Perkins Loan Program ELO for 1993–94, an institution must have a Federal Perkins Loan default rate of 7.5 percent or less as of June 30, 1992 and must have participated in the Federal Perkins Loan Program for the two previous award years (1991–92 and 1992–93). In addition, an institution must enter into a special ELO participation agreement with the Secretary. An institution that elects to participate in the ELO must complete, sign, date and submit the ELO Participation Agreement by the closing date to obtain approval.

Institutions that become Federal Perkins Loan Program ELO participants will be required to increase the Institutional Capital Contribution (ICC) to at least a dollar-for-dollar match with any portion of the 1993–94 award year Federal Capital Contribution (FCC) received. Only new FCC received on or after July 1, 1993, would be matched at the increased rate. Institutions would not match funds received prior to July 1, 1993, at the higher rate. Institutions receiving no new FCC for the 1993–94 award year may still elect to participate in the Federal Perkins Loan Program ELO.

Institutions that become Federal Perkins Loan Program ELO participants may make loans to eligible students at higher maximum annual and aggregate limits than is the case with nonparticipating institutions. ELO participating institutions that do not ultimately make any loans at the higher ELO levels for the 1993–94 award year must still honor the ELO Participation Agreement to deposit in the Federal Perkins Loan Program Fund an ICC at least equal to the 1993–94 award year FCC deposited into the Fund. All other administrative procedures would remain the same as for institutions not participating in the Federal Perkins Loan Program ELO.

Closing Date for Transmittal of ELO Participation Agreement: To ensure participation in the Federal Perkins Loan Program ELO in the 1993–94 award year, an eligible institution that elects to participate, must submit its ELO Participation Agreement by November 8, 1993.

ELO Participation Agreement Delivered By Mail: An ELO Participation Agreement delivered by mail must be addressed to the U.S. Department of Education, Office of Student Financial Assistance, Campus-Based Programs, Financial Management Division, 400 Maryland Avenue, SW., room 4621, Regional Office Building 3, Washington, DC 20202–5452.

An institution must show proof of mailing its ELO Participation Agreement by the closing date. Proof of mailing consists of one of the following: (1) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service, (2) a legibly dated U.S. Postal Service postmark, (3) a dated shipping label, invoice, or receipt from a commercial carrier, or (4) any other proof of mailing acceptable to the U.S. Secretary of Education.

If an ELO Participation Agreement is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service. An Institution should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an institution should check with its local post office. An institution is encouraged to use certified or at least first-class mail.

ELO Participation Agreement Delivered by Hand: An ELO Participation Agreement delivered by hand must be delivered to the U.S. Department of Education, Office of Student Financial Assistance, Campus-Based Programs, Financial Management Division, 7th and D Streets, SW., room 4621, Regional Office Building 3, Washington, DC.

Hand-delivered ELO Participation Agreements will be accepted between 8 a.m. and 4:30 p.m. daily (Eastern Daylight Time), except Saturdays, Sundays, and Federal holidays. An ELO Participation Agreement that is hand-delivered will not be accepted after 4:30 p.m. on the closing date.

Applicable Regulations: The following regulations apply to this program:

Student Assistance General Provisions, 34 CFR part 668.

Federal Perkins Loan Program, 34 CFR part 674.

Federal Work-Study Program, 34 CFR part 675.

Federal Supplemental Educational Opportunity Grant Program, 34 CFR part 676.

Institutional Eligibility Under the Higher Education Act of 1965, as amended, 34 CFR part 600.

Federal Family Educational Loan Program, 34 CFR part 682.

New Restrictions on Lobbying, 34 CFR part 82.

Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants), 34 CFR part 85.

FOR FURTHER INFORMATION CONTACT: For information concerning designation of eligibility, contact Robert Coates, Director Campus-Based Programs, Financial Management Division, Office of Postsecondary Education, 400 Maryland Avenue, SW., (Room 4621, ROB–3), Washington, DC 20202–5452. Telephone: 202–708–4664.

For technical assistance concerning the Federal Perkins Loan Program ELO, contact Susan Morgan, Chief, Campus-Based Loan Programs Section, Division of Policy Development, Student Financial Assistance Programs, Office of Postsecondary Education, U.S. Department of Education, Telephone: 202–708–8242 or Gwendolyn Dockett-Morris, Program Specialist, Telephone: 202–708–8242. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

(Catalog of Federal Domestic Assistance Numbers: 84.038, Federal Perkins Loan Program)

Dated: September 30, 1993.

William L. Moran,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 93–24595 Filed 10–6–93; 8:45 am]

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federal register

Thursday
October 7, 1993

Part IV

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 700, et al.
Definitions of Anthracite, Bituminous/ Subbituminous, Coal and Lignite; Proposed Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 700, 701, 705, 706, 715, 716, 785, 825 and 870

RIN 1029–AB75

Definitions of "Anthracite," "Bituminous/subbituminous," "Coal," and "Lignite"

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) proposes to revise its existing definitions of "anthracite" and "coal"; to add definitions of "bituminous/subbituminous" and "lignite"; and to remove its existing definitions of "anthracite, bituminous and subbituminous coal" and "lignite coal."

Unlike several of the existing definitions, none of the amended definitions would incorporate any ASTM Standard. The amendment is needed to eliminate any uncertainty which may have arisen regarding the existing definition of "coal"; to provide a detailed definition of "bituminous/subbituminous"; and to generally improve the editorial clarity of the definitions.

DATES: *Written comments:* OSM will accept written comments on the proposed rule until 5 p.m., Eastern time, on December 6, 1993.

Public hearings: Upon request, OSM will hold a public hearing on the proposed rule in Washington, DC, on November 29, 1993, at 9:30 a.m., local time. Upon request, OSM will also hold public hearings in the States of California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington at times and dates to be announced prior to the hearings. OSM will accept requests for public hearings until 5:00 p.m., Eastern time, on November 8, 1993. Individuals wishing to attend, but not testify, at any hearing should contact the person identified under **FOR FURTHER INFORMATION CONTACT** before the hearing date to verify that the hearing will be held.

ADDRESSES: *Written comments:* Hand-deliver to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, room 660, 800 North Capitol Street, Washington, DC; or mail to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, room 660 NC, 1951 Constitution Avenue, NW., Washington, DC 20240.

Public hearings: If held, the public hearing in Washington, DC, will take place in the Department of the Interior Auditorium, 18th and C Streets, NW. The address for any hearing held in the States of California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, or Washington will be announced prior to the hearing.

Requests for public hearings: Submit requests orally or in writing to the person and address specified under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Douglas J. Growitz, P.G., Office of Surface Mining Reclamation and Enforcement, room 640, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: 202–343–1507.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background
III. Discussion of Proposed Rule
IV. Procedural Matters

I. Public Comment Procedures

Written comments: Written comments submitted on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where practicable, commenters should submit three copies of their comments. Comments received after the close of the comment period (see **DATES**) or delivered to an address other than those listed above (see **ADDRESSES**), may not be considered or included in the Administrative Record for the final rule.

Public hearings: OSM will hold a public hearing on the proposed rule on request only. The time, date, and address for any hearing will be announced in the Federal Register at least 7 days prior to the hearing.

Any person interested in participating at a hearing at a particular location should inform Mr. Growitz (see **FOR FURTHER INFORMATION CONTACT**), either orally or in writing, of the desired hearing location by 5 p.m., Eastern time, on November 8, 1993. If no one has contacted Mr. Growitz to express an interest in participating in a hearing at a given location by that date, a hearing will not be held. If only one person expresses an interest, a public meeting rather than a hearing may be held and the results included in the Administrative Record.

If a hearing is held, it will continue until all persons wishing to testify have been heard. The hearing will be transcribed. To assist the transcriber and ensure an accurate record, OSM requests that each person who testifies at a hearing provide the transcriber with a written copy of his or her testimony. To assist OSM in preparing appropriate questions, OSM also requests, if possible, that each person who plans to testify submit to OSM at the address previously specified for the submission of written comments (see **ADDRESSES**) an advance copy of his or her testimony.

II. Background

A. The Existing Definitions

The Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1201–1328, generally is concerned with the surface effects of mining coal. While section 701 of SMCRA, 30 U.S.C. 1291, defines a number of terms, it does not define the term "coal." Nor does it define the related terms "anthracite," "bituminous," or "subbituminous." Section 701(30) of SMCRA does, however, define the term "lignite coal" to mean "consolidated lignitic coal having less than 8,300 British thermal units per pound, moist and mineral matter free."

SMCRA directs the Secretary of the Interior (the Secretary), acting through the Office of Surface Mining Reclamation and Enforcement, to publish and promulgate such rules and regulations as may be necessary to carry out its purposes and provisions. SMCRA sections 201(c)(2), 412(a), and 501(b): 30 U.S.C. 1211(c)(2), 1242(a), and 1251(b). Pursuant to this authority, on March 13, 1979, and June 30, 1982, the Secretary promulgated definitions of "coal" and the related terms "anthracite," "anthracite, bituminous and subbituminous coal," and "lignite coal." (44 FR 15311 and 47 FR 28593.)

"Anthracite," is defined by the existing regulation at 30 CFR 700.5 to mean "coal classified as anthracite in ASTM [(American Society for Testing and Materials)] Standard D 388–77." The definition also contains extensive explanatory information concerning ASTM Standard D 388–77 and its incorporation by reference into the definition. Thus, the existing definition of "anthracite" is based entirely on the "anthracite" coal classification in ASTM Standard D 388–77.

"Coal" is defined by the existing regulation at 30 CFR 700.5 to mean "combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by ASTM Standard D 388–77, referred to and incorporated by reference in the definition of 'anthracite' immediately above." Thus, like the definition of

"anthracite," the existing definition of "coal" is based on the coal classifications in ASTM Standard D 388–77.

"Lignite coal" is defined at 30 CFR 870.5 to mean "consolidated lignite coal having less than 8,300 British thermal units per pound, moist and mineral-matter-free." The definition goes on to specify how British thermal units (Btu) per pound are to be determined in accordance with ASTM Standard D 388–77. This regulatory definition of "lignite coal" is essentially the same as the statutory definition at SMCRA section 701(30), but with the addition of the reference to ASTM Standard D 388–77.

"Anthracite, bituminous and subbituminous coal" are defined jointly at 30 CFR 870.5 to mean "all coals other than lignite coal."

The existing definitions of "anthracite" and "coal" at 30 CFR 700.5 apply generally to the OSM regulations throughout 30 CFR chapter VII. The existing definitions of "anthracite, bituminous and subbituminous coal" and "lignite coal" apply only to the OSM regulations at 30 CFR chapter VII, subchapter R, governing abandoned mine land reclamation.

B. Need for Amendment

The existing OSM definitions of "coal" and its related terms have a number of purposes. On the broadest level, for example, the definition of "coal" at 30 CFR 700.5 delineates the overall scope of OSM's regulatory jurisdiction. More narrowly, the definition of "anthracite" at 30 CFR 700.5 delineates OSM's jurisdiction over anthracite surface coal mining operations in Pennsylvania under 30 CFR 785.11 and part 820. The definition of "bituminous" at 30 CFR 700.5 delineates OSM's jurisdiction over special bituminous coal mines under 30 CFR 785.12 and part 825. And the related definitions of "lignite coal" and "anthracite, bituminous and subbituminous coal" affect the computation of reclamation fees for lignite and these other types of coal under 30 CFR 870.13.

In enacting SMCRA, the Congress sought to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." SMCRA section 102(a), 30 U.S.C. 1202(a). There are, in SMCRA, provisions in section 529, 30 U.S.C. 1279, that apply to anthracite mines, provisions in section 527, 30 U.S.C. 1277, that apply to special bituminous mines, and provisions in sections 402 and 701(30), 30 U.S.C. 1232 and 1291(30), that apply to lignite coal. Apart from these limited provisions, there is nothing in SMCRA or its legislative history which indicates that the Congress intended to in any way limit what it meant by the term "coal." Clearly, the Congress was not as much concerned with a precise technical definition of that term as it was with certain methods of mining and their attendant effects. Accordingly, the Congress did not define the term "coal," but left that definition to the discretion of OSM.

The existing regulatory definitions of "coal" and "anthracite" were promulgated by OSM shortly after SMCRA was passed. Apparently, at that time, the classifications of anthracite, bituminous, subbituminous, and lignite in ASTM Standard D 388–77 appeared to be a reasonable way to differentiate these materials.

Generally, OSM has experienced little difficulty in applying the existing definitions of "coal" and its related terms to the regulation of surface coal mining and reclamation operations and the surface effects of underground mining. Several questions did arise, however, as to the propriety of existing definitions and their reliance upon ASTM Standard D 388–77 in light of subsequent revisions to the ASTM Standard in 1984, 1988, and 1992. These questions arose particularly in light of the provisions in the existing definition of "anthracite" at 30 CFR 700.5 which said, "Notices of changes made to (ASTM Standard D 388–77) will be periodically published by (OSM) in the **Federal Register**." OSM never did publish any such notice or otherwise incorporate the 1984, 1988, or 1992 revisions. Had the existing definitions been revised to reflect the revisions in ASTM Standard D 388, certain types of coal that would have been classified as lignite under the statutory definition at section 701(30), 30 U.S.C. 1291(30), would have been excluded from the revised regulatory definition.

For example, while consolidated lignitic coal with a calorific value of 8,100 Btu per pound, moist, mineral-matter-free, and rich in inertinite or liptinite, as determined by petrographic analysis, was classified as lignite under ASTM Standard D 388–77, it is not classified as lignite under the 1984, 1988, or 1992 revisions. Thus, the 1984, 1988, and 1992 revisions of ASTM Standard D 388 exclude from the lignite classification some coals that are included under the SMCRA definition of "lignite coal" as "consolidated lignitic coal having less than 8,300 [Btu] per pound, moist and mineral-matter-free."

Another issue surrounding the definition of "coal" and its related terms was the fact that the definition of "anthracite" at 30 CFR 700.5 provides for the expiration on July 1, 1981, of the Director of the Federal Register's approval of the incorporation by reference of ASTM Standard D 388–77. Notwithstanding this provision, the Director of the Federal Register had continued to approve the incorporation by reference of the ASTM standard D 388–77.

A California operator has also challenged OSM's regulatory jurisdiction over its operations, alleging both flaws in OSM's existing definitions of "coal" and, because of subsequent revisions to ASTM D 388, the substance which it mined was none of the coal classifications specified in ASTM Standard D 388–77. In a settlement agreement applying only to the parties and facts at issue, the previous Director of the Office of Surface Mining agreed "* * * under the most current ASTM standard the material mined (by the California operator) would not be classifiable as coal" and resolved the dispute in favor of the California operator. *Jackson Valley Energy Partners, L.P.*, v. *Office of Surface Mining and Enforcement*, Doc. No. DV 92–2–P (settled December 8, 1992), proceeding dismissed December 15, 1992.

The Office of Surface Mining Director's reliance in this action upon the most current ASTM Standard and not the ASTM Standard D 388–77 specified in the existing regulations understandably has led to some uncertainty as to the applicability of those regulations.

In response to these issues and in the interest of increased stability and predictability of its regulations, OSM proposes to revise the existing definition of "coal" and its related terms by deleting references to the coal classifications of ASTM Standard D 388–77. The new definition of coal will be general and more in keeping with congressional intent to regulate all types of coal under SMCRA. The definitions of "anthracite," "bituminous/subbituminous," and "lignite" will be based on fixed carbon content and calorific values measured by ASTM procedures.

These revisions will avoid prior periodic calls to update the existing definitions to reflect the most current ASTM Standard D 388. The definitions of "anthracite," and "bituminous/subbituminous" will also be more consistent with the statutory definition of "lignite" which is defined at section 701 (30) in terms of calorific values.

III. Discussion of Proposed Rule

A. Introduction

The proposed rule uses commonly-accepted physical and chemical characteristics to define the term "coal" and the related terms "anthracite," "bituminous/subbituminous," and "lignite." Unlike the existing definitions, the proposed definitions do not incorporate by reference the coal classifications of ASTM Standard D 388–77.

OSM proposes to exclude from the proposed definitions any reference to the coal classification in ASTM Standard D 388 because, to a large extent, from a regulatory standpoint, the exacting petrographic distinctions which now set forth in part the applicability of these classifications have little relevance to the considerations involved in the regulation of coal mining and reclamation operations and the surface effects of underground mining operations under SMCRA.

Although they do not incorporate any ASTM standard, the proposed definitions do rely on ASTM procedures for measuring the fixed carbon content and calorific value of coal. The recited ASTM procedures are those that will be in effect at the time the final rule promulgated. The current procedures have not substantially changed from those in effect since 1977. Should a change occur in these procedures, such change is not expected to have a material effect on the measurement results.

Under the Administrative Procedure Act, 5 U.S.C. 553, there should be no question as to which ASTM procedures are meant by the definitions' general references to the ASTM procedures for measuring fixed carbon content and calorific value. However, such general references could lead to the same problem of interpretation that OSM is attempting to correct through this rulemaking. OSM solicits comment on whether the final rule should include specific references to the applicable ASTM procedures.

B. Section 700.5 Definition of "Coal"

OSM proposes to refine the term "coal" at 30 CFR 700.5 to mean "combustible, carbonaceous rock composed principally of consolidated and chemically altered plant remains." Any such material, regardless of its otherwise unique physical, chemical, or petrographic properties, would be subject to regulation under SMCRA. This proposed definition is not intended, however, to include oil shales and other related materials such as heavy oils, tar sands, etc.

The proposed definition of "coal" is modeled largely on the definition of "coal" in ASTM Standard D 2796–69, which was in effect before and during the passage of SMCRA. Because it does not incorporate any ASTM standard, the proposed definition of "coal" would not be affected by any current or revised ASTM standard.

In drafting this proposed definition, OSM sought input from other Federal agencies. The U.S. Geological Survey (USGS) and the Energy Information Administration of the U.S. Department of Energy provided glossaries with definitions of coal definitions of coal and related terms. The definitions of "coal" in these glossaries are similar to the proposed OSM definition of "coal," except that the USGS definition specifies carbonaceous content. None of the agencies contacted in this rulemaking effort had a regulatory definition of "coal." Several of these agencies did, however, refer to the Bureau of Mines "Dictionary of Mining, Mineral, and Related Terms," which contains a lengthy discussion of coal and its properties that is consistent with the proposed OSM definition of "coal."

OSM is seeking comments on the applicability of this rule to the material found in abandoned coal refuse piles or extracted therefrom through reprocessing.

C. Sections 700.5 and 870.5 Definitions of "Lignite" and "Lignite Coal"

The proposed rule would remove from 30 CFR 870.5 the existing definition of "lignite coal" and, in its place, at 30 CFR 700.5, define "lignite" to mean "coal having less than 8,300 British thermal units (Btu) per pound on a moist, mineral-matter-free basis, as determined by the procedures of the American Society for Testing and Materials for measuring the calorific value of coal."

The proposed definition of "lignite" is technically similar to the existing statutory and regulatory definitions of "lignite coal" at section 701(30) of SMCRA, 30 U.S.C. 1291(30), and 30 CFR 870.5. It adds to the SMCRA definition a general reference to the ASTM procedures for measuring calorific value. It modifies the existing regulatory definition by substituting that general reference for the incorporation by reference of specific ASTM procedures for measuring the calorific value of coal. The ASTM procedures referred to in the proposed definition would be those in effect at the time the final rule is promulgated.

OSM proposes to define only the term "lignite," as compared to the longer statutory term "lignite coal," because the definition of "lignite" itself includes the term "coal," and the shorter term is more consistent with the related, defined terms, "anthracite," and "bituminous/subbituminous."

OSM proposes to place the new definition of "lignite" in 30 CFR 700.5, as compared to 30 CFR 870.5, to facilitate easy reference to it and the related definitions. OSM is not aware of any effect that this location of the definition would have on its application or interpretation and does not intend to cause any such effect.

D. Sections 700.5 and 870.5 Definitions of "Anthracite," "Bituminous/Subbituminous," and "Anthracite, Bituminous and Subbituminous Coal"

The proposed rule would remove from 30 CFR 870.5 the existing definition of "anthracite, bituminous and subbituminous coal" and, in its place, at 30 CFR 700.5, add separate definitions of "anthracite," and "bituminous/subbituminous."

It would define "anthracite" to mean "coal having 86 percent or more fixed carbon on a dry, mineral-matter-free basis, as determined by the procedures of the American Society for Testing and Materials for measuring the fixed carbon content of coal."

It would define "bituminous/subbituminous" to mean "coal having less than 86 percent fixed carbon on a dry, mineral-matter-free basis; and having a calorific value of 8,300 British thermal units (Btu) or more per pound on a moist, mineral-matter-free basis. Fixed carbon content and calorific value shall be determined by the procedures of the American Society for Testing and Materials for measuring the fixed carbon content and calorific value of coal." The proposed definition of "bituminous/subbituminous" would, therefore, generally include the ranks of coal commonly classified as bituminous and subbituminous under ASTM Standard D 388–77.

The purpose of the existing definition of "anthracite, bituminous and subbituminous coal" is to differentiate those coals from lignite coal in connection with the computation of abandoned mine land reclamation (AML) fees. Under 30 CFR 870.13, the surface and underground mining fee for lignite coal is 10 cents per ton, while the surface and underground mining fees for the other coals is 35 cents and 15 cents per ton respectively.

The existing definition of "anthracite, bituminous and subbituminous coal"

does not specify any physical or chemical characteristics, since, for purposes of AML fee computation, the definition of "lignite coal" adequately delineates the boundary between "lignite coal" from these other materials. OSM proposes to remove the definition of "anthracite, bituminous and subbituminous coal" from 30 CFR 870.5 because more-specific definitions of "anthracite" and "bituminous/subbituminous" are needed at 30 CFR 700.5 for purposes other than AML fee computation and these specific definitions would eliminate the need for the general definition in 30 CFR 870.5. In proposing to remove the definition of "anthracite, bituminous and subbituminous coal," OSM does not intend to in any way affect the computation of AML fees for lignite and these other coals.

A definition of "anthracite" is needed in connection with the regulation of anthracite surface coal mining and reclamation operations under 30 CFR 785.11 and part 820 and for the computation of AML fees under 30 CFR 870.13. The proposed definition of "anthracite," like the proposed definition of "coal," no longer incorporates the anthracite classification of ASTM Standard D 388–77. It is based entirely on fixed carbon context. Any coal having a fixed carbon content of 86 percent or more would be considered anthracite. Fixed carbon content would be determined by the ASTM procedures in effect at the time the final rule is promulgated.

A definition of "bituminous/subbituminous" is needed in connection with the regulation of special bituminous mines under 30 CFR 785.12 and Part 825 and for the computation of AML fees under 30 CFR 870.13. The proposed definition of "bituminous/subbituminous," like the proposed definition of "coal," does not incorporate the bituminous or subbituminous classifications of ASTM Standard D 388–77. It is based entirely on fixed carbon content and calorific value. Any coal having a fixed carbon content of less than 86 percent and a calorific value of 8,300 Btu or more would be considered bituminous/subbituminous. Fixed carbon content and calorific value would be determined by the ASTM procedures in effect at the time the final rule is promulgated.

As discussed above, the proposed definition of "bituminous/subbituminous" would generally include the coals classified both as bituminous and subbituminous under ASTM Standard D 388–77. Neither of these coals are separately defined in existing regulations. The combining of bituminous and subbituminous coals in the proposed broad definition of "bituminous/subbituminous" is needed to conform the proposed definition to the provisions of section 527 of SMCRA, 30 U.S.C. 1277, which deal with special bituminous coal mines in the Western states. The coal from these mines, although identified by SMCRA as being bituminous would be deemed to be subbituminous by most classification systems. Therefore, in order to include this Western coal in a definition consistent with section 527, the Secretary has chosen to broadly frame the proposed definition of "bituminous/subbituminous" to include the calorific values of both bituminous and subbituminous coals. This broad definition should not alter the AML fee computation for operators mining coals within the proposed bituminous/subbituminous range of values and characteristics.

OSM intends to encompass under the proposed definitions of "anthracite," "bituminous/subbituminous," and "lignite" all of the materials encompassed by the proposed definition of "coal." Thus, the definition of each succeeding type of coal begins precisely where the other leaves off, with no gap in coverage. OSM solicits comment on any coal that inadvertently may have been excluded from these definitions.

E. Sections 870.13 (a) and (b) Bituminous and Subbituminous

The proposed rule would remove from 30 CFR 870.13 (a) and (b) the terms "bituminous" and "subbituminous." The chemical and physical properties for these classifications of coal have been included in the broader term "bituminous/subbituminous."

In addition, OSM is proposing to make conforming changes to 30 CFR Sections 701.5, 705.5, 706.3, 715.11, 716.4, 785.12, 825, 825.1, and 825.2 by removing the terms "bituminous" and "subbituminous" and adding in their place the combined term "bituminous/subbituminous."

IV. Procedural Matters

Federal Paperwork Reduction Act

This rule does not contain provisions for the collection of information that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Executive Order 12778; Civil Justice Reform Certification

This proposed rule has been reviewed under the applicable standards of section 2(b)(2) of Executive Order 12778, Civil Justice Reform (56 FR 55195). In general, the requirements of section 2(b)(2) of Executive Order 12778 are covered by the preamble discussion of this proposed rule. Additional remarks follow concerning individual elements of the Executive Order:

A. What is the preemptive effect, if any, to be given to the regulation?

The proposed rule would have the same preemptive effect as other standards adopted pursuant to SMCRA. To retain primacy, States have to adopt and apply standards for their regulatory programs that are no less effective than those set forth in the OSM's rules. Any State law that is inconsistent with, or that would preclude implementation of this proposed rule, would be subject to preemption under SMCA section 505 and implementing regulations at 30 CFR 730.11. To the extent that the proposed rules would result in preemption of State law, the provisions of SMCRA are intended to preclude inconsistent State laws and regulations. This approach is established in SMCRA, and has been judicially affirmed. See *Hodel* v. *Virginia Surface Mining and Reclamation Ass'n*, 452 U.S. 264 (1981).

B. What is the effect on existing Federal law or regulation, if any, including all provisions repealed or modified?

This rule modifies the implementation of SMCRA, as described herein, and is not intended to modify the implementation of any other Federal statute. The preceding discussion of this rule specifies the Federal regulatory provisions that are affected by this rule.

C. Does the rule provide a clear and certain legal standard for affected conduct rather than a general standard, while promoting simplification and burden reduction?

The standards established by this rule are as clear and certain as practicable, given the complexity of the topics covered and the mandates of SMCRA.

D. What is the retroactive effect, if any, to be given to the regulation?

This rule is not intended to have retroactive effect.

E. Are administrative proceedings required before parties may file suit in court? Which proceedings apply? Is the exhaustion of administrative remedies required?

No administrative proceedings are required before parties may file suit in court challenging the provisions of this rule under section 526(a) of SMCRA, 30 U.S.C. 1276(a).

Prior to any judicial challenge to the application of the rule, however, administrative procedures must be exhausted. In situations involving OSM application of the rule, applicable administrative procedures may be found

at 43 CFR part 4. In situations involving State regulatory authority application of provisions equivalent to those contained in this rule, applicable administrative procedures are set forth in the particular State program.

F. Does the rule define key terms, either explicitly or by reference to other regulations or statutes that explicitly define those items?

Terms which are important to the understanding of this rule are set forth in 30 CFR 700.5, 701.5 and 870.5.

G. Does the rule address other important issues affecting clarity and general draftsmanship of regulations set forth by the Attorney General, with the concurrence of the Director of the Office of Management and Budget, that are determined to be in accordance with the purposes of the Executive Order?

As of October 7, 1993, the Attorney General and the Director of the Office of Management and Budget have not issued any guidance on this requirement.

Executive Order 12291 and Regulatory Flexibility Act

The Department of the Interior has determined that the proposed rule is not a major rule under the criteria of Executive Order 12291 and certifies that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* These determinations are based on the findings that the regulatory additions in the rule will not change costs to industry or to the Federal, State, or local governments. Furthermore, the rule produces no adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States enterprises to compete with foreign-based enterprises in domestic or export markets.

National Environmental Policy Act

OSM has prepared a draft environmental assessment (EA) of this proposed rule and has made a tentative finding that it would not significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). It is anticipated that a finding of no significant impact will be made for the final rule in accordance with OSM procedures under NEPA. The EA is on file in the OSM Administrative Record at the address specified previously (see "**ADDRESSES**"). The EA will be completed and a finding made on the significance of any resulting impacts prior to promulgation of the final rule.

Authors

The principal author of this proposed rule is: Douglas J. Growitz, P.G., Hydrologist, Branch of Research and Technical Standards, Office of Surface Mining Reclamation and Enforcement, room 640 N.C., 1951 Constitution Avenue, NW., Washington, DC 20240, Telephone: 202–343–1507.

List of Subjects

30 CFR Part 700

Administrative practice and procedure, Reporting and recordkeeping requirements, Surface mining, and Underground mining.

30 CFR Part 870

Reporting and recordkeeping requirements, Surface mining, and Underground mining.

Dated: August 9, 1993.

Michael Dombeck,

Acting Deputy Assistant Secretary, Land and Minerals Management.

Accordingly, under the authority of 30 U.S.C. 1201 *et seq.*, as amended, OSM proposes to amend 30 CFR chapter VII as set forth below:

PART 700—GENERAL

1. The authority citation for part 700 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended; and Pub. L. 100–34.

2. Section 700.5 is amended by revising the definitions of "Anthracite" and "Coal" and adding definitions of "Bituminous/subbituminous" and "Lignite" to read as follows:

§ 700.5 Definitions.

* * * * *

Anthracite means coal having 86 percent or more fixed carbon on a dry, mineral-matter-free basis, as determined by the procedures of the American Society for Testing and Materials for measuring the fixed carbon content of coal.

Bituminous/subbituminous means coal having less than 86 percent fixed carbon on a dry, mineral-matter-free basis; and having a calorific value of 8,300 British thermal units (Btu) or more per pound on a moist, mineral-matter-free basis. Fixed carbon content and calorific value shall be determined by the procedures of the American Society for Testing and Materials for measuring the fixed carbon content and calorific value of coal.

Coal means combustible, carbonaceous rock composed principally of consolidated and chemically altered plant remains.

* * * * *

Lignite means coal having less than 8,300 British thermal units (Btu) per pound on a moist, mineral-matter-free basis, as determined by the procedures of the American Society for Testing and Materials for measuring the calorific value of coal.

* * * * *

PART 870—ABANDONED MINE RECLAMATION FUND—FEE COLLECTION AND COAL PRODUCTION REPORTING

3. The authority citation for part 870 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended; and Pub. L. 100–34.

4. Section 870.5 is amended by removing the definitions of "Anthracite, bituminous and subbituminous coal" and "Lignite coal."

5. Section 870.13 (a) and (b) are revised to read as follows:

§ 870.13 Fee computations.

(a) *Surface mining fees.* The fee for anthracite and bituminous/subbituminous coal, including reclaimed coal, is 35 cents per ton unless the value of such coal is less than $3.50 per ton, in which case the fee is 10 percent of the value.

(b) *Underground mining fees.* The fee for anthracite and bituminous/subbituminous coal is 15 cents per ton unless the value of such coal is less than $1.50 per ton, in which case the fee is 10 percent of the value.

* * * * *

PARTS 701, 705, 706, 715, 716, 785, 825—[AMENDED]

§§ 701.5, 705.5, 706.3, 715.11, 716.4, 785.12, 825.1, 825.2 [Amended]

6. In the list below, for each section indicated in the left column, remove the information in the middle column from wherever it appears in the section, and replace it with the information indicated in the right column:

Section	Remove	Add
701.5	Special bituminous coal mines.	Special bituminous/subbituminous coal mines.
705.5	Or loading bituminous coal, sub-bituminous coal.	Or loading bituminous/sub-bituminous coal.
706.3	Or loading bituminous coal, subbituminous coal.	Or loading bituminous/subbituminous coal.

Section	Remove	Add
715.11 (a)(3).	Bituminous	Bituminous/ sub-bituminous.
716.4 heading.	Special bituminous coal mines.	Special bituminous/sub-bituminous coal mines.
716.4(a)–(c)	Bituminous	Bituminous/ sub-bituminous.
785.12 heading.	Special bituminous surface coal.	Special bituminous/sub-bituminous surface coal
785.12(a)–(d).	Bituminous	Bituminous/ sub-bituminous.
825.1	Bituminous	Bituminous/ sub-bituminous.
825.2	Special bituminous coal mines.	Special bituminous/sub-bituminous coal mines.

7. In the heading of Part 825, the reference to "BITUMINOUS" is revised to read "BITUMINOUS/SUB-BITUMINOUS".

[FR Doc. 93–24495 Filed 10–6–93; 8:45 am]
BILLING CODE 4310-05-M

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federal register

Thursday
October 7, 1993

Part V

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Squaxin Island Tribe and State of Washington

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming; Squaxin Island Tribe and the State of Washington

AGENCY: Bureau of Indian Affairs; Interior.

ACTION: Notice of approved tribal-state compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved the Tribal-State Compact for Class III Gaming Between the Squaxin Island Tribe and the State of Washington, enacted on July 27, 1993.

DATES: This action is effective October 7, 1993.

FOR FURTHER INFORMATION CONTACT: Hilda Manuel, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: September 17, 1993.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 93–24645 Filed 10–6–93; 8:45 am]

BILLING CODE 4310–02–P

federal register

Thursday
October 7, 1993

Part VI

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Sisseton-Wahpeton Sioux Tribe and State of South Dakota

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming; Sisseton-Wahpeton Sioux Tribe and State of South Dakota

AGENCY: Bureau of Indian Affairs; Interior.

ACTION: Notice of approved amendment to Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved the Amended Gaming Compact Between the Sisseton-Wahpeton Sioux Tribe and the State of South Dakota, enacted on July 26, 1993.

DATES: This action is effective on October 7, 1993.

FOR FURTHER INFORMATION CONTACT: Hilda Manuel, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: September 24, 1993.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 93–24646 Filed 10–6–93; 8:45 am]

BILLING CODE 4310–02–P

federal register

Thursday
October 7, 1993

Part VII

The President

Proclamation 6603—Mental Illness Awareness Week, 1993

Proclamation 6604—German-American Day, 1993

Memorandum of September 30—Negotiated Rulemaking

Memorandum of October 1—Implementing Management Reform in the Executive Branch

Federal Register
Vol. 58, No. 193
Thursday, October 7, 1993

Presidential Documents

Title 3—

The President

Proclamation 6603 of October 5, 1993

Mental Illness Awareness Week, 1993

By the President of the United States of America

A Proclamation

Almost 50 million Americans have serious emotional disorders or illnesses. The economic and human costs of these disorders are staggering. Treatment expenses and lost productivity cost the United States over one hundred billion dollars a year. The pain and suffering caused by mental illness are immeasurable for the individuals afflicted and their families.

The consequences of untreated mental illnesses and emotional disturbances are clear. Suicide is 30 times more common among people who are clinically depressed than among the general population. Persons with mental illness often live in poverty and are at risk for homelessness and disease. The mentally ill may find themselves in jail or prison, not for any criminal act, but rather because no other facilities are available to respond to psychiatric emergencies.

Research has led to major advances, not only in the development of treatments for mental illnesses, but also in the understanding of the needs of the individuals who live with mental illnesses. With appropriate care and support, many people who have these disorders can live productive and fulfilling lives. Unfortunately, less than one-third of all individuals in need of mental health services actually receive appropriate care. Children, probably the most vulnerable among the mentally ill population, are the least likely to receive care, with less than one-fifth of those in need of services receiving them. The barriers to effective treatment are numerous. Individuals may be unaware that treatment can help them or may be hesitant to seek help for fear of discrimination or ridicule. In many instances, individuals actually lack access to appropriate services. We must work to remove the stigma of mental illness and to educate the public about the availability and effectiveness of mental health treatment.

The Center for Mental Health Services (CMHS), a component of the Substance Abuse and Mental Health Services Administration in the Department of Health and Human Services, was created in 1992 to provide vigorous Federal leadership in the development and delivery of mental health services. CMHS plays a unique role in working with other Federal agencies and departments whose programs and policies affect the lives of the mentally ill, their families, and their communities. CMHS also works closely with State and local governments and the private sector to guarantee continuity, integration of services, and access to comprehensive systems of care. CMHS supports policy studies, evaluations, and assessments on service delivery issues that are critical for Federal, State, and local policymakers as they organize and finance systems of care.

In recognition of the importance of improving the delivery of mental health services and of educating the American public about the needs of individuals with mental illness, the Congress, by Senate Joint Resolution 61, has designated the week of October 3 through October 9, 1993, as Mental Illness Awareness Week.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim the week beginning October 3, 1993, as Mental Illness Awareness Week. I call upon all citizens of the United States to observe this week with ceremonies and activities to increase the Nation's understanding and acceptance of people with mental illness and to encourage recognition of their need for a broad array of treatment services.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of October, in the year of our Lord nineteen hundred and ninety-three, and of the Independence of the United States of America the two hundred and eighteenth.

William J. Clinton

[FR Doc. 93-24928
Filed 10-6-93; 10:31 am]
Billing code 3195-01-P

Presidential Documents

Proclamation 6604 of October 5, 1993

German-American Day, 1993

By the President of the United States of America

A Proclamation

The makeup of the United States of America is a diverse one, a rich tapestry of different cultures and ethnic origins, stronger and more vibrant because of its variety. The German culture contributes a substantial piece to the American mosaic, and German-Americans have given much to our Nation in the arts, the sciences, the business world, academia, and government. It is fitting that we celebrate these innumerable contributions to our great Nation by marking October 6 as "German-American Day."

The first German settlers arrived in America 310 years ago—harbingers of the more than seven million to follow. German immigrants have thrived in America, finding our Nation's political and economic culture fertile ground for securing the inalienable rights of life, liberty, and the pursuit of happiness for themselves and for their children. Today, citizens of German ancestry comprise the largest ethnic group in the United States.

German-Americans today look with pride to a free and unified Germany as the living symbol of the best in their heritage. Americans look with satisfaction at the enduring friendship between the Federal Republic of Germany and the United States of America. This friendship is rooted in a long line of immigrants and was replanted in the ashes of the Second World War and nurtured through the storms of national division and Cold War confrontation. Warmed by the benefits of peaceful commerce and strengthened by the myriad personal relationships between the German and American peoples, the friendship has flourished.

The United States and the Federal Republic of Germany face formidable challenges in the post-Cold War era, challenges that we approach with greater confidence because we stand together, united in common democratic values.

The Congress, by Senate Joint Resolution 121, has designated October 6, 1993, as "German-American Day" and has authorized and requested the President to issue a proclamation in observance of that day.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim October 6, 1993, as German-American Day. I urge all Americans to learn more about the contributions of German immigrants to the United States in all fields of human endeavor and to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of October, in the year of our Lord nineteen hundred and ninety-three, and of the Independence of the United States of America the two hundred and eighteenth.

William J. Clinton

[FR Doc. 93-24935
Filed 10-6-93; 10:57 am]
Billing code 3195-01-P

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Presidential Documents

Memorandum of September 30, 1993

Negotiated Rulemaking

Memorandum for Executive Departments and Selected Agencies [and the] Administrator of the Office of Information and Regulatory Affairs

Today, I issued the Executive order on Regulatory Planning and Review, which sets forth the Administration's regulatory philosophy and establishes the procedures to be followed by agencies in promulgating regulations. This order also enhances public disclosure requirements and public involvement in the regulatory review process. In Section 6(a) of the order, I direct each agency to explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking. Consistent with that directive and the recommendation of the National Performance Review on this issue, I further direct each agency, within 90 days of this order, to (i) identify to OIRA at least one rulemaking which the agency will, within the upcoming year, develop through the use of negotiated rulemaking or (ii) explain to OIRA why the use of negotiated rulemaking will not be feasible in the upcoming year.

I further direct the Administrator of OIRA to publish this memorandum in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, September 30, 1993.

THE DEPARTMENT OF THE TREASURY
THE DEPARTMENT OF STATE
THE DEPARTMENT OF DEFENSE
THE DEPARTMENT OF JUSTICE
THE DEPARTMENT OF THE INTERIOR
THE DEPARTMENT OF AGRICULTURE
THE DEPARTMENT OF COMMERCE
THE DEPARTMENT OF LABOR
THE DEPARTMENT OF HEALTH AND HUMAN SERVICES
THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
THE DEPARTMENT OF TRANSPORTATION

THE DEPARTMENT OF ENERGY
THE DEPARTMENT OF EDUCATION
THE DEPARTMENT OF VETERANS AFFAIRS
THE ENVIRONMENTAL PROTECTION AGENCY
THE GENERAL SERVICES ADMINISTRATION
THE SMALL BUSINESS ADMINISTRATION
THE OFFICE OF PERSONNEL MANAGEMENT

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Editorial note: For the text of Executive Order 12866, "Regulatory Planning and Review", see the *Weekly Compilation of Presidential Documents* (vol. 29, page 1925), and the Federal Register issue of October 4, 1993 (58 FR 51735).

Presidential Documents

Memorandum of October 1, 1993

Implementing Management Reform in the Executive Branch

Memorandum for the Heads of Executive Departments and Agencies

The National Performance Review has examined how well the government serves its citizens, where it can improve, and where it is necessary to make fundamental changes to make government work better. It has presented its findings and recommendations—including the adoption of new management principles and structural reforms—to improve government throughout the Executive branch.

In order to establish and implement more effective and efficient leadership and management principles throughout the Executive branch as identified in the National Performance Review, I hereby direct the following:

1. *Establish Chief Operating Officers.*

Each agency head shall designate a Chief Operating Officer, who shall be the Deputy or another official with agency-wide authority. The Chief Operating Officer shall report directly to the agency head and shall be responsible for:

(a) implementing the President's and agency head's goals and the agency's mission;

(b) providing overall organization management to improve agency performance;

(c) assisting the agency head in promoting ongoing quality improvement, developing strategic plans, and measuring results;

(d) directing ongoing reengineering of the agency's administrative processes;

(e) overseeing agency-specific application of performance measures, procurement reforms, personnel reductions, financial management improvements, telecommunications and information technology policies, and other government-wide systems reforms adopted as a result of the recommendations of the National Performance Review; and

(f) reforming the agency's management practices by incorporating the principles of the National Performance Review into day-to-day management.

2. *Implement Additional Agency Reforms.*

Each agency head shall identify and implement additional changes within the agency that will promote the principles and standards of the National Performance Review and the strategic and quality management approaches described by the Federal Quality Institute's "Presidential Award for Quality" or its successor award(s).

3. *Establishment of President's Management Council.*

In order to advise and assist the President and the Vice President in ensuring that the reforms adopted as a result of the National Performance Review are implemented throughout the Executive branch, I hereby establish the President's Management Council ("The Council"). The Council shall comprise the:

BEST COPY AVAILABLE

(a) The Deputy Director for Management, Office of Management and Budget;

(b) The Chief Operating Officers from the following agencies:

(1) Department of State;

(2) Department of the Treasury;

(3) Department of Defense;

(4) Department of Justice;

(5) Department of the Interior;

(6) Department of Agriculture;

(7) Department of Commerce;

(8) Department of Labor;

(9) Department of Health and Human Services;

(10) Department of Housing and Urban Development;

(11) Department of Transportation;

(12) Department of Energy;

(13) Department of Education;

(14) Department of Veterans Affairs;

(15) Environmental Protection Agency;

(c) The following central management agency representatives:

(1) Director of the Office of Personnel Management;

(2) Administrator of General Services;

(d) Chief Operating Officers of three other Executive branch agencies designated by the Chairperson, in his or her discretion;

(e) Secretary of the Cabinet; and

(f) Such other officials of Executive departments and agencies as I may, from time to time, designate.

The Deputy Director for Management of the Office of Management and Budget shall serve as Chairperson of the Council. The Chairperson of the Council shall appoint a Vice-Chairperson from the Council's membership to assist the Chairperson in conducting the affairs of the Council.

I also establish an Executive Committee of the Council. Members of the Executive Committee shall be: the Chairperson; the Vice Chairperson; the two central management agency representatives; two Chief Operating Officers serving on the Council, whom I shall designate, and any additional Council members whom I may, from time to time, designate.

The Chairperson shall convene meetings of the Council, which shall be held at least once a month.

The functions of the Council shall include, among others:

(a) improving overall Executive branch management, including reform of government-wide management systems, such as management controls, financial management, personnel, budgeting, and procurement;

(b) coordinating management-related efforts to improve government throughout the Executive branch and, as necessary, resolving specific interagency management issues;

(c) ensuring the adoption of new management practices in agencies throughout the Executive branch; and

(d) identifying examples of, and providing mechanisms for, interagency exchange of information about best management practices.

The Council shall be provided with appropriate staff support and other resources as may be necessary to carry out its duties. In addition, the Federal Quality Institute shall serve as a resource to the Council.

The Council shall seek advice and information as appropriate from nonmember Federal agencies, particularly smaller agencies. The Council

shall also consider the management reform experience of corporations, non-profit organizations, State and local governments, government employees, public sector unions, and customers of government services.

Agencies shall cooperate with the Council and provide such assistance, information, and advice to the Council as the Council may request, to the extent permitted by law.

4. *Independent Agencies.*

Independent agencies are requested to adhere to this directive.

5. *Judicial Review.*

This directive is for the internal management of the Executive branch and does not create any right or benefit, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

6. *Publication.*

The Director of the Office of Management and Budget is authorized and directed to publish this memorandum in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, October 1, 1993.

[FR Doc. 93-24884
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Reader Aids

Federal Register

Vol. 58, No. 193

Thursday, October 7, 1993

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202–523–5227
Public inspection desk	523–5215
Corrections to published documents	523–5237
Document drafting information	523–3187
Machine readable documents	523–3447

Code of Federal Regulations

Index, finding aids & general information	523–5227
Printing schedules	523–3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523–6641
Additional information	523–5230

Presidential Documents

Executive orders and proclamations	523–5230
Public Papers of the Presidents	523–5230
Weekly Compilation of Presidential Documents	523–5230

The United States Government Manual

General information	523–5230

Other Services

Data base and machine readable specifications	523–3447
Guide to Record Retention Requirements	523–3187
Legal staff	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (PLUS)	523–6641
TDD for the hearing impaired	523–5229

ELECTRONIC BULLETIN BOARD

Free **Electronic Bulletin Board** service for Public Law numbers, and Federal Register finding aids.	202–275–1538, or 275–0920

FEDERAL REGISTER PAGES AND DATES, OCTOBER

51211–51664.....1
51665–51756.....4
51757–51972.....5
51973–52206.....6
52207–52396.....7

CFR PARTS AFFECTED DURING OCTOBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Administrative Orders:
Memorandums:
September 30, 1993.....52391
October 1, 1993.....52393
Notices:
September 30, 1993.....51563
Executive Orders:
11145 (Continued by EO 12869).....51751
11183 (Continued by EO 12869).....51751
11287 (Continued by EO 12869).....51751
11776 (Continued by EO 12869).....51751
12002 (See EO 12867).....51747
12131 (Continued by EO 12869).....51751
12196 (Continued by EO 12869).....51751
12214 (See EO 12867).....51747
12216 (Continued by EO 12869).....51751
12291 (Revoked by EO 12866).....51735
12345 (Continued by EO 12869).....51751
12367 (Continued by EO 12869).....51751
12382 (Continued by EO 12869).....51751
12498 (Revoked by EO 12866).....51735
12675 (Revoked in part EO 12869).....51751
12687 (Revoked by EO 12869).....51751
12696 (Revoked by EO 12869).....51751
12700 (See EO 12869).....51751
12720 (Revoked by EO 12869).....51751
12730 (See EOs 12867, 12868).....51747, 51749
12735 (Revoked by EO 12867; See EO 12868).....51747, 51749
12774 (Superseded by EO 12869).....51751
12775 (See notice of September 30).....51563
12779 (See notice of September 30).....51563
12792 (Revoked by EO 12869).....51751
12813 (Revoked by EO 12869).....51751
12853 (See notice of September 30).....51563
12866.....51735
12867.....51747
12868.....51749
12869.....51751
12870.....51753
12871.....52201
Proclamations:
6598.....51559
6599.....51561
6600.....51721
6601.....51723
6602.....52205
6603.....52387
6604.....52389
Presidential Determinations:
No. 93–39 of September 17, 1993.....51973
No. 93–40 of September 28, 1993.....51975
No. 93–41 of September 29, 1993.....51977
No. 93–43 of September 30, 1993.....52207
No. 93–44 of September 30, 1993.....52209
No. 93–45 of September 30, 1993.....52211
No. 94–1 of October 1, 1993.....52213

5 CFR

532.....51211
591.....51565
Proposed Rules:
2502.....51255
2504.....51256

7 CFR

2.....51211
246.....51566
301.....51979, 51982
1002.....51982
1205.....52215
1211.....51568
1427.....51982
1477.....51757
1478.....51757
Proposed Rules:
1413.....51934

9 CFR

Proposed Rules:
82.....52240
317.....51581

318.....51581

10 CFR

72.....51762

Proposed Rules:

73.....52035

11 CFR

Proposed Rules:

100.....52040
113.....52040

12 CFR

574.....52140
618.....51993

14 CFR

23.....51970
39.....51212, 51215, 51770, 51771, 52220
71.....51773, 52140
91.....51966, 52140
97.....51774, 51776

Proposed Rules:

39.....51583, 51585, 51587, 51589, 51793, 52041, 52240, 52243
71.....51256, 51257
91.....51938
121.....51938, 51944
125.....51938
129.....51944
135.....51938, 51944

15 CFR

773.....52166, 52168
778.....52166
799.....52166, 52169

17 CFR

250.....51488
259.....51488

Proposed Rules:

250.....51508

18 CFR

35.....51217, 51777
38.....51777
292.....51777
293.....51777
375.....51222
382.....51777

Proposed Rules:

35.....51259

19 CFR

Proposed Rules:

7.....52246
10.....52246
148.....52246

20 CFR

404.....52346
416.....52346

Proposed Rules:

655.....52152

21 CFR

172.....52221
176.....51994
522.....52222
864.....51570

Proposed Rules:

103.....52042
812.....52142, 52144
813.....52142
1301.....52246
1311.....52246

23 CFR

Proposed Rules:

660.....51794

24 CFR

888.....51410
905.....51952
965.....51952

Proposed Rules:

905.....51261
990.....51261

26 CFR

1.....51571
602.....51571

27 CFR

Proposed Rules:

24.....52222

28 CFR

2.....51779
11.....51223
51.....51225

29 CFR

Proposed Rules:

507.....52152
1609.....51266

30 CFR

917.....51225
950.....52232

Proposed Rules:

253.....52059
700.....52374
701.....52374
705.....52374
706.....52374
715.....52374
716.....52374
785.....52374
825.....52374
870.....52374

31 CFR

Proposed Rules:

103.....51269

32 CFR

40.....51780
80.....51996
86.....52010
199.....51227
706.....51241

33 CFR

2.....51726
3.....51726
100.....51242
165.....51243
175.....51576
181.....51576

Proposed Rules:

126.....51906
127.....51906
187.....51920

34 CFR

642.....51518
645.....51518
646.....51518
668.....52194
674.....52194
675.....52194
676.....52194
682.....52194
690.....52194

Proposed Rules:

668.....51712

36 CFR

3.....52017
4.....52017
21.....51780, 51781

Proposed Rules:

3.....51798
17.....51799

40 CFR

52.....52237
61.....51784
300.....52018
258.....51536
271.....51244
372.....51785
721.....51672, 51694

Proposed Rules:

52.....51591, 51593
89.....51595

42 CFR

435.....51408
436.....51408
440.....51408

Proposed Rules:

440.....51288
441.....51288

43 CFR

37.....51550

Proposed Rules:

4700.....51297

Public Land Orders:

6998.....52238
6999.....52238

44 CFR

64.....51576, 52019

Proposed Rules:

67.....51598

46 CFR

160.....51576

Proposed Rules:

10.....51408
12.....51408
67.....51298
585.....52248

47 CFR

1.....51246
15.....51247
73.....51250, 51578, 51579, 51787
74.....51250
87.....52021
90.....51251

Proposed Rules:

15.....51299
36.....52254
73.....51603, 51799
74.....52256
90.....51299

48 CFR

107.....51524
171.....51524
172.....51524
173.....51524
174.....51524
175.....51524
176.....51524
177.....51524
178.....51524
179.....51524
180.....51524
571.....51788, 52021
1002.....52027
1017.....52027
1018.....52027
1312.....52027
1313.....52027
1314.....52027

Proposed Rules:

23.....52050
390.....51800
1063.....51603
1105.....51800
1121.....51800
1152.....51800

50 CFR

17.....52027, 52031
229.....51788
301.....51253
642.....51579, 51789
663.....52031
672.....51791, 52032
675.....51253, 52033

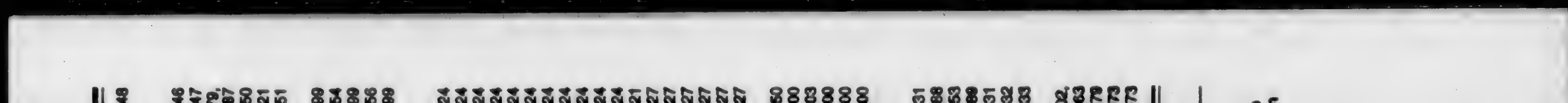
Proposed Rules:

17.....51302, 51604, 52058, 52059, 52063
52.....51270, 51279
641.....52063, 52073
651.....52073

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last List October 6, 1993



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Problems with Federal agency subscriptions	523–5243

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WHO: The Office of the Federal Register.

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WASHINGTON, DC

(two briefings)

WHEN: October 19 at 9:00 am and 1:30 pm

WHERE: Office of the Federal Register, 7th Floor Conference Room, 800 North Capitol Street NW, Washington, DC (3 blocks north of Union Station Metro)

RESERVATIONS: 202–523–4538

Contents

Federal Register
Vol. 58, No. 194
Friday, October 8, 1993

Agricultural Marketing Service
RULES
Celery grown in Florida, 52402
Lemons grown in California and Arizona, 52401
Milk marketing orders:
Middle Atlantic, 52404, 52405
Oranges and grapefruit grown in Texas, 52400

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Cooperative State Research Service
See Federal Grain Inspection Service

Animal and Plant Health Inspection Service
RULES
Plant Protection and Quarantine Treatment Manual; incorporation by reference, 52399

Antitrust Division
NOTICES
National cooperative research notifications:
Gas Utilization Research Forum, 52508
National Information Technology Center of Maryland, Inc., 52508
SciMed Life Systems, Inc., 52508

Blind or Severely Disabled, Committee for Purchase From People Who Are
See Committee for Purchase From People Who Are Blind or Severely Disabled

Coast Guard
RULES
Drawbridge operations:
Michigan, 52441
Ports and waterways safety:
Boston Inner Harbor, MA; safety zone; correction, 52442
Regattas and marine parades:
First Chattanooga Head Race, 52440
Tank vessels:
Vessels that carry oil cargoes; longitudinal strength, plate thickness and periodic gauging; minimum standards, 52598
PROPOSED RULES
Drawbridge operations:
Minnesota et al., 52466
NOTICES
Meetings:
National Boating Safety Advisory Council, 52524, 52525

Commerce Department
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Procurement list; additions and deletions, 52478

Cooperative State Research Service
NOTICES
Grants and cooperative agreements; availability, etc.:
National competitive research initiative program, 52570

Copyright Royalty Tribunal
NOTICES
Audio home recording royalty fees:
Distribution proceedings, 52478

Defense Department
See Navy Department
NOTICES
Meetings:
Science Board task forces, 52478

Defense Nuclear Facilities Safety Board
NOTICES
Conflict of interest resolution:
Sanford Cohen & Associates, Inc., 52479

Drug Enforcement Administration
NOTICES
Schedules of controlled substances; production quotas:
Schedule I and II—
1994 proposed aggregate, 52510
Schedules I and II—
1994 aggregate, 52508

Education Department
PROPOSED RULES
Special education and rehabilitative services:
Client assistance program, 52614
Rehabilitation long-term training, 52606

Employment Standards Administration
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 52510

Energy Department
See Federal Energy Regulatory Commission
See Hearings and Appeals Office, Energy Department
NOTICES
Meetings:
National Petroleum Council, 52484
Natural gas exportation and importation:
Nortech Energy Corp., 52484

Environmental Protection Agency
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Texas, 52467
NOTICES
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 52485
Weekly receipts, 52485
Municipal solid waste landfill permit programs; adequacy determinations:
South Dakota, 52486

Utah, 52489
Wyoming, 52491
Toxic and hazardous substances control:
Chemical substance inventory—
Removal of 36 incorrectly reported chemical substances, 52493

Executive Office of the President
See Presidential Documents
See Trade Representative, Office of United States

Federal Aviation Administration
NOTICES
Environmental statements; availability, etc.:
New Jersey; aircraft flight patterns, effects of changes, 52624
Meetings:
Research, Engineering, and Development Advisory Committee, 52525
RTCA, Inc., 52525, 52526

Federal Communications Commission
NOTICES
Committees; establishment, renewal, termination, etc.:
Advanced Television Service Advisory Committee charter, 52495
Rulemaking proceedings; petitions field, granted, denied, etc., 52495

Federal Emergency Management Agency
NOTICES
Disaster and emergency areas:
Illinois, 52496
Iowa, 52496
Missouri, 52496

Federal Energy Regulatory Commission
RULES
Federal Power Act; approved forms; FERC–714 et al., 52420
NOTICES
Applications, hearings, determinations, etc.:
Chandeleur Pipe Line Co., 52481
Columbia Gas Transmission Corp., 52481
Koch Gateway Pipeline Co., 52482
MIGC, Inc., 52482
Natural Gas Pipeline Co. of America, 52482
Pacific Gas Transmission Co., 52483
Polk Power Partners, L.P., 52483
Texas Eastern Transmission Corp., 52483
United Gas Pipe Line, 52484

Federal Grain Inspection Service
NOTICES
Agency designation actions:
Michigan, 52475

Federal Maritime Commission
NOTICES
Freight forwarder licenses:
G.C. International Forwarding Co. et al., 52496
Investigations, hearings, petitions, etc.:
Ocean Tariff Bureau, 52497
Pacific Coast Tariff Bureau, 52497

Federal Mine Safety and Health Review Commission
NOTICES
Meetings; Sunshine Act, 52531

Federal Reserve System
NOTICES
Applications, hearings, determinations, etc.:
White Eagle Financial Group, Inc., 52497

Food and Drug Administration
RULES
Medical devices:
Device tracking
Correction, 52440
NOTICES
Meetings:
Center for Drug Evaluation and Research, 52497

General Services Administration
RULES
Acquisition regulations:
Amendments, 52442

Health and Human Services Department
See Food and Drug Administration
See Public Health Service
See Social Security Administration

Health Resources and Services Administration
See Public Health Service

Hearings and Appeals Office, Energy Department
NOTICES
Cases filed, 52484

Housing and Urban Development Department
RULES
Low income housing:
Rental rehabilitation program closeout requirements, 52566
PROPOSED RULES
Employment and business opportunity:
Economic opportunities for low and very low-income persons, 52534, 52560
NOTICES
Grant and cooperative agreement awards:
Rent supplement and rental assistance program, 52500
Grants and cooperative agreements; availability, etc.:
Facilities to assist homeless—
Excess and surplus Federal property, 52501
Mortgage and loan insurance programs:
Interest rates, 52499

Interior Department
See Land Management Bureau
See Minerals Management Service
See National Park Service
See Reclamation Bureau

Interstate Commerce Commission
NOTICES
Motor carriers:
Compensated intercorporate hauling operations, 52507
Railroad operation, acquisition, construction, etc.:
Indiana Harbor Belt Railroad Co. et al., 52507

Justice Department
See Antitrust Division
See Drug Enforcement Administration
See National Institute of Corrections
NOTICES
Pollution control; consent judgments:
Electro-Voice, Inc., 52507

Labor Department
See Employment Standards Administration

Land Management Bureau
NOTICES
Oil and gas leases:
South Dakota, 52504
Wyoming, 52504
Realty actions; sales, leases, etc.:
Nevada; correction, 52504
New Mexico, 52505
Resource management plans, etc.:
Arizona Strip District, AZ, 52505

Minerals Management Service
NOTICES
Outer Continental Shelf operations:
Oil and gas lease sales; restricted joint bidders list, 52505

Mine Safety and Health Federal Review Commission
See Federal Mine Safety and Health Review Commission

National Aeronautics and Space Administration
RULES
Acquisition regulations:
Cost-plus-award-fee contracts coverage, 52446

National Institute of Corrections
NOTICES
Meetings:
Advisory Board, 52510

National Institute of Standards and Technology
NOTICES
Information processing standards, Federal:
Applications portability profile; user interface component, 52475

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Bering Sea and Aleutian Islands groundfish, 52451
PROPOSED RULES
Fishery conservation and management:
Reef fish fishery of the Gulf of Mexico; hearing, 52474
NOTICES
Permits:
Endangered and threatened species, 52477

National Park Service
NOTICES
Concession contract negotiations:
Acadia National Park, ME, 52506

National Science Foundation
NOTICES
Meetings:
Physiology and Behavior Advisory Panel, 52512
Senior Executive Service:
Performance Review Board; membership, 52512

Navy Department
NOTICES
Meetings:
Naval Research Advisory Committee, 52479

Nuclear Regulatory Commission
RULES
Whistleblower protection provision, 52406
NOTICES
Abnormal occurrence reports:
Quarterly reports to Congress, 52512
Environmental statements; availability, etc.:
Atlas Corp., 52516
Meetings:
Nuclear Safety Research Review Committee, 52515

Occupational Safety and Health Review Commission
NOTICES
Meetings; Sunshine Act, 52531

Office of United States Trade Representative
See Trade Representative, Office of United States

Presidential Documents
PROCLAMATIONS
Special observances:
Disability Employment Awareness Month, National (Proc. 6605), 52627
ADMINISTRATIVE ORDERS
EPA; authority delegation to Administrator to review emergency release authorities and transmit message to Congress (Memorandum of August 19, 1993), 52397

Public Health Service
See Food and Drug Administration
NOTICES
Agency information collection activities under OMB review, 52498

Railroad Retirement Board
NOTICES
Agency information collection activities under OMB review, 52516

Reclamation Bureau
NOTICES
Environmental statements; availability, etc.:
Glenn-Colusa Irrigation District fish screening facilities improvements, CA, 52506
Meetings:
Colorado River Basin Salinity Control Advisory Council, 52504

Research and Special Programs Administration
PROPOSED RULES
Hazardous materials:
Tank cars; crashworthiness protection requirements, 52574

Securities and Exchange Commission
RULES
Securities:
Access to nonpublic information, 52416
NOTICES
Self-regulatory organizations; proposed rule changes:
Philadelphia Stock Exchange, Inc., 52517, 52518
Applications, hearings, determinations, etc.:
Boston Financial Tax Credit Fund VIII, a Limited Partnership, et al., 52519
Public utility holding company filings, 52521

Sentencing Commission, United States
See United States Sentencing Commission

Small Business Administration
RULES
Small business size standards:
Environmental services, 52415

PROPOSED RULES
Small business size standards:
Environmental services, 52452

Social Security Administration
PROPOSED RULES
Supplemental security income:
Aged, blind, and disabled; benefit continuation and special eligibility for severely impaired recipients who work, 52458
Aged, blind, and disabled; royalties and honoraria treatment, 52464

State Department
NOTICES
Export Administration Act; determination; addition of Sudan to list, 52523
Meetings:
Historical Diplomatic Documentation Advisory Committee, 52523

Trade Representative, Office of United States
NOTICES
Senior Executive Service:
Performance Review Board; membership, 52516

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Research and Special Programs Administration
NOTICES
Aviation proceedings:
Agreements filed; weekly receipts, 52524
International cargo rate flexibility level:
Standard foreign fare level—
Index adjustment factors, 52524

Treasury Department
NOTICES
Agency information collection activities under OMB review, 52526, 52527

United States Sentencing Commission
NOTICES
Sentencing guidelines and policy statements for Federal courts, 52527

Separate Parts in This Issue

Part II
Department of Housing and Urban Development, 52534

Part III
Department of Housing and Urban Development, 52566

Part IV
Department of Agriculture, Cooperative State Research Service, 52570

Part V
Department of Transportation, Research and Special Programs Administration, 52574

Part VI
Department of Transportation, United States Coast Guard, 52598

Part VII
Department of Education, 52606

Part VIII
Department of Education, 52614

Part IX
Department of Transportation, Federal Aviation Administration, 52624

Part X
The President, 52625

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers and Federal Register finding aids is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Administrative Orders:
Memorandums:
August 19, 1993.....52397
Proclamations:
6605.....52627

7 CFR
300.....52399
906.....52400
910.....52401
967.....52402
1004 (2 documents).....52404, 52405

10 CFR
19.....52406
30.....52406
40.....52406
50.....52406
60.....52406
61.....52406
70.....52406
72.....52406
150.....52406

13 CFR
121.....52415
Proposed Rules:
121.....52452

17 CFR
200.....52416
203.....52416
240.....52416

18 CFR
141.....52420

20 CFR
Proposed Rules:
416 (2 documents).....52459, 52464

21 CFR
821.....52440

24 CFR
511.....52566
Proposed Rules:
92.....52560
135.....52534
219.....52560
570.....52560
572.....52560
574.....52560
576.....52560
583.....52560
700.....52560
889.....52560
890.....52560
905.....52560
961.....52560
963.....52560

33 CFR
100.....52440
117.....52441
165.....52442
Proposed Rules:
117.....52466

34 CFR
Proposed Rules:
370.....52614
386.....52606

40 CFR
Proposed rules:
52.....52467

46 CFR
30.....52598
31.....52598
32.....52598

48 CFR
501.....52442
503.....52442
507.....52442
508.....52442
509.....52442
511.....52442
514.....52442
515.....52442
519.....52442
522.....52442
525.....52442
528.....52442
529.....52442
532.....52442
536.....52442
542.....52442
543.....52442
552.....52442
570.....52442
1816.....52446
1852.....52446

49 CFR
Proposed Rules:
172.....52574
173.....52574
179.....52574

50 CFR
675.....52451
Proposed Rules:
641.....52474

L

B

S

C

93

M I

Federal Register
Vol. 58, No. 194
Friday, October 8, 1993

Presidential Documents

Title 3—

The President

Memorandum of August 19, 1993

Delegation of Authority To Review Emergency Release Authorities and Prepare and Transmit to the Congress a Message Concerning Such Authorities

Memorandum for the Administrator of the Environmental Protection Agency

WHEREAS, the Environmental Protection Agency, the agencies and departments that are members of the National Response Team (authorized under Executive Order No. 12580, 52 Fed. Reg. 2923 (1987)), and other Federal agencies and departments undertake emergency release prevention, mitigation, and response activities pursuant to various authorities;

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 112(r)(10) of the Clean Air Act (the "Act") (section 7412(r)(10) of title 42 of the United States Code) and section 301 of title 3 of the United States Code, and in order to provide for the delegation of certain functions under the Act, I hereby:

(1) Authorize you, in coordination with agencies and departments that are members of the National Response Team and other appropriate agencies and departments, to conduct a review of release prevention, mitigation, and response authorities of Federal agencies in order to assure the most effective and efficient implementation of such authorities and to identify any deficiencies in authority or resources that may exist, to the extent such review is required by section 112(r)(10) of the Act; and

(2) Authorize you, in coordination with agencies and departments that are members of the National Response Team and other appropriate agencies and departments, to prepare and transmit a message to the Congress concerning the release prevention, mitigation, and response activities of the Federal Government with such recommendations for change in law as you deem appropriate, to the extent such message is required by section 112(r)(10) of the Act.

The authority delegated by this memorandum may be further redelegated within the Environmental Protection Agency.

You are hereby authorized and directed to publish this memorandum in the **Federal Register**.

William J. Clinton

[FR Doc. 93–24958
Filed 10–6–93; 12:46 pm]
Billing code 6560–50–M

Rules and Regulations

Federal Register
Vol. 58, No. 194
Friday, October 8, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 300

[Docket No. 93-028-1]

Incorporation by Reference; Plant Protection and Quarantine Treatment Manual

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document gives notice that the "Plant Protection and Quarantine Treatment Manual" (PPQ Treatment Manual) has been revised and reprinted and that the new version is now on file at the office of the Federal Register. We have revised the PPQ Treatment Manual by reformatting the treatment schedules so that the information can be more readily found and by removing certain treatment schedules that required the use of chemicals no longer authorized for use by the Environmental Protection Agency. This document also amends our regulations listing documents incorporated by reference to ensure that the current revision of the PPQ Treatment Manual is incorporated by reference and used.

EFFECTIVE DATE: October 8, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Cooper, Senior Operations Officer, PPQ, APHIS, USDA, room 635, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-6799.

SUPPLEMENTARY INFORMATION:

Background

The "Plant Protection and Quarantine Treatment Manual" (PPQ Treatment Manual) of the Animal and Plant Health Inspection Service is incorporated by reference into the Code of Federal Regulations at 7 CFR 300.1. The PPQ Treatment Manual contains treatment schedules and information on procedures for applying treatments to allow the movement of articles under domestic and foreign plant quarantines and regulations. This document amends the regulations at § 300.1 to show that the PPQ Treatment Manual has been revised and reprinted.

Since the PPQ Treatment Manual is referenced in various quarantines and regulations in chapter III, title 7 of the Code of Federal Regulations, it is necessary to amend part 300 to ensure that the current revision is incorporated by reference and used.

We have revised the PPQ Treatment Manual and reformatted the treatment schedules in the PPQ Treatment Manual so that the information can be more readily found. In addition, we have removed certain treatment schedules that required the use of chemicals that are no longer authorized for use by the Environmental Protection Agency under the Federal Insecticide, Fungicide, Rodenticide Act.

Miscellaneous

To further clarify the procedures in the PPQ Treatment Manual, we have used the U.S. measuring system throughout and provided a conversion table for the metric measurement system. The PPQ Treatment Manual also includes enhanced safety guidelines for applying treatments and treatment schedules for the movement of articles under domestic and foreign plant quarantines and regulations.

Effective Date

The PPQ Treatment Manual, which contains treatment schedules and information on procedures for applying treatments to allow the movement of articles under domestic and foreign quarantines and regulations, has been revised and reprinted. This document amends the regulations listing documents incorporated by reference to ensure that the current revision is incorporated by reference and used. Since there are no substantive changes as a result of these actions, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**.

Accordingly, this rule is effective upon publication in the **Federal Register**.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The PPQ Treatment Manual, which contains treatment schedules and information on procedures for applying treatments to allow the movement of articles under domestic and foreign quarantines and regulations, has been revised and reprinted. This document amends the regulations listing documents incorporated by reference to ensure that the current revision is incorporated by reference and used.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

List of Subjects in 7 CFR Part 300

Incorporation by reference, Plant diseases and pests, Quarantine.

Accordingly, 7 CFR part 300 is amended as follows:

PART 300—INCORPORATION BY REFERENCE

1. The authority citation for part 300 continues to read as follows:

Authority: 7 U.S.C. 150ee, 161.

2. In § 300.1, paragraph (a) is revised to read as follows:

§ 300.1 Materials incorporated by reference.

(a) The Plant Protection and Quarantine Treatment Manual, which was revised and reprinted November 30, 1992, has been approved for incorporation by reference in 7 CFR chapter III by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

* * * * *

Done in Washington, DC, this 4th day of October 1993.

Patricia Jensen,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–24832 Filed 10–7–93; 8:45 am]

BILLING CODE 3410–34–P

Agricultural Marketing Service

7 CFR Part 906

[Docket No. FV93–906–31FR]

Oranges and Grapefruit Grown in the Lower Rio Grande Valley in Texas; Revision of the Handling Requirements for Oranges and Grapefruit

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule revises the handling requirements for Texas oranges and grapefruit to require handlers to ensure that an inspection certificate accompanies each shipment of fruit when it is transported by motor vehicle, and that such inspection certificates are surrendered upon leaving the production area when requested by Texas Department of Agriculture (TDA) road guard station personnel designated as agents of the Texas Valley Citrus Committee (committee). This revision is expected to help the Texas citrus industry ensure that all fresh oranges and grapefruit are inspected prior to shipment from the production area.

DATES: This interim final rule becomes effective October 8, 1993. Comments received by November 8, 1993, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim final rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456. Fax # (202) 720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Belinda Garza, McAllen Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1313 East Hackberry, McAllen, Texas 78501, telephone: (210) 682–2833; or Charles L. Rush, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone: (202) 720–2431.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Order No. 906 [7 CFR part 906] regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas, hereinafter referred to as the order. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This interim final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This interim final rule is not intended to have retroactive effect. This interim final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 15 handlers of oranges and grapefruit regulated under the marketing order each season and approximately 750 orange and grapefruit producers in Texas. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

The committee met on August 3, 1993, and unanimously recommended revising paragraph (a)(5) of § 906.365 to require handlers to ensure that an inspection certificate accompanies each shipment of fruit when it is transported by motor vehicle, and that such inspection certificates are surrendered upon leaving the production area when requested by Texas Department of Agriculture (TDA) road guard station personnel designated as agents of the committee.

Section 906.365 is amended by adding the following sentence at the end of the current language in paragraph (a)(5). "No handler may transport by motor vehicle or cause the transportation of any shipment of fruit for which an inspection certificate is required unless each such shipment is accompanied by a copy of the inspection certificate applicable thereto,

and a copy of such inspection certificate is surrendered upon request to Texas Department of Agriculture Road Guard personnel as designated by the committee."

The committee recommended this action after discussions with TDA road guard station personnel on the subject of operating road guard stations located on the major roads leading out of the production area for Texas oranges and grapefruit. TDA informed the committee that, heretofore, TDA road guard station personnel had not been authorized to require handlers to surrender a copy of their inspection certificates to them, when checking fruit being transported from the production area to determine if it had been inspected and certified as meeting order requirements. Requiring handlers to surrender a copy of their inspection certificates to the TDA will enable TDA personnel to determine whether the fruit meets order requirements, thereby helping ensure compliance with order provisions.

Based on the above the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the committee and other available information, it is hereby found that this rule as hereinafter set forth will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The committee needs to have this amendment in effect by this October when Texas orange and grapefruit shipments for the 1993–94 season are expected to begin, so that all handlers leaving the production area will be required to surrender their inspection certificates to TDA personnel; (2) handlers are aware of this action which was unanimously recommended by the committee at a public meeting; and (3) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 906

Grapefruit, Marketing agreements and orders, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 906 is amended as follows:

PART 906—ORANGES AND GRAPEFRUIT GROWN IN THE LOWER RIO GRANDE VALLEY IN TEXAS

1. The authority citation for 7 CFR part 906 is revised to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 906.365 is amended by revising paragraph (a)(5) to read as follows:

Note: This action will appear in the annual Code of Federal Regulations.

§ 906.365 Texas Orange and Grapefruit Regulation 34.

* * * * *

(a)(5) An appropriate inspection certificate has been issued for such fruit within 48 hours prior to the time of shipment. No handler may transport by motor vehicle or cause the transportation of any shipment of fruit for which an inspection certificate is required unless each such shipment is accompanied by a copy of the inspection certificate applicable thereto, and a copy of such inspection certificate is surrendered upon request to Texas Department of Agriculture personnel designated by the committee.

* * * * *

Dated: October 4, 1993.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–24758 Filed 10–7–93; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 910

[FV93–910–3IFR]

Lemons Grown in California and Arizona; Increase in the Organic Exemption Provision

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule changes the rules and regulations established under the marketing order covering California-Arizona lemons to increase from 350 to 500 cartons per week, the amount of organic lemons handlers may ship without regard to volume and size regulations. The marketing order regulates the handling of lemons grown in California and Arizona and is administered locally by the Lemon Administrative Committee (Committee). This action recognizes additional opportunity to market organic lemons to organic or health food wholesalers and retailers.

DATES: This interim final rule is effective on October 8, 1993; comments received by November 8, 1993 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456, Fax # (202) 720–5698. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Kellee J. Hopper, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California, 93721; telephone: (209) 487–5901; or Kenneth G. Johnson, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, room 2522–S, P.O. Box 96456, Washington, DC 20090–6456: telephone: (202) 720–5127.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 910 [7 CFR part 910], as amended, regulating the handling of lemons grown in California and Arizona, hereinafter referred to as the "order." This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C 601–674], hereinafter referred to as the "Act."

This rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this action.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with

law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 2,000 producers of lemons in the production area and approximately 70 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

This interim final rule invites comments on a change to the rules and regulations of the lemon marketing order. This rule modifies language in the order's rules and regulations to increase from 350 to 500 cartons per week, the amount of organic lemons handlers may ship free of order regulations.

Section 910.80 of the order authorizes the Committee, with the approval of the Secretary, to establish minimum quantities and types of shipments which shall be free from regulation under this order. Section 910.180(d)(3) of the administrative rules and regulations prescribes procedures governing exemption from volume and size regulations for organic lemons handled in minimum quantities.

On July 23, 1993, Mr. Rich Hart, President of Rainbow Valley Orchards, sent a letter to the Committee requesting an increase in the amount of organic lemons a handler may ship free of order regulations to 500 cartons per week. Currently, handlers can ship up to 350 cartons of such lemons weekly. At its August 3, 1993, meeting, the Committee recommended increasing the organic exemption provision from 350 to 500 cartons per week that handlers may ship to organic or health food wholesalers and retailers without regard to volume and size regulations. The vote on the recommendation was 12 in favor and 1 abstention. The person who abstained expressed a concern with the definition of organic.

Shippers of organic lemons have indicated that organic fruit markets can absorb more fruit than in the past, and that they need to take advantage of the additional marketing opportunity. The Committee expects the increase in shipments allowed will provide shipping flexibility for organic shippers and will facilitate the marketing of organic lemons. The Committee also believes that sales of organic lemons will not adversely impact sales of regulated lemons.

Based on these considerations, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the information collection requirements that are contained in this rule have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0120.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule as hereinafter set forth will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) Handlers are currently shipping lemons for the 1993–94 season and this action will provide additional opportunity in the organic market; (2) the Committee recommended this action at a public meeting and all interested persons had an opportunity to provide input; (3) this action relaxes current organic requirements; (4) California-Arizona lemon handlers are aware of this action and need no additional time to comply with the relaxed requirements; and (5) this rule provides a 30-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 910

Lemons, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 is revised to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 910.180, paragraph (d)(3) is amended by revising the first sentence to read as follows:

[**Note:** This section will appear in the annual Code of Federal Regulations.]

§ 910.180 Lemons not subject to regulation.

* * * * *

(d) * * *

(3) Any person may be granted an exemption of up to 500 cartons per week, or an equivalent amount thereof, to market or distribute organic lemons to organic or health food wholesalers and retailers. * * *

* * * * *

Dated: October 4, 1993.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–24833 Filed 10–7–93; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 967

[Docket No. FV–93–967–2FR]

Handling Regulation for Celery Grown in Florida

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The U.S. Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule that established the quantity of Florida celery which handlers may ship to fresh markets during the 1993–94 marketing season at 6,712,910 crates or 100 percent of producers' base quantities. This action is intended to lend stability to the industry and help provide consumers with an adequate supply of the product. As in past marketing

seasons, the limitation on the quantity of Florida celery handled for fresh shipment is not expected to restrict the quantity of Florida celery actually produced or shipped to fresh markets, because production and shipments are anticipated to be less than the marketable quantity. This action was unanimously recommended by the Florida Celery Committee (Committee), the agency responsible for local administration of the order.

EFFECTIVE DATE: November 8, 1993.

FOR FURTHER INFORMATION CONTACT: Mark Slupek, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 205–2830, or John R. Toth, Officer-In-Charge, Southeast Marketing Field Office, P.O. Box 2276, Winter Haven, FL 33883–2276, telephone 813–299–4770.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Marketing Order No. 967 [7 CFR part 967] both as amended, regulating the handling of celery grown in Florida. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This final rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action establishes the quantity of Florida celery (at 6,712,910 crates or 100 percent of producers' base quantities) which handlers may ship to fresh markets during the 1993–94 marketing season which covers the period August 1, 1993, through July 31, 1994. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately seven producers of celery in the production area and an estimated seven handlers of celery grown in Florida subject to regulation under the celery marketing order. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual gross receipts from all commodities of less than $500,000, and small agricultural service firms are defined as those whose annual gross receipts from all quantities are less than $3,500,000. The majority of celery handlers and producers may be classified as small entities.

This action is based upon a recommendation and information submitted by the Committee and upon other available information. The Committee met on June 9, 1993, and unanimously recommended a marketable quantity of 6,712,910 crates of fresh celery for the 1993–94 marketing season. The season began August 1, 1993. Additionally, a uniform percentage of 100 percent was recommended which will allow each producer, registered pursuant to section 967.37(f) of the order, to market 100 percent of such producer's base quantity. These recommendations were based on an appraisal of expected 1993–94 supply and demand.

As required by section 967.37(d)(1) of the order, a reserve of 6 percent (396,775 crates) of the 1992–93 total base quantities was made available to new producers and for increases for existing producers. The deadline for requesting changes in base quantities was May 1, 1993. An application for additional base quantity of 100,000 crates was received from one producer. During the 1992–93 season, transfers of allotment to this producer of 100,000 crates from two other producers was approved by the committee. Therefore, the committee approved this application for additional base quantity.

This final rule will continue to limit the quantity of Florida celery which handlers may purchase from producers and ship to fresh markets during the 1993–94 marketing season to 6,712,910 crates. This marketable quantity is slightly more than the 1992–93 marketable quantity, and is more than the average number of crates marketed fresh during the 1987–88 through 1991–92 seasons. It is expected that such quantity will be more than actual shipments for the 1993–94 season. Thus, the 6,712,910 crate marketable quantity is not expected to restrict the amount of Florida celery which growers produce or the amount of celery which handlers ship. For these reasons, this final rule should lend stability to the industry and help provide consumers with an adequate supply of the product.

The interim final rule was issued on July 8, 1993, and published in the **Federal Register** [58 FR 38276, July 16, 1993], with an effective date of July 16, 1993. That rule added section 967.328 to the rules and regulations in effect under the marketing order. That rule provided a 30-day comment period which ended August 16, 1993. No comments were received.

On the basis on the foregoing, the Administrator of the AMS has determined that issuance of this final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** [58 FR 38276, July 16, 1993] will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 967

Celery, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 967 is revised as follows:

PART 967—CELERY GROWN IN FLORIDA

1. The authority citation for 7 CFR part 967 is revised to read as follows:

Authority: 7 U.S.C. 601–674.

Subpart—Administrative Rules and Regulations

2. Accordingly, the interim final rule adding section 967.328, which was published at 58 FR 38276 on July 16, 1993, is adopted as a final rule without change.

Note: This section will not appear in the Code of Federal Regulations.

Date: October 4, 1993.

Robert C. Keeney

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–24759 Filed 10–7–93; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 1004

[DA–93–19]

Milk in the Middle Atlantic Marketing Area; Order Suspending Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This action relaxes for the months of September 1993 through February 1994 the limit on the amount of milk that may be diverted to nonpool plants by handlers other than cooperative associations from 40 percent to 50 percent of the milk for which a proprietary plant operator is the handler.

The suspension was requested by a large proprietary handler who receives milk from a substantial number of producers who are not cooperative members. Proponent contends that the action is necessary to assure that producer milk which has been historically associated with the market will continue to be pooled under the order without incurring unnecessary and uneconomic movements of milk for the purpose of maintaining pool status.

EFFECTIVE DATES: September 1, 1993 through February 28, 1994.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–7311.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued August 3, 1993; published August 12, 1993 (58 FR 42881).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. This action lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria in Executive Order 12291, and has been determined to be a "non-major" rule.

This suspension of rules has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This action will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not established in accordance with law and requesting a modification of an order or an exemption from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and of the order regulating the handling of milk in the Middle Atlantic marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on August 12, 1993 (58 FR 42881) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views, and arguments thereon. One comment supporting the proposed suspension was received, and is summarized in the statement of consideration.

After consideration of all relevant material, including the proposal in the notice, the comment received, and other available information, it is hereby found and determined that for the months of September 1993 through February 1994 the following provisions of the order do not tend to effectuate the declared policy of the Act:

1. In § 1004.12(d)(2), the words "or (ii)".

2. In § 1004.12(d)(2)(i), the words "of members of a cooperative association or a federation of cooperative associations to nonpool plants are for the account of such cooperative association or federation, and the amount of member milk", and the words "of all members of such cooperative association or federation".

3. § 1004.12(d)(2)(ii).

Statement of Consideration

For the months of September 1993 through February 1994, this action suspends provisions of the Middle Atlantic milk order for the purpose of relaxing the percentage of a proprietary handler's supply of milk from producers who are not members of a cooperative association that may be diverted to nonpool plants from 40 percent to 50 percent.

The suspension was requested by Johanna Dairies, Inc. (Johanna), and its affiliates. Johanna and its affiliates receive milk from a substantial number of independent producers who are not cooperative members. Johanna stated that its reasons for requesting a suspension of the order's producer milk diversion limits are the same as those given by Pennmarva, a federation of cooperative associations representing about 90 percent of the market's producer milk, in requesting a suspension of the requirement that pool distributing plants dispose of at least 40 percent of their receipts as Class I use.

A decrease in the percentage of the Middle Atlantic market's producer milk used in Class I has made it difficult to maintain the pool status of the milk of producers who historically have been associated with the market. Since 1990, the percentage of the Middle Atlantic market's producer milk used in Class I has decreased. For example, in February 1990, 52 percent of Middle Atlantic producer milk was used in Class I compared with only 45 percent for the same month in 1993.

In addition, two large Order 4 distributing plants with which large volumes of Order 4 diverted milk had been associated recently became regulated under the New York-New Jersey order. Under Order 4, diverted milk is included in the receipts of the plant from which the milk is diverted in determining whether such plant meets

the minimum Class I use percentage to qualify as a pool plant. As a consequence of the above recent changes in marketing conditions in the Middle Atlantic area, Johanna and its affiliates apparently are experiencing the same difficulty as the cooperative handlers in associating all of their diverted producer milk with the remaining distributing plants now regulated under the Middle Atlantic order without affecting the pool status of the milk.

A comment supporting the proposed suspension was filed by Dairylea Cooperative, Inc., on the basis that the suspension would assure that uneconomic and inefficient movements of milk would not be required to maintain the pool status of the milk of producers historically associated with the market.

The suspension is found to be necessary for the purpose of assuring that producers' milk will not have to be moved in an uneconomic and inefficient manner to assure that producers whose milk has long been associated with the Middle Atlantic marketing area will continue to benefit from pooling and pricing under the order.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area, in that such action is necessary to permit the continued pooling of the milk of dairy farmers who have historically supplied the market without the need for making costly and inefficient movements of milk;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. One comment supporting the suspension was received.

Therefore, good cause exists for making this order effective less than 30 days from the date of publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1004

Milk marketing orders.

For the reasons set forth in the preamble, the following provisions in Title 7 part 1004 are suspended as follows:

PART 1004—MILK IN THE MIDDLE ATLANTIC MARKETING AREA

1. The authority citation for 7 CFR Part 1004 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 1004.12 [Temporarily suspended in part]

2. In § 1004.12(d)(2), the words "or (ii)" are suspended.

3. In § 1004.12(d)(2)(i), the words "of members of a cooperative association or a federation of cooperative associations to nonpool plants are for the account of such cooperative association or federation, and the amount of member milk" are suspended, and the words "of all members of such cooperative association or federation" are suspended.

4. Section 1004.12(d)(2)(ii) is suspended.

Dated: October 4, 1993.

Patricia Jensen,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–24756 Filed 10–7–93; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 1004

[DA–93–23]

Milk in the Middle Atlantic Marketing Area; Order Suspending Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This action relaxes for the months of September 1993 through February 1994 the limit on the period of automatic pool plant status for supply plants and reserve processing plants.

The suspension was requested by a federation of cooperative associations representing approximately 90 percent of the market's producer milk. The action is necessary to assure that producer milk which has been historically associated with the market will continue to be pooled under the order without incurring unnecessary and uneconomic movements of milk for the purpose of maintaining pool status.

EFFECTIVE DATES: September 1, 1993 through February 28, 1994.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–7311.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued August 9, 1993; published August 17, 1993 (58 FR 43572).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. This action lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria in Executive Order 12291, and has been determined to be a "non-major" rule.

This suspension of rules has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This action will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not established in accordance with law and requesting a modification of an order or an exemption from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and of the order regulating the handling of milk in the Middle Atlantic marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on August 17, 1993 (58 FR 43572) concerning a proposed suspension of certain provisions of the order.

Interested persons were afforded opportunity to file written data, views, and arguments thereon. No comments regarding the proposed suspension were received.

After consideration of all relevant material, including the proposal in the notice and other available information, it is hereby found and determined that for the months of September 1993 through February 1994 the following provisions of the order do not tend to effectuate the declared policy of the Act:

In § 1004.7(e), the word "immediately" and the words "for each of the following months of March through August".

Statement of Consideration

For the months of September 1993 through February 1994, this action suspends provisions of the Middle Atlantic milk order for the purpose of relaxing the limit on the period of automatic pool plant status for supply plants and reserve processing plants.

The suspension was requested by Pennmarva Dairymen's Federation, a federation of cooperative associations representing approximately 90 percent of the market's producer milk. According to Pennmarva, a decline in the percentage of the Middle Atlantic market's producer milk used in Class I and a reduction in products processed at pool distributing plants have made maintaining pool status difficult for producers whose milk historically has been associated with the market.

Two large Order 4 distributing plants with which large volumes of Order 4 diverted milk had been associated recently became regulated under the New York-New Jersey order (Order 2). Under Order 4, diverted milk is included in the receipts of the plant from which the milk is diverted in determining whether such plant meets the minimum Class I use percentage to qualify as a pool plant. This action is necessary to ensure that producers whose milk has been displaced from the plants that have shifted their regulatory status to Order 2 maintain association with the Middle Atlantic marketing order, thus eliminating unnecessary and uneconomical movements of milk to maintain pool status for the purpose of benefiting from pooling and pricing under the order.

No comments supporting or opposing the proposed suspension were filed by interested persons.

It is hereby found and determined that 30 days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area, in that such action is necessary to permit the continued pooling of the milk of dairy farmers who have historically supplied the market without the need for costly and inefficient movements of milk;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. No comments were received.

Therefore, good cause exists for making this order effective less than 30 days from the date of publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1004

Milk marketing orders.

For the reasons set forth in the preamble, the following provisions in Title 7 part 1004 are suspended as follows:

PART 1004—MILK IN THE MIDDLE ATLANTIC MARKETING AREA

1. The authority citation for 7 CFR part 1004 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 1004.7 [Temporarily suspended in part]

2. In § 1004.7(e), the word "immediately" and the words "for each of the following months of March through August" are suspended.

Dated: October 4, 1993.

Patricia Jensen,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–24757 Filed 10–7–93; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 19, 30, 40, 50, 60, 61, 70, 72, and 150

RIN 3150–AE50

Whistleblower Protection for Employees of NRC-Licensed Activities

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations regarding the protection of employees who provide information to the NRC or their employers concerning safety issues. The amendments are intended to conform current NRC regulations to the new nuclear whistleblower protection provisions of the Energy Policy Act of 1992, which was enacted on October 24, 1992.

EFFECTIVE DATE: October 8, 1993.

FOR FURTHER INFORMATION CONTACT: James Lieberman, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301–504–2741.

SUPPLEMENTARY INFORMATION:

I. Background
II. Summary of Proposed Rule
III. Public Comments and the Commission's Response
IV. Environmental Impact: Categorical Exclusion
V. Paperwork Reduction Act Statement
VI. Regulatory Analysis
VII. Regulatory Flexibility Certification
VIII. Backfit Analysis

I. Background

On October 24, 1992, the President signed into law the Energy Policy Act of 1992. Section 2902, "Employee Protection for Nuclear Whistleblowers," includes provisions amending Section 210 of the Energy Reorganization Act (ERA) of 1974, as amended. The changes pertinent to this rulemaking include the following:

(1) Because the ERA contained two sections 210, the legislation renumbered the whistleblower protection provisions as section 211.

(2) The new legislation extends the period in which a whistleblower complaint may be filed with the Department of Labor (DOL) from 30 days to 180 days.

(3) The new legislation extends and/or clarifies protection to new classes of employees and employers to include: (a) Employees who bring or are about to bring concerns directly to their employers; (b) employees who have "refused to engage in" an unlawful practice, provided that the employee has identified the illegality to the employer; (c) employees who have testified, or are about to testify, before Congress or in any Federal or State proceeding regarding any provision (or proposed provision) of the ERA or the Atomic Energy Act (AEA).

As a result of these legislative changes, the NRC concluded that its regulations in 10 CFR parts 19, 30, 40, 50, 60, 61, 70, 72, and 150 should be updated to conform to the new legislation. Accordingly, on June 15, 1993 (58 FR 33042), the Commission published in the **Federal Register** proposed changes to these Parts to reflect the changes in the whistleblower

protection provisions brought about by the Energy Policy Act of 1992.

II. Summary of Proposed Rules

Currently, 10 CFR 19.11(c) requires that the June 1982 version or later revision of the NRC Form 3, "Notice to Employees," be posted. This section is being changed to ensure that the most recent version of NRC Form 3 is posted. The language is modified so that the date of publication for NRC Form 3 is inserted in the revision to 10 CFR part 19. In the future, if NRC Form 3 is changed, 10 CFR part 19 will also be changed. With this rulemaking, 10 CFR part 19 is revised to specify NRC Form 3 (6/93). The revised NRC Form 3, in addition to addressing the 180-day time period that employees have to file a complaint with the Department of Labor, describes protection for employees who: (1) Bring safety complaints to their employers; (2) refuse to engage in an unlawful practice, provided that the employee has identified the illegality to the employer; and (3) have testified or are about to testify before Congress or in any Federal or State proceeding regarding any provision (or proposed provision) of the ERA or the AEA. The June 1993 version of Form 3 was distributed in July 1993. Additional copies are available as specified in 10 CFR 19.11. In addition, 10 CFR parts 30, 40 and 70 are modified to require posting of NRC Form 3 by general licensees subject to 10 CFR part 19.

Section 211 requires that the provisions of that section be posted. The Department of Labor (DOL) is implementing procedures to require all employers to post the provisions of section 211. Accordingly, given that the DOL action will require posting by a class of employers that includes all NRC licensees, the NRC is not separately requiring the posting of the provisions. However, NRC licensees will be subject to the DOL rule implementing the posting provision of section 211 and will also be required by this rule to post NRC Form 3 which summarizes protected activities, defines discrimination, and explains how to file a complaint with the DOL.

In 10 CFR 30.7, 40.7, 50.7, 60.9, 61.9, 70.7, 72.10, and 150.20, the following changes were proposed to reflect the new legislation:

(1) The applicable section 210 is renumbered as section 211.

(2) The definition of protected activities is modified to reflect the provisions of the Energy Policy Act of 1992.

(3) The period in which a complaint can be filed with DOL is changed from 30 days to 180 days.

(4) References in certain sections of the regulations to "compensation, terms, conditions, and privileges of employment" are being changed to "compensation, terms, conditions, or privileges of employment." This change is necessary to correct earlier language to conform to the language in the ERA of 1974, as amended.

(5) The exemption in §§ 30.7, 40.7, and 70.7, formally exempting general licensees from the requirement to post NRC Form 3, is being deleted because some general licensees are subject to part 19.

(6) The part 150 NRC general license, recognizing Agreement State licenses, would be amended to conform to the changes to §§ 30.7, 40.7, and 70.7.

(6) Each applicable regulation would be amended to provide that licensees and applicants are expected to notify their contractors of the prohibition against discrimination for engaging in protected activities.

As provided in 10 CFR 30.7(c), 40.7(c); 50.7(c), 60.9(c), 61.9(c), 70.7(c), and 72.10(c) of these regulations, licensees and applicants may be subject to enforcement action for discrimination caused by their contractors or subcontractors.

III. Public Comments and the Commission's Response

The June 15, 1993 proposed rule resulted in the receipt of comments from the Nuclear Management and Resources Council (NUMARC), the International Union, United Plant Guard Workers of America (UPGWA), and the law firm of Winston & Strawn who commented on behalf of four nuclear utilities. (Copies of the three comment letters are available for inspection in the NRC Public Document Room, 2120 L Street, NW. (Lower Level) Washington, DC).

Two of the comments were similar in nature. NUMARC commented that the NRC's rule changes appear to meet the Commission's intent to conform the regulations to the new statutory requirements. The UPGWA indicated that it enthusiastically supports the rule changes and hopes that the rules will be vigorously and strictly enforced. Both commenters were generally supportive of the proposed rule and provided no comments on specific provisions.

On the other hand, Winston & Strawn, while recognizing that most of the proposed changes are required by the Energy Policy Act of 1992, focused on the proposal in 10 CFR 50.7(e) and the related enforcement provision in § 50.7(c). In particular, the proposed rulemaking would add a subsection in each applicable section, e.g. 50.7(e)(2), that stated NRC's expectation that all licensees will notify their contractors of the prohibition against discrimination for engaging in protected activities. Winston & Strawn commented that there is no need for this provision since, in its view, the existing regulatory framework provides ample incentives for licensees to notify their contractors of the prohibitions on discrimination. Winston & Strawn's basic concern, however, is that these proposed subsections do not specify in any detail the licensee's contractor notification requirements and yet the NRC may seek to take enforcement action against a licensee for violations of the notification provision.

It should be noted that the NRC continues to find instances of contractor discrimination which indicate that there is a continuing need for licensees to work with their contractors to eliminate discrimination. A basic need in this area is for contractors to be fully apprised of their responsibilities and the prohibition on discrimination. The intent of these subsections was to prompt licensees to take whatever actions they believe to be necessary to ensure that their contractors are informed of the prohibitions against discrimination, not to impose rigid or prescriptive requirements as to how, when or how often licensees are to notify their contractors of the prohibitions.

The proposed notification requirement was not expressed in mandatory language, rather the language used provided NRC's expectation. This may make enforcement difficult. Therefore, rather than embark on a new rulemaking at this time to provide more specificity, the language will be deleted. However, the NRC continues to believe that it is in the interest of the public health and safety that each licensee take sufficient steps to assure that its contractors are aware of the prohibitions against discrimination. The need for rulemaking on this notification matter may be revisited following the completion of the staff's report to the Commission on its reassessment of the NRC program for protecting allegers against retaliation. 58 FR 41108 (August 2, 1993). The NRC emphasizes, however, regardless of whether a notification provision is specified in the regulations, licensees will be subject to enforcement actions for discrimination caused by their contractors.

IV. Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for the final rule.

V. Paperwork Reduction Act Statement

The final rule does not contain new or amended information collection requirements subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval numbers 3150–0044, –0017, –0020, –0011, –0127, –0135, –0009, –0132, and 0032.

VI. Regulatory Analysis

The Commission finds that there is no alternative to amending the regulations because most of the amendments are statutorily mandated as required by the Energy Policy Act of 1992. The final rule is intended to conform the Commission's regulations to the nuclear whistleblower provisions of the Energy Policy Act of 1992. The final rule extends and clarifies protection to new classes of employees and employers and extends the period in which an employee may file a whistleblower complaint. The foregoing constitutes the regulatory analysis for the final rule.

VII. Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. The final rule conforms the Commission's regulations to the nuclear whistleblower provisions of the Energy Policy Act of 1992.

VIII. Backfit Analysis

The Nuclear Regulatory Commission has determined that the backfit rule, 10 CFR 50.109, does not apply to the final rule and that a backfit analysis is not required for the final rule because these amendments are required by law and/or do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects

10 CFR Part 19—Criminal penalties, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements, Sex discrimination.

10 CFR Part 30—Byproduct material, Criminal penalties, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 40—Criminal penalties, Government contracts, Hazardous materials transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, Uranium.

10 CFR Part 50—Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

10 CFR Part 60—Criminal penalties, High-level waste, Nuclear power plants and reactors, Nuclear materials, Reporting and recordkeeping requirements, Waste treatment and disposal.

10 CFR Part 61—Criminal penalties, Low-level waste, Nuclear materials, Reporting and recordkeeping requirements, Waste treatment and disposal.

10 CFR Part 70—Criminal penalties, Hazardous materials—transportation, Material control and accounting, Nuclear materials, Packing and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 72—Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

10 CFR Part 150—Criminal penalties, Hazardous materials—transportation, Intergovernmental relations, Nuclear materials, Reporting and recordkeeping requirements, Security measures, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 19, 30, 40, 50, 60, 61, 70, 72, and 150.

PART 19—NOTICES, INSTRUCTIONS, AND REPORTS TO WORKERS: INSPECTION AND INVESTIGATIONS

1. The authority citation for part 19 is revised to read as follows:

Authority: Secs. 53, 63, 81, 103, 104, 161, 186, 68 Stat. 930, 933, 935, 936, 937, 948, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2073, 2093, 2111, 2133, 2134, 2201, 2236, 2282); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841). Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851).

2. In § 19.11, paragraph (c) is revised to read as follows:

§ 19.11 Posting of notices to workers.

* * * * *

(c) Each licensee and each applicant for a specific license shall prominently post NRC Form 3, (Revision dated June 1993), "Notice to Employees."

Note: Copies of NRC Form 3 may be obtained by writing to the Regional Administrator of the appropriate U.S. Nuclear Regulatory Commission Regional Office listed in appendix D to part 20 of this chapter or by contacting the NRC Information and Records Management Branch (telephone no. 301–492–8138).

* * * * *

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

3. The authority citation for part 30 is revised to read as follows:

Authority: Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83, Stat. 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201 as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 30.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123, (42 U.S.C. 5851). Section 30.34(b) also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 30.61 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

4. Section 30.7 is revised to read as follows:

§ 30.7 Employee protection.

(a) Discrimination by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant against an employee for engaging in certain protected activities is prohibited. Discrimination includes discharge and other actions that relate to compensation, terms, conditions, or privileges of employment. The protected activities are established in section 211 of the Energy Reorganization Act of 1974, as amended, and in general are related to the administration or enforcement of a requirement imposed under the Atomic Energy Act or the Energy Reorganization Act.

(1) The protected activities include but are not limited to:

(i) Providing the Commission or his or her employer information about alleged

violations of either of the statutes named in paragraph (a) introductory text of this section or possible violations of requirements imposed under either of those statutes;

(ii) Refusing to engage in any practice made unlawful under either of the statutes named in paragraph (a) introductory text or under these requirements if the employee has identified the alleged illegality to the employer;

(iii) Requesting the Commission to institute action against his or her employer for the administration or enforcement of these requirements;

(iv) Testifying in any Commission proceeding, or before Congress, or at any Federal or State proceeding regarding any provision (or proposed provision) of either of the statutes named in paragraph (a) introductory text.

(v) Assisting or participating in, or is about to assist or participate in, these activities.

(2) These activities are protected even if no formal proceeding is actually initiated as a result of the employee assistance or participation.

(3) This section has no application to any employee alleging discrimination prohibited by this section who, acting without direction from his or her employer (or the employer's agent), deliberately causes a violation of any requirement of the Energy Reorganization Act of 1974, as amended, or the Atomic Energy Act of 1954, as amended.

(b) Any employee who believes that he or she has been discharged or otherwise discriminated against by any person for engaging in protected activities specified in paragraph (a)(1) of this section may seek a remedy for the discharge or discrimination through an administrative proceeding in the Department of Labor. The administrative proceeding must be initiated within 180 days after an alleged violation occurs. The employee may do this by filing a complaint alleging the violation with the Department of Labor, Employment Standards Administration, Wage and Hour Division. The Department of Labor may order reinstatement, back pay, and compensatory damages.

(c) A violation of paragraphs (a), (e), or (f) of this section by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant may be grounds for—

(1) Denial, revocation, or suspension of the license.

(2) Imposition of a civil penalty on the licensee or applicant.

(3) Other enforcement action.

(d) Actions taken by an employer, or others, which adversely affect an employee may be predicated upon nondiscriminatory grounds. The prohibition applies when the adverse action occurs because the employee has engaged in protected activities. An employee's engagement in protected activities does not automatically render him or her immune from discharge or discipline for legitimate reasons or from adverse action dictated by nonprohibited considerations.

(e)(1) Each specific licensee, each applicant for a specific license, and each general licensee subject to part 19 shall prominently post the revision of NRC Form 3, "Notice to Employees," referenced in 10 CFR 19.11(c).

(2) The posting of NRC Form 3 must be at locations sufficient to permit employees protected by this section to observe a copy on the way to or from their place of work. Premises must be posted not later than 30 days after an application is docketed and remain posted while the application is pending before the Commission, during the term of the license, and for 30 days following license termination.

Note: Copies of NRC Form 3 may be obtained by writing to the Regional Administrator of the appropriate U.S. Nuclear Regulatory Commission Regional Office listed in appendix D to part 20 of this chapter or by contacting the NRC Information and Records Management Branch (telephone no. 301–492–8138).

(f) No agreement affecting the compensation, terms, conditions, or privileges of employment, including an agreement to settle a complaint filed by an employee with the Department of Labor pursuant to section 211 of the Energy Reorganization Act of 1974, as amended, may contain any provision which would prohibit, restrict, or otherwise discourage an employee from participating in protected activity as defined in paragraph (a)(1) of this section including, but not limited to, providing information to the NRC or to his or her employer on potential violations or other matters within NRC's regulatory responsibilities.

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

5. The authority citation for part 40 is revised to read as follows:

Authority: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95–604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L. 97–415, 96 Stat. 2067 (42 U.S.C. 2022).

Section 40.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123, (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

6. Section 40.7 is revised to read as follows:

§ 40.7 Employee protection.

(a) Discrimination by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant against an employee for engaging in certain protected activities is prohibited. Discrimination includes discharge and other actions that relate to compensation, terms, conditions, or privileges of employment. The protected activities are established in section 211 of the Energy Reorganization Act of 1974, as amended, and in general are related to the administration or enforcement of a requirement imposed under the Atomic Energy Act or the Energy Reorganization Act.

(1) The protected activities include but are not limited to:

(i) Providing the Commission or his or her employer information about alleged violations of either of the statutes named in paragraph (a) introductory text of this section or possible violations of requirements imposed under either of those statutes;

(ii) Refusing to engage in any practice made unlawful under either of the statutes named in paragraph (a) introductory text or under these requirements if the employee has identified the alleged illegality to the employer;

(iii) Requesting the Commission to institute action against his or her employer for the administration or enforcement of these requirements;

(iv) Testifying in any Commission proceeding, or before Congress, or at any Federal or State proceeding regarding any provision (or proposed provision) of either of the statutes named in paragraph (a) introductory text.

(v) Assisting or participating in, or is about to assist or participate in, these activities.

(2) These activities are protected even if no formal proceeding is actually initiated as a result of the employee assistance or participation.

(3) This section has no application to any employee alleging discrimination

prohibited by this section who, acting without direction from his or her employer (or the employer's agent), deliberately causes a violation of any requirement of the Energy Reorganization Act of 1974, as amended, or the Atomic Energy Act of 1954, as amended.

(b) Any employee who believes that he or she has been discharged or otherwise discriminated against by any person for engaging in protected activities specified in paragraph (a)(1) of this section may seek a remedy for the discharge or discrimination through an administrative proceeding in the Department of Labor. The administrative proceeding must be initiated within 180 days after an alleged violation occurs. The employee may do this by filing a complaint alleging the violation with the Department of Labor, Employment Standards Administration, Wage and Hour Division. The Department of Labor may order reinstatement, back pay, and compensatory damages.

(c) A violation of paragraphs (a), (e), or (f) of this section by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant may be grounds for—

(1) Denial, revocation, or suspension of the license.

(2) Imposition of a civil penalty on the licensee or applicant.

(3) Other enforcement action.

(d) Actions taken by an employer, or others, which adversely affect an employee may be predicated upon nondiscriminatory grounds. The prohibition applies when the adverse action occurs because the employee has engaged in protected activities. An employee's engagement in protected activities does not automatically render him or her immune from discharge or discipline for legitimate reasons or from adverse action dictated by nonprohibited considerations.

(e)(1) Each specific licensee, each applicant for a specific license, and each general licensee subject to part 19 shall prominently post the revision of NRC Form 3, "Notice to Employees", referenced in 10 CFR 19.11(c).

(2) The posting of NRC Form 3 must be at locations sufficient to permit employees protected by this section to observe a copy on the way to or from their place of work. Premises must be posted not later than 30 days after an application is docketed and remain posted while the application is pending before the Commission, during the term of the license, and for 30 days following license termination.

Note: Copies of NRC Form 3 may be obtained by writing to the Regional Administrator of the appropriate U.S. Nuclear Regulatory Commission Regional Office listed in appendix D to part 20 of this chapter or by contacting the NRC Information and Records Management Branch (telephone no. 301–492–8138).

(f) No agreement affecting the compensation, terms, conditions, or privileges of employment, including an agreement to settle a complaint filed by an employee with the Department of Labor pursuant to section 211 of the Energy Reorganization Act of 1974, may contain any provision which would prohibit, restrict, or otherwise discourage an employee from participating in protected activity as defined in paragraph (a)(1) of this section including, but not limited to, providing information to the NRC or to his or her employer on potential violations or other matters within NRC's regulatory responsibilities.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

7. The authority citation for part 50 is revised to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 is also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123, (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 82 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50–81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

8. Section 50.7 is revised to read as follows:

§ 50.7 Employee protection.

(a) Discrimination by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant against an employee for engaging in certain protected activities is prohibited. Discrimination includes discharge and other actions that relate to compensation, terms, conditions, or privileges of employment. The protected activities are established in section 211 of the Energy Reorganization Act of 1974, as amended, and in general are related to the administration or enforcement of a requirement imposed under the Atomic Energy Act or the Energy Reorganization Act.

(1) The protected activities include but are not limited to:

(i) Providing the Commission or his or her employer information about alleged violations of either of the statutes named in paragraph (a) introductory text of this section or possible violations of requirements imposed under either of those statutes;

(ii) Refusing to engage in any practice made unlawful under either of the statutes named in paragraph (a) introductory text or under these requirements if the employee has identified the alleged illegality to the employer;

(iii) Requesting the Commission to institute action against his or her employer for the administration or enforcement of these requirements;

(iv) Testifying in any Commission proceeding, or before Congress, or at any Federal or State proceeding regarding any provision (or proposed provision) of either of the statutes named in paragraph (a) introductory text.

(v) Assisting or participating in, or is about to assist or participate in, these activities.

(2) These activities are protected even if no formal proceeding is actually initiated as a result of the employee assistance or participation.

(3) This section has no application to any employee alleging discrimination prohibited by this section who, acting without direction from his or her employer (or the employer's agent), deliberately causes a violation of any requirement of the Energy Reorganization Act of 1974, as amended, or the Atomic Energy Act of 1954, as amended.

(b) Any employee who believes that he or she has been discharged or otherwise discriminated against by any person for engaging in protected activities specified in paragraph (a)(1) of this section may seek a remedy for the discharge or discrimination through an administrative proceeding in the Department of Labor. The administrative proceeding must be initiated within 180 days after an alleged violation occurs. The employee

may do this by filing a complaint alleging the violation with the Department of Labor, Employment Standards Administration, Wage and Hour Division. The Department of Labor may order reinstatement, back pay, and compensatory damages.

(c) A violation of paragraph (a), (e), or (f) of this section by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant may be grounds for—

(1) Denial, revocation, or suspension of the license.

(2) Imposition of a civil penalty on the licensee or applicant.

(3) Other enforcement action.

(d) Actions taken by an employer, or others, which adversely affect an employee may be predicated upon nondiscriminatory grounds. The prohibition applies when the adverse action occurs because the employee has engaged in protected activities. An employee's engagement in protected activities does not automatically render him or her immune from discharge or discipline for legitimate reasons or from adverse action dictated by nonprohibited considerations.

(e) Each licensee and each applicant for a license shall prominently post the revision of NRC Form 3, "Notice to Employees," referenced in 10 CFR 19.11(c). This form must be posted at locations sufficient to permit employees protected by this section to observe a copy on the way to or from their place of work. Premises must be posted not later than 30 days after an application is docketed and remain posted while the application is pending before the Commission, during the term of the license, and for 30 days following license termination.

Note: Copies of NRC Form 3 may be obtained by writing to the Regional Administrator of the appropriate U.S. Nuclear Regulatory Commission Regional Office listed in appendix D to part 20 of this chapter or by contacting the NRC Information and Records Management Branch (telephone no. 301–492–8138).

(f) No agreement affecting the compensation, terms, conditions, or privileges of employment, including an agreement to settle a complaint filed by an employee with the Department of Labor pursuant to section 211 of the Energy Reorganization Act of 1974, as amended, may contain any provision which would prohibit, restrict, or otherwise discourage an employee from participating in protected activity as defined in paragraph (a)(1) of this section including, but not limited to, providing information to the NRC or to his or her employer on potential violations or other matters within NRC's regulatory responsibilities.

PART 60—DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTES IN GEOLOGIC REPOSITORIES

9. The authority citation for part 60 is revised to read as follows:

Authority: Secs. 51, 53, 62, 63, 65, 81, 161, 182, 183, 68 Stat. 929, 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2071, 2073, 2092, 2093, 2095, 2111, 2201, 2232, 2233); secs. 202, 206, 88 Stat. 1244, 1246 (42 U.S.C. 5842, 5846); secs. 10 and 14, Pub. L. 95–601, 92 Stat. 2951 (42 U.S.C. 2021a and 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 114, 121, Pub. L. 97–425, 96 Stat. 2213(g), 2228, as amended (42 U.S.C. 10134, 10141) and Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851).

10. Section 60.9 is revised to read as follows:

§ 60.9 Employee protection.

(a) Discrimination by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant against an employee for engaging in certain protected activities is prohibited. Discrimination includes discharge and other actions that relate to compensation, terms, conditions, or privileges of employment. The protected activities are established in section 211 of the Energy Reorganization Act of 1974, as amended, and in general are related to the administration or enforcement of a requirement imposed under the Atomic Energy Act or the Energy Reorganization Act.

(1) The protected activities include but are not limited to:

(i) Providing the Commission or his or her employer information about alleged violations of either of the statutes named in paragraph (a) introductory text of this section or possible violations of requirements imposed under either of those statutes;

(ii) Refusing to engage in any practice made unlawful under either of the statutes named in paragraph (a) introductory text or under these requirements if the employee has identified the alleged illegality to the employer;

(iii) Requesting the Commission to institute action against his or her employer for the administration or enforcement of these requirements;

(iv) Testifying in any Commission proceeding, or before Congress, or at any Federal or State proceeding regarding any provision (or proposed provision) of either of the statutes named in paragraph (a) introductory text.

(v) Assisting or participating in, or is about to assist or participate in, these activities.

(2) These activities are protected even if no formal proceeding is actually initiated as a result of the employee assistance or participation.

(3) This section has no application to any employee alleging discrimination prohibited by this section who, acting without direction from his or her employer (or the employer's agent), deliberately causes a violation of any requirement of the Energy Reorganization Act of 1974, as amended, or the Atomic Energy Act of 1954, as amended.

(b) Any employee who believes that he or she has been discharged or otherwise discriminated against by any person for engaging in protected activities specified in paragraph (a)(1) of this section may seek a remedy for the discharge or discrimination through an administrative proceeding in the Department of Labor. The administrative proceeding must be initiated within 180 days after an alleged violation occurs. The employee may do this by filing a complaint alleging the violation with the Department of Labor, Employment Standards Administration, Wage and Hour Division. The Department of Labor may order reinstatement, back pay, and compensatory damages.

(c) A violation of paragraph (a), (e), or (f) of this section by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant may be grounds for—

(1) Denial, revocation, or suspension of the license.

(2) Imposition of a civil penalty on the licensee or applicant.

(3) Other enforcement action.

(d) Actions taken by an employer, or others, which adversely affect an employee may be predicated upon nondiscriminatory grounds. The prohibition applies when the adverse action occurs because the employee has engaged in protected activities. An employee's engagement in protected activities does not automatically render him or her immune from discharge or discipline for legitimate reasons or from adverse action dictated by nonprohibited considerations.

(e) Each licensee and each applicant for a license shall prominently post the revision of NRC Form 3, "Notice to Employees," referenced in 10 CFR 19.11(c). This form must be posted at locations sufficient to permit employees protected by this section to observe a copy on the way to or from their place of work. Premises must be posted not

later than 30 days after an application is docketed and remain posted while the application is pending before the Commission, during the term of the license, and for 30 days following license termination.

Note: Copies of NRC Form 3 may be obtained by writing to the Regional Administrator of the appropriate U.S. Nuclear Regulatory Commission Regional Office listed in appendix D to Part 20 of this chapter or by contacting the NRC Information and Records Management Branch (telephone no. 301–492–8138).

(f) No agreement affecting the compensation, terms, conditions, or privileges of employment, including an agreement to settle a complaint filed by an employee with the Department of Labor pursuant to section 211 of the Energy Reorganization Act of 1974, as amended, may contain any provision which would prohibit, restrict, or otherwise discourage an employee from participating in protected activity as defined in paragraph (a)(1) of this section including, but not limited to, providing information to the NRC or to his or her employer on potential violations or other matters within NRC's regulatory responsibilities.

PART 61—LICENSING REQUIREMENTS FOR LAND DISPOSAL OF RADIOACTIVE WASTE

11. The authority citation for part 61 is revised to read as follows:

Authority: Secs. 53, 57, 62, 63, 65, 81, 161, 182, 183, 68 Stat. 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2073, 2077, 2092, 2093, 2095, 2111, 2201, 2232, 2233); secs. 202, 206, 88 Stat. 1244, 1246, (42 U.S.C. 5842, 5846); secs. 10 and 14, Pub. L. 95–601, 92 Stat. 2951 (42 U.S.C. 2021a and 5851) and Pub. L. 102–486, sec. 2902, 106 Stat. 3123, (42 U.S.C. 5851).

12. Section 61.9 is revised to read as follows:

§ 61.9 Employee protection.

(a) Discrimination by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant against an employee for engaging in certain protected activities is prohibited. Discrimination includes discharge and other actions that relate to compensation, terms, conditions, or privileges of employment. The protected activities are established in section 211 of the Energy Reorganization Act of 1974, as amended, and in general are related to the administration or enforcement of a requirement imposed under the Atomic Energy Act or the Energy Reorganization Act.

(1) The protected activities include but are not limited to:

(i) Providing the Commission or his or her employer information about alleged violations of either of the statutes named in paragraph (a) introductory text of the section or possible violations of requirements imposed under either of those statutes;

(ii) Refusing to engage in any practice made unlawful under either of the statutes named in paragraph (a) introductory text or under these requirements if the employee has identified the alleged illegality to the employer;

(iii) Requesting the Commission to institute action against his or her employer for the administration or enforcement of these requirements;

(iv) Testifying in any Commission proceeding, or before Congress, or at any Federal or State proceeding regarding any provision (or proposed provision) of either of the statutes named in paragraph (a) introductory text.

(v) Assisting or participating in, or is about to assist or participate in, these activities.

(2) These activities are protected even if no formal proceeding is actually initiated as a result of the employee assistance or participation.

(3) This section has no application to any employee alleging discrimination prohibited by this section who, acting without direction from his or her employer (or the employer's agent), deliberately causes a violation of any requirement of the Energy Reorganization Act of 1974, as amended, or the Atomic Energy Act of 1954, as amended.

(b) Any employee who believes that he or she has been discharged or otherwise discriminated against by any person for engaging in protected activities specified in paragraph (a)(1) of this section may seek a remedy for the discharge or discrimination through an administrative proceeding in the Department of Labor. The administrative proceeding must be initiated within 180 days after an alleged violation occurs. The employee may do this by filing a complaint alleging the violation with the Department of Labor, Employment Standards Administration, Wage and Hour Division. The Department of Labor may order reinstatement, back pay, and compensatory damages.

(c) A violation of paragraph (a), (e), or (f) of this section by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant may be grounds for—

(1) Denial, revocation, or suspension of the license.

(2) Imposition of a civil penalty on the licensee or applicant.

(3) Other enforcement action.

(d) Actions taken by an employer, or others, which adversely affect an employee may be predicated upon nondiscriminatory grounds. The prohibition applies when the adverse action occurs because the employee has engaged in protected activities. An employee's engagement in protected activities does not automatically render him or her immune from discharge or discipline for legitimate reasons or from adverse action dictated by nonprohibited considerations.

(e) Each licensee and each applicant for a license shall prominently post the revision of NRC Form 3, "Notice to Employees," referenced in 10 CFR 19.11(c). This form must be posted at locations sufficient to permit employees protected by this section to observe a copy on the way to or from their place of work. Premises must be posted not later than 30 days after an application is docketed and remain posted while the application is pending before the Commission, during the term of the license, and for 30 days following license termination.

Note: Copies of NRC Form 3 may be obtained by writing to the Regional Administrator of the appropriate U.S. Nuclear Regulatory Commission Regional Office listed in appendix D to part 20 of this chapter or by contacting the NRC Information and Records Management Branch (telephone no. 301–492–8138).

(f) No agreement affecting the compensation, terms, conditions, or privileges of employment, including an agreement to settle a complaint filed by an employee with the Department of Labor pursuant to section 211 of the Energy Reorganization Act of 1974, as amended, may contain any provision which would prohibit, restrict, or otherwise discourage an employee from participating in protected activity as defined in paragraph (a)(1) of this section including, but not limited to, providing information to the NRC or to his or her employer on potential violations or other matters within NRC's regulatory responsibilities.

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

13. The authority citation for part 70 is revised to read as follows:

Authority: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954 as amended, secs. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282); Secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246, (42 U.S.C. 5841, 5842, 5845, 5846).

Sections 70.1(c) and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 70.7 also issued under Pub. L. 5–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123, (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93–377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

14. Section 70.7 is revised to read as follows:

§ 70.7 Employee protection.

(a) Discrimination by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant against an employee for engaging in certain protected activities is prohibited. Discrimination includes discharge and other actions that relate to compensation, terms, conditions, or privileges of employment. The protected activities are established in section 211 of the Energy Reorganization Act of 1974, as amended, and in general are related to the administration or enforcement of a requirement imposed under the Atomic Energy Act or the Energy Reorganization Act.

(1) The protected activities include but are not limited to:

(i) Providing the Commission or his or her employer information about alleged violations of either of the statutes named in paragraph (a) introductory text of this section or possible violations of requirements imposed under either of those statutes;

(ii) Refusing to engage in any practice made unlawful under either of the statutes named in paragraph (a) introductory text or under these requirements if the employee has identified the alleged illegality to the employer;

(iii) Requesting the Commission to institute action against his or her employer for the administration or enforcement of these requirements;

(iv) Testifying in any Commission proceeding, or before Congress, or at any Federal or State proceeding regarding any provision (or proposed provision) of either of the statutes named in paragraph (a) introductory text.

(v) Assisting or participating in, or is about to assist or participate in, these activities.

(2) These activities are protected even if no formal proceeding is actually initiated as a result of the employee assistance or participation.

(3) This section has no application to any employee alleging discrimination prohibited by this section who, acting without direction from his or her employer (or the employer's agent), deliberately causes a violation of any requirement of the Energy Reorganization Act of 1974, as amended, or the Atomic Energy Act of 1954, as amended.

(b) Any employee who believes that he or she has been discharged or otherwise discriminated against by any person for engaging in protected activities specified in paragraph (a)(1) of this section may seek a remedy for the discharge or discrimination through an administrative proceeding in the Department of Labor. The administrative proceeding must be initiated within 180 days after an alleged violation occurs. The employee may do this by filing a complaint alleging the violation with the Department of Labor, Employment Standards Administration, Wage and Hour Division. The Department of Labor may order reinstatement, back pay, and compensatory damages.

(c) A violation of paragraphs (a), (e), or (f) of this section by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant may be grounds for—

(1) Denial, revocation, or suspension of the license.

(2) Imposition of a civil penalty on the licensee or applicant.

(3) Other enforcement action.

(d) Actions taken by an employer, or others, which adversely affect an employee may be predicated upon nondiscriminatory grounds. The prohibition applies when the adverse action occurs because the employee has engaged in protected activities. An employee's engagement in protected activities does not automatically render him or her immune from discharge or discipline for legitimate reasons or from adverse action dictated by nonprohibited considerations.

(e)(1) Each specific licensee, each applicant for a specific license, and each general licensee subject to part 19 shall prominently post the revision of NRC Form 3, "Notice to Employees," referenced in 10 CFR 19.11(c).

(2) The posting of NRC Form 3 must be at locations sufficient to permit employees protected by this section to observe a copy on the way to or from their place of work. Premises must be posted not later than 30 days after an application is docketed and remain posted while the application is pending before the Commission, during the term of the license, and for 30 days following license termination.

Note: Copies of NRC Form 3 may be obtained by writing to the Regional Administrator of the appropriate U.S. Nuclear Regulatory Commission Regional Office listed in appendix D to part 20 of this chapter or by contacting the NRC Information and Records Management Branch (telephone no. 301–492–8138).

(f) No agreement affecting the compensation, terms, conditions, or privileges of employment, including an agreement to settle a complaint filed by an employee with the Department of Labor pursuant to section 211 of the Energy Reorganization Act of 1974, as amended, may contain any provision which would prohibit, restrict, or otherwise discourage an employee from participating in protected activity as defined in paragraph (a)(1) of this section including, but not limited to, providing information to the NRC or to his or her employer on potential violations or other matters within NRC's regulatory responsibilities.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

15. The authority citation for part 72 is revised to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282), sec. 274 Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123, (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853) 42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c), (d). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244, (42 U.S.C. 10101, 10137(a), 10161(h). Subparts K and L are also issued under sec. 133, 96 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

16. Section 72.10 is revised to read as follows:

§ 72.10 Employee protection.

(a) Discrimination by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant against an employee for engaging in certain protected activities is prohibited. Discrimination includes discharge and other actions that relate to compensation, terms, conditions, or privileges of employment. The protected activities are established in section 211 of the Energy Reorganization Act of 1974, as amended, and in general are related to the administration or enforcement of a requirement imposed under the Atomic Energy Act or the Energy Reorganization Act.

(1) The protected activities include but are not limited to:

(i) Providing the Commission or his or her employer information about alleged violations of either of the statutes named in paragraph (a) introductory text of this section or possible violations of requirements imposed under either of those statutes;

(ii) Refusing to engage in any practice made unlawful under either of the statutes named in paragraph (a) introductory text or under these requirements if the employee has identified the alleged illegality to the employer;

(iii) Requesting the Commission to institute action against his or her employer for the administration or enforcement of these requirements;

(iv) Testifying in any Commission proceeding, or before Congress, or at any Federal or State proceeding regarding any provision (or proposed provision) of either of the statutes named in paragraph (a) introductory text.

(v) Assisting or participating in, or is about to assist or participate in, these activities.

(2) These activities are protected even if no formal proceeding is actually initiated as a result of the employee assistance or participation.

(3) This section has no application to any employee alleging discrimination prohibited by this section who, acting without direction from his or her employer (or the employer's agent), deliberately causes a violation of any requirement of the Energy Reorganization Act of 1974, as amended, or the Atomic Energy Act of 1954, as amended.

(b) Any employee who believes that he or she has been discharged or otherwise discriminated against by any person for engaging in protected activities specified in paragraph (a)(1) of this section may seek a remedy for the discharge or discrimination through an administrative proceeding in the Department of Labor. The administrative proceeding must be initiated within 180 days after an alleged violation occurs. The employee may do this by filing a complaint alleging the violation with the Department of Labor, Employment Standards Administration, Wage and Hour Division. The Department of Labor may order reinstatement, back pay, and compensatory damages.

(c) A violation of paragraphs (a), (e), or (f) of this section by a Commission licensee, an applicant for a Commission licensee, or a contractor or subcontractor of a Commission licensee or applicant may be grounds for—

(1) Denial, revocation, or suspension of the license.

(2) Imposition of a civil penalty on the licensee or applicant.

(3) Other enforcement action.

(d) Actions taken by an employer, or others, which adversely affect an employee may be predicated upon nondiscriminatory grounds. The prohibition applies when the adverse action occurs because the employee has engaged in protected activities. An employee's engagement in protected activities does not automatically render him or her immune from discharge or discipline for legitimate reasons or from adverse action dictated by nonprohibited considerations.

(e)(1) Each licensee and each applicant for a license shall prominently post the revision of NRC Form 3, "Notice to Employees," referenced in 10 CFR 19.11(c). This form must be posted at locations sufficient to permit employees protected by this section to observe a copy on the way to or from their place of work. Premises must be posted not later than 30 days after an application is docketed and remain posted while the application is pending before the Commission, during the term of the license, and for 30 days following license termination.

(2) Copies of NRC Form 3 may be obtained by writing to the Regional Administrator of the appropriate U.S. Nuclear Regulatory Commission Regional Office listed in appendix D to part 20 of this chapter or by contacting the NRC Information and Records Management Branch (telephone no. 301–492–8138).

(f) No agreement affecting the compensation, terms, conditions, or privileges of employment, including an agreement to settle a complaint filed by an employee with the Department of Labor pursuant to section 211 of the Energy Reorganization Act of 1974, as amended, may contain any provision which would prohibit, restrict, or otherwise discourage an employee from participating in protected activity as defined in paragraph (a)(1) of this section including, but not limited to, providing information to the NRC or to his or her employer on potential violations or other matters within NRC's regulatory responsibilities.

PART 150—EXEMPTIONS AND CONTINUED REGULATORY AUTHORITY IN AGREEMENT STATES AND IN OFFSHORE WATERS UNDER SECTION 274

18. The authority citation for part 150 is revised to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 274, 73 Stat. 688 (42 U.S.C. 2201, 2021); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Sections 150.3, 150.15, 150.15a, 150.31, 150.32 also issued under secs. 11e(2), 81, 68 Stat. 923, 935, as amended, secs. 83, 84, 92 Stat. 3033, 3039 (42 U.S.C. 2014e(2), 2111, 2113, 2114). Section 150.14 also issued under sec. 53, 68 Stat. 930, as amended (42 U.S.C. 2073). Section 150.15 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 150.17a also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 150.30 also issued under sec. 234, 83 Stat. 444 (42 U.S.C. 2282).

19. In § 150.20, the introductory text of paragraph (b) is revised to read as follows:

§ 150.20 Recognition of Agreement State licenses.

* * * * *

(b) Notwithstanding any provision to the contrary in any specific license issued by an Agreement State to a person engaging in activities in a non-Agreement State or in offshore waters under the general licenses provided in this section, the general licenses provided in this section are subject to the provisions of §§ 30.7(a) through (f), 30.9, 30.10, 30.14(d), 30.34, 30.41, 30.51 to 30.63, inclusive, of part 30 of this chapter; §§ 40.7(a) through (f), 40.9, 40.10, 40.41, 40.51, 40.61, 40.63 inclusive, 40.71 and 40.81 of part 40 of this chapter; §§ 70.7(a) through (f), 70.9, 70.10, 70.32, 70.42, 70.51 to 70.56, inclusive, 70.60 to 70.62, inclusive, and to the provisions of 10 CFR parts 19, 20 and 71 and subpart B of part 34, §§ 39.15 and 39.31 through 39.77, inclusive, of part 39 of this chapter. In addition, any person engaging in activities in non-Agreement States or in offshore waters under the general licenses provided in this section:

* * * * *

Dated at Rockville, Maryland this 24th day of September, 1993.

For the Nuclear Regulatory Commission.
James M. Taylor,
Executive Director for Operations.
[FR Doc. 93–24787 Filed 10–7–93; 8:45 am]
BILLING CODE 7590–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Environmental Services

AGENCY: Small Business Administration.
ACTION: Final rule.

SUMMARY: On January 13, 1993, the Small Business Administration (SBA) published an interim final rule which established a small business size standard of $18 million for environmental services, an activity designated by the SBA under Standard Industrial Classification code 8744, Facilities Support Management Services (58 FR 4074). This final rule withdraws that size standard. This action is being taken in order to comply with a court decision, dated June 23, 1993, which judicially vacated the environmental services size standard.

DATES: Effective October 8, 1993.

FOR FURTHER INFORMATION CONTACT: Gary M. Jackson, Director, Size Standards Staff, at (202) 205–6618.

SUPPLEMENTARY INFORMATION: On January 13, 1993, the SBA published an interim final rule in the **Federal Register**, 58 FR 4074, that established a size standard of $18 million in average annual receipts for environmental services. As discussed in the interim rule, SBA believed environmental services to be an emerging industry which the current SIC System and its corresponding size standards did not adequately address. In response to this situation, the SBA promulgated the environmental services size standard rule on an interim final basis, without opportunity for prior public comment, pursuant to the Administrative Procedure Act, 5 U.S.C. 553 (b)(B). SBA sought public comment on the rule as it recognized the desirability of input from the public prior to the Agency's final decision on establishing this size standard.

SBA is hereby withdrawing that interim final rule. This action is being taken as a result of a court decision that judicially vacated the environmental services size standard. As explained in a notice published in the **Federal Register** on August 9, 1993 (58 FR 42355), the United States District Court for the District of Columbia on June 23, 1993 held that the SBA's publication of that size standard as an interim final rule violated applicable provisions of the Administrative Procedure Act (APA), 5 U.S.C. 553, requiring notice and comment as part of agency rulemaking procedures. *Analysas Corp. v. Bowles*, No. 93–0711, slip. op. (D.D.C. June 23, 1993). Because applicable provisions of the APA were not followed, the Court vacated the $18 million size standard for environmental services under SIC code 8744. *Id.* at 10.

This final rule formally withdraws the environmental services size standard. This allows the SBA to begin a new rulemaking action to reconsider a size standard for environmental services. Published elsewhere in this issue of the **Federal Register** a size standard for environmental services of $18 million is being proposed for public comment.

Compliance With Regulatory Flexibility Act, Executive Orders 12291, 12612, 12778, and the Paperwork Reduction Act

General

SBA certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) as it is merely withdrawing the interim final rule in compliance with a court order. In addition, this rule will not constitute a major rule for the purpose of Executive Order 12291 for the same reasons.

Further, SBA certifies that this rule will not impose any paperwork or recordkeeping requirements subject to the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

SBA certifies that this rule will not have federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in section 2 of that order.

List of Subjects in 13 CFR Part 121

Government procurement, Government property, Grant programs—business, Loan programs—business, Small business.

Accordingly, part 121 of 13 CFR is amended as follows:

PART 121—[AMENDED]

1. The authority citation for part 121 continues to read as follows:

Authority: 15 U.S.C. 632(a), and 634(b)(6), 637(a) and 644(c).

2. In § 121.601 Major Group 87, is amended in the table by revising SIC code 8744 to read as follows:

§ 121.601 Standard Industrial classification codes and size standards.

* * * * *

SIZE STANDARDS BY SIC INDUSTRY

SIC (*=new SIC code in 1987, not used in 1972)	Description (N.E.C.=not elsewhere classified)	Size standards in number of employees or millions of dollars
*	*	*
8744*	Facilities Support Management Services [19].	$3.5
	Base Maintenance [20].	13.5

[19] *Facilities Management, a component of SIC code 8744,* has the following definition: Establishments, not elsewhere classified, which provide overall management and the personnel to perform a variety of related support services in operating a complete facility in or around a specific building, or within another business or Government establishment. Facilities arrangement means furnishing three or more personnel supply services which may include, but are not limited to, secretarial services, typists, telephone answering, reproduction or mimeograph service, mailing service, financial or business management, public relations, conference planning, travel arrangements, word processing, maintaining files and/or libraries, switchboard operation, writers, bookkeeping, minor office equipment maintenance and repair, use of information systems (not programming), etc.

[20] SIC code 8744: If one of the activities of *base maintenance,* as defined below, can be identified with a separate industry, and that activity (or industry) accounts for 50 percent or more of the value of an entire contract, then the proper size standard shall be that for the particular industry, and not the base maintenance size standard.

"Base Maintenance" constitutes three or more separate activities. The activities may be either service or special trade construction related activities. As services, these activities must each be in a separate industry. These activities may include, but are not limited to, such separate maintenance activities as Janitorial and Custodial Service, Protective Guard Service, Commissary Service, Fire Prevention Service, Safety Engineering Service, Messenger Service, and Grounds Maintenance and Landscaping Service. If the contract involves the use of special trade contractors (plumbing, painting, plastering, carpentering, etc.), all such specialized special trade construction activities will be considered a single activity, which is Base Housing Maintenance. This is only one activity of base maintenance and two additional activities must be present for the contract to be considered base maintenance. The size standard for Base Housing Maintenance is $7 million, the same size standard as for Special Trade Contractors.

* * * * *

Dated: September 30, 1993.

Erskine B. Bowles,

Administrator.

[FR Doc. 93–24811 Filed 10–7–93; 8:45 am]

BILLING CODE 8025–01–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR PARTS 200, 203, and 240

[Release No. 34–33007; International Series Release No. 587 File No. S7–38–92]

RIN 3235–AF72

Access to Nonpublic Information in the Commission's Possession

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission is adopting Rule 24c–1 under the Securities Exchange Act of 1934, pursuant to authority granted to it in 1990 by Congress. The Rule lists the entities to which the Commission may, in its discretion, and with appropriate assurances of confidentiality, provide nonpublic information. The Commission is also adopting related revisions to its Rules of Organization and Rules Relating to Investigations. Rule 24c–1 and attendant changes are intended to continue current procedures for cooperation between securities regulatory authorities.

EFFECTIVE DATE: November 8, 1993.

FOR FURTHER INFORMATION CONTACT: Anne H. Sullivan, (202) 272–7525, Office of General Counsel.

SUPPLEMENTARY INFORMATION:

I. Rule 24c–1

A. Section 24(c) and Proposed Rule 24c–1

The International Securities Cooperation Act of 1990 [1] added section 24(c) [2] to the Securities Exchange Act of 1934 (the "Exchange Act"). Section 24(c) provides that the Commission may, "in its discretion and upon a showing that such information is needed," provide nonpublic records "to such persons, both domestic and foreign, as the Commission by rule deems appropriate if the person receiving such records provides such assurances of confidentiality as the Commission deems appropriate." [3] The purpose of the provision was to make explicit the Commission's authority to provide documents and other information to appropriate foreign and domestic authorities. [4]

In November 1992, the Commission proposed Rule 24c–1 under section 24(c).[5] The proposed rule defined nonpublic information and listed the entities to which the Commission could, in its discretion, provide such information upon receiving appropriate assurances of confidentiality. The proposing release noted that, if it adopted Rule 24c–1, the Commission intended to amend other rules so that Rule 24c–1 could be administered by the staff pursuant to delegated authority.

B. Comments on the Proposal

The Commission received five comment letters on the proposed rule. The New York Stock Exchange expressed concern that the rule may permit the inappropriate use of competitive information obtained by request and, along with the Intermarket Surveillance Group, suggested that the Commission formally limit the use of the rule to situations identified in the Commission's existing request form. The Intermarket Surveillance Group argued that the rule should require express standards to judge a legitimate regulatory need and should limit the types of nonpublic information subject to disclosure.

The Pacific Stock Exchange expressed similar concern that the proposed rule would allow the Commission to share proprietary information from one domestic exchange with another domestic exchange. The comment letter also argued that the rule's requirement for "a showing that the information is needed" is too vague a standard for the Commission's release of information and requested that the Commission provide the Exchange with prior notice before releasing the Exchange's confidential nonpublic information to a third party.

The London Stock Exchange contended that section 24(c) does not give the Commission authority to define all the information in the Commission's possession which can be considered nonpublic, that the rule's proposed standards are too vague, and that it permits access to an excessively large group of requestors. In particular, the Exchange objects that the rule permits the Commission to share information with "persons or entities who are appointed in connection with a litigation."

The Depository Trust Company ("DTC") argued that the rule's standard is too vague, expressed a concern that the Commission might release proprietary information obtained from the DTC to a competitor, and requested that the Commission provide notice before releasing nonpublic information. In addition, the DTC requested that the Commission delegate authority under Rule 24c–1 to the Director of the Division of Market Regulation, especially with respect to information which it submits to the Commission.

C. Analysis of the Comments

The Commission shares the concern about confidentiality expressed by the commenters. The Commission understands that its ability to obtain confidential information promptly and cooperatively depends not only on its statutory powers but also on the expectation that the Commission will provide appropriate protection for the confidential information it obtains. The Commission does not intend, in adopting Rule 24c–1, to reduce its emphasis on maintaining the confidentiality of nonpublic information or change its procedures for ensuring confidentiality.

The Commission does not believe, however, that Rule 24c–1 is the appropriate place to develop detailed confidentiality or access procedures. section 24(c) gives the Commission broad discretion to determine whether information is needed, to whom it should be provided, and what assurances of confidentiality to require. What it does require is that the Commission list, in a rule, the types of persons to whom nonpublic information may be provided. Rule 24c–1 repeats the statutory standard and then, as required, enumerates the persons to whom the Commission may provide information under section 24(c).

The rule does not elaborate upon the standards enacted by Congress, and the Commission believes that further elaboration at this point would not preserve sufficient flexibility. The Commission receives a broad variety of specific requests for access, and the information it has been able to provide in response to requests is equally varied.

The Commission attempts to preserve the confidentiality of nonpublic information provided to third parties in a number of ways. In deciding whether to provide nonpublic information, the Commission evaluates the requestor's statement of its need for the information, the sensitivity of the information the Commission would be providing, and the assurances of confidentiality which the requestor

[1] Pub. L. No. 101–550, 104 Stat. 2714.

[2] 15 U.S.C. 78x(c).

[3] Id.

[4] See H.R. Rep. No. 240, 101st Cong., 1st Sess. 21 (1989).

[5] Exchange Act Release No. 31553 (Nov. 30, 1992) (57 FR 57710 (Dec. 7, 1992)).

offers. The Commission routinely requires that these assurances be in writing, and include promises to maintain the confidentiality of the information and consult with the Commission before any release of the information, other than as set out in the agreement for release. The Commission also routinely includes, in its memoranda of understanding with foreign securities authorities, provisions regarding the uses and confidentiality of information shared.

With respect to information obtained from self-regulatory organizations or broker-dealers, the Commission generally does not give other regulators access to such information except for a purpose which is proper under this Rule. Whenever the regulatory offices of the Commission provide information to any regulator, the Commission routinely cautions that the information is provided for regulatory, but not for competitive, purposes.

The Commission intends, under Rule 24c–1, to continue to use these existing confidentiality procedures, including the required statements of need and assurances of confidentiality. If it appears that these provisions are inadequate to maintain the confidentiality and limit the use of nonpublic information, the Commission will consider revisions.

The rule also makes no provision for notice to the sources of nonpublic information prior to release, as requested by some commentators. Although a certain amount of consultation may be necessary and appropriate in many circumstances, the Commission must also preserve flexibility to act without prior notice or consultation, which it would not have under a notice provision. The Commission's current procedures often involve consultation. For example, when the Commission has originally received notification of possible wrongdoing from a registrant or self-regulatory organization, it may also contact the original source before sharing that information with other regulators. Similarly, when the Commission has originally received information from a foreign authority under a memorandum of understanding, the memorandum will generally address the question of prior notice before the information is shared with a third party. However, there may also be circumstances in which it would be inappropriate for the Commission to advise the original source of information that an enforcement organization other than the Commission has inquired about the information.

The conforming amendments which are adopted along with Rule 24c–1 include delegations of authority to the Directors of the Divisions of Enforcement, Corporation Finance, Market Regulation and Investment Management and the General Counsel and the Director of the Office of International Affairs. This will ensure that decisions regarding grants of access are made by the senior staff members who are most knowledgeable about the information in question and most sensitive to the confidentiality concerns of those who provided it. This is consistent with the request of the Depository Trust Company that the Director of the Division of Market Regulation receive authority to decide whether to release information obtained by the Division from the Depository Trust Company.

Finally, the Commission does not believe that, in carrying out the Congressional directive to list persons which might request access to nonpublic Commission files, it has been overly inclusive. Many of the persons listed in Rule 24c–1 are already listed in the current access rules: Rule 30–4(a)(7) of the Rules of Organization and Rule 2 of the Rules of Investigation. Many of these persons are also parties to agreements, or subject to rules, which require them to maintain the confidential nature of information provided.

II. Amendments to the Rules of Organization and Relating to Investigations

The adoption of Rule 24c–1 will require the Commission to make certain amendments to its existing Rules of Organization and Rules Relating to Investigations. The Commission is amending its Rules of Organization to include a new Rule 15 describing the responsibilities of its Office of International Affairs, and it is amending its rules relating to delegation of authority to include a delegation of authority to that Office. The Commission has also identified sections of existing rules which need modification in light of the adoption of Rule 24c–1.

A. Office of International Affairs

The Commission is amending its Rules of Organization to include a new rule describing the responsibilities of its Office of International Affairs, and to delegate certain authority to that office.

B. Rules of Organization and Delegations of Authority

Rule 24c–1 is intended to complement the Commission's existing access program, which is currently administered primarily by the Director of the Division of Enforcement pursuant to delegated authority.[6] The Commission is amending its Rules of Organization relating to delegation of authority to clarify that the authority of the Director of the Division of Enforcement extends to administration of Rule 24c–1, and also to extend similar authority to share information, including investigatory or enforcement-related information, to the Directors of the Divisions of Corporation Finance, Market Regulation, and Investment Management, the General Counsel and the Director of the Office of International Affairs. Delegated authority to administer Rule 24c–1 is being extended to the directors of these other divisions and offices because information that the Commission may provide under its access program is not limited to investigatory or enforcement-related information. It may include, for example, compliance, regulatory and market surveillance information.

The International Securities Enforcement Cooperation Act of 1990 also added section 24(d) to the Exchange Act,[7] which permits the Commission, when advised in good faith that disclosure would violate foreign law and when the Commission obtains information pursuant to enforcement proceedings or a memorandum of understanding, to withhold from disclosure records obtained from a foreign securities authority. The Commission has therefore amended its delegation of authority rules to give the General Counsel and the Directors of each of the above mentioned Divisions and Offices delegated authority to administer the provisions of section 24(d).

The foregoing amendments to the Commission's delegation of authority rules are reflected in: Rule 30–1(f)(14) and (15) (17 CFR 200.30–1(14) and (15)); Rule 30–3(a)(53) and (54) (17 CFR 200.30–3(a)(53) and (54); Rule 30–4(a)(7) and (9) (17 CFR 200.30–4(a)(7) and (9)); Rule 30–5(c–1)(3) and (4) (17 CFR 200.30–5(c–1)(3) and (4)); Rule 30–14(j)(1) and (2) (17 CFR 200.30(j)(1) and (2)); and new rule 30–17 (17 CFR 200.30–17).

C. Rules Relating to Investigations

Rule 2 of the Commission's Rules Relating to Investigations (17 CFR 203.2) currently provides that information or documents obtained in the course of an investigation or examination, unless

[6] See Rule 30–4(a)(7) of the Commission's Rules of Organization, 17 CFR 200.30–4(a)(7).

[7] 15 U.S.C. 78x(d).

made a matter of public record, shall be deemed nonpublic, but indicates that the Commission approves the practice whereby senior officials of the Division of Enforcement and of the Commission's Regional Offices may engage in, and may authorize members of the Commission's staff to engage in, discussions concerning such information or documents with persons specified in the Rule. In view of the adoption of Rule 24c–1, which identifies persons who may be provided access to nonpublic information in the Commission's possession, and the related amendments to the Commission's delegation of authority rules regarding administration of Rule 24c–1, the Commission has amended Rule 2 to amplify the persons currently identified therein for purposes of discussions with those persons identified in Rule 24c–1, and to provide that senior staff members of the Divisions of Corporation Finance, Market Regulation and Investment Management and the Office of International Affairs may also participate in discussions regarding information or documents obtained in the course of any investigation or examination.

The Commission has determined that its amendments and additions to its Delegations of Authority and Rules Relating to Investigations, and new Rule 15 of its Rules of Organization, describing the Office of International Affairs, relate solely to the agency organization, procedure or practice. Therefore, the provisions of the Administrative Procedure Act ("APA") regarding notice of proposed rulemaking and opportunities for public participation,[8] are not applicable. Similarly, the provisions of the Regulatory Flexibility Act,[9] which apply only when notice and comment rulemaking are required by the APA or other law, are not applicable. The Commission finds that the rule amendments and new rule 15 will not impose any burden on competition.

III. Regulatory Flexibility Act Analysis

Section 3(a) of the Regulatory Flexibility Act [10] requires the Commission to undertake a regulatory flexibility analysis of the impact of a rule on small entities, unless the Chairman certifies that the rule, if adopted, would not have a significant economic impact on a substantial number of small entities. To the extent that Rule 24c–1 would impose any costs on entities subject to the Rule, or have a competitive effect on entities subject to the Rule, these costs are not significant and would not impact a substantial number of small entities. Accordingly, the Chairman has certified that the rule would not have a significant economic impact on a substantial number of small entities. A copy of the Chairman's certification is available from Anne Sullivan at 450 Fifth Street NW., Washington, DC 20549.

IV. Effects on Competition

Section 23(a)(2) of the Exchange Act [11] requires the Commission, in adopting rules under the Exchange Act, to consider the anti-competitive effects of such rules, if any, and to balance any impact against the regulatory benefits gained in terms of furthering the purposes of the Exchange Act. The Commission has considered Rule 24c–1 in light of the standards cited in section 23(a)(2) and believes that adoption would not impose any burden on competition not necessary or appropriate in furtherance of the Exchange Act.

V. Statutory Basis of Rule

Rule 24c–1 is being adopted pursuant to sections 23(a) and 24(c) of the Exchange Act.[12] The amendments to the Commission's Rules of Organization are adopted pursuant to the authorities set forth therein.

List of Subjects

17 CFR Part 200

Authority delegations (Government agencies), Organization and functions (Government agencies).

17 CFR Part 203

Administrative practice and procedures, Investigations, Securities.

17 CFR Part 240

Brokers, Confidential business information, Fraud, Reporting and recordkeeping requirements, Securities.

In accordance with the foregoing, 17 CFR, chapter II, is amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Subpart A—Organization and Program Management

1. The authority citation for part 200, subpart A, continues to read as follows:

Authority: 15 U.S.C. 77s, 78d–1, 78d–2, 78w, 78*ll*(d), 79t, 77sss, 80a–37, 80b–11, unless otherwise noted.

Section 200.30–1 is also issued under 15 U.S.C. 77f, 77g, 77h, 77j, 78c(b), 78*l*, 78m, 78n, 78*o*(d).

Section 200.30–3 is also issued under 15 U.S.C. 78b, 78d, 78f, 78k–1, 78s, 78q, 78eee, 79d.

2. Section 200.15 is added to read as follows:

§ 200.15 Office of International Affairs.

(a) The Office of International Affairs ("OIA") is responsible for the negotiation and implementation of the Commission's bilateral and multilateral agreements and understandings with foreign financial regulatory authorities. OIA coordinates and participates in activities relating to the Commission's international cooperation programs and develops initiatives to enhance the Commission's ability to enforce the federal securities laws in matters with international elements.

(b) OIA assists in and facilitates the efforts of the Commission's other divisions and offices in responding to international issues and in developing legislative, rulemaking and other initiatives relating to international securities markets. OIA facilitates the development of and, where appropriate, provides advice and presents Commission positions relating to international initiatives of other U.S. Government departments and agencies affecting regulation of securities markets. OIA plans, coordinates and participates in Commission meetings with foreign financial regulatory authorities.

3. Section 200.30–1 is amended by republishing paragraph (f) introductory text and by adding paragraphs (f)(14) and (15) to read as follows:

§ 200.30–1 Delegation of authority to Director of Division of Corporation Finance.

* * * * *

(f) With respect to the Securities Exchange Act of 1934 (15 U.S.C. 78a, *et seq.*):

* * * * *

(14) To administer the provisions of § 240.24c-1 of this chapter; provided that access to nonpublic information as defined in such section shall be provided only with the concurrence of the head of the Commission division or office responsible for such information or the files containing such information.

(15) To administer the provisions of Section 24(d) of the Act (15 U.S.C. 78x(d)).

* * * * *

4. Section 200.30–3 is amended by republishing paragraph (a) introductory

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[8] 5 U.S.C. 553.

[9] 5 U.S.C. 601 *et seq.*

[10] 5 U.S.C. 603(a).

[11] 15 U.S.C. 78w(a)(2).

[12] 15 U.S.C. 78w(a) and 78x(c).

text and by adding paragraphs (a) (53) and (54) to read as follows:

§ 200.30–3 Delegation of authority to Director of Division of Market Regulation.

* * * * *

(a) With respect to the Securities Exchange Act of 1934 (15 U.S.C. 78a, *et seq.*):

* * * * *

(53) To administer the provisions of § 240.24c-1 of this chapter; provided that access to nonpublic information as defined in such section shall be provided only with the concurrence of the head of the Commission division or office responsible for such information or the files containing such information.

(54) To administer the provisions of Section 24(d) of the Act (15 U.S.C. 78x(d)).

* * * * *

5. Section 200.30–4 is amended by revising paragraph (a)(7) and adding paragraph (a)(9) to read as follows:

§ 200.30–4 Delegation of authority to Director of Division of Enforcement.

* * * * *

(a) * * *

(7) To administer the provisions of § 240.24c-1 of this chapter; provided that access to nonpublic information as defined in such section shall be provided only with the concurrence of the head of the Commission division or office responsible for such information or the files containing such information.

* * * * *

(9) To administer the provisions of Section 24(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78x(d)).

* * * * *

6. Section 200.30–5 is amended by republishing paragraph (c-1) introductory text, by removing "; and" at the end of paragraph (c-1)(1) and adding a period in its place, and by adding paragraphs (c-1)(3) and (4) to read as follows:

§ 200.30–5 Delegation of authority to Director of Division of Investment Management.

* * * * *

(c-1) With respect to the Securities Exchange Act of 1934:

* * * * *

(3) To administer the provisions of § 240.24c-1 of this chapter; provided that access to nonpublic information as defined in such section shall be provided only with the concurrence of the head of the Commission division or office responsible for such information or the files containing such information.

(4) To administer the provisions of section 24(d) of the Act (15 U.S.C. 78x(d)).

* * * * *

7. Section 200.30–14 is amended by adding paragraph (j) to read as follows:

§ 200.30–14 Delegation of authority to the General Counsel.

* * * * *

(j) With respect to the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*):

(1) To administer the provisions of § 240.24c-1 of this chapter; provided that access to nonpublic information as defined in such section shall be provided only with the concurrence of the head of the Commission division or office responsible for such information or the files containing such information.

(2) To administer the provisions of section 24(d) of the Act (15 U.S.C. 78x(d)).

8. Section 200.30–17 is added to read as follows:

§ 200.30–17 Delegation of authority to Director of Office of International Affairs.

Pursuant to the provisions of Pub. L. 100–181, 101 Stat. 1254, 1255 (15 U.S.C. 78d-1, 78d-2), the Securities and Exchange Commission hereby delegates, until the Commission orders otherwise, the following functions to the Director of the Office of International Affairs to be performed by the Director or under the Director's direction by such other person or persons as may be designated from time to time by the Chairman of the Commission:

(a) To administer the provisions of § 240.24c-1 of this chapter; provided that access to nonpublic information as defined in such section shall be provided only with the concurrence of the head of the Commission division or office responsible for such information or the files containing such information.

(b) To administer the provisions of section 24(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78x(d)).

PART 203—RULES RELATING TO INVESTIGATIONS

9. The authority citation for Part 203 is revised to read as follows:

Authority: 15 U.S.C 77s, 78w, 79t, 77sss, 80a-37, 80b-11, unless otherwise noted.

Subpart A—In General

10. Section 203.2 is revised to read as follows:

§ 203.2 Information obtained in investigations and examinations.

Information or documents obtained by the Commission in the course of any investigation or examination, unless made a matter of public record, shall be deemed non-public, but the Commission approves the practice whereby officials of the Divisions of Enforcement, Corporation Finance, Market Regulation and Investment Management and the Office of International Affairs at the level of Assistant Director or higher, and officials in Regional Offices at the level of Assistant Regional Administrator or higher, may engage in and may authorize members of the Commission's staff to engage in discussions with persons identified in § 240.24c-1(b) of this chapter concerning information obtained in individual investigations or examinations, including formal investigations conducted pursuant to Commission order.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

11. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78*l*, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, and 80b-11 unless otherwise noted.

* * * * *

12. Section 240.24c-1 is added to read as follows:

§ 240.24c-1 Access to nonpublic information.

(a) For purposes of this section, the term "nonpublic information" means records, as defined in Section 24(a) of the Act, and other information in the Commission's possession, which are not available for public inspection and copying.

(b) The Commission may, in its discretion and upon a showing that such information is needed, provide nonpublic information in its possession to any of the following persons if the person receiving such nonpublic information provides such assurances of confidentiality as the Commission deems appropriate:

(1) A federal, state, local or foreign government or any political subdivision, authority, agency or instrumentality of such government;

(2) A self-regulatory organization as defined in Section 3(a)(26) of the Act, or any similar organization empowered with self-regulatory responsibilities under the federal securities laws (as defined in Section 3(a)(47) of the Act), the Commodity Exchange Act (7 U.S.C. 1, *et seq.*), or any substantially equivalent foreign statute or regulation;

(3) A foreign financial regulatory authority as defined in Section 3(a)(51) of the Act;

(4) The Securities Investor Protection Corporation or any trustee or counsel for a trustee appointed pursuant to Section 5(b) of the Securities Investor Protection Act of 1970;

(5) A trustee in bankruptcy;

(6) A trustee, receiver, master, special counsel or other person that is appointed by a court of competent jurisdiction or as a result of an agreement between the parties in connection with litigation or an administrative proceeding involving allegations of violations of the securities laws (as defined in Section 3(a)(47) of the Act) or the Commission's Rules of Practice, 17 CFR Part 201, or otherwise, where such trustee, receiver, master, special counsel or other person is specifically designated to perform particular functions with respect to, or as a result of, the litigation or proceeding or in connection with the administration and enforcement by the Commission of the federal securities laws or the Commission's Rules of Practice;

(7) A bar association, state accountancy board or other federal, state, local or foreign licensing or oversight authority, or a professional association or self-regulatory authority to the extent that it performs similar functions; or

(8) A duly authorized agent, employee or representative of any of the above persons.

(c) Nothing contained in this section shall affect:

(1) The Commission's authority or discretion to provide or refuse to provide access to, or copies of, nonpublic information in its possession in accordance with such other authority or discretion as the Commission possesses by statute, rule or regulation; or

(2) The Commission's responsibilities under the Privacy Act of 1974 (5 U.S.C. 552a), or the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401–22) as limited by section 21(h) of the Act.

By the Commission.

Dated: October 4, 1993.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–24745 Filed 10–7–93; 8:45 am]

BILLING CODE 6010–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 141

[Docket No. RM93–10–000]

New Reporting Requirement Implementing Section 213(b) of the Federal Power Act and Supporting Expanded Regulatory Responsibilities Under the Energy Policy Act of 1992, and Conforming and Other Changes to Form No. FERC–714

Issued September 30, 1993.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is creating a new reporting requirement, FERC Form No. 715, Annual Transmission Planning and Evaluation Report, to inform potential transmission customers, State regulatory authorities, and the public of potentially available transmission capacity and known constraints as required under section 213(b) of the Federal Power Act, as added by the Energy Policy Act of 1992.

In addition to implementing the information requirements of section 213(b), the rule is intended to support the Commission's expanded responsibilities under sections 211 and 212 of the Federal Power Act, as amended by the Energy Policy Act of 1992, and to provide information with which to analyze filings involving, or requests for, transmission services under the Federal Power Act.

The Commission is also amending Form No. FERC–714, Annual Electric Control and Planning Area Report. The conforming and other changes in Form 714 involve: Changing the designation of the form to read: "FERC Form No. 714"; changing the annual filing date of the form to no later than June 1 of the following year; eliminating information requirements duplicating the information that the Commission will now collect in Form 715; eliminating the reporting of certain information no longer needed for the Commission's regulatory purposes; and modifying certain existing information requirements to improve their usefulness.

DATES: The final rule is effective November 8, 1993. The information collection provisions, however, will not become effective until approved by the Office of Management and Budget. Notice of this date will be published in the **Federal Register.**

ADDRESSES: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Daniel L. Larcamp (Legal Information), Assistant General Counsel, Electric Rates and Corporate Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 208–2088.

William Booth (Technical Information), Office of Electric Power Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 208–0849.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3104, at 941 North Capitol Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200, or 2400 bps, full duplex, no parity, 8 data bits and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208–1781. The full text of the Final Rule will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3104, 941 North Capitol Street NE., Washington, DC 20426.

Order No. 558

Final Rule

Issued September 30, 1993.

Before Commissioners: Elizabeth Anne Moler, Chair; Vicky A. Bailey, James J. Hoecker, William L. Massey, and Donald F. Santa, Jr.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is amending part 141 of its regulations by adding a new § 141.300 requiring that "transmitting utilities" [1] inform

[1] A transmitting utility is any electric utility (*i.e.*, any person or State agency (including any municipality) which sells electric energy), qualifying cogeneration facility, qualifying small power production facility, or Federal power marketing agency that owns or operates electric power transmission facilities that are used for the

potential transmission customers, State regulatory authorities, and the public of potentially available transmission capacity and known constraints as required under section 213(b) of the Federal Power Act (FPA), as added by the Energy Policy Act of 1992 (Energy Policy Act).[2] The new regulation creates a new reporting form, FERC Form No. 715, Annual Transmission Planning and Evaluation Report (Form 715). In addition to implementing the requirements of section 213(b), this rule is intended to support the Commission's expanded responsibilities under sections 211 and 212 of the FPA, as amended by Energy Policy Act, and to provide information with which to analyze filings involving, or requests for, transmission services. The Commission also is amending 18 CFR 141.51 and the associated Form No. FERC–714, Annual Electric Control and Planning Area Report (Form 714), to make conforming and other changes.[3]

A. Notice of Proposed Rulemaking

The Commission issued a Notice of Proposed Rulemaking (NOPR) on March 30, 1993.[4] The Commission received 118 sets of comments in response to the NOPR. Commenters represent all interest groups in the electric utility industry. Commenters include: 48 investor-owned utilities; 18 municipal utilities; 12 rural electric cooperatives; 13 regional reliability councils, subregional organizations or proposed regional transmission groups (RTGs); 7 state regulatory commissions; 7 non-traditional generating entities (such as Independent Power Producers (IPPs) and Qualifying Facilities (QFs)); and 13 other parties, including industrial customer groups, the U.S. Department of Energy (DOE) and members of the Energy and Commerce Committee of the United States House of Representatives.

B. Summary of Form 715 Requirements[5]

Starting on April 1, 1994, each transmitting utility that operates integrated transmission system facilities that are rated at or above 100 kilovolts (kV) (Respondent), will annually submit to the Commission a new reporting form, Form 715.

Form 715 requires each Respondent to:

(1) Identify a contact person for inquiries regarding information in the form [Form 715, part 1];

(2) Submit in electronic form its base case power flow data[6] if it does not participate in the development and use of regional power flow data. A Respondent that participates in the development and use of regional power flow studies must either submit in electronic form the regional or subregional base case power flow data or designate any regional or subregional organization, or any other single entity to submit in electronic form the regional or subregional base case power flow data [Form 715, part 2];

(3) Submit transmission system maps and diagrams used by the Respondent for transmission planning [Form 715, part 3];

(4) Submit a detailed description of the transmission planning reliability criteria used to evaluate system performance for time frames and planning horizons used in regional and corporate planning [Form 715, part 4];

(5) Submit a detailed description of the Respondent's transmission planning assessment practices (including, but not limited to, how reliability criteria are applied and the steps taken in performing transmission planning studies) [Form 715, part 5]; and

(6) Submit a detailed evaluation of the Respondent's anticipated system performance as measured against its stated reliability criteria using its stated assessment practices [Form 715, part 6].

Respondents must submit to the Commission an original and two copies in hard copy of the above items 1 through 6. Respondents must also submit to the Commission in electronic form items 1, 2, 4, 5, and 6.

Respondents must also make available expeditiously to the public, upon request, in hard copy, the above items 1 through 6. Respondents must also make available expeditiously to the public, upon request, in electronic form, items 1, 2, 4, 5, and 6.

When Respondents have designated any single entity to submit regional or subregional base case power flow data to the Commission, that entity must submit these data to the Commission in both hard copy and electronic form, as indicated immediately above. That entity must also make these data available expeditiously to the public, upon request, in both hard copy and electronic form, as indicated immediately above.

The primary authority for the collection of Form 715 data is section 213(b) of the FPA. The collection of these data also supports the Commission's expanded responsibilities under sections 211, 212 and 213(a) of the FPA (as amended by the Energy Policy Act), and assists in rate or other regulatory proceedings. Thus, the Commission's authority for this rule is also based on the Commission's general authorities under sections 307(a), 309 and 311 of the FPA.

C. Summary of Form 714 Revisions[7]

Changes to Form 714 involve:

(1) Changing the designation of the form to read: "FERC Form No. 714," to be consistent with the designation of other Commission forms;

(2) Changing the annual reporting date from May 1 to no later than June 1 of the following year (to better accommodate regional reporting of hourly demand and demand forecast data); and

(3) Eliminating and modifying several existing information requirements.

The Commission is eliminating certain schedules from Form 714 because it will now collect this information in Form 715. These schedules include: Schedules VIII (Control Area Transmission Power Flow Data), XIII (Planning Area Transmission Line Data), and XV (Planning Area Transmission Maps and Diagrams). The Commission is also eliminating Schedule XIV (Hydroelectric Data) because the Commission no longer needs the information in this schedule to fulfill its responsibilities under parts I or II of the FPA.

The Commission is also eliminating the reporting of Base Power Transfers and Incremental Transfer Capability from Schedule VI because the Commission can derive this information from data now filed in Form 715. The Commission is changing Schedule VII (Control Area System Lambda) to collect hourly system lambda data (in electronic form) for the entire year and to require a description of how transmitting utilities calculate system lambda or, for those control areas that do not use an economic dispatch algorithm, how the control area dispatches its resources.

In addition, the Commission is consolidating Schedules X (Planning Area Monthly Net Energy for Load), XI

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sale of electric energy at wholesale. See section 3(23) of the FPA, as added by the Energy Policy Act.

[2] Public Law No. 102–486, 106 Stat. 2776 (1992).

[3] Although some information required by new Form 715 is already included in Form 714, the Commission is not combining the reporting requirements into one form because the two forms differ substantially both in purpose and as to who must file them. To prevent duplication of reporting effort, the Commission is eliminating a number of schedules from Form 714.

[4] New Reporting Requirements Under the Federal Power Act and Changes to Form No. FERC–714, 58 FR 17544 (April 5, 1993); IV FERC Stats. & Regs. ¶ 32,493.

[5] The instructions for completing Form 715 appear in appendix A.

[6] Base case power flows are best estimate simulations of the operations of regional transmission grids.

[7] The changes to Form 714 appear in appendix B.

(Planning Area Summer and Winter Actual and Forecast Peak Demand and Annual Net Energy for Load), and XII (Planning Area Hourly Demand Data By Specified Week) into a requirement that form 714 Respondents submit hourly demand data in electronic form to the Commission. Respondents that are members of regional or sub-regional organizations may instead, however, authorize their national, regional, or subregional organizations to file hourly demand data on behalf of their member systems. If a national, regional, or subregional organization does consolidate and report Form 714 (or Form 715) information for its members, it must separately identify data for each Respondent covered by the report. The authority to collect the Form 714 information is the Commission's general information collection authorities in sections 307(a), 309 and 311 of the FPA.

D. Major Changes in Final Rule From NOPR

The following is a list of the major changes in the final rule from the reporting requirements proposed in the NOPR:

—Only transmitting utilities that are operators of integrated transmission system facilities that are rated at or above 100 kV must file a Form 715. The NOPR proposed submittal by operators and owners and included entities owning only radial facilities.

—A request for waiver of the requirement to file Form 715 must either: (1) Indicate the entity that performs transmission planning for the entity requesting waiver, or (2) State that the entity requesting waiver does not use power flow analyses in performing transmission planning.[8]

—The annual filing date for Form 715 is no later than April 1 of each year. The NOPR proposed a filing date of January 1.

—When a Respondent identifies stability as a limiting factor in its regional transmission analysis, the Respondent must, on request, make regional stability studies available to the public.

—The Commission is allowing regional organizations to charge a fee for copying the material provided to the public, and requiring that a fee schedule be included in part 2 of Form 715.

—The Commission has eliminated Base Power Transfers and First Contingency Incremental Transfer Capability data from Schedule 5 (previously cited as Schedule VI) of Form 714. Similar information can be derived from base case power flows data that transmitting utilities now submit in part 2 of Form 715.

—The Commission has added to Schedule 6 of Form 714 a requirement that a control area describe how it calculates its system lambda (*i.e.* its incremental cost of energy).[9] Any entity that does not use an economic dispatch algorithm must describe how it dispatches its resources. The annual filing date for Form 714 is no later than June 1 of the following year. The current filing date is no later than May 1.

II. Preliminary Matter

A number of commenters filed their comments after the deadline for the filing of comments in this proceeding.[10] All of these commenters have demonstrated a substantial interest in this proceeding, and no one objects to the admission of these untimely-filed comments into the record in this proceeding. Our consideration of these comments will not unduly prolong this proceeding or prejudice any of the parties who timely filed their comments. The late-filed comments have contributed to our analysis of the issues in this proceeding. We will, therefore, accept these untimely filed comments and make them a part of the record.

Some commenters have requested the opportunity to respond to other parties' comments. Other commenters have requested that the Commission convene a technical conference.

We think that the 118 comments that we have received thoroughly explore the issues in this proceeding. We see no need for either reply comments or for a technical conference. We will, therefore, deny the requests for reply comments and for a technical conference.

III. Jurisdiction

There are two challenges to the Commission's jurisdiction to apply the rule to certain entities. Alabama Electric Cooperative (Alabama Electric) challenges the Commission's authority to apply the rule to cooperatives. The Alaska Intertie Operating Committee (Alaska Committee) argues that the Commission has no power to apply the rule to the operators of Alaskan transmission facilities. We have reviewed these arguments and have concluded that, in each instance, the Commission has the authority to apply the rule to the entities.

A. Cooperatives

Section 213(b) of the FPA, as amended by the Energy Policy Act, requires the Commission to require "transmitting utilities" to provide potential transmission customers, State regulatory authorities, and the public with information concerning potentially available transmission capacity and known constraints. In the NOPR,[11] the Commission stated that:

> A transmitting utility is any electric utility (i.e., investor-owned, cooperative, municipal or state agency), qualifying cogeneration facility, qualifying small power production facility, or Federal power marketing agency which owns or operates electric power transmission facilities which are used for the sale of electric energy at wholesale. See section 3(23) of the Federal Power Act, as added by the Energy Policy Act of 1992.[12]

The Commission also stated that:

> [T]he Energy Policy Act gives the Commission authority to order wheeling by "transmitting utilities" as defined in the new section 3(23) of the FPA. Such entities include electric utilities (irrespective of public, cooperative or private ownership status), qualifying facilities and Federal power marketing agencies which own or operate electric power transmission facilities used for the sale of electric energy at wholesale.[13]

Alabama Electric challenges the accuracy of the Commission's jurisdictional assertions. It notes that the Energy Policy Act does not include the word "cooperative" in its definition of "transmitting utility." Alabama Electric argues that the Commission offers no statutory support for including the term "cooperative" within the definition of "transmitting utility" or within the term "electric utility."[14] Alabama Electric cites *Salt River Project Agr. Dist.* v. *Federal Power Commission*[15] and *Dairyland Power Cooperative*[16] for the proposition that the Commission lacks jurisdiction over cooperatives.[17] We reject Alabama

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[8] The Commission expects that requiring only operators of integrated transmission facilities to file Form 715 will reduce the number of requests for waiver.

[9] A description of the development of system lambda is included in the instructions to Schedule 6, Control Area Hourly System Lambda, of Form 714.

[10] The Commission originally designated May 20, 1993 as the final date for filing comments in this proceeding, but later extended the comment period to June 21, 1993.

[11] New Reporting Requirement Under the Federal Power Act and Changes to Form No. FERC–714, 58 FR 17544 (April 5, 1993); IV FERC Stats. & Regs. ¶ 32,493.

[12] 58 FR 17544 (April 5, 1993), n.1; IV FERC Stats & Regs. ¶ 32,493 at 32,686, n.1.

[13] 58 FR 17544, 17548 (April 5, 1993); IV FERC Stats. & Regs. ¶ 32,493 at 32,691.

[14] Alabama Electric Comments at 3.

[15] 391 F.2d 470 (D.C. Cir. 1968), *cert. denied*, 393 U.S. 857 (1968) (*Salt River*).

[16] Opinion No. 511, 37 FPC 12 (1967) (*Dairyland*).

[17] In contrast to Alabama Electric's position, North Carolina Electric Membership Corporation

Electric's arguments. The *Salt River* and *Dairyland* cases are inapposite. These cases address whether a cooperative is a public utility as defined in the FPA.[18] They do not address whether a cooperative is an electric utility as defined in the FPA.[19]

The terms "public utility" and "electric utility" have different meanings under the FPA.[20] As the Commission has noted, "[a]ll public utilities, as defined in the FPA, are electric utilities * * *. However, electric utilities include entities that are not public utilities, such as cooperative and municipal utilities."[21] Section 3(22) of the FPA defines "electric utility" as any person, State agency, or Federal agency that sells electricity.[22] Section 3(4) of the FPA defines "person" as an individual or corporation.[23] Section 3(3) of the FPA defines "corporation" as, among other things, any corporation, joint-stock company, partnership, association, business trust, or any organized group of persons, whether incorporated or not.[24] Because cooperatives fall within the definition of "corporation," they are persons that sell electricity. As such, they are "electric utilities."

When Congress passed the Public Utility Regulatory Policies Act of 1978 (PURPA),[25] it added section 211 as well as the section 3(22) definition of electric utility to the FPA, thereby giving the Commission authority to order electric utilities not otherwise subject to its jurisdiction (i.e., not otherwise "public utilities") to provide transmission service.[26] The term "transmitting utility," which the Energy Policy Act added to the FPA, and which appears in both the newly amended section 211 and the new section 213, includes the term "electric utility." The Commission, therefore, has jurisdiction under section 213(b) of the FPA, as added by the Energy Policy Act, to require cooperatives to provide information on their potentially available transmission capacity and known constraints.

B. Alaska

Alaska Committee argues that, because Alaska is not interconnected with any interstate transmission grid, Alaskan transmission facilities do not meet the Commerce Clause requirements for interstate activity. We construe its argument to mean that we should not apply the proposed reporting requirements to Alaskan utilities because to do so would be unconstitutional.[27]

This rule requires that all transmitting utilities submit information to us. Section 3(23) of the FPA defines "transmitting utilities" as those that own or operate transmission facilities used for the sale of electric energy at wholesale. Indeed, the term "transmitting utility" (FPA section 3(23)) encompasses the term "electric utility" (FPA section 3(22)). Neither term includes any reference to a distinction between inter- and intrastate facilities. When Congress intended to make such a distinction, it did so clearly, as is evidenced by the term "wholesale transmission services" (FPA section 3(23)) which specifically refers to energy sold at wholesale in interstate commerce.[28] Therefore, Congress intended that the information requirements of section 213(b) apply to both interstate and intrastate utilities.

Moreover, there is little doubt that Congress may regulate intrastate utilities. Congress may regulate an intrastate activity when that activity is part of a national activity that Congress has chosen to regulate under its interstate commerce power. When it enacted the Energy Policy Act, Congress' purpose was national in scope.[29] It intended to encourage a competitive bulk power market, to promote increased efficiency and reduce the cost of electric energy.[30] Information regarding transmission availability and known constraints is essential to market-oriented pricing. And Congress has a legitimate interest in using market forces to aid in producing an abundant supply of electric energy at reasonable prices. The transmission information requirements are, therefore, reasonably adapted to a constitutional end, as the case law requires.[31] Since the effects of electricity are all-pervasive in our society, Congress was well within its interstate commerce authority in applying its transmission information requirements to transmitting utilities that are not connected to an interstate transmission grid.[32] The Commission has found jurisdiction in analogous circumstances.[33]

IV. Objectives of Form 715

A. Implementation Alternatives

In addressing how best to implement the requirements of Section 213(b), the Commission stated in the NOPR that, based on its experience, "it is not practical to provide a simple measure of

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recognizes that "under the recently enacted Energy Act, electric cooperatives that own or operate * * * facilities used for wholesale sales could be subject to FERC jurisdiction as 'transmitting utilities' * * * regardless of their exempt status from other aspects of FERC jurisdiction." North Carolina Electric Membership Corporation Comments at 4–5.

[18] See *Salt River* at 472. In *Dairyland*, the Commission determined that non-profit cooperatives financed by the Rural Electrification Administration (REA) are not "public utilities" under the FPA, and thus do not have to comply with the Commission's reporting, accounting and rate schedule filing requirements. Salt River relied on Dairyland in finding that a specific REA-financed cooperative was "not a 'public utility' within the meaning of Parts II and III of the Federal Power Act."

[19] *Salt River* at 474. See also Arkansas Electric Cooperative Corp. v. Arkansas Public Service Commission, 461 U.S. 375, 381–385 (1982) (discussing Dairyland and Salt River).

[20] See Enron Power Enterprise Corp., 52 FERC ¶ 61,193 at 61,704, n.5, citing Long Lake Energy Corp., 51 FERC ¶ 61,262 (1990).

[21] Policy Statement Regarding Regional Transmission Groups, 58 FR 41,626 (Aug. 5, 1993), III FERC Stats. & Regs. ¶ 30,975.

[22] Public Law No. 95–617 section 3(4), 92 Stat. 3117, (1978) (codified at 16 U.S.C. 796(22) (1988)).

[23] U.S.C. 796(4).

[24] U.S.C. 796(3).

[25] Public Law No. 95–617, 92 Stat. 3117 (1978).

[26] H.R. Rep. No. 95–1750, 95th Cong., 2d Sess. at 94–95 (1978). Prior to PURPA, the Commission had limited authority to order transmission in non-emergency situations, but only to public utilities. See FPA sections 202(b) and 207. When Congress added sections 210–212 to the FPA, it provided in section 201(b)(2) that compliance with a Commission order under sections 210 or 211 will not make an electric utility subject to the jurisdiction of the Commission for purposes other than the provisions of sections 210, 211 or 212.

[27] Alaska Committee Comments at 3–4. Alaska Committee argues that Alaskan transmission facilities do not meet the Commerce Clause requirements for interstate activity; this implies that if the Energy Policy Act does apply to these utilities, the statute is unconstitutional. In the alternative, Alaska Committee asks the Commission for an exemption, implicitly recognizing the Commission's authority to impose the reporting requirements on Alaska's transmitting utilities.

[28] FPA section 3(24) defines wholesale transmission services as the transmission of electric energy sold, or to be sold, at wholesale in interstate commerce.

[29] Congress' aim was nothing less than a "comprehensive national energy policy * * *." H.R. Rep. No. 102–474, 102nd Cong. 2nd Sess., pt. 1 at 132 (1992).

[30] H.R. Rep. No. 102–474, 102nd Cong. 2nd Sess., pt. 1 at 132–138 (1992). Congress sought "to use the market rather than government regulation wherever possible both to advance energy security goals and to protect consumers." *Id.* at 133. It hoped that "additional competition in [the] wholesale electricity power market * * * [would] improve the efficiency of the electric utility industry and secure the lowest possible costs for consumers." *Id.* at 138.

[31] See *Pressault* v. *Interstate Commerce Commission*, 494 U.S. 1, 17 (1989); *Hodel* v. *Virginia Surface Mining & Reclamation Assn., Inc.*, 452 U.S. 264 (1981); *Hodel* v. *Indiana*, 452 U.S. 314, 323–324 (1981); *FERC* v. *Mississippi*, 456 U.S. 472 (1981).

[32] See e.g., *Heart of Atlanta Motel* v. *United States*, 379 U.S. 241 (1964); *Katzenbach* v. *McClung*, 379 U.S. 294 (1964); *Wickard* v. Filburn, 317 U.S. 111 at 125 (1942) (Congress may reach local activity if the activity "exerts a substantial economic effect on interstate commerce"); *cf. Arizona Public Service Co.* v. *Snead*, 441 U.S. 141 (1979) (New Mexico's energy tax found to be an impermissible burden on interstate commerce).

[33] See Central Power and Light Company, 8 FERC ¶ 61,065, modified and reh'g denied, 9 FERC ¶ 61,011 (1979), reh'g denied, 10 FERC ¶ 61,131 (1980); Kalaeloa Partners, L.P., 48 FERC ¶ 61,173 (1989).

transmission availability that would cover all potential transmission service requests."[34] The Commission stated that the better approach to providing meaningful information to potential transmission customers is to require access to "the fundamental information used and assumptions made by the transmitting utility to perform its planning and operating studies"[35] so that these potential customers "can perform their own studies and reach their own conclusions."[36]

One commenter states that the Commission's interpretation is the only practical approach.[37] Other commenters state that the commission's approach is consistent with Congressional intent in establishing Section 213(b).[38] On the other hand, some commenters do not support the Commission's approach, stating that it is unnecessary, burdensome, wasteful, unreasonable, will not provide useful or meaningful information, or exceeds the intent of Congress.[39]

Seven commenters believe that potential transmission customers would not be able to use the requested information to do their own analyses.[40] One of the commenters states that "if potential users want to know if a transmission system can accommodate additional transfers, they will have to ask the owners and operators of that generation and transmission system."[41] A few commenters also question the value of collecting this information in light of alleged national security concerns.[42] Additionally, several commenters state that the information to be collected is not sufficient to analyze transmission capability because stability is the limiting factor in their areas. These commenters argue that more detailed and specific data and analyses are needed to evaluate transmission capability.[43]

These commenters propose a number of alternatives, such as:

(1) Allowing transmitting utilities to provide the information when requested;

(2) Relying on the transmitting utility to perform any studies, perhaps jointly with the requester;

(3) Requiring that transmitting utilities provide only summary information, such as regional assessments, DOE OE–411 reports or transfer capability data; and

(4) Encouraging working through regional reliability councils or regional transmission groups (RTGs).

The Commission concludes that none of the proposed alternatives satisfies the requirements of section 213(b). Requiring transmitting utilities to make information available only on request or relying on a transmitting utility to perform the studies is inconsistent with the annual collection and public availability requirements of section 213(b). Furthermore, a large number of commenters, representing the entire spectrum of interests, state that the information as defined in this rule will be useful to potential customers for screening analyses of transmission capability.[44]

The Commission has concluded that there is, at present, no simpler way to satisfy the requirements of section 213(b).[45] Regional reliability council assessments (such as NERC summer and winter assessments that contain interregional transfer capabilities for those periods or DOE OE–411 reports) are too general to provide useful information to potential transmission customers for meaningful analysis regarding specific inquiries. Similarly, regional operating studies—which estimate the ability to transfer energy between control areas or regions (such as the East Central Area Reliability Coordination Agreement's (ECAR) summer and winter assessment of transmission system performance)—provide little, if any, information regarding the availability of transmission capacity within or across a control area or region. In addition, reported transfer capability data do not provide sufficient information to evaluate or to screen for either alternative generation sites or for the effects of alternative bulk power purchases and sales on the transmission system.[46]

A number of commenters disagree with the Commission's objective of providing data to potential transmission customers so that customers can perform their own studies and reach their own conclusions. These commenters state that meaningful planning studies can result from joint studies done from a regional perspective. The commenters urge that the Commission discourage potential customers from performing their own studies and instead encourage them to work through regional organizations such as RTGs to develop transmission capacity studies.[47]

The Commission agrees with the commenters that RTGs could be good vehicles for satisfying the intent of section 213(b) and encourages parties to work through regional transmission organizations to develop the data required by this rule.[48] However, RTGs simply do not exist at the present time and thus are not available to help us meet the requirements of section 213(b). In addition, once RTGs do exist, not all entities may see a need to work through a regional organization. Some entities, such as Exempt Wholesale Generators (EWGs) or Qualifying Facilities (QFs), with multiple facilities across the

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[34] 58 FR 17548 (April 5, 1993); IV FERC Stats. & Regs., Proposed Regulations ¶ 32,493 at 32,692.

[35] *Id.*

[36] 58 FR 17548 (April 5, 1993); IV FERC Stats. & Regs. at 32,693.

[37] See Pennsylvania-New Jersey-Maryland Interconnection Comments at 3.

[38] See, e.g., American Iron and Steel Institute, *et al.* Comments at 3; Indiana Utility Regulatory Commission Comments at 2; U.S. Department of Energy (DOE) Comments at 1; Electric Generating Association Comments at 1; Texas Utilities Comments at 1; National Association of Regulatory Utility Commissioners (NARUC) Comments at 3; Pacific Gas & Electric Comments at 3.

[39] See, e.g., Centerior Comments at 1; Northern States Power Comments at 2; Central Louisiana Electric Comments at 3; Large Public Power Council Comments at 5.

[40] See Central Louisiana Electric Comments at 3; Wisconsin Power and Light Comments at 2; North American Electric Reliability Council (NERC) Comments at 2; Northern States Power Comments at 6; South Carolina Electric & Gas Comments at 1; Virginia-Carolinas Reliability Group Comments at 3–4; and Central & Southwest Comments at 2.

[41] NERC Comments at 2.

[42] See, e.g., Commonwealth Edison, *et al.* Comments at 2–3; Central Illinois Public Service Comments at 6. This issue is addressed separately in Section V.B, below.

[43] See, e.g., Public Generating Pool Comments at 3; Montana-Dakota Utilities Comments at 2; San Diego Gas & Electric Comments at 2; Large Public Power Council Comments at 5.

[44] See, e.g., NARUC Comments at 5–7; DOE Comments at 3; California Energy Commission Comments at 1; National Rural Electric Cooperative Association, *et al.* Comments at 1–2; National Independent Energy Producers Comments at 3; Indiana Utility Regulatory Commission Comments at 4; American Public Power Association (APPA) Comments at 1–3; Western Systems Coordinating Council Comments at 1–4; Duke Power Comments at 3; Edison Electric Institute (EEI) Comments at 7; Institute of Electrical and Electronic Engineers (IEEE) Comments at 2.

[45] The Tennessee Valley Authority (TVA) states that it "would be willing to work with the Commission on ways to develop a system of reporting transmission capacity that would both minimize the reporting burden and provide a realistic measure of available capacity and known constraints." TVA Comments at 2. The Commission supports and encourages efforts to identify more efficient and less costly means to develop data required by section 213(b).

[46] See, e.g., Southwest Power Pool Comments at 4; Utah Associated Municipal Power Systems Comments at 4–7. A transmitting utility may, however, use the results of regional assessments and transfer capability studies, in part, to develop the narrative description of the transmitting utility's evaluation of its transmission performance, which Part 6 of Form 715 requires.

[47] See, e.g., Southwest Power Pool Comments at 3; NERC Comments at 2; South Carolina Electric & Gas Comments at 1; Virginia-Carolinas Reliability Group Comments at 3–4.

[48] The Commission recently issued a Policy Statement encouraging the development of RTGs. Policy Statement Regarding Regional Transmission Groups, 58 FR 41626 (Aug. 5, 1993); 64 FERC ¶ 61,138 (1993). As yet, however, no RTG has been approved.

Nation, may not wish to join each regional group throughout the country, but nevertheless are interested in the ability to perform screening studies. The information requirements of this rule allow potential transmission users to judge for themselves the value of either working through regional organizations or doing screening studies on their own.

B. Objectives in Gathering Form 715 Information

Several commenters ask the Commission to state that it intends transmitting utilities and potential transmission customers to use Form 715 information only for screening studies. They also ask the Commission to recognize that a transmitting utility can only assess the actual availability of transmission capacity when presented with a specific request for transmission service under section 213(a).[49] Some commenters allege that the Commission is confusing the requirements of section 213(b) with those of section 213(a).[50]

The Form 715 reporting requirement serves two purposes. First, Form 715 will provide a potential transmission customer with sufficient information to perform a screening analysis (*i.e.*, a preliminary study of the availability of transmission capacity for the region of interest) to determine the likely response by a transmitting utility should the customer make a request for transmission service. With this information in hand, the potential transmission user can make broad estimates of the likely transmission costs of a potential transaction. The availability of such information should reduce the instances when a transmitting utility denies a request for transmission service because transmission capacity is not available or because its cost is too high.

Second, Form 715 will provide potential transmission customers, State regulatory authorities, and the public with the specific procedures that a transmitting utility will follow when determining available transmission capacity in response to a request for service. The information in parts 3 through 6 of Form 715 will enhance the understanding of how an individual transmitting utility performs transmission planning studies that it will need to respond to a transmission service request.

Some commenters allege that there is an inconsistency between the general nature of the regional power flow base cases required in part 2 of Form 715 and the individual detail required in parts 3 through 6 of Form 715.[51] The different requirements of these parts are intentional; data from the various parts complement each other.[52] Regional power flow base cases typically do not include certain lower voltage transmission lines within the region, while transmission planning data, criteria and procedures that transmitting utilities use typically consider all lower voltage transmission lines.

Furthermore, Form 715 will inform a potential customer of the current utility practices that may be relevant to a specific request for transmission service. The annual reporting of Form 715 also will ensure identification of significant changes in data, criteria or procedures used to analyze individual requests. The availability of Form 715 information should also help to ensure the accuracy and consistency of transmission planning information and assist potential customers in corroborating the validity of transmitting utility responses to requests for service. Similarly, the availability of a utility's transmission planning information will help potential transmission customers make better "good faith" requests and better understand the transmitting utility's response.

Although the level of detail in parts 3 through 6 of Form 715 may, in some cases, exceed that necessary to understand and to use the regional data furnished under part 2 of Form 715, the Commission finds that the need to understand the entire process of determining available transmission capacity and constraints on individual systems warrants the filing of this information. The Commission intends to make publicly available information that reflects, to the fullest extent possible, utilities' current planning processes. These criteria and procedures may change in light of the open transmission access environment that is now evolving. Changes in the planning process may also occur as a result of organizational developments, such as the formation of RTGs. Ensuring that current information is available regarding available transmission capacity is consistent with our statutory responsibilities and Congressional intent in enacting the relevant sections of the Energy Policy Act, i.e., those modifying sections 211 and 212 and adding section 213 to the FPA.

C. Use of Existing Information

The NOPR stated that the proposed Form 715 reporting requirement would rely in large part on existing information. Most commenters generally agree.[53] Part 2 (regional power flow base cases) and part 3 (utility maps and diagrams) of Form 715 do not require the development of new information. Transmitting utilities currently develop and use these data in the course of their utility business.

Parts 4 and 5 (criteria and planning procedures) of Form 715 require a description of a transmitting utility's planning reliability criteria and planning assessment procedures. Commenters indicate, however, that the degree of documentation of procedures varies among companies. For example, many utilities state that they make numerous engineering judgments in the course of performing transmission studies. Because these judgments are based on the planner's experience, they are not generally documented in any systematic fashion.

Commenters also raise concerns regarding the meaning of certain portions of the instructions of parts 4 and 5 of Form 715. They interpret certain phrases contained in these parts, such as "in totality" and "reasonably replicate," as requiring an unreasonable or impractical amount of detail.[54]

The Commission is not requiring the documentation of the institutional knowledge of transmitting utilities' planning engineers. The Commission's intention is that transmitting utilities file the substantive criteria and planning procedures that they follow in the normal course of business. The information that transmitting utilities will file in Form 715 should help requesters to perform preliminary

[49] See, e.g., Wisconsin Public Service Comments at 1–2; Southern Company Services Comments at 13–14; Pennsylvania Power & Light Comments at 2–3.

[50] See, e.g., American Electric Power Comments at 2; Duke Power Comments at 4–21.

[51] See, e.g., Midwest Power Systems Comments at 2; Municipal Energy Agency of Nebraska Comments at 6; NERC Comments at 9; Pacific Gas & Electric Comments at 4.

[52] The Commission notes that advances in computing capability are allowing regional power flow analyses to reflect more individual utility detail. Future regional models are likely to include much more individual utility data as utilities attempt to reduce the number of sets of base cases they must maintain on their own and the amount of additional individual data they must input when using regional base cases as the basis for performing their own analyses. See, e.g., Southwest Power Pool Comments at 2; APPA Comments at 18; Transmission Access Policy Study Group Comments at 11.

[53] See, e.g., American Electric Power Comments at 3; NERC Comments at 2; Western Systems Coordination Council Comments at 2; Associated Electric Cooperative Comments at 3; Municipal Electric Authority of Georgia Comments at 3; NARUC Comments at 6.

[54] See, e.g., American Electric Power Comments at 6–7; NERC Comments at 10; Entergy Services Comments at 4–5; Union Electric Comments at 8; Associated Electric Cooperative Comments at 4–5; Duke Power Comments at 3–4; Allegheny Power Service Comments at 2–4; Pacific Gas & Electric Comments at 9.

screening analyses and to better understand the process of determining available transmission capacity. With such knowledge, requesters can better anticipate the response of an inquiry regarding potential transmission service. In the final rule, the Commission has modified the instructions of parts 4 and 5 to clarify this point. It has also removed the terms "in totality" and "reasonably replicate" to ensure that Form 715 will not require an unreasonable amount of detail.

Because most criteria and procedures required by parts 4 and 5 should already be identified and documented by utilities, the Commission does not expect that new information will have to be developed. If utilities have not identified or documented some of their criteria and procedures, they will have to add this to their existing materials in order to satisfy the initial reporting requirements for parts 4 and 5. In subsequent years, however, only changed criteria and procedures are required to be filed.

The evaluation of transmission system performance requirement of part 6 of Form 715 does require data that transmitting utilities do not currently develop in the normal course of business. This evaluation requires new data because: (1) The analysis is to include information that encompasses future periods that generally are longer than the periods covered by operating studies utilities currently perform; and (2) similar evaluations are not collected or cannot be derived from existing information requirements. Without these data, neither the Commission nor potential transmission users can estimate potentially available transmission capacity and known constraints. Consequently, the rule will not satisfy the statutory mandate that transmission capacity and known constraints be made available without the development of this information.

V. Discussion of Specific Issues

A. Reporting Burden

The estimate of the annual reporting burden for Form 715 is 200 hours per response. In the NOPR, the Commission estimated the reporting burden to be 100 hours per response. Many commenters indicate that if the Commission requires the reporting of only existing information and a narrative description for Part 6, the 100 hours per response estimate is reasonable after the first year.[55] Other commenters suggest that the burden is greater than 100 hours, with estimates generally ranging from 250 to 600 hours.[56] After consideration of the comments, the Commission concludes that 200 hours is a more accurate reflection of the average reporting burden per response for Form 715. The estimated number of Form 715 respondents is 200; thus, the resulting total annual reporting burden is 40,000 hours.

The Commission estimates that the annual reporting burden for the revised Form 714 will decline from 86 to 50 hours per response. Two commenters claim that the Commission has underestimated the reporting burden associated with changes to Form 714.[57] After further consideration, the Commission retains the burden estimate of 50 hours per response for Form 714. The estimated number of Form 714 Respondents is 250; thus, the resulting total annual reporting burden is 12,500 hours.

These estimates include time for reviewing instructions, gathering and maintaining the data, and reviewing the collection of information. Comments regarding these burden estimates or any other aspect of this collection of information, including suggestions for reducing the reporting burden, should be filed at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 (Attention: Michael Miller, Information Services Division) and sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission).

B. National Security Concerns

A large number of commenters indicate that the filing of Form 715 data raises national security concerns.[58] Several commenters note that although much of the information either is currently available from various sources or could be developed, Form 715 combines the information into one source and thus makes it more readily available to those who might misuse it.[59] To mitigate concerns regarding national security, commenters suggest that the Commission: (1) Consult with NERC and other organizations that monitor terrorist activity before issuing a final rule;[60] (2) place restrictions on access to Form 715 information, such as screening requesters, or requiring that the information be made confidential;[61] or (3) require that requesters state the intended use of he information.[62] Other commenters claim that some commenters may be raising national security issues in an attempt to thwart the establishment of the reporting requirement.[63]

A number of commenters object to reporting "a list of critical facilities."[64] These commenters indicate that the industry has specifically avoided creating such a list due to national security concerns. NERC suggests that rather than requiring the reporting of a list of critical facilities, the Commission should ask Respondents to indicate the various contingencies against which the utility typically tests in applying its reliability criteria.[65]

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[55] See, e.g., EEI Comments at 20–21; Oglethorpe Power Corporation Comments at 9; Allegheny Power Service Comments at 4–5; Pacific Gas & Electric Comments at 10–11; Mid-Continent Area Power Pool Comments at 3; Minnesota Power & Light Comments at 4; Pennsylvania Power & Light Comments at 3; TVA Comments at 1.

[56] See e.g., Midwest Power Systems Comments at 7–8; Southwestern Public Service Comments at 3; Associated Electric Cooperative Comments at 6; Houston Lighting & Power Comments at 4; Northeast Utilities Comments at 5; Boston Edison Comments at 3; Central & Southwest Comments at 1. At the extreme, one commenter estimates that thousands of hours would be required to meet the new data requirements. Northern States Power Comments at 9–10.

[57] See Pacific Gas & Electric Comments at 10; and Southwest Regional Transmission Association Comments at 16.

[58] See e.g., NERC Comments at 1–3; New England Power Pool Comments at 3; Commonwealth Edison, *et al.* Comments at 3; Mid-America Interconnected Network Comments at 2; Pennsylvania-New Jersey-Maryland Interconnection Comments at 4–5; San Diego Gas & Electric Comments at 5–6; Central Maine Power Comments at 3; South Carolina Electric & Gas Comments at 2; New England Power Service Comments at 3–5; Central Illinois Public Service Comments at 2; Virginia-Carolinas Reliability Group Comments at 3.

[59] See, e.g., Wisconsin Public Service Comments at 2; Southern Company Comments at 20; Commonwealth Edison, *et al.* Comments at 12; Central Illinois Public Service Comments at 6; New England Power Service Comments at 4.

[60] See, e.g., Mid-American Interconnected Network Comments at 2; Pennsylvania-New Jersey-Maryland Interconnection Comments at 5; Southern Company Comments at 20.

[61] See, e.g., Midwest Powers Comments at 7; South Carolina Electric & Gas Comments at 2; Commonwealth Edison, *et al.* Comments at 13; Central Illinois Public Service Comments at 7; Duke Power Comments at 29; Allegheny Power Service Comments at 3; Dayton Power & Light Comments at 1.

[62] See, e.g., Midwest Powers Comments at 7; Cajun Electric Power Cooperative Comments at 5; Transmission Access Policy Study Group Comments at 17.

[63] See, e.g., Sacramento Municipal Utility District Comments at 6–7; National Independent Energy Producers Comments at 3; Transmission Access Policy Study Group Comments at 16–17; Members of the House of Representatives Energy and Commerce Committee Comments at 1–3.

[64] 58 FR 17552 (April 5, 1993); IV FERC Stats. & Regs. ¶ 32,493 at 32,699. See, e.g., Wisconsin Public Service Comments at 2; San Diego Gas & Electric Comments at 5–6; South Carolina Electric & Gas Comments at 2; Virginia-Carolinas Reliability Group Comments at 3; Duke Power Comments at 29; Cajun Electric Power Cooperative Comments at 5; Houston Lighting & Power Comments at 4; TVA Comments at 1.

[65] See NERC Comments at 5.

The Commission agrees with this suggestion. In the final rule, the Commission has revised part 5 of Form 715 to require the identification of contingencies that a Respondent typically uses to perform transmission assessments. The Commission does not intend that utilities compile lists of sensitive facilities.

Entities that are concerned that someone may use Form 715 information improperly may, when receiving requests for the information, require the identity of requesters (e.g., organization name, contact person, verifiable address) as a prerequisite for disclosure of information. The Southwest Power Pool points out that keeping a record of the name and address of a requester will have an added benefit of allowing transmitting utilities to inform requesters of errors in the information provided.[66] The final rule, however, does not require requesters to state the intended use of the information. Such a requirement would exceed that necessary to reasonably administer the statutory requirements of section 213(b) while doing little to address national security concerns. Given the clear Congressional intent to make this information available to the public, the Commission will not treat Form 715 information as confidential or limit public access to it.[67]

C. Form 714 Changes

1. *Elimination of Redundant or Unnecessary Data.* As part of the implementation of section 213(b), the Commission proposed certain changes to Form 714. The changes involve eliminating and modifying several existing information requirements. The Commission is eliminating four Schedules of Form 714: Schedule VIII, Control Area Transmission Power Flow Data; Schedule XIII, Planning Area Transmission Line Data; Schedule XIV, Hydroelectric Data; and Schedule XV, Planning Area Transmission Maps and Diagrams. The Commission is eliminating Schedules VIII, XIII, and XV because the Commission will now collect this information through Form 715. The Commission is eliminating Schedule XIV because the Commission no longer needs this information to fulfill the Commission's regulatory responsibilities under parts I and II of the FPA. Most commenters support these changes.[68]

Some commenters ask the Commission to eliminate the requirement to report the Base Power Transfers and the First Contingency Incremental Transfer Capability (FCITC) data in part I, Schedule VI of Form 714. They contend that these data are redundant because similar information can be derived from the base case power flow data submitted in part 2 of Form 715.[69] The Commission agrees. In the final rule, the Commission has eliminated from Form 714 the requirement to report Base Power Transfers and FCITC data.

2. *System Lambda Data.* The proposed rule would revise the reporting format for Schedule VII, Control Area System Lambda, to require reporting in electronic form of hourly system lambda data.[70] Sixty-nine commenters address the issue of collecting system lambda data.

In the NOPR, the Commission stated that the purpose of collecting system lambda data together with other Form 714 data is "to permit the replication of production cost simulations * * *."[71] Numerous commenters indicate that system lambda cannot serve this purpose because system lambda is typically an "output" of production cost studies, not an input data requirement.[72] They are correct; a more accurate statement is that system lambda data can assist in validating results of production cost simulations.

The Commission stated in the NOPR that system lambda information may "be useful to prospective generators in deciding where to locate."[73] Several commenters disagree.[74] However, they do not rebut the observation that system lambda data will help identify areas where introduction of more efficient generation could lower energy costs.

Many commenters claim system lambda data are proprietary and competitively sensitive information.[75] Their concern is that making current system lambda data available to others may weaken a utility's competitive position. The system lambda data collected, however, are historical, *i.e.*, for the prior year. Historical hourly system lambda data do not necessarily provide a good projection of the future. As NERC states in its comments:

> The timeliness of the data is the key. Having lambda available to the public in real-time may be anticompetitive.[76]

Even commenters arguing for non-disclosure of system lambda data agree that one cannot project future generation costs on the basis of historical hourly system lambda data.[77] Furthermore, a number of commenters, most of which are utilities with their own control areas, indicate a willingness to provide hourly system lambda data and do not consider such data proprietary.[78] Moreover, fifteen control areas have submitted hourly system lambda data since 1990. Although not required to, these entities have done so, presumably because it is less burdensome than providing the monthly statistics.

Because the system lambda data reported: (1) Are historical, (2) cannot be used to derive unit specific cost data, and (3) are currently provided by a number of entities, the information is neither confidential nor proprietary.

Many commenters state that it is unfair to provide system lambda information to their competitors unless the Commission also requires competitors, especially non-traditional

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[66] See Southwest Power Pool Comments at 4.

[67] NERC supports this position; it states: "Our investigation and discussions showed a misconception among security experts regarding how publicly and routinely disclosing transmission line loadings could increase the vulnerability of transmission facilities to sabotage and terrorism. These experts now have a better understanding of how electric transmission systems work, the nature of the data requested, and their concerns have been ameliorated. These agencies have agreed to defer to NERC to speak to the national security concerns. NERC only asks that the word 'critical' in 'critical facilities' be dropped or changed." NERC Comments at 6.

[68] See, e.g., EEI Comments at 21–22; Dayton Power and Light Comments at 4; Northeast Utilities Comments at 5–6; PSI Energy Comments at 7; Union Electric Comments at 12–13.

[69] See, e.g., EEI Comments at 22; Central & Southwest Comments at 20; Commonwealth Edison, *et al.* Comments at 27; Midwest Power Systems Comments at 11.

[70] Respondents currently are required to report only certain statistics, i.e., monthly highs, lows, and averages for system lambda. Hourly system lambda are necessary in order to calculate these statistics.

[71] 58 FR 17545 (April 5, 1993); IV FERC Stats. & Regs. ¶ 32,493 at 32,687.

[72] See, e.g., NERC Comments at 11; Electric Power Consultants Comments at 1; APPA Comments at 16; PSI Energy Comments at 7; Montana-Dakota Utilities Comments at 3; National Rural Electric Cooperative Association, *et al.* Comments at 9–10; Cajun Electric Power Cooperative Comments at 6–7; Power Computer Applications Comments at 2.

[73] 58 FR 17545; IV FERC Stats. & Regs. ¶ 32,493 at 32,687.

[74] See, e.g., Southern Company Services Comments at 22; Atlantic City Electric Comments at 7; Northern States Power Comments at 16.

[75] See, e.g., Otter Tail Power Comments at 3; American Electric Power Comments at 8; Wisconsin Power & Light Comments at 1–3; Oklahoma Gas & Electric Comments at 4; Public Service Electric & Gas Comments at 5–6; Southwestern Public Service Comments at 7; Florida Power & Light Comments at 2; Central & Southwest Comments at 3; National Rural Electric Cooperative Association, *et al.* Comments at 9–10; Associated Electric Cooperative Comments at 2–3; Central Illinois Public Service Comments at 13–15; Dayton Power & Light Comments at 1–2.

[76] NERC Comments at 12.

[77] See, e.g., Wisconsin Power and Light Comments at 1; Southern Company Services Comments at 23; EEI Comments at 26.

[78] See, e.g., LG&E Energy Comments at 2; Consumers Power Comments at 2–3; Duke Power Comments at 33; Duquesne Light Comments at 7–8; Pacific Gas & Electric Comments at 6–7.

utility generators, to report this information.[79] Some commenters confuse system lambda data with unit-specific cost information. System lambda data do not provide incremental production cost information for individual units. The data collection is intended to show hourly system information, not unit data. System lambda data are a product of economically dispatching thermal generating resources to follow load within a control area.[80] Individual unit data are not system lambda data and are of limited value for purposes of this rule. Although a number of commenters ask the Commission to require collection of unit-specific information (either to allow for replication of production cost simulations[81] or to allow redispatch of units in power flow studies[82]), the Commission finds that it does not need such information for purposes of section 213(b) (*i.e.*, performing screening analyses) or for other Commission regulatory responsibilities.[83] Therefore, the Commission will not require individual-unit data. Consequently, the Commission will not require entities such as QFs and other non-traditional generators, that own only a single unit, to submit system lambda information data.

Many commenters question whether the Commission is justifying changes to system lambda reporting under section 213(b)[84] or whether it intends to use the data to identify transmission availability or constraints.[85] These commenters misconstrue both the purpose of the proposed rule and the authority under which the Commission is requiring production of hourly system lambda data. Changes to the Form 714 schedules are necessary to avoid duplication of the information requirements established in new Form 715, which implements section 213(b). The Commission is not collecting Form 714 data, including the reporting of hourly system lambda, for section 213(b) purposes.

The proposed rules are designed in part to enable the Commission to better monitor the wholesale electric power market in an era of increasing market competition.[86] The Commission must monitor wholesale power markets to carry out its regulatory responsibilities in an era of increasing competition in the electric utility industry, especially in the generation sector. As many commenters point out,[87] hourly system lambda data will contribute to the body of knowledge necessary to understand the changing wholesale electric market. One commenter states that hourly system lambda are a minimum basis for testing whether market forces discipline the price for generation resources.[88]

The Commission can better monitor markets by comparing, on an hour-by-hour basis, the system lambda of control areas within a region or adjacent regions. Although system lambda comparisons may be only a rough measure of market performance, they nevertheless serve as a preliminary indicator of market problems. Significant differences in hourly system lambda indicate that trade possibilities have not been exhausted. This market failure could be due to transmission capacity constraints or other reasons, such as inadequate information availability or market power. As the Commission relies more on market forces to discipline prices, the performance of wholesale markets takes on added importance. These comparisons also will assist the Commission in carrying out other regulatory responsibilities, such as power pooling studies pursuant to section 205(b) of PURPA and analyses of electric bulk power transfers and system interconnected operations.

Some commenters state that the current collection of monthly statistics on system lambda is adequate for monitoring the market.[89] Adequate comparisons cannot be made from monthly statistics. Other commenters contend that system lambda data are of little use for monitoring the market. They argue that because various utilities calculate system lambda differently, comparison of system lambda is of questionable value.[90] Commenters also claim that system lambda may be distorted by operational requirements or the mix of thermal and hydroelectric generation.[91]

The Commission acknowledges that different utilities use different methods to calculate system lambda. These commenters, however, do not show that this limitation seriously undermines the usefulness of the data as a preliminary indicator of market performance. In addition, most control areas calculate system lambda, so there is a common criterion for comparison.

The final rule requires that control areas using an economic dispatch algorithm must document how they calculate system lambda. Control areas

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[79] See, e.g., Midwest Power Systems Comments at 4; Virginia Electric and Power Comments at 3; Union Electric Comments at 13–14; San Diego Gas & Electric Comments at 7–9; Northern States Power Comments at 14–16; Florida Power & Light Comments at 2; South Carolina Electric & Gas Comments at 2; Consumers Power Comments at 2–3; Central & Southwest Comments at 3; Texas-New Mexico Power Comments at 16–17; Duke Power Comments at 33; Houston Lighting & Power Comments at 2–3; Allegheny Power Service Comments at 5; Northeast Utilities Comments at 5–6; Wisconsin Power & Light Comments at 1–3; Centerior Energy Comments at 5; Minnesota Power & Light Comments at 4; Pennsylvania-New Jersey-Maryland Interconnection Comments at 13–15; Oglethorpe Power Corporation Comments at 9–11; TVA Comments at 2.

[80] Units owned by others, including QFs and other nontraditional generators, can affect the dispatch of these resources and can affect the net of control area purchases and sales.

[81] See, e.g., APPA Comments at 16–17; Allegheny Electric Cooperative, *et al.* Comments at 52–58; National Independent Energy Producers Comments at 4–6; National Power Comments at 5–6.

[82] See, e.g., Electric Power Consultants Comments at 1; Duquesne Light Comments at 2; Oglethorpe Power Corporation Comments at 5.

[83] In fact, production cost simulations may be just as reliable a method for competitors to use for estimating (projecting) a utility's current (future) incremental costs. Competitors can perform these studies using publicly available information (such as the monthly delivered cost of fuel delivered to generating plants reported in FERC Form No. 423, plant operation and maintenance costs and purchases and sales data reported in FERC Form No. 1, and actual and typical heat rate data reported by the Energy Information Administration in EIA Form 860 and Electric Power Research Institute Technical Assessment Guides, respectively).

[84] See, e.g., Midwest Power Systems Comments at 4; American Electric Power Comments at 8; Minnesota Power & Light Comments at 4; Northern States Power Comments at 14–16; Oglethorpe Power Corporation Comments at 9–11; New England Power Pool Comments at 3; Northeast Utilities Comments at 5–6; Houston Power & Light Comments at 2–3.

[85] See, e.g., Public Generating Pool Comments at 3; Oklahoma Gas & Electric Comments at 4; Centerior Energy Comments at 5; Orlando Utilities Commission Comments at 2; Southwestern Public Service Comments at 7; Florida Power & Light Comments at 2; EEI Comments at 23–27; Associated Electric Cooperative Comments at 2–3; Commonwealth Edison, *et al.* Comments at 26–29; Northeast Utilities Comments at 5–6.

[86] See New Reporting Requirements Under the Federal Power Act and Changes to Form No. FERC–714, 58 FR 17544 (April 5, 1993); IV FERC Stats. & Regs. ¶ 32,493 at 32,687–88.

[87] See, e.g., Indiana Utility Regulatory Commission Comments at 4–6; DOE Comments at 11; Duquesne Light Comments at 7–8; American Iron & Steel Institute, *et al.* Comments at 13–15.

[88] See Transmission Access Policy Study Group Comments at 15.

[89] See, e.g., Pennsylvania-New Jersey-Maryland Interconnection Comments at 13–15; Union Electric Comments at 13–14; Central & Southwest Comments at 3; Commonwealth Edison, *et al.* Comments at 25–26; Central Illinois Public Service Comments at 13–15.

[90] See, e.g., Public Service Commission of Wisconsin Comments at 6; PSI Energy Comments at 7–8; Minnesota Power & Light Comments at 4; San Diego Gas & Electric Comments at 7–9; Southwestern Public Service Comments at 7; New England Power Pool Comments at 3; Houston Power & Light Comments at 2–3; Allegheny Power Service Comments at 5; Multinational Business Services Comments at 1.

[91] See, e.g., APPA Comments at 17; City of Colorado Springs Comments at 6; Entergy Services Comments at 6; Western Group Considering Formation of RTG(s) Comments at 8; Puget Sound Power & Light Comments at 4–6; Cajun Electric Power Cooperative Comments at 6–7; Power Computer Applications Comments at 2.

that do not use an economic dispatch algorithm must describe how they dispatch their resources. By requiring the documentation of system lambda development, the Commission can identify significant differences in methodologies that may affect the level of system lambda and that may make direct comparison with other data less meaningful.

The Commission's authority to collect hourly system lambda data derives from several provisions of the FPA. First, section 304 authorizes the Commission to require every public utility to make adequate provision for determining the current cost of generating electric energy and to report that cost to the Commission.[92] Second, section 309 of the FPA gives the Commission power to perform any and all acts and to prescribe such rules and regulations as it finds necessary to carry out the provisions of the Act.[93] Among other things, the Commission may prescribe the reports to be filed with the Commission, and the information that they shall contain.[94] Third, so that the Commission can secure information upon which to recommend legislation, section 311 of the FPA authorizes the Commission to conduct investigations regarding the generation, transmission, distribution, and sale of electric energy, however produced, throughout the United States and its possessions, whether or not otherwise subject to the jurisdiction of the Commission.[95] Section 311 of the FPA further provides that the Commission shall secure and keep current information regarding the cost of generation of electric energy.[96]

Thus, the Commission has ample authority to collect system lambda data, since these data reflect the incremental cost of energy, and the Commission has explicit (sections 304 and 311) and implied (section 309) authority to collect information regarding the cost of generating electric energy.

Finally, one commenter requests that: (1) Hourly system lambda data start at 1 a.m. (instead of 12 midnight) on January 1, consistent with current industry practices for collecting hourly demand data, and (2) "N.A." be entered for hours when the dispatch computer is not operating.[97] The final rule adopts both suggestions.

3. *Planning Area Hourly Demand Data.* The Commission is replacing the current reporting of demand data (*i.e.*, Schedule X—Planning Area Monthly Net Energy for Load, Schedule XI—Planning Area Summer and Winter Actual and Forecast Peak Demand and Annual Net Energy for Load, and Schedule XII—Planning Area Hourly Demand Data By Specified Week) with a requirement that Respondents report in electronic form:

(1) The historical hourly demands for planning areas for the reporting year; and

(2) The forecast summer and winter peak demands and net energy for load for each of the next ten years.

Most commenters support this change.[98] However, a few commenters state that the submission of hourly and seasonal demand and hourly load data does not achieve the purpose of the rulemaking; that is, it does not enable potential transmission customers to assess available transmission capacity.[99] The Commission is proposing to collect hourly system load data as part of Form 714, not as part of Form 715. As noted above, the regulatory purpose for collecting Form 714 data (e.g., bulk power transfer and interconnected operations analyses) is not changed. Furthermore, if the Commission performs a production simulation study involving the analysis of actual hourly data, the change in reporting requirements eliminates the need to impute a relationship between the summary statistics previously reported and actual hourly data. Also, by requiring hourly data, the Commission can more easily and accurately aggregate respondents' load information.

The final rule also requires Respondents to authorize their regional organization to make hourly demand and forecast demand information available in an easily accessible format. Consistent with this requirement, commenters indicate that NERC already collects and maintains an hourly load data system for most utilities in the country in EEI format.[100] In addition, consistent with the change in reporting for hourly system lambda data, the Commission is modifying Part III, Schedule 2 of Form 714 to require reporting of hourly demand data beginning at 1 a.m. on January 1.

D. Market Power

The Commission stated in the NOPR that the availability of transmission information should help mitigate a potential source of a transmitting utility's market power.[101] Some commenters support the statement;[102] others disagree.[103] For example, one commenter states that Congress did not enact section 213(b) because it was concerned about market power.[104]

The Commission disagrees. Section 213(b) requires the Commission to collect information regarding available transmission capacity and known constraints. It is important to view the section 213(b) information requirements in their appropriate context. Congress added section 213 to the FPA to support the concurrent changes that it made to sections 211 and 212, which give the Commission additional authority to order transmission service. The Members of the House Committee on Energy and Commerce note in their comments that:

> Congress' objective of increasing the efficiency of the electricity markets through a more open transmission system can only be achieved if basic information about the system is publicly available.[105]

Eliminating the ability to withhold basic transmission information reduces the potential for abuse of market power and will increase efficiency in the wholesale electric market.

Another commenter claims that the Energy Policy Act removes its market power in transmission.[106] We do not agree. The Commission's new authority to order transmission service under section 211 does not by itself eliminate market power in transmission. Market power may lie in the ability to delay or

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[92] 16 U.S.C. 825(c).

[93] 16 U.S.C. 825h.

[94] 16 U.S.C. 825h. Section 309 authorizes the Commission "to use means of regulation not spelled out in detail, provided * * * [the Commission's] action conforms with the purposes and policies of Congress and does not contravene any terms of the Act." Niagara Mohawk Power Corp. v. Federal Power Commission, 379 F.2d 153, 158 (D.C. Cir. 1967). Although section 309 does not confer additional power on the Commission, it does augment those powers that Congress has conferred upon it. New England Power Co. v. Federal Power Commission, 467 F.2d 425 (D.C. Cir. 1972), aff'd 415 U.S. 345 (1973). Here, the Commission is collecting information that sections 304 and 311 of the FPA authorize it to collect.

[95] 16 U.S.C. 825j.

[96] 16 U.S.C. 825j.

[97] See LG&E Energy Comments at 2.

[98] See, e.g., EEI Comments at 27; Western Entities Considering Formation of Regional Transmission Group(s) Comments at 7–8; Allegheny Power Service Comments at 6; Atlantic Electric Comments at 7; Duquesne Light Comments at 7.

[99] See, e.g., Oglethorpe Power Corporation Comments at 11; Southern Company Services Comments at 20–21.

[100] See, e.g., EEI Comments at 27–28; Electric Reliability Council of Texas (ERCOT) Comments at 2.

[101] 58 FR 17548; IV FERC Stats. & Regs. ¶ 32,493 at 32,693.

[102] See, e.g., APPA Comments at 2; Duquesne Light Comments at 1–2; American Iron and Steel Institute, *et al.* Comments at 3–4; DOE Comments at 2; Transmission Access Policy Study Group Comments at 6.

[103] See, e.g., Central Louisiana Electric Comments at 4; EEI Comments at 6–7; Allegheny Power Service Comments at 2.

[104] See Duke Power Comments at 21.

[105] Members of the House Committee on Energy and Commerce Comments at 1. Cf. HR. R. Rep. No. 102–474, 102nd Cong. 2nd Sess. pt. 1 at 132–138 (1992).

[106] See, Allegheny Power Service Comments at 2.

to undermine the process of requesting service. While the Commission addressed the formal process of service requests in its recent policy statement on good faith requests for transmission services and responses,[107] there still remains a basic information asymmetry that impedes efficient resource choices and market results. Superior knowledge of and access to technical information on transmission system availability may result in competitive advantages. Consequently, the availability of information regarding transmission capacity and known constraints helps to mitigate a potential source of market power and promotes a "more level playing field" for buyers and sellers.

E. General Filing Requirements

1. *Form 715 Respondents.* A number of commenters, many representing small systems, raise concerns regarding exemptions from or waivers of Form 715. In the NOPR, the Commission proposed that the reporting requirements apply to transmitting utilities that own or operate transmission facilities at or above 100 kilovolts (kV).[108] Commenters state that many entities that technically may be transmitting utilities do not engage in transmission planning because they: (1) Do not operate the transmission line (because they lease or are a joint owner of transmission facilities); or (2) operate only radial lines.[109] Some commenters also note that operators of these facilities may be "small-business concerns" as defined in section 3 of the Small Business Act, (15 U.S.C. 632) and thus require special consideration.[110]

Upon further consideration, we will require only transmitting utilities operating integrated transmission system (i.e., non-radial) facilities that are rated at or above 100 kV to report Form 715. In cases of joint ownership of a facility, only the operator of the facility must report. This change avoids duplication of reported information. Similarly, we will not require operators of only radial transmission lines to file Form 715 data; we expect few requests for transmission service that would use such facilities exclusively.

We will retain the 100 kV threshold for transmission facilities. Because the capacity of lines below 100 kV is relatively small, those lines do not provide significant amounts of transmission service. This threshold also eliminates the reporting requirement for most small business entities.

Some commenters indicate that if an entity other than the party requesting waiver of Form 715 performs transmission planning for that party: (1) The waiver requirements generate confusion regarding the party responsible for reporting information, and (2) obtaining the planning information required by the rule from the other party is sometimes difficult.[111] The final rule requires that an entity requesting waiver must either: (1) Indicate the entity that performs transmission planning for it, or (2) state that it does not use power flow analyses in performing transmission planning.

Once granted, a waiver request in subsequent years is unnecessary, provided the party's status does not change; that is, as long as the party does not begin to perform transmission planning or to use power flow analyses in its planning. Exemption or granting of waiver from Form 715 reporting requirements does not affect an entity's status as a transmitting utility for other purposes under the FPA, such as the applicability of sections 211 and 213(a).

One commenter requests an exemption from Form 715 requirements for facilities used primarily to deliver energy to affiliates for use in manufacturing.[112] We will not grant this proposed exemption because an affiliate could operate facilities that are a part of the integrated transmission system, for which Form 715 reporting is appropriate. The radial line exemption and 100 kV threshold provide sufficient protection for small entities, including many manufacturing affiliates of transmitting utilities.

2. *Filing Date*—a. *Form 715.* The NOPR established a January 1 filing date for Form 715. Several commenters request that the filing date be moved to later in the year.[113] Many commenters also suggest that the filing date coincide with either that for the DOE OE–411 report, which is a voluntary filing by regional reliability councils (April 1), FERC Form No. 1 (April 30), or Form 714 (currently May 1).[114] Commenters state that filing several forms at the same time promotes administrative efficiency and data consistency.[115] The Commission's experience, however, is that a significant number of Respondents, especially those required to file Form 714, request extensions of time to file because of the difficulty in completing all the reporting forms at the same time.

Some commenters state that they cannot supply historical data immediately after the end of the year.[116] These commenters apparently confuse Form 715 with Form 714. Form 715 does not require historical information. The filing date for Form 714, which requires the reporting of some historical data, has been May 1.

Upon consideration of the comments and to provide for a reporting consistent with utility and regional planning schedules, we will change the filing date for Form 715 to April 1.

Finally, several commenters request that the Commission delay the collection of information until 1995.[117] Given the deadline imposed by Congress for Commission regulations implementing data collection (October 24, 1993), we will adopt a filing date of April 1, 1994. This is sufficient time for Respondents to develop and provide the information, especially because most of the requested information is produced in the normal course of business.

b. *Form 714.* Respondents currently file Form 714 no later than May 1 of the year following the calendar reporting year. One commenter requests a delay in the Form 714 filing date until June 1, the date on which it submits hourly demand information to NERC.[118] The final rule adopts the suggestion.

Two commenters request that the Commission delay the collection of

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[107] Policy Statement Regarding Good-Faith Requests for Transmission Services and Responses by Transmitting Utilities Under sections 211(a) and 213(a) of the Federal Power Act, as Amended and Added by the Energy Policy Act of 1992, 58 FR 38964 (July 21, 1993), III FERC Stats. and Regs. ¶30,975.

[108] 58 FR 17544, 17550; IV FERC Stats. & Regs. ¶ 32,493 at 32,686, 32,695.

[109] See, e.g., Oregon Trail Consumers Cooperative Comments at 2–5; PSI Energy Comments at 3–4; North Texas Electric Cooperative Comments at 2–5; Old dominion Electric Cooperative Comments at 11; Northwest Cogeneration and Industrial Power Comments at 1–2; Southwest Regional Transmission Association Comments at 12; Texas-New Mexico Power Comments at 10–11; City of Vernon Comments at 5–6; National Independent Energy Producers Comments at 4; Utah Associated Municipal Power Systems Comments at 14.

[110] See, e.g., American Forest & Paper Association Comments at 2; Oxbow Geothermal Corporation Comments at 3–4; Allegheny Electric Cooperative Comments at 13.

[111] See, e.g., Oxbow Geothermal Corporation Comments at 3; Transmission Agency of Northern California Comments at 2; Southwestern Public Service Comments at 2–3; New England Electric Service Comments 6–7; Allegheny Power Service Comments at 3.

[112] Alcoa Companies Comments at 1–2.

[113] See, e.g., ERCOT Comments at 2; Colorado Association of Municipal Utilities Comments at 1.

[114] See, e.g., Atlantic City Electric Comments at 3; Commonwealth Edison, *et. al.* Comments at 3; Western Group Considering Formation of RTG(s) Comments at 9–10.

[115] See, e.g., Atlantic City Electric Comments at 8; Western Systems Coordinating Council Comments at 4; Northeast Utilities Comments at 4.

[116] See, e.g., Large Public Power Council Comments at 21; Southwest Regional Transmission Association Comments at 8.

[117] See, e.g., Western Systems Coordinating Council Comments at 4; Large Public Power Council Comments at 21; Southwest Regional Transmission Association Comments at 8.

[118] See ECAR Comments at 4.

hourly system lambda until 1995 because some systems do not collect such data.[119] The Commission will deny this request. Entities have reported system lambda information since 1990. Respondents have had ample time to add necessary software or to adjust computer systems in order to record system lambda data. In addition, calculation of the previously required monthly system lambda statistics requires averaging of hourly data, which Respondents must now report. Therefore, entities which must file a Form 714 should be able to satisfy the modified reporting requirement without significant additional investment. Respondents must file hourly system lambda data by the June 1, 1994 filing date of the next Form 714 report.

F. Section-by-Section Analysis of Form 715

1. *Part 1—Identification and Certification.* Part 1 requires that Respondents file the following identifying information.

(1) The name and business address of the transmitting utility;

(2) The name, title, telephone number, and facsimile number of a person to contact regarding Form 715 data;

(3) A certification by an authorized official of the transmitting utility regarding the accuracy of the data submitted; and

(4) The name and title of the certifying official.

One commenter requests that part 1 data also include information identifying the individuals in charge of transmission system planning, transmission system operations, and transmission service contracting.[120] Such information would inform interested parties of whom to contact regarding technical and contracting information. Another commenter requests that Form 715 include a section identifying a contact person for section 213(a) transmission service requests.[121]

The Commission rejects these proposed additions. Part 1 is intended to gather only information necessary to implement the requirements of section 213(b). Information regarding specific transmission service requests, including requests under section 213(a), is not within the scope of Form 715. The purpose of the contact person requirement is to identify a point of contact at the transmitting utility for inquiries regarding Form 715 data. However, a transmitting utility may, at its option, include in its Part 1 response the person to contact regarding specific transmission service requests.[122]

2. *Part 2—Regional or Subregional Power Flow Base Cases.* There is nearly universal agreement that the ability to simulate power flows on a transmission grid is a necessary first step in determining available transmission capacity and constraints on that grid. To give potential transmission customers and the public this ability, the NOPR proposed that transmitting utilities authorize their regional or subregional organizations to make available base case power flow data.

Generally, the regional organizations support this proposal.[123] It is these organizations that develop base case power flows for their members' use and, under part 2, that will make them available to potential transmission customers and the public. Most individual transmitting utilities also support the intent of part 2.[124]

In the NOPR, the Commission requested comments on ways in which transmitting utilities or regional or subregional entities could best make the electronic data available to the public. Comments from regional entities support making the data available on diskette[125] in a format similar to those suggested in the NOPR.[126] The Commission is modifying the instructions for part 2 to make clear that the Commission is not recommending any particular format. However, to ensure that information is reported on a consistent and useful basis for a region, the format used must be associated with the power flow program used by that region.

One commenter claims that the IEEC Common Format is obsolete and that the Electric Power Consultants' (EPC) format contains a more meaningful set of input data.[127] Another commenter supports the use of the IEEE Common Format.[128] The Commission is adding EPC raw data file format to the list of commonly used formats for reporting power flow data in Part 2. Although the IEEE Common Format will be retained, it does not appear that it is currently being used to develop input data for the commonly used power flow programs. The Commission does not encourage translation of data into input formats other than those used in the region due to the risk that vital information necessary to solve the power flows will be lost.

Two commenters express concern that power flow software documentation (with the exception of the IEEE common format) may be copyrighted and proprietary and therefore not be readily available.[129] They note that users need software manuals and papers to interpret the power flow cases. According to these commenters, if the Commission or others publish this information, they risk violating such copyrights. The concerns of these commenters are unfounded. The Commission is not recommending the unauthorized distribution, nor will it provide, licensed software to the public. To use the information in Part 2, a potential transmission customer or member of the public must have software compatible with that used in the region. No other commenters have suggested that the power flow data required under this rule are proprietary because of vendor license conditions.

Several commenters within Texas are concerned that regional power flow data will reveal industrial load levels that industrial customers consider proprietary and confidential.[130] ERCOT now requires users of power flow data to specify what they will do with it and to agree not to provide it to a third party. The Commission will not allow restrictions on the use of these data. If the information is shared by all within ERCOT for purposes of transmission planning, then it must be available to potential transmission customers and the public. Conditioning the use of these data would be inconsistent with the

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[119] See City of Colorado Springs Comments at 7; and Western Group Considering Formation of RTG(s) Comments at 9–10.

[120] See APPA Comments at 9.

[121] See EEI Comments at 10.

[122] One of the goals of making Form 715 data available is to foster successful negotiations that culminate in voluntary transmission agreements. Identifying individuals that will respond to specific requests would simplify the initiation of this process.

[123] See, e.g., NERC Comments at 2; ERCOT Comments at 1; Mid-America Interconnected Network Comments at 2; Mid-Continent Area Power Pool Comments at 6.

[124] See, e.g., EEI Comments at 9; APPA Comments at 6; Allegheny Power Service Comments at 3; Atlantic Electric Comments at 4–5; Idaho Power Comments at 1; Duke Power Comments at 23.

[125] Reaction to the use of Electronic Bulletin Boards is mixed. The Southwest Power Pool members now have access to power flow models through dial-up capability. See Southwest Power Pool Comments at 4. ECAR, however, contends that it is impractical. See ECAR Comments at 4. The Commission will not require Electronic Bulletin Board access at this time, but encourages its use when practical.

[126] See, e.g., ECAR Comments at 3; Mid-Continent Area Power Pool Comments at 5; Southwest Regional Transmission Association Comments at 8; Group of Western Entities Considering Formation of RTG(s) Comments at appendix.

[127] APPA Comments at 10.

[128] Pennsylvania-New Jersey-Maryland Interconnection Comments at 5.

[129] Electrocon International Comments at 1; New England Electric System Comments at 6.

[130] See, e.g., ERCOT Comments at 2; Houston Lighting and Power Comments at 4; Texas Utilities Comments at 4; Central & Southwest Comments at 8–9; Texas–New Mexico Comments at 10.

public availability requirement of section 213(b).

Regional groups and others suggest that the Commission should allow them to charge the administrative costs of providing this information to the public.[131] The Commission finds that recovering the cost to copy materials is reasonable. However, transmitting utilities may not assess copying charges to those entities (such as the Commission and other regulatory, planning and siting agencies) which have statutory authority to require the filing of the information with such entity. If Respondents desire to impose copying charges, Form 715 requires Respondents to include the fee schedule for making the information available to the public. Transmitting utilities must also provide for on-site inspection of data.

Some commenters suggest that transmitting utilities should update the data in Form 715 during the year when there are significant changes.[132] Because section 213(b) requires an annual submission, the Commission will not require the filing of updated information between reporting dates. However, we agree with those commenters who say that transmitting utilities should have the opportunity to update criteria and practices (and presumably power flow data) as needed to help avoid misunderstandings.[133] Consequently, we would expect regional entities, upon request, to supply the most current criteria, practices and power flow data available, beyond those in the Form 715 on file with us. Transmitting utilities need not file this up-dated information and data with us until the next Form 715 submission.

Several commenters suggest that the 100 kV threshold should not apply to power flow data bases made available under part 2.[134] This is not the Commission's intent. The 100 kV threshold determines only who must file Form 715. The base case power flow data made available by a regional entity should include all voltage levels used in developing the regional base cases.

Some commenters suggest that part 2 should cover additional information beyond that proposed. One commenter provides a list of generating unit information that some power flow programs can use to dispatch generation on an economic basis.[135]

Some redispatch of the generation output in a power flow program is generally necessary to simulate a proposed power transfer on the transmission system. However, for purposes of preliminary studies, transmitting utilities can dispatch generation in various ways other than through the use of an economic dispatch algorithm; that is, without the need for detailed, unit-specific data. Therefore, the Commission does not find that this information is necessary to perform preliminary studies based on the power flow imput data that transmitting utilities will make available under part 2. However, if the regional power flow data base cases provided to members already contain economic dispatch data, then transmitting utilities must release that data to the public.

Other commenters suggest that system stability may limit transmission availability in certain regions and that, therefore, these regions should provide stability studies,[136] or the data needed to perform stability studies, to a requester.[137] Also, a number of electric utilities state that the power flow data without stability data will not be sufficient to conduct useful preliminary studies.[138]

While a more detailed and comprehensive analysis of a proposed use of the transmission system in certain regions may require a stability study, the Commission does not find it necessary to require the regional entities to provide the more voluminous input data necessary to perform stability studies, if stability is not identified as a limiting factor in their regional power flow analyses. The Commission notes that a number of other studies, such as voltage stability and other specialized analyses of suspected system dynamic problems, may also affect the outcome of power flow analyses. In light of the fact that Form 715 data will generally be used for preliminary analyses, the Commission is not requiring transmitting utilities to provide the data for such studies. However, the instructions in part 6 of Form 715 provide that, if stability is identified in studies as a regional transmission limiting factor, transmitting utilities must, on request, provide a requester with the results of existing regional stability studies.

Two State commissions express concern whether planning data reflected in the power flow base cases will also reflect planning done under State authority.[139] The Commission expects that utilities will provide information consistent with that provided to their state commissions.

3. Part 3—Transmitting Utility Maps and Diagrams. Part 3 requires transmitting utilities to file two copies of their general transmission maps and single-line schematic diagrams of their transmission systems. Specific guidelines indicate the type of information (such as geographic location of generating plants, switching stations, substations, service areas, and interconnections with other utilities) and the level of detail (for example, nominal operating and design voltages of transmission lines) that transmitting utilities must include in the maps and diagrams. The Commission is not requiring Respondents to create new maps and diagrams for purposes of this reporting requirement. Transmitting utilities must file only those maps and diagrams prepared in the normal course of business.

Some commenters contend that the part 3 requirement is more involved than the current Form 714 requirement.[140] They suggest relaxing the requirement to no more than the level of detail included in regional maps submitted as part of DOE OE–411 reports.

The data that transmitting utilities must file under this part are no different from those required in part II, Schedule XV of the current Form 714. The detail required by part 3 has not changed from existing requirements that have been effective for many years. The current Form 714 and its predecessor forms (EIA Form 714 and Federal Power Commission Form 12) require

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[131] See, e.g., ECAR Comments at 4; ERCOT Comments at 2; Mid-America Interconnected Network Comments at 3; Southwest Regional Transmission Association Comments at 7; Group of Western Entities Considering Formation of RTG(s) Comments at 9.

[132] See, e.g., APPA Comments at 4; American Iron and Steel Institute, *et al.* Comments at 5; LG&E Energy Comments at 4.

[133] See, e.g., EEI Comments at 12; LG&E Energy Comments at 3–4; PSI Energy Comments at 4–5.

[134] See, e.g., APPA Comments at 5–6; Transmission Access Policy Study Group Comments at 15; National Rural Electric Cooperative Association, *et al.* Comments at 4–5; Municipal Energy Agency of Nebraska Comments at 2–3; American Iron and Steel Institute, *et al.* Comments at 6.

[135] APPA Comments at Attachment C.

[136] Stability studies are studies of the measures that transmitting utilities must take to maintain the synchronization of their generating units after a disturbance.

[137] See, e.g., APPA Comments at 15; DOE Comments at 9; Electric Power Consultants Comments at 1; Professor Choudhry of West Virginia University Comments at 1.

[138] See, e.g., San Diego Gas & Electric Comments at 2–3; Minnesota Power & Light Comments at 3; Otter Tail Power Comments at 3; Public Generating Pool Comments at 3; Montana-Dakota Utilities Comments at 2; Large Public Power Council Comments at 5.

[139] See Public Service Commission of Wisconsin Comments at 2–3; Massachusetts Department of Public Utilities Comments at 4–5.

[140] See, e.g., American Electric Power Comments at 5–6; Pennsylvania-New Jersey-Maryland Interconnection Comments at 8–9; New England Power Pool Comments at 1.

Respondents to submit maps with the same level of detail as that required by part 3. Although the applicability of the requirement to file maps and diagrams is slightly different under Form 715 than Form 714,[141] most transmitting utilities currently file Form 714. Consequently, there is no change in the filing requirement for these entities. Furthermore, the Commission is not requiring entities that do not currently produce maps and diagrams to create such documents solely for the purpose of part 3 reporting.

Additionally, a Respondent that has not produced more recent maps and diagrams than those currently on file at the Commission need not re-submit the same maps and diagrams each year. In such a case, a Respondent will file a statement indicating that a more recent set of maps and diagrams is not available.

Because of the expected interest in Form 715 information, the Commission will require transmitting utilities to file two copies of maps and diagrams. This requirement will enable the Commission to keep a copy available in the Commission's public reference room and to use the other copy. If a Respondent has up-to-date maps and diagrams on file, it need only file one additional copy of its maps and diagrams with its Form 715 report.

4. Part 4—Transmission Planning Reliability Criteria. In the NOPR, the Commission requested comments on the proposed requirement that Respondents submit transmission planning reliability criteria that the transmitting utility uses to assess the limits of its transmission system to meet its load responsibility as well as to move bulk power among other electric systems. The Commission also proposed guidelines to indicate the type of information that Respondents might provide to satisfy this requirement. The guidelines included documents that contain transmission reliability criteria of NERC, regional reliability councils, or DOE OE–411 reports. In addition to these documents, the rule would have required the Respondent to submit all criteria that are enforced on its system. The criteria could be imposed by the Respondent itself or pursuant to interconnection or pooling agreements with others. In the proposed rule, the test for adequacy of submitted information was that, using the same reliability criteria, others should be able to "reasonably replicate" studies done by the Respondent.

Many commenters support allowing individual Respondents to reference appropriate NERC publications and DOE OE–411 reports in order to satisfy part 4 requirements. They state that these criteria may be sufficient for transmission service requesters who require information on established regional transmission planning reliability criteria.[142] A few commenters, however, state that existing DOE OE–411 report criteria, alone, are sufficient to satisfy the requirements of part 4.[143] A number of regional and pool commenters support submittal of transmission reliability criteria, but state that individual utilities would have to supply criteria specific to their systems.[144] Some commenters interpret the proposed rule as permitting utilities to submit additional system-specific planning criteria,[145] or allowing submittal upon request.[146] For example, Duke Power Company indicates that it has internal criteria that are not in written form, and it would be extremely burdensome to reduce these criteria to written form, because the criteria involve the application of subjective engineering judgments.[147] Two transmission-owning commenters support the requirement for submittal of specific criteria, with one commenter recommending that the Commission require individual utilities to document and explain the engineering basis for the reliability criteria.[148]

In addition to their regional criteria, Respondents must submit system-specific planning criteria. Unless Respondents make such criteria publicly available, a potential user of the system will have little idea of system specific criteria that might limit transmission availability. As stated above, the Commission's intention is that transmitting utilities file the substantive criteria and planning procedures that they follow in the normal course of business.

We have removed the terms "in totality" and "reasonably replicate" from the instructions to Form 715 and have revised the part 4 instructions to make clear that the transmission planning criteria must be in sufficient detail to allow others to perform similar planning or screening studies, and to better understand the process of determining available transmission capacity.

Two commenters are concerned that once Respondents supply their reliability criteria, they will be unable to modify them as needed.[149] The Commission will not require Respondents to update their submittals immediately upon a change in reliability criteria. However, Respondents must reflect revised criteria in their next Form 715 filing. In addition, in their next Form 715 filing, Respondents will also be required to identify any changes from their prior year's report.

One commenter recommends that the Commission require each transmitting utility to file a description of its transmission planning process and list specific items that transmitting utilities should provide to potential transmission users.[150] Another commenter suggests that the Commission provide guidance on the format and level of detail to be used by Respondents that do not document individual system reliability criteria.[151] A commenter requests that reliability criteria rules also specify the relationship between planning criteria and actual system operation, and define reliability policies.[152] Another commenter recommends that the Commission require transmitting utilities to document the method used to assess the effect of a wheeling transaction on the transmitting utility's system.[153]

Because only existing reliability criteria are to be reported, the Commission is not establishing standards or requiring a particular format. We, therefore, will not adopt these suggestions.

5. *Part 5—Transmission planning Assessment Practices.* In the NOPR, the Commission requested comments on the proposal to require submittal of transmission planning assessment practices that the transmitting utility uses to apply its particular reliability criteria. The Commission also provided guidelines on what might constitute transmission planning assessment practices. Included in the guidelines

[141] Form 714 requires electric utilities with an annual peak demand greater than 200 megawatts to file maps and diagrams. Form 715 filing requirements are applicable to transmitting utilities.

[142] See, e.g., EEI Comments at 11; Boston Edison Comments at 2; Union Electric Comments at 6–7; Oglethorpe Power Corporation Comments at 6.

[143] See, e.g., Dayton Power and Light Comments at 3; Northern States Power Comments at 9.

[144] See, e.g., New England Power Tool Comments at 2; Northeast Power Coordinating Council Comments at 2; Pennsylvania-New Jersey-Maryland Interconnection Comments at 9–10.

[145] See EEI Comments at 11; Allegheny Power System Comments at 3–4; Union Electric Comments at 7.

[146] See Boston Edison Comments at 2.

[147] See Duke Power Comments at 25.

[148] See Public Service Electric and Gas Comments at 3; Duquesne Light Comments at 5.

[149] See EEI Comments at 12; Florida Power & Light Comments at 5–6.

[150] APPA Comments at 12–13 and 31–32.

[151] Oglethorpe Power Comments at 7.

[152] National Independent Energy Producers Comments at 3–4.

[153] Electric Power Consultants Comments at 2.

was a proposal to require the transmitting utility to submit a list of critical facilities that are generally used in performing its contingency studies. As in part 4, the Commission proposed that the information provided in part 5 should be in sufficient detail to allow others to reasonably replicate planning studies done by the Respondent.

We have removed the term "critical facilities" from the instructions.[154] We have also re-written the second paragraph of the part 5 instructions to make clear that a transmitting utility need only submit a list of contingencies that are generally considered as part of its assessment of system performance.[155]

Some commenters agree that transmission planning assessment practices are important in determining transmission capacity and constraints, but state that utilities cannot describe, in sufficient detail for all possible cases, certain assessment practices which have been developed through experience, study and an interactive review process.[156]

Northern States Power states that requiring Respondents to file transmission planning practices is duplicative because transmitting utilities already include this information in DOE OE–411 reports.[157] Otter Tail Power is concerned that a listing of "proposed" system additions could create a financial liability for the Respondent.[158] Pacific Gas & Electric states that it has no comprehensive document describing transmission planning and assessment practices, but is prepared to submit any existing documents that relate to the requested information.[159] Large Public Power Council states that the data gathered would not be sufficient to perform screening studies.[160] However, DOE states that submission of transmission planning assessment practices, together with the other information provided, will enable potential transmission users to do their own first-cut analysis of transmission availability.[161] Florida Power & Light Company cautions that the reporting requirements must not constrain the utility's ability to modify its transmission planning assessment practices.[162]

As in part 4, the Commission's objective is to require submittal of the substantive planning assessment practices that a Respondent follows in the normal course of business. The information filed should help requesters to perform screening analyses and to better understand the process of determining available transmission capacity and known constraints. As in the case of part 4 material, the Commission will require transmitting utilities to file changes in their transmission planning assessment practices on an annual basis, as part of Form 715.

Oglethorpe Power Corporation states that Form 715 information should specifically address any economic and financial factors governing system planning decisions, including state or Federal regulatory constraints (such as siting and licensing approval requirements, or the ability to recover incremental facility expansion costs).[163] The Commission will not adopt these suggestions because they are overly broad and have nothing to do with the reporting of planning assessment practices necessary in the context of section 213(b).

6. *Part 6—Evaluation of Transmission System Performance.* In the NOPR, the Commission requested comments on the proposed requirement that Respondents submit evaluations of their transmission system performance for future time periods based on the application of their reliability criteria. As proposed, the evaluation would provide potential transmission customers and regulators with a clear understanding of existing and, where known, likely future transmission constraints, the location of such constraints, and how they were identified, as well as a description of any plans to mitigate the constraints. The Commission also proposed that transmitting utilities submit the results of any dynamic stability studies that set transmission limits. The proposed rule characterized the evaluation as being separate from traditional utility studies that are not usually undertaken unless there is a specific need.

Some commenters claim that part 6 requirements would cause a significant burden, if the filing of existing planning studies is considered insufficient.[164] Many transmitting utilities state that, if they are to develop and file Form 715 within the projected 100 hours timeframe for completing the form, only a narrative description for part 6 should be required, and new evaluations should not be required where none currently exist.[165] As discussed above, the part 6 instructions require only a narrative description.

A few commenters state that the Commission should limit the part 6 portion of the filing to information that a utility prepares in the normal course of planning and operating its transmission system, and should not impose a requirement for additional studies.[166] Florida Power and Light Company states that transmitting utilities cannot fulfill the proposed requirement that owners of transmission facilities provide detailed descriptions of all expected constraints and mitigation plans unless they have a specific list of expected uses for their transmission system.[167]

Northern States Power is concerned that the rule provides no clear time frame for assessment. It states that, if the analyses are for a short term, they will not provide any useful information on long-term transmission capacity availability; and if they are for a long term, they must by their very nature include assumptions regarding the future that may not turn out to be true.[168] Midwest Power Systems Incorporated asks the Commission to clarify the definition of "transmission constraint" and to include in the definition thresholds for factors such as costs, overloads, and low voltage.[169] Texas-New Mexico Power Company proposes that the Commission address the issue of the maximum amount of capacity a utility may set aside in a given corridor for uses such as load growth, load swings and inadvertent flows.[170]

The Commission anticipates that for the most part only existing information will need to be filed to comply with part

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[154] See NERC Comments at 6.

[155] For example, before testing for the limits of transmission capability that could be used for firm power transfers on its system, a transmitting utility will assume, based on experience or realistic expectation, that certain facilities will be unavailable for certain periods.

[156] See, e.g., New England Power Pool Comments at 2; Pennsylvania-New Jersey-Maryland Interconnection Comments at 10–11; EEI Comments at 13–14; Boston Edison Comments at 3; Central Maine Power Comments at 2; Florida Power and Light Comments at 5–6; Northeast Utilities Comments at 3.

[157] Northern States Power Comments at 9.

[158] Otter Tail Power Comments at 5.

[159] Pacific Gas & Electric Comments at 9.

[160] Large Public Power Council Comments at 7–8.

[161] DOE Comments at 3–4.

[162] Florida Power & Light Comments at 5–6.

[163] Oglethorpe Power Corporation Comments at 8–9.

[164] See, e.g., New England Power Pool Comments at 2; Northeast Power Coordinating Council Comments at 2; Southwest Regional Transmission Association Comments at 12–13; Allegheny Power Comments at 4; TVA Comments at 2.

[165] See, e.g., Pennsylvania-New Jersey-Maryland Interconnection Comments at 13; EEI Comments at 16; Allegheny Power Comments at 4; American Electric Power Comments at 7–8; Northeast Utilities Comments at 4; PSI Energy Comments at 6; Southwestern Public Service Comments at 6–7.

[166] See, e.g., Duke Power Comments at 32–33; Union Electric Comments at 9–10.

[167] Florida Power and Light Comments at 5.

[168] Northern States Power Comments at 10.

[169] Midwest Power Systems Comments at 3–4.

[170] Texas-New Mexico Power Comments at 15.

6 requirements. However, evaluation of the transmitting utility's system to take into account potential transactions beyond those already planned for is necessary in order to satisfy the statutory objective of identifying available transmission capacity and known constraints. To minimize the Respondent's burden, the Commission will accept narrative descriptions of existing and future transmission system performance that identify known and future constraints and proposed mitigating actions. The Commission recognizes that transmitting utilities cannot be held strictly accountable if their predictions turn out to be inaccurate; that is, when they do not correctly anticipate the results of a particular proposed transaction. The Commission has revised the language of the rule to reflect this discussion.

Some commenters point out that it may take a long time to perform system evaluations and that it would be very burdensome to require a transmitting utility to provide evaluations using power flow base cases submitted in part 2 for the current year.[171] The Commission recognizes that requiring use of power flows submitted in part 2 would be impractical due to the time constraints and has rewritten part 6 accordingly.

A few commenters state that it is important to submit stability studies as part of the evaluation.[172] The Commission finds that stability studies will be useful in screening studies to assess transmission availability only when stability is the constraining factor in transmission. The instructions have been modified to require that transmitting utilities make available the results of stability studies when stability is a limiting factor in the existing or planned transmission system.

A number of commenters state that a transmitting utility should provide only existing transmission capability studies performed as part of DOE OE–411 reports (for 230 kV and above) or as part of pool or regional reliability council requirements.[173] While the Commission will accept transmission capability studies as part of the transmission system evaluation narrative, they alone may not be adequate to meet future assessments of the transmission system.

A number of commenters propose that Respondents provide certain specific information so that others can evaluate transmission availability and identify the constraints.[174] The Commission will not adopt these suggestions. The ability to be more specific at this stage may well impose a burden beyond that required to meet our responsibilities.

A number of commenters suggest that any operating guides or criteria that transmitting utilities may implement must be available or described in detail, to help transmission dependent entities understand the permissible uses of the network and its capabilities, and because a utility's transmission system operating criteria may vary from the planning criteria submitted.[175] Respondents may draw upon operating studies to establish transmission transfer limits, but the explicit reporting of operating criteria is not necessary to meet our responsibilities.

IV. Information Collection Statement

The Office of Management and Budget's (OMB) regulations[176] require that OMB approve certain information and recordkeeping requirements imposed by an agency. The information requirements contained in this proposed rule are contained in FERC–715 "Annual Transmission Planning and Evaluation Report" (1902–0167) and FERC–714 (1902–0140). The Commission uses the data collected in these information requirements to carry out its regulatory responsibilities under the FPA, PURPA and the Energy Policy Act. Moreover, the collection of Form 715 data is mandated by the Energy Policy Act. The Commission's Office of Electric Power Regulation uses the Form 714 data to obtain a better overall picture of annual power generation and transmission and to ensure consistency in the reporting of operational data by the electric utility industry. In particular, the data collected provides greater comprehension of interconnected control area operations. The Commission also has deleted certain reporting requirements from the Form 714 because the Commission can obtain the data from Form 715.

The Commission is notifying the Office of Management and Budget that it is modifying its proposed information requirements. Interested persons may obtain information on these reporting requirements by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 (Attention: Michael Miller, Information Services Division (202) 208–1415). Comments on the requirements of the final rule can be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission).

V. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act requires rulemaking either to contain a description and analysis of the effect that a rule will have on small entities or to certify that the rule will not have a significant economic effect on a substantial number of small entities.[177] Allegheny Electric Cooperative, Inc. (Allegheny) and several other electrical cooperatives (Allegheny, *et al.*)[178] challenge the Commission's certification that the proposed rule would not have a significant economic impact on a substantial number of small entities.[179] Allegheny, *et al.* maintain that the proposed rule will impose new data collection and maintenance requirements on rural electrical cooperatives and small generation and transmission cooperatives that operate radial, rather than network transmission facilities.

These commenters state that electric cooperatives do not generally conduct load flow simulations or develop the type of reliability, assessment, or evaluation information that the rule would require. According to Allegheny, *et al.*, electric cooperatives are generally not full members of NERC regional councils or sub-regional groups, and their facilities are not typically included in those groups' load flow simulations.

Allegheny, *et al.* point out that many electrical cooperatives already serve municipalities or other customers at wholesale and may well become transmitting utilities, covered by the requirements of the proposed rule, as EWGs and IPPS locate within their service areas. Allegheny, *et al.* fear that electrical cooperatives and small power systems may have to manufacture the

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[171] See, e.g., Pennsylvania-New Jersey-Maryland Interconnection Comments at 13; EEI Comments at 15.

[172] See, e.g., Utah Associated Municipal Power Systems Comments at 13; American Iron and Steel Institute, *et al.* Comments at 10–11.

[173] See, e.g., Atlantic Electric Comments at 6; Boston Edison Comments at 4; Central & Southwest Comments at 10–13, 16–17.

[174] See, e.g., Duquesne Light Comments at 6–7; National Power PLC Comments at 4–5; ERCOT Comments at 3.

[175] See, e.g., APPA Comments at 14–15; American Iron and Steel Institute, *et al.* Comments at 10; Oglethorpe Power Comments at 8.

[176] 5 CFR 1320.12.

[177] 5 U.S.C. 601–612.

[178] The other electrical cooperatives are: Four County Electric Membership Cooperative, Inc., Rayburn County Electric Cooperative, Inc. (Rayburn), Saluda River Electric Cooperative, Inc. (Saluda River) and Southern Maryland Electric Cooperative, Inc.

[179] New Reporting Requirement Under the Federal Power Act and Changes to Form No. FERC–714; Proposed Rulemaking, 58 FR 17544, 17549 (April 5, 1993); IV FERC Stats. & Regs. ¶ 32,493 at 32,694–5.

required data for the sole purpose of complying with the proposed rule.[180] Allegheny, *et al.* request that the Commission exempt from the Form 715 reporting requirements entities that own or operate only discrete line sections or radial facilities, and that the Commission exempt small power systems from the requirement to conduct regional power flow studies or to provide equivalent power flow cases.[181]

Although we will not grant Allegheny, *et al.* the exemptions they seek, we have modified the proposed rule to accommodate their concerns. To ensure that the final rule will not have a significant economic impact on a substantial number of small entities, we have made the following changes from the proposed rule:

A. In the NOPR, we proposed that both owners and operators of fully integrated and radial transmission facilities must file Form 715. In the final rule, we are requiring only operators of these facilities to file Form 715.[182]

B. The proposed rule would have included entities owning and operating only radial facilities. We have restricted the filing requirements in the final rule to operators of integrated facilities.[183]

C. In the final rule, we have allowed for waiver for those entities that do not develop or use power flows in the normal course of business.[184]

We think that our changes in the final rule have responded to the needs of small entities. Most small entities will either be exempt from our final rule or will be eligible for a waiver from its requirements. The final rule only covers the operators of integrated transmission facilities of 100 kV and above. Because most transmission utilities that operate integrated transmission facilities of 100 kV and above do not fall within the definition of "small entity,"[185] and because the final rule accommodates the economic concerns of small entities, the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities.

VI. Environmental Statement

Commission regulations require that an environmental assessment or an environmental impact statement be prepared for any Commission action that may have a significant adverse effect on the human environment.[186] The Commission categorically excludes certain actions from this requirement as not having a significant effect on the human environment.[187] No environmental consideration is necessary for the promulgation of a rule that involves the gathering, analysis, and dissemination of information.[188] Because this final rule involves only the gathering, analysis and dissemination of information, no environmental consideration is necessary.

VII. Effective Date

This final rule is effective November 8, 1993. The information collection provisions; however, will not become effective until approved by the Office of Management and Budget. Notice of this date will be published in the **Federal Register.**

List of Subjects in 18 CFR Part 141

Electric power, Reporting and recordkeeping requirements.

It is ordered:

1. Late filed comments are hereby accepted and made part of the record in this proceeding.

2. Requests for an opportunity to file reply comments are hereby denied;

3. Requests for a technical conference are hereby denied;

4. In consideration of the foregoing, the Commission amends part 141 in chapter I, title 18, Code of Federal Regulations, as set forth below.

PART 141—STATEMENT AND REPORTS (SCHEDULES)

1. The authority citation for part 141 is revised to read as follows:

Authority: 15 U.S.C. 79; 16 U.S.C. 791a–828c, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

2. Section 141.51 is revised to read as follows:

§ 141.51 FERC Form No. 714, Annual Electric Control and Planning Area Report.

(a) *Who must file.* (1) Any electric utility, as defined by section 3(4) of the Public Utility Regulatory Policies Act, 16 U.S.C. 2602, operating a control area, and any group of electric utilities, which by way of contractual arrangements operates as a single control area, must complete and file the applicable schedules in FERC Form No. 714 with the Federal Energy Regulatory Commission.

(2) Any electric utility, or group of electric utilities that constitutes a planning area and that has a peak load greater than 200 megawatts (MW) based on net energy for load for the reporting year, must complete applicable schedules in FERC Form No. 714.

(b) *When to file.* FERC Form No. 714 must be filed on or before each June 1 for the preceding calendar year.

(c) *What to file.* An original and three conformed copies of FERC Form No. 714 "Annual Electric Control and Planning Area Report," must be filed with the Federal Energy Regulatory Commission, in accordance with the instructions in that form and in this section.

3. Part 141 is amended by adding § 141.300 to read as follows:

§ 141.300 FERC Form No. 715, Annual Transmission Planning and Evaluation Report.

(a) *Who must file.* Any transmitting utility, as defined in § 3(23) of the Federal Power Act, that operates integrated (that is, non-radial) transmission facilities at or above 100 kilovolts must complete FERC Form No. 715.

(b) *When to file.* FERC Form No. 715 must be filed on or before each April 1.

(c) *What to file.* FERC Form No. 715 must be filed with the Federal Energy Regulatory Commission in accordance with the instructions on that form.

[**Note:** The instructions for filling out FERC Form No. 15 appear in appendix A. The changes to FERC Form No. 714 appear in appendix B. Neither appendix will appear in the Code of Federal Regulations.]

Appendix A—Annual Transmission Planning and Evaluation Report—FERC Form No. 715

Form Approved
OMB No. 1902–0167
Expires: 12/31/96

This report is mandatory under sections 213(b), 307(a) and 311 of the Federal Power Act and Volume 18 CFR 141.300.

The Commission does not consider the information collected by this report to be confidential and will not treat it as such.

The public reporting burden for this collection of information is estimated to average 200 hours per response, including

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[180] Allegheny, *et al.* Comments at 22–27.

[181] Allegheny, *et al.* Comments at 31–36.

[182] Because Allegheny owns but does not operate a section of 500 kV transmission line (Allegheny, *et al.* Comments at 15), under the final rule it will not have to file Form 715.

[183] Because Saluda River operates only radial lines (Allegheny, *et al.* Comments at 25), it will not have to file Form 715.

[184] Allegheny, *et al.* state that electrical cooperatives do not generally conduct load flow simulations. Allegheny, *et al.* Comments at 24. Those cooperatives would, then, be eligible for waiver from the requirement to file Form 715.

Rayburn requests a waiver from Form 715 filing requirements. Allegheny, *et al.* Comments at 26. We will deny this request as premature, without prejudice to Rayburn's renewing its request for waiver once the final rule becomes effective.

[185] 5 U.S.C. 601(3), citing to section 3 of the Small Business Act, 15 U.S.C. 632, which defines a "small-business concern" as a business that is independently owned and operated and that is not dominant in its field of operation.

[186] Regulations Implementing National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987); FERC Stats. and Regs., Regulations Preambles 1986–1990, ¶ 30,783 (1987).

[187] 18 CFR 380.4.

[188] 18 CFR 380.4(a)(5).

the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to:

Federal Energy Regulatory Commission, Information Services Division, ED12.3, 941 N. Capitol St. NE., Washington, DC 20426

and to:

Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

FERC Form No. 715 Contents

General Information
General Instructions
Terms and Definitions
Specific Instructions
- Part 1: Identification and Certification
- Part 2: Power Flow Base Cases
- Part 3: Transmitting Utility Maps and Diagrams
- Part 4: Transmission Planning Reliability Criteria
- Part 5: Transmission Planning Assessment Practices
- Part 6: Evaluation of Transmission System Performance

Instructions for Completing the FERC Form No. 715 Annual Transmission Planning and Evaluation Report

General Information

I. Purpose of Report

The FERC Form No. 715, Annual Transmission Planning and Evaluation Report, is required pursuant to sections 213(b), 307(a) and 311 of the Federal Power Act to provide information adequate to inform potential transmission customers, State regulatory authorities and the public of potential transmission capacity and known constraints, to support the Commission's expanded responsibilities under sections 211, 212 and 213(a) of the Federal Power Act (as amended by the Energy Policy Act), and to assist in rate or other regulatory proceedings.

II. Who Must Submit

Each transmitting utility, as defined in section 3(23) of the Federal Power Act, that operates network (that is, non-radial) transmission facilities at or above 100 kilovolts must report and make readily available to the public the information requested under the listed items in the prescribed manner. A designated agent, such as a regional transmission group, North American Electric Reliability Council (NERC), regional reliability council, formal power pool, or other group, may submit and make readily available to the public part or all of the required information on behalf of the transmitting utility. The transmitting utility is responsible for submitting all data not submitted on its behalf by a designated agent. Designated agents must specify the transmitting utility (or transmitting utilities) for which they are submitting information.

III. Where to Submit

Submit one original and two copies in hard copy of FERC Form No. 715, Annual Transmission Planning and Evaluation Report, and one copy in electronic form of FERC Form No. 715, Annual Transmission Planning and Evaluation Report (except part 3: Transmitting Utility Maps and Diagrams), to:

Office of Electric Power Regulation, Federal Energy Regulatory Commission, room 2410, ER–10.1, 825 North Capitol Street NE., Washington, DC 20426

IV. When to Submit

File the report annually on April 1.

V. Further Information

Direct questions concerning the FERC Form No. 715, Annual Transmission Planning and Evaluation Report, to James E. Ballard at (202) 208–6989, Fax (202) 208–0180.

VI. Sanctions and Confidentiality Statements

The FERC Form No. 715, Annual Transmission Planning and Evaluation Report, is mandatory under the Federal Power Act. The information reported in FERC Form No. 715 is not confidential. Late filing or failure to file, keep records, or comply with these instructions may result in criminal fines, civil penalties, and other sanctions as provided by law.

General Instructions

The Federal Energy Regulatory Commission (Commission) has determined that to satisfy section 213(b) of the Federal Power Act (FPA) it is necessary for potential customers to be able to reasonably anticipate the outcome of technical studies that a transmitting utility would perform in assessing the availability of transmission capacity to satisfy a request for transmission service. Therefore, the Commission requires each transmitting utility, or its designated agent, to: (1) Submit and make available expeditiously to the public, upon request (in hard copy and in electronic form, except for item (b), below) an annual report that includes (a) power flow base cases for its transmission system, or if the transmitting utility belongs to a regional or subregional transmission planning or reliability organization, power flow base cases for that region or subregion; (b) system maps and one-line diagrams; (c) a description of their reliability criteria and transmission planning assessment practices; and (d) an evaluation under the reliability criteria of the current and future performance of their transmission system; and (2) designate any regional or subregional transmission planning or reliability organizations to which it belongs or any other single entity to submit to the Commission and to release to the public any regional or subregional power flow base cases developed for the purposes of members' transmission planning. If Respondents desire to impose copying charges, they shall provide a fee schedule for making this information available to the public.

The Commission assumes that most transmitting utilities participate in the development, by a regional or subregional organization to which they belong, of regional or subregional power flow base cases. The purpose of this process is to ensure consistency of assumptions and accuracy of data.

Individual members of regional or subregional organizations use these power flow cases as the starting place for their own transmission planning studies. A detailed description of a transmitting utility's reliability criteria and planning practices and an evaluation of system performance are essential to perform planning studies, to assess the availability of transmission, to identify potential constraints, and to anticipate the outcome of transmitting utility technical studies made in response to an actual request for service.

Terms and Definitions

Transmission Planning Reliability Criteria—The measuring systems and performance standards used for assessing the actual or projected ability of the bulk electric transmission system to deliver power to load reliably. Failure to attain a specified performance standard indicates the need to consider adding or rearranging facilities, changing operating modes, or other responses.

Examples of criteria that might apply to simulated testing of the bulk electric transmission system are:

(a) No cascading outage following any specified set of contingencies.

(b) No overloaded facilities following a specified contingency.

(c) All voltages within prescribed limits.

Transmitting Utility—Any electric utility, qualifying cogeneration facility (section 3(18)(B), FPA), qualifying small power production facility (section 3(17)(C), FPA), or Federal power marketing agency (section 3(19), FPA) that owns or operates electric power transmission facilities that are used for the sale of electric energy at wholesale. (section 3(23), FPA)

Specific Instructions

Part 1: Identification and Certification

Provide the following information:

1. Transmitting Utility Name.
2. Transmitting Utility Mailing Address.
3. Contact Person Name.
4. Contact Person Title.
5. Contact Person Telephone Number.
6. Contact Person Facsimile Number.
7. Certification by an authorized official of the Transmitting Utility regarding the accuracy of the information submitted.
8. Certifying Official Signature.
9. Certifying Official Name.
10. Certifying Official Title.

Part 2: Power Flow Base Cases

A Respondent participating in a regional or subregional process (for consolidating and ensuring the consistency and accuracy of the power flow information used by the Respondent for transmission planning) must either authorize the regional or subregional organization to release, without conditions, to the public in an easily accessible electronic format, the most current regional or subregional input data to solved power flow base cases that the transmitting utility would ordinarily use as the starting point for

its transmission planning studies or, where these data are unavailable from a regional organization, submit such data itself.

If the Respondent participates in such a regional or subregional process, it must submit the following items:

1. Regional or subregional organization name;
2. Regional or subregional organization mailing address;
3. Regional or subregional organization contact person;
4. Regional or subregional organization contact person title;
5. Regional or subregional organization contact person telephone number;
6. Regional or subregional organization contact person facsimile number;
7. Description of process for public access to regional or subregional power flow information; and
8. Description of power flow cases currently available from regional or subregional organization, including time frame, conditions, format, media and the fees, if any, for copying data for the public.

If a Respondent does not participate in the development of regional or subregional transmission planning power flow base cases, the Respondent must submit its own equivalent power flow base cases directly to the Commission.

Each Respondent must submit for each solved power flow base case: the input data file (in formats described below) and the corresponding output data file (in ASCII format) showing the solved real and reactive power flows, voltages, real and reactive generation and loads, solution parameters, and other relevant output information; or, in the alternative, at a minimum, a one-line diagram showing real and reactive power flows, bus voltages and angles, generator outputs, transformer tap settings and loads.

Regional and subregional organizations authorized by their members to provide access to solved power flow cases should make them available electronically on MS/PC DOS format (version 3.x or higher), high density (1.44 MB), 3.5 inch diskette or via a computer bulletin board, when practical, in the input data format associated with the power flow program that the regional or subregion organizations use in their transmission studies. The Commission expects that, in nearly all cases, the format will be one of the following:

—The Raw Data File format of the PTI (Power Technologies, Inc.) PSS/E Power flow program.
—The Card Deck Image format of the Philadelphia Electric Power flow program.
—The Card Deck format of the WSCC Power flow program.
—The Raw Data File format of the EPC (Electric Power Consultants, Inc.), or the PSLP power flow program.
—The IEEE Common Format for Exchange of Solved Power Flows.

Respondents submitting their own cases must supply the input data to the solved base cases and associated ASCII output data on MS/PC DOS format (version 3.x or higher), high density (1.44 MB), 3.5 inch diskette in the format associated with the power flow program used by the Respondents in the course of their transmission studies, as described above.

The input data to the solved power flow base cases must be forward-looking. For example, the power flow base cases submitted and made available might include:

—One, two, five and ten-year forecasts under summer and winter peak conditions.
—A one-year forecast under light load/heavy transfers condition.

This example is similar to a schedule of base cases proposed by NERC's Multiregional Modeling Working Group for development at the time this form was created. A regional and subregional organization may develop, depending on its needs, a different number of power flow base cases than those described above.

The power flow base cases must be in sufficient detail that network equivalents, if used, extend sufficiently beyond the electrical borders of the transmitting utility that potential transmission users could simulate power transfers within a reasonable market area without significant loss of accuracy.

The power flow base cases should include all branch circuit ratings (that is, normal, long-term and short-term emergency, or other relevant ratings) that a Respondent uses. Each Respondent must also submit or make available a data-dictionary that cross-references the bus or line terminal names.

Part 3 Transmitting Utility Maps and Diagrams

1. Each Respondent must submit an original and one copy of general transmission maps and single-line schematic diagrams. The maps and diagrams should be those prepared in the general course of business for planning and operating purposes. The guidelines provided below indicate the type of information and the level of detail desired; however, the Commission is not requiring the Respondent to specifically prepare new maps and diagrams to satisfy this requirement. If the Respondent has readily available more than one set of maps and/or diagrams, the Commission requests that the set submitted best provide the level of detail described below.

2. The transmitting utility's general maps should show the geographic locations and names of:

A. Generating plants;
B. Switching stations;
C. Substations;
D. Service areas; and
E. Interconnections with other utilities.

3. The transmitting utility's single-line schematic diagrams should show and identify:

A. AC and DC transmission lines and facilities, including their nominal operating and design voltages;
B. Electrical connections;
C. Generating plants;
D. Transformation facilities;
E. Phase angle transformers;
F. VAR control equipment; (i.e., shunt and series capacitors and inductors, etc.).

4. On the maps or in separate documentation, each Respondent should provide a legend that shows the symbols used on the map or diagram to represent generators, transmission lines, transformers, capacitors, reactors, buses, etc.

5. If maps and diagrams have not changed from those currently on file at the Commission, Respondents should make a statement to that effect. Respondents must submit new maps or diagrams only if they have revised those currently on file at the Commission.

Part 4 Transmission Planning Reliability Criteria

Each Respondent is to provide the transmission planning reliability criteria used to assess and test the strength and limits of its transmission system to meet its load responsibility as well as to move bulk power between and among other electric systems.

If a Respondent subscribes to the NERC and regional reliability council transmission reliability criteria, the Respondent must submit the documents containing such criteria, unless these documents are readily available in NERC publications or are available in the regional reliability council OE–411 reports submitted to the DOE. In such cases, Respondent must submit only the title, source and effective date of each publication or document.

If a transmitting utility subscribes to more detailed criteria compatible with the NERC or regional reliability council through its interconnection or pooling agreements with others, then it must also submit these additional criteria.

The Commission expects that each transmitting utility will have additional detailed criteria. For example, each utility generally sets its own voltage limit criteria on its bulk system as well as its lower voltage system, since NERC and the regional reliability councils generally do not. Particular criteria may differ from those of the council and may be justified by the geography of the area, type of loads being served, system configuration, weather considerations, or other reasons. Each transmitting utility must submit all such additional criteria.

The above criteria will be those which the transmitting utility uses to determine available transmission capacity needed to meet potential transmission requests as well as its own native load. A transmitting utility must describe the criteria that it uses in sufficient detail to allow others to use the criteria when performing their own planning or screening studies and to better understand the process of determining available transmission capacity.

In subsequent years, Respondents need only identify and file changed criteria.

Part 5 Transmission Planning Assessment Practices

The criteria submitted under part 4 of this form set the limits of transmission use. However, assessment practices that a transmitting utility uses in applying these criteria are as important as the criteria themselves. These practices, developed through experience and study, include consideration of detailed factors that a transmitting may not list in the criteria that it submits under part 4. For example, a utility might have certain operating restrictions and

limitations that must be met by appropriate modelling within a simulation study.

Also, through experience and study, each transmitting utility may have developed a list of various contingencies it typically tests against in the application of its transmission planning reliability criteria. For example, before testing for the limits of transmission capability that could be used for firm power transfers on its system, a transmitting utility will assume, based on experience or realistic expectation, that certain facilities will be unavailable for some period of time. Each transmitting utility must identify these contingencies and submit them under this part.

A description of the Respondent's practices when applying the transmission planning reliability criteria submitted in part 4 must be submitted under this part. The description must include the substantive planning assessment practices that a Respondent follows in the normal course of business. The information filed should help requesters to perform planning or screening studies and to better understand the process of determining available transmission capacity and known constraints.

In subsequent years, Respondents need only identify and file changed assessment practices.

Part 6 Evaluation of Transmission System Performance

The transmitting utility must provide a narrative evaluation or assessment of the performance of its transmission system in future time periods based on the application of its reliability criteria. It must provide a clear understanding of existing and likely future transmission constraints, their sources, how it identified these constraints, and a description of any plans to mitigate the constraints. The evaluation must provide a clear understanding of the existing and expected system performance of the Respondent's transmission system. The evaluation should include a description of all existing transmission stability limits that the transmitting utility has uncovered through dynamic system simulation studies. If, in their studies, Respondents identify stability as a regional transmission limiting factor, Respondents must, on request, provide the results of their studies.

The required evaluation is to be drawn from existing utility transmission planning studies and the experience and judgment of the Respondents' transmission system planners. Respondents may base the required evaluation, in part, on recently performed operating studies that determine transfer capabilities for the upcoming peak load season.

Appendix B—Changes to FERC Form No. 714

The existing form FERC–714 is modified by eliminating schedules VIII, XIII, XIV and XV, modifying schedules VI and VII and consolidating schedules X, XI, and XII. The table of contents (reorganized and renumbered) is as follows:

Part I: Identification and Certification

Part II: Control Area Information

Schedule 1: Generating Plants Included in Reporting Control Area
Schedule 2: Control Area Monthly Capabilities at Time of Monthly Peak Demand
Schedule 3: Control Area Net Energy for Load and Peak Demand Sources by Month
Schedule 4: Adjacent Control Area Interconnections
Schedule 5: Control Area Scheduled and Actual Interchange
Schedule 6: Control Area Hourly System Lambda

Part III: Planning Area Information

Schedule 1: Electric Utilities that Compose the Planning Area
Schedule 2: Planning Area Hourly Demand and Forecast Summer and Winter Peak Demand and Annual Net Energy for Load

Part IV: Notes

The existing schedule VII, Control Area System Lambda is replaced by the following:

Part II Schedule 6: Control Area Hourly System Lambda

Submit on a 3.5 inch diskette formatted for the DOS operating system the following data file in ASCII format: the control area's system lambda for each hour of the year starting with 1 a.m., January 1, 1993. Identify clearly the time zone in which this time series is made. The file should have 8760 records (8784 for leap years). Each record is to contain the system lambda value at the clock hour in dollars per megawatthour (mills per kilowatthour) or an "NA" for those hours when system lambda was not calculated.

Control Area Hourly System Lambda. For control areas where demand following is primarily performed by thermal generating units, the system lambda is derived from the economic dispatch function associated with automatic generation control performed at the controlling utility or pool control center. Excluding transmission losses, the fuel cost ($/hr) for a set of on-line and loaded thermal generating units (steam and gas turbines) is minimum [1] when each unit is loaded and operating at the same incremental fuel cost ($/MWh) [2] with the sum of the unit loadings (MW) equal to the system demand plus the net of interchange with other control areas. This single incremental cost of energy is the system lambda. System lambdas are likely recalculated many times in one clock hour. However, the indicated system lambda occurring on each clock hour would be sufficient for reporting purposes.

Provide, as a note in part IV; an explanation describing the reason for the unavailability of system lambda information and a definite plan for reporting the information with a target date. The Commission expects that all Energy Management Systems, with proper instructions, can record the system lambda being used for economic dispatch of the control area's thermal units.

Respondents should be able to report system lambda, along with the other information reported on a control area basis, that describe the operation of such areas from information that should be readily available. The Commission is not requesting Respondents to develop incremental or marginal cost (either short or long term) according to any formula. Nor is the Commission requesting "avoided cost rates" that, pursuant to PURPA 210, electric utilities file with state commissions or otherwise make available for prospective qualified facilities.

Description of Economic Dispatch. Also, provide in writing a detailed description of how Respondent calculates system lambda. For those systems that do not use an economic dispatch algorithm and do not have a system lambda, provide in writing a detail description of how control area resources are efficiently dispatched.

The existing Schedule X, Planning Area Monthly Net Energy for Load, Schedule XI Planning Area Summer and Winter Actual and Peak Demand and Annual Net Energy for Load, and Schedule XII, Planning Area Hourly Demand Data By Specified Week are replaced by the following:

Part III Schedule 2: Planning Area Hourly Demand and Forecast Summer and Winter Peak Demand and Annual Net Energy For Load

(1) Respondents must submit hourly demand data in electronic form to the Commission. Additionally, Respondents that participate in a national, regional or subregional process for consolidating and ensuring the consistency and accuracy of actual hourly and forecast demand information, may instead authorize the national, regional or subregional organization to release that information to the Commission, and to the public at the cost of reproduction, in an easily accessible electronic format, such as EEI format.

(2) If the Respondent does not participate in the development of national, regional or subregional actual and forecast demand information, it must submit its own, equivalent, demand information directly to the Commission along with this report, as follows.

Respondents must submit on a 3.5 inch diskette formatted for the DOS operating system the following data file in ASCII format: the planning area's actual hourly demand, in megawatts, for each hour of the year starting with 1 am, January 1, 1993, central standard time. The file should have 8760 records (8784 for leap years). For hours when this information is not available, enter "NA."

Also provide on the diskette a file containing the planning area's forecast summer and winter peak demand, in megawatts, and annual net energy for load, in megawatthours, for the next ten years.

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[1] Some utilities may also include variable operation and maintenance costs that they consider "dispatchable." Therefore the costs to be minimized could include a variable O&M component as well as the fuel costs.

[2] Because unit heat rates and fuel costs vary, some units may not be able to operate at the same incremental fuel cost as the other units and, thus, those units may be loaded differently.

By the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–24521 Filed 10–7–93; 8:45 am]

BILLING CODE 6717–07–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 821

[Docket No. 91N–0296]

Medical Devices; Device Tracking; Opportunity for Comments; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; opportunity for comments; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of August 16, 1993 (58 FR 43442). The document announced an opportunity for public comments on the final rule on device tracking which was also published in the **Federal Register** of August 16, 1993 (58 FR 43442). The document was published with some inadvertent editorial errors. This document corrects those errors.

FOR FURTHER INFORMATION CONTACT: Robin T. Johnson, Office of Policy (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2994.

In FR Doc. 93–19473, appearing on page 43442, in the **Federal Register** of Monday, August 16, 1993, the following corrections are made:

On page 43442, in the first column, under the caption **FOR FURTHER INFORMATION CONTACT:**, in line 3, the mail code "(HFA–84)" is corrected to read "(HFZ–84)"; and in the second column, the heading **"III. Opportunity for Comments"** is removed.

Dated: October 1, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–24783 Filed 10–7–93; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD02–93–031]

Special Local Regulations; the First Chattanooga Head Race (Tennessee River Between Mile 467.0 and 464.0)

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Special local regulations are being adopted for the First Chattanooga Head Race which will be held on the Tennessee River near Chattanooga, Tennessee on October 9, 1993. These regulations are needed to control vessel traffic in the immediate vicinity of the event. The regulations will restrict general navigation in the regulated area for the safety of spectators, participants and through traffic.

EFFECTIVE DATE: These regulations become effective from 8 a.m. to 6 p.m. local time on October 9, 1993.

FOR FURTHER INFORMATION CONTACT: LTJG D.R. Dean, Chief, Boating Affairs Branch, Second Coast Guard District, 1222 Spruce Street, St. Louis, Missouri 63103–2832. The telephone number is (314) 539–3971, fax (314) 539–2685.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of these regulations are LTJG D.R. Dean, Project Officer, Second Coast Guard District, Boating Safety Division and LCDR A.O. Denny, Project Attorney, Second Coast Guard District Legal Office.

Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. Specifically, the Coast Guard could not approve this regatta until it was too late to publish a notice of proposed rule making in advance of the event. This delay was caused by the Coast Guard's operational commitments to providing flood relief in the Upper Mississippi River basin. Until recently, personnel were not available to provide the necessary patrols for the regatta. Rather than deny approval of the event, the decision to approve was delayed.

Background and Purpose

The First Chattanooga Head Race is an event that consists of a three-mile rowing race along the south shore of the river starting at 8 a.m. on Saturday, October 9, 1993. It will be completed by 6 p.m. local time. In order to provide for the safety of spectators and participants, and for the safe passage of through traffic, the Coast Guard will restrict vessel movement in the regatta area. The river will be closed during part or all of the effective periods to all vessel traffic except participants, official regatta vessels, and patrol craft. These regulations are issued pursuant to 33 U.S.C. 1233 and 33 CFR 100.35.

Regulatory Evaluation

This regulation is not major under Executive Order 12291 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979), it will not have a significant economic impact on a substantial number of small entities, and it contains no collection of information requirements. A full regulatory analysis is unnecessary because the Coast Guard expects the impact of this regulation to be minimal due to its short duration.

Federalism Assessment

Under the principles and criteria of Executive Order 12612, this regulation does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

Under section 2.B.2.c of Commandant Instruction M16475.1B, this regulation is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Records and recordkeeping requirements, Waterways.

Temporary Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary section 100.35–T0231 is added, to read as follows:

§ 100.35–T0231 Tennessee River, Chattanooga, Tennessee.

(a) *Regulated Area.* Tennessee River from mile 467.0 to mile 464.0.

(b) *Special Local Regulations.* (1) Except for participants in the First Chattanooga Head Race, no person or

vessel may enter or remain in the regulated area without permission of the Patrol Commander.

(2) The Coast Guard Patrol Commander will be a commissioned or petty officer designated by the Commanding Officer, Marine Safety Office Paducah, Kentucky and may be contacted, during the event, on channel 16 (156.8 MHz) by the call sign "Coast Guard Patrol Commander." The Patrol Commander may:

(i) Direct the anchoring, mooring, or movement of any vessel within the regulated area,

(ii) Restrict vessel operation within the regulated area to vessels having particular operating characteristics,

(iii) Terminate the marine event or the operation of any vessel when necessary for the protection of life and property, and

(iv) Allow vessels to transit the regulated area whenever an event is not being conducted and the transit can be completed before another event begins.

(3) Coast Guard commissioned or petty officers will patrol the event on board patrol vessels which display the Coast Guard Ensign. If radio or other voice communications are not available to communicate with a vessel, they will use a series of sharp, short blasts by whistle or horn to signal the operator of any vessel in the vicinity of the regulated area to stop. When signaled, the operator of any vessel in the immediate vicinity of the regulated area shall stop the vessel immediately and shall proceed as directed.

(4) Vessels desiring to transit the regulated area may do so only with the prior approval and direction of the Patrol Commander.

(5) The Patrol Commander will terminate enforcement of the regulations at the conclusion of the marine event if earlier than the announced termination time.

(c) *Effective Dates.* These regulations become effective from 8 a.m. to 6 p.m. local time on October 9, 1993.

Dated: September 29, 1993.

F.M. Chliszczyk,

Captain, U.S. Coast Guard, Commander, Second Coast Guard District, Acting.

[FR Doc. 93–24808 Filed 10–7–93; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD 09–93–006]

Drawbridge Operation Regulations, Manistee River

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Michigan Department of Transportation and the City of Manistee, Michigan, the Coast Guard is changing the operating regulations governing the US–31 highway bridge, mile 1.14, the Maple Street highway bridge, mile 1.1, and the Chessie System Railroad bridge, mile 1.5 across the Manistee River in Manistee, Michigan. The new regulations extend the periods of time when bridgetenders are not required to be in constant attendance at the bridges. This action will relieve the bridge owners of the burden of having bridgetenders constantly in attendance at the bridges and will still provide for the reasonable needs of navigation.

EFFECTIVE DATE: This rule is effective on November 8, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Robert W. Bloom, Jr., Chief, Bridge Branch, telephone (216) 522–3993.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Mr. Fred H. Mieser, Project Manager, and Lieutenant Karen E. Lloyd, Project Counsel, Ninth Coast Guard District.

Regulatory History

On Thursday, July 15, 1993, the Coast Guard published a notice of proposed rulemaking entitled Drawbridge Operation Regulations in the **Federal Register** (58 FR 38102). In addition, the Commander, Ninth Coast Guard District, published the proposal in a Public Notice dated July 6, 1993. The Coast Guard received one letter commenting on the proposal. A public hearing was not requested and one was not held.

Background and Purpose

Presently, the Maple Street, US–31 highway, and Chessie System Railroad bridges are not required to have bridgetenders in constant attendance at the bridges from January 1 through March 31, and the draws need not open unless notice is given to the bridge owners at least 24 hours in advance of a vessel's time of intended passage through the draws.

The owners of the highway bridges requested that the present period of time when bridgetenders are not required to be in constant attendance at the bridges be extended, allowing for the removal of bridgetenders, from November 1 through April 30. In addition, the owners requested the removal of bridgetenders between the hours of 10 p.m. and 6 a.m., seven days a week, from May 1 through October 31. Both requests will reduce the burden to the bridge owners of the requirement to have bridgetenders in constant attendance at the bridges during periods of time when there are few, if any, requests for bridge openings. The few vessels that do require the bridges to open during the unattended periods from May 1 through October 31, between the hours of 10 p.m. and 6 a.m., will be accommodated by giving a two (2) hours advance notice, and, for the unattended period from November 1 through April 30, by giving a 24 hours advance notice.

Discussion of Comments

One letter was received in response to the Public Notice. The response was from a representative of Great Lakes commercial shipping interests who stated that their member companies will interpose no objection to the proposed change to the operating regulations as long as the regulations could be rescinded should the bridge owners not comply with the new regulations by not having bridgetenders on duty at the bridges after being notified of vessel's time of intended passage through the draw, thereby causing delays to vessel traffic. The Commander, Ninth Coast Guard District, has the authority to rescind drawbridge operations regulations, and could do so after a thorough review of any documentation that would be received which would support a need to rescind such regulations.

No changes were made to the final rule as a result of comments from the Notice of Proposed Rulemaking or Public Notice.

Regulatory Evaluation

These regulations are not major under Executive Order 12291 and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a Regulatory Evaluation is unnecessary. We conclude this because the additional periods of time when the bridges would be unattended are times when there are few requests to have the bridges opened for the passage of a vessel.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will not have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify

as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Since vessels could navigate the Manistee River by giving an advance notice during the periods of time the bridges are unattended, and the impact is expected to be so minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2.g.5 of Commandant Instruction M16475.1B, promulgation of operating requirements or procedures for drawbridges is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.637 is revised to read as follows:

§ 117.637 Manistee River.

(a) The draws of the Maple Street bridge, mile 1.1, and US–31 highway bridge, mile 1.4, both at Manistee, shall operate as follows:

(1) From May 1 through October 31 from 6 a.m. to 10 p.m., the bridges shall open on signal. From 10 p.m. to 6 a.m., the bridges need not open unless notice is given at least two hours in advance of a vessel's time of intended passage through the draws.

(2) From November 1 through April 30, the bridges need not open unless notice is given at least 24 hours in advance of a vessel's time of intended passage through the draws.

(b) The Chessie System railroad bridge, mile 1.5, at Manistee, shall open on signal from May 1 to October 31. From November 1 to April 30, the bridge need not open unless notice is given at least 24 hours in advance of a vessel's time of intended passage through the draw.

Dated: September 28, 1993.

W.R. Wilkins,

Captain, U.S. Coast Guard, Commander, Ninth Coast Guard District, Acting.

[FR Doc. 93–24810 Filed 10–7–93; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CGD01–93–001]

Safety Zone; Boston Inner Harbor, Boston, MA; Correction

AGENCY: Coast Guard, DOT.

ACTION: Corrections to final rule.

SUMMARY: This document contains corrections to the final regulation [CGD01–93–001] which was published Tuesday, September 14, 1993, (58 FR 47990). The regulation related to a permanent safety zone around the USS CASSIN YOUNG (DD–793), 33 CFR 165.112.

EFFECTIVE DATE: This regulation becomes effective September 28, 1993.

FOR FURTHER INFORMATION CONTACT: MST1 Daniel J. Dugery, USCG Marine Safety Office Boston, at (617) 223–3000.

SUPPLEMENTARY INFORMATION:

Background

The final regulation that is the subject of this correction, is a permanent safety zone around the USS CASSIN YOUNG (DD–793), a 376 foot World War II Fletcher Class destroyer, operated by the National Park Service in Boston, MA, to protect the vessel whenever it is underway in Boston Harbor.

Need for Correction

As published, the final regulation contains an error in the **EFFECTIVE DATE** section which needs to be corrected.

Correction of Publication

Accordingly, the publication on September 14, 1993 of the final regulation [CGD01–93–001] is corrected as follows:

§ 165.112 [Corrected]

Paragraph 1 on page 47990, in the second column, under the heading **EFFECTIVE DATE**, the line "This regulation becomes effective October 14, 1993." is corrected to read "This regulation becomes effective October 8, 1993."

Dated: September 28, 1993.

G.W. Abrams,

Captain, U.S. Coast Guard, Captain of the Port, Boston, Massachusetts.

[FR Doc. 93–24809 Filed 10–7–93; 8:45 am]

BILLING CODE 4910–14–M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 501, 503, 507, 508, 509, 511, 514, 515, 519, 522, 525, 528, 529, 532, 536, 542, 543, 552 and 570

[APD 2800.12A, CHGE 47]

General Services Administration Acquisition Regulation; Regulation Review Project

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is conducting a review of its internal acquisition regulation/directive system. Consistent with the requirements of Executive Order 12681, "The Elimination of One-Half of Executive Branch Internal Regulations," GSA will, among other things, streamline its directive system, and eliminate unnecessary, unproductive, duplicative and burdensome requirements. This change implements our first phase of the regulatory review effort by deleting more than sixty provisions of the GSAR which were initially found to be appropriate for elimination. The next phase of GSA's regulatory review effort will further reduce internal regulations in order to improve productivity, streamline operations and improve customer service. Future changes will also provide greater flexibility for contracting officials to exercise discretion, encourage innovation, place decisionmaking authority at the lowest level possible, and minimize paperwork burdens on contractors and contracting officials.

EFFECTIVE DATE: October 15, 1993.

FOR FURTHER INFORMATION CONTACT: Ida Ustad, Office of GSA Acquisition Policy (202) 501–1224.

SUPPLEMENTARY INFORMATION:

A. Public Comments

This rule was not published in the **Federal Register** for public comment because it is not a significant revision as defined in FAR 1.501–1.

B. Executive Order 12291

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this rule.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply because this rule is not a significant revision as defined in FAR 1.501–1 and, therefore, was not required to be published for public comment.

D. Paperwork Reduction Act

This rule does not contain any recordkeeping or information collection requirements that require the approval of OMB under 44 U.S.C. 3501 *et seq.*

List of Subjects in 48 CFR Parts 501, 503, 507, 508, 509, 511, 514, 515, 519, 522, 525, 528, 529, 532, 536, 542, 543, 552 and 570

Government procurement.

Accordingly, 48 CFR parts 501, 503, 507, 508, 509, 511, 514, 515, 519, 522, 525, 528, 529, 532, 536, 542, 543, 552 and 570 are amended to read as follows:

1. The authority citation for 48 CFR parts 501, 503, 507, 508, 509, 511, 514, 515, 519, 522, 525, 528, 529, 532, 536, 542, 543, 552 and 570 continues to read as follows:

Authority: 40 U.S.C. 486(c).

PART 501—GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATION SYSTEM

2. Section 501.105 is amended by removing reference to 507.305 and 552.207–70 and related OMB Control Numbers.

501.105 OMB Approval under the Paperwork Reduction Act.

3. Sections 501.670, 501.670–2, 501.670–3, 501.670–4, 501.670–5 and 501.670–6 are removed.

501.670 [Removed]

501.670–1 [Removed]

501.670–2 [Removed]

501.670–3 [Removed]

501.670–4 [Removed]

501.670–5 [Removed]

501.670–6 [Removed]

501.704–70 [Amended]

4. Section 501.704–70 is amended by removing and reserving paragraph (b)(2).

PART 503—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

5. Section 503.104–8 is revised to read as follows:

503.104–8 Knowing violations, duty to inquire, and ethics advisory opinions.

If a contracting officer has not been appointed, the contracting director shall serve as the Administrator's designee and respond to inquiries under FAR 3.104–8(d) and (e) regarding proprietary and source selection information.

PART 507—ACQUISITION PLANNING

507.305 [Removed]

6. Section 507.305 is removed.

PART 508—REQUIRED SOURCES OF SUPPLIES AND SERVICES

7. Section 508.307–1 is revised to read as follows:

508.307–1 General.

GSA contracting officers are not required to submit proposed utility contracts that meet the criteria at FAR 8.307–1 to the Public Utilities Division (PPU) for review.

508.705–72 [Removed]

8. Section 508.705–72 is removed.

PART 509—CONTRACTOR QUALIFICATIONS

509.106–1 [Removed]

9. Section 509.106–1 is removed.

509.405 [Removed]

10. Section 509.405 is removed.

PART 511—ACQUISITION AND DISTRIBUTION OF COMMERCIAL PRODUCTS

511.001 [Removed]

11. Section 511.001 is removed.

PART 514—SEALED BIDDING

514.201–72 [Removed]

12. Section 514.201–72 is removed.

514.208 [Removed]

13. Section 514.208 is removed.

14. Section 514.402–1 is amended by revising paragraph (i) to read as follows:

514.402–1 Unclassified Bids.

* * * * *

(i) Negotiable instruments submitted as bid guarantees to meet solicitation requirements must be forwarded by the bid opening official to the Finance Division in accordance with procedures established by the Chief Financial Officer. When award is made, the solicitation is cancelled, or all bids are rejected, the contracting officer shall direct the Finance Division to refund the amount of the bid guarantee to the unsuccessful bidder(s). Bid guarantees may be returned before award when a bidder requests the guarantee be returned and the bidder is not in contention for the award. Other forms of bid guarantees (e.g., bid bonds, letters of credit, corporate and individual sureties, etc.), must be retained by the contracting officer and included in the contract file.

* * * * *

15. Section 514.404–1 is amended by revising paragraph (b) to read as follows:

514.404–1 Cancellation of invitations after opening.

* * * * *

(b) *Extension of time for bid acceptance.* Requests for time extensions may be made using GSA Form 2981 and must specify a period reasonable under the circumstances.

514.407–2 [Removed]

16. Section 514.407–2 is removed.

PART 515—CONTRACTING BY NEGOTIATION

515.170 [Removed]

17. Section 515.170 is removed.

18. Section 515.402 is revised to read as follows:

515.402 General.

Contracting officers may authorize facsimile proposals (see FAR 15.407(j)) after considering the factors outlined in FAR 15.402(i), provided that facsimile equipment is available in the office designated to receive proposals, procedures and controls have been established for receiving and safeguarding incoming proposals.

515.403 [Removed]

19. Section 515.403 is removed.

20. Section 515.405–1 is revised to read as follows:

515.405–1 General.

Solicitations for information or planning purposes must be approved by the Chief of the Contracting Office (See 502.101).

515.506–1 [Removed]

21. Section 515.506–1 is removed.

22. Section 515.414–70 is amended by revising paragraph (a) to read as follows:

515.414–70 GSA Forms.

(a) The GSA Form 1602, Notice Concerning Solicitation, may be used to (1) describe the type of contract, the duration of the contract, and the type of

supplies or services being procured; (2) direct the attention of prospective offerors to special requirements that, if overlooked, may result in rejection of the offer; (3) highlight significant changes from previous solicitations covering the same supplies or service; and (4) include other special notices as appropriate. The GSA Form 1602 is not part of the solicitation or resulting contract.

* * * * *

PART 519—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

23. Section 519.705–5 is amended by revising paragraph (d) to read as follows:

519.705–5 Awards involving subcontracting plans.

* * * * *

(d) When the contractor submits a commercial products plan, the contracting officer shall transmit copies of the Standard Form 295, Summary Subcontract Report, to the contractor at the time of contract award. (See 519.770–1(b)(2) for exception.) A letter substantially as follows must be used for this purpose:

Name _____
Address _____
City, State, Zip Code _____

Re: Subcontracting Plan Reports
Contract No. _____

Dear _____:

Your commercial products plan, submitted under the Small Business and Small Disadvantaged Business Subcontracting Plan clause of your contract, has been approved by *(name, address, and telephone number of approving official)*. The clause also requires you to submit subcontracting reports on Standard Form (SF) 295, Summary Subcontract Report.

The SF 295 is an annual report and is due on or before October 30th of each year. The reporting period is October 1–September 30, i.e., the Government fiscal year. The report should summarize subcontracting activity under plans for commercial products in effect during the reporting period.

Please note the requirement on the SF 295 to report your subcontracting with women-owned small business concerns.

Forward this report to: (*address of contracting office administering the contract*); and send a copy to the GSA Office of Small and Disadvantaged Business Utilization (AU), 18th and F Streets, NW, Washington, DC 20405.

Note: Contractors are required to submit SF 295 reports to the Contracting Officer who approved the commercial products plan, only. If the contract for which the commercial products plan was submitted and approved is assigned to an Administrative Contracting Officer (ACO), then the reports are submitted to the ACO.

SF 295 report forms are enclosed.

Sincerely,
Contracting Officer _____
Enclosure (SF 295)

24. Section 519.705–6 is amended by revising paragraph (a) and removing paragraph (c) to read as follows:

519.705–6 Postaward responsibilities of the contracting officer.

(a) In addition to the requirements of FAR 19.705–6, contracting officers shall notify the SBTA of each contract award or contract modification exceeding $500,000 ($1 million for construction) that contains a subcontracting plan within 5 work days after award. The notice of award must contain the following information:

(1) Contractor's name, address, phone number.

(2) Subcontracting plan administrator's name, address, phone number.

(3) Contract number.

(4) Place of performance.

(5) Dollar amount of contract award.

(6) Period of contract performance.

(7) Description of contract items.

(8) Contracting officer's name, address, phone number.

(9) Administrative contracting office address, phone number.

(10) Type of plan (individual or commercial products).

* * * * *

25. Section 519.770–1 is amended by revising paragraph (b)(2)(i) to read as follows:

519.770–1 Report forms.

* * * * *

(b) * * *

(2) * * *

(i) Contractors shall submit the SF 295 reports to the contracting office administering the contract and a copy to AU. *NOTE:* Contractors are required to submit SF 295 reports to the Contracting Officer who approved the commercial products plan, only. If the contract for which the commercial products plan was submitted and approved is assigned to an Administrative Contracting Officer (ACO), then the reports are submitted to the ACO.

* * * * *

26. Section 519.770–3 is amended by revising paragraph (a) to read as follows:

519.770–3 Reporting on contractual actions under Section 211 of Public Law 95–507.

(a) *Contracting office reporting requirements.* A quarterly report of the number and dollar value of contracts and modifications awarded in excess of $500,000 ($1 million for construction) that require subcontracting plans, or a written determination that no subcontracting opportunities exist, must be prepared by contracting offices and submitted to the SBTA by the 10th calendar day after the end of the quarter. Report Control Symbol ADM 64 is assigned to this report. Negative reports are required. The SBTA will forward the reports to AU by the 20th calendar day following the end of the quarter.

* * * * *

PART 522—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITION

522.407 [Removed]

27. Section 522.407 is removed.

PART 525—FOREIGN ACQUISITION

Subpart 525.10 [Removed]

28. Subpart 525.10 is removed.

PART 528—BONDS AND INSURANCE

528.102–3 [Removed]

29. Section 528.102–3 is removed.

528.106–70 [Removed]

30. Section 528.106–70 is removed.

31. Section 528.202 is revised to read as follows:

528.202 Acceptability of corporate sureties.

(a) Corporate surety bonds must be manually signed by the Attorney-in-Fact or officer of the surety company and the corporate seal affixed. Failure of the surety to affix the corporate seal may be waived as a minor informality. (See B–184120, July 2, 1975, 75–2 CPD 9.)

(b) A contractor submitting a performance or payment bond executed by an unacceptable corporate surety in satisfaction of a performance or payment bond requirement may be permitted to substitute an acceptable surety for a surety previously determined to be unacceptable.

PART 529—TAXES

32. Section 529.401–70 is revised to read as follows:

529.401–70 Small purchases.

The contracting officer shall insert the clause at 552.229–70, Federal, State, and Local Taxes, in small purchases, except small purchase of utility services.

529.401–71 [Removed]

33. Section 529.401–71 is removed.

PART 532—CONTRACT FINANCING

532.803 [Removed]

34. Section 532.803 is removed.

PART 536—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

35. Section 536.201 is revised to read as follows:

536.201 Evaluation of contractor performance.

(a) The construction activity shall prepare a performance report for each construction contract of $25,000 or more, and each construction contract where any element of performance was unsatisfactory or outstanding.

(b) Each regional construction activity shall establish an evaluation report file with procedures for maintaining alphabetically the evaluation reports, for cross referencing all names under which a contractor does business with GSA, and for ensuring that fully qualified personnel possessing the knowledge of the contractor's performance prepare and review the evaluation reports.

36. Section 536.203 is revised to read as follows:

536.203 Government estimate of construction cost.

(a) A copy of the independent Government estimate must be sealed in an envelope and submitted to the contracting officer before the date and time for bid opening or the date for receipt of proposals. (See paragraphs (b) and (c) of this section.)

(b) If the procurement is by sealed bidding, the sealed copy of the Government estimate must be stored with the bids received until bid opening. Before releasing an amendment to a solicitation that may affect the price, a revised sealed Government estimate must be stored with the bids until bid opening. After the bids are read and recorded, the sealed Government estimate will be opened and retained with abstract of offers (See Optional Forms 1419 and 1419A). However, the Government's estimate must not be disclosed until after award. Immediately after award the Government estimate must be recorded on the abstract of offers as the Independent Government Estimate.

(c) If the procurement is by negotiation, the sealed copy of the Government estimate must be stored with the proposals until the closing time for receipt of proposals. Cost figures in the Government estimate may be disclosed during negotiation, but only to the extent considered necessary for arriving at a fair and reasonable price, provided that the overall amount of the Government estimate is not disclosed before award. Before the release of a modification to the solicitation which may affect price, a revised Government estimate must be prepared, sealed, and stored, with the proposals until closing time for proposals. After award, the independent Government estimated price may be revealed, upon request, to those firms or individuals who submitted proposals.

(d) The Government estimate must be used to evaluate offers, as a guide in conducting contract negotiations or negotiations of contract modifications, and as a tool for determining the reasonableness of prices.

536.206 [Removed]

37. Section 536.206 is removed.

536.303 [Removed]

38. Section 536.303 is removed.

39. Section 536.303–70 is revised to read as follows:

536.303–70 Bids that include alternates.

(a) The base bid must include all features that are essential to a sound and adequate building design. However, if it appears that funds available for a project may be insufficient to include all desired features in the base bid, the contracting officer may issue a solicitation for a base bid and include one or more alternates in the order of priority. Alternates may be used only when they are clearly justified and should involve substantial amounts of work in relation to the base bid. Their use must be limited and should involve only "add" alternates.

(b) The language used in soliciting alternates must be approved in writing by counsel.

(c) Before opening bids that include alternates, the contracting officer shall determine and record in the contract file the amount of funds available for the project. The amount recorded must be announced at the beginning of the bid opening and must be the controlling factor in determining the low bidder. This amount may be increased later when determining the alternate items to be awarded to the low bidder, provided that the award amount of the base bid plus the combination of alternate items do not exceed the amount offered by any other responsible bidder whose bid conforms to the solicitation for the base bid and the same combination of alternate items.

536.303–71 [Amended]

40. Section 536.303–71 is amended by removing paragraph (g).

536.303–72 [Amended]

41. Section 536.303–72 is amended by removing paragraph (c) and redesignating paragraph (d) as paragraph (c).

PART 542—CONTRACT ADMINISTRATION

42. Section 542.302 is amended by removing paragraph (c) and redesignating paragraph (d) as paragraph (c).

542.302 [Amended]

43. Section 543.202 is revised to read as follows:

543.202 Authority to issue change orders.

(a) A contracting officer's representative (COR) for a construction contract that has been issued a warrant under 501.603–70, may be authorized to issue change orders. (See 542.302.) Such change order authority may be exercised on a contract-by-contract basis by the contracting officer's written authorization. The contracting officer may further limit the authorization, e.g., to lower dollar amounts, to emergency situations, etc. In addition, the contracting officer's written authorization must instruct the COR to avoid personally performing all of the following tasks for a single change order: (1) Determining the need for change, (2) Preparing the Government's cost estimate, (3) Conducting negotiations, (4) Issuing the change order and (5) Inspecting the work. The contracting officer shall further instruct the COR to submit change orders to a designated official for review before issuance (for price-to-be-determined-later change orders before definitization) whenever all of these activities are personally performed. The contracting officer may personally review change orders or may designate the COR's immediate supervisor or a higher-level official within the organization to review change orders. To the maximum extent possible, the same individual should review change orders issued under a particular contract.

(b) Change orders should be issued after coordination as appropriate, with counsel, quality control, finance, audit or other technical personnel.

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

552.207–70 [Removed]

44. Section 552.207–70 is removed.

552.222–82 [Removed]

45. Section 552.222–82 is removed.

46. Section 552.228–70 is amended by revising the introductory paragraph to read as follows:

552.228–70 Bid Guarantee and Bonds.

As prescribed in 528.101–3(a) insert a clause substantially the same as follows:

* * * * *

47. Section 570–208–1 is amended by removing paragraph (c).

Dated: September 24, 1993.

Richard H. Hopf, III,

Associate Administrator for Acquisition Policy.

[FR Doc. 93–24363 Filed 10–7–93; 8:45 am]

BILLING CODE 6820–61–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1816 and 1852

NASA FAR Supplement Coverage on Cost-Plus-Award-Fee Contracts

AGENCY: Office of Procurement, Procurement Policy Division, National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: NASA has amended the NASA FAR Supplement (NFS) with more extensive coverage on cost-plus-award-fee (CPAF) contracts policy. Consideration of a variety of types of contracts before selecting CPAF is emphasized. Cost control must be emphasized in all award fee evaluations. Use of base fees in CPAF contracts is restricted. On other than service contracts, all award fee is earned based on the final, comprehensiye rating. "Roll-over" of fee on service contracts is eliminated. Six months is established as a standard evaluation period. A NASA-wide, simplified scoring system is created. Both positive and negative performance incentives are to be required on all hardware contracts over $25 million. NFS CPAF contract clauses have also been amended to reflect the new CPAF coverage.

EFFECTIVE DATE: This rule is effective October 8, 1993.

FOR FURTHER INFORMATION CONTACT: Ms. Anne Guenther (Code HC), Telephone (202) 358–0003.

SUPPLEMENTARY INFORMATION:

Background

Section 401 of the fiscal year 1993 NASA Authorization Act (Pub. L. 102–588) directs NASA to assess the allocation of risk between the Agency and its contractors in order to identify options for more effectively allocating risk on future contracts. This policy on the use of CPAF contracts, which was developed as a result of a initiative begun in August 1991, will implement that direction.

Proposed CPAF coverage was published in the **Federal Register** for public comment on April 14, 1993. Eighteen responses were received. Numerous comments were received which opposed (i) elimination of base fee and roll-over on service contracts, (ii) interim evaluations on contracts other than for services, (iii) the 80 percent cap on provisional interim fee payments, (iv) the requirement to underrun cost and achieve a score of at least 80 on all factors except cost to be rewarded for the underrun, (v) mandating less than the maximum rating for achieving on-target cost, (vi) negative performance incentives that are not limited to earned award fee, and (vii) no incentive amount earned at the standard performance level. As a result of all of the comments received, changes were made to the draft coverage to correct ambiguities or add clarifying language. However, no substantive changes were made.

In addition to the revised CPAF coverage, this notice includes four NASA FAR Supplement contract clauses for use in CPAF contracts. These clauses reflect the new CPAF coverage.

Availability of NASA FAR Supplement

The NASA FAR Supplement, of which this proposed coverage will become a part, is codified in 48 CFR, chapter 18, and is available in its entirety on a subscription basis from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. Cite GPO Subscription Stock Number 933–003–00000–1. It is not distributed to the public, whether in whole or in part, directly from NASA.

Regulatory Flexibility Act

NASA certifies that this final rule will not have significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601, et seq.) because it applies to a very limited number of contracts, which are generally not used with small entities; in fact, the policy will reduce even further the possibility that CPAF contracts will be used with small entities.

Paperwork Reduction Act

This final rule does not impose any reporting or recordkeeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 48 CFR 1816 and 1852

Government procurement.

Deidre A. Lee,

Associate Administrator for Procurement.

Accordingly, 48 CFR parts 1816 and 1852 are amended as follows:

1. The authority citation for 48 CFR parts 1816 and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1816—TYPES OF CONTRACTS

2. Section 1816.404 is revised to read as follows:

1816.404 Cost-reimbursement incentive contracts.

1816.404–2 Cost-plus-award-fee (CPAF) contracts.

1816.404–270 Approval of CPAF contracts.

(a) Use of a cost-plus-award-fee (CPAF) contract shall be approved in writing by the procurement officer. The procurement officer's approval shall include a discussion of the other types of contracts considered and shall indicate why a CPAF contract is the appropriate choice.

(b) Normally, CPAF contracts are only used on contracts with a total estimated cost and few greater than $1 million per year. The procurement officer may authorize use of a CPAF contract for lower-valued acquisitions, but should do so only in exceptional situations, such as contract requirements having direct health or safety impacts, where the judgmental assessment of the quality of contractor performance is critical.

1816.404–271 Base fee.

(a) A base fee shall not be used on CPAF service contracts for which the periodic award fee evaluations are final (1816.404–273(a)). Base fee normally shall not be used in other contracts, such as study, design, or hardware. However, the procurement officer may authorize the use of a base fee for these contracts by making a written determination that such use is in the best interest of the Government. In such cases, a base fee of no more than 3 percent of the estimated contract cost may be included in the contract.

(b) When a base fee is authorized for use in a CPAF contract, it shall be paid only if the final award fee evaluation is "satisfactory" or better. (See 1816.404–273 and 1816.404–275 for information on final evaluations and evaluation rating categories, respectively.) Pending final evaluation, the base fee may be paid during the life of the contract at defined intervals on a provisional basis. If the final award fee evaluation is

"poor/unsatisfactory," all provisional base fee payments shall be refunded to the Government.

1816.404–272 Award fee evaluation periods.

(a) Award fee evaluation periods shall be at least 6 months in length. When appropriate, the procurement officer may authorize shorter evaluation periods after ensuring that the additional administrative costs associated with the shorter periods are balanced by benefits accruing to the Government. In some cases, such as developmental contracts with defined performance milestones (e.g., Preliminary Design Review, Critical Design Review, initial system test), the procurement officer may authorize evaluation periods at conclusion of the milestones rather than calendar dates, or in combination with calendar dates. In no case, however, shall an evaluation period be longer than 12 months.

(b) A portion of the total available award fee on a CPAF contract shall be allocated to each of the evaluation periods. This allocation may result in either an equal or unequal distribution of fee among the evaluation periods. The contracting officer should consider the nature of each contract and the incentive effects of fee distribution in determining the appropriate allocation structure. Allocation of fee on contracts for which periodic award fee evaluations are interim is for provisional fee payment purposes only. See 1816.404–273 (b) and (c).

1816.404–273 Award fee evaluations.

(a) Award fee evaluations are either interim or final. On service contracts where the contract deliverable is the performance of the service over any given time period, contractor performance is definitively measurable at each evaluation period. In these cases, all evaluations are final, and the contractor keeps the fee earned in any period regardless of the evaluations of subsequent periods. Unearned award fee in any given period in a service contract is lost and shall not be carried forward, or "rolled-over," into subsequent periods.

(b) On other contracts such as study, design, or hardware, where the true quality of contractor performance cannot be measured until the end of the contract, only the last evaluation is final. At that point, the total contract award fee pool is available, and the contractor's total performance is evaluated against the award fee plan to determine total earned award fee. Interim evaluations are also done to monitor performance prior to contract completion and provide feedback to the contractor on the Government's assessment of the quality of its performance. Interim evaluations are also used to establish the basis for making professional award fee payments.

(c) Provisional award fee payments may be included in the contract and should be negotiated on a case-by-case basis. For service contracts, provisional payments may be made in amounts up to 80 percent of the current period's available amount. For other contracts, the amount of the provisional award fee payment is determined by applying the lesser of the interim evaluation score (see 1816.404–275) or 80 percent of the fee allocated to that period. The provisional award fee payments are superseded by the fee determination made in the final evaluation at contract completion. The Government will then pay the contractor, or the contractor will refund to the Government, the difference between the final award fee determination and the cumulative provisional fee payment.

(d) The Fee Determination Official's rating for both interim and final evaluations will be provided to the contractor within 45 calendar days of the end of the period being evaluated. Any fee, provisional or final, due the contractor will be paid no later than 60 calendar days after the end of the period being evaluated.

1816.404–274 Award fee evaluation factors.

(a) Evaluation factors will be developed by the contracting officer based upon the characteristics of an individual procurement. Normally, technical and schedule considerations will be included in all CPAF contracts as evaluation factors.

(b) Cost control shall be included as an evaluation factor in all CPAF contracts. When explicit evaluation factor weightings are used, cost control shall be no less than 25 percent of the total fee, excluding any base fee. When explicit weightings are not used (which should only occur on service contracts), cost control shall be a substantial factor in the performance evaluation plan. The predominant consideration of the cost control evaluation should be an objective measurement of the contractor's performance against the negotiated estimated cost of the contract. This estimated cost may include the value of undefinitized change orders when appropriate.

(c) In rare circumstances, contract costs may increase for reasons outside the contractor's control and for which the contractor is not entitled to an equitable adjustment. One example is a weather-related launch delay on a launch support contract. The Government shall take such situations into consideration when evaluating contractor cost control.

(d) Emphasis on cost control should be balanced against other performance requirement objectives. The contractor should not be incentivized to pursue cost control to the point that overall performance is significantly degraded. For example, incentivizing an underrun that results in direct negative impacts on technical performance, safety, or other critical contract objectives is both undesirable and counterproductive. Evaluation of cost control shall conform to the following guidelines:

(1) Normally, the contractor should be given a score of 0 for cost control when there is a significant overrun within its control. However, the contractor may receive higher scores for cost control if the overrun is insignificant. Scores should decrease sharply as the size of the overrun increases. In any evaluation of contractor overrun performance, the Government shall consider the reasons for the overrun and assess the extent and effectiveness of the contractor's efforts to control or mitigate the overrun.

(2) The contractor should normally be rewarded for an underrun within its control, up to the maximum score allocated for cost control, provided the average numerical rating for all other award fee evaluation factors is 81 or greater. See 1816.404–275 for information on numerical scoring. An underrun shall be rewarded as if the contractor has met the estimated cost of the contract (see 1816.404–274(d)(3)) when the average numerical rating for all other factors is less than 81 but greater than 60.

(3) The contractor should be rewarded for meeting the estimated cost of the contract, but not to the maximum score allocated for cost control, to the degree that the contractor has prudently managed costs while meeting contract requirements. No award shall be given in this circumstance unless the average numerical rating for all other award fee evaluation factors is 61 or greater.

(e) Only the award fee performance evaluation factors set forth in the award fee plan shall be used to determine award fee scores. The Government may unilaterally modify the award fee performance evaluation factors and performance evaluation areas applicable to the evaluation period. The contracting officer shall notify the contractor in writing of any such changes prior to the start of the relevant evaluation period.

1816.404–275 Award fee evaluation scoring.

(a) A scoring system of 0–100 shall be used for all award fee ratings. Award fee earned is determined by applying the numerical score to the award fee pool. For example, a score of 85 yields an award fee of 85 percent of the award fee pool. No award fee shall be paid unless the total score is 61 or greater.

(b) The following standard adjectival ratings and the associated numerical scores shall be used on all award fee contracts.

(1) Excellent (100–91): Of exceptional merit; exemplary performance in a timely, efficient, and economical manner; very minor (if any) deficiencies with no adverse effect on overall performance.

(2) Very good (90–81): Very effective performance; fully responsive to contract requirements accomplished in a timely, efficient, and economical manner for the most part; only minor deficiencies.

(3) Good (80–71): Effective performance; fully responsive to contract requirements; reportable deficiencies, but with little identifiable effect on overall performance.

(4) Satisfactory (70–61): Meets or slightly exceeds minimum acceptable standards; adequate results; reportable deficiencies with identifiable, but not substantial, effects on overall performance.

(5) Poor/Unsatisfactory (60 and below): Does not meet minimum acceptable standards in one or more areas; remedial action required in one or more areas; deficiencies in one or more areas which adversely affect overall performance.

(c) As a benchmark for evaluation, in order to be rated "Excellent," the contractor must be under cost, on or ahead of schedule, and have provided excellent technical performance.

(d) A scoring system appropriate for the circumstances of the individual contract requirement should be developed. Weighted scoring is recommended. In this system, each evaluation factor (e.g., technical, schedule, cost control) is assigned a specific percentage weighting with the cumulative weightings of all factors totalling 100. During the award fee evaluation, each factor is scored from 0–100 according to ratings defined in 1816.404–275(b). The numerical score for each factor is then multiplied by the weighting for that factor to determine the weighted score. For example, if the technical factor has a weighting of 60 percent and the numerical score for that factor is 80, the weighted technical score is 48 (80×60%). The weighted scores for each evaluation factor are then added to determine the total award fee score.

1816.404–276 Performance incentives on CPAF hardware contracts.

(a) A performance incentive shall be included in all CPAF contracts where the primary deliverable(s) is (are) hardware and where total estimated cost and fee is greater than $25 million. Any exception to this requirement shall be approved in writing by the Center Director. Performance incentives may be included in CPAF hardware contracts valued under $25 million at the discretion of the procurement officer. Performance incentives, which are objective and measure hardware performance after delivery and acceptance, are separate from award fee, which is subjective and measures contractor performance. The final award fee rating is final and cannot be retroactively changed.

(b) When a performance incentive is used, it shall be structured to be both positive and negative based on hardware performance after delivery and acceptance. In doing so, the contract shall establish a standard level of performance based on the salient hardware performance requirement. This standard performance level is normally the contract's minimum performance requirement. No incentive amount is earned at this standard performance level. Discrete units of measurement based on the same performance parameter shall be identified for performance both above and below the standard. Specific incentive amounts shall be associated with each performance level from maximum beneficial performance (maximum positive incentive) to minimal beneficial performance or total failure (maximum negative incentive) in accordance with 1816.404–276(g)(3). The relationship between any given incentive, both positive and negative, and its associated unit of measurement should reflect the value to the Government of that level of hardware performance. The contractor should not be rewarded for above-standard performance levels that are of no benefit to the Government.

(c) The final calculation of the positive or negative performance incentive shall be done when performance, as defined in the contract, ceases or when the maximum positive incentive is reached. When the performance is below the standard established in the contract, the Government shall calculate the amount due and the contractor shall pay the Government that amount. When performance exceeds the standard, the contractor may request payment of the incentive amount associated with a given level of performance, provided that such payments shall not be more frequent than monthly. When performance ceases or when the maximum positive incentive is reached, the Government shall calculate the final performance incentive earned and unpaid and promptly remit it to the contractor. The exclusion at FAR 16.405(e)(3) does not apply to decisions made as to the amount(s) of positive or negative incentive.

(d) One example of how a performance incentive would work is on a contract requiring delivery of a spacecraft. In this case, the performance incentive unit of measurement could be useful months in orbit. If 12 months is the expected performance level, the 12th month could be identified as standard performance for which no incentive is earned. If 24 months is the maximum useful life for the spacecraft relative to the technical requirements, the 24th month could be identified as the maximum performance level at which the contractor would earn the maximum positive incentive. Interim measures of spacecraft life from 12 to 24 months would then be identified with fees from $0 to the maximum positive incentive. The amounts associated with these interim measures should correspond to the relative value to the Government of each additional month in orbit. A similar scale would be established for the negative incentive ranging from the 12th month for standard performance, $0, to total and immediate system failure at the start of performance, the maximum negative incentive.

(e) When the deliverable hardware lends itself to multiple, meaningful measures of performance, multiple performance incentives may be established. In addition, when the contract requires the sequential delivery of several hardware items (e.g., multiple satellites), separate performance incentive structures may be established to parallel the sequential delivery and use of the deliverables. In either case, the amounts of the maximum performance incentives and the total potential award fee, including any base fee, shall be in accordance with the structure and limitations specified in 1816.404–276(g).

(f) The definitions of standard performance, maximum positive and negative performance, and the units of measurement may be negotiated and will vary from contract to contract. Care must be taken, however, to ensure that the performance incentive structure is

both reflective of the value to the Government of the various performance levels and a meaningful incentive to the contractor.

(g) In determining the value of the maximum performance incentive available under the contract, the contracting officer shall follow the following rules.

(1) The sum of the total potential award fee (including any base fees) plus the maximum positive performance incentive may not exceed the limitations in FAR 15.903(d).

(2) The individual values of the maximum positive performance incentive and the total potential award fee (including any base fee) shall each be at least one-third of the total potential contract fee. The remaining one-third of the total potential contract fee may be divided between award fee and the maximum performance incentive at the discretion of the contracting officer.

(3) The maximum negative performance incentive for research and development hardware (e.g., the first and second units) shall be equal in amount to the total *earned* award fee (including any base fee). The maximum negative performance incentives for production hardware (e.g., the third and all subsequent units of any hardware items) shall be equal in amount to the total *potential* award fee (including any base fee). Where one contract contains both cases described above, any base fee shall be allocated reasonably among the items.

3. Section 1816.405 is revised to read as follows:

§ 1816.405 Contract clauses.

§ 1816.405–70 NASA contract clauses.

(a) As authorized by FAR 16.405(e), the contracting officer shall insert the clause at 1852.216–76, Award Fee for Service Contracts, in solicitations and contracts when a cost-plus-award-fee contract is contemplated and the contract deliverable is the performance of a service. When provisional award fee payments are authorized, use Alternate I.

(b) As authorized by FAR 16.405(e), the contracting officer shall insert the clause at 1852.216–77, Award Fee for Non-Service Contracts, in solicitations and contracts when a cost-plus-award-fee contract is contemplated and the contract deliverables are a study, design, hardware or other end items for which total contractor performance cannot be measured until the end of the contract.

(c) The contracting officer may insert a clause substantially as stated at 1852.216–83, Fixed Price Incentive, in fixed-price-incentive solicitations and contracts utilizing firm or successive targets. For items to be subject to incentive price revision, identify the target cost, target profit, target price, and ceiling price for each item.

(d) The contracting officer shall insert the clause at 1852.216–84, Estimated Cost and Incentive Fee, in cost-plus-incentive-fee solicitations and contracts.

(e) The contracting officer may insert the clause at 1852.216–85, Estimated Cost and Award Fee, in cost-plus-award-fee solicitations and contracts. When the contract includes performance incentives, use Alternate I.

(f) Except as provided at 1816.404–276, the contracting officer shall insert a clause substantially as stated at 1852.216–88, Performance Incentive, when (1) a CPAF contract is contemplated, (2) the primary deliverable(s) is (are) hardware, and (3) total estimated cost and fee is greater than $25 million. A clause substantially as stated at 1852.216–88 may be included in lower dollar value CPAF hardware contracts with the approval of the Procurement Officer.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Part 1852 is amended as set forth below:

a. Section 1852.216–76 is revised, and section 1852.216–77 is added to read as follows:

§ 1852.216–76 Award Fee for Service Contracts.

As prescribed in 1816.405–70(a), insert the following clause:

Award Fee for Service Contracts

(September 1993)

(a) The contractor can earn award fee from a minimum of zero dollars to the maximum stated in NASA FAR Supplement clause 1852.216–85, "Estimated Cost and Award Fee" in this contract.

(b) Beginning 6* months after the effective date of this contract, the Government shall evaluate the Contractor's performance every 6* months to determine the amount of award fee earned by the contractor during the period. The Contractor may submit a self-evaluation of performance for each evaluation period under consideration. These self-evaluations will be considered by the Government in its evaluation. The Government's Fee Determination Official (FDO) will determine the award fee amounts based on the Contractor's performance in accordance with *[identify performance evaluation plan]*. The plan may be revised unilaterally by the Government prior to the beginning of any rating period to redirect emphasis.

(c) The Government will advise the Contractor in writing of the evaluation results. The Contracting Officer will issue a unilateral modification to the contract that will recognize the award fee earned. The Contractor is not required to submit a separate voucher for earned award fee. The *[insert payment office]* will make payment based on the unilateral modification.

(d) The amount of award fee which can be awarded in each evaluation period is limited to the amounts set forth at *[identify location of award fee amounts]*. Award fee which is not earned in an evaluation period cannot be reallocated to future evaluation periods.

(e) Award fee determinations made by the Government under this contract are not subject to the Disputes clause.

* A period of time greater or lesser than 6 months may be substituted in accordance with 1816.404–272(a).

Alternate I

(September 1993)

As prescribed in 1816.405–70(a), insert the following paragraph (e) and reletter existing paragraph (e) to (f):

(e) (1) Pending a determination of the amount of award fee earned for an evaluation period, a portion of the available award fee for that period will be paid to the contractor on a _____[Insert the frequency of provisional payments (not more often than monthly)] basis. The portion paid will be _____[Insert percentage (not to exceed 80 percent) for provisional payments] percent of the current period's available amount; provided, however, that when the Contracting Officer determines that the Contractor will not achieve a level of performance commensurate with the provisional rate, payment of provisional award fee will be discontinued or reduced in such amounts as the Contracting Officer deems appropriate. The Contracting Officer shall notify the Contractor in writing if it is determined that such discontinuance or reduction is appropriate. This determination is not subject to the Disputes clause.

(2) In the event the amount of award fee earned, as determined by the FDO, is less than the sum of the provisional payments made for that period, the Contractor will either credit the next payment voucher for the amount of such overpayment or refund the difference to the Government, as directed by the Contracting Officer.

(3) Provisional award fee payments will [*insert "not" if appropriate*] be made prior to the first award fee determination by the Government.

(End of clause)

1852.216–77 Award Fee for Non-Service Contracts.

As prescribed in 1816.405–70(b), insert the following clause:

Award Fee for Non-Service Contracts

(September 1993)

(a) The contractor can earn award fee, or base fee, if any, from a minimum of zero dollars to the maximum stated in NASA FAR Supplement clause 1852.216–85, "Estimated Cost and Award Fee" in this contract. All award fee evaluations, with the exception of the last evaluation, will be interim

evaluations. At the last evaluation, which is final, the Contractor's performance for the entire contract will be evaluated to determine total earned award fee. No award fee or base fee will be paid to the Contractor if the final award fee evaluation is "poor/unsatisfactory."

(b) Beginning 6* months after the effective date of this contract, the Government shall evaluate the Contractor's interim performance every 6* months to monitor Contractor performance prior to contract completion and to provide feedback to the Contractor. The evaluation will be performed in accordance with [*identify performance evaluation plan*] to this contract. The Contractor may submit a self-evaluation of performance for each period under consideration. These self-evaluations will be considered by the Government in its evaluation. The Government will advise the Contractor in writing of the evaluation results. The plan may be revised unilaterally by the Government prior to the beginning of any rating period to redirect emphasis.

(c)(1) Provisional payments will [*insert "not" if applicable*] be made under this contract. Pending the final evaluation, provisional award fee, including base fee if any, payments will be made to the Contractor on a [*insert the frequency of provisional payments (not more often than monthly)*] basis. The amount of award fee, including base fee, if any, which will be provisionally paid in each evaluation period is limited to the lesser of the interim evaluation score, applied as a percentage, or 80 percent of the award fee allocated to that period (see *[insert applicable cite]*). If the Government determines that (i) the total amount of provisional fee payments will apparently *substantially* exceed the anticipated final evaluation score, or (ii) the interim evaluation is "poor/unsatisfactory," no provisional fee payment shall be made for that period.

(2) The Contracting Officer will issue a unilateral modification to the contract that will recognize any provisional award fee, including base fee if any, paid, for the interim performance period evaluated. The Contractor is not required to submit a separate voucher for provisional fee payments. The [*insert payment office*] will make payment based on the unilateral modification.

(3) All provisional fee payments will be superseded by the fee determination made in the final award fee evaluation. The Government will then pay the Contractor, or the Contractor will refund to the Government, the difference between the final award fee determination and the cumulative provisional fee payments.

(d) Award fee determinations made by the Government under this contract are not subject to the Disputes clause.

(End of clause)

1852.216–83 and 1852.216–84 [Amended]

b. In 1852.216–83, the reference "1816.405–70(b)" is revised to read "1816.405–70(c)" and in 1852.216–84, the reference "1816.405–70(c)" is revised to read "1816.405–70(d)."

c. Section 1852.216–85 is revised, and section 1852.216–88 is added to read as follows:

1852.216–85 Estimated Cost and Award Fee

As prescribed in 1816.405–70(e), insert the following clause:

Estimated Cost and Award Fee

(September 1993)

The estimated cost of this contract is $_____. The maximum available award fee, excluding base fee, if any, is $_____. The base fee is $_____. Total estimated cost, base fee, and maximum award fee are $_____.

Alternate I

(September 1993)

As prescribed in 1816.405–70(e), change the title to read ESTIMATED COST, AWARD FEE AND PERFORMANCE INCENTIVE and insert the following sentence at the end of the clause:

The maximum positive performance incentive is $_____. The maximum negative performance incentive is *(1)*.

(1) For research and development hardware contracts, insert [equal to total earned award fee (including any base fee)]. For production hardware contracts, insert [$ *(total potential award fee amount, including any base fee)*]

(End of clause)

* * * * *

1852.216–88 Performance Incentive

As prescribed in 1816.405–70(f), insert the following clause:

Performance Incentive

(September 1993)

(a) A performance incentive applies to the following hardware item(s) delivered under this contract: *(1)* The performance incentive will measure the performance of those items against the salient hardware performance requirement, called "unit(s) of measurement," e.g., months in service or amount of data transmitted, identified below. The performance incentive becomes effective when the hardware is put into service. It includes a standard performance level, a positive incentive, and a negative incentive, which are described in this clause.

(b) *Standard performance level.* At the standard performance level, the Contractor has met the contract requirement for the unit of measurement. Neither positive nor negative incentives apply when this level is achieved but not exceeded. The standard performance level for *(1)* is established as follows: *(2)*

(2) *Positive incentive.* The Contractor earns a separate positive incentive amount for each hardware item listed in paragraph (a) of this clause when the standard performance level for that item is exceeded. The amount earned for each item varies with the units of measurement achieved, up to a maximum positive performance incentive amount of $ *(3)* per item. The units of measurement and the incentive amounts associated with achieving each unit are shown below: *(4)*

(d) *Negative incentive.* The Contractor will pay to the Government a negative incentive amount for each hardware item that fails to achieve the standard performance level. The amount to be paid for each item varies with the units of measurement achieved, up to the maximum negative incentive amount of $ *(5)*. The units of measurement and the incentive amounts associated with achieving each unit are shown below: *(6)*

(e) The final calculation of positive or negative performance incentive amounts shall be done when performance (as defined by the unit of measurement) ceases or when the maximum positive incentive is reached.

(1) When the Contracting Officer determines that the performance level achieved fell below the standard performance level, the Contractor will either pay the amount due the Government or credit the next payment voucher for the amount due, as directed by the Contracting Officer.

(2) When the performance level exceeds the standard level, the Contractor may request payment of the incentive amount associated with a given level of performance, provided that such payments shall not be more frequent than monthly. When performance ceases or the maximum positive incentive is reached, the Government shall calculate the final performance incentive earned and unpaid and promptly remit it to the contractor.

(f) If performance cannot be demonstrated, through no fault of the Contractor, within *[insert number of months or years]* after the date of hardware acceptance by the Government, the Contractor will be paid *[insert percentage]* of the maximum performance incentive.

(g) The decisions made as to the amount(s) of positive or negative incentives are subject to the Disputes clause.

(1) Insert applicable item number(s) and/or nomenclature.

(2) Insert a specific unit of measurement for each hardware item listed in (1) and each salient characteristic, if more than one.

(3) Insert the maximum positive performance incentive amount (see 1816.404–276(g)(1) and (2)).

(4) Insert all units of measurement and associated dollar amounts up to the maximum performance incentive.

(5) For research and development hardware contracts, insert [equal to total earned award fee (including any base fee)]. For production hardware contracts, insert [$____(total potential award fee amount, including any base fee)] (see 1816.404–276(g)(3)).

(6) Insert all units of measurement and associated dollar amounts up to the maximum negative performance incentive.

(End of clause)

[FR Doc. 93–24728 Filed 10–7–93; 8:45 am]

BILLING CODE 7510–01–M

* A period of time greater or lesser than 6 months may be substituted in accordance with 1816.404–272(a).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 921185–3021; I.D. 100493B]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Rescission of a closure.

SUMMARY: NMFS is rescinding the closure to directed fishing for pollock by the inshore component in the Aleutian Islands subarea (AI) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to fully utilize the allowance of the total allowable catch (TAC) of pollock for the inshore component in the AI.

EFFECTIVE DATE: 12 noon, Alaska local time A.l.t., October 4, 1993, until 12 midnight, A.l.t., December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The directed fishery for pollock in the AI by vessels catching pollock for processing by the inshore component was previously closed under § 675.20(a)(8) on April 9, 1993 (58 FR 19213, April 13, 1993).

The Regional Director, Alaska Region, NMFS, has determined that the allowance of the TAC of pollock allocated to the inshore component in the AI has not been reached. Therefore, NMFS is rescinding that closure and is reopening directed fishing for pollock in the AI for vessels catching pollock for processing by the inshore component effective at 12 noon, A.l.t., October 4, 1993, until 12 midnight, A.l.t., December 31, 1993.

Classification

This action is taken under § 675.20 and complies with E.O. 12291.

List of Subjects in 50 CFR 675

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 4, 1993.

Richard H. Schaefer,

Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–24754 Filed 10–5–93; 9:22 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 58, No. 194
Friday, October 8, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Environmental Services

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The Small Business Administration (SBA) is proposing a size standard of $18.0 million in average annual receipts for environmental services, an activity which involves work identified with a number of different functions including: Preliminary assessment, site inspection, testing, remedial investigation, feasibility studies, remedial design, containment, remedial action, and security and site closeouts. SBA views environmental services activities as an emerging industry in which firms perform tasks that depart from traditional activities in any one industry as presently defined under the Standard Industrial Classification System. This is expected to result in a different and distinct industry structure in which firms tend to be of a different size than firms specializing in any one industry.

DATES: Comments must be submitted on or before December 7, 1993.

ADDRESSES: Send Comments to: Gary M. Jackson, Director, Size Standards Staff, U.S. Small Business Administration, 409 3rd Street, SW, 8th Fl., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Robert N. Ray, Economist, Size Standards Staff, Tel: (202) 205–6618.

SUPPLEMENTARY INFORMATION: The Small Business Administration (SBA) is proposing a size standard of $18.0 million for the activity of environmental services. Environmental services involves the restoration of a contaminated environment to an acceptable condition (usually to accommodate regulatory requirements). In many situations, a wide range of activities is undertaken to achieve this result, for example, preliminary assessment, site inspection, testing, remedial investigation, feasibility studies, remedial design, containment, remedial action, and security and site closeouts. SBA believes environmental services is an emerging industry not explicitly defined under the present Standard Industrial Classification System. This proposed size standard is the same as was in effect earlier this year on an interim final rule basis until vacated by a court order, except that the accompanying definition of environmental services has been revised.

An interim final size standard, similar to that proposed in this rule, was judicially vacated by an order of the United States District Court for the District of Columbia (Civil Action No. 93–0711). On January 13, 1993, SBA promulgated an interim final rule which established a size standard of $18.0 million for the activity of environmental services (58 FR 4074). On June 23, 1993, the District Court invalidated this size standard on the basis that SBA should have obtained public comments before implementing the size standard. On August 9, 1993, SBA published in the **Federal Register** a notice on this decision (58 FR 42355). Published elsewhere in this **Federal Register** is a final rule which withdraws the environmental services size standard that was established by the interim final rule.

SBA continues to believe that the reasons for establishing an environmental services size standard are valid and that the best available data support a size standard of $18.0 million. The purposes of this proposed rule are twofold: (1) To propose a size standard of $18.0 million for the activity of environmental services as a component of SIC code 8744, Facilities Support Management Services, and (2) to request public comments on this proposal, both as to the industry definition and as to the appropriate industry size standard.

Industry Designation for Environmental Services

Environmental services has become an expanding area of Federal government procurement. Over the past year, Federal agencies and small businesses have expressed concern about the appropriate SIC classification of environmental services. A distinct industry designation specifically describing environmental services does not exist under the Standard Industrial Classification (SIC) System. Federal procurements for environmental services, therefore, have had to be classified in one of several existing SIC codes which inadequately describe the procurement's true nature. These SIC codes have included: Heavy Construction (SIC code 1629); Plastering, Drywall, Acoustical and Insulation Work (SIC code 1742); Wrecking and Demolition Work (SIC code 1795); Special Trade Contractors, Not Elsewhere Classified (SIC code 1799); Local Trucking Without Storage (SIC code 4212); Refuse Systems (SIC code 4953); Sanitary Services, Not Elsewhere Classified (SIC code 4959); Architectural and Engineering Services (SIC codes 8711 and 8712); Commercial Physical and Biological Research (SIC code 8731); Testing Laboratories (SIC code 8734); and Management Consulting (SIC code 8742). However, these SIC codes, individually, do not fully represent the true nature and scope of the multiple activities involved in environmental services. This results in confusion and inconsistency among the Federal procuring agencies in selecting the proper SIC for environmental services procurements. Further confusion and inconsistency arises in determining which procurements can be set aside for small business. One of the principal reasons underlying the creation of a new environmental services size standard is to resolve the present uncertainty in determining the proper SIC of procurements involving environmental services activities so that contracting officers can make set-aside decisions with confidence.

The nature of environmental services typically involves multimillion dollar costs spread out over a number of years. For example, among the *smallest* procurements recently issued by Brooks Air Force Base in Texas for environmental services have been multi-year procurements estimated at approximately $25.0 million, or about $5.0 million to $6.0 million per year over five years. For many of the industries listed above, the current size standard for that industry would preclude the opportunity to set aside procurements for small business competition since businesses at or below the size standard would lack the capabilities needed to perform the

environmental services contract, or the successful offeror would exceed the size standard shortly after obtaining such a contract, thereby rendering it ineligible for any other set-aside contracting. Accordingly, a new size standard is needed which takes into consideration the size and scope of environmental services procurements and the varying size of businesses that operate in the environmental services field.

SBA is proposing to segment a category of the industry of Facilities Support Management Services (SIC code 8744) to define environmental services under SBA's regulations. SBA will consider establishing a separate industry or sub-industry designation when requested and when changes within industries suggest that a new industry is taking shape which would have a different structure than the traditional industries with which it is associated under the SIC System designations (13 CFR 121.301(c)). This situation exists with respect to environmental services activities, an activity in which Federal procurements have expanded significantly in recent years, and with the imposition of rigorous environmental standards combined with the Department of Defense's realignments and base closings.

In evaluating a new emerging industry, for size standard purposes, the SBA must consider whether the activity under consideration for a distinct size standard is a component of a larger four-digit SIC code industry or includes activities which are incorporated in several SIC industries. Based upon information available to it, SBA believes the latter is the case for environmental services activities. As indicated above, many different SIC codes have been used because they reflect a portion of the work performed under environmental services and the industries of firms doing part of the work. Significantly, these industries have widely varying size standards and this has led to difficulties in the past in implementing small business procurement preference programs for environmental services activities where the procurement involves a combination of activities from these industries.

SBA is proposing to further segment a component of SIC code 8744 to identify environmental services due to the similar characteristics it has with Base Maintenance, also a component of SIC code 8744 with its own size standard. Both involve activities that comprise several industries, but no single industry activity represents the majority of the activities. Also, like Base Maintenance, a great majority of environmental services activities will occur on Federal lands and installations. Thus, both the multi-industry composition and the dependence of both activities on Federal procurements suggest a close similarity between base maintenance and environmental services.

One important change has been made to the definition of environmental services contained in this proposed rule as compared with the interim final rule of January 13, 1993. The proposed definition requires that for a firm to be classified under environmental services there must be a range of activities identified with separate industries, none of which constitutes 50 percent or greater of a firm's revenues, employees or other factors. For purposes of Federal procurement, the definition tracks the existing language within footnotes 19 and 20 to SBA's size standard table (13 CFR 121.601) and requires that there be at least three activities associated with separate industries. In the interim final rule of January 13, SBA stated an intent to combine remedial activities which involve three or more activities in different industries into the single industry category of environmental services activities with a size standard of $18.0 million, but it was not stated as an explicit requirement in the definition of environmental services. As a result, some agencies were not aware of this intent and classified procurements involving activities in only one or two industries under environmental services rather than under the appropriate industry activity. The SBA, in this rule, is making this requirement explicit. This definition should clarify the SIC designation for environmental services, and avoid situations in which contracting officers would incorrectly classify procurements involving activities primarily associated with one industry under environmental services. Such procurements should have been, and should continue to be, classified by that primary industry.

SBA received thirty-one comments to its request in the January 13 interim final rule. Twenty-two commentators, for various reasons, argued against an environmental services size standard of any kind. Reasons included their disagreement with SBA's contention that the environmental services activities is an emerging industry, disagreement with a receipts-based size standard, and concerns with the interim rule being in conflict with the Brooks Act and the Small Business Competitiveness Demonstration Program. The discussion above explained the reasons SBA believes environmental services is an emerging industry, and believes there is a need to establish a separate size standard. SBA's assessment of comments concerning the possible conflict between the environmental services size standard, as proposed, and the Brooks Act and Small Business Competitiveness Demonstration Program follows below.

SBA's designation of environmental services under SIC code 8744 in its interim rule raised concerns by some architectural and engineering firms, various industry associations, and Federal procuring offices that, since environmental services often involves a high proportion of architectural and engineering work, utilizing SIC code 8744 would ignore the Federal government's qualification-based selection procedures for architectural and engineering services required under the Brooks Act. This Act stipulates that a different contractor selection process (based on qualifications) must be used for architectural and engineering services than that for other contracting activities in which the primary criteria usually focus on bid price.

The SBA believes that the designation of a procurement for size standard purposes should not by itself affect the applicability of statutory requirements related to the Brooks Act, or any other legal requirements (such as wage requirements related to the Davis Bacon Act or the Service Contracts Act). It is not uncommon, for example, for a single contract to have more than one product or service associated with it and for these products or services to often be individually associated with industries with more than one size standard. In such cases SBA provides explicit guidance as to the classification of the procurement under one size standard based on the principal purpose of the procurement and the relative value and importance of each of the components in the procurement. This guidance, however, refers to the classification of the procurement for size standard purposes only.

The classification of a procurement or a component of the procurement for purposes of Brooks Act application depends on the procurement's statement of work. Pursuant to § 36.601–3(b) of the Federal Acquisition Regulations (FAR), Title 48 of the Code of Federal Regulations, the Brooks Act procedures apply to a contract statement of work that includes both architect-engineer services and other services "if the statement of work, substantially or to a dominant extent, specifies performance or approval by a registered or licensed architect or engineer."

Similarly, the Davis-Bacon Act requirements apply to contracts that are

not primarily construction if the construction work to be performed under the contract is (1) to be performed on a public work or building, (2) substantial, and (3) separable (FAR § 22.402(b)). The establishment of this size standard for environmental services is not meant to affect these and other statutory requirements for specific types of procurements.

There is nothing inconsistent with utilizing the environmental services size standard and associated SIC code designation under SIC code 8744 if the procurement satisfies the definition of the rule and at the same time follows the dictates of the Brooks Act or the Davis-Bacon Act to the extent that they apply.

Another concern raised as a result of the interim final rule was whether the establishment of an environmental services industry designation conflicted with the Small Business Competitiveness Demonstration Program. Title VII of Public Law 100–656 established the Demonstration program to test the competitiveness of small business in the Federal procurement market by limiting the use of small business set-aside procurements under certain conditions. Four industry categories have been designated to participate in the program: Architectural and Engineering Services (including surveying and mapping), construction, refuse systems and related services, and nonnuclear ship repair. SBA does not believe the industry category of environmental services, as described in this rule, is within the scope of the Demonstration program. Under the Office of Federal Procurement Policy and Small Business Administration's Policy Directive (58 FR 19849) governing the Demonstration program's implementation, procurements classified under a construction SIC code or certain Federal Procurement Data System (FPDC) service codes for the architectural and engineering services, nonnuclear ship repair and refuse systems industries are covered by the program. The FPDC service codes for environmental services fall under FPDC service codes F101–F999. None of these codes is listed in the Demonstration program's policy directive. Furthermore, under the proposed definition for environmental services, if 50 percent or more of the procurement is identified with a specific industry activity, such as construction, the proper industry classification would be that industry (i.e., construction) rather than the environmental service industry category, and the Demonstration program could then be applicable, depending upon the major industry involved.

Size Standard for Environmental Services

SBA is proposing for public comment a size standard of $18.0 million in average annual receipts for the activity of environmental services. The following section outlines considerations which SBA commonly uses in the size standard decision process. These considerations are reviewed to assist the public to comment on this proposed rule. Following that discussion, another section discusses the reasons SBA believes the proposed $18.0 million size standard is appropriate.

Factors Influencing the Size Standard Decision Process

In considering the appropriateness of a size standard, SBA evaluates an industry using five primary factors. The primary factors include: Industry competition, average firm size, start-up costs, distribution of firms by size and the impact on SBA's programs. Preliminary information based on both established data sources and anecdotal information, using the above factors as guidelines, point to the need for a relatively high size standard for the activity of environmental services. Information relating to any of these factors would greatly assist SBA in its evaluation of the acceptability of the proposed size standard for environmental services activities of $18.0 million in average annual receipts. However, while these factors are generally considered the most important, SBA will consider and evaluate all relevant information that would assist it in assessing this industry's size standard; its assessment of relevant factors is not limited to these five factors.

As an indicator of industry competition, SBA first looks at competition within the industry as measured by the share of industry sales controlled by producers above a relatively large firm size. In this case, SBA would be most interested in obtaining information which would indicate industry activity for firms active in environmental services activities that individually exceed $25.0 million in annual sales or the market share of the largest firms in an industry. To the extent that economic activity is concentrated in an industry or a component of an industry by a few relatively large producers, SBA tends to set higher size standards to assist firms in a broader size range to compete with firms that are dominant in the industry. If this pattern occurs for environmental services activities to a greater degree than alternate industry activities (e.g., construction, sanitary services, refuse collection, testing, research and development and engineering), there would be a justification for a higher size standard for this activity.

Average firm size is the second factor considered by SBA. SBA tends to set higher size standards in industries with high average firm size and low size standards in industries with low average firm size. Any information which commentators have relating to differences in the average size of firms active in environmental services activities as contrasted with average firm size for the related industries would assist SBA in evaluating the need for a separate, distinct size standard for environmental services activities.

Indexes of start-up costs are the third factor used to evaluate size standards. High start-up costs affect a firm's initial size because potential entrants into an industry must have sufficient capital to start a viable business, and these capital requirements vary significantly by industry. To the extent that firms active in environmental services activities have greater capital expenses than firms active in related industries, the SBA would be justified in considering a higher size standard for the environmental services activities. High average start-up costs are viewed as a justification for a relatively high size standard, while low average start-up costs are usually associated with smaller size standards.

The fourth factor—firm size distribution—relates the proportion of industry sales, employment and other economic activity accounted for by firms of different sizes within an industry to its size standard. If the preponderance of an industry's output is by smaller firms, this would tend to support a low size standard. The opposite would be the case for an industry in which firm size distribution indicates that output is concentrated among intermediate sized and/or large firms.

The fifth factor to be considered is the impact of the proposed size standard on SBA's programs. These usually involve a calculation of small business shares of federal procurement, and often the size of federal contracts in an industry. In general, the lower the share of Federal procurement activity by small firms in an industry, and the greater the average size of Federal contracts, the greater would be the justification for a higher size standard. Any information which commentators may have relating to the impact of the present size standards or

the proposed size standard on any of SBA's major programs could affect the decision for environmental services.

Selection of $18.0 Million Size Standard

As already discussed, SBA is proposing a size standard of $18.0 million in average annual receipts for this activity. Because environmental services has not been established as a separate industry under the SIC system, governmental statistical agencies have not collected data on the structural characteristics of firms engaged in environmental services. This hinders SBA in its evaluation of the primary industry factors discussed above; and underscores the desirability of receiving additional information for the public. However, data available to SBA on firms active in environmental service work from private data sources and the data on known procurement activity undertaken by several Federal agencies together provide an indication of the need for a relatively high size standard as an appropriate size standard for environmental services. These reasons are discussed below.

In lieu of data on firms engaged in environmental services from standard statistical sources, such as the U.S. Bureau of the Census, SBA analyzed data from private data collection sources. The primary source of data influencing this proposed size standard is Wards Business Directory, a publication which describes in detail a firm's activities within its industry classification. It is possible from this data source to determine whether a firm is active in environmental services. One of the largest single grouping of firms which are capable of performing environmental services is listed in Refuse Systems (SIC code 4953); and data for this industry are listed in Table 1. This table first portrays the larger industry in which many firms specialize in garbage and trash collection activities. However, the second part of this table separates out firms, by size, that are involved in environmental services activities from the larger industry.

TABLE 1.—SIZE DISTRIBUTION OF FIRMS IN REFUSE SYSTEMS

[Total Industry (SIC 4953)]

Size firm	Less than 100 employees	100–249 employees	250–999 employees	1,000–4,999 employees	5,000+ employees	Total
Number of firms	44	29	19	11	5	104
Number of employees	2,200	3,800	8,400	21,100	138,500	174,000

FIRMS SPECIALIZING IN ENVIRONMENTAL CLEANUP ACTIVITIES IN SIC CODE 4953

Size firm	Less than 100 employees	100–249 employees	250–999 employees	1,000–4,999 employees	5,000+ employees	Total
Number of firms	28	14	10	10	4	66
Number of employees	1,400	1,900	4,200	18,600	133,100	159,200

Source: Data derived from Wards Business Directory of U.S. Private and Public Companies—1992.

The data in this table clearly indicate that very large firms are more involved in environmental services activities than smaller firms. The larger the size class of firm, the more likely a firm will have the ability to perform environmental services activities. This table, therefore, suggests that the size standard for firms involved in environmental services activities should be significantly higher than the size standard of $6.0 million for the refuse systems industry generally.

A preliminary evaluation of the various factors associated with firms which specialize in this activity supports the indication for the need of a size standard which is relatively high among SBA's receipts-based size standards. The primary considerations influencing this view stem from SBA's belief that relatively large companies will have to be involved in the task given the size and sophistication of Federal government remediation efforts. This effort requires highly responsible and competent contractors since the liability of both the government and contractor is at stake given the extraordinary importance of the cleanup work. Most full service remediation projects, such as tank removal and site restoration contracts, are multi-year projects to fall in the $20 to $30 million range with some contracts exceeding $100 million. In rare cases, contracts may exceed $1.0 billion with contractors subcontracting much of the work to smaller firms.

Among industries typically classified under environmental services, the larger the size class of firm, the more likely that it includes firms that have the ability to do environmental services activities. SBA uncovered this pattern in its survey of SIC 4953 (Refuse Systems). SBA believes a similar pattern would logically occur in other industries as well. A broad-based pattern would suggest that the size standard for firms involved in environmental services activities should be significantly higher than the size standard for most industries into which this activity has been categorized, and would tend to support the decision to raise the size standard for this activity to a level which is one of the highest size standards among industries with receipts-based size standards.

The following table lists industries and their size standards into which environmental services activities have been classified in the past in order to provide a perspective on the complexity of contracting in the absence of an environmental service size standard.

SIC	Name	Size standard
1629	Heavy Construction, NEC	$17.0 million.
1795	Wrecking & Demolition Work	$7.0 million.
1799	Special Trade Contractors, NEC	$7.0 million.
4212	Local Trucking Without Storage	$12.5 million.
4953	Refuse Systems	$6.0 million.
4959	Sanitary Services, NEC	$3.5 million.
8711	Other Engineering Services	$2.5 million.

SIC	Name	Size standard
8731	Commercial, Physical & Biological Research	500 employees.
8734	Testing Laboratories	$3.5 million.

A size standard of $18.0 million (as measured by the annual average receipts of a firm over the last three completed fiscal years) would fall at the very highest level of the receipts-based size standards among industries listed above. It would better reflect the size of firms needed to address larger sized contracts in this area, which tend to fall in the $20 to $30 million range over the period of the contract, or $5.0 million to $6.0 million per year. Moreover, since SBA is requiring that procurements which fall in this category by composed of activities in three industries with distinct size standards, SBA is defining this category by a criteria which would naturally encompass larger procurements. The establishment of a size standard for an industry that is higher than most of the size standards for industries that typically make up its components has proven successful for small business in the base maintenance field. Base maintenance has a size standard of $13.5 million in order to accommodate the needs of procurements with widely disparate and numerous components. If a procurement for remediation activities is composed of only one or two industry activities, it would be classified under a size standard for that industry which best describes the procurement, usually one of the industries listed above. This distinction permits Federal agencies some degree of discretion in structuring contracts that would both address the remedial requirements of the Federal government and the need to develop a small business base of contractors for this industry/activity.

The selection of the $18.0 million size standard level for environmental services is influenced in part by a recent SBA proposal to simplify industry-based size standards by reducing the number of size standard levels. Currently, SBA has 30 different size standard levels covering almost 1000 industries. On December 31, 1992, SBA published a proposed rule in the **Federal Register** (57 FR 62515) to reduce the number of size standard levels from 30 to 9. The nine proposed size standard levels were: $5.0 million, $10.0 million, $18.0 million and $24.0 million for size standards based on average annual receipts; and 100, 500, 750, 1000 and 1500 employees for size standards based on number of employees. SBA withdrew that proposal on February 19, 1993 (58 FR 9131). However, SBA intends to re-propose the simplification of industry-based size standards in the near future which will contain these or similar size standards. As previously discussed, SBA believes that a relatively high size standard is appropriate for this industry. Under SBA's intended policy to establish size standards only at certain pre-established size levels, the $18.0 million level is believed to be the most appropriate size standard level for environmental services.

Fourteen comments received in response to the interim rule discussed above dealt specifically with the appropriateness of $18.0 million as the size standard. Eight of the 14 comments were in complete agreement with a size standard of $18.0 million for the activity of environmental services as a component of SIC code 8744. Six comments specifically disagreed with the establishment of a size standard of $18.0 million for various reasons. Those not in agreement with the $18.0 million suggested that either an employee-based size standard be used, which generally equates to a much higher receipts-based size standard than $18.0 million, or suggested a complicated "tiering" of size standards based on the number of firms in different size classes. As is evident from the above, comments received specifically on the $18.0 million size standard level were mixed. However, as discussed above, SBA's analysis points to a relatively high size standard compared to size standards in effect for other industries. The comments, while helpful, did not provide any substantial data or information which would indicate a size standard other than $18.0 million as a more appropriate size standard for environmental services. Noting that several commentators were proposing an employee-based size standard, SBA is interested in obtaining data or information indicating the need for an employee-based standard in the environmental services field. SBA generally uses a receipts-based size standard for nonmanufacturing industries. However, SBA will consider an employee-based size standard if information clearly demonstrates a receipts-based size standard would be inequitable in its application to environmental services firms.

SBA is seeking information or data which would either support an $18.0 million size standard for environmental services or suggest the need for a different size standard. This request for public comment stems from the unavailability of statistical data on the structural characteristics for this industry/activity collected by Federal statistical agencies commonly relied upon by SBA in establishing size standards. For commenters offering a different size standard, SBA is seeking data which would provide some perspective of the magnitude of differences in industry structure (e.g., average firm size in receipts and assets, size distribution of firms, the concentration of economic activity among a few firms, etc.) between firms specializing in environmental services activities and firms specializing in activities which are related, such as sanitary services and refuse collection and disposal, as well as any other information which supports an alternative size standard.

SBA also is interested in obtaining comments on two other aspects of this proposed size standard: (1) Whether this industry/activity should have a single size standard or should have more than one size standard based on such considerations as the toxicity and difficulty of the remediation activities (i.e., the cleanup of radioactive waste might justify a higher size standard than the cleanup of other, less toxic waste), and (2) whether the proposed definition of environmental services adequately describes the full range of activities associated with environmental services, and is otherwise appropriate.

Comments on the proposed size standard, or comments suggesting other standards, or measures of size, should also address the questions of:

(1) The interaction of this size standard with SBA's programs;

(2) The relative levels of participation in SBA programs anticipated at different size standards;

(3) The effect of this proposed size standard or the commenter's proposed alternative size standard on businesses within the industry; and

(4) The prospect of significant new entries into these businesses in response to the establishment of the proposed size standard or some alternative size standard;

Compliance With Regulatory Flexibility Act, Executive Orders 12291, 12612, 12778, and the Paperwork Reduction Act

General

Based on all available information, SBA believes that this proposed rule would, if finalized, have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) In addition,

this rule constitutes a major rule for the purpose of Executive Order 12291. Immediately below SBA has set forth an initial regulatory impact analysis.

(1) Description of Entities to Which This Rule Applies

Based on the interest in a recent environmental services conference in SBA's Region VI attended by representatives of over 600 firms and other industry information, SBA estimates that 300 to 1000 firms would gain eligibility to bid on procurements competed under various small business and small disadvantaged business procurement preference programs or to seek assistance under SBA's financial assistance programs if the proposed rule is adopted. These are primarily firms that are active in environmental services and cleanup activities, but are classified in industries such as construction, refuse systems, engineering, management consulting, and commercial physical and biological research and development. Since the size standards for all of these industries, except one, are significantly less than $18.0 million in average annual receipts, a number of firms exceed these industries' size standards while not exceeding the $18.0 million size standard that SBA is proposing for this industry. SBA estimates that 300 to 1000 firms would presently fall in this category. However, from a longer term perspective, more firms may eventually be impacted if the proposed standard is adopted, as firms develop their capabilities in response to one of the major growth areas of Federal procurement and the private sector.

(2) Description of Potential Benefits of the Rule

The establishment of a size standard of $18.0 million would open up procurement opportunities to hundreds of small firms and permit Federal agencies to better utilize SBA programs and other programs (such as the Small Disadvantaged Business (SDB) Program of the Department of Defense) which also utilizes SBA's size standards. The amount of Federal procurement in this area is projected to fall in the billions of dollars on a yearly basis. It is possible that over a ten year period, federal contracting may exceed $25 billion for this activity. At present, many procurements cannot be set-aside for small business or reserved for SDB or 8(a) firms because the alternative size standards for environmental services work are considered too low. The result is that SBA's preference programs for small businesses cannot be properly utilized and many contracts which could be performed by small firms would be competed on an unrestricted basis.

In SBA's Business Loan Program, it is estimated that approximately ten additional loans amounting to $5 million would be made to firms newly eligible to participate in the program if the proposed standard is adopted. This modest estimated impact occurs since only a small percentage of eligible firms avail themselves of this program in any one year, especially by firms at the proposed size standard level.

(3) Description of Potential Costs of the Rule

The potential cost of the establishment of this size standard are expected to be minimal. With respect to the General Business Loan Program, no extra costs to the government should result from the establishment of this size standard. The amount of lending authority SBA can make or guarantee is established by appropriation.

The costs to Federal procurement are also thought to be minimal for two reasons: First, competition between two or more small firms must exist before a contract may be set aside for small business. Second, set-asides are expected to be awarded at reasonable prices. If competition and reasonable pricing do not exist on proposed set-asides, the procuring agencies are expected to issue unrestricted procurements. Thus, losses in the form of increased costs to the government, if any, are not expected to be significant.

In addition, this new size standard is not expected to have significant adverse effects on competition, employment, investment, price, productivity, innovation or on the ability of U.S. based businesses to compete with foreign-based businesses in domestic or export markets. The competitive effects of size standard revisions differ from those normally associated with regulations affecting key economic factors such as the price of goods and services, costs, profits, growth, innovations, mergers and foreign trade. Size standards are not thought to have any appreciable effect on any of these factors.

(4) Description of the Potential Net Benefits of the Rule

From the above discussion, SBA believes that, because the potential costs of this rule are minimal, the potential net benefits would approximately equal the potential benefits. The impact of the size standard would, if adopted, be concentrated in Federal procurement.

(5) Description of Reasons Why This Action Is Being Taken and Objectives of the Rule

SBA has provided above in the supplementary information a description of why this action is being taken and a statement of the reasons for and objectives of this proposed rule.

(6) Legal Basis for this Proposed Rule

The legal basis for this rule is sections 3(a) and 5(b) of the Small Business Act, 15 U.S.C. 632(a), 634(b)(6), 637(a) and 644(c).

(7) Federal Rules

There are no Federal rules which duplicate, overlap or conflict with this final rule. SBA has statutorily been given exclusive jurisdiction in establishing size standards.

(8) Significant Alternatives to Proposed Rule

The change set forth in this rule attempts to establish the most appropriate definition of small business eligible for SBA's assistance programs. There are no significant alternatives to defining a small business other than developing an alternate size standard. This was discussed in the supplementary information above.

SBA certifies that this rule will not impose any requirements subject to the Paperwork Reduction Act of 1980, 44 U.S.C., chapter 35. SBA certifies that this rule will not have federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in section 2 of that order.

List of Subjects in 13 CFR Part 121

Government procurement, Government property, Grant programs—business, Loan programs—business, Small business.

Accordingly, part 121 of 13 CFR is amended as follows:

PART 121—[AMENDED]

1. The authority citation for part 121 continues to read as follows:

Authority: 15 U.S.C. 632(a), and 634(b)(6), 637(a) and 644(c).

2. In § 121.601 Major Group 87, is amended in the table by revising SIC code 8744 to read as follows:

§ 121.601 Standard industrial Classification codes and size standards.

* * * * *

SIZE STANDARDS BY SIC INDUSTRY

SIC (*=New SIC code in 1987, not used in 1972)	Description (N.E.C.=not elsewhere classified	Size standards in number of employees or millions of dollars
* * * * *		
8744*	Facilities Support Management Services.[19]	$3.5
	Base Maintenance[20]	13.5
	Environmental Services.[21]	18.0

[19] *Facilities Management, a component of SIC code 8744,* has the following definition: Establishments, not elsewhere classified, which provide overall management and the personnel to perform a variety of related support services in operating a complete facility in or around a specific building, or within another business or Government establishment. Facilities arrangement means furnishing three or more personnel supply services which may include, but are not limited to, secretarial services, typists, telephone answering, reproduction or mimeograph service, mailing service, financial or business management, public relations, conference planning, travel arrangements, word processing, maintaining files and/or libraries, switchboard operation, writers, bookkeeping, minor office equipment maintenance and repair, use of information systems (not programming), etc.

[20] SIC code 8744: If one of the activities of *base maintenance,* as defined below, can be identified with a separate industry, and that activity (or industry) accounts for 50 percent or more of the value of an entire contract, then the proper size standard shall be that for the particular industry, and not the base maintenance size standard.

"Base Maintenance" constitutes three or more separate activities. The activities may be either service or special trade construction related activities. As services, these activities must each be in a separate industry. These activities may include, but are not limited to, such separate maintenance activities as Janitorial and Custodial Service, Protective Guard Service, Commissary Service, Fire Prevention Service, Safety Engineering Service, Messenger Service, and Grounds Maintenance and Landscaping Service. If the contract involves the use of special trade contractors (plumbing, painting, plastering, carpentering, etc.), all such specialized special trade construction activities will be considered a single activity, which is Base Housing Maintenance. This is only one activity of base maintenance and two additional activities must be present for the contract to be considered base maintenance. The size standard for Base Housing Maintenance is $7 million, the same size standard as for Special Trade Contractors.

[21] SIC code 8744: Environmental Services includes concerns primarily engaged in furnishing a range of services for the remediation of a contaminated environment to an acceptable condition, such as, but not limited to, preliminary assessment, site inspection, testing, remedial investigation, feasibility studies, remedial design, containment, remedial action, and security and site closeouts. If any particular service associated with remediation activities accounts for 50 percent or more of a concern's total revenues, employees or other factors, the concern's primary industry shall be that for the particular industry and not environmental services.

For purposes of classifying a Government procurement as environmental services under SIC code 8744, the following is required: (1) That the overall purpose of the procurement is to restore a contaminated environment and (2) that the procurement is composed of activities of three or more separate industries identified with separate Standard Industrial Classification four-digit industry codes or, in some instances (e.g., engineering) smaller subcomponents of four-digit industry codes with separate, distinct size standards. These activities may include, but are not limited to, such separate industry activities as Heavy Construction; Special Trade Construction; Engineering Services; Architectural Services; Management Services; Refuse Systems; Sanitary Services, Not Elsewhere Classified; Local Trucking Without Storage; Pollution Testing; and the industry of Commercial, Physical and Biological Research. However, if any activity in the procurement can be identified with a separate four-digit industry code, or component of a code with a separate, distinct size standard, and that industry accounts for 50 percent or more of the value of the entire procurement, then the proper size standard shall be the one for that particular industry, and not the environmental services size standard.

* * * * *

Erskine B. Bowles,

Administrator.

[FR Doc. 93–24812 Filed 10–7–93; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Regulations No. 16]

RIN 0960–AC22

Supplemental Security Income for the Aged, Blind, and Disabled; Continuation of Benefits and Special Eligibility for Certain Severely Impaired Recipients Who Work

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rules.

SUMMARY: These proposed regulations reflect changes made by section 2 and portions of section 4 of the Employment Opportunities for Disabled Americans Act, and sections 5032 and 5033 of the Omnibus Budget Reconciliation Act of 1990. These statutes amend section 1612(b)(4)(B)(ii) and section 1619 of the Social Security Act (the Act). Section 1612(b)(4)(B)(ii) provides an impairment-related work expense exclusion from the regular supplemental security income (SSI) income counting rules. Section 1619 provides incentives for disabled and blind SSI recipients who attempt to work. The effects of the section 1619 amendments made by these statutes are to liberalize, simplify, and make permanent section 1619 of the Act. In addition, we propose related administrative policy changes necessary to carry out these provisions.

DATES: To be sure that your comments are considered, we must receive them by December 7, 1993.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, MD 21235, or delivered to the Office of Regulations, Social Security Administration, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact individual shown below.

FOR FURTHER INFORMATION CONTACT: Richard M. Bresnick, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1758.

SUPPLEMENTARY INFORMATION:

General

SSI payments are designed to provide a basic level of support for certain aged, blind or disabled individuals. A number of different work incentive provisions have been incorporated into the SSI program. They generally enable blind and disabled individuals to return to work or to increase their level of work activity without the loss of SSI disability or blindness status. Certain work incentives provide some protection to individuals from having their SSI benefits reduced based on the increased earnings. Some of these provisions also permit continued Medicaid coverage for qualified individuals, in most States, even if the earnings preclude any SSI cash payments.

Under the law in effect before July 1, 1987, regular SSI benefits (section 1611 benefits) were not payable to a disabled SSI recipient who worked at the substantial gainful activity (SGA) level after a 9-month trial work period. Work at the SGA level resulted in the cessation of disability status and, thus, resulted in an inability to requalify for regular SSI benefits without the filing of a new SSI application if the work continued after a 15-month extended period of eligibility. Section 1619, in effect from January 1, 1981, through June 30, 1987, permitted payment of special SSI cash benefits (section 1619(a) benefits) to disabled recipients when they lost eligibility for section 1611 benefits because of SGA. Section 1619(b) provided for special SSI eligibility status for Medicaid purposes to working disabled or blind individuals when their earnings made them ineligible for SSI cash payments. Transitions between the various statuses, particularly after the extended period of eligibility, were complicated. Many felt that the complexity deterred people from participating in the section 1619 program. Amendments to the section 1619 program enacted in 1986 addressed these concerns. Specifically, sections 2 and 4 of Public Law 99–643 made permanent and provided several improvements to sections 1619 (a) and (b). Four years later, section 5032 of Public Law 101–508 further amended section 1619(b) by eliminating the 65-year age limit for special SSI eligibility status for Medicaid purposes. In addition, section 5033 of Public Law 101–508 liberalized the impairment-related work expense exclusion of section 1612(b)(4)(B)(ii) of the Act.

Proposed Changes

11. Expiration Date of Section 1619

Section 2 of Public Law 99–643 amended section 201(d) of the Social Security Disability Amendments of 1980, as amended by section 14 of the Social Security Disability Benefits Reform Act of 1984, to remove the expiration date of June 30, 1987, for section 1619 of the Act. The effect of section 2 of Public Law 99–643 is to make section 1619 permanent for an individual who works despite a disabling impairment or blindness. Regulations at §§ 416.260 and 416.261 provide that the special SSI cash benefits and special SSI eligibility status would remain in effect through June 30, 1987. The proposed changes at §§ 416.260 and 416.261 reflect removal of the expiration date.

2. Section 1619(a)—Special SSI Cash Benefits

Section 4 of Public Law 99–643 amended section 1619(a) of the Act to provide for special SSI cash benefits to an individual whose earnings exceed the amount designated by the Secretary of Health and Human Services (the Secretary) to represent SGA despite a disabling impairment, provided that individual meets certain eligibility requirements.

The eligibility requirements for special SSI cash benefits contained in our regulations, which reflect section 1619(a) before Public Law 99–643, and the proposed changes, which reflect the changes to section 1619(a) made by section 4 of Public Law 99–643, and related policy changes are discussed below.

Sections 416.262(a)

- These regulations require an individual to have been eligible for regular SSI benefits, special SSI cash benefits, or State supplementary payments in the month immediately prior to the month of eligibility under 1619(a).

Proposed regulations reflect the change in the requirement for eligibility under section 1619(a), as amended by section 4 of Public Law 99–643, that the individual was eligible to receive a regular SSI benefit or federally administered State supplementary payment based on disability in a month before the month for which eligibility is being determined. The month the individual was eligible for a regular SSI benefit or federally administered State supplementary payment may not be in a prior period of eligibility which has been terminated pursuant to §§ 416.1331–416.1335.

Sections 416.262(c)

- These regulations require that an individual continue to have a disabling impairment.

Proposed regulations do not change this requirement.

Sections 416.260, 416.261, and 416.262(b)

- These regulations require that an individual be ineligible for regular SSI benefits under section 1611 of the Act because of a demonstrated ability to engage in SGA. Thus, an actual SGA determination must be made which includes deciding whether an individual's earnings, as described in § 416.1110, in a month subsequent to a month of initial SSI eligibility exceed the amount designated by the Secretary ordinarily to represent SGA in order to determine whether the individual qualifies for special SSI cash benefits in lieu of regular SSI benefits.

Under the proposed regulations, the individual is eligible for benefits under section 1619(a) when his or her gross earned income exceeds the amount designated as the SGA level (currently $500 per month). Because actual monthly determinations of SGA are not required to be made before an individual moves from section 1611 to 1619(a) status, gross earned income rather than earnings will be used. This is consistent with Congress' intent, as shown in the legislative history of section 1619, to simplify the transition between benefit statuses, to limit actual determinations of eligibility, and to ease the administration of the section 1619 program. For disabled individuals otherwise eligible for a cash benefit, the only distinction between regular benefit status under section 1611 and section 1619(a) status will be whether or not their gross earned income exceeds the SGA level. Section 1619(a) of the Act does not apply to the blind because earnings of blind individuals are not subject to an SGA test under the SSI program.

Section 416.262(d)

- These regulations require that the individual "continue to meet" all of the nondisability requirements for eligibility for SSI benefits.

Proposed regulations provide that in order to be eligible for special SSI cash benefits, an individual must "meet" all nondisability requirements for SSI eligibility. This change reflects the amendment to section 1619(a) made by section 4 of Public Law 99–643 which removes the former statutory requirement that an individual "continue to meet" all nondisability

requirements for eligibility for SSI benefits in the month for which the determination is being made, thus permitting eligibility for special SSI cash benefits following a month or months of suspension.

3. Section 1619(b)—Special SSI Eligibility Status

Section 4 of Public Law 99–643 and section 5032 of Public Law 101–508 amended section 1619(b) of the Act to provide changes in the eligibility requirements for special SSI eligibility status. The changes are discussed below.

Section 416.264

• These regulations provide that special SSI eligibility status applies only for purposes of establishing or maintaining eligibility for Medicaid.

The proposed regulations add that special SSI eligibility status also applies for purposes of reacquiring status as eligible for regular or special SSI cash benefits.

Section 416.265

• These regulations require that an individual be under age 65 to be eligible for special SSI eligibility status.

Proposed regulations reflect that section 5032 of Public Law 101–508 removes this limitation effective May 1, 1991.

Section 416.265

• These regulations require an individual to have been eligible to receive a regular SSI benefit, a special SSI cash benefit, or a State supplementary payment in the month immediately prior to the first month of eligibility for special SSI eligibility status.

Proposed regulations reflect the change in a requirement for eligibility under section 1619(b), as amended by section 4 of Public Law 99–643 by providing that an individual must have eligibility for a regular SSI benefit or a federally administered State supplementary payment in a month before the month for which eligibility for special SSI eligibility status is being determined. The month the individual was eligible for a regular SSI benefit or federally administered State supplementary payment may not be in a prior period of eligibility which has been terminated pursuant to §§ 416.1331–416.1335.

Sections 416.265(a) and 416.267

• These regulations provide that an individual must continue to be blind or continue to have a disabling impairment in order to be eligible for the special SSI eligibility status.

Proposed regulations do not change this requirement.

Section 416.265(b)

• These regulations require that an individual, except for earnings, "continue to meet" all the nondisability requirements for SSI eligibility to be eligible in the month for which the determination is being made.

Proposed regulations provide that an individual must "meet" all nondisability requirements, except for earnings, for eligibility for SSI benefits to be eligible for the special SSI eligibility status (§ 416.265(b)). This change reflects the amendment to section 1619(b) made by section 4 of Public Law 99–643 which removes the former statutory requirement that an individual, except for earnings, "continue to meet" all the nondisability requirements for SSI eligibility to be eligible in the month for which the determination is being made, thus permitting eligibility following a month or months of suspension.

Section 416.265(c)

• These regulations require that the termination of an individual's eligibility for Medicaid would seriously inhibit the individual's ability to continue working.

Proposed regulations do not change this requirement.

Section 416.265(d)

• These regulations require that an individual's earnings not be sufficient to allow the individual to provide a reasonable equivalent of the benefits (SSI benefits, federally administered State supplementary payments, and Medicaid) which would be available if the individual did not have those earnings.

Proposed regulations do not change this requirement; however, publicly funded attendant care services will be considered for purposes of sufficiency of earnings determinations.

Section 416.268

• These regulations provide that the individual must need Medicaid eligibility in order to continue to work (§ 416.265(c)). Need is evidenced by a signed statement from the individual regarding use of Medicaid benefits in the current month and past 12 months, or when there has been no past use, by the individual's identified expectations of use in the next 12 months. The regulations do not now provide for consideration of unexpected medical expenses. The individual's allegations regarding past use are verified with the service providers or agency administering the Medicaid program in the State.

The proposed regulations add the provision that an individual may also establish the need for Medicaid eligibility by showing that Medicaid benefits would be needed to pay for unexpected medical expenses in the next 12 months (§ 416.268). This policy change adds consideration of the individual's ability to pay for unexpected medical expenses to the factors that can meet the statutory requirement that termination of Medicaid would seriously inhibit the individual's ability to continue working. We believe the proposed change is consistent with the purpose of Public Law 99–643 because such individuals, if not accorded section 1619(b) status, might be forced to stop working in order to get Medicaid to pay for unexpected medical expenses. This proposed change will enable individuals without recurring medical expenses or expectation of expenses to meet the requirement if they cannot provide for their own medical care. We are also proposing to delete paragraphs (b) and (c) of § 416.268 which require an individual's signed statement about use or expected use of Medicaid and verification, as necessary, of past services with the service providers or the State agency administering the Medicaid program. This proposed change will permit determinations of the need for Medicaid in order to continue working to be made based on information provided by the individual. Our operational experience shows that the individual's knowledge about use or expected use of Medicaid is almost always valid and, therefore, verification results in unnecessary administrative burdens and costs.

Section 416.269

• These regulations require that the individual have insufficient earnings to provide a reasonable equivalent of the SSI benefits, State supplementary payments, and Medicaid benefits which would be available absent those earnings (§ 416.265(d)). Insufficiency of earnings is determined (§ 416.269) by a comparison of actual and/or anticipated gross earnings for the 12-month period, beginning with the month for which special SSI eligibility status is being determined, with a threshold amount for the individual's State of residence. The threshold amount is determined using the amount of gross earnings that it would take to reduce to zero the Federal SSI benefit and State supplementary payment for an individual with no other income living

in his or her own household and the average Medicaid expenditures for disabled SSI cash recipients for the State of residence. If an individual's gross earnings exceed the State threshold amount, a second comparison is done which compares the earnings with an individualized threshold.

Proposed regulations reflect the statutory expansion of the factors considered in determining the sufficiency of a person's earnings. In addition to the factors discussed in the preceding paragraph, the individualized threshold determination will also consider any amounts excluded as impairment-related work expenses or work expenses of the blind, amounts used or set aside for use under an approved plan for achieving self-support, and the value of any publicly funded attendant care services.

Proposed regulations add § 416.269(d) which explains that the value of attendant care services will be considered for purposes of sufficiency of earnings determinations discussed previously if the services are provided by a paid attendant, needed to assist with work-related and/or individual functions, and paid from Federal, State, or local funds.

Proposed regulations add § 416.269(e) to reflect the requirement of section 4 of Public Law 99–643, which amended section 1619(b), that determinations of sufficiency of earnings will be based on information and data updated no less frequently than annually.

• These regulations at § 416.269 predate retrospective monthly accounting and refer to "calendar quarter" rather than "month" for the beginning of the comparison period.

Proposed regulations revise the language of § 416.269, which predates retrospective monthly accounting, and provides for using the month, rather than the calendar quarter, for which eligibility for special SSI eligibility status is being determined as the beginning of the 12-month period for which it will be determined whether an individual's earnings are sufficient to replace benefits which would be available in the absence of such earnings.

4. Impairment-Related Work Expense Change

Section 416.1112(c)(5)

• The regulations at § 416.1112(c)(5) require that disabled individuals must first establish SSI (Federal) eligibility without use of the impairment-related work expense exclusion. Once an individual qualifies for the use of this exclusion, that exclusion is used in determining continuing eligibility for as long as he or she remains continuously eligible for a regular or special SSI cash benefit or for a federally administered optional State supplement. However, in order for an individual who left special SSI eligibility status under section 1619(b) to return to cash payment status, he or she had to meet the eligibility requirements without use of the impairment-related work expense exclusion.

In enacting Public Law 99–643, Congress recognized that disabled individuals who make work attempts may not be able to follow a steady progression from regular SSI status under section 1611 of the Act to special SSI cash benefit status under section 1619(a), to special SSI eligibility status under section 1619(b), and then to a status of complete independence. In reality, such individuals tend to have setbacks which may cause a drop in earnings and, therefore, a change in eligibility status. According to the legislative history of Public Law 99–643, it was the intent of Congress to provide for easy transition, in either direction, among the various categories of benefits.

Proposed regulations, in response to the intent of Congress as expressed in Public Law 99–643, would change § 416.1112(c)(5) to facilitate easier movement between different benefit statuses. The proposed regulations provide that for periods prior to December 1, 1990, an individual who remained continuously eligible for a benefit under section 1611, 1616 (if supplementation is federally administered), 1619(a), or 1619(b) of the Act, continued to qualify for the impairment-related work expense exclusion in determining financial eligibility for SSI.

In addition, effective for periods after November 30, 1990, section 5033 of Public Law 101–508 removed the requirement that an individual must establish eligibility without benefit of the impairment related work expense exclusion.

These changes, consistent with Congressional intent, will allow an individual to move more freely between the different benefit statuses.

5. Administrative Actions Under Section 1619(a)

In addition to the changes already discussed, these proposed regulations contain changes which we believe are consistent with the legislative intent of Public Law 99–643 to simplify the administration of section 1619 of the Act and facilitate transition among the various categories of benefits. We propose to revise current regulations at §§ 416.1402 and 416.1403 with regard to initial determinations in order to state our policy on determinations involving transitions between sections 1611, 1619(a), and 1619(b) of the Act.

We propose to revise § 416.1402(a) to clarify that initial determinations regarding SSI benefits include, but are not limited to, determinations about eligibility for or the amount of SSI benefits or special SSI cash benefits, except actions solely involving transitions to eligibility between these types of benefits. We propose to revise § 416.1402(b) to clarify that the administrative actions of "suspension" and "termination" pertain to special SSI eligibility status under section 1619(b) as well as SSI cash benefits under section 1611 or section 1619(a).

Current regulations at § 416.1402(h) provide that a determination about whether an individual is eligible for special SSI cash benefits under § 416.262 (section 1619(a) status) is an initial determination. We propose to delete § 416.1402(h) and redesignate the subsequent paragraphs. The proposed change recognizes that transition alone from eligibility for regular SSI benefits under section 1611 of the Act to eligibility for special SSI cash benefits under section 1619(a) and vice versa generally has little practical effect on an individual. The change will allow movement between the statuses to be made with fewer steps, saving time and administrative expense. We believe this change is consistent with Congress' intent to simplify the transition between benefit statuses.

In addition, we propose to revise § 416.1403(a) to include in the list of administrative actions that are not initial determinations, transitions from section 1611 to 1619(a) eligibility or section 1619(a) to 1611 eligibility. If a recipient's section 1611 or 1619(a) benefits are adversely affected (i.e., reduced, suspended, or terminated) for a reason unrelated to his or her medical condition at the time of the shift, such planned action(s) will continue to be subject to advance notice of benefit reduction, suspension, or termination and be covered as initial determinations under § 416.1402(b). If an individual's benefit amount increases, an initial determination is made under § 416.1402(a). Determinations about an individual's disability are also initial determinations under § 416.1402.

Current § 416.1402(i) provides that a determination about whether an individual is eligible for special SSI eligibility status under § 416.265 is an initial determination. The referenced section (§ 416.265) describes the

eligibility requirements for special SSI eligibility status under section 1619(b).

Because a threshold calculation and a finding that an individual needs Medicaid to continue working must be made in order to determine eligibility for section 1619(b) benefits, an initial determination will continue to be provided. Movement from special SSI eligibility status under section 1619(b) of the Act back to regular SSI benefit status under section 1611 of the Act or special SSI cash benefit status under section 1619(a) of the Act is covered as an initial determination at § 416.1402(a).

Public Law 99–643 Changes Not Reflected In This NPRM

Public Law 99–643 also provided for additional continuing disability review requirements for individuals with section 1619 status and provides for benefits based on the full Federal benefit rate to certain blind and disabled section 1619 individuals during the initial 2 months in certain institutions. These changes will be addressed in separate notices of proposed rulemaking.

Regulatory procedures

Executive Order 12291

All program changes related to Public Law 99–643 were implemented on July 1, 1987. All program changes related to Public Law 101–508 were implemented on May 1, 1991. As of June 1992, there were 16,474 section 1619(a) participants and 29,792 section 1619(b) participants.

The Secretary has determined that this is not a major rule under Executive Order 12291 because the program and administrative costs of these regulations will be insignificant and the threshold criteria for a major rule are not otherwise met. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

These proposed regulations contain information collection requirements in § 416.268. As required by section 2(a) of the Paperwork Reduction Act of 1980, 44 U.S.C. 3504(h), we will submit a copy to the Office of Management and Budget (OMB) for its review. Other organizations and individuals desiring to submit comments on these proposed rules should direct them to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building, Room 3208, Washington, DC 20503, Attention: Desk Officer for HHS. Public reporting burden for this collection of information is estimated to average 5 minutes per response. This includes the time it will take to read the instructions, gather the necessary facts, and fill out the forms, if any. If you have any comments or suggestions on this estimate, or on any other aspect of this proposed rule, write to the Social Security Administration, ATTN: Reports Clearance Officer, 1–A–21 Operations Building, Baltimore, Maryland 21235, and to the Office of Management and Budget, Paperwork Reduction Project (0960–*NEW*), Washington, DC 20503.

Regulatory Flexibility Act

We certify that these proposed regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities because they affect only individuals and States. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program No. 93.807, Supplemental Security Income Program)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Reporting and recordkeeping requirements, Public assistance programs, Supplemental Security Income.

Dated: May 25, 1993.

Louis D. Enoff,

Principal Deputy Commissioner of Social Security.

Approved: August 10, 1993.

Donna E. Shalala,

Secretary of Health and Human Services.

Subparts B, K, and N of part 416 of chapter III of title 20 of the Code of Federal Regulations are proposed to be amended as follows:

1. The authority citation for Subpart B of part 416 continues to read as follows:

Authority: Secs. 1102, 1110(b), 1602, 1611, 1614, 1615(c), 1619(a), 1631, and 1634, of the Social Security Act; 42 U.S.C. 1302, 1310(b), 1381a, 1382, 1382c, 1382d(c), 1382h(a), 1383, and 1383c; secs. 211 and 212 of Pub. L. 93–66, 87 Stat. 154 and 155; sec. 502(a) of Pub. L. 94–241, 90 Stat. 268; and sec. 2 of Pub. L. 99–643, 100 Stat. 3574.

2. The undesignated center heading immediately above § 416.260 is revised to read as follows:

Special Provisions for People Who Work Despite a Disabling Impairment

3. Section 416.260 is revised to read as follows:

§ 416.260 General.

The regulations in §§ 416.260 through 416.269 describe the rules for determining eligibility for special SSI cash benefits and for special SSI eligibility status for an individual who works despite a disabling impairment. Under these rules an individual who works despite a disabling impairment may qualify for special SSI cash benefits and in most cases for Medicaid benefits when his or her gross earned income exceeds the applicable dollar amount which ordinarily represents SGA described in § 416.974(b)(2). Also, for purposes of determining eligibility or continuing eligibility for Medicaid benefits, a blind or disabled individual (no longer eligible for regular SSI benefits or for special SSI cash benefits) who, except for earnings, would otherwise be eligible for SSI cash benefits may be eligible for a special SSI eligibility status under which he or she is considered to be a blind or disabled individual receiving SSI benefits. We explain the rules for eligibility for special SSI cash benefits in §§ 416.261 and 416.262. We explain the rules for the special SSI eligibility status in §§ 416.264 through 416.269.

4. The undesignated center heading immediately above § 416.261 is removed.

5. Section 416.261 is amended by revising the first sentence to read as follows:

§ 416.261 What are special SSI cash benefits and when are they payable.

Special SSI cash benefits are benefits that we may pay you in lieu of regular SSI benefits because your gross earned income in a month subsequent to the month of initial eligibility for regular SSI benefits exceeds the amount ordinarily considered to represent SGA under § 416.974(b)(2). * * *

6. Section 416.262 is amended by revising the introductory text and paragraphs (a), (b) and (d) to read as follows:

§ 416.262 Eligibility requirements for special SSI cash benefits.

You are eligible for special SSI cash benefits if you meet the following requirements—

(a) You were eligible for a regular SSI benefit or a federally administered State supplementary payment (see § 416.2001) in a month before the month for which we are determining your eligibility for special SSI cash benefits as long as that month was not in a prior period of eligibility which has terminated according to §§ 416.1331 through 416.1335;

(b) In the month for which we are making the determination, your gross earned income exceeds the amount ordinarily considered to represent SGA under § 416.974(b)(2);

(c) * * *

(d) You meet all the nondisability requirements for eligibility for SSI benefits (see § 416.202).

7. Section 416.264 is revised to read as follows:

§ 416.264 When does the special SSI eligibility status apply.

The special SSI eligibility status applies for the purposes of establishing or maintaining your eligibility for Medicaid. For these purposes we continue to consider you to be a blind or disabled individual receiving benefits even though you are in fact no longer receiving regular SSI benefits or special SSI cash benefits. You must meet the eligibility requirements in § 416.265 in order to qualify for the special SSI eligibility status. Special SSI eligibility status also applies for purposes of reacquiring status as eligible for regular SSI benefits or special SSI cash benefits.

8. Section 416.265 is amended by revising the heading to the section, introductory paragraph and paragraphs (b) and (d) to read as follows:

§ 416.265 Requirements for the special SSI eligibility status.

In order to be eligible for the special SSI eligibility status, you must have been eligible to receive a regular SSI benefit or a federally administered State supplementary payment (see § 416.2001) in a month before the month for which we are making the special SSI eligibility status determination. The month you were eligible for a regular SSI benefit or a federally administered State supplementary payment may not be in a prior period of eligibility which has been terminated according to §§ 416.1331 through 416.1335. For periods prior to May 1, 1991, you must be under age 65. Also, we must establish that—

(a) * * *

(b) Except for your earnings, you meet all the nondisability requirements for eligibility for SSI benefits (see § 416.202);

(c) * * *

(d) Your earnings after the exclusions in § 416.1112(c) (5), (7) and (8) are not sufficient to allow you to provide yourself with a reasonable equivalent of the benefits (SSI benefits, federally administered State supplementary payments, Medicaid, and publicly-funded attendant care services, including personal care assistance under § 416.269(d)) which would be available to you if you did not have those earnings (see § 416.269).

9. The undesignated center heading immediately above § 416.267 is removed.

10. Section 416.268 is revised to read as follows:

§ 416.268 What is done to determine if you must have Medicaid in order to work.

For us to determine that you need Medicaid benefits in order to continue to work, you must establish:

(a) That you are currently using or have received services which were paid for by Medicaid during the period which began 12 months before our first contact with you to discuss this use; or

(b) That you expect to use these services within the next 12 months; or

(c) That you would need Medicaid to pay for unexpected medical expenses in the next 12 months.

11. Section 416.269 is revised to read as follows:

§ 416.269 What is done to determine whether your earnings are too low to provide comparable benefits and services you would receive in the absence of those earnings.

(a) *What we determine.* We must determine whether your earnings are too low to provide you with benefits and services comparable to the benefits and services you would receive if you did not have those earnings (see § 426.265(d)).

(b) *How the determination is made.* In determining whether your earnings are too low to provide you with benefits and services comparable to the benefits and services you would receive if you did not have those earnings, we compare your anticipated gross earnings (or a combination of anticipated and actual gross earnings, as appropriate) for the 12-month period beginning with the month for which your special SSI eligibility status is being determined to a threshold amount for your State of residence. This threshold amount consists of the sum for a 12-month period of two items, as follows:

(1) The amount of gross earnings including amounts excluded under § 416.1112(c) (5) and (6) that would reduce to zero the Federal SSI benefit and the optional State supplementary payment for an individual with no other income living in his or her own household in the State where you reside. This amount will vary from State to State depending on the amount of the State supplementary payment; and

(2) The average expenditures for Medicaid benefits for disabled and blind SSI cash recipients, including recipients of federally administered State supplementary payments only, in your State of residence.

(c) *How the eligibility requirements are met.* (1) You meet the requirements in § 416.265(d) if the comparison shows that your gross earnings are equal to or less than the applicable threshold amount for your State, as determined under paragraphs (b) (1) and (2) of this section. However, if the comparison shows that these earnings exceed the applicable threshold amount for your State, we will establish (and use in a second comparison) an individualized threshold taking into account the total amount of:

(i) The amount determined under paragraph (b)(1) of this section that would reduce to zero the Federal SSI benefit and State supplementary payment for your actual living arrangement;

(ii) The average Medicaid expenditures for your State of residence under paragraph (b)(2) of this section or, if higher, your actual medical expenditures in the appropriate 12-month period;

(iii) Any amounts excluded from your income as impairment-related work expenses (see § 416.1112(c)(5)), work expenses of the blind (see § 416.1112(c)(7)), and income used or set aside for use under an approved plan for achieving self support (see § 416.1112(c)(8)); and

(iv) The value of any publicly-funded attendant care services as described in paragraph (d) of this section (including personal care assistance).

(2) If you have already completed the 12-month period for which we are determining your eligibility, we will consider only the expenditures made in that period.

(d) *Attendant care services.* Expenditures for attendant care services (including personal care assistance) which would be available to you in the absence of earnings that make you ineligible for SSI cash benefits will be considered in the individualized threshold (as described in paragraph (c)(1) of this section) if we establish that they are:

(1) Provided by a paid attendant;

(2) Needed to assist with work-related and/or personal functions; and

(3) Paid from Federal, State, or local funds.

(e) *Annual update of information.* The threshold amounts used in determinations of sufficiency of earnings will be based on information and data updated no less frequently than annually.

12. The authority citation for Subpart K of Part 416 is revised to read as follows:

Authority: Secs. 1102, 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act; 42 U.S.C. 1302, 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383; sec. 211 of Pub. L. 93–66, 87 Stat. 154.

13. Section 416.1112 is amended by revising paragraph (c)(5) to read as follows:

§ 416.1112 Earned income we do not count.

* * * * *

(c) * * *

(5) Earned income you use to pay impairment-related work expenses described in § 416.976, if you are disabled (but not blind) and under age 65 or you are disabled (but not blind) and received SSI as a disabled individual (or received disability payments under a former State plan) for the month before you reached age 65.

(i) For periods prior to December 1, 1990, you must be able, however, to establish your initial eligibility for Federal benefits without the use of the impairment-related work expense exclusion. Once you establish your initial eligibility without the use of the impairment-related work expense exclusion, the exclusion applies for determining your eligibility for all subsequent consecutive months for which you are eligible for regular SSI benefits, federally administered optional State supplementary payments, special SSI cash benefits or special SSI eligibility status. If, in a subsequent month, you are not eligible for any of these benefits, you cannot reestablish your eligibility for Federal SSI benefits or federally administered optional State supplementary payments before December 1, 1990, using the impairment-related work expense exclusion.

(ii) For periods after November 30, 1990, you may also use the impairment-related work expense exclusion to establish initial eligibility and reeligibility following a month in which you were not eligible for regular SSI benefits, a federally administered optional State supplementary payment, special SSI cash benefits or special SSI eligibility status.

* * * * *

14. The authority citation for Subpart N of Part 416 is revised to read as follows:

Authority: Secs. 1102, 1631, and 1633 of the Social Security Act; 42 U.S.C. 1302, 1383, and 1383b.

15. Section 416.1402 is amended by revising paragraphs (a) and (b), removing paragraph (h), and by redesignating paragraphs (i) through (l) as paragraphs (h) through (k), respectively, to read as follows:

§ 416.1402 Administrative actions that are initial determinations.

* * * * *

(a) Your eligibility for, or the amount of, your supplemental security income benefits or your special SSI cash benefits under § 416.262, except actions solely involving transitions to eligibility between these types of benefits (see §§ 416.1403(a)(11) and (a)(12)).

(b) Suspension, reduction, or termination of your SSI benefits or special SSI cash benefits (see §§ 416.261 and 416.262) or suspension or termination of your special SSI eligibility status (see §§ 416.264 through 416.269);

* * * * *

16. Section 416.1403 is amended by adding new paragraphs (a)(12) and (a)(13) to read as follows:

§ 416.1403 Administrative actions that are not initial determinations.

(a) * * *

(12) Transition to eligibility for special SSI cash benefits (§ 416.262) in a month immediately following a month for which you were eligible for regular SSI benefits; and

(13) Transition to eligibility for regular SSI benefits in a month immediately following a month for which you were eligible for special SSI cash benefits (§ 416.262).

* * * * *

[FR Doc. 93–24718 Filed 10–7–93; 8:45 am]
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20 CFR Part 416

RIN 0960–AD35

Supplemental Security Income for the Aged, Blind, and Disabled; Treatment of Certain Royalties and Honoraria

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rules.

SUMMARY: We are proposing to amend the supplemental security income (SSI) regulations to reflect the provisions of section 5034 of the Omnibus Budget Reconciliation Act of 1990 (OBRA '90). The provisions of this section change the treatment of certain royalties and honoraria from unearned income to earned income. The effects of this statutory change depend on the individual case. We are also proposing to amend SSI regulations to clarify the definition of royalties.

DATES: We will consider any comments we receive by December 7, 1993. The provisions of section 5034 of Pub. L. 101–508 are effective for determinations of eligibility and benefit amount beginning December 1, 1991.

ADDRESSES: Comments should be submitted in writing to the Social Security Administration, P.O. Box 1585, Baltimore, MD 21235, or delivered to the Office of Regulations, Social Security Administration, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Duane Heaton, Legal Assistant, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–8470.

SUPPLEMENTARY INFORMATION:

Background

Section 5034 of OBRA '90, enacted November 5, 1990, amended section 1612(a)(1) and (2) of the Social Security Act (the Act). Prior to this amendment, the Act provided that royalties were counted as unearned income under the SSI program unless the royalties were from self-employment in a royalty-related trade or business. Honoraria also were counted as unearned income. As unearned income, any expenses of obtaining this income were not counted. Then, the first $20 of the SSI beneficiary's income in a month was excluded, and the remaining unearned income resulted in a dollar-for-dollar reduction in the SSI beneficiary's benefits.

This OBRA '90 amendment provides that any royalties earned by an individual in connection with any publication of the work of the individual, as well as that portion of any honoraria received for services rendered, are earned income under the SSI program. The provisions of section 5034 are effective for determinations of eligibility and benefit amount as of December 1, 1991.

As a result of this statutory provision, the statutory earned income exclusions, which in many cases are more generous than the unearned income exclusions, will now apply to such earnings. Under the earned income exclusions, SSA will exclude the first $65 of monthly earnings plus 50 percent of the remaining earnings per month. Other earned income exclusions, such as impairment-related work expenses, also may apply.

In many cases, the application of the earned income exclusions will result in considering a smaller portion of the royalties and honoraria as countable income. However, in those cases in which the individual receives a royalty for the publication of his or her work and incurs a large amount of expenses in obtaining this income, but does not have a royalty-related trade or business, the individual may have a greater

portion of his or her royalty treated as countable income. This is because there is no statutory or regulatory provision that permits the deduction of expenses from earned income that parallels the deduction of expenses for obtaining unearned income. Further, we believe the statute does not provide authority for us to permit, through regulations, the deduction of expenses from earned royalty income.

Current regulations in § 416.1121(c) state that royalties may include, among other things, payments to the owner of a mine, oil well, timber tract, or other natural resource for extraction of a product. In the past, we interpreted this provision to mean that royalties include the proceeds from timber sales as well as from timber leases.

We are clarifying this section of the regulations to make it clear that proceeds from the conversion of a resource are not income. For example, the term royalties may include the proceeds from timber leases, but not from timber sales. A timber sale is the conversion of a resource from one form (timber) to another (cash) as provided for in §§ 416.1103(c) and 416.1207(e). Thus, royalties would include fees for the use of the land, but not payments resulting from a sale.

Under that definition of royalties, if an owner of timberland enters into a long-term lease agreement which permits the lessee to manage and cut timber, with payment to be dependent on the amount of timber actually harvested, the payments to the lessor would be considered royalties. However, a contract for the sale of standing timber would not result in royalties. We propose to amend the regulations to clarify the definition of royalties accordingly.

Revised Regulations

We are proposing to revise §§ 416.1110, 416.1111, and 416.1121 to reflect the statutory changes of section 5034 of OBRA '90 and the change in the definition of royalties as follows:

- Section 416.1110, which lists what we consider to be earned income, is revised by adding a new paragraph (e) to provide that payments of royalties to an individual in connection with any publication of the work of the individual are earned income. Also, that portion of honoraria received in consideration of services rendered is included as earned income. Honoraria that are earned income include rewards and donations received in consideration of services rendered for which no payment can be enforced by law.
- Section 416.1111, which explains how we count each type of earned income, is revised by adding paragraph (f), which provides that payments of royalties to an individual in connection with the publication of the work of the individual and honoraria, to the extent received for services rendered, count at the earliest of the following points: when received, credited, or set aside for the individual's use.
- Section 416.1121(c) is revised by clarifying the definition of royalties and adding a cross-reference to show that payments of royalties to an individual in connection with the publication of the work of the individual are treated differently from other royalties.

Regulatory Procedures

Executive Order No. 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 since the program and administrative costs of these regulations will be insignificant and the threshold criteria for a major rule are not otherwise met. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

We certify that these proposed rules will not have a significant economic impact on a substantial number of small entities since these rules affect only individuals and States. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

These proposed regulations impose no additional reporting and recordkeeping requirements subject to Office of Management and Budget clearance.

(Catalog of Federal Domestic Assistance: No. 93.807–Supplemental Security Income.)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income.

Dated: May 14, 1993.

Louis D. Enoff,

Principal Deputy Commissioner of Social Security.

Approved: July 30, 1993.

Donna E. Shalala,

Secretary of Health and Human Services.

For the reasons set out in the preamble, Part 416 of Title 20 of the Code of Federal Regulations is proposed to be amended as follows:

1. The authority citation for Subpart K of Part 416 is revised to read as follows:

Authority: Secs. 1102, 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act; 42 U.S.C. 1302, 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383; sec. 211 of Pub. L. 93–66, 87 Stat. 154.

2. Section 416.1110 is amended by adding a new paragraph (e) as follows:

§ 416.1110 What is earned income.

* * * * *

(e) *Certain royalties and honoraria.* Royalties that are earned income are payments to an individual in connection with any publication of the work of the individual. (See § 416.1110(b) if you receive a royalty as part of your trade or business. See § 416.1121(c) if you receive another type of royalty.) Honoraria that are earned income are those portions of payments, such as an honorary payment, reward, or donation, received in consideration of services rendered for which no payment can be enforced by law. (See § 416.1120 if you receive another type of honorarium.)

3. Section 416.1111 is amended by adding a new paragraph (f) as follows:

§ 416.1111 How we count earned income.

* * * * *

(f) *Royalties and honoraria.* We count payments of royalties to you in connection with any publication of your work, and honoraria, to the extent received for services rendered, at the earliest of the following points: when you receive them, when they are credited to your account, or when they are set aside for your use. (See § 416.1111(b) if you receive royalties as part of your trade or business.)

4. Section 416.1121 is amended by revising paragraph (c) to read as follows:

§ 416.1121 Types of unearned income.

* * * * *

(c) *Dividends, interest, and certain royalties.* Dividends and interest are returns on capital investments, such as stocks, bonds, or savings accounts. Royalties are compensation paid to the owner for the use of property, usually copyrighted material or natural resources such as mines, oil wells, or timber tracts. Royalty compensation may be expressed as a percentage of receipts from using the property or as an amount per unit produced. (See § 416.1110(b) if you receive royalties as part of your trade or business and § 416.1110(e) if you receive royalties in

connection with the publication of your work.)

* * * * *

[FR Doc. 93–24717 Filed 10–7–93; 8:45 am]
BILLING CODE 4190–29–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD02–93–002]

RIN 2115–AE47

Drawbridge Operation Regulations, St. Croix River, Minnesota and Wisconsin

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes changing the regulations governing the opening of the draw of the S36 Bridge over the St. Croix River at mile 23.4, at Stillwater, Minnesota. The present opening schedule has caused traffic delays and congestion in Stillwater, Minnesota. Revising the schedule should reduce the traffic congestion.

DATES: Comments must be received on or before November 22, 1993.

ADDRESSES: Comments may be mailed to Commander (ob), Second Coast Guard District, 1222 Spruce Street, St. Louis, MO 63103–2832, Attention: Docket CGD2–93–02. Comments may also be delivered to room 2.107B at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. For information concerning comments, the telephone number is (314) 539–3724.

The Bridge Branch, Second Coast Guard District, maintains the public docket for this rulemaking. Comments will become part of the public docket and the docket will be available for inspection or copying in room 2.107B at the above address.

FOR FURTHER INFORMATION CONTACT: Roger K. Wiebusch, Bridge Administrator, Second Coast Guard District, (314) 539–3724.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking [CGD02–93–002], identify the specific section of this proposal to which each comment applies, and give the reason for each comment. Each person who wants an acknowledgment of the receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. The Coast Guard may change the proposal in view of the comments.

The Coast Guard does not plan to hold a public hearing. Persons may request a public hearing by writing to the Docket Clerk at the address under "ADDRESSES." If the Coast Guard determines that the opportunity to make oral presentations will aid the rulemaking process, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are Wanda G. Renshaw, Project Officer, Bridge Branch, and Lieutenant Commander Arne O. Denny, Project Attorney, Second Coast Guard District Legal Office.

Background and Purpose

The mayor of Stillwater, Minnesota has requested that the existing regulation governing the opening and closing of the draw of the S36 Bridge over the St. Croix River at mile 23.4 be changed. The requested change would require hourly openings of the draw from May 15 through October 15 from 8 a.m. to 10 p.m., Monday through Friday, and from 8 a.m. to 12 midnight, Saturday, Sunday, and Federal holidays.

The St. Croix River is heavily used by recreational craft. River excursion boats are the only known commercial navigation passing the bridge. A review of the bridge logs and traffic count data indicate that both vehicular traffic and the number of vessels requiring bridge openings has increased substantially. The increase in vessels has resulted in the bridge being open for vessels to pass through the draw for longer periods during the existing hourly and half hourly openings. Each opening is lasting longer than intended when the original opening schedule was established. Thus, the bridge is closed to vehicular traffic for longer periods creating a backlog of traffic in the downtown business district of Stillwater, Minnesota.

The proposed rulemaking will reduce the number of scheduled bridge openings during the boating season, May 15 through October 15. Less frequent openings, on the hour instead of every half hour, should relieve traffic congestion and delays in the City of Stillwater. The reduction in the number of bridge openings should serve to more efficiently manage the traffic flow on the approaches to the S36 Bridge.

The proposed regulation will maintain the scheduled hourly and emergency openings. It will also maintain the openings based upon two hours advance notice Monday through Friday from 10 p.m. to 8 a.m., and Saturdays, Sundays and Federal holidays from 12 midnight to 8 a.m.

Discussion of Proposed Amendments

Presently, the regulation requires the bridge to be opened every half hour from May 15 through October 15 from 11 a.m. to 3 p.m. and from 6 p.m. to 10 p.m., Monday through Friday, except Federal holidays, and from 8 a.m. to 11 a.m. and from 8 p.m. to midnight, Saturdays, Sundays and Federal holidays. The proposal will amend the bridge opening schedule to eliminate the requirement for scheduled openings on the half-hour. Scheduled openings from May 15 through October 15 will be amended to require opening on the hour only. The rescheduled openings should reduce the number of bridge openings during the day. This will allow for a better flow of automobile traffic, reducing traffic congestion in the city of Stillwater, Minnesota.

Regulatory Evaluation

This proposal is not major under Executive Order 12291 and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a Regulatory Evaluation is unnecessary. Excursion boat operators have indicated that adjusting to the proposed hourly openings can be met without impact on their businesses.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant impact on a substantial number of small entities. If, however, you think that your business qualifies as a small entity and that this proposal will have a significant economic impact on your business, please submit a comment (see "**ADDRESSES**") explaining why you think

your business qualifies and in what way and to what degree this proposal will economically affect your business.

An Initial Regulatory Flexibility Analysis discussing the impact of this proposal on small entities is available in the docket for inspection or copying where indicated under "**ADDRESSES**." The analysis indicates that the only businesses which will be directly affected by the amended bridge opening schedule, the excursion boat operators, will be able to adjust their schedules without impact on their businesses. However, one marina operator whose marina is located upriver from the bridge feels that the scheduling change will indirectly affect him. He feels that the change will cause him to lose business because boat owners will relocate their vessels down river, below the bridge.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Environment

The Coast Guard has reviewed the environmental impact of this proposal and concluded that under section 2.B.2 of the NEPA Implementing Procedures, COMDTINST M16475.1B, this proposal is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulations have been found to not have a significant effect on the human environment. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under "**ADDRESSES**."

List of Subjects in 33 CFR Part 117

Bridges.

PART 117—DRAWBRIDGE OPERATION REGULATIONS

For the reasons set out in the preamble, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. § 499; 49 CFR § 1.46; 33 CFR § 1.05(g).

2. Part 117 is amended by revising paragraphs (b) introductory text, (b)(1) and (b)(2) of § 117.667 to read as follows:

§ 117.667 St. Croix River.

* * * * *

(b) The draw of the S36 Bridge, Mile 23.4, at Stillwater, shall open on signal as follows:

(1) From May 15 through October 15, Monday through Friday, except Federal holidays:

(i) From 8 a.m. to 10 p.m., every hour on the hour;

(ii) From 10 p.m. to 8 a.m., if at least two hours notice is given.

(2) From May 15 through October 15, Saturdays, Sundays, and Federal holidays:

(i) From 8 a.m. to midnight, every hour on the hour;

(ii) From midnight to 8 a.m., if at least two hours notice is given.

* * * * *

Dated: September 23, 1993.

Paul M. Blayney,

Rear Admiral, U.S. Coast Guard, Commander, Second Coast Guard District.

[FR Doc. 93–24807 Filed 10–7–93; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–14–1–5455; FRL–4787–2]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Revision to the State Implementation Plan Addressing PM–10 for El Paso

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: This action proposes approval of a revision to the Texas PM–10 State Implementation Plan (SIP) for El Paso, Texas. PM–10 is defined as particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers. The EPA is also proposing to approve the PM–10 SIP for El Paso, Texas, as meeting the requirements of section 179B of the Clean Air Act (CAA) regarding implementation plans and revisions for international border areas.

DATES: Comments on this proposed action must be received in writing on or before November 8, 1993.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Planning Section, at the EPA Region 6 Office indicated. Copies of the documents relevant to this proposed action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T-AP), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Texas Air Control Board, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Sather, Planning Section (6T-AP), Air Programs Branch, U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, Telephone (214) 655–7258.

SUPPLEMENTARY INFORMATION:

El Paso, Texas, was designated nonattainment for PM–10 and classified as moderate under sections 107(d)(4)(B) and 188(a) of the CAA, upon enactment of the Clean Air Act Amendments (CAAA) of 1990.[1] Please reference 56 FR 56694 (November 6, 1991, codified for Texas at 40 CFR 81.344) and 57 FR 13498, 13537 (April 16, 1992). The air quality planning requirements for moderate PM–10 nonattainment areas are set out in subparts 1 and 4 of part D, title I of the CAA. Subpart 1 contains provisions generally applicable to all nonattainment areas and Subpart 4 contains provisions specifically applicable to PM–10 nonattainment areas. At times, Subparts 1 and 4 overlap or conflict. The EPA has attempted to clarify the relationship among these various provisions in the General Preamble and, as appropriate, in this action.

The EPA has issued a "General Preamble" describing the EPA's preliminary views on how the EPA intends to review SIPs and SIP revisions submitted under Title I of the CAA, including those State submittals containing moderate PM–10 nonattainment area SIP requirements (see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). The reader should refer to the General Preamble for a more detailed discussion of the interpretations of Title I advanced in this proposed action and the supporting rationale. In this rulemaking action on the El Paso, Texas, moderate PM–10 SIP, the EPA is

[1] The 1990 Amendments to the Clean Air Act made significant changes to the air quality planning requirements for areas that do not meet (or that significantly contribute to ambient air quality in a nearby area that does not meet) the PM-10 national ambient air quality standards (see Public Law No. 101-549, 104 Stat. 2399). References herein are to the Clean Air Act, as amended, 42 U.S.C. 7401 *et seq.*

proposing to apply its interpretations, taking into consideration the specific factual issues presented. Thus, the EPA will consider any timely submitted comments before taking final action on this proposal.

On November 15, 1991, the Governor of Texas submitted to the EPA the SIP revision for PM–10 concerning El Paso, Texas. The CAA specifies that States containing those moderate PM–10 nonattainment areas designated nonattainment under section 107(d)(4) of the Act were to submit SIPs to the EPA by November 15, 1991, and outlines certain required items to be included in the SIPs. These required items, due November 15, 1991, unless otherwise noted, include: (1) A comprehensive, accurate, and current inventory of actual emissions from all sources of PM–10 in the nonattainment area (section 172(c)(3) of the CAA); (2) a permit program to be submitted by June 30, 1992, which meets the requirements of section 173 for the construction and operation of new and modified major stationary sources of PM–10 (section 189(a)(1)(A)); (3) a demonstration (including air quality modeling) that the plan provides for attainment of the PM–10 National Ambient Air Quality Standards (NAAQS) as expeditiously as practicable but no later than December 31, 1994, or a demonstration that attainment by that date is impracticable (section 189(a)(1)(B)); (4) provisions to assure that Reasonably Available Control Measures (RACM), including Reasonably Available Control Technology (RACT), for control of PM–10 will be implemented no later than December 10, 1993 (sections 172(c)(1) and 189(a)(1)(C)). For sources emitting insignificant (de minimis) quantities of PM–10, the EPA's policy is that it would be unreasonable and would not constitute RACM to require controls on the source (please reference 57 FR 13540). Also, when evaluating RACM and RACT, the technological and economic feasibility of the controls are relevant considerations (57 FR 13540–13544); (5) quantitative emission reduction milestones which are to be achieved every three years until the area is redesignated attainment and which demonstrate reasonable further progress (RFP) toward attaining the PM–10 NAAQS (section 189(c)); (6) contingency measures due November 15, 1993 (please reference 57 FR 13510–13512 and 13543–13544), that are to be implemented if the EPA determines that the area has failed to make RFP or to attain the primary standards by the applicable date (section 172(c)(9)); and (7) control requirements for major stationary sources of PM–10 precursors, unless the EPA determines inappropriate. The CAA, in section 189(e), states that control requirements applicable to major stationary sources of PM–10 will also be applicable to major stationary sources of PM–10 precursors, except where the Administrator determines that such sources do not significantly contribute to PM–10 levels that exceed the PM–10 ambient standards in the area.

As outlined below, the State of Texas' SIP revision for PM–10 concerning El Paso, a moderate PM–10 nonattainment area, was reviewed against the applicable requirements. The reader is referred to the El Paso PM–10 SIP submittal and the EPA's supporting technical information for pertinent details regarding each requirement. These items are available for public review at the addresses indicated above.

Section 110(k) of the CAA sets out provisions governing the EPA's review of SIP submittals (see 57 FR 13565–13566). In this action, the EPA is proposing to grant approval of the plan revision submitted to the EPA on November 15, 1991, for El Paso, Texas, because it meets all of the applicable requirements of the CAA.

Analysis of State Submission

1. Procedural Background

The CAA requires States to observe certain procedural requirements in developing implementation plans for submission to the EPA. Section 110(a)(2) of the CAA provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing.[2] See also section 110(l) of the CAA. Also, the EPA must determine whether a submittal is complete and therefore warrants further EPA review and action (see section 110(k)(1) and 57 FR 13565). The EPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V (1992). The EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by the EPA six months after receipt of the submission.

After providing adequate notice, the State of Texas held a public hearing on September 5, 1991, to entertain public comment on the PM–10 implementation plan for El Paso. Following the public hearing the plan was adopted by the State and signed by the Governor on November 5, 1991, and submitted to the EPA on November 15, 1991, as a proposed revision to the SIP.

The SIP revision was reviewed by the EPA to determine completeness shortly after its submittal, in accordance with the completeness criteria referenced above. A letter dated December 31, 1991, was forwarded to the Governor indicating the completeness of the submittal and the next steps to be taken in the review process. As noted, in this action, the EPA proposes to approve the Texas PM–10 SIP submittal for El Paso and invites public comment on the action.

2. PM–10 Emission Inventory

Section 172(c)(3) of the CAA requires that nonattainment plan provisions include a comprehensive, accurate, and current inventory of actual emissions from all sources of relevant pollutants in the nonattainment area. Further, section 110(a)(2)(K) generally authorizes the EPA to request any data necessary to perform air quality modeling for the purpose of predicting, among other things, impacts on the PM–10 NAAQS.

The State of Texas included two inventories in the El Paso PM–10 Moderate SIP: (1) An inventory for El Paso County (the City of El Paso is located in El Paso County) based on actual emissions for the year 1990; and (2) An inventory for El Paso County based on permit allowable emissions (where appropriate) for the year 1994. For 1990, the State calculated 1,082 tons/year of PM–10 emissions from point sources, 1,691 tons/year from area sources, and 4,640 tons/year from mobile sources (includes PM–10 emissions from paved and unpaved roads), for a total of 7,413 tons/year of PM–10 emissions. Projecting for 1994, and accounting for growth factors, the State calculated 1,413 tons/year of PM–10 emissions from point sources, 1,740 tons/year from area sources, and 4,399 tons/year from mobile sources (includes PM–10 emissions from paved and unpaved roads), for a total of 7,552 tons/year of PM–10 emissions. It is important to note that there were calculation errors in the two emission inventories submitted by the State. These calculation errors are discussed in detail in the Technical Support Document. Only one of the errors resulted in greatly different emissions estimates. This error involved PM–10 emissions from agricultural tilling. Instead of 126 tons/year, the 1990 inventory should have calculated PM–10 emissions from agricultural tilling operations to be 1,025 tons/year. The State was asked to re-examine its attainment

[2] Section 172(c)(7) of the CAA requires that plan provisions for nonattainment areas meet the applicable provisions of section 110(a)(2).

demonstration, as discussed below in Section 4, to account for this additional amount of PM–10 emissions.

By cover letter dated November 20, 1992, from Lane Hartsock, Deputy Director of Air Quality Planning, Texas Air Control Board (TACB), to Thomas H. Diggs, Chief of the Air Planning Section, EPA Region 6, the State submitted a revised emissions inventory addressing the calculation errors. The State used this revised inventory for an additional attainment demonstration which will be discussed in Section 4 below.

3. Nonattainment New Source Review Permit Program

The State of Texas has submitted new source review regulatory revisions to the EPA. These revisions, submitted by cover letter from the Governor dated May 13, 1992, were submitted in part to meet requirements found in sections 173 and 189(a)(1)(A) of the CAA for the construction and operation of new and modified major stationary sources of PM–10. These revisions were due independently of the November 15, 1991, moderate PM–10 nonattainment area SIP requirements addressed in this action and will be addressed in detail in a separate **Federal Register** notice.

4. Demonstration of Attainment of the PM–10 NAAQS by December 31, 1994, but for Emissions Emanating From Mexico

As noted, the initial moderate PM–10 nonattainment areas must submit a demonstration (including air quality modeling) showing that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994 (see section 189(a)(1)(B)(i) of the CAA). Alternatively, the State must show that attainment by December 31, 1994, is impracticable (section 189(a)(1)(B)(ii)).

There have been several air quality studies conducted in the El Paso/Juarez air basin. Special receptor modeling and other studies in El Paso and across the United States border in Juarez, Mexico, conducted by the TACB, the EPA, the El Paso City-County Health District (EPCCHD), and Mexico's Secretariat of Urban Development and Ecology (SEDUE) (now known as the Secretariat for Social Development or SEDESOL), have included PM–10 and meteorological monitoring in both El Paso and Juarez, trends analyses of the monitoring data, trajectory analyses demonstrating PM–10 transport from Juarez into El Paso, and laboratory analyses of air samples. The most extensive study was performed in December of 1990—an 18 day project entitled the "El Paso/Juarez Winter PM–10 Receptor Modeling Scoping Study." Results from the study showed that generally, PM–10 concentrations were higher in Juarez, Mexico, than in El Paso, and a monitoring station in Juarez consistently reported higher PM–10 values than any other station during the special study period. In addition, when high PM–10 concentrations were measured in El Paso, trajectory analyses showed that many of the air parcels came from source regions within Juarez or areas outside Juarez in Mexico.

Section 179B(a) of the CAA provides that notwithstanding any other provision of law, a SIP required under the CAA shall be approved by the Administrator if: (1) The plan meets all requirements applicable to it under the CAA other than a requirement that such plan demonstrate attainment and maintenance of the relevant NAAQS by the specified attainment date; and (2) the submitting State establishes to the satisfaction of the Administrator that the SIP would be adequate to attain and maintain the relevant NAAQS by the specified attainment date, but for emissions emanating from outside of the United States. See generally 57 FR 13569–13570. In addition, for PM–10 nonattainment areas, section 179B(d) of the CAA specifies that notwithstanding any other provision of law, any State that establishes to the satisfaction of the Administrator that, with respect to a PM–10 nonattainment area in such State, such State would have attained the NAAQS for PM–10 by the applicable attainment date, but for emissions emanating from outside the United States, then such PM–10 nonattainment area in the State shall not be subject to the reclassification to serious area provisions of section 188(b)(2) (failure to attain after the applicable attainment date). The EPA has construed this reclassification restriction to also extend to section 188(b)(1) of the CAA that pertains to reclassification before the attainment date where the EPA determines an area cannot practicably timely attain (57 FR 13569, footnote 42).

The State of Texas references section 179B of the CAA when presenting their demonstration. As set out in more detail below, the State has submitted a demonstration showing that the El Paso PM–10 moderate nonattainment area would be in attainment of the PM–10 NAAQS both currently and by December 31, 1994, based on dispersion modeling of United States (El Paso County) PM–10 emissions alone. Based on the EPA's review, the demonstration appears to be satisfactory. Accordingly, the EPA is proposing to approve the demonstration as showing that the SIP provides for timely attainment of the PM–10 NAAQS but for emissions emanating from Mexico.

The State of Texas used five years of hourly meteorological data (National Weather Service data from the El Paso International Airport for the years 1985–1989) and two sets of emissions inventory data for El Paso County (1990 actual point, area, and mobile source emissions, and 1994 projected allowable emissions) to model PM–10 NAAQS impacts in El Paso County. The State used a Gaussian Plume Multiple Source Air Quality Algorithm (Regional Air Model (RAM)) for modeling 1990 and 1994 PM–10 emissions, and also used the Valley Screening method for estimating PM–10 NAAQS impacts of significant elevated point sources on mountainous terrain, such as the nearby Franklin Mountains (1994 inventory only). PM–10 reductions due to some State-adopted control measures addressed in this proposal were not included in the modeling of the 1994 emissions inventory.

Based on the Gaussian Plume Multiple Source Air Quality Algorithm (RAM) modeling runs, the 1990 annual average PM–10 design concentration for the five year study period was 40.10 ug/m^3, below the annual PM–10 NAAQS of 50 ug/m^3. The annual PM–10 NAAQS is attained when the expected annual arithmetic mean concentration is less than or equal to 50 ug/m^3 (40 CFR 50.6). The 1990 24-hour PM–10 design concentration for the five year study period was 91.45 ug/m^3, below the 24-hour PM–10 NAAQS of 150 ug/m^3. The 24-hour NAAQS is attained when the expected number of days per calendar year with a 24-hour average concentration above 150 ug/m^3 is equal to or less than one (40 CFR 50.6). For 1994, the modeling runs produced a maximum annual design concentration of 41.64 ug/m^3 and a maximum 24-hour design concentration of 114.08 ug/m^3, both below their respective NAAQS threshold levels. Please reference the Technical Support Document and the El Paso PM–10 SIP for pertinent details on the above modeling demonstrations.

As mentioned above in Section 2, the State was asked to re-examine the attainment demonstration using a revised inventory. The State submitted a revised attainment demonstration by cover letter dated November 20, 1992, to the EPA. This additional modeling resulted in insignificant increases in the maximum predicted PM–10 concentrations in El Paso County. Based on the revised modeling runs, the 1990 annual average PM–10 design concentration for the five year study period was 40.45 ug/m^3, below the annual PM–10 NAAQS of 50 ug/m^3. The

1990 24-hour PM–10 design concentration for the five year study period was 93.52 ug/m³, below the 24-hour PM–10 NAAQS of 150 ug/m³. For 1994, the revised modeling runs produced a maximum annual design concentration of 41.92 ug/m³ and a maximum 24-hour design concentration of 114.19 ug/m³, both below their respective NAAQS threshold levels. Please reference the revised El Paso PM–10 SIP documentation from Lane Hartsock dated November 20, 1992, for pertinent details on the above revised modeling demonstrations.

Complex terrain screening for the 1994 inventory was performed on all elevated point sources which had 24-hour average emissions of 0.5 gram per second or more. The Valley Screening method was used to determine PM–10 impacts on elevated terrain at plume height for each of the significant sources. Predicted impacts on the nearby Franklin Mountains at plume height for the indicated sources were negligible.

5. RACM and RACT for Control of PM–10 and Additional Control Measures

As noted, the initial moderate PM–10 nonattainment areas must submit provisions to assure that RACM (including RACT) are implemented no later than December 10, 1993 (see sections 172(c)(1) and 189(a)(1)(C) of the CAA). The General Preamble contains a detailed discussion of the EPA's interpretation of the RACM (including RACT) requirement (see 57 FR 13539–13545 and 13560–13561). The EPA's interpretation of this requirement is set out here only in broad terms.

The State should first identify available control measures, evaluating them for their reasonableness in light of the feasibility of the controls and the attainment needs of the area. A State may reject an available control measure if the measure is technologically infeasible or the cost of the control is unreasonable. The SIP must demonstrate attainment of the NAAQS as expeditiously as practicable but no later than December 31, 1994 (unless the State demonstrates that attainment by that date is impracticable). Therefore, if a State adopts less than all available measures but demonstrates, adequately and appropriately, that RFP and attainment of the PM–10 NAAQS is assured, and application of all such available measures would not result in attainment any faster, then a plan which requires implementation of less than all available measures may be approved as meeting the RACM requirement. As a suggested starting point for determining RACM, the EPA has identified available control measures for sources of fugitive dust, residential wood combustion, and prescribed burning (see 57 FR 18072–18074 (April 28, 1992)). The State should add to the list of available measures in an area any measures that public commenters demonstrate may well be reasonably available in a particular circumstance.

The RACT for a particular source is similarly determined. The EPA's longstanding definition of RACT is the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility (see 57 FR 13541). Thus, the EPA recommends that available control technology be applied to those existing sources in the area that are reasonable to control in light of the attainment needs of the area and the feasibility of controls.[3]

A State should submit a reasoned justification for partial or full rejection of any available control measure (including any available control technology) that explains, with appropriate documentation, why each rejected control measure is infeasible or otherwise unreasonable and, therefore, does not constitute RACM (or RACT) for the area. In those PM–10 nonattainment areas where mobile sources significantly contribute to the PM–10 air quality problem, States also must address the section 108(f) transportation control measures (see 57 FR 13561).

The SIP for moderate PM–10 nonattainment areas subject to section 179B must similarly provide for the implementation of RACM (including RACT). In such areas the implementation of potentially available control measures may not be "reasonably" available and, therefore, would not be required by RACM (including RACT) where it can be shown that the PM–10 NAAQS could be attained as expeditiously as practicable in the nonattainment area disregarding emissions emanating from outside the United States. By directing the EPA under section 179B to approve the SIP or SIP revision for a moderate PM–10 area showing that it would timely attain the NAAQS "but for" foreign emissions and by excluding such an area from reclassification to serious, Congress has avoided penalizing such areas by not making them responsible for control of emissions emanating from a foreign country over which they have no jurisdiction. The reclassification exclusion avoids subjecting such areas to the more stringent or "best" available control measures applicable in serious PM–10 nonattainment areas (section 189(b)(1)(B)). Further, section 179B(a)(2) by its plain terms requires the State to establish only that the SIP submitted would be "adequate" to timely attain and maintain the NAAQS, "but for" emissions from outside the United States.

Thus, no State is relieved from meeting all other applicable moderate area PM–10 SIP requirements, including the requirement to implement RACM. However, neither is any State required to shoulder more of a regulatory and economic burden than States not similarly affected, by having to implement measures that go well beyond those which the SIP demonstrates would otherwise be adequate to attain and maintain the PM–10 NAAQS "but for" emissions emanating from outside the United States. Such a requirement would be inconsistent with the apparent purpose of section 179B. Nevertheless, because the NAAQS reflect public health and welfare standards, the EPA encourages states to reduce emissions beyond the minimum necessary to satisfy the "but for" test in order to reduce the PM–10 concentrations to which their populations are exposed by virtue of the additional contribution from international transport.

The State of Texas in the El Paso SIP reviewed RACM and RACT for control of PM–10. Following is an analysis of the measures employed to control PM–10 in El Paso, Texas.

A. Fugitive Dust Control Measures

An evaluation of available fugitive dust control measures for the City of El Paso is included in appendix N of the El Paso PM–10 Moderate SIP. The State of Texas has incorporated provisions into the TACB Regulation I which control fugitive particulate emissions from materials handling, construction, roads, streets, alleys, and parking lots in the El Paso area. A Memorandum of Understanding (MOU), dated November 5, 1991, between the City of El Paso and the TACB, included in the SIP submittal, will serve as the basis for defining the division of responsibility for, and the commitments to carry out, pertinent provisions of Regulation I. In any event, the TACB has the ultimate enforcement authority to ensure the implementation of these fugitive dust control measures. Each pertinent section of Regulation I will be discussed below. Even though the TACB demonstrated that the El Paso PM–10 nonattainment

[3] The EPA has issued technological and economic parameters that should be considered in determining RACT for a particular source (see 57 FR 18073–18074).

area would be in attainment by December 31, 1994, without including the fugitive dust control measures, the State of Texas is implementing control measures for fugitive dust in the El Paso area. The State has authority under section 116 of the CAA to require these controls, and the EPA is proposing to approve the following provisions of TACB Regulation I as control measures beyond RACM which strengthen the Texas SIP. Moreover, as discussed later, the EPA is proposing to treat these and the other control measures that go beyond the minimum RACM requirement as fulfilling the requirement for contingency measures.

Section 111.141. This section cites certain provisions in Regulation I applicable to the El Paso area (including the Fort Bliss Military Reservation except for tactical training areas) and also cites appropriate compliance dates, with compliance being no later than December 31, 1991, for some provisions, and no later than December 10, 1993, for the remaining provisions.

Section 111.143. Part one of this section requires maximum control of material storage piles through application of water or suitable chemicals or other coverings. Part two of this section requires proper installation, maintenance and use of hoods, fans, and filters to enclose, collect, and clean emissions of any dusty materials (if applicable). Finally, part three of this section requires covering of all open bodied trucks, trailers, and railroad cars transporting materials which can create airborne particulate matter in public areas within the City of El Paso. It is important to note that this section was previously adopted by the TACB on June 16, 1989, after proper public notice and hearing (public hearings were held on February 1–2, 1989). This section was previously submitted to the EPA by cover letter from the Governor dated August 21, 1989.

Section 111.145. This section requires dust control (e.g., paving or chemical stabilization) at all construction and demolition sites in the City of El Paso, including control of access points to paved roads. It is important to note that parts 1 and 2 of this section were previously adopted by the TACB on June 16, 1989, after proper public notice and hearing (public hearings were held on February 1–2, 1989). These parts were previously submitted to the EPA by cover letter from the Governor dated August 21, 1989.

Section 111.147. Part one of this section requires dust control measures (i.e., paving, watering, chemical stabilization) for the following unpaved surfaces in the El Paso area: industrial facility roadways, public thoroughfares, commercial roads, residential roads, alleys (paving at the rate of at least 15 miles per year), and levee roads. Part two of this section requires removal of soil or other materials from roads by means of mechanical sweepers, including removal of sand applied on public thoroughfares for snow or ice control in the City of El Paso. In addition, a sweeping schedule and recordkeeping of such activities is specified. Also, this section gives the Executive Director, with the concurrence of the EPA, the option of granting a waiver from paving requirements for industrial roadways, provided the roadway owner can demonstrate that the cost of paving is economically unreasonable compared to other forms of dust control specified in section 111.147(1). It is important to note that parts 1(B) through 1(D) of this section were previously adopted by the TACB on June 16, 1989, after proper public notice and hearing (public hearings were held on February 1–2, 1989). These parts were previously submitted to the EPA by cover letter from the Governor dated August 21, 1989.

Section 111.149. This section requires parking surfaces in the City of El Paso with more than five parking spaces to be paved or uniformly covered with gravel. Temporary parking lots must apply water or suitable oil or chemicals to control dust, while all parking lots with more than 100 parking spaces must be paved or covered by an equivalent method to paving as determined by the Executive Director of the TACB. The equivalent method shall not include the utilization of waste materials from industrial processes. It is important to note that this section was previously adopted by the TACB on June 16, 1989, after proper public notice and hearing (public hearings were held on February 1–2, 1989). This section was previously submitted to the EPA by cover letter from the Governor dated August 21, 1989.

B. Off-road Recreational Vehicles

The State considers, and the EPA agrees, that PM–10 emissions due to off-road recreational vehicles are de minimis. According to the EPCCHD, there is no significant off-road vehicle use in the City of El Paso. As discussed earlier, where sources of PM–10 contribute insignificantly to the PM–10 problem in the area, the EPA's policy is that it would be unreasonable to require the sources to implement potentially available control measures. Therefore, such potentially available control measures are not "reasonably" available and RACM does not require controls on insignificant PM–10 sources (57 FR 13540).

C. Residential Wood Combustion Control Measures

An evaluation of available residential wood combustion control measures for the City of El Paso is included in appendix O of the El Paso PM–10 Moderate SIP. The State of Texas has incorporated provisions into Regulation I (section 111.111(c)) which require an episodic curtailment program to be implemented in the City of El Paso regarding wood combustion. This program mandates operating restrictions for solid fuel heating devices in the City of El Paso, including the Fort Bliss Military Reservation, during periods when National Weather Service data indicates that an atmospheric stagnation condition exists or is predicted to exist. The program contains exemptions to account for burn down periods, sole sources of heat, and temporary power losses. The City of El Paso also enforces an episodic curtailment program regarding wood combustion under Chapter 9.38 of the City Code. This City ordinance was submitted as part of the SIP. The TACB and the City of El Paso are working together on producing pamphlets and other materials for educating the public regarding residential wood combustion devices and wood smoke, as called for in the November 5, 1991, MOU between the City and the TACB. As in the case of fugitive dust control measures, this MOU between the City of El Paso and the TACB, submitted as a part of the SIP, serves as the basis for defining the division of responsibility for, and the commitments to carry out, the provisions of Section 111.111(c) and Chapter 9.38 of the City Code, both concerning solid fuel heating devices. Nevertheless, the TACB is responsible for the ultimate implementation and enforcement of this program. The TACB is implementing these residential wood combustion control measures even though attainment of the PM–10 standards for the El Paso area was demonstrated by December 31, 1994, without consideration of these adopted control measures. Thus, the EPA is proposing to approve the El Paso residential wood combustion control measures as control measures beyond RACM which strengthen the Texas SIP. As discussed further below, the EPA is proposing to treat these and other control measures that go beyond the minimum RACM requirement as fulfilling the requirement for contingency measures.

D. Prescribed Burning Control Measures

Prescribed burning, including agricultural or silvicultural burning, is controlled by the TACB Regulation I under Sections 111.101, 111.103, 111.105, and 111.107, which detail prohibitions for outdoor burning and general requirements for allowable outdoor burning. Please reference these sections of Regulation I attached to the Technical Support Document. It is important to note that these sections were previously adopted by the TACB on June 16, 1989, after proper public notice and hearing (public hearings were held on February 1–2, 1989). These sections were previously submitted to the EPA by cover letter from the Governor dated August 21, 1989. As stated earlier, the TACB is implementing these prescribed burning control measures even though attainment of the PM–10 standards for the El Paso area was demonstrated by December 31, 1994, without consideration of these adopted control measures, and the EPA is proposing to approve these and other measures as fulfilling the contingency measure requirement.

E. Point Sources

For El Paso, RACT includes control of existing stationary point sources for stack, process, and fugitive particulate emissions. RACT for a particular point source is determined on a case-by-case basis and considers the technological and economic feasibility of reducing emissions from that source. The State of Texas included an analysis of RACT for El Paso point sources that had total suspended particulate emissions equal to or greater than 25 tons per year. The analysis, concerning stack, process, and fugitive particulate emissions, is found in appendix P of the El Paso PM–10 SIP. This analysis was comprised of a current listing of RACT (appendix P) at specific emission points of PM–10 for El Paso point sources. Appendix P provides a description of control equipment and emissions in tons per year for the point sources. The TACB enforces RACT through federally enforceable permit conditions. The EPA is proposing to approve the El Paso PM–10 SIP as adequately containing RACT for stationary point sources.

In summary, the EPA is proposing to find that the State of Texas' PM–10 SIP for the El Paso nonattainment area includes adequate RACM/RACT as discussed in detail above. The State of Texas included a listing of RACT, federally enforceable in approved permits, being used at all major and other stationary sources in the El Paso area. In addition, the EPA views the State's prescribed burning, fugitive dust, and residential wood combustion control measures in Regulation I and the City ordinance as contingency measures that go beyond the core RACM control strategy. This is discussed further below. The EPA is also proposing to approve the MOU between the City of El Paso and the TACB which serves to define the division of responsibility for, and the commitments to carry out, the provisions of Regulation I and Chapter 9.38 of the City Code (City of El Paso episodic curtailment program regarding wood combustion).

6. Milestones and Reasonable Further Progress

Section 189(c) of the CAA requires that plan revisions for moderate PM–10 nonattainment areas contain quantitative milestones which are to be achieved every three years until the area is redesignated to attainment. The milestones must also demonstrate to the EPA that reasonable further progress (RFP) toward attainment of the PM–10 NAAQS is being met (see 57 FR 13539).

The EPA has attempted to reconcile the quantitative milestones and periodic reporting called for in section 189(c) with the EPA's proposed decision under section 179B to approve the El Paso PM–10 SIP as meeting the requirements for an international border area implementation plan. The State demonstrated that the El Paso nonattainment area would attain the PM–10 NAAQS both currently and by December 31, 1994, using current and projected United States (El Paso County) emissions alone. Also, the PM–10 problem in the El Paso area is international in scope (contribution from Mexico). Therefore, the EPA believes it is reasonable for El Paso to satisfy section 189(c) by reporting every three years, beginning on November 15, 1994, the air quality progress actually made in response to the implementation of control measures, and information addressing a potential change in circumstances in the area that may, in turn, warrant further air quality protection efforts. Specifically, the State should report to the EPA every three years the following information regarding the El Paso nonattainment area: (1) The status and effectiveness of the existing controls, including quantification of emission reductions achieved relative to those projected in the El Paso PM–10 SIP submittal, the subject of this proposed action, (2) significant changes in the inventory due to new source growth or other activities (to allow for a comparison with the 1990 base year PM–10 emission inventory, and the projected 1994 PM–10 emission inventory); and (3) an evaluation of any additional controls which may be feasible to reduce exposures and/or bring the area into attainment.

Reasonable further progress is defined in section 171(1) of the CAA as such annual incremental reductions in emissions of the relevant air pollutant as are required by part D or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable NAAQS by the applicable date. Since part D does not dictate annual incremental reductions for moderate PM–10 areas, the EPA has broad discretion in determining RFP under section 171(1). The EPA is proposing to approve as satisfying RFP the annual incremental reduction in emissions provided for by the RACM (including RACT) being implemented in the area. Section 189(c) provides that the quantitative milestones also must demonstrate RFP. Thus, the EPA will assess the State's compliance with RFP for this area in conjunction with determining its compliance with the quantitative milestone requirement described above. Thus, when the State demonstrates the El Paso area's compliance with the quantitative milestone requirement it should also demonstrate that RFP has been achieved during each of the relevant three years.

7. Contingency Measures

As per section 172(c)(9) of the CAA, all nonattainment SIPs must contain contingency measures (due November 15, 1993) that are to be implemented if the area fails to make RFP or to attain the NAAQS by the applicable date (see 57 FR 13510–13512 and 13543–13544). These contingency measures are to be implemented immediately after the EPA determines failure of RFP or attainment of standards. The CAA does not specify how many contingency measures are needed or the magnitude of emissions reductions that must be provided by these measures (57 FR 13511). However, since the purpose of the contingency measure requirement is to provide for the implementation of additional air quality control measures beyond the core control strategy to ensure that emissions reduction progress continues to be made in the event of SIP failure to produce RFP or attainment, contingency measures must consist of other available control measures that are not included in the RACM (including RACT) control strategy.

As addressed in the discussion of control measures, above, the State is implementing several control measures in El Paso that are in excess of those

needed to provide for timely attainment "but for" emissions from Mexico and that go beyond the RACM (including RACT) requirement. In this action, the EPA is proposing to approve the fugitive dust, residential wood combustion, and prescribed burning control measures previously discussed in this action, as contingency measures for the El Paso PM–10 SIP. Implementation of these measures should result in a PM–10 emission reduction of around 400–500 tons per year. These measures appear to go beyond RACM (including RACT). The State has demonstrated that the El Paso nonattainment area would be in attainment of the PM–10 NAAQS no later than December 31, 1994, based on U.S. emissions alone, without these control measures.

Section 172(c)(9) of the CAA specifies that contingency measures shall "take effect * * * without further action by the State or the Administrator." The EPA interprets this requirement to mean that no further rulemaking activities by the State or the EPA would be needed to implement the contingency measures (57 FR 13512). The EPA expects all actions needed to affect full implementation of the measures to occur within 60 days after the EPA notifies the State of its failure to achieve RFP or to attain (57 FR 13512).

The EPA is proposing to accept the control measures submitted by the State of Texas that are in excess of those necessary to provide for timely attainment of the PM–10 NAAQS "but for" emissions from Mexico, and that go beyond RACM (including RACT), as fulfilling the requirement for contingency measures because the measures will provide for continued emissions reduction progress beyond the core control strategy. It is the EPA's determination that since the State has acted to implement these precautionary measures along with the primary RACM (including RACT) control strategy that these measures essentially provide advance contingency benefit and satisfy the requirement that they "take effect without further action by the State or the Administrator."

The implementation of these control measures in conjunction with the primary control strategy should not disqualify treating them as contingency measures under section 172(c)(9) of the CAA. Section 172(c)(9) indicates that the SIP shall provide for the implementation of contingency measures to be undertaken if the area fails to make RFP or to timely attain the NAAQS. The State of Texas is, in effect, accelerating its implementation of contingency measures for El Paso. Alternatively, these measures would be undertaken at some later time if the area failed to make RFP or timely attain "but for" emissions from Mexico. It would, quite simply, be absurd to penalize or otherwise discourage the State from taking the arguably more precautionary air quality management step of accelerating the implementation of the contingency measures.

Finally, the EPA notes that the magnitude of emissions reduction progress provided by these measures appears reasonable in light of improved PM–10 air quality on the U.S. side of the border over the last three years. There have been no exceedances of the PM–10 annual standard, and 3 recorded exceedances of the 24-hour PM–10 standard (one in October, 1991, and two in October, 1992 at one site), since 1990. The three recorded exceedances were 166 ug/m^3, 159 ug/m^3, and 158 ug/m^3, not too far over the 24-hour standard of 150 ug/m^3. In addition, the TACB commits to developing future contingency measures provided that adequate information from Mexico becomes available. It is anticipated that the EPA, the TACB, the City of El Paso, and SEDUE (now SEDESOL) will continue their cooperative effort in studying the PM–10 air quality in the El Paso/Juarez air basin. The EPA agrees with the State of Texas that the PM–10 air quality problem in the El Paso/Juarez air basin is international in scope, and agrees with the State's commitment to provide future contingency measures if adequate information becomes available.

8. PM–10 Precursors

Section 189(e) of the CAA states that control requirements applicable to major stationary sources of PM–10 are also applicable to major stationary sources of PM–10 precursors, except where the Administrator determines that such sources do not significantly contribute to PM–10 levels that exceed the PM–10 ambient standards in the area. The General Preamble contains guidance addressing how the EPA intends to implement section 189(e) (see 57 FR 13539–13540 and 13541–13542).

The State of Texas used annular denuder samplers during the December, 1990, special PM–10 study as a method to differentiate between gas and particulate phase compounds in the ambient air.[4] The results of the annular denuder sampling showed that a large majority of the sulfur compounds found on the samples were in the form of gaseous sulfur dioxide (SO_2), and not in the sulfate particulate phase, suggesting that secondary sulfate was only a minor contributor to high PM–10 concentrations in the study. For nitrogen compounds, a large majority of the compounds found in the samples were also gaseous, suggesting that nitrate was also a minor contributor to high PM–10 concentrations in the study. The concentrations of the particulate phase sulfates and nitrates constituted a small fraction of the 24-hour PM–10 standard, ranging from about 3–12 ug/m^3, or 2–8 % of the 24-hour PM–10 standard (150 ug/m^3). It is also important to note that the annular denuder sampling was conducted during a time of the year (December) in which adverse meteorological conditions would be expected in the El Paso/Juarez air basin. Further, based on review of the PM–10 monitoring data from both El Paso and Juarez, and of the trajectory analyses, it is very likely that emissions from Mexico contribute to the PM–10 precursor concentrations in El Paso. Thus, the concentrations referenced above are conservative estimates. Based upon the preceding study, PM–10 precursors do not appear to significantly contribute to high PM–10 concentrations in El Paso, Texas, and the EPA is proposing to grant the El Paso area the exclusion from control requirements as authorized under section 189(e) of the CAA.

9. Enforceability Issues

All required measures and other elements in the SIP must be enforceable by the State and the EPA (see sections 172(c)(6), 110(a)(2)(A) and 57 FR 13556). The EPA criteria addressing the enforceability of SIPs and SIP revisions were stated in a September 23, 1987, memorandum (with attachments) from J. Craig Potter, Assistant Administrator for Air and Radiation, et al. (see 57 FR 13541). The criteria include, for example: Ensuring that the rules contained in the SIP are explicit in their applicability to the regulated sources; ensuring that compliance dates are clearly specified; ensuring that compliance periods and test methods are clearly noted; ensuring that adequate recordkeeping is required; and ensuring that any exemptions or variances are clear in their applicability and in how they are triggered. In addition to enforceable requirements, nonattainment area plan provisions must contain a program that provides for enforcement of the control measures and other elements in the SIP (see section 110(a)(2)(C)).

[4] Annular denuder sampling is one of many possible reasonable techniques that could be employed for assessing precursor contribution. EPA intends to assess the reasonableness of such techniques on a case by case basis (see 57 FR 13539).

The State of Texas has an enforcement program that will ensure that certain control measures contained in the El Paso PM–10 SIP (i.e., Regulation I and the City Ordinance) are adequately enforced. The State has also entered into an MOU with the City of El Paso which serves to define the division of responsibility regarding, and the commitments to carry out, the provisions of Regulation I and Chapter 9.38 of the City Code pertaining to control measures for fugitive dust and residential wood combustion devices. RACT for stationary point sources is enforced by the TACB through federally enforceable permit conditions.

10. Summary

The Governor of Texas submitted the moderate PM–10 SIP for El Paso to the EPA on November 15, 1991. The El Paso SIP analyzed PM–10 emissions from point and area sources around the El Paso region. Using a Gaussian Plume Multiple Source Air Quality Algorithm (RAM), the State demonstrated that the El Paso nonattainment area would attain the PM–10 NAAQS both currently and by December 31, 1994, using current and projected United States (El Paso County) emissions alone. The State also conducted a comprehensive RACM/RACT analysis, including a RACT analysis for El Paso stationary point sources. The State has adequately addressed RACT for El Paso stationary sources through federally enforceable permits. Further, the State has adopted certain provisions found in Regulation I which incorporate control measures for fugitive dust, prescribed burning, and residential wood combustion devices that go beyond RACM and that the EPA is proposing to approve as fulfilling the requirement for contingency measures. The State has also entered into an MOU with the City of El Paso which serves to define the division of responsibility regarding, and the commitments to carry out, the provisions of the TACB Regulation I and Chapter 9.38 of the City Code pertaining to control measures for fugitive dust and residential wood combustion devices.

Proposed Action

The EPA is proposing to approve the El Paso, Texas, moderate PM–10 SIP. The EPA is also proposing to approve the El Paso, Texas, moderate PM–10 SIP as meeting the requirements of section 179B of the CAA. All required SIP items have been adequately addressed as discussed in this **Federal Register** action, and the State of Texas has conducted a comprehensive RACM/RACT analysis.

Based on the above evaluation, the EPA proposes to approve the El Paso, Texas, moderate PM–10 nonattainment SIP. Additional requirements, such as the nonattainment new source review program for the area, will be addressed independent of this action.

Request for Public Comments

The EPA requests comments on all aspects of this proposal including the EPA's proposal to approve the PM–10 SIP for El Paso, Texas, as meeting the requirements of section 179B of the CAA regarding implementation plans and revisions for international border areas. As indicated at the outset of this action, the EPA will consider any comments received by 30 days from date of publication.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D, of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids the EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410(a)(2).

Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: August 20, 1993.

W.B. Hathaway,

Acting Regional Administrator (6A).

[FR Doc. 93–24814 Filed 10–7–93; 8:45 am]

BILLING CODE 6560-50-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 641

Reef Fish Fishery of the Gulf of Mexico; Public Hearing

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public hearing.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene a public hearing to receive public testimony on a proposed regulatory amendment for an experimental one-year move of the reef fish longline/buoy gear boundary line from 20 fathoms to 15 fathoms in two regions off Florida.

DATES: Written comments on the proposed actions must be received by November 12, 1993. The hearing is scheduled for Wednesday, October 27, 1993, from 7 p.m. to 10 p.m.

ADDRESSES: Comments should be addressed to Steven M. Atran, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, suite 331, Tampa, FL 33609. The hearing will be held at the Madeira Beach City Hall Auditorium, 300 Municipal Drive, Madeira Beach, Florida (813–391–9951).

FOR FURTHER INFORMATION CONTACT: Steven M. Atran, 813–228–2815.

SUPPLEMENTARY INFORMATION: This hearing is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Beverly Badillo at the above Council address by October 20, 1993.

Dated: October 4, 1993.

Richard H. Schaefer,

Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–24753 Filed 10–5–93; 9:22 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 58, No. 194
Friday, October 8, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

Request for Applicants to Provide Official Services in Hillsdale and Branch Counties, MI

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: Schneider Inspection Service, Inc. (Schneider), has asked that their designation be amended to remove Hillsdale and Branch Counties from their assigned geographic area. FGIS is asking persons interested in providing official services in these counties to submit an application for designation.

DATES: Applications must be postmarked or sent by telecopier (FAX) on or before November 9, 1993.

ADDRESSES: Applications must be submitted to Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. Telecopier (FAX) users may send applications to the automatic telecopier machine at 202–720–1015, attention: Homer E. Dunn. If an application is submitted by telecopier, FGIS reserves the right to request an original application. All applications will be made available for public inspection at this address located at 1400 Independence Avenue, S.W., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Schneider has asked to relinquish part of their assigned geographic area, Hillsdale and Branch Counties, in the State of Michigan. Schneider has not provided service to these two counties; however, Michigan Grain Inspection Services, Inc., has provided service. FGIS is asking persons interested in providing official services in these counties to submit an application for designation. The applicant selected for designation in Hillsdale and Branch Counties will be assigned by FGIS' Administrator according to Section 7(f)(1) of the Act.

Interested persons are hereby given the opportunity to apply for designation to provide official services in the geographic area specified above under the provisions of Section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Designation in the geographic area specified above is for the period beginning April 1, 1994, and not to exceed 3 years as prescribed in Section 7(g)(1) of the Act. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated.

AUTHORITY: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: October 1, 1993.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 93–24760 Filed 10–7–93; 8:45 am]

BILLING CODE 3410–EN–F

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 920812–3170]

RIN 0693–AB10

Approval of Federal Information Processing Standards Publication 158–1, the User Interface Component of the Applications Portability Profile

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: The purpose of this notice is to announce that the Secretary of Commerce has approved a revised standard, which will be published as FIPS Publication 158–1, The User Interface Component of the Applications Portability Profile.

SUMMARY: On October 20, 1992, notice was published in the **Federal Register** (57 FR 47839) that a revision of Federal Information Processing Standard 158, The User Interface Component of the Applications Portability Profile, was being proposed for Federal use.

The written comments submitted by interested parties and other material available to the Department relevant to this standard were reviewed by NIST. On the basis of this review, NIST recommended that the Secretary approve this revised standard as a Federal Information Processing Standards Publication, and prepared a detailed justification document for the Secretary's review in support of that recommendation.

The detailed justification document which was presented to the Secretary is part of the public record and is available for inspection and copying in the Department's Central Reference and Records Inspection Facility, room 6020, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC 20230.

This FIPS contains two sections: (1) An announcement section, which provides information concerning the applicability, implementation, and maintenance of the standard; and (2) a specifications section which deals with the technical requirements of the standard. Only the announcement section of the standard is provided in this notice.

EFFECTIVE DATE: This revised standard is effective May 2, 1994.

ADDRESSES: Interested parties may purchase copies of this revised standard, including the technical specifications portion, from the National Technical Information Service (NTIS). Specific ordering information from NTIS for this standard is set out in the Where to Obtain Copies Section of the announcement section of the standard.

FOR FURTHER INFORMATION CONTACT: Mr. Robert H. Bagwill, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone (301) 975–3282, fax (301) 948–1784.

Dated: October 4, 1993.

Samuel Kramer,

Associate Director.

Federal Information Processing Standards Publication 158–1—Announcing the Standard for the User Interface Component of the Applications Portability Profile

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology (NIST) after approval by the Secretary of Commerce pursuant to Section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Public Law 100–235.

Name of Standard. The User Interface Component of the Applications Portability Profile (FIPS Pub 158–1).

Category of Standard. Software Standard, Application Program Interface.

Explanation. This publication announces the adoption of the X Protocol, Xlib Interface, Xt Intrinsics and Bitmap Distribution Format specifications of the X Window System, Version 11, Release 5 (X Window System is a trademark of the Massachusetts Institute of Technology (MIT)) as a Federal Information Processing Standard. This FIPS is identical to FIPS 158, except that the specification is updated from Release 3 to Release 5 of the X Window System, Version 11. This standard is for use by computing professionals involved in system and application software development and implementation. This standard is part of a series of specifications needed for application portability. This standard covers the Data Stream Encoding, Data Stream Interface, and Subroutine Foundation layers of the reference model. It is the intention of NIST to provide standards for other layers of the reference model as consensus develops within industry. This standard addresses the user interface functional area of the Applications Portability Profile (NIST SP 500–187).

Approving Authority. Secretary of Commerce.

Maintenance Agency. U.S. Department of Commerce, National Institute of Standards and Technology (NIST), Computer Systems Laboratory.

Cross Index. The X Window System, Version 11, Release 5.

Related Documents.

a. Federal Information Resources Management Regulations subpart 201–20.303, Standards, and subpart 201–39.1002, Federal Standards.

b. FIPS 160, Programming Language C.

c. FIPS 151–2, POSIX: Portable Operating System Interface (POSIX)—System Application Program Interface [C Language]

d. Applications Portability Profile (NIST SP 500–187).

Objectives. This FIPS permits Federal departments and agencies to exercise more effective control over the production, management, and use of the Government's information resources. The primary objectives of this FIPS are:

a. To promote portability of computer application programs at the source code level.

b. To simplify computer program documentation by the use of a standard portable system interface design.

c. To reduce staff hours in porting computer programs to different vendor systems and architectures.

d. To increase portability of acquired skills, resulting in reduced personnel training costs.

e. To maximize the return on investment in generating or purchasing computer programs by insuring operating system compatibility.

f. To provide ease of use in computer systems through network-based bit-mapped graphic user interfaces with a consistent appearance. Government-wide attainment of the above objectives depends upon the widespread availability and use of comprehensive and precise standard specifications.

Applicability. This FIPS shall be used for network-based bit-mapped graphic systems that are either developed or acquired for government use where distributed/networked bit-mapped graphic interfaces to multi-user computer systems are required.

Specifications. The specifications for this FIPS are the following documents from the X Window System, Version 11, Release 5. These specifications define a C language source code level interface to a network-based bit-mapped graphic system. The computer program source code contained in Version 11, Release 5 is not part of the specifications for this FIPS. The specifications for this FIPS are the following documents from X Version 11, Release 5:

a. X Window System Protocol, X Version 11,

b. Xlib—C Language X Interface,

c. X Toolkit Intrinsics—C Language Interface,

d. Bitmap Distribution Format 2.1.

Implementation. This revised standard is effective May 2, 1994.

a. *Acquisition of a Conforming System.* Organizations developing network-based bit-mapped graphic system applications which are to be acquired for Federal use after May 2, 1994, and which have applications portability as a requirement shall consider the use of this FIPS. Conformance to this FIPS shall be considered whether the network-based bit-mapped graphic system applications are:

1. Developed internally,

2. Acquired as part of an ADP system procurement,

3. Acquired by separate procurement,

4. Used under an ADP leasing arrangement, or

5. Specified for use in contracts for programming services.

b. *Interpretation of the FIPS for the User Interface Component of the Applications Portability Profile.* NIST provides for the resolution of questions regarding the FIPS specifications and requirements, and issues official interpretations as needed. All questions about the interpretation of this FIPS should be addressed to:

Director, Computer Systems Laboratory,
Attn: APP User Interface Component FIPS Interpretation, National Institute of Standards and Technology,
Gaithersburg, MD 20899.

c. *Validation of Conforming Systems.* The X Consortium is developing a validation suite for measuring conformance to the Xlib component of this standard. NIST is considering the use of the X Consortium validation suite as the basis for an NIST validation suite for measuring conformance to this standard.

Waivers. Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agency may redelegate such authority only to a senior official designated pursuant to section 3506(b) of title 44, U.S. Code. Waivers shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system, or

b. Cause a major adverse financial impact on the operator which is not offset by Governmentwide savings.

Agency heads may act upon a written waiver request containing the information detailed above. Agency heads may also act without a written waiver request when they determine that conditions for meeting the standard cannot be met. Agency heads may approve waivers only by a written decision which explains the basis on which the agency head made the required finding(s). A copy of each such decision, with procurement sensitive or

classified portions clearly identified, shall be sent to: National Institute of Standards and Technology; ATTN: FIPS Waiver Decisions, Technology Building, room B–154; Gaithersburg, MD 20899.

In addition, notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate and shall be published promptly in the **Federal Register**.

When the determination on a waiver applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the Commerce Business Daily as a part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after that notice is published, by amendment to such notice.

A copy of the waiver, any supporting documents, the document approving the waiver and any supporting and accompanying documents, with such deletions as the agency is authorized and decides to make under 5 U.S.C. 522(b), shall be part of the procurement documentation and retained by the agency.

Where to Obtain Copies: Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. (Sale of the included specifications document is by arrangement with the Massachusetts Institute of Technology and Digital Equipment Corporation.) When ordering, refer to Federal Information Processing Standards Publication 158–1 (FIPSPUB158–1), and title. Payment may be made by check, money order, or deposit account.

[FR Doc. 93–24846 Filed 19–7–93; 8:45 am]

BILLING CODE 3510–CN–M

National Oceanic and Atmospheric Administration

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of receipt applications for incidental take permits (P250F and P507G).

Notice is hereby given that the Washington Department of Wildlife (WDW) (P250F) and the Washington Department of Fisheries (WDF) (P507G) have applied in due form for an incidental take permit to take endangered or threatened species as authorized by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) and the National Marine Fisheries Service regulations governing listed fish and wildlife permits (50 CFR Part 217–227).

WDW and WDF each request authorization to continue current operations of their hatchery facilities in the Columbia River basin for five years.

WDW currently operates four major steelhead and eleven resident finfish hatchery complexes. One new combination steelhead and resident finfish facility (Lewis River at Merwin Dam) is currently under construction. This facility is scheduled to become operational October 1993 and will replace fish production from three of the existing facilities with one central facility. The Cowlitz Hatchery and the Lewis River Facility under construction are located on tributaries to the Columbia River downstream of Bonneville dam. The remaining three steelhead hatchery complexes (Wells, Chelan Falls, and Eastbank) are located on the mainstem Columbia River in the mid-Columbia River basin upstream of the confluence with the Snake River. Additionally, WDW cooperates with a variety of local organizations in the operation of small projects to rear anadromous steelhead and sea-run cutthroat trout.

WDF currently operates seven major salmon hatchery complexes in the Columbia River basin. Two of these facilities, Cowlitz and Lewis River, are located on tributaries to the Columbia River below Bonneville Dam. The remaining five facilities, Priest Rapids, Rocky Reach, Eastbank, Wells, and Methow, are located above the confluence of the Snake and Columbia Rivers. The Methow facility is located on a tributary to the mid-Columbia River, while the other four are located on the mainstem.

These artificial propagation projects may result in the incidental takes of listed species, from ecological and genetic interactions between hatchery-produced fish and listed fish and from hatchery operations. Impacts on juvenile fish may include competition for food and space, disease transmission, predation by hatchery fish, and increased vulnerability to predation by other predators. Hatchery-produced salmon may impact the listed species through interbreeding, which could result in a loss in genetic variability and a swamping effect in the listed population.

WDW and WDF have submitted conservation plans that specify the steps they propose to take to monitor, minimize, and mitigate impacts.

Written data or views, or requests for a public hearing on these applications should be submitted to the Director, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Hwy., suite 13229, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on the particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in the application summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Documents submitted in connection with the above application are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Hwy., suite 13229, Silver Spring, MD 20910 (301–713–2322); and

Environmental and Technical Services Division, National Marine Fisheries Service, 911 North East 11th Ave., room 620, Portland, OR 97232 (503–230–5400).

Dated: October 4, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources.

[FR Doc. 93–24773 Filed 10–7–93; 8:45 am]

BILLING CODE 3510–22–M

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Issuance of a scientific research Permit; Florida Department of Environmental Protection, Florida Marine Research Institute (P553).

On August 5, 1993, notice was published (58 FR 41736) that an application had been filed by Florida Department of Environmental Protection, Florida Marine Research Institute, to take listed species as authorized by the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217–222).

Notice is hereby given that on October 4, 1993 as authorized by the provisions of the ESA, NMFS issued Permit Number 878 for the above taking subject to certain conditions set forth therein.

Issuance of this Permit, as required by the ESA, was based on a finding that such Permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the listed species which is/are the subject of this Permit; (3) is

consistent with the purposes and policies set forth in Section 2 of the ESA. This Permit was also issued in accordance with and is subject to parts 217–222 of title 50 CFR, the NMFS regulations governing listed species permits.

The application, permit, and supporting documentation are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, suite 8268, Silver Spring, MD 20910 (301–713–2322); and

National Marine Fisheries Service, Southeast Region, 9450 Koger Boulevard, St. Petersburg, FL 33702 (813–893–3141).

Dated: October 4, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources.

[FR Doc. 93–24774 Filed 10–7–93; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to procurement list

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: Comments must be received on or before: November 8, 1993.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and service to the Government.

2. The action does not appear to have a severe adverse impact on the current contractors for the commodities and service.

3. The action will result in authorizing small entities to furnish the commodities and service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and service proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and service have been proposed for addition to the Procurement List for production by the nonprofit agency listed:

Commodities

Bookcase, Steel, Contemporary
7110–00–601–9821
7110–00–601–9822
7110–00–135–1997
7110–00–135–1998
Nonprofit Agency: Knox County Association for Retarded Citizens, Knoxville, Tennessee

Brush, Sanitary
7920–00–141–5450
Nonprofit Agency: Lighthouse Industries, Long Island City, New York

Service

Janitorial/Custodial,Automated Flight Service Station, Seattle, Washington
Nonprofit Agency: Seattle Mental Health Institute, Inc., Seattle, Washington

G. John Heyer,

General Counsel.

[FR Doc. 93–24793 Filed 10–7–93; 8:45 am]

BILLING CODE 6820–33–P

COPYRIGHT ROYALTY TRIBUNAL

[CRT Docket No. 93–1–92DRD]

1992 Audio Home Recording Act Distribution Proceeding

AGENCY: Copyright Royalty Tribunal.

ACTION: Order establishing procedural schedule.

SUMMARY: The Copyright Royalty Tribunal is establishing a procedural schedule for the 1992 Audio Home Recording Act (AHRA) distribution proceedings.

EFFECTIVE DATE: October 8, 1993.

FOR FURTHER INFORMATION CONTACT: Linda Bocchi, General Counsel, Copyright Royalty Tribunal, 1825 Connecticut Avenue, NW., suite 918, Washington, DC 20009, (202) 606–4400.

SUPPLEMENTARY INFORMATION: By *Notice of Declaration of Controversy*, 58 FR 17576 (1993), the Tribunal declared a controversy, effective March 31, 1993, in the 1992 AHRA distribution proceeding. Thereafter, by *Notice*, 58 FR 29811 (1993), the Tribunal requested information regarding the status of settlement negotiations. To date, it appears that, although the parties have been actively pursuing a universal settlement in each of the relevant Funds, no such settlements have been obtained.

In view of the foregoing and the Tribunal's statutory deadline of March 31, 1994 as the date of completion of the distribution proceeding, the Tribunal must establish a procedural schedule for the proceeding.

Accordingly, the Tribunal adopts the following procedural schedule:

Exchange of Direct Cases—December 1, 1993
Discovery Period—December 2–31
Discovery Motions and Evidentiary Objections Due—December 20
Responses to Motions and/or Objections Due—December 31
Tribunal Rulings on Discovery—January 7, 1994
Evidentiary Hearing Commences—January 10

Dated: October 4, 1993.

Cindy Daub,

Chairman.

[FR Doc. 93–24716 Filed 10–7–93; 8:45 am]

BILLING CODE 1410–09–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Antitrust Aspects of Defense Industry Consolidation

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board Task Force on Antitrust Aspects of Defense Industry Consolidation will

meet in open session on October 18, 1993 at the Pentagon, room 1E801, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense.

Persons interested in further information should call Ms. Amy Jeffress at (703) 697–9247.

Dated: October 4, 1993.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–24739 Filed 10–7–93; 8:45 am]

BILLING CODE 5000–04–M

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

Notice was published September 17, 1993, at 58 FR 48639 that the Naval Research Advisory Committee Panel on Littoral Warfare/Amphibious Warfare will meet on October 4 and 5, 1993, at the Marine Corps Base, Camp Pendleton, California. The meeting has been changed to add a session on October 6, 1993. The additional meeting session will commence at 8 a.m. and terminate at 2 p.m. on October 6, 1993. All sessions of the meeting will be closed to the public. All other information in the previous notice remains effective. In accordance with 5 U.S.C. b(e)(2), the meeting change is publicly announced at the earliest time.

For further information concerning this meeting contact: Commander R.C. Lewis, USN, Office of Naval Research, 800 North Quincy Street, Arlington, Virginia 22217–5660, Telephone Number (703) 696–4870.

Dated: September 30, 1993.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 93–24915 Filed 10–6–93; 9:12 am]

BILLING CODE 3810–AE–P–M

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Resolution of Potential Conflict of Interest

The Defense Nuclear Facilities Safety Board (Board) identified and resolved a potential conflict of interest situation related to its contractor, Sanford Cohen and Associates, Inc. (SC&A). This notice satisfies the requirements of 10 CFR 1706.8(e). Under the Board's Organizational and Consultant Conflicts of Interests Regulations, 10 CFR part 1706 (OCI Regulations), and organizational or consultant conflict of interest (OCI) means that because of other past, present, or future planned activities or relationships, a contractor or consultant is unable, or potentially unable, to render impartial assistance or advice to the Board, or the objectivity of such offeror or contractor in performing contract work for the Board is or might be otherwise impaired, or such offeror or contractor has or would have an unfair competitive advantage. While the OCI Regulations provide that contracts shall generally not be awarded to an organization where the Board has determined that an actual or potential OCI exists and cannot be avoided, the Board may waive this requirement in certain circumstances.

As a result of a competitive solicitation, the Board found SC&A to be the best qualified to provide technical support for a project regarding the evaluation of standards implementation at Department of Energy (DOE) defense nuclear facilities. The work requires technical assistance in the assessment for compliance and verification of implementation of standards applied at DOE defense nuclear facilities.

Prior to the award of the contract, SC&A advised that while no direct OCI would result from award of the Board's contract, potential concerns might arise from certain past, present, and potential future contracts with DOE, its contractors, and other Government entities. A summary of each situation, and the Board's evaluation and conclusion regarding any OCI prior to the award of the contract to SC&A, is as follows:

Contractual Relationships Involving DOE, Its Contractors, or Subcontractors

a. Under a subcontract to a DOE prime contractor, SC&A provides systems engineering support to DOE's Office of Civilian Radioactive Waste Management for work not related to defense nuclear facilities.

b. SC&A has a subcontract to provide technical assistance to the Office of NEPA Compliance of DOE's Office of Environment, Safety and Health (EH). The technical assistance is expected to take the form of an Environmental Impact Statement (EIS) review and the development of criteria for the review of NEPA documents.

c. SC&A has a contract with Battelle Memorial Institute Pacific Northwest Laboratories, to assist in environmental assessments for DOE's Office of Environment, Safety and Health. While this Task Order Contract may include assessments of contamination at defense nuclear facilities, SC&A had not yet received tasks under this contract for work involving defense nuclear facilities or that would otherwise overlap with the Board contract.

d. SC&A informed the Board that it had submitted a proposal to a DOE national laboratory that was not involved in work falling under the Board's jurisdiction. If successful, SC&A would be awarded a Basic Ordering Agreement (BOA) to assist the national laboratory in mixed-waste assessments. Work under the BOA could include assessments of contamination at defense nuclear facilities in connection with environmental clean-up issues. Under a BOA, a contractor only has the right to compete for specific tasks as they are issued.

After carefully examining each of these relationships, the Board concluded that there was no actual direct conflict of interest between the arrangements described in paragraphs (a)–(d) and the work SC&A was expected to perform under the Board contract. Further, the total value of this work was very small in relation to SC&A's annual revenues and did not represent a substantial financial and business dependence on DOE-related efforts. Moreover, in the event of a potential conflict with work under the Board's contract, SC&A represented that it has the right to refuse work under these arrangements. Because the contracts described in paragraphs (b)–(d) above contain broad scopes of work that could in the future involve areas of interest to the Board at defense nuclear facilities, it was difficult to predict precisely what tasks would be assigned to SC&A under those contracts and whether actual or potential OCIs would arise as a result. In order to avoid or mitigate any potential conflicts of interest arising in the future, the Board decided that it would generally require SC&A to refuse tasks under these contracts where (a) the scope of the work proposed under those agreements may significantly overlap with work SC&A is performing for the Board, or (b) the work to be performed by SC&A might otherwise give rise to a conflict of interest with work under the Board contract. The Board will ordinarily not assign tasks to SC&A where the Board's task would result in SC&A's evaluating services it has provided or would provide directly or indirectly for DOE or a DOE national laboratory, where the task involves issues within the scope of the work previously performed under a DOE effort. Under the OCI Regulations and the Board contract with SC&A,

SC&A must report to the Board all new and proposed work that may give rise to a conflict of interest, regardless of source. SC&A also agreed to refuse work from the DOE or its contractors that may give rise to a conflict of interest with respect to the work for the Board.

With respect to past activities, in 1990 SC&A provided technical consulting services to EG&G Idaho, Inc. under a DOE prime contract for the preparation of a requirements document for the specification of standards for the operation of mixed-waste laboratories. This project was very small and related to environmental measurements. SC&A also provide the services of three associates in 1990 to assist Westinghouse Savannah River Company, under a DOE contract, in the safety evaluation of K-Reactor for approximately three months. The Board concluded that any conflict that might be created as a result of the small amount of work previously performed under the 1990 contracts could be avoided by not tasking SC&A with evaluating products or services it previously provided to DOE or its contractors under those contracts.

Based on the foregoing factors, the Board determined that the existence of SC&A's current, previous, and proposed contracts with DOE contractors (including a DOE national laboratory) should not prevent the Board from awarding the contract for evaluation of standards implementation to SC&A. So long as the Board carefully monitors the work SC&A performs or proposes to do for others, it should be possible to prevent actual conflicts from developing, or to issue waivers where appropriate.

Contractual Arrangements Involving Associates of SC&A and DOE or Its Contractors

SC&A's Project Manager for the Board contract is under contract with the Office of Nuclear Energy Self-Assessment of the DOE Office of Nuclear Energy to participate in safety or environmental reviews of selected DOE facilities or activities. This individual's work had been limited, and DOE did not anticipate much, if any, activity relating to defense nuclear facilities under this contract. He does have the ability to refuse work under this arrangement and agreed to do so if an OCI would otherwise arise. A second individual proposed for the Board contract is listed on a DOE national laboratory registry of technical talent, but had not received any assignments from the laboratory. A third individual proposed for the Board contract conducts research unrelated to areas under the Board's jurisdiction as a summer faculty fellow at another DOE national laboratory, through an ongoing academic year grant to a university which employs this person. Neither the second nor the third individual was proposed as key personnel for the Board contract, and each of them has the right to decline further assignments from the laboratories.

The Board did not find an actual conflict of interest with the Board contract in the arrangements of any of these individuals. The amount of work involved in each of the cases is not significant enough to make the individual dependent on DOE or DOE contractors for his or her livelihood. Under the OCI Regulations, SC&A may not, and it must ensure that its employees, subcontractors, and consultants under the Board contract do not, enter into contractual arrangements with others that may involve an actual or potential OCI, and SC&A must promptly inform the Board in writing of any such proposed arrangement. The Board will therefore be informed in advance of any work for DOE or its contractors proposed to be entered into by SC&A, any of its associates or its subcontractors. If the Board determines that such work presents an actual or potential conflict of interest with the Board contract, the Board will inform SC&A that SC&A or the associate in question must refuse that work. Alternatively, the Board may choose not to authorize work for SC&A in areas where contractual arrangements of its associates present actual or potential conflicts of interest.

Contractual Arrangements Involving SC&A and Government Agencies Other than DOE

SC&A is performing under a contract with the U.S. Environmental Protection Agency (EPA) in an area that may overlap with work it will be asked to perform under the Board contract. Under the contract, SC&A furnishes services to support EPA's radiological waste, federal guidance and radioactive emergency response programs, and efforts directed to protecting human health. These programs encompass radiation sources and radionuclide contamination involving, among other things, DOE facilities. The technical areas in which SC&A might be rendering assistance under this contract may overlap with services the Board will request under its contract. The Board may request SC&A to perform a study of a matter at a defense nuclear facility that SC&A has already analyzed under the EPA contract. SC&A also has a contract with the Centers for Disease Control and Prevention (CDC), under which it is collecting data in support of a historical radiation dose reconstruction at the Idaho National Engineering Laboratory on CDC's behalf.

Although the work under both the EPA and the CDC contracts is for agencies other than DOE, a conflict of interest under the OCI Regulations could potentially arise if a task the Board wishes to have performed under its contract coincides with technical work already performed or in progress under the EPA or CDC contracts. The basis for the potential conflict would be that SC&A's previous work on an issue might impair its ability to be completely impartial or objective in performing work for the Board. In other words, insofar as SC&A had already reached certain conclusions and given certain advice in its work for the other entities, it might not be studying the matter for the Board from a completely neutral perspective.

The Board considered these situations and concluded that the EPA and CDC contracts to which SC&A is a party did not constitute impediments to awarding the Board contract to SC&A. First, even where work may overlap, the Board believed it more likely that the Board will benefit from SC&A's experience in performing similar work for EPA and CDC than it will suffer from lack of objectivity on the part of SC&A. The interests of EPA and CDC in a particular issue are more likely to parallel the Board's concerns than to conflict with them. Further, as discussed above, SC&A must disclose all new work potentially involving defense nuclear facilities. The Board will scrutinize SC&A's ongoing and completed work for EPA and CDC when assigning tasks under the Board contract so that conflict issues can be handled on a task-by-task basis. If and when a question of potential conflict of interest does arise, the Board will determine at that time how to proceed, including possible means of avoidance or mitigation, and whether a waiver is justified in the particular situation. Even in those situations where there are no actual or potential conflicts of interest, but the Board determines that overlapping assignments are undesirable in a particular situation, it can choose not to assign a particular task to SC&A. Consequently, the Board concluded that the EPA and CDC arrangements should not prevent the contract award to SC&A and no waiver was required prior to award, because of the unlikelihood that an OCI conflict of interest will actually develop.

Conclusion

In conclusion, the Board found no actual conflicts of interest that precluded the award of the contract to SC&A. The Board determined that it should be possible to avoid or substantially mitigate future actual conflicts of interest of SC&A with the Board contract through diligent monitoring of SC&A's actual and proposed work for others and enforcement of the "Work for Others" prohibitions under the OCI Regulations. Therefore, a waiver of the potential conflicts of interest (and the pertinent provisions of the OCI Regulations) and the award of the contract to SC&A was determined to be in the best interests of the Untied States Government because: (a) SC&A possesses outstanding expertise which will be of great value to the Board in its review of standards implementation; (b) the existence of SC&A's contractual arrangements with DOE contractors should not in themselves have an adverse affect on SC&A's ability to provide unbiased work products; (c) the Board can avoid or substantially mitigate actual conflicts of interest by monitoring work for others by SC&A and its associates and tasking work to SC&A accordingly; and (d) many of the other offerors responding to the Board's solicitation also had actual or potential conflicts of interest, so that the conduct of a new competitive procurement would by no means have assured avoidance of similar issues but would clearly have delayed further the start of the important technical work. Accordingly, pursuant to the applicable provisions of 10 CFR part 1706, the Chairman of the Board granted such a waiver.

Dated: October 4, 1993.

Kenneth M. Pusateri,

General Manager.

[FR Doc. 93–24781 Filed 1–7–93; 8:45 am]

BILLING CODE 6820–KD–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Chandeleur Pipe Line Co.; Request Under Blanket Authorization

[Docket No. CP93–749–000]

October 4, 1993.

Take notice that on September 27, 1993, Chandeleur Pipe Line Company (Chandeleur), P.O. Box 740339, New Orleans, Louisiana 70174–0339, filed in Docket No. CP93–749–000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate a new delivery point under Chandeleur's blanket certificate issued in Docket No. CP89–929–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Chandeleur proposes to construct a 12-inch tap and regulating station as a second delivery point to be included in the transportation service agreements covering service to International Paper Company (IP) under Chandeleur's Rate Schedules FT and IT. Chandeleur states that the proposed delivery point would be located on Chandeleur's Pascagoula Meter Station site in Jackson County, Mississippi. Chandeleur further states that the peak and average day deliveries at the point would be 15,000 MMBtu per day. Chandeleur advises that the additional delivery point would have no effect on Chandeleur's peak or annual deliveries. Chandeleur estimates that the cost of the facilities would be $75,000 which would be reimbursed by IP.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24772 Filed 10–7–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–2–21–000]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

October 4, 1993.

Take notice that on September 29, 1993, Columbia Gas Transmission Corporation (Columbia), tendered for filing as part of its FERC Tariff, First Revised Volume No. 1, the following proposed changes to be effective October 1, 1993;

Forty-third Revised Sheet No. 26
Thirty-eighth Revised Sheet No. 26.1

Columbia states that the aforementioned tariff sheets are being filed to reduce the Gas Inventory Charge (GIC) pursuant to § 26.6 of the General Terms and Conditions of Columbia's Tariff from $0.3702 per Dth to $0.3644 per Dth.

Columbia states that copies of the filing were served upon the Columbia's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE. Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 12, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24764 Filed 10–7–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–1–000]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

October 4, 1993.

Take notice that on October 1, 1993, Columbia Gas Transmission Corporation (Columbia) filed the following tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1, to become effective November 1, 1993:

First Revised Sheet No. 262
First Revised Sheet No. 477
Original Sheet No. 480
Alternate Original Sheet No. 480
Original Sheet No. 481

Columbia states that this filing is being made in compliance with the Commission's Order on Compliance with Restructuring Rule issued July 14, 1993 in Docket No. RS92–5–000 to file an alternative recovery mechanism for the Weighted Average Cost of Gas (WACOG) surcharge previously approved by the Commission in Docket No. RP93–161. Columbia states that it is proposing an Unrecovered WACOG Surcharge which will recover on a commodity basis amounts which it would have been permitted to recover under the WACOG surcharge authorized

in Docket RP93–161. The Unrecovered WACOG Surcharge would apply to Columbia's restructured services and be billed to Columbia's converting sales customers.

Columbia states that a copy of the filing is being served on all parties to this proceeding, jurisdictional customers and interested state Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 12, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24770 Filed 10–7–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–205–000]

Koch Gateway Pipeline Co.; Proposed Changes in FERC Gas Tariff

October 4, 1993.

Take notice that on September 30, 1993, Koch Gateway Pipeline Company (KGPC) tendered for filing proposed changes to its FERC Gas Tariff, Third Revised Volume No. 1 and Original Volume No. 50, to establish market-based storage rates on KGPC's system effective November 1, 1993. KGPC anticipates an effective date of April 1, 1994 for the applicable tariff sheets assuming the Commission exercises its authority under Section 4(e) of the NGA and suspends the effective date for the full five month statutory period. The instant filing is a limited Section 4(e) filing.

KGPC states this filing is made to establish market-based storage rates for rate schedules FSS and ISS. KGPC has not changed the costs allocated to either service from the levels approved in Docket No. RS92–26. Since authority to charge market-based rates is the only change KGPC is making to Rate Schedules FSS and ISS, this filing was made as a limited Section 4(e) filing.

KGPC is filing tariff sheets in Original Volume No. 50 as part of its tariff pending in Docket No. RS92–26. KGPC states that when KGPC receives final approval of its Docket No. RS92–26 filing, KGPC will file all of the pro forma tariff sheets in Original Volume No. 50 as Fifth Revised Volume No. 1. At that time, KGPC will file the tariff sheets proposed in this filing as part of Fifth Revised Volume No. 1. Alternatively, KGPC is filing the tariff sheets for Rate Schedules FSS and ISS in KGPC's currently effective tariff, Third Revised Volume No. 1, as part of this filing. KGPC does not intend for the instant sheets to become effective in Third Revised Volume No. 1 and is only filing those sheets since Fifth Revised Volume No. 1, which will implement Order No. 636 on KGPC's system, has not yet been filed pending the Commission's second order in Docket No. RS92–26.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol St., NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 and 385.211. All such petitions or protests must be filed on or before October 12, 1993. Protests will not serve to make protestants parties to the proceeding. Any person wishing to beome a party must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24768 Filed 10–7–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–89–000]

MIGC, Inc.; Informal Settlement Conference

October 4, 1993.

Take notice that on informal settlement conference will be convened in this proceeding on Wednesday, October 13, 1993 (and may be extended until Thursday, October 14, 1993). The conference will begin at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., room 6200, Washington, DC. The purpose of the conference is to explore the possibility of settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Robert L. Woods at (202) 208–1087 or Russell B. Mamone at (202) 208–0744.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24771 Filed 10–7–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–745–000]

Natural Gas Pipeline Company of America; Application

October 4, 1993.

Take notice that on September 28, 1993, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket No. CP93–745–000 an application pursuant to section 7(c) of the Natural Gas Act, requesting authorization to construct and operate additional facilities, and/or to replace existing facilities at three of Natural's existing storage fields, in order to increase Natural's maximum daily deliverability by an additional 250 MMcf per day, all as more fully set forth in the application on file with the Commission and open to public inspection.

More specifically, Natural states that it is proposing to construct and operate 16 injection/withdrawal wells, and associated piping and meters. Natural further states that it is proposing to replace one compress, and two segments of storage field lines. Natural states that the proposed construction, operation and/or replacement of facilities at two of its storage fields in Iowa, and one of its storage fields in Texas will increase the maximum daily deliverability from its storage operations.

Natural estimates that the construction cost of the proposed jurisdictional facilities to be approximately $14,650,000. Natural further states that it estimates the non-jurisdictional facilities for this project to cost an additional $6,137,000. Natural averred that the cost of the facilities required will be financed from funds on hand.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 25, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in

determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Natural to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24767 Filed 10–7–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP89–460–012]

Pacific Gas Transmission Co.; Proposed Change in FERC Gas Tariff

October 4, 1993.

Take notice that on September 30, 1993, Pacific Gas Transmission Company (PGT) tendered for filing and acceptance proposed tariff sheets to be a part of its FERC Gas Tariff, Second Revised Volume No. 1. PGT states that the purpose of this filing is to implement new firm transportation service under Rate Schedule T–3.

PCT states that a copy of this filing is being served on PGT's jurisdictional customers, affected state regulatory commissions and all parties on the official service list as compiled by the Commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before October 12, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24769 Filed 10–7–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. EL93–62–000, and QF92–54–005]

Polk Power Partners, L.P.; Filing

October 4, 1993.

On September 21, 1993, Polk Power Partners, L.P. (Polk) filed a request for a limited waiver of the Commission's operating and efficiency standards applicable to natural gas-fired, topping-cycle qualifying cogeneration facilities under section 292.205 of the Commission's regulations. 18 CFR 292.205. Polk states that the Commission issued an order certifying the Mulberry Cogeneration Facility (Facility), a cogeneration facility to be located in Polk County, Florida, as a qualifying cogeneration facility. *Polk Power Partners, L.P.*, 61 FERC ¶ 61,030, *reh'g denied*. 61 FERC ¶ 61,300 (1992), *appeal pending sub nom. Liquid Carbonic Corporation* v. *FERC*, File No. 93–1095 (D.C. Cir.).

As certified, the Facility's useful thermal energy output was to be used to produce liquid carbon dioxide in a facility to be constructed and owned by Polk. The Polk states that because of the pendency of the appeal in the Court of Appeal for the District of Columbia Circuit, Polk has been forced to consider an alternative arrangement pursuant to which the useful thermal energy output the Facility would be used for the production of fuel-grade ethanol in a plant to be constructed by Polk and leased to an unaffiliated third party. Polk states that due to the change in the planned thermal host, the thermal host will not be complete until three months after the Facility is expected to begin producing electricity in July 1994. Polk states that because no useful thermal output would be produced for that three month period, the Facility would not satisfy the Commission's operating and efficiency standards for calendar year 1994. Polk requests a waiver to permit it to begin operation by June 30, 1994.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214 (1992)). All such motions or protests should be filed on or before October 29, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24765 Filed 10–7–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–204–000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

October 4, 1993.

Take notice that on September 30, 1993, Texas Eastern Transmission Corporation (Texas Eastern), filed a limited application pursuant to Section 4 of the Natural Gas Act, 15 U.S.C. 717c (1988), and the Rules and Regulations of the Federal Energy Regulatory Commission (Commission) promulgated thereunder to recover Account No. 858 costs (Stranded Costs) incurred as a consequence of Texas Eastern's implementation of Order No. 636.

Texas Eastern states that it is filing to recover Stranded Costs pursuant to section 15.2(D) of the General Terms and Conditions of Texas Eastern's FERC Gas Tariff, Sixth Revised Volume No. 1, as modified in compliance with the Commission's September 17, 1993 order in Docket No. RS92–11, *et al.*

Texas Eastern states that by this filing it seeks to recover known and measurable Stranded Costs totalling $3,642,520.68 incurred from the date of implementation of Order No. 636 on Texas Eastern's system, June 1, 1993, through August 31, 1993. Interest of $54,429.73 at the current FERC annual rate of 6.00% is added for carrying charges from the date of payment of the costs to the projected date of payment by the customers.

The proposed effective date of the filing is October 31, 1993.

Texas Eastern states that copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington,

DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 12, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24763 Filed 10–7–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP91–126–000, et al. and RP92–235–000, et al.]

United Gas Pipe Line; Technical Conference

October 4, 1993.

On March 29, 1993, the Commission issued an order approving United Gas Pipe Line's proposed settlement in Docket No. RP92–235–000, *et al.* The Settlement provides for the continuation of United's experimental Market Responsive Storage and Delivery Service (MRSDS) through March 31, 1994. The settlement also provides that United meet with staff and other interested parties to evaluate the service.

Take notice that a technical conference will be held on Wednesday, October 20, 1993, at 10 a.m. to discuss United's MRSDS. The conference will be held in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24766 Filed 10–7–93; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

National Petroleum Council; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: National Petroleum Council (NPC).

Date and Time: Wednesday, October 20, 1993 at 9 a.m.

Place: The Madison Hotel, Dolley Madison Ballroom, Fifteenth and M Streets, NW., Washington, DC.

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE–5), Washington, DC 20585. Telephone: 202/586–3867.

Purpose: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industry.

Tentative Agenda

—Call to order and introductory remarks by Ray L. Hunt, Chairman of the NPC.
—Remarks by the Honorable Hazel R. O'Leary, Secretary of Energy.
—Discussion of NPC Refining Study.
—Administrative matters.
—Discussion of any other business properly brought before the NPC.
—Public comment (10-minute rule).
—Adjournment.

Public Participation: The meeting is open to the public. The chairperson of the Council is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Council will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. This notice is being published less than 15 days in advance of the meeting due to certain programmatic issues which had to be resolved prior to publication in the **Federal Register**.

Transcripts: Available for public review and copying at the Public Reading Room, room IE–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on October 4, 1993.

Howard H. Raiken,

Advisory Committee Management Officer.

[FR Doc. 93–24819 Filed 10–7–93; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 93–68–NG]

Nortech Energy Corp.; Order Granting Blanket Authorization to Import Natural Gas and Export Natural Gas From and to Mexico

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Nortech Energy Corp. blanket authorization to import up to 40 Bcf of natural gas and export up to 40 Bcf of natural gas from and to Mexico over a two-year term beginning on the date of the first import or export delivery.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, September 30, 1993.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–24818 Filed 10–7–93; 8:45 am]

BILLING CODE 6450–01–M

Office of Hearings and Appeals

Cases Filed During the Week of September 3 through September 10, 1993

During the Week of September 3 through September 10, 1993, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: October 1, 1993

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of September 3 through September 10, 1993]

Date	Name and location of applicant	Case No.	Type of submission
Sept. 9, 1993 ..	Westport Energy Corporation and Westport Petroleum, Washington, DC.	LEF–0113	Implementation of Special Refund Procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR, part 205, subpart V, in connection with the July 1986, confirmation of the Second Amended Plan of Reorganization by Westport Energy Corporation and Westport Petroleum Corporation.
Sept. 10, 1993	James L. Schwab, Spokane, WA	LFA–0320	Appeal of an Information Request Denial. If granted: The August 24, 1993 Freedom of Information Request Denial issued by the Office of Inspector General would be rescinded, and James L. Schwab would receive access to copies of all documents in the control or possession of the Nevada Field Office regarding work done concerning him by a criminal investigator in 1989.

REFUND APPLICATIONS RECEIVED

Date received	Name of refund proceeding/name of refund applicant	Case No.
9/3/93 thru 9/10/93	Atlantic Richfield refund applications received	RF304–14482 thru RF304–14516
9/7/93	Frantic Auto Repair	RF265–2887
9/7/93	G & G Texaco	RF321–19878
9/7/93	Western Resources, Inc	RF321–19879

[FR Doc. 93–24817 Filed 10–7–93; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–4704–4]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared September 20, 1993 Through September 24, 1993 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1993 (58 FR 18392).

DRAFT EISs

ERP No. D–BLM–K65148–NV Rating EO2, Bedell Flat Water and Natural Gas Pipelines Crossing Project, Right-of-Way Grants and COE Section 404 Permit, Washoe County, NV.

Summary: EPA expressed environmental objections because of potential adverse impacts to wetlands and other waters of the United States, air quality and biological resources. EPA requested additional information on mitigation for impacts to wetlands and biological resources, project purpose and need, air quality impacts, and groundwater contamination.

ERP No. D–FHW–C40131–NY Rating EC2, Long Island Expressway (I–495)/ Seaford—Oyster Bay Expressway (NY–135) Interchange Project, Improvements between Exit 43 South Oyster Bay Road to Exit 46 Sunnyside Boulevard, Funding and NPDES Permit, Town of Oyster Bay, Nassau County, NY.

Summary: EPA expressed environmental concerns about the project because of potential air quality impacts. EPA requested that the final EIS address this issue. Specifically, it needs to be demonstrated that: the carbon monoxide (CO) and mobile source emissions predictions provided are at least as conservative as those predicted by the use of the latest EPS approved models; the project will not cause or contribute to a violation of CO standards; and the project complies with New York State's congestion management system. EPA requested additional air quality intersection modeling and documentation that the project complies with New York State's congestion management system.

ERP No. D–HUD–K80032–CA Rating EC2, Martin Luther King, Jr. Plaza Development on the former Marritt College and University High School Site, Funding and Implementation, City of Oakland, Alameda County, CA.

Summary: EPA expressed environmental concerns due to the potential existance of hazardous waste and toxic substances. EPA requested additional information on these issues and discussion of pollution prevention and energy conservation.

Final EISs

ERP No. F–BLM–K67016–NV Cortez Gold Mines Expansion Project, Construction and Operation, Mining Plan of Operations Approval and Right-of-Way Permits, Special-Use Permit, NPDES and COE Section 404 Permits Issuance, Crescent Valley, south of Battle Mountain District, Lander and Eureka Counties, NV.

Summary: EPA had no objections to the preferred alternative. ERP No. FS–NOA–C64003–00, Shallow-Water Reef Fish Fishery Management Plan, Amendment 2, Updated Information, Puerto Rico and U.S. Virgin Islands.

Summary: EPA believed that the implementation of Amendment 2 of the Shallow-Water Reef Fish Fishery Management Plan will not result in any significant adverse environmental impacts. Accordingly, we have no objection to the Plan's implementation.

Dated: October 5, 1993.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 93–24824 Filed 10–7–93; 8:45 am]

BILLING CODE 6560–60–U

[ER–FRL–4704–3]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 OR (202) 260–5075.

Weekly receipt of Environmental Impact Statements Filed September 27, 1993 Through October 01, 1993 Pursuant to 40 CFR 1506.9.

EIS No. 930338, Draft EIS, AFS, CA, Shasta-Trinity National Forests Land and Resource Management Plan, Implementation, Humboldt, Modoc, Shasta, and Siskiyou, Tehama and Trinity Counties, CA, Due: December 30, 1993, Contact: Steve Fitch (916) 246–5222.

EIS No. 930339, Final EIS, AFS, WA, ID, OR, CA, Pacific Yew (Taxus brevifolia) Harvesting Program, Implementation, WA, OR, ID and CA, Due: November 08, 1993, Contact: Sally Campbell (503) 326–7755.

EIS No. 930340, Draft EIS, AFS, CA, Six Rivers National Forest Land and Resource Management Plan, Implementation, Humboldt, Trinity, Del Norte and Siskiyou Counties, CA, Due: January 06, 1994, Contact: Laura Chapman (707) 441–3537.

EIS No. 930341, Draft EIS, AFS, CA, Mendocine National Forest Land and Resource Management Plan, Implementation, Colusa, Glenn, Lake, Mendocino, Tehama and Trinity Counties, CA, Due: January 06, 1994, Contact: Daniel K. Chisholm (916) 934–3316.

EIS No. 930342, Draft EIS, AFS, AK, Polk Inlet Project, Long-Term Timber Sale Contract, Implementation, Tongass National Forest, Prince of Wales Island, AK, Due: November 22, 1993, Contact: Dave Arrasmith (907) 225–3101.

EIS No. 930343, Draft EIS, FAA, TX, New Austin Airport at Bergstrom Air Force Base (AFB) 1993 Master Plan, Approval, Funding, Property Acquisition and Construction, City of Austin, Travis County, TX, Due: November 30, 1993, Contact: Bill Perkins (817) 624–5609.

EIS No. 930344, Draft EIS, BLM, CO, Royal Gorge Resource Management Plan, Implementation, Canon City District, several Counties, CO, Due: January 10, 1994, Contact: Dave Taliaferro (719) 275–0631.

EIS No. 930345, Draft Supplement, AFS, MT, Beaver-Dry Timber Sales, Timber Harvest and Road Construction, Updated Information, Implementation, Helena National Forest, Lincoln Ranger District, Lewis & Clark and Powell Counties, MT, Due: November 22, 1993, Contact: Terry Eccles (406) 362–4265.

EIS No. 930346, Draft Supplement, VAD, IL, Northeastern Illinois Area National Cemetery Development, Construction and Operation, Updated Information Concerning New Site Selection, Joliet, Grant Park or Cissna Park, Possible COE Section 404 Permit, Kankanka, Iroquois or Will County, IL , Due: November 22, 1993, Contact: Robert J. Frazier, Jr. (202) 233–7085.

EIS No. 930347, Draft EIS, AFS, CA, OR, Klamath National Forest Land and Resource Management Plan, Implementation, Siskyou Co., CA and Jackson Co., OR, Due: November 22, 1993, Contact: Barbara Holder (916) 842–6131.

Amended Notices

EIS No. 930285, Draft EIS, FHW, NB, South Locust Street (also known as Old Highway 281) Transportation Improvements, I–80 to the Grand Island and north of US 34, Funding and COE Section 404 Permit, Hall County, NB, Due: November 22, 1993, Contact: Phillip E. Barnes (402) 437–5521.

Published FR 08–20–93—Review period extended due to the distribution of errata sheets concerning additional mitigation measures.

Dated: October 5, 1993.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 93–24825 Filed 10–7–93; 8:45 am]

BILLING CODE 6560–50–U

[FRL–4787–5]

South Dakota; Final Determination of Adequacy of State/Tribal Municipal Solid Waste Permit Program

AGENCY: Environmental Protection Agency (Region VIII).

ACTION: Notice of final determination of full program adequacy for South Dakota's application.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or conditionally exempt small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). RCRA section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether States have adequate "permit" programs for MSWLFs, but does not mandate issuance of a rule for such determinations. EPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, State/Tribal landfill permit programs. The Agency intends to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of the STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State/Tribal permit programs provide interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in State/Tribes with approved permit programs can use the site-specific flexibility provided by part 258 to the extent the State/Tribal permit program allows such flexibility. EPA notes that regardless of the approval status of a State/Tribe and the permit status of any facility, the Federal landfill Criteria will apply to all permitted and unpermitted MSWLFs.

South Dakota applied for a determination of adequacy under section 4005 of RCRA. EPA reviewed South Dakota's application and proposed a determination that South Dakota's MSWLF permit program is adequate to ensure compliance with the revised MSWLF Criteria. After consideration of all comments received, EPA is today issuing a final determination that South Dakota's program is adequate.

EFFECTIVE DATE: The determination of adequacy for South Dakota shall be effective on October 8, 1993.

FOR FURTHER INFORMATION CONTACT: Brian Rimar, Mail Code 8HWM-WM, Waste Management Branch, U.S. EPA Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, telephone (303) 293–1673.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that facilities comply with the Federal Criteria under part 258. Subtitle D also requires in section 4005 that EPA determine the adequacy of State municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, the Agency has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR). The rule will specify the

requirements which State/Tribal programs must satisfy to be determined adequate.

EPA intends to approve State/Tribal MSWLF permit programs prior to the promulgation of STIR. EPA interprets the requirements for States or Tribes to develop "adequate" programs for permits or other forms of prior approval to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF Criteria. Next, the State/Tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, EPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions will determine whether a State/Tribe has submitted an "adequate" program based on the interpretation outlined above. EPA plans to provide more specific criteria for this evaluation when it proposes the State/Tribal Implementation Rule. EPA expects States/Tribes to meet all of these requirements for all elements of a MSWLF program before it gives full approval to a MSWLF program.

On September 27, 1993, the EPA Administrator signed the final rule extending the effective date of the landfill Criteria for certain classifications of landfills (proposed rule at 58 FR 40568, July 28, 1993). Thus, for certain small landfills, the Federal Criteria will not be effective until April 9, 1994, instead of October 9, 1993. The final ruling on the effective date extension is scheduled for publication in the **Federal Register** within a week after the signature date.

B. State of South Dakota

On April 29, 1993, South Dakota submitted an application for adequacy determination for the State's municipal solid waste landfill permit program. On July 20, 1993, EPA published a tentative determination of adequacy for all portions of South Dakota's program. Further background on the tentative determination of adequacy appears at 58 FR 38759 (July 20, 1993).

Along with the tentative determination, EPA announced the availability of the application for public comment and the date of the public hearing on the application. EPA and the State of South Dakota held a public hearing at 1 p.m. on September 14, 1993, in Pierre, South Dakota.

During its September 16, 1993, meeting, the South Dakota Board of Minerals and Environment approved State rule changes, effective October 18, 1993, to bring South Dakota's ground-water monitoring program into full Federal compliance.

EPA has reviewed South Dakota's application and has determined that all portions of the State's MSWLF permit program will ensure compliance with the revised Federal Criteria. In its application, South Dakota demonstrated that the State's permit program adequately meets the location restrictions, operating criteria, design criteria, ground-water monitoring and corrective action requirements, closure and post-closure care requirements, and financial assurance criteria in the revised Federal Criteria. In addition, the State of South Dakota also demonstrated that its MSWLF permit program contains specific provisions for public participation, compliance monitoring, and enforcement.

C. Public Comment

The EPA received the following public comments on the tentative determination of adequacy for South Dakota's MSWLF permit program.

Ten commenters supported EPA approval of the State of South Dakota application, expressing confidence in the South Dakota Department of Environment and Natural Resources and their municipal solid waste program.

Eleven commenters were opposed to State jurisdiction over the municipal solid waste landfill program on fee lands located within exterior boundaries of Indian Reservations. Eight commenters expressed support for State jurisdiction on fee lands located within exterior boundaries of Indian Reservations. EPA has responded to these comments in the section below entitled "Decision."

One commenter requested more time to comply with 40 CFR part 258 regulations. This comment is addressed in the section above entitled "Supplementary Information."

One commenter stated that the staffing level at the South Dakota Department of Environment and Natural Resources was not sufficient to carry out the program. Although the State/Tribe should demonstrate that adequate staffing and resources exist, EPA is not proposing specific resources and staffing requirements and will not judge the resource estimates with any upper or lower bounds for approval or disapproval. Each State/Tribe will have different resource requirements and strategies for ensuring compliance with part 258. The Agency intends to allow States/Tribes the flexibility to determine the best use of their resources. EPA believes that the State of South Dakota has demonstrated that adequate staffing and resources do exist. The Department of Environment and Natural Resources has a total of eight full time equivalent staff to administer the program, and 20 to 25 planned MSWLFs.

One commenter believed that permit documents for permit determination are not generally available for public review and comment prior to public notice by the South Dakota Department of Environment and Natural Resources. The Agency reviewed the South Dakota application to determine if the State provided for the following: MSWLF permit documents for permit determinations are made available for public review and comment; final permit determinations on MSWLF permit applications are made known to the public, and; the state has procedures to insure that public comments on permit determinations are considered. State procedures for following these requirements can be found in Section VI. Public Participation of South Dakota's Solid Waste Management Permit Program Application, April 1993. Furthermore, South Dakota Codified Law 1–27–1 specifically allows for open inspection of all records and documents during normal business hours. EPA believes that the State of South Dakota provides adequate opportunity for document review.

One commenter stated that final permit determinations may not be published widely. EPA is not specifying public notice procedures, although these must be adequate to effectively ensure public participation. EPA believes that South Dakota's current practice of publishing determinations in local newspapers is adequate.

One commenter believed that there is an inadequate procedure for considering public comment on proposed MSWLFs. EPA is not specifying prescriptive public participation requirements. Rather, the draft STIR outlines a framework to ensure that the public has an opportunity to express its views on the permit materials prior to permit issuance by the State/Tribe. A detailed discussion of the procedure for consideration of public comment can be found in Section VI. Public Participation found in South Dakota's Solid Waste Management Permit Program Application, April 1993. EPA believes that the State of South Dakota

will provide sufficient consideration of public opinion.

One commenter expressed concern over Administrative Rules of South Dakota (ARSD) 74:09:01:06, which he believes restricts citizen intervention in civil enforcement. This State rule does not allow citizen intervention in a contested case hearing. However, this rule has been overridden by State statutes 34A–10–1 and 34A–10–2, which specifically allow for public intervention.

One commenter felt that the South Dakota Board of Minerals and Environment excludes citizen groups from participation in contested case hearings, unless they are represented by an attorney. This requirement by the Board does not exclude citizens from full participation at hearings, but does require legal representation for citizen groups. The South Dakota Bar Association has issued an ethics opinion that appearance before administrative agencies on behalf of corporations or associations must be by licensed attorneys. EPA does not believe that such a requirement would exclude citizen participation. EPA is not specifying prescriptive public participation requirements. Furthermore, in Section VI. Public Participation of South Dakota's Solid Waste Management Permit Program Application, the State has listed three opportunities for public participation on the permitting of MSWLFs: Local government zoning and/or permit application public meetings; County Commission public meetings for resolution approval or disapproval, and; Board of Minerals and Environment case hearings.

One commenter requested clarification on the applicability of 40 CFR part 258 to ash monofills that dispose of co-mingled coal ash and ash from burning "refuse derived fuel," tires, and commercial and industrial wastes. The MSWLF criteria apply to landfills that accept wastes derived from households. Commercial and industrial wastes, and ash derived from such wastes, so long as not comingled with household waste, are not regulated under 40 CFR part 258. The Agency's current position with respect to combustion of coal ash and ash from the combustion of refuse derived fuel is that disposal of such comingled ash would be subject to 40 CFR part 258.

One commenter believed that the 40 CFR part 258 groundwater monitoring and assessment requirements are weaker than South Dakota's Groundwater Discharge Permit System. EPA is not requiring States/Tribes to replace current regulations with minimum Federal criteria. States/Tribes may continue to use groundwater monitoring and assessment requirements beyond those specified in the minimum Federal criteria.

One commenter stated that land application or recirculation of untreated leachate should not be allowed without a composite liner. The recirculation of leachate does require the use of a composite liner and leachate collection system, as required in 40 CFR 258.28(a)(2). However, EPA has concluded that the surface application of leachate over daily or interim cover areas does not require the use of a composite liner, as this application does not constitute placing of leachate in MSWLF units. In ARSD 74:27:13:24(1) surface application of leachate over daily and interim cover areas that are underlain by both a liner system and a leachate collection system is allowed. However, the recirculation of leachate in MSWLF units is prohibited in ARSD 74:27:13:27, which requires that all demonstrations for variances for MSWLFs must meet the requirements of 40 CFR part 258.

One commenter believed that groundwater regulations included in 40 CFR part 258 would be better addressed by the South Dakota Board of Water Management rather than the Board of Minerals and Environment. State statute 34A–6–1.13 gives the Board of Minerals and Environment the authority to issue MSWLF permits. Furthermore, the proposed STIR does not include prescriptive requirements regarding which State organizations should address groundwater topics.

One commenter questioned the criteria used by the State of South Dakota to define "no practicable alternative," in order for MSWLFs to qualify for the small landfill exemption. The requirement that the MSWLF be fifty miles or more from a regional facility was recommended in the State's solid waste management plan. This plan was produced with public input from throughout the State. This was determined to be the farthest practicable haul distance for the majority of the State. EPA has allowed States the flexibility to interpret "no practicable alternative" under conditions specific to the individual State.

One commenter maintained that use of the draft STIR as guidance is a violation of the Administrative Procedure Act (APA) requirements that a rule must go through notice and opportunity for comment. EPA does not believe that it is violating requirements of the APA. The Agency is not utilizing the draft STIR as a regulation which binds either the Agency or the States/Tribes. Instead, EPA is using the draft STIR as guidance for evaluating State/Tribal permit programs and maintains its discretion to approve State/Tribal permit programs utilizing the draft STIR and/or other criteria which assure compliance with 40 CFR part 258.

In addition, members of the public have an opportunity to comment on the criteria by which EPA assures the adequacy of State/Tribal MSWLF permit programs because the Agency discusses the criteria for approval of a permit program when it publishes each tentative determination notice in the **Federal Register**. In the tentative determination notice for the State of South Dakota's permit program, the Agency set forth for public comment the requirements for an adequate permit program (58 FR 38759–38761, July 20, 1993).

D. Decision

After reviewing the public comments, I conclude that South Dakota's application for adequacy determination meets all of the statutory and regulatory requirements established by RCRA. Accordingly, South Dakota is granted a determination of adequacy for all portions of its municipal solid waste landfill permit program.

Today's decision to approve the South Dakota MSWLF permitting program does not extend to "Indian Country," as defined in 18 U.S.C. 1151, including the following "existing or former" Indian reservations in the State of South Dakota:

1. Cheyenne River;
2. Crow Creek;
3. Flandreau;
4. Lower Brule;
5. Pine Ridge;
6. Rosebud;
7. Sisseton;
8. Standing Rock; and
9. Yankton.

Before EPA would be able to approve the State of South Dakota MSWLF permit program for any portion of "Indian Country," the State would have to provide an appropriate analysis of the State's jurisdiction to enforce in these areas. In order for a State (or Tribe) to satisfy this requirement, it must demonstrate to the EPA's satisfaction that it has authority either pursuant to explicit Congressional authorization or applicable principles of Federal Indian law to enforce its laws against existing and potential pollution sources within any geographical area for which it seeks program approval. EPA has reason to believe that disagreement exists with regard to the State's jurisdiction over "Indian Country," and EPA is not

satisfied that South Dakota has, at this time, made the requisite showing of its authority with respect to such lands.

In withholding program approval for these areas, EPA is not making a determination that the State either has adequate jurisdiction or lacks such jurisdiction. Should the State of South Dakota choose to submit analysis with regard to its jurisdiction over all or part of "Indian Country" in the State, it may do so without prejudice.

EPA's future evaluation of whether to approve the South Dakota program for Indian Country," to include Indian reservation lands, will be governed by EPA's judgment as to whether the State has demonstrated adequate authority to justify such approval, based upon its understanding of the relevant principles of Federal Indian law and sound administrative practice. The State may wish to consider EPA's discussion of the related issue of tribal jurisdiction found in the preamble to the Indian Water Quality Standards Regulation (see 56 FR 64876, December 12, 1991).

Until EPA approves a State or Tribal MSWLF permit program for any part of "Indian Country" in South Dakota, the requirements of 40 CFR part 258 will, after the effective date of the Federal Criteria, automatically apply to that area. Thereafter, the requirements of 40 CFR part 258 will apply to all owners/operators of MSWLFs located in any part of "Indian Country" that is not covered by an approved State or Tribal MSWLF permit program. EPA is not, however, proposing at this time to determine that there is no adequate permit program in place in Indian Country in South Dakota for the purposes of section 4005(c)(2)(A) of RCRA.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR part 258 independent of any State/Tribal enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

Today's action takes effect on October 8, 1993. EPA believes it has good cause under section 553(d) of the Administrative Procedure Act, 5 U.S.C 553(d), to put this action into effect less than 30 days after publication in the **Federal Register**. All of the requirements and obligations in the State's/Tribe's program are already in effect as a matter of State/Tribal law. EPA's action today does not impose any new requirements that the regulated community must begin to comply with. Nor do these requirements become enforceable by EPA as Federal law. Consequently, EPA finds that it does not need to give notice prior to making its approval effective.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This notice, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of section 4005 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6946.

Dated: September 30, 1993.

Jack W. McGraw,

Acting Regional Administrator.

[FR Doc. 93–24820 Filed 10–7–93; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4787–4]

Utah; Final Determination of Partial Program Adequacy of State/Tribal Municipal Solid Waste Landfill Permit Program

AGENCY: Environmental Protection Agency (Region VIII).

ACTION: Notice of final determination of partial program adequacy of Utah's application.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or conditionally exempt small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). RCRA section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether States have adequate "permit" programs for MSWLFs, but does not mandate issuance of a rule for such determinations. EPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, State/Tribal landfill permit programs. The Agency intends to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of the STIR, adequacy determinations will be made based on statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State/Tribal permit programs provide for interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in States/Tribes with approved permit programs can use the site-specific flexibility provided by part 258 to the extent the State/Tribal permit program allows such flexibility. EPA notes that regardless of the approval status of a State/Tribe and the permit status of any facility, the Federal landfill Criteria will apply to all permitted and unpermitted MSWLFs.

Utah applied for a partial program determination of adequacy under section 4005 of RCRA. EPA reviewed Utah's application and made a tentative determination of adequacy for those portions of the MSWLF permit program that are adequate to ensure compliance with the revised MSWLF Criteria. After reviewing all comments received, EPA today is granting final approval to Utah's partial program.

EFFECTIVE DATE: The determination of adequacy for Utah shall be effective on October 8, 1993.

FOR FURTHER INFORMATION CONTACT: Brian Rimar, Mail Code 8HWM-WM, Waste Management Branch, U.S. EPA Region VIII, 999 18th Street, Suite 500, Denver, Colorado, 80202–2466, telephone (303) 293–1673.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that facilities comply with the Federal Criteria under part 258. Subtitle D also requires in section 4005 that EPA determine the adequacy of State municipal solid waste landfill permit programs to ensure that facilities comply with the revised

Federal Criteria. To fulfill this requirement, the Agency has drafted and is in the process of proposing the State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

EPA intends to propose in STIR to allow partial approval if:

(1) The Regional Administrator determines that the State/Tribal permit program largely meets the requirements for ensuring compliance with part 258;

(2) Changes to a limited narrow part(s) of the State/Tribal permit program are needed to meet these requirements; and

(3) Provisions not included in the partially approved portions of the State/Tribal permit program are a clearly identifiable and separable subset of part 258.

As provided in the October 9, 1991, municipal landfill rule, EPA's national subtitle D standards will take effect in October 1993. Consequently, any remaining portions of the Federal Criteria which are not included in an approved State/Tribal program by October 1993 would apply directly to the owner/operator.

On September 27, 1993, the EPA Administrator signed the final rule extending the effective date of the landfill Criteria for certain classifications of landfills (proposed rule at 58 FR 40568, July 28, 1993). Thus, for certain small landfills, the Federal Criteria will not be effective until April 9, 1994, instead of October 9, 1993. The final ruling on the effective date extension is scheduled for publication in the **Federal Register** within a week after the signature date.

The requirements of the STIR, if promulgated, will ensure that any mixture of State/Tribal and Federal rules that take effect will be fully workable and leave no significant gaps in environmental protection. These practical concerns apply to individual partial approvals granted prior to the promulgation of the STIR rule. Consequently, EPA reviewed the program approved today and concluded that the State/Tribal and the Federal requirements mesh reasonably well and leave no significant gaps. Partial approval would allow the Agency to approve those provisions of the State/Tribal permit program that meet the requirements and provide the State/Tribe time to make necessary changes to the remaining portions of its program. As a result, owners/operators will be able to work with the State/Tribal permitting agency to take advantage of the Criteria's flexibility for those portions of the program which have been approved.

EPA will review State/Tribal requirements to determine whether they are "adequate" under section 4005(c)(1)(C) of RCRA. EPA interprets the requirements for States or Tribes to develop "adequate" programs for permits or other forms of prior approval to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF Criteria. Next, the State/Tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, EPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions will determine whether a State/Tribe has submitted an "adequate" program based on the interpretation outlined above. EPA plans to provide more specific criteria for this evaluation when it proposes the State/Tribal Implementation Rule. EPA expects States/Tribes to meet all of these requirements for all elements of a MSWLF program before it gives full approval to a MSWLF program. EPA also is requesting States/Tribes seeking partial program approval to provide a schedule for the submittal of all remaining portions of their MSWLF permit programs. EPA notes that it intends to propose to make submissions of a schedule mandatory in STIR.

B. State of Utah

On July 20, 1993, Utah submitted an application to obtain a partial program adequacy determination for the State's municipal solid waste landfill permit program. On August 12, 1993, EPA published a tentative determination of adequacy for Utah's program. Further background on the tentative partial program determination of adequacy appears at 58 FR 42965 (August 12, 1993).

Along with the tentative determination, EPA announced the availability of the application for public comment. EPA also tentatively scheduled a public hearing for September 27, 1993, to be held if a sufficient number of peopled expressed interest in participating. After no one expressed interest, the Agency cancelled the public hearing.

During its September 9, 1993, meeting, the Utah Solid and Hazardous Waste Control Board adopted two proposed changes in the Utah Solid Waste Permitting and Management Rules: Deleting, at R315–303–4(f), the small landfill ground-water monitoring exemption; and adding, at R315–310–4(e)(v), the requirement for the owner/operator to provide the name, address, and telephone number of the person to contact about the facility during the post-closure period, as required by 40 CFR 258.61(c)(2).

EPA has reviewed Utah's application and has determined that all parts, with the exception listed below, of the State's MSWLF permit program will ensure compliance with the revised Federal Criteria.

In addition, the State of Utah demonstrated that its MSWLF permit program contains specific provisions for public participation, compliance monitoring, and enforcement.

EPA is not approving a portion of Utah's program. To ensure compliance with all the Federal Criteria, Utah needs to revise the following aspects of its permit program.

1. All requirements of State of Utah Solid Waste Permitting and Management Rules, R315–309, Financial Assurance, must be applicable to all permitted MSWLF units, as required by 40 CFR part 258, subpart G.

The State of Utah expects to complete the statutory and regulatory changes needed for full program approval by mid-1994.

As a State's/Tribe's regulations and statutes are amended to comply with the Federal landfill regulations, unapproved portions of a partially approved MSWLF program may be approved by the EPA. The State/Tribe may submit an amended application to EPA for review and an adequacy determination will be made using the same criteria as for the initial application. This adequacy determination will be published in the **Federal Register** summarizing the Agency's decision and the portion(s) of the State/Tribal MSWLF permit program affected and providing an opportunity to comment for a period of thirty (30) days. The adequacy determination will become effective sixty (60) days following publication if no adverse comments are received. If EPA receives adverse comments on its adequacy determination, another **Federal Register** notice will be published either affirming or reversing the initial decision while responding to the public comments.

C. Public Comment

EPA received three public comments on the tentative determination of adequacy for Utah's MSWLF permit program.

The State of Utah, in two comments, requested that EPA re-evaluate language in the tentative determination regarding jurisdiction over "Indian Country," especially the use of the term "former Indian reservation lands." The commenters requested that EPA approve the State's MSWLF permit program within the State of Utah except for Indian lands.

EPA has revised this language in the section below entitled "Decision."

One commenter maintained that use of the draft STIR as guidance is a violation of the Administrative Procedure Act (APA) requirements that a rule must go through notice and opportunity for comment. EPA does not believe that it is violating requirements of the APA. The Agency is not utilizing the draft STIR as a regulation which binds either the Agency or the States/Tribes. Instead, EPA is using the draft STIR as guidance for evaluating State/Tribal permit programs and maintains its discretion to approve State/Tribal permit programs utilizing the draft STIR and/or other criteria which assure compliance with 40 CFR part 258.

In addition, members of the public have an opportunity to comment on the criteria by which EPA assures the adequacy of State/Tribal MSWLF permit programs because the Agency discusses the criteria for approval of a permit program when it publishes each tentative determination notice in the **Federal Register**. In the tentative determination notice for the State of Utah's permit program, the Agency set forth for public comment the requirements for an adequate permit program (58 FR 42965–42967, August 12, 1993).

D. Decision

After reviewing the public comments, I conclude that Utah's application for partial program adequacy determination meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Utah is granted a partial program determination of adequacy for the following areas of its municipal solid waste permit program: 40 CFR part 258, subparts A, B, C, D, E, and F.

The State of Utah has not asserted jurisdiction over "Indian Country," as defined in 18 U.S.C. 1151, in its application for adequacy determination. Today's decision to approve Utah's application does not extend to the following Indian reservations in the State of Utah:

1. Goshute;
2. Navajo;
3. Northwestern Shoshoni;
4. Southern Paiute;
5. Five Affiliated Paiute;
6. Skull Valley; and
7. Uintah and Ouray.

Until EPA approves a State or Tribal MSWLF permit program in Utah for any part of "Indian Country" in Utah, the requirements of 40 CFR part 258 will, after the effective date of the Federal Criteria, automatically apply to that area. Thereafter, the requirements of 40 CFR part 258 will apply to all owners/operators of MSWLFs located in any part of "Indian Country" that is not covered by an approved State or Tribal MSWLF permit program.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR part 258 independent of any State/Tribal enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

Today's action takes effect on October 8, 1993. EPA believes it has good cause under section 553(d) of the Administrative Procedure Act, 5 U.S.C 553(d), to put this action into effect less than 30 days after publication in the **Federal Register**. All of the requirements and obligations in the State's/Tribe's program are already in effect as a matter of State/Tribal law. EPA's action today does not impose any new requirements that the regulated community must begin to comply with. Nor do these requirements become enforceable by EPA as Federal law. Consequently, EPA finds that it does not need to give notice prior to making its approval effective.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this final approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This notice, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of section 4005 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6946.

Dated: September 30, 1993.

Jack W. McGraw,

Acting Regional Administrator.

[FR Doc. 93–24816 Filed 10–7–93; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4787–3]

Wyoming; Final Determination of Partial Program Adequacy of State/Tribal Municipal Solid Waste Landfill Permit Program

AGENCY: Environmental Protection Agency (Region VIII).

ACTION: Notice of final determination of partial program adequacy of Wyoming's application.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or conditionally exempt small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). RCRA section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether States have adequate "permit" programs for MSWLFs, but does not mandate issuance of a rule for such determinations. EPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, State/Tribal landfill permit programs. The Agency intends to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of the STIR, adequacy determinations will be made based on statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State/Tribal permit programs provide for interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in States/Tribes with approved permit programs can use the site-specific flexibility provided by part 258 to the extent the State/Tribal permit

program allows such flexibility. EPA notes that regardless of the approval status of a State/Tribe and the permit status of any facility, the Federal landfill Criteria will apply to all permitted and unpermitted MSWLFs.

Wyoming applied for a partial program determination of adequacy under section 4005 of RCRA. EPA reviewed Wyoming's application and made a tentative determination of adequacy for those portions of the MSWLF permit program that are adequate to ensure compliance with the revised MSWLF Criteria. After reviewing all comments received, EPA today is granting final approval to Wyoming's partial program.

EFFECTIVE DATE: The determination of adequacy for Wyoming shall be effective on October 8, 1993.

FOR FURTHER INFORMATION CONTACT: Gerald Allen, Mail Code 8HWM-WM, Waste Management Branch, U.S. EPA Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, telephone (303) 293–1496.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that facilities comply with the Federal Criteria under part 258. Subtitle D also requires in section 4005 that EPA determine the adequacy of State municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, the Agency has drafted and is in the process of proposing the State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

EPA intends to propose in STIR to allow partial approval if:

(1) The Regional Administrator determines that the State/Tribal permit program largely meets the requirements for ensuring compliance with part 258;

(2) Changes to a limited narrow part(s) of the State/Tribal permit program are needed to meet these requirements; and

(3) Provisions not included in the partially approved portions of the State/Tribal permit program are a clearly identifiable and separable subset of part 258.

As provided in the October 9, 1991, municipal landfill rule, EPA's national subtitle D standards will take effect in October 1993. Consequently, any remaining portions of the Federal Criteria which are not included in an approved State/Tribal program by October 1993 would apply directly to the owner/operator.

On September 27, 1993, the EPA Administrator signed the final rule extending the effective date of the landfill Criteria for certain classifications of landfills (proposed rule at 58 FR 40568, July 28, 1993). Thus, for certain small landfills, the Federal Criteria will not be effective until April 9, 1994, instead of October 9, 1993. The final ruling on the effective date extension is scheduled for publication in the **Federal Register** within a week after the signature date.

The requirements of the STIR, if promulgated, will ensure that any mixture of State/Tribal and Federal rules that take effect will be fully workable and leave no significant gaps in environmental protection. These practical concerns apply to individual partial approvals granted prior to the promulgation of the STIR rule. Consequently, EPA reviewed the program approved today and concluded that the State/Tribal and the Federal requirements mesh reasonably well and leave no significant gaps. Partial approval would allow the Agency to approve those provisions of the State/Tribal permit program that meet the requirements and provide the State/Tribe time to make necessary changes to the remaining portions of its program. As a result, owners/operators will be able to work with the State/Tribal permitting agency to take advantage of the Criteria's flexibility for those portions of the program which have been approved.

EPA will review State/Tribal requirements to determine whether they are "adequate" under section 4005(c)(1)(C) of RCRA. EPA interprets the requirements for States or Tribes to develop "adequate" programs for permits or other forms of prior approval to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF Criteria. Next, the State/Tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, EPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions will determine whether a State/Tribe has submitted an "adequate" program based on the interpretation outlined above. EPA plans to provide more specific criteria for this evaluation when it proposes the State/Tribal Implementation Rule. EPA expects States/Tribes to meet all of these requirements for all elements of a MSWLF program before it gives full approval to a MSWLF program. EPA also is requesting States/Tribes seeking partial program approval to provide a schedule for the submittal of all remaining portions of their MSWLF permit programs. EPA notes that it intends to propose to make submissions of a schedule mandatory in STIR.

B. State of Wyoming

On November 6, 1992, Wyoming submitted an application to obtain a partial program adequacy determination for the State's municipal solid waste landfill permit program. On August 12, 1993, EPA published a tentative determination of adequacy for Wyoming's program. Further background on the tentative partial program determination of adequacy appears at 58 FR 42967 (August 12, 1993).

Along with the tentative determination, EPA announced the availability of the application for public comment. EPA also tentatively scheduled a public hearing for September 27, 1993, to be held if a sufficient number of peopled expressed interest in participating. After no one expressed interest, the Agency cancelled the public hearing.

During its hearing on September 17, 1993, the Wyoming Environmental Quality Commission approved emergency rules needed for the State of Wyoming to demonstrate compliance with substantial portions of the Federal Criteria. The emergency rules will be effective for 120 days beginning on October 8, 1993, and will be replaced by permanent rules prior to expiration.

EPA has reviewed Wyoming's application (including existing permanent rules and new emergency rules) and has determined that the following portions of the State's MSWLF permit program will ensure compliance with the revised Federal Criteria.

1. Location restrictions for airports, flood plains, wetlands, fault areas, seismic impact zones, and unstable areas (40 CFR 258.10 through 258.15).

2. Operating criteria for the exclusion of hazardous waste, cover materials,

disease vector control, explosive gases, air criteria, access requirements, run-on/run-off control systems, surface water requirements, liquids restrictions, and record keeping requirements (40 CFR 258.20 through 258.29).

3. Design criteria requirements (40 CFR 258.40).

4. Closure and post-closure requirements (40 CFR 258.60 through 258.61).

In addition, the State of Wyoming demonstrated that its MSWLF permit program contains specific provisions for public participation, compliance monitoring, and enforcement.

EPA is not approving certain portions of Wyoming's program. To ensure compliance with all the Federal Criteria, Wyoming needs to revise the following aspects of its permit program.

1. Wyoming will revise its regulations to incorporate the Federal ground-water monitoring and corrective action requirements in 40 CFR 258.50, 258.51, and 258.53 through 258.58.

2. Wyoming will develop new regulations to incorporate the financial assurance requirements in 40 CFR 258.70 through 258.72 and 258.74. Wyoming will revise its regulations to incorporate the financial assurance requirements in 40 CFR 258.73.

Wyoming has already begun to revise its permanent rules and expects to have the rule changes necessary for full program approval completed by early 1994.

As a State's/Tribe's regulations and statutes are amended to comply with the Federal landfill regulations, unapproved portions of a partially approved MSWLF program may be approved by the EPA. The State/Tribe may submit an amended application to EPA for review and an adequacy determination will be made using the same criteria as for the initial application. This adequacy determination will be published in the **Federal Register** summarizing the Agency's decision and the portion(s) of the State/Tribal MSWLF permit program affected and providing an opportunity to comment for a period of thirty (30) days. The adequacy determination will become effective sixty (60) days following publication if no adverse comments are received. If EPA receives adverse comments on its adequacy determination, another **Federal Register** notice will be published either affirming or reversing the initial decision while responding to the public comments.

C. Public Comment

EPA received one public comment on the tentative determination of adequacy for Wyoming's MSWLF permit program.

The commenter maintained that use of the draft STIR as guidance is a violation of the Administrative Procedure Act (APA) requirements that a rule must go through notice and opportunity for comment. EPA does not believe that it is violating requirements of the APA. The Agency is not utilizing the draft STIR as a regulation which binds either the Agency or the States/Tribes. Instead, EPA is using the draft STIR as guidance for evaluating State/Tribal permit programs and maintains its discretion to approve State/Tribal permit programs utilizing the draft STIR and/or other criteria which assure compliance with 40 CFR part 258.

In addition, members of the public have an opportunity to comment on the criteria by which EPA assures the adequacy of State/Tribal MSWLF permit programs because the Agency discusses the criteria for approval of a permit program when it publishes each tentative determination notice in the **Federal Register**. In the tentative determination notice for the State of Wyoming's permit program, the Agency set forth for public comment the requirements for an adequate permit program (58 FR 42967–42969, August 12, 1993).

D. Decision

After reviewing the public comments, I conclude that Wyoming's application for partial program adequacy determination meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Wyoming is granted a partial program determination of adequacy for the following areas of its municipal solid waste permit program: 40 CFR 258.10 through 258.15; 258.20 through 258.29; 258.40; and 258.60 through 258.61.

The State of Wyoming has not asserted jurisdiction over "Indian Country," as defined in 18 U.S.C. 1151, in its application for adequacy determination. Today's decision to approve Wyoming's application does not extend to the following Indian reservations in the State of Wyoming:

1. Wind River.

Until EPA approves a State or Tribal MSWLF permit program in Wyoming for any part of "Indian Country" in Wyoming, the requirements of 40 CFR part 258 will, after the effective date of the Federal Criteria, automatically apply to that area. Thereafter, the requirements of 40 CFR part 258 will apply to all owners/operators of MSWLFs located in any part of "Indian Country" that is not covered by an approved State or Tribal MSWLF permit program.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR part 258 independent of any State/Tribal enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

Today's action takes effect on October 8, 1993. EPA believes it has good cause under section 553(d) of the Administrative Procedure Act, 5 U.S.C 553(d), to put this action into effect less than 30 days after publication in the **Federal Register**. All of the requirements and obligations in the State's/Tribe's program are already in effect as a matter of State/Tribal law. EPA's action today does not impose any new requirements that the regulated community must begin to comply with. Nor do these requirements become enforceable by EPA as Federal law. Consequently, EPA finds that it does not need to give notice prior to making its approval effective.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this final approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This notice, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of section 4005 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6946.

Dated: September 30, 1993.

Jack W. McGraw,

Acting Regional Administrator.

[FR Doc. 93–24815 Filed 10–7–93; 8:45 am]

BILLING CODE 6560-50-F

[OPPTS–81022A; FRL–4645–5]

TSCA Chemical Substance Inventory Removal of 36 Incorrectly Reported Chemical Substances from the TSCA Inventory

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In an earlier notice published in the **Federal Register** of April 13, 1993 (58 FR 19251), EPA announced its intent to remove from the Toxic Substances Control Act (TSCA) Chemical Substance Inventory 39 chemical substances which were believed to have been incorrectly reported and listed. Five comments were received in response to the April 13, 1993 notice. EPA has determined that three of the chemical substances mentioned in the April 13, 1993 notice have been manufactured or imported for distribution in commerce prior to the date of the notice. The remaining 36 chemical substances were incorrectly reported or identified and listed on the Inventory. The 36 chemical substances listed in this document are deleted from the TSCA Inventory as of October 8, 1993.

EFFECTIVE DATE: The 36 chemical substances listed in this document are deleted from the TSCA Inventory as of October 8, 1993.

ADDRESSES: A record of the nonconfidential versions of these comments is available for viewing and photocopying in the TSCA Nonconfidential Information Center, Rm. E–G102, 401 M St., SW., Washington, DC. Documents may be viewed from 8 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION:

I. Background

EPA announced in the **Federal Register** of April 13, 1993 (58 FR 19251), its intent to remove from the Toxic Substances Control Act (TSCA) Chemical Substance Inventory 39 chemical substances which were believed to have been incorrectly reported and listed. Prior to the April 13, 1993 notice, persons who had originally reported the 39 chemical substances informed EPA that the chemical identities they reported to the Agency and included on the Inventory were incorrect. The corrected identities for these 39 chemical substances have been provided by the original submitters and added to the Agency's Master Inventory File. EPA reviewed each of these 39 chemical substances, as originally reported, to determine whether any other person had also reported the same chemical substance for the Inventory. No other manufacturers were found at the time. Therefore, in accordance with the established EPA policy that an erroneously or incorrectly reported chemical substance should be removed from the Inventory, EPA announced its intent to remove these chemical substances from the Inventory in the **Federal Register** of April 13, 1993.

The **Federal Register** of April 13, 1993, solicited public comments on the proposed removal action. EPA was specifically interested in knowing whether any of the 39 chemical substances had been manufactured, imported, or processed for TSCA commercial purposes other than research and development, as defined in the Inventory Reporting Regulation (40 CFR 710.2), by anyone between the period of January 1, 1975 through April 13, 1993. EPA was also interested in knowing whether any person could show that any of the 39 chemicals substances could have been properly reported for the Inventory. EPA also solicited comments from anyone who believed that any of the chemical substances should not be removed from the TSCA Inventory for any reason.

EPA received five comments in response to the April 13, 1993 notice. The five comments requested that CASRNs 29434–25–1, 54847–34–6, 67947–19–7, and 68441–81–6, not be removed from the Inventory.

II. Substances Not to be Removed

The Agency acknowledged that inclusion of CASRN 67947–19–7 in the **Federal Register** of April 13, 1993, was an error. Therefore, the Agency will not remove from the Inventory this chemical substance.

The Agency will also retain CASRNs 29434–25–1 and 54847–34–6 on the Inventory because the submitters of the comments concerning these two chemical substances provided evidence indicating that these substances have been in commercial production or importation prior to April 13, 1993.

The Agency reviewed the information regarding CASRN 68441–81–6 and its replacement CASRN and decided to delete the CASRN because the new CASRN is a better description of the substance as it was originally submitted to the TSCA Inventory.

The CASRNs and Chemical Abstracts Service (CAS) Index Names of the aforementioned three chemical substances not to be removed from the TSCA Inventory are as follows:

CASRN	CAS Index Name
29434–25–1	Silane, ethenyltriethoxy-, homopolymer
54847–34–6	Oxirane, 2,2'-[(1-methylethylidene) bis(4,1-phenyleneoxymethylene)]bis-, homopolymer, 2-propenoate
67947–19–7	Phosphoric acid, dimethyl ester, compd. with 2-aminoethanol (1:1)

III. Substances that are Removed from the Inventory

The Agency concluded that the remaining 36 chemical substances were not manufactured, imported, or processed for commercial purposes between January 1, 1975, and April 13, 1993, and thus are not eligible for continued inclusion on the Inventory. Therefore, Premanufacture Notification (PMN) requirements of section 5(a) of TSCA would apply to future manufacture or import of any of these 36 chemical substances. The 36 chemical substances to be removed from the Inventory are listed below in ascending CAS Registry Number sequence, and by their corresponding Chemical Abstracts Service (CAS) Index Names:

CAS	CAS Index Name
126–13–6	.alpha.-D-Glucopyranoside, 6-O-acetyl-1,3,4-tris-O-(2-methyl-1-oxopropyl)-.beta.-D-fructofuranosyl, 6-acetate 2,3,4-tris(2-methylpropanoate)
530–91–6	2-Naphthalenol, 1,2,3,4-tetrahydro-
1397–83–7	Alantol
3641–14–3	1H-1,2,4-Triazole-3-carboxylic acid, 5-amino-, methyl ester
9012–72–0	D-Glucan
25852–29–3	2-Propenoic acid, 2-ethylhexyl ester, polymer with 2-methyl-2-propenamide and N-octyl-2-propenamide

CAS	CAS Index Name
36409–57–1	Butanedioic acid, [(dodecyloxy)sulfonyl]-, disodium salt
52985–3–8	2-Propenoic acid, polymer with 2,2'-[(1-methylethylidene)bis(4,1-phenyleneoxymethylene)]bis[oxirane]
61792–39–0	Oxiraneoctanoic acid, 3-octyl-, ammonium salt
64683–43–8	3H-Indolium,2-[2-(3,5-diphenyl-1H-pyrazol-1-yl)ethenyl]-1,3,3-trimethyl-, chloride
64798–59–0	Benzenemethanaminium,ar-ethenyl-N,N,N-trimethyl-, chloride, polymer with 1,2-ethanediyl bis(2-methyl-2-propenoate)
65036–93–3	2-Propenoic acid, 2-ethylhexyl ester, polymer with N-octyl-2-propenamide
68037–89–8	Silsesquioxanes, 3-[(2-aminoethyl) amino]propyl, monohydrochlorides, polymers with ethylenimine
68083–89–6	1,2-Propanediol, polymer with 5-amino-1,3,3-trimethylcyclohexanemethanamine,1,1'-methylenebis[4-isocyanatocyclohexane] and 4,4'-(1-methylethylidene)bis[phenol]
68153–24–2	Peanut oil, glycerol trioleate-enriched, sulfated, sodium salt, reaction products with diethylene glycol, sapond., potassium salts
68187–82–6	Fats and Glyceridic oils, fish, bisulfited
68238–86–8	Starch, dihydrogen phosphate, 2-(diethylamino)ethyl ether, hydroxide, inner salt
68310–22–5	Cellulose, acetate butanoate, polymer with (chloromethyl)oxirane,4,4'-(1-methylethylidene)bis[phenol], triethoxyphenylsilane and 3-(triethoxysilyl)-1-propanamine
68441–81–6	Formaldehyde, polymer with 3-methylphenol, reaction products with 6-diazo-5,6-dihydro-5-oxo-1-naphthalenesulfonyl chloride
68511–01–3	C.I. Leuco Sulphur Green 36
68513–54–2	Castor oil, dehydrated, polymer with glycerol, methylstyrene, pentaerythritol, phthalic anhydride and soybean oil
68552–72–7	Fatty acids, tall-oil, polymers with ethylene glycol, formaldehyde, glycerol, linseed oil, maleic anhydride, pentaerythritol, phenol, phthalic anhydride, rosin, soybean oil and tung oil
68554–59–6	Siloxanes and Silicones, di-Me, polymers with 1,4-cyclohexanedimethanol, glycerol, isophthalic acid and Me Ph silsesquioxanes
68607–72–7	Siloxanes and Silicones, di-Me, polymers with ethylene glycol, Me Ph silsesquioxanes and trimethylolpropane
68609–62–1	Hexanedioic acid, polymer with hexahydro-2H-azepin-2-one and 1,6-hexanediamine, mixed with acrylonitrile-butadiene polymer, formaldehyde-4-(1,1,3,3-tetramethylbutyl)phenol polymer-vulcanized
68834–17–3	2-Propenoic acid, 2-methyl-, 2-hydroxypropyl ester, polymer with 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethylcyclohexane
70776–86–2	2-Butanone, 4-[[[1,2,3,4,4a,9,10,10a-octahydro- 1,4a-dimethyl-7-(1-methylethyl)-1-phenanthrenyl]methyl](3-oxo-3-phenylpropyl)amino]-, [1R-(1.alpha.,4a.beta.,10a.alpha.)]-
70983–84–5	Fatty acids, safflower-oil, polymers with isophthalic acid, 4,4'-(1-methylethylidene)bis[cyclohexanol], trimellitic anhydride and trimethylolpropane
70984–00–8	Polyphosphoric acids, esters with C8-11-alc. distn. residues
70984–01–9	Polyphosphoric acids, mixed esters with C8-11 alc. distn. residues and C12-18 alcs.
72162–18–6	Formaldehyde, polymer with 4-(1,1,3,3-tetramethylbutyl)phenol, vulcanization products with ethylene-5-ethylidenebicyclo[2.2.1]hept-2-ene-propene polymer and polypropylene
72479–95–9	Chromium, 4-hydroxy-3-[(2-hydroxy-3,5-dinitrophenyl)azo]benzenesulfonate 4-hydroxy-3-[(3-hydroxy-4-nitrophenyl)azo]-1-naphthalene-sulfonate complexes, compds. with N-butyl-1-butanamine and N-cyclohexylcyclohexanamine
84731–63–5	Dodecanedioic acid, diisotridecyl ester
85883–90–5	2-Oxa-4,7-diaza-1-phosphaoctan-8-ol, 1,1-dihydroxy-4,7-bis[(phosphonooxy)methyl]-, dihydrogen phosphate (ester), 1-oxide, calcium sodium salt (2:5:6)
96278–62–5	Fatty acids, tall-oil, polymers with benzoic acid, bisphenol A, p-tert-butylphenol, formaldehyde, pentaerythritol and phthalic anhydride
96557–45–8	Carbonic dichloride, polymer with 1,6-hexanediol and 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethylcyclohexane,2-hydroxyethyl acrylate-blocked

Accordingly, the 36 chemical substances listed above are deleted from the TSCA Inventory as of October 8, 1993.

List of Subjects

Environmental protection, TSCA Inventory.

Dated: October 1, 1993.

Mary Ellen Weber,

Acting Director, Economics, Exposure and Technology Division, Office of Pollution Prevention and Toxics.

[FR Doc. 93–24813 Filed 10–7–93; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

FCC Renews Charter for Advisory Committee on Advanced Television Service

September 30, 1993.

The Charter for the Advisory Committee on Advanced Television Service has been renewed for a period of two years. The renewed charter is set to expire on September 29, 1995. For further information please contact Bill Hassinger on (202) 632–6460.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–24735 Filed 10–7–93; 8:45 am]

BILLING CODE 6712–01–M

[Report No. 1976]

Petitions for Reconsideration and Clarification of Actions in Rulemaking Proceedings

October 4, 1993.

Petitions for reconsideration, clarification and review have been filed in the Commission rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in room 239, 1919 M Street, NW., Washington, DC or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857–3800. Opposition to these petitions must be filed October 25, 1993. See section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition

must be filed within 10 days after the time filing oppositions has expired.

Subject: Amendment of the Commission's Rules to Establish New Narrowband Personal Communications Services (GEN Docket No. 90–314), (ET Docket No. 92–100).

Petition for Reconsideration

Number of Petitions Filed: 3

Petition for Clarification

Number of Petitions Filed: 1

Petition for Clarification or Partial Reconsideration

Number of Petitions Filed: 1

Petition For Reconsideration and Clarification

Number of Petitions Filed: 1

Petition For Review

Number of Petitions Filed: 1

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–24734 Filed 10–7–93; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–997–DR]

Illinois; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Illinois (FEMA–997–DR), dated July 9, 1993, and related determinations.

EFFECTIVE DATE: October 1, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for Alexander, Calhoun, Greene, Jackson, Jersey, Madison, Monroe, Morgan, Randolph, Scott, St. Clair, and Union Counties has been reopened. The incident period for these counties is April 23, 1993, and continuing.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–24835 Filed 10–7–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–996–DR]

Iowa; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Iowa, (FEMA–996–DR), dated July 9, 1993, and related determinations.

EFFECTIVE DATE: October 1, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Iowa dated July 9, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 9, 1993:

Hancock, Ida, Monroe, Plymouth, Poweshiek, and Wayne Counties for Public Assistance. (Already designated for Individual Assistance.)

Notice is hereby given that the incident period for this disaster is closed effective October 1, 1993.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–24836 Filed 10–7–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–995–DR]

Missouri; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Missouri, (FEMA–995–DR), dated July 9, 1993, and related determinations.

EFFECTIVE DATE: September 29, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Missouri dated July 9, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 9, 1993:

Christian, Dallas, Laclede, Lawrence, Phelps, Polk, Taney, Texas, Washington, Webster, and Wright Counties for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–24837 Filed 10–7–93; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR part 510.

License Number: 3029
Name: George C. Cheng dba G.C. International Forwarding Company
Address: 9818 E. Camino Real Ave., Arcadia, CA 91007
Date Revoked: September 5, 1993
Reason: Failed to maintain a valid surety bond.

License Number: 3473
Name: New York Forwarding, Inc.
Address: 4300 Haddonfield Rd., Ste. 314, Pennsauken, NJ 08109
Date Revoked: September 7, 1993
Reason: Surrendered license voluntarily.

License Number: 3212
Name: Condor International Freight Forwarders, Inc.
Address: 7500 N.W. 54th Street, Miami, FL 33166
Date Revoked: September 12, 1993
Reason: Failed to maintain a valid surety bond.

License Number: 2753
Name: Blanca R. Lopez dba ABY Forwarding
Address: 138 E. 234th Place, Carson, CA 90745
Date Revoked: September 15, 1993
Reason: Failed to maintain a valid surety bond.

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 93–24744 Filed 10–7–93; 8:45 am]

BILLING CODE 6730–01–M

[Petition No. P74–93]

Filing of Petition

In the matter of Petition for Temporary Exemption From Electronic Tariff Filing Requirements; petition of Ocean Tariff Bureau on behalf of various carriers.

Notice is hereby given of the filing of a petition by Ocean Tariff Bureau pursuant to 46 CFR 514.8(a), on behalf of various common carriers for temporary exemption from the electronic tariff filing requirements of the Commission's ATFI System.

To facilitate thorough consideration of the petition, interested persons are requested to reply to the petition no later than October 8, 1993. Replies shall be directed to the Secretary, Federal Maritime Commission, Washington, DC. 20573–0001, shall consist of an original and 15 copies, and shall be served on Capt. Alex Yang, President, Ocean Tariff Bureau, 161 W. Victoria Street, Suite 240, Long Beach, California 90805.

Copies of the petition are available for examination at the Washington, DC. office of the Secretary of the Commission, 800 N. Capitol Street, NW., room 1046.

Joseph C. Polking,

Secretary.

[FR Doc. 93–24740 Filed 10–7–93; 8:45 am]

BILLING CODE 6730–01–M

[Petition Nos. P72–93 and P73–93]

Petition of Pacific Coast Tariff Bureau on Behalf of West Coast/Middle East—USA Rate Agreement; et al.

Notice is hereby given of the filing of petitions by the above named petitioners, pursuant to 46 CFR 514.8(a), for temporary exemption from the electronic tariff filing requirements of the Commission's ATFI System. Petitioners request exemption from the September 24, 1993, electronic filing deadline.

To facilitate thorough consideration of the petitions, interested persons are requested to reply to the petitions no later than October 8, 1993. Replies shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573–0001, shall consist of an original and 15 copies, and shall be served on the following:

P72–93—James C. Olsson, President, Pacific Coast Tariff Bureau, 221 Main Street, Suite 530, San Francisco, California 94105–1915

P73–93—Tanga S. FitzGibbon, Executive Vice President, Effective Tariff Management Corporation, 4000 Mitchellville Road, suite 326–B, Bowie, Maryland 20716

Copies of the petitions are available for examination at the Washington, D.C. office of the Secretary of the Commission, 800 N. Capitol Street, NW., room 1046.

Joseph C. Polking,

Secretary.

[FR Doc. 93–24741 Filed 10–7–93; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

White Eagle Financial Group, Inc. Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than October 18, 1993.

A. Federal Reserve Bank of Atlanta (Zane R. Kelly, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. White Eagle Financial Group, Inc., Boca Raton, Florida; to become a bank holding company by acquiring 90 percent of the voting shares of Admiralty Bank, Palm Beach, Florida.

Board of Governors of the Federal Reserve System, October 5, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–24927 Filed 10–7–93; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 92N–0371]

New Drug Applications; Refusal to File; Meeting of Review Committee

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the second regular meeting of its standing committee in the Center for Drug Evaluation and Research (CDER) that conducts a periodic review of CDER's use of its refusal to file (RTF) procedure, by which it refuses to file new drug applications (NDA's) that are facially deficient under FDA's regulations. This committee was established on a 1-year trial basis to conduct quarterly review meetings. FDA invites NDA applicants to use the committee's confidential mechanism to submit for review the names and numbers of NDA's that the agency has refused to file. The meeting described in this document continues the efforts of the agency to promote the timely, efficient, and consistent review of NDA's.

DATES: The second regular meeting of the committee will be held in November 1993. Submit requests for review by October 25, 1993.

ADDRESSES: Submit RTF review requests to Amanda B. Pedersen, FDA Chief Mediator and Ombudsman, Office of the Commissioner (HF097), Food and Drug Administration, rm. 1409105, 5600 Fishers Lane, Rockville, MD 20857, 30109443091306.

FOR FURTHER INFORMATION CONTACT: Janet M. Jones, Center for Drug Evaluation and Research (HFD092), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 30109443092894.

SUPPLEMENTARY INFORMATION: The importance to the public health of getting new drug therapies on the market as efficiently as possible has made improving the new drug evaluation process an FDA priority for a number of years. Thus, in 1985, FDA revised its regulations to streamline the process for submitting and reviewing NDA's (50 FR 7452, February 22, 1985). FDA supplemented these regulations with extensive guidelines to applicants on how to prepare complete applications and thus facilitate agency review (52 FR 10819, April 3, 1987). FDA similarly revised its investigational new drug application (IND) regulations

in 1987 to clarify and simplify the rules governing clinical testing of new drugs (52 FR 8798, March 19, 1987). FDA has further refined drug approval procedures to expedite marketing approval for therapies for serious or life-threatening illnesses (54 FR 41516, October 21, 1988) and to make such therapies available prior to marketing approval through mechanisms such as the "treatment IND" (52 FR 19466, May 22, 1987) and the "parallel track" (57 FR 13250, April 15, 1992) initiatives. The meeting described in this document continues the efforts of the agency to promote the timely, efficient, and consistent review of NDA's.

CDER is aware that a clear, well understood, and consistently applied RTF policy could improve substantially the efficiency of the new drug evaluation process. CDER recognizes that the practice of submitting an incomplete or inadequate application and then providing additional information during an extended review period is inherently inefficient and wasteful of agency resources. It also is unfair to those applicants who fulfill their scientific and legal obligations by submitting complete applications whose review may be delayed as incomplete applications, submitted earlier, undergo review and repair.

FDA regulations on filing applications, including grounds and procedures for refusals to file, are found in 21 CFR 314.101. In the past, some review divisions in CDER have refused to file applications only where the deficiencies were extreme, e.g., the total omission of a section required by 21 CFR 314.50, or the absence of any study even arguably adequate and well controlled, while others have applied this regulation more broadly. When deciding whether to file an application, CDER will exercise discretion, particularly when the application is for a medically important drug. CDER intends to make every effort to promote rapid development and review of applications.

Although an RTF is not a final determination, it is a significant step that delays, at least for a time, full review of an application. The applicant who receives an RTF notification may request an informal conference with the agency and, thereafter, may ask that the application be "filed over protest," as described under 21 CFR 314.101(a)(3) (See 57 FR 17950 at 17987, April 28, 1992). CDER believes that an RTF decision is, in general, of benefit to applicants as an early signal that the application has major deficiencies that would, most probably, result in a "not approvable" action or would introduce serious impediments to a prompt review.

CDER established the RTF review committee to periodically review RTF decisions to assess their scientific and procedural quality. The review will examine selected refusals to file to assess, among other things, the consistency of RTF practices across new drug evaluation offices and divisions, the need for additional guidance on NDA content and format, and the need to modify FDA's RTF policy.

The RTF review committee consists of senior CDER officials, a senior official from the Center for Biologics Evaluation and Research, and FDA's Chief Mediator and Ombudsman.

The committee held pilot meetings on September 24, 1992, and April 1, 1993. The notice of the establishment and first regular meeting of the committee appeared in the **Federal Register** of May 18, 1993 (58 FR 28983). The first regular meeting of the committee was held on July 28, 1993. At these meetings, the committee reviewed several NDA's that CDER has refused to file that were selected by the Office of the FDA Chief Mediator and Ombudsman. For the second regular meeting, applicants should submit RTF's proposed for committee review to the FDA Chief Mediator and Ombudsman, who will be responsible for compiling the list of RTF decisions for committee consideration. The committee and CDER staff (with the exception of the FDA Chief Mediator and Ombudsman) are not advised, either in the review process or thereafter, which of the RTF's were randomly chosen and which were submitted by applicants. The committee will evaluate the selected decisions for scientific content and consistency with agency regulations and CDER policy.

Because the committee's deliberations will deal with confidential commercial information, the RTF review meeting will be closed to the public. The committee's deliberations will be reported in the minutes of the meeting. Although those minutes will not be publicly available because they will contain privileged commercial information, summaries of the committee's deliberations, with all such privileged commercial information omitted, will be available from the FDA Chief Mediator and Ombudsman. If, following the committee's review, an RTF decision changes, the reviewing division will notify the applicant of the change.

FDA invites applicants to submit to the FDA Chief Mediator and Ombudsman the name and number of any NDA that CDER has refused to file during the past 12 months that they want the committee to review at its second meeting. Submissions should be made by October 25, 1993, to Amanda B. Pedersen, FDA Chief Mediator and Ombudsman (address above).

Dated: October 1, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–24721 Filed 10–7–93; 8:45 am]

BILLING CODE 4160–01–F

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection requests it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on Friday, October 1, 1993.

(Call PHS Reports Clearance Officer on 202–690–7100 for copies of request).

1. Epidemiology of Fatiguing Illness in San Francisco: A Population-Based Study—New—The purpose of this study is to generate population-based information about the prevalence of self-reported fatiguing illness in an ethnically diverse urban population. The study will also provide basic information about the extent to which criteria now included in the case definition of CFS are useful in identifying a unique syndrome associated with fatigue. Respondents: Individuals or households: Number of Respondents: 3,848; Number of Responses Per Respondent: 1; Average Burden per Response: .207 hours; Estimated Annual Burden: 798 hours.

2. Assessment of the Impact of the National Practitioner Data Bank—New—Data will be collected from users of the Data Bank to determine usefulness of the information provided by the Data Bank. Information will be used to determine problems among users and develop solutions. Data will be obtained from hospitals, licensure boards, malpractice insurers and other health care entities. Respondents: State or local governments; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations.

Title	Number of respondents	Number of responses per respondent	Average burden per response (hr)
Medical Malpractice Insurers	150	1	.5
State Licensure Boards and Professional Societies	203	1	.58
Hospitals and Other Health Care Entities	970	1	.75
Nonusers of NPDB—Professional Societies and Other Health Care Entities	50	1	.10
Estimated total annual burden: 929 hours			

3. Effects of Social Environments on Psychological Functioning in Older People—New—This study examines the psychological effects of environmental conditions on the elderly. Its results should be extremely useful for developing environments and services making the later years fulfilling and satisfying. Its data is gathered through in-person interviews and self-filled forms from a representative sample, first interviewed in 1974. Respondents: Individuals or households: Number of Respondents: 665; Number of Responses Per Respondent: 2; Average Burden per Response: 2.75 hours; Estimated Annual Burden: 3,656 hours.

4. The Role of the Indian Health Service in the Child Protection/Abuse Arena—New—This is a survey of tribal representatives regarding the prevalence and incidence of child maltreatment and the services provided to and received by Indian families. This will effectively expand the scope of an existing project examining the role and responsibility of the Indian Health Service in child protection. Respondents: State or local governments.

Title	Number of respondents	Number of responses per respondent	Average burden per response
Mail Survey	345	1	1 hr.
Telephone Interviews.	150	1	20 min.
Estimated total annual burden: 395 hours.			

Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated below at the following address:

Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, Room 3002, Washington, DC 20503.

Dated: October 1, 1993.

James Scanlon,

Director, Division of Data Policy, Office of Health Planning and Evaluation.

[FR Doc. 93-24719 Filed 10-7-93; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. N-93-3671; FR-3583-N-01]

Interest Rate for the Section 235(r) Mortgage Insurance Program

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of change in interest rate.

SUMMARY: This notice announces a change in the maximum interest rate for mortgages to be insured under section 235(r) of the National Housing Act. The section 235(r) maximum interest rate is to be determined by the Secretary of HUD and published in the **Federal Register**. Mortgage market conditions now dictate that the Secretary decrease the section 235(r) maximum rate from 7.50 percent to 7.00 percent. There is no change being made in the maximum margin of additional percentage points that may be added to the maximum rate if the established conditions are met.

Therefore, the maximum for the premium section 235(r) interest rate will be 8.50 percent (7.00 percent for the rate of interest and 1.50 percent for the margin of additional percentage points).

EFFECTIVE DATE: October 8, 1993.

FOR FURTHER INFORMATION CONTACT: John N. Dickie, Director, Program Evaluation Division, room B-133, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone number (202) 755-7470, Ext. 117, or (202) 708-4594 (TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Section 235(r) of the National Housing Act (12 U.S.C. 1715z) authorizes the Secretary to insure mortgages that refinance mortgages insured under section 235. The purpose of the program is to reduce the interest rate insured and assisted under section 235, so that the assistance payments which the Department pays on behalf of mortgagors are reduced. The regulations implementing the program are contained in 24 CFR part 235 (subpart H, on the refinancing of mortgages under section 235(r), was published on December 30, 1992 (57 FR 62452), and became effective on February 16, 1993). The interest rate for these loans is set by the Secretary and published in the **Federal Register** as authorized by 24 CFR 235.1202(b)(3). The previous section 235(r) interest rate of 7.50 percent was published in the **Federal Register** on April 7, 1993 (58 FR 18105). The market conditions dictate a change in the section 235(r) interest rate commencing on the date of publication of this notice.

On September 9, 1993, the Federal Home Loan Mortgage Corporation announced that the average interest rate for 30-year mortgages was 6.82 percent, down from 7.10 percent on August 19. Although the most recent (August 1, 1993) complete information on FHA loans indicated that at that time the majority of these loans were being originated at rates in excess of 7.00 percent, it is fair to assume that FHA rates have followed the same trend downward and are now in the vicinity of 7.00 percent. The bond market has continued to rally since the 235(r) interest rate was set at 7.50 percent on April 7, 1993. As a result of investors' reaction to legislation reducing the Federal budget deficit without inflationary impact, coupled with signs the economy may be weakening, bond yields have fallen dramatically. The yield on 30-year Treasury bonds was 7.47 percent on January 8, 1993 and dropped to 6.47 percent on the first trading day after passage of the budget legislation, and was 5.89 percent on September 10, 1993. The yield curve for Treasury bonds had climbed sharply upward because of investor uncertainty and lingering fear of inflation. Now

these fears are being eased almost entirely, and long-term rates are showing steady downward movement that may well continue over the short term.

Most FHA mortgages are funded in the GNMA mortgaged-backed securities market. On September 9, 1993, the GNMA 6.50 percent security, which in normal market conditions is backed with 7.00 percent FHA/VA loans, was trading in the two-month forward delivery market at about par. This means it would be logical for lenders to close these loans in the primary market at no discount points. The 7.00 percent GNMA securities are now trading at about 3 points premium.

Adjusting the section 235(r) rate to 7.00 percent will bring this rate back into line with the rest of the FHA current production loans. Therefore, the maximum rate for section 235(r) mortgages is 7.00 percent beginning with the publication date of this notice. The maximum margin of additional percentage points that may be added to the maximum rate under 25 CFR 235.1202(b)(3)(i)(B) will remain at 1.50 percent.

The subject matter of this notice is categorically excluded from HUD's environmental clearance procedures, in accordance with 24 CFR 50.20(1). For that reason, no environmental finding has been prepared for this notice.

Authority: 12 U.S.C. 1715z; 42 U.S.C. 3535(d).

Dated: October 4, 1993.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 93–24750 Filed 10–7–93; 8:45 am]

BILLING CODE 4210–27–M

[Docket No. N–93–3430; FR–3234–N–02]

Announcement of Funding Awards for the Rent Supplement and Rental Assistance Program

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department as a result of competitions for funding under the Rent Supplement and Rental Assistance Program. The announcement contains the names and addresses of the award winners for the competition and the amounts of the wards.

DATES: October 8, 1993.

FOR FURTHER INFORMATION CONTACT: Albert B. Sullivan, Director, Office of Multifamily Housing Management, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708–3730. The TDD number for the hearing impaired is (202) 708–4594. (These are not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Rent Supplement and Rental Assistance Program (RAP) Conversion to section 8 Loan Management Set-/aside Program is authorized under title II of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1992 (Pub. L. 102–139, Approved October 28, 1991) (the "1992 Appropriations Act").

Under the program, HUD awards funds to projects with HUD-insured or HUD-held mortgages with active Rent Supplement or RAP units whose owners are willing to convert these units to five-year Section 8 contracts.

A Notice of Funding Availability (NOFA) was published in the **Federal Register** on May 19, 1992, at 57 FR 21334. In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the Department is publishing the names, addresses, and amounts of those awards, as set out at the end of this Notice.

Dated: September 30, 1993.

Jeanne Engel,

General Deputy Assistant Secretary for Housing-Federal Housing, Commissioner.

RENT SUPPLEMENT/RENTAL ASSISTANCE PAYMENT (RAP) CONVERSION TO SECTION 8 LOAN MANAGEMENT SET-ASIDE FISCAL YEAR 1992

FHA No.	Project name and address	Units	Section 8 budget authority
000–44128	Revitize House, 6111 Montrose Road, Rockville, MD 20850. Owner: Montrose House Corp	32	819,850
044–44801	Dunn Family Sr Citizen, 8400 Engleman, Center Line, MI 48015. Owner: Dunn Family Sr Cit. Home, Inc.	16	211,595
054–44164	McBee Apartments, 1 Merritt Circle, Greenville, SC 29601 Owner: McBee Apts, LP	9	171,665
061–35125	Villa Marie Apts, Office Building, 3200 Deans Bridge RD., Augusta, GA 30906. Owner: Caritas Corp.	110	3,320,000
067–35006	Tampa Park Apts I, 1417 Tampa Park Plaza, Tampa, FL 33605–4821. Owner: Tampa Park Apts, Inc.	172	3,177,770
112–35032	Remond Cliff Plaza, 2928 Remond Drive, Dallas, TX 75211. Owner: Remond Cliff Plaza Associates.	92	2,016,960
117–44002	Horizon Apartments, 313 Horizon Drive, Altus, OK 73521. Owner: Horizon Apts, Ltd	1	15,510
091–35035	Wall Ann Apts, 607 Main Ave., Brookings, SD 57006. Owner: Wall Ann Apartments	11	180,115
091–35104	Pierre Senior Citizens, 1812 East Dakota, Pierre, SD 57006. Owner: Wall Ann Apartments	11	180,115
091–35104	Pierre Senior Citizens, 1812 East Dakota, Pierre, SD. Owner: Pierre Senior Citizens Homes	26	330,790
093–44803	Missoula Manor Homes, 909 West Central Ave., Missoula, MT. Owner: Missoula Manor Homes	25	429,000
093–44805	Miles City Eagles Manor, 1000 Palmer, Miles City, MT. Owner: Miles City Eagles Manor	33	411,310
101–35024	Durango Housing Corp., 110 5th Ave., Durango, CO. Owner: Durango Housing Corp	61	1,422,630
121–44068	Village Avante, 1670–A Del Monte Ave., Morgan Hill, CA 95037. Owner: United Community Housing III.	13	531,565
127–SH016	Garden Terrace, 500 N. Emerson St., Wenatchee, WA 98801. Owner: Wenatchee Brethern-Baptist Homes, Inc.	16	238,390
136–35074	Heritage Plaza PH 2, 1875 Benton Drive, Redding, CA 96003. Owner: 5 Counties C/C	59	1,262,910
171–55001	Tri Cities Low Cost, P.O. Box 1157, Pasco, WA 99301. Owner: Tri Cities Low Cost Housing, Inc	48	928,355
171–SH011	Mike Foye Home, 420 B West Adler, Walla Walla, WA 99362. Owner: Mike Foye Home, Inc	6	69,630

[FR Doc. 93–24749 Filed 10–7–93; 8:45 am]

BILLING CODE 4210–27–M

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-93-1917; FR-3350-N-52]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact Mark Johnston, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the Federal Register, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *U.S. Air Force:* Bob Menke, USAF, Bolling AFB, SAF–MIIR, Washington, DC 20332–5000; (202) 767–6235; *GSA:* Leslie Carrington, Federal Property Resources Services, GSA, 18th and F Streets NW, Washington, DC 20405; (202) 208–0619; *U.S. Army:* Robert Conte, Dept. of Army, Military Facilities, DAEN–ZCI–P; Rm. 1E671, Pentagon, Washington, DC 20310–2600; (703) 693–4583; (These are not toll-free numbers).

Dated: October 1, 1993.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program Federal Register Report for 10/8/93

Suitable/Available Properties

Buildings (by State)

New York

Bldg. T–806, Fort Drum
Ft. Drum Co: Jefferson NY 13602-
Landholding Agency: Army
Property Number: 219330438
Status: Unutilized
Comment: 1296 sq. ft., 1-story, needs repair, most recent use—storage, off-site use only

Bldg. T–4804, Fort Drum
Ft. Drum Co: Jefferson NY 13602-
Landholding Agency: Army
Property Number: 219330439
Status: Unutilized
Comment: 2500 sq.. ft., 1-story, needs repair, most recent use—storage, off-site use only

Bldg. T–4898, Fort Drum
Ft. Drum Co: Jefferson NY 13602-
Landholding Agency: Army
Property Number: 219330440
Status: Unutilized
Comment: 3536 sq. ft., 1-story, needs repair, most recent use—storage, off-site use only

Texas

Bldg. T–374
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330480
Status: Unutilized
Comment: 8640 sq. ft., 1-story wood frame, needs rehab, located in National Historic District, off-site use only

Bldg. T–1170
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330481
Status: Unutilized
Comment: 1144 sq. ft., 1-story wood frame, needs rehab, most recent use—admin., off-site use only

Bldg. T–1468
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330482
Status: Unutilized
Comment: 1144 sq. ft., 1-story wood frame, needs rehab, most recent use—admin., off-site use only

Bldg. T–1492
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army

Property Number: 219330483
Status: Unutilized
Comment: 2284 sq. ft., 1-story wood frame, needs rehab, most recent use—admin., off-site use only

Bldg. T–2066
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330484
Status: Unutilized
Comment: 4720 sq. ft., 2-story wood frame, needs rehab, most recent use—admin., off-site use only

Bldg. T–2509
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330485
Status: Unutilized
Comment: 3147 sq. ft., 1-story wood frame, needs rehab, most recent use—admin., off-site use only

Bldg. T–5901
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330486
Status: Unutilized
Comment: 742 sq. ft., 1-story wood frame, most recent use—admin., off-site use only.

Bldg. T–1464
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330487
Status: Unutilized
Comment: 3778 sq. ft., 1-story wood frame, needs rehab, most recent use—t-shirts and frame shop, off-site use only

Bldg. T–1874
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330488
Status: Unutilized
Comment: 3108 sq. ft., 1-story wood frame, needs rehab, off-site use only

Bldg. T–2011
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330489
Status: Unutilized
Comment: 150 sq. ft., 1-story wood frame, needs rehab, most recent use—storehouse, off-site use only

Bldg. T–2193
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330490
Status: Unutilized
Comment: 1800 sq. ft., 1-story wood frame, needs rehab, most recent use—storage shed, off-site use only

Bldg. T–2507
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330491
Status: Unutilized
Comment: 224 sq. ft., 1-story wood frame, needs rehab, most recent use—storage, off-site use only

Bldg. T–2510
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330492
Status: Unutilized
Comment: 3210 sq. ft., 1-story wood frame, needs rehab, most recent use—storage, off-site use only

Bldg. T–4044
Fort Sam Houston
San Antonio Co: Bexar TX 78234-5000
Landholding Agency: Army
Property Number: 219330493
Status: Unutilized
Comment: 263 sq. ft., 1-story brick, needs rehab, most recent use—storage, off-site use only

Bldg. T–2511
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330494
Status: Unutilized
Comment: 18,260 sq. ft., 1-story wood frame, needs rehab, most recent use—vehicle maintenance shop, off-site use only

Bldg. T–2512
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330495
Status: Unutilized
Comment: 18,260 sq. ft., 1-story wood frame, needs rehab, most recent use—vehicle maintenance shop, off-site use only

Bldg. T–2513
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330496
Status: Unutilized
Comment: 13,603 sq. ft., 1-story wood frame, needs rehab, most recent use—repair shop, off-site use only

Bldg. S–2516
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330497
Status: Unutilized
Comment: 3008 sq. ft., 1-story steel, most recent use—paint stripping plant, lead contaminants present, off-site use only

Bldg. T–2520
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330498
Status: Unutilized
Comment: 31,296 sq. ft., 1-story wood frame, needs rehab, most recent use—physical fitness, off-site use only

Bldg. T–2183
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330499
Status: Unutilized
Comment: 3000 sq. ft., 1-story wood frame, needs rehab, most recent use—stable, off-site use only

Bldg. T–6231
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330500
Status: Unutilized
Comment: 600 sq. ft., 1-story wood frame, most recent use—firing range, off-site use only

Bldg. T–6232
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330501
Status: Unutilized
Comment: 401 sq. ft., 1-story wood frame, most recent use—firing range, off-site use only

Bldg. T–6236
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330502
Status: Unutilized
Comment: 401 sq. ft., 1-story wood frame, needs rehab, most recent use—firing range, off-site use only

Bldg. T–2508
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330503
Status: Unutilized
Comment: 224 sq. ft., 1-story wood frame, needs rehab, most recent use—storage, off-site use only.

Unsuitable Properties

Buildings (by State)

California

117 Bldgs.
Camp Parks Reserve
Camp Parks Co: Alameda CA 98433-
Landholding Agency: Army
Property Number: 219330448
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration

New Jersey

Bldg. TO0606, Fort Dix
Ft. Dix Co: Burlington NJ 08640-
Landholding Agency: Army
Property Number: 219330449
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. TO0608, Fort Dix
Ft. Dix Co: Burlington NJ 08640-
Landholding Agency: Army
Property Number: 219330450
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. SO5211, Fort Dix
Ft. Dix Co: Burlington NJ 08640-
Landholding Agency: Army
Property Number: 219330451
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. TO5308, Fort Dix
Ft. Dix Co: Burlington NJ 08640-
Landholding Agency: Army
Property Number: 219330452
Status: Unutilized

Reason: Other
Comment: Extensive deterioration
Bldg. TO6729, Fort Dix
Ft. Dix Co: Burlington NJ 08640-
Landholding Agency: Army
Property Number: 219330453
Status: Unutilized
Reason: Other
Comment: Extensive deterioration
Bldg. TO6883, Fort Dix
Ft. Dix Co: Burlington NJ 08640-
Landholding Agency: Army
Property Number: 219330454
Status: Unutilized
Reason: Other
Comment: Extensive deterioration
Bldg. TO7474, Fort Dix
Ft. Dix Co: Burlington NJ 08640-
Landholding Agency: Army
Property Number: 219330455
Status: Unutilized
Reason: Other
Comment: Extensive deterioration
Bldg. TO8512, Fort Dix
Ft. Dix Co: Burlington NJ 08640-
Landholding Agency: Army
Property Number: 219330456
Status: Unutilized
Reason: Other
Comment: Extensive deterioration
Bldg. TO9042A, Fort Dix
Ft. Dix Co: Burlington NJ 08640-
Landholding Agency: Army
Property Number: 219330457
Status: Unutilized
Reason: Other
Comment: Extensive deterioration
Bldg. TO9065, Fort Dix
Ft. Dix Co: Burlington NJ 08640-
Landholding Agency: Army
Property Number: 219330458
Status: Unutilized
Reason: Other
Comment: Extensive deterioration]
Bldg. TO9531, Fort Dix
Ft. Dix Co: Burlington NJ 08640-
Landholding Agency: Army
Property Number: 219330459
Status: Unutilized
Reason: Other
Comment: Extensive deterioration
Bldg. TO9612A, Fort Dix
Ft. Dix Co: Burlington NJ 08640-
Landholding Agency: Army
Property Number: 219330460
Status: Unutilized
Reason: Other
Comment: Extensive deterioration
Bldg. TO9980, Fort Dix
Ft. Dix Co: Burlington NJ 08640-
Landholding Agency: Army
Property Number: 219330461
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

New York

Facility 841
Griffiss Air Force Base
Rome Co: Oneida NY 13441-4520
Landholding Agency: Air Force
Property Number: 189330097
Status: Unutilized
Reason: Secured Area
Bldg. T-1295, Fort Drum
Ft. Drum Co: Jefferson NY 13602-
Landholding Agency: Army
Property Number: 219330464
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material
Bldg. T-1296, Fort Drum
Ft. Drum Co: Jefferson NY 13602-
Landholding Agency: Army
Property Number: 219330465
Status: Unutilized
Reason: Other
Comment: Extensive deterioration
Bldg. T-1297, Fort Drum
Ft. Drum Co: Jefferson NY 13602-
Landholding Agency: Army
Property Number: 219330466
Status: Unutilized
Reason: Other
Comment: Extensive deterioration
Bldg. T-1395, Fort Drum
Ft. Drum Co: Jefferson NY 13602-
Landholding Agency: Army
Property Number: 219330467
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material
Bldg. T-1495, Fort Drum
Ft. Drum Co: Jefferson NY 13602-
Landholding Agency: Army
Property Number: 219330468
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material
Bldgs. T-1595, T-1795
Fort Drum
Ft. Drum Co: Jefferson NY 13602-
Landholding Agency: Army
Property Number: 219330469
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material
Bldg. T-1895, Fort Drum
Ft. Drum Co: Jefferson NY 13602-
Landholding Agency: Army
Property Number: 219330470
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material
Bldg. T-1995, Fort Drum
Ft. Drum Co: Jefferson NY 13602-
Landholding Agency: Army
Property Number: 219330471
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material
Bldg. T-3805, Fort Drum
Ft. Drum Co: Jefferson NY 13602-
Landholding Agency: Army
Property Number: 219330472
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

Texas

Bldg. P-130
Fort Sam Houston
San Antonio Co: Bexar TX 78234-5000
Landholding Agency: Army
Property Number: 219330473
Status: Unutilized
Reason: Other
Comment: Extensive deterioration
Bldg. P-4201
Fort Sam Houston
San Antonio Co: Bexar TX 78234-5000
Landholding Agency: Army
Property Number: 219330474
Status: Unutilized
Reason: Other
Comment: Extensive deterioration
Bldg. T-2514
Fort Sam Houston
San Antonio Co: Bexar TX 78234-5000
Landholding Agency: Army
Property Number: 219330475
Status: Unutilized
Reason: Other
Comment: Pump house
Bldg. T-2916
Fort Sam Houston
San Antonio Co: Bexar TX 78234-5000
Landholding Agency: Army
Property Number: 219330476
Status: Unutilized
Reason: Other
Comment: Detached latrine
Bldg. T-3180
Fort Sam Houston
San Antonio Co: Bexar TX 78234-5000
Landholding Agency: Army
Property Number: 219330477
Status: Unutilized
Reason: Other
Comment: Detached latrine
Bldg. T-3192
Fort Sam Houston
San Antonio Co: Bexar TX 78234-5000
Landholding Agency: Army
Property Number: 219330478
Status: Unutilized
Reason: Other
Comment: Detached latrine
Bldg. T-3398
Fort Sam Houston
San Antonio Co: Bexar TX 78234-5000
Landholding Agency: Army
Property Number: 219330479
Status: Unutilized
Reason: Other
Comment: Detached latrine

Washington

Bldg. 1220
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011-
Landholding Agency: Air Force
Property Number: 189330091
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
Bldg. 1224
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011-
Landholding Agency: Air Force
Property Number: 189330092
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
Bldg. 2004
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011-
Landholding Agency: Air Force
Property Number: 189330093
Status: Unutilized
Reason: Secured Area
Bldg. 2018
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011-
Landholding Agency: Air Force

Property Number: 189330094
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 2150
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011-
Landholding Agency: Air Force
Property Number: 189330095
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 2164
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011-
Landholding Agency: Air Force
Property Number: 189330096
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

267 Buildings, Fort Lewis
Ft. Lewis Co: Pierce WA 98433-
Landholding Agency: Army
Property Number: 219330462
Status: Unutilized
Reason: Secured Area

34 Buildings
Cantonment Area, Yakima Training Center
Co: Yakima WA 98901-
Landholding Agency: Army
Property Number: 219330463
Status: Unutilized
Reason: Secured Area

Land (by State)

Arizona

Salt River Vortac
North of intersection of Price Rd. & 1st St.
Mesa Co: Maricopa AZ 85201-
Landholding Agency: GSA
Property Number: 549330008
Status: Excess
Reason: Other
Comment: no legal access
GSA Number: 9-U-AZ-624

Colorado

Former ERDA Site
Black Bridge Park
Gunnison Co: Mesa CO 81501-
Landholding Agency: GSA
Property Number: 549330009
Status: Excess
Reason: Floodway
GSA Number: 7-GR-CO-463-D

[FR Doc. 93-24594 Filed 10-7-93; 8:45 am]
BILLING CODE 4310-30-F

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Colorado River Basin Salinity Control Advisory Council

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 10 (a)(2) of the Federal Advisory Committee Act (Public Law 92-463), an announcement is made of a meeting of the Colorado River Basin Salinity Control Advisory Council.

DATES: The meeting begins on Tuesday, October 26, 1993, at 1 p.m. and reconvenes on Wednesday, October 27, 1993, at about 2 p.m.

ADDRESSES: The meeting will be held at the Holiday Inn Crown Plaza, 111 North Central Avenue, Phoenix, Arizona 85004.

FOR FURTHER INFORMATION CONTACT: Mr. Stanley (Stan) W. Gappa, Colorado River Salinity Program Coordinator, Bureau of Reclamation, D-5003, P.O. Box 25007, Denver, CO 80225; telephone: 303-236-6782.

SUPPLEMENTARY INFORMATION: Advisory Council members will be briefed on the status of salinity control activities and receive input for drafting the Council's annual report. The Department of the Interior, Department of Agriculture, and the Environmental Protection Agency will each present a progress report and a schedule of activities on salinity control in the Colorado River Basin. The Council will discuss Colorado River Basin Salinity Control Activities and content of their annual report.

The meeting of the Advisory Council is open to the public. Any member of the public may file a written statement with the Council before, during, or after the meeting in person or by mail. To the extent that time permits, the Council chairman may allow public presentation of oral statements at the meeting.

Dated: October 1, 1993.

J. William McDonald,

Acting Deputy Commissioner.

[FR Doc. 93-24776 Filed 10-7-93; 8:45 am]
BILLING CODE 4310-94-M

Bureau of Land Management

[MT-920-03-4110-03, SDM 81158]

Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Public Law 97-451, a petition for reinstatement of oil and gas lease SDM 81158, Fall River County, South Dakota, was timely filed and accompanied by the required rental accruing from the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16⅔% respectively. Payment of a $500 administration fee has been made.

Having met all the requirements for reinstatement of the lease as set out in sec. 31 (d) and (e) of the Mineral Lands Leasing act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective as of the date of termination, subject to the original terms and conditions of the lease, the increased rental and royalty rates cited above, and reimbursement for cost of publication of this Notice.

Dated: September 27, 1993.

Karen L. Carroll,

Chief, Fluids Adjudication Unit.

[FR Doc. 93-24727 Filed 10-7-93; 8:45 am]
BILLING CODE 4310-DN-M

[WY-920-41-5700; WYW101300]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

Pursuant to the provisions of 30 U.S.C. 188(d), and 43 CFR 3108.2-3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW101300 for lands in Carbon County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW101300 effective May 1, 1993, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Mary Jo Rugwell,

Acting Supervisory Land Law Examiner.

[FR Doc. 93-24723 Filed 10-7-93; 8:45 am]
BILLING CODE 4310-32-M

[NV-930-4210-05; N-45233]

Corrected Notice of Realty Action: Competitive Sale of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Competitive Sale of Public Lands in Clark County, Nevada.

SUMMARY: The Notice of Realty Action published in the **Federal Register** on July 21, 1992 (57 FR 32230; FR Doc 92-17070), is hereby corrected with respect to the subdivision description of the lands located within section 4. The proper subdivision description is as follows:

Sec. 4, Lots 5 and 12, SE¼NE¼, E½SE¼.

All other terms and conditions of the Notice continue to apply.

Dated: October 1, 1993.

Colin P. Christensen,

Acting District Manager, Las Vegas, NV.

[FR Doc. 93–24724 Filed 10–7–93; 8:45 am]

BILLING CODE 4310–HC–M

[NM–030–4210–05; NMNM90654]

Realty Action; Recreation and Public Purposes (R&PP) Act Classification; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification.

SUMMARY: The following public land in Dona Ana County, New Mexico has been examined and found suitable for classification for lease or conveyance to Dona Ana County under the provision of the R&PP Act, as amended (43 U.S.C. 869 *et seq.*). Dona Ana County proposes to use the land for the Chaparral Community Park.

T. 26 S., R. 5 E., NMPM,
Sec. 14, E½SE¼SW¼, W½SW¼SE¼.
Containing 40.00 acres, more or less.

DATES: Comments regarding the proposed lease/conveyance or classification must be submitted on or before November 22, 1993.

ADDRESSES: Comments should be sent to the Bureau of Land Management, Las Cruces District Office, 1800 Marquess, Las Cruces, New Mexico 88005.

FOR FURTHER INFORMATION CONTACT: Marvin M. James at the address above or at (505) 525–4349.

SUPPLEMENTARY INFORMATION: Lease or conveyance will be subject to the following terms, conditions, and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. All valid existing rights documented on the official public land records at the time of lease/patent issuance.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

4. Any other reservations that the authorized officer determines appropriate to ensure public access and proper management of Federal lands and interests therein.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice, interested persons may submit comments regarding the proposed lease/conveyance or classification of the lands to the District Manager, Las Cruces District Office, 1800 Marquess, Las Cruces, New Mexico 88005. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice.

Classification Comments: Interested parties may submit comments involving the suitability of the land for Chaparral Community Park. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planing and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for the Chaparral Community Park.

Dated: September 28, 1993.

Linda S.C. Rundell,

District Manager.

[FR Doc. 93–24725 Filed 10–7–93; 8:45 am]

BILLING CODE 4310–FB–M

[AZ–010–2200–04]

Availability of the Arizona Strip Resource Management Plan Amendment and Environmental Assessment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In compliance with the Federal Land Policy and Management Act of 1976 and section 102(2)(C) of the National Environmental Policy Act of 1969, the Bureau of Land Management (BLM) has prepared an amendment and environmental assessment to its Arizona Strip Resource Management Plan. The amendment finds the following public lands suitable for exchange providing exchange is in the public interest.

Gila and Salt River Meridian, Arizona

T. 40 N., R. 15 W.,
Sec. 4, lot 1 (part)—that portion that is on the bluff above the Virgin River. Cadastral survey required.
Containing 30 acres more or less.

T. 40 N., R. 16 W.,
Sec. 35, SW¼ SW¼.
Containing 40 acres.

T. 41 N., R. 15 W.,
Sec. 28, SW¼ SW¼ SW¼ (part)—a small triangle southwest of the county road right-of-way Cadastral survey required.
Containing 5 acres more or less.

DATES: For a period of 30 days from November 8, 1993 interested persons may submit comments regarding the suitability determination to the District Manager, Bureau of Land Management, Arizona Strip District, 390 North 3050 East, St. George, Utah 84770.

Except for any portions under protest, the BLM's Arizona State Director may approve the plan after November 8, 1993.

Roger G. Taylor,

District Manager.

[FR Doc. 93–24731 Filed 10–7–93; 8:45 am]

BILLING CODE 4310–32–M

Minerals Management Service

Outer Continental Shelf Gas and Oil Lease Sales

AGENCY: Minerals Management Service, Interior.

ACTION: List of restricted joint bidders.

SUMMARY: Pursuant to the authority vested in the Director of the Minerals Management Service by the joint bidding provisions of 30 CFR 256.41, each entity within one of the following groups shall be restricted from bidding with any entity in any other of the following groups at Outer Continental Shelf gas and oil lease sales to be held during the bidding period from November 1, 1993, through April 30, 1994. The List of Restricted Joint Bidders published April 9, 1993, in the **Federal Register** at 58 FR 18416 covered the period of May 1, 1993, through October 31, 1993.

Group I. Chevron Corporation; Chevron U.S.A. Inc.

Group II. Exxon Corp.; Exxon San Joaquin Production Co.

Group III. Shell Oil Co.; Shell Offshore Inc.; Shell Western E&P Inc.; Shell Frontier Oil & Gas Inc.

Group IV. Mobil Oil Corp.; Mobil Oil Exploration and Producing Southeast Inc.; Mobil Producing Texas and New Mexico Inc.; Mobil Exploration and Producing North America Inc.

Group V. BP America Inc.; The Standard Oil Co.; BP Exploration & Oil Inc.; BP Exploration (Alaska) Inc.

Dated: October 4, 1993.

Tom Fry,

Director, Minerals Management Service.

[FR Doc. 93–24782 Filed 10–7–93; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Concession Permit; Acadia National Park, Maine

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to award a concession permit authorizing continued carriage ride services, horse camp facility, and day use parking and related services for visiting equestrians for the public at Acadia National Park, Maine for a period of three years from January 1, 1994, through December 31, 1996.

EFFECTIVE DATE: December 7, 1993.

ADDRESSES: Interested parties should contact the Regional Director, National Park Service, North Atlantic Region, Attention: Division of Concessions Program Management, 15 State Street, Boston, MA 02109–3572, Telephone (617) 223–5209, to obtain a copy of the prospectus describing the requirements of the proposed permit.

SUPPLEMENTARY INFORMATION: This permit renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The existing concessioner has performed its obligations to the satisfaction of the Secretary under an existing permit which expires by limitation of time on December 31, 1992, and therefore pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), is entitled to be given preference in the renewal of the permit and in the negotiation of a new permit, providing that the existing concessioner submits a responsive offer (a timely offer which meets the terms and conditions of the Prospectus). This means that the permit will be awarded to the party submitting the best offer, provided that if the best offer was not submitted by the existing concessioner, then the existing concessioner will be afforded the opportunity to match the best offer. If the existing concessioner agrees to match the best offer, then the permit will be awarded to the existing concessioner.

If the existing concessioner does not submit a responsive offer, the right of preference in renewal shall be considered to have been waived, and the permit will then be awarded to the party that has submitted the best responsive offer.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be received by the Regional Director not later than the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Dated: September 27, 1993.

Marie Rust,

Regional Director.

[FR Doc. 93–24720 Filed 10–7–93; 8:45 am]

BILLING CODE 4310–70–M

Bureau of Reclamation

Proposed Glenn-Colusa Irrigation District Fish Screening Facilities Improvements, Sacramento River, Glenn County, CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare an environmental impact statement/environmental impact report, and to conduct a public scoping meeting.

SUMMARY: Pursuant to sections 3406(b)(20) and 3410 of the Central Valley Project Improvement Act, section 102(2)(c) of the National Environmental Policy Act of 1969, as amended, and section 21002 of the California Environmental Quality Act, the Bureau of Reclamation (Reclamation) and the Reclamation Board of the State of California (an independent State board), intend to prepare a joint environmental impact statement/environmental impact report (EIS/EIR) for the Glenn-Colusa Irrigation District's (GCID) proposed Fish Screening Facilities Improvements Project as its Hamilton City pumping plant on the Sacramento River, Glenn County, California. Reclamation, the Reclamation Board, and GCID propose to either improve the existing screens, build new screens, relocate the intake, restore the Sacramento River gradient by raising the water elevation about 3 feet in the vicinity of the pumping plant, or a combination thereof, to reduce mortality of chinook salmon and other species of fish.

DATES: Comments are requested on this notice concerning the scope of alternatives and impact analysis for the EIS/EIR. Written comments should be mailed by November 12, 1993. Oral comments will be taken at a scoping meeting on Wednesday, October 27, 1993, at 7 p.m.

ADDRESSES: Written comments should be addressed to the Reclamation Board, c/o Mr. Stacy Cepello, California Department of Water Resources, 2440 Main Street, Red Bluff, CA 96080. The scoping meeting will be held at the Willows Civic Memorial Building, 525 West Sycamore Street, Willows, CA 95988.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Shaffer, Environmental Specialist, Bureau of Reclamation, Mid-Pacific Region, MP–750, 2800 Cottage Way, Room W–2103, Sacramento, CA 95825, telephone: (916) 978–5487; or Mr. Stacy Cepello, Environmental Specialist, California Department of Water Resources, 2440 Main Street, Red Bluff, CA 96080, telephone: (916) 529–7352.

SUPPLEMENTARY INFORMATION: Under a water rights settlement contract with Reclamation, GCID diverts irrigation water from the Sacramento River at its Hamilton City pumping plant which is located about 5 miles northwest of Hamilton City in Glenn County, California.

Fish screens were installed at the plant in 1972 by the California Department of Fish and Game to prevent the entrainment of downstream migrating fish, primarily chinook salmon. The screens have operated since then with mixed success. Since construction of the fish screens, the morphology and hydrology of the Sacramento River main channel have changed. As a result, the gradient of the river has increased, and the water elevation at the fish screens has been lowered about 3 feet, rendering the screens less effective. Fishery agency biologists and engineers generally agree that modifying the fish screens and/or restoring the gradient of the river is needed to reduce fish mortality.

In 1990, the winter-run chinook salmon was listed as threatened under the Federal Endangered Species Act (ESA); and the United States brought an action pursuant to the ESA seeking an order to enjoin GCID from operating its Hamilton City pumping plant. As a result of settlement negotiations to allow GCID to continue to operate its pumping plant during peak winter-run chinook salmon downstream migration, GCID is required to pursue a long-term repair or replacement of its fish screens. Pursuant to sections 3406(b)(20) and 3410 of the Central Valley Project Improvement Act (Title 34 of Pub. L.

102–575), the Secretary of the Interior is authorized and directed to participate with the State of California and other Federal agencies in the implementation of the ongoing program to fully mitigate the fishery impacts associated with the operation of the pumping plant. For the EIS/EIR, Reclamation is the lead Federal agency, and the Reclamation Board, represented by the Department of Water Resources, is the lead State agency.

The EIS/EIR will evaluate the environmental impacts of various combinations of restoring the river gradient, relocating the intake and screen, and modifying the design of the screens. Analyses will include potential direct impacts to aquatic, riparian, and terrestrial resources, and potential secondary impacts to socioeconomic, recreation, and related resources for each alternative.

GCID; State, Federal, and local agencies; organizations; and interested persons have been addressing the issues related to fish mortality for many years, with concerted efforts to resolve the problem since 1989. On October 8, 1992, the Department of Water Resources conducted a preliminary public scoping session to solicit public input regarding needed fish screening facility improvements and potential direct and secondary impacts to the local area. A second scoping meeting will be held on October 27, 1993, to solicit additional comments regarding the alternatives and the associated potential direct and indirect environmental impacts.

For those persons requiring special services, please contact Mr. Stacy Cepello at the Department of Water Resources, telephone: (916) 529–7352. Please call Mr. Cepello as far in advance of the meeting as possible, and no later than October 20, 1993, to enable the Department of Water Resources to secure the needed services. If a request cannot be honored, the requester will be notified. A telephone device for the hearing impaired is available, TDD number (916) 653–6934.

Dated: October 1, 1993.

J. William McDonald,

Acting Deputy Commissioner.

[FR Doc. 93–24775 Filed 10–7–93; 8:45 am]

BILLING CODE 4310–94–M

INTERSTATE COMMERCE COMMISSION

Intent to Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: Kost Brothers Incorporated—a Minnesota corporation, 1515 1st Avenue North, Moorhead, MN 56560.

2. Wholly owned subsidiaries which will participate in the operations, and state of incorporation:

(a) Elbow Lake Gravel, Inc.—a Minnesota corporation, Box 164, Elbow Lake, MN 56531.

(b) Hawley Ready-Mix, Inc.—a Minnesota corporation, PO Box 707, Hawley, Minnesota 56549.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–24828 Filed 10–7–93; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 32348]

Indiana Harbor Belt Railroad Company and the Belt Railway Company of Chicago—Joint Relocation Project Exemption

On September 13, 1993, Indiana Harbor Belt Railroad Company (IHB) filed a notice of exemption under 49 CFR 1180.2(d)(5) to relocate a portion of its Stockyard Branch Line in Chicago, IL, extending from milepost 2.02 to milepost 4.81 from its present location to a parallel and adjacent track owned and operated by The Belt Railway Company of Chicago (BRC). Under the proposal, IHB and BRC will consolidate rail traffic where their tracks parallel each other in Chicago from BRC 55th Street interlocking plant, westerly to 59th and Oak Park Streets. IHB will remove its main track, which is located approximately 75 feet north of BRC's double mainline tracks, and BRC will grant trackage rights over its mainline tracks to the IHB between the aforesaid locations. The parties intend to consummate the transaction on or after September 20, 1993.

IHB states that train service will remain the same following the relocation and that there are no industries or patrons served by the track that will be affected by the relocation. The purpose of the joint relocation is to eliminate excess facilities, develop operating economies, and improve safety.

As a condition to the use of this exemption, any employees affected by the trackage rights agreement will be protected by the conditions imposed in Norfolk and Western Ry. Co.—Trackage Rights—BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653 (1980).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Roger A. Serpe, General Counsel, Indiana Harbor Belt Railroad Company, 175 W. Jackson Blvd., Suite 1460, Chicago, IL 60604.

Decided: September 30, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–24830 Filed 10–7–93; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree, United States v. Electro-Voice, Inc.

Notice is hereby given that a Consent Decree in *United States* v. *Electro-Voice, Inc.*, Civil Action No. 1:93CV753, was lodged with the United States District Court for the Western District of Michigan on September 20, 1993. This action was brought under sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9606, 9607, with respect to the Electro-Voice Superfund Site located at 600 Cecil Street, Buchanan, Michigan. The Consent Decree provides that defendants will implement remediation for the First Operable Unit at the Electro-Voice Site and pay $24,223.55 of past response costs incurred by the U.S. Environmental Protection Agency in connection with the Site.

For thirty (30) days from the date of publication of this notice, the Department of Justice will receive written comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, Department of Justice, Washington, D.C. 20530 and should refer to *United States* v. *Electro-Voice, Inc.*, D.O.J. Ref. No. 90–11–2–776.

The Consent Decree may be examined at the Office of the United States Attorney, Western District of Michigan, 399 Federal Building, Grand Rapids, Michigan 49503 and at the Region 5 office of the U.S. Environmental Protection Agency, 77 W. Jackson Boulevard, Chicago, Illinois 60604.

A copy of the Consent Decree also may be examined at the Consent Decree

Library, 1120 G Street NW., 4th Floor, Washington, DC 20005, telephone number (202) 624–0892. A copy of the Consent Decree may be obtained in person or by mail from the Consent Decree Library. The proposed Consent Decree package consists of an 80 page Consent Decree and 113 pages of appendices and exhibits. A request for a copy of the proposed Consent Decree should be accompanied by a check in the amount of $20.00 (25 cents per page reproduction charge) for the Consent Decree only or $48.25 for the whole package payable to "Consent Decree Library."

Myles E. Flint,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 93–24729 Filed 10–7–93; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Gas Utilization Research Forum

Notice is hereby given that, on August 27, 1993, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S. C. 4301 *et seq.* ("the Act"), Gas Utilization Research Forum ("GURF") filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in its membership. The notifications were filed for the purpose of extending the protections of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, Unocal Corporation, Unocal Energy Resources Division, Brea, CA, has become a member of GURF.

No other changes have been made in either the membership or planned activity of the project. Membership in the project remains open, and GURF intends to file additional written notification disclosing all changes in membership.

On December 19, 1990, GURF filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on January 16, 1991, 56 FR 1655.

The last notification was filed with the Department on March 11, 1992. A corrected notice was published in the **Federal Register** pursuant to section 6(b) of the Act on June 11, 1992, 57 FR 24848.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–24733 Filed 10–7–93; 8:45 am]

BILLING CODE 4410–01–M

Pursuant to the National Cooperative Research and Production Act of 1993—National Information Technology Center of Maryland, Inc.

Notice is hereby given that, on September 3, 1993, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the National Information Technology Center of Maryland, Inc. ("NITC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following have become members of NITC: Consultare Group, Inc., Bethesda, MD; First National Bank of Maryland, Baltimore, MD; International Systems Development Corp., Rockville, MD; Personnel Assets, Germantown, MD; Morino Foundation, Great Falls, VA; Technology Access, San Rafael, CA; General Services Administration, Falls Church, VA; Intercon Systems Corporation, Herndon, VA; C3, Inc., Herndon, VA; Garcia Consulting, Inc., Arlington, VA; Office of the Assistant Secretary of Defense, Washington, DC; and the Mitre Corporation, McLean, VA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NITC intends to file additional written notification disclosing all changes in membership.

On September 12, 1991, NITC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on October 22, 1991 (56 FR 54586).

The last notification was filed with the Department on June 8, 1993. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on July 15, 1993 (58 FR 38140).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–24730 Filed 10–7–93; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993; SciMed Life Systems, Inc.

Notice is hereby given that, on September 8, 1993, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), SciMed Life Systems, Inc. ("SciMed") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of a joint venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are SciMed Life Systems Inc., Maple Grove, MN; and Cardiovascular Imaging Systems Inc., Sunnyvale, CA. The parties agreed in March 1992 to cooperate in the development and production of ultrasound imaging guidewires, imaging hardware, and other related products and technology for coronary and peripheral intravascular applications.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–24732 Filed 10–7–93; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Quotas for Controlled Substances in Schedules I and II

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: 1994 Aggregate Production Quota.

SUMMARY: This document establishes initial 1994 aggregate production quotas for controlled substances in Schedules I and II of the Controlled Substances Act (CSA).

DATES: This order is effective on October 8, 1993.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug & Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: Section 306 of the CSA (21 U.S.C. 826) requires the Attorney General to establish aggregate production quotas for controlled substances in Schedules I and II each year. This responsibility has been delegated to the Administrator of the DEA pursuant to section 0.100 of

title 28 of the Code of Federal Regulations.

On July 27, 1993, a notice of the proposed initial 1994 aggregate production quotas for certain controlled substances in Schedules I and II was published in the **Federal Register** (58 FR 40159). All interested parties were invited to comment on or object to these proposed aggregate production quotas on or before August 26, 1993.

A company commented that the initial 1994 aggregate production quotas for codeine (for sale) and oxymorphone were insufficient to provide for the estimated medical, scientific, research and industrial needs of the United States, estimated export requirements and for the establishment and maintenance of reserve stocks. The companies' comments were based on their actual 1993 sales, forecasted 1994 domestic sales, actual 1993 exports and estimated 1994 exports.

After reviewing the relevant information, the DEA has determined that no increases are necessary for the initial 1994 aggregate production quotas for codeine (for sale) and oxymorphone at this time.

Several companies commented that the initial 1994 aggregate production quotas for amobarbital, amphetamine, codeine (for conversion), hydrocodone, methylphenidate, methadone, methadone intermediate (for conversion), morphine (for conversion), noroxymorphone (for conversion), opium, oxycodone (for sale), pentobarbital, phenylacetone and thebaine were insufficient to provide for the medial, scientific, research and industrial needs of the United States and for the establishment and maintenance of reserve stocks.

The DEA has reviewed the involved companies' current 1993 and forecasted 1994 sales and inventories and has adjusted the initial 1994 aggregate production quotas for amobarbital, amphetamine, codeine (for conversion), hydrocodone, methylphenidate, methadone, methadone intermediate (for conversion), noroxymorphone (for conversion), morphine (for conversion), opium, oxycodone (for sale), pentobarbital, phenylacetone and thebaine accordingly.

The DEA received updated information from several manufacturers which shows the necessity for adjustments of the initial 1994 aggregate production quotas for dextropropoxyphene, hydromorphone and fentanyl. The adjustments will provide for the estimated medical, scientific, research and industrial needs of the United States and for the establishment and maintenance of reserve stocks. The DEA has adjusted the 1994 initial aggregate production quotas for dextropropoxyphene, hydromorphone and fentanyl accordingly.

The DEA has received applications for manufacturing quotas from several manufacturers who were recently registered as bulk manufacturers of Schedule I and II controlled substances. The Schedule I and II controlled substances affected by this are lysergic acid diethylamide, methaqualone, 3,4-methylenedioxyamphetamine, 3,4-methylenedioxymethamphetamine, phencyclidine and methcathinone. The DEA has adjusted the initial 1994 aggregate production quotas for these controlled substances to include the recent applications.

Pursuant to section 3(c)(3) and 3(e)(2)(C) of Executive Order 12291, the Director of the Office of Management and Budget has been consulted with respect to these proceedings.

These actions have been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this matter does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

The Administrator hereby certifies that this action will have no significant impact upon small entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The establishment of aggregate production quotas for Schedules I and II controlled substances is mandated by law and by international treaty obligations. While aggregate production quotas are of primary importance to large manufacturers, their impact upon small entities is neither negative nor beneficial. Accordingly, the Administrator has determined that this action does not require a regulatory flexibility analysis.

Therefore, under the authority vested in the Attorney General by section 306 of the Controlled Substances Act of 1970 (21 U.S.C. 826) and delegated to the Administrator of the DEA by section 0.100 of title 28 of the Code of Federal Regulations, the Administrator hereby orders that the 1994 initial aggregate production quotas, expressed in grams of anhydrous acid or base, be established as follows:

Basic class	Established initial 1994 quotas (in grams)
Schedule I	
2, 5–Dimethoxyamphetamine	15,400,000
Dimethylamphetamine	2
Heroin	4
Levo-alpha-acetylmethadol	150,000
Lysergic acid diethylamide	36
Mescaline	2
4-Methylaminorex	4
Methaqualone	12
Methcathinone	4
3, 4-Methylenedioxyamphetamine	14
3, 4-Methylenedioxymethamphetamine	12
N-Hydroxy-3, 4-methylenedioxyamphetamine	2
Normorphine	2
Tetrahydrocannabinols	50,000
Schedule II	
Alfentanil	7,110
Amobarbital	300,000
Amphetamine	359,000
Cocaine	599,000
Codeine (for sale)	64,235,000
Codeine (for conversion)	12,048,000
Desoxyephedrine	1,065,000
1,043,000 grams of levodesoxyephedrine for use in a noncontrolled, nonprescription product and 22,100 grams for methamphetamine.	
Dextropropoxyphene	117,053,000
Dihydrocodeine	395,000
Diphenoxylate	1,023,000
Ecgonine (for conversion)	650,000
Fentanyl	101,000
Glutethimide	979,000
Hydrocodone	8,015,000
Hydromorphone	380,000
Levorphanol	6,400
Meperidine	8,480,000
Methadone	3,970,000
Methadone (for conversion)	220,000
Methadone Intermediate (for sale)	700,000
Methadone Intermediate (for conversion)	4,962,000
Methamphetamine (for conversion)	723,000
Methylphenidate	5,300,000
Morphine (for sale)	6,480,000
Morphine (for conversion)	75,668,000
Noroxymorphone (for sale)	150,000
Noroxymorphone (for conversion)	1,500,000
Opium	1,242,000
Oxycodone (for sale)	4,312,000
Oxycodone (for conversion)	3,400
Oxymorphone	1,400
Pentobarbital	14,430,000
Phencyclidine	32
Phenylacetone (for conversion)	1,952,000
Secobarbital	550,800
Sufentanil	820
Thebaine	9,298,000

Dated: September 29, 1993.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 93–24742 Filed 10–7–93; 8:45 am]

BILLING CODE 4410–09–M

Proposed 1994 Aggregate Production Quotas for Schedule I Controlled Substances

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Proposed 1994 Aggregate Production Quotas.

SUMMARY: This notice proposes 1994 aggregate production quotas for controlled substances in Schedule I of the Controlled Substances Act (CSA).

DATES: Comments or objections must be received on or before November 8, 1993.

ADDRESSES: Send comments or objections to the Administrator, Drug Enforcement Administration, Washington, DC 20537, Attn: DEA Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug & Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: Section 306 of the CSA (21 U.S.C. 826) requires that the Attorney General establish aggregate production quotas for all controlled substances in Schedules I and II each year. This responsibility has been delegated to the Administrator of the DEA pursuant to § 0.100 of title 28 of the Code of Federal Regulations.

Applications have been made for manufacturing quotas for several Schedule I controlled substances. Based on a review of these applications and other information available to the DEA, the Administrator of the DEA, under the authority vested in the Attorney General by section 306 of the CSA of 1970 (21 U.S.C. 826) and delegated to the Administrator by § 0.100 of title 28 of the Code of Federal Regulations, hereby proposes the 1994 aggregate production quotas for the following controlled substances, expressed in grams of anhydrous base, be established as follows:

Basic class	Proposed 1993 aggregate production quota (grams)
4-Methoxyamphetamine	10
3-Methylfentanyl	10
Cathinone	2

All interested persons are invited to submit comments or objections, in writing, regarding this proposal. A person may object to or comment on the proposal relating to any of the above-mentioned substances without filing comments or objections regarding the others. If a person believes that one or more of these issues warrant a hearing, the individual should so state and summarize the reasons for this belief.

In the event that comments or objects to this proposal raise one or more issues which the Administrator finds warrant a hearing, the Administrator shall order a public hearing by notice in the **Federal Register**, summarizing the issues to be heard and setting the time for the hearing.

Pursuant to sections (3)(c)(3) and 3(e)(2)(c) of Executive Order 12291, the Director of the Office of Management and Budget has been consulted with respect to these proceedings.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 and it has been determined that this matter does not have sufficient federalism implications to warrant the preparations of a Federalism Assessment.

The Administrator hereby certifies that this matter will have no significant impact upon small entities within the meaning of and intent of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The establishment of annual production quotas for Schedules I and II controlled substances is mandated by law and by the international commitments of the United States. Such quotas impact predominantly upon major manufacturers of the affected controlled substances.

Dated: September 30, 1993.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 93–24743 Filed 10–7–93; 8:45 am]

BILLING CODE 4410–09–M

National Institute of Corrections

Advisory Board Meeting

Time and Date: 9:45 a.m., Tuesday, November 9, 1993

Place: Old Colony Inn, Conference Center Ballroom, North, 625 First Street, Alexandria, Virginia

Status: Open.

Matters to be Considered: An update on the selection process for the NIC Director, progress reports on the Jail Suicide Update Newsletter and the NIC/SAMHSA Agreement, an update on technical assistance for prisons riots and disturbances, a budget update, and a NASA briefing. A review of issues forum on the mentally ill offender and follow-up Advisory Board issues forum on medical issues will also be presented.

Contact Person for More Information: Larry Solomon, Deputy Director, (202) 307–3106.

Larry Solomon,

Deputy Director.

[FR Doc. 93–24726 Filed 10–7–93; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., room S–3014, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume and State.

Volume I

Florida
FL930060 (Oct. 8, 1993)
FL930061 (Oct. 8, 1993)
FL930062 (Oct. 8, 1993)
FL930063 (Oct. 8, 1993)
FL930064 (Oct. 8, 1993)
FL930065 (Oct. 8, 1993)
FL930066 (Oct. 8, 1993)
FL930067 (Oct. 8, 1993)
FL930068 (Oct. 8, 1993)
FL930069 (Oct. 8, 1993)
FL930070 (Oct. 8, 1993)
FL930071 (Oct. 8, 1993)
FL930072 (Oct. 8, 1993)
FL930073 (Oct. 8, 1993)
FL930074 (Oct. 8, 1993)
FL930075 (Oct. 8, 1993)
FL930076 (Oct. 8, 1993)
FL930077 (Oct. 8, 1993)
FL930078 (Oct. 8, 1993)
FL930079 (Oct. 8, 1993)
FL930080 (Oct. 8, 1993)
FL930081 (Oct. 8, 1993)
FL930082 (Oct. 8, 1993)
FL930083 (Oct. 8, 1993)
FL930084 (Oct. 8, 1993)
FL930085 (Oct. 8, 1993)
FL930086 (Oct. 8, 1993)

Volume II

Missouri
M0930020 (Oct. 8, 1993)

Modification to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Florida
FL930017 (Feb. 19, 1993)
Kentucky
KY930001 (Feb. 19, 1993)
KY930002 (Feb. 19, 1993)
KY930003 (Feb. 19, 1993)
KY930004 (Feb. 19, 1993)
KY930007 (Feb. 19, 1993)
KY930029 (Feb. 19, 1993)
Massachussetts
MA930001 (Feb. 19, 1993)
MA930005 (Feb. 19, 1993)
MA930007 (Feb. 19, 1993)
West Virginia
WV930002 (Feb. 19, 1993)
West Virginia
WV930032 (Feb. 19, 1993)

Volume II

Arkansas
AR930001 (Feb. 19, 1993)
AR930003 (Feb. 19, 1993)
AR930008 (Feb. 19, 1993)
Illinois
IL930002 (Feb. 19, 1993)
Illinois
IL930015 (Feb. 19, 1993)
Kansas
KS930006 (Feb. 19, 1993)
KS930007 (Feb. 19, 1993)
KS930008 (Feb. 19, 1993)
KS930012 (Feb. 19, 1993)
KS930016 (Feb. 19, 1993)
KS930017 (Feb. 19, 1993)
KS930018 (Feb. 19, 1993)
KS930019 (Feb. 19, 1993)
KS930020 (Feb. 19, 1993)
KS930021 (Feb. 19, 1993)
KS930023 (Feb. 19, 1993)
KS930025 (Feb. 19, 1993)
Michigan
MI930040 (Oct. 1, 1993)
MI930041 (Oct. 1, 1993)
MI930052 (Oct. 1, 1993)
Oklahoma
OK930013 (Feb. 19, 1993)
OK930014 (Feb. 19, 1993)
OK930016 (Feb. 19, 1993)
OK930017 (Feb. 19, 1993)
OK930018 (Feb. 19, 1993)
OK930019 (Feb. 19, 1993)
OK930020 (Feb. 19, 1993)

Volume III

Utah
UT930001 (Feb. 19, 1993)
UT930004 (Feb. 19, 1993)
UT930005 (Feb. 19, 1993)
UT930006 (Feb. 19, 1993)
UT930007 (Feb. 19, 1993)
UT930008 (Feb. 19, 1993)
UT930009 (Feb. 19, 1993)
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UT930020 (Feb. 19, 1993)
UT930023 (Feb. 19, 1993)
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UT930025 (Feb. 19, 1993)
UT930026 (Feb. 19, 1993)
UT930028 (Feb. 19, 1993)
UT930029 (Feb. 19, 1993)
UT930031 (Feb. 19, 1993)
UT930033 (Mar. 19, 1993)
Washington
WA930001 (Feb. 19, 1993)
WA930002 (Feb. 19, 1993)
WA930003 (Feb. 19, 1993)
WA930007 (Feb. 19, 1993)
WA930008 (Feb. 19, 1993)
WA930011 (Feb. 19, 1993)
WA930013 (Aug. 27, 1993)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 1st day of October 1993.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 93–24519 Filed 10–5–93; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Physiology and Behavior; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Panel for Physiology and Behavior.

Date and Time: October 27–29, 1993, 8:30 a.m. to 5:30 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22203, Rm. 680.

Type of Meeting: Part—Open.

Contact Person: Dr. Fred Stollnitz, Program Director, Animal Behavior, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22203, room 685, (703) 306–1421.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the NSF for financial support.

Agenda: Closed Session—October 27 and 29, 1993, 8:30 a.m. to 5:30 p.m., and October 28, 1993, 8:30 a.m. to 4 p.m. To review and evaluate proposals in Animal Learning and Behavior as part of the selection process for awards. Open Session—October 28, 1993, 4 p.m. to 5:30 p.m. for a discussion with the Acting Division Director of IBN and the Acting Assistant Director of BIO on research trends and opportunities in Animal Learning and Behavior.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 5, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–24840 Filed 10–7–93; 8:45 am]

BILLING CODE 7555–01–M

Membership of National Science Foundation's Senior Executive Service Performance Review Board

AGENCY: National Science Foundation.

ACTION: Announcement of Membership of the National Science Foundation's Senior Executive Service Performance Review Board.

SUMMARY: This announcement of the membership of the National Science Foundation's Senior Executive Service Performance Review Board is made in compliance with 5 U.S.C. 4314(c)(4).

ADDRESSES: Comments should be addressed to Director, Division of Human Resource Management, National Science Foundation, room 208, 1800 G Street NW., Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Bransford at the above address or (202) 357–7857.

SUPPLEMENTARY INFORMATION: The membership of the National Science Foundation's Senior Executive Service Performance Review Board is as follows:

Mary E. Clutter, Assistant Director for Biological Sciences, Chairperson
Constance K. McLindon, Director, Office of Information Resource Management, Executive Secretary
Judith S. Sunley, Executive Officer, Directorate for Mathematical and Physical Sciences
Nathaniel G. Pitts, Director, Office of Science and Technology Infrastructure
Luther S. Williams, Assistant Director for Education and Human Resources
Joseph Bordogna, Assistant Director for Engineering.

Dated: October 5, 1993.

John F. Wilkinson, Jr.,

Acting Director, Division of Human Resource Management.

[FR Doc. 93–24841 Filed 10–7–93; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Abnormal Occurrences for Second Quarter CY 1993; Dissemination of Information

Section 208 of the Energy Reorganization Act of 1974, as amended, requires the NRC to disseminate information on abnormal occurrences (i.e., unscheduled incidents or events that the Commission determines are significant from the standpoint of public health and safety). During the second quarter of CY 1993, the following incidents at NRC licensees were determined to be abnormal occurrences (AOs) and are described below, together with the remedial actions taken. The events are also being included in NUREG–0090, Vol. 16, No. 2, ("Report to Congress on Abnormal Occurrences: April–June 1993"). This report will be available at the NRC's Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC 20555 about three weeks after the publication date of this **Federal Register** Notice.

OTHER NRC LICENSEES

93–5 Medical Brachytherapy Misadministration at Parkview Memorial Hospital in Fort Wayne, Indiana

One of the AO reporting guidelines notes that a therapeutic exposure to a part of the body not scheduled to receive radiation should be considered an abnormal occurrence.

Date and Place—December 9, 1992; Parkview Memorial Hospital; Fort Wayne, Indiana.

Nature and Probable Consequences—On December 9, 1992, a 62-year-old patient was scheduled to receive a 500 centigray (cGy) (500 rad) radiation dose for vaginal cancer using a high-dose-rate brachytherapy treatment device. The device uses a 296,000 megabequerel (MBq) (8 curie (Ci)) iridium-192 (Ir-192) source.

The brachytherapy treatment was the final part of a curative radiation treatment series.

The location of the treatment area was unusual for vaginal treatments and required a different starting position for the Ir-192 source than is normally used for such treatments. Both the dosimetrist and the medical physicist performed the treatment calculations working together (the second series of calculations was not an independent check) and both used the incorrect starting location for the source position. The error was not detected, and the treatment was performed as scheduled. As a result, the intended 500 cGy (500 rad) radiation dose was delivered to an area 5.25 centimeters (2.07 inches) away from the intended treatment area. A small portion of the intended treatment area received a radiation dose ranging from 50 to 300 cGy (50 to 300 rad) according to the licensee.

On January 6, 1993, the error was discovered during a record review by a dosimetrist. The referring physician and the patient were informed of the error. The licensee reported the misadministration to NRC on January 7, 1993. The incident constitutes a misadministration because the radiation dose was administered to the wrong treatment site. On January 18, 1993, the patient received an additional treatment using the high dose rate brachytherapy treatment device. The treatment plan was revised to meet the intended objectives of the earlier treatment, taking into account the lower dose already received by a portion of the treatment area.

The licensee reported that no physical effect was observed as a result of the misadministration. The NRC retained a medical consultant to evaluate the

circumstances of the misadministration. The consultant concluded that no noticeable biological effect is expected as a result of the misadministration.

Cause or Causes—Because of the unusual configuration of the treatment area, the standard treatment parameters used for vaginal brachytherapy treatment were not applicable. A medical physicist and a dosimetrist prepared the dose calculations working together and made the same error in assuming the initial position of the treatment source.

The licensee's Quality Management Program requires that an independent check of the dose calculations be performed by a qualified individual before the treatment is initiated. Such an independent check was not performed.

Actions Taken To Prevent Recurrence

Licensee—The licensee has revised its procedures for preparing the treatment plans for the high-dose-rate brachytherapy procedures. It has made improvements in the calculation notebook and other related data used in preparing the treatment plans and the dose calculations.

NRC—NRC Region III conducted a special inspection on January 28 and 29, 1993, to review the circumstances surrounding the misadministration. An NRC medical consultant was also retained to review the case.

The NRC inspection determined that the licensee failed to follow its Quality Management Program requirement for an independent check of brachytherapy dose calculations. Other violations were identified which did not directly relate to the misadministration. A notice of violation was issued to the licensee.

93–6 Inoperable Research Reactor Scrams at University of Virginia in Charlottesville, Virginia

One of the AO reporting guidelines notes that a major deficiency in operating, management, or procedural controls that impact safety should be considered an abnormal occurrence.

Date and Place—April 28, 1993; the University of Virginia; Charlottesville, Virginia.

Nature and Probable Consequences—Since November of 1992, the University of Virginia's research reactor had been experiencing a series of spurious scrams. The scrams were occurring without any annunciator indication. Because of the design of the scram annunciator system, the licensee staff did not believe that the unannunciated scrams were being caused by electrical supply line noise. A member of the licensee's staff who was in charge of the electronic maintenance at the facility concluded that the most likely source of the problem was in the scram logic system. Therefore, when he experienced unannunciated scrams on April 28, 1993, while performing the duties of the Senior Reactor Operator (SRO), he independently began trouble-shooting the problem to try to isolate the source of the scrams. There was no specific procedure in place to provide guidance for the trouble-shooting activities.

With the reactor shutdown, the SRO first interchanged some of the electronic equipment in the reactor control console. That action did not remedy the situation so he interchanged some other equipment, i.e., two mixer/driver (MD) modules. The MD modules appeared to be identical in their external appearance and both had the same identification number. After approximately 30 minutes, no further scrams were received so the SRO briefly conferred with the Reactor Administrator about the situation, and the reactor was restarted. Neither the SRO nor the Reactor Administrator realized that the trouble-shooting actions (exchanging the MD modules) were maintenance activities. Therefore, no post-maintenance testing was performed to ensure that the safety systems were operating as required.

The reactor was operated at full power for the next 5.5 hours with a change in SROs every 2 hours. No scram signal was received during that period. During a normal shutdown of the reactor at the end of the day on April 28, another SRO, who was then in charge of reactor operations, decided to complete the shutdown by introducing an electronic period scram. The scram logic, however, failed to produce the expected period scram and the SRO manually scrammed the reactor, which resulted in safe shutdown of the reactor.

Cause or Causes—The principal cause of the incident was the SRO exchanging the MD modules in the reactor control console. This inadvertently defeated five of the scrams required for reactor operation. Other contributing causes were not recognizing the exchanging of the modules as a maintenance activity, lack of adequate procedures defining maintenance and trouble-shooting activities, and failure to perform post-maintenance testing of the safety system prior to restarting reactor operations.

Actions Taken To Prevent Recurrence

Licensee—The Reactor Director was notified of the problem when no scram was received the evening of April 28 and an investigation was begun into the cause of the problem. As a result of the investigation, the licensee initiated various corrective actions including: (1) Maintaining the reactor in safe shutdown until the problem was investigated, understood, and reviewed with the Reactor Safety Committee (RSC) and with the NRC; (2) notifying the University, the community, and the NRC of the problem; (3) requesting a peer review from the National Organization of Test, Research, and Training Reactors (TRTR); (4) determining the root cause(s) of the event and taking corrective actions; (5) determining if there were any problems with the hardware, schematics, and Standard Operating Procedures (SOPs) which may have contributed to this event and taking actions to correct the problems noted; and (6) determining if any administrative corrective actions were needed.

NRC—A reactive inspection was conducted on May 3, 1993. Staff members from NRC Region II and headquarters participated in this inspection. A follow-up inspection was conducted on June 3 and 4, 1993, again with participation from NRC Region II and headquarters. Apparent violations of regulatory requirements were identified and discussed with licensee management and the SRO involved in the incident during a June 29, 1993, enforcement conference held in the NRC Region II Office. The licensee presented its perspective on the significance of the event, its causes, and the licensee's corrective actions. A notice of violation and proposed imposition of civil penalty was issued by the NRC on July 28, 1993. Violations were imposed for operating the reactor without five safety system channels required by the Technical Specifications and for failing to verify that the safety system channels were operable following maintenance, as required by the Technical Specifications. These were categorized in the aggregate as a Severity Level II problem (Severity Levels I through V range from the most significant to the least significant) and a civil penalty of $2000 was proposed. The licensee paid the civil penalty on August 26, 1993.

93–7 Medical Brachytherapy Misadministration at Mercy Memorial Medical Center in St. Joseph, Michigan

One of the AO reporting guidelines notes that a therapeutic exposure to a part of the body not scheduled to receive radiation should be considered an abnormal occurrence.

Date and Place—February 16, 1993; Mercy Memorial Medical Center; St. Joseph, Michigan.

Nature and Probable Consequences—On February 16, 1993, at 5 p.m., a patient was undergoing a brachytherapy

procedure using cesium-137 (Cs-137) sources). The radiation oncologist involved in this procedure failed to properly rotate the insert of the brachytherapy device containing the sources, and one source containing 862.1 megabecquerel (MBq) (23.3 millicuries (mCi)) Cs-137 fell out of the insert onto the patient's bed. The source landed on an absorbent pad that was placed between the patient and the surface of the bed. The loss of the source was not observed by the oncologist or the medical physicist who was assisting him.

On February 17, at about 8:20 a.m., a nurse observed a small piece of metal between the patient and the absorbent pad. The nurse thought it was a small screw and retrieved it, placing it in a paper cup on the bedside table. The radiation oncologist and the medical physicist were notified, and they identified the object as a Cs–137 source. Using tongs, they placed it in a shielded storage container.

The dislodged source was subsequently placed in the treatment device, and the treatment plan was revised to reflect that the source was implanted for a reduced period of time. The revised treatment plan indicated that this implant time reduction for the one source would result in an underdose of about 6 percent to the intended treatment site.

The licensee calculated that the dislodged source resulted in a radiation dose of about 45.8 centigray (cGy) (45.8 rad) to the perineum, an area different from the intended treatment site. In addition, the licensee stated that there is no evidence of clinical effects on the patient as a result of the radiation exposure from the dislodged source.

This incident is considered a misadministration because a part of the patient's body received unscheduled radiation exposure. The licensee reported that both the patient and the referring physician had been notified of the incident.

The NRC staff calculated the dose to the nurse who discovered and handled the dislodged source. Based on information supplied by the nurse on her handling of the source, NRC calculated that she received a 4.25 cGy (4.25 rad) radiation exposure to the surface of the hand in contact with the source.

Cause or Causes—The cause of the misadministration was the radiation oncologist's failure to properly rotate the Cs–137 source insert while loading the source into the treatment device. In addition, the nurse who discovered the dislodged source had not received any training on the size and appearance of the brachytherapy sources.

Actions Taken To Prevent Recurrence

Licensee—The licensee conducted refresher training for its nurses to explain brachytherapy procedures and provided them with instructions.

NRC—NRC Region III conducted a special inspection from March 26 through April 7, 1993, to review the circumstances surrounding the misadministration. An NRC medical consultant was also retained to evaluate the circumstances of the event.

The inspection identified several apparent violations of NRC requirements including: (1) Substantial failure to implement a Quality Management Program for brachytherapy procedures; (2) failure of the RSO to adequately investigate the accident to identify a misadministration, and to assess overexposure to the nurses's hands; (3) failure to adequately instruct nurses caring for brachytherapy patients; and (4) failure to make evaluations to assure compliance with NRC exposure limits for occupational workers. On August 2, 1993, the NRC issued a Notice of Violation and Proposed Imposition of Civil Penalties in the amount of $6,250. The licensee paid the civil penalties on August 12, 1993.

93–8 Medical Brachytherapy Misadministration at Keesler Medical Center, Keesler Air Force Base, in Biloxi, Mississippi

One of the AO reporting guidelines notes that a therapeutic exposure to a part of the body not scheduled to receive radiation should be considered an abnormal occurrence.

Date and Place—June 10, 1993; Keesler Medical Center; Kessler Air Force Base; Biloxi, Mississippi.

Nature and Probable Consequences—On June 14, 1993, the United States Air Force Radioisotope Committee Secretariat (RIC) notified NRC Region IV of an incident involving a brachytherapy treatment which occurred at Keesler Medical Center on June 10, 1993. The permittee's Radiation Safety Officer (RSO) was not present at the facility on June 10. The permittee staff involved with the treatment did not initially recognize the incident as a misadministration. The incident and related facts were reported to the RSO when he returned to the medical center on June 14. The RSO subsequently notified RIC of the incident, who in turn formally notified NRC. RIC's initial report noted that a patient who was to receive a total dose of 1400 centigray (cGy) (1400 rad) to the right lower lung had also received an unintended dose of approximately 2.09 cGy (2.09 rad) to the facial area.

The incident involved a brachytherapy treatment using an iridium-192 high-dose-rate remote afterloading device. The written directive prepared by the authorized user prescribed two treatment doses of 700 cGy (700 rad) each to be delivered to the lower lobe of the patient's right lung. The first treatment dose was administered on June 2, 1993, using a single endobronchial catheter, as prescribed in the written directive. The second treatment dose was to be administered on June 10, 1993, using two endobronchial catheters, one positioned in the lower lobe of the right lung and the second positioned in the middle lobe of the lung. The fractional dose prescribed for the lower lobe was delivered as intended. The fractional dose for the middle lobe was not delivered as prescribed in the written directive due to incorrect positioning of the source.

The mispositioning of the source resulted from an error in entering the length of the catheter into the treatment planning computer. The treatment plan established by the authorized user called for use of two catheters, each with a length of 150 centimeters (cm) (59.1 inches (in.). The length of the first catheter and source position was properly entered at the treatment planning computer console. The permittee's dosimetrist believed that the length and source position for the second catheter were properly entered. However, it was later discovered that due to an erroneous keystroke, a default value of 100 cm (39.4 in.) was entered as the length of the second catheter. This resulted in an error in the source position since the actual distance of source travel is determined by subtracting an "offset" value from the length of the catheter. The error in the source position was recognized by the authorized user as the treatment was underway and the treatment was promptly stopped.

Following consultation with the device manufacturer and review of the treatment planning computer data and the data available from the remote afterloading device control console, permittee representatives determined that the source had been positioned approximately 10 cm (3.9 in.) in front of the patient's face for a period of approximately 46 seconds. The estimated dose to the patient's face was determined to be approximately 2.09 cGy (2.09 rad). In the absence of the licensee's RSO, and based on advice provided by the manufacturer's

representative, the permittee's staff determined that the incident did not constitute a therapeutic misadministration. The remainder of the prescribed treatment dose was delivered to the middle lobe of the patient's right lung later that day. Through discussions with the RSO, the RIC, and the NRC staff, the permittee subsequently determined on June 14 that a misadministration had occurred and reported the incident to NRC and the patient as required.

NRC inspectors were at the medical center on June 23 and 24, 1993, to review the circumstances associated with the misadministration and its probable cause(s).

Cause or Causes—Based on interviews with permittee representatives and reenactment of the treatment planning and setup, the apparent root cause of the misadministration was determined to be an erroneous keystroke at the treatment planning computer console. The permittee's dosimetrist demonstrated for the NRC inspectors the sequence of steps taken during treatment planning, noting that the correct value of 150 cm (59.1 in.) had been entered for both catheters on June 10. However, the dosimetrist believed that after the length of the second catheter was entered, she depressed the "F2" function key to enter another treatment parameter and accidentally touched the "F1" function key with her hand at the same time. This caused the catheter length value to change to the default value of 100 cm (39.4 in.) with only the sound of a "beep" to warn the operator. Through repetitive testing of different keystroke sequences, the dosimetrist determined that this was the only sequence that would reproduce a reset of the catheter length to the default value once the length was manually entered at the treatment planning console. This sequence of steps was repeated for the inspectors several times during the inspection and in each instance, the catheter length defaulted to 100 cm (39.4 in.).

A contributing factor to the misadministration was the failure of permittee staff to verify the dwell positions for each catheter prior to performing the treatment as required by an "Operating Instruction" established by the permittee. Although this operating instruction was not incorporated in the permittee's Quality Management Program, it did require that individuals administering patient treatments using the high-dose-rate remote afterloading device verify both the source dwell time and source dwell positions prior to administering a treatment. This requirement was established to ensure that treatment parameters entered in the device control unit matched the parameters entered in the treatment planning computer. Both the dosimetrist and medical physicist who administered the treatment on June 10 acknowledged that they had only verified the source dwell times noted on the treatment planning and device control computer printouts. Although the dwell position value on both records was incorrect (because the error was propagated in both computer systems), the dosimetrist and physicist state that they probably would have identified the error if they had verified the dwell position prior to treatment.

Actions Taken To Prevent Recurrence

Permittee—Following the misadministration, the permittee modified a checklist that had been used by the staff to verify that certain actions were completed prior to treatment. The modifications included requirements to (1) physically measure each catheter prior to use for patient treatments and documents the measured length of the catheter on the checklist form, (2) document the planned distance from the end of the catheter to the first dwell position on the checklist form, (3) have the authorized user and medical physicist verify the documented catheter length and dwell positions and sign the checklist for approval, and (4) include a review of the checklist in the permittee's Quality Management Program.

NRC—An inspection was conducted on June 23 and 24, 1993, to review the misadministration and its probable cause(s). Based on the results of the inspection, two apparent violations were identified relative to the permittee's Quality Management Program. These included (1) a failure to implement and maintain a Quality Management Program that met the objective of ensuring that radiation from byproduct material was administered in accordance with a written directive, and (2) failure to indicate the radioisotope to be used by brachytherapy treatments in 22 written directives. In addition, several weaknesses were identified in the permittee's written Quality Management Program. The inspection findings indicated that the failure to verify the source dwell positions prior to performing a patient treatment was an isolated event and that the permittee staff had complied with the applicable operating instruction during previous patient treatments. A Notice of Violation was issued on July 20, 1993. A Civil Penalty was not proposed.

Dated at Rockville, MD, this 4th day of October 1993.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 93–24785 Filed 10–7–93; 8:45 am]

BILLING CODE 7590–01–M

Nuclear Safety Research Review Committee

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

The Nuclear Safety Research Review Committee (NSRRC) will hold a telephone conference meeting on October 27, 1993, from 4 p.m. until approximately 5:30 p.m. The designated conference room for the meeting will be the Rockville Room in the Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland 20814, with conference call hook-ups to participating Committee members not present in the conference room. The meeting will be held in accordance with the requirements of the Federal Advisory Committee Act (FACA). Except as noted below, this meeting is open for attendance by members of the public who wish to be present at the Committee's deliberations. Communication with Committee members not present in the conference room will be by speaker phone located in the designated conference room.

A portion of this meeting may be closed to discuss matters the release of which would represent a clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. 552b(c)(6).

The NSRRC provides advice to the Director of the Office of Nuclear Regulatory Research (RES) and through him to the Commission on matters of overall management importance in the direction of the NRC's program of nuclear safety research. The purpose of this meeting is to deliberate on a report submitted to the Committee by its Severe Accident Subcommittee on the accomplishments, status, completion plans, and personnel activities for programs pursued under the Nuclear Regulatory Commission's Severe Accident Research Program. The review will focus primarily on accomplishments and changes since the Committee's October 22, 1992 meeting.

Members of the public may file written statements regarding any matter to be discussed at the meeting. Members of the public may also make requests to speak at the meeting, but permission to speak will be subject to the approval of the Committee chairperson in

accordance with procedures established by the Committee.

I have determined in accordance with subsection 10(d) of Public Law 92–463 that it may be necessary to close a portion of this meeting, as noted above, to discuss matters the release of which would represent a clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. 552b(c)(6).

Inquiries regarding this notice, any subsequent changes in the status of the meeting, the filing of written statements, and requests to speak at the meeting may be made to the Designated Federal Officer, Mr. George Sege (telephone: 301/492–3904), Monday through Friday, between 8:15 a.m. and 5 p.m.

Dated: October 4, 1993.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 93–24798 Filed 10–7–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 40–3453]

Atlas Corporation

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of withdrawal of intent to amend source material license SUA–917, for the Atlas Corporation's uranium mill, near Moab, Utah, and a related finding of no significant impact regarding the proposed action.

SUMMARY: This notice withdraws the previously noticed (58 FR 38796) intent to approve the revised reclamation plan for uranium mill tailings at the Atlas Corporation's uranium mill near Moab, Utah.

ADDRESSES: Copies of the license amendment request and the staff evaluations previously noticed, as well as copies of comments received on the proposed licensing action, are available for inspection at the Uranium Recovery Field Office, 730 Simms Street, suite 100, Lakewood, Colorado, and the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, D.C.

Comments on this notice of withdrawal may be mailed to David L. Meyer, Chief, Rules Review and Directives Branch, Office of Administration, P–223, U.S. Nuclear Regulatory Commission, Washington, D.C., 20555, with a copy to the Director, Uranium Recovery Field Office, U.S. Nuclear Regulatory Commission, P.O. Box 25325, Denver, Colorado, 80225.

FOR FURTHER INFORMATION CONTACT: Ramon E. Hall, Director, Uranium Recovery Field Office, Region IV, U.S. Nuclear Regulatory Commission, P.O. Box 25325, Denver, Colorado, 80225. Telephone: (303) 231–5800.

SUPPLEMENTARY INFORMATION: As noticed in the July 20, 1993, **Federal Register** (58 FR 38796), the Nuclear Regulatory Commission had proposed amendment of Source Material License SUA–917 to incorporate a revised tailings disposal area reclamation plan for Atlas Corporation's Moab Mill located near Moab, Utah. The proposed action was supported by a Technical Evaluation, and an Environmental Assessment and a Finding of No Significant Impact. The notice had a 30-day comment period which expired August 19, 1993.

Based on comments received on this proposed action, the Nuclear Regulatory Commission is withdrawing the Notice of Intent to Amend Source Material License SUA–917 for the Atlas Corporation's Moab Mill and the related Finding of No Significant Impact. The Nuclear Regulatory Commission intends to reevaluate reclamation of the tailings in place and at alternative locations, including environmental implications, before making a decision on approval of the revised reclamation plan.

Ramon E. Hall,

Director, Uranium Recovery Field Office, Nuclear Regulatory Commission.

[FR Doc. 93–24786 Filed 10–7–93; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Membership of the Performance Review Board (PRB)

AGENCY: Office of the United States Trade Representative.

SUMMARY: The following staff members are designated to serve on the Performance Review Board:

Performance Review Board (PRB)

Chair—Kathryn Early
Alternate Chair—John Hopkins
Members
Howard Reed
Carmen Suro-Bredie
Ellen Frost
Ira Wolf
Thomas Nides
Lorraine Green, Executive Secretary

EFFECTIVE DATE: September 28, 1993.

FOR FURTHER INFORMATION CONTACT: Lorraine Green, Director, Human Resources, (202) 395–7360.

John Hopkins,

Assistant United States Trade Representative for Administration.

[FR Doc. 93–24780 Filed 10–7–93; 8:45 am]

BILLING CODE 3190–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

Summary: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Notice of Extent to Offset Federal Income Tax Refund.

(2) *Form(s) submitted:* G–49A, G–49B.

(3) *OMB Number:* 3220–0181.

(4) *Expiration date of current OMB clearance:* Three years from date of OMB approval.

(5) *Type of request:* Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

(6) *Frequency of response:* On occasion.

(7) *Respondents:* Individuals or households.

(8) *Estimated annual number of respondents:* 300.

(9) *Total annual responses:* 300.

(10) *Average time per response:* .166 hours.

(11) *Total annual reporting hours:* 50. .

(12) *Collection description:* Under Title 31 of the U.S. Code, the Railroad Retirement Board (RRB) may refer to the Internal Revenue Service for collection by tax refund offset, legally enforceable debts incurred by beneficiaries who received overpayments from the RRB. The Collection obtains information concerning the debtor's willingness to pay some or all of such debts or to state reasons for not doing so.

Additional Information or Comments: Copies of the form and supporting documents can be obtained from Dennis Eagan, the agency clearance officer (312–751–4693).) Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503.

Dennis Eagan,

Clearance Officer.

[FR Doc. 93–24736 Filed 10–7–93; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–33009; File No. SR–PHLX–93–34]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. to Update Certain Provisions Due to the Change to Friday Expiration for Foreign Currency Options

October 4, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 13, 1993, the Philadelphia Stock Exchange, Inc. ("PHLX" or Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PHLX proposes to amend Floor Procedure Advice ("Advice") B–10 and Advice E–1, due to the recent change from Saturday to Friday expiration for foreign currency options.[1] Specifically, Advice B–10, "Responsibility for Mismatched or "Out" Trades," refers to expiration Saturday, such that the addition of the phrase "of listed options" is proposed to clarify that respecting options that expire on Friday, Monday is too late to inform a registered options trader ("ROT") of a mismatched or "out" trade, because on Monday, the options that expired on Friday are no longer "listed options." In addition, because Advice E–1, "Required Staffing of Options Floor," also refers to "expiration Saturday," this reference should be replaced with language requiring a representative to remain on the trading floor on expiration day until the Exchange's last call of changes, deleting the reference to Saturday.

Finally, the PHLX proposes to amend Exchange Rule 1001(b)35 which contains the definition of "European style." According to the PHLX, this definition needs to be corrected to state that a European style option contract can only be exercised on the day it expires, rather than on the last trading day prior to expiration as it currently reads. The text of the proposed rule change is available at the Office of the Secretary, PHLX, and at the Commission.

[1] See Securities Exchange Act Release No. 32623 (July 13, 1993), 58 FR 38803.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PHLX included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Section (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The PHLX proposes certain amendments in light if the recent change to a Friday expiration for foreign currency options. Specifically, two Exchange Advices require clarification due to references to "expiration Saturday." Advice B–10 and Advice E–1 are currently both applicable to both the equity/index options floor and the foreign currency options floor. Advice E–1 would still contain a staffing requirement, but with the clarification that a representative be available until the Exchange's last call for adjustments on expiration day. Accordingly, this staffing requirement would apply on expiration Saturday for non-foreign currency options as well as on expiration Friday for foreign currency options. In addition, the proposed change to Rule 1001(b)35 corrects the definition of "European style" to reflect the change to Friday expirations for foreign currency options.

The Exchange believes that the proposed rule change is consistent with section 6 of the Act in general, and in particular, section 6(b)(5), in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, as well as to protect investors and the public interest by updating the language in certain Exchange Rules to reflect the recent change from Saturday to Friday expirations for foreign currency options.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Exchange, it has become effective pursuant to section 19(b)(3)(A) of the Act and Subparagraph (e) of Rule 19b–4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PHLX. All submissions should refer to File No. SR–PHLX–93–34 and should be submitted by October 9, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-24802 Filed 10-7-93; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-33008; File No. SR-PHLX-93-36]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to ITSFEA Procedures

October 4, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 17, 1993, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PHLX proposes to amend PHLX Rule 761 and Floor Procedure Advice ("Advice") F-13, both of which concern supervisory procedures relating to the Insider Trading and Securities Fraud Enforcement Act of 1988 ("ITSFEA").[1] Both would be separated into paragraphs (a) and (b), and approval of the required procedures would be made by the Exchange, deleting the reference to the Designated Examining Authority ("DEA"). The text of the proposed rule change and the Exchange's forms related to ITSFEA are available at the Office of the Secretary, PHLX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PHLX included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Section (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In response to Congressional enactment of the amendments to Section 15 of the Act that constitute ITSFEA, the Exchange filed and the Commission approved the Exchange's proposed rule change adopting procedures relating to ITSFEA in 1992.[2] At this time, the PHLX proposes to make minor changes to Exchange Rule 761 and Advice F-13. The first paragraph would become a separate paragraph (a) in order to emphasize that the written supervisory procedures required and acts prohibited by ITSFEA are applicable to all member organizations, regardless of any separate Exchange requirement. Accordingly, the Exchange's requirements become paragraph (b).

In addition, with respect to the approval of the requirements of paragraph (b), the reference to the DEA would be changed to the Exchange. The Exchange's ITSFEA requirements do not apply to those PHLX member organizations which have in place written supervisory procedures relating to ITSFEA pursuant to the rules of another national securities exchange, which were approved by that organization's DEA. As a result, only those PHLX member organizations for which the PHLX is also the DEA are subject to PHLX Rule 761. Thus, because the rule states that the procedures must be approved by the "respective DEA," the Exchange approves all of the procedures under this rule. Accordingly, changing the words "respective DEA" to "Exchange" renders the rule more explicit as to who approves the procedures.

Further, the Exchange proposes to move the sentence stating that organizations with DEA-approved ITSFEA procedures do not also have to meet the PHLX's requirement. The Exchange believes it is clearer to state who is exempt from the rule before listing the rule's requirements in detail. Accordingly, this sentence will appear in paragraph (b) immediately preceding the detailed requirements of sub-paragraphs (1) through (3).

Lastly, in order to facilitate compliance with the Exchange's ITSFEA requirements, the Exchange has developed a form which it believes reflects the requirements of Advice F-13. Specifically, Form F-13 is divided into three sections: (1) Section I is the Exchange's Notice of Insider Trading Advice containing a new employee's attestation;[3] (2) Section II is the List of Personal and Household Accounts filled out by employees;[4] and (3) Section III is the ITSFEA Accounts List used by an employee's supervisor in the course of the review of accounts.[5]

The Exchange believes that the proposed rule change is consistent with section 6 of the Act in general, and in particular, section 6(b)(5), in that it is designed prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and protect investors and the public interest, because it is intended to further the purposes of ITSFEA, including preventing the misuses of material, nonpublic information by brokers and dealers by clarifying PHLX Rule 760 and Advice F-13.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Exchange, it has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions

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[2] 17 CFR 200.30-3(a)(12) (1992).

[1] Public Law 100-704, 102 Stat. 4677.

[2] See Securities Exchange Act Release No. 30597 (April 16, 1992), 57 FR 14855.

[3] See PHLX Rule 761(b)(i).

[4] *Id.*

[5] See PHLX Rule 761(ii), (iii).

should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PHLX. All submissions should refer to File No. SR–PHLX–93–36 and should be submitted by October 29, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.*

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–24803 Filed 10–7–93; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 19757; 812–8570]

Boston Financial Tax Credit Fund VIII, a Limited Partnership, and Arch Street VIII Limited Partnership; Application for Exemption

October 4, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANT: Boston Financial Tax Credit Fund VIII, A Limited Partnership (the "Partnership") and its general partner, Arch Street VIII Limited Partnership (the "General Partner").

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) of the Act from all provisions of the Act.

SUMMARY OF APPLICATION: Applicants seek an order that would exempt the Partnership from all provisions of the Act to permit the Partnership to invest in limited partnerships that engage in the ownership and operation of apartment complexes for low and moderate income persons.

FILING DATE: The application was filed on September 10, 1993.

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*17 CFR 200.30–3(a)(12) (1992).

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 1, 1993, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, 101 Arch Street, Boston, Massachusetts 02210.

FOR FURTHER INFORMATION CONTACT: James J. Dwyer, Staff Attorney, at (202) 504–2920, or Robert A. Robertson, Branch Chief, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Partnership was formed on August 25, 1993, under the Massachusetts Uniform Limited Partnership Act. The Partnership will operate as a "two-tier" partnership, i.e., the Partnership, as limited partner, will invest in other limited partnerships ("Local Limited Partnerships") that in turn will engage in the ownership and operation of apartment complexes. Applicants believe that this two-tier structure is consistent with the purposes and criteria set forth in the SEC's release concerning two-tier real estate partnerships. Investment Company Act Release No. 8456 (August 9, 1974) ("Release No. 8456"). The apartment complexes are expected to qualify for low income housing tax credits under the Internal Revenue Code of 1986 (the "Code").

2. The Partnership's investment objectives are: (a) To provide current tax benefits in the form of tax credits which investors may use to offset their Federal income tax liability, (b) to preserve and protect the Partnership's capital, and (c) to provide limited cash distributions from the operations of the apartment complexes.

3. On August 31, 1993, the Partnership filed a registration statement under the Securities Act of 1933, pursuant to which the Partnership intends to offer publicly, in one or more series, 200,000 units of limited partnership interest ("Units") at $1,000 per Unit. The minimum investment will be five Units. Purchasers of Units will become limited partners ("Limited Partners") of the Partnership.

4. The Partnership will be controlled by the General partner, pursuant to the Partnership's partnership agreement (the "Partnership Agreement"). the Limited Partners, consistent with their limited liability status, will not be entitled to participate in the control of the business of the Partnership. However, a majority-in-interest of the Limited Partners will have the right to amend the Partnership Agreement (subject to certain limitations), remove any General Partner, and elect a replacement therefor, and dissolve the Partnership. In addition, under the Partnership Agreement, each Limited Partner is entitled to review all books and records of the Partnership.

5. The Partnership will not admit any subecribers as Limited Partners to the Partnership until the requested exemptive order is granted or the Partnership receives an opinion of counsel that it is exempt from registration under the Act. Any subscriptions for Units must be approved by the General Partner, which approval will be conditioned upon representations as to suitability of the investment for each subscriber. The suitability standards provide, among other things, that investment in the Partnership is suitable only for an investor who meets the following requirements: (a) In the case of an investor that is a corporation but not subject to Subchapter S of the Code and is neither closely-held nor a personal service corporation, such corporation should reasonably expect to have for each of the next twelve years sufficient Federal taxable income from all sources to utilize the tax credits anticipated from its investment in the Units, or (b) in the case of a noncorporate investor, such investor reasonably expects to have substantial unsheltered passive income or, if an individual, income tax liability during the next twelve years in respect of which the tax credits can be utilized, and either (1) has a net worth (exclusive of home, furnishings and automobiles) of at least $30,000 and an annual gross income of at least $30,000, (2) irrespective of annual income, has a net worth (exclusive of home, furnishings and automobiles) of at least $75,000, or (3) is purchasing in a

fiduciary capacity for a person or entity having such net worth and annual gross income as set forth in clause (1) above or such net worth as set forth in clause (2) above, or (c) in the case of an investor that is a corporation subject to Subchapter S of the Code, each of the shareholders meets the criteria applicable to noncorporate investors, or (d) in the case of a partnership, each of its partners meets the criteria applicable to noncorporate investors. Units will be sold only to investors who meet these suitability standards, or more restrictive suitability standards as may be established by certain states for purchasers of Units within their respective jurisdictions. In addition, transfers of Units will be permitted only if the transferee meets the same suitability standards as had been imposed upon the transferor Limited Partner.

6. Although the Partnership's direct control over the management of each apartment complex is limited, the Partnership's ownership of interests in Local Limited Partnerships shall, in an economic sense, be tantamount to direct ownership of the apartment complexes themselves. The Partnership normally will acquire at least a 95% interest in the profits, losses, and tax credits of the Local Limited Partnerships. The Partnership also normally will acquire a significant interest in the cash distributions of the Local Limited Partnerships. Should the Partnership acquire less than 50% of the interest in any Local Limited Partnership, the Partnership will have at least a 50% vote to amend the Partnership Agreement of such Local Limited Partnership, dissolve such Local Limited Partnership, remove the Local General Partner and elect a replacement, and approve or disapprove the sale of substantially all of the assets of such Local Limited Partnership.

7. The Partnership Agreement and prospectus of the Partnership (the "Prospectus") contain numerous provisions designed to insure fair dealing by the General Partner with the Limited Partners. All compensation to be paid to the General Partner and its affiliates is specified in the Partnership Agreement and Prospectus. While the fees and other forms of compensation that will be paid to the General Partner and its affiliates will not have been negotiated at arm's length, applicants believe that the compensation is fair and on terms no less favorable to the Partnership that would be the case if such arrangements had been made with independent third parties.

8. During the offering and organizational phase, the General Partner and its affiliates will be reimbursed by the Partnership for expenses incurred in connection with organizing the Partnership and conducting the offering. Subject to certain adjustments, and as described in the Partnership Agreement, the General Partner agrees to pay such expenses in excess of sales commissions to the extent the expenses exceed 5.5% of the first $60,000.000 of the gross proceeds of the offering, and 4% of the remaining gross proceeds.

9. During the acquisition phase, the Partnership will pay the General Partner or its affiliates a fee, not to exceed 6% of the gross proceeds, for analyzing and evaluating potential investments in Local Limited Partnerships. During the operating phase, the General Partner or its affiliates may receive certain other fees paid by the Partnership, including without limitation and asset management fee paid in consideration of the administration of the Partnership's affairs, fees paid in consideration of property management services for some of the Local Limited Partnerships, and a fee paid in consideration for consulting services to some of the Local Limited Partnerships. During the liquidation phase, the General Partner generally will receive, subject to certain payments to the Limited Partners and certain other reductions, 5% of the proceeds from the sale or refinancing of Local Limited Partnership projects or interests. In addition to the foregoing fees and interests, the General Partner and its affiliates generally will be allocated 1% of profits and losses of the Partnership for tax purposes and tax credits.

10. All proceeds of the public offering of Units initially will be placed in an escrow account with Shawmut Bank, N.A. (Escrow Agent"). Pending release of the offering proceeds to the Partnership, the Escrow Agent will deposit escrowed funds in a federally insured money market account that invests in short-term United States Government securities, securities issued or guaranteed by the United States Government, certificates of deposit, or time or demand deposits in commercial banks. Upon receipt of a prescribed minimum number of subscriptions, funds in escrow will be released to the Partnership and held in trust pending investment in Local Limited Partnerships.

Applicants' Legal Analysis

1. Applicants believe that the Partnership is not an "investment company" under section 3(a) of the Act. If the Partnership is deemed an investment company, however, applicants request an exemption under section 6(c) from all provisions of the Act.

2. Section 3(a)(1) of the Act provides that an issuer is an "investment company" if it is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities. Applicants, however, believe that the Partnership will not be an investment company under section 3(a)(1) because the Partnership will be in the business of investing in and being beneficial owner of apartment complexes, not securities.

3. The Units are not "face-amount certificates of the installment type," and so applicants submit that the Partnership is not an investment company as defined in section 3(a)(2) of the Act.

4. Applicants believe that the Local Limited Partnership interests do not constitute "investment securities" because those interests are not readily marketable, have no value apart from the value of the apartment complexes owned by the Local Limited Partnerships, and cannot be sold without severe adverse tax consequences. Accordingly, the Partnership should not be considered an investment company under section 3(a)(3) of the Act.

5. Release No. 8456 contemplates that investment companies that are two-tier real estate partnerships that invest in limited partnerships engaged in the development and operation of housing for low and moderate income persons may qualify for exemption from the Act pursuant to section 6(c). Section 6(c) provides that the SEC may exempt any person from any provision of the Act and any rule thereunder, if, and to the extent that, such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

6. Applicants believe that the Partnership will operate in accordance with the purposes and criteria set forth in Release No. 8456. The release lists two conditions, designed for the protection of investors, which must be satisfied to qualify for an exemption under section 6(c). First, interests in the issuer should be sold only to persons for whom investments in limited profit, essentially tax-shelter, investments would not be unsuitable. Second, requirements for fair dealing by the general partner of the issuer with the limited partners of the issuer should be included in the basic organizational documents of the company.

7. Applicants assert, among other things, that the exemption requested is both necessary and appropriate in the public interest because investment in low and moderate income housing in accordance with the national policy expressed in Title IX of the Housing and Urban Development Act of 1968 is not economically suitable for private investors without the tax and organizational advantages of the limited partnership form.

8. Applicants also believes that the suitability standards set forth in the application, the requirements for fair dealing provided by the Partnership Agreement, and pertinent governmental regulations imposed on each Local Limited Partnership by various Federal, state, and local agencies provided protection to investors in Units comparable to and in some respects greater than that provided by the Act.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–24801 Filed 10–7–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–25901]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

October 1, 1993.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) of complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by October 25, 1993, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Consolidated Natural Gas Company (70–8231)

Consolidated Natural Gas Company ("CNG"), CNG Tower, 625 Liberty Avenue, Pittsburgh, Pennsylvania 15222–3139, a registered holding company, has filed a declaration under Section 12(b) of the Act and rule 45 thereunder.

CNG proposes to guarantee, through December 31, 1998, up to an aggregate principal amount of $750 million of the obligations of CNG Gas Services Corporation ("Gas Services"), its wholly owned subsidiary company, pursuant to certain gas purchase, sales and transportation contracts. Gas Services plans to use risk-management tools to reduce the CNG's risk. However, no additional guarantee of Gas Services' obligations would be made by CNG as long as there are any current defaults by Gas Services on any of its delivery obligations.

Eastern Utilities Associates, et al. (70–8255)

Eastern Utilities Associates ("EUA"), a registered holding company, and its nonutility subsidiary company, EUA Cogenex Corporation ("Cogenex"), both located at P.O. Box 2333, Boston, Massachusetts 02107, have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b), and 12(f) of the Act and rules 43, 45 and 50(a)(5) thereunder.

In separate transactions, Cogenex proposes to acquire two energy management service companies, James L. Day Co., Inc. a New York corporation ("Day Co."), and Northeast Energy Management, Inc., a Maine corporation ("NEMI"). The acquisitions will be accomplished by the exchange of the common stock of these companies to Cogenex for common stock of EUA. The outstanding common stock of the companies will then be cancelled by operation of law. Cogenex will pay an aggregate purchase price for Day Co. and NEMI not to exceed $5 million and $12 million, respectively, as described in more detail below. The number of shares of EUA common stock to be exchanged in the transactions will be determined by their average closing market price over a five-day period before the relevant payment date.

Cogenex is an energy conservation company. It employs energy efficiency technology and equipment, participates in self-generation projects, and assists electric utilities in demand-side management ("DSCM") activities, including, but not limited to, shared-savings energy conservation projects and demand-side utility programs. At June 30, 1993, Cogenex's assets were $166.9 million. For the six month period ended June 30, 1993, Cogenex had revenues of $26.9 million and net income of $1.9 million, as compared to revenues of $44.2 million and net income of $2.8 million for the twelve months ended December 31, 1992.

Day Co. and NEMI are engaged in these same businesses. Day Co. is primarily engaged in the business of customization, installation and servicing of building temperature control systems and process control systems for the purpose of energy conservation. For example, Day Co. supplies and installs control systems for large commercial buildings. NEMI is an energy services contracting firm, which has a contract for DSM services with Central Maine Power Company ("Central Maine") for commercial/industrial energy efficiency projects. At June 30, 1993, Day Co. had assets of $2.8 million. For the six month period ended June 30, 1993, Day Co. had revenues of $3.3 million and net income of $108,000.

Day Co. stockholders will have two payment options, each payable only in EUA common stock. Under Option 1, the Day Co. stockholders will receive $3 million at closing plus a deferred earn-out amount ranging from zero up to $1 million depending on the level of Day Co. cumulative operating income, as defined, for approximately two years after closing. Under Option 2, the Day Co. stockholders will receive $2.5 million at closing, plus an earn-out amount ranging from zero up to $1.25 million based on cumulative operating income for approximately two years after closing, or, if a target cumulative operating income level is reached, up to an aggregate earn-out of $2.5 million based on cumulative operating income for approximately three years after closing. The closing price will be adjusted up or down on a dollar-for-dollar basis in the event that the shareholders' equity of Day Co. at closing is greater or less than $752,400, the amount of Day Co.'s shareholders' equity on December 31, 1992. Assuming an EUA common share price of $29.00 per share, up to 137,931 common shares of EUA could be issued in the acquisition under Option 1, and up to 172,414 shares under Option 2. The actual number of shares to be issued will be determined in accordance with the formula to be included in the merger agreement. Cash will be paid in lieu of fractional shares of common stock.

Cogenex will also assume Day Co. liabilities, including promissory notes to third parties up to $973,000, provided that the closing price will be reduced on a dollar-for-dollar basis for promissory notes in excess of this amount. Any guarantees of the liabilities of Day Co. by the Day Co. shareholders (and/or their spouses) must be discharged by Cogenex in connection with the closing.

Cogenex will pay a total consideration of approximately $12 million for NEMI. Assuming an EUA common share price of $29.00 per share, up to approximately 414,000 shares could be issued in the acquisition. The final amount of such consideration will be equal to the "gross value" of NEMI, defined as the net present value, using a discount rate of 14%, of 95% of NEMI's gross projected revenue reduced by the liabilities of NEMI to be assumed by Cogenex as a result of the merger. NEMI's gross projected revenue and the amount of liabilities to be assumed by Cogenex will be finally determined at or prior to closing. Cash will be issued in lieu of fractional shares of common stock.

Cogenex will defer and subject to offset a portion of the purchase price equal to $3 million (the "Hold Back") for certain NEMI indemnity obligations. The Hold Back will be paid upon the earlier of the second anniversary of closing or December 31, 1995 (the "Hold Back Payment Date"). Interest on the Hold Back will accrue from closing and be paid on the Hold Back Payment Date, at the base lending rate in effect from time to time and published by the First National Bank of Boston, compounded monthly. The Hold Back Amount and interest thereon will be paid also in EUA common shares.

As stated, EUA proposes to issue and sell 1,500,000 shares of new common stock, $5.00 par value, in order to effect the acquisitions described above. The maximum number of shares issued by EUA in connection with the acquisitions of Day Co. and NEMI will be based upon the formulas described above and will be less than the total number of shares to be registered under the Securities Act of 1933. The additional shares being registered are for possible use in connection with future Cogenex acquisitions for which it would seek subsequent Commission approval.

New England Electric System, et al. (70–8261)

New England Electric System ("NEES"), a registered holding company and its subsidiary companies, Massachusetts Electric Company ("Mass-Electric"), Narragansett Energy Resources Company ("Narragansett Energy"), New England Electric Transmission Corporation ("Transmission"), New England Energy Incorporated ("NEET"), New England Hydro-Transmission Electric Company, Inc. ("NE-Hydro"), New England Hydro-Transmission Corporation ("Hydro-TransCorp"), New England Power Company ("NEP"), and New England Power Service Company ("NEPSCO"), all located at 25 Research Drive, Westborough, Massachusetts 01582, Granite State Electric Company ("Granite State"), 33 West Lebanon Road, Lebanon, New Hampshire 03766, and The Narragansett Electric Company ("Narragansett"), 280 Melrose Street, Providence, Rhode Island 02901 (collectively, "Applicants") have filed an application-declaration under Sections 6(a), 7, 9(a), 10, and 12(b) of the Act and Rules 43, 45, and 50(a)(5) thereunder.

From November 1, 1993 through October 31, 1993, certain subsidiaries request short-term financing authority up to the amounts listed below. Such financing will be made either through bank loans and/or through loans by the NEES intrasystem money pool ("Money Pool") and/or in the case of Mass-Electric, Narragansett, and NEP, through the issuance of commercial paper.

	Amount requested (millions)
Granite State	$10
Mass-Electric	150
Narragansett	100
Transmission	10
NE-Hydro	25
Hydro-TransCorp	25
NEP	375
NEPSCO	20
Total	715

Applicants state that the proceeds from the subsidiary companies' borrowings will be used: (1) To pay then outstanding notes initially issued to banks and/or dealers in commercial paper and/or the Money Pool; (2) to provide new money for capitalizable expenditures and/or to reimburse the treasury therefor; and (3) for other corporate purposes including working capital and the financing of construction and property acquisitions. Although no acquisition is anticipated at this time, proceeds from the borrowings may be used to acquire an interest in an exempt wholesale generator or in a foreign utility company as defined by the Act.

Applicants state that the bank loans will be evidenced by notes maturing less than one year from the date of issuance. Fees will be paid to the banks in lieu of compensating balance arrangements. The effective interest cost will not exceed the greater of the bank's base or prime lending rate, or the rate publishes in the Wall Street Journal as the high federal funds rate, plus, in either case, one percent.

It is stated that certain bank borrowings may be without prepayment privileges. Payment of any short-term notes prior to maturity will be made on the basis most favorable to the subsidiary companies, taking into account fixed maturities, interest rates, and any other relevant financial considerations.

Under the Money Pool, surplus funds that maybe available in the treasuries of the participating companies are used to make loans to the borrowing companies. All applicants request authority to lend to the Money Pool, but only Granite State, Mass-Electric, Narragansett, Transmission, NE-Hydro, Hydro-TransCorp, NEP, and NEPSCO propose to borrow from the Money Pool. Loans by the Money Pool may or may not be evidenced by notes. The interest rate for such loans will be the monthly average of the rate for high grade 30-day commercial paper sold through dealers by major corporations as published in the Wall Street Journal. Although there is no fixed maturity date for loans made by the Money Pool, such loans are payable on demand, and may be prepaid without penalty.

Mass-Electric, Narragansett, and NEP propose to issue and to sell commercial paper ("Commercial Paper") directly to one or more nationally recognized commercial paper dealers ("CP Dealers"). Initially, the CP Dealer will be the First Boston Corporation and/or Merrill Lynch Money Markets Incorporated.

The Commercial Paper will satisfy the requirements of Section 3(a)(3) of the Securities Act of 1993, will be in the form of unsecured promissory notes having varying maturities of not to exceed 270 days, and will be in denominations of not less than $50,000. Prepayment prior to maturity will be prohibited.

The CP Dealer will purchase the Commercial Paper from the issuer at a discount which will not be excess of the discount then prevailing for commercial paper of comparable quality and maturity which is sold by public utility issuers to commercial paper dealers. The CP Dealer will initially reoffer the commercial paper at the discount rate not more than ⅛ of 1% per annum less than the prevailing discount rate to the issuer.

The effective interest cost to the issuer of Commercial Paper will generally not exceed the effective interest cost of the base lending rate at the First National

Bank of Boston ("Bank"). However, the effective interest cost of such paper is based on the supply of, and the demand for, that and similar quality paper at the time of sale, and the interest cost has from time to time exceeded that of the base lending rate for brief periods. While it is not anticipated that the effective annual cost of borrowing through Commercial Paper will exceed the annual base-rate borrowing from the Bank, in order to obtain maximum flexibility, Commercial Paper with a maturity of not than 90 days may be issued with an effective cost in excess of the then-existing lending rate.

West Texas Utilities Company (70–8265)

West Texas Utilities Company ("WTU"), 301 Cypress Street, Abilene, Texas 79601–5820, an eclectic public-utility subsidiary company of Central and South West Corporation, a registered holding company, has filed an application-declaration under Sections 6(a), 7, 9(a), 10 and 12(c) of the Act and Rules 42, 50 and 50(a)(5) thereunder.

WTU proposes to issue and sell up to an aggregate principal amount of $45 million of first mortgage bonds ("New Bonds"), in one or more series, from time to time through December 31, 1996. The New Bonds will have maturities of not less than five years nor more than forty years. WTU estimates that the New Bonds will be issued at an interest rate between 4.5% and 8.5% depending on market conditions and maturity, and in no event will the interest rate on the New Bonds exceed 11%.

The New Bonds will be issued under WTU's indenture dated August 1, 1943, to Harris Trust and Savings Bank and J. Bartolini, as Trustees, as amended and supplemented, ("Indenture") and secured by a first lien on substantially all of the properties now owned and hereafter acquired by WTU, except for properties specifically excepted from such liens. The New Bonds will be issued under one or more new supplements to the Indenture and will be authenticated against available unused net expenditures for bondable property and/or previously retired first mortgage bonds.

The proceeds from the sale of the New Bonds will be used principally to redeem all or a portion of one or more series of WTU's outstanding first mortgage bonds including $12 million aggregate principal amount of Series G Bonds, 7¼%, due January 1, 1999 ("Series G Bonds") and $23 million aggregate principal amount of Series H Bonds, 7⅞%, due July 1, 2003 ("Series H Bonds"), at the then current general redemption price (currently, 101.25% and 102.61% of the principal amount of the Series G Bonds and Series H Bonds, respectively), plus accrued and unpaid interest to the redemption date (collectively, "Old Bonds"). The Series G Bonds and Series H Bonds were issued in 1969 and 1973, respectively, under the Indenture and are currently refundable pursuant to their terms.

Any net proceeds not used for the redemption or repurchase of the Old Bonds will be used to repay outstanding short-term borrowings incurred or expected to be incurred primarily to finance construction expenditures, to provide working capital or for other general corporate purposes. In the event the proceeds from the issuance of the New Bonds are less than the amount required to redeem all of the Old Bonds, WTU will pay a portion of the redemption price from internally generated funds or available short-term borrowings.

WTU shall not redeem the Old Bonds with the proceeds of the sale of the New Bonds unless the estimated present value savings derived from the net difference between interest payments on a hypothetical new issue of bonds of a maturity comparable to the maturity remaining on the Old Bonds is, on an after-tax basis, greater than the present value of all redemption and issuance costs, assuming a discount rate based on the estimated interest rate on the New Bonds ("Net Present Value Savings"). If the New Bonds are issued with comparable maturities to the Old Bonds being redeemed, then Net Present Value Savings will be generated. However, given the current low rates of interest, WTU may wish to extend the maturities of the New Bonds beyond the maturities of the Old Bonds, in which case WTU may not realize Net Present Value Savings.

WTU requests authority to sell the New Bonds either: (1) Under competitive bidding pursuant to Rule 50 or, in the case of a delayed or continuous offering and sale pursuant to Rule 415 under the Securities Act of 1933, as amended, the alternative competitive bidding procedures as modified by the Commission's Statement of Policy dated September 2, 1982 (HCAR No. 22623); or (2) in a negotiated transaction with underwriters or agents under an exception from the requirements of competitive bidding under Rule 50(a)(5). Therefore, WTU requests authority to enter into negotiations with potential underwriters with respect to the interest rate, redemption provisions and other terms and conditions applicable to the New Bonds. It may do so.

WTU proposes to deviate from the Commission's Statement of Policy Regarding First Mortgage Bonds Subject to the Public Utility Holding Company Act of 1935 (HCAR No. 13105, February 16, 1956, as amended by HCAR No. 16369, May 8, 1969). WTU requests authority to include in the terms of the New Bonds provisions that they will either: (1) Not be redeemable at WTU's option for a period of up to a maximum of fifteen years; or (2) be issued with a refunding restriction that WTU would not be permitted to refund the New Bonds with lower cost debt securities for a specified period not exceeding fifteen years. The exact terms of any redemption or refunding restrictions would be determined at or about the time of sale of the New Bonds. WTU further proposes to issue the New Bonds with or without a sinking or retirement fund and requests a waiver from the requirement of a limitation on dividends.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–24746 Filed 10–7–93; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice 1876]

Determination Sudan

On August 12, 1993, Secretary of State Warren Christopher made the following determination:

"In accordance with section 6(j) of the Export Administration Act (50 U.S.C. App. 2405 (j)), I hereby determine that Sudan is a country which has repeatedly provided support for acts of international terrorism. The list of 6(j) countries as of this time therefore includes Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria."

Warren Christopher,

Secretary of State.

[FR Doc. 93–24838 Filed 10–7–93; 8:45 am]

BILLING CODE 4710–10–M

[Public Notice 1877]

Advisory Committee on Historical Diplomatic Documentation; Meeting

The Advisory Committee on Historical Diplomatic Documentation

will meet November 4–5, 1993, at 9 a.m. in the Department of State.

The Committee will meet in open session from 9 a.m. on the morning of Thursday, November 4, 1993, until noon of that day, in room 1205, Main State. The remainder of the Committee's sessions, until the end of this session on Friday, November 5, at 2 p.m., including several subcommittee meetings on November 3, will be closed to the public in accordance with section 10(d) of the Federal Advisory Committee Act (P.L. 92–463). It has been determined that discussions during these portions of the meeting will involve consideration of matters not subject to public disclosure under 5 U.S.C. 552b(c)(1), and that the public interest requires that such activities will be withheld from disclosure.

Questions concerning the meeting should be directed to William Z. Slany, Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, Department of State, Office of the Historian, Washington, DC 20520, telephone (202) 663–1123.

Dated: October 4, 1993.

William Z. Slany,

Executive Secretary.

[FR Doc. 93–24839 Filed 10–7–93; 8:45 am]

BILLING CODE 4710–11–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended October 1, 1993

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 49156
Date filed: September 30, 1993
Parties: Members of the International Air Transport Association
Subject: Comp Telex Mail Vote 649, Amend Mileage Manual
Proposed Effective Date: November 1, 1993

Docket Number: 49157
Date filed: September 30, 1993
Parties: Members of the International Air Transport Association
Subject: TC3 Telex Mail Vote 650, Japan-Singapore fares
Proposed Effective Date: November 1, 1993

Docket Number: 49158
Date filed: September 30, 1993
Parties: Members of the International Air Transport Association
Subject: TC3 Telex Mail Vote 648, Taiwan-Japan fares, r-1—070t & r-2—085t
Proposed Effective Date: January 1, 1994

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 93–24796 Filed 10–7–93; 8:45 am]

BILLING CODE 4910–62–P

Order Adjusting International Cargo Rate Flexibility Level

Policy Statement PS–109, implemented by Regulation ER–1322 of the Civil Aeronautics Board and adopted by the Department, established geographic zones of cargo pricing flexibility within which certain cargo rate tariffs filed by carriers would be subject to suspension only in extraordinary circumstances.

The Standard Foreign Rate Level (SFRL) for a particular market is the rate in effect on April 1, 1982, adjusted for the cost experience of the carriers in the applicable ratemaking entity. The first adjustment was effective April 1, 1983. By Order 93–7–41, the Department established the currently effective SFRL adjustments.

In establishing the SFRL for the two-month period beginning October 1, 1993, we have projected non-fuel costs based on the year ended June 30, 1993 data, and have determined fuel prices on the basis of the latest available experienced monthly fuel cost levels as reported to the Department.

By Order 93–9–38 cargo rates may be adjusted by the following adjustment factors over the April 1, 1982 level:

Atlantic	1.1756
Western Hemisphere	1.1151
Pacific	1.4702

For further information contact: Keith A. Shangraw (202) 366–2439.

By the Department of Transportation:

Dated: September 30, 1993.

Patrick V. Murphy,

Acting Assistant Secretary for Policy and International Affairs.

[FR Doc. 93–24794 Filed 10–7–93; 8:45 am]

BILLING CODE 4910–62–P

[Docket 37554]

Order Adjusting the Standard Foreign Fare Level Index

The International Air Transportation Competition Act (IATCA), Public Law 96–192, requires that the Department, as successor to the Civil Aeronautics Board, establish a Standard Foreign Fare Level (SFFL) by adjusting the SFFL base periodically by percentage changes in actual operating costs per available seat-mile (ASM). Order 80–2–69 established the first interim SFFL, and Order 93–7–43 established the currently effective two-month SFFL applicable through September 30, 1993.

In establishing the SFFL for the two-month period beginning October 1, 1993, we have projected non-fuel costs based on the year ended June 30, 1993 data, and have determined fuel prices on the basis of the latest available experienced monthly fuel cost levels as reported to the Department.

By Order 93–9–37 fares may be increased by the following adjustment factors over the October 1979 level:

Atlantic	1.4375
Latin America	1.3427
Pacific	1.8922
Canada	1.4185

For further information contact: Keith A. Shangraw (202) 366–2439.

By the Department of Transportation.

Dated: September 30, 1993.

Patrick V. Murphy,

Acting Assistant Secretary for Policy and International Affairs.

[FR Doc. 93–24795 Filed 10–7–93; 8:45 am]

BILLING CODE 4910–62–M

Coast Guard

[GGD–93–065]

National Boating Safety Advisory Council; Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. 1), notice is hereby given of a meeting of the National Boating Safety Advisory Council to be held on Monday and Tuesday, November 1 and 2, 1993, at the Adam's Mark Hotel, 430 South Gulfview Boulevard, Clearwater Beach, Florida, beginning at 8:45 a.m. and ending at 4 p.m. The agenda for the meeting will be as follows:

1. Review of action taken at the 51st meeting of the Council.
2. Executive Director's Report.
3. Multiple-Use Waterways Subcommittee Report.
4. Personal Watercraft Definition and Requirements Subcommittee Report.
5. Overview of the National Marine Sanctuaries Program.
6. Presentation on the National Transportation Safety Board (NTSB) Study on Recreational Boating Safety.
7. Report of the Subcommittee for the Review of the National Transportation Safety Board Recreational Boating Safety Study, and Council Discussion.
8. Report on Inflatable Personal Flotation Devices (PFDs) and other PFD Issues.
9. Report on the National Association of State Boating Law Administrators Annual Conference.

10. Presentation on Field Sobriety Test Validation.

11. Report on the Role of Voluntary Safety Standards.

12. Chairman's Session.

Attendance is open to the interested public. With advance notice, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should so notify the Executive Director no later than the day before the meeting. Any member of the public may present a written statement to the Council at any time. Additional information may be obtained from Mr. Albert J. Marmo, Executive Director, National Boating Safety Advisory Council, U.S. Coast Guard, (G–NAB), Washington, DC 20593–0001, or by calling (202) 267–1077.

Dated: October 5, 1993.

William J. Ecker,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 93–24804 Filed 10–7–93; 8:45 am]

BILLING CODE 4910–14–M

[GGD–93–066]

National Boating Safety Advisory Council; Subcommittee Meetings

Pursuant to section 10 (a) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 1), notice is hereby given of meetings of the National Boating Safety Advisory Council's Subcommittees on the Review of the National Transportation Safety Board Safety Study on Recreational Boating Safety, Personal Watercraft Definition and Requirements, and Multiple-Use Waterways to be held on Saturday, October 30, 1993, at the Adam's Mark Hotel, 430 South Gulfview Boulevard, Clearwater Beach, Florida, between 1 p.m. and 5:30 p.m. The agenda for each meeting will be to review the status of various projects undertaken by the subcommittee and initiate any necessary new tasks. Attendance is open to the interested public. With advance notice, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should so notify the Executive Director no later than the day before the meeting. Any member of the public may present a written statement to the Council at any time. Additional information may be obtained from Mr. Albert J. Marmo, Executive Director, National Boating Safety Advisory Council, U.S. Coast Guard, (G–NAB), Washington DC 20593–0001, or by calling (202) 267–1077.

Dated: October 5, 1993.

William J. Ecker,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 93–24805 Filed 10–7–93; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

RTCA, Inc.; Twenty-Seventh Meeting of Special Committee 159

Minimum Operational Performance Standards for Airborne Navigation Equipment Using Global Positioning System (GPS)

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix I), notice is hereby given for Special Committee 159 meeting to be held October 18–22, 1993, starting at 9 a.m., in the RTCA Conference Room at 1140 Connecticut Avenue, SW., Suite 1020, Washington, DC 20036.

Specific Working Groups Sessions

October 18—Working Group 5, Fault Detection and Isolation

October 19—Working Group 2, GPS/GIC/WAD

October 20—Working Group 3, GPS/Other Navigation Systems

October 21—Working Group 4, Precision Landing Guidance & Airport Surface Surveillance

The agenda for this meeting is as follows: (1) Chairman's introductory remarks; (2) Approval of summary of the twenty-sixth meeting; (3) Review working group (WG) progress and identify issues for resolution (a) GPS/GLONASS (WG1) (b) GPS/GIC/WAD (WG2) (c) GPS/Other Navigation Systems (WG3) (d) GPS/precision Landing Guidance and Airport Surface Surveillance (WG4) (e) Fault Detection and Isolation (WG5) (f) Interference (Ad Hoc); (4) Review of EUROCAE activities; (5) Assignment/review of future work; (6) Other business (7) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on September 28, 1993.

Joyce J. Gillen,

Designated Officer.

[FR Doc. 93–24788 Filed 10–7–93; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc.; Second Meeting of Special Committee 180

Design Assurance Guidance for Complex, Electronic Hardware Used in Airborne Systems

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix I), notice is hereby given for Special Committee 180 meeting to be held October 25–26, 1993, starting at 9:30 a.m., in the RTCA Conference Room 1140 Connecticut Avenue, SW, Suite 1020, Washington, DC 20036.

The agenda for this meeting is as follows: (1) Discussion of lessons learned from SC–167; (2) Finalize Terms of Reference Revision; (3) Identify goals, develop work program and examine milestones; (4) Assign tasks; (5) Review recruitment of other support; (6) Review status of EUROCAE involvement; (7) Other business; (8) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW, Suite 1020, Washington, DC 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on September 28, 1993.

Joyce J. Gillen,

Designated Officer.

[FR Doc. 93–24789 Filed 10–7–93; 8:45 am]

BILLING CODE 4910–13–M

Research, Engineering and Development Advisory Committee; Open Systems Development Subcommittee

Pursuant to section 10(A)(2) of the Federal Advisory Committee Act (Public Law 92–362; 5 U.S.C. App. I), notice is hereby given of a meeting of the Open Systems Development Subcommittee of the Federal Aviation Administration Research, Engineering and Development Advisory Committee to be held on Friday, November 5, 1993, at 9 a.m. The meeting will take place at TRW, 12900

Federal Systems Park Drive, Fairfax, VA 22033, in Conference Room 7150–C.

The purpose of this meeting is to review preliminary findings and recommendations of the Open Systems Development Subcommittee in preparation for the development of a report to be made to the members of the full advisory committee prior to final recommendations on Open Systems being submitted to the Federal Aviation Administration.

Attendance is open to the interested public but limited to space available. With the approval of the Subcommittee Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements, obtain information, or plan to access the building to attend the meeting should contact Mrs. Eleanor Dex at TRW, telephone (703) 968–1700.

Members of the public may present a written statement to the subcommittee at any time.

Issued in Washington, DC, on October 4, 1993.

Martin T. Pozesky,

Executive Director, Research, Engineering and Development Advisory Committee.

[FR Doc. 93–24790 Filed 10–7–93; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc.; Sixth Meeting of Special Committee 176

Airborne Loran-C Area Navigation Equipment

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix I), notice is hereby given for Special Committee 176 meeting to be held October 4, 1993, starting at 9 a.m., in the RTCA Conference Room at 1140 Connecticut Avenue, SW., Suite 1020, Washington, DC 20036.

The agenda for this meeting is as follows: (1) Chairman's Remarks; (2) Approval of the summary of the fifth meeting; (3) Review Draft Change No. 1 to RTCA/DO–194; (4) Review ways to improve Loran coverage and accuracy; (5) Assignment of tasks; (6) Other business; (7) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on September 28, 1993.

Joyce J. Gillen,

Designated Officer.

[FR Doc. 93–24791 Filed 10–7–93; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc.; Eighth Meeting of Special Committee 178

Requirements for Aircraft Ground Surface Position Sensors

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix I), notice is hereby given for Special Committee 178 meeting to be held November 8–9, 1993, starting at 9 a.m., in the RTCA Conference Room at 1140 Connecticut Avenue, SW., Suite 1020, Washington, DC 20036.

The agenda for this meeting is as follows: (1) Chairman's introductory remarks; (2) Review and approval of meeting agenda; (3) Approve summary of the seventh meeting held September 21–22, RTCA Paper No. 418–93/SC178–34 (enclosed); (4) Review draft report. Review each item and make additions, deletions, changes as required; (5) Breakout sessions if needed; (6) Recap of session; (7) Other business; (8) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on September 28, 1993.

Joyce J. Gillen,

Designated Officer.

[FR Doc. 93–24792 Filed 10–7–93; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

October 1, 1993.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0003

Form Number: IRS Forms SS–4 and SS–4PR

Type of Review: Revision

Title: Application for Employer Identification Number (SS–4); Solicitud de Numero de Identificacion Patronal (SS–4PR)

Description: Taxpayers required to have an identification number for use on any return, statement, or other document must prepare and file Form SS–4 or Form SS–4PR (Puerto Rico only) to obtain a number. The information is used by the Internal Revenue Service and the Social Security Administration in tax administration and by the Bureau of the Census for business statistics.

Respondents: Individuals or households, State or local governments, Farms, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations

Estimated Number of Respondents/ Recordkeepers: 3,217,362

Estimated Burden Hours Per Respondent/Recordkeeper:

	Form SS–4	Form SS–4PR
Recordkeeping	7 minutes	7 minutes.
Learning about the law or the form	18 minutes	20 minutes.
Preparing the form	44 minutes	44 minutes.
Copying, assembling, and sending the form to the IRS	20 minutes	20 minutes.

Frequency of Response: On occasion
Estimated Total Reporting/ Recordkeeping Burden: 4,761,932 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports,Management Officer.
[FR Doc. 93–24799 Filed 10–7–93; 8:45 am]
BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review

October 4, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Customs Service

OMB Number: 1515–0088
Form Number: None
Type of Review: Extension
Title: Foreign Assembler's Declaration (with Endorsement of Importer)
Description: This information is needed to substantiate a claim for duty-free treatment of U.S. fabricated components sent abroad for assembly and subsequently return to the United States.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents/ Recordkeepers: 2,730
Estimated Burden Hours Per Respondent/Recordkeeper: 50 minutes
Frequency of Response: Other (with every importation of merchandise under this tariff classification).
Estimated Total Reporting Burden: 283,469 hours.
Clearance Officer: Ralph Meyer (202) 927–1552, U.S. Customs Service, Paperwork Management Branch, Room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 93–24800 Filed 10–7–93; 8:45 am]
BILLING CODE 4820–02–M

UNITED STATES SENTENCING COMMISSION

Revisions to the Sentencing Guidelines for the United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of final action regarding amendments to sentencing guidelines and policy statements effective November 1, 1993.

SUMMARY: The Sentencing Commission hereby gives notice of several actions taken pursuant to its authority under section 217(a) of the Comprehensive Crime Control Act of 1984 (28 U.S.C. 994 (a) and (u)). The Commission has reviewed amendments submitted to Congress on April 29, 1993, that may result in a lower guideline range and has designated five such amendments for inclusion in policy statement § 1B1.10 (Retroactivity of Amended Guideline Range). The Commission also has made several commentary amendments, explaining how particular guidelines are intended to be applied, and miscellaneous additions and corrections to the Statutory Index. Finally, the Commission has made a number of minor editorial revisions to the Guidelines Manual.

DATES: The Commission has specified an effective date of November 1, 1993, for these actions.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Information Specialist, Telephone: (202) 273–4590.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the U.S. Government. The Commission is empowered by 28 U.S.C. 994(a) to promulgate sentencing guidelines and policy statements for federal sentencing courts. Sections 994 (o) and (p) of title 28, United States Code, further direct the Commission to periodically review and revise guidelines and policy statements previously promulgated, and require that guideline amendments be submitted to Congress for review. Absent action of the Congress to the contrary, guideline amendments become effective following 180 days of Congressional review on the date specified by the Commission (i.e., November 1, 1993). Unlike new guidelines and amendments thereto issued pursuant to 28 U.S.C. 994 (a) and (p), sentencing policy statements, commentary, and amendments thereto promulgated by the Commission are not required to be submitted to Congress for 180 days' review prior to their taking effect.

In connection with its ongoing review of the Guidelines Manual, the Commission continues to welcome comment on any aspect of the sentencing guidelines, policy statements, and official commentary. Comments should be sent to: The United States Sentencing Commission, One Columbus Circle, NE., suite 2–500, South Lobby, Washington, DC 20002–8002, Attn: Office of Communications.

Authority: Section 217(a) of the Comprehensive Crime Control Act of 1984 (28 U.S.C. 994(a)).

William W. Wilkins, Jr.,
Chairman.

Additional Commentary Amendments and Modifications to the Statutory Index

1. Amendment: The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 16 by inserting the following at the end:

"Example: A defendant, who the court finds meets the criteria for a downward departure under this provision, has a Chapter Two offense level of 40, a 2-level reduction for a minor role from § 3B1.2, and a 3-level reduction for acceptance of responsibility from § 3E1.1. His final offense level is 35. If the defendant's Chapter Two offense level had been 36, the 2-level reduction for a minor role and 3-level reduction for acceptance of responsibility would have resulted in a final offense level of 31. Therefore, under this provision, a downward departure not to exceed 4 levels (from level 35 to level 31) would be authorized.".

Reason for Amendment: This amendment adds an example to clarify the operation of Application Note 16 of § 2D1.1, an application note added this amendment cycle. The effective date of this amendment is November 1, 1993.

2. Amendment: Appendix A (Statutory Index) is amended in the second paragraph of the introduction by deleting "or an attempt" and inserting in lieu thereof ", attempt, or solicitation".

Appendix A (Statutory Index) is amended by inserting the following at

the appropriate place by title and section:

"16 U.S.C. § 742j-1(a)	2Q2.1",
"16 U.S.C. § 773e(a)(2), (3),(4),(6)	2A2.4",
"16 U.S.C. § 773g	2A2.4",
"16 U.S.C. § 916c	2Q2.1",
"16 U.S.C. § 916f	2Q2.1",
"16 U.S.C. § 973c(a)(8), (10),(11),(12)	2A2.4",
"16 U.S.C. § 973e	2A2.4",
"16 U.S.C. § 1417(a)(5),(6), (b)(2)	2A2.4",
"16 U.S.C. § 3606	2A2.4",
"16 U.S.C. § 3637(a)(2), (3),(4),(6),(c)	2A2.4",
"16 U.S.C. § 4223	2Q2.1",
"16 U.S.C. § 4224	2Q2.1",
"16 U.S.C. § 4910(a)	2Q2.1",
"16 U.S.C. § 4912(a)(2)(A)	2Q2.1",
"16 U.S.C. § 5009(5),(6), (7),(8)	2A2.4",
"16 U.S.C. § 5010(b)	2A2.4",
"18 U.S.C. § 43	2B1.3",
"18 U.S.C. § 228	2J1.1",
"18 U.S.C. § 924(h)	2K2.1",
"18 U.S.C. § 2119	2B3.1",
"18 U.S.C. § 2322	2B6.1",
"22 U.S.C. § 2197(n)	2F1.1",
"26 U.S.C. § 7208	2F1.1",
"26 U.S.C. § 7212(a) (omnibus clause)	2J1.2, 2T1.1",
"26 U.S.C. § 7232	2F1.1",
"29 U.S.C. § 530	2B3.2",
"29 U.S.C. § 1131	2E5.3",
"30 U.S.C. § 1461(a)(3), (4),(5),(7)	2A2.4",
"30 U.S.C. § 1463	2A2.4",
"42 U.S.C. § 1973gg-10	2H2.1",
"42 U.S.C. § 9151(2),(3), (4),(5),	2A2.4",
"42 U.S.C. § 9152(d)	2A2.4",
"46 U.S.C. App. § 1707a (f)(2)	2B1.1",
"49 U.S.C. App. § 1687(g)	2B1.3"

Appendix A (Statutory Index) is amended by deleting:

"7 U.S.C. § 13(a)	2B1.1
7 U.S.C. § 13(b)	2F1.1
7 U.S.C. § 13(c)	2F1.1
7 U.S.C. § 13(e)	2F1.2",

and inserting in lieu thereof:

"7 U.S.C. § 13(a)(1)	2B1.1
7 U.S.C. § 13(a)(2)	2F1.1
7 U.S.C. § 13(a)(3)	2F1.1
7 U.S.C. § 13(a)(4)	2F1.1
7 U.S.C. § 13(c)	2C1.3
7 U.S.C. § 13(d)	2F1.2
7 U.S.C. § 13(f)	2F1.2";

In the lines referenced to 15 U.S.C. §§ 1172, 1173, 1174, 1175, and 1176 by deleting "2E3.3" and inserting in lieu thereof "2E3.1";

In the lines referenced to 16 U.S.C. §§ 1029 and 1030 by deleting "2A2.2, 2A2.3, 2Q2.1" and inserting in lieu thereof "2A2.4";

In the line referenced to 16 U.S.C. § 1857(1)(D) by deleting "2A2.3" and inserting in lieu thereof "2A2.4";

In the line referenced to 16 U.S.C. § 1857(1)(E) by deleting "2A2.2, 2A2.3" and inserting in lieu thereof "2A2.4";

In the line referenced to 16 U.S.C. § 1857(1)(F) by deleting "2A2.3" and inserting in lieu thereof "2A2.4";

In the line referenced to 16 U.S.C. § 1857(1)(H) by deleting "2A2.2, 2A2.3" and inserting in lieu thereof "2A2.4";

By deleting: "16 U.S.C. § 1857(2)2Q2.1";

In the line referenced to 16 U.S.C. § 1859 by deleting "2A2.2, 2A2.3, 2Q2.1" and inserting in lieu thereof "2A2.4";

In the line referenced to 16 U.S.C. § 2435(4) by deleting "2A2.3" and inserting in lieu thereof "2A2.4";

In the lines referenced to 16 U.S.C. §§ 2435(5), 2435(6), 2435(7), and 2438 by deleting "2A2.2, 2A2.3" and inserting in lieu thereof "2A2.4";

In the line referenced to 18 U.S.C. § 32(a),(b) by deleting "2A1.1–A2.3" and inserting in lieu thereof "2A1.1, 2A1.2, 2A1.3, 2A1.4, 2A2.1, 2A2.2, 2A2.3".

In the lines referenced to 18 U.S.C. §§ 201(b)(3) and 201(b)(4) by deleting "2J1.8" and inserting in lieu thereof "2J1.3";

In the lines referenced to 18 U.S.C. §§ 471, 472, 473, 474, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 488, 493, 494, 497, 498, 499, 500, 502, 503, 505, 506, 507, 508, 509, 510, and 513 by deleting "2B5.2" and inserting in lieu thereof "2F1.1";

In the lines referenced to 18 U.S.C. §§ 553(a)(1) and 553(a)(2) by deleting "2B1.2" and inserting in lieu thereof "2B1.1";

In the line referenced to 18 U.S.C. § 641 by deleting ", 2B1.2";

In the line referenced to 18 U.S.C. § 642 by deleting "2B5.2" and inserting in lieu thereof "2F1.1";

In the line referenced to 18 U.S.C. § 659 by deleting ", 2B1.2";

In the line referenced to 18 U.S.C. § 662 by deleting "2B1.2" and inserting in lieu thereof "2B1.1";

In the line referenced to 18 U.S.C. § 664 by deleting "2E5.2" and inserting in lieu thereof "2B1.1";

In the line referenced to 18 U.S.C. § 666(a)(1)(C) by deleting "18 U.S.C. § 666(a)(1)(C)"and inserting in lieu thereof "18 U.S.C. § 666(a)(2)";

In the line referenced to 18 U.S.C. § 667 by deleting ", 2B1.2";

In the line referenced to 18 U.S.C. § 798 by deleting ", 2M3.6";

In the line referenced to 18 U.S.C. § 842(j) by deleting "2K1.2" and inserting in lieu thereof "2K1.1";

In the line referenced to 18 U.S.C. § 844(h) by deleting "2K1.4 (offenses committed prior to November 18, 1988), 2K1.6, 2K1.7" and inserting in lieu thereof "2K2.4 (2K1.4 for offenses committed prior to November 18, 1988)";

In the lines referenced to 18 U.S.C. §§ 1003 and 1010 by deleting "2B5.2,";

In the line referenced to 18 U.S.C. § 1024 by deleting "2B1.2" and inserting in lieu thereof "2B1.1";

In the line referenced to 18 U.S.C. § 1028 by deleting ", 2L2.3, 2L2.4";

In the line referenced to 18 U.S.C. § 1082 by deleting "2E3.3" and inserting in lieu thereof "2E3.1";

In the line referenced to 18 U.S.C. § 1084 by deleting "2E3.2" and inserting in lieu thereof "2E3.1";

In the line referenced to 18 U.S.C. § 1153 by deleting "2B2.2,";

In the line referenced to 18 U.S.C. § 1163 by deleting ", 2B1.2";

In the lines referenced to 18 U.S.C. §§ 1301, 1302, 1303, 1304, 1306, and 1511 by deleting "2E3.3" and inserting in lieu thereof "2E3.1";

In the line referenced to 18 U.S.C. § 1541 by deleting "2L2.3" and inserting in lieu thereof "2L2.1";

In the lines referenced to 18 U.S.C. §§ 1542, 1543, and 1544 by deleting "2L2.3, 2L2.4" and inserting in lieu thereof "2L2.1, 2L2.2";

In the line referenced to 18 U.S.C. § 1704 by deleting "2B5.2,";

In the line referenced to 18 U.S.C. § 1708 by deleting "2B1.2,";

In the line referenced to 18 U.S.C. § 1716C by deleting "2B5.2" and inserting in lieu thereof "2F1.1";

In the lines referenced to 18 U.S.C. §§ 1852 and 1854 by deleting "2B1.2,";

In the line referenced to 18 U.S.C. § 1951 by deleting "2E1.5" and inserting in lieu thereof "2B3.1, 2B3.2, 2B3.3, 2C1.1";

In the line referenced to 18 U.S.C. § 1953 by deleting "2E3.3" and inserting in lieu thereof "2E3.1";

In the line referenced to 18 U.S.C. § 2113(a) by deleting "2B2.2" and inserting in lieu thereof "2B2.1";

In the line referenced to 18 U.S.C. § 2113(c) by deleting ", 2B1.2";

In the lines referenced to 18 U.S.C. §§ 2115, 2116, 2117, and 2118(b) by deleting "2B2.2" and inserting in lieu thereof "2B2.1";

In the line referenced to 18 U.S.C. § 2154 by deleting "2M2.2" and inserting in lieu thereof "2M2.1";

In the line referenced to 18 U.S.C. § 2156 by deleting "2M2.4" and inserting in lieu thereof "2M2.3";

In the line referenced to 18 U.S.C. § 2197 by deleting "2B5.2,";

In the line referenced to 18 U.S.C. § 2276 by deleting "2B2.2" and inserting in lieu thereof "2B2.1";

In the lines referenced to 18 U.S.C. §§ 2312 and 2313 by deleting ", 2B1.2";

In the lines referenced to 18 U.S.C. §§ 2314 and 2315 by deleting "2B1.2, 2B5.2,";

In the lines referenced to 18 U.S.C. §§ 2316 and 2317 by deleting ", 2B1.2";

In the lines referenced to 18 U.S.C. §§ 2318 and 2320 by deleting "2B5.4" and inserting in lieu thereof "2B5.3";

In the line referenced to 20 U.S.C. § 1097(a) by deleting "2B5.2,";

By deleting:

"21 U.S.C. § 842(a)(2)2D3.3
21 U.S.C. § 842(a)(9),(10) 2D3.5",

and inserting in lieu thereof:

"21 U.S.C. § 842(a)(2),(9),(10)2D3.2";

In the line referenced to 21 U.S.C. § 846 by deleting ", 2D3.3, 2D3.4, 2D3.5";

In the lines referenced to 21 U.S.C. §§ 954 and 961 by deleting "2D3.4" and inserting in lieu thereof "2D3.2";

In the line referenced to 21 U.S.C. § 963 by deleting ", 2D3.3, 2D3.4, 2D3.5";

In the line referenced to 22 U.S.C. § 4221 by deleting "2B5.2" and inserting in lieu thereof "2F1.1";

In the line referenced to 26 U.S.C. § 7203 by deleting "2T1.2" and inserting in lieu thereof "2T1.1";

In the line referenced to 26 U.S.C. § 7206(1),(3),(4),(5) by deleting "2T1.3" and inserting in lieu thereof "2S1.3, 2T1.1";

In the line referenced to 26 U.S.C. § 7206(2) by inserting "2S1.3," immediately before "2T1.4";

In the line referenced to 26 U.S.C. § 7207 by deleting "2T1.5" and inserting in lieu thereof "2T1.1";

In the line referenced to 26 U.S.C. § 7211 by deleting "2T1.3" and inserting in lieu thereof "2T1.1";

In the line referenced to 26 U.S.C. § 7212(a) by deleting "2A2.2, 2A2.3" and inserting in lieu thereof "2A2.4";

In the line referenced to 29 U.S.C. § 186 by deleting "2E5.6" and inserting in lieu thereof "2E5.1";

In the lines referenced to 29 U.S.C. §§ 431, 432, 433, 439, and 461 by deleting "2E5.5" and inserting in lieu thereof "2E5.3";

In the line referenced to 29 U.S.C. § 501(c) by deleting "2E5.4" and inserting in lieu thereof "2B1.1";

In the line referenced to 31 U.S.C. § 5316 by deleting "2S1.4" and inserting in lieu thereof "2S1.3";

In the line referenced to 31 U.S.C. § 5322 by deleting ", 2S1.4";

In the line referenced to 33 U.S.C. § 1232(b)(2) by deleting "2A2.2, 2A2.3" and inserting in lieu thereof "2A2.4";

In the line referenced to 33 U.S.C. § 1415(b) by inserting "§ 2Q1.2," immediately before "2Q1.3";

In the line referenced to 46 U.S.C. § 3718(b) by deleting "2K3.1" and inserting in lieu thereof "2Q1.2";

In the lines referenced to 49 U.S.C. §§ 1472(h)(2) and 1809(b) by deleting "2K3.1" and inserting in lieu thereof "2Q1.2";

In the line referenced to 50 U.S.C. § 783(b) by deleting "2M3.7" and inserting in lieu thereof "2M3.3"; and

In the line referenced to 50 U.S.C. § 783(c) by deleting "2M3.8" and inserting in lieu thereof "2M3.3".

The Commentary to § 2J1.1 captioned "Statutory Provision" is amended by deleting "Provision: 18 U.S.C. § 401" and inserting lieu thereof "Provisions: 18 U.S.C. §§ 401, 228".

The Commentary to § 2J1.1 captioned "Application Note" is amended in the caption by deleting "Note" and inserting lieu thereof "Notes"; and by inserting the following additional note:

"2. For offenses involving the willful failure to pay court-ordered child support (violations of 18 U.S.C. § 228), the most analogous guideline is § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft). The amount of the loss is the amount of child support that the defendant willfully failed to pay. Note: This guideline applies to second and subsequent offenses under 18 U.S.C. § 228. A first offense under 18 U.S.C. § 228 is not covered by this guideline because it is a Class B misdemeanor.".

Appendix A (Statutory Index) is amended in the second paragraph of the introduction by deleting "or an attempt" and inserting in lieu thereof ", attempt, or solicitation".

Reason for Amendment: This amendment makes Appendix A more comprehensive, conforms it to the consolidation of offense guidelines under amendments 481, 490, and 491 and deletes references to several Class B and C misdemeanor offenses to which the guidelines do not apply. In addition, it adds a reference to solicitations in the introductory paragraph of the commentary to the Statutory Index that was inadvertently omitted.

3. Amendment: The Commentary to § 1B1.1 captioned "Application Notes" is amended in Note 4 by inserting the following additional paragraph as the second paragraph:

"Absent an instruction to the contrary, the adjustments from different guideline sections are applied cumulatively (added together). For example, the adjustments from § 2F1.1(b)(2) (more than minimal planning) and § 3B1.1 (aggravating role) are applied cumulatively.".

Reason for Amendment: This amendment clarifies the Commission's intent that, absent an instruction to the contrary, adjustments from different guideline sections are to be applied cumulatively.

4. Amendment: The Commentary to § 1B1.7 is amended by deleting the second paragraph as follows:

"In stating that failure to follow certain commentary 'could constitute an incorrect application of the guidelines,' the Commission simply means that in seeking to understand the meaning of the guidelines courts likely will look to the commentary for guidance as an indication of the intent of those who wrote them. In such instances, the courts will treat the commentary much like legislative history or other legal material that helps determine the intent of a drafter.",

and inserting in lieu thereof:

"'[C]ommentary in the Guidelines Manual that interprets or explains a guideline is authoritative unless it violates the Constitution or a federal statute, or is inconsistent with, or a plainly erroneous reading of, that guideline.' Stinson v. United States, 113 S. Ct. 1913, 1915 (1993).".

Reason for Amendment: This amendment revises the commentary to this section to reflect the decision of the Supreme Court in Stinson v. United States, 113 S. Ct. 1913, 1915 (1993).

5. Amendment: The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 10 in the "Drug Equivalency Tables" in the subdivision captioned "LSD, PCP, and other Schedule I and II Hallucinogens" by deleting:

"Phenylcyclohexamine (PCE) = 5.79 kg of marihuana"

and inserting in lieu thereof:

"N-ethyl-1-phenylcyclohexylamine (PCE)= 1 kg of marihuana".

Reason for Amendment: This amendment revises the equivalency for PCE to reflect a reassessment of the potency of this controlled substance by the Drug Enforcement Administration. In addition, this amendment corrects an error in the scientific name for this controlled substance.

6. Amendment: The Commentary to § 3B1.1 captioned "Application Notes" is amended by renumbering Notes 2 and 3 as 3 and 4, respectively; and by inserting the following additional note:

"2. To qualify for an adjustment under this section, the defendant must have been the organizer, leader, manager, or supervisor of one or more other participants. An upward departure may be warranted, however, in the case of a defendant who did not organize, lead, manage, or supervise another participant, but who nevertheless exercised management responsibility over the property, assets, or activities of a criminal organization.".

Reason for Amendment: This amendment clarifies the operation of this section to resolve a split among the courts of appeal. Compare United States v. Carroll, 893 F.2d 1502 (6th Cir. 1990) (requiring degree of control over other persons for § 3B1.1 to apply); United States v. Fuller, 897 F.2d 1217 (1st Cir.

1990) (same); United States v. Mares-Molina, 913 F.2d 770 (9th Cir. 1990) (same) and United States v. Fuentes, 954 F.2d 151 (3d Cir.) (same), cert. denied, 112 S.Ct. 2950 (1992) with United States v. Chambers, 985 F.2d 1263 (4th Cir.) (defendant may be a "manager" even though he did not directly supervise other persons), petition for cert. filed, No. 92–8737 (U.S. May 17, 1993).

7. Amendment: The Commentary to § 5E1.1 captioned "Background" is amended in the second paragraph by inserting the following additional sentence as the first sentence:

"A court's authority to decline to order restitution is limited.";

by inserting, immediately after "18 U.S.C. § 3663(d).", the following:

"The legislative history of 18 U.S.C. § 3579, the precursor of 18 U.S.C. § 3663, states that even '[i]n those unusual cases where the precise amount owed is difficult to determine, the section authorizes the court to reach an expeditious, reasonable determination of appropriate restitution by resolving uncertainties with a view toward achieving fairness to the victim.' S. Rep. No. 532, 97th Cong., 2d Sess. 31, reprinted in 1982 U.S. Code Cong. & Ad. News 2515, 2537.";

and by inserting the following additional sentence as the last sentence:

"Subsection (a)(2) provides for restitution as a condition of probation or supervised release for offenses not set forth in Title 18, United States Code, or 49 U.S.C. § 1472(h), (i), (j), or (n).".

The Commentary to § 5E1.1 captioned "Background" is amended by deleting the fifth paragraph as follows:

"A court's authority to deny restitution is limited. Even 'In those unusual cases where the precise amount owed is difficult to determine, section 3579(d) authorizes the court to reach an expeditious, reasonable determination of appropriate restitution by resolving uncertainties with a view toward achieving fairness to the victim.' S. Rep. No. 532, 97th Cong., 2d Sess. 31, reprinted in 1982 U.S. Code Cong. & Ad. News 2515, 2537.";

and by deleting the seventh paragraph as follows:

"Subsection (a)(2) provides for restitution as a condition of probation or supervised release for offenses not set forth in Title 18, United States Code, or 49 U.S.C. § 1472(h), (i), (j), or (n).".

Reason for Amendment: This amendment updates the background commentary of § 5E1.1 to reflect the redesignation of 18 U.S.C. § 3579 as 18 U.S.C. § 3663. In addition, it moves material from the fifth and seventh paragraphs to the second paragraph to enhance clarity.

8. Amendment: Section 1B1.10(d) is amended by deleting "and 461" and inserting in lieu thereof "454, 461, 484, 488, 490, and 499".

Reason for Amendment: This amendment expands the listing in § 1B1.10(d) to implement the directive in 28 U.S.C. § 994(u) in respect to guideline amendments that may be considered for retroactive application. The amendment numbers listed are those as they appear in Appendix C of the Guidelines Manual.

9. Amendment: The Commentary to § 3C1.1 captioned "Application Notes" is amended in Note 6 by inserting "; Bribery of Witness" immediately following "of Perjury"; by deleting "§ 2J1.8 (Bribery of Witness), or § 2J1.9 (Payment to Witness)" and inserting in lieu thereof "§ 2J1.9 (Payment to Witness), § 2X3.1 (Accessory After the Fact), or § 2X4.1 (Misprision of Felony)"; and by deleting "or prosecution" and inserting in lieu thereof ", prosecution, or sentencing".

Reason for Amendment: This amendment makes the listing of offense guidelines to which this section applies more comprehensive and corrects an inadvertent omission of a reference to "sentencing" in the commentary of this section. (The First Circuit noted this omission in *United States* v. *Agoro, 996 F.2d 1288 (1st Cir. 1993).*

[FR Doc. 93–24752 Filed 10–7–93; 8:45 am]
BILLING CODE 2210–40–P

Sunshine Act Meetings

Federal Register
Vol. 58, No. 194
Friday, October 8, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, October 14, 1993.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *U.S. Steel Mining Co., Inc.*, Docket No. WEVA 92–783. (Issues include whether the judge erred in concluding that U.S. Steel violated a notice to provide safeguards issued by the Secretary of Labor and in concluding that the violation was of a significant and substantial nature.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(e).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Dated: October 5, 1993.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 93–24989 Filed 10–6–93; 3:28 pm]

BILLING CODE 6735–01–M

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, October 21, 1993.

PLACE: Hearing Room 965, One Lafayette Centre, 1120—20th Street, NW., Washington, DC. 20036–3419.

STATUS: Open Meeting.

MATTERS TO BE CONSIDERED: Oral Argument before the Commission in *McNally Construction and Tunneling, Inc.* (OSHRC Docket No. 90–2337.)

CONTACT PERSON FOR MORE INFORMATION: Patrick Moran, (202) 606–5410.

Dated: October 6, 1993.

Earl R. Ohman, Jr.,

General Counsel.

[FR Doc. 93–24936 Filed 10–6–93; 11:17 am]

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federal register

Friday
October 8, 1993

Part II

Department of Housing and Urban Development

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

24 CFR Subtitle A and Part 92, et al.
Economic Opportunities for Low- and Very Low-Income Persons; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

24 CFR Part 135

[Docket No. R–93–1677; FR–2898–P–01]

RIN 2529–AA49

Proposed Amendments to Part 135—Economic Opportunities for Low- and Very Low-Income Persons

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Proposed rule.

SUMMARY: Section 3 of the Housing and Urban Development Act of 1968 (section 3), as amended by the Housing and Community Development Act of 1992, requires that economic opportunities generated by HUD financial assistance for housing (including public and Indian housing) and community development programs shall, to the greatest extent feasible, be given to low- and very low-income persons, particularly those who are recipients of government assistance for housing, and to businesses that provide economic opportunities for these persons. This proposed rule would make comprehensive amendments to HUD's section 3 regulations at 24 CFR part 135 to bring these regulations into conformity with the changes made to section 3 by the Housing and Community Development Act of 1992, and to make additional changes directed to facilitating compliance with section 3.

Elsewhere in today's edition of the **Federal Register**, the Department has published a proposed rule that would make conforming amendments to several parts in title 24 of the Code of Federal Regulations that include reference, or should include reference, to the part 135 regulations.

DATES: Comment due date: November 8, 1993.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Office of General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying on weekdays between 7:30 a.m. and 5:30 p.m. at the above address.

FOR FURTHER INFORMATION CONTACT: Maxine B. Cunningham, Office of Fair Housing Assistant and Voluntary Programs, Section 3 Compliance Division, Room 5232, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708–2251 (voice/TDD). (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act Statement

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1980. No person may be subjected to a penalty for failure to comply with these information collection requirements until the requirements have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**. The public reporting burden for the collection of information requirements contained in this rule is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Information on the estimated public reporting burden is provided under the preamble heading, *Other Matters*. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street SW., room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3001, Washington, DC 20503, Attention: HUD Desk Officer.

II. Background

Since its enactment, section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) has been a statutory basis for promoting the award of jobs and contracts, generated from projects receiving HUD financial assistance, to, respectively, low-income residents and businesses of the areas where the project to be assisted are located. Section 3 was recently amended, in its entirety, by section 915 of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992) (the 1992 Act). Although the 1992 Act significantly revised section 3, it did not alter the objective of section 3—to provide economic opportunities to low-income persons. The 1992 Act, in fact, strengthens the section 3 mandate by: Clarifying the types of HUD financial assistance, activities, and recipients subject to the requirements of section 3; identifying the specific individuals and businesses who are the intended beneficiaries of the economic opportunities generated from HUD-assisted activities; and establishing the order of priority in which these individuals and businesses should be recruited and solicited for the employment and other economic opportunities generated from HUD-assisted activities.

As amended by section 915 of the 1992 Act, section 3 now read as follows:

Sec. 3 Economic Opportunities for Low- and Very Low-Income Persons

(a) *Findings.* The Congress finds that—

(1) Federal housing and community development programs provide State and local governments and other recipients of Federal financial assistance with substantial funds for projects and activities that produce significant employment and other economic opportunities;

(2) Low- and very low-income persons, especially recipients of government assistance for housing, often have restricted access to employment and other economic opportunities;

(3) The employment and other economic opportunities generated by projects and activities that receive Federal housing and community development assistance offer an effective means of empowering low- and very low-income persons, particularly persons who are recipients of government assistance for housing; and

(4) Prior Federal efforts to direct employment and other economic opportunities generated by Federal housing and community development programs to low- and very low-income persons have not been fully effective and should be intensified.

(b) *Policy.* It is the policy of the Congress and the purpose of this section to ensure that the employment and other economic opportunities generated by Federal financial assistance for housing and community development programs shall, to the greatest extent feasible, be directed toward low- and very low-income persons, particularly those who are recipients of government assistance for housing.

(c) Employment—(1) Public and Indian housing program. (A) In general.—The Secretary shall require that public and Indian housing agencies, and their contractors and subcontractors, make their best efforts, consistent with existing Federal, State, and local laws and regulations, to give to low- and very low-income persons the training and employment opportunities generated by development assistance provided pursuant to section 5 of the United States Housing Act of 1937, operating assistance provided pursuant to section 9 of that Act, and modernization grants provided pursuant to section 14 of that Act.

(B) Priority.—The efforts required under subparagraph (A) shall be directed in the following order of priority:

(i) To residents of the housing developments for which the assistance is expended.

(ii) To residents of other developments managed by the public or Indian housing agency that is expending the assistance.

(iii) To participants in Youthbuild programs receiving assistance under subtitle D of title IV of the Cranston-Gonzalez National Affordable Housing Act.

(iv) To other low- and very low-income persons residing within the metropolitan area (or nonmetropolitan county) in which the assistance is expended.

(2) Other programs. (A) In general. In other programs that provide housing and community development assistance, the Secretary shall ensure that, to the greatest extent feasible, and consistent with existing Federal, State, and local laws and regulations, opportunities for training and employment arising in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project are given to low- and very low-income persons residing within the metropolitan area (or nonmetropolitan county) in which the project is located.

(B) Priority. Where feasible, priority should be given to low- and very low-income persons residing within the service area of the project or the neighborhood in which the project is located and to participants in Youthbuild programs receiving assistance under subtitle D of title IV of the Cranston-Gonzalez National Affordable Housing Act.

(d) Contracting. (1) Public and Indian housing program.—

(A) In general.—The Secretary shall require that public and Indian housing agencies, and their contractors and subcontractors, make their best efforts, consistent with existing Federal, State, and local laws and regulations, to award contracts for work to be performed in connection with development assistance provided pursuant to section 5 of the United States Housing Act of 1937, operating assistance provided pursuant to section 9 of that Act, and modernization grants provided pursuant to section 14 of that Act, to business concerns that provide economic opportunities for low- and very low-income persons.

(B) Priority. The efforts required under subparagraph (A) shall be directed in the following order of priority:

(i) To business concerns that provide economic opportunities for residents of the housing development for which the assistance is provided.

(ii) To business concerns that provide economic opportunities for residents of other housing developments operated by the public and Indian housing agency that is providing the assistance.

(iii) To Youthbuild programs receiving assistance under subtitle D of title IV of the Cranston-Gonzalez National Affordable Housing Act.

(iv) To business concerns that provide economic opportunities for low- and very low-income persons residing within the metropolitan area (or nonmetropolitan county) in which the assistance is provided.

(2) Other programs. (A) In general. In providing housing and community development assistance pursuant to other programs, the Secretary shall ensure that, to the greatest extent feasible, and consistent with existing Federal, State, and local laws and regulations, contracts awarded for work to be performed in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project are given to business concerns that provide economic opportunities for low- and very low-income persons residing within the metropolitan area (or nonmetropolitan county) in which the assistance is expended.

(B) Priority. Where feasible, priority should be given to business concerns which provide economic opportunities for low- and very low-income persons residing within the service area of the project or the neighborhood in which the project is located and to Youthbuild programs receiving assistance under subtitle D of title IV of the Cranston-Gonzalez National Affordable Housing Act.

(e) *Definitions.* For the purposes of this section, the following definitions shall apply:

(1) Low- and very low-income persons. The terms 'low-income persons' and 'very low-income persons' have the same meanings given the terms 'low-income families' and 'very low-income families', respectively, in section 3(b)(2) of the United States Housing Act of 1937.

(2) Business concern that provides economic opportunities. The term 'a business concern that provides economic opportunities' means a business concern that—

(A) provides economic opportunities for a class of persons that has a majority controlling interest in the business;

(B) employs a substantial number of such persons; or

(C) meets such other criteria as the Secretary may establish.

(f) *Coordination With Other Federal Agencies.* The Secretary shall consult with the Secretary of Labor, the Secretary of Health and Human Services, the Secretary of Commerce, the Administrator of the Small Business Administration, and such other Federal agencies as the Secretary determines are necessary to carry out this section.

(g) *Regulations.* Not later than 180 days after the date of enactment of the National Affordable Housing Act Amendments of 1992, the Secretary shall promulgate regulations to implement this section.

This proposed rule would amend HUD's section 3 regulations, codified at 24 CFR part 135, in their entirety, to incorporate the changes made to section 3 by the 1992 Act, and to make additional changes directed to facilitating compliance with section 3. (Unless the context indicates otherwise, the references to section 3 are to section 3 as amended by section 915 of the 1992 Act.)

As part of the process of development of the proposed rule, the Department held two meetings at HUD Headquarters on the subject of section 3, and invited to these meetings various housing authorities, industry groups and organizations that are currently subject to compliance with section 3, or that share interest in the regulatory implementation of section 3. The purpose of the meetings was to discuss, informally, the strengths and weaknesses of the existing section 3 regulations; the changes made to section 3 by the 1992 Act; and how the objectives of section 3 could best be achieved with minimum administrative burden on the entities subject to compliance with section 3. The meetings were held on March 12, 1993 and March 16, 1993. Organizations that participated in these meetings included the National Low Income Housing Coalition; the National Urban League; the Center for Community Change; the National League of Cities; the National Association for County, Community and Economic Development; the Association of Local Housing Finance Agencies; Coalition for Low Income Community Development; Council of State Community Development Agencies; the National Housing Law Project; Council of Large Public Housing Authorities; Maine Housing Authority; Chicago Housing Authority; the Salt Lake County Housing Authority; National Association of Housing and Redevelopment Officials; and the Public Housing Authorities Directors Association.

Recommendations concerning ways to implement section 3, and requirements that should, or should not, be part of section 3 regulations that were offered by the participants of these meetings included the following: the regulation should specify examples of good faith efforts to offer economic opportunities to low- and very low-income persons; compliance with section 3 should be determined by a numerical result (e.g., 20 percent employment); the Department should offer incentives or rewards to entities which achieve significant results from their good faith efforts, rather than impose sanctions against entities which fail or refuse to make good faith efforts; the regulation should require the use of community and neighborhood groups for assistance in identifying low- and very low-income persons seeking employment; the regulation should include rating factors for section 3 performance in future notices of funding availability; the regulation should minimize reporting requirements; the regulation should

establish reasonable dollar thresholds before compliance with section 3 becomes mandatory; the regulation should eliminate dollar thresholds to establish mandatory compliance with section 3; the regulation should revise income requirements for public housing residents who obtain employment as a result of a housing authority's compliance with section 3; and the regulation should provide maximum flexibility to housing authorities in implementing section 3. (The transcripts of the March 12th and March 16th meetings are part of the public comment file for this rule, and are available for public inspection.)

In developing the proposed new regulations for section 3, the Department took into consideration the comments and suggestions made by the participants at the March 12th and March 16th meetings, and, through this proposed rule, seeks further comment from these groups; similar organizations and associations; public housing agencies and Indian housing authorities; participants in HUD's housing programs and community development programs; low- and very low-income persons who are the intended beneficiaries of this rule and their advocates and representatives; and the public at large on the issues raised at the March 12th and 16th meetings (as noted above), and on the substance and organization of the proposed section 3 regulations.

A suggestion was made at the March 12th and March 16th meetings (and it is a suggestion that has been made before to the Department through other means, such as correspondence) that compliance with section 3 should be measured by a numerical result (e.g., compliance with section 3 is demonstrated by filling 20 percent of the job vacancies with low- and very low-income persons, or by awarding 20 percent of available contracts to section 3 business concerns). The Department did not adopt this suggestion in the proposed rule, and has not adopted this suggestion in the past, because establishment of a numerical result is not consistent with the objectives of section 3. Section 3 provides that to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, economic opportunities generated by the expenditure of HUD financial assistance should be given to low- and very low-income persons. This means that, if feasible and if consistent with existing Federal, State and local laws and regulations, all economic opportunities generated by HUD financial assistance must be given to low- and very low-income persons. Generally, however, this will not be feasible in every case. For example, with respect to employment opportunities, it is unlikely that in every hiring situation low- and very low-income persons will be qualified for every job opportunity generated from the expenditures of HUD financial assistance. Therefore, it is not possible to measure compliance with section 3 in terms of a numerical result, because numerical results will vary dependent upon the circumstances of the hiring, e.g., the types of jobs offered, the skills required for these jobs, and the qualifications of the low- and very low-income persons (residing within the metropolitan area, or nonmetropolitan county) to fill these jobs. Although every job may not be filled by a low-or a very low-income person, section 3 requires that efforts must be made to hire as many low- and very low-income persons to the greatest extent feasible.

The following section of the preamble presents an overview of the part 135 proposed rule. Consistent with the comprehensive amendment made to section 3 by section 915 of the 1992 Act, this proposed rule would amend part 135 in its entirety. Throughout the remainder of this preamble, the term "low-income persons" will be used to refer to both "low-income persons" and "very low-income persons."

III. Overview of Proposed Rule

The proposed rule would organize part 135 into six subparts: Subpart A—General Provisions; Subpart B—Economic Opportunities for Low and Very Low-Income Persons in Public and Indian Housing Programs; Subpart C—Economic Opportunities for Low and Very Low-Income Persons in Housing Programs; Subpart D—Economic Opportunities for Low and Very Low-Income Persons in Community Development Programs; Subpart E—Compliant and Compliance Review; and Subpart F—Reporting and Recordkeeping. The following discusses the principal regulatory sections within each subpart.

Subpart A—General Provisions

Section 135.1 Purpose and Scope

Section 135.1 of subpart A would describe the purpose of section 3 and the part 135 regulations, and also would clarify that neither section 3 nor the part 135 regulations require recipients of HUD financial assistance to create jobs or job training programs or to create contract opportunities.

Section 3 and the part 135 regulations require that where recipients of HUD financial assistance, and/or their contractors and subcontractors, intend to undertake hiring or intend to award contracts or subcontracts in connection with the expenditure of HUD financial assistance covered by section 3, the recipients, contractors and subcontractors must give a preference in hiring to low-income persons, and must give a preference in the award of contracts to business concerns which provide economic opportunities to low-income persons (These requirements are referred to as the "section 3 preference requirements.")

Section 135.3 Applicability

Section 135.3 would describe the HUD programs to which the section 3 preference requirements are applicable. With respect to HUD's public and Indian housing programs, the section 3 preference requirements apply to job training, employment, contracting, and other economic opportunities generated from the expenditure of the following three categories of assistance: (1) Development assistance provided pursuant to section 5 of the United States Housing Act of 1937 (the 1937 Act) (see 42 U.S.C. 1437); (2) operating assistance provided pursuant to section 9 of the 1937 Act (42 U.S.C. 1437g); and (3) modernization assistance provided pursuant to section 14 of the 1937 Act (42 U.S.C. 14371).

With respect to HUD's housing and community development programs, the section 3 preference requirements apply to job training, employment, contracting and other economic opportunities generated in connection with HUD housing and community development assistance that is expended for: (1) Housing rehabilitation (including reduction and abatement of lead-based paint hazards); (2) housing construction; and (3) other public construction projects.

Section 135.7 Definitions

Section 135.7 would define the principal terms used in part 135. Certain terms defined in this section have been retained from the existing part 135 regulations; other terms have been retained with revisions; and several new terms are introduced. The terms defined in § 135.7 include the following:

"Low-income persons" and "very low-income persons" would be defined, in accordance with paragraph (e)(1) of section 3, to have the same meanings given these terms in section 3(b)(2) of the U.S. Housing Act of 1937.

"Section 3 business concern" (which would be used in part 135 in lieu of the term that is used and defined in paragraph (e)(2) of section 3—"business concern that provides economic opportunities") would be defined to

mean: a business concern that: (1) is 51 percent or more owned by low-income persons; or (2) employs a substantial number of low-income persons for the type of activity in which the business concern is engaged; or (3) is substantially owned, but less than 51 percent owned, by low-income persons, and employs low-income persons in key management positions. The first two criteria are established by paragraphs (e)(2)(A) and (B) of section 3. The third criterion is added by the Department, as permitted by paragraph (e)(2)(C) of section 3.

* * * The Department specifically requests comment on this third criterion, and invites the public to recommend other criteria which should qualify a business concern as a section 3 business concern.

In HUD's public and Indian housing programs, section 3 provides for coverage to be determined by the types of assistance utilized. Accordingly, "section 3 covered assistance" would be defined to refer only to the three categories of public and Indian housing assistance to which the statutory language of section 3 states that section applies. (See paragraphs (c)(1)(A) and (d)(1)(A) of section 3.)

In HUD's housing and community development programs, section 3 provides for coverage to be determined by the types of projects on which housing and community development assistance is expended. Accordingly, "section 3 covered project" would be defined to refer only to the types of projects (i.e., construction and rehabilitation) to which the statutory language of section 3 states that section 3 applies in HUD's housing and community development programs. (See paragraphs (c)(2)(A) and (d)(2)(A) of section.)

With respect to "other public construction project," which the section 3 statutory language establishes as a section 3 covered project activity, the regulatory definition would clarify that "other public construction project" refers to "other buildings or improvements (regardless of ownership) assisted with housing or community development assistance."

* * * The Department specifically requests comment from the public on this proposal to extend section 3 coverage, through the definition of "section 3 covered project," to all private, for-profit entities that receive HUD housing or community development assistance for a section 3 covered project, including private, for-profit businesses receiving Community Development Block Grant (CDBG) funding for economic development projects.

"Section 3 covered contract" would be defined to clarify that contracts subject to section 3 requirements are those that are awarded for "work" generated by the expenditure of section 3 covered assistance or in connection with a section 3 covered project. Contracts for the purchase of supplies and materials would not constitute section 3 covered contracts. The Department believes that this definition is consistent with section 3, which uses the term "contract for work."

Section 135.11 Section 3 Clause

Section 135.11 would require that all section 3 covered contracts include the "section 3 clause." The purpose of the section 3 clause (which also was required in § 135.20 of the existing part 135 regulations) is to notify the parties to a section 3 covered contract of their responsibilities under section 3, and to require their agreement to comply with the regulations in part 135. The section 3 clause has been revised (from that set forth in the existing part 135 regulations) to reflect current practices in HUD programs, and to reflect new terminology contained in section 3.

Section 135.13 Requirements Applicable to HUD NOFAs for Section 3 Covered Programs

Section 135.13 would impose certain requirements on all notices of funding availability (NOFAs) issued by HUD, which announce the availability of funding covered by section 3. First, § 135.13 would require that all applicants for section 3 covered funding must submit, as part of their application, a certification of compliance with the part 135 regulations. For PHAs, this requirement will be met if a PHA Resolution in Support of the Application (Form HUD 52471) is submitted. Second, § 135.13 would provide that each NOFA which awards funds on the basis of a rating and ranking system shall invite, but shall not require, an applicant to include, as part of its application materials, a description or summary of the applicant's past experience and achievements in providing economic opportunities to low-income persons. Applicants that submit this summary will be eligible to receive additional (bonus) points. The bonus points shall be awarded only to those applications determined to be technically acceptable for funding. The bonus points cannot be used to give undue advantage to applicants who fail to meet minimal standards or other technical program criteria specified in the NOFA. The Department anticipates that the bonus points will be used to give advantage to applicants that receive the highest cumulative ratings based on the other criteria specified in the NOFA.

* * * The Department specifically requests comments from the public on this proposal to award additional points to applicants that have previously demonstrated successful results in providing economic opportunities to low-income persons.

Subpart B—Economic Opportunities for Low and Very Low-Income Persons in Public and Indian Housing Programs

This subpart would provide for implementation of section 3 in HUD's public and Indian housing programs. Section 3 requires public housing agencies (PHAs) and Indian housing authorities (IHAs), their contractors and subcontractors to make their "best efforts, consistent with existing Federal, State, and local laws and regulations" to comply with the section 3 preference requirements. (PHAs and IHAs are referred to, collectively, as housing authorities (HAs), or, in the singular, housing authority (HA).) Because section 3 imposes a best efforts requirement on HAs, their contractors and subcontractors, the Department has determined that establishment of a dollar threshold, in connection with the expenditure of section 3 covered assistance, for purposes of triggering mandatory compliance with section 3 is not consistent with a best efforts requirement.

* * * The Department specifically requests comment on its determination that the establishment of dollar thresholds is not consistent with the section 3 best efforts requirement.

Section 135.30 General

Section 135.30 of subpart B would clarify that IHAs that receive section 3 covered assistance shall comply with the provisions of subpart B to the maximum extent consistent with, but not in derogation of, compliance with section 7(b) of the Indian Self-Determination and Education Assistance Act (ISDEA Act) (25 U.S.C. 450e(b)). Section 7(b) of the ISDEA Act provides that job training and employment opportunities, and contract opportunities, generated in connection with any contract, subcontract, grant or subgrant entered into for the benefit of Indians be given, respectively, to Indians, and to Indian-owned enterprises.

Section 135.30 also would clarify that it is the responsibility of the "HAs" to monitor their own operations and the operations of their contractors and

subcontractors to ensure compliance with the section 3 preference requirements.

Section 135.32 Training and Employment Opportunities

Section 135.32 of subpart B would address implementation of the section 3 training and employment preference. Section 135.32 would specify, consistent with the statutory language of section 3, the categories of low-income persons to whom HAs, their contractors and subcontractors must direct their best efforts to offer training and employment opportunities, and the order of priority in which these categories of low-income persons should be recruited for jobs. The categories of low-income persons and their order of priority, as established by paragraph (c)(1)(B) of section 3, are as follows: (1) Residents of the housing developments for which the assistance is expended; (2) residents of other developments managed by the HA that is expending the assistance; (3) participants in HUD Youthbuild programs; and (4) other low-income persons residing within the metropolitan area (or non-metropolitan county) in which the assistance is expended.

Section 135.32 also would provide examples of activities which HAs, their contractors and subcontractors may undertake, in any combination, and which, dependent upon the combination and the hiring circumstances, may demonstrate that best efforts were made to comply with the section 3 training and employment preference. (The criteria by which the activities of HAs, their contractors and subcontractors will be determined to have constituted best efforts are discussed later in this preamble.)

* * * The Department specifically requests public comment on the examples of best effort activities described in § 135.32, and solicits suggestions on other activities that would demonstrate that best efforts were made to meet the section 3 job training and employment preference.

Section 135.36 Contracting Opportunities

Section 135.36 of subpart B would address implementation of the section 3 contracting preference. Section 135.36, consistent with the statutory language of section 3, would specify the categories of section 3 business concerns to which HAs, their contractors and subcontractors must direct their best efforts to award contracting opportunities, and the order of priority in which these categories of section 3 business concerns should be given preference in the contract award process. The categories of section 3 business concerns and their order of priority, as established by paragraph (d)(1)(A) of section 3, are as follows: (1) Section 3 business concerns that are 51 percent or more owned by residents of the housing development or developments for which the section 3 covered assistance is expended, or which employ a substantial number of these persons; (2) section 3 business concerns that are 51 percent or more owned by residents of other housing developments managed by the HA that is expending the section 3 covered assistance, or which employ a substantial number of these persons; (3) HUD Youthbuild programs being carried out in the metropolitan area (or nonmetropolitan county) in which the section 3 covered assistance is expended; and (4) business concerns that are 51 percent or more owned by low-income persons residing within the metropolitan area (or nonmetropolitan county) in which the section 3 covered assistance is expended, or which employ a substantial number of these persons.

The fact that § 135.36, consistent with section 3 lists, in order of priority, the categories of section 3 business concerns to which best efforts must be directed, does not mean that § 135.36 (or section 3) authorizes set-asides or the restriction of competition to one or more of these categories of business concerns, and § 135.36 would clarify this point.

Section 135.36 also would provide specific procedures for implementing the section 3 contracting preference for each of the competitive procurement methods authorized in 24 CFR 85.36(d), and which are utilized by HAs. The procedures in § 135.36 are modeled on those provided in 24 CFR 905.175 of HUD's Indian housing regulations, which provide for implementation of the Indian preference in contracting. Section 135.36 would provide that HAs must follow the procurement procedures set forth in this section. (Again, IHAs shall comply with these procedures to the maximum extent feasible, but not in derogation of, compliance with section 7(b) of the ISDEA Act.) Requiring HAs to follow the procedures in § 135.36 would mean that a HA should select the procurement method that is suitable for the type of procurement it intends to undertake (e.g., small purchase procedures, procurement by sealed bids, procurement by competitive proposals, etc.), and then must follow the procedures in § 135.36(c) that provide for implementation of the section 3 contracting preference for the procurement method selected.

Section 135.36 would clarify that the requirements imposed by this section apply only to HAs, and not to their contractors and subcontractors. The contractors and subcontractors of HAs are not required to follow the procurement procedures of 24 CFR 85.36(d). However, § 135.36 would require HA contractors and subcontractors to provide preference for section 3 business concerns in their procurement practices, and to undertake efforts that ensure compliance with the section 3 contracting preference.

Section 135.36 also would provide that before the completion of the contract award process, the contractor selected by the HA will have disclosed the activities that the contractor intends to undertake to comply with the section 3 training and employment preference or section 3 contracting preference, or both, if applicable, and the HA will have approved these activities as meeting the "best efforts requirement." The timing of disclosure of the intended best effort activities will vary depending upon the procurement method selected by the HA. For example, under the competitive proposal method of procurement, the disclosure will be made by all business concerns in their proposals, submitted in response to a Request for Proposals. If the HA determines that the activities intended to be undertaken by the contractor do not constitute best efforts, the HA and the contractor will negotiate the best effort activities to be undertaken by the contractor. When the HA and contractor reach agreement on best effort activities, the actions will be described in an attachment to the contract and made a part of the contract. If the HA and contractor fail to reach agreement on best efforts, the contractor will be determined to be not responsible, and therefore ineligible for the contract award. (Compliance with section 3 is a matter of responsibility.) The HA will select the next lowest responsive bidder, and either approve that bidder's best effort activities, or commence negotiation concerning these efforts as it did with the first bidder selected.

* * * The Department specifically requests comment on this proposal to disclose, and negotiate, as determined necessary by the HA, the best effort activities before the HA awards a contract to a contractor.

Section 135.36 also would provide examples of outreach activities which HAs, their contractors and subcontractors may undertake in any combination and which, dependent upon the procurement circumstances

and the combination of activities selected, may demonstrate that best efforts were made to comply with the section 3 contracting preference.

* * * The Department specifically requests public comment on these activities, and recommendations on other activities that would demonstrate best efforts were made to meet the section 3 contracting preference.

Sections 135.32 Documentation, and

Section 135.36 Evaluation of Best Efforts

Both §§ 135.32 and 135.36 would impose requirements on HAs (and only HAs) to document the best efforts undertaken to meet, respectively, the section 3 employment and contracting preferences. The information which the Department would request that HAs maintain would be as follows: with respect to training and employment, the number of low-income persons hired in comparison to the total number of persons hired at the end of an HA fiscal year, the types of training and employment positions filled by low-income persons, a description of the best efforts that were undertaken to train and hire low-income persons, and a description of the mechanism by which the HA ensured that its contractors and subcontractors complied with the section 3 training and employment preference. With respect to contracting, the information to be maintained would include the number and dollar value of contracts awarded to section 3 business concerns in comparison to the number and dollar value of contracts awarded to all business concerns at the end of an HA fiscal year, a description of the best efforts that were undertaken to award contracts to section 3 business concerns, and a description of the mechanism by which the HA ensured that its contractors and subcontractors complied with the section 3 contracting preference.

No recordkeeping requirements would be imposed by HUD on an HA's contractors and subcontractors. The regulations, however, would provide authority for the HA to impose such recordkeeping and reporting requirements on its contractors and subcontractors as may be necessary in order for the HA to comply with the recordkeeping and reporting requirements imposed by part 135.

Additionally, both §§ 135.32 and 135.36 would provide for evaluation of best efforts on the basis of the following criteria. With respect to training and employment, the Department will look at the efforts undertaken to make low-income persons aware of the training and employment positions to be filled, to encourage and facilitate the participation of low-income persons in the job application process, and to train and employ low-income persons who are qualified for the positions to be filled. With respect to contracting, the Department will look at the efforts undertaken to identify section 3 business concerns, and to make these business concerns aware of the contracting opportunities, to encourage and facilitate their participation in the procurement process, and to award contracts to section 3 business concerns that are capable of performing the contract work.

Section 135.38 Providing Other Economic Opportunities.

Section 135.38 of subpart B would provide examples of economic opportunities, other than job training, employment, and the award of contracts for work, that HAs may provide to low-income persons.

* * * The Department requests public comment on the examples of other economic opportunities provided in § 135.38, and requests suggestions of other economic opportunities that should be included in this section, and are consistent with the objectives of section 3.

Subpart C—Economic Opportunities for Low and Very Low-Income Persons in Housing Programs and

Subpart D—Economic Opportunities for Low and Very Low-Income Persons in Community Development Programs

Subpart C provides for implementation of section 3 in HUD's housing programs. Subpart D provides for implementation of section 3 in HUD's community development programs. Subparts C and D are discussed together in this preamble because, with few exceptions, these two subparts closely resemble each other. These two subparts closely resemble each other because section 3 imposes the same requirements on HUD's housing programs as it does on HUD's community development programs.

In addressing the preference requirements imposed on housing and community development programs, section 3 does not use the term "best efforts" as it does in connection with HUD's public and Indian housing programs. Section 3 provides that in HUD's housing and community development programs, the Secretary of HUD shall ensure that, to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, training and employment opportunities are given to low-income persons, and contracting opportunities are given to section 3 business concerns. The Department has interpreted this language to mean that recipients (and their recipients, contractors, and subcontractors) of HUD housing and community development assistance must make "good faith efforts" (as opposed to best efforts) to meet the section 3 preference requirements when expending this assistance in connection with a section 3 covered project.

Section 135.50 General (Subpart C)

Section 135.70 General (Subpart D)

Each of these sections would establish a dollar threshold before compliance with the section 3 preference requirements would be mandatory. These sections would provide that recipients and contractors subject to compliance with subpart C or subpart D are those that receive, respectively, HUD housing program assistance (other than section 8 assistance, and other than Flexible Subsidy assistance as discussed below) or HUD community development program assistance for a section 3 covered project and for which the HUD share of the "project cost" (which is defined in § 135.7) exceeds $100,000. (As will be discussed below, section 8 assistance is excluded from section 3 coverage, and Flexible Subsidy assistance is treated differently under section 3 than other HUD housing program assistance.) Sections 135.50 and 135.70 also would provide that subparts C and D are applicable to subcontractors that are awarded a subcontract in connection with a section 3 covered project for which the HUD share of the project cost exceeds $100,000 *and* the subcontract exceeds $50,000. Once the threshold is met, the entire project would be subject to the section 3 preference requirements.

* * * The Department specifically requests public comment on the proposal to apply, once the dollar threshold is met, the section 3 preference requirements to the entire project, and not solely to that portion of the project that is assisted with HUD housing or community development assistance.

The Department proposes to lower the threshold to $100,000 from the $500,000 threshold provided in the existing part 135 regulations (see § 135.5(m)). The reasons for the reduction in the threshold are twofold. First, the $500,000 threshold in the existing regulation is based on total project cost, and not solely on the HUD share of the total project cost, as is proposed in this

rule. Second, section 915 of the 1992 Act substantially reduces section 3 coverage in HUD's housing and community development programs. As previously discussed in this preamble, in HUD's housing and community development programs, the requirements of section 3 are limited to construction and rehabilitation projects. Thus, the Department believes that a $100,000 threshold is reasonable for the types of covered projects specified by section 3, and is consistent with the statutory requirement that employment and contracting opportunities shall, to the greatest extent feasible, be given to low-income persons.

The use of "HUD share" of project cost takes into consideration the fact that in HUD assisted programs, other than HUD's public and Indian housing programs, recipients frequently receive assistance from several sources, of which HUD is only one. This is particularly the case in HUD's CDBG programs. In the CDBG programs, HUD awards financial assistance to State and local governments for a wide range of eligible community development activities, and the HUD assistance awarded to States and local governments may constitute only a portion of the assistance that will be used to support or undertake these activities. The States or local governments expend HUD assistance in conjunction with assistance provided from other public and private sources. The decision concerning how the financial assistance, obtained from various sources, will be expended and in what combination, if any, is left to the decision of the State or local government. For this reason, the Department proposes to limit the threshold amounts for section 3 covered housing and community development projects and activities to the "HUD share" of the project cost.

* * * The Department specifically requests public comment on the proposal to base the threshold amount on the HUD share of total project cost, rather than on the total project cost.

Section 135.50 of subpart C would exclude section 8 certificate and voucher assistance from section 3 coverage. Recipients of HUD assistance that are subject to section 3 do not include any ultimate beneficiary of the assistance, as for examples, tenants in the section 8 programs.

Section 135.50 of subpart C would establish a different dollar threshold for recipients (or multifamily project mortgagors) under HUD's Flexible Subsidy Program, the regulations for which are codified in 24 CFR part 219. HUD's Flexible Subsidy Program provides two types of assistance to troubled projects—operating assistance, and assistance for capital improvements. (Multifamily projects that have serious financial and physical problems are designated as "troubled.") Of these two types of assistance, only capital improvement assistance, which involves assistance for housing rehabilitation, is expended for a project activity that qualifies as a "section 3 covered project," as this term is defined in § 135.7. Accordingly, § 135.50 would provide that subpart C applies to multifamily project mortgagors that receive assistance under the Flexible Subsidy Program for rehabilitation, and for which the HUD share of the rehabilitation cost exceeds $7,500 per unit. Section 135.50 also would provide that subpart C applies to contractors and subcontractors that are awarded a contract or a subcontract in connection with assistance under the Flexible Subsidy Program for which the HUD share of the rehabilitation cost exceeds $7,500.

The per unit dollar threshold of $7,500 was based on the fact that since 1983, the Office of Housing has used the fixed dollar amount of $6,500 per unit as an indicator of "rehabilitation"—that is, when work is undertaken on a multifamily project to bring it into compliance with building codes, housing quality standards, etc. Applying to this amount a general increase factor of 39 percent for wood and masonry structure costs indicates that what may have cost $6,500 in 1983 would cost approximately $9,035 in 1993. However, to meet the section 3 "greatest extent feasible requirement" in the Flexible Subsidy Program, the Department would reduce this $9,035 per unit cost to $7,500 (and, thus, establish the dollar threshold at $7,500 per unit), to provide for increased section 3 coverage in this program.

Sections 135.50 and 135.70 would each define "HUD share" to mean the aggregate of funds received, respectively, from all HUD housing or community development programs for the project cost. (Sections 135.50 and 135.70 also would define "service area" and "neighborhood"—terms used in section 3 in connection with HUD housing and community development programs.)

* * * The Department requests public comment on the dollar thresholds established under subparts C and D, and on the definition of HUD share.

Sections 135.50 and 135.70 also would impose a responsibility on recipients of HUD housing or community development assistance to monitor their own operations and the operations of their contractors and subcontractors to ensure compliance with the section 3 preference requirements.

Section 135.52 Training and Employment Opportunities (Subpart C)

Section 135.72 Training and Employment Opportunities (Subpart D)

Sections 135.52 and 135.72 would address implementation of the section 3 training and employment preference in HUD's housing programs and HUD's community development programs, respectively. For HUD's housing and community development programs, section 3 does not require that good faith efforts must be directed to employ certain categories of low-income persons, but, rather, section 3 requires that, where feasible, priority should be given to hiring low-income persons residing within the service area or neighborhood in which the section 3 covered project is located, and to participants in HUD Youthbuild programs. (See paragraphs (c)(2)(B) and (d)(2)(B) of section 3.) Sections 135.52 and 135.72 would incorporate this statutory provision.

The Department believes that the "where feasible" language in section 3 was included because the Congress understood that the service area or neighborhood for some section 3 covered projects may not have low-income persons capable of undertaking the work to be performed in connection with a section 3 covered project. For example, the employment opportunities generated from a section 3 covered project that involves housing construction may be opportunities that require the ability to perform heavy labor, and the low-income persons residing in the neighborhood of this section 3 covered project may consist of a high percentage of elderly persons. In this situation, it would not be feasible to give priority consideration in hiring to the low-income persons in the neighborhood, but it may be feasible to give priority consideration to HUD Youthbuild program participants. If it is not feasible to give priority consideration in hiring to HUD Youthbuild program participants (there may not be any HUD Youthbuild programs in the metropolitan area of the section 3 covered project), section 3 would still require that good faith efforts should be made to employ low-income persons residing in the metropolitan area (or nonmetropolitan county) in which the section 3 covered project is located.

Additionally, § 135.72 would provide that where the section 3 covered project is assisted under the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11301 *et seq.*) (McKinney Act), homeless persons residing in the service area or neighborhood in which the section 3 covered project is located shall be given the highest priority. This category of persons was added because the McKinney Act requires that preference be given to homeless persons for employment opportunities generated from the expenditure of assistance awarded under the McKinney Act.

Sections 135.52 and 135.72 also would provide examples of activities which recipients, contractors, and subcontractors may undertake, in any combination, and which, dependent upon the hiring circumstances and the combination of activities selected, may demonstrate that good faith efforts were made to comply with the section 3 training and employment preference.

Section 135.56 Contracting Opportunities (Subpart C)

Section 135.76 Contracting Opportunities (Subpart D)

Sections 135.56 and 135.76 would address implementation of the section 3 contracting preference. With respect to implementation of the contracting preference in HUD's housing and community development programs, section 3 provides that, where feasible, priority consideration should be given to awarding contracts to section 3 business concerns that provide economic opportunities for low-income persons residing in the service area or neighborhood in which the section 3 covered project is located, and to HUD Youthbuild programs. Sections 135.56 and 135.76 incorporate this statutory provision.

Sections 135.56 and 135.76 would provide that good faith efforts to award contracts to section 3 business concerns may be demonstrated by utilizing the procurement procedures provided in § 135.36(c) of subpart B. As discussed under subpart B, § 135.36(c) provides specific procedures for implementation of the section 3 contracting preference for each of the competitive procurement methods authorized in 24 CFR 85.36(d). The procurement methods described in 24 CFR 85.36(d) are standard procurement methods, and in all likelihood, familiar to recipients, contractors and subcontractors subject to subparts C and D. Thus, the procurement procedures in § 135.36(c) may prove useful to recipients, contractors, and subcontractors, subject to subparts C and D, seeking to demonstrate compliance with the section 3 contracting preference. However, § 135.56 of subpart C would provide that for multifamily project mortgagors, demonstration of compliance with the section 3 contracting preference is not necessarily met by following the procurement procedures specified in § 135.36(c).

As use of the term "may" in §§ 135.56 and 135.76 indicates, the procurement procedures specified in § 135.36(c) are not required to be followed by recipients, contractors and subcontractors subject to subparts C and D. Nevertheless, in § 135.56, the Department is excluding multifamily project mortgagors under the Flexible Subsidy Program from this provision to avoid confusion on their part that the procurement procedures specified in § 135.36 are the only options available to demonstrate compliance with the section 3 contracting preference.

As noted earlier in this preamble, the Flexible Subsidy Program provides assistance to "troubled" multifamily projects, i.e., projects that have serious financial and physical problems. In many cases, the Flexible Subsidy assistance is provided to address a project's emergency health and safety problems (leaking gas stoves, falling balconies), and in these cases, the multifamily project mortgagor does not have the time to undertake procurement through formal procurement procedures. Through this rule, the Department does not wish to indicate to multifamily project mortgagors, who must, among other things, address emergency health and safety problems, that the procurement procedures of § 135.36 are the only options available to demonstrate compliance with the section 3 contracting preference. Additionally, the Flexible Subsidy Program is a program designed to restore or maintain the physical and financial soundness of eligible projects at the lowest possible cost to the Federal Government. Several of the procurement procedures set forth in § 135.36 provide for the award of a contract to a business concern that submits a bid that is higher than the lowest responsive bid, which is inconsistent with the requirements imposed by the Flexible Subsidy Program. Section 135.56 would provide, however, that multifamily project mortgagors must provide, where feasible, for preference to section 3 business concerns in the procurement practices that they follow.

* * * The Department specifically requests public comment from multifamily project mortgagors on how the section 3 contracting preference may be implemented in the Flexible Subsidy Program.

Sections 135.56 and 135.76 also would provide other examples of activities which may be undertaken in any combination, and which, dependent upon the procurement circumstances and the combination of activities selected, may demonstrate that good faith efforts have been made to award contracts to section 3 business concerns.

* * * The Department specifically requests comments from current, past and prospective recipients, contractors and subcontractors of HUD housing or community development assistance on the activities listed in §§ 135.56 and 135.76. The Department's requests comment on whether these activities are more suited to the types of endeavors that a local government or nonprofit entity may undertake, as opposed to a private local developer.

Sections 135.52, 135.72 Documentation, and

Sections 135.56, 135.76 Evaluation of Good Faith Efforts

The procedures for documenting and evaluating good faith efforts to meet the employment and contracting preferences of section 3, established in §§ 135.52, 135.56, 135.72, and 135.76, are similar to the documentation and evaluation procedures established in §§ 135.32 and 135.36.

With respect to good faith efforts in subparts C and D, and as discussed earlier in this preamble under §§ 135.50 and 135.70, recipients of HUD housing or community development assistance are responsible for monitoring their own operations and the operations of their contractors and subcontractors to ensure compliance with the section 3 preference requirements. Although monitoring responsibility is imposed on the recipient, the responsibility to provide preference to low-income persons with respect to training and employment opportunities, and to provide preference to section 3 business concerns with respect to contracting opportunities, falls on the entity or entities (whether it is the recipient, contractor or subcontractor) that is undertaking the hiring or procurement in connection with a section 3 covered project.

* * * The Department requests public comment, particularly by local jurisdictions, on whether local governments that receive funding under HUD's CDBG Program and that do not themselves engage in hiring and procurement activities, but rather pass the funding along to a project owner/developer which will engage in hiring

and procurement, should be required by the section 3 regulations to undertake more than monitoring responsibility—that is, should local governments be required to assist the project owner with outreach activities. The Department solicits comment on this issue because the preference requirements imposed by section 3, in large part, attempt to respond to the requests by local governments, particularly those in major urban areas, that the Federal Government do more (1) to address the under- and unemployment problem in these areas, and (2) to promote the employment of local residents. Since local governments have an interest in increased employment within their jurisdictions, especially employment of those persons who are under- and unemployed, the Department requests comment on what efforts and activities local governments should and can undertake not only to ensure that their recipients and contractors comply with section 3, but to further the objectives of section 3.

Subpart E—Complaint and Compliance Review

This subpart would establish the procedures for handling complaints alleging noncompliance with the part 135 regulations, and the procedures governing the review by the Assistant Secretary for Fair Housing and Equal Opportunity (FHEO) of a recipient's or contractor's compliance with the part 135 regulations.

Subpart F—Reporting and Recordkeeping

Subpart F would provide that the documentation required to be maintained under subparts B, C and D shall be maintained for a period of three years. Subpart F also would provide that each recipient which receives, directly from HUD, financial assistance covered by the requirements of part 135 shall submit to the Assistant Secretary for FHEO an annual report as the Assistant Secretary may request for the purpose of determining the effectiveness of section 3.

IV. Invitation to Comment

The Department requests thorough review of this proposed rule by the public, and particularly by PHAs, IHAs, States and local governments, multifamily project owners, contractors, and subcontractors that have been, and will continue to be subject to the requirements of section 3. Additionally, the Department requests comments from the intended beneficiaries of section 3—low-income persons and section 3 business concerns.

In this proposed rule, the Department has strived to provide PHAs, IHAs and other recipients with flexibility in implementing section 3 without, however, abdicating the Department's statutory responsibility to ensure, to the greatest extent feasible, that employment and other economic opportunities generated by HUD financial assistance be directed to low-income persons. Accordingly, the Department invites comments on all definitions and provisions set forth in the proposed rule, and on whether the proposed rule strikes an appropriate balance between flexibility in implementation, and diligence in enforcement of section 3. Additionally, the Department specifically requests comment on the issues listed in this section of the preamble. The majority of these issues already have been called to the attention of the public earlier in this preamble, but they are repeated in this section for the convenience of the commenters.

1—The appropriateness of the third criterion established by the Department for determining whether a business concern is a section 3 business concern, and any additional criteria that should be established;

2—(a) The definition of "section 3 covered project," which is the Department's interpretation of "covered" activities described in paragraphs (c)(2)(A) and (d)(2)(A) of section 3; and (b) the appropriateness of extending section 3 coverage, through the definition of "section 3 covered project" to all private, for-profit entities, including private, for-profit businesses receiving CDBG funding for economic development projects.

3—The Department's proposal to provide for additional (bonus) points in HUD NOFAs (that award funds on the basis of a rating and ranking system) for applicants that have demonstrated previous experience in providing economic opportunities to low-income persons, and how applicants for HUD funding envision this proposal working, or not working, in their programs;

4—The Department's determination that the establishment of dollar thresholds in HUD's public and Indian housing programs is *not* consistent with a statutory "best efforts" requirement;

5—The proposal that the intended best effort activities of an HA contractor must be approved by the HA before the contract award is completed;

6—Suggestions concerning economic opportunities, other than job training, employment, and contract awards, that may be provided to low-income persons;

7—Incentives that the Department should provide to encourage compliance with section 3;

8—(a) The appropriateness of the dollar thresholds established in subparts C and D, and (b) the appropriateness of basing the dollar thresholds in subparts C and D on the HUD share of project cost rather than on the total project cost;

9—The proposal to apply, once the dollar threshold is met, the section 3 preference requirements to the entire project, and not solely to that portion of the project that is funded with HUD housing or community development assistance;

10—The appropriateness of the "best effort" activities described in subpart B, and suggestions on activities that should be included or excluded;

11—The appropriateness of the "good faith" activities described in subparts C and D, and suggestions on activities that should be included or excluded;

12—Suggestions from multifamily project mortgagors assisted under HUD's Flexible Subsidy Program on how the section 3 contracting preference may be implemented in this program;

13—The distinctions, if any, that should be drawn between the efforts to be made by PHAs and IHAs (on which is imposed a "best efforts" requirement) and those to be made by recipients of HUD housing and community development assistance (on which is imposed a "good faith efforts" requirement) to comply with section 3;

14—The distinctions, if any, that should be drawn between the efforts required of recipients of HUD housing program assistance, and the recipients of HUD community development assistance;

15—Activities that local jurisdictions should undertake when they are not engaged in hiring or procurement, to promote the objectives of section 3 within their jurisdictions;

16—Suggestions on enforcement procedures the Department should undertake to ensure that recipients are complying with the section 3 preference requirements.

The Department requests that commenters who object to the inclusion of certain provisions in the proposed rule, not only express their opposition but explain how these provisions may be improved, or what provisions may work in lieu of the ones provided in the rule.

V. Justification for Reduced Comment Period

It is the Department's general policy to provide a 60-day public comment period. For this proposed rule, however, the Department is providing only a 30-

day public comment period. The purpose of the reduced public comment period is to help the Department have a section 3 final rule in place for the Federal Fiscal Year 1994 funding round. The Federal Fiscal Year (FY) begins October 1 of each year, and notices of funding availability, which make available to eligible applicants funding appropriated by the Congress for the new FY, generally begin being published in the Federal Register in the month of December.

The Department would like to have a final rule in place as quickly as possible, but particularly by the time the FY 1994 funding round begins, because the regulations of existing part 135 have not been amended substantively since their adoption in 1973. Thus, not only do the existing part 135 regulations fail to reflect the changes recently made to section 3 by the 1992 Act, the part 135 regulations fail to reflect the many changes in HUD's administration of its funded programs, and in HUD's procurement practices that have been implemented since 1973. Accordingly, recipients and contractors, subject to the requirements of section 3, are without adequate and appropriate guidance concerning how to carry out their responsibilities under section 3. The result of this inadequate guidance is that economic opportunities are not being provided to low-income persons and to businesses owned by or employing low-income persons as contemplated by section 3. This is particularly evident in the inner city areas of America's large urban centers, where the low-income population generally is high, and the economic opportunities are few.

The Department believes that it is in the interest of the public that final regulations which provide guidance for compliance with section 3—guidance that is consistent with the amended statutory language of section 3 and the structure and substance of current HUD programs—be developed as quickly as possible. The Department already has had the benefit of some public comment through the meetings held on March 12th and March 16th on the subject of section 3 at HUD Headquarters. To ensure maximum public comment in the 30-day period provided, the Department will send copies of the proposed rule to organizations that represent recipients subject to section 3, and to advocates of low-income persons and representatives of resident groups, to seek their assistance in soliciting expedited public comment on the proposed rule.

VI. Other Matters

Impact on the Economy

This proposed rule would not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the proposed rule indicates that it would not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this proposed rule, and, in so doing, certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities. Recipients and contractors that receive HUD financial assistance subject to the requirements are currently required, to the greatest extent feasible, to give economic opportunities generated by such assistance to low-income persons. This proposed rule, which would implement the amendments made to section 3 by the 1992 Act, provides greater guidance on how the requirements of section 3 may be met, and decreases the administrative burden on recipients from that contained in the existing part 135 regulations. For example, the proposed rule would eliminate the requirement that recipients must prepare an affirmative action plan, as contained in the existing part 135 regulations.

With respect to HUD housing and community development programs, the proposed rule, consistent with the changes made by the 1992 Act, limits section 3 coverage to three types of project activities: housing rehabilitation, housing construction, and other public construction. For these covered project activities, the proposed rule would lower the dollar threshold below that provided in the existing part 135 regulations, but would limit the threshold to the "HUD share" of the total project cost.

With respect to HUD's public and Indian housing programs, the proposed rule would eliminate the dollar threshold, thereby increasing the circumstances in which PHAs and IHAs must comply with the requirements of section 3. The Department believes, however, that this elimination of a dollar threshold in public and Indian housing programs is consistent with the statutory language that imposes a "best efforts" requirement on PHAs, IHAs, their contractors and subcontractors.

While the Department anticipates that this proposed rule would increase the number of small businesses that will benefit from the implementation of amended section 3, the Department also anticipates that the lowered dollar threshold in HUD's housing and community development programs, and the absence of a dollar threshold in HUD's public and Indian housing programs, may increase the number of small business concerns that will be subject to compliance with the part 135 regulations. However, as with those small businesses expected to benefit from the revised part 135 regulations, the increase in the number of small businesses that may be made subject to compliance with part 135 is not considered so great as to constitute a significant economic impact on a substantial number of small entities.

Additionally, to lessen the regulatory burden on small entities, the rule limits its reporting and recordkeeping requirements to those recipients that receive HUD financial assistance directly from the Department.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order No. 12611, *Federalism*, has determined that this proposed rule would not have a substantial, direct effect on the States or on the relationship between the Federal government and the States, or on the distribution of power or responsibilities among the various levels of government. The proposed rule provides, consistent with section 3, that the preference requirements of section 3 are to be carried out consistent with existing Federal, State, or local laws and regulations.

Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this proposed rule may have the potential to promote family formation, maintenance, and general well-being. If the revised part 135 regulations, as proposed by this rule, contribute to successful implementation of section 3, an increased number of low-income persons will be employed which may promote family unification and general well-being. Since the impact of this proposed rule is anticipated to be beneficial, no further review under the Order is necessary.

Regulatory Agenda

This rule was listed as sequence number 1542 in the Department's Semiannual Agenda of Regulations published on April 26, 1993 (58 FR 24382, 24430), under Executive Order 12291 and the Regulatory Flexibility Act.

Public Reporting Burden

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget for approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). The following provisions of the rule have been determined by the Department to contain collection of information requirements:

Reference in rule	Number of respondents (recipients)	Number of responses per respondent	Total annual responses	Hours per response	Total hours
§ 135.32	33,000	1	33,000	1	33,000
§ 135.36	33,000	1	33,000	1	33,000
§ 135.52	403	1	403	1	403
§ 135.56	403	1	403	1	403
§ 135.72	25,000	1	25,000	1	25,000
§ 135.76	25,000	1	25,000	.....	25,000
Total annual burden	.....	.....	.....	3.0	116,806

Reference in rule	Number of respondents (contractors and subcontractors)	Number of responses per respondent	Total annual responses	Hours per response	Total hours
§ 135.32	42,750	1	42,750	1	42,750
§ 135.36	42,750	1	42,750	1	42,750
§ 135.52	750	1	750	1	750
§ 135.56	750	1	750	1	750
§ 135.72	31,500	1	31,500	1	31,500
§ 135.76	31,500	1	31,500	1	31,500
Total annual burden	.....	.....	.....	.....	150,000

List of Subjects in 24 CFR Part 135

Administrative practice and procedure, Community development, Equal employment opportunity, Government contracts, Grant programs: housing and community development, Housing, Loan programs: housing and community development, Reporting and recordkeeping requirements, Small businesses.

Accordingly, 24 CFR part 135 would be revised to read as follows:

PART 135—ECONOMIC OPPORTUNITIES FOR LOW AND VERY LOW-INCOME PERSONS

Subpart A—General Provisions

Sec.
135.1 Purpose and scope.
135.3 Applicability.
135.7 Definitions.
135.9 Delegation of authority.
135.11 Section 3 clause.
135.13 Requirements applicable to HUD NOFAs for section 3 covered programs.
135.15 Approved apprenticeship programs and applicable regulations.

Subpart B—Economic Opportunities for Low- and Very Low-Income Persons in Public and Indian Housing Programs

135.30 General.
135.32 Training and employment opportunities.
135.36 Contracting opportunities.
135.38 Providing other economic opportunities.

Subpart C—Economic Opportunities for Low- and Very Low-Income Persons in Housing Programs

135.50 General.
135.52 Training and employment opportunities.
135.56 Contracting opportunities.

Subpart D—Economic Opportunities for Low- and Very Low-Income Persons in Community Development Programs

135.70 General.
135.72 Training and employment opportunities.
135.76 Contracting opportunities.

Subpart E—Complaint and Compliance Review

135.90 General.
135.92 Cooperation in achieving compliance.
135.94 Section 3 compliance review procedures.
135.96 Filing and processing complaints.

Subpart F—Recordkeeping and Reporting

135.100 Recordkeeping.
135.102 Reporting.

Authority: 12 U.S.C. 1701u; 42 U.S.C. 3535(d).

Subpart A—General Provisions

§ 135.1 Purpose and scope.

(a) *Section 3.* The purpose of section 3 of the Housing and Urban

Development Act of 1968 (12 U.S.C. 1701u) (section 3) is to ensure that employment and other economic opportunities generated by HUD financial assistance shall, to the greatest extent feasible, be directed toward low- and very low-income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low- and very low-income persons.

(b) *Part 135.* The purpose of this part is to establish the standards and procedures to be followed to ensure that the objectives of section 3 are met.

(c) *Providing economic opportunities to low- and very low-income persons.* (1) *Providing preference when opportunities are created.* Section 3 does not require that the expenditure of HUD financial assistance must result in the creation of employment and training opportunities or the award of contracts. However, where employment and contracting opportunities will be created by the expenditure of HUD financial assistance covered by section 3, section 3 requires that preference be given to low- and very low-income persons, and to business concerns that provide economic opportunities to low income persons.

(2) *"Low-income persons" to refer to low- and very low-income persons.* For purposes of this part, and unless the context indicates otherwise, the term "low-income persons," wherever it appears, refers to both low-income persons and very low-income persons of the metropolitan area (or nonmetropolitan county) in which section 3 covered assistance is expended, or in which a section 3 covered project is located. The efforts required by section 3 of recipients of HUD financial assistance to employ low-income persons and very low-income persons must be directed to both income groups.

§ 135.3 Applicability.

(a) *Applicability of Section 3.* Section 3 applies to HUD programs as follows:

(1) *Public and Indian housing programs.* Section 3 applies to job training, employment, contracting and other economic opportunities arising from the expenditure of the following public and Indian housing assistance (section 3 covered assistance):

(i) development assistance provided pursuant to section 5 of the U.S. Housing Act of 1937;

(ii) operating assistance provided pursuant to section 9 of the U.S. Housing Act of 1937; and

(iii) modernization assistance provided pursuant to section 14 of the U.S. Housing Act of 1937.

(2) *Housing and community development programs.* Section 3 applies to job training, employment and contracting opportunities arising in connection with housing and community development assistance expended for the following projects (section 3 covered projects):

(i) housing rehabilitation (including reduction and abatement of lead-based paint hazards) projects;

(ii) housing construction projects; and

(iii) other public construction projects.

(b) *Appliability of Part 135.* Subparts A (General), E (Compliance), and F (Reporting and Recordkeeping) of this part are applicable to the HUD assistance described in paragraph (a)(1) of this section and the HUD-assisted projects described in paragraph (a)(2) of this section. Subpart B (Economic Opportunities for Low and Very Low-Income Persons in Public and Indian Housing Programs) applies to the HUD public and Indian housing assistance described in paragraph (a)(1) of this section. Subpart C (Economic Opportunities for Low and Very Low-Income Persons in Housing Programs) and Subpart D (Economic Opportunities for Low and Very Low-Income Persons in Community Development Programs) apply to the "projects" described in paragraph (a)(2) of this section.

§ 135.7 Definitions.

As used in this part:

Annual Contributions Contract (ACC) means the contract under the U.S. Housing Act of 1937 (1937 Act) between HUD and the PHA, or between HUD and the IHA, that contains the terms and conditions under which HUD assists the PHA or the IHA in providing decent, safe, and sanitary housing for low-income families. The ACC must be in a form prescribed by HUD under which HUD agrees to provide assistance in the development, modernization and/or operation of a low-income housing project under the 1937 Act, and the PHA or IHA agrees to develop, modernize and operate the project in compliance with all provisions of the ACC and the 1937 Act, and all HUD regulations and implementing requirements and procedures. (The ACC is not a form of procurement contract.)

Applicant means any entity which makes an application for section 3 covered assistance, and includes, but is not limited to any State, unit of local government, public housing agency, Indian housing authority, Indian tribe, or other public body, public or private nonprofit organization, private agency or institution, mortgagor, developer, limited dividend sponsor, builder, property manager, community housing development organization (CHDO), resident management corporation, resident council, or cooperative association.

Assistant Secretary means the Assistant Secretary for Fair Housing and Equal Opportunity.

Business concern means a business entity formed in accordance with State law, and which is licensed under State, county or municipal law to engage in the type of business activity for which it was formed.

Business concern that provides economic opportunities for low- and very low-income persons. See definition of "section 3 business concern" in this section.

Contract. See the definition of "section 3 covered contract" in this section.

Contractor means any entity which contracts to perform work generated by the expenditure of section 3 covered assistance, or for work in connection with a section 3 covered project.

Department or *HUD* means the Department of Housing and Urban Development, including its Regional and Field Offices to which authority has been delegated to perform functions under this part.

Housing and community development assistance means any financial assistance provided or otherwise made available through a HUD housing or community development program through any grant, entitlement, loan, loan guarantee, cooperative agreement, contract, and includes community development funds in the form of community development block grants, and loans guaranteed under section 108 of the Housing and Community Development Act of 1974, as amended. Housing and community development assistance does not include financial assistance provided through a contract of insurance.

Housing development means low-income housing owned, developed, or operated by the public housing agencies or Indian housing authorities in accordance with HUD's public and Indian housing program regulations codified in 24 CFR Chapter IX.

HUD share. For HUD's housing programs, see the definition provided in § 135.50(e)(2) of this part. For HUD's community development programs, see the definition provided in § 135.70(e)(2) of this part.

HUD Youthbuild programs means programs that receive assistance under subtitle D of Title IV of the National

Affordable Housing Act (42 U.S.C. 12899), as amended by the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992), and provide disadvantaged youth with opportunities for employment, education, leadership development, and training in the construction or rehabilitation of housing for homeless individuals and members of low- and very low-income families.

Indian housing authority (IHA) has the meaning given this term in 24 CFR 905.102.

JTPA means the Job Training Partnership Act (29 U.S.C. 1579(a)).

Low-income persons has the meaning given this term in section 3(b)(2) of the U.S. Housing Act of 1937 (42 U.S.C. 1437a(b)(2)) which is—families (including single persons) whose incomes do not exceed 80 per centum of the median income for the area, as determined by the Secretary, with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 80 per centum of the median for the area on the basis of the Secretary's findings that such variations are necessary because of prevailing levels of construction costs or unusually high or low-income families.

Metropolitan area means a metropolitan statistical area (MSA), as established by the Office of Management and Budget.

Nonmetropolitan county means any county outside of a metropolitan area.

Project cost means the cost of a section 3 covered project (excluding administrative costs of the recipient), including acquisition costs, development hard costs (i.e., the actual costs of construction or rehabilitation), related soft costs associated with financing and development of the project (e.g., architectural, engineering or related professional services required to prepare plans, drawings, specifications, or work write-ups; costs to process the settlement of financing for the project) and relocation costs.

Public housing agency (PHA) has the meaning given this term in 24 CFR part 941.

Recipient means any entity which receives section 3 covered assistance, directly from HUD or from another recipient, or which receives HUD housing or community development assistance directly from HUD or from another recipient for a section 3 covered project, and includes, but is not limited to, any State, unit of local government, PHA, IHA, Indian tribe, or other public body, public or private nonprofit organization, private agency or institution, mortgagor, developer, limited dividend sponsor, builder, property manager, community housing development organization, resident management corporation, resident council, or cooperative association. Recipient also includes any successor, assignee or transferee of any such entity, but does not include any ultimate beneficiary under the HUD program to which section 3 applies and does not include contractors.

Secretary means the Secretary of Housing and Urban Development.

Section 3 means section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u).

Section 3 business concern means a business concern, as defined in this section, that:

(1) Is 51 percent or more owned by low-income persons;

(2) Employs a substantial number of low-income persons for the type of activity in which the business concern is engaged; or

(3) Is substantially owned, but less than 51 percent owned, by low-income persons, and employs low-income persons in key management positions.

Section 3 clause means the contract provisions set forth in § 135.11 of this part.

Section 3 covered assistance means one or more of the following types of public and Indian housing assistance:

(1) Development assistance provided pursuant to section 5 of the U.S. Housing Act of 1937;

(2) Operating assistance provided pursuant to section 9 of the U.S. Housing Act of 1937;

(3) Modernization assistance provided pursuant to section 14 of the U.S. Housing Act of 1937.

Section 3 covered contract means a contract or subcontract awarded by a recipient or contractor for work generated by the expenditure of section 3 covered assistance, or for work in connection with a section 3 covered project. Contracts for the purchase of supplies and materials do not constitute section 3 covered contract. However, wherever a contract for materials includes the installation of the materials, the contract constitutes a section 3 covered contract. For example, a contract for purchase and installation of a furnace would be a section 3 covered contract because the contract is a contract for work (i.e., the installation of the furnace) and thus is covered by section 3.

Section 3 covered project means the construction, reconstruction, conversion or rehabilitation of housing (including reduction and abatement of lead-based paint hazards), other buildings or improvements (regardless of ownership) assisted with housing or community development assistance.

Subcontractor means any entity (other than a person who is an employee of the contractor) which has a contract with a contractor to undertake a portion of the contractor's obligation for the performance of work generated by the expenditure of section 3 covered assistance, or arising in connection with a section 3 covered project.

Very low-income persons has the meaning given this term in section 3(b)(2) of the U.S. Housing Act of 1937 (42 U.S.C. 1437a(b)(2) which is—low-income families (including single persons) whose incomes do not exceed 50 per centum of the median family income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 50 per centum of the median for the area on the basis of the Secretary's findings that such variations are necessary because of unusually high or low family incomes.

Youthbuild programs. See the definition of "HUD Youthbuild programs" in this section.

§ 135.9 Delegation of authority.

Except as may be otherwise provided in this part, the functions and responsibilities of the Secretary under section 3, and described in this part, are delegated to the Assistant Secretary for Fair Housing and Equal Opportunity. The Assistant Secretary is further authorized to redelegate functions and responsibilities to other employees of HUD; *provided however,* that the authority to issue rules and regulations under this part, which authority is delegated to the Assistant Secretary, may not be redelegated by the Assistant Secretary.

§ 135.11 Section 3 clause.

All section 3 covered contracts shall include the following clause (referred to as the section 3 clause):

A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. The parties to this contract will certify that they are under no contractual or other

impediment that would prevent them from complying with the part 135 regulations.

C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places available to employees and applicants for training and employment.

D. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in termination of this contract for default.

G. With respect to work to be performed in connection with section 3 covered public or Indian housing assistance, the housing authority and its contractor will agree to specific actions that will constitute the contractor's best efforts to offer job training and employment opportunities to low-income persons and/or contracting opportunities to section 3 business concerns, as applicable. These "best effort" activities will be described on the attachment to this contract and made a part of this contract.

H. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

§ 135.13 Requirements applicable to HUD NOFAs for section 3 covered programs.

(a) *Certification of compliance with part 135.* All notices of funding availability (NOFAs) issued by HUD which announce the availability of funding covered by section 3 shall include a provision in the NOFA that notifies applicants that section 3 and the regulations in part 135 are applicable to funding awards made under the NOFA, and shall require as an application submission requirement (which may be specified in the NOFA or application kit) a certification by the applicant that it will comply with the regulations in part 135. (For PHAs, this requirement will be met where a PHA Resolution in Support of the Application is submitted.) With respect to application evaluation, HUD will accept an applicant's certification unless there is evidence substantially challenging the certification.

(b) *Award of bonus points for previous section 3 or similar achievements.* (1) Each NOFA which provides for the selection of applicants by a rating and ranking process shall invite, but shall not require, an applicant to include as part of its application a description of the applicant's past experience and achievements in providing economic opportunities to low-income persons. This experience and achievements need not be limited to Section 3 covered assistance or projects. Economic opportunities include, but need not be limited to, training, employment and contracting. The NOFA or other notice made available to applicants will specify the criteria that will be used to evaluate an applicant's description of experience and achievements, and the number or range of bonus points that may be awarded. The bonus points cannot be used to give an undue advantage to applicants who fail to meet minimal standards or other technical program criteria specified the NOFA. Bonus points provided pursuant to this provision may be awarded only to those applicants determined to be technically acceptable for funding.

(2) This requirement is not applicable to funding where the authorizing legislation establishes the criteria for funding and prohibits HUD from establishing additional criteria.

§ 135.15 Approved apprenticeship programs and applicable regulations.

(a) Certain apprenticeship and trainee programs have been approved by various Federal agencies. Approved apprenticeship and trainee programs include: an apprenticeship program approved by the Bureau of Apprenticeship and Training of the Department of Labor, or a State Apprenticeship Agency, or an on-the-job training program approved by the Bureau of Apprenticeship and Training, in accordance with the regulations at 29 CFR part 5; or an apprenticeship or training program approved by HUD in accordance with HUD policies and guidelines, as applicable. Participation in an approved apprenticeship program does not, in and of itself, demonstrate compliance with the regulations of this subpart.

(b) Certain HUD-assisted construction, rehabilitation and maintenance activities are subject to federal labor standards, set forth in regulations and guidelines, requiring the payment of prevailing wage rates to all laborers and mechanics engaged in such work. Apprentices and trainees may be utilized on this work to the extent permitted under either Department of Labor regulations at 29 CFR part 5 or HUD policies and guidelines, as applicable. These requirements include adherence to the wage rates and ratios of apprentices or trainees to journeymen set out in approved apprenticeship and training programs, as described in paragraph (a) of this section.

Subpart B—Economic Opportunities for Low- and Very Low-Income Persons in Public and Indian Housing Programs

§ 135.30 General.

(a) *Purpose.* The purpose of this subpart is to provide for implementation of section 3 in HUD's public and Indian housing programs.

(b) *Section 3 preference requirements.* With respect to section 3 covered assistance, as defined in § 135.7, section 3 requires that PHAs and IHAs, their contractors and subcontractors, shall make their best efforts, consistent with existing Federal, State, and local laws and regulations, to:

(1) give the training and employment opportunities generated by section 3 covered assistance to low-income persons (the training and employment preference);

(2) award contracts for work to be performed in connection with section 3 covered assistance to section 3 business concerns (the contracting preference); and

(3) provide other economic opportunities to low-income persons and section 3 business concerns.

(c) *Applicability.* (1) This subpart applies to PHAs, IHAs, their contractors and subcontractors that receive "section 3 covered assistance," as this term is defined in § 135.7.

(2) IHAs that receive section 3 covered assistance shall comply with the procedures and requirements of this subpart B to the maximum extent consistent with, but not in derogation

of, compliance with section 7(b) of the Indian Self-determination and Education Assistance Act (25 U.S.C. 450e(b)). (See 24 CFR part 905.)

(3) PHAs and IHAs that receive other Federal or public assistance that is not covered by section 3 are encouraged to comply with the section 3 preference requirements with the respect to all job training, employment, and contracting opportunities that are generated by this other assistance.

(d) *Special use of "HA".* For purposes of this subpart, and except where the context indicates otherwise, the term "HA" refers collectively to a PHA and an IHA, and "HAs" refers collectively to PHAs and IHAs.

(e) *HA responsibility for monitoring compliance with section 3.* (1) Each HA shall be responsible for monitoring its own operations and the operations of its contractors and subcontractors to ensure compliance with the section 3 preference requirements. A finding by HUD that the HA has not provided adequate monitoring, or enforcement of the section 3 preference requirements also may result in a determination by HUD that the HA is in breach of the ACC or that the HA lacks administrative capacity.

(2) Failure to offer training and employment opportunities to low-income persons, or to award contracts to section 3 business concerns shall not be evidence in itself of noncompliance with the section 3 preference requirements. However, such failure may result in a review of records by HUD in the case of an HA, or by the HA or HUD, or both, in the case of contractor or subcontractor, to determine whether best efforts were undertaken to comply with the section 3 preference requirements.

§ 135.32 Training and employment opportunities.

(a) *General.* This section describes the specific categories of low-income persons to which best efforts must be directed in the offering of training and employment opportunities. This section also provides examples of activities that may be undertaken, in any combination, to demonstrate that best efforts were made to offer training and employment opportunities to low-income persons.

(b) *Preference for low-income persons.* (1) *Order of providing preference.* (i) HAs, their contractors and subcontractors shall direct their best efforts to give training and employment opportunities to the following low-income persons, in the order of priority presented:

(A) *Category 1:* residents of the housing development or developments for which the section 3 covered assistance is expended;

(B) *Category 2:* residents of other housing developments managed by the HA that is expending the section 3 covered housing assistance;

(C) *Category 3:* participants in HUD Youthbuild programs being carried out in the metropolitan area (or nonmetropolitan county) in which the section 3 covered assistance is expended;

(D) *Category 4:* other low-income persons residing within the metropolitan area (or nonmetropolitan county) in which the section 3 covered assistance is expended.

(ii) Best efforts to offer training and employment opportunities must first be directed to category 1 persons. These best efforts shall be expanded to include the succeeding categories of persons, in the order of priority shown in paragraph (b)(1)(i) of this section, if there are an insufficient number of persons in the immediately preceding category responding to the best efforts to offer training and employment opportunities, or meeting the qualifications of the positions to be filled.

(2) *Eligibility for preference.* A low-income person responding to the best efforts of an HA, contractor or subcontractor to offer training and employment opportunities to low-income persons, and seeking the preference in training and employment provided by this section, shall certify, or submit evidence to the HA, contractor or subcontractor, if requested, that the person is a category 1, 2, 3, or 4 person, as described in paragraph (b)(1)(i) of this section.

(3) *Eligibility for employment.* Nothing in this subpart shall be construed to require the employment of a category 1, 2, 3, or 4 person who does not meet the qualifications of the position to be filled.

(c) *Best efforts.* (1) *Flexibility in meeting best efforts.* The activities described in this paragraph (c) are options, not requirements, that may be undertaken to demonstrate that best efforts were made to comply with the section 3 training and employment preference. Other activities may be undertaken to comply with the section 3 training and employment preference, and HAs, their contractors and subcontractors are encouraged to develop innovative methods to increase training and employment opportunities for low-income persons.

(2) *Contractor's disclosure of best efforts before contract award.* A contract may not be awarded to a contractor (that intends to offer training and employment opportunities in connection with the contract) unless the contractor has disclosed to the HA the best efforts that the contractor intends to undertake to meet the section 3 training and employment preference, and the HA has approved these efforts in accordance with the procedures of § 135.36(c)(1)(iv).

(3) *Examples of best efforts.* The following presents examples of activities which may be undertaken, in any combination, and which may demonstrate that best efforts were made to offer training and employment opportunities to low-income persons.

(i) Advertising the training and employment positions by distributing flyers (which identify the positions to be filled, the qualifications required, and where to obtain additional information about the application process) to every occupied dwelling unit in the housing development or developments where category 1 or category 2 persons (as these terms are defined in paragraph (b)(1)(i) of this section) reside.

(ii) Advertising the training and employment positions by posting flyers (which identify the positions to be filled, the qualifications required, and where to obtain additional information about the application process) in the common areas or other prominent areas of the housing development or developments where category 1 or category 2 persons reside.

(iii) Contacting resident councils, resident management corporations, or other resident organizations, where they exist, in the housing development or developments where category 1 or category 2 persons reside, and request the assistance of these organizations in notifying residents of the training and employment positions to be filled.

(iv) Scheduling (and advertising) a job informational meeting to be conducted by an HA or contractor representative or representatives at the housing development or developments where category 1 or category 2 persons reside.

(v) Arranging for an HA contractor representative or representatives to be available to provide assistance in completing job application forms to residents of the housing development or developments where category 1 or category 2 persons reside.

(vi) Arranging for an HA or contractor representative or employment specialist to conduct a workshop on applying and interviewing for jobs at the housing development or developments where category 1 or category 2 persons reside or at a location easily accessible to these residents.

(vii) Arranging for a location in the housing development or developments where category 1 persons reside where

job applications may be delivered to and collected by an HA or contractor representative or representatives.

(viii) Conducting job interviews at the housing development or developments where category 1 or category 2 persons reside, or a location easily accessible to these residents.

(ix) Contacting agencies administering HUD Youthbuild programs, and requesting their assistance in recruiting HUD Youthbuild program participants for the HA's or contractor's training and employment positions.

(x) Consulting with community leaders, community organizations and other officials or organizations to assist with recruiting category 4 residents for the HA's or contractor's training and employment positions.

(xi) Advertising the jobs to be filled through the local media, such as community television networks, newspapers of general circulation, and radio advertising.

(xii) Employing a job coordinator, or contracting with a business concern that is licensed in the field of job placement (preferably one of the section 3 business concerns identified in § 135.36(b)(1) of this part), that will undertake, on behalf of the HA contractor, the efforts to match eligible and qualified low-income persons with the training and employment positions that the HA or contractor intends to fill.

(xiii) Employing low-income persons directly on either a permanent or a temporary basis to perform work generated by section 3 assistance. (This type of employment is referred to as "force account labor" in HUD's Indian housing regulations. See 24 CFR 905.102, AND 905.201(a)(6).)

(xiv) Where there are more qualified low-income persons than there are positions to be filled, maintaining a file of eligible qualified low-income persons for future employment positions.

(xv) Encouraging category 1 and 2 persons to maintain on file with the HA, or with the contractor, as applicable, a copy of a current resume.

(xvi) Sponsoring employment and training programs for low-income residents through such programs as HUD's "Step-Up" employment and training program for public and Indian housing residents and other low-income persons (*See* 57 FR 46398), or through the JTPA Program, or through programs undertaken in association with local educational institutions.

(xvii) Undertaking such continued job training efforts as may be necessary to ensure the continued employment of low-income persons previously hired for employment opportunities.

(d) *Documentation of best efforts.* (1) To demonstrate that best efforts were made to comply with the section 3 training and employment preference, the HA shall:

(i) Amend its personnel policies to include a statement that the HA's personnel practices provide preference for low-income persons in training and employment opportunities as required by section 3; and

(ii) Not later than 45 days following the end of the HA fiscal year, the HA shall have documented the following:

(A) The total number of persons that were hired during the HA fiscal year, and the types of training and employment positions for which they were hired, and an indication of which positions, if any, were temporary or seasonal positions;

(B) The total number of low-income persons that were hired during the HA fiscal year, and the types of training and employment positions for which they were hired, and an indication of which positions, if any were temporary or seasonal positions;

(C) The best efforts that were undertaken to make the low-income persons identified in paragraph (b)(1)(i) of this section aware of the training and employment positions to be filled, and to encourage and facilitate their participation in the job application process;

(D) The mechanism by which the HA ensured that its contractors and subcontractors complied with the section 3 training and employment preference.

(2) The documentation required by paragraph (d)(1)(ii) of this section shall be maintained by the HA for review by HUD. The HA shall require appropriate and timely documentation of its contractor and subcontractors concerning their best efforts to comply with the section 3 training and employment preference in order that the HA may comply with the recordkeeping and reporting requirements of this part.

(e) *Evaluating best efforts.* A determination of whether best efforts were made to offer training and employment opportunities to low-income persons shall be based on evaluation of the efforts by the HA, contractor or subcontractor, as applicable, to:

(1) Make the low-income persons identified in paragraph (b)(1)(i) of this section aware of the training and employment positions to be filled;

(2) Encourage and facilitate the participation of low-income persons in the job application process; and

(3) Train and employ those low-income persons that are qualified for the positions to be filled.

§ 135.36 Contracting opportunities.

(a) *General.* This section describes the specific categories of section 3 business concerns to which best efforts must be directed in the offering of contracting opportunities. This section also describes specific procedures which must be used to implement the section 3 contracting preference for each of the competitive procurement methods authorized in 24 CFR 85.36(d). Additionally, this section describes the outreach activities that may be undertaken to demonstrate that best efforts were made to award section 3 covered contracts (as defined in § 135.7) to section 3 business concerns.

(b) *Preference for section 3 business concerns.* (1) (i) *Order of providing preference.* HAs, their contractors and subcontractors shall direct their best efforts to award contracts to the following section 3 business concerns, in the order of priority presented:

(A) *Catetory 1:* Business concerns that are 51 percent or more owned by residents of the housing development or developments for which the section 3 covered assistance is expended, or which employ a substantial number of these persons.

(B) *Category 2:* Business concerns that are 51 percent or more owned by residents of other housing development or developments managed by the HA that is expending the section 3 covered assistance, or which employ a substantial number of these persons.

(C) *Category 3:* HUD Youthbuild programs being carried out in the metropolitan area (or nonmetropolitan county) in which the section 3 covered assistance is expended.

(D) *Category 4:* Business concerns that are 51 percent or more owned by low-income persons residing within the metropolitan area (or nonmetropolitan county) in which the section 3 covered assistance is expended, or which employ a substantial number of these persons.

(ii) The requirement to direct best efforts to the categories of business concerns listed in paragraph (b)(1)(i) shall not be construed to authorize set-asides or any restriction of competition to one or more these categories of business concerns.

(2) *Eligibility for section 3 preference.* A business concern seeking to qualify for a section 3 contracting preference shall certify or submit evidence, if requested, that the business concern is a category 1, 2, 3, or 4 section 3 business

concern, as provided in (b)(1)(i) of this section.

(3) *Ability to complete contract.* A section 3 business concern seeking a contract or a subcontract shall submit evidence to the HA, contractor, or subcontractor (as applicable), if requested, sufficient to demonstrate to the satisfaction of the HA, contractor, or subcontractor that the business concern has the ability to perform successfully under the terms and conditions of the proposed contract, as required by 24 CFR 85.36(b)(8) of HUD's procurement regulations.

(c) *Procurement procedures.* This paragraph (c) sets forth requirements applicable to all contracting by HAs, and also provides specific procedures that must be followed by HAs for implementing the section 3 contracting preference for each of the competitive procurement methods authorized in 24 CFR 85.36(d). HA contractors and subcontractors may, but are not required to comply with procurement procedures provided in paragraphs (c)(2) through (c)(4) of this section to demonstrate compliance with section 3. A contractor or subcontractor that chooses not to follow the procedures in paragraphs (c)(2) through (c)(4) of this section, must provide for preference for section 3 business concerns in the procurement practices that they utilize.

(1) *Requirements and guidance applicable to all contracting. (i) Permissible use of lists of pre-qualified section 3 business concerns.* Use of lists of pre-qualified section 3 business concerns is permitted provided that use of such lists does not preclude potential bidders from qualifying during the solicitation period, and does not conflict with order of preference set forth in paragraph (b)(1)(i) of this section.

(ii) *Notification of availability of lists of section 3 business concerns by specialty.* Each Invitation for Bids (IFB) and each Request for Proposals (RFP) shall state whether the HA or contractor maintains lists of section 3 business concerns by specialty (e.g., plumbing, electrical, foundations) and by priority ranking (i.e., category 1, category 2, etc.) which are available to contractors and subcontractors, as applicable, to assist them in meeting their section 3 obligations concerning contracting opportunities.

(iii) *Inability to comply with contracting preference.* Where a determination is made that there are no business concerns which qualify as section 3 business concerns as provided in paragraph (b)(2) of this section, or that there are no section 3 business concerns which have the ability to perform successfully under the terms of the proposed contract as provided in paragraph (b)(3) of this section, the HA, contractor or subcontractor, as applicable, shall document in writing the basis for this determination, and shall maintain this written explanation with the documentation required by paragraph (e) of this section.

(iv) *Contractor's disclosure of best efforts before contract award.* Before a section 3 covered contract is awarded to a contractor, the contractor shall have disclosed to the HA the best effort activities intended to be undertaken by the contractor to comply with section 3 job training and employment preference or the section 3 contracting preference, or both, if applicable, and the HA shall have approved these best efforts. The timing of disclosure of the best effort activities by the contractor will depend upon the method of procurement selected by the HA. If the HA determines that the efforts intended to be undertaken by the contractor do not constitute best efforts, the HA and the contractor will negotiate the best effort activities to be undertaken by the contractor. Where the method of procurement utilized is sealed bid, the negotiations shall not affect the bid price or any material aspect of the bid. When the HA and contractor reach agreement on best effort activities, the actions will be described in an attachment to the contract and made part of the contract in accordance with § 135.11 of this part. If the HA and contractor fail to reach agreement, the contractor will be determined to be not responsible and, therefore ineligible for the contract award. (Compliance with section 3 is a matter of responsibility.) This paragraph (c)(1)(iv) is also applicable to section 3 covered contracts awarded to subcontractors.

(2) *Small Purchase Procedures.* For section 3 covered contracts aggregating no more than $25,000, the methods set forth in this paragraph (c)(2) or the more formal procedures set forth in paragraphs (c)(3) and (c)(4) must be utilized.

(i) *Solicitation.* (A) Quotations may be solicited by telephone, letter or other informal procedure provided that the manner of solicitation provides for participation by a reasonable number of competitive sources. At the time of solicitation, the parties must be informed of: The section 3 covered contract to be awarded with sufficient specificity; the time within which quotations must be submitted; and the information that must be submitted with each quotation.

(B) If the method described in paragraph (i)(A) is utilized, there must be an attempt to obtain quotations from a minimum of three qualified sources in order to promote competition. Fewer than three quotations is acceptable when the HA has attempted, but has been unable, to obtain a sufficient amount of competitive quotations. In unusual circumstances, the HA may accept the sole quotation received in response to a solicitation provided the price is reasonable. In all cases, the HA shall document the circumstances when it has been unable to obtain at least three quotations.

(ii) *Award.* (A) Where the section 3 covered contract is to be awarded based upon the lowest price, the contract shall be awarded to the qualified section 3 business concern with the lowest responsive quotation, if it is reasonable and no more than 10 percent higher than the quotation of the lowest responsive quotation from any qualified source. If no responsive quotation by a qualified section 3 business concern is within 10 percent of the quotation of the lowest responsive quotation from any qualified source, the award shall be made to the source with the lowest quotation.

(B) Where the section 3 covered contract is to be awarded based on factors other than price, a request for quotations shall be issued by developing the particulars of the solicitation, including a rating system for the assignment of points to evaluate the merits of each quotation. The solicitation shall identify all factors to be considered, including price or cost. The rating system shall provide for a range of 15 to 25 percent of the total number of available rating points to be set aside for the provision of preference for section 3 business concerns. The purchase order shall be awarded to the responsible firm whose quotation is the most advantageous, considering price and all other factors specified in the rating system.

(3) *Procurement by sealed bids (Invitations for Bids).* Preference in the award of section 3 covered contracts that are awarded under a sealed bid (IFB) process shall be provided as follows:

(i) Bids shall be solicited from all businesses (section 3 business concerns, and non-section 3 business concerns). An award shall be made to the qualified section 3 business concern with the highest priority ranking and with the lowest responsive bid if that bid—

(A) is within the maximum total contract price established in the HA's budget for the specific project for which bids are being taken, and

(B) is not more than "X" higher than the total bid price of the lowest

responsive bid from any responsible bidder. "X" is determined as follows:

	x=lesser of:
When the lowest responsive bid is less than $100,000	10% of that bid or $9,000.
When the lowest responsive bid is:	
At least $100,000, but less than $200,000	9% of that bid, or $16,000.
At least $200,000, but less than $300,000	8% of that bid, or $21,000.
At least $300,000, but less than $400,000	7% of that bid, or $24,000.
At least $400,000, but less than $500,000	6% of that bid, or $25,000.
At least $500,000, but less than $1 million	5% of that bid, or $40,000.
At least $1 million, but less than $2 million	4% of that bid, or $60,000.
At least $2 million, but less than $4 million	3% of that bid, or $80,000.
At least $4 million, but less than $7 million	2% of that bid, or $105,000.
$7 million or more	1½% of the lowest responsive bid, with no dollar limit.

(ii) If no responsive bid by a section 3 business concern meets the requirements of paragraph (c)(3)(i) of this section, the contract shall be awarded to a responsible bidder with the lowest responsive bid.

(4) *Procurement under the competitive proposals method of procurement (Request for Proposals (RFP)).* For contracts and subcontracts awarded under the competitive proposals method of procurement (24 CFR 85.36(d)(3)), a Request for Proposals (RFP) shall be developed which shall identify all evaluation factors (and their relative importance) to be used to rate proposals. One of the evaluation factors shall address both the preference for section 3 business concerns and the acceptability of the best effort activities disclosed in proposals submitted by all business concerns (section 3 and non-section 3 business concerns). This factor shall provide for a range of 15 to 25 percent of the total number of available points to be set aside for the evaluation of these two components. The component of this evaluation factor designed to address the preference for section 3 business concerns must establish a preference for these business concerns in the order of priority ranking as described in 135.36(b)(1)(i). With respect to the second component (the acceptability of the best effort activities), the RFP shall require the disclosure of the contractor's intended best effort activities to comply with the section 3 training and employment preference, or contracting preference, or both, if applicable. A determination of the contractor's responsibility will include the submission of acceptable best effort activities. The contract award shall be made to the responsible firm (either section 3 or non-section 3 business concern) whose proposal is determined most advantageous, considering price and all other factors specified in the RFP.

(5) *Indian preference in IHA contracting.* The provisions of section 7(b) of the Indian Self Determination and Education Assistance Act (25 U.S.C. 450e) apply to IHAs. These provisions require to the greatest extent feasible that preference and opportunities for training and employment be given to Indians and that preference in the award of subcontracts and subgrants be given to Indian Organizations and Indian Owned Economic Enterprises, as these terms are defined in 24 CFR part 905. Where an IHA awards a contract providing Indian preference differentials allowed under 24 CFR 905.175, the IHA may allow additional differentials for section 3 preference not to exceed one-third of the differentials authorized for Indian preference. For all other contracts awarded, the IHA shall comply with the provisions of this § 135.36.

(d) *Examples of best efforts.* The following presents examples of activities which HAs, their contractors and subcontractors may undertake, in any combination, and which may demonstrate that best efforts were made to award contracts to section 3 business concerns.

(1) Advertising the contracting opportunities by posting notices, which provide general information about the work to be contracted and where to obtain additional information, in the common areas or other prominent areas of the housing development or developments owned and managed by the HA.

(2) Contacting resident councils, resident management corporations, or other resident organizations, where they exist, and requesting their assistance in identifying category 1 and category 2 business concerns.

(3) Providing written notice to all known section 3 business concerns of the contracting opportunities. This notice should be in sufficient time to allow the section 3 business concerns to respond to the bid invitations or request for proposals.

(4) Following up with section business concerns that have expressed interest in the contracting opportunities by contacting them to provide additional information on the contracting opportunities.

(5) Coordinating any pre-bid meetings at which section 3 business concerns could be informed of upcoming contracting and subcontracting opportunities.

(6) Carrying out workshops on contracting procedures and specific contract opportunities in a timely manner so that section 3 business concerns can take advantage of upcoming contracting opportunities, with such information being made available in languages other than English where appropriate.

(7) Advising section 3 business concerns as to where they may seek assistance to overcome limitations such as inability to obtain bonding, lines of credit, financing, or insurance.

(8) Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways to facilitate the participation of section 3 business concerns.

(9) Where appropriate, breaking out contract work items into economically feasible units to facilitate participation by section 3 business concerns.

(10) Contacting agencies administering HUD Youthbuild programs, and notifying these agencies of the contracting opportunities.

(11) Advertising the contracting opportunities through trade association papers and newsletters, and through the local media, such as community television networks, newspapers of general circulation, and radio advertising.

(12) Developing a list of eligible section 3 business concerns.

(13) Participating in the "Contracting with Resident-Owned Businesses"

program provided under 24 CFR part 963.

(14) Establishing or sponsoring programs designed to assist residents of public or Indian housing in the creation and development of resident-owned businesses.

(e) *Documentation of best efforts.* (1) To demonstrate that best efforts were made to award contracts to the section 3 business concerns identified in paragraph (b)(1)(i) of this section, the HA shall:

(i) Amend its procurement policies to include a statement that the HA's procurement practices provide for preference to section 3 business concerns, as required by section 3; and

(ii) Not later than 45 days following the end of each HA fiscal year, the HA shall have documented the following:

(A) The number and dollar value of all contracts that were awarded during the HA fiscal year;

(B) The number and dollar value of all contracts that were awarded to section 3 business concerns during the HA fiscal year;

(C) A description of the best efforts that were undertaken to award contracts to the section 3 business concerns; and

(D) A description of the mechanism by which the HA ensured that its contractors and subcontractors complied with the contracting preference of this subpart.

(2) The documentation required by paragraph (e)(1) of this section shall be maintained by the HA for review by HUD. The HA shall require appropriate and timely documentation of its contractors and subcontractors concerning their best efforts to comply with the section 3 contracting preference in order that the HA may comply with the reporting and recordkeeping requirements of this part.

(f) *Evaluating best efforts.* A determination of whether best efforts were made to award contracts to section 3 business concerns shall be based on evaluation of efforts by the HA, contractor, or subcontractor, as applicable, to:

(1) Identify section 3 business concerns;

(2) Make section 3 business concerns aware of the contracting opportunities;

(3) Encourage and facilitate the participation of section 3 business concerns in the procurement process; and

(4) Award contracts to those section 3 business concerns that are capable of performing the contract work in accordance with paragraph (b)(3) of this section.

§ 135.38 Providing other economic opportunities.

In accordance with the findings of the Congress, as stated in section 3, that other economic opportunities offer an effective means of empowering low-income persons, an HA is encouraged to undertake efforts to provide to low-income persons economic opportunities other than training, employment, and contract awards, in connection with section 3 covered assistance. Other economic opportunities may include, but are not limited to:

(a) Providing incentives to non-section 3 business concerns to form joint ventures with section 3 business concerns. Incentives may be provided through a competitive proposal method of procurement, or through a notice of funding availability that utilizes a rating system which assigns points to joint ventures which qualify as a "section 3 joint venture" as defined in this paragraph (a). The points assigned however may not be greater than those points assigned to one of the categories of section 3 business concerns listed in § 135.36(b)(1)(i) for which a contracting preference is provided. A section 3 joint venture means an association of business concerns, one of which qualifies as a section 3 business concern, formed by written joint venture agreement to engage in and carry out a specific business venture for which purpose the business concerns combine their efforts, resources, and skills for joint profit, but not necessarily on a continuing or permanent basis for conducting business generally, and for which the section 3 business concern:

(1) Is responsible for a clearly defined portion of the work to be performed and holds management responsibilities in the joint venture; and

(2) Performs at least 25 percent of the work and is contractually entitled to compensation proportionate to its work.

(b) Awarding contracts for supplies and equipment to section 3 business concerns or to business concerns which purchase supplies and equipment from section 3 business concerns.

Subpart C—Economic Opportunities for Low- and Very Low-Income Persons in Housing Programs

§ 135.50 General.

(a) *Purpose.* The purpose of this subpart is to provide for implementation of section 3 in HUD's housing programs.

(b) *Section 3 preference requirements.* With respect to work to be performed in connection with a "section 3 covered project" (as this term is defined in § 135.7), section 3 requires that, to the greatest extent feasible, and consistent with existing Federal, State, and local laws and regulations:

(1) opportunities for training and employment be given to low-income persons (the training and employment preference); and

(2) contracts awarded for work to be performed in connection with a section 3 covered project be given to section 3 business concerns (the contracting preference).

(c) *Applicability.* (1) *General.* (i) Except as provided in paragraphs (c)(3) and (c)(4) of this section, this subpart applies to:

(A) Recipients that receive HUD housing program assistance for a section 3 covered project, for which the HUD share of the project cost exceeds $100,000; and

(B) Contractors and subcontractors that are awarded a contract or a subcontract in connection with a section 3 covered project for which the HUD share of the project cost exceeds $100,000, and the contract or subcontract exceeds $50,000.

(ii) Recipients that receive HUD housing program assistance for a section 3 covered project that does not meet the dollar thresholds set forth in paragraph (c)(1)(i) of this section, or that receive HUD housing program assistance for non-section 3 covered projects are encouraged to comply with the section 3 preference requirements with respect to all job training, employment, and contracting opportunities that are generated in connection with these projects.

(2) *IHAs.* IHAs that receive HUD housing program assistance for a section 3 covered project shall comply with the procedures and requirements of this subpart C to the maximum extent consistent with, but not in derogation of, compliance with section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)). (See 24 CFR part 905.)

(3) *HUD's Flexible Subsidy Program.* (i) HUD's Flexible Subsidy Program (the regulations for which are codified at 24 CFR part 219) provides two types of assistance to troubled multifamily projects: operating assistance and capital improvement loans. Only the latter type of assistance which is provided for major repairs that constitute housing rehabilitation within the meaning of "section 3 covered project" (as this term is defined in § 135.7) is subject to compliance with the section 3 preference requirements. Therefore, with respect to the Flexible Subsidy Program, this subpart applies to:

(A) Multifamily project mortgagors that receive assistance under the

Flexible Subsidy Program for rehabilitation and for which the HUD share of the rehabilitation cost exceeds $7,500 per unit; and

(B) Contractors and subcontractors that are awarded a contract or a subcontract in connection with assistance under the Flexible Subsidy Program for which the HUD share of the rehabilitation cost exceeds $7,500 per unit.

(ii) For purposes of this subpart, and unless otherwise indicated, the responsibilities of the "recipient" as set forth in this subpart C shall apply to the multifamily project mortgagor that receives assistance under the Flexible Subsidy Program as provided in paragraph (c)(3)(i) of this section.

(4) *Inapplicability of section 3 to section 8 assistance.* Section 3 and the regulations of part 135 are not applicable to section 8 certificate or voucher assistance.

(d) *Recipient responsibility for monitoring compliance with section 3.* (1) Each recipient is responsible for monitoring its own operations, and the operations of its contractors and subcontractors to ensure compliance with the section 3 preference requirements.

(2) Failure to offer training and employment opportunities to low-income persons, or to award contracts to section 3 business concerns shall not be evidence in itself of noncompliance with the section 3 preference requirements. However, such failure may result in a review of records by HUD in the case of a recipient, or by the recipient or HUD, or both, in the case of a contractor or subcontractor, to determine whether good faith efforts were undertaken to comply with the section 3 preference requirements.

(e) *Definitions.* For purposes of this subpart:

(1) *Good faith efforts* means the activities undertaken to employ low-income persons for training and employment opportunities, and to award contracts to section 3 business concerns as required by section 3.

(2) *HUD share* means the aggregate of funds received from all HUD housing programs for the "project cost," as this term is defined in § 135.7.

(3) *Neighborhood area* means a geographical location within the jurisdiction of a unit of general local government (but not the entire jurisdiction) designated in ordinances, or other local documents as a neighborhood, village, or similar geographical designation.

(4) *Service area* means the geographical area in which the persons benefitting from the section 3 covered project reside. The service area shall not extend beyond the metropolitan area or nonmetropolitan county in which the section 3 covered assistance is expended.

§ 135.52 Training and employment opportunities.

(a) *General.* This section describes the specific categories of low-income persons to which priority consideration should be given, where feasible, in the offering of training and employment opportunities. This section also provides examples of activities that may be undertaken to demonstrate that good faith efforts were made to offer training and employment opportunities to low-income persons.

(b) *Preference for low-income persons.* Recipients, contractors and subcontractors shall direct their good faith efforts to give training and employment opportunities to low-income persons.

(1) *Priority consideration for certain low-income persons.* In making good faith efforts to hire low-income persons as required by section 3, priority consideration should be given, where feasible, to hiring the following low-income persons:

(i) Low-income persons residing in the service area or neighborhood in which the section 3 covered project is located; and

(ii) Participants in HUD Youthbuild programs.

(2) *Eligibility for preference.* A low-income person responding to the good faith efforts of a recipient, contractor or subcontractor to employ low-income persons, and seeking the preference in training and employment provided by this section, shall certify or submit evidence, if requested, that the person is a low-income person residing within the metropolitan area (or nonmetropolitan county) in which the section 3 covered project is located, or is a member of one of the categories of low-income persons identified in paragraph (b)(1) of this section.

(3) *Eligibility for employment.* Nothing in this subpart shall be construed to require the employment of a low-income person who does not meet the qualifications of the job to be filled.

(c) *Good faith efforts.* (1) *Flexibility in meeting good faith efforts.* The activities described in this section are options, not requirements, that may be undertaken to demonstrate that good faith efforts were made to comply with the section 3 training and employment preference. Other activities may be undertaken to comply with the section 3 training and employment preference, and recipients, contractors and subcontractors are encouraged to develop innovative methods to increase training and employment opportunities for low-income persons.

(2) *Examples of good faith efforts.* The following presents examples of good faith efforts which may be undertaken, in any combination, and which may demonstrate that good faith efforts were made to employ low-income persons, and to give priority consideration to hiring the low-income persons identified in paragraph (b)(1) of this section.

(i) Advertising the training and employment positions by distributing flyers (which identify the positions to be filled, the qualifications required, and where to obtain additional information about the application process) to dwelling units in the neighborhood in which the section 3 covered project is located.

(ii) Advertising the training and employment positions by posting flyers (which identify the positions to be filled, the qualifications required, and where to obtain additional information about the application process) at the site or proposed site of the section 3 covered project, and at public or private institutions operating within the neighborhood or service area of the section 3 covered project, such as grocery stores, shopping malls, schools, community colleges, homeless shelters, and transitional housing facilities.

(iii) Contacting neighborhood organizations, where they exist, in the neighborhood of the section 3 covered project, and requesting the assistance of these organizations in notifying neighborhood residents of the training and employment positions to be filled.

(iv) Scheduling (and advertising) a job informational meeting to be conducted or sponsored by the recipient at a location easily accessible within the service area or neighborhood in which the section 3 covered project is located.

(v) Developing promotional campaigns to inform low-income persons of the recipient's (anticipated and actual) training and employment needs resulting from section 3 covered projects.

(vi) Contracting agencies administering HUD Youthbuild programs, and requesting their assistance in recruiting HUD Youthbuild program participants for the recipient's training and employment positions.

(vii) Consulting with community leaders, community organizations, including resident councils and resident management corporations, and other officials or organizations to assist with recruiting low-income persons for the

recipient's training and employment positions.

(viii) Advertising the jobs to be filled through the local media, such as community television networks, newspapers of general circulation, and radio advertising.

(ix) Contacting non-profit organizations and other public or private agencies operating or involved with job training programs for low-income persons about section 3 employment opportunities, including but not limited to agencies engaged in planning or implementation of training funded through the JTPA.

(x) Employing a job coordinator, or contracting with a business concern that is licensed in the field of job placement (preferably a section 3 business concern, as defined in § 135.7), that will undertake, on behalf of the recipient, the efforts to match eligible and qualified low-income persons with the training and employment positions that the recipient intends to fill.

(xi) Where there are more qualified low-income persons than there are positions to be filled, maintaining a file of eligible qualified low-income persons for future employment positions.

(d) *Documentation of good faith efforts.* (1) To demonstrate that good faith efforts were made to comply with the section 3 training and employment preference, the recipient shall document:

(i) The good faith efforts that were undertaken by the recipient to make low-income persons (and, where feasible, particularly the low-income persons identified in paragraph (b)(1) of this section) aware of the training and employment positions to be filled, and to encourage and facilitate their participation in the job application process; and

(ii) The mechanism by which the recipient ensured that its contractors and subcontractors complied with the section 3 training and employment preference.

(2) The documentation required by paragraph (d)(1) of this section shall be maintained by the recipient receiving the funds directly from HUD for review by HUD. The recipient shall require appropriate and timely documentation of its recipients, contractors and subcontractors concerning their good faith efforts to comply with the section 3 training and employment preference in order that the recipient may comply with the recordkeeping and reporting requirements of this part. Where the recipient is a State which distributes funds for use by a local government or other public entity, or by a private entity, to carry out activities, the State shall require appropriate documentation of funded entities in order that the State may comply with the recordkeeping and reporting requirements of this part.

(e) *Evaluating good faith efforts.* A determination of whether good faith efforts were undertaken to offer training and employment opportunities to low-income persons shall be based on evaluation of the efforts by the recipient, contractor, or subcontractor, as applicable, to:

(1) Make low-income persons (and, where feasible, particularly those identified in paragraph (b)(1) of this section) aware of the training and employment positions to be filled;

(2) Encourage and facilitate the participation of low-income persons in the job application process; and

(3) Employ those low-income persons that are qualified for the positions to be filled.

§ 135.56 Contracting opportunities.

(a) *General.* This section describes the specific categories of section 3 business concerns to which priority consideration should be given, where feasible, in the award of section 3 covered contracts. This section also identifies specific procurement procedures, and describes outreach activities for implementing the section 3 contracting preference that may be undertaken to demonstrate that good faith efforts were made to award section 3 covered contracts to section 3 business concerns.

(b) *Preference for section 3 business concerns.* Recipients, contractors and subcontractors shall direct their good faith efforts to award contracting opportunities to section 3 business concerns.

(1) *Priority consideration for certain section 3 business concerns.* In making good faith efforts to award contracts to section 3 business concerns, priority consideration should be given, where feasible, to awarding contracts to the following section 3 business concerns:

(i) Section 3 business concerns which provide economic opportunities for low-income persons residing in the service area or neighborhood in which the section 3 covered project is located; and

(ii) Applicants (as this term is defined in 42 U.S.C. 12899) selected to carry out HUD Youthbuild programs.

(2) *Eligibility for preference.* A business concern seeking to qualify for the section 3 contracting preference shall certify or submit evidence to the recipient, contractor, or subcontractor, if requested, that the business concern is a section 3 business concern as defined in § 135.7.

(3) *Ability to complete contract.* A section 3 business concern seeking a contract or subcontract shall submit evidence to the recipient, contractor or subcontractor (as applicable), if requested, sufficient to demonstrate to the satisfaction of the recipient, contractor or subcontractor that the business concern has the ability to perform successfully under the terms and conditions of the proposed contract or subcontract. Evidence may include record or references of past performance, and documentation of financial and technical resources.

(c) *Procurement procedures that provide for preference.* Except for multifamily project mortgagors in the Flexible Subsidy Program, good faith efforts to award contracts to section 3 business concerns may be demonstrated by utilizing the specific procedures set forth in § 135.36(c), which provide for implementation of the section 3 contracting preference. Multifamily project mortgagors in the Flexible Subsidy Program are not required to utilize the methods of procurement in 24 CFR 85.36(d) to which the procurement procedures of § 135.36(c) relate, and are not permitted to utilize methods of procurement that would result in their award of a contract to a business concern that submits a bid higher than the lowest responsive bid. A multifamily project mortgagor, or other recipient, contractor or subcontractor that chooses not to follow the procurement procedures of § 135.36(c) must ensure that, where feasible, the procurement practices it selects provide for preference to section 3 business concerns.

(d) *Examples of good faith efforts.* The following presents examples of good faith efforts which may be undertaken, in any combination, and which may demonstrate that good faith efforts were made to award contracts to section 3 business concerns.

(1) Advertise the contracting opportunities by prominently posting notices, which provide general information about the work to be contracted and where to obtain additional information, in the service area or neighborhood in which the section 3 covered project is located.

(2) Contact community organizations and business associations and request their assistance in identifying and contacting section 3 business concerns.

(3) Provide written notice to known section 3 business concerns of the contracting opportunities. This notice should be in sufficient time to allow the section 3 business concerns to respond to the bid invitations or request for proposals.

(4) Follow up with section 3 business concerns that have expressed interest in the contracting opportunities by contacting them to provide additional information on the contracting opportunities.

(5) Coordinate any pre-bid meetings at which section 3 business concerns could be informed of upcoming contracting and subcontracting opportunities.

(6) Carry out workshops on contracting procedures and specific contract opportunities in a timely manner so that section 3 business concerns can take advantage of upcoming contracting opportunities and, where appropriate, make such information available in languages other than English.

(7) Advise section 3 business concerns as to where they may seek assistance to overcome obstacles to securing contract awards such as difficulty with obtaining bonding, lines of credit, financing, or insurance.

(8) Arrange solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways to facilitate the participation of section 3 business concerns.

(9) Break out contract work items into economically feasible units to facilitate participation by section 3 business concerns.

(10) Contact agencies administering HUD Youthbuild programs, and notify these agencies of the contracting opportunities.

(11) Advertise the contracting opportunities though trade association publications, and through the local media, such as community television networks, newspapers of general circulation, and radio advertising.

(12) Develop a list of eligible section 3 business concerns.

(e) *Documentation of good faith efforts.* (1) To demonstrate that good faith efforts were made to award contracts to section 3 business concerns, the recipient shall:

(i) If the recipient maintains written procurement policies, include a statement that the recipient's procurement practices provide preference for section 3 business concerns as required by section 3; and

(ii) Not later than 45 days following the end of the recipient's fiscal year, the recipient shall have documented the following:

(A) The number and dollar value of all contracts that were awarded during the recipient's fiscal year;

(B) The number and dollar value of all contracts that were awarded to section 3 business concerns during the fiscal year;

(C) A description of the good faith efforts that were undertaken to award contracts to section 3 business concerns; and

(D) A description of the mechanism by which the recipient ensured that its contractors and subcontractors complied with the section 3 contracting preference.

(2) The documentation required by paragraph (e)(1) of this section shall be maintained by the recipient for review by HUD. The recipient shall require appropriate and timely documentation of its contractors and subcontractors concerning their good faith efforts to comply with the section 3 contracting preference in order that the recipient may comply with the reporting and recordkeeping requirements of this part.

(f) *Evaluating good faith efforts.* A determination of whether good faith efforts were made to award contracts to section 3 business concerns shall be based on evaluation of the efforts by the recipient to:

(1) Identify section 3 business concerns;

(2) Make section 3 business concerns aware of the contracting opportunities;

(3) Encourage and facilitate the participation of section 3 business concerns in the procurement process; and

(4) Award contracts to those section 3 business concerns that are capable of performing the contract work in accordance with paragraph (b)(3) of this section

Subpart D—Economic Opportunities for Low- and Very Low-Income Persons in Community Development Programs

§ 135.70 General.

(a) *Purpose.* The purpose of this subpart is to provide for implementation of section 3 in HUD's community development programs.

(b) *Section 3 preference requirements.* With respect to work to be performed in connection with a "section 3 covered project" (as this term is defined in § 135.7), section 3 requires that, to the greatest extent feasible, and consistent with existing Federal, State, and local laws and regulations:

(1) Opportunities for training and employment be given to low-income persons (the training and employment preference); and

(2) Contracts awarded for work to be performed in connection with a section 3 covered project be given to section 3 business concerns (the contracting preference.).

(c) *Applicability.* (1) *General.* (i) This subpart applies to:

(A) Recipients that receive HUD community development program assistance for a section 3 covered project, for which the HUD share of the project cost exceeds $100,000; and

(B) Contractors and subcontractors that are awarded a contract or subcontract in connection with a section 3 covered project for which the HUD share of the project cost exceeds $100,000, and the contract or subcontract exceeds $50,000.

(ii) A recipient that receives HUD community development program assistance for a section 3 covered project that does not meet the dollar thresholds set forth in paragraph (c)(1)(i) of this section, or that receives HUD community development program assistance for a non-section 3 covered project, is encouraged, but not required, to make good faith efforts to comply with the employment and contracting objectives of this subpart.

(2) *IHAs.* IHAs that receive HUD community development program assistance for a section 3 covered project shall comply with the procedures and requirements of this subpart D to the maximum extent consistent with, but not in derogation of, compliance with section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)). (See 24 CFR part 905.)

(d) *Recipient responsibility for monitoring compliance with section 3.* (1) Each recipient is responsible for monitoring its own operations and the operations of its contractors and subcontractors to ensure compliance with the section 3 preference requirements. The State's responsibility under the State Community Development Block Grant Program and the HOME Program, with respect to program funds that the State distributed to local governments, shall be to:

(i) Require the local government, its recipients, contractors and subcontractors to make good faith efforts to adhere to the section 3 preference requirements;

(ii) Monitor the local governments; and as appropriate,

(iii) Assist local governments in meeting section 3 requirements.

(2) Failure to offer training and employment opportunities to low-income persons, or to award contracts to section 3 business concerns shall not be evidence in itself of noncompliance with the section 3 preference requirements. However, such failure may result in a review of records by HUD in the case of a recipient, or by the recipient or HUD, or both, in the case of contractor or subcontractor, to determine whether a good faith effort

was undertaken to comply with the section 3 preference requirements.

(e) *Definitions.* For purposes of this subpart:

(1) *Good faith efforts* means the activities undertaken to employ low-income persons for training and employment opportunities, and to award contracts to section 3 business concerns as required by section 3.

(2) *HUD share* means the aggregate funds received from all HUD community development programs for the "project cost," as this term is defined in § 135.7.

(3) *Neighborhood area.* See definition in 24 CFR 570.204(c)(1).

(4) *Service area* means the geographical area in which the persons benefitting from the section 3 covered project reside. The service area shall not extend beyond the metropolitan area or nonmetropolitan county in which the section 3 covered assistance is expended. In HUD's Indian housing programs, the service area, for IHAs established by an Indian tribe as a result of the exercise of the tribe's sovereign power, is limited to the area of tribal jurisdiction.

§ 135.72 Training and employment opportunities.

(a) *General.* This section describes the specific categories of low-income persons to which priority consideration should be given, where feasible, in the offering of training and employment opportunities. This section also provides examples of activities that may be undertaken to demonstrate that good faith efforts were made to offer training and employment opportunities to low-income persons.

(b) *Perference for low-income persons.* Recipients, contractors and subcontractors shall direct their good faith efforts to give training and employment opportunities to low-income persons.

(1) *Priority consideration for certain low-income persons.* In making good faith efforts to hire low-income persons as required by section 3, priority consideration should be given, where feasible, to hiring the following low-income persons:

(i) Low-income persons residing in the service area or neighborhood in which the section 3 covered project is located;

(ii) Participants in HUD Youthbuild programs; and

(iii) Where the section 3 project is assisted under the Steward B. McKinney Homeless Assistance Act (42 U.S.C. 11301 *et seq.*), homeless persons residing in the service area or neighborhood in which the section 3 covered project is located shall be given the highest priority.

(2) *Eligibility for preference.* A low-income person responding to the good faith efforts of a recipient, contractor or subcontractor to employ low-income persons, and seeking the preference in training and employment provided by this section, shall certify or submit evidence, if requested, that the person is a low-income person residing within the metropolitan area (or nonmetropolitan county) in which the section 3 covered project is located, or is a member of one of the categories of low-income persons identified in paragraph (b)(1) of this section.

(3) *Eligibility for employment.* Nothing in this subpart shall be construed to require the employment of a low-income person who does not meet the qualifications of the job to be filled.

(c) *Good faith efforts.* (1) *Flexibility in meeting good faith efforts.* The activities described in this section are options, not requirements, that may be undertaken to demonstrate that good faith efforts were made to comply with the section 3 training and employment preference. Other activities may be undertaken to comply with the section 3 training and employment preference, and recipients, contractors and subcontractors are encouraged to develop innovative methods to increase training and employment opportunities for low-income persons.

(2) *Examples of good faith efforts.* The following presents examples of good faith efforts which may be undertaken, in any combination, and which may demonstrate that good faith efforts were made to employ low-income persons, and to give priority consideration to hiring the low-income persons identified in paragraph (b)(1) of this section.

(i) Advertising the training and employment positions by distributing flyers (which identify the positions to be filled, the qualifications required, and where to obtain additional information about the application process) to dwelling units in the neighborhood in which the section 3 covered project is located.

(ii) Advertising the training and employment positions by posting flyers (which identify the positions to be filled, the qualifications required, and where to obtain additional information about the application process) at the site or proposed site of the section 3 covered project, and at public or private institutions operating within the neighborhood or service area of the section 3 covered project, such as grocery stores, shopping malls, schools, community colleges, homeless shelters, and transitional housing facilities.

(iii) Contacting neighborhood organizations, where they exist, in the neighborhood of the section 3 covered project, and requesting the assistance of these organizations in notifying neighborhood residents of the training and employment positions to be filled.

(iv) Scheduling (and advertising) a job informational meeting to be conducted or sponsored by the recipient at a location easily accessible within the service area or neighborhood in which the section 3 covered project is located.

(v) Developing promotional campaigns to inform low-income persons of the recipient's (anticipated and actual) training and employment needs resulting from section 3 covered projects.

(vi) Contacting agencies administering HUD Youthbuild programs, and requesting their assistance in recruiting HUD Youthbuild program participants for the recipient's training and employment positions.

(vii) Consulting with community leaders, community organizations, including resident councils or resident management corporations, and other officials or organizations to assist with recruiting low-income persons for the recipient's training and employment positions.

(viii) Advertising the jobs to be filled through the local media, such as community television networks, newspapers of general circulation, and radio advertising.

(ix) Contacting non-profit organizations and other public or private agencies operating or involved with job training programs for low-income persons about section 3 employment opportunities, including but not limited to agencies engaged in planning or implementation of training funded through the JTPA.

(x) Employing a job coordinator, or contracting with a business concern that is licensed in the field of job placement (preferably a section 3 business concern, as defined in § 135.7), that will undertake, on behalf of the recipient, the efforts to match eligible and qualified low-income persons with the training and employment positions that the recipient intends to fill.

(xi) Where there are more qualified low-income persons than there are positions to be filled, maintaining a file of eligible qualified low-income persons for future employment positions.

(d) *Documentation of good faith efforts.* (1) To demonstrate that good faith efforts were made to comply with the section 3 training and employment

preference, the recipient shall document:

(i) The good faith efforts that were undertaken by the recipient to make low-income persons (and, where feasible, particularly the low-income persons identified in paragraph (b)(1) of this section) aware of the training and employment positions to be filled, and to encourage and facilitate their participation in the job application process;

(ii) The mechanism by which the recipient ensured that its contractors and subcontractors complied with the section 3 training and employment preference;

(iii) Where the recipient is a State which distributes funds for use by a local government or other public entity, or by a private entity, to carry out activities, the State shall document the mechanism by which it ensured that the funded entity complied with the section 3 training and employment preference.

(2) The documentation required by paragraph (d)(1) of this section shall be maintained by the recipient receiving the funds directly from HUD for review by HUD. The recipient shall require appropriate and timely documentation of its recipients, contractors and subcontractors concerning their good faith efforts to comply with the section 3 training and employment preference in order that the recipient may comply with the recordkeeping and reporting requirements of this part. Where the recipient is a State which distributes funds for use by a local government or other public entity, or by a private entity, to carry out activities, the State shall require appropriate documentation of funded entities in order that the State may comply with the recordkeeping and reporting requirements of this part.

(e) *Evaluating good faith efforts.* A determination of whether good faith efforts were undertaken to offer training and employment opportunities to low-income persons shall be based on evaluation of the efforts by the recipient, contractor, or subcontractor, as applicable, to:

(1) Make low-income persons (and, where feasible, particularly those identified in paragraph (b)(1) of this section) aware of the training and employment positions to be filled;

(2) Encourage and facilitate the participation of low-income persons in the job application process; and

(3) Employ those low-income persons that are qualified for the positions to be filled.

§ 135.76 Contracting opportunities.

(a) *General.* This section describes the specific categories of section 3 business concerns to which priority consideration should be given, where feasible, in the award of section 3 covered contracts. This section also identifies specific procurement procedures, and describes outreach activities for implementing the section 3 contracting preference that may be undertaken to demonstrate that good faith efforts were made to award section 3 covered contracts to section 3 business concerns.

(b) *Preference for section 3 business concerns.* Recipients, contractors and subcontractors shall direct their good faith efforts to award contracting opportunities to section 3 business concerns.

(1) *Priority consideration for certain section 3 business concerns.* In making good faith efforts to award contracts to section 3 business concerns, priority consideration should be given, where feasible, to awarding contracting to the following section 3 business concerns:

(i) Section 3 business concerns which provide economic opportunities for low-income persons residing in the service area or neighborhood in which the section 3 covered project is located; and

(ii) Applicants (as this term is defined in 42 U.S.C. 12899) selected to carry out HUD Youthbuild programs.

(2) *Eligibility for preference.* A business concern seeking to qualify for the section 3 contracting preference shall certify or submit evidence to the recipient, contractor, or subcontractor, if requested, that the business concern is a section 3 business concern as defined in § 135.7.

(3) *Ability to complete contract.* A section 3 business concern seeking a contract or subcontract shall submit evidence to the recipient, contractor or subcontractor (as applicable), if requested, sufficient to demonstrate to the satisfaction of the recipient, contractor or subcontractor that the business concern has the ability to perform successfully under the terms and conditions of the proposed contract or subcontract. Evidence may include record or references of past performance, and documentation of financial and technical resources.

(c) *Procurement procedures that provide for preference.* Good faith efforts to award contracts to section 3 business concerns may be demonstrated by utilizing the specific procedures set forth in § 135.36(c), which provide for implementation of the section 3 contracting preference. A recipient, contractor or subcontractor that chooses not to follow the procurement procedures of § 135.36(c) must ensure that, where feasible, the procurement practices it selects provide for preference to section 3 business concerns.

(d) *Examples of good faith efforts.* The following presents examples of good faith efforts which may be undertaken, in any combination, and which may demonstrate that good faith efforts were made to award contracts to section 3 business concerns.

(1) Advertise the contracting opportunities by prominently posting notices, which provide general information about the work to be contracted and where to obtain additional information, in the service area or neighborhood in which the section 3 covered project is located.

(2) Contact community organizations and business associations and request their assistance in identifying and contacting section 3 business concerns.

(3) Provide written notice to all known section 3 business concerns of the contracting opportunities. This notice should be in sufficient time to allow the section 3 business concerns to respond to the bid invitations or request for proposals.

(4) Follow up with section 3 business concerns that have expressed interest in the contracting opportunities by contacting them to provide additional information on the contracting opportunities.

(5) Coordinate any pre-bid meetings at which section 3 business concerns could be informed of upcoming contracting and subcontracting opportunities.

(6) Carry out workshops on contracting procedures and specific contract opportunities in a timely manner so that section 3 business concerns can take advantage of upcoming contracting opportunities, and where appropriate make such information available in languages other than English.

(7) Advise section 3 business concerns as to where they may seek assistance to overcome obstacles to securing contract awards such as difficulty with obtaining bonding, lines of credit, financing, or insurance.

(8) Arrange solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways to facilitate the participation of section 3 business concerns.

(9) Break out contract work items into economically feasible units to facilitate participation by section 3 business concerns.

(10) Contact agencies administering HUD Youthbuild programs, and notify these agencies of the contracting opportunities.

(11) Advertise the contracting opportunities through trade association

publications, and through the local media, such as community television networks, newspapers of general circulation, and radio advertising.

(12) Develop a list of eligible section 3 business concerns.

(e) *Documentation of good faith efforts.* (1) To demonstrate that good faith efforts were made to award contracts to section 3 business concerns, the recipient shall:

(i) If the recipient maintains written procurement policies, include a statement that the recipient's procurement practices provide preference for section 3 business concerns as required by section 3; and

(ii) Not later than 45 days following the end of the recipient's fiscal year, the recipient shall have documented the following:

(A) The number and dollar value of all contracts that were awarded during the recipient's fiscal year;

(B) The number and dollar value of all contracts that were awarded to section 3 business concerns during the fiscal year;

(C) A description of the good faith efforts that were undertaken to award contracts to section 3 business concerns; and

(D) A description of the mechanism by which the recipient ensured that its contractors and subcontractors complied with the section 3 contracting preference.

(2) The documentation required by paragraph (e)(1) of this section shall be maintained by the recipient for review by HUD. The recipient shall require appropriate and timely documentation of its contractors and subcontractors concerning their good faith efforts to comply with the section 3 contracting preference in order that the recipient may comply with the reporting and recordkeeping requirements of this part.

(f) *Evaluating good faith efforts.* A determination of whether good faith efforts were made to award contracts to section 3 business concerns shall be based on evaluation of the efforts by the recipient to:

(1) Identify section 3 business concerns;

(2) Make section 3 business concerns aware of the contracting opportunities;

(3) Encourage and facilitate the participation of section 3 business concerns in the procurement process; and

(4) Award contracts to those section 3 business concerns that are capable of performing the contract work in accordance with paragraph (b)(3) of this section.

Subpart E—Complaint and Compliance Review

§ 135.90 General.

(a) *Purpose.* The purpose of this subpart is to establish the procedures for handling complaints alleging noncompliance with the regulations of this part, and the procedures governing the Assistant Secretary's review of a recipient's or contractor's compliance with the regulations in this part.

(b) *Definitions.* For purposes of this subpart:

(1) *Complaint* means an allegation of noncompliance with regulations of this part made in the form described in § 135.96(d).

(2) *Complainant* means the party which files a complaint with the Assistant Secretary alleging that a recipient or contractor has failed or refused to comply with the regulations in this part.

(3) *Respondent* means the recipient or contractor against which a complaint of noncompliance has been filed. The term "recipient" shall have the meaning set forth in § 135.7, which includes PHA and IHA.

§ 135.92 Cooperation in achieving compliance.

(a) The Assistant Secretary recognizes that the success of ensuring that low-income persons and section 3 business concerns have the opportunity to apply for jobs and to bid for contracts generated by HUD financial assistance depends upon the cooperation and assistance of HUD recipients. All recipients shall cooperate fully and promptly with the Assistant Secretary in section 3 compliance reviews, in investigations of allegations of noncompliance made under § 135.96, and with the distribution and collection of data and information that the Assistant Secretary may require in connection with achieving the economic objectives of section 3.

(b) The recipient shall refrain from entering into a contract with any contractor after notification to the recipient by HUD that the contractor has been found in violation of the regulations in this part. The provisions of 24 CFR part 24 apply to the employment, engagement of services, awarding of contracts or funding of any contractors or subcontractors during any period of debarment, suspension or otherwise ineligible status.

§ 135.94 Section 3 compliance review procedures.

(a) The Assistant Secretary shall periodically conduct section 3 compliance reviews of selected recipients and contractors to determine whether these recipients are in compliance with the regulations in this part.

(b) A section 3 compliance review shall consist of a comprehensive analysis and evaluation of the recipient's or contractor's compliance with the requirements and obligations imposed by the regulations of this part, including an analysis of the extent to which low-income persons have been hired and section 3 business concerns have been awarded contracts as a result of the methods undertaken by the recipient to achieve the employment, contracting and other economic objectives of section 3.

(c) Where the section 3 compliance review reveals that a recipient or contractor has not complied with the requirements of this part, the Assistant Secretary shall notify the recipient or contractor of its specific deficiencies in compliance with the regulations of this part, and shall advise the recipient or contractor of the means by which these deficiencies may be corrected. HUD shall conduct a follow-up review with the recipient or contractor to ensure that action is being taken to correct the deficiencies.

(d) A continuing failure or refusal by the recipient to comply with the regulations in this part may result in the application of sanctions specified in the contract through which HUD assistance is provided, or the application of sanctions specified in the regulations governing the HUD program under which HUD financial assistance is provided. HUD will notify the recipient of any continuing failure or refusal by the contractor to comply with the regulations in this part for possible action under any procurement contract between the recipient and the contractor. Debarment, suspension and limited denial of participation pursuant to HUD's regulations in 24 CFR part 24, where appropriate, may be applied to the recipient or the contractor.

(e) Section 3 compliance reviews may be conducted before the award of contracts, and especially where the Assistant Secretary has reasonable grounds to believe that the recipient or contractor will be unable or unwilling to comply with the regulations in this part.

(f) Complaints alleging noncompliance with the regulations of this part, as provided in § 135.96, may also be considered during any compliance review conducted to determine the recipient's conformance with regulations in this part.

§ 135.96 Filing and processing complaints.

(a) *Who may file a complaint.* The following individuals and business concerns may, personally or through an authorized representative, file with the Assistant Secretary a complaint alleging noncompliance with the regulations of this part:

(1) Any low-income person on behalf of himself or herself, or as a representative of persons similarly situated, seeking employment, training or other economic opportunities with a recipient or contractor;

(2) Any section 3 business concern on behalf of itself, or as a representative of other section 3 business concerns similarly situated, seeking contract opportunities from a recipient or contractor.

(b) *Where to file a complaint.* A compliant must be filed with the Assistant Secretary for Fair Housing and Equal Opportunity, Department of Housing and Urban Development, Washington, DC 20410.

(c) *Time of filing.* (1) A complaint must be received not later than 180 days from the date of the action or omission upon which the complaint is based, unless the time for filing is extended by the Assistant Secretary for good cause shown.

(2) Where a complaint contains incomplete information, the Assistant Secretary shall request the needed information from the complainant. In the event this information is not furnished to the Assistant Secretary within sixty (60) days of the date of the request, the compliant may be closed.

(d) *Contents of complaint.* Each complaint must be in writing, signed by the complainant, and include:

(1) The complainant's name and address;

(2) The name and address of the respondent;

(3) A description of the acts or omissions by the respondent that is sufficient to inform the Assistant Secretary of the nature and date of the alleged noncompliance.

(e) *Dismissal of complaint.* Where the allegations in a complaint on their face, or as amplified by the statements of the complainant, disclose that the complaint is not timely filed or fails to present a valid allegation of noncompliance with the regulations in this part, the Assistant Secretary may dismiss the complaint without further action. The Assistant Secretary shall notify the complainant of the dismissal of the complaint and the reasons for the dismissal.

(f) *Notification and opportunity to respond to complaint.* Where the allegations in a complaint on their face, or as amplified by the statements of the complainant, present a valid allegation of noncompliance with the regulations in this part, the Assistant Secretary shall accept the complaint, and shall furnish the recipient or contractor against whom the complaint is directed (hereafter, respondent) with a copy of the complaint by certified mail. The respondent shall be allowed a period of 15 calendar days from the date of receipt of the copy of the complaint to submit a response to the Assistant Secretary.

(g) *Investigation of complaint.* The Assistant Secretary shall conduct an investigation of each complaint filed, and shall notify the complainant and the respondent in writing as to whether the Assistant Secretary intends to attempt to resolve the complaint.

(h) *Voluntary resolution of complaint.* (1) The Assistant Secretary will attempt, through informal methods, to obtain a voluntary and just resolution of the complaint, including:

(i) Specific relief for the complainant, and

(ii) Affirmative actions by the respondent to relieve the effects of past noncompliance, and to preclude the occurrence of future violations.

(2) Written notice of a proposed resolution of the complaint, and the terms of the proposed resolution, will be provided to the complainant and respondent, or their representatives, by the Assistant Secretary.

(3) The Assistant Secretary shall, from time to time, review compliance with the terms of any settlement agreement that may have been entered into by the complainant and the respondent, and may, upon a finding of noncompliance, reopen the complaint and take further action as provided in paragraph (i) of this section.

(i) *Referral of complaint for appropriate action under regulations governing the HUD funded program, and responsibilities of Award Official.* If the respondent fails or refuses to confer with the Assistant Secretary, or (1) fails or refuses to make a good faith effort to resolve the complaint, or if the Assistant Secretary finds for any other reason that voluntary resolution of the complaint is not likely to result, the Assistant Secretary may terminate efforts to resolve the complaint. The Assistant Secretary shall:

(i) In the case of a recipient that receives funds directly from HUD, refer the complaint to the Assistant Secretary for the HUD program under which the recipient received HUD assistance (Award Official) for appropriate action to be taken by the Award Official in accordance with the regulations governing that HUD program, which may include debarment, suspension and limited denial of participation in HUD programs.

(ii) In other cases, refer the matter for appropriate action under HUD's regulations at 24 CFR part 24, governing debarment, suspension and limited denial of participation in HUD programs.

(2) Within 30 days following referral of the complaint to the Award Official by the Assistant Secretary, the Award Official shall notify the parties in writing that the complaint has been referred to the Award Official for further action. This notification also will advise the parties of the action to be taken by the Award Official if a decision has been made by that date concerning the action to be taken. If no decision has been made by that date concerning the action to be taken, the notification shall so advise the parties that a decision is pending, and the parties shall receive timely notification of the action to be taken when such decision is made. If a determination is made to take no action, the notification shall disclose why no action is to be taken. The decision by the Award Official (and the type of action to be taken) or to take no action shall be made in consultation with the Assistant Secretary. If a determination is made to take action, the Award Official shall periodically advise the Assistant Secretary of the progress, results, or resolution achieved as a result of the action taken.

Subpart F—Recordkeeping and Reporting

§ 135.100 Recordkeeping.

(a) *Recordkeeping.* To assist HUD in determining whether a recipient or contractor is in compliance with the regulations of this part, the records described in this paragraph (a) must be maintained for the period specified in this paragraph (a). Failure to maintain these records for the applicable period shall constitute noncompliance with part 135.

(1) Recipients subject to subpart B shall maintain the documentation required by § 135.32(d) or by § 135.36(e), or both, for a period of three years from the date of preparation of the documentation.

(2) Recipients that receive funds directly from HUD and that are subject to subpart C shall maintain the documentation required by § 135.52(d) or by § 135.56(e), or both, for a period of three years from the date of preparation of the documentation.

(3) Recipients that receive funds directly from HUD and that are subject

to subpart D shall maintain the documentation required by § 135.72(d) or by § 135.76(e), or both, for a period of three years from the date of preparation of the documentation.

(b) *Access to records.* HUD shall have access to all records, reports, and other documents or items of the recipient or contractor that are maintained to demonstrate compliance with the requirements of this part, or that are maintained in accordance with the regulations governing the specific HUD program under which section 3 covered assistance is provided or otherwise made available to the recipient or contractor.

§ 135.102 Reporting.

Each recipient which receives, directly from HUD, financial assistance that is subject to the requirements of this part shall submit to the Assistant Secretary an annual report in such form and with such information as the Assistant Secretary may request, for the purpose of determining the effectiveness of section 3.

Dated: October 1, 1993.

Roberta Achtenberg,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 93–24747 Filed 10–7–93; 8:45 am]

BILLING CODE 4210–28–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Subtitle A and Parts 92, 219, 570, 572, 574, 576, 583, 700, 889, 890, 905, 961, 963

[Docket No. R–93–1678; FR–3536–P–01]

RIN 2501–AB64

Economic Opportunities for Low- and Very Low-Income Persons—Proposed Conforming Amendments

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: Section 3 of the Housing and Urban Development Act of 1968 (section 3), as amended by the Housing and Community Development Act of 1992, requires that economic opportunities generated by HUD financial assistance for housing (including public and Indian housing) and community development programs shall, to the greatest extent feasible, be given to low- and very low-income persons, particularly those who are recipients of government assistance for housing, and to business that provide economic opportunities for these persons. Elsewhere in today's edition of the **Federal Register**, the Department has published a proposed rule that would make comprehensive amendments to HUD's section 3 regulations at 24 CFR part 135 to bring these regulations into conformity with the changes made to section 3 by the Housing and Community Development Act of 1992, and to make additional changes directed to facilitating compliance with section 3. This proposed rule would make conforming amendments to several parts in title 24 of the Code of Federal Regulations that include reference, or should include reference, to the part 135 regulations.

DATES: Comment due date: November 8, 1993.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Office of General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying on weekdays between 7:30 a.m. and 5:30 p.m. at the above address.

FOR FURTHER INFORMATION CONTACT: Maxine B. Cunningham, Office of Fair Housing Assistance and Voluntary Programs, Section 3 Compliance Division, room 5232, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–2251 (voice/TDD). (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

Since its enactment, section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) has been a statutory basis for promoting the award of jobs and contracts, generated from projects receiving HUD financial assistance, to, respectively, low-income residents and businesses of the areas where the projects to be assisted are located. Section 3 was recently amended, in its entirety, by section 915 of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992) (the 1992 Act). Although the 1992 Act significantly revised section 3, it did not alter the objective of section 3—to provide economic opportunities to low-income persons. The 1992 Act, in fact, strengthens the section 3 mandate by: Clarifying the types of HUD financial assistance, activities, and recipients subject to the requirements of section 3; identifying the specific individuals and businesses who are the intended beneficiaries of the economic opportunities generated from HUD-assisted activities; and establishing the order of priority in which these individuals and businesses should be recruited and solicited for the employment and other economic opportunities generated from HUD-assisted activities.

Elsewhere in today's edition of the **Federal Register**, the Department has published a proposed rule which would make comprehensive amendments to HUD's section 3 regulations at 24 CFR part 135 to being these regulations into conformity with the changes made to section 3 by the Housing and Community Development Act of 1992, and to make additional changes directed to facilitating compliance with section 3.

This proposed rule would make conforming amendments to several parts in title 24 of the Code of Regulations to include reference to the applicability of the part 135 regulations to the HUD program addressed by these parts. Several HUD Programs, particularly new HUD programs, include in their program requirements the applicability of section 3 to the program, but do not require compliance with the part 135 regulations. (See, for example, 24 CFR parts 576, 583, 700.) Compliance with the part 135 regulations was not included because the part 135 regulations are very outdated. The part 135 regulations have not been amended substantively since their original adoption in 1973, although statutory amendments were made to section 3 in 1974 and 1980. Additionally, several parts in 24 CFR currently refer to the part 135 regulations, but include reference to the former statutory language of section 3 (i.e., before its amendment by section 915 of the 1992 Act, the title of section 3 was "Employment Opportunities for Businesses and Lower Income Persons in Connection with Assisted Projects"). The Department notes, however, that not all parts in 24 CFR which reference section 3 and the part 135 regulations require conforming amendments. (For example, see 24 CFR 941.208(a).)

In addition to these conforming amendment, this proposed rule would amend 24 CFR part 963—Contracting with Resident—Owned Businesses—to raise the dollar contract limit from $500,000 to $1,000,000. The purpose of the alternative procurement process provided by part 963 is to encourage PHAs to contract with resident-owned businesses for public housing services, supplies, or construction. The proposed

increase in the dollar contract limit is directed to encouraging additional contract opportunities for resident-owned businesses, which is consistent with the objectives of section 3.

Justification for Reduced Comment Period

Itr is the Department's general policy to provide a 60-day public comment period. For the part 135 proposed rule published elsewhere in today's edition of the **Federal Register**, and for this proposed rule, however, the Department is providing only a 30 day public comment period. The purpose of the reduced public comment period is to help the Department have a section 3 final rule and all conforming amendments in place for the Federal Fiscal Year 1994 funding round. The preamble to the part 135 proposed rule published elsewhere in today's edition of the **Federal Register** provides a more detailed justification for the reduced comment period.

Other Matters

Impact on the Economy

This proposed rule would not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the proposed rule indicates that it would not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this proposed rule, and, in so doing, certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would make conforming amendments to various parts in title 24 of the Code of Federal Regulations that include reference (and thus update this reference), or that should include reference to the part 135 regulations.

Environmental Impact

In connection with the development of the part 135 proposed rule, a Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). That Finding of No Significant Impact, which is also applicable to this proposed rule, is available for public inspection during regular business hours in the Office of the General Counsel, Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order No. 12611, Federalism, has determined that this proposed rule would not have a substantial, direct effect on the States or on the relationship between the Federal government and the States, or on the distribution of power or responsibilities among the various levels of government. The proposed rule would simply make conforming amendments to various parts in 24 CFR that include reference (and thus update this reference), or that should include reference to the part 135 regulations. The part 135 proposed rule, published elsewhere in today's **Federal Register**, provides, consistent with section 915 of the 1992 Act, that the preference requirements of section 3 are to be carried out consistent with existing Federal, State, and local laws and regulations.

Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this proposed rule may have the potential to promote family formation, maintenance, and general well-being. This proposed rule would make conforming amendments to several parts in 24 CFR to update reference, or include reference to the part 135 regulations. No change in existing HUD policies or programs will result from promulgation of this proposed rule, as those policies and programs relate to family concerns.

Regulatory Agenda

This rule was not listed in the Department's Semiannual Agenda of Regulations published on April 26, 1993 (58 FR 24382) under Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects

24 CFR Part 92

Administrative practice and procedure, Grant programs—housing and community development, Grant programs—Indians, Low and moderate income housing, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 219

Loan programs—housing and community development, Low and moderate income housing, Reporting and recordkeeping requirements.

24 CFR Part 570

Administrative practice and procedure, American Samoa, Community development block grants, Grant programs—education, Grant programs—housing and community development, Guam, Indians, Lead poisoning, Loan programs—housing and community development, Low and moderate income housing, New communities, Northern Mariana Islands, Pacific Islands Trust Territory, Pockets of poverty, Puerto Rico, Reporting and recordkeeping requirements, Small cities, Student aid, Virgin Islands.

24 CFR Part 572

Condominiums, Cooperatives, Fair housing, Government property, Grant programs—housing and community development, Low and moderate income housing, Nonprofit organizations, Reporting and recordkeeping requirements.

24 CFR Part 574

Community facilities, Disabled, Emergency shelter, Grant programs—health programs, Grant programs—housing and community development, Grant programs—social programs, HIV/AIDS, Homeless, Housing, Low and moderate income housing, Nonprofit organizations, Rent subsidies, Reporting and recordkeeping requirements, Technical assistance.

24 CFR Part 576

Community facilities, Emergency shelter grants, Grant programs—housing and community development, Grant programs—social programs, Homeless, Reporting and recordkeeping requirements.

24 CFR Part 583

Community facilities, Employment, Grant programs—housing and community development, Grant programs—social programs, Handicapped, Homeless, Indians, Mental health programs, Nonprofit organizations, Reporting and recordkeeping requirements, Technical assistance.

24 CFR Part 700

Aged, Grant programs—housing and community development, Individuals

with disabilities, low and moderate income housing, Nutrition, Public Housing, Rent subsidies, Reporting and recordkeeping requirements, and Supportive services.

24 CFR Part 889

Aged, Capital advance programs, Grant programs—housing and community development, Loan programs—housing and community development, Low and moderate income housing, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 890

Civil rights, Grant programs—housing and community development, Individuals with disabilities, Loan programs—housing and community development, Low and moderate income housing, Mental health programs, Reporting and recordkeeping requirements.

24 CFR Part 905

Aged, Energy conservation, Grant programs—housing and community development, Grant programs—Indians, Individuals with disabilities, Lead poisoning, Loan programs—housing and community development, Loan programs—Indians, Low and moderate income housing, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 961

Drug abuse, Drug traffic control, Grant programs—housing and community development, Grant programs—Indians, Grant programs—low and moderate income housing, Indians, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 963

Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

Accordingly, title 24 of the Code of Federal Regulations, subtitle A and parts 92, 219, 570, 572, 574, 576, 583, 700, 889, 890, 905, 961, and 963 would be amended as follows:

PART 92—HOME INVESTMENT PARTNERSHIPS PROGRAM

1. The authority citation for part 92 would continue to read as follows:

Authority: 42 U.S.C. 3535(d) and 12701–12839.

2. In § 92.350, paragraph (a)(4) would be revised to read as follows:

§ 92.350 Equal opportunity and fair housing.

(a) * * *

(4) The requirements of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and the regulations at 24 CFR part 135;

* * * * *

3. In § 92.631, a new paragraph (c)(5) would be added to read as follows:

§ 92.631 Indian preference.

* * * * *

(c) * * *

(5) *Local area residents.* In accordance with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and the implementing regulations at 24 CFR part 135, IHAs, their contractors and subcontractors, shall make best efforts, consistent with existing Federal, State, and local laws and regulations (including section 7(b) of the Indian Self-Determination and Education Assistance Act), to give low- and very low-income persons the training and employment opportunities generated by section 3 covered assistance (as this term is defined in 24 CFR 135.7), and to give section 3 business concerns the contracting opportunities generated by section 3 covered assistance.

* * * * *

4. Appendix A.V. to subtitle A would be amended by revising the first sentence of paragraph (c)(1) in section 504 to read as follows:

Appendix A to Subtitle A—Hope for Public and Indian Housing Homeownership Program

* * * * *

V. Other Requirements.

* * * * *

Section 505. Nondiscrimination and equal opportunity.

* * * * *

(c) *Employment opportunities.* (1) The requirements of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), and the implementing regulations at 24 CFR part 135 shall apply. * * *

* * * * *

5. Appendix B.V. to subtitle A would be amended by revising the first sentence of paragraph (c)(1) in section 505 to read as follows:

Appendix B to Subtitle A—Hope for Homeownership of Multifamily Units Program

* * * * *

V. Other Requirements.

* * * * *

Section 505. Nondiscrimination and equal opportunity.

* * * * *

(c) *Employment opportunities.* (1) The requirements of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), and the implementing regulations at 24 CFR part 135 shall apply. * * *

* * * * *

PART 219—FLEXIBLE SUBSIDY PROGRAM FOR TROUBLED PROJECTS

6. The authority citation for part 219 would continue to read as follows:

Authority: 12 U.S.C. 1715z; 42 U.S.C. 3535(d).

7. A new § 219.126 would be added to read as follows:

§ 219.126 Other program requirements.

Assistance funded for capital improvements under this part, for which the HUD share of the rehabilitation cost equals or exceeds $7,500 per unit is subject to section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and the regulations at 24 CFR part 135. Contractors and subcontractors that are awarded a contract or a subcontract in connection with assistance funded for capital improvements under this part for which the HUD share of the rehabilitation cost equals or exceeds $7,500 per unit are also subject to the regulations at 24 CFR part 35.

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

8. The authority citation for part 570 would continue to read as follows:

Authority: 42 U.S.C. 3535(d) and 5300–5320.

9. In § 570.487, a new paragraph (d) would be added to read as follows:

§ 570.487 Other applicable laws and related program requirements.

* * * * *

(d) States shall comply with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and the implementing regulations at 24 CFR part 135. Section 3 requires that employment and other economic opportunities arising in connection with housing rehabilitation, housing construction, or other public construction projects shall, to the greatest extent feasible, and consistent with existing Federal, State, and local laws and regulations, be given to low- and very low-income persons.

10. In § 570.607, paragraph (b) would be revised to read as follows:

§ 570.607 Employment and contracting opportunities.

* * * * *

(b) Grantees shall comply with section 3 of the Housing and Urban

Development Act of 1968 (12 U.S.C. 1701u) and the implementing regulations at 24 CFR part 135. Section 3 requires that employment and other economic opportunities arising in connection with housing rehabilitation, housing construction, or other public construction projects shall, to the greatest extent feasible, and consistent with existing Federal, State, and local laws and regulations, be given to low- and very low-income persons.

PART 572—HOPE FOR HOMEOWNERSHIP OF SINGLE FAMILY HOMES PROGRAM (HOPE 3)

11. The authority citation for part 572 would continue to read as follows:

Authority: 42 U.S.C. 3535(d) and 12891.

12. In § 572.405, paragraph (c)(1) would be revised to read as follows:

§ 572.405 Nondiscrimination and equal opportunity requirements.

* * * * *

(c) *Employment opportunities.* (1) The requirements of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and the implementing regulations at 24 CFR part 135; and Executive Order 11246 (3 CFR, 1964–1965 Comp., p. 339) (Equal Employment Opportunity) and implementing regulations at 41 CFR part 60.

* * * * *

PART 574—HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS

13. The authority citation for part 574 would continue to read as follows:

Authority: 42 U.S.C. 12901–12912.

14. In § 574.600, paragraph (c) would be revised to read as follows:

§ 574.600 Nondiscrimination and equal opportunity.

* * * * *

(c) *Employment opportunities.* Grantees and project sponsors shall comply with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and the implementing regulations at 24 CFR part 135. Section 3 requires that employment and other economic opportunities arising in connection with housing rehabilitation, housing construction, or other public construction projects shall, to the greatest extent feasible, and consistent with existing Federal, State, and local laws and regulations, be given to low- and very low-income persons.

* * * * *

PART 576—EMERGENCY SHELTER GRANTS PROGRAM: STEWART B. McKINNEY HOMELESS ASSISTANCE ACT

15. The authority citation for part 576 would continue to read as follows:

Authority: 42 U.S.C. 3535(d) and 11376.

16. In § 576.79, paragraph (a)(4) would be revised to read as follows:

§ 576.79 Other Federal requirements.

(a) * * *

(4) The requirements of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and the regulations at 24 CFR part 135.

* * * * *

PART 583—SUPPORTIVE HOUSING PROGRAM

17. The authority citation for part 583 would continue to read as follows:

Authority: 42 U.S.C. 3535(d) and 11389.

18. In § 583.325, paragraph (b)(4) would be revised to read as follows:

§ 583.325 Nondiscrimination and equal opportunity requirements.

* * * * *

(b) * * *

(4) The requirements of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and the regulations at 24 CFR part 135.

* * * * *

PART 700—CONGREGATE HOUSING SERVICES PROGRAM

19. The authority citation for part 700 would continue to read as follows:

Authority: 42 U.S.C. 3535(d) and 8011.

20. In § 700.245, paragraph (c)(4) would be revised to read as follows:

§ 700.245 Other Federal requirements.

* * * * *

(c) * * *

(4) Employment Opportunities. The requirements of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and the implementing regulations at 24 CFR part 135.

* * * * *

PART 889—SUPPORTIVE HOUSING FOR THE ELDERLY

21. The authority citation for part 889 would continue to read as follows:

Authority: 12 U.S.C. 1701q; 42 U.S.C. 3535(d).

22. In § 889.265, paragraph (a)(4) would be revised to read as follows:

§ 889.265 Other Federal requirements.

(a) * * *

(4) The requirements of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and the regulations at 24 CFR part 135.

* * * * *

PART 890—SUPPORTIVE HOUSING FOR PERSONS WITH DISABILITIES

23. The authority citation for part 890 would continue to read as follows:

Authority: 42 U.S.C. 3535(d) and 8013.

24. In § 890.260, paragraph (a)(4) would be revised to read as follows:

§ 890.260 Other Federal requirements.

(a) * * *

(4) The requirements of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and the regulations at 24 CFR part 135.

* * * * *

PART 905—INDIAN HOUSING PROGRAMS

25. The authority citation for part 905 would continue to read as follows:

Authority: 25 U.S.C. 450e(b); 42 U.S.C. 1437aa, 1437bb, 1437cc, 1437ee, and 3535(d).

26. In § 905.165, paragraph (c)(5) would be revised to read as follows:

§ 905.165 Indian preference.

* * * * *

(c) * * *

(5) *Local area residents.* In accordance with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and the implementing regulations at 24 CFR part 135, IHAs, their contractors and subcontractors, shall make best efforts, consistent with existing Federal, State, and local laws and regulations (including section 7(b) of the Indian Self-Determination and Education Assistance Act), to give low- and very low-income persons the training and employment opportunities generated by section 3 covered assistance (as this term is defined in 24 CFR 135.7) and to give section 3 business concerns the contracting opportunities generated by section 3 covered assistance.

* * * * *

PART 961—PUBLIC HOUSING DRUG ELIMINATION PROGRAM

27. The authority citation for part 961 would continue to read as follows:

Authority: 42 U.S.C. 3535(d) and 11901 *et seq.*

28. In § 961.29, paragraph (b)(4) would be revised to read as follows:

§ 961.29 Other Federal requirements.

* * * * *

(b) * * *

(4) The requirements of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and the implementing regulations at 24 CFR part 135; and

* * * * *

PART 963—PUBLIC HOUSING—CONTRACTING WITH RESIDENT-OWNED BUSINESSES

29. The authority citation for part 963 would continue to read as follows:

Authority: 42 U.S.C. 1437 and 3535(d).

30. In § 963.3, the second sentence would be revised to read as follows:

§ 963.3 Applicability.

* * * Public housing contracts eligible to be awarded under the alternative procurement process provided by this part are limited to individual contracts that do not exceed $1,000,000. * * *

31. In § 963.10, paragraph (d) would be revised to read as follows:

§ 963.10 Eligible resident-owned businesses.

* * * * *

(d) *Limitation on alternative procurement contract awards.* The business shall submit a certification as to the number of contracts awarded, and the dollar amount of each contract award received, under the alternative procurement process provided by this part. A resident-owned business is not eligible to participate in the alternative procurement process provided by this part if the resident-owned business has received under this process one or more contracts with a total combined dollar value of $1,000,000.

Dated: October 1, 1993.

Henry G. Cisneros,

Secretary.

[FR Doc. 93–24748 Filed 10–7–93; 8:45 am]

BILLING CODE 4210-32-M

federal register

Friday
October 8, 1993

Part III

Department of Housing and Urban Development

Office of the Assistant Secretary

24 CFR Part 511

Rental Rehabilitation Program Closeout Requirements; Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 511

[Docket No. R-93-1620; FR-3280-F-01]

RIN 2506-AB39

Amendment of Rental Rehabilitation Program Closeout Requirements

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends regulations governing the closeout of the Rental Rehabilitation Program (RRP), for which the statutory authorization has been repealed. Principally, the rule conforms RRP regulations to recent changes in the regulations for the HOME Investment Partnerships program (HOME) and one of the Homeownership and Opportunity for People Everywhere programs (HOPE 3), which make it possible for State and local governments (as RRP grantees) to contribute RRP program income as matching funds under the HOME or HOPE 3 programs, provided that the grantee's RRP has been closed out and the contribution is made in accordance with applicable HOME or HOPE program rules. This rule would extend the permissible uses of such RRP program income to the HOPE 1 and 2 programs as well. In addition, this rule also amends RRP regulations to allow HUD Field Offices, under certain conditions, to close out a Rental Rehabilitation grant without having to conduct an on-site monitoring of the grantee in advance of closeout. HUD will complete a subsequent on-site review as soon as feasible.

EFFECTIVE DATE: This regulation is effective November 8, 1993.

FOR FURTHER INFORMATION CONTACT: David M. Cohen, Director, Office of Affordable Housing Programs, room 7164, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708-2685, or (202) 708-2565 (voice/TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Justification for Final Rulemaking

In general, the Department publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking, 24 CFR part 10. However, part 10 does provide for exceptions from that general rule where the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is "impracticable, unnecessary, or contrary to the public interest" (24 CFR 10.1). The Department finds that good cause exists to publish this rule for effect without first soliciting public comment because the rule facilitates better use of moneys (program income) that become available to grantees in connection with a repealed Federal grant program and simplifies administrative requirements for winding up that program.

Because the Rental Rehabilitation Program (RRP) has been terminated, there is no point in continuing to require program income to be used primarily for RRP activities after program closeout. By revising the RRP requirements to broaden eligible uses, the Department can eliminate an outdated requirement and the need to enforce the requirement.

At the same time, the Department can facilitate participation in the CDBG, HOME, and HOPE programs by permitting RRP program income on hand at closeout or earned after closeout to be used or contributed for activities eligible under those other programs. Permitting the RRP program income to count as matching funds under HOME and the HOPE 1, 2, and 3 programs, if so requested by the HOME or HOPE grantee (CDBG does not require match), is also consistent with the policies of those programs concerning matching funds derived from program income of other Federal programs. In addition, it is consistent with recent regulatory changes specifically permitting RRP program income earned after closeout to be used as match in the HOME program (see 24 CFR 92.220(a)(1)(i), as amended at 57 FR 60966 (December 22, 1992)) and in the HOPE 3 program (see 24 CFR 572.220(b)(1)(ii)(C), published at 58 FR 36518, 36536 (July 7, 1993)).

Because the RRP has already been terminated, the change implemented by this rule is of immediate and temporary interest to RRP grantees and to HOME; HOPE 1, 2, and 3; and CDBG participants that can benefit from the relaxation of current RRP requirements. Therefore, delaying implementation of the rule to accommodate public procedure would undermine the purpose of the rule and would be contrary to the public's interest in the efficient and productive administration of federally funded programs.

Background

This final rule amends the Rental Rehabilitation Program (RRP) regulations to make it possible for RRP grantees to contribute or use RRP program income on-hand at the time of program close-out for activities eligible for assistance under the CDBG program, as well as for activities eligible for assistance under Title II (the HOME Investment Partnerships Program) and for Title IV of the National Affordable Housing Act (Pub. L. 101-625, approved November 28, 1990) (NAHA) (authorizing the Homeownership and Opportunity for People Everywhere (HOPE 1, 2, and 3) Programs), provided the particular grantee's RRP has been closed out. Most importantly, subject to applicable HOME or HOPE program rules, the program income could be used by a HOME participating jurisdiction to meet matching funds requirements under 24 CFR 92.220(a)(1)(i), or by a participant in a HOPE 1, 2, or 3 program as a matching funds contribution. (In addition to the HOME and HOPE 3 regulations cited above, program guidelines for the HOPE for Public and Indian Housing Homeownership Program (HOPE 1) and the HOPE for Homeownership of Multifamily Units Program (HOPE 2) were published on January 14, 1992, at 57 FR 1522 and 1558, respectively.)

The current RRP regulations require program income in the amount of $5,000 or more to be used only for eligible RRP activities. If the amount of program income on hand at program closeout is less than $5,000, or if any program income is received after program closeout, the program income must be used for either RRP or Community Development Block Grant (CDBG) eligible activities. However, this rule allows program income on hand at, or received after, closeout of the RRP to be used by the RRP grantee for activities eligible under the CDBG program; the HOPE 1, 2, or 3 programs; the HOME program; or the RRP, or to be contributed for use as matching funds under the HOME or HOPE programs. Use of these funds for any of the authorized programs would be subject to all applicable requirements for those programs.

Further, this final rule amends § 511.77(d) to allow HUD Field Offices, under specified conditions, to close out a RRP grant without first having to conduct an on-site monitoring of the grantee. The conditions are that grant expenditure data collected through the program's Cash and Management Information System must support the grantee's certification that grant funds have been expended in compliance with program requirements, and that the grantee must agree in writing to pay back the amount of any costs that are

determined by HUD to be ineligible based on subsequent on-site monitoring reviews or audits.

This change will expedite closeout of the RRP, and will provide HOME and HOPE 1, 2, and 3 grantees with additional sources of matching funds for the newer HOME or HOPE programs sooner than would be possible by retaining the requirement for on-site monitoring in advance of closeout. Removing the advance monitoring requirement also will permit HUD to devote more of its scarce staff and travel resources to the successful implementation of the HOME and HOPE 1, 2, and 3 programs. The monitoring of closed out RRP grants likely will be scheduled and conducted in conjunction with HOME or HOPE technical assistance or monitoring visits.

Other Matters

Major Rule

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule is limited to a revision that would make it possible for grantees to use income from a terminated program for activities eligible for assistance under related current programs.

Environmental Review

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(k), the policies and procedures contained in this rule relate only to internal administrative procedures that concern the performance of accounting, auditing, and fiscal functions and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

Executive Order 12612, Federalism

The General Council, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule will not have substantial direct effects on states or their political subdivisions, or the relationship between the Federal Government and the states, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the Order. Specifically, the rule is limited to revising the regulations of the terminated Rental Rehabilitation Program (RRP) to make it possible for RRP grantees to use or contribute RRP grantees to use or contribute RRP program income for activities eligible for assistance under the CDBG; HOME; and HOPE 1, 2, and 3 programs, provided the RRP has been closed out. Thus the rule would eliminate an administrative requirement that no longer serves a useful purpose and which inhibits the use of resources in the most productive manner.

Executive Order 12606, Family

The General Counsel, as the Designated official under Executive Order 12606, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

This rule was listed as Item 1518 in the Department's Semiannual Agenda of Regulations published on April 26, 1993 (58 FR 24382, 24425), in accordance with Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 511

Administrative practice and procedure, Grant programs—housing and community development, Lead poisoning, Low and moderate income housing, Reporting and recordkeeping requirements, Technical assistance.

For the reasons stated in the preamble, part 511 of title 24 of the Code of Federal Regulations is amended as follows.

PART 511—RENTAL REHABILITATION GRANT PROGRAM

1. The authority citation for part 511 is revised to read as follows:

Authority: 42 U.S.C. 1437o and 3535(d).

2. Section 511.76 is amended by revising paragraphs (h) (1) and (2) to read as follows:

§ 511.76 Program income.

* * * * *

(h) * * *

(1) Before program closeout, program income shall be used for activities eligible under § 511.76(c); and

(2) Program income on hand at the time of program closeout or earned after program closeout shall be contributed to HOME or HOPE program grantees as a cash matching contribution in accordance with applicable HOME or HOPE program rules, or shall be used for activities that would be eligible under:

(i) Paragraph (c) of this section;

(ii) The Community Development Block Grant Program (24 CFR part 570);

(iii) The HOME Investment Partnerships Program (24 CFR part 92); or

(iv) Title IV (Homeownership and Opportunity for People Everywhere Programs) of the National Affordable Housing Act (Pub. L. 101–625, approved November 28, 1990) (HOPE 1 and 2 guidelines at 24 CFR subtitle A, appendices A and B, respectively, and HOPE 3 regulations at 24 CFR part 572).

3. Section 511.77(d) is revised to read as follows:

§ 511.77 Grant closeout.

* * * * *

(d) With respect to monitoring the grantee, either:

(1) The HUD Field Office has conducted an on-site monitoring of the grantee and has determined that the grantee's performance, with respect to any grant to be closed out, is satisfactory and is in compliance with Rental Rehabilitation program statutory and regulatory requirements, including § 511.10(a) and § 511.10(b); or

(2) A grant may be closed before on-site monitoring has been conducted, provided:

(i) The Cash and Management Information reports indicate the grantee's performance is satisfactory and is in compliance with Rental Rehabilitation program statutory and regulatory requirements;

(ii) There are no outstanding monitoring findings; and

(iii) The grantee agrees in writing to pay back the amount of any costs that are later found by HUD to be ineligible

based on a subsequent on-site monitoring review or audit.

Dated: October 1, 1993.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

[FR Doc. 93–24778 Filed 10–7–93; 8:45 am]

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federal register

Friday
October 8, 1993

Part IV

Department of Agriculture

Cooperative State Research Service

National Competitive Research Initiative Grants Program; Notice

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

National Competitive Research Initiative Grants Program (Competitive Research Grants Program); Fiscal Year 1994: Supplementary Solicitation for Applications

Applications are invited for competitive grant awards in agricultural, forest, and related environmental sciences under the National Competitive Research Initiative Grants Program (NCRIGP) administered by the Office of Grants and Program Systems, Cooperative State Research Service (CSRS), for fiscal year 1994. This solicitation is supplementary to that previously published in the **Federal Register** on September 7, 1993 (58 FR 47184).

Authority

The authority for this program is contained in section 2(b) of the Act of August 4, 1965, as amended by section 1615 of the Food, Agriculture, Conservation, and Trade Act of 1990 (FACT Act) (7 U.S.C. 450i(b)) (1965 Act, as amended). Under this program, subject to the availability of funds, the Secretary may award competitive research grants, for periods not to exceed five years, for the support of research projects to further the programs of the Department of Agriculture (USDA). Proposals may be submitted by any State agricultural experiment station, college, university, other research institution or organization, Federal agency, private organization, corporation, or individual. Proposals from scientists at non-United States organizations will not be considered for support.

It is expected that Congress, in the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1994, will prohibit CSRS from using the funds available for the NCRIGP for fiscal year 1994 to pay indirect costs exceeding 14 per centum of the total Federal funds provided under each award on competitively-awarded research grants.

Applicable Regulations and Statutory Guidance

Regulations applicable to this program include, but are not limited to, the following:

(a) The regulations governing the NCRIGP, 7 CFR part 3200, which set forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals and the awarding of grants, and regulations relating to the post-award administration of grant projects;

(b) The USDA Uniform Federal Assistance Regulations, 7 CFR part 3015;

(c) The USDA Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, 7 CFR part 3016;

(d) Section 1402 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended by section 1602 of the FACT Act, which sets forth purposes that research supported by the NCRIGP should address; and

(e) Section 1404 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended by section 1603 of the FACT Act, which defines "sustainable agriculture."

Project Types

The project types for which proposals are solicited include:

I. Conventional Projects

(a) Standard Research Grants: Research will be supported that is fundamental or mission-linked conducted by individual investigators, co-investigators within the same discipline, or multidisciplinary teams. Any State agricultural experiment station, college, university, other research institution or organization, Federal agency, private organization, corporation, or individual may apply.

(b) Conferences: Scientific meetings that bring together scientists to identify research needs, update information, or advance an area of research are recognized as integral parts of research efforts. Any State agricultural experiment station, college, university, other research institution or organization, Federal agency, private organization, corporation, or individual is an eligible applicant in this area.

II. Agricultural Research Enhancement Awards

In order to contribute to the enhancement of research capabilities in the research program areas described herein, applications are solicited for competitive grants to be awarded in the following categories:

(a) Postdoctoral Fellowships: In accordance with section 2(b)(3)(D) of the 1965 Act, as amended, for individuals who have received their doctoral degree after January 1, 1991, and no later than June 15, 1994.

(b) New Investigator Awards: Pursuant to section 2(b)(3)(E) of the 1965 Act, as amended, for investigators or co-investigators who have completed graduate or post-doctoral training, and are beginning their independent research careers.

(c) Strengthening Awards: Pursuant to sections 2(b)(3) (D) and (F) of the 1965 Act, as amended, proposals are solicited that request funds for Research Career Enhancement Awards, Equipment Grants, Seed Grants, or Strengthening Standard Research Project Awards.

Research Programs To Be Supported (Supplementary to those published in the September 7, 1993 Federal Register (58 FR 47184))

CSRS is soliciting proposals, subject to the availability of funds, for support of high priority research of importance to agriculture, forestry, and related environmental sciences, in the following Research Programs (the NCRIGP Division in which the program falls and the approximate amount of funds available to that Division follow in parentheses):

Water Resources Assessment and Protection (Natural Resources and the Environment Division, $22.396 M)
Biological Control Research (Plants Division, $41.485 M)
Assessing Pest Control Strategies (Plants Division, $41.485 M)
Agricultural Systems (all Divisions contributing, approximately $2 M total)

The solicitation, which contains Research Program descriptions and detailed instructions on how to apply, may be obtained by contacting the office indicated below. Please note that applicants who submitted NCRIGP proposals for fiscal year 1993 or who have recently requested placement on the list for fiscal year 1994 will automatically receive a copy of the fiscal year 1994 solicitation and any supplements.

Proposal Services Branch, Awards Management Division, Cooperative State Research Service, U.S. Department of Agriculture, Ag Box 2245, Washington, DC 20250–2245. Telephone: (202) 401–5048

Requests for solicitations and application materials may also now be made via Internet by sending a message with your name, complete mailing address, phone number, and materials that you are requesting to psb@darth.esusda.gov. Materials will be mailed as quickly as possible.

Postmark Dates for all NRICGP Programs

To be considered for funding during FY 1994, proposals must be postmarked by the following dates:

Postmarked dates	Program areas	Contacts (202)
Nov. 15, 1993	Improving Human Nutrition for Optimal Health	205–8250
Nov. 22, 1993	Plant Genome	401–1901
	Plant Genetic Mechanisms	401–5042
Dec. 6, 1993	Forest/Range/Crop/Aquatic Ecosystems	401–4082
	Pathology	401–4310
	Weed Science	401–4310
Dec. 13, 1993	Plant Responses to the Environment	401–4871
	Enhancing Reproductive Efficiency	401–6234
Dec. 20, 1993	Photosynthesis and Respiration	401–6030
Jan. 10, 1994	Entomology	401–5114
	Nematology	401–5114
	Alcohol Fuels	401–4310
Jan. 18, 1994	Sustaining Animal Health and Well-Being	401–6303
	Biological Control Research	401–5114
Jan. 24, 1994	Soils and Soil Biology	401–4082
	Food Characterization/Process/Product Research	401–1952
	Non-Food Characterization/Process/Product Research	401–1952
Jan. 31, 1994	Assessing Pest Control Strategies	401–5114
	Plant Growth and Development	401–5042
Feb. 7, 1994	Water Resources Assessment and Protection	401–4504
	Markets and Trade	401–4772
	Rural Development	401–4425
Feb. 14, 1994	Improved Utilization of Wood and Wood Fiber	401–1952
	Ensuring Food Safety	401–4399
	Nitrogen Fixation/Nitrogen Metabolism	401–6030
	DOE/NSF/USDA Program on Collaborative Research in Plant Biology:	
	Research Coordination	401–4871
	Research Training	401–4871
Feb. 22, 1994	Research Career Enhancement Awards	401–6234
	Equipment Grants	401–6234
	Seed Grants	401–6234
	Agricultural Systems	401–1901
Mar. 7, 1994	Improving Animal Growth and Development	205–0250
	Identifying Genetic Mechanisms and Gene Mapping (Animal)	401–4399

Done at Washington, DC this 4th day of October 1993.

William D. Carlson,

Associate Administrator, Cooperative State Research Service.

[FR Doc. 93–24831 Filed 10–7–93; 8:45 am]

BILLING CODE 3410–22–M

federal register

Friday
October 8, 1993

Part V

Department of Transportation

Research and Special Programs Administration

49 CFR Part 172, et al.
Crashworthiness Protection Requirements for Tank Cars; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 172, 173, 179

[Docket No. HM–175A; Notice No. 93–19]

RIN 2137–AB69

Crashworthiness Protection Requirements for Tank Cars

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: RSPA is proposing revisions to the Hazardous Materials Regulations (HMR) that would improve the crashworthiness of tank cars and restrict the continued use in hazardous materials service of tank cars that no longer meet current safety requirements. Included are proposals to expand the use of thermal protection systems and head protection on tank cars used for transporting certain hazardous materials; add new requirements for bottom discontinuity protection; prohibit the use of self-energized manways located below the liquid level of the cargo; revise "grandfather" provisions that allow certain uses of tank cars; and require the use of pressure tank cars, that are more resistant to puncture, for all poisonous by inhalation (PIH) materials and certain other high hazard materials. The intended effect of these actions is to enhance the safe transportation of hazardous materials in tank cars.

DATES: *Written comments:* Comments must be received on or before February 7, 1994.

Public hearing. A public hearing will be held at 10 a.m., January 6, 1994.

ADDRESSES: *Written comments:* Address comments to the Dockets Unit, DHM–30, Research and Special Programs Administration, Department of Transportation, Washington, DC 20590–0001. Commenters should identify the docket and notice number, and, if possible, submit five copies in response to this notice. Commenters needing a confirmation of receipt of their comments should include a self-addressed stamped postcard that shows the docket number (i.e., Docket HM–175A). Interested persons may review the comments to this notice, and publications referenced in it, between the hours of 8:30 a.m., and 5 p.m., Monday through Friday, except holidays. The Dockets Unit is located in room 8417 of the Nassif Building, 400 Seventh Street SW., Washington, DC 20590–0001.

Public hearing: The public hearing noted above will be held in room 2230 of the Nassif Building at the same street address. Persons desiring to make oral statements at the hearing should notify the Federal Railroad Administration (FRA) Docket Clerk by telephone (202–366–0635) or in writing by December 22, 1993. Mail written requests to: Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street SW., room 8201, Washington DC, 20590–0001. Each request must identify the speaker; organization represented, if any; daytime telephone number; and the anticipated length of the presentation, not to exceed 10 minutes. Written text of the oral statement should be presented to the hearing officer prior to the oral presentation. The hearing may conclude before 5 p.m. if all persons wishing to testify have been heard.

FOR FURTHER INFORMATION CONTACT: Edward W. Pritchard (Telephone 202–366–9178) or James H. Rader (Telephone 202–366–0510), Hazardous Materials Division, or Thomas A. Phemister (Telephone 202–366–0635), Trial Attorney, Office of Chief Counsel, FRA, Washington DC, 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

Based on research and on a continuing review of serious accidents involving the transportation of hazardous materials in tank cars in the United States and Canada, RSPA has issued a number of regulations to improve the survivability of tank cars in accidents. In these rulemakings, RSPA required the installation of a tank head puncture resistance system (head protection), a coupler vertical restraint system (shelf couplers), insulation, and a thermal protection system for certain high-risk cargoes.[1]

The record shows that these systems, working in combination, have reduced the potential harm to human health and the environment tremendously.[2]

On May 15, 1990, RSPA published an Advance Notice of Proposed Rulemaking (ANPRM) under Docket HM–175A (55 FR 20242). The notice solicited comments on the costs and safety benefits that would be derived should the HMR be amended to: (1) Require thermal protection or head protection, or both, on new and existing tank cars that are constructed of aluminum or nickel, or that are used to transport certain hazardous materials; (2) disallow the use of the half-head shield as an option to meet head protection requirements; (3) prohibit the use of tank cars that have a manway opening located below the liquid level of the material transported; (4) disallow the use of so-called "non-pressure" tank cars to transport materials toxic by inhalation; (5) increase the start to discharge pressure setting on certain tank car; (6) establish specifications for the securement and accident survivability of tank car tank closure fittings; and (7) phase out certain "grandfather" provisions. This ANPRM also solicited comments on what changes or design modification should be considered in place of the retrofitting of tank cars that do not conform to the safety requirements for new tank cars. RSPA published a Supplemental Advance Notice of Proposed Rulemaking (SANPRM) on August 29, 1990 (55 FR 35327), requesting information on four additional tank car related safety issues. Specifically, the SANPRM requested comments on the costs and safety benefits that would be derived should the HMR be amended to (1) prohibit bottom outlets on new and existing tank cars used to transport certain hazardous materials; (2) establish a maximum permissible safety relief valve capacity for materials that are toxic by inhalation; (3) require that, for new and existing tank cars, the exterior surface of a carbon steel tank and the inside surface of a carbon steel jacket be given a protective coating when foam-in-place insulation is applied; and (4) permit reductions in the safety vent size, or increases in the tank test pressure and vent bursting pressure, on new and existing tank cars used to transport certain hazardous materials.

[1] The difference between a thermal protection system and insulation is that a thermal protection system protects the tank from a pool or torch fire environment; in contrast, insulation protects the contents of the tank from ambient temperature differentials, much like home insulation.

[2] The discussions in the following rulemakings provide greater detail about each of these safety system requirements: Interlocking Couplers and Restrictions of Capacity of Tank Cars, Docket HM–38, 35 FR 14213 (September 9, 1970); Tank Car Tank Head Protection, Docket HM–109, 41 FR 21475 (May 26, 1976); Shippers; Specifications for Pressure Tank Cars, Docket HM–144, 42 FR 46306 (September 15, 1977); Shippers, Specifications for Tank Cars, Docket HM–174, 49 FR 3473, (January 27, 1984); Specifications for Railroad Tank Cars Used to Transport Hazardous Materials, Docket HM–175, 49 FR 3468 (January 27, 1984); Transportation of Hazardous Materials, Miscellaneous Amendments, Docket HM–166W, 54 FR 36790 (September 20, 1989); and Performance-Oriented Packaging; Changes to Classification, Hazard Communication, Packaging and Handling Requirements Based on UN Standards and Agency Initiative, Docket HM–181, 55 FR 52402 (December 12, 1990).

RSPA received over 50 comments in response to the ANPRM and the SANPRM from members of private trade associations and the various industries that own, lease, transport or use tank cars. All comments were given full consideration and FRA and RSPA appreciate the information and opinions received. Based on those comments and on research conducted by the FRA, this notice proposes new regulations or revisions to the HMR in the following subject areas: (1) Tank head protection; (2) thermal protection; (3) self-energized manways below the tank liquid level; (4) the use of non-pressure tank cars for materials with a poison-inhalation hazard; (5) "grandfathering," that is, the permissive, continued use of tank cars conforming to former regulatory standards; (6) protection of bottom discontinuities on tank cars; (7) protective coatings on insulated tanks; and (8) the use of tank cars of limited and designated specifications with greater protection in accidents for transporting materials with health and environmental risks.

Based on comments made to some of the issues raised in the ANPRM and the SANPRM, and research done by the FRA, RSPA and FRA concluded that several topics raised in these earlier notices are either too technically complex or insufficiently developed to be resolved by regulatory proposals now. RSPA will consider action on safety relief devices, top fitting protection, and gasket specifications in a separate rulemaking action. Also, consideration will be given to making certain operational changes, for instance, restricting train placement, in lieu of tank car design or specification changes under a future rulemaking docket.

Tank cars built to the DOT 111 specification have received a great degree of interest since the ANPRM and SANPRM were published in this docket. With over 160,000 in use today, they constitute about two-thirds of the North American tank car fleet, and they remain a critical resource for movement of industrial chemicals and other materials in commerce. The issues surrounding this specification tank car are many and complex, but FRA and RSPA are committed to improving an already good safety record in the transportation by railroad of hazardous materials and to addressing forthrightly the hazards these cars may pose in certain situations.

Since the early 1970s, FRA and RSPA have been engaged in a program to improve the tank car fleet with respect to crashworthiness. The DOT program has proceeded from those cars used to transport the most hazardous commodities to those cars carrying commodities posing relatively less serious hazards. This NPRM is part of that process and addresses several key facets of low-pressure tank cars, including the DOT 111s. Among the proposals discussed in more detail below are those that would remove the DOT 111 tank car from the transportation of PIH materials, the transportation of Class 2 materials, and from the transportation of environmentally sensitive halogenated organic compounds (HOCs). Proposals in this notice also include the required installation of head and thermal protection on tank cars transporting thermally reactive materials. As will be developed more fully in the text that follows, comments are requested on the possibility of replacing DOT 111 tank cars constructed of aluminum or nickel plate with those made of stainless steel, or with lined or coated carbon steel tank cars. Additionally, current rulemaking actions and FRA mandated inspection and maintenance programs address other parts of the larger DOT program of progressive safety improvement.

II. Tank Head Protection

After a series of railroad accidents in the late 1960s and early 1970s involving head punctures of tank cars, FRA and RSPA began, in 1976, to require half-head protection for tank cars transporting flammable compressed gases (now Division 2.1 materials) and for tank cars transporting anhydrous ammonia and ethylene oxide (Docket HM–109). The design of, and criteria for, head protection were based on tests performed by the FRA, the Association of American Railroads (AAR), and the Railway Progress Institute (RPI) Tank Car Safety Research and Test Project in the early 1970s.

These tests showed that head punctures caused by over-speed impacts in railroad classification yards generally occurred at speeds above 12 mph, and often happened when a loaded tank car struck a standing empty car, causing the empty car to "jump" and ram its coupler into the head of the oncoming tank. Reviewing incidents on main-line trackage, a recent analysis of accident data showed that objects such as broken rails and couplers may penetrate the top half of the tank head indicating that head protection is essential, even though not 100 percent effective, in a train derailment.

In a recent FRA research effort on puncture resistance,[3] FRA conducted full- and 1/5-scale experimental studies to evaluate the relative puncture resistance of DOT 105A500W and 112J340W tank cars. The research results show that puncture resistance is strongly influenced by impact location, by head and jacket thickness and by insulation thickness. Based on the results of the studies, FRA expects that certain DOT 105A tank cars in chlorine service may meet the 18 mph threshold for puncture resistance prescribed in § 179.105(c)(4). The Coltman/Hazel report demonstrates that puncture resistance is an inter-related function of head thickness, insulation thickness, and jacket thickness, at least, and that the concept of "head protection" must include more than just traditional head shields. Some existing tank cars may in fact meet the performance standard through an increase in the thickness of the tank jacket, the tank head, or the insulation system.

Most commenters to the earlier notices in this docket expressed support for the application of full-head protection to new tank cars and to those existing tank cars without head protection used for PIH materials and Division 2.1 flammable gases regardless of tank car capacity. All commenters agreed that there is no need to require full-head protection on existing tank cars built to the current standard (49 CFR 179.100–23) allowing half-head protection. Most commenters did not support an across-the-board requirement for full-head protection on tank cars constructed from either aluminum or nickel plate. Both the National Transportation Safety Board (NTSB) and the Association of American Railroads expressed the need to require full-head protection on tank cars transporting thermally reactive materials (i.e., materials that decompose or polymerize when exposed to heat). These comments are discussed in more detail below.

Tank cars currently equipped with half-head protection: The AAR/RPI Tank Car Safety Research and Test Project analyzed the effectiveness of the requirements to install shelf couplers and half-head protection on Class DOT 112 and 114 tank cars. They reported that, based on accident data, these improvements were 95 percent effective in preventing head punctures.[4] While the RPI report combines shelf couplers with head protection and evaluates this protection *system*, the data is fully

[3] Coltman, M., & Hazel, M, Jr., Chlorine Tank Car Puncture Resistance Evaluation, (1992) Federal Railroad Administration, Washington, DC (NTIS DOT/FRA/ORD–92/11).

[4] Phillips, E. A., Analysis of Tank Cars Damaged in Accidents 1965 through 1986, (RA–02–0–55), 1988, AAR–RPI Railway Tank Car Safety Test and Research Project, AAR Technical Center, Chicago, IL.

applicable to this proceeding because all tank cars transporting hazardous materials are required to have shelf couplers.

Because tank cars currently equipped with a half-head protection system are already 95 percent effective against preventing head punctures, FRA and RSPA agree with commenters that there is neither a safety need nor an incremental cost justification to require a retrofit of full-head protection on those tank cars.

Head protection systems for existing tank cars with capacities less than 18,500 gallons: In 1984, the final rule published under Docket HM–175 did not require Class DOT 105 tank cars with a capacity of less than 18,500 gallons and transporting flammable gases, anhydrous ammonia, or ethylene oxide to be fitted with head protection. This provision is contained in Notes 23 and 24 to § 173.314(c) and § 173.323(c)(1). The preamble to HM–175 noted that RSPA would continue to evaluate the need for new or amended rules applicable to tank cars. These "smaller" cars were not covered earlier primarily because their predominant service is in chlorine transportation and, in that service, they are covered with thick cork or urethane foam insulation, believed by many at the time to offer sufficient protection against puncture.[5] In addition, these smaller capacity tank cars did not have the same history of tank head punctures that demanded the change and retrofit program mandated for the larger capacity DOT 112 and 114 tank cars. Summarized, the priorities in 1984 pointed to the need to provide head protection first to other segments of the tank car fleet.

In comments filed in response to the ANPRM in this docket, the NTSB said the accident data for the last 20 years clearly demonstrates the vulnerability of tank heads to puncture and urged RSPA to move expeditiously to issue and implement final rules that would require full-head protection for all DOT 105 tank cars, including those tank cars with a capacity less than 18,500 gallons. Several commenters to the May 5 and November 6, 1987 notices of proposed rulemaking (NPRMs) under Docket HM–181 agreed that the former grandfathering of tank cars based on capacity was no longer justified. The Chlorine Institute agreed that head protection systems are now warranted for on the cars they used. FRA and RSPA agree with these commenters and, for the stated reasons, RSPA proposes to remove the 18,500 gallon limitation.

Tank cars transporting materials in Division 2.2: RSPA is proposing to require full-head protection on all new tank cars and on those existing tank cars that currently do not have head protection, regardless of tank car capacity, when used to transport materials classed in Division 2.2 (non-flammable gas). Not only can these containers violently rupture if they are punctured, but the released cargo may kill or injure through asphyxiation or other impairment of the human cardiac, nervous, or pulmonary systems.

Existing tank cars without head protection: RSPA disagrees with those commenters who argue that there is no need to require full-head protection on existing tank cars equipped with no head protection. The benefits of head protection are real, are predictable, and are quantifiable. Where earlier rules required head protection on other cars, it was a matter of recognizing the highest priority needs first. The question is not one of demanding low-priority safety benefits, but the need to expand the safety base of hazardous materials transportation in tank cars.

Based on an accident history that highlighted the problem of coupler override in switch yard impacts, the first head shield requirements prescribed protection for the lower half of the tank head. It is now time to expand the head protection system priorities to include main line derailments. In these accidents, often involving higher speeds than yard derailments, tank cars may roll over while derailing or couplers may break because of high train-action forces; in either case, draft sill override may occur. However it happens, FRA is aware that the top half of the tank head is vulnerable to puncture. For example, on January 14, 1980, in Ridgefield, Washington, a Burlington Northern freight train struck a mud slide. The train action forces in that accident caused the coupler of a DOT 112S340W tank car transporting anhydrous ammonia to break. An adjacent box car over-rode the coupler and the half-head shield on the anhydrous ammonia tank car and punctured the top half of the tank head. Twenty thousand gallons of anhydrous ammonia were released and two train crew members died in the plume.

RSPA and FRA consider the small additional cost of installing full-head protection on cars that now have no head protection system, as compared with adding only half-head protection, is justified on the basis of increased safety. RSPA proposes that the installation of a tank head puncture resistance system on tank cars transporting Class 2 materials be phased-in over a 10-year period.

Tank cars constructed from aluminum and from nickel plate: Tank cars constructed from aluminum plate commonly transport fertilizer ammoniating solutions, hydrogen peroxide solutions, and nitric acids and tank cars constructed from nickel plate commonly transport acetyl chloride and bromine. After a 1983 release of nitric acid resulting from a puncture in an aluminum tank car head in Denver, Colorado, the NTSB urged the FRA to conduct a full scale testing and evaluation program to develop a head shield to protect aluminum tank car heads from puncture and, if needed, mandate installation of head shields at an early date.[6] FRA conducted the research and found that the threshold velocity needed to puncture a tank head constructed from aluminum is four mph.[7] Such low puncture resistance supports the need for full-head protection on new and existing tank cars constructed from aluminum plate in hazardous materials service. Because the properties of nickel plate are similar to those of aluminum plate, FRA and RSPA also believe that the use of full-head protection on tank cars constructed from nickel plate should be required as well.[8] These changes are proposed in this notice.

Several commenters stated that RSPA should consider the characteristics of the particular hazardous material to be transported before requiring steel head protection on tank cars constructed from either aluminum or nickel plate. Based on the low puncture resistance characteristics of aluminum and nickel plate, RSPA disagrees with these commenters.

With advances in alloy metallurgy and in the capabilities of tank car coatings, linings, and claddings, it may

[5] Recent tests, see Coltman and Hazel, cited earlier, tend to confirm that view. These tests revealed that some stub sill to tank head configurations, with a modified reinforcing pad and bracket, may withstand the puncture resistance performance criteria, but some chlorine tank cars may not offer puncture resistance fully satisfying the performance criteria originally adopted for larger flammable gas tank cars.

[6] Denver and Rio Grande Western Railroad Company Yard Accident Involving Punctured Tank Car, Nitric Acid Vapor Cloud and Evacuation, Denver, Colorado, April 3, 1983, National Transportation Safety Board Report NTSB/RAR–85/10, National Transportation Safety Board, Washington, DC.

[7] Larson, W.G., Aluminum/Cold Temperature Tank Car Puncture Resistance Tests, (FRA/ORD 91/06), (1991), (NTIS DOT/FRA/ORD/91/06), Federal Railroad Administration, Washington, DC.

[8] "Constructed from nickel plate" means that the tank shell is built of steel with a high nickel content, conforming to specification ASTM B162, AAR TC133, or AAR TC134. A "nickel clad" tank car has a protective inner coating or lining of nickel applied to the parent steel.

now be more possible than it once was to transport in steel tank cars many of the products that today move in aluminum or nickel cars.[9] RSPA and FRA specifically request comments as to whether the use of other than steel tank cars should be disallowed with respect to all or to certain hazardous materials based on the low puncture resistance of aluminum and nickel shells; and, if so, what the effective date of such a requirement should be.

Tank cars transporting thermally reactive materials: RSPA agrees with those commenters who suggested the need for full-head protection on tank cars transporting thermally reactive materials.[10] Many of these materials, if released, react violently with other materials and may decompose with explosive force. As an example, in a 1989 investigation into the collision and derailment of a Montana Rail Link freight train, the NTSB found that the puncture of a tank car containing hydrogen peroxide resulted in a release of product. When the hydrogen peroxide combined with contaminants on the ground, a chemical reaction occurred causing a fire; the fire heated and ignited nearby polyethylene pellets and that fire led to an explosion of the hydrogen peroxide tank car releasing a force equivalent to 10 tons of TNT (tri-nitro-toluene). Fragments of the tank car penetrated homes within a fourth of a mile and one home, located one-half mile away, was penetrated by a section of the liquid eduction tube.[11]

In its comments, the Association of American Railroads supplied the following list[12] of thermally reactive materials that it believes should only be transported in tank cars with full-head protection:

acetaldehyde
acrolein
acrylic acid
acrylonitrile
butyl acrylate
chloroprene
crotonaldehyde
dimethylaminoethyl methacrylate
dimethylhydrazine, unsymmetrical
dinitrotoluene
ethyl acrylate
ethyl nitrite
ethyl methacrylate
ethylene imine
ethylene oxide
hydrazine, anhydrous
hydrogen cyanide
hydrogen peroxide solution
isobutylacrylate
isoprene
isopropyl nitrate
methacrylic acid
methacrylonitrile
methyl acrylate, inhibited
methyl isopropenyl ketone
methyl methacrylate monomer, inhibited
methyl vinyl ketone
methyl isopropenyl ketone
motor fuel anti-knock compound
nitroethane
proplyene imine
propylene oxide
styrene monomer
sulfur trioxide
vinyl acetate
vinyl ethyl ether
vinyl isobutyl ether
vinyl toluenes
vinylidene chloride
vinyl pyridene
vinyltrichlorosilane

FRA and RSPA agree with the AAR that this is an appropriate listing of the thermally reactive materials likely to move by railroad; however, the AAR list also contained other commodities that are not specifically named in the Hazardous Materials Table (HMT), and some of them move in substantial quantities. FRA and RSPA request comments on the identification of additional thermally reactive materials, on whether a generic description such as "thermally reactive materials, n.o.s." is proper for inclusion in the HMT, and on the best way to ensure that the proper packaging requirements (such as "B" codes in the Special provisions in § 172.102) are attached to appropriate commodities.

Based on the risks that these materials pose in the transportation system and based on the effectiveness of head protection systems, RSPA proposes to require full-head protection for new cars and for existing cars without head protection when transporting thermally reactive materials.

III. Thermal Protection Systems

At about the same time as action was being taken to provide head protection for tank cars, RSPA began to require the application of a thermal protection system on tank cars transporting Division 2.1 materials (flammable gases) or ethylene oxide after a series of major railroad accidents that involved fires and ruptures of non-insulated pressure tank cars.[13] The design and criteria of the thermal protection system were based on tests performed for the FRA at the U.S. Army Ballistics Research Laboratory in White Sands, New Mexico, and at the Transportation Test Center in Pueblo, Colorado.

These tests revealed that a 33,600-gallon non-protected tank car filled with propane will rupture within 24 minutes after exposure to a pool fire. Rupture occurs when the residual strength of the tank shell falls below the force generated by the vapor pressure of the cargo exerted on the inside surface of the tank shell.[14] Further testing by FRA demonstrated that a tank car filled with propane and equipped with a thermal protection system vented its cargo through the safety relief valve before the tank car shell ruptured when subjected to either a 100-minute pool fire or a 30-minute torch fire.[15] These periods were chosen because they provided emergency response personnel the needed time to assess the accident and to initiate remedial actions, such as evacuating an area.

The performance standard for thermal protection considers the tank and its cargo as a whole system. Many insulation materials also provide good thermal protection so these materials,

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[9] In § 179.100–7 of the final rule for Docket HM–181F, Performance-Oriented Packaging Standards; Miscellaneous Amendments, 58 FR 50224 (September 24, 1993), RSPA has authorized certain stainless steel alloys for the construction of DOT 105, 109, 112, and 114 pressure tank cars.

[10] In 1974, the Department studied the self-reaction hazards of chemical substances that are thermally unstable. The thermal decomposition of 30 commercially available materials at 300 °C were reviewed. The report reviewed the thermal sensitivity of the 30 materials using thermal surge stimuli, differential scanning calorimetry, and a system designed to determine quantitatively the percent decomposition of the materials. The amount of gas resulting from the thermal decomposition was also reported. The report shows that the hazard potential of these materials is related to the percent of thermal decomposition, the amount of gas liberated in decomposition, the flammability of the material, and the reactivity of the material in air. For further information, see Kayser E.G., The Thermal Decomposition of Thirty Commercially Available Materials at 300 °C, DOT Report No. TES–20–74–1, (1974), Department of Transportation, Washington, D.C.; and Tsang, W. & Domalski, E.S., An Appraisal of Methods for Estimating Self-Reaction Hazards, DOT Report TES–20–74–6, (1974), Department of Transportation, Washington, DC.

[11] Collision and Derailment of Montana Rail Link Freight Train with Locomotive Units and Hazardous Materials Release, Helena, Montana, February 2, 1989, National Transportation Safety Board Report NTSB/RAR–89/05, National Transportation Safety Board, Washington D.C.

[12] The names of some commodities on this list have been edited to conform to the proper shipping names shown in the Hazardous Materials Table at 49 CFR 172.101.

[13] Shippers; Specifications for Pressure Tank Car Tanks, Docket HM–144, 42 FR 46306 (September 15, 1977).

[14] Some sources refer to this phenomenon as a tank car BLEVE. That term, the acronym for Boiling Liquid Expanding Vapor Explosion (BLEVE), is technically imprecise to describe a thermally induced tank car rupture although it has become useful in the emergency response training field. A more complete description of tank car thermal ruptures, together with a technical discussion of the BLEVE, can be found in Emergency Action Guides, ©1990, Association of American Railroads, Washington, DC, pp. V–VII.

[15] This is the current performance standard in 49 CFR 179.105–4.

when analyzed with the tank and the cargo, may show that nothing further needs to be installed on the car to achieve passage of the Federal pool and torch fire performance tests. Research sponsored by the FRA on urethane foam and glass fiber insulation systems show that urethane foam insulation will pass the pool and torch fire requirements and that glass fiber insulation will also pass both tests provided the insulation is held in place with a plastic or wire scrim. Owners of tank cars with either of these systems, or another comparable system, may find that their thermal analysis of the car shows the presence of sufficient thermal protection to meet the performance standard. In this case, the tank car owner would have to verify only that the insulation material installed on the tank car is capable of passing the pool and torch fire verification or "proof" tests in part 179. Owners may find that a car will pass the performance standard with only minor modifications, such as applying a thermal protection system to the manway nozzle.[16]

While this notice is not the place for a detailed discussion of thermodynamics as applied to tank cars or of the use of thermal modelling as an acceptable approach for performing thermal analysis, the results of FRA research support the modelling concept.[17] Research shows that the thermal analysis should consider as a minimum a 100-minute pool fire having a flame intensity of 815.6 °C ± 37.77 °C (1500 °F ± 100 °F) over the entire surface of the tank car (including discontinuities); a 30-minute torch fire having a flame intensity of 1,204 °C ± 37.77 °C (2200 °F ± 100 °F) and a torch velocity 64.37 km/h ± 16.09 km/h (40 mph ± 10 mph). Other vital factors include the following: the cargo in the tank car, the angle of rollover, the diameter of the tank car, shell thickness, the capacity of the tank, the safety relief valve flow capacity and flow rating pressure, the safety relief valve start-to-discharge pressure, net absorptivity and emissivity of the tank car shell surface, the bursting strength of the tank, the thermal conductance of the tank car jacket and tank car shell material, the conductivity of the thermal protection system, the pressure of any nitrogen padding, the initial temperature of the tank car and its cargo, and the gas compressibility factor.

In some cases, the use of a high capacity safety relief valve with a low start-to-discharge pressure setting, the use of certain insulating materials, and the use of thicker or higher strength steels may be sufficient to meet the thermal protection performance requirements. As an example, if a tank car is constructed from TC128 steel plate 9/16-inch thick and has an adequately sized safety relief valve, some low vapor pressure cargoes may vent completely through the safety relief valve before the tank ruptures in a 100-minute pool fire or 30-minute torch fire. Such a car would conform to the performance standard for thermal protection and could be marked accordingly for that particular cargo.

As an example of how thermal modelling works, in a research contract for Occidental Chemical Corporation, the IIT Research Institute found that the urethane foam insulation applied to the company's DOT 105A tank cars was adequate to prevent failure of the tank in a 100-minute pool fire, when loaded with sulfur monochloride or sulfuryl chloride.[18]

Most commenters responding to the ANPRM and the SANPRM supported the need for a thermal protection system on tank cars transporting Division 2.1 (flammable gas) or 2.3 (poisonous gas) materials, regardless of tank car capacity. In contrast, some commenters opposed the application of a thermal protection system to tank cars transporting Division 2.2 materials (nonflammable gases) and anhydrous ammonia. In discussing tank cars constructed from either aluminum or nickel plate, most commenters said that the cargo within the tank should determine the need for a thermal protection system.

Class 2 materials: Under the current rules, tank cars used to transport Division 2.1 materials must have a thermal protection system, unless the tank car is a Class DOT 105 tank car that is also less than 18,500 gallons. There are no requirements for thermal protection for Division 2.2 materials. For Division 2.3 materials, the regulations contain grandfather clauses and other limited provisions that, overall, present an inconsistent regulatory scheme. Many commenters suggested the use of a thermal protection system for all Division 2.1 and 2.3 materials and RSPA agrees that these materials should be transported only in tank cars that have appropriate safeguards against fire. A comprehensive approach for all Division 2.1 and 2.3 materials, as proposed here, will require the owner or the shipper to assure an equivalent level of thermal protection, as prescribed in current § 179.105–4. This would require performing an analysis of the characteristics of the material and of the thermal resistance capabilities of the tank car, taking into consideration the safety relief valve start-to-discharge pressure setting and relief capacity and all areas of the tank car that are not afforded protection from fire (such as stub sills, bolsters, and protective housings). Such a whole systems approach ensures that all tank cars transporting a Division 2.1 or 2.3 material will have sufficient thermal resistance in a fire; in FRA's experience, all such materials will require the full measure of safety that only a thermal protection system can provide. This approach, analyzing the loaded car and designing a system to meet the standard for protection in pool and torch fires, is compatible with the regulatory framework of performance standards for packagings that has grown out of Docket HM–181. Because tank cars may transport different cargoes, and because changing cargoes may affect the whole system, owners or shippers may choose to perform a "worst case" analysis based on all the commodities the car is likely to carry.[19]

In 1981, a joint effort between the Chlorine Institute and the RPI–AAR Tank Car Safety Research and Test Project resulted in the development of an insulation system to protect a chlorine tank car involved in a fire. The developed insulation system maintains back plate (inside surface of the tank car shell) temperatures below 250.56 °C (483 °F). Since 1985, chlorine tank cars have been required to be equipped with half-head protection and an insulation system that meets the above requirements. The system consists of 5.08 cm (2 inches) of ceramic fiber covered by 5.08 cm (2 inches) of glass fiber encased in an eleven gauge steel

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[16] The following research report contains additional information on the effectiveness of urethane foam and fiberglass: Wright, W.P., Slack W.A., and Jackson W.F., Evaluation of the Thermal Effectiveness of Urethane Foam and Fiberglass as Insulation Systems for Tank Cars, NTIS DOT/FRA/ORD–87/11 (1987), Federal Railroad Administration, Washington, DC.

[17] For example, further information about the effects of a pool fire on a tank car are available in Johnson, M.R., Temperatures, Pressures and Liquid Levels of Tank Cares Engulfed in Fires, NTIS DOT/FRA/ORAD–84/08.11 (1984), Federal Railroad Administration, Washington, DC. The procedures outlined in the cited work are being updated by the AAR and should be available from that organization prior to publication of a final rule in this docket.

[18] Johnson, Milton R., Fire Effects on Tank Cars Containing Sulphur Monochloride and Sulfuryl Chloride, ITRI Project V06230 (1993), Occidental Chemical Corporation, Pasadena, Texas.

[19] Owners are reminded that 49 CFR 173.31 (a)(4) limits the use of tank cars to those commodities for which they are authorized. Authorized (or approved) commodities are those listed on the certificate of construction or an AAR R–1 form. (See the AAR Specifications for Tank Cars Section 1.4.3.1 and Appendix R, Section R4.04.)

jacket. Prior to 1985, the chlorine insulation system consisted of 10.16 cm (4 inches) of polyurethane foam or cork. The insulation system used today was incorporated into the HMR in 1981 by RSPA.[20] After reviewing the Chlorine Institute's insulation system, FRA and RSPA consider the thermal resistance capabilities of the current insulation system acceptable for the transportation of chlorine. This notice does not propose any new thermal protection requirements for chlorine.

While commenters do not agree on the need for thermal protection for Division 2.2 (non-flammable gas) materials, in the notice today, RSPA is proposing to require such a system if, after an analysis of the effects of a 100-minute pool fire and a 30-minute torch fire, there will be a release of the cargo from the tank car other than through the safety relief valve. An AAR publication states that "[a]t a chemical accident, there are generally two reasons for an evacuation, one is to protect the public from any toxic, poisonous, or noxious vapors or fumes generated by the product itself . . ., the second is to protect the public from thermal ruptures and the container debris that may be hurled from an incident site."[21] Many Division 2.2 materials have both of these characteristics. For example, in the same publication, the AAR states that containers of dichlorodifluoromethane may rupture violently in fire due to increasing pressure and that the decomposition of dichlorodifluoromethane evolves highly toxic phosgene, fluorides, halogen acids, hydrogen chloride and carbonyl halides. Of the 125 materials most frequently shipped by rail,[22] only 4 fall into the Division 2.2 category: anhydrous ammonia;[23] carbon dioxide, refrigerated liquid; argon, refrigerated liquid; and dichlorodifluoromethane.

Anhydrous ammonia is transported in DOT 105A300W, 105S300W, 105J300W, 112S340W, 114S340W, 112J340W, and 114J340W specification tank cars (including the same class tank car with a higher marked tank test pressure). All these cars, with the exception of the DOT 112S and 114S tanks, are either insulated or have a thermal protection system. The RPI commented that, for anhydrous ammonia, there were three fire-induced ruptures in the 22-year RPI database reporting history (1965–1986):

—Orleans Road, West Virginia (11–28–77);
—Crestview, Florida (4–8–79); and,
—Hutchinson, Kansas (9–10–81).

Commenters to the ANPRM stated that even if the Class DOT 112 and 114 tank cars in the above accidents had been equipped with thermal protection, it would not have prevented their ruptures. Not only is this argument an exercise in historical speculation, but RSPA and FRA point to the proven benefits of the head shield, shelf coupler, thermal protection combination and conclude that thermal protection, at the very least, could have delayed the thermal rupture of the tanks by keeping the internal temperature of the tank shell below that at which it begins to thin and lose strength. Delay of ruptures, and not their absolute prevention, was the goal of the thermal protection systems, and that goal has been met.

Carbon dioxide is transported in DOT 105A500W specification tank cars equipped with two regulator valves, a reclosing pressure relief device, a frangible disc, and an insulation system with good thermal performance (a thermal conductance of 0.03 B.t.u. per square foot per degree fahrenheit differential). Consequently, existing and new tank cars in carbon dioxide service have sufficient thermal resistance and this notice would impose no new thermal protection requirements for those tank cars.

Argon, refrigerated liquid is transported in DOT 107A seamless-steel high-pressure cylinders that are mounted on a freight car structure. This notice would impose no new requirements for these types of tank cars because the carrying capacity of each cylinder is small and, if released, there would be no imminent or substantial harm to human health or the environment.

Dichlorodifluoromethane is commonly transported in DOT 114A tank cars having no insulation or thermal protection. As discussed later under the heading of "Health and environmental risks," dichlorodifluoromethane is banned from land disposal and RSPA believes that these tank cars are not equipped with the protection needed to ensure the protection of human health and the environment.

In this notice, RSPA proposes to require the owner or shipper of a tank car used to transport a Class 2 material to perform an analysis that will predict the behavior of the tank car in a 100-minute pool fire and in a 30-minute torch fire. If the analyses show that there will be a release of the cargo from the tank car, other than through the safety relief valve, a thermal protection system will be required. To analyze the thermal effects on a tank car, RSPA will allow the use of computer assisted thermal modelling. A possible alternative to the proposed performance standard is for RSPA to analyze each specific tank car/safety relief valve/compressed gas combination. This alternative approach is reasonably certain to lead to a patchwork of regulatory requirements rather than a single logical and consistent standard. The proposals contained in this notice are designed to reduce the violent rupture of a tank car in a fire environment.

Thermally reactive materials: For some thermally reactive materials,[24] the critical temperature for the tank car and its contents may be the heat at which the material undergoes decomposition or polymerization rather than the temperature at which the steel of the tank becomes so plastic that it begins to lose tensile strength. RSPA and FRA agree with the commenters that tank cars transporting thermally reactive materials need a thermal protection system.

Accidents involving thermally reactive materials can be dramatic. On August 2, 1988, at 9 p.m., at Brazoria, Texas, 13 cars of a Union Pacific freight train derailed.[25] Seven of the derailed cars contained acetaldehyde and none of these cars had a thermal protection system (nor was it required). Two acetaldehyde cars sustained coupler punctures and released their contents, which ignited. The resulting fire engulfed 4 other acetaldehyde cars and each of them had a total failure, or rupture, of the tank shell within 5 to 10 minutes after the derailment. Witnesses reported "3–4 explosions between 9:05 and 9:10." It would be speculation to assume that a thermal protection system would have extended the time before rupture of these cars, but the effectiveness of the combination of head shields, shelf couplers, and thermal protection has been amply demonstrated.

As with Class 2 materials, RSPA believes that the best approach for applying thermal protection systems on

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[20] Transportation of Hazardous Materials; Miscellaneous Amendments, Docket HM–166U, 52 FR 13034, (April 20, 1987).

[21] Emergency Action Guides, p. VII.

[22] Annual Report of Hazardous Materials Transported by Rail / Year 1992, Association of American Railroads, Bureau of Explosives, Washington, DC, p. 3ff.

[23] Anhydrous ammonia meets the criteria of poisonous by inhalation and for international transportation is classified in Division 2.3 Zone D.

[24] A listing of the thermally reactive materials affected by this proposal appears earlier, in the section discussing the need for head protection systems on cars.

[25] Union Pacific derailment at Brazoria, Texas, FRA Accident Investigation No. 137–88, Railroad Report No. 0888H0200, August 2, 1988.

tank cars transporting thermally reactive materials is to require the owner or the shipper to perform an analysis of the predictable performance of the loaded car in a fire environment and to apply a thermal protection system that will (1) prevent the release of any cargo, other than through the safety relief valves, in a 100-minute pool fire and a 30-minute torch fire and (2), for the same time periods, maintain the internal temperature of the chemical in the tank below a level that will accelerate the decomposition or polymerization of the lading.

Tank cars constructed from aluminum and nickel plate: Recent tests performed for the FRA at the Transportation Test Center in Pueblo, Colorado, show that during the torch fire test the back plate temperatures [26] of a non-protected tank car constructed from aluminum plate will reach 427 °C (800 °F.) within 3 minutes and the aluminum plate will melt through in 5 minutes.

In the pool fire test, back plate temperatures reached 427 °C within 25 minutes; 75 minutes short of the carbon steel standard. The pool fire tests also showed that glass fiber insulation enclosed within an eleven gauge steel jacket offers no additional protection at all. The high temperatures from the test flame caused the glass fiber to lose tensile strength and fail, leaving the aluminum plate exposed to the direct radiant heat from the jacket. Because the glass fiber melted and fell away from the tank shortly after initiating the test, the thermocouples on the aluminum back plate showed a rapid temperature rise above 427 °C within 30-minutes, 70 minutes short of the carbon steel standard. When testing a thermal protection system and/or aluminum plate combination, however, FRA found that aluminum back plate temperatures during the 100-minute pool fire test remained well below 427 °C.[27]

Although FRA did not conduct fire tests on tank cars constructed from nickel plate, RSPA considers the properties of nickel plate similar to those of aluminum and the proposed rules will treat them similarly.

In consideration of the FRA research summarized above, and based on the comments received, FRA and RSPA consider thermal protection essential for tank cars constructed from either aluminum or nickel plate when used to transport a Class 2 or thermally reactive material. FRA and RSPA believe that all such cars will need protection. RSPA proposes to require the owner of a tank car constructed from aluminum or nickel plate that is used to transport a Class 2 or thermally reactive material to perform an analysis of the tank car in a 100-minute pool fire and in a 30-minute torch fire. If the analysis shows that there will be a release of the cargo from the tank car, other than through the safety relief valve, a thermal protection system will be required.

Compressed gases that are poisonous by inhalation: Commodities in this category include Division 2.3 materials and anhydrous ammonia. As with liquid PIH materials (see below), and based on the proven ability of tank jackets to reduce shell punctures, RSPA is proposing the use of a tank car that has a jacket conforming to § 179.100–4 of this subchapter and a tank test pressure of at least 300 psi for compressed gases that are also PIH. Bottom outlets would not be authorized.

In a 1987 report on the vulnerability of pressure tank car shells to puncture, the RPI found that shelf couplers, hardboard insulation (cork), increased shell thickness, thermal protection, small tank car size and increased jacket thickness proved effective towards reducing the frequency of shell punctures.[28] The report summarizes a 20½-year history of accident data on shell punctures of pressure tank cars and concludes that the 11-gauge steel jacket provides a measure of shell protection.

RSPA is proposing that tank cars transporting PIH materials that did not require a tank jacket prior to the effective date of any final rule in this docket must have a tank jacket that conforms to the requirements of § 179.100–4 of this subchapter no later than 10 years from the final rule's effective date.

Liquid materials poisonous by inhalation: The regulations adopted under Docket HM–181 [29] require the application of a thermal protection system on a tank car used to transport a PIH liquid material. Persons seeking further information on PIH liquid materials should refer to that proceeding.

On September 24, 1993, RSPA published a final rule, under Docket HM–181F (58 FR 50224), containing provisions that removed the applicability of Special Provision B14 for tank cars (a requirement for insulation), revised Special Provision B74 to allow the optional use of an insulated DOT 105S tank car or a non-insulated, but thermally protected, DOT 112J or 114J tank car for "liquid" PIH materials, allowed the construction of pressure tank cars from ASTM Type 304L or 316L stainless steel plate, and revised Note 30 in § 173.314(c) to authorize the use of DOT 105S tank cars for chlorine; hydrogen chloride, refrigerated liquid; methyl bromide; nitrosyl chloride; nitrous oxide; and sulfur dioxide.

IV. Self-energized manways located below the liquid level of the cargo

On September 8, 1987, in a railroad yard in New Orleans, Louisiana, a tank car equipped with a self-energized bottom manway and loaded with butadiene developed a leak and caught fire. At one point, the flames were large enough that both spans of a bridge on Interstate 10 were engulfed. After the investigation, the NTSB concluded that "it is unlikely that a hazardous materials leak through a bottom manway during transportation could be stopped." The NTSB urged the FRA to prohibit the transportation of tank cars that have a manway opening located below the liquid level of the lading in hazardous materials service.[30] Because the design of bottom manways depends in part on the weight of the product and the pressure in the tank to make the seal fully effective, RSPA and FRA agree with the NTSB's conclusion.

The design was never popular and FRA believes that there are only 14 such cars in the United States fleet. Other tank cars of this construction that might operate in the United States would be of Canadian or Mexican origin. Most commenters expressed support for the removal of internal self-energized manways located below the liquid level of the cargo, with one commenter proposing no new construction and the modification of existing tank cars within 2 years. FRA and RSPA support the commenters' suggestions and RSPA is proposing to revise § 173.31 to prohibit the use of internal self-energized

[26] 49 CFR 179.105–4(d) and (e) describes the procedures for conducting the pool fire and torch fire tests, respectively. The "back plate temperature" measurement determines the heat on the non-insulated side of the test material, that is, on the side away from the direct flame. The standard for carbon steel tank cars declares a test failure if any of the nine required thermocouples detects a temperature in excess of 427 °C. (800 °F.)

[27] Larson, W.G., Fire Tests on Insulation for Aluminum Tank Cars, NTIS DOT/FRA/ORD–87/04, (1987) Federal Railroad Administration, Washington, DC.

[28] Phillips, E.A., Review of Pressure Car Shell Puncture Vulnerability, RA–09–6–52, (1987), AAR–RPI Railway Tank Car Safety Research and Test Project, AAR Technical Center, Chicago, Illinois.

[29] Performance Oriented Packaging, Docket HM–181, 55 FR 52402, (December 21, 1990).

[30] Butadiene Release and Fire from GATX 55996 at the CSX Terminal Junction Interchange, New Orleans, Louisiana, September 8, 1987, National Transportation Safety Board Report NTSB/HZM–88/01, National Transportation Safety Board, Washington, DC.

manways located below the liquid level of the cargo after a 2-year period. For new tank cars, RSPA is proposing to revise the construction standard for Class DOT 114 tank cars in § 179.103–5, thereby prohibiting further new construction of tank cars with internal self-energized manways located below the liquid level of the cargo; existing cars would have to be modified.

V. Non-Pressure tank cars for materials poisonous by inhalation

With the publication of the Docket HM–181 final rule, as of October 1, 1993, nearly all liquefied compressed gas PIH materials must be transported in Class DOT 105, 112, and 114 pressure tank cars with a test pressure that conforms to § 173.31(a)(14). In §§ 173.314 and 173.323, however, certain PIH materials are authorized in Class DOT 111A tank cars. For instance, the regulations authorize the transportation of methyl bromide (§ 173.314) and ethylene oxide (§ 173.323) in DOT 111A100W4 specification tank cars.

In a recent research report,[31] the FRA found that, in a single car national risk profile, the transportation of ethylene oxide in a DOT 111A100W4 tank car involves significantly greater risk than the transportation of the same material in a DOT 105J500W tank car. Characteristics and parameters evaluated in this assessment included the toxicity, the fire hazard, and the explosion hazard. In comments to the ANPRM, the Railway Progress Institute (RPI) reported that, during the time period of 1965 through 1986, DOT 111A tank cars involved in accidents and damaged were slightly more than three times as likely to lose cargo as were DOT 105 cars in similar situations.[32]

The Raj/Turner report amply demonstrates (and AAR/RPI Tank Car Safety Test and Research Project data support) that it is "improbable" to assume that any single DOT 111A or DOT 105 car would be involved in an accident. Based on FRA accident data, however, a significant number of such cars will be involved in accidents during their service life. Accordingly, because of the hazards associated with these materials and the performance superiority of the DOT 105 car for this service, this notice proposes to remove the Class DOT 111A tank car as an authorized packaging for Division 2.3 materials. The majority of the commenters to the ANPRM support prohibiting non-pressure tank cars for the transportation of PIH materials.

VI. Phasing out of Various Grandfather Clauses

"Grandfather" clauses in several regulations allow tank cars constructed or built before a certain date to remain in service without modification. As an example, in § 173.314(c), Notes 23 and 24 allow the continued use of DOT 105A tank cars for certain compressed and flammable gases if they were built before September 1, 1981, while tank cars built after that date must meet a more stringent DOT 105S or 105J standard.

The NTSB stated, in a March 1, 1988 letter to RSPA that it was time to stop using tank cars that fail to meet current minimum safety requirements for the transportation of hazardous materials under grandfather clauses. The NTSB indicated that grandfather clauses could result in a reduced level of safety. The AAR also petitioned RSPA to amend § 173.314(c) Note 30 (P–1138):

> Because it does not provide any assurance that tank cars with head protection will be used for PIH [poisonous by inhalation] compressed gas service in the foreseeable future. * * * [C]ompanies will be able to use tank cars without head protection for PIH compressed gas service for the next thirty years. * * *

Although the majority of commenters did not support the phasing out of grandfather clauses from the regulations, expressing special concern about banning formerly approved materials of construction, RSPA agrees with both the NTSB and the AAR that there should be no allowance for the permanent use of tank cars that do not meet minimum safety requirements. In this notice, RSPA is not proposing to abandon older materials of construction, but rather to eliminate specific grandfather clauses that are no longer compatible with the needs of safety.

As further illustration, in § 171.102, special provision "B63" continues to allow the use of DOT 105A100W, 111A100W4, 112A200W and 114A340W tank cars for ethyl chloride and ethyl methyl ether, provided the cars were constructed before September 1, 1991.[33] These tank cars do not provide an equivalent level of safety to other tank cars used for Division 2.1 materials, because these tank cars do not have head protection or thermal protection systems. This notice proposes to remove special provision "B63" from column 7 of the hazardous materials table; thereby prohibiting the use of non-protected tank cars for these two materials.

The current § 173.314(c) also allows the use of Class DOT 111A non-pressure tank cars for certain Class 2 (compressed gas) materials, such as ammonia solutions, ethylamine, ethyl chloride and ethyl methyl ether. This notice proposes to remove the authorization for the use of Class DOT 111A non-pressure tank cars for Class 2 materials.

The proposed revision to § 173.323(c)(1) will remove the DOT 111A100W4 car as a proper packaging for ethylene oxide and will "sunset" its head protected and thermally protected DOT 111J alternative. Based on information obtained by the FRA, there are no DOT 111J tank cars in the national fleet; therefore, RSPA is proposing to remove the authorization for these tank cars on the effective date of this rule.

VII. Bottom Outlets

There are two principal issues concerning bottom outlets: first, whether or not they should be permitted at all and, second, whether, if permitted, they can and should be protected against damage during a derailment, when the tank car may separate from its wheel assemblies and allow any bottom fitting to fail following a collision with the ground.

Nearly all commenters to the ANPRM opposed the total elimination of bottom outlets on tank cars. One commenter stated that the benefits to be realized from removing bottom outlets are much smaller than the costs. Another pointed out that removing the bottom outlet on approximately 45,000 tank cars would require extensive modifications to the top fittings on those cars. Another commenter stated that the elimination of the bottom outlet would have drastic economic implications, such as preventing tank car to cargo tank transfers at many facilities. Commenters also said that eliminating bottom unloading fittings would prevent the continuation of highly successful unit-train operations, with good safety records, in sulfuric acid service, and it would require the installation of top unloading racks at facilities now using the bottom outlet to unload the tank car. Finally, commenters said that prohibiting bottom outlets would make cleaning of certain cars difficult, if not impossible.

RSPA agrees with the commenters that banning bottom outlets altogether may decrease safety at tank car

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[31] Raj, P.K., and Turner, C.K., Hazardous Materials Transportation in Tank Cars/Analysis of Risks—Part 1, NTIS DOT/FRA/ORD–92/24, (1993), Federal Railroad Administration, Washington, DC.

[32] Phillips, R.A., Analysis of Tank Cars Damaged in Accidents 1965 through 1986, RA–92–6–86, (1989), AAR–RPI Railway Tank Car Safety Test and Research Project, AAR Technical Center, Chicago, Illinois.

[33] Prior to the issuance of Docket HM–181, these two materials were classed as a flammable liquid.

unloading facilities by requiring employees to climb on top of cars to connect and disconnect transfer hoses. In addition, with top unloading it is typical to pump air into the car to displace the cargo out the liquid eduction line; the elimination of bottom outlets would expose more employees to high-pressure air inlet lines. The concerns at unloading facilities, however, are no less important than reducing the chances of a release of a hazardous material from the bottom outlet, sheared off in a derailment, on a tank car.

To balance these competing interests, RSPA is proposing to require accident damage protection for, instead of removal of, bottom fittings.

In 1978, the AAR developed bottom discontinuity protection requirements for new tank car construction. Over a period of years, these requirements were extended to existing tank cars on a priority schedule determined by the nature of the commodity transported. AAR-developed bottom discontinuity protection consists of either a metal "skid" protecting the portion of the bottom outlet that protrudes beyond the shell or the machining of a "breakage groove" in the valve assembly.

The Chemical Manufacturers Association, an industry association of chemical and petroleum producers and shippers, along with other tank car owners and users, supports the AAR's design. A report from the AAR/RPI Tank Car Safety Research and Test Project that shows that, taking bottom outlet valves and washouts as a group, the overall effectiveness of the AAR's bottom discontinuity protection requirements was 55 percent during the period 1971 through 1986.[34] Additionally, the RPI reports that bottom outlet protection led to a 42 percent reduction in the average cargo loss.

RSPA is proposing to require bottom outlet protection for all tank cars equipped with bottom unloading devices. New cars would have to meet the requirement as of the effective date of any final rule published under this docket. Those existing cars that are outside the scope of the AAR requirements would have 10 years from the effective date of the final rule to meet the standard. As proposed, bottom outlet protection systems would have to conform to paragraphs E9.00 and E10.00 of the AAR Specification for Tank Cars, M–1002. Paragraphs E9.00 and E10.00 generally require the protection of each valve and fitting from mechanical damage by the tank, another protective device, such as a tank saddle or skid plate, or the underframe. Furthermore, paragraphs E9.00 and E10.00 require that the protective device must be designed as follows—

(1) A load, normal to the slope of the protective device, whose vertical component equals the rail load minus the weight (mass) of the trucks;

(2) The above load must be considered as concentrated on any transverse line on the protective device;

(3) The stresses in the tank shell, the protective device, and its connections to the tank shell must not exceed the minimum tensile strength of the material. In addition, the combined stress in the tank shell due to the load specified above and an internal pressure, equal to the safety relief valve start-to-discharge pressure, may not exceed the minimum tensile strength of the shell material. The stresses in the webs of the protective device may not exceed the critical buckling stress;

(4) The longitudinal slope of the protective device must not exceed 1:3;

(5) Any vertical extension of the discontinuity below the protective device must be designed to break off without rupturing the tank or releasing lading. The protective device must extend down to, or below, the level of the discontinuity, or its designed breaking point. For bottom outlets, the skid should extend down to the breakage groove, or to the extreme outward projection of the parts comprising the equivalent of a breakage groove;

(6) The skid, when used, must be of fabricated, cast or forged design and be of a material compatible with that to which it is attached;

(7) The design of the protective device must take into account any abrupt change in stiffness from the long, rigid protective device to the flexible tank shell;

(8) Bottom outlet valve handles, unless stowed separately, must be designed to either bend or break free on impact, or the handle in the closed position must be located above the bottom surface of the skid; and

(9) Bottom profile of the protective device must provide a sliding surface without discontinuities.

VIII. Protective Coatings on Insulated Tank Cars

In recent years, it has become ever more apparent that the insulation of jacketed tank cars has an undesirable side effect. FRA has learned of several insulated tank cars with severe corrosion or pitting on the outer surface of the shell, or the inner surface of the jacket. It is not exactly known whether the corrosion stems from the physical properties of the insulation itself or whether the corrosion develops when insulation becomes impregnated or contaminated with water or a chemical from the atmosphere in which the tank car operates. Research within the industry has led to the development of protective coating materials.

In 1988, AAR petitioned RSPA[35] to amend the regulations to incorporate a require protective coatings on the exterior of a tank car and the interior of a tank car jacket to retard rust or corrosion for new car construction. Most comments received to the ANPRM supported a requirement similar to that suggested by AAR. One commenter asked RSPA to consider adopting a recommended practice for applying protective coatings on tank cars that is now under development by the National Association of Corrosion Engineers (NACE).

RSPA is proposing to adopt the suggestions made by the commenters and by the AAR to require protective coatings for all new tank cars[36] and for existing tank cars when a repair to the tank car requires the complete removal of the jacket. The NACE proposal is under consideration at meetings of the AAR Tank Car Committee and will be reviewed in that context. If warranted, a subsequent rulemaking proceeding may propose the adoption of this or other anti-corrosion protocols.

IX. Health and Environmental Risks

Beginning with the Rivers and Harbors Act of 1899, Congress has passed many laws to protect human health and the environment from hazardous substances and wastes. Major modern environmental legislative programs began after 1970 with the passage of the Resource Conservation and Recovery Act of 1976 to control and manage hazardous waste disposal sites; the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) to clean-up abandoned hazardous waste sites; the Toxic Substances Control Act to require testing of manufactured materials to determine their effect on human health and the environment; and the Federal Insecticide, Fungicide and Rodenticide Act to require the registration and

[34] Phillips, E.A., Bottom Discontinuity Protection Effectiveness on DOT 111A Stub Sill Tank Cars, RA–09–7–60, (1992), AAR–RPI Railway Tank Car Safety Test and Research Project, AAR Technical Center, Chicago, Il.

[35] Rulemaking petition No. P–1050.

[36] Current requirements, at 49 CFR 179.100–4(a) and 197.200–4(a), state ". . . protective coating is not required when foam-in-place insulation that adheres to the tank or jacket is applied." The proposal here would require protective coatings on all insulated tank cars.

regulation of chemicals that manufacturers produce. With the enactment of CERCLA in 1980, the body of law directed at environmental protection merged into hazardous materials transportation law as Congress required the Secretary of Transportation to list all hazardous substances as hazardous materials.

In 1984, Congress enacted the Hazardous and Solid Waste Amendments of 1984,[37] prohibiting the continued land disposal (including spillage or leakage) of untreated wastes because of the potential of these wastes to cause harm to human health and the environment. The statute requires the Environmental Protection Agency (EPA) to set

> levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of the hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized.[38]

As enacted, the legislation set forth a series of deadlines that would restrict further land disposal of certain wastes if no levels or methods of treatment were set by EPA. Untreated wastes, as identified by Congress and set forth in the legislation, were restricted from land disposal after a certain date. All such deadlines have now passed.

The rationale for restricting wastes from land disposal focuses primarily on the relationship between disposal of a hazardous waste and ground water quality. In 40 CFR part 261, EPA classified wastes as hazardous based on the potential of those wastes to cause harm to human health and the environment. EPA's determinations include the potential harm of the material on human health and the environment as a result of the characteristics of the material (reactivity, ignitability, corrosivity, or toxicity) as seen in ground water or a surface water pathway.

Based on information on untreated wastes and on other environmental contaminants such as pesticides, RSPA proposes certain new requirements for HOCs that are banned from land disposal by the EPA. HOCs pose a risk to human health and the environment when transported in large capacity tank cars because, in addition to toxicity, when released, HOCs are persistent in soil and have the potential for large scale soil and groundwater contamination. In addition, when HOCs are released they have the potential to cause depression of the central nervous system by acting as a general anesthetic, inhibiting activity in the brain and spinal cord and lowering a person's functional capacity. After systemic absorption, other potential acute toxicities include hepatotoxicity (toxic effects in the liver), nephrotoxicity (toxic effects in the kidneys), and cardiac arrhythmias induced by sensitization of the heart to adrenaline or adrenaline-like compounds. Animal studies and accidental human poisonings have shown that these and other organ toxicities may be produced by acute exposure to organic solvents, such as certain HOCs.[39]

In addition to the acute or chronic toxicity of these materials, HOCs are persistent in soil and difficult to remove (or clean up) after a spill. Railroads have incurred enormous costs for environmental clean-up after the release or disposal of HOCs. As an example, on September 28, 1982, several cars of an Illinois Central Gulf freight train derailed at Livingston, Louisiana. As a result of the derailment, one tank car spilled approximately 14,000 gallons of perchloroethylene (an HOC). Two weeks after the incident, the Louisiana Department of Natural Resources (DNR) detected perchloroethylene in concentrations of up to 25 parts per million (ppm) in the soil at the derailment site. It was also discovered that the chemical had migrated well beyond the derailment location. The town of Livingston obtains its drinking water from wells by tapping a deep aquifer and, to prevent human health risks from the chemical, the DNR established a 0.3 ppm concentration of perchloroethylene as the criterion for the maximum safe level of groundwater contamination. Since the accident, the railroad has incurred over $20 million in environmental clean-up costs.

In creating and enacting the environmental legislation referenced earlier, Congress made evident its concern about constituents that are both mobile and potentially hazardous to human health and the environment. Based on these concerns, EPA has identified and listed in 40 CFR Part 268, Appendix III, HOCs that share these characteristics. The EPA list represents a comprehensive, yet enforceable, list of HOCs. RSPA, in keeping with Congressional intent, is concentrating first on wastes that are known to create a substantial risk of harm to human health and the environment and, in this proceeding, RSPA is proposing improved packagings for certain HOCs transported by railroad and identified as regulatory priorities by the EPA.

In a recent report on the cost effectiveness of transporting HOCs in pressure tank cars,[40] the AAR identified 10 of 83 HOCs that are currently transported by rail in non-pressure tank cars without safety improvements such as head protection and thus present a greater than acceptable risk of harm to humans and the environment. The AAR states that these HOCs should be transported by rail in pressure tank cars. In support of its thesis, AAR shows that, within the last 10 years, the release of HOCs in railroad accidents has resulted in environmental clean-up costs exceeding $50 million and that, even though these materials accounted for less than one percent of the total car volume of hazardous materials movements, their releases accounted for 60 percent of all railroad environmental clean-up costs. The AAR report concludes that the net present value of the benefit minus the costs of using a DOT 105A300W specification tank car for the transportation of HOCs over a 30-year lifetime is $60.5 million.

The AAR report suggests that shippers should use DOT 105A300W or DOT 105A500W specification tank cars to minimize the risks of transporting HOCs. RSPA and FRA have recently learned that the railroad and chemical industry associations have adopted a recommendation for the jacketed DOT 105S200W and the non-jacketed DOT 112S200W tank car to transport HOCs. From a puncture resistance standpoint, neither RSPA nor FRA considers that these tank cars provide equivalent puncture resistance, because the DOT 105S200W tank car has the additional protection afforded by its jacket.[41] This view is supported by an RPI report cited earlier.[42] RPI reviewed 20½ years of accident data and concluded that DOT 105A tank cars and non-jacketed DOT 112A tank cars had about the same

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[37] The act amended RCRA secs. 3004(d)(1), (e)(1), and (g)(5) (42 U.S.C. 6924(d)(1), (e)(1), and (g)(5)).

[38] RCRA sec. 3004(m)(1) (42 U.S.C. 6924(m)(1)).

[39] Williams, Phillip L. & Burson, James L., "Industrial Toxicology," in James, Robert C., The Toxic Effects of Organic Solvents, Van Norstrand Reinhold, New York, 1985, pp 230–232.

[40] Barken, Glickman, & Harvey, Benefit-Cost Analysis of Using Type 105 Tank Cars Instead of Type 111 Tank Cars to Ship Environmentally Sensitive Chemicals, R–794, (1991), AAR Document Distribution Center, Chicago, IL.

[41] Simple puncture resistance calculations show that the DOT 105S200W and the 112S340W have about 13 percent more shell puncture resistance than the non-jacketed DOT 112S200W tank car. Adding a jacket to the DOT 112S200W tank car removes this deficit. FRA calculated puncture resistance by multiplying 75 percent of the tensile strength of the steel used in the tank shell by the thickness of the plate. For jacketed tank cars a similar calculation was made for the 11 gauge jacket and the result was added to the tank shell calculation.

[42] Phillips, Review of Pressure Car Shell Puncture Vulnerability.

degree of vulnerability to puncture. The comparability is explained by the average thickness of the steels in the two groups of cars: The DOT 105A has an average shell thickness of 1.49 cm (0.585 inches) and a 0.30 cm (0.119 inches) steel jacket, for a total of 1.79 cm (0.705 inches); the DOT 112A has an average shell thickness of 1.757 cm (0.692 inches). In summary, the thinner 105A car achieves equivalency with the thicker 112A car through the extra protection provided by its jacket.

RSPA and FRA consider that adequate accident damage protection is provided by the use of an 11-gauge metal jacket (in addition to head shields) on DOT 105S tank cars and on DOT 112J and 114J tank cars. The metal jacket and head shields on these tank cars blunt the impacting forces from couplers, wheels, track, and other objects along the carrier's right of way. According to FRA research, this blunting effect is directly proportional to the thickness of the tank jacket or head shield and is effective in preventing tank punctures.[43]

Therefore, to provide equivalent puncture resistance, RSPA is proposing the use of a DOT 105S200W, a jacketed DOT 112S200W, or a 112S340W tank car for HOCs.

Rules developed by the EPA, require the "initial generator" of a hazardous waste to make a determination as to whether or not the waste is restricted from land disposal based on the generator's knowledge of the waste. In such cases, the generator must maintain all supporting data used to make the determination on-site in the generator's files. Under the provisions contained in this notice, shippers (i.e., generators) would retain responsibility for making a determination of whether or not an HOC is restricted from land disposal.

Furthermore, in a 1991 report, the NTSB urged RSPA and FRA to consider environmental contamination and its effects on human health when authorizing the use of tank cars.[44] The NTSB recommended RSPA and FRA:

> establish [ ] a working group . . . to expeditiously improve the packaging of the more dangerous products (such as those that are highly flammable or toxic, or pose a threat to health through contamination of the environment). . . .

RSPA and FRA agree with the NTSB that there is a need to consider long-term health effects and environmental risks when authorizing packages for hazardous materials and, in this notice, RSPA proposes the mandatory use, for the transportation of materials that pose a potential harm to human health and the environment, of tank cars that are more likely to survive a railroad accident. On May 15, 1992, the NTSB closed the recommendation to FRA, but urged "FRA to expedite its rulemaking activities under Docket HM–175A. . . ." RSPA and FRA believe that the actions taken in this notice are responsive to the NTSB's letter and recommendation.

RSPA believes that using the EPA list of wastes that are prohibited from land disposal is a consistent and easily understood course of action for targeting potential materials that should be transported in improved packaging.

As to other materials that could potentially cause harm to human health and the environment, RSPA, in cooperation with other DOT agencies and the EPA, will address them in future rulemaking actions when more information on each chemical and its transportation risks becomes available. RSPA asks for comments on the number of tank car shipments, if any, and the tank car specifications used for other materials banned from land disposal by the EPA. This information will help RSPA evaluate the need to develop future rulemaking actions.

X. Implementation of New Requirements.

FRA and RSPA have considered many factors in developing the compliance periods proposed in this notice. These factors include:

- The safety benefits of the proposals made in this notice,
- The need to establish priorities for the proposed modifications,
- The possible impact of these proposals on other safety initiatives mandated by FRA, RSPA, and the railroad industry and the capacity of shops and repair facilities to handle these initiatives,
- Minimizing equipment shortages,
- The realization, based on the best estimates available of the number of tank cars affected by these proposals, that no governmental entity can achieve change overnight merely by mandating it.

For tank cars built on or after the effective date of the final rule published under this docket, the proposed requirements would take effect immediately. For tank cars built prior to the effective date ("existing tank cars"), the compliance dates are summarized in the table below.

Under "Option A," in the table, most of the proposed compliance dates are set at 10 years from the effective date of the final rule under this docket. This 10-year period will allow tank car owners to coordinate necessary retrofit modifications with the "thorough inspection" interval for tank cars in Interchange Rule 88.B.1,[45] and with the retest interval for most single-unit tank car tanks specified in § 173.31(c). A 10-year period also coincides with the duration frequently specified in typical full term tank car leases, whether a true lease or a financing vehicle.

FRA and RSPA believe that certain tank car types and car/commodity combinations should be considered for shorter retrofit periods, with 5 years given to bring existing cars into compliance. "Option B" in the table presents these intervals. For instance, aluminum and nickel tank cars are more vulnerable to tank puncture and tanks used for transporting PIH materials or thermally reactive materials present special hazards.

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[43] Coltman, M., & Hazel, M., Jr., Chlorine Tank Car Puncutre Resistance Evaluation, Report DOT/FRA/ORD–92–11, (1992) Federal Railroad Administration, Washington, DC.

[44] Transport of Hazardous Materials by Rail, National Transportation Safety Board Safety Study, Report NTSB/SS–91/01, National Transportation Safety Board, Washington, DC.

[45] Field Manual of the Interchange Rules, adopted by the Association of American Railroads, Mechanical Division, Washington, DC 1992. At intervals not to exceed ten years, major components of the car must be inspected, including body bolsters and center plates, center sills, crossbearer, cross ties, draft systems and components, end sills, side sills, and trucks.

Implementation of Requirements for Existing Tank Cars

SAFETY FEATURE	Current Requirements	Proposed Requirements	Compliance: Option "A"	Compliance: Option "B"
Tank head protection				
Tank cars currently equipped with half-head protection	Currently authorized in §§ 179.105-5 and 179.100-23	Would be authorized by § 173.31(a)(19)	N/A	N/A
Class 105 tank cars < 18,500 gallons	Head protection not required	Full-head protection would be required by § 173.31(a)(19)	10 years	10 years
Tank cars transporting Division 2.2 materials	Head protection not required	Full-head protection would be required by § 173.31(a)(19)(i)	10 years	10 years
Aluminum and nickel tank cars	Head protection not required	Full-head protection would be required by § 173.31(a)(19)(ii)	10 years	5 years
Tank cars transporting thermally reactive materials	Head protection not required	Full-head protection would be required by § 173.31(a)(19)(ii)	10 years	5 years
Shell protection				
Tank cars transporting materials poisonous by inhalation	Some require shell protection	Would be required by § 173.31(a)(21)	10 years	5 years
Thermal protection systems				
Division 2.1	Thermal protection required, except for Class DOT 105 cars < 18,500 gallons	Would be required by § 173.31(a)(20) based on an analysis	10 years	10 years
Division 2.2	Thermal protection not required	Would be required by § 173.31(a)(20) based on an analysis	10 years	10 years

SAFETY FEATURE	Current Requirements	Proposed Requirements	Compliance: Option "A"	Compliance: Option "B"
Division 2.3	Some require thermal protection	Would be required by § 173.31(a)(20) based on an analysis	10 years	5 years
Thermally reactive materials	Some require thermal protection	Would be required by § 173.31(a)(20) based on an analysis	10 years	5 years
Aluminum and nickel tank cars	Thermal protection not required	Would be required, based on an analysis, if the car is carrying a Class 2 or thermally reactive material	10 years	5 years
Self-energized manways				
	Authorized by § 179.103-5(a)(1)	Would be prohibited by §§ 173.31(a)(21) and 179.103-5.	2 years	2 years
Non-pressure tank cars for PIH materials				
	Authorized for certain materials	Would be prohibited by § 171.102, Special Provisions B72 and B74 and by §§ 173.314 and 173.323	Immediately	Immediately
Grandfather clauses				
	Authorized for certain materials	Would be removed in §§ 172.102, 173.314, and 173.323	Varies: Details are elsewhere in this chart	Varies: Details are elsewhere in this chart
Bottom outlet protection				
	Except for breakage grooves, industry requirements only	Would be required by §§ 173.31(a)(22) and 179.20	AAR standard: immediately; all others: 10 years	AAR standard: immediately; all others: 10 years
Protective coatings on insulated tank cars				
	Required, except for polyurethane foams, by §§ 179.100-4(a) and 179.200-4(a)	Would be required by §§ 173.31(f)(3), 179.100-4(a), and 179.200-4(a)	New construction: immediately; existing cars: when repair requires complete removal of the tank jacket	New construction: immediately; existing cars: when repair requires complete removal of the tank jacket

SAFETY FEATURE	Current Requirements	Proposed Requirements	Compliance: Option "A"	Compliance: Option "B"
Health and environmental risks				
	Authorized in non-pressure Class DOT 111 cars	DOT 105S200W, jacketed 112S200W, or 112S340W pressure tank cars would be required	10 years	10 years

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Substantive comments are solicited on the appropriateness of these compliance periods. Comment is also requested on the means by which proposed compliance might be scheduled, e.g., through a requirement to retrofit at the next retest date, at a change of ownership, or when a tank car is changed to a commodity service that requires the protection afforded by any of the retrofits proposed in this notice.

XI. Review by Section

Part 172

Section 172.101. In the Hazardous Materials Table, Special Provision 23 would be added, in Column 7, of the entries for the following thermally reactive materials:

Acetaldehyde
Acrolein, inhibited
Acrylic acid, inhibited
Acrylonitrile, inhibited
Butylacrylate
Chloroprene, inhibited
Crotonaldehyde, stabilized
Dimethylaminoethyl methacrylate
Dimethylhydrazine, unsymmetrical
Dinitrotoluenes, liquid
Dinitrotoluenes, molten
Dinitrotoluenes, solid
Ethyl acrylate, inhibited
Ethyl methacrylate
Ethyl nitrite solutions
Ethylene oxide, pure or with nitrogen
Ethyleneimine, inhibited
Hydrazine, anhydrous *or* Hydrazine aqueous solutions *with more than 64 per cent hydrazine, by mass*
Hydrogen cyanide, anhydrous, stabilized
Hydrogen peroxide, aqueous solutions with more than 40 per cent but not more than 60 per cent hydrogen peroxide tabilized as necessary).
Hydrogen peroxide, aqueous solutions with not less than 20 per cent but not more than 40 per cent hydrogen peroxide (stabilized as necessary)
Hydrogen peroxide, stabilized or Hydrogen peroxide aqueous solutions, stabilized with more than 60 per cent hydrogen peroxide
Isobutyl acrylate
Isoprene, inhibited
Isopropyl nitrate
Methacrylic acid, inhibited
Methacrylonitrile, inhibited
Methyl acrylate, inhibited
Methyl isopropenyl ketone, inhibited
Methyl methacrylate monomer, inhibited
Methyl vinyl ketone
Motor fuel anti-knock mixtures
Nitroethane
Propylene oxide
Propyleneimine, inhibited
Styrene monomer, inhibited
Sulfur trioxide, inhibited
Sulfur trioxide, uninhibited
Vinyl acetate, inhibited *mixed isomers*
Vinyl ethyl ether, inhibited
Vinyl isobutyl ether, inhibited
Vinyl toluene, inhibited
Vinylidene chloride, inhibited
Vinylpyridenes, inhibited
Vinyltrichlorosilane

Section 172.102. Special Provision 23 would be added to specify that thermally reactive materials must be packaged according to the HMR. Special Provision B63 would be removed, thus prohibiting the use of tank cars without head protection or thermal protection for the transportation of ethyl chloride and ethyl methyl ether.

Part 173

Section 173.31. Several changes would be made to this section.

Paragraph (a)(14) would be amended by adding a new requirement that all tank cars used to transport a PIH material must have a tank test pressure of at least 300 psi. This proposed requirement is consistent with other regulations adopted under Docket HM–181 for PIH liquids.[46] Several shipping names appearing in current § 173.31(a)(14)(i) would be revised for consistency with proper shipping names shown in the § 172.101 table.

Several new paragraphs would be added.

Proposed paragraph (a)(19) would require head protection for all tank cars transporting Class 2 materials or thermally reactive materials and for all tank cars constructed from aluminum and nickel plate.

Proposed paragraph (a)(20) would require a thermal protection system on tank cars transporting Class 2 materials and thermally reactive materials. For thermally reactive materials, the rule would require sufficient thermal protection to preclude the cargo from reaching the point of decomposition or polymerization. As discussed in the preamble, the need for a thermal protection is based on an analysis of the thermal characteristics of the cargo and the tank car. Taking the whole system into consideration, certain existing tank cars may have sufficient thermal resistance to meet these requirements.

Proposed paragraph (a)(21) would require shell puncture resistance protection on tank cars used for transporting PIH materials.

Proposed paragraph (a)(22) would require the removal of internal self-energized manways on certain tank cars within 2 years.

Proposed paragraph (a)(23) would require bottom discontinuity protection for all tank cars. The proposed protection requirements would conform to paragraph E9.00 and E10.00 of the AAR Specifications for Tank Cars, M–1002.

Proposed paragraph (a)(24) would be added to require the use of DOT 105S200W, jacketed 112S200W, or non-jacketed 112S340W specification tank cars for HOCs that are banned from land disposal under the Environmental Protection Agency regulations contained in 40 CFR part 268.

Proposed paragraph (f)(3) would be added to require protective coatings for all types of insulation materials if the complete jacket is removed to effect tank car repairs.

Readers should be aware that RSPA proposed to revise and restructure the provisions contained in current § 173.31

[46] For further information see Performance-Oriented Packaging Docket HM–181, 55 FR 52402 (December 12, 1990).

under Docket HM–201, 58 FR 48485, September 16, 1993. Therefore, any changes adopted under either of the two dockets would be made consistent with the other and in the text ultimately published in the bound volumes of the Code of Federal Regulations.

Section 173.314. The table in paragraph (c) would be amended by removing the individual authorized tank car specifications and adding the authorized tank car classes. This change will ensure that the authorized tank car conforms to § 173.31(a)(14) concerning tank test pressure. The notes following the table would also be amended by removing all tank car "design requirements." Only those notes that apply to filling limits would be retained. The current notes following the table in § 173.314(c) would be redesignated, revised, or removed as follows:

Note 1, no change.

Note 2 would be editorially revised and moved to proposed § 173.314(n).

Note 3 and *Note 4* would be revised and moved to proposed § 173.314(j), applicable to all Division 2.1 (flammable gas) materials.

Note 5 would be editorially changed for clarity.

Note 6 would be editorially revised and moved to proposed § 173.314(o).

Note 7 would be removed. This provision allows the transportation of multi-unit-tank cars tanks (ton containers) by rail and highway only. A provision restricting the transport of multi-unit tank car tanks by air is unnecessary because quantity limitations for these commodities exceeded the maximum allowed by air. RSPA also believes there is no valid reason for not authorizing the transport of these units by water.

Note 8 would be editorially revised and moved to proposed § 173.314(l).

Note 9 would be moved to proposed § 173.314(j) and made applicable to all materials with a Division 2.1 hazard.

Note 10 would be editorially revised and moved to § 173.314(m).

Note 11 would be editorially revised and included in proposed § 173.314(m).

Note 12 would be revised and the filling density requirements would be moved to proposed Note 6, and the design requirements would be moved to proposed § 173.314(k).

Note 13 would be removed to eliminate duplication of the marking requirements prescribed in Special Provision B12, §§ 173.314(a)(5), and 172.332(a)(i)(i).

Note 14 would be removed because it is not referenced in the table.

Note 15 would be included with certain other design requirements applicable to tank cars used for 2.1 materials in proposed § 173.314(j).

Note 16, which is currently reserved, would be removed.

Note 17, which references § 173.314(g) would be removed.

Note 18 would be editorially revised and moved to proposed Note 7.

Note 19 would be editorially revised and moved to proposed Note 8.

Note 20 would be editorially revised and moved to proposed Note 4.

Note 21 would be editorially revised and moved to proposed Note 3.

Note 22, referencing the requirements in § 173.245, would be incorporated into the table under the entry for Division 2.3, Zone A materials.

Note 23 and *Note 24* would be removed based on other proposals in this notice concerning the elimination of grandfather clauses.

Note 25 would be editorially revised and moved to proposed Note 2.

Note 29 and *Note 30* would be removed based on other proposals in this notice concerning the elimination of grandfather clauses.

Section 173.323. Paragraph (c)(1) would be revised to require DOT 105 tank cars used for transporting PIH materials to have a tank test pressure of at least a 300 psi. Authorization for the use of a DOT 111J100W4 tank car would be removed.

Part 179

Section 179.16. Proposed § 179.16 containing the tank head puncture resistance requirements found in current §§ 179.100–23 and 179.105–5 would be added. The test verification requirements in current § 179.105–5(b) and (c) would be editorially revised and placed in a new Appendix A of part 179.

Section 179.18. Proposed § 179.18, containing thermal protection requirements found in current § 179.105–4, would be added. Editorial revisions would be made for clarity and for consistency with other changes proposed in this notice. The proposed regulatory text in this notice references a research report [47] that contains an analytical thermal model. FRA expects that AAR will have the model available on a computer disc by the time any final rule is issued in this docket.

Section 179.20. Proposed § 179.20, containing bottom discontinuity protection requirements, would be added. As proposed in this notice, bottom discontinuity protection must conform to paragraphs E9.00 and E10.00 of the AAR Specifications for Tank Cars, M–1002.

[47] Johnson, M.R., op. cit., Temperatures, Pressures, etc.

Section 179.22. Proposed § 179.22 would be added. This section would consolidate the marking requirements currently in §§ 179.100–21, 179.105–8, 179.200–25, and 179.203–3.

Section 179.100–4. This section would be amended by removing the phrase, "except that a protective coating is not required when foam-in-place insulation that adheres to the tank or jacket is applied" at the end of the first paragraph.

Section 179.100–21. The marking requirements contained in this section would be consolidated with other marking requirements in proposed new § 179.22. Therefore, current § 179.100–21 would be removed.

Section 179.100–23. The head protection requirements contained in this section would be moved to proposed § 179.16(d). Therefore current § 179.100–23 would be removed.

Section 179.103–1. Paragraph (c), which provides that a manway may be located other than at the top of the tank, would be removed.

Section 179.103–2. Paragraph (a) containing manway cover requirements would be revised.

Section 179.103–5. Paragraph (a)(l) would be revised by removing the first two sentences, thus eliminating the authorization for a self-energizing manway located below the liquid level of the cargo in the tank car.

Section 179.105. Current §§ 179.105– through 179.105–8 containing special requirements for DOT 105S, 105J, 111J, 112S, 112J, 112T, 114S, 114J, 114T specification tank cars would be removed because they are unnecessary. The applicable requirements concerning head protection and thermal protection would be moved to proposed §§ 179.16, 179.18, and a new Appendix B to Part 179 as appropriate. The marking requirements would be moved to § 179.22.

Section 179.200–4. This section would be revised by removing the phrase, "except that a protective coating is not required when foam-in-place insulation that adheres to the tank or jacket is applied" at the end of the first paragraph.

Section 179.200–25. The marking requirements contained in this section would be consolidated with other marking requirements in proposed § 179.22. Therefore, current § 179.200–25 would be removed.

Section 179.200–27. The head protection requirements would be contained in proposed § 179.16. Therefore, current § 179.200–27 would be removed.

Section 179.203. Current § 179.203–1 through 179.203–3 containing special

requirements for DOT 111 tank cars are unnecessary and would be removed. The restriction in paragraph (c) against the use of DOT 111 tank cars built after March 1, 1984, for the transportation of flammable gases or ethylene oxide would be incorporated into §§ 173.314 and 173.323. The applicable head protection and thermal protection requirements would be contained in proposed §§ 179.16 and 179.18, respectively. Therefore, current § 179.203–2 is unnecessary and would be removed. The marking requirements would be moved to proposed § 179.22.

XII. Regulatory Analysis and Notices

A. Executive Order 12291 and DOT Regulatory Policies and Procedures

This proposed rule does not meet the criteria specified in section 1(b) of Executive Order 12291 and, therefore, is not a major rule. The rule is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034). A regulatory evaluation is available for review in the Docket.

The main benefit found in the regulatory evaluation is that head protection and thermal protection would reduce the risk of rare but catastrophic accidents. The materials and tank cars selected were those which posed large potential risk, even if their accident history has not shown many accidents. One catastrophic accident would be too many.

The rule would significantly reduce the risk of fatalities and injuries from releases of gases and volatile liquids that are PIH, including anhydrous ammonia, and from explosive reactions involving ethylene oxide and thermally reactive materials. The release or explosion of these materials have the potential to affect thousands of people in urban and suburban areas. Preventing just one major release or explosion in a densely populated area could save the lives of hundreds of people and amount to hundreds of millions of dollars in benefits. By reducing the risk of fatalities, the proposal would also reduce the frequency, magnitude, and hence the cost of evacuations, which can affect thousands of people for days. The proposal would also reduce the frequency, magnitude and cost of transportation delays that can affect rail and highway traffic for many hours or even days.

The proposal would also reduce the risk of releasing some hazardous materials, especially Halogenated Organic Compounds, HOC's, into the environment. They are exceptionally costly to clean up once released. In the first year, under Option A, the cost reduction would be about $490,000, and the cost reduction would increase to about $4,900,000 in the tenth and subsequent years. That means that the reduction in cleanup costs alone would more than offset the cost of the proposal after the tenth year.

The proposals under Option A in the accompanying Notice of Proposed Rulemaking could cost up to $79 million in discounted costs over the first 10 years. They could cost up to $9.7 million in the first year, rising to $11.7 million in the tenth year. Each year after that the proposal could cost up to $2 million. Option B would cost more.

Costs, in some cases, have been difficult to estimate and, because of conservative assumptions, may significantly overstate actual costs. For example, the costs of additional protection for new and retrofit tank cars carrying thermally reactive materials account for an estimated $7.3 million annually or about $54.75 million, or 69 percent of total discounted costs under Option A over 10 years. (Seventy-six percent of costs when the weight penalty is excluded.)

However, these costs may be significantly overstated because it has been assumed that all cars carrying thermally reactive materials will require additional protection. In fact, for many tank cars, the testing of the tank car and the cargo at the given performance specification in the rule may require no additional thermal protection measures.

The relative cost-effectiveness of many of the provisions will also be influenced by the actual manner in which cars removed from one type of service cascade into other types of service. Based on available data, including data provided by commenters, the DOT seeks to determine how the requirements of this rule can be made most cost-effective while substantially reducing the risk of sometimes often rare but potentially catastrophic accidents.

B. Executive Order 12612

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 ("Federalism"). The Hazardous Materials Transportation Act (HMTA) contains an express preemption provision (49 App. U.S.C. 1804(a)(4)) that preempts State, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

(1) The designation, description, and classification of hazard materials;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(3) The preparation, execution, and use of shipping documents pertaining to hazardous materials and requirements respecting the number, content, and placement of such documents;

(4) The written notification, recording, and reporting of unintentional release in transportation of hazardous materials; or

(5) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials.

This proposed rule concerns design, manufacturing, repairing, and other requirements for packages represented as qualified for use in the transportation of hazardous materials.

If adopted as final, this rule would preempt any State, local, or Indian tribe requirements concerning these subjects unless the non-Federal requirements are "substantively the same" (see 49 CFR 107.202(d)) as the Federal requirements.

The HMTA (49 App. U.S.C. 1804(a)(5)) provides that if DOT issues a regulation concerning any of the covered subjects after November 16, 1990, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. That effective date may not be earlier than the ninetieth day following the date of issuance. RSPA requests comments on what the effective date of Federal preemption should be for the requirements in this proposed rule that concern covered subjects. RSPA lacks discretion in this area, and preparation of a federalism assessment is not warranted.

C. Regulatory Flexibility Act

Based on limited information concerning the size and nature of the entities likely to be affected by this proposed rule, I certify that this proposed rule would not have a significant economic impact on a substantial number of small entities. The major impacts of this rule center on tank car owners, which are primarily large corporations, and on offerers and transporters of hazardous materials in tank cars. This certification is subject to modification as a result of a review of comments received in response to this proposal.

D. Intermodalism/Modal Diversion

FRA reviewed the proposals in this notice to investigate their potential for diverting rail hazardous materials traffic to truck. FRA's concern was that, if diversion was likely, the safety impacts on highway transportation would need

to be studied to fulfill the Department's responsibility for multi-modal systems safety. The study examined the amount of traffic moving by rail, the average distance each chemical moves, proportionate rail share, and the number of tank cars estimated to require modification if the proposals in this rule are made final. The study concluded that, for most commodities, disruption to rail service would occur if modification were required within one year.[48] As long as the compliance period exceeds one year, FRA believes that sufficient cars will be available to handle the projected traffic volumes. A copy of FRA's paper, "Divertibility of Certain Hazardous Materials," is available in the docket for review by interested persons.

E. Paperwork Reduction Act

The information collection requirements contained in proposed §§ 179.16 and 179.18 are being submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC, Attention: Desk Officer for the Department of Transportation. Comments must reference the title of this notice, "Crashworthiness Protection Requirements for Tank Cars."

F. Regulatory Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labels, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 179

Hazardous materials transportation, Railroad safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR chapter I would be amended as follows:

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

1. The authority citation for part 172 would continue to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1808; 49 CFR part 1, unless otherwise noted.

§ 172.101 [Amended]

2. In the § 172.101 Hazardous Materials Table, the following changes are made.

a. For the following entries, Special Provision "23" would be added in Column (7), in appropriate numeric sequence:

Acetaldehyde
Acrolein, inhibited
Acrylic acid, inhibited
Acrylonitrile, inhibited
Butylacrylate
Chloroprene, inhibited
Crotonaldehyde, stabilized
Dimethylaminoethyl methacrylate
Dimethylhydrazine, unsymmetrical
Dinitrotoluenes, liquid
Dinitrotoluenes, molten
Dinitrotoluenes, solid
Ethyl acrylate, inhibited
Ethyl methacrylate
Ethyleneimine, inhibited
Hydrazine, anhydrous or Hydrazine aqueous solutions with more than 64 percent hydrazine by mass
Hydrogen cyanide, anhydrous, stabilized
Hydrogen peroxide, aqueous solutions with more than 40 per cent but not more than 60 percent hydrogen peroxide (stabilized as necessary)
Hydrogen peroxide, aqueous solutions with not less than 20 percent but not more than 40 percent hydrogen peroxide (stabilized as necessary)
Hydrogen peroxide, stabilized or Hydrogen peroxide aqueous solutions, stabilized with more than 60 percent hydrogen peroxide
Isobutyl acrylate
Isoprene, inhibited
Isopropyl nitrate
Methacrylic acid, inhibited
Methyl acrylate, inhibited
Methyl isopropenyl ketone, inhibited
Methyl methacrylate monomer, inhibited
Methyl vinyl ketone
Motor fuel anti-knock mixtures
Nitroethane
Propylene oxide
Propyleneimine, inhibited
Styrene monomer, inhibited
Sulfur trioxide, inhibited
Sulfur trioxide, uninhibited
Vinyl acetate, inhibited
Vinyl ethyl ether, inhibited
Vinyl isobutyl ether, inhibited
Vinyl toluene, inhibited *mixed isomers*
Vinylidene chloride, inhibited
Vinylpyridenes, inhibited
Vinyltrichlorosilane

b. For the entry "Ethylene oxide, pure or with nitrogen", Special Provision "23" would be added in Column (7), in appropriate numeric sequence.

c. For the entries "Ethyl nitrite solutions" and "Methacrylonitrile, inhibited", Special Provision "23" would be added in Column (7), in appropriate numeric sequence.

3. In § 172.102, in paragraph (c)(1), Special Provision 23 would be added in proper numeric sequence, to read as follows:

§ 172.102 Special provisions.

* * * * *

(c) * * *

(1) * * *

Code/Special Provisions

* * * * *

23 This material is thermally reactive and must be packaged as such under the provisions of this subchapter.

* * * * *

§ 172.102 [Amended]

4. In addition, in § 172.102, in paragraph (c)(3), Special Provision "B63" would be removed.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

5. The authority citation for part 173 would continue to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1806, 1807, 1808; 1817; 49 CFR part 1, unless otherwise noted.

6. In § 173.31, paragraph (a)(14) would be revised and paragraphs (a)(19) through (a)(24), and (f)(3) would be added to read as follows:

§ 173.31 Qualification, maintenance, and use of tank cars.

(a) * * *

(14) Tank test pressure must be equal to or greater than the greatest of the following:

(i) Except for shipments of anhydrous hydrogen chloride, refrigerated liquid;

[48] Of the many commodities affected by this proposal, 26 of those moving in the largest volume were selected for examination; 27 of the 26 commodities studied showed a relative insensitivity to diversion, at least as caused by the proposals in this notice. The remaining commodity, hydrogen cyanide, is not authorized to move in a cargo tank or a portable tank.

carbon dioxide, refrigerated liquid; ethylene, refrigerated liquid; hydrogen; or vinyl fluoride, 133 percent of the sum of lading vapor pressure at the reference temperature of 46°C (115°F) for non-insulated tank cars or 41°C (105°F) for insulated tank cars plus static head, plus gas padding pressure in the vacant space of tank car;

(ii) 133 percent of the maximum loading or unloading pressure, whichever is greater;

(iii) 300 p.s.i. for materials that are poisonous by inhalation;

(iv) The minimum pressure prescribed by the specification in Part 179 of this subchapter; or

(v) The minimum test pressure prescribed for the specific hazardous material in the applicable packaging section in Subpart F or Subpart G of this part.

* * * * *

(19) *Tank head puncture resistance requirements.* The following tank cars must have a tank head puncture resistance system meeting the requirements of § 179.16 of this subchapter, or a tank head puncture resistance system meeting the requirements of Part 179 of this subchapter in effect at the time of installation.

(i) Except as otherwise provided in this section, tank cars used for transporting Class 2 materials must conform to the requirements of § 179.16 of this subchapter. Tank cars used for transporting Class 2 materials that did not require a tank head puncture resistance system prior to [EFFECTIVE DATE OF FINAL RULE] must have a tank head puncture resistance system installed that conforms to the requirements of § 179.16 of this subchapter no later than [10 YEARS FROM EFFECTIVE DATE OF FINAL RULE].

(ii) Tank cars that are used for transporting thermally reactive materials or that are constructed of aluminum or nickel plate must have a tank head puncture resistance system conforming to the requirements of § 179.16 of this subchapter no later than [10 YEARS FROM EFFECTIVE DATE OF FINAL RULE].

(20) *Thermal protection requirements.* With the exception of Class DOT 107A tank cars, tank cars used for transporting Class 2 materials or thermally reactive materials must conform to the requirements of § 179.18 of this subchapter. In addition, tank cars used for transporting thermally reactive materials must have sufficient thermal resistance to prevent the cargo within the tank car from reaching the temperature of decomposition or polymerization within a 100-minute pool fire or a 30-minute torch fire. The use of computer assisted thermal modeling is an acceptable approach for analyzing the fire effects on the tank car. Tank cars used for transporting a Class 2 material or a thermally reactive material that did not require a thermal protection system prior to [EFFECTIVE DATE OF FINAL RULE] must have a thermal protection system installed that conforms to the requirements of § 179.18 of this subchapter no later than [10 YEARS FROM EFFECTIVE DATE OF FINAL RULE].

(21) *Shell puncture resistance requirements for materials poisonous by inhalation.* In addition to the requirements of paragraph (a)(20) of this section, each tank car used for transporting a material that is poisonous by inhalation must have a jacket that conforms to § 179.100–4 of this subchapter. Bottom outlets are not authorized. Tank cars that did not require a tank jacket prior to [EFFECTIVE DATE OF FINAL RULE] must have a tank jacket installed that conforms to the requirements of § 179.100–4 of this subchapter no later than [10 YEARS FROM EFFECTIVE DATE OF FINAL RULE].

(22) *Self-energized manways.* Tank cars constructed before [EFFECTIVE DATE OF FINAL RULE] with a self-energized manway located below the liquid level of the lading must have the self-energized manway removed no later than [2 YEARS FROM EFFECTIVE DATE OF FINAL RULE].

(23) *Bottom discontinuity protection.* Tank cars must have bottom discontinuity protection that conforms to the requirements of E9.00 and E10.00 of the AAR Specifications for Tank Cars. Tank cars that do not require bottom discontinuity protection under the terms of Appendix Y of the AAR Specifications for Tank Cars as of [EFFECTIVE DATE OF FINAL RULE] must conform to these requirements no later than [10 YEARS FROM EFFECTIVE DATE OF FINAL RULE].

(24) *Halogenated organic compounds forbidden from land disposal.* Notwithstanding any other requirement of this subchapter, tank cars used for the transportation of HOCs that are forbidden from land disposal under EPA regulations contained in 40 CFR Part 268, must conform to a DOT 105S200W, DOT 112S200W with a jacket that conforms to § 179.100–4 of this subchapter, or DOT 112S340W specification tank car no later than [10 YEARS FROM EFFECTIVE DATE OF FINAL RULE].

* * * * *

(f) * * *

(3) *Protective coatings.* Unless the exterior tank car shell or interior tank car jacket has a protective coating, after a repair that requires the complete removal of the tank car jacket, the exterior tank car shell and the interior tank car jacket must have a protective coating applied to prevent the deterioration of the tank shell and tank jacket.

7. In § 173.314, the section heading and paragraph (c) would be revised and paragraphs (j) through (o) would be added to read as follows:

§ 173.314 Compressed gases in tank cars and multi-unit tank cars.

* * * * *

(c) *Authorized gasses, filling limits for tank cars.* A compressed gas in a tank car or a multi-unit tank car must be offered for transportation in accordance with § 173.31 and this section. The named gases must be loaded and offered for transportation in accordance with the following table:

BILLING CODE 4910-60-P

Proper shipping name	Outage and filling limits (see Note 1)	Authorized tank car class
Ammonia, anhydrous, or ammonia solutions > 50 percent ammonia	Note 2	105, 112, 114
	Note 3	106
Ammonia solutions with > 35 percent ammonia by mass	Note 3	105, 109, 112, 114
Argon, compressed	Note 4	107
Boron trichloride	Note 3	105, 106
Carbon dioxide, refrigerated liquid	Note 5	105
Chlorine	Note 6	105
	125	106
Chlorine trifluoride	Note 3	106, 110
Chlorine pentafluoride	Note 3	106, 110
Dimethylamine, anhydrous	Note 3	105, 106, 112
Dimethyl ether	Note 3	105, 106, 110
Dinitrogen tetroxide, inhibited	Note 3	105, 106, 110
Division 2.1 materials not specifically identified in this table.	Note 3	105, 106, 110, 112, 114
Division 2.2 materials not specifically identified in this table.	Note 3	105, 106, 109, 110, 112, 114
Division 2.3 Zone A materials not specifically identified in this table.	None	See § 173.245
Division 2.3 Zone B materials not specifically identified in this table.	Note 3	105, 106, 110, 112, 114
Division 2.3 Zone C materials not specifically identified in this table.	Note 3	105, 106, 110, 112, 114
Division 2.3 Zone D materials not specifically identified in this table.	Note 3	105, 106, 109, 110, 112, 114
Ethylamine	Note 3	105, 106, 110, 112, 114
Helium, compressed	Note 4	107
Hydrogen	Note 4	107
Hydrogen chloride, refrigerated liquid	Note 7	105
Hydrogen sulphide, liquified	68	106
Methylamine, anhydrous	Note 3	105, 106, 112
Methyl bromide	Note 3	105, 106
Methyl chloride	Note 3	105, 106, 1121
Methyl mercaptan	Note 3	105, 106
Nitrogen, compressed	Note 4	107
Nitrosyl chloride	124	105
	110	106
Nitrous oxide, refrigerated liquid	Note 5	105
Oxygen, compressed	Note 4	107
Phosgene	Note 3	106
Sulfur dioxide, liquified	125	105, 106, 110
Sulfuryl fluoride	120	105
Vinyl fluoride, inhibited	Note 8	105

Notes:
1 The filling density for liquefied gases is hereby defined as the weight of gas in the tank to the weight of water the tank will hold. For determining the water capacity of the tank in pounds, the weight of one gallon of water at 15.55 °C (60 °F.) in air is 3.777 kg (8.32828 pounds).
2 The liquefied gas must be so loaded so that the outage is at least two percent of the total capacity of the tank at the reference temperature of 46 °C (115 °F.) for non-insulated tanks and 41 °C (105 °F.) for insulated tanks.
3 The requirements of § 173.24b(a) apply.
4 The gas pressure at 54.44 °C (130 °F.) in any non-insulated tank car may not exceed 7/10 of the marked test pressure, except that a tank may be charged with helium to a pressure 10 percent in excess of the marked maximum gas pressure at 54.44 °C (130 °F.) of each tank.
5 The liquid portion of the gas at −17.77 °C (0 °F.) must not completely fill the tank.
6 The maximum permitted filling density is 125 percent. The quantity of chlorine loaded into a single unit-tank car may not be loaded in excess of the normal lading weights nor in excess of 81.65 Mg (90 tons).
7 89 percent maximum to 80.1 percent minimum at a test pressure of 620.53 kPa (90 psig), when offered for transportation.
8 59.6 percent maximum to 53.6 percent minimum at a test pressure of 723.95 kPa (105 psig), when offered for transportation.

* * * * *

(j) *Special requirements for flammable gases.* For single unit tank cars, interior pipes of loading and unloading valves, sampling devices, and gaging devices with an opening for the passage of the cargo exceeding 1.52 mm (0.060 inch) diameter must be equipped with excess flow valves. For single unit tank cars constructed before December 30, 1971, gaging devices must conform to this paragraph no longer than [10 YEARS FROM EFFECTIVE DATE OF FINAL RULE]. The protective housing cover must be provided with an opening, with a weatherproof cover, above each safety relief valve that is concentric with the discharge of the safety relief valve and that has an area at least equal to the valve outlet area. Class 109 tank cars and tank cars manufactured from aluminum or nickel plate are not authorized.

(k) *Special requirements for chlorine.* The requirements of § 173.31(a)(20) do not apply. Tank cars built after September 30, 1991, must have an insulation system consisting of 5.08 cm (2 inches) glass fiber placed over 5.08 cm (2 inches) of ceramic fiber. Tank cars must have excess flow valves on the interior pipes of liquid discharge valves. Tank cars constructed to a DOT 105A500W specification may be marked as a DOT 105A300W specification with the size and type of safety relief valves required by the marked specification.

(l) *Special requirements for hydrogen sulphide.* Each multi-unit tank car must be equipped with adequate safety relief devices of the fusible plug type having a yield temperature not over 76.66 °C (170 °F.), and not less than 69.44 °C (157 °F.). Each device must be resistant to extrusion of the fusible alloy and leak tight at 55 °C (130 °F.). Each valve outlet must be sealed by a threaded solid plug. In addition, all valves must be protected by a metal cover.

(m) *Special requirements for nitrosyl chloride.* Single unit tank cars and their associated service equipment, such as venting, loading and unloading valves, and safety relief valves, must be made of metal or clad with a material that is not subject to rapid deterioration by the lading. Multi-unit tank car tanks must be nickel clad and have safety relief devices incorporating a fusible plug having a yield temperature of 79.44 °C (175 °F.). Safety relief devices must be vapor tight at 54.44 °C (130 °F.).

(n) *Special requirements for hydrogen chloride.* Each tank car must be equipped with one or more safety relief devices. The discharge outlet for each safety relief device must be connected to a manifold having a non-obstructive discharge area of at least 1.5 times the total discharge area of the safety relief devices connected to the manifold. All manifolds must be connected to a single common header having a non-obstructed discharge pointing upward and extending above the top of the car. The header and the header outlet must each have a non-obstructive discharge area at least equal to the total discharge area of the manifolds connected to the header. The header outlet must be equipped with an ignition device that will instantly ignite any hydrogen discharged through the safety relief device.

(o) *Special requirements for carbon dioxide, refrigerated liquid and nitrous oxide, refrigerated liquid.* The requirements of § 173.31(a)(20) do not apply. Each tank car must have an insulation system so that the thermal conductance is not more than 0.03 B.t.u. per square foot per hour, per degree fahrenheit temperature differential. Each tank car must be equipped with one safety relief valve set to open at a pressure not exceeding 75 percent of the tank test pressure and one rupture disc set to function at a pressure less than the tank test pressure. The discharge capacity of each safety relief device must be sufficient to prevent building up of pressure in the tank in excess of 82.5 percent of the test pressure of the tank. Tanks must be equipped with two regulating valves set to open at a pressure not to exceed 350 psi on DOT 105A500W tanks and at a pressure not to exceed 400 psi on DOT 105A600W tanks. Each regulating valve and safety relief device must have its final discharge piped to the outside of the protective housing.

8. In § 173.323, paragraph (c)(1) would be revised to read as follows:

§ 173.323 Ethylene oxide.

* * * * *

(c) * * *

(1) *Tank cars.* Class DOT 105 tank cars. Notwithstanding the requirements of § 173.31(a)(14) of this subchapter, each tank car must have a tank test pressure of at least 300 psi no later than [10 YEARS FROM EFFECTIVE DATE OF FINAL RULE].

* * * * *

PART 179—SPECIFICATIONS FOR TANK CARS

9. The authority citation for part 179 would continue to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1806, 1808; 49 CFR part 1, unless otherwise noted.

10. Section 179.16 would be added to read as follows:

§ 179.16 Tank head puncture resistance systems.

(a) *Performance standard.* When the regulations in this subchapter require a tank head puncture resistance system, the system shall be capable of sustaining, without any loss of cargo, coupler-to-tank head impacts at relative car speeds of 18 mph when:

(1) The weight of the impact car is at least 119,294.79 kg (263,000 pounds);

(2) The impacted tank car is coupled to one or more backup cars that have a total weight of at least 217,724.33 kg (480,000 pounds) and the hand brake is applied on the first car; and

(3) The impacted tank car is pressurized to at least 100 psi.

(b) Compliance with the requirements of paragraph (a) of this section shall be verified by full scale testing according to Appendix A of this part or by installing full head shields or full tank head jackets on each end of the tank car conforming to the following—

(1) Th tank head puncture resistance system must be at least ½-inch thick, shaped to the contour of the tank head and made from steel having a tensile strength greater than 55,000 psi.

(2) The securement of the tank head puncture resistance system must meet the impact test requirements of the AAR Specifications for Tank Cars, paragraph AAR 24–5.

(3) The workmanship requirements of the AAR Specifications for Design, Fabrication and Construction of Freight Cars apply.

11. Section 179.18 would be added to read as follows:

§ 179.18 Thermal protection systems.

(a) *Performance standard.* When the regulations in this subchapter require thermal protection on a tank car, the tank car must have sufficient thermal resistance that an analysis conforming to paragraph (b) of this section shows that there will be no release of any cargo within the tank car, except release through the safety relief valve, when subjected to:

(1) A pool fire for 100-minutes; and

(2) A torch fire for 30-minutes.

(b) *Thermal Analysis.* (1) Compliance with the requirements of paragraph (a) of this section shall be verified by modelling the fire effects on the entire surface of the tank car according to the procedures outlined in [*a future document for incorporation by reference based on "Temperatures, Pressures and Liquid Levels of Tank Cars Engulfed in Fires", NTIS DOT/FRA/ORD–84/08.11, (1984), Federal Railroad Administration, Washington D.C.*]. The analysis must also consider the fire effects on and the heat flux through tank discontinuities, protective housings, underframes, metal jackets, insulation, and thermal protection. A complete record of each analysis shall be made, retained and, upon request, made available for inspection and copying by an authorized representative of the Department.

(2) When the analysis shows the thermal resistance of the car does not conform to paragraph (a) of this section, the thermal resistance of the car must be increased by using a listed material under paragraph (c) of this section or by testing an unlisted system and verifying it according to appendix B of this part.

(c) *Systems that no longer require test verification.* RSPA maintains a list of thermal protection systems that comply with the requirements of Appendix B of this Part and that no longer require test verification. Information necessary to equip tank cars with one of these systems is available in the Dockets Unit, room 8421, Research and Special Programs Administration, 400 Seventh Street, SW., Washington, DC 20590–0001, between the hours of 8 a.m. and 5 p.m., Monday through Friday.

(d) *Exterior tank car color.* Notwithstanding the provisions of § 179.101–1(a) Table, Note 4, each DOT 112 and 114 specification tank car equipped with a thermal protection system that complies with the requirements of paragraph (a) of this section is not required to be painted white.

12. Section 179.20 would be added to read as follows:

§ 179.20 Service equipment; protection systems.

If an applicable tank car specification authorizes location of filling or discharge connections in the bottom shell, the connections must be designed, constructed, and protected according to paragraphs E9.00 and E10.00 of the AAR Specifications for Tank Cars, M–1002.

13. Section 179.22 would be added to read as follows:

§ 179.22 Marking.

In addition to any other marking requirement in this subchapter, the following marking requirements apply:

(a) Each tank car must be marked according to the requirements in Appendix C of the AAR Specifications for Tank Cars.

(b) Each tank car that is equipped with a tank head puncture resistance system must have the letter "S" substituted for the letter "A" in the specification marking.

(c) Each tank car that is equipped with a tank head puncture resistance system and a thermal protection system enclosed in a metal jacket must have the letter "J" substituted for the letter "A" or "S" in the specification marking.

(d) Each tank car that is equipped with a tank head puncture resistance system and a non-jacketed thermal protection system must have the letter "T" substituted for the letter "A" or "S" in the specification marking.

14. In § 179.100–4, in paragraph (a), the last sentence would be amended by removing the phrase "except that a protective coating is not required when foam-in-place insulation that adheres to the tank or jacket is applied".

15. In § 179.103–1, paragraph (c) would be removed and reserved.

16. In § 179.103–2, paragraph (a) would be revised to read as follows:

§ 179.103–2 Manway cover.

(a) Manway cover must be of approved design.

* * * * *

17. In § 179.103–5, paragraph (a)(1) would be amended by removing the first two sentences.

18. In § 179.200–4, in paragraph (a), the last sentence would be amended by removing the phrase ", except that protective coating is not required when foam-in-place insulation that adheres to the tank or jacket is applied".

19. In addition to the amendments set forth above, part 179 would be amended by removing the following sections:

§ 179.100–21
§ 179.100–23
§ 179.105
§ 179.105–1
§ 179.105–2
§ 179.105–3
§ 179.105–4
§ 179.105–5
§ 179.105–6
§ 179.105–7
§ 179.105–8
§ 179.200–25
§ 179.200–27
§ 179.203
§ 179.203–1
§ 179.203–2
§ 179.203–3

20. Appendix A to part 179 would be added to read as follows:

Appendix A to Part 179—Procedures for Tank Head Puncture Resistance Test

This test procedure is designed to verify the integrity of new or untried tank head puncture resistance systems and to test for system survivability after coupler-to-tank head impacts at relative speeds of 18 mph.

(a) *Tank head puncture resistance test.* A tank head puncture resistance system must be tested under the following conditions:

(1) The ram car used must weigh at least 119,294.79 kg (263,000 pounds), be equipped with a coupler, and duplicate the condition of a conventional draft sill including the draft yoke and draft gear. The coupler must protrude from the end of the ram car so that it is the leading location of perpendicular contact with the standing tank car.

(2) The impacted test car must be loaded with water at six percent outage with internal pressure of at least 100 psi and coupled to one or more "backup" cars which have a total weight of 217,724.33 kg (480,000 pounds) with hand brakes applied on the first car.

(3) At least two separate tests must be conducted with the coupler on the vertical centerline of the ram car. One test must be conducted with the coupler at a height of 53.34 cm (21 inches), plus-or-minus one-inch, above the top of the sill; the other test must be conducted

with the coupler height at 78.74 cm (31 inches), plus-or-minus 2.54 cm (1 inch) above the top of the sill. If the combined thickness of the tank head and any additional shielding material is less than the combined thickness on the vertical centerline of the car, a third test must be conducted with the coupler positioned so as to strike the thinnest point.

(b) One of the following test procedures must be applied:

Minimum weight of attached ram cars in kg (pounds).	Minimum velocity of impact in km/hour (mph).	Restrictions
119,294.79 (263,000) . . .	28.96 (18)	One ram car only
155,582.18 (343,000) . . .	25.49 (16)	One ram car or one car plus one rigidly attached car.
311,164.36 (686,000) . . .	22.53 (14)	One ram car plus one or more rigidly attached cars.

(c) A test is successful if there is no visible leak from the standing tank car within one hour after impact.

22. Appendix B to part 179 would be added to read as follows:

Appendix B to Part 179—Procedures for Simulated Pool and Torch Fire Testing

This test procedure is designed to measure the thermal effects of new or untried thermal protection systems and to test for system survivability when exposed to a 100-minute pool fire and a 30-minute torch fire.

(a) *Simulated pool fire test.* (1) A pool fire environment must be simulated in the following manner:

(i) The source of the simulated pool fire must be hydrocarbon fuel with a flame temperature of 871 °C (1600 °F) plus-or-minus 37.8 °C (100 °F) throughout the duration of the test.

(ii) A square bare plate with thermal properties equivalent to the material of construction of the tank car must be used. The plate dimensions must be not less than one foot by one foot by nominal 1.59 cm (⅝-inch) thick. The bare plate must be instrumented with not less than nine thermocouples to record the thermal response of the bare plate. The thermocouples must be attached to the surface not exposed to the simulated pool fire and must be divided into nine equal squares with a thermocouple placed in the center of each square.

(iii) The pool fire simulator must be constructed in a manner that results in total flame engulfment of the front surface of the bare plate. The apex of the flame must be directed at the center of the plate.

(iv) The bare plate holder must be constructed in such a manner that the only heat transfer to the back side of the bare plate is by heat conduction through the plate and not by other heat paths.

(v) Before the bare plate is exposed to the simulation pool fire, none of the temperature recording devices may indicate a plate temperature in excess of 37.8 °C (100 °F) nor less than 0 °C (32 °F).

(vi) A minimum of two thermocouple devices must indicate 427 °C (800 °F) after not less than twelve minutes nor more than fourteen minutes of simulated pool fire exposure.

(2) A thermal protection system must be tested in the simulated pool fire environment described in paragraph (a)(1) of this appendix in the following manner:

(i) The thermal protection system must cover one side of a bare plate as described in paragraph (a)(1)(ii) of this appendix.

(ii) The non-protected side of the bare plate must be instrumented with not less than nine thermocouples placed as described in paragraph (a)(1)(ii) of this appendix to record the thermal response of the plate.

(iii) Before exposure to the pool fire simulation, none of the thermocouples on the thermal protection system configuration may indicate a plate temperature in excess of 37.8 °C (100 °F) nor less than 0 °C (32 °F).

(iv) The entire surface of the thermal protection system must be exposed to the simulated pool fire.

(v) A pool fire simulation test must run for a minimum of 100-minutes. The thermal protection system must retard the heat flow to the plate so that none of the thermocouples on the non-protected side of the plate indicate a plate temperature in excess of 427 °C (800 °F).

(vi) A minimum of three consecutive successful simulation fire tests must be performed for each thermal protection system.

(b) *Simulated torch fire test.* (1) A torch fire environment must be simulated in the following manner:

(i) The source of the simulated torch must be a hydrocarbon fuel with a flame temperature of 1,204 °C (2200 °F) plus-or-minus 37.78 °C (100 °F) throughout the duration of the test. Furthermore, torch velocities must be 64.37 km/h ± 16.09 km/h (40 mph ± 10 mph) throughout the duration of the test.

(ii) A square bare plate with thermal properties equivalent to the material of construction of the tank car must be used. The plate dimensions must be at least four feet by four feet by nominal 1.59 cm (⅝-inch) thick. The bare plate must be instrumented with not less than nine thermocouples to record the thermal response of the plate. The thermocouples must be attached to the surface not exposed to the simulated torch and must be divided into nine equal squares with a thermocouple placed in the center of each square.

(iii) The bare plate holder must be constructed in such a manner that the only heat transfer to the back side of the plate is by heat conduction through the plate and not by other heat paths. The apex of the flame must be directed at the center of the plate.

(iv) Before exposure to the simulated torch, none of the temperature recording devices may indicate a plate temperature in excess of 37.8 °C (100 °F) or less than 0 °C (32 °F).

(v) A minimum of two thermocouples must indicate 427 °C (800 °F) in a time of four plus-or-minus five minutes of torch simulation exposure.

(2) A thermal protection system must be tested in the simulation torch fire

environment described in paragraph (b)(1) of this appendix in the following manner:

(i) The thermal protection system must cover one side of the bare plate identical to that used to simulate a torch fire under paragraph (b)(1)(ii) of this appendix.

(ii) The back of the bare plate must be instrumented with not less than nine thermocouples placed as described in paragraph (b)(1)(ii) of this appendix to record the thermal response of the material.

(iii) Before exposure to the simulated torch, none of the thermocouples on the back side of the thermal protection system configuration may indicate a plate temperature in excess of 37.8 °C (100 °F) nor less than 0 °C (32 °F).

(iv) The entire outside surface of the thermal protection system must be exposed to the simulated torch fire environment.

(v) A torch simulation test must be run for a minimum of 30-minutes. The thermal protection system must retard the heat flow to the plate so that none of the thermocouples on the backside of the bare plate indicate a plate temperature in excess of 427 °C (800 °F).

(vi) A minimum of two consecutive successful torch simulation tests must be performed for each thermal protection system.

Issued in Washington, DC, on September 29, 1993, under authority delegated in 49 CFR part 106, Appendix A.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 93-24307 Filed 10-7-93; 8:45 am]

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Friday
October 8, 1993

Part VI

Department of Transportation

Coast Guard

46 CFR Parts 30, 31 and 32

Requirements for Longitudinal Strength, Plating Thickness, and Periodic Gauging for Certain Tank Vessels; Final Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 30, 31 and 32

[CGD 91–209]

Requirements for Longitudinal Strength, Plating Thickness, and Periodic Gauging for Certain Tank Vessels

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing minimum longitudinal strength and plating thickness standards for tank vessels that carry oil cargoes. The regulations also require the periodic gauging of these vessels after they reach the age of 30 years. The regulations are established as required by the Oil Pollution Act of 1990 (OPA 90). The purpose of the regulations is to reduce the likelihood of oil spills from structural failure of tank vessels, particularly in the case of unclassed tank barges.

EFFECTIVE DATE: November 8, 1993.

ADDRESSES: Unless otherwise indicated, documents referenced in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G–LRA), U.S. Coast Guard Headquarters, 2100 Second Street SW., room 3406, Washington, DC 20593–0001, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: Thomas Jordan, Project Manager, at (202) 267–6751 or Phil Alman, G–MTH–3, at (202) 267–2988.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Thomas Jordan, Project Manager, and Pamela M. Pelcovits, Project Counsel, Oil Pollution Act (OPA 90) Staff.

Regulatory History

On March 23, 1993, the Coast Guard issued a notice of proposed rulemaking (NPRM) in the **Federal Register** (58 FR 54). The Coast Guard received 26 public comments on the proposal. A public hearing was not requested, and one was not held.

Statutory Basis and Purpose

Section 4109 of the Oil Pollution Act of 1990 (Pub. L. 101–380) (OPA 90), found as a statutory note following 46 U.S.C. 3703, requires the issuance of regulations on two matters related to the structural integrity of vessels that carry oil in bulk as cargo or cargo residue. These new regulations will: (1) Establish minimum standards for plating thickness, and (2) require periodic gauging of the plating thickness of all tank vessels over 30 years old operating on the navigable waters of the United States or the waters of the Exclusive Economic Zone.

The purpose of the regulations is to ensure adequate structural integrity of tank vessels throughout their service life. This will reduce the likelihood of a vessel breaking apart and spilling a substantial quantity of its cargo oil. The statute also requires the regulations to be consistent with generally recognized principles of international law. Additionally, the legislative history of the section stipulates that the Coast Guard should consider gaugings by classification societies, if equivalent to the Secretary's requirements, to be acceptable evidence of compliance.

In accordance with its authority under section 4109 of OPA 90 and its additional authority to establish standards for structural integrity under 46 U.S.C. 3306, the Coast Guard is establishing requirements in this final rule that address these matters.

Discussion of Comments and Changes

Twenty-six public comments were received in response to the NPRM. The Coast Guard has reviewed all of the comments and, in some instances, revised the proposed regulations as appropriate. The comments have been grouped by issue, and are discussed as follows.

1. Comments From Classification Societies

Two classification societies specifically commented on the NPRM: the American Bureau of Shipping (ABS) and Det Norske Veritas (DNV) of Norway.

ABS made a general comment that vessel scantlings for ocean service are not always heavier than for inland service, but generally require more robust attachments (welding, bracketing, etc.). ABS also commented that it might have original construction information on barges built in the 1950s and 1960s (even though such barges may not be classed today) and, therefore, may be able to assist current owners of these barges.

DNV pointed out that the Coast Guard does recognize and approve DNV for certain purposes (*e.g.*, case-by-case load line assignments in accordance with the International Convention on Load Lines, fishing vessel inspections, and tonnage admeasurement). DNV believes that it is in the best economic interests of U.S. tank vessel owners and operators to have competitive services available from other classification societies and recommends that the proposed regulations allow for Coast Guard-approved societies other than ABS. The Coast Guard agrees that other classification societies in addition to ABS can be approved for purposes of the structural evaluations required by these regulations. Therefore, §§ 31.10–21a(d)(2) and (f), and § 32.59–1(a) have been revised accordingly.

2. "As-Built" Versus "As-Required" Standards

The NPRM proposed that the minimum section modulus and thickness standards be based upon the original "as-built" construction of the vessel. However, eight operators, as well as ABS, recommended that the standards be based upon the "as-required" standards of the appropriate Rules for the vessel's present service routes. The reason for this is that it is common practice for inland barges to be deliberately overbuilt when constructed, especially with thicker hull plating. These barges would, therefore, be penalized by having to maintain higher section modulus and plating thicknesses than barges built to the exact Rule requirements. Further, several comments were concerned that the proposed regulations left it solely to the discretion of the local Officer in Charge of Marine Inspection (OCMI) to decide whether or not an overbuilt vessel would be evaluated against "as-required" standards or "as-built" standards. These comments wanted to ensure that their overbuilt barges would be evaluated against appropriate standards and not be subject to a discretionary decision.

The Coast Guard concurs that "as required" standards in accordance with the current applicable Rules of a recognized classification society are an acceptable basis for any evaluation, regardless of the vessel's original construction. Section 32.59–1 has been revised accordingly. However, it will still be the responsibility of vessel operators to prepare the appropriate engineering analysis to establish the "as required" design of their vessels.

3. Implementing Schedule

Six comments stated that the proposed implementation schedule would result in numerous unscheduled drydockings, resulting in significant docking and gas-freeing costs. Two comments also noted that the legislative history of section 4109 indicates a

Congressional intention for the requirements to conform to existing inspection schedules to ensure minimum disruption of operations.

The Coast Guard agrees with these comments. Section 31.10–21a(b)(1) has been revised so that the initial gauging is now required no later than the next drydocking inspection after the vessel midbody becomes 30 years old.

4. Periodic Gauging Schedule

Five comments pointed out that ABS requires gauging surveys long before 30 years of age and recommended that the proposed regulations be revised to require gaugings at 20 years.

The Coast Guard does not concur with this suggestion. Section 4109 of OPA 90 specifically requires gauging of vessels more than 30 years old. However, the minimum thickness and section modulus standards apply to all vessels regardless of age.

Three comments pointed out that the proposed 5-year regauging interval does not necessarily coincide with the inspection schedules for all tank vessels (*e.g.*, the inspection schedule for double-hulled vessels in freshwater service is 10 years). The Coast Guard agrees with this comment and has revised § 31.10–21a(b)(2) accordingly.

5. Section Modulus Standards

One comment stated that the proposed section modulus requirements exceeded the statutory mandate of OPA 90. The Coast Guard agrees that a section modulus analysis is not specifically required by section 4109 of OPA 90; however, requiring a section modulus analysis is within the authority of 46 U.S.C. 3703. As previously noted, section 4109 of OPA 90 is a statutory footnote to 46 U.S.C. 3703 because it simply reflects a mandate for specific regulatory action under that broader statutory provision. Section 4109 of OPA 90 was prompted by the failure of the longitudinal hull structure of a 37-year-old tank barge, and section modulus analysis is the appropriate engineering approach to evaluating the longitudinal strength of a hull.

The same comment also included midship section modulus calculations of a double hull tank barge, demonstrating that it is possible to meet the minimum thickness standard but still fail the section modulus standard and vice versa. The Coast Guard agrees that a vessel might meet one standard and fail the other; it is for exactly this reason that both standards are necessary. The minimum thickness standards recognize that there is some redundant strength in the original structural design. Therefore, some amount of local thickness can be lost without compromising the overall structural integrity of the hull. However, widespread thickness losses, even within allowable limits at every point, can still reduce the midship section modulus below acceptable levels for a hull subjected to bending stresses. Conversely, a vessel might meet the section modulus requirement but still have excessive thickness losses in local stiffeners. If the hull is subjected to compressive stresses, then this local structure may suddenly fail by buckling, thereby dramatically reducing the midship section modulus and possibly leading to a larger structural failure. Therefore, the Coast Guard finds that both minimum thickness and midship section modulus standards are necessary to ensure adequate longitudinal strength.

Six comments argued that a midship section modulus requirement is unnecessary for barges on inland service (*i.e.*, rivers; lakes, bays, and sounds (LBS); and intracoastal waterways) because these vessels are not exposed to wave-induced bending stresses and because the minimum thickness requirements will indirectly preserve enough midship section modulus to tolerate the normal bending stresses during loading and discharging operations. The Coast Guard agrees with this argument in the case of tank barges in river service. However, the Coast Guard disagrees that vessels in LBS service do not see wave-induced bending stresses. In fact, Tank Barge 565 itself, whose structural failure precipitated this statutory requirement, broke apart as a result of three-foot waves in the Chesapeake Bay following a summer squall. Further, some barges built to river Rules are allowed on intracoastal routes that are legally inside the boundary lines but which are actually offshore (*i.e.*, along certain sections of the Florida and Gulf coasts). These routes can expose vessels to wave-induced bending loads. Therefore, the Coast Guard finds that it is appropriate to impose a midship section modulus requirement on these tank vessels.

Accordingly, § 32.59(c) has been revised so that a separate section modulus requirement is not necessary for tank barges limited by their Certificate of Inspection (COI) to river service only. For other tank vessels, the minimum section modulus must be 90 percent of the Rule requirement.

Several comments pointed out that ABS does not have an explicit midship section modulus requirement in its River Rules; therefore, imposing such a requirement on unclassed barges exceeds the standards imposed on classed barges. The Coast Guard disagrees with the implication of these comments that ABS does not have a concern for longitudinal strength of classed river barges even though it does not have an explicit section modulus requirement. The ABS comment to the NPRM recognized this problem and recommended that the minimum midship section modulus should be at least 90 percent of that required by the applicable ABS Rules or by the bending moments imposed on the vessel. However, the ABS comment did not specify any particular loading or wave conditions to be used in conjunction with the bending moment calculations. The Coast Guard agrees with using a bending moment approach when there are no other explicit section modulus requirements in the Rules but does not agree that the 90 percent minimum is appropriate. For tank vessels in LBS or intracoastal service, the Coast Guard finds that the minimum section modulus must be 100 percent of that which is necessary to meet the full-load/still water bending moment, using a permissible bending stress of 12.74 kN/cm² (1.30 tf/m², 8.25 Ltf/in²). This bending moment standard has been added to § 32.59–1(c)(2).

6. Minimum Thickness for Hull Stiffeners

Five comments stated that the proposed minimum thickness standards for hull stiffeners in § 32.59–1(d)(1) (85 percent without a buckling analysis or 80 percent with an analysis) is unnecessarily high and that 75 percent is adequate. One comment even recommended only a 70 percent minimum. The Coast Guard finds that buckling failure is an important consideration for deck and bottom stiffeners because they can be subjected to compressive forces during cargo loading and discharging as well as from wave-induced bending. The Coast Guard agrees, however, that side shell stiffeners are not subjected to the same amount of compressive forces and are not at the same risk of compressive buckling failure. Therefore, the originally-proposed standards will still apply to deck and bottom stiffeners, but side shell stiffeners must only meet a minimum of 75 percent; § 32.59–1(d) has been revised accordingly.

7. Minimum Thickness for Plating

ABS recommended that the minimum plating thickness for "trunks" be 75 percent rather than 70 percent as originally proposed. The Coast Guard concurs and has revised § 32.59–1(e)(3) accordingly.

8. Gauging Survey Standards

Three comments were concerned that different Coast Guard OCMIs will impose different requirements for the gauging surveys (*e.g.*, number and location of sampling points, evaluation of data, etc.), resulting in uneven practices and costs. They urged that specific guidelines be provided to OCMIs to ensure consistency from one district to another.

The proposed gauging surveys (*i.e.*, three transverse girth belts of plating and longitudinals) are based upon general classification society requirements for Special Hull Survey #4 for tank vessels. Coast Guard OCMIs and the marine industry already have established practices and procedures for conducting these surveys and evaluating the data for classed vessels. The Coast Guard intends that these established practices now also be applied to unclassed vessels. The Coast Guard does not believe that more specific guidelines need to be included in the regulations; however, if subsequently determined to be necessary, they can be provided by revising Navigation and Vessel Inspection Circular (NVIC) 7–68 "Notes on Inspection and Repair of Steel Hulls," or the Marine Safety Manual.

9. Engineering Analysis

Seven comments disagreed with the engineering analysis requirement. One comment stated that the need for such an analysis would be obviated by simply restoring all plating and stiffeners to "as new" thicknesses. The Coast Guard agrees that, in theory, this is true but concludes that, in practice, it would be far more expensive to restore all plating and stiffeners to "as new" condition than to prepare the analysis, especially for older barges. Other comments stated that ABS does not explicitly require submittal of engineering analyses; therefore, this requirement exceeds classification standards. The Coast Guard disagrees with the implication of this comment that ABS does not analyze longitudinal strength of classed vessels; ABS has its own in-house staff of engineers who review gauging results and perform structural analyses as appropriate. The specific purpose of transverse belt gaugings is to evaluate longitudinal strength. ABS imposes transverse (girth) belt gaugings on ocean service tank vessels at Special Hull Survey #3, which is generally 15 years after construction. For classed river barges, ABS allows its surveyors more discretion in gauging requirements; however, these barges have been subject to special hull surveys throughout their service lives. The Coast Guard believes the engineering analysis is necessary for unclassed barges for two reasons:

(1) To verify compliance with the minimum standards; and

(2) To ensure that they are especially evaluated for structural integrity after 30 years of service.

10. Required Use of Professional Engineers

Four comments objected to the requirement that the engineering analysis be signed by a registered Professional Engineer (PE). These comments contended that in-house staff may be capable of preparing the analysis with a corporate executive's signature on the results. The Coast Guard recognizes that the larger operating companies may have naval architects on staff who are capable of performing the analyses. However, the purpose of this requirement is to reduce, as much as possible, any potential conflict of interest in the analysis and evaluation process. Even if they are employees, by virtue of their registered status PEs are obligated to consider more than their employer's sole interests when required to sign off on any engineering work.

11. Determination of Vessel Age

The language of the proposed regulations in § 31.10–21a(a) of the NPRM referred to the original delivery date of the vessel. Because delivery dates as used on a vessel's COI may be changed as a result of a major conversion, it was necessary to add a definition of vessel "midbody" to § 31.10–21a of the Final Rule to ensure that the appropriate midship structure of the vessel is gauged, regardless of the date of delivery used for other documentation purposes. Midbodies that have been replated only, without complete replacement of all other scantlings, must still use their date of original construction when determining their age.

12. Other Design Standards

Two comments stated that the proposed standards do not go far enough to ensure adequate structural integrity. They specifically cited the National Research Council's study "Tanker Spills: Prevention by Design," which concluded that current strength criteria are inadequate. The comments urged the Coast Guard to develop its own standards instead of relying on standards of classification societies. The Coast Guard determined that this would require developing new design and construction standards for all tank vessels. This is action that is outside the scope of this rulemaking.

13. Major Conversion

Two comments were concerned that the Coast Guard may consider any structural renewals or replacements to restore longitudinal strength as a major conversion, thereby forcing them into compliance with the double hull regulation.

OPA 90 did not change the statutory definition of major conversion per 46 U.S.C. 2101(14a), which is used in 33 CFR 157.03(k). Therefore, determinations of major conversion for application of this rule must be consistent with determinations that have been or will be made under this same definition for the application of other safety or pollution prevention requirements. The Coast Guard will continue to make major conversion determinations on a case-by-case basis, using the definition in 33 CFR 157.03(k). Owners anticipating structural renewals or replacements are strongly encouraged to request such a determination from Commandant (G–MVI), through the cognizant OCMI, at the earliest possible stage.

14. Other Regulatory Amendments

One comment pointed out that 46 CFR 30.01 must also be revised in order for the proposed regulations to be applicable to foreign flag tank vessels. The Coast Guard is revising 46 CFR 30.01(e)(2) to include the new section 31.10–21a and subpart 32.59.

15. Other Comments

One comment was a petition from various fishing organizations and individuals from Cook Inlet, Alaska, requesting requirements for reinforced or double plating for tank vessels operating in ice conditions in Cook Inlet waters. The requested measures constitute an improved puncture-resistance construction standard and are outside the longitudinal strength concerns of section 4109.

One comment concurred with the proposed standards and further suggested that hull strength and integrity also be examined following any casualty resulting in significant damage to the hull. This is already Coast Guard practice. Coast Guard inspectors already examine vessels involved in casualties and have the authority to require gaugings and other structural evaluations as appropriate.

One operator questioned how the Coast Guard will identify tank vessels that do not carry pollution category I cargoes and, therefore, will not be affected by the regulations. A tank vessel's COI indicates the cargoes that it is certificated to carry, and it may also

be annotated to indicate that it does not carry petroleum category I cargoes.

Regulatory Evaluation

This proposal is not major under Executive Order 12291 and not significant under the "Department of Transportation Regulatory Policies and Procedures" (44 FR 11040; February 26, 1979). A draft Regulatory Evaluation (RE) was prepared and put into the docket. The final RE for this rulemaking is available in the docket (CGD 91–209) for inspection or copying, as indicated in "ADDRESSES." A copy of the final RE also has been placed in a special file (CGD 91–207) established to facilitate review of the programmatic Regulatory Impact Analysis (RIA) for titles IV and V of OPA 90.

As a result of comments to the NPRM, the proposed regulations were revised in certain respects. These revisions also affected some of the economic assumptions and calculations in the draft RE. Accordingly, the final RE reflects four significant economic revisions:

(1) The original NPRM proposed a 3½-year implementation period for compliance with the periodic gauging requirements, based upon the tank vessel's age. Several comments to the NPRM pointed out that this would force a number of vessels into premature drydockings, with considerable costs beyond the actual gauging survey cost, because the proposed compliance schedule was not based upon the vessel's drydock schedule. These comments pointed out that the legislative history of section 4109 indicates Congressional intent that the requirements conform to existing inspection schedules. Accordingly, the proposed regulations were revised so that compliance must be accomplished at the next drydocking inspection after the vessel becomes 30 years old. Because most vessels are on a 5-year drydock cycle, the short-term economic effect of this revision is that the initial compliance effort by industry will be spread out over 5 years rather than 3½ years. However, over the long term this change makes no significant economic difference. Because of this change to the implementation schedule, the number of expected surveys during the initial 3½-year program period (mid-1993 through 1996) was substantially reduced from 1,225 to 872 surveys, although the expected totals for the initial 5½-year period are not significantly different (1,434 versus 1,292 surveys).

(2) The proposed NPRM included plating thickness and section modulus standards that were based upon the original "as-built" construction of the vessel. The draft RE estimated that this would require only a minor amount of reverse-engineering effort. However, several comments to the NPRM pointed out that inland barges are typically overbuilt in excess of ABS Rule requirements and, therefore, using an "as-built" standard would penalize them in comparison to vessels built exactly to the Rule. Accordingly, the proposed regulations were revised to use an "as-required" standard. The economic effect of this revision is that more reverse-engineering efforts will be necessary. The final RE, therefore, reflects an additional 16 labor-hours of professional engineer time, raising the total estimated cost of the first gauging survey from $3,990 to $4,790. The cost of subsequent regauging surveys, however, is not affected because they do not require any reverse-engineering effort.

(3) The draft RE estimated that a total of 4,446 gauging surveys would be accomplished over the period from mid-1993 to 2015. However, the draft RE did not take into account the effect of other OPA 90 regulations on the periodic gauging regulations. Specifically, the double hull requirements of section 4115(a) of OPA 90 mandate that all single hull tank vessels less than 5,000 gross tons—which encompasses most unclassed tank vessels—must be either double-hulled or removed from service by January 1, 2015. Because it is not economically feasible to retrofit double hulls to tank barges and harbor tankers, the practical effect of section 4115(a) will be to force the premature retirement of tank vessels before they reach their normal service retirement age of 50 years. The economic effect of this premature retirement on the gauging regulations is to reduce the number of gaugings during the end years of the program. This is because vessel operators are not expected to conduct gauging surveys after 2010 (*e.g.*, the last 5 years before their vessels will be forced into retirement). This premature retirement effect will reduce the estimated number of gauging surveys by approximately 767 surveys.

(4) The draft RE discounted all costs and benefits at 7 percent back to 1992. However, in order to be consistent with the OPA 90 programmatic RIA, the final RE discounts back to 1990. The economic effect of this revision is that the discounted costs and benefits are lower. For example, the draft RE estimated the total program cost at $8.61 million in 1992 dollars. Discounted to 1990 dollars, however, this cost is $7.52 million.

The net economic effect of these four revisions is to slightly reduce the original estimated 22-year program cost from $7.52 million (per the draft RE) to $7.34 million (both in 1990 dollars). The final program benefit cost, therefore, is $2,248 to $9,962 per barrel of unspilled oil.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant impact on a substantial number of small entities. "Small entities" include independently owned and operated businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (5 U.S.C. 632).

No comments on the NPRM specifically identified themselves as small business entities.

As a result of the revised implementation schedule, the impact on most small entities has been lessened to the extent that they may have up to 5 years before their vessels must undergo the initial gauging survey, rather than up to 3½ years as originally proposed. Operators of double-hulled tank vessels in freshwater service may even have up to 10 years before the first required gauging. This will ensure that they will not be required to prematurely drydock any vessel before its next scheduled drydock inspection.

The small entity impact analysis is incorporated into the final RE for this rulemaking.

Collection of Information

This rule contains collection of information requirements. The Coast Guard submitted the requirements to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and OMB has approved them. The section number is § 31.10–21a and the OMB Control Number is 2115–0603.

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this proposal under COMDTINST M16475.1B. An Environmental Assessment (EA) is available in the docket for copying and inspection as indicated in the

"ADDRESSES" section of this preamble. The EA discusses and compares the proposed action and alternatives, subsequent expected environmental impacts, and overall need for the action.

As previously discussed, structural hull failures like that which occurred to Tank Barge 565 are infrequent. The EA has no statistical basis for projecting how much oil spillage might be prevented by the proposed regulations.

Therefore, although some reduction in environmental damage will probably accrue, the actual benefits cannot be reasonably predicted beyond making an assumption of effectiveness. The EA assumes that the regulations will prevent at least one catastrophic hull failure, averting a spill of 4,000 barrels. (This quantity is the approximate capacity of a set of port/starboard cargo tanks on a typical barge.)

Although this averted spillage may be significant to a local environment, generally the regulations are not expected to result in significant impact on the quality of the human environment. Therefore, the Coast Guard has issued a Finding of No Significant Impact.

List of Subjects

46 CFR Part 30

Cargo vessels, Foreign relations, Hazardous materials transportation, Penalties, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 31

Cargo vessels, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 32

Cargo vessels, Fire protection, Marine safety, Navigation (water), Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

For the reasons discussed in the preamble, the Coast Guard amends 46 CFR parts 30, 31 and 32 as follows:

SUBCHAPTER D—TANK VESSELS

PART 30—GENERAL PROVISIONS

1. The authority citation for 46 CFR part 30 is revised to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703; 49 U.S.C. app. 1804; 49 CFR 1.45, 1.46; Section 30.01–2 also issued under the authority of 44 U.S.C. 3507; Section 30.01–5 also issued under the authority of Sect. 4109, Pub. L. 101–380, 104 Stat. 515.

2. Section 30.01–5(e)(2) is revised to read as follows:

§ 30.01–5 Application of regulations—TB/ALL.

* * * * *

(e) * * *

(2) A foreign flag vessel, except a public vessel, which operates on or enters the navigable waters of the United States, or which transfers oil in any port or place subject to the jurisdiction of the United States, must comply with the provisions of § 31.10–21a and subparts 32.53, 32.59 and 34.05 of this chapter, as applicable.

* * * * *

PART 31—INSPECTION AND CERTIFICATION

3. The authority citation for part 31 is revised to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3306, 3703; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.46; Section 31.10–21a also issued under the authority of Sect. 4109, Pub. L. 101–380, 104 Stat. 515.

4. Section 31.10–21a is added as follows:

§ 31.10–21a Periodic gauging of tank vessel midbodies more than 30 years old that carry certain oil cargoes—TB/ALL.

(a) As used in this section, the term "midbody" means the 40-percent midship length (0.40L) of the tank vessel. The age of the midbody is determined from its year of original construction.

(b) Midbodies of all tank vessels certificated to carry a pollution category I oil cargo listed in 46 CFR Table 30.25–1 must undergo an initial gauging survey and periodic regauging surveys as follows:

(1) An initial midbody gauging survey must be accomplished no later than the next drydocking inspection after the midbody becomes 30 years old.

(2) Regaugings:

(i) Midbodies of double hull tank vessels, or single hull tank vessels with independent tanks, that operated in fresh water at least 6 months in every 12-month period since the last drydock examination must be regauged at intervals not exceeding 10 years;

(ii) Midbodies of all other tank vessels must be regauged at intervals not exceeding 5 years.

(c) The midbody gauging survey must be comprised of at least three transverse (girth) belts of deck, bottom, side, inner hull, trunk, and longitudinal bulkhead plating and attached longitudinal members. The number and specific locations of the gauging points shall be to the satisfaction of the Officer in Charge of Marine Inspection (OCMI).

(d) Except as provided in paragraph (f) of this section, within 60 days of the vessel's required compliance date the owner or operator shall submit the following to the OCMI that issued the vessel's current Certificate of Inspection:

(1) The gauging survey results.

(2) An engineering analysis signed by a registered Professional Engineer licensed by any state of the United States or the District of Columbia, or signed by a Coast Guard-approved organization, that—

(i) Certifies the vessel's compliance with the minimum section modulus and plating thickness requirements of subpart 32.59 of this chapter; or

(ii) Proposes structural repairs and/or modifications that will bring the vessel up to the required strength standards.

(e) The vessel owner or operator shall keep a permanent copy of the Coast Guard-approved gauging report available for inspection by the OCMI.

(f) Instead of the submittals required by paragraphs (c) and (d) of this section, current classification with the American Bureau of Shipping or another recognized classification society, or a load line certificate issued in accordance with the International Convention on Load Lines or the International Voyage Load Line Act, may be submitted as evidence of compliance with the requirements of this section.

PART 32—SPECIAL EQUIPMENT, MACHINERY, AND HULL REQUIREMENTS

5. The authority citation for part 32 is revised to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46; Subpart 32.59 also issued under the authority of Sect. 4109, Pub. L. 101–380, 104 Stat. 515.

6. Subpart 32.59 is added to read as follows:

Subpart 32.59—Minimum Longitudinal Strength and Plating Thickness Requirements for Unclassed Tank Vessels That Carry Certain Oil Cargoes—TB/ALL

§ 32.59–1 Minimum section modulus and plating thickness requirements—TB/ALL.

(a) As used in this seciton, *Rule* means the current Rules of the American Bureau of Shipping or other recognized classification society, as appropriate for the vessel's present service and regardless of the year the vessel was constructed.

(b) The requirements of this section apply to all in-service, unclassed tank vessels certificated to carry a pollution category I oil cargo listed in 46 CFR Table 30.25–1.

(c) For all vessels except those limited on their Certificate of Inspection to river

routes only, the minimum midship section modulus must be—

(1) At least 90 percent of that required by Rule; or

(2) Where there is no specific Rule requirment, at least 100 percent of that which is necessary to meet the bending moment developed under a full load condition in still water, using a permissible bending stress of 12.74 kN/cm² (1.30 t/cm², 8.25 Ltf/in²).

(d) Within the 40-percent midship length, the average flange and web thicknesses of each longitudinal stiffener must be as follows:

(1) For deck and bottom stiffeners: at least 85 percent of Rule thickness, unless a buckling analysis demonstrates that lesser thicknesses can be safely tolerated. However, the average thickness must never be less than 80 percent of Rule thickness; and

(2) For side stiffeners: at least 75 percent of Rule thickness.

(e) Within the 40-percent midship length, the average thickness for longitudinal strength plating must be at least as follows:

(1) Weather deck: 75 percent of Rule thickness;

(2) Hatch: 70 percent of Rule thickness;

(3) Trunk: 75 percent of Rule thickness;

(4) Sheer strake: 75 percent of Rule thickness;

(5) Outer sideshell: 75 percent of Rule thickness;

(6) Inner sideshell: 75 percent of Rule thickness;

(7) Outer bottom; 75 percent of Rule thickness;

(8) Inner bottom: 70 percent of Rule thickness;

(9) Keel: 75 percent of Rule thickness;

(10) Bulkheads: 75 percent of Rule thickness.

Dated: October 4, 1993.

A.E. Henn,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 93–24806 Filed 10–7–93; 8:45 am]

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Friday
October 8, 1993

Part VII

Department of Education

34 CFR Part 386
Rehabilitation Long-Term Training; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 386

RIN 1820–AB21

Rehabilitation Training; Rehabilitation Long-Term Training

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The regulations are needed to implement the Rehabilitation Act Amendments of 1992. These amendments direct the Secretary to issue regulations as appropriate to carry out the provisions of the Act. The Rehabilitation Long-Term Training program is authorized by section 302 of Title III of the Rehabilitation Act of 1973, as amended. The purpose of this discretionary grant program is to fund projects to provide academic training in areas of personnel shortages identified by the Secretary.

DATES: Comments must be received on or before December 7, 1993.

ADDRESSES: All comments concerning these proposed regulations should be addressed to the Acting Commissioner, U.S. Department of Education, 400 Maryland Avenue, SW., room 3028 Switzer Building, Washington, DC 20202–2531.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Richard Melia, U.S. Department of Education, 400 Maryland Avenue, SW., room 3324 Switzer Building, Washington, DC 20202–2649. Telephone (202) 205–9400. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: These proposed regulations would implement the changes to the Rehabilitation Long-Term Training program made by the Rehabilitation Act Amendments of 1992, Public Law 102–569, enacted October 29, 1992. Commenters are invited to comment on the regulations in their entirety.

The proposed regulations are substantially technical, updating definitions, referencing changes in Education Department General Administrative Regulations, and incorporating new phraseology from the Act However, program reviews and audits have identified several problem areas for which new rulemaking is proposed. In particular, stricter standards are needed to ensure effective implementation of the work-or-repay provision. The Secretary proposes additional changes in the "work-or-repay" provisions to ensure that—

(1) Grantees disburse awards to individuals only after required certifications and agreements have been executed;

(2) Scholars receiving awards clearly understand their obligations under this program by participating in an exit certification when they leave their educational program; and

(3) Grantees maintain adequate tracking, record, and report systems for verifying that scholars have met their work-or-repay responsibilities.

The proposed changes to the work-or-repay provision are presented in greater detail in the following paragraphs. Major proposed changes are identified by section.

Section 386.1 has been revised to respond to increasing numbers of proposals under the long-term training program that do not include academic training subject to the work-or-repay provision. The purpose of the Rehabilitation Long-Term Training program and the work-or-repay provision is to prepare professionals for jobs in designated State and related rehabilitation agencies in areas of shortage. This provision clarifies that grants awarded under this program must support academic outcomes.

Section 386.30 proposes that the Federal share of the cost of the project may not be more than 90 percent of the total cost of the project. The current regulations do not specify a specific amount for Federal participation and leave the amount of non-Federal match to be determined during the negotiation process. Currently most grantees provide a matching component greater than 10 percent, and the Department believes this level of match is appropriate for all grantees under this program.

Section 386.31 would require grantees to use at least 75 percent of the grant award for scholarships. This provision is consistent with the work-or-repay requirement and responds directly to a recommendation of a report by the Department's Office of Inspector General. Exceptions to this requirement may apply under unique circumstances, such as the establishment of a new training program that does not award degrees or certificates.

Section 386.33 would incorporate statutory language on employment that qualifies for the work-or-repay provision and would add a requirement that each scholar complete a Certification of Eligibility for Federal Assistance established in 1992 by the Education Department for all scholarship, direct student grant, fellowship, and loan programs.

Section 386.34 would require grantees to obtain necessary assurances before scholarship assistance is provided to an individual. New statutory provisions for the work-or-repay requirement are addressed. The provision for an exit certification addresses a recommendation of the Office of Inspector General report that scholars be reminded of their obligations as they leave their educational program (similar to the exit requirements for student loans) and that they confirm the accuracy of the information in their record. The expanded tracking and records requirements ensure that grantees verify requirements of the work-or-repay provision and maintain accurate records until the requirement is met.

Section 386.35 would require institutions of higher education that are grantees under the Rehabilitation Long-Term Training program to provide information necessary for designated State agencies to meet the requirements of section 101(a)(7) of the Act. The Act places a significant burden on designated State agencies to collect information on numbers of students enrolled in rehabilitation programs in the State and related information. This provision will ensure that institutions of higher education receiving Federal rehabilitation training funds will cooperate in compiling the mandated information.

This program supports National Education Goal 5 that every adult American, including individuals with disabilities, will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship. The Department supports a variety of training activities for vocational rehabilitation personnel so that they may assist individuals with disabilities in gaining the knowledge and skills to obtain employment and compete in a global economy.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

The small entities that would be affected are small colleges and universities. The regulations would impose minimal requirements to ensure

the proper expenditure of program funds.

Paperwork Reduction Act of 1980

Sections 386.20, 386.33, 386.34, 386.35, and 386.42 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h))

State agencies and other public or nonprofit agencies and organizations, including institutions of higher education, that participate in the Rehabilitation Long-Term Training program would have to comply with the information collection requirements in these proposed regulations. The Department needs and uses the information to make grants and to ensure compliance with work-or-repay requirements for scholarship recipients.

Annual public reporting and recordkeeping burden for this collection of information is estimated to average 80 hours per response for 300 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, room 3002, New Executive Office Building, Washington, DC 20503; Attention: Daniel J. Chenok.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room 3214, Switzer Building, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 386

Rehabilitation training, Grant programs, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number 84.129, Rehabilitation Training: Rehabilitation Long-Term Training)

Dated: October 5, 1993.

Richard W. Riley,

Secretary of Education.

The Secretary proposes to amend title 34 of the Code of Federal Regulations by revising part 386 to read as follows:

PART 386—REHABILITATION TRAINING: REHABILITATION LONG-TERM TRAINING

Subpart A—General

Sec.

386.1 What is the Rehabilitation Long-Term Training program?
386.2 Who is eligible for an award?
386.3 What regulations apply?
386.4 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

386.20 What selection criteria does the Secretary use?

Subpart D—What Conditions Must Be Met after an Award?

386.30 What are the matching requirements?
386.31 What are requirements for directing grant funds?
386.32 What are allowable costs?
386.33 What are the requirements for grantees in disbursing scholarships?
386.34 What assurances must be provided by a grantee that intends to provide scholarships?
386.35 What information must be provided by a grantee that is an institution of higher education to assist designated State agencies?

Subpart E—What Conditions Must Be Met by a Scholar?

386.40 What are the requirements for scholars?
386.41 Under what circumstances does the Secretary grant a deferral or exception to performance or repayment under a scholarship agreement?
386.42 What must a scholar do to obtain a deferral or exception to performance or repayment under a scholarship agreement?
386.43 What are the consequences of a scholar's failure to meet the terms and conditions of scholarship agreement?

Authority: 29 U.S.C. 711(c) and 774, unless otherwise noted.

Subpart A—General

§ 386.1 What is the Rehabilitation Long-Term Training program?

(a) The Rehabilitation Long-Term Training program provides financial assistance for—

(1) Projects that provide basic or advanced training leading to an academic degree in one of those fields of study identified in paragraph (b) of this section;

(2) Projects that provide a specified series of courses or program of study leading to award of a certificate in one of those fields of study identified in paragraph (b) of this section; and

(3) Projects that provide support for medical residents enrolled in residency training programs in the specialty of physical medicine and rehabilitation.

(b) The Rehabilitation Long-Term Training program is designed to provide academic training in areas of personnel shortages identified by the Secretary and published in a notice in the Federal Register. These areas may include—

(1) Vocational rehabilitation counseling;
(2) Rehabilitation technology;
(3) Rehabilitation medicine;
(4) Rehabilitation nursing;
(5) Rehabilitation social work;
(6) Rehabilitation psychiatry;
(7) Rehabilitation psychology;
(8) Rehabilitation dentistry;
(9) Physical therapy;
(10) Occupational therapy;
(11) Speech pathology and audiology;
(12) Physical education;
(13) Therapeutic recreation;
(14) Community rehabilitation program personnel;
(15) Prosthetics and orthotics;
(16) Rehabilitation of individuals who are blind;
(17) Rehabilitation of individuals who are deaf;
(18) Rehabilitation of individuals who are mentally ill;
(19) Undergraduate education in the rehabilitation services;
(20) Independent living;
(21) Client assistance;
(22) Administration of community rehabilitation programs;
(23) Rehabilitation administration;
(24) Vocational evaluation and work adjustment;
(25) Services to individuals with specific disabilities or specific

impediments to rehabilitation, including individuals who are members of populations that are unserved or underserved by programs under this Act;

(26) Job development and job placement services to individuals with disabilities;

(27) Supported employment services, including services of employment specialists for individuals with disabilities;

(28) Specialized services for individuals with severe disabilities;

(29) Recreation for individuals with disabilities; and

(30) Other fields contributing to the rehabilitation of individuals with disabilities.

(Authority: Secs. 12 and 302 of the Act; 29 U.S.C. 711 and 771a)

§ 386.2 Who is eligible for an award?

Those agencies and organizations eligible for assistance under this program are described in 34 CFR 385.2.

(Authority: Sec. 302(a) of the Act; 29 U.S.C. 771a(a))

§ 386.3 What regulations apply?

The following regulations apply to the Rehabilitation Training: Rehabilitation Long-Term Training program:

(a) The regulations in this part 386.

(b) The regulations in 34 CFR part 385.

(Authority: Sec. 302 of the Act; 29 U.S.C. 771a)

§ 386.4 What definitions apply?

The following definitions apply to this program:

(a) Definitions in 34 CFR 385.4.

(b) *Other definitions.* The following definitions also apply to this part:

Academic year means a full-time course of study—

(1) Taken for a period totaling at least nine months; or

(2) Taken for the equivalent of at least two semesters, two trimesters, or three quarters.

Certificate means a recognized educational credential awarded by a grantee under this part that attests to the completion of a specified series of courses or program of study.

Professional corporation or professional practice means—

(1) A professional service corporation or practice formed by one or more individuals duly authorized to render the same professional service, for the purpose of rendering that service; and

(2) The corporation or practice and its members are subject to the same supervision by appropriate State regulatory agencies as individual practitioners.

Related agency means—

(1) An American Indian rehabilitation program; or

(2) Any of the following agencies that provide services to individuals with disabilities under an agreement with a designated State agency in the area of specialty for which training is provided:

(i) A Federal, State, or local agency.

(ii) A nonprofit organization.

(iii) A professional corporation or professional practice group.

Scholar means an individual who is enrolled in a certificate or degree granting course of study in one of the areas listed in § 386.1(b) and who receives scholarship assistance under this part.

Scholarship means an award of financial assistance to a scholar for training and includes all disbursements or credits for student stipends, tuition and fees, and student travel in conjunction with training assignments.

State rehabilitation agency means the designated State agency.

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 386.20 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Plan of operation.* (30 points) The Secretary evaluates each application on the basis of the criterion in § 385.32(a).

(b) *Quality of key personnel.* (10 points) The Secretary evaluates each application on the basis of the criterion in § 385.32(b).

(c) *Budget and cost effectiveness.* (10 points) The Secretary evaluates each application on the basis of the criterion in § 385.32(c).

(d) *Evaluation plan.* (5 points) The Secretary evaluates each application on the basis of the criterion in § 385.32(d).

(e) *Adequacy of resources.* (5 points) The Secretary evaluates each application on the basis of criterion in § 385.32(e).

(f)(1) *Evidence of need.* (10 points) The Secretary reviews each application for information that shows that the need for the training project has been adequately justified.

(2) The Secretary looks for information that shows that the need for the training project has been established in terms of rehabilitation supply and demand for qualified rehabilitation personnel and includes an assessment of how the project will respond to personnel needs established in local, State, or national studies.

(g)(1) *Relevance to State-Federal rehabilitation service program.* (10 points) The Secretary reviews each application for information that shows that the proposed project appropriately relates to the mission of the State-Federal rehabilitation service program.

(2) The Secretary looks for information that shows that the project can be expected either to increase the supply of trained personnel available to State and other public or nonprofit agencies involved in the rehabilitation of individuals with physical or mental disabilities through degree or certificate granting programs, or to improve the skills and quality of professional personnel in the rehabilitation field in which the training is to be provided through the granting of a degree or certificate.

(h)(1) *Nature and scope of curriculum.* (20 points) The Secretary reviews each application for information that demonstrates the adequacy of the proposed curriculum.

(2) The Secretary looks for information that shows—

(i) The scope and nature of the coursework reflect content that can be expected to enable the achievement of the established project objectives;

(ii) The curriculum and teaching methods provide for an integration of theory and practice relevant to the educational objectives of the program;

(iii) There is evidence of educationally focused practical and other field experiences in settings that ensure student involvement in the provision of vocational rehabilitation, supported employment, or independent living rehabilitation services to individuals with disabilities, especially individuals with severe disabilities;

(iv) The coursework includes student exposure to vocational rehabilitation, supported employment, or independent living rehabilitation processes, concepts, programs, and services; and

(v) If applicable, there is evidence of current professional accreditation by the designated accrediting agency in the professional field in which grant support is being requested.

(Authority: Secs. 12(c) and 302 of the Act; 29 U.S.C. 711(c) and 771a)

Subpart D—What Conditions Must Be Met After an Award?

§ 386.30 What are the matching requirements?

The Federal share may not be more than 90 percent of the total cost of a project under this program.

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))

§ 386.31 What are the requirements for directing grant funds?

(a) A grantee must use at least 75 percent of the total award for scholarships as defined in § 386.4.

(b) The Secretary may award grants that use less than 75 percent of the total award for scholarships based upon the unique nature of the project, such as the establishment of a new training program or long-term training in an emerging field that does not award degrees or certificates.

(Authority: Secs. 12(c) and 302 of the Act; 29 U.S.C. 711(c) and 771a)

§ 386.32 What are allowable costs?

In addition to those allowable costs established in the Education Department General Administrative Regulations in §§ 75.530 through 75.562, the following items are allowable under long-term training projects:

(a) Student stipends.

(b) Tuition and fees.

(c) Student travel in conjunction with training assignments.

(Authority: Secs. 12(c) and 302 of the Act; 29 U.S.C. 711(c) and 771a)

§ 386.33 What are the requirements for grantees in disbursing scholarships?

(a) Before disbursement of scholarship assistance to an individual, a grantee—

(1)(i) Shall obtain documentation that the individual is—

(A) A U.S. citizen or national; or

(B) A permanent resident of the Republic of the Marshall Islands, Federated States of Micronesia, Republic of Palau, or the Commonwealth of the Northern Mariana Islands; or

(ii) Shall confirm from documentation issued to the individual by the U.S. Immigration and Naturalization Service that he or she—

(A) Is a lawful permanent resident of the United States; or

(B) Is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident; and

(2) Shall have documentation that the individual is not an employee of the Federal Government;

(3) Shall confirm that the applicant has expressed interest in a career in clinical practice, administration, supervision, teaching, or research in the vocational rehabilitation, supported employment, or independent living rehabilitation of individuals with disabilities, especially individuals with severe disabilities;

(4) Shall have documentation that the individual expects to maintain or seek employment in a designated State rehabilitation agency or in a nonprofit rehabilitation, professional corporation, professional practice group, or related agency providing services to individuals with disabilities or individuals with severe disabilities under an agreement with a designated State agency;

(5) Shall reduce the scholarship by the amount in which the combined awards would be in excess of the cost of attendance, if a scholarship, when added to the amount the scholar is to receive for the same academic year under Title IV of the Higher Education Act, would otherwise exceed the scholar's cost of attendance;

(6) Shall limit scholarship assistance to the individual's cost of attendance at the institution for no more than four academic years except that the grantee may provide an extension consistent with the institution's accommodations under section 504 of the Act if the grantee determines that an individual has a disability that seriously affects the completion of the course of study; and

(7) Shall obtain a Certification of Eligibility for Federal Assistance from each scholar as prescribed in 34 CFR 75.60, 75.61, and 75.62.

(Authority: Secs. 12(c) and 302(b) of the Act; 29 U.S.C. 711(c) and 771a(b))

§ 386.34 What assurances must be provided by a grantee that intends to provide scholarships?

A grantee under this part that intends to grant scholarships for any academic year beginning after June 1, 1992, shall provide the following assurances before an award is made:

(a) *Requirement for agreement.* No individual will be provided a scholarship without entering into a written agreement containing the terms and conditions required by this section. An individual will sign and date the agreement prior to the initial disbursement of scholarship funds to the individual for payment of the individual's expenses, such as tuition.

(b) *Disclosure to applicants.* The terms and conditions of the agreement that the grantee enters into with a scholar will be fully disclosed in the application for scholarship.

(c) *Form and terms of agreement.* Each scholarship agreement with a grantee will be in the form and contain the terms that the Secretary requires, including at a minimum the following provisions:

(1) The scholar will—

(i) Maintain employment—

(A) In a nonprofit rehabilitation agency or related agency or in a State rehabilitation agency or related agency, including a professional corporation or professional practice group through which the individual has a service arrangement with the designated State agency;

(B) On a full- or part-time basis; and

(C) For a period of not less than the full-time equivalent of two years for each year for which assistance under this section was received, within a period, beginning after the recipient completes the training for which the scholarship was awarded, of not more than the sum of the number of years required in this paragraph and two additional years; and

(ii) Repay all or part of any scholarship received, plus interest, if the individual does not fulfill the requirements of paragraph (c)(1)(i) of this section, except as the Secretary by regulations may provide for repayment exceptions and deferrals.

(2) The employment obligation in paragraph (c)(1) of this section as applied to a part-time scholar will be based on the accumulated academic years of training for which the scholarship is received.

(3) Until the scholar has satisfied the employment obligation described in paragraph (c)(1) of this section, the scholar will inform the grantee of any change of name, address, or employment status and will document employment satisfying the terms of the agreement.

(4) Subject to the provisions in § 386.41 regarding a deferral or exception, when the scholar enters repayment status under § 386.43(e), the amount of the scholarship that has not been retired through eligible employment will constitute a debt owed to the United States that—

(i) Will be repaid by the scholar, including interest and costs of collection as provided in § 386.43; and

(ii) May be collected by the Secretary in accordance with 34 CFR part 30, in the case of the scholar's failure to meet the obligation of § 386.43.

(d) *Executed agreement.* The grantee will provide an original executed agreement upon request to the Secretary.

(e) *Standards for satisfactory progress.* The grantee will establish, publish, and apply reasonable standards for measuring whether a scholar is maintaining satisfactory progress in the scholar's course of study. The Secretary considers an institution's standards to be reasonable if the standards—

(1) Conform with the standards of satisfactory progress of the nationally recognized accrediting agency that accredits the institution, if the institution is accredited by such an agency, and if the agency has those standards;

(2) For a scholar enrolled in an eligible program who is to receive assistance under the Rehabilitation Act, are the same as or stricter than the institution's standards for a student enrolled in the same academic program who is not receiving assistance under the Rehabilitation Act; and

(3) Include the following elements:

(i) Grades, work projects completed, or comparable factors that are measurable against a norm.

(ii) A maximum timeframe in which the scholar shall complete the scholar's educational objective, degree, or certificate.

(iii) Consistent application of standards to all scholars within categories of students; e.g., full-time, part-time, undergraduates, graduate students, and students attending programs established by the institution.

(iv) Specific policies defining the effect of course incompletes, withdrawals, repetitions, and noncredit remedial courses on satisfactory progress.

(v) Specific procedures for appeal of a determination that a scholar is not making satisfactory progress and for reinstatement of aid.

(f) *Exit certification.* The grantee has established policies and procedures for receiving written certification from scholars at the time of exit from the program acknowledging the following:

(1) The name of the institution and the number of the Federal grant that provided the scholarship.

(2) The scholar's field of study.

(3) The number of years the scholar needs to work to satisfy the work requirements in § 386.34(c)(1)(i)(C).

(4) The total amount of scholarship assistance received subject to the work-or-repay provision in § 386.34(c)(1)(ii).

(5) The time period during which the scholar must satisfy the work requirements in § 386.34(c)(1)(i)(C).

(6) All other obligations of the scholar in § 386.34.

(g) *Tracking system.* The grantee has established policies and procedures to determine compliance of the scholar with the terms of the agreement. In order to determine whether a scholar has met the work-or-repay provision in § 386.34(c)(1)(i), the tracking system must include for each employment position maintained by the scholar—

(1) Documentation of the employer's name, address, dates of the scholar's employment, and the position the scholar maintained;

(2) Documentation of how the employment meets the requirements in § 386.34(c)(1)(i); and

(3) Documentation that the grantee, if experiencing difficulty in locating a scholar, has checked with existing tracking systems operated by alumni organizations.

(h) *Reports.* The grantee shall make reports to the Secretary that are necessary to carry out the Secretary's functions under this part.

(i) *Records.* The grantee shall maintain the information obtained in paragraphs (g) and (h) of this section for a period of time equal to the time required to fulfill the obligation under § 386.34(c)(1)(i)(C).

(Authority: Secs. 12(c) and 302(b) of the Act; 29 U.S.C. 711(c) and 771a(b))

§ 386.35 What information must be provided by a grantee that is an institution of higher education to assist designated State agencies?

A grantee that is an institution of higher education provided assistance under this part shall cooperate with the following requests for information from a designated State agency:

(a) Information required by section 101(a)(7) of the Act which may include, but is not limited to—

(1) The number of students enrolled by the grantee in rehabilitation training programs; and

(2) The number of rehabilitation professionals trained by the grantee who graduated with certification or licensure, or with credentials to qualify for certification or licensure, during the past year.

(b) Information on the availability of rehabilitation courses leading to certification or licensure, or the credentials to qualify for certification or licensure, to assist State agencies in the planning of a program of staff development for all classes of positions that are involved in the administration and operation of the State agency's vocational rehabilitation program.

(Authority: Secs. 12(c) and 302 of the Act; 29 U.S.C. 711(c) and 771a)

Subpart E—What Conditions Must Be Met by a Scholar?

§ 386.40 What are the requirements for scholars?

A scholar—(a) Shall receive the training at the educational institution or agency designated in the scholarship; and

(b) Shall not accept payment of educational allowances from any other Federal, State, or local public or private nonprofit agency if that allowance conflicts with the individual's obligation under § 386.33(a)(4) or § 386.34(c)(1).

(c) Shall enter into a written agreement with the grantee, before starting training, that meets the terms and conditions required in § 386.34;

(d) Shall be enrolled in a course of study leading to a certificate or degree in one of the fields designated in § 386.1(b); and

(e) Shall maintain satisfactory progress toward the certificate or degree as determined by the grantee.

(Authority: Secs. 12(c) and 302(b) of the Act; 29 U.S.C. 711(c) and 771a(b))

§ 386.41 Under what circumstances does the Secretary grant a deferral or exception to performance or repayment under a scholarship agreement?

A deferral or repayment exception to the requirements of § 386.34(c)(1) may be granted, in whole or part, by the Secretary as follows:

(a) Repayment is not required if the scholar—

(1) Is unable to continue the course of study or perform the work obligation because of a disability that is expected to continue indefinitely or result in death; or

(2) Has died.

(b) Repayment of a scholarship may be deferred during the time the scholar is—

(1) Engaging in a full-time course of study at an institution of higher education;

(2) Serving, not in excess of three years, on active duty as a member of the armed services of the United States;

(3) Serving as a volunteer under the Peace Corps Act;

(4) Serving as a full-time volunteer under Title I of the Domestic Volunteer Service Act of 1973;

(5) Temporarily totally disabled, for a period not to exceed three years; or

(6) Unable to secure employment as required by the agreement by reason of the care provided to a disabled spouse for a period not to exceed 12 months.

(Authority: Secs. 12(c) and 302(b) of the Act; 29 U.S.C. 771(c) and 771a(b))

§ 386.42 What must a scholar do to obtain a deferral or exception to performance or repayment under a scholarship agreement?

To obtain a deferral or exception to performance or repayment under a scholarship agreement, a scholar shall provide the following:

(a) *Written application.* A written application must be made to the Secretary to request a deferral or an exception to performance or repayment of a scholarship.

(b) *Documentation.* (1) Documentation must be provided to substantiate the grounds for a deferral or exception.

(2) Documentation necessary to substantiate an exception under § 386.41(a)(1) or a deferral under § 386.41(b)(5) must include a sworn

affidavit from a qualified physician or other evidence of disability satisfactory to the Secretary.

(3) Documentation to substantiate an exception under § 386.41(a)(2) must include a death certificate or other evidence conclusive under State law.

(Authority: Secs. 12(c) and 302 of the Act; 29 U.S.C. 711(c) and 771a)

§ 386.43 What are the consequences of a scholar's failure to meet the terms and conditions of a scholarship agreement?

In the event of a failure to meet the terms and conditions of a scholarship agreement or to obtain a deferral or an exception as provided in § 386.41, the scholar shall repay all or part of the scholarship as follows:

(a) *Amount.* The amount of the scholarship to be repaid is proportional to the employment obligation not completed.

(b) *Interest rate.* The Secretary charges the scholar interest on the unpaid balance owed in accordance with 31 U.S.C. 3717.

(c) *Interest accrual.* (1) Interest on the unpaid balance accrues from the date the scholar is determined to have entered repayment status under paragraph (e) of this section.

(2) Any accrued interest is capitalized at the time the scholar's repayment schedule is established.

(3) No interest is charged for the period of time during which repayment has been deferred under § 386.41.

(d) *Collection costs.* Under the authority of 31 U.S.C. 3717, the Secretary may impose reasonable collection costs.

(e) *Repayment status.* A scholar enters repayment status on the first day of the first calendar month after the earliest of the following dates, as applicable:

(1) The date the scholar informs the Secretary he or she does not plan to fulfill the employment obligation under the agreement.

(2) Any date when the scholar's failure to begin or maintain employment makes it impossible for that individual to complete the employment obligation within the number of years required in § 386.34(c)(1).

(f) *Amounts and frequency of payment.* The scholar shall make payments to the Secretary that cover principal, interest, and collection costs according to a schedule established by the Secretary.

(Authority: Secs. 12(c) and 302(b) of the Act; 29 U.S.C. 711(c) and 771a(b))

[FR Doc. 93–24845 Filed 10–7–93; 8:45 am]

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federal register

Friday
October 8, 1993

Part VIII

Department of Education

34 CFR Part 370

Client Assistance Program; Notice of Proposed Rulemaking

DEPARTMENT OF EDUCATION

34 CFR Part 370

RIN 1820–AB16

Client Assistance Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing the Client Assistance Program (CAP). These amendments are needed to implement recent changes to the Rehabilitation Act of 1973 (Act) made by the Rehabilitation Act Amendments of 1992 (1992 Amendments) enacted on October 29, 1992. The proposed regulations describe the process a Governor would be required to use to designate a public or private agency to conduct the CAP authorized by section 112 of the Act (i.e., the designated agency), identify the authorized activities a designated agency would be required to carry out under the CAP, and specify the conditions that would apply to a State and the designated agency in the operation of its CAP. The proposed regulations also would implement changes to section 112 of the Act made by the 1992 Amendments, clarify certain program requirements, and make other changes that are needed to increase program effectiveness. The proposed regulations would implement the requirement in the 1992 Amendments that CAPs expand the services they provide to include dissemination of information related to title I of the Americans with Disabilities Act of 1990 (ADA), especially with regard to individuals with disabilities who have traditionally been unserved or underserved by vocational rehabilitation programs. Finally, the proposed regulations would implement the due process requirements added by the 1992 Amendments that apply if a Governor of a State chooses to redesignate the agency designated to conduct the State's CAP.

This program is an important part of the National Education Goals. The program addresses Goal 5, that every adult American, including individuals with disabilities, will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

DATES: Comments must be received on or before November 22, 1993.

ADDRESSES: All comments concerning these proposed regulations should be addressed to RSA Commissioner, U.S. Department of Education, 400 Maryland Avenue, SW., room 3028, Switzer Building, Washington, DC 20202–2735.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Deborah Havens, U.S. Department of Education, 400 Maryland Avenue, SW., room 3220, Switzer Building, Washington, DC 20202–2735. Telephone: (202) 205–8733. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–9362 between 8 a.m. and 8 p.m. EDT, Monday through Friday.

SUPPLEMENTARY INFORMATION: The CAP is authorized by section 112 of the Act (29 U.S.C. 732). The CAP provides support to States for programs that assist clients and client applicants to secure the benefits and services available to them under the Act.

Regulations for this program were last published on March 12, 1985 (50 FR 9960) and are currently codified in 34 CFR part 370. These proposed regulations would implement section 112 of the Act, as recently amended by the 1992 Amendments, Public Law 102–569 and incorporate certain provisions of the Education Department General Administrative Regulations (EDGAR).

A summary of the proposed regulations follows:

Proposed § 370.1 would make only minor revisions to current § 370.1 to reflect that the 1992 Amendments have included the provision of information on the ADA.

Proposed § 370.2(a) through (d) concerning who is eligible for a grant under the CAP would remain the same as current § 370.2(a) through (d). The provisions in current § 370.2(e) and (f) concerning the redesignation of the agency designated to carry out the State's CAP would be revised and would be placed in proposed Subpart B as §§ 370.10 through 370.17.

Proposed § 370.2(e) would prohibit a designated agency from subgranting to or entering into a contract with an agency that provides services under the Act for either carrying out the CAP or providing any services under the CAP. For purposes of § 370.2, services under the Act" would not include services and activities carried out under the protection and advocacy program authorized by section 509 of the Act (i.e., the Protection and Advocacy of Individual Rights (PAIR) program, 34 CFR part 381). The purpose of this prohibition would be to stop the practice by some States of circumventing the independence requirement in section 112(c)(1)(A) of the Act by having the designated agency contract with another entity that provides services under the Act to carry out the State's CAP or to provide services under the CAP. A designated agency would be able to contract with an entity or individual that does not provide services under the Act to provide services under the CAP.

Under proposed § 370.3, any individual who applies for or receives services under the Act would be eligible for services under the CAP. For purposes of this section, services under the Act would not include services provided to an individual under the PAIR program.

Proposed § 370.4 would revise the list of activities and services in current § 370.10 that a designated agency would be required or authorized to carry out under this part to reflect the activities added by the 1992 Amendments. These activities now include the provision of information on available services and benefits related to title I of the ADA, especially with regard to individuals with disabilities who have been traditionally unserved or underserved by vocational rehabilitation programs. Also, in providing assistance and advocacy with respect to services under title I of the Act, a designated agency is now permitted to provide assistance and advocacy with respect to services that are directly related to facilitating the employment of the individual. The proposed regulations would clarify that a designated agency may engage in both individual and systemic advocacy, as defined in these proposed regulations, under the CAP. The proposed regulations would permit the designated agency to facilitate access by individuals with disabilities exiting from public school programs to the services funded under the Act.

Proposed § 370.5 would revise and update the list of regulations in current § 370.3 that would apply to the CAP. Except as specifically prohibited by or as otherwise provided in State law, section 112(e)(3) of the Act requires that CAP funds be paid directly to the designated agency, even though only the State may submit an application to the Secretary for a grant under the CAP. However, even if State law prevents the CAP funds from going directly to the designated agency, the designated agency is the eventual "recipient" of the CAP funds. Therefore, in those cases where the designated agency is not a State or local government agency or Indian tribal organization, proposed § 370.5(a)(1) would make the regulations

in 34 CFR part 74 applicable to the designated agency.

Moreover, pursuant to section 112(f) of the Act, only the State, rather than the designated agency, may apply for, and receive, a grant under the CAP. Therefore, proposed § 370.5(a)(2) would make the regulations in 34 CFR part 76 (except for certain provisions) applicable to the State in its administration of its CAP grant. Part 76 (except for those provisions so identified in proposed § 370.5(a)(2)) would apply to the State, whether or not the designated agency is a State agency and even if State law does not prevent the designated agency from receiving the CAP grant funds directly, as required by section 112(e)(3) of the Act. As the grantee, the State remains responsible under parts 76 and 370 for ensuring that the provisions of section 112 of the Act and these regulations are carried out.

In addition, because each State's CAP would not be carried out through multiple competitive or formula-based awards, the Secretary would not regard the designated agency as a "subgrantee," as that term is used in 34 CFR parts 74, 76, or 80 of EDGAR. (See the note at the end of proposed § 370.5.) Accordingly, the provisions of 34 CFR part 76 governing the relationship between grantees and subgrantees, such as subparts D and E of part 76 (34 CFR 76.300 through 76.401), are inapplicable to the CAP, whether or not the designated agency is a State agency.

Under proposed § 370.5(a)(5), the regulations in 34 CFR part 80 would apply to the State because the State is the grantee. In addition, part 80 would apply to a designated agency if the designated agency is a State or local government agency.

Finally, proposed § 370.5(a)(6) would make 34 CFR part 81 applicable to the designated agency. Section 112(c)(3) of the Act specifically states that the designated agency shall be accountable for the proper use of the CAP funds it receives. In addition, as discussed above, the designated agency is the eventual, if not the direct, recipient of the CAP funds. Therefore, whether or not the designated agency is the actual recipient of the CAP grant (e.g., if the designated agency is a State agency), proposed § 370.5(a)(6) would make the regulations in 34 CFR part 81 applicable to the designated agency.

Proposed § 370.6 would revise or add the following definitions in current § 370.4 that apply to the CAP: "Advocacy," "Class action," "Client or client applicant," "Designated agency," "Mediation," and "State." Although already previously allowed as part of the assistance provided to clients under this program, the 1992 Amendments specifically added "advocacy" and "systemic advocacy" to the activities permitted under section 112 of the Act.

Proposed §§ 370.10 through 370.17 would implement the due process requirements added by the 1992 Amendments that apply if a Governor of a State chose to redesignate the agency designated to conduct the State's CAP. Proposed § 370.10 would require that a redesignation could be made only for good cause and would describe when the requirements for redesignation apply.

The Secretary would require that an action giving rise to good cause for redesignation be of a substantial nature. The regulations would not define good cause. However, the Secretary would not consider merely technical or minor shortcomings as good cause sufficient to support a redesignation. Furthermore, the Secretary would not consider a proposed redesignation as supported by good cause if the proposed redesignation is based on a designated agency carrying out any actions or activities that are authorized under section 112 of the Act or the regulations implementing the CAP.

What constitutes good cause for redesignation would be determined on a case-by-case basis. Examples of activities that the Secretary would consider as constituting good cause for redesignation under proposed § 370.10(a) would include, but would not be limited to, the following: Misappropriation of CAP funds; substantial failure to carry out the assurances prescribed in section 112 of the Act; substantial failure to carry out the intent of section 112 of the Act; substantial inability or unwillingness to provide the spectrum of CAP services; engaging in activities prohibited in section 112 of the Act; or commission of other substantial infractions, such as illegal activities sanctioned, encouraged, or carried out by the designated agency implementing the CAP. However, even if a designated agency engaged in one of these activities, a Governor of a State might not choose to redesignate the client assistance agency of his or her State. Therefore, what constitutes good cause for redesignation is left for the Governor of each State to determine, subject to review by the Secretary if the redesignation is properly appealed to the Secretary.

Proposed § 370.11 describes the requirements for a proposed redesignation. Proposed § 370.12 describes what a designated agency must do to preserve its right to appeal a Governor's written decision to redesignate. Proposed § 370.13 describes the requirements for a decision to redesignate. Proposed § 370.14 describes how a designated agency could appeal a Governor's written decision to redesignate. If the Governor of a State did not issue a written decision to redesignate (subsequent to the issuance of a notice of proposed redesignation), the client assistance agency would have no reason (and no basis) to appeal to the Secretary. Proposed § 370.15 describes what a Governor must do after receipt of a copy of a designated agency's written appeal to the Secretary. Proposed § 370.16 describes how the Secretary reviews an appeal of a redesignation. Proposed § 370.17 describes when a redesignation would become effective.

Proposed § 370.20 is substantially the same as current § 370.20. However, the provision related to the evaluations and studies of the CAP would be deleted because the 1992 Amendments deleted section 112(h) of the Act, which formerly required the Secretary to conduct studies and evaluations of the CAP. In addition, proposed § 370.20(d) would ensure the proper implementation of section 112(e)(3) of the Act by requiring a State to provide an assurance with its application for assistance under this part that direct payment to the designated agency is not prohibited or inconsistent with the laws, regulations, or policies of the State in which the designated agency plans to carry out the CAP. The State's failure to provide this assurance with its application would prohibit the designated agency from receiving the CAP funds directly from the Secretary.

Proposed § 370.30(c) is substantially the same as current § 370.30(c). However, proposed § 370.30(c) would add that, as the eventual, if not the direct, recipient of the CAP funds, 34 CFR parts 74 and 81 would apply to the designated agency, whether or not the designated agency is the actual recipient of the CAP grant. However, because it is the State that submits an application for and receives the CAP grant, the State remains the grantee for purposes of 34 CFR parts 76 and 80. In addition, both the State and the designated agency are considered recipients for purposes of 34 CFR part 81.

Proposed § 370.31 would revise current § 370.31 by adding a new paragraph (b) that would require a designated agency to inform the Secretary 90 days before the end of the fiscal year for which CAP funds were received whether the designated agency is making available for reallotment any of those CAP funds that it will be unable to obligate in that fiscal year.

Proposed § 370.40 would revise current § 370.40 to clarify that a designated agency must apply the cost principles referenced in subpart Q of 34 CFR part 74 or 34 CFR 80.22 to determine what are allowable costs. If a designated agency is an NPO, the cost principles in Office of Management and Budget (OMB) Circular A–122 would apply (34 CFR 74.174). If a designated agency is a State or local agency, the cost principles in OMB Circular A–87 would apply (34 CFR 80.22(b)). Although the cost principles under these circulars are similar, each circular treats some items of cost differently. Therefore, it is important for a designated agency to apply the correct circular, depending on whether the designated agency is an NPO or a State or local agency.

Proposed § 370.40(d) is substantially the same as current § 370.30(d). As discussed above, the State is the grantee and the designated agency is the eventual, if not the direct, recipient of the CAP funds. Therefore, the State and the designated agency would be accountable, both jointly and severally, for the proper use of funds made available under the CAP. This provision would implement section 112(c)(3) of the Act and, because the State remains the grantee, also would keep the State accountable for the funds made available under the CAP. However, the Secretary would be free to choose to recover funds under the procedures in 34 CFR part 81 from either the State or the designated agency, or both, depending on the circumstances of each case.

Proposed § 370.40(e) would prohibit a designated agency from using expenditures as an offset against disallowed costs unless those expenditures had been reported prior to the audit or compliance review on which the disallowance of costs is based.

Proposed § 370.41 would revise current § 370.41 to clarify that employees of a designated agency would be prohibited, while so employed, from serving concurrently as a staff member of, or consultant to, or in any other capacity within, any other rehabilitation project, program, or facility receiving assistance under the Act in the State, including a designated agency that is not subject to the independence requirement of section 112(c)(1) of the Act. Proposed § 370.41(c) would exempt from this prohibition those individuals who are employed by a designated agency that is also participating in the PAIR program.

Proposed § 370.43 would revise current § 370.43 to clarify that, consistent with the Executive Order on Civil Justice Reform (E.O. No. 12778), which became effective on January 21, 1991, good faith negotiations or mediation, or both, should be used to the maximum extent possible, before a designated agency may resort to formal administrative or legal remedies. The Secretary will encourage but not require a designated agency to maintain records that will support its decision to engage in formal administrative or legal remedies. However, if a question arises about a designated agency's failure to use good faith negotiations or mediation to the maximum extent possible, the burden of demonstrating its compliance with this section will be upon the designated agency.

Proposed § 370.44 would revise current § 370.44 to implement the new requirement added by the 1992 Amendments that a designated agency must report annually the number of requests for assistance under the CAP that the designated agency received, the number of those requests that the designated agency was unable to address, and the reasons why the designated agency was unable to serve all of those requests. Proposed § 370.44 would implement both old section 112(g)(4) and new section 112(g)(5) of the Act.

Proposed § 370.45 would remain the same as current § 370.45, which prohibits a designated agency from bringing a class action in carrying out its responsibilities under this part. Even though the 1992 Amendments revised section 112(a) of the Act to clarify that a designated agency may engage in both individual and systemic advocacy, the 1992 Amendments did not remove or revise section 112(d) of the Act, which prohibits a designated agency from bringing a class action in carrying out its responsibilities under this part. The prohibition on class actions by a designated agency applies only to the use of CAP funds to support in whole or in part a class action. These regulations do not apply to a designated agency's use of non-CAP funds.

Proposed § 370.46 would revise current § 370.46 so that the consultation requirement for the designation of a CAP agency also would apply to the redesignation of a CAP agency under proposed § 370.10(a).

Proposed § 370.47 would revise current § 370.47 to implement the change made by the 1992 Amendments allowing funds appropriated for a fiscal year that are not expended or obligated during that year to be carried over to the next fiscal year. In addition, proposed § 370.47(b) would require a designated agency to inform the Secretary within 90 days after the end of the fiscal year for which the CAP funds were made available whether the designated agency carried over to the succeeding fiscal year any CAP funds that it was unable to obligate by the end of the fiscal year.

Proposed § 370.48 would be based on current § 369.47, which is made applicable to the CAP by current § 370.3(b). Proposed § 370.48 (a) and (b) would require a designated agency to keep personal information about individuals served under the CAP strictly confidential and would allow a designated agency to release personal information only under very limited conditions.

Proposed § 370.48(d) would state that the Secretary will not require a designated agency to disclose personally identifiable information about clients or client applicants for purposes of a periodic audit, report, or performance evaluation. However, proposed § 370.48(e) would state that, if the Secretary has independent and reliable evidence that the designated agency has violated its legislative mandate or misused Federal funds, the designated agency must provide access to personally identifiable information if requested by the Secretary. Finally, proposed § 370.48(f) would state that the right of an individual or the designated agency not to disclose information or records also would be governed by the common law of privileges, as interpreted by the courts of the United States.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

Less than 60 designated agencies would be funded under section 112 of the Act. The small entities that would be affected by these proposed regulations would include a small number of private, nonprofit organizations. The proposed regulations would not have a significant economic impact on the designated agencies affected because the proposed regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal requirements to ensure the proper expenditure of program funds.

Paperwork Reduction Act of 1980

Sections 370.11, 370.12, 370.13, 370.14, 370.15, 370.16, 370.20, 370.31, 370.40, 370.44, and 370.47 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of

Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h))

A State, through its Governor, must apply to the Secretary for a grant under this program. The Department needs and uses the information in a State's application about a previous year's grant results for program evaluation and monitoring purposes.

Annual public reporting and recordkeeping burden for this collection of information is estimated to average 35 hours for 57 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, room 3002, New Executive Office Building, Washington, DC 20503; Attention: Daniel J. Chenok.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room 3220 Switzer Building, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Assessment of Education Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 370

Administrative practice and procedure, Education, Client assistance, Grant program—education, Grant program—social programs, Reporting and recordkeeping requirement, Vocational rehabilitation.

Dated: October 5, 1993.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.161, Client Assistance Program)

The Secretary proposes to amend title 34 of the Code of Federal Regulations by revising part 370 to read as follows:

PART 370—CLIENT ASSISTANCE PROGRAM

Subpart A—General

Sec.

370.1 What is the Client Assistance Program (CAP)?
370.2 Who is eligible for an award?
370.3 Who is eligible for services?
370.4 What kinds of activities may the Secretary fund?
370.5 What regulations apply?
370.6 What definitions apply?

Subpart B—What Requirements Apply to Redesignation?

370.10 When do the requirements for redesignation apply?
370.11 What requirements apply to a notice of proposed redesignation?
370.12 How does a designated agency preserve its right to appeal a redesignation?
370.13 What are the requirements for a decision to redesignate?
370.14 How does a designated agency appeal a written decision to redesignate?
370.15 What must the Governor of a State do upon receipt of a copy of a designated agency's written appeal to the Secretary?
370.16 How does the Secretary review an appeal of a redesignation?
370.17 When does a redesignation become effective?

Subpart C—How Does a State Apply For a Grant?

370.20 What must be included in a request for a grant?

Subpart D—How Does the Secretary Allocate and Reallocate Funds to a State?

370.30 How does the Secretary allocate funds?
370.31 How does the Secretary reallocate funds?

Subpart E—What Post-Award Conditions Must Be Met by a Designated Agency?

370.40 What are allowable costs?
370.41 What conflict of interest provision applies to employees of a designated agency?
370.42 What access must the CAP be afforded to policy making and administrative personnel?
370.43 What requirement applies to the use of mediation procedures?
370.44 What reporting requirement applies to each designated agency?
370.45 What limitation applies to the pursuit of legal remedies?
370.46 What consultation requirement applies to a Governor of a State?
370.47 When must grant funds be obligated?
370.48 What are the special requirements pertaining to the protection, use, and release of personal information?

Authority: 29 U.S.C. 732, unless otherwise noted.

Subpart A—General

§ 370.1 What is the Client Assistance Program (CAP)?

The purpose of this program is to establish and carry out CAPs that—

(a) Advise and inform clients, client applicants, and individuals with disabilities in the State, especially individuals with disabilities who have traditionally been unserved or underserved by vocational rehabilitation programs, of all services and benefits available to them through programs authorized under the Act and title I of the Americans with Disabilities Act of 1990; and

(b) Assist and advocate for clients and client applicants in their relationships with projects, programs, and facilities providing services under the Act.

(Authority: 29 U.S.C. 732(a))

§ 370.2 Who is eligible for an award?

(a) Any State, through its Governor, is eligible for an award under this part.

(b) The Governor of each State shall designate a public or private agency to conduct the State's CAP under this part.

(c) Except as provided in paragraph (d) of this section, the Governor shall designate an agency that is independent of any agency that provides treatment, services, or rehabilitation to individuals under the Act.

(d) The Governor may, in the initial designation, designate an agency that provides treatment, services, or rehabilitation to individuals with disabilities under the Act if, at any time before February 22, 1984, there was an agency in the State that both—

(1) Was a grantee under section 112 of the Act by serving as a client assistance agency and directly carrying out a CAP; and

(2) Was, at the same time, a grantee under any other provision of the Act.

(e) An agency designated by the Governor of a State to conduct the State's CAP under this part may not award a subgrant to or enter into a contract with an agency that provides services under this Act either to carry

out the CAP or to provide services under the CAP. For purposes of this paragraph, "services under the Act" do not include services and activities carried out under the protection and advocacy program authorized by section 509 of the Act (i.e., the Protection and Advocacy of Individual Rights (PAIR) program, 34 CFR part 381). A designated agency may contract with an entity or individual that does not provide services under the Act to provide services under the CAP.

(Authority: 29 U.S.C. 711(c) and 732(a) and (c)(1)(A))

§ 370.3 Who is eligible for services?

Any individual who applies for or receives services under the Act is eligible for services under the CAP. For purposes of this section, services under the Act do not include services provided under the PAIR program.

(Authority: 29 U.S.C. 732(a))

§ 370.4 What kinds of activities may the Secretary fund?

(a) Funds made available under this part must be used for activities consistent with the purposes of this program, including—

(1) Advising and informing clients, client applicants, and individuals with disabilities in the State, especially individuals with disabilities who have traditionally been unserved or underserved by vocational rehabilitation programs, of—

(i) All services and benefits available to them through programs authorized under the Act, Title I of the Americans with Disabilities Act of 1990, and related Federal and State assistance programs; and

(ii) Their rights in connection with those services and benefits;

(2) Upon the request of a client or client applicant, assisting a client and client applicant in his or her relationship with projects, programs, and facilities that provide services under the Act by engaging in individual or systemic advocacy and pursuing, or assisting them in pursuing, legal, administrative, and other available remedies, if necessary—

(i) To ensure the protection of the rights of a client or client applicant under the Act; and

(ii) To facilitate access by individuals with disabilities and individuals with disabilities who are exiting public school programs to services funded under the Act; and

(3) Providing information to the public concerning the CAP.

(b) In providing assistance and advocacy under this subsection with respect to services under this title, a designated agency may provide the assistance and advocacy with respect to services that are directly related to facilitating the employment of the client or client applicant.

(Authority: 29 U.S.C. 732(a))

§ 370.5 What regulations apply?

The following regulations apply to the CAP:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals and Nonprofit Organizations) applies to the designated agency if the designated agency is not a State agency, local government agency, or Indian tribal organization. As the entity that eventually, if not directly, receives the CAP grant funds, the designated agency is considered a recipient for purposes of part 74.

(2) 34 CFR part 76 (State-Administered Programs) applies to the State and, if the designated agency is a State or local government agency, to the designated agency, except for—

(i) Section 76.103;

(ii) Sections 76.125–76.137;

(iii) Sections 76.300–76.401;

(iv) Section 76.704;

(v) Section 76.734; and

(vi) Section 76.740.

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments) applies to the State and, if the designated agency is a State or local government agency, to the designated agency.

(6) 34 CFR part 81 (General Education Provisions Act—Enforcement) applies to both the State and the designated agency, whether or not the designated agency is the actual recipient of the CAP grant. As the entity that eventually, if not directly, receives the CAP grant funds, the designated agency is considered a recipient for purposes of part 81.

(7) 34 CFR part 82 (New Restrictions on Lobbying).

(8) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(b) The regulations in this part 370.

(c) The regulations in 34 CFR 369.43, 369.46 and 369.48, relating to various conditions to be met by grantees.

(Note: Any funds made available to a State under this program that are transferred by a State to a designated agency do not comprise a subgrant as that term is defined in 34 CFR 77.1. The designated agency is not, therefore, in these circumstances a subgrantee, as that term is defined in that section or in 34 CFR parts 74, 76, or 80.)

(Authority: 29 U.S.C. 711(c) and 732)

§ 370.6 What definitions apply?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Award
EDGAR
Fiscal year
Nonprofit
Private
Public
Secretary

(b) *Other definitions.* The following definitions also apply to this part:

Act means the Rehabilitation Act of 1973, as amended.

Advocacy means pleading an individual's cause or speaking or writing in support of an individual. Advocacy may be formal, as in the case of a lawyer representing an individual in a court of law or in formal administrative proceedings before government agencies (whether State, local or Federal). Advocacy also may be informal, as in the case of a lawyer or non-lawyer representing an individual in negotiations, mediation, or informal administrative proceedings before government agencies (whether State, local or Federal), or as in the case of a lawyer or non-lawyer representing an individual's cause before private entities, organizations, or government agencies (whether State, local or Federal). Advocacy may be on behalf of—

(1) a single individual, in which case it is *individual advocacy;*

(2) more than one individual or a group or class of individuals, in which case it is *systems* (or *systemic*) *advocacy;* or

(3) oneself, in which case it is *self advocacy.*

Class action means a formal legal suit on behalf of a group of individuals filed in a court of law, whether Federal or State, that meets the requirements for a "class action" under Federal or State law.

Client or client applicant means an individual receiving or seeking services under the Act, respectively. However, for purposes of this definition, an individual does not become a client or client applicant merely by receiving "information and referral" from the designated agency. In addition, for purposes of this definition, "services

under the Act" do not include services and activities carried out under the PAIR program.

Designated agency means the agency designated by the Governor under § 370.2 to conduct a client assistance program under this part.

Mediation means the act or process of using an independent third party to act as a mediator, intermediary or conciliator to settle differences or disputes between persons or parties. The third party who acts as a mediator, intermediary or conciliator must be independent of the parties to the dispute and may not be any entity or individual who is connected in any way with the eligible system, with the agency, entity, or individual with whom the individual with a disability has a dispute, or with the individual with a disability or his or her guardian, parent, or other legally authorized representative or advocate (including the individual's advocate from the designated agency). Mediation may involve the use of professional mediators or any other independent third party mutually agreed to by the parties to the dispute.

State means, in addition to each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, The United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Republic of Palau (until the Compact of Free Association takes effect), except for purposes of the allotments under section 112 of the Act, in which case "State" does not mean or include Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Republic of Palau.

(Authority: 29 U.S.C. 711(c) and 732)

Subpart B—What Requirements Apply to Redesignation?

§ 370.10 When do the requirements for redesignation apply?

(a) The Governor may not redesignate the agency designated pursuant to section 112(c) of the Act and § 370.2(b) without good cause and without complying with the requirements of §§ 370.10–370.17.

(b) For purposes of §§ 370.10–370.17, a "redesignation of" or "to redesignate" a designated agency means any change in or transfer of the designation of an agency previously designated by the Governor to conduct the State's CAP to a new or different agency, unit, or organization. A "redesignation of" or "to redesignate" a designated agency includes either the decision by a designated agency to cancel or not to renew its existing contract with another entity with which it has previously contracted to carry out and operate the CAP or the decision by a designated agency to enter into a new contract with another entity to carry out and operate the CAP. Therefore, an agency that is carrying out a State's CAP under a contract with a designated agency is considered a designated agency for purposes of §§ 370.10–370.17.

(c) The requirements for redesignation in §§ 370.10–370.17 apply to any redesignation that is proposed for whatever reason, unless the designated agency finds it necessary, for purposes of complying with § 370.2(e), to cancel or not to renew its existing contract with an agency that provides services under the Act. For purposes of this paragraph, "services under the Act" do not include services and activities carried out under the PAIR program.

(Authority: 29 U.S.C. 711(c) and 732(c)(1)(B))

§ 370.11 What requirements apply to a notice of proposed redesignation?

(a) Prior to any redesignation of the agency that conducts the CAP, the Governor shall give written notice of the proposed redesignation to the designated agency and publish a public notice of the Governor's intention to redesignate. Both the notice to the designated agency and the public notice must include, at a minimum, the following:

(1) The Federal requirements for the CAP (section 112 of the Act).

(2) The goals and function of the CAP.

(3) The name of the current designated agency.

(4) A description of the current CAP and how it is administered.

(5) The reason or reasons for proposing the redesignation, including why the Governor believes good cause exists for the proposed redesignation.

(6) The effective date of the proposed redesignation.

(7) The name of the agency the Governor proposes to administer the CAP.

(8) A description of the system that the redesignated (i.e., new) agency would administer.

(b) The notice to the designated agency must—

(1) Be given at least 30 days in advance of the Governor's written decision to redesignate; and

(2) Advise the designated agency that it has at least 30 days from receipt of the notice of proposed redesignation to respond to the Governor and that the response must be in writing.

(c) The notice of proposed redesignation must be published in a place and manner that provides individuals with disabilities or their representatives and the public with at least 30 days to submit oral or written comments to the Governor.

(d) Following public notice, public hearings concerning the proposed redesignation must be conducted in an accessible format that provides individuals with disabilities or their representatives an opportunity for comment. The Governor shall maintain a written public record of these hearings.

(e) The Governor shall fully consider any public comments before issuing a written decision to redesignate.

(Authority: 29 U.S.C. 711(c) and 732(c)(1)(B))

§ 370.12 How does a designated agency preserve its right to appeal a redesignation?

(a) To preserve its right to appeal a Governor's written decision to redesignate (see § 370.13), a designated agency must respond in writing to the Governor within 30 days after it receives the Governor's notice of proposed redesignation.

(b) The designated agency shall send its response to the Governor by registered or certified mail, return receipt requested, or other means that provides a record that the Governor received the designated agency's response.

(Authority: 29 U.S.C. 711(c) and 732(c)(1)(B))

§ 370.13 What are the requirements for a decision to redesignate?

(a) If, after complying with the requirements of § 370.11, the Governor decides to redesignate the designated agency, the Governor shall provide to the designated agency a written decision to redesignate that includes the rationale for the redesignation. The Governor shall send the written decision to redesignate to the designated agency by registered or certified mail, return receipt requested, or other means that provides a record that the designated agency received the Governor's written decision to redesignate.

(b) If the designated agency submitted to the Governor a timely response to the Governor's notice of proposed redesignation, the Governor shall inform the designated agency that it has at least 15 days from receipt of the Governor's written decision to redesignate to file a formal written appeal with the Secretary.

(Authority: 29 U.S.C. 711(c) and 732(c)(1)(A))

§ 370.14 How does a designated agency appeal a written decision to redesignate?

(a) A designated agency may appeal to the Secretary a Governor's written decision to redesignate only if the designated agency submitted to the Governor a written response to the Governor's notice of proposed redesignation.

(b) To appeal to the Secretary a Governor's written decision to redesignate, a designated agency shall file a formal written appeal with the Secretary within 15 days after the designated agency's receipt of the Governor's written decision to redesignate. The date of filing of the designated agency's written appeal with the Secretary will be determined in a manner consistent with the requirements of 34 CFR 81.12, as amended in 57 FR 56794 (November 30, 1992).

(c) If the designated agency files a written appeal with the Secretary, the designated agency shall send a separate copy of this appeal to the Governor by registered or certified mail, return receipt requested, or other means that provides a record that the Governor received a copy of the designated agency's appeal to the Secretary.

(d) The designated agency's written appeal to the Secretary must state why the Governor has not met the burden of showing that good cause for the redesignation exists or has not met the procedural requirements under §§ 370.11 and 370.13.

(e) The designated agency's written appeal must be accompanied by the designated agency's written response to the Governor's notice of proposed redesignation and may be accompanied by any other written submissions or documentation the designated agency wishes the Secretary to consider.

(f) As part of its submissions under this section, the designated agency may request an informal meeting with the Secretary at which representatives of both parties will have an opportunity to present their views on the issues raised in the appeal.

(Authority: 29 U.S.C. 711(c) and 732(c)(1)(B))

§ 370.15 What must the Governor of a State do upon receipt of a copy of a designated agency's written appeal to the Secretary?

(a) If the designated agency files a formal written appeal in accordance with § 370.14, the Governor shall, within 15 days of receipt of the designated agency's appeal, submit to the Secretary copies of the following:

(1) The written notice of proposed redesignation sent to the designated agency.

(2) The public notice of proposed redesignation.

(3) Transcripts of all public hearings held on the proposed redesignation.

(4) Written comments received by the Governor in response to the public notice of proposed redesignation.

(5) The Governor's written decision to redesignate, including the rationale for the decision.

(6) Any other written documentation or submissions the Governor wishes the Secretary to consider.

(7) Any other information requested by the Secretary.

(b) As part of the submissions under this section, the Governor may request an informal meeting with the Secretary at which representatives of both parties will have an opportunity to present their views on the issues raised in the appeal.

(Authority: 29 U.S.C. 711(c) and 732(c)(1)(B))

§ 370.16 How does the Secretary review an appeal of a redesignation?

(a) If either party requests a meeting under § 370.14(f) or § 370.15(b), the meeting is to be held within 30 days of the submissions by the Governor under § 370.15, unless both parties agree to waive this requirement. The Secretary promptly notifies the parties of the date and place of the meeting.

(b) Within 30 days of the informal meeting permitted under paragraph (a) of this section or, if neither party has requested an informal meeting, within 60 days of the submissions required from the Governor under § 370.15, the Secretary issues to the parties a final written decision on whether the redesignation was for good cause.

(c) The Secretary reviews a Governor's decision based on the record submitted under §§ 370.14 and 370.15 and any other relevant submissions of other interested parties. The Secretary may affirm or, if the Secretary finds that the redesignation is not for good cause, remand for further findings or reverse a Governor's redesignation.

(d) The Secretary sends copies of the decision to the parties by registered or certified mail, return receipt requested, or other means that provide a record of receipt by both parties.

(Authority: 29 U.S.C. 711(c) and 732(c)(1)(B))

§ 370.17 When does a redesignation become effective?

A redesignation does not take effect for at least 15 days following the designated agency's receipt of the Governor's written decision to redesignate or, if the designated agency appeals, for at least 5 days after the Secretary has affirmed the Governor's written decision to redesignate.

(Authority: 29 U.S.C. 711(c) and 732(c)(1)(B))

Subpart C—How Does a State Apply for a Grant?

§ 370.20 What must be included in a request for a grant?

(a) Each State seeking assistance under this part shall submit to the Secretary, in writing, each fiscal year, an application that includes, at a minimum—

(1) The name of the designated agency; and

(2) An assurance that the designated agency meets the independence requirement of section 112(c)(1)(A) of the Act and § 370.2(c), or that the State is exempted from that requirement under section 112(c)(1)(A) of the Act and § 370.2(d).

(b)(1) Each State also shall submit to the Secretary an assurance that the designated agency has the authority to pursue legal, administrative, and other appropriate remedies to ensure the protection of rights of individuals with disabilities who are receiving treatments, services, or rehabilitation under the Act within the State.

(2) The authority to pursue remedies described in paragraph (b)(1) of this section must include the authority to pursue those remedies against the State vocational rehabilitation agency and other appropriate State agencies. The designated agency meets this requirement if it has the authority to pursue those remedies either on its own behalf or by obtaining necessary services, such as legal representation, from outside sources.

(c) Each State also shall submit to the Secretary assurances that—

(1) All entities conducting, administering, operating, or carrying out programs within the State that provide services under the Act to individuals with disabilities in the State will advise all clients and client applicants of the existence of the CAP, the services provided under the program, and how to contact the designated agency;

(2) The designated agency will meet each of the requirements of this part; and

(3) The designated agency will provide the Secretary with the annual report required by section 112(g)(4) of the Act and § 370.44.

(d) To allow a designated agency to receive direct payment of funds under this part, a State must provide to the Secretary, as part of its application for assistance, an assurance that direct payment to the designated agency is not prohibited by or inconsistent with State law, regulation, or policy.

(Authority: 29 U.S.C. 732 (b) and (f))

Subpart D—How Does the Secretary Allocate and Reallocate Funds to a State?

§ 370.30 How does the Secretary allocate funds?

(a) The Secretary allocates the funds available under this part for any fiscal year to the States on the basis of the relative population of each State. The Secretary allocates at least $50,000 to each State, unless the provisions of section 112(e)(1)(D) of the Act, which provides for increasing the minimum allotment, are applicable.

(b) The Secretary allocates $30,000 each to American Samoa, Guam, the Virgin Islands, the Northern Mariana Islands, and the Republic of Palau (except that the Republic of Palau may receive an allotment under this section only until the Compact of Free Association with Palau takes effect), unless the provisions of section 112(e)(1)(D) of the Act are applicable.

(c) Unless prohibited or otherwise provided by State law, regulation, or policy, the Secretary pays to the designated agency, from the State allotment under paragraph (a) or (b) of this section, the amount specified in the State's approved request. Because the designated agency is the eventual, if not the direct, recipient of the CAP funds, 34 CFR parts 74 and 81 apply to the designated agency, whether or not the designated agency is the actual recipient of the CAP grant. However, because it is the State that submits an application for and receives the CAP grant, the State remains the grantee for purposes of 34 CFR parts 76 and 80. In addition, both the State and the designated agency are considered recipients for purposes of 34 CFR Part 81.

(Authority: 29 U.S.C. 732 (b) and (e))

§ 370.31 How does the Secretary reallocate funds?

(a) The Secretary reallocates funds in accordance with section 112(e)(2) of the Act.

(b) A designated agency shall inform the Secretary at least 90 days before the end of the fiscal year for which CAP funds were received whether the designated agency is making available for reallotment any of those CAP funds that it will be unable to obligate in that fiscal year.

(Authority: 29 U.S.C. 711(c) and 732(e)(2))

Subpart E—What Post-Award Conditions Must Be Met by a Designated Agency?

§ 370.40 What are allowable costs?

(a) If the designated agency is a State or local government agency, the designated agency shall apply the cost principles in accordance with 34 CFR 80.22(b).

(b) If the designated agency is a private nonprofit organization, the designated agency shall apply the cost principles in accordance with subpart Q of 34 CFR part 74.

(c) In addition to those allowable costs established in EDGAR, and consistent with the program activities listed in § 370.4, the cost of travel in connection with the provision to a client or client applicant of assistance under this program is allowable. The cost of travel includes the cost of travel for an attendant if the attendant must accompany the client or client applicant.

(d) The State and the designated agency are accountable, both jointly and severally, to the Secretary for the proper use of funds made available under this part. However, the Secretary may choose to recover funds under the procedures in 34 CFR part 81 from either the State or the designated agency, or both, depending on the circumstances of each case.

(e) Expenditures in a particular fiscal year that are not reported as costs charged to the CAP by the designated agency on its financial status reports prior to the commencement of an audit or compliance review for that year may not be used as an allowable cost to offset any costs disallowed in a notice of disallowance decision or preliminary departmental decision based on that audit or compliance review.

(Authority: 29 U.S.C. 711(c) and 732(c)(3))

§ 370.41 What conflict of interest provision applies to employees of a designated agency?

(a) Except as permitted by paragraphs (b) and (c) of this section, no employee of a designated agency, while so employed, shall serve concurrently as a staff member of, consultant to, or in any other capacity within, any other rehabilitation project, program, or facility receiving assistance under the Act in the State, including a designated agency that is not subject to the independence requirement of section 112(c)(1) of the Act, as implemented by § 370.2(d) of this part.

(b) Paragraph (a) of this section does not prohibit a designated agency from employing an individual receiving a traineeship under section 302 of the Act during the traineeship.

(c) Paragraph (a) of this section does not prohibit the employment of individuals by a designated agency that is also participating in the PAIR program.

(Authority: 29 U.S.C. 732(g)(1))

§ 370.42 What access must the CAP be afforded to policy making and administrative personnel?

The CAP must be afforded reasonable access to policy making and administrative personnel in State and local rehabilitation programs, projects, and facilities. One way in which the CAP may be provided that access would be to include the director of the designated agency among the individuals to be consulted on matters of general policy development and implementation, as required by section 101(a) (18) and (23) of the Act.

(Authority: 29 U.S.C. 721(a) (18) and (23) and 732(g)(2))

§ 370.43 What requirement applies to the use of mediation procedures?

Each designated agency shall implement procedures designed to ensure that, to the maximum extent possible, good faith negotiations and mediation procedures are used before resorting to formal administrative or legal remedies.

(Authority: 29 U.S.C. 732(g)(3))

§ 370.44 What reporting requirement applies to each designated agency?

In addition to the program and fiscal reporting requirements in EDGAR that are applicable to this program, each designated agency shall submit to the Secretary, no later than 90 days after the end of each fiscal year, an annual report on the operation of its CAP during the previous year, including a summary of the work done and the uniform statistical tabulation of all cases handled by the program. The annual report must contain information on—

(a) The number of requests for assistance under the CAP that the designated agency received;

(b) The number of these requests the designated agency was unable to serve;

(c) The reasons that the designated agency was unable to serve all of these requests; and

(d) Any other information that the Secretary may require.

(Authority: 29 U.S.C. 732(g) (4) and (5))

§ 370.45 What limitation applies to the pursuit of legal remedies?

A designated agency may not bring any class action in carrying out its responsibilities under this part.

(Authority: 29 U.S.C. 732(d))

§ 370.46 What consultation requirement applies to a Governor of a State?

In designating a client assistance agency under § 370.2, redesignating a client assistance agency under § 370.10(a), and carrying out the other provisions of this part, the Governor

shall consult with the director of the State vocational rehabilitation agency (or, in States with both a general agency and an agency for the blind, the directors of both agencies), the head of the developmental disability protection and advocacy agency, and representatives of professional and consumer organizations serving individuals with disabilities in the State.

(Authority: 29 U.S.C. 732(c)(2))

§ 370.47 When must grant funds be obligated?

(a) Any funds appropriated for a fiscal year to carry out the CAP that are not expended or obligated by the designated agency prior to the beginning of the succeeding fiscal year remain available for obligation by the designated agency during the succeeding fiscal year in accordance with 34 CFR 76.705–76.707.

(b) A designated agency shall inform the Secretary within 90 days after the end of the fiscal year for which the CAP funds were made available whether the designated agency carried over to the succeeding fiscal year any CAP funds that it was unable to obligate by the end of the fiscal year.

(Authority: 29 U.S.C. 718)

§ 370.48 What are the special requirements pertaining to the protection, use, and release of personal information?

(a) All personal information about individuals served by any designated agency under this part, including lists of names, addresses, photographs, and records of evaluation, must be held strictly confidential.

(b) The designated agency's use of information and records concerning individuals must be limited only to purposes directly connected with the CAP, including program evaluation activities. Except as provided in paragraphs (c) and (e) of this section, this information may not be disclosed, directly or indirectly, other than in the administration of the CAP, unless the consent of the individual to whom the information applies, or his or her guardian, parent, or other legally authorized representative or advocate (including the individual's advocate from the designated agency), has been obtained in writing. A designated agency may not produce any report, evaluation, or study that reveals any personally identifying information without the written consent of the individual or his or her representative.

(c) Except as limited in paragraphs (d) and (f) of this section, the Secretary or other Federal or State officials responsible for enforcing legal requirements are to have complete access to all—

(1) Records of the designated agency that receives funds under this program; and

(2) All individual case records of clients served under this part without the consent of the client.

(d) For purposes of any periodic audit, report, or evaluation of the performance of the CAP established or assisted under this part, the Secretary does not require the designated agency to disclose the identity of, or any other personally identifiable information related to, any individual requesting assistance under the CAP.

(e) Notwithstanding paragraph (d) of this section, if an audit, monitoring review, State plan assurance review, evaluation or other investigation has already produced independent and reliable evidence that there is probable cause to believe that the designated agency has violated its legislative mandate or misused Federal funds, the designated agency shall disclose, if the Secretary so requests, the identity of, or any other personally identifiable information (i.e., name, address, telephone number, social security number, or any other official code or number by which an individual may be readily identified) related to, any individual requesting assistance under the CAP.

(f) In addition to the protection afforded by paragraph (d) of this section, the right of a person or designated agency not to produce documents or disclose information is governed by the common law of privileges, as interpreted by the courts of the United States.

(Authority: 29 U.S.C. 711(c) and 732(g)(6))

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federal register

Friday
October 8, 1993

Part IX

Department of Transportation

Federal Aviation Administration

Effects of Changes of Aircraft Flight Patterns Over New Jersey; Extension of Comment Period; Notice

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 26987]

Draft Environmental Impact Statement; Effects of Changes of Aircraft Flight Patterns Over the State of New Jersey; Extension of Comment Period

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Extension of the comment period.

SUMMARY: On November 12, 1992, the FAA issued a Draft Environmental Impact Statement (DEIS) to assess the impact of changes in aircraft flight patterns caused by the implementation of the Expanded East Coast Plan (EECP) over the State of New Jersey for public review and comment. The DEIS evaluates the EECP and alternatives to its continued use.

In December, 1992, the FAA initiated an extension of the public comment period from January 22, 1993 to March 5, 1993 because of the technical complexity of the DEIS. On March 15, 1993 the FAA reopened the comment period through June 14, 1993 at the request of the New Jersey Citizens for Environmental Research (NJCER) and a joint request from the Governor of New Jersey and the Chairman of the Port Authority of New York and New Jersey.

In response to a request from NJCER, the FAA further extended the comment period through August 6. These parties requested another extension and the FAA reopened the comment period from August 10 through October 8, 1993.

In response to a fourth request from the NJCER, FAA has decided to extend the comment period an additional 45 days through November 23, 1993.

DATES: The comment period is extended through November 23, 1993.

ADDRESSES: Written comments on the document should be addressed to: Federal Aviation Administration, Office of the Chief Counsel: Docket Number 26987, 800 Independence Avenue SW., Washington, DC 20591.

SUPPLEMENTARY INFORMATION: The FAA will consider and respond to all comments directly within the scope of the DEIS. The most useful comments are those which provide facts and analyses to support the reviewer's recommendations or conclusions. The FAA will consider comments received after the close of the comment period to the extent practicable. The FAA will issue a final EIS that includes corrections, clarifications and responses to comments on the DEIS.

Issued in Washington, DC, on October 6, 1993.

Bill F. Jeffers,

Deputy Associate Administrator for Air Traffic.

[FR Doc. 93–24953 Filed 10–6–93; 2:45 pm]

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federal register

Friday
October 8, 1993

Part X

The President

Proclamation 6605—National Disability Employment Awareness Month, 1993

Federal Register
Vol. 58, No. 194
Friday, October 8, 1993

Presidential Documents

Title 3—

The President

Proclamation 6605 of October 6, 1993

National Disability Employment Awareness Month, 1993

By the President of the United States of America

A Proclamation

The United States has long been a champion of the civil rights of individuals, and it is only natural that we now serve in the forefront of efforts to ensure equal opportunity for persons with disabilities. Inspired by the enactment of the Americans with Disabilities Act (ADA) on July 26, 1990, other nations have begun to reexamine the challenges faced by their citizens with disabilities. The ADA, which prohibits discrimination in employment, public accommodations, government services, transportation, and communications, provides a practical model for people everywhere to ensure that individuals with disabilities will not be excluded from the social, cultural, and economic mainstream.

Together we have begun shifting disability policy in America from exclusion to inclusion; from dependence to independence; from paternalism to empowerment. And we have made a firm commitment—a national pledge of civil rights for people with disabilities—to enforce the Americans with Disabilities Act. We cannot be satisfied until all citizens with disabilities receive equal treatment under the law, whether in the workplace, in schools, in government, or in the courts. We will not be satisfied as a Nation until we have fully implemented the laws that offer equal opportunity for Americans with disabilities, including the ADA and the Rehabilitation Act of 1973.

We do not have a single person to waste. Citizens with disabilities want to lead full, independent, and productive lives. They want to work; they want to pay their fair share of taxes; they want to be self-supporting citizens. America must enable the 43 million talented Americans with disabilities to contribute by offering them the individualized training and education we offer everyone else.

Our Nation can ill afford to waste this vast and only partially tapped source of knowledge, skills, and talent. In addition to being costly—over $300 billion is expended annually at the Federal, State, and local levels to financially support potentially independent individuals—this waste of human ability cannot be reconciled with our tradition of individual dignity, self-reliance, and empowerment. As we work to achieve thorough and harmonious implementation of the Americans with Disabilities Act, we will open the doors of opportunity for millions of people, thereby expanding, not only the ranks of the employed, but also the ranks of consumers. These individuals and their families will thus be able to pursue the real American Dream.

I congratulate the small business and industry leaders, labor leaders, and community leaders from all walks of life who are working together to implement the ADA and the Rehabilitation Act, and I commit the resources and cooperation of the Federal Government toward that effort. Our ongoing progress attests to the fundamental vitality and openness of our free enterprise system and to our abiding commitment to civil rights for all. Every American needs a chance to contribute. Our work is far from finished. America needs the continued leadership of every citizen to fulfill the promise of the Americans with Disabilities Act and related laws.

The Congress, by joint resolution approved August 11, 1945, as amended (36 U.S.C. 155) has called for the designation of October of each year as "National Disability Employment Awareness Month." This month is a special time for all Americans to recognize the tremendous potential of citizens with disabilities and to renew our commitment to full inclusion and equal opportunity for them, as for every citizen.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim October 1993 as National Disability Employment Awareness Month. I call on all Americans to observe this month with appropriate programs and activities that affirm our determination to fulfill both the letter and the spirit of the Americans with Disabilities Act.

IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of October, in the year of our Lord nineteen hundred and ninety-three, and of the Independence of the United States of America the two hundred and eighteenth.

William J. Clinton

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Reader Aids

Federal Register

Vol. 58, No. 194

Friday, October 8, 1993

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202–523–5227
Public inspection desk	523–5215
Corrections to published documents	523–5237
Document drafting information	523–3187
Machine readable documents	523–3447

Code of Federal Regulations

Index, finding aids & general information	523–5227
Printing schedules	523–3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523–6641
Additional information	523–5230

Presidential Documents

Executive orders and proclamations	523–5230
Public Papers of the Presidents	523–5230
Weekly Compilation of Presidential Documents	523–5230

The United States Government Manual

General information	523–5230

Other Services

Data base and machine readable specifications	523–3447
Guide to Record Retention Requirements	523–3187
Legal staff	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (PLUS)	523–6641
TDD for the hearing impaired	523–5229

ELECTRONIC BULLETIN BOARD

Free **Electronic Bulletin Board** service for Public Law numbers, and Federal Register finding aids. 202–275–1538, or 275–0920

FEDERAL REGISTER PAGES AND DATES, OCTOBER

51211–51664.....1
51665–51756.....4
51757–51972.....5
51973–52206.....6
52207–52396.....7
52397–52628.....8

CFR PARTS AFFECTED DURING OCTOBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Administrative Orders:

Memorandums:
August 19, 1993.....52397
September 30, 1993.....52391
October 1, 1993.....52393

Notices:
September 30, 1993.....51563

Executive Orders:
11145 (Continued by EO 12869).....51751
11183 (Continued by EO 12869).....51751
11287 (Continued by EO 12869).....51751
11776 (Continued by EO 12869).....51751
12002 (See EO 12867).....51747
12131 (Continued by EO 12869).....51751
12196 (Continued by EO 12869).....51751
12214 (See EO 12867).....51747
12216 (Continued by EO 12869).....51751
12291 (Revoked by EO 12866).....51735
12345 (Continued by EO 12869).....51751
12367 (Continued by EO 12869).....51751
12382 (Continued by EO 12869).....51751
12498 (Revoked by EO 12866).....51735
12675 (Revoked in part EO 12869).....51751
12687 (Revoked by EO 12869).....51751
12696 (Revoked by EO 12869).....51751
12700 (See EO 12869).....51751
12720 (Revoked by EO 12869).....51751
12730 (See EOs 12867, 12868).....51747, 51749
12735 (Revoked by EO 12867; See EO 12868).....51747, 51749
12774 (Superseded by EO 12869).....51751
12775 (See notice of September 30).....51563
12779 (See notice of September 30).....51563
12792 (Revoked by EO 12869).....51751
12813 (Revoked by EO 12869).....51751
12853 (See notice of September 30).....51563
12866.....51735
12867.....51747
12868.....51749
12869.....51751
12870.....51753
12871.....52201

Proclamations:
6598.....51559
6599.....51561
6600.....51721
6601.....51723
6602.....52205
6603.....52387
6604.....52389
6605.....52627

Presidential Determinations:
No. 93–39 of September 17, 1993.....51973
No. 93–40 of September 28, 1993.....51975
No. 93–41 of September 29, 1993.....51977
No. 93–43 of September 30, 1993.....52207
No. 93–44 of September 30, 1993.....52209
No. 93–45 of September 30, 1993.....52211
No. 94–1 of October 1, 1993.....52213

5 CFR

532.....51211
591.....51565

Proposed Rules:
2502.....51255
2504.....51256

7 CFR

2.....51211
246.....51566
300.....52399
301.....51979, 51982
906.....52400
910.....52401
967.....52402
1002.....51982
1004.....52404, 52405
1205.....52215
1211.....51566
1427.....51982
1477.....51757
1478.....51757

Proposed Rules:
1413.....51934

9 CFR

Proposed Rules:
82.....52240
317.....51581
318.....51581

10 CFR

19.....52406
30.....52406
40.....52406
50.....52406
60.....52406
61.....52406
70.....52406
72.....51762, 52406
150.....52406

Proposed Rules:
73.....52035

11 CFR

Proposed Rules:
100.....52040
113.....52040

12 CFR

574.....52140
618.....51993

13 CFR

121.....52415

Proposed Rules:
121.....52452

14 CFR

23.....51970
39.....51212, 51215, 51770, 51771, 52220
71.....51773, 52140
91.....51966, 52140
97.....51774, 51776

Proposed Rules:
39.....51583, 51585, 51587, 51589, 51793, 52041, 52240, 52243
71.....51256, 51257
91.....51938
121.....51938, 51944
125.....51938
129.....51944
135.....51938, 51944

15 CFR

773.....52166, 52168
778.....52166
799.....52166, 52169

17 CFR

200.....52416
203.....52416
240.....52416
250.....51488
259.....51488

Proposed Rules:
250.....51508

18 CFR

35.....51217, 51777
38.....51777
141.....52420
292.....51777
293.....51777
375.....51222
382.....51777

Proposed Rules:
35.....51259

19 CFR

Proposed Rules:
7.....52246
10.....52246
148.....52246

20 CFR

404.....52346
416.....52346

Proposed Rules:
416.....52458, 52464
655.....52152

21 CFR

172.....52221
176.....51994
522.....52222
821.....52440
864.....51570

Proposed Rules:
103.....52042
812.....52142, 52144
813.....52142
1301.....52246
1311.....52246

23 CFR

Proposed Rules:
660.....51794

24 CFR

511.....52566
888.....51410
905.....51952
965.....51952

Proposed Rules:
92.....52560
135.....52534
219.....52560
570.....52560
572.....52560
574.....52560
576.....52560
583.....52560
700.....52560
889.....52560
890.....52560
905.....51261, 52560
961.....52560
963.....52560
990.....51261

26 CFR

1.....51571
602.....51571

27 CFR

Proposed Rules:
24.....52222

28 CFR

2.....51779
11.....51223
51.....51225

29 CFR

Proposed Rules:
507.....52152
1609.....51268

30 CFR

917.....51225
950.....52232

Proposed Rules:
253.....52059
700.....52374
701.....52374
705.....52374
706.....52374
715.....52374
716.....52374
785.....52374
825.....52374
870.....52374

31 CFR

Proposed Rules:
103.....51269

32 CFR

40.....51780
80.....51996
86.....52010
199.....51227
706.....51241

33 CFR

2.....51726
3.....51726
100.....51242, 52440
117.....52441
165.....51243, 52442
175.....51576
181.....51576

Proposed Rules:
117.....52466
126.....51906
127.....51906
187.....51920

34 CFR

642.....51518
645.....51518
646.....51518
668.....52194
674.....52194
675.....52194
676.....52194
682.....52194
690.....52194

Proposed Rules:
370.....52414
386.....52606
668.....51712

38 CFR

3.....52017
4.....52017
21.....51780, 51781

Proposed Rules:
3.....51798
17.....51799

40 CFR

52.....52237
61.....51784
300.....52018
258.....51536
271.....51244
372.....51785
721.....51672, 51694

Proposed Rules:
52.....51591, 51593, 52467
89.....51595

42 CFR

435.....51408
436.....51408
440.....51408

Proposed Rules:
440.....51288
441.....51288

43 CFR

37.....51550

Proposed Rules:
4700.....51297

Public Land Orders:
6998.....52238
6999.....52238

44 CFR

64.....51576, 52019

Proposed Rules:
67.....51598

46 CFR

160.....51576

Proposed Rules:
10.....51408
12.....51408
30.....52598
31.....52598
32.....52598
67.....51298
585.....52248

47 CFR

1.....51246
15.....51247
73.....51250, 51578, 51579, 51787
74.....51250
87.....52021
90.....51251

Proposed Rules:
15.....51299
36.....52254
73.....51603, 51799
74.....52256
90.....51299

48 CFR

501.....52442
503.....52442
507.....52442
508.....52442
509.....52442
511.....52442
514.....52442
515.....52442
519.....52442
522.....52442
525.....52442
528.....52442
529.....52442
532.....52442
536.....52442
542.....52442
543.....52442
552.....52442
570.....52442
1816.....52446
1852.....52446

49 CFR

107.....51524
171.....51524
172.....51524
173.....51524
174.....51524
175.....51524
176.....
177.....
178.....
179.....
180.....
571.....
1002.....
1017.....
1018.....
1312.....
1313.....
1314.....

176.....51524
177.....51524
178.....51524
179.....51524
180.....51524
571.....51788, 52021
1002.....52027
1017.....52027
1018.....52027
1312.....52027
1313.....52027
1314.....52027

Proposed Rules:
23.....52050
172.....52574
173.....52574
179.....52574
390.....51800
1063.....51603
1105.....51800
1121.....51800
1152.....51800

50 CFR

17.....52027, 52031
229.....51788
301.....51253
642.....51579, 51789
663.....52031
672.....51791, 52032
675.....51253, 52033, 52451

Proposed Rules:
17.....51302, 51604, 52058, 52059, 52063
52.....51270, 51279
641.....52063, 52073, 52474
651.....52073

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last List October 6, 1993

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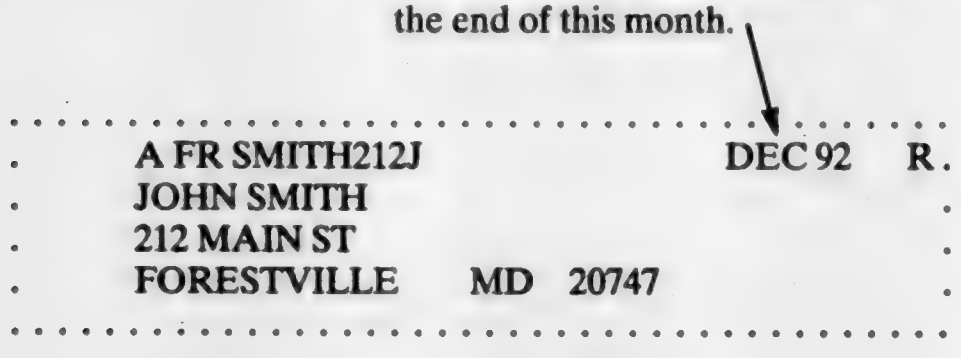

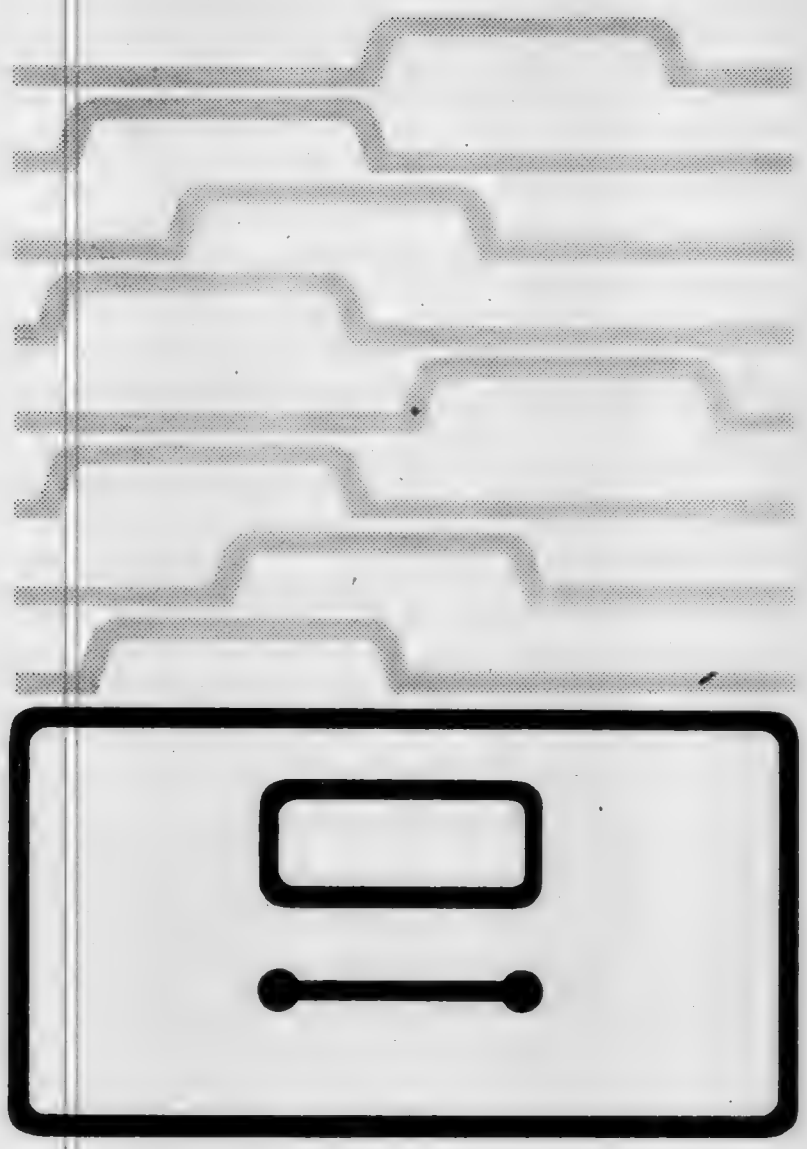

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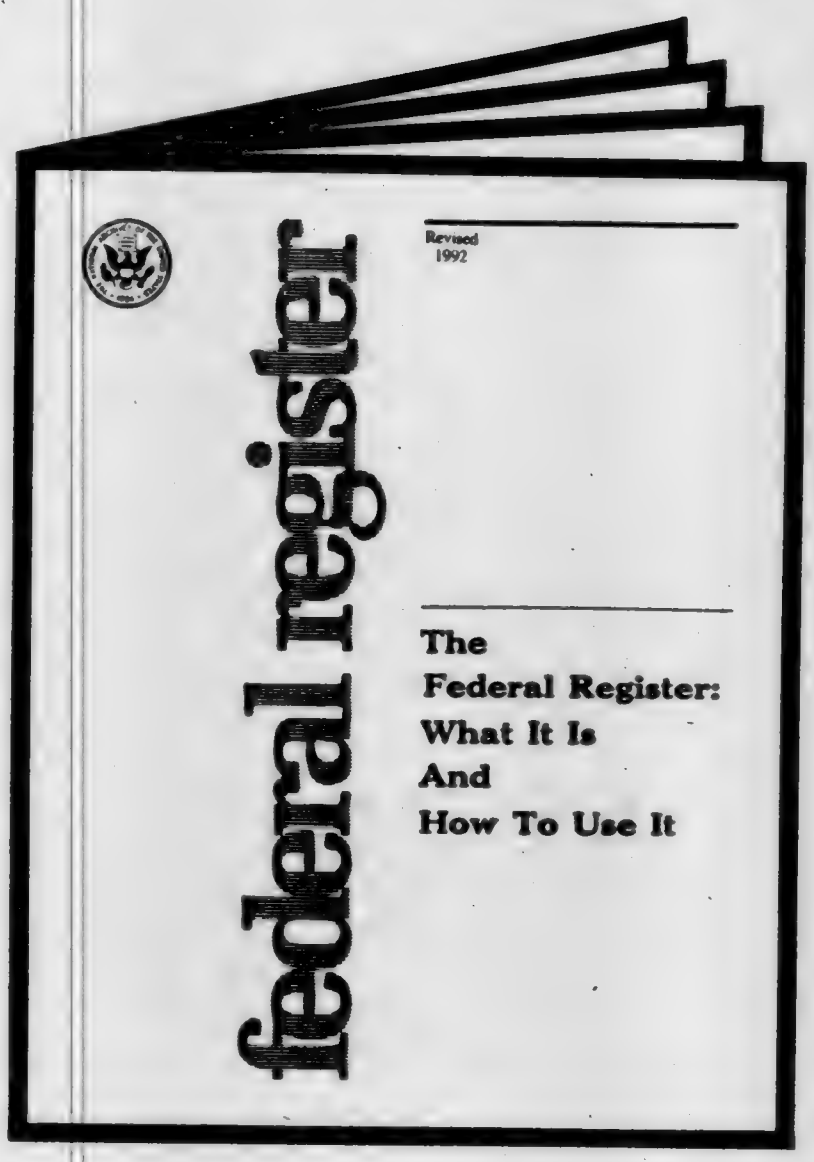

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Contents

Federal Register

Vol. 58, No. 195

Tuesday, October 12, 1993

Agriculture Department
See Commodity Credit Corporation
See Farmers Home Administration
See Food Safety and Inspection Service
See Forest Service
See Rural Electrification Administration
NOTICES
Import quotas and fees:
Meat import limitations; quarterly estimates, 52742

Army Department
See Engineers Corps
NOTICES
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Spread spectrum multiplexed noise codes and methods to eliminate interference, etc., 52747

Centers for Disease Control and Prevention
NOTICES
Prevention of tuberculosis transmission in health care facilities; guidelines availability and comment request, 52810

Children and Families Administration
NOTICES
Meetings:
Researchers and evaluators for family preservation, family support, and child welfare, 52781

Commerce Department
See Foreign-Trade Zones Board
See International Trade Administration
See National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities under OMB review, 52743

Commodity Credit Corporation
PROPOSED RULES
Loan and purchase programs:
Rice (1994); acreage reduction, 52686

Commodity Futures Trading Commission
RULES
Conflict of interests, 52637, 52656

Comptroller of the Currency
PROPOSED RULES
Risk-based capital standards:
Interest rate risk
Correction, 52808

Defense Department
See Army Department
See Engineers Corps
See Navy Department
RULES
Civil defense:
Military support to civil authorities (MSCA), 52667

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Ramirez-Gonzalez, Nelson, M.D., 52787

Employment and Training Administration
NOTICES
Adjustment assistance:
Agrico Chemical Co., 52789
G&L Machine, 52789
Pictsweet Frozen Foods, 52789
Federal-State unemployment compensation program:
Unemployment insurance program letters—
Federal unemployment insurance law interpretation, 52790
Nonimmigrant aliens employed as registered nurses; attestations by facilities; list, 52793

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Natural gas exportation and importation:
Valero Industrial Gas, L.P., 52757

Engineers Corps
NOTICES
Water resource development projects; recreational user fees, 52747

Environmental Protection Agency
RULES
Hazardous waste program authorizations:
Arkansas, 52674
New Mexico, 52677
Oklahoma, 52679
NOTICES
Agency information collection activities under OMB review, 52757
Pesticide, food, and feed additive petitions:
Sandoz Agro, Inc., 52757

Executive Office of the President
See Presidential Documents

Farm Credit Administration
PROPOSED RULES
Farm credit system:
Funding and fiscal affairs, loan policies and operations, and funding operations, 52701

Farmers Home Administration
RULES
Program regulations:
NonProgram loans; uniform handling, 52644

Federal Aviation Administration
RULES
VOR Federal airways; correction, 52808
PROPOSED RULES
Airworthiness directives:
de Havilland, 52714
McDonnell Douglas, 52717

Airworthiness standards:
Special conditions—
Cessna Model 526 airplane, 52702
NOTICES
Passenger facility charges; applications, etc.:
Minot International Airport, ND, 52800

Federal Communications Commission
PROPOSED RULES
Radio stations; table of assignments:
Arkansas, 52735
Florida, 52734
Hawaii, 52733
Illinois, 52734
Kentucky, 52733
Pennsylvania, 52735

Federal Deposit Insurance Corporation
PROPOSED RULES
Risk-based capital:
Interest rate risk
Correction, 52808

Federal Election Commission
PROPOSED RULES
Presidential nominating conventions; publicly financed; hearing, 52700

Federal Energy Regulatory Commission
RULES
Natural Gas Policy Act:
Outer Continental Shelf Lands Act; implementation; open access, nondiscriminatory transportation of natural gas on OCS, 52660
NOTICES
Electric rate, small power production, and interlocking directorate filings, etc.:
PacifiCorp et al., 52748
Meetings; Sunshine Act, 52805
Applications, hearings, determinations, etc.:
Algonquin Gas Transmission Co., 52749, 52750
ANR Pipeline Co., 52750
Arkla Energy Resources Co., 52751
East Tennessee Natural Gas Co., 52751
El Paso Natural Gas Co., 52751
Koch Gateway Pipeline Co., 52752
Niagara Mohawk Power Corp., 52752
Northern Natural Gas Co., 52753, 52754
Pacific Gas Transmission Co., 52755
Panhandle Eastern Pipeline Co., 52755
Texas Eastern Transmission Corp., 52755, 52756
Trunkline Gas Co. et al., 52756
Viking Gas Transmission Co., 52756

Federal Highway Administration
RULES
Engineering and traffic operations:
National bridge inspection standards; frequency of inspection and inventory, 52663

Federal Housing Finance Board
RULES
Federal home loan bank system:
Membership procedures
Reporting and recordkeeping requirements; correction, 52808

Federal Maritime Commission
NOTICES
Freight forwarder licenses:
U.S. Atlantic and Gulf/Hispaniola Steamship Freight Association and U.S. Atlantic and Gulf/Southeastern Caribbean Freight Association, 52758

Federal Reserve System
PROPOSED RULES
Risk-based capital:
Interest rate risk
Correction, 52808
NOTICES
Applications, hearings, determinations, etc.:
Atlantic Community Bancorp, Inc., et al., 52758
Chemical Banking Corp., 52759
Dai-Ichi Kangyo Bank, Ltd., 52760
DFC Acquisition Corp. II, 52760
Keystone Financial, Inc., et al., 52761
Steinberg, Dr. William, et al., 52761

Federal Retirement Thrift Investment Board
NOTICES
Meetings; Sunshine Act, 52806

Federal Trade Commission
NOTICES
Prohibited trade practices:
Diet Center, Inc., 52761
Keds Corp., 52767
Nutri/System, Inc., 52769
Physicians Weight Loss Centers of America, Inc., et al., 52775

Federal Transit Administration
RULES
Charter services:
Government, civic, charitable, and other community activities; transit needs; demonstration program
Correction, 52684
NOTICES
Environmental statements; availability, etc.:
Clackamas and Multnomah counties, OR, and Clark County, WA, 52800
Transfer of federally assisted land or facility:
Santa Clara County District, CA, 52801

Financial Management Service
See Fiscal Service

Fiscal Service
NOTICES
Surety companies acceptable on Federal bonds:
Midwestern Indemnity Co., 52802

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Northern copperbelly water snake, etc., 52740

Food and Drug Administration
PROPOSED RULES
Food additives:
Substances used in food-contact articles; regulation threshold, 52719
Medical devices:
Premarket approval applications; temporary suspension of approval, 52729

Food Safety and Inspection Service
RULES
Meat and poultry inspection:
Raw meat and poultry products labeling; mandatory safe handling statements, 52856

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
New York
Bally, Inc.; shoe and accessory distribution/processing facility, 52743

Forest Service
NOTICES
Environmental statements; availability, etc.:
Erambert and Black Creek Seed Orchards, National Forests, MS, 52743
Idaho Panhandle National Forests, ID, 52742

Health and Human Services Department
See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration
See Health Resources and Services Administration
See Social Security Administration

Health Resources and Services Administration
NOTICES
National vaccine injury compensation program:
Health insurance policy; average cost revision, 52782

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See Minerals Management Service
See Surface Mining Reclamation and Enforcement Office

International Trade Administration
NOTICES
Antidumping:
Uranium from—
Kazakhstan et al., 52744
Antidumping and countervailing duties:
Electrical conductor aluminum redraw rod from—
Venezuela, 52743

International Trade Commission
NOTICES
Meetings; Sunshine Act, 52806

Interstate Commerce Commission
NOTICES
Meetings; Sunshine Act, 52807
Rail carriers:
Waybill data; release for use, 52787

Justice Department
See Drug Enforcement Administration

Labor Department
See Employment and Training Administration
See Occupational Safety and Health Administration

Land Management Bureau
RULES
Public land orders:
Alaska, 52683
New Mexico, 52682
Utah, 52684
NOTICES
Closure of public lands:
New Mexico, 52786
Geothermal resource areas:
Idaho, 52786, 52787

Minerals Management Service
PROPOSED RULES
Outer Continental Shelf; oil, gas, and sulfur operations:
Archaeological resource surveys and reports on Outer Continental Shelf lease tracts, 52731

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Summer flounder; correction, 52685
NOTICES
Meetings:
New England Fishery Management Council, 52746
Pacific Fishery Management Council, 52746
Permits:
Marine mammals, 52746

Navy Department
NOTICES
Environmental statements; availability, etc.:
Base realignment and closures—
Naval Training Center, Great Lakes, IL, 52748
Meetings:
Chief Naval Operations Executive Panel task forces, 52748

Nuclear Regulatory Commission
NOTICES
Applications, hearings, determinations, etc.:
Army Materials Technology Laboratory, 52798
Georgia Power Co., 52796
University of—
Kansas, 52798

Occupational Safety and Health Administration
NOTICES
Nationally recognized testing laboratories, etc.:
GTE TestMark Laboratories, 52795

Personnel Management Office
NOTICES
Meetings:
Federal Salary Council, 52799

Presidential Documents
ADMINISTRATIVE ORDERS
Ireland and Northern Ireland; contributions to international fund (Presidential Determination No. 93–42 of September 30, 1993), 52629

Prospective Payment Assessment Commission
NOTICES
Meetings, 52799

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Resources and Services Administration

Rural Electrification Administration
RULES
Electric and telephone loans:
Borrower investments, 52639
PROPOSED RULES
Rural development:
Rural economic development loan and grant program, 52688

Small Business Administration
NOTICES
Disaster loan areas:
Missouri, 52799
North Dakota, 52799
Interest rates; quarterly determinations, 52799

Social Security Administration
NOTICES
Privacy Act:
Systems of records, 52782

Surface Mining Reclamation and Enforcement Office
RULES
Permanent program and abandoned mine land reclamation plan submissions:
Virginia, 52666

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Federal Transit Administration
PROPOSED RULES
Americans with Disabilities Act; implementation:
Transportation for individuals with disabilities—
Over-the-road buses; accessibility, 52735

Treasury Department
See Comptroller of the Currency
See Fiscal Service
NOTICES
Meetings:
Debt Management Advisory Committee, 52802

United States Information Agency
NOTICES
Senior Executive Service:
Performance Review Board; membership, 52802

Veterans Affairs Department
NOTICES
Agency information collection activities under OMB review, 52803, 52804

Separate Parts In This Issue

Part II
Department of Health and Human Services, Centers for Disease Control and Prevention, 52810

Part III
Department of Agriculture, Food Safety and Inspection Service, 52856

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free Electronic Bulletin Board service for Public Law numbers and Federal Register finding aids is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Administrative Orders:
Presidential Determinations:
No. 93–42 of September 30, 1993 52629
Executive Orders:
3406 (Revoked in part by PLO 7001) 52683
5327 (Revoked in part by PLO 7002) 52684

5 CFR
Ch. XLI 52637

7 CFR
1744 52639
1900 52644
1910 52644
1951 52644
1955 52644
1962 52644
1965 52644
Proposed Rules:
1413 52686
1703 52688

9 CFR
317 52856
381 52856

11 CFR
Proposed Rules:
107 52700
114 52700
9008 52700

12 CFR
933 52808
Proposed Rules:
3 52808
208 52808
325 52808
615 52701

14 CFR
71 52808
Proposed Rules:
23 52702
39 (2 documents) 52714, 52717

17 CFR
140 52656

18 CFR
284 52660

21 CFR
Proposed Rules:
6 52719
25 52719
170 52719
171 52719
174 52719
814 52729

23 CFR
650 52663

30 CFR
946 52666
Proposed Rules:
250 52731
256 52731
280 52731
281 52731

32 CFR
186 52667

40 CFR
272 (3 documents) 52674, 52677, 52679

43 CFR
Public Land Orders:
4522 (Revoked in part by PLO 7002) 52684
7000 52682
7001 52683
7002 52684

47 CFR
Proposed Rules:
73 (6 documents) 52733, 52734, 52735

49 CFR
604 52684
Proposed Rules:
37 52735

50 CFR
625 52685
Proposed Rules:
17 52740

Federal Register
Vol. 58, No. 195
Tuesday, October 12, 1993

Presidential Documents

Title 3—

The President

Presidential Determination No. 93–42 of September 30, 1993

Certification To Permit U.S. Contributions to the International Fund for Ireland

Memorandum for the Secretary of State

Pursuant to Section 5(c) of the Anglo-Irish Agreement Support Act of 1986 (P.L. 99–415), I hereby determine and certify that: (1) the Board of the International Fund for Ireland as established pursuant to the Anglo-Irish Agreement of November 15, 1985, is, as a whole, broadly representative of the interests of the communities in Ireland and Northern Ireland; and (2) disbursements from the International Fund (a) will be distributed in accordance with the principle of equality of opportunity and nondiscrimination in employment, without regard to religious affiliation; and (b) will address the needs of both communities in Northern Ireland.

You are authorized and directed to transmit this determination and certification to the Congress, together with the Memorandum of Explanation, and to publish it in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, September 30, 1993.

Memorandum of Explanation for Certification of the Fiscal Years 1992 and 1993 U.S. Contribution to the International Fund for Ireland

I. Introduction

This report has been prepared to comply with legislative requirements associated with the Anglo-Irish Agreement Support Act of 1986, Public Law 99–415 ("the Act").

Section 5(c) of the Act requires that each fiscal year, prior to contributions to the International Fund for Ireland (IFI), the President certify to the Congress that he is satisfied the following conditions have been met:

A. The Board of Directors of the International Fund for Ireland, as a whole, is broadly representative of the interests of the communities of Ireland and Northern Ireland;

B. Disbursements from the IFI:

1. will be distributed in accordance with the principle of equality of opportunity and nondiscrimination in employment, without regard to religious affiliation, and

2. will address the needs of both communities in Northern Ireland.

II. Background

A. Establishment and Operation of the Fund

The International Fund for Ireland ("the Fund") was formally established as an independent entity on December 12, 1986, in keeping with the provisions of the Anglo-Irish Agreement of November 15, 1985. The overall objectives of the Fund are to promote economic and social advancement and to encourage contact, dialogue, and reconciliation between nationalists and unionists throughout Ireland and Northern Ireland. The Anglo-Irish Agreement states that the Fund shall accomplish these objectives by stimulating private investment and encouraging voluntary efforts with special emphasis on projects promoting communal reconciliation. The Agreement also stipulated the establishment of two investment companies under the Fund.

The Fund is an independent entity which is administered by a Board of Directors appointed jointly by the British and Irish governments. The Board is guided by a Joint Advisory Committee consisting of senior civil servants drawn equally from Northern Ireland and Ireland. The Advisory Committee's principal role is to advise the Board on the economic and social policies and priorities of the two governments and to maximize the impact of assistance by avoiding duplication of activity. The Board is supported by a Secretariat composed of administrators from the two jurisdictions. The Secretariat is headed by two Joint Director Generals, one from each side. The Fund's operating expenses are paid by the British and Irish governments.

The Fund's activities are developed primarily through program teams in the following areas: Business Enterprise, Tourism, Urban Development, Agriculture and Rural Development, Science and Technology, and the Wider Horizons Program. These program teams are composed of an equal number of representatives from Northern Ireland and the Republic of Ireland. The teams are administered by joint chairmen who keep the Board of Directors apprised of their respective program teams' activities.

In an effort to focus on the more disadvantaged areas, the Fund directs 70–80 percent of the resources available in the program sectors to disadvantaged areas in Northern Ireland. The Fund also created four additional program schemes: *Community Economic Regeneration*, which focuses on community driven regeneration of economic activity in urban areas; *Community Relations*, designed to promote reconciliation; *Disadvantaged Areas Special Projects*; and, the *Community Regeneration and Improvement Special Program (CRISP)* designated for disadvantaged areas in Northern Ireland and focuses the Fund's resources on smaller towns and villages by linking a series of projects from the various program areas together.

B. Fund Contributions

The Fund receives contributions directly from bilateral and multilateral donors. U.S. obligations to date total $170 million. Under the Foreign Operations, Export Financing, and Related Programs Appropriations Act, Congress appropriated an additional $19.704 million in FY 1992 and $19.704 million in FY 1993. Since 1989, the European Community has disbursed 15 million European Currency Units (approximately US$20 million) per year to the Fund and will continue to contribute this amount until 1994. New Zealand contributed about $0.16 million in FY 1992 and Canada has provided approximately $0.39 million.

Each donor is entitled to appoint a representative to attend all Board meetings as a non-voting observer. Observers receive all Board papers and provide guidance to the Fund on behalf of their respective donor countries.

C. Program Implementation

Since its establishment in 1986, the Fund has approved a total of 2,263 projects and budgeted over $343 million to its various program areas. Some $284 million have been committed to approved projects within the various programs. The Fund has disbursed approximately $182 million to ongoing

and completed projects, including $26 million to the two investment companies.

Individual project applications continue to represent a majority of the projects for funding. However, the program teams are assisting various communities in identifying and preparing proposals through regular contact and consultation with a number of area Economic Development Consultants. The Consultants serve as a point of contact for local communities, provide technical assistance and advice, and help to speed program implementation.

The Fund has put into place a computerized system of recording key data for the projects. Information, such as employment generation, leveraging, and geographical distribution of funds, is collected and logged into the new system. The information system has assisted the IFI in developing its capacity to analyze and report on the economic and social indicators of the Fund's achievements.

New disbursement procedures have also been established for the U.S. contribution to the Fund. In October 1992, A.I.D. established a Letter of Credit mechanism to meet the legislative requirement to disburse funds at the minimum rate necessary to make timely payments for projects and activities. The Letter of Credit has allowed the U.S. Government to exercise greater control over money distributed to the Fund by transferring resources only when needed, and thereby minimizing interest costs to the U.S. Treasury.

D. Job Creation and Additional Investment

Two elements identified as priorities of the U.S. Goverment in its contribution to the Fund are job creation and the leveraging of additional investment into the economy. Both elements have been adopted by the Fund in the implementation of its program.

The Fund agrees that job creation is an essential factor in determining the allocation of Fund resources and clearly places an emphasis on the job creation potential of each project considered for funding. The Fund estimates that its activities directly resulted in the creation of about 18,000 new jobs and indirectly resulted in the creation of an additional 7,300 jobs. Construction activities have also resulted in 8,300 person-years of temporary employment.

The Fund has also been successful in leveraging new investment. Of the $284 million of Fund resources committed to approved projects, another $297 million and $186 million of private and government resources, respectively, have been invested. Thus every dollar that the Fund has committed has resulted in an additional $1.70 committed from other sources.

III. Presidential Certification Elements

Each fiscal year, prior to the United States making a contribution to the Fund, the President must certify that he is satisfied that the Fund has complied with the legislative requirements in the Act. This Certification covers both the FY 1992 and FY 1993 contributions to the Fund. The following discusses the required elements.

A. Board Representation

The Board of Directors consists of seven members; three nominated by the British government, three nominated by the Irish government, and the Chairman. Board members are approved by both sides through consultations between the two governments. The Board, by design and agreement, is representative of the communities in both Northern Ireland and Ireland. The Board meets once every two months, primarily to review policy and procedural issues and to approve or reject proposals forwarded by the program teams for consideration. In addition, each Board member is responsible for coordinating with specific program teams and is consulted on a regular basis.

The Board members are as follows:

Mr. Willie McCarter, Chairman

Mr. John E. Craig

Mr. Paddy Duffy

Mr. Pat Kenny

Mrs. J. McCrum

Ms. C. Murphy

Mr. B.A. Slowey

The Chairman is a prominent businessman and Director of Fruit of the Loom, one of the largest employers in the Northwest with major factories located in Buncrana (Republic of Ireland) and Londonderry (Northern Ireland).

As in the past, the present Board is noted for its professionalism and integrity in setting policy and approving projects. The Board has taken a proactive role in promoting the Fund throughout Northern Ireland and Ireland as well as internationally.

B. Disbursements From the International Fund

The Fund's structure and policy framework ensure that resources are distributed in accordance with the principle of equality of opportunity and nondiscrimination in employment, without regard to religious affiliation, and that these resources address the needs of both communities in Northern Ireland and the six border counties of the Republic of Ireland.

The board has developed its policies for disbursement of resources taking into account the terms of the Agreement under which it was established, the wishes of the donor countries, and the need to supplement the economic and social policies of the two governments. The Board structure and policy framework is manifested in the internal checks and balances in the Fund's appraisal, approval, and management systems. Also, the wide geographical distribution of approved projects enhances the Fund's efforts to meet the needs of both communities. The Fund's programs have created jobs, leveraged private investments, and fostered reconciliation. In addition, the Fund has made concerted efforts to target the most disadvantaged areas through CRISP and other special programs as well as through the work of development consultants.

1. *Distribution of disbursements in accordance with the principle of equality of opportunity and nondiscrimination in employment, without regard to religious affiliation.*

a. *Structure of the Fund.* Ireland and Northern Ireland are equally represented by members of the Fund's Board of Directors, Advisory Committee, Secretariat, and Program Teams. These individuals are highly respected for their professional competence, integrity, and commitment to the Fund's objectives. The Advisory Committee, as mentioned above, is composed of senior officials of both the British and Irish governments and provides guidance and support for the Board. The Secretariat staff maintains the day-to-day operations of the Fund and have been carefully selected for their administrative skills and judgement. The Program Teams are staffed with technical and administrative professionals who are committed to the Fund's operating principles of non-discrimination. Review of the IFI portfolio of projects and visits to selected sites by Agency for International Development (A.I.D.) personnel has confirmed that the Fund has assembled a competent and professional staff who have cultivated and exercised sound project approval and management procedures.

b. *Policy Framework.* All Fund publications and solicitations for proposals clearly spell out the Fund's commitment to equality of opportunity and nondiscrimination. All successful applicants are required by the Board to agree to the following prior to receiving an award:

> "Acceptance of a grant or loan under this scheme will be deemed to signify the applicant's acceptance of the principle of equality of opportunity and non-discrimination in employment, without regard to religious affiliation and that the applicant will be expected to use the money in accordance with this principle."

Letters of offer clearly state that any violation of this agreement will require immediate repayment of resources. To date, the Fund has not had to request repayment.

Equality of opportunity requirements are also enforced in Northern Ireland under the *Fair Employment (Northern Ireland) Act of 1989*. This Act makes employment discrimination on the grounds of religious belief or public opinion illegal. The Act is designed to eradicate job discrimination and ensure the active practice of fair employment opportunity throughout Northern Ireland.

c. *Project Appraisal and Approval.* The Fund has instituted a clear and systematic appraisal and approval system. Each Program Team has signed agreements with the Fund Secretariat which spell out the criteria upon which all applications are made. As mentioned above, the Program Teams consist of officials from various government agencies, both North and South, which, in close cooperation with the Secretariat, help to bring the programs to fruition. The Team members, chosen for their expertise in their particular sector, review each project based on its merit using standard economic and financial analysis tools, as well as criteria relevant to their technical field.

Projects must also be consistent with the economic and social policies and priorities of the British and Irish governments. Each government reserves the right to veto support for activities proposed which violate their stated policies. No resources are to be used, for example, to improve the standing of or to further the goals of any paramilitary organization, either directly or indirectly. The Fund, the British government, and the Irish government are, however, committed to supporting activities which contribute to viable, self-sustaining growth, prosperity, and stability. In addition, it is hoped that the projects will have a positive impact on increasing respect for human rights and fundamental freedoms for citizens of both traditions from Northern Ireland and the Republic.

Thus, within the Fund's policy guidelines and the established criteria for the evaluation and approval process, projects are accepted for funding, rejected, or forwarded to an appropriate government agency for possible support from existing government programs. Applications are processed in a timely and efficient manner, consistent with a proper and prudent review of projects. In addition, of course, a considerable responsibility rests with the individual promoters of projects who must take the lead in completing their share of the financial package and implementing the project to a stage where payment can be made.

Each decision to approve, disapprove, or forward a project to a government agency requires the recommendation of the relevant program team, the endorsement of the two Board members supervising the team, and the approval of the Fund Secretariat. Any projects which are controversial, raise policy issues, or exceed the program team's delegation of authority, are forwarded to the Board for consideration.

Equality of opportunity and nondiscrimination is the guiding principle under which the Fund operates. Projects are reviewed on merit alone, without regard to political or religious affiliations of the applicants. The cross-community composition of the Fund Board, the Secretariat, and the program teams ensures this principle.

2. *Addressing the needs of both communities in Northern Ireland.*

In order to comply with British law, the principles under which the Fund was established, and the U.S. Government priorities under which our contribution was made, religious affiliation is not a factor in the approval

process. It is generally known, however, which religious majority is predominant within a specific geographical area.

During the program review visit by an A.I.D. official in May of 1992, management officials, community leaders, grantees, and program implementors were asked to comment on the extent to which the needs of both communities were being met. All respondents believed that every effort was being made to strengthen the cross-community nature of the programs. Many spoke of how, through Fund activities, they were able to experience for the first time a working or recreational experience with people of the opposite tradition. Such liaisons have produced cross-community boards of directors (under such organizations as the enterprise centers), cross-community enterprise matchmaking, cross-border joint ventures (such as the Derry-Galway-Boston Trade Fair), and genuine friendships. The civil servants of both governments in laboring together on the Fund have also developed excellent working, as well as personal, relationships with their counterparts. Such interaction contributes to reconciliation through dialogue and cooperation.

The Fund has made a concerted effort to direct assistance to the more economically disadvantaged areas. Special programs, such as CRISP, have been developed toward this end. The work of the development consultants is important in assisting the disadvantaged communities to develop ideas and proposals to help themselves through the Fund. The consultants participate in establishing local groups, ensure cross-community participation whenever possible, and assist groups in creating viable projects. In many cases, however, the IFI merely serves as a catalyst for community initiatives that have been developing independently of the Fund. The consultants are also instrumental in contributing to a greater overall understanding and positive perception of the Fund among the people of both communities.

IV. Conclusion

A review of Fund activities and a visit to Ireland and Northern Ireland by a senior A.I.D. officer confirms that the Board of Directors has maintained policies and procedures designed to ensure that both traditions benefit from Fund activities. The Board's operating principles ensure that project decisions are made on the basis of merit. In addition, it has been concluded that Fund resources are being distributed in a manner consistent with its mandate as stated above. All grantees are made aware of the principles of equality of opportunity and nondiscrimination in employment, stipulated by acceptance of any grant monies.

This report therefore concludes that:

- The Board of Directors of the International Fund for Ireland, as a whole, is broadly representative of the interests of the communities in Ireland and Northern Ireland.

- Monies from the Fund are distributed in accordance with the principle of equality of opportunity and nondiscrimination in employment, without regard to religious affiliation, and address the needs of both communities in Northern Ireland.

Appendix I.—Projects Approved, Program Allocations, Commitments, and Disbursements

[$ Million]

Projects	Projects approved	IFI program budget	Committed	Disbursed
Rural Development	530	14,172	9,905	6,117
Wider Horizons	236	26,055	21,110	21,491
Business Enterprise	232	56,454	48,042	37,353
Tourism	329	66,377	52,494	33,851
Urban Development	699	54,849	40,695	18,623
Community Relations	68	4,461	3,503	2,496
Disadvantaged Areas Initiative	49	49,317	41,544	10,740
Special Projects	29	11,208	10,241	8,456
Flagship Projects	2	11,285	9,758	6,713
Science and Technology	60	19,872	17,400	11,933
Sub-Total	2,234	314,050	254,692	157,773
Investment Companies	29	29,468	29,468	24,468
Total	2,263	343,518	284,160	182,241

Appendix II.—Estimated Employment Generated

Projects	Direct	Indirect	Construction (man years)	Total
Rural Development	704	270	259	1,233
Wider Horizons	.....	.....	.....	.....
Business Enterprise	5,259	1,770	1,156	8,185
Tourism	2,403	1,652	1,951	6,006
Urban Development	4,651	1,786	2,213	8,650
Community Relations	12	5	29	46
Disadvantaged Areas	2,157	706	1,389	4,252
Special Projects	1,623	383	122	2,128
Flagship Projects	561	42	1,072	1,675
Science and Technology	154	41	63	258
Sub-Total	17,524	6,655	8,254	32,433
Investment Companies	739	372	40	1,151
Total	17,963	7,327	8,294	33,584

Appendix III.—Amount Leveraged on Approved Projects Commitments, and Disbursements

[$ Million]

Projects	Private sector	Government	IFI	Total
Rural Development	11,835	4,740	9,905	26,480
Wider Horizons	7,152	11,291	21,110	39,553
Business Enterprise	32,379	52,448	48,042	132,869
Tourism	94,062	1,206	52,494	147,762
Urban Development	90,012	5,525	40,695	136,232
Community Relations	7,989	2,805	3,503	14,297
Disadvantaged Areas	3,114	30,459	41,544	75,117
Special Projects	10,155	15,809	10,241	36,205
Flagship Projects	1,830	41,084	9,758	52,672
Science and Technology	12,924	14,171	17,400	44,495
Sub-Total	271,452	179,538	254,692	705,682
Investment Companies	25,904	6,521	29,468	61,893
Total	297,356	186,059	284,160	767,575

Appendix IV.—Geographical Distribution of IFI Approved Projects

District Council (North):	
Ballymena	34
Ards	42
Belfast	93
Castlereagh	3
Lisburn	21
Down	90
North Down	26
Antrim	23
Carrickfergus	29
Larne	19
Newtonabbey	23
Coleraine	57
Balleymoney	20
Moyle	27
Cookstown	28
Banbridge	17
Craigavon	65
Armagh	91
Dungannon	107
Fermanagh	168
Londonderry	45
Limavady	29
Magherafelt	40
Newry & Mourne	166
Omagh	81
Strabane	68
Unallocated	314
Sub-Total	1,726
County (South):	.....
Cavan	77
Donegal	122
Leitrim	71
Louth	59
Managhan	87
Sligo	65
Unallocated	19
Sub-Total	500
Joint Regional Programs	37
Total	2,263

[FR Doc. 93–25062
Filed 10–7–93; 11:47 am]
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Rules and Regulations

Federal Register
Vol. 58, No. 195
Tuesday, October 12, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

COMMODITY FUTURES TRADING COMMISSION

5 CFR Chapter XLI

RIN 3209–AA04 and 3209–AA15

Supplemental Standards of Ethical Conduct for Employees of the Commodity Futures Trading Commission

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (Commission), with the concurrence of the Office of Government Ethics (OGE), is issuing regulations (supplemental regulations) for members and other employees of the Commission which supplement the Standards of Ethical Conduct for Employees of the Executive Branch issued by OGE, effective February 3, 1993. The regulations are a necessary supplement to the Executive Branch Standards because they address ethical issues unique to the Commission. The supplemental regulations, the substance of which has applied to Commission employees under its conduct standards codified in 17 CFR chapter I, relate to financial interests and transactions and to outside employment and activities.

EFFECTIVE DATE: October 12, 1993.

FOR FURTHER INFORMATION CONTACT: Larry D. Gasteiger, Attorney, Office of the General Counsel, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone (202) 254–9880.

SUPPLEMENTARY INFORMATION:

I. Background

On August 7, 1992, the Office of Government Ethics published the Standards of Ethical Conduct for Employees of the Executive Branch (Standards). See 57 FR 35006–35067, as corrected at 57 FR 48557 and 57 FR 52583. The Standards, codified at 5 CFR part 2635 and effective February 3, 1993, established uniform standards of ethical conduct that apply to all executive branch personnel.

With the concurrence of OGE, 5 CFR 2635.105 authorizes executive branch agencies to publish agency-specific supplemental regulations necessary to implement their respective ethics programs. The Commission, with OGE's concurrence, has determined that the following supplemental regulations, being codified in new chapter XLI of 5 CFR, are necessary to implement the Commission's ethics program successfully, in light of the Commission's unique programs and operations. In a related action, the Commission is today repealing certain portions of its code of conduct which have been superseded by the Standards and is recodifying at 17 CFR part 140 other portions of that code which it has independent authority to adopt.

II. Analysis of the Regulations

Section 5101.101 General

Section 5101.101 explains that the regulations apply to members and other employees of the Commission and supplement the Standards. It also notes that members and other employees are required to comply with 5 CFR part 2635, this part and the existing Commission regulations being recodified in 17 CFR part 140.

Section 5101.102 Prohibited Financial Interests and Transactions

Section 5101.102 incorporates reference to existing Commission regulations recodified in 17 CFR 140.735–2 which implement and interpret the restrictions on certain financial interests and transactions in sections 2(a)(7) and 9(c) and (d) of the Commodity Exchange Act. Because the financial interests restricted by those regulations are prohibited financial interests within the meaning of 5 CFR 2635.403, the Commission, at the request of OGE, has included a cross-reference to recodified 17 CFR 140.735–2 in § 5101.102 of its supplemental regulations.

Section 5101.103 Outside Employment and Activities

As permitted by 5 CFR 2635.802, the Commission is issuing § 5101.103(b) as a supplemental regulation. This regulation sets forth prohibitions on non-Governmental employment and outside activities applicable to Commission members and employees. Prohibited activities listed in § 5101.103(b) include the rendering of advice concerning any legal, accounting or economic matter, or any agricultural, mining, foreign currency market or other commodity-related matter, in which the Commission may be significantly interested. Also prohibited are legal representational activities in relation to any matter which relates to any policy, program or operation of the Commission. The Commission has determined that these prohibitions, which have applied to Commission personnel under superseded 17 CFR 140.735–5, should be continued to help ensure that reasonable persons will not question the impartiality and objectivity with which the Commission's programs are administered. The rule also provides that a special Government employee is not subject to the prohibition against furnishing commodity-related advice unless the employee has participated personally and substantially in the same matter or has served with the Commission 60 days or more during the immediately preceding year. Finally, § 5101.103(b) incorporates by reference the prohibition in section 2(a)(7) of the Commodity Exchange Act on Commission members or employees accepting employment from any person, exchange or clearinghouse subject to regulation by the Commission or participating in operations or transactions subject to regulation by the Commission.

Under 5 CFR 2635.803, agencies may, by supplemental regulation, require employees to obtain prior approval before engaging in outside employment or activities. Under superseded 17 CFR 140.735–5 the Commission has long required notification by employees who undertake outside employment. Based on its finding that this requirement has helped to ensure that employees' outside activities conform to applicable statutes and regulations, the Commission has determined to continue this requirement in § 5101.103(c) as necessary for the purposes of its ethics program. Section 5101.103(c) also makes clarifying changes to conform the regulation to the Commission's practices administering 17 CFR 140.735–5. Before

engaging in any outside employment, with or without compensation, § 5101.103(c) requires a Commission employee (other than a special Government employee) to obtain written approval from his or her division or office head and the Executive Director. In addition, an employee must obtain written approval from the Commission to appear in court or on a brief in a representative capacity.

"Employment" is broadly defined at § 5101.103(c)(5) to cover any form of non-Federal employment or business relationship involving the provision of personal services, including writing when done under an arrangement with another person for production or publication of the written product. It does not, however, include participation in the activities of nonprofit charitable, religious, professional, social, fraternal and similar organizations, unless such activities involve the provision of professional services or advice or are for compensation other than reimbursement of expenses.

Section 5101.103(c)(3) provides that approval shall be granted only upon a determination that the outside employment is not expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635 and these supplemental regulations. And, § 5101.103(c)(4) sets forth the requirements for submission and processing of a written request for approval.

III. Matters of Regulatory Procedure

Administrative Procedure Act

The Commission has determined that these rules relate solely to agency organization, procedure, and practice. In addition, the substance of these rules already applies to Commission employees under the Commission's ethics standards contained in 17 CFR part 140, subpart C, 17 CFR 140.735–1–140.735–16 which, as noted above, is simultaneously being revoked in part and recodified in part by the Commission in a separate rulemaking document. Therefore, the provisions of the Administrative Procedure Act, as codified, 5 U.S.C. 553, generally requiring notice of proposed rulemaking and other opportunity for public participation, are not applicable. The Commission further finds that there is good cause to make these rules effective upon publication in the Federal Register.

Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), Public Law No. 96–354, 94 Stat. 1164 (1980), 5 U.S.C. 601 *et seq.*, requires each Federal agency to consider, in the course of proposing substantive rules, the effect of those rules on small entities. The Commission has determined that the provisions of the RFA do not apply to the promulgation of these supplemental regulations since they relate solely to agency procedure or practice.

Paperwork Reduction Act

The Paperwork Reduction Act of 1989, ("PRA") 44 U.S.C. 3501 *et seq.*, imposes certain requirements on Federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. The Commission has determined that this rulemaking does not impose any information collection requirements as defined by the PRA.

List of Subjects in 5 CFR Part 5101

Conflict of interests, Executive branch standards of conduct, Government employees.

Dated: September 27, 1993.

Jean Webb,

Secretary, Commodity Futures Trading Commission.

Approved: September 28, 1993.

Stephen D. Potts,

Director, Office of Government Ethics.

For the reasons set forth in the preamble, the Commodity Futures Trading Commission, in concurrence with the Office of Government Ethics, is amending title 5 of the Code of Federal Regulations by adding a new chapter XLI, consisting of part 5101, to read as follows:

CHAPTER XLI—COMMODITY FUTURES TRADING COMMISSION

PART 5101—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE COMMODITY FUTURES TRADING COMMISSION

Sec.

5101.101 General.
5101.102 Prohibited financial interests and transactions.
5101.103 Outside employment and activities.

Authority: 5 U.S.C. 7301, 7353; 5 U.S.C. App. (Ethics in Government Act of 1978); 7 U.S.C. 4a(f) and (j); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.403(a), 2635.802(a), 2635.803.

§ 5101.101 General.

In accordance with 5 CFR 2635.105, the regulations in this part apply to members and other employees of the Commodity Futures Trading Commission and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635. Members and other employees are required to comply with 5 CFR part 2635 and this part. Commission members and other employees are also subject to the Regulation Concerning Conduct of Members and Employees and Former Members and Employees of the Commission at 17 CFR part 140.

§ 5101.102 Prohibited financial interests and transactions.

In accordance with 5 CFR 2635.403(a), no Commission member or other employee shall engage in business or financial transactions, or hold business or financial interests, prohibited by the Commodity Exchange Act, as set forth in 17 CFR 140.735–2.

§ 5101.103 Outside employment and activities.

(a) Subject to the restrictions and requirements contained in 5 CFR part 2635 and this part, Commission members and other employees are encouraged to engage in teaching, speaking, and writing activities and, when qualified, to participate without compensation in programs to provide legal assistance and representation to indigents.

(b) *Prohibitions.* A Commission member or other employee shall not engage in non-Federal employment or any other outside activity that:

(1) Involves the rendering of advice concerning any legal, accounting or economic matter, or any agricultural, mining, foreign currency market or other commodity-related matter, in which the Commission may be significantly interested, except that this prohibition shall not apply to a special Government employee unless the special Government employee

(i) Has participated personally and substantially as an employee or special Government employee in the same matter; or

(ii) Has served with the Commission 60 days or more during the immediately preceding period of 365 consecutive days.

(2) Involves an appearance in court or on a brief in a representative capacity in relation to any matter which relates to any policy, program or operation of the Commission; or

(3) Is prohibited by section 2(a)(7) of the Commodity Exchange Act, as incorporated in 17 CFR 140.735–2 and 140.735–3. That statute provides that no Commission member or employee shall accept employment or compensation from any person, exchange or

clearinghouse subject to regulation by the Commission, or participate, directly or indirectly, in any contract market operations or transactions of a character subject to regulation by the Commission.

(c) *Prior approval for outside employment.* (1) Before engaging in any outside employment, with or without compensation, an employee of the Commission, other than a special Government employee, must obtain written approval from his or her division or office head and the Executive Director, who may seek the concurrence of the General Counsel.

(2) In addition to the approval under paragraph (c)(1) of this section, an employee, including a special Government employee, must obtain written approval from the Commission to appear in court or on a brief in a representative capacity.

(3) Approval shall be granted only upon a determination that the outside employment is not expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635 and this part.

(4) The approval required by paragraph (c)(1) or (c)(2) of this section shall be requested in writing in advance of engaging in outside employment. The request shall be submitted to the employee's division or office head, through the employee's immediate supervisor, and shall set forth all pertinent facts regarding the anticipated employment, including the name of the employer, the nature of the work to be performed, its estimated duration and the amount of compensation to be received. If approved by the division or office head, the request shall be forwarded by the division or office head to the Executive Director. In granting or denying approval, the Executive Director may seek the concurrence of the General Counsel. If approved by the Executive Director, a request for permission to appear in court or on a brief in a representational capacity shall be forwarded to the Commission for final decision.

(5) For purposes of this section, "employment" means any form of non-Federal employment or business relationship involving the provision of personal services by the employee. It includes, but is not limited to personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner, trustee, teacher or speaker. It includes writing when done under an arrangement with another person for production or publication of the written product. It does not, however, include participation in the activities of a nonprofit charitable, religious, professional, social, fraternal, educational, recreational, public service, or civic organization, unless such activities involve the provision of professional services or advice or are for compensation other than reimbursement of expenses.

[FR Doc. 93-24638 Filed 10-8-93; 8:45 am]
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DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Part 1744

Borrower Investments—Telephone Loan Program

AGENCY: Rural Electrification Administration, USDA.

ACTION: Final rule.

SUMMARY: The Rural Electrification Administration (REA) hereby adds a regulation concerning the types of investments REA telephone borrowers may make without prior approval of the Administrator of REA. The regulation is necessary to implement a new policy created by the Rural Economic Development Act of 1990. The purpose of this new policy is to provide an incentive for REA telephone borrowers to invest in rural communities and businesses. The regulation will establish REA's procedure for the treatment of investments in rural development projects when determining a borrower's allowable distribution of capital.

EFFECTIVE DATE: This regulation is effective on November 12, 1993.

FOR FURTHER INFORMATION CONTACT: Matthew P. Link, Director, Rural Telephone Bank Management Staff, U.S. Department of Agriculture, Rural Electrification Administration, room 2832-S, 14th and Independence Avenue, SW., Washington, DC 20250–1500, telephone number (202) 720–0530.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This final rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512–1. This action has been classified as "nonmajor" because it does not meet the criteria for a major regulation as established by the Order.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This final rule will have retroactive effect with respect to investments in rural development projects. This final rule will not:

(1) Preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule; and

(2) Require administrative proceedings before parties may file suit challenging the provisions of this rule.

Regulatory Flexibility Act Certification

The Administrator has determined that this final rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The REA programs provide and finance grants and loans to REA borrowers at interest rates and terms that are more favorable than those generally available from the private sector. REA borrowers, as a result of obtaining Federal financing, receive economic benefits which ultimately offset any direct economic costs associated with complying with REA regulations and requirements. Moreover, this action eases certain investment restrictions by allowing certain borrowers to invest in rural development projects without REA approval, which further offsets economic costs.

Information Collection and Recordkeeping Requirements

The reporting and recordkeeping requirements contained in this final rule have been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). The OMB control number for these requirements is 0572–0098, which expires on September 30, 1995.

The public reporting and recordkeeping burden for this collection of information is estimated to average 3.16 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Department of Agriculture, Clearance Office, Office of Information Resources Management, room 404-W, Washington, DC 20250, and to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USDA, room 3201, New Executive Office Building, Washington, DC 20503.

National Environmental Policy Act Certification

The Administrator has determined that this final rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this final rule is listed in the Catalog of Federal Domestic Assistance Programs under numbers 10.851, Rural Telephone Loans and Loan Guarantees, and 10.852, Rural Telephone Bank Loans. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402–9325.

Executive Order 12372

This final rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation. A Notice of Final rule entitled Department Programs and Activities Excluded from Executive Order 12372 (50 FR 47034) exempts REA and RTB loans and loan guarantees to governmental and nongovernmental entities from coverage under this Order.

Comments

On September 1, 1992, REA published a proposed rule in the **Federal Register** (57 FR 39628) implementing a new policy that would enable a REA telephone borrower to invest in rural development projects without prior approval of the Administrator of REA. This action was necessary to comply with section 2356 of the Rural Economic Development Act of 1990 (7 U.S.C. 928). The primary purpose of this new policy is to provide an incentive for REA telephone borrowers to invest in economic development projects that benefit rural communities and businesses. It is believed that this regulation could have a positive affect on rural communities and businesses served by the financially sound REA telephone borrowers. Eligible telephone borrowers that choose to invest in rural development projects could benefit both directly, through returns on their rural development project investments, and indirectly if the local economy grows, generating increased demand for telephone services.

REA received joint comments from the National Rural Telecom Association (NRTA) and the Western Rural Telephone Association (WRTA) regarding the proposed rule, which were taken into consideration in preparing the final rule. The comments and/or modifications will be discussed in the order in which they appear in the final rule.

Executive Order 12778

Comment: The commenter objected to the reference to the "retroactive effect" of the proposed rule under this section stating that nothing contained in the statute, express or implied, would suggest that Congress intended this rule to be applied retroactively. The commenter wanted all references to a retroactive application to be deleted from the final rule.

Response: The requirements of the final rule reflect REA's interpretation of section 205 of the RE Act since the effective date of this section and is consistent with the language of section 205. This approach facilitates the most effective administration of this policy, particularly the implementation of new procedures equitable to all borrowers. Therefore, the commenter's proposed change was not accepted.

Section 1744.200 General statement.

Comment: The commenter suggested that to more accurately reflect the intent of Congress, REA should amend the first sentence by inserting the following language which is consistent with the language in House Report 101–415: "REA telephone borrowers are encouraged to invest their own resources in the development of their local rural areas in keeping with the requirements of the statute limiting the amount of such investments in relation to the borrower's net worth which protects the government's legitimate loan security interests."

Response: REA believes this section sets forth the underlying purposes of the RE Act.

Section 1744.201 Definitions.

Comment: The commenter suggested that a definition of "qualified borrower" should be added to this section and defined in accordance with section 205(b) of the RE Act.

Response: Qualified borrower is defined in section 205(b) as "... a person whose net worth is at least 20 percent of the total assets of such person." REA does not interpret section 205(b) of the RE Act as requiring REA to use the specific term "qualified borrower", however, REA has incorporated the concept of "qualified borrower" in § 1744.201 under the heading "Minimum total assets ratio": means the borrower's net worth is at least twenty percent of its total assets including the proposed qualified investment. This definition facilitates efficient policy administration by REA while providing clear and concise instructions for the borrowers.

Comment: The commenter suggested that specific reference should be made to the Governor of the Rural Telephone Bank (RTB) and the application of this rule to the RTB loan program.

Response: This change has been made, see paragraph (b) of §§ 1744.200 and 1744.201.

Comment: The commenter suggested that the definition of maximum investment ratio should be revised to incorporate the concept of the timing of the calculation of the eligible investment amount to "immediately after such investment" as required by the statute.

Response: Borrowers are to determine the maximum investment ratio based on balances in their calendar year end financial report. This is necessary to ensure a clear and definitive statement for all parties when setting the "as of" date for figures to be used for the calculation. Uniform requirements permit reliable assessments of the borrowers' financial capabilities.

Section 1744.202 Borrowers may make qualified investments without prior approval of the Administrator.

Comment: The commenter suggested that the title and paragraph (a) should be amended to refer to "qualified borrowers", and by deleting the reference to "qualified investments". The commenter stated that "qualified" borrower is a reference to the statutory provision, "qualified" investments is an extraneous concept.

Response: See the response to the first comment on § 1744.201. Also, reference to "qualified investments" was retained.

Comment: The commenter objected to paragraph (b) in its entirety stating that it serves no legitimate purpose in implementing the statutory provision and is an unnecessary regulatory burden. The commenter wanted this paragraph deleted from the final rule.

Response: The definition of "qualified investment" informs the reader of what REA considers to constitute an investment and what is meant by "rural development."

Comment: In paragraph (b)(3), the commenter objected to REA's requirement that a borrower use its "own funds" when making rural development investments, and further objected to the definition of "own funds"; specifically, the reference to funds necessary for future loan payments.

Response: The definition of "own funds" informs the reader of what REA

does not consider to constitute own funds. The reference to "funds necessary for future loan payments" provides assurance that the borrower will not use funds needed to meet its loan payment obligations for other purposes.

Comment: In paragraph (d), the commenter objected to the requirement that investments be made "for a period longer than one year" stating that no where in the statute does such a requirement appear and the agency does not have the authority to impose it under the guise of implementing the statutory provision. The commenter wanted this requirement deleted from the final rule.

Response: REA believes the intent of section 205 of the RE Act is to promote long-term rural economic growth. REA is concerned that the ultimate beneficiaries, rural businesses and communities, could not achieve sustainable development if the investment goal was short-term profit maximization. Long-term commitments by borrowers are crucial to the advancement and viability of rural America.

Section 1744.203 Establishing amount of rural development investment.

Comment: The commenter objected to the concept of "estimates of future investment amount" in the calculation of the aggregate total of allowable investments and stated that this concept is outside the parameters of the statute and should be deleted from the final rule. Also, the concept of "committed funds" is extraneous to the statute.

Response: This requirement applies only to borrowers who have committed to provide funds to the project at a future date. In the interests of loan security and consistent policy guidelines, this requirement is necessary because it enables effective and accurate monitoring of the borrower's investments and financial obligations.

Comment: The commenter stated that it was the borrower's obligation to determine that it was in compliance with section 205 of the RE Act, not REA, and, that REA was given no monitoring or verification role.

Response: As a Federal lending institution, REA has an obligation to protect the Government's security interests by overseeing borrower compliance. The criteria put forth in section 205 of the RE Act determines the borrower's rural development capabilities but does not mean that investments may be made even at the risk of loan security.

Section 1744.204 Rural development investments that do not meet the ratio requirements.

Comment: The commenter suggested that paragraph (c) be revised to eliminate the notion that the one-third aggregate investments test or the 20 percent net worth test for qualified borrowers are ongoing requirements or tests that must be maintained by the borrower in the future.

Response: The regulation was changed to clarify this point, see § 1744.206.

Section 1744.205 Determinations and application of limitations described in § 1744.202.

Comment: The commenter suggested that paragraph (c) be revised to accurately reflect the timing of the calculation required under the statute to "immediately after such investment" stating that REA has no authority to establish timing different from that contained in the statute.

Response: See the response to the third comment on § 1744.201.

Section 1744.207 Investment not to jeopardize loan security.

Comment: The commenter objected to this section in its entirety stating that, Congress has determined that investments in rural development by qualified borrowers that do not exceed one-third of such borrower's net worth in the aggregate calculated immediately after the investment do not violate the Government's legitimate loan security interests. Therefore, no additional requirements are necessary or warranted under the rule. The commenter wanted this section deleted from the final rule.

Response: The criteria put forth in section 205 of the RE Act determines the borrower's rural development capabilities, it does not imply that risks to loan security are nonexistent if the borrower meets the criteria. This requirement is needed because as a Federal lending institution, REA has an obligation to protect the Government's security interests.

Section 1744.208 Rural development investments before November 28, 1990.

Comment: The commenter requested that this section be revised to exclude from the maximum investment ratio, that is, the one-third aggregate investment test, rural development investments made by the borrower before November 28, 1990.

Response: See the response to the comment on *Executive Order 12778.*

Some minor changes were made in the regulatory text for the purpose of simple clarification. Also, former §§ 1744.203 through 1744.208 were renumbered because two new sections were added to the final rule, and the headings to §§ 1744.203 and 1744.204 were changed.

In § 1744.201, the definitions of "Advance" and "Extension of credit" were added, as were the definitions of "Maximum investment ratio" and "Minimum total assets ratio" which were moved from the former paragraphs (b) and (e) of § 1744.202, respectively. In addition, the definitions of "Administrator", "Borrower", and "REA" were reworded slightly.

In paragraphs (b)(1) and (2) of § 1744.202, "guarantor" was changed to "guarantee" and "extension of credit, or advance" was added for clarification.

§ 1744.203 was reorganized for clarity purposes.

In § 1744.204, the terms "investment" or "invest" were substituted for "expenditures" or "expend."

In paragraph (c) of § 1744.205, the term "net plant" was deleted because it was unnecessary.

Finally, the former § 1744.209, OMB control number, was deleted in its entirety because the content of this section was addressed in the Supplementary section of this final rule.

List of Subjects in 7 CFR Part 1744

Accounting, Loan programs—communications, Reporting and recordkeeping requirements, Rural areas, Telephone.

Chapter XVII of title 7 of the Code of Federal Regulations is amended as follows:

PART 1744—POST-LOAN POLICIES AND PROCEDURES COMMON TO GUARANTEED AND INSURED TELEPHONE LOANS

1. The authority citation for part 1744 is revised to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*

2. Subpart D is added and reserved and subpart E is added to read as follows:

Subpart D—[Reserved]

Subpart E—Borrower Investments

Sec.

1744.200 General statement.
1744.201 Definitions.
1744.202 Borrowers may make qualified investments without prior approval of the Administrator.
1744.203 Establishing amount of rural development investment.
1744.204 Rural development investments that do not meet the ratio requirements.
1744.205 Determinations and application of limitations described in § 1744.202.
1744.206 Effect of subsequent failure to maintain ratios.

Sec.
1744.207 Investment not to jeopardize loan security.
1744.208 Rural development investments before November 28, 1990.
1744.209 Records.
1744.210 Effect of this subpart on REA loan contract and mortgage.

Subpart D—[Reserved]

Subpart E—Borrower Investments

§ 1744.200 General statement.

(a) REA telephone borrowers are encouraged to utilize their own funds to participate in the economic development of rural areas, provided that such activity does not impair a borrower's ability to provide modern telecommunications services at reasonable rates or to repay its indebtedness to REA and other lenders. When considering loans, investments, or guarantees, borrowers are expected to act in accordance with prudent business practices and in conformity with the laws of the jurisdictions in which they serve.

(b) This subpart E applies to both REA and RTB borrowers. For the purposes of RTB borrowers, as used in this subpart E, if a borrower has received a loan from the RTB, REA means RTB, and Administrator means Governor unless the text indicates otherwise.

§ 1744.201 Definitions.

As used in this subpart:

Administrator means the Administrator of the Rural Electrification Administration (REA) and, as provided in § 1744.200(b), the Governor of the Rural Telephone Bank (RTB).

Advance means any funds provided of which repayment is expected.

Affiliated company means any organization that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the borrower.

Borrower means any organization which has an outstanding loan made by REA or RTB, or guaranteed by REA, or which is seeking such financing.

Extension of credit means to make loans or advances.

Guarantee means to undertake collaterally to answer for the payment of another's debt or the performance of another's duty, liability, or obligation, including, without limitation, the obligations of affiliated companies. Some examples of such guarantees would include:

(1) Guarantees of payment or collection on a note or other debt instrument;

(2) Issuing performance bonds or completion bonds; or

(3) Cosigning leases or other obligations of third parties.

Maximum investment ratio means that the aggregate of all qualified investments by the borrower including the proposed qualified investment shall not be more than one-third of the net worth of the borrower.

Minimum total assets ratio means the borrower's net worth is at least twenty percent of its total assets including the proposed qualified investment.

Net plant means the sum of the balances of the following accounts of the borrower:

Account Names	Number
(1) Telecommunications plant in service	2001
(2) Property held for future telecommunications use	2002
(3) Telecommunications plant under construction-short term	2003
(4) Telecommunications plant under construction-long term	2004
(5) Telecommunications plant adjustment	2005
(6) Nonoperating plant	2006
(7) Goodwill	2007
(8) Less accumulated depreciation	3100 through 3300s
(9) Less accumulated amortization	3400 through 3600s

Note: All references to account numbers are to the Uniform System of Accounts (47 CFR part 32).

Net worth means the sum of the balances of the following accounts of the borrower:

Account Names	Number
(1) Capital stock	4510
(2) Additional paid-in capital	4520
(3) Treasury stock	4530
(4) Other capital	4540
(5) Retained earnings	4550

Note: For nonprofit organizations, owners' equity is shown in subaccounts of 4540 and 4550. All references regarding account numbers are to the Uniform System of Accounts (47 CFR part 32).

Qualified investment is defined in § 1744.202(b).

RE Act means the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*).

REA means the Rural Electrification Administration, an agency of the United States Department of Agriculture and, as provided in § 1744.200(b), the RTB.

REA mortgage means the instrument creating a lien on or security interest in the borrower's assets in connection with a loan made or guaranteed under the RE Act.

RTB means the Rural Telephone Bank, an agency and instrumentality of the United States within the United States Department of Agriculture.

Rural development investment is defined in § 1744.202(d).

Total assets means the sum of the balances of the following accounts of the borrower:

Account Names	Number
(1) Current assets	1100s through 1300s
(2) Noncurrent assets	1400s through 1500s
(3) Total telecommunications plant	2001 through 2007
(4) Less accumulated depreciation	3100 through 3300s
(5) Less accumulated amortization	3400 through 3600s

Note: All references regarding account numbers are to the Uniform System of Accounts (47 CFR part 32).

Uniform System of Accounts means the Federal Communications Commission Uniform System of Accounts for Telecommunications Companies (47 CFR part 32) as supplemented by 7 CFR Part 1770, Accounting Requirements for REA Telephone Borrowers.

§ 1744.202 Borrowers may make qualified investments without prior approval of the Administrator.

(a) A borrower that equals or exceeds the minimum total assets ratio may make a qualified investment, defined in paragraph (b) of this section without prior written approval of the Administrator.

(b) A qualified investment is a rural development investment, defined in paragraph (d) of this section meeting the following criteria:

(1) Unless the borrower's commitment is a guarantee, extension of credit, or advance, the borrower receives any financial return accruing to such investment, or the borrower's proportionate share of such return;

(2) Unless the borrower's commitment is a guarantee, extension of credit, or advance, the borrower retains title to any asset acquired with such investment, or the borrower's proportionate share of such title; and

(3) The funds committed are the borrower's own funds. As used in this subpart, the term own funds shall not include proceeds of loans made, guaranteed or lien accommodated by REA; funds necessary to make timely payments of principal and interest on loans made, guaranteed or lien

accommodated by REA; and funds on deposit in the cash construction fund-trustee account, as defined in the borrower's loan contract with REA.

(c) A rural development investment will not be considered to be a qualified investment to the extent that the amount of such investments exceeds the borrower's maximum investment ratio.

(d) A rural development investment is an investment, extension of credit, advance, or guarantee by a borrower for a period longer than one year and for one or more of the following purposes:

(1) Improve the economic well-being of rural residents and alleviate the problems of low income, elderly, minority, and otherwise disadvantaged rural residents;

(2) Improve the business and employment opportunities, occupational training and employment services, health care services, educational opportunities, energy utilization and availability, housing, transportation, community services, community facilities, water supplies, sewage and solid waste management systems, credit availability, and accessibility to and delivery of private and public financial resources in the maintenance and creation of jobs in rural areas;

(3) Improve state and local government management capabilities, institutions, and programs related to rural development and expand educational and training opportunities for state and local officials, particularly in small rural communities;

(4) Strengthen the family farm system; or

(5) Maintain and protect the environment and natural resources of rural areas.

(e) As used in paragraph (d) of this section, the term rural development investment shall include investments by a borrower in its own name, in affiliated companies, and in entities not affiliated with the borrower.

§ 1744.203 Establishing amount of rural development investment.

For purposes of determining whether a rural development investment is within the limits of the borrower's maximum investment ratio or the minimum total assets ratio, the amount of the qualified investment shall be the total amount of funds committed to the rural development project as of the date of determination. The total amount of funds committed to the rural development project includes:

(a) The principal amount of loans and advances made by the borrower;

(b) Guarantees made by the borrower; and

(c) A reasonable estimate of the amount the borrower is committed to provide to the rural development project in future years.

§ 1744.204 Rural development investments that do not meet the ratio requirements.

(a) Each borrower is authorized to make investments other than qualified investments only in accordance with the provisions of the borrower's mortgage with REA. Without REA's approval, the portion of any investment of funds or commitment to invest funds for any rural development investment that will exceed the borrower's maximum investment ratio or cause the borrower to fall below the minimum total assets ratio, must comply with the provisions of the REA mortgage.

(b) REA will consider, on a case-by-case basis, requests for approval of rural development investments not constituting qualified investments. REA may condition such approval, if granted, on such requirements and restrictions as REA may determine to be in the best interests of the Government, including, without limitation, the borrower's agreement to limit dividends or distributions of capital by an amount specified by REA. Requests for such approvals must be submitted in writing to the relevant REA regional office and shall include:

(1) A description of the rural development project and the type of investment to be made, such as a loan, guarantee, stock purchase or equity investment;

(2) A reasonable estimate of the amount the borrower is committed to provide to the rural development project including investments that may be required in the future; and

(3) A pro forma balance sheet and cash flow statement for the period covering the borrower's future commitments to the rural development project.

(c) In determining whether to approve a rural development investment that may cause the borrower to exceed the maximum investment ratio or to fall below the minimum total assets ratio in the future, REA will consider annual increases to the borrower's net worth and total assets as might be reasonably anticipated from the borrower's normal operations.

§ 1744.205 Determinations and application of limitations described in § 1744.202.

(a) REA will not include qualified investments, including qualified investments in affiliated companies, in calculating the amount of dividend or capital distributions a borrower may make under its REA mortgage.

(b) A borrower's investment in its net plant shall not be considered a rural development investment for purposes of calculating the maximum investment ratio or the minimum total assets ratio.

(c) The borrower's net worth and total assets shall be determined using the balances of the respective accounts of the borrower as of December 31 of the last complete calendar year preceding the date on which the borrower's maximum investment ratio and minimum total assets ratio are calculated.

(d) All determinations required to be made under 7 U.S.C. 926 or this subpart will be made in accordance with the Uniform System of Accounts (USoA)(47 CFR part 32). References to specific USoA accounts shall include revised or replacement accounts.

§ 1744.206 Effect of subsequent failure to maintain ratios.

If an expenditure constitutes a qualified investment under the terms of this subpart, it does not cease to be a qualified investment merely because subsequently the borrower fails to maintain the maximum investment ratio or the minimum total assets ratio.

§ 1744.207 Investment not to jeopardize loan security.

A borrower shall not make a qualified investment or a rural development investment which jeopardizes:

(a) The security of loans made or guaranteed by REA; or

(b) The borrower's ability to repay such loans under the terms and conditions as agreed.

§ 1744.208 Rural development investments before November 28, 1990.

All investments made by a borrower shall be subject to the provisions of this subpart, regardless of when the investment was made or whether it has been approved by REA. Any restrictions required by REA as a condition to approving a rural development investment before November 28, 1990, shall continue to be in effect to the extent that such investment exceeds the maximum investment ratio or causes the borrower to fall below the minimum total assets ratio.

§ 1744.209 Records.

(a) The records of borrowers, including records relating to qualified investments, shall be subject to the auditing procedures prescribed in part 1773 of this chapter. REA reserves the right to review the records of the borrower relating to qualified investments to determine if the borrower is in compliance with this subpart.

(b) Borrowers shall report to REA on the end-of-year operating report, REA Form 479, the current status and principal amount of each qualified investment it has made or is committed to make pursuant to § 1744.202.

(Approved by the Office of Management and Budget under control number 0572–0096.)

§ 1744.210 Effect of this subpart on REA loan contract and mortgage.

(a) Except as expressly provided in this subpart, the borrower shall comply with all provisions of its loan contract with REA, its notes issued to REA, and the REA mortgage, including all provisions thereof relating to investments not covered by this subpart.

(b) Nothing in this subpart shall affect any rights of supplemental lenders under the REA mortgage, or other creditors of the borrower, to limit a borrower's investments, loans and guarantees to levels below those permitted in § 1744.202.

(c) As used in paragraph (b) of this section, supplemental lender means a creditor of the borrower, other than REA, whose loan to the borrower is secured by the REA mortgage.

Dated: October 1, 1993.

Bob J. Nash,

Under Secretary, Small Community and Rural Development.

[FR Doc 93–24761 Filed 10–8–93; 8:45 am]

BILLING CODE 3410–15–F

Farmers Home Administration

7 CFR Parts 1900, 1910, 1951, 1955, 1962, and 1965

RIN 0575–AA39

NonProgram (NP) Loans

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) is implementing new regulations for NonProgram (NP) loans. This action is necessary since NP loans are not eligible for program supervision and servicing and NP debtors are not eligible for program benefits and entitlements. They cannot, therefore, be made, managed, collected, and liquidated in the same manner as program loans. In the past, there have been a relatively small number of NP loans, which are on more stringent terms than program loans and are an extension of credit for the convenience of the Government. The intended effect is to have a regulation for the uniform handling of NP loans.

EFFECTIVE DATE: November 12, 1993.

FOR FURTHER INFORMATION CONTACT: Jean F. Leavitt, Senior Loan Specialist, Single Family Housing Servicing and Property Management Division, Farmers Home Administration, USDA, South Agriculture Building, room 5309, Washington, DC 20250, telephone: (202) 720–1452.

SUPPLEMENTARY INFORMATION: This final rulemaking has been reviewed under USDA procedures established in Departmental Regulation 1512–1 which implements Executive Order 12291, and has been classified as "nonmajor." It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

BACKGROUND INFORMATION: On August 17, 1989 (54 FR 33906), Farmers Home Administration published a proposed rule on procedures for the making, management, servicing, and liquidation of nonprogram (NP) loan(s). FmHA now publishes this procedure for final rule. 7 CFR, part 1951, subpart J—Management and Collection of Nonprogram (NP) Loans is a new regulation which establishes procedures for the making, management, servicing, and liquidation of nonprogram (NP) loans. Nonprogram (NP) loans are an extension of credit for the convenience of the Government to facilitate loan servicing actions or assist with the sale of acquired property. Program credit is not provided because the property either does not meet current program requirements and/or the applicant does not meet current loan program eligibility requirements. An NP loan is made on more stringent terms than a program loan. Previously, guidance on handling NP loans was dispersed through various regulations including Subparts A and C of part 1965 and subpart C of part 1955. The new regulation combines those portions of these regulations on NP loans into one regulation and provides for guidance that was not previously and/or explicitly provided in existing regulations. This will make it easier for FmHA personnel and the general public to ascertain FmHA's regulations on NP loans.

The issues in subpart J of part 1951 which were not explicitly included in the proposed rulemaking but are part of the subject matter addressed in the proposed rulemaking are as follows:

1. Provides that an appraisal fee will be collected from applicants who wish to obtain FmHA credit to purchase a Single Family residence at the time the applicant is determined eligible for FmHA financing. This requirement has recently been implemented for program applicants. It would not be equitable to impose a financial burden on program applicants and have the Agency pay the fee for nonprogram applicants; therefore, the collection of an application fee will be required from both program and nonprogram applicants.

2. Provides that NP loans include loans converted to NP status when only a portion of the security property is being transferred and the FmHA debt is not paid in full.

3. Establishes that NP loans can be reamortized when initially establishing a borrower on an escrow system when real estate taxes for one or more years and/or an insurance premium for one year is vouchered and the borrower is not able to repay the advance within the number of years represented by the taxes or insurance, as applicable.

4. Provides that NP borrowers will escrow funds for the payments of taxes if requested by FmHA. Existing borrowers requested to escrow will be notified by letter at least 90 days prior to initiating escrowing for taxes. A borrower who is also indebted for a Farmer Program (FP) program loan will not be required to escrow.

5. Provides that FmHA will consider a borrower's offer to convey by deed in lieu of foreclosure only after the debt has been accelerated and when it is in the government's best interest.

The major issues in subpart J of part 1951 which are clarified, established, or vary from that contained in existing FmHA regulations and were included in the proposed rulemaking are as follows:

1. Reiterates and clarifies that NP loans are not eligible for program supervision or management, and NP debtors are not entitled to program benefits and entitlements such as interest credit, moratorium, reamortization, rescheduling, consolidation, deferral, limited resource assistance or appeal rights.

2. Establishes a nonrefundable application fee, which will change periodically, to process an application for NP credit. The application fee is exclusive of any required credit report fee. Initially, the fee will be set at $100.

3. Establishes downpayment requirements which are based on the purchase price for a credit sale and the current market value or debt, whichever

is lower, for an assumption. While the downpayment requirements vary depending on the type of property, the determination as to the amount of the downpayment will be based on objective standards and are available at any FmHA office.

4. Establishes a collection policy consistent with conventional lenders on the servicing and collection of overdue payments. Program servicing regulations and authorities are not authorized.

5. Clarifies that acceleration letters to NP borrowers will not contain appeal rights, but will provide the borrower with the option to have the decision reviewed by the next level supervisor to confirm the loan is in default.

6. Provides detailed guidance on settlement of NP debts.

7. Provides that NP debtors will not be released from liability unless the NP debt is satisfied in full.

Related changes are made in other regulations to conform to the new regulation.

Programs Affected

These programs/activities are listed in the Catalog of Federal Domestic Assistance (CFDA) under Nos:

10.404 Emergency Loans
10.405 Farm Labor Housing Loans and Grants
10.406 Farm Operating Loans
10.407 Farm Ownership Loans
10.410 Low Income Housing Loans
10.411 Rural Housing Site Loans
10.414 Resource Conservation and Development Loans
10.415 Rural Rental Housing Loans
10.416 Soil and Water Loans
10.417 Very Low-Income Housing Repair Loans and Grants
10.418 Water and Waste Disposal Systems for Rural Communities
10.419 Watershed Protection and Flood Prevention Loans
10.421 Indian Tribes and Tribal Corporation Loans
10.422 Business and Industrial Loans
10.423 Community Facilities Loans
10.427 Rural Rental Assistance Payments

Intergovernmental Consultation

For the reasons set forth in the Final Rule related Notice(s) to 7 CFR part 3015, subpart V, the following programs are excluded from the scope of Executive Order 12372 which requires Intergovernmental consultation with State and local officials: 10.404—Emergency Loans, 10.406—Farm Operating Loans, 10.407—Farm Ownership Loans, 10.410—Low Income Housing Loans, 10.416—Soil and Water Loans, and 10.417—Very Low Income Housing Repair Loans and Grants. The following programs are subject to intergovernmental consultation with State and local officials: 10.405—Farm Labor Housing Loans and Grants, 10.411—Rural Housing Site Loans, 10.414—Resource Conservation and Development Loans, 10.415—Rural Rental Housing Loans, 10.418—Water and Waste Disposal Systems for Rural Communities, 10.419—Watershed Protection and Flood Prevention Loans, 10.421—Indian Tribes and Tribal Corporation Loans, 10.422—Business and Industrial Loans, 10.423—Community Facility Loans, and 10.427—Rural Rental Assistance Payments.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–90, an Environmental Impact Statement is not required.

Discussion of Comments—August 17, 1989, Proposed Rule

The proposed rule published in the **Federal Register** (54 FR 33906) on August 17, 1989, provided for a 60-day comment period. Three comments were received during the comment period. One comment was received late, but was also considered in the scope of this review. All comments received were from FmHA field office employees. The summary of the comments received are presented here as follows:

1. One commentor stated that the reference to nonprogram borrowers not having appeal rights should be revised to state that a borrower does have appeal rights if the decision involved the denial of NP loan assistance under the leaseback/buyback and Homestead Protection provisions of Subpart S of Part 1951 of this chapter. We agree and have incorporated this change into the FmHA Instruction.

2. One commentor is concerned the statement "where a borrower has both program and NP loans outstanding, the servicing will be according to the regulation applicable to the program loan(s)" is unclear and therefore, can be misinterpreted. We agree and have revised this statement in the FmHA Instruction to state that a borrower who has a program and NP loan will have their loan accounts serviced and liquidated in accordance with the regulation applicable to the particular loan. Nonprogram loans are not eligible for any program servicing except those permitted in subpart J of part 1951 of this chapter.

3. One commentor suggested the downpayment remain at 10% rather than having it reduced to 5%. We agree and have revised the instruction to state that the downpayment requirements on NP farm real estate, regardless of whether the property is sold from FmHA inventory or by a debtor through transfer and assumption, will be 10%.

4. One commentor is concerned that NP borrowers are required to pledge all their farmland as security for the NP loan. The commentor believes this requirement would severely limit the number of NP buyers for surplus farm inventory properties. We agree and have revised the FmHA Instructions to require an NP loan to be secured only by the property which is purchased. The commentor is also concerned that the regulation does not provide guidance on handling surplus CONACT property which is not farm real estate (e.g., grain elevators, lake lots, gas stations, warehouse buildings, etc). We agree and have revised the instruction to include these properties.

List of Subjects

7 CFR Part 1900

Appeals, Credit, Loan programs—housing and community development.

7 CFR Part 1910

Applications, Credit, Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing, Marital status discrimination, Sex discrimination.

7 CFR Part 1951

Accounting, Accounting servicing, Credit, Debt restructuring, Loan programs—Agriculture, Low and moderate income housing loans—Servicing, Foreclosure, Government acquired property, Mortgages, Rural areas, Sale of government acquired property, Surplus government property, Loan programs—Housing and community development, Rent subsidies, Subsidies.

7 CFR Part 1955

Foreclosure, Government acquired property, Sale of government acquired property, Surplus government property.

7 CFR Part 1962

Crops, Government property, Livestock, Loan programs—Agriculture, Rural areas.

7 CFR Part 1965

Administrative practice and procedure, Foreclosure, Loan programs—Agriculture, Loan programs—Housing and Community development, Low and Moderate income housing—Rental, Mortgages, Rural areas.

Therefore, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1900—GENERAL

1. The authority citation for part 1900 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart B—Adverse Decisions And Administrative Appeals

2. Section 1900.51 is amended by adding a sentence to the end of paragraph (b) to read as follows:

§ 1900.51 General.

* * * * *

(b) * * * The provisions of this subpart do not apply to decisions involving nonprogram (NP) applicants, borrowers, or property except denial of NP loan assistance involving the leaseback/buyback and homestead protection provisions of subpart S of part 1951 of this chapter.

* * * * *

§ 1900.55 [Amended]

3. Section 1900.55 is amended by removing paragraph (a)(13) and redesignating paragraphs (a)(14), (a)(15), (a)(16), (a)(17), and (a)(18), as (a)(13), (a)(14), (a)(15), (a)(16), and (a)(17), respectively.

4. Exhibit C of subpart B of part 1900 is amended by revising the heading to read "Letter For Notifying Applicants, Lenders, Holders, And Borrowers Of Adverse Decisions When Part Or All Of The Decision Is Not Appealable [Not Used In Connection With Decisions Related To Nonprogram Applicants, Borrowers, Or Property]" and by removing in the second paragraph the words "(month) _____,".

PART 1910—GENERAL

5. The authority citation for part 1910 continues to read as follows:

Authority: 7 U.S.C. 1989, 42 U.S.C. 1480, 5 U.S.C. 301, 7 CFR 2.23, 7 CFR 2.70.

Subpart A—Receiving And Processing Applications

6. Section 1910.1 is amended in the introductory text by adding a sentence at the end of the paragraph to read as follows:

§ 1910.1 General.

* * * Receiving and processing applications for Nonprogram (NP) loans will be handled in accordance with subpart J of part 1951 of this chapter.

* * * * *

PART 1951—SERVICING AND COLLECTIONS

7. The authority citation for part 1951 continues to read as follows:

Authority: 7 U.S.C. 1989, 42 U.S.C. 1480, 5 U.S.C. 301, 7 CFR 2.23, 7 CFR 2.70.

Subpart A—Account Servicing Policies

§ 1951.8 [Amended]

8. Section 1951.8 is amended by revising in paragraph (a) the words "1962.4 (j)" to read "§ 1962.4" and the words "1965.17 (d)" to read "§ 1965.17 (c)".

Subpart G—Borrower Supervision, Servicing and Collection of Single Family Housing Loan Accounts

9. Section 1951.301 is amended by revising the seventh sentence to read as follows:

§ 1951.301 Purpose.

* * * These are NP loans which will be serviced according to subpart J of part 1951 of this chapter. * * *

10. Section 1951.314 is amended by revising paragraph (a)(6) and by adding paragraph (a)(10) to read as follows:

§ 1951.314 Reamortizations.

* * * * *

(a) * * *

(6) To initially establish a borrower on an escrow system when real estate taxes for one or more years and/or an insurance premium for one year is vouchered and the borrower is not able to repay the advance within the number of years represented by the taxes or insurance, as applicable.

* * * * *

(10) When only a portion of the security property is being transferred and the total FmHA debt is not being assumed. The remaining balance will be reamortized for a period not to exceed 10 years or the final due date of the note being rescheduled, whichever is sooner.

* * * * *

11. Subpart J of part 1951, consisting of § § 1951.451 through 1951.500, is added to read as follows:

Subpart J—Management and Collection of Nonprogram (NP) Loans

Sec.

1951.451 General.
1951.452 Policy.
1951.453 [Reserved]
1951.454 Review of adverse decisions.
1951.455 NP loan making for Single Family Housing (SFH) and farm property (real and chattel).
1951.456 [Reserved]
1951.457 Payments.
1951.458 Servicing real estate taxes.
1951.459 Preservation of security.
1951.460 Release of security property or sale or lease of related property rights.
1951.461 Release of valueless FmHA lien without monetary consideration.
1951.462 Deceased borrower.
1951.463 Transfer of security and assumption of indebtedness.
1951.464—1951.467 [Reserved]
1951.468 Liquidation.
1951.469 Actions after liquidation of property.
1951.470—1951.478 [Reserved]
1951.479 Pilot projects.
1951.480 [Reserved]
1951.481 FmHA Instructions.
1951.482—1951.500 [Reserved]

§ 1951.451 General.

This subpart sets forth policies and procedures of the Farmers Home Administration (FmHA) for making, managing, collecting, liquidating and settling loans on Nonprogram (NP) terms, except those on properties which secure (d) Community and Business Program (C&BP) or Multi-Family Housing (MFH) loans. All references in this subpart to farm real estate, farm property and farm chattels also include nonfarm property that was security for Farmer Program (FP) loan(s).

(a) An NP loan is a loan on terms more stringent than terms for a program loan and it is an extension of credit for the convenience of the Government because the applicant does not qualify for program assistance or the property to be financed is not suited for program purposes. Such loans are made or continued only when it is in the best interest of the Government. NP loans include:

(1) Sale of inventory property on NP terms;

(2) Assumption of a program loan on NP terms;

(3) Loans converted to NP status as a result of receipt of unauthorized assistance;

(4) Loans converted to NP status when only a portion of the security property is being transferred and the FmHA debt is not paid in full;

(5) Sale of the real property that was security for an FP loan to the previous owner under the Leaseback/Buyback program on NP terms;

(6) Sale of the real property of an FP borrower under the Homestead Protection program;.or

(7) FP accounts rescheduled under an accelerated repayment agreement.

(b) C&BP/NP and MFH/NP transactions involving transfer of the security property will be submitted to the National Office for review, authorization and processing guidance. The submission must include a justification for the proposed action, a servicing and management plan, the State Director's recommendations, and the case files. The sale of C&BP and MFH inventory property to NP purchasers will be handled in accordance with subpart C of part 1955 of this chapter.

(c) Borrowers who have program and NP loans will have their loan accounts serviced and liquidated in accordance with the regulation applicable to the particular loan(s). Therefore, NP loans are not eligible for any program servicing except those permitted in this subpart. However, even though the NP loan will not be eligible for program servicing benefits or entitlements, the borrower is not precluded from receiving assistance on the program loan (e.g., having an NP farm loan should not preclude a borrower from being considered for debt restructuring assistance in the form of a deferral, rescheduling, consolidation, etc., on a FP program loan). When the decision has been made to liquidate the program loan of a borrower who is also indebted for an NP loan and the NP security is also additional security for the program loan the NP loan will be accelerated at the same time as the program loan using the program acceleration notice. Likewise, if an NP loan is to be liquidated and the borrower is also indebted for a program loan which serves as additional security for the NP loan the program loan will be accelerated at the same time as the NP loan using the program acceleration notice. Any appeal of an adverse decision involving both an NP and program loan would affect only the program loan.

§ 1951.452 Policy.

NP credit is extended for the convenience of the Government in servicing an existing loan or to facilitate sale of inventory property. Where a borrower has both program and NP loans outstanding, servicing will be according to the regulation applicable to the particular loan(s). NP borrowers are not eligible for program entitlements or servicing actions such as subsidy, moratorium, reamortization, rescheduling, consolidation, deferral, limited resource assistance, buyout, writedown and conservation easements. Neither are NP borrowers subject to occupancy/operation requirements, graduation or other similar requirements imposed on program borrowers. NP borrowers are required to adequately maintain the security, pay real estate taxes and/or assessments when due or make scheduled escrow installments for taxes and insurance when required by FmHA, and keep buildings insured according to the promissory note and mortgage or security agreement, but may lease all or a portion of the security without FmHA's consent, except as provided in § 1951.460 (a0 and (b) of this subpart.

§ 1951.453 [Reserved]

§ 1951.454 Review of adverse decisions.

NP applicants and borrowers are not entitled to appeal rights under subpart B of part 1900 of this chapter; except that a borrower does have appeal rights if the decision involves the denial of NP loan assistance under the Leaseback/Buyback and Homestead Protection provisions of subpart S of this Part 1951. However, decisions involving NP applicants, borrowers or property are reviewable by the next level supervisor.

§ 1951.455 NP loan making for Single Family Housing (SFH) and farm property (real and chattel).

(a) *Application for NP credit.* Applications for credit on NP terms are made at the County Office serving the area where the property is located or through an approved packager or real estate broker if so instructed by County Office personnel. To apply for NP credit, except Leaseback/Buyback and Homestead Protection, standard forms used to process program applications may be utilized or comparable documentation which contains information to establish financial stability, creditworthiness, and repayment ability for the requested credit. However, the loan approval official will have the discretion to determine what information is required to support approval of the loan. For property purchased under the Leaseback/Buyback and Homestead Protection programs the information required to support approval of the loan will be in accordance with subpart S of part 1951 of this chapter. The creditworthiness standards in § 1944.9 of subpart A of part 1944 of this chapter will be used to evaluate an NP applicant's eligibility for FmHA assistance to purchase a single family residence. The application is not complete until all information requested by FmHA is received.

(b) *Fees.* A nonrefundable application fee must be submitted with the application. In addition, credit reports will be ordered to determine the eligibility of NP applicants requesting FmHA credit. A nonrefundable credit report fee will be charged the applicant. The amounts of these fees change periodically; current fees will be quoted by FmHA county office personnel upon request. A borrower whose loan is reclassified as NP because unauthorized assistance was received; or only a portion of the security property is being transferred and the FmHA debt is not paid in full; or FP accounts rescheduled under an accelerated repayment agreement will not be required to submit an application or pay the application fee.

(c) *Eligibility restrictions.* If farm property is being purchased or the debt assumed, and an individual or member, stockholder, partner, or joint operator of a proposed entity transferee or purchaser has been convicted after December 23, 1985, under Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance (see 21 CFR part 1308, which is Exhibit C of subpart A of part 1941 of this chapter (available in any FmHA office), for the definition of "controlled substance") prior to the approval of the credit sale or assumption in any crop year, the individual or entity shall be ineligible for FmHA credit for the crop year in which the individual was convicted four succeeding crop years following the conviction. Purchasers will attest on the application form used that as individuals or that its members, if an entity, have not been convicted of such crime after December 23, 1985.

(d) [Reserved]

(e) *Downpayment.* A downpayment must be collected at closing and remitted in accordance with subpart B of this part 1951 (available in any FmHA office). The minimum downpayment will be based on the purchase price for a credit sale and the current market value (less any prior liens for chattel security) or the debt, whichever is lower, for an assumption. Downpayment requirements vary from time to time and vary by type of property. Current downpayment requirements will be provided by FmHA county office personnel upon request.

(f) *Interest rate.* The SFH/NP interest rate in effect at the time of loan approval will be charged on all NP assumptions and credit sales involving a single family residence. The FP/NP interest rate for real property or chattel property, as applicable, in effect at the time of loan approval, will be charged on NP assumptions and credit sales involving all other types of sales, except as otherwise stated. For the Leaseback/

Buyback program, the FP/NP farmer program interest rate for farm real estate in effect at the time of loan approval will be charged. The Homestead Protection program interest rate in effect at the time of loan approval will be charged on Homestead Protection properties.

(g) *Terms.* The purchase price for credit sales or the FmHA debt being assumed, less the downpayment amount, will be amortized as follows, except the term will never be longer than the period for which the property will serve as adequate security:

(1) *Single family residence.* (i) When a purchaser does not own an adequate home and intends to occupy the house, the term may be for a period not to exceed 30 years.

(ii) For purchasers who do not meet the criteria in paragraph (g)(1)(i) of this section, the amortization period will not be for more than 10 years unless FmHA determines that more favorable terms are necessary to facilitate the sale, in which case the assumption may be amortized using up to a 20-year factor with payment in full (balloon payment) due not later than 10 years from the date of closing.

(iii) When a presently indebted NP owner/occupant wishes to purchase another property which he/she intends to occupy, the term may be for a period not to exceed 30 years on the condition that the existing debt is reamortized for a period not to exceed 10 years less the number of years the loan has been outstanding. If the existing loan has been outstanding for more than 10 years, the loan must be paid off.

(2) *Farm property (real estate security) and CONACT residential property classified as surplus.* The note amount will be amortized over a period not to exceed 15 years. When an NP loan was initially scheduled for repayment in 15 years or less together with a 25-year amortization, FmHA may authorize an extension not to exceed a total of 25 years from the date the NP assumption or credit sale was closed provided it is in the Government's best interest and FmHA retains the same lien priority.

(3) *Farm property (chattels security).* The note amount will be amortized over a period not to exceed 5 years.

(4) *Farm property (Leaseback/ Buyback).* The note amount will be amortized over a period not to exceed 25 years.

(5) *Homestead protection.* The note amount will be amortized over a period not to exceed 35 years.

(h) *Modification of security instruments.* Any convenants in the promissory note and/or security instruments (mortgage or deed of trust) relating to graduation to other credit, inability to secure other financing, restrictions on leasing, FP operation requirements, and consent to junior lien encumbrance will be deleted.

(i) *Security.* The security requirements for an NP loan on a single family residence will be in accordance with subpart A of part 1944 of this chapter. The security requirements for NP loans on farm real estate will be in accordance with Subpart A of part 1943 of this chapter and NP loans on chattel property will be secured in accordance with Subpart A of part 1962 of this chapter. Except that, an NP loan will be secured only by the property purchased.

(j) *Closing.* Title clearance, preparation of deeds, loan closing and property insurance requirements are the same as for an FmHA program loan on the same type property, except the purchaser must pay his/her own closing costs.

§ 1951.456 [Reserved]

§ 1951.457 Payments.

(a) *Receiving payments.* Borrowers indebted for a Single Family residence or who have purchased property under the Homestead Protection program will mail their payments directly to the address shown on the coupon. Borrowers who bring or send regular payments to the County Office will be instructed to mail them directly to the address shown on their coupon. Borrowers who bring in cash payments will be charged a fee necessary to convert the cash to a money order. If the fee is not paid, it will be deducted from the payment. Borrowers indebted for a farm loan(s), including property purchased under the Leaseback/ Buyback program will mail or bring their payments to the County Office.

(b) *Payments not received when due.* NP borrowers are expected to make scheduled payments when due. FmHA personnel are not required to provide program supervision, servicing, management or credit counseling in accordance with FmHA servicing instructions if payments are not received when due. To ensure consistency, a series of contacts will be made when servicing delinquent accounts. All actions taken, agreements reached and recommendations made in the servicing of the borrower's account are to be documented. When appropriate, FmHA may work out a reasonable agreement with an NP borrower to cure a delinquency; however, such an agreement will not usually exceed 1 year. Failure to make payments as agreed will result in actions determined by FmHA to best protect the Government's interest. Collection of a delinquency from an Internal Revenue Service (IRS) offset will be used to the extent permitted by law.

§ 1951.458 Servicing real estate taxes.

In this section, "taxes" include assessments which, if not paid, will become a lien on the property. Borrowers are required to pay the taxes on FmHA security property when they become due. Security instruments for FmHA credit provide that the borrower will escrow funds for the payment of taxes if requested by FmHA. Existing borrowers requested to escrow will be notified by letter at least 90 days prior to initiating escrowing for taxes. Monthly payment borrowers will be required to escrow, except that, a borrower who is also indebted for an FP program loan will *not* be required to escrow. Failure to pay the taxes is a default of the loan convenants. Borrowers who have not paid their taxes will be notified by FmHA. FmHA will *not* voucher for taxes on NP loans except to protect the Government's security interest. FmHA will advance funds for the payment of taxes as follows:

(a) *Borrowers required to escrow for taxes.* Taxes will be paid as they become due from the borrower's escrow account. If a borrower's escrow account contains sufficient funds, all discounts will be taken advantage of when it is determined by FmHA to be in the best financial interest of the borrower and the Government. If a borrower has insufficient funds in his/her escrow account to pay the taxes when due, the escrow servicer will request the borrower to pay an amount equal to the difference between the taxes due and the escrow balance in a lump sum within 30 days after notification. If the borrower fails to remit the amount requested, the amount will be advanced and charged to the borrower's account as a recoverable cost. When initially establishing a borrower on an escrow system, NP accounts can be reamortized provided taxes for 1 or more years are vouchered and the borrower is not able to repay the advance within the number of years represented by the taxes.

(b) *Foreclosure-pending cases.*—(1) *Borrowers not required to escrow.* Where State law permits property will be sold at foreclosure sale subject to outstanding taxes. Where taxes must be paid up to the foreclosure sale date, payment should be deferred until the date for the foreclosure sale is set unless the taxing authority scheduled a tax sale sooner. This permits a single advance to be processed and allows flexibility for a

management decision if it is later determined, due to such considerations as high tax rate, length of time required to foreclose, and possible vandalism or other loss, there is no recovery to be made. If a tax sale is scheduled while foreclosure is pending, FmHA will either pay the taxes by voucher in accordance with paragraph (c) of this section or allow the property to be sold at the tax sale, as determined to be in the Government's best interest.

(2) *Borrowers required to escrow for taxes.* Taxes will continue to be paid as outlined in paragraph (a) of this section until the property is acquired by FmHA.

(c) *Processing tax advances.* When a borrower's taxes are to be paid by an escrow servicer, an advance will be drawn from FmHA to cover the escrow shortage. When a borrower's taxes are to be paid by FmHA, the advance will be charged to the borrower's account as an unamortized cost item. A tax advance will bear interest at the rate which is in effect on the initial loan or the lowest loan number within the fund code still outstanding.

§ 1951.459 Preservation of security.

(a) *Inspections of NP security property.* Inspections will be made on NP security as necessary to protect FmHA's security interest. In the event of abandonment, servicing actions will be taken according to § 1955.55 of subpart B of part 1955 of this chapter.

(b) *Subordination.* Subordination is not authorized where an NP borrower only owes FmHA an NP loan(s). Subordination of a mortgage may be permitted to refinance, extend, reamortize, increase the amount of an existing prior lien, or to permit a prior lien only when the security for the NP loan is also security for an FmHA program loan, the request for the subordination meets all the requirements for the subordination of the FmHA program loan and is in the best interest of the Government.

(c) *Bankruptcy.* NP loans on single family residences will be serviced in accordance with subpart C of part 1965 of this chapter, farm real estate in accordance with subpart A of part 1965 of this chapter, and farm chattel in accordance with subpart A of part 1962 of this chapter.

§ 1951.460 Release of security property or sale or lease of related property rights.

(a) *Partial release.* Release of a portion of the security property may be made when the borrower requests it and FmHA determines the release will not adversely affect the Government's interest. Release may be approved when payment is received by FmHA in the amount of the market value, as determined by FmHA, of the property to be released. Proceeds from such transactions (less related expenses authorized by FmHA) will be applied to the FmHA indebtedness as an extra payment or to prior liens in order of lien priority.

(b) *Easements, right-of-ways, and lease of mineral rights or other rights.* Consent may be given by FmHA for the borrower to grant an easement or lease mineral rights when it is determined by FmHA the action will not adversely affect the Government's interest. The granting of an easement or right-of-way and lease of mineral rights may be approved when payment is received by FmHA in the amount of the market value, as determined by FmHA, for rights granted or benefits are derived which are equal to or greater than the value of the property being disposed of. Proceeds from these transactions (less related expenses authorized by FmHA) will be applied to the FmHA debt as an extra payment or to prior liens in order of lien priority.

(c) [Reserved]

(d) [Reserved]

§ 1951.461 Release of valueless FmHA lien without monetary consideration.

Release of an FmHA lien without monetary consideration may be granted when it is determined by FmHA to have no present or prospective value or when enforcement would be ineffectual or uneconomical. Judgment liens or statutory redemption rights may be released only with prior consent of OGC.

§ 1951.462 Deceased borrower.

When an NP borrower dies, FmHA will determine whether or not arrangements can be effected for continuation of the loan under one of the provisions of this section. If not, the loan may be liquidated according to § 1951.468 of this subpart. The servicing actions and the circumstances under which they may be considered are outlined in paragraphs (a) through (d) of this section.

(a) *Continue with jointly liable borrower.* If a jointly liable borrower will repay the loan and fulfill other obligations of the loan, FmHA will take no action to liquidate the loan.

(b) *Assumption by spouse not liable for the FmHA debt.* The spouse of a deceased borrower who is not liable for the FmHA debt and who wishes to assume the debt may do so in accordance with § 1951.463(d)(1) of this subpart.

(c) *Continue with joint tenant, tenant by the entirety, or other person.* When a joint tenant, tenant by the entirety, or other person who inherits title to (or an interest in) the security property, on which the principal residence is located, by devise, descent, or operation of law upon the death of a borrower makes payments as scheduled in the promissory note (or assumption agreement), FmHA may not take action to liquidate the loan as long as the property is adequately maintained, real estate taxes and assessments are paid when due, and the dwelling is not known to be uninsured (if funds for taxes and insurance are being escrowed, the escrow is a part of the scheduled payments). The loan may be assumed in accordance with § 1951.463(d) of this subpart; however, assumption of the indebtedness is not required. Continuation with a joint tenant, tenant by the entirety, or other person under the provisions of this paragraph applies only to the transfer of title resulting from death of the borrower; it does not apply to any subsequent transfer of title by the inheritor(s) except by devise, descent, or operation of law upon the death of the inheritors or sale of interests among inheritors to consolidate title. Any other subsequent transfer of title will be treated as a sale and is subject to the requirements of § 1951.463 of this subpart.

(d) *Assumption by a person, other than the spouse, who is not liable for the FmHA loan.* A person other than the deceased borrower's spouse who wishes to assume the loan for the benefit of persons who were dependent on the deceased borrower at the time of death, without receiving title to the property, may do so in accordance with § 1951.463(d)(1) of this subpart provided:

(1) The residence will continue to be occupied by one or more persons who were dependent on the borrower at the time of death; and

(2) There is reasonable prospect for orderly repayment of the loan and other obligations of the loan will be met.

§ 1951.463 Transfer of security and assumption of indebtedness.

When a borrower proposes to sell security property, assumption of the indebtedness may be approved on program or NP terms, as applicable, subject to the provisions of paragraphs (c) and (d) of this section. Assumptions under paragraphs (b)(2), (b)(3), (b)(4), (b)(5) and (d) of this section only are authorized on existing terms. When security property is sold (or title is otherwise conveyed), whether by full conveyance or by land contract, contract-for-deed, or other similar instrument, and the FmHA debt is not

assumed by the purchaser (new owner) or paid in full, the conveyance will not be approved, except as provided in paragraphs (b)(2) and (b)(5) of this section or § 1951.462 of this subpart. If the conveyance is not approved the loan must be liquidated unless FmHA determines it is not in the Government's best interest. If FmHA decides to continue with the loan, the account will be serviced in the borrower's name and the borrower will remain liable for the loan under the terms of the security instrument.

(a) [Reserved]

(b) *General.* The following policies apply to all transfers and assumptions under this subpart:

(1) *Amount of assumption.* Except for transfers covered in paragraphs (b)(2), (b)(3), (b)(4), (b)(5) and (d) of this section, the transferee will assume the lesser of the indebtedness, or current market value as determined by FmHA, less any prior liens and the downpayment.

(2) *Conveyance of security property by borrower to spouse or child.* When a borrower conveys security property to his/her spouse or children, assumption of the indebtedness is not required and FmHA may not take action to liquidate the loan as long as payments are made as scheduled and other obligations of the loan are met. In the event the transferee(s) wishes to assume the indebtedness, it may be assumed on the terms outlined in paragraph (d)(1) of this section as applicable to the circumstances.

(3) *Withdrawal of jointly liable borrower.* When a stockholder/member/partner/joint operator of an entity who is personally liable on the note withdraws from the entity or dies, and all of the remaining individuals are not personally liable on the note(s), the loan must be assumed by all remaining parties.

(4) *Addition of new transferee(s).* When new stockholders/members/partners/joint operators enter an entity, assumption of the indebtedness is required, however, the indebtedness may be assumed on existing terms. A downpayment based on the unpaid balance of the loan is required when the assumption is closed.

(5) *Conveyance of security property into an inter vivos trust.* When the borrower conveys security property into an inter vivos trust, whereby the borrower does not transfer rights of occupancy in the property, FmHA may not take action to liquidate the loan as long as payments are made as scheduled and other obligations of the loan are met.

(c) *Program assumption.* A NP loan may be assumed by an eligible program applicant if the property meets the eligibility requirements for a currently authorized program (SFH, Farm Ownership (FO), etc.). In such cases, the assumption will be at the interest rate and up to the maximum term in effect for the type loan involved at the time the assumption is approved. After assumption on program terms, the loan will be reclassified as Rural Housing (RH), FO, etc., as applicable.

(d) *NP assumption.* The rates and terms for an NP assumption will be as provided in § 1951.455 of this subpart. A loan may be assumed on existing terms only in the situations outlined in paragraphs (b)(2), (b)(3), (b)(4), (b)(5), (d)(1), (d)(2), and (d)(3) of this section. An individual not liable for the loan who acquires title to or an interest in the security by means of one of the situations mentioned may assume the indebtedness on existing terms or current terms if more favorable, in which case a downpayment based on the unpaid balance would be required. The interest rate, final due date, payment date, and account status (current, delinquent, ahead of schedule) will not be changed by virtue of an assumption on existing terms, after assumption compliance with loan conditions is required. If a same terms assumption is consummated and the account is delinquent, it may be reamortized in accordance with applicable program regulations. Situations where these terms are authorized are:

(1) An individual who acquires title to or an interest in the security property by virtue of death, divorce, or deed from a spouse or parent but is not liable for the debt and who wishes to assume the loan may do so. Any subsequent transfer of title, except between inheritors to consolidate title, will be treated as a sale and is not covered by these provisions. Individuals in this category are:

(i) A deceased borrower's surviving spouse.

(ii) A divorced borrower's spouse.

(iii) A joint tenant with right of survivorship or relative of a deceased borrower.

(2) The spouse or child of a living borrower to whom title to the security property has been conveyed by spouse or parent.

(3) A person other than the deceased borrower's spouse who wishes to continue with the loan under conditions outlined in § 1951.462 (c) or (d) of this subpart may do so.

(e) *County Committee actions on Farmer Program assumptions.* On program assumptions, the County Committee must certify the transferee's eligibility for the type of loan to be assumed.

(f) *Title clearance and loan closing.* Title clearance and closing will be the same as for any program loan of the same type.

(g) *Release from liability.* Release from liability of NP borrowers is not authorized.

§§ 1951.464—1951.467 [Reserved]

§ 1951.468 Liquidation.

When it is determined an NP borrower cannot or will not successfully repay the loan, FmHA will attempt to have the borrower liquidate voluntarily.

(a) *Voluntary.* If an NP borrower in default indicates a willingness to voluntarily liquidate, other liquidation actions by FmHA may be delayed for a reasonable period, usually not to exceed 120 days for real estate, if the borrower is earnestly seeking other financing, or has the security property listed or offered for sale and it is being actively marketed at a reasonable price.

(b) *Foreclosure.* If an NP borrower in default (monetary or nonmonetary) does not cure the default and is not willing or able to voluntarily liquidate, the servicing official will refer the case to the next level supervisor with a recommendation for further action. If foreclosure is approved, the account will be accelerated. NP borrowers do not have appeal rights under subpart B of part 1900 of this chapter; however, the NP borrower may request a review of the decision to foreclose by the next level supervisor to consider evidence that the loan is not in default. If the borrower fails to satisfy the account during the period specified in the demand letter, FmHA will proceed with foreclosure without further notice or extension of time.

(c) *Conveyance to FmHA.* FmHA does not solicit or encourage conveyance of NP security property to the Government and will consider a borrower's offer to convey by deed in lieu of foreclosure only after the debt has been accelerated and when it is in the Government's best interest. Release of the borrower from liability is not authorized. Upon receipt of an offer to convey, FmHA will remind the borrower of provisions for voluntary liquidation under paragraph (a) of this section. The borrower will also be informed of the consequences of a conveyance by deed in lieu of foreclosure as follows:

(1) All costs related to the conveyance which FmHA pays will be added to the debt;

(2) A credit equal to the market value of the property, as determined by

FmHA, less prior liens, will be applied to the debt; and

(3) If the credit does not satisfy the debt, the debtor remains liable for the payment of the account balance and the account will be debt settled.

(d) *Consent to sale of real estate security when the FmHA debt and authorized selling expenses exceed market value.* If an NP borrower proposes to sell real estate security for an amount which will be insufficient to pay the FmHA debt, prior lien(s) if any, and sale expenses authorized by FmHA, an appraisal will be completed and FmHA may consent to the sale if the proposed sale price is not less than the market value. No commission will be allowed or paid under this paragraph when the sale is to the broker, broker's salesperson(s), to persons living in his/her or salesperson(s) immediate household or to legal entities in which the broker or salesperson(s) have an interest if the sale involves FmHA credit. If credit is not being extended to the persons mentioned in the preceding sentence (a cash sale), a commission will be allowed or paid. In no case will the borrower (seller) receive any cash proceeds from the sale. Any real estate taxes due from the transferor and other authorized selling expenses for which there is insufficient equity proceeds for payment at closing will be charged to the borrower's account prior to loan closing. Authorized selling expenses will not be considered or included in the amount assumed. Release from liability is not authorized.

§ 1951.469 Actions after liquidation of property.

(a) [Reserved]

(b) *Servicing unsatisfied account balances.* A current financial statement will be obtained, if possible, when application of sale proceeds does not satisfy an NP loan; or if a conveyance to FmHA has been accepted and credit of the market value less prior liens and estimated inventory handling expenses does not satisfy the debt, FmHA will pursue collection if there appears to be income or assets from which to collect. Where the borrower owns other real estate, or if the borrower is known to be in the process of purchasing other real estate (such as another dwelling), a judgment for the remaining debt including expenses paid by FmHA will be sought.

(c) [Reserved]

§§ 1951.470–1951.478 [Reserved]

§ 1951.479 Pilot projects.

From time to time FmHA conducts pilot projects to test concepts related to the management and/or sale of SFH inventory property which may deviate from the provisions of this subpart, but will not be inconsistent with provisions of the authorizing statutes, or other Acts affecting FmHA's loan programs. Prior to initiation of a pilot project, FmHA will publish in the **Federal Register** a Notice outlining the nature, scope, and duration of the pilot. The pilot projects may be handled by FmHA employees and/or under contract with persons, firms, or other entities in the private sector.

§ 1951.480 [Reserved]

§ 1951.481 FmHA instructions.

Detailed FmHA Instructions for administering this subpart are available in any FmHA office (FmHA Instruction 1951–J).

§§ 1951.482–1951.500 [Reserved]

Subpart M—Servicing Cases Where Unauthorized Loan or Other Financial Assistance Was Received—Single Family Housing

12. Section 1951.608 is amended by revising in the second sentence of paragraph (e)(1)(i)(B) the words "under paragraph (e)(i)(B) of this section" to read "under this paragraph".

13. Section 1951.608 (e)(1)(iii) is amended in the second sentence by revising the words "of FmHA 1951–13" to read "or FmHA 1951–13".

14. Section 1951.612 is amended by revising in the fourth sentence of paragraph (a)(1)(i) the words "§ 1951.618 (a)(1)(iii)" to read "1951.618 (a)(1)(ii)"; by revising in the second sentence of paragraph (a)(1)(ii) the words "§ 1951.618 (a)(1)(iii)" to read "§ 1951.618 (a)(1)(ii)"; by removing paragraph (a)(1)(iv), introductory text; by redesignating paragraphs (a)(1)(iv)(A), (a)(1)(iv)(B), (a)(1)(iv)(C), and (a)(1)(iv)(D) as paragraphs (a)(1)(iii)(A), (a)(1)(iii)(B), (a)(1)(iii)(C), and (a)(1)(iii)(D), respectively; and by revising the introductory text of paragraph (a)(1)(iii) and newly redesignated paragraphs (a)(1)(iii)(A) and (a)(1)(iii)(D) to read as follows:

§ 1951.612 Servicing options in lieu of liquidation or legal action to collect.

* * * * *

(a) * * *

(1) * * *

(iii) When the case is not serviced according to paragraphs (a)(1)(i) or (ii) of this section, or the recipient was not eligible for a loan, or the loan was approved for unauthorized purposes as outlined in § 1951.604 (a)(1)(iv) of this subpart, continuation with the loan on the existing terms is authorized, after which the loan will be serviced as an authorized loan, *except* that, if interest credit is granted in a case where continuation is authorized under the provisions of this paragraph, all subsidy granted will be recaptured to the extent proceeds are available when the property is sold, allowing a deduction for authorized selling expenses only. Where interest credit is granted in cases of this type, the following actions must be taken:

(A) The borrower must agree in writing to the recapture of subsidy as outlined in paragraph (a)(1)(iii) of this section executing an agreement in the format of Exhibit E of this subpart (available in any FmHA office).

* * * * *

(D) If the borrower refuses to execute the agreement prescribed in paragraph (a)(1)(iii) (A) of this section, interest credit will *not* be granted on the loan.

* * * * *

§ 1951.618 [Amended]

15. Section 1951.618 is amended by removing paragraph (a)(1)(ii); by redesignating paragraph (a)(1)(iii) as (a)(1)(ii); by removing paragraph (a)(8)(i)(B); by redesignating paragraph (a)(8)(i)(C) as (a)(8)(i)(B); and by revising in the second sentence of the introductory text of paragraph (b) the words "in paragraph (b) of this section" to read "under this paragraph."

Subpart S—Farmer Programs Account Servicing Policies

16. Section 1951.911 is amended by revising paragraphs (a)(7)(iii), (a)(7)(iv), (b)(9), (b)(10), and (c) to read as follows:

§ 1951.911 Preservation Loan Service Programs.

(a) * * *

(7) * * *

(iii) The property will be offered on eligible terms (if the purchaser is eligible in accordance with subpart A of part 1943 of this chapter) and credit sale processed in accordance with subpart C of part 1955 of this chapter or NP terms in accordance with subpart J of part 1951 of this chapter. The interest rate

(iv) If the purchaser is an eligible applicant (in accordance with subpart A of part 1943 of this chapter) and the value of the property is greater than $200,000, the property may be financed with a $200,000 credit sale on eligible terms and the remainder with the applicant's own resources and/or with participating credit as set forth in subpart A of part 1943 of this chapter. If the value of the farm property is greater than $200,000 and the eligible applicant is NOT able to arrange the necessary financing for the balance over

$200,000, FmHA may finance the purchase of the property with a credit sale on NP terms in accordance with subpart J of part 1951 of the chapter. A credit sale on eligible terms and the remaining balance of ineligible term will NOT be made to the same applicant to purchase farm property.

* * * * *

(b) * * *

(9) *Rates and terms for a credit sale.* Terms for a credit sale of homestead protection property when the lessee is exercising the option to purchase will be in accordance with subpart J of part 1951 of this chapter.

(10) *Closing.* A credit sale will be closed in accordance with subpart J of part 1951 of this chapter.

* * * * *

(c) *Servicing homestead protection loans.* Homestead protection loans will be serviced as set forth in subpart J of part 1951 of this chapter.

PART 1955—PROPERTY MANAGEMENT

17. The authority citation for part 1955 continues to read as follows:

Authority: 7 U.S.C. 1989, 42 U.S.C. 1480, 5 U.S.C 301, 7 CFR 2.23, 7 CFR 2.70.

Subpart A—Liquidation of Loans Secured By Real Estate and Acquisition of Real and Chattel Property

18. Section 1955.2 is amended by revising the last sentence to read as follows:

§ 1955.2 Policy.

* * * Nonprogram (NP) loans, except for Community and Business Programs, will be liquidated as provided in subpart J of part 1951 of this chapter, unless specifically referenced in this subpart.

Subpart C—Disposal of Inventory Property

19. Section 1955.101 is amended by adding two sentences at the end of the section to read as follows:

§ 1955.101 Purpose.

* * * Credit sales of inventory property to ineligible (nonprogram (NP)) purchasers will be handled in accordance with subpart J of part 1951 of this chapter, except Community and Business Programs (C&BP) and Multi-Family Housing (MFH) which will be handled in accordance with this subpart. In addition, credit sales of Single Family Housing (SFH) properties converted to MFH will be handled in accordance with this subpart.

20. Section 1955.102 is amended by adding a sentence at the beginning of this section to read as follows:

§ 1955.102 Policy.

The terms "nonprogram (NP)" and "ineligible" may be used interchangeably throughout this subpart, but are identical in their meaning. * * *

21. Section 1955.108 is amended by revising paragraph (a) to read as follows:

§ 1955.108 Sale of surplus property (CONACT).

* * * * *

(a) *Rates and terms.* Rates and terms for Homestead Protection and Leaseback/Buyback will be in accordance with subpart S of part 1951 of this chapter. Except for C&BP properties, all surplus property will be offered for cash or on ineligible terms in accordance with subpart J of part 1951 of this chapter. C&BP surplus property will be offered for cash or on ineligible terms of not less than 10 percent downpayment with the remaining balance amortized over a period not to exceed 25 years. The State Director will determine the loan terms for surplus property within these limitations. The interest rate for Business and Industry (B&I) property will be the established insured B&I rate for profit corporations plus ½ percent; for Community Programs property the interest rate will be the current market rate for Community Programs. A credit sale made on ineligible terms will be closed at the interest rate in effect at the time the credit sale was approved. After extensive sales efforts where no acceptable offer has been received, the State Director may request the Administrator to permit offering surplus property for sale on more favorable rates and terms; however, the terms may not be more favorable than those legally permissible for eligible borrowers. Surplus property will be offered for sale for cash or terms that will provide the best net return for the Government. The term of financing extended may not be longer than the period for which the property will serve as adequate security. All credit sales on ineligible terms will be identified as NP loans.

* * * * *

22. Section 1955.109 is amended by revising in the last sentence of paragraph (b) the words "or ineligible" to read "on ineligible" and by revising paragraphs (a), (c), (h), and (i) to read as follows:

§ 1955.109 Processing and closing (CONACT).

(a) *Determining repayment ability and creditworthiness.* If a credit sale is involved, the applicant must furnish necessary financial information to assist in determining repayment ability and creditworthiness. Form FmHA 431–2, "Farm and Home Plan," should be used for all eligible applicants unless the applicant has furnished all required information in another acceptable format. Information regarding eligibility, planned development and total operations will be provided the same as for the respective type of Farmer Program loan. Purchasers requesting credit on ineligible terms, except for C&BP, will be handled in accordance with subpart J of part 1951 of this chapter. For C&BP, information will be provided which is similar to an application including financial information required for the respective loan program to establish financial stability, creditworthiness and repayment ability.

* * * * *

(c) *Form of payment.* Payments at closing will be in the form of cash, cashier's check, certified check, postal or bank money order, or bank draft made payable to FmHA and handled in accordance with subpart B of part 1951 of this chapter.

* * * * *

(h) *Classification.* Credit sales on ineligible terms for C&BP will be classified as NP loans and serviced accordingly.

(i) *State supplements.* A State supplement specifying modifications to be made in note and mortgage instruments as pertinent to a credit sale to an ineligible purchaser for C&BP will be issued with the advice and approval of OGC.

* * * * *

23. Section 1955.114 is amended by revising the second sentence in paragraph (a)(5) to read as follows:

§ 1955.114 Sales steps for program property (housing).

* * * * *

(a) * * *

(5) * * * Cash sales will be handled in accordance with § 1955.118 of this subpart and credit sales on NP terms will be made in accordance with subpart J of part 1951 of this chapter.

* * * * *

24. Section 1955.115 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 1955.115 Sales steps for non program (NP) property (housing).

* * * * *

(a) *Single Family Housing.* Sales steps will be the same as for program properties as provided in § 1955.114(a) of this subpart, except that sales must be for cash in accordance with § 1955.118 or credit on NP terms as provided in subpart J of part 1951 of this chapter. See Exhibit D of this subpart (available in any FmHA office) which outlines chronologically the sales steps for NP properties.

* * * * *

25. Section 1955.118 is amended by revising the heading and by revising paragraph (a), the introductory text of paragraph (b) and paragraphs (b)(2), (3), (4), (5), (6), (8)(iii) and (10) to read as follows:

§ 1955.118 Processing cash sales or MFH credit sales on NP terms.

(a) *Cash sales.* Cash sales will be closed by the servicing official collecting the purchase price (less any earnest money deposit or bid deposit) and delivering the deed to the purchaser Proceeds will be remitted in accordance with subparts B and K of part 1951 of this chapter.

(b) *Credit sales.* The following provisions apply to MFH credit sales on NP terms:

* * * * *

(2) *Processing.* Purchasers requesting credit on NP terms will be required to submit documentation to establish financial stability, repayment ability, and creditworthiness. Standard forms used to process program applications may be utilized or comparable documentation may be accepted from the purchaser with the servicing official having the discretion to determine what information is required to support loan approval for the type property involved. Individual credit reports will be ordered for each individual applicant and each principal within an applicant entity in accordance with subpart B of part 1910 of this chapter. Commercial credit reports will be ordered for profit corporations and partnerships, and organizations with a substantial interest in the applicant entity in accordance with subpart C of part 1910 of this chapter.

(3) *Approval.* Form FmHA 1944–51 will be used to approve a credit sale even though no obligation of funds is involved. Special instructions on the FMI pertaining to NP credit sales will be followed.

(4) *Downpayment.* A downpayment of not less than 10 percent of the purchase price is required at closing and will be remitted by the servicing official according to subpart B and K of part 1951 of this chapter.

(5) *Interest rate.* The Section 515 RRH interest rate plus ½ percent will be charged on all types of housing credit sales, except SFH. Refer to Exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for interest rates. Loans made on NP terms will be closed at the interest rate which was in effect at the time the loan was approved.

(6) *Term of note.* The note amount will be amortized over a period not to exceed 10 years. If the State Director determines more favorable terms are necessary to facilitate the sale, the note amount may be amortized using a 30-year factor with payment in full (balloon payment) due not later than 10 years from the date of closing. In no case will the term be longer than the period for which the property will serve as adequate security.

* * * * *

(8) * * *

(iii) The County Supervisor or District Director will provide the closing agent with the necessary information for closing the sale. The assistance of OGC will be requested to provide closing instructions for all MFH sales.

* * * * *

(10) *Classification.* MFH credit sales on NP terms will be classified as NP loans and serviced accordingly.

* * * * *

26. Section 1955.119 is amended by revising the introductory text of the section and the introductory text of paragraph (d) to read as follows:

§ 1955.119 Sale of SFH inventory property to a public body or nonprofit organization.

Notwithstanding the provisions of § 1955.111 through § 1955.118 of this subpart, this section contains provisions for the sale of SFH inventory property to a public body or nonprofit organization to use for transitional housing for the homeless. A public body or nonprofit organization is a nonprogram applicant. All other SFH credit sales on nonprogram terms will be handled in accordance with subpart J of part 1951 of this chapter.

* * * * *

(d) *Approval and closing.* Processing cash sales or MFH credit sales on nonprogram terms is according to § 1955.118 of this subpart, except as follows:

* * * * *

27. Section 1955.120 is amended by adding a sentence at the end of the section to read as follows:

§ 1955.120 Payment of points (housing).

* * * These payments will be handled in accordance with subpart B of part 1951 of this chapter.

28. Section 1955.123 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1955.123 Sale procedures (chattel).

(a) *Credit sales.* Although cash sales are preferred in the sale of chattels, credit sales may be used advantageously in the sale of chattels to eligible purchasers and to facilitate sales of high-priced chattels;. Credit sales to eligible purchasers will be in accordance with the provisions of this chapter for the appropriate program for which a loan would otherwise be made including eligibility determinations. Preference will be given to a cash offer which is at least * percent of the highest offer requiring credit. [* Refer to exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for the current percentage.] For FP, County Supervisors, District Directors, and State Directors are authorized to approve or disapprove credit sales on eligible terms in accordance with the respective loan approval authorities in Exhibit C of Subpart A of Part 1901 of this chapter (available in any FmHA office). The determination of eligibility of applicants or eligible applicants that have their application disapproved will be notified of the opportunity to appeal in accordance with subpart B of part 1900 of this chapter. Credit sales to ineligible purchasers of C&BP chattel property may be offered on terms of not less than 10 percent downpayment with the remaining balance amortized over a period not to exceed 5 years. The interest rate for ineligible purchasers of C&BP chattel property will be the current ineligible interest rate for FP property set forth in Exhibit B of FmHA Instruction 440.1 (available in any FmHA office).

District Directors and State Directors are authorized to approve or disapprove credit sales of C&BP chattel property on ineligible terms in accordance with the respective type of program approval authorities in Exhibit E of subpart A of part 1901 of this chapter (available in any FmHA office). For other than C&BP, credit sales to NP purchasers will be handled in accordance with Supbart J of Part 1951 of this chapter.

(b) *Receipt of payment.* Payment will be by cashier's check, certified check, postal or bank money order, or personal check (not in excess of $500) made payable to FmHA. Cash may be accepted if it is not possible for one of these forms of payment to be used. Third party checks are not acceptable. Payments will be handled in accordance with subpart B of part 1951 of this chapter. If full payment is not received at the time of sale, the offer will be

documented by Form FmHA 1955–45 or FmHA 1955–46 where the chattel is sold jointly with real estate by regular sale.

* * * * *

PART 1962—PERSONAL PROPERTY

29. The authority citation for part 1962 continues to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70

Subpart A—Servicing and Liquidation of Chattel Security

30. Section 1962.1 is amended by adding a sentence to the end of the section to read as follows:

§ 1962.1 Purpose.

* * * Security servicing for Nonprogram (NP) loans on farm property will be according to subpart J of part 1951 of this chapter.

31. Section 1962.34 is amended by adding in the last sentence of paragraph (d) the word "Part" before the word "1955"; by removing paragraph (e)(2); by redesignating paragraph (e)(3) as paragraph (e)(2); and by revising paragraph (b)(3) to read as follows:

§ 1962.34 Transfer of chattel security and EO property and assumption of debts.

* * * * *

(b) * * *

(3) FmHA debts assumed will be repaid in amortized installments not to exceed 5 years using Form FmHA 1964–13. The Farmer Program NP interest rate for chattel property set forth in Exhibit B of FmHA Instruction 440.1 (available in any FmHA office), in effect at the time of loan approval, will be charged. Any deferred interest not paid by the time the transfer takes place must be added to the principal balance. The transferred property, including EO property, will be subject to any existing FmHA lien. In the absence of an existing FmHA lien, new lien instruments will be executed.

* * * * * *

PART 1965—REAL PROPERTY

32. The authority citation for part 1965 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Servicing of Real Estate Security For Farmer Program Loans and Certain Note-Only Cases

33. Section 1965.1 is revised to read as follows:

§ 1965.1 Purpose.

This subpart delegates authority and prescribes policies and procedures for servicing real estate, leasehold interests, and certain note-only cases for Farmers Home Administration (FmHA) Farmer Program (FP) loans. Security servicing for borrowers who have *both* FmHA FP and Single Family Housing (SFH) loans, (excluding Technical Assistance Grants and Site loans), will be according to this subpart. Security servicing for borrowers who are indebted for SFH loans only, will be according to subpart C of part 1965 of this chapter. Security servicing for Nonprogram (NP) loan(s) on farm real estate and chattel property will be according to subpart J of part 1951 of this chapter. For borrowers who have both a FP and NP loan, security servicing will be in accordance with the applicable FP regulations and subpart J of part 1951 of this chapter. This subpart does not apply to FmHA guaranteed loans, Rural Rental Housing (RRH) loans, Labor Housing (LH) loans, Business and Industrial (B&I) loans, Community Programs (CP) loans, Shift-in-Land-Use (Grazing Association) loans, Irrigation and Drainage (I&D) loans, or Indian Tribal Land Acquisition loans.

§ 1965.12 [Amended]

34. Section 1965.2 is amended by redesignating paragraphs (a), (b), and (c) as (b), (c) and (d) respectively and by adding a paragraph (a) to read as follows:

§ 1965.2 General policies.

(a) The terms "nonprogram (NP)" and "ineligible" may be used interchangeably throughout this subpart but are identical in their meaning.

* * * * *

35. Section 1965.12 is amended by removing the first sentence of the introductory text and by removing the last sentence of paragraph (g).

36. Section 1965.13 is amended by revising the first sentence of the introductory text to read as follows:

§ 1965.13 Consent by partial release or otherwise to sale, exchange or other disposition of a portion of or interest in security, except leases.

See subpart S of part 1951 of this chapter when a combination of NP, ST and other FP loans are involved. * * *

* * * * *

§ 1965.17 [Amended]

37. Section 1965.17 is amended by removing paragraph (c) and redesignating paragraph (d) as (c).

§ 1965.26 [Amended]

38. Section 1965.26 is amended by removing the heading of paragraph (e)(4)(i); by removing paragraph (e)(4)(ii); by redesignating paragraphs (e)(4)(i)(A), (B), and (C) as (e)(4)(i), (ii), and (iii), respectively; and by revising the words "(A) or (B) of this paragraph" in newly redesignated paragraph (e)(4)(iii) to read "paragraphs (e)(4)(i) or (ii) of this section".

39. Section 1965.27 is amended by revising the fifth sentence of the introductory text; by revising the last sentence of paragraph (c)(1)(ii); by revising paragraphs (c)(1)(iii)(C), (d), (f), (g)(4), and (g)(6)(i) to read as follows:

§ 1965.27 Transfer of real estate security.

* * * Transfer with assumption of real estate security on NP terms will be in accordance with subpart J of part 1951 of this chapter. * * *

* * * * *

(c) * * *

(1) * * *

(ii) * * * See subpart J of part 1951 of this chapter.

(iii) * * *

(C) On ineligible rates and terms in accordance with paragraph (d) of this section for all other transferees. The ineligible term assumption(s) will be serviced in accordance with § 1965.34 of this subpart.

* * * * *

(d) *Assumption of loans by ineligible transferees.* When a borrower sells or proposes to sell the real estate security to a person(s) or entity not eligible to assume the debt under paragraph (b)(5) or (c) of this section, the debt may be assumed on NP terms in accordance with subpart J of part 1951 of this chapter.

* * * * *

(f) *Release of transferor from liability.* The borrower may be released from personal liability when all of the real estate security is transferred under paragraph (c) or (d) of this section and the total outstanding debt or that portion of the debt equal to the present market value of the security is assumed. When the transferor's remaining outstanding FmHA debt after a transfer and assumption exceeds $150,000, the Administrator or designee must approve the release of liability; otherwise, the State Director must approve or disapprove the release of liability. All cases requiring a release of liability will be submitted for review in accordance with Exhibit A of subpart B of part 1956 of this chapter (available in any FmHA office). When the total outstanding debt is not assumed and an FP borrower is to being released from liability, the borrower must be sent a letter similar to Exhibit F of subpart A of part 1955 of this chapter (available in any FmHA

office). SFH borrowers will be released from liability in accordance with § 1965.127 of subpart C of part 1965 of this chapter. In FP cases, the County Committee must take certain action if it is to recommend that the transferor(s) and any cosigner be released from liability. They must determine that the transferor(s) and any cosigner do not have reasonable ability to pay all or a substantial part of the balance of the debt not assumed after considering their assets and income at the time of transfer; that the transferor and any cosigner have cooperated in good faith, used due diligence to maintain the security against loss, and have otherwise fulfilled the covenants incident to the loan to the best of their ability; and recommend that the transferor and any cosigner be released of personal liability upon the transferees' assumption of that portion of the indebtedness equal to the present market value of the security. This action will be documented by checking the appropriate block on Form FmHA 440–2, "County Committee Certification or Recommendation," as specified in the Forms Manual Insert.

(g) * * *

(4) *Farms and Home plans and financial statements.* When an assumption will be for less than the amount of the indebtedness and a release of liability is involved, a current financial and income statement of the transferor will be obtained on Forms FmHA 1944–3 or FmHA 431–2 or other plan of operation acceptable to FmHA.

* * * * *

(6) * * *

(i) The transfer will be contingent upon the County Committee certification on Form FmHA 440–2 for an eligible applicant. This action will be documented by checking the appropriate block on Form FmHA 440–2, as specified in the Forms Manual Insert.

* * * * *

§ 1965.31 [Amended]

40. Section 1965.31 is amended in paragraph (c) by revising the words "Real Estate Mortgage for _____" to read "Real Estate Mortgage or Deed of Trust for _____(Insured Loans to Individuals)".)

§ 1965.34 [Removed and reserved]

41. Section 1965.34 is removed and reserved.

Subpart C—Security Servicing for Single Family Rural Housing Loans

42. Section 1965.101 is amended by adding a sentence at the end of the section to read as follows:

§ 1965.101 Purpose.

* * * Security servicing for Nonprogram (NP) loans on a single family residence will be according to subpart J of part 1951 of this chapter.

43. Section 1965.104 is amended by revising paragraph (c)(2) to read as follows:

§ 1965.104 Preservation of security and protection of liens.

* * * * *

(c) * * *

(2) *Junior lien foreclosure.* When a junior lienholder foreclosure does not result in payment in full of the FmHA debt but the property is sold subject to the FmHA lien, the account may be assumed by the purchaser on program terms subject to the provisions of § 1965.126(c) or NP terms as provided in subpart J of part 1951 of this chapter; otherwise the FmHA loan will be liquidated.

* * * * *

§ 1965.105 [Amended]

44. Section 1965.105 is amended by revising in the last sentence of the introductory text the words "paragraphs (a), (b), and (c)" to read "paragraphs (a) and (b)"; by removing paragraph (c); and by redesignating paragraphs (d) and (e) as (c) and (d), respectively.

45. Section 1965.125 is amended by revising paragraph (a)(2)(iv) and by adding a paragraph (a)(2)(v) to read as follows:

§ 1965.125 Liquidation.

(a) * * *

(2) * * *

(iv) *Release of security instruments.* When consent under this paragraph is given, FmHA will release its security instrument(s).

(v) *Unsatisfied account balances.* Servicing unsatisfied account balances is covered in § 1965.127 of this subpart.

* * * * *

46. Section 1965.126 is amended by revising the introductory text; by revising the last sentence of the introductory text of paragraph (b)(1); by revising paragraph (b)(3); by revising the second sentence of the introductory text of paragraph (b)(4)(ii); and by revising paragraph (d) to read as follows:

§ 1965.126 Transfer of property with assumption of indebtedness.

When a borrower proposes to sell real estate security, assumption of the loan(s) may be approved on program or NP terms, as applicable. Approval on program terms will be subject to the provisions of paragraph (c) of this section and NP terms will be as provided in subpart J of part 1951 of this chapter. Assumptions under paragraphs (b)(12) and (c)(2) of this section *only* are authorized on existing terms without considering the assuming party's eligibility for program assistance. When security property is sold (or title is otherwise conveyed), whether by full conveyance or by land contract, contract-for-deed, or other similar instrument, and the FmHA account is not assumed by the purchaser (or new owner), the loan must be liquidated except as provided in paragraph (b)(12) of this section or § 1965.116 of this subpart.

* * * * *

(b) * * *

(1) * * * The following loans may be assumed on program terms under paragraph (c) of this section or NP terms in accordance with subpart J of part 1951 of this chapter:

* * * * *

(3) *Dwelling situated on more than a minimum-adequate site.* If the property to be transferred with assumption consists of a dwelling on more than a minimum-adequate site as defined in subpart A of part 1944 of this chapter, a determination must be made by FmHA as to whether the excess land can serve as a minimum-adequate site for another dwelling. It is not intended to exclude a property currently in the program from being transferred to a program applicant simply because it is situated on more than a minimum-adequate site. If it is determined that the excess property cannot be sold separately as a minimum-adequate site for another dwelling, the property may be retained in the SFH program provided the entire property is modest in cost compared to a similar house on a minimum-adequate site in the area. When only a portion of the security property is being transferred to the party assuming the FmHA debt and the balance of the FmHA debt is not paid in full when the assumption is closed, the remaining debt of the transferor will be reclassified as NP and reamortized for a period not to exceed 10 years or the final due date of the note being rescheduled, whichever is sooner, using the NP interest rate for a single family residence. FmHA will retain its security position on the portion of property retained by the transferor until the balance not assumed is repaid.

(4) * * *

(ii) * * * In those instances, assumption may be on NP terms only, in accordance with subpart J of part 1951 of this chapter. * * *

* * * * *

(d) *Assumption on NP terms.* When a borrower sells or proposes to sell security property and the purchaser does not meet the eligibility requirements for an RH loan, or the property is not suited for retention in the housing program, the debt may be assumed on NP terms in accordance with subpart J of part 1951 of this chapter.

* * * * *

Dated: June 29, 1993.

Bob Nash,

Under Secretary for Small Community and Rural Development.

[FR Doc. 93-24834 Filed 10-8-93; 8:45 am]

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 140

Regulation Concerning Conduct of Members and Employees and Former Members and Employees of the Commission

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission ("CFTC" or "Commission") is repealing provisions of its regulations on the ethical conduct of employees. These provisions are superseded by Office of Government Ethics ("OGE") rules set forth in 5 CFR part 2635 and part 2634. In a related action, the Commission is today issuing jointly with OGE supplemental regulations which the Commission has determined are necessary and appropriate to fulfill the purposes of part 2635. These supplemental regulations will be codified in 5 CFR part 5100 of chapter XLI, and concern restrictions on financial interests and transactions and on outside employment and activities.

The Commission is not repealing those provisions of its conduct regulations in 17 CFR part 140 which the CFTC has authority to issue independent of the OGE ethics rules. These provisions will continue to apply to the conduct of Commission members and employees. The Commission is, however, revising certain aspects of these rules to conform to current agency administrative practice and to reflect statutory and regulatory changes that have occurred since Subpart C of part 140 was last amended.

This action relates solely to the Commission's organization, procedure, and practice.

EFFECTIVE DATE: October 12, 1993.

FOR FURTHER INFORMATION CONTACT: Larry D. Gasteiger, Attorney, Office of the General Counsel, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone (202) 254-9880.

SUPPLEMENTARY INFORMATION: On August 7, 1992, OGE issued new Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR part 2635. These standards of conduct, effective February 3, 1993, supersede the Commission's part 140 conduct regulations promulgated pursuant to 5 CFR part 735. The new standards also authorize agencies to issue (jointly with OGE) "supplemental agency regulations which the agency determines are necessary and appropriate, in view of its programs and operations, to fulfill the purposes" of part 2635.

Accordingly, the Commission is repealing those provisions of part 140 that have been superseded: §§ 735-2 through 735-3, 735-5 (other than paragraph (a)(1)), 735-6, 735-8, 735-11, and 735-13 through 735-15. In connection with the repeal of most of § 735-5 (Non-governmental employment and other outside activity), the CFTC is jointly issuing with OGE a regulation that will supplement 5 CFR part 2635 Subpart H (Outside Activities). As is the case under existing § 735-5, the supplemental regulation sets forth procedures for CFTC employees to obtain prior approval of certain outside activities. The rule also includes exceptions, under specified circumstances, for special government employees that were formerly contained in § 735-13.

Additionally, the Commission is repealing § 735-7 (Statement of financial interests and outside employment; certification of compliance) to reflect OGE rules in 5 CFR part 2634, which, effective October 5, 1992, superseded the prior executive branch confidential reporting regulations at 5 CFR part 735, subpart D, § 735.106, and agencies' implementing regulations. Further, in connection with the repeal of § 735-13, which applied to special government employees, the obligation of such employees to file financial disclosure reports is also covered by OGE rules codified in 5 CFR part 2634.

As noted above, the government-wide conduct regulations issued by OGE do not supersede regulations that an agency has separate authority, independent of 5 CFR part 2635, to issue. Accordingly, the Commission is retaining 17 CFR 735-1 (Authority and purpose), 735-4 (restrictions on business and financial transactions and interests), 735-5(a)(1) (restrictions on accepting employment or compensation from persons regulated by the Commission), 735-8A (Receipt and disposition of foreign gifts and decorations), 735-9 (Disclosure of information), 735-10 (Practice by former members and employees of the Commission), 735-12 (Statutory violations applicable to conduct of Commission members and employees), and 735-16 (Interpretative and advisory service). These provisions have been renumbered and, in some cases, revised to reflect recent amendments to the Commodity Exchange Act and other pertinent statutes.

The Commission has determined that these rules relate solely to agency organization, procedure, and practice. Therefore, the provisions of the Administrative Procedure Act, as codified, 5 U.S.C. 553, generally requiring notice of proposed rulemaking and other opportunity for public participation, are not applicable. Since the OGE rules became effective on October 5, 1992 and February 3, 1993, the Commission further finds that there is good cause to make these rules effective upon publication in the **Federal Register.**

Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), Public Law No. 96-354, 94 Stat. 1164 (1980), 5 U.S.C. 601 *et seq.*, requires each federal agency to consider, in the course of proposing substantive rules, the effect of those rules on small entities. The Commission has determined that the provisions of the RFA do not apply to the promulgation of these regulations since they relate solely to agency procedure or practice.

Paperwork Reduction Act

The Paperwork Reduction Act of 1989 ("PRA"), 44 U.S.C. 3501 *et seq.*, imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. The Commission has determined that this rulemaking does not impose any information collection requirements as defined by the PRA.

List of Subjects in 17 CFR Part 140

Conflict of interests, Ethics, Organizations and functions.

PART 140—[AMENDED]

Subpart C—Regulation Concerning Conduct of Members and Employees and Former Members and Employees of the Commission

1. The authority citation for part 140, subpart C, is revised to read as follows:

Authority: 7 U.S.C. 4a (f) and (j), 12a(5), and 13.

2. Section 140.735–1 is revised to read as follows:

§ 140.735–1 Authority and purpose.

This subpart sets forth specific standards of conduct required of members, employees, and special government employees, and regulations concerning former members, employees, and special government employees of the Commodity Futures Trading Commission. These rules are separate from and in addition to the Office of Government Ethics' conduct rules, Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR part 2635, and the Commission's supplemental rules set forth in 5 CFR part 5100. In addition, this subpart contains references to various statutes governing employee conduct in order to aid members and employees in their understanding of statutory restrictions and requirements.[1]

§§ 140.735–2, 140.735–3 [Removed]

3. Sections 140.735–2 and 140.735–3 are removed.

4. Section 140.735–4 is redesignated Section 140.735–2 and revised to read as follows:

§ 140.735–2 Business and financial transactions and interests.

(a) *Application.* This section applies to all transactions effected by or on behalf of a Commission member or employee, including transactions for the account of other persons effected by the member or employee, directly or indirectly under a power of attorney or otherwise. Since this section applies to "indirect" participation in transactions, a member or employee is considered to have sufficient interest in the transactions of the spouse or minor child of the member or employee, or other relatives who are residents of the immediate household of the member or employee, so that such transactions must be reported and, absent compelling countervailing reasons, are subject to all the terms of this section.

(b) *Prohibitions.* No Commission member or employee shall:

(1) Participate, directly or indirectly, in any transaction—

(i) Involving a contract of sale of any commodity for future delivery;

(ii) Involving any commodity that is of the character of, or is commonly known to the trade as, an option, privilege, indemnity, bid, offer, put, call, advance guaranty or decline guaranty; or

(iii) For the delivery of any commodity that is or is to be executed pursuant to a standardized contract commonly known to the trade as a margin account, margin contract, leverage account or leverage contract or similar contracts when subject to regulation by the Commission under section 19 of the Act; except that the prohibitions in paragraphs (b)(1) (i) and (ii) of this section shall not apply to:

(A) A transaction in connection with a farming, ranching, oil and gas, mineral rights or other natural resource operation in which the Commission member or employee has a financial interest, if the Commission member or employee is not involved in the decision to engage in, and does not have prior knowledge of, the actual futures or option transaction and has previously notified the General Counsel in writing of the nature of the operation, the extent of the member's or employee's interest, the types of transactions in which the operation may engage and the identity of the person or persons who will make trading decisions for the operation; or

(B) A transaction entered into by any investment company (*e.g.*, a mutual fund) or similar pooled investment entity other than one operated by a person who is a commodity pool operator with respect to that entity, in which the direct or indirect ownership interest of the Commission member or employee is limited to and represents less than 1 per cent of the total ownership interest of the fund or entity and with which the Commission member or employee has no other relationship;[2]

(2) Participate, directly or indirectly, in any investment transaction involving an actual commodity if:

(i) The transaction involves the use of nonpublic information, or

(ii) The transaction is effectuated by an instrument regulated by the Commission, and is not in connection with a transaction permitted under paragraph (b)(1) of this section, or

(iii) The transaction is effected by an instrument functionally equivalent to an instrument regulated by the Commission;[3]

(3) Have a beneficial interest, through ownership of securities or otherwise, in any person[4] regulated by the Commission,[5] such as a contract market or clearinghouse or member thereof, a registered futures commission merchant,[6] any person associated with a futures commission merchant or with any agent of a futures commission merchant, floor broker, commodity trading advisor or commodity pool operator, or any other person required to be registered in a fashion similar to any of the above under the Commodity Exchange Act or pursuant to any rule or

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[1] These references, however, do not purport to cover all restrictions and requirements, and the paraphrased restatements of statutory provisions, such as that of 18 U.S.C. 201, *et seq.*, appearing in this subpart C, are not intended to be, and should not be construed as, verbatim quotations of the law. The statutory text should be consulted in any situation in which it might apply.

[2] Attention is directed to section 9(c) of the Commodity Exchange Act, which makes it a felony for any member or employee of the Commission, or agent thereof, to participate, directly or indirectly, in, *inter alia*, any commodity futures, option or leverage transaction, unless authorized to do so by Commission rule or regulation. Attention is also directed to 17 CFR 4.5, which excludes certain otherwise regulated persons from the definition of "commodity pool operator" with respect to the operation of specific investment entities enumerated in the regulation.

Although not required, if they choose to do so, Commission members or employees may use powers of attorney or other arrangements in order to meet the notice requirements of, and to assure that they have no control or knowledge of, futures or option transactions permitted under paragraph (b)(1)(A) of this section. A Commission member or employee considering such arrangements should consult with the Office of the General Counsel in advance for approval. Should a Commission member or employee gain knowledge of an actual futures or option transaction that has already taken place and the market position represented by that transaction still remains open, he or she should promptly report that fact and all other details to the General Counsel and seek advice as to what action, including recusal from pending matters involving that market, may be appropriate.

[3] Attention is directed to section 9(c) of the Commodity Exchange Act which provides, among other things, that it shall be a felony for any Commission member or employee to participate in any investment transaction in an actual commodity that the Commission by rule or regulation has prohibited to Commission members and employees. A transaction involving an instrument that is the "functional equivalent to an instrument regulated by the Commission" would include, for example, but is not limited to, a transaction in a stock index effectuated through the purchase or sale of an option traded on a national securities exchange where the stock index also underlies a futures contract regulated by the Commission. Attention is also directed to § 140.735–8 of this subpart for information regarding interpretative and advisory service by the General Counsel of the Commission.

[4] As defined in section 1a(16) of the Commodity Exchange Act and 17 CFR 1.3(u) thereunder, a "person" includes an individual, association, partnership, corporation, and a trust.

[5] Attention is directed to sections 2(a)(7) and 9(c) of the Commodity Exchange Act. See footnotes 1, 2, and 8 to this subpart.

[6] This provision does not, however, preclude a member or employee from carrying securities on margin, pursuant to customary margin requirements, with a broker who is also a registered futures commission merchant, or engaged in the trading of commodity options, or commodity leverage transactions.

regulation promulgated by the Commission;

(4) Have a significant beneficial interest, through ownership of securities or otherwise, in any other person required to file reports under the Commodity Exchange Act or pursuant to any rule or regulation promulgated by the Commission;[7] or

(5) Purchase or sell any securities of a company which, to his knowledge, is involved in any:

(i) Pending investigation by the Commission;

(ii) Proceeding before the Commission or to which the Commission is a party; or

(iii) Other matter under consideration by the Commission that could significantly affect the company.

5. Section 140.735–5 is redesignated 140.735–3 and revised to read as follows:

§ 140.735–3 Non-governmental employment and other outside activity.

A Commission member or employee shall not accept employment or compensation from any person, exchange or clearinghouse subject to regulation by the Commission. For purposes of this section, a person subject to regulation by the Commission includes but is not limited to a contract market or clearinghouse or member thereof, a registered futures commission merchant, any person associated with a futures commission merchant or with any agent of a futures commission merchant, floor broker, commodity trading advisor, commodity pool operator or any person required to be registered in a fashion similar to any of the above or file reports under the Act or pursuant to any rule or regulation promulgated by the Commission.[8]

§§ 140.735–6–140.735–8 [Removed]

6. Sections 140.735–6 through 140.735–8 are removed.

§ 140.735–8A [Redesignated as § 140.735–4]

7. Section 140.735–8A Receipt and disposition of foreign gifts and decorations is redesignated § 140.735–4.

§ 140.735–9 [Redesignated as § 140.735–5]

8. Section 140.735–9 is redesignated § 140.735–5 end revised to read as follows:

§ 140.735–5 Disclosure of information.

A Commission employee or former employee shall not divulge, or cause or allow to be divulged, confidential or non-public commercial, economic or official information to any unauthorized person, or release such information in advance of authorization for its release.[9] Except as directed by the Commission or its General Counsel as provided in these regulations, no Commission employee or former employee is authorized to accept service of any subpoena for documentary information contained in or relating to the files of the Commission. Any employee or former employee who is served with a subpoena requiring testimony regarding non-public information or documents shall, unless the Commission authorizes the disclosure of such information, respectfully decline to disclose the information or produce the documents called for, basing his refusal on these regulations.[10] Any employee or former employee who is served with a subpoena calling for information regarding the Commission's business shall promptly advise the General Counsel of the service of such subpoena, the nature of the information or documents sought, and any circumstances which may bear upon the desirability of making such information or document available in the public interest.[11] In any proceeding in which the Commission is not a party, no employee of the Commission shall testify concerning matters related to the business of the Commission unless authorized to do so by the Commission.

§ 140.735–10 [Redesignated as § 140.735–6]

9. Section 140.735–10 is redesignated § 140.735–6 and revised to read as follows:

§ 140.735–6 Practice by former members and employees of the Commission.

(a) Personal and substantial participation or nonpublic knowledge of a particular matter. No person who has been a member or employee of the Commission shall ever knowingly make, with the intent to influence, any communication to or appearance before the Commission in connection with any particular matter involving a specific party or parties[12] in which such person, or one participating with him or her in the particular matter, participated personally and substantially, or gained nonpublic knowledge of facts thereof, while with the Commission.[13]

(b) Particular matter under an individual's official responsibility. No person who has been a member or employee of the Commission shall,

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[7] For purposes of this section, the Office of the General Counsel normally views "significant" ownership as being 10 per cent or more of the outstanding securities of a firm or a $25,000 total investment in a firm, regardless of the percentage of stock owned. The Office has also noted that each investment must be considered on a case-by-case basis and that an investment level in excess of $25,000 may not be "significant" in the case of a large company.

[8] Attention is directed to section 2(a)(7) of the Commodity Exchange Act, which provides, among other things, that no Commission member or employee shall accept employment or compensation from any person, exchange or clearinghouse subject to regulation by the Commission, or participate, directly or indirectly, in any contract market operations or transactions of a character subject to regulation by the Commission.

[9] Attention is directed to section 9(d) of the Commodity Exchange Act, which provides that it shall be a felony punishable by a fine of not more than $500,000 or imprisonment for not more than five years, or both, together with the costs of prosecution—(1) for any Commissioner of the Commission or any employee or agent thereof who, by virtue of his employment or position, acquires information which may affect or tend to affect the price of any commodity future or commodity and which information has not been promptly made public, to impart such information with intent to assist another person, directly or indirectly, to participate in any transaction in commodity futures, any transaction in an actual commodity or in any transaction of the character of or which is commonly known to the trade as an option, privilege, indemnity, bid, offer, put, call, advance guaranty or decline guaranty, or in any transaction for the delivery of any commodity under a standardized contract commonly known to the trade as a margin account, margin contract, leverage account or leverage contract, or under any contract or other arrangement that the Commission determines to serve the same function or is marketed in the same manner as such standardized contract, and (2) for any person to acquire such information from any Commissioner of the Commission or any employee or agent thereof and to use such information in any of the foregoing transactions.

[10] No employee shall disclose such information unless directed to do so by the Commission.

[11] The prohibitions regarding confidential or nonpublic information stated above are intended to cover the matters addressed in sections 4(c), 8, and 9(d) of the Commodity Exchange Act as well as nonpublic information under the Freedom of Information Act, 5 U.S.C. 552, the rules of the Commission thereunder, 17 CFR Part 145, the Privacy Act, 5 U.S.C. 552a, the rules of the Commission thereunder, 17 CFR Part 146, and cases where, apart from specific prohibitions in any statute or rule, the disclosure or use of such information would be unethical.

[12] The phrase "particular matter involving a specific party or parties" does not apply to general rulemaking, general policy and standards formulation or other similar matters. *See* § 2637.201(c)(1) of the regulations of the Office of Government Ethics, 5 CFR 2637.201(c)(1); *cf.*, memorandum of the Attorney General dealing with the conflict-of-interest provisions prior to amendment by the Ethics in Government Act (reproduced following 18 U.S.C. 201).

[13] Attention is directed to 18 U.S.C. 207(a)(1), as amended, which generally prohibits former Federal officers and employees permanently from knowingly making, with the intent to influence, any communication to or appearance before any Federal (or District of Columbia) department, agency or court, or court martial, or any officer or employee thereof, in connection with any particular matter involving a specific party or parties in which the United States (or the District of Columbia) is a party or has a direct and substantial interest and in which the former officer or employee participated personally and substantially while with the government.

within two years after that employment has ceased, knowingly make, with the intent to influence, any communication to or appearance before the Commission in connection with a particular matter involving a specific party or parties which was actually pending under his official responsibility as a member or employee of the Commission at any time within one year prior to the termination of government service.[14]

(c) Restrictions on former members and senior employees. A former member or employee of the Commission who occupied a "senior" position specified in 18 U.S.C. 207(c)(2), as amended, shall not within one year after such "senior" employment has ceased, knowingly make, with the intent to influence, any communication to or appearance before the Commission on behalf of any other person in connection with any matter in which such person seeks official action by the Commission.[15]

[14] Attention is directed to 18 U.S.C. 207(a)(2), as amended. Section 207(a)(2) generally prohibits former Federal officers and employees, within two years after their Federal employment has ceased, from knowingly making, with the intent to influence, any communication to or appearance before any Federal (or District of Columbia) department, agency or court, or court martial, or any officer or employee thereof, in connection with any particular matter involving a specific party or parties in which the United States (or the District of Columbia) is a party or has a direct and substantial interest and which was actually pending under the official responsibility of the former officer or employee within one year prior to the termination of government service.

As used in paragraph (b) of this section, the term "official responsibility" has the meaning assigned to it in 18 U.S.C. 202(b), namely, the "direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct Government action."

[15] Attention is directed to 18 U.S.C. 207(c), as amended, which places restrictions on the representational activities of certain senior officers and employees after their departure from a senior position. Section 207(c) generally makes it unlawful for one year after service in a "senior" position terminates for a former "senior" Federal employee to knowingly make, with the intent to influence, any communication to or appearance before an employee of a department or agency in which he served in any capacity during the one year period prior to termination from "senior" service, if that communication or appearance is on behalf of any other person (except the United States), in connection with any matter concerning which he seeks official action by that employee.

Note that the one year period is measured from the date when the employee ceases to be a senior employee, not from the termination of Government service, unless the two occur simultaneously. This provision prohibits communications to or appearances before the Government and does not prohibit "behind-the-scenes" assistance. The restriction does not require that the former employee has ever been in any way involved in the matter that is the subject of the communication or appearance. The restriction applies with respect to any matter, whether or not involving a specific party.

(d) Exceptions. The prohibitions contained in paragraphs (a), (b), and (c) of this section do not apply to communications solely for the purpose of furnishing scientific or technological information if approved by the Commission or generally to giving testimony under oath or making a statement which is subject to penalty or perjury. Further, the prohibition contained in paragraph (c) of this section does not apply to an uncompensated statement in a particular area within the special knowledge of the former Commission member or employee.[16]

(e) Reporting requirement. Any former member or employee of the Commission who, within two years after ceasing to be such, is employed or retained as the representative of any person (except the United States) in connection with a matter in which it is contemplated that he will appear before or communicate with the Commission shall, within ten days of such retainer or employment, or of the time when appearance before or communication with the Commission is first contemplated, file with the General Counsel of the Commission a statement as to the nature thereof together with any desired explanation as to why it is deemed consistent with this section. Employment of a recurrent character may be covered by a single comprehensive statement. Each such statement should include an appropriate caption indicating that it is filed pursuant to this section. The reporting requirement of this paragraph does not apply to communications incidental to court appearances in litigation involving the Commission.

(f) Definitions. As used in this section, the phrase "appearance before the Commission" means any formal or informal appearance on behalf of any person (except the United States) before the Commission, or any member or employee thereof with an intent to influence. As used in this section, the phrase "communication with the Commission" means any oral or written communication made to the Commission, or any member or employee thereof, on behalf of any person (except the United States) with an intent to influence.

(g) Advisory ruling. Persons in doubt as to the applicability of this section may apply for an advisory ruling by addressing a letter requesting such a ruling to the General Counsel.

(h) Procedures for administrative enforcement of statutory restrictions on post-government employment conflicts of interest.[17] (1) Scope. The provisions of this paragraph prescribe procedures for administrative enforcement of the restrictions which 18 U.S.C. 207 (a), (b), and (c), as amended, place on appearances before or communications with Federal (and District of Columbia) departments, agencies and courts, and other enumerated entities, as well as the officers and employees thereof, by former Commission members and employees.

(2) Investigations. The General Counsel of the Commission, or his or her designee, shall conduct such investigations as he or she deems appropriate to determine whether any former Commission member or employee have violated 18 U.S.C. 207 (a), (b) or (c), as amended. The General Counsel shall report the results of his or her investigations to the Commission and shall recommend to the Commission such action as he or she deems appropriate.

(3) Hearings. Hearings required to be held under the provisions of this section shall be held before an Administrative Law Judge, utilizing the procedures prescribed by the Commission's rules of practice for adjudicatory proceedings (17 CFR Part 10), except to the extent that those rules are inconsistent with the provisions of this section. Any proceeding brought under the provisions of this section shall be prosecuted by the General Counsel or his or her designee.

(4) Sanctions. If the Commission finds, after notice and opportunity for a hearing, that a former Commission member or employee has violated 18 U.S.C. 207 (a), (b) or (c), as amended, the Commission may prohibit that person from making, on behalf of any other person (except the United States), any formal or informal appearance before, or with the intent to influence any oral or written communication to, the Commission on a pending matter of business for a period not to exceed five years, or may take other appropriate disciplinary action.

[16] Attention is directed to 18 U.S.C. 207(j), as amended (listing other exceptions). Self-representation is not prohibited under Section 207.

[17] This section does not apply to employees who leave service after December 31, 1990.

§ 140.735–11 [Removed]

10. Section 140.735–11 is removed.

§ 140.735–12 [Redesignated as § 140.735–7]

11. Section 140.735–12 is redesignated § 140.735–7 and revised to read as follows:

§ 140.735–7 Statutory violations applicable to conduct of Commission members and employees.

A violation of Section 2(a)(7), 8 or 9 (c) or (d) of the Commodity Exchange Act, as amended, shall be deemed to be a violation of this subpart as well.

§§ 140.735–13—140.735–15 [Removed]

12. Sections 140.735–13 through 140.735–15 are removed.

§ 140.735–16 [Redesignated as § 140.735–8]

13. Section 140.735–16 is redesignated § 140.735–8 and revised to read as follows:

§ 140.735–8 Interpretative and advisory service.

(a) *Counselor for the Commission.* The General Counsel, or his or her designee, will serve as Counselor for the Commission and as the Commission's representative to the Office of Government Ethics, on matters covered by this subpart. The General Counsel will also serve as the Commission's designated agency ethics official to review the financial reports filed by high-level Commission officials under Title II of the Ethics in Government Act, as well as otherwise to coordinate and manage the Commission's ethics program.

(b) *Duties of the Counselor.* The Counselor shall:

(1) Coordinate the agency's counseling services and assure that counseling and interpretations on questions of conflict of interests and other matters covered by the regulations in this subpart are available as needed to Regional Deputy Counselors, who shall be appointed by the General Counsel, in coordination with the Chairman of the Commission, for each Regional Office of the Commission;

(2) Render authoritative advice and guidance on matters covered by the regulations in this subpart which are presented to him or her by employees in the Washington, D.C. headquarters office; and

(3) Receive information on, and resolve or forward to the Commission for consideration, any conflict of interests or apparent conflict of interests which appears in the Statements of Employment and Financial Interests submitted under this subpart, which is not resolved by the Director of Personnel, and any other conflict of interests or apparent conflict of interests which otherwise appears.

(c) *Regional Deputy Counselors.* Regional Deputy Counselors shall:

(1) Give advice and guidance as requested to the employees assigned to their respective Regional Offices; and

(2) Receive information on and refer to the Director of Personnel, any conflict of interests or appearance of conflict of interests in Statements of Employment and Financial Interests submitted by employees to whom they are required to give advice and guidance.

(d) *Confidentiality of communications.* Communications between the Counselor and Regional Deputy Counselors and an employee shall be confidential, except as deemed necessary by the Commission or the Counselor to carry out the purposes of this subpart and of the laws of the United States.[18]

(e) *Furnishing of conduct regulations.* The Director of Personnel shall furnish a copy of this Conduct Regulation to each member, employee, and special government employee immediately upon his or her entrance on duty and shall thereafter, annually, and at such other times as circumstances warrant, bring to the attention of each member and employee this Conduct Regulation and all revisions thereof.

(f) *Availability of counseling services.* The Director of Personnel shall notify each member, employee, and special government employee of the availability of counseling services and of how and where these services are available at the time of entrance on duty and periodically thereafter.

Issued in Washington, DC, on September 27, 1993, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 93–24656 Filed 10–8–93; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM93–8–000]

Revisions to Regulations Implementing Section 5 of the Outer Continental Shelf Lands Act

Issued October 4, 1993.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is amending certain regulations and removing certain other regulations which were promulgated to implement section 5 of the Outer Continental Shelf Lands Act (OCSLA). Section 5 of the OCSLA requires open access, nondiscriminatory transportation of natural gas on the Outer Continental Shelf (OCS).

Among other things, the Commission is removing the regulations governing the OCSLA capacity allocation program, and the regulation which provides for abandonment authority. In Order No. 636, the Commission established a capacity release program which is applicable for all transportation services provided by interstate pipelines that hold a Part 284 blanket transportation certificate, including OCS transactions. Hence, the Commission proposes to remove the Order No. 509 capacity allocation regulations.

EFFECTIVE DATE: November 1, 1993.

FOR FURTHER INFORMATION CONTACT: Connie Caldwell, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 208–1022.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200, or 2400 bps, full duplex, no parity, 8 data bits, and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208–1781. The full text of this rule will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

Order No. 559

I. Introduction

The Federal Energy Regulatory Commission (Commission) is amending certain regulations and removing certain

[18] No attorney-client privilege, however, attaches to such communications since the Counselors are counsel to the Commission, not to the employee. Thus, any evidence of criminal law violations divulged by an employee to the Counselor must be reported by the latter to the Commission, which may refer the matter to the Criminal Division of the Department of Justice and the United States Attorney in whose venue the violations lie.

other regulations which were promulgated to implement section 5 of the Outer Continental Shelf Lands Act (OCSLA).[1] Section 5 of the OCSLA requires open-access, nondiscriminatory transportation of natural gas on the Outer Continental Shelf (OCS). The pertinent regulations were promulgated in Order No. 509,[2] and are contained in Subpart K of part 284 of the Commission's regulations.[3] The amendments to the regulations will become effective on November 1, 1993.

Among other things, the Commission is removing the regulations governing the OCSLA capacity allocation program,[4] and the regulation which provides for abandonment authority.[5] In Order No. 636,[6] the Commission established a capacity release program which is applicable for all transportation services provided by interstate pipelines that hold a Part 284 blanket transportation certificate, including OCS transactions. With implementation of the Order No. 636 capacity release program, the Order No. 509 capacity allocation program will become obsolete. Therefore, the Commission is removing the Order No. 509 capacity allocation regulations. However, existing Order No. 509 allocations will be subsumed by the pipeline's new Order No. 636 capacity release program so that these existing arrangements will not be unnecessarily disturbed.

As discussed more fully below, this rulemaking also resolves the matters raised in a related court order remanding certain orders to the Commission for further consideration.[7] In the remanded orders, the Commission had applied the newly-promulgated Order No. 509 regulations to Tennessee Gas Pipeline Company (Tennessee).

II. Reporting Requirements

By this final rule, the Commission is amending its regulations to eliminate duplicative requirements that currently exist under the Order No. 509 capacity allocation program and under the Order No. 636 capacity release program. The Order No. 636 regulations established a capacity release program applicable to all interstate transactions, both offshore and onshore; therefore, the information requirements under Order No. 509 have been subsumed by the Order No. 636 regulations. Thus, there is no change in the OCS information requirements and no change in reporting burden.

The Commission estimates that the public reporting burden will not change with the adoption of this final rule. The current average burden estimate of 225.34 hours per response/filling under FERC–545, Gas Pipeline Rates: Rate Change (Non-Formal), (1902–0154) is representative of the burden required for an average non-formal rate filing. The per filing estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden associated with the collection of OCS transportation information, was estimated to total 10,320 hours when Order No. 509 was first issued. The only Order No. 509 burden was a one-time filing that has since been completed. That burden reduction has been reflected in previous FERC–545 submissions to the Office of Management and Budget (OMB). Thus, the one-time Order No. 509 burden is not part of the current FERC–545 total burden. The total burden for 100 pipelines companies providing information under FERC–545 is expected to remain unchanged at 757 filings and 170,585 hours annually.

The Commission is notifying OMB of this amendments. Interested persons may send comments regarding this burden estimate or any other aspect of the Commission's collection of information, including suggestions for reducing this burden, to the Federal Energy Regulatory Commission, 941 North Capitol Street, NE., Washington, DC 20426 [Attention: Michael Miller, Information Services Division, (202) 208–1415]. Comments on the requirements of this order can also be sent to the Office of Information and Regulatory Affairs of OMB [Attention: Desk Officer for Federal Energy Regulatory Commission (202) 395–6880].

III. Background

On April 21, 1993, the Commission issued a Notice of Proposed Rulemaking (NOPR) in this docket[8] which proposed to amend the Commission's existing regulations to conform with the regulations adopted in Order No. 636. A companion order to the NOPR was issued[9] which determined that the matters remanded to the Commission by the Court of Appeals for the District of Columbia Circuit would be resolved by this rulemaking.[10]

In the NOPR, the Commission ascertained that, as a result of the implementation of the Order No. 636 capacity release programs, the OCSLA capacity allocation program would become redundant. Also, since the Order No. 636 capacity release program is applicable to all interstate transactions, including those occurring on the OCS, the Commission further determined that conflict and/or confusion could arise as to which program should be applied to OCS transactions. The Commission decided that one uniform capacity release program applicable to all interstate transactions, offshore and onshore, would best serve the public interest. Hence, the Commission proposed to remove the regulations authorizing the Order No. 509 capacity allocation programs.[11]

The Commission also proposed to remove the Order No. 509 regulations, provided at 18 CFR 284.305, which required OCS pipelines to make certain rate filings needed to implement Order

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[1] 43 U.S.C. 1334.

[2] Order No. 509, Interpretation of, and Regulations Under, Section 5 of the Outer Continental Shelf Lands Act (OCSLA) Governing Transportation of Natural Gas by Interstate Governing Transportation of Natural Gas by Interstate Natural Gas Pipelines on the Outer Continental Shelf, FERC Stats. & Regs. Preambles ¶ 30,842 (1988), 53 FR 50,925 (Dec. 9, 1988), *order on rehearing*, Order No. 509–A, FERC Stats. & Regs. Preambles ¶ 30,847 (1989), 54 FR 8301 (Feb. 17, 1989).

[3] 18 CFR 284.301–284.305.

[4] 18 CFR 284.304.

[5] 18 CFR 284.303(c)(3).

[6] Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, 57 FR 13,267 (April 16, 1992), III FERC Stats. & Regs. Preambles ¶ 30,939 (April 8, 1992); *Order on reh'g*, Order No. 636–A, 57 FR 36,128 (August 12, 1992), III FERC Stats. & Regs. Preambles ¶ 30,950 (August 3, 1992), *order on reh'g*, Order No. 636–B, 57 FR 57,911 (December 8, 1992), 61 FERC ¶ 61,272 (1992).

[7] *Tennessee Gas Pipeline Company* v. *FERC*, 972 F.2d 376 (D.C. Cir. 1992).

[8] Revisions to Regulations Implementing Section 5 of the Outer Continental Shelf Lands Act, 58 FR 25583 (Apr. 27, 1993), corrected, 58 FR 27691 (May 11, 1993), III FERC Stats. & Regs. Preambles ¶ 32,494 (Apr. 21, 1993). Regs. Preambles at 30,552–553. However, the OCS capacity allocation program, which was authorized by regulation as opposed to Commission order, remained intact.

[9] Tennessee Gas Pipeline Company, 63 FERC ¶ 61,096 (1993).

[10] However, the companion order directed Tennessee to inform the Commission, in its comments to the NOPR, if remaining matters need to be resolved. No requests for rehearing of the companion order were filed.

[11] It should be noted here that the Commission issued a companion order to Order No. 636 which required the modification of all pre-Order No. 636 capacity brokering, capacity release, and upstream pipeline capacity assignment programs to bring those programs into conformance with the Order No. 636 capacity release program. That Order resolved any disparity between the Order No. 636 capacity release program and existing programs which had been authorized by Commission order. Algonquin Gas Transmission Co., *et al.*, 59 FERC ¶ 61,032 (1992), *Reh'g denied*, 60 FERC ¶ 61,113 (1992). *See* Order No. 636, III FERC Stats. & Regs. Preambles at 30, 416; Order No. 636–A, III FERC Stats. &

No 509. The Commission concluded that, since all existing OCS interstate pipelines now have rates on file for transportation service under the part 284 blanket certificates issued to them in Order No. 509, these filing requirements would no longer be needed.

However, the Commission emphasized that it was not proposing to rescind or alter the requirement that new interstate pipelines that transport natural gas on the OCS offer open-access transportation under a part 284 blanket transportation certificate. Under the Commission's proposal, that requirement would continue to be imposed on all OCS pipelines, as required by Commission policy and in order to ensure compliance with the open-access, nondiscriminatory standard for OCS transportation required by section 5 of the OCSLA.

IV. Comments

In response to the NOPR, comments were filed by three parties: High Island Offshore System (HIOS), U–T Offshore System (U–TOS), and Tennessee. No reply comments were filed.

VI. Discussion

A. Effectiveness of Blanket Certificates Issued in Order No. 509

HIOS and U–TOS request that the Commission clarify and confirm that the part 284, Subpart G blanket certificates previously issued to all OCS pipelines in Order No. 509 remain effective despite the proposed revisions to the regulations. We will grant this request by clarifying that the revisions to the regulations made in this rule do not affect the validity of the certificates issued in Order No. 509.

The regulations being removed were needed for the initial implementation of the requirement of the OCSLA that interstate pipelines provide open access transportation on the OCS. Since all existing OCS interstate pipelines were issued Part 284, Subpart G blanket transportation certificates in Order No. 509, and now have rates on file for service under those certificates, the regulations being removed have become superfluous. Of course, as stated above, any new OCS interstate pipeline would be required to provide open access under a Part 284 blanket transportation certificate in order to conform to the requirements of section of the OCSLA.

B. Abandonment Authorization

Section 284.303(c)(3) of the regulations was promulgated in order to give additional abandonment authorization to OCS blanket certificate holders. This additional abandonment authority was needed to facilitate the OCS allocation program. Since we are removing the OCS allocation program from the regulations, this additional authority is no longer warranted. Therefore, by removing § 284.303 (c)(3) from the regulations, we are rescinding the abandonment authorization provided to OCS pipelines.

C. Existing Order No. 509 Capacity Allocations

HIOS and U–TOS request that we clarify and confirm that capacity relinquishment implemented under the Order No. 509 regulations remain authorized despite the discontinuation of those regulations. We will grant the requests.

In *Algonquin*,[12] the Commission required the modification of all pre-Order No. 636 capacity brokering, capacity release, and upstream pipeline capacity assignment programs to bring those programs into conformance with the Order No. 636 capacity release program. The *Algonquin* order also addressed the treatment of pre-existing capacity assignments and reassignments. We will follow the reasoning expressed in that order.

Accordingly, existing Order No. 509 capacity allocations will be subsumed with the pertinent pipeline's new Order No. 636 capacity release program. The existing Order No. 509 capacity allocations will be allowed to continue to be effective for the term agreed upon between the parties. However, once a pipelines's Order No. 636 capacity release program goes into effect, the pipeline must post notice of all preexisting Order No. 509 capacity allocations on its electronic bulletin board.

C. Termination Date for Order No. 509 Capacity Allocation Programs

HIOS and U–TOS request that we establish November 1, 1993, as the termination date for the Order No. 509 capacity allocation programs in order to ensure an orderly transition between the Order No. 509 programs and the Order No. 636 programs. We agree that a date certain should be established for termination so that there is no break between the two programs. However, it is important that this date not precede the effective date of the tariff filings establishing the Order No. 636 capacity release programs. Otherwise, a gap in time would occur when capacity releasing could not be performed under any program, *i.e.*, the Order No. 509 program would have been terminated, but the Order No. 636 program may not have become effective as yet for the pertinent pipeline.

It is anticipated that most interstate pipelines will have effective tariffs with capacity release provisions by November 1, 1993. Since the effective date of this rule will operate to terminate the Order No. 509 capacity allocation programs, we will establish November 1, 1993, as the date upon which the amendments to the regulations contained in this rule will become effective. After the November 1 date, capacity allocations must be formulated under the Order No. 636 programs. However, new capacity allocations may be made under the Order No. 509 capacity allocation programs until that time. Further, if the November 1 effective date interferes with ongoing transactions for the few pipeline whose Order No. 636 tariffs become effective after November 1, the pipeline may notify the Commission and request appropriate relief.

D. Individually Certificated (Part 157) Services

Tennessee states that its difficulties with the Order No. 509 capacity allocation program, which ultimately resulted in the court remand discussed above, are resolved by the revisions to the regulations proposed in the NOPR "only if the Commission approves Tennessee's proposed procedure for shippers served under individually certificated rate schedules to convert to Tennessee's part 284 firm transportation rate schedule, as set forth in Tennessee's restructuring filing in Docket No. RS92–23." Otherwise, Tennessee argues, part 157 services (which are not eligible for Order No. 636 capacity release) would remain in place and hinder open-access transportation on the OCS.

It appears that we have come full circle on this issue. It was this very concern for open-access transportation on the OCS (as mandated by the OCSLA) that prompted us to encourage the abandonment of part 157 services where necessary to facilitate the Order No. 509 capacity allocation program. Under that scenario, once the part 157 service was abandoned, new service would be provided under the pipeline's part 284 blanket transportation certificate and the pipeline would charge its part 284 rates for service. However, Tennessee balked at this approach because it appeared to require a pipeline to abandon services and rates the pipeline might prefer to retain. Therefore, Tennessee argued to the Court of Appeals for the District of Columbia Circuit that we have no authority to *require* and unwilling

[12] *Supra* note 11.

pipeline such as Tennessee to abandon a certificated service. Unable to reach a definitive conclusion based on the record before it, the court remanded the matter to the Commission for further review.

Tennessee now argues that unless individually certificated services are converted to part 284 service: (1) The potential exists for discriminatory treatment among similarly situated shippers, (2) to the extent that the costs of part 157 service have been rolled into system-wide costs, the part 157 shipper would pay general, rolled-in rates, but would not receive the advantages of Part 284 service, (3) Part 157 shippers would escape responsibility for their fair share of Order No. 636 transition costs, and (4) merchants serving customers with part 157 transportation service would be able to command higher netback wellhead prices because the transportation cost would be artificially lower. We need not address these specific assertions directly because part 157 services may be converted to part 284 services only upon consent of the pipeline and its customer. Therefore, we encourage Tennessee to negotiate directly with its customers to encourage conversion part 284 services and thereby avoid the potential for types of abuses Tennessee perceives.

Tennessee argues that its problems with the Order No. 509 capacity allocation program are resolved only if the procedure it has proposed in its restructuring proceeding is approved by the Commission. It is unclear from Tennessee's request for rehearing how the specifics of a conversion procedure undertaken within the context of an Order No. 636 restructuring proceeding relate to the rescission of the Order No. 509 capacity allocation program. However, this is not a matter appropriately addressed here. Instead, the specifics of the conversion procedure must be, and currently are being, addressed in Tennessee's restructuring docket.[13]

VII. Environmental Analysis

The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any Commission action that may have a significant adverse effect on the human environment.[14] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment. The action taken here falls within the categorical exemptions provided in the Commission's regulations.[15] Therefore, an environmental assessment is unnecessary and was not prepared in this proceeding.

VIII. Information Collection Requirement

Office of Management and Budget (OMB) regulations require that OMB approve certain information and recordkeeping requirements imposed by agency rules. The information collection requirements in this rule have not changed from those proposed in the Notice of Proposed Rulemaking published in the **Federal Register** on April 27, 1993 (58 FR 25583), as corrected on May 11, 1993 (58 FR 27691). Therefore, this rule does not have to be submitted to OMB for review. A copy will be sent to OMB for informational purposes only.

The information collection requirement amended by this order is FERC–545, Gas Pipeline Certificates: Rate Change (Non-Formal) (1902–0154). The information collected under FERC–545 enables the Commission to carry out its legislative mandate and regulatory responsibilities under the OCSLA and the NGA. Specifically, the Commission's Office of Pipeline and Producer Regulation uses the data to ensure that all rates and charges in proposed tariff sheets are just and reasonable in light of the transportation activities authorized for OCS pipelines.

The Commission is submitting notification of this rule to OMB. Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission, 941 North Capitol Street, NE., Washington, DC 20426 [Attention: Michael Miller, Information Services Division, (202) 208–1415]. Comments on the requirements of the subject order may also be sent to the Office of Information and Regulatory Affairs at OMB [Attention: Desk Officer for Federal Energy Regulatory Commission, (202) 395–6880].

List of Subjects 18 CFR Part 284

Continental shelf, Natural gas, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends part 284, chapter I, title 18, Code of Federal Regulations, as set forth below.

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

1. The authority citation for part 284 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352; 43 U.S.C. 1331–1356.

2. Section 284.303 is revised to read as follows:

§ 284.303 OCS blanket certificates.

Every OCS pipeline [as that term is defined in § 284.302(b)] is required to provide open-access, nondiscriminatory transportation service pursuant to a blanket transportation certificate issued under subpart G of this part.

§§ 284.304 and 284.305 [Removed]

3. Sections 284.304 and 284.305 are removed.

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24925 Filed 10–8–93; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 650

[FHWA Docket No. 92–25]

RIN 2125–AD01

National bridge inspection Standards

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is adopting, as final, a current interim final rule that specifies a maximum frequency at which highway bridges must be inspected under the National Bridge Inspection Standards (NBIS). This final rule establishes 4 years as the maximum period between inspections. However, States must inspect bridges at intervals not to exceed 2 years unless the FHWA grants an exemption. The NBIS regulation permits an exemption from the 2-year inspection frequency for certain types or groups of bridges where past inspection reports and favorable experience and analysis justify the increased interval of inspection. A State proposing to inspect some bridges at

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[13] *See* Tennessee Gas Pipeline Company, 64 FERC ¶ 61,020 (1993). In that order, we denied Tennessee's request that it be allowed to require customers to convert part 157 services to part 284 services. Observance of that directive will occur in Tennessee's subsequent compliance filing, and will be addressed in our next order in the restructuring proceeding.

[14] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles ¶ 30,783 (1987).

[15] 18 CFR 380.4(a)(27).

intervals exceeding 2 years must submit a detailed proposal and supporting data to the FHWA for approval. In such cases, the interval between inspections would be determined on the basis of the State's proposal and supporting data, but is not to exceed 4 years.

DATES: This regulation is effective October 12, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. David H. Densmore, Bridge Management Branch, Bridge Division, Office of Engineering, (202) 366–4617; or Ms. Vivian Philbin, Office of Chief Counsel, (202) 366–0780, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m to 4:15 p.m., e.t., Monday through Friday, except legal Federal holidays.

SUPPLEMENTARY INFORMATION: The NBIS for bridges on all public roads are set forth in 23 CFR part 650, subpart C. Section 650.305 specifies the frequency at which bridges must be inspected. Under § 650.305(a), the normal maximum interval between inspection is 2 years. The FHWA's rulemaking of August 26, 1988 (53 FR 32611), added provisions for varying from this normal frequency for certain types or groups of bridges. Section 650.305(b) requires more frequent inspection than at 2-year intervals for certain types and groups of bridges which, because of such factors as age, traffic characteristics, state of maintenance, or known deficiencies, require closer monitoring. Section 650.305(c) permits the maximum interval between inspections to exceed 2 years for certain types or groups of bridges where past inspection reports and favorable experience and analysis justify the increased interval of inspection. If a State proposes to inspect some bridges at greater than the specified 2-year interval, the State must submit a detailed proposal and supporting data to the FHWA, and obtain FHWA approval. Although the preamble to the 1988 rulemaking suggested a maximum of 4 years between inspections, the rule itself did not establish a maximum interval. The FHWA's November 9, 1992, interim final rule (57 FR 53278) requested comments on an amendment to § 650.305(c) that specified, effective December 9, 1992, that 4 years is the maximum interval between inspections. This action was taken in response to the decision in *Center for Auto Safety* v. *FHWA*, 956 F.2d 309 (D.C. Cir. 1992), in which the U.S. Court of Appeals for the D.C. Circuit ruled that the current regulation was not valid because it failed to "establish" any "maximum time period between inspections" as required by 23 U.S.C. 151(b)(2).

Discussion of Comments

Eight commenters responded to the rulemaking. Comments were received from 5 State Departments of Transportation, 1 consulting firm that performs bridge inspections, and 2 safety groups.

Two safety groups, the Advocates for Highway and Auto Safety (Advocates), and the Center for Auto Safety (CAS), in letters to the Federal Highway Administrator, opposed the rulemaking. These letters were added to the FHWA docket. The Advocates and the CAS subsequently submitted separate comments directly to the docket.

Comment 1

Comments from the State Departments of Transportation and the consulting firm supported the rulemaking. One State that had obtained approval from the FHWA for inspecting some 527 bridges at 4-year intervals indicated that its experience reinforced its belief that the 4-year maximum interval is adequate for certain bridges. Two States that have not applied for an exemption to the 2-year inspection interval under § 650.305(c) indicated that they may take advantage of the provision as bridge management systems are implemented. Two other States indicated that the flexibility provided by the rule should permit them to better direct their financial and personnel resources. One State suggested a need for more specific guidelines for selecting candidate bridges for inspection intervals longer than 2 years, and one State suggested changes to the current guidelines.

Response

The current guidelines for selecting candidate bridge projects are contained in the FHWA's September 16, 1988, Technical Advisory T 5140.21. Paragraph 5a(1) identifies classes of bridges that, in general, would be excluded from consideration for inspection intervals longer than 2 years. Bridges that are outside of the excluded classes could become candidates for inspection at intervals exceeding 2 years but not exceeding 4 years under the application process. The FHWA has no plans to modify the current guidelines for selecting candidate bridge projects.

Comment 2

The consulting firm indicated that there are cases where, in its judgment, it is not necessary to inspect at 2-year intervals. Several examples were given. The firm suggested that some agency at the State level should be allowed to establish criteria for extension of inspection intervals on rural bridges.

Response

Section 650.305(c) does not extend the authority to the States to approve inspections at intervals greater than 2 years. Under § 650.305(c) a State may develop and submit to the FHWA proposed criteria and supporting data for extending inspection intervals.

Comment 3

The Advocates and the CAS urged the FHWA not to proceed with a final rule prior to receipt of full public comment. The Advocates cited increased funding under the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Public Law 102-240, 105 Stat. 1914, and the current emphasis on maintaining cost-effective programs as reasons not to proceed. The Advocates also commented that providing an opportunity for comment subsequent to the issuance of an interim final rule violates the notice and comment requirements applicable to informal rulemaking. The group indicated that it was not afforded the opportunity to comment on the original rulemaking because it was not in existence at that time (1987).

Response

As stated in the preamble to the November 9, 1992, interim final rule, the FHWA decided to amend the bridge regulation through an interim final rule without further prior notice and additional opportunity for comment because inspection frequency was the subject of public comment in an earlier rulemaking. A 60-day comment period was also provided in the interim final rule published on November 9, 1992.

Comment 4

The Advocates commented that lengthening the time between inspections will increase the cost of bridge work when it is undertaken.

Response

The FHWA disagrees with the comment. Bridge maintenance and repair costs would not be affected since eligible bridges would, in general, not require special or preventive maintenance in the timeframe between inspections.

Comment 5

The Advocates commented that the FHWA's exemption criteria should consider the importance of a bridge to the surrounding community and the length of detour routes.

Response

Bridge importance is not listed in the exemption criteria (Paragraph 5a of the FHWA's September 16, 1988, Technical Advisory T 5140.21 on Revisions to the National Bridge Inspection Standards (NBIS)) because the goal of the NBIS is to assure the proper safety inspection of all bridges. Exemptions are not permitted where structural reliability is an issue, irrespective of the bridge's location or perceived importance.

Comment 6

The Advocates commented concerning the need, in its view, for the States to report on how they are redirecting inspection resources as a result of using longer inspection intervals on some bridges.

Response

Several States have indicated that the provisions of § 650.305(c) would enable them to use their inspection resources more effectively. However, the FHWA has no plans to require States to track and report how bridge inspection resources are being used. The FHWA believes that this would divert needed resources to accounting exercises and report writing without a concomitant safety benefit. Also, changes in inspection and reporting practices that are taking place as a result of bridge management systems would frustrate any attempt to track and compare current and historical inspection efforts.

Comment 7

The Advocates commented that there should be separate State reporting of the conditions of bridges inspected on 4-year intervals, and criteria governing the circumstances under which a bridge must be returned to a 2-year inspection interval.

Response

The condition of bridges that are permitted to be inspected at intervals exceeding two years are reported to the FHWA in a manner that permits separate review whenever desired. To qualify for an inspection interval exceeding two years, a bridge must meet criteria approved by the FHWA. These criteria are approved on the basis of the State's detailed proposal and supporting data which must be provided to the FHWA at the time of application. If, as a result of an inspection, a bridge no longer meets the approved criteria, it must be returned to an appropriate inspection interval not to exceed 2 years.

Comment 8

The CAS urged the FHWA to reconsider and withdraw the interim final rule in the light of the agency's 1983 benefit/cost analysis that, the CAS suggests, supports the universal application of a 2-year inspection rule.

Response

The conclusion that the FHWA's 1983 benefit/cost analysis supports the universal application of a 2-year inspection rule is not accurate. The 1983 cost analysis provided a rough estimate of the benefits to the public from application of the NBIS. It has no direct bearing on this rulemaking action since it did not evaluate the benefits and costs of altered inspection frequencies.

Comment 9

The CAS commented that the FHWA has not supplied a viable benefit/cost analysis that supports the interim final rule, i.e., estimated the cost to society for increasing the inspection interval, either in economic terms or in increased injuries or fatalities. CAS also commented that the FHWA has not explained how the use of inspection resources would, in fact, be redistributed as a result of the granting of 4 year inspection intervals. It expressed concern that resources now spent on inspection may no longer be used for bridge inspection.

Response

The FHWA stated its conclusions with regard to the effects on public safety in the preamble to the November 9, 1992, rulemaking. Permitting up to a 4-year interval between inspections under the exemption process outlined will not present a risk to public safety. 57 FR 53278, 53281. Changes in the cost of inspection will depend on the extent to which States utilize the § 650.305(c) exemption provision and how they choose to redistribute those resources. As previously noted, State comments indicate that the added flexibility would permit them to better direct these resources.

Comment 10

The CAS commented that in issuing an interim final rule in advance of public comment the FHWA has proceeded on a predetermined course, is relying on a stale docket, and is relying heavily on new information that has not been examined or explained by the agency.

Response

The FHWA's decision to proceed in issuing the interim final rule is well supported by the information available on bridge deterioration rates and by public comment. The 1988 rulemaking on frequency of inspection was based on extensive review and evaluation of the available information which included the views of 46 commenters and several studies. Studies that were examined by the FHWA in connection with the 1988 rulemaking are identified in the November 9, 1992, rulemaking preamble. Several studies that were published since 1988 are also listed. The FHWA relied on the information that was published prior to 1988 as the basis for its interim rule. Studies which were published since 1988 were identified to provide an up-to-date list of relevant information and to document the administrative record as to the information which the FHWA has examined as a part of the rulemaking. The studies published since 1988 corroborate the findings of earlier studies and they fully support the determinations of the 1988 rulemaking. This rulemaking action is based on all information cited in FHWA's rulemaking of August 26, 1988, of November 9, 1992, and on an analysis of the comments that were received in response to the November 9, 1992, rulemaking and summarized herein.

Comment 11

The CAS commented that the FHWA has made no attempt to provide current data or analysis of the experience of the States that have been operating under a 4-year inspection frequency in support of the rulemaking.

Response

The time that elapsed between the first FHWA approvals to inspect some bridges at intervals exceeding 2 years, and the time those approvals were withdrawn, was insufficient for the States to gain much experience in operating under a 4-year inspection frequency. The earliest FHWA approval date was August 22, 1990; withdrawal of all approvals took place on May 8, 1992, following the appellate court's remand of the 1988 rulemaking to the FHWA for further proceedings. Accordingly, there is no meaningful data regarding any experience with a 4-year inspection interval.

Comment 12

The CAS indicated concern that the appellate court opinion in *Center for Auto Safety* v. *FHWA*, concerning the non-applicability of § 650.305(a) to underwater bridge members, leaves the impression that the underwater portion of bridge supports are not a part of the bridge inspection program. The CAS suggests that the FHWA amend the

definition of "bridge," in § 650.301 to undo this impression.

Response

The FHWA believes that the decision in *Center for Auto Safety* v. *FHWA* in upholding § 650.303(e)(2) leaves no doubt that underwater members, inspected under 650.303(e)(2), remain part of the national bridge inspection program, regardless of how the term "bridge" is defined in § 650.301.

In 1988, the FHWA recognized a need for specific requirements for underwater inspections, but because these inspections were not the general practice in most States, the FHWA lacked sufficient historical data to determine an appropriate maximum inspection interval. Lacking factual data, the FHWA drew from the collective expertise and judgment of professional bridge, hydraulic, and geotechnical engineers by adopting the 5-year standard set forth in relevant guidelines established by the American Association of State Highway and Transportation Officials as the maximum interval between underwater inspections.

The appellate court declined to find, as CAS argued it should, that the FHWA's action in adopting this 5-year standard was arbitrary and capricious and constituted a relaxation of prior standards. (CAS claimed § 650.305(a) already required underwater members to be inspected every 2 years). The appellate court found that this reliance on policy considerations in the absence of factual data was justified and it upheld § 650.303(e)(2) against CAS' challenge that the agency acted arbitrarily and capriciously in establishing the 5-year standard.

With the addition of § 650.303(e)(2) to the NBIS in 1988, and the court's action upholding this section, the FHWA believes there is no need for further clarification on the issue of whether underwater bridge supports are included in the bridge inspection program, such as an amendment to § 650.301.

Based on its analysis of all the comments received and the various studies cited above, and for the reasons discussed above and in the preamble to the November 9, 1992, interim final rule, the FHWA concludes that establishing a 4-year maximum interval between inspections under § 650.305 is warranted.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or a significant regulation under the regulatory policies and procedures of the Department of Transportation. It is anticipated that the economic impact of this rulemaking will be minimal. Therefore, a full regulatory evaluation is not required.

This final rule is made effective upon publication. As a matter of law, the interim final rule on the frequency of bridge inspections has been in effect since December 9, 1992. This final rule makes no changes on that interim final rule and merely informs the public that the interim final rule remains unchanged. Therefore, the FHWA finds that good cause exists to dispense with the 30-day delay on the effective date normally required under 5 U.S.C. 553(d).

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the agency has evaluated the effects of this rule on small entities. This rule would affect State and local governmental entities responsible for bridge inspection activities. This rule provides such governmental entities with flexibility to extend the period between bridge inspections subject to stringent conditions and FHWA approval. The FHWA believes that the increased inspection period permitted by this rule would be available for a very limited number of bridges nationwide, and that relatively few governmental entities will be affected. Based on the evaluation, the FHWA certifies that this rule would not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal and Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980. (44 U.S.C. 3501–3520)

National Environmental Policy Act

The agency has analyzed this section for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Services Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 650

Bridges, Highways and roads, Grant programs—transportation, Reporting and recordkeeping requirements.

Issued on: October 1, 1993.

Rodney E. Slater,

Federal Highway Administrator.

In consideration of the foregoing and under the authority of 23 U.S.C. 315, the interim rule amending 23 CFR part 650, subpart C, which was published at 57 FR 53278, November 9, 1992, is adopted as final without change.

[FR Doc. 93–24882 filed 10–8–93; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 946

Virginia Regulatory Program; Revegetation Standards for Success, Roads, Impoundments and Siltation Structures, Prime Farmland, Coal Preparation Plants, and Incidental Coal Extraction Exemption; Correction

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the final regulations which were published on Tuesday, July 7, 1992, (57 FR 29788–29794). The

regulations reflect the approval by OSM of amendments to Virginia's Permanent Regulatory Program.

EFFECTIVE DATE: July 7, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Robert A. Penn, Director, Big Stone Gap Field Office, Office of Surface Mining Reclamation and Enforcement, P.O. Drawer 1217, Powell Valley Square Shopping Center, Room 220, Big Stone Gap, Virginia 24219; Telephone (703) 523–4303.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections affect the permanent program performance standards for surface and underground mining activities as set forth in the Virginia Regulatory Program at § 480–03–19.816.116 and § 480–03–19.817.116.

Need for Correction

As published at 47 FR 29792–29794, 30 CFR 946.15(ff) failed to contain references to two sections of the Virginia Regulatory Program which were approved by OSM, as discussed in Finding III.B.1 at 57 FR 29790.

List of Subjects in 30 CFR Part 946

Intergovernmental relations, surface mining, underground mining.

Dated: October 4, 1993.

Carl C. Close,

Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T, part 946 of the Code of Federal Regulations is corrected by making the following correcting amendments:

PART 946—VIRGINIA

1. The authority citation for part 946 continues to read as follows:

Authority: 30 U.S.C. 1201 et. seq.

2. In § 946.15(ff), the following sections of the Virginia Permanent Regulatory Program are added in numerical order to read as follows:

§ 946.15 Approval of regulatory program amendments.

* * * * *

(ff) * * *

§ 480–03–19.816.116(b)(3)(v)(C) * * * Permanent Program Performance Standards-Surface Mining Activities; Revegetation: Standards for Success.

§ 480–03–19.817.116(b)(3)(iv)(C) * * * Permanent Program Performance Standards-Underground Mining Activities; Revegetation: Standards for Success.

* * * * *

[FR Doc. 93–24797 Filed 10–8–93; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 185

[DoD Directive 3025.1]

Military Support to Civil Authorities (MSCA)

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Final rule.

SUMMARY: This part consolidates all policy and responsibilities previously known as "Military Assistance to Civil Authorities (MACA)," which applies to disaster-related civil emergencies within the United States, its territories, and possessions, with those related to attacks on the United States, which previously were known as "Military Support to Civil Defense (MSCD)." This provision guides Department of Defense cooperation with Federal Emergency Management Agency (FEMA) for response to major disasters or emergencies in accordance with the Stafford Act, and for support to Federal or State civil defense programs under the authority of the Federal Civil Defense Act. It continues the use of DoD Regional Military Emergency Coordinator (RMEC) teams, to facilitate planning with civil agencies and response to any national security emergency. The Secretary of Army is designated as the DoD Executive Agent for MSCA.

EFFECTIVE DATE: This rule is effective January 15, 1993.

FOR FURTHER INFORMATION CONTACT: M. Alston, (703) 697–5454.

SUPPLEMENTARY INFORMATION:

Executive Order 12291, "Federal Regulation

It has been determined that 32 CFR part 185 is not a major rule. The rule is a regulation issued with respect to a military function of the United States.

The rule does not:

(1) Have an annual effect on the economy of $100 million or more.

(2) Cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Have a significant adverse effect on competition, employment, investment, productivity, or innovation."

Public Law 96–354, "Regulatory Flexibility Act

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because the rule is a regulation issued with respect to a military function of the United States. The rule does not have a significant economic impact on a substantial number of small entities. The primary effect of the rule is the consolidation of military policy and responsibilities as they apply to disaster-related civil emergencies, civil defense programs and national security emergencies within the United States. The rule guides Department of Defense cooperation with the Federal Emergency Management Agency (FEMA) and facilitates planning with civil agencies."

Public Law 96–511, "Paperwork Reduction Act

It has been certified that 32 CFR part 185 does not impose any reporting or record keeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520)."

List of Subjects in 32 CFR Part 185

Armed forces, Civil defense.

Accordingly, 32 CFR part 185 is revised to read as follows:

PART 185—MILITARY SUPPORT TO CIVIL AUTHORITIES (MSCA)

Sec.

185.1 Purpose.
185.2 Applicability and scope.
185.3 Definitions.
185.4 Policy.
185.5 Responsibilities.
185.6 Information requirements.

Authority: 50 U.S.C. 2251, as amended; E.O. 12148, 3 CFR 1979 Comp. p. 412.

§ 185.1 Purpose.

This part:

(a) Consolidates all policy and responsibilities previously known as "Military Assistance to Civil Authorities (MACA)," applicable to disaster-related civil emergencies within the United States, its territories, and possessions under DoD Directive 3025.1 [1] with those related to attacks on the United States, which previously were known as "Military Support to Civil Defense (MSCD)" under DoD Directive 3025.10.[2]

(b) Provides for continuation of the DoD Regional Military Emergency

[1] The May 23, 1980 edition of this Directive has been canceled by DoD Directive 3025.1 dated January 15, 1993.

[2] Canceled by DoD Directive 3025.1, dated January 15, 1993.

Coordinator (RMEC) teams, previously developed under DoD Directive 5030.45 [3], to facilitate peacetime planning for MSCA and to provide trained teams of DoD liaison personnel to represent essential DoD Components, as appropriate, for response to any national security emergency.

(c) Constitutes a single system for MSCA, by which DoD Components (as defined in § 185.2) shall plan for, and respond to, requests from civil government agencies for military support in dealing with the actual or anticipated consequences of civil emergencies requiring Federal response, or attacks, including national security emergencies as defined in E.O. 12656, 53 FR 47491, 3 CFR 1988 Comp., p. 585.

(d) States the policy and responsibilities by which the Department of Defense responds to major disasters or emergencies in accordance with the Stafford Act, as amended, and supports the national civil defense policy and Federal or State civil defense programs, in cooperation with the Federal Emergency Management Agency (FEMA), under the authority of The Federal Civil Defense Act of 1950.

(e) Designates the Secretary of the Army as the DoD Executive Agent for MSCA.

(f) Authorizes the publication of DoD 3025.1–M, "DoD Manual for Civil Emergencies," consistent with DoD 5025.1–M.[4]

§ 185.2 Applicability and scope.

This part:

(a) Applies to the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Unified and Specified Commands, the Inspector General of the Department of Defense, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "the DoD Components"). The term "Military Services," as used herein, refers to the Army, the Navy, the Air Force, the Marine Corps, and the Coast Guard (when it is operating, or planning for operations, as a Service in the Navy).

(b) Shall govern MSCA activities of all DoD Components in the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and U.S. territories and possessions.

(c) Does not apply to foreign disasters covered by DoD Directive 5100.46.

(d) Focuses on the assignment and allocation of DoD resources to support civilian authorities during civil emergencies arising during peace, war, or transition to war.

(e) Does not integrate contingency war planning as a subelement of MSCA, and does not relieve the Chairman of the Joint Chiefs of Staff of his authority to supervise contingency planning.

(f) Does not include military support to civil law enforcement. (See § 185.4(b).)

§ 185.3 Definitions.

Attack. Any attack or series of attacks by an enemy of the United States causing, or that may cause, substantial damage or injury to civilian property or persons in the United States (or its territories) in any manner, by sabotage or by the use of bombs, shellfire, or nuclear, radiological, chemical, bacteriological, or biological means, or other weapons or processes (Federal Civil Defense Act of 1950).

Civil defense. All those activities and measures designed or undertaken to:

(1) Minimize the effects upon the civilian population caused, or that would be caused, by an attack upon the United States or by a natural or technological disaster;

(2) Deal with the immediate emergency conditions that would be created by any such attack or natural or technological disaster; and

(3) Effectuate emergency repairs to, or the emergency restoration of, vital utilities and facilities destroyed or damaged by any such attack or natural or technological disaster.

Civil disturbances. Group acts of violence and disorders prejudicial to public law and order within the 50 States, District of Columbia, Commonwealth of Puerto Rico, U.S. possessions and territories, or any political subdivision thereof. The term *civil disturbance* includes all domestic conditions requiring the use of Federal Armed Forces, as more specifically defined in DoD Directive 3025.12.[5]

Civil emergency. Any natural or manmade disaster or emergency that causes or could cause substantial harm to the population or infrastructure. This term can include a "major disaster" or "emergency," as those terms are defined in the Stafford Act, as amended, as well as consequences of an attack or a national security emergency. Under 42 U.S.C. 5121, the terms "major disaster" and "emergency" are defined substantially by action of the President in declaring that extant circumstances and risks justify his implementation of the legal powers provided by those statutes.

Civil emergency preparedness. The non-military actions taken by Federal agencies, the private sector, and individual citizens to meet essential human needs, to support the military effort, to ensure continuity of Federal authority at national and regional levels, and to ensure survival as a free and independent nation under all emergency conditions, including a national emergency caused by threatened or actual attack on the United States.

Civil government resources. Civil resources owned by, controlled by, or under the jurisdiction of civilian agencies of the U.S. Government, or of State and local government agencies.

Civil resources. Resources that normally are not controlled by the Government, including workforce, food and water, health resources, industrial production, housing and construction, telecommunications, energy, transportation, minerals, materials, supplies, and other essential resources and services. Such resources cannot be ordered to support needs of the public except by competent civil government authority.

Continental United States Airborne Reconnaissance for Damage Assessment (CARDA). A system of aerial reconnaissance of the Continental United States for determining the effects of a nuclear attack. CARDA integrates the combined resources of all government agencies and Military Services for the National Command Authority.

Defense Coordinating Officer (DCO). A military or civilian official of any DoD Component, who has been designated by the DoD Executive Agent to exercise some delegated authority of the DoD Executive Agency to coordinate MSCA activities under this Directive. The authority of each DCO will be defined in documentation issued or authorized by the DoD Executive Agent, and will be limited either to the requirements of a specified interagency planning process or to a specified geographic area or emergency. (The DoD Executive Agent also may delegate authority to designate DCOs to any DoD Planning Agent specified in this part.)

Defense Emergency Response Fund. Established by Pub. L. 101–165 (1989). That law provides that, "The Fund shall be available for providing reimbursement to currently applicable appropriations of the Department of Defense for supplies and services provided in anticipation of requests from other Federal departments and agencies and from State and local governments for assistance on a reimbursable basis to respond to natural

[3] See footnote 2 to § 185.2(a).

[4] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[5] See footnote 4 to § 185.1(f).

or manmade disasters. The Fund may be used upon a determination by the Secretary of Defense that immediate action is necessary before a formal request for assistance on a reimbursable basis is received." The Fund is applicable to Foreign Disaster Assistance under DoD Directive 5100.46 * and to MSCA under the authority of this part.

DoD executive agent. The individual designated by position to have and to exercise the assigned responsibility and delegated authority of the Secretary of Defense, as specified in this part.

DoD planning agent. An individual designated by position to facilitate and coordinate MSCA contingency planning (and MSCA operations when ordered) by all DoD Components within an assigned geographic area in accordance with the requirements of this part.

DoD resources. Military and civilian personnel, including Selected and Ready Reservists of the Military Services, and facilities, equipment, supplies, and services owned by, controlled by, or under the jurisdiction of a DoD Component.

Federal function. Any function, operation, or action carried out under the laws of the United States by any department, agency, or instrumentality of the United States, or by an officer or employee thereof.

Federal property. Property that is owned, leased, possessed, or occupied by the Federal Government.

Federal Region. A grouping of States and territories of the United States, by which FEMA coordinates responsibilities of the State governments with those of Federal departments and agencies, for disaster relief, civil defense, and planning for both civil and national security emergencies. These regions are sometimes referred to as "FEMA Regions" to distinguish them from any one of the various regional alignments of other Federal Departments and Agencies, all of which are circumscribed by FEMA's coordination authority. Today, there are ten Federal Regions, but the term is used generally to facilitate MSCA regardless of the number of Federal Regions at any time.

Federal response plan. The inter-departmental planning mechanism, developed under FEMA leadership, by which the Federal Government prepares for and responds to the consequences of catastrophic disasters. Federal planning and response are coordinated on a functional group basis, with designated lead and support agencies for each identified functional area.

Immediate response. Any form of immediate action taken by a DoD Component or military commander, under the authority of this part and any supplemental guidance prescribed by the Head of a DoD Component, to assist civil authorities or the public to save lives, prevent human suffering, or mitigate great property damage under imminently serious conditions occurring where there has not been any declaration of major disaster or emergency by the President or attack.

Imminently serious conditions. Emergency conditions in which, in the judgment of the military commander or responsible DoD official, immediate and possibly serious danger threatens the public and prompt action is needed to save lives, prevent human suffering, or mitigate great property damage. Under these conditions, timely prior approval from higher headquarters may not be possible before action is necessary for effective response.

Military resources. Military and civilian personnel, facilities, equipment, and supplies under the control of a DoD Component.

Military Support to Civil Authorities (MSCA). Those activities and measures taken by the DoD Components to foster mutual assistance and support between the Department of Defense and any civil government agency in planning or preparedness for, or in the application of resources for response to, the consequences of civil emergencies or attacks, including national security emergencies.

National Disaster Medical System (NDMS). An inter-departmental national mutual aid system developed by Federal departments and agencies to provide for the medical needs of victims of major disasters, and to provide backup support for medical systems of the Departments of Defense and Veterans Affairs in caring for casualties from military conflicts. The Department of Health and Human Services serves as the lead Federal agency for administering NDMS, and would coordinate NDMS operations in response to civil emergencies. The Department of Defense could activate and coordinate NDMS operations in support of military contingencies.

National security emergency. Any occurrence, including natural disaster, military attack, technological emergency, or other emergency, that seriously degrades or seriously threatens the national security of the United States (E.O. 12656).

Planning agent. A military or civilian official of any DoD Component, who has been designated by the head of that Component to exercise delegated authority for MSCA planning for the entire Component (i.e., "principal planning agent") or for certain subordinate elements or a specified geographic area (e.g., "regional planning agents"). Authority and responsibilities of each planning agent will be defined by the Component, and may include MSCA response as well as planning at the election of any Component. The actual authority of planning agents will be communicated to others, as determined by the DoD Component, or when requested by the DoD Executive Agent.

Regional Military Emergency Coordinator (RMEC). An individual, designated on behalf of the Secretary of Defense and the DoD Executive Agent, to perform coordination, information exchange, and liaison functions on behalf of the Department of Defense with any Federal emergency management structure established at the Region level. Alternate RMECs are designated by other DoD Components, as required, in accordance with this part; and the RMECs and alternates collectively are referred to as "RMEC Teams."

Residual Capability Assessment (RECA). An assessment of the effects of a nuclear or conventional attack on U.S. resources, or of a major peacetime disaster that results in the declaration of a national security emergency. Such an assessment is made (through all appropriate means) to determine the remaining capabilities of the United States with emphasis on military preparedness.

Resource claimancy. The procedure, employed during any period of attack or national security emergency, whereby authorized Federal agencies determine definitive requirements and justify the allocation of civil government and civil resources needed to support programs under their cognizance. It does not imply procurement activity, nor does it involve the Government as an intermediary in the normal mechanisms of trade other than in expediting essential activities and ensuring equitable distribution of civil resources. Resource claimancy occurs at both the national and regional levels.

State Area Commands (STARCs). Specific headquarters units of the Army National Guard for each State, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.

§ 185.4 Policy.

(a) *National policy.* (1) Planning and preparedness by the Federal Government for civil emergencies and attacks are important due to the severity of the consequences of emergencies for

* See footnote 4 to § 185.1(f).

the nation and the population, and to the sophistication of means of attack on the United States and its territories.

(2) Under the Stafford Act, as amended, it is the policy of the Federal Government to provide an orderly and continuing means of supplemental assistance to State and local governments in their responsibilities to alleviate the suffering and damage that result from major disasters or emergencies. Upon declaring a major disaster or emergency under the Stafford Act, the President may direct any agency of the Federal Government to undertake missions and tasks (on either a reimbursable or non-reimbursable basis) to provide assistance to State and local agencies. The President appoints a Federal Coordinating Officer (FCO) to operate in the affected area, and delegates authority to the FCO. The President has delegated to the Director of FEMA the authority to appoint FCOs; and FEMA officials frequently serve as FCOs.

(3) In accordance with the Federal Civil Defense Act of 1950, as amended, the national civil defense policy is to have a civil defense program to develop capabilities common to all catastrophic emergencies and those unique to attack emergencies, which will support all-hazard emergency management at State and local levels, in order to protect the population and vital infrastructure. Under the national civil defense policy, the Department of Defense will support civil authorities in civil defense, to include facilitating the use of the National Guard in each State for response in both peacetime disasters and national security emergencies.

(4) Under E.O. 12656, it is the policy of the Federal Government to have sufficient capabilities at all levels of government to meet essential defense and civilian needs during any national security emergency.

(b) *Scope.* This part governs all planning and response by DoD Components for civil defense or other assistance to civil authorities, with the exception of military support to law enforcement operations under DoD Directive 3025.12 and contingency war plans.

(c) *Delegations of authority.* The Secretary of Defense shall be assisted in executing his responsibility for MSCA by the following:

(1) The Secretary of the Army shall be the DoD Executive Agent and shall act for the Secretary of Defense in accordance with this part and any supplemental direction or guidance received from the Secretary of Defense. In that capacity, the DoD Executive Agent will develop planning guidance, plans, and procedures for MSCA in accordance with this part. The DoD Executive Agent has the authority of the Secretary of Defense to task the DoD Components to plan for and to commit DoD resources, in response to requests from civil authorities under MSCA. The Secretary of the Army shall coordinate with the Chairman of the Joint Chiefs of Staff any commitment of military forces assigned to the Unified and Specified Commands.

(2) The Chairman of the Joint Chiefs of Staff shall communicate to the Commanders of the Unified and Specified Commands appropriate guidance issued by the Secretary of the Army for their compliance with this part, and also shall assist the DoD Executive Agent in developing MSCA planning guidance for all conditions of war or attacks on the United States or its territories.

(3) The Commander in Chief, Forces Command (CINCFOR); the Commander in Chief, U.S. Atlantic Command (USCINCLANT); and the Commander in Chief, U.S. Pacific Command (USCINCPAC), shall serve as "DoD Planning Agents" for MSCA. Pursuant to guidance issued by the DoD Executive Agent, after coordination with the Chairman of the Joint Chiefs of Staff, the DoD Planning Agents shall conduct MSCA planning, and shall lead MSCA planning activities of all DoD Components within the following geographic areas:

(i) CINCFOR (48 contiguous States and the District of Columbia).

(ii) USCINCLANT (Puerto Rico and the U.S. Virgin Islands).

(iii) USCINCPAC (Alaska, Hawaii, and U.S. possessions and territories in the Pacific area).

(4) The Commanders of the Unified and Specified Commands shall provide MSCA response, as directed by the DoD Executive Agent.

(5) The Secretary of Defense reserves the authority to modify or terminate the executive agency established by this part if operational needs so require in a particular situation.

(d) *MSCA policy.*

(1) MSCA shall include (but not be limited to) support similar to that described for immediate response (paragraph (e) of this section), in either civil emergencies or attacks, during any period of peace, war, or transition to war. It shall include response to civil defense agencies, but shall not include military assistance for civil law enforcement operations.

(i) DoD Directive 3025.12 governs use of military resources in the event of civil disturbances, which may include providing physical security for DoD Key Assets, as defined in DoD Directive 5160.54.[7]

(ii) Material, logistic, communications, and other assistance to law enforcement (especially during enforcement operations) is provided under DoD Directive 5525.5[8]

(2) The DoD Components shall respond to requirements of the DoD Executive Agent and DoD Planning Agents for MSCA, as authorized by this part.

(3) To ensure sound management of DoD resources, MSCA planning will stress centralized direction of peacetime planning with civil authorities, with decentralized planning by DoD Components with civil agencies, where appropriate, and decentralized execution of approved plans in time of emergency.

(4) Subject to priorities established by the President or the Secretary of Defense, all DoD resources are potentially available for MSCA. MSCA planning and execution will encourage and adhere to the following premises:

(i) That civil resources are applied first in meeting requirements of civil authorities.

(ii) That DoD resources are provided only when response or recovery requirements are beyond the capabilities of civil authorities (as determined by FEMA or another lead Federal agency for emergency response).

(iii) That specialized DoD capabilities requested for MSCA (e.g., airlift and airborne reconnaissance) are used efficiently.

(iv) Generally, military operations other than MSCA will have priority over MSCA, unless otherwise directed by the Secretary of Defense.

(5) MSCA shall provide a mechanism to facilitate continuous and cooperative civil and military planning and preparedness to mobilize all appropriate resources and capabilities of the civil sector and the Department of Defense, whenever required for any form of national security emergency.

(6) DoD planning shall recognize that:

(i) Army and Air National Guard forces, acting under State orders (i.e., not in Federal service), have primary responsibility for providing military assistance to State and local government agencies in civil emergencies.

(ii) The Army National Guard State Area Command (STARC), when ordered to Federal Active Duty, will be the DoD focal point for delivery of MSCA at State and local levels in time of war.

(iii) Plans and preparedness measures of MSCA must foster close and

[7] See footnote 4 to § 185.1(f).

[8] See footnote 4 to § 185.1(f).

continuous coordination for efficient employment of DoD resources of the National Guard (whether employed under State or Federal authority), as well as resources of the DoD Components, in time of peace, war, or transition to war.

(iv) In the event of an attack on the United States, its territories, or possessions, the scope of MSCA in each geographical area will depend upon the commitment of military resources to military operations, the extent of damage sustained by the civilian communities, and the status of Active and Reserve Component forces.

(7) DoD Components shall augment staffs responsible for MSCA, as appropriate, with personnel from Reserve components of all Military Services who are specifically trained for civil-military planning and emergency liaison duties. (See enclosure 3 in DoD Directive 1215.6.)[9] The Military Services also shall ensure that all Active or Reserve component military personnel assigned or attached to FEMA are appropriately trained and employed to enhance DoD capabilities for MSCA in time of war or attack on the United States or its territories.

(8) The DoD Components ordinarily shall provide DoD resources in response to civil emergencies on a cost reimbursable basis. However, see paragraph (e)(2) of this section for circumstances in which an inability or unwillingness of a requester to commit to reimbursement will not preclude action by DoD components.

(i) The DoD Components shall comply with legal and accounting requirements for the loan, grant, or consumption of DoD resources for MSCA, as necessary, to ensure reimbursement of costs to the DoD Components under the Stafford Act, as amended; the Defense Emergency Response Fund established by Public Law 101–165 (1989); or other applicable authority.

(ii) The DoD Components shall not procure or maintain any supplies, material, or equipment exclusively for providing MSCA in civil emergencies, unless otherwise directed by the Secretary of Defense.

(iii) Planning for MSCA during any time of attack on the United States shall assume that financial requirements will be met through appropriate legal processes.

(9) Military forces employed in MSCA activities shall remain under military command and control under the authority of the DoD Executive Agent at all times.

(10) The DoD Components shall not perform any function of civil government unless absolutely necessary on a temporary basis under conditions of Immediate Response. Any commander who is directed, or undertakes, to perform such functions shall facilitate the reestablishment of civil responsibility at the earliest time possible.

(e) *Immediate Response.* (1) Imminently serious conditions resulting from any civil emergency or attack may require immediate action by military commanders, or by responsible officials of other DoD Agencies, to save lives, prevent human suffering, or mitigate great property damage. When such conditions exist and time does not permit prior approval from higher headquarters, local military commanders and responsible officials of other DoD Components are authorized by this part, subject to any supplemental direction that may be provided by their DoD component, to take necessary action to respond to requests of civil authorities. All such necessary action is referred to in this part as "Immediate Response."

(2) While Immediate Response should be provided to civil agencies on a cost-reimbursable basis if possible, it should not be delayed or denied because of the inability or unwillingness of the requester to make a commitment to reimburse the Department of Defense.

(3) Any commander or official acting under the Immediate Response authority of this Directive shall advise the DoD Executive Agent through command channels, by the most expeditious means available, and shall seek approval or additional authorizations as needed.

(4) Immediate Response may include DoD assistance to civil agencies in meeting the following types of need:

(i) Rescue, evacuation, and emergency medical treatment of casualties, maintenance or restoration of emergency medical capabilities, and safeguarding the public health.

(ii) Emergency restoration of essential public services (including fire-fighting, water, communications, transportation, power, and fuel).

(iii) Emergency clearance of debris, rubble, and explosive ordnance from public facilities and other areas to permit rescue or movement of people and restoration of essential services.

(iv) Recovery, identification, registration, and disposal of the dead.

(v) Monitoring and decontaminating radiological, chemical, and biological effects; controlling contaminated areas; and reporting through national warning and hazard control systems.

(vi) Roadway movement control and planning.

(vii) Safeguarding, collecting, and distributing food, essential supplies, and material on the basis of critical priorities.

(viii) Damage assessment.

(ix) Interim emergency communications.

(x) Facilitating the reestablishment of civil government functions.

(f) *Military cooperation with civil agencies.* (1) Under E.O. 12148 (44 FR 43239, 3 CFR 1979 Comp., p. 412) and E.O. 12656, FEMA is responsible for coordinating Federal plans and programs for response to civil emergencies at the national and regional levels, and for Federal assistance to the States in civil emergencies. Other Federal departments and agencies have specific responsibilities for emergency planning and response under E.O. 12656, and under statutory authorities not listed in this part. The DoD Executive Agent shall ensure:

(i) Coordination of MSCA plans and procedures with FEMA, and with other civil agencies as appropriate, at the national and Federal Region level.

(ii) Facilitation of direct planning for MSCA by DoD facilities and installations with their local communities, and with their respective STARCs, as appropriate.

(2) The DoD Executive Agent also shall provide appropriate guidance to facilitate MSCA planning and response with the American Red Cross and other civilian disaster and emergency assistance organizations where authorized by law.

(g) *Response under other authorities.* DoD response to emergencies under authorities not cited in this Directive also may be directed, coordinated, or supplemented by the DoD Executive Agent, as circumstances require. For example:

(1) The U.S. Coast Guard (USCG) or the U.S. Environmental Protection Agency (EPA) will coordinate Federal response to oil or hazardous material spills, other than those occurring within DoD jurisdictions. The DoD Executive Agent will provide MSCA to the USCG or the EPA; but responsibilities of DoD Components in areas under DoD jurisdiction are covered by DoD Directive 5030.41[10].

(2) Emergencies or other incidents involving radiological materials shall be handled in accordance with DoD Directive 5100.52[11].

(3) The Secretary of the Army shall ensure the implementation of DoD

[9] See footnote 4 to § 185.1(f).

[10] See footnote 4 to § 185.1(f).

[11] See footnote 4 to § 185.1(f).

responsibilities for emergency water requirements, as specified in E.O. 12656, and response to flooding, as provided in Public Law 84–99 (1941), as amended.

(4) Forest fire emergencies are responsibilities of the U.S. Department of Agriculture or Interior. The Boise Interagency Fire Center (BIFC) may request DoD assistance; and specific details regarding DoD support are covered by agreements between the Department of Defense and the BIFC that are administered by the DoD Executive Agent.

(5) The DoD Executive Agent is delegated the authority to direct DoD Components in planning for and responding to any civil emergency that may arise out of any mass immigration by aliens into the land territory of the United States, its territories and possessions, consistent with applicable law and this part. The DoD Executive Agent should ensure appropriate coordination with Federal law enforcement authorities in exercising this authority.

(6) Use of DoD transportation resources in response to a non-declared civil emergency shall be directed by the DoD Executive Agent under this part. (See also DoD Directive 4500.9 [12]

(h) *Non-declared emergencies.* The DoD Executive Agent may direct DoD Components to respond to any emergency, based on authority that is provided by this part or obtained from the Secretary or Deputy Secretary of Defense. If an emergency of any kind or size requires a response on behalf of the Department of Defense, where there has not been any declaration of major disaster or emergency by the President, or if reimbursement of funds to the Department of Defense is otherwise not certain, the DoD Executive Agent shall ascertain the authority necessary to commit DoD resources for response to requests from civil authorities.

(1) Authorizations by the DoD Executive Agent under this paragraph shall include (but not be limited to) commitment of funds from the Defense Emergency Response Fund in anticipation of reimbursements to that fund.

(2) The DoD Executive Agent shall obtain authorization from the Secretary of Defense or Deputy Secretary of Defense to provide support in those cases in which DoD response is not clearly required by Federal law or by DoD plans approved by the DoD Executive Agent.

(i) *Emergency priorities.* When guidance cannot be obtained from higher headquarters on a timely basis, due to attack on the United States or other emergency circumstances, the DoD Components should apply DoD resources to MSCA in the following order of priority:

(1) To save human life and mitigate human suffering, and to protect essential U.S. Government capabilities, including:

(i) Continuity of the U.S. Government.

(ii) Protection of U.S. Government officials.

(iii) Prevention of loss or destruction to Federal property.

(iv) Restoration of essential Federal functions.

(2) To preserve or restore services of State and local government.

§ 185.5 Responsibilities.

(a) The *Under Secretary of Defense For Policy* shall:

(1) Exercise policy oversight of MSCA for the Secretary of Defense, and ensure compatibility of MSCA with National Security Emergency Preparedness, in accordance with DoD Directive 3020.36 [13] and E.O. 12656.

(2) Coordinate DoD policy governing plans and operations with FEMA; and assist the DoD Executive Agent, the Chairman of the Joint Chiefs of Staff, and others, as appropriate, in their coordination with FEMA.

(b) The *Assistant Secretary of Defense For Health Affairs* shall coordinate policy for emergency medical support to civil authorities in consonance with this part, to include participation by the Department of Defense in the National Disaster Medical System (NDMS).

(c) The *Assistant Secretary of Defense (Reserve Affairs)* shall advise the DoD Executive Agent, the Chairman of the Joint Chiefs of Staff, the USD(P), and the Secretaries of the Military Departments, as required, on Reserve component matters impacting on MSCA.

(d) The *Comptroller of the Department of Defense* shall:

(1) Facilitate accounting procedures that will enable the Department of Defense to respond on a timely basis to all emergency requirements for MSCA; and

(2) In conjunction with the DoD Executive Agent, provide for accounting and other procedures necessary to manage expenditures for MSCA from the Defense Emergency Response Fund.

(e) The *Chairman of the Joint Chiefs of Staff* shall:

(1) Advise the Secretary of Defense and the DoD Executive Agent on policies, responsibilities, and programs bearing on MSCA.

(2) In coordination with the DoD Executive Agent, facilitate communications by the DoD Executive Agent with commanders, as appropriate.

(3) Ensure the compatibility of MSCA plans with other military plans.

(4) Facilitate CINCFOR's development of an MSCA data base and emergency reporting system, as described in paragraph (j) of this section.

(5) Facilitate coordinated evaluation of MSCA plans and capabilities by the Commanders of the Unified and Specified Commands through exercises or other means, as appropriate.

(f) The *Secretaries of the Military Departments* shall:

(1) Provide for participation by the Military Services in MSCA planning, in accordance with this part and with guidance of the DoD Executive Agent; and ensure readiness of Active and Reserve components to execute plans for MSCA.

(2) Ensure the designation of a principal planning agent and regional planning agents of MSCA for each Military Service, and advise the DoD Executive Agent and the Chairman of the Joint Chiefs of Staff of such agents.

(3) Ensure effective and efficient coordination of MSCA planning by Service installations with Federal Regions, STARCs, and State and local civil authorities, through the DoD Planning Agents, as directed by the DoD Executive Agent.

(4) Furnish available resources for MSCA when directed by the DoD Executive Agent.

(5) Identify to the DoD Executive Agent the resources of their respective Military Services that are potentially available for MSCA within the parameters of the DoD Resources Data Base (DODRDB) for MSCA, which is described in paragraph (n) of this section. Facilitate use of that data base to support decentralized management of MSCA in time of emergency, as appropriate.

(6) Prepare to support civil requests for damage and residual capability assessment following civil emergencies or attacks, to include providing aerial reconnaissance as appropriate.

(7) Provide Military Department representatives to serve on RMEC teams, as requested by the DoD Executive Agent.

(8) Based on validated military planning and operational requirements, assign individual Reservists from Military Services to FEMA and other appropriate civil government offices and headquarters to provide liaison for planning and emergency operations for MSCA. (See enclosure 3 in DoD Directive 1215.6.)

[12] See footnote 4 to § 185.1(f).

[13] See footnote 4 to § 185.1(f).

(9) Provide available Military Service personnel for MSCA training, including courses conducted by CINCFOR and FEMA.

(10) Provide for application of critical emergency capabilities of the Services (such as disposal of explosive ordnance and nuclear devices) for MSCA, as required.

(g) In addition to the responsibilities assigned under paragraph (f) of this section, the *Secretary of the Army*, as DoD Executive Agent, shall:

(1) Coordinate with the Chairman of the Joint Chiefs of Staff, in advance, for the employment of forces assigned to the Unified and Specified Commands in MSCA missions.

(2) Establish a single headquarters element (to be denominated the "Directorate of Military Support (DOMS)") under the Secretary of the Army, through which the Secretary of the Army issues orders necessary to perform the duties of the DoD Executive Agent under this part. The Secretary of the Army shall ensure that the staff element includes specially qualified and trained officers of all Military Services, including those at senior levels within the element.

(3) Manage expenditures for MSCA from the Defense Emergency Response Fund. (See § 185.4(d)(8).)

(4) Direct and coordinate the development of both generic and incident-specific plans for MSCA through the DoD Planning Agents designated in § 185.4(c)(3), and through the DoD Components, as appropriate.

(5) Establish appropriate guidance, through the National Guard Bureau, for the Adjutants General of the 50 States, District of Columbia, Guam, Puerto Rico, and the Virgin Islands to ensure compliance by the Army National Guard with this part. Such guidance shall provide for the following, as appropriate:

(i) Resourcing the STARCs for MSCA planning and response tasks.

(ii) STARC interfaces with commands and installations of all Services, including the DoD Planning Agents, and with State civil agencies.

(iii) STARC acceptance, support, and utilization of liaison and augmentation from all Military Services, as appropriate.

(6) Provide for the manning and operation of RMEC teams to coordinate the interface between the Defense Components and all Federal regional emergency management structures established by FEMA that may affect MSCA.

(7) Provide for effective utilization in MSCA planning of the U.S. Army Corps of Engineers, the Naval Construction Force, and the U.S. Air Force Civil Engineers, to include all civil works authorities and other unique civil emergency capabilities, as permitted by law.

(8) Delegate as appropriate authority under this part to the DoD Planning Agents, to Defense Coordinating Officers (DCOs) appointed for response to civil emergencies under the Stafford Act, as amended, or to other DoD officials to accomplish any requirement for MSCA planning or operations under this part.

(9) Provide guidance to CINCFOR for content, dissemination, and use of the DODRDB for MSCA, which is described in paragraph (j) of this section and ensure opportunity for input by the Chairman of the Joint Chiefs of Staff in the continuing development of that data base.

(10) Maintain national-level liaison with FEMA for MSCA.

(11) Provide Army Reserve support to FEMA, on a reimbursable basis, for emergency communications, security operations, and associated management support, at the Federal Regions, as determined by agreement between FEMA and the DoD Executive Agent; and ensure the availability of such support during any time of war or national mobilization.

(12) Provide full-time Army personnel, as required, to manage the Military Support Liaison Office established by agreement between the Secretary of Defense and the Director of FEMA. Utilize that office to facilitate requirements and communications of the DoD Executive Agent under this part.

(13) Develop training courses for MSCA, including specialized training for Reserve component emergency preparedness liaison officers of all Military Services who will work with civilian communities and agencies as authorized for MSCA missions.

(14) Provide authorizations to DoD Components to perform emergency work under Section 403(c) of the Stafford Act, as amended. That statute provides that, when authorized by the President at the request of a State Governor, under certain conditions, the Department of Defense may perform on public or private lands emergency work that is essential for the preservation of life or property. Emergency work by the Department of Defense under that provision may be carried out only for a period not to exceed 10 days, and is only 75 percent funded by Federal funds.

(h) In addition to the responsibilities assigned under paragraph (f) of this section, the Secretary of the Navy shall:

(1) Maintain liaison and coordinate planning with the Department of Transportation for participation by USCG forces in MSCA.

(2) Furnish technical advice and support for MSCA planning and implementation in areas that are uniquely within the competence of the Navy, Marine Corps, or USCG (e.g., nuclear material disposal for coastal and maritime areas, and emergency protection or restoration of seaport capabilities).

(i) In addition to the responsibilities assigned under paragraph (f) of this section, the Secretary of the Air Force shall:

(1) Establish appropriate guidance, through the National Guard Bureau, for the Adjutants General of the 50 States, District of Columbia, Guam, Puerto Rico, and the Virgin Islands to ensure compliance by the Air National Guard with this part.

(2) Facilitate planning by the Civil Air Patrol for participation in MSCA.

(3) Furnish technical advice and support for MSCA planning and implementation in areas that are uniquely within the competence of the Air Force and its wartime augmentation elements (e.g., coordination with the Federal Aviation Administration, the National Aeronautics and Space Administration, and the National Oceanic and Atmospheric Administration).

(4) Facilitate the conduct and coordination of aerial reconnaissance missions to perform damage assessment in support of MSCA.

(j) In addition to serving as a DoD Planning Agent under paragraph (k) of this section, the Commander in Chief, Forces Command (CINCFOR), subject to the direction of the DoD Executive Agent, shall:

(1) Maintain liaison with FEMA to facilitate cooperative civil and military planning and training for MSCA.

(2) Lead DoD liaison with FEMA and other Federal Agencies at the Federal Regions, including utilization of the RMEC Teams.

(3) Continue to develop, maintain, and disseminate the DODRDB.

(i) The DODRDB shall support MSCA planning for civil emergencies or attacks, as well as post-disaster and post-attack damage and residual capability assessment by field elements of the DoD Components. It shall include essential information on resources routinely held by the DoD Components and directly applicable to lifesaving, survival, and immediate recovery aspects of MSCA.

(ii) Forces to be included in the DODRDB are those that are based in the

United States and its territories and most capable of supporting civil emergency functions. Those forces include (but are not limited to) construction, airlift, medical, signal, transportation, and military police elements, and training base forces of all Services. The DODRDB will not include strategic forces or any other forces identified for exclusion by the Chairman of the Joint Chiefs of Staff, unless otherwise directed by the Secretary of Defense.

(iii) The DODRDB shall serve as the basis for emergency reports under continuity of operations, damage assessment, and residual capabilities, and shall include (but not be limited to) reports through the STARCs required by subsection F.2. of DoD Directive 3020.26.[14]

(4) Plan and conduct civil-military training courses and exercises in conjunction with FEMA.

(k) The Commander in Chief, Forces Command; the Commander in Chief, U.S. Atlantic Command; and the Commander in Chief, U.S. Pacific Command, shall:

(1) In accordance with guidance from the DoD Executive Agent communicated through the Chairman of the Joint Chiefs of Staff—

(i) Serve as DoD Planning Agents for MSCA for the areas specified in § 185.4(b)(3); and develop MSCA plans and preparedness measures for their MSCA areas of responsibility.

(ii) Ensure cooperative planning for MSCA operations between DoD Components, FEMA, and other Federal or State civil agencies, as required.

(iii) Utilize RMEC teams to assist in plan development.

(iv) Coordinate with the STARCs through channels established by the Secretary of the Army; and utilize liaison officers provided for in DoD Directive 1215.6 and others, as appropriate, to facilitate coordination of emergency planning.

(v) Plan to perform any designated function of the DoD Executive Agent under this part, if ordered by the Secretary of Defense in time of war or attack on the United States.

(vi) Evaluate MSCA plans, preparedness measures, and training in joint civil military exercises.

(2) Furnish MSCA as directed by the DoD Executive Agent. Employ RMEC Teams and liaison officers, as appropriate, to coordinate emergency response operations with civil agencies, the National Guard, the Military Departments and the CINCs.

(3) Furnish assistance to civil authorities in non-declared emergency situations when directed by the DoD Executive Agent.

(l) The Directors of the Defense Agencies shall:

(1) Designate a principal planning agent and regional planning agents for MSCA, and advise the DoD Executive Agent of such designated agents.

(2) Ensure effective and efficient coordination of planning by subordinate elements with Federal Regions, STARCs, and State and local civil authorities, through the DoD Planning Agents, as directed by the DoD Executive Agent.

(3) Furnish resources for MSCA when directed by the DoD Executive Agent.

(4) Make DoD resources available for technical support to the other DoD Components for MSCA, when required.

(5) Respond to requests by the DoD Executive Agent to identify resources for the DODRDB.

(6) Provide representatives to serve on RMEC teams, as requested by the DoD Executive Agent.

§ 185.6 Information requirements.

The reporting requirements in § 185.5 are exempt from licensing in accordance with paragraph E.4.b. of DoD 8910.1–M.[15]

Dated: October 5, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–24876 Filed 10–8–93; 8:45 am]

BILLING CODE 5000–04–M

[14] See footnote 4 to § 185.1(f).

[15] See footnote 4 to § 185.1(f).

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 272

[FRL–4783–7]

Hazardous Waste Management Program: Incorporation by Reference of Approved State Hazardous Waste Program for Arkansas

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: Under the Resource Conservation and Recovery Act of 1976, as amended (RCRA), the United States Environmental Protection Agency (EPA) may grant Final Authorization to States to operate their hazardous waste management programs in lieu of the Federal program. EPA uses part 272 of title 40 Code of Federal Regulations (CFR) to provide notice of the authorization status of State programs, and to incorporate those provisions of the State statutes and regulations that EPA will enforce under RCRA Section 3008 by reference into 40 CFR part 272.

EFFECTIVE DATE: This document will be effective on December 13, 1993 unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on this action must be received by the close of business on November 12, 1993. The incorporation by reference of certain Arkansas statutes and regulations was approved by the Director of the Federal Register as of December 13, 1993 in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

ADDRESSES: Written comments should be addressed to Dick Thomas, Region 6 Authorization Coordinator (6H–HS), Grants and Authorization Section, RCRA Programs Branch, U.S. EPA Region VI, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Suite 1200, Dallas, TX 75202, phone 214/655–8528.

FOR FURTHER INFORMATION CONTACT: Dick Thomas, Region 6 Authorization Coordinator (6H–HS), Grants and Authorization Section, RCRA Programs Branch, U.S. EPA Region VI, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Suite 1200, Dallas, TX 75202, phone 214/655–8528.

SUPPLEMENTARY INFORMATION:

Background

Section 3006 of RCRA, 42 U.S.C. 6926 *et seq.*, allows the U.S. Environmental Protection Agency (EPA) to authorize State hazardous waste programs to operate in the State in lieu of the Federal hazardous waste program. The purpose of today's **Federal Register** notice is to incorporate EPA's approval of Arkansas' base hazardous waste management program and its revisions into 40 CFR part 272.

On January 11, 1985, EPA published a **Federal Register** document announcing its decision to grant final authorization for the RCRA base program to the State of Arkansas (see 50 FR 1513). Effective August 23, 1985; May 29, 1990 (55 FR 11192); November 18, 1991 (56 FR 47153 and 56 FR 57593); December 4, 1992 (57 FR 45721 and 57 FR 45722), EPA granted Arkansas additional authorization.

Arkansas has adopted but is not authorized for the September 1, 1988 (53 FR 33938) amendments to 40 CFR parts 264 and 265 addressing liability requirements. Thus, the portions of the Arkansas Hazardous Waste Management Code, Chapter 2, Sections 3a(5) and 3a(6) incorporating the September 1, 1988 amendments are not part of the

State's authorized program and are not part of the incorporation by reference addressed by today's **Federal Register** document.

Arkansas is authorized to implement certain HSWA requirements in lieu of EPA. EPA has explicitly indicated its intent to allow such action in **Federal Register** documents granting Arkansas authorization effective November 18, 1991 (56 FR 47153; September 18, 1991) and December 4, 1992 (57 FR 45721 and 57 FR 45722; October 5, 1992).

EPA provides notice of its approval of State programs in 40 CFR part 272, and incorporates by reference therein the State statutes and regulations that it will enforce under section 3008 of RCRA. This effort will provide clearer notice to the public of the scope of the authorized program in Arkansas. Such notice is particularly important in light of the Hazardous and Solid Waste Act Amendments of 1984 (HSWA), Public Law 98–618. Revisions to State hazardous waste programs are necessary when Federal statutory or regulatory authority is modified. Because HSWA extensively amended RCRA, State programs must be modified to reflect those amendments. By incorporating by reference the authorized Arkansas program and by amending the Code of Federal Regulations whenever a new or different set of requirements is authorized in Arkansas, the status of Federally approved requirements of the Arkansas program will be readily discernible.

The Agency will only incorporate by reference for enforcement purposes those provisions of the Arkansas hazardous waste management program for which authorization approval has been granted by EPA. Concerning HSWA, some State requirements may be similar to HSWA requirements that are in effect under Federal statutory authority in that State. However, a State's HSWA-type requirements are not authorized and will not be codified into the CFR until the Regional Administrator publishes his final decision to authorize the State for specific HSWA requirements. Until such time, EPA will enforce the HSWA requirements and not the State analogs.

Arkansas Authorized Hazardous Waste Program

To incorporate by reference the Arkansas authorized hazardous waste program, EPA intends to add subpart E to 40 CFR part 272. The State statutes and regulations are incorporated by reference at 40 CFR 272.201(a) and the Memorandum of Agreement, the Attorney General's Statement and the Program Description are referenced at 40 CFR 272.201(d), (e) and (f), respectively.

The Agency retains the authority under sections 3007, 3008, 3013 and 7003 of RCRA to undertake enforcement actions in authorized States. With respect to such an enforcement action, the Agency will rely on Federal sanctions, Federal inspection authorities, and the Federal Administrative Procedure Act rather than the authorized State analogues to these requirements. Therefore, the Agency does not intend to incorporate by reference for purposes of enforcement such particular, authorized Arkansas enforcement authorities. Section 272.201(b) of 40 CFR lists those authorized Arkansas authorities that are part of the authorized program but are not incorporated by reference.

Some provisions of the State's hazardous waste management program are not part of the Federally authorized State program. These non-authorized provisions are not part of the RCRA Subtitle C program because they are "broader in scope" than RCRA Subtitle C (see 40 CFR 271.1(i)). As a result, State provisions which are "broader in scope" than the Federal program are not incorporated by reference for purposes of enforcement in 40 CFR part 272. Section 272.201(c) of 40 CFR lists for reference and clarity the Arkansas statutory and regulatory provisions which are "broader in scope" than the Federal program and which are not, therefore, part of the authorized program being incorporated by reference. "Broader in scope" provisions will not be enforced by EPA; the State, however, will continue to enforce such provisions.

HSWA Provisions

As noted above, the Agency is not amending 40 CFR part 272 to include HSWA requirements and prohibitions that are immediately effective in Arkansas and other States. Section 3006(g) of RCRA provides that any requirement or prohibition of HSWA (including implementing regulations) takes effect in authorized States at the same time that it takes effect in non-authorized States. Thus, EPA has immediate authority to implement a HSWA requirement or prohibition once it is effective. A HSWA requirement or prohibition supersedes any less stringent or inconsistent State provision which may have been previously authorized by EPA (see 50 FR 28702, July 15, 1985).

Because of the vast number of HSWA statutory and regulatory requirements taking effect over the next few years, EPA expects that many previously authorized and incorporated by reference State provisions will be affected. The States are required to revise their programs to adopt the HSWA requirements and prohibitions by the deadlines set forth in 40 CFR 271.21, and then to seek authorization for those revisions pursuant to 40 CFR part 271. EPA expects that States will modify their programs substantially and repeatedly. Instead of amending 40 CFR part 272 every time a new HSWA provision takes effect under the authority of RCRA 3006(g), EPA will wait until the State receives authorization for its analog to the new HSWA provision before amending the section of 40 CFR part 272 applicable to the State. In the interim, persons wanting to know whether a HSWA requirement or prohibition is in effect should refer to 40 CFR 271.1(j), as amended, which lists each such provision.

Incorporation by reference of State authorized programs in the CFR should substantially enhance the public's ability to discern the current status of the authorized State program and clarify the extent of Federal enforcement authority. This will be particularly true as more State program revisions to adopt HSWA provisions are authorized.

As indicated earlier, Arkansas is authorized to implement certain HSWA requirements in lieu of EPA. EPA has explicitly indicated its intent to allow such action in **Federal Register** documents granting Arkansas authorization effective November 18, 1991 (56 FR 47153; September 18, 1991) and December 4, 1992 (57 FR 45721 and 57 FR 45722; October 5, 1992).

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this action will not have a significant economic impact on a substantial number of small entities. It intends to incorporate by reference the decisions already made to authorize Arkansas' program and has no separate effect on handlers of hazardous waste in the State or upon small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden

imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

List of Subjects in 40 CFR Part 272

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste transportation, Hazardous waste, Incorporation by reference, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: September 23, 1993.

Joe D. Winkle,

Acting Regional Administrator.

For the reasons set forth in the preamble, 40 CFR part 272 is amended as follows:

PART 272—APPROVED STATE HAZARDOUS WASTE MANAGEMENT PROGRAMS

1. The authority citation for part 272 continues to read as follows:

Authority: Secs. 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Subpart E—[Amended]

2. Subpart E is amended by adding § 272.201 to read as follows:

§ 272.201 Arkansas State-Administered Program: Final Authorization.

(a) Pursuant to section 3006(b) of RCRA, 42 U.S.C. 6926(b), Arkansas has final authorization for the following elements as submitted to EPA in Arkansas' base program application for final authorization which was approved by EPA effective on January 25, 1985. Subsequent program revision applications were approved effective on August 23, 1985, May 29, 1990, November 18, 1991, and December 4, 1992. Arkansas is authorized to implement certain HSWA requirements in lieu of EPA. EPA has explicitly indicated its intent to allow such action effective on November 18, 1991 and December 4, 1992.

(b) *State Statutes and Regulations.*

(1) The Arkansas statutes and regulations cited in this paragraph are incorporated by reference as part of the hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 et seq.

(i) EPA Approved Arkansas Statutory Requirements Applicable to the Hazardous Waste Management Program, September, 1993.

(ii) EPA Approved Arkansas Regulatory Requirements Applicable to the Hazardous Waste Management Program, September, 1993.

(2) The following statutes and regulations concerning State enforcement, although not incorporated by reference, are part of the authorized State program:

(i) Arkansas Hazardous Waste Management Act of 1979, Act 406 of 1979, as amended, Arkansas Code of 1987 Annotated (A.C.A.), 1991 Replacement, Sections 8–7–204 through 8–7–214, 8–7–217, 8–7–218, 8–7–220, 8–7–222, and 8–7–225(b) through 8–7–225(d).

(ii) Arkansas Resource Reclamation Act of 1979, Act 1098 of 1979, as amended, Arkansas Code of 1987 Annotated (A.C.A.), 1991 Replacement, Sections 8–7–302(3), 8–7–303, 8–7–308(1), and 8–7–308(4).

(iii) Arkansas Department of Pollution Control and Ecology (ADPC&E) Regulation No. 23, Hazardous Waste Management, as amended December 6, 1991, effective January 27, 1992, chapter two, sections 3a(11), 3b, 3c, 4, 6 (except 6b and 6c), 7, 8, 12b(7), 12c introductory paragraph, 12(c)(1)–12c(9), 12d, 12e, 14a, 17; chapter three, sections 19 and 20; chapter five, sections 26 and 27.

(iv) Arkansas Department of Pollution Control and Ecology, Regulation No. 7, Civil Penalties, May 25, 1984.

(v) Arkansas Department of Pollution Control and Ecology, Regulation No. 8, Administrative Procedures, July 6, 1984.

(3) The following statutory and regulatory provisions are broader in scope than the Federal program, are not part of the authorized program, and are not incorporated by reference:

(i) Arkansas Hazardous Waste Management Act, as amended, Act 406 of 1979, as amended, Arkansas Code of 1987 Annotated (A.C.A.), 1991 Replacement, Section 8–7–226.

(ii) Arkansas Department of Pollution Control and Ecology Regulation No. 23, Hazardous Waste Management, as amended December 6, 1991, effective January 27, 1992, chapter two, section 2a(5) (only the second sentence), section 2b(11), section 3a(10), section 11, section 16a, and portions of sections 16c and 16d that refer to PCBs; and chapter four, section 23.

(4) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region VI and the State of Arkansas Department of Pollution Control and Ecology, signed by the EPA Regional Administrator on September 6, 1991, is referenced as part of the authorized hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(5) *Statement of Legal Authority.* "Attorney General's Statement for Final Authorization", signed by the Attorney General of Arkansas on July 9, 1984 and revisions, supplements and addenda to that Statement dated September 24, 1987, February 24, 1989, December 11, 1990, and May 7, 1992, are referenced as part of the authorized hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(6) *Program Description.* The Program Description dated and any other materials submitted as part of the original application or as supplements thereto are referenced as part of the authorized hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

3. Appendix A to part 272, is amended by adding in alphabetical order, "Arkansas" and its listing to read as follows:

Appendix A to Part 272—State Requirements

* * * * *

Arkansas

The statutory provisions include:

Arkansas Hazardous Waste Management Act, as amended, Act 406 of 1979, as amended, Arkansas Code of 1987 Annotated (A.C.A.), 1991, Sections 8–7–202, 8–7–203, 8–7–215, 8–7–216, 8–7–219, 8–7–221, 8–7–223, 8–7–224, and 8–7–225(a), published in 1991 by the Michie Company, Law Publishers, 1 Town Hall Square, Charlottesville, Virginia 22906–7587.

The regulatory provisions include:

Arkansas Department of Pollution Control and Ecology Regulation No. 23, Hazardous Waste Management, as amended December 6, 1991, effective January 27, 1992, chapter one; chapter two, sections 2a (excluding all of 2a(5) except the first sentence), 2b (except 2b(11)), 2c, 3a (except 3a(10) and 3a(11)), 5, 6 introductory paragraph, 6b, 6c, 9, 10, 12 introductory paragraph, 12a, 12b (except 12b(7)), 12c(10), 12c(11), 13, 14 introductory paragraph, 14b, 15, 16 introductory paragraph, 16b, 16c (except the phrase "or the letters 'PCB' for PCB shipments" in 16c(1)(e)), 16d(1) (except the phrase "(including PCBs and PCB contaminated wastes)" in the first sentence), 16d(1)(a)–16d(1)(d), 16d(1)(e) (except the phrase "or 'PCBs'" in the first sentence), 16d(1)(f)–16e. Copies of the Arkansas regulations can be obtained from the Arkansas Register, Secretary of State, State Capitol Building, Little Rock, Arkansas 72201.

* * * * *

[FR Doc. 93–24962 Filed 10–8–93; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 272

[FRL–4786–4]

Hazardous Waste Management Program: Incorporation by Reference of Approved State Hazardous Waste Program for New Mexico

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: Under the Resource Conservation and Recovery Act of 1976, as amended (RCRA), the United States Environmental Protection Agency (EPA) may grant Final Authorization to States to operate their hazardous waste management programs in lieu of the Federal program. EPA uses title 40, part 272 of Code of Federal Regulations (CFR) to provide notice of the authorization status of State programs, and to incorporate by reference those provisions of the State statutes and regulations that EPA will enforce under RCRA section 3008. EPA intends to incorporate by reference the New Mexico authorized State program in 40 CFR part 272.

EFFECTIVE DATES: This document will be effective December 13, 1993, unless EPA publishes a prior Federal Register action withdrawing this immediate final rule. All comments on this action must be received by the close of business November 12, 1993. The incorporation by reference of certain New Mexico statutes and regulations was approved by the Director of the Federal Register as of December 13, 1993, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

ADDRESSES: Written comments should be sent to Dick Thomas, Region 6 Authorization Coordinator (6H–HS), Grants and Authorization Section, RCRA Programs Branch, U.S. EPA Region VI, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, suite 1200, Dallas, TX 75202, phone 214–655–8528.

FOR FURTHER INFORMATION CONTACT: Dick Thomas, Region 6 Authorization Coordinator (6H–HS), Grants and Authorization Section, RCRA Programs Branch, U.S. EPA Region VI, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Suite 1200, Dallas, TX 75202, phone 214–655–8528.

SUPPLEMENTARY INFORMATION:

Background

Section 3006 of RCRA, 42 U.S.C. 6926 *et seq.*, allows the EPA to authorize State hazardous waste programs to operate in the State in lieu of the Federal hazardous waste program. The purpose of today's Federal Register document is to incorporate by reference EPA's approval of New Mexico's base hazardous waste management program and its revisions to that program.

On January 11, 1985, EPA published a Federal Register (FR) document announcing its decision to grant final authorization for the RCRA base program to the State of New Mexico (see 50 FR 1515). Effective April 10, 1990 (see 55 FR 4604); July 25, 1990 (55 FR 28397); and December 4, 1992 (57 FR 45717), EPA granted New Mexico additional authorization.

New Mexico has adopted but is not authorized for the Federal rules published in the Federal Register from January 28, 1983 through March 20, 1984 (see 53 FR 33938; 48 FR 3977; 48 FR 39611; 48 FR 52718; 49 FR 5308; and 49 FR 10490) and on September 1, 1988 (see 53 FR 33938). Therefore, these rules included in the State incorporation by reference of Federal code at Parts I, II, III, V, VI, and IX are not Federally enforceable.

Except for the HSWA provisions concerning research, development and demonstration permits (50 FR 28702; July 15, 1985), New Mexico is not authorized to implement any HSWA requirements in lieu of EPA. However in adopting Federal requirements by reference, the State included in its adoption certain of the HSWA-based regulations that were promulgated by EPA prior to July 1, 1990. Since EPA cannot enforce a State's requirements which have not been reviewed and approved according to the Agency's authorization standards, it is important that EPA clarify any limitations on the scope of a State's approved hazardous waste program. Thus, in those instances where a State's method of adopting Federal law by reference has the effect of including unauthorized requirements, EPA will provide this clarification by: (1) Incorporating by reference the relevant State legal authorities according to the requirements of the Office of Federal Register; and (2) subsequently identifying in a distinct section of this subpart any requirements which while adopted and incorporated by reference, are not authorized by EPA, and therefore are not Federally enforceable. With respect to HSWA requirements for which the State has not yet been authorized, EPA will continue to enforce the Federal HSWA standards until the State received specific HSWA authorization from EPA.

EPA provides both notice of its approval of State programs in 40 CFR part 272 and incorporates by reference therein the State statutes and regulations that EPA will enforce under section 3008 of RCRA. This effort will provide clearer notice to the public of the scope of the authorized program in New Mexico. Such notice is particularly important in light of the Hazardous and Solid Waste Act Amendments of 1984 (HSWA), Public Law 98–618. Revisions to State hazardous waste programs are necessary when Federal statutory or regulatory authority is modified. Because HSWA extensively amended RCRA, State programs must be modified to reflect those amendments. By incorporating by reference the authorized New Mexico program and by amending the Code of Federal Regulations whenever a new or different set of requirements is authorized in New Mexico, the status of Federally approved requirements of the New Mexico program will be readily discernible.

The Agency will only enforce those provisions of the New Mexico hazardous waste management program for which authorization approval has been granted by EPA. This document incorporates by reference provisions of State hazardous waste statutes and regulations and clarifies which of these provisions are included in the authorized and Federally enforceable program. Concerning HSWA, some State requirements may be similar to HSWA requirements that are in effect under Federal statutory authority in that State. However, a State's HSWA-type requirements are not authorized and will not be codified into the CFR until the Regional Administrator publishes his final decision to authorize the State for specific HSWA requirements. Until such time, EPA will enforce the HSWA requirements and not the State analogs.

New Mexico Authorized Hazardous Waste Program

To incorporate by reference the New Mexico authorized hazardous waste program, EPA intends to add subpart GG to 40 CFR part 272. The State statutes and regulations are incorporated by reference at 40 CFR 272.1601(a) and the Memorandum of Agreement, the Attorney General's Statement and the Program Description are referenced at 40 CFR 272.1601(e), (f) and (g), respectively.

The Agency retains the authority under sections 3007, 3008, 3013 and 7003 of RCRA to undertake enforcement actions in authorized States. With respect to such an enforcement action, the Agency will rely on Federal sanctions, Federal inspection authorities, and the Federal Administrative Procedure Act rather than the authorized State analogues to these requirements. Therefore, the Agency does not intend to incorporate

by reference for purposes of enforcement such particular, authorized New Mexico enforcement authorities. Section 272.1601(b) of 40 CFR lists those authorized New Mexico authorities that are part of the authorized program but are not incorporated by reference.

The public also needs to be aware that some provisions of the State's hazardous waste management program are not part of the Federally authorized State program. These non-authorized provisions are not part of the RCRA Subtitle C program because they are "broader in scope" than RCRA Subtitle C (see 40 CFR 271.1(i)). As a result, State provisions which are "broader in scope" than the Federal program are not incorporated by reference for purposes of enforcement in 40 CFR part 272. Section 272.1601(c) of 40 CFR lists for reference and clarity the New Mexico statutory and regulatory provisions which are "broader in scope" than the Federal program and which are not, therefore, part of the authorized program being incorporated by reference. "Broader in scope" provisions will not be enforced by EPA; the State, however, will continue to enforce such provisions. Similarly, the State's adoption of Federal rules listed at 40 CFR 272.1601(d) is not approved by EPA and are not Federally enforceable.

HSWA Provisions

As noted above, the Agency is not amending 40 CFR part 272 to include HSWA requirements and prohibitions that are immediately effective in New Mexico and other States. Section 3006(g) of RCRA provides that any requirement or prohibition of HSWA (including implementing regulations) takes effect in authorized States at the same time that it takes effect in non-authorized States. Thus, EPA has immediate authority to implement a HSWA requirement or prohibition once it is effective. A HSWA requirement or prohibition supercedes any less stringent or inconsistent State provision which may have been previously authorized by EPA (see 50 FR 28702, July 15, 1985).

Because of the vast number of HSWA statutory and regulatory requirements taking effect over the next few years, EPA expects that many previously authorized and incorporated by reference State provisions will be affected. The States are required to revise their programs to adopt the HSWA requirements and prohibitions by the deadlines set forth in 40 CFR 271.21, and then to seek authorization for those revisions pursuant to 40 CFR part 271. EPA expects that the States will be modifying their programs substantially and repeatedly. Instead of amending 40 CFR part 272 every time a new HSWA provision takes effect under the authority of RCRA section 3006(g), EPA will wait until the State receives authorization for its analog to the new HSWA provision before amending the State's 40 CFR part 272 incorporation by reference. In the interim, persons wanting to know whether a HSWA requirement or prohibition is in effect should refer to 40 CFR 271.1(j), as amended, which lists each such provision.

The incorporation by reference of State authorized programs in the CFR should substantially enhance the public's ability to discern the current status of the authorized State program and clarify the extent of Federal enforcement authority. This will be particularly true as more State program revisions to adopt HSWA provisions are authorized.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this action will not have a significant economic impact on a substantial number of small entities. It intends to incorporate by reference the decisions already made to authorize New Mexico's program and has no separate effect on handlers of hazardous waste in the State or upon small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et. seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

List of Subjects in 40 CFR Part 272

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste transportation, Hazardous waste, Incorporation by reference, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: September 28, 1993.

A. Stanley Meiburg,

Acting Regional Administrator.

For the reasons set forth in the preamble, 40 CFR part 272 is amended as follows:

PART 272—APPROVED STATE HAZARDOUS WASTE MANAGEMENT PROGRAMS

1. The authority citation for part 272 continues to read as follows:

Authority: Secs. 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

2. Subpart GG is amended by adding § 272.1601 to read as follows:

§ 272.1601 New Mexico State-Administered Program: Final Authorization.

(a) Pursuant to section 3006(b) of RCRA, 42 U.S.C. 6926(b), New Mexico has final authorization for the following elements as submitted to EPA in New Mexico's base program application for final authorization which was approved by EPA effective on January 25, 1985. Subsequent program revision applications were approved effective on April 10, 1990, July 25, 1990, and December 4, 1992.

(b) *State Statutes and Regulations.* (1) The New Mexico statutes and regulations cited in this paragraph are incorporated by reference as part of the hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 et. seq.

(i) EPA Approved New Mexico Statutory Requirements Applicable to the Hazardous Waste Management Program, September, 1993.

(ii) EPA Approved New Mexico Regulatory Requirements Applicable to the Hazardous Waste Management Program, September 1993.

(2) The following statutes and regulations concerning State enforcement, although not incorporated by reference, are part of the authorized State program:

(i) New Mexico Statutes 1978 Annotated, Hazardous Waste Act, Chapter 74, Article 4, (1992 Replacement Pamphlet), Sections 74-4-4 (except 74-4-4C), 74-4-4.1, 74-4-4.2C through 74-4-4.2E, 74-4-4.2G(1), 74-4-4.2H, 74-4-4.21, 74-4-4.3 (except 74-4-4.3A(2) and 74-4-4.3F), 74-4-4.7, 74-4-5, 74-4-7B, 74-4-7C, 74-4-10, 74-4-10.1 (except 74-4-10.1C), 74-4-11 through 74-4-14.

(ii) New Mexico Hazardous Waste Management Regulations,

Environmental Improvement Board (EIB), HWMR–6, as amended, February 28, 1991, New Mexico Register, Vol. II-No. 4, Part IX, Sections 902 (except 902.B.1 through 902.B.6); and Part X, Sections 1001, 1004, and 1005.

(3)(i) The following statutory and regulatory provisions are broader in scope than the Federal program, are not part of the authorized program, and are not incorporated by reference:

(ii) New Mexico Statutes 1978 Annotated, Hazardous Waste Act, Chapter 74, Article 4, (1992 Replacement Pamphlet), Sections 74–4–3.3 and 74–4–4.2J.

(4) *Unauthorized State Provisions:* The State's adoption of the Federal rules listed below, while incorporated by reference at 40 CFR 272.1601(a), is not approved by EPA and are not enforceable:

Federal requirement	Federal Register reference	Publication date
Liability Requirements.	53 FR 33938	09/01/88
Biennial Report	48 FR 3977	01/28/83
Permit Rules: Settlement Agreement.	48 FR 39611	09/01/83
Interim Status Standards Applicability.	48 FR 52718	11/22/83
Chlorinated Aliphatic Hydrocarbon Listing (F024).	49 FR 5308	02/10/84
National Uniform Manifest.	49 FR 10490	03/20/84

Additionally, except for the HSWA provisions concerning research, development and demonstration permits (50 FR 28702; July 15, 1985), New Mexico is not authorized to implement any HSWA rule in lieu of EPA. EPA will continue to enforce the Federal HSWA standards for which the State is not authorized until the State receives specific HSWA authorization from EPA.

(5) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region VI and the State of New Mexico signed by the EPA Regional Administrator on January 27, 1993, is referenced as part of the authorized hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et. seq.*

(6) *Statement of Legal Authority.* "Attorney General's Statement for Final Authorization", signed by the Attorney General of New Mexico in January, 1985, and revisions, supplements and addenda to that Statement dated April 13, 1988, September 14, 1988, July 19, 1989 and July 23, 1992, are referenced as part of the authorized hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et. seq.*

(7) *Program Description.* The Program Description dated and any other materials submitted as part of the original application or as supplements thereto are referenced as part of the authorized hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et. seq.*

3. Appendix A to part 272, is amended by adding in alphabetical order, "New Mexico" and its listing to read as follows:

Appendix A to Part 272—State Requirements

* * * * *

New Mexico

The statutory provisions include:

New Mexico Statutes 1978 Annotated, Hazardous Waste Act, Chapter 74, Article 4, (1992 Replacement Pamphlet), Sections 74–4–2, 74–4–3 (except 74–4–3L, 74–4–3O, and 74–4–3R), 74–4–3.1, 74–4–4.2.A, 74–4–4.2B, 74–4–4.2F, 74–4–4.2G(2), 74–4–4.3F, 74–4–7 introductory paragraph, 74–4–7A, 74–4–9, and 74–4–10.1C, as published by the Michie Company, Law Publishers, 1 Town Hall Square, Charlottesville, Virginia 22906–7587.

The regulatory provisions include: New Mexico Hazardous Waste Management Regulations, Environmental Improvement Board (EIB), HWMR–6, as amended, February 28, 1991, New Mexico Register, Vol. II-No. 4, Parts I through Part VIII; Part IX, Sections 901, 902.B.1 through 902.B.6; and Part X, Section 1003. Copies of the New Mexico regulations can be obtained from the New Mexico Register, New Mexico Information Systems, P. O. Box 6703, Santa Fe, NM 87502.

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[FR Doc. 93–24959 Filed 10–8–93; 8:45 am]
BILLING CODE 6560–50–P

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40 CFR Part 272

[FRL–4783–8]

Hazardous Waste Management Program: Incorporation by Reference of Approved State Hazardous Waste Program for Oklahoma

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: Under the Resource Conservation and Recovery Act of 1976, as amended (RCRA), the United States Environmental Protection Agency (EPA) may grant Final Authorization to States to operate their hazardous waste management programs in lieu of the Federal program. EPA uses title 40 Code of Federal Regulations (CFR), part 272 to provide notice of the authorization status of State programs, and to incorporate by reference those provisions of the State statutes and regulations that EPA will enforce under RCRA section 3008. EPA intends to incorporate by reference the Oklahoma authorized State program in 40 CFR part 272.

EFFECTIVE DATES: This document will be effective December 13, 1993 unless EPA publishes a prior **Federal Register** (FR) action withdrawing this immediate final rule. All comments on this action must be received by the close of business November 12, 1993. The incorporation by reference of certain Oklahoma statutes and regulations was approved by the Director of the Federal Register as of December 13, 1993 in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

ADDRESSES: Written comments should be sent to Dick Thomas, Region 6 Authorization Coordinator (6H–HS), Grants and Authorization Section, RCRA Programs Branch, U.S. EPA Region VI, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, suite 1200, Dallas, TX 75202, 214/655–8528.

FOR FURTHER INFORMATION CONTACT: Dick Thomas, Region 6 Authorization Coordinator (6H–HS), Grants and Authorization Section, RCRA Programs Branch, U.S. EPA Region VI, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, suite 1200, Dallas, TX 75202, 214/655–8528.

SUPPLEMENTARY INFORMATION:

Background

Section 3006 of RCRA, 42 U.S.C. 6926 *et seq.*, allows the EPA to authorize State hazardous waste programs to operate in the State in lieu of the Federal hazardous waste program. The purpose of today's **Federal Register** document is to incorporate by reference EPA's approval of Oklahoma's base hazardous waste management program and its four revisions to that program.

On December 27, 1984, EPA published a **Federal Register** notice announcing its decision to grant final authorization for the RCRA base program to the State of Oklahoma (see 49 FR 50362). Effective on June 18, 1990 (see 55 FR 14280); November 27, 1990 (see FR 39274); June 3, 1991 (see 56 FR 13411); and November 19, 1991 (see 56

FR 47675), EPA granted Oklahoma additional authorization.

Oklahoma is only authorized for non-HSWA Federal provisions which have been promulgated, through June 30, 1989, in 40 CFR 124 parts 260 through 266, 268, and 270. However, the Oklahoma Industrial Waste Management Regulations include Federal rules that were published in the **Federal Register** between July 1, 1989 and June 30, 1990. Also, Oklahoma has adopted but is not authorized for the September 1, 1988 (53 FR 33938) amendments to 40 CFR parts 264 and 265 addressing liability requirements. Thus, Federal rules published on September 1, 1988 and between July 1, 1989 and June 30, 1990 and included in the State adoption by reference of Federal code at 310:270–3–2(1) and 310:270–3–2(4) through 310:270–3–2(12) are not part of the State's authorized program and are not Federally enforceable.

Oklahoma is not yet authorized to implement any HSWA requirements in lieu of EPA. However in adopting Federal requirements by reference, the State included in its adoption certain of the HSWA-based regulations that were promulgated by EPA prior to July 1, 1990. Since EPA cannot enforce a State's requirements which have not been reviewed and approved according to the Agency's authorization standards, it is important that EPA clarify any limitations on the scope of a State's approved hazardous waste program. Thus, in those instances where a State's method of adopting Federal law by reference has the effect of including unauthorized requirements, EPA will provide this clarification by: (1) Incorporating by reference the relevant State legal authorities according to the requirements of the Office of Federal Register; and (2) subsequently identifying in a distinct section of this subpart any requirements which while adopted and incorporated by reference, are not authorized by EPA, and therefore are not Federally enforceable. With respect to HSWA requirements for which the State has not yet been authorized, EPA will continue to enforce the Federal HSWA standards until the State received specific HSWA authorization from EPA.

On December 31, 1991, Oklahoma renumbered its hazardous waste rules, Rules and Regulations for Industrial Waste Management, ODH Bulletin 0525, and codified them at Title 310 of the Oklahoma Administrative Code (OAC). The table that follows provides the analogs between the former and renumbered provisions of the Oklahoma hazardous waste regulations.

Former Oklahoma provision [1]	Renumbered Oklahoma provision [2]
Chapter One	Subchapter 1
	310:270–1–1
100	310:270–1–2
110	310:270–1–2
120	310:270–1–2
130	310:270–1–2
140	310:270–1–2
150	310:270–1–2
160 (reserved)	
170	310:270–1–2
180	310:270–1–2
Chapter two	Subchapter 3
200	310:270–3–1
210	310:270–3–2
211	310:270–3–3
220–221	310:270–3–4(a)–(b)
230	310:270–3–5
240	310:270–3–6
Chapter three	Subchapter 5
300	310:270–5–1
301	
302	310:270–5–1(1)
303	
304	310:270–5–1(2)
310	310:270–5–3 (Reserved)
320	310:270–5–4 (Reserved)
Chapter five	Subchapter 9
500	310:270–9–1
510	310:270–9–2
520	310:270–9–3
521–522	310:270–9–3(a)–(b)
530	310:270–9–4
531–532	310:270–9–4(1)–(2)
540	310:270–9–5
Chapter six	Subchapter 11
600	310:270–11–1
601–606	310:270–11–1(a)–(f)
610	310:270–11–2
611–612	310:270–11–2(a)–(b)
620	310:270–11–3
621–624	310:270–11–3(a)–(b)
630	310:270–11–4
631–637	310:270–11–4(a)–(g)
Chapter seven	Subchapter 11
700	310:270–13
701–703	310:270–13–1(a)–(c)
710	310:270–13–2
711–713	310:270–13–2(a)–(c)
720	310:270–13–3
730 (reserved)	
740	310:270–13–4
741–743	310:270–13–4(b)–(d)
330	310:270–5–5 (Reserved)
Chapter four	Subchapter 7
400	310:270–7–1
410	310:270–7–2
420	310:270–7–3
430	310:270–7–4

[1] Rules and Regulations for Industrial Waste Management, ODH Bulletin 0525, as amended, June 29, 1989, effective August 17, 1989; April 12, 1990, effective June 4, 1990; and June 21, 1990, effective August 9, 1990.

[2] Industrial Waste Management Regulations, Chapter 270, Title 310 *The Oklahoma Administrative Code*, (SUBCHAPTERS 1 through 19, Sections 310:270–1–1 through 310:270–19–34), (codified December 31, 1991)

EPA provides both notice of its approval of State programs in 40 CFR part 272 and incorporates by reference therein the State statutes and regulations that EPA will enforce under section 3008 of RCRA. This effort will provide clearer notice to the public of the scope of the authorized program in Oklahoma. Such notice is particularly important in light of the Hazardous and Solid Waste Act Amendments of 1984 (HSWA), Public Law 98–618. Revisions to State hazardous waste programs are necessary when Federal statutory or regulatory authority is modified. Because HSWA extensively amended RCRA, State programs must be modified to reflect those amendments. By incorporating by reference the authorized Oklahoma program and by amending the Code of Federal Regulations whenever a new or different set of requirements is authorized in Oklahoma, the status of Federally approved requirements of the Oklahoma program will be readily discernible.

The Agency will only enforce those provisions of the Oklahoma hazardous waste management program for which authorization approval has been granted by EPA. This document incorporates by reference of State hazardous waste statutes and regulations and clarifies which of these provisions are included in the authorized and Federally enforceable program. Concerning HSWA, some State requirements may be similar to HSWA requirements that are in effect under Federal statutory authority in that State. However, a State's HSWA-type requirements are not authorized and will not be codified into the CFR until the Regional Administrator publishes his final decision to authorize the State for specific HSWA requirements. Until such time, EPA will enforce the HSWA requirements and not the State analogs.

Oklahoma Authorized Hazardous Waste Program

To incorporate by reference the Oklahoma authorized hazardous waste program, EPA intends to add subpart LL to 40 CFR part 272. The State statutes and regulations are incorporated by reference at 40 CFR 272.1851(a) and the Memorandum of Agreement, the Attorney General's Statement and the Program Description are referenced at 40 CFR 272.1851(e), (f) and (g), respectively.

The Agency retains the authority under sections 3007, 3008, 3013 and 7003 of RCRA to undertake enforcement actions in authorized States. With respect to such an enforcement action, the Agency will rely on Federal sanctions, Federal inspection authorities, and the Federal Administrative Procedure Act rather than the authorized State analogues to these requirements. Therefore, the Agency does not intend to incorporate by reference for purposes of enforcement such particular, authorized Oklahoma enforcement authorities. Section 272.1851(b) of 40 CFR lists those authorized Oklahoma authorities that are part of the authorized program but are not incorporated by reference.

Some provisions of the State's hazardous waste management program are not part of the Federally authorized State program. These non-authorized provisions are not part of the RCRA Subtitle C program because they are "broader in scope" than RCRA Subtitle C (see 40 CFR 271.1(i)). As a result, State provisions which are "broader in scope" than the Federal program are not incorporated by reference for purposes of enforcement in 40 CFR part 272. Section 272.1851(c) of 40 CFR lists for reference and clarity the Oklahoma statutory and regulatory provisions which are "broader in scope" than the Federal program and which are not, therefore, part of the authorized program being incorporated by reference. "Broader in scope" provisions will not be enforced by EPA; the State, however, will continue to enforce such provisions. Similarly, the State's adoption of Federal rules listed at 40 CFR 272.1851(d) is not approved by EPA and are, therefore, not part of the Federally enforceable program.

HSWA Provisions

As noted above, the Agency is not amending 40 CFR part 272 to include HSWA requirements and prohibitions that are immediately effective in Oklahoma and other States. Section 3006(g) of RCRA provides that any requirement or prohibition of HSWA (including implementing regulations) takes effect in authorized States at the same time that it takes effect in non-authorized States. Thus, EPA has immediate authority to implement a HSWA requirement or prohibition once it is effective. A HSWA requirement or prohibition supersedes any less stringent or inconsistent State provision which may have been previously authorized by EPA (see 50 FR 28702, July 15, 1985).

Because of the vast number of HSWA statutory and regulatory requirements taking effect over the next few years, EPA expects that many previously authorized and incorporated by reference State provisions will be affected. The States are required to revise their programs to adopt the HSWA requirements and prohibitions by the deadlines set forth in 40 CFR 271.21, and then to seek authorization for those revisions pursuant to 40 CFR part 271. EPA expects that the States will be modifying their programs substantially and repeatedly. Instead of amending 40 CFR part 272 every time a new HSWA provision takes effect under the authority of RCRA 3006(g), EPA will wait until the State receives authorization for its analog to the new HSWA provision before amending the part of 40 CFR part 272 applicable to the State's incorporation by reference. In the interim, persons wanting to know whether a HSWA requirement or prohibition is in effect should refer to 40 CFR 271.1(j), as amended, which lists each such provision.

The incorporation by reference of State authorized programs in the CFR should substantially enhance the public's ability to discern the current status of the authorized State program and clarify the extent of Federal enforcement authority. This will be particularly true as more State program revisions to adopt HSWA provisions are authorized.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this action will not have a significant economic impact on a substantial number of small entities. It intends to incorporate by reference the decisions already made to authorize Oklahoma's program and has no separate effect on handlers of hazardous waste in the State or upon small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

List of Subjects in 40 CFR Part 272

Environmental Protection Administrative practice and procedure, Confidential business information, Hazardous waste transportation, Hazardous waste, Incorporation by reference, Indian lands, Intergovernmental relations, Penalties Reporting and recordkeeping requirements, Water pollution control Water supply.

Dated: September 23, 1993.

Joe D. Winkle,

Acting Regional Administrator.

For the reasons set forth in the preamble, 40 CFR part 272 is amended as follows:

PART 272—APPROVED STATE HAZARDOUS WASTE MANAGEMENT PROGRAMS

1. The authority citation for part 272 continues to read as follows:

Authority: Secs. 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

2. Subpart LL is amended by adding § 272.1851 to read as follows:

§ 272.1851 Oklahoma State-Administered Program: Final Authorization.

(a) Pursuant to section 3006(b) of RCRA, 42 U.S.C. 6926(b), Oklahoma has final authorization for the following elements as submitted to EPA in Oklahoma's base program application for final authorization which was approved by EPA effective on January 10, 1985. Subsequent program revision applications were approved effective on June 18, 1990, November 27, 1990, June 3, 1991, and November 19, 1991.

(b) *State Statutes and Regulations.* (1) the Oklahoma statutes and regulations cited in this paragraph are incorporated by reference as part of the hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 et seq.

(i) EPA Approved Oklahoma Statutory Requirements Applicable to the Hazardous Waste Management Program, September, 1993.

(ii) EPA Approved Oklahoma Regulatory Requirements Applicable to the Hazardous Waste Management Program, September, 1993.

(2) The following statutes and regulations concerning State enforcement, although not incorporated by reference, are part of the authorized State program:

(i) Oklahoma Controlled Industrial Waste Disposal Act, 63 O.S. 1991, Sections 1–2001.1, 1–2003, 1–2003.1, 1–

2004 (except 1–2004(19) through 1–2004(21) and 1–2004(27) through 1–2004(34)), 1–2004.1, 1–2004.2, 1–2005, 1–2005.1, 1–2005.3, 1–2006, 1–2006.1(A), 1–2007, 1–2008(A), 1–2008(G), 1–2008(H)(1), 1–2009.1(B), 1–2011, 1–2012, 1–2012.1, 1–2013, and 1–2013.1.

(ii) Industrial Waste Management Regulations, Chapter 270, Title 310 The Oklahoma Administrative Code, December 31, 1991: Subchapter 3, Section 310:270–3–2(1); Subchapter 11, Sections 310:270–11–1(a)(6), 310:270–11–1(e), 310:270–11–2; Subchapter 13, 310:270–13–1, and 310:270–13–3.

(3) The following statutory and regulatory provisions are broader in scope than the Federal program, are not part of the authorized program, and are not incorporated by reference:

(i) Oklahoma Controlled Industrial Waste Disposal Act, 69 O.S. 1991, Sections 1–2005.2 and 1–2005.3A.

(ii) Industrial Waste Regulations, Chapter 270, Title 310 The Oklahoma Administrative Code, December 31, 1991: Subchapter 11, Sections 310:270–11–1(c) portion addressing application fees, 310:270–11–1(d) portion addressing application fees; Subchapter 13, Section 310:270–13–4; and Subchapter 17.

(4) *Unauthorized State Provisions:* The State's adoption of the Federal rules listed below, while incorporated by reference at 40 CFR 272.1851(a), is not approved by EPA and are, therefore, not enforceable:

Federal requirement	Federal Register reference	Publication date
Liability Requirements	53 FR 33938	09/01/88
Delay of Closure Period for Hazardous Waste Management Facilities	54 FR 33376	08/14/89
Mining Waste Exclusion I	54 FR 36592	09/01/89
Testing and Monitoring Activities	54 FR 40260	09/29/89
Mining Waste Exclusion II	55 FR 2322	01/23/90
Modification of F019 Listing	55 FR 5340	02/14/90
Testing and Monitoring Activities; Technical Corrections	55 FR 8948	03/09/90
Criteria for Listing Toxic Wastes; Technical Amendment	55 FR 18726	05/04/90
Land Disposal Restrictions for Third Scheduled Wastes (Non-HSWA)	55 FR 22520	06/01/90

Additionally, Oklahoma is not yet authorized to implement any HSWA requirements in lieu of EPA. EPA will continue to enforce the Federal HSWA standards until the State receives specific HSWA authorization from EPA.

(5) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region VI and the State of Oklahoma signed by the EPA Regional Administrator on March 22, 1991, is referenced as part of the authorized hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(6) *Statement of Legal Authority.* "Attorney General's Statement for Final Authorization", signed by the Attorney General of Oklahoma on January 20, 1984 and revisions, supplements and addenda to that Statement dated January 14, 1988 (as amended July 20, 1989, December 22, 1988 (as amended June 7, 1989 and August 14, 1990), November 20, 1989, and September 16, 1990, are referenced as part of the authorized hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(7) *Program Description.* The Program Description dated and any other materials submitted as part of the original application or as supplements thereto are referenced as part of the authorized hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

3. Appendix A to part 272 is amended by adding in alphabetical order, "Oklahoma" and its listing to read as follows:

Appendix A to Part 272—State Requirements

* * * * *

Oklahoma

The statutory provisions include:

Oklahoma Controlled Industrial Waste Disposal Act, 63, O.S. 1991, Sections 1–2002, 1–2006.1 (except 1–2006.1(A)), 1–2008(B) through 1–2008(F), 1–2008(H)(2), 1–2008(H)(3), 1–2009, 1–2009.1 (except 1–2009.1(B)(2)), 1–2010, 1–2012.3, 1–2014(A), 1–2014(B) (except the last sentence), 1–2014(C)(2), 1–2014(D), 1–2014(E) and 1–2014.2.

Copies of the Oklahoma statutes that are incorporated by reference are available from West Publishing Company, 50 West Kellogg Boulevard, P.O. Box 64526, St. Paul, Minnesota 55164–0526.

The regulatory provisions include:

Industrial Waste Management Regulations, Chapter 270, Title 310 *The Oklahoma Administrative Code*, December 31, 1991: Subchapter 1, Section 310:270–1–2 (excluding definitions for "Annulus", "Cone of influence", "Fresh water" and "Maximum total pressure gradient"); Subchapter 3, Sections 310:270–3–1 (excluding the phrase "and the Underground Injection Control Program, as amended through July 1, 1990), 310:270–3–2 introductory paragraph, 310:270–3–2(4) through 310:270–3–2(12), 310:270–3–4(a), 310:270–3–5 (excluding the phrase "40 CFR 144.3, 40 CFR 146.3, or"), 310:270–3–6; Subchapter 5 (except 310:270–5–2); Subchapter 7; Subchapter 9 (except 310:270–9–6 and 310:270–9–7); Subchapter 11, Sections 310:270–11–1(a), 310:270–11–1(a)(1) first sentence, 310:270–11–1(a)(2), 310:270–11–1(a)(3), 310:270–11–1(b), 310:270–11–1(c) introductory paragraph (except the phrase "the application fee and"), 310:270–11–1(c)(1) through 310:270–11–1(c)(3), 310:270–11–1(d) introductory paragraph (except the phrase "the application fee and"), 310:270–11–1(d)(1), 310:270–11–1(d)(2) (except the references "144, 146,"), 310:270–11–1(f), 310:270–11–3, 310:270–11–4(a) through 310:270–11–4(e); and Subchapter 13, Sections 310:270–13–2 introductory paragraph, 310:270–13–2(1) and 310:270–13–2(2) first sentence.

Copies of the Oklahoma regulations that are incorporated by reference can be obtained from The Oklahoma Register, Office of Administrative Rules, Secretary of State, 101 State Capitol, Oklahoma City, Oklahoma 73105.

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[FR Doc. 93–24960 Filed 10–8–93; 8:45 am]
BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7000

[NM–010–4210–06; NMNM 86979]

Withdrawal of Public Lands for the Ojito Area of Critical Environmental Concern; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 7,320 acres of public lands from surface entry and mining for a period of 20 years for the Bureau of Land Management to protect the paleontological, geological, recreational, cultural, watershed, and scenic values of the Ojito Area of Critical Environmental Concern. The lands have been and will remain open

to mineral leasing, except the portion of the Ojito Wilderness Study Area that overlaps the Ojito Area of Critical Environmental Concern, which is not currently open to leasing.

EFFECTIVE DATE: October 12, 1993.

FOR FURTHER INFORMATION CONTACT: Debby Lucero, BLM Rio Puerco Resource Area, 435 Montano Road NE., Albuquerque, New Mexico 87107, 505–761–8787.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described public lands are hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2 (1988)), but not from leasing under the mineral leasing laws, to protect the Bureau of Land Management's Ojito Area of Critical Environmental Concern:

New Mexico Principal Meridian

T. 15 N., R. 1 E.,
Sec. 17, E½E½, NW¼NE¼, and W½;
Sec. 18, E½, and SW¼;
Sec. 19;
Sec. 20, E½NE¼, W½, and SE¼;
Sec. 21;
Sec. 28, N½;
Sec. 29;
Sec. 30;
Sec. 31;
Sec. 32, SW¼NE¼, SE¼SW¼, and W½SE¼.
T. 15 N., R. 1 W.,
Sec. 13;
Sec. 24;
Sec. 25;
Sec. 36, SW¼NE¼, SE¼NW¼, NE¼SW¼, and NW¼SE¼.

The areas described aggregate 7,320 acres in Sandoval County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: September 29, 1993.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 93–24861 Filed 10–8–93; 8:45 am]

BILLING CODE 4310–FB–M

43 CFR Public Land Order 7001

[AK–932–4210–06; AA–8037]

Partial Revocation of Executive Order No. 3406, Dated February 13, 1921; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes an Executive order insofar as it affects approximately 858.84 acres of National Forest System lands withdrawn for use by the Coast Guard, Department of Transportation, for the Point Arden Lighthouse, the Spanish Islands Lighthouse, and the Tonki Cape Lighthouse. The lands are no longer needed for the purpose for which they were withdrawn. The lighthouses at Point Arden and Spanish Islands are located within the Tongass National Forest. The land withdrawn for the Point Arden Lighthouse is part of the Admiralty Island National Monument and the Admiralty Island National Monument Wilderness, and the land withdrawn for the Spanish Islands Lighthouse is part of the Coronation Island Wilderness, as established and designated by the Alaska National Interest Lands Conservation Act of 1980. The lands at Point Arden and Spanish Islands remain withdrawn from all forms of entry, appropriation, or disposal under the public land laws, and will continue to be subject to the terms and conditions of the Tongass National Forest reservation. The land withdrawn for the Tonki Cape Lighthouse is located within the Chugach National Forest, and has been conveyed out of Federal ownership. This action, as it affects Tonki Cape, is for record-clearing purposes only.

EFFECTIVE DATE: October 12, 1993.

FOR FURTHER INFORMATION CONTACT: Sandra C. Thomas, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–271–5477.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Executive Order No. 3406, dated February 13, 1921, which withdrew National Forest System lands for lighthouse purposes, is hereby revoked insofar as it affects the following described lands:

Copper River Meridian

Tongass National Forest

(a) Point Arden Lighthouse

Located within Tps. 43 S. Rs. 68 and 69 E., described as Tracts A and B of U.S. Survey No. 1632, excluding the following parcel:
Beginning at U.S.L.M. 1632, as shown on U.S. Survey No. 1632, which is situated at approximate latitude 58°09′05″ N., longitude 134°10′16″ W.;
Thence N. 60° W. to mean high water line;
Thence easterly along the mean high water line to a point S. 60° E. from U.S.L.M. 1632;
Thence N. 60° W. to the point of beginning, containing approximately 5 acres.

The area described contains approximately 385.84 acres.

(b) Spanish Islands Lighthouse

Located within protracted secs. 10 and 15 of T. 68 S., R. 73 E., situated at approximate latitude 55°59′ N., longitude 134°06′ W., excluding the following parcel:
Beginning at a point 100 feet true south of the existing Spanish Island Lighthouse;
Thence along the true east-west line to the mean high water lines on the east and west shores of the northern most Spanish Island. All land located north of this east-west line, including islets and reefs, containing approximately 2 acres.

The area described contains approximately 103 acres.

Seward Meridian

Chugach National Forest

(c) Tonki Cape Lighthouse

A parcel of land located within sec. 19 of partially surveyed T. 21 S., R. 16 W., and secs. 13 and 23 of partially surveyed T. 21 S., R. 17 W., situated at approximate latitude 58°20′ N., longitude 152°00′ W., more particularly described as:

All that part of the cape lying north of a true east and west line, south true one nautical mile for high water line at the northern extremity of the cape, including all outlying islands, islets and rocks. The area described contains approximately 370 acres.

The areas described aggregate a total of approximately 858.84 acres.

2. The land described in paragraph 1(a), Point Arden Lighthouse, is part of the Admiralty Island National Monument and the Admiralty Island National Monument Wilderness, and the land described in paragraph 1(b), Spanish Islands Lighthouse, is part of the Coronation Island Wilderness, pursuant to sections 503, 703, and 707 of the Alaska National Interest Lands Conservation Act, 94 Stat. 2399, 2418, and 2421, and remains withdrawn from all forms of entry, appropriation, or disposal under the public land laws. Any of the land described in paragraph 1(a) that may be outside of the Admiralty Island National Monument or the Admiralty Island National Monument Wilderness, will remain withdrawn from all forms of entry,

appropriation, or disposal under the public land laws until a further opening order is published.

Dated: September 29, 1993.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 93–24864 Filed 10–8–93; 8:45 am]

BILLING CODE 4310–JA–M

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43 CFR Public Land Order 7002

[UT–942–4210–06; U–4061, U–2036]

Partial Revocation of Executive Order No. 5327 and Public Land Order No. 4522; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes two oil shale withdrawal orders insofar as they affect 50 acres of public land. The land is no longer needed for the purpose of the withdrawals, and the revocation is necessary to permit disposal of the land to the State of Utah pursuant to a Quantity Grant Selection application. The land has been and will continue to be open to oil and gas leasing.

EFFECTIVE DATE: October 12, 1993.

FOR FURTHER INFORMATION CONTACT: Randy Massey, BLM Utah State Office, P.O. Box 45155, Salt Lake City, Utah 84145–0155, 801–539–4119.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is hereby ordered as follows:

1. Executive Order No. 5327, and Public Land Order No. 4522, which withdrew oil shale deposits and the lands containing such deposits for protection of oil shale values, are hereby revoked insofar as they affect the following described land:

Salt Lake Meridian

T. 5 S., R. 19 E.,
Sec. 12, SE¼NW¼ and N½N½SW¼NE¼.

The area described contains 50 acres in Uintah County.

2. At 9 a.m. October 12, 1993, the land will be opened to the operation of the public land laws generally, subject to valid existing rights, the provision of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on October 12, 1993, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 9 a.m. on October 12, 1993, the land will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provision of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: September 29, 1993.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 93–24860 Filed 10–8–93; 8:45 am]

BILLING CODE 4310–DO–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 604

Charter Service Regulation; Technical Amendments

AGENCY: Federal Transit Administration, DOT.

ACTION: Final rule; technical amendments.

SUMMARY: This document makes two technical amendments in the Federal Transit Administration (FTA) Charter Service Regulation. The first amends the final rule establishing the charter services demonstration program mandated by section 3040 of the Intermodal Surface Transportation Efficiency Act, by extending the program through October 31, 1994. This extension is necessary to accommodate participants who were unable to begin their demonstration programs on the effective date of August 9, 1993. It will allow them to conduct their programs for a full 12-month period beginning at any time after the effective date of the rule and ending on October 31, 1994. The second amends the regulation to reflect a delegation to the Regional Administrators of responsibility for deciding complaints filed by interested parties.

EFFECTIVE DATE: October 12, 1993.

FOR FURTHER INFORMATION CONTACT: Rita Daguillard, Deputy Assistant Chief Counsel for General Law, FTA Office of Chief Counsel, (202) 366–1936.

SUPPLEMENTARY INFORMATION: A final rule published in the Federal Register on July 9, 1993 (58 FR 36894), established a charter services demonstration program which would allow transit operators to provide charter services to meet the needs of government, civic, charitable and other community activities, as directed by section 3040 of the Intermodal Surface Transportation Efficiency Act. Under the program, recipients in eight sites within four States will be allowed to provide direct charter services as determined by local officials. The rule provided that the demonstration program would be conducted from August 9, 1993, to August 9, 1994.

Because of specific local circumstances, however, certain participants were unable to begin their demonstration programs on the effective date of August 9, 1993. In order to provide these participants with a full 12-month implementation period, the FTA is extending the program through October 31, 1994. Therefore, participants may provide the services described in 49 CFR 604.9(b)(8) for any 12 month period beginning at any time after the effective date of the rule and ending on October 31, 1994. By allowing each participant a full 12-month implementation period, FTA believes that it will be able to more effectively evaluate each local program, taking full account of seasonal variations.

This document also amends Subpart B ("Complaint Process") of 49 CFR part 604 (specifically sections 604.15 through 604.21) to reflect a delegation to the FTA Regional Administrators of responsibility for deciding complaints filed by interested parties. This delegation became effective on December 1, 1992, under FTA Order 1100.50, Change 2 ("FTA Delegations of Authority"), which provided for increased regional authority. Thus, "Regional Administrator" will be substituted for "Chief Counsel" wherever it appears in subpart B of 49 CFR part 604.

VI. Regulatory Impacts and Assurances

A. Executive Order 12291

FTA has determined that this action is not major within the meaning of Executive Order 12291 or significant within the meaning of Department of Transportation regulatory policies and procedures. Since this final rule makes only technical amendments to current

regulatory languages, it is anticipated that the economic impact of this rulemaking will be minimal; therefore, a full regulatory evaluation is not required.

B. Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b), as added by the Regulatory Flexibility Act, Pub. L. 96–354, the FTA certifies that this rule will not have a significant impact on a substantial number of small entities within the meaning of the Act.

C. Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

D. Federalism

This action has been reviewed under Executive Order 12612 on Federalism and the FTA has determined that it does not have implications for principles of Federalism that warrant the preparation of a Federalism Assessment. If promulgated, this rule will not limit the policy making or administrative discretion of the States, nor will it impose additional costs or burdens on the States, nor will it affect the States' abilities to discharge the traditional State governmental functions or otherwise affect any aspect of State sovereignty.

List of Subjects in 49 CFR Part 604

Bus, Grant programs—transportation, Mass transportation, Reporting and recordkeeping requirements.

Accordingly, for the reasons described in the preamble, title 49, Code of Federal Regulations, part 604, Charter Service, is amended as follows:

PART 604—[AMENDED]

1. The authority citation for part 604 continues to read as follows:

Authority: Federal Transit Act, as amended (49 U.S.C. 1601 *et seq.*); 23 U.S.C. 103(e)(4), 142(a), and 142(c); and 49 CFR 1.51.

2. Section 604.9 is amended by revising paragraph (b)(8)(iv) to read as follows:

§ 604.9 Charter service.

* * * * *

(b)(8) * * *

(iv) The service described in this subsection may be provided only during the demonstration program to be conducted for any 12-month period between August 9, 1993, and October 31, 1994, in the following sites:

(A) Monterey, California;

(B) Oklahoma City, Oklahoma;

(C) St. Louis, Missouri;

(D) Yolo County, California;

(E) Four sites within the State of Michigan to be selected by the Michigan Department of Transportation and approved by the Federal Transit Administration prior to the start of the demonstration program.

3. Section 604.15 through 604.21 is amended by removing the phrase "Chief Counsel" and inserting in its place "Regional Administrator" wherever it appears.

Issued: October 6, 1993.

Grace Crunican,

Deputy Administrator.

[FR Doc. 93–24956 Filed 10–8–93; 8:45 am]

BILLING CODE 4910–57–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 625

[Docket No. 930497–3097; I.D. 052093C]

Summer Flounder Fishery; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; corrections.

SUMMARY: On September 24, 1993 (58 FR 49937), a final rule was published to implement the conservation and management measures prescribed in Amendment 4 to the Fishery Management Plan for the Summer Flounder Fishery (FMP). Amendment 4 revised the percentage of the commercial quota allocated to each state and the manner in which 1994 state quotas will be adjusted for quota overages that may occur in 1993. This document clarifies the relationship between the emergency interim rule published on May 7, 1993 (58 FR 27214); the emergency interim rule, extension of effective dates published on July 26, 1993 (58 FR 39680); and the final rule published on September 24, 1993 (58 FR 49937).

EFFECTIVE DATE: October 25, 1993.

FOR FURTHER INFORMATION CONTACT: Shirley E. Whitted, Fishery Management Specialist, (301) 713–2341.

Correction of Publication

Accordingly, on page 49939 in the third column, the final rule published on September 24, 1993, that was the subject of FR Doc. 93–23426, is corrected as follows:

A. After the authority citation and before amendatory instruction 2., add amendatory instruction 1a. to read as follows:

1a. Effective October 25, 1993, the emergency interim rule, published on May 7, 1993, temporarily suspending § 625.20(d)(1) and temporarily adding § 625.20(d)(3) from May 4, 1993, through August 5, 1993, and the emergency interim rule, extension of effective dates published on July 26, 1993, extending the effective dates from August 6, 1993, through November 3, 1993, are terminated.

B. In amendatory instruction 2., the word "In" is revised to read: "Effective October 25, 1993, in".

Dated: October 5, 1993.

Samuel W. McKeen,

Program Coordinator, National Marine Fisheries Service.

[FR Doc. 93–24885 Filed 10–8–93; 8:45 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 58, No. 195
Tuesday, October 12, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1413

RIN 0560–AD18

1994 Rice Program and Adjusted World Price for Broken-Kernel Rice

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulations to set forth the acreage reduction percentage, if any, for the 1994 crop of rice. This action is required by section 101B of the Agricultural Act of 1949, as amended (the 1949 Act). This proposed rule outlines a range of acreage reduction percentage options proposed for the 1994 crop of rice and requests comments regarding price support rate adjustments for aroma and grade of rice, the method for calculating the adjusted world price for broken kernel rice, and how to determine an amount that is fair and equitable in relation to wheat and feed grains in calculating the target-price deficiency payment rates for the 1994 rice crop.

DATES: Comments must be received on or before November 12, 1993 in order to be assured of consideration.

ADDRESSES: Comments must be mailed to: Deputy Administrator, Policy Analysis, Agricultural Stabilization and Conservation Service (ASCS), U.S. Department of Agriculture (USDA), P.O. Box 2415, room 3090–S, Washington, DC 20013–2415.

FOR FURTHER INFORMATION CONTACT: Gene S. Rosera, Agricultural Economist, Fibers and Rice Analysis Division, ASCS, USDA, room 3758–S, P.O. Box 2415, Washington, DC 20013–2415 or call 202–720–6734.

SUPPLEMENTARY INFORMATION:

Executive Order 12291 and Departmental Regulation 1512–1

This rule has been reviewed under USDA procedures established in accordance with provisions of Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as "major." It has been determined that an annual effect on the economy of $100 million or more may result from implementation of the provisions of this proposed rule.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is applicable to this proposed rule since the Commodity Credit Corporation (CCC) is required by section 105B(o) of the 1949 Act to request comments with respect to the subject matter of this rule.

Preliminary Regulatory Impact Analysis

A Preliminary Regulatory Impact Analysis was prepared, which determined that this regulation will have no significant impact on a substantial number of small entities because the particular acreage reduction percentages considered will not affect the paperwork, reporting, or compliance burdens of the small entities in the program. Accordingly, CCC certifies that the rule will have no significant impact on a substantial number of small entities. The Preliminary Regulatory Impact Analysis describing the options considered in developing this proposed rule and the impact of the implementation of each option is available on request from the above-named individual.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this proposed rule applies, are: Rice Production Stabilization—10.065.

Executive Order 12778

This proposed rule has been reviewed in accordance with Executive Order 12778. The provisions of this proposed rule do not preempt State laws, are not retroactive, and do not require the exhaustion of any administrative appeal remedies.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Paperwork Reduction Act

The amendments to 7 CFR part 1413 set forth in this proposed rule do not contain information collections that require clearance by the Office of Management and Budget under the provisions of 44 U.S.C. 35.

Request for Public Comment

Comments are requested with respect to this proposed rule and such comments shall be considered in developing the final rule.

Background

In accordance with section 101B of the 1949 Act, an acreage reduction program (ARP) may be implemented for the 1994 rice crop if it is determined that the total supply of rice, in the absence of such a program, would be excessive taking into account the need for an adequate carryover to maintain reasonable and stable supplies and prices, and to meet a national emergency.

Land diversion payments also may be made to producers if needed to adjust the total national acreage of rice to desirable goals. A paid land diversion program is not considered because, given the considered program options, it is not needed to achieve the statutory stocks-to-use levels of rice.

If an ARP is announced, the reduction shall be achieved by applying a uniform percentage reduction (from 0 to 35 percent) to the rice crop acreage base for the crop for each rice producing farm. In making such a determination, the number of acres placed into the agricultural resources conservation program established under subtitle D of title XII of the Food Security Act of

1985, as amended, must be taken into consideration.

Producers who knowingly produce rice in excess of the permitted acreage for the farm plus any rice acreage planted in accordance with the flexibility provisions are ineligible for loans and purchases and all payments with respect to that crop on the farm.

The Secretary is required to carry out an acreage limitation program in a manner that will result in carry-over stocks equal to 16.5 to 20.0 percent of the simple average of the total disappearance (including domestic, export, and residual disappearance) of rice for each of the 3 marketing years preceding the year for which the announcement is made. The 1994-crop options considered are:

Option 1. 0-percent ARP
Option 2. 2.5-percent ARP.
Option 3. 5.0-percent ARP.

The estimated impacts of these options are shown in this table.

ESTIMATED IMPACTS OF 1994 ARP OPTIONS

Options	1	2	3
ARP (%)	0.0	2.5	5.0
Participation (%)	96	96	96
Planted acres (1,000 acres)	3,156	3,070	2,984
Production (million hundredweight)	175.6	170.4	165.3
Domestic/residual use (million hundredweight)	103.6	103.4	103.2
Exports (million hundredweight)	80.5	76.5	72.5
Ending stocks (million hundredweight)	30.2	29.3	28.4
Ratio of ending stocks to prior 3 years' use (%)	17.5	17.0	16.5
Season average price ($ per hundredweight)	5.65	5.80	5.95
Net outlays (million $)	1005	977	948

Accordingly, comments are requested whether to establish an ARP for the 1994 rice crop, and if so, at what reduction percentage.

The final determination of this percentage will be set forth at 7 CFR 1413.54(a)(4).

In accordance with section 403 of the 1949 Act, appropriate adjustments may be made in the support price for any commodity for differences in grade, type, staple, quality, location, and other factors. Discounts to the 1994-crop price support rates for aromatic rice varieties may be appropriate because of the special storage and merchandising requirements of such rice.

Accordingly, comments are requested whether to establish discounts to the price support rates for aromatic rice varieties, and if so, the level of such discounts.

A difference of $1.00 per hundredweight between the support rates for milled whole kernels of long and medium/short grain has been effective since the 1987 crop year. Comments are requested regarding an appropriate difference between price support rates for milled whole kernels of long grain and medium/short grain for the 1994 crop of rice.

Discounts for price support rates for lower grades of rice have been established for prior crop years at levels reflecting the lower market value of such rice. Rough rice pledged as collateral for price support loans is currently subject to discounts that have been effective since 1983. These discounts are $0.30 per hundredweight for U.S. Grade #3, $0.60 per hundredweight for U.S. Grade #4, $1.00 per hundredweight for U.S. Grade #5, and $2.00 per hundredweight for U.S. Grade #6. Accordingly, comments are requested as to the level of premiums and discounts that would be appropriate for any grade of 1994-crop rice.

In accordance with section 101B(a)(5)(A) of the 1949 Act, the Secretary may permit rice price support loans to be repaid at the prevailing world market price for rice, as determined by the Secretary. In determining the world market price of rough rice, the world market price of milled broken kernel rice has been established at 50 percent of the world market price for milled long grain whole kernel rice. USDA has received comments that this price relationship results in excessive program outlays and is inconsistent with regulations at § 1421.25(a)(5)(ii). These regulations specify that the world market value of broken kernels shall be based upon the relationship of whole and broken kernel world prices as estimated from observations of prices at which rice is being sold in world markets.

Accordingly, comments are requested regarding an appropriate method for establishing the world market price for milled broken kernel rice. Comments are specifically sought regarding foreign origins and grades of milled broken-kernel rice suitable for determining world market prices of broken rice.

In accordance with section 101B(c)(1)(B) of the 1949 Act, the 1994-crop deficiency payment rate shall be the amount by which the target price exceeds the higher of the loan level or the lower of (1) the national average price received during the calendar year containing the first five months of the marketing year, or (2) the 5-month price plus an amount determined by the Secretary to be fair and equitable in relation to wheat and feed grains. The adjustments to the 5-month price provided by this section are 10 cents per bushel for wheat and 7 cents per bushel for feed grains.

Accordingly, comments are requested regarding how to determine an amount to be added to the 5-month weighted average price received for rice that is fair and equitable in relation to the adjustments of the wheat and feed grains 5-month prices.

List of Subjects in 7 CFR Part 1413

Cotton, Feed grain, Price support programs, Rice, Wheat.

Accordingly, it is proposed that 7 CFR part 1413 be amended as follows:

PART 1413—FEED GRAIN, RICE, UPLAND AND EXTRA LONG STAPLE COTTON, WHEAT AND RELATED PROGRAMS

1. The authority citation for 7 CFR part 1413 continues to read as follows:

Authority: 7 U.S.C. 1308, 1308a, 1309, 1441–2, 1444–2, 1444f, 1445b–3a, 1461–1469; 15 U.S.C. 714b and 714c.

2. Section 1413.54 is amended by:

A. Revising paragraph (a)(4)(iii),

B. Adding paragraph (a)(4)(iv),

C. Adding and reserving paragraph (d)(4)(iv) and adding paragraph (d)(4)(v) to paragraph (d)(4) as proposed at 58 FR 41641 (August 5, 1993) and at 58 FR 51934 (October 5, 1993) to read as follows:

Sec. 1413.54 Acreage reduction program provisions.

(a) * * *

(4) * * *

(iii) 1993 rice, 5 percent;

(iv) 1994 rice, within the range of 0 to 35 percent, if supplies are excessive, as determined and announced by CCC with no paid land diversion.

* * * * *

(d) * * *

(4) * * *

(v) Shall not be made available to producers of rice.

* * * * *

Signed on October 5, 1993 at Washington, DC.

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 93–24945 Filed 10–6–93; 3:47 pm]

BILLING CODE 3410–05–P

Rural Electrification Administration

7 CFR Part 1703

Rural Economic Development Loan and Grant Program: Grants

AGENCY: Rural Electrification Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Electrification Administration(REA) recently revised its Rural Economic Development Loan andGrant Program to provide additional information to potentialapplicants on the selection factors and rating criteria, allowmonthly submittal of applications, and establish a maximum amountof project funding as a fixed percentage of allocated fundsrather than the $100,000 limit in the existing rule. Thesechanges were published in a final rule on September 25, 1992. REA proposes to amend this final rule on the Rural EconomicDevelopment Loan and Grant Program to reflect additionalinformation for the grant portion of the regulation. Theproposed amendment would add and revise procedures for approvingand administering grants and would clarify eligible uses of grantfunds, supplemental funds requirements, and administrativerequirements for grant funds.

DATES: Written comments must be received by REA orcarry a postmark of equivalent no later than November 12, 1993. REA requires an original and three copies of all comments (7 CFRpart 1700).

ADDRESSES: Submit written comments to Blaine D.Stockton, Jr., Assistant Administrator, Economic Development andTechnical Services, Rural Electrification Administration, room4025, South Building, U.S. Department of Agriculture, 14th andIndependence Avenue, SW., Washington, DC 20250091500. The publicmay inspect written comments on this proposed rule in room 2234of the South Building between 8:30 a.m. and 5 p.m. on officialworkdays (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Blaine D.Stockton, Jr., Assistant Administrator, Economic Development andTechnical Services, Rural Electrification Administration,telephone number (202) 720–9552.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This proposed rule has been issued in conformance withExecutive Order 12291 and Departmental Regulation 1512091. Thisaction has been classified as "nonmajor" because it does notmeet the criteria for a major regulation as established by theOrder.

Executive Order 12778

This proposed rule has been reviewed under Executive Order12778, Civil Justice Reform. If adopted, this proposed rule:

(1) Will not preempt any State or local laws, regulations,or policies, unless they present an irreconcilable conflict withthis rule;

(2) Will not have any retroactive effect; and

(3) Will not require administrative proceedings before parties may file suit challenging the provisions of this rule.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act, theAdministrator certifies that this action would not have asignificant economic impact on a substantial number of smallentities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Based on current and historical fundinglevels for this program and a projected average size loan and/or grant in the range of $300,000 to $400,000, it is estimated that 50 to 60 loans and/or grants will be made nationwide each year. It is projected that the Rural Economic Development Loan and Grant Program will have a limited impact upon small businesses because of the program's unique delivery system; i.e., loans and grants will be made through REA financed electric and telephonecooperatives. These cooperatives do not operate as credit institutions, thus they do not seek funds for the expressed purpose of loan portfolio expansion. Rather, REA financed cooperatives selectively request REA funding through this program to enhance economic development in rural areas by funding a limited number of development projects. Since credit is channeled to areas which are generally underdeveloped and financially depressed, job creation and economic development resulting from newly emerging businesses and community facilities funded by REA does not pose undue competition or other adverse effects upon existing businesses. Therefore, this proposed rule will have no effect upon businesses or entities other than those to be funded through this program.

Information Collection and Recordkeeping Requirements

In compliance with the Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implements the Paperwork Reduction Act of 1980 (Pub. L. 9609511) and section 3504 of that Act, the information collection and recordkeeping requirements contained in this proposed rule have been approved by OMB under control number 0572090090. Comments concerning these requirements should be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USDA, room 3201, NEOB, Washington, DC 20503.

National Environmental Policy Act Certification

The Administrator has determined that this proposed rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Intergovernmental Review

The program is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials, with the exception of applications for Project Feasibility Studies.

Catalog of Federal Domestic Assistance

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.854, Rural Economic Development Loans and Grants. This catalog is available a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402–9325.

Background

REA is proposing this action to establish procedures for approving and administering grants. The selection of applications financed with grants would

be based on a preference for projects that meet the Act's purpose of benefitting an entire rural area rather than a particular business or individual. REA believes the following projects best meet this purpose: 1) The establishment and/or operation of a revolving loan program by REA Borrowers; and 2) Pass-through grants in conjunction with loans for: (a) project feasibility studies, (b) technical assistance by non-profit organizations for business start-ups, business planning, and market research, (c) community development assistance by non-profit organizations, (d) projects operated on a profit or non-profit basis that enhance the overall quality of medical care of rural residents, and (e) projects by profit or non-profit organizations which encourage the use of advanced telecommunications for educational and medical services.

Several conditions need to be established under this program in order to maximize the benefits of the grant program, conserve the limited funds available, and provide for the efficient administration of grant making by REA.

First, with the exception of the establishment and/or operation of a revolving loan programs, grants will be made only in conjunction with rural development loans. This will increase the number of projects which REA Borrowers may finance by reducing the amount of zero-interest loan funds required to fund projects and reducing the debt repayment obligation for those projects which would be unable to repay 100 percent loan funding. In addition, grants made in conjunction with loans will result in the greatest chance for project success because the concurrent loan repayment obligation will require, to the extent possible, dedication and commitment to the success of projects by grant recipients. Further, the loan repayment requirements will provide a measurable yardstick to enable REA Borrowers to effectively evaluate the viability of proposed projects and eliminate those projects from consideration which are clearly not viable. Finally, from an administrative standpoint, REA believes that grants made in conjunction with loans will eliminate the need for complex regulations, and provide for more efficient and effective program administration.

The sole exception to the requirement for making grants in conjunction with loans is the establishment and/or operation of a revolving loan program by REA Borrowers. A locally administered revolving loan program is an effective use of grant funds for local involvement and control in lending activity. Grant funding will encourage and enable REA Borrowers to become more active and responsive in local rural economic development activity. Grant funds to REA Borrowers for local revolving loan programs will provide the most powerful multiplier for rural economic development and, since REA proposes to limit funding to REA Borrowers on a non-pass-through basis, grants will be awarded without zero-interest loans. REA Borrowers will be required to lend grant funds at zero-percent interest during the initial lending cycle. The operation of the revolving loan program after the initial lending cycle would be in accordance with written agreement between REA and REA Borrowers.

Second, as with zero-interest loans, all REA projects funded with grants will require a minimum of 20 percent supplemental funding for project costs. Supplemental funds may come from the project owner in the form of equity funds, private sources, state and local government sources, other Federal Government sources, the borrower, or other sources. For grants to REA Borrowers to establish revolving loan funds, up to 80 percent of the revolving fund may be funded with the grant funds. For all other projects eligible for loan and grant funding, the portion of project costs eligible for REA funding may be funded up to 20 percent with grant funds.

Third, for grants made in conjunction with zero-interest loans, grant funding will be provided only in sufficient amount necessary for a feasible project. A feasible project is a project which generates sufficient income to pay operating expenses and pay debts. A feasible project must also generate sufficient income to cover depreciation of equipment or facilities acquired or constructed in connection with the project. Depreciation must be based on recognized depreciation schedules as set forth by the United States Internal Revenue Service. A project which generates sufficient revenue to show feasibility without grant funds is not eligible for a grant. REA feels this provision appropriately targets limited grant funds for those projects most in need of grant funds.

Fourth, in determining the eligible amount of a grant, REA proposes to base the appropriate amount of grant funding on a typical year of operation, when the project has generally reached its target income earning potential. Grant awards would be unnecessarily large if based on project debt repayment ability during the start-up phase when project income is relatively low. The current regulation allows a deferral of loan payments for up to two years for new business start-ups and a one year deferral for business expansion. Prior to awarding a grant for a project where a start-up phase indicates lower project income, the applicable deferral provisions will be considered to determine if the project can repay a 100 percent zero-interest loan plus the deferred amount after the deferral period. Therefore, in cases where projected net income for a project is relatively low in the beginning years of the project, REA will require the use of the deferral provisions in the regulation and base grant eligibility on project debt repayment ability after the authorized deferral period, if this would result in a lower percentage of grant funding necessary to fund the project.

Fifth, grant funding will be channeled, to the extent practicable, to entities which have a broad impact on rural economies. REA recognizes that successful for-profit and non-profit entities alike can provide broad economic stimulus. However, given program funding limitations, REA believes it is appropriate to target grant funding to non-profit entities. Providing grant funding to select for-profit entities could be perceived as arbitrarily and inequitably placing those entities in an unfair competitive position relative to other for-profit entities which are not funded. Therefore, to ensure an atmosphere of fair competition, REA will fund those non-profit enterprises which provide a broad multiplier of benefits to the rural community, but which do not compete with other enterprises based on the profit motive. Non-profit enterprises operating business incubators and community driven projects for community facilities, industrial parks and infrastructure, such as water and sewer systems and industrial parks, provide a fertile base for rural economic development in a community by multiple enterprises, both profit and non-profit. The existing loan provisions of the zero-interest loan and grant program adequately fulfill the needs of for-profit enterprises.

REA proposes to allow grant funding provisions in certain cases regardless of whether projects are operated on a non-profit or on a for-profit basis. Grant funding will be available for project feasibility studies and technical assistance. Grant funding for these purposes irrespective of entity status isconsistent with specific provisions of the Act. Grants in conjunction with zero-interest loans will help ensure successful job creation projects by for-profit enterprises, as well as effective broad based community development assistance by not-for profit entities. Regarding for-profit entities, REA does not believe this provision causes unfair

competition because grant funding to those entities will be limited to the costs incurred for feasibility studies and technical assistance, and no grant assistance will be provided to for-profit entities for other capital costs or operating costs. In addition, grant funding will be provided irrespective of entity status for enhancement of medical care, and advanced telecommunications for educational and medical services. These types of projects provide broad based benefits regardless of the type of entity which is funded. Because of the critical need for these services and the limited number of entities which can feasibly undertake such enterprises in rural areas, grant funding to for-profit entities which provide these services will not result in unfair competition.

The Establishment and/or Operation of a Revolving Loan Fund by REA Borrowers

REA intends to finance through grants up to 80 percent of the cost of establishing revolving loan funds which will provide seed money to those REA Borrowers who demonstrate a willingness and desire to finance at a local level potential rural development activities. REA Borrowers who demonstrate strong interest in economic development are capable of administering the congressional intent of the program with limited oversight after Federal grant fund disbursement is initially monitored by REA. In accordance with the Act, grant assistance will be provided to REA Borrowers; however, REA's desire to exercise due diligence to ensure the proper use of grant funds necessitates that funds remain in control of REA Borrowers, on a non pass-through basis. REA will require that the initial lending of the grant monies by REA Borrowers be in accordance with REA policies and procedures, and REA personnel will monitor the initial loans. After the first cycle of lending is completed, the REA Borrowers will maintain the revolving fund in accordance with a prior agreement with REA. Revolving loan funds will, in effect, provide local lending control by REA Borrowers for local projects, along with local responsibility. An REA borrower administering a revolving loan account must have a rural development plan in which lending parameters, such as maximum loan amount and type(s) of eligible projects, would be established for a particular area. An REA borrower that receives a grant for a revolving loan fund will be encouraged to fund projects using the revolving fund beforerequesting a pass-through zero-interest loan and grant from REA. If the proposed project type or funding requirements does not fit within borrower revolving fund parameters, revolving funds are exhausted, or if the project requires a higher level of funding than the borrower's limited funds allow, an REA borrower could fund projects with pass-through loans and grants, subject to Agency requirements.

The revolving loan programs that REA would consider financing with grant funds will need to comply with several restrictions. First, the program will not use more than 10 percent of its funds to cover operating expenses, including the administrative costs of administering the revolving fund and the provision for providing technical assistance to project owners. This restriction is designed to avoid a program that will use a substantial amount of grant funds for purposes such as raising additional funds rather than financing rural economic development and job creation projects. The second restriction will require that loans made with the initial REA grant carry an interest rate of zero percent. This restriction is based on the interest rate of zero percent on the REA loans made from this program. Loans made with repayments of the initial loan would carry an interest rate in accordance with prior agreement between the REA borrower and REA. In addition, REA will require that Federal grant funds be disbursed on a reimbursement basis. Under this provision, Borrowers providing initial loans under the revolving loan fund will be required to advance their own funds and utilize other financing as necessary to fund the projects prior to requesting reimbursement from REA. This requirement is necessary to ensure that grant funds are handled in accordance with USDA's Uniform Assistance Regulation 7 CFR parts 3015 and 3016 for grants, which requires Federal agencies to formulate procedures which minimize the time between grant disbursement and usage for the project, and Federal Agencies to retain full oversight for each disbursement of Federal grant funds. REA considered all practicable alternatives to meet these mandatory Departmental requirements; however, alternatives which were explored would necessitate complicated and excessively burdensome and costly regulations for both REA Borrowers to comply with and REA to administer. The reimbursement requirement provides a relatively uncomplicated mechanism which, within pre-established grant agreement parameters and the borrower's rural development plan, maximizes REA borrower discretion to initially fund projects. REA believes that the resultant cost savings and flexibility afforded Borrowers and REA by this less cumbersome regulation outweighs the initial cost incurred by Borrowers to "front" the financing for rural development projects. In any case, the disbursement procedures contained in this proposed rule apply only to REA grant funds which are disbursed for projects initially funded under the revolving loan fund. Repayments fromthose loans initially made from Federal grant funds will benon-Federal in character, and Borrowers will not be subject tothe Federal disbursement requirements contained in this proposed rule.

There will also be four other restrictions on the revolving loan program for Federal grant funds which are disbursed. First, REA Borrowers will be required to identify an adequate number of projects eligible for funding which would be funded by REA grant funds within three years; second, no loans will be authorized for purposes that are ineligible for REA zero-interest loans; third, grant funds which are not disbursed will be cancelled if the program is terminated; and fourth, in accordance with written prior agreement, REA Borrowers will be required to utilize the repayments of loans made with the grant funds for rural economic development and job creation projects unless REA agrees otherwise.

To extend additional latitude for REA Borrowers to promote rural economic development using their revolving loans, REA proposes to eliminate the requirement in paragraph (f) of 1703.28 that sets a minimum rural economic loan and grant at $10,000. This will allow REA Borrowers to make small loans to assist small projects. This exception applies only to the revolving loan provision. Further, REA proposes to allow an REA borrower to use revolving loan funds to refinance creditors which provide interim or construction financing for eligible purposes in connection with viable projects. Refinancing for the sole purpose of replacing higher interest conventional financing with zero-interest revolving loan funds is not be authorized. This refinancing provision is consistent with other Agencies' rural development revolving loan fund provisions.

Finally, an important policy consideration is how grant funds for revolving loan funds will be utilized. In light of Federal grant regulations which necessitate full Agency oversight of grant fund approval and disbursement

by REA, it has been determined that compliance with the regulations necessitates that, at time of application, REA Borrowers identify a sufficient number of rural development projects in the planning stage requiring zero-interest loans equal to the amount of grant funding requested.

Since zero-interest loan demand presently exceeds available funding, REA intends to limit the types of projects which are funded initially with grants for revolving funds to those community development projects by non-profit enterprises operating business incubators, and community driven projects for community facilities, industrial parks and infrastructure, such as water and sewer systems and industrial parks. REA Borrowers may also use grant funds initially to fund projects, regardless of entity status, for educational and medical facilities, and enhancement of educational services and medical care through advanced telecommunications. Feasibility studies and technical assistance may also be funded.

In many rural areas, economic development is stymied due to inadequate community services and infrastructure, which results in the inability of communities to attract and sustain business growth. In determining appropriate types of projects to most effectively use Federal grant funds for revolving loan funds, especially in chronically depressed rural areas with inadequate community facilities, REA will encourage Borrowers to cooperate with local community leaders in developing community facilities plans, or other community development plans which identify rural community needs. REA believes the use of Federal revolving loan funds for community development facilitates effective partnerships between REA borrowers and community leaders, and lays the groundwork for sustained economic development. As community facilities are developed to attract business formation, pass-through zero-interest loans and grants, and the repayment of initial loans from revolving loan funds for community development projects could then be used by REA borrowers for any rural economic development purpose, including projects by for-profit entities which result in direct job creation as previously agreed with REA.

Project Feasibility Studies and Technical Assistance

REA intends to provide grant funds for independent feasibility studies and technical assistance for planning, management assistance and consultation to enable the success of individual projects that will provide substantial benefits to the rural community. Grant funding for independent feasibility studies and technical assistance will be available only in conjunction with zero-interest loans.

Feasibility studies will include consultation, studies or research from qualified entities which address the important aspects of project assessment and planning to ensure, to the extent practicable, the success of projects. Feasibility studies will address the market, technical, economic, financial and managerial issues related to project feasibility. Feasibility studies may be funded in connection with viable projects as a reimbursement to the project owner for expenses incurred during the initial planning stages of the project prior to project funding by REA.

Technical assistance will include managerial, technical, financial and operational consultation by independent qualified entities. Technical assistance will assist project owners to identify and evaluate problems or potential problems and provide training to enable a project owner to successfully implement, manage, operate and maintain a viable project which is financed with zero-interest loan funds.

If REA approves loan funding for a project, REA proposes to provide grant funding up to 20 percent of the loan to cover the cost of the feasibility study and/or technical assistance for the project. This will help enable those projects to start out with a lower debt, and help enhance project feasibility.

REA will not finance initial feasibility studies or technical assistance that would provide general guidelines for rural development in an area, nor will REA finance studies or consultation for the sole purpose of determining whether or not a project could be financed under the loan portion of this regulation. This preliminary investigation material, in our opinion, is available and obtainable from both private and public organizations that promote and disseminate developmental information at the local, state, regional and/or national basis. Therefore, there is no need for redundant studies or information regarding general business operations.

REA intends to fund only those feasibility studies and technical assistance consultations which are necessary to plan or implement a viable project approved for loan funding by REA. Feasibility studies or technical assistance consultation performed in connection with projects which are not approved for loan funding under the zero-interest loan and grant program will not be funded. General feasibility studies financed independently of loan program criteria would not be a productive use of limited grant funds. Under this scenario, REA would very likely be inundated with grant funding requests for unproductive studies yielding no substantive economic development; thus, grant funding would not be utilized in the most productive manner. Technical assistance for non-REA funded projects could positively impact rural economic development; however, REA believes that technical assistance in conjunction with REA funded projects is the most effective use of grant funds. Further, grant funded feasibility studies and technical assistance consultations independent of REA funded projects would require complex regulations to objectively evaluate the relative merits of numerous and diverse studies and consultations, and the additional personnel costs associated with review and administration of a grant program separate from the zero-interest loan program would result in excessive administrative costs to REA.

Business Incubators Established by Non-Profit Organizations for Business Formation

REA intends to provide grant funds to non-profit organizations to establish business incubators which will assist in developing emerging businesses. Business incubators funded under this program will be those facilities in which single or multiple small businesses may use premises, support staff, computer software, hardware, telecommunications equipment, machinery, janitorial services, utilities, or share other overhead facilities. Grant funds may also be used to enable incubators to provide technical assistance to emerging businesses for managerial, planning, technical, financial and operational functions. REA expects that the grant funds would be sufficient to enable a business to become established and self-sustaining within a 12 to 24 month period. A for-profit enterprise would not be eligible for a pass-through grant to establish an incubator. However, a for-profit business which utilizes the services of the incubator could be funded with a zero-interest loan.

Community Development Assistance by Non-Profit Organizations

REA intends to provide grant funds to facilitate job creation projects or other projects that provide needed facilities and services which will promote economic development in rural communities. Examples are the development of non-profit distributional

and collection enterprises for local cottage industries, industrial parks and 911 or enhanced 911 services. In addition, if other Federal, state or local sources of funding are not available or not sufficient, grants may be used for community equipment, such as firefighting or ambulance equipment, that fills a documented community need.

Projects To Be Operated on a Profit or Non-Profit Basis That Enhance the Overall Quality of Medical Care of Rural Residents

REA intends, in conjunction with loan applications, to provide grant funds for the acquisition of equipment or construction of the physical plant, including buildings, for health care facilities where it can be demonstrated that existing health care facilities are inadequate or nonexistent in the community or in close proximity thereto. The need to attract qualified medical personnel to some rural communities is recognized as a major obstacle to attracting or retaining businesses and residences in rural areas. It is anticipated that this provision would be used in conjunction with the REA Distance Learning and Medical Link Grant (DLML) program set forth in 7 CFR part 1703, subpart D, to provide infrastructure as needed, in addition to DLML equipment. However, this provision could be used independently of the DLML program. While providing medical links in some areas may encourage more medical care services, the acquisition of equipment or construction of physical plant facilities, including buildings, for health care facilities will also be needed.

Projects Providing Advanced Telecommunications Services and Computer Networks for Medical and Educational Services

REA intends to provide grant funds to establish advanced telecommunications systems and computer networks for medical and educational services. In the past, rural development loan funds have been provided for these services, including interactive video and computer networks, in order to provide medical and job training or other educational services. This proposal allows for grants in addition to loans enabling advanced telecommunications to be established in economically depressed areas which otherwise would not be able to meet the debt repayment requirements of a 100 percent loan. This provision finances much of the same types of equipment as does the REA DLML grant program; however, it differs in two important respects. First, whereas the primary goal of the DLML program is to establish advanced telecommunications in order to deliver educational and medical services, the thrust of this grant provision is to enhance rural economic development efforts by providing the key ingredients for economic growth. Adequate educational capability targeted to specific groups, such as job retraining for displaced workers, skills enhancement for employed workers, vocational and/or advanced technology training for those desiring employment, and reliable medical care for workers and their families, will result in the ability of rural areas to stabilize and strengthen their population base, attract new businesses and thus facilitate increases in economic activity.

Second, unlike the DLML program, this provision does not provide for 100 percent grant funding. However, zero-interest loans and grants under this provision will provide private businesses or non-profit entities in rural areas or attracted to rural areas the ability to establish advanced telecommunications or computer hook-ups to facilitate job training, educational skills and provide medical care. This grant provision coupled with the existing loan provisions offers a viable alternative for funding these projects. This provision, therefore, fills an important niche to foster rural economic development through advanced telecommunications services for educational and medical services. The telecommunications facilities that would be financed include, but are not limited to, interactive video equipment, telecommunications terminal equipment, data terminal equipment, and telecommunications transmission equipment.

Supplemental Funds

REA proposes that the borrower supply supplemental funds of at least 20 percent of the total project costs for any project funded through the REA grant program, including the revolving loan program. Supplemental funds may comprise equity funds from the project owner, private sources, state and local government sources, other Federal Government sources, or other funds from the REA borrower, subject to requirements set forth in the existing regulation.

The requirement of supplemental funds for grants is consistent with a similar requirement for zero-interest loans. The amount of supplemental funds required to be provided by the project applicant is important for the success of the grant selection process. The applicant's contribution to the project evidences a degree of support and commitment which provides REA adequate assurance of viable projects that have a high probability of success. In addition, this requirement reduces REA capital requirements for each project, thus resulting in the ability to fund more projects using limited loan and grant funds. Further, the supplemental funds requirement serves to minimize project risk because organizations which incur a risk to provide supplemental funds financing will likely provide project review and oversight to protect their interests.

Other Provisions

There are several government-wide grant requirements which must be incorporated into this grant program. Several new sections are proposed which are based on government-wide grant regulations. These sections cover the disbursement of grant funds, reporting requirements for REA Borrowers, changes in the project, and grant termination. The government-wide grant regulations require an REA borrower receiving a grant to provide a number of reports on the status of the project. For example, the REA borrower would be required to file a quarterly financial status report and a projects performance activity report. A project performance report would contain a comparison of actual accomplishments to the objectives established for a period, reasons why any established objectives were not met, a description of any problems or delays that will prevent the project from meeting timetables, and the action taken or planned to resolve any problems.

In addition to incorporating the grant provisions into the existing regulation for zero-interest loans, additional changes are proposed for the zero-interest loan and grant regulation.

First, for zero-interest loans only, paragraph (d) of §1A1703.21 has been revised to require Borrowers to deposit zero-interest loan funds into their construction accounts. If loan funds are not expected to be disbursed within two months after receipt from REA, a borrower will be required to set up a separate federally insured account called the Rural Economic Development Account. For zero-interest loans, the requirement that interest accrued in excess of $500 per 12-month period be returned to REA or used for authorized purposes has been maintained. The $500 interest exemption for zero-interest loans has also been maintained to avoid placing additional administrative burdens on the borrower for funds that were only briefly deposited in an interest bearing account prior to

disbursing them. The provisions in this paragraph apply only to zero-interest loans, since USDA's Federal Uniform Assistance Regulation, 7 CFR part 3015, places more restrictions on handling of grant funds and requires all interest earned on grant funds to be returned to REA. The disbursement of grant funds is addressed in paragraph (b) of § 1703.61.

Second, paragraph (b) of § 1703.28 has been revised to eliminate the $400,000 limitation on the size of zero-interest loans and grants. Funding for individual loans and grants each fiscal year will be limited to not exceed 3 percent of the projected amount of zero-interest loan and grant funds available for that year. However, notwithstanding this change, the REA Administrator will retain the authority to limit funding below the 3 percent level, and a decision in this regard will be published in the **Federal Register** for each fiscal year. The provision setting a $200,000 floor for the maximum amount has been retained. Therefore, in those years where 3 percent of the projected amount of zero-interest loan and grant funds available for the year would be less than $200,000, the maximum amount of the loan and grant combination would still be maintained at $200,000. As published in the **Federal Register** on October 6, 1992, at 57 FR 46013, the REA Administrator has determined the maximum amount of a loan and grant to be $400,000 for fiscal year 1993.

Third, REA proposes to eliminate paragraph (e) of § 1703.46 in the existing rule. This paragraph requires projects providing recreational facilities to convincingly demonstrate that they would be an integral part of a tourism industry in their area. The rule also provides that projects that are intended to provide recreational facilities for the residents of particular areas would not receive points. After evaluating this requirement in light of REA policy set forth in § 1703.11 of the rule, and applications which have been received for funding under the zero-interest loan program, this provision is overly restrictive. Many recreational facilities promote economic development and job creation, and are based on sound economic and financial analysis, regardless of whether they are integrated with a tourism industry. The selection factors outlined in the rule are sufficient to evaluate the appropriateness of recreational facility projects in accordance with the goals of the zero-interest loan and grant program.

Fourth, paragraph (b) of § 1703.61 has been amended to clarify that the grant portion of the zero-interest loan and grant will be disbursed to the borrower only upon completion of the project. This will require REA Borrowers and project owners to initially use zero-interest loan funds and supplemental funding or to employ other financing as necessary to finance the project prior to requesting disbursement of grant funds by REA. This requirement is necessary to ensure that grant funds are handled so as to minimize the time between disbursement and authorized use in accordance with USDA's Federal Uniform Assistance Regulation, 7 CFR parts 3015 and 3016. At the same time this provides an REA regulation which minimizes the administrative burden upon REA Borrowers and REA for accounting and monitoring the disbursement of grant funds.

Fifth, to effectively monitor compliance with zero-interest loan and grant program provisions regarding supplemental funds, REA proposes to revise paragraph (b) of § 1703.66 to require recipients of pass-through loans and grants to furnish a record of receipts showing total project costs in such detail to allow verification that no greater than 80 percent of project costs have been funded with REA zero-interest loan and grant funds. This change is necessary to ensure zero-interest loan and grant program integrity.

Sixth, REA proposes to revise paragraph (e) of § 1703.66 in the rule to allow REA field accountants to provide a loan fund review of projects funded by zero-interest loans. The current language in the rule requires Borrowers receiving zero-interest loans to have a financial report and general accounting of all zero-interest loan funds prepared in accordance with the provisions of 7 CFR Part 1773, "REA Policy on Audits of Electric and Telephone Borrowers." The aforementioned rule requires formal audits to be performed which, in many cases, may cost thousands of dollars. While the provisions of 7 CFR part 1773 may be appropriate for large and complex electric and telephone loans, REA believes the requirement for formal audits outlined in this regulation are too cumbersome and costly for REA Borrowers receiving zero-interest loans which typically are $100,000, with the maximum of $400,000. Considering the fact REA Borrowers "pass-through" these rural economic development loans at zero-interest, REA believes excessive audit costs for Borrowers will provide an insurmountable obstacle for making loans under the zero-interest loan grant program. REA believes audits performed by REA field accountants will ensure that loan funds are properly used and the zero-interest loan and grant program is properly implemented. Therefore, in order to allow audits to be performed by REA personnel, REA proposes to revise paragraph (e) of § 1703.66, to allow borrowers receiving zero-interest loans to be subject to a rural economic development loan review of zero-interest loan funds, rather than a formal audit in accordance with 7 CFR part 1773. This provision applies to zero-interest loans only. Grant reporting requirements are addressed separately.

Seventh, REA proposes to revise paragraph (g) of § 1703.66 in the rule to clarify that for pass-through zero-interest loans and pass-through grants, REA borrowers must require project owners to provide sufficient financial, accounting and budget information, and other records deemed necessary to facilitate audits in accordance with 7 CFR part 3015 and 7 CFR part 3016, as appropriate. Likewise, paragraph (g) of § 1703.66 is revised to stipulate that REA borrowers receiving grants for establishment of revolving loan funds will be required to furnish information necessary to facilitate audits in accordance with USDA departmental grant regulations. Copies of these grant regulations are available to REA Borrowers by request.

List of Subjects in 7 CFR Part 1703

Community development, Grant programs-housing and community development, Loan programs-housing and community development, Reporting and recordkeeping requirements, Rural areas.

For the reasons set out in the preamble, chapter XVII of title 7 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1703—RURAL DEVELOPMENT

1. The authority citation for 7 CFR part 1703 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.* and 950 aaa *et seq.*

Subpart B—Rural Economic Development Loan and Grant Program

2. In § 1703.12 of this subpart B, the following definitions are added in alphabetical order to read as follows:

§ 1703.12 Definitions.

* * * * *

Revolving loan program—a program established and operated by the borrower, using grant funds, the borrower's contribution and loan repayments to make loans to businesses or others for rural economic development and job creation purposes.

* * * * *

RTB—the Rural Telephone Bank, established as a body corporate and an instrumentality of the United States, to obtain supplemental funds from non-Federal sources and utilize them in making loans, for the purposes of financing, or refinancing, the construction, improvement, expansion, acquisition, and operation of telephone lines, facilities, or systems, for REA borrowers financed under sections 201 and 408 of the Act.

* * * * *

Rural economic development—job creation or preservation or community facilities improvement projects in rural areas.

* * * * *

Scope of work—a detailed plan, which has been approved by the Administrator, covering the work to be performed by the loan and/or grant recipient using the loan and/or grant funds.

* * * * *

Technical assistance—managerial, analysis of facilities or processes, financial and operational consultation by independent qualified entities to assist project owners to identify and evaluate problems or potential problems and provide training to enable project owners to successfully implement, manage, operate and maintain viable projects.

* * * * *

3. Paragraph (c) of § 1703.17 is added to read as follows:

§ 1703.17 Uses of zero-interest loans and grants.

* * * * *

(c) Zero-interest loans and grants may be used for Projects that enhance rural economic development by providing advanced telecommunications services and computer networks for medical and educational services, as follows:

(1) For telecommunications end use and/or transmission facilities; and

(2) Other portions of the project, such as modifications to buildings necessary to accommodate telecommunications equipment for medical care and other services, public or private education, and employment training.

4. Sections 1703.18 and 1703.19 are added to read as follows:

§ 1703.18 Types of projects eligible for grant funding.

Grants may be made for the following purposes:

(a) The establishment and operation of a revolving loan program by borrowers in accordance with § 1703.22 of this subpart;

(b) Project feasibility studies to assist for-profit and non-profit entities in conjunction with a loan for an authorized project. Feasibility studies will include management assistance, consultation, and research for planning individual projects that the borrower has determined will benefit the rural community. Feasibility studies which may be financed under this section must be performed by qualified entities subject to § 1703.19(i), General requirements for grant funding. Feasibility studies must address the important aspects of project assessment and planning to ensure, to the extent practicable, the success of projects. These include the market, technical, economic, financial, and managerial issues related to project feasibility. Feasibility studies may be funded in connection with viable projects as a reimbursement to the project owner for expenses incurred during the initial planning stages of the project prior to project funding by REA;

(c) The acquisition of technical assistance in conjunction with projects funded with zero-interest loans to enable for-profit and non-profit entities to obtain managerial, analysis of facilities and processes, financial and operational consultation. Grant funds may also be used in conjunction with zero-interest loans to enable non-profit business incubators to provide technical assistance. Technical assistance will enable project owners to identify and evaluate problems or potential problems and provide training in order that they may ultimately implement, manage, operate and maintain viable projects which are financed with zero-interest loan funds. Technical assistance financed under this section must be performed by qualified entities which are independent of the project owner subject to § 1703.19(i), General requirements for grant funding;

(d) Business incubators established by non-profit organizations to assist in developing emerging enterprises. Business incubators funded in conjunction with zero-interest loans will include those facilities in which single or multiple businesses may use premises, support staff, computer software, hardware, telecommunications equipment, machinery, janitorial services, utilities, or other overhead facilities. Grant funding may also be provided to allow business incubators to provide feasibility studies and technical assistance in accordance with paragraphs (b) and (c) of this section;

(e) Community development assistance to non-profit entities and public bodies for employment creation projects, or other projects which provide needed community facilities and services;

(f) Facilities and equipment to public, for-profit and non-profit entities to provide education and training to rural residents to facilitate economic development. Equipment and facilities may be funded to enable rural businesses to provide educational and job enhancement skills to employees;

(g) Facilities and equipment to public, for-profit and non-profit entities to provide medical care to rural residents. Equipment and facilities may be funded to enable eligible entities to provide medical training and related professional health care skills to rural health care providers;

(h) Projects which utilize advanced telecommunications and/or a computer networks to facilitate medical or educational services or job training in accordance with paragraphs (f) and (g) of this section.

§ 1703.19 General requirements for grant funding.

(a) Grants made under § 1703.18(a), establishment and operation of a revolving loan program by borrowers, will be limited to borrowers and can be made without zero-interest loans. Grants made under § 1703.18(b) and (h) will be made only in conjunction with zero-interest loans, and on a pass-through basis.

(b) Pass-through grant funding for projects under § 1703.18(b), (c), (f), (g) and (h) will be available for non-profit and for-profit entities. Pass-through grant funding for projects under § 1703.18(d) and (e) will be available only for non-profit entities.

(c) All projects funded with zero-interest loans and grants will require supplemental funding in accordance with § 1703.23 of this subpart. For grants made under § 1703.18(a), the portion eligible for REA funding may be fully funded with grant funds. For all other grants funded under § 1703.18, the portion of project costs eligible for REA funding may be funded up to 20 percent with grant funds.

(d) Grant funding will be provided only to the extent necessary for a feasible project. A feasible project is a project which generates sufficient income to pay operating expenses and debts and compensate for depreciation of equipment and facilities for the project which is to be funded by REA. Depreciation must be based on allowable depreciation schedules as set forth by the United States Internal Revenue Service. Projects which generate sufficient revenue to show feasibility without grant funds are not eligible for grant funding. Borrowers requesting pass-through grant funds will base grant funding requests on

substantiated income and expense projections for the project, and documentation regarding depreciation of the equipment and facilities for the project. The Administrator will determine whether the borrower's projections of income, expenses and depreciation are reasonable.

(e) For those projects that initially project low income in the start-up phase compared with a typical year of operation, the deferral provisions set forth in § 1703.29(b) of this subpart will be considered prior to determining the level of eligible grant funding. Debt payment requirements will be calculated based on the debt repayment requirement at the expiration of the deferral and without the deferral option. Zero-interest loan and grant funding will be approved in accordance with paragraph (d) of this section based on the option which results in the lowest required grant percentage.

(f) The owner of the pass-through project that receives grant funds will be encouraged to commit that the project will be a demonstration project.

(g) Grant funds must be used to finance projects that will be viable.

(h) Borrowers or project owners must demonstrate the availability and commitment of other sources of funding needed to complete a project in addition to REA loan and/or grant funds, prior to the first advance of REA funds.

(i) Feasibility studies and/or technical assistance funded with grants under § 1703.18(b) and (c) of this subpart must be performed by entities which are independent of the borrower and qualified to provide such services. The project owner, if deemed qualified in accordance with this paragraph, may furnish a feasibility study under § 1703.18(b). Entities furnishing technical assistance under § 1703.18(c), must be independent of the project owner. To be deemed qualified, entities providing feasibility studies and/or technical assistance must:

(1) Provide sufficient documentation evidencing their proven ability, background and experience to furnish such services; and

(2) Provide sufficient documentation evidencing their legal authority and capacity to furnish such services.

5. Section 1703.20 is revised to read as follows:

§ 1703.20 Ineligible uses of zero-interest loans and grants.

(a) Zero-interest loans and grants must not be used:

(1) To fund or assist projects of which any director, officer, general manager or significant stockholder of the borrower, or close relative thereof, is an owner, stockholder, partner or director, or which would, in the judgment of the Administrator, create a conflict of interest or the appearance of a conflict of interest. The borrower must disclose to the Administrator information regarding any conflict of interest, potential conflict of interest or any appearance of a conflict of interest. The Administrator will determine whether there is a conflict of interest or whether any potential conflict of interest or appearance of a conflict of interest may adversely affect REA's interests. A borrower organized as, or consisting of a cooperative, widely held mutual corporation, tribal government, municipal power corporation, public power district, or a similar widely held organization would ordinarily be able to have an ownership interest in or manage a project operated on either a for-profit or non-profit basis. A borrower organized as a closely held, for-profit corporation with more than 5 percent of its stock held by one legal person, its subsidiary or an affiliate, would ordinarily be able to own or manage a project operated on a non-profit basis only;

(2) For any costs incurred on the project:

(i) Prior to receipt of the borrower's completed application by REA during an application period unless the Administrator has specifically approved such usage in writing; or

(ii) For site development, the destruction or alteration of buildings, or other activities that would adversely affect the environment or limit the choice of reasonable alternatives prior to satisfying the requirements of § 1703.32;

(3) By the borrower to purchase or lease any real property, materials, equipment, or services from its subsidiary, an affiliate, or significant stockholders, officers, managers or directors of the borrower, or close relatives thereof, where the purchase or lease has not been fully disclosed to the Administrator and received the Administrator's prior written approval;

(4) By the recipient of a pass-through-loan or pass-through-grant to purchase or lease any real property, materials, equipment, or services from the borrower, its subsidiary, an affiliate of the borrower, or significant stockholders, officers, managers or directors of the borrower, or close relatives thereof, where the purchase or lease has not been fully disclosed to the Administrator and received the Administrator's prior written approval;

(5) To pay off or refinance existing indebtedness incurred prior to receipt of the borrower's completed application by REA or for refinancing or repaying a loan made under the Act or a program administered by the Administrator;

(6) For any electric or telephone purpose, as determined by the Administrator;

(7) For the borrower's electric or telephone operations or for any operations affiliated with the borrower unless the Administrator has specifically informed the borrower in writing that the operations are part of the approved purposes;

(8) To pay the salaries of any employee or owner of the borrower, its subsidiaries, or affiliates. This restriction does not prohibit the use of loan or grant funds for printing and similar costs for project feasibility studies it has prepared, commissioned or purchased if specifically approved by the Administrator;

(9) To fund feasibility studies and technical assistance as set forth in § 1703.18 of this subpart independently of projects which are funded under the zero-interest loan and grant program;

(10) For proposed projects located in areas covered by the Coastal Barrier Resources Act (16 U.S.C. 3501 *et seq.*); or

(11) For anything other than an approved purpose.

(b) [Reserved]

6. Section 1703.21 has been amended by adding a sentence at the end of paragraph (b) and revising paragraph (d) to read as follows:

§ 1703.21 Limitations on the use of zero-interest loan and grant funds.

* * * * *

(b) * * * Grant funds will be disbursed to the borrower in accordance with § 1703.61(b) of this subpart.

* * * * *

(d) The borrower may not requisition zero-interest loan funds unless those funds are deposited into the borrower's REA construction fund trustee account. The borrower will be required to set up a separate federally insured account called the Rural Economic Development Account, if loan funds are not expected to be disbursed within two months after receipt from REA. All interest earned on temporarily deposited zero-interest loan funds in excess of $500 per 12-month period must be used for approved purposes or returned to REA. Grant funds will be disbursed by REA in accordance with 7 CFR parts 3015 and 3016, and § 1703.61 (b) of this subpart.

* * * * *

7. Section 1703.22 is added to read as follows:

§ 1703.22 Revolving loan program.

Grant funds under this section will be provided only to REA borrowers on a

non pass-through basis. REA borrowers will, in turn, provide loans to foster rural economic development in accordance with this subpart and the specific requirements of this section.

(a) *General.* Grant funds disbursed to REA borrowers to establish revolving loan programs under this section are subject to the following requirements:

(1) The uses, restrictions and limitations for zero-interest loans set forth in §§ 1703.17, 1703.20 and 1703.21 of this subpart, respectively;

(2) Loans made by REA borrowers initially lending grant funds disbursed by REA are limited to types of projects specified in § 1703.18(d), (e), (f), (g) and (h). Loans may also be made for feasibility studies and technical assistance in accordance with § 1703.18(b) and (c), respectively, but only for those types of projects specified in this paragraph. Loans made from repayments of the initial loans made by REA borrowers may be used for any rural economic development purpose in accordance with a prior agreement between the borrower and REA;

(3) All other requirements relevant to zero-interest pass-through loans outlined in this subpart, except the minimum size of a zero-interest loan as specified in § 1703.28(f);

(4) The loans made from the revolving loan program using the grant funds must carry an interest rate of zero percent; however, the fund may charge reasonable loan servicing fees. Loans made from repayments of the initial loan may carry an interest rate in accordance with prior agreement with REA;

(5) Grant funds will only be provided to an REA borrower for a revolving loan program when a proposed budget submitted to REA demonstrates and the borrower agrees in writing that no more than 10 percent of grant funds received are used to cover operating expenses of the revolving loan program. Operating expenses include the costs of administering the revolving loan fund and the provision of technical assistance to project owners. All proceeds in excess of those needed to cover authorized expenses, as described above, must revert to the revolving fund and be available for re-lending for eligible projects. Budgets which reflect expenses incurred in operating the fund must be submitted to REA annually;

(6) The borrower may charge reasonable loan servicing charges. For purposes of this section, loan servicing charges must not exceed an amount equal to the sum of one percent per year of the outstanding principal on the first day of each year on each project owner's zero-interest loan which is made from the REA grant proceeds;

(7) The borrower will submit documentation indicating that potential projects which are eligible for funding have sufficiently progressed in the planning stage to allow grant funding approved for a revolving loan program to be requisitioned by the borrower, disbursed by REA, and loaned to recipients within three years of the date of grant approval by REA. Grant funds that have not been requisitioned within three years will be cancelled, unless the Administrator has approved an extension in writing. Grant funds will be disbursed by REA in accordance with paragraphs (d) and (g) of this section;

(8) If the revolving loan program is terminated, further disbursement of grant funds will be cancelled. Repayments of loans made using grant funds which have been disbursed will be used in accordance with the borrower's rural development plan;

(9) Payment of creditors which provide interim or construction financing to a viable project for eligible purposes as set forth in § 1703.17 of this subpart may be authorized. Refinancing for the sole purpose of replacing higher interest conventional financing with zero-interest revolving loan funds is not authorized.

(b) *The borrower's rural development plan.* REA requires that the revolving loan program be administered in accordance with a rural development plan, developed by the borrower and approved by REA. The plan must be of sufficient detail to provide REA with a complete understanding of what the borrower intends to accomplish by administering a revolving loan program. The rural development plan will provide the mechanics of how the revolving loan funds will be disbursed to the project owner. The rural development plan must outline the borrower's plans for administering the revolving loan program during the initial period when REA grant funds are lent by the borrower and after the revolving fund becomes non-Federal in accordance with paragraph (f) of this section. The plan must outline the following:

(1) Specific objectives for the revolving loan program, revolving loan operating procedures, lending parameters, maximum and minimum loan amount, and types of projects to be funded;

(2) Eligibility criteria if other than outlined in this subpart;

(3) The application process and method of disposition of the funds to the project owner; and

(4) A procedure for monitoring the project owner's accomplishments and reporting requirements by the project owner's management.

(c) *The borrower's scope of work.* Borrowers applying for grant funding under this section must submit a scope of work to REA. Applications for grants under this section will be evaluated for funding based on the borrower's rural development plan in paragraph (b) of this section and the scope of work. The scope of work must contain the following items:

(1) Documented need for grant funds. The borrower must identify a sufficient number of rural development projects of the type specified in § 1703.18(d), (e), (f), (g), and (h) which are currently being planned requiring zero-interest loans equal to the amount of grant assistance requested from REA. These projects may be supported with a community facilities plan, or other development plan, prepared by local community leaders in cooperation with the borrower. For each project, the borrower will submit information required under § 1703.34 of this subpart;

(2) Documented authority and ability of the borrower to administer a revolving rural development loan program in accordance with the provisions of this subpart. The borrower must provide a complete listing of all personnel responsible for administering this program along with a statement of their qualifications and experience;

(3) Documented ability of the borrower to commit financial resources under the control of the borrower to assist in the establishment of a rural development revolving loan program. This should include a statement of the sources of funding for the administration of the borrower's operations, as well as financial and technical assistance for projects;

(4) Documentation that the borrower has secured commitments of significant financial support from public agencies and/or private organizations for supplemental funding to support a rural development loan program;

(5) A list of proposed fees and other charges the borrower will assess the projects it funds; and

(6) The borrower's rural development policy for non-Federal funds in accordance with paragraphs (b) and (f) of this section.

(d) *Grant processing and approval.* Applications for grants to establish revolving loan funds will be reviewed in accordance with §§ 1703.45 and 1703.46 of this subpart, and with the borrower's rural development plan and scope of work outlined in this paragraphs (b) and (c) of this section. Grants will be

processed in accordance with §§ 1703.58 and 1703.59 of this subpart.

(e) *Disbursement of grant funds.* Borrowers are not authorized to commence projects to be funded under this section until those projects have been submitted for authorization in accordance with paragraph (c)(1) of this section, or the projects have been submitted for authorization subsequent to grant approval in accordance with paragraph (e)(2) of this section. REA grant funds will be disbursed in accordance with the provisions of 7 CFR Part 3015, Uniform Federal Assistance Regulations, on a reimbursement basis, the applicable requirements of this subpart, the administrative provisions outlined in paragraph (g) of this section, and the following requirements:

(1) Only projects authorized by REA in accordance with paragraphs (c)(1) and (e)(2) of this section, for which adequate documentation, including receipts for expenditures and certification of approved purposes, are submitted will be considered for reimbursement.

(2) A project which was not submitted prior to grant approval in accordance with paragraph (c)(1) of this section, may be authorized for funding subsequent to grant approval. A project which is authorized for funding under this paragraph will be considered for disbursement at the first allowable time period after project authorization in accordance with paragraphs (e)(3) and (e)(4) of this section. Project authorization after grant approval is subject to the following requirements:

(i) The project meets the specific objectives for the borrower's revolving loan program as outlined in paragraph (b)(1) of this section;

(ii) The borrower presents evidence that the project requested for authorization can be funded prior to projects which were authorized prior to grant approval in accordance with paragraph (b)(1) of this section; and

(iii) REA approves the project for funding in accordance with § 1703.34 of this subpart.

(3) Grant funds requisitioned for individual projects in increments of less than $100,000, or less than 25 percent of the amount approved for the revolving loan fund, whichever is less, may be reimbursed semi-annually. Submission periods for requisitioning grant funds on a semi-annual disbursement basis will be 14 days commencing from the 6-month anniversary date of grant approval.

(4) Grant funds requisitioned for individual projects in increments of $100,000 or greater, or at least 25 percent of the amount approved for the revolving loan fund, whichever is less, may be submitted for reimbursement at any time.

(f) *Reporting requirements.* (1) The borrower must maintain financial management systems and retain financial records in accordance with 7 CFR Part 3015, Uniform Federal Assistance Regulations.

(2) borrower records must include an accurate accounting and source documentation to support each transaction involving the revolving loan fund. Records are subject to a rural economic loan review as set forth in § 1703.66(g) of this subpart.

(3) SF-269, "Financial Status Report," and a revolving loan program activity report will be required of all borrowers on an annual basis. Reports will be submitted no later than 90 days after December 31 of each year. The program activity report will contain an aggregate list of projects funded, the amount funded for each project, the project repayment schedule, a brief description of each project, the project objectives, whether or not the project has been completed, and the projected number of jobs created or saved by each project. Reports under this paragraph will be required until all grant funds have been disbursed and projects completed.

(4) A performance report will be required for each project funded on an annual basis. Performance reports will be due no later than 90 days after December 31 of each year. Performance reports will be submitted until one year after project completion. Project performance reports will contain the following:

(i) A comparison of actual accomplishments during the reporting period to the objectives established for the project and, if not attained, reasons why established objectives were not met;

(ii) Problems, delays, or adverse conditions which will materially affect attainment of planned project objectives, prevent the meeting of time schedules or objectives, or preclude the attainment of project work elements during established time periods. This disclosure shall be accompanied by a statement of the action taken or contemplated to resolve the situation;

(iii) Projected accomplishments for the next reporting period, if applicable; and

(iv) Status of compliance with any special conditions for project funding, if applicable.

(5) Borrowers must report and remit interest earned on advances of grant funds deposited in interest accounts to REA on a quarterly basis in accordance with 7 CFR Part 3015, Uniform Federal Assistance Regulations.

(g) *Non-Federal funds.* Once all REA-derived grant funds have been utilized by the borrower to fund rural development projects according to the provisions of this section and the applicable provisions of this subpart, loans made by the borrower thereafter from repayments to the revolving loan fund shall not be considered as being derived from Federal funds and the requirements of these regulations will not be imposed on the borrower or project owners. However, the borrower will, as a condition for receiving a grant under this section, agree to the following conditions:

(1) To maintain a revolving loan account to promote rural economic development in accordance with the borrower's rural development plan for non-Federal funds submitted in accordance with paragraph (b) of this section.

(2) To maintain the supplemental funding supplied by the borrower in accordance with § 1703.23 of this subpart within the revolving loan fund.

(3) Approval may be granted by the Administrator to terminate the revolving loan program, or modify the requirements set forth in paragraphs (g)(1) and (g)(2) of this section, upon written request and justification by the borrower.

(h) *Administrative provisions.* The requirements of this paragraph set forth the procedures for accounting, requisitioning and disbursement of Federal funds, those funds initially disbursed for projects which may be funded in accordance with an approved rural development plan and scope of work submitted by the borrower. Disbursement of grant funds will be approved on a reimbursement basis after the grant agreement is executed by REA and the borrower, the applicable provisions of this subpart are met, subject to disbursement restrictions in paragraph (e) of this section, and the following requirements.

(1) *Accounting requirements.* Accounting will be performed in accordance with 7 CFR Part 1767, Accounting Requirements for REA Electric Borrowers, or 7 CFR Part 1770, Accounting Requirements for REA Telephone Borrowers, as appropriate. The borrower will maintain accounts for the revolving funds as follows:

(i) REA electric borrowers.

(A) A general ledger Account 131.13, "Cash—General—Economic Development Grant Funds." The borrower will debit this account in an amount equal to the amount of the grant approved by REA, the borrower's

supplemental fund contribution required in accordance with § 1703.23 of this subpart, and all other funds advanced for the project, regardless of the source, if controlled by the borrower. The borrower will credit this account for all expenditures made with Federal funds on behalf of the rural development project.

(B) A general ledger Account 124.1, "Other Investments—Federal Economic Development Loans." The borrower will debit this account in the amount of Federal funds the borrower advances to nonassociated organizations for authorized rural economic development projects. For each debit in this account, a corresponding credit will be made in Account 131.13 in paragraph (h)(1)(i)(A) of this section.

(C) A general ledger Account 123.3, "Investment in Associated Companies—Federal Economic Development Loans." The borrower will debit this account in the amount of Federal funds the borrower advances to associated organizations for authorized rural economic development projects. For each debit in this account, a corresponding credit will be made in Account 131.13 in paragraph (h)(1)(i)(A) of this section.

(D) Account 421, "Miscellaneous Non-operating Income." The borrower will credit this account in the amount of grant funds disbursed by REA resulting from an approved requisition request in accordance with paragraph (h)(2) of this section.

(E) A general ledger Account 131.14, "Cash—General—Economic Development Non-Federal Revolving Funds." The borrower will debit this account with cash received from the repayment of loans made from accounts in paragraphs (h)(1)(i)(B), (h)(1)(i)(C), (h)(1)(i)(F), and (h)(1)(i)(G) of this section. The borrower will credit this account to reflect loans made for rural economic development projects from non-Federal funds from accounts specified in paragraphs (h)(1)(i)(F) and (h)(1)(i)(G) of this section.

(F) A general ledger Account 124.2, "Other Investments—Non-Federal Economic Development Loans." The borrower will debit this account in the amount of non-Federal funds the borrower advances to nonassociated organizations for authorized rural economic development projects. For each debit in this account, a corresponding credit will be made in Account 131.14, in paragraph (h)(1)(i)(E) of this section.

(G) A general ledger Account 123.4, "Investment in Associated Companies—Non-Federal Economic Development Loans." The borrower will debit this account in the amount of non-Federal funds the borrower advances to associated organizations for authorized rural economic development projects. For each debit in this account, a corresponding credit will be made in Account 131.14, in paragraph (h)(1)(i)(E) of this section.

(ii) REA telephone borrowers.

(A) A general ledger Account 1130.4, "Cash—General—Economic Development Grant Funds (Class A Companies)", or Account 1120.14, "Cash—General—Economic Development Grant Funds (Class B Companies)." The borrower will debit the appropriate account in an amount equal to the amount of the grant approved by REA, the borrower's supplemental fund contribution required in accordance with § 1703.23 of this subpart, and all other funds advanced for the project, regardless of the source, if controlled by the borrower. The borrower will credit the appropriate account for all expenditures made with Federal funds on behalf of the rural development project.

(B) A general ledger Account 1402.4, "Other Investments in Nonaffiliated Companies—Federal Economic Development Loans." The borrower will debit this account in the amount of Federal funds the borrower advances to nonaffiliated organizations for authorized rural economic development projects. For each debit in this account, a corresponding credit will be made in the appropriate account in paragraph (h)(1)(ii)(A) of this section.

(C) A general ledger Account 1401.1, "Other Investments in Affiliated Companies—Federal Economic Development Loans." The borrower will debit this account in the amount of Federal funds the borrower advances to affiliated organizations for authorized rural economic development projects. For each debit in this account, a corresponding credit will be made in the appropriate account in paragraph (h)(1)(ii)(A) of this section.

(D) Account 7360, "Other Non-operating Income (Class A Companies)", or Account 7300, Non-operating Income and Expense (Class B Companies), as appropriate. The borrower will credit these accounts, as appropriate, in the amount of grant funds disbursed by REA resulting from an approved requisition request in accordance with paragraph (h)(2) of this section.

(E) A general ledger Account 1130.5, "Cash—General—Economic Development Non-Federal Revolving Funds (Class A Companies)", or Account 1120.15, "Cash—General—Economic Development Non-Federal Revolving Funds (Class B Companies)", as appropriate. The borrower will debit the appropriate account with cash received from the repayment of loans made from accounts in paragraphs (h)(1)(ii)(B), (h)(1)(ii)(C), (h)(1)(ii)(F), and (h)(1)(ii)(G) of this section. The borrower will credit the appropriate account to reflect loans made for rural economic development projects from non-Federal funds from accounts specified in paragraphs (h)(1)(ii)(F) and (h)(1)(ii)(G) of this section.

(F) A general ledger Account 1402.5, "Other Investments in Nonaffiliated Companies—Non-Federal Economic Development Loans." The borrower will debit this account in the amount of non-Federal funds the borrower advances to nonaffiliated organizations for authorized rural economic development projects. For each debit in this account, a corresponding credit will be made in the appropriate account in paragraph (h)(1)(ii)(E) of this section.

(G) A general ledger Account 1401.2, "Other Investments in Affiliated Companies—Non-Federal Economic Development Loans." The borrower will debit this account in the amount of non-Federal funds the borrower advances to affiliated organizations for authorized rural economic development projects. For each debit in this account, a corresponding credit will be made in the appropriate account in paragraph (h)(1)(ii)(E) of this section.

(2) *Requisition requirements.* Grant funds may be requisitioned by REA borrowers in accordance with disbursement requirements in paragraph (e) of this section. Borrowers will be reimbursed eighty percent (80%) of funds expended for approved projects funded, in accordance with supplemental funding requirements set forth in § 1703.23 of this subpart. For each completed project, the borrower will submit the following for reimbursement:

(i) Standard Form 270, "Request for Advance of Reimbursement";

(ii) Appropriate account ledgers completed in accordance with paragraph (h)(1) of this section, and certification of their accuracy;

(iii) Cancelled checks and other verifiable source records supporting the transactions; and

(iv) Certification and evidence that the project costs to be reimbursed are for a project which has been authorized by REA, and are authorized costs for that project.

(3) *REA review.* Requisition requests will be evaluated for compliance with loan purposes previously submitted by the borrower for project authorization in accordance with paragraphs (c)(1) or (e)(2) of this section, compliance with

the borrower's rural development plan, accounting documentation submitted in paragraph (h)(1) of this section, and the cancelled checks and source records submitted.

8. Paragraph (b) of § 1703.28 is revised to read as follows:

§ 1703.28 Maximum and minimum sizes of a zero-interest loan or grant application.

* * * * *

(b) Regardless of the projected total amount that will be available, the maximum size may not be lower than $200,000.

* * * * *

9. Section 1703.30 is amended by revising the parenthetical containing the OMB control number at the end of the section to read as follows:

§ 1703.30 Approval of agreements.

* * * * *

(Approved by the Office of Management and Budget under control number 0572090090)

10. Section 1703.34 is amended by revising paragraphs (b)(5) (ii) and (iii), and adding paragraphs (b)(5) (iv) and (v) to read as follows:

§ 1703.34 [Amended]

* * * * *

(b) * * *

(5) * * *

(ii) A section entitled "Project Description" as set forth in § 1703.36;

(iii) Except for applications for project feasibility studies, a section entitled "Environmental Impact of the Project" as set forth in § 1703.37;

(iv) Monitoring plan. For a pass-through loan and/or grant, a copy of the borrower's plan to monitor the loan and/or grant and ensure that the requirements of this subpart are met; and

(v) Scope of work. For an application for a loan and/or grant, a proposed scope of work for the project.

* * * * *

11. Section 1703.46 is amended by revising the first sentence of paragraph (a); by removing paragraph (e), and redesignating paragraphs (f), (g), (h), (i), (j), (k), and (l) as paragraphs (e), (f), (g), (h), (i), (j), and (k), respectively; and by adding a sentence at the end of newly designated paragraph (g)(6)(iv) to read as follows:

§ 1703.46 Documenting the evaluation and selection of applications for zero-interest loans and grants.

(a) The Administrator will only consider for selection applications that request funds for purposes as set forth in §§ 1703.17 and 1703.18 and are not ineligible under § 1703.20, as determined by the Administrator. * * *

* * * * *

(g) * * *

(6) * * *

(iv) * * * For a pass-through loan and grant, the quality of the borrower's plan to monitor the loan and grant and assure that the requirements of this subpart and 7 CFR parts 3015 and 3016 are met will also be considered.

* * * * *

12. Section 1703.61 is amended by adding two sentences at the end of paragraph (a) and three sentences at the end of paragraph (b) to read as follows:

§ 1703.61 Disbursement of zero-interest loan and grant funds.

(a) * * * The borrower or project owner's share in the cost of the project must be utilized in advance of REA zero-interest loan funds, or upon REA approval, on a pro rata distribution basis with loan funds during the disbursement period. The borrower or project owner will not be permitted to provide its contribution at the end of the loan disbursement period.

(b) * * * Prior to the disbursement of grant funds under this subpart, the borrower will provide evidence of fidelity bond coverage as required by § 3015.17 of this title. The grant portion of a pass-through zero-interest loan and grant will be disbursed to the borrower on a reimbursement basis after all other project funds have been utilized and evidence is provided that the project has been completed. Grants to borrowers for establishment of revolving loan funds will be disbursed in accordance with § 1703.22 of this subpart.

* * * * *

13. Section 1703.66 is amended by revising paragraphs (b), (d), (e) and (g), and by adding paragraphs (h), (i), and (j), to read as follows:

§ 1703.66 Review and other requirements.

* * * * *

(b) The borrower must require the recipient of a pass-through loan and grant to provide an itemized list to the borrower that shows the expenditures made on the project for approved purposes, including a certification to that effect. The borrower will also require the recipient to attach invoices, receipts, bills of sale, and other evidence representing the items on the list of expenditures that at least total the amount of the REA zero-interest loan and grant. In addition, the borrower will also require the recipient to furnish a record of itemized receipts showing total project costs in such detail that will permit auditors to establish the REA funding percentage. REA's legal agreements will include the terms and conditions that the borrower must require in its agreement with the recipient of a pass-through loan and grant covering the use and intended schedule of expenditures of the loan funds.

* * * * *

(d) The legal documents executed between the borrower and the Administrator in connection with a zero-interest loan and/or grant must contain certain provisions giving the Administrator discretionary rights and remedies in the event a borrower fails to comply with this subpart, other Federal regulations and statutes, or the terms, conditions and requirements of the executed legal documents. Regardless of any right or remedy the Administrator chooses to assert, if the borrower uses any zero-interest loan and/or grant funds other than for approved purposes, the borrower will be required to return to REA the amount used for unapproved purposes. An unauthorized zero-interest loan amount which is returned will be considered a prepayment on the REA note.

(e) Borrowers receiving zero-interest loans and/or grants will be subject to a rural economic development review of zero-interest loan and grant funds.

* * * * *

(g) Grants provided under this program will be administered in accordance with 7 CFR part 3015 and 7 CFR part 3016, as appropriate. Copies of these USDA Uniform Assistance regulations can be obtained by contacting REA in Washington, DC. The borrower that receives a grant for the establishment of a revolving loan fund, or project owner that receives a pass-through loan and grant, will be subject to requirements under these regulations which cover, among other things, financial reporting, accounting records, budget controls, record retention and audit requirements. For pass-through loans and grants, REA borrowers will be required to include in their legal documents the requirement for project owners to provide sufficient financial, accounting and budget information and other records deemed necessary to facilitate audits in accordance with 7 CFR part 3015 and 7 CFR part 3016 for non-profit entities, and REA loan fund and accounting reviews for projects in a for-profit status.

(h) For pass-through loans and grants awarded under this subpart, the borrower must diligently monitor performance to ensure that time schedules are being met, projected work by time periods is being accomplished, and other performance objectives are being achieved. The borrower must submit an original and one copy of each report to REA on an annual basis. The

project performance reports shall include, but not be limited to, the following:

(1) A comparison of actual accomplishments to the objectives established for that period;

(2) Reasons why any established objectives were not met;

(3) A description of any problems, delays, or adverse conditions which have occurred, or are anticipated, and which may affect the attainment of overall project objectives, prevent meeting of time schedules or objectives, or preclude the attainment of particular project work elements during established time periods. This disclosure shall be accompanied by a statement of the action taken or planned to resolve the situation; and

(4) Objectives and timetable established for the next reporting period.

(i) For pass-through loans and grants, a final project performance report will be required with the last SF 269, "Financial Status Report," available from REA in Washington, DC The final report also must provide an evaluation of the success of the project in meeting the objectives of the program. The final report may serve as the last annual report.

(j) Monitoring requirements for borrowers receiving grants for revolving loan funds are specified in § 1703.22 of this subpart.

14. Sections 1703.67 and 1703.68 are added to read as follows:

§ 1703.67 Changes in project objective or scope.

For loans and grants awarded under this subpart, the borrower must obtain prior approval for any material change to the scope or objectives of the approved project, including changes to the scope of work or budget. Failure to obtain prior approval of changes can result in suspension or termination of grant funds.

§ 1703.68 Loan and grant termination provisions.

(a) *Termination for cause.* The Administrator may terminate any loan and/or grant in whole, or in part, at any time before the date of completion of loan and/or grant disbursement, whenever the borrower has failed to comply with the conditions of the loan and/or grant. The Administrator will promptly notify the borrower in writing of the determination and the reasons for the termination, together with the effective date. The termination date will be no less than 30 days following receipt of the termination notice. The borrower will have such time to cure the default, or to state why it feels the loan and/or grant should not be terminated. The Administrator will stay the termination upon the curing of the default, and may delay termination if, sufficient cause has been given by the borrower.

(b) *Termination for convenience.* The Administrator or the borrower may terminate a loan and/or grant in whole, or in part, when both parties agree that the continuation of the project would not produce beneficial results commensurate with further expenditure of funds. The two parties will agree upon termination conditions, including the effective date, and in the case of partial terminations, the portion to be terminated. The borrower will not incur new obligations for the terminated portion after the effective date, and will cancel as many outstanding obligations as possible. The Administrator will allow full credit to the borrower for the Federal share of unfulfilled contractual obligations which were incurred in good faith by the borrower prior to grant termination.

§§ 1703.80—1703.99 [Reserved]

15. Sections 1703.80 through 1703.99, which are presently reserved in subpart B, are transferred to subpart C.

Dated: October 1, 1993.

Bob J. Nash,

Under Secretary, Small Community and Rural Development.

[FR Doc 93–24957 Filed 10–8–93; 8:45 am]

BILLING CODE 3410–15–F

FEDERAL ELECTION COMMISSION

11 CFR Parts 107, 114 and 9008

[Notice 1993–24]

Federal Funding of Presidential Nominating Conventions

AGENCY: Federal Election Commission.

ACTION: Notice of public hearing.

SUMMARY: The Federal Election Commission announces that it will hold a public hearing on proposed revisions to its regulations governing publicly financed Presidential nominating conventions. Further information is provided in the supplementary information which follows.

DATES: The hearing will be held on October 27, 1993 at 10 a.m. Requests to testify must be received on or before October 15, 1993. Persons requesting to testify must also submit written comments by October 15, 1993, if they have not previously filed written comments on the proposed rules.

ADDRESSES: Requests to testify, and any accompanying comments, must be made in writing and addressed to: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463. The hearing will be held in the Commission's ninth floor meeting room, 999 E Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Ms. Susan E. Propper, Assistant General Counsel, (202) 219–3690 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: On August 12, 1993 (58 FR 43046) the Commission published a Notice of Proposed Rulemaking regarding possible changes to 11 CFR part 107, § 114.1 and part 9008, which concern the public financing of Presidential nominating conventions. These regulations implement the Federal Election Campaign Act of 1971, as amended, and the Presidential Election Campaign Fund Act. See 2 U.S.C. 437 and 26 U.S.C. 9008.

Five comments were received in response to the NPRM. One commentor, a national party committee, requested an opportunity to testify, if the Commission were to hold a public hearing on this rulemaking. Another national party committee has also indicated an interest in appearing. Accordingly, the Commission is scheduling a public hearing to give all those interested in the proposed changes to the regulations an opportunity to testify.

List of Subjects

11 CFR Part 107

Political committees and parties, Reporting requirements.

11 CFR Part 114

Business and industry, Elections.

11 CFR Part 9008

Campaign funds, Political committees and parties, Reporting requirements.

Scott E. Thomas,

Chairman, Federal Election Commission.

[FR Doc. 93–24873 Filed 10–8–93; 8:45 am]

BILLING CODE 6715–01–M

FARM CREDIT ADMINISTRATION

12 CFR Part 615

RIN 3052–AB45

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA), by the Farm Credit Administration Board (Board), proposes to amend its regulations to allow Farm Credit System (FCS) institutions to document the existence of a first lien on the security for long-term real estate mortgage loans by obtaining title insurance instead of an attorney's certification. The current regulation requires that an attorney's certification be obtained for every long-term mortgage loan in order for that loan to qualify as collateral for FCS debt obligations. The regulation is being amended because title insurance has become the prevailing method used by the mortgage lending industry to ensure clear title. Additionally, the revised regulation permits FCS institutions greater flexibility in determining which method for validating first lien position (an attorney's certification or title insurance) provides the institution the best protection for the amount expended.

DATES: Written comments must be received on or before November 12, 1993.

ADDRESSES: Comments must be submitted in writing (in triplicate) to Patricia W. DiMuzio, Division Director, Regulation Development Division, Office of Examination, Farm Credit Administration, McLean, Virginia 22102–5090. Copies of all communications received will be available for examination by interested parties in the Regulation Development Division, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

Laurie A. Rea, Policy Analyst, Regulation Development Division, Office of Examination, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4498, TDD (703) 883–4444,

or

James M. Morris, Senior Attorney, Regulatory Operations Division, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: Section 1.10(a)(2) of the Farm Credit Act of 1971, as amended (Act), requires that long-term mortgage loans made by Farm Credit Banks (FCBs) under section 1.7 of the Act, or by associations under sections 1.7 and 7.6 of the Act, "be secured by first liens on interests in real estate of such classes as may be prescribed by regulations of the Farm Credit Administration." At present, § 615.5060 requires that an attorney's certification be obtained for long-term mortgage loans if such loans are to qualify as collateral for FCS debt obligations. Nevertheless, title insurance is the prevailing method for ensuring clear title in the mortgage lending industry and is becoming more commonplace in FCS lending. Title insurance can provide a lender with protection that is comparable to an attorney's certification and in some instances may be more timely and less expensive to obtain. Despite these facts, under the present § 615.5060, even if FCS lenders obtain title insurance they must also obtain an attorney's certification, thus incurring unnecessary expenses without providing any substantial additional protection. FCA has reconsidered this requirement, and proposes to amend the regulation to permit institutions to obtain title insurance instead of an attorney's certificate to document the existence of a first lien, provided that the title insurance policy meets certain standards.

The FCA recognizes that practices within the mortgage lending industry continually change and proposes amending § 615.5060 to give FCS institutions additional flexibility while maintaining protection for them as well as for FCS investors and borrower-stockholders. The revised regulation allows FCS institutions to determine which method for validating first lien position (an attorney's certification or title insurance) provides them the best protection for the amount expended.

List of Subjects in 12 CFR Part 615

Accounting, Agriculture, Banks, banking, Government securities, Investments, Rural areas.

For the reasons stated in the preamble, part 615 of chapter VI, title 12 of the Code of Federal Regulations is proposed to be amended to read as follows:

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

1. The authority citation for part 615 continues to read as follows:

Authority: Secs. 1.5, 1.7, 1.10, 1.11, 1.12, 2.2, 2.3, 2.4, 2.5, 2.12, 3.1, 3.7, 3.11, 3.25, 4.3, 4.9, 4.14B, 4.25, 5.9, 5.17, 6.20, 6.26 of the Farm Credit Act; 12 U.S.C. 2013, 2015, 2018, 2019, 2020, 2073, 2074, 2075, 2076, 2093, 2122, 2128, 2132, 2146, 2154, 2160, 2202b, 2211, 2243, 2252, 2278b, 2278b-6; sec. 301(a) of Pub. L. 100–233, 101 Stat. 1568, 1608.

Subpart B—Collateral

2. Section 615.5060 is amended by revising paragraph (a) to read as follows:

§ 615.5060 Special collateral requirement.

(a) If the counsel for a bank or association has determined, in writing, that bank or association procedures provide sufficient safeguards to ensure that a real estate mortgage loan, within the meaning of section 1.7(a) of the Act, made by the bank or association will be secured by a first lien, or its equivalent, on the borrower's interest in the primary real estate security, an attorney lien certification need not be obtained at the time a note is accepted as collateral. However, the note shall be withdrawn from collateral upon the expiration of 1 year from the date of the loan closing, unless, before the end of such period:

(1) An attorney has certified that the bank or association has a first lien or its equivalent from a security standpoint in the primary real estate security for the loan; or

(2) The bank or association obtained at loan closing a title insurance policy insuring that it has a first lien or its equivalent from a security standpoint in the primary real estate security for the loan, and all of the following requirements are satisfied:

(i) The final policy was issued by a title insurance company that has been licensed to issue such policies by the appropriate state insurance regulatory body or bodies, has not been barred or suspended, and has been approved by the lending institution;

(ii) The final policy was issued in a form that has been approved by the counsel for the lending institution;

(iii) The final policy was issued for an amount equal to the balance outstanding on the real estate mortgage loan; and

(iv) Personnel with adequate training and experience in real estate title matters designated by the counsel for the lending institution certified in writing that:

(A) They reviewed the final policy and that the policy complies with standards prescribed by such counsel; and

(B) The final policy insures that a first lien or its equivalent from a security standpoint has been obtained on the primary real estate security for the loan.

* * * * *

Dated: October 4, 1993.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 93–24881 Filed 10–8–93; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. 115CE, Special Condition 23–ACE–74]

Special Conditions; Cessna Model 526 Airplane

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Cessna Aircraft Company Model 526 airplanes. These airplanes will have novel and unusual features when compared to the state of technology envisaged in the applicable airworthiness standards. These design features include engine location, performance characteristics, and acrobatic maneuver capabilities, for which the applicable regulations do not contain adequate or appropriate airworthiness standards. This notice contains the additional airworthiness standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the current airworthiness standards.

DATES: Comments must be received on or before November 12, 1993.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Assistant Chief Counsel, ACE–7, Attention: Rules Docket Clerk, Docket No. 115CE Room No. 1558, 601 East 12th Street, Kansas City, Missouri 64106. All comments must be marked: Docket No. 115CE. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Mike Downs, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certificate Service, Federal Aviation Administration, 601 East 12th Street, Kansas city, Missouri 64106; telephone (816) 426–5688.

SUPPLEMENTARY INFORMATION

Comments Invited

Interested persons are invited to participate in the making of these special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking further rulemaking action on this proposal. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 115CE". The postcard will be date stamped and returned to the commenter. The proposals contained in this notice may be changed in light of the comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested parties. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Background

On January 18, 1993, the Cessna Aircraft Co., P.O. Box 7704, Wichita, KS 67277 made application for acrobatic category type certification of the Model 526 airplane. This airplane is a two place (tandem seating), all metal, low wing, twin turbofan engine-powered monoplane with fully enclosed retractable landing gear. The Model 526 has engines mounted on the fuselage sides aft and above the wing rear spar. The Model 526 is capable of acrobatic flight, including inverted maneuvers, and Mach .700 performance.

Type Certification Basis

Type certification basis of the Cessna Model 526 airplane is as follows: Federal Aviation Regulations (FAR Part 23), effective February 1, 1965, through amendment 23–42, effective February 4, 1991; FAR 36, effective December 1, 1969, through amendment effective on the date of type certification; exemptions, if any; and any special conditions that may result from this notice.

Discussion

Cessna plans to incorporate certain novel and unusual design features into the airplane for which the airworthiness regulations do not contain adequate or appropriate safety standards. These features include electronic systems, acrobatic flight capability, engine location, and certain performance characteristics necessary for this type of airplane that were not envisaged by the existing regulations.

Special conditions may be issued and amended, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.17(a)(1) do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane. Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and become a part of the type certification basis, as provided by § 21.17(a)(2).

Protection of Systems From High Intensity Radiated Fields(HIRF)

Recent advances in technology have given rise to the application in aircraft designs of advanced electrical and electronic systems that perform functions required for continued safe flight and landing. Due to the use of sensitive solid state components in analog and digital electronics circuits, these advanced systems are readily responsive to the transient effects of induced electrical current and voltage caused by the HIRF incident on the external surface of aircraft. These induced transient currents and voltages can degrade electronic systems performance by damaging components or upsetting system functions.

Furthermore, the electromagnetic environment has undergone a transformation that was not envisioned when the current requirements were developed. Higher energy levels are radiated from transmitters that are used for radar, radio, and television. Also, the population of transmitters has increased significantly.

The combined effect of the technological advances in aircraft design and the changing environment has resulted in an increased level of vulnerability of electrical and electronic systems required for the continued safe flight and landing of aircraft. Effective measures against the effects of exposure to HIRF must be provided by the design and installation of these systems.

The accepted maximum energy levels in which civilian airplane system installations must be capable of operating safely are based on surveys and analysis of existing radio frequency emitters. These special conditions require that the airplane be evaluated under these energy levels for the protection of the electronic system and its associated wiring harness. These external threat levels are believed to represent the worst case to which an

airplane would be exposed in the operating environment.

These special conditions require qualification of systems that perform critical functions, as installed in aircraft, to the defined HIRF environment in paragraph (1) or, as an option to a fixed value using laboratory tests, in paragraph (2), as follows:

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the HIRF environment, defined below:

Field strength (volts/meter)		
Frequency	Peak	Average
10–100 KHz	50	50
100–500 KHz	60	60
500–2000 KHz	70	70
2–30 MHz	200	200
30–70 MHz	30	30
70–100 MHz	30	30
100–200 MHz	150	33
200–400 MHz	70	70
400–700 MHz	4020	935
700–1000 MHz	1700	170
1–2 GHz	5000	990
2–4 Ghz	6680	840
4–6 GHz	6850	310
6–8 GHz	3600	670
8–12 GHz	3500	1270
12–18 GHz	3500	360
18–40 GHz	2100	750

(2) The applicant may demonstrate by a laboratory test that the electrical and electronic systems that perform critical functions can withstand a peak of electromagnetic field strength of 100 volts per meter (v/m) in a frequency range of 10 KHz to 40 GHz. When using a laboratory test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation.

In view of the revised HIRF envelope, the requirement for the fixed value test has been changed to 100 v/m from the previously used value of 200 v/m. The applicant opting for the fixed value laboratory test, instead of the HIRF envelope, may be subject to post certification reassessment based on the finalized rule requirements. The applicant should be cautioned that choosing 100 v/m may make it difficult, under post certification reassessment requirements, to qualify the installations without upgrading the design. If the system should not meet the post certification reassessment requirements, additional protection provisions and/or testing may be required.

A preliminary hazard analysis must be performed by the applicant for approval by the FAA to identify electrical and/or electronic systems that perform critical functions. The term "critical" means those functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the aircraft. The systems identified by the hazard analysis that perform critical functions are candidates for the application of HIRF requirements. A system may perform both critical and non-critical functions. Primary electronic flight display systems, and their associated components, perform critical functions such as attitude, altitude, and airspeed indication. The HIRF requirements only apply to critical functions.

Compliance with HIRF requirements may be demonstrated by tests, analysis, models, similarity with existing systems, or a combination thereof. Service experience alone is not acceptable since such experience in normal fight operations may be include an exposure to the HIRF environment. Reliance on a system with similar design features for redundancy as a means of protection against the effects of external HIRF is generally insufficient since all elements of a redundant system are likely to be exposed to the fields concurrently.

Thrust Attenuation

The Model 526 design includes a system that permits the attenuating of engine thrust. Attenuation is accomplished by movable panels, mounted on the engine pylons downstream of the exhaust cones, that can be deployed into the exhaust streams. The thrust attenuators are designed to be used in both ground and flight operations and differ from thrust reverses in that attenuators do not provide for either zero or reverse thrust levels. These special conditions provide requisite standards for thrust attenuating systems.

Flight

Previous certification and operational experience with jet powered airplanes has not included an airplane of similar design or approval in the acrobatic category.

Current standards in part 23 did not envisage this type of airplane and the associated performance and maneuvering capabilities. Based upon the knowledge and experience gained during certification and operation of previous part 23 jet airplanes and other acrobatic airplanes, special conditions similar to the requirements included in the draft Joint Airworthiness Regulations (JAR) 23, Issue 4 are proposed instead of the performance and flight characteristics requirements of subpart B of part 23.

Operating Limitations and Information

Current standards in part 23 did not envisage this type of airplane and the associated performance and maneuvering capabilities.

To maintain a level of safety consistent with other acrobatic category and jet powered airplanes, special conditions similar to the requirements included in the draft JAR 23, Issue 4 are proposed instead of the marketing, placards, and flight manual requirements of subpart G of part 23.

Effects of Contamination on Natural Laminar Flow Airfoils

Airfoil configurations similar to the Cessna Model 526 have been found to have measurable degradation of handling qualities and performance when laminar flow was lost due to airfoil contamination. Tripping of the boundary layer could be caused from flight in precipitation conditions or by the presence of contamination such as insects. If measurable effects are detected, it should be determined that the minimum flight characteristics standards continue to be met, and that any degradation to performance information are identified. This may be accomplished by a combination of analysis and testing. Current standards in part 23 did not envisage this type of airplane and the associated airfoil contamination considerations. Special conditions are proposed since existing regulations do not require these adverse effects to be evaluated.

Conclusion

In view of the design features and operational envelope discussed for the Model 526 airplane, the following special conditions are proposed. This action is not a rule of general applicability and affects only the model of airplane identified in these proposed special conditions.

List of Subjects in 14 CFR Part 23

Air transportation, Aircraft, Aviation safety, Safety.

Citation

The authority citation for these special conditions is as follows:

Authority: Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g); 14 CFR 21.16 and 21.17; and 14 CFR 11.28 and 11.29(b).

The Proposed Special Conditions

Accordingly, pursuant to the authority delegated to me by the

Administrator, the Federal Aviation Administration proposes the following special conditions as part of the type certification basis for the Cessna Model 526 airplane:

Note: To provide for clarity and continuity within the proposed special conditions, some sections of subparts B and G of part 23 are included without change in the following special conditions. These unchanged sections are marked with an asterisk (*) preceding the section number to permit them to be readily identified from the different/added requirements of the proposed special conditions.

1. Protection of Systems From High Intensity Radiated Fields (HIRF)

Each system that performs critical functions must be designed and installed to ensure that the operation and operational capabilities of these critical functions are not adversely affected when the airplane is exposed to high intensity radiated electromagnetic fields external to the airplane.

2. Thrust Attenuating Systems

Thrust attenuating systems must be designed and installed so that no unsafe condition will result during normal operation of the systems, or from any failure (or reasonably likely combination of failures) of the thrust attenuation systems under any anticipated condition of operation of the airplane, including ground operation. Failure of structural elements need not be considered if the probability of this kind of failure is extremely remote.

3. *Flight*

Instead of compliance with the sections contained in Subpart B of part 23, the following sections apply:

General

**SC23.21 Proof of Compliance*

(a) Each requirement of this subpart must be met at each appropriate combination of weight and center of gravity within the range of loading conditions for which certification is requested. This must be shown—

(1) By tests upon an airplane of the type for which certification is requested, or by calculations based on, and equal in accuracy to, the results of testing; and

(2) By systematic investigation of each probable combination of weight and center of gravity, if compliance cannot be reasonably inferred upon combinations investigated.

(b) The following general tolerances are allowed during flight testing. However, greater tolerances may be allowed in particular tests—

Item	Tolerance
Weight	+5%,–10%.
Critical items affected by weight.	+5%,–1%.
CG	±7% total travel.

SC23.23 Load Distribution Limits

(a) Ranges of weight and center of gravity within which the airplane may be safely operated must be established. If a weight and center of gravity combination is allowable only within certain lateral load distribution limits that could be inadvertently exceeded, these limits must be established for the corresponding weight and center of gravity combinations.

(b) The load distribution must not exceed:

(1) The selected limits;

(2) The limits at which the structure is proven; or

(3) The limits at which compliance with each applicable flight requirement of this subpart is shown.

SC23.25 Weight Limits

(a) *Maximum weight.* The maximum weight is the highest weight at which compliance with each applicable requirement of FAR 23 (other than those complied with at the design landing weight) is shown. The maximum weight must be established so that it is—

(1) Not more than the least of—

(i) The highest weight selected by the applicant; or

(ii) The design maximum weight, which is the highest weight at which compliance with each applicable structural loading condition of FAR 23 (other than those complied with at the design landing weight) is shown; or

(iii) The highest weight at which compliance with each applicable flight requirement is shown, and,

(2) With each seat occupied, assuming a weight of 190 pounds, not less than the weight with—

(i) Oil at full tank capacity, and at least enough fuel for maximum continuous thrust operation of at least 45 minutes; or

(ii) The required minimum crew, and fuel and oil to full tank capacity.

(b) *Minimum weight.* The minimum weight (the lowest weight at which compliance with each applicable requirement of this part is shown) must be established so that it is not more than the sum of—

(1) The empty weight determined under SC23.29;

(2) The weight of the required minimum crew (assuming a weight of 170 pounds for each crew member); and

(3) The weight of 5 percent of the total fuel capacity of that particular fuel tank arrangement under investigation.

SC23.29 Empty Weight and Corresponding Center of Gravity

(a) The empty weight and corresponding center of gravity must be determined by weighing the airplane with—

(1) Fixed ballast;

(2) Unusable fuel determined under 23.959; and

(3) Full operating fluids, including—

(i) Oil;

(ii) Hydraulic fluid; and

(iii) Other fluids required for normal operation of airplane systems.

(b) The condition of the airplane at the time of determining empty weight must be one that is well defined and can be easily repeated.

SC23.31 Removable Ballast

Removable ballast may be used in showing compliance with the flight requirements of this subpart, if—

(a) The place for carrying ballast is properly designed and installed, and is marked under SC23.1557; and

(b) Instructions are included in the Airplane Flight Manual, approved material, or markings and placards, for the proper placement of the removable ballast under each loading condition for which removable ballast is necessary.

SC23.45 Performance—General

(a) The performance requirements of this subpart must be met for: Still air; and Ambient atmospheric conditions.

(b) Unless otherwise prescribed, performance data must be provided over not less than the following ranges of conditions:

(1) Airport altitude from sea level to 10,000 feet; and

(2) Temperature from standard to 30 °C above standard, or the maximum ambient atmospheric temperature at which compliance with the cooling provisions of 23.1041 to 23.1045 is shown, if lower.

(c) Performance data must be determined with the means for controlling the engine cooling air supply in the position used in the cooling tests required by 23.1041 to 23.1045.

(d) The available propulsive thrust must correspond to engine thrust not exceeding the approved thrust, less:

(1) Installation losses; and

(2) The equivalent thrust absorbed by the accessories and services appropriate to the particular ambient atmospheric conditions and the particular flight condition.

(e) The performance as affected by engine thrust must be based on a relative humidity of:

(1) 80 percent at and below standard temperature; and

(2) 34 percent at and above standard temperature plus 50 °F.

Between the two temperatures the relative humidity must vary linearly.

(f) Unless otherwise prescribed in determining the takeoff and landing distances, changes in the airplane's configuration, speed and thrust must be made in accordance with procedures established by the applicant for operation in service. The procedures must be able to be executed consistently by pilots of average skill in atmospheric conditions reasonably expected to be encountered in service.

(g) The takeoff and landing distances must be determined on a smooth dry hard-surfaced runway. The effect on these distances of operation on other types of surface (for example, grass, gravel) when dry, may be derived and these surfaces listed under SC23.1583(p).

SC23.49 Stalling Speed

(a) V_{SO} and V_{S1} are the stalling speeds or the minimum steady flight speed, in knots (CAS), at which the airplane is controllable with—

(1) The propulsive thrust may not be greater than zero at the stalling speed, or if the resultant thrust may not be greater than zero at the stalling speed, or, if the resultant thrust has not appreciable effect on the stalling speed, with engines idling and throttles closed;

(2) The airplane in the condition existing in the test in which V_{SO} and V_{S1} are being made;

(3) Center of gravity in the position which results in the highest value of V_{SO} and V_{S1}; and

(4) Weight used when V_{SO} or V_{S1} are being used as a factor to determine compliance with a required performance standard.

(b) V_{SO} and V_{S1} must be determined by flight tests using the procedure and meeting the flight characteristics specified in SC23.201.

SC23.51 Takeoff Speeds

(a) The rotation speed V_R, is the speed at which the pilot makes a control input with the intention of lifting the airplane out of contact with the runway. V_R must not be less than the greater of 1.05 V_{MC} and 1.10 V_{S1}.

(b) The speed at 50 feet must not be less than the highest of:

(1) A speed that is shown to be safe for continued flight (or land-back, if applicable) under all reasonably expected conditions, including turbulence and complete failure of the critical engine; or

(2) 1.10 V_{MC}; or

(3) 1.20 V_{S1}.

SC23.53 Takeoff Distance

(a) The takeoff distance must be determined in accordance with subparagraph (b), using speeds determined in accordance with SC23.51 (a) and (b).

(b) The distance required to takeoff and climb to a height of 50 feet above the takeoff surface must be determined for each weight, altitude and temperature within the operational limits established for takeoff with—

(1) Takeoff thrust on each engine;

(2) Wing flaps in the takeoff position(s); and

(3) Landing gear extended.

SC23.63 Climb: General

(a) Compliance with the requirements of SC23.65, SC23.66, SC23.67, SC23.69 and SC23.77 must be shown—

(1) Out of ground effect; and

(2) At speeds which are not less than those at which compliance with the powerplant cooling requirements of 23.1041 to 23.1045 has been demonstrated.

(b) Compliance must be shown, at weights, as a function of airport altitude and ambient temperature, within the operational limits established for takeoff and landing respectively, with—

(1) SC23.65 and SC23.67(a) and (b) for takeoff; and

(2) SC23.67(b) and SC 23.77 for landing.

SC23.65 Climb: All Engines Operating

The airplane must have a steady gradient of climb after takeoff of at least 4 percent with—

(a) Takeoff thrust on each engine;

(b) Landing gear extended except that, if the landing gear can be retracted in not more than 7 seconds, it may be assumed to be retracted;

(c) Wing flaps in the takeoff position(s); and

(d) A climb speed not less than the greater of 1.1 V_{MCA} and 1.2 V_{S1}.

SC23.66 Takeoff Climb: One-Engine-Inoperative

The steady gradient of climb or descent must be determined at each weight, altitude and ambient temperature within the operational limits established by the applicant with—

(a) Critical engine inoperative;

(b) Remaining engine at takeoff thrust;

(c) Landing gear extended except that, if the landing gear can be retracted in not more than 7 seconds, it may be assumed to be retracted;

(d) Wing flaps in the takeoff position(s);

(e) Wings level; and

(f) Climb speed equal to that achieved at 50 feet in the demonstration of SC23.53.

SC23.67 Climb: One-Engine Inoperative

(a) The steady gradient of climb at an altitude of 400 feet above the takeoff surface must be measurably positive with the—

(1) Critical engine inoperative;

(2) Remaining engine at takoff thrust;

(3) Landing gear retracted;

(4) Wing flaps in the takeoff position(s); and

(5) Climb speed equal to that achieved at 50 feet in the demonstration of SC23.53.

(b) the steady gradient of climb may not be less than 0.75 percent at an altitude of 1500 feet above the takeoff or landing surface, as appropriate, with the—

(1) Critical engine inoperative;

(2) Remaining engine at not more than maximum continuous thrust;

(3) Landing gear retracted;

(4) Wing flaps retracted; and

(5) Climb speed not less than 1.2 V_{s1}

SC23.69 En-route Climb/Descent

(A) *All engines operating.*

The steady gradient and rate of climb must be determined at each weight, altitude and ambient temperature within the operational limits established by the applicant with—

(1) Not more than maximum continuous thrust on each engine;

(2) Landing gear retracted;

(3) Wing flaps retracted; and

(4) Climb speed not less than 1.3 V_{s1}

(b) *One-engine inoperative.*

The steady gradient and rate of climb/descent must be determined at each weight, altitude and ambient temperature within the operational limits established by the applicant with—

(1) Critical engine inoperative;

(2) Remaining engine at not more than maximum continuous thrust;

(3) Landing gear retracted;

(4) Wing flaps retracted; and

(5) Climb speed not less than 1.2 V_{s1}

SC23.73 Reference Landing Approach Speed

The reference landing approach speed, V_{REF}, must not be less than the greater of V_{MC}, determined under SC23.149(c) with the wing flaps in the landing position, and 1.3 V_{SO}.

SC23.75 Land Distance

The horizontal distance necessary to land and come to a complete stop from a point 50 feet above the landing surface

must be determined, for standard temperatures at each weight and altitude with the operational limits established for landing, as follows:

(a) A steady approach at not less than V_{REF} must be maintained down to the 50-foot height and—

(1) The steady approach must be at a gradient of descent not greater than 5.2 percent (3 degrees) down to the 50-foot height; and

(2) In addition, an applicant may demonstrate by tests that a maximum steady approach gradient, steeper than 5.2 percent, down to the 50-foot height is safe. The gradient must be established as an operating limitation and the information necessary to display the gradient must be available to the pilot by an appropriate instrument.

(b) A constant configuration must be maintained throughout the maneuver.

(c) The landing must be made without excessive vertical acceleration or tendency to bounce, nose-over, ground loop, or porpoise.

(d) It must be shown that a safe transition to the landing conditions of SC23.77 can be made from the conditions that exist at the 50-foot height, at maximum landing weight or the maximum landing weight for altitude and temperature of SC23.63(b)(2), as appropriate.

(e) The brakes must not be used so as to cause excessive wear of brakes or tires.

(f) Retardation means other than wheel brakes may be used if that means—

(1) Is safe and reliable;

(2) Is used so that consistent results can be expected in service; and

(3) If any device is used that depends on the operation of any engine, and the landing distance would be increased when a landing is made with that engine inoperative; the landing distance must be determined with that engine inoperative, unless the use of other compensating means will result in a landing distance not more than that with each engine operating.

SC23.77 Balked Landing

The steady gradient of climb must not be less than 2.5 percent with—

(a) Not more than the thrust that is available 8 seconds after initiation of movement of the thrust controls from the minimum flight idle position;

(b) The landing gear extended;

(c) The wing flaps in the landing position; and

(d) A climb speed equal to V_{REF}, as defined in SC23.73.

Flight Characteristics

SC23.141 General

The airplane must meet the requirements of SC23.143 through SC23.253 at all practical loading conditions and operating altitudes for which certification has been requested, not exceeding the maximum operating altitude established under SC23.1527 and without requiring exceptional piloting skill, alertness, or strength.

Controllability and Maneuverability

SC23.143 General

(a) The airplane must be safely controllable and maneuverable during all flight phases including—

(1) Takeoff;

(2) Climb;

(3) Level flight;

(4) Descent;

(5) Go-around; and

(6) Landing (power on and power off) with the wing flaps extended and retracted.

(b) It must be possible to make a smooth transition from one flight condition to another (including turns and slips) without danger of exceeding the limit load factor, under any probable operating condition, including those conditions normally encountered in the sudden failure of any engine.

(c) If marginal conditions exist with regard to required pilot strength, the control forces required must be determined by quantitative tests. In no case may the control forces under the conditions specified in paragraphs (a) and (b) exceed those prescribed in the following table:

Values in pounds force applied to the relevant control	Pitch	Roll	Yaw
For temporary application:			
Stick	60	30	.....
Rudder pedal	.....	.....	150
For prolonged application	10	5	20

SC23.145 Longitudinal Control

(a) With the airplane as nearly as possible in trim at 1.3 V_{S1}, it must be possible, at speeds below the trim-speed, to pitch the nose downward so that the rate of increase in airspeed allows prompt acceleration to the trim speed with—

(1) Maximum continuous thrust on each engine;

(2) Power off; and

(3) Wing flaps and landing gear—

(i) Retraced; and

(ii) Extended.

(b) It must be possible to carry out the following maneuvers without requiring the application of control forces exceeding those specified in SC23.143(c). The trimming controls must not be adjusted during the maneuvers:

(1) With landing gear extended and flaps retracted and the airplane as nearly as possible in trim at 1.4V_{S1}, extend the flaps as rapidly as possible and allow the airspeed to transition from 1.4V_{S1} to 1.4 V_{SO}, with—

(i) Power off; and

(ii) Thrust necessary to maintain level flight in the initial condition.

(2) With landing gear and flaps extended, power off and the airplane as nearly as possible in trim at 1.3 V_{SO}, quickly apply takeoff thrust and retract the flaps as rapdily as possible to the recommended balked landing setting and allow the airspeed to transition from 1.3 V_{SO} to 1.3 V_{S1}. Retract the gear when a positive rate of climb is established.

(3) With landing gear and flaps extended, thrust for and in level flight at 1.1 V_{SO} and the airplane as nearly as possible in trim, it must be possible to maintain approximately level flight while retracting the flaps as rapidly as possible with simultaneous application of not more than maximum continuous thrust. If gated flap positions are provided, the flap retraction may be demonstrated in stages with thrust and trim reset for level flight at 1.1 V_{S1} in the initial configuration for each stage—

(i) From the fully extended position to the most extended gated position;

(ii) Between intermediate gated positions, if applicable; and

(iii) From the least extended gated position to the fully retracted position.

(4) With power off, flaps and landing gear retracted and the airplane as nearly as possible in trim at 1.4 V_{S1}, apply takeoff thrust rapidly while maintaining the same airspeed.

(5) With power off, landing gear and flaps extended and the airplane as nearly as possible in trim at V_{REF}, obtain and maintain airspeeds between 1.1 V_{SO} and either 1.7 V_{SO} or V_{FE}, whichever is lower.

(6) With maximum takeoff thrust, landing gear retracted, flaps in the takeoff position(s) and the airplane as nearly as possible in trim at V_{FE} appropriate to the takeoff flap position, retract the flaps as rapidly as possible while maintaining speed constant.

(c) At speeds above V_{MO}/M_{MO} and up to the maximum speed shown under SC23.251, a maneuvering capability of 1.5g must be demonstrated to provide a margin to recover from upset or inadvertent speed increase.

(d) It must be possible, with a pilot control force of not more than 10 pounds, to maintain a speed of not more than V_{REF} during a power-off glide with landing gear and wing flaps extended.

(e) By using normal flight and thrust controls, except as otherwise noted in paragraphs (e)(1) and (e)(2) of this section, it must be possible to establish a zero rate of descent at an attitude suitable for a controlled landing with out exceeding the operational and structural limitations of the airplane, as follows:

(1) Without the use of the primary longitudinal control system;

(2) Without the use of the primary directional control; and

(3) If a single failure of any one connecting or transmitting link would affect both the longitudinal and directional primary control system, without the primary longitudinal and directional control system.

SC23.147 Directional and Lateral Control

(a) It must be possible, while holding the wings level within 5 degrees, to make sudden changes in heading safely in both directions. This must be shown at 1.4 V_{S1} with heading changes up to 15 degrees (except that the heading change at which the rudder force corresponds to the limits specified in SC23.143 need not be exceeded), with the—

(1) Critical engine inoperative;

(2) Remaining engine at maximum continuous thrust;

(3) Landing gear—

(i) Retracted; and

(ii) Extended.

(4) Flaps retracted.

(b) It must be possible to regain full control of the airplane without exceeding a bank angle of 45 degrees, reaching a dangerous attitude or encountering dangerous characteristics, in the event of a sudden and complete failure of the critical engine, making allowance for a delay of 2 seconds in the initiation of recovery action appropriate to the situation, with the airplane initially in trim, in the following conditions—

(1) Maximum continuous thrust on each engine;

(2) Wing flaps retracted;

(3) Landing gear retracted; and

(4) Speed equal to that at which compliance with SC23.69(a) has been shown.

(c) It must be shown that the airplane is safely controllable without the use of the primary lateral control system in any configuration and at any speed or altitude within the approved operating envelope and that the airplane's flight characteristics are not impaired below a level needed to permit continued safe flight and the ability to maintain attitudes suitable for a controlled landing without exceeding the operational and structural limitations of the airplane. If a single failure of any one connecting or transmitting link in the lateral control system would also cause the loss of additional control system(s), the above requirement is equally applicable with those additional systems also assumed to be inoperative.

SC23.149 Minimum Control Speed

(a) V_{MC} is the calibrated airspeed at which, when the critical engine is suddenly made inoperative, it is possible to recover control of the airplane, with that engine still inoperative, and thereafter maintain straight flight at the same speed with an angle of bank not more than 5 degrees. The method used to simulate critical engine failure must represent the most critical mode of powerplant failure with respect to controllability expected in service.

(b) V_{MC} for takeoff must not exceed 1.2 V_{S1}, (where V_{S1} is determined at the maximum takeoff weight) and must be determined with the most unfavorable weight and center of gravity position and with the airplane airborne and the ground effect negligible, for the takeoff configuration(s) with—

(1) Maximum available takeoff thrust initially on each engine;

(2) The airplane trimmed for takeoff;

(3) Flaps in the takeoff position(s); and

(4) Landing gear retracted.

(c) The V_{MC} requirements of (a) must also be met for the landing configuration with—

(1) Maximum available takeoff thrust initially on each engine;

(2) The airplane trimmed for an approach with all engines operating at V_{REF} at an approach gradient equal to the steepest used in the landing distance demonstration of SC23.75;

(3) Flaps in the landing position; and

(4) Landing gear extended.

(d) At V_{MC} the rudder pedal force required to maintain control must not exceed 150 pounds and it must not be necessary to reduce thrust of the operative engine. During recovery, the airplane must not assume any dangerous attitude and it must be possible to prevent a heading change of more than 20 degrees.

(e) A minimum speed to intentionally render the critical engine inoperative must be established and designated as the safe, intentional, one-engine-inoperative speed, V_{SEE}.

SC23.151 Acrobatic Maneuvers

(a) The airplane must be able to perform safely the acrobatic maneuvers for which certification is requested. Safe entry speeds for these maneuvers must be determined.

(b) It must be possible to safely recover control of the airplane following inadvertent upsets encountered during the acrobatic maneuvers for which certification is requested.

(c) The airplane must meet the emergency egress requirements of 23.807(b)(5).

(d) The airplane must meet the following spin requirements:

(1) One-turn spins. The airplane must recover from a one-turn spin or a three second spin, whichever takes longer, in not more than one additional turn, after initiation of the first control action for recovery. In addition—

(i) For both the flaps retracted and flaps extended conditions, the applicable airspeed limit and positive limit maneuvering load factor must not be exceeded;

(ii) No control forces or characteristics encountered during the spin or recovery may adversely affect prompt recovery.

(iii) It must be impossible to obtain unrecoverable spins with any use of the flight or engine power controls either at the entry into or during the spin; and

(iv) For the flaps extended condition, the flaps may be retracted during the recovery, but not before rotation has ceased.

(2) Six-turn (or greater) spins: The following requirements must be met in each configuration for which approval for spinning is requested:

(i) The airplane must readily recover from any point in a spin up to and including six turns, or any greater number of turns for which certification is requested, in not more than one and one half additional turns after initiation of the first control action for recovery. However, beyond three turns, the spin may be discontinued if spiral characteristics appear;

(ii) The applicable airspeed limits and limit maneuvering load factors must not be exceeded. For flaps extended configurations for which approval is requested, the flaps must not be retracted during the recovery.

(iii) It must be impossible to obtain unrecoverable spins with any use of the flight or engine power controls either at the entry into or during the spin; and

(iv) There must be no characteristics during the spin (such as excessive rates of rotation or extreme oscillatory motion) which might prevent a successful recovery due to disorientation or incapacitation of the pilot.

SC23.153 Control During Landings

It must be possible, while in the landing configuration, to safety complete a landing without exceeding the control force limits specified in SC23.143(c) following an approach to land—

(a) At a speed of $V5_{REF}$-5 kts;

(b) With the airplane in trim, or as nearly as possible in trim and without the trimming control being moved throughout the maneuver;

(c) At an approach gradient equal to the steepest used in the landing distance demonstration of SC23.75; and

(d) With only those thrust changes, if any, which would be made when landing normally from an approach at V_{REF}.

SC23.155 Elevator control force in Maneuvers

(a) The elevator control force needed to achieve the positive limit maneuvering load factor may not be less than W/140 (where W is the maximum weight) or 15 pounds, whichever is greater, except that it need not be greater than 35 pounds.

(b) The requirement of paragraph (a) of this section must be met at maximum continuous thrust with the wing flaps and landing gear retracted—

(1) In a turn, with the trim setting used for wings level flight at V_o; and

(2) In a turn, with the trim setting used for the maximum wings level flight speed, except that the speed need not exceed V_{MO}/M_{MO}.

(c) There must be no excessive decrease in the gradient of the curve of stick force versus maneuvering load factor with increasing load factor.

SC23.157 Rate of roll

(a) Takeoff. It must be possible, using a favorable combination of controls, to roll the airplane from a steady 30 degree banked turn through an angle of 60 degrees, so as to reverse the direction of the turn within W+500+1300 seconds, where W is the weight in pounds.

(b) The requirement of paragraph (a) of this section must be met when rolling the airplane in each direction with—

(1) Flaps in the take-off position(s);

(2) Landing gear retracted;

(3) With the critical engine inoperative and the remaining engine at maximum takeoff thrust; and

(4) The airplane trimmed at a speed equal to the greater of 1.2 V_{SI} or 1.1 V_{MC} or as nearly as possible in trim for straight flight.

(c) Approach. It must be possible using a favorable combination of controls, to roll the airplane from a steady 30 degree banked turn through an angle of 60 degrees, so as to reverse the direction of the turn with W+2800+2200 seconds, where W is the weight in pounds.

(d) The requirement of paragraph (c) of this section must be met when rolling the airplane in each direction in the following conditions—

(1) Flaps in the landing position(s);

(2) Landing gear extended;

(3) All engines operating at the thrust for a 3 degree approach; and

(4) The airplane trimmed at V_{REF}.

Trim

SC23.161 Trim

(a) General. Each airplane must meet the trim requirements of this section after being trimmed and without further pressue upon, or movement of, the primary controls or their corresponding trim controls by the pilot or the automatic pilot. In addition, it must be possible, in other conditions of landing, configuration, speed and thrust to ensure that the pilot will not be unduly fatigued or distracted by the need to apply residual control forces exceeding those for prolonged application specified in SC23.143.(c). This applies in normal operation of the airplane and, if applicable, to those conditions associated with the failure of one engine for which performance characteristics are established.

(b) Lateral and directional trim. The airplane must maintain lateral and directional trim in level flight at 0.9 V_H, V_C or V_{MO}/M_{MO}, whichever is lowest, with the landing gear and wing flaps retracted.

(c) Longitudinal trim. The airplane must maintain longitudinal trim under each of the following conditions:

(1) A climb with:

(i) Takeoff thrust, landing gear retracted, wing flaps in the takeoff position(s), at the speeds used in determining the climb performance required by SC23.65; and

(ii) Maximum continuous thrust at the speeds in the configuration used in determining the climb performance required by SC23.69(a).

(2) Level flight at all speeds from the lesser of V_H and V_{MO}/M_{MO} (as appropriate), to 1.4 V_{SI}, with the landing gear and flaps retracted.

(3) A descent at V_{MO}/M_{MO} with power off and with the landing gear and flaps retracted.

(4) Approach with landing gear extended and with—

(i) A 3 degree angle of descent, with flaps retracted and at a speed of 1.4 V_{SI};

(ii) A 3 degree angle of descent, flaps in the landing position(s) at V_{REF}; and

(iii) An approach gradient equal to the steepest used in the landing distance demonstrations of SC23.75, flaps in the landing position(s) at V_{REF}.

(d) The airplane must maintain longitudinal and directional trim and the lateral control force must not exceed 5 pounds, at the speed used in complying with SC23.67(b) with—

(1) The critical engine inoperative;

(3) The landing gear retracted;

(4) The wing flaps retracted; and

(5) An angle of bank of not more than 5 degrees.

Stability

**SC23.171 General*

The airplane must be longitudinally, directionally and laterally stable under SC23.173 through SC23.181. In addition, the airplane must show suitable stability and control "feel" (static stability) in any condition normally encountered in service, if flight tests show it is necessary for safe operation.

SC23.173 Static longitudinal stability

Under the conditions specified in SC23.175 and with the airplane trimmed as indicated, the characteristics of the elevator control forces and the friction within the control system must be as follows:

(a) A pull must be required to obtain and maintain speeds below the specified trim speed and a push required to obtain and maintain speeds above the specified trim speed. This must be shown at any speed that can be obtained, except that speeds requiring a control force in excess of 40 pounds or speeds above the maximum allowable speed or below the minimum speed for steady unstalled flight, need not be considered.

(b) The airpeed must return to within plus or minus 10 percent of the original trim speed when the control force is slowly released at any speed within the speed range specified in paragraph (a) of this section.

(c) The stick force must vary with speed so that any substantial speed change results in a stick force clearly perceptible to the pilot.

SC23.175 Demonstraton of Static Longitudinal Stability

Static longitudinal stability must be shown as follows:

(a) Climb. The stock force curve must have a stable slope, at speeds between 85 percent and 115 percent of the trim speed, with—

(1) Flaps retracted;

(2) Landing gear retracted;

(3) Maximum continuous thrust; and

(4) The airplane trimmed at the speed used in determining the climb performance required by SC23.69(a).

(b) Cruise. With flaps and landing gear retracted and the airplane in trim with thrust for level flight at representative cruising speeds at high and low altitudes, including speeds up to V_{MO}/M_{MO}, as appropriate, except that the speed need not exceed V_H.

(1) The stick force curve must have a stable slope at all speeds within a range that is the greater of 15 percent of the trim speed plus the resulting free return speed range, or 40 knots plus the resulting free return speed range, above and below the trim speed, except that the slope need not be stable—

(i) At speeds less than 1.3 V_{S1}; and

(ii) At speeds greater than V_{FC}/M_{FC}.

(c) Landing. The stick force curve must have a stable slope at speeds between 1.1 V_{S1} and 1.8 V_{S1} with—

(1) Flaps in the landing position(s);

(2) Landing gear extended; and

(3) The airplane trimmed at—

(i) V_{REF}, or the minimum trim speed if higher, with power off; and

(ii) V_{REF} with enough thrust to maintain a 3 degree angle of descent.

SC23.177 Static Directional and Lateral Stability

(a) The static directional stability, as shown by the tendency to recover from a skid with the rudder free, must be positive for any landing gear and flap position appropriate to the takeoff, climb, cruise, approach and landing configurations. This must be shown with symmetrical thrust up to maximum continuous thrust and at speeds from 1.2 V_{s1} up to maximum allowable speed for the condition being investigated. The angle of sideslip for these tests must be appropriate to the type of airplane. At larger angles of sideslip up to that at which full rudder is used or a control force limit in § SC23.143 is reached, whichever occurs first, and at speeds from 1.2 V_{s1} to V_o the rubber pedal force must not reverse.

(b) The static lateral stability, as shown by the tendency to raise the low wing in a sideslip, must be positive for all landing gear and flap positions. This must be shown with symmetrical power up to 75 percent maximum continuous thrust at speeds above 1.2 V_{s1} in the takeoff configuration(s) and at speeds above 1.3 V_{s1} in other configurations, up to the maximum allowable speed for the configuration being investigated, in the takeoff, climb, cruise, and approach configurations. For the landing configuration, the power must be up to that necessary to maintain a 3 degree angle of descent in coordinated flight. The static lateral stability must not be negative at 1.2 V_{s1} in the takeoff configuration(s), or at 1.3 V_{s1} in other configurations. The angle of sideslip for these tests must be appropriate to the type of airplane but in no case may the constant heading sideslip angle to be less than that obtainable with a 10 degree bank, or if less, the maximum bank angle obtainable with full rudder deflection or 150 pound rudder force.

(c) Paragraph (b) of this section does not apply to acrobatic category airplanes certificated for unlimited inverted flight.

(d) In straight, steady sideslips at 1.2 V_{s1} for any landing gear and flap positions and for any symmetrical thrust conditions up to 50 percent of maximum continuous thrust, the aileron and rudder control movements and forces must increase steadily (but not necessarily in constant proportion) as the angle of sideslip is increased up to the maximum appropriate to the type of airplane. At larger sidelslip angles up to the angle at which full rudder or aileron control is used or a control force limit contained in SC23.143 is obtained, the aileron and rudder control movements and forces must not reverse as the angle of sideslip is increased. Rapid entry into, or recovery from, a maximum sideslip considered appropriate for the airplane must not result in uncontrollable flight characteristics.

SC23.18 Dynamic Stability

(a) Any short period oscillation not including combined lateral-directional oscillations occurring between the stalling speed and the maximum allowable speed appropriate to the configuration of the airplane must be heavily damped with the primary control—

(1) free; and

(2) in a fixed position.

(b) Any combined lateral-directional oscillations ("Dutch roll") occurring between the stalling speed and the maximum allowable speed appropriate to the configuration of the airplane must be damped to 1/10 amplitude in 7 cycles with the primary controls—

(1) free; and

(2) in a fixed position.

(c) It if is determined that the function of a stability augmentation system, reference 23.672, is needed to meet the flight characteristic requirements of this part, the primary control requirements of paragraphs (a)(2) and (b)(2) of this section are not applicable to the tests needed to verify the acceptability of that system.

(d) During the conditions as specified in SC23.175, when the longitudinal control force required to maintain speeds differing from the trim speed by at least plus and minus 15 percent is suddenly released, the response of the airplane must not exhibit any dangerous characteristics nor be excessive in relation to the magnitude of the control force released. Any long-period oscillation of flight path, phugoid oscillation, that results must not be so unstable as to increase the pilot's workload or otherwise endanger the airplane.

Stalls

SC23.201 Wings Level Stall

(a) It must be possible to produce and to correct roll by unreversed use of the rolling control and to produce and to correct yaw by unreversed use of the directional control, up to the time the airplane stalls.

(b) The wings level stall characteristics must be demonstrated in flight as follows. Starting from a speed at least 10 knots above the stall speed, the elevator control must be pulled back so that the rate of speed reduction will not exceed one knot per second until a stall is produced, as shown by either:

(1) an uncontrollable downward pitching motion of the airplane; or

(2) the control reaching the stop.

(c) Normal use of elevator control for recovery is allowed after the downward pitching motion of paragraph (b)(1) of this special condition has unmistakably been produced, or after the control has been held against the stop for not less than the longer of two seconds or the time employed in the minimum steady flight speed determination of SC23.49.

(d) During the entry into and the recovery from the maneuver, it must be possible to prevent more than 15 degrees of roll or yaw by the normal use of controls.

(e) Compliance with the requirements of this section must be shown under the following conditions:

(1) Wing flaps: Retracted, fully extended and each intermediate operating position;

(2) Landing gear: Retracted and extended;

(3) Power: Power off and 75 percent maximum continuous thrust. If the thrust-to-weight ratio at 75 percent maximum continuous thrust results in extremely nose-high attitudes, the test may be accomplished with the power required for level flight in the landing configuration at maximum landing weight and a speed of 1.4 V_{SO}, but the power may not be less that 50 percent of maximum continuous thrust.

(4) Trim: The airplane trimmed at a speed as near 1.5 V_{S1} as practicable.

SC23.203 Turning Flight and Accelerated Turning Stalls

Turning flight and accelerated turning stalls must be demonstrated in tests as follows:

(a) Establish and maintain a coordinated turn in a 30 degree bank. Reduce speed by steadily and progressively tightening the turn with the elevator until the airplane is stalled, as defined in SC23.201(b). The rate of speed reduction must be constant, and—

(1) For a turning flight stall, may not exceed one knot per second; and

(2) For an accelerated turning stall, be 3 to 5 knots per second with steadily increasing normal acceleration.

(b) After the airplane has stalled, as defined in SC23.201(b) it must be possible to regain wings level flight by normal use of the flight controls but without increasing thrust and without—

(1) Excessive loss of altitude;

(2) Undue pitch up;

(3) Uncontrollable tendency to spin;

(4) Exceeding a bank angle of 60 degrees in the original direction of the turn or 30 degrees in the opposite direction in the case of turning flight stalls;

(5) Exceeding a bank angle of 90 degrees in the original direction of the turn or 60 degrees in the opposite direction in the case of accelerated turning stalls; and

(6) Exceeding the maximum permissible speed or allowable limit load factor.

(c) Compliance with the requirements of this section must be shown under the following conditions:

(1) Wing flaps: Retracted, fully extended and each intermediate operating position;

(2) Landing gear: Retracted and extended;

(3) Power: Power off and 75 percent maximum continuous thrust. If the thrust-to-weight ratio at 75 percent maximum continuous thrust results in extremely nose-high attitudes, the test may be accomplished with the power required for level flight in the landing configuration at maximum landing weight and a speed of 1.4 V_{SO}, but the power may not be less that 50 percent of maximum continuous thrust;

(4) Trim: The airplane trimmed at a speed as near 1.5 V_{S1} as practicable.

SC23.207 Stall Warning

(a) There must be a clear and distinctive stall warning, with the flaps and landing gear in any normal position, in straight and turning flight.

(b) The stall warning may be furnished either through the inherent aerodynamic qualities of the airplane or by a device that will give clearly distinguishable indications under expected conditions of flight. However, a visual stall warning device that requires the attention of the crew within the cockpit is not acceptable by itself.

(c) During the stall tests required by SC23.201(b) and SC23.203(a)(l), the stall warning must begin at a speed exceeding the stalling speed by a margin of not less than 5 knots and must continue until the stall occurs.

(d) When following the procedures of SC23.1585, the stall warning must not occur during a takeoff with all engines operating, a takeoff continued with one engine inoperative or during an approach to landing.

(e) During the stall tests required by SC23.203(a)(2), the stall warning must begin sufficiently in advance of the stall for the stall to be averted by pilot action taken after the stall warning first occurs.

(f) An artificial stall warning may be mutable, provided that it is armed automatically during takeoff and re-armed automatically in the approach configuration.

Ground Handling Characteristics

SC23.231 Longitudinal Stability and Control

The airplane may have no uncontrollable tendency to nose over in any reasonably expected operating condition, including rebound during landing or take-off. Wheel brakes must operate smoothly and may not induce any undue tendency to nose over.

SC23.233 Directional Stability and Control

(a) A 90 degree cross-component of wind velocity, demonstrated to be safe for taxiing, takeoff and landing must be established and must be not less than 0.2 V_{SO}.

(b) The airplane must be satisfactorily controllable in power-off landings at normal landing speed, without using brakes or engine thrust to maintain a straight path until the speed has decreased to at least 50 percent of the speed at touchdown.

(c) The airplane must have adequate directional control during taxiing.

SC23.235 Operation on Unpaved Surfaces

The airplane must be demonstrated to have satisfactory characteristics and the shock-absorbing mechanism must not damage the structure of the airplane when the airplane is taxied on the roughest ground that may reasonably be expected in normal operation and when takeoffs and landings are performed on unpaved runways having the roughest surface that may reasonably be expected in normal operation.

Miscellaneous Flight Requirements

SC23.251 Vibration and Buffeting

There must be no vibration or buffeting severe enough to result in structural damage and each part of the airplane must be free from excessive vibration, under any appropriate speed and power conditions up to V_D/M_D. In addition there must be no buffeting in any normal flight condition severe enough to interfere with the satisfactory control of the airplane or cause excessive fatigue to the flight crew. Stall warning buffeting within these limits is allowable.

SC23.253 High Speed Characteristics

The following speed increase and recovery characteristics must be met—

(a) Operating conditions and characteristics likely to cause inadvertent speed increases (including upsets in pitch and roll) must be simulated with the airplane trimmed at any likely speed up to V_{MO}/M_{MO}. These conditions and characteristics include gust upsets, inadvertent control movements, low stick force gradient in relation to control friction, leveling off from climb and descent from Mach limit to airspeed limit altitude.

(b) Allowing for pilot reaction time after occurrence of the effective inherent or artificial speed warning specified in 23.1303, it must be shown that the airplane can be recovered to a normal attitude and its speed reduced to V_{MO}/M_{MO} without—

(1) Exceptional piloting strength or skill;

(2) Exceeding V_D/M_D, the maximum speed shown under SC23.251, or the structural limitations; or

(3) Buffeting that would impair the pilot's ability to read the instruments or to control the airplane for recovery.

(c) There may be no control reversal about any axis at any speed up to the maximum speed shown under SC23.251. Any reversal of elevator control force or tendency of the airplane to pitch, roll, or yaw must be mild and readily controllable, using normal piloting techniques.

4. Operating Procedures and Information

Instead of compliance with the sections contained in subpart G of part 23, the following sections apply:

**SC23.1501 General*

(a) Each operating limitation specified in SC23.1505 through SC23.1527 and other limitations and information necessary for safe operation must be established.

(b) The operating limitations and other information necessary for safe

operation must be made available to the crew members as prescribed in SC23.1541 through SC23.1589.

SC23.1505 Airspeed Limitations

The maximum operating limit speed (V_{MO}/M_{MO} airspeed or Mach number, whichever is critical at a particular altitude) must be established as a speed that may not be deliberately exceeded in any regime of flight (climb, cruise, or descent) unless a higher speed is authorized for flight test or pilot training operations. V_{MO}/M_{MO} must be established so that it is not greater than the design cruising speed V_C/M_C and so that it is sufficiently below V_D/M_D and the maximum speed shown under SC23.251 to make it highly improbable that the latter speeds will be inadvertently exceeded in operations. The speed margin between V_{MO}/M_{MO} and V_D/M_D or the maximum speed shown under SC23.251 may not be less than the speed margin established between V_C/M_C and V_D/M_D under 23.335(b), or the speed margin found necessary in the flight tests conducted under SC23.253.

SC23.1507 Operating Maneuvering Speed

The maximum operating maneuvering speed V_O must be established as an operating limitation, where V_O must not be greater than the $V_S\sqrt{n}$ established in 23.335(c).

SC23.1511 Flap Extended Speed

(a) The flap extended speed V_{FE} must be established so that it is—

(1) Not less than the minimum value of V_F allowed in 23.345(b); and

(2) Not more than V_F established under 23.345(a), (c) and (d).

(b) Additional combinations of flap setting, airspeed and engine thrust may be established if the structure has been proven for the corresponding design conditions.

SC23.1513 Minimum Control Speed

The minimum control speed(s) V_{MC}, determined under SC23.149(b) and (c) must be established as an operating limitation(s).

SC23.1519 Weight and Center of Gravity

The weight and center of gravity ranges, determined under SC23.23 must be established as operating limitations.

SC23.1521 Powerplant Limitations

(a) General. The powerplant limitations prescribed in this section must be established so that they do not exceed the corresponding limits for which the engines are type certificated. In addition, other powerplant limitations used in determining compliance with this part must be established.

(b) Takeoff operation. The powerplant takeoff operation must be limited by—

(1) The maximum rotational speed (rpm);

(2) The maximum allowable gas temperature;

(3) The maximum allowable oil temperature; and

(4) The time limit for the use of the thrust corresponding to the limitations established in paragraphs (1) and (2) of this special condition.

(c) Continuous operation. The continuous operation must be limited by—

(1) The maximum rotational speed (rpm);

(2) The maximum allowable gas temperature; and

(3) The maximum allowable oil temperature.

(d) Fuel designation. The fuel designation(s) must be established so that it is not less than that required for the operation of the engines within the limitations in paragraphs (b) and (c) of this section.

(e) Ambient temperature. Ambient temperature limitations must be established as the maximum ambient atmospheric temperature at which compliance with the cooling provisions of 23.1041 through 23.1045 is shown.

SC23.1523 Minimum Flight Crew

The minimum flight crew must be established so that it is sufficient for safe operation considering—

(a) The workload on individual crew members;

(b) The accessibility and ease of operation of necessary controls by the appropriate crew member; and

(c) The kinds of operation authorized under SC23.1525.

SC23.1525 Kinds of Operation

The kinds of operation (such as VFR, IFR, day or night) and the meteorological conditions (such as icing) to which the operation of the airplane is limited or from which it is prohibited, must be established appropriate to the installed equipment.

SC23.1527 Maximum Operating Altitude

(a) The maximum altitude up to which operation is allowed, as limited by flight, structural, powerplant, functional, or equipment characteristics, must be established.

(b) A maximum operating altitude limitation of not more than 25,000 feet must be established for pressurized airplanes, unless compliance with § 23.775(e) is shown.

SC23.1529 Instructions for Continued Airworthiness

The applicant must prepare Instructions for Continued Airworthiness in accordance with Appendix G that are acceptable to the FAA. The instructions may be incomplete at type certification if a program exists to ensure their completion prior to the delivery of the first airplane.

Markings and Placards

SC23.1541 General

(a) The airplane must contain—

(1) The markings and placards specified in §§ SC23.1545 through SC23.1567; and

(2) Any additional information, instrument markings and placards required for the safe operation if it has unusual design, operating, or handling characteristics.

(b) Each marking and placard prescribed in paragraph (a) of this section—

(1) Must be displayed in a conspicuous place; and

(2) May not be easily erased, disfigured or obscured.

SC23.1543 Instrument Markings: General

For each instrument—

(a) When markings are on the cover glass of the instrument, there must be means to maintain the correct alignment of the glass cover with the face of the dial;

(b) Each arc and line must be wide enough and located to be clearly visible to the pilot; and

(c) All related instruments must be calibrated in compatible units.

SC23.1545 Airspeed Indicator

Each airspeed indicator must be marked as follows—

(a) For the flap operating range, a white arc with the lower limit at V_{SO} at the maximum weight and the upper limit at the flaps extended speed V_{FE} established under SC23.1511.

(b) A maximum allowable airspeed indication showing the variation of V_{MO}/M_{MO} with altitude or compressibility limitations (as appropriate), or a radial red line marking for V_{MO}/M_{MO} must be made at the lowest value of V_{MO}/M_{MO} established for any altitude up the maximum operating altitude for the airplane.

SC23.1547 Magnetic Direction Indicator

(a) A placard meeting the requirements of this section must be installed on or near the magnetic direction indicator.

(b) The placard must show the calibration of the instrument in level flight with the engines operating.

(c) The placard must state whether the calibration was made with radio receivers on or off.

(d) Each calibration reading must be in terms of magnetic headings in not more than 30 degree increments.

(e) If a magnetic non-stabilized direction indicator can have a deviation of more than 10 degrees caused by the operation of electrical equipment, the placard must state which electrical loads, or combination of loads, would cause a deviation of more than 10 degrees when turned on.

SC23.1549 Powerplant Instruments

For each required powerplant instrument, as appropriate to the type of instruments—

(a) Each maximum and if applicable, minimum safe operating limit must be marked with a red radial or a red line;

(b) Each normal operating range must be marked with a green arc or green line not extending beyond the maximum and minimum safe limits;

(c) Each takeoff and precautionary range must be marked with a yellow arc or a yellow line; and

(d) Each engine range that is restricted because of excessive vibration stresses must be marked with red arcs or red lines.

SC23.1551 Oil Quantity Indicator

Each oil quantity indicator must be marked in sufficient increments to indicate readily and accurately the quantity of oil.

SC23.1553 Fuel Quantity Indicator

A red radial line must be marked on each indicator at the calibrated zero reading, as specified in 23.1337(b)(1).

SC23.1555 Control Markings

(a) Each cockpit control, other than primary flight controls and simple push-button type starter switches, must be plainly marked as to its function and method of operation.

(b) Each secondary control must be suitably marked.

(c) For powerplant fuel controls—

(1) Each fuel tank selector control must be marked to indicate the position corresponding to each tank and to each existing crossfeed position;

(2) If safe operation requires the use of any tanks in a specific sequence, that sequence must be marked on or near the selector for those tanks;

(3) The conditions under which the full amount of usable fuel in any restricted usage fuel tank can safely be used must be stated on a placard adjacent to the selector valve for the tank; and

(4) Each valve control must be marked to indicate the position corresponding to each engine controlled.

(d) Usable fuel capacity must be marked as follows—

(1) The usable fuel capacity available at each selector control position must be indicated near the selector control.

(e) For accessory, auxiliary and emergency controls—

(1) The landing gear indicator required by 23.729 must be marked so that the pilot can, at any time, ascertain that the wheels are secured in the extreme positions; and

(2) Each emergency control must be red and must be marked as to method of operation. No control other than an emergency control shall be this color.

SC23.1557 Miscellaneous Markings and Placards

(a) Baggage and cargo compartments and ballast location. Each baggage and cargo compartment, and each ballast location, must have a placard stating any limitations on contents, including weight, that are necessary under the loading requirements.

(b) Fuel and oil filler openings. The following apply—

(1) Fuel filler openings must be marked at or near the filler cover with—

(i) The words "Jet Fuel"; and

(ii) The permissible fuel designations, or references to the Airplane Flight Manual (AFM) for permissible fuel designations.

(iii) For pressure fueling systems, the maximum permissible fueling supply pressure and the maximum permissible defueling pressure.

(2) Oil filler openings must be marked at or near the filler cover with—

(i) The word "Oil"; and

(ii) The permissible oil designation, or references to the Airplane Flight Manual (AFM) for permissible oil designations.

(c) Emergency exit placards. Each placard and operating control for each emergency exit must be red. A placard must be near each emergency exit control and must clearly indicate the location of that exit and its method of operation.

(d) The system voltage of each direct current installation must be clearly marked adjacent to its external power connection.

SC23.1559 Operating Limitations Placard

(a) There must be a placard in clear view of the pilot stating—

(1) That the airplane must be operated in accordance with the approved Flight Manual; and

(2) The certificated category to which the placards apply.

(b) There must be a placard in clear view of the pilot that specifies the kind of operations to which the operation of the airplane is limited or from which it is prohibited under SC23.1525.

SC23.1561 Safety Equipment

(a) Safety equipment must be plainly marked as to method of operation.

(b) Stowage provisions for required safety equipment must be marked for the benefit of occupants.

SC23.1563 Airspeed Placards

There must be an airspeed placard in clear view of the pilot and as close as practicable to the airspeed indicator. This placard must list—

(a) The design maneuvering speed, V_O; and

(b) The maximum landing gear operating speed V_{LO};

(c) The maximum value of the minimum control speed V_{MC} (one-engine inoperative) determined under SC23.149 (b) and (c).

SC23.1567 Flight Maneuver Placard

There must be a placard in clear view of the pilot—

(a) Listing the control actions for recovery from spinning maneuvers; and

(b) Stating that recovery must be initiated when spiral characteristics appear, or after not more than six turns or not more than any greater number of turns for which the airplane has been certificated.

Airplane Flight Manual

SC23.1581 General

(a) An FAA-Approved Airplane Flight Manual must be furnished with each airplane and it must contain the following—

(1) Information required by SC23.1583 through SC23.1589.

(2) Other information that is necessary for safe operation because of design, operating or handling characteristics.

(3) Further information necessary to comply with the relevant operating rules.

(b) Each part of the Airplane Flight Manual containing information prescribed in SC23.1583 through SC23.1589 must be approved, segregated, identified and clearly distinguished from each unapproved part of the Airplane Flight Manual.

(c) The units used in the Airplane Flight Manual must be the same as those marked on the appropriate instruments and placards.

(d) All Airplane Flight Manual operational airspeeds must, unless otherwise stated, be presented as indicated airspeeds.

(e) Provisions must be made for stowing the Airplane Flight Manual in a suitable fixed container which is readily accessible to the pilot.

(f) Each Airplane Flight Manual must contain a means for recording the incorporation of revisions and/or amendments.

SC23.1583 Operating Limitations

The Airplane Flight Manual must contain operating limitations determined under the applicable regulations, including the following—

(a) Airspeed limitations.

(1) Information necessary for the marking of the airspeed limits on the indicator as required in SC23.1545, and the significance of each of those limits and of the color coding used on the indicator.

(2) The speeds V_{MC}, V_O, V_{LE}, and V_{LO} and their significance.

(b) Powerplant limitations.

(1) Limitations required by SC23.1521.

(2) Explanation of the limitations marking the instruments required by SC23.1549 through SC23.1553.

(c) Weight.

(1) The maximum weight; and

(2) The maximum landing weight, if the design landing weight selected by the applicant is less than the maximum weight.

(3) The maximum takeoff weight for each airport altitude and ambient temperature within the range selected by the applicant not exceeding the weight at which the airplane complies with the climb requirements of SC23.63.

(4) The maximum landing weight for each airport altitude and ambient temperature within the range selected by the applicant not exceeding the weight at which the airplane complies with the climb requirements of SC23.63(b)(2).

(5) The maximum zero fuel weight, where relevant.

(d) Center of gravity. The established center of gravity limits.

(e) Maneuvers. The following authorized maneuvers, appropriate airspeed limitations, and unauthorized maneuvers, as prescribed in this section.

(1) A list of approved acrobatic flight maneuvers demonstrated in the type flight tests, together with recommended entry speeds and any other associated limitations.

(2) Spin recovery procedure established to show compliance with SC23.151(d).

(f) Maneuve load factor. The positive and negative limit load factors in g's.

(g) Minimum flight crew. The number and functions of the minimum flight crew determined under SC23.1523.

(h) Kinds of operation. A list of the kinds of operation to which the airplane is limited or from which it is prohibited under SC23.1525, and also a list of installed equipment that affects any operating limitation and identification as to the equipment's required operational status for the kinds of operation for which approval has been granted.

(i) Maximum operating altitude. The maximum altitude established under SC23.1527.

(j) Allowable lateral fuel loading. The maximum allowable lateral fuel loading differential, if less than the maximum possible.

(k) Baggage and cargo loading. The following information for each baggage and cargo compartment or zone—

(1) The maximum allowable load; and

(2) The maximum intensity of loading.

(l) Systems. Any limitations on the use of airplane systems and equipment.

(m) Ambient temperatures. Where appropriate, maximum and minimum ambient air temperatures for operation.

(n) Smoking. Any restrictions on smoking in the airplane.

(o) Types of surface. A statement of the types of surface on which operations may be conducted must be provided.

SC23.1585 Operating Procedures

Information concerning normal, abnormal (if applicable) and emergency procedures and other pertinent information necessary for safe operation and the achievement of the scheduled performance, must be furnished, including—

(a) An explanation of significant or unusual flight or ground handling characteristics.

(b) The maximum demonstrated values of crosswind for take-off and landing and procedures and information pertinent to operations in crosswinds.

(c) Procedures, speeds and configuration(s) for making a normal takeoff in accordance with SC23.51 and SC23.53 and the subsequent climb in accordance with SC23.65 and SC23.69.

(d) Procedures for abandoning a takeoff due to engine failure or other cause.

(e) A recommended speed for flight in rough air. This speed must be chosen to protect against the occurrence, as a result of gusts, of structural damage to the airplane and loss of control (e.g. stalling).

(f) Procedures, speeds and configuration(s) for making a normal approach and landing in accordance with SC23.73 and SC23.75 and a transition to the balked landing condition.

(g) Procedures for restarting any engine in flight, including the effects of altitude.

(h) Procedures and speeds for continuing a take-off following engine failure and the conditions under which takeoff can safely be continued, or a warning against attempting to continue the takeoff.

(i) Procedures, speeds and configurations for continuing a climb following engine failure, after take-off in accordance with SC23.67 and en route in accordance with SC23.69.

(j) Procedures, speeds and configuration(s) for making an approach and landing with one engine inoperative.

(k) Procedures, speeds and configuration(s) for making a balked landing with one engine inoperative and the conditions under which a balked landing can safely be performed or a warning against attempting a balked landing.

(l) The V_{SSE} determined in SC23.149.

(m) Information identifying each operating condition in which the fuel system independence prescribed in § 23.953 is necessary for safety must be furnished, together with instructions for placing the fuel system in a configuration used to show compliance with that section.

(n) For each airplane showing compliance with 23.1353(g)(2) or (g)(3), the operating procedures for disconnecting the battery from its charging source must be furnished.

(o) Information on the total quantity of usable fuel for each fuel tank and the effect on the unusable fuel quantity as a result of a failure of any pump, must be furnished.

(p) Procedures for the safe operation of the airplane's systems and equipment, both in normal use and in the event of malfunction, must be furnished.

SC23.1587 Performance Information

Unless otherwise prescribed, the following information must be furnished over the altitude and temperature ranges required by SC23.45(b)—

(a) The stalling speeds V_{s0}, and V_{s1} with the landing gear and wing flaps retracted, determined at maximum weight under SC23.49 and the effect on

these stalling speeds of angles of bank up to 60 degrees.

(b) The takeoff distance, determined under SC23.53 and the type of runway surface for which it is valid.

(c) The steady rate and gradient of climb with all engines operating, determined under SC23.69(a).

(d) The landing distance, determined under SC23.75 and the type of runway surface for which it is valid.

(e) The effect on takeoff and landing distances of operation on other than smooth hard surfaces, when dry, determined under SC23.45(g).

(f) The effect on takeoff and landing distances of runway slope and 50 percent of the headwind component and 150 percent of the tailwind component.

(g) The steady rate and gradient of climb/descent with one engine inoperative, determined under SC23.69(b).

(h) The steady gradient of climb/descent, determined under SC23.66.

SC23.1589 Loading Information

The following loading information must be furnished—

(a) The weight and location of each item of equipment that can easily be removed, relocated, or replaced and that is installed when the airplane was weighed under SC23.25.

(b) Appropriate loading instructions for each possible loading condition between the maximum and minimum weights established under SC23.25, to facilitate the center of gravity remaining within the limits established under SC23.23.

5. Effects of Contamination of Natural Laminar Flow Airfoils

In the absence of specific requirements for airfoil contamination, airplane airfoil designs that have airfoil pressure gradient characteristics and smooth aerodynamic surfaces that may be capable of supporting natural laminar flow must comply with the following:

(a) It must be shown by tests, or analysis supported by tests, that the airplane complies with the requirements of SC23.141 through SC23.253 and special condition 4 with any airfoil contamination that would normally be encountered in service and that would cause significant adverse effect on the handling qualities of the airplanes resulting from the loss of laminar flow.

(b) Significant performance degradations identified as resulting from the loss of laminar flow must be provided as part of the information required by special condition 4.

Issued in Kansas City, Missouri on September 13, 1993.

John Tigue,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–24954 Filed 10–8–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 91–CE–87–AD]

Airworthiness Directives: de Havilland DHC–6 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede Airworthiness Directive (AD) 80–13–11 R2, which currently requires repetitively inspecting the elevator, flap, aileron, and rudder control rods for cracks on certain de Havilland DHC–6 series airplanes, replacing any cracked rod, and installing rod sleeves. The Federal Aviation Administration's policy on aging commuter-class aircraft is to eliminate or, in certain instances, reduce the number of repetitions of certain short-interval inspections when improved parts or modifications are available. The proposed action would require the incorporation of a modification that would reduce the need for the number of repetitions of the inspections currently required by AD 80–13–11 R2. The actions specified in the proposed AD are intended to prevent cracking of these control rods, which could result in loss of control of the airplane.

DATES: Comments must be received on or before December 17, 1993.

ADDRESSES: Submit comments on the proposal in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–CE–87–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from de Havilland, Inc., 123 Garratt Boulevard, Downsview, Ontario, Canada, M3K 1Y5. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Jon Hjelm, Aerospace Engineer, FAA, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581; Telephone (516) 791–6220.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 91–CE–87–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–CE–87–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has determined that reliance on critical repetitive inspections on aging commuter-class airplanes carries an unnecessary safety risk when a design change exists that could eliminate or, in certain instances, reduce the number of repetitions of those critical inspections. In determining what inspections are critical, the FAA considers (1) the safety consequences of the airplane if the known problem is not detected by the inspection; (2) the reliability of the inspection such as the probability of not detecting the known problem; (3) whether the inspection area is difficult to access; and (4) the possibility of damage to an adjacent structure as a result of the problem.

These factors have led the FAA to establish an aging commuter-class aircraft policy that requires incorporating a known design change when it could replace or, in certain instances, reduce the number of repetitions of a critical inspection. With this policy in mind, the FAA recently conducted a review of existing AD's that apply to de Havilland DHC–6 series airplanes. Assisting the FAA in this review were (1) Transport Canada, which is the airworthiness authority for Canada; (2) de Havilland, Inc.; (3) the Regional Airlines Association (RAA); and (4) several U.S. and foreign operators of the affected airplanes.

From this review, the FAA has identified AD 80–13–11 R2, Amendment 39–4703, as one that should be superseded with a new AD that would require a modification and reduction of the number of repetitions of the short-interval and critical inspections. AD 80–13–11 R2 currently requires repetitively inspecting the elevator, flap, aileron, and rudder control rods for cracks on certain de Havilland DHC–6 series airplanes, replacing any cracked rod, and installing rod sleeves. These actions are required to be accomplished in accordance with de Havilland Service Bulletin (SB) No. 6/390, Revision A, dated June 9, 1980.

De Havilland has issued SB No. 6/502, dated March 24, 1989, which specifies procedures for replacing elevator, flap, aileron, and rudder control rods and elevator trim and elevator/flap interconnect control rods on certain de Havilland DHC–6 series airplanes. In addition, de Havilland has revised SB 6/390 to the Revision E level, which clarifies the inspection procedures of these control rods on the affected airplanes.

As a result of the previously discussed AD review, Transport Canada considers the modification referenced in de Havilland SB No. 6/502, dated March 24, 1989, as mandatory and has issued Transport Canada AD CF–80–03R2, dated October 18, 1991, in order to assure the continued airworthiness of these airplanes in Canada.

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada has kept the FAA informed of the situation described above.

Based on its aging commuter-class aircraft policy and after reviewing all available information including that received from Transport Canada, the FAA has determined that AD action should be taken to reduce the number of repetitions of the short-interval and critical inspections required by AD 80–13–11 R2 and to prevent failure of the elevator, flap, aileron, and rudder control rods caused by cracking, which could result in loss of control of the airplane.

Since an unsafe condition has been identified that is likely to exist or develop in other de Havilland DHC- 6 series airplanes of the same type design, the proposed AD would supersede AD 80–13–11 R2 with a new AD that would (1) require replacing elevator, flap, aileron, and rudder control rods and elevator trim and elevator flap/interconnect control rods with improved parts; and (2) retain the aileron control rod inspections currently required by AD 80–13–11 R2, but reduce the number of repetitions of these inspections. The proposed replacement would be accomplished in accordance with de Havilland SB No. 6/502, dated March 24, 1989; and the proposed inspections would be accomplished in accordance with de Havilland SB No. 6/390, Revision E, dated December 20, 1991.

The FAA estimates that 169 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 20 workhours (4 workhours/ inspection and 16 workhours/replacement) per airplane to accomplish the proposed action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $15,600 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $2,822,300.

AD 80–13–11 R2, which would be superseded by the proposed action, currently requires inspecting these control rod assemblies for cracks at intervals of 800 hours time-in-service (TIS), but requires removing the rod assemblies, inspecting with a 10-power glass, and then reinstalling the assemblies. These inspections take approximately 32 workhours at an average cost of $55 per hour; approximately $1,760 per airplane or $297,440 for the entire fleet. The inspection procedures of the proposed AD would be less costly and less frequent than those required by AD 80–13–11 R2.

With the above figures in mind including the costs for the modification proposed by this action, the proposed AD would cost an additional $14,940 per airplane over that already required by AD 80–13–11 R2, or a total additional fleet cost of $2,524,860. These figures do not account for the recurring costs through the repetitive inspection requirement of AD 80–13–11 R2 and the proposed AD. The proposed AD would only require repetitive inspections every 2,400 hours TIS after the control rod assembly is replaced, where AD 80–13–11 R2 currently requires repetitive inspections every 800 hours TIS.

The intent of the FAA's aging commuter airplane program is to ensure safe operation of commuter-class airplanes that are in commercial service without adversely impacting private operators. Of the approximately 169 airplanes in the U.S. registry that would be affected by the proposed AD, the FAA has determined that approximately 50 percent are operated in scheduled passenger service by 14 different operators. A significant number of the remaining 50 percent are operated in other forms of air transportation such as air cargo and air taxi.

The proposed AD allows 500 hours time-in-service (TIS) before mandatory accomplishment of the design modification. The average utilization of the fleet for those airplanes in commercial commuter service is approximately 25 to 50 hours TIS per week. Based on these figures, operators of commuter-class airplanes involved in commercial operation would have to accomplish the proposed modification within 2 to 5 calendar months after the proposed AD would become effective. Based on these scheduled operation figures, repetitive inspections for the proposed AD for operators who had accomplished the modification would be required approximately every 1 to 2 calendar years. For private owners, who typically operate between 100 to 200 hours TIS per year, this would allow 2 to 5 calendar years before the proposed modification would be mandatory. Based on these nonscheduled operation figures, repetitive inspections for the proposed AD for operators who had accomplished the modification would be required approximately every 12 to 24 calendar years.

The incremental costs of the proposed AD would depend on the remaining service life of a DHC–6 and its utilization, i.e., the number of hours TIS per year. The proposed AD would provide a cost savings over that already required to most owner/operators of de Havilland DHC–6 airplanes. The following examines the incremental costs to owners of de Havilland DHC–6 series airplanes with remaining service lives of 10, 20, and 30 years if the airplanes are utilized between 100 and 2,500 hours TIS annually.

The proposed AD would provide a cost savings at a service life of 10 years for operators utilizing their airplanes less than 135 hours TIS or more than 1,000 hours TIS annually, and would provide a cost savings at service lives of 20 and 30 years for all de Havilland DHC–6 series airplanes, regardless of airplane usage. The savings resulting from the less frequent inspections more than offset the costs of replacing the control rods. The cost savings would be at least $2,800 at an average 20-year remaining service life and utilizing a 7 percent interest rate. For a 30-year remaining service life, the operator should realize a cost savings of at least $6,000 (with a 7 percent interest rate).

De Havilland DHC–6 series airplanes that are utilized between 135 and 1,000 hours TIS annually may not see a cost savings when replacing the control rods based upon a 10-year remaining service life. Before issuing this notice of proposed rulemaking, the FAA took into account that the costs of replacing the rods could be greater than the savings from the inspections required by the proposed AD for these airplanes utilizing their airplanes within this range.

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily or disproportionally burdened by government regulations. The RFA requires government agencies to determine whether rules would have a "significant economic impact on a substantial number of small entities," and, in cases where they would, conduct a Regulatory Flexibility Analysis in which alternatives to the rule are considered. FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, outlines FAA procedures and criteria for complying with the RFA. Small entities are defined as small businesses and small not-for-profit organizations that are independently owned and operated or airports operated by small governmental jurisdictions. A "substantial number" is defined as a number that is not less than 11 and that is more than one-third of the small entities subject to the proposed rule, or any number of small entities subject to the rule which is substantial in the judgment of the rulemaking official. A "significant economic impact" is defined as an annualized net compliance cost, adjusted for inflation, which is greater than a threshold cost level for defined entity types. FAA Order 2100.14A sets the size threshold for small entities operating aircraft for hire at 9 aircraft owned and annualized cost threshold at $65,300 for scheduled operators and $4,600 for unscheduled operators (expressed in second quarter 1993 dollars).

The 169 U.S.-registered airplanes affected by the proposed AD are owned according to the following breakdown: 13 by individuals, 8 by U.S. government agencies, and 148 by businesses or not-for-profit enterprises. Of the 148 entities, one owns 26 airplanes, one owns 11 airplanes, nineteen own between 2 and 9 airplanes, and fifty own 1 airplane each.

The FAA cannot determine the sizes of all the 148 owner entities nor the relative significance of the costs or cost savings estimated above. However, more than one-third of these entities operate their de Havilland DHC–6 series airplanes in scheduled service. According to statistics obtained by the FAA, these airplane operators in scheduled service utilize their airplanes an average of 1,383 hours TIS annually, and general aviation operators utilize their airplanes an average of 706 hours TIS annually. These figures may have a standard of error of 14.4 percent and the general aviation average may include some airplanes in commuter service. The FAA cannot reasonably estimate the distribution of these hours among the de Havilland DHC–6 fleet.

Because of these uncertainties, no cost thresholds for significant economic impact can be reasonably determined. The FAA solicits comments concerning the impact of this proposed AD on small entity owners of affected airplanes. Based on the possibility that this proposed AD could have a significant impact on a substantial number of small entities, the FAA conducted a regulatory flexibility analysis. A copy of this analysis may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is significant under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979) because of substantial public interest; and, (3) if promulgated, may have a significant economic impact on a substantial number of small entities. The FAA has conducted an Initial Regulatory Flexibility Determination and Analysis and has considered alternatives to this proposal that could minimize the impact on small entities. A copy of this analysis may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES". After careful consideration, the FAA has determined that the proposed action is the best course to achieve the safety objective of returning the airplane to its original certification level of safety. Alternative actions and views are solicited from interested persons and will be considered by the FAA in the development of the final rule.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

39.13 [Amended]

2. Section 39.13 is amended by removing AD 80–13–11 R2, Amendment 39–4703, and by adding the following new AD:

de Havilland: Docket No. 91–CE–87–AD. Supersedes AD 80–13–11 R2, Amendment 39–4703.

Applicability: Models DHC–6–1, DHC–6–100, DHC–6–200, and DHC–6–300 airplanes (all serial numbers), certificated in any category.

Compliance: Required as indicated, unless already accomplished.

To prevent loss of control of the airplane caused by cracked elevator, flap, aileron, and rudder control rods, accomplish the following:

(a) Within the next 500 hours time-in-service (TIS) after the effective date of this AD, replace all 2024–T3 or 2024–T81 elevator, flap, aileron, and rudder control rods and elevator trim and elevator/flap interconnect control rods with 6061–T6 control rods as specified in and in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of de Havilland Service Bulletin (SB) No. 6/502, dated March 24, 1989.

Note 1: The specific part numbers of the 2024–T3 or 2024–T81 control and

interconnect control rods and their 6061–T6 replacement part numbers are contained in de Havilland SB No. 6/502, dated March 24, 1989.

(b) Within 2,400 hours TIS after the replacement required by paragraph (a) of this AD, and thereafter at intervals not to exceed 2,400 hours TIS, inspect all elevator, flap, aileron, and rudder control rods and elevator trim and elevator/flap interconnect control rods for cracks in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of de Havilland SB No. 6/390, Revision E, dated December 20, 1991. Prior to further flight, replace any cracked rod with a new 6061–T6 rod as specified in and in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of de Havilland SB No. 6/502, dated March 24, 1989.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, New York Aircraft Certification Office, 181 Franklin Avenue, room 202, Valley Stream, New York 11581. The request shall be forwarded through an FAA Maintenance Inspector, who may add comments and then send it to the Manager, New York Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York Aircraft Certification Office.

(e) All persons affected by this directive may obtain copies of the documents referred to herein upon request to de Havilland, Inc., 123 Garratt Boulevard, Downsview, Ontario, Canada, M3K 1Y5; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(f) This amendment supersedes AD 80–13–11 R2, Amendment 39–4703.

Issued in Kansas City, Missouri, on October 5, 1993.

John E. Tigue,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–24916 Filed 10–8–93; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 93–NM–112–AD]

Airworthiness Directives; McDonnell Douglas Model DC–10 Series Airplanes and Model KC–10A (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to all McDonnell Douglas Model DC–10 series airplanes and Model KC–10A (military) airplanes, that currently requires certain structural modifications and inspections. This action would require additional structural modifications and inspections. This proposal is prompted by an evaluation by the Model DC–10 Task Group, which identified additional modifications for mandatory action. The actions specified by the proposed AD are intended to prevent degradation in the structural capabilities of the affected airplanes. This action also reflects the FAA's decision that long term continued operational safety should be assured by actual modification of the airframe, where feasible, rather than only repetitive inspections for known service problems.

DATES: Comments must be received by December 7, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–112–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801–1771, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1–L5B. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Maureen Moreland, Aerospace Engineer, Airframe Branch, ANM–121L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5238; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–112–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–112–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On June 4, 1990, the FAA issued AD 90–16–04, Amendment 39–6613 (55 FR 31816, August 6, 1990), to require certain structural modifications and inspections of McDonnell Douglas Model DC–10 series airplanes and Model KC–10A (military) airplanes. That action was prompted by reports of incidents involving fatigue cracking and corrosion in transport category airplanes that are approaching or have exceeded their economic design goal. These incidents have jeopardized the airworthiness of the affected airplanes. The requirements of that AD are intended to prevent degradation in the structural capabilities of the affected airplanes.

Since the issuance of that AD, the McDonnell Douglas DC–10/KC–10A Model Task Group, comprised of representatives from Model DC–10/KC–10A operators, the manufacturer, and the FAA, has completed its review of certain revised service bulletins that are applicable to aging Model DC–10 series airplanes and Model KC–10A (military) airplanes. The Task Group has recommended these service bulletin revisions for mandatory modification and inspection in order to reduce the

potential for major structural failure of those airplanes.

Consequently, McDonnell Douglas has issued Revision B to Report No. MDC K1571, "DC–10/KC–10 Aging Aircraft Service Action Requirements Document," dated March 24, 1993, which reflects the Working Group's proposal and incorporates the revised service bulletins discussed previously. The FAA has reviewed and approved that document. The document references the following service bulletins:

1. Two service bulletins that describe modifications of the power plant;
2. Six service bulletins that describe inspections and modifications of the wings;
3. Two service bulletins that describe inspections and modifications of the horizontal stabilizer;
4. Ten service bulletins that describe inspections and modifications of the nacelles/pylons;
5. Nine service bulletins that describe inspections and modifications of the fuselage;
6. Two service bulletins that describe inspections and modifications of the landing gear; and
7. Two service bulletins that describe ice and rain protection inspections and modifications.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 90–16–04 to require additional structural modifications and inspections. The actions would be required to be accomplished in accordance with the McDonnell Douglas document described previously.

There are approximately 426 Model DC–10 series airplanes and Model KC–10A (military) airplanes of the affected design in the worldwide fleet.

The FAA estimates that 194 airplanes of U.S. registry were originally affected by AD 90–16–04. The requirements of that AD were estimated to take approximately 360 work hours to accomplish, at a current average labor rate of $55 per work hour. The cost for required modification kits was estimated to be $9,600 per airplane. Based on these figures, the FAA estimated that the total cost impact of AD 90–16–04 on U.S. operators would be $5,703,600, or $29,400 per airplane, over the initial 4-year time period. (These figures do not include the cost of downtime, planning, set-up, familiarization, or tool acquisition.)

The FAA estimates that a total of 269 airplanes of U.S. registry would be affected by the new requirements specified in this proposed AD. This increase in the number of affected airplanes is due to various reasons, including transfer of ownership and the fact that additional airplanes have accumulated time-in-service since the issuance of AD 90–16–04 and have now reached the threshold for modification/inspection. The new additional requirements proposed by this AD action would take approximately 796 additional work hours per airplane to accomplish, at an average labor rate of $55 per work hour. Required parts would cost an additional $101,900 per airplane. Based on these figures, the total additional cost impact of this proposed AD on U.S. operators is estimated to be $39,187,920, or $145,680 per airplane, over a 4-year time period. (These figures do not include the cost of downtime, planning, set-up, familiarization, and tool acquisition).

The figures discussed above assume that no operator has yet accomplished the currently required or the newly proposed requirements of this AD action; however, the FAA has been advised that many of the affected airplanes have previously accomplished various modifications that would be required by this AD.

Additional airplanes will be affected as they accumulate time-in-service and reach the threshold for modification/inspection.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–6613 (55 FR 31816, August 6, 1990), and by adding a new airworthiness directive (AD), to read as follows:

McDonnell Douglas: Docket 93–NM–112–AD. Supersedes AD 90–16–04, Amendment 39–6613.

Applicability: All Model DC–10–10, –10F, –15, –30, –30F, –40, and –40F series airplanes and Model KC–10A (military) airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

Note 1: Paragraphs (a) and (c) of this AD restate the requirements for an initial inspection and the repetitive inspections contained in paragraphs A. and C. of AD 90–16–04. Therefore, for operators who have previously accomplished at least the initial inspection in accordance with AD 90–16–04, paragraphs (a) and (c) of this AD require that the next scheduled inspection be performed within the specified repetitive inspection interval after the last inspection performed in accordance with paragraphs A. and C. of AD 90–16–04.

Note 2: Paragraphs (b) and (d) of this AD restate the modification requirements of paragraphs B. and D. of AD 90–16–04. As allowed by the phrase, "unless accomplished previously," if the requirements of paragraphs B. and D. of AD 90–16–04 have been accomplished previously, paragraphs (b) and (d) of this AD do not require that they be repeated.

To prevent structural failure, accomplish the following:

(a) For service bulletins other than those identified in paragraph (c) of this AD, within the threshold for inspections specified in the service bulletins listed in Table 2.1 of McDonnell Douglas Report No. MDC–K1571, "DC–10/KC–10 Aging Aircraft Service Action Requirements Document," Revision A, dated February 28, 1990 (hereafter referred to as the "SARD, Revision A"), or Revision B, dated March 24, 1993 (hereafter referred to as the "SARD, Revision B"), or within one repetitive inspection period specified in

those service bulletins after September 10, 1990 (the effective date of AD 90–16–04, Amendment 39–6613), whichever occurs later, inspect for cracks in accordance with those service bulletins. Repeat these inspections thereafter at the intervals specified in the service bulletins listed in Table 2.1 of the SARD, Revision A or Revision B.

(1) If any crack is found as a result of any inspection, prior to further flight, either accomplish the terminating modification in accordance with the applicable service bulletin, or repair in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note 3: Detection of any discrepancies other than cracking necessitates appropriate corrective action in accordance with the provisions of Part 43 of the Federal Aviation Regulations (FAR).

(2) Modification in accordance with paragraph (b) of this AD terminates the individual inspection requirements of the applicable service bulletin.

(b) For service bulletins other than those identified in paragraph (c) of this AD, prior to reaching the incorporation thresholds listed in the SARD, Revision A or Revision B, or prior to four years after September 10, 1990, whichever occurs later, accomplish the structural modifications specified in the service bulletins listed under "S/B No. Rev." in Table 2.1 of the SARD, Revision A or Revision B.

Note 4: The service bulletin revision levels listed under "Recommended Modification" in Table 2.1 of the SARD, Revision B, are acceptable revisions for modifications accomplished prior to September 10, 1990.

Note 5: The modifications required by this paragraph do not terminate the inspection requirements of any other AD unless that AD specifies that any such modification constitutes terminating action for the inspection requirements.

(c) For McDonnell Douglas Service Bulletins A30–37, 30–38, 53–16, 53–19, 53–25, 54–11, 54–27, 54–33, 55–2, and 57–7, listed in Table 2.1 of the SARD, Revision A; and for McDonnell Douglas Service Bulletins A30–37, 30–38, 53–16, 53–19, 53–25, 54–11, 54–27, 55–2, and 57–7, listed in Table 2.1 of the SARD, Revision B: Within the threshold for inspections listed under "S/B Change Required" in Table 2.1 of the SARD, Revision A or Revision B, or within one repetitive inspection period specified under "S/B Change Required" in Table 2.1 of the SARD, Revision A or Revision B, after September 10, 1990, whichever occurs later, inspect for cracks in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Repeat these inspections thereafter at the intervals specified under "S/B Change Required" in Table 2.1 of the SARD, Revision A or Revision B.

(1) If any crack is found during any inspection, prior to further flight, either accomplish the terminating modification in accordance with the applicable service bulletin, or repair in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(2) Modification in accordance with paragraph (d) of this AD terminates the individual inspection requirements of the applicable service bulletin.

(d) Prior to four years after September 10, 1990, accomplish the structural modifications stipulated in the service bulletins specified in paragraph (c) of this AD.

(e) Within the threshold for inspections specified in the service bulletins listed in Table 2.2 of the SARD, Revision B, or within one repetitive inspection period specified in those service bulletins after the effective date of this AD, whichever occurs later, inspect for cracks in accordance with those service bulletins. Repeat these inspections thereafter at the intervals specified in the service bulletins listed in Table 2.2 of the SARD, Revision B.

(1) If any crack is found during any inspection, prior to further flight, either accomplish the terminating modification in accordance with the applicable service bulletin, or repair in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(2) Modification in accordance with paragraph (f) of this AD terminates the individual inspection requirements of the applicable service bulletin.

(f) Prior to reaching the incorporation thresholds listed in the SARD, Revision B, or within four years after the effective date of this AD, whichever occurs later, accomplish the structural modifications specified in the service bulletins listed in Table 2.2 of the SARD, Revision B.

Note 6: The service bulletin revision levels listed under "Recommended Modification" in Table 2.2 of the SARD, Revision B, are acceptable revisions for modifications accomplished prior to the effective date of this AD.

Note 7: The modifications required by this paragraph do not terminate the inspection requirements of any other AD unless that AD specifies that any such modification constitutes terminating action for the inspection requirements.

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 8: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(h) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on October 5, 1993.

Suzanne Stevens,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–24918 Filed 10–8–93; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 5, 25, 170, 171, and 174

[Docket No. 92N–0181]

RIN 0905–AD86

Food Additives; Threshold of Regulation for Substances Used in Food-Contact Articles

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to establish a process for determining when the likelihood or extent of migration to food of a substance used in a food-contact article is so trivial as not to require regulation of the substance as a food additive. Under this process, information about the proposed use of a substance will undergo an abbreviated review by FDA, as opposed to the extensive review and formal issuance of a regulation normally required for food additives. In this document, FDA is proposing the criteria that it will use as part of this review in deciding whether to regulate the use of a substance as a food additive, as well as identifying the types of data that it will need to make this determination.

DATES: Written comments by December 13, 1993.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Edward J. Machuga, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9528.

SUPPLEMENTARY INFORMATION:

I. Background

In 1958, Congress amended the Federal Food, Drug, and Cosmetic Act (the act) to require premarket approval of food additives (sections 201(s), 402(a)(2)(C), and 409 (21 U.S.C. 321(s),

342(a)(2)(C); and 348)). A "food additive," as defined in section 201(s) of the act, is:

> * * * any substance the intended use of which results or may reasonably be expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food (including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food; * * *), if such substance is not generally recognized, among experts qualified by scientific training or experience to evaluate its safety, as having been adequately shown through scientific procedures * * * to be safe under the conditions of its intended use * * *.

Under section 409(a) of the act, the use of a food additive is deemed unsafe unless it either conforms to the terms of a regulation prescribing its use or to an exemption for investigational use. Consequently, the safety of the substance under its intended conditions of use must be demonstrated, and a food additive regulation issued, before the substance can be used in food. Petitions submitted to establish that a use of a food additive is safe ordinarily contain or reference data from toxicological studies that demonstrate to a reasonable certainty that there will be no harm resulting from the specific use of the subject additive. In this regard, petitions must include information that will enable FDA to estimate the dietary concentration resulting from the intended use of the substance. They also address the potential for an environmental impact resulting from the manufacture, use, and disposal of the proposed food additive.

A strict interpretation of the definition of "food additive" would make all substances that migrate, or may be expected to migrate, from food-contact materials into food subject to premarket approval as food additives. However, agency personnel, in response to inquiries from manufacturers of food-contact articles, have stated that certain specific uses of substances in food-contact materials did not require regulation under the food additive provisions. Based on these responses, food additive petitions have not been submitted for use of substances that were expected to result in very low levels of migration and that did not raise any safety concerns. However, this system has never been formalized.

In addition to submitting requests for exemptions from the food additive regulations for specific uses of specific substances, representatives of the food-packaging and food-processing industries have suggested that FDA establish a threshold of regulation policy for such substances. For example, the Society of Plastics Industries submitted a citizen petition (Docket No. 77–0122) requesting that FDA modify § 170.3(e) (21 CFR 170.3(e)), the regulation that defines "food additive," so that the use of a substance that does not result in detectable levels of migration into food-simulating solvents (using validated analytical methods sensitive to at least 50 parts per billion (ppb)) would be exempt from regulation as a food additive unless there was scientific evidence to indicate that the substance presents a significant risk of harm to human health. However, FDA has been reluctant to adopt these or any other proposals in the absence of data clearly showing that substances present in the daily diet at concentrations at or below the proposed threshold level would not pose safety concerns.

A Federal court also has addressed the issue of whether the use of a food-contact material involving insignificant migration into food can be exempted from the food additive regulations. In *Monsanto* v. *Kennedy*, 613 F. 2d 947 (D.C. Cir. 1979)), the Monsanto Co. contended that no migration of acrylonitrile copolymer resulted from the use of their beverage bottles that contained the substance, and that, therefore, the bottles did not have to be regulated as food additives. In its decision, the court stated that the Commissioner of Food and Drugs may determine that the level of migration into food of a particular substance is so negligible as to present no public health concerns and, in such cases, may decline to define the substance as a food additive even though it comes within the strictly literal terms of the statutory definition of a food additive (see 613 F. 2d at 955). The court also stated that the Commissioner has the discretion to decline to exercise this exemption authority (id. at 956).

The agency recognizes that, historically, a number of companies have made their own determination that a particular substance effectively does not migrate to food and thus is not a food additive under its conditions of use. They have marketed the products without recourse to the regulatory process. Nothing in the regulatory scheme presented in this proposed rule would prevent a company from making its own determination that a particular use of a substance does not meet the definition of a food additive. However, as always, the company makes such a determination at its own risk. If the agency learns of the use of a substance from, for example, a competitor and reaches a different conclusion than the company, the agency may take regulatory action against the substance as an unsafe food additive or against the company that makes the substance for introducing an adulterated food into interstate commerce. Therefore, in cases where it is not clear whether the use of a food-contact article would meet the food additive definition, FDA recommends that manufacturers seek a determination under the procedures that FDA is proposing to avoid the possibility of regulatory action.

II. Need for a Threshold of Regulation for Substances Used in Food-Contact Articles

The existing informal practice of determining by letter when a petition is needed for a particular use of a substance presents several problems. While agency personnel have been issuing these letters over the past three decades, the analytical methods used to detect migration into food from indirect food additives, such as packaging materials, have become capable of detecting and measuring much smaller quantities. As a result, many of the food-contact uses for which no migration into food was detectable using older analytical methodologies, may now be shown to result in measurable levels of migration. Therefore, the basis for some letters issued for use of a food-contact material showing "no detectable migration" may no longer be valid. This practice, however, provides no mechanism by which the informal opinions rendered by agency employees can be updated to reflect scientific developments.

A second problem with these opinion letters is that scientific laws of diffusion predict that any two substances that are in contact with one another will tend to diffuse into each other (Ref. 1). As a result, even if migration cannot be detected, it is still likely to be occurring at some level below the detection limit. Therefore, one could argue that all food-contact uses may reasonably be expected to result in migration of the food-contact material into food.

A third problem with the current practice is that because the criteria for data needed to evaluate such requests have never been published, the quality of the requests submitted to FDA for review varies considerably. In many cases, the original submission does not contain adequate data, and FDA has to request additional data to complete the review. As a result, many of these requests for informal opinions have to be reviewed several times. These multiple reviews compete for the resources necessary to review food additive petitions.

FDA believes that the regulation proposed in this document for determining when the likelihood/extent of migration of a substance from a food-contact article is so trivial as not to require regulation as a food additive offers the following advantages over the current practice:

1. It will establish a specific dietary concentration level as the threshold of regulation for substances used in food-contact articles. As a result, there will be a uniform standard for all determinations as opposed to a "no detectable migration" standard, which depends on the detection limits of analytical methods. Because the toxicological effect of a substance is directly related to its concentration in the diet, evaluation of the dietary concentration resulting from the use of a substance is more appropriate for assessing potential health risk than an evaluation that is limited either to the level of migration or to whether a migrating substance can be detected.

Under the proposed regulation, the fact that the use of a substance in a food-contact article may reasonably be expected to result in migration at levels below the analytical detection limit is not determinative. The substance will qualify for an exemption from regulation as a food additive if the estimated dietary concentration of the substance is below the level that is of regulatory concern. If the estimated dietary concentration is above the regulatory concern level, FDA will not grant an exemption from regulation as a food additive for the substance even though no migration into food has been detected.

2. A regulation outlining data requirements for determining when the use of a substance in a food-contact article will result in negligible dietary concentration will increase the likelihood that a submission will contain all the data needed for FDA's review. Because it will decrease the chance that a particular request will need to be reviewed more than once, in most cases a review under the proposed regulation will require fewer resources than a review under the current practice. In addition, the agency is confident that a decision under the proposed regulation will require significantly fewer resources than the review of a food additive petition and the issuance of a listing regulation.

The agency believes that the degree of effort expended in its review of the safety of a substance should be related to the likelihood that the use of the substance poses a potential health hazard (Ref. 2). The use of a substance that results in a high dietary concentration will have a higher likelihood of posing a potential health hazard than the use of the same substance (or one with similar toxic potency) that results in a lower dietary concentration. Therefore, the agency believes that its resources should be applied preferentially to those substances whose use results in high dietary concentrations. Subjecting the use of a substance that results in trivial dietary concentrations to an abbreviated review under the proposed regulation will be a more effective use of resources than subjecting it to the extensive review and the regulatory process normally required for food additives. The resultant savings in reviewer time will mean that reviewers will have more time to spend on food additive petitions for food ingredients and food-contact articles that do involve significant migration into food.

Moreover, because reviews made under proposed § 170.39 will require significantly fewer resources than petition reviews, decisions on whether a substance under its proposed conditions of use requires regulation as a food additive can be issued relatively quickly. As a result, substances used in food-contact articles that FDA exempts from regulation as food additives will be able to be marketed sooner than under current procedures.

3. Issuing a regulation establishing a threshold of the agency's regulatory concern will also decrease the likelihood that a requestor, unaware of a previous informal opinion letter, will submit a food additive petition or a request for exemption for the same type of food-contact application for which the agency has already issued an informal opinion letter. A list of the decisions on uses of substances exempted from the food additive regulations under this proposed regulation will be maintained by the agency and will be available at FDA's Dockets Management Branch.

For these reasons, FDA tentatively finds that it is appropriate to adopt a regulation that sets a specific dietary concentration level as the threshold of regulation for food-contact materials. Under this proposed regulation, the use of a noncarcinogenic substance that is shown, through data submitted to FDA, to result in a dietary concentration that does not exceed the threshold will be exempted by FDA from regulation as a food additive.

III. Selection of Criteria for the Proposed Threshold of Regulation

FDA believes that there are two basic types of cases in which the use of a substance in a food-contact article would qualify for an exemption from regulation as a food additive. The first type would involve the use of a substance in a food-contact article where the resulting dietary concentration of that substance is so negligible as to pose no public health concerns. The second type would involve a regulated direct food additive for use in a food-contact article where the resulting dietary concentration is negligibly small compared to the dietary concentration resulting from those uses in which it is added directly to food. The threshold of regulation that FDA is proposing to establish for each of these cases is described below.

A. Selection of a Specific Level of Dietary Concentration That Poses No Safety Concerns

In considering what level to set as the threshold of regulation, FDA reviewed a study by the Society of Plastics Industries that assessed the feasibility of establishing a threshold of regulation for substances used in food-contact articles (Ref. 3). The consensus view of the participants in this study was that a threshold of regulation of up to 1 ppb in the diet may be contemplated for indirect additives for which no toxicological data have been developed. However, FDA's consideration of this issue has led it to propose a somewhat lower level.

The dietary concentration chosen as the threshold of regulation must be low enough to ensure that the public health is protected, even in the event that a substance exempted from regulation as a food additive is later found to be a carcinogen. Known carcinogens and substances whose chemical structures provide reason to suspect that they may be carcinogens will be excluded from review under the proposed regulation (§ 170.39(a)(1)) because the use of carcinogens as food additives is prohibited by the Delaney Clause (section 409(c)(3)(A) of the act).

Because the likelihood of a substance posing a health hazard depends on its dietary concentration and on its toxic potency, the agency considered both of these factors in establishing a threshold of regulation level. Because of its belief that the degree of effort expended in its review of the safety of a substance should be related to the potential health risk, FDA has generally not required long-term toxicity testing for substances migrating into food at low levels. Thus, in selecting a threshold of regulation level, FDA initially considered short-term toxicity data.

Although many of the substances that will be reviewed under the proposed regulation will not have been the subject

of toxicological oral feeding studies, it is possible to predict the likely range of toxic potency for an unstudied compound based on an analysis of the toxic potencies of a large number of representative compounds. Analysis of the data on 18,000 acute oral feeding studies in rats and mice found that all of the acute toxic effects occurred above 1,000 ppb (Ref. 4). Because of the large number and wide variety of chemicals used in this analysis, it is representative of the substances used in the manufacture of food-contact articles. Therefore, this analysis can be used to predict the upper-bound dietary concentration at which an unstudied chemical (i.e., one that has not been the subject of toxicological feeding studies) is unlikely to cause acute toxic effects.

The agency also considered the toxic effects that result from chronic exposure to chemical substances. The results of 2-year chronic oral feeding studies on 220 compounds have shown that only 5 of the 220 chemicals exhibited toxic effects below 1,000 ppb. All 5 of the chemicals that were toxic at levels below 1,000 ppb were pesticides, compounds that would, based on their pesticidal activity, be expected to be more toxic than most substances (Ref. 5). However, even among these 5 pesticides, none exhibited toxic effects at dietary concentrations below 100 ppb.

Based on the results of these analyses, the agency believes that it is reasonable to expect that the noncarcinogenic toxic effects caused by the majority of unstudied compounds would be unlikely to occur below 1,000 ppb. To provide an adequate safety margin, however, the dietary concentration chosen as a level that presents no regulatory concern should be well below 1,000 ppb. Therefore, FDA is proposing in § 170.39(a)(2)(i) to establish a dietary concentration of 0.5 ppb as the threshold of regulation for substances used in food-contact articles. A 0.5 ppb threshold is 2,000 times lower than the dietary concentration at which the vast majority of studied compounds are likely to cause noncarcinogenic toxic effects and 200 times lower than the chronic exposure level at which potent pesticides induce toxic effects. FDA believes that these safety margins, which are larger than the 100 fold safety factor that is typically used in applying animal experimentation data to humans (21 CFR 170.22), support a conclusion that substances consumed in dietary concentrations at or below 0.5 ppb are not of regulatory concern. FDA considered the following additional factors in reaching its tentative decision to establish a 0.5 ppb dietary concentration level as the threshold of regulation:

(1) Because it is possible that a substance that has not been tested for carcinogenicity may later be found to be a carcinogen, FDA also has evaluated the likelihood of carcinogenic toxic effects associated with substances present in the diet at 0.5 ppb or less. FDA used potency data on a large number of known carcinogens to estimate the likely risk that could be expected if an unstudied compound were later found to be a carcinogen. These data were obtained from a carcinogenic potency data base, compiled by Gold et al. (Refs. 6 through 8), that included data on more than 3,500 long-term chronic animal studies of 975 chemicals. FDA restricted its analysis to the 477 animal carcinogens that were the subject of oral feeding studies showing a statistically significant increase in the incidence of animals with specific neoplasms ($p<0.01$) (Ref. 9).

FDA limited its analysis to oral feeding studies because the route of exposure to food additives is by ingestion. FDA further restricted its analysis to the 477 animal carcinogens that were the subject of oral feeding studies showing a statistically significant increase in the incidence of animals with specific neoplasms ($p<0.01$) to ensure that it considered only the most reliable studies. In those cases where multiple studies had been carried out on a specific chemical, the carcinogenic potency chosen represented the most sensitive species/sex/organ combination. Finally, in assessing the appropriate dietary concentration level to use as the threshold of regulation level, FDA has assumed that the distribution of carcinogenic potencies of the 477 chemicals studied is representative of all known and unknown carcinogens, and that it is very unlikely that an unstudied compound would both be a carcinogen and have an intrinsic carcinogenic potency far greater than the typical potency observed for the studied compounds.

Based on the range of potencies exhibited by these 477 animal carcinogens, FDA has determined that most known carcinogens pose less than one in a million lifetime risk if present in the daily diet at 0.5 ppb (Ref. 9). Therefore, FDA tentatively finds that establishing a 0.5 ppb dietary concentration level as the "threshold of regulation" for food-contact articles would result in negligible risk, even in the event that a substance that is exempted from regulation as a food additive were later shown to be a carcinogen.

(2) FDA also tentatively concludes that establishing a 0.5 ppb dietary concentration level as the threshold of regulation is appropriate because it corresponds to a migration level that is above the detection limit for many of the analytical methods used to quantify migrants from food-contact materials. Thus, decisions will usually be made based on dietary concentrations that result from measurable migration into food or food-simulating solvents rather than on worst-case estimates of dietary concentration based on the detection limits of the methods used in the analysis. For example, assuming a consumption factor[1] of 5 percent (the minimum value used by FDA in the absence of specific market volume data), a dietary concentration of 0.5 ppb corresponds to a migration level of 10 ppb. Although detection limits can vary considerably, the analytical methods used to detect migration of food-contact materials can seldom reliably quantify migrants below 1 to 2 ppb.

(3) FDA tentatively concludes that exempting from regulation as food additives those food-contact materials whose use results in dietary concentrations of 0.5 ppb or less is also consistent with the latitude given to FDA in the *Monsanto* v. *Kennedy* decision. The court ruled that in order for the "component" element of the food additive definition in section 201(s) of the act to be met, FDA would have to determine (with a fair degree of confidence) that a substance migrates into food in more than insignificant amounts. The court further stated that "* * * the Commissioner may determine, based on the evidence before him, that the level of migration into food of a particular substance is so negligible as to present no public health or safety concerns * * *." This authority derives from the administrative discretion, inherent in the statutory scheme, to deal appropriately with de minimis[2] situations.

Based on the study of the toxicological effects of a large number of chemicals that is discussed above, FDA tentatively concludes that the presence of a substance in the daily diet at or below 0.5 ppb is so negligible as to present no public health concerns. Therefore, FDA is proposing to adopt

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[1] The consumption factor for a food packaging material is that fraction of food in the diet that could be in contact with this material.

[2] This doctrine is expressed in Latin as de minimis non curat lex (the law does not concern itself with trifles).

this level as the threshold of regulation in § 170.39.

Known or suspected carcinogens would be excluded from review under the proposed regulation because the use of carcinogens as food additives is prohibited by the Delaney Clause (section 409(c)(3)(A) of the act). However, in *Scott* v. *FDA*, 728 F. 2d 322 (6th Cir. 1984), the court stated that a food additive that has not been shown to cause cancer, but that contains a carcinogenic impurity, may properly be evaluated under the general safety clause of the statute using risk assessment procedures to determine if there is reasonable certainty that no harm will result from the use of the substance.

FDA has used risk assessment procedures to determine under what conditions a substance containing a carcinogenic impurity could be used in a food-contact article and pose no safety concerns. A widely used measure of a carcinogenic response in the scientific literature is the so-called "TD_{50}," that is, the feeding dose that causes cancer in 50 percent of test animals. FDA has calculated a theoretical TD_{50} threshold at which carcinogenic impurities would present less than a one in a million risk, a level of risk generally considered to be very low, when present in the diet at 0.5 ppb. In using these risk assessment procedures, FDA assumed a linear relationship between the feeding dose and the carcinogenic response. Based on a linear dose/response relationship, FDA determined that carcinogenic impurities that cause cancer in 50 percent of test animals at feeding levels above 6.25 milligrams (mg) per kilogram (kg) bodyweight per day (i.e., TD_{50} values above 6.25 mg/kg bodyweight/day) will pose less than a one in a million hypothetical upper-bound lifetime risk if present in the daily diet at levels of 0.5 ppb (Ref. 10). If a chemical with a TD_{50} value above 6.25 mg/kg bodyweight/day is present as an impurity in a substance that is exempted from regulation because its dietary concentration is 0.5 ppb or less, the level of the chemical in the diet as a result of the use of the exempted substance would obviously be considerably less than 0.5 ppb. Therefore, the hypothetical upper-bound lifetime risk of cancer from an impurity that is carcinogenic and that has a TD_{50} value greater than 6.25 mg/kg bodyweight/day would be expected to be well below one in a million and to pose effectively no safety concern.

Based on this risk assessment, FDA proposes to limit its review under proposed § 170.39 to those substances that have not been shown to be carcinogens and that do not contain carcinogenic impurities, unless the impurity has a TD_{50} value of more than 6.25 mg/kg bodyweight/day (proposed § 170.39(a)(1)).

FDA's tentative decision to only review substances known to contain carcinogenic impurities under the proposed regulation if the carcinogenic impurity is shown to have a TD_{50} value greater than 6.25 mg/kg bodyweight/day is conservative. However, FDA tentatively concludes that such conservatism is appropriate because of the limited showing that need be made for such substances. It will only be necessary to show that based on results reported in the scientific literature or on results of a chronic feeding study that has been previously reviewed by the agency, the TD_{50} value for the impurity exceeds the specified level. If such a showing is made, that is the end of the inquiry about the impurity. This approach is in marked contrast to FDA's review of petitions for food additives that appear to contain a carcinogenic impurity. In such cases, the agency carries out an in-depth review of the data to determine whether the impurity should be classified as a carcinogen. If FDA concludes that the impurity is a carcinogen, the agency uses risk assessment procedures to determine whether there is reasonable certainty that no harm will result from the use of the food additive containing the impurity. The quantitative risk assessment carried out by the agency is based on the cumulative dietary exposure to the carcinogenic impurity resulting from the intended use of the food additive under review and from other regulated uses of the additive. The carcinogenic potency used in the risk assessment is that estimated by the agency based on a thorough review of the data available on the carcinogenic impurity.

B. Selection of a Threshold of Regulation for the Use of Direct Food Additives in Food-contact Articles

As mentioned above, FDA has tentatively concluded that there are certain limited types of situations in which the use of a substance in a food-contact article that would result in a dietary concentration greater than 0.5 ppb should still qualify for an exemption from regulation as an indirect food additive. If a substance that is currently regulated for direct addition to food is intended to be used in a food-contact article, and if the dietary concentration of the substance resulting from the proposed indirect use is very small compared to the acceptable daily intake (ADI) for the substance based on data in FDA's files, the agency will consider granting an exemption from regulation for this use of the substance even if the dietary concentration will exceed 0.5 ppb. Because these substances will have already been the subject of acceptable safety studies that have established the level of use of the substance that is safe, FDA believes that the threshold for such substances can be established based not on a specific level of dietary concentration but on a specific percentage of the ADI, that is, 1 percent or less of the ADI for the substance (proposed § 170.39(a)(2)(ii)). This level of exposure would contribute only a small fraction of the ADI of a substance and would be well within the margin of safety for those direct food additives with small cumulative dietary exposures. For substances with high cumulative dietary exposures resulting from currently regulated direct food additive uses, a level of exposure that is 1 percent of the ADI would be within the margin of error for the estimated daily intake, which invariably is based on one or more worst-case assumptions, and would, therefore, not significantly affect the cumulative dietary exposure, even in the event that a particular substance has been granted exemptions for several different types of uses in food-contact articles.

IV. Process for Evaluating Requests for Exemption From Regulation as a Food Additive

FDA proposes to establish the following criteria to evaluate requests to exempt substances from regulation as food additives:

1. The substance must not have been shown to be a carcinogen in humans or animals and must not contain a carcinogenic impurity with a TD_{50} value of less than 6.25 mg/kg bodyweight/day, and there must be no reason, based on the chemical structure of the substance, to suspect that the substance is a carcinogen (proposed § 170.39(a)(1)). Known carcinogens would be excluded from review under the proposed regulation because the use of carcinogens as food additives is prohibited by the Delaney Clause (section 409(c)(3)(A) of the act).

2. The substance must: (a) Not migrate, and not be expected to migrate, into food at levels that result in dietary concentrations that are above 0.5 ppb, corresponding to dietary exposures above 1.5 micrograms/person/day (based on a diet of 1,500 grams of solid food and 1,500 grams of liquid food per

person per day)[3], and, therefore, not pose a public health or safety concern; or (b) be currently regulated for direct addition into food and be used in a manner that would result in exposure levels that are less than 1 percent of the ADI as determined by safety data in FDA files (proposed § 170.39(a)(2)).

3. The substance must have no technical effect in or on the food to which it migrates (proposed § 170.39(a)(3)). FDA tentatively finds that there is no basis on which to exempt a substance that is added directly or indirectly to food at a level at which it has a technical effect in that food.

4. The use of the substance must not have a significant adverse impact on the environment (proposed § 170.39(a)(4)).

To have the use of a substance in a food-contact article reviewed under this proposed regulation, a company would submit its request to the Division of Petition Control (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204 (proposed § 170.39(d)).

The agency recognizes that it is impossible to foresee all of the safety issues that may be revealed by scientific information not presently available. Therefore, in proposed § 170.39(b), FDA is reserving the right to decline to grant an exemption in any case where available information suggests that the proposed use of the substance may pose a public health risk.

Listed below is the information that FDA will need to determine whether an exemption is appropriate (proposed § 170.39(c)):

1. Information on the chemical composition of the substance (proposed § 170.39(c)(1)). This information is necessary to enable FDA to confirm the identity of the substance.

2. Detailed information on the conditions of use of the substance (e.g., temperature, types of food with which the substance will come into contact and the duration of the contact, repeat versus single use) (proposed § 170.39(c)(2)). Consistent with the legislative history of the Food Additives Amendment (S. Rept. 2422, 85th Cong. 2d sess. 2–3(1958)), any exemption for a specific substance issued under the proposed regulation will be for a specific use.

3. A clear statement of the basis for the request for exemption from regulation as a food additive (i.e., whether the use of the substance in the food-contact article results in a dietary concentration at or below 0.5 ppb, or whether it involves the use of a regulated direct food additive where the dietary exposure is less than 1 percent of the ADI) (proposed § 170.39(c)(3)).

4. Data that will enable FDA to estimate the daily dietary concentration resulting from the proposed use of the substance (proposed § 170.39(c)(4)). These data should be either in the form of: (a) Validated migration data obtained under worst-case (time/temperature) intended use conditions utilizing appropriate food-simulating solvents; (b) amounts of the substances used in the manufacture of the food-contact article; or (c) residual levels of the substances present in the food-contact article. For repeat-use articles, an estimate of the amount of food contacting a specific unit of surface area over the lifetime of the article should also be provided. In cases where data are provided only in the form of manufacturing use levels or residual levels of the substance present in the food-contact article, FDA will calculate a worst-case dietary concentration level assuming 100 percent migration. A detailed description of the analytical method used to quantify the substance should also be submitted along with data used to validate the detection limit.

In cases where there is no detectable migration into food or food simulants, or when no residual level of a substance is detected in the food-contact article by a suitable analytical method, FDA intends, for the purposes of estimating the dietary concentration, to consider the validated detection limit of the method used to analyze for the substance.

Interested persons are encouraged to obtain guidance from FDA on the appropriate protocols to be used for obtaining extraction data on the validation of the analytical methods used to quantify migration levels and on the procedures used to relate migration data to dietary exposures.

5. A literature search for toxicological data on the substance and its impurities (proposed § 170.39(c)(5)). This search is necessary to show whether an animal carcinogen bioassay has been carried out, or whether there is some other basis for suspecting that the substance is a carcinogen or a potent toxin.

6. Information on the environmental impact resulting from the proposed use of the substance (proposed § 170.39(c)(6)). Under the National Environmental Policy Act, FDA must consider the environmental effect of its actions, including each proposed action to exempt a component of a food-contact article from regulation as a food additive and include these considerations in its decisionmaking. This information should be in the form of an abbreviated environmental assessment as specified in § 25.31a (b)(1) or (b)(2) (21 CFR 25.31a (b)(1) or (b)(2)).

Upon completion of its review, FDA will inform the requestor by letter whether it is exempting the specific food-contact article from regulation as a food additive (proposed § 170.39(e)). FDA is proposing that these letters be issued by either the Director of FDA's Center for Food Safety and Applied Nutrition (CFSAN), the Director of CFSAN'S Office of Premarket Approval, or by the Directors of CFSAN's Divisions of Petition Control and Product Policy (proposed § 5.61(h)). FDA is proposing this delegation of authority because it expects a significant number of such requests, and officials other than the Commissioner should be able to respond to these to ensure the appropriate functioning of this system. Moreover, the determination will generally be based on a straightforward determination as to whether the threshold level is exceeded or not. Thus, delegation to officials other than the Commissioner is appropriate. If the request for an exemption from regulation as a food additive is not granted, the requestor may submit a petition to FDA for reconsideration of the decision in accordance with 21 CFR 10.33 *Administrative reconsideration of action* (proposed § 170.39(f)).

Although the uses of substances exempted under the proposed regulation will not be the subject of a regulation published in the **Federal Register** and will not appear in the Code of Federal Regulations, FDA is proposing that it will maintain a list of these exempted substances on display at the Dockets Management Branch (address above) (proposed § 170.39(e)). This list will include the name of the company that made the request, the chemical name of the exempted substance, the specific use for which it has been exempted, and any appropriate limitations. It will not include any trade names.

The agency's determination as to whether a substance used in a food-contact article meets the criteria established in the proposed regulation (§ 170.39) for an exemption from regulation as a food additive will be binding on the agency. Thus, manufacturers of food-contact articles can rely on these determinations and market their products without fear of regulatory action. However, if the

[3] A detailed description of FDA's method for calculating dietary exposure is included in "Recommendations for Chemistry Data for Indirect Food Additive Petitions" and can be obtained from the Division of Petition Control, Center for Food Safety and Applied Nutrition, Food and Drug Administration, Washington, DC 20204.

agency receives significant new information that raises questions about the dietary concentration level or the safety of a food-contact use of a substance that it has exempted from regulation, the agency may reconsider its decision (proposed § 170.39(g)). If FDA concludes that the available information no longer supports an exemption of the use of a food-contact material from the food additive regulations, the agency will notify the original requestor of its tentative decision. The requestor will be given an opportunity to show why regulation of the use of the substance as a food additive is not appropriate. If the requestor fails to adequately respond to the new evidence, the agency will advise the requestor that further use of the substance in question for the particular use will require a food additive regulation. This notification will be placed on public display at the Dockets Management Branch along with the file of those uses of substances exempted from regulation as food additives.

Because substances exempted from regulation as indirect food additives under the proposed regulation (§ 170.39) will not be required to undergo premarket approval through the submission of a food additive petition, FDA proposes to amend 21 CFR part 171 (proposed § 171.8) and 21 CFR part 174 (proposed § 174.6) to provide appropriate cross references to the proposed rule establishing a threshold of regulation for substances used in food-contact articles. FDA is also proposing to modify § 170.3(e) *Definitions* by adding new § 170.3(e)(2) to indicate that those food additives exempted from regulation under proposed § 170.39 will not be required to undergo premarket approval via the food additive petition process (21 CFR 171.1).

V. Economic Impact

FDA has examined the economic implications of the proposed rule establishing a threshold of regulation level for components of food-contact articles as required by Executive Order 12291 and the Regulatory Flexibility Act. Executive Order 12291 compels agencies to use cost-benefit analysis when making decisions. The Regulatory Flexibility Act requires regulatory relief for small businesses where feasible. The agency finds that this proposed rule is not a major rule as defined by Executive Order 12291. In accordance with the Regulatory Flexibility Act (Pub. L. 96–354), FDA has also determined that this proposed rule will not have a significant adverse impact on a substantial number of small businesses.

The compliance cost to firms resulting from the proposed rule is zero, because no current activity is prohibited. Total costs are also zero because no increase in the health risks faced by consumers will result from this proposed rule. Benefits consist of agency resources saved by eliminating the need to consider food additive petitions for food-contact articles in cases involving trivial levels of migration from food-contact articles into food. Resources saved by eliminating this activity may be applied to the review of food additive petitions for food-contact articles in cases where significant migration into food may occur. By reducing the time required for the review of these petitions, the return to private investment in developing safe food-contact articles will be increased. This will lead to the more rapid development and utilization of these products. Because costs are zero and benefits are positive, net benefits will occur.

VI. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Under the National Environmental Policy Act, FDA must consider the environmental effect of its actions and include these considerations in its decisionmaking. This requirement extends to consideration of whether to exempt a component of a food-contact article from regulation as a food additive. The agency believes that almost all of the substances that would be reviewed under the proposed regulation will be minor components of finished food-packaging material that are present at less than 5-percent-by-weight or that will be used as components of food-contact surfaces of permanent or semipermanent equipment or of other food-contact articles intended for repeated use. The approval of a food additive petition for such substances would qualify for an abbreviated environmental assessment under § 25.31a(b)(1) and (b)(2). Because the environmental information needed for such substances is the same whether or not the substances are regulated as food additives, the agency is proposing to amend 21 CFR part 25 to require an abbreviated environmental assessment for substances that are considered for exemption from regulation as a food additive.

VII. Paperwork Reduction Act

This proposed rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). Therefore, in accordance with 5 CFR part 1320, the title, description, and respondent description of the proposed collection of information requirements are shown below with an estimate of the annual collection and information burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering necessary information, and completion and submission of the request.

Title: Food additives; threshold of regulation for substances used in food-contact articles.

Description: FDA is proposing a regulation for determining when the likelihood/extent of migration of a component of a food-contact article is so trivial as not to require regulation as a food additive. A substance considered under this proposed rule would undergo an abbreviated review by FDA, as opposed to the extensive review and formal issuance of a regulation required for other food additives. The agency is proposing to establish § 170.39 as the procedural regulation for these types of reviews. This proposed regulation lists the criteria that must be met for a food-contact material to be reviewed under this policy and identifies the types of data that FDA will need for its review. A substance determined by FDA to be below the threshold of regulation would be exempt from regulation as a food additive and, therefore, would not require the submission of a food additive petition.

Description of Respondents: Businesses or other for-profit organizations.

ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN

Section	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
170.39	60	1	88	5,280
Total				5,280

Although requests submitted for review under the proposed regulation require an average burden of approximately 88 person hours, there will be a significant decrease in overall burden for those components of food-contact articles that are exempted by this expedited process but that previously would have required premarket approval via the food additive petition process. (Petitions on these types of issues can require 270 person hours to prepare and cost anywhere from $85,000 to $100,000.) There would also be a significant decrease in burden to FDA because these types of petitions typically require 250 to 500 person hours to review as compared to the 8 person hours that would be required to review a request under the proposed regulation.

In order to determine whether the proposed regulation (21 CFR 170.39) will significantly reduce the amount of resources that will need to be expended on indirect food additives, FDA analyzed the dietary concentration levels of substances that were the subject of indirect food additive petitions submitted over the last 5 years to determine what percent of these petitions would not have been submitted had the proposed provision been in place. Adhesive petitions seeking to amend 21 CFR 175.105 were not included because such uses involve the presence of a functional barrier between the adhesive component and food, and these petitions do not ordinarily contain migration data. FDA's analysis showed that 22 of the 163 petitions, or 13.5 percent involved dietary concentrations at or below 0.5 ppb and, they would have qualified for the exemption. These results suggest that there will be a significant savings in resources to both FDA and industry if this regulation is adopted.

The agency has submitted copies of the proposed rule to OMB for its review of these recordkeeping requirements. Interested persons are requested to send comments regarding this estimated burden, including suggestions for reducing this burden to FDA's Docket Management Branch (address above), and to the Office of Information and Regulatory Affairs, OMB, rm. 3208, New Executive Office Bldg., Washington, DC 20503, Attn: Desk Officer for FDA.

VIII. Request for Comments

FDA invites public comment on all aspects of the agency's proposed regulations and is particularly requesting comments on the following:

1. The 0.5-ppb dietary concentration level that the agency proposes to establish as the threshold of regulation for those substances used in food-contact articles that are not currently regulated for direct addition into food and the 1 percent of the ADI threshold level proposed for regulated direct food additives.

2. The types of information that FDA should make publicly available regarding decisions made under this policy. FDA believes that it is essential that decisions made under this policy be made available to the public to the greatest extent possible. However, FDA recognizes its obligation to protect trade secret information and is interested in comments on how best to inform the public while protecting proprietary information.

Interested persons may, on or before December 13, 1993, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

IX. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Briston, J. H., and L. L. Katan, "Plastics in Contact With Food," Food Trade Press Ltd., pp. 432–438, 1974.

2. FDA, "Toxicological Principles for the Safety Assessment of Direct Food Additives and Color Additives Used in Food," p. 10, 1982.

3. Munro, I., "Safety Assessment Procedures for Indirect Food Additives: An Overview," *Regulatory Toxicology and Pharmacology*, vol. 12, pp. 2–12, 1990.

4. Rulis, A., "Establishing a Threshold of Regulation" in "Risk Assessment in Setting National Priorities," Edited by Bonin, J., and D. Stevenson, Plenum Publishing Corp., pp. 271–278, 1989.

5. Frawley, J. P., "Scientific Evidence and Common Sense as a Basis for Food-Packaging Regulations," *Food and Cosmetic Toxicology*, vol. 5, pp. 293–308, 1967.

6. Gold, L. S. et al., "A Carcinogenesis Potency Database of the Standardized Results of Animal Bioassays," *Environmental Health Perspectives*, vol. 58, pp. 9–319, 1984.

7. Gold, L. S. et al., "Chronological Supplement to the Carcinogenic Potency Database: Standardized Results of Animal Bioassays Published Through December 1982," *Environmental Health Perspectives*, vol. 67, pp. 161–200, 1986.

8. Gold, L. S. et al., "Second Chronological Supplement to the Carcinogenic Potency Database: Standardized Results of Animal Bioassays Published Through December 1984 and by the National Toxicology Program through May 1986," *Environmental Health Perspectives*, vol. 74, pp. 237–329, 1987.

9. Rulis, A., "Threshold of Regulation: Options for Handling Minimal Risk Situations," in "Food Safety Assessment," Edited by Finley, J. W., S. F. Robinson, and D. J. Armstrong, American Chemical Society Symposium Series 484, pp. 132–139, 1992.

10. Machuga, E., "Review of Substances Containing Carcinogenic Impurities Under the Proposed Threshold of Regulation Policy," Memorandum for the File, December 14, 1992.

List of Subjects

21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

21 CFR Part 25

Environmental impact statements, Foreign relations, Reporting and recordkeeping requirements.

21 CFR Part 170

Administrative practice and procedure, Food additives, Reporting and recordkeeping requirements.

21 CFR Part 171

Administrative practice and procedure, Food additives.

21 CFR Part 174

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR parts 5, 25, 170, 171, and 174 be amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552, App. 2; 7 U.S.C. 138a, 2271; 15 U.S.C. 638, 1261–1282, 3701–3711a; secs. 2–12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451–1461); 21 U.S.C. 41–50, 61–63, 141–149, 467f, 679(b), 801–886, 1031–1309; secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–394); 35 U.S.C. 156; secs. 301, 302, 303, 307, 310, 311, 351, 352, 361, 362, 1701–1706, 2101 of the Public Health Service Act (42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 264, 265, 300u-300u-5, 300aa-1); 42 U.S.C. 1395y, 3246b, 4332, 4831(a), 10007–10008; E.O. 11490, 11921, and 12591.

2. Section 5.61 is amended by adding new paragraph (h) to read as follows:

§ 5.61 Food standards, food additives, generally recognized as safe (GRAS) substances, and color additives.

* * * * *

(h) The following officials are authorized to issue letters concerning substances determined to be below the threshold of regulation under § 170.39 of this chapter:

(1) The Director, Center for Food Safety and Applied Nutrition (CFSAN).

(2) The Director, Office of Premarket Approval, CFSAN.

(3) The Directors of the Divisions of Petition Control and Product Policy, Office of Premarket Approval, CFSAN.

PART 25—ENVIRONMENTAL IMPACT CONSIDERATIONS

3. The authority citation for 21 CFR part 25 continues to read as follows:

Authority: Secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–393); secs. 351, 354–361 of the Public Health Service Act (42 U.S.C. 262, 263b-264); 42 U.S.C. 4321, 4332; 40 CFR parts 1500–1508; E.O. 11514 as amended by E.O. 11991; E.O. 12114.

4. Section 25.22 is amended by revising paragraph (a)(10) to read as follows:

§ 25.22 Actions requiring preparation of an environmental assessment.

* * * * *

(a)(10) Approval of food and color additive petitions, approval of requests for exemptions for investigational use of food additives, and granting of requests for exemption from regulation as a food additive.

* * * * *

5. Section 25.31a is amended by revising the introductory text of paragraphs (a), (b)(1), and (b)(2) to read as follows:

§ 25.31a Environmental assessment for proposed approvals of FDA-regulated products-Format 1.

(a) For proposed actions to approve food or color additives, drugs, biological products, animal drugs, and class III medical devices, for proposed actions to affirm food substances as generally recognized as safe (GRAS), and for proposed actions to grant requests for exemption from regulation as a food additive, the applicant or petitioner shall prepare an environmental assessment in the following format:

* * * * *

(b)(1) For actions (either to approve food additive petitions or to grant requests for exemption from regulation as a food additive) concerning components of food-contact articles present in the finished food-packaging material at a level not greater than 5-percent-by-weight, the following information is required for the format items specified:

* * * * *

(b)(2) For actions (either to approve food additive petitions or to grant requests for exemption from regulation as a food additive) concerning components of food-contact articles to be used in surfaces of permanent or semipermanent equipment or of other food-contact articles intended for repeated use, the following information is required for the items specified:

* * * * *

PART 170—FOOD ADDITIVES

6. The authority citation for 21 CFR part 170 continues to read as follows:

Authority: Secs. 201, 401, 402, 408, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 346a, 348, 371).

7. Section 170.3 is amended by redesignating paragraph (e) as (e)(1) and by adding new paragraph (e)(2) to read as follows:

§ 170.3 Definitions.

* * * * *

(e)(2) *Uses of food additives not requiring a listing regulation.* Substances used in food-contact articles (e.g., food-packaging and food-processing equipment) that migrate or may be expected to migrate into food at such negligible levels that they have been exempted from regulation as food additives under § 170.39.

* * * * *

8. New § 170.39 is added to subpart B to read as follows:

§ 170.39 Threshold of regulation for substances used in food-contact articles.

(a) A substance used in a food-contact article (e.g., food-packaging or food-processing equipment) that migrates, or that may be expected to migrate, into food will be exempted from regulation as a food additive because it becomes a component of food at levels that are below the threshold of regulation if:

(1) The substance has not been shown to be a carcinogen in humans or animals, does not contain a carcinogenic impurity or, if it does, does not contain a carcinogenic impurity with a TD_{50} value based on chronic feeding studies reported in the scientific literature, or otherwise available to the Food and Drug Administration, of less than 6.25 milligrams per kilogram bodyweight per day, and there is no reason, based on the chemical structure of the substance, to suspect that the substance is a carcinogen. (The TD_{50}, for the purposes of this regulation, is the feeding dose that causes cancer in 50 percent of the test animals. If more than one TD_{50} value has been reported in the scientific literature for a substance, the Food and Drug Administration will use the lowest TD_{50} value in its review.);

(2) The substance presents no other health or safety concerns because:

(i) The use in question has been shown to result in or may be expected to result in dietary concentrations at or below 0.5 parts per billion, corresponding to dietary exposure levels at or below 1.5 micrograms/person/day (based on a diet of 1,500 grams of solid food and 1,500 grams of liquid food per person per day); or

(ii) The substance is currently regulated for direct addition into food, and the dietary exposure to the substance resulting from the proposed use is less than 1 percent of the acceptable daily intake as determined by safety data in the Food and Drug Administration files;

(3) The substance has no technical effect in or on the food to which it migrates; and

(4) The substance use has no significant adverse impact on the environment.

(b) Notwithstanding paragraph (a) of this section, the Food and Drug Administration reserves the right to decline to grant an exemption in those cases in which available information establishes that the proposed use may pose a public health risk. The reasons

for the agency's decision to decline to grant an exemption will be explained in the Food and Drug Administration's response to the requestor.

(c) A request for the Food and Drug Administration to exempt a use of a substance from regulation as a food additive shall include the following information:

(1) The chemical composition of the substance for which the request is made;

(2) Detailed information on the conditions of use of the substance (e.g., temperature, type of food with which the substance will come into contact, the duration of the contact, and whether the food-contact article will be for repeated or single use applications);

(3) A clear statement as to whether the request for exemption from regulation as a food additive is based on the fact that the use of the substance in the food-contact article results in a dietary concentration at or below 0.5 ppb, or on the fact that it involves the use of a regulated direct food additive for which the dietary exposure is less than 1 percent of the acceptable dietary intake;

(4) Data that will enable the Food and Drug Administration to estimate the daily dietary concentration resulting from the proposed use of the substance. These data should be either in the form of:

(i) Validated migration data obtained under worst-case (time/temperature) intended use conditions utilizing appropriate food-simulating solvents;

(ii) Levels of the substances used in the manufacture of the food-contact article; or

(iii) Residual levels of the substances present in the food-contact article. For repeat-use articles, an estimate of the amount of food that contacts a specific unit of surface area over the lifetime of the article should also be provided. (In cases where data are provided only in the form of manufacturing use levels or residual levels of the substance present in the food-contact article, the Food and Drug Administration will calculate a worst-case dietary concentration level assuming 100 percent migration.) A detailed description of the analytical method used to quantify the substance should also be submitted along with data used to validate the detection limit.

(iv) In cases where there is no detectable migration into food or food stimulants, or when no residual level of a substance is detected in the food-contact article by a suitable analytical method, the Food and Drug Administration will, for the purposes of estimating the dietary concentration, consider the validated detection limit of the method used to analyze for the substance.

(v) Interested persons are encouraged to obtain guidance from the Food and Drug Administration on the appropriate protocols to be used for obtaining extraction data, on the validation of the analytical methods used to quantify migration levels, and on the procedures used to relate migration data to dietary exposures;

(5) The existing toxicological data on the substance and its impurities; and

(6) Information on the environmental impact that would result from the proposed use of the substance. Depending on the type of use, this information should be in the form of an abbreviated environmental assessment as specified in § 25.31a(b)(1) or (b)(2) of this chapter.

(d) Data to be reviewed under this section as well as any requests for guidance, shall be submitted to the Division of Petition Control (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204.

(e) The Food and Drug Administration will inform the requestor by letter whether the specific food-contact application is exempt from regulation as a food additive or not. Although a substance that migrates to food at a level that results in a dietary concentration at or below the threshold of regulation will not be the subject of a regulation published in the **Federal Register** and will not appear in the Code of Federal Regulations, the Food and Drug Administration will maintain a list of substances exempted from regulation as food additives under this regulation at the Dockets Management Branch. This list will include the name of the company that made the request, the chemical name of the substance, the specific use for which it has received an exemption from regulation as a food additive, and any appropriate limitations on its use. The list will not include any trade names. This list will enable interested persons to see the types of uses of food-contact materials being exempted under the regulation. The agency's finding of no significant environmental impact and the evidence supporting that finding, contained in an environmental assessment, also will be available for public inspection at the Dockets Management Branch in accordance with § 25.41(b)(2) of this chapter.

(f) If the request for an exemption from regulation as a food additive is not granted, the requestor may submit a petition to the Food and Drug Administration for reconsideration of the decision in accordance with the provisions of § 10.33 of this chapter.

(g) If the Food and Drug Administration receives significant new information that raises questions about the dietary concentration or the safety of a substance that the agency has exempted from regulation, the Food and Drug Administration may reconsider its decision. If the Food and Drug Administration concludes that the available information no longer supports an exemption of the use of the food-contact material from the food additive regulations, the agency will notify the original requestor of its tentative decision. The requestor will be given an opportunity to show why regulation of the use of the substance as a food additive is not appropriate. If the requestor fails to adequately respond to the new evidence, the agency will advise the requestor that further use of the substance in question for the particular use will require a food additive regulation. This notification will be placed on public display at the Dockets Management Branch along with the file of those uses of substances exempted from regulation as food additives.

PART 171—FOOD ADDITIVE PETITIONS

9. The authority citation for 21 CFR part 171 continues to read as follows:

Authority: Secs. 201, 402, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 371).

10. New § 171.8 is added to subpart A to read as follows:

§ 171.8 Threshold of regulation for substances used in food-contact articles.

Substances used in food-contact articles (e.g., food-packaging or food-processing equipment) that migrate or that may be expected to migrate into food at negligible levels may be reviewed under § 170.39 of this chapter. The Food and Drug Administration will exempt substances whose uses it determines meet the criteria in § 170.39 of this chapter from regulation as food additives and, therefore, a food additive petition will not be required for the exempted uses.

PART 174—INDIRECT FOOD ADDITIVES: GENERAL

11. The authority citation for 21 CFR part 174 continues to read as follows:

Authority: Secs. 201, 402, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 371).

12. New § 174.6 is added to read as follows:

§ 174.6 Threshold of regulation for substances used in food-contact articles.

Substances used in food-contact articles (e.g., food-packaging or food-

processing equipment) that migrate or that may be expected to migrate into food at negligible levels may be reviewed under § 170.39 of this chapter. The Food and Drug Administration will exempt substances whose uses it determines satisfy the criteria in § 170.39 of this chapter from regulation as food additives and, therefore, a food additive petition will not be required for the exempted uses.

David A. Kessler,

Commissioner of Food and Drugs.

Dated: August 30, 1993.

Donna E. Shalala,

Secretary of Health and Human Services.

[FR Doc. 93–24940 Filed 10–8–93; 8:45 am]

BILLING CODE 4160–01–P

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21 CFR Part 814

[Docket No. 93N–0047]

Medical Devices; Temporary Suspension of Approval of a Premarket Approval Application

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to establish procedures to order the temporary suspension of a premarket approval application (PMA) for a medical device. This action implements a new authority granted to the agency by the Safe Medical Devices Act of 1990 (the SMDA). Under this new authority, if, after providing an opportunity for an informal hearing, FDA determines there is a reasonable probability that continued distribution of the device would cause serious, adverse health consequences or death, the agency shall by order temporarily suspend approval of the PMA and proceed expeditiously to withdraw the PMA.

DATES: Written comments by December 13, 1993. FDA intends that the final rule based on this proposal become effective 30 days after publication in the **Federal Register**.

ADDRESSES: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ–84) Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–4765.

SUPPLEMENTARY INFORMATION:

I. Legislative History

Section 9 of the SMDA (Pub. L. 101–629) amends section 515(e) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(e)) by adding section 515(e)(3) of the act to give the agency emergency authority to order the temporary suspension of approval of a PMA for a medical device pending the outcome of a proceeding to permanently withdraw the PMA.

The legislative history of the SMDA reflects congressional concern about allowing dangerous devices to remain on the market pending the outcome of the potentially time-consuming, permanent withdrawal proceedings under section 515(e)(1) of the act. (See S. Rept. 513, 101st Cong., 2d sess. 18–19 (1990).) To provide the agency with a quick method of removing dangerous devices from the market pending resolution of permanent withdrawal proceedings, Congress amended section 515(e) of the act to allow FDA to order the temporary suspension of a PMA without having to pursue a parallel proceeding in district court (id.).

Under section 515(e)(3) of the act, if, after providing an opportunity for an informal hearing, FDA determines there is "a reasonable probability" that continued distribution of the device would cause serious, adverse health consequences or death, the agency shall by order temporarily suspend approval of the PMA and proceed expeditiously to withdraw the PMA. The legislative history of section 515(e)(3) of the act states that a "reasonable probability" is "one where it is more likely than not that the event will occur." (id.). FDA emphasizes that the application of section 515(e)(3) of the act does not turn on the probability of whether a particular percentage of devices would cause serious adverse health consequences or death, but rather on the judgment that, if distribution of the devices continues, one or more individual devices would be more likely than not to cause serious adverse health consequences or death.

The legislative history also states that the term "serious, adverse health consequences" means:

> any significant adverse experience attributable to a device, including those which may be either life threatening, or involve permanent or long-term injuries, but excluding those non-life-threatening injuries which are temporary and reasonably reversible. In other words, injuries attributable to a device that are not significant in nature and are treatable and reversible by standard medical techniques, proximate in time to the injury, are not included within the term's definition. (id.)

The legislative history clearly indicates congressional intent that FDA will have "considerable discretion" in determining whether the standard required for the issuance of a temporary suspension order has been met (id.).

Under section 515(e)(3) of the act (21 U.S.C. 360e(e)(3)), before FDA may order the temporary suspension of a PMA, the agency must provide the PMA holder with an opportunity for an "informal hearing." The SMDA does not require FDA to issue regulations to implement the temporary suspension provision of section 515(e)(3) of the act. FDA, however, believes that regulations would serve to define certain terms related to temporary suspensions and establish and clarify the procedures the agency intends to follow in exercising its authority under section 515(e)(3) of the act.

II. Contents of the Proposed Regulation

The proposed regulation amends 21 CFR part 814 by adding § 814.3(k) and (l) to include definitions of the terms "reasonable probability" and "serious, adverse health consequences," respectively. The proposed definitions of these two terms conform to the definitions of these terms in the legislative history.

The proposed regulation also adds § 814.47 Temporary suspension of approval of a PMA. Proposed § 814.47 states the scope of the regulation authorizing FDA to issue an order temporarily suspending approval of a PMA, establishes procedures for issuing a temporary suspension order, and sets out the standard for temporarily suspending approval of a PMA.

Proposed § 814.47(a) describes the scope of this proposed rule. FDA would follow the procedures set out in proposed § 814.47 when the agency believes that there is a reasonable probability that continued distribution of the device would cause serious, adverse health consequences or death.

Proposed § 814.47(b) describes the procedures that FDA would follow in providing the PMA holder with an opportunity for a regulatory hearing before the agency decides whether to issue an order temporarily suspending approval of the PMA.

Under proposed § 814.47(b)(1), if FDA believes that there is a reasonable probability that the continued distribution of a device subject to an approved PMA would cause serious, adverse health consequences or death, FDA may initiate and conduct a regulatory hearing to determine whether to temporarily suspend approval of the PMA. Proposed § 814.47(b)(2) makes clear that any regulatory hearing to

determine whether to issue an order temporarily suspending the approval of a PMA would be initiated and conducted by FDA pursuant to 21 CFR part 16. If FDA believes that immediate action to remove a dangerous device from the market is necessary to protect the public health, 21 CFR 16.60(h) provides that the agency may waive, suspend, or modify any part 16 procedure pursuant to 21 CFR 10.19. For example, FDA may require that the PMA holder submit a request for a hearing on the same day on which the PMA holder receives the notice of opportunity for hearing. FDA may then conduct the hearing and render the decision on this same day. In such a case, FDA would waive the last sentence of 21 CFR 16.24(e) that states that a hearing may not be required to be held at a time less than 2 working days after receipt of the request for a hearing. This provision reflects congressional intent that, for temporary suspension actions, the informal hearing, when necessary, should be analogous to a temporary restraining order hearing that could result in notice, a hearing, and a judicial decision in a single day. (See H. Rept. 808, 101st Cong., 2d sess. 29 (1990).)

Proposed § 814.47(b)(3) provides that FDA would deem the PMA holder's failure to request a hearing within the timeframe specified by FDA in the notice of opportunity for hearing to be waiver of an opportunity for a hearing.

Under proposed § 814.47(c), if the PMA holder does not request a regulatory hearing or if, after the hearing and after consideration of the administrative record of the hearing, FDA determines that there is a reasonable probability that the continued distribution of a device under an approved PMA would cause serious, adverse health consequences or death, the agency would, under the authority of section 515(e)(3) of the act, issue an order to the PMA holder temporarily suspending approval of the PMA.

Under proposed § 814.47(d), if FDA issues an order temporarily suspending approval of a PMA, the agency must proceed expeditiously to withdraw the PMA in accordance with section 515(e)(1) of the act and the procedures set out in 21 CFR 814.46. This requirement conforms the proposed regulation to the statutory requirement in the last sentence in section 515(e)(3) of the act.

III. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Economic Impact

FDA estimates that the potential cost to holders of PMA's that are temporarily suspended pending agency action to complete proceedings to withdraw the PMA's is $20,000 annually. This figure represents the potential cost of responding to the agency's notice of opportunity for an informal hearing. FDA anticipates no more than two such responses annually, with a maximum estimated cost of $10,000 each. There will also be a loss of sales to the individual company. The loss would vary greatly depending on the device and cannot be estimated. The benefit of this rule is that dangerous devices will be removed from the market quickly rather than allowing them to remain on the market until after the completion of potentially lengthy permanent withdrawal proceedings.

The agency does not anticipate any other significant additional costs of compliance. Therefore, FDA certifies that this proposed rule requires neither a regulatory impact analysis, as specified in Executive Order 12291, nor a regulatory flexibility analysis as defined in the Regulatory Flexibility Act (Pub. L. 96–354).

V. Comments

Interested persons may, on or before December 13, 1993, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 814

Administrative practice and procedure, Confidential business information, Medical devices, Medical research, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 814 be amended as follows:

PART 814—PREMARKET APPROVAL OF MEDICAL DEVICES

1. The authority citation for 21 CFR part 814 continues to read as follows:

Authority: Secs. 501, 502, 503, 510, 513–520, 701, 702, 703, 704, 705, 706, 708, 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 352, 353, 360, 360c–360j, 371, 372, 373, 374, 375, 376, 379, 381).

2. Section 814.3 is amended by adding paragraphs (k) and (l) to read as follows:

§ 814.3 Definitions.

* * * * *

(k) Reasonable probability means that it is more likely than not that an event will occur.

(l) Serious, adverse health consequences means any significant adverse experience, including those which may be either life-threatening or involve permanent or long range injuries, but excluding injuries that are not life-threatening and that are temporary and reasonably reversible. Injuries attributable to a device that are treatable and reversible by standard medical techniques, proximate in time to the injury, are not included within the term's definition.

3. Section 814.47 is added to subpart C to read as follows:

§ 814.47 Temporary suspension of approval of a PMA.

(a) *Scope.* (1) This section describes the procedures that FDA will follow in exercising its authority under section 515(e)(3) of the act (21 U.S.C. 360e(e)(3)).

(2) FDA will issue an order temporarily suspending approval of a PMA if FDA determines that there is a reasonable probability that continued distribution of the device would cause serious, adverse health consequences or death.

(b) *Regulatory hearing.* (1) If FDA believes that there is a reasonable probability that the continued distribution of a device subject to an approved PMA would cause serious, adverse health consequences or death, FDA may initiate and conduct a regulatory hearing to determine whether to issue an order temporarily suspending approval of the PMA.

(2) Any regulatory hearing to determine whether to issue an order temporarily suspending approval of a PMA shall be initiated and conducted by FDA pursuant to part 16 of this chapter. As provided for in § 16.60(h) of this chapter, if FDA believes that immediate action to remove a dangerous device from the market is necessary to protect the public health, the agency may waive, suspend, or modify any part 16 procedure pursuant to § 10.19 of this chapter.

(3) FDA shall deem the PMA holder's failure to request a hearing within the timeframe specified by FDA in the

notice of opportunity for hearing to be a waiver of an opportunity for a hearing.

(c) *Temporary suspension order.* If the PMA holder does not request a regulatory hearing or if, after the hearing, and after consideration of the administrative record of the hearing, FDA determines that there is a reasonable probability that the continued distribution of a device under an approved PMA would cause serious, adverse health consequences or death, the agency shall, under the authority of section 515(e)(3) of the act, issue an order to the PMA holder temporarily suspending approval of the PMA.

(d) *Withdrawal of the PMA.* If FDA issues an order temporarily suspending approval of a PMA, the agency shall proceed expeditiously to withdraw the PMA in accordance with section 515(e)(1) of the act and the procedures set out in § 814.46.

Dated: July 22, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–24939 Filed 10–8–93; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 250, 256, 280, and 281

RIN 1010–AB63

Archaeological Resource Surveys and Reports on Outer Continental Shelf Lease Tracts

AGENCY: Minerals Management Service, Interior.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the regulatory program of the Minerals Management Service (MMS) to state specifically the authority of MMS to require lessees or operators to conduct archaeological resource surveys and submit reports prior to exploration, development and production, or installation of lease term or right-of-way pipelines. This rule also proposes to standardize the definition and use of the term "archaeological resources" within MMS's regulatory program. This action serves to notify the public of the changes that MMS is proposing and to solicit views on the subject.

DATES: Comments must be received or postmarked by December 13, 1993.

ADDRESSES: Comments should be mailed or hand-carried to the Department of the Interior; Minerals Management Service, Mail Stop 4700; 381 Elden Street; Herndon, Virginia 22070–4817, Attention: Chief, Engineering and Standards Branch.

FOR FURTHER INFORMATION CONTACT: Kumkum Ray, Engineering and Standards Branch; Minerals Management Service, Mail Stop 4700; 381 Elden Street; Herndon, Virginia 22070–4817, or telephone (703) 787–1600 or (FTS) 8–703–787–1600.

SUPPLEMENTARY INFORMATION: Since 1973, the Department of the Interior (DOI) has included a stipulation on the Outer Continental Shelf (OCS) mineral lease tracts to notify potential lessees that, where applicable, archaeological resource surveys and reports will be required. Lessees and operators have, since that time, submitted this information when the stipulation was invoked by MMS.

The authority to require this information was identified, in a general fashion, in a final rule published by MMS in the **Federal Register** on April 1, 1988 (53 FR 10596). That rule granted authority to MMS Regions to ensure safety and environmental protection by requiring OCS lessees and operators to conduct needed surveys and submit reports when seeking approval of their plans to explore or develop and produce hydrocarbons or to install lease term or right-of-way pipelines.

This proposed amendment grants specific authority to each MMS Regional Director to require archaeological resource surveys and reports.

The proposed rule also makes minor modifications in 30 CFR parts 256 and 280 to standardize the use of the term "archaeological resource," eliminates use of other terms such as "cultural resources," and provides a uniform definition.

Author

This document was prepared by Jeff Wiese, Operations and Safety Management and Kumkum Ray, Engineering and Standards Branch, MMS.

Executive Order (E.O.) 12291

The DOI has determined that this document does not constitute a major rule under E.O. 12291 because: (1) It will not have an annual effect on the economy of $100 million or more, (2) it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, and (3) it will not result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete in domestic or export markets. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

The DOI has determined that this proposed rule will not have a significant economic effect on a substantial number of small entities. Any direct effects of this rulemaking will primarily affect OCS lessees and operators—entities that are not, by definition, small due to the technical complexities and financial resources necessary to conduct OCS activities. The indirect effects of this rulemaking on small entities that provide support for offshore activities have also been determined to be small.

Paperwork Reduction Act

The information collection requirements contained in those parts of MMS's regulatory program affected by this rule have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.* and have been assigned OMB clearance numbers 1010–0057 and 1010–0050.

Takings Implication Assessment

The DOI certifies that the proposed rule does not represent a governmental action capable of interference with constitutionally protected rights. A Takings Implication Assessment prepared pursuant to E.O. 12630, Government Action and Interference with Constitutionally Protected Property Rights, is not required.

E.O. No. 12778

The Department has certified to the Office of Management and Budget that this proposed regulation meets the applicable standards provided in Sections 2(a) and 2(b)(2) of E.O. 12778.

National Environmental Policy Act

The MMS has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment; therefore, preparation of an Environmental Impact Statement is not required.

List of Subjects 30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

30 CFR Part 256

Administrative practice and procedure, Continental shelf, Government contracts, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements, Surety bonds.

30 CFR Part 280

Administrative practice and procedure, Bonds, Continental shelf, Environmental protection, Mines, Public lands—mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 281

Administrative practice and procedure, Bonds, Continental shelf, Mineral royalties, Mines, Public lands—mineral resources, Reporting and recordkeeping requirements.

Dated: August 20, 1993.

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

For the reasons set out in the preamble, 30 CFR parts 250, 256, 280, and 281 are proposed to be amended as follows:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

1. The authority citation for part 250 continues to read as follows:

Authority: Sec. 204, Pub. L. 95–372, 92 Stat. 629 (43 U.S.C. 1334).

2. Section 250.2 is amended by adding the following definition, in alphabetical order, to read as follows:

§ 250.2 Definitions.

* * * * *

Archaeological resource means any prehistoric or historic district, site, building, structure, or object (including shipwrecks). The term includes artifacts, records, and remains that are related to such a district, site building, structure, or object.

* * * * *

3. A new § 250.26 is added to subpart A to read as follows:

§ 250.26 Archaeological reports and surveys.

(a) If the Regional Director believes that an archaeological resource may exist in the lease area, the Regional Director will notify the lessee in writing. The lessee shall then comply with the following:

(1) Prior to commencing any operations, the lessee shall prepare a report, as specified by the Regional Director, to determine the potential existence of any archaeological resource that may be affected by operations. The report shall be prepared by an archaeologist and geophysicist and shall be based on an assessment of data from remote-sensing surveys and of other pertinent archaeological and environmental information. The lessee shall submit this report to the Regional Director for review.

(2) If the evidence suggests that an archaeological resource may be present, the lessee shall either:

(i) Locate the site of any operation so as not to affect adversely the area where the archaeological resource may be; or

(ii) Establish to the satisfaction of the Regional Director that an archaeological resource does not exist or will not be adversely affected by operations. This shall be done by further archaeological investigation, conducted by an archaeologist and a geophysicist, using survey equipment and techniques deemed necessary by the Regional Director. A report on the investigation shall be submitted to the Regional Director for review.

(3) If the Regional Director determines that an archaeological resource is likely to be present in the lease area and may be adversely affected by operations, the Regional Director will notify the lessee immediately. The lessee shall take no action that may adversely affect the archaeological resource until the Regional Director has told the lessee how to protect it.

(b) If the lessee discovers any archaeological resource while conducting operations in the lease area, the lessee shall report the discovery immediately to the Regional Director. The lessee shall make every reasonable effort to preserve the archaeological resource until the Regional Director has told the lessee how to protect it.

4. Section 250.33 is amended by revising paragraphs (b)(15) and (o) to read as follows:

§ 250.33 Exploration Plan.

* * * * *

(b) * * *

(15) Archaeological resources (including any archaeological resource reports or survey information required by the Regional Director and not previously submitted) located within the area that may be disturbed by the proposed activities.

* * * * *

(o) To ensure safety and protection of the environment and archaeological resources, the Regional Director may authorize or direct the lessee to conduct geological, geophysical, biological, archaeological, or other surveys or monitoring programs. The lessee shall provide the Regional Director, upon request, with copies of any data obtained as a result of those surveys and monitoring programs.

* * * * *

5. Section 250.34 is amended by revising paragraphs (b)(8)(v)(A) and (s) to read as follows:

§ 250.34 Development and Production Plan.

* * * * *

(b) * * *

(8) * * *

(v) * * *

(A) Archaeological resources (including any archaeological resource reports or survey information required by the Regional Director and not previously submitted) located within the area that may be disturbed by the proposed activities.

* * * * *

(s) To ensure safety and protection of the environment and archaeological resources, the Regional Director may authorize or direct the lessee to conduct geological, geophysical, biological, archaeological, or other surveys or monitoring programs. The lessee shall provide the Regional Director, upon request, copies of any data obtained as a result of those surveys and monitoring programs.

* * * * *

6. Section 250.157 is amended by revising paragraph (a)(5) to read as follows:

§ 250.157 Applications.

(a) * * *

(5) The application shall include a shallow hazards survey report and, if required by the Regional Director, an archaeological resource report that covers the entire length of the pipeline. A shallow hazards analysis may be included in a lease term pipeline application in lieu of the shallow hazards survey report with the approval of the Regional Director. The Regional Director may require the submission of the data upon which the report or analysis is based.

* * * * *

7. Section 250.159 is amended by revising paragraph (c)(4) to read as follows:

§ 250.159 General requirements for a pipeline right-of-way grant.

* * * * *

(c) * * *

(4) If an archaeological resource should be discovered during the conduct of any operations within the right-of-way, the right-of-way holder shall immediately report such findings to the Regional Director and make every

reasonable effort to preserve and protect the archaeological resource from damage until the Regional Director has told the lessee how to protect it.

* * * * *

PART 256—OUTER CONTINENTAL SHELF MINERALS AND RIGHTS-OF-WAY MANAGEMENT, GENERAL

8. The authority citation for part 256 continues to read as follows:

Authority: Secretarial Order 3071, Amendment No. 1, May 10, 1982, and the OCS Lands Act, 43 U.S.C. 1331 *et seq.*, as amended, 92 Stat. 629.

9. Section 256.23 is amended by revising the last sentence in paragraph (b) to read as follows:

§ 256.23 Information on areas.

* * * * *

(b) * * * For an oil and gas lease sale Call Area, the Director may request comments concerning geological conditions, including bottom hazards; archaeological sites on the seabed or nearshore; multiple uses of the proposed leasing area, including navigation, recreation, and fisheries; and other socioeconomic, biological, and environmental information.

PART 280—PROSPECTING FOR MINERALS OTHER THAN OIL, GAS, AND SULFUR IN THE OUTER CONTINENTAL SHELF

10. The authority citation for part 280 continues to read as follows:

Authority: Outer Continental Shelf Lands Act, 43 U.S.C. 1331 *et seq.*, National Environmental Policy Act of 1969, 42 U.S.C. 4332 *et seq.*

11. Section 280.2 is amended by revising the definition of "archaeological resource" to read as follows:

§ 280.2 Definitions.

* * * * *

Archaeological resource means any prehistoric or historic district, site, building, structure, or object (including shipwrecks). This term includes artifacts, records, and remains that are related to such a district, site, building, structure, or object.

* * * * *

PART 281—LEASING OF MINERALS OTHER THAN OIL, GAS, AND SULFUR IN THE OUTER CONTINENTAL SHELF

12. The authority citation for part 281 continues to read as follows:

Authority: Outer Continental Shelf Lands Act 43 U.S.C. 1331 *et seq.*, as amended, 92 Stat. 629.

§ 281.12 [Amended]

13. In § 281.12, paragraph (c) is amended by removing the word "archeological" and adding in its place the word "archaeological."

[FR Doc. 93-24966 Filed 10-8-93; 8:45 am]

BILLING CODE 4310-MR-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93-257, RM-8327]

Radio Broadcasting Services; Glasgow, KY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Henry Royse seeking the allotment of Channel 231A to Glasgow, Kentucky, as that community's fourth local aural transmission service. Channel 231A can be allotted to Glasgow in compliance with the Commission's minimum distance separation requirements with a site restriction of 3.9 kilometers (2.4 miles) southeast, in order to avoid a short-spacing to a construction permit for Station WHIC (FM), Channel 232C2, Hardinsburg, Kentucky. The coordinates for Channel 231A at Glasgow are North Latitude 36-57-41 and West Longitude 85-54-19.

DATES: Comments must be filed on or before November 18, 1993, and reply comments on or before December 3, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Henry Royse, Box, 1628, Glasgow, Kentucky 42142 (petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93-257, adopted September 21, 1993, and released September 30, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857-3800, 1919 M Street NW., room 246, or 2100 M Street NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Victoria M. McCauley,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93-24854 Filed 10-8-93; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 93-258, RM-8253]

Radio Broadcasting Services; Hawaiian Ocean View Estates, Hawaii

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by James Stonecipher seeking the allotment of Channel 273A to Hawaiian Ocean View Estates, Hawaii, as that community's first local aural transmission service. Channel 273A can be allotted to Hawaiian Ocean View in compliance with the Commission's minimum distance separation requirements. The coordinates for Channel 273A at Hawaiian Ocean View Estates are North Latitude 19-05-37 and West Longitude 155-46-43.

DATES: Comments must be filed on or before November 18, 1993, and reply comments on or before December 3, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Dan A. Alpert, 1250 Connecticut Avenue NW., #700, Washington, DC 20036 (Attorney for petitioner).

FOR FURTHER INFORMATION CONTACT:

Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–258, adopted September 17, 1993, and released September 30, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1919 M Street NW., room 246, or 2100 M Street NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Victoria M. McCauley,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–24851 Filed 10–8–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 93–256, RM–8326]

Radio Broadcasting Services; Taylorville, IL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Miller Communications, Inc. seeking the allotment of Channel 232A to Taylorville, Illinois, as that community's second local aural transmission service. Channel 232A can be allotted to Taylorville in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.2 kilometers (4.5 miles) south, in order to avoid short-spacings to the licensed sites of Station WRMS (FM), Channel 232A, Beardstown, Illinois and Station WLRW (FM), Channel 233B, Champaign, Illinois. The coordinates for Channel 232A at Taylorville are North Latitude 39–29–22 and West Longitude 89–19–45.

DATES: Comments must be filed on or before November 18, 1993, and reply comments on or before December 3, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC, 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John F. Garziglia, Pepper & Corazzini, 1776 K Street NW., suite 200, Washington, DC 20006 (Attorney for Petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau; (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–256, adopted September 20, 1993, and released September 30, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 230), 1919 M Street NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1919 M Street NW., room 246, or 2100 M Street NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Victoria M. McCauley,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–24853 Filed 10–8–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 93–255, RM–8322]

Radio Broadcasting Services; Titusville, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Southern Starr Limited Partnership, licensee of Station WGNE (FM), Channel 251C2, Titusville, Florida, seeking the substitution of Channel 251C1 for Channel 251C2 at Titusville, and modification of its license to specify the higher class channel. Channel 251C1 can be substituted for Channel 251C2 at Titusville with a site restriction of 23.6 kilometers (14.6 miles) southeast of the community. The coordinates for Channel 251C1 at Titusville are North Latitude 28–35–00 and West Longitude 80–34–10.

DATES: Comments must be filed on or before November 18, 1993, and reply comments on or before December 3, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Bradford D. Carey, Hardy & Carey, 111 Veterans Blvd., suite 255, Metairie, LA 70005 (Attorney for petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–255, adopted September 22, 1993, and released September 30, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1919 M Street NW., room 246, or 2100 M Street NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in

Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73:

Radio broadcasting.

Federal Communications Commission.

Victoria M. McCauley,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–24852 Filed 10–8–93; 8:45 a.m.]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 93–259, RM–8341]

Radio Broadcasting Services; Earle, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rulemaking filed on behalf of Earle Broadcasting, requesting the allotment of FM Channel 234C3 to Earle, Arkansas, as that community's first local aural transmission service. Coordinates used for this proposal are 35–18–46 and 90–33–04.

DATES: Comments must be filed on or before November 18, 1993, and reply comments on or before December 3, 1993.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Riley M. Murphy, Esq., 1100 Poydras Street, suite 2590, New Orleans, LA 70163–2590.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking, MM Docket No. 93–259, adopted September 17, 1993, and released September 30, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239) 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rulemaking is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Victoria M. McCauley,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–24849 Filed 10–8–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 93–260, RM–8361]

Radio Broadcasting Services; Fairview, PA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission request comments on a petition filed by KDC, Inc. seeking the allotment of Channel 298A to Fairview, Pennsylvania, as the community's first local aural transmission service. Channel 298A can be allotted to Fairview in compliance with the Commission's minimum distance separation requirements, with respect to domestic allotments, without the imposition of a site restriction, at coordinates North Latitude 42–01–48 and West Longitude 80–15–12. The allotment would be short-spaced to vacant Channel 298A, Welland, Ontario, and Channel 298A, Stratford, Ontario, Canada. However, the staff has determined that the Fairview station can limit its power in the direction of these two communities so as to avoid any prohibited overlap. Canadian concurrence is required since Fairview is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

DATES: Comments must be filed on or before November 18, 1993, and reply comments on or before December 3, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Allan G. Moskowitz, Esq., Kaye, Scholer, Fierman, Hays & Handler, The McPherson Building, 901 Fifteenth Street, NW., suite 1100, Washington, DC 20005–2327 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–250, adopted September 17, 1993, and released September 30, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involved channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Victoria M. McCauley,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–24850 Filed 10–8–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 37

[Docket 49173; Notice 93–21]

RIN 2105–AC00

Transportation for Individuals With Disabilities; Accessibility of Over-the-Road Buses

AGENCY: Office of the Secretary, DOT.

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: The Department is seeking responses to a number of questions concerning requirements for the accessibility of over-the-road buses (OTRBs). Recently, the Office of Technology Assessment (OTA) issued a report on this subject, which the Department is required to consider as it drafts OTRB access rules. Before making regulatory proposals, the Department wishes to receive the views of interested persons on issues raised by the OTA report and the Department's thinking about OTRB accessibility.

DATES: Comments are requested by November 26, 1993. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Comments should be sent, preferably in triplicate, to Docket Clerk, Docket No. 49173, Department of Transportation, 400 7th Street, SW., room 4107, Washington, DC, 20590. Comments will be available for inspection at this address from 9 a.m. to 5:30 p.m., Monday through Friday. Commenters who wish the receipt of their comments to be acknowledged should include a stamped, self-addressed postcard with their comments. The Docket Clerk will date-stamp the postcard and mail it back to the commenter.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th Street, SW., room 10424, Washington, DC, 20590. (202) 366–9306 (voice); (202) 755–7687 (TDD), or Ira Laster, Office of Transportation Regulatory Affairs, same street address, room 9217, (202) 366–4859.

SUPPLEMENTARY INFORMATION:

Rulemaking Process

This ANPRM is the first of several actions that are intended to result, by May 16, 1994, in the issuance of final Department of Transportation (DOT) rules and final Architectural and Transportation Barriers Compliance Board (Access Board) accessibility guidelines to implement Americans with Disabilities Act (ADA) requirements that apply to OTRBs. The next action will be a workshop, sponsored jointly by the two agencies, to bring key parties together to discuss issues related to OTRB accessibility. This workshop, which will be open to the public, will take place October 21–22, 1993, in the third floor training room of the President's Committee on Employment of People with Disabilities. The address of the President's Committee's offices is 1331 F. Street, NW., Washington, DC 20004–1107.

The two agencies have tentatively scheduled for January 1994 the publication of a joint notice of proposed rulemaking (NPRM) to propose guidelines and standards for accessible OTRBs. The Department also tentatively plans to publish a separate NPRM concerning OTRB service requirements in January 1994. Following the review of comments, the agencies intend to publish final rules based on each of these NPRMs in May 1994.

Statutory Requirements

For purposes of the Americans with Disabilities Act (ADA), an OTRB is "a bus characterized by an elevated passenger deck located over a baggage compartment" (sec. 301(5)). The Department's ADA regulation (49 CFR 37.3) repeats this definition without change. OTRBs are a familiar type of bus used by Greyhound and other fixed-route intercity bus carriers as well as charter and tour operators.

Section 304(b)(3) of the ADA requires private providers of specified public transportation service who are primarily engaged in the business of transporting people, and whose operations affect commerce, to purchase accessible vehicles in certain circumstances. Under this section, most new vehicles—but not OTRBs—purchased for use in fixed route service must be accessible to individuals with disabilities, including wheelchair users. If a new vehicle subject to the requirements of section 304(b)(3) is to be used in demand responsive service, the entity may purchase an inaccessible vehicle if the provider's system, when viewed in its entirety, provides a level of service to individuals with disabilities, including wheelchair users, that is equivalent to the level of service provided to the general public. The requirements of section 304(b)(3) do not apply, in any case, to used vehicles.

Instead of being subject to section 304(b)(3), OTRBs are covered by section 304(b)(4)(A). This provision prohibits "the purchase or lease by such entity [i.e., a private entity primarily engaged in the business of transporting people and whose operations affect commerce] of an over-the-road bus which does not comply with the regulations issued under section 306(a)(2)." (Section 302(b)(2)(D)(ii)(I) of the ADA applies this same requirement to private entities who are not primarily engaged in the business of transporting people. None of the provisions under discussion apply to public entities, whose vehicle purchases—whether of OTRBs or other buses—must be accessible as provided in Title II of the ADA.)

Section 306(a)(2) requires the Department to issue two sets of regulations—interim requirements and final requirements—concerning OTRB service. The interim requirements must "require each private entity which uses an over-the-road bus to provide transportation to individuals to provide accessibility to such bus." However, the interim rule may not require either structural changes in buses to provide accessibility to wheelchair users or the purchase of boarding assistance devices. The Department's September 6, 1991, ADA rule established these interim requirements (49 CFR section 37.169). The interim requirements, which are now in effect, require boarding assistance and accommodation of wheelchairs for passengers with mobility impairments.

In section 305 of the ADA, Congress directed the Office of Technology Assessment (OTA) to study

(1) The access needs of individuals with disabilities to over-the-road buses and over-the-road bus service; and

(2) The most cost-effective methods for providing access to over-the-road buses and over-the-road bus service to individuals with disabilities, through all forms of boarding options.

The contents of the study were to include the demand for OTRB service by individuals with disabilities, the degree to which such service was already accessible, the effectiveness of various methods of providing accessibility, the cost of providing accessible buses and service, possible design changes (including restrooms that do not result in a loss of seating capacity), and the impact of accessible service on the continuation of over-the-road service, especially to rural communities. OTA published its study on May 16, 1993.

Section 306(a)(2)(B) provides that not later than one year after the date of the OTA study, the Department must issue regulations to carry out sections 304(b)(4) and 302(b)(2)(D)(ii), cited above. These final requirements, "taking into account the purposes of the study under section 305 and any recommendations resulting from such study, [shall require] each private entity which uses an over-the-road bus to provide transportation to individuals to provide accessibility to such bus to individuals with disabilities, including individuals who use wheelchairs." The statute does not permit the regulations to require the installation of restrooms in OTRBs if doing so would result in a loss of seating capacity.

The purpose of this ANPRM is to seek information from interested persons about a variety of questions and issues that the Department must face as it devises regulations to comply with section 306(a)(2)(B).

The OTA Study

Persons who want a copy of the complete OTA report (entitled "Access to Over-the-Road Buses for Persons with Disabilities," S/N 052–003–01320–7) may obtain it from

New Orders
Superintendent of Public Documents
P.O. Box 371954
Pittsburgh, PA 15250–7954

The cost of the publication is $9.00 (international customers must add 25 percent). The Superintendent of Public Documents accepts payment by check, Government Printing Office Deposit Account, or Visa or MasterCard. For the information of readers, we are reprinting below an extract from the text of the Executive Summary of the OTA study.

In Congressional debate over the ADA, particular difficulty developed around the issue of access for individuals with disabilities to transportation on buses with a high passenger deck, otherwise known as over-the-road buses (OTRBs). OTRBs are most often used in scheduled service that takes passengers from city to city, or on local and regional tours and charter trips. Uncertain about the feasibility and cost of OTRB accessibility technologies, Congress was concerned that the burden of implementing the ADA might cripple an already struggling industry, and thus cause the loss of intercity, charter, and tour bus service for many citizens. To ensure that regulations issued by the U.S. Department of Transportation (DOT) would be based on accurate, objective information, and fully reflect the needs of both the bus industry and the disability community, Congress directed the Office of Technology Assessment (OTA) to study this issue, with emphasis on the demand for accessible OTRB service, current and potential technologies, costs of implementation, and impact on the industry.

There are no simple answers to the issue of access to OTRBs. OTA identified a number of positive factors, however, that could lead to workable solutions. A variety of technologies are now available and more are under development. Even more important are the desire by the industry to provide accessible service, the willingness by disability communities to be part of a good-faith process that may take years to reach full accessibility, and the growing understanding by all participants that implementation of the ADA will mean devising specific strategies over time to meet specific needs.

Regulatory Milestones

Within 1 year of the release of this study, DOT must issue regulations to inform OTRB operators to their compliance obligations under the ADA. These regulations take effect for large operators in July 1996 and for small operators in July 1997, although the President may delay implementation for up to 1 year. The conclusions of this OTA study, provided to Congress and DOT, can inform and support DOT in this regulatory process.

What Is an Accessible OTRB?

OTA defines an accessible OTRB as one that allows persons with disabilities to board and, where applicable, remain with their wheelchair or other mobility aid while riding, with only minimal assistance from bus company personnel. Accessible OTRBs have

- Access to level-change devices, including lifts or ramps. An OTRB without an onboard level-change device is accessible only if it operates primarily at stops equipped with level-change devices.
- A sufficiently wide door to accommodate persons with mobility impairments.
- Two wheelchair tie-downs to secure wheelchairs and their users.
- Movable arm rests on some aisle seats.
- A means to communicate with persons who have sensory and cognitive impairments, both on and off the bus.
- An accessible restroom or operational provisions for use of accessible restroom facilities.
- Personnel trained in both equipment use and people skills (already a requirement under DOT regulations).

How Might Accessible Service Be Implemented?

The ADA specifies that accessibility is phased in as OTRBs are purchased or leased by private transportation providers; no retrofitting of vehicles is required. Since the lifetime of an OTRB can exceed 20 years, operators may take that long or longer to turn over their fleets and complete the phase in of accessible OTRBs. Several variables will affect the process:

- OTRB service providers may choose between vehicle-based and station-based level-change devices as best suits their service patterns. However, more complicated regulatory strategies will be required for the station-based lift approach, because a bus without a level-change device onboard is only accessible when it is at a station with a level-change device.
- Available technologies can provide reliable access. Over time, design and production will lead to technological improvements and reduced costs. New designs are under development.
- The area in which technology is least able to offer help at present is that of accessible onboard restrooms. However, access to restrooms is an important aspect of accessible service, and OTRB operators who choose not to equip vehicles with accessible restrooms must respond to this need in some way, presumably with suitably frequent stops at accessible facilities.
- The ADA imposes different standards on "fixed-route" and "demand-responsive" transportation services. OTRBs in fixed-route service follow set schedules; demand-responsive charter and tour services do not. All OTRBs purchased or leased for fixed-route service must be accessible, but demand-responsive OTRB systems can meet ADA standards by providing enough accessible OTRBs to accommodate the demand.
- Reservation systems can hasten the implementation of accessible service before OTRB systems are fully accessible, by allowing passengers to notify companies of special needs and by providing advance notice to make accessible equipment available. However, the ADA forbids the use of reservation systems primarily for persons with disabilities; reservation systems must serve all riders.
- Companies without a reservation system can begin compliance by publishing schedules with designations of routes and times that are served by accessible vehicles, and, for the routes and times that are not accessible, the company can specify that persons call, for example, 24 hours in advance if, and only if, they need boarding assistance.

How Much Will It Cost?

- OTA calculates that the additional cost for one new OTRB to be outfitted with accessibility technologies and operated over its entire lifetime (of roughly 20 years) ranges from $18,000 to $40,000, or approximately 1 percent of the total lifetime capital and operating costs. These estimates follow critical financial assumptions made by OTA and, as with all estimates of future cost, there is a high degree of uncertainty [OTA's brief summary of its cost analysis, reprinted here, does not fully reflect OTA's assumptions and calculations, which include some higher cost scenarios.]
- Most operators will not purchase accessible vehicles until sometime after the ADA regulations go into effect in 1996–97, so they will not begin to incur these costs for some time. As operators turn over their fleet, the cost of implementing accessible service will rise and approach approximately 1 percent of the total operating costs only when the fleet becomes fully accessible.
- Choice in purchasing station-based or onboard level-change devices is an important factor in minimizing costs. For example, operators in urbanized areas with many express buses are likely to benefit from station-based technologies, whereas operators in rural areas with many stops will most likely prefer OTRBs with onboard level-change devices.

What Might the Impacts Be?

The impacts of the ADA cannot be predicted with any certainty. OTA estimates the most likely impacts as follows:

OTRB operators providing fixed-route service will face capital and operating costs in implementing the ADA. Since many OTRB operators are experiencing financial difficulties, already they are concerned about these costs. Some fixed-route providers have said that they may reduce service, and it is conceivable that some companies already in financial trouble could choose to end service. Charter and tour operators of OTRBs have somewhat simpler requirements than fixed-route providers under the ADA, and, as their general financial situation is often stronger than that of fixed-route OTRB operators, the cost impact should be less.

Rural communities could experience a reduction in service, but it is not possible to predict whether this will actually happen. Given the proprietary nature of company data and the decline of rural service over the decades before the passage of the ADA, it may be impossible to isolate the effect of ADA compliance on rural service—even after the fact—but OTA expects the effect to be marginal.

Persons with disabilities and other passengers face a phase in of full accessibility that could last as long as 20 years. Thus, for a number of years, carrying of riders with mobility impairments will still be used as a method of boarding assistance, creating problems for both the riders and OTRB personnel. Accessibility costs that are passed on through increased fares could marginally reduce ridership by those now using OTRBs. However, the demand for OTRB service by persons with disabilities will most likely increase as systems become truly accessible and the population ages.

Questions

While the OTA study examines in depth many of the issues concerned with OTRB accessibility, the Department is interested in receiving information on a wide variety of issues. We will consider the information we receive in response to these questions and from the October 1993 workshop, as well as the OTA findings and recommendations, as we work to formulate an NPRM to carry out section 306(a)(2)(B) of the ADA and a regulatory evaluation for that NPRM.

A. Scope of Accessibility Requirements

The joint Access Board-DOT NPRM will concern the guidelines for bus accessibility. It will propose answers to the question, "What does an accessible OTRB look like?" The Department's separate NPRM on accessible OTRB service will address issues such as what requirements bus companies should meet for acquiring accessible buses and what OTRB service requirements should be established. It is the Department's responsibility to determine the scope of accessibility requirements for OTRB operators.

The OTA study appears to take the legal view that, under the ADA, OTRBs must be subject to the same requirements as other large buses operated by private entities primarily in the business of transporting people. In this view, for example, the Department would be compelled to require that all new OTRBs purchased for fixed-route service be accessible. The Department, while required to take OTA's views and recommendations into account, is not bound by them. Consequently, the Department is authorized to consider whether, for example, in light of the industry's financial circumstances, less stringent requirements could be imposed on some or all segments of the industry.

1. Should the requirements the Department imposes in its regulations differ in any respects from the requirements imposed on other private entities primarily engaged in the business of transporting people?

2. Should the rule require that all new buses to be used for fixed route service be accessible? For demand responsive service? If not, should there be an equivalent service standard applying to operators before they can purchase inaccessible buses? In the latter case, are vehicle pooling arrangements feasible and acceptable?

3. Should the rule require operators to have a minimum number of accessible vehicles in their fleets? Should this be a fixed number, or a percentage, or be otherwise dependent on the total number of vehicles in the fleet? If the operator is a national or regional operator, should this minimum be based on the operator's nationwide fleet or broken down into limited geographic areas? Should this minimum be required to be reached within a specific amount of time? If so, what number of years would be appropriate? Should requirements differ for fixed route and demand responsive operators? If the accessibility requirement does not apply to used buses (as is the case for other vehicles covered by section 304 of the ADA), how would the establishment of a specific number or percentage affect the operator's current policies on purchase of used vehicles?

4. Under section 304 of the ADA, private entities primarily in the business of transporting people must purchase accessible *new* vehicles in certain circumstances (e.g., for fixed route service). This requirement does not apply to used vehicles, however. If this same scheme is applied to OTRBs, then some operators may decide not to purchase new vehicles. As a result, the total national OTRB fleet may become completely accessible only very slowly. This has particular implications for the accessibility of interline service (e.g., if a major carrier has accessible vehicles, but a small interlining carrier does not, then a passenger with a disability may be unable to complete his or her intended trip). How can this problem best be addressed? Should all carriers be required to provide some accessible service, or equivalent service? Should the Department require good faith efforts to obtain accessible used OTRBs (as is required of public operators)?

5. Should there be a different set of rules depending on the size of an operator's fleet? For example, are there significant operational considerations for a company that has a few buses, as opposed to an operator with a few hundred or thousand buses, that should make the regulations different for these companies? Where should the break point be, and what should the regulatory differences be? (This question also is relevant to the timing of regulations, since small operators have an additional year to come into compliance, under the statute.)

6. If the regulation prescribes different standards based on the type of service provided (e.g., fixed route vs. charter/tour), how should the regulations address operators who provide both types of service?

B. Interim Service Requirements

1. It is likely that it will be many years before all OTRBs, or even a majority of OTRBs in providers' fleets, are accessible. Should the Department require providers to make some sort of accessible service available to passengers with disabilities in the meantime? If so, what kind of service should be required? When should such service be implemented?

2. The Department's existing interim requirements for OTRB service require boarding assistance for passengers who request it, without specifying the means. Boarding assistance could be provided by use of boarding chairs or direct hand-carrying, under these interim requirements. Under the new rule, should either of these means of providing assistance be required in instances where accessible service (e.g., employing vehicle-based or station-based lifts) is not available? Should it be discretionary with the carrier? Should it be prohibited, given the problems that it may create for both passengers and carrier personnel? Both hand-carrying and current airline-style boarding chairs require two people to provide assistance. How would operators address the need for personnel to perform this service?

3. During the period before operators' fleets fully meet accessibility requirements, it has been suggested that a reservations system could be used by passengers with disabilities to alert operators that accessible service will be necessary. Some have suggested that an "on-call" accessible bus system would be a good idea. On the other hand, OTA said, and others have argued, that the ADA would not permit requiring persons with disabilities to use a reservation system if other passengers are not also required to use it. That is, if passengers in general can be accommodated on a "space available" basis by showing up at the terminal, the

ADA would require that same flexibility of service to apply to passengers with disabilities. The Department seeks comments on this issue. Would an "on-call" system specifically for passengers with disabilities be appropriate as part of an "interim" system even if not appropriate on a permanent basis?

C. Operational and Fleet Composition Issues

1. What load factors do fixed-route operators have for various kinds of service at various times (e.g., average weekdays, Friday nights, nights before and evenings of holidays, various seasons etc.)

2. What are carriers' policies for accommodating extra passengers when scheduled buses are full? For example, do carriers add extra buses? If so, how many extra passengers must be waiting before an extra bus is added? Is there a difference between how extra passengers are handled at a terminal and at some en route pickup point? Do carriers' practices in this regard depend on equipment availability at a given time and place, or is there a policy of always making an extra bus available when needed for a given number of passengers?

3. If the first available OTRB cannot accommodate a wheelchair user (e.g., all securement locations are occupied), what, if any, "back-up" service should be required? Should the operator provide another accessible OTRB? Is equivalent service in another type of vehicle acceptable? What constitutes a reasonable waiting time for the passenger to receive service in a back-up or alternative vehicle?

4. What percentage of trips involve interlining? How, if at all, would the introduction of accessible buses affect interlining?

5. What is the breakdown of the types of stops/stations (e.g., terminals, Interstate highway rest stops, restaurants, retail stores, flag stops etc.), in terms of numbers and percentages?

6. Charter tour operations sometimes provide "tour guide" services, in which an employee provides information about points of interest, etc. Should the Department propose requirements to provide these services in ways which are available to persons with hearing impairments? If so, what means are preferable? What would the cost be?

7. Should drivers be required to cycle lifts before leaving on a trip? If lifts malfunction, what should the driver or bus company do? How should service be provided to passengers who may be unable to be served because of a broken lift (especially if the passenger is already on board)?

8. How are people needing special accommodations other than assistance with mobility (e.g., users of oxygen or respirators) currently handled on OTRBs providing fixed route or charter service? What should requirements be for serving such passengers?

9. If the main door is used to board wheelchair users and other passengers, what are the potential impacts on boarding and deboarding times and schedule delays?

10. If station-based lifts are used in lieu of vehicle-based lifts, how many personnel are needed to deploy and operate these lifts? How long does it take to get on or off an OTRB using a station-based lift, compared with a vehicle-based lift? What is the availability and cost of station-based lifts (purchase price and operation/maintenance costs)? Please estimate annual production of these units. We request that users and manufacturers provide data supporting their responses to these questions.

11. How would persons with disabilities best be deboarded in an emergency that prevented the lift from operating (e.g., an accident that caused the lift to jam)? Should buses carry any particular sort of equipment to assist in this situation? If so, what equipment should be required?

12. Are station-based ramps available that could be used for boarding and deboarding? Do they (and do they need to) meet ADA ramp slope specifications?

D. Lavatories and Rest Stops

1. The OTA report indicates that installation of current on-board accessible lavatory modules on OTRB's will result in the loss of seating capacity. Are there operational ways of minimizing potential seat loss for these units?

2. OTA estimates that lavatory modules they studied cause a loss of 3–7 seats on OTRBs. What would be the economic effects of such a reduction in seating capacity on particular companies? On industry segments (e.g., long haul fixed route, short haul fixed route service, charter/tour service)? On the industry as a whole?

3. The economic effects of a reduction in seating capacity caused by installation of accessible lavatories would appear to depend, to some extent, on vehicle load factors. That is, if a bus now carries an average of 20 persons per trip, the revenue the bus generates for its owner would be unaffected if the seating capacity dropped from 47 to 42. On the other hand, if that same bus carries an average of 45 persons per trip, the reduction on seating capacity would have a revenue impact. Is this a fair assumption? With this in mind, what currently are the load factors for particular companies, industry segments, the entire industry?

4. Could the economic effects of any such reductions, especially at peak travel times, be mitigated by the provision of alternative transportation services for able-bodied passengers? That is, if what otherwise would be a full bus could, because it had an accessible lavatory, carry only 42 passengers, a van might be made available for the five "excess" passengers, presumably at lower capital and operating costs than an additional full size bus. Is such an alternative practical? Could the "excess" passengers be accommodated in the same manner currently used to accommodate passengers in excess of bus capacity?

5. The most obvious means of ensuring access by persons with mobility impairments to rest room services, in the absence of on-board accessible lavatories, is to make rest stops at facilities with accessible restrooms. Currently, at what intervals are rest stops provided? How long are the stops? Please provide data to support estimates.

6. From the point of view of passengers who use wheelchairs (as well as in terms of the convenience of other passengers), at what intervals should rest stops be made (e.g., 2 hours, 3 hours, 4 hours, on request) and how long should they be? What is the estimated time for a passenger to use a lift to get on and off an OTRB? We would request data on this point particularly from operators who now provide accessible service.

7. At the present time, what are the mean and median stage lengths of fixed route OTRB service? Do stage lengths differ on "express" service from stage lengths on non- "express" or "local" service? What percentage of runs, and of passengers, are represented by "express" trips with longer stage lengths? What effects would rest stops of various intervals and lengths have on service of this kind?

8. It appears likely that charter/tour operators (i.e., carriers who operate demand responsive service) may have more flexibility in choosing rest stops, as well as foreknowledge of whether a given trip will include persons with mobility impairments. What problems, if any, would charter/tour operators have in ensuring availability of accessible rest stops to passengers?

9. A necessary condition of using rest stops as the means of making rest rooms available to passengers with disabilities

is the presence of accessible rest room facilities, with an accessible pathway, along the route. What problems have operators had in finding accessible rest stops?

10. It is likely to be some years before OTRB fleets are composed largely or wholly of accessible buses. Pending that time (even if accessible lavatories are required on new OTRBs), should bus operators be required to stop only at accessible rest stop locations?

11. Suppose that there are a limited number of fixed routes (e.g., long express runs) on which it would not be feasible (e.g., for reasons of too-lengthy schedule delays) to use rest stops as a means of providing accessible rest room service to passengers with disabilities. Would it be practical, and consistent with the ADA, to use on-call accessible buses with accessible on-board rest rooms to provide service to passengers with disabilities on these routes?

E. Training

1. Should driver training be required? Training for other public contact personnel? How much? Should there be recurrent as well as initial training? What training with respect to accommodating passengers with disabilities do drivers and other company personnel now receive?

2. The training would probably include information on the proper and safe operation of vehicle-borne lifts, as well as on the use of securement devices. If station-based or wayside lifts are used, should the operator ensure that its drivers are familiar with the various types of lifts on particular routes? If not, who would be responsible for their proper operation?

3. Should drivers have sensitivity training, in order to respond appropriately to passengers with disabilities? What other areas, if any, should training cover?

4. What will the costs of training be? What is the average cost per hour of training bus drivers or other personnel involved?

F. Economic Issues

1. Some carriers may typically buy only new or only used buses. We solicit information on carriers' purchasing practices. In the last 10 years, how many new and how many used buses have you purchased? Is there a percentage increase in the cost of a new bus that would cause you to change current purchasing practices?

2. What means do carriers use to finance the purchase of newly acquired vehicles?

3. Carriers probably use different approaches for depreciating and/or amortizing the costs of buses. What are these methods? Would they change if requirements for accessibility features increased the cost of a new bus by a given percentage (e.g., 5–10 percent)?

4. To what degree is the purchase price of a used OTRB a function of age, versus other factors such as condition and number of miles driven? What is the price range for used OTRBs?

5. Some carriers provide a mix of service (e.g., fixed route intercity passenger services, charter or tour services, package express). What are carriers' gross revenues and net income by type of service? How sensitive is the demand for these services to price increases?

6. Is 20 years the life expectancy, on average, of all OTRBs, or does this differ by manufacturer? What is the average amount of time that initial purchasers tend to keep new OTRBs before resale?

7. If manufacturers sell both inaccessible and accessible buses, would making both designs impose significant costs on manufacturers, above the cost of making only accessible buses?

8. How does the industry determine price per seat? What is the estimated price per seat in particular companies, industry segments, and the industry as a whole?

Issued this 30th day of September, 1993, at Washington, DC.

Federico Peña,

Secretary of Transportation.

[FR Doc. 93–24865 Filed 10–6–93; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB75 and 1018–AC09

Endangered and Threatened Wildlife and Plants; Thirty-Day Extension on the Proposed Rule To List the Northern Copperbelly Water Snake (Nerodia Erythrogaster Neglecta) and the Lake Erie Water Snake (Nerodia Sipendon Insularum) as Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of extension of comment period and public hearing request deadline.

SUMMARY: The U.S. Fish and Wildlife Service (Service) extends for 30 days the period during which it will accept comments and requests for public hearings on two proposed rules to list the northern copperbelly water snake (*Nerodia erythrogaster neglecta*) (58 FR 43860–43863, August 18, 1993) and the Lake Erie water snake (*Nerodia sipendon insularum*) (58 FR 43857–43860, August 18, 1993) as threatened pursuant to the Endangered Species Act of 1973, as amended. The Service believes a number of parties interested in these proposed listings may not have received notice of the proposals in sufficient time to submit comments or request public hearings during the original comment periods. The extension will provide sufficient time for comment preparation and submission of requests for public hearings.

DATES: This extension will result in the comment period for both proposals ending on November 16, 1993. The public hearing request period will end on November 4, 1993, for both proposals.

ADDRESSES: Comments and public hearing requests should be submitted to the address below. The complete files for these proposals are available for inspection, by appointment, during normal business hours, at the Twin Cities Regional Office, U.S. Fish and Wildlife Service, Division of Endangered Species, Whipple Federal Building, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056.

FOR FURTHER INFORMATION CONTACT: Terence J. Miller, Acting Chief, Division of Endangered Species, at the above address (telephone 612/725–3276).

SUPPLEMENTARY INFORMATION:

Background

These two snakes have been proposed for listing as threatened species due to strong evidence that their range and numbers have declined dramatically, primarily as a result of the destruction of their habitats, and that the threats to their habitats and to the snakes themselves are continuing. The northern copperbelly water snake now persists in isolated populations in southern Michigan and adjacent Indiana and Ohio, southern Indiana, southeastern Illinois, and adjacent Kentucky. It occupies lowland swamps and adjacent wooded and upland areas. The Lake Erie water snake is now found only on a portion of the limestone island archipelago of western Lake Erie; the mainland peninsula between Catawba and Marblehead, Ohio; and Pt. Pelee, Ontario. Its habitat is the rocky shoreline and adjacent waters of Lake Erie.

Since the publication of the August 18, 1993, proposal to list these two snakes as threatened species, the

Service has been attempting to contact owners of property upon which these snakes are believed to exist. The Service has also been contacting the major national, regional, and state herpetological organizations; county, state, and Federal governmental agencies having activities in these areas; and Congressional representatives from these locations to notify them of the proposals and their potential effects. However, the Service believes a significant number of interested and affected parties may not have received notification in time for them to review the proposal and submit comments or requests for public hearings. The Service considers input from all interested and affected parties to be a vital component of the listing process. Therefore, the Service is providing additional opportunity for all parties to prepare and submit comments on the proposal and to request public hearings.

Author

The author of this notice is Ronald L. Refsnider, U.S. Fish and Wildlife Service, Division of Endangered Species, Whipple Federal Building, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056.

Authority

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1543; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Dated: October 5, 1993.

Thomas J. Kerze,

Acting Regional Director.

[FR Doc. 93–24919 Filed 10–8–93; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 58, No. 195
Tuesday, October 12, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Meat Import Limitations; Fourth Quarterly Estimate

Public Law 88–482, enacted August 22, 1964, as amended by Public Law 96–177, PUblic Law 100–418, and Public Law 100–449 (hereinafter referred to as the "Act"), provides for limiting the quantity of fresh, chilled, or frozen meat of bovine, sheep except lamb, and goats; and processed meat of beef or veal (Harmonized Tariff Schedule of the United States subheadings 0201.10.00, 0201.20.20, 0201.20.40, 0201.20.60, 0201.30.20, 0201.30.40, 0201.30.60, 0202.10.00, 0202.20.20, 0202.20.40, 0202.20.60, 0202.30.20, 0202.30.40, 0202.30.60, 0204.21.00, 0204.22.40 0204.23.40, 0204.41.00, 0204.42.40, 0204.43.40, and 0204.50.00), other than products of Canda, which may be imported into the United States in any calendar year. Such limitations are to be imposed when the Secretary of Agriculture estimates that imports of articles, other than products of Canada, provided for in harmonized Tariff Schedule of the United States subheadings 0201.10.00, 0201.20.40, 0201.20.60, 0201.30.40, 0201.30.60, 0202.20.40, 0202.20.60, 0202.30.40, 0202.30.60, 0204.21.00, 0204.22.40, 0204.23.40, 0204.41.00, 0204.42.40, 0204.43.40, and 0204.50.00 (hereinafter referred to as "meat articles"), in the absence of limitations under the Act during such calendar year, would equal or exceed 110 percent of the estimated aggregate quantity of meat articles prescribed for calendar year 1993 by section 2(c) as adjusted under section 2(d) of the Act.

As announced in the Notice published in the **Federal Register** on January 6, 1993 (58 FR 536), the estimated aggregate quantity of meat articles other than products of Canada prescribed by section 2(c) as adjusted by section 2(d) of the Act for calendar year 1993 is 1,144.7 million pounds.

In accordance with the requirements of the Act, I have determined that the fourth quarterly estimate of the aggregate quantity of meat articles other than products of Canada which would, in the absence of limitations under the Act, be imported during calendar year 1993 is 1,259.1 million pounds.

Done at Washington, DC, this 28th day of September 1993.

Mike Espy,

Secretary of Agriculture.

[FR Doc. 93–24880 Filed 10–8–93; 8:45 am]

BILLING CODE 3410–10–M

Forest Service

Savant Sage Resource Area, Idaho Panhandle National Forests, Kootenai County, ID

ACTION: Notice of Availability of the Draft Environmental Impact Statement for proposed activities in the Savant Sage Resource Area.

DATES: The comment period on this draft environmental impact statement ends November 26, 1993.

ADDRESSES: Send written comments to District Ranger, Fernan Ranger District, 2502 E. Sherman Avenue, Coeur d'Alene, ID 83814.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and environmental impact statement should be directed to Patrick Sheridan. Planning Staff Officer, Fernan Ranger District, Idaho Panhandle National Forests, 2502 East Sherman Avenue, Coeur d'Alene, ID 83814. Phone: (208) 769–3000.

SUMMARY: The notice is hereby given that the Forest Service has prepared a Draft Environmental Impact Statement (EIS) documenting a landscape-level approach to ecosytem management in the Savant Sage Resource Area. The area is located approximately 5 miles east of Athol, Idaho, and is approximately 7,500 acres in size.

Public participation is important. People may visit with Forest Service officials at any time prior to the decision, however, it is very important that public comment be made available to the Forest Service during review of this Draft EIS. After a 45-day public comment period, the comments received will be analyzed and considered by the Forest Service in preparing the Final Environmental Impact Statement (FEIS). The FEIS is scheduled to be completed by January, 1994. The Forest Service will respond to the comments received in the FEIS.

The District Ranger is the responsible official for this EIS, and will make a decision regarding this proposal considering the comments and responses, environmental consequences discussed in the FEIS, and applicable laws, regulations, and policies. The decision and reasons for the decision will be documented in a Record of Decision.

SUPPLEMENTARY INFORMATION: A very specific proposed action was developed for the area, and included timber harvest and reforestation activities, through implementation of a single timble sale. The scope of the proposed action is limited to timber harvesting, reforestation, and related road construction and reconstruction activities. During development of the proposed action and alternatives to the proposed action, emphasis has been placed on addressing the water resource needs and visual concerns of local residents.

Five alternatives were developed, including a No-Action Alternative. Alternative 5 is the alternative preferred by the Forest Service. Under Alternative 5, uneven-aged management (group selection) would be utilized on all of the acres to be treated. No new roads would be constructed; approximately 3.5 miles of road would be reconstructed. Helicopter logging would be used to allow access to a larger portion of the area while avoiding construction of new roads and meeting resource needs, including water resource needs and visual concerns of local residents. There would be a total of 561 acres treated.

Management activities would be administered by the Fernan Ranger District of the Idaho Panhandle National Forests in Kootenai County, Idaho. This EIS will tier to the Forest Plan (September 1987) which provides the overall guidance (Goals, Objectives, Standards and Guidelines, and Management Area direction) in achieving the desired future condition for this area.

The agency invites written comments and suggestions on the issues and management opportunities in the area

being analyzed. Written comments concerning the scope of the analysis must be received within 45 days from the date of publication in the Federal Register.

Dated: October 12, 1993.

Peggy Polichio,

Acting District Ranger, Fernan Ranger District, Idaho Panhandle National Forests.

[FR Doc. 93–24858 Filed 10–8–93; 8:45 am]

BILLING CODE 3410–11–M

Seed Orchard Pest Management Program in the Erambert and Black Creek Seed Orchards, National Forests in Mississippi, Perry and Forrest Counties, MS

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare environmental impact statement.

SUMMARY: The Department of Agriculture, Forest Service published a Notice of Intent to prepare an environmental impact statement (EIS) in the Federal Register (56 FR 23674) on May 20, 1991, for a proposal to develop a pest management program at two Mississippi Seed Orchards: The Erambert Seed Orchard near New Augusta and the Black Creek Seed Orchard near Brooklyn. The Notice of Intent is revised to show that the draft EIS is expected to be available for public review by March 1994, and the final EIS is scheduled to be completed by October 1994.

FOR FURTHER INFORMATION CONTACT: Jerry Windham, Erambert and Black Creek Orchard Manager, 368 Ashe Nursery Road, Brooklyn, MS 39425, Phone: (601) 584–8488; or Sally Campbell, EIS Team Leader, PO Box 3623, Portland, OR 97208, Phone: (503) 326–7755.

Dated: September 23, 1993.

Kenneth R. Johnson,

Forest Supervisor.

[FR Doc. 93–24924 Filed 10–8–93; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Economic Development Administration

Title: Applicant Certification Clause

Form Number: Agency: ED–536 OMB #: 0610–0092

Type of Request: Extension

Burden: Reporting Requirement: 385 respondents totalling 7,700 hours. Average reporting time is twenty hours.

Needs and Uses: To avoid liability under CERCLA and meet EDA's responsibility under NEPA, applicants will be required to certify regarding their knowledge of any hazardous or toxic contamination that may affect properties subject to project construction activities.

Affected Public: Public works and Title IX applicants connected with EDA projects.

Frequency: On Occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Gary Waxman (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 482–3271, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Gary Waxman, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: October 6, 1993.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 93–24974 Filed 10–8–93; 8:45 am]

BILLING CODE 3510–CW–M

Foreign-Trade Zones Board

[Order No. 657]

Grant of Authority for Subzone Status, Bally, Inc., (Shoes/Accessories) New Rochelle, NY

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the County of Orange, New York, grantee of Foreign-Trade Zone 37, for authority to establish a special-purpose subzone for the shoe and accessory distribution/processing facility of Bally, Inc., in New Rochelle, New York, was filed by the Board on November 6, 1991, and notice inviting public comment was given in the Federal Register (FTZ Docket 78–91, 56 FR 65040, 12/13/91); and,

Whereas, the Board has found that the requirements of the Act and Board's regulations would be satisfied, and that approval of the application is in the public interest;

Now, Therefore, the Board hereby authorizes the establishment of a subzone (Subzone 37B) at the Bally, Inc. plant in New Rochelle, New York, at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 30th day of September 1993.

Joseph A. Spetrini,

Acting Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 93–24975 Filed 10–8–93; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–307–701 and C–307–702]

Certain Electrical Conductor Aluminum Redraw Rod From Venezuela Court Decision and Suspension of Liquidation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of court decision.

SUMMARY: On August 4, 1993, the United States Court of International Trade (CIT) affirmed the International Trade Commission's (ITC) determination on remand of no threat of material injury to the U.S. industry. *Suramerica de Aleaciones Laminadas, C.A.* v. *United States,* Slip op. 93–144 (CIT Aug. 4, 1993) (*Suramerica*). *Suramerica* is presently on appeal to the

U.S. Court of Appeals for the Federal Circuit (Federal Circuit). If the Federal Circuit affirms the CIT decision, then the U.S. Department of Commerce (the Department) will revoke the antidumping and countervailing duty orders.

In accordance with the U.S.Court of Appeals for the Federal Circuit (Federal Circuit) decision in *Timken Company* v. *United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), the Department will continue to order the suspension of liquidation of the subject merchandise until the Federal Circuit issues a conclusive decision in this lawsuit.

EFFECTIVE DATE: August 14, 1993.

FOR FURTHER INFORMATION CONTACT: Gayle Longest, Office of Countervailing Compliance, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3338.

SUPPLEMENTARY INFORMATION:

Background

On July 28, 1988, the ITC determined that an industry in the United States was threatened with material injury by reason of imports of Electrical Conductor Aluminum Redraw Rod from Venezuela. Certain Electrical Conductor Aluminum Redraw Rod from Venezuela, Invs. Nos. 701–TA–287 (Final) and 731–TA–378 (Final), USITC Pub. 2103 (Aug. 1988). The ITC determination was appealed and on March 15, 1993, the CIT remanded to the ITC the threat of injury determination. *Suramerica de Aleaciones Laminadas, C.A.* v. *United States*, Slip op. 93–35 (CIT March 15, 1993). On June 2, 1993, the ITC determined on remand that there was not threat of material injury to a U.S. industry. The CIT affirmed the ITC's remand determination on August 4, 1993. *Suramerica*. This case is presently on appeal at the Federal Circuit.

Suspension of Liquidation

In its decision in *Timken*, the Federal Circuit held that the Department must publish notice of a decision of the CIT or the Federal Circuit which is not "in harmony" with the Department's or the ITC's respective final determinations. The CIT's decision in *Suramerica* on August 4, 1993, constitutes a decision not in harmony with the ITC's affirmative injury determination. Accordingly, the Department is publishing this notice. The Federal Circuit also held that the Department must suspend liquidation pending a "conclusive" court decision in the action. Therefore, the Department will continue the suspension of liquidation of the subject merchandise until the Federal Circuit issues a final decision in this action. If the Federal Circuit affirms the CIT's decision that there is no threat of material injury to a U.S. industry, then the Department will revoke the antidumping and countervailing duty orders in this case effective August 14, 1993.

Dated: September 29, 1993.

Joseph A Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–24977 Filed 10–8–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–100–002]

Notice of Price Determination; Uranium From Kazakhstan, Kyrgyzstan, Russia, and Uzbekistan

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: Pursuant to section IV.C.1. of the antidumping suspension agreements on uranium from Kazakhstan, Kyrgyzstan, Russia, and Uzbekistan, the Department calculated an observed market price for uranium of $11.12/lb. On the basis of this price, the export quota for uranium pursuant to section IV.A. of each of the agreements is zero. Exports pursuant to other provisions of the agreements are not affected by this price.

EFFECTIVE DATE: October 1, 1993.

FOR FURTHER INFORMATION CONTACT: Melissa Skinner or Beth Chalecki, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Ave. NW., Washington, DC 20230; telephone: (202) 482–0159 or (202) 482–2312.

PRICE CALCULATION:

Background

Section IV.C.1. of each agreement specifies that the Department will issue the DOC observed market price on October 1, 1993, and use it to determine the quota applicable to imports from the various republics during the period October 1, 1993 to March 31, 1994.

Calculation Summary

Section IV.C.1. of each agreement specifies how the components of the market price are reached. In order to determine the spot market price, the Department utilized the monthly average of the Uranium Price Information System Spot Price Indicator (UPIS SPI) and the weekly average of the Uranium Exchange Spot Price (Ux Spot). In order to determine the long-term market price, the Department utilized the average long-term price as determined by the Department on the basis of information provided by market participants. The Department did not use the UPIS Base Price because no new contracts were reported executed between April 1, 1993, and September 1, 1993.

Our letters to market participants provided a contract summary sheet and directions requesting the submitter to report his/her best estimate of the future price of merchandise to be delivered in accordance with the contract delivery schedules (in U.S. dollars per pound U_3O_8 equivalent). Using the information reported in the proprietary summary sheets, the Department calculated the present value of the prices reported for any future deliveries assuming an annual inflation rate of 3.9 percent, which was derived from a rolling average of the annual GNP Implicit Price Deflator Index from the past four years. The Department used the base quantities reported on the summary sheet for the purpose of weight-averaging the prices of the long-term contracts submitted by market participants. We then calculated a simple average of the UPIS Base Price and the long-term price determined by the Department.

Weighting

As in the previous price determination released on April 1, 1993, the Department used the average spot and long-term volumes of U.S. utility purchases during 1988–1991, as reported by the Energy Information Administration (EIA) to weight the spot and long-term components of the observed price. During this period, the spot market accounted for 30.05 percent of total purchases, and the long-term market for 69.95 percent.

Calculation Announcement

The Department determined, using the methodology and information described above, the observed market price is $11.12. This reflects an average spot market price of $10.12, weighted at 30.05 percent, and an average long-term contract price is $11.54, weighted at 69.95 percent. Since this price is below the $13.00/lb. minimum expressed in Appendix A of the agreements, there will be no quota under Section IV.A. of the agreements available to any signatory republic for the period October 1, 1993 to March 31, 1994.

Comments

Consistent with the Department's letters of interpretation dated February 22, 1993, we provided interested parties our preliminary price determination on September 10, 1993. We received comments from interested parties, which are addressed below.

Long-Term Price Calculation

Comment 1: The Government of the Russian Federation (GORF) maintains that, according to Section IV.C.1 of the Agreement, the Department is obligated to use the UPIS Base Price in the long term price segment of its calculation, whether or not it includes contract data signed during the period under consideration. According to the GORF, all parties discussed the limitations of the UPIS Base Price as an indicator during negotiations, but agreed to use it anyway, since the Russian Federation insisted upon a third-party price index. The long-term uranium market is characterized by a handful of transactions, and ignoring an indicator such as the UPIS Base Price may inaccurately skew the price determination. Since the Agreement provides the Department with latitude to use price information concerning transactions outside the six-month period immediately preceding the price determination, the Department is permitted, even obligated, to use a UPIS Base Price value that contains such information. Finally, the GORF again proposes that the Department establish procedures for mandatory reporting of all long-term uranium contracts executed in the United States.

Department's Position: We disagree with the GORF and have not included the UPIS base price in this price determination. The latest data reported in the UPIS Base Price represents contracts signed in November of 1992. This information was appropriately used in the Department's calculation of the observed market price as released on April 1, 1993, covering the period October 16, 1992 through March 1, 1993. The UPIS Base Price as reported during the period March 1, 1993 through September 1, 1993 is no longer representative of the current long-term market. The Department's observed price is intended to provide a picture of the market as it was during the previous six months, and we see no reason to include "old" data. Finally, as previously stated, the Department has no authority to require long-term uranium contracts be reported.

Comment 2: The GORF argues that the Department should utilize maximum, not base, quantities when calculating quantity to be delivered under long-term contracts. These quantities, the GORF maintains, represent committed demand at a committed price in the U.S. market, which satisfies the Department's requirements for usable long-term information.

Department's Position: We disagree with the GORF. While the maximum quantity deliverable in a contract is, theoretically, the maximum demand that *can* be placed on the seller, it occurs only at the discretion of the buyer. The nominal contract quantity, in contrast, is the maximum demand that will be placed on the seller, regardless of any future decisions made by the buyer, unless the contract is renegotiated.

Comment 3: In classifying contracts as long-term or spot purchases, the GORF argues that any contract in which the deliveries are made over a period longer than twelve months should be considered a "long-term" contract. UPIS defines its spot transactions as involving "delivery within six months," and EIA defines long-term contracts as those "under which at least one delivery of material is scheduled to occur during the second calendar year after the contract-signing year." Consequently, the GORF would like the Department to include in its long-term calculation three specific reported contracts of two- and three-year duration.

Department's Position: We disagree with the GORF. Different entities within the industry use different definitions, and the cited example, of UPIS and EIA using different definitions of long-term contracts, is illustrative of the fact that there is no set industry standard. The long-term component of our price calculation is designed to include that part of the market that represents stable utility purchases for end use in a reactor. Longer term contracts mean security of supply for the buyer and more responsibility to deliver for the seller in spite of unforeseen consequences in the future market. This allows the seller to charge higher prices for the same material that is available on the spot market, often for a lower price, but with less security for the buyer. Such longer term contracts are the only type of contract allowed to be filled pursuant to Appendix C of any agreement; since these contracts indicate a serious commitment on behalf of both the seller and the buyer, they were viewed as increasing market stability, consistent with the purpose of the agreements. The DOC has continued to include only contracts of four years or more, consistent with our April 1, 1993 price calculation.

Comment 4: The petitioners point out that, in the long-term segment of the price calculation, the Department has listed two reported contracts that in fact appear to be the same contract reported by both the seller and the buyer. In this case, however, the seller has reported a significantly higher pricing term than has the buyer. Petitioners argue that, absent clear and sufficient explanation of the discrepancies in the respective price calculations, the Department should drop both contracts from the long-term price segment.

Department's Position: We have examined the contracts in question and have received sufficient explanation as to the discrepancy in price term calculation. Rather than dropping the two contracts, however, the Department has decided to calculate a simple average of the two deflated prices. (*See,* Calculation Memo dated October 1, 1993)

Spot Price Calculation

Comment 5: The petitioners request that the Department correct a minor data error in its spot price segment of the calculation. The Department apparently inadvertently used the UPIS Short-Term Price Indicator data rather than the UPIS Spot Price Indicator data, which is consistent with previous calculations.

Department's Position: We agree with the petitioners and have corrected the data error.

Deflator Calculation

Comment 6: The GORF argues that the Department should only use a rolling average of the past three years of GNP Implicit Price Deflator data, rather than the past four years, in deflating future contract prices. This is consistent with the three-year benchmark used by the Energy Information administration in summarizing the percentage of U.S. uranium sales made pursuant to long-term and spot transactions.

Department's Position: We note that the EIA data representing the percentage of U.S. utility purchases made in the spot and long-term markets covers the inclusive four-year period form 1989 through 1992.

Since both the EIA data and the GNP deflator cover the same period of four years, we are making no adjustment to the data.

After analysis of the above comments, we have determined that the observed market price for uranium is $11.12/lb. The Department invites parties to provide pricing information for use in the next price determination. Any such information should be provided for the record and should be submitted by March 5, 1994.

Dated: October 1, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93-24976 Filed 10-8-93; 8:45 am]

BILLING CODE 3510-DS-P

National Oceanic and Atmospheric Administration

[I.D. 100593B]

New England Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a one day public meeting on October 14, 1993, at the Ramada Inn, 225 McClellan Highway, East Boston, MA; telephone: 617-569-5250. The meeting will begin at 9:30 a.m. on October 14.

The Lobster Oversight Committee will present its recommendations for management measures to be included in the public hearing document for Amendment #5 to the Lobster Fishery Management Plan. The full Council then intends to approve the document and schedule public hearings.

FOR FURTHER INFORMATION CONTACT: Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906; telephone: (617) 231-0422.

Dated: October 5, 1993.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93-24941 Filed 10-8-93; 8:45 am]

BILLING CODE 3510-22-P

[I.D. 100593A]

Pacific Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Groundfish Management Team (Team) will hold a public meeting on October 19-21, 1993, at the National Marine Fisheries Service, Alaska Fisheries Science Center, 7600 Sand Point Way NE, Building 4, room 2079, Seattle WA. The meeting will begin on October 19 at 1 p.m. and adjourn on October 21 at 4:30 p.m.

The Team will act on the following agenda items:

(1) Review final stock assessment reports for several important groundfish species;
(2) Develop final 1994 harvest level recommendations to the Council and prepare the annual Stock Assessment and Fishery Evaluation document;
(3) Calculate open access groundfish allocations for the 1994 license limitation program;
(4) Develop trip limit recommendations;
(5) Consider the individual transferrable quota proposal for the fixed gear sablefish fishery; and
(6) Review progress on an analysis of a Pacific whiting allocation proposal and final catch projections for various species for the remainder of the year.

The Council has directed the Team to review a list of management issues developed at a "scoping" session in September and rank them in order of priority. On October 21 the Team will meet beginning at 1:30 p.m., to ask members of the public attending the meeting to help assign the proper priority to each issue.

FOR FURTHER INFORMATION CONTACT: Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, Suite 420, 2000 S.W. First Avenue, Portland, OR 97201; telephone: (503) 326-6352.

Dated: October 5, 1993.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93-24942 Filed 10-8-93; 8:45 am]

BILLING CODE 3510-22-P

Marine Mammals

AGENCY: National Marine Fisheries Service, (NMFS), NOAA, Commerce.

ACTION: Modification of scientific research permit No. 771 (P66I).

SUMMARY: Notice is hereby given that Scientific Research Permit No. 771 issued to the Alaska Department of Fish and Game, P.O. Box 3-2000, Juneau, AK 99802, on March 20, 1992 (Publ. 57 FR 10649), amended on May 28, 1993, has been further amended. This modification becomes effective upon signature by the Assistant Administrator for Fisheries.

ADDRESSES: The Permit, as amended, and associated documents are available for review upon written request or by appointment in the Office of Protected Resources, NMFS, 1315 East-West Hwy., Room 13130, Silver Spring, MD 20910; and

Director, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802 (907/586-7221).

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of Sections 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), and Section 220.24 of the regulations governing endangered fish and wildlife permits, the subject Permit which authorized capture, tagging and handling research on up to 50 Steller sea lions (*Eumetopias jubatus*), the accidental death of up to 10 during the course of developing and testing effective chemical immobilization protocols, and unintentional disturbance of up to 1000 seals during the course of all research activities over a 2-year period.

The Permit was modified to extend the take authority until December 31, 1994. No increase in the original number of takes is authorized.

Dated: October 1, 1993.

Herbert W. Kaufman,

Acting Director, Office of Protected Resources National Marine Fisheries Service.

[FR Doc. 93-24920 Filed 10-8-93; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Issuance of modification to scientific research permit No. 808 (P368C).

SUMMARY: Notice is hereby given that Permit No. 808 issued to Dr. James T. Harvey, Assistant Professor, Moss Landing Marine Laboratories, P.O. Box 450, Moss Landing, CA 95039-0450, on October 16, 1992 (publ. 57 FR 60173, 12/18/92), has been modified. The modification became effective upon signature of the Assistant Administrator for Fisheries.

ADDRESSES: The Permit, as modified, and associated documents are available upon written request or by appointment in the Permits Division, Office of Protected Resources, NMFS, 1335 East-West Hwy., suite 7324, Silver Spring, MD 20901 (301/713-2289); and Director, Southwest Region, NMFS, 501 W. Ocean Blvd., suite 4200, Long Beach, CA 90802-4213 (310/980-4015).

SUPPLEMENTARY INFORMATION: Prusuant to the provisions of §§ 216.33(d) and (e) of the Regulations Governing the Taking

and Importing of Marine Mammals (50 CFR part 216), the subject Scientific Research Permit authorized the capture of up to 200, inadvertent harassment of up to 300, and the accidental death of up to 20 California sea lions (*Zalophus californianus*), during the research activities.

The Permit has been modified to extend the expiration date to December 31, 1994, and to allow the researcher to administer a small amount of Valium when restraining animals.

Dated: October 1, 1993.

Herbert W. Kaufman,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–24921 Filed 10–8–93; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of Inventions for Non-exclusive, Exclusive, or Partially Exclusive Licensing

AGENCY: U.S. Army Communications-Electronics Command, DOD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6 announcement is made of the availability of the following inventions for non-exclusive or partially exclusive licensing. All of the listed inventions will be assigned to the United States of America as represented by the Secretary of the Army, Washington, DC. These inventions are as yet unpatented and may not be patentable. They relate in general to spread spectrum multiplexed noise codes and methods to eliminate interference among them, and to antenna systems and signal marking techniques.

By utilizing these multiplexed noise codes, simplex and duplex wireless data transmission may be accomplished with no interference. Further, these codes may be used in multiple access communication systems wherein each user may be assigned a different unique noise code pair consisting of code mate pairs that are selected from a subset of multiplexed noise codes whose cross-correlation function value is equal to zero at a time when all the code mate pairs compress to a single impulse with no sidelobes. Therefore, a large number of users may exist in any one local transmission area.

These inventions, in large part, relate to a series of patents already licensed by a party from the United States Army. While the Army will consider licensing on a nonexclusive, exclusive or partially exclusive basis preference will be given to a mandatory sublicensing arrangement through that party. A list of relevant invention disclosures follows:

—Multiamplitude Single Phase Pseudonoise Coded System.
—A New and Different Philosophy and Intercept System for Optimum Detection of Frequency Hopping Signals.
—Signal Marking Low Probability of Intercept Concepts.
—A Multidimensional Rake Diversity Transmission System.
—Noise Measurement Systems.
—A Unique Transversal Filter Design Concept.
—A Unique End Fire Linear Array Antenna.
—High Data Rate H.F. Transmission System.
—An ECCM Technique for Countering Pulse Noise Jamming.
—Generation of Orthogonal Code Sets.
—Orthogonal Code Set Generation with Randomly Interleaved Code Bits.
—A General Vector Transform Theory.
—A Multiple Rate Orthogonal CDMA System.
—An Optimal Intercept Receiver for Detecting Time Hopping Signals.

Under the authority of Section 11(a)(2) of the federal Technology Transfer Act of 1986 (Pub. L. 99–502) and section 207 of Title 35, United States Code, the Department of the Army as represented by the Communications-Electronics Command wishes to license the U.S. patents listed above in the non-exclusive, exclusive, or partially exclusive manner to any party interested in manufacturing, using, and/or selling devices or processes covered by these patents.

ADDRESSES: Commander, United States Army Communications-Electronics Command, ATTN: AMSEL–LG–L, Fort Monmouth, New Jersey 07703–5010.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Zelenka, (908) 532–4112.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 93–24922 Filed 10–8–93; 8:45 am]

BILLING CODE 3710–08–M

Department of the Army, Engineers Corps

Recreational User Fees

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice.

SUMMARY: In accordance with the provisions of the Omnibus Budget Reconciliation Act of 1993, Public Law 103–66, section 210 of the Flood Control Act of 1968 (16 US Code 406d–3) (as amended), and 36 Code of Federal Regulation § 327.23 governing public use of U.S. Army Corps of Engineers Water Resource Development Projects Administered by the Chief of Engineers, this notice hereby establishes a change in the collection of recreational user fees for Federal Government recreation areas administered by the Chief of Engineers.

The specific application of the fees to be collected will be reflected in notices posted at each U.S. Army Corps of Engineers water resource development project where a use fee is to be charged.

EFFECTIVE DATE: The effective implementing date of this change is 1 March 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Darrel E. Lewis, U.S. Army Corps of Engineers, Natural Resources Management Branch, Washington, DC 20314–1000, telephone (202) 272–0247.

SUPPLEMENTARY INFORMATION:

House Bill

Authorizes the Secretary of the Army to establish and collect fees for the use of developed recreation sites and facilities. New fees established under the authorization are limited to $3 per private, noncommercial vehicle. It also deletes the existing requirement for one free campground at Corps facilities where camping is permitted.

Senate Amendment

Authorizes the Secretary of the Army to charge fees for the use of developed recreation sites and facilities, and deletes the existing requirement for one free campground at Corps facilities where camping is permitted.

Conference Agreement

Adopts a combination of the two provisions authorizing the Secretary of the Army to establish and collect fees for the use of developed recreation sites and facilities. The new fees are limited to $3 per private, noncommercial vehicle transporting not more than 8 persons. It also deletes the existing requirement for one free campground at Corps facilities where camping is permitted.

Wording of the Approved Bill

Sec. 210. Recreational User fees, paragraph (b), Fees for use of developed recreation sites and facilities requires that—

1. Notwithstanding section 4(b) of the Land and Water Conservation Fund Act of 1965 (16 U.S. Code 4601–6a(b)), the Secretary of the Army is authorized, subject to paragraphs (2) and (3), to

establish and collect fees for the use of developed recreation sites and facilities, including campsites, swimming beaches, and boat launching ramps but excluding a site or facility which includes only a boat launch ramp and a courtesy dock.

2. The Secretary shall not establish or collect fees under this subsection for the use or provision of drinking water, wayside exhibits, roads, scenic drives, overlook sites, picnic tables, toilet facilities, surface water areas, undeveloped or lightly developed shoreline, or general visitor information.

3. The fee under this subsection for use of a site or facility (other than an overnight camping site or facility or any other site or facility at which a fee is charged for use of the site or facility as of the date of the enactment of this paragraph (10 August 1993)) for persons entering the site of facility by private, noncommercial vehicle transporting not more than 8 persons (including the driver) shall not exceed $3 per day per vehicle. Such maximum amount may be adjusted annually by the Secretary for changes in the Consumer Price Index of All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor.

4. All fees collected under this subsection shall be deposited into the Treasury account for the Corps of Engineers established by section 4(i) of the Land and Water Conservation Fund Act of 1965 (16 U.S. Code 4601–6a(i)).

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 93–24923 Filed 10–8–93; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

Intent to Prepare an Environmental Impact Statement for Proposed Realignment of Naval Training Center, Great Lakes, Illinois

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500–1508), the Department of the Navy announces its intent to prepare an Environmental Impact Statement (EIS) to evaluate the environmental effects of the realignment of Naval Training Center (NTC), Great Lakes, Illinois. This realignment is being conducted in compliance with the Defense Base Closure and Realignment Act of 1990.

The proposed action involves the relocation of personnel and activities from NTC Orlando, Florida, and NTC San Diego, California, to NTC Great Lakes, Illinois. Under the current base closure scenario, all recruit training, service, and apprentice schools form NTC Orlando and NTC San Diego will be consolidated at NTC Great Lakes. The consolidation of recruit training and service schools at NTC Great Lakes will increase the current average number of recruits/students by approximately 7,500 students. Also, approximately 1,100 additional personnel, with their dependents, will relocate to support the various schools.

Several military construction projects are required to upgrade existing facilities and construct new facilities to support the increased operations. This will include new warehouses, training facilities, bachelor quarters, and approximately 240 new family housing units.

Alternatives addressed in the EIS will focus on means of meeting realignment requirements at NTC Great Lakes, including alternative construction site locations. Major environmental issues that will be addressed in the EIS include, but not limited to, socioeconomic impacts, water quality, wetlands endangered species, cultural resources and local infrastructure impacts.

The Navy will initiate a scoping process for the purpose of determining the scope of issues to be addressed and for identifying the significant issues related to this action. The Navy will hold a public scoping meeting on October 27, 1993, beginning at 7 p.m., at the College of Lake County, room A–162, 19351 West Washington Street, Grayslake, Illinois. This meeting will be advertised in Chicago and selected local newspapers.

A brief presentation will precede request for public comment. Navy representatives will be available at this meeting to receive comments from the public regarding issues of concern to the public. It is important that federal, state, and local agencies and interested individuals take this opportunity to identify environmental concerns that should be addressed during the preparation of the EIS. In the interest of available time, each speaker will be asked to limit their oral comments to five minutes.

Agencies and the public are also invited and encouraged to provide written comment in addition to, or in lieu of, oral comments at the public meeting. To be most helpful, scoping comments should clearly describe specific issues or topics which the commentor believes the EIS should address. Written statements and or questions regarding the scoping process should be mailed no later than November 12, 1993, to Commanding Officer, Southern Division, Naval Facilities Engineering Command, 2155 Eagle Drive, P.O. Box 190010, North Charleston, South Carolina 29419–9010 (Attn: Robert Teague, Code 203RT), telephone (803) 743–3864.

Dated: October 6, 1993.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 93–24972 Filed 10–8–93; 8:45 am]

BILLING CODE 3810–01–M

CNO Executive Panel; Closed Meeting

Notice was published Tuesday September 21, 1993, at 58 FR 49038, that the Chief of Naval Operations (CNO) Executive Panel Emerging Technologies Task Force was to meet on October 7, 1993, from 10:00 a.m. to 11:00 a.m., at the Pentagon. That Meeting has been rescheduled and will be held on October 25, 1993. All other information in the previous notice remains in effect. In accordance with 5 U.S.C. section 552b(e)(2), the meeting change is publicly announced at the earliest time.

For further information concerning this meeting contact: J. Kevin Mattonen, Executive Secretary to the CNO Executive Panel, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302-0268, Phone (703) 756-1205.

October 5, 1993.

Patrick W. Kelley

CAPT, JAGC, USN, Alternate Federal Register Liaison Officer.

[FR Doc. 93-24914 Filed 10-8-93; 8:45 am]

BILLING CODE 3810-AE-F

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER93–972–000, et al.]

PacifiCorp, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

October 4, 1993.

Take notice that the following filings have been made with the Commission:

1. PacifiCorp

[Docket No. ER93–972–000]

Take notice that on September 24, 1993, tendered for filing in accordance with Commission's Order pertaining to agreements involving final amnesty for jurisdictional service and waiver of notice, issued July 30, 1993 under Docket No. PL93–2–002, agreements

which contain provisions involving a return of energy associated with the purchase of firm capacity from the Bonneville Power Administration (Bonneville).

Copies of this filing were supplied to Bonneville, the Public Utility Commission of Oregon, the Utah Public Service Commission, the Washington Utilities and Transportation Commission and the Public Utilities Commission of the State of California.

PacifiCorp requests, for each filed agreement, that the Commission disclaim jurisdiction that the Commission's approval is not required for such agreement(s) because the provision for the return of energy by PacifiCorp is not a jurisdictional service subject to the Commission's review.

In the alternative, if the Commission determines that the energy returns do constitute a jurisdictional service, PacifiCorp requests in accordance with 18 CFR 35.11 of the Commission's rules and regulations that a waiver of prior notice requirements be granted and that the filed agreements be accepted for filing effective as indicated for each of the agreements.

Comment date: October 18, 1993, in accordance with Standard Paragraph E at the end of this notice.

2. Pennsylvania Power & Light Co.

[Docket No. ER93–268–001]

Take notice that on September 16, 1993, Pennsylvania Power & Light Company tendered for filing its compliance filing in the above-referenced docket.

Comment date: October 13, 1993, in accordance with Standard Paragraph E at the end of this notice.

3. North Atlantic Energy Corp.

[Docket No. ER93–803–000]

Take notice that on September 17, 1993, North Atlantic Energy Corporation (North Atlantic) tendered for filing supplemental information requested by Commission Staff in the above-referenced docket.

Comment date: October 18, 1993, in accordance with Standard Paragraph E at the end of this notice.

4. New England Power Co.

[Docket No. ER93–979–000]

Take notice that New England Power Company (NEP), on September 29, 1993, tendered for filing Supplement to Service Agreement No. 6 under NEP's FERC Electric Tariff, Original Volume No. 3. According to NEP, the purpose of the supplement is to permit Montaup Electric Company to wheel periodic short-term power purchases from Green Mountain Power Corporation and Central Vermont Public Service Corporation across NEP's system.

Comment date: October 18, 1993, in accordance with Standard Paragraph E at the end of this notice.

5. Florida Power & Light Co.

[Docket No. ER93–725–000]

Take notice that on September 29, 1993, Florida Power & Light Company filed supplemental information regarding its filing in the above-captioned docket.

Comment date: October 18, 1993, in accordance with Standard Paragraph E at the end of this notice.

6. Niagara Mohawk Power Corp.

[Docket No. ER93–931–000]

Take notice that on September 27, 1993, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing an amendment to its filing in Docket No. ER93–831–000, which affects an agreement between Niagara Mohawk and the Village of Bergen, New York (Bergen). This agreement provides for a new transmission arrangement and also provides for a power sales agreement from Niagara Mohawk to satisfy Bergen's electrical requirements in excess of its NYPA purchases.

The proposed amendment is based on discussions with FERC Staff and modifies certain rate ceiling provisions. Niagara Mohawk proposes an original effective date of October 1, 1993.

Copies of this filing were served upon the Public Service Commission of the State of New York and the Village of Bergen.

Comment date: October 18, 1993, in accordance with Standard Paragraph E at the end of this notice.

7. PSI Energy, Inc.

[Docket No. ER93–806–000]

Take notice that on September 24, 1993, PSI Energy, Inc. (PSI) and The City of Piqua, Ohio on September 24, 1993, tendered for filing corrected Service Schedules to the amended Service Schedules in the FERC filing in Docket No. ER93–806–000.

Copies of this filing were served on The City of Piqua, Ohio, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: October 18, 1993, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24886 Filed 10–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–14–000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

October 5, 1993.

Take notice that on October 1, 1993, Algonquin Gas Transmission Company (Algonquin) tendered for filing proposed changes in its FERC Gas Tariff, Fourth Revised Volume No. 1, as set forth in the revised tariff sheets:

1st Revised 2 Sub Original Sheet No. 600
1st Revised 2 Sub Original Sheet No. 658
1st Revised 2 Sub Original Sheet No. 673
1st Revised 2 Sub Original Sheet No. 674
1st Revised 2 Sub Original Sheet No. 709
1st Revised 2 Sub Original Sheet No. 710
1st Revised 2 Sub Original Sheet No. 711
1st Revised 2 Sub Original Sheet No. 712
Sheet Nos. 713–798

The proposed effective date of the tariff sheets is November 1, 1993.

Algonquin states that the purpose of this filing is to replace Algonquin's electronic bulletin board and TRACTS with a single system to be combined with Texas Eastern Transmission Corporation's LINK system.

Algonquin notes that copies of this filing were served upon each affected party and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 13, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to

the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24887 Filed 10–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–11–000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

October 5, 1993.

Take notice that on October 1, 1993, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheets, with a proposed effective date of November 1, 1993:

Second Revised Sheet No. 20A
First Revised Sheet No. 98
Sheet No. 99

Algonquin states that the purpose of this filing is to establish the balance and allocation of certain Order No. 636 transition costs to be paid by Algonquin to Texas Eastern Transmission Corporation (Texas Eastern) pursuant to Texas Eastern's September 30, 1993 proposal for the recovery of standard costs.

Algonquin notes that copies of this filing were served upon each affected party and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 13, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24888 Filed 10–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–10–000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

October 5, 1993.

Take notice that on October 1, 1993, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Original Sheet No. 96A, with a proposed effective date of November 1, 1993.

Algonquin states that the purpose of this filing is to establish the balance and allocation of contract assignment program costs to be paid by Algonquin to Texas Eastern Transmission Corporation (Texas Eastern) pursuant to Texas Eastern's second direct bill of contract assignment program costs filed on October 1, 1993.

Algonquin notes that copies of this filing were served upon each affected party and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 13, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24889 Filed 10–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP93–14–000, et al., RP93–126–000, et al., RP87–14–000, et al., RP86–41–000, et al.]

Algonquin Gas Transmission Co.; Informal Settlement Conference

October 5, 1993.

Take notice that an informal settlement conference will be convened in these proceedings on October 14, 1993 at 10 a.m. at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, 20426, for the purpose of exploring the possible settlement of the issues in this proceeding.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Marc G. Denkinger (202) 208–2215 or David R. Cain (202) 208–0917.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24890 Filed 10–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–207–000]

ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff

October 5, 1993.

Take notice that on September 30, 1993 ANR Pipeline Company (ANR), tendered for filing as part of its FERC Gas Tariff, the following tariff sheets with a proposed effective date of November 1, 1993:

Second Revised Volume No. 1

Second Revised Sheet No. 17
Original Sheet No. 17A

Original Volume No. 2

Twenty-Third Revised Sheet Nos. 16–19
Twenty-Fifth Revised Sheet No. 20
Twenty-Fourth Revised Sheet No. 21
Twenty-Second Revised Sheet No. 22
Original Sheet No. 22A

ANR states that the referenced tariff sheets are being submitted pursuant to Article VIII of ANR's Interim Settlement that was approved by the Commission in the captioned proceeding. See ANR Pipeline Company, 60 FERC (CCH) 61,145 (1992). ANR has submitted revised tariff sheets to become effective November 1, 1993.

ANR states that a copy of this filing have been served by mail on all parties to these proceedings.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 13, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24891 Filed 10–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–17–000]

Arkla Energy Resource Co.; Proposed Changes in FERC Gas Tariff

October 5, 1993.

Take notice that on October 1, 1993, Arkla Energy Resources Company (AER), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following revised tariff sheet to become effective November 1, 1993:

First Revised Sheet No. 105
First Revised Sheet No. 106

AER states that the revised tariff sheets set the first tier tolerance level for cash balancing at 5.35%, instead of the 5% level contained in the original sheets which would otherwise take effect automatically as of November 1, 1993 by operating of AER's tariffs.

On September 20, 1993, AER filed receipt volume data (Data) that reflected a 5.35% accuracy level between AER's mid-month information to shippers and actual receipts, for the period May 1, 1993 to August 31, 1993 ("Test Period"). Pursuant to the Commission's August 2, 1993 order in this docket and AER's approved tariffs, AER is setting its first tier cash balancing tolerance level of 5.35%, effective November 1, 1993, in accordance with the results reflected in the Data.

AER states that copies of the filing have been served upon AER's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 13, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24892 Filed 10–8–93; 8:45 am]

BILLING CODE 6717–01–M

East Tennessee Natural Gas Co.; Proposed Changes in FERC Gas Tariff

[Docket Nos. RP94–13–000 and TM94–2–2–000]

October 5, 1993.

Take notice that on October 1, 1993, East Tennessee Natural Gas Company (East Tennessee) filed a limited rate adjustment to direct bill the balance in its Account 191 to firm sales customers upon implementation of East Tennessee's restructured tariff in Docket No. RS92–33. The amounts to be billed to firm sales customers following implementation are set forth in Original Sheet No. 6 of East Tennessee's Second Revised Volume No. 1.

East Tennessee states that the tariff sheet which provides for the mechanism pursuant to which those costs are to be recovered was accepted by the Commission in Docket No. RS92–33, *et al.* East Tennessee states that the purpose of the filing in this docket is to set forth the lump sum amounts and related monthly payments that will be charged by East Tennessee pursuant to Section 23 for the annual period commencing November 1, 1993. East Tennessee states that pursuant to this provision, the amounts to be billed will be adjusted after the six-month period following implementation.

East Tennessee also states that it is filing to adjust its Transportation Cost Rate adjustment pursuant to Section 25 of the General Terms and Conditions. The adjustments are set forth in Substitute Original Sheet No. 4, Second Revised Volume No. 1.

East Tennessee requests an effective date of November 1, 1993, or alternatively the date established by Commission order for implementation of East Tennessee's restructuring.

East Tennessee states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or to make any protest with reference to said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with sections 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214. All such petitions or protests should be filed on or before October 13, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24893 Filed 10–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94 12–000]

El Paso Natural Gas Co.: Tariff Filing

October 5, 1993.

Take notice that on October 1, 1993, El Paso Natural Gas Company (El Paso), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A and Third Revised Volume No. 2, the following tariff sheets, with a proposed effective date of November 1, 1993:

First Revised Volume No. 1–A

Sixteenth Revised Sheet No. 20
Sixteenth Revised Sheet No. 21
Tenth Revised Sheet No. 23

Third Revised Volume No. 2

Twenty-eighth Revised Sheet No. 1–D.2

El Paso states that it has tendered Statement of Rates tariff sheets applicable to Rate Schedules T–3, FTS–S and T–1 contained in its Volume No. 1–A Tariff, which reflect an adjustment to El Paso's transportation rates to include the costs associated with the construction of the East-End Flexibility Project, to become effective November 1, 1993.

El Paso states that on April 27, 1992, it filed an application at Docket No. CP92–466–000, pursuant to Section 7(c) of the NGA, for authorization to construct and operate new compression and pipeline facilities on the east end of its system, in order to provide increased operational flexibility.

El Paso states that on January 29, 1993 at Docket Nos. RP91–188–000, RP92–214–000 and RS92–60–000, et al., it filed an Offer of Settlement in Restructuring, Rate and Related Proceedings (Settlement). El Paso states that Article IX, Certificate Proceedings, provides that the order accepting and approving Settlement shall be deemed to grant a certificate of public convenience and necessity authorizing the construction and operation of the facilities proposed at Docket No. CP92–466–000. El Paso states that Article 9.2 specifically provides that upon the in-service date of such project, El Paso

shall be entitled, without filing a new general system-wide rate case, to adjust the settlement reservation charges by $0.0013 per dth ($0.03954 per dth on a monthly basis) to reflect the additional costs of such facility and to make a corresponding change of $0.0013 per dth in rates under Rate Schedules T–1 and FTS–S.

El Paso states that on April 30, 1993, the Commission issued an "Order Accepting Settlement and Compliance Filing, Subject to Modifications," at Docket No. RS92–60–011, et al. El Paso states that ordering paragraph (E) of the order granted El Paso a certificate of public convenience and necessity authorizing the construction and operation of the East-End Flexibility Project. El Paso further states that the order permitted it to roll in the costs of the project in the context of the Settlement proceeding. El Paso states that on August 31, 1993, the Commission issued an "Order Denying Rehearing, Granting and Denying Clarification, Terminating Technical Conference in Part, Accepting Revised Compliance Filings, and Granting Limited Waiver," at Docket No. RS92–60–000, et al. El Paso also states that by letter dated September 27, 1993, the Director, Office of Pipeline and Producer Regulation, advised El Paso that its restructuring proposal, as modified by the Commission's orders, will be effective on October 1, 1993.

El Paso requested that the Commission accept the tendered tariff sheets for filing and permit them to become effective on November 1, 1993, which is not less than thirty (30) days after the date of the filing.

El Paso states that copies were served upon all interstate pipeline system transportation customers of El Paso and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Regulations. All such motions or protests should be filed on or before October 13, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection in the public conference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24894 10–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–2–000]

Koch Gateway Pipeline Co.; Notice of Request Under Blanket Authorization

October 5, 1993.

Take notice that on October 1, 1993, Koch Gateway Pipeline Company (Gateway), P.O. Box 1478, Houston, Texas 77251–1478 filed in Docket No. CP94–2–000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and install a four-inch tap and related facilities to enable Gateway to provide a delivery point to serve Frito Lay, Inc. (Frito Lay), under the authorization issued in Docket No. CP82–430–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Gateway states that it seeks to install a four-inch tap, riser and ball valve to connect Frito Lay's Jackson Plant on Gateway's Index 301-22-1 line at M.P. 0.6, Hinds County, Mississippi. It is stated that these facilities are required to comply with the terms of an interruptible transportation agreement between Frito Lay and Gateway. Gateway states that construction for the proposed project will be within Gateway's existing right of way and the area of ground disturbed by this construction activity will be approximately 8 feet by 10 feet. It is estimated that the cost for installation of these facilities is $8,151.

Gateway states that the proposed installation of facilities for Frito Lay will not have an impact on Gateway's curtailment plan because the proposed service is interruptible in nature. It is stated that, additionally, the quantities to be delivered at the delivery point will be within the certificated entitlements of the shipper for whom the transportation service will be performed.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24895 Filed 10–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER93–760–000]

Niagara Mohawk Power Corp.; Notice of Filing

October 5, 1993.

Take notice that on September 16, 1993, New York State Electric & Gas Corporation (NYSEG), tendered for filing a Certificate of Concurrence in Docket No. ER93–760–000. In this docket, Niagara Mohawk Power Corporation (Niagara Mohawk) filed a supplement to its Rate Schedule FERC No. 165 pursuant to which NYSEG and Niagara Mohawk provide wheeling service to one another.

The supplement proposes an increase in the charges for wheeling service provided by each utility, and these charges are proposed to be effective September 1, 1993 and will be in place for a two year period.

NYSEG requests that September 1, 1993 be allowed as the effective date of the filing and requests waiver of the notice requirement for good cause shown.

Copies of NYSEG's filing were served upon the Public Service Commission of the State of New York and Niagara Mohawk.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before October 18, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24896 Filed 10–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–3–000]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

October 5, 1993.

Take notice that on October 1, 1993, Northern Natural Gas Company (Northern), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Original Sheet No. 68, with a proposed effective date of November 1, 1993.

Northern states that the filing establishes the direct bill amounts by shipper resulting from the Reverse Auction Cost Recovery Mechanism established in Northern's Global Settlement. Northern states that Original Sheet No. 68 reflects these amounts in its Tariff and will commence billing such amounts effective November 1, 1993.

Northern notes that copies of this filing were served upon the Northern's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 13, 1993. All protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestant a party to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24897 Filed 10–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–8–000]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

October 5, 1993.

Take notice that on October 1, 1993, Northern Natural Gas Company (Northern), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Original Sheet No. 67, with a proposed effective date of November 1, 1993.

Northern states that the filing supplements Northern's September 27, 1993, filing in this docket, which set forth the direct bill amounts by shipper resulting from the termination of the ANGTS Rate Adjustment Mechanism effective November 1, 1993, pursuant to First Revised Sheet No. 261 of its Fourth Revised Volume No. 1. Northern has filed Original Sheet No. 67 to include the monthly direct bill amounts by customer in its FERC Gas Tariff, Fifth Revised Volume No. 1.

Northern states that copies of this filing were served upon Northern's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 13, 1993. All protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestant a party to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24898 Filed 10–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–6–000]

Northern Natural Gas Co.; Notice of Proposed Changes in FERC Gas Tariff

October 5, 1993.

Take notice that on October 1, 1993, Northern Natural Gas Company (Northern), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets with a proposed effective date of November 1, 1993:

First Revised Sheet No. 50
First Revised Sheet No. 51
First Revised Sheet No. 53

Northern states that the filing establishes the initial Stranded Account No. 858 surcharge to recover costs incurred by Northern related to its contracts with third-party pipelines. Therefore, Northern has filed First Revised Sheet Nos. 50, 51, and 53 to establish this surcharge effective November 1, 1993.

Northern states that copies of this filing were served upon the company's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE, Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 13, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestant parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24899 Filed 10–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–206–000]

Northern Natural Gas Co.; Notice of Proposed Changes in FERC Gas Tariff

October 5, 1993.

Take notice that on September 30 1993, Northern Natural Gas Company (Northern), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, First Revised Sheet No. 245, with a proposed effective date of November 1, 1993.

Northern states that the filing represents the resolution of the issue of Carlton receipt point supply needed to meet the firm Market Area requirements.

Northern states that copies of this filing were served upon the Northern's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 13, 1993. All protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies

of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-24900 Filed 10-8-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP94-5-000]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

October 5, 1993.

Take notice that on October 1, 1993, Northern Natural Gas Company (Northern), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, with a proposed effective date of November 1, 1993:

Original Sheet No. 66
Original Sheet No. 69

Northern states that the filing establishes the direct bill amounts by shipper resulting from the termination of the Purchased Gas Adjustment (PGA). Northern further states that the direct bill amounts shown on Original Sheet No. 66 are based upon the post-July 1991 Account No. 191 balance as of October 31, 1993.

Northern states that copies of this filing were served upon the Northern's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 13, 1993. Protests will be considered by the Commission in determining the appropriate proceeding, but will not serve to make protestant a party to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-24901 Filed 10-8-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP94-2-000]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

October 5, 1993.

Take notice that on October 1, 1993, Northern Natural Gas Company (Northern), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, with a proposed effective date of November 1, 1993:

First Revised Sheet No. 240
Second Revised Sheet No. 245

Northern states that First Revised Sheet No. 240 and Second Revised Sheet No. 245 of its Fifth Revised Volume No. 1 are being filed to provide that Northern may recover any future upstream Account No. 858 transportation costs under its Stranded Account No. 858 Cost Recovery Mechanism should any capacity assigned through the Reverse Auction process revert to Northern.

Northern states that copies of this filing were served upon Northern's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 13, 1993. All protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestant a party to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-24902 Filed 10-8-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP94-7-000]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

October 5, 1993.

Take notice that on October 1, 1993, Northern Natural Gas Company (Northern), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets with a proposed effective date of November 1, 1993:

First Revised Sheet No. 50
First Revised Sheet No. 51
First Revised Sheet No. 53

Northern states that the filing establishes the initial surcharge to recover costs incurred by Northern related to the realignment of its gas supply contracts. Therefore, Northern has filed First Revised Sheet Nos. 50, 51, and 53 to establish the GSR surcharge effective November 1, 1993.

Northern states that copies of this filing were served upon the company's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 13, 1993. All protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestant a party to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-24903 Filed 10-8-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP94-4-000]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

October 5, 1993.

Take notice that on October 1, 1993, Northern Natural Gas Company (Northern), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1 and Original Volume No. 2, the following tariff sheets, with a proposed effective date of October 1, 1993:

First Revised Sheet No. 50
First Revised Sheet No. 51
First Revised Sheet No. 52
First Revised Sheet No. 53
First Revised Sheet No. 59
First Revised Sheet No. 60
141st Revised Sheet No. 1C
Sixteenth Revised Sheet No. 1C.a

Northern states that the filing revises Northern's Market Area TF/TFX demand rates to reflect the System Management Service (SMS) demand revenue credit based upon the SMS requirements of Northern's customers. Northern further states that the filing also establishes the revised Annual Charge Adjustment (ACA) rate of $0.0026 in Northern's Fifth Revised Volume No. 1, and in its Original Volume No. 2 to the extent these rates change, effective November 1, 1993.

Northern states that copies of this filing were served upon Northern's

customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 13, 1993. All protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestant a party to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24904 Filed 10–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–9–000]

Pacific Gas Transmission Co.; Request for Waiver of Quarterly PGA Filing

October 5, 1993.

Take notice that on October 1, 1993, Pacific Gas Transmission Company (PGT), filed with the Commission a letter requesting that the Commission waive its regulations in requiring PGT to filed its Purchased Gas Adjustment (PGA).

PGT states that the Commission has voted in PGT's restructuring proceeding, Docket No. RS92–46–004, to permit PGT to implement the restructuring required by Order No. 636, *et seq.*, including the unbundling of sales service, on November 1, 1993. PGT states that as part of the implementation of this restructuring, the PGA mechanism will also be terminated on November 1, 1993. PGT states that the current adjustment PGT would normally file at this time will never become effective.

PGT states that the preparation and submission of a quarterly PGA filing to establish a current adjustment as of November 1, 1993 is unnecessary. PGT is not submitting such a filing.

PGT states that a copy of the letter is being served on PGT's sales customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 13, 1993. All protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestant a party to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24905 Filed 10–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–4–000]

Panhandle Eastern Pipeline Co., Notice of Application

October 5, 1993.

Take notice that on October 1, 1993, Panhandle Eastern Pipeline Company (Panhandle), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP94–4–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon the transportation service associated with direct sales service to 31 individual direct industrial sales customers, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle states that on May 1, 1993, it implemented its restructured service as approved in Docket No. RS92–22–000, *et al.*, and is no longer providing a sales service as such. Panhandle further states that prior to the restructuring the direct industrial customers had been purchasing some of their gas requirements from Panhandle under individual certificate authorizations. Panhandle asserts that since it is no longer providing a sales service, the individual certificate authorizations are no longer required. Panhandle is providing restructured transportation service for the direct industrial customers that requested the continuation of service under the restructured tariff, it is stated.

Panhandle further states that it does not propose to abandon any facilities herein.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 26, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Panhandle to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24906 Filed 10–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–16–000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

October 5, 1993.

Take notice that on October 1, 1993, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets, with a proposed effective date of November 1, 1993:

Original Sheet No. 168
Original Sheet No. 169
Original Sheet No. 170
Sheet Nos. 171–199

Texas Eastern states that the above tariff sheets are filed as a limited application pursuant to Section 4 of the Natural Gas Act, 15 U.S.C. 717c (1988) Texas Eastern states that the purpose of the filing is to permit Texas Eastern to recover certain costs incurred by Texas Eastern following the termination of Texas Eastern's Gas Supply Inventory Reservation Charge (GSIRC) on November 1, 1992, in light of Order No.

636. Texas Eastern states that these costs were incurred as a direct consequence of Texas Eastern's need to continue to stand ready to meet its customers' purchase rights under their service agreements with Texas Eastern during the period following the termination of the GSIRC on November 1 and the implementation of Order No. 636 on Texas Eastern's system.

Texas Eastern states that this filing covers a total amount of $5,213,081.75 for the period from March 1, 1993 through May 31, 1993, which are the costs that are currently known and measurable and recorded on the books of Texas Eastern, plus applicable carrying charges. Texas Eastern proposes to recover its costs through a direct bill mechanism analogous to that employed for recovering Account No. 191 costs.

Texas Eastern states that copies of its filing have been served on all firm customers of Texas Eastern and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 13, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24907 Filed 10–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–181–000]

Texas Eastern Transmission Corp.; Technical Conference

October 5, 1993.

In the Commission's order issued on September 30, 1993 the Commission ordered that a technical conference be convened to resolve issues raised by the filing. The conference to address the issues has been scheduled for Tuesday, December 7, 1993, at 10 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24908 Filed 10–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–743–000]

Trunkline Gas Co. and Texas Gas Transmission Corp.; Notice of Application

October 5, 1993.

Take notice that on September 28, 1993, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251–1642, and Texas Gas Transmission Corporation (Texas Gas), P.O. Box 1160, Owensboro, Kentucky 42302 filed an application with the Commission in Docket No. CP93–743–000 pursuant to Section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon two natural gas exchange services which were authorized in Docket Nos. CP62–221–000 [1] and CP72–53–000 [2], all as more fully set forth in the application which is open to public inspection.

Trunkline and Texas Gas propose to abandon two interruptible exchange services no longer needed and performed under Trunkline's FERC Rate Schedules X–3 and E–4 and Texas Gas' FERC Rate Schedules X–30 and X–40, respectively. Trunkline and Texas Gas exchange gas at an interconnection of their pipeline systems near Trunkline's Dyersburg, Dyer County, Tennessee, compressor station under their respective Rate Schedules X–3 and X–30. Trunkline also delivers up to 5,000 Mcf of natural gas per day to Texas Gas in the Lake Misere Field, Cameron Parish, Louisiana, under its Rate Schedule E–4. Texas Gas redelivers equivalent volumes under its Rate Schedule X–40 to Trunkline at (1) the tailgate of Continental Oil Company's Egan Plant, Egan, Acadia Parish, Louisiana; (2) Union Oil Company of California's facilities in Vermilion Parish, Louisiana; and (3) Texas gas' metering facilities at North Fresh Water Bayou Field, Vermilion Parish, Louisiana.

Neither Trunkline nor Texas Gas proposes to abandon any facilities in this proposal.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 26, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be necessary for Trunkline or Texas Gas to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24909 Filed 10–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–15–000]

Viking Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

October 5, 1993.

Take notice that on October 1, 1993, Viking Gas Transmission Company (Viking) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets with a proposed effective date of November 1, 1993:

First Revised Sheet No. 62
First Revised Sheet No. 63
First Revised Sheet No. 64
First Revised Sheet No. 65

Viking states that the purpose of its filing is to amend the "Service Lateral Line Policy" set forth in Article XVI of the General Terms and Conditions of the proposed tariff Viking filed in Docket

[1] See order at 28 FPC 12 (1962).
[2] See order at 47 FPC 143 (1972).

No. RS92–52. Viking has proposed an effective date of November 1, 1993, to coincide with the proposed effective date of Viking's restructured tariff.

Viking states that copies of the filing have been mailed to all of its customers and to affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions should be filed on or before October 13, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24910 Filed 10–8–93; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[FE Docket No. 93–78–NG]

Valero Industrial Gas, L.P.; Blanket Authorization To Import Natural Gas From and Export Natural Gas to Mexico

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting blanket authorization to Valero Industrial Gas, L.P. to import and export up to a combined total of 300 billion cubic feet of natural gas from and to Mexico over a two-year period beginning on date of the first delivery of either imports or exports after October 22, 1993.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on September 29, 1993.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–24965 Filed 10–8–93; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4784–8]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this notice announces the Office of Management and Budget's (OMB) responses to Agency PRA clearance requests.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer (202) 260–2740.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency PRA Clearance Requests

OMB Approvals

EPA ICR No. 1640.01; 1993 Coastal Oil and Gas Questionnaire; was approved 07/26/93; OMB No. 2040–0160; expires 01/31/95.

EPA ICR No. 0113.05; National Emission Standard for Mercury (part 61, subpart E); was approved 08/31/93; OMB No. 2060–0097; expires 08/31/96.

EPA ICR No. 0111.07; National Emission Standard for Asbestos, Reporting and Recordkeeping Requirements—part 61, subpart M; was approved 08/31/93; OMB No. 2060–0101; expires 08/31/96.

EPA ICR No. 1547.03; The Pesticides Enforcement and Applicator Certification Accomplishments Reporting Form; was approved 08/31/93; OMB No. 2070–0113; expires 08/31/96.

EPA ICR 1627.01; Chesapeake Bay Attitude Survey; was approved 09/02/93; OMB No. 2040–0165; expires 09/30/96.

EPA ICR No. 0794.05; Notification of Substantial Risk of Injury to Health and the Environment under section 8(e) of the Toxic Substances Control Act (TSCA); was approved 09/17/93; OMB No. 2070–0046; expires 12/31/94.

EPA ICR No. 1520.03; Recall of Suspended and Canceled Pesticides; was approved 09/16/93; OMB No. 2070–0110; expires 09/30/96.

OMB Extension of Expiration Dates

EPA ICR No. 1039; Monthly Progress Reports; OMB No. 2030–0005; expiration date was extended to 03/31/94.

EPA ICR No. 0909; Information Requirements for Construction Grants Delegation to States; expiration date was extended to 02/28/94.

Dated: October 5, 1993.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 93–24962 Filed 10–8–93; 8:45 am]

BILLING CODE 6560–50–F

[PF–583; FRL–4650–9]

Sandoz Agro, Inc.; Amended Pesticide Petitions for Dicamba

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document provides notice of an amended pesticide petition (PP 3F2794) for a tolerance for the combined residues of the herbicide dicamba (3,6-dichloro-o-anisic acid) and its 5-hydroxy metabolite (3,6-dichloro-5-hydroxy-o-anisic acid), resulting from the application of the sodium salt, in or on the raw agricultural commodity (RAC) cottonseed at 3.0 parts per million (ppm) and an amended feed additive petition (FAP 4H5439) for the same chemicals in or on the animal feed commodity cottonseed meal at 6.0 ppm. The petitions were filed by Sandoz Agro, Inc., to establish the maximum level for residues of the herbicide in or on this RAC and animal feed commodity.

DATES: Comments, identified by the document control number, [PF-583], must be recieved on or before October 27, 1993.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 2460. In Person, deliver comments to rm. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of comment that does contain CBI must be submitted for inclusion in

the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. The public docket is available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Robert J. Taylor, Product Manager (PM) 25, Registration Division (H7505C), Office of Pesticide Programs, Environmentral Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 241, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6800.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 1, 1984 (49 FR 30790), EPA issued notices that announced that Velsicol Chemical Corp., 341 East Ohio St., Chicago, IL 60611, proposed amending 40 CFR 180.227 by establishing a tolerance under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, for the combined residues of the herbicide dicamba (3,6-dichloro-*o*-anisic acid) and its metabolite 3,6-dichloro-5-hydroxy-*o*-anisic acid in or on the RAC cottonseed at 3.0 ppm (pesticide petition (PP) 3F2794) and amending 21 CFR part 561 by establishing a food additive regulation under section 409 of the FFDCA, 21 U.S.C. 348, permitting residues of dicamba in or on cottonseed meal at 6.0 ppm (feed additive petition (FAP) 4H5439).

No comments were received in response to the notices of filing.

The Agency subsequently issued a recodification document, published in the **Federal Register** of June 29, 1988 (53 FR 24688), redesignating 21 CFR part 561 under 40 CFR part 186 and redesignating dicamba as 40 CFR 186.1800. Velsicol Chemical Corp. was purchased by Sandoz Crop Protection Corp., Corporate Headquarters, 1300 East Touhy Ave., Des Plaines, IL 60018.

The petitioner subsequently amended PP 3F2794 and FAP 4H5439, proposing the establishment of tolerances for residues of the herbicide dicamba (3,6-dichloro-*o*-anisic acid) and its 5-hydroxy metabolite, resulting from the application of the sodium salt, on the RAC cottonseed at 3.0 ppm and the animal feed item cottonseed meal at 6.0 ppm. The earlier petition proposing the use of the dimethylamine (DMA) salt was made for the purpose of "ameliorat(ing) the Agency's concerns over toxicological issues [i.e. carcinogenicity] from nitrosamine in the DMA salt formulation."

Interested persons are invited to submit written comments on the amended petitions. Documents that will be considered are available to the public in the Office of Pesticide Programs docket at the Public Response and Program Resources Branch, at the address given above. Comments must bear a notation indicating the document control number, [PF-583]. All written comments filed in response to this petition will be available in the Information Services Section, at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests.

Dated: October 1, 1993.

Steven L. Johnson,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 93–24961 Filed 10–8–93; 8:45 am]

BILLING CODE 6560–60–F

FEDERAL MARITIME COMMISSION

[Petition No. P75–93]

Petition of the United States Atlantic and Gulf/Hispaniola Steamship Freight Association and the United States Atlantic and Gulf/Southeastern Caribbean Freight Association; Petition for Temporary Exemption From Electronic Tariff Filing Requirements; Filing of Petition

Notice is hereby given of the filing of a petition by the United States Atlantic and Gulf/Hispaniola Steamship Freight Association and the United States Atlantic and Gulf/Southeastern Caribbean Freight Association pursuant to 46 CFR 514.8(a), for temporary exemption from the electronic tariff filing requirements of the Commission's ATFI System. Petitioners request exemption from the October 8, 1993, electronic filing deadline.

To facilitate thorough consideration of the petition, interested persons are requested to reply to the petition no later than October 15, 1993. Replies shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573–0001, shall consist of an original and 15 copies, and shall be served on counsel for petitioners, Nathan J. Bayer, Esq., Sher & Blackwell, 1255 23rd Street NW., suite 500, Washington, DC 20037.

Copies of the petition are available for examination at the Washington, DC office of the Secretary of the Commission, 800 N. Capitol Street NW., room 1046.

Joseph C. Polking,

Secretary.

[FR Doc. 93–24855 Filed 10–8–93; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Atlantic Community Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than November 1, 1993.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Atlantic Community Bancorp, Inc., Rocky Mount, North Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of Unity Bank & Trust Company, Rocky Mount, North Carolina.

2. KS Bancorp, Inc., Kenly, North Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of Kenly Savings Bank, Inc., Kenly, North Carolina.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104

Marietta Street, N.W., Atlanta, Georgia 30303:

1. AmSouth Bancorporation, Birmingham, Alabama; to merge with Citizens National Corporation, Naples, Florida, and thereby indirectly acquire Citizens National Bank, Naples, Florida.

2. SouthTrust Corporation, Birmingham, Alabama; to merge with BMR Financial Group, inc., Atlanta, Georgia, and thereby indirectly acquire Ameribank, Clearwater, Florida, and Community First Bank of Central Florida, Winter Garden, Florida.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Arvest Bank Group, Inc., Bentonville, Arkansas; to acquire at least 63.78 percent of the voting shares of Bank of Bentonville, Bentonville, Arkansas.

D. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. FSB Bancshares, Inc., Clute, Texas, to become a bank holding company by acquiring 100 percent of the voting shares of FSB Bancshares of Delware, Inc. Wilmington, Delaware, and thereby indirectly acquire First State Bank, Clute, Texas. In connection with this application, FSB Bancshares of Delaware, Inc. has applied to become a bank holding company by acquiring 100 percent of the voting shares of First State Bank, Clute, Texas.

Board of Governors of the Federal Reserve System, October 5, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-24930 Filed 10-8-93; 8:45 am]

BILLING CODE 6210-01-F

Chemical Banking Corporation, New York, New York; Application to Engage in Nonbanking Activities

Chemical Banking Corporation, New York, New York (Applicant), has applied pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (BHC Act) and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)) to engage *de novo* through its wholly owned subsidiary, Chemical Securities Inc., New York, New York (Company), a broker-dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), in underwriting and dealing in, to a limited extent, all types of equity securities, including without limitation, common stock, prefarred stock, American Depositary Receipts, options, limited partnership units, securities issued by closed-end investment companies but not securities issued by open-end investment companies, and other direct and indirect equity ownership interests in corporations and other entities. Applicant proposes to conduct these activities throughout the United States and the world.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity which the Board, after due notice and opportunity for hearing, has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto. This statutory test requires that two separate tests be met for an activity to be permissible for a bank holding company. First, the Board must determine that the activity is, as a general matter, closely related to banking. Second, the Board must find in a particular case that the performance of the activity by the applicant bank holding company may reasonably be expected to produce public benefits that outweigh possible adverse effects.

A particular activity may be found to meet the "closely related to banking" test if it is demonstrated that banks have generally provided the proposed activity; that banks generally provide services that are operationally or functionally similar to the proposed activity so as to equip them particularly well to provide the proposed activity; or that banks generally provide services that are so integrally related to the proposed activity as to require their provision in a specialized form. *National Courier Ass'n v. Board of Governors*, 516 F.2d 1229, 1237 (D.C. Cir. 1975). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. Board Statement Regarding Regulation Y, 49 Federal Register 806 (1984).

The Board previously has approved, by order, underwriting and dealing in, to a limited extent, all types of debt and equity securities. *J.P. Morgan & Co. Incorporated, et al.*, 75 Federal Reserve Bulletin 192 (1989) (1989 Section 20 Order), *as modified by* Order dated September 21, 1989, 75 Federal Reserve Bulletin 751 (1989) (Modification Order). Applicant has stated that it will conduct the proposed underwriting and dealing activities using the same methods and procedures, and subject to the same prudential limitations established by the Board in the 1989 Section 20 Order, as modified by the Modification Order, including the Board's 10 percent revenue limitation on such activities. For this reason, Applicant contends that approval of the application would not be barred by section 20 of the Glass-Steagall Act (12 U.S.C. 377), which prohibits the affiliation of a state member bank with any company principally engaged in the underwriting, public sale, or distribution of securities.

In order to satisfy the proper incident to banking test, section 4(c)(8) of the BHC Act requires the Board to find that the performance of the activities by Company can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices. Applicant believes that the proposed activities will benefit the public by promoting competition, lower financing costs, and more innovative financing. Applicant also believes that approval of this application will allow Company to provide a wider range of services and added convenience to its customers. Applicant believes that the proposed activities will not result in any unsound banking practices or other adverse effects.

In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets, or is likely to meet, the standards of the BHC Act.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than October 29, 1993. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, October 5, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-24931 Filed 10-8-93; 8:45 am]

BILLING CODE 6210-01-F

The Dai-Ichi Kangyo Bank, Limited; Application to Engage in Certain Nonbanking Activities

The Dai-Ichi Kangyo Bank, Limited, Tokyo, Japan (Applicant), has applied pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (BHC Act) and section 225.23 of the Board's Regulation Y, 12 C.F.R. 225.23, to engage through its wholly owned subsidiary, DKB Securities Corporation, New York, New York (Company), in the purchase and sale for its own account of certain futures, options, and options on futures contracts with respect to certain bank-eligible securities and money market instruments, for purposes other than hedging.[1]

Applicant seeks approval to conduct the proposed activities throughout the United States, and plans to conduct the activities on a world-wide basis.

Closely Related to Banking Standard

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto. In determining whether a proposed activity is closely related to banking for purposes of the BHC Act, the Board considers, *inter alia*, the matters set forth in *National Courier Association v. Board of Governors of the Federal Reserve System*, 516 F.2d 1229 (D.C. Cir. 1975). These considerations are

(1) whether banks generally have in fact provided the proposed services;

(2) whether banks generally provide services that are operationally or functionally so similar to the proposed services as to equip them particularly well to provide the proposed services; and

(3) whether banks generally provide services that are so integrally related to the proposed services as to require their provision in a specialized form. *See* 516 F.2d at 1237. In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. *Board Statement Regarding Regulation Y*, 49 FR 806 (1984).

Applicant states that the Board previously has determined by order that the proposed activities are closely related to banking. *See Swiss Bank Corporation*, 77 Federal Reserve Bulletin 759 (1991). Applicant further states that banks conduct the proposed trading activity; that the Office of the Comptroller of the Currency has permitted national banks to conduct such activity; and that banks are equipped to engage in the proposed activity and have developed relevant expertise in such matters as judging and predicting interest rate movements.

Proper Incident to Banking Standard

In order to approve the proposal, the Board must determine that the proposed activities to be conducted by Company can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices. 12 U.S.C. 1843(c)(8).

Applicant believes that the proposal will produce public benefits that outweigh any potential adverse effects. In particular, Applicant maintains that the proposal will enhance market competition, increase market liquidity, and enable Company to operate more efficiently in its government securities business. In addition, Applicant states that the proposed activities will not result in adverse effects such as an undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices.

In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application, and does not represent a determination by the Board that the proposal meets or is likely to meet the standards of the BHC Act.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than November 3, 1993. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of San Francisco.

Board of Governors of the Federal Reserve System, October 5, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-24932 Filed 10-8-93; 8:45 am]

BILLING CODE 6210-01-F

DFC Acquisition Corporation II; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources,

[1] The specific futures, options, and options on futures contracts which Applicant proposes to purchase and sell through Company are substantially similar to those contracts listed in the appendices to the Board's Order in *Swiss Bank Corporation*, 77 Federal Reserve Bulletin 759 (1991).

decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 1, 1993.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. DFC Acquisition Corporation II, Kansas City, Missouri; to become a bank holding company by acquiring 98.06 percent of the voting shares of Dickinson Financial Corporation, Kansas City, Missouri, and thereby acquire Army National Bank, Fort Leavenworth, Kansas, and Bank Midwest, N.A., Maryville, Missouri.

DFC Acquisition Corporation II, Kansas City, Missouri; has also applied to acquire Livingston Life Insurance Company, Kansas City, Missouri, and thereby engage in reinsuring credit-related insurance pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 5, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-24928 Filed 10-8-93; 8:45 am]

BILLING CODE 6210-01-F

Keystone Financial, Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than November 1, 1993.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. Keystone Financial, Inc., Harrisburg, Pennsylvania; to acquire Elmwood Bancorp, Inc., Media, Pennsylvania, and thereby engage in operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Citizens Holding Company, Muskogee, Oklahoma; to acquire DigiSource, Inc., Fayetteville, Arkansas, and thereby engage throughy a joint venture in providing data processing services pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 5, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-24933 Filed 10-8-93; 8:45 am]

BILLING CODE 6210-01-F

Dr. William Steinberg, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 28, 1993.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. Dr. William Steinberg, and Jill Steinberg, Meadowbrook, Pennsylvania; who currently own 24.82 percent, to acquire additional shares for a total of over 25 percent of the voting shares of Continental Bancorporation, Laurel, New Jersey.

2. Arthur Toll, Ambler, Pennsylvania, and Linda Toll, Ambler, Pennsylvania; to acquire more than 10 percent and less than 25 percent of the voting shares of First Bank of Philadelphia, Philadelphia, Pennsylvania.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Harold Eugene Lieding, Vienna, Virginia; to acquire an additional 16.31 percent of the voting shares of Heritage Bank, McLean, Virginia, for a total of 16.39 percent.

Board of Governors of the Federal Reserve System, October 5, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-24929 Filed 10-8-93; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

[File No. 902-3178]

Diet Center, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final

Commission approval, would prohibit, among other things, a Pittsburgh, Pennsylvania diet program company from misrepresenting the performance or safety of any weight-loss program it offers in the future; require it to have competent and reliable scientific evidence to back up future claims it makes about weight loss and maintenance; require it to include in conjunction with maintenance success claims, the statement "For many dieters, weight loss is temporary;" and require it to disclose to its customers that failure to eat all of the food recommended in the program may put their health at risk.

DATES: Comments must be received on or before December 13, 1993.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Kathryn C. Nielsen, Seattle Regional Office, Federal Trade Commission, 2806 Federal Building, 915 Second Ave., Seattle WA, 98174, (206) 220–6350.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order to Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Diet Center, Inc., a corporation, hereafter sometimes referred to as proposed respondent or respondent, and it now appearing that proposed respondent is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between Diet Center, Inc., by its duly authorized officers and its attorneys, and counsel for the Federal Trade Commission that:

1. Proposed respondent Diet Center, Inc. is an Idaho corporation, with its offices and principal place of business at 921 Penn Avenue, Pittsburgh, Pennsylvania 15222.

2. Proposed respondent admits all the jurisdictional facts set forth in the attached draft complaint.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act, 5 U.S.C. 504.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the attached draft complaint, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent of facts, other than jurisdictional facts, or of violations of law as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent: (a) Issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order to cease and desist in disposition of the proceeding; and (b) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the attached draft complaint and the following order. Proposed respondent understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

Definitions

For purposes of this Order, the following definitions shall apply:

A. "Competent and reliable scientific evidence" shall mean tests, analyses, research, studies, surveys, or other evidence conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the relevant profession or science to yield accurate and reliable results;

B. "Weight loss program" shall mean any program designed to aid consumers in weight loss or weight maintenance;

C. "Broadcast medium" shall mean any radio or television broadcast, cablecast, home video or theatrical release.

D. For any Order-required disclosure in a print medium to be made "clearly and prominently," or in a "clear and prominent" manner, it must be given both in the same type style and in: (1) Twelve point type where the representation that triggers the disclosure is given in twelve point or larger type; or (2) the same type size as the representation that triggers the disclosure where that representation is given in a type size that is smaller than twelve point type. For any Order-required disclosure given orally in a broadcast medium to be made "clearly and prominently," or in a "clear and prominent" manner, the disclosure must be given at the same volume and in the same cadence as the representation that triggers the disclosure.

E. "Short broadcast advertisement" shall mean any advertisement of thirty seconds or less duration made in a broadcast medium.

I

It is ordered, That respondent Diet Center, Inc., a corporation, its

successors and assigns, and respondent's officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, including franchisees or licensees, in connection with the advertising, promotion, offering for sale, or sale of any weight loss program, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Making any representation, directly or by implication, about the success of participants on any weight loss program in achieving or maintaining weight loss or weight control unless, at the time of making any such representation, respondent possesses and relies upon competent and reliable scientific evidence substantiating the representation; *Provided, further,* That for any representation that:

(1) Any weight loss achieved or maintained through the weight loss program is typical or representative of all or any subset of participants of respondent's program, said evidence shall, at a minimum, be based on a representative sample of:

(a) All participants who have entered the program, where the representation relates to such persons; *Provided, however,* That the required sample may exclude those participants who dropped out of the program within two weeks of their entrance or who were unable to complete the program due to illness, pregnancy or change of residence; or

(b) All participants who have completed a particular phase of the program or the entire program, where the representation *only* relates to such persons;

(2) Any weight loss is maintained long-term, said evidence shall, at a minimum, be based upon the experience of participants who were followed for a period of at least two years from their completion of the active maintenance phase of respondent's program or earlier termination, as applicable; and

(3) Any weight loss is maintained permanently, said evidence shall, at a minimum, be based upon the experience of participants who were followed for a period of time after completing the program that is either:

(a) Generally recognized by experts in the field of treating obesity as being of sufficient length for predicting that weight loss will be permanent; or

(b) Demonstrated by competent and reliable survey evidence as being of sufficient duration to permit such a prediction.

B. Representing, directly or by implication, except through endorsements of testimonials referred to in paragraph I.E., that participants of any weight loss program have successfully maintained weight loss, unless respondent discloses, clearly and prominently, and in close proximity to such representation, the statement: "For many dieters, weight loss is temporary;" *Provided, further,* That respondent shall not represent, directly or by implication, that the above-quoted statement does not apply to dieters in respondent's weight loss program; *Provided, however,* That a mere statement about the existence, design or content of a maintenance program shall not, without more, be considered a representation that participants on any weight loss program have successfully maintained weight loss.

C. Representing, directly or by implication, except through short broadcast advertisements referred to in paragraph I.D., and except through endorsements or testimonials referred to in paragraph I.E., that participants on any weight loss program have successfully maintained weight loss, unless respondent discloses, clearly and prominently, and in close proximity to such representation the following information:

(1) The average percentage of weight loss maintained by those participants;

(2) The duration over which the weight loss was maintained, measured from the date that participants ended the active weight loss phase of the program; *Provided, further,* That if any portion of the time period covered includes participation in a maintenance program(s) that follows active weight loss, such fact must also be disclosed; and

(3) If the participant population referred to is not representative of the general participant population for respondent's programs:

(a) The proportion of the total participant population in respondent's programs that those participants represent, expressed in terms of a percentage or actual numbers of participants; or

(b) The statement: "Diet Center makes no claim that this [these] result[s] is [are] representative of all participants in the Diet Center Program."

Provided, further, That compliance with the obligations of this Paragraph I.C. in no way relieves respondent of the requirement under Paragraph I.A. of the Order to substantiate any representation about the success of participants on any weight loss program in maintaining weight loss.

D. Representing, directly or by implication, in short broadcast advertisements that participants of any weight loss program have successfully maintained weight loss unless respondent:

(1) Includes, clearly and prominently, and in immediate conjunction with such representation, the statement: "Check at our outlets for details about our maintenance record;"

(2) For a period of time beginning with the date of the first broadcast of any such advertisement and ending no sooner than thirty days after the last broadcast of such advertisement, complies with the following procedures upon the first presentation of any form asking for information from a potential customer, but in any event before such person has entered into any agreement with respondent:

(a) Gives to each potential client a separate document entitled "Maintenance Information," which shall include all the information required by paragraph I.B. and subparagraphs I.C.(1)–(3) of this Order and shall be formatted in the exact type size and style as the example form below, and shall include the heading (Helvetica 14 pt. bold), lead-in (Times Roman 12 pt.), disclosures (Helvetica 14 pt. bold), acknowledgment language (Times Roman 12 pt.) and signature block therein: *Provided, further,* That no information in addition to that required to be included in the document required by this subparagraph I.D.(2) shall be included therein:

Maintenance Information

You may have seen our recent ad about maintenance success. Here's some additional information about our maintenance record.

[Disclosure of maintenance statistics goes here

_____

_____

_____

_____

For many dieters, weight loss is temporary.
I have read this notice.

_____

(Client Signature)

_____

(Date)

(b) Requires each potential customer to sign such document; and

(c) Gives each customer a copy of such document;

Provided, further, That if any potential participant who does not then participate in the program refuses to sign or accept a copy of such document, respondent shall so indicate on such document and shall not, for that reason alone, be found in breach of this subparagraph I.D.(2); and

(3) Retains in each customer's file a copy of the signed maintenance notice required by this paragraph;

Provided, further, That: (1) Compliance with the obligations of this paragraph I.D. in no way relieves respondent of the requirement under paragraph I.A. of this Order to substantiate any representation about the success of participants on any weight loss program in maintaining weight loss; and (2) respondent must comply with both paragraphs I.D. and I.C. of this Order if respondent includes in any such short broadcast advertisement a representation about maintenance success that states a number or percentage, or uses descriptive terms that convey a quantitative measure such as "most of our customers maintain their weight loss long-term;"

Provided, however, That the provisions of paragraph I.D. shall not apply to endorsements or testimonials referred to in paragraph I.E.

E. Using any advertisement containing an endorsement or testimonial about weight loss success or weight loss maintenance success by a participant or participants on respondent's weight loss program if the weight loss success or weight loss maintenance success depicted in the advertisement is not representative of what participants on respondent's weight loss programs generally achieve, unless respondent discloses, clearly and prominently, and in close proximity to the endorser's statement of his or her weight loss success or weight loss maintenance success:

(1) What the generally expected success would be for Diet Center customers in losing weight or maintaining achieved weight loss; *Provided, however,* In determining the generally expected success for Diet Center customers, respondent may exclude those customers who dropped out of the program within two weeks of their entrance or who were unable to complete the program due to illness, pregnancy or change of residence; or

(2) One of the following statements:

(a) "You should not expect to experience these results."

(b) "This result is not typical. You may not do as well."

(c) "This result is not typical. You may be less successful."

(d) "_____'s success is not typical. You may not do as well."

(e) "_____'s experience is not typical. You may achieve less."

(f) "Results not typical."

(g) "Results not typical of program participants.";

Provided, further, That if endorsements or testimonials covered by this paragraph I.E. are made in a broadcast medium, any disclosure required by this paragraph must be communicated in a clear and prominent manner and in immediate conjunction with the representation that triggers the disclosure.

Provided, however, That:

(1) For endorsements or testimonials about weight loss success, respondent can satisfy the requirements of subparagraph I.E.(1) by accurately disclosing the generally expected success in the following phrase: "Diet Center clients lose an average of _____ pounds over an average __-week treatment period;" and

(2) If the weight loss success or weight loss maintenance success depicted in the advertisement is representative of what participants of a group or subset clearly defined in the advertisement generally achieve, then, in lieu of the disclosures required in either subparagraph I.E. (1) or (2) herein, respondent may substitute a clear and prominent disclosure of the percentage of all of respondent's customers that the group or subset defined in the advertisement represents;

F. Representing, directly or by implication, the typical rate or speed at which any participant on any weight loss program has experienced or will experience weight loss unless, at the time of making any such representation, respondent possesses and relies upon competent and reliable scientific evidence substantiating the representation.

G. Failing to disclose, clearly and prominently, either:

(1) To each participant who, after the first two weeks on the program, is experiencing average weekly weight loss that exceeds two percent (2.0%) of said participant's initial body weight, or three pounds (whichever is less), for at least two consecutive weeks; or

(2) In writing to all participants, when they enter the program, that failure to follow the program protocol and eat all of the varieties and amounts of food recommended may involve the risk of developing serious health complications.

H. Representing, directly or by implication, that participants on respondent's weight loss program will lose only fat and no lean body tissue.

I. Making any representation, directly or by implication, about the loss of fat or the loss of lean body tissue that participants on respondent's weight loss program will experience unless, at the time of making any such representation, respondent possesses and relies upon competent and reliable scientific evidence substantiating the representation.

J. Misrepresenting, directly or by implication, the existence, contents, validity, results, conclusions or interpretations of any test or study.

K. Misrepresenting, directly or by implication, the performance, efficacy or safety of any weight loss program.

II

It is further ordered, That respondent shall notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation(s), the creation or dissolution of subsidiaries or any other change in the corporation(s) that may affect compliance obligations arising out of this Order; *Provided, however,* That nothing in this Order shall be interpreted to require respondent to notify the Commission regarding the addition or termination of franchisees or licensees.

III

It is further ordered, That respondent shall maintain for a period of three (3) years after the date the representation was last made, and upon request make available to the Federal Trade Commission staff for inspection and copying, all materials possessed and relied upon to substantiate any representation covered by this Order, and all test reports, studies, surveys or other information in its possession or control that contradicts, qualifies or calls into question any such representation, including complaints from consumers.

IV

It is further ordered, That respondent shall distribute a copy of this Order to each of its officers, agents, representatives, independent contractors and employees who is involved in the preparation and placement of advertisements or promotional materials or who has any responsibilities with respect to the subject matter of this Order; and, for a period of five (5) years from the date of entry of this Order, distribute same to all future such officers, agents, representatives, independent contractors and employees.

V

It is further ordered, That:

A. Respondent shall distribute a copy of this Order to each of its franchisees and licensees and shall contractually

bind them to comply with the prohibitions and affirmative requirements of this Order; respondent may satisfy this contractual requirement by incorporating such Order requirements into its current Operations Manual; and

B. Respondent shall further make reasonable efforts to monitor its franchisees' and licensees' compliance with the Order provisions; respondent may satisfy this requirement by: (1) Taking reasonable steps to notify promptly any franchisee or licensee that respondent determines is failing materially or repeatedly to comply with any order provision; (2) providing the Federal Trade Commission with the name and address of the franchisee or licensee and the nature of the noncompliance if the franchisee or licensee fails to comply promptly with the relevant Order provision after being so notified; and (3) in cases where that franchisee's or licensee's conduct constitutes a material or repeated violation of the order, diligently pursuing reasonable and appropriate remedies available under its franchise or license agreement and applicable state law to bring about a cessation of that conduct by the franchisee or licensee;

Provided, however, That respondent's compliance with this Part shall constitute an affirmative defense to any civil penalty action arising from an act or practice of one of respondent's franchisees or licensees that violates this Order where respondent: (a) Has not authorized, approved or ratified that conduct; (b) has reported that conduct promptly to the Federal Trade Commission under this Part; and (c) in cases where that franchisee's or licensee's conduct constitutes a material or repeated violation of the order, has diligently pursued reasonable and appropriate remedies available under its franchise or license agreement and applicable state law to bring about a cessation of that conduct by the franchisee or licensee.

VI

It is further ordered, That respondent shall, within sixty (60) days after the date of service of this Order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Diet Center, Inc. (hereinafter "Diet Center"), marketer of the Diet Center Program, a low-calorie diet (hereinafter "LCD") program. The Diet Center Program is offered to the public nationwide through franchised outlets.

The proposed consent order has been placed on the public record for sixty (60) days for the reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Commission's complaint charges that the proposed respondent deceptively advertised: (1) Its LCD program's success in helping customers achieve and maintain weight loss; (2) the typical rate or speed at which consumers will lose weight; and (3) customers on its LCD program lose only fat with little or no muscle loss. The complaint further alleges that Diet Center engaged in the deceptive practice of failing to warn clients it monitors of the health importance of following the diet protocol.

Success

The complaint against Diet Center alleges that the company failed to possess a reasonable basis for claims it made regarding the success of its customers in losing weight and avoiding the regain of weight lost during the program. Through consumer testimonials and other advertisements, Diet Center represented that its customers typically are successful in reaching their weight loss goals and in maintaining their weight loss achieved under the Diet Center Program either long-term or permanently.

The Commission believes that these success claims for customer weight loss and maintenance of achieved weight loss are deceptive because Diet Center at the time it made the claims did not possess adequate substantiation for those claims.

The proposed consent order seeks to address the alleged success misrepresentations cited in the accompanying complaint in several ways. First, the order (Part I.A.) requires the company to possess a reasonable basis consisting of competent and reliable scientific evidence substantiating any claim about the success of participants on any diet program in achieving or maintaining weight loss. To ensure compliance, the order further specifies what this level of evidence shall consist of when certain types of success claims are made:

(1) In the case of claims that weight loss is typical or representative of all participants using the program or any subset of those participants, that evidence shall be based on a representative sample of: (a) All participants who have entered the program, where the representation relates to such persons; or (b) all participants who have completed a particular phase of the program or the entire program, where the representation *only* relates to such persons.

(2) In the case of claims that any weight loss is maintained long-term, that evidence shall be based upon the experience of participants who were followed for a period of at least two years after their completion of the respondent's program, including any periods of participation in respondent's maintenance program.

(3) In the case of claims that weight loss is maintained permanently, that evidence shall be based upon the experience of participants who were followed for a period of time after completing the program that is either: (a) Generally recognized by experts in the field of treating obesity as being of sufficient length to constitute a reasonable basis for predicting that weight loss will be permanent; or (b) demonstrated by competent and reliable survey evidence as being of sufficient duration to permit such a prediction.

Second, as measures to ensure future compliance, the proposed order requires the proposed respondent for any claim that participants of any diet program have successfully maintained weight loss to disclose the fact that "For many dieters, weight loss is temporary" (Part I.B.), as well as the following information relating to that claim (Part I.C.):

(1) The average percentage of weight loss maintained by those participants (e.g., "60% of achieved weight loss was maintained"),

(2) The duration over which the weight loss was maintained, measured from the date that participants ended the active weight loss phase of the program, and the fact that all or a portion of the time period covered includes participation in proposed respondent's maintenance program(s) that follows active weight loss, if that is the case—e.g., "participants maintain an average of 60% of weight loss 22 months after active weight loss (includes 18 months on maintenance program)", and

(3) Where the participant population referred to is not representative of the general participant population for that program, the proportion of the total participant population that those participants represent, expressed in

terms of a percentage or actual numbers of participants—e.g. "Participants on maintenance—30% of our customers—kept off an average of 66% of the weight for one year (includes time on maintenance program)" or, in lieu of that factual disclosure, the statement: "Diet Center makes no claim that this result is representative of all participants in the Diet Center Program."

Third, for maintenance success claims made in broadcast advertisements of thirty seconds or less duration, the proposed order (Part I.D.) requires that Diet Center, in lieu of making the factual disclosures required for such claims by Part I.C.: (1) Include in such advertisements the statement "Check at our outlets for details about our maintenance record."; and (2) provide consumers at point-of-sale with a required form that includes the factual disclosures required by Part I.C., which form must be signed by the client and retained in the company's client file. If any potential participant who does not then participate in the program refuses to sign or accept a copy of such document, respondent shall so indicate on such document.

The proposed order makes clear that this alternative disclosure requirement does not relieve Diet Center of the obligation to substantiate any maintenance success claim, in accordance with Part I.A. of the order, and it "takes back" the exception from full quantitative disclosures in short broadcast advertising if Diet Center makes a maintenance success claim that uses numbers or descriptive terms that convey a quantitative measure, such as "most of our customers maintain their weight loss long term." Diet Center in that case would have to make all the required disclosures in the ad and provide the disclosures at point-of-sale.

Fourth, for weight-loss and weight-loss maintenance success claims made through endorsements or testimonials that are not representative of what Diet Center Program participants generally achieve, the order (Part I.E.) requires that Diet Center disclose either what the generally expected success would be for Diet Center customers, or one of several alternative statements, such as "This result is not typical. You may be less successful," which explains the limited applicability of atypical testimonials in accordance with the Commission's "Guides Concerning Use of Endorsements and Testimonials in Advertising" 16 CFR 255.2(a). Under the proposed order, Diet Center may satisfy the requirements of the first disclosure concerning generally expected success by accurately disclosing those facts in the following format: "Diet Center clients lose an average of __pounds over an average __week treatment period."

Finally, the proposed order (Part I.K.) generally prohibits the company from misrepresenting the performance or efficacy of any weight loss program.

Speed of Weight Loss

The Commission's complaint further alleges that Diet Center failed to possess a reasonable basis for its claims that consumers will typically lose weight at a certain rate or speed. To address this practice, the proposed order (Part I.F.) prohibits Diet Center from representing the typical rate or speed with which any participant has or will experience weight loss unless proposed respondent possesses and relies upon competent and reliable scientific evidence substantiating the representation.

Fat Versus Muscle Loss

The Commission's complaint alleges that Diet Center falsely represented that consumers who follow the Diet Center Program will lose only fat and no muscle. In addition, the complaint alleges that Diet Center falsely represented that competent and reliable evidence showed that 92% of the weight lost on the Diet Center Program is fat, not water or lean body mass (muscle). To address this practice, the proposed order (Parts I.H. and I.I.) prohibits Diet Center from: (1) Representing that participants on its LCD program will lose fat and no lean body mass; and (2) making any representation about the loss of fat or the loss of lean body tissue that participants on its LCD program will experience unless proposed respondent possesses and relies upon competent and reliable scientific evidence substantiating the representation.

Monitoring Practices

According to the complaint, Diet Center provides its customers with diet protocols that require the customers to come in to one of proposed respondent's franchises regularly for monitoring of their progress, including weighing in. In the course of regularly ascertaining weight loss progress, Diet Center franchises, in some instances, are presented with weight loss results indicating that customers may not be consuming all of the food prescribed by their diet protocol. According to the complaint, such conduct could, if continued, impact their health. In light of this monitoring practice, the Commission's complaint alleges that Diet Center franchises have failed to disclose to consumers who are losing weight at a rate faster than called for under the diet protocol that failing to follow the diet protocol and consume all of the food prescribed could impact their health.

The proposed consent order seeks to address the alleged monitoring misrepresentation cited in the accompanying complaint in two ways. First, the order (Part I.G.) requires Diet Center to disclose in writing to all participants when they enter the program, that failure to follow the program protocol and eat all of the food recommended may involve the risk of developing serious health complications. Second, the proposed order (part I.K.) generally prohibits any misrepresentation concerning the safety of any weight loss program.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order, or to modify in any way their terms.

Donald S. Clark,

Secretary.

Statement of Commissioner Deborah K. Owen Concurring in Part and Dissenting in Part

Statement of Commissioner Deborah K. Owen concurring in part and dissenting in part in Diet Center, Inc., File No. 902-3178, Jenny Craig Inc., File No. 902-3188, Nutri/System, Inc., File No. 902-3159, Physicians Weight Loss Centers of America, Inc., File No. 902-3185, and Weight Watchers International, Inc., File No. 902-3195.

The Commission's decision to accept for public comment consent orders with three major marketers of low calorie diets, and to issue Part III complaints against two others, represents an important, and largely appropriate, next step in the Commission's efforts to address allegations of false and unsubstantiated advertising claims in the diet industry. However, I must dissent on two aspects of the proposed remedies in these matters.

First, in the earlier very low calorie diet cases, I took the position that the mandated weight loss maintenance disclosures were likely to be too complex to enlighten consumers if made during short radio or TV ads.[1] I recommended requiring more concise disclosures for such broadcast ads, which would be supplemented by full disclosure at the point of sale. The contemplated relief in the present five matters adopts much of this approach, and, as such, represents a significant improvement over the very low calorie diet consents. However, this improvement would not apply where a broadcast maintenance claim includes a number, percentage, or other descriptive term

[1] See Statement Concurring in Part and Dissenting in Part in Jason Pharmaceuticals, Inc., File No. 912-3337, National Center for Nutrition, Inc., File No. 912-3024, and Sandoz Nutrition Corporation, File No. 912-3023 (Aug. 10, 1992).

to convey a quantitative measure. I am concerned that this proviso will significantly reduce, if not eliminate, the incidence of shorter, more understandable broadcast ad disclosures, without providing sufficiently compensating gains in preventing deception. Furthermore, the proviso's language regarding descriptive terms conveying a quantitative measure is vague. Appropriate, non-deceptive claims may be inadvertently chilled as a result, and vexing compliance questions may arise as respondents attempt to conform to the requirements of the orders. Accordingly, I dissent with respect to inclusion of this proviso in the proposed consents and notice orders.

Second, I dissent with regard to the notice of possible action under section 19(b) of the Federal Trade Commission Act, 15 U.S.C. 57b, in the Jenny Craig and Weight Watchers matters. Consumer redress has not been included in any of the recent settlements with marketers of very low, and low calorie diet programs, and there appear to be no distinguishable appropriate grounds for seeking this relief from Jenny Craig and Weight Watchers. Moreover, assessing consumer injury and determining levels of fair and equitable redress are apt to pose insurmountable problems for meaningful section 19(b) actions in these matters.

[FR Doc. 93–24868 Filed 10–8–93; 8:45 am]
BILLING CODE 6750–01–M

[File No. 931–0067]

The Keds Corporation; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a Massachusetts-based manufacturer and seller of athletic and casual shoes from fixing the resale price at which any dealer may advertise or sell any Keds athletic or casual footwear item; coercing or pressuring any dealer to adopt or adhere to any resale price; attempting to secure commitments from any dealer about the resale price at which it will advertise or sell any such product; and requiring or suggesting that dealers report other dealers who advertise or sell any such product below any resale price.

DATES: Comments must be received on or before December 13, 1993.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC. 20580.

FOR FURTHER INFORMATION CONTACT: Mark Whitener or Joan Greenbaum, FTC/H–374, Washington, DC. 20506. (202) 326–2845 or 326–2629. Michael Bloom or Rhonda McLean, New York Regional Office, Federal Trade Commission, 150 William St., suite 1300, New York, N.Y. 10038. (212) 264–1207.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 39 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

Commissioners: Janet D. Steiger, Chairman, Mary L. Azcuenaga, Deborah K. Owen, Roscoe B. Starek III, Dennis A. Yao.

The Federal Trade Commission having initiated an investigation of certain acts and practices of The Keds Corporation, a subsidiary of The Stride Rite Corporation, and it now appearing that The Keds Corporation, hereinafter sometimes referred to as proposed respondent, is willing to enter into an agreement containing an order to cease and desist from engaging in the acts and practices being investigated,

It is hereby agreed by and between The Keds Corporation, by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent The Keds Corporation, a wholly-owned subsidiary of The Stride-Rite Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Massachusetts. The mailing address and principal place of business of proposed respondent is: Five Cambridge Center, Cambridge, Massachusetts 02142.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. The proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. The proposed respondent has read the proposed complaint and order

contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. The proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered, That for the purpose of this order, the following definitions shall apply:

(A) "Keds" or "respondent" means The Keds Corporation, its predecessors, subsidiaries, divisions, groups, and affiliates controlled by The Keds Corporation, and their respective directors, officers, employees, agents, and representatives, and their respective successors and assigns.

(B) "Product" means any athletic or casual footwear items which are manufactured, offered for sale or sold by respondent to dealers.

(C) "Dealer" means any person, corporation or entity not owned by The Keds Corporation or by any entity owned or controlled by Keds that in the course of its business sells any product.

(D) "Resale Price" means any price, price floor, minimum price, maximum discount, price range, or any mark-up formula or margin of profit used by any dealer for pricing any product. "Resale price" includes, but is not limited to, any suggested, established, or customary resale price.

II

It is further ordered, That Keds, directly or indirectly, or through any corporation, subsidiary, division or other device, in connection with the manufacturing, offering for sale, sale or distribution of any product in or affecting "commerce," as defined by the Federal Trade Commission Act, do forthwith cease and desist from:

(A) Fixing, controlling, or maintaining, directly or indirectly, the resale price at which any dealer may advertise, promote, offer for sale or sell any product.

(B) Requiring, coercing, or otherwise pressuring any dealer, directly or indirectly, to maintain, adopt, or adhere to any resale price.

(C) Securing or attempting to secure, directly or indirectly, any commitment or assurance from any dealer concerning the resale price at which the dealer may advertise, promote, offer for sale or sell any product.

(D) Requiring, requesting or suggesting, directly or indirectly, that any dealer report the identity of other dealers who advertise, promote, offer for sale or sell any product below any resale price.

III

It is further ordered, That, for a period of five (5) years from the date on which this order becomes final, Keds shall clearly and conspicuously state the following on any list, advertising, book, catalogue, or promotional material where it has suggested any resale price to any dealer:

Although the Keds corporation may suggest resale prices for products, retailers are free to determine on their own the prices at which they will advertise and sell keds products.

IV

It is further ordered, That, within thirty (30) days after the date on which this order becomes final, Keds shall mail by first class mail either the letter attached as Exhibit A or the letter attached as Exhibit B, together with copy of this order, to all to Keds' directors, officers, dealers, distributors, agents, or sales representatives.

V

It is further ordered, That, for a period of two (2) years after the date on which this order becomes final, Keds shall mail by first class mail either the letter attached as Exhibit A or the letter attached as Exhibit B, together with a copy of this order, to all new directors, officers, dealers, distributors, agents, or sales representatives of Keds, within ninety (90) days of the commencement of such person's employment or affiliation with Keds.

VI

It is further ordered, That Keds shall notify the Commission at least thirty (30) days prior to any proposed changes in Keds such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of the order.

VII

It is further ordered, That, within sixty (60) days after this order becomes final, and at such other times as the Commission or its staff shall request, Keds shall file with the Commission a verified written report setting forth in detail the manner and form in which Keds has complied and is complying with this order.

Exhibit A

[KEDS LETTERHEAD]

Dear Retailer: The Federal Trade Commission has conducted an investigation into Keds' sales policies, and in particular, Keds' Suggested Retail Pricing Policy that was announced in May 1992. As you know, on June 25, 1993, Keds withdrew its Pricing Policy. Keds has always believed, and continues to believe, that its Pricing Policy did not violate the law. However, to expeditiously resolve the investigation and to avoid disruption to the conduct of its business, Keds has agreed, without admitting any violation of the law, to the entry of a Consent Order by the Federal Trade Commission prohibiting certain practices relating to resale prices. A copy of the Order is enclosed. This letter and the accompanying Order are being sent to all of our dealers, sales personnel and representatives.

The Order spells out our obligations in greater detail, but we want you to know and understand the following:

1. You can sell and advertise our products at any price you choose.

2. While we may send materials to you which may contain our suggested retail prices, you are completely free to disregard these suggestions.

We look forward to continuing to do business with you in the future.

Sincerely yours,

President,
The Keds Corporation.

Exhibit B

[KEDS LETTERHEAD]

Dear Retailer: The [name of state] Attorney General's Office, along with the offices of the Attorneys General in the other 49 states, and the Federal Trade Commission have conducted investigations into Keds' sales policies, and in particular, Keds' Suggested Retail Pricing Policy that was announced in May 1992. As you know, on June 25, 1993, Keds withdrew its Pricing Policy. Keds has always believed, and continues to believe, that its Pricing Policy did not violate the law. However, to expeditiously resolve the investigations and to avoid disruption to the conduct of its business, Keds has agreed, without admitting any violation of the law, to the entry of Final Judgments and Consent Decrees by the State of [name of state] and the Federal Trade Commission prohibiting certain practices relating to resale prices. Copies of the Final Judgments and Consent Decrees are attached. This letter and the accompanying documents have been sent to all of our dealers, sales personnel and representatives.

The Final Judgments and Consent Decree spell out our obligations in greater detail, but we want you to know and understand the following. Under both orders:

1. You can advertise and sell our products at any price you choose.

2. While we may send materials to you which may contain our suggested retail prices, you are completely free to disregard these suggestions.

In addition, the [name of state] order requires that:

3. Keds will not take any adverse action against you because of the price at which you advertise or sell our products.

We look forward to continuing to do business with you in the future.

Sincerely yours,

President,

The Keds Corporation.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from The Keds Corporation, a wholly-owned subsidiary of Stride Rite Corporation.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint alleges that The Keds Corporation ("Keds") has entered into a combination, agreement, and understanding with certain of its dealers to maintain the resale prices at which certain of its dealers sell certain of its athletic or casual footwear products. The complaint alleges that this conduct violates section 5 of the Federal Trade Commission Act.

Keds has signed a consent agreement that prohibits it from fixing, controlling, or maintaining the resale prices at which any dealer may advertise, promote, offer for sale, or sell any Keds product. The proposed order prohibits Keds from coercing or pressuring any dealer to maintain, adopt, or adhere to any resale price, and from securing or attempting to secure commitments or assurances from any dealer concerning the resale price at which the dealer may advertise, promote, offer for sale, or sell any Keds product. The proposed order does not prohibit the use of price-restrictive cooperative advertising programs if they are not part of an attempt by Keds to maintain resale prices. See U.S. Pioneer Electronic Corp., Docket No. C–2755, 9–13 (April 8, 1992) (order granting in part and denying in part request to reopen and modify order issued October 24, 1975, and order to show cause). The proposed consent order also prohibits Keds from requiring, requesting, or suggesting that its dealers report dealers who sell any Keds product below any resale price suggested or established by Keds.

The proposed order requires The Keds Corporation to mail a letter to its dealers which will inform them that they can sell and advertise Keds products at any price they choose. The proposed order also requires Keds, for a period of five years, to place on any material in which it suggest resale prices a statement that the dealer is free to determine the prices at which it will sell Keds products.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 93–24866 Filed 10–8–93; 8:45 am]

BILLING CODE 6750–01–M

[File No. 902–3159]

Nutri/System, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a Blue Bell, Pennsylvania diet program company from misrepresenting the performance or safety of any weight-loss program it offers in the future; require it to have competent and reliable scientific evidence to back up future claims it makes about weight loss and maintenance; require it to include, in conjunction with maintenance success claims, the statement "For many dieters, weight loss is temporary;" require it to disclose to its customers that failure to eat all of the food recommended in the program may put their health at risk; require it to disclose, if it makes price representations, either all mandatory fees or a list of the additional products or services consumers will need to purchase; and require it to disclose all material connections between its program and any entity that endorses or evaluates it.

DATES: Comments must be received on or before December 13, 1993.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Matthew Daynard, Federal Trade Commission, 6th St. and Pa. Ave., NW., Washington DC, 20580, (202) 326–3291.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Nutri/System, Inc., a corporation, and it now appearing that Nutri/System, Inc., a corporation, hereafter sometimes referred to as proposed respondent or respondent, is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed, by and between Nutri/System, Inc., by its duly authorized officers, and its attorneys, and counsel for the Federal Trade Commission that:

1. Respondent Nutri/System, Inc., is a Pennsylvania corporation, with its offices and principal place of business at 380 Sentry Parkway, Blue Bell, Pennsylvania 19422.

2. Proposed respondent admits all the jurisdictional facts set forth in the attached draft complaint.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act, 5 U.S.C. 504.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the attached draft complaint, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this

agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent of facts, other than jurisdictional facts, or of violations of law as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent: (a) Issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following Order to cease and desist in disposition of the proceeding; and (b) make information public in respect thereto. When so entered, the Order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to Order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or the agreement may be used to vary or contradict the terms of the Order.

7. Proposed respondent has read the attached draft complaint and the following Order. Proposed respondent understands that once the Order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the Order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

Definitions

For the purposes of this Order, the following definitions shall apply:

A. "Competent and reliable scientific evidence" shall mean those tests, analyses, research, studies, surveys, or other evidence conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the relevant profession or science to yield accurate and reliable results;

B. "Weight loss program" shall mean any program designed to aid consumers in weight loss or weight maintenance;

C. "Material connection" shall mean any relationship between the respondent and a third party, which relationship might materially affect the weight or credibility of any endorsement, evaluation or test and which relationship would not reasonably be expected by consumers;

D. "Broadcast medium" shall mean any radio or television broadcast, cablecast, home video, or theatrical release.

E. For any order-required disclosure in a print medium to be made "clearly and prominently", or in a "clear and prominent" manner, it must be given both in the same type style and in: (1) Twelve point type where the representation that triggers the disclosure is given in twelve point or larger type; or (2) the same type size as the representation that triggers the disclosure where that representation is given in a type size that is smaller than twelve point type. For any order-required disclosure given orally in a broadcast medium to be made "clearly and prominently", or in a "clear and prominent" manner, the disclosure must be given at the same volume and in the same cadence as the representation that triggers the disclosure.

F. "Short broadcast advertisement" shall mean any advertisement of thirty seconds or less duration made in a broadcast medium.

I

It is ordered, That respondent Nutri/System, Inc., a corporation, its successors and assigns, and respondent's officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, including franchisees or licensees, in connection with the advertising, promotion, offering for sale, or sale of any weight loss program, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Making any representation, directly or by implication, about the success of participants on any weight loss program in achieving or maintaining weight loss or weight control unless, at the time of making any such representation, respondent possesses and relies upon competent and reliable scientific evidence substantiating the representation; *Provided, further,* That for any representation that:

(1) Any weight loss achieved or maintained through the weight loss program is typical or representative of all or any subset of participants of respondent's program, said evidence shall, at a minimum, be based on a representative sample of:

(a) All participants who have entered the program, where the representation relates to such persons; *Provided, however,* That the required sample may exclude those participants who dropped out of the program within two weeks of their entrance or who were unable to complete the program due to illness, pregnancy, or change of residence; or

(b) All participants who have completed a particular phase of the program or the entire program, where the representation *only* relates to such persons;

(2) Any weight loss is maintained long-term, said evidence shall, at a minimum, be based upon the experience of participants who were followed for a period of at least two years from their completion of the active maintenance phase of respondent's program or earlier termination, as applicable; and

(3) Any weight loss is maintained permanently, said evidence shall, at a minimum, be based upon the experience of participants who were followed for a period of time after completing the program that is either:

(a) Generally recognized by experts in the field of treating obesity as being of sufficient length for predicting that weight loss will be permanent, or

(b) Demonstrated by competent and reliable survey evidence as being of sufficient duration to permit such a prediction.

B. Representing, directly or by implication, except through endorsements or testimonials referred to in paragraph I.E. herein, that participants of any weight loss program have successfully maintained weight loss, unless respondent discloses, clearly and prominently, and in close proximity to such representation, the statement: "For many dieters, weight loss is temporary."; *Provided, further,* That respondent shall not represent, directly or by implication, that the above-quoted statement does not apply to dieters in respondent's weight loss program; *Provided, however,* That a mere statement about the existence, design, or content of a maintenance program shall not, without more, be

considered a representation that participants of any weight loss program have successfully maintained weight loss.

C. Representing, directly or by implication, except through short broadcast advertisements referred to in paragraph I.D. herein, and except through endorsements or testimonials referred to in paragraph I.E. herein, that participants of any weight loss program have successfully maintained weight loss, unless respondent discloses, clearly and prominently, and in close proximity to such representation, the following information:

(1) The average percentage of weight loss maintained by those participants;

(2) The duration over which the weight loss was maintained, measured from the date that participants ended the active weight loss phase of the program; *Provided, further,* That if any portion of the time period covered includes participation in a maintenance program(s) that follows active weight loss, such fact must also be disclosed; and

(3) If the participant population referred to is not representative of the general participant population for respondent's programs:

(a) The proportion of the total participant population in respondent's programs that those participants represent, expressed in terms of a percentage or actual numbers of participants, or

(b) The statement: "Nutri/System makes no claim that this [these] result[s] is [are] representative of all participants in the Nutri/System program."

Provided, further, That compliance with the obligations of this paragraph I.C. in no way relieves respondent of the requirement under paragraph I.A. of this Order to substantiate any representation about the success of participants on any weight loss program in maintaining weight loss.

D. Representing, directly or by implication, in short broadcast advertisements, that participants of any weight loss program have successfully maintained weight loss, unless respondent:

(1) Includes, clearly and prominently, and in immediate conjunction with such representation, the statement: "Check at our centers for details about our maintenance record.";

(2) For a period of time beginning with the date of the first broadcast of any such advertisement and ending no sooner than thirty days after the last broadcast of such advertisement, complies with the following procedures upon the first presentation of any form asking for information from a potential client, but in any event before such person has entered into any agreement with respondent:

(a) Give to each potential client a separate document entitled "Maintenance Information," which shall include all the information required by paragraph I.B. and subparagraphs I.C.(1)–(3) of this Order and shall be formatted in the exact type size and style as the example form below, and shall include the heading (Helvetica 14 pt. bold), lead-in (Times Roman 12 pt.), disclosures (Helvetica 14 pt. bold), acknowledgment language (Times Roman 12 pt.) and signature block therein; *Provided, further,* That no information in addition to that required to be included in the document required by this subparagraph I.D.(2) shall be included therein:

Maintenance Information

You may have seen our recent ad about maintenance success. Here's some additional information about our maintenance record.

[Disclosure of maintenance statistics goes here _____]

For many dieters, weight loss is temporary.

I have read this notice.

_____

(Client Signature)

_____

(Date)

(b) Requires each potential client to sign such document; and

(c) Gives each client a copy of such document; and

Provided, however, That if any potential participant who does not then participate in the program refuses to sign or accept a copy of such document, respondent shall so indicate on such document and shall not, for that reason alone, be found in breach of this subparagraph I.D.(2); and

(3) Retains in each client file a copy of the signed maintenance notice required by this paragraph;

Provided, further, that: (1) Compliance with the obligations of this paragraph I.D. in no way relieves respondent of the requirement under paragraph I.A. of this Order to substantiate any representation about the success of participants on any weight loss program in maintaining weight loss; and (2) respondent must comply with both paragraph I.D. and paragraph I.C. of this Order if respondent includes in any such short broadcast advertisement a representation about maintenance success that states a number or percentage, or uses descriptive terms that convey a quantitative measure such as "most of our customers maintain their weight loss long-term";

Provided, however, That the provisions of paragraph I.D. shall not apply to endorsements or testimonials referred to in paragraph I.E. herein.

E. Using any advertisement containing an endorsement or testimonial about weight loss success or weight loss maintenance success by a participant or participants of respondent's weight loss program if the weight loss success or weight loss maintenance success depicted in the advertisement is not representative of what participants of respondent's weight loss programs generally achieve, unless respondent discloses, clearly and prominently, and in close proximity to the endorser's statement of his or her weight loss success or weight loss maintenance success:

(1) What the generally expected success would be for Nutri/System customers in losing weight or maintaining achieved weight loss; *Provided, however,* That in determining the generally expected success for Nutri/System customers, respondent may exclude those customers who dropped out of the program within two weeks of their entrance or who were unable to complete the program due to illness, pregnancy, or change of residence; or

(2) One of the following statements:

(a) "You should not expect to experience these results."

(b) "This result is not typical. You may not do as well."

(c) "This result is not typical. You may be less successful."

(d) "_____'s success is not typical. You may not do as well."

(e) "_____'s experience is not typical. You may achieve less."

(f) "Results not typical."

(g) "Results not typical of program participants."

Provided, further, That if endorsements or testimonials covered by this paragraph are made in a broadcast medium, any disclosure required by this paragraph must be communicated in a clear and prominent manner and in immediate conjunction with the representation that triggers the disclosure.

Provided, however, That:

(1) For endorsements or testimonials about weight loss success, respondent can satisfy the requirements of subparagraph I.E.(1) by accurately disclosing the generally expected success in the following phrase: "Nutri/System clients lose an average of _____pounds over an average ____ week treatment period"; and

(2) If the weight loss success or weight loss maintenance success depicted in the advertisement is representative of

what participants of a group or subset clearly defined in the advertisement generally achieve, then, in lieu of the disclosures required in either subparagraph I.E. (1) or (2) herein, respondent may substitute a clear and prominent disclosure of the percentage of all of respondent's customers that the group or subset defined in the advertisement represents.

F. Representing, directly or by implication, that the price at which any weight loss program can be purchased is the only cost associated with losing weight on that program, unless such is the case.

G. Representing, directly or by implication, the price at which any weight loss program can be purchased, unless respondent discloses, clearly and prominently, either:

(1) In close proximity to such representation, the existence and amount of all mandatory costs or fees associated with the program offered; or

(2) In immediate conjunction with such representation, one of the following statements:

(a) "Plus the cost of [list of products or services that participants must purchase at additional cost]."

(b) "Purchase of [list of products or services that participants must purchase at additional cost] required.";

Provided, further, That in broadcast media, if the representation that triggers any disclosure required by this paragraph is oral, the required disclosure must also be made orally.

H. Failing to disclose over the telephone, for a period of time beginning with the date of any advertisement of the price at which any weight loss program can be purchased and ending no sooner than 180 days after the last dissemination of any such advertisement, to consumers who inquire about the cost of any weight loss program, or are told about the cost of any weight loss program, the existence and amount of any mandatory costs or fees associated with participation in the program; *Provided, however,* That respondent may satisfy this requirement by directing its weight loss centers to disclose the information, by providing the center personnel with suggested language to be used when responding to phone inquiries and by making its best efforts to ensure compliance with its directive to disclose price information over the telephone.

I. Representing, directly or by implication, that prospective participants in respondent's weight loss program will reach a specified weight within a specified time period, unless at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence substantiating the representation.

J. Making comparisons between the efficacy of respondent's weight loss program and the efficacy of any other weight loss and/or diet program(s), unless at the time of making such representation, respondent possesses and relies upon a competent and reliable scientific study or survey substantiating the representation.

K. Representing, directly or by implication, that any of respondent's employees or any of the employees of any of respondent's franchisees, has been certified or trained as a specialist in nutrition or nutrition science unless respondent has determined through some objective means that the employee is in fact competent in that particular field or discipline, or otherwise misrepresenting the competence, skill, training, credentials or expertise of any of respondent's employees or any of the employees of respondent's franchisees.

L. Failing to disclose, clearly and prominently, in writing to all participants when they enter the program, that failure to follow the program protocol and eat all of the food recommended may involve the risk of developing serious health complications.

M. Representing, directly or by implication, that any weight loss program is endorsed by, complies with, or meets standards or guidelines for weight loss established by any professional or governmental organization or association, unless such is the case.

N. Making any representation, directly or by implication, that any organization, institution or publication has conducted or collaborated in, or endorsed the results of, any evaluation, survey, study, or report concerning any diet program unless such is the case.

O. Failing to disclose, clearly and prominently, the nature of any material connection, where one exists, between an endorser, evaluator, or tester of any diet program and the respondent, or otherwise misrepresenting the nature of any material relationship between respondent and any third party endorser, evaluator or tester.

P. Misrepresenting, directly or by implication, the existence, contents, validity, results, conclusions, or interpretations of any test or study.

Q. Misrepresenting, directly or by implication, the performance, efficacy, or safety of any weight loss program.

II

It is further ordered, That respondent shall notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the corporate respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation(s), the creation or dissolution of subsidiaries, or any other change in the corporation that may affect compliance obligations arising out of this Order.

III

It is further ordered, That respondent shall maintain for a period of three (3) years after the date the representation was last made and upon request make available to the Federal Trade Commission staff for inspection and copying, all materials possessed and relied upon to substantiate any representation covered by this Order, and all test reports, studies, surveys or other information in its possession or control that contradict, qualify or call into question any such representation.

IV

It is further ordered, That respondent shall distribute a copy of this Order to each of its officers, agents, representatives, independent contractors and employees who is involved in the preparation and placement of advertisements or promotional materials or who has any responsibilities with respect to the subject matter of this Order; and, for a period of five (5) years from the date of entry of this Order, distribute same to all future such officers, agents, representatives, independent contractors and employees.

V

It is further ordered, That:

A. Respondent shall distribute a copy of this Order to each of its franchisees and licensees and shall contractually bind them to comply with the prohibitions and affirmative requirements of this Order; respondent may satisfy this contractual requirement by incorporating such Order requirements into its current Operations Manual; and

B. Respondent shall further make reasonable efforts to monitor its franchisees' and licensees' compliance with the Order provisions; respondent may satisfy this requirement by: (1) Taking reasonable steps to notify promptly any franchisee or licensee that respondent determines is failing materially or repeatedly to comply with any order provision; (2) providing the Federal Trade Commission with the name and address of the franchisee or licensee and the nature of the noncompliance if the franchisee or

licensee fails to comply promptly with the relevant Order provision after being so notified; and (3) in cases where that franchisee's or licensee's conduct constitutes a material or repeated violation of the order, diligently pursuing reasonable and appropriate remedies available under its franchise or license agreement and applicable state law to bring about a cessation of that conduct by the franchisee or licensee.

VI

It is further ordered, That respondent shall, within sixty (60) days after the date of service of this Order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Nutri/System, Inc., (hereinafter "N/S"), marketer of the Nutri/System low-calorie diet (hereinafter "LCD") program. The N/S diet program is offered to the public nationwide through company-owned and franchished clinics.

The proposed consent order has been placed on the public record for sixty (60) days for the reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Commission's complaint charges that the proposed respondent deceptively advertised: (1) Its LCD program's success in helping customers achieve and maintain weight loss; (2) the time frame within which consumers will achieve their desired weight loss goal; (3) the effectiveness of the N/S program in comparsion to other weight loss programs; (4) the purchase price of the N/S program; (5) the independence of a magazine endorsement of the N/S program; (6) the N/S program's compliance with guidelines for weight loss established by the American Medical Association, the American Heart Association and the American Dietetic Association; and (7) the qualifications and expertise of its staff. The complaint further alleges that N/S engaged in the deceptive practice of failing to warn clients it monitors of the health importance of following the diet protocol.

Success

The complaint against N/S alleges that the company failed to possess a reasonable basis for claims it made regarding the success of its customers in losing weight and avoiding the regain of weight lost during the program. Through consumer testimonials and other advertisements, N/S represented that its customers typically are successful in reaching their weight loss goals and in maintaining their weight loss achieved under the N/S diet program either long-term or permanently.

The Commission believes that these success claims for customer weight loss and maintenance of achieved weight loss are deceptive because at the time it made the claims N/S did not possess adequate substantiation for those claims.

The proposed consent order seeks to address the alleged success misrepresentations cited in the accompanying complaint in several ways. First, the order (Part I.A.) requires the company to possess a reasonable basis consisting of competent and reliable scientific evidence substantiating any claim about the success of participants on any diet program in achieving or maintaining weight loss. To ensure compliance, the order further specifies what this level of evidence shall consist of when certain types of success claims are made:

(1) In the case of claims that weight loss is typical or representative of all participants using the program or any subset of those participants, that evidence shall be based on a representative sample of: (a) All participants who have entered the program, where the representation relates to such persons; or (b) all participants who have completed a particular phase of the program or the entire program, where the representation *only* relates to such persons.

(2) In the case of claims that any weight loss is maintained long-term, that evidence shall be based upon the experience of participants who were followed for a period of at least two years after their completion of the respondent's program, including any periods of participation in respondent's maintenance program.

(3) In the case of claims that weight loss is maintained permanently, that evidence shall be based upon the experience of participants who were followed for a period of time after completing the program that is either: (a) Generally recognized by experts in the field of treating obesity as being of sufficient length to constitute a reasonable basis for predicting that weight loss will be permanent; or (b) demonstrated by competent and reliable survey evidence as being of sufficient duration to permit such a prediction.

Second, as measures to ensure future compliance, the proposed order requires the proposed respondent for any claim that participants of any diet program have successfully maintained weight loss to disclose the fact that "For many dieters, weight loss is temporary" (Part I.B.), as well as the following information relating to that claim (Part I.C.):

(1) The average percentage of weight loss maintained by those participants (*e.g.*, "60% of achieved weight loss was maintained"),

(2) The duration over which the weight loss was maintained, measured from the date that participants ended the active weight loss phase of the program, and the fact that all or a portion of the time period covered includes participation in proposed respondent's maintenance program(s) that follows active weight loss, if that is the case—*e.g.*, "participants maintain an average of 60% of weight loss 22 months after active weight loss (includes 18 months on maintenance program)", and

(3) Where the participant population referred to is not representative of the general participant population for that program, the proportion of the total participant population that those participants represent, expressed in terms of a percentage or actual numbers of participants—e.g. "Participants on maintenance—30% of our clients—kept off an average of 66% of the weight for one year (includes time on maintenance program)" or, in lieu of that factual disclosure, the statement: "N/S makes no claim that this result is representative of all participants in the N/S program."

Third, for maintenance success claims made in broadcast advertisements of thirty seconds or less duration, the proposed order (Part I.D.) requires that N/S, in lieu of making the factual disclosures required for such claims by Part I.C: (1) Include in such advertisements the statement "Check at our centers for details about our maintenance record."; and (2) provide consumers at point-of-sale with a required form that includes the factual disclosures required by Part I.C, which form must be signed by the client and retained in the company's client file.

The proposed order makes clear that this alternative disclosure requirement does not relieve N/S of the obligation to substantiate any maintenance success

claim, in accordance with Part I.A. of the order, and it "takes back" the exception from full quantitative disclosures in short broadcast advertising if N/S makes a maintenance success claim that uses numbers or descriptive terms that convey a quantitative measure, such as "most of our customers maintain their weight loss long term." N/S in that case would have to make all the required disclosures in the ad and provide the disclosures at point-of-sale.

Fourth, for weight-loss and weight-loss maintenance success claims made through endorsements or testimonials that are not representative of what N/S diet program participants generally achieve, the order (Part I.E.) requires that N/S disclose either what the generally expected success would be for N/S customers, or one of several alternative statements, such as "This result is not typical. You may be less successful", which explains the limited applicability of atypical testimonials in accordance with the Commission's "Guides Concerning Use of Endorsements and Testimonials in Advertising" 16 CFR 255.2(a). Under the proposed order, N/S may satisfy the requirements of the first disclosure concerning generally expected success by accurately disclosing those facts in the following format: "Nutri/System clients lose an average of ____pounds over an average ____-week treatment period."

Finally, the proposed order (Part I.Q.) generally prohibits the company from misrepresenting the performance or efficacy of any weight loss program.

Projection of Weight Loss

The Commission's complaint further alleges that N/S failed to possess a reasonable basis for its claim made during initial sales presentations that consumers will typically reach their desired weight-loss goal within the time frame set by the company's computer program. To address this practice, the proposed order (Part I.I.) prohibits N/S from representing that prospective participants will reach a specified weight within a specified period of time, unless proposed respondent possesses and relies upon competent and reliable scientific evidence substantiating the representation.

Comparative Weight Loss

The Commission's complaint further alleges that N/S falsely claimed that competent and reliable studies or surveys show that its customers lose at least 29% more weight than dieters on other weight loss programs. The proposed order seeks to address this practice in two ways. First, Part I.J. requires the company to have a competent and reliable scientific study or survey substantiating any claim that compares the efficacy of its weight loss program with that of any other weight loss or diet program. Second, Part I.P. of the proposed order prohibits the company from misrepresenting any facts about, or interpretations of, any test or study.

Price

The Commission's complaint against N/S also alleges that the company falsely represented that the price it advertised for its diet program is the only cost associated with losing weight on the diet program, when, in fact, there are substantial additional mandatory expenses that far exceed the advertised price. The complaint further alleges that N/S failed to disclose adequately to consumers the existence and amount of all mandatory expenses associated with participation in the diet program.

The proposed consent order seeks to address these practices in three ways. First, Part I.F. of the proposed order prohibits untrue representations that an advertised price for a weight loss program is the only cost associated with losing weight on that program. Second, for any advertisement containing a price at which any weight loss program can be purchased, the proposed order (Part I.G.) requires N/S to disclose either the existence and amount of all mandatory costs or fees associated with the program offered or a statement identifying a list of all products or services that participants must purchase at an additional cost. This disclosure must be made orally under the proposed order if the price representation is made orally in broadcast media.

Finally, the proposed order (Part I.H.) requires the proposed respondent to disclose over the telephone to callers who inquire or are told about the cost of any weight loss program, the existence and amount of any mandatory costs or fees associated with participation in the program. Under the order, N/S can satisfy this requirement by: (1) Directing its weight loss centers to disclose the information; (2) providing the center personnel with suggested language to be used when responding to phone inquiries; and (3) making its best efforts to ensure compliance with its directive to disclose price information over the telephone.

Independence of Magazine Endorsement

The Commission's complaint further alleges that N/S falsely claimed that an evaluation and rating of various diet programs appearing in a magazine were conducted or written in collaboration with, and the results approved by, a major university, and that the company had no material connection with the publication of the magazine rating. The complaint further alleges that N/S failed to disclose that, prior to publication of the magazine article, it paid a sponsorship fee to the magazine for promotion and distribution of the magazine, and received and exercised a right of prior review of the article rating the diet programs.

The proposed consent order seeks to address these practices in three ways. First, Part I.N. prohibits untrue claims that any entity has conducted, collaborated in, or endorsed the results of, any evaluation concerning any diet program. Second, Part I.O. of the proposed order requires N/S to disclose the nature of any material connection, where one exists, between an endorser, evaluator or tester of any diet program and the proposed respondent. Finally, the proposed order (Part I.O.) generally prohibits the company from misrepresenting the nature of any material relationship between the proposed respondent and any third party endorser, evaluator or tester.

Guidelines for Weight Loss Programs

The Commission's complaint also alleges that N/S falsely claimed that its diet program complies with all of the specific elements of a comprehensive weight loss program issued by the American Medical Association, the American Heart Association and the American Dietetic Association. The proposed consent order (Part I.M.) prohibits untrue representations that N/S's diet program is endorsed by, complies with, or meets standards or guidelines for weight loss established by any professional or governmental entity.

Certified Nutritional Specialists

The Commission's complaint further alleges that N/S claimed, through the use of badges identifying certain employees as "Certified Nutritional Specialists, and other representations, that its "Nutritional Specialists" have been certified as specialists in nutrition through an objective determination of their competence in the field of nutrition, when, in fact, they have not. The complaint further alleges that the "certification" procedure used by the proposed respondent fails to test or evaluate the N/S "Nutritional Specialist's" competence in applying the basic principles of nutrition.

To address this practice, the proposed consent order (Part I.K.) prohibits the company from misrepresenting the

qualifications or expertise of any of its employees or those of its franchisees, and bars claims that any such employee is certified or trained as a specialist in nutrition or nutritional science unless proposed respondent has determined through some objective means that the employee is in fact competent in that particular field or discipline.

Monitoring Practices

According to the complaint, N/S provides its customers with diet protocols that require the customers to come in to one of proposed respondent's centers once a week for monitoring of their progress, including weighing in. In the course of regularly ascertaining weight loss progress, respondent, in some instances, is presented with weight loss results indicating that customers are losing weight significantly in excess of their projected goals, which is an indication that they may not be consuming all of the food prescribed by their diet protocol. According to the complaint, such conduct could, if not corrected promptly, result in health complications. In light of this monitoring practice, the Commission's complaint alleges that N/S has failed to disclose to consumers who are losing weight significantly in excess of their projected goals that failing to follow the diet protocol and consume all of the food prescribed could result in health complications.

The proposed consent order seeks to address the alleged monitoring misrepresentation cited in the accompanying complaint in two ways. First, the order (Part I.L.) requires N/S to disclose in writing to all participants when they enter the program, that failure to follow the program protocol and eat all of the food recommended may involve the risk of developing serious health complications. Second, the proposed order (Part I.Q.) generally prohibits any misrepresentation concerning the safety of any weight loss program.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order, or to modify in any way their terms.

Donald S. Clark,

Secretary.

Statement of Commission Deborah K. Owen Concurring in Part and Dissenting in Part

Statement of Commissioner Deborah K. Owen concurring in part and dissenting in part in Diet Center, Inc., File No. 902–3176, Jenny Craig Inc., File No. 902–3188, Nutri/System, Inc., File No. 902–3159, Physicians Weight Loss Centers of America, Inc., File No. 902–3185, and Weight Watchers International, Inc., File No. 902–3195.

The Commission's decision to accept for public comment consent orders with three major marketers of low calorie diets, and to issue Part III complaints against two others, represents an important, and largely appropriate, next step in the Commission's efforts to address allegations of false and unsubstantiated advertising claims in the diet industry. However, I must dissent on two aspects of the proposed remedies in these matters.

First, in the earlier very low calorie diet cases, I took the position that the mandated weight loss maintenance disclosures were likely to be too complex to enlighten consumers if made during short radio or TV ads.[1] I recommended requiring more concise disclosures for such broadcast ads, which would be supplemented by full disclosure at the point of sale. The contemplated relief in the present five matters adopts much of this approach, and, as such, represents a significant improvement over the very low calorie diet consents. However, this improvement would not apply where a broadcast maintenance claim includes a number, percentage, or other descriptive term to convey a quantitative measure. I am concerned that this proviso will significantly reduce, if not eliminate, the incidence of shorter, more understandable broadcast ad disclosures, without providing sufficiently compensating gains in preventing deception. Furthermore, the proviso's language regarding descriptive terms conveying a quantitative measure is vague. Appropriate, non-deceptive claims may be inadvertently chilled as a result, and vexing compliance questions may arise as respondents attempt to conform to the requirements of the orders. Accordingly, I dissent with respect to inclusion of this proviso in the proposed consents and notice orders.

Second, I dissent with regard to the notice of possible action under section 19(b) of the Federal Trade Commission Act, 15 U.S.C. 57b, in the Jenny Craig and Weight Watchers matters. Consumer redress has not been included in any of the recent settlements with marketers of very low, and low calorie diet programs, and there appear to be no distinguishable appropriate grounds for seeking this relief from Jenny Craig and Weight Watchers. Moreover, assessing consumer injury and determining levels of fair and equitable redress are apt to pose insurmountable problems from meaningful section 19(b) actions in these matters.

[FR Doc. 93–24867 Filed 10–8–93; 8:45 am]

BILLING CODE 6750–01–M

[1] See Statement Concurring in Part and Dissenting in Part in Jason Pharmaceuticals, Inc., File No. 902–3337, National Center for Nutrition, Inc., File No. 912–3024, and Sandoz Nutrition Corporation, File No. 912–3023 (Aug. 10, 1992).

[File No. 902 3185]

Physicians Weight Loss Centers of America, Inc., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, the Ohio diet-program companies from misrepresenting the performance or safety of any weight-loss program they offer in the future, and would require them to have scientific data to substantiate future claims they make regarding weight loss and maintenance. In addition, the consent agreement would require certain disclosures regarding safety and health risks.

DATES: Comments must be received on or before December 13, 1993.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Richard Kelly, FTC/H–200, Washington, DC 20580. (202) 326–3304 or Michael Milgrom, Cleveland Regional Office, Federal Trade Commission, 668 Euclid Ave., suite 520–A, Cleveland, OH. 44114. (216) 522–4207.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order to Cease and Desist

The Federal Trade Commission, having initiated an investigation of certain acts and practices of Physicians Weight Loss Centers of America, Inc. and Physicians Weight Loss Centers, Inc., ("Physicians Weight Loss Centers" or "respondents"), and it now appearing that proposed respondents are willing to

enter into an Agreement containing an Order to Cease and Desist from the acts and practices being investigated.

It is hereby agreed by and between Physicians Weight Loss Centers of America, Inc., and Physicians Weight Loss Centers, Inc., by their duly authorized officers and their attorney and counsel for the Federal Trade Commission that:

1. Proposed respondents Physicians Weight Loss Centers of America, Inc., and Physicians Weight Loss Centers, Inc., are corporations organized, existing, and doing business under and by virtue of the laws of the State of Ohio. The principal place of business of both corporations is located at 395 Springside Drive, Akron, Ohio 44313.

2. Proposed respondents admit all the jurisdictional facts set forth in the attached draft Complaint.

3. Proposed respondents waive:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this Agreement; and

d. Any claim under the Equal Access to Justice Act, 5 U.S.C. § 504.

4. This Agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this Agreement is accepted by the Commission, it, together with the attached draft Complaint, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this Agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its Complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This Agreement is for settlement purposes only and does not constitute an admission by proposed respondents of facts, other than jurisdictional facts, or of violations of law as alleged in the draft Complaint here attached.

6. This Agreement contemplates that if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (a) issue its Complaint corresponding in form and substance with the attached draft Complaint and its decision containing the following Order to Cease and Desist in disposition of the proceeding, and (b) make information public in respect thereto. When so entered, the Order to Cease and Desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the Complaint and decision containing the agreed-to Order to proposed respondents' addresses as stated in this Agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The Complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order of the Agreement may be used to vary or contradict the terms of the Order.

7. Proposed respondents have read the attached draft Complaint and the following Order. Proposed respondents understand that once the Order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the Order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

Definitions

For the purposes of this Order, the following definitions shall apply:

A. "Competent and reliable scientific evidence" shall mean those tests, analyses, research, studies, surveys, or other evidence conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the relevant profession or science to yield accurate and reliable results.

B. "Weight loss program" shall mean any program designed to aid consumers in weight loss or weight maintenance.

C. "Very-low-calorie diet" or "VLCD" shall mean any dietary regimen that provides less than 800 calories per day.

D. "Low-calorie diet" or "LCD" mean any dietary regimen designed to cause weight loss that provides 800 calories or more per day.

E. "Broadcast medium" shall mean any radio or television broadcast, cablecast, home video, or theatrical release.

F. For any Order-required disclosure in a print medium to be made "clearly and prominently," or in a "clear and prominent" manner, it must be given both in the same type style and in: (1) Twelve point type where the representation that triggers the disclosure is given in twelve point or larger type; or (2) the same type size as the representation that triggers the disclosure where that representation is given in a type size that is smaller than twelve point type. For any Order-required disclosure given orally in a broadcast medium to be made "clearly and prominently,", or in a "clear and prominent" manner, the disclosure must be given at the same volume and in the same cadence as the representation that triggers the disclosure.

G. "Short broadcast advertisement" shall mean any advertisement of thirty seconds or less duration made in a broadcast medium.

H. "Affiliate" includes, but is not limited to, any corporation with a majority of shareholders or directors in common with either respondent.

It is ordered, That respondents Physicians Weight Loss Centers of America, Inc., a corporation, and Physicians Weight Loss Centers, Inc., a corporation, their successors, assigns and affiliates, their officers, representatives, agents and employees, directly or through any corporation, subsidiary, division, or other device, including franchisees or licensees, in connection with the advertising, promotion, offering for sale, or sale of any weight loss program in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Making any representation, directly or by implication, about the success of participants in any weight loss program in achieving or maintaining weight loss or weight control unless, at the time of making any such representation, respondents possess and rely upon competent and reliable scientific evidence substantiating the representation; *Provided, further,* That for any representation that:

1. Any weight loss achieved or maintained through the weight loss program is typical or representative of all or any subset of participants of respondents' program, said evidence shall, at a minimum, be based on a representative sample of:

a. All participants who have entered the program where the representation relates to such persons; *Provided, however,* That the required sample may exclude those customers who dropped out of the program within two weeks of their entrance or who did not complete

the program due to illness, pregnancy, or change of residence; or

b. All participants who have completed a particular phase of the program or the entire program, where the representation *only* relates to such persons;

2. Any weight loss is maintained long-term, said evidence shall, at a minimum, be based upon the experience of participants who were followed for a period of at least two (2) years from their completion of the active maintenance phase of respondents' program, or earlier termination, as applicable; and

3. Any weight loss is maintained permanently, said evidence shall, at a minimum, be based upon the experience of participants who were followed for a period of time after completing the program that is either:

a. Generally recognized by experts in the field of treating obesity as being of sufficient length for predicting that weight loss will be permanent; or

b. Demonstrated by competent and reliable survey evidence as being of sufficient duration to permit such a prediction.

B. Representing, directly or by implication, except through endorsements or testimonials referred to in paragraph I.E. herein, that participants of any weight loss program have successfully maintained weight loss, unless respondents disclose, clearly and prominently, and in close proximity to such representation, the statement: "For many dieters, weight loss is temporary."; *Provided, further,* That respondents shall not represent, directly or by implication, that the above-quoted statement does not apply to dieters in respondents' weight loss program; *Provided, however,* That a mere statement about the existence, design, or content of a maintenance program shall not, without more, be considered a representation that participants of any weight loss program have successfully maintained weight loss.

C. Representing, directly or by implication, except through short broadcast advertisements referred to in paragraph I.D. herein, and except through endorsements or testimonials referred to in paragraph I.E. herein, that participants of any weight loss program have successfully maintained weight loss, unless respondents disclose, clearly and prominently, and in close proximity to such representation, the following information:

1. The average percentage of weight loss maintained by those participants;

2. The duration over which the weight loss was maintained, measured from the date that participants ended the active weight loss phase of the program; *Provided, further,* That if any portion of the time period covered includes participation in a maintenance program(s) that follows active weight loss, such fact must also be disclosed; and

3. If the participant population referred to is not representative of the general participant population for respondents' programs:

a. The proportion of the total participant population in respondents' programs that those participants represent, expressed in terms of a percentage or actual numbers of participants, or

b. The statement: "Physicians Weight Loss Centers makes no claim that this [these] result[s] is [are] representative of all participants in the Physicians Weight Loss Centers program."

Provided, further, That compliance with the obligations of this Paragraph I.C. in no way relieves respondents of the requirement under Paragraph I.A. of this Order to substantiate any representation about the success of participants on any weight loss program in maintaining weight loss.

D. Representing, directly or by implication, in short broadcast advertisements, that participants of any weight loss program have successfully maintained weight loss, unless respondents:

1. Include, clearly and prominently, and in immediate conjunction with such representation, the statement: "Check at our centers for details about our maintenance record.";

2. For a period of time beginning with the date of the first broadcast of any such advertisement and ending no sooner than thirty days after the last broadcast of such advertisement, comply with the following procedures upon the first presentation of any form asking for information from a potential client, but in any event before such person has entered into any agreement with respondents:

a. Give to each potential client a separate document entitled "Maintenance Information," which shall include all the information required by paragraph I.B. and subparagraphs I.C. (1)–(3) of this Order and shall be formatted in the exact type size and style as the example form below, and shall include the heading (Helvetica 14 pt. bold), lead-in (Times Roman 12 pt.), disclosures (Helvetica 14 pt. bold), acknowledgment language (Times Roman 12 pt.), and signature block therein; *Provided, further,* That no information in addition to that required to be included in the document required by this subparagraph I.D. (2) shall be included therein:

Maintenance Information

You may have seen our recent ad about maintenance success. Here's some additional information about our maintenance record.

[Disclosure of maintenance statistics goes here

_____]

For many dieters, weight loss is temporary. I have read this notice.

_____

(Client Signature)

_____

(Date)

b. Require each potential client to sign such document; and

c. Give each client a copy of such document;

Provided, however, That if any potential participant who does not then participate in the program refuses to sign or accept a copy of such document, respondents shall so indicate on such document and shall not, for that reason alone, be found in breach of this subparagraph I.D. (2); and ,

3. Retain in each client file a copy of the signed maintenance notice required by this paragraph;

Provided further, That: (1) compliance with the obligations of this paragraph I.D. in no way relieves respondents of the requirement under paragraph I.A. of this Order to substantiate any representation about the success of participants on any weight loss program in maintaining weight loss; and (2) respondents must comply with both paragraph I.D. and paragraph I.C. of this Order if respondents include in any such short broadcast advertisement a representation about maintenance success that states a number or percentage, or uses descriptive terms that convey a quantitative measure such as "most of our customers maintain their weight loss long-term";

Provided, however, That the provisions of paragraph I.D. shall not apply to endorsements or testimonials referred to in paragraph I.E. herein.

E. Using any advertisement containing an endorsement or testimonial about weight loss success or weight loss maintenance success by a participant or participants on respondents' weight loss program if the weight loss success or weight loss maintenance success depicted in the advertisement is not representative of what participants on respondents' weight loss programs generally achieve, unless respondents disclose, clearly and prominently, and in close proximity to the endorser's statement of his or her

weight loss success or weight loss maintenance success:

1. what the generally expected success would be for Physicians Weight Loss Centers customers in losing weight or maintaining achieved weight loss; *Provided, however,* That in determining the generally expected success for Physicians Weight Loss Centers customers, respondents may exclude those customers who dropped out of the program within two weeks of their entrance or who were unable to complete the program due to illness, pregnancy, or change of residence; or

2. one of the following statements:

a. "You should not expect to experience these results."

b. "This result is not typical. You may not do as well."

c. "This result is not typical. You may be less successful."

d. "_____'s success is not typical. You may not do as well."

e. "_____'s experience is not typical. You may achieve less."

f. "Results are not typical."

g. "Results not typical of program participants."

Provided, further, That if endorsements or testimonials covered by this paragraph are made in a broadcast medium, any disclosure required by this paragraph must be communicated in a clear and prominent manner and in immediate conjunction with the representation that triggers the disclosure;

Provided, however, That:

(1) For endorsements or testimonials about weight loss success, respondents can satisfy the requirements of subparagraph I.E.(1) by accurately disclosing the generally expected success in the following phrase: "Physicians Weight Loss Centers clients lose an average of _____pounds over an average _____-week treatment period";

(2) If the weight loss success or weight maintenance success depicted in the advertisement is representative of what participants of a group or subset clearly defined in the advertisement generally achieve, then, in lieu of the disclosures required in either subparagraph I.E. (1) or (2) herein, respondents may substitute a clear and prominent disclosure of the percentage of all of respondents' customers that the group or subset defined in the advertisement represents; and

(3) A clearly defined claim about respondents' very-low-calorie diet program, or low-calorie diet program, shall not require a disclosure as to representativeness for all of respondents' programs, where the claim does not refer to all programs.

F. Representing, directly or by implication, that the price at which any weight loss program can be purchased is the only cost associated with losing weight on that program, unless such is the case.

G. Representing, directly or by implication, the price at which any weight loss program can be purchased, unless respondents disclose, clearly and prominently, either:

(1) In close proximity to such representation, the existence and amount of all mandatory costs or fees associated with the program offered; or

(2) In immediate conjunction with such representation, one of the following statements:

(a) "Plus the cost of [list of products or services that participants must purchase at additional cost]."

(b) "Purchase of [list of products or services that participants must purchase at additional cost] required.";

Provided, further, That in broadcast media, if the representation that triggers the disclosure is oral, the disclosures required by either (1) or (2) of this paragraph must also be made orally.

H. Failing to disclose over the telephone, for a period of time beginning with the date of any advertisement of the price at which any weight loss program can be purchased and ending no sooner than 180 days after the last dissemination of any such advertisement, to prospective participants who inquire about the cost of any weight loss program, or are told about the cost of any weight loss program, the existence and amount of any mandatory costs or fees associated with participation in the program;

Provided, however, That: (1) respondents may satisfy this requirement by directing their weight loss centers to disclose the information, by providing the center personnel with suggested language to be used when responding to phone inquiries and by making their best efforts to ensure compliance with their directive to disclose price information over the telephone; and (2) respondents may satisfy the disclosure of food costs in connection with such telephone inquiries by the disclosure of average approximate weekly costs.

I. Representing, directly or by implication, the average or typical rate or speed at which prospective participants in any weight loss program will lose weight, unless at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence substantiating the representation.

J. Representing, directly or by implication, that prospective participants on respondents' weight loss program will reach a specified weight within a specified time period, unless at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence substantiating the representation.

K. For any LCD program, failing to disclose, clearly and prominently, either (1) to each participant who, after the first two weeks on the program, is experiencing average weight loss that exceeds two percent of said participant's initial body weight or three pounds, whichever is less, for at least two consecutive weeks, or (2) in writing to all participants when they enter the program, that failure to follow the diet instructions and consume the total caloric intake recommended may involve the risk of developing serious health complications.

L. For any VLCD program, making any representation, directly or by implication, regarding its safety, unless respondents disclose, clearly and prominently, and in close proximity to any such representation, that physician monitoring is required to minimize the potential for health risks.

M. Misrepresenting, directly or by implication, the extent to which any weight loss program is supervised or monitored by physicians or any other health care professional.

N. Misrepresenting, directly or by implication, the performance, efficacy, or safety of any weight loss program.

II

It is further ordered, That respondents Physicians Weight Loss Centers of America, Inc., and Physicians Weight Loss Centers, Inc., shall notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the corporate respondent(s) such as dissolution, assignment, or sale resulting in the emergence of a successor corporation(s), the creation or dissolution of subsidiaries, or any other change in the corporation(s) that may affect compliance obligations arising out of this Order.

III

It is further ordered, That respondents shall maintain for a period of three (3) years after the date the representation was last made and upon request make available to the Federal Trade Commission staff for inspection and copying, all materials possessed and relied upon to substantiate any representation covered by this Order,

and all test reports, studies, surveys or other information in their possession or control, including complaints from consumers, that contradict, qualify or call into question the representation.

IV

It is further ordered, That respondents Physicians Weight Loss Centers of America, Inc., and Physicians Weight Loss Centers, Inc., shall distribute a copy of this Order to each of their officers, agents, and to employees or other entities involved in the preparation and placement of advertisements or promotional materials, and, for a period of three (3) years from the date of entry of this Order, distribute the same to all of respondents' future such officers, agents, representatives, independent contractors and employees. It shall be sufficient compliance with this provision as to employees with point-of-sale contact with customers to distribute a document that is approved by the Commission or its designated staff and contains the substantive provisions of this Order.

V

It is further ordered, That:

A. Respondents shall distribute a copy of this Order to each of their franchisees and licensees and shall contractually bind them to comply with the prohibitions and affirmative requirements of this Order; respondents may satisfy this contractual requirement by incorporating such Order requirements into their current Operations Manual; and

B. Respondents shall further make reasonable efforts to monitor their franchisees' and licensees' compliance with the Order provisions; respondents may satisfy this requirement by: (1) Taking reasonable steps to notify promptly any franchisee or licensee that respondents determine is failing materially or repeatedly to comply with any order provision; (2) providing the Federal Trade Commission with the name and address of the franchisee or licensee and the nature of the noncompliance if the franchisee or licensee fails to comply promptly with the relevant Order provision after being so notified; and (3) in cases where that franchisee's or licensee's conduct constitutes a material or repeated violation of the order, diligently pursuing reasonable and appropriate remedies available under their franchise or license agreement and applicable state law to bring about a cessation of that conduct by the franchisee or licensee.

Provided, however, That respondents' compliance with this Part shall constitute an affirmative defense to any civil penalty action arising from an act or practice of one of respondents' franchisees or licensees that violates this Order where respondents: (a) Have not authorized, approved or ratified that conduct; (b) have reported that conduct promptly to the Federal Trade Commission under this Part; and (c) in cases where that franchisee's or licensee's conduct constitutes a material or repeated violation of the order, have diligently pursued reasonable and appropriate remedies available under the franchise or license agreement and applicable state law to bring about a cessation of that conduct by the franchisee or licensee.

It is further ordered, That respondents shall, within sixty (60) days after the date of service of this Order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Commission has accepted an agreement to a proposed consent order from Physicians Weight Loss Centers of America, Inc., and Physicians Weight Loss Centers Inc., (hereinafter referred to collectively as "PWLC"), marketers of the Physicians Weight Loss Centers low-calorie diet (hereinafter "lcd") and very-low-calorie diet (hereinafter "vlcd") programs. The PWLC diet programs are offered to the public throughout much of the United States through centers owned by Physicians Weight Loss Centers, Inc., and centers franchised by Physicians Weight Loss Centers of America, Inc.

The proposed consent order has been placed on the public record for sixty (60) days for the reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Commission's complaint charges that the proposed respondents deceptively advertised: (1) Their diet programs' success in helping customers achieve and maintain weight loss; (2) the purchase price of the PWLC programs; (3) the rate at which customers will lose weight; (4) the time frame within which consumers will achieve their desired weight loss goal; (5) that customers are actively supervised by the center physicians throughout their diet program; and (6) the safety of its vlcd program. The complaint also alleges that PWLC engaged in the deceptive practice of failing to warn clients that it monitors on lcd programs of the health importance of following the diet protocol.

Success

The complaint against PWLC alleges that the company failed to possess a reasonable basis for claims it made regarding the success of its customers in losing weight and avoiding the regain of weight lost during the program. Thorugh consumer testimonials and other advertisements, PWLC represented that its customers typically are successful in reaching their weight loss goals and in maintaining their weight loss achieved under PWLC diet programs long-term.

The Commission believes that these success claims for customer weight loss and maintenance of achieved weight loss are deceptive because PWLC at the time it made the claims did not possess adequate substantiation for those claims.

The proposed consent order seeks to address the alleged success misrepresentations cited in the accompanying complaint in several ways. First, the order (Part I.A.) requires the company to possess a reasonable basis consisting of competent and reliable scientific evidence substantiating any claim about the success of participants on any diet program in achieving or maintaining weight loss. To ensure compliance, the order further specifies what this level of evidence shall consist of when certain types of success claims are made:

(1) In the case of claims that weight loss is typical or representative of all participants using the program or any subset of those participants, that evidence shall be based on a representative sample of: (a) All participants who have entered the program, where the representation relates to such persons; or (b) all participants who have completed a particular phase of the program or the entire program, where the representation *only* related to such persons.

(2) In the case of claims that any weight loss is maintained long-term, that evidence shall be based upon the experience of participants who were followed for a period of at least two years after their completion of the respondents' program, including any periods of participation in respondents' maintenance program.

(3) In the case of claims that weight loss is maintained permanently, that evidence shall be based upon the experience of participants who were followed for a period of time after completing the program that is either: (a) Generally recognized by experts in the field of treating obesity as being of sufficient length to constitute a reasonable basis for predicting that weight loss will be permanent; or (b) demonstrated by competent and reliable survey evidence as being of sufficient duration to permit such a prediction.

Second, as measured to ensure future compliance, the proposed order requires the proposed respondents for any claim that participants of any diet program have successfully maintained weight loss to disclose the fact that "For many dieters, weight loss is temporary" (Part I.B.), as well as the following information relating to that claim (Part I.C.):

(1) The average percentage of weight loss maintained by those participants (*e.g.*, "60% of achieved weight loss was maintained"),

(2) The duration over which the weight loss was maintained, measured from the date that participants ended the active weight loss phase of the program, and the fact that all or a portion of the time period covered includes participation in proposed respondents' maintenance program(s) that follows active weight loss, if that is the case—*e.g.*, "participants maintain an average of 60% of weight loss 22 months after active weight loss (includes 18 months on maintenance program)", and

(3) Where the participant population referred to is not representative of the general participant population for that program, the proportion of the total participant population that those participants represent, expressed in terms of a percentage or actual numbers of participants—e.g. "Participants on maintenance—30% of our customers—kept off an average of 66% of the weight for one year (includes time on maintenance program)" or, in lieu of that factual disclosure, the statement: "Physicians Weight Loss Centers makes no claim that this result is representative of all participants in the Physicians Weight Loss Centers program."

Third, for maintenance success claims made in broadcast advertisements of thirty seconds or less duration, the proposed order (Part I.D.) requires that PWLC, in lieu of making the factual disclosures required for such claims by Part I.C: (1) Include in such advertisements the statement "Check at our centers for details about our maintenance record."; and (2) provide consumers at point-of-sale with a required form that includes the factual disclosures required by Part I.C., which form must be signed by the client and retained in the company's client file. If any potential participant who does not then participate in the program refused to sign or accept a copy of such document, respondents shall so indicate on such document.

The proposed order makes clear that this alternative disclosure requirement does not relive PWLC of the obligation to substantiate any maintenance success claim, in accordance with Part I.A. of the order, and it "takes back" the exception from full quantitative disclosures in short broadcast advertising if PWLC makes a maintenance success claim that uses numbers or descriptive terms that convey a quantitative measure, such as "most of our customers maintain their weight loss long term." PWLC in that case would have to make all the required disclosures in the ad and provide the disclosures at point-of-sale.

Fourth, for weight-loss and weight-loss maintenance success claims made through endorsements or testimonials that are not representative of what PWLC diet program participants generally achieve, the order (Part I.E.) requires that PWLC disclose either what the generally expected success would be for PWLC customers, or one of several alternative statements, such as "This result is not typical. You may be less successful", which explains the limited applicability of atypical testimonials in accordance with the Commission's "Guides Concerning Use of Endorsements and Testimonials in Advertising" 16 CFR 255.2(a). Under the proposed order, PWLC may satisfy the requirements of the first disclosure concerning generally expected success by accurately disclosing those facts in the following format: "Physicians Weight Loss Centers clients lose an average of _____pounds over an average _____-week treatment period."

Finally, the proposed order (Part I.N.) generally prohibits the company from misrepresenting the performance or efficacy of any weight loss program.

Price

The Commission's complaint against PWLC also alleges that PWLC failed to disclose adequately to consumers the existence and amount of all mandatory expenses associated with participation in the diet program.

The proposed consent order seeks to address these practices in three ways. First, Part I.F. of the proposed order prohibits untrue representations that an advertised price for a weight loss program is the only cost associated with losing weight on that program. Second, for any advertisement containing a price at which any weight loss program can be purchased, the proposed order (Part I.G.) requires PWLC to disclose either the existence and amount of all mandatory costs or fees associated with the program offered or a statement identifying a list of all products or services that participants must purchase at an additional cost. This disclosure must be made orally under the proposed order if the price representation is made orally in broadcast media.

Finally, the proposed order (Part I.H.) requires the proposed respondents to disclose over the telephone to callers who inquire or are told about the cost of any weight loss program, the existence and amount of any mandatory costs or fees associated with participation in the program. Under the order, PWLC can satisfy this requirement by: (1) Directing its weight loss centers to disclose the information; (2) providing the center personnel with suggested language to be used when responding to phone inquiries; and (3) making its best efforts to ensure compliance with its directive to disclose price information over the telephone. Proposed respondent may satisfy the disclosure of food costs over the telephone by disclosing average approximate weekly costs.

Rate of Weight Loss

The Commission's complaint further alleges that PWLC failed to possess a reasonable basis for claims it made concerning the average rate of weight loss for participants in its lcd program. The proposed consent order addresses this practice (Part I.I.) by prohibiting PWLC from representing that participants in its programs will lose weight at an average or typical rate or speed, unless PWLC possesses and relies upon competent and reliable scientific evidence substantiating the representation.

Projection of Weight Loss

The Commission's complaint also alleges that PWLC failed to possess a reasonable basis for its claim made during initial sales presentations that consumers will typically reach their desired weight-loss goal within the time frame computed by PWLC personnel. To address this practice, the proposed order (Part I.J.) prohibits PWLC from representing that prospective participants will reach a specified weight within a specified period of time, unless proposed respondents

possess and rely upon competent and reliable scientific evidence substantiating the representation.

Physician Supervision

The Commission's complaint further alleges that PWLC falsely advertised that customers participating in its programs are actively supervised by the center physicians throughout the diet program. To address this practice, the proposed consent order (Part I.M.) prohibits the proposed respondents from misrepresenting the extent to which any weight loss program is supervised or monitored by physicians or any other health care professional.

Safety

The Commission's complaint against PWLC also alleges that PWLC has failed to disclose that physician supervision is required to minimize the potential for health risks on vlcd's. PWLC has deceptively advertised that its vlcd program is unqualifiedly free of health risks.

The complaint does not allege that the PWLC vlcd program is unsafe, but that proposed respondents' claim that the program is risk-free is deceptive in light of its failure to disclose that physician supervision is required to minimize the potential for health risks. There is some empirical evidence that, during the period in which they are dieting, patients on vlcd's may be at increased risk of developing gallstones.

The proposed consent order seeks to address the alleged safety misrepresentation cited in the accompanying complaint in two ways. First, the order (Part I.L.) requires PWLC to disclose in conjunction with any claim regarding the safety of any vlcd program that physician monitoring is required to minimize the potential for health risks. Thus, if proposed respondents in the future were to claim that PWLC's vlcd program is "safe," they would need to make the required disclosure in close proximity to that claim. Second, the proposed order (Part I.N.) prohibits any misrepresentation about the safety of any weight loss program.

Thus, PWLC in the future could not claim that its vlcd program is safe, unless that is the case.

Monitoring Practices

According to the complaint, PWLC provides its customers with diet protocols that require customers to come in to one of proposed respondents' centers three times per week for monitoring of their progress, including weighing in. In the course of regularly ascertaining weight loss progress, respondents, in some instances, are presented with weight loss results indicating that customers are losing weight significantly in excess of their projected goals, which is an indication that they may not be consuming all of the food prescribed by their diet protocol. According to the complaint, such conduct could, if not corrected promptly, result in health complications. In light of this monitoring practice, the Commission's complaint alleges that PWLC has failed to disclose to consumers who are losing weight significantly in excess of their projected goals that failing to follow the diet protocol and consume all the food prescribed could result in health complications.

The proposed consent order seeks to address the alleged monitoring misrepresentation cited in the accompanying complaint in two ways. First, the order (Part I.K.) requires PWLC to disclose in writing to all participants when they enter the program, that failure to follow the program protocol and eat all of the food recommended may involve the risk of developing serious health complications. Second, the proposed order (Part I.N.) generally prohibits any misrepresentation concerning the safety of any weight loss program.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order, or to modify in any way their terms.

Donald S. Clark,

Secretary.

Statement of Commissioner Deborah K. Owen Concurring in Part and Dissenting in Part

Statement of Commissioner Deborah K. Owen concurring in part and dissenting in part in Diet Center, Inc., File No. 902–3178, Jenny Craig Inc., File No. 902–3188, Nutri/System, Inc., File No. 902–3159, Physicians Weight Loss Centers of America, Inc., File No. 902–3185, and Weight Watchers International, Inc., File No. 902–3195.

The Commission's decision to accept for public comment consent order with three major marketers of low calorie diets, and to issue Part III complaints against two others, represents an important, and largely appropriate, next step in the Commission's efforts to address allegations of false and unsubstantiated advertising claims in the diet industry. However, I must dissent on two aspects of the proposed remedies in these matters.

First, in the earlier very low calorie diet cases, I took the position that the mandated weight loss maintenance disclosures were likely to be too complex to enlighten consumers if made during short radio or TV ads.[1] I recommended requiring more concise disclosures for such broadcast ads, which would be supplemented by full disclosure at the point of sale. The contemplated relief in the present five matters adopts much of this approach, and, as such, represents a significant improvement over the very low calorie diet consents. However, this improvement would not apply where a broadcast maintenance claim includes a number, percentage, or other descriptive term to convey a quantitative measure. I am concerned that this proviso will significantly reduce, if not eliminate, the incidence of shorter, more understandable broadcast ad disclosures, without providing sufficiently compensating gains in preventing deception. Furthermore, the proviso's language regarding descriptive terms conveying a quantitative measure is vague. Appropriate, non-deceptive claims may be inadvertently chilled as a result, and vexing compliance questions may arise as respondents attempt to conform to the requirements of the orders. Accordingly, I dissent with respect to inclusion of this proviso in the proposed consents and notice orders.

Second, I dissent with regard to the notice of possible action under section 19(b) of the Federal Trade Commission Act, 15 U.S.C. 57b, in the Jenny Craig and Weight Watchers matters. Consumer redress has not been included in any of the recent settlements with marketers of very low, and low calorie diet programs, and there appear to be no distinguishable appropriate grounds for seeking this relief from Jenny Craig and Weight Watchers. Moreover, assessing consumer injury and determining levels of fair and equitable redress are apt to pose insurmountable problems for meaningful section 19(b) actions in these matters.

[FR Doc. 93–24869 Filed 10–8–93; 8:45 am]

BILLING CODE 6750–01–M

[1] See Statement Concurring in Part and Dissenting in Part in Jason Pharmaceuticals, Inc., File No. 902–3337, National Center for Nutrition, Inc., File No. 912–3024, and Sandoz Nutrition Corporation, File No. 912–3023 (Aug. 10, 1992).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Notice of Meeting of Researchers and Evaluators for Family Preservation, Family Support, and Child Welfare

AGENCY: Administration for Children, Youth and Families, (ACF), DHHS.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given of a meeting of researchers and evaluators working in the areas of family preservation, family support, and child welfare to inform staff of the Administration for Children, Youth and Families on the state of the art in these areas. The meeting will be held on

Monday, October 25, 1993 from 10 a.m. to 4 p.m.

ADDRESSES: Department of Health and Human Services, Hubert H. Humphrey Building, room 503–A, 200 Independence Avenue, SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Deborah Roderick Stark, 330 C Street, SW., room 2026, Washington, DC 20201, (202) 205–8347.

Dated: October 6, 1993.

Joseph Mottola,

Acting Commissioner, Administration for Children, Youth and Families.

[FR Doc. 93–25035 Filed 10–8–93; 8:45 am]

BILLING CODE 4184–01–M

Health Resources and Services Administration

National Vaccine Injury Compensation Program: Revised Amount of the Average Cost of a Health Insurance Policy

The Health Resources and Services Administration is publishing an updated monetary amount of the average cost of a health insurance policy as it relates to the National Vaccine Injury Compensation Program (VICP).

Subtitle 2 of Title XXI of the Public Health Service Act, as enacted by the National Childhood Vaccine Injury Act of 1986, and as amended, governs the VICP. The VICP, administered by the Secretary, provides that a proceeding for compensation for a vaccine-related injury or death shall be initiated by service upon the Secretary and the filing of a petition with the United States Court of Federal Claims. In some cases, the injured individual may receive compensation for future lost earnings, less appropriate taxes and the "average cost of a health insurance policy, as determined by the Secretary."

Section 100.2 of the Program's implementing regulations (42 CFR part 100) provides that revised amounts of an average cost of a health insurance policy, as determined by the Secretary, are to be published from time to time in a notice in the **Federal Register**. The existing regulations cite the baseline amount of an average cost of a health insurance policy as $158.00 per month; this amount was based on data from a survey by the Health Insurance Association of America, updated by a formula using changes in the medical care component of the Consumer Price Index (CPI) (All Urban Consumers, U.S. City average) for the period July 1, 1990, through September 30, 1991.

The Secretary announces that for the 12-month period, October 1, 1991, through September 30, 1992, the medical care component of the CPI increased 7.7 percent. According to the regulatory formula (§ 100.2), 2 percent is added to the actual CPI change for each year. Therefore, the adjusted CPI change results in an increase of 9.7 percent for this 12-month period. Applied to the baseline amount of $158.00, this results in the amount of $173.33.

The CPI change for the 9-month period, October 1, 1992, through June 30, 1993, was 4.58 percent. According to the regulatory formula, three-quarters of the annual adjustment, or 1.50 percent, is added to the actual CPI change for this 9-month period. Therefore, according to the current regulatory formula, the adjusted CPI change results in an increase of 6.08 percent for this 9-month period. Applied to the $173.33 amount, this results in a new amount of $183.86.

Therefore, the Secretary announces that the revised average cost of a health insurance policy under the VICP is $183.86 per month. In accordance with § 100.2, the revised amount was effective upon its delivery by the Secretary to the United States Court of Federal Claims (formerly known as the United States Claims Court). Such notice was delivered to the Court on September 20, 1993.

Dated: October 4, 1993.

William A. Robinson,

Acting Administrator.

[FR Doc. 93–24937 Filed 10–8–93; 8:45 am]

BILLING CODE 4160–15–P

Social Services Administration

Privacy Act of 1974; Report of New System of Records

AGENCY: Social Security Administration (SSA), Department of Health and Human Services (HHS).

ACTION: New system of records.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(4)), we are issuing public notice of our intent to establish a new system of records. The proposed system of records is entitled *Vocational Rehabilitation Reimbursement Case Processing System, HHS/SSA/OD, 09–60–0321.* The system will maintain information for use in determining whether a State vocational rehabilitation agency (VRA) providing vocational rehabilitation (VR) services under a State plan approved under title I of the Rehabilitation Act of 1973 or an alternate participant providing such services can be reimbursed for the costs of VR services provided to individuals while they are entitled/eligible to Social Security benefits and/or supplemental security income (SSI) payments based on disability or blindness. We also are proposing to establish routine uses of the information which will be maintained in the system. We invite public comment on this publication.

DATES: We filed a report of the proposed system with the Chairman, Committee on Government Operations of the House of Representatives, and the Chairman, Committee on Governmental Affairs of the Senate, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget on October 1, 1993. The proposed system, including the proposed routine uses, will become effective on December 1, 1993, unless we receive comments on or before that date which would warrant our preventing the proposal from taking effect.

ADDRESSES: Interested individuals may comment on this publication by writing to the SSA Privacy Officer, Social Security Administration, Room 3–D–1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235. All comments received will be available for public inspection at that address.

FOR FURTHER INFORMATION CONTACT: Mr. Robert C. Cross, Director, Division of Employment and Rehabilitation Programs, Office of Disability, Social Security Administration, 545 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone 410–965–9066.

SUPPLEMENTARY INFORMATION:

I. Discussion of the System

Sections 222(d) and 1615(d) of the Social Security Act and the regulations promulgated thereunder (20 CFR part 404, subpart V and 20 CFR part 416, Subpart V) authorize the Secretary of HHS to reimburse State VRAs for the costs of VR services provided to individuals while they are entitled/eligible to Social Security benefits and/or SSI payments based on disability or blindness. If a State is unwilling to participate in the SSA-VR Reimbursement Program, the Commissioner of SSA may arrange for VR services to disabled and blind Social Security beneficiaries and/or SSI recipients within the State by agreement or contract with other public or private agencies, organizations, institutions, or individuals, which are referred to in the regulations as "alternate participants."

Reimbursements for the costs of VR services are made on a case-by-case basis provided it is established that:

(1) the VR services provided contributed to the individual's

performance of substantial gainful activity for a continuous period of at least 9 months;

(2) The individual medically recovered while in a VR program and continued to receive cash payments under section 225(b) and/or 1631(a)(6) of the Social Security Act; or

(3) The individual refused, without good cause, to continue or to cooperate in a VR program in such a way as to preclude his/her successful rehabilitation.

The purpose of the SSA–VR Reimbursement Program is to make VR services more readily available to the disabled and blind and to ensure long term savings to the Social Security trust funds and the general fund.

We currently maintain information concerning the SSA–VR Reimbursement Program in an automated format which provides a case processing, case control, and management information system for the VR reimbursement function and information for program evaluation purposes. In some instances, information furnished by a VRA or alternate participant may be used as a lead in determining whether an individual's disability/blindness payments should continue. Otherwise, the maintenance of data in the system about individuals who received VR services will have no impact on their rights to receive Social Security benefits/SSI payments under provisions of the Social Security Act.

We currently retrieve the information by using non-personal identifiers. For example, to retrieve data on a specific individual, we must know the identity of the VRA and the examiner in addition to the SSN of the individual who received VR services for which the VRA filed a claim for reimbursement.

This process of tracking cases is cumbersome and requires an inordinate amount of work and does not alert us when an individual had been serviced by more than one VRA or alternate participant. Further, this makes it difficult to analyze the overall impact of the SSA–VR Reimbursement Program on our beneficiary/recipient population. Therefore, we are proposing to change the manner in which we retrieve data from the system. We will be able to retrieve data by using only the SSN and name of the individual who received VR services. This change will mean that the records will constitute a system of records subject to the requirements of the Privacy Act.

II. Collection and Maintenance of Data in the System

We collect and maintain data in the system about the individuals who received VR services for which State VRAs or alternate participants are claiming reimbursement. This includes data concerning the length of time the individual received VR services and the nature and costs of those services. The data is taken from reimbursement claims forms submitted by State VRAs or alternate participants. We also include in the system data derived from existing SSA systems of records (e.g., Earnings Recording and Self-Employment Income System (09–60–0059), the Master Beneficiary Record (09–60–0090) and the Supplemental Security Income Record (09–60–0103)). These data enable us to establish that the individual was entitled/eligible to Social Security benefits/SSI payments based on disability or blindness during the period VR services were provided, to draw conclusions about the individuals who are being successfully rehabilitated, and to calculate the savings to the Social Security trust funds and the general fund.

Additionally, we will capture data relating to the individual's post-VR work activity, participation in a VR program after medical recovery, and/or reasons for failing to cooperate in a VR program through investigations conducted by SSA and State VRA field employees and by reviewing data recorded in SSA's Earnings Recording and Self-Employment Income System (09–60–0059) and Claims Folder System (09–60–0089).

III. Proposed Routine Use Disclosures of Data in the System

We are proposing to establish the following routine uses of information which will be maintained in the system:

A. *Disclosure to the State VRA or alternate participant regarding the basis for SSA's decision on its claim for reimbursement and the reason(s) the costs were allowed or denied.*

This proposed routine use would permit us to advise the State VRA or alternate participant of our decision regarding their claim for reimbursement. Only information relating to a reimbursement claim and the reason(s) costs were or were not allowed will be disclosed. This routine use will not apply to any information which is subject to the disclosure restrictions of the Internal Revenue Code (IRC) (26 U.S.C. 6103) unless disclosure of such information is specifically permitted by that statute.

B. *Disclosure to the Department of Justice (DOJ), to a court or other tribunal, or to another party before such tribunal, when:*

(1) *SSA, or any component thereof; or*

(2) *Any SSA employee in his/her official capacity; or*

(3) *SSA employee in his/her individual capacity where DOJ (or SSA, where it is authorized to do so) has agreed to represent the employee; or*

(4) *The United States or any agency thereof where SSA determines that the litigation is likely to affect SSA or any of its components,*

is a party to litigation or has an interest in such litigation, and SSA determines that the use of such records by DOJ, the court or other tribunal, or the other party before the tribunal is relevant and necessary to the litigation provided, however, that in each case, SSA determines that such disclosure is compatible with the purpose for which the records were collected.

This proposed routine use would permit us to disclose information from the proposed system when SSA components and/or employees are involved in litigation involving the system. The routine use also would permit disclosure in instances in which SSA brings suit or another party brings suit and SSA has an interest in the litigation. This routine use will not apply to any information which is subject to the disclosure restrictions of the IRC (26 U.S.C. 6103) unless disclosure of such information is specifically permitted by that statute.

C. *Disclosure to a congressional office in response to an inquiry from that office made at the request of the subject of the record.*

We contemplate disclosing information under this routine use only in situations in which the individual may ask his/her congressional representative to intercede in an SSA matter on his/her behalf. Information would be disclosed when the congressional representative makes an inquiry and presents evidence that he/she is acting on behalf of the individual whose record is requested. This routine use will not apply to any information which is subject to the disclosure restrictions of the IRC (26 U.S.C. 6103) unless disclosure of such information is specifically permitted by that statute.

D. *Information may be disclosed to contractors and other Federal agencies, as necessary, for the purpose of assisting SSA in the efficient administration of its programs. We contemplate disclosing information under this routine use only in situations in which SSA may enter into a contractual or similar agreement with a third party to assist in accomplishing an agency function relating to this system of records.*

In the administration of our programs, we find that it is not always

administratively feasible or cost effective to do certain operations "in-house." In such instances, we may use the services of contractors or other Federal agencies pursuant to an interagency reimbursable agreement to assist in performing various Agency functions. This proposed routine use would permit us to disclose information from the proposed system of records under these circumstances. This routine use will not apply to any information which is subject to the disclosure restrictions of the IRC (26 U.S.C. 6103) unless disclosure of such information is specifically permitted by that statute.

E. *Non-tax return information which is not restricted from disclosure by Federal law may be disclosed to the General Services Administration (GSA) and the National Archives and Records Administration (NARA) under 44 U.S.C. 2904 and 2906, as amended by the National Archives and Records Administration Act of 1984 for their use in conducting records management studies.*

The Administrator, GSA, and the Archivist, NARA, are charged by 44 U.S.C. 2904, with promulgating standards, procedures, and guidelines with respect to records management and the conduct of records management studies. Section 2906 of this law, also amended by the NARA Act of 1984, provides that GSA and NARA shall have access to Federal agencies' records and that agencies shall cooperate with GSA and NARA. In carrying out these responsibilities, it may be necessary for GSA and NARA to have access to this proposed system of records. In such instances, the routine use would facilitate disclosure. This routine use will not apply to any information which is subject to the disclosure restrictions of the IRC (26 U.S.C. 6103).

F. *To Internal Revenue Service, for the purpose of auditing SSA's compliance with safeguard provisions of the Internal Revenue Code of 1986, as amended.*

This routine use will allow SSA to disclose information from the proposed system to the IRS for auditing purposes.

G. *Disclosure of information to the Rehabilitation Services Administration (RSA) for use in its program studies of, and development of enhancements for, State vocational rehabilitation programs to which applicants or beneficiaries under titles II and/or XVI of the Social Security Act may be referred. Data released to RSA will not include any personally identifying information (such as names or SSNs).*

This routine use will enable SSA employees to disclose statistical data to RSA. The RSA will use the data in its program studies and development of program enhancements for State VR programs which benefit applicants for, and beneficiaries of, SSA disability programs who are, or will be, participating in such VR programs. The statistical data that will be disclosed pursuant to this routine use will not be personally identifiable (such as names or SSNs). It may be theoretically possible to manipulate the statistical data with other information maintained by RSA in such a way that would identify the individuals to whom the statistics pertain. However, RSA has assured SSA that RSA will not attempt to identify these individuals and will apply appropriate safeguards measures to prevent anyone from doing so. We are publishing this routine use statement in order to ensure that disclosure of the statistical data to RSA without the consents of individuals will comply with the requirements of 5 U.S.C. 552a(b).

IV. Compatibility of the Proposed Routine Uses

The Privacy Act (5 U.S.C. 552a(a)(7) and 5 U.S.C. 552a(b)(3)) both permit us to disclose data under a routine use for a purpose which is compatible with the purpose for which we collect information. Section 401.310 of the regulations permit us to disclose information under a routine use for administering our programs or to assist other agencies in administering similar income-maintenance or health-maintenance programs. Section 401.205 of the regulations require us to disclose information when a law specifically requires it.

The proposed routine uses identified in III.A–D and F–G above describe disclosures that will assist in the administration of SSA's programs or will assist other agencies in the administration of other programs which have purposes which are compatible with those of SSA's programs. The proposed routine use identified in III.E will allow inspection of records by GSA and NARA, as required by 44 U.S.C. 2904 and 2906, when those agencies conduct records management studies. Thus, all of the routine uses are appropriate and meet the criteria in the Privacy Act and SSA's regulations.

V. Safeguards

We will employ a number of security measures which are designed to minimize the risk of unauthorized access to, and disclosure of, personal data in the proposed system. This includes using passwords and access codes to enter the computer system which will maintain the VR reimbursement case processing records and maintaining computerized records in secured areas which are accessible only to employees who require the information to perform their assigned duties. SSA employees who have access to the data will be notified of the criminal penalties of the Privacy Act dealing with unauthorized access to, or disclosure of, information which will be maintained in the system.

Further, any contract which may be entered into with a third party, in order to develop and maintain software for the proposed system, will contain provisions which: (1) Require the contractor to establish safeguards to protect personal information received from SSA; (2) restrict the contractor's use of the information to that which is necessary to perform the contract; and (3) subject the contractor to criminal penalties for violations of the Privacy Act.

VI. Effect of the Proposed System of Records on Individual Rights

The proposed system of records will maintain information for use in determining whether a State VRA or alternate participant may be reimbursed for any or all of the costs of VR services they provided to their disabled/blind clients. We also will use information in the system to profile the types of beneficiaries/recipients who are being successfully rehabilitated so that individuals with similar profiles are targeted for rehabilitation. In some instances, we may use information furnished by a VRA or alternate participant as a lead in determining if an individual's disability/blindness payments should continue. But the primary purpose of the SSA–VR Reimbursement Program is to make VR services more readily available to the disabled and blind and to ensure that savings accrue to the Social Security trust funds and the general fund; thus, we do not believe that the proposed system will have any unwarranted adverse effect on individual rights.

Dated: September 21, 1993.

Lawrence H. Thompson,

Principal Deputy Commissioner of Social Security.

09–60–0221

SYSTEM NAME:

Vocational Rehabilitation Reimbursement Case Processing System, HHS/SSA/OD.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Social Security Administration, Office of Disability, 6401 Security Boulevard, Baltimore, MD 21235
Social Security Administration, Office of System Operations, 6401 Security Boulevard, Baltimore, MD 21235

In addition, vocational rehabilitation (VR) reimbursement claims documents may be temporarily transferred to other locations within the Department of Health and Human Services (HHS). Contact the system manager to inquire about these addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system maintains information on disabled and blind individuals who received VR services for which State vocational rehabilitation agencies (VRA) or alternate participants seek reimbursement under sections 222(d) and 1615(d) of the Social Security Act because the individuals were entitled/eligible to Social Security benefits and/or supplemental security income (SSI) payments based on disability or blindness while receiving those VR services.

The individuals described above will be included in the system when they: (1) Performed substantial gainful activity (SGA) for a continuous period of at least 9 months as a result of VR services received or; (2) medically recovered while in a VR program and continued to receive cash payments under section 225(b) and/or 1631(a)(6) of the Social Security Act; or (3) refused, without good cause, to continue or to cooperate in a VR program in such a way as to preclude their successful rehabilitation; and (4) State VRAs or alternate participants filed claims for reimbursement of the cost of VR services rendered to the individuals. (An alternate participant is a public or private agency, organization, institution, or individual which the Commissioner of Social Security may use to provide VR services to disabled and blind beneficiaries/ recipients within a State if that State is unwilling to participate in the Social Security Administration (SSA)-VR Program or does not have an approved plan for VR services.)

CATEGORIES OF RECORDS IN THE SYSTEM:

Data in the system consist of information such as the VR client's name, Social Security number (SSN), disability diagnosis, sex and date of birth; the SSN and identification code under which the VR client received Social Security benefits/SSI payments; the type of benefits/payments received; the monthly benefit/payment amount; information relating to the period he/she was entitled/eligible to benefits/payments and, if benefits/payments were terminated or suspended, the basis for termination/suspension; information relating to his/her yearly earnings and employment; information relating to the period he/she received VR services and the nature and costs of those services; and information required to determine if and when he/she: (1) Performed SGA for a continuous period of at least 9 months based on services the State VRA or alternate participant provided; (2) medically recovered while in a VR program and continued to receive cash payments under section 225(b) and/or 1631(a)(6) of the Social Security Act; or (3) refused, without good cause, to continue or to cooperate in a VR program in such a way as to preclude his/her successful rehabilitation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 222(d) and 1615(d) of the Social Security Act.

PURPOSE(S):

Data in this system will be used to determine if a State VRA or alternate participant can be reimbursed for the costs of VR services provided to individuals while they were entitled/eligible to Social Security benefits or SSI payments based on disability or blindness. Data also will be used for program evaluation purposes and to determine what types of individuals are being successfully rehabilitated so that Social Security beneficiaries/SSI recipients with similar profiles are targeted for rehabilitation. In some instances, information furnished by a VRA or alternate participant may be used as a lead in determining if an individual's disability/blindness payments should continue.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed for routine uses as indicated below:

1. To a State VRA or alternate participant regarding the basis for SSA's decision on its claim for reimbursement and the reason(s) costs were allowed or denied.

2. To the Department of Justice (DOJ), to a court or other tribunal, or to another party before such tribunal, when

(a) SSA, or any component thereof; or

(b) Any SSA employee in his/her official capacity; or

(c) Any SSA employee in his/her individual capacity where DOJ (or SSA, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where SSA determines that the litigation is likely to affect SSA or any of its components,

is a party to litigation or has an interest in such litigation, and SSA determines that the use of such records by DOJ, the court or other tribunal, or the other party before the tribunal is relevant and necessary to the litigation, provided, however, that in each case, SSA determines that such disclosure is compatible with the purpose for which the records were collected.

3. To a congressional office in response to an inquiry from that office made at the request of the subject of the record.

4. Non-tax return information which is not restricted from disclosure by Federal law may be disclosed to the General Services Administration and the National Archives and Records Administration under 44 U.S.C. 2904 and 2906, as amended by the National Archives and Records Administration Act of 1984, for their use in conducting records management studies with respect to their duties and responsibilities.

5. Information may be disclosed to contractors or other Federal agencies, as necessary, for the purpose of assisting SSA in the efficient administration of its programs. We contemplate disclosing information under this routine use only in situations in which SSA may enter into a contractual or similar agreement with a third party to assist in accomplishing an Agency function relating to this system of records.

6. To the Internal Revenue Service, for the purpose of auditing SSA's compliance with safeguard provisions of the Internal Revenue Code of 1986, as amended.

7. To the Rehabilitation Services Administration (RSA) for use in its program studies of, and development of enhancements for, State vocational rehabilitation programs to which applicants or beneficiaries under titles II and/or XVI of the Social Security Act may be referred. Data released to RSA will not include any personally identifying information (such as names or SSNs).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records will be stored in magnetic media (e.g., computer disc packs) and, on a temporary basis, in paper form.

RETRIEVABILITY:

Data will be retrieved from the system by the SSN of the individual who received VR services for which the State

VRA or alternate participant filed the reimbursement claim.

SAFEGUARDS (ACCESS CONTROLS):

Safeguards for automated data have been established in accordance with the HHS Information Resources Management Manual, Part 6, Automated Information Systems Security Program Handbook. This includes maintaining computer disc packs or other magnetic files with personal identifiers in secured storage areas accessible only to authorized personnel. SSA employees having access to the computerized records and employees of any contractor who may be utilized to develop and maintain the software for the automated system will be notified of criminal sanctions for unauthorized disclosure of information about individuals. Also, contracts with third parties, if any, will contain language which delineates the conditions under which contractors will have access to data in the system and what safeguards must be employed to protect the data.

Manually maintained data will be stored in either lockable file cabinets within locked rooms or otherwise secured areas. Access to these records will be restricted to those employees who require them to perform their assigned duties.

RETENTION AND DISPOSAL:

Computerized records and manual data (claim applications, keyed claim forms, etc.) used in the VR claims reimbursement process will be maintained for a period of 6 years, 3 months, after the close of the fiscal year in which final adjudication was made. Means of disposal will be appropriate to the storage medium (e.g., erasure of discs, shredding of paper records, or transfer to another system of records).

SYSTEM MANAGER(S) AND ADDRESS:

Associate Commissioner, Office of Disability, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235.

NOTIFICATION PROCEDURE:

An individual can determine if this system contains data about him/her by writing to the system manager at the address shown above and providing his/her name, address and SSN (or the SSN under which the reimbursement claim was filed). (Furnishing the SSN is voluntary. However, searching for the individual's data will be easier and faster if it is furnished.)

An individual requesting notification of data in person need not furnish any special documents of identity. Documents he/she would normally carry on his/her person would be sufficient (e.g., credit cards, driver's license, or voter registration card). An individual requesting notification via telephone must furnish as a minimum, his/her name, date of birth, and address in order to establish identity, plus any additional information which may be specified in this section. An individual requesting notification via mail must furnish a notarized or certified statement of identity. These procedures are in accordance with HHS Regulations 45 CFR part 5b.

RECORD ACCESS PROCEDURES:

Same as notification procedures above. Also, a requester should reasonably identify and specify the information he/she is attempting to obtain. These procedures are in accordance with HHS Regulations 45 CFR part 5b.

CONTESTING RECORD PROCEDURES:

Same as notification procedures above. Also, an individual contesting data in the system should identify the data, specify the information he/she is contesting, state the corrective action sought, and the reasons for the correction with supporting justification showing how the record is incomplete, untimely, inaccurate, or irrelevant. These procedures are in accordance with HHS Regulations 45 CFR part 5b.

RECORD SOURCE CATEGORIES:

Data in this system will be derived in part from other SSA systems of records (i.e., Earnings Recording and Self-Employment Income System (09–60–0059), Claims Folder System (09–60–0089), Master Beneficiary Record (09–60–0090), and Supplemental Security Income Record (09–60–0103)); the reimbursement applications submitted by State VRAs or alternate participants; earnings information provided by the wage-earner/beneficiary; and investigations conducted by SSA and State VRA field employees which relate to a VR client's post-VR work activity, participation in a VR program after medical recovery, and/or reason(s) for failing to cooperate in a VR program.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 93–24943 Filed 10–8–93; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–920–4191–04]

Closure of Public Land in Socorro County, New Mexico.

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of emergency closure.

SUMMARY: Notice is hereby given that effective immediately, the following public land is temporarily closed to all public use and entry, including appropriation under the public land laws and mining laws.

T. 5 S., R. 6 E.,
Section 30, lots 1 through 6, NE¼, E½W½, N½SE¼,
Section 31, lots 1 through 11, E½NW¼, NE ¼SW¼, N½SE¼,
T. 6 S., R. 5 E.,
Section 1, lots 1 through 4, S½N½, S½

The following parties are exempt from this closure;

1. Bureau of Land Management personnel and their authorized representatives.

2. Any law enforcement agency in the performance of their duties.

3. All mining claim holders.

4. Joe and Jeanne Mendiburu, grazing permittees, and their representatives.

The purpose of this closure is to protect the public health and safety. The authority for this closure is 43 CFR 8364.1

DATES: This temporary closure is effective October 1, 1993 and will remain in effect until further notice.

FOR FURTHER INFORMATION CONTACT: Harlen Smith, Area Manager, Bureau of Land Management, Socorro Resource Area, 198 Neel Avenue, NW., Socorro, New Mexico 87801 or telephone at (505) 835–0412.

Dated: October 4, 1993.

Linda S.C. Rundell,

District Manager.

[FR Doc. 93–24990 Filed 10–8–93; 8:45 am]

BILLING CODE 4310–FB–M

[ID–920–03–4140–02; IDI–28116]

Notice of Revocation of the Island Park Known Geothermal Resource Area; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Known Geothermal Resource Area Revocation.

SUMMARY: The Island Park Known Geothermal Resource Area (KGRA) was defined effective April 1, 1975, solely

on the basis of competitive interest as defined in 43 CFR 3200.1(c). No hot springs or thermal activity of any kind are known to occur on lands within the KGRA and there is no evidence indicating the existence of a geothermal resource in the area. Furthermore, Congress has effectively prohibited geothermal development of the Island Park KGRA through legislation prohibiting the leasing of lands in the Island Park Geothermal Area which includes the Island Part KGRA. For the above reasons, it has been determined that the original justification for the Island Park KGRA no longer exists and the lands should be declassified.

EFFECTIVE DATE: March 5, 1993.

FOR FURTHER INFORMATION CONTACT: Robert Mallis, Bureau of Land Management, Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706, (208) 384–3030.

SUPPLEMENTARY INFORMATION: The Island Park Known Geothermal Resource Area contains the following described lands:

Boise Meridian

T. 11 N., R. 42 E.
Sec. 15.
T. 12 N., R. 42 E.
Sec. 3,
Sec. 8, E½NE¼, SW¼NE¼S½
Sec. 29, 30 and 31.
T. 11 N., R. 43 N.
Secs. 7, 17, 19, 23, 26, 28, 30, 31 and 34.
T. 12 N., R. 43 E.
Secs. 2, 10, 22 and 27.
T. 10 N., R. 44 E.
Secs. 2, 5, 19, 20, 22, 24 and 33.
T. 11 N., R. 44 E.
Secs. 6, 7, 15, 19, 29, 31, 33 and 35.
T. 12 N., R. 44 E
Sec. 30.
T. 10 N., R. 45 E.
Secs. 9, 10 and 16.
T. 11 N., R. 45 E.
Secs. 5, 8, 28, 29, 33 and 34.
T. 12 N., R. 45 E.
Sec. 29.

Containing 28,539 acres in Caribou County.

Detailed information regarding this action, a description of lands included in the Island Park Known Geothermal Resource Area, and a diagram showing its boundaries are on file at the Idaho State Office of the BLM.

Purusant to authority contained in the Act of March 3, 1879, (43 U.S.C. 31), as supplemented by Reorganization Plan No. 3 of 1950 (43 U.S.C. 1451, note), 220 Departmental Manual 2, and Secretarial Orders No. 3071 and 3087, the Island Park Known Geothermal Resource Area, serial number IDI–28116, is revoked effective March 5, 1993.

Bill R. LaVelle,
Deputy State Director for Mineral Resources.
[FR Doc. 93–24862 Filed 10–8–93; 8:45 am]
BILLING CODE 4310–GG–M

[ID–920–03–4140–02; IDI–28111]

Notice of Revocation of the Yellowstone Known Geothermal Resource Area; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Known Geothermal Resource Area Revocation.

SUMMARY: The Yellowstone Known Geothermal Resource Area (KGRA) was defined effective December 24, 1970 based upon its proximity to the active thermal features in Yellowstone National Park. No hot springs or thermal activity of any kind are known to occur in the region immediately west of Yellowstone National Park and there is no evidence to indicate the existence of a geothermal resource within the KGRA. Furthermore, Congress has effectively prohibited geothermal development of lands in the Yellowstone KGRA through legislation prohibiting the leasing of lands in the Island Park Geothermal Area which includes the Yellowstone KGRA. For the above reasons, it has been determined that the original justification for the Yellowstone KGRA no longer exists and the lands should be declassified.

EFFECTIVE DATE: April 1, 1993.

FOR FURTHER INFORMATION CONTACT: Robert Mallis, Bureau of Land Management, Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706, (208) 384–3030.

SUPPLEMENTARY INFORMATION: The Yellowstone Known Geothermal Resource Area contains the following described lands:

Boise Meridian

T. 12 N., R. 45 E.
Secs. 2, 3, 10, 11, 14, 15, 22, 23, 26, 27, 34, and 35.
T. 13 N., R. 45 E.
Secs. 2, 3, 10, 11, 14, 15, 22, 23, 26, 27, 34 and 35.
T. 14 N., R. 45 E.
Sec. 34.

Containing 14,164 acres in Caribou County.

Detailed information regarding this action, a description of lands included in the Yellowstone Known Geothermal Resource Area, and a diagram showing its boundaries are on file at the Idaho State Office of the BLM.

Pursuant to authority contained in the Act of March 3, 1879, (43 U.S.C. 31), as supplemented by Reorganization Plan No. 3 of 1950 (43 U.S.C. 1415, note), 220 Departmental Manual 2, and Secretarial Orders No. 3071 and 3087, the Yellowstone Known Geothermal Resource Area, serial number IDI–28111, is revoked effective April 1, 1993.

Bill R. LaVelle,
Deputy State Director for Mineral Resources.
[FR Doc. 93–24863 Filed 10–8–93; 8:45 am]
BILLING CODE 4310–GG–M

INTERSTATE COMMERCE COMMISSION

Release of Waybill Data

The Commission has received a requests from Gellman Research Associates, Inc. for permission to use certain data from the 1992 ICC Waybill Samples.

A copy of the of the request (WB573—9/20/93) may be obtained from the ICC Office of Economics.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to this request, they should file their objections (an original and 2 copies) with the Director of the Commission's Office of Economics within 14 calendar days of the date of this notice. The rules for release of waybill data [Ex Parte 385 (Sub-No. 2)] are codified at 49 CFR 1244.8.

Contact: James A. Nash, (202) 927–6196

Sidney L. Strickland, Jr.,
Secretary.
[FR Doc. 93–24964 Filed 10–8–93; 8:45 am]
BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 92–83]

Nelson Ramirez-Gonzalez, M.D.; Revocation of Registration

On August 31, 1992, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Nelson M. Ramirez-Gonzales, M.D. (Respondent), seeking to revoke his DEA Certificate of Registration, AR1741746, under 21 U.S.C. 824(a)(5), and deny any pending applications for renewal of such registration as a practitioner under 21 U.S.C. 823(f).

Respondent filed a request for a hearing on the issues raised in the Order to Show Cause, and the matter was docketed before Administrative Law Judge Paul A. Tenney. Following prehearing procedures, a hearing was held on March 24, 1993, in Tampa, Florida. On May 21, 1993, Judge Tenney

issued his findings of fact, conclusions of law, and recommended ruling, recommending that the Administrator revoke Respondent's DEA Certificate of Registration. No exceptions were filed, and on June 22, 1993, the administrative law judge transmitted the record in this proceeding to the Administrator. The Administrator has carefully considered the entire record in this matter and, pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth.

The administrative law judge found that during the summer of 1988, the United States Department of Health and Human Services (DHHS) began investigating complaints from Medicare recipients in the St. Petersburg and Tampa, Florida areas concerning a medical equipment company that sold transcutaneous electronic nerve stimulator (TENS) units on a door-to-door basis. The investigation revealed that sales representatives from various medical equipment companies went door-to-door, and represented to elderly residents that Medicare had sent the salespersons to provide a pain control device for patients, specifically the TENS unit. The sales representatives further indicated that there would be no cost for these units. However, the company later billed Medicare for these units.

The administrative law judge found that the Respondent was associated with the company that was billing for these units, and was one of the physicians prescribing TENS units for these elderly patients. During the hearing in this matter, the Government presented the testimony of the DHHS agent assigned to the case. The agent testified that he interviewed the Respondent at the latter's home in November 1988, and Respondent informed him that the sales representatives for the TENS units would call the Respondent and provide Respondent with information as to the elderly patients. The Respondent would then make an appointment with a patient, conduct a home visit, perform a physical examination in the patient's home, and then prescribe the medical equipment.

The administrative law judge found that the Respondent prescribed the TENS units for elderly patients without consulting the patients' primary physicians. He further found that Medicare guidelines require a thirty-day trial period to be instituted prior to payment for a TENS unit. The physician is to sign a prescription form to the effect that a thirty-day trial period has been instituted. Respondent however, only saw the patients for one visit and did not routinely schedule any follow-up visits with the patients. The DHHS agent testified that there was no follow-up visit of the patients in over 98 percent of the Respondent's medical files. In spite of Respondent's lack of familiarity with the patients and their medical history, Respondent gave the patients vitamin shots and also prescribed other medications, including heart medications.

The DHHS agent further testified that there was no legitimate medical necessity for the TENS units that the Respondent prescribed. Many of the patients were unfamiliar with the use of the TENS units, and several turned the units in to DHHS.

The administrative law judge found that although there was no evidence that Respondent was paid any "kickbacks" by the sales representatives in return for selling the TENS units, he found that Respondent did bill Medicare for his services which included a history and physical examination, an electrocardiogram (EKG), and a Holter monitor examination of the heart. The bill to Medicare for each patient totalled $550.00.

The administrative law judge found that on November 9, 1990, in the United States Court for the Middle District of Florida, the Respondent was convicted on nine felony counts; specifically, conspiracy to defraud the United States, mail fraud, submitting false claims, and submitting false statements to the United States. The Respondent was subsequently sentenced to serve 37 months in prison, and to make restitution in the amount of $135,697.00. The United States Court of Appeals for the Eleventh Circuit affirmed the conviction of the Respondent on February 24, 1993.

As as result of Respondent's conviction, on August 9, 1991, the Director of Health Care Administrative Sanctions, Office of the Inspector General, United States Department of Health and Human Services, excluded the Respondent from participation in Medicare and any State health program of the Social Security Act, for a period of seven years pursuant to 42 U.S.C. 1320a–7(a).

The Administrator may revoke or suspend a DEA Certificate of Registration under 21 U.S.C. 824(a), upon a finding that the registrant:

(1) Has materially falsified any application filed pursuant to or required by this subchapter or subchapter II of this chapter;

(2) Has been convicted of a felony under this subchapter or subchapter II of this chapter or any other law of the United States, or of any State relating to any substance defined in this subchapter as a controlled substance;

(3) Has had his State license or registration suspended, revoked, or denied by competent state authority and is no longer authorized by state law to engage in the manufacturing, distribution, or dispensing of controlled substances or has had the suspension, revocation, or denial of registration recommended by competent state authority;

(4) Has committed such acts as would render his registration under section 823 of this title inconsistent with the public interest as determined under such section;

(5) Has been excluded (or directed to be excluded) from participation in a program pursuant to § 1320a-7(a) of title 42.

In this case, subsection (5) provides the sole basis for the suspension of revocation of the Respondent's registration. Respondent has been excluded from participation in Medicare and any State health programs for a period of seven years. There are no allegations by the Drug Enforcement Administration that the Respondent's exclusion from participation in such programs was a result of any misuse of controlled substances.

Section 824(a)(5) codifies an amendment to the Controlled Substances Act in 1987, adding the exclusion from Medicare as one of the bases for denial, revocation, or suspension of a registration to manufacture, distribute or dispense a controlled substance. See S.R. No. 100–109, 100th Cong. 1st Sess., reprinted in 1987; U.S.C.C.A.N. 680, 682. Further, the Drug Enforcement Administration has previously held that misconduct which does not involve controlled substances may constitute grounds for the revocation of a DEA Certificate of Registration. See *Gilbert L. Franklin, D.D.S.*, 57 FR 3441 (1992).

The Administrator has carefully reviewed the entire record and adopts the opinion and recommended decision of the administrative law judge. The administrative law judge found the evidence persuasive that the fraud perpetrated by the Respondent casts doubt upon his integrity, and as such supports an action against his registration. The administrative law judge also found that the Respondent's medical practice consisted largely of fraud against the Medicare program, for purely pecuniary gain. The Administrator determines that, based on the evidence in the record, the Respondent's DEA Certificate of Registration must be revoked.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, AR1741746,

previously issued to Nelson Ramirez-Gonzalez, M.D., be, and it hereby is, revoked. It is further ordered that any pending applications for renewal of said registration be, and they hereby are, denied. This order is effective November 12, 1993.

Dated: October 4, 1993.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 93-24951 Filed 10-8-93; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-28, 697]

Agrico Chemical Co., Mulberry, FL; Negative Determination on Reconsideration

On August 30, 1993, the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers of the subject firm. The notice was published in the **Federal Register** on September 10, 1993 (58 FR 47762).

A company official submitted an additional list of customers and claims that the former Soviet Union (FSU) is dumping phosphate fertilizers into the U.S., especially mono-ammonium phosphate (MAP).

The Department's denial was based on the fact that the increased import criterion and the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act were not met. U.S. imports of phosphoric acid, concentrated super-phosphates and di-ammonium phosphate (DAP) were negligible relative to U.S. production in the relevant time periods.

The "contributed importantly" test is generally demonstrated through a survey of the workers' firm's customers. The Department's survey showed that the preponderance of respondents did not import in the relevant time periods.

Investigation findings show that the major product being produced at Mulberry is phosphate rock. Sales and production of phosphate rock increased, in quantity, at Mulberry in 1992 compared to 1991. The major portion of the phosphate rock is shipped to other corporate plants in Louisiana for the production of MAP and DAP. The remaining phosphate rock is either exported or used internally at Mulberry for the production of granular triple super-phosphate (GTSP) and phosphoric acid. Sales and production of GTSP at Mulberry increased in 1992 compared to 1991.

The findings show several very minor products being produced at Mulberry, most of which are intermediate products—used internally at Mulberry in the manufacture of other products. Sulphuric acid and phosphoric acid are used internally at Mulberry to produce other products. Also, technical grades of DAP and MAP called TDAP and TMAP, respectively, are produced at Mulberry but for special customers in the market. Sales and production of TDAP and TMAP remained constant in 1992 compared to 1991. Total production of TDAP and TMAP at Mulberry accounted for less than one-half of one percent of the total production at Mulberry. Workers are not separately identifiable by product.

On reconsideration the Department found that the list of customers submitted for survey were accounts only for DAP, a product not produced at Mulberry. Also, the accounts were very small.

Other findings show a significant portion of Agrico's phosphate rock going to the export market in the relevant time period. Industry experts state that the former Soviet Union, once the largest fertilizer user in the world, has cut consumption by two-thirds since the fall of communism. Industry experts state that reformers in Russia have left farmers on their own. According to industry spokesmen, in order to obtain hard currency, Russia's production of fertilizer has gone to other markets overseas formerly marketed by U.S. firms. Neither the loss of export markets or price would provide a basis for a worker group certification.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for adjustment assistance for workers and former workers of the Agrico Chemical Company, Mulberry, Florida.

Signed at Washington, DC, this day of September 30, 1993.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Service, Unemployment Insurance Service.

[FR Doc. 93-24949 Filed 10-8-93; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-28,571]

G & L Machine South Paris, Maine; Affirmative Determination Regarding Application for Reconsideration

On September 20, 1993, the company requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers at the subject firm. The Department's Negative Determination was issued on August 12, 1993 and published in the **Federal Register** on August 27, 1993 (58 FR 45357).

The company stated that one of its major customers moved to Texas and is doing business across the border.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this day of October 1, 1993.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 93-24947 Filed 10-8-93; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-28,683]

Pictsweet Frozen Foods, Fairmont, Minnesota; Negative Determination Regarding Application for Reconsideration

By applications dated from August 22, 1993 through September 17, 1993, the workers requested administrative reconsideration of the subject petition for trade adjustment assistance (TAA). The denial notice was signed on July 30, 1993 and was published in the **Federal Register** on August 17, 1993 (58 FR 43656).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The workers submitted a copy of the Securities Exchange Commission's 10-K report and state, among other things, that machinery used in the processing plant is being shipped oversees.

Investigation findings show that the Fairmont workers process and package

frozen vegetables. The shipment of machinery overseas would not form a basis for a worker group certification. Only increased imports of the articles produced (frozen packaged foods) that contributed importantly to declines in sales or production and employment would form a basis for a certification.

The Department's denial was based on the fact that the decreased sales or production and increased import criteria of the Group Eligibility Requirements of the Trade Act of 1974 were not met. Sales and production of frozen vegetables at Pictsweet's Fairmont plant increased in 1992 compared to 1991 and in the first quarter of 1993 compared to the same quarter in 1992. Aggregate U.S. imports of frozen corn, peas, carrots, celery and potatoes were negligible during the relevant periods.

Company officials indicated that worker separations occurred because the parent company of Pictsweet made a decision to obtain its frozen vegetables from a domestic vegetable packer with processing plants in the Pacific Northwest rather than from Fairmont. The principle reason for this decision is the unreliable supply of raw materials which is reinforced by recent weather difficulties.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this day of September 30, 1993.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Service, Unemployment Insurance Service.

[FR Doc. 93–24948 Filed 10–8–93; 8:45 am]

BILLING CODE 4510–30–M

Federal-State Unemployment Compensation Program: Unemployment Insurance Program Letters Interpreting Federal Unemployment Insurance Law

The Employment and Training Administration interprets Federal law requirements pertaining to unemployment compensation as part of the fulfillment of its role in the administration of the Federal-State unemployment compensation program. These interpretations are issued in Unemployment Insurance Program Letters (UIPLs) to the State Employment Security Agencies (SESAs). The UIPLs described below are published in the **Federal Register** in order to inform the public.

Unemployment Insurance Program Letter No. 36–93

This UIPL advises SESAs that training under Title III of the Job Training Partnership Act is "approved training" under section 3304(a)(8) of the Federal Unemployment Tax Act (FUTA).

Unemployment Insurance Program Letter No. 43–93

This UIPL advises SESAs of the Department of Labor's position concerning the optional "between and within terms" denial provisions of Section 3304(a)(6)(A), FUTA.

Unemployment Insurance Program Letter No. 44–93

This UIPL advises SESAs of the Department of Labor's position regarding State options concerning (1) establishing collective liability for reimbursing employers and (2) preventing loss of interest and recovering interest lost to State unemployment funds due to the reimbursement method under sections 3304(a)(6)(B) and 3309(a)(2), FUTA.

Doug Ross,

Assistant Secretary of Labor.

Classification: UI.
Correspondence symbol: TEURL.
Date: August 6, 1993.
Directive: Unemployment Insurance Program Letter No. 36–93
To: All State Employment Security Agencies
From: Barbara Ann Farmer, Administrator for Regional Management
Subject: Training Under the Job Training Partnership Act as "Approved Training" For Unemployment Compensation Purposes

Rescissions: None.

Expiration date: August 31, 1994.

1. *Purpose.* To inform State Employment Security Agencies (SESAs) that certain individuals participating in training under the Job Training Partnership Act (JTPA) are considered to be in approved training under Section 3304(a)(8), Federal Unemployment Tax Act (FUTA).

2. *References.* Section 314(f), JTPA, as amended by Section 301 of P.L. 102–367 (The Job Training Reform Amendments of 1992), and Section 3304(a)(8), FUTA.

3. *Background.* Section 3304(a)(8), FUTA, requires, as a condition for employers in a State to receive normal credit against the Federal tax, that a State's unemployment compensation (UC) law provide that:

compensation shall not be denied to an individual for any week because he is in training with the approval of the State agency (or because of the application, to any such week in training, of State law provisions relating to availability for work, active search for work, or refusal to accept work) * * *.

Title III, JTPA, contains certain employment and training provisions specifically related to dislocated workers. In its original enactment (Public Law (P. L.) 97–300), JTPA included a provision which the Department of Labor (Department) interpreted as requiring that acceptance of training under Title III, JTPA, was to be considered approved training under Section 3304(a)(8), FUTA. The reauthorization of JTPA (Pub. L. 99–496) did not include a similar provision; however, Department regulations at 20 CFR 631.4 (1992) imposed such a requirement. The recently enacted Public Law 102–367, the Job Training Reform Amendment of 1992, again included such a provision related to approved training. Specifically, section 301(2) of Public Law 102–367 added new section 314(f)(2) to JTPA. This section provides:

An eligible dislocated worker participating in training (except for on-the-job training) under this title [i.e., Title III] shall be deemed to be in training with the approval of the State agency for purposes of section 3304(a)(8) of the Internal Revenue Code of 1986 [i.e., Section 3304(a)(8), FUTA].

This provision is implemented in regulations at 20 CFR 631.4 (57 FR 62004, 62063).

4. *Discussion.* Section 3304(a)(8), FUTA, requires a State to allow an individual in an approved training course to receive UC and to prohibit denial based on State law provisions relating to availability for work, active search for work, or refusal of work. Ordinarily, each State is free to determine whether training is appropriate for a claimant, to establish the criteria for approval of a training course, and to adopt safeguards to assure that the claimant is actually attending approved training. Section 314(f)(2), JTPA, however, preempts State agency discretion to approve training in one area. A State must consider training under Title III of JTPA to be "approved" training within the meaning of section 3304(a)(8), FUTA.

This amendment to JTPA applies only to those individuals actually participating in training under Title III, JTPA. It does not apply to individuals who are merely enrolled, accepted in, or planning to attend such training. Nor, by its terms, does it apply to on-the-job training. States do, however, have the option of considering whether individuals participating in training under other titles of JTPA are in "approved" training.

Section 3304(a)(8), FUTA, prohibits the denial of compensation to a trainee in an approved training course based on State law requirements relating to availability for work, active search for work, or refusal of work. However, an individual participating in training under Title III, JTPA, who does not meet other State UC eligibility requirements is not entitled to UC. For example, Title III, JTPA, permits individuals who have exhausted their compensation to participate in training programs. These individuals remain ineligible for UC because of State law regarding exhaustion of compensation, despite participation in training under Title III, JTPA. Individuals must satisfy all other

basic State law requirements for eligibility, such as establishing sufficient qualifying wages or showing good cause for voluntarily leaving employment. These requirements are not waived by any provision of JTPA or FUTA.

5. *Effective Date.* Under section 701(a) of Public Law 102–367, the amendments made by such act "shall take effect on July 1, 1993" except as otherwise provided. Since no other provision designates an effective date for section 314(f), it is effective July 1, 1993.

6. *Action Required.* States should review their laws to assure that individuals participating in training (except for on-the-job training) under Title III, JTPA, are in "approved" training under State laws.

7. *Inquiries.* Direct inquiries to the appropriate Regional Office.

Classification; UI.

Correspondence symbol: TEURL.

Date: September 13, 1993.

Directive: Unemployment Insurance Program Letter No. 43–93

To: All State Employment Security Agencies

From: Barbara Ann Farmer, Administrator for Regional Management

Subject: Optional Between and Within Terms Denial Provisions of Section 3304(a)(6)(A) of the Federal Unemployment Tax Act

Rescissions: None.

Expiration date: September 30, 1994.

1. *Purpose.* To advise State employment security agencies of the Department of Labor's ("Department") new position concerning the application of the optional between and within terms denial provisions.

2. *References.* Section 3304(a)(6)(A) of the Federal Unemployment Tax Act (FUTA), UIPL No. 18–78, dated March 6, 1978; UIPL No. 4–83, dated November 15, 1982; UIPL No. 41–83, dated September 13, 1983; UIPL No. 30–85, dated July 12, 1985, (50 FR 48274, 48280); UIPL No. 11–86, dated January 31, 1986; UIPL No. 15–92, dated January 27, 1992, (57 FR 7795, 7796); the *Draft Language and Commentary to Implement the Unemployment Compensation Amendments of 1976–P.L. 94–566* (*"1976 Draft Language"*); and Supplements 1 through 5 to the *1976 Draft Language.*

3. *Background.* Section 3304(a)(6)(A), FUTA, requires each State to pay unemployment compensation (UC) based on services performed for certain governmental entities and nonprofit organizations. UC is to be paid based on these services "on the same terms, and subject to the same conditions as compensation payable on the basis of other service" covered by the State law. This is commonly referred to as the "equal treatment" requirement. Exceptions to the equal treatment requirement are found in six distinct clauses of section 3304(a)(6)(A), FUTA. These provisions are commonly referred to as the "between and within terms denial" provisions.

Some of the between and within terms denial provisions are required as a condition of certification of State law by the Secretary of Labor. Others are optional. The following describes which provisions are required and which are optional:

Required: Denial between and within terms based on services performed in an instructional, research or principal administrative (i.e., a "professional") capacity for either an educational institution or an educational service agency (ESA). (Clauses (i), (iii) and (iv) of Section 3304(a)(6)(A), FUTA.)

Optional:

(1) Denial between and within terms based on services performed in other than an instructional, research or principal administrative (i.e., a "nonprofessional") capacity for either an educational institution or an ESA. (Clause (ii); clauses (iii) and (iv) which are made optional for nonprofessional services by clause (vi), all of section 3304(a)(6)(A), FUTA.)

(2) Denial between and within terms based on services performed in either a professional or nonprofessional capacity when the services are provided to or on behalf of an educational institution. (Clause (v) of section 3304(a)(6)(A), FUTA.)

In the past, the Department had taken the position that, if an optional denial clause is enacted by a State, it must be applied equally to all services described in that clause. UIPL No. 15–92, the Department's most recent issuance on the optional clauses, provided that a State may not apply the optional denial to some nonprofessional services while excluding other nonprofessional services. UIPL No. 15–92 also restated the Department's position that "if State law contained a provision implementing clause (v), it was required to apply equally to *all* services described in Section 3304(a)(6)(A)(i)–(iv)." (Emphasis in original.)

The Department has reconsidered its position and concluded that, if a State so chooses, an optional denial clause need not be applied to all services described in that clause. In addition, the Department has concluded that States have other options concerning the implementation of the optional clauses. This UIPL is issued to provide the Department's new position to the States. Any previous Departmental position conflicting with this new position is superseded.

3. *Discussion.* As noted above, the between and within terms denial provisions are exceptions to the equal treatment requirement of section 3304(a)(6)(A), FUTA. The equal treatment requirement only describes the relationship of the services required to be covered by section 3304(a)(6)(A), FUTA, to other services covered by State law. It does not address how exceptions to its requirements are to be applied. Therefore, the equal treatment requirement is not relevant to this matter.

Those clauses of section 3304(a)(6)(A), FUTA, which provide for the optional application of the between and within terms denial all provide that UC "may be denied." It is clear that the denial contained in these clauses is discretionary. No optional clause explicitly requires that all provisions of the clause be applied.

Social legislation such as the FUTA is to be construed broadly with respect to coverage and benefits. Exceptions to its statutory remedies are to be narrowly construed. (See *United States* v. *Silk,* 331 U.S. 704, 712 (1947).) Accordingly, since the denial provisions are exceptions to the broad coverage provisions of section 3304(A)(6)(A), they are given a narrow reading. The narrower reading in this case dictates that the application of an optional clause may be limited as to scope and/or time by a State.

Such a reading, which permits a State to differentiate among services, or to otherwise limit application of a clause, could also result in extending coverage to the broadest number of unemployed persons, thereby accomplishing the basic purpose of the coverage requirements of section 3304(a)(6)(A), FUTA. That is because States could choose to not apply the optional provisions to those services performed by classes of workers more deeply affected by unemployment.

This discussion also indicates that an optional denial clause is not to be treated as an absolute which the States must implement in its entirety, but instead as a ceiling beyond which a State may not go without violating the equal treatment requirement of section 3304(a)(6)(A), FUTA; a lesser application is possible. This approach has previously been followed by the Department where a "reasonable assurance" was required if a State implemented an optional clause. As was also noted in UIPL No. 15–92:

States do have the option of adopting a more restrictive test than the "reasonable assurance" test for nonprofessional services. For example, instead of requiring the reasonable assurance requirement as specified under clause (ii), the State law may include a provision requiring a contract to return to work in the next year or term.

Applying this concept to the optional denial clauses, States are henceforth granted discretion to apply any optional clause to some or all of the classes of services described in that clause. The term "classes of services" pertains to services performed as, for example, a custodian, cafeteria worker, bus driver, clerical worker or other nonprofessional class. Similarly, States may also limit the time period to which the optional clauses apply.

Once a State elects to limit the application of a clause, the limitation must be uniformly applied throughout the State. A State may not, for example, treat services performed for one school district differently than services performed in another school district or treat services performed in a nonprofit educational institution differently from services performed in a public educational institution. This is because the denial clauses refer explicitly to "services" and certain periods of time, thereby providing a basis for providing the States the option to limit the provisions of an optional denial clause to particular classes of services or periods of time. There is no similar reference in the statute to schools, school districts or other geographical and political subdivisions and, therefore, no basis for allowing disparate treatment of such geographical or political subdivisions.

4. *Interpretation and Application.* The clauses of Section 3304(a)(6)(A), FUTA, relating to the optional application of the between and within terms denials to "nonprofessional" services are interpreted as follows:

An optional clause represents an exception to the equal treatment requirement beyond which a State may not go. However, States may limit the application of the clause in the following situations, provided the limitation is applied uniformly throughout the State:

(1) Clause (ii)(I) may be applied to some or all of the classes of services described in that clause. The term "clauses of services" pertains to services performed as, for example, a custodian, cafeteria worker, bus driver, clerical worker or other nonprofessional class.

(2) A more restrictive test than the "reasonable assurance" test required under the Department's interpretation of that term may be adopted.

(3) The denial period may be limited to a shorter period than the period specified in clause (ii)(I), and the denial period may be applied only to selected vacation periods or holiday recesses specified in clause (iii).

5. *Action Required.* State Administrators should provide this information to appropriate staff.

6. *Inquiries.* Inquiries should be directed to the appropriate Regional Office.

Classification: UI/FUTA.

Correspondence Symbol: TEURL.

Directive: Unemployment Insurance Program Letter No. 44–93

To: All State Employment Security Agencies

From: Barbara Ann Farmer, Administrator for Regional Management

Subject: Sections 3304(a)(6)(B) and 3309(a)(2) of the Federal Unemployment Tax Act Relating to Liabilities of Reimbursing Employers

Rescissions: None.

Expiration Date: September 30, 1994.

1. *Purpose.* To advise States of the Department of Labor's position regarding State options concerning (1) establishing collective liability for reimbursing employers and (2) preventing loss of interest and recovering interest lost to State unemployment funds due to the reimbursement method.

2. *References.* Sections 3304(a)(6)(B) and 3309(a)(2) of the Federal Unemployment Tax Act (FUTA); Unemployment Insurance Program letter (UIPL) No. 21–80 dated February 29, 1989, UIPL No. 14–86 dated February 6, 1986; and the Draft Legislation to Implement the Employment Security Amendments of 1970 . . . H.R. 14705 ("1970 Draft Legislation").

3. *Background.* Section 3304(a)(6)(B), FUTA, requires that nonprofit organizations described in section 501(c)(3) of the Internal Revenue Code and all State and local governmental entities must be liable for contributions under State law. However, this section also provides that these entities must be given, under State law, the option of electing to make payments in lieu of contributions (i.e., reimbursements) as the method of financing their liability for unemployment compensation (UC) costs, on the basis set forth in section 3309(a)(2), FUTA. Section 3309(a)(2), FUTA, provides that:

(2) The State law shall provide that a governmental entity or any other organization (or group of governmental entities or other organizations) which, but for the requirements of this paragraph, would be liable for contributions with respect to service to which paragraph (1) applies may elect, for such minimum period and at such time as may be provided by State law, to pay (in lieu of such contributions) into the State unemployment fund amounts equal to the amounts of compensation attributable under the State law to such service. The State law may provide safeguards to ensure that governmental entities or other organizations so electing will make the payments required under such elections.

Initially, the Department of Labor took the position that Section 3309(a)(2) required reimbursing employers to reimburse all UC costs based on services performed for these employers. This position was modified by the Secretary of Labor in a 1979 conformity proceeding involving the States of Delaware, New Jersey and New York. Specifically, the Secretary found that whether the UC paid out is attributable to service in the employ of a reimbursing employer (and, therefore, whether the UC costs must be reimbursed by that employer) is to be determined under provisions of State UC laws which reasonably interpret and implement Section 3309(a)(2), FUTA.

UIPL No. 21–80, dated February 29, 1980, transmitted this decision of the Secretary to the States and provided guidance on the application of the decision. One of the effects of the Secretary's decision was that there was now the possibility of large amounts of unrecovered UC costs when costs were not attributed to a particular reimbursing employer. As a result, UIPL No. 21–80 discussed the establishment of "collective liability" for reimbursing employers. UIPL No. 21–80, in relevant part, provided that the States should be aware of:

a. [their] responsibility for assuring that reimbursing employers pay a fair share of their benefit costs. As a means of doing so, the States may wish to adopt a principle whereby benefits are attributed to service in the employ of reimbursing employers collectively when, under specified conditions, they are not attributable to service in the employ of a particular reimbursing employer. The collective liability may be discharged by requiring (or allowing, if optional) reimbursing employers to pay, at specified times and at specified rates, amounts attributed collectively. If the allocation of individual amounts due to discharge a collective liability should place upon a reimbursing employer a larger obligation that [sic] it would have had as a contributing employer, such an obligation is not inconsistent with the reimbursement option. That is a risk inherent in election of such an option.

In recent years, the Department has learned that not all States are aware of the option of establishing collective liability. As a result, State unemployment funds are sometimes incurring substantial losses.

This UIPL expands on the guidance provided in UIPL 21–80 concerning the establishment of collective liability. It also addresses the prevention of loss of interest and recovering interest lost due to the reimbursement method.

4. *Liability for Unrecovered UC Costs.*

a. *Establishment of Collective Liability.* As noted above, UIPL 21–80 gave States the option of establishing "collective liability" in order to assure that reimbursing employers pay a fair share of unrecovered UC costs. This principle was based on Section 3309(a)(2), FUTA. The words "compensation attributable" as used in section 3309(a)(2), FUTA, permit States to include the employer's share of all UC costs not recovered through reimbursements, as well as those benefits specifically attributable to service for that employer. Although nothing in Federal law prohibits contributory employers from subsidizing reimbursing employers, this broad reading of Section 3309(a)(2), FUTA, permits States to take steps to minimize such subsidizing, thereby preventing a drain on State unemployment funds. This would be accomplished by permitting States to require that all reimbursing employers bear their fair share of the costs of UC. See UIPL No. 21–80.

Collective liability may be discharged by requiring reimbursing employers to pay, at specified times and at specified rates, amounts attributed collectively through establishment of a separate payment. As noted in UIPL No. 21–80, if the allocation of individual amounts due to discharge a collective liability places a larger obligation upon a reimbursing employer than it would have had as a contributing employer, this obligation is a risk inherent in electing the reimbursement option.

Any payments established to discharge the collective liability required of reimbursing employers must not exceed the actual amount of collective liability for such employers. Collective liability may be up to one hundred percent of unreimbursed UC costs, but reimbursing employers may not be singled out and required to pay more than one hundred percent of UC costs as this would discourage employers from electing the reimbursing option. Such action would be contrary to Section 3309(a)(2), FUTA.

b. *Payments From Contributing and Reimbursing Employers.* Collective liability may also be discharged through socializing unrecovered UC costs among all employers, without regard to whether the employer was a contributing or reimbursing employer. Since, in this case, a uniform rate would be applied to both contributing and reimbursing employers, reimbursing employers would not be singled out and there would be no conflict with section 3309(a), FUTA, when:

(1) Provision of State law relating to charging of reimbursing employers are either the same as they are for contributing empioyer or serve to decrease the liability of reimbursing employers when compared to contributing employers; and

(2) Unrecovered UC costs, as a percentage of total UC costs, are not greater for contributing than reimbursing employers.

If either of these two conditions is not met, reimbursing employers would improperly subsidize the contributing employer's unrecovered UC costs. In the event a State chooses this uniform payment method, the Department will require the State to demonstrate that the above two conditions are met.

c. *Distinctions between Reimbursing Employers.* Just as contributing employers need not subsidize reimbursing employers, reimbursing employers with only small amounts of unrecovered UC costs need not subsidize reimbursing employers with large amounts of unrecovered costs. Therefore, States may distinguish among groups of reimbursing employers on this basis. To be acceptable, any distinction must be based upon differences relating only to unrecovered UC costs, so that each employer bears its fair share of unrecovered UC costs. For example, a State may assign one payment rate for "high risk" employers based on the total of such employers' unrecovered UC costs and another payment rate to "low risk" reimbursing employers based on the total of their unrecovered UC costs. Left to the State are the number of payment rates based on "risk" categories.

5. *Lost Interest.* Reimbursing employers retain the use of moneys between the time the State pays UC from its unemployment fund and the employer reimburses the fund. During this time, the unemployment fund loses interest it would otherwise have earned. Although section 3309(a)(2), FUTA, is silent on the matter of interest loss, sound cash management principles dictate that the solvency of the State unemployment fund be protected. States may, therefore, prevent this loss to the unemployment fund by requiring either advance payments or additional payments.

a. *Advance Payments.* Section 3309(a)(2), FUTA, has been interpreted to permit a State to require a reimbursing employer to make advance payments of potential reimbursing liability for immediate deposit into the State's unemployment fund, based on the estimated amount of UC likely to be attributed to the employer for an upcoming period. In addition, the last sentence of section 3309(a)(2), FUTA, provides that "[t]he State law may provide safeguards to ensure that governmental entities or other organizations so electing will make the payments required under such elections." Requiring payments in advance is just such a safeguard. The 1970 Draft Legislation, pages 76–79 and 98–99 provided for the making of optional advance payments.

Under this option, reimbursing employers may be required to make advance payments at the beginning of a period (for example, a calendar quarter or a calendar year) based upon estimated UC costs that will likely be attributable to that employer during that period. At the end of the period, the advance payment is reconciled with actual UC payments determined to be attributable to the employer for purposes of determining if the advance payment is too great or too small, and adjustments (e.g., credits toward future advance payments, refunds, or additional payments received in order to obtain full reimbursement) are then made as appropriate. A somewhat similar scheme, with a requirement for an annual accounting and for authorization to collect unpaid balances and dispose of excessive payments, is described in detail in the 1970 Draft Legislation, pages 76–79.

b. *Additional Payments for Lost Interest.* Alternatively, States may require reimbursing employers to make additional payments to the unemployment fund to cover any interest lost.

Under this approach, States assess interest for the period from the date a UC payment is made to the date the employer reimburses the unemployment fund for that payment. A State may determine this liability separately for each employer or for reimbursing employers as a whole. In the latter case, an identical payment rate would be assessed each employer and applied to the amount of reimbursements made such employer. The State will need to determine the period between the time UC is paid and reimbursement is received. States may use the actual time lag or a reasonable estimate of the time lag. For example, when liability is determined for reimbursing employers as a whole, the State may estimate the average time lag based on a sample of reimbursing employers. Under this approach, employers who reimbuse promptly will subsidize those who are delinquent. To avoid this, a State may assign different payment rates based on the time lag, or a reasonable estimate of the time lag, which applies to prompt or delinquent employers. For example, employers who pay promptly may be assigned one payment rate while delinquent employers may be assigned a higher payment rate.

Reimbursing employers may not be assessed an additional cost not related to the reimbursement option as this would discourage election of the reimbursement option in conflict with section 3309(a)(2), FUTA. Concerning additional interest payments, this means that, ideally, a State would not assess a payment rate which produces more revenue than the interest rate that would have been applicable had the moneys remained in the State unemployment fund. However, because the interest rate for the Unemployment Trust Fund (UTF) is not available until after the end of the quarter to which the rate pertains, this is impossible. A State may instead use the average rate of earnings in the UTF for the prior calendar year, for the last quarter of the prior calendar year, or for a more recent quarter.

6. *Sharable Benefits.* When a State's unemployment fund is reimbursed for UC costs by the Federal government, as in the case of sharable benefits under the Federal-State Extended Unemployment Compensation Act of 1970, as amended, reimbursing employer may be relieved of liability to the extent that the unemployment fund is reimbursed by the Federal Government. Refer to 20 CFR 615.10(b) and also to UIPL 14–86, page 9.

7. *Action Required.* Administrators are requested to provide the above information to appropriate staff.

8. *Inquiries.* Direct inquiries to the appropriate Regional Office.

[FR Doc. 93–24877 Filed 10–8–93; 8:45 am]
BILLING CODE 4510–30–M

Attestations Filed by Facilities Using Nonimmigrant Aliens as Registered Nurses

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is publishing, for public information, a list of the following health care facilities which plan on employing nonimmigrant alien nurses. These organizations have attestations on file with DOL for that purpose.

ADDRESSES: Anyone interested in inspecting or reviewing the employer's attestation may do so at the employer's place of business.

Attestations and short supporting explanatory statements are also available for inspection in the Immigration Nursing Relief Act Public Disclosure Room, U.S. Employment Service, Employment and Training Administration, Department of Labor, room N4456, 200 Constitution Avenue, NW., Washington, DC 20210.

Any complaints regarding a particular attestation or a facility's activities under that attestation, shall be filed with a local office of the Wage and Hour Division of the Employment Standards Administration, U.S. Department of Labor. The address of such offices are found in many local telephone directories, or may be obtained by writing to the Wage and Hour Division, Employment Standards Administration, Department of Labor, room S3502, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Regarding the Attestation Process: Chief, Division of Foreign Labor Certifications, U.S. Employment Service. Telephone: 202–219–5263 (this is not a toll-free number).

Regarding the Complaint Process: Questions regarding the complaint process for the H–1A nurse attestation program shall be made to the Chief, Farm Labor Program, Wage and Hour Division. Telephone: 202–219–7605 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Immigration and Nationality Act requires that a health care facility seeking to use nonimmigrant aliens as registered nurses first attest to the Department of Labor (DOL) that it is taking significant steps to develop, recruit and retain United States (U.S.) workers in the nursing profession. The law also requires that these foreign nurses will not adversely affect U.S. nurses and that the foreign nurses will be treated fairly. The facility's

attestation must be on file with DOL before the Immigration and Naturalization Service will consider the facility's H–1A visa petitions for bringing nonimmigrant registered nurses to the United States. 26 U.S.C. 1101(a)(15)(H)(i)(a) and 1181(m). The regulations implementing the nursing attestation program are at 20 CFR Part 655 and 29 CFR Part 504, 55 FR 50500 (December 6, 1990). The Employment and Training Administration, pursuant to 20 CFR 655.310(c), is publishing the following list of facilities which have submitted attestations which have been accepted for filing.

The list of facilities is published so that U.S. registered nurses, and other persons and organizations can be aware of health care facilities that have requested foreign nurses for their staffs. If U.S. registered nurses or other persons wish to examine the attestation (on Form ETA 9029) and the supporting documentation, the facility is required to make the attestation and documentation, the facility is required to make the attestation and documentation available. Telephone numbers of the facilities' chief executive officers also are listed, to aid public inquiries. In addition, attestations and supporting short explanatory statements (but not the full supporting documentation) are available for inspection at the address for the Employment and Training Administration set forth in the **ADDRESSES** section of this notice.

If a person wishes to file a complaint regarding a particular attestation or a facility's activities under that attestation, such complaint must be filed at the address for the Wage and Hour Division of the Employment Standards Administration set forth in the **ADDRESSES** section of this notice.

Signed at Washington, DC, this 4th day of October 1993.

Robert A. Schaerfl,

Director, United States Employment Service.

DIVISION OF FOREIGN LABOR CERTIFICATIONS APPROVED ATTESTATIONS 9/1/93 TO 9/30/93

CEO—Name/facility name/address	State	Approval date
Mr. Robert F. Theilmann, Central Arizona Medical Ctr., 450 West Adamsville Road, Florence 85232, 602–868–5841	AZ	9/8/93
Mr. Robert F. Theilmann, Casa Grande Regional Medical Ctr., Casa Grande 85222, 602–426–6300	AZ	9/20/93
Sr. Elizabeth Joseph Keaveney, St. Francis Medical Ctr., 3630 East Imperial Highway, Lynwood 90262, 310–603–6930.	CA	9/1/93
Gene Burleson/Tese Mohr, Tarzana Rehabilitation Center, 5650 Reseda Boulevard, Tarzana 91356, 818–881–4261	CA	9/1/93
Mr. Steven Mattachione, Orthopaedic Hospital, 2400 S. Flower Street, Los Angeles 90007, 213–742–1114	CA	9/8/93
Bernard F. Hyatt, Bonnie Brae Convalescent Hosp., 420 South Bonnie Brae Street, Los Angeles 90057, 213–483–8144.	CA	9/8/93
Ms. Jean R. Murphy, CSM Home Health Services, Inc., 1562 Wilshire Blvd., Los Angeles 90010, 213–380–2259	CA	9/9/93
Ms. Marietta Subbert, Unicare Health Services, 3400 W. 6th Street, suite 303, Los Angeles 90020, 213–385–9470	CA	9/13/93
Mr. Cory Glad, Parkview Care Ctr., Walker Management, Delano 93215, 916–742–7311	CA	9/15/93
Mr. Cory Glad, Terrace Care Ctr., Walker Management, Delano 93215, 916–671–0550	CA	9/15/93
Mr. Cory Glad, Lorel Way Care Ctr., Walker Management, Delano 93215, 916–674–9140	CA	9/15/93
Mr. Femy Santos, Menlo Place, 16221–23 Menlo Avenue, Gardena 90247, 310–329–8853	CA	9/17/93
Mr. Raymond N. Smith, Community Hospital of Gardena, Gardena Physicians Hospital, Inc., Gardena 90247, 310–768–2267.	CA	9/20/93
Mr. Nemesio Mabini, Jr., Dial 4 Care Home Health Services, Inc., San Gabriel 91776, 818–451–6699	CA	9/24/93
Mr. Solomon Goldner, Goldenstate Manor Conv. Hospital, Bakersfield 93301, 805–327–7687	CA	9/29/93
Mr. Solomon Goldner, San Joaquin Care Center, Goldenstate Palms Inc., Bakersfield 93305, 805–872–2324	CA	9/29/93
Mr. Albert E. Ebuen, Exproserv Unlimited, 550 East 8th Street, National City 91950, 619–477–2477	CA	9/29/93
Mr. Solomon Goldner, Parkview Real Conv. Hospital, Rosemead Sanitarium, Inc., Bakersfield 93309, 805–327–7107.	CA	9/29/93
Mr. Charles S. Ricks, White Memorial Med. Ctr., 1720 Brooklyn Avenue, Los Angeles 90033, 213–268–5000	CA	9/30/93
Mr. Harold L. Stewart, Bay St. George Care Center, Begonia & Hi-Way 98, Eastpoint 32328, 904–670–8571	FL	9/7/93
Mr. Richard Ninis, Sunshine Village Nursing Home, Inc., Pinellas Park 34666, 813–541–7515	FL	9/7/93
Mr. Harold L. Stewart, Bay St. Joseph Care Center, 220 9th Street, Port St. Joe 32456, 904–229–8244	FL	9/7/93
Mr. Harold L. Stewart, Apalachicola Health Care Ctr., 150 10th Street, Apalachicola 32320, 904–653–8844	FL	9/8/93
Ms. Kathleen T. DuCasse, Miami Heart Institute North, 4701 Meridian Avenue, Miami Beach 33140, 305–672–1111	FL	9/8/93
Mr. Robert Meade, Dade City Hospital, 1550 Fort King Road, Dade City 33526, 904–521–1165	FL	9/13/93
Mr. Lance Anastasio, Winter Haven Hospital, Inc., 200 Avenue F, NE., Winter Haven 33881, 813–297–1818	FL	9/20/93
Mr. Anthony Liuzzo, University Nursing Care Ctr., Inc., Gainesville 32608, 904–376–8821	FL	9/20/93
Mr. Dominick Bianco, Coral Gables Hospital, 3100 Douglas Road, Coral Gables 33134, 305–445–8461	FL	9/22/93
Ms. Martha Musino, Comprehensive Medical Services, Inc., Miami 33166, 305–477–4701	FL	9/29/93
Ms. Ruth Jordan, Oak Manor Village, 3500 Oak Manor Lane, Largo 34644, 813–581–9427	FL	9/30/93
Ms. Kay F. Broman, Medical College of Georgia Hospital & Clinics, Augusta 30912, 706–721–3921	GA	9/29/93
Richard P. Blinn, Hillhaven Rehab. and Conval., 26 Towers Road, NE., Marietta 30090, 404–422–8913	GA	9/30/93
Richard P. Blinn, Savannah Convalescent Center, 815 East 63rd Street, Savannah 31405, 912–352–8615	GA	9/30/93
Rev. Frank Chong, Waikiki Health Ctr., 277 Ohua Avenue, Honolulu 96815, 808–922–4787	HI	9/22/93
Mr. John Samatas, Lexington Health Care Ctr. of Lombard, Inc., Lombard 60148, 708–495–1700	IL	9/1/93
Mr. Joseph F. Warner, Heritage Manor Nursing and Conval. Home at Springfield, Springfield 62702, 217–789–0930	IL	9/1/93
Mr. Richard Schutt, Rest Haven West Christian N.C., 3450 Saratoga Avenue, Downers Grove 60515, 708–969–2900.	IL	9/1/93
Mr. Joseph F. Warner, Heritage Manor Nursing and Conval. Home at Normal, Normal 61761, 309–452–7488	IL	9/1/93
Mr. John Samatas, Lexington Health Care Ctr. of Bloomingdale, Inc., Bloomingdale 60108, 708–495–1700	IL	9/1/93
Mr. John Samatas, Lexington Health Care Ctr. of Schaumburg, Inc., Schaumburg 60193, 708–495–1700	IL	9/13/93
Mr. Marvin Mermelstein, Central Nursing Home, Inc., 2450 North Central Avenue, Chicago 60639, 312–889–1333	IL	9/13/93
Mr. Philip S. Deleon, Jr., The Abington of Glenview, 3901 Glenview Road, Glenview 60025, 708–729–0000	IL	9/20/93
Mr. Harold Lederman, Windsor Manor Nursing and Rehab. Ctr., Ltd., Palos Hills 60465, 708–598–3460	IL	9/29/93
Mr. Jes Cole, Villa Scalabrini, 460 North Wolf Road, Northlake 60164, 708–562–0040	IL	9/30/93
Mr. Wayne Swiniarski, West Calcasieu Cameron, 701 East Cypress Street, Sulphur 70664, 318–527–4260	LA	9/1/93

DIVISION OF FOREIGN LABOR CERTIFICATIONS APPROVED ATTESTATIONS 9/1/93 TO 9/30/93—Continued

CEO—Name/facility name/address	State	Approval date
Mr. Richard P. Blinn, Presentation Manor Nursing Home, The Hillhaven Corporation, Brighton 02135, 617–782–8113.	MA	9/30/93
Emma S. Resumadero, Total Healthcare Resource, Inc., 9300 Livingston Road, Fort Washington 20744, 301–248–9619.	MD	9/1/93
Mr. Frank P. Iacobell, Hutzel Hospital, 4707 St. Antoine, Detroit 48201, 313–745–7015	MI	9/13/93
Mr. G. Wayne Schuler, Madison General Hospital, Highway 16 East, Canton 39046, 601–859–1331	MS	9/10/93
Ms. Debra Griffin, Humphreys County Mem. Hosp., P.O. Box 510, Belzoni 39032, 601–247–3831	MS	9/13/93
Joseph Thomas Bland, Montfort Jones Memorial Hospital, P.O. Box 677, Highway 12 West, Kosciusko 39090, 601–289–4311.	MS	9/20/93
Mr. David Wilson, Brian Center Nursing Care, 6000 Fayetteville Rd., Durham 27713, 919–544–9021	NC	9/7/93
Ms. Frances L. Messer, Northwood Manor Nursing Ctr., 303 E. Carver Street, Durham 27704, 919–471–4558	NC	9/8/93
Mr. Richard Hess, The Evergreens, Inc., 4007 W. Wendover Avenue, Greensboro 27407, 919–292–8620	NC	9/13/93
Mr. Leslie Jarema, Meadowbrook Terrace of North Raleigh, Raleigh 27615, 919–878–7772	NC	9/20/93
Ms. Crystal Sims, Brian Center Nursing Care, 520 Valley Street, Statesville 28677, 704–873–0517	NC	9/22/93
Mr. Nolan G. Brown, Louisburg Nursing Ctr., Inc., P.O. Box 629, Louisburg 27549, 919–496–2188	NC	9/29/93
Mr. Chris Asmann-Frinch, Regent Care Center, 50 Polifly Road, Hackensack 07601, 201–646–1166	NJ	9/7/93
Ms. Nadine Sibila, Eastern Shore Nursing and Convalescent Ctr., Cape May Court House 08210, 609–465–2260	NJ	9/8/93
Ms. Dana K. Barnett, Union County General Hospital, 301 Harding Street, Clayton 88415, 505–374–2585	NM	9/29/93
Mr. H.W. Handy, Mountain Shadows Nursing & Rehab. Ctr., Las Cruces 88005, 505–523–4573	NM	9/30/93
Mr. Paul Baine, H–B Management Services Corp., 1072 Grand Concourse, Bronx 10456, 718–681–4000	NY	9/15/93
Mr. W. Richard Zacher, Manhattan Manor, 300 Manhattan Avenue, Buffalo 14214, 716–838–5460	NY	9/17/93
Mr. Renate Wack, Kirby Forensic Psychiatric Ctr., New York 10035, 212–427–9003	NY	9/20/93
Ms. Juliana Santos Sison, On-Call Staffing, Inc., 55 West 47th Street, New York 10036, 212–398–9558	NY	9/29/93
Ms. Celia Strow, The Grace Plaza of Great Neck, Inc., Great Neck 11021, 516–466–3001	NY	9/30/93
Mr. Richard L. Petrillo, The Mount Vernon Hospital, 12 North Seventh Ave., Mount Vernon 10550, 914–664–8000	NY	9/30/93
Mr. Bruce Feldman, Home Health Corp. of America, 2101 Brandywine Street, Philadelphia 19130, 215–568–2715	PA	9/9/93
Mr. Harold Hunter, Jr., Williamsburg County Memorial Hospital, Kingstree 29556, 803–354–9661	SC	9/15/93
Ron Frizzell, Healthcare Resources, Inc., 5050 Thoroughbred Lane, suite C, Brentwood 37027, 615–377–9140	TN	9/7/93
Mr. Stephen C. Reynolds, Baptist Memorial Hospital, Employment Services, Memphis 38146, 901–227–5090	TN	9/10/93
Mr. H. Thomas Nichols, Jr., Vintage Health Resources, Inc., 2032 Exeter Road, Germantown 38138, 901–757–8899.	TN	9/15/93
Mr. Luis G. Silva, AMI Park Place Medical Ctr., AMI Hospitals of Texas, LTD, Port Arthur 77642, 409–983–4951	TX	9/8/93
Mr. Luis G. Silva, AMI Mid Jefferson Hospital, AMI Hospitals of Texas Ltd., Nederland 77627, 409–985–0303	TX	9/8/93
Sister Gretchen Kunz, St. Joseph Hospital & Health Center, Bryan 77802, 409–776–2515	TX	9/13/93
Mr. William Burns, HCA Rio Grande Regional Hospital, 101 E. Ridge Road, McAllen 78503, 210–632–6000	TX	9/17/93
Mr. William A. Gregory, Diagnostic Center Hospital, 6447 Main, Houston 77030, 713–790–0790	TX	9/17/93
Art Layne, Brownwood Regional Hospital, P.O. Box 760, Brownwood 76804, 915–646–8541	TX	9/20/93
Mr. Robert W. Vanderveer, Knapp Medical Center, 1401 East Eighth, Weslaco 78596, 210–968–8567	TX	9/20/93
Mr. Harvey L. Fishers, Navarro Regional Hospital, 3201 W. Highway 22, Corsicana 75110, 903–872–4861	TX	9/22/93
Mr. Jeffrey E. Hausler, Wichita General Service Corporation, Wichita Falls 76301, 817–761–8291	TX	9/22/93
Mr. Antony Bunker, St. Paul Medical Ctr., 5909 Harry Hines Blvd., Dallas 75235, 800–388–2723	TX	9/28/93
Mr. Hector Hernandez, Doctors Hospital of Laredo, Ltd., Laredo 78041, 210–723–1131	TX	9/29/93
Mr. Arron Jewell, Pleasant Star Manor, 2700 Pleasanton Road, San Antonio 78221, 512–924–8183	TX	9/29/93
Mr. Art Gonzales, St. Joseph's Hospital, 1401 South Main St., Fort Worth 76104, 817–347–1417	TX	9/29/93
Mr. Charles V. Rice, IHS–I, 5160 Parkstone Drive, Chantilly 22021, 703–222–3900	VA	9/20/93
Mr. Scott Shearin, Brian Center Health, 105 Clonce Street, Weber City 24290, 703–386–9444	VA	9/20/93
Mr. Rick Glanz, Laurelwood Care Center, 150 102nd Avenue SE., Bellevue 98004, 206–454–6166	WA	9/8/93
Mr. Rob Weinsten, Regency at Puyallup Rehab. Ct., 909 Meridian South, Puyallup 98371, 206–845–6631	WA	9/10/93
Ms. Loren Anderson, Lakeland Medical Center, P.O. Box 1002 Hwy. NN, Elkhorn 53121, 414–741–2000	WI	9/29/93
Total attestations: 91		

[FR Doc. 93–24950 Filed 10–8–93; 8:45 am]
BILLING CODE 4510–30–M

Occupational Safety and Health Administration

[Docket No. NRTL–2–91]

GTE TestMark Laboratories

AGENCY: Occuaptional Safety and Health Administration, Department of Labor.

ACTION: Additional comments on the GTE TestMark Laboratories' application for recognition as a nationally recognized testing laboratory; request for 30-day extension.

SUMMARY: This notice allows an additional 30-day extension in the reopening of the record for comments concerning whether GTE TestMark Laboratories can meet the independence requirement for recognition as a nationally recognized testing laboratory (NRTL) under 29 CFR 1910.7.

DATES: This extension allows additional comments to be submitted by no later than November 12, 1993.

ADDRESSES: Send comments to: NRTL Recognition Program, Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue NW., Room N3653, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT:

Henry Woodcock, Acting Director, Office of Variance Determination, NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue NW., room N3653, Washington, DC 20210.

SUPPLEMENTARY INFORMATION:

I. Background

A Notice of Application for the recognition of GTE TestMark Laboratories (TML) for recognition as a nationally recognized testing laboratory (NRTL) and Preliminary Finding was published in the **Federal Register**, July 8, 1992 (57 FR 30235). The American Council of Independent Laboratories, Inc. (ACIL), raised several issues concerning the independence of GTE TestMark and opposed the Laboratory's application for recognition (Exhibit 4–1). OSHA's request for additional comments on the independence issue prior to determining GTE TestMark Laboratories' eligibility for recognition as an NRTL was published in the **Federal Register**, July 13, 1993 (58 FR 37750).

In its response dated August 12, 1993, (Ex. 6–1), the ACIL requested additional time to more completely respond to OSHA's request for comments. OSHA agrees that the ACIL's request had merit and is, therefore, extending the comment period.

Copies of the TML application, the laboratory survey report, and all comments submitted in response to OSHA's request for additional comments on the independence issue published in the **Federal Register**, July 13, 1993 (58 FR 37750), and a copy of the **Federal Register**, July 13, 1993 (58 FR 37750), (Docket No. NRTL–2–91), are available for inspection and duplication at the Docket Office, Room N 2634, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address.

Authority And Signature

This document was prepared under the direction of David C. Zeigler, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. It is issued pursuant to section 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655).

Signed at Washington, DC this 5th day of October 1993.

David C. Zeigler,

Acting Assistant Secretary.

[FR Doc. 93–24878 Filed 10–8–93; 8:45 am]

BILLING CODE 4510–26–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–424]

Vogtle Electric Generating Plant, Unit 1; Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–68, issued to Georgia Power Company, acting for itself, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, and City of Dalton, Georgia (the licensees), for operation of the Vogtle Electric Generating Plant, Unit 1 (the facility) located in Burke County, Georgia.

The proposed amendment would be a one-time only revision to Technical Specification (TS) 4.6.1.2d, adding a footnote that would extend the 10 CFR part 50, Appendix J, Section III.D.3, Type C test interval, for the Unit 1 auxiliary component cooling water (ACCW) supply and return containment isolation valves, from 24 months to prior to entry to Mode 4 following the next outage requiring entry into Mode 5, but no later than November 1, 1994.

Georgia Power Company submits that the proposed amendment involves exigent circumstances in that the 24 month testing interval, as specified in 10 CFR part 50, Appendix J, Section III.D.3, and TS 4.6.1.2d, for the Unit 1 ACCW supply and return containment isolation valves, will expire on October 28, 1993, thus requiring the facility to be shut down and placed into Mode 5 prior to October 28, 1993, in order to perform the Type C test on the subject valves.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change is a one-time only extension of the Type C leakage test interval for the Unit 1 ACCW supply and return containment isolation valves. As such, it has no effect on the probability of any accident previously evaluated. Furthermore, based on the past leakage test history of these valves, there is reasonable assurance that extending the test interval to no later than November 1, 1994, (or the next forced outage that requires entry into Mode 5) will not adversely affect the ability of these valves to perform their isolation function. Therefore, the proposed change will not involve a significant increase in the consequences of any accident previously evaluated.

2. The proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change does not change the configuration or method of operation of any plant equipment, and no new failure modes have been defined for any plant system or component. Furthermore, no new limiting failure has been identified as a result of the proposed change.

3. The proposed change does not involve a significant reduction in a margin of safety. There continues to be reasonable assurance that the subject valves will remain capable of performing their isolation function. In addition, the proposed change avoids a plant shutdown solely for the purpose of performing Type C testing of these valves.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 15 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 15-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public

and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of the **Federal Register** notice. Written comments may also be delivered to Room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By November 12, 1993, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at Burke County Library, 412 Fourth Street, Waynesboro, Georgia 30830. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intevene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to David B. Matthews, Project Director, Project Directorate II–3: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Troutman, Sanders, 600 Peachtree Street, Nations Bank Plaza, Suite 5200, Atlanta, Georgia 30308–2216, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated September 30, 1993, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, and at the local public document room,

located at Burke County Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Dated at Rockville, Maryland, this 5th day of October 1993.

For the Nuclear Regulatory Commission.

C.E. Carpenter, Jr.,

Acting Project Manager, Project Directorate II–3 Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93–24969 Filed 10–8–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–47]

U.S. Army Materials Technology Laboratory (the U.S. Army Materials Technology Laboratory Research Reactor); Order Terminating Amended Facility License

By application dated October 8, 1991, as supplemented on March 16 and March 31, 1992, the U.S. Army Materials Technology Laboratory (AMTL or the licensee) requested from the U.S. Nuclear Regulatory Commission (the Commission) authorization to dismantle and dispose of the component parts of the AMTL pool-type research reactor located in Watertown, Massachusetts. The letter of October 8, 1991, contained a request that, upon completion of decommissioning, authorization be given for termination of Amended Facility License No. R–65. A "Notice of Proposed Issuance of Orders Authorizing Disposition of Component Parts and Terminating Facility License" was published in the **Federal Register** on February 24, 1992 (57 FR 6339). By Order dated June 3, 1992 (57 FR 24834), the Commission authorized dismantling of the facility and disposition of component parts as proposed in the decommissioning plan of the licensee. On June 23 and November 3, 1992, as supplemented on November 24, 1992, the licensee requested approval for changes to the decommissioning plan. These changes to the decommissioning plan were approved on July 16, 1992, and January 21, 1993. By letter dated March 30, 1993, as supplemented on May 24 and July 14, 1993, the licensee submitted the final survey report for decommissioning the AMTL research reactor.

This Order applies to the AMTL Reactor Building 100 and the reactor yard at Watertown. Building 97 at the AMTL is not covered by the license being terminated herein. Building 97 is covered by NRC License No. 20–01010–04 (Docket No. 030–04593), which is separately being considered for termination.

The reactor fuel has been removed from the core and shipped to a Department of Energy (DOE) facility. The reactor facility has been completely dismantled and all requirements pertaining to residual radioactivity, personnel and external radiation exposure, and fuel disposition have been met. Confirmatory radiological surveys verified that the facility met the recommended regulatory guidance for release of the facility for unrestricted use. Accordingly, the Commission has found that the facility has been dismantled and decontaminated pursuant to the Commission Order dated June 3, 1992, as supplemented on July 16, 1992, and January 21, 1993. Satisfactory disposition has been made of the component parts and fuel in accordance with the Commission's regulations in title 10 of the Code of Federal Regulations, (10 CFR) Chapter I, and in a manner not inimical to the common defense and security, or to the health and safety of the public. Therefore, on the basis of the application filed by the AMTL, and pursuant to Sections 104 and 161 b, i, of the Atomic Energy Act of 1954, as amended, and in 10 CFR 50.82(f), Amended Facility License No. R–65 is terminated as of the date of this Order. In accordance with 10 CFR part 51, the Commission has determined that the issuance of this termination Order will have no significant impact. The environmental assessment was published in the **Federal Register** on October 4, 1993 (58 FR 51654).

For further details with respect to this action see (1) the application for termination of Amended Facility License No. R–65, dated October 8, 1991, as supplemented, (2) the Commission safety evaluation related to the termination of the license, (3) the environmental assessment, and (4) the "Notice of Proposed Issuance of Orders Authorizing Disposition of Component Parts and Terminating Facility License," published in the **Federal Register** on February 24, 1992 (57 FR 6339). Each of these items is available for public inspection at the Commission Public Document Room, 2120 L Street, NW., Washington, DC 20555.

Copies of items (2), (3), and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Operating Reactor Support.

Dated at Rockville, Maryland this 5th day of October 1993.

For The Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 93–24971 Filed 10–8–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–148]

The University of Kansas, the University of Kansas Research Reactor; Order Terminating Facility License

By application dated December 17, 1990, the University of Kansas (UK or the licensee) requested from the U.S. Nuclear Regulatory Commission (the Commission) authorization to dismantle and dispose of the component parts of the UK research reactor located in Lawrence, Kansas. The letter of December 17, 1990, contained a request that, upon completion of decommissioning, authorization be given for termination of Facility License No. R–78. A "Notice of Proposed Issuance of Orders Authorizing Disposition of Component Parts and Terminating Facility License" was published in the **Federal Register** on May 9, 1991 (56 FR 16349). By Order dated September 19, 1991 (56 FR 49215), the Commission authorized dismantling of the facility and disposition of component parts as proposed in the decommissioning plan of the licensee. By letter dated January 4, 1993, the licensee submitted the final report for Decommissioning the Kansas University training reactor.

The reactor fuel has been removed from the core and shipped to a Department of Energy (DOE) facility. The reactor facility has been completely dismantled and all requirements pertaining to residual radioactivity, personnel and external radiation exposure, and fuel disposition have been met.

Confirmatory radiological surveys verified that the facility met the recommend regulatory guidance for release of the facility for unrestricted use. Accordingly, the Commission has found that the facility has been dismantled and decontaminated pursuant to the Commission's Order dated September 19, 1991. Satisfactory disposition has been made of the component parts and fuel in accordance with the Commission's regulations in Title 10 of the Code of Federal Regulations (10 CFR) chapter I, and in a manner not inimical to the common defense and security, or to the health and safety of the public. Therefore, on the basis of the application filed by the

UK and pursuant to sections 104 and 161 b, i, of the Atomic Energy Act of 1954, as amended, and in 10 CFR 50.82(f), Facility License No. R–78 is terminated as of the date of this Order. In accordance with 10 CFR part 51, the Commission has determined that the issuance of this termination order will have no significant impact. The environmental assessment was published in the **Federal Register** on October 4, 1993 (58 FR 51655).

For further details with respect to this action see (1) the application for termination of Facility License No. R–78, dated December 17, 1990, as supplemented on January 4, 1993, (2) the Commission's safety evaluation related to the termination of the license, (3) the environmental assessment, and (4) the "Notice of Proposed Issuance of Orders Authorizing Disposition of Component Parts and Terminating Facility License," published in the **Federal Register** on May 9, 1991 (56 FR 16349). Each of these items is available for public inspection at the Commission Public Document Room, 2120 L Street NW., Washington, DC 20555.

Copies of items (2), (3), and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Operating Reactor Support.

Dated at Rockville, Maryland this October 5, 1993.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 93–24970 Filed 10–8–93; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Federal Salary Council; Meeting

AGENCY: Office of Personnel Management.

ACTION: Notice of meeting.

SUMMARY: According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the twenty-eighth meeting of the Federal Salary Council will be held at the time and place shown below. At the meeting the Council will present its views and recommendations to the Pay Agent on locality-based comparability payments authorized by the Federal Employees Pay Comparability Act of 1990 (FEPCA). The meeting is open to the public.

DATES: October 28, 1993, at 9 a.m.

ADDRESSES: Office of Personnel Management, 1900 E Street NW., room 5A06A, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ruth O'Donnell, Chief, Salary Systems Division, Office of Personnel Management, 1900 E Street NW., room 6H31, Washington, DC 20415–0001. Telephone number: (202) 606–2838.

For the President's Pay Agent.

Lorraine A. Green,

Deputy Director.

[FR Doc. 93–24847 Filed 10–8–93; 8:45 am]

BILLING CODE 6325–01–M

PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

Meetings

Notice is hereby given of the meetings of the Prospective Payment Assessment Commission on Tuesday and Wednesday, October 26 and 27, 1993, at the Madison Hotel, 15th & M Streets, Northwest, Washington, DC.

The Subcommittee on Hospital Inpatient Care will convene at 9 a.m. October 26, 1993, in Executive Chambers 1, 2 and 3. The Subcommittee on Hospital Outpatient and Other Facility Services will convene in Drawing Rooms III and IV, also at 9 a.m.

The Full Commission will convene at 1:45 p.m. on October 26, 1993, in Executive Chambers 1, 2 and 3, and on October 27, 1993, the meeting will begin at 8 a.m. in the same room.

All meetings are open to the public.

Donald A. Young,

Executive Director.

[FR Doc. 93–25027 Filed 10–8–93; 8:45 am]

BILLING CODE 6820–BW–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2663; Amdt.6]

Missouri; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended, effective September 17, 1993, to include Barton County in the State of Missouri as a disaster area as a result of damages caused by severe storms and flooding beginning on June 10, 1993 and continuing.

All counties contiguous to the above-named primary county have been previously declared.

All other information remains the same, i.e., the termination date for filing applications for physical damage is November 15, 1993 and for economic injury the deadline is April 11, 1994.

The economic injury number for Missouri is 793300.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 27, 1993.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 93–24870 Filed 10–8–93; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2670; Amdt. 5]

North Dakota; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended, effective September 21, 1993, to establish the incident period for this disaster as beginning on June 22, 1993 and continuing through September 24, 1993 for all declared counties except Benson, Nelson, Ramsey, and Stutsman. The incident period for these counties is June 22, 1993 and continuing.

All other information remains the same, i.e., the termination date for filing applications for physical damage is November 15, 1993 and for economic injury the deadline is April 26, 1994.

The economic injury number for North Dakota is 795500.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 27, 1993.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 93–24872 Filed 10–8–93; 8:45 am]

BILLING CODE 8025–01–M

Interest Rates

The interest rate on section 7(a) Small Business Administration direct loans (as amended by Pub. L. 97–35) and the SBA share of immediate participation loans is 6⅞ percent for the fiscal quarter beginning October 1, 1993.

On a quarterly basis, the Small Business Administration also publishes an interest rate called the optional "peg" rate (13 CFR 122.8–4(d)). This rate is a weighted average cost of money to the government for maturities similar to the average SBA loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. For the October–December quarter of FY 94, this rate will be 5⅞ percent.

Charles R. Hertzberg,

Assistant Administrator for Financial Assistance.

[FR Doc. 93–24871 Filed 10–8–93; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Intent To Rule on Application to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Minot International Airport, Minot ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Minot International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Ominibus Budget Reconciliation Act of 1990) (Public Law 101–508) part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before November 12, 1993.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Bismarck Airports District Office, 2000 University Drive, Bismarck, North Dakota 58504.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. R. A. Schempp, City Manager of the City of Minot at the following address: City of Minot, 515 2nd Avenue Southwest, Minot, North Dakota 58701.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Minot under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Irene Porter, Manager, Federal Aviation Administration, Bismarck Airports District Office, 2000 University Drive, Bismarck, North Dakota 58504, (701) 250–4385. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Minot International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On September 22, 1993, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Minot, North Dakota was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than December 21, 1993.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00
Proposed charge effective date: October, 1993
Proposed charge expiration date: October, 1998
Total estimated PFC revenue: $1,569,483
Brief description of proposed project(s):

Projects to Impose and Use PFC

1. Construct Vault and Standby Power Generator
2. Passenger Facility Charge Application Costs
3. Reconstruct West Terminal Apron—Phase I & II
4. Reconstruct Access Roads to West Terminal Area
5. Acquire Snow Removal Equipment—Runway Sweeper
6. Reconstruct West Terminal Building

Projects Only to Impose a PFC

7. Reconstruct and Expand Air Cargo Apron
8. Acquire Land
9. Acquire Snow Removal Equipment
10. Construct Parallel Taxiway for Runway 8/26
11. Extend and Strengthen Runway 8/26
12. Install Security Fence
13. Construct Hangar Taxiways
14. Construct Service Road to North Areas
15. Construct Compass Rose
16. Const. Service Rd to Air Carrier Apron and Cargo Apron
17. Prepare Airport Master Plan
18. Reconst. Rwy 13/31 and Install Porous Friction Course
19. Install Runway Surface Condition Detector System
20. Install Automated Weather Observing System (AWOS).

Class or classes of air carriers which the public agency has requested not to be required to collect PFCs: Unscheduled passenger/charter services: operating aircraft with 30 seats or less.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of Minot.

Issued in Des Plaines, Illinois on October 4, 1993.

W. Robert Billingsley,
Manager, Airports Division, Great Lakes Region.

[FR Doc. 93–24955 Filed 10–8–93; 8:45 am]
BILLING CODE 4910–13–M

Federal Transit Administration

Environmental Impact Statement on the Selection and Construction of a New High Capacity Transit Improvement in Clackamas and Multnomah counties, OR, and Clark County, WA

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Federal Transit Administration (FTA), Metro and C-TRAN hereby give notice that they intend to prepare an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act (NEPA) on a proposal to construct a new high capacity transit improvement in the combined Milwaukie and I–5 North corridor from Clackamas County, Oregon, through the Portland central business district to Clark County, Washington. The local cooperating lead agencies for the project will be Metro and C-Tran. The local joint lead agencies will ensure that the Environmental Impact Statement (EIS) also satisfies the requirements of the State of Washington Environmental Protection Act (SEPA) and serves as the EIS required by SEPA. The study will initially evaluate several high capacity transit alternatives, a Transportation System Management (TSM) alternative, a No-Action alternative and possibly new alternatives generated through the scoping process. Those alternatives that are determined to be the most promising will be evaluated within the EIS. Scoping for the initial study of the alternatives will be accomplished through correspondence with interested persons, organizations, and federal, state and local agencies and through three public meetings.

DATES: Comment Due Date: Written comments on the scope of alternatives and impacts to be considered should be sent to Metro by November 12, 1993. Scoping Meetings: Public scoping meetings will be held on Tuesday, October 26, 1993 at 3 p.m. and 7 p.m. in the Oregon Convention Center, and on Wednesday, October 27, 1993 at 7 p.m. at the Putnam High School Cafeteria, and on Thursday, October 28,

1993 at 7 p.m. in the Clark County Public Utility District Community Room. See **ADDRESSES** below.

ADDRESSES: Written comments on the project scope should be sent to Mr. Leon Skiles, Project Manager, Metro, 600 NE Grand, Portland, Oregon, 97232. Scoping meetings will be held at the following locations:

1. Tuesday, October 26, 1993—3 p.m. and 7 p.m., Oregon Convention Center, 777 NE. Martin Luther King Jr. Blvd., Portland, Oregon 97232.

2. Wednesday, October 27, 1993—7 p.m., Putnam High School, 4950 SE. Roethe Road, Milwaukie, Oregon.

3. Thursday, October 28, 1993—7 p.m., Clark County Public Utility District, 1200 Fort Vancouver Way, Vancouver, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Terry Ebersole, Regional Administrator, Federal Transit Administration, 915 Second Avenue, Suite 3142, Seattle, Washington, 98104, (206) 220–7954, or Mr. Leon Skiles, Project Manager, Metro, 600 NE Grand, Portland, Oregon, 97232, (503) 797–1700.

SUPPLEMENTARY INFORMATION:

I. Scoping

FTA, Metro and C-Tran invite interested individuals, organizations, and federal, state and local agencies to participate in defining the alternatives that could be evaluated in a local screening process and subsequently in the EIS and in identifying any significant social, economic or environmental issues related to the alternatives. Staff will be present at the scoping meetings to describe the proposed scope of the study using maps and visual aids, a project work schedule, opportunities for citizen involvement, and an estimated budget. Members of the public and interested Federal, state, and local agencies are invited to comment on the proposed scope of work, alternatives to be assessed, impacts to be analyzed, and evaluation criteria to be used to arrive at a decision. Comments regarding the scope of the study may be made verbally at the public scoping meetings or in writing. See **DATES** and **ADDRESSES** sections above for locations and times.

II. Description of Study Area and Project Need

The study area is the travel shed from Oregon City, Oregon, through the Portland central business district into Clark County, Washington. The study area generally encompasses I–205 between Clackamas Town Center and Oregon City; McLoughlin Blvd. between the Portland CBD and Oregon City; I–5 North between the Portland CBD and 179th in Clark County; and SR–500 between I–5 and Vancouver Mall. High capacity transit service to the activity centers of Oregon City, Clackamas Town Center, Milwaukie and Portland, Oregon and Vancouver, 179th St. and Vancouver Mall in Washington will be evaluated. The study is intended to address traffic and air quality problems, land use goals and local transportation policies by improving transit service in an area that is experiencing significant population and employment growth.

III. Alternatives

The alternatives proposed for initial evaluation include: No-Action, which means no high capacity transit improvements would be built in the study area, and a variety of build alternatives, including expanded bus service, busways and light rail transit. The build alternatives include several termini and alignment options. Prior to initiation of the EIS, the study will perform an analysis on the alternatives in order to screen out all but the most promising alternatives. The EIS will be written on and analyze only the most promising alternatives.

IV. Probable Effects

FTA and the local cooperating agencies plan to evaluate in the EIS all significant social, economic, and environmental impacts of the alternatives that are determined to be the most promising following an extensive public involvement and local screening process. Among the primary issues that will be addressed in the EIS are the expected impact on transit ridership, the capital outlays needed to construct the project, and the financial impacts on the funding agencies. Environmental and social impacts proposed for analysis in the EIS include land use impacts, neighborhood impacts, traffic impacts, visual impacts, impacts on historical and cultural resources, air quality impacts, and noise and vibration impacts. Impacts on natural areas, rare and endangered species, water quality, ground water, and geologic forms will also be covered in the EIS. Measures to mitigate significant adverse impacts will be explored.

V. FTA Procedures

In accordance with the Federal Transit Act, as amended, and FTA policy, the Draft EIS will be prepared in conjunction with an Alternatives Analysis, and the Final EIS in conjunction with Preliminary Engineering. After its publication, the Draft EIS will be available for public and agency review and comment, and a public hearing will be held. On the basis of the Draft EIS and the comments received, Metro will select a locally preferred alternative and seek approval from FTA to continue with Preliminary Engineering and preparation of the Final EIS.

Issued on: October 5, 1993.

Terry Ebersole,

Regional Administrator.

[FR Doc. 93–24857 Filed 10–6–93; 8:45 am]

BILLING CODE 4910–57–U

Transfer of Federally Assisted Land or Facility

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of intent to transfer Federally assisted land or facility.

SUMMARY: The Federal Transit Act, as amended (FT Act), permits the Administrator of the Federal Transit Administration (FTA) to authorize a recipient of FTA funds to transfer land or a facility to a public body for any public purpose with no further obligation to the Federal Government if, among other things, no Federal agency is interested in acquiring the asset for Federal use. Accordingly, FTA is issuing this Notice to advise Federal agencies that the Santa Clara County Transit District intends to transfer real property located at the southeast corner of Highway 237 and Zanker Road, San Jose, CA.

EFFECTIVE DATE: Any Federal agency interested in acquiring the land or facility must notify the FTA San Francisco Regional Office of its interest, by November 12, 1993.

ADDRESSES: Interested parties should notify the Regional Office by writing Donna Turchie, Federal Transit Administration at 211 Main Street, Suite 1160, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Donna Turchie, in the San Francisco Regional Office, at 415/744–3115 or Frank Kelly, Office of Grants Management at 202/366–1647.

SUPPLEMENTARY INFORMATION:

Background

Section 12(k) of the FT Act, as amended, provides guidance on the transfer of capital assets. Specifically, if a recipient of FTA assistance determines that capital assets (including land) acquired, in whole or part, with such assistance are no longer needed for the purposes for which they were acquired, the Administrator may authorize the transfer of such assets to any public

body to be used for any public purpose with no further obligation to the Federal Government.

Section 12(k)(2) Determinations

The provision also provides that before the FTA may authorize such a transfer for a non-transit use, the FTA must first determine that:

(A) The asset being transferred will remain in public use for not less than 5 years after the date of the transfer;

(B) There are no purposes eligible for assistance under the FT Act for which the asset should be used;

(C) The overall benefit of allowing the transfer outweighs the Federal Government interest in liquidation and return of the Federal financial interest in the asset, after consideration of fair market value and other factors; and

(D) In any case in which the asset is a facility or land, there is no interest in acquiring the asset for Federal use.

Federal Interest in Acquiring Land or Facility

This document implements the requirements of section 12(k)(2)(D). Accordingly, FTA hereby provides notice of the availability of the land or facility further described below. Any Federal agency interested in acquiring the affected land or facility should promptly notify the FTA.

If no Federal agency is interested in acquiring the existing land or facility, FTA will make certain that the other requirements specified in section 12(k)(2) (A) through (C) are met before permitting the asset to be transferred.

Additional Description of Land or Facility

The property is vacant land, consisting of two adjacent parcels. Parcel 49630–1 has an easement with the City of San Jose for an existing underground sewer line on .077 acres. The unencumbered area of this parcel is .411 acres. Parcel 49641–1 is 2.73 acres of unencumbered property.

Issued on: October 5, 1993.

Portia L. Palmer,

Acting Regional Administrator.

[FR Doc. 93–24856 Filed 10–8–93; 8:45 am]

BILLING CODE 4910–57–U

DEPARTMENT OF THE TREASURY

Departmental Offices; Debt Management Advisory Committee; Meeting

Notice is hereby given, pursuant to 5 U.S.C. App. 2 sec. 10(a)(2), that a meeting will be held at the U.S. Treasury Department, 15th and Pennsylvania Avenue NW., Washington, DC, on November 2 and 3, 1993, of the following debt management advisory committee:

Public Securities Association Treasury Borrowing Advisory Committee

The agenda for the meeting provides for a technical background briefing by Treasury staff on November 2, followed by a charge by the Secretary of the Treasury or his designate that the committee discuss particular issues, and a working session. On November 3, the committee will present a written report of its recommendations.

The background briefing by Treasury staff will be held at 9 a.m. Eastern time on November 2 and will be open to the public. The remaining sessions on November 2 and the committee's reporting session on November 3 will be closed to the public pursuant to 5 U.S.C. App. 2 sec. 10(d).

This notice shall constitute my determination, pursuant to the authority placed in heads of departments by 5 U.S.C. App. 2 sec. 10(d) and vested in me by Treasury Department Order No. 101–05, that the closed portions of the meeting are concerned with information that is exempt from disclosure under 5 U.S.C. sec. 552b(c)(9)(A). The public interest requires that such meetings be closed to the public because the Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decision on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community. When so utilized, such a committee is recognized to be an advisory committee under 5 U.S.C. App. 2 sec. 3.

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of the advisory committee, premature disclosure of the committee's deliberations and reports would be likely to lead to significant financial speculation in the securities market. Thus, these meetings fall within the exemption covered by 5 U.S.C. sec. 552b(c)(9)(A).

The Office of the Under Secretary for Domestic Finance is responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of committee activities and such other matters as may be informative to the public consistent with the policy of 5 U.S.C. sec 552b.

Dated: October 5, 1993.

Frank N. Newman,

Under Secretary of the Treasury, Domestic Finance.

[FR Doc. 93–24917 Filed 10–8–93; 8:45 am]

BILLING CODE 4810–25–M

Fiscal Service

[Dept. Circ. 750, 1993 Rev., Supp. No. 4]

The Midwestern Indemnity Co.

A Certificate of Authority as an acceptable surety on Federal Bonds is hereby issued to the following company under Sections 9304 and 9308, Title 31, of the United States Code. Federal bond approving officers should annotate their reference copies of the Treasury Circular 570, 1993 Revision on page 35804 to reflect this addition:

The Midwestern Indemnity Company. Business address: 1700 Edison Drive, Milford, OH 45150. Underwriting Limitation [b]: $6,206,000. Surety Licenses [c]: AL, GA, IL, IN, IA, KS, MI, MN, MO, NE, NC, OH, PA, TN, VA, WV, WI. Incorporated: Ohio.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR, Part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

Copies of the Circular may be obtained form the Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, Washington, DC 20227, telephone (202) 874–6850.

Dated: September 30, 1993.

Charles F. Schwan III,

Director, Funds Management Division, Financial Management Service.

[FR Doc. 93–24875 Filed 10–8–93; 8:45 am]

BILLING CODE 4810–35–M

UNITED STATES INFORMATION AGENCY

Performance Review Board Members

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: This Notice is issued to revise the membership of the United States Information Agency (USIA) Performance Review Board.

DATES: Upon publication.

FOR FURTHER INFORMATION CONTACT:

Mr. John S. Welch (Co-Executive Secretary), Deputy Director, Office of Personnel, Bureau of Broadcasting, U.S. Information Agency, 330 Independence Avenue SW., Washington, DC 20547, Tel: (202) 619–7545,

or

Ms. Patricia H. Noble (Co-Executive Secretary), Chief, Domestic Personnel Division, Office of Personnel, U.S. Information Agency, 301 4th Street SW., Washington, DC 20547, Tel: (202) 619–4617.

SUPPLEMENTARY INFORMATION: In accordance with section 4314(c) (1) through (5) of the Civil Service Reform Act of 1978 (Pub. L. 95454), the following list supersedes the U.S. Information Agency Notice (57 FR 192, October 2, 1992)

Chairperson: Associate Director for Management Richard T. Stephens (Acting)

Deputy Chairperson: Associate Director for Broadcasting Joseph B. Bruns (Acting)

Career SES Members

Hattie P. Baldwin, Director, Office of Equal Employment Opportunity and Civil Rights

J. Richard Berman, Assistant Inspector General for Audits, Office of Inspector General

Janice H. Brambilla, Director, Office of Personnel, Bureau of Broadcasting

Richard J. Caldwell, Deputy for Telecommunications, Office of Engineering and Technical Operations, Bureau of Broadcasting

Edward J. DeFontaine, Director, Broadcasting Operations, Bureau of Broadcasting

R. Wallace Stuart, Deputy General Counsel, Office of the General Counsel

Alternate Career SES Members

William K. Jones, Director, Washington Relocation Project Staff

Earl Klitenic, Senior Advisor to the Associate Director for Broadcasting.

This supersedes the previous U.S. Information Agency Notice (57 FR 192 October 2, 1992)

Dated: October 5, 1993.

Richard Stephens,

Deputy Associate Director for Management, U.S. Information Agency.

[FR Doc. 93–24946 Filed 10–8–93; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review: Application for Amounts Due Estates of Persons Entitled to Benefits, VA Form 21–609

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 233–3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer,Joseph Lackey, NEOB, Room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer by November 12, 1993.

Dated: September 30, 1993.

By direction of the Secretary.

B. Michael Berger,

Director, Records Management Service.

Extension

1. Application for Amounts Due Estates of Persons Entitled to Benefits, VA Form 21–609
2. The form is used to gather the necessary information to determine who is the proper payee of certain accrued benefits due the veteran at the date of his or her death. The information is used by VA to determine eligibility.
3. Individuals or households
4. 375 hours.
5. 30 minutes
6. On occasion
7. 750 respondents

[FR Doc. 93–24911 Filed 10–8–93; 8:45 am]

BILLING CODE 8320–01–M

Information Collection Under OMB Review: Statement of Disappearance, VA Form 21–1775

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 233–3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, Room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer by November 12, 1993.

Dated: September 30, 1993.

By direction of the Secretary.

B. Michael Berger,

Director, Records Management Service.

Extension

1. Statement of Disappearance, VA Form 21–1775
2. The form is used to gather the necessary information from individuals to determine if a decision of formal presumption of death can be made for benefits payment purposes when a veteran has been missing for seven years. The information is used by VA to determine death benefit entitlement.
3. Individuals or households
4. 5,000 hours
5. 2 hours and 45 minutes

6. On occasion
7. 2,000 respondents.

[FR Doc. 93–24912 Filed 10–8–93; 8:45 am]
BILLING CODE 8320–01–M

Information Collection Under OMB Review: VA Acquisition Regulation (VAAR) (48 CFR, Chapter 8, Parts 813, 814, and 815)

AGENCY: Department of Veterans Affairs.
ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) the title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Patti Viers, Office of Information Resources Management (723), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 (202) 233–3172.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before November 12, 1993.

Dated: September 30, 1993.

By direction of the Secretary.

B. Michael Berger,
Director, Records Management Service.

Revision

1. VA Acquisition regulation (VAAR) (48 CFR, chapter 8, parts 813, 814, and 815)
2. Acquisition information is collected by VA purchasing and contracting personnel for the purpose of issuing purchase orders and awarding contracts for supplies, services, and construction necessary to the operations of VA offices and health care facilities.
3. Individuals or households—Businesses or other for profit—Small businesses or organizations—Non-profit institutions.
4. 981,445 hours.
5. 2.3 hours.
6. As offers are solicited.
7. 426,715 respondents.

[FR Doc. 93–24913 Filed 10–8–93; 8:45 am]
BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 195
Tuesday, October 12, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ENERGY REGULATORY COMMISSION

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-409), U.S.C. 552b:

DATE AND TIME: October 13, 1993, 10:00 a.m.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary. Telephone (202) 208-0400. For a recording listing items stricken from or added to the meeting, call (202) 208-1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro, 987th Meeting—October 13, 1993, Regular Meeting (10:00 a.m.)

CAH-1.
Project No. 2623-097, Youghiogheny Hydroelectric Authority
CAH-2.
Project No. 10729-003, Murphy Hydro Company, Inc.
CAH-3.
Project No. 6287-007, Rainsong Company
CAH-4.
Project Nos. 10822-001 and 10823-001, Summit Hydropower
CAH-5.
Project No. 11221-003, Tropicana Limited Partnership
CAH-6.
Project No. 11323-001, Blue Diamond Associates
CAH-7.
Omitted
CAH-8.
Project Nos. 2523-004, 005 and 006, Wisconsin Electric Power Company
CAH-9.
Project No. 8256-002, Joseph M. Keating

Consent Agenda—Electric

CAE-1.
Docket No. FA91-54-001, Central Vermont Public Service Corporation
CAE-2.
Docket Nos. ER93-523-000 and ER93-533-000, Western Resources, Inc. and Kansas Gas & Electric Company
CAE-3.
Docket No. EL92-38-000, Arkansas Power & Light Company, System Energy Resources, Inc., New Orleans Public Service, Inc., Louisiana Power & Light Company, Mississippi Power & Light Company and Entergy Power, Inc.
CAE-4.
Docket Nos. EL93-21-000, 001, EL93-25-001 and EL93-38-000, Vermont Yankee Nuclear Power Corporation Docket Nos. ER90-525-000 and ER90-526-000, New England Power Company
CAE-5.
Docket No. ER84-560-035, Union Electric Company
CAE-6.
Docket No. EC93-6-001, Cincinnati Gas & Electric Company and PSI Energy, Inc.
CAE-7.
Docket No. ER82-616-036, Systems Energy Resources, Inc.
CAE-8.
Docket No. ER92-812-001, Wisconsin Electric Power Company
CAE-9.
Docket No. ER93-296-001, Green Mountain Power Corporation
Docket No. ER93-297-001, Northeast Utilities Service Company
CAE-10.
Docket No. PL93-2-003, Prior Notice and Filing Requirements Under Part II of the Federal Power Act
CAE-11.
Omitted
CAE-12.
Omitted
CAE-13.
Docket No. EL88-1-005 (Phase II), Indiana & Michigan Municipal Distributors Association and City of Auburn, Indiana v. Indiana Michigan Power Company
Docket Nos. ER88-31-004 and ER88-32-004 (Phase II), Indiana Michigan Power Company
CAE-14.
Docket No. ER85-477-015, Southwestern Public Service Company
CAE-15.
Docket No. ER92-517-002, Southern Company Services, Inc.
CAE-16.
Docket No. EL93-45-000, Metropolitan Dade County, Florida v. Energy Systems Division of Thermo Electron Corporation, Florida Energy Partners Limited Partnership and South Florida Cogeneration Associates
Docket No. QF83-248-002, Entergy Systems Divisions of Thermo Electron Corporation, Metropolitan Dade County, Florida Energy Partners Limited Partnership and South Cogeneration Associates
CAE-17.
Docket No. ER93-73-000, Nordic Power of Southpoint I Limited Partnership
CAE-18.
Docket No. EG93-70-000, Haralson Generating Company, L.P.
CAE-19.
Docket No. EG93-68-000, Indiana Generating Company, L.P.
CAE-20.
Docket No. EG93-77-000, Nevada Cogeneration Associates #5
CAE-21.
Docket No. EG93-66-000, Tenneco Power Generation Company
CAE-22.
Docket No. EG93-76-000, Muddy River Limited Partnership
CAE-23.
Docket No. EG93-67-000, LG&E Power Generation, L.P.
CAE-24.
Docket No. EG93-72-000, Tenasko Washington Partners II, L.P.
CAE-25.
Docket No. EG93-69-000, DLS Energy, Inc.
CAE-26.
Docket No. EG93-74-000, CRSS Capital Cogeneration, Inc.
CAE-27.
Docket No. EG93-75-000, Naheola Power, Inc.
CAE-28.
Docket No. EG93-64-000, CSW Nevada, Inc.
CAE-29.
Docket No. EG93-65-000, VC Operating Services
CAE-30.
Docket No. EG93-71-000, Red Lake Energy Partners
CAE-31.
Docket No. RM93-22-000, Notice Provisions for Applications for Transmission Services Under Section 211 of the Federal Power Act

Consent Agenda—Oil and Gas

CAG-1.
Docket No. RP91-104-006, Transwestern Pipeline Company
CAG-2.
Docket No. PR93-10-000, Louisiana State Gas Corporation
CAG-3.
Docket No. PR93-11-000, Northern Illinois Gas Company
CAG-4.
Docket No. RP88-259-065, Northern Natural Gas Company
CAG-5.
Docket No. RP93-14-010, Algonquin Gas Transmission Company
CAG-6.
Docket No. RP93-89-001, MIGC, Inc.
CAG-7.
Docket No. RP93-173-000, Pacific Gas Transmission Company
CAG-8.

Docket No. RP93–195–000, Florida Gas Transmission Company
CAG–9.
Docket No. RP93–134–005, Southern Natural Gas Company
CAG–10.
Docket Nos. RP93–139–000 and 001, Transwestern Pipeline Company
CAG–11.
Docket Nos. RP93–143–001 and RP93–157–001, Carnegie Natural Gas Company
CAG–12.
Docket No. CP91–2322–005, Paiute Pipeline Company
CAG–13.
Omitted
CAG–14.
Docket No. RP92–166–010, Panhandle Eastern Pipe Line Company
CAG–15.
Omitted
CAG–16.
Docket Nos. RP93–6–008, 009 and RS92–75–002, Pauite Pipeline Company
CAG–17.
Omitted
CAG–18.
Omitted
CAG–19.
Omitted
CAG–20.
Docket No. RP93–141–001, Northern Natural Gas Company
CAG–21.
Docket Nos. TA91–1–17–009, TM91–1–17–002 and RP85–177–102, Texas Eastern Transmission Corporation
CAG–22.
Docket Nos. IS93–31–000 and IS93–37–000, Point Arguello Pipeline Company
CAG–23.
Docket No. RO87–19–000, Pel-Star Energy, Inc. and John H. Harvison
CAG–24.
Docket No. RO91–5–000, T.E. Reserve Corporation and James G. Allison, Jr.
CAG–25.
Docket No. GP93–8–000, North Dakota Industrial Commission, Tight Formation Determination, North Dakota–3, Red River Formation, FERC No. JD93–05716T
CAG–26.
Omitted
CAG–27.
Docket No. CP91–2759–002, Northern Natural Gas Company
CAG–28.
Docket No. CP92–165–002, Texas Eastern Transmission Corporation
CAG–29.
Docket No. CP92–190–001, Panhandle Eastern Pipe Line Company
Docket No. CP92–203–001, KN Wattenberg Transmission Limited Liability Company
Docket No. CP92–208–001, KN Front Range Gathering Company
CAG–30.
Docket Nos. RM92–13–002 and 003, Revisions to Regulations Governing NGPA Section 311 Construction and the Replacement of Facilities
CAG–31.
Docket No. CP93–79–000, Mid Louisiana Gas Company and Fairbanks Gathering Company
CAG–32.
Docket No. CP93–41–001, KN Energy, Inc. and KN Interstate Gas Transmission Company
Docket No. CP93–42–001, KN Gas Gathering, Inc.
CAG–33.
Docket Nos. RS92–49–003, RP92–74–009, RP92–204–002 and CP92–668–002, South Georgia Natural Gas Company
CAG–34.
Docket No. RP93–169–000, Transcontinental Gas Pipe Line Corporation
CAG–35.
Docket Nos. RP93–5–000, 010, 014 and RP93–96–001, Northwest Natural Gas Company
CAG–36.
Docket No. CP92–668–003, Southern Natural Gas Company and South Georgia Natural Gas Company

Hydro Agenda

H–1.
Reserved

Electric Agenda

E–1.
Docket Nos. TX93–4–000 and EL93–51–000, Florida Municipal Power Agency v. Florida Power & Light Company. Order on complaint under section 211 of the Federal Power Act.

Oil and Gas Agenda

I. Pipeline Rate Matters

PR–1.
Docket No. RM93–11–000, Revision to Oil Pipeline Regulation Pursuant to the Energy Policy Act of 1992. Final Rule.
PR–2.
Docket No. RM94–1–000, Market-Based Ratemaking for Oil Pipelines. Notice of Inquiry.
PR–3.
Docket No. RM94–2–000, Cost-of-Service Filing and Reporting Requirements for Oil Pipelines. Notice of Inquiry.
PR–4.
Docket Nos. IS90–21–002, IS90–31–002, IS90–32–002, IS90–40–002, IS91–1–002, SP91–3–002, SP91–5–002, IS91–21–002, IS91–28–002, IS91–33–002, IS92–19–001 and OR93–1–000, Williams Pipe Line Company
Docket Nos. IS90–39–002, IS91–3–000 and IS91–32–000, Enron Liquids Pipeline Company. Opinion and Order on Initial Decision.

II. Restructuring Matters

RS–1
Docket No. RS92–66–004, Mojave Pipeline Company. Order on compliance and rehearing.
RS–2
Docket No. RS92–65–004, Kern River Gas Transmission Company. Order on compliance and rehearing.
RS–3
Docket No. RS92–27–005 and 006, Alabama-Tennessee Natural Gas Company. Order on compliance and rehearing.
RS–4
Docket No. RS92–52–004, Viking Gas Transmission Company. Order on compliance and rehearing.

III. Pipeline Certificate Matters

PC–1.
Reserved

Lois D. Cashell,

Secretary.

[FR Doc. 93–25054 Filed 10–7–93; 11:20 am]

BILLING CODE 6717–01–M

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

TIME AND DATE: 11:00 a.m., October 6, 1993.

PLACE: 4th Floor, Executive Director's Conference Room, 1250 H Street, NW., Washington, DC.

STATUS: Closed.

MATTER CONSIDERED: Selection of Executive Director.

CONTACT PERSON FOR MORE INFORMATION: Tom Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: October 6, 1993.

Francis X. Cavanaugh,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 93–25031 Filed 10–6–93; 4:57 pm]

BILLING CODE 6760–01–M

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

TIME AND DATE: 10:00 a.m., October 18, 1993.

PLACE: 4th Floor, Conference Room, 1250 H Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the September 20, 1993, Board meeting.
2. Thrift Savings Plan activity report by the Executive Director.
3. Review of KPMG Peat Marwick audit report: "Pension and Welfare Benefits Administration Review of the Thrift Savings Plan Annuity Operations at the Metropolitan Life Insurance Company and the Federal Retirement Thrift Investment Board."

CONTACT PERSON FOR MORE INFORMATION: Tom Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: October 7, 1993.

Francis X. Cavanaugh,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 93–25153 Filed 10–7–93; 4:02 pm]

BILLING CODE 6760–01–M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE–93–32]

TIME AND DATE: 3:30 p.m., October 18, 1993.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: Open to the public.

1. Agenda for future meeting.
2. Minutes.
3. Ratification List.
4. Inv. No. 701–TA–312 (Remand) (Softwood Lumber from Canada)—briefing and vote.
5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

CONTACT PERSON FOR MORE INFORMATION: Donna R. Koehnke, Secretary, (202) 205–2000.

Issued: October 6, 1993.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–25061 Filed 10–7–93; 11:21 am]

BILLING CODE 7030–02–P

INTERSTATE COMMERCE COMMISSION

Commission Voting Conference

TIME & DATE: 10:00 a.m., Tuesday, October 19, 1993.

PLACE: Hearing Room A, Interstate Commerce Commission, 12th and Constitution Avenue, NW., Washington, DC 20423.

STATUS: The Commission will meet to discuss among themselves the following agenda items. Although the conference is open for the public observation, no public participation is permitted.

MATTERS TO BE DISCUSSED:

Finance Docket No. 30000 (Sub-No. 16), *St. Louis Southwestern Railway Company—Trackage Rights Over Missouri Pacific Railroad Company—Kansas City to St. Louis*

Finance Docket No. 31024, *The Durango & Silverton Narrow Gauge Railroad Company—Petition for Declaratory Order or Exemption*

Ex Parte No. MC–216, *Jurisdiction Over Motor Finance Transactions*

CONTACT PERSONS FOR MORE INFORMATION: Alvin H. Brown or A. Dennis Watson, Office of Congressional and Public Affairs, Telephone: (202) 927–5350, TDD: (202) 927–5721.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–25099 Filed 10–7–93; 2:42 pm]

BILLING CODE 7503–01–M

Corrections

Federal Register
Vol. 58, No. 195
Tuesday, October 12, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 933

[No. 93-75]

Members of the Federal Home Loan Banks

Correction

In rule document 93-23791 beginning on page 50836 in the issue of Wednesday, September 29, 1993, in the third column, under **SUPPLEMENTARY INFORMATION**, in the seventh line, "§ § 932.2" should read "§ § 933.2".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 92-ANE-25]

Alteration of VOR Federal Airway V-123; NY

Correction

In rule document 93-21684 beginning on page 47039 in the issue of Tuesday, September 7, 1993, the subject heading should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket No. 93-11]

FEDERAL RESERVE SYSTEM

12 CFR Part 208

[Docket No. R-0802]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

RIN 3064-AB22

Risk-Based Capital Standards; Interest Rate Risk

Correction

In proposed rule document 93-22149 beginning on page 48206 in the issue of Tuesday, September 14, 1993, make the following corrections:

1. On page 48208, in the third column, in the first line, "reply" should read "rely".

2. On page 48210, in the third column, in the first full paragraph, in the fourth line from the bottom, "(0.300.03)." should read "(0.30 × 0.03)."

3. On the same page, in the same column, in the same paragraph, in the last line, "(0.300.10)." should read "(0.30 × 0.10)."

4. On page 48211, in the second column, in the first partial paragraph, in the third line from the bottom, insert "only" after "rates".

5. On page 48215, in the first column, in the third full paragraph, in the second line, "national" should read "notional".

6. On page 48216, in the third column, in the third full paragraph, in the fifth line from the bottom, insert "change" between "conditions" and the comma.

7. On the same page, in the same column, in the same paragraph, in the second and third lines from the bottom, remove "biennial review of risk-based capital required".

8. On page 48218, in the second column, in the first full paragraph, in the first line, "measure" should read "measurement".

9. On page 48222, in the second column, in footnote 13, in the fifth line, "– (.01 Total Assets)" should read "– (.01 × Total Assets)".

10. On page 48223, in the first column, in the first full paragraph, in the sixth line from the bottom, "is" should read "if".

11. On the same page, in the second column, in the second full paragraph, in the fourth line from the bottom, "would" should read "could".

12. On page 48225, in the third column, in the fourth paragraph, in the third line from the bottom, insert "any" after "on".

13. On page 48226, in the first column, in the first bold, all-capital heading, "Comptroller" was misspelled.

Appendix B to Part 3 [Corrected]

14. On pages 48227 and 48234, Tables 1 and 3 were printed out of sequence. Tables 1 and 3 should appear in reverse order.

15. On page 48231, in the first column, under the heading *Section 8. Calculation of Excess Measured Exposure*, in paragraph (a), in the last line, remove "9".

Appendix A to Part 208 [Corrected]

16. On page 48233, in the third column of text, in the first line, "(Assets Risk Weights)" should read "(Assets × Risk Weights)".

17. On the same page, in the same column, in the second line, "(Liabilities Risk Weights)" should read "(Liabilities × Risk Weights)".

18. On the same page, in the same column, in the third line, "Sheet Positions Risk Weight)" should read "Sheet Positions × Risk Weight)".

19. On page 48235, in the third column, under the heading *F. Example of the Interest Rate Risk Measure*, in the second line, "of" should read "by".

Appendix C to Subpart A of Part 325 [Corrected]

20. On page 48240, in the first column, under the heading *D. Calculation of Excess Measured Exposure*, in paragraph 1., in the sixth line, "(.01 Total" should read "(.01 × Total".

BILLING CODE 1505-01-D

federal register

Tuesday
October 12, 1993

Part II

Department of Health and Human Services

Centers for Disease Control and Prevention

Draft Guidelines for Preventing the Transmission of Tuberculosis in Health-Care Facilities, Second Edition; Notice of Comment Period

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Draft Guidelines for Preventing the Transmission of Tuberculosis in Health-Care Facilities, Second Edition; Notice of Comment Period

AGENCY: Centers for Disease Control and Prevention (CDC), Public Health Service (PHS), Department of Health and Human Services (DHHS).

ACTION: Notice.

SUMMARY: This notice is a request for comment and review of the draft document entitled Guidelines for Preventing the Transmission of Tuberculosis in Health-Care Facilities, Second Edition prepared by the Centers for Disease Control and Prevention.

DATES: To ensure consideration, written comments on this draft document must be received on or before December 13, 1993.

ADDRESSES: Comments on the content of this notice should be in writing and addressed to Centers for Disease Control and Prevention, Attention: Guidelines Work Group, Mail Stop E07, 1600 Clifton Road, NE., Atlanta, Georgia 30333. To facilitate review please categorize your comments as follows: (1) Risk Assessment, (2) Administrative Controls, (3) Engineering Controls, (4) Respiratory Protection, (5) Education and Training, (6) HCW Counseling, Screening, and Evaluation, (7) Cost and Feasibility of Implementation, and (8) Other.

FOR FURTHER INFORMATION CONTACT: Carmine Bozzi, (404) 639–8027.

SUPPLEMENTARY INFORMATION: This document updates and replaces the previously published CDC guidelines for the prevention of tuberculosis (TB) transmission in health-care facilities to emphasize the importance of (1) the hierarchy of control measures including administrative and engineering controls, and personal respiratory protection, (2) health-care facility risk assessment and development of a written TB control plan, (3) early identification and management of persons with TB, (4) purified protein derivative (PPD) skin testing programs, and (5) health-care worker (HCW) education.

Transmission of TB is a recognized risk in health-care facilities. Transmission is most likely to occur from patients with unrecognized pulmonary or laryngeal TB who are not on effective antituberculosis therapy and have not been placed in TB isolation. Several recent TB outbreaks in health-care facilities, including outbreaks of multidrug-resistant TB (MDR–TB), have heightened concern about nosocomial transmission. Increases in TB in many areas are related to the high risk of TB among immunosuppressed persons, particularly those infected with the human immunodeficiency virus (HIV). Transmission of Mycobacterium tuberculosis infection to persons with HIV infection is of particular concern because they are at high risk of developing active TB if infected. Thus, health-care facilities should be particularly alert to the need for preventing TB transmission in settings in which persons with HIV infection receive care or work.

An effective tuberculosis infection control program requires early detection, isolation, and treatment of persons with active infectious TB. The primary emphasis of the TB infection control plan should be achieving these three goals by the application of a hierarchy of control measures, including (1) the use of administrative measures to reduce the risk of exposure to persons with infectious TB, (2) the use of engineering controls to prevent the spread and reduce the concentration of infectious droplet nuclei in the air, and (3) the use of personal respiratory protective equipment in areas where there is still a risk of exposure to M. tuberculosis, such as TB isolation rooms where persons with infectious TB are isolated.

Although completely eliminating the risk of TB transmission in all health-care facilities may be impossible, adherence to these guidelines should greatly reduce the risk to persons in these settings.

Dated: October 5, 1993.

Walter R. Dowdle,

Acting Director, Centers for Disease Control and Prevention (CDC).

Appendix—Guidelines for Preventing the Transmission of Tuberculosis in Health-Care Facilities, Second Edition

October 1993 Draft Prepared by Department of Health and Human Services, Public Health Service (PHS), Centers for Disease Control and Prevention (CDC), Guidelines Work Group, Atlanta, Georgia 30333.

Table of Contents

Executive Summary
I. Introduction
A. Purpose of Document
B. Epidemiology, Transmission, and Pathogenesis of TB
C. Risk of Nosocomial TB Transmission
D. Fundamentals of TB Infection Control
II. Recommendations
A. Assignment of Responsibility
B. Risk Assessment, Development of the TB Control Plan, and Periodic Reassessment
1. Risk assessment
a. General
b. Case surveillance
c. Analysis of HCW PPD test screening data
d. Review of TB patient medical records
e. Observation of infection control practices
f. Engineering evaluation
2. Development of the TB Infection Control Plan
3. Periodic Reassessment
4. Examples of Risk Assessment and Selection of TB Control Protocol
C. Detection of Patients Who May Have Active TB
D. Management of Patients in Ambulatory Care Settings and Emergency Rooms
E. Management of Hospitalized Patients with TB
1. Evaluation for TB
2. Initiation of treatment
3. Initiation of TB isolation
4. TB isolation practice
5. The TB isolation room
6. Discontinuation of TB isolation
7. Discharge planning
F. Engineering Control Recommendations
1. General ventilation
2. Additional engineering control approaches
a. HEPA filtration
b. Ultraviolet germicidal irradiation (UVGI)
G. Respiratory Protection
H. Cough-Inducing Procedures
1. General guidelines
2. Additional considerations for bronchoscopy
3. Special considerations for the administration of aerosolized pentamidine (AP)
I. Education and Training of Health-Care Workers
J. Health-Care Worker Counseling, Screening and Evaluation
1. Counseling the HCW regarding TB
2. Screening HCWs for active TB
3. Screening HCWs for latent TB infection
4. Evaluation and management of health-care workers with positive PPD tests
a. Evaluation
b. Routine and follow-up chest radiographs
c. Work restrictions
K. Problem Evaluation
1. Investigating PPD conversions and active TB in HCWs
2. Investigating possible patient-to-patient transmission of TB
3. Investigating contacts of persons with TB who were not recognized and isolated appropriately
L. Coordination with the Public Health Department
M. Additional Considerations for Selected Areas
1. Operating rooms
2. Autopsy rooms
3. Emergency medical services
4. Laboratories
5. Hospices
6. Nursing homes
7. Correctional facilities
8. Dental offices

9. Home-health services
Supplement 1—Determining the Infectiousness of a TB Patient
Supplement 2—Diagnosis and Treatment of TB
I. Diagnostic Procedures for TB
A. Purified Protein Derivative (PPD) Skin Testing and Energy Testing
B. Chest Radiograph
C. Bacteriology
II. Preventive Therapy for Latent TB Infection and Treatment of Active TB
A. Preventive Therapy for Latent TB Infection
B. Treatment for Active TB
Supplement 3—Engineering Controls
I. Introduction
II. Ventilation
A. Local Exhaust Ventilation
1. Enclosing devices
2. Exterior devices
3. Discharge from booths, tents, and hoods
B. General Ventilation
1. Dilution and removal
a. Systems
b. Ventilation rates
2. Room air flow patterns
3. Facility air flow direction
4. Room negative pressure
a. Pressure differential
b. Monitoring
5. TB Isolation Rooms
a. Alternate methods for achieving negative pressure
b. Exhaust from TB isolation rooms
C. HEPA Filtration
1. Recirculation of HEPA-filtered air to other areas of a facility
2. Recirculation of HEPA-filtered air back into the same room
a. Room recirculation
b. In-room (portable) systems
3. Use of HEPA filtration when exhausting air to the outside
4. Installation, maintenance, and monitoring
III. Ultraviolet Germicidal Irradiation
A. Applications
1. Duct irradiation
2. Upper room air irradiation
B. Limitations
C. Safety Issues
D. Exposure Criteria for UV Radiation
E. Maintenance and Monitoring
1. Labeling and posting
2. Maintenance
3. Monitoring
Supplement 4—Respiratory Protection
I. Introduction
A. Performance Criteria for Personal Respirators for Protection Against Transmission of M. tuberculosis
B. Specific Respirators
C. The efficacy of respiratory protective devices
1. Face-seal leakage
2. Filter leakage
3. Fit testing
4. Fit checking
5. Reuse of respirators
III. Implementing a Personal Respiratory Protection Program
Supplement 5—Decontamination: Cleaning, Disinfecting, and Sterilizing of Patient-Care Equipment
Glossary
References

Executive Summary

This document updates and replaces the previously published CDC guidelines for the prevention of tuberculosis (TB) transmission in health-care facilities 1—CDC1982, 2—CDC1990d) to emphasize the importance of (1) the hierarchy of control measures including administrative and engineering controls, and personal respiratory protection, (2) health-care facility risk assessment and development of a written TB control plan, (3) early detection and management of persons with TB, (4) purified protein derivative (PPD) skin testing programs, and (5) health-care worker (HCW) education.

Transmission of TB is a recognized risk in health-care facilities. Transmission is most likely to occur from patients with unrecognized pulmonary or laryngeal TB who are not on effective antituberculosis therapy and have not been placed in TB isolation. Several recent TB outbreaks in health-care facilities, including outbreaks of multidrug-resistant TB (MDR–TB), have heightened concern about nosocomial transmission. Increases in TB in many areas are related to the high risk of TB among immunosuppressed persons, particularly those infected with the human immunodeficiency virus (HIV). Transmission of Mycobacterium tuberculosis infection to persons with HIV infection is of particular concern because they are at high risk of developing active TB if infected. Thus, health-care facilities should be particularly alert to the need for preventing TB transmission in settings in which persons with HIV infection receive care or work.

An effective TB infection control program requires early detection, isolation, and treatment of persons with active TB. The primary emphasis of the TB infection control plan should be achieving these three goals by the application of a hierarchy of control measures, including (1) the use of administrative measures to reduce the risk of exposure to persons with infectious TB, (2) the use of engineering controls to prevent the spread and reduce the concentration of infectious droplet nuclei, and (3) the use of personal respiratory protective equipment in areas where there is still a risk of exposure to M. tuberculosis, such as TB isolation rooms.

Implementation of an optimum TB control program requires risk assessment; early identification and isolation of infectious TB patients; effective engineering controls; an appropriate respiratory protection program; and HCW TB education, counseling, screening, and evaluation.

Although completely eliminating the risk of TB transmission in all health-care facilities may be impossible, adherence to these guidelines should greatly reduce the risk to persons in these settings.

I. Introduction

A. Purpose of Document

The purpose of this document is to review the mode and risk of tuberculosis (TB) transmission in health-care facilities and to make recommendations for reducing the risk of transmission to health-care workers (HCWs), patients, volunteers, visitors, and other persons in these settings. The document also may serve as a useful resource for educating HCWs about TB.

These recommendations update and replace all previously published CDC recommendations for TB infection control in health-care facilities (1—CDC1982, 2—CDC1990d). The recommendations in this guideline are applicable to all settings in which health care is provided. In this document, the term "health-care facility" includes hospitals, ambulatory care facilities, outpatient and dental clinics, home health-care settings, emergency medical services and other facilities or residential settings providing medical care including substance abuse treatment settings and medical care areas of correctional facilities.

The term HCW refers to all paid and unpaid persons working in a health-care setting who have the potential for exposure to M. tuberculosis, including, but not limited to, physicians; nurses; aides; technicians; laboratory, morgue, funeral home, and dental workers; emergency medical responders; students; part time personnel; temporary staff not employed by the health-care facility; and persons not directly involved in patient care but who have potential occupational exposure to M. tuberculosis (e.g., dietary, housekeeping, maintenance, clerical and janitorial staff, and volunteers).

While the purpose of this document is to make recommendations for reducing the risk of transmission of tuberculosis to health-care workers, patients, and others in health-care facilities, the process of implementing any

recommendation must include provisions to safeguard the confidentiality and civil rights of individuals with TB under applicable state and federal laws.

B. Epidemiology, Transmission, and Pathogenesis of TB

TB is not evenly distributed throughout all segments of the U.S. population. Some subgroups or individuals have a higher risk of TB either because they are more likely than the general population to have been exposed to and infected by M. tuberculosis or because they are more likely to progress to active TB once infected (3—CDC1990b). In some cases, both of these factors may be present. Groups known to have a higher prevalence of TB infection include medically underserved populations (including some African-Americans, Hispanics, Asians and Pacific Islanders, American Indians and Alaskan Natives), homeless persons, current or past prison inmates, alcoholics, injecting drug users, the elderly, foreign-born persons from areas of the world with a high prevalence of TB (e.g., Asia, Africa, the Caribbean, and Latin America), and contacts to persons with active TB. Groups with a higher risk of progression from latent TB infection to active disease include persons with certain medical conditions, including HIV infection, silicosis, status post gastrectomy or jejuno-ileal bypass surgery, being ≥10 below ideal body weight, chronic renal failure, diabetes mellitus, immunosuppression due to receipt of high-dose corticosteroid or other immunosuppressive therapy, and some malignancies; persons who have been recently infected (within the past two years); young children (≤5 years old); and persons with fibrotic lesions on chest radiograph (3—CDC1990b).

M. tuberculosis is carried in airborne particles, known as droplet nuclei, that can be generated when persons with pulmonary or laryngeal TB sneeze, cough, speak, or sing (4—ATS/CDC1990). The particles are estimated to be approximately 1–5 microns in size, and normal air currents keep them airborne and can spread them throughout a room or building (5—Wells1955). Infection occurs when a susceptible person inhales droplet nuclei containing M. tuberculosis, and bacilli are able to traverse the mouth or nasal passages, upper respiratory tract, and bronchi to reach the alveoli of the lungs. Once in the alveoli, the organisms are taken up by alveolar macrophages and spread throughout the body. Usually within 2 to 10 weeks after initial infection with M. tuberculosis, the immune response limits further multiplication and spread of the tubercle bacilli; however, some of the bacilli remain dormant and viable for many years. This is known as latent TB infection. Persons with latent TB infection usually have a positive purified protein derivative (PPD) skin test, but they have no symptoms of active TB, and they are not infectious. In general, persons with latent TB infection have approximately a 10% risk during their lifetime for the development of active TB. The risk is greatest in the first 2 years after infection, but some risk persists for decades.

Persons with immunocompromising conditions have a greater risk for the progression of latent TB infection to active disease. HIV infection is the strongest known risk factor yet identified for the progression from latent TB infection to active TB disease. Persons with latent TB infection who become infected with HIV have approximately an 8–10% risk per year for the development of active TB (6—Selwyn1989). Persons who are infected with HIV and become newly infected with TB have an even greater risk for the development of active TB (7—DiPerri1989, 8—Daley1992, 9—Edlin1992, 10—Dooley1992a).

The probability that a susceptible person will become infected with M. tuberculosis depends primarily upon the concentration of infectious droplet nuclei in the air and the duration of exposure. Characteristics of the TB patient that enhance transmission include: (1) Disease in the lungs, airways, or larynx, (2) presence of cough or other forceful expiratory measures, (3) presence of acid-fast bacilli (AFB) in the sputum, (4) failure of the patient to cover the mouth and nose when coughing, (5) presence of cavitation on chest radiograph, (6) short duration of adequate chemotherapy, and (7) administration of procedures that can induce coughing or cause aerosolization of M. tuberculosis (e.g., sputum induction). Environmental factors that enhance the likelihood of transmission include: (1) Exposure of susceptible persons to an infectious person in relatively small, enclosed spaces, (2) inadequate local or general ventilation that results in insufficient dilution and/or removal of infectious droplet nuclei, and (3) recirculation of air containing infectious droplet nuclei.

C. Risk of Nosocomial TB Transmission

TB transmission is a recognized risk in health-care facilities (11—Barrett-Connor1979, 12—Brennen1988, 13—Goldman1988, 14—Catanzaro1982, 15—Ehrenkranz1972, 16—Haley1989, 17—Hutton1990, 18—Kantor1988, 19—Lundgren1987). The magnitude of the risk varies considerably by type of health-care facility, prevalence of TB in the community, patient population served, job category, area of the health-care facility in which a person works, and the effectiveness of TB infection control interventions. The risk may be higher in areas where patients with TB are provided care before diagnosis and initiation of TB isolation precautions (e.g., clinic waiting areas and emergency rooms) or where diagnostic or treatment procedures that stimulate coughing are performed. Nosocomial transmission of TB has been associated with close contact with infectious patients or HCWs, and during procedures such as bronchoscopy (14—Catanzaro1982), endotracheal intubation and suctioning (15—Haley1989), open abscess irrigation (17—Hutton1990), and autopsy (18—Kantor1988, 19—Lundgren1987). Sputum induction and aerosol treatments that induce cough may also increase the potential for TB transmission (20—CDC1989a, 21—Beck-Sagué1992). Health-care-facility personnel should be particularly alert to the need for preventing TB transmission in health-care facilities in which immunocompromised persons, such as persons with HIV infection, receive care and/or work, especially if cough-inducing procedures, such as sputum induction and aerosolized pentamidine treatments, are being performed.

Several TB outbreaks in health-care facilities have been reported during the past several years (22—CDC1990a, 23—CDC1991, 9—Edlin1992, 24—Pearson1992, 21—Beck-Sagué1992, 25—Dooley1992, 26—CDCUnpub). Many of these outbreaks involved transmission of multidrug-resistant (MDR) strains of M. tuberculosis to both patients and HCWs. Most of the patients and some of the HCWs were HIV-infected persons in whom new infection progressed rapidly to active disease. Mortality associated with those outbreaks was very high (range 43% to 93%). Furthermore, the time between diagnosis and death was very short, with the median interval ranging from 4–16 weeks. Factors contributing to these outbreaks included delayed diagnosis of patients with TB, delayed recognition of drug resistance, delayed initiation of effective therapy resulting in prolonged infectiousness, delayed initiation and inadequate duration of TB isolation, inadequate ventilation in TB isolation rooms, lapses in TB isolation practices, and inadequate precautions for cough-inducing procedures. There is evidence

from three of the facilities that MDR–TB transmission decreased significantly or ceased in areas where measures similar to those in the previously published CDC guidelines were implemented (2—CDC1990d, 27—Wenger1992, 28—Otten1992, 29—Maloney1992, 30—Stroud1993). Since several interventions were implemented simultaneously, it cannot be determined which played the most important role in reducing transmission.

D. Fundamentals of TB Infection Control

An effective TB control program requires early detection, isolation, and treatment of persons with active TB. The primary emphasis of the TB infection control plan should be achieving these three goals. In all health-care facilities, particularly those in which persons who are at high risk for TB work or receive care, policies and procedures for TB control should be developed, periodically reviewed, and evaluated for effectiveness to determine the actions necessary to minimize the risk of TB transmission.

The TB control program should be based on a hierarchy of control measures. The first and most important level of the hierarchy is the use of administrative measures to reduce the risk of exposure to persons with infectious TB. This includes developing and implementing effective written policies and protocols to ensure the rapid detection, isolation, diagnostic evaluation, and treatment of persons likely to have TB, as well as implementing effective work practices by persons working in the health-care facility.

The second level of the hierarchy is the use of engineering controls to prevent the spread and reduce the concentration of infectious droplet nuclei. This includes (1) Direct source control using local exhaust ventilation, (2) controlling direction of air flow to prevent contamination of air in areas adjacent to the infectious source, (3) dilution and removal of contaminated air via general ventilation, and (4) air cleaning via air filtration or ultraviolet germicidal irradiation (UVGI).

The first two approaches minimize the number of areas in the health-care facility where exposure to infectious TB may occur, and reduce, but do not eliminate the risk in those few areas (e.g., TB isolation rooms and treatment rooms where cough-inducing procedures are performed) where exposure may still occur. Because persons entering isolation and treatment rooms may be exposed to M. tuberculosis, the third level of the hierarchy is the use of personal respiratory protective equipment in these and a few other situations of probable relatively higher risk.

Specific measures to reduce the risk of TB transmission include the following:

- Assigning supervisory responsibility for the design, implementation, and maintenance of the TB infection control program to specific persons in the health-care facility (Section II.A).
- Conducting a risk assessment to evaluate the risk of TB transmission in all parts of the health-care facility, developing a written TB control program based on the risk assessment, and periodically repeating the risk assessment to evaluate the effectiveness of the TB infection control program (Section II.B).
- Developing, implementing, and enforcing policies and protocols to ensure early detection of patients who may have infectious TB (Section II.C, Supplement 1).
- Providing prompt triage and appropriate management of patients who may have infectious TB in the outpatient setting (Section II.D).
- Promptly initiating and maintaining TB isolation, diagnostic evaluation, and treatment for persons who may have infectious TB and who are admitted to the inpatient setting (Section II.E).
- Developing, installing, maintaining, and evaluating ventilation and other engineering controls to reduce the potential for airborne exposure to M. tuberculosis (Section II.F, Supplement 3).
- Developing, implementing, maintaining, and evaluating a respiratory protection program (Section II.G, Supplement 4).
- Using appropriate precautions for cough-inducing procedures (Section II.H, Supplement 3).
- Educating and training HCWs about TB, effective methods for prevention of TB transmission, and the benefits of medical screening programs (Section II.I).
- Developing and implementing a program for routine periodic screening of HCWs for active TB and TB infection (Section II.J, Supplement 2).
- Promptly evaluating possible episodes of transmission of TB in health-care facilities, including HCW PPD skin test conversions, clusters of cases in HCWs or patients, and contacts of TB patients who were not promptly detected and isolated (Section II.K).
- Coordinating activities with the local public health department, emphasizing reporting, adequate discharge follow-up, and ensuring continuation and completion of therapy (Section II.L).

II. Recommendations

A. Assignment of Responsibility

- Supervisory responsibility for the TB Control Program should be assigned to designated persons with expertise in infection control, occupational health, and engineering.

B. Risk Assessment, Development of the TB Control Plan, and Periodic Reassessment

1. *Risk assessment*—a. *General.* TB control measures for each health-care facility should be based on a careful assessment of the risk of TB transmission in that setting. Therefore, the first step in developing the TB control program should be conducting an initial risk assessment (Figure 1). The purpose of this assessment is to evaluate the risk of TB transmission in each area and occupational group in the facility so that appropriate infection control interventions can be developed based on actual risk.[1]

- The risk assessment should be conducted by a group of qualified personnel which may include hospital epidemiologists, infectious disease specialists, pulmonary disease specialists, infection control practitioners, health-care administrators, occupational health personnel, engineers, HCWs, and local public health authorities.
- The risk assessment should be done for the facility as a whole and for individual areas of the institution (e.g., medical, TB, pulmonary, or HIV wards; HIV, infectious disease or pulmonary clinics; emergency departments or areas where TB patients may receive care or where cough-inducing procedures are performed, etc.). In addition, risk assessments should be done for individual groups of HCWs that work throughout the institution (e.g., respiratory therapists, bronchoscopists, environmental services, dietary, maintenance, housestaff by specialty, etc.).
- The elements of a risk assessment are summarized in Table 1. Classification of risk as high, intermediate or low in a specific area and for a specific occupational category should be based on (1) the number of infectious TB patients admitted to the

[1] Regardless of risk level, the management of patients with known or suspected infectious TB will not vary. However, the index of suspicion for infectious TB among patients, the frequency of HCW PPD skin testing, the number of TB isolation rooms, and other factors will vary by whether the risk of TB transmission in the facility, area, or occupational group is high, intermediate, or low.

area or ward, or the estimated number of infectious TB patients to whom HCWs in an occupational category may be exposed, and (2) on the results of analysis of HCW PPD test conversions and possible patient-to-patient TB transmission (Figure 1).

• All TB infection control programs should include periodic PPD testing and reassessment of risk. The frequency of repeat skin testing and risk assessment should be selected on the basis of the most recent risk assessment (Figure 1):

• "Low risk" areas or groups are those in which (1) the PPD test conversion rate is not greater than in areas or groups without occupational exposure TB patients or than previous rates in the same area or group, (2) there are no clusters of PPD test conversions, (3) there is no evidence of patient-to-patient transmission, and (4) (in the case of an area) there are <6 TB patients hospitalized per year.

• "Intermediate risk" areas or groups are those in which (1) the PPD test conversion rate is not greater than in areas without occupational exposure to TB patients or than previous rates in the same area or group, (2) there are no clusters of PPD conversions, (3) there is no evidence of patient-to-patient transmission, and (4) there are ≥6 TB patients hospitalized per year.

(**Note:** Even if there is no evidence of M. tuberculosis transmission, areas or groups encountering ≥6 TB patients per year still have a potential for transmission and should be classified as "intermediate risk").

• "High risk" areas or groups are those in which (1) the PPD test conversion rate is significantly greater than areas without occupational exposure to TB patients or than previous rates in the same area *or* group, *or* (2) there is a cluster of PPD test conversions, *or* (3) there is other evidence of patient-to-patient or patient-to-HCW transmission of M. tuberculosis.

• If no data or insufficient data for determination of risk have been collected on PPD test conversions among HCWs, the number of TB patients who have received care in that area, or from an occupational group, these data should be compiled, analyzed, and reviewed expeditiously. Until such data are analyzed and found to warrant a lesser risk rating, all acute care areas and occupational groups likely to encounter TB patients or be exposed to M. tuberculosis should be considered high risk.

b. *Case surveillance.*

• Data on the number of active TB cases among patients and HCWs in the facility should be systematically collected, reviewed, and used to estimate the number of isolation rooms needed, recognize clusters of nosocomial transmission, and assess the level of potential occupational risk. Information regarding the number of TB patients by specific area can be obtained by review of laboratory surveillance data on specimens positive for AFB smears and/or M. tuberculosis cultures.

• Drug-susceptibility characteristics of M. tuberculosis isolates (i.e., the antituberculous agents to which each isolate is susceptible and those to which it is resistant) from TB patients seen in the facility should be reviewed to identify the frequency and patterns of drug-resistance. This information may indicate a need to modify the initial treatment regimen or may suggest evidence of nosocomial transmission or increased occupational risk.

c. *Analysis of HCW PPD test screening data.*

• In addition to being recorded in individual HCW's employee health records, results of PPD testing should also be recorded in a retrievable aggregate data base of all HCW PPD test results. Identifying information should be handled confidentially. PPD test conversion rates should be calculated at appropriate intervals to estimate the risk of PPD test conversion for each area in the facility and for each specific occupational group not assigned to a specific area. In order to calculate PPD test conversion rates, it is necessary to know the total number of PPD-negative persons working in each area or group (denominator) and the number of PPD test conversions among HCWs in each area or group (numerator).

• PPD test conversion rates for each area should be compared to rates in areas without occupational exposure to M. tuberculosis and to previous rates in the same area to identify areas where the risk of occupational PPD test conversion may be increased. When comparing conversion rates by area, a low number of HCWs in a specific area may result in a greatly increased rate of conversion for that area, although the risk may not actually be meaningfully higher than for other areas. Testing for statistical significance (e.g., Fishers exact test or Chi square) may assist interpretation. However, lack of statistical significance may not rule out a problem because, if the number of HCWs tested is low, there may not be adequate statistical power to detect a significant difference. Thus, some interpretation of individual situations is indicated.

• Any time a cluster of PPD test conversions is noted, further evaluation is indicated (Section II.K.1). A cluster is defined as PPD test conversions in ≥2 persons in one area, or in a single occupational group that works in multiple areas (e.g., respiratory therapy, dietary, etc.), over a 3-month time period.

• The frequency and comprehensiveness of the HCW PPD testing program should be evaluated periodically to assure that all HCWs are being included in the program and tested at appropriate intervals. For surveillance purposes, it may be advantageous to stagger the testing of HCWs in a given area or occupational group, since this may lead to earlier detection of transmission (Section II.J.3).

d. *Review of TB patient medical records.*

• The medical records of a sample of consecutive TB patients admitted to the facility should be reviewed periodically to evaluate infection control parameters (Table 1). Parameters to examine include the intervals from date of admission until TB was suspected, specimens for AFB smears were ordered, collected, tests performed, and results reported. Adequacy of TB treatment regimens should also be evaluated.

• Medical record reviews should also note previous admissions before onset of TB. Patient-to-patient transmission may be suspected if active TB occurs in a patient with a prior hospitalization during which exposure to another TB patient occurred, or if ≥2 patients with a characteristic drug-susceptibility or DNA fingerprint pattern are detected.

• Data from the case review should be used to determine if there is a need to modify: (1) Protocols for detecting and isolating patients who may have infectious TB, (2) laboratory procedures, (3) administrative policies and practices, or (4) protocols for patient management.

e. *Observation of infection control practices.*

• Assessment of adherence to the policies of the TB control program should be part of the evaluation process. This assessment should be performed on a regular basis and whenever there is an increase in HCW PPD test conversions or number of TB patients. Areas at high risk for TB transmission should be monitored more frequently. The review of patient records discussed above provides information on HCW adherence to a portion of the policies. In addition, observation of work practices related to TB isolation should be done to determine if employers are enforcing and HCWs are adhering to the policies and enforcing patient adherence. Whenever poor adherence to policies is recognized, the situation should be evaluated to determine if

problems exist that interfere with adherence to procedures, and appropriate education and other corrective action should be implemented.

f. *Engineering evaluation.*

• Engineering measures should be evaluated and monitored according to the appropriate TB control protocol schedule (Section II.B.2, Supplement 3). Data from the most recent evaluation and from review of maintenance procedures and logs should be carefully reviewed as a part of the risk assessment.

2. *Development of the TB Infection Control Plan.*

• Based on the risk assessment, a written TB infection control plan should be developed and implemented for each area of the facility (or occupational group for those HCWs not assigned to a specific area of the facility). There are optimum measures that all health-care facilities should implement to ensure that a program suitable to the needs of HCWs and patients is in place (Table 2). Additional measures may be necessary in facilities with a greater potential for TB transmission.

• In "low risk" areas, PPD testing of HCWs should be done annually, a repeat risk assessment should be done annually, the ventilation system should be evaluated annually, and TB isolation room negative pressure should be checked daily when in use.

• In "intermediate risk" areas, PPD testing of HCWs should be done every 6 months, a repeat risk assessment should be done every 6 months, the ventilation system should be evaluated every 6 months, and TB isolation room negative pressure should be checked daily when in use.

• In "high risk" areas, problem evaluation should be immediately conducted (section II.K). PPD testing should be done every 3 months, a repeat risk assessment should be done every 3 months, the ventilation system should be evaluated every 3 months, and TB isolation room negative pressure should be checked daily when in use.

• Areas in which cough-inducing procedures are performed on patients who may have TB should, at the minimum, implement the intermediate protocol.

• The occurrence of drug-resistant TB in the facility or the community, or a high prevalence of HIV infection among patients or HCWs in the facility may increase the concern about transmission of TB and may influence the decision regarding the protocol to follow in favor of a higher risk classification.

• Health-care facilities are likely to have a combination of low-, intermediate-, and high-risk areas or groups in the same time period and may not follow the same protocol in all areas. The appropriate protocol should be implemented for each area or occupational group.

• The number of rooms available for TB isolation should be determined by the number of TB patients seen in the area or by the occupational groups (Section II.E.5).

• Protocols for detection of patients who may have active TB should be based on the number and characteristics of TB patients seen in the area or by the occupational group (Section II.C).

3. *Periodic Reassessment.*

• Follow-up risk assessment should be performed at the interval indicated by the most recent risk assessment (Figure 1). Based on the follow-up assessment, problem evaluation may need to be conducted or the protocol modified to a higher or lower risk level.

• Following each risk assessment, the staff responsible for TB control, in conjunction with other appropriate HCWs, should review all TB control policies to assure that they are effective and meet current needs.

4. *Examples of Risk Assessment and Selection of TB Control Protocol.*

Below are described four hypothetical situations, and how surveillance data are used to select a TB control protocol.

Hospital A: The health-care facility overall HCW PPD test conversion rate is 1.6%. No areas or occupational groups have a significantly greater PPD test conversion rate than areas without occupational exposure to TB patients (and than previous rates in the same area or group). There is no clustering of PPD test conversions. There is no evidence of patient-to-patient transmission. No area admits ≥6 TB patients per year. They will follow the low risk protocol in all areas.

Hospital B: Has an overall HCW PPD conversion rate of 1.8%. The medical intensive care unit (MICU) rate is significantly higher. No other area has a rate that high. They institute problem identification (section II.K). No patient is found that was not isolated appropriately. Other potential problems are then evaluated and no cause is found. The high risk protocol is followed in the MICU until the PPD conversion rate is documented to be similar to areas of the facility without occupational exposure to TB patients for two consecutive three-month periods. If the rate remains significantly higher, further evaluation, including environmental and procedural studies (Table 2), will be performed to identify possible reasons for the high conversion rate.

Hospital C: The overall HCW PPD conversion rate is 2.4%. Rates range from 0 to 2.6% in individual areas and departments. None of these rates is significantly higher than rates in areas without occupational exposure to infectious TB patients. No particular HCW group has higher conversion rates than others. No clusters of HCW PPD conversions have occurred. Two units cared for >6 TB patients last year. These units will follow the intermediate protocol and the remainder of the hospital will follow the low-risk protocol. This hospital is in the southeastern United States and these conversion rates may reflect cross reactivity with nontuberculous mycobacteria.

Hospital D: Overall HCW PPD conversion rate 1.2%. No area cared for >6 TB patients last year. Respiratory therapy HCWs had a PPD conversion rate of 15% (3/20 therapists). It was determined that HCWs who had PPD conversions spent all or part of their time in the pulmonary function lab where induced sputum specimens were obtained. Low risk protocol is maintained for all areas of the facility except in the pulmonary function lab, where problem evaluation is conducted (Section II.K), and it is determined that the ventilation in the area is not adequate. The high risk protocol is implemented and booths are installed for sputum induction. Once the booths are installed, after there are two consecutive three-month periods with a PPD test conversion rate similar to areas of the facility without occupational exposure to M. tuberculosis, respiratory therapy HCWs will return to the low-risk protocol.

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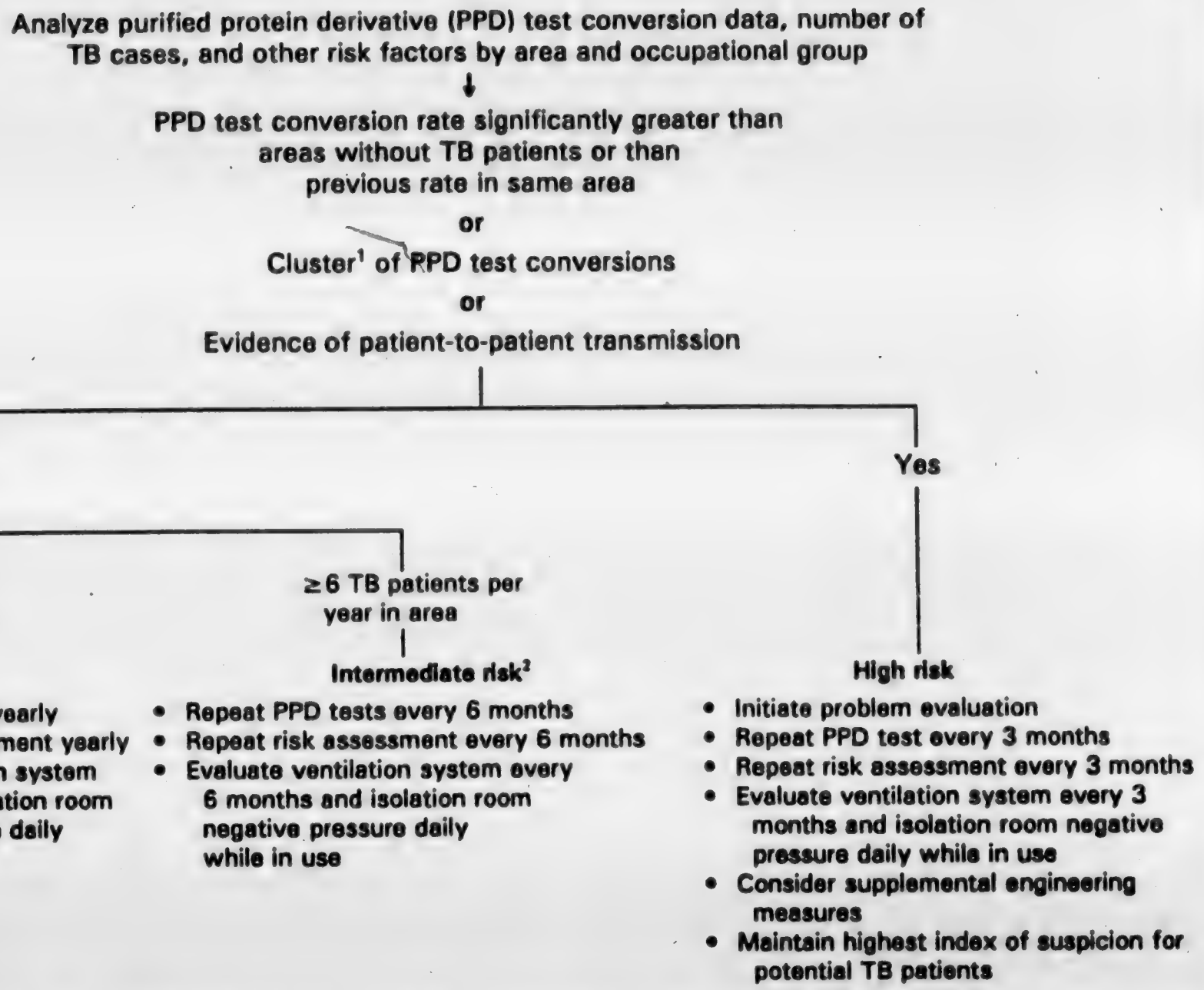
Figure 1. Risk Assessment



[1] Cluster = Two or more PPD conversions in one area or a single occupational group that works in multiple areas over a 3-month period

[2] Occurrence of drug-resistant TB in the facility or the community, or high prevalence of HIV infection among patients or workers in the facility may warrant a higher risk rating

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TABLE 1.—ELEMENTS OF THE RISK ASSESSMENT

1. Review the number of TB patients seen, by area (inpatient and outpatient). (This information can be obtained by laboratory surveillance or medical record review.)
2. Review the drug-susceptibility patterns of TB patients seen at the facility.
3. Analyze HCW PPD test data, by area (or by occupational group for persons not assigned to a specific area, such as respiratory therapists).

Review medical records of a sample of consecutive TB patients seen at the facility to evaluate infection control parameters.

Calculate intervals from:

- Admission until TB suspected
- Admission until TB evaluation performed
- Admission until AFB specimens ordered
- AFB specimens ordered until AFB specimens collected
- AFB specimens collected until AFB smears done and reported
- AFB specimens collected until cultures done and reported
- AFB specimens collected until species identification done and reported
- AFB specimens collected until drug susceptibility tests done and reported
- Admission until TB isolation initiated
- Admission until TB treatment initiated
- Duration of TB isolation

Additional information:

- Were appropriate criteria used for discontinuing isolation?
- History of prior admission to facility
- Adequacy of TB treatment regimen
- Were follow-up sputum specimens collected appropriately?
- Was appropriate discharge planning conducted?

Perform an observational review of TB infection control practices.

Perform a review of the most recent environmental evaluation and maintenance procedures.

TABLE 2.—OPTIMUM TB CONTROL PROGRAM FOR ALL HEALTH-CARE FACILITIES

I. Initial and Periodic Risk Assessment
  A. Evaluate HCW PPD test conversion data
  B. Determine TB prevalence among patients
  C. Reassess risk each PPD testing period
II. Written TB Infection Control Program
  A. Document all aspects of TB control
  B. Identify individual(s) responsible for TB control program
  C. Explain and emphasize hierarchy of controls
III. Implementation
  A. Assignment of Responsibility
    1. Assign responsibility for TB control program to individual(s)
    2. Ensure that persons with expertise in infection control, occupational health and engineering are identified and included.
  B. Risk Assessment and Periodic Reassessment of the Program
    1. Select initial risk protocols
    2. Observe HCW infection control practices
    3. Repeat risk assessment at appropriate intervals
  C. Early Detection of Patients With TB
    1. Symptom screen for each patient:
      a. On initial encounter in ER or ambulatory care setting
      b. Before or at admission
    2. Radiologic and bacteriologic screening for patients with symptoms of TB
  D. Management of Outpatients With Possible Infectious TB
    1. Promptly initiate TB precautions
    2. Place patients in separate waiting areas or TB isolation rooms
    3. Give patients mask, box of tissues, instructions
  E. Isolation for Infectious TB Patients
    1. Prompt isolation and initiation of treatment for patients with suspected or known infectious TB
    2. Monitoring of response to treatment
    3. Appropriate criteria for discontinuation of isolation
  F. Engineering Recommendations
    1. Local exhaust and general ventilation should be designed in collaboration with persons with expertise in ventilation engineering
    2. In areas where infectious TB patients receive care, use single-pass system or recirculation after HEPA filtration
    3. Use additional measures, if needed, in areas where TB patients may receive care
    4. Health-care facilities should be designed to achieve the best possible ventilation air flows
    5. Regularly monitor and maintain engineering controls
    6. Monitor and maintain TB isolation room negative pressure daily while in use relative to hallway and all surrounding areas
    7. Exhaust TB isolation room air to outside or, if unavoidable, recirculate after HEPA filtration
  G. Respiratory Protection
    1. Respiratory protective devices should meet recommended performance criteria
    2. Should be worn by persons in settings where administrative and engineering controls are not likely to provide adequate protection (e.g., TB isolation rooms, treatment rooms, and other high-risk areas)
    3. A respiratory protection program is required where respiratory protection is used
  H. Cough-Inducing Procedures
    1. Should not be performed on TB patients unless absolutely necessary

facility may warrant a higher risk rating

TABLE 2.—OPTIMUM TB CONTROL PROGRAM FOR ALL HEALTH-CARE FACILITIES—Continued

- 2. Should be performed using local exhaust or in individual TB isolation room
- 3. After completion, TB patients should remain in booth or enclosure until cough subsides

I. HCW TB Education
- 1. All HCWs should receive periodic education appropriate to their job
- 2. Should include epidemiology of TB in the facility
- 3. Should emphasize concepts of pathogenesis and occupational risk
- 4. Should describe practices that reduce TB transmission

J. HCW Counseling and Screening
- 1. Counsel all HCWs regarding TB and TB infection
- 2. Counsel all HCWs about increased risk if immunocompromised
- 3. PPD test all HCWs on employment and repeat at periodic intervals
- 4. Screen symptomatic HCWs for active TB

K. Evaluate HCW PPD Test Conversions and Possible Nosocomial TB Transmission

L. Coordinate Efforts with Public Health Department

C. Detection of Patients Who May Have Active TB

• The most important steps in preventing TB transmission are early detection of patients who may have infectious TB, prompt application of TB isolation precautions for such patients, and prompt initiation of effective treatment in those in whom the diagnosis of TB is likely.

Health-care personnel assigned responsibility for TB infection control in ambulatory care and inpatient settings should develop, implement, and enforce protocols for early detection of patients who may have infectious TB.

The criteria used in these protocols should be based on the prevalence and characteristics of TB in the population served by the specific facility. Review of medical records of patients seen in the facility who were found to have TB may serve as a guide for developing or revising these protocols.

• A diagnosis of TB should be considered in any patient with persistent cough (>2 weeks duration) or other signs or symptoms compatible with TB such as complaints of bloody sputum, night sweats, weight loss, anorexia, or fever. The index of suspicion for TB should be very high in areas or among groups of patients in which the prevalence of TB is high (Section I.B).

• Diagnostic measures for identifying TB should be instituted among such patients. These measures include history, physical examination, PPD test, chest radiograph, and microscopic examination and culture of sputum or other appropriate specimens (31—Strong1981, 4—ATS/CDC1990, 32—CDC1989b). Other diagnostic methods, such as bronchoscopy or biopsy, may be indicated for some patients (Supplement 2) (33—Willcox1982, 34—Willcox1986).

• Laboratories should use the most rapid methods available (e.g., fluorescent microscopy for AFB smears; radiometric culture methods for isolation of mycobacteria; ρ-nitro-α acetylamino-β-hydroxy-proprophenone [NAP] test, nucleic acid probes or high-pressure liquid chromatography [HPLC] for species identification; radiometric methods for drug-susceptibility testing). As other more rapid or sensitive tests become available, practical, and affordable, such tests should be promptly incorporated into the mycobacteriology laboratory.

• Results of AFB smears of sputum should be available in ≤24 hours of specimen collection. In some cases, availability of "stat" AFB smears may facilitate screening for TB.

• The probability of TB is higher among patients with a positive PPD test or a history of a positive PPD test, previous TB, exposure to TB, and among patients who belong to a group at high risk for TB (Section I.B). Active TB is strongly suggested if the diagnostic evaluation reveals AFB in sputum, a chest radiograph suggestive of TB or symptoms highly suggestive of TB. TB may occur simultaneously in immunosuppressed persons with pulmonary infections due to other organisms, such as Pneumocystis carinii or M. avium complex, and should be sought in the diagnostic evaluation of all patients with symptoms compatible with TB (Supplements 1 and 2).

• In addition to other measures for detecting patients with TB, immunosuppressed patients with pulmonary signs or symptoms that are initially ascribed to other etiologies should be evaluated for co-existing TB initially and the evaluation should be repeated if the patient does not respond to appropriate therapy for the presumed etiology of the pulmonary abnormalities (Supplements 1 and 2).

• TB may be more difficult to diagnose among persons with HIV infection or other conditions associated with severe suppression of cell-mediated immunity; the diagnosis may be overlooked because of an unusual or atypical clinical or radiographic presentation and/or the simultaneous occurrence of other pulmonary infections (e.g., P. carinii pneumonia). Among persons with HIV infection, the difficulty in making a diagnosis may be further compounded by impaired responses to PPD tests (35—Pitchenik1984, 36—Maayan1985), possibly lower sensitivity of sputum smears for detecting AFB (37—Klein1989), or overgrowth of cultures with M. avium complex among patients with both M. avium complex and M. tuberculosis (38—Burnens1989).

• Patients with suspected or confirmed TB should be reported to the appropriate health department immediately so that standard procedures for identifying and evaluating TB contacts can be initiated.

D. Management of Patients in Ambulatory Care Settings and Emergency Rooms

• Triage of patients should include vigorous efforts to detect patients with active TB promptly. HCWs who are the first points of contact in facilities serving patients at risk for TB should be trained to ask appropriate questions which will help recognize and detect patients with signs and symptoms suggestive of TB.

• Patients with signs or symptoms suggestive of TB should be evaluated promptly to minimize the time spent in ambulatory care areas. Such patients should also have TB precautions applied while the diagnostic evaluation is being conducted. TB precautions in the ambulatory care setting consist of 1) placing the patient in a separate waiting area apart from other patients and not in open waiting areas, ideally, in a room meeting TB isolation requirements, and 2) giving the patient a surgical mask and instruction to keep it on. Patients should also be given tissues and instructed to cover their mouths and noses when coughing or sneezing, if

they must remove their mask to facilitate respiratory clearance.

• Patients who are known to have active TB and who have not completed therapy, should have TB precautions applied until they are documented to be noninfectious (Supplement 1).

• Patients with active TB who need to be seen in a clinic should have appointments scheduled to avoid exposing HIV-infected or otherwise severely immunocompromised persons. This could be accomplished by setting aside certain times of the day for appointments for these patients or having them seen in areas where immunocompromised persons are not treated.

• Ventilation in ambulatory care areas serving patients at high risk for TB should be designed and maintained to reduce the risk of TB transmission. General-use (e.g., waiting rooms) and special areas (e.g., treatment or TB isolation rooms in ambulatory areas) should be ventilated in the same manner as described for similar inpatient areas (Sections II.E.4, II.F, and Supplement 3). Enhanced general ventilation or the use of air disinfection techniques, such as in-room recirculation of air through high-efficiency particulate air (HEPA) filters or UVGI may be useful in facilities where many infectious TB patients receive care in general-use areas for reducing the risk of transmission in these areas (see Section II.F and Supplement 3 for specific details and limitations of these disinfection techniques).

• Ambulatory care settings in which patients with TB are frequently seen should have TB isolation room(s) available. In ambulatory care settings where cough-inducing procedures are performed, the additional guidelines in section II.H. should be followed.

E. Management of Hospitalized Patients With TB

1. Evaluation for TB.

• Vigorous efforts should be made to detect patients with TB and initiate appropriate therapy promptly. Pulmonary TB should always be included in the differential diagnosis of persons with signs and symptoms suggestive of TB, and appropriate diagnostic measures should be used.

2. Initiation of treatment.

• Patients who have confirmed active TB or are considered highly likely to have active TB should be started on appropriate treatment promptly, according to current guidelines (Supplement 2) (39—CDC1993b). In areas or facilities in which there is a high prevalence of MDR–TB, the initial regimen used (while results of drug-susceptibility tests are pending) may need to be enhanced. The decision should be based on analysis of surveillance data.

• While the patient is in the health-care facility, antituberculosis drugs should be administered by directly observed therapy (DOT), in which a HCW observes the patient ingesting the medications. Strong consideration should be given to continuing DOT when the patient is discharged. This decision and arrangements for providing outpatient DOT should be made in collaboration with the health department.

3. *Initiation of TB isolation.*

• In hospitals and other inpatient facilities, any patient suspected or known to have infectious TB should be placed in TB isolation in a private room with appropriate ventilation (Section II.E.5, Supplement 3). There should be written policies for initiating TB isolation that specify (1) the indications for isolation, (2) who is authorized to initiate and discontinue isolation, (3) isolation practices, (4) monitoring of isolation, (5) management of patients who will not comply with isolation practices, and (6) criteria for discontinuing isolation.

• Pediatric patients with suspected or confirmed TB should be evaluated for potential infectiousness as are adults, on the basis of symptoms, sputum AFB smears, radiologic findings, and other criteria. Those with pulmonary or laryngeal TB should be placed in TB isolation until they are determined to be non-infectious.

• Intensive care unit patients, like patients in non-critical care settings, should be placed in TB isolation and have respiratory secretions submitted for AFB smear and culture if they have undiagnosed pulmonary symptoms suggestive of TB.

• When patients with previously diagnosed TB are readmitted to an inpatient facility before confirmation of complete cure, they should be placed in TB isolation until infectiousness has been ruled out.

4. *TB isolation practice.*

• Patients who are placed in TB isolation should be educated about the transmission of TB and the reasons for TB isolation. They should be taught to cover their mouths and noses with a tissue when coughing or sneezing, even while in the TB isolation room, thus containing most liquid drops and droplets before they are expelled into the air (40—Riley 1974).

• Patients in TB isolation should remain in the isolation room with the door closed. Diagnostic and treatment procedures should be performed in the isolation room whenever possible to avoid transportation of the patient throughout the institution. If a patient who may have infectious TB must be transported outside the TB isolation room for a medically essential procedure that cannot be done in the room, he/she should wear a surgical mask covering the nose and mouth when transported outside the TB isolation room. The person transporting the patient does not need to wear respiratory protection outside of the isolation room. Efforts should be made to schedule the procedure at a time when it can be performed rapidly and when waiting areas are less crowded.

• Treatment and procedure rooms where patients who have infectious TB or undiagnosed pulmonary disease and are at high risk for active TB receive care should meet the ventilation recommendations for TB isolation rooms (Section II.E.5, Supplement 3). Ideally, an area in the radiology department should be separately ventilated for TB patients. If this is not possible, the patient should be masked and spend the minimum amount of time possible in the radiology suite and returned promptly to the isolation room.

• Efforts should be made to facilitate patient adherence to TB isolation measures, such as staying in the room. Such efforts might include the use of incentives, such as providing telephones, televisions, or radios in the room, or allowing special dietary requests. Efforts should also be made to address other problems that may interfere with adherence to isolation. Withdrawal from addictive substances (including tobacco) should be appropriately managed.

• The number of persons entering the TB isolation room should be kept to a minimum. All persons who enter a TB isolation room or other room where known or suspected TB patients are receiving care should wear respiratory protection (Section II.G, Supplement 4).

5. *The TB isolation room.*

• TB isolation rooms should be single-patient rooms with special ventilation characteristics appropriate for the purposes of TB isolation (below and Supplement 3). The primary purposes of the isolation room are to (1) isolate patients who are likely to have infectious TB from other people, (2) prevent escape of droplet nuclei from the room, thus preventing entry of M. tuberculosis into the corridor and other areas of the facility, and (3) provide an environment that will allow reduction of the concentration of droplet nuclei through various engineering controls.

• The isolation room should be maintained under negative pressure (Supplement 3). TB isolation room doors should be kept closed, except when patients or personnel must enter or exit the room, in order to maintain negative pressure. Negative pressure should be monitored daily while the room is being used for TB isolation.

• The American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) (41—ASHRAE1991), the American Institute of Architects (AIA) (42—AIA1993), and the federal Health Resources and Services Administration (43—HRSA1984) recommend a minimum of 6 ACH for isolation and treatment rooms based on comfort and odor control considerations. The efficacy of this or any other level of air flow in reducing transmission of airborne pathogens has not been evaluated. Some reports suggest that ventilation rates substantially higher than 6 ACH produce a greater reduction in the concentration of bacteria in a room (44—Riley1961, 45—Gelson1968, 46—Kethley1963). However, accurate quantitation of decreases in risk that would result from specific increases in general ventilation levels from 6 ACH to substantially higher values is not possible. Under some experimental conditions, increasing ACH to 37 yielded substantial reductions in concentration of non-mycobacterial test organisms; further increases up to 60 ACH continued to be associated with reductions in concentrations of test organisms, but these reductions were more modest (44—Riley1961, 45—Gelson1968, 46—Kethley1963). It is unclear if these data can be extrapolated to TB control. However, ventilation air flows substantially >6 ACH would be expected to result in greater dilution of droplet nuclei. Therefore, it is recommended that health-care facilities be designed to achieve the best possible ventilation air flows.

• Air from isolation rooms should be exhausted to the outside in accordance with applicable federal, state, and local regulations. The air should not be recirculated into the general ventilation. However, if recirculation of air into the general ventilation system from rooms or areas used to treat patients with known or suspected infectious TB is unavoidable (e.g., the ventilation system or facility configuration is such that it is impossible to vent the exhaust to the outside), HEPA filters should be used in the exhaust duct to the general ventilation system to remove infectious organisms and particulates the size of droplet nuclei from the air before the air is returned to the general ventilation system (Section II.F and Supplement 3).

• Although not required, an anteroom may increase the effectiveness of the isolation room by serving as an airlock to minimize the potential for droplet nuclei to escape into the corridor when the door is opened. To work effectively, the anteroom should have positive air pressure in relation to the TB isolation room. The pressure relationship between the anteroom and the corridor may vary according to ventilation design.

• Upper air UVGI or in-room recirculation of air through UVGI devices may be used as adjuncts to general ventilation in the TB isolation room (Supplement 3).

• There should be enough TB isolation rooms to appropriately isolate all patients with suspected or confirmed active TB. This number should be derived through the risk assessment of the health-care facility. All acute care inpatient health-care facilities should have at least one TB isolation room.

• Grouping TB isolation rooms together in one area of the facility may facilitate care of TB patients and installation and maintenance of optimal engineering (particularly ventilation) strategies, and reduces the possibility of transmission of TB to other patients.

6. *Discontinuation of TB isolation.*

• The length of time required for a patient to become noninfectious after starting antituberculous therapy varies considerably (Supplement 1). TB isolation should be discontinued only when the patient is on effective therapy, is improving clinically, and the sputum smear is negative for AFB on three consecutive days.

• Patients with active TB should be monitored for relapse with sputum smears on a regular basis (e.g., every 2 weeks). Failure to take medications as prescribed and the presence of drug-resistant TB are the two most common reasons for a patient remaining infectious. Thus, nonadherence to therapy or drug resistance should be considered in any patient who does not clinically respond to therapy within 2–3 weeks.

• Consideration should be given to continuing isolation for patients with multidrug-resistant TB throughout their hospitalization because of the tendency to treatment failure or relapse (i.e., difficulty in maintaining non-infectiousness) that has been observed in such patients.

7. *Discharge planning.*

• Before a TB patient is discharged from the health-care facility, the facility's staff and public health authorities should collaborate to ensure continuation of therapy. Discharge planning in the health-care facility should include, at a minimum, (1) a confirmed appointment with the provider who will follow the patient until cure, (2) sufficient medication to take until the outpatient appointment, and (3) placement into case management, such as directly observed therapy, or outreach programs of the local health department. It is essential that these plans be initiated and in place well before the patient's discharge.

• Patients who may be infectious at the time of discharge should only be discharged to facilities with TB isolation capability or to home. However, they should not be discharged to home if there are persons in the household who are at high risk of active TB if infected (e.g., HIV-infected or otherwise severely immunocompromised persons or children ≤5 years old).

F. Engineering Control Recommendations

1. *General ventilation.*

This section deals only with engineering controls for general use areas of the health-care facility (e.g., waiting areas or emergency departments). Recommendations for engineering controls for specific areas of the facility (e.g., TB isolation rooms) are contained in the sections dealing with those areas. Supplement 3 includes details regarding ventilation design, evaluation, and supplemental approaches.

• Staff of health-care facilities should either include an engineer or other professional with expertise in ventilation, or the facility should have this expertise available from a consultant who is an expert in ventilation engineering and who also has hospital experience. These persons should work closely with infection control staff to assist in the control of airborne infections.

• Health-care facility ventilation system design should meet federal (e.g., Environmental Protection Agency), state, and local requirements.

• The direction of air flow in health-care facilities should be set up and maintained so that air flows from clean areas to less-clean areas. In areas of a facility in which TB transmission is a potential problem, direction of air flow should be monitored with smoke tubes at intervals defined by the TB control plan.

• Health-care facilities serving populations with a high prevalence of TB may need to supplement general ventilation or use additional engineering approaches (UVGI, HEPA filtration) in general use areas of the

health-care facilities where patients with TB are likely to be found (e.g., waiting areas, emergency rooms, or radiology suites). A single pass, non-recirculating system with air exhausted to the outside or a recirculation system with the air passed through HEPA filters before recirculation to the general ventilation system may be used in general use areas where infectious TB patients are likely to be found.

2. *Additional engineering control approaches.*

a. *HEPA filtration.*

HEPA filters may be used in a number of ways to reduce or eliminate infectious droplet nuclei from room air or exhaust (Supplement 3). These methods include placement of HEPA filters (1) in exhaust ducts to remove droplet nuclei from air being discharged to the outside, either directly or through ventilation equipment; (2) in exhaust ducts discharging air from booths or enclosures into the surrounding room; (3) in ducts discharging room air into the general ventilation system; and (4) in ducts for individual room air recirculation. It should be noted that, although portable HEPA filtration units are available, the effectiveness of such units has not been adequately evaluated, and there is likely to be considerable variation in the effectiveness of these devices. In any application, HEPA filters need to be carefully installed and meticulously maintained to ensure adequate function.

b. *Ultraviolet germicidal irradiation (UVGI).*

For settings in which the risk of TB transmission is high, UV lamps may be used as a supplemental method of reducing the concentration of infectious droplet nuclei (Supplement 3.III). However, the effectiveness of such units has not been adequately evaluated to permit their being substituted for other controls. UV units can be installed in a room or corridor to irradiate the air in the upper portion of the room (upper air irradiation), or they can be installed in ducts to irradiate air passing through the ducts. UV units installed in ducts should not be used as a substitute for HEPA filters prior to recirculation of air from a TB isolation room back into the general ventilation system. However, they may be used in ducts recirculating air back into the same room.

To function properly and decrease hazards to HCWs and others in the health-care facility, UV lamps should be properly installed and adequately maintained (with radiation levels monitored). UV tubes should be changed according to manufacturer's instructions or when meter readings indicate tube failure. A trained individual should be responsible for these measures and for keeping maintenance records. Applicable safety guidelines should be followed. Care should be taken to protect HCWs, patients, visitors, and others from excessive exposure to UV radiation.

G. Respiratory Protection

- Respiratory protective devices used for M. tuberculosis should meet the following criteria:

1. The ability to filter particles 1 micron in size in the unloaded [1] state with a filter efficiency of ≥95% (i.e., filter leakage of ≤5%), given flow rates of up to 50 liters per minute.

Available evidence suggests that infectious droplet nuclei are in the 1–5 micron size range, therefore respirators used in health-care settings should be able to filter the smallest particles in this range efficiently. Fifty liters per minute is a reasonable estimate of the highest flow rate a HCW is likely to achieve during breathing even with strenuous work activities.

2. The ability to be qualitatively or quantitatively fit tested in a reliable way (47—ANS/1992) [2] to obtain a face-seal leakage of no more than 10% for most workers.

3. The ability to fit HCWs with different facial sizes and characteristics, which can usually be met by the availability of at least three sizes of respirators.

4. To ensure proper protection, the facepiece fit should be checked by the wearer each time he or she puts on the respirator, in accordance with OSHA's standard and good industrial hygiene practice.

- The OSHA respiratory protection standard requires that all respiratory protective devices be certified by NIOSH (48—20 CFR 1910.134). Respirators with HEPA filters are the only currently available certified respirators that meet or exceed the performance criteria stated above. Although DM and DFM filters are certified, these criteria are not evaluated. Current NIOSH certification procedures require that DM and DFM filters filter 99% of silica dust, but the certification process does not include adequate tests for filter efficacy against low-concentration aerosols in the size range of droplet nuclei. There is evidence that some respirators with DM and DFM filters do meet these criteria. However, at the present time, the certification process does not determine which NIOSH-certified DM and DFM filters meet these performance criteria.

- Appropriate respiratory protection should be worn by persons potentially exposed to M. tuberculosis in settings where administrative and engineering controls may not provide adequate protection (Supplement 4). Such settings include TB isolation rooms and rooms or enclosures in which patients who may have infectious TB are undergoing cough-inducing or aerosol-generating procedures. Other such settings may include transport of patients who may have infectious TB in emergency transport vehicles, or when urgent surgical or dental care must be provided to a patient who may have infectious TB before the patient can be treated with anti-TB medications and rendered noninfectious.

- In some settings, the risk of TB transmission may be estimated in the risk assessment or the best judgment of infection control staff to be so high that respiratory protection exceeding these criteria may be considered appropriate. In such settings, consideration may be given to the use of higher levels of protection (Table S4–1). Characteristics of a variety of currently available respiratory protection devices are summarized in Table S4–1.

- Health-care facilities in which respiratory protection is used for protection against inhalation of M. tuberculosis are required to develop, implement, and maintain a respiratory protection program (Supplement 4). All HCWs who need to use respiratory protection should be included in this program.

H. Cough-Inducing Procedures

1. *General guidelines.*

Procedures that involve instrumentation of the lower respiratory tract or induce cough may increase the probability of droplet nuclei being expelled into the air. These cough-inducing procedures include endotracheal intubation and suctioning, diagnostic sputum induction, aerosol treatments (including pentamidine therapy), and bronchoscopy. Other procedures that may generate aerosols, (e.g., irrigation of tuberculous abscesses, homogenizing or lyophilizing tissue),

[1] Some filters become more efficient as they become loaded with dust. Health-care settings do not have enough dust in the air to "load" a filter on a respirator. Therefore, the filter efficiency for respirators used in health-care settings must be determined in the unloaded state.

[2] If quantitative fit testing is conducted, because of the well-documented deterioration of protection provided by respirators in the actual workplace compared to that obtained during a fit test, it is established industrial hygiene practice to require a fit test protection factor that is 10 times the assigned protection factor (APF) rating of the testing respirator. Thus, a quantitative fit test would require a fit factor of 100 to guarantee no more than 10% face-seal leakage for most workers in the workplace.

are also included in these recommendations.

- Cough-inducing procedures should not be performed on patients who may have infectious TB unless absolutely necessary.
- All cough-inducing procedures performed on patients who may have infectious TB should be performed using local exhaust ventilation devices (e.g., booths or special enclosures) or, if that is not feasible, in a room that meets the ventilation requirements for TB isolation.
- HCWs should wear respiratory protection when present in rooms or enclosures where cough-inducing procedures are being performed on patients who have, or are at high risk of having, infectious TB.
- After completion of cough-inducing procedures, patients with known or suspected TB should remain in the isolation room or enclosure and not return to common waiting areas until coughing subsides. They should be given tissues and instructed to cover their mouth and nose when coughing. If they must recover from sedatives or anesthesia following procedures such as bronchoscopy, they should be monitored in a separate TB isolation room, and not in recovery rooms with other patients.
- Before the booth, enclosure, or room is used for another patient, adequate time should be allowed to pass so that any droplet nuclei that have been expelled into the air are removed. This time will vary according to the efficiency of the ventilation or filtration used (Supplement 3).

2. *Additional considerations for bronchoscopy.*

- If performing bronchoscopy in positive-pressure rooms (such as operating rooms) is unavoidable, TB should be ruled out before the procedure. If bronchoscopy is being performed for diagnosis of pulmonary disease that may include TB, it should be performed in a room that meets TB isolation ventilation requirements.

3. *Special considerations for the administration of aerosolized pentamidine (AP).*

- All patients should be screened for active TB before prophylactic AP therapy is initiated. Screening should include medical history, PPD test, and a chest radiograph.
- Before each subsequent AP treatment, patients should be screened for symptoms suggestive of TB, such as development of a productive cough. If such symptoms are elicited, a diagnostic evaluation for TB should be initiated.
- For patients with suspected or confirmed active TB, it is preferable to use oral prophylaxis for PCP if clinically practical.

I. Education and Training of Health-Care Workers

All HCWs should receive education about TB that is appropriate to their job category. Training should be conducted before initial assignment and subsequently on a periodic basis (e.g., annually). Although the level and detail of this education may vary according to job description, the following elements should be included in the education of all HCWs:

- The basic concepts of TB transmission, pathogenesis, and diagnosis, including the difference between latent TB infection and active TB disease, the signs and symptoms of TB, and the possibility of reinfection in persons with a positive PPD test.
- The potential for occupational exposure to persons with infectious TB in the health-care facility, including the prevalence of TB in the community and facility, the ability of the facility to appropriately isolate patients with active TB, and situations with increased risk of exposure to TB.
- The principles and practices of infection control that reduce the risk of transmission of TB, including the hierarchy of TB infection control measures and the written policies and procedures of the facility. Site-specific control measures should be provided to personnel in areas needing measures in addition to the basic control program.
- The purpose of PPD testing, the significance of a positive result and the importance of participation in the skin test program.
- The principles of preventive therapy for latent TB infection. Indications, use, and effectiveness, including the potential adverse effects of the drugs (Supplement 2).
- The responsibility of the HCW to seek medical evaluation promptly if symptoms develop that may be due to TB or if PPD test conversion occurs in order to receive appropriate evaluation and therapy and to prevent transmission of TB to patients and other HCWs.
- The principles of drug therapy for active TB.
- The importance of notifying the facility if diagnosed with active TB so appropriate contact investigation can be instituted.
- The responsibilities of the facility to maintain the confidentiality of the HCW while assuring that the HCW with TB receives appropriate therapy and is non-infectious before returning to duty.
- The higher risk posed by TB to individuals with HIV infection or other causes of severely impaired cell-mediated immunity including (1) the more frequent and rapid development of clinical TB after infection with M. tuberculosis; (2) the differences in the clinical presentation of disease; and (3) the high mortality rate associated with MDR–TB disease in such individuals.
- The potential development of cutaneous energy as immune function, measured by CD4 + T-lymphocyte counts, declines.
- The facility's policy on voluntary work reassignment options for immunocompromised HCWs should be explained.

J. Health-Care Worker Counseling, Screening and Evaluation

A TB screening and prevention program for HCWs should be established for protection of both HCWs and patients. Personnel with positive PPD tests, PPD test conversions, or symptoms suggestive of TB should be identified, evaluated to rule out active TB, and started on therapy or preventive therapy if indicated (3—CDC1990b). In addition, the results of the HCW PPD screening program will permit evaluation of the effectiveness of current infection control practices. Recommendations for PPD testing and interpretation can be found in Supplement 2.

1. Counseling the HCW regarding TB.

- Because of the increased risk of rapid progression from latent TB infection to active TB in HIV-positive or otherwise severely immunocompromised persons, all HCWs should know if they have a medical condition or are receiving a medical treatment that may lead to severely impaired cell-mediated immunity. HCWs who may be at risk for HIV infection should know their HIV status, i.e., they should be encouraged to voluntarily seek counseling and testing for HIV antibody status. Existing guidelines for counseling and testing should be routinely followed (49—CDC1993a). Knowledge of these conditions will allow for the HCW to seek appropriate preventive measures, as outlined in this document, and consider voluntary work reassignments. It is particularly important that HCWs who may be at risk for HIV infection and who work in settings where there is increased prevalence of MDR-TB among patients know their HIV status.
- Though implementation of guidelines greatly reduces risk of occupational infection, all HCWs should be counseled about the potential risks, in severely immunocompromised persons, associated with taking care of patients with some infectious diseases, including TB. They should also be

counseled about the need to follow existing recommendations for infection control to minimize the risk of exposure to infectious agents (50—Williams1983). As the best protection against becoming infected, severely immunosuppressed HCWs should avoid exposure to M. tuberculosis. HCWs with severely impaired cell-mediated immunity (due to HIV infection or other causes) who may be exposed to M. tuberculosis should consider a change in job setting. Therefore, HCWs should be advised of options for severely immunocompromised HCWs to voluntarily transfer to areas and activities in which there is the lowest possible risk of exposure to M. tuberculosis. This should be a personal decision for HCWs after being informed of the risk to themselves and evaluating their own job commitment and satisfaction.

• Employers should make reasonable attempts to offer alternative job assignments to an employee with a documented condition compromising cell-mediated immunity who works in a high-risk setting for TB. Immunocompromised HCWs should be referred to an employee health professional who can counsel the employee on an individual basis regarding his/her risk of TB. Upon the request of the immunocompromised HCW, the facility should offer, but not compel, a work setting in which the HCW would have the lowest possible risk of occupational exposure to M. tuberculosis. Evaluation of these situations should also include consideration of the provisions of the Americans With Disabilities Act (ADA) of 1990 (51—ADA) and other applicable federal, state, and local laws.

• All HCWs should be informed that immunosuppressed HCWs need to have appropriate follow-up and screening for infectious diseases, including TB. HCWs who are known to be HIV-infected or otherwise severely immunosuppressed should be tested for cutaneous anergy at the time of PPD testing (Supplement 2). Consideration should be given to retesting immunocompromised HCWs with PPD and anergy tests at least every six months because of the high risk of rapid progression to active TB should infection occur.

• Information provided by HCWs regarding their immune status should be treated confidentially. If the HCW requests voluntary job reassignment, the confidentiality of the worker should be maintained. Facilities should have written procedures on confidential handling of such information.

2. *Screening HCWs for active TB.*

• Any HCW with persistent cough (>2 weeks duration), especially in the presence of other symptoms or signs compatible with TB, such as weight loss, night sweats, bloody sputum, anorexia, or fever, should be evaluated promptly for TB. The HCW should not return to work until TB is excluded or the HCW is on therapy and documented to be noninfectious.

3. *Screening HCWs for latent TB infection.*

• At the time of employment, all HCWs, including those with a history of vaccination with Bacillus of Calmette and Guérin (BCG), should receive a Mantoux PPD (Supplement 2). On the initial test, two-step testing should be performed to detect boosting phenomena that might be misinterpreted as skin test conversions. HCWs with a documented history of a positive PPD test, adequate treatment for disease, or adequate preventive therapy for infection, should be exempt from further PPD screening unless they develop signs or symptoms suggestive of TB.

• All PPD-negative HCWs should undergo repeat PPD testing at intervals determined by the risk assessment (Section II.A). It may be advantageous to stagger the testing of HCWs in a given area or occupational group (e.g., do testing on employment anniversary date or birthdate) rather than testing all HCWs in the area or group at one time, since staggering may lead to earlier detection of transmission.

• Initial and follow-up PPD tests should be administered, read, and interpreted according to current guidelines (Supplement 1). At the time of testing, HCWs should be informed about the interpretation of PPD test results, whether positive or negative, including the possible variable interpretations of induration of ≥5 mm, depending on immune status and exposure to persons with infectious TB.

• If PPD test conversions are identified, other HCWs assigned to the same work area or group should be tested to determine if there is additional evidence of transmission in the area. When HCWs not regularly assigned to a single work area have PPD conversions, an effort should be made to identify the areas where the HCW worked during the time when infection was likely to have occurred, so those areas can be evaluated.

• In any area of the facility where transmission of TB is known to have recently occurred, PPD testing should be repeated every three months until no additional conversions have been detected for two consecutive 3-month intervals. This will allow detection of additional PPD conversions and rapid institution of preventive therapy, and documentation of the effectiveness of the control interventions that have been implemented.

• Results of PPD tests should be recorded both in the individual HCW's employee health record and in a retrievable aggregate database of all HCW PPD test results, so that they can be periodically analyzed to estimate the risk of acquiring new infection in each area or group of the facility.

4. *Evaluation and management of health-care workers with positive PPD tests*—a. *Evaluation.*

• All HCWs with newly recognized positive PPD tests or PPD test conversions should be promptly evaluated for clinically active TB with a chest radiograph and clinical evaluation. Those without clinical TB should be evaluated for preventive therapy according to published guidelines (Supplement 2).

• If a HCW's PPD test converts to positive, a history of possible exposure should be obtained in an attempt to determine the potential source of TB exposure. When the source of exposure is known, the drug susceptibility pattern of the M. tuberculosis isolated from the source should be determined in order to determine appropriate preventive therapy for the HCW with the PPD test conversion.

• All HCWs, including those with a history of a positive PPD, should be reminded periodically that they should be evaluated promptly for any pulmonary symptoms suggestive of TB.

b. *Routine and follow-up chest radiographs.*

• Routine chest radiographs are not required for asymptomatic, PPD-negative HCWs. HCWs with positive PPD tests should have a chest radiograph as part of the initial evaluation of their PPD test; if negative, repeat chest radiographs are not needed unless symptoms develop that may be due to TB (52—Barrett-Connor1980).

c. *Work restrictions.*

Active TB

• HCWs with pulmonary or laryngeal TB pose a risk to patients and other HCWs while they are infectious; therefore, they should be excluded from work until they are no longer infectious. The same work restrictions applicable for immunocompetent HCWs apply to HCWs with active TB and HIV infection or other conditions resulting in severely impaired cell-mediated immunity.

• Before the HCW returns to work, the health-care facility needs to ensure that the HCW with TB is receiving adequate therapy, cough is resolved,

and that the HCW has three consecutive daily sputum AFB smears that are negative. After work duties are resumed and while the HCW remains on antituberculosis therapy, facility staff should ensure that the HCW is maintained on effective drug therapy for the appropriate time period and remains AFB sputum smear negative.

- HCWs with TB at sites other than the lung or larynx usually do not need to be excluded from work if concurrent pulmonary TB has been excluded.
- HCWs with TB who discontinue treatment before the recommended course of therapy has been completed should be excluded from work until treatment is resumed, an adequate response to therapy is documented, and they again have negative sputum smears on three consecutive days.
- Even if a HCW is treated for TB by a private physician, a knowledgeable professional in the health-care facility employee health service should be advised confidentially of the diagnosis and should verify the appropriateness of the treatment and monitor symptoms and job duties.

Latent TB Infection

- HCWs receiving preventive treatment for latent TB infection should be allowed to continue usual work activities.
- HCWs with TB infection who cannot take or do not accept or complete a full course of preventive therapy do not need to be excluded from work, but they should be counseled about the risk of developing active TB and should be instructed on a regular basis to seek evaluation promptly if symptoms develop that may be due to TB, especially if they have exposure to high-risk patients (i.e., patients at high risk for developing TB if they become infected with M. tuberculosis, such as patients who are HIV infected).

K. Problem Evaluation

1. *Investigating PPD conversions and active TB in HCWs.*

If a skin test conversion is identified, the following steps should be taken:

- The HCW should be promptly evaluated for active TB; the initial evaluation should include a thorough history, physical examination and chest radiograph. Other diagnostic procedures (e.g., sputum examination) may be indicated, based on the initial evaluation.
- The HCW should be placed on preventive or curative therapy, if appropriate, according to current guidelines (Supplement 2) (3—CDC1990b).
- A history of possible exposure should be obtained in an attempt to determine the potential source of TB infection. When the source of exposure is known, the drug-susceptibility pattern of the M. tuberculosis isolate from the source should be determined in order to determine appropriate preventive therapy.
- Other HCWs in the same area or group who may have had similar exposure should receive PPD tests to determine if there is additional evidence of transmission. The contact investigation should extend to possibly exposed patients, if indicated.
- Initiate problem evaluation (Table 3), if indicated. If a problem with patient detection, TB isolation practices, or engineering controls is identified, implement the appropriate interventions and follow the high-risk protocol until there have been two consecutive three-month periods with no evidence of transmission.
- If no specific problem can be identified or the problem does not resolve after the apparent cause is corrected and no other cause can be identified, continue following the high-risk protocol in that area and consult with the public health department or other persons with expertise in TB control.
- If transmission appears to be occurring in TB isolation or procedure rooms, engineering controls should be improved as needed.
- If a HCW develops TB, the following steps should be taken: contact investigation should be performed, including other HCWs, patients, and visitors who had significant exposure to the HCW. The public health department should immediately be notified for consultation and to allow for investigation of community contacts not exposed in the health-care facility.
- The public health department should notify facilities when HCWs with TB are reported by physicians so that appropriate contact investigation can be done in the facility. Sharing of such information is by law strictly limited to a need to know basis in order to protect the confidentiality of the HCW.

2. *Investigating possible patient-to-patient transmission of TB.*

Surveillance of active TB cases in patients should be conducted. If this surveillance suggests the possibility of patient-to-patient TB transmission (e.g., high proportion of TB patients have prior admission in past year, sudden increase in patients with drug-resistant TB, multiple patients with identical and characteristic drug-susceptibility or DNA fingerprint patterns) the following steps should be taken:

- Review HCW PPD test and patient surveillance data for the suspected areas to detect additional patients or HCWs with PPD conversions or active disease.
- Look for possible exposures of the new TB patients to other patients with TB during prior admissions (e.g., admitted to same room, area, received same procedure or were in same treatment area on the same day, etc.)

If the above steps suggest that transmission has occurred, the following steps should be taken:

- Conduct a problem evaluation (Figure 2 and Table 3) to determine possible causes of the transmission (e.g., problem with patient detection, institutional barriers to implementation of appropriate TB isolation practices, or engineering controls).
- Determine which additional patients or HCWs may have been exposed and evaluate with PPD tests.
- Consult with the public health department for assistance in community contact investigation.

3. Investigating contacts of persons with TB who were not recognized and isolated appropriately.

When a patient is seen in the institution without being recognized as having TB and promptly isolated, but is subsequently diagnosed as having infectious TB, the following steps should be taken:

- Identify HCWs and other patients who were exposed to the TB patient by interviewing the patient and appropriate personnel and by reviewing the patient's medical record to determine which areas and persons may have been exposed to the patient prior to appropriate isolation (e.g., outpatient clinics, hospital rooms, treatment, radiology and procedure areas, patient lounges, persons providing direct care, other personnel such as therapists, clerks, transportation personnel, housekeepers, social workers, etc.). Contact investigation should follow a concentric circle, expanding from closest to less close contacts, if transmission to the former is found.
- Administer a PPD test to all HCWs and patients with documented exposure as soon as possible after exposure. If the initial test is negative, a second test should be administered 12 weeks after the exposure was terminated.
- Exposed persons with PPD conversion or with symptoms suggestive of TB should be evaluated clinically and with chest radiographs promptly. Persons with previously known positive PPDs who have been exposed to an infectious patient do not require a

repeat PPD or a chest radiograph unless they have symptoms suggestive of TB.

• In addition to PPD testing of exposed HCWs and patients, an investigation should be conducted to determine why TB was not recognized in the patient or, if recognized, why the patient was not isolated promptly so that appropriate corrective actions may be taken.

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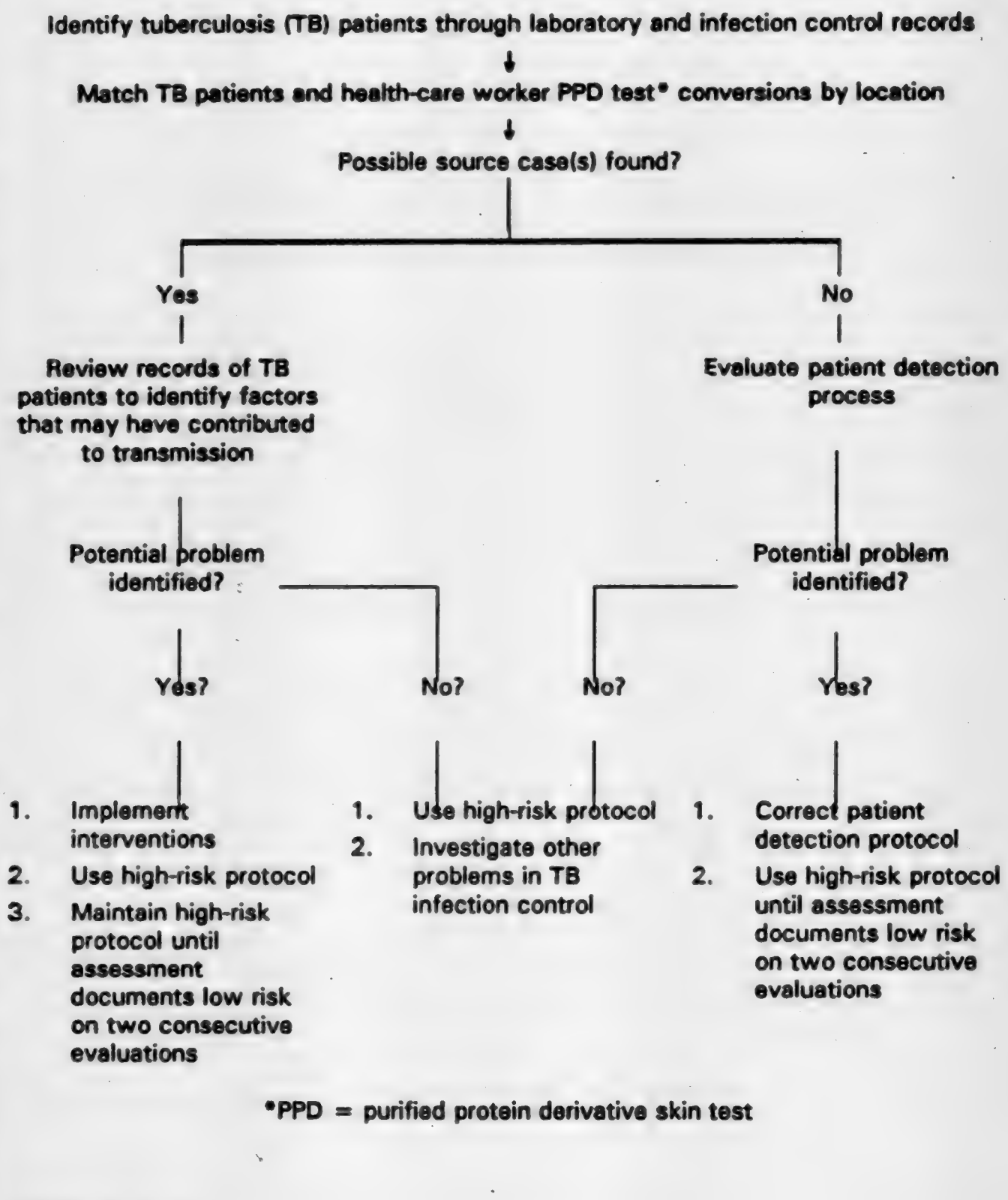
68

Figure 2. Problem Evaluation



*PPD = purified protein derivative skin test

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TABLE 3.—EXAMPLES OF POTENTIAL PROBLEMS WITH PATIENT IDENTIFICATION OR TB ISOLATION

Patient identification	Potential problem	Intervention
Triage	Patient with signs or symptoms not identified	Review triage procedures, facilities, and practices.
	Patient had no "triage" symptoms	Reevaluate triage protocol.
	Patient previously admitted for TB not readmitted to isolation.	Review triage process, review discharge planning process.
Laboratory	Positive smear—Results available >24 hours* after submitted.	Change lab practice, assess potential bottlenecks, explore alternatives.
	Positive smear—results available but not acted upon in a timely fashion.	Education of appropriate personnel, review protocol for management of positive smear results.
	Positive culture—results not available for >3 weeks*	Change lab practices, assess potential bottlenecks.
	Positive culture—results available but not acted upon in a timely fashion.	Education of appropriate personnel, review protocol for management of positive culture result.
	Positive culture—susceptibility results not available for >6 weeks*.	Change lab practices, assess potential bottlenecks, explore alternatives.
	Positive culture—susceptibility results available but not acted upon in a timely fashion.	Education of appropriate personnel, review protocol for management of positive culture susceptibility results.
Diagnosis	Patient with signs/symptoms of TB—appropriate tests not ordered in a timely fashion.	Education of appropriate personnel, evaluate protocols for TB detection.
TB isolation	Isolation room unavailable	Reassess need for number of rooms.
	Isolation not ordered or discontinued too soon, or isolation policy not followed properly (e.g., patients ambulating outside of room).	Education of patients and appropriate personnel, evaluate institutional barriers to implementation of isolation policy.
	Personnel not using respiratory protection appropriately	Education of appropriate personnel, evaluation of regularly scheduled re-education, and institutional barriers to respiratory protection use.
	Isolation room or procedure room not negative pressure relative to rest of facility.	Appropriate engineering modifications including regular monitoring and maintenance program.
	Inadequate air circulation	Appropriate engineering modifications.
	Door left open	Education of appropriate personnel and patients, evaluate self-closing doors, comfort in room, other measures to promote door closing.

*Time intervals used as examples and should not be considered absolute standards.

L. Coordination With the Public Health Department

• As scon as a patient or HCW is known or suspected to have TB, the patient or HCW should be reported to the health department, so that appropriate community contact investigation and follow-up can be performed. The health department should be notified well before patient discharge to facilitate follow-up and continuation of therapy. A discharge plan coordinated with the patient or HCW, the health department, and the inpatient facility should be implemented.

• The public health department should protect the confidentiality of the HCW as prescribed by state and local law.

• Health-care facilities and health departments should coordinate their efforts to perform appropriate contact investigations on patients and HCWs with active TB.

• Results of all AFB-positive sputum smears, cultures positive for M. tuberculosis, and drug-susceptibility results on M. tuberculosis isolates should be forwarded to the health department as soon as they become available, in accordance with state and local laws and regulations.

• The health department may be able to provide assistance to facilities for various aspects of planning and implementing a TB infection control program, such as surveillance, screening activities, and outbreak investigations. In addition, the state health department may be able to provide names of experts for the engineering aspects of TB control.

M. Additional Considerations for Selected Areas

The following comments do not apply to all areas or types of facilities, but should be incorporated into the TB Control Plan for the specific area discussed.

1. Operating rooms.

• Elective operative procedures on patients with TB should be delayed until the patient is no longer infectious.

• If procedures must be performed, they should be done in operating rooms with anterooms if possible. For operating rooms without anterooms, the doors to the operating room should be closed and traffic in and out of the room should be kept to a minimum to reduce the frequency of opening and closing the door. Attempts should be made to perform the procedure at a time when other patients are not present in the operative suite (i.e., end of day) and when a minimum number of personnel are present.

• A bacterial filter placed on the patient endotracheal tube or at the expiratory side of the breathing circuit of the anesthesia machine when general anesthesia is being administered to a patient with possible TB may be useful in reducing the risk of contamination of the anesthesia equipment or discharge of tubercle bacilli into the ambient air. The cost-benefit ratio of bacterial filter use is unknown, as no transmission of airborne pathogens has ever been traced to this route.

• The patient should be monitored during recovery in an individual room meeting TB isolation room ventilation recommendations.

• Personnel present when operative procedures are performed on patients who may have infectious TB should wear respiratory protection rather than standard surgical masks alone (Supplement 4). Valved or positive-pressure respirators are not appropriate for use during procedures requiring surgical masks.

2. Autopsy rooms.

• Due to the probability of the presence of infectious aerosols, autopsy rooms should be at negative pressure with respect to adjacent areas, with room air exhausted directly to the

outside of the building. ASHRAE recommends that autopsy rooms have ventilation that provides 12 total air changes per hour (41—ASHRAE1991). However, the effectiveness of this level of ventilation for reducing the risk of TB transmission has not been evaluated. Autopsy rooms should be designed to achieve the best possible air flows; substantially higher levels of ventilation than 12 ACH would be expected to provide greater dilution of droplet nuclei (Supplement 3.II.B.1.b).

• Respiratory protection should be worn by personnel while performing autopsies on patients who may have had TB (Supplement 4).

• In-duct, HEPA-filtered air recirculation or UVGI may be used as a supplement to the recommended ventilation (Supplement 3).

3. *Emergency medical services.*

• When emergency medical response personnel or others must transport patients with confirmed or suspected active TB, a surgical mask should be placed on the patient, if possible. Because of the inability to ensure administrative and engineering controls in emergency transport situations and vehicles, the HCW should wear respiratory protection.

• Emergency-response personnel should be included in a comprehensive PPD screening program and receive a PPD at least annually. They should also be included in the follow-up of contacts of a patient with infectious TB.

4. *Laboratories.*

• Laboratories processing specimens for mycobacterial studies (e.g., AFB smears and cultures) should conform to criteria previously specified by CDC and NIH (53—CDC/NIH1993).

5. *Hospices.*

• Hospice patients with confirmed or suspected TB should be managed in the manner described in this document for hospitals. General use and special areas, such as treatment or TB isolation rooms, should be ventilated in the same manner as described for similar hospital areas.

6. *Nursing homes.*

• Published recommendations for prevention and control of TB in nursing homes should be followed (54—CDC1990c). TB isolation procedures described in this document should be followed.

7. *Correctional facilities.*

• Published recommendations for prevention and control of TB in correctional facilities should be followed (55—CDC1989c).

• Prison medical facilities should follow the recommendations outlined in this document. Ventilation should be designed and maintained to reduce the risk of TB transmission. General and special areas, such as treatment or TB isolation rooms, should be ventilated in the same manner as described for similar hospital areas. If appropriate TB isolation rooms are not available, persons with suspected or known TB should be transferred to facilities with those provisions.

8. *Dental offices.*

During dental procedures, patients and dental workers share the same airspace for varying lengths of time. Aerosols of oral fluids and materials may be generated, and, on occasion, coughing may be stimulated by oral manipulations. No specific dental procedures have been classified as "cough-inducing". In light of these observations, the following additional considerations appear prudent in dental settings:

• During initial medical history and periodic updates, dental HCWs should routinely ask all patients about a history of TB disease and symptoms suggestive of TB.

• Patients with history and symptoms suggestive of active TB should be promptly referred for evaluation for possible infectiousness.

• Elective dental treatment should be delayed until a physician confirms that the patient does not have infectious TB. If the patient is determined to have infectious TB, elective dental treatment should be deferred until the patient is no longer infectious.

• If urgent dental care must be provided for a patient who has, or is strongly suspected of having, infectious TB, TB isolation practices should be implemented (Sections II.E and G). Dental HCWs should use respiratory protection while performing procedures on such patients.

• Dental HCWs who work in a facility where there is a likelihood of exposure to patients with infectious TB should be included in an employer-sponsored PPD testing program.

9. *Home-health services.*

• For HCWs visiting the home of patients with suspected or confirmed infectious TB, precautions may be necessary if the patient is likely to be infectious. These precautions include instructing the patient to cover his/her mouth and nose with a tissue when coughing or sneezing and offering the patient a surgical mask. The worker should wear respiratory protection when entering the home or the patient's room until the patient is no longer infectious (Supplement 1).

• Precautions in the home may be discontinued when the patient is no longer infectious (Supplement 1).

• Home-health-care personnel can assist in preventing TB transmission by educating the patient about the importance of taking medications as prescribed and by administering directly observed therapy.

• If immunocompromised persons or young children live in the home with a patient who has infectious TB, they should be temporarily relocated until the patient is no longer infectious (Supplement 1).

• Cough-inducing procedures should only be performed on patients with infectious TB if absolutely necessary. When necessary cough-inducing procedures, such as AFB sputum collection for evaluation of therapy, must be performed on a patient who may have infectious TB, they should be performed in a well ventilated area of the home away from other household members. Opening a window to improve ventilation, or specimen collection outside should be considered, when feasible. The HCW collecting these specimens should wear respiratory protection during the procedure (Supplement 4).

• Home HCWs should be included in a comprehensive employer-sponsored TB screening and prevention program.

• Home health-care personnel and patients who are at risk for contracting active TB should be reminded periodically of the importance of having pulmonary symptoms promptly evaluated to permit early detection and treatment of persons with TB.

Supplement 1—Determining the Infectiousness of a TB Patient

The infectiousness of a person with TB correlates with the number of organisms expelled into the air, which, in turn, probably correlates with the following factors: (1) Presence of pulmonary, laryngeal, or oral involvement, (2) presence of cough or other forceful expirational maneuvers, including procedures that stimulate coughing, (3) AFB positive sputum smear, (4) willingness or ability of the patient to cover his or her mouth when coughing or sneezing, (5) presence of cavitation on chest radiograph, and (6) length of time the patient has been on adequate chemotherapy.

The most infectious persons are thought to be those untreated persons with pulmonary or laryngeal TB who have a cough or are undergoing cough-inducing procedures, who are AFB sputum smear positive, or who have cavitation on chest radiograph. Persons with extrapulmonary TB are usually not infectious, with the following exceptions: (1) Concomitant pulmonary disease, (2) non-pulmonary disease

located in the respiratory tract or oral cavity, or (3) extrapulmonary disease that includes an open abscess or lesion in which the concentration of organisms is high, especially if drainage from the abscess or lesion is extensive (17—Hutton1990, 19—Lundgren1987). Although data are limited, some studies suggest that TB patients with acquired immunodeficiency syndrome (AIDS), if smear positive, have infectiousness similar to that of smear-positive TB patients without AIDS (56—Manoff1988, 57—Cauthen1991, 58—Klausner1993).

Young children with TB are less likely than adults to be infectious; however, transmission from children can occur. Therefore, children with TB should be evaluated for infectiousness using the same parameters as for adults (i.e., pulmonary or laryngeal TB, presence of cough or cough-inducing procedures, positive sputum AFB smear [or gastric aspirate], cavitation on chest radiograph, and adequacy and duration of therapy). Children with pulmonary or laryngeal TB should be placed on TB isolation until they are determined to be noninfectious.

Infection is most likely to result from exposure to persons with unsuspected pulmonary TB who are not receiving anti-tuberculous therapy or from persons with diagnosed TB who are not receiving adequate therapy. Administering effective anti-tuberculous medications has been shown to be associated with decreased infectiousness among persons with TB (59—Riley1962). Effective chemotherapy reduces coughing, the amount of sputum, and the number of organisms in the sputum. However, the length of time a patient must be on effective medication before becoming noninfectious varies (60—Noble1981); some patients are never infectious, whereas those with unrecognized or inadequately treated drug-resistant TB may remain infectious for weeks or months (21—Beck-Sagué1992). Thus, decisions about infectiousness should be made on a case-by-case basis.

In general, persons suspected or confirmed to have active TB should be considered infectious if (1) cough is present, (2) they are undergoing cough-inducing procedures, or (3) sputum AFB smears are positive, and (4) they are not on chemotherapy, have just started chemotherapy, or have a poor clinical or bacteriologic response to chemotherapy. A person with drug-susceptible TB who is on adequate chemotherapy and has had a significant clinical and bacteriologic response to therapy (reduction in cough, resolution of fever, and progressively decreasing quantity of bacilli on smear) is probably no longer infectious. However, since drug-susceptibility results are usually not known when the decision to discontinue isolation is made, all TB patients should remain in TB isolation while hospitalized until three consecutive sputum smears are negative and they demonstrate clinical improvement.

Supplement 2—Diagnosis and Treatment of TB

I. Diagnostic Procedures for TB

A. Purified Protein Derivative (PPD) Skin Testing and Anergy Testing

The PPD skin test is the only method available for demonstrating infection with M. tuberculosis. Although currently available PPD tests are less than 100% sensitive and specific for detection of infection with M. tuberculosis, no better diagnostic methods have yet been devised. Interpretation of PPD test results requires a knowledge of the antigen used, the immunologic basis for the reaction to this antigen, the technique of administering and reading the test, and the results of epidemiologic and clinical experience with the test (3—CDC1990b, 4—ATS/CDC1990, 2—CDC1990d). The PPD test, like all medical tests, is subject to variability, but many of the inherent variations in administration and reading of tests can be avoided by proper training and careful attention to details.

The intracutaneous (Mantoux) administration of a measured amount of purified protein derivative tuberculin is the best means of detecting infection with M. tuberculosis. One-tenth milliliter of PPD (5 TU) is injected into either the volar or dorsal surface of the forearm. The tuberculin should be injected just beneath the surface of the skin. A discrete, pale elevation of the skin (a wheal) 6 to 10 mm in diameter should be produced.

PPD tests should be read by designated, trained personnel between 48 and 72 hours after injection. Patient or HCW self-reading of PPDs should not be accepted. The basis of the reading is the presence or absence of induration. Redness or erythema should not be measured. The transverse diameter of induration should be recorded in millimeters. The interpretation of a PPD reaction should be influenced by the purpose for which the test was given (e.g., epidemiologic versus diagnostic purposes), by the prevalence of TB infection in the population being tested, and by the consequences of false classification. Errors in classification can be minimized by establishing an appropriate definition of a positive reaction (Table S2–1).

The positive predictive value of PPDs (i.e, the probability that a person with a positive PPD is truly infected with M. tuberculosis) is dependent on the prevalence of TB infection in the population being tested (61—Snider1982). In populations with a low prevalence of TB infection, the probability that a positive PPD represents true infection with M. tuberculosis is very low. In populations with a high prevalence of TB infection, the probability that a positive PPD represents true infection with M. tuberculosis is much higher. In order to ensure that very few persons infected with M. tuberculosis will be classified as having negative reactions and few persons not infected with tubercle bacilli will be classified as having positive reactions, different cut-points are used to separate positive reactions from negative reactions for different groups, depending on the risk of TB in that group.

A lower cut-point (i.e., 5 mm) is used for the highest risk groups, including HIV-infected persons, recent close contacts (recent close contact implies household contact or unprotected occupational exposure similar in intensity and duration to household contact), or persons with abnormal chest radiographs consistent with old TB. A higher cut-point (i.e., 10 mm) is used for persons who are not in the highest risk group but who have other risk factors, such as injecting drug users known to be HIV seronegative; persons with certain medical conditions that increase the risk of progression from latent TB infection to active TB (Table S2–1); medically underserved, low-income populations; foreign-born persons from countries with a high prevalence of TB; and residents of correctional institutions and nursing homes. An even higher cut-point (i.e., 15 mm) is used for all other persons with none of the above risk factors.

Recent PPD converters are considered a high-risk group. An increase of induration of ≥10 mm within a 2-year period is classified as a conversion to a positive test among persons <35 years of age. An increase of induration of ≥15 mm within a 2-year period is classified as a conversion for persons ≥35 years of age (3—CDC1990b). Increases of induration ≥5 mm may be indicative of new infection in certain circumstances (4—ATS/CDC1990).

Persons with HIV-infection may have suppressed reactions to skin tests because of anergy, particularly when CD4-T-lymphocyte counts decline (62—CDC1990e, 63—Canessa1989). Persons

with anergy will have a negative PPD whether or not they are infected with M. tuberculosis. Persons with HIV infection should be evaluated for anergy in conjunction with PPD testing. Two companion antigens (e.g., Candida antigen and tetanus toxoid) should be used in addition to PPD. Persons with >2 mm of induration to any of the skin tests (including tuberculin) are considered not anergic. Reactions of ≥5 mm to PPD are considered to be evidence of TB infection in HIV-infected persons regardless of the reaction to the companion antigens. If there is no reaction (i.e., <3 mm induration) to any of the antigens, the person being tested is considered anergic. In such persons, determining whether or not the person is likely to be infected with M. tuberculosis must be decided on the basis of other epidemiologic factors, such as the proportion of other persons with the same level of exposure who have positive PPDs and the intensity or duration of exposure to infectious TB patients that the anergic person experienced.

BCG vaccination may produce a PPD reaction that cannot be reliably distinguished from a reaction due to infection with M. tuberculosis. In a person who was vaccinated with BCG, the probability that a PPD test reaction results from infection with M. tuberculosis increases (1) as the size of the reaction increases, (2) when the patient is a contact of a person with TB, (3) when the patient's country of origin has a high prevalence of TB, and (4) as the length of time between vaccination and PPD testing increases. For example, a PPD test reaction of ≥10 mm can be attributed to infection with M. tuberculosis in an adult who was vaccinated with BCG as a child and who is from a country with a high prevalence of TB (64—Snider1985).

In persons with TB infection, the ability to react to PPD may gradually wane over time. If tested with PPD, persons who were remotely infected may have a negative reaction. However, the PPD may boost the hypersensitivity, and the size of the reaction may be larger on a subsequent test. This boosted reaction may be misinterpreted as a PPD test conversion from a new infection. The occurrence of the booster phenomenon increases with increasing age.

When PPD testing of adults is to be repeated periodically (as in HCW skin testing programs), two-step testing can be used to reduce the likelihood that a boosted reaction is misinterpreted as a new infection. Two-step testing should be done on all newly employed HCWs who have an initial negative PPD at the time of employment. A second test should be performed 1–3 weeks later. If the second test is positive, this is most likely a boosted reaction, and the person should be classified as previously infected. If the second test remains negative, the person is classified as uninfected. A positive reaction to a subsequent test is likely to represent a new infection with M. tuberculosis in the interval.

TABLE S2–1.—SUMMARY OF INTERPRETATION OF SKIN TESTS

1. A reaction of ≥5 mm is classified as positive in:
   - persons with HIV infection or risk factors for HIV infection with unknown HIV status
   - persons who have had recent close contact* with persons with active TB
   - persons who have abnormal chest radiographs consistent with old healed TB
2. A reaction of ≥10 mm is classified as positive in all persons who do not meet any of the criteria above but who have other risk factors for TB including:
   High-Risk Groups
   - intravenous drug users known to be HIV seronegative
   - persons with other medical conditions that have been reported to increase the risk of progressing from latent TB infection to active TB, including silicosis, gastrectomy, jejuno-ileal bypass surgery, being 10% or more below ideal body weight, chronic renal failure, diabetes mellitus, high dose corticosteroid and other immunosuppressive therapy, some hematologic disorders (e.g., leukemias and lymphomas), and other malignancies

   High-Prevalence Groups
   - foreign-born persons from high prevalence countries in Asia, Africa, and Latin America
   - persons from medically underserved low income populations
   - residents of long-term care facilities (e.g., correctional institutions, nursing homes)
   - persons from high risk populations in their communities, as determined by local public health authorities
3. Induration of ≥15 mm is classified as positive for persons who do not meet any of the above criteria.
4. Recent converters are defined on the basis of both induration and age:
   - ≥10 mm increase within a 2-year period is classified as positive for persons <35 years of age
   - ≥15 mm increase within a 2-year period is classified as positive for persons ≥35 years of age
   - ≥5 mm increases under certain circumstances (#1, above)

*Recent close contact implies household contact or unprotected occupational exposure similar in intensity and duration to household contact.

B. Chest Radiograph

Persons with symptoms suggestive of TB should receive a chest radiograph regardless of PPD test results. Abnormalities strongly suggestive of active TB include upper lobe infiltration, particularly if cavitation is seen (65—DesPrez1990). Patchy or nodular infiltrates in the apical or subapical posterior upper lobes or the superior segment of the lower lobe are also suggestive of active TB. If abnormalities are noted or if the person has symptoms suggestive of extrapulmonary TB, additional diagnostic studies should be undertaken.

The radiographic presentation of pulmonary TB in patients with HIV infection may be unusual (66—Pitchenik1985). Typical apical cavitary disease is less common among persons with HIV infection. They may have infiltrates in any lung zone, often associated with mediastinal and/or hilar adenopathy, or rarely they may have a normal chest radiograph.

C. Bacteriology

Smear and culture examination of three sputum specimens collected on different days is the main diagnostic procedure for pulmonary TB (4—ATS/CDC1990). Sputum smears that fail to demonstrate AFB do not exclude the diagnosis of TB. Nationwide, approximately 60% of patients with

positive sputum cultures have positive AFB sputum smears. Sputum smears from patients with HIV infection and pulmonary TB may be less likely to reveal AFB than those from immunocompetent patients, a finding believed to be consistent with the lower frequency of cavitary pulmonary disease observed among HIV-infected persons (35—Pitchenik1984, 37—Klein1989).

It is important that specimens for smear and culture have adequate volume of expectorated sputum and contain little saliva. In patients with negative sputum smears, bronchoscopy may produce positive results (33—Willcox1982, 34—Willcox1986). In young children who cannot adequately produce sputum, gastric aspirates may provide an adequate specimen.

A positive culture of sputum or other clinical specimen, with organisms identified as M. tuberculosis, provides a definitive diagnosis of TB. Conventional laboratory methods may require 4–8 weeks for species identification; however, the use of radiometric culture techniques and nucleic acid probes facilitates more rapid detection and identification of mycobacteria (67—Kiehn1986, 68—Crawford1989). Mixed mycobacterial infection, either simultaneous or sequential, may occur and may obscure the recognition of M. tuberculosis clinically and in the laboratory (38—Burnens1989). The use of nucleic acid probes for both Mycobacterium avium complex and M. tuberculosis may be useful for identifying mixed mycobacterial infections in clinical specimens.

II. Preventive Therapy for Latent TB Infection and Treatment of Active TB

A. Preventive Therapy for Latent TB Infection

Determining whether or not a person with a positive PPD reaction or conversion is a candidate for preventive therapy must be based on (1) the likelihood that the reaction represents true infection with M. tuberculosis (as determined by the cut-points), (2) the estimated risk of progression from latent infection to active TB, and (3) the risk of hepatitis with isoniazid preventive therapy (as determined by age and other factors).

HCWs with positive PPD tests should be evaluated for preventive therapy, regardless of age if they are a recent converter, a close contact of a person with active TB, have a medical condition that increases the risk for TB, have HIV infection, or use injecting drugs (3—CDC1990b). HCWs without those risk factors should be evaluated for preventive therapy if they are under age 35.

Preventive therapy should be considered for anergic persons who are known contacts of infectious TB patients and for those from groups in which the prevalence of TB infection is high (i.e., ≥10%).

Because of some reports of an increased risk of isoniazid hepatitis in the peripartum period, the decision to use preventive therapy during pregnancy should be made on a case-by-case basis, depending on the patient's estimated risk of progression to active disease (69—Moulding, 70—Snider1980, 71—Snider1984, 72—Hamadeh1992). Although testing in animals has demonstrated a risk of cancer (73—IARC1974), there are no data to suggest that INH poses a carcinogenic risk for humans (74—Glassroth #11977, 75—Glassroth #21977, 76—Costello1980).

The usual preventive therapy regimen is oral isoniazid 300 mg daily for adults and 10 mg/kg/day for children (77—CDC1990g). The recommended duration of therapy is 12 months for persons with HIV infection and persons with abnormal chest radiographs consistent with old healed TB; other persons should receive 6 months of therapy. For persons likely to be infected with MDR–TB, alternative multidrug preventive therapy regimens should be considered (78—CDC1992).

All persons placed on preventive therapy should be educated about the possible adverse reactions associated with isoniazid and should be monitored at least monthly by appropriately trained personnel (79—ATS/CDC1986, 77—CDC1990g, 80—ATS/CDC1992, 69—Moulding, 70—Snider1980, 71—Snider1984, 72—Hamadeh1992). Persons with asymptomatic TB infection should be advised of the possibility of reinfection with another strain of M. tuberculosis (81—Small1993).

B. Treatment for Active TB

Drug susceptibility test should be performed on all initial isolates from patients with TB. However, since test results may not be available for several weeks, selection of an initial regimen can be difficult, especially in areas where there is drug-resistant TB. Tables S2–2 and S2–3 summarize current recommendations for initial therapy and dosage schedules for the treatment of drug susceptible TB (39—CDC1993b). In areas or facilities in which there is a high prevalence of MDR–TB, the initial treatment regimen used (while results of drug-susceptibility tests are pending) may need to be expanded. This decision should be based on analysis of surveillance data.

When drug susceptibility results become available, the regimen should be adjusted appropriately (82—Iseman1989, 83—Goble1986, 84—Goble1993, 85—Simone1992). If drug resistance is present, clinicians unfamiliar with the management of patients with drug-resistant TB should seek expert consultation.

In order for any regimen to be effective, adherence to the regimen must be assured. The most effective method of assuring adherence is the use of DOT following discharge (80—ATS/CDC1992, 39—CDC1993b). This should be coordinated with the public health department.

TABLE S2–2.—OPTIONS FOR THE INITIAL TREATMENT OF TB IN CHILDREN AND ADULTS (39)

Option 1	Option 2	Option 3
Initial Phase: Daily isoniazid, rifampin, pyrazinamide, and either ethambutol or streptomycin for 8 weeks. Ethambutol or streptomycin may be discontinued if susceptibility to isoniazid and rifampin is demonstrated. Ethambutol or streptomycin may not be necessary for patients in areas where the primary isoniazid resistance rate is documented to be less than 4%. Continuation Phase: Isoniazid and rifampin for 16 weeks, either daily, two times weekly, or three times weekly.* Consult a TB medical expert if drug susceptibility results show resistance to any of the first-line drugs or if the patient remains smear positive after 3 months.	Initial Phase: Isoniazid, rifampin, pyrazinamide, and either ethambutol or streptomycin daily for 2 weeks, then two times weekly* for 6 weeks. Continuation Phase: Isoniazid and rifampin two times weekly* for 16 weeks. Consult a TB medical expert if drug susceptibility results show resistance to any of the first-line drugs or if the patient remains smear positive after 3 months.	Treat with directly observed therapy 3 times/weekly* with isoniazid, rifampin, pyrazinamide, and ethambutol or streptomycin for 6 months. The strongest evidence from clinical trials is for the effectiveness of all four drugs administered for the full six months. There is weaker evidence that streptomycin can be discontinued after four months if the isolate is susceptible to all drugs. The evidence for stopping pyrazinamide before the end of six months is equivocal for the three-times/weekly regimen and there is no evidence on the effectiveness of this regimen with ethambutol for less than the full six months. Consult a TB medical expert if drug susceptibility results show resistance to any of the first-line drugs or if the patient remains smear positive after 3 months.

* All regimens given two-times/weekly or three-times/weekly should be administered by directly observed therapy.

TABLE S2–3.—DOSAGE RECOMMENDATIONS FOR THE INITIAL TREATMENT OF TB AMONG CHILDREN* AND ADULTS

Drugs	Dosage					
	Daily dose		Two-times/weekly dose		Three-times/weekly dose	
	Children*	Adults	Children*	Adults	Children	Adults
Isoniazid	10–20 mg/kg Max 300 mg	5 mg/kg ..... Max 300 mg	20–40 mg/kg Max 900 mg	15 mg/kg ..... Max 900 mg	20–40 mg/kg Max 900 mg	15 mg/kg Max 900 mg
Rifampin	10–20 mg/kg Max 600 mg	10 mg/kg ..... Max 600 mg	10–20 mg/kg Max 600 mg	10 mg/kg ..... Max 600 mg	10–20 mg/kg Max 600 mg	10 mg/kg Max 600 mg
Pyrazinamide	15–30 mg/kg Max 2 gm	15–30 mg/kg Max 2 gm	50–70 mg/kg Max 4 gm	50–70 mg/kg Max 4 gm	50–70 mg/kg Max 3 gm	50–70 mg/kg Max 3 gm
Ethambutol	15–25 mg/kg Max 2.5 gm .	15–25 mg/kg Max 2.5 gm .	50 mg/kg	50 mg/kg	25–30 mg/kg	25–30 mg/kg .....
Streptomycin	20–40 mg/kg Max 1 gm	15 mg/kg ..... Max 1 gm	20–40 mg/kg Max 1.5 gm .	20–40 mg/kg Max 1.5 gm .	20–40 mg/kg Max 1 gm	20–40 mg/kg Max 1 gm

*12 years of age or under.

Supplement 3—Engineering Controls

I. Introduction

This supplement provides information on the use of ventilation (Section II) and ultraviolet germicidal irradiation (UVGI) (Section III) for prevention of transmission of TB in health-care facilities. The information provided is designed to orient staff in the health-care facility, including HCWs with clinical responsibilities and infection control, administrative, occupational health and facility maintenance staff, to issues related to engineering controls, and how engineering controls can be evaluated as part of an assessment of the institutional control program. The sections cannot be used in place of consultation with experts who can assume responsibility for advising on selection, installation and maintenance of equipment.

Engineering control issues include (1) local exhaust ventilation (source control method), (2) general ventilation to decrease contamination of air and control direction of air flow, and (3) air cleaning. Issues discussed under general ventilation include (a) dilution and removal of contaminants, (b) room air flow patterns, (c) facility air flow direction, (d) room negative pressure, and (e) TB isolation rooms. Air disinfection can be accomplished by UVGI or by filtration of air, such as through high-efficiency particulate air (HEPA) filters.

II. Ventilation

Ventilation systems for health-care facilities should be designed, and modified when necessary, by ventilation engineers in collaboration with infection control and occupational health staff. Information for designing and operating ventilation systems can be found in the ASHRAE, AIA, and ACGIH recommendations (41—ASHRAE1991, 42—AIA1993, 42—1993, ACGIH 86—1992e).

As part of the TB control plan, health-care facility personnel should determine the number of TB isolation rooms, treatment rooms, and local exhaust devices (for cough-inducing procedures) needed. Locations of these rooms and devices will be dependent upon where ventilation conditions recommended in this document can be achieved. Grouping TB isolation rooms together in one area of the facility may facilitate care of TB patients and installation and maintenance of optimal engineering (particularly ventilation) strategies, and reduces the possibility of transmission of TB to other patients.

Periodic evaluations of the ventilation system should be performed, that include the number of TB isolation rooms, treatment rooms, local exhaust devices, and regular maintenance and monitoring of the local and general exhaust systems and HEPA filter systems, if used.

A. Local Exhaust Ventilation

Purpose: To capture airborne contaminants at or near their source (source control method) and remove them without exposing persons in the area (87—Woods1989).

Source control techniques can prevent or reduce the spread of infectious droplet nuclei into the general air circulation. These techniques are called source control methods because they entrap infectious droplet nuclei as they are emitted by the patient, or "source." They are especially important during performance of medical procedures likely to generate aerosols containing infectious particles or during infectious TB patients' active coughing or sneezing.

Local exhaust is the preferred ventilation technique. Because local ventilation captures airborne contaminants very near their source, before they can disperse, it is often the most efficient way to contain contaminants. Therefore, it should be used wherever cough-inducing treatment procedures permit. There are two basic types of local exhaust techniques that use hoods: the enclosing type, in which the hood either partially or fully encloses the infectious source; and the exterior type, in which the infection source is near but outside the hood. The fully enclosed hood, booth, or tent is always preferable to exterior types because of superior reliability. Descriptions of examples of both enclosing and exterior devices have been published (88—ACGIH1992a, 89—ACGIH1992b).

1. *Enclosing devices.* The enclosing type of local exhaust ventilation includes booths for sputum induction or administration of aerosolized medications (e.g., aerosolized pentamidine) (Figure 1), and tents or hoods made of vinyl or other materials used to enclose and isolate a patient.

Booths or tents used for cough-inducing treatments should be equipped with exhaust fans that have sufficient air flow capacity to remove nearly 100 percent of airborne particles during the time interval between the departure of one patient and the arrival of the next. The time required for removing a given percentage of airborne particles from an enclosed space depends on several factors. These include the number of air changes per hour, which is determined by the number of cubic feet of air in the room or booth, the rate at which air is entering the room or booth at the intake source, the location of the ventilation inlet and outlet, and the physical configuration of the room or booth (Table S3–1).

The exhaust fan should be located on the discharge side of the HEPA filter at the booth discharge. This will maintain negative pressure in the booth with respect to adjacent areas, so that air will flow into the booth through all openings and minimize the possibility that infectious droplet nuclei in the booth will escape and move into adjacent rooms or hallways (Supplement 3.II.B.4).

2. *Exterior devices.* An exterior hood is a hood very near to, but not enclosing, the infectious source. Air flow produced by these devices should be sufficient to prevent cross-currents of air near a patients face from causing escape of droplet nuclei. The device may need to attain an air velocity of at least 200 feet per minute at the patient's breathing zone into the hood to be effective, though little data are available about this. The patient should face directly into the hood opening so that any coughing or sneezing will be directed into the hood. If the patient does not face directly into the hood opening, droplet nuclei may escape into the room.

3. *Discharge from booths, tents, and hoods.* The air from booths, tents, and hoods should be exhausted directly to the outside of the building, away from air-intake vents, people, and animals, in accordance with federal, state, and local regulations concerning environmental discharges. Exhaust ducts should not be located near areas that may be populated (e.g., sidewalks or windows that may be opened). Ventilation system exhaust discharges and inlets should be designed to prevent re-entry of exhaust air. Wind blowing over a building creates a highly turbulent recirculation zone, which can cause reentry of the exhaust into the building (Figure 2). Exhaust flow should be discharged above this zone. Design guidelines for proper placement can be found in the 1989 ASHRAE Fundamentals Handbook (90—ASHRAE1989b). As an additional safety measure, air may be discharged to the outside through HEPA filters to preclude reentry of air containing infectious droplet nuclei into the ventilation supply. This is especially desirable if the exhaust discharge cannot be extended to the roof.

If direct exhaust to the outside is impossible, air from booths, tents, and hoods should only be exhausted within the facility through a properly designed, installed, and maintained HEPA filter. Most local exhaust devices are fitted with HEPA filters, and additional HEPA filtration is not needed if already a part of the device design.

B. General Ventilation

1. *Dilution and removal.* Purpose: To reduce the concentration of contaminants in the air.

General ventilation maintains air quality by two processes, dilution and removal of airborne contaminants. Dilution reduces the concentration of contaminants in a room by supplying air that does not contain those contaminants. The supply air mixes with and then displaces some of the contaminated room air, which is subsequently removed from the room by the exhaust system. This process reduces the concentration of droplet nuclei in the room air and possibly the risk of TB transmission.

a. *Systems.* General ventilation can be achieved using two types of systems; "single pass" or "recirculating" systems. In a single pass system, 100% of the room air is exhausted to the outside. The supply air is air from outside that has undergone appropriate heating and cooling or is from a central system supplying a number of areas. After passing through a room or area, air is exhausted directly to the outside. The single pass system is the preferred choice in areas where infectious airborne droplet nuclei are known to be present (e.g., isolation or treatment rooms). In a recirculating system, only a small portion of the total room or area exhaust is discharged to the outside. This volume of exhaust air is then replaced with fresh outside air. The resulting mixture is then recirculated to the rooms or areas serviced by the system. Recirculating systems can be used for general areas such as waiting or emergency rooms.

b. *Ventilation rates.* Recommended general ventilation rates for health-care facilities are usually expressed in air changes per hour (ACH). The number of ACH is the ratio of the ventilation rate (volume of air entering the room per hour) to the room volume and is equal to the exhaust airflow, Q (cubic feet per minute) divided by the room volume, V (cubic feet) times 60 ($ACH=Q/V\times60$). However, the air will not usually be changed the indicated number of times per hour, as the air flow patterns in the room may not permit complete mixing of the supply and room air in all parts of the room. This results in an "effective" air flow rate in which the supplied air flow may be less than required for proper ventilation. A "mixing factor" is required to account for this (45—Galson1968, 91—ACGIH1992c). The factor can vary from 1 for perfect mixing to 10 for poor mixing. The factor is applied as a multiplier to determine the actual

supply air flow (e.g., ACH recommended times mixing factor equals actual required supply ACH). It is important that the room supply and exhaust be designed to achieve the lowest mixing factor possible. The mixing factor may be estimated by an experienced ventilation engineer but is most accurately determined experimentally for each space configuration. A qualitative measure of mixing can be determined by releasing smoke from smoke tubes at a number of locations in the room and observing movement of the smoke. Movement in all areas will indicate good mixing. Stagnation in some areas is indicative of poor mixing necessitating movement of the supply and exhaust openings or redirection of the supply air.

The American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) (41—ASHRAE1991), the American Institute of Architects (AIA) (42—AIA1993), and the federal Health Resources and Services Administration (92—HRSA1984) recommend a minimum of 6 ACH for isolation and treatment rooms based on comfort and odor control considerations. The efficacy of this or any other level of air flow in reducing transmission of airborne pathogens has not been evaluated. Some reports suggest that ventilation rates substantially higher than 6 ACH produce a greater reduction in the concentration of bacteria in a room (44—Riley1961, 45—Galson1968, 46—Kethley1963). However, accurate quantitation of decreases in risk that would result from specific increases in general ventilation levels from 6 ACH to substantially higher values is not possible. Under some experimental conditions, increasing ACH to 37 yielded substantial reductions in concentration of non-mycobacterial test organisms; further increases up to 60 ACH continued to be associated with reductions in concentrations of test organisms, but these reductions were more modest (44—Riley1961, 45—Galson1968, 46—Kethley1963). It is unclear if these data can be extrapolated to TB control. However, ventilation air flows substantially >6 ACH would be expected to result in greater dilution of droplet nuclei. Therefore, it is recommended that health-care facilities be designed to achieve the best possible ventilation air flows.

Achievement of specific air flows will involve decisions both in ventilation system construction and operation (e.g., energy requirements to move and to heat or cool the air). Feasibility also will vary with respect to new construction or retrofit of existing facilities. The expense and effort to achieve specific higher air flow rates for new construction may not be unreasonable. However, retrofitting of an existing facility to achieve similar air flow rates may be more difficult.

2. *Room air flow patterns.* Purpose: To prevent stagnation or "short circuiting" of air and to provide optimum air flow patterns.

General ventilation systems should be designed to (1) prevent stagnation of the air and (2) prevent "short circuiting" of the supply to the exhaust (i.e., passage of air directly from air intake to the air exhaust). The supply and exhaust locations should first direct the clean air to areas where HCWs are likely to work, across the infectious source, and then, to the exhaust, so that the HCW is not positioned between the infectious source and the exhaust location. This may not always be possible but should be attempted to the fullest extent feasible. One way to accomplish this is to supply air at one end of a room and exhaust it from the opposite end. Another method is to supply air near the ceiling and exhaust it near the floor (most effective when the supply air is cooler than the room air) (Figure 3). However, air flow patterns are affected by large air temperature differentials, the precise location of the supply and exhausts, the location of furniture, movement of HCWs and patients, and the physical configuration of the space. Air flow patterns can be visualized using smoke tubes to observe air flow directions.

3. *Facility air flow direction.* Purpose: To contain contaminated air in localized areas and prevent spread to uncontaminated areas.

The general ventilation system should be designed and balanced to provide air flow patterns from more clean to less clean (or less-contaminated to more-contaminated) areas, such as from hallways to treatment rooms or corridors to patient rooms (41—ASHRAE1991, 42—AIA1993). Examples include the emergency room area, or patient TB isolation rooms, where air should flow inward to assure prevention of spread of contaminants to other areas. Some special treatment rooms where operative and invasive procedures are performed have air flow from room to hallway to provide cleaner air during these procedures. Cough-inducing or aerosol-generating procedures (e.g., bronchoscopy, irrigation of tuberculous abscesses) should not be performed in these rooms on patients who may have infectious TB.

The direction of air flow is controlled by creating a lower (negative) pressure in the area into which flow is desired. Negative pressure is attained by exhausting air from the area at a higher rate than it is being supplied (negative is defined relative to the area from which air is to flow). The level of negative pressure necessary to achieve the desired air flow will depend on the physical configuration of the ventilation system and area, including the air flow path and flow openings, and should be determined by an experienced ventilation engineer on a case-by-case basis.

4. *Room negative pressure.* Purpose: To prevent airborne contaminants escaping from a room.

In order for air to flow from one area to another, there must be a difference in the air pressure between the two areas. Air will flow from the higher pressure to lower pressure area. The lower pressure area is at "negative pressure" relative to the higher pressure area.

a. *Pressure differential.* The pressure difference necessary to achieve and maintain negative pressure in a room is very small and may be difficult to measure accurately. Negative pressure can be achieved by balancing the room supply and exhaust flows to set the exhaust flow to a value 10% (but no less than 50 cubic feet per minute [cfm]) greater than the supply.

The level of negative pressure achieved will depend on the physical configuration of the area, including the air flow path and flow openings. A pressure differential of 0.001 inch of water and an inward air velocity of 100 feet per minute (fpm) are minimum acceptable levels.

Negative pressure in a room can be altered by small changes in the ventilation system operation, or by the opening and closing of the isolation room, corridor doors, or windows. It is, therefore, essential that once an operating configuration has been established, all doors and windows remain appropriately closed in both the isolation room and other areas, except when needed to enter or leave an area.

b. *Monitoring.* Periodic checks are required by use of smoke tubes or by use of an air velocity measuring device with smoke tubes to assure that the desired negative pressure condition is present. Rooms where potentially infectious TB patients are hospitalized, treated, or receive cough-inducing treatments, should be checked for negative pressure on a daily basis when in use by means of smoke tubes or by air velocity measurement devices. If smoke tubes are used, a minimum air velocity of 100 fpm into the room should be verified periodically (e.g., monthly to quarterly) by use of an air velocity measuring device (e.g., a thermoanemometer). The

thermoanemometer does not indicate direction and should be used with the smoke tube to verify air flow direction.

To check a room for negative pressure with a smoke tube, the smoke tube should be placed near the bottom of the door (and at the face of a grille or other opening if so equipped) between the room and the corridor and a small amount of smoke produced by squeezing the bulb (Figure 4). (The principal opening will usually be at the bottom of the door. However, other areas, such as the top and sides of the door, sliding window, etc., should also be checked). The smoke will travel in the direction of air flow. If the room is under negative pressure, the smoke should travel into the room under the door or through the grille (e.g., from higher to lower pressure). If not under negative pressure, the smoke should be blown outward or stay stationary. The smoke tube should be held parallel to the door and the smoke should be issued from the tube slowly to assure that the velocity of the smoke from the tube does not overpower the air velocity. This test is to be done with the door closed. The same technique can be used to check for air flow between areas or for observation of air flow patterns within an area. Care should be taken not to inhale the smoke, because it is irritating if inhaled.

Pressure-sensing devices also can be used for determination of negative pressure, but can be difficult to use correctly. If these devices are used, they should sense the room pressure just inside the air flow path into the room (e.g., at the bottom of the door). Unusual air flow patterns within the room can cause pressure variations. It is possible that negative pressure could exist at the middle of a door with positive pressure at the bottom of the door (Figure 5). A major problem with the use of pressure-sensing devices is that the pressure differentials used to achieve negative pressure are very small, necessitating the use of costly and sensitive mechanical devices, electronic devices, or pressure gauges to assure accurate measurements. If pressure-sensing devices are used, periodic verification by use of smoke tubes is required.

5. *TB Isolation Rooms.* Purpose: To isolate patients with known or suspected TB in rooms designed to prevent the escape of droplet nuclei generated by infectious TB patients.

An important application of negative pressure in TB control is the TB patient isolation room. The primary purposes of the isolation room are to (1) isolate patients who are likely to have infectious TB from other people, (2) prevent escape of droplet nuclei from the room, thus preventing entry of M. tuberculosis into the corridor and other areas of the facility, and (3) provide an environment that will allow reduction of the concentration of droplet nuclei through various engineering controls (Supplement 3.II.B.5). Rooms used for TB isolation should be single-patient rooms with negative pressure relative to the corridor or other areas connected to the room. Doors between the isolation room and other areas should remain closed except for entry or egress and there should be a small gap of ⅛ to ½ inch at the bottom of the door to provide an air flow path. Proper use of negative pressure will prevent the contaminated room air from escaping from the room.

a. *Alternate methods for achieving negative pressure.* An anteroom may be used to reduce escape of droplet nuclei during opening and closing of the isolation room door. If the anteroom has an air supply, the air flow to the anteroom should be set equal to the difference between the room supply and exhaust flows. This should result in pressure positive with respect to the isolation room and neutral with respect to the corridor. If the anteroom does not have an air supply, it is still useful, and should still be positive with respect to the room and negative with respect to the corridor. Some states and localities may have fire codes that prohibit the isolation room from being negative relative to the corridor to prevent entry of smoke into the room in case of fire. In such cases, the anteroom should be supplied with air to make it slightly positive to both the isolation room and the corridor.

Where the existing ventilation system is incapable of achieving the desired negative pressure due to the lack of a ventilation system in the room or a system which cannot provide the proper air flow, a small centrifugal blower (exhaust fan) can be used to exhaust air to the outside either through the building, or through a window or outside wall. This approach may be used as an interim measure to achieve negative pressure, but provides no fresh air and suboptimal dilution.

Another approach to achieving the required pressure difference is to pressurize the corridor. In this approach, the corridor general ventilation system is balanced to create a higher pressure in the corridor than in the room. The type of balancing necessary will depend on the configuration of the ventilation system. Ideally, the corridor air supply should be increased while not increasing the corridor exhaust rate. If this is not possible, the exhaust rate should be decreased either by resetting appropriate exhaust dampers or by partially blocking exhaust grilles serving the corridor return. (Caution should be used, as the exhaust rate could be reduced below acceptable levels.) In some instances, the corridor exhaust may be located out of the corridor. Corridor pressurization can be achieved by use of corridor doors, which can be closed. This approach will require that all settings used to achieve the pressure balance, including doors, be maintained. This approach may not be desirable if the corridor being pressurized has rooms where negative pressure is not desired.

In rooms with recirculating ventilation systems, negative pressure can be achieved by removing the room exhaust from the system return and ducting it to the outside. As with the methods discussed above, caution should be exercised, as the overall ventilation system balance will be affected.

Isolation can also be achieved by use of negative-pressure enclosures, such as tents or booths (Section A.1). These can be used to provide patient isolation in areas such as emergency rooms, and medical testing areas, and to supplement isolation in designated isolation rooms.

b. *Exhaust from TB isolation rooms.* Air discharged from TB isolation rooms should follow the same recommendations as air discharged from local exhaust devices (i.e., booths, tents, or hoods used for cough-inducing procedures) (see Section II.A.3). Caution is required if window fans are used, as excessive negative pressure could create backflow from the room exhaust system into the room.

C. HEPA Filtration

Purpose: To remove contaminants from the air.

HEPA filtration can be used as a method of air cleaning that supplements other recommended ventilation measures. HEPA filters, which remove at least 99.97% of particles 0.3 microns in diameter (the most penetrating size), have been shown to be effective in reducing the concentration of Aspergillus spores (which are in the size range of 1.5–6 microns) to below measurable levels (93—Sherertz1987,94—Rhame1984,95—Opal1986). The ability of HEPA filters to remove tubercle bacilli from the air has not been studied, but M. tuberculosis droplet nuclei probably range from 1–5 microns in diameter, about the same size as Aspergillus spores. Therefore, HEPA filters can be expected to remove infectious droplet nuclei. HEPA filters can be used to clean air before it is

recirculated to other areas of a facility, recirculated back into the same room, or exhausted to the outside.

HEPA filters may be used in a number of ways to reduce or eliminate infectious droplet nuclei from room air or exhaust. These methods include placement of HEPA filters (1) in exhaust ducts to remove droplet nuclei from air being discharged to the outside, either directly or through ventilation equipment; (2) in exhaust ducts discharging air from booths or enclosures into the surrounding room; (3) in ducts discharging room air into the general ventilation system; and (4) in ducts for individual room air recirculation units. Portable HEPA filtration units are available, although the effectiveness of such units has not been adequately evaluated, and there is likely to be considerable variation in the effectiveness of these devices. In any application, HEPA filters need to be carefully installed and meticulously maintained to ensure adequate function.

1. *Recirculation of HEPA-filtered air to other areas of a facility.* When it is impossible for air from TB isolation rooms and local exhaust devices (i.e., booths, tents, or hoods used for cough-inducing procedures) to be exhausted directly outside, it is necessary for the air to be filtered through a HEPA filter before recirculating it to other areas of a facility.

2. *Recirculation of HEPA-filtered air back into the same room.* Recirculation of HEPA-filtered air in a room can be achieved by (1) recirculation of air exhausted from the room into a duct, filtered with an in-duct HEPA filter and returned to the room (Figure 6) or (2) in-room, wall-mounted or portable HEPA filters.

a. *Room recirculation.* Individual room recirculation can be used in areas where there is no general ventilation system, where the system is incapable of providing adequate air flow, or where an increase in dilution is desired without affecting the fresh air supply or negative pressure system already in place. Air is exhausted from the room into a duct, filtered through a HEPA filter, and returned to the room (Figure 6). This technique may be used to add air changes in areas where there is a recommended minimum and it is difficult to meet the recommendation with general ventilation alone. It will permit higher air flow rates than can be normally achieved with general ventilation, since the air does not have to be conditioned, other than filtered.

b. *In-room (portable) systems.* Both the HEPA filter and blower can be located within rooms, and can be either wall mounted or portable. Effectiveness is dependent upon all the air in the room circulating through the HEPA filter, which can be difficult to achieve and evaluate. Efficacy of a particular unit may vary according to the configuration of the room, furniture, persons in the room, placement of supply and exhaust grilles, and placement of the unit. Portable HEPA units have been used to reduce nosocomial Aspergillus infections (94—Rhame1984, 95—Opal1986) and as an interim solution for retrofitting old areas of hospitals. Portable HEPA filtration units may be considered for areas where there is no general ventilation system or where the system is incapable of providing adequate air flow. If these units are used, caution should be exercised to assure that they can recirculate all or nearly all of the room air through the HEPA filter. Some commercially available units are not able to meet this requirement due to design limitations or insufficient air flow capacity. Portable HEPA filtration units have not been evaluated adequately to determine their role in TB infection control programs. Therefore, these units should not substitute for other, more established measures, except for short-term intervention while other engineering controls are being implemented. Some of these units employ UVGI for disinfecting air after HEPA filtration. However, there are no data to suggest that, once air is passed through a HEPA filter, exposing the filtered air to UV irradiation will further decrease the concentration of contaminants.

3. *Use of HEPA filtration when exhausting air to the outside.* Use of HEPA filters to clean air from TB isolation rooms and local exhaust devices (i.e., booths, tents, or hoods used for cough-inducing procedures) before exhausting to the outside may be employed as an added safety measure, but is not necessary. It should be considered where there is any chance that the exhaust air could reenter the system. Discharge from local exhaust devices and TB isolation rooms should follow recommendations in Section II.A.3 of this supplement.

Heat wheel energy recovery units are sometimes used to reduce cost of operating ventilation systems (87—Woods1989). If they are used with the system, a HEPA filter should be used. As the wheel rotates, energy is transferred into (or removed from) the supply inlet air stream. Because of the potential for leakage across seals separating the inlet and exhaust chambers and the theoretical possibility that droplet nuclei could be impacted on the wheel by the exhaust air and subsequently stripped off into the supply air, the HEPA filter should be upstream from the heat wheel.

4. *Installation, maintenance, and monitoring.* Proper installation, testing, and meticulous maintenance are critical if a HEPA filter system is used (96—Woods1988). This is especially true for HEPA filter systems used to recirculate air to other parts of a facility: improper design, installation, or maintenance could permit infectious particles to circumvent filtration and escape into the ventilation system (41—ASHRAE1991). The filters are to be installed to prevent leakage between filter segments and between the filter bed and its frame. A regular scheduled maintenance program is required to monitor the HEPA filter for possible leakage and for filter loading. A quantitative leakage and filter performance test using the dioctal phthalate (DOP) penetration test (97—ASHRAE1992a) should be performed at the initial installation and whenever the filter is changed or moved. The test should be repeated every six months for filters in systems exhausting air from areas where air is likely to be contaminated with M. tuberculosis, such as isolation rooms, and every six months from general areas.

A manometer or other pressure-sensing device should be installed in the filter system to provide an accurate means of objectively determining the need for filter replacement. Pressure drop characteristics of the filter are supplied by the manufacturer. Installation should allow for maintenance without contaminating the delivery system or the area served. The "bag in, bag out" method used for changing filters in systems containing carcinogens (or a similar system) should be used (98—ORNL1979). Because of the potential risk of infection to staff who perform this maintenance, it should be performed only by personnel who are adequately trained. Appropriate respiratory protection is to be worn during maintenance and testing. In addition, filter housing and ducts leading to the housing should be clearly marked "Contaminated Air" (or a similar warning). When a HEPA filter is used, one or more lower efficiency disposable prefilters installed up-stream will extend the useful life of the HEPA filter. The life of a HEPA filter can be increased 25 percent with a disposable filter. If the disposable filter is followed by a 90 percent extended surface filter, the life of the HEPA filter can be extended nearly 900 percent (99—ACGIH1992d). These prefilters should be handled and disposed of in the same manner as the HEPA filter.

TABLE S3–1.—AIR CHANGES PER HOUR AND TIME IN MINUTES REQUIRED FOR REMOVAL EFFICIENCIES OF 90%, 99%, OR 99.9% OF AIRBORNE CONTAMINANTS

[This table is prepared according to the formula* $t_1=(\ln (C_2/C_1)/(Q/V)) \cdot 60$, which is an adaptation of the formula for the rate of purging airborne contaminants (100—Mutchler1973) with $t_1=0$, and $C_2/C_1=1$ – (removal efficiency/100).]

Air changes per hour	Minutes required for a removal efficiency of		
	90%	99%	99.9%
1	138	276	414
2	69	138	207
3	46	92	138
4	35	69	104
5	28	55	83
6	23	46	69
7	20	39	59
8	17	35	52
9	15	31	46
10	14	28	41
11	13	25	38
12	12	23	35
13	11	21	32
14	10	20	30

TABLE S3–1.—AIR CHANGES PER HOUR AND TIME IN MINUTES REQUIRED FOR REMOVAL EFFICIENCIES OF 90%, 99%, OR 99.9% OF AIRBORNE CONTAMINANTS—Continued

[This table is prepared according to the formula* $t_1=(\ln (C_2/C_1)/(Q/V)) \cdot 60$, which is an adaptation of the formula for the rate of purging airborne contaminants (100—Mutchler1973) with $t_1=0$, and $C_2/C_1=1$ – (removal efficiency/100).]

Air changes per hour	Minutes required for a removal efficiency of		
	90%	99%	99.9%
15	9	18	28
16	9	17	26
17	8	16	24
18	8	15	23
19	7	15	22
20	7	14	21
25	6	11	17
30	5	9	14
35	4	8	12
40	3	7	10
45	3	6	9
50	3	6	8

*Where:

t_1=initial time point t_2=time (minutes) required for removal efficiency C_1=initial concentration of contaminants C_2=final concentration of contaminants Q=air flow rate (cubic feet per hour) V=room volume (cubic feet) Q/V=air changes per hour

The times given assume perfect mixing of the air within the space (i.e., mixing factor = 1). However, perfect mixing normally does not occur, and the mixing factor could be as high as 10 if air distribution is very poor. (A discussion of mixing is provided in reference Industrial Ventilation: A Manual of Recommended Practice (151—NIOSH1987). The required time is determined by multiplying the appropriate time from the table by the mixing factor determined for the booth or room. The factor and required time should be included by the manufacturer of the booth or enclosure as part of the operating instructions for the enclosure, and these instructions should be followed.

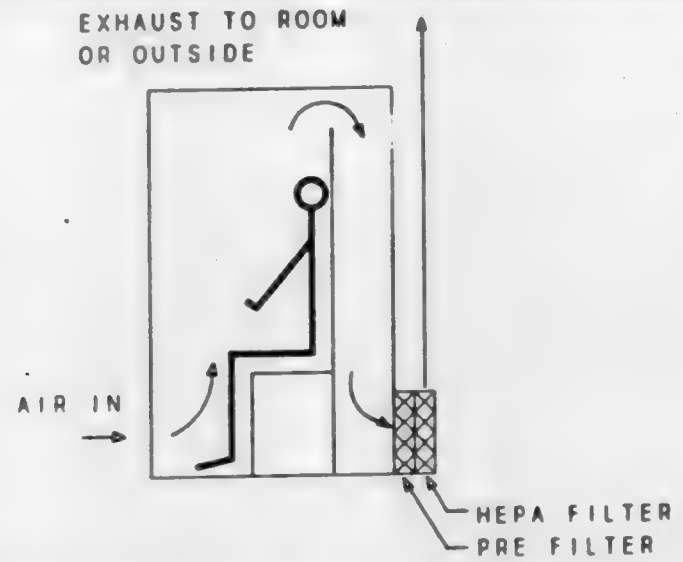

Figure S3–1. Enclosing booth designed to sweep air past patient and entrap infectious droplet nuclei at high-efficiency particulate air (HEPA) filter. Short circuiting of air from supply to exhaust is prevented by structure on which patient sits and wall on which patient rests back.

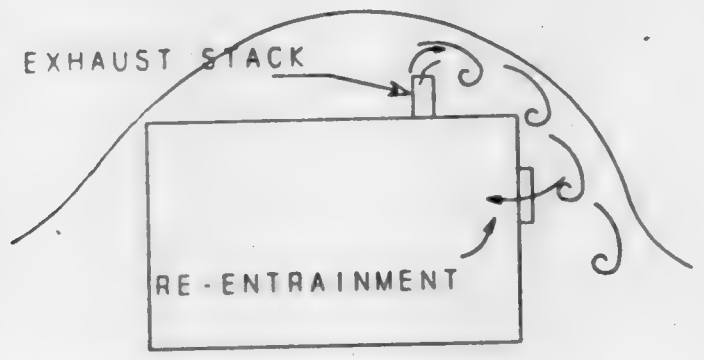

Figure S3–2. Recirculation zone, variable in height, created by wind blowing over a building. Air should be exhausted above this zone to prevent re-entrainment.

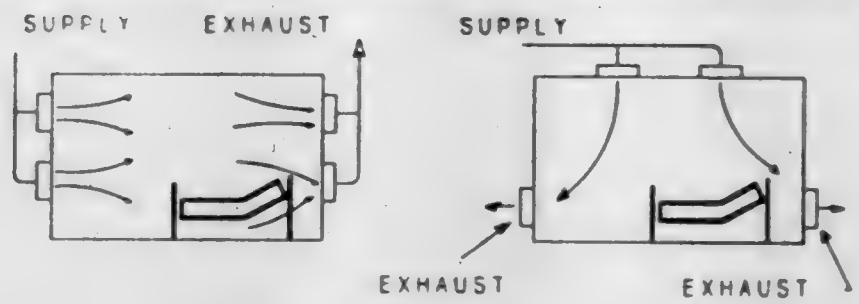

Figure S3–3. Room air flow patterns accomplished by supplying air at opposite sides of the room from the exhaust, and by supplying air at the ceiling and exhausting it near the floor. Such systems can be used to achieve optimum air flow patterns.

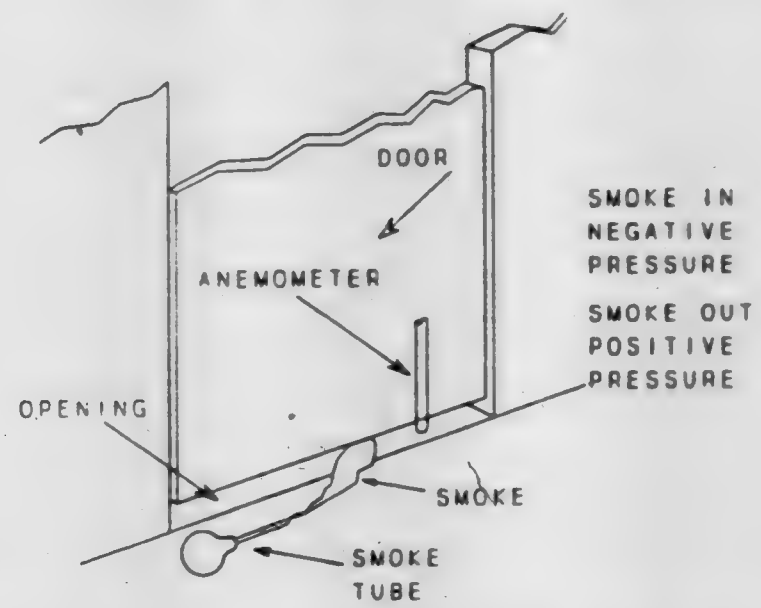

Figure S3–4. Smoke tube testing to determine direction of air flow. Smoke flowing into the room indicates the room is at negative pressure relative to the corridor. Smoke flowing out of the room indicates the room is at positive pressure relative to the corridor. Anemometer, if used, is placed with sensor in the air flow path at bottom of door.

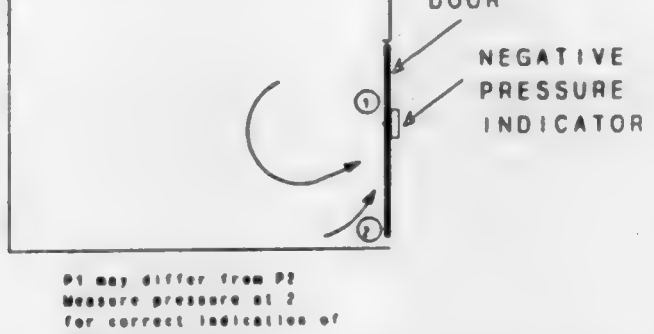

Figure S3–5. Cross-section of a room showing negative pressure measurement location. Certain air flow patterns may cause pressure at location 1 to differ from location 2. Negative pressure indicator should be used at location 2 for correct measurement of negative pressure.

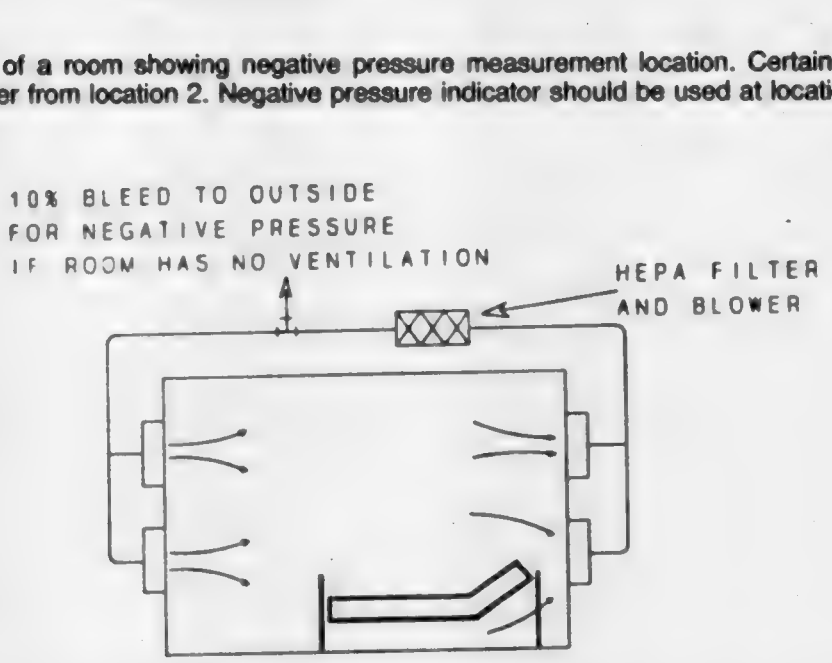

Figure S3–6. Individual room recirculation system using a HEPA filter within an air duct. Such a system can be used to increase the room ventilation rate.

III. Ultraviolet Germicidal Irradiation

Research has demonstrated that ultraviolet germicidal irradiation (UVGI) is effective in killing tubercle bacilli under experimental conditions. Experimental data showed that guinea pigs were completely protected from becoming infected with TB after exposure to air from infectious TB patients after the air had been treated with UVGI (101—Riley1957, 59—Riley1962, 102—Riley1989, 103—Riley1988, 104—Stead1989). Other studies cite effectiveness of UVGI in reducing transmission of other infections in hospitals (105—McLean1961), military housing (106—Willmon1948), and classrooms (107—Wells1942, 108—Wells1950, 109—Perkins1947). On the basis of these findings, other studies (110—Lurie1964, 111—Collins1971, 112—David1971, 113—David1973, 114—Riley1976), and the experience of TB clinicians and mycobacteriologists during the past 2–3 decades, the use of UVGI has been recommended as a supplement to other TB infection control measures in settings where the need for killing of tubercle bacilli is greatest (115—ATS/CDC1983, 1—CDC1982, 4—ATS/CDC1990, 116—NTRDA1969, 117—CDC1971, 118—Schieffelbein1988, 119—CDC1989c).

UV radiation is defined as that portion of the electromagnetic spectrum described by wavelengths from 100 to 400 nm. For convenience of classification, the ultraviolet spectrum has been separated into three different wavelength bands. These bands are UV–A (long wavelengths: 320–400 nm), UV–B (midrange wavelengths: 290–320 nm), and UV–C (short wavelengths: 100–290 nm) (120—CIE1987). Commercially available UV lamps used for germicidal purposes are low-pressure mercury vapor lamps (121—Nagy1964) that emit radiant energy in the UV–C range, predominantly at a wavelength of 253.7 nm (122—IES1966).

A. Applications

UVGI can be used as a method of air disinfection that supplements other engineering controls. Two systems of UVGI can be utilized: duct irradiation and upper room air irradiation.

1. *Duct irradiation.* In duct irradiation systems, the UV lamps are placed inside ducts that remove air from rooms, for the purpose of disinfecting the air before it is recirculated. When UVGI duct systems are properly designed, installed, and maintained, high levels of UV radiation may be produced in the ductwork with no potential for human exposure, except during maintenance operations.

Duct irradiation may be used:

a. For isolation and treatment rooms to recirculate air from the room, through a duct containing UV lamps, back into the room. This recirculation method can increase the overall room air flow but does not increase the supply of fresh (outside) air to the room.

b. For other patient rooms, waiting rooms, emergency rooms, and other general-use areas of a facility where there may be unrecognized TB patients, to recirculate air back into the room.

Duct irradiation systems are dependent on air flow patterns within a room that ensure that all or nearly all of the room air circulates through the duct.

2. *Upper room air irradiation.* In upper room air irradiation, UVGI lamps are suspended from ceilings or mounted on walls. The bottom of the lamp is shielded so that the radiation is directed upwards but not downwards. Thus, the purpose is to disinfect air in the upper part of the room, while minimizing exposure to persons in the lower part of the room. The system depends on air mixing to bring irradiated air from the upper to the lower part, and non-irradiated air from the lower to the upper part. The irradiated air space is much larger than in a duct system. Some studies have demonstrated efficacy of UV under conditions where air mixing was mainly by convection; one in which BCG was atomized in a room without supplemental ventilation (114—Riley1976), another in which a surrogate bacteria, Serratia marcesens, was aerosolized in a room with 6 ACH (123—Kethley1972). These reports estimated the effect of UV to be equivalent to 10 and 39 ACH respectively for the organisms tested, which are less resistant to UVGI than M. tuberculosis (114—Riley1976). The addition of fans or some heating/air conditioning arrangements have been shown to as much as double the effect (124—Riley1971a, 125—Riley1971b, 126—Riley1971c). Greater rates of ventilation, however, may decrease contact time and would be expected to decrease killing and show less added benefit of UVGI (111—Collins1971, 123—Kethley1972). The optimal relationship between ventilation and UVGI is not known. One study demonstrated killing of atomized Serratia marcesens by air irradiation in corridors (127—Riley1971d). A recent study noted that use of UVGI lamps in an outpatient waiting room reduced culturable airborne bacteria by 14 to 19 percent (M. tuberculosis was unable to be cultured from air samples in the study), although it did not reduce the concentration of gram-positive, rod-shaped bacteria (128—Macher1992). The effect in this study, in air exchange equivalents, was only one tenth of that found in the earlier study using BCG.

Upper room air UV irradiation may be used:

a. In isolation or treatment rooms as a supplemental method of air cleaning.

b. In other patient rooms, waiting rooms, emergency rooms, corridors, and other central areas of a facility where there may be unrecognized TB patients.

Determinants of effectiveness include room configuration, UV lamp placement, and the adequacy of air flow patterns in bringing contaminated air into contact with the irradiated upper room space. Air mixing may be facilitated by supplying cool air near the ceiling in rooms where warmer air (or a heating device) is present below. Sufficient ceiling height is needed to allow irradiation of a large volume of upper air space.

B. Limitations

Because the clinical effectiveness of UV systems may vary, and because the risk of TB transmission if a system malfunctions or is improperly maintained, UVGI is *not* recommended for some particular applications. Specifically,

1. Duct systems using UVGI are *not* recommended as a substitute for HEPA filters if it is necessary to recirculate air from TB isolation rooms to other areas of a facility.

2. UVGI is *not* recommended as a substitute for HEPA filtration or local exhaust of air to the outside from booths, tents, or hoods used for cough-inducing procedures.

3. UVGI is *not* recommended as a substitute for negative pressure.

UV lamps in series with a properly maintained HEPA filter would *not* be expected to have any infection control benefit over the HEPA filter alone.

The effectiveness of UVGI in killing airborne tubercle bacilli depends on the intensity of UVGI, the duration of contact the organism has with UVGI, and the relative humidity (59—Riley1962, 105—McLean1961, 102—Riley1989). Humidity has been noted to have an adverse effect on UVGI effectiveness at levels above 70% relative humidity for Serratia marcescens (129—Riley1972). The precise interaction of these factors has not been fully defined, however, making it difficult to develop precise recommendations for individual UVGI installations.

In all UVGI systems, regular maintenance is crucial, since old lamps

or dust-covered lamps become less effective.

C. Safety Issues

Short-term overexposure to UV irradiation can cause keratoconjunctivitis and erythema of the skin (130—NIOSH1972). Broad spectrum UV radiation has been associated with increased risk of squamous and basal cell carcinomas of the skin (131—Urbach1969, 132—IARC1992). UV-C was recently classified by the International Agency for Research on Cancer (IARC) as "probably carcinogenic to humans (Group 2A)" (132—IARC1992). This classification is based on studies suggesting that UV-C radiation can induce skin cancers in animals, induce DNA damage, chromosomal aberrations, sister chromatid exchange and transformation in human cells in vitro, and induce DNA damage in mammalian skin cells in vivo. In the animal studies, a contribution of UV-B to the tumor effects could not be excluded, but the effects were greater than expected for UV-B alone (132—IARC1992). Although some recent studies have demonstrated that UV radiation can activate human immunodeficiency gene promoters (i.e., the genes in HIV that prompt replication of the virus) in laboratory samples of human cells (133—Valerie1988, 134—Zmudzka1990, 135—Wallace1992, 136—Valerie1990, 137—Stein1989, 138—Clerici1992), the implications of these in vitro findings for humans are unknown.

In 1972, NIOSH published a recommended exposure limit (REL) for occupational exposure to UV radiation (130—NIOSH1972). The REL is intended to protect workers from the acute effects of UV exposure (e.g., erythema and photokeratoconjunctivitis). However, photosensitive individuals and those concomitantly exposed to photoactive chemicals may not be protected by the recommended standard. Additional information on the REL is provided in Section D.

Particular precautions with UVGI systems are as follows:

1. Duct irradiation safety issues

HCWs performing maintenance on such fixtures are at risk for exposure to UV radiation, if proper procedures are not followed.

2. Upper room air irradiation safety issues

Because UV fixtures are present in rooms rather than hidden in ducts, safety may be much more difficult to achieve and maintain. Fixtures must be designed and installed in a way that ensures exposure to persons in the room (including HCWs and inpatients) below existing safe exposure levels.

Recent Health Hazard Evaluations conducted by NIOSH have noted problems with overexposure of HCWs to UVGI, and inadequate maintenance, training, labelling, and use of personal protective equipment (139—NIOSH1992a, 140—NIOSH1992b, 141—NIOSH1992c).

Currently, there is a paucity of professionals properly trained in UVGI system design and installation. CDC strongly recommends that a competent UVGI system designer be consulted to address safety issues before a system is procured and installed. Experts who might be consulted for advice include industrial hygienists, engineers, and health physicists. Principles for the safe installation of UV lamp fixtures have been developed and can be used as guidelines (142—Macher1989, 143—Riley1991).

If UV lamps are in use in a facility, the general TB education of HCWs should include:

1. General principles of UVGI: how it works and its limitations.

2. The potential hazardous effects of UVGI if overexposure occurs.

3. The potential for photosensitivity from certain medical conditions or pharmaceuticals.

4. General maintenance procedures for UVGI fixtures and their importance.

Exposure to UV intensities above recommended exposure limits should be avoided. Light-weight clothing made of tightly woven fabric and UV absorbing sunscreens with high solar-protection factors (SPF 15 or greater) may help protect photosensitive individuals. HCWs should be advised that any eye or skin irritation that develops after exposure to UV should be examined by occupational health staff.

D. Exposure Criteria for UV Radiation

The NIOSH document, Criteria for a Recommended Standard * * * Occupational Exposure to Ultraviolet Radiation includes a recommended exposure limit (REL) that is intended to prevent acute effects on skin and eyes (130—NIOSH1972). The NIOSH REL for UV radiation is wavelength dependent because different wavelengths of ultraviolet radiation have differing abilities to cause skin and eye effects. The term relative spectral effectiveness is used to compare various UV sources with a source producing UV radiation only at 270 nm, the wavelength of maximum ocular sensitivity. For example, the relative spectral effectiveness (S_λ) at 254 nm is 0.5, therefore twice as much energy is required at 254 nm to produce an identical biological effect at 270 nm (130—NIOSH1972). Thus, at 254 nm, the permissible 8-hour dose is 0.006 Joules per square centimeter (J cm^{-2}), and at 270 nm it is 0.003 J cm^{-2}.

For germicidal lamps which emit radiant energy predominantly at a wavelength of 254 nm, proper use of the REL requires that the measured irradiance level (E) in microwatts per square centimeter ($\mu W\ cm^{-2}$) be multiplied by the relative spectral effectiveness at 254 nm (0.5) to obtain the effective irradiance (E_{eff}). The maximum permissible exposure time (t) can then be read directly from Table S3–2 for selected values of E_{eff}, or can be calculated (in seconds) by dividing 0.003 J cm^{-2} (the 8-hour permissible dose at 270 nm) by E_{eff} in W cm^{-2} (130—NIOSH1972, 144—ACGIH1991).

To protect HCWs who are exposed to germicidal UV radiation for eight hours per day, the measured irradiance (E), should be $\leq 0.2\ \mu W\ cm^{-2}$. This is calculated by using Table S3–2 to obtain E_{eff} ($0.1\ \mu W\ cm^{-2}$), and then dividing by S_λ (0.5).

E. Maintenance and Monitoring

1. *Labeling and posting.* Warning signs should be posted on UV lamps and wherever high-intensity (above the REL) germicidal UV irradiation is present (e.g., upper room air space and accesses to ducts [if duct irradiation is used]) to alert maintenance or other HCWs of the hazard. Some examples are shown below:

CAUTION
ULTRAVIOLET ENERGY
PROTECT EYES AND SKIN

CAUTION
ULTRAVIOLET ENERGY
TURN OFF LAMPS BEFORE
ENTERING UPPER ROOM

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2. *Maintenance.* A schedule for replacement of UV lamps should be developed, since the intensity of the lamps varies with age. This could be determined from either a time/use log or a system based on cumulative time. The tube should be checked periodically for dust build up, which will lessen the output of UVGI. If the tube is dirty, it should be cleaned after cooling with a damp cloth. On occasions when a tube stops burning or flickers to an objectionable extent, it should be replaced. Maintenance personnel must turn off all UV tubes before entering the upper part of the room or accessing ducts to change tubes or for any other purpose. Direct exposure to the intense UV of the upper air space or in ducts can cause burns in a matter of seconds.

Protective equipment such as gloves, goggles, and/or face shields should be worn if exposure above recommended standard is anticipated.

Banks of UVGI tubes can be installed in ventilating ducts. Safety devices should be used on access doors to eliminate hazard to maintenance personnel. For duct irradiation systems, the access door for servicing the lamps should have an inspection window (ordinary glass is sufficient to filter out UV radiation) through which the lamps periodically are checked for dust build up and malfunctioning. The access door should also have a sign in appropriate languages alerting maintenance personnel to the health hazard of looking directly at bare tubes. The lock for this door should have an automatic electric switch or other device that ensures that the lamps are turned off whenever the door is opened.

There are two types of fixtures used in upper room air irradiation: Wall-mounted fixtures with louvers to block downward radiation and fixtures suspended from the ceiling with baffles to block radiation below the horizontal plane of the UV tube. The UV tube itself must not be visible from any normal position in the room for either type of fixture. It is appropriate to have switches that can be locked to avoid accidentally turning the lamps on during maintenance procedures.

In most applications it is not difficult to properly shield the UV lamps so that protection from most, if not all, of the direct UV radiation is provided. However, radiation reflected from glass, polished metal, and high-gloss ceramic paints can be harmful to persons in a room, particularly if more than one UV lamp is in use. Surfaces in irradiated rooms that would reflect UVGI into occupied areas of the room should be covered with non-UV reflecting material.

3. *Monitoring.* A regularly scheduled evaluation of the UV intensity to which HCWs and others (e.g., patients) are exposed should be conducted.

UV measurements should be made in a variety of locations within a room using a detector designed to be most sensitive at 254 nm. Equipment used to measure germicidal UV radiation should be maintained and calibrated on a regular schedule.

A new UV installation must be carefully checked for "hot spots" by an industrial hygienist or other person knowledgeable in making UV measurements. UV radiation levels should not exceed the recommended guidelines.

TABLE S3–2.—MAXIMUM PERMISSIBLE EXPOSURE TIMES FOR SELECTED VALUES OF E_{eff}

Duration of exposure per day	Effective irradiance, E_{eff} ($\mu W/cm^2$)
8 hrs	0.1
4 hrs	0.2
2 hrs	0.4
1 hr	0.8
30 min	1.7
15 min	3.3
10 min	5.0
5 min	10.0
1 min	50.0
30 sec	100.0

This table was adapted from a table in Criteria for a Recommended Standard * * * Occupational Exposure to Ultraviolet Radiation (130—NIOSH1972).

Supplement 4—Respiratory Protection

I. Introduction

Personal respiratory protection should be used by persons entering rooms where patients with known or suspected infectious TB are being isolated, during cough-inducing or aerosol-generating procedures on patients with known or suspected infectious TB, and in other settings where administrative and engineering controls are not likely to protect persons from inhaling infectious airborne droplet nuclei.

The precise level of effectiveness of respiratory protection in protecting HCWs from transmission of M. tuberculosis in health-care settings cannot be determined with currently available data. Studies have provided data about the effectiveness of respiratory protection from many hazardous airborne materials, but not from M. tuberculosis. There are gaps in the understanding of the transmission of M. tuberculosis that limit the ability to conduct the appropriate studies to determine the effectiveness of respiratory protection against transmission of M. tuberculosis. Neither the smallest infectious dose of M. tuberculosis nor the highest level of exposure to M. tuberculosis at which transmission will not occur have been conclusively defined (53—CDC/NIH1993, 145—Bloom1992, 146—Nardel11990). Furthermore, the size, size distribution, and number of particles containing viable M. tuberculosis that are generated by infectious TB patients have not been adequately studied, and it is not possible to measure the concentration of infectious droplet nuclei in a room accurately with currently available methods.

Nevertheless, there are certain settings where administrative and engineering controls may not fully protect HCWs from airborne droplet nuclei, such as in TB isolation rooms, during cough-inducing or aerosol-producing procedure, and in certain other settings (e.g., transportation of an infectious TB patient in an ambulance). Respiratory protective devices used in these settings should have characteristics that are suitable for the organism they are protecting against (i.e., M. tuberculosis) and the settings in which they are used (i.e., health-care settings). The recommendations in this document are based on the available data about the effectiveness of respiratory protection against noninfectious hazardous materials in work places other than health-care settings and an interpretation of how these data can be applied to respiratory protection against M. tuberculosis. Although the following recommendations do not offer the maximum available protection, they probably exceed the minimum level of protection needed to prevent occupational exposure.[1]

These are interim recommendations. As new data and devices become available, and if new certification procedures are developed and implemented, these recommendations may be changed.

A. Performance Criteria for Personal Respirators for Protection Against Transmission of M. tuberculosis

Based on the limited data currently available and the considerations stated above, it is recommended that respiratory protective devices used in health-care settings for protection against M. tuberculosis meet the following criteria. These criteria are based on estimated characteristics of respirators that were used in conjunction with administrative and engineering controls in outbreak settings where transmission to HCWs and patients appeared to cease.

[1] The Occupational Safety and Health Act of 1970 (Pub. L. 91–596) requires that NIOSH develop recommendations so that no worker will suffer impaired health or function or diminished life expectancy as a result of his or her work. In September 1992, NIOSH recommended the use of NIOSH-certified, powered halfmask respirators equipped with HEPA filters by all workers potentially exposed to TB in conjunction with an effective respiratory protection program (48, 147—OSHA1910.134). NIOSH concluded that because the amount of infectious droplet nuclei in the air cannot currently be measured and because an exposure limit to M. tuberculosis has not yet been established, a high level of respiratory protection should be recommended.

1. The ability to filter particles 1 micron in size in the unloaded [1] state with a filter efficiency of ≥95% (i.e., filter leakage of ≥5%), given flow rates of up to 50 liters per minute.

Available evidence suggests that infectious droplet nuclei are in the 1–5 micron size range, therefore respirators used in health-care settings should be able to filter the smallest particles in this range efficiently. Fifty liters per minute is a reasonable estimate of the highest flow rate a HCW is likely to achieve during breathing even with strenuous work activities.

2. The ability to be qualitatively or quantitatively fit tested in a reliable way (47—ANSI1992)[2] to obtain a face-seal leakage of no more than 10% for most workers.

3. The ability to fit HCWs with different facial sizes and characteristics, which can usually be met by the availability of at least three sizes of respirators.

4. To ensure proper protection, the facepiece fit should be checked by the wearer each time he or she puts on the respirator, in accordance with OSHA's standard and good industrial hygiene practice.

B. Specific Respirators

The OSHA respiratory protection standard requires that all respiratory protective devices be certified by NIOSH (147—20 CFR 1910.134). Respirators with HEPA filters are the only currently available certified respirators that meet or exceed the performance criteria stated above. Although DM and DFM filters are certified, these criteria are not evaluated. Current NIOSH certification procedures require that DM and DFM filters filter 99% of silica dust, but the certification process does not include adequate tests for filter efficacy against low-concentration aerosols in the size range of droplet nuclei. There is evidence that some respirators with DM and DFM filters do meet these criteria. However, at the present time, there is no way to determine which NIOSH-certified DM and DFM filters meet these performance criteria.

In some settings, the risk of TB transmission may be estimated in the risk assessment or the best judgment of infection control staff to be so high that respiratory protection exceeding these criteria may be considered appropriate. In such settings, consideration may be given to the use of higher levels of protection (Table S4–1). Characteristics of a variety of currently available respiratory protection devices are summarized in Table S4–1.

C. The Efficacy of Respiratory Protective Devices

The following information summarizes the available data about the effectiveness of respiratory protection against hazardous airborne materials, and is based on experience with respiratory protection in the industrial setting. Data for protection against transmission of M. tuberculosis are not available. Table S4–1 summarizes the differences among the categories of respirators. Table S4–2 summarizes the advantages and disadvantages for available categories of respirators.

The parameters used to determine the efficacy of a respiratory protective device are face-seal efficacy and filter efficacy.

1. Face-seal leakage. Face-seal leakage compromises the ability of particulate respirators to protect the worker from airborne material (148—ANSI1980, 149—Hyatt1963, 150—ANSI1961). A proper seal between a respirator's sealing surface and a wearer's face is essential for effective and reliable performance of any negative-pressure respirator. It is less critical, but still important, for a positive-pressure respirator. Face-seal leakage can result from factors such as incorrect facepiece size or shape, incorrect or defective facepiece sealing-lip, beard growth on a wearer, perspiration or facial oils that can result in facepiece slippage, failure to use all the headstraps, incorrect positioning of a facepiece on a wearer's face, incorrect headstrap tension or position, improper mask maintenance, and mask damage.

The mechanism of action of negative-pressure (non-powered) particulate respirators is based on the same principle. During each inhalation by a wearer, a negative pressure (relative to the workplace air) is created inside the facepiece of this type of respirator. Due to this negative pressure, air containing contaminants can take a path of least resistance into the respirator—through leaks at the faceseal interface—thus avoiding the higher-resistance filter material. Currently available, cup-shaped, disposable particulate respirators have 0% to 10% (148—ANSI1980) to 20% (151—NIOSH1987, 152—DCCIR1987) face-seal leakage. This leakage through the face seal results from limitations in the design, construction, number of sizes available of these masks, and the variability of the human face. The face-seal leakage is assumed to be even higher if the respirators are not properly fitted to the wearer's face, tested for an adequate fit by a qualified individual, and then checked for fit by the wearer every time these masks are donned. Face-seal leakage may be reduced to less than 10% with improvements in design and more available sizes, combined with appropriate fit testing and fit checking.

In contrast to non-powered filter respirators, powered air-purifying respirators (PAPRs) produce a positive pressure inside the facepiece under most conditions of use. The blower forcibly draws ambient air through HEPA filters, then delivers the filtered air to the facepiece. This air is blown into the facepiece at flow rates that generally exceed the expected inhalation flow rates. The small positive pressure inside the facepiece reduces face-seal leakage to low levels, particularly during the relatively low inhalation rates expected in health-care settings. Powered air-purifying respirators with a tight-fitting facepiece have less than 2% face-seal leakage under routine conditions (151—NIOSH1987). Powered-air respirators with loose-fitting facepieces, hoods, or helmets have less than 4% face-seal leakage under routine conditions (151—NIOSH1987). Thus, a powered air-purifying respirator may offer lower levels of face-seal leakage than non-powered, half-mask respirators (full face-piece, non-powered respirators have the same leakage, i.e., 2%, as PAPRs). However, a surgical mask should also be worn during procedures where a sterile field is maintained.

Another problem that can contribute to face-seal leakage of cup-shaped, disposable masks is that currently most of these masks are available in only one size. The single size in which most cup-shaped, disposable masks are available may produce higher leakage for wearers with small face sizes (153—Lowry1977). The facepieces used for some reusable (including HEPA and replaceable filter, negative-pressure) and all positive-pressure particulate air-purifying respirators are available in up to three different sizes.

2. *Filter leakage.* Aerosol leakage through respirator filter is dependent on at least five types of independent variables (154—Hyatt1974): (1) the

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[1] Some filters became more efficient as they become loaded with dust. Health-care settings do not have enough dust in the air to "load" a filter on a respirator. Therefore, the filter efficiency for respirators used in health-care settings must be determined in the unloaded state.

[2] If quantitative fit testing is conducted, because of the well-documented deterioration of protection provided by respirators in the actual workplace compared to that obtained during a fit test, it is established industrial hygiene practice to require a fit test protection factor that is 10 times the assigned protection factor (APF) rating of the testing respirator. Thus, a quantitative fit test would require a fit factor of 100 to guarantee no more than 10% face-seal leakage for most workers in the workplace.

filtration characteristics for each type of filter, (2) the size distribution of the droplets in the aerosol, (3) the linear velocity through the filtering material, (4) the filter loading (i.e., amount of contaminant deposited on the filter), and (5) any electrostatic charges on the filter and on the droplets in the aerosol.

DM and DFM filters have widely varying efficiencies against particles ≤2 μm (155—Hinds1987, 156—Liu1988, 157—Chen1990, 158—Chen1992) with filter leakage ranging from 0% to 40%. Current NIOSH certification procedures require DM and DFM filters to filter 99% of silica dust,[1] but the certification process does not include adequate tests for filter efficacy against low-concentration aerosols in the size range of droplet nuclei. In contrast, the NIOSH certification performance standard for HEPA filters requires HEPA filters to be at least 99.97% efficient (i.e., leakage must be less than or equal to 0.03%) against the most filter-penetrating aerosol size (approximately 0.3 μm), although these filters are not tested against biological aerosols (159—NIOSH30CFR).

When HEPA filters are used in a particulate air-purifying respirator, filter efficiency is so high (effectively 100%) that filter leakage is not a consideration. Hence, for all HEPA-filter respirators, the potential for inward leakage of droplet nuclei is essentially that which occurs at a mask's face seal. In contrast, many currently available disposable, negative-pressure respirators with DM or DFM filters are likely to have some leakage through the filter that adds to the leakage at the face seal.

3. *Fit testing.* A fit test is used to determine whether a respiratory protective device adequately fits a particular HCW. The HCW may need to be fit tested with several devices in order to determine which device offers the best fit for that HCW. However, fit tests can detect only the face-seal leakage that exists at the time of the fit testing. Also, fit tests do not distinguish face-seal leakage from filter leakage.

Determination of facepiece fit can involve qualitative or quantitative tests (160—NIOSH1991b) (Table S4–3). A qualitative test relies on the wearer's subjective response. A quantitative test uses detectors to measure inward leakage.

Disposable, negative-pressure particulate respirators can be qualitatively fit tested with substances that can be tasted, although the results may not be reliable since they depend on the subjective response of the person being tested. Quantitative fit testing of disposable negative pressure particulate respirators with DM or DFM filters can only be performed if the manufacturer provides a test respirator with a probe for this purpose and cannot be performed using the usual test aerosols of 0.6–0.7 microns, due to filter penetration. The reliability of quantitative fit testing of these devices is not known. Qualitative fit tests can also be performed on disposable negative-pressure particulate respirators with HEPA filters using irritant smoke. Quantitative fit testing can be performed on disposable, negative-pressure particulate respirators with HEPA filter devices using a test respirator with a probe.

Replaceable filter, negative-pressure particulate respirators and all positive pressure particulate respirators can be reliably fit tested both qualitatively and quantitatively when fitted with HEPA filters.

4. *Fit checking.* A fit check is a maneuver that a HCW performs before each use of the respiratory protective device to check the fit. The fit check can be performed according to the manufacturer's facepiece fitting instructions or using a negative pressure test or a positive pressure test (Table S4–3).

Some currently available cup-shaped, disposable negative-pressure particulate respirators with DM, DFM, or HEPA filters cannot be reliably fit checked by wearers (152—DCCIR1987), because it is difficult to occlude the entire surface of the filter. Strategies for overcoming these limitations are under development by respirator manufacturers but have not been evaluated.

5. *Reuse of respirators.* In use against non-biological aerosols, filters must be changed when the filter becomes loaded with airborne material such that breathing resistance becomes uncomfortable or physical damage occurs to a filter. However, in health-care settings, there should be fewer particles in the air. In addition, once particles impact on a filter, they are not readily reaerosolized. Thus, in theory, respirator filters could remain functional for weeks to months, and one HCW could use the same respirator for that period of time. Before each use, the outside of each filter should be inspected for physical damage. Standard operating procedures should be developed by infection control personnel for the reuse of respirators designated as disposable and for disinfection and disposal of replaceable filter elements, according to published guidelines (160—NIOSH1991b).

III. Implementing a Personal Respiratory Protection Program

Whenever personal respiratory protection is used for protection of HCWs, an effective personal respiratory protection program must be developed, implemented, administered, and periodically reevaluated (47—ANSI1992, 151—NIOSH1987, 161—OSHA29CFR).

All HCWs who enter TB isolation rooms or who are present when cough-inducing procedures are performed on patients with known or suspected TB must be included in the respiratory protection program. Visitors, such as family members, should be required to wear respiratory protection and should be given instruction on how to use it while in TB isolation rooms. However, they need not be included in the respiratory protection program.

The number of HCWs included in the program will vary in each facility according to the size of the facility and the number of potentially infectious TB patients in the facility. The program should include enough HCWs to provide adequate care for a patient with known or suspected TB should such a patient be admitted to the facility. Respiratory protection programs in facilities with a low prevalence of TB may include only a limited number of HCWs.

Information on how to develop and manage a respiratory protection program is available in technical training courses covering the basics of personal respiratory protection, which are offered by organizations such as NIOSH, OSHA, and the American Industrial Hygiene Association. In addition, similar short courses are available from private contractors and universities.

In order to be effective and reliable, any respiratory protection program must contain at least the following elements (148—ANSI1980, 151—NIOSH1987, 161—OSHA29CFR):

1. Assignment of Responsibility: Supervisory responsibility for the respiratory protection program should be assigned to designated persons with expertise in issues relevant to the program, including occupational health.

2. Standard Operating Procedures: Written standard operating procedures should contain information on all aspects of the respiratory protection program.

3. Medical Screening: HCWs should not be assigned a task requiring use of respirators unless they are physically able to do the work while wearing the respirator. HCWs should be screened for

[1] In order to be certified, a filter is allowed a maximum penetration of 1.5 milligrams after the silica test. The total amount of dust that contacts the filter during the test is 144 mg. Therefore, a maximum allowable leakage is about 1%.

pertinent medical conditions upon employment and periodically rescreened (151—NIOSH1987). The recommended periodicity varies according to several factors but could be as infrequent as every 5 years. The screening process should begin with a general screening (e.g., a questionnaire) for pertinent medical conditions. The results can then be used to identify HCWs who need further evaluation. The extent of the evaluation should be determined by what is medically indicated. Routine testing with chest roentgenograms or spirometry is not necessary or required.

Qualified personnel should determine what medical conditions are pertinent for each type of respiratory protection device that is used in the facility. There are very few medical conditions that would preclude the use of most negative-pressure particulate respirators. HCWs who have mild pulmonary or cardiac conditions may report some discomfort with breathing when wearing negative-pressure particulate respirators, but these respirators would not be expected to have any adverse health effect on the HCW. HCWs who have cardiac or pulmonary conditions that are more severe may have more difficulty performing their duties wearing negative-pressure respirators. These HCWs may be unable to use some powered air-purifying respirators because of the added weight of these respirators.

4. Training: Respirator wearers and supervisors should receive training in the reasons for the need for wearing their respirator and the potential risks of not doing so. This training should also include at a minimum:

- The nature, extent, and specific hazards of TB transmission in their health-care facility.
- A description of specific risks of infection to each exposed individual, of any subsequent treatment with isoniazid or other chemoprophylactic agents, and of the possibility of active disease.
- A description of why engineering controls may not be adequate to eliminate the need for personal respiratory protection.
- An explanation of why a particular type of respirator has been selected for a specific location.
- An explanation of the operation, capabilities, and limitations of the respirator provided.
- Instruction in how the respirator wearer should inspect, don, fit check, and correctly wear their provided respirator.
- An opportunity for each wearer to handle the respirator, learn how to don and wear it properly (i.e., achieve a proper face-seal fit on the wearer's face) and check important parts.
- An explanation of why a particular type of respirator was chosen, how the respirator is properly maintained and stored, and the capabilities and limitations of the respirator provided.
- Instruction in how to recognize an inadequately functioning respirator.

5. Face-Seal Fit Testing and Fit Checking: HCWs should undergo fit testing to identify a respirator with an adequate fit for that HCW. The HCW should receive fitting instructions including demonstrations and practice in how the respirator should be worn, how to adjust it, and how to determine if it fits properly. The HCW should be instructed to check the facepiece fit before each use.

6. Respirator Inspection, Cleaning, Maintenance, and Storage: Scrupulous respirator maintenance should be made an integral part of the overall respirator program. This applies to both replaceable filter respirators and respirators that are classified as disposable but that are reused. Manufacturers' instructions for inspection, cleaning, and maintenance of respirators should be followed to ensure that the respirator continues to function properly.

7. Periodic Evaluation of the Personal Respiratory Protection Program: The program should be completely evaluated at least annually, and both the written operating procedures and program administration should be modified as necessary based on the results. Elements of the program that should be evaluated include work practices and acceptance of respirators, including comfort and interference with duties.

TABLE S4–1.—SUMMARY OF FEATURES OF RESPIRATORY PROTECTIVE DEVICES

	Surgical masks	Disposable, negative-pressure particulate respirators	Reusable, negative-pressure particulate respirators	Tight-fitting, positive-pressure particulate respirators
Fit test	Fit tests cannot be performed.	DM & DFM: Qualitative HEPA: Qualitative and quantitative	Both qualitative and quantitative fit tests can be performed reliably.	Both qualitative and quantitative fit tests can be performed reliably.
Fit check	Fit checks cannot be performed.	Some currently available cannot be fit checked with current technology.	Fit checks can be performed reliably.	Fit checks can be performed reliably.
Face-seal leakage [1].	10–20%	DM or DFM: 10–20% [2] HEPA: ≤10%	Half-masks: ≤10% Full-mask: <2%	<2%.
Filter leakage	25–85% [3]	DM or DFM: 0–40% [3] HEPA: <0.03% [4]	DM or DFM: 0–40% [3] HEPA: <0.03% [4]	HEPA: <0.03% [4].
Facepiece sizes	One [5]	Up to 3	Up to 3	Up to 3.

[1] For respirable aerosols (i.e., less than 10 microns).
[2] Less than 10% face-seal leakage should be achievable if more sizes become available and if fit testing and fit checking is performed.
[3] At 30 L/min over a particle size range of 1–5 microns.
[4] For aerosols 0.3 microns.
[5] Currently, only one facepiece size is generally available, tending to produce higher face-seal leakages on small facial sizes.

TABLE S4–2.—ADVANTAGES AND DISADVANTAGES OF DIFFERENT TYPES OF RESPIRATORS

Type of respirator	Advantages	Disadvantages, limitations
Negative-pressure, particulate air-purifying respirators Disposable • Dust-mist (DM) • Dust-fume-mist (DFM) • HEPA Replaceable filter Half facepiece with HEPA	General • Lightweight • Small size • Ease of maintenance • Little physiological stress to wearer • Mobility is not restricted • Simple design, easily understood by wearer Disposable respirators • Require no maintenance, cleaning or disinfecting • Low breathing resistance	General • Negative pressure may allow leakage, particularly if not fitted properly. • Negative pressure cannot be achieved if HCW is not clean-shaven. Disposable respirators • Measuring faceseal in the field may be difficult. DM and DFM respirators • May degrade if not stored properly. Replaceable filter masks • Require maintenance, cleaning, disinfection.
Positive-pressure particulate air-purifying respirators Half facepiece with HEPA filter Full facepiece with HEPA filter Loose-fitting with HEPA filter	General • Decreased inhalation resistance may make respirator more comfortable to wear • Mobility is not restricted Loose-fitting devices • No large sealing surfaces on the face allows some people with facial scars or facial hair to achieve an adequate fit.	General • Weight and bulk makes respirator more difficult to wear than non-powered respirators. • Need for continued maintenance. • May compromise communication. • May be intimidating to some patients. • Motor and airflow will create noise, which may hamper wearers ability to hear.

TABLE 3.—PROCEDURES FOR QUALITATIVE FIT TESTING AND FIT CHECKING (160—NIOSH1991b)

Fit Testing

A fit test is used to determine whether a respirator adequately fits a particular HCW. The HCW may need to be fit tested with several respirators in order to determine which respirator offers the best fit.

Qualitative (Irritant or Oderous Chemical Agent)

The wearer is exposed to an irritant smoke, isoamyl acetate vapor, or other suitable test agent easily detectable by irritation, odor, or taste. If the wearer is unable to detect penetration of the test agent, the respirator is probably tight enough. DM and DFM filters do not filter irritant smoke, therefore they may not be tested with this agent. Isoamyl acetate vapor is not suitable for fit testing particulate respirators.

Quantitative (Probe)

A quantitative fit test uses a probe inserted through the device to determine the concentration of a substance inside the respirator compared to the concentration of the substance outside the respirator.

Quantitative respirator fit testing procedures may be found in the NIOSH document, Guide to Industrial Respiratory Protection (151—NIOSH1987).

Advantages and Disadvantages

Usually, qualitative tests are fast, require no complicated, expensive equipment, and are easily performed in the field. However, most qualitative tests rely on the wearer's subjective response, so they may not be entirely reliable. The tests are unable to rank two or more adequately fitting respirators, due to the subjective nature of the test.

One advantage of a quantitative test is that it does not rely on a subjective response and therefore may be more reliable. Quantitative fitting tests require expensive equipment that can be operated only by highly trained personnel. Each test respirator must be equipped with a sampling probe to allow removal of a continuous air sample from the facepiece, so the same facepiece cannot be worn in actual service. New tests are available that allow the HCW to wear the actual respirator. Filter elements contain the probe and are changed.

Fit Checking

HCWs should check the facepiece fit of a respirator before each use. They should be instructed how to adjust the respirator and to determine if it fits properly. This may be done following the manufacturer's facepiece fitting instructions. This may also be done in one of the following ways:

Negative Pressure Test

To perform a negative-pressure fit check, the HCW dons the respirator and adjusts the straps. The HCW then occludes any portion of the respirator through which air may enter (i.e., wherever there is filter). The HCW then inhales deeply. Suction created by the inhalation should compress the respirator against the face, if the mask fits properly; no leakage should be detected.

Positive Pressure Test

To perform a positive-pressure fit check, the HCW dons the device with the straps adjusted correctly and exhales with moderate force while occluding the exhalation valve. Leakage of air at the face seal indicates an inadequate fit.

Supplement 5—Decontamination: Cleaning, Disinfecting, and Sterilizing of Patient-Care Equipment

Equipment used on patients with TB is unlikely to be involved in the transmission of the organism, although transmission by contaminated bronchoscopes has been demonstrated (162—Nelson1983, 163—Leers1980). Guidelines for cleaning, disinfecting, and sterilizing equipment have been published (164—Garner1983, —Rutala1990). The rationale for cleaning, disinfecting, or sterilizing patient-care equipment can be understood more readily if medical devices, equipment, and surgical materials are divided into three general categories (critical items, semicritical items, and noncritical items) based on the potential risk of infection involved in their use (166—Favero1991, 167—Garner1985).

Critical items are instruments such as needles, surgical instruments, cardiac catheters, or implants that are introduced directly into the bloodstream or into other normally sterile areas of the body. These items should be sterile at the time of use.

Semi-critical items are items such as noninvasive flexible and rigid fiberoptic endoscopes or bronchoscopes, endotracheal tubes, or anesthesia breathing circuits, that may come in contact with mucous membranes but do not ordinarily penetrate body surfaces. Although sterilization is preferred for these instruments, high-level disinfection that destroys vegetative microorganisms, most fungal spores, tubercle bacilli, and small, nonlipid viruses may be used. Meticulous physical cleaning before sterilization or high-level disinfection is essential.

Noncritical items are those that either do not ordinarily touch the patient or touch only intact skin. Such items include crutches, bedboards, blood pressure cuffs, and various other medical accessories. These items are not associated with transmission of pathogens, including M. tuberculosis. Consequently, washing with a detergent is usually sufficient.

Generally, critical items should be sterilized, semi-critical items should be sterilized or subjected to high-level disinfection. Noncritical items need only be cleaned with detergents or low-level disinfectants. Meticulous physical cleaning before sterilization or high level disinfection is essential.

Health-care facility policies should identify whether cleaning, disinfecting, or sterilizing an item is indicated to decrease the risk of infection. Decisions about decontamination processes should be based on the intended use of the item and not on the diagnosis of the patient for whom the item was used. Selection of chemical disinfectants depends on the intended use, the level of disinfection required, and the structure and material of the item to be disinfected.

Although microorganisms are normally found on walls, floors, and other surfaces, these environmental surfaces are rarely associated with transmission of infections to patients or HCWs. This is particularly true with organisms such as M. tuberculosis, which generally require inhalation by the host for infection to occur. Therefore, extraordinary attempts to disinfect or sterilize environmental surfaces are not indicated. If a detergent germicide is used for routine cleaning a hospital-grade, Environmental Protection Agency-approved germicide/disinfectant that is not tuberculocidal can be used. The same routine daily cleaning procedures used in other rooms in the facility should be used to clean rooms of patients who are on TB isolation, and personnel cleaning the room should follow TB isolation practices.

Glossary

This glossary contains many of the terms used in the guidelines, as well as others which are frequently encountered by those who work in TB infection control programs. The definitions given are not dictionary definitions but are the ones most applicable to usage relating to TB.

Acid-Fast Bacilli—Bacteria that retain certain dyes even when washed with an acid solution. Most acid-fast organisms are mycobacteria. When seen on a stained smear of sputum or other clinical specimen, a diagnosis of TB should be considered; however, the diagnosis is not confirmed until a culture is grown and identified as M. tuberculosis.

Acquired Drug Resistance—Resistance to one or more antituberculosis drugs which develops while a patient is on therapy, usually the result of nonadherence on the part of the patient or inadequate therapy prescribed by a health care provider.

Adherence—Refers to the completion by patients of all aspects of the treatment regimen as prescribed by the medical provider. Also refers to HCWs and employers following all guidelines pertaining to infection control.

Aerosol, Aerosolization—In TB, it refers to the infectious droplet nuclei that are expelled from a person which can be transmitted to other people.

AIA—The American Institute of Architects, a professional body that develops standards for building ventilation.

Air Changes—Air flow quantity to a space measured in terms of the room volume, i.e., volume of air delivered÷room volume. Usually expressed as number of air changes per hour.

Alveoli—The small air sacs in the lungs which lie at the end of the bronchial tree. The site where carbon dioxide is replaced by oxygen in the lungs, and the site where TB infection usually begins.

Anergy—The inability of a person to react to skin-test antigens because of defects in the immune system, even if the person is infected with the organisms tested.

Anteroom—A small room located between an isolation room and a corridor that acts as an airlock, preventing escape of room contaminants into the corridor.

Ashrae—The American Society of Heating, Refrigerating and Air Conditioning Engineers, a professional body that develops standards for building ventilation.

Asymptomatic—Showing or causing no symptoms.

Bactec®—One of the most widely used radiometric methods to detect early growth of mycobacteria in culture. It provides rapid growth (average of 9 days), specific identification of M. tuberculosis (5 days), and rapid drug susceptibility testing (6 days).

Bactericidal—Capable of killing bacteria. Isoniazid and rifampin are the two most potent bactericidal antituberculosis drugs (see Bacteriostatic).

Bacteriostatic—Capable of preventing bacterial growth but not necessarily capable of killing bacteria. Drugs such as ethambutol and para-aminosalicylic acid are primarily bacteriostatic (see Bactericidal).

BCG (Bacillus of Calmette and Guerin)—A TB vaccine widely used in some parts of the world.

Booster Phenomenon—Seen when an individual with infection does not react to tuberculin because his/her body's cell responses to tuberculin have gradually waned over the years. An initial tuberculin test may stimulate (boost) the immune system so that the next test will be positive. This phenomenon is important in infection control in order to distinguish between recent converters and people who have been infected for a long time, and determine if in fact transmission is taking place. Although the booster phenomenon may occur at any age, it is most frequent among persons over 55.

Bronchoscopy—A procedure for examining the respiratory tract by inserting an instrument (bronchoscope) through the mouth or nose into the trachea. Diagnostic specimens can be obtained during bronchoscopy.

Capreomycin—An injectable second-line antituberculosis drug related to streptomycin. Used primarily for drug-resistant TB.

Cavity—A hole in the lung resulting from destruction of pulmonary tissue. May be caused by TB, but also by other pulmonary infections and conditions. TB patients with cavities in their lungs are said to have "cavitary disease" and are often more infectious than patients without cavities.

Chemotherapy—Treatment of an infection or disease by means of oral or injectable drugs.

Chest Radiograph—In patients showing signs or symptoms of TB, a radiograph of the chest is taken to view the respiratory system. Abnormalities, such as lesions or cavities in the lungs and enlarged lymph nodes, may indicate the presence of TB.

Contact—An individual who has shared the same air as a person with infectious TB for a sufficient amount of time so that there is a probability that transmission of TB has occurred.

Conversion, PPD—See PPD TEST CONVERSION.

Culture—The process of growing bacteria in the laboratory so that organisms can be identified.

Cycloserine (CS)—A second line oral antituberculosis drug, used primarily for treating drug-resistant TB and disease caused by nontuberculous mycobacteria.

Dilution Ventilation—An engineering control technique to dilute and remove air-borne contaminants by the flow of air into and out of the area. Air that contains droplet nuclei is removed and replaced by air that is free of contaminants. If the flow is sufficient, droplet nuclei become dispersed, and their concentration in the air is diminished.

Directly Observed Therapy—An adherence-enhancing strategy in which each dose of medication is ingested by the patient under the supervision of a health care worker.

DNA Probe—A technique that allows precise identification of mycobacterium such as M. tuberculosis and M. bovis that are grown in culture. The identification can be completed in as little as two hours.

Droplet Nuclei—Microscopic particles (1 to 5 microns in diameter) produced when a person coughs, sneezes, shouts, or sings. The droplets can carry tubercle bacilli and remain in the air by normal air currents in the room.

Drug Susceptibility Pattern—The antituberculosis drugs to which a tubercle bacillus is susceptible and those to which it is resistant based on susceptibility tests.

Drug Susceptibility Tests—Laboratory tests which determine if the tubercle bacilli cultured from a patient is susceptible or resistant to various antituberculosis drugs.

Ethambutol—An oral antituberculosis drug sometimes used with isoniazid and/or rifampin.

Ethionamide—A second line oral antituberculosis drug.

Exposure—The condition of being subjected to something, such as infectious agents, which may have a harmful effect. A person exposed to TB does not necessarily become infected (see Transmission).

Fluorochrome Stain—A technique for staining a clinical specimen with dyes which fluoresce, in order to perform a microscopic examination (smear) for mycobacteria. This technique is preferable to other staining techniques because the mycobacteria can be easily seen.

Fomites—Linens, books, dishes, or other objects used or touched by a patient. They are *not* involved in the transmission of TB.

Gastric Aspirates—Procedure sometimes used to obtain mycobacteria for culture when a patient cannot produce adequate sputum. A tube inserted into the stomach is used to recover any bacilli which may have been coughed up and then swallowed. This procedure is particularly useful for diagnosis in children.

HEPA (High-Efficiency Particulate Air) Filter—Specialized filter that is capable of removing 99.97% of particles 0.3 microns in diameter. It may be of assistance in control of TB transmission. Requires expertise in installation and maintenance.

Human Immunodeficiency Virus or HIV Infection—Infection with the virus that causes the acquired immunodeficiency syndrome (AIDS). It is the most potent risk factor for progression from TB infection to active TB.

Immunosuppressed—Persons with severe cellular immunosuppression (e.g., HIV-infected or organ transplant patients on immunosuppressive therapy). These patients are at greatly increased risk for developing TB once infected. There are no data available on whether they are also at risk of becoming infected with M. tuberculosis, if exposed.

Induced Sputum—Sputum obtained from a patient unable to cough up a spontaneous specimen. The patient inhales a mist of saline (salt water), which stimulates a cough from deep within the lungs.

Induration—The area of swelling that surrounds the site of injection of tuberculin. The diameter of the indurated area is measured (in millimeters) 48–72 hours after the injection and is recorded as the result of the PPD test.

Infection—The condition in which organisms capable of causing disease (e.g., M. tuberculosis) multiply within the body and cause a response from the host's immune defenses. Infection may or may not lead to clinical disease.

Infectious—Capable of causing infection. In TB, a person is infectious only if he/she has clinically active TB. TB patients whose sputum is AFB smear positive are often infectious.

Intermittent Therapy—Therapy given on a twice-weekly or three-times weekly basis under direct supervision of a health worker.

Intradermal—Within the layers of the skin.

Isoniazid (INH)—An oral drug either used alone to treat TB infection or in combination with one or more other drugs to treat TB disease.

Kanamycin—Injectable secondary antituberculosis drug related to Streptomycin. It is used primarily for treatment of streptomycin-resistant TB.

Local Exhaust Ventilation—Used as a source control technique to capture and remove air-borne contaminants by enclosing the contaminant source or by means of a hood placed very near the contaminant source.

Mantoux Test—A tuberculin test given by injecting a measured amount of liquid tuberculin into the dermis (second layer of the skin) with a needle and syringe. It is the most reliable and best standardized technique for tuberculin testing (see Tuberculin Skin Test and Purified Protein Derivative Test).

Mixing—The degree to which air supplied to a room mixes with the air already in the room. Generally expressed in terms of a Mixing Value. A low value (i.e., 1) indicates good mixing; a higher value (i.e., 10) indicates poor mixing.

Mycobacterium Tuberculosis Complex—The complex of mycobacterial species that causes TB; it includes M. tuberculosis, M. bovis, and M. africanum.

Negative Pressure—A term used to describe the relative air pressure difference between two areas of the health-care facility. Air will flow from the higher pressure area into the lower pressure area.

Para-Aminosalicylic Acid (PAS)—An oral antituberculosis drug used for drug-resistant TB.

Pathogenesis—The natural development of a disease in the body without intervention (i.e., without treatment).

Portable Filtration Units—Portable devices that provide contaminant dilution by recirculating air within a room through a HEPA filter.

Positive PPD Reaction—A reaction to the purified protein derivative (PPD) test that suggests the individual tested is infected with tubercle bacilli. Determination of the reaction is largely dependent on interpretation by the person evaluating the test, given the patient's or HCW's medical history and risk factors.

Preventive Therapy—Chemotherapy of TB infection, primarily used to prevent progression of infection to clinically active disease.

Primary Drug Resistance (PDR)—Resistance of bacteria to drugs which exists before the beginning of treatment (see Acquired Drug Resistance).

Primary Drugs—Term sometimes used to refer to the most commonly used antituberculosis drugs: isoniazid, rifampin, pyrazinamide, ethambutol, and streptomycin.

Purified Protein Derivative (PPD)—A type of purified tuberculin preparation derived from old tuberculin (OT) and developed in the 1930's. The standard Mantoux test uses 5 TU (tuberculin units) of PPD.

Purified Protein Derivative (PPD) Test—A method to determine whether a person is infected with Mycobacterium tuberculosis. A small dose of the antigen from M. tuberculosis is injected just beneath the surface of the skin and the area is examined 48–72 hours after the injection. A positive reaction is measured according to the size of the induration. The classifications for positive reactions depend on the patient's medical history and various risk factors (see Mantoux Test).

Purified Protein Derivative (PPD) Test Conversion—Growth in induration within a two-year period after an initial negative reaction with a difference of 10 or more millimeters of induration. Such "conversion" may represent new infection which is associated with a high risk of developing disease, or may occur as a result of the Booster Phenomenon.

Pyrazinamide (PZA)—An oral antituberculosis drug. It is important as a primary drug in short-course treatment regimens.

Radiometric Methods—A rapid method for culturing TB allowing identification of M. tuberculosis in 5–10 days.

Recirculation—Ventilation where all or most of the air exhausted from an area is returned to the area.

Regimen—Any particular treatment plan for TB specifying which drugs are used, in what doses, according to what schedule, and for how long.

Registry—A record-keeping method to collect clinical, laboratory, and radiographic data on TB or any other pathological field so the data can be organized and properly processed to be made available for epidemiologic study.

Resistance—The ability of some strains of bacteria (including M. tuberculosis) to grow and multiply even in the presence of certain drugs which normally kill them. (Such strains are referred to as "drug resistant strains.")

Rifampin—An oral antituberculosis drug which when used along with isoniazid provides the basis for short-course therapy.

Secondary Drugs—Antituberculosis drugs used in difficult cases (such as for retreatment or when there is resistance to primary drugs). Examples are cycloserine, ethionamide, capreomycin.

Single Pass Ventilation—Ventilation in which 100% of the air supplied to an area is exhausted to the outside.

Smear (AFB Smear)—A laboratory technique for visualizing mycobacteria. The specimen is smeared onto a slide and stained, and then placed under the microscope for examination. Smear results should be available within 24 hours. A large amount of mycobacteria usually indicates infectiousness; however, a "positive" result is not definitive for TB.

Source Case—An infectious individual who has transmitted tubercle bacilli to another person or persons.

Source Control—Control of a contaminant at the source of generation rather than permitting it to enter the general work space.

Specimen—Any body fluid, secretion, or tissue sent to the laboratory where smears and cultures for tubercle bacilli will be performed. The specimen may consist of sputum, urine, spinal fluid, material obtained at biopsy, etc.

Sputum—Material coughed up from deep within the lungs. If a patient has a pulmonary infection, an examination of the sputum by smear and culture can indicate what organism is responsible for the infection. It should not be confused with saliva or with nasal secretions.

Sputum Smear Positive—AFB are visible after staining when viewed under a microscope. Individuals with sputum smear positive for AFB are considered more infectious than those with smear-negative sputum.

Streptomycin (SM)—The most commonly used injectable antituberculosis drug.

Symptomatic—Having symptoms which may be clues to the presence of TB or another disease (see Asymptomatic).

Transmission—The spread of an infectious agent like Mycobacterium tuberculosis from one individual to another. The duration and intensity of exposure to TB is directly related to the likelihood that transmission will occur and a person will become infected (see Exposure).

Treatment Failures—Refers to individuals who fail to improve even after a course of chemotherapy is begun, and to individuals whose disease worsens after having initially improved.

Tubercle Bacilli—The term often used to refer to the organism Mycobacterium tuberculosis.

Tuberculin Skin Test—A method to determine whether a person is infected with Mycobacterium tuberculosis. A small dose of the antigen from M. tuberculosis is injected just beneath the surface of the skin and the area is examined 48–72 hours after the injection. A positive reaction is measured according to the size of the swelling. The classifications for positive reactions depend on the patient's medical history and various risk factors (see Mantoux Test, PPD Test).

Tuberculosis (TB)—A clinically apparent active disease process caused by Mycobacterium tuberculosis complex (usually M. tuberculosis or, rarely, M. bovis or M. africanum).

Tuberculosis Case—A particular instance of clinically active TB. It is sometimes used incorrectly to designate the individual with the disease.

Tuberculosis Infection—A condition in which living tubercle bacilli are present in the body, without producing clinically active disease. Although the infected individual has a positive tuberculin reaction, he/she has no symptoms related to the infection and is not infectious. However, the infected individual remains at lifelong risk of developing disease unless preventive therapy is given.

Tuberculosis (TB) Isolation Precautions—Infection control procedures that should be applied when persons with known or suspected infectious TB are hospitalized or residing in other inpatient facilities. These precautions include the use of a private room with negative pressure in relation to surrounding air and removal of air from the room directly to the outside. Not the same as "respiratory isolation" which calls for a private room, but does not require negative pressure and exhaust of room air to the outside.

Two-Step Testing—A procedure used among people who receive tuberculin skin tests periodically (such as health care workers) to reduce the likelihood of mistaking a boosted reaction for a recent infection. If the initial tuberculin test is classified as negative, a second test is repeated one week later. If the reaction to the second test is positive, it probably represents a boosted reaction. If the second test result remains negative, the person is classified as being uninfected.

Ultraviolet (UV) Lamps—Lamps that destroy germs by emitting radiation predominantly at a wavelength of 254 nanometers (intermediate between visible light and X-rays). They can be used in ceiling or wall fixtures or within air ducts of ventilation systems. The effectiveness in killing tubercle bacilli for infection control in health-care facilities is not yet proven.

Ultraviolet Germicidal Irradiation (UVGI)—A form of radiation intermediate between visible light and X-rays. UVGI is effective in killing many bacteria, including tubercle bacilli.

Virulence—Refers to the ability of a microorganism, such as M. tuberculosis, to produce serious disease. M. tuberculosis is a virulent organism. Some nontuberculous mycobacteria are virulent (e.g., M. kansasii), while others (e.g., M. gordonae) are not. (Pathogenicity is a related, though not identical, concept.)

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Part III

Department of Agriculture

Food Safety and Inspection Service

9 CFR Parts 317 and 381

Mandatory Safe Handling Statements on Labeling of Raw Meat and Poultry Products; Final Rule

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR 317 and 381

[Docket No. 93–012F]

RIN 0583–AB67

Mandatory Safe Handling Statements on Labeling of Raw Meat and Poultry Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the Federal meat and poultry products inspection regulations to make safe handling instructions mandatory on all raw meat and poultry product labeling. The handling instructions include a rationale statement and address safe storage of raw product, prevention of cross-contamination, cooking of raw product, and handling of leftovers. The rule provides additional safeguards to protect consumers from exposure to possible bacterial contaminants found in raw meat and poultry products. This action is being taken in an effort to reduce the risk of foodborne illness.

DATES: Effective Date: October 15, 1993. However, pork products other than those described in 318.10(a)(1) will not be required to comply until January 15, 1994.

FOR FURTHER INFORMATION CONTRACT: Patrick J. Clerkin, Director, Field Operations Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 254–2537.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

When the Agency published the interim rule, the Agency had determined that the rule was not a major rule under Executive Order 12291. Since that time, President Clinton has signed Executive Order 12860 which revokes Executive Order 12291 and requires, among other things, that agencies determine whether a regulatory action is significant. A significant regulatory action is one that is likely to (1) have an annual effect on the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations or recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the executive order.

A preliminary analysis was published for comment in the preamble of the interim rule (58 FR 43478, August 16, 1993). Most comments addressed the cost of the rule.

The analysis assumes all commuted product must be labeled by October 15, 1993. This final rule incorporates two major changes from the interim rule that should greatly reduce the costs of complying with safe handling requirements. The first modification allows for point-of-purchase "leaflets" for most products during the first 6 months after the effective date of October 15, 1993. Until April 15, 1994, only raw or partially-cooked commuted products such as ground beef, ground poultry or patties will be required to have the safe handling instructions affixed to each individual consumer package. A second major change provides for a single set of instructions for both meat and poultry at both retail and institution markets. The interim rule specified four different sets of instructions.

An analysis of comments on the projected costs and benefits taking into consideration the above modifications and the new Executive Order follows.

Risk/Benefits Analysis

In criticizing the benefit analysis, several commenters pointed to the statement that "The Department is not aware of any quantitative estimate of effectiveness." Taking this statement out of context misses the point. The net benefit analysis was constructed to show that while the exact level of effectiveness is unknown, safe handling labels do not need to prevent a high level of foodborne illness to result in net societal benefits.

It is the nature of health and safety regulations that benefits accrue to society in general while costs are borne by specific businesses or other entities. This situation normally leads to cases where costs can be quantified easier than benefits.

Retail Costs

There are three central cost issues that will determine the impact on retail stores. These are the compatibility of existing scale/wrapping systems, the increased cost for labels, and the labor costs for applying labels. These three costs are discussed separately but interrelated because the cost of labels and labor depend on whether or not the existing equipment is compatible. Based on the revisions to the rule and comments on the preliminary analysis, the Department estimates that retail stores prepare approximately 10 billion packages annually, and that an estimated 1 billion or 10 percent are for comminuted product.

Use of Existing Scale/Meat Wrapping Systems

The Preliminary analysis assumed that retail stores would have the option of applying a second auxiliary label or of increasing their label size to combine weight and price information with safe handling instructions. While some retail companies indicated their equipment could handle a larger label, others stated that they would not be able to increase the amount of printing on the labels or the size of the label generated without retooling or replacing scale/meat wrapping systems. Other firms indicated they used equipment that could print the safe handling instructions, but could not print the symbols. A large retail firm suggested they would upgrade their equipment rather than apply separate labels. Given the 6-month delay for labeling non-comminuted product, the Department anticipates that this will be the response of most large retail chains that cannot use existing equipment to apply a single label. The Department expects the majority of retail stores to initially use point-of-purchase information for non-comminuted product and use separate pressure-sensitive labels for comminuted product and then phase in new equipment that can apply safe handling instructions along with net weight and price information.

Labor Costs

A large number of comments noted that the Department's preliminary analysis did not include labor costs associated with applying pressure-sensitive labels to retail packages. These comments are correct. If firms can use existing equipment, there are no additional labor costs. The comments suggested that for firms that must use auxiliary labels, there are ways to minimize costs. While come comments suggested that applying the label would take from 2 to 4 seconds per label, a rate of from 15 to 30 per minute, a retail chain with almost 100 supermarkets commented that labels could be applied at a rate of 100 per minute using retail hand label guns. Most estimates of labor costs per package ranged from $.0075 to $.0175 per label. However, none of these estimates were based on the use of label application guns.

The Department believes that most retail stores will expend upfront capital costs rather than experience recurring labor costs. The 6-month delay for most products will allow for modifying equipment or phasing in new equipment, if needed. Small retail stores are more likely to experience some labor costs but the option of hand-held labeling guns should minimize such costs. The Department anticipates that stores will utilize point-of-purchase materials that will minimize any labor costs.

Cost Per Label

The preliminary analysis assumed that all raw product already includes some form of commercially prepared label and that the incremental cost of including the safe handling instructions will increase the total per label cost by $.0025 to $.005. One large retail chain commented that printing the safe handling instructions as part of their price labels would double their label costs from $.0025 to $.005, the same estimate used in the preliminary analysis. For firms that indicated they would require separate labels, the most frequent response was that the labels would cost $.01 each. The preliminary analysis estimated that the cost of an additional label would range from $.01 to $.025. In general, the comments supported this estimate with more comments suggesting the lower end of the range. There were comments, including one from an official at the Small Business Administration, suggesting that some retail firms were paying far more for pressure-sensitive labels. Discussions with label manufacturers indicate that the lower prices are available for even small quantities.

The cost per label will be a recurring cost. Comments suggest that the large retail chains will utilize equipment, especially by April 15, 1994, that will keep the recurring cost in the range of $.0025 to $.005 per label. Larger retail chains most likely account for more than 80 percent of the packages. If 80 percent of the packages (8 billion) have recurring costs of $.00375 (midpoint of $.0025 and $.005) and 20 percent (2 billion) have recurring costs of $.01 per package, then 10 billion retail packages have recurring costs of $50 million per year.

The labor costs for applying 2 billion labels using label guns would be $3.2 million (160 staff years at an average salary of $20,000 per year). Thus, total recurring retail costs are estimated at $53.2 million.

Number of Packages

The preliminary analysis was based on an estimate that consumers purchase approximately 15 billion retail packages of fresh meat and poultry products annually. Comments raised the question of whether the 15 billion is an estimate of total packages or packages that are packed, wrapped, and labeled at retail stores. The 15 billion figure is an estimate of total retail packages of raw product purchased at retail. The Department is aware the most poultry is packed and labeled at processing plants. Comments provided an estimate that there are approximately 4.5 billion packages of raw poultry sold annually at retail. Given that some raw meat is also packed at processing plants, it is reasonable to assume that the 15 billion estimate can be separated into 10 billion packages labeled at retail and 5 billion packages labeled at processing plants.

As discussed earlier, the Department estimates that 10 percent, or 1 billion, of the packages labeled at retail stores are comminuted product. Using the same 10 percent estimate, an estimated 500 million packages labeled at processing plants are comminuted products. Comminuted products labeled at processing plants include boxes of frozen beef patties, fresh and frozen chubs of ground beef or ground poultry, and more recently, tray-packed, fresh-ground poultry.

Retail Costs Versus Manufacturer Costs

Several manufacturers commented that the Department based its cost estimate almost totally on the cost associated with compliance at the retail level, and that little consideration was given to economic impact on the manufacturer. The Department recognizes that the analysis appeared to focus on retail costs. Actually, the intent was to focus on recurring costs, recognizing that processors would most likely make permanent modifications to labels. Processors would, therefore, face larger upfront, one-time costs, but would not experience recurring costs. Both modifications, a single set of instructions and the 6-month delay for non-comminuted product should significantly reduce costs to processors.

The Department estimates that there are somewhere between 50,000 and 100,000 labels approved for use by processors that are affected. The difficulty in estimating the number of labels and products arises because of the rapid growth of frozen snacks and entrees that have detailed heating and preparation instructions but frequently no clear differentiation between what is fully cooked and what is partially cooked. This rule will help consumers separate fully cooked from partially-cooked product, a distinction the Department believes should have been clarified long ago.

The cost of revising a label varies widely depending on the type of label, the number of colors affected and the printing process used. Adding safe handling instructions is the lowest cost type of modification because it involves single color printing. The Department also is aware that many of the labels affected, such as frozen entrees, are modified frequently in the normal course of doing business. Thus, in many cases, the 6-month delay will allow for the addition of safe-handling instructions as part of an already planned revision. Given the above considerations, the Department considers an average cost of $1,000 per label to be a reasonable estimate for the average label modification cost. Thus, processors would experience one-time, upfront costs from $50 to $100 million.

The Department expects processors to use pressure-sensitive labels only for a brief period until permanent changes are made. Many processor comments pointed out that pressure-sensitive labels do not work equally well on all products. Providing an additional 6 months for permanent changes should eliminate the problem.

Summary of Analysis of Comments on Cost

After reviewing the comments on the preliminary analysis, the Department has concluded that most costs will be one-time, upfront costs while benefits will recur annually. Processing plants will make permanent modifications to existing labels rather than continue to apply pressure-sensitive labels. Processing plants will most likely have to apply some pressure-sensitive labels to comminuted products until permanent changes can be made. Large retail chains can be expected to modify equipment to handle a larger single label when their existing equipment is not compatible. Small retail firms should be able to procure labels for $.01 each and apply them efficiently using retail label guns.

Since the public health benefits are recurring, it is necessary to compare annual benefits with annual recurring costs plus annualized nonrecurring costs. To make such comparisons, the Department used a 20-year time period, the time period used to compare costs and benefits of nutrition labeling. The Department has estimated recurring costs to retailers of $53.2 million per year ($50 million for labels and $3.2 million for labor). The annualized costs

of processor label modifications would range from $6 to $12 million per year using a 10 percent cost of capital. Two retail comments provided per store estimates to upgrade existing store equipment or replace equipment. These estimates were approximately $6,000 and $9,000 per scale. Thus, it would take an estimated $144 to $216 million to provide compatible scales in each of the 24,000 supermarkets with annual sales over $2.5 million. The annualized costs of retail equipment would range from $17.3 to $26.9 million. In summary, the estimated annual costs would be:

Type of cost	Millions
Recurring Labels	$50.0
Recurring Labor	3.2
Processor Label Modification	6.0–12.0
Retail Equipment	17.3–26.9
Total	76.5–92.1

As presented in the preliminary analysis, estimated annual benefits will range from $77.6 to $86.6 million if the safe handling instructions prevent only 2 percent of associated foodborne illness. At 3 percent effectiveness, the annual benefits range from $116.4–$129.9 million.

Executive Order 12778

This interim rule has been reviewed under Executive Order 12778, Civil Justice Reform. States and local jurisdictions are preempted under the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) from imposing any marking, labeling, packing, or ingredient requirement on federally inspected meat and poultry products that are in addition to, or different than, those imposed under the FMIA or PPIA. States and local jurisdictions may, however, exercise concurrent jurisdiction over meat and poultry products that are outside official establishments for the purpose of preventing the distribution of meat and poultry products that are misbranded or adulterated under the FMIA or PPIA, or, in the case of imported articles, which are not at such an establishment, after their entry into the United States. Under the FMIA and PPIA, States that maintain meat and poultry inspection programs must impose requirements that are at least equal to those required under the FMIA and PPIA. The States may, however, impose more stringent requirements on such State inspected products and establishments.

No retroactive effect will be given to this rule. The administrative procedures specified in 9 CFR 306.5 and 381.35 must be exhausted prior to any judicial challenge of the application of the provisions of this rule, if the challenge involves any decision of an inspector relating to inspection services provided under the FMIA or PPIA. The administrative procedures specified in 9 CFR 335 and 381, Subpart W, must be exhausted prior to any judicial challenge of the application of the provisions of this rule with respect to labeling decisions.

Effect on Small Entities

The Administrator has determined that this rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). The rule affects a substantial number of small entities, but the economic impact on such small entities will not be significant.

The rule affects both retail stores and inspected establishments. In 1991, USDA estimated there were 253,000 foodstores in the United States. These stores are categorized as follows:

Supermarkets (Sales >$2.5 million each)	23,813
Superettes (Sales <$2.5 million each)	94,647
Convenience Stores	51,700
Specialty Stores	82,895
Total	253,055

Most of the small businesses affected will be superettes and specialty stores, such as meat markets, butcher shops, and locker plants. The specialty store category includes a large number of small businesses that do not sell meat and poultry products, e.g., confectionery stores. Most convenience stores do not sell raw meat and poultry products.

The Department has reviewed all comments pertaining to small business and particularly those received from the Office of Chief Counsel for Advocacy, U.S. Small Business Administration. The Department recognizes that small retail firms will experience the greatest relative ongoing costs because they may not be able to afford new or modified equipment that can minimize costs. With regard to comments that pressure-sensitive labels can cost $.05 or more, the other comments are conclusive that such labels are available at far lower costs. Other comments suggest that labor costs can be minimized by using label application guns.

The public health risks do not allow for alternative small business considerations. At least one of the recent incidents described in the interim rule involved ground beef sold through a small market in a small community.

Background

Introduction

The Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*) direct the Secretary of Agriculture to maintain meat and poultry inspection programs designed to assure consumers that meat and poultry products distributed to them (including imports) are wholesome, not adulterated, and properly marked, labeled, and packaged.

Section 2 of the FMIA (21 U.S.C. 602) and section 2 of the PPIA (21 U.S.C. 451) state that unwholesome, adulterated, or misbranded meat or meat food products and poultry products are injurious to the public welfare, destroy markets for wholesome, not adulterated, and properly marked, labeled, and packaged products, and result in sundry losses to producers and processors of meat and poultry products, as well as injury to consumers. Therefore, Congress has granted the Secretary authority to regulate meat, meat food products, and poultry products to protect consumers' health and welfare. Subsection 1(n)(12) of the FMIA (21 U.S.C. 601(n)(12)) and Subsection 3(h)(12) of the PPIA (12 U.S.C. 453(h)(12)) state that the term "misbranded" applies to any product if it fails to bear, directly thereon or on its container, as the Secretary may by regulations prescribe, the inspection legend, and unrestricted by any of the foregoing, such information as the Secretary may require in such regulations to assure that it will not have false or misleading labeling and that the public will be informed of the manner of handling required to maintain the article in a wholesome condition. Section 7(d) of the FMIA (21 U.S.C. 6076(d)) states: "No article subject to this title shall be sold or offered for sale by any person, firm, or corporation, in commerce, under any name or other marking or labeling which is false or misleading, or in any container of a misleading form or size, but established trade names and other marking and labeling and containers which are not false or misleading and which are approved by the Secretary are permitted." The PPIA contains similar language in section 8(c) (21 U.S.C. 457(c)).

FSIS carries out its responsibility under these laws by inspecting meat and poultry products and facilities at federally inspected establishments. As part of the inspection, FSIS routinely monitors for the presence of microbial contamination in commercially cooked or processed ready-to-eat meat and

poultry products to assure that they are safe. The samples are tested in FSIS laboratories. After product leaves the federally inspected establishment, FSIS compliance officers monitor the product as it is handled, sold, and transported in commerce. State and local food regulatory agencies also regulate and inspect grocery stores restaurants, and other establishments that sell food. The report incidence of unsafe products reaching consumers is low.

In 1972, the American Public Health Association, individual consumers, and six other public health and consumer interest groups brought suit in the U.S. District Court for the District of Columbia Against the U.S. Department of Agriculture alleging that labels placed on meat and poultry products were false and misleading because they failed to warn consumers against the dangers of food poisoning caused by Salmonella and other bacteria in such products. The Court of Appeals affirmed the District Court's order dismissing the action, and ruled that the Secretary of Agriculture did not abuse his discretion by choosing to undertake a consumer education program instead of requiring labeling instructions for meat and poultry products. Since that ruling, USDA has conducted a massive and increasingly targeted food safety campaign to inform consumers about safe handling and cooking of meat and poultry products. FSIS has offered a toll-free nationwide hotline, staffed by food safety specialists, and conducted campaigns, directed at such specialized audiences as food handlers, institutions, health professionals, and at-risk populations, as well as food handlers in the home. Additionally, FSIS has permitted the voluntary labeling of poultry products with safe handling instructions since 1987. FSIS does not monitor participation in voluntary labeling; however, on trade association has said that 75 percent of its members offer handling instructions on their labels.

New Policy Direction

In recent years, FSIS has been aware that a growing percentage of the U.S. population consists of persons lacking experience in food preparation and knowledge of safe food handling and storage methods. Studies of foodborne illness outbreaks have repeatedly shown improper food handling to be the frequent cause of foodborne illnesses. Improper cooling of cooked foods has been ranked as the leading factor. Other factors cited included inadequate cooking, cross-contamination, and inadequate reheating.

Studies of consumer knowledge and practices indicate that a significant number lack basic food safety information and skills, particularly with respect to the relationship between temperature and foodborne illness. A nationwide study done in 1972 (Jones and Weimer) classified 63 percent of a national sample as "high risk" based on the use of one or more food handling practices identified by the researchers as unsafe.[1] A study by Woodburn and VanDeRiet, published in 1985, concluded that cross-contamination between raw and cooked foods, inadequate cooking, and unsafe holding temperatures were frequent food handling practices in the home.[2] A 1990 study of the knowledge of food safety and home food preparation practices in 2,000 randomly selected households (Williamson, Gravani and Lawless) showed that: (1) 18 percent were not concerned or not sure about leaving cooked meat out at room temperature for over 4 hours; (2) 68 percent would leave a large quantity of cooked stew in the pot it was cooked in or would store it in a deep container; (3) 29 percent would leave cooked chicken on the counter to cool before refrigerating it; and (4) 23 percent would thaw hamburger on the countertop at room temperature.[3]

Information from the Center for Disease Control (CDC) revealed that: (1) Undercooking was a factor in 108 of 345 (31.3) percent home outbreaks of foodborne illness that occurred between 1973 and 1982 (data include all foods); and (2) cooking foods ahead, i.e., 12 hours or more before serving, was a factor in 12.8 percent of the home outbreaks.

While the Agency has long been committed to a program of consumer education to help prevent foodborne illness, as exemplified by its distribution of publications for consumers and its Meat and Poultry Hotline, it has become convinced of the need for more direct methods of placing food safety information in the hands of consumers. Thus, Agency officials in early January began to advocate in their speeches and writings that the mandatory safe handling instructions on the labeling of meat and poultry products was a necessary component of a program to combat foodborne illness.

The Agency's new policy direction gained additional impetus following the mid-January 1993 outbreaks of a severe food poisoning that led to four deaths among approximately 500 confirmed cases in Washington, Idaho, California, and Nevada. The outbreaks were linked to the pathogenic bacterial strain *E. coli* 0157:H7. Because most of the cases were traceable to undercooked hamburgers served at a fast-food restaurant chain, Federal and local authorities have intensified their regulatory activities. In recent months, the Department became aware of nine separate incidents where *E. coli* 0157:H7 has been the cause of illness or death or at least suspected of being the cause. The incidents led the Department to conclude that it was time to require safe handling information on raw meat and poultry products and require it immediately via the interim final rulemaking process. On August 16, 1993, FSIS published in the **Federal Register** an interim rule (58 FR 43478) that amended the Federal meat and poultry products inspection regulations to make safe handling instructions mandatory on all raw meat and poultry product labeling.

Interim rule

The interim rule mandated the inclusion of safe handling instructions on the labels of certain meat and poultry products along with a rationale statement to indicate the reason why it is important to follow such handling instructions. Generally, the rule required safe handling instructions for those products that are uncooked or have not been otherwise further processed to make them ready-to-eat. The Department has established required cooking temperatures for certain beef, poultry, and patty products. These requirements are set forth at 9 CFR 318.17, 381.150, and 318.23, respectively. The Department has also described at 9 CFR 318.10(a) a category of pork products that are customarily well cooked before service to consumers. The Department has also established proceeding requirements for the curing or other treatment of certain meat products to control microbial activity. Some of these products are identified in part 319 of the meat inspection regulations. The uncooked products and products that have not been otherwise further processed so as to render them ready-to-eat are considered to be at risk of microbial contamination and warrant the application of safe handling labels. The interim rule generally provides that products not receiving a heat treatment that would be lethal to pathogens must bear the label. Pork products are an exception. While a class of clearly raw products is identified, some other products that are not included have not received a lethal heat treatment. Such products are among products listed at 9

[1] A copy of this study is available for public review in the FSIS Hearing Clerk's office.

[2] A copy of this study is available for public review in the FSIS Hearing Clerk's office.

[3] A copy of this study is available for public review in the FSIS Hearing Clerk's office.

CFR 318.10(b) and among products described at 9 CFR 319, Definitions and Standards of Identity and Composition. Many of those products are well cooked and can be considered ready-to-eat. Others receive no lethal heat treatment and may not be pathogen free. While some of these products are required to bear safe handling instructions under this final rule, FSIS will evaluate its policies and regulations governing all these products.

The interim rule provided for the use of two different rationale statements depending on where the product is labeled. One rationale statement was designed for use on products fully labeled at the federally inspected establishments and a second rationale statement was designed for use on products labeled at retail. The latter reflects the fact that the product has been further processed without continuous inspection.

The interim rule required the following four safe handling statements for use on the label of products distributed to consumers: (1) Keep refrigerated or frozen. Thaw in refrigerator or microwave; (2) Keep raw [meats or poultry] separate from other foods. Wash working surfaces (including cutting boards), utensils, and hands after touching raw [meat or poultry]; (3) Cook thoroughly; and (4) Refrigerate leftovers within 2 hours. In addition, the graphic illustrations depicting the essence of each message shall be displayed next to the statement.

In addition, the interim rule required the following four safe handling statements for use on the label of products distributed to institutions: (1) Keep refrigerated or frozen. Thaw in refrigerator or microwave; (2) Keep raw [meats or poultry] separate from other foods. Wash working surfaces (including cutting boards), utensils, and hands after touching raw [meat or poultry]; (3) Cook thoroughly; and (4) Keep foods hot at 140 °F or higher. Immediately after service, refrigerate leftovers. In addition, the graphic illustrations depicting the essence of each message shall be displayed next to the statement.

The interim rule required that each of the four safe handling instructions appear on the product label. The rule allowed safe handling instructions to be added to labels by the manufacturer and to be approved under the provisions of generic label approval since the regulations prescribe the exact language of the safe handling instructions.

The interim rule also required that safe handling instructions accompany each product and appear either on the principal display panel or the information panel of the product label. The safe handling information could be supplemented by point-of-purchase materials, videos, live demonstrations or other media. Examples of point-of-purchase materials to display safe handling information may include large placards (e.g., wall posters, signs, aisle hangers), pamphlets, brochures, videos, and notebooks.

The interim rule exempted products intended for further processing by an inspected establishment from mandatory safe handling labeling requirements. Since products for further processing by another federally inspected or State inspected establishment will not be available to consumers or food service institutions, FSIS believed it was unnecessary to require safe handling instructions on such packaging.

A discussion providing a summary of the comments received on the interim rule and relevant changes made in the final rule follows: The comments and changes do not affect the Department's determination that immediate action is necessary to protect public health. Since the changes made in the final rule do not establish new requirements for immediate implementation, but provide affected businesses with additional flexibility not available under the interim rule they relieve restrictions. Further, good cause exists to make this rule effective less than 30 days after publication in order to increase information to consumers and others which will help reduce the risk of foodborne illness caused by unsafe handling and cooking practices.

Discussion of Comments

The FSIS Hearing Clerk received 357 comments on the interim rule. Commenters included consumers, representatives of consumer and other interest groups, State meat and poultry inspection officials, university officials, representatives and associations of retail stores, representatives and associations of official meat and poultry establishments, an association of exporters, representatives of farm bureaus and farm cooperatives, consultants to the food industry, label manufacturers, a Small Business Administration official, a Food and Drug Administration (FDA) official, State health agency officials, members of Congress, and others.

The following discussion of comments follows the general structure of the interim rule. General concerns are addressed in the context of specific features of the rule. Where the concerns can not be logically addressed in the context of specific sections of the rule, they are presented under a "Miscellaneous Issues" section. Changes made in the final rule are described so that it is apparent how they address the concerns of commenters. Where the Agency addresses the meat regulations, conforming changes are also made in the poultry regulations. Any changes unique to either the meat or poultry regulation are identified.

Miscellaneous Issues

Some commenters suggested that the comment period should be extended. FSIS believes that the comment period was adequate in light of the extensive comments that were received.

The vast majority of commenters supported the labeling of products with safe handling instructions. A few consumers, official establishments, university officials, and retailers objected to the labeling either because they believed that the risk of foodborne illness was minimal, that other means of educating consumers were more appropriate, that labeling would be ineffective for educating consumers, that labeling should be a temporary step to be replaced by point of purchase materials at a later date, that official establishments or retailers should not take on the responsibility of educating consumers, that the appropriate alternative was to produce a pathogen free product by requiring irradiation of products, or that some products currently include sufficient safe handling instructions.

FSIS does not agree with these comments. The notion that the risks are minimal is belied by statistics on meat and poultry related foodborne illnesses. The Department has recently published estimates that indicate that in 1992 over four million persons had foodborne illness, and the 1992 cost of foodborne illnesses attributable to meat and poultry products was $3,880 to $4,330 million. These costs include costs of productivity losses related to death or illness as well as medical costs.

Regarding the appropriateness and effectiveness of a label message, participants in focus study research expressed a preference for safe handling instructions to be on the package label and felt that other labeling, such as pamphlets or in-store signs, should only be used to supplement package labels. Some of the commenters on the interim rule were responding to FSIS' request for comments on specific alternatives to placing the message on the label. While they preferred alternatives, there was little information provided in support of the efficacy of these alternatives. Some commented negatively on a specific alternative mentioned in the preamble

to the interim rule. This was the inclusion of the rationale statement on the label with a reference to instructions on an insert. Those commenting rejected this alternative because of concerns over the additional handling associated with inserting labels in the package.

FSIS agrees that official establishments should strive to produce a pathogen free product. Irradiation should be considered along with other pathogen reduction strategies. But FSIS believes labeling should be required unless pathogen free product can be insured. Finally, these safe handling instructions are not intended to replace more comprehensive handling and cooking statements currently on certain product labeling. This statement primarily alerts food preparers that there is a risk of illness if product is mishandled or improperly cooked, and it addresses four broad parameters of food safety.

Officials of five retail chains and one retail association, who support the intent of the regulation, suggested that the regulation have a sunset provision and that the effectiveness of the regulation be studied before the requirements are continued. The Regulatory Flexibility Act already provides that Agencies will periodically review regulations. While this does not have the same effect as a sunset provision, it does insure that the continuing appropriateness of regulations be assessed.

Some commenters asked that the rule language specifically address whether export product would be required to bear the safe handling label. FSIS does not feel that this needs to be put in the regulatory language of the final rule. The conditions under which deviations from labeling requirements are permitted are already set out in 9 CFR 317.7 and 9 CFR 381.128. These sections establish that such deviations as excluding the safe handling instruction can be permitted with the agreement of the foreign consignee, and providing it is not contrary to the law of the importing country.

A number of commenters stated that FSIS improperly invoked the "good cause" exception to the Administrative Procedures Act (APA). The commenters claim that the justification for an interim rule is limited to ground beef and ground poultry, in that the interim rule cited nine incidents of food poisoning in the preceding two months which identified *E. coli* 0157:H7 as the suspected cause of illness or death. The APA requires that agencies publish in the **Federal Register** a general notice of proposed rule making and provide the opportunity for public comment except in cases "when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. § 553(b).

E. coli 0157:H7 is not the only pathogen targeted in this rule making proceeding. The interim rule also cited statistics relating to illness, death, and medical and productivity cost due to other bacteria, including *Salmonella, Campylobacter jejuni* or *coli, Listeria monocytogenes,* and parasites, including *Toxoplasma gondii, Trichinella spiralis, Taenia saginata,* and *Taenia solium.*

The safe handling instructions were designed to cover the four broad parameters of food safety and to prevent outbreaks of foodborne illness resulting from all sources, not just *E. coli* 0157:H7 in ground beef. Meat and poultry products are known carriers of the pathogenic bacteria and parasites identified in the interim rule and compliance with the safe handling instructions will prevent foodborne illnesses and deaths. To require safe handling instructions exclusively on ground beef and poultry might lead consumers to mistakenly believe that other meat and poultry products are safe, and ignores the growing threat to the public health resulting from bacteria on all meat and poultry products.

As detailed in the interim rule, FSIS has become aware that, in recent years, a growing percentage of the U.S. population lack experience in food preparation and knowledge of safe food handling and storage methods. Furthermore, the public health threat caused by the presence of dangerous bacteria in meat and poultry has worsened in recent years. The Centers for Disease Control and Prevention has placed bacterial contamination in meat at the top of the list of public health threats in the food supply. Based on this information, agency officials began to advocate mandating safe handling instructions on the labeling of meat and poultry products.

The commitment to require safe handling instructions was strengthened in January, 1993, following the largest recorded outbreak of *E. coli* 0157:H7 food poisoning in the Western United States. This outbreak, which was linked to the consumption of undercooked beef patties at a fast food restaurant, resulted in more than 500 illnesses and four deaths.

To convey a complete and effective message, FSIS reviewed available information and consulted with the Food and Drug Administration to identify the parameters of food safety and conducted consumer focus group research. Even while the research effort was continuing on an expedited basis, additional outbreaks of food poisoning occurred, resulting in serious illness and death. These additional illnesses and deaths lead the Department to conclude that an interim rule was necessary to protect the public against the serious and continued health threat caused by bacteria in raw meat and poultry products. For these reasons, FSIS believes that the "good cause" exception to the APA was properly invoked.

Another commenter referenced the litigation cited in the preamble to the interim rule, and commented that it was troublesome to see regulations being promulgated in the courts. As referenced in the background, mandatory safe-handling labeling was endorsed by FSIS prior to the onset of the cited litigation. The stipulated agreement settling the suit only recited the Agency's prior plan to publish regulations and set a date by which FSIS would publish proposed labeling requirements. It did not involve negotiation of a proposal or judicial supervision of its content.

Several commenters stated that FSIS should refrain from offering advice on potential product liability. The observation, in the preamble to the interim rule, that if people did not become ill there would be a reduced potential of product liability claims, does not speak to the possible merits of any claims where an illness had occurred. FSIS does not think the reference is inappropriate.

While there was strong support for safe handling instruction on the labels, many expressed concerns over the feasibility and cost of implementing labeling requirements by October 15, 1993. The cost concerns were discussed in the cost analysis above. The feasibility concerns are discussed below under the heading, "Location of Information on Label." There were few comments regarding the scope of the labeling requirements, except in the context of its initial implementation. These are discussed with the feasibility concerns. Some suggested that the requirements be phased in, either on a risk or feasibility basis. One official of a State meat and poultry inspection program took exception to statements in the preamble to the interim rule that states operating an "equal-to" meat or poultry inspection program must adopt equivalent labeling requirements. The commenter believed that "equal-to" requirements of the FMIA and PPIA did not extend to the labeling of product. Section 301(c) of the FMIA (21 U.S.C.

661(c)) clearly provides that states must establish and effectively enforce requirements with respect to wholly intrastate operations "at least equal" to the requirements under Title I and Title IV of the FMIA. There are similar sections in the PPIA. They cover labeling requirements.

Other commenters expressed concern over enforcement of these requirements at the retail level. One was concerned that meat and poultry inspection programs would not have the resources to do the monitoring. Another was concerned that states would have to monitor it under the authority in their general food sanitation codes. FSIS appreciates the concerns of these commenters. It is envisioned that the monitoring of compliance with these requirements will follow the current model of enforcement of misbranding of products at the retail level. Jurisdiction is primarily exercised by State and local food regulatory agencies. Local codes generally require that foods be fully labeled in conformance with requirements of agencies having jurisdiction over the product. FSIS and State meat and poultry inspection programs also monitor meat and poultry products in commerce. If products are found out of compliance with these requirements, they generally require that the specific product be brought into compliance or other appropriate action is taken. FSIS anticipates that initial compliance monitoring of this labeling requirement at retail will have an educational focus. Where noncompliance is found, FSIS Compliance and other enforcement officials will provide guidance to retailers on these labeling requirements. Where it is apparent that businesses are making a good faith effort to comply with these requirements, they will not be subjected to enforcement action.

Some commenters felt that the focus group research results were misused. They cited a statement in the final report on the focus group research that cautioned that the findings of focus group studies should not be generalized to a larger population in any statistical sense. Some thought that the results of the study were biased in that participants were only presented with six formats and messages to consider. FSIS does not think that its use of the focus group research findings was inappropriate. The study was not intended to determine what parameters of safe handling should be addressed. Its purpose was to determine what label presentation would be most effective. The study produced qualitative conclusions rather that quantitative statistics on the efficacy of the labels.

One commenter asked that FSIS publish its plan for a comprehensive consumer education program. FSIS will announce such plans in an appropriate forum.

Product Appropriateness and Inclusiveness

Several commenters suggested that products covered by the regulations were too inclusive. Some stated that the Department acknowledged in the interim rule that consumers know how to handle some meat and poultry products, thus they do not need safe handling instructions. Specifically, these commenters referenced 9 CFR 318.10(a) which characterizes certain products as "customarily well cooked in the home or elsewhere before being served to the consumer." Two official establishments suggested that the labeling only be required on minimally processed raw muscle meats, one suggesting that other products be labeled on a voluntary basis. Several official establishments recommended that the labeling requirements only apply to ground beef. Three official establishments and three associations of official establishments commented that frozen dinners and entrees should not require the safe handling labels because the products are unpalatable if not cooked and there is little inherent risk of foodborne illness associated with these products because consumers handling is minimized. FSIS does not agree that the regulation is too inclusive.

With regard to the products referenced in 9 CFR 318.10(a), the handling parameters extend beyond cooking. While consumers may know that pork needs to be well cooked, they need to be reminded of such risks as the contamination of ready to eat-to-eat foods by contact with raw meat. The balance of these comments suggest that FSIS should have different requirements for safe handling instructions based on the relative risk of foodborne illness related to different product types. There is a comprehensive discussion of labeling only higher risk products under the heading, "Location of Information on Label." The information presented there supports the conclusion that the regulation is not too inclusive.

A few commenters stated that the regulation was not inclusive enough, and suggested that ready-to-eat product should also bear safe handling instructions since they may become leftovers or may be subject to mishandling. Another suggested that meat products that contain cooked meat ingredients, such as pot pies, should include the safe-handling label because they might be mishandled or temperature abused. One State inspection official suggested that FSIS could coordinate with other regulatory agencies that have jurisdiction over the labeling of products that are not subject to the FMIA and PPIA to insure that they bore a similar instruction. FSIS agrees that there are risks associated with the handling of all foods. However, this rule is intended to address concerns over pathogens on raw and partially cooked meat and poultry products. On that basis, FSIS rejected the idea of requiring that ready-to-eat product or meat or poultry products that contain cooked meat or poultry ingredients should require safe handling instructions. These comments and our analysis of them brought into focus a problem with the structure of the interim rule. With respect to pork products, not all products that are uncooked or not otherwise processed so as to be rendered ready-to-eat are covered by the labeling requirements. The interim rule provides that products that are required by regulation to be treated for trichinae by heating, curing, or refrigeration are not required to bear the labeling. Not all of these products are further processed in a manner that would render them ready-to-eat. In the final rule, FSIS is requiring that those products that are uncooked or not further processed in a manner that would render them ready-to-eat carry the safe handling instructions. This is consistent with the rationale that forms the basis for inclusion of products under the final rule. Products that are added to those that are covered by the interim rule are not required to carry safe handling instruction labeling until January 15, 1994. FSIS will consider and discuss the labeling of other products and products outside our jurisdiction with the Food and Drug Administration.

One commenter said that in defining what cooked product would be exempt from these requirements, FSIS should not establish a time/temperature combination that is qualified by the term, "before removal from the cooking medium." Most cooking methods do not provide an opportunity to test the temperature of the product in the cooking medium. Additionally, some products only achieve the time/temperature combination during a dwell time after removal from the medium. FSIS agrees, and is deleting the phrase in the final rule.

Location of Information on Label

Official establishments and their associations and retailers and their associations detailed problems they would have adding such instructions to

labels in compliance with the regulation. They also detailed problems they would have in acquiring labels or in some cases equipment to apply them by October 15, 1993. Many expressed concern that those problems would be exacerbated if they had to relabel product that was packed prior to that date. While the rule does not apply to product packed prior to October 15, 1993, convincing arguments were made that some products would pose significant problems to achieving compliance with this part by the effective date. The arguments are laid out below.

Both retailers and their associations and official establishments and their associations described problems with fitting labels on small packages. Most retail comments seemed based in a misconception that they could not apply labels to the bottom of tray packed products. Six retailers suggested permitting safe handling instructions on the bottom of the package. One printer also endorsed this idea. Another printer objected to placing the instructions on the bottom of the package, arguing that the label would not be conspicuous and that tray manufacturers would have to bear the cost of retooling to produce such trays. Several commenters also objected to any prohibitions on labeling the tray bottom, arguing that consumers wanted to be able to see what they were buying. FSIS reaffirms that these labels can be placed on the bottom of trays, and concludes that retailers will be able to label these small packages under the terms of the interim rule. One commenter questioned whether pressure sensitive labels would adhere to the bottom of tray packed products. FSIS believes that the labels will adhere to the bottom of the trays. However, as discussed below, in the final rule FSIS has permitted more flexibility in the placement of the safe handling instructions.

Some commenters asked that FSIS directly address whether this rule would preempt local labeling laws. They had concluded that they could not comply with this label requirement and meet local restrictions on label size. The issue of preemption is not peculiar to this regulation. As indicated above, if the local law is inconsistent with the Federal requirement, the Federal requirement would preempt the local law. However, FSIS does not expect that the issue will arise here. The Federal requirement as set out in this final rule provides significant flexibility in label shape and placement.

One retail store chain official stated that the logistics of getting labeling materials to a large number of stores and of training personnel at those stores were difficult, and that a longer implementation period was required. While FSIS agrees that the task is challenging, it believes that large chains have the communications infrastructure to accomplish training tasks and that added options for compliance under the final rule will make acquiring materials easier.

The interim rule provides that the instructions appear on the label's principal display panel or information panel. Several official establishments and their associations suggested that FSIS permit labeling on other panels including the top of boxes and the front riser panel of tray packs. They said this would be conspicuous and visible to consumers. Official establishments also posed the issue of not being able to fit the a pressure-sensitive label containing the safe handling instructions on small packages without obscuring other mandatory information. While they could make adjustments in label design, they would not have enough lead time to get labels printed by October 15, 1993. Some questioned whether very small packages could fit both required safe-handling labels and nutrition education labels.

The final rule provides more flexibility in the placement of the safe handling instructions on the label. The requirement that safe handling instructions be on the principal display panel or the information panel of the label has been deleted in the final rule. FSIS permits safe handling instructions to appear anywhere on the label where they are likely to be read. FSIS is not aware of labels smaller than those on 12 ounce chubs that would likely require safe handling instructions. FSIS believes that with the added flexibility provided in the final rule and the flexibility provided in the nutrition labeling regulations that labels will be large enough to accommodate both the mandatory features.

Many official establishments and their associations commented that without redesign and reprinting of printed film, or of labeling to be applied to products that would be frozen before shipment, they would be faced with an extremely difficult challenge. They would have to find pressure-sensitive labels that would adhere to packages through the chilling and freezing process, or that would adhere to a frozen package. Many reported a history of past failure in such efforts. They also pointed out that in those cases where the packaging and labeling step is the same, because the label is printed on the packaging film, it would be extremely disruptive to the manufacturing line, if not impossible, to insert a step where pressure sensitive labels would be applied.

Several official establishments and their associations also described problems with getting pressure-sensitive stickers that could be applied to wax coated cartons. They also described past failures. Some suggested that FSIS allow official establishments to supply insert labels to retailers or other point of purchase materials as an interim step to requiring labels, as a way of obviating these problems.

Many official establishments and their associations, retailers and their associations, as well as several officials of State meat and poultry inspection programs and others sought some form of extension of the effective date of the rule. These ranged from simply ensuring that the rule only applied to products packed on or after October 15, 1993, to delaying the effective date to October, 1994. The most frequent variant was a recommendation that the effective date coincide with that of the nutrition labeling regulation. One noted that the short implementation deadline denied them the opportunity to search for the least costly way of coming into compliance. Many official poultry establishments and their associations recommended that FSIS phase in the rule. They suggested only requiring the label on ground meat or ground poultry on October 15, 1993, if the product labels were void of cooking instructions or other voluntary handling instructions. They argued that the need to label by October 15, 1993 had only been demonstrated for these ground products. Under different comments the balance of products would become labeled on various dates, from November 15, 1993 to October, 1994. Some commenters suggested that FSIS allow use of point of purchase materials during that time. Some suggested that to avoid confusion, nothing should become effective until publication of a final rule. Several commenters recommended that implementation of these requirements not be delayed for any reason, because of the risks of foodborne illness associated with raw meat and poultry. One State meat and poultry inspection official suggested that the requirements take effect on October 15, 1993, but that compliance enforcement be phased in. The commenter suggested that no compliance reviews be made until January, 1994, and that no penalties be assessed until April, 1994. One association of official establishments and several other commenters suggested that a rule of reason should be applied in enforcing compliance with this part. Some commenters suggested that FSIS

allow the use of pressure sensitive labels bearing the safe-handling message indefinitely. Pressure sensitive labels may be used to modify a package label indefinitely. However, FSIS expects that most retailers and official establishments will incorporate safe handling instructions onto a label to achieve economy.

Recognizing that official establishments and retailers will have problems including the safe handling instructions on the labeling of some products, FSIS has modified the rule to permit official establishments and retailers to use alternate approaches to deliver the safe handling instructions to consumers for a 6-month period, except for comminuted products. "Comminuted" is a processing term which describes the reduction in size of pieces of meat or poultry, and included chopping, flaking, grinding, or mincing. All official establishments and retailers will be required to comply with the requirement that the safe handling instructions appear on the product label by April 15, 1994. FSIS anticipates that some official establishments that produce these products will be able to comply sooner than that date as their individual circumstances permit. The Agency expects that they would comply as soon as possible since the alternate approaches entail use of additional materials and added handling of products. The April 15, 1994, date will have provided official establishments and retailers manufacturing the covered categories of products a reasonable amount of time from the publication of this final rule to obtain labeling. This should be sufficient, especially in light of the generic approval of such labels. FSIS believes that these alternatives are responsive to their comments, and will allow official establishments and retailers to achieve compliance by October 15, 1993, and will insure that the safe-handling instructions reach consumers.

The permitted alternate approaches are presented below: (1) Official establishments may include in the shipping container either pressure-sensitive labels containing the safe handling instructions for retailers to apply to packages or leaflets containing a facsimile of the safe handling instructions in lettering no smaller than one-sixteenth of an inch for retailers to place in close proximity to the packages to ensure that leaflets are likely to be seen and taken home by consumers; and (2) retailers may distribute leaflets concerning the facsimile described below.

In some cases, it is expected that retailers might prefer pressure-sensitive labels or leaflets of their own design and manufacture to those that an official establishment would provide under the permitted alternative. If a retailer notifies an official establishment in writing that it intends to supply its own labels on labeling, the official establishment would not be required to supply the materials as the shipping container.

The final rule does not permit these alternate approaches to be used for comminuted meat or comminuted poultry products. FSIS recognizes that these products may pose the same or similar challenges with respect to affixing safe-handling instructions. However, these comminuted products pose an increased risk of foodborne illness. First, the starting materials for comminuted meat and poultry products are trimmings which tend to have a higher probability of contamination because a high percentage of trimmings come from the surface of the carcass. Second, the production process assures that any present pathogens will be distributed throughout the product, including the interior, while bacteria tend to remain on the surface of other cuts of meat and poultry. The consumption of raw comminuted meat packaged at a single meat processing establishment, was the cause of a multi-State outbreak of *Salmonella* newport disease (Fontaine *et al.*, 1978).[4] Pathogenic *E. coli* 0157:H7 in comminuted meat has been responsible for outbreaks of hemorrhagic colitis. Adequate cooking of the comminuted meat should minimize or eliminate the risk of contracting this disease from its consumption. Cooked comminuted meat as an ingredient in a variety of foods can be associated with foodborne illness (Bryan, 1980).[5]

The Agency concludes that all products defined in the interim rule should have such labeling, as indicated above, regarding safe handling instructions by October 15, 1993 and that meat or meat products of swine that have been added under the final rule should have such labeling by January 15, 1994. Official establishments would be able to obtain the alternate labeling materials allowed under the final rule by that date. They also would be able to come into full compliance with the label requirements for any comminuted products by the date. FSIS does not find the arguments offered for any more liberal phase-in period on complexity or on a risk basis to be compelling, for the following reasons. *E. coli* 0157:H7 is not the sole target of this initiative. As indicated into the item rule, during 1992, it is estimated that there were over four million cases of foodborne illnesses. During the period 1972–1987, 1,879 foodborne disease outbreaks associated with bacterial agents and involving 108,906 cases were reported to CDC (Table 1). The most frequently identified bacterial agent was *Salmonella* followed in order by *Staphylococcus aureus, Clostridium botulinum, Clostridium perfringens* and *Shigella*. Food products of all types were identified as vehicles (Table 2) including beef, pork, turkey, and chicken products. The bacterial agents most frequently identified for illnesses associated with meat and poultry products were *Salmonella, Staphylococcus aureus, Clostridium perfringens* and pathogenic *Escherichia coli* including *E. coli* 0157:H7. For these organisms, in particular, the most frequently reported factors identified as contributing to the outbreaks were improper holding temperatures and inadequate cooking (Table 3). Outbreaks were associated with food prepared in homes, delicatessens, cafeterias, restaurants, schools, picnics, churches, and camps (Table 4). Since foodborne illnesses have been associated with all food product types and species and at all food preparation levels, instructions on the proper storage and preparation procedures are essential to the education of food preparation personnel at all levels and to the prevention of illness and death.

Carcasses, primal, sub-primal, and retail cuts of meat from normal, healthy animals contain a variety of microorganisms including low levels of some pathogens. Refrigerated raw meats will spoil eventually even if they are produced from the carcasses of normal, healthy animals, fabricated under good manufacturing conditions, and properly refrigerated. If meats are not properly cooked, held, cooled, and stored, they can potentially cause foodborne illness. Frozen raw meat and poultry products, including dinners and entrees, are vulnerable to the same mishandling risks associated with fresh product.

[4] A copy of this study is available for public review in the FSIS Hearing Clerk's office.

[5] A copy of this study is available for public review in the FSIS Hearing Clerk office.

TABLE 1.—NUMBER AND PERCENTAGE OF FOODBORNE DISEASE OUTBREAKS AND CASES OF KNOWN ETIOLOGY, BY ETIOLOGIC AGENT, 1973–87 [1]

Etiologic agent	Outbreaks		Cases	
	No.	Percent	No.	Percent
Bacterial:				
Bacillus cereus	58	2	1123	1
Brucella	4	<1	43	<1
Campylobacter	53	2	1547	1
Clostridium botulinum	231	8	494	<1
Clostridium perfringens	190	7	12234	10
Escherichia coli	10	<1	1187	1
Salmonella	790	28	55864	45
Shigella	104	4	14399	12
Staphylococcus aureus	367	13	17248	14
Streptococcus, group A	12	<1	1917	2
Streptococcus, other	7	<1	248	1
Vibrio cholerae	6	<1	916	1
Vibrio cholerae, non-01	2	<1	11	<1
Vibrio parahaemolyticus	23	1	535	<1
Yersinia enterocolitica	5	<1	767	1
Other bacterial	7	<1	373	<1
Total bacterial	1879	66	106906	87

[1] Bean, N.H. and P.M. Griffin. 1990. Foodborne Disease Outbreaks in the United States, 1973–1987: Pathogens, Vehicles, and Trends. Jour. Food Prot. 53:804–817.

TABLE 2.—NUMBER OF FOODBORNE OUTBREAKS BY BACTERIAL AGENT AND FOOD VEHICLE, 1973–87[1]

Bacterial agent	Chicken	Turkey	Beef	Pork	Bakery prod.	Chinese food	Dairy prod.	Eggs	Finfish	Fruits & veggies	Ice cream	Mexican food	Mushrooms	Nondairy beverages	Shellfish	Other	Unknown	Total
Bacillus cereus	1	1	3	0	0	24	0	0	1	3	1	5	0	0	2	8	9	56
Brucella	0	0	0	0	0	0	3	0	0	0	0	0	0	0	0	0	1	4
Campylobacter	2	1	0	0	1	1	25	1	0	1	0	0	0	0	0	5	16	53
Clostridium botulinum	1	1	2	1	0	0	1	0	35	99	0	3	5	5	0	40	38	231
Clostridium perfringens	9	19	51	8	0	0	0	0	3	1	0	23	0	0	2	46	28	190
Escherichia coli	9	0	3	0	0	0	0	0	3	1	0	2	0	0	0	2	0	20
Salmonella	30	36	77	25	12	2	22	16	5	9	28	10	0	4	3	191	320	790
Shigella	3	1	0	0	1	0	0	1	3	3	0	2	0	0	4	43	43	104
Staphylococcus aureus	14	20	22	96	26	0	5	9	3	4	1	4	0	0	2	137	24	367
Streptococcus, group A	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	6	5	12
Streptococcus, other	0	0	1	0	0	0	1	0	1	1	0	1	0	0	0	1	1	7
Vibrio cholerae	0	0	0	0	0	0	0	0	2	0	0	0	0	0	3	1	0	6
Vibrio cholerae, non-01	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2	0	0	2
Vibrio parahaemolyticus	0	0	0	0	0	0	0	0	1	0	0	0	0	0	18	1	3	23
Yersinia enterocolitica	0	0	0	0	0	0	2	0	0	2	0	0	0	0	0	1	0	5
Other bacterial	1	0	0	0	0	0	2	0	0	0	0	0	0	0	0	3	1	7
Total bacterial	70	79	159	130	40	27	61	28	57	124	30	50	5	9	36	485	489	1879
Percent of total	3.7	4.2	8.5	6.9	2.1	1.4	3.2	1.5	3.0	6.6	1.6	2.7	0.3	0.5	1.9	25.8	26.0	

[1] Bean, N.H. and P.M. Griffin. 1990. Foodborne Disease Outbreaks in the United States, 1973–1987. Jour. Food Prot. 53:804–817.

TABLE 3.—PERCENTAGE OF FOODBORNE OUTBREAKS IN WHICH FACTORS THOUGHT TO CONTRIBUTE TO THE OUTBREAKS WERE REPORTED, BY ETIOLOGIC AGENT, 1973–87 [1]

Etiologic agent	Contributing factor [2]						
	Number of outbreaks in which factors reported [3]	Improper holding temperatures	Inadequate cooking	Contaminated equipment	Food from unsafe source	Poor personal hygiene	Other
Bacterial:							
Bacillus cereus	48	94	32	53	5	24	33
Brucella	2	0	50	0	100	0	100
Campylobacter	27	45	45	45	67	45	57
Clostridium botulinum	69	34	91	3	3	0	41
Clostridium perfringens	147	97	65	28	6	26	34
Escherichia coli	3		50	0	0	0	100
Salmonella	504	83	67	63	25	63	43
Shigella	68	63	3	30	11	91	33
Staphylococcus aureus	272	98	22	43	12	71	24
Streptococcus, group A	11	100	0	0	0	88	20
Streptococcus, other	2				100	100	
Vibrio cholerae	3	100	100		100		
Vibrio cholerae, non–01	1		100				
Vibrio parahaemolyticus	16	75	92	0	75	0	33
Yersinia enterocolitica	2	100	100	100	100	100	100
Other bacteria	7	100	50	0	50	100	100
Total bacterial	1182	87	56	47	20	59	37

[1] Bean, N.H. and P.M. Griffin. 1990. Foodborne Disease Outbreaks in the United States, 1973–1987: Pathogens, Vehicles, and Trends. Jour. Food Prot. 53: 804–817.
[2] For many outbreaks more than one factor was responsible.
[3] Number given is the number of outbreaks for which the presence or absence of any factor was reported. The denominator for each factor varies and is the number of outbreaks in which the presence or absence of that factor was reported.

TABLE 4.—FOODBORNE DISEASE OUTBREAKS, BY ETIOLOGIC AGENT AND PLACE WHERE FOOD EATEN, 1983–1987 [1]

Etiologic agent	Home	Delicatessen, cafeteria, restaurant	School	Picnic	Church	Camp	Other	Unknown	Total
Bacterial:									
B. cereus	4	7	2		1		1	1	16
Brucella	2								2
Campylobacter	8	4	1	2		1	12		28
C. botulinum	56	2						16	74
C. perfringens	1	9	3		1		10		24
E. coli	1	1		1			4		7
Salmonella	60	141	16	9	11	4	93	8	342
Shigella	4	21	1	1	2	2	12	1	44
S. aureus	6	5	6	4	4	1	20	1	47
Streptococcus, group A	2	3	1		1				7
Streptococcus, other	1		1						2
Vibrio cholera	1								1
Vibrio parahemolyticus	2	1							3
Other bacterial	1						2		3
Total	149	194	31	17	20	8	154	27	600

[1] Bean, Nancy H., et al. 1990. Foodborne Delicatessen Outbreaks, 5-year Summary, 1983–1987. Jour. Food Prot. 53:711–728.

General Label Format and Features

Four commenters stated that the label size was too large. The comments were based on the assumption that the label needed to be of the size and format of the exhibit appearing in the preamble to the interim rule. This was not the Agency's intent. Two commenters stated that the one-sixteenth of an inch type size was too small to be easily read. FSIS believes that the one-sixteenth of an inch type size minimum provides a balance between readability and the availability of space on packages to incorporate safe handling instructions. Most other size comments were restricted to the problem of obscuring other mandatory label features if pressure-sensitive labels were applied during a period prior to label redesign and printing.

Employees of the Food Labeling Division of FSIS noted that several businesses which sought approval of labels under the interim rule found the reference to a "neutral" background to be confusing. Similarly, businesses were limited by the requirements for setting off the same handling instructions in a box marketed by a hairline. Additionally, one commenter asked that FSIS specifically provide that the configuration of the safe handling statement could be variable, e.g., triangular, trapezoidal, etc., to facilitate incorporating the statement onto labels. In the final rule, FSIS has deleted there reference to "neutral," and simply requires one color type against a solid, contrasting-color background. FSIS has also removed the "box" requirement, and allows the use of any border to set off the safe handling instructions including a change of color of the background.

Rationale Statement

Many official establishments and their associations, and numerous retail chains and their associations expressed the opinion that the rationale statement was cast negatively. They also said it unfairly singled out animal products as potential sources of pathogens. In so doing, it was implying that other foods were safer than meat and poultry. The commenters suggested substituting "Food Products," or "Agricultural Products" for "Animal Products" in the statement. This comment and recommendation was also made by a university official. A restaurant chain and an association of restaurant chains commented that the rationale statement gave the impression that improper handling is the sole cause of foodborne illness. They discussed the need for overlapping systems of control that would ensure that they receive and prepare a wholesome product. One commenter suggested dropping the statement since it contained no actionable information for the consumer. Others expressed strong objections to constructing this as a warning label rather that as an information label. Conversely, some consumer interest groups stated that the "inspected and passed" and "inspected for your safety" phrases were misleading and consumers would not read beyond those phrases. Five consumer interest groups suggested including the words "danger," "warning," or "caution" in the statement. One commenter thought that the rationale statement should also mention the possibility of death, and that it should also include descriptions of the symptoms of foodborne illnesses.

Other commenters suggested minor wording changes. Two suggested changing "raw" to "uncooked." No explanation was given. Another wanted "bacteria" changed to "organisms." The commenter seemingly thought that this change would permit official establishments to eliminate some sanitation procedures. The logic of this was unclear.

Official establishments, retailers, and their respective associations raised an objection to having separate rationale statements for meat and for poultry. The stated that it would be more efficient to have one statement that would cover both meat and poultry. They pointed out that the current requirement necessitated two inventories of labels and introduced the possibility of error in applying the labels. Such errors would undermine consumer confidence in the label. Many other commenters agreed with this comment and recommendation, including State meat and poultry inspection officials, a small business advocacy group, and the Small Business Administration.

An additional issue raised by official establishments and their associations was an objection to having separate labels for products packaged by official establishments and products packaged by retailers solely because of a difference in one sentence of the rationale statement. They argued that the retail statement which states that product was produced from inspected and passed meat would be equally true for products packaged at an official establishment. Since official establishments may end up supplying labels to a retailer in some cases, they argued that it would be better to have only one label.

FSIS is convinced that significant economies and reduced labeling errors could be achieved by allowing one rationale statement to satisfy retail and official establishment labeling of both meat and poultry products. Changes have been incorporated into the final rule to allow for one rationale statement. FSIS also determined that it would be appropriate to substitute "food products" for "animal products." Other minor word changes were not adopted because cogent arguments were not presented to support them. FSIS has also concluded that the rationale statement strikes a good balance that will neither scare consumers away from meat and poultry products nor cause them to ignore risks of foodborne illness.

One State meat and poultry inspection official commented that none of the rationale statements were appropriate for poultry slaughtered under exemptions specified in 9 CFR 381.10. The rationale statement refers to inspected products. Products produced under these exemptions from inspection requirements should not carry a reference to inspected product. FSIS agrees with this comment, and in the final rule provides an appropriate rationale statement for these poultry products.

One commenter stated that a different rationale statement should be permitted for irradiated product. They felt a reference should be made to the reductions in bacterial counts that irradiation produces. FSIS does not agree. Consumers might conclude that the handling statements did not apply.

Consumer Handling Statement

The majority of commenters on the handling statements addressed only the cooking statement. Comments from 69 consumers suggested that a cooking temperature was necessary in the cooking statement. Most of the comments contained a 160°F recommendation. Officials of five universities commented on the cooking statement. One endorsed adding a cooking temperature. The others suggested that more information should be provided, but not a temperature. One noted, "The use of a specific temperature endpoint is not feasible for consumer use. * * * Therefore, the qualitative subjective statements are appropriate." Six consumer interest groups and two retailers also stated that more explicit cooking instructions were necessary. Many recommended allowing businesses to incorporate their recommended cooking messages into the label. FSIS does not believe it would be appropriate to add either an endpoint temperature or more comprehensive cooking directions because cooking

temperature and other visual indications of doneness vary by product. As stated above, this labeling is not intended to replace comprehensive cooking and handling statements that accompany some products.

One commenter suggested that the cooking parameter not be addressed since research does not establish lethality data for all pathogens. The commenters suggested that this labeling initiative be postponed until such research is available. FSIS has not required that safe handling instructions include a cooking temperature. Suggesting that consumers cook product thoroughly is not dependent on lethality data for all products and pathogens.

One commenter suggested that the safe handling instruction be limited to the cooking parameter only. They argued that since undercooking was the usual cause cited for E. Coli. illnesses, this is the only one necessary. FSIS did not agree with this comment. As cited above, mishandling and improper storage are also significant contributors to the incidence of foodborne illness.

Additional comments related to the literacy level of the handling instructions, the efficacy of the symbols required, a suggestion that one statement be modified to make it applicable to both meat and poultry, concerns that generic handling statements would not be useful to consumers, concerns that insufficient generic statements might result in liability claims, and concerns over likely inconsistencies between the "Keep refrigerated or frozen. Thaw in refrigerator or microwave" statement and other handling statements on some packages. Additional commenters addressed the use of the term, "leftovers," suggested modifying the hand-washing instruction, and suggested adding the FSIS Hotline telephone number to the statement.

FSIS does not believe that comments on the reading level of the statements provide sufficient data to justify a change, especially since they offered no alternative language.

Reaction of commenters to the graphic symbols were mixed. Many commenters characterized them as clear and easily understood. Others expressed concerns that they were not clear. Almost all commenters thought the refrigerator symbol was clear, and that consumers would understand that the product should be refrigerated or frozen. The final rule leaves it unchanged. Many commenters objected to the bar of soap symbol. The accompanying message covers separation of raw and ready-to-eat foods and cleaning of hands and food preparation surfaces and utensils. Some suggested presenting these in two separate messages with separate graphics, or together with two graphics in a "split screen." Critics of the bar of soap pointed out that consumers might think they should wash the product with soap. They also pointed out that bar soap is not approved for cleaning food contact surfaces. FSIS has decided that the message should still cover both separation and cleaning, but that the graphic symbol should be changed. The required symbol will be soapy hands under a faucet. This could be interpreted both as washing hands, a part of the message, and as washing utensils, another part of the message.

Some commenters objected to the skillet symbol, suggesting that it might imply that frying was the recommended cooking method. One suggested a range instead. Based on a relatively high acceptance of the skillet symbol among commenters, FSIS will leave it unchanged.

Many commenters thought the clock symbol was confusing, especially in the context of the institutional message. Many pointed out that temperature was the primary concern under both the consumer and institutional messages. A thermometer was often recommended by commenters. FSIS will make this change in the final rule.

The commenters that support modifying one of the statements to make it applicable to both meat and poultry argue convincingly that significant economies and reduced error in labeling will result from the change. The final rule makes that modification.

FSIS does not agree that generic statements are insufficient or could lead to liability claims. The underlying food safety principles addressed in the safe handling statements apply to all meat and poultry products that require cooking. Additionally, the statements are not intended to replace more comprehensive handling and cooking instructions contained on some labels.

Several official establishments, restaurant chains and their respective associations commented that the "Keep refrigerated or frozen. Thaw in refrigerator or microwave." statement was, in some cases, contradictory to other handling statements on the package, and could result in creation of confusion and errors in handling. Products such as frozen stuffed turkeys were cited as representative of the problem. They are designed to go from freezer to the cook step without thawing, as are many other products. Thawing them would increase the likelihood of pathogen growth. FSIS finds this argument compelling, and has amended this provision in the final rule to permit official establishments and retailers to omit any portion of the statement that is in conflict with the product's specific handling instructions.

One commenter stated that the use of the term "leftovers," as used in the last statement, would not be understood by consumers because it is a colloquial term. FSIS does not agree. The term is well understood.

Two commenters suggested that the hand-washing instruction be modified to add washing *before* handling meat or poultry products. While FSIS agrees that this is a good practice, the focus of these statements is avoidance of contamination of other ready-to-eat foods by contact with raw meat and poultry product. This change will not be incorporated.

One commenter suggested that the FSIS Meat and Poultry Hotline telephone number be added to the statement, so that consumers could call food handling experts if they had any questions arising from the statement. The Meat and Poultry Hotline telephone number may be included on other parts of the label. FSIS does not believe it is necessary to include this phone number with the safe handling instructions.

Institutional Handling Statements

Comments on the institutional handling statements were primarily from official establishments who sought some modification to this or the consumer label to permit the use of one label. Additional commenters on these statements included restaurants and their associations and others who expressed concerns about including a 140 °F hot holding statement because it might be viewed as a cooking temperature, and concerns about the "Keep Refrigerated. Keep Frozen" statement. The latter concerns paralleled those discussed under the "Consumer Handling Statements" heading. These commenters suggested that FSIS address these concerns by permitting different handling statements to be used for different customers, or different statements be approved on a case by case basis by the Administrator. Other commenters recommended that no variations be allowed. FSIS believes that the changes that permit certain terms to be dropped if they conflict with other handling statements adequately addresses that concern. No alternate statements will be permitted.

One restaurant chain official asked that the phrase, "Keep raw meat and poultry separate from other foods," should be more precisely defined. They thought some might think that they were required to main separate refrigerators for raw meat and poultry.

FSIS does not agree that readers will draw that inference from the phrase.

Commenters, including official establishments, FDA officials, university officials, and others suggested specific changes to the handling statement and the symbol associated with the hot holding temperature. These commenters pointed out that the clock symbol was inappropriate to the message. Several suggested a thermometer. The FDA officials suggested adding language relating to reheating of the product to 165 °F if a temperature recommendation is included. FSIS is convinced that including a hot holding temperature might result in it being viewed as a cooking temperature. The holding statement will be changed in the final rule to "Keep hot foods hot. Refrigerate leftovers immediately or discard." The latter part of the phrase responds to comments by FDA and the restaurant associations that the message include the likelihood of discarding leftovers. FSIS is adopting the symbol change in the final rule. Since omitting the hot holding temperature eliminates the major distinction between the household consumer statement and the institutional statement, FSIS is incorporating the changes discussed above into one statement to cover all products, whether they are intended for consumers or institutions.

The label for safe handling instructions including all revisions made by the final rule is shown in Exhibit 1.

BILLING CODE 3410-DM-M

EXHIBIT 1

Safe Handling Instructions

This product was prepared from inspected and passed meat and/or poultry. Some food products may contain bacteria that could cause illness if the product is mishandled or cooked improperly. For your protection, follow these safe handling instructions.

Keep refrigerated or frozen.
Thaw in refrigerator or microwave.

Keep raw meat and poultry separate from other foods.
Wash working surfaces (including cutting boards), utensils, and hands after touching raw meat or poultry.

Cook thoroughly.

Keep hot foods hot. Refrigerate leftovers immediately or discard.

BILLING CODE 3410-DM-C

FSIS is adopting the interim rule as a final rule with the changes as discussed above. Labels prepared in accordance with the interim rule may be used until April 15, 1994.

List of Subjects

9 CFR Part 317

Food labeling, Meat inspection.

9 CFR Part 381

Food labeling, Poultry inspection.

Final Rule

For the reasons discussed in the preamble, the interim rule amending 9 CFR parts 317 and 381 of the Federal meat and poultry products inspection regulations published at 58 FR 43478, August 16, 1993, is adopted as final with the following changes:

PART 317—LABELING, MARKING DEVICES, AND CONTAINERS

1. The authority citation for part 317 continues to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

2. Section 317.2 is amended by revising paragraph (l) to read as follows:

§ 317.2 Labels; definition; required features.

* * * * *

(l) Safe handling instructions shall be provided for: All meat and meat products of cattle, swine, sheep, goat, horse, or other equine not heat processed in a manner that conforms to the time and temperature combinations in the Table for Time/Temperature Combination For Cooked Beef, Roast Beef, and Cooked Corned Beef in § 318.17, or that have not undergone other further processing that would render them ready-to-eat; and all comminuted meat patties not heat processed in a manner that conforms to the time and temperature combinations in the Table for Permitted Heat-Processing Temperature/Time Combinations For Fully-Cooked Patties in § 318.23; except as exempted under paragraph (l)(4) of this section, provided, however that swine products other than those described in § 318.10(a)(1) need not be labeled with safe handling instructions until January 15, 1994.

(1)(i) Safe handling instructions shall accompany every meat or meat product, specified in this paragraph (l), destined for household consumers, hotels, restaurants, or similar institutions and shall appear on the label, except as provided in paragraphs (l)(1)(i) (A) and (B) of this section. The information shall be in lettering no smaller than one-sixteenth of an inch in size and shall be prominently placed with such conspicuousness (as compared with other words, statements, designs or devices in the labeling) as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(A) Until April 15 1994, in lieu of placing the safe handling instructions on the label, official establishments may include in the shipping container either pressure-sensitive labels containing the safe handling instructions for retailers to apply to packages or leaflets containing a facsimile of the safe handling instructions in lettering no smaller than one-sixteenth of an inch for retailers to distribute with the packages, except that this is not permitted for comminuted meat products. Including pressure-sensitive labels or leaflets in shipping containers is not necessary if retailers notify official establishments in writing that they will provide such labeling.

(B) Until April 15, 1994, in lieu of placing the safe handling instructions on the label, retailers may distribute leaflets containing a facsimile of the safe handling instructions in lettering no smaller than one-sixteenth of an inch, except that this is not permitted for comminuted meat products.

(ii) The safe handling information shall be presented on the label under the heading "Safe Handling Instructions" which shall be set in type size larger than the print size of the rationale statement and handling statements as discussed in paragraphs (l)(2) and (l)(3) of this section. The safe handling information shall be set off by a border and shall be one color type printed on a single color contrasting background whenever practical.

(2) The labels of the meat and meat products specified in this paragraph (l) shall include the following rationale statement as part of the safe handling instructions, "This product was prepared from inspected and passed meat and/or poultry. Some food products may contain bacteria that could cause illness if the product is mishandled or cooked improperly. For your protection, follow these safe handling instructions." This statement shall be placed immediately after the heading and before the safe handling statements.

(3) Meat and meat products, specified in this paragraph (l), shall bear the labeling statements:

(i) Keep refrigerated or frozen. Thaw in refrigerator or microwave. (Any portion of this statement that is in conflict with the product's specific handling instructions, may be omitted, e.g., instructions to cook without thawing.) (A graphic illustration of a refrigerator shall be displayed next to the statement.);

(ii) Keep raw meat and poultry separate from other foods. Wash working surfaces (including cutting boards), utensils, and hands after touching raw meat or poultry. (A graphic illustration of soapy hands under a faucet shall be displayed next to the statement.);

(iii) Cook thoroughly. (A graphic illustration of a skillet shall be displayed next to the statement.); and

(iv) Keep hot foods hot. Refrigerate leftovers immediately or discard. (A graphic illustration of a thermometer shall be displayed next to the statement.)

(4) Meat or meat products intended for further processing at another official establishment are exempt from the requirements prescribed in paragraphs (l)(1) through (l)(3) of this section.

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

3. The authority citation for part 381 continues to read as follows:

Authority: 7 U.S.C. 450, 21 U.S.C. 451–470; 7 CFR 2.17, 2.55.

4. Section 381.125 is amended by revising paragraph (b) to read as follows:

§ 381.125 Special handling label requirements.

* * * * *

(b) Safe handling instructions shall be provided for all poultry products not heat processed in accordance with the provisions of § 381.150(b) or that have not undergone other further processing that would render them ready-to-eat, except as exempted under paragraph (b)(4) of this section.

(1)(i) Safe handling instructions shall accompany the poultry products, specified in this paragraph (b), destined for household consumers, hotels, restaurants, or similar institutions and shall appear on the label, except as provided in paragraphs (b)(1)(i) (A) and (B) of this section. The information shall be in lettering no smaller than one-sixteenth of an inch in size and shall be prominently placed with such conspicuousness (as compared with other words, statements, designs or devices in the labeling) as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(A) Until April 15, 1994, in lieu of placing the safe handling instructions on the label, official establishments may include in the shipping container either pressure-sensitive labels containing the safe handling instructions for retailers to

apply to packages or leaflets containing a facsimile of the safe handling instructions in lettering no smaller than one-sixteenth of an inch for retailers to distribute with the packages, except that this is not permitted for comminuted poultry products. Including pressure-sensitive labels or leaflets in shipping containers is not necessary if retailers notify official establishments in writing that they will provide such labeling.

(B) Until April 15, 1994, in lieu of placing the safe handling instructions on the label, retailers may distribute leaflets containing a facsimile of the safe handling instructions in lettering no smaller than one-sixteenth of an inch, except that this is not permitted for comminuted poultry products.

(ii) The safe handling information shall be presented on the label under the heading "Safe Handling Instructions" which shall be set in type size larger than the print size of the rationale statement and handling statements as discussed in paragraphs (b)(2) and (b)(3) of this section. The safe handling information shall be set off by a border and shall be one color type printed on a single color contrasting background whenever practical.

(2)(i) The labels of the poultry products, specified in this paragraph (b) and prepared from inspected and passed poultry, shall include the following rationale statement as part of the safe handling instructions, "This product was prepared from inspected and passed meat and/or poultry. Some food products may contain bacteria that could cause illness if the product is mishandled or cooked improperly. For your protection, follow these safe handling instructions." This statement shall be placed immediately after the heading and before the safe handling statements.

(ii) The labels of the poultry products, specified in this paragraph (b) and prepared pursuant to § 381.10(a) (2), (5), (6), and (7), shall include the following rationale statement as part of the safe handling instructions, "Some food products may contain bacteria that could cause illness if the product is mishandled or cooked improperly. For your protection, follow the safe handling instructions." This statement shall be placed immediately after the heading and before these safe handling statements.

(3) Poultry products, specified in this paragraph (b), shall bear the labeling statements:

(i) Keep refrigerated or frozen. Thaw in refrigerator or microwave. (Any portion of this statement that is in conflict with the product's specific handling instructions may be omitted, e.g., instructions to cook without thawing.) (A graphic illustration of a refrigerator shall be displayed next to the statement.);

(ii) Keep raw meat and poultry separate from other foods. Wash working surfaces (including cutting boards), utensils, and hands after touching raw meat or poultry. (A graphic illustration of soapy hands under a faucet shall be displayed next to the statement.);

(iii) Cook thoroughly. (A graphic illustration of a skillet shall be displayed next to the statement.); and

(iv) Keep hot foods hot. Refrigerate leftovers immediately or discard. (A graphic illustration of a thermometer shall be displayed next to the statement.)

(4) Poultry products intended for further processing at another official establishment are exempt from the requirements prescribed in paragraphs (b)(1) through (b)(3) of this section.

Done at Washington, DC, on: October 6, 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–25006 Filed 10–8–93; 8:45 am]

BILLING CODE 3410–DM–M

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51
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52
52
52

L
8
S
C
2
93
MI

Reader Aids

Federal Register

Vol. 58, No. 195

Tuesday, October 12, 1993

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202–523–5227
Public inspection desk	523–5215
Corrections to published documents	523–5237
Document drafting information	523–3187
Machine readable documents	523–3447

Code of Federal Regulations

Index, finding aids & general information	523–5227
Printing schedules	523–3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523–6641
Additional information	523–5230

Presidential Documents

Executive orders and proclamations	523–5230
Public Papers of the Presidents	523–5230
Weekly Compilation of Presidential Documents	523–5230

The United States Government Manual

General information	523–5230

Other Services

Data base and machine readable specifications	523–3447
Guide to Record Retention Requirements	523–3187
Legal staff	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (PLUS)	523–6641
TDD for the hearing impaired	523–5229

ELECTRONIC BULLETIN BOARD

Free Electronic Bulletin Board service for Public Law numbers, and Federal Register finding aids.	202–275–1538, or 275–0920

FEDERAL REGISTER PAGES AND DATES, OCTOBER

51211–51664.....1
51665–51756.....4
51757–51972.....5
51973–52206.....6
52207–52396.....7
52397–52628.....8
52629–52874.....12

CFR PARTS AFFECTED DURING OCTOBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Administrative Orders:

Memorandums:
August 19, 1993.....52397
September 30, 1993.....52391
October 1, 1993.....52393

Notices:
September 30, 1993.....51563

Executive Orders:
3406 (Revoked in part by PLO 7001).....52683
5327 (Revoked in part by PLO 7002).....52684
11145 (Continued by EO 12869).....51751
11183 (Continued by EO 12869).....51751
11287 (Continued by EO 12869).....51751
11776 (Continued by EO 12869).....51751
12002 (See EO 12867).....51747
12131 (Continued by EO 12869).....51751
12196 (Continued by EO 12869).....51751
12214 (See EO 12867).....51747
12216 (Continued by EO 12869).....51751
12291 (Revoked by EO 12866).....51735
12345 (Continued by EO 12869).....51751
12367 (Continued by EO 12869).....51751
12382 (Continued by EO 12869).....51751
12498 (Revoked by EO 12866).....51735
12675 (Revoked in part EO 12869).....51751
12687 (Revoked by EO 12869).....51751
12696 (Revoked by EO 12869).....51751
12700 (See EO 12869).....51751
12720 (Revoked by EO 12869).....51751
12730 (See EOs 12867, 12868).....51747, 51749
12735 (Revoked by EO 12867; See EO 12868).....51747, 51749
12774 (Superseded by EO 12869).....51751
12775 (See notice of September 30).....51563
12779 (See notice of September 30).....51563
12792 (Revoked by EO 12869).....51751
12813 (Revoked by EO 12869).....51751
12853 (See notice of September 30).....51563
12866.....51735
12867.....51747
12868.....51749
12869.....51751
12870.....51753
12871.....52201

Proclamations:
6596.....51559
6599.....51561
6600.....51721
6601.....51723
6602.....52205
6603.....52387
6604.....52389
6605.....52627

Presidential Determinations:
No. 93–39 of September 17, 1993.....51973
No. 93–40 of September 28, 1993.....51975
No. 93–41 of September 29, 1993.....51977
No. 93–42 of September 30, 1993.....52629
No. 93–43 of September 30, 1993.....52207
No. 93–44 of September 30, 1993.....52209
No. 93–45 of September 30, 1993.....52211
No. 94–1 of October 1, 1993.....52213

5 CFR

Ch. XLI.....52637
532.....51211
591.....51565

Proposed Rules:
2502.....51255
2504.....51256

7 CFR

2.....51211
246.....51566
300.....52399
301.....51979, 51982
906.....52400
910.....52401

967.....52402
1002.....51982
1004.....52404, 52405
1205.....52215
1211.....51568
1427.....51982
1477.....51757
1478.....51757
1744.....52639
1900.....52644
1910.....52644
1951.....52644
1955.....52644
1962.....52644
1965.....52644
Proposed Rules:
1413.....51934, 52686
1703.....52686

9 CFR

317.....52856
381.....52856
Proposed Rules:
82.....52240
317.....51581
318.....51581

10 CFR

19.....52406
30.....52406
40.....52406
50.....52406
60.....52406
61.....52406
70.....52406
72.....51762, 52406
150.....52406
Proposed Rules:
73.....52035

11 CFR

Proposed Rules:
100.....52040
107.....52700
113.....52040
114.....52700
9008.....52700

12 CFR

574.....52140
618.....51993
933.....52808
Proposed Rules:
3.....52808
208.....52808
325.....52808
615.....52701

13 CFR

121.....52415
Proposed Rules:
121.....52452

14 CFR

23.....51970
39.....51212, 51215, 51770, 51771, 52220
71.....51773, 52140, 52808
91.....51966, 52140
97.....51774, 51776
Proposed Rules:
23.....52702
39.....51583, 51585, 51587, 51589, 51793, 52041, 52240, 52243, 52714, 52717
71.....51256, 51257
91.....51938
121.....51938, 51944
125.....51938
129.....51944
135.....51938, 51944

15 CFR

773.....52166, 52168
778.....52166
799.....52166, 52169

17 CFR

140.....52856
200.....52416
203.....52416
240.....52416
250.....51488
259.....51488
Proposed Rules:
250.....51508

18 CFR

35.....51217, 51777
38.....51777
284.....52660
141.....52420
292.....51777
293.....51777
375.....51222
382.....51777
Proposed Rules:
35.....51259

19 CFR

Proposed Rules:
7.....52246
10.....52246
148.....52246

20 CFR

404.....52346
416.....52346
Proposed Rules:
416.....52458, 52464
655.....52152

21 CFR

172.....52221
176.....51994
522.....52222
821.....52440
864.....51570
Proposed Rules:
5.....52719
25.....52719
103.....52042
170.....52719
171.....52719
174.....52719
812.....52142, 52144
813.....52142
814.....52729
1301.....52246
1311.....52246

23 CFR

650.....52663
Proposed Rules:
660.....51794

24 CFR

511.....52566
888.....51410
905.....51952
965.....51952
Proposed Rules:
92.....52560
135.....52534
219.....52560
570.....52560
572.....52560
574.....52560
576.....52560
583.....52560
700.....52560
889.....52560
890.....52560
905.....51261, 52560
961.....52560
963.....52560
990.....51261

26 CFR

1.....51571
602.....51571

27 CFR

Proposed Rules:
24.....52222

28 CFR

2.....51779
11.....51223
51.....51225

29 CFR

Proposed Rules:
507.....52152
1609.....51266

30 CFR

917.....51225
946.....52666
950.....52232
Proposed Rules:
250.....52731
253.....52059
256.....52731
280.....52731
281.....52731
700.....52374
701.....52374
705.....52374
706.....52374
715.....52374
716.....52374
785.....52374
825.....52374
870.....52374

31 CFR

Proposed Rules:
103.....51269

32 CFR

40.....51780
80.....51996
86.....52010
185.....52667
199.....51227
706.....51241

33 CFR

2.....51726
3.....51726
100.....51242, 52440
117.....52441
165.....51243, 52442
175.....51576
181.....51576
Proposed Rules:
117.....52466
126.....51906
127.....51906
187.....51920

34 CFR

642.....51518
645.....51518
646.....51518
668.....52194
674.....52194
675.....52194
676.....52194
682.....52194
690.....52194
Proposed Rules:
370.....52414
386.....52606
668.....51712

38 CFR

3.....52017
4.....52017
21.....51780, 51781
Proposed Rules:
3.....51796
17.....51799

40 CFR

52.....52237
81.....51784
300.....52018
258.....51536
271.....51244
272.....52674, 52677, 52679
372.....51785
721.....51672, 51694
Proposed Rules:
52.....51591, 51593, 52467
89.....51595

42 CFR

435.....51408
436.....51408
440.....51408
Proposed Rules:
440.....51288
441.....51288

43 CFR

37.....51550
Proposed Rules:
4700.....51297
Public Land Orders:
4522 (Revoked in part by PLO 7002).....52684
6998.....52238
6999.....52238
7000.....52682
7001.....52683
7002.....52684

44 CFR

64.....51576, 52019
Proposed Rules:
67.....51598

46 CFR

160.....51576
Proposed Rules:
10.....51408
12.....51408
30.....52598

31.....52598
32.....52598
67.....51298
585.....52248

47 CFR

1.....51246
15.....51247
73.....51250, 51578, 51579, 51787
74.....51250
87.....52021
90.....51251

Proposed Rules:

15.....51299
36.....52254
73.....51603, 51799, 52733, 52734, 52735
74.....52256
90.....51299

48 CFR

501.....52442
503.....52442
507.....52442
508.....52442
509.....52442
511.....52442
514.....52442
515.....52442
519.....52442
522.....52442
525.....52442
528.....52442
529.....52442
532.....52442
536.....52442
542.....52442
543.....52442
552.....52442
570.....52442
1816.....52446
1852.....52446

49 CFR

107.....51524
171.....51524
172.....51524
173.....51524
174.....51524
175.....51524
176.....51524
177.....51524
178.....51524
179.....51524
180.....51524
571.....51788, 52021
604.....52684
1002.....52027
1017.....52027
1018.....52027
1312.....52027
1313.....52027
1314.....52027

Proposed Rules:

23.....52050
37.....52735
172.....52574
173.....52574
179.....52574
390.....51800
1063.....51603
1105.....51800
1121.....51800
1152.....51800

50 CFR

17.....52027, 52031
229.....51788
301.....51253
625.....52686
642.....51579, 51789
663.....52031
672.....51791, 52032
675.....51253, 52033, 52451

Proposed Rules:

17.....51302, 51604, 52058, 52059, 52063, 52740
52.....51270, 51279
641.....52063, 52073, 52474
651.....52073

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470).

H.R. 20/P.L. 103–94
Hatch Act Reform Amendments of 1993 (Oct. 6, 1993; 107 Stat. 1001; 11 pages)

H.R. 1513/P.L. 103–95
To designate the United States courthouse located at 10th and Main Streets in Richmond, Virginia, as the "Lewis F. Powell, Jr. United States Courthouse". (Oct. 6, 1993; 107 Stat. 1012; 1 page)

H.R. 2431/P.L. 103–96
To designate the Federal building in Jacksonville, Florida, as the "Charles E. Bennett Federal Building". (Oct. 6, 1993; 107 Stat. 1013; 1 page)

S. 464/P.L. 103–97
To redesignate the Pulaski Post Office located at 111 West College Street in Pulaski, Tennessee, as the "Ross Bass Post Office". (Oct. 6, 1993; 107 Stat. 1014; 1 page)

S. 779/P.L. 103–98
To continue the authorization of appropriations for the East Court of the National Museum of Natural History, and for other purposes. (Oct. 6, 1993; 107 Stat. 1015; 1 page)

S.J. Res. 61/P.L. 103–99
To designate the week of October 3, 1993, through October 9, 1993, as "Mental Illness Awareness Week". (Oct. 6, 1993; 107 Stat. 1016; 2 pages)

S.J. Res. 121/P.L. 103–100
To designate October 6, 1993 and 1994, as "German-American Day". (Oct. 6, 1993; 107 Stat. 1018; 2 pages)

Last List October 6, 1993

CFR CHECKLIST

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–019–00001–1)	$15.00	Jan. 1, 1993
3 (1992 Compilation and Parts 100 and 101)	(869–019–00002–0)	17.00	[1] Jan. 1, 1993
4	(869–019–00003–8)	5.50	Jan. 1, 1993
5 Parts:			
1–699	(869–019–00004–6)	21.00	Jan. 1, 1993
700–1199	(869–019–00005–4)	17.00	Jan. 1, 1993
1200–End, 6 (6 Reserved)	(869–019–00006–2)	21.00	Jan. 1, 1993
7 Parts:			
0–26	(869–019–00007–1)	20.00	Jan. 1, 1993
27–45	(869–019–00008–9)	13.00	Jan. 1, 1993
46–51	(869–019–00009–7)	20.00	Jan. 1, 1993
52	(869–019–00010–1)	28.00	Jan. 1, 1993
53–209	(869–019–00011–9)	21.00	Jan. 1, 1993
210–299	(869–019–00012–7)	30.00	Jan. 1, 1993
300–399	(869–019–00013–5)	15.00	Jan. 1, 1993
400–699	(869–019–00014–3)	17.00	Jan. 1, 1993
700–899	(869–019–00015–1)	21.00	Jan. 1, 1993
900–999	(869–019–00016–0)	33.00	Jan. 1, 1993
1000–1059	(869–019–00017–8)	20.00	Jan. 1, 1993
1060–1119	(869–019–00018–6)	13.00	Jan. 1, 1993
1120–1199	(869–019–00019–4)	11.00	Jan. 1, 1993
1200–1499	(869–019–00020–8)	27.00	Jan. 1, 1993
1500–1899	(869–019–00021–6)	17.00	Jan. 1, 1993
1900–1939	(869–019–00022–4)	13.00	Jan. 1, 1993
1940–1949	(869–019–00023–2)	27.00	Jan. 1, 1993
1950–1999	(869–019–00024–1)	32.00	Jan. 1, 1993
2000–End	(869–019–00025–9)	12.00	Jan. 1, 1993
8	(869–019–00026–7)	20.00	Jan. 1, 1993
9 Parts:			
1–199	(869–019–00027–5)	27.00	Jan. 1, 1993
200–End	(869–019–00028–3)	21.00	Jan. 1, 1993
10 Parts:			
0–50	(869–019–00029–1)	29.00	Jan. 1, 1993
51–199	(869–019–00030–5)	21.00	Jan. 1, 1993
200–399	(869–019–00031–3)	15.00	Jan. 1, 1993
400–499	(869–019–00032–1)	20.00	Jan. 1, 1993
500–End	(869–019–00033–0)	33.00	Jan. 1, 1993
11	(869–019–00034–8)	13.00	Jan. 1, 1993
12 Parts:			
1–199	(869–019–00035–6)	11.00	Jan. 1, 1993
200–219	(869–019–00036–4)	15.00	Jan. 1, 1993
220–299	(869–019–00037–2)	26.00	Jan. 1, 1993
300–499	(869–019–00038–1)	21.00	Jan. 1, 1993
500–599	(869–019–00039–9)	19.00	Jan. 1, 1993
600–End	(869–019–00040–2)	28.00	Jan. 1, 1993
13	(869–019–00041–1)	28.00	Jan. 1, 1993
14 Parts:			
1–59	(869–019–00042–9)	29.00	Jan. 1, 1993
60–139	(869–019–00043–7)	26.00	Jan. 1, 1993
140–199	(869–019–00044–5)	12.00	Jan. 1, 1993
200–1199	(869–019–00045–3)	22.00	Jan. 1, 1993
1200–End	(869–019–00046–1)	16.00	Jan. 1, 1993
15 Parts:			
0–299	(869–019–00047–0)	14.00	Jan. 1, 1993
300–799	(869–019–00048–8)	25.00	Jan. 1, 1993
800–End	(869–019–00049–6)	19.00	Jan. 1, 1993
16 Parts:			
0–149	(869–019–00050–0)	7.00	Jan. 1, 1993
150–999	(869–019–00051–8)	17.00	Jan. 1, 1993
1000–End	(869–019–00052–6)	24.00	Jan. 1, 1993
17 Parts:			
1–199	(869–019–00054–2)	18.00	Apr. 1, 1993
200–239	(869–019–00055–1)	23.00	June 1, 1993
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Title	Stock Number	Price	Revision Date
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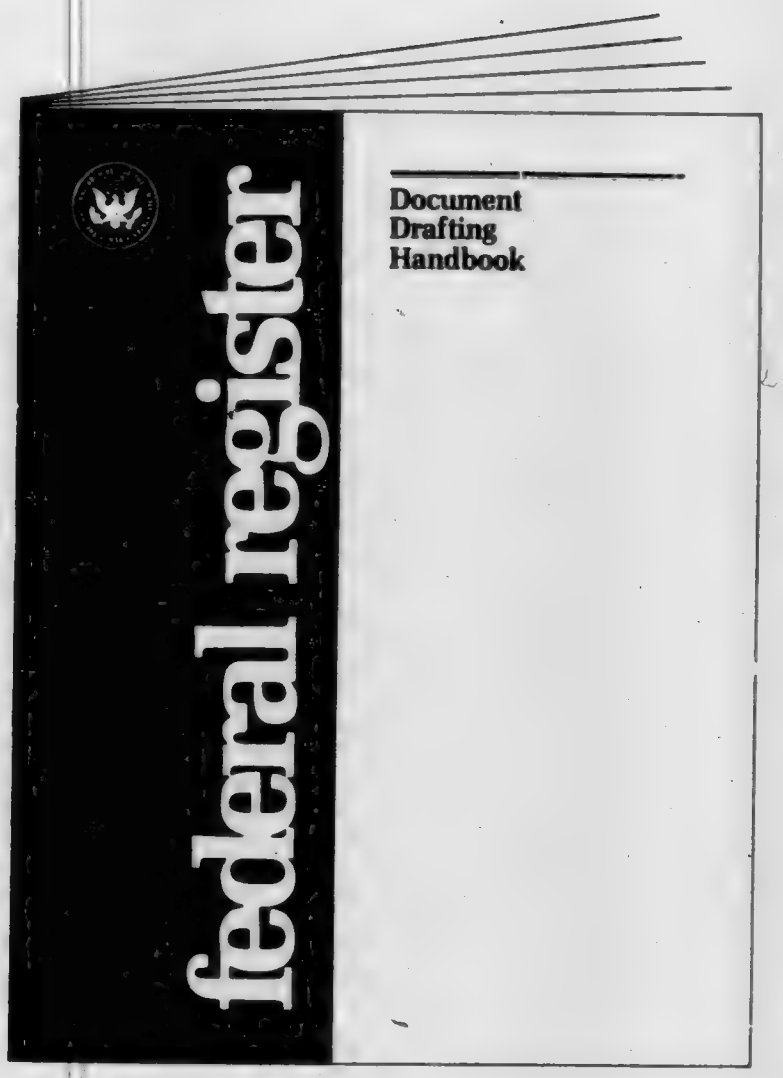

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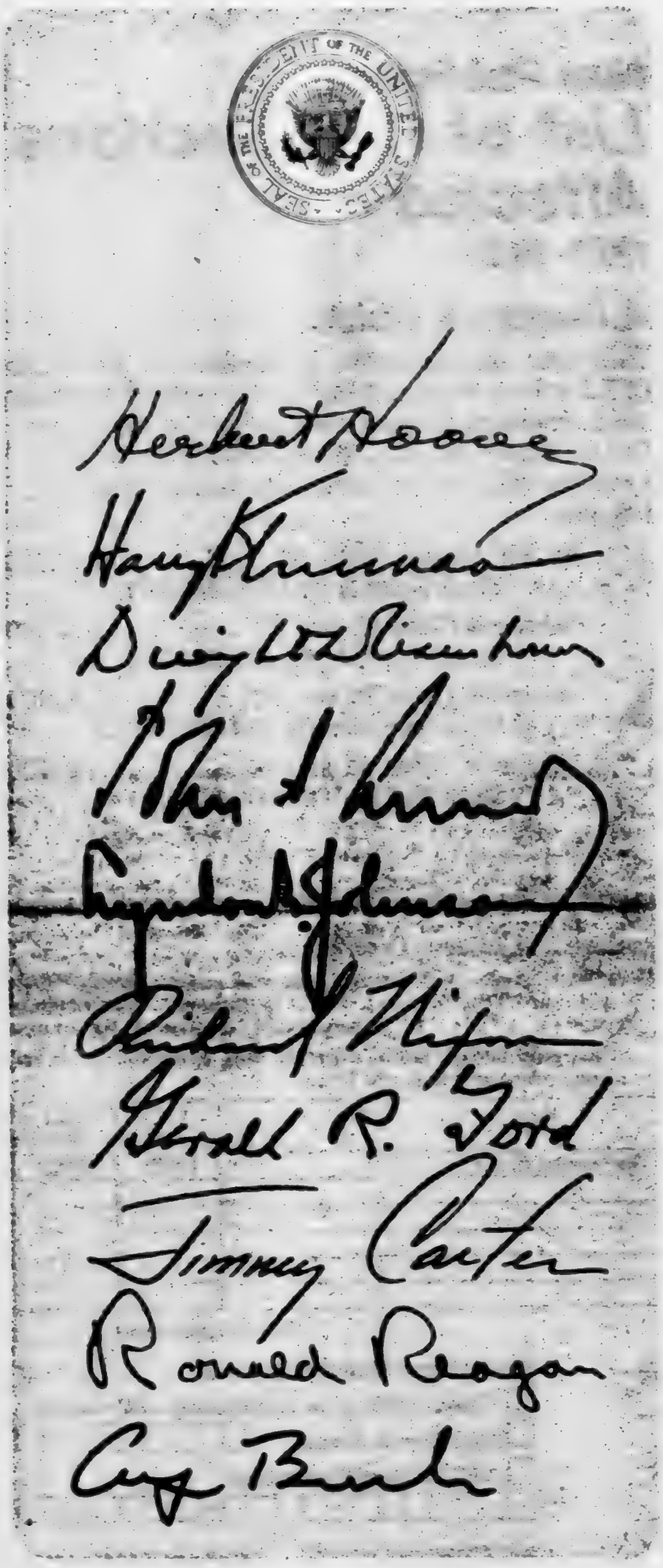

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THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC
(two briefings)

WHEN: October 19 at 9:00 am and 1:30 pm

WHERE: Office of the Federal Register, 7th Floor Conference Room, 800 North Capitol Street NW, Washington, DC (3 blocks north of Union Station Metro)

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Contents

Federal Register

Vol. 58, No. 196

Wednesday, October 13, 1993

Agricultural Marketing Service
See Packers and Stockyards Administration

Agriculture Department
See Commodity Credit Corporation
See Forest Service
See Packers and Stockyards Administration
NOTICES
Agricultural commodities overseas donations; types and quantities, 52946

Army Department
NOTICES
Meetings:
Yakima Training Center Cultural and Natural Resources Committee, 52950
Military traffic management:
Defense Transportation Tracking System, 52951
Total quality assurance program, 52950

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
California, 52946
Oklahoma, 52946
Meetings; Sunshine Act, 53021

Commerce Department
See Export Administration Bureau
See National Institute of Standards and Technology

Commodity Credit Corporation
PROPOSED RULES
Loan and purchase programs:
Extra long staple cotton; acreage reduction percentage, 52928

Commodity Futures Trading Commission
NOTICES
Exchange-traded futures and options contracts; exemptions, 52948

Customs Service
NOTICES
Commercial gauger:
Approval—
Saybolt, Inc.; correction, 53023

Defense Department
See Army Department
NOTICES
Privacy Act:
Systems of records, 52948

Education Department
NOTICES
Grants and cooperative agreements; availability, etc.:
State postsecondary review program, 52951

Energy Department
See Energy Efficiency and Renewable Energy Office
See Federal Energy Regulatory Commission
See Hearings and Appeals Office, Energy Department
NOTICES
Natural gas exportation and importation:
Crestar Energy Marketing Corp., 52959
Granite State Gas Transmission, Inc., 52960
Pacific Gas & Electric Co., 52959
Philbro Oil & Gas, Inc., 52959
Tennessee Gas Pipeline Co., 52959
Vermont Gas Systems, Inc., 52960
Wisconsin Fuel & Light Co., 52960
Wisconsin Gas Co., 52960
Wisconsin Public Service Corp., 52960

Energy Efficiency and Renewable Energy Office
NOTICES
Investor-owned utilities; net income neutrality certification applications, 52952

Environmental Protection Agency
NOTICES
Meetings:
Environmental Policy and Technology National Advisory Council, 52961
Superfund; response and remedial actions, proposed settlements, etc.:
Para-Chem Southern Inc. Site, SC, 52961
Tonolli Corp. Site, PA, 52961
Water pollution control:
Clean Water Act—
Class I and II administrative penalty assessments, 52962

Executive Office of the President
See Presidential Documents

Export Administration Bureau
NOTICES
Meetings:
Transportation and Related Equipment Technical Advisory Committee, 52947

Farm Credit Administration
RULES
Farm credit system:
Accounting and reporting requirements, problem loan accounting, etc.
Correction, 52888
NOTICES
Meetings; Sunshine Act, 53021

Federal Aviation Administration
RULES
Airworthiness directives:
Canadair, 52889
Restricted areas, 52890
PROPOSED RULES
Airworthiness directives:
British Aerospace, 52929
Canadair, 52931
McDonnell Douglas, 52932

NOTICES
Advisory circulars; availability, etc.:
Helicopter simulator qualification, 53015
Exemption petitions; summary and disposition, 53016

Federal Emergency Management Agency
NOTICES
Disaster and emergency areas:
Illinois, 52964
Iowa, 52964
Kansas, 52963
Minnesota, 52965
Missouri, 52965
North Dakota, 52965
South Dakota, 52966
Wisconsin, 52966
Grants and cooperative agreements; availability, etc.:
Individual and family programs, and public assistance program; amounts adjustments, 52966

Federal Energy Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Alabama Power Co., 52952
Natural Gas Policy Act:
State jurisdictional agencies tight formation recommendations; preliminary findings—
Colorado Oil and Gas Conservation Commission, 52953
Oklahoma Corporation Commission, 52955
Applications, hearings, determinations, etc.:
ANR Pipeline Co., 52953
Arkla Energy Resources Co., 52953
Electric Energy, Inc., 52954
El Paso Natural Gas Co., 52953
Heber Light & Power Co., 52954
Idaho Power Co., 52954
Iroquois Gas Transmission System L.P., 52954
Louisiana-Nevada Transit Co., 52955
Panhandle Eastern Pipeline Co., 52955
Southern California Edison Co., 52956
Transcontinental Gas Pipe Line Corp., 52956
Trunkline Gas Co., 52956

Federal Housing Finance Board
RULES
Federal home loan bank system:
Membership procedures
Correction, 53023

Federal Maritime Commission
NOTICES
Agreements filed, etc., 52967

Federal Reserve System
NOTICES
Federal Open Market Committee:
Domestic policy directives, 52967
Meetings; Sunshine Act, 53021
Applications, hearings, determinations, etc.:
Jones Bancshares, L.P., 52968

Food and Drug Administration
NOTICES
Food additive petitions:
Food Techniques, Inc., 52971

Forest Service
NOTICES
Appeal exemptions; timber sales:
Kaibab National Forest, AZ, 52946

General Accounting Office
NOTICES
Meetings:
Federal Accounting Standards Advisory Board, 52968

General Services Administration
RULES
Federal property management:
Public buildings and space—
Space utilization and assignment, 52917
NOTICES
Federal travel:
Special actual subsistence expense reimbursement ceiling
Topeka (Shawnee County), KS, 52968

Government Printing Office
NOTICES
GPO Electronic Information Access Enhancement Act (1993) implementation; meeting, 52969

Health and Human Services Department
See Food and Drug Administration
See Health Care Financing Administration
See Social Security Administration
NOTICES
Organization, functions, and authority delegations:
Public Affairs Office, 52969

Health Care Financing Administration
NOTICES
Privacy Act:
Systems of records, 52971

Hearings and Appeals Office, Energy Department
NOTICES
Cases filed, 52957

Housing and Urban Development Department
NOTICES
Meetings:
Lead-Based Paint Hazard Reduction and Financing Task Force, 52973
Mortgage and loan insurance programs:
Federal Home Loan Mortgage Corporation; interim housing goals, 53048
Federal National Mortgage Association; interim housing goals, 53048

Indian Affairs Bureau
PROPOSED RULES
Facilities Management Programs:
Education facilities construction, 53026

Interior Department
See Indian Affairs Bureau
See Land Management Bureau
See National Park Service
NOTICES
Meetings:
Indian Affairs Bureau Reorganization Joint Tribal/BIA/DOI Advisory Task Force, 53046

International Trade Commission
NOTICES
Import investigations:
Anisotropically etched one megabit and greater DRAMS, components, and products containing DRAMS, 52976

Interstate Commerce Commission
NOTICES
Railroad operation, acquisition, construction, etc.:
Indiana Southern Railroad, Inc., 52977
Peninsula Corridor Joint Powers Board, 52977
Railroad services abandonment:
Union Pacific Railroad Co., 52976

Land Management Bureau
NOTICES
Environmental statements; availability, etc.:
San Bernardino County et al., CA; heated crude oil pipeline, 52974
Meetings:
San Juan River Regional Coal Team, 52975

Legal Services Corporation
RULES
Freedom of Information Act; implementation
Disclosure procedures, 52918

National Aeronautics and Space Administration
NOTICES
Agency information collection activities under OMB review, 52977

National Foundation on the Arts and the Humanities
NOTICES
Grants and cooperative agreements; availability, etc.:
Arts in education newsletter, 52978
Meetings:
Expansion Arts Advisory Panel, 52978
Humanities Panel, 52978

National Highway Traffic Safety Administration
RULES
Motor vehicle safety standards:
Occupant crash protection—
Lap or lap/shoulder belts; requirements for child safety seats, 52922
NOTICES
Motor vehicle safety standards:
Nonconforming vehicles—
Importation eligibility; determinations, 53017

National Institute of Standards and Technology
NOTICES
Laboratory Accreditation Program, National Voluntary:
Calibration laboratories technical guide workshop, 52947

National Park Service
NOTICES
Environmental statements; availability, etc.:
Foothills Parkway, TN, 52975
National Register of Historic Places:
Pending nominations, 52976

National Science Foundation
NOTICES
Environmental statements; availability, etc.:
Hanford site, Richland, WA; Laser Interferometer Gravitational-Wave Observatory, 52979

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
University of—
Texas, 53001
Meetings:
Evolutionary light water reactor designs certification; workshop, 53002
Reactor Safeguards Advisory Committee, 53001
Meetings; Sunshine Act, 53021
Operating licenses, amendments; no significant hazards considerations; biweekly notices, 52979

Nuclear Waste Technical Review Board
NOTICES
Meetings:
Yucca Mountain site, NV; DOE's environmental activities, 53003

Packers and Stockyards Administration
RULES
Packers and Stockyards Act:
Trade practices, scale test instructions, and advertising allowance guidelines, 52884

Personnel Management Office
RULES
Freedom of Information Act; implementation, 52877
Retirement:
Civil Service Retirement System—
Survivor deposits payment by actuarial reduction, 52877

Presidential Documents
PROCLAMATIONS
Special observances:
Country Music Month (Proc. 6606), 52875

Public Health Service
See Food and Drug Administration

Securities and Exchange Commission
RULES
Securities:
Transaction settlements, 52891
PROPOSED RULES
Securities:
Customer confirmations, annual account statements, and new accounts; enhanced order flow payment disclosure, 52934
NOTICES
Self-regulatory organizations; proposed rule changes:
Chicago Board Options Exchange, Inc., 53003
Depository Trust Co., 53007
Philadelphia Stock Exchange, Inc., 53009
Applications, hearings, determinations, etc.:
SwissKey Funds et al., 53011
Trinity Assets Trust, 53013

Small Business Administration
PROPOSED RULES
Small business size standards:
Numerical size standard for determining small entity, 52929
NOTICES
Agency information collection activities under OMB review, 53014
License surrenders:
FCA Investment Co., 53014

Meetings; district and regional advisory councils:
New York, 53014
Texas, 53014
Wyoming, 53015

Social Security Administration
RULES
Social security benefits:
Coal Industry Retiree Health Benefit Act; administrative review procedures, 52914
Supplemental security income:
Benefits due deceased recipients; payment to survivors, 52909
PROPOSED RULES
Supplemental security income:
Promissory notes in home replacement situations, treatment, 52943
NOTICES
Social security rulings:
Disability insurance benefits—
Human immunodeficiency virus infection; evaluation, 52973

State Department
NOTICES
Munitions export licenses suspension:
Cohen, Eliyahu, et al., 53015

Transportation Department
See Federal Aviation Administration
See National Highway Traffic Safety Administration

Treasury Department
See Customs Service
NOTICES
Agency information collection activities under OMB review, 53018

Separate Parts in This Issue

Part II
Department of Interior, Bureau of Indian Affairs, 53026

Part III
Department of Interior, 53046

Part IV
Department of Housing and Urban Development, 53048

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers and Federal Register finding aids is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamations:
6606.....52875

5 CFR
294.....52877
831.....52877
838.....52877
842.....52877
890.....52877

7 CFR
Proposed Rules:
1413.....52928

9 CFR
201.....52884
203.....52884

12 CFR
611.....52888
613.....52888
614.....52888
620.....52888
621.....52888
627.....52888

13 CFR
Proposed Rules:
121.....52929

14 CFR
39.....52889
73.....52890
Proposed Rules:
39 (3 documents).....52929, 52931, 52932

17 CFR
200.....52891
240.....52891
Proposed Rules:
240.....52934

20 CFR
416.....52909
422.....52914
Proposed Rules:
416.....52943

25 CFR
Proposed Rules:
294.....53026

41 CFR
101–17.....52917

45 CFR
1602.....52918

49 CFR
571.....52922

L

8

S

C

3

93

MI

Federal Register
Vol. 58, No. 196
Wednesday, October 13, 1993

Presidential Documents

Title 3—

The President

Proclamation 6606 of October 7, 1993

Country Music Month, 1993

By the President of the United States of America

A Proclamation

Country music is one of America's unique musical forms. Our immigrant ancestors from Great Britain and Ireland brought their tunes and melodies with them, and those songs were reshaped by life and landscape in our new Nation. In Appalachia, the Piedmonts, the Ozarks, the Mississippi Delta, and the Pine Barrens, those songs and ballads were forged from the spirit of working men and women, farmers and field laborers, miners and railroad workers, and pioneers crossing the Great Plains.

They blended with songs of African Americans, Mexican Americans, and Cajuns. Out of this wellspring came Western swing, honky-tonk, blues, gospel, and shape note music, creating a family of many musical cousins. Country music is not one voice, but many, irresistible to the ear and to any heart that likes to sing. The instruments that accompany the songs are also from our ancestors of many lands—the dulcimer from Germany, the fiddle from all of Europe, the banjo from Africa.

Country music is about the American story. It fuses the traditions of many cultures and celebrates what makes us Americans. Country lyrics tell tales of life and love, joy and heartbreak, toil and celebration. From early folk singers like Woody Guthrie to such legends as Roy Acuff, Hank Williams, and Patsy Cline to today's bright stars—the singers all let loose the soulful music inside their hearts. In its rhythms and words, we can hear the lonesome sound, as well as the festive spirit, of our beloved land.

The Congress, by Senate Joint Resolution 102, has designated the month of October as "Country Music Month." I urge all Americans to join me in recognizing the role that country music has played in shaping our cultural heritage.

Country Music Month is a time to recognize the contributions of singers, songwriters, musicians, and all in the industry who work to bring us the very best of country music and dance. Throughout the month of October, let us celebrate country music in our homes and towns across the United States.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim October 1993 as Country Music Month.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of October, in the year of our Lord nineteen hundred and ninety-three, and of the Independence of the United States of America the two hundred and eighteenth.

William J. Clinton

Rules and Regulations

Federal Register
Vol. 58, No. 196
Wednesday, October 13, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 294

RIN 3206–AF42

Implementation of the Freedom of Information Act

AGENCY: Office of Personnel Management (OPM).

ACTION: Final rule.

SUMMARY: This action renders final the changes to agency regulations implementing the Freedom of Information Act previously published by OPM as an interim rule. Because no comments were received, the interim rule making editorial changes to clarify and improve OPM's regulations implementing the Freedom of Information Act (FOIA) is effective as published.

EFFECTIVE DATE: October 13, 1993.

FOR FURTHER INFORMATION CONTACT: Leslie Crawford, (703) 908–8565.

SUPPLEMENTARY INFORMATION: OPM published interim regulations on June 8, 1993 (58 FR 32043) which made editorial changes to OPM's regulations implementing the FOIA. OPM received no comments in response to the interim rulemaking.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12292, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because costs associated with requesting information under the Freedom of Information Act are not affected.

List of Subjects in 5 CFR Part 294

Freedom of information.

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

Accordingly, under the authority of 5 U.S.C. 552, the inertim rule amending 5 CFR 294, which was published at 58 FR 32043 on June 8, 1993, is adopted as a final rule without change.

[FR Doc. 93–25055 Filed 10–12–93; 8:45 am]
BILLING CODE 6325–01–M

5 CFR Parts 831, 838, 842, and 890

RIN 3206–AF66

Payment of Survivor Deposits by Actuarial Reduction

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations to implement section 11004 of the Omnibus Budget Reconciliation Act of 1993. The Act requires OPM to reduce a retiree's annuity instead of collecting a deposit when the retiree marries during retirement and elects to provide a survivor annuity for the new spouse. These regulations comply with the requirement that OPM establish, by regulation, the method for computing the actuarial reduction on an actuarial basis. These regulations also reorganize OPM's survivor elections and survivor annuity regulations for the Civil Service Retirement System to group together sections on similar subjects and provide a more detailed table of contents to make the regulations easier to use.

DATES: Interim rules effective October 1, 1993; comments must be received on or before December 13, 1993.

ADDRESSES: Send comments to Reginald M. Jones, Jr., Assistant Director for Retirement and Insurance Policy; Retirement and Insurance Group; Office of Personnel Management; P.O. Box 57; Washington, DC 20044; or deliver to OPM, room 4351, 1900 E Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Harold L. Siegelman, (202) 606–0299.

SUPPLEMENTARY INFORMATION:

1. Change in Law on Deposits for Post-Retirement Survivor Elections

Under the retirement law in effect before October 1, 1993, a retiree who marries after retirement and elects to provide a survivor annuity for his or her spouse must pay a deposit. The deposit represents the difference between the annuity actually paid since retirement and the amount the retiree would have received with a survivor reduction; interest is added at the rate of 6 percent per year. The retiree must either send OPM the full amount of the deposit in a lump sum or authorize OPM to deduct 25 percent of the retiree's annuity until the deposit has been completed. If the retiree dies before completing the deposit, the full survivor benefit is offset until the balance of the deposit is entirely paid off. A retiree electing to provide a survivor annuity for a former spouse must also make a deposit.

Under section 11004 of the Omnibus Budget Reconciliation Act of 1993, Public Law 103–66, effective October 1, 1993, OPM will no longer collect these deposits in either a lump sum or by installments. Instead, OPM is now required to establish a permanent actuarial reduction in the annuity of the retiree. This means that OPM must take the amount of the deposit computed under the old law, and "translate" it into a lifetime reduction in the retiree's benefits. The reduction is based on actuarial tables, similar to those used for alternative forms of annuity under sections 8343a and 8420a of title 5, United States Code. (Section 11004 limits the maximum reduction to 25% of the full annuity, but we expect that in most cases the reduction will be less than 5% of the annuity.) Conceptually, the amended law would in essence lend the amount of the deposit to the annuitant who then repays the "loan" through a reduction in annuity payments over his or her lifetime. The effect of this change is to spread the reduction over the remaining life expectancy of the retiree. Future cost-of-living adjustments on the retiree's annuity are applied to the reduced amount. Under no circumstances would the survivor have to complete the deposit, as under the old law, because the need to make a deposit is eliminated when the permanent actuarial reduction is established.

The new law has no effect on the normal reduction in a retiree's annuity to provide survivor benefits for his or her spouse. Under FERS, this reduction remains at 10 percent of the annuity on which the survivor annuity is based, and, under CSRS rules, 2½ percent of the first $3600 per year, plus 10 percent of the amount over $3600. The actuarial reduction is in addition to the normal reduction based on these percentages.

The effective date of the statutory change is October 1, 1993. The new law applies to all deposits on which no payments have been made before the effective date. If the deposit has been partially paid prior to October 1, 1993, OPM must determine the amount of the remaining deposit and establish the actuarial reduction on the basis of that amount.

2. Reorganization of Regulations on Survivors Elections and Annuities

The current CSRS regulations on survivor elections are included in subpart F of part 831 of title 5, Code of Federal Regulations, along with the regulations concerning survivor annuities. These regulations were revised in 1985 as part of our implementation of the Civil Service Retirement Spouse Equity Act of 1984, Pub. L. 98–615, enacted November 8, 1984. As subsequent legislation required additional regulations, new sections were added at the end of the current regulations. This has produced a regulatory structure (containing 30 sections) that is difficult to use. Accordingly, we have reorganized the current regulatory provisions to provide a more coherent structure that will be easier to use.

In this reorganization, we are not changing any regulatory text. We are only changing section numbers and placing labels on groups of sections containing similar subject matter. The corresponding FERS regulations are already organized in three distinct subparts (survivor elections in subpart F of part 842, spousal annuities in subpart C of part 843, and children's annuities in subpart D of part 843) and, therefore, do not require a similar reorganization.

3. Section Analysis of Regulations To Implement the Statutory Change

A definition of "present value factor" is added to sections 831.603 and 842.602. This definition is the same one used in the regulations governing computation of the actuarial reduction associated with the alternative form of annuity.

These regulations also add sections 831.663 and 831.664 to the reorganized CSRS regulations to implement the statutory change discussed above. Section 831.663 establishes the methodology for applying the actuarial reduction to new deposits under section 11004(c)(1) of the statute. Section 831.664 establishes corresponding rules for partially paid deposits under section 11004(c)(2) of the statute.

Paragraph (a) of each section states to whom the section applies. Section 831.663 applies to retirees who have not paid any portion of the deposit before the statutory change became effective on October 1, 1993. Section 831.664 applies to retirees who have made partial lump-sum payments or who have partially completed the deposit by installments taken from annuity payable for periods before October 1, 1993. Section 831.664, not § 831.663, applies to retirees who have partially paid the deposit from the annuity payment for September 1993 (which is paid on October 1, 1993). Since any installment paid from the check dated October 1, 1993, accrued before the effective date of the law, we will treat any installment collected from a CSRS annuity check issued on October 1, 1993, as an installment correctly taken under the old law.

Paragraph (b) of each section restates the statutory requirement that a permanent actuarial reduction is the exclusive method for paying the deposit under the new law. Retirees do not have the option to pay the deposit in order to avoid the actuarial reduction.

Paragraph (c) of each section states the commencing date of the reduction. For cases in which we have not collected part of the deposit under the old law, § 831.663 provides that the reduction begins on the same date as the regular survivor reduction under section 8339 of title 5, United States Code. For cases in which we have collected part of the deposit and must convert the remaining balance to an actuarial reduction, § 831.664 provides that the reduction starts from annuity accruing on October 1, 1993, the effective date of the statute.

Paragraph (d) of each section provides the methodology for computing the actuarial reduction. For cases in which we will be converting the remaining balance of a partially paid deposit under § 831.664, we divide the amount of the remaining balance by the present value factor (as we currently do for the alternative form of annuity) to compute the monthly reduction. The present value factor will be the one for the retiree's age on October 1, 1993. If this method results in a reduction of greater than 25 percent, we reduce the annuity by 25 percent. The method for "new" deposits under § 831.663 is essentially the same except that the 25-percent limit applies to the sum of all actuarial reductions (if more than one), not to each individually, and the present value factor will be the one for the retiree's age on the commencing date of the reduction under paragraph (c).

The actuarial reduction is in addition to the regular survivor reduction. The 25-percent limit applies only to the actuarial reduction. The combined total may exceed 25 percent of the self-only annuity, but we expect it will do so in less than 5 percent of the cases.

Paragraph (e) of both sections restates the statutory provision that the reduction terminates when the retiree dies. The survivor annuity is not affected by the actuarial reduction in the retiree's annuity. Whether the retiree's reduction remains in effect for many years or only a short time, the survivor is not liable for any amount of the deposit that formed the basis for the actuarial reduction.

If the retiree died before October 1, 1993, the statutory change is inapplicable. The existing regulation that states the requirement that the survivor complete any remaining unpaid deposit in those cases has been redesignated as § 831.665.

For FERS, paragraphs (b) through (d) of § 842.615 of Title 5, Code of Federal Regulations, correspond to §§ 831.663 through 831.665 of the CSRS regulations with one difference. The CSRS provisions for conversion of partially paid deposits apply to two types of deposits for survivor elections under noncodified statutes applicable only to retirees who retired before May 7, 1985. FERS began in 1987.

The following three charts contain the present value factors that will apply beginning on October 1, 1993. These present value factors are the same as the factors currently applicable for the alternative form of annuity.

CSRS Present Value Factors

Age	Reduction factor
40	322.9
41	317.7
42	312.3
43	306.9
44	301.4
45	293.4
46	285.2
47	277.8
48	270.2
49	263.8
50	257.6
51	251.2
52	245.1
53	239.1
54	232.1
55	225.1

CSRS PRESENT VALUE FACTORS—Continued

Age	Reduction factor
56	218.7
57	213.1
58	207.5
59	202.3
60	197.9
61	192.4
62	186.2
63	180.4
64	174.3
65	168.4
66	162.6
67	157.4
68	151.3
69	145.1
70	139.8
71	133.9
72	128.2
73	122.6
74	117.1
75	111.6
76	106.4
77	101.3
78	96.4
79	91.6
80	86.9
81	82.3
82	77.9
83	73.7
84	69.7
85	65.9
86	62.3
87	58.8
88	55.6
89	52.5
90	49.6

FERS PRESENT VALUE FACTORS FOR REGULAR EMPLOYEES

Age	Reduction factor
40	171.8
41	171.7
42	171.5
43	171.4
44	171.2
45	170.0
46	168.8
47	167.9
48	166.9
49	166.4
50	166.0
51	165.7
52	165.5
53	165.4
54	164.9
55	164.5
56	164.6
57	165.1
58	165.9
59	167.3
60	169.5
61	171.2
62	169.3
63	164.4
64	159.4
65	154.3
66	149.5

FERS PRESENT VALUE FACTORS FOR REGULAR EMPLOYEES—Continued

Age	Reduction factor
67	145.1
68	139.9
69	134.5
70	129.8
71	124.8
72	119.8
73	114.9
74	110.0
75	105.2
76	100.5
77	95.9
78	91.4
79	87.0
80	82.6
81	78.7
82	74.6
83	70.7
84	67.1
85	63.5
86	60.1
87	56.9
88	53.9
89	50.9
90	48.2

FERS PRESENT VALUE FACTORS FOR LAW ENFORCEMENT OFFICERS, FIREFIGHTERS, AIR TRAFFIC CONTROLLERS, AND MILITARY RESERVE TECHNICIANS WHO RETIRE UNDER 5 U.S.C. 8414(C) BY REASON OF DISABILITY

Age	Reduction factor
40	274.0
41	270.3
42	266.5
43	262.7
44	258.7
45	252.8
46	246.8
47	241.3
48	235.7
49	230.9
50	226.1
51	221.3
52	216.5
53	211.7
54	206.3
55	200.8
56	195.7
57	191.1
58	186.7
59	182.5
60	178.9
61	174.4

(Age 62 and over, see table for regular employees)

Under section 553(b)(3)(B) and (d)(3) of title 5, United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking and to make these rules effective in less than 30 days. The regulations are effective October 1, 1993, the effective date of the statutory change. The statute requires OPM to establish by regulation the method for computing the actuarial reduction. The statute was enacted on August 10, 1993, and affects benefits accruing on or after October 1, 1993. Considering these time frames, publication of a general notice of proposed rulemaking or the normal 30-day delay in effective date is impracticable. Delaying implementation of these regulations would be contrary not only to the statutory provision itself, but would also be contrary to the public interest. The statute that these regulations implement was intended to alleviate a financial hardship on retirees and their families. Delaying implementation of these regulations would unnecessarily prolong that hardship. Although later adjustments could be retroactive to October 1, 1993, such adjustments would be costly to the Government and could seriously harm entitled persons with an immediate need for payment.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect Federal employees and agencies and retirement payments to retired Government employees and their survivors.

List of Subjects

5 CFR Parts 831 and 842

Administrative practice and procedure, Air traffic controllers, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Reporting and recordkeeping requirements, Retirement.

5 CFR Part 838

Administrative practice and procedure, Claims, Courts, Disability benefits, Government employees, Income taxes, Pensions, Retirement.

5 CFR Part 890

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professionals, Hostages, Reporting and recordkeeping requirements, Retirement.

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

Accordingly, OPM is amending title 5, Code of Federal Regulations, as follows:

PART 831—RETIREMENT

1. The authority citation for part 831 of title 5, United States Code, is revised to read as follows:

Authority: 5 U.S.C. 8347; § 831.102 also issued under 5 U.S.C. 8334; § 831.106 also issued under 5 U.S.C. 552a; § 831.108 also issued under 5 U.S.C. 8336(d)(2); § 831.201(b)(6) also issued under 5 U.S.C. 7701(b)(2); § 831.204 also issued under section 7202(m)(2) of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 105–508, 104 Stat. 1388–339; § 831.303 also issued under 5 U.S.C. 8334(d)(2); § 831.502 also issued under 5 U.S.C. 8337; § 831.502 also issued under section 1(3), E.O. 11228, 3 CFR 1964–1965 Comp.; § 831.663 also issued under 5 U.S.C. 8339 (j) and (k)(2); §§ 831.663 and 831.664 also issued under section 11004(c)(2) of the Omnibus Budget Reconciliation Act of 1993, Pub. L. 103–66; § 831.682 also issued under section 201(d) of the Federal Employees Benefits Improvement Act of 1986, Pub. L. 99–251, 100 Stat. 23; subpart S also issued under 5 U.S.C. 8345(k); subpart V also issued under 5 U.S.C. 8343a and section 6001 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, 101 Stat. 1330–275; § 831.2203 also issued under section 7001(a)(4) of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508; 104 Stat. 1388–328.

2. Section 831.603 is amended by adding in alphabetical order a definition of the term "present value factor" to read as follows:

§ 831.603 Definitions.

* * * * *

Present value factor means the amount of money (earning interest at an assumed rate) required at the time of retirement to fund an annuity that starts out at the rate of $1 a month and is payable in monthly installments for the annuitant's lifetime based on mortality rates for non-disability annuitants under the Civil Service Retirement System; and increases each year at an assumed rate of inflation. Interest, mortality, and inflation rates used in computing the present value are those used by the Board of Actuaries of the Civil Service Retirement System for valuation of the System, based on dynamic assumptions. The present value factors are unisex factors obtained by averaging six distinct present value factors, weighted by the total dollar value of annuities typically paid to new retirees at each age.

* * * * *

PART 838—[AMENDED]

3. The authority citation for part 838 continues to read in part as follows:

Authority: 5 U.S.C. 8347(a) and 8461(g). * * *

PART 890—[AMENDED]

4. The authority citation for part 890 continues to read in part as follows:

Authority: 5 U.S.C. 8913; * * *

§§ 831.105, 831.112, 831.601, 831.603, 831.604, 831.605, 831.606, 831.607, 831.611, 831.612, 831.613, 831.614, 831.619, 831.620, 831.621, 831.622, 831.623, 831.624, 831.626, 831.628, 831.629, 831.630, 831.2203, 838.711, 838.733, 838.921, 838.922, 838.1006, 838.1016, 890.803, 890.805 [Amended]

5. In the list below, for each section and paragraph indicated in the left two columns, remove the reference indicated in the third column where it appears in the paragraph, and add the reference (and text) indicated in the fourth column:

Section	Paragraph	Remove	Add
831.105	(h)	831.612	831.631.
831.105	(h)	831.613	831.632.
831.105	(h)	831.621	831.682.
831.105	(h)	831.623	831.684.
831.105	(j)	831.629	831.662.
831.112	(c)	831.607	831.614.
831.601	(b)	831.621	831.682.
831.601	(b)	831.622	831.683.
831.603	"Current spouse annuity"	831.618	831.642.
831.603	"Former spouse"	831.621	831.682.
831.603	"Former spouse"	831.622	831.683.
831.604	(a)(1)	831.605(b)	831.612(b).
831.604	(a)(1)	831.607	831.614.
831.604	(b)	831.608	831.618.
831.604	(c)	831.614	831.641.
831.604	(d)(1)(ii)	831.613	831.631.
831.605	(b)	831.607	831.614.
831.605	(b)	831.608	831.618.
831.605	(e)	831.612 (two occurrences)	831.632.
831.605	(f)(1)(ii)	831.612	831.632.
831.606	(a)	831.604(a)	831.611(a).
831.606	(c)(1)	831.604(a)(1)	831.611(a)(1).
831.606	(c)(2)	831.604(a)(1)	831.611(a)(1).
831.606	(c)(2)(ii)	831.609	831.621.
831.606	(c)(2)(iii)	831.628	831.685.
831.606	(c)(3)	831.611(b)	831.622(b).
831.606	(c)(3)	831.628	831.685.
831.606	(c)(4)	831.611(b)	831.622(b).
831.606	(c)(4)	831.628	831.685.
831.606	(c)(5)(iii)	831.612	831.632.
831.606	(h)(1)	831.605(d)	831.612(d).
831.606	(h)(1)	831.612	831.632.
831.606	(k)(1)	831.613	831.631.
831.606	(k)(2)(i)	831.613	831.631.
831.606	(k)(2)(ii)	831.613	831.631.
831.607	(a)	831.608	831.618.
831.611	(a)	831.621	831.682.
831.611	(a)	831.623	831.684.

Section	Paragraph	Remove	Add
831.611	(a)	831.628	831.685.
831.611	(b)(1)	831.606	831.613.
831.611	(b)(2)	831.614	831.641.
831.611	(b)(3)	831.629	831.662.
831.611	(b)(5)	831.604	831.611.
831.611	(b)(7)	831.614 (two occurrences)	831.641.
831.612	(b)(1)	831.614	831.641.
831.612	(b)(2)(ii)	831.604	831.611.
831.612	(b)(2)(ii)	831.605	831.612.
831.612	(b)(2)(ii)	831.613	831.631.
831.612	(b)(3)(i)	831.607(c)	831.614(c).
831.612	(b)(3)(i)	831.608	831.618.
831.612	(b)(3)(ii)	831.604(a)(1) or (a)(2)	831.611(a)(1) or (a)(2).
831.612	(e)(1)(ii)	831.612	831.632.
831.613	(b)(2)(i)(A)	831.604	831.611.
831.613	(b)(2)(i)(B)	831.608	831.618.
831.613	(b)(2)(ii)(A)	831.607	831.614.
831.613	(b)(2)(ii)(B)	831.607	831.614.
831.613	(b)(4)(ii)	831.618	831.642.
831.613	(c)(1)	831.614	831.641.
831.613	(c)(2)	831.605	831.612.
831.613	(c)(2)	831.612	831.632.
831.613	(c)(2)	831.614	831.641.
831.613	(c)(2)	831.614(c)	831.641(c).
831.614	(a)	831.621	831.682.
831.614	(a)	831.622	831.683.
831.614	(c)(3)	831.613	831.631.
831.619	(b)	831.622 (two occurrences)	831.683.
831.620	(b)(2)(i)	831.622	831.683.
831.621	(e)(3)	831.624	831.665.
831.621	(f)(2)	831.621(b)(4)	Paragraph (b)(4) of this section.
831.621	(i)	831.622	831.683.
831.622	(a)(1)(iv)	831.619(b)	831.643(b).
831.622	(a)(2)(iii)	831.619(b)	831.643(b).
831.622	(c)	831.619(b)	831.643(b).
831.623	(c)(3)	831.624	831.665.
831.624	(a)	831.611	831.622.
831.624	(a)	831.612	831.631.
831.624	(a)	831.613	831.632.
831.624	(a)	831.621	831.682.
831.624	(a)	831.623	831.684.
831.624	(a)	831.628	831.685.
831.624	(b)	831.621	831.682.
831.624	(b)	831.623	831.684.
831.624	(b)	831.621(e)	831.682(e).
831.624	(b)	831.623(c)	831.684(c).
831.624	(c)	831.612	831.631.
831.624	(c)	831.613	831.632.
831.624	(d)	831.612	831.631.
831.624	(d)	831.613	831.632.
831.624	(d)	831.621	831.682.
831.624	(d)	831.623	831.684.
831.624	(e)	831.611	831.622.
831.624	(e)	831.628	831.685.
831.624	(e)	831.629	831.662.
831.626	(a)	831.604	831.611.
831.626	(a)	831.611	831.622.
831.626	(b)	831.604	831.611.
831.626	(b)	831.611	831.622.
831.626	(c)	831.604	831.611.
831.626	(c)	831.611	831.622.
831.628	(a)	831.606	831.613.
831.628	(b)(2)	831.614	831.641.
831.628	(b)(3)(i)	831.629	831.662.
831.628	(b)(5)	831.604	831.611.
831.628	(c)	831.614 (two occurrences)	831.641.
831.629	(only)	831.611(b) (two occurrences)	831.622.
831.629	(only)	831.628 (two occurrences)	831.685.
831.630	(a)	831.625	831.644.
831.630	(b)	831.613	831.631.
831.630	(c)	831.612	831.632.
831.630	(c)	831.621	831.682.
831.701	(d)	831.620	831.651.

Section	Paragraph	Remove	Add
831.2203	(c)	831.608	831.618.
831.2203	(f)	831.607	831.614.
831.2203	(g)	831.605(a) or (b)	831.611(a) or (b).
831.2203	(g)(2)	831.605(a) or (b)	831.611(a) or (b).
838.711	(a)	831.614	831.641.
838.733	(a)(2)	831.604	831.611.
838.733	(a)(2)	831.605	831.612.
838.733	(a)(2)	831.612	831.631.
838.733	(a)(2)	831.613	831.632.
838.921	(a)	831.614	831.641.
838.921	(b)(1)	831.614	831.641.
838.922	(a)	831.614	831.641.
838.1006	(c)(3)	831.614	831.641.
838.1006	(d)(3)	831.607	831.614.
838.1016	(a)	831.614	831.641.
890.803	(a)(3)(ii)	831.621	831.682.
890.803	(a)(3)(ii)	831.622	831.683.
890.803	(a)(3)(iii)	831.622	831.683.
890.805	(a)(2)(i)	831.621	831.682.
890.805	(a)(2)(ii)	831.622	831.683.

6. Section 831.665, is added to read as follows:

§ 831.665 Payment of deposits under § 831.631, § 831.632, § 831.682, or § 831.684 under pre-October 1, 1993, law or when the retiree has died prior to October 1, 1993. [Reserved]

§§ 831.604 through 831.630 [Redesignated]

7. Sections 831.604 through 831.630 are redesignated as follows:

Old section	New section
831.612	831.632.
831.613	831.631.
831.614	831.641.
831.615	831.671.
831.616	831.672.
831.617	831.673.
831.618	831.642.
831.619	831.643.
831.620	831.651.
831.621	831.682.
831.622	831.683.
831.623	831.684.
831.624(a)	831.661.
831.624(b)	831.665.(a)
831.624(c)	831.665.(b)
831.624(d)	831.665.(c)
831.624(e)	[removed]
831.625	831.644.
831.626	831.616.
831.627	831.681.
831.628	831.685.
831.629	831.662.
831.630	831.645.
831.605	831.612.
831.606	831.613.
831.607	831.614.
831.608	831.618.
831.609	831.621.
831.610	831.619.
831.611	831.622.
831.604	831.611.

Subpart F—Survivor Elections and Annuities

8. Subpart F is amended by removing and reserving §§ 831.615 and 831.617 and adding an undesignated centerheading immediately before the section listed in the left column as follows:

Section	Undesignated centerheading
831.601	Organization and Structure of Regulations on Survivor Annuities.
831.611	Elections at the Time of Retirement.
831.621	Changes of Survivor Elections.
831.631	Post-Retirement Elections.
831.641	Eligibility.
831.651	Payment of Survivor Annuities.
831.661	Survivor Election Deposits.
831.671	Children's Annuities.
831.681	Regulations Pertaining to Noncodified Statutes.

9. In newly redesignated § 831.661, the section heading is revised to read as follows:

§ 831.661 Deposits not subject to waiver.

10. In newly redesignated § 831.662, the section heading is revised to read as follows:

§ 831.662 Deposits required to change an election after final adjudication.

11. Section 831.663 is added to read as follows:

§ 831.663 Actuarial reduction in annuity of retirees who make post-retirement elections to provide a current spouse annuity or a former spouse annuity.

(a) *Applicability of this section.* This section applies to all retirees who are required to pay deposits under § 831.631 or § 831.632 and have not paid any portion of the deposit prior to October 1, 1993, or from annuity accruing before that date.

(b) *Other methods of payment not available.* Retirees described in paragraph (a) of this section must have a permanent annuity reduction computed under paragraph (d) of this section.

(c) *Commencing date of the reduction.* A reduction under this section commences on the same date as the annuity reduction under § 831.631 or § 831.632.

(d) *Computing the amount of the reduction.* The annuity reduction under this section is equal to the lesser of—

(1) The amount of the deposit under § 831.631 or § 831.632 divided by the present value factor for the retiree's age on the commencing date of the reduction under paragraph (c) of this section (plus any previous reduction(s) in the retiree's annuity required under this section § 831.664); or

(2) Twenty-five percent of the rate of the retiree's self-only annuity on the commencing date of the reduction under paragraph (c) of this section.

(e) *Termination of the reduction.* (1) The reduction under this section terminates on the date that the retiree dies.

(2) If payment of a retiree's annuity is suspended or terminated and later reinstated, or if a new annuity becomes payable, OPM will increase the amount of the original reduction computed under paragraph (d) of this section by any cost-of-living adjustments under section 8340 of title 5, United States Code, occurring between the commencing date of the original reduction and the commencing date of the reinstated or new annuity (but the adjusted reduction may not exceed 25

percent of the rate of the reinstated or new self-only annuity).

12. Section 831.664 is added to read as follows:

§ 831.664 Post-retirement survivor election deposits that were partially paid before October 1, 1993.

(a) *Applicability of this section.* This section applies to all retirees who are required to pay deposits under § 831.631, § 831.632, § 831.682, or § 831.684 and have paid some portion (but not all) of the deposit prior to October 1, 1993, or from annuity accruing before that date.

(b) *Other methods of payment not available.* Retirees described in paragraph (a) of this section must have a permanent annuity reduction computed under paragraph (d) of this section.

(c) *Commencing date of the reduction.* A reduction under this section commences on October 1, 1993.

(d) *Computing the amount of the reduction.* The annuity reduction under this section is equal to the lesser of—

(1) The amount of the principal balance remaining to be paid on October 1, 1993, divided by the present value factor for the retiree's age on October 1, 1993; or

(2) Twenty-five percent of the rate of the retiree's self-only annuity on October 1, 1993.

(e) *Termination of the reduction.* (1) The reduction under this section terminates on the date that the retiree dies.

(2) If payment of a retiree's annuity is suspended or terminated and later reinstated, or if a new annuity becomes payable, OPM will increase the amount of the original reduction computed under paragraph (d) of this section by any cost-of-living adjustments under section 8340 of title 5, United States Code, occurring between the commencing date of the original reduction and the commencing date of the reinstated or new annuity (but the adjustment reduction may not exceed 25 percent of the rate of the reinstated or new self-only annuity).

PART 842—FEDERAL EMPLOYEES RETIREMENT SYSTEM; BASIC ANNUITY

13. The authority citation for part 842 continues to read as follows:

Authority: 5 U.S.C. 8461(g); §§ 842.104 and 842.106 also issued under 5 U.S.C. 8461(n); § 842.105 also issued under 5 U.S.C. 8402(c)(1) and 7701(b)(2); § 842.106 also issued under section 7202(m)(2) of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508 and 5 U.S.C. 8402(c)(1); §§ 842.604 and 842.611 also issued under 5 U.S.C. 8417; § 842.607 also issued under 5 U.S.C. 8416 and 8417; § 842.614 also issued under 5 U.S.C. 8419; § 842.615 also issued under 5 U.S.C. 8418; § 842.703 also issued under section 7001(a)(4) of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508; § 842.707 also issued under section 6001 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203; § 842.708 also issued under section 4005 of the Omnibus Budget Reconciliation Act of 1989, Pub. L. 101–239 and section 7001 of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508; subpart H also issued under 5 U.S.C. 1104.

14. Section 842.602 is amended by adding in alphabetical order a definition of the term "present value factor" to read as follows:

§ 842.602 Definitions.

* * * * *

Present value factor means the amount of money (earning interest at an assumed rate) required at the time of retirement to fund an annuity that starts out at the rate of $1 a month and is payable in monthly installments for the annuitant's lifetime based on mortality rates for non-disability annuitants under the Civil Service Retirement System; and increases each year at an assumed rate of inflation. Interest, mortality, and inflation rates used in computing the present value are those used by the Board of Actuaries of the Civil Service Retirement System for valuation of the System, based on dynamic assumptions. The present value factors are unisex factors obtained by averaging six distinct present value factors, weighted by the total dollar value of annuities typically paid to new retirees at each age.

* * * * *

15. In § 842.615, paragraph (d) is added and the section heading and paragraphs (b) and (c) are revised to read as follows:

§ 842.615 Deposits required.

* * * * *

(b) *Actuarial reduction in annuity of retirees who make post-retirement elections to provide a current spouse annuity or a former spouse annuity.* (1) The annuity reduction required by paragraph (b)(2) of this section applies to all retirees who are required to pay deposits under § 842.611 or § 842.612 and have not paid any portion of the deposit prior to October 1, 1993, or from annuity accruing before that date.

(2) Retirees described in paragraph (b)(1) of this section must have a permanent annuity reduction computed under paragraph (b)(4) of this section.

(3) A reduction under paragraph (b)(2) of this section commences on the same date as the annuity reduction under § 842.611 or § 842.612.

(4) The annuity reduction under paragraph (b)(2) of this section is equal to the lesser of—

(i) The amount of the deposit under § 842.611 or § 842.612 divided by the present value factor for the retiree's age on the commencing date of the reduction under paragraph (b)(3) of this section (plus any previous reduction(s) in the retiree's annuity required under paragraph (b)(2) or (c)(2) of this section); or

(ii) Twenty-five percent of the rate of the retiree's self-only annuity on the commencing date of the reduction (under paragraph (b)(3) of this section).

(5) (i) The reduction under paragraph (b)(2) or paragraph (c)(2) of this section terminates on the date that the retiree dies.

(ii) If payment of a retiree's annuity is suspended or terminated and later reinstated, or if a new annuity becomes payable, OPM will increase the amount of the original reduction computed under paragraph (b)(4) or paragraph (c)(4) of this section by any cost-of-living adjustments under section 8462 of title 5, United States Code, occurring between the commencing date of the original reduction and the commencing date of the reinstated or new annuity (but the adjusted reduction may not exceed 25 percent of the rate of the reinstated or new self-only annuity).

(c) *Post-retirement survivor election deposits that were partially paid before October 1, 1993.* (1) The annuity reduction required by paragraph (c)(2) of this section applies to all retirees who are required to pay deposits under § 842.611 or § 842.612 and have paid any portion (but not all) of the deposit prior to October 1, 1993, or from annuity accruing before that date.

(2) Retirees described in paragraph (c)(1) of this section must have a permanent annuity reduction computed under paragraph (c)(4) of this section.

(3) A reduction under paragraph (c)(2) of this section commences on October 1, 1993.

(4) The annuity reduction under paragraph (c)(2) of this section is equal to the lesser of—

(i) The amount of the principal balance remaining to be paid on October 1, 1993, divided by the present value factor for the retiree's age on October 1, 1993; or

(ii) Twenty-five percent of the rate of the retiree's self-only annuity on October 1, 1993.

(5) (i) The reduction under paragraph (c)(2) of this section terminates on the date that the retiree dies.

(ii) If payment of a retiree's annuity is suspended or terminated and later reinstated, or if a new annuity becomes payable, OPM will increase the amount of the original reduction computed under paragraph (b)(4) or paragraph (c)(4) of this section by any cost-of-living adjustments under section 8462 of title 5, United States Code, occurring between the commencing date of the original reduction and the commencing date of the reinstated or new annuity (but the adjusted reduction may not exceed 25 percent of the rate of the reinstated or new self-only annuity).

(d) For retirees who die before October 1, 1993, any unpaid portion of the deposit required under § 842.611 or § 842.612 will be collected from the survivor annuity (for which the election required the deposit) before OPM pays any survivor annuity.

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BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Packers and Stockyards Administration

9 CFR Parts 201 and 203

RIN 0580-AA07

Regulations and Policy Statements Under the Packers and Stockyards Act: Trade Practices, Scale Test Instructions, Advertising Allowance Guidelines

AGENCY: Packers and Stockyards Administration, USDA.

ACTION: Final rule.

SUMMARY: Proposed amendments to rules issued under the Packers and Stockyards (P&S) Act (7 U.S.C. 181 *et seq.*) were published in the **Federal Register** (57 FR 45005) on September 30, 1992. This document adopts proposed changes which amend one regulation by lessening restrictions on market agencies selling on commission and amends a statement of general policy to provide greater clarity concerning guidelines for advertising allowances and other promotional programs offered by meat packers. Proposed changes which remove 6 regulations are also being adopted. Four of these regulations provide outdated procedures for testing scales subject to the P&S Act and the other concern selling agencies providing price guarantees and their ability to employ certain individuals. Seven other regulations and a statement of general policy will be retained in their present form as set forth in the proposal at 57 FR 45006.

EFFECTIVE DATE: November 12, 1993.

FOR FURTHER INFORMATION CONTACT: Harold W. Davis, Director, Livestock Marketing Division, (202) 720-6951, or Kenneth Stricklin, Director, Packer and Poultry Division, (202) 720-7363.

SUPPLEMENTARY INFORMATION: In response to the proposal published in the **Federal Register** (57 FR 45005), the Agency received a total of 13 comments. Comments were received from five livestock producer trade associations, five individuals and groups representing livestock marketing interest, one meat trade association, and the other two were from poultry grower and processor trade associations.

Nine comments were received concerning removal of § 201.64 concerning price guarantees by market agencies selling livestock on a commission basis. Four comments from livestock producer trade associations, including two national associations, and two from associations representing cooperative livestock markets support removal of this regulation. While three of these comments provide general support for all the proposals, one comment from a national association representing livestock producers and the two comments from cooperative marketing interests specifically assert removal of this regulation will help selling agencies compete more effectively and benefit livestock producers. Three comments from marketing interests object to removal of § 201.64 because they believe its removal could, in the long term, weaken market agencies selling on commission and actually lead to less competition.

Removal of § 201.64 of the regulations will permit selling agencies to compete more effectively with other types of marketing businesses which are not affected by this regulation. If price guarantees, which have been prohibited by this regulation, are offered in a manner that is unjustly discriminatory, restrict competition, or have the effect of creating an unfair competitive environment, the Agency has authority to address specific problems on a case-by-case basis under the provisions of the P&S Act. Further, structural changes in the livestock marketing industry have altered the importance of § 201.64 since market agencies selling on commission are only one of several marketing alternatives available to most livestock sellers today. Other Alternatives include packer and dealer buying stations and direct purchases by packers, dealers, and producers.

Six comments were received concerning the proposed removal of § 201.66 and all generally supported removal. This regulation was intended to prohibit less than arm's length transactions between a packer and selling agency, thereby avoiding any conflict of interest. While this regulation eliminates a potential conflict of interest, it also restricts potential buying power. Since dealers and order buyers are permitted to be employed by a selling agency, except in key positions, we can see no viable reason to continue to exclude packer employees from employment by a selling agency under similar circumstances. Concerns regarding potential conflicts of interest are addressed under § 201.56 by restricting employment in specific key positions. Further, provisions of the P&S Act which prohibit unfair and deceptive practices would make any unfair advantage gained from such employment unlawful.

Sections 201.72-1, 201.78-1, 201.106-1, and 201.106-2, which provided detailed instructions for testing scales subject to the P&S Act, will be removed as proposed. These regulations are outdated and, in some instances, in conflict with current testing requirements as set forth in the National Bureau of Standards (now National Institute of Standards and Technology) Handbook 44, "Specifications, Tolerances, and other Technical Requirements for Weighing and Measuring Devices" which has been incorporated in § 201.71. All six of the comments which address these regulations supported their removal.

As proposed, § 201.56 will be amended to permit selling agencies, their owners, officers, agents, and employees (except specified key employees) to purchase livestock out of consignment for any purpose provided the livestock is first offered for sale in an open, competitive manner to other available buyers. This proposal limits the definition of key employees to the auctioneer, weighmaster, and private treaty or commission salesman. Such key employees will be prohibited from purchasing livestock out of consignment for any purpose for their own account. This change will permit selling agencies to market livestock in a manner that best represents the interest of the livestock seller and provide greater flexibility for market mechanisms to work.

Nine comments were received which addressed the proposed amendments to § 201.56. All support the proposed changes. One comment from a national association representing livestock markets suggests the term "Salesman" be clarified to state clearly it applies to

persons who actually take bids at a particular sale, rather than a fieldman. The language being adopted herein is limited to a prohibition against purchases from consignment by salesmen and other specified key employees, and the Agency affirms there is no intent to include fieldmen who are not engaged in accepting bids on consigned livestock.

The Agency received four comments on its proposed changes to policy statement 203.14. Three of the comments generally supported the recommended changes and one opposed them. The opposing comment expresses concern that the proposed changes will have a substantial economic effect on the small entities. The concern is that larger processors will be given increased license to use advertising and other allowances to freeze out competition from small producers who do not have the financial resources to compete on an even playing field with large national marketers. Further, the comment states, in effect, that unless the guidelines are absolutely compulsory in their application and compliance, it is likely that they may stifle competition.

This policy statement was issued to provide guidelines to the meat packing industry in complying with the provisions of the P&S Act when furnishing advertising and allowances to competing customers. The guidelines were not written to cover every promotional activity offered by every packer and are advisory in nature and do not have the full force and effect of law (thus the use of "should" rather than "must"). The intent of the guidelines is to assure that small processors are not put at a competitive disadvantage by discriminatory promotional activity of larger processors. Any advertising or allowance activity which is not in conformity with the guidelines and violates the P&S Act will be investigated by the Agency in a timely manner and appropriate action taken.

After considering the comments, the Agency has determined that several of the examples used in the guidelines should be eliminated, as proposed, to provide clarity and user friendliness. By doing so the Agency will be consistent with the Federal Trade Commission which amended its guidelines in August 1990 by eliminating several examples of how to implement promotional programs.

As proposed, each of the following regulations and statements of general policy will be retained in their present form:

201.11 Suspended registrants, officers, agents, and employees.
201.42 Custodial accounts for trust funds.
201.43 Payment and accounting for livestock and live poultry.
201.67 Packers not to own or finance selling agencies.
201.72 Scales; testing of.
201.97 Annual reports.
201.99 Purchase of livestock by packers on a carcass grade, carcass weight, or grade and weight basis.
203.10 Statement with respect to insolvency, definition of current assets and current liabilities.

In the process of reviewing these regulations, it was determined that they were necessary to the efficient and effective enforcement of the P&S Act and to the orderly conduct of the marketing system. The absence of any of the regulations would be detrimental to the industry and could result in increased litigation.

The comments received generally support retaining each of these regulations. However, some individual comments offered suggestions on specific sections. Three comments suggested § 201.11 be amended to deny registration to any applicant for registration with a prior conviction for fraud, theft, or embezzlement and another wanted to limit suspensions to specific circumstances. Since this regulation applies to registrants that have already been suspended, these suggestions need to be considered under § 201.10 which is still being reviewed. Two comments recommended a statutory dealer trust be incorporated into § 201.42 which requires selling agencies to maintain custodial accounts. A statutory dealer trust would require legislation amending the P&S Act. Another comment suggests this regulation be amended to permit items added to the buyer's invoice to be paid directly from the custodial account. The Agency believes this regulation already provides sufficient latitude to permit incidental charges that are directly related to a transaction to be paid from the custodial account when the charge is included in the buyer's payment and deposited directly into the custodial account.

One comment proposed amendments to § 201.43 to prohibit coercion or intimidation to dictate the terms or manner of payment on a poultry growing arrangement and to add recordkeeping requirements for live poultry dealers. Sections 401 and 410 of the P&S Act (7 U.S.C. 221 and 228b–1) provide recordkeeping and payment requirements for live poultry dealers. The Agency believes these provisions are adequate to address the concerns expressed in this comment.

Two comments recommended § 201.67 be amended to prohibit packers from owning or financing a selling agency only in those instances where it leads to anticompetitive behavior. Since this is an advisory regulation, the practical effect of the regulation is consistent with this recommendation. One comment recommended § 201.72 be amended to include scale testing requirements for scales used to weigh poultry feed distributed under a poultry growing arrangement. No changes are being adopted in § 201.72 at this time. This recommendation would require further study and consideration in light of current legislative authority before any changes could be proposed. One comment opposes retaining the annual report requirements of § 201.97 for live poultry dealers. The financial information furnished in these reports is crucial in administering the poultry payment and trust provisions of the P&S Act. It provides the necessary data for evaluation of the financial stability of each firm and, consequently, the ability of each to make prompt payment for live poultry.

One comment recommended § 201.99 be amended to establish uniform purchasing requirements for all packers purchasing livestock on a carcass basis. The Agency is responsible for ensuring that a packer's purchasing procedures do not result in any unfair, deceptive, or discriminatory practices; however, this does not include establishing uniform purchasing or marketing programs for the industry.

Two comments suggest the principal test for solvency set forth in § 203.10 should be whether a person can pay his/her obligations as they come due, not whether he/she has enough current assets to meet all obligations during the next 12 months. These comments do not accurately describe the principal test for insolvency defined in § 203.10 which is that current assets be at least equal to current liabilities. Obligations which may come due within 1 year, but have not yet been incurred, such as utilities, wages, etc., are not considered current liabilities. The issue to be addressed is whether an entity has the ability to meet its day-to-day obligations. In our experience, the current asset/liability ration is the best measure of that ability.

The changes in §§ 201.56 and 203.14 do not impose or change any recordkeeping or information collection requirements. Existing requirements in these regulations have been previously approved by OMB under Control No. 0590–0001.

As approved by the Regulatory Flexibility Act, it is hereby certified that these rules will not have a significant economic impact on a substantial number of small entities and a statement explaining the reasons for the certification is set forth in the following paragraph and is being provided to the Chief Counsel for Advocacy of the Small Business Administration.

While these amended rules impact small entities, they will not have a significant economic impact on any entity, large or small. The primary effect of these rules is to remove restrictions which will provide greater flexibility for market mechanisms to work and provide clarity and consistency with other regulations and guidelines. Although the primary effect is to remove restrictions, the changes further restrict purchases by auctioneers, salesmen, and weighmasters to eliminate conflicts of interest in fulfilling their fiduciary responsibilities in consignment transactions.

These amendments to rules are not major rules for the purposes of E.O. 12291. The amendments do not impose any new paperwork requirements; do not have implications of Federalism under the Criteria of E.O. 12612; and do not impact on family formation under the Criteria of E.O. 12606.

These amendments to rules have been reviewed under E.O. 12778, Civil Justice Reform, and are not intended to have retroactive effect. The six amendments will not preempt State or local laws, regulations, or policies unless they present an irreconcilable conflict with these amendments. Prior to judicial challenge of the amendments to rules, a party must be first found by the Secretary to be in violation of the P&S Act and in violation of the regulations. Second, the party must appeal that finding and the validity of the regulation to the Secretary in the course of the administrative proceeding. Only after taking these steps, the party may challenge the regulation in a court of competent jurisdiction.

List of Subjects in 9 CFR Parts 201 and 203

Advertising allowances, Market agency employees, Price guarantees, Purchases from consignment, Scale test instructions.

Done at Washington, DC, this 6th day of October 1993.

Calvin W. Watkins,

Acting Administrator, Packers and Stockyards Administration.

For reasons set forth in the preamble, the Packers and Stockyards Administration will amend 9 CFR parts 201 and 203 as follows:

1. The authority citation for parts 201 and 203 continues to read as follows:

Authority: 7 U.S.C. 204, 228; 7 CFR 2.17(e), 256.

PART 201—[AMENDED]

2. Remove § 201.64.

3. Remove § 201.66.

4. Remove § 201.72–1.

5. Remove § 201.78–1.

6. Remove § 201.106–1.

7. Remove § 201.106–2

8. Section 201.56 is amended by revising paragraphs (b), (c), and (d), and by removing paragraph (e).

§ 201.56 Market agencies selling on commission, purchases from consignment.

* * * * *

(b) *Purchases from consignment.* No market agency engaged in the business of selling livestock on a commission basis shall purchase livestock from consignments, and no such market agency shall permit its owners, officers, agents, employees or any firm in which such market agency or its owners, officers, agents, or employees have an ownership or financial interest to purchase livestock consigned to such market agency, without first offering the livestock for sale in an open and competitive manner to other available buyers, and then only at a price higher than the highest available bid on such livestock.

(c) *Key employees not to purchase livestock out of consignments.* No market agency engaged in selling livestock on commission shall permit its auctioneers, weighmasters, or salesmen to purchase livestock out of consignment for any purpose for their own account, either directly or indirectly.

(d) *Purchase from consignments; disclosure required.* When a market agency purchases consigned livestock or sells consigned livestock to any owner, officer, agent, employee, or any business in which such market agency, owner, officer, agent, or employee has an ownership or financial interest, the market agency shall disclose on the account of sale the name of the buyer and the nature of the relationship existing between the market agency and the buyer.

(Approved by the Office of Management and Budget under control number 0590–0001.)

9. Section 203.14 is revised to read as follows:

§ 203.14 Statement with respect to advertising allowances and other merchandising payments and services.

The Guidelines

1. *Who is a customer?* (a) A *customer* is a person who buys for resale directly from the packer, or through the packer's agent or broker; and in addition, a customer is any buyer of the packer's product for resale who purchases from or through a wholesaler or other intermediate reseller.

(**Note:** In determining whether a packer has fulfilled its obligations toward its customers, the Packers and Stockyards Administration will recognize that there may be some exceptions to this general definition of "customer." For example, the purchaser of distress merchandise would not be considered a "customer" simply on the basis of such purchase. Similarly, a retailer who purchases solely from other retailers or one who makes only sporadic purchases, or one who does not regularly sell the packer's product or who is a type of retail outlet not usually selling such products will not be considered a "customer" of the packer unless the packer has been put on notice that such retailer is selling its product.)

(b) *Competing customers* are all businesses that compete in the resale of the packer's products of like grade and quality at the same functional level of distribution, regardless of whether they purchase direct from the packer or through some intermediary.

Example: A packer sells directly to some independent retailers, sells to the headquarters of chains and of retailer-owned cooperatives, and also sells to wholesalers. The direct-buying independent retailers, the headquarters of chains and of retailer-owned cooperatives, and the wholesalers' independent retailer customers are customers of the packer. Individual retail outlets which are part of the chains or members of the retailer-owned cooperatives are not customers of the packer.

2. *Definition of services. Services* are any kind of advertising or promotion of a packer's product, including but not limited to, cooperative advertising, handbills, window and floor displays, demonstrators and demonstrations, customer coupons, and point of purchase activity.

3. *Need for a plan.* If a packer makes payments or furnishes services, it should do so under a plan that meets several requirements. If there are many competing customers to be considered, or if the plan is at all complex, the packer would be well advised to put its plan in writing. The requirements are:

(a) Proportionally equal terms—The payments or services under the plan should be made available to all competing customers on proportionally equal terms. This means that payments or services should be made proportionately on some basis that is fair to all customers who compete in the resale of the packer's products. No single way to achieve the proper proportion is prescribed, and any method that treats completing customers on proportionally equal terms may be used. Generally, this can best be done by basing the payments made or the services

furnished on the dollar volume or on the quantity of goods purchased during a specified period. Other methods which are fair to all competing customers are also acceptable.

Example 1: A packer may properly offer to pay a specified part (say 50 percent) of the cost of local advertising up to an amount equal to a set percentage (such as 5 percent) of the dollar volume of such purchases during a specified time.

Example 2: A packer may properly place in reserve for each customer a specified amount of money of each unit purchased and use it to reimburse those customers for the cost of advertising and promoting the packer's product during a specified time.

Example 3: A packer's plan should not provide an allowance on a basis that has rates graduated with the amount of goods purchased, as for instance, 1 percent of the first $1,000 purchases per month, 2 percent on second $1,000 per month, and 3 percent on all over that.

(b) Packer's duty to inform—The packer should take reasonable action, in good faith, to inform all its competing customers of the availability of its promotional program. Such notification should include all the relevant details of the offer in time to enable customers to make an informed judgment whether to participate. Where such one-step notification is impracticable, the packer may, in lieu thereof, maintain a continuing program of first notifying all competing customers of the types of promotions offered by the packer and a specific source for the customer to contact in order to receive full and timely notice of all relevant details of the packer's promotions. Such notice should also inform all competing customers that the packer offers advertising allowances and/or other promotional assistance that are usable in a practical business sense by all retailers regardless of size. When a customer indicates its desire to be put on the notification list, the packer should keep that customer advised of all promotions available in its area as long as the customer so desires. The packer may make the required notification by any means it chooses; but in order to show later that it gave notice to a certain customer, it is in a better position to do so if it was given in writing or a record was prepared at the time of notification showing date, person notified, and contents of notification.

If more direct methods of notification are impracticable, a packer may employ one or more of the following methods, the sufficiency of which will depend upon the complexity of its own distribution system. Different packers may find that different notification methods are most effective for them:

(1) The packer may enter into contracts with its wholesaler, distributors or other third parties which conform to the requirements of item 5, infra.

(2) The packer may place appropriate announcements on product containers or inside thereof with conspicuous notice of such enclosure on the outside.

(3) The packer may publish notice of the availability and essential features of a promotional plan in a publication of general distribution in the trade.

Example 1: A packer has a wholesaler-oriented plan directed to wholesalers distributing its products to retailing customers. It should notify all the competing wholesalers distributing its products of the availability of this plan, but the packer is not required to notify retailing customers.

Example 2: A packer who sells on a direct basis to some retailers in an area, and to other retailers in the area through wholesalers, has a plan for the promotion of its products at the retail level. If the packer directly notifies not only all competing direct purchasing retailers but also all competing retailers purchasing through the wholesalers as to the availability, terms and conditions of the plan, the packer is not required to notify its wholesalers.

Example 3: A packer regularly engages in promotional programs and the competing customers include large direct purchasing retailers and smaller customers who purchase through wholesalers. The packer may encourage, but not coerce, the retailer purchasing through a wholesaler to designate a wholesaler as its agent for receiving notice of, collecting, and using promotional allowances for the customer. If a wholesaler or other intermediary by written agreement with a retailer is actually authorized to collect promotional payments from suppliers, the packer may assume that notice of and payment under a promotional plan to such wholesaler or intermediary constitutes notice and payment to the retailer.

(A packer should not rely on a written agreement authorizing an intermediary to receive notice of and/or payment under a promotional plan for a retailer if the packer knows, or should know, that the retailer was coerced into signing the agreement. In addition, a packer should assume that an intermediary is not authorized to receive notice of and/or payment under a promotional plan for a retailer unless there is a written authorization signed by such retailer.)

(c) Availability to all competing customers—The plan should be such that all types of competing customers may participate. It should not be tailored to favor or discriminate against a particular customer or class of customers but should, in its terms, be usable in a practical business sense by all competing customers. This may require offering all such customers more than one way to participate in the plan or offering alternative terms and conditions to customers for whom the basic plan is not usable and suitable. The packer should not, either expressly or by the way the plan operates, eliminate some competing customers, although it may offer alternative plans designed for different customer classes. If it offers alternative plans, all of the plans offered should provide the same proportionate equality and the packer should inform competing customers of the various alternative plans.

When a packer, in good faith, offers a basic plan, including alternatives, which is reasonably fair and nondiscriminatory and refrains from taking any steps which would prevent any customer, or class of customers, from participating in its program, it shall be deemed to have satisfied its obligation to make its plan functionally available to all customers, and the failure of any customer or customers to participate in the program shall not be deemed to place the packer in violation of the provisions of the Packers and Stockyards Act.

Example 1: A packer offers a plan of short term store displays of varying sizes, including some which are suitable for each of its competing customers and at the same time are small enough so that each customer may make use of the promotion in a practical business sense. The plan also calls for uniform, reasonable certification of performance by the retailer. Because they are reluctant to process a reasonable amount of paperwork, some small retailers do not participate. This fact is not deemed to place a packer in violation of Item 3(c) and it is under no obligation to provide additional alternatives.

Example 2: A packer offers a plan for cooperative advertising on radio, television, or in newspapers of general circulation.[1] Because the purchases of some of its customers are too small, this offer is not "functionally available" to them. The packer should offer them alternative(s) on proportionally equal terms that are usable by them and suitable for their business.

(d) Need to understand terms—In informing customers of the details of a plan, the packer should provide them sufficient information to give a clear understanding of the exact terms of the offer, including all alternatives, and the conditions upon which payment will be made or services furnished.

(e) Checking customer's use of payments—The packer should take reasonable precautions to see that services it is paying for are furnished and also that it is not overpaying for them. Moreover, the customer should expend the allowance solely for the purpose for which it was given. If the packer knows or should know that what it pays or furnishes is not being properly used by some customers, the improper payments or services should be discontinued.[2]

A packer who, in good faith, takes reasonable and prudent measures to verify the performance of its competing customers will be deemed to have satisfied its obligations under the Act. Also, a packer who, in good faith, concludes a promotional agreement with wholesalers or other intermediaries and who otherwise conforms to the standards of Item 5 shall be deemed to have satisfied this obligation. If a packer has taken such steps, the fact that a particular customer has retained an allowance in excess of the cost, or approximate cost if the actual cost is not known, of services performed by the customer shall not alone be deemed to place a packer in violation of the Act.

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[1] In order to avoid the tailoring of promotional programs that discriminate against particular customers or class of customers, the packer in offering to pay allowances for newspaper advertising should offer to pay the same percentage of the cost of newspaper advertising for all competing customers in a newspaper of the customer's choice, or at least in those newspapers that meet the requirements for second class mail privileges.

[2] The granting of allowances or payments that have little or no relationship to cost or approximate cost of the service provided by the retailer may be considered a violation of section 202 of the Act.

(When customers may have different but closely related costs in furnishing services that are difficult to determine such as the cost for distributing coupons from a bulletin board or using a window banner, the packer may furnish to each customer the same payment if it has a reasonable relationship to the cost of providing the service or is not grossly in excess thereof.)

4. *Competing customers.* The packer is required to provide in its plan only for those customers who compete with each other in the resale of the packer's products of like grade and quality. Therefore a packer should make available to all competing wholesalers any plan providing promotional payments or services to wholesalers, and similarly should make available to all competing retailers any plan providing promotional payments or services to retailers. With these requirements met, a packer can limit the area of its promotion. However, this section is not intended to deal with the question of a packer's liability for use of an area promotion where the effect may be to injure the packer's competition.

5. *Wholesaler or third party performance of packer's obligations.* A packer may, in good faith, enter into written agreements with intermediaries, such as wholesalers, distributors or other third parties, including promoters of tripartite promotional plans, which provide that such intermediaries will perform all or part of the packer's obligations under this part. However, the interposition of intermediaries between the packer and its customers does not relieve the packer of its ultimate responsibility of compliance with the provisions of the Packers and Stockyards Act. The packer, in order to demonstrate its good faith effort to discharge its obligations under this part, should include in any such agreement provisions that the intermediary will:

(1) Give notice to the packer's customers in conformity with the standards set forth in items 3(b) and (d), supra;

(2) Check customer performance in conformity with the standards set forth in item 3(e), supra;

(3) Implement the plan in a manner which will insure its functional availability to the packer's customers in conformity with the standards set forth in item 3(c), supra (This must be done whether the plan is one devised by the packer itself or by the intermediary for use by the packer's customers.): and

(4) Provide certification in writing and at reasonable intervals that the packer's customers have been and are being treated in conformity with the agreement.

A packer who negotiates such agreements with its wholesalers, distributors or third party promoters will be considered by the Administration to have justified its "good faith" obligations under this section only if it accompanies such agreements with the following supplementary measures: At regular intervals the packer takes affirmative steps to verify that its customers are receiving the proportionally equal treatment to which they are entitled by making spot checks designed to reach a representative cross section of its customers. Whenever such spot checks indicate that the agreements are not being implemented in such a way that its customers are receiving such proportionally equal treatment, the packer takes immediate steps to expand or to supplement such agreements in a manner reasonably designed to eliminate the repetition or continuation of any such discriminations in the future.

Intermediaries, subject to the Packers and Stockyards Act, administering promotional assistance programs on behalf of a packer may be in violation of the provisions of the Packers and Stockyards Act, if they have agreed to perform the packer's obligations under the Act with respect to a program which they have represented to be usable and suitable for all the packer's competing customers if it should later develop that the program was not offered to all or, if offered, was not usable or suitable, or was otherwise administered in a discriminatory manner.

6. *Customer's liability.* A customer, subject to the Packers and Stockyards Act, who knows, or should know, that it is receiving payments or services which are not available on proportionally equal terms to its competitors engaged in the resale of the same packer's products may be in violation of the provisions of the Act. Also, customers (subject to the Packers and Stockyards Act) that make unauthorized deductions from purchase invoices for alleged advertising or other promotional allowances may be proceeded against under the provisions of the Act.

Example: A customer subject to the Act should not induce or receive an allowance in excess of that offered in the packer's advertising plan by billing the packer at "vendor rates" or for any other amount in excess of that authorized in the packer's promotion program.

7. *Meeting competition.* A packer charged with discrimination under the provisions of the Packers and Stockyards Act may defend its actions by showing that the payments were made or the services were furnished in good faith to meet equally high payments made by a competing packer to the particular customer, or to meet equivalent services furnished by a competing packer to the particular customer. This defense, however, is subject to important limitations. For instance, it is insufficient to defend solely on the basis that competition in a particular market is very keen, requiring that special allowances be given to some customers if a packer is "to be competitive."

8. *Cost justification.* It is no defense to a charge of unlawful discrimination in the payment of an allowance or the furnishing of a service for a packer to show that such payment or service could be justified through savings in the cost of manufacture, sale, or delivery.

(Approved by the Office of Management and Budget under control number 0590–0001)

[FR Doc. 93–25007 Filed 10–12–93; 8:45 am]

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FARM CREDIT ADMINISTRATION

12 CFR Parts 611, 613, 614, 620, 621, and 627

RIN 3052–AB32

Organization; Eligibility and Scope of Financing; Loan Policies and Operations; Disclosure to Shareholders; Accounting and Reporting Requirements; Title V Conservators and Receivers; Correction

AGENCY: Farm Credit Administration.

ACTION: Final rule; correction.

SUMMARY: The Farm Credit Administration (FCA) published a final rule (58 FR 48780, September 20, 1993) that amended the regulations updating the existing accounting and reporting requirements, promoting consistency with industry practices pertaining to problem loan accounting and reporting issues, and ensuring that the regulatory requirements and standards remain consistent with those of generally accepted accounting principles. This document corrects a typographical error in the final rule.

EFFECTIVE DATE: The regulations shall become effective on December 31, 1993 or upon the expiration of 30 days after publication, during which either or both Houses of Congress are in session, whichever is later. Notice of the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Cindy R. Nicholson, Paralegal Specialist, Regulation Development Division, Office of Examination, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: In preparing the final rule for publication in the **Federal Register**, a typographical error was inadvertently made in the second sentence of § 621.20(b)(3). Accordingly, FR Doc. 93–22525, published September 20, 1993, is amended as follows:

PART 621—ACCOUNTING AND REPORTING REQUIREMENTS

Subpart E—Reports Relating to Securities Activities of the Federal Agricultural Mortgage Corporation

§ 621.20 [Corrected]

1. On page 48790, first column, twentieth line from the bottom, paragraph (b)(3) of § 621.20 is corrected by removing the reference "§ 621.11" and adding in its place, the reference "§ 621.12".

Dated: October 5, 1993.
Curtis M. Anderson,
Secretary, Farm Credit Administration Board.
[FR Doc. 93-24991 Filed 10-12-93; 8:45 am]
BILLING CODE 6705-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-NM-231-AD; Amendment 39-8675; AD 83-07-09 R1]

Airworthiness Directives; Canadair Model CL-600-1A11 and CL-600-2A12 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to all Model CL-600 series airplanes, that currently requires an inspection to verify proper installation of the 8 gage feeder wires from generators 1 and 2 and the auxiliary power unit (APU), and correction or replacement of discrepant parts. That action was prompted by reports of wire overheating under heavy electrical load conditions. This amendment limits the applicability of the rule. The actions specified by this AD are intended to prevent potential wire overheating, which could result in a cabin fire.

EFFECTIVE DATE: November 12, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station A, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Michele Maurer, Aerospace Engineer, Systems and Equipment Branch, ANE-173, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581; telephone (516) 791-6427; fax (516) 791-9024.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by revising AD 83-07-09, Amendment 39-4609 (48 FR 14353, April 4, 1983), which is applicable to all Canadair Model CL-600 series airplanes, was published in the **Federal Register** on March 3, 1993 (58 FR 12192). The action proposed to supersede an existing AD to limit the applicability only to Model CL-600-1A11 and CL-600-2A12 series airplanes. The existing AD currently requires a one-time inspection to verify proper installation of the 8 gage feeder wires from generators 1 and 2 and the auxiliary power unit (APU), and correction or replacement of discrepant parts. The models that would be excluded from the applicability of the rule are later models, which are equipped with improved generator and APU feeder wires.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposed rule.

Another commenter requests that this AD action be issued as a "revision" rather than a "supersedure" of the existing AD. The commenter believes that the proposed change is non-substantive in nature, since certain airplanes equipped with improved wiring would be removed from the applicability statement. The FAA concurs. This AD action is relieving in nature; that is, fewer airplanes are affected by the requirements. To supersede the existing AD and replace it with a new one having a new AD number, would serve no purpose in terms of the ability of affected operators to track compliance with the AD and maintain accurate records of compliance. Because this AD requires only a one-time action and was originally effective over 10 years ago, the FAA finds that the consequent workload burden that would be associated with revising maintenance record entries (to record a new AD number) among all of the affected operators would not be appropriate. The FAA considers that a less burdensome approach is to revise the existing AD, rather than to supersede it. In accordance with this approach, the final rule for this action (1) retains the same AD number, but an "R1" has been added to it; and (2) is assigned a new amendment number. (This change does not affect the operators' obligation to maintain records indicating current AD status.)

Affected operators should note that this revised AD has been reformatted to be in compliance with the **Federal Register** style. In addition, the compliance time for corrective action has been clarified to indicate that it is required "prior to further flight;" and Canadair Drawing 600-58001, Note 17, has been included in the AD as an additional source of service information. All of these items appeared in the notice preceding this final rule.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Since this action amends the applicability of an existing AD to exclude certain models of airplanes, no additional operators will be affected by the requirements of this rule, nor will additional costs be incurred.

The current requirements of this AD now affect approximately 90 airplanes of U.S. registry. The costs associated with accomplishing the requirements of the AD are: 5 work hours per airplane to perform the required one-time inspection, at an average labor rate of $55 per work hour. Based on these figures, the total cost impact of the current revised AD on U.S. operators is estimated to be $24,750, or $275 per airplane. (This total cost figure assumes that no operator has yet accomplished the requirements of this AD. However, based on the fact that the original AD was issued some 10 years ago, in all likelihood, the majority of affected operators have complied previously with the rule.)

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules

Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–4609 (48 FR 14353, April 4, 1983), and by adding a new airworthiness directive (AD), amendment 39–8675, to read as follows:

83–07–09 R1 Canadair: Amendment 39–8675. Docket 92–NM–231–AD, Revises AD 83–07–09, Amendment 39–4609.

Applicability: All Model CL–600–1A11 and CL–600–2A12 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

Note 1: This AD requires the same actions as required by AD 83–07–09, amendment 39–4609, but is applicable to fewer airplanes. Operators affected by this AD who have accomplished these actions previously in accordance with AD 83–07–09 are considered to be in compliance with this revised AD.

To prevent possible wire overheating, which could result in a cabin fire, accomplish the following:

(a) Within 300 hours time-in-service or within 3 calendar months after April 13, 1983 (the effective date of AD 83–07–09, Amendment 39–4609), whichever occurs earlier, perform an inspection to verify proper installation of the 8 gage feeder wires from generators 1 and 2 and the auxiliary power unit (APU), in accordance with Canadair Drawings 600–58001, Note 17, or 600–58031, Note 14; and CL–600 Completion Centre Handbook Section 6. Prior to further flight, correct any discrepant wires in accordance with the drawings or handbook.

(b) Replacement of the 8 gage generator 1, generator 2, and APU feeder wires with 4 gage feeder wires of the same type constitutes an approved alternative method of compliance for the requirements of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) This amendment becomes effective on November 12, 1993.

Issued in Renton, Washington, on August 23, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–25036 Filed 10–12–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 73

[Airspace Docket No. 93–ASW–1]

Establishment of Restricted Area R–3807; Glencoe, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Restricted Area R–3807 located in the vicinity of Glencoe, LA. The restricted area is necessary to provide for the safety of aircraft operations in the vicinity of a tethered aerostat airborne radar system operated by the U.S. Customs Service. The aerostat balloon will be operated as high as 15,000 feet mean sea level (MSL) to provide radar surveillance of aircraft suspected of transporting illegal drugs into the United States.

EFFECTIVE DATE: 0901 UTC, October 13, 1993.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace—Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

History

On June 16, 1993, the FAA proposed to amend part 73 of the Federal Aviation Regulations (14 CFR part 73) to establish Restricted Area R–3807, Glencoe, LA, (58 FR 33223).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Six comments were received in response to the Notice of Proposed Rulemaking (NPRM) published on June 16, 1993. Five comments were received from interested parties that represented helicopter companies or helicopter organizations. One comment was received from the Louisiana Department of Transportation, Aviation Safety Program. The comments are as follows:

1. Air Logistics Inc., objected to the proposal and stated that numerous fixed-wing aircraft and more than 400 helicopters operate within that area, frequently during periods of reduced visibility. They also stated that the aerostat tether will neither be marked nor lighted, which will increase the hazard to general aviation, thereby placing passengers and crew members in jeopardy.

2. The Helicopter Safety Advisory conference stated that its members operate about 630 helicopters in the Gulf of Mexico while transporting a daily average of about 10,900 passengers in the vicinity of the proposed Glencoe restricted area. They believe that the combination of an unmarked and unlighted tethered balloon at 15,000 feet and within a high intensity air traffic area will present a serious safety hazard and warrants further regulatory evaluation.

3. Industrial Helicopters, Inc., stated that there is high density traffic in the area around Restricted Area R–3807 and that restricted airspace would not prevent an inadvertent encounter with the aerostat during marginal weather conditions.

4. The State of Louisiana, Department of Transportation, Aviation Safety Program, is concerned about the concentration of aviation traffic in the area around R–3807 and the aerostat balloon's effect on night visual flight rules (VFR) operations in proximity of the Le Matire Memorial Airport.

5. Petroleum Helicopters, Inc., is of the opinion that the lack of marking and lighting of the tether poses an unnecessary risk to air operations. Until a suitable means of marking and lighting is developed, the aerostat deployment should remain on hold.

6. The Helicopter Association International, commented that the establishment of Restricted Area R–3807 will not prevent air traffic from inadvertently encountering the aerostat in reduced visibility conditions. An obstruction the size of the aerostat and the tether should be marked and lighted up to at least 5,000 feet MSL.

The Environmental Assessment that was submitted by the U.S. Customs

Service referencing the Glencoe site, stated among other items, that there would be no impact on any airport in the area.

The FAA's study indicates that there would be no significant impact on instrument flight rules (IFR) and VFR operations in the area of the aerostat.

The major concerns identified by commenters are that:

(1) The aerostat is positioned in an area where there is helicopter VFR traffic servicing the off-shore oil wells;

(2) The Restricted Area R–3807 will not appear on navigational charts until the U.S. Gulf Coast Charts are published on November 11, 1993, and

(3) The tether will not be marked or lighted.

The FAA has undertaken a special effort to inform pilots of the restricted area and the aerostat location. A notice with a graphic depicting the location of Restricted Area R–3807 has been mailed to all pilots in the United States. The graphic notice will be published continuously in the bi-weekly Notice to Airmen (NOTAM) publication until R–3807 appears on the Houston Sectional Chart effective date February 11, 1994. Prior to that date R–3807 will appear on the U.S. Gulf Coast Chart, effective November 11, 1993. In addition, a nationwide NOTAM describing the restricted area is currently in effect and available to pilots.

High intensity strobe lights are installed on the balloon and, as an additional safety feature, an array of high intensity strobe lights has been installed on the ground around the balloon's anchor point. The ground array will alert pilots of the tether location if they inadvertently stray into the restricted area. Also, local NOTAM's can be obtained from appropriate air traffic control facilities in the area. These actions address the concerns of the commenters and provide the necessary safeguards for operation of the aerostat. The coordinates for this airspace docket are based on North American Datum 83. Section 73.38 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8A dated March 3, 1993.

The Rule

This amendment to part 73 of the Federal Aviation Regulations establishes Restricted Area R–3807, Glencoe, LA. The restricted area will provide airspace for the operation of a tethered aerostat-borne radar system. This system provides surveillance of airspace to detect low altitude aircraft attempting to penetrate the United States airspace. The restricted area encompasses a 3-nautical-mile radius centered at lat. 29°48'37"N., long. 91°39'47"W., from the surface up to and including 15,000 feet MSL. This system increases the probability of the interception and interdiction of suspect aircraft and provides low altitude radar coverage for the Customs Service. Restricted Area R–3807 is necessary to contain a U.S. Customs Service aerostat balloon. The circular restricted area establishes airspace that aircraft must avoid and therefore will not strike the unmarked and unlighted tether. The aerostat balloon has been operated within a temporary flight restriction area since August 30, 1993, because of urgent requirements to have the system tested and operational as soon as possible. In view of the safety measures previously described and the notification to all pilots of the current operation of the balloon, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and good cause, pursuant to 5 U.S.C. 553(d), exists for making this amendment effective in less than thirty days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

An environmental assessment of the proposal performed by C.H. Fenstermaker & Associated, Inc., Environmental Consultants, for the U.S. Customs Service, which the FAA adopts, finds no significant environmental impact. Use of the subject area as proposed is consistent with existing national environmental policies and objectives as set forth in section 101(a) of NEPA and will not significantly affected the quality of the human environment or otherwise include any condition requiring consultation pursuant to section 102(2)(c) of NEPA.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73, as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510, 1522; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 73.38 [Amended]

2. § 73.38 is amended as follows:

R–3807 Glencoe, LA [New]

Boundaries. A 3-nautical-mile radius centered at lat. 29°48'37"N., long. 91°39'47"W.

Designated altitudes. Surface to 15,000 feet MSL.

Time of designation. Continuous.

Controlling agency. FAA, Houston ARTCC

Using agency. USAF, Southeast Air Defense Sector, Tyndall AFB, FL.

Issued in Washington, DC, on October 5, 1993.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 93–25050 Filed 10–12–93; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200 and 240

[Release No. 33–7022; 34–33023; IC–19768; File No. S7–5–93] RIN 3235–AF85

Securities Transactions Settlement

AGENCY: Securities and Exchange Commission

ACTION: Final Rule.

SUMMARY: The Securities and Exchange Commission ("Commission" or "SEC") announces the adoption of new Rule 15c6–1 under the Securities Exchange Act of 1934 ("1934 Act") which establishes three business days as the standard settlement timeframe for broker-dealer trades, effective June 1, 1995. Rule 15c6–1 is designed to reduce the risk to clearing corporations, their members, and public investors inherent in settling securities transactions by reducing the number of unsettled trades in the clearance and settlement system at any given time. The Rule also will facilitate additional risk reduction measures by achieving closer conformity between the government securities and derivative markets and the markets for other securities.

EFFECTIVE DATE: June 1, 1995.

FOR FURTHER INFORMATION CONTACT: Jack Drogin, Branch Chief, or Sonia Burnett, Attorney, at 202/272–2775, Office of Securities Processing Regulation, Branch of International and Debt Clearing Agency Regulation, Division of Market Regulation ("Division"), 450 Fifth Street, N.W., Mail Stop 5–1, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: On February 23, 1993, the Commission proposed for comment Rule 15c6–1 (17 CFR 240.15c6–1) under the 1934 Act.[1] That Rule provides that, unless otherwise expressly agreed by the parties at the time of the transaction, a broker or dealer is prohibited from entering into a contract for the purchase or sale of a security (other than an exempted security, government security, municipal security, commercial paper, bankers' acceptance, or commercial bill) that provides for payment of funds and delivery of securities later than the third business day after the date of the contract.[2] As described above, the Rule would allow a broker or dealer to agree that settlement will take place in more than three business days. The agreement, however, must be express and reached at the time of the transaction. In the Proposing Release, the Commission invited commentators to address the merits of the proposed Rule; the costs and benefits of the proposed Rule; the scope of and securities affected by the proposed Rule; broker-dealer costs to develop and employ procedures to comply with the proposed Rule; and any risk reduction benefits and costs savings that may result from the proposed rule.

The Commission received comments from 1,914 commentators concerning the proposed Rule. Over 101 commentators favor the proposed Rule, 248 commentators oppose the proposed Rule, and 15 commentators offered comments on the proposed Rule but did not state if the commentator generally supports or opposes the proposal. In addition, 1,550 commentators submitted substantially similar letters generally in favor of increasing the safety and soundness of the U.S. clearance and settlement system but urging the Commission to ensure that investors can continue to obtain direct registration of their securities on issuer records in a three-day settlement environment. Fifty-six of the commentators that oppose the Rule expressed concern about the costs of complying with the three-day settlement. A complete list of commentators is attached as Appendix 1. Staff of the Commission has prepared a summary of the comments, a copy of which has been placed in the official file.

As discussed below, the Commission agrees with many of the commentators' suggestions, and the Commission has modified Rule 15c6–1 accordingly. For example, the Commission is modifying the Rule to exempt at this time transactions in limited partnership interests that are not listed on a national securities exchange or traded in the over-the-counter market ("unlisted limited partnership interests") and certain new issues involving firm-commitment underwritings. Although the Commission is not expanding the scope of the Rule to encompass municipal securities, the Commission is calling upon the Municipal Securities Rulemaking Board ("MSRB") to take all steps necessary to shorten the routine settlement cycle for municipal securities transactions by the effective date of Rule 15c6–1. In addition, the Commission has determined not to exempt other securities issued by mutual funds and private label mortgage-backed securities, or listed limited partnership interests. Finally, the Commission is modifying the Rule to authorize the Commission, by order, to exempt additional securities from the scope of Rule 15c6–1. For the reasons discussed in the Proposing Release and below, the Commission is adopting Rule 15c6–1, as revised, effective June 1, 1995.

I. Background

In recognition of the importance of broker-dealer settlement practices to the clearance and settlement process,[3] the Securities Acts Amendments of 1975 ("1975 Amendments")[4] authorized federal regulation of the time and method by which broker-dealers settle securities transactions. In adopting the 1975 Amendments, Congress directed the Commission to act in the national interest to achieve safety and efficiency in clearance and settlement. Section 17A of the 1934 Act directs the Commission "to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of transactions in securities (other than exempted securities)."[5] That directive was revised by the Market Reform Act of 1990[6] to reflect the interdependence of options, futures, and equity markets that trade products involving securities or stock indexes.

Currently, the settlement cycle in the U.S. varies among markets.[7] Settlement of securities transactions on the fifth business day after the trade date ("T+5") is largely a function of market custom and industry practice. There is no federal rule that mandates a specific settlement cycle for securities transactions. Indeed, at one time, other settlement periods were considered "regular-way."[8] Prior to 1953, settlement at the American Stock Exchange ("Amex") occurred on the second day after the trade date ("T+2"), and gradually moved to the third day after the trade date ("T+3") in 1953, T+4 in 1962, and to the present T+5 in 1968.[9] The New York Stock Exchange ("NYSE") originally settled trades on T+1 in the 1920s, but settlement has gradually moved to T+5.[10] Currently, self-regulatory organization ("SRO") rules define "regular way" settlement as settlement on T+5.[11] At this time, however, and for the reasons set out

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[1] Securities and Exchange Commission Release Nos. 33–6976; 34–31904; IC–19282; (February 23, 1993), 58 FR 11806 (File No. S7–5–93) ("Proposing Release").

[2] As noted in the Proposing Release, because exchange-traded options and government securities routinely settle on the day after trade date, settlement of such securities transactions will be essentially unchanged.

[3] The term "clearance" includes the comparison of data regarding the terms of settlement of securities transactions and the allocation of securities settlement responsibilities. After trade comparison, most trades clear through a continuous net settlement system ("CNS") operated by a clearing corporation registered with the Commission under Section 17A of the 1934 Act. Under CNS, the clearing corporation nets each clearing member's purchases and sales to arrive at a daily net receive or deliver obligation for each security and a daily net settlement payment obligation. The term "settlement" includes the delivery of securities in exchange for funds, pursuant to the terms of the original transaction, and the custody of securities. See section 3(a)(23)(A) of the 1934 Act, 15 U.S.C. 78c(a)(23)(A).

[4] Public Law 94–29 section 16, 89 Stat. 146.

[5] See 15 U.S.C. § 78o, 78q-1, and 78w.

[6] Public Law 101–432, 104 Stat. 963.

[7] Settlement in the futures, options, and government securities markets occurs on the day after trade date ("T+1") using same-day funds. Settlement of most trades in corporate and municipal securities, on the other hand, takes place on the fifth business day after the trade date ("T+5") with money payments among financial intermediaries made in next-day funds (*i.e.*, payment by means of certified checks passing between the clearing corporation and its members). Thus, financial intermediaries have good funds on "T+6."

[8] See e.g., Remarks of Commissioner Mary L. Schapiro before the Securities Industry Association ("SIA") Regional Conference (March 20, 1991), stating that "[p]rior to 1968, equity transactions in the U.S. were settled on the fourth day after the trade date ("T+4"), without causing undue harm to retail customers."

[9] Letter from Mary Ann Callahan, Vice President/Director of International Development, National Securities Clearing Corporation ("NSCC"), to Toshitsugu Shimizu, Assistant Manager, Tokyo Stock Exchange (June 30, 1987).

[10] Frank W. Curran, Address to Executives and Officers of Korea Securities Industry (March 28, 1974).

[11] See e.g., National Association of Securities Dealers, Inc. Uniform Practice Code ¶ 3512, section 12 and New York Stock Exchange Rule 64.

below, the Commission believes T+3 settlement should be mandated.

II. Basis and Purpose of the Rule

A. Regulatory Basis

The market break of 1987 highlighted the need for improvements in the nation's clearance and settlement system.[12] The performance of the clearance and settlement system was viewed by many as a threat to the stability of the market during this time. During and after the week of October 19, 1987, over 50 introducing brokers failed, many as a result of the inability of customers to meet margin calls and pay settlement obligations.[13] The failure to meet margin calls and/or transaction settlement obligations exposed some clearing firms to financial loss, thus threatening the entire financial system.[14]

Shortly after the 1987 market break, then Treasury Secretary Nicholas F. Brady referred to the clearance and settlement system as the weakest link in the nation's financial system and noted that improving clearance and settlement would "help ensure that a securities market failure does not become a credit market failure."[15] Gerald Corrigan, President of the Federal Reserve Bank of New York ("FRBNY"), noted: "[T]he greatest threat to the stability of the financial system as a whole [during the 1987 market break] was the danger of a major default in one of these clearing and settlement systems."[16]

The connection between a crisis in the clearance and settlement system and the financial industry was highlighted by the bankruptcy in 1990 of Drexel Burnham Lambert Group, the holding company parent of Drexel Burnham Lambert, Inc. ("Drexel"), a large broker-dealer. As described more fully in the Commission's testimony before the Senate Banking Committee,[17] near gridlock developed in the mortgaged-backed securities market and in the corporate debt and equity markets where Drexel was an active participant. Drexel had significant positions in mortgage-backed securities that required physical delivery of certificates to settle and also in corporate equity and debt that could be liquidated by book-entry transfer. Lenders and counterparties, however, were reluctant to release both physical certificates and book-entry securities to Drexel. Those counterparties were concerned that the delivery of securities to Drexel against the promise of payment at the end of the day might result in the deliverer's inability to retrieve the securities if the deliverer did not receive payment because of an intervening event, such as the filing of a petition for bankruptcy by or against Drexel, or the assertion of a lien or set-off by one or more financial institutions handling those funds or securities.[18]

The events that surrounded the subsequent liquidation of Drexel's positions in mortgage-backed and corporate securities highlighted two concerns—first, the risk that counterparty credit concerns could lead to gridlock in securities markets, even where regulators assured markets that a major participant is solvent; second, that these risks are not limited to markets where transactions are subject to netting by clearing corporations. These events forced the conclusion that the clearance and settlement system deserved immediate attention.[19]

As noted by Alan Greenspan, Chairman of the Board of Governors of the Federal Reserve System ("Federal Reserve Board" or "Board"), "The importance of strong clearing and settlement systems cannot be overemphasized. This area was identified by the Brady Commission and others after the market break last year as a potential point of vulnerability in the U.S. financial system. The overloading of the * * * clearing systems last October induced breakdowns that dramatically increased uncertainty among investors and likely contributed to additional downward pressures on prices."[20]

In the Proposing Release, the Commission set forth three reasons why adoption of Rule 15c6–1 would be necessary or appropriate. First, at any given point in time, fewer unsettled trades would be subject to credit and market risk, and there would be less time between trade execution and settlement for the value of those trades to deteriorate. Second, the proposed Rule would reduce the liquidity risk among the derivative and cash markets and reduce financing costs by allowing investors that participate in both markets to obtain the proceeds of securities transactions sooner. Finally, the Commission noted that a shorter settlement timeframe could encourage greater efficiency in clearing agency and broker-dealer operations.

Commentators that support T+3 settlement believe that the new Rule would facilitate these goals. Commentators stated specifically that the Rule would significantly reduce settlement risk. The Federal Reserve Board stated that settlement systems for securities and other financial

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[12] Commentators opposed to Rule 15c6–1 predominantly expressed concern about the cost implications of the rule, which are addressed in section II.B of this release. Fewer than ten commentators indicated that the rule was unnecessary or that Commission goals could be achieved by other means. See discussion, *infra*, at pp. 19–21.

[13] Division of Market Regulation, The October 1987 Market Break ("Market Break Report") 10–20 (February 1988).

[14] *Id.* at 10–16. Clearing firms stand between the clearing corporation, on the one side, and market professionals, introducing firms, and public investors on the other. Many customers, institutional and otherwise, open their accounts with an introducing broker. Introducing brokers use executing brokers (which are usually members of a clearing agency) to execute and clear customer trades. If the customer fails to meet margin calls made by the executing firm or fails to pay on T+5 the settlement amount for securities it has purchased, the introducing or executing broker must pay that debt. If the amount exceeds the introducing broker's ability to pay and it fails, the clearing member executing firm will be responsible for the customer's debt. If the clearing member fails to meet its obligation to the clearing agency, the clearing agency will suspend and cease to act for that member. Clearing agencies ceased to act for three clearing members during the week of October 19, 1987. The Depository Trust Company ("DTC") and NSCC ceased to act for Metropolitan Securities ("Metropolitan"), American Investors Group, and H.B. Shaine and Co. ("Shaine"). The Options Clearing Corporation ("OCC") ceased to act for Shaine, and MBS Clearing Corporation ceased to act for Metropolitan. *Id.*

[15] The Market Reform Act of 1989: Joint Hearings on S. 648 before the Subcomm. on Securities and the Senate Comm. on Banking, Housing and Urban Affairs, 101st Cong., 1st Sess. 225 (Oct. 26, 1989) (statement of Nicholas F. Brady, Secretary of the Treasury).

[16] Luncheon Address: Perspectives on Payment System Risk Reduction by E. Gerald Corrigan, President, FRBNY, reprinted in The U.S. Payment System: Efficiency, Risk and the Role of the Federal Reserve 129–30 (1990).

[17] The Issues Surrounding the Collapse of Drexel Burnham Lambert, Hearings before the United States Congress, Senate Committee on Banking, Housing, and Urban Affairs, 101st Cong., 2d Sess. 5 (1990) (testimony of Richard C. Breeden, Chairman, Commission) ("Drexel testimony").

[18] Ordinarily, lenders who accept securities in DTC's pledge program release those securities to the debtor's control without requiring full payment of outstanding loans, provided payment (including refunding through new pledge loans) occurs before the end of the day. This permits the debtor (typically, a broker-dealer) to deliver the pledged securities against payment to another participant or to NSCC during both of DTC's delivery processing cycles. Because settlement of transactions typically starts with delivery of securities, with the deliverer assuming the risk that payment will be made at or before the end of the day, release of pledged collateral can help maximize the number of trades that settle while shifting some credit risk to the deliverer's bank.

When Drexel experienced financial difficulties, however, its lenders and counterparties took steps to reduce their credit risk exposure to Drexel. In particular, because of concern about what might happen during the day or the quality of collateral that might be posted at the end of the day, lenders insisted upon repayment before release of securities, which meant Drexel could not settle open transactions even as it was winding down its portfolio. See Drexel testimony at 47.

[19] Initiatives in clearance and settlement reform undertaken since 1987 are outlined in Appendix 2.

[20] See Remarks by Alan Greenspan before the Annual Convention of the SIA (November 30, 1988).

instruments are a potential source of systemic disturbance to financial markets and to the economy.[21] In the Board's view, the key features of an ideal settlement system are the settlement of trades immediately after execution and payment in same-day funds, and compressing the settlement timeframe for corporate securities to three days from five days is an important and achievable step toward this ideal. Similarly, the FRBNY noted that shortening the settlement cycle decreases the opportunity for adverse developments to occur between the execution and settlement of each trade, thus lowering the credit and market risks that can arise when settling individual transactions. A move to T+3 reduces the total volume and value of outstanding obligations in the settlement pipeline at any point in time; the FRBNY believes this will better insulate the financial sector from the potential systemic consequences of serious market disruptions.[22]

Commentators stated also that the Rule will facilitate risk reduction by achieving closer conformity between the corporate securities markets and the markets for other securities that currently settle in fewer than five days (*i.e.*, government securities and derivative securities), and will encourage market participants to achieve greater efficiencies in clearing agency and broker-dealer operations. For example, the Government Securities Clearing Corporation ("GSCC") stated that settlement risk can arise from dissimilarities in settlement cycles among markets as well as the length of a specific market's settlement cycles, which can lead to artificial delays in moving securities and make it more difficult to establish risk reduction mechanisms such as common netting and cross margining arrangements.[23] The American Bankers Association echoed these views, noting that by reducing the lag between the settlement of derivatives and government securities and the settlement of corporate securities, investors that participate in both markets will be able to reduce their financing costs and obtain the proceeds of their securities transactions on a more timely basis.[24]

The Commission believes that the benefits of three-day settlement will inure to all market participants. As noted in the Proposing Release, the value of securities positions can change suddenly causing a market participant to default on unsettled positions. Because the markets are interwoven through common members, default at one clearing corporation or by a major market participant or end-user[25] could trigger additional failures, resulting in risk to the national clearance and settlement system ("system").[26] This risk is even more acute given the growth of the over-the-counter derivative product markets where dealers shift risk exposure among major market participants in international centers and end-users.[27] Finally, in a T+3 settlement environment, because the settlement date will be accelerated by two business days, a broker-dealer who executes a trade based on a customer's verbal agreement will be able to take action as much as two business days sooner than in a T+5 environment to mitigate losses in the event of the customer's cancellation.

B. Cost of Systems and Operational Changes

The Commission believes that the potential benefits from shortening the settlement cycle by two business days outweigh the costs associated with such a change. The benefits of a shorter settlement cycle include reduced credit, market, and systemic risk. Perhaps no single conclusion from the Bachmann Task Force ("Task Force") Report[28] is more significant than the equation "Time = Risk." A shorter settlement cycle not only reduces the number of outstanding trades, but significantly changes how market participants calculate credit and market risk.

Activity in the national clearance and settlement system measures in the tens of billions of dollars, with continuous-net-settlement ("CNS") processing at the National Securities Clearing Corporation ("NSCC") averaging over $22.5 billion in corporate equity and debt transactions a day. This activity creates considerable risk to clearing corporations, including credit risk, market risk on open contractual commitments, and systemic risk because clearing corporations interpose themselves between purchasers and sellers of securities. The Task Force found that the risk reduction to one clearing corporation, NSCC, from reducing the standard settlement cycle to T+3 in the event of the failure of an average large member could range from $6.5 million (or 58%) to $208 million (or 55%) in a worst case scenario.[29] Equally significant, if the temporary insolvency of eleven average large firms were to occur on a typical trading day, T+3 would reduce the risk to NSCC by $72 million (or 59%) to $2.3 billion (or 55%) in a worst-case situation.[30]

Notwithstanding these benefits, some commentators, generally small retail broker-dealers, thought that the costs involved in shortening the settlement cycle would outweigh the benefits. Although they were unable to quantify their estimated expenses with precision, these commentators noted problems with receipt of confirmation, payment by check, and possible financing costs resulting from the rule.[31] Commentators

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[21] Letter from William W. Wiles, Secretary to the Board, to Jonathan G. Katz, Secretary, Commission (September 1, 1993). See also Bank for International Settlements, Delivery Versus Payment in Securities Settlement Systems (September 1992).

[22] Letter from William J. McDonough, President, FRBNY, to Jonathan G. Katz, Secretary, Commission (August 27, 1993).

[23] Letter from Jeffrey F. Ingber, General Counsel and Secretary, GSCC, to Jonathan G. Katz, Secretary, Commission (June 30, 1993).

[24] Letter from Sarah A. Miller, Senior Government Relations Counsel, American Bankers Association, to Jonathan G. Katz (June 30, 1993).

[25] See Securities Exchange Act Release No. 32256 (May 14, 1993), 58 FR 27486 (concept release regarding changes to Commission's net capital treatment of derivative products); and the Group of Thirty, Derivatives: Practices and Principles (July 1993).

[26] Clearing corporations function as, among other things, post-trade processing facilities and guarantors of post-trade settlements. Upon reporting matched trade information to its members, the clearing corporation becomes the counterparty to every trade and guarantees payment and delivery. See Securities Exchange Act Release No. 20221 (September 23, 1983), 48 FR 45167 ("Full Registration Order"). To protect against the credit risk presented by unsettled positions, clearing corporations obtain contributions from their members to a pool of funds designed to provide a ready source of liquidity in case of a member default. See Securities Exchange Act Release Nos. 16900 (June 17, 1980), 45 FR 4192 (announcing the Division of Market Regulation's standards for the registration of clearing agencies); 20221 supra; and 30879 (July 1, 1992), 57 FR 30279 (order approving modifications to the CNS portions of NSCC, Midwest Clearing Corporation, and Securities Clearing Corporation of Philadelphia clearing fund formulas). Any sizable loss in liquidating the open commitments of a defaulting member, however, would be assessed pro rata against all clearing members. See e.g., NSCC Rule 4. See also, Market Break Report, Chapter 10.

[27] Task Force on Securities Settlement Report to the Governor of The Bank of England (June 1993).

[28] Bachmann Task Force, Report of the Bachmann Task Force on Clearance and Settlement in the U.S. Securities Markets ("Task Force Report") (May 1992).

[29] Task Force Report at 35.

[30] *Id.* at 36.

[31] Based on the information received from commentators upon staff requests for further data, the firms' estimated costs ranged from $0 to $5 million. Three firms stated that they expected to incur little or no cost. Other firms cited annual cost figures as follows: $12,000, $20,000, $55,000, $75–100,000, $87,000, $99,300, $1 million, $3.8 million, and $5 million.

Two clearing firms provided specific cost data. One clearing firm stated that it would have initial start-up costs of approximately one million dollars to make changes to its cash management and trade processing systems and procedures. Letter from George Minnig, Managing Director, Pershing Division of Donaldson, Lufkin and Jenrette

supporting the Rule, including exchanges, the ABA, the Securities Industry Association ("SIA"), and a significant number of broker-dealers representing a large majority of the retail customer base indicated that the risk reduction benefits of Rule 15c6–1 were important to the national clearance and settlement system, and they therefore supported the Rule.

The Commission is sensitive to the costs necessary for transition to a shorter settlement timeframe but on balance believes that the benefits to the financial system outweigh those costs. Moreover, the Commission believes Rule 15c6–1 creates an incentive for broker-dealers, particularly retail firms, to encourage timely customer payment and improve management of cash flows. With more than 19 months before the effective date of Rule 15c6–1, the Commission expects broker-dealers will have adequate notice to educate customers about the need for prompt payment and will have adequate time and incentive to implement changes to reduce the need for financing.

As discussed in more detail in the Final Regulatory Flexibility Analysis ("FRFA"), a potentially large expense for retail firms likely will be interest expenses, while a few firms projected a cost increase from hiring additional personnel.[32] Many of the cost estimates are based on assumptions of static circumstances. Firms generally projected costs, or claimed the move to T+3 settlement would be impossible for them, by assuming continued reliance upon the U.S. mail for delivery of confirmations and checks and no change in the behavior of customers who do not provide payment until receipt of confirmations; all without considering use of new practices and technologies.

The Commission believes that alternatives exist to speed processing funds payments. For example, broker-dealers could encourage clients to deposit funds or securities with the broker-dealer upon placing an order, or to send funds and securities that day. Existing technology allows firms to advise customers immediately after trade execution what the net cost is. Sixteen commentators indicated that many customers will not pay by check until they see the written confirmation which means that funds won't arrive at the firm until after a "round-trip" mailing.[33]

Alternatively, firms could establish facilities with local banks that would permit customers to authorize payments to firms using electronic funds transfer systems. One type of electronic funds transfer system is the Automated Clearing House ("ACH") system operated under the guidelines established by the National Automated Clearing House Association ("NACHA"),[34] which is now used by several retail service industries for periodic and occasional funds payments. A study done in 1990 by the U.S. Working Committee of the Group of Thirty indicated that the costs of ACH may be offset by a reduction of internal costs arising from the processing of checks and elimination of financing costs currently incurred for checks received after T+5 and could be absorbed by the initiating firm.[35] Several commentators noted that firms and customers may be uncomfortable using these systems for security, administrative, and other reasons.

Several broker-dealers have expressed reluctance to use ACH because of liability that may result from a customer exercising his sixty-day right of rescission in the current ACH system. In response to this concern, NACHA recently passed a rule that will, effective April 1994, require a receiving depository financial institution to obtain a signed affidavit from a consumer when the consumer claims that a transaction to his or her account is unauthorized or that an authorization had been revoked. NACHA is confident that this rule amendment will make the ACH network more attractive for retail security transactions.

Seven retail broker-dealers, including the three retail broker-dealers that believe the Rule is not necessary, suggested that the Commission adopt a daily mark-to-market instead of shortening the settlement cycle to three days. These commentators believe that a daily mark-to-market is the best way to reduce "real" systemic risk, *i.e.*, market risk, as opposed to time risk. The commentators suggested that the Commission propose a pass-through mark-to-market similar to the one NSCC imposes on open trades in its CNS system.[36]

The Commission believes the mark-to-market mechanism raises more concerns than it does solutions, inasmuch as it reduces, but does not eliminate, the potential risk of unsettled trades. Indeed, the Bachmann Task Force concluded that shortening the settlement cycle significantly reduced market risk to clearing agencies when a major participant defaults compared to a system that only required pass-through of daily marks-to-the-market. Moreover, it would appear to require firms to have the capacity to collect funds from customers to meet some or all mark-to-market obligations, particularly in volatile markets where the firm might not have enough working capital to meet the mark-to-market payment obligation. In addition, because the firm would not have any collateral to post, financing could be difficult to obtain except on an unsecured basis. In this regard, shortening the settlement cycle should be more manageable for firms because the firm can post the customer's securities as collateral for financing pending settlement with the customer.

As stated above, the Commission believes that greater risk reduction can be achieved through reducing the settlement timeframe. While a risk reduction measure such as a mark-to-market may be more readily acceptable to the retail segment of the industry, the Commission believes that retail broker-dealers and their customers can achieve T+3 settlement given the extended transition period for implementation.

C. Building Blocks

Several commentators expressed concern that certain "building blocks"

Securities Corporation ("Pershing"), to Jonathan G. Katz, Secretary, Commission (June 21, 1993). The other responding clearing firm stated that its informal analysis indicated that it would have annual costs, mainly based on financing late payments, of approximately five million dollars. Letter from Jeffrey R. Larsen, Senior Legal Counsel, Fidelity Investments Institutional Services Company, Inc. ("Fidelity"), to Jonathan G. Katz, Secretary, Commission (June 24, 1993).

[32] The Commission notes that the cost data received in general were very rough estimates, not based on detailed studies, and the Commission expects that actual costs will vary among firms depending on many factors, including the nature and location of the firm's clientele and the level of technology employed by the firm.

[33] In addition, three commentators indicated that the customer needed to review the confirmation to eliminate unauthorized transactions. Commentators raise valid concerns about unauthorized transactions and the utility of the written confirmation in detecting unauthorized transactions. Nevertheless, unauthorized transactions generally represent a small percentage of all trades executed each day, and the key to avoiding those transactions is prompt communication of key trade terms to the customer, which could be accomplished orally as well as in writing. Even more to the point, firms should take corrective action whenever they discover unauthorized transactions in customer accounts without regard to when the customer receives a confirmation.

[34] ACH is a domestic electronic payment system operated under the direction of NACHA and is utilized by over 22,000 banks, thrifts, and other depository financial institutions on behalf of corporations and individuals.

[35] U.S. Working Committee, Implementing the Group of Thirty Recommendations in the United States (November 1990).

[36] See *e.g.*, letter from Robert C. Disset, Director, Operations Division, A.G. Edwards & Sons, Inc. ("A.G. Edwards"), to Jonathan G. Katz, Secretary, Commission (June 1, 1993).

must be in place before the Commission mandated T+3 settlement. The building blocks most frequently cited were an interactive institutional delivery system at securities depositories (to allow institutional broker-dealers, money managers, and custodians to confirm trades, correct errors, and instruct release of funds and securities on an intraday basis), making as many securities as possible eligible for processing in those depositories, and improving retail customer payment systems to broker-dealers. Commentators also identified several regulatory initiatives they believe are predicates to T+3 settlement, including changes in the Commission's confirmation rule (Rule 10b–10), broker-dealer financial responsibility rules (Rules 15c3–1 and 15c3–3), and the Federal Reserve Board broker-dealer credit rules (Regulation T). These concerns are described briefly below and in greater detail in appendix 3.

The Commission believes that none of these building blocks justify delaying the Commission's adoption of Rule 15c6–1. Efforts to implement several of the building blocks commentators identified are underway, and the Commission reasonably anticipates implementation will be completed before June 1, 1995, the effective date of Rule 15c6–1. Indeed, if the Commission were to defer action on this Rule, those efforts might well languish. Moreover, certain changes, particularly those that involve regulation, are best considered after a date for shortening the settlement cycle has been established, as the Commission is doing today. Of course, the Commission will monitor efforts to address these and other concerns.

1. SRO and Industry Initiatives

To facilitate three-day settlement, The Depository Trust Company ("DTC") is developing an interactive Institutional Delivery ("ID") system [37] that would permit real-time confirmation/affirmation of institutional trades. In March 1993, DTC distributed to its participants and other ID system users a design paper containing detailed descriptions of the various features of the interactive ID system as well as a tentative implementation schedule for each. DTC proposes to introduce certain features in late 1993, with the interactive receipt of trade input and affirmations, and the interactive distribution of confirmations and Eligible/Ineligible Trade Reports, scheduled for the first half of 1994.

Institutional trades comprise a large part of the U.S. securities market. As of the third quarter of 1992, institutions held 29% of the total outstanding corporate equity securities in the U.S., totaling over $1.4 trillion.[38] During 1992, institutions accounted for two-thirds, and perhaps more, of daily share volume on the NYSE.[39]

DTC's ID system is the workhorse for processing institutional trades in the national ID system, which links broker-dealers, investment managers, and custodian banks through a network of electronic communications systems to speed confirmations, settlement instructions, and corrections among the agents for institutional investors. Currently, 81% of institutional transactions are affirmed by T+1, and 94% are affirmed by T+2. An interactive ID system will allow the processes of trade data input, confirmation output, affirmation, and issuance of settlement instructions to be completed in a matter of minutes. Consequently, with an interactive ID system in place, the number of institutional trades that are affirmed by T+2 could approach 100%. DTC has filed with the Commission a proposed rule change under section 19(b)(1) of the 1934 Act outlining its proposed enhancements to the ID system.[40] Commission staff will review the proposal in light of the requirement under section 17A of the 1934 Act that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and the safeguarding of funds and securities.

Some commentators believe that T+3 settlement would be difficult to achieve without making all securities depository eligible. Currently, only a small fraction of securities listed on an exchange, the National Association of Securities Dealers Automated Quotation System ("NASDAQ"), or the over-the-counter ("OTC") Bulletin Board are not eligible for deposit at a registered clearing agency. Accordingly, the Commission does not believe this is a serious impediment to T+3 settlement, although the percentage of ineligible securities must remain minuscule. The Legal and Regulatory Subgroup of the U.S. Working Committee of the Group of Thirty ("Legal and Regulatory Subgroup") is drafting a uniform rule intended to incorporate a depository eligibility requirement into a listing standard for each registered national securities exchange and into the eligibility requirements of NASDAQ. The Commission expects the exchanges and the National Association of Securities Dealers ("NASD") to submit proposed rule changes to the Commission under section 19(b)(1) of the 1934 Act in the near future. Although the rules, if approved, would not reach settlement of transactions in securities that are not listed on a national exchange or NASDAQ, the Commission believes preliminarily that this effort could be an important step towards improving the efficiency of the national clearance and settlement system, and indeed towards facilitating T+3 settlement.

The Commission did not solicit comment on the desirability of settling securities transactions in same-day funds. However, six commentators stated that additional risk reduction could be gained by converting to a same-day funds payment system. DTC and NSCC recently distributed a memorandum outlining their plans and timetable for converting to same-day funds settlement and detailing how DTC and NSCC believe many aspects of the same-day funds settlement system will function. DTC and NSCC expect to implement the proposal by late 1994 or early 1995. The Commission supports the efforts of the SROs and will continue to work with the SROs towards early implementation of the initiatives.

2. Regulatory Initiatives

Some commentators suggested that implementation of a T+3 settlement period will require amendments to the Commission's confirmation rule, Rule 10b–10 adopted under the 1934 Act.[41] That rule, however, does not require the confirmation to be received prior to settlement, and therefore the current practice of sending the confirmation the day after trade date will satisfy Rule 10b–10 in a T+3 settlement cycle. Implementation of T+3, however, may alter the confirmation's utility as a customer invoice because confirmation delivery and transfer of customer funds and securities may not be possible within the three-day settlement period.

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[37] In the ID system, brokers notify the depository of trades made by an investment manager on behalf of an institutional client. The investment manager and the client's custodian banks are notified of the trade and asked to affirm that the information is correct. Trades affirmed by T+3 settle automatically by book-entry at the depository on T+3.

The majority of settlements between broker-dealers and their institutional customers are processed through the National Institutional Delivery System ("national ID system" or "NIDS") which includes links with three securities depositories (Midwest Securities Trust Company, Philadelphia Depository Trust Company, and DTC) and their member broker-dealers. See, e.g., Securities Exchange Act Release No. 25120 (November 13, 1987), 52 FR 44506.

[38] NYSE, Fact Book for the Year 1992 (April 1993) at 28.

[39] For the first six months of 1993, an average of 264 million shares were traded daily on the NYSE.

[40] See File No. SR–DTC–93–07.

[41] 17 CFR 240.10b–10.

The Commission therefore encourages broker-dealers to consider changes to their procedures for delivery of confirmations, as necessary, to accommodate three-day settlement. Such changes might include dispatch on trade date from offices within one-day delivery range of the customer or transmission of confirmations by facsimile or other electronic means.

Commentators also asked the Commission to review Rules 15c3–1 and 15c3–3 to determine whether amendments will be required to conform those rules to a shorter settlement timeframe. Rule 15c3–1[42] establishes the net capital requirements for brokers and dealers. To determine net capital, Rule 15c3–1 requires a broker or a dealer to deduct from net worth, as computed in accordance with generally accepted accounting principles, assets not readily convertible into cash, including most unsecured receivables. A broker or a dealer also must deduct certain specific percentages from the securities and commodity positions that it carries in its proprietary account. The rule also requires that a failed to deliver contract that has been outstanding for a certain specified period of time be treated as a proprietary position of the broker-dealer and subject to a percentage deduction. This time period is dependent upon the time from the settlement date.[43]

Rule 15c3–3[44] requires brokers and dealers to maintain possession or control of all customer fully paid and excess margin securities. As with Rule 15c3–1, some of the requirements imposed on brokers and dealers by Rule 15c3–3 are dependent upon the time from settlement. One commentator referred specifically to Rule 15c3–3(m).[45] Rule 15c3–3(m) requires that a broker or dealer that has executed a sell order for a customer, and has not obtained possession of such securities from the customer within ten business days after the settlement date, must immediately close the transaction with the customer by purchasing securities of like kind and quantity. The Commission notes that Rule 15c6–1 merely changes the number of days following the trade date that settlement will occur. Therefore, being keyed to settlement date, Rules 15c3–1 and 15c3–3, including Rule 15c3–3(m), are consistent with Rule 15c6–1.

Commentators urged the Commission, in conjunction with other regulators, to review Regulation T ("Reg T")[46] to determine how, if at all, Reg T should be modified. Currently, Reg T does not require that any action be taken unless a customer fails to pay for securities within seven business days of the trade date. The commentators were concerned that Reg T as currently drafted could leave customers and broker-dealers with the impression that payment from the customer is not due in a three-day settlement environment until the expiration of the seven-day period specified by Reg T. The Commission understands that the Federal Reserve Board staff has undertaken a general review of Reg T, and the Commission has already asked the Federal Reserve Board staff informally to consider whether conforming amendments to Reg T would be necessary in a three-day settlement environment.

In the Proposing Release, the Commission solicited comment on whether the Commission should require disclosure of whether the securities being offered in an initial public offering ("IPO") are depository eligible, and if not, why not. Five commentators supported the adoption of a disclosure requirement for IPOs as described above. Three commentators stated that a disclosure requirement was not necessary. None of the commentators, however, articulated the basis for their support. Nevertheless, the Commission believes that disclosure regarding whether or not an IPO will be eligible for deposit at a securities depository may be appropriate. Accordingly, the Commission is directing the staff to pursue requiring disclosure in those instances when neither the issuer nor the underwriter intends to make the securities depository eligible.

D. Implementation Date

The Commission believes that the benefits of a shorter settlement cycle exceed the costs associated with implementing that change, including the cost to firms to finance purchases by retail customers that traditionally rely on the U.S. mail service to deliver checks. The potential reduction in systemic risk coupled with the opportunity to provide smoother transmission of value from markets using a five-day settlement convention to markets using earlier settlement timeframes (such as the next-day settling government securities and derivative product markets) are essential to maintaining investor confidence and the premier competitive position of U.S. securities markets. As one commentator stated, "The speed with which market conditions can change today and the risk inherent in the five day settlement timeframe, warrant consideration of an earlier implementation date. We believe that the move to a three business day timeframe for settlements could and should occur earlier than 1996."[47] Although the transition to T+3 will entail costs and changes, the Commission believes the U.S. securities industry is more than equal to the challenge given current technology and financing sources.

The Commission is adopting Rule 15c6–1 with an effective date of June 1, 1995. The Commission believes that changes in industry practice and custom such as an earlier settlement timeframe must involve marketplaces, marketplace regulators, and participants in those markets acting cooperatively. In connection with this, the Commission recognizes that some broker-dealers need to make operational and procedural changes to comply with a three-day settlement period and that certain building blocks must be in place prior to compressing the settlement cycle. In view of the Commission's desire to minimize the potential cost of complying with the Rule and the need for more work at the SRO and regulatory levels, the Commission is adopting an extended transition period to allow affected parties to implement necessary changes gradually.

Forty of the commentators that support adoption of proposed Rule 15c6–1 suggested that the proposal be implemented on January 1, 1996, or earlier. The Cashiers' Association of Wall Street, Inc. ("Cashiers' Association"), the Public Securities Association ("PSA"), and Data Management Division of Wall Street ("Data Management Division") agreed that the proposal should be implemented in 1996 but believed implementing the proposal in January 1996 would place an excessive strain on broker-dealers' production systems.[48] These commentators suggested implementing the proposed Rule late in the first quarter or second quarter of 1996 to allow broker-dealers more time to complete year-end processing.

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[42] 17 CFR 240.15c3–1.

[43] See Rule 15c3–1(c)(2)(ix).

[44] 17 CFR 240.15c3–3.

[45] 17 CFR 240.15c3–3(m).

[46] Reg T, 12 CFR part 220, *et. seq.*, imposes, among other things, initial margin requirements and payment rules on securities transactions. See 15 U.S.C. § 78a *et seq.*, part 220.

[47] Letter from Albert Peterson, Executive Vice President, State Street Bank and Trust Company, to Jonathan G. Katz, Secretary, Commission (June 2, 1993).

[48] See letters from Paul Faraca, President, Cashiers Association, to Jonathan G. Katz, Secretary, Commission (June 14, 1993); and letter from Salvatore N. Cucco, President, Data Management Division, to Jonathan G. Katz, Secretary, Commission (June 16, 1993).

Eight commentators suggested specifically that the proposed Rule be deferred until the necessary building blocks are in place or for an indefinite period, three retail broker-dealers stated that the Rule was not necessary, and one broker-dealer specifically opposed implementation earlier than January 1, 1996.

The Commission is adopting Rule 15c6–1 with an effective date of June 1, 1995, rather than January 1, 1996, for two principal reasons. First, the Commission believes it is better not to change the settlement cycle timeframe at the same time market participants, custodians, and investors might be distracted by other matters, such as year-end tax and trading concerns. Second, June 1, 1995, is reasonably close so as to draw the immediate attention of those who must take steps to initiate compliance, and is reasonably far-off to permit completion of those preparatory steps. An effective date of January 1, 1996 or June 1, 1996, would continue to expose securities markets to risks that can and should be reduced. Accordingly, the Commission believes a 19 month delay in the effective date of Rule 15c6–1 is appropriate. Nevertheless, the Commission will monitor industry efforts toward implementation and will take all appropriate steps in that regard.

As stated above, the Commission encourages broker-dealers who wish to limit financing costs or the use of overnight mail to explore the available alternatives to payment by check through the U.S. mail. In addition, the Commission believes that customer education regarding those alternatives is paramount to successful implementation of T+3 settlement. For example, broker-dealers can require clients to deposit funds or securities upon placing an order, educate customers on the necessity of providing funds earlier, and emphasize the usefulness of in-house brokerage accounts. Alternatively, broker-dealers could encourage customers to use an electronic payment system, such as the ACH system, to pay for transactions.

The Commission recognizes that it must play its part in facilitating a smooth transition to shorter securities settlements. Adoption of Rule 15c6–1 may entail expense and may be unpopular among those who would prefer to see no change in current practice or would prefer to see next-day and even same-day settlement prevail. Reducing systemic risk is important to the safety and vitality of securities markets, and the Commission's efforts and resources remain committed to those goals. The Commission invites a continuing dialogue and partnership with all interested parties.

III. Scope of Rule 15c6–1

A. Application of Rule 15c6–1 to Municipal Securities, Limited Partnership Interests, New Issues, Mutual Funds, and Mortgage-Backed Securities

The Commission received approximately 66 comment letters addressing the scope of Rule 15c6–1. Generally, those commentators were supportive of the Commission's efforts to include a broad range of products within a shortened settlement cycle. The Commission has considered these comments, and for the reasons discussed below, the Commission believes that Rule 15c6–1 appropriately applies to securities issued by mutual funds, private-label mortgage-backed securities, and limited partnership interests that are listed on an exchange. The Rule does not apply to municipal securities, and the Commission has determined that, in addition, unlisted limited partnership interests and new issues should be exempt from the Rule for the reasons discussed below. Finally, the Rule has been revised to provide that the Commission may, by order, exempt additional securities from the scope of the Rule.

1. New Issues

Several commentators voiced concerns that new issues of securities[49] could not be settled by T+3 due to the need to deliver a prospectus prior to settlement.[50] Specifically, commentators have indicated that because the prospectus cannot be printed prior to the trade date (the date on which the securities are priced), the prospectus printing and delivery process cannot be completed within a T+3 timeframe. The problems described by commentators would seem to be specific to firm commitment offerings where the underwriter must make payment with its own funds to the issuer on a specified date, whether or not its customers have purchased and paid for the securities.[51]

To address this problem, the Commission is modifying the Rule to provide a limited exemption from T+3 for the sale of securities for cash pursuant to firm commitment offerings.[52] The exemption is limited to sales to an underwriter by the issuer and initial sales by members of the underwriting syndicate and selling group. Any secondary resale of such securities must be settled within T+3.

The Commission recognizes that the comment process may not have identified all situations or types of trades where settlement on T+3 would be problematic. Accordingly, the Rule has been revised to authorize the Commission to exempt, by order, additional types of trades from the scope of Rule 15c6–1.[53] This revision and the exemption for firm commitment offerings should assure that the Rule will not interfere unduly with the settlement of securities whose characteristics make it difficult to operate within the framework of Rule 15c6–1.

2. Municipal Securities

In proposing Rule 15c6–1, the Commission invited commentators to address the merits of including municipal securities within the scope of the Rule. Due to differences between the corporate and municipal securities markets and the unique role the MSRB has in overseeing the municipal securities market, and based in part on comments received, the Commission has determined not to include municipal securities within the scope of Rule 15c6–1. The Commission makes this determination, however, with the expectation that the MSRB will take the lead in implementing three-day settlement of municipal securities by June 1, 1995, the implementation date of the new Rule.

Over fifty commentators favored including municipal securities within the scope of the Rule. Those commentators believe that maintaining separate settlement cycles for corporate and municipal securities is unnecessary and would impose significant cost and operational difficulties on industry participants.

Several other commentators favor excluding municipal securities from the scope of Rule 15c6–1, citing the many special features of the municipal

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[49] A new issue of securities includes both IPOs and offerings of additional debt or equity issues by reporting companies.

[50] See section 5 of the Securities Act of 1933 ("1933 Act") (15 U.S.C. § 77e).

[51] In a firm commitment offering, the underwriter purchases the securities from the issuer, generally for a fixed price, and then re-sells the securities to the public, thereby assuming the risk of market fluctuations in the price of securities.

[52] The exemption will apply only to offerings when cash is the sole form of consideration given in exchange for the securities. This requirement is intended to limit the exemption to the conventional firm commitment public offerings which are associated with the problems raised by the commentators rather than including transactions such as issuer exchange offers or business combinations.

[53] Concurrent with the adoption of the Rule, the Commission is delegating to the Director of the Division of Market Regulation authority to exempt such additional types of trades.

securities markets. Those features include a lower confirmation/affirmation percentage of transactions in municipal securities than corporate securities, lack of CUSIP numbers in many municipal securities,[54] non-depository eligibility of many municipal issues, and the greater reliance on confirmations by purchasing investors.

The Commission believes that the benefits of reduced systemic, market, and credit risk justify reducing the settlement timeframe for municipal securities from five to three business days consistent with Rule 15c6–1. The Commission recognizes, however, that the differences between the corporate and municipal securities markets may justify a different approach to implementing T+3 settlement for municipal securities than corporate securities. For example, while publicly-traded corporate debt issuances number in the thousands, there are over one million municipal securities "maturities," each of which is a separate security for purposes of trade clearance and settlement and not all of which are depository eligible. In addition, approximately 80,000 entities issue municipal securities, which are not subject to the provisions of the Securities Act of 1933 ("1933 Act") and are exempted from many provisions of the 1934 Act.

Despite these differences, significant progress has been made towards more efficient, automated clearance and settlement of municipal securities.[55] First, the Commission understands that the system changes at clearing agencies necessary for T+3 settlement of municipal securities should be functional by July 1, 1994. Second, as a result of recent changes to MSRB rules, most, if not all municipal securities dealers and institutional investors have access (directly or through correspondents) to clearing agencies for automated clearance, confirmation, and settlement of their municipal securities trades. Third, only a fraction of newly-issued municipal securities are not routinely made eligible for deposit at securities depositories, and efforts are underway to address the remaining newly-issued securities. This progress has been the result of cooperative efforts by the Commission, the MSRB, clearing agencies, and their members.

Although commentators have raised concerns about the differences between municipal and other debt securities, the Commission believes that these differences can be overcome. For example, it may be appropriate to consider exempting certain types of municipal securities trades for a certain amount of time. Similarly, it might be appropriate to explore alternatives to the confirmation as the means of identifying securities that have been sold and as a risk disclosure document. It might also be appropriate to consider exemptions for trades in connection with firm commitment underwritings and for trades in securities for which CUSIP numbers are not required.

The Commission also understands commentator concern about potential costs to municipal securities dealers, such as financing retail customer purchase transactions pending receipt of payment from customers. With sufficient notice, the Commission believes that the municipal securities industry can identify and address these costs in ways similar to other broker-dealers.

In summary, the Commission is confident that municipal securities dealers and market participants, under the guidance of the MSRB, can accomplish the goal of shortening the settlement timeframe by two business days and that regular-way settlement for municipal securities can be subject to the same timetable as other securities. Accordingly, the Commission is requesting a report from the MSRB within six months outlining a time schedule in which the MSRB intends to implement T+3 in the municipal securities market.

3. Limited Partnership Interests

The Commission invited comment as to whether limited partnership interests should be included in the scope of Rule 15c6–1. Eleven commentators supported inclusion of limited partnership interests, citing the difficulty caused by different settlement dates for different types of securities. Eight commentators opposed the inclusion of limited partnership interests.

Many commentators distinguished between limited partnership interests that are listed on an exchange or on NASDAQ ("listed limited partnerships") and those that are not listed ("unlisted limited partnerships"). Six commentators stated that listed limited partnerships should be included in the scope of the Rule, while no commentator specifically stated that listed limited partnerships should be excluded from the scope of the Rule. Six commentators stated that unlisted limited partnerships should be excluded from the scope of the Rule, while no commentator specifically stated that unlisted limited partnerships should be included in the scope of the Rule.

Accordingly, the Commission is modifying the Rule to distinguish between trades involving listed versus unlisted limited partnership interests, including listed limited partnership interests and excluding unlisted limited partnership interests. First, the majority of commentators appear to support the inclusion of listed limited partnerships. Second, as exchange or NASDAQ traded securities, these interests currently settle in a five-day timeframe and exclusion of listed limited partnerships from Rule 15c6–1 would unnecessarily contribute to the bifurcation of the settlement cycle in these markets. Under Rule 15c6–1, therefore, listed limited partnerships will be required to settle by T+3.

Many commentators expressed concern, however, about the ability to settle unlisted limited partnerships by T+3, indicating that extended time periods are required to settle trades in these instruments. In order to settle, transfer documentation must be obtained in order to determine whether the transfer of ownership is permitted on the books and records of the issuer.[56] In addition, several commentators noted that there is not an active secondary market in unlisted limited partnership interests. Therefore, the Commission has determined to exempt unlisted limited partnership interests from the Rule.

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[54] CUSIP is an acronym for the Committee on Uniform Securities Identification Procedures. Although most outstanding municipal securities have CUSIP numbers, there probably are several thousand maturities that do not.

[55] For example, the Commission recently approved a rule proposed by the MSRB requiring the use of automated clearance and settlement systems on most Delivery Versus Payment and Receipt Versus Payment customer transactions. Securities Exchange Act Release No. 32460 (July 22, 1993), 58 FR 39260. In addition, the MSRB has filed with the Commission a proposed rule change that will require use of automated clearance and settlement systems on most interdealer transactions. Securities Exchange Act Release No. 32262 (May 4, 1993), 58 FR 27757. That proposed rule change was filed in concert with NSCC's recently implemented comparison system which accelerates the comparison cycle for municipal securities. Securities Exchange Act Release No. 32747 (August 18, 1993), 58 FR 44530. The Commission also approved an MSRB proposal requiring most interdealer transactions in municipal securities that are eligible for book-entry settlement in a registered securities depository to be settled by book-entry through the facilities of that depository or in an interface with another registered securities depository.

[56] Required paperwork varies among different issuers, and the processing requirements may take weeks. According to the comment letter from the Chicago Partnership Board, some issuers require that blank paperwork be ordered after a trade is agreed to, and these same issuers often take weeks to deliver the paperwork once ordered. Letter from James Frith, Jr., President, Chicago Partnership Board, to Jonathan G. Katz, Secretary, Commission (June 4, 1993).

4. Securities Issued by Mutual Funds

As proposed, Rule 15c6–1 would include securities issued by investment companies.[57] The Commission noted that mutual funds often permit customers to purchase shares by telephone and requested comment on whether a T+3 settlement timeframe would make it necessary for mutual funds and broker-dealers to implement operational changes to confirm the sale to the investor, to receive the proceeds, and to settle the transaction.[58] Twenty-five commentators believed the proposed three-day settlement should be applied to securities issued by mutual funds. These commentators stated that the exclusion or delayed implementation of a shortened settlement cycle for mutual funds would complicate rather than simplify the transition to T+3. Seven commentators believed the Rule should provide an exemption for securities issued by mutual funds.

The Commission has determined that Rule 15c6–1 should apply to broker-dealer contracts for the purchase and sale of securities issued by investment companies, including mutual funds shares. A broker-dealer selling securities issued by a closed-end fund or unit investment trust could avail itself of the exemption for new issues in a firm commitment underwriting under Rule 15c6–1(b). Thus, the new issue exemption would cover underwritings of closed-end funds and unit investment trusts but not open-end funds.

The Commission believes it is appropriate to include mutual fund transactions because mutual fund shares represent a significant and growing percentage of a broker-dealer's transactions. Even though some mutual fund shares may represent diversified portfolios, contracts for the purchase and sale of these securities pose many of the same systemic, market, and credit risk concerns as other securities subject to Rule 15c6–1, and in the event of a broker-dealer insolvency, these contracts will also need to be resolved. In addition, many, if not most, mutual fund purchases and redemptions are now processed through the centralized "FUND SERV" system operated by NSCC.[59] Although NSCC does not formally guarantee performance on contracts cleared in the "FUND SERV" service, its central role, coupled with potential changes to payment settlement timeframes, suggests that reducing the "FUND SERV" settlement timeframe to three business days would significantly reduce risk to the national clearance and settlement system.

Several commentators expressed concern that shortening the timeframe for redemptions by two business days would create liquidity concerns in the event of unexpectedly high volumes of redemptions. The commentators noted that although mutual funds generally meet redemption requests from cash on hand, a particularly large volume of redemption requests would require mutual funds to sell securities from their portfolios. The commentators maintain that application of the T+3 settlement requirement under these circumstances could be problematic, particularly for mutual funds with portfolios heavily invested in securities not subject to T+3 settlement.

The Commission shares commentator concern about the potential for redemptions to create a liquidity crisis, but believes several factors mitigate these concerns. First, the Commission expects that mutual fund managers will account for the risk of a liquidity crisis in planning their portfolio investments. Second, the Commission is delaying the effective date of Rule 15c6–1 by more than nineteen months, which should permit fund managers sufficient time to identify potential exposures and take appropriate remedial steps. Third, the primary components of mutual fund portfolio assets should, by June 1, 1995, settle within three business days of the date of the trade (including U.S. government, corporate equity and debt, and municipal securities). Indeed, as discussed above, the Commission expects the MSRB will act to implement T+3 settlement for municipal securities by June 1, 1995, consistent with Rule 15c6–1. Finally, the Commission will retain authority to exempt, by order, specific trades or classes of trades from the requirement of Rule 15c6–1.

Several commentators raised concerns about whether application of Rule 15c6–1 would be consistent with obligations and requirements under section 22(e)[60] of the Investment Company Act of 1940 ("1940 Act") and section 11(d)(1) of the 1934 Act.[61] Section 22(e) generally provides that investment companies may not suspend the right of redemption, or postpone payment or satisfaction upon redemption of any redeemable security for more than seven days after tender of the security being redeemed, except under certain circumstances.

The Commission believes that the primary purpose of the seven day period prescribed in section 22(e) is to set forth an outside limit on the amount of time that an investment company may take to satisfy a redeeming shareholder's request for payment. Further, the Commission believes that the underlying rationale of section 22(e) is to ensure that "redeemable" securities are, in fact, redeemable, and that that rationale does not conflict with the purposes of Rule 15c6–1.[62] Moreover, industry practice regarding the settlement timeframe for securities transactions, including transactions in mutual funds, has fluctuated since the enactment of the 1940 Act. Accordingly, while the commentators may contend that the seven-day period provided by section 22(e) is analogous to the current industry convention of effecting settlement on the fifth business day following trade date, the fact that those periods are the same today is merely fortuitous.

Section 11(d)(1) generally prohibits a person that acts as both a broker and a dealer from extending credit to a customer to allow that customer to purchase securities issued by a mutual fund. The Commission preliminarily believes these requirements should not be an obstacle to reducing the settlement timeframe for trades in mutual fund shares. At the time these requirements were enacted, the settlement timeframe was T+2. Commentators have discussed with the Commission staff the potential

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[57] The Investment Company Act of 1940 ("1940 Act"), 15 U.S.C. 80a–1, describes several forms of investment companies. Among these are "open-end" and "closed-end" management companies and unit investment trusts. Sections 4, 5, 1940 Act; 15 U.S.C. 80a–4, 80a–5. Open-end companies, commonly known as mutual funds, offer redeemable securities. Unit investment trusts also issue redeemable securities, although their sponsors generally create a secondary market for their shares. Closed-end companies resemble corporations in that at any time they have a fixed number of shares outstanding that are traded on an exchange or in the over-the-counter market at prices which reflect supply and demand.

[58] See Proposing Release, at note 33.

[59] The Mutual Fund Settlement, Entry, and Registration Service ("Fund/Serv") was implemented in 1986 to enable NSCC members to submit mutual fund purchase and redemption orders to NSCC, and to enable NSCC in turn to transmit the orders to its members acting on behalf of eligible mutual funds.

[60] 15 U.S.C. 80a–22(e).

[61] 15 U.S.C. 78k(d)(1).

[62] The legislative history of section 22(e), although sparse, indicates the significant importance placed on an open-end investment company shareholder's right to redeem shares, "and receive at once, or within a very short time, the approximate cash asset value of such shares as of the time of the tender." See Hearings Before a Subcomm. of the Comm. on Banking and Currency on S. 3580, 76th Cong., 3d Sess. (1940), at 985. The Commission believes that the wording of section 22(e)—"No registered investment company * * * shall * * * postpone the date of payment or satisfaction upon redemption of any redeemable security * * * for more than seven days after the tender of such security"—clearly suggests that the section is intended to be a "limit" rather than a "grant."

application of these provisions and the staff expect to address these concerns before June 1, 1995.

5. Mortgage-Backed Securities

As proposed in February 1993, private-label mortgage backed securities ("MBS")[63] would fall within the ambit of Rule 15c6–1. The Rule would not, however, apply to those MBSs issued by government agencies and government sponsored enterprises ("GSE").[64] In the Proposing Release, the Commission invited commentators to consider whether adopting a T+3 settlement timeframe would cause difficulties for issuers and investors in the MBS market and to consider generally whether additional safeguards relating to clearance and settlement of MBSs would be appropriate.

The commentators generally were supportive of applying the proposed Rule to MBSs. Some of the commentators stated that the Rule should apply to MBSs issued by government agencies and GSEs as well as to private-label collateralized mortgage obligations ("CMO"). The PSA stated that although it would prefer that all MBSs settle on the same basis, the bifurcation between private-label MBSs on the one hand, and government agency and GSE MBSs on the other, did not present an insurmountable barrier. The PSA stated that the larger firms probably would adopt a T+3 settlement standard for all MBSs, whether or not subject to the Rule.

Commentators identified several areas of concern with respect to MBSs. The first relates to the availability of factors,[65] and whether that could create a barrier for private-label MBSs to move to T+3. Transactions that are effected before the current month's factor is available must go through a cancel and correct procedure to ensure that the correct amount of principal and interest is attributed to the investor for that month. Shortening the settlement cycle could make it less likely that the current month's factor will be available for a given transaction, which would be reflected by more cancel and correct transactions.

The Commission notes, along with The PSA, that for private-label MBSs settling through DTC, DTC's CMO Trade Adjustment System[66] keeps track of trades settling with the previous month's factor and automatically adjusts those trades after the current factor is available. Over three-quarters of outstanding private-label CMOs are on deposit at DTC, and the CMO Trade Adjustment System is used regularly among participants.[67]

The Commission believes that trades in private-label CMOs should be included within the scope of Rule 15c6–1. First, although CMO trades could require some adjustments to reflect changing principal payments in underlying collateral, existing trade adjustment and reconciliation systems and practices appear adequate. Second, the potential for gridlock in the event of a major participant default[68] warrants the exchange of as much value as soon as possible in these markets, even if that means that some post-trade adjustment is necessary. This is even more important given the increasing complexity of CMO products, the absence of transparent markets for establishing fair value, and concern about the liquidity of CMO markets in the event of a major market event.

Commentators also expressed concern about how contracts for purchase or sale of mortgage pass-throughs in the to-be-announced ("TBA") market would be treated under Rule 15c6–1. Trading in this market occurs without providing specific mortgage pool information. Among other things, TBA trading allows an underwriter of a private-label mortgage pass-through security to acquire the financing necessary to assemble the pool of mortgages that will comprise a given mortgage pass-through security.[69] In response to those concerns, the Commission will interpret Rule 15c6–1 to require that settlement of mortgage pass-through securities occur within three days after a specific pool is identified for delivery under the contract. Under current TBA market conventions, as specified in PSA Guidelines,[70] firms must designate specific pools allocated to a TBA transaction at least 48 hours before settlement.[71] Firms following this convention will be deemed to comply with Rule 15c6–1.

In summary, all private-label MBSs shall be subject to the T+3 settlement requirement. TBA trades will not be subject to the Rule; instead, once a pool is designated, settlement must occur within three days. New issuances of CMOs that are the subject of a firm commitment underwriting will be subject to the settlement timeframe applicable to other initial issuances as provided in Rule 15c6–1(b).

B. Ability of Broker-Dealers to Override T+3 Settlement

As proposed, Rule 15c6–1 provides that, unless otherwise expressly agreed by the parties at the time of the transaction, a broker or dealer is prohibited from entering into a contract for the purchase or sale of a security (other than an exempted security, government security, municipal security, commercial paper, bankers' acceptance, or commercial bill) that provides for payment of funds and delivery of securities later than T+3. As described above, the proposed Rule allows a broker or dealer to agree that settlement will take place in more than three business days, when the agreement is express and reached at the time of the transaction.

Several letters from individual commentators and approximately 1,550 substantially similar letters expressed concern that the ability to override the three day settlement requirement could create a market inefficiency that could be exploited by some broker-dealers. Those commentators suggested that the ability of broker-dealers to override the three day settlement requirement for specific transactions will permit broker-dealers to establish two classes of investors, providing advantages to investors holding with the broker-dealer

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[63] MBSs include mortgage pass through securities, collateralized mortgage obligations ("CMO"), and Real Estate Mortgage Investment Conduits ("REMIC"). Private-label MBSs include privately issued MBSs collateralized by agency or government sponsored enterprise mortgages or mortgage pass through securities.

[64] Government agencies include, for example, the Government National Mortgage Association ("Ginnie Mae"). GSEs include, without limitation, the Federal National Mortgage Association ("Fannie Mae") and the Federal Home Loan Mortgage Corporation ("Freddie Mac").

[65] A factor is the proportion of outstanding principal to the original principal balance, expressed as a decimal. In the case of CMOs and REMICs, factors are made available once a month, and in the case of private-label MBSs, this occurs at the end of the month.

[66] See Securities Exchange Act Release No. 30277 (January 22, 1992), 57 FR 3657 (order approving DTC's CMO Trade Adjustment System).

[67] Telephone conversation with James Riley, Planning Department, DTC, and Patricia Trainor, Associate Counsel, DTC (August 23, 1993).

[68] See *e.g.*, testimony concerning the bankruptcy of Drexel.

[69] Mortgage pass-through securities have been traded for many years and frequently are the collateral from which CMOs and REMICs are created. For a description of this market, *see e.g.*, Securities Exchange Act Release No. 26671 (March 28, 1989), 54 FR 13266 (granting the Participants Trust Company temporary registration as a clearing agency).

[70] PSA, Uniform Practices for the Clearance and Settlement of Mortgage-Backed Securities and Other Related Securities 8.B.1 (1992).

[71] Forward trades are done typically on a TBA basis because certain specifics, such as the pool numbers, are not available at the time of the trade and are typically provided 48 hours before settlement to allow for the smooth settlement of the pass-through security. Letter from Dominick F. Antonelli, Chairman, PSA Municipal Securities Division Operations and Compliance Committee, and Stephen W. Hopkins, Chairman, PSA Mortgage Securities Division Operations Committee, to Jonathan G. Katz, Secretary, Commission (July 8, 1993).

in indirect or beneficial ownership form over those investors choosing to own shares of stock in direct ownership form.

Several commentators suggested eliminating from the Rule the ability to override the three day settlement requirement. The large majority of the letters, however, did not suggest eliminating the override provision, but rather encouraged the Commission to ensure that broker-dealers do not use the override provision to discourage direct forms of securities ownership.

The override provision was intended to apply only to unusual transactions, such as seller's option trades, that typically settle as many as sixty days after execution as specified by the parties to the trade at execution. It was not intended to permit broker-dealers to specify before execution of specific trades that a group of trades will settle in a timeframe other than T+3. In general, broker-dealers will not be able to contract out of the three day settlement timeframe.

The Commission supports industry efforts to develop products which will enhance the ability of retail investors to choose among suitable forms of ownership. The Commission, moreover, intends for the choice of securities ownership to be driven by market forces, and not for the override provision of Rule 15c6–1 to be used by market participants to prefer one form of ownership over another. The Commission will continue to monitor the use of the override provision of Rule 15c6–1, and, if such abuses are detected, will consider additional rulemaking.

IV. Competition Findings

Section 23(a)(2) of the 1934 Act [72] requires the Commission, in adopting rules under the 1934 Act, to consider the anti-competitive effects of such rules, if any, and to balance any impact against the regulatory benefits gained in terms of furthering the purposes of the 1934 Act. Several commentators, primarily small retail broker-dealers, raised concerns that Rule 15c6–1 would increase their costs, thereby making it more difficult to compete with larger broker-dealers. The Commission notes that Rule 15c6–1 does not distinguish between categories of broker-dealers, and believes that the costs created would be imposed evenly upon larger and smaller broker-dealer firms. The costs may be higher for certain firms, regardless of their size, that have not invested in necessary infrastructure and technology.[73] These costs would be necessary in assuring that the purpose of the Rule, risk reduction, is met. The Commission has considered Rule 15c6–1 in light of the standard cited in section 23(a)(2) and believes that adoption of the Rule will not impose any burden on competition not necessary or appropriate in furtherance of the 1934 Act.

V. Conclusion

The Commission believes that Rule 15c6–1 will reduce credit and liquidity risks, reduce the settlement gap between the corporate securities market and the government securities and derivatives markets, and increase efficiency in broker-dealer and clearing agency operations. Some broker-dealers currently have the operational capability to comply with three-day settlement. However, where a broker-dealer's procedures currently are not designed to accommodate three-day settlement, the facilities to expedite the settlement process do exist (*e.g.*, bank wire systems or overnight postal courier services). The Commission believes that broker-dealers and their customers can make the necessary systems and operational changes to comply with three-day settlement given the extended transition period for implementation of the Rule. The Commission recognizes, however, that the extent and nature of modifications depends on the specific needs of each firm. Nevertheless, the Commission recommends that, as necessary, industry participants that need to make significant systems or operational changes evaluate their progress periodically as the implementation date for T+3 approaches and make adjustments as appropriate to ensure a smooth transition to T+3 settlement.

VI. Summary of Final Regulatory Flexibility Analysis

The Commission has prepared a Final Regulatory Flexibility Analysis ("FRFA") regarding Rule 15c6–1, in accordance with 5 U.S.C. 604. The FRFA notes the potential costs of operational and procedural changes that may be necessary to comply with the Rule. In addition, the FRFA notes the importance of the risk reduction that will result from a shorter settlement cycle. The Commission believes that the benefits of Rule 15c6–1 outweigh the costs that will be incurred by industry participants in complying with the Rule.

A copy of the FRFA may be obtained by contacting Christine Sibille, Attorney, Branch of Debt and International Clearing Agency Regulation, Office of Securities Processing Regulation, Division of Market Regulation, Commission, 450 Fifth Street, NW., Mail Stop 5–1, Washington, DC 20549.

List of Subjects

17 CFR Part 200

Administrative practice and procedure, Authority delegations (Government agencies), Organizations and functions (Government organizations).

17 CFR Part 240

Brokers and dealers, Registration and regulation, Securities.

Text of the Amendments

In accordance with the foregoing, title 17 chapter II of the Code of Federal Regulations is amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. The authority citation for part 200, subpart A continues to read in part as follows:

Authority: 15 U.S.C. 77s, 78d–1, 78d–2, 78w, 78*ll*(d), 79t, 77sss, 80a–37, 80b–11, unless otherwise noted.

* * * * *

2. Section 200.30–3 is amended by adding paragraph (a)(55) to read as follows:

§ 200.30–3 Delegation of authority to Director of Division of Market Regulation.

* * * * *

(a) * * *

(55) Pursuant to § 240.15c6–1 of this chapter, taking into account then existing market practices, to exempt contracts for the purchase or sale of any securities from the requirements of § 240.15c6–1(a) of this chapter.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78*l*, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, and 80b–11, unless otherwise noted.

* * * * *

2. Section 240.15c6–1 is added to read as follows:

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[72] 15 U.S.C. 78w(a)(2).

[73] These broker-dealers, however, are not subject to a unique cost. Instead, they are incurring a cost previously paid by their competitors.

§ 240.15c6–1 Settlement cycle.

(a) Except as provided in paragraph (b) of this section, a broker or dealer shall not effect or enter into a contract for the purchase or sale of a security (other than an exempted security, government security, municipal security, commercial paper, bankers' acceptances, or commercial bills) that provides for payment of funds and delivery of securities later than the third business day after the date of the contract unless otherwise expressly agreed to by the parties at the time of the transaction.

(b) Paragraph (a) of this section shall not apply to contracts:

(1) For the purchase or sale of limited partnership interests that are not listed on an exchange or for which quotations are not disseminated through an automated quotation system of a registered securities association;

(2) For the sale for cash of securities by an issuer to an underwriter pursuant to a firm commitment offering registered under the Securities Act of 1933, or the sale to an initial purchaser by a broker-dealer participating in such offering; or

(3) For the purchase or sale of securities that the Commission may from time to time, taking into account then existing market practices, exempt by order from the requirements of paragraph (a) of this section, either unconditionally or on specified terms and conditions, if the Commission determines that such exemption is consistent with the public interest and the protection of investors.

Dated: October 6, 1993.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

Note: Appendices 1 through 3 to the preamble will not appear in the Code of Federal Regulations.

Appendix 1—List of Commentators

The following commentators submitted comments relating to proposed Rule 15c6–1.

Government Agency

Board of Governors of the Federal Reserve System ("Federal Reserve Board" or "Board")

Self-Regulatory Organizations

Boston Stock Exchange ("BSE")
Chicago Mercantile Exchange ("CME")
The Depository Trust Company ("DTC")
Government Securities Clearing Corporation ("GSCC")
International Securities Clearing Corporation ("ISCC")
Midwest Clearing Corporation/Midwest Securities Trust Company ("CHX")
Municipal Securities Rulemaking Board ("MSRB")
National Securities Clearing Corporation ("NSCC") New York Stock Exchange ("NYSE")
The Options Clearing Corporation ("OCC")

Trade Associations

American Bankers Association ("American Bankers")
American Bar Association Section of Business Law, Subcommittee on Market Regulation and Subcommittee on Registration Statements, 1933 Act of the Committee on Federal Regulation of Securities ("American Bar Association")
American Council of Life Insurance ("American Council")
American Society of Corporate Secretaries, Inc. ("Corporate Secretaries")
Association of Reserve City Bankers ("Reserve City Bankers")
The Cashiers' Association of Wall Street, Inc. ("Cashiers' Association")
Corporate Transfer Agents Association, Inc. ("CTAA")
Data Management Division of Wall Street (Securities Industry Association) ("Data Management Division")
Investment Company Institute ("ICI")
National Association of Securities Dealers, Inc. ("NASD")
National Automated Clearing House Association ("NACHA")
New York Clearing House ("NYCH")
Public Securities Association ("PSA")
Regional Municipal Operations Association ("RMOA")
Securities Industry Association ("SIA")
Securities Operations Division of the SIA ("SOD")
Security Traders Association ("Traders Association")
The Securities Transfer Association, Inc. ("STA")
Syndicate Operations Association Incorporated ("SOA")

Broker-Dealers

A.G. Edwards & Sons, Inc. ("A.G. Edwards")
Alex. Brown & Sons Incorporated ("Alex Brown")
Arthurs Lestrange & Company Incorporated ("Arthurs Lestrange")
Asiel & Co. ("Asiel")
Robert W. Baird & Co. Incorporated ("Baird")
Baker & Co., Incorporated ("Baker")
Bear Stearns & Co., Inc. ("Bear Stearns")
Bodell Overcash Anderson & Co., Inc. ("Bodell Overcash")
Jack V. Butterfield Investment Company ("Butterfield")
J.W. Charles Securities, Inc. (4 letters) ("J.W. Charles")
Chatfield Dean & Co., Inc. ("Chatfield")
Cheevers, Hand & Angeline, Inc. ("Cheevers")
The Chicago Corporation ("Chicago Corporation")
Collopy & Company Inc. ("Collopy")
Consolidated Financial Investments, Inc. ("Consolidated")
CUSO Equities, Inc. ("CUSO")
Cygnet Resources, Inc. ("Cygnet")
D.A. Davidson & Co. ("Davidson")
Davenport & Co. of Virginia, Inc. ("Davenport")
Dean Witter Reynolds, Inc. ("Dean Witter")
J.V. Delaney & Associates ("Delaney")
Dempsey & Company ("Dempsey")
H.C. Denison Co. ("Denison")
Dorsey & Company, Incorporated ("Dorsey")
East/West Securities Co. ("East/West")
Ferris, Baker Watts, Incorporated ("Ferris Baker")
Fidelity Investments Institutional Services Company, Inc. ("Fidelity")
Financial Network Investment Corporation ("Financial Network")
John Finn & Company, Inc. ("John Finn")
The First Boston Corporation ("First Boston")
First Dallas Securities Incorporated ("First Dallas")
First Manhattan Co. ("First Manhattan")
First Northeast Securities, Inc. ("First Northeast")
Gilbert Marshall & Company ("Gilbert")
Goldman, Sachs & Co. ("Goldman Sachs")
Grove Securities, Inc. ("Grove")
Gruntal & Co. Incorporated ("Gruntal")
G–W Brokerage Group, Inc. ("G–W")
Hamilton & Company Incorporated ("Hamilton")
The Heitner Corporation ("Heitner")
Hopper Securities-Vermont ("Hopper")
Wayne Hummer & Co. ("Hummer")
Interstate/Johnson Lane Corporation ("Interstate/Johnson Lane")
Raymond James & Associates, Inc. (2 letters) ("Raymond James")
Kenneth Jerome & Company ("Jerome")
JJC Specialist Corp. ("JJC")
Edward D. Jones & Co. ("E.D. Jones")
Juran & Moody, Inc. ("Juran & Moody")
Kidder, Peabody & Co., Incorporated (2 letters) ("Kidder")
Kirk Securities Corporation ("Kirk")
La Branche & Co. ("LaBranche")
Legg Mason Wood Walker, Incorporated ("Legg Mason")
Lewco Securities Corp. ("Lewco")
Locust Street Securities, Inc. ("Locust")
McCourtney-Breckenridge & Company ("McCourtney")
M.E. Metzler Organization, Incorporated ("M.E. Metzler")
Merchant Capital Corporation ("Merchant Capital")
Mericka & Co., Inc. ("Mericka")
Meridian Associates, Inc. ("Meridian")
Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch")
Miller & Schroeder Financial, Inc. ("Miller")
Montgomery Securities ("Montgomery")
Morton Seidel & Co., Inc. ("Morton Seidel")
Mutual Service Corporation ("Mutual")
Nicodemus & Sherwood, Inc. ("Nicodemus")
Northern Trust Securities, Inc. ("Northern Trust")
Paine Webber Incorporated ("Paine Webber")
Paulson Investment Company Inc. ("Paulson")
Pershing Division of Donaldson, Lufkin and Jenrette Securities Corporation ("Pershing")
Peterson Financial Corp. ("Peterson")
Pflueger & Baerwald Inc. ("Pflueger")
Piper Jaffray Companies Inc. ("Piper Jaffray")
Pirrone & Co., Inc. ("Pirrone")
Robert A. Podesta & Co. ("Podesta")
The Principal/Eppler, Guerin & Turner, Inc. ("Principal Financial")
Protective Group Securities Corporation ("Protective")

Prudential Securities Incorporated ("Prudential")
Quick & Reilly, Inc. ("Quick & Reilly")
Quincy Cass Associates Incorporated ("Quincy")
Richards, Merrill & Peterson, Inc. ("Richards Merrill")
Robinson & Lukens, Inc. ("Robinson Lukens")
Rodgers Capital Corporation ("Rodgers")
Roland Francis & Co., Inc. ("Roland Francis")
Sands Brothers & Co., Ltd. ("Sands Bros.")
Saperston Financial Inc. ("Saperston")
Charles Schwab & Co., Inc. ("Schwab")
S.C. Parker & Co., Inc. (3 letters) ("S.C. Parker")
Janney Montgomery Scott Inc. ("Montgomery Scott")
Scott & Stringfellow Investment Corp. ("Scott Stringfellow")
Selected Securities Company ("Selected")
Sierra Trading ("Sierra Trading")
Smith, Moore & Co. ("Smith Moore")
Southwest Securities Incorporated ("Southwest")
Summitt Investment Corporation ("Summitt")
Robert Thomas Securities, Inc. ("Robert Thomas")
Robertson, Stephens & Company ("Robertson Stephens")
The Warner Group Inc. ("Warner")
U.S. Clearing Corp. ("U.S. Clearing")
Wheat, First Securities, Inc. ("Wheat First")
William J. Conway & Co., Inc. ("Conway")
Wulff, Hansen & Co. ("Wulff Hansen")
Wyoming Financial Securities, Inc. ("Wyoming")
B.C. Ziegler and Company ("B.C. Ziegler")
Ziegler Thrift Trading, Inc. ("Ziegler Thrift")

Investment Advisors

Jobel Financial, Inc. ("Jobel")
Massachusetts Financial Services Company ("Massachusetts Financial")
Neuberger & Berman ("Neuberger")
Oppenheimer Management Corporation ("Oppenheimer Management")
Seger-Elvekrog, Inc. ("Seger-Elvekrog")
Society National Bank ("Society")
St. Denis J. Villere & Company ("St. Denis")
Stephenson and Company ("Stephenson")

Bank Custodians

Bank of America National Trust and Savings Association ("Bank of America")
The Chase Manhattan Bank, N.A. ("Chase")
Citibank, N.A. ("Citibank")
Morgan Guaranty Trust Company of New York ("Morgan Guaranty")
United States Trust Company of New York ("U.S. Trust")
Wachovia Trust Services, Inc. ("Wachovia")

Insurance Company-Affiliated Broker-Dealers

Green Hill Financial Service Corp. ("Green Hill")
MML Investors Services, Inc. ("MML")
Sun Investment Services Company ("Sun")

Limited Partnerships Broker-Dealer

Chicago Partnership Board, Inc. ("Chicago Partnership Board")

Mutual Fund Broker-Dealers

Chubb Securities Corporation ("Chubb")
Penn Square Management Corporation ("Penn Square")
H.D. Vest Investment Securities, Inc. ("H.D. Vest")

Municipal Bond Broker-Dealers

Clayton Brown & Associates, Inc. ("Clayton Brown")
Halpert and Company, Inc. ("Halpert")
Hanifen, Imhoff Inc. ("Hanifen")
The Leedy Corporation ("Leedy")

Transfer Agents

Burnham Pacific Properties, Inc. ("Burnham")
Chemical Banking Corporation ("Chemical")
Fidelity Accounting & Custody Services Company ("FACS")
Morgan Stanley & Co. Incorporated ("Morgan")
Oppenheimer Shareholder Services Division of Oppenheimer Management Corporation (2 letters) ("Oppenheimer Shareholder")
State Street Bank and Trust Company ("State Street")
Southern Company Services, Inc. ("Southern")
Texaco Inc. ("Texaco")
Valero Energy Corporation ("Valero")
Wisconsin Energy Corporation ("Wisconsin")

Individuals

Scott G. Abbey
John W. Bachmann
Dr. & Mrs. L.O. Banks
Rodney E. Bate
Chris Bennett
Nelda Bergsten
Russell M. Bimber
Helen A. Bird
Allan R. Black
Weston A. Boyd
Carl R. Brasee
D.N. Bulla
Mark C. Bublak
Thomas A. Byrne
D.H. Carlson
John Cirrito
Daniel B. Coleman
Richard Conway
Douglas Czarnecki
Martin H. Drayer
Karen Frye
Gordon G. Garney
Elaine Graham
Rae T. Gaida
Professor Steven Hill
Donald R. Hollis
Frank Hutcheon
Mark Jackson
Rex and Susan Jacobsen
Kenneth S. Janke
Marilyn D. Jennings
James A. Jephcote
William P. Kilroy
David M. Klausmeyer
Donald R. Kryzan
Robert T. Levine
Lowell H. Listrom
Pearl Lurie
Ina Mandel
Joseph J.F. March
George J. Minnig
Stephen A. Molasky
H.J. Porter
Mani K. Pulimood
Richard R. Romano
Donald Rhyne
Michael A. Rogawski
Ramona B. Schafehen
Charles F. Schlein, Jr.
D. Schroeder
Kenneth Shazel
Hank Simon
Richard B. Smith
George Sneed
Murray L. Solomon
Walter Stelma
Frank C. Vogel
Robert C. Waldo, Jr.
Warren D. Weber
Martin J. Webler
Barbara Wilkinson
Theo L. Wealinsh
Daniel P. Worth

Insurance Company

Aetna

Other

Armstrong World Industries, Inc.
William Batdorf & Company, Certified Public Accountants
BellSouth Corporation ("BellSouth")
Bryan Cave
The College Retirement Equities Fund ("CREF")
DQE
E.F. Miller & Company ("E.F. Miller")
Federal Reserve Bank of New York ("FRBNY")
The Group of Thirty ("Group of Thirty")
Minnesota Utility Investors ("MUI")
Sixty Niner Investment Club ("Sixty Niner")
Texas Industries, Inc. ("Texas Industries")
Thomson Financial Services ("Thomson")

In addition, the Commission received substantially similar letters from three separate groups, as set out below.

Individual Investors

1,550 identical letters supporting direct registration

Regional Investment Brokers, Inc. ("RIBS") Letters ("RIBS Letters")

[101 letters opposing T+3 settlement]

Century Capital Corp. of South Carolina ("Century")
Corporate Securities Group, Inc. (16 letters) ("Corporate Securities")
Culverwell & Co., Inc. (5 letters) ("Culverwell")
Girard Securities, Inc. ("Girard")
Greenway Capital Corporation ("Greenway")
Investors Associates, Incorporated ("Investors Associates")
La Jolla Capital Corporation ("LaJolla")
M.H. Meyerson & Co., Inc. ("Meyerson")
Royce Investment Group, Inc. ("Royce")
RIBS
Royce Employees (69 letters)
Sentra Securities Corporation ("Sentra")
Spellman & Company, Inc. ("Spellman")
Wilson-Davis & Company Incorporated ("Wilson Davis")

Transfer Agent Letters

17 letters supporting T+3 settlement

The Bank of New York ("BONY")
Barnett Banks, Inc. ("Barnett")
CBI Industries Inc. ("CBI")
CEL-SCI Corporation ("CEL-SCI")

Central and South West Corporation ("Central")
E.I. du Pont de Nemours and Company ("DuPont")
Nevada Power Company ("Nevada Power")
First Chicago Trust Company of New York ("First Chicago")
Florida Progress Corporation ("Florida Progress")
GenCorp
Mellon Financial Services Corporation No. 17 ("Mellon")
Northern States Power Company ("Northern States")
Northwest Natural Gas Company ("Northwest")
Ottertail Power Company ("Ottertail")
Society National Bank ("Society National")
WPL Holdings, Inc.
Union Data Service Center, Inc. ("Union Data")

Appendix 2—Recent Initiatives in Clearance and Settlement Reform

Although the U.S. clearance and settlement system is among the safest in the world, recent events have demonstrated that vulnerabilities exist. Record volume and volatility during October 1987 proved detrimental to broker-dealers who were unable to resolve processing errors before settlement with their customers on T+5. Moreover, the steep decline in stock prices during that period, as well as the decline on October 16, 1989, left some broker-dealers vulnerable to loss from the positions of customers who were unable or unwilling to meet either margin calls or transaction settlement obligations. This in turn called into question the ability of those broker-dealers to meet their obligations to the clearing corporations.[1]

After the October 1987 market break, several groups sought to identify causes of the market decline and changes that could be made to shield market participants from the impact of sudden steep declines in the market.[2] All these studies identified clearance and settlement as an area which needed further attention.[3]

At the same time, in March 1988, the Group of Thirty[4] organized a symposium in London to discuss the state of clearance and settlement in the world's principal securities markets. The symposium participants concluded that there was a need for international agreement on a uniform set of practices and standards for the clearance and settlement of securities transactions in order to improve the process. In light of this conclusion, the Group of Thirty organized a Steering Committee to work with a professional and broad-based Working Committee in order to produce a set of operational proposals for practices and standards in the area of clearance and settlement.

In March 1989, the Group of Thirty issued a report by the Steering Committee setting forth nine recommendations ("Group of Thirty recommendations"),[5] including implementation of settlement on T+3, to modernize and improve clearance and settlement systems at a local level and to make them compatible with each other internationally.[6] Following the release of the Group of Thirty Report, several countries initiated separate efforts to study how their clearance and settlement systems compared with the Group of Thirty recommendations. In the U.S., a Working Group was created for this purpose. The U.S. Working Group concluded that, while the U.S. was in compliance with seven of the Group of Thirty recommendations, continued consideration should be given to the implementation of the two remaining recommendations, T+3 settlement and settlement in same-day funds.[7]

Two subcommittees, a U.S. Steering Committee and a U.S. Working Committee of the Group of Thirty ("the U.S. committees") were formed to evaluate the benefits of shortening the settlement cycle and converting to the use of same-day funds. The U.S. committees urged adoption of the two recommendations and, in order to support a move to T+3 settlement, also recommended that: (1) Book-entry settlement be mandatory for transactions between financial intermediaries and between financial intermediaries and their institutional customers;[8] and (2) all new securities issues should be made eligible for depository services.

In November 1990, the Commission held a Roundtable to discuss the recommendations of the U.S. committees. Roundtable participants generally agreed that the two recommendations should be adopted, but urged that the timetables for implementation be sufficiently flexible so that obstacles to implementation could be fully explored and practical solutions found and implemented. Roundtable participants expressed concern that broker-dealers conducting a predominantly retail business might have difficulty operating in a three business day settlement timeframe in the national clearance and settlement system because of the need, among other things, to obtain payment from retail clients for purchase transactions.

Following the Commission's Roundtable, former SEC Chairman Richard Breeden asked Howard Shallcross, Director of Operations, Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch"), to form a committee to examine how retail firms and their customers could best be accommodated in a T+3 settlement environment and to report the committee's findings to the Commission. The committee was asked specifically to determine how to solve the problem of timely payments for retail purchase transactions as well as any other retail issues that it considered appropriate. The Shallcross Committee prepared a draft report that recommended alternative risk reduction proposals, such as marking unsettled securities transactions to the market beginning on T+1.[9] Subsequently, former Chairman Breeden asked the U.S. Steering Committee of the Group of Thirty to form a task force, chaired by John W. Bachmann, Managing Principal, Edward D. Jones & Co., to review what changes to the clearance and settlement system were

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[1] See Division of Market Regulation, Commission, The October 1987 Market Break Chapter 10 at 20–21 ("Market Break Report").

[2] *Id.* See also Working Group on Financial Markets, Interim Report to the President of the United States (May 1988) (Appendix D) (the Working Group is chaired by the Secretary of the Treasury and its members include the Chairmen of the SEC, the Commodity Futures Trading Commission, and the Board of Governors of the Federal Reserve System); Presidential Task Force on Market Mechanisms, Report to the President of the United States (January 1988) (the so-called "Brady Report"); and General Accounting Office, Preliminary Observations on the October 1987 Crash (January 1988).

[3] Since 1987, considerable progress has been made toward increasing clearing corporations' capabilities to handle large volumes of trades and manage financial risk. Examples include increases in the number of cross margining facilities sponsored by The Options Clearing Corporation ("OCC") and commodity clearing organizations, expansion of the depository system to include new financial products such as commercial paper, and development of extensive lines of communication between banking, securities, and commodities organizations.

[4] The Group of Thirty, established in 1978, is an independent, non-partisan, non-profit organization composed of international financial leaders whose focus is on international economic and financial issues.

[5] See Group of Thirty, Clearance and Settlement Systems in the World's Securities Markets (March 1989) ("Group of Thirty Report").

[6] These recommendations were: (1) By 1990, trade comparison between direct market participants should occur by the day following the date of trade execution; (2) by 1992, indirect market participants should be members of a trade comparison system which achieves positive affirmation of trade details; (3) by 1992, each country should have an effective and fully developed central securities depository; (4) by 1992, if appropriate, each country should implement a netting system; (5) by 1992, a delivery versus payment system should be employed as the method for settling all securities transactions; (6) countries should adopt a same-day funds payment method for settlement of securities transactions; (7) a rolling settlement system should be adopted by all markets as follows: (a) by 1990, final settlement should occur on the fifth day after the date of trade execution, (b) by 1992, final settlement should occur on the third day after the date of execution; (8) securities lending and borrowing should be encouraged as a method of expediting the settlement of securities transactions; and (9) by 1992, each country should adopt the standards for securities numbering and messages developed by the International Standards Organization.

[7] "Same-day funds" refers to payment in funds that are available on payment date and generally are transferred by electronic means.

[8] On June 11, 1993, the Commission approved a proposed rule change filed by the securities exchanges and the National Association of Securities Dealers ("NASD") that requires members, member organizations, or affiliated members of the securities exchanges and the NASD to use the facilities of a securities depository for the book-entry settlement of all transactions in depository eligible securities with another financial intermediary (broker, dealer, or bank). In addition, the rule prohibits members, member organizations, or affiliated members of the SROs from effecting a delivery-versus-payment ("DVP") or receipt-versus-payment ("RVP") transaction in a depository eligible security with an institutional customer unless the transaction is settled by book-entry using the facilities of a securities depository. Securities Exchange Act Release No. 32455 (June 11, 1993), 58 FR 33679.

[9] Shallcross Committee, Impact of T+3 Migration on the Retail Sector A Preface to the Interim Report to the SEC (March 20, 1991).

necessary, to identify practical solutions, and to propose a reasonable timeframe for implementation of each of those solutions.[10] The Bachmann Task Force[11] ("Task Force") undertook that challenge, identifying many of the issues that would confront retail broker-dealers in a T+3 settlement environment and proposing solutions and timetables for resolving those issues.

In May 1992, the Task Force presented its findings and recommendations to the Commission.[12] Among other things, the Task Force concluded that "time equals risk" and that the settlement cycle for corporate and municipal securities should be compressed to T+3.[13] The Task Force also evaluated the principal suggestion of the Shallcross Committee, *i.e.*, that unsettled trades should be marked-to-the-market. The Task Force produced a quantitative analysis that showed that shortening the settlement cycle to T+3 would result in greater risk reduction than a daily mark-to-market without a shortened settlement cycle.[14] The Task Force concluded that compared with T+5 settlement, T+3 settlement would result in a 58% reduction in risk to National Securities Clearing Corporation ("NSCC")[15] in the event of the failure of an average large clearing member. The Task Force's data further showed that NSCC's average expected exposure in a T+5 settlement period with a daily mark-to-market would be 30% higher than its exposure in a T+3 settlement period without a daily mark-to-market.

On June 22, 1992, the Commission published the Task Force Report in the **Federal Register** for public comment.[16] The Commission received over 1,000 comment letters from banks, broker-dealers, investment advisors, trade associations, clearing agencies, exchanges, transfer agents, and individual investors. Although many of these commentators expressed concern about the potential loss of access to physical certificates,[17] in large part they were supportive.

The Commission agrees with the Task Force conclusion that "time equals risk." Based on that analysis and recent events demonstrating that vulnerabilities still exist in the U.S. clearance and settlement system, the Commission believes that it is prudent to shorten the time that unsettled trades remain outstanding.

Appendix 3—Building Blocks

A. Industry and SRO Initiatives

1. Interactive Institutional Delivery ("ID") Process

Moving settlement to T+3 requires that the affirmation[1] process be completed on T+1. Early affirmation of institutional trades can be accomplished by enhancing DTC's existing batch processing ID system to permit DTC to process information on receipt and distribute reports on request.

Commentators consider DTC's interactive ID system a critical building block to successful implementation of Rule 15c6–1. Twenty-one of the 101 commentators that support the proposed Rule express the need for early affirmation of institutional trades. These commentators believe that DTC's proposed interactive system will allow participants to be highly interactive, allowing completion of the confirmation/affirmation process on T+1, rather than on T+2 or T+3 as is the case in DTC's current batch processing ID system. One trade association, one clearing broker-dealer, and two retail broker-dealers conditioned their support of the proposal on DTC's interactive ID system being fully operational prior to adoption of the proposed Rule. Those commentators believed that T+3 settlement was not possible if affirmation/confirmation was not completed by T+1. Finally, five opposing commentators stated that their opposition to the Rule was based in part on the need to implement first DTC's interactive ID system.

DTC is developing an enhanced ID system that would provide users with an interactive option and would unify the existing ID and International ID systems. DTC expects to offer the interactive system to ID users in early 1994.[2] System users will be able to use the system either in the present batch environment or interactively, with the capability to accomplish all ID processing within a single business day. DTC plans to implement the enhanced system in stages. The proposed system includes a Standing Instructions Database ("SID"), to be implemented in late 1993;[3] an Electronic Mail feature, to be implemented in late 1993 or early 1994;[4] a "matching" system, to be implemented in mid-1994;[5] and an Authorization/Exception Processing and Reporting feature to be implemented in mid-1994.[6]

DTC has filed a proposed rule change under Section 19 of the 1934 Act regarding the interactive ID system. Although the Commission generally supports DTC's efforts towards an interactive ID system, Commission staff will review the proposal for consistency with the purposes of the 1934 Act.

2. Revisions to the Automated Clearing House ("ACH") System

To address the problem of timely payments between a retail broker and its customer, broker-dealers should consider ACH[7] as one

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[10] Letter from Richard C. Breeden, Chairman, Commission, to Lewis W. Bernard, Chairman, U.S. Steering Committee, Group of Thirty (July 11, 1991).

[11] In addition to Mr. Bachmann, the members of the Task Force included: David M. Kelly, President and Chief Executive Officer, National Securities Clearing Corporation ("NSCC"); Richard G. Ketchum, Executive Vice President and Chief Operating Officer, NASD; John F. Lee, President, New York Clearing House; Gerard P. Lynch, Managing Director, Morgan Guaranty Trust Company of New York; James J. Mitchell, Senior Executive Vice President, Northern Trust Securities, Inc.; Richard J. Stream, Managing Director, Piper Jaffray Companies Inc.; and Arthur L. Thomas, Senior Vice President, Merrill Lynch.

[12] Bachmann Task Force, Report of the Bachmann Task Force on Clearance and Settlement in the U.S. Securities Markets (May 1992).

[13] The Task Force recommended that this be accomplished by July 1994. The Task Force made eight other recommendations that would facilitate settling securities transactions on T+3: Revising the Automated Clearing House ("ACH") system; requiring an interactive institutional delivery process; settling all transactions among financial intermediaries and their institutional customers in book-entry form only and in same-day funds; depository eligibility for new issues; monitoring flipping (*i.e.*, the sale of stock back to the underwriting syndicate during the new issue stabilization period); expanding cross-margining; streamlining the handling of physical certificates; and monitoring all market activity.

[14] Task Force Report at 34–39.

[15] NSCC is the largest U.S. clearing corporation and is registered as a clearing agency under Section 17A of the 1934 Act. NSCC, among other things, functions as a post-trade processing facility and as a guarantor of post-trade settlements. In the latter capacity, NSCC assumes the credit risk of fails to deliver and fails to receive by substituting itself as the contra party on the day after trade date. Trades that are not settled on settlement date are carried forward to the next settlement day as open obligations. NSCC seeks to protect against the financial risk of these open positions by obtaining contributions from its members to a pool of funds. Any sizable loss in liquidating the open commitments of a defaulting member essentially would be absorbed by all members.

[16] See Securities Exchange Act Release No. 30802 (June 15, 1992), 57 FR 27812.

[17] Over 800 of the comment letters were from individual investors responding to the recommendation to streamline the handling of physical certificates. The letters indicate a belief that the Task Force recommendation to streamline the handling of physical certificates would result in the elimination of physical certificates and force investors to hold securities in street name. The Task Force did not propose eliminating physical certificates for those retail investors who choose to maintain their record of ownership in that form.

[1] Under standard practice, an affirmation serves as the institution's authorization to the custodian to deliver securities against payment by (or accept securities and release payment to) the broker-dealer. A confirmation differs from an affirmation in that confirmation reports must contain all the information required by Rule 10b–10. If the broker-dealer includes all the necessary data about the trade in the ID transmission, he can comply with the trade confirmation requirements of Securities Exchange Act Rule 10b–10. 17 CFR 240.10b–10 (1992).

[2] DTC, An Interactive Option for the Institutional Delivery System, Memorandum to Participants and Other ID Users (March 31, 1993).

[3] The SID feature will be a repository for customer account and settlement information such as customer name, agent and interested parties furnished by institutions, agents and broker-dealers. This SID will eliminate the need for the broker-dealer to maintain all such information in its internal records and to provide all such information each time that it enters trade data into the ID system. *See* File No. SR–DTC–93–07, at 3–5, describing the features of the interactive ID system.

[4] The Electronic Mail feature will eliminate the need to make telephone calls or send facsimile transmissions by enabling broker-dealers and institutions to send and receive details of an order execution, allocations of block trades, or requests for cancellation (if the institution disagrees with a confirmation that the institution has received through the ID system). *Id.*

[5] The enhanced ID system will match trade data received from the broker-dealer with the instructions received from the institution automatically with the results of the matching being reported through the distribution of various output reports to the broker-dealer, the agent, and the institution. *Id.*

[6] This feature will allow delivering parties to authorize settlement of unaffirmed trades of DTC-eligible securities on the settlement date and later. *Id.*

[7] ACH is a domestic electronic payment system operated under the direction of the National

alternative to physical checks for payment and collection of funds to and from customers.

Ten of the 100 commentators that supported the proposed Rule suggested that an electronic payment system that results in finality of payment would make T+3 settlement more practicable, particularly for retail transactions. Most of the commentators addressing this issue stated that ACH would be the desired method of payment if the securities and banking industries could reach a consensus on the necessary revisions to Regulation E and NACHA operating rules so that transactions executed through registered broker-dealers would not be subject to rescission. Four commentators conditioned their support of Rule 15c6–1 on the implementation of a payment system that achieves finality of payment. NACHA, although it was officially neutral on the general merits of proposed Rule 15c6–1, stated that in a three-day settlement environment, the industry would need a payment system such as ACH for retail transactions.[8] Five opposing commentators stated that one reason for their opposition was the lack of an electronic payments system that results in finality of payment, which was considered by those commentators as an essential building block for T+3 settlement.

Following publication of the Bachmann Task Force Report, NACHA proposed a rule amendment that would remove the sixty-day right of rescission for payments in connection with securities transactions. That proposal was defeated. On August 30, 1993, NACHA approved a rule amendment that requires a receiving depository financial institution to obtain a signed affidavit from a consumer when the consumer claims that a transaction to his or her account is unauthorized or that an authorization has been revoked.[9] With the affidavit process in place, a retail securities transaction can be processed through the ACH network as follows: (1) A consumer will purchase securities from his or her broker; (2) the broker will initiate a debit to the consumer's account through its bank; and (3) the debit will be effected against the consumer's account at his or her bank. The consumer claiming that a retail securities transaction was unauthorized or that the authorization for that entry had been revoked would go to his or her bank and sign an affidavit to that effect prior to the bank returning the transaction. Under NACHA rules, the consumer has fifteen days after the receiving depository financial institution sends or makes available to the consumer information pertaining to that debit entry to claim that a transaction was unauthorized or that the authorization was revoked. The receiving depository financial institution must return the rescinded transaction within sixty days of the original settlement date. This change modifies the current process for handling unauthorized transactions over the ACH network, making it consistent with the procedures in the check processing system.

The Commission understands that further changes may be imminent. For example, NACHA is considering modifying the rule change to establish a dollar limit on the mandatory affidavit request and to establish a definition of what constitutes a reasonable timeframe for the receiving depository financial institution to respond to a request from the originating depository financial institution for a copy of the affidavit.[10]

The Commission encourages banks, broker-dealers, clearing agencies, and securities industry representatives to continue to improve the ACH process. The Commission recognizes, however, that ACH represents one of several methods of effecting payments and, accordingly, encourages broker-dealers to pursue other ways to secure good funds on T+3, including wider use of asset management accounts.

3. Mandatory Depository Eligibility

Some commentators believe that T+3 settlement would be difficult to achieve without mandating depository eligibility for all securities. In connection with this, one commentator indicated that the cost of doing business in new issues would increase significantly unless mandatory depository eligibility is developed along with an automated means of tracking flipping.[11]

Nine commentators believed that depository eligibility should be mandatory for all new issues. Two retail broker-dealers indicated that they would not support adoption of the proposed Rule without mandatory depository eligibility. Data Management Division, while neutral on the overall merits of proposed Rule 15c6–1, stated that depository eligibility for all securities should be mandatory.[12] Three opposing commentators believed that all new issues should be depository eligible.

As a practical matter, according to DTC, 94% of all issues listed on the New York Stock Exchange and 99% of issues traded in the over-the-counter market on the National Association of Securities Dealers Automated Quotation System ("NASDAQ") are depository eligible.[13]

Representatives of SROs and the Legal and Regulatory Subgroup of the U.S. Working Committee of the Group of Thirty ("Legal and Regulatory Subgroup") are drafting a uniform SRO rule for depository eligibility for new issues. The uniform rule is intended to incorporate a depository eligibility requirement into a listing standard for each registered national securities exchange and into the eligibility requirements for NASDAQ. Because listing standards for each SRO differ and the manner in which those standards are set forth in their respective rules is not uniform, however, individual SROs will consider the appropriate means to adopt such a uniform depository eligibility requirement to their current listing standards when all SROs have agreed upon and developed a uniform rule. Although the rules, if approved, would not reach settlement of transactions in securities that are not listed on a national exchange or NASDAQ, the Commission preliminarily believes this effort represents an important step towards improving the efficiency of the national clearance and settlement system, and indeed towards making T+3 settlement more practicable.

As discussed above, an issue closely related to mandatory depository eligibility is how to prevent the practice of selling back to syndicate members during the new issue stabilization period, *i.e.*, flipping. The current practice by lead managers in the settlement of IPOs is to issue and deliver certificates in physical form in order to track the sale of securities during the stabilization period. Most of the commentators addressing the depository eligibility issue suggested that an alternative method of monitoring flipping be developed. The U.S. Working Committee of the Group of Thirty Focus Group on Flipping ("Focus Group") has developed a conceptual framework as an alternative to the current practice for monitoring flipping. The Focus Group intends to provide the controls for underwriters to monitor flipping while allowing book-entry settlement to occur.

Although a number of issues remain to be resolved, the Commission recognizes the potential benefits that can be achieved from mandatory depository eligibility and the development of an automated means of monitoring flipping, such as increasing the efficient operation of the clearance and settlement system. The Commission therefore encourages efforts to address concerns and advance these initiatives.

4. Same-Day Funds Settlement

Six commentators suggested that the industry should implement same-day funds settlement prior to shortening the settlement cycle. The Commission believes that significant risk reduction can be gained by converting to a same-day funds payment system. DTC and NSCC are preparing to convert to same-day funds settlement by late 1994 or early 1995. DTC and NSCC recently distributed a Memorandum that details how DTC and NSCC believe many aspects of the new same-day funds settlement system will function, and solicited comments on the proposal.

DTC now processes securities deliveries through two different settlement systems, one that settles in same-day funds ("SDFS") and

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Automated Clearing House Association ("NACHA") and is utilized by over 22,000 banks, thrifts, and other depository financial institutions on behalf of corporations and individuals.

[8] Letter from Elliott McEntee, President & Chief Executive Officer, NACHA, to Jonathan G. Katz, Secretary, Commission (June 30, 1993).

[9] Letter from Elliott McEntee, President & Chief Executive Officer, NACHA, to Jeff Marquardt, Assistant Director, Payment Systems Studies & Payment System Risk Division of Reserve Bank Operations & Payment Systems, Board of Governors (August 31, 1993).

[10] *Id.*

[11] Letter from Stanley J. Kraska, President, SOA, to Jonathan G. Katz, Secretary, Commission (June 22, 1993). Flipping occurs when, during the new issue stabilization period, an investor sells the stock back to the syndicate or to another investor who in turn sells it back to the syndicate. Under current practice, the securities certificate number is used to identify which member of the syndicate sold the issue to the investor who "flipped" it back to the syndicate. Identifying that syndicate member allows the syndicate to recoup from the syndicate member a portion of the seller's concession.

[12] Letter from Salvatore N. Cacco, President, Data Management Division, to Jonathan G. Katz, Secretary, Commission (June 10, 1993).

[13] Telephone conversation with Richard Nesson, General Counsel, DTC (September 21, 1993).

the other in next-day funds ("NDFS"). The NDFS system primarily services corporate equities and corporate and municipal debt issues; the SDFS system primarily services commercial paper and other money market-like instruments. The vast majority of transactions that settle at DTC settle in its NDFS system, although the total value of the transactions that settle in the SDFS system is much larger than that in the NDFS system. NSCC currently operates a single NDFS system in which the money settlement obligations of NSCC's participants are the net results of all NSCC activity.

DTC's and NSCC's NDFS systems and operations are intertwined. DTC is the nation's largest depository for corporate and municipal securities, while NSCC, in addition to its other services, operates the securities industry's largest trade clearance and settlement system for corporate securities. Under the proposed SDFS system, DTC will combine its NDFS and SDFS systems into a single SDFS system, using its current SDFS system as the base design. DTC and NSCC will employ a mandatory netting procedure (expected to be implemented prior to SDFS conversion) whereby a participant's net debit at one organization will be netted against the amount of its net credit, if any, at the other organization. Participants will continue to settle separately with DTC and NSCC.

The same-day funds conversion project is intended to provide two major benefits: Standardization of the form in which funds are settled and risk reduction. It should simplify the cash management practices of firms that currently deal in both same-day and next-day funds settling securities, as well as reducing existing overnight exposure.

The Commission encourages DTC's and NSCC's efforts to finalize the details of the same-day funds proposal. The Commission urges DTC and NSCC to start an educational campaign targeting retail participants, and have the flow of information begin well ahead of the implementation date for Rule 15c6–1.

B. Regulatory Initiatives

As discussed below, the Commission will recommend to other appropriate regulatory authorities that they amend their rules as necessary and appropriate to permit three business day settlement.

1. Rule 10b–10

Some commentators suggested that implementation of a T+3 settlement period will require amendments to the Commission's confirmation rule, Rule 10b–10 adopted under the 1934 Act.[14] Rule 10b–10 requires that broker-dealers send customers written confirmation disclosing information relevant to the transaction "at or before completion" of the transaction.[15] Generally, Rule 15c1–1 under the 1934 Act defines "completion of the transaction" to mean the time when: (i) A customer is required to deliver the security being sold; (ii) a customer is required to pay for the security being purchased; or (iii) a broker-dealer makes a bookkeeping entry showing a transfer of the security from the customer's account or payment by the customer of the purchase price.[16]

Currently, broker-dealers typically send customer confirmations the day after trade date. While the confirmation must be sent by settlement, because the confirmation does not need to be received prior to settlement, the current practice of sending the confirmation the day after trade date will satisfy Rule 10b–10 even under T+3.

Implementation of T+3, however, may alter the confirmation's utility as a customer invoice because confirmation delivery and transfer of customer funds and securities may not be possible within the three day settlement period. Under the current five day settlement period, confirmations generally reach customers in time for the customer to review them prior to transferring funds or securities to the transacting broker-dealer. Under T+3, the customer frequently will not receive the confirmation through the mails by day three; thus, shortening the settlement period to three days may require broker-dealers either to cover the cost of the transaction for a longer period of time or demand funds or securities from the customer earlier than under current practice.[17] Accordingly, the Commission encourages broker-dealers to consider changes to their systems to dispatch confirmations as early as possible following execution of a trade. The Commission also encourages broker-dealers to develop and implement the systems necessary to provide customers, at the time of execution, the net purchase price.

In addition to serving currently as an invoice, the confirmation serves other significant investor protection functions. In particular, the confirmation serves as a written record of the customer's transaction, thus satisfying the Statute of Frauds,[18] provides customers a means of checking the accuracy of their trades, and informs the customer of the broker-dealer's status and often its compensation in connection with the trade. Although the Commission believes that implementation of T+3 will not create compliance problems with regard to Rule 10b–10, it is continuing to consider the effect of T+3 on the confirmation's investor protection functions.

2. Rules 15c3–1 and 15c3–3

Rule 15c3–1 [19] establishes the net capital requirements for brokers and dealers. Rule 15c3–3 [20] requires brokers and dealers to maintain possession or control of all customer fully paid and excess margin securities. Commentators asked the Commission to review these rules to determine whether amendments will be required to conform them to a shorter settlement timeframe.

In determining a broker-dealer's net capital under Rule 15c3–1, the broker-dealer deducts from net worth, as computed in accordance with generally accepted accounting principles, assets not readily convertible into cash, including most unsecured receivables. A broker-dealer also must deduct certain category specific percentages from the securities and commodity futures positions that it carries in its proprietary account. The rule also requires that a failed to deliver contract that has been outstanding for a certain specified period of time be treated as a proprietary position of the broker-dealer and subject to a percentage deduction. This time period is dependent upon the time from settlement date. A contract becomes a fail when it has not settled by the prescribed settlement date. By establishing a shorter settlement timeframe, Rule 15c6–1 will affect the 15c3–1 requirements correspondingly, thus a contract will become a fail in three business days rather than the current five business days.

As with Rule 15c3–1, some of the requirements imposed on broker-dealers by Rule 15c3–3 are dependent upon the time from settlement. One commentator, Goldman Sachs,[21] referred specifically to Rule 15c3–3(m).[22] Rule 15c3–3(m) requires that a broker or dealer that has executed a sell order for a customer, and has not obtained possession of such securities from the customer within ten business days after the settlement date, must immediately close the transaction with the customer by purchasing securities of like kind and quantity.

The Commission notes that Rule 15c6–1 merely changes the number of days following the trade date that settlement will occur. For example, under the new rule, the ten day time period referred to in Rule 15c3–3(m) would generally begin three business days following the trade date, instead of the five business day convention currently in effect. Therefore, Rules 15c3–1 and 15c3–3 are consistent with Rule 15c6–1.[23]

3. Regulation T ("Reg T")

Commentators urged the Commission, in conjunction with the Federal Reserve Board, to review Reg T [24] to determine how, if at all, Reg T should be modified. Currently, Reg T does not require that any action be taken unless a customer fails to pay for securities within seven business days of the trade date. The concern is that Reg T as currently drafted could leave customers and brokers and

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[14] 17 CFR 240.10b–10.

[15] 17 CFR 240.10b–10(a).

[16] 17 CFR 240.15c1–1(b).

[17] Rule 10b–10 does not specify mail delivery as the sole means of sending customer confirmations. Facsimile transmissions would be acceptable under the Rule as well.

[18] Uniform Commercial Code section 8–319 states that a "contract for the sale of securities is not enforceable by way of action or defense unless * * * there is some writing signed by the party against whom enforcement is sought or by his authorized agent or broker, sufficient to indicate that a contract has been made for sale of a stated quantity of described securities at a defined or stated price." U.C.C. 8–319 (1990).

[19] 17 CFR 240.15c3–1.

[20] 17 CFR 240.15c3–3.

[21] Letter from Anthony J. Leitner, Vice President-Associate General Counsel, Goldman Sachs, to Jonathan G. Katz, Secretary, Commission (June 30, 1993).

[22] 17 CFR 240.15c3–3(m).

[23] Similarly, the Commission notes that the time periods indicated in the formula for determining reserve requirements for brokers and dealers, Rule 15c3–3a, also are consistent with Rule 15c6–1.

[24] Reg T, 12 CFR part 220, *et. seq.*, imposes, among other things, initial margin requirements and payment rules on securities transactions. See 15 U.S.C. 78a *et seq.*, part 220.

dealers with the impression that payment from the customer is not due in a three day settlement environment until the expiration of the seven-day period specified by Reg T.

Consistent failures of customers to make payment until seven days would diminish greatly the benefits to be achieved from Rule 15c6–1. Recently, the Federal Reserve Board published notice of its intent to review Reg T generally, including perhaps tying the deadline for payment to settlement date.[28] Accordingly, the Commission has authorized the Division to request the Federal Reserve Board staff to consider whether conforming amendments to Reg T requiring payment from customers within two business days following the settlement date would be appropriate.

4. Disclosure of Depository Eligibility

In the Proposing Release, the Commission solicited comment on whether the Commission should adopt a disclosure requirement under the 1933 Act concerning depository eligibility of an IPO. The disclosure requirement, as discussed in the Proposing Release, would require disclosure of whether the securities being offered in an IPO are depository eligible, and if not, why not.

Five commentators supported the adoption of a disclosure requirement for IPOs as described above. The Cashiers' Association, DTC, and CHX agreed that the Commission should adopt a disclosure requirement concerning depository eligibility of IPOs, but these commentators believed that it was not necessary to include as an exhibit to the registration statement a letter from a securities depository confirming that the securities are eligible for deposit with that depository. Three commentators opposed the proposal, stating that it was unnecessary.

The Commission believes that depository eligibility is important to perfecting the national clearance and settlement system. Moreover, the Commission believes that disclosure regarding whether or not an IPO is, or will be, eligible for deposit at a securities depository is appropriate. SRO rules require broker-dealers to use depositories to confirm and settle trades in depository eligible securities. Disclosure that the securities are not depository eligible will facilitate compliance and efficient clearance and settlement in the secondary market immediately after the offering. Accordingly, the Commission is directing the staff to pursue requiring disclosure when neither the issuer nor the underwriter are intending to make the securities being offered depository eligible.

[FR Doc. 93–25093 Filed 10–12–93; 8:45 am]
BILLING CODE 8010–01–P

[28] See Securities Credit Transactions, Review of Regulation T, "Credit by Brokers and Dealers" (August 18, 1992), 57 FR 37109.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

RIN 0960–AC28

Supplemental Security Income for the Aged, Blind, and Disabled; Payment of Benefits Due Deceased Recipients

AGENCY: Social Security Administration, HHS.

ACTION: Final rules.

SUMMARY: These final regulations reflect the requirements of section 8 of the Employment Opportunities for Disabled Americans Act which expanded our authority to pay supplemental security income (SSI) benefits due persons who are deceased. We explain we are now authorized to pay SSI benefits due a deceased individual to a surviving spouse and may also pay SSI benefits due a deceased disabled or blind child to parent(s) under certain conditions. These regulations also make several other changes that are unrelated to this legislation but which clarify longstanding policy or involve overpayment and underpayment issues.

EFFECTIVE DATE: October 13, 1993.

FOR FURTHER INFORMATION CONTACT: Lawrence V. Dudar, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1759.

SUPPLEMENTARY INFORMATION: These final rules reflect section 1631(b)(1) of the Social Security Act (the Act), as amended by section 8 of Public Law 99–643, the Employment Opportunities for Disabled Americans Act, by revising the circumstances under which SSI benefits, that may be due persons who have died, may be paid to survivors. Under these rules, if the deceased had a spouse, as spouse is defined in § 416.1806, in the month of death, who was not his or her "eligible spouse," as defined in § 416.1801, that spouse may be paid any benefits due the deceased for the month of June 1986 and for later months if the surviving spouse was "living in the same household" with the deceased in the month of death or within the 6 months preceding the month of death. These rules do not change the current rules that permit payment of benefits due the deceased individual to an eligible spouse.

Under section 1631(b)(1)(A)(i), a spouse and the deceased were "living in the same household" if they were "living in the same household" under the rules for title II lump-sum death payments made pursuant to section 202(i) of the Act in the month of death or within the 6 months preceding the month of death. See § 404.347. Since the rules in the SSI program for "deeming" income from one spouse to another are more restrictive than the rules in section 202(i), an ineligible spouse who was "living in the same household" with the deceased for purposes of deeming will automatically meet the "living in the same household" test of section 202(i).

Under these final rules, if the deceased individual was a disabled or blind child at the time the underpayment occurred, and was living with his or her parent(s) in the month of death or within the 6 months preceding the month of death, the underpayment may be paid to the parent(s). The term "child" is defined in § 416.1856 to mean an individual under 18 years of age, or a student under 22 years of age, who is not married and not the head of a household. However, only a natural or adoptive parent may qualify for the benefits due. A stepparent who was not an adoptive parent cannot qualify since the statute specifies payment only to a parent or parents but does not include the spouse of a parent. Without specific legislative authority or any indication in the legislative history that Congress intended stepparents to qualify for benefits due to the deceased individual, we have no clear basis for making such payments to stepparents. Therefore, if the deceased individual was living with a natural or adoptive parent or parents in the month of death or within the 6 months preceding the month of death, we can pay that parent or parents any SSI underpayment due the deceased individual which occurred while such individual was a blind or disabled child. The authority to so pay parents was effective with respect to benefits payable for months after May 1986.

Under these final regulations, if the deceased individual was living with his spouse within the meaning of section 202(i) of the Act in the month of death or within the 6 months preceding the month of death, and with a natural or adoptive parent(s) in the month of death or within the 6 months preceding the month of death, we will pay the parent(s) any SSI underpayment due a deceased individual which occurred for months the deceased was a blind or disabled child, and we will pay the spouse any SSI underpayment due the deceased individual which occurred for months he or she no longer met the definition of "child" as defined in § 416.1856. In cases in which both the parent(s) and the spouse qualify for payment of the underpayment but the parent(s) cannot be paid due to death or

some other reason, then the underpayment will be paid to the spouse.

Under these final regulations, an individual who was a disabled or blind child at the time the underpayment occurred will be considered to have been "living with" his or her parent(s) in the period if the individual satisfies the "living with" criteria we use when applying the rules for deeming of income (§ 416.1165), or would have satisfied the criteria had his or her death not precluded the application of such criteria throughout a month. We considered establishing a requirement of "actual physical cohabitation" to establish that the parent(s) and deceased individual lived together in the month of death or within the 6 months preceding the month of death. Instead, we chose a policy that would establish that the deceased individual was "living with" his or her parent(s) if the deceased individual and his or her parent(s) were in the same household under the rules for deeming of parental income. Requiring actual physical cohabitation would create a new definition of "living with" and thus would complicate the administration of the program. The definition used in "deeming" uses the general rule of "actual physical cohabitation" with some common sense exceptions for "temporary absences," and this will best effectuate the intent of the amendment.

Determinations about any SSI benefits payable to survivors, and how and to whom benefits will be paid, are "initial determinations," as defined in § 416.1402, giving rise to administrative and judicial appeal rights. If an individual dies after requesting an administrative law judge hearing or Appeals Council review, we will not dismiss the request if a spouse or parent qualified to receive any SSI benefits due the deceased individual wishes to continue the proceedings. We will also not dismiss a pending request for a hearing or Appeals Council review upon the death of the individual if the deceased authorized IAR to a State, even if there is no spouse or parent to pursue the appeal.

Regulatory Changes

The current rules at §§ 416.340 and 416.345 authorize the use of the date of a written statement or oral inquiry as an individual's date of application for SSI benefits. The current rules also provide that if the individual dies before he or she has filed an application, the date of the written statement or oral inquiry will be used as the date of application if the deceased's eligible spouse or someone on his or her behalf files an SSI application, and the eligible spouse lived with the deceased within 6 months immediately preceding the individual's death. These final regulations at §§ 416.340(d)(2) and 416.345(e)(2) provide that we will use the date of the written or oral inquiry as the date of application if the claimant dies before an application is filed and a surviving eligible or ineligible spouse or parent of an individual who was a blind or disabled child at the time the underpayment occurred who could be paid the SSI benefits as a survivor or someone on the survivor's behalf files an SSI application form within the prescribed time.

The current rules at § 416.533 bar payment of SSI benefits to a transferee or assignee of an eligible individual except for amounts due a State or political subdivision as IAR. These final regulations at § 416.533 provide that any SSI benefit amounts payable to survivors are also not subject to advance transfer or assignment.

We are also clarifying the current rules at § 416.536 to delete references to underpayment amounts for a "month." As explained in the introductory paragraph in § 416.536 and the provisions of § 416.538, we determine underpayments for a "period" rather than by month. Further, the final rule at § 416.536 contains a phrase identical to that now set forth in § 416.537(a) that explains when payment of benefits is made. This change standardizes the rule as to when payment of benefits is to be made for underpayments with the rule regarding overpayments.

The current rules at § 416.537(b)(2) provide that a penalty is not an adjustment of an overpayment and is imposed only against any amount due the penalized individual or, after death, any amount due the deceased which otherwise would be payable to his or her surviving eligible spouse. We are revising the rules at § 416.537(b)(2) to provide that a penalty is not an adjustment of an overpayment and is imposed only against any amount due the penalized individual or, after death, any amount due the deceased which otherwise would be paid to his or her survivor.

The current rules at § 416.538 permit no delay in a determination and payment of an underpayment otherwise due unless we can make a determination for an apparent overpayment before the close of the month following the month in which we discovered the underpayment. These final rules at § 416.538 will (1) maintain current rules regarding underpayments to eligible individuals and (2) add new rules which permit a postponement to enable us to resolve all overpayments, incorrect payments, adjustments, and penalties before we determine an underpayment and pay unpaid SSI benefits to an ineligible survivor or to an individual who is now ineligible. This is intended to provide additional time to apply the rule in § 416.543 accurately and thus provides the best opportunity of collecting an overpayment from a survivor or a person who is ineligible for SSI.

The current rules at § 416.538 provide that we can offset a penalty assessed against an individual's benefit against SSI benefits due the individual that are otherwise payable to his or her surviving eligible spouse. These final rules at § 416.538 provide that we can offset a penalty against SSI benefits due the deceased that are otherwise payable to a survivor.

The current rules at § 416.542(b) permit payment of SSI benefits due a deceased individual only to a surviving spouse who was eligible for SSI benefits and was living in the same household with the deceased in the month of death or was not separated from the individual for 6 months at the time of death. These final rules at § 416.542(b) permit payment to the surviving member of an eligible couple, a surviving spouse who was not a member of an eligible couple, or a natural or adoptive parent if the deceased was a blind or disabled child when the underpayment occurred and where the requirements regarding living arrangements are met.

These final rules at § 416.542 also prohibit payment of SSI benefits that may be due a deceased individual to a person who intentionally caused the death of the individual and prohibit payment of such benefits to a survivor, other than an eligible spouse, who requests the payment more than 24 months after the month of the individual's death. The first change is based on our longstanding policy of prohibiting a person who intentionally causes the death of another individual from profiting from that action. The second change responds to the need to set a reasonable administrative limit on the time a survivor may request payment of SSI benefits that may be due a deceased individual. The limit for other than the eligible spouse is set at 24 months to make the time the same as the title II rule for applying for lump-sum death benefits under § 404.391(b). There is no such time limit for eligible spouses under preexisting regulations at § 416.542.

The current rules at § 416.543 give priority consideration to applying SSI benefits due a deceased individual and

payable to a surviving eligible spouse against any overpayment to the spouse unless we have waived recovery. The final rules at § 416.543 extend this priority consideration to include benefits due a deceased individual and payable to a survivor who has received any overpayments unless we have waived recovery of the survivor's overpayment.

These final rules add the determinations concerning how much and to whom SSI benefits due a deceased individual will be paid to the list of administrative actions that are initial determinations at § 416.1402, extending administrative and judicial appeal rights to those determinations.

The current rules at § 416.1457(c)(4) authorize an administrative law judge (ALJ) to dismiss a request for a hearing if the person requesting the hearing dies, there are no other parties, and there is no information to show that the deceased may have an eligible spouse. Under these final rules at § 416.1457(c)(4), an ALJ may not dismiss the request for a hearing of a deceased individual if there is an eligible spouse or other survivor who could be qualified to receive the benefits and who wishes to pursue the request for hearing, or if the deceased individual authorized IAR to a State pursuant to section 1631(g) of the Act.

The current rules at § 416.1471(b) authorize the Appeals Council to dismiss a request for review if the person requesting the review or any other party to the proceedings dies and the record clearly shows that there is no other person who may be the deceased's eligible spouse who wishes to continue the action.

Under these final rules at § 416.1471(b), the Appeals Council may not dismiss the request for review of a deceased individual if there is an eligible spouse or survivor who could be qualified to receive the benefits and who wishes to continue the action or if the deceased individual authorized IAR to a State pursuant to section 1631(g) of the Act.

Public Comments

These rules were published as a Notice of Proposed Rulemaking (NPRM) at 55 FR 37249 on September 10, 1990. We received two responses commenting on the proposed rules.

Comment: The first commenter expressed concern that § 416.538(c) deviated from current policy of promptly paying underpayments to recipients and eligible spouses by delaying payment to ineligible individuals and/or survivors.

Response: Although § 416.538(c) of the proposed regulations states that we may delay issuance of underpayments due an individual who is no longer eligible and certain survivors, we are not deviating from present policy on the payment of underpayments to currently eligible recipients.

Prior to the enactment of this legislation, payment of benefits otherwise due could be paid only to the SSI recipient or the surviving eligible spouse. The prior regulations also specified that when there was an apparent overpayment and no determination had been reached on that overpayment, payment of benefits otherwise due had to be paid by the close of the month following the month the underpaid amount was discovered.

We did not intend to give the impression that the payment of underpayments to other survivors could be delayed indefinitely. To that end, even though we are not bound by the prior regulatory time restriction for eligible recipients, we believe that all survivors deserve prompt attention and should be paid any benefits due both timely and correctly. These new regulations only permit us to review the record of the deceased individual (or the ineligible individual's old record) to determine if there are any discrepancies on the record which need to be resolved (e.g., an overpayment, IAR to a State, or a penalty).

Otherwise, if the benefits due were paid to an ineligible individual or survivor immediately without the resolution of any overpayments or discrepancies on the deceased individual's record, we would have limited methods of collecting the outstanding debt from the ineligible individual or survivor. On the other hand, when benefits are due to an eligible individual or eligible spouse, we can recover overpaid amounts directly from the individual. In addition, this review of the record also allows us to make certain that when the benefits are paid, they are paid to the individual to whom they are due. Our present operating instructions reflect the need for expeditious action on these cases which fall under § 416.538(c).

Comment: Another commenter expressed concern that there may be a broader interpretation of a portion of section 1631(b)(1)(A)(ii) which was not being given consideration. The commenter suggested that the statutory language could be read to mean that the underpaid individual need not have been a child in the month of death in order to pay the underpayment to his or her parent(s).

Response: Our interpretation of the statutory provision, as set forth in the NPRM, required the deceased to have been a child in the month of death. In our view, this was, and continues to be, the most natural reading of the statute.

However, we have decided that the interpretation suggested by the commenter is an acceptable reading as well. This interpretation will allow us to pay underpayments to parent(s) of individuals who would have received benefits as blind or disabled children if their claims had been awarded on a timely basis. However, any underpayments payable to parent(s) will only be payable for months after May 1986 for which benefits were due and only for months of eligibility in which the deceased individual was a child as defined in § 416.1856. This latter requirement allows us to maintain the integrity of the statutory provision requiring that the underpayment have been due "a disabled or blind child."

Because of the broader interpretation of the statute resulting from the additional comment we received, it is now possible that both a spouse and parent(s) could be eligible to receive the same underpayment due a deceased individual. If the underpayment occurred for months the individual was a blind or disabled child, and if the individual subsequently married, the underpayment could be paid to *either* the parent(s) or the spouse in cases where both the parent(s) and the spouse were living in the same household with that individual within 6 months of the month of his or her death. However, if the underpayment in such a case occurred for months *after* the individual married or ceased to be a child, as that term is defined in section 1614(c) of the Act and the regulation at 20 CFR 416.1856, then, as explained above, the underpayment could not be paid to the parents under the revised interpretation of section 1631(b)(1)(A)(ii) since the underpayment was not due "a disabled or blind child."

For cases in which the underpayment could be paid to both a parent(s) and a spouse for the period of time that the individual was a child, we will pay the underpayment to the parent(s) since the underpayment occurred while the deceased was a disabled or blind child.

Of course, in cases in which both the parent(s) and the spouse qualify for payment of the underpayment but the parent(s) cannot be paid due to death or some other reason, then the underpayment will be paid to the spouse.

Regulatory Procedures

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 since the costs are expected to be less than $100 million and the threshold criteria for a major rule are not otherwise met. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

These regulations do not impose recordkeeping or reporting requirements on the public.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only individuals and States. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program No. 93.807, Supplemental Security Income)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and Recordkeeping requirements, Supplemental Security Income.

Dated: April 8, 1993.

Louis D. Enoff,

Principal Deputy Commissioner of Social Security.

Approved: July 20, 1993.

Donna E. Shalala,

Secretary of Health and Human Services.

For the reasons set out in the preamble subparts C, E and N of part 416 of chapter III of title 20 of the Code of Federal Regulations are amended as follows:

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart C—Filing of Applications

1. The authority citation for subpart C of part 416 continues to read as follows:

Authority: Secs. 1102, 1611, and 1631(a), (d), and (e) of the Social Security Act; 42 U.S.C. 1302, 1382, and 1383(a), (d), and (e).

2. In part 416, subpart C, § 416.340(d)(2) is revised to read as follows:

§ 416.340 Use of date of written statement as application filing date.

* * * * *

(d) * * *

(2) If the claimant dies after the written statement is filed, the deceased claimant's surviving spouse or parent(s) who could be paid the claimant's benefits under § 416.542(b), or someone on behalf of the surviving spouse or parent(s) files an application form. If we learn that the claimant has died before the notice is sent or within 60 days after the notice but before an application form is filed, we will send a notice to such a survivor. The notice will say that we will make an initial determination of eligibility for SSI benefits only if an application form is filed on behalf of the deceased within 60 days after the date of the notice to the survivor.

3. In part 416, subpart C, § 416.345(e)(2) is revised to read as follows:

§ 416.345 Use of date of oral inquiry as application filing date.

* * * * *

(e) * * *

(2) If the claimant dies after the oral inquiry is made, the deceased claimant's surviving spouse or parent(s) who could be paid the claimant's benefits under § 416.542(b), or someone on behalf of the surviving spouse or parent(s) files an application form. If we learn that the claimant has died before the notice is sent or within 60 days after the notice but before an application form is filed, we will send a notice to such a survivor. The notice will say that we will make an initial determination of eligibility for SSI benefits only if an application form is filed on behalf of the deceased within 60 days after the date of the notice to the survivor.

Subpart E—Payment of Benefits, Overpayments, and Underpayments

4. The authority citation for subpart E of part 416 continues to read as follows:

Authority: Secs. 1102, 1601, 1602, 1611(c), and 1631(a), (b), (d), and (g) of the Social Security Act; 42 U.S.C. 1302, 1381, 1381a, 1382(c), and 1383(a), (b), (d), and (g).

5. In part 416, subpart E, the first sentence of § 416.533 is revised to read as follows:

§ 416.533 Transfer or assignment of benefits.

Except as provided in § 416.525 and subpart S of this part, the Social Security Administration will not certify payment of supplemental security income benefits to a transferee or assignee of a person eligible for such benefits under the Act or of a person qualified for payment under § 416.542.

* * *

6. In part 416, subpart E, § 416.536 is revised to read as follows:

§ 416.536 Underpayments—defined.

An underpayment can occur only with respect to a period for which a recipient filed an application, if required, for benefits and met all conditions of eligibility for benefits. An underpayment, including any amounts of State supplementary payments which are due and administered by the Social Security Administration, is:

(a) Nonpayment, where payment was due but was not made; or

(b) Payment of less than the amount due. For purposes of this section, payment has been made when certified by the Social Security Administration to the Department of the Treasury, except that payment has not been made where payment has not been received by the designated payee, or where payment was returned.

7. In part 416, subpart E, § 416.537(b)(2) is revised to read as follows:

§ 416.537 Overpayments—defined.

* * * * *

(b) * * *

(2) *Penalty.* The imposition of a penalty pursuant to § 416.724 is not an adjustment of an overpayment and is imposed only against any amount due the penalized recipient, or, after death, any amount due the deceased which otherwise would be paid to a survivor as defined in § 416.542.

8. In part 416, subpart E, § 416.538 is revised to read as follows:

§ 416.538 Amount of underpayment or overpayment.

(a) *General.* The amount of an underpayment or overpayment is the difference between the amount paid to a recipient and the amount of payment actually due such recipient for a given period. An underpayment or overpayment period begins with the first month for which there is a difference between the amount paid and the amount actually due for that month. The period ends with the month the initial determination of overpayment or underpayment is made. With respect to the period established, there can be no underpayment to a recipient or his or her eligible spouse if more than the correct amount payable under title XVI of the Act has been paid, whether or not adjustment or recovery of any overpayment for that period to the recipient or his or her eligible spouse has been waived under the provisions of §§ 416.550 through 416.556. A subsequent initial determination of overpayment will require no change with respect to a prior determination of overpayment or to the period relating to such determination to the extent that

the basis of the prior overpayment remains the same.

(b) *Limited delay in payment of underpaid amount to recipient or eligible surviving spouse.* Where an apparent overpayment has been detected but determination of the overpayment has not been made (see § 416.558(a)), a determination of an underpayment and payment of an underpaid amount which is otherwise due cannot be delayed to a recipient or eligible surviving spouse unless a determination with respect to the apparent overpayment can be made before the close of the month following the month in which the underpaid amount was discovered.

(c) *Delay in payment of underpaid amount to ineligible individual or survivor.* A determination of an underpayment and payment of an underpaid amount which is otherwise due an individual who is no longer eligible for SSI or is payable to a survivor pursuant to § 416.542(b) will be delayed for the resolution of all overpayments, incorrect payments, adjustments, and penalties.

(d) *Reduction of underpaid amount.* Any underpayment amount otherwise payable to a survivor on account of a deceased recipient is reduced by the amount of any outstanding penalty imposed against the benefits payable to such deceased recipient or survivor under section 1631(e) of the Act (see § 416.537(b)(2)).

9. In part 416, subpart E, § 416.542 is amended by revising the section heading, revising paragraph (b) and adding a new paragraph (c) to read as follows:

§ 416.542 Underpayments—to whom underpaid amount is payable.

* * * * *

(b) *Underpaid recipient deceased—underpaid amount payable to survivor.* (1) If a recipient dies before we have paid all benefits due or before the recipient endorses the check for the correct payment, we may pay the amount due to the deceased recipient's surviving eligible spouse or to his or her surviving spouse who was living with the underpaid recipient within the meaning of section 202(i) of the Act (see § 404.347) in the month he or she died or within 6 months immediately preceding the month of death. (2) If the deceased underpaid recipient was a disabled or blind child when the underpayment occurred, the underpaid amount may be paid to the natural or adoptive parent(s) of the underpaid recipient who lived with the underpaid recipient in the month he or she died or within the 6 months preceding death. We consider the underpaid recipient to have been living with the natural or adoptive parent(s) in the period if the underpaid recipient satisfies the "living with" criteria we use when applying § 416.1165 or would have satisfied the criteria had his or her death not precluded the application of such criteria throughout a month. (3) If the deceased individual was living with his or her spouse within the meaning of section 202(i) of the Act in the month of death or within 6 months immediately preceding the month of death, and was also living with his or her natural or adoptive parent(s) in the month of death or within 6 months preceding the month of death, we will pay the parent(s) any SSI underpayment due the deceased individual for months he or she was a blind or disabled child and we will pay the spouse any SSI underpayment due the deceased individual for months he or she no longer met the definition of "child" as set forth at § 416.1856. If no parent(s) can be paid in such cases due to death or other reason, then we will pay the SSI underpayment due the deceased individual for months he or she was a blind or disabled child to the spouse. (4) No benefits may be paid to the estate of any underpaid recipient, the estate of the surviving spouse, the estate of a parent, or to any survivor other than those listed in paragraph (b)(1) through (3) of this section. Payment of an underpaid amount to an ineligible spouse or surviving parent(s) may only be made for benefits payable for months after May 1986. Payment to surviving parent(s) may be made only for months of eligibility during which the deceased underpaid recipient was a child. We will not pay benefits to a survivor other than the eligible spouse who requests payment of an underpaid amount more than 24 months after the month of the individual's death.

(c) *Underpaid recipient's death caused by an intentional act.* No benefits due the deceased individual may be paid to a survivor found guilty by a court of competent jurisdiction of intentionally causing the underpaid recipient's death.

10. In part 416, subpart E, § 416.543 is revised to read as follows:

§ 416.543 Underpayments—applied to reduce overpayments.

We apply any underpayment due an individual to reduce any overpayment to that individual that we determine to exist (see § 416.558) for a different period, unless we have waived recovery of the overpayment under the provisions of §§ 416.550 through 416.556. Similarly, when an underpaid recipient dies, we first apply any amounts due the deceased recipient that would be payable to a survivor under § 416.542(b) against any overpayment to the survivor unless we have waived recovery of such overpayment under the provisions of §§ 416.550 through 416.556.

Example: A disabled child, eligible for payments under title XVI, and his parent, also an eligible individual receiving payments under title XVI, were living together. The disabled child dies at a time when he was underpaid $100. The deceased child's underpaid benefit is payable to the surviving parent. However, since the parent must repay an SSI overpayment of $225 on his own record, the $100 underpayment will be applied to reduce the parent's own overpayment to $125.

Subpart N—Determinations, Administrative Review Process, and Reopening of Determinations and Decisions

11. The authority citation for subpart N of part 416 continues to read as follows:

Authority: Secs. 1102, 1631, and 1633 of the Social Security Act; 42 U.S.C. 1302, 1383, and 1383b; sec. 6 of Pub. L. 98–460, 98 Stat. 1802.

12. In part 416, subpart N, § 416.1402 is amended by removing the word "and" at the end of paragraph (k), replacing the period at the end of paragraph (l) with "; and", and adding paragraph (m) to read as follows:

§ 416.1402 Administrative actions that are initial determinations.

* * * * *

(m) How much and to whom benefits due a deceased individual will be paid.

13. In part 416, subpart N, § 416.1457(c)(4) is revised to read as follows:

§ 416.1457 Dismissal of a request for a hearing before an administrative law judge.

* * * * *

(c) * * *

(4) You die, there are no other parties, and we have no information to show that you may have a survivor who may be paid benefits due to you under § 416.542(b) and who wishes to pursue the request for hearing, or that you authorized interim assistance reimbursement to a State pursuant to section 1631(g) of the Act. The administrative law judge, however, will vacate a dismissal of the hearing request if, within 60 days after the date of the dismissal:

(i) A person claiming to be your survivor, who may be paid benefits due to you under § 416.542(b), submits a written request for a hearing, and shows

that a decision on the issues that were to be considered at the hearing may adversely affect him or her; or

(ii) We receive information showing that you authorized interim assistance reimbursement to a State pursuant to section 1631(g) of the Act.

14. In part 416, subpart N, § 416.1471(b) is revised to read as follows:

§ 416.1471 Dismissal by Appeals Council.

* * * * *

(b) You die, there are no other parties, and we have no information to show that you may have a survivor who may be paid benefits due to you under § 416.542(b) and who wishes to pursue the request for review, or that you authorized interim assistance reimbursement to a State pursuant to section 1631(g) of the Act. The Appeals Council, however, will vacate a dismissal of the request for review if, within 60 days after the date of the dismissal:

(1) A person claiming to be your survivor, who may be paid benefits due to you under § 416.542(b), submits a written request for review, and shows that a decision on the issues that were to be considered on review may adversely affect him or her; or

(2) We receive information showing that you authorized interim assistance reimbursement to a State pursuant to section 1631(g) of the Act.

[FR Doc. 93–24984 Filed 10–12–93; 8:45 am]
BILLING CODE 4190–29–P

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20 CFR Part 422

Review Procedures Under the Coal Industry Retiree Health Benefit Act of 1992 (Pub. L. 102–486)

AGENCY: Social Security Administration, HHS.

ACTION: Final rules, with request for comments.

SUMMARY: These final rules implement section 9706(f) of the Internal Revenue Code (IRC), enacted on October 24, 1992, as part of the Energy Policy Act of 1992, which contains the Coal Industry Retiree Health Benefit Act (the Coal Act) of 1992. Under section 9706 of the IRC, the Secretary of Health and Human Services (the Secretary) will assign to certain coal operators and related persons the responsibility for paying annual health and death benefit premiums and unassigned beneficiary premiums for retired miners and their eligible family members (eligible beneficiaries) who were eligible as of July 20, 1992 to receive and were receiving benefits under the 1950 or 1974 United Mine Workers of America (UMWA) Benefit Plans. Under section 9706(f) of the IRC, assigned operators (or related persons) may request the Secretary to provide detailed information regarding the assignments and to review the assignments. These rules explain how this review process will be carried out.

DATES: *Effective Date:* These rules are effective October 13, 1993.

Comments: Because we are not publishing proposed rules with an opportunity for comments, we are requesting comments on these final rules. Comments should be submitted on or before November 12, 1993.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, MD 21235, sent by telefax to (410) 966–0869, or delivered to the Office of Regulations, Social Security Administration, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Jack Schanberger, Legal Assistant, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–8471.

SUPPLEMENTARY INFORMATION: The 1950 and 1974 UMWA Benefit Plans for miners and their families were funded by contributions from those coal operators who signed wage agreements with the UMWA Union. These agreements provided health and other benefits for miners and certain others related to the miners and were renewed every few years in negotiations between the Union and the operators. Over the past several years, many of these operators went out of business, while others continued in business but without renewing their wage agreements with the Union. The consequence to the UMWA Benefit Plans was a continuing decline in contributions in the face of rising medical costs for miners. In effect, fewer and fewer coal operators were contributing to the costs of health insurance premiums for miners who had worked in the past for operators no longer making contributions. In 1992, with the Plans running large deficits, the Coal Act was enacted to ensure that retired miners (and their families) would continue to receive their health benefits in the future.

The Coal Act continues these benefits under a new plan, the UMWA Combined Benefit Fund, into which the old plans are merged. Per capita premiums under the Coal Act are assessed coal operators (or related persons) based upon the miner's employment history. The term "related persons" includes corporations, partnerships, and other business ventures in addition to individuals. Using rules set forth in the Coal Act, we will assign responsibility for paying such premiums for each retired miner (and his or her eligible family member) who was receiving benefits under the 1950 or the 1974 UMWA Benefit Plans as of July 20, 1992, to a particular coal operator (or related person) for which the miner worked or, if we are unable to assign, to a pool of unassigned eligible beneficiaries. Annual premiums for the "unassigned" are paid for on a proportionate basis by those operators assigned premium responsibility for other eligible beneficiaries.

Since the Social Security Administration (SSA) maintains earnings record information for the nation's workers, the Secretary has delegated to SSA the responsibility for examining the miners' earnings records and assigning eligible beneficiaries for premium liability purposes to individual coal operators (or related persons). About 120,000 beneficiaries will be affected by this one-time assignment activity which must be completed before October 1, 1993.

We will provide notices of the assignments to the assigned operators (or related persons) and to the UMWA Combined Benefit Fund Trustees who administer the new Fund, but we will not send notices to the eligible beneficiaries. The notice of assignment will inform the operator that the operator may, within 30 days of receiving the notice, request detailed information as to the work history of a miner and the basis for the assignment and that the assigned operator may thereafter ask for a review of the assignment of any eligible beneficiary within 30 days of receiving the detailed information. Alternatively, within 30 days of receiving the notice and without first requesting detailed information, the operator may ask us to review the assignment. In that case, we will not process the request for review until at least 30 days after the operator received the notice of assignment, in case the operator wants to request detailed information and submit additional evidence.

Only the assigned operator (or related person) may request the detailed information and request SSA to review

and revise its assignment. The requests must be filed within the periods specified in the Coal Act. We will review the assignment only if the assigned operator presents a prima facie case of error regarding the assignment. The review will be a review on the record and will not entail a face-to-face hearing. If review is denied, or if granted and the assignment is found correct, SSA's decision is final.

In these regulations, we explain the detailed information that the operator may request for any miner for whom we have assigned premium responsibility to that operator. We explain that the request must be filed with us within 30 days after the assigned operator received the assignment notice, as provided in the Coal Act. We will assume that the operator received the assignment notice within 5 days of the date shown on the notice. If the operator presents evidence to show that the operator received the notice more than 5 days after the date shown on the notice, we will consider the operator's request to be timely filed if the operator files the request within 30 days of the date of receipt.

We explain in these regulations how an assigned operator may request review of any assignment and explain that a request for review must be accompanied by evidence constituting a prima facie case of error. Although not required by the Coal Act, we provide in these regulations that if an operator files a request for review and asks for additional time to submit evidence, we will not process the request for review for 90 days from the date it was filed in order to allow the operator to submit the evidence. We also provide that an assigned operator may request review within 30 days after receiving the notice of assignment, without having requested detailed information. In that case, we will not process the request for review until at least 30 days after the operator received the notice of assignment. Thus, the operator will still have the 30 days provided by statute to request detailed information. If, subsequent to requesting review within 30 days of receiving the notice of assignment, the operator requests detailed information within that same 30-day period, we will send the information and not process the request for review until at least 30 days after the date the operator receives the detailed information. These time frames will allow the operator to review the detailed information, if desired, and then to submit any additional evidence.

The Coal Act provides for only a reconsideration by the Secretary of Health and Human Services, which will be a review on the record and will not include a face-to-face hearing. An SSA employee who was not previously involved in the assignment of premium responsibility to the operator will perform the review.

SSA is responsible for the accuracy of the assignment of premium responsibility in terms of the employment relationship of the miner to the assigned operator under the provisions of the Coal Act. However, we are not responsible for determining which individuals are eligible for health benefits or the amount of their benefits, or for assessing coal operators (or related persons) for premiums under the Coal Act. Accordingly, these issues cannot be raised as part of the review process set out in these rules.

Although our determination on review is final as to the operator's request, we provide in the regulations that we may on our own initiative reopen an assignment, whether or not it has been reviewed, within one year of the notice of the assignment if evidence in file shows that there is error on the face of the record or that the assignment was based on fraud. Absent any statutory provision for reopening an assignment, we believe that this policy offers reasonable protection for both the operators and SSA.

Regulatory Procedures

Justification for Final Rules Without Proposed Rules

The Department, even when not required by statute, as a matter of policy, generally follows the notice of proposed rulemaking and public comment procedures specified in the Administrative Procedure Act (APA), 5 U.S.C. 553, in the development of its regulations. The APA provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b)(B), good cause exists for waiver of notice of proposed rulemaking and prior public comment procedures because such procedures are impracticable in this case, as is explained below.

Although the Coal Act was enacted on October 24, 1992, Congress did not provide funding for the Department of Health and Human Services to implement the assignment provisions. Moreover, the Department did not have the authority to allocate other funds appropriated to it by Congress to carry out this activity. Because SSA could not expend money to implement the Coal Act until money was appropriated, we could not issue rules or begin implementation until funding was provided. A supplemental appropriation for these purposes was not approved until July 2, 1993 in the Supplemental Appropriation Act of 1993 (Pub. L. 103–50). At the same time, the Coal Act requires that all assignments be made before October 1, 1993.

We believe it is desirable for assigned operators to be aware that we have in place a Coal Act review process to implement section 9706(f) of the IRC. The use of prior notice and comment procedures would necessarily delay the issuance of final rules until well after the time assigned operators would have had—under statutory deadlines—to file their requests for detailed information and for review. Nevertheless, SSA is seeking public comments on these final rules to see whether there are ways to make the rules more effective. We will publish any changes to these regulations that we believe are needed as a result of the public comments.

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because these regulations do not meet any of the threshold criteria for a major rule. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

Because we have determined that good cause exists for waiver of prior notice and comment procedures as impracticable, we are not required by the Regulatory Flexibility Act (Pub. L. 96–354) to prepare and make available for public comments a regulatory flexibility analysis. Nevertheless, we do not believe that this regulation will have a significant economic impact on a substantial number of small entities because it affects primarily large coal mine and related operators. In addition, relatively few small coal operators active prior to 1978 (when most of the retired miners now eligible for benefits under the Coal Act were working) are still in business and subject to assignment by SSA.

Paperwork Reduction Act

These final regulations contain reporting requirements in §§ 422.604 and 422.605. As required by section 2(a) of the Paperwork Reduction Act of 1980, 44 U.S.C. 3507, we will submit a copy to the Office of Management and Budget for its review.

Public reporting burden for this collection of information is estimated to average 1 hour per response. This includes the time it will take to read the instruction, gather the necessary facts

and provide the information. If you have any comments or suggestions on this estimate, write to the Social Security Administration, ATTENTION: Reports Clearance Officer, 1–A–21 Operations Building, Baltimore, MD 21235, and to the Office of Management and Budget, Paperwork Reduction Project (0960–NEW), Washington, DC 20503.

(Catalog of Federal Domestic Assistance Program—No listing)

List of Subjects in 20 CFR Part 422

Administrative practice and procedure; Freedom of information; Organization and functions (Government agencies); Social Security.

Dated: September 1, 1993.

Lawrence H. Thompson,

Principal Deputy Commissioner of Social Security.

Approved: September 27, 1993.

Donna E. Shalala,

Secretary of Health and Human Services.

For the reasons set out in the preamble, Subpart G is added to part 422 of 20 CFR chapter III to read as follows:

PART 422—ORGANIZATION AND PROCEDURES

Subpart G—Administrative Review Process Under the Coal Industry Retiree Health Benefit Act of 1992

Sec.

422.601 Scope and purpose.
422.602 Terms used in this subpart.
422.603 Overview of the review process.
422.604 Request for detailed information.
422.605 Request for review.
422.606 Processing the request for review.
422.607 Limited reopening of assignments.

Authority: Secs. 19141–19143 of the Energy Policy Act of 1992, Pub. L. 102–486; 106 Stat. 3047.

Subpart G—Administrative Review Process Under the Coal Industry Retiree Health Benefit Act of 1992

§ 422.601 Scope and purpose.

The regulations in this subpart describe how the Social Security Administration (SSA) will conduct reviews of assignments it makes under provisions of the Coal Industry Retiree Health Benefit Act of 1992 (the Coal Act). Under the Coal Act, certain retired coal miners and their eligible family members (beneficiaries) are assigned to particular coal operators (or related persons). These operators are then responsible for paying the annual health and death benefit premiums for these beneficiaries as well as the annual premiums for certain unassigned coal miners and eligible members of their families. We will notify the assigned operators of these assignments and give each operator an opportunity to request detailed information about an assignment and to request review of an assignment. We also inform the United Mine Workers of America (UMWA) Combined Benefit Fund Trustees of each assignment made and the unassigned beneficiaries so they can assess appropriate annual premiums against the assigned operators. This subpart explains how assigned operators may request such additional information, how they may request review of an assignment, and how reviews will be conducted.

§ 422.602 Terms used in this subpart.

Assignment means our selection of the coal operator or related person to be charged with the responsibility of paying the annual health and death benefit premiums of certain coal miners and their eligible family members.

Beneficiary means either a coal industry retiree who, on July 20, 1992, was eligible to receive, and receiving, benefits as an eligible individual under the 1950 or the 1974 UMWA Benefit Plan, or an individual who was eligible to receive, and receiving, benefits on July 20, 1992 as an eligible relative of a coal industry retiree.

Evidence of a prima facie case of error means documentary evidence, records, and written statements submitted to us by the assigned operator (or related person) that, standing alone, shows our assignment was in error. The evidence submitted must, when considered by itself without reference to other contradictory evidence that may be in our possession, be sufficient to persuade a reasonable person that the assignment was erroneous. Examples of evidence that may establish a prima facie case of error include copies of Federal, State, or local government tax records; legal documents such as business incorporation, merger, and bankruptcy papers; health and safety reports filed with Federal or State agencies that regulate mining activities; payroll and other employment business records; and information provided in trade journals and newspapers.

A related person to a signatory operator means a person or entity which as of July 20, 1992, or, if earlier, the time immediately before the coal operator ceased to be in business, was a member of a controlled group of corporations which included the signatory operator, or was a trade or business which was under common control with a signatory operator, or had a partnership interest (other than as a limited partner) or joint venture with a signatory operator in a business within the coal industry which employed eligible beneficiaries, or is a successor in interest to a person who was a related person.

We or *us* refers to the Social Security Administration, or the Secretary of Health and Human Services or the Secretary's delegate, as appropriate.

You as used in this subpart refers to the coal operator (or related person) assigned premium responsibility for a specific beneficiary under the Coal Act.

§ 422.603 Overview of the review process.

Our notice of assignment will inform you as the assigned operator (or related person) which beneficiaries have been assigned to you, the reason for the assignment, and the dates of employment on which the assignment was based. The notice will explain that, if you disagree with the assignment for any beneficiary listed in the notice of assignment, you may request from us detailed information as to the work history of the miner and the basis for the assignment. Such request must be filed with us within 30 days after you receive the notice of assignment, as explained in § 422.604. The notice will also explain that if you still disagree with the assignment after you have received the detailed information, you may submit evidence that shows there is a prima facie case of error in that assignment and request review. Such request must be filed with us within 30 days after you receive the detailed information, as explained in § 422.605. Alternatively, you may request review within 30 days after you receive the notice of assignment, even if you have not first requested the detailed information. In that case, you still may request the detailed information within that 30-day period. (See § 422.606(c) for further details.)

§ 422.604 Request for detailed information.

(a) *General.* After you receive our notice of assignment listing the beneficiaries for whom you have premium responsibility, you may request detailed information as to the work histories of any of the listed miners and the basis for the assignment. Your request for detailed information must:

(1) Be in writing;

(2) Be filed with us within 30 days of receipt of that notice of assignment. Unless you submit evidence showing a later receipt of the notice, we will assume the notice was received by you within 5 days of the date appearing on the notice. We will consider the request to be filed as of the date we receive it. However, if we receive the request after the 30-day period, the postmark date on

the envelope may be used as the filing date. If there is no postmark or the postmark is illegible, the filing date will be deemed to be the fifth day prior to the day we received the request; and

(3) Identify the individual miners about whom you are requesting the detailed information.

(b) *The detailed information we will provide.* We will send you detailed information as to the work history and the basis for the assignment for each miner about whom you requested such information. This information will include the name and address of each employer for whom the miner has worked since 1978 or since 1946 (whichever period is appropriate), the amount of wages paid by each employer and the period for which the wages were reported. We will send you the detailed information with a notice informing you that you have 30 days from the date you receive the information to submit to SSA evidence of a prima facie case of error (as defined in § 422.602) and request review of the assignment if you have not already requested review. The notice will also inform you that, if you are seeking evidence to make a case of prima facie error, you may include with a timely filed request for review a written request for additional time to obtain and submit such evidence to us. Under these circumstances, you will have 90 days from the date of your request to submit the evidence before we determine whether we will review the assignment.

§ 422.605 Request for review.

We will review an assignment if you request review and show that there is a prima facie case of error regarding the assignment. This review is a review on the record and will not entail a face-to-face hearing. We will review an assignment if:

(a) You are an assigned operator (or related person);

(b) Your request is in writing and states your reasons for believing the assignment is erroneous;

(c) Your request is filed with us no later than 30 days from the date you received the detailed information described in § 422.604, or no later than 30 days from the date you received the notice of assignment if you choose not to request detailed information. Unless you submit evidence showing a later receipt of the notice, we will assume you received the detailed information or the notice of assignment within 5 days of the date shown thereon. We will consider the request to be filed as of the date we receive it. However, if we receive the request after the 30-day period, the postmark date on the envelope may be used as the filing date. If there is no postmark or the postmark is illegible, the filing date will be deemed to be the fifth day prior to the day we received the request; and

(d) Your request is accompanied by evidence establishing a prima facie case of error regarding the assignment. If your request for review includes a request for additional time to submit such evidence, we will give you an additional 90 days from the date of your request for review to submit such evidence to us.

§ 422.606 Processing the request for review.

Upon receipt of your written request for review of an assignment and where relevant, the expiration of any additional times allowed under §§ 422.605(d) and 422.606(c), we will take the following action:

(a) *Request not timely filed.* If your request is not filed within the time limits set out in § 422.605(c), we will deny your request for review on that basis and send you a notice explaining that we have taken this action;

(b) *Lack of evidence.* If your request is timely filed under § 422.605(c) but you have not provided evidence constituting a prima facie case of error, we will deny your request for review on that basis and send you a notice explaining that we have taken this action;

(c) *Request for review without requesting detailed information.* If your request is filed within 30 days after you received the notice of assignment and you have not requested detailed information, we will not process your request until at least 30 days after the date you received the notice of assignment. You may still request detailed information within that 30-day period, in which case we will not process your request for review until at least 30 days after you received the detailed information, so that you may submit additional evidence if you wish;

(d) *Reviewing the evidence.* If your request meets the filing requirements of § 422.605 and is accompanied by evidence constituting a prima facie case of error, we will review the assignment. We will review all evidence submitted with your request for review, together with the evidence used in making the assignment. An SSA employee who was not involved in the original assignment will perform the review. The review will be a review on the record and will not involve a face-to-face hearing.

(e) *Original decision correct.* If, following this review of the evidence you have submitted and the evidence in our file, we make a determination that the assignment is correct, we will send you a notice explaining the basis for our decision. We will not review the decision again, except as provided in § 422.607.

(f) *Original decision erroneous.* If, following this review of the evidence you have submitted and the evidence in our file, we make a determination that the assignment is erroneous, we will send you a notice to this effect. We will then determine who the correct operator is and assign the affected beneficiary(s) to that coal operator (or related person). If no assigned operator can be identified, the affected beneficiary(s) will be treated as "unassigned." We will notify the UMWA Combined Benefit Fund Trustees of the review decision so that any premium liability of the initial assigned operator can be adjusted.

§ 422.607 Limited reopening of assignments.

On our own initiative, we may reopen and revise an assignment, whether or not it has been reviewed as described in this subpart, under the following conditions:

(a) The assignment reflects an error on the face of our records or the assignment was based upon fraud; and

(b) We sent to the assigned operator (or related person) notice of the assignment within 12 months of the time we decided to reopen that assignment.

[FR Doc. 93–24986 Filed 10–12–93; 8:45 am]
BILLING CODE 4190–29–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–17

[FPMR Temp. Reg. D–17, Suppl. 2]

Extension of Temporary Regulation D–76

AGENCY: Public Buildings Service, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: This supplement extends the expiration date of FPMR Temporary Regulation D–76 to August 26, 1994. Temporary Regulation D–76 provides procedures governing the assignment and utilization of space in Federal or leased facilities under the custody and control of the General Services Administration.

DATES: *Effective Date:* October 13, 1993.
Expiration Date: August 26, 1994.

ADDRESSES: Comments should be submitted to the General Services Administration, (PQ), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Robert E. Ward, Director, Real Estate; Office of Real Property Development, at (202–501–4266).

SUPPLEMENTARY INFORMATION: The purpose of this regulation is to extend Temporary Regulation D–76 until such time as the Final Rule which will supersede it is approved for publication.

GSA has determined that this is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more, a major increase in costs to consumers or others, or significant adverse effects. Therefore, a Regulatory Impact Analysis has not been prepared. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs; has maximized the net benefits; and has chosen the alternative approach involving the least cost to society.

List of Subjects in 41 CFR Part 101–17

Administrative practices and procedures, Federal buildings and facilities, Government real property management.

Authority: (Sec. 205(c), 63 Stat. 390 40 U.S.C. 486(c)).

In 41 CFR chapter 101, FPMR Temp. Reg. D–76, Supplement 2 is added to the appendix at the end of subchapter D to read as follows:

APPENDIX TO SUBCHAPTER D—TEMPORARY REGULATIONS

* * * * *

Federal Property Management Regulations, Temporary Regulation D–76, Supplement 2

To: Heads of Federal Agencies

Subject: Assignment and Utilization of Space

1. *Purpose.* This supplement extends the expiration date of FPMR Temporary Regulation D–76.

2. *Effective date.* October 13, 1993.

3. *Expiration of change.* This supplement expires August 26, 1994.

4. *Expiration of change.* The expiration date in Temporary Regulation D–76 is revised to August 26, 1994.

Roger W. Johnson,

Administrator of General Services

[FR Doc. 93–25021 Filed 10–12–93; 8:45 am]

BILLING CODE 6820–23–M

LEGAL SERVICES CORPORATION

45 CFR Part 1602

Procedures for Disclosure of Information Under the Freedom of Information Act

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends the Legal Services Corporation's ("LSC" or "Corporation") regulation implementing the Freedom of Information Act ("FOIA") by giving authority to process and to grant or deny requests for records of the Corporation's Office of Inspector General ("OIG") to an official within the OIG. In addition, this final rule also makes other technical and procedural changes intended to reflect the Corporation's internal administrative structure and procedures and to better conform the regulation to the FOIA.

EFFECTIVE DATE: November 12, 1993.

FOR FURTHER INFORMATION CONTACT: Victor M. Fortuno, General Counsel, 202–336–8810.

SUPPLEMENTARY INFORMATION: On July 9, 1993, the Corporation published in the **Federal Register** (58 FR 36910) a proposed rule to amend 45 CFR Part 1602, the Corporation's regulation that implements the Freedom of Information Act. Only one comment was received. Pointing out that a new LSC Board would likely be confirmed by the United States Senate within a few weeks, one comment submitted on behalf of the National Legal Aid and Defender Association and the Project Advisory Group urged that the LSC Board table any action on the rule. The comment also noted that language anticipated to be included in the Corporation's FY 1994 appropriations act would preclude the rule from becoming effective until October 1, 1994. After considering the proposed revisions and the comment received, the LSC Board voted on September 29, 1993, to adopt the proposed amendments as a final rule.

The Inspector General Act of 1978 was amended in 1988 to provide for the statutory establishment of Offices of Inspector General at 33 "designated Federal entities," one of which is LSC. 5 U.S.C. App. 3 Sec. 8E. The primary function of LSC's OIG is to promote economy and efficiency and to prevent and detect fraud, waste and abuse in LSC's programs and operations. Because of the independent and investigative nature of the OIG, OIG records are kept separate from other LSC records, and many are of a confidential nature. Although not required, it is appropriate to amend Part 1602 to give the OIG the authority to process and to grant or deny FOIA requests for OIG records.

Accordingly, this final rule adds a definition for "Office of Inspector General records" as records that are in the exclusive possession and control of the OIG. It also gives the authority to process and to grant or deny a request for OIG records to the Counsel to the Inspector General, and maintains the authority to process and to grant or deny a request for all other Corporation records with the General Counsel. It further makes clear that the General Counsel may delegate this authority to a designee and provides that the Counsel to the Inspector General also may delegate to a designee. Also, the rule gives the Inspector General the authority to decide appeals of requests for OIG records, while the President of the Corporation retains the authority to decide all other appeals.

Although requests for OIG records will be processed by the OIG, the rule provides that all requests be directed initially to the Office of the General Counsel ("OGC"). The General Counsel or his designee is required by the rule to promptly refer to the OIG any request or portion thereof determined to be for OIG records and to send the requester notice of such referral.

In addition, this rule adds the requirement that the OGC consult with the OIG before granting any requests for records or portions of records which originated with the OIG or contain information which originated with the OIG, but which are maintained by other components of the Corporation. Examples of such records would be written reports by OIG personnel; minutes, notes or transcripts of oral reports by the Inspector General to the Board of Directors of the Corporation during closed portions of Board meetings; and travel vouchers prepared by OIG personnel. Such reports, minutes, notes and vouchers all have the potential to reveal the identity of confidential sources or targets and the investigative or audit strategy of the OIG or to otherwise interfere with its ongoing activities. Similarly, this rule requires the OIG to consult with the OGC prior to granting any request.

The rule also amends § 1602.9(6)(iv) by adding language found in the corresponding FOIA exemption that appeared to be unnecessary prior to the establishment of the OIG. The FOIA exemption at 5 U.S.C. 552(b)(7)(D) protects documents that might identify a confidential source, and also, in the case of a criminal investigation, that might identify the information furnished by the source. LSC's current

rule has no language protecting such documents. Because the OIG conducts investigations into criminal activities, addition of the language would appear to be appropriate.

Technical and procedural revisions: This rule also amends Part 1602 by making numerous technical and procedural changes that reflect the Corporation's internal administrative structure and procedures. For example, the rule states that all LSC records are maintained at the Corporation's headquarters in Washington, DC, and that the OGC is responsible for handling FOIA requests, except requests for OIG records. It also deletes references to a central records room to more accurately reflect LSC's practice of maintaining its records in the various divisions of the Corporation.

The fees section has been revised to better reflect categories of employees and to update labor costs. In addition, the rule has been amended to include an assumption that requesters agree to pay up to $25 in charges for services associated with their requests. For requests estimated to exceed $25, the Corporation will consult with the requester prior to processing the request. Also, requests estimated to exceed $25 will not be deemed to be received by the Corporation for purposes of the initial 10-day response period until the requester agrees to pay all fees for services. This amendment allows requesters to reconsider their request before generating fees they may not have anticipated.

In addition, the rule amends the language of Part 1602 that applies to matters specifically exempted from disclosure by statute. *See* § 1602.9(a)(2). The change is intended to better conform the rule to the corresponding FOIA exemption, 5 U.S.C. 552 (b)(3).

List of Subjects in 45 CFR Part 1602

Freedom of Information.

For reasons set out above, Part 1602 of Title 45 of the Code of Federal Regulations be amended as follows:

PART 1602—PROCEDURES FOR DISCLOSURE OF INFORMATION UNDER THE FREEDOM OF INFORMATION ACT

1. The authority citation for Part 1602 is revised to read as follows:

Authority: 5 U.S.C. 552 and 42 U.S.C. 2996d(g).

2. Section 1602.2 is revised to read as follows:

§ 1602.2 Definitions.

As used in this part—

Commercial use request[s] means request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, the Corporation will look to the use to which a requester will put the documents requested. When the Corporation has reasonable cause to doubt the use to which a requester will put the records sought, or where the use is not clear from the request itself, it will seek additional clarification before assigning the request to a specific category. If still in doubt, the Corporation will make the determination based on the factual circumstances surrounding the request, including the identity of the requester.

Duplication means the process of copying a document to send to a FOIA requester. Such copies can take the form of paper copy, microform, audio-visual materials, or machine-readable documentation (e.g., magnetic tape or disk), among others.

Educational institution means a preschool, a public or private elementary or secondary school, an institution of undergraduate or graduate higher education, and an institution of professional or vocational education which operates a program or programs of scholarly research.

FOIA means the Freedom of Information Act, 5 U.S.C. 552.

Labor charges means those costs which the Corporation incurs in searching for, reviewing, and duplicating records to respond to a FOIA request. A schedule of labor charges appears at § 1602.13(e)(1).

Non-commercial scientific institution means an institution that is not operated on a "commercial" basis and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

Office of Inspector General records means those records as defined generally in this section which are exclusively in the possession and control of the Office of Inspector General of the Legal Services Corporation.

Records means books, papers, maps, photographs, or other documentary materials, regardless of physical form or characteristics, made or received by the Corporation in connection with the transaction of the Corporation's business and preserved by the Corporation as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Corporation, or because of the informational value of data in them. The term does not include, *inter alia*, books, magazines, or other materials acquired solely for library purposes.

Representative of the news media means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of "freelance" journalists, they will be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it.

Review means the process of examining documents located in response to a commercial use request to determine whether any portion of any such document may be withheld. It also includes processing any documents for disclosure, e.g., doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

Search means all the time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. The search will be conducted in the most efficient and least expensive manner. Searches may be done manually or by computer using existing programming.

3. Section 1602.4 is revised to read as follows:

§ 1602.4 Location of Corporation headquarters.

The Corporation's headquarters are located at 750 First Street, NE., Washington, DC 20002–4250. The telephone number for the Corporation's headquarters is (202) 336–8800.

4. Section 1602.5 is revised to read as follows:

§ 1602.5 Index of records.

The Corporation will maintain a current index identifying any matter within the scope of § 1602.6(b) which has been issued, adopted, or promulgated by the Corporation, and other information published or made publicly available. The index will be maintained and made available for public inspection and copying at the Corporation's headquarters, located at the address stated in § 1602.4.

5. Section 1602.6 is added to read as follows:

§ 1602.6 Records available.

(a) The Corporation will maintain its records as described in paragraph (b) of this section at its headquarters, located at the address stated in § 1602.4, during the regular business hours of the Corporation for the convenience of members of the public in inspecting and copying records made available pursuant to this part.

(b) Subject to the limitation stated in paragraph (c) of this section, the following records will be available:

(1) All final opinions, including concurring and dissenting opinions, and orders made in the adjudication of cases;

(2) Statements of policy and interpretations adopted by the Corporation;

(3) Administrative staff manuals and instructions to the staff that affect the public;

(4) To the extent feasible, guidelines, forms, published regulations, notices, program descriptions, and other records considered to be of general interest to members of the public in understanding activities of the Corporation or in dealing with the Corporation in connection with those activities;

(5) The current index required by § 1602.5.

(c) Certain types of staff manuals or instructions, such as instructions to auditors or inspection staff, or instructions covering certain phases of contract negotiation, that deal with the performance of functions that would automatically be rendered ineffective by general awareness of the Corporation's techniques or procedures, may be exempt from mandatory disclosure even though they affect or may affect the public.

(d) Certain records made available pursuant to this part may be "edited" by the deletion of identifying details concerning individuals, to prevent a clearly unwarranted invasion of personal privacy. In such cases, the record shall have attached to it a full explanation of the deletion.

6. Section 1602.7 is revised to read as follows:

§ 1602.7 Procedures for public inspection of records.

Any member of the public may inspect or copy records regularly maintained by the Corporation at the Corporation during regular business hours. Because it will sometimes be impossible to produce records or copies of them on short notice, a person who wishes to inspect or copy Corporation records is advised to arrange a time in advance, by telephone or letter request made to the Office of the General Counsel at the address and telephone number stated in § 1602.4. Persons submitting written requests should identify the records sought in the manner provided in § 1602.8(b) and should indicate the specific date when they wish to inspect the records. The Corporation will endeavor to advise the requester as promptly as possible if, for any reason, it may not be possible to make the records sought available on the date requested.

7. Section 1602.8 is amended by revising paragraphs (a), (b)(3), (4) and (5), (c) introductory text, and (d) to read as follows:

§ 1602.8 Availability of records on request.

(a) In addition to the records described in section 1602.6, the Corporation will make all other Corporation records available to any person in accordance with paragraphs (b) and (c) of this section, unless it is determined that such records should be withheld and are exempt from mandatory disclosure under the FOIA and § 1602.9.

(b) * * *

(3) The Corporation is not required to create a record or to perform research to satisfy a request for information.

(4) Requests for records under this section should be made in writing, with the envelope and the letter clearly marked "Freedom of Information Request" and should be addressed to the LSC Office of the General Counsel at the address stated in § 1602.4. Any request not marked and addressed as specified in this paragraph will be so marked by Corporation personnel as soon as it is properly identified, and will be forwarded immediately to the Office of the General Counsel. A request improperly addressed will not be deemed to have been received for purposes of the time period set forth in paragraph (c) of this section until it is received by the Office of the General Counsel. Upon receipt of an improperly addressed request, the General Counsel or his designee shall notify the requester of the date on which the time period began.

(5) All requests should identify the records sought with reasonable specificity and should indicate the number of copies desired. The Corporation may require that fees be paid in advance, in accordance with § 1602.13(i), and the Corporation will advise a requester as promptly as possible if the fees are estimated to exceed $25 or any limit indicated by the requester. If a waiver or reduction of fees is requested, the grounds for such request as set out in § 1602.13(f) should be included in the letter.

(c) The General Counsel or his designee, upon request for any records made in accordance with this part, except in the case of a request for Office of Inspector General records, shall make an initial determination of whether to comply with or deny such request and dispatch such determination to the requester within 10 working days after receipt of such request, except for unusual circumstances, in which case the time limit may be extended for not more than 10 working days by written notice to the requester setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. If the General Counsel or his designee determines that a request or portion thereof is for Office of Inspector General records, the General Counsel or his designee shall promptly refer the request or portion thereof to the Office of Inspector General and send notice of such referral to the requester. In such case, the Counsel to the Inspector General or his designee shall make an initial determination of whether to comply with or deny such request and dispatch such determination to the requester within 10 working days after receipt of such request, except for unusual circumstances, in which case the time limit may be extended for not more than 10 working days by written notice to the requester setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. As used herein, "unusual circumstances" are limited to the following, but only to the extent reasonably necessary to the proper processing of the particular request:

* * * * *

(d) If no determination has been dispatched at the end of the 10-day period, or the last extension thereof, the requester may deem his request denied, and exercise a right of appeal in accordance with § 1602.12. When no determination can be dispatched within the applicable time limit, the General

Counsel or his designee, and/or the Counsel to the Inspector General or his designee, shall nevertheless continue to process the request. On expiration of the time limit, the General Counsel or his designee, and/or the Counsel to the Inspector General or his designee, shall inform the requester of the reason for the delay, of the date on which a determination may be expected to be dispatched, and of the requester's right to treat the delay as a denial and to appeal to the President of the Corporation, or to the Inspector General of the Corporation, in accordance with § 1602.12. The General Counsel or his designee, and/or the Counsel to the Inspector General or his designee, may ask the requester to forego appeal until a determination is made.

* * * * *

8. Section 1602.9 is amended by revising paragraphs (a)(2) and (6)(iv) to read as follows:

§ 1602.9 Invoking exemptions to withhold a requested record.

(a) * * *

(2) Matter which is specifically exempted from disclosure by statute other than section 552b of the FOIA, provided that such statute requires that the matters be withheld from the public in such a manner as to leave no discretion on the issues, or establishes particular criteria for withholding or refers to particular types of matters to be withheld;

* * * * *

(6) * * *

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, information furnished by a confidential source;

* * * * *

9. Section 1602.10 is revised to read as follows:

§ 1602.10 Officials authorized to grant or deny requests for records.

The General Counsel shall furnish necessary advice to Corporation officials and staff as to their obligations under this part and shall take such other actions as may be necessary or appropriate to assure a consistent and equitable application of the provisions of this part by and within the Corporation. The General Counsel or his designee, and the Counsel to the Inspector General or his designee, are authorized to grant or deny requests under this part. In the absence of a Counsel to the Inspector General, the Inspector General shall name a designee who will be authorized to grant or deny requests under this part and who will perform all other functions of the Counsel to the Inspector General under this regulation. The General Counsel or his designee shall consult with the Office of Inspector General prior to granting any request for records or portions of records which originated with the OIG, or which contain information which originated with the OIG, but which are maintained by other components of the Corporation. The Counsel to the Inspector General or his designee shall consult with the Office of the General Counsel prior to granting any request for records.

10. Section 1602.12 is revised to read as follows:

§ 1602.12 Appeals of denials.

(a) Any person whose written request has been denied is entitled to appeal the denial within 90 days by writing to the President of the Corporation or, in the case of a denial of a request for Office of Inspector General records, the Inspector General, at the Corporation's headquarters, located at the address stated in § 1602.4. The envelope and letter should be clearly marked "Freedom of Information Appeal." An appeal need not be in any particular form, but should adequately identify the denial, if possible, by describing the requested record, identifying the official who issued the denial, and providing the date on which the denial was issued.

(b) No personal appearance, oral argument, or hearing will ordinarily be permitted on appeal of a denial. Upon request and a showing of special circumstances, however, this limitation may be waived and an informal conference may be arranged with the President, or the Inspector General, or their designees, for this purpose.

(c) The decision of the President or the Inspector General on an appeal shall be in writing and, in the event the denial is in whole or in part upheld, shall contain an explanation responsive to the arguments advanced by the requester, the matters described in § 1602.11(a) (1) through (4), and the provisions for judicial review of such decision under section 552(a)(4) of the FOIA. The decision shall be dispatched to the requester within 20 working days after receipt of the appeal, unless an additional period is justified pursuant to § 1602.8(c) and such period taken together with any earlier extension does not exceed 10 days. The decision of the President or the Inspector General shall constitute the final action of the Corporation. All such decisions shall be treated as final opinions under § 1602.6(b).

11. Section 1602.13 is revised to read as follows:

§ 1602.13 Fees.

(a) Information provided routinely in the normal course of doing business will be provided at no charge.

(b) For commercial use requests, fees shall be limited to reasonable standard charges for document search, review and duplication.

(c) When records are not sought for commercial use and the request is made by a representative of the news media or by an educational institution or a non-commercial scientific institution whose purpose is scholarly or scientific research, fees shall be limited to reasonable standard charges for document duplication after the first 100 pages.

(d) For all other requests, fees shall be limited to reasonable standard charges for search time after the first 2 hours and duplication after the first 100 pages.

(e) The schedule of charges for services regarding the production or disclosure of Corporation records is as follows:

(1) Manual search for and review of records will be billed at the following labor charges:

(i) Salary levels 1–4: $14 per hour;

(ii) Salary levels 5–6: $25 per hour;

(iii) Salary level 7—unclassified: $34 per hour;

(iv) Charges for search and review time less than a full hour will be billed by quarter-hour segments;

(2) Computer time: Actual charges as incurred;

(3) Duplication by paper copy: $0.10 per page;

(4) Duplication by other methods: actual charges as incurred;

(5) Certification of true copies: $1.00 each;

(6) Packing and mailing records: no charge for regular mail;

(7) Special delivery or express mail: actual charges as incurred.

(f) Fees will be waived or reduced below the fees established under paragraph (e) of this section if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Corporation and is not primarily in the commercial interest of the requester.

(1) In order to determine whether disclosure of the information "is in the public interest because it is likely to contribute significantly to public

understanding of the operations or activities of the Corporation," the Corporation will consider the following four criteria:

(i) The subject of the request: Whether the subject of the requested records concerns "the operations or activities of the Corporation";

(ii) The informative value of the information to be disclosed: Whether the disclosure is "likely to contribute" to an understanding of Corporation operations or activities;

(iii) The contribution to an understanding of the subject by the general public likely to result from disclosure: Whether disclosure of the requested information will contribute to "public understanding"; and

(iv) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute "significantly" to public understanding of Corporation operations or activities.

(2) In order to determine whether disclosure of the information "is not primarily in the commercial interest of the requester," the Corporation will consider the following two factors:

(i) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so,

(ii) The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester."

(3) These fee waiver/reduction provisions will be subject to appeal in the same manner as appeals from denial under § 1602.12.

(g) No fee will be charged under this section if the cost of routine collection and processing of the fee payment is likely to equal or exceed the amount of the fee charged. That cost is currently $6.50.

(h) Requesters must agree to pay all fees charged for services associated with their requests. The Corporation will assume that requesters agree to pay all charges for services associated with their requests up to $25 unless otherwise indicated by the requester. For requests estimated to exceed the $25 amount, the Corporation will first consult with the requester prior to processing the request, and such requests will not be deemed to have been received by the Corporation until the requester agrees in writing to pay all fees charged for services.

(i) No requester will be required to make an advance payment of any fee unless:

(1) That requester has previously failed to pay a required fee (within 30 days of the date of billing), in which case an advance deposit of the full amount of the anticipated fee together with the fee then due plus interest accrued may be required. The request will not be deemed to have been received by the Corporation until such payment is made;

(2) The Corporation determines that an estimated fee will exceed $250, in which case the requester shall be notified of the amount of the anticipated fee or such portion thereof as can readily be estimated. Such notification shall be transmitted as soon as possible, but in any event within five working days of receipt by the Corporation, giving the best estimate then available. The notification shall offer the requester the opportunity to confer with appropriate representatives of the Corporation for the purpose of reformulating the request so as to meet the requester's needs at a reduced cost. The request will not be deemed to have been received by the Corporation for purposes of the initial 10-day response period until an advance payment of the entire fee is made.

(j) Interest will be charged to those requesters who fail to pay the fees charged. Interest will be assessed on the amount billed, starting on the 31st day following the day on which the billing was sent. The rate charged will be as prescribed in 31 U.S.C. 3717.

(k) If the Corporation reasonably believes that a requester or group of requesters is attempting to break a request into a series of requests for the purpose of evading the assessment of fees, the Corporation shall aggregate such requests and charge accordingly.

(l) The Corporation reserves the right to limit the number of copies that will be provided of any document to any one requester or to require that special arrangements for duplication be made in the case of bound volumes or other records representing unusual problems of handling or reproduction.

Dated: October 7, 1993.

Victor M. Fortuno,

General Counsel.

[FR Doc. 93–25087 Filed 10–12–93; 8:45 am]

BILLING CODE 7650–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 87–06; Notice 9]

RIN 2127–AD39

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This final rule requires lap belts or the lap belt portion of lap/shoulder belts to be capable of being used to tightly secure child safety seats, without the necessity of the user's attaching any device to the seat belt webbing, retractor, or any other part of the vehicle in order to achieve that purpose. A vehicle's compliance with this requirement is to be determined by "locking" the belt with whatever means is provided for that purpose, measuring the length of belt webbing between two points on the belt assembly, pulling on the "locked" belt with a 50 pound force, and while the force is pulling on the belt, again measuring the distance between the two points on the belt assembly. The difference between the two measurements for the locked belt is used to determine if the safety belt assembly complies with this requirement. This final rule will ensure that safety belts are both comfortable for adult occupants and capable of tightly securing child safety seats.

DATES: The amendments made in this rule are effective September 1, 1995.

Any petitions for reconsideration must be received by NHTSA no later than November 12, 1993.

ADDRESSES: Any petitions for reconsideration should refer to the docket and notice number of this notice and be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. (Docket Room hours are 9:30 a.m.–4 p.m., Monday through Friday.)

FOR FURTHER INFORMATION CONTACT: Daniel Cohen, Chief, Frontal Crash Protection Division, NHTSA, NRM–12, room 5320, 400 Seventh Street, SW., Washington, DC 20590. Mr. Cohen can be reached by telephone at (202) 366–2264.

SUPPLEMENTARY INFORMATION: NHTSA published a supplementary notice of proposed rulemaking (SNPRM) on December 6, 1991 proposing to require that lap belts or the lap belt portion of

lap/shoulder belts be capable of tightly securing child safety seats, without the necessity of the user's attaching any device to the seat belt webbing, retractor, or any other part of the vehicle in order to achieve that purpose (56 FR 63914). A history of this rulemaking can be found in that notice. A vehicle's compliance with the requirements proposed in the SNPRM would have been determined by "locking" the belt with whatever means is provided for that purpose, measuring the length of belt webbing between two points on the belt assembly, pulling on the "locked" belt with a 50 pound force, and while the force is pulling on the belt, again measuring the distance between the two points on the belt assembly. The difference between the two measurements for the locked belt would have been used to determine if the safety belt assembly complied with this proposed requirement. This proposed requirement was referred to as the "lockability requirement."

The lockability requirement evolved from the public reaction to the movement at low vehicle speeds of child safety seats held by safety belts that use an emergency locking retractor (ELR). This movement gave rise to questions and concerns on the part of the public about the safety and effectiveness of child seats when used with such belts. In particular, parents of small children expressed concerns that child safety seats move about in response to relatively routine driving maneuvers. They voiced these concerns via NHTSA's Hotline telephone service, generally reporting dissatisfaction that they are unable to adjust the safety belt webbing so that the child safety seat will remain fixed in position during these driving maneuvers.

The lockability issue has been a priority concern among those in the business of child passenger safety. Much of the state and local advocates' time is spent either answering parents' questions or in performing outreach activities designed to reduce the problems associated with the lockability of safety belts. Newsletter articles, workshop agendas, and public information materials from groups such as the Physicians for Automotive Safety, the National Child Passenger Safety Association, and the American Academy of Pediatrics have consistently included lockability-related information since the early 1980's.

Given these questions and concerns on the part of the public, NHTSA believes that some parents may not be as likely to use child safety seats if they are concerned about the seat's stability during both normal and emergency driving conditions. Providing lockability for child safety seats should help mitigate these concerns, and therefore, increase usage of child safety seats. In 1990, 435 unrestrained children aged 0–4 died in motor vehicle crashes. Child safety seats are estimated to be approximately 53 percent effective in preventing fatalities among infants and toddlers. (This effectiveness is a weighted average of the individual safety seat effectiveness estimates for infants and toddlers.) If only 10 percent of these cases had been in child safety seats, over 20 fatalities could have been prevented. Thus, the potential for preventing death and injury to young children is clearly significant.

NHTSA received 17 comments on the SNPRM. In general, commenters supported the need for a lockability requirement, however, commenters did disagree with some aspects of the proposed test procedure and with the need for this requirement at the right front seating position. All of the comments were considered while formulating this final rule, and the most significant comments are addressed below.

Vehicles Subject to this Proposal

The SNPRM proposed that the lockability requirements apply to all vehicles with a gross vehicle weight rating (GVWR) of 10,000 pounds or less. Vehicles with a higher GVWR were excluded because they are much less frequently used to transport children in child safety seats.

In its comments, General Motors (GM) requested exclusion of certain vehicles with a GVWR of 10,000 pounds or less that it believes are also unlikely to be used to transport children. Specifically, GM requested exclusion of walk-in type vans and vehicles manufactured to be sold exclusively to the U.S. Postal Service. The agency agrees that these vehicles are also unlikely to be used for transporting children in child safety seats and therefore has excluded these vehicles in the final rule.

Seating Positions Subject to this Proposal

The SNPRM proposed that all seating positions other than the driver's position be required to comply with the lockability requirement. In the SNPRM, NHTSA tentatively concluded that it would not be appropriate to exclude seating positions with automatic safety belts from the lockability requirements. However, the agency proposed to permit the use of a separate manual lap belt as the means of achieving lockability at seating positions equipped with an automatic belt.

In response to the Intermodal Surface Transportation Efficiency Act of 1991 (Pub. L. 102–240), NHTSA is currently proceeding to mandate air bags and manual lap/shoulder safety belts at all front outboard seating positions. NHTSA is currently proceeding with the rulemaking to implement these requirements which will require all 1998 model year passenger cars and all 1999 model year light trucks and multipurpose passenger vehicles to have an air bag and a manual lap/shoulder belt at each front outboard seating position. Because of these requirements and the lack of the quantification of a significant safety problem, NHTSA has decided that it would be an undue financial burden to require manufacturers to redesign their automatic safety belt systems to provide lockability when those systems will be installed in vehicles for only a few more years before air bags become mandatory. Therefore, automatic safety belt systems have been excluded from the requirements of this final rule.

Test Procedure

The SNPRM proposed a modified test procedure which required buckling the seat belt assembly, "locking" the safety belt in accordance with the manufacturer's instructions in the vehicle owner's manual, locating any point on the safety belt buckle or emergency release buckle, locating any point on the attachment hardware or retractor assembly on the other end of the safety belt assembly, adjusting the lap belt or lap belt portion of the safety belt assembly so that the length of webbing between these two points does not exceed 30 inches, pulling on the "locked" belt with a 50 pound force using a webbing tension pull device, and, with the force still pulling on the belt, measuring the distance between the two points again. The difference between the two measurements could not exceed two inches. The SNPRM also included language stating that inversion, twisting or otherwise deforming the safety belt to provide lockability would not be permitted to satisfy this proposed lockability requirement.

1. Force Application

GM, Ford, Nissan, Honda and Toyota asked for a text fixture to simulate an actual child restraint system, instead of the webbing tension pull device. As explained in the SNPRM, the agency considered incorporating a test fixture or body block into the lockability test procedure when developing the proposal. The agency determined that such a modification to the test

procedure would make it unnecessarily complex. Except as explained below, the commenters did not submit any new information to persuade the agency that this position is incorrect.

Ford commented that a single load applied at the center of the belt webbing loop is not representative of the load applied by a child seat. If the agency again declined to use a test fixture, Ford asked the agency to specify a load application using two webbing tension pull devices spaced 12 inches apart laterally. The webbing tension pull device is not intended to simulate the interaction of a child seat and the safety belt. Application of a single load is simple and represents a worst case condition. Ford's suggestion of a double load application complicates the test procedure without any demonstrated safety benefit. Therefore, the agency has not adopted Ford's suggestion.

Nissan requested use of a test fixture because "the seat cushion undergoes greater degrees of compression due to loading by the buckle and webbing without the child restraint in place than it does when the restraint is in place." Toyota included a video with its comments to demonstrate this phenomenon. As demonstrated in the video, the webbing rotates downward when the required load is applied, compressing the seat cushion, and resulting in a greater apparent length of the webbing.

In order to minimize the possibility of false test results due to seat cushion compression, the agency has modified the test procedure. The test procedure in this rule specifies that a pre-load of 10 pounds be applied before measuring the safety belt webbing. This will ensure that any rotation of the webbing and seat compression has occurred prior to the measurement.

Volvo, Ford, and Toyota recommended changes in the regulatory language specifying how the load is applied. All three commenters stated that the point "equidistant between points A and B" may be asymmetrical in relation to the seat when the belt is buckled. Volvo recommended "that the line of force should be in a vertical plane, parallel to the longitudinal axis of the car, and passing through the Seating Reference Point." NHTSA's language in the SNPRM was intended to specify that the load be applied at the center of the seat. NHTSA agrees that Volvo's suggestion is clearer, and therefore, regulatory language has been changed to adopt this suggestion.

2. Test Force

Cosco questioned the adequacy of the 50 pound test force, stating its belief that centrifugal force, not the direct force applied during the test procedure, is responsible for problems with child seats tipping over. Cosco cited anecdotal evidence of experiences in which a 15 pound child seat with a 35 pound child in it (total weight 50 pounds) tipped over notwithstanding the fact that it was restrained in a belt equipped with a retractor that was designed to lock when a 45 pound force was applied. Cosco believes that this experience demonstrates that a 50 pound test force is inadequate to ensure that child safety seats are tightly secured.

NHTSA disagrees and believes that the situation cited by Cosco is a result of slack in the safety belt system. An ELR equipped safety belt will gradually allow slack to be introduced during routine driving maneuvers. Because of this slack in the belt, the child seat can tip over without applying sufficient load to lock the belt. Therefore, NHTSA is not persuaded by Cosco's argument and has retained the 50 pound force.

3. 30 Inch Limit

Ford and Toyota stated that the 30 inch limit on the length of webbing specified in the test procedure may be insufficient to buckle the belt in some designs and asked that this limit be deleted. Volvo also asked for this limit to be deleted as it did not appear to have any effect on lockability.

NHTSA included the 30 inch limit to preclude belt designs that comply with the lockability test solely because all of the webbing has been spooled off the retractor. If all of the webbing were spooled off the retractor at the beginning of the test, the belt would appear to be "locked" because the webbing would be at its maximum extension and no slack could possibly occur. To prevent this condition, the test was designed to demonstrate compliance with the lockability requirement at less than full extension of the belt webbing. However, based on these comments, NHTSA has amended the regulatory language to allow any length of webbing which is no more than 5 inches less than the maximum length of the webbing.

The agency has also added language requiring at least 3 inches of webbing remain on the retractor after application of the 50 pound load. Compliance with the lockability requirement is determined by measuring the difference between the length of the webbing after the pre-load is applied and the length of the webbing after the 50 pound load is applied. If all the webbing were to spool off the retractor when the pre-load was applied, the design would appear to comply with the lockability requirement, but only because there was not any webbing remaining on the retractor. The additional requirement that at least 3 inches of webbing remain on the retractor after the test will ensure that the belt design achieves lockability by virtue of some features other than spooling out all the webbing from the retractor.

4. Two-inch Spool-out Limit

Advocates for Highway and Auto Safety (Advocates), Center for Auto Safety (CAS) and Cosco objected to the increase from one inch to two inches of allowable webbing spool-out in the SNPRM based on their belief that this would allow too much movement of a child safety to allay parent's concerns. In addition, Cosco stated that this would allow up to five inches of forward movement of a child seat. Cosco's calculation was arrived at by adding the two inches allowed in the SNPRM with the two inches allowed by the latest draft of the SAE J-1819 test criteria.

NHTSA believes that Cosco's calculations are based on erroneous assumptions. First, the test procedure in this final rule is a separate test from the SAE test criteria. The two inches specified in the rule and the two inches specified by SAE are not cumulative. Second, Cosco also added another inch for belt stretch in an accident. Comparisons to belt performance in accidents are not appropriate as this requirement is intended to prevent slack during normal driving, not in accidents.

As explained in the SNPRM, the one inch limit proposed in the NPRM reflected the agency's judgment at that time that any spool-out in excess of one inch would adversely affect the public's perception of the effectiveness of child seats. At the same time, the agency recognized that zero webbing spool-out would be difficult to achieve.

Based upon comments submitted in response to the NPRM, the agency decided to reexamine the amount of webbing spool-out that should be allowed. In developing the original proposal, the agency had concluded that a very small amount of belt slack would theoretically allow a large amount of forward motion of a child seat. To test this conclusion, the agency installed a "typical" child seat in a test vehicle and introduced known amounts of slack to determine how much movement occurred. Based upon these tests, the agency determined that two inches of slack permitted about two inches of forward movement, about half what the agency had expected would occur. Based on this additional information about the relationship between belt slack and forward movement of child seats, the agency tentatively concluded

in the SNPRM that two inches of belt increase in this lockability test would be an appropriate limit.

The commenters to the SNPRM believe that the two inch limit would decrease the safety benefit of lockability, however, the commenters did not submit any information to support this claim. Therefore, the agency has retained the two inch limit.

5. Belts Subject to Testing

The agency has added language excluding belts which have no retractor, and belts equipped only with an automatic locking retractor (ALR) from the lockability requirements. These belts automatically provide lockability and therefore subjecting them to testing would be unnecessary. The agency notes that it is not excluding dual-mode retractors incorporating both an ALR and an ELR since the consumer must take a specific action to convert the retractor to an ALR and provide lockability.

6. "Nominal Forward Facing Position"

The SNPRM specified that adjustable seats should be adjusted to the "manufacturer's specified nominal forward facing position." The Insurance Institute for Highway Safety (IIHS) requested a definition of this term in the final rule. NHTSA believes that belts should provide lockability at any adjustment position of the seat. Therefore, the regulatory language has been amended to specify that the seat is in any adjustment position.

Belt Labeling and Owner's Manual Information

The SNPRM proposed to require a vehicle's owner's manual include operating instructions if a vehicle user had to take any action to activate the lockability feature of the safety belt. The proposed regulatory language required these instructions to be in the form of "a step-by-step procedure with a diagram or diagrams showing how to activate the locking feature."

Several commenters requested a label be required on the safety belt and/or additional information in the owner's manual concerning lockability. Cosco requested a statement in the owner's manual that the belt system meet the lockability requirement. IIHS requested operating instructions be required on the belt, in addition to the instructions in the owner's manual. CAS requested at least three different warning labels in the vehicle stating that a child could be injured or killed in a car if the child restraint is secured with an automatic belt. Advocates requested a label on all automatic belts warning users that a manual belt is provided to secure a child restraint.

VW stated that the owner's manual requirements were too restrictive. VW stated that some systems may not be easily described in a "step-by-step" procedure (such as a locking latch plate), while other systems may not need a diagram (such as an ALR/ELR retractor). VW asked for a more general requirement for a clear description by whichever method is most appropriate.

NHTSA has concluded that the owner's manual instructions are sufficient. Many of the requests for additional warnings are concerned with automatic belts which have been excluded from the final rule. NHTSA agrees with VW that the SNPRM language may be too specific and has adopted a more general requirement in the final rule.

Leadtime

The SNPRM proposed an effective date of September 1, 1993. Several commenters requested an extension of this date to develop means to provide lockability for automatic belts. As stated previously, automatic belts have been excluded from these requirements. However, to allow adequate leadtime after publication, the effective date has been extended to September 1, 1995.

Rulemaking Analyses and Notices

DOT Regulatory Policies and Procedures

NHTSA has examined the impact of this rulemaking action and determined that, it is not "significant" within the meaning of the Department of Transportation's regulatory policies and procedures.

The one-time redesign and testing costs of this final rule are expected to be minimal because the hardware to achieve lockability is currently available and, in many cases, already being used (for example, locking latch plates or convertible ALR/ELR retractors). The agency estimates that the annual increased consumer costs associated with the lockability requirement are between $30.2 million and $55.0 million. This reflects estimated costs of between $0.75 and $1.50 per seating position for locking latch plates as well as minor added fuel consumption costs. NHTSA estimates that about 79 percent of all light passenger vehicles will require a locking latch plate at the front outboard position, and that about 56 percent will require one at the rear outboard positions.

Regulatory Flexibility Act

NHTSA has also considered the impacts of this rulemaking action under the Regulatory Flexibility Act. Based on that analysis, I hereby certify that this proposal will not have a significant economic impact on a substantial number of small entities. As explained above, NHTSA estimates that no significant impacts on vehicle price or sales will be associated with this final rule. Therefore, there will be no significant impacts on small manufacturers, organizations or jurisdictions.

National Environmental Policy Act

NHTSA has also analyzed this rulemaking action for the purpose of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

Executive Order 12612 (Federalism)

Finally, NHTSA has analyzed this final rule in accordance with the principles and criteria contained in E.O. 12612, and has determined that this final rule does not have sufficiently significant federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice Reform

This final rule does not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (Safety Act; 15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the State requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. Section 105 of the Safety Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

1. The authority citation for part 571 of Title 49 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407, delegation of authority at 49 CFR 1.50.

2. Section 571.208 is amended by adding a new section S7.1.1.5 to read as follows:

§ 571.208 Standard No. 208, Occupant Crash Protection.

* * * * *

S7.1.1.5 *Passenger cars, and trucks, buses, and multipurpose passenger vehicles with a GVWR of 10,000 pounds or less manufactured on or after September 1, 1995 shall meet the requirements of S7.1.1.5(a), S7.1.1.5(b) and S7.1.1.5(c).*

(a) Each designated seating position, except the driver's position, and except any right front seating position that is equipped with an automatic belt, that is in any motor vehicle, except walk-in van-type vehicles and vehicles manufactured to be sold exclusively to the U.S. Postal Service, and that is forward-facing or can be adjusted to be forward-facing, shall have a seat belt assembly whose lap belt portion is lockable so that the seat belt assembly can be used to tightly secure a child restraint system. The means provided to lock the lap belt or lap belt portion of the seat belt assembly shall not consist of any device that must be attached by the vehicle user to the seat belt webbing, retractor, or any other part of the vehicle. Additionally, the means provided to lock the lap belt or lap belt portion of the seat belt assembly shall not require any inverting, twisting or otherwise deforming of the belt webbing.

(b) If the means provided pursuant to S7.1.1.5(a) to lock the lap belt or lap belt portion of any seat belt assembly makes it necessary for the vehicle user to take some action to activate the locking feature, the vehicle owner's manual shall include a description in words and/or diagrams describing how to activate the locking feature so that the seat belt assembly can tightly secure a child restraint system and how to deactivate the locking feature to remove the child restraint system.

(c) Except for seat belt assemblies that have no retractor or that are equipped with an automatic locking retractor, compliance with S7.1.1.5(a) is demonstrated by the following procedure:

(1) With the seat in any adjustment position, buckle the seat belt assembly. Complete any procedures recommended in the vehicle owner's manual, pursuant to S7.1.1.5(b), to activate any locking feature for the seat belt assembly.

(2) Locate a reference point A on the safety belt buckle. Locate a reference point B on the attachment hardware or retractor assembly at the other end of the lap belt or lap belt portion of the seat belt assembly. Adjust the lap belt or lap belt portion of the seat belt assembly pursuant to S7.1.1.5(c)(1) as necessary so that the webbing between points A and B is at the maximum length allowed by the belt system. Measure and record the distance between points A and B along the longitudinal centerline of the webbing for the lap belt or lap belt portion of the seat belt assembly.

(3) Readjust the belt system so that the webbing between points A and B is at any length that is 5 inches or more shorter than the maximum length of the webbing.

(4) Apply a pre-load of 10 pounds, using the webbing tension pull device described in Figure 5 of this standard, to the lap belt or lap belt portion of the seat belt assembly in a vertical plane parallel to the longitudinal axis of the vehicle and passing through the seating reference point of the designated seating position whose belt system is being tested. Apply the pre-load in a horizontal direction toward the front of the vehicle with a force application angle of not less than 5 degrees nor more than 15 degrees above the horizontal. Measure and record the length of belt between points A and B along the longitudinal centerline of the webbing for the lap belt or lap belt portion of the seat belt assembly while the pre-load is being applied.

(5) Apply a load of 50 pounds, using the webbing tension pull device described in Figure 5 of this standard, to the lap belt or lap belt portion of the seat belt assembly in a vertical plane parallel to the longitudinal axis of the vehicle and passing through the seating reference point of the designated seating position whose belt system is being tested. The load is applied in a horizontal direction toward the front of the vehicle with a force application angle of not less than 5 degrees nor more than 15 degrees above the horizontal at an onset rate of not more than 50 pounds per second. Attain the 50 pound load in not more than 5 seconds. If webbing sensitive emergency locking retroactive are installed as part of the lap belt assembly or lap belt portion of the seat belt assembly, apply the load at a rate less than the threshold value for lock-up specified by the manufacturer. Maintain the 50 pound load for at least 5 seconds before the measurements specified in S7.1.1.5(c)(6) are obtained and recorded.

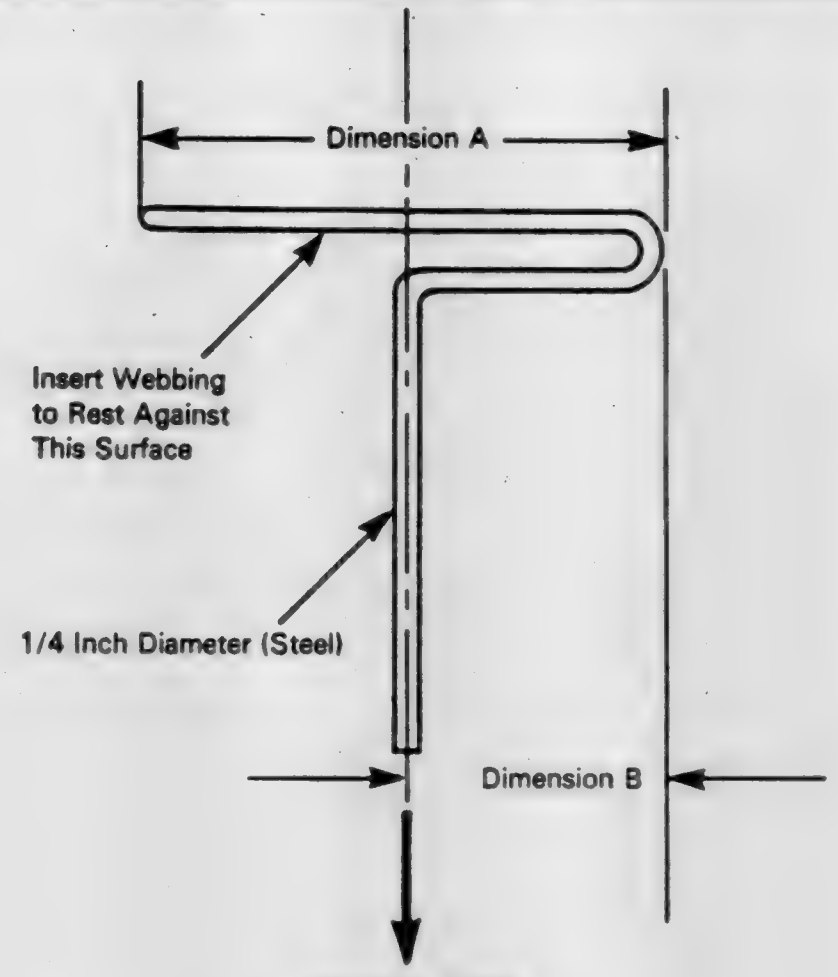
(6) Measure and record the length of belt between points A and B along the longitudinal centerline of the webbing for the lap belt or lap belt portion of the seat belt assembly.

(7) The difference between the measurements recorded under S7.1.1.5(c) (6) and (4) shall not exceed 2 inches.

(8) The difference between the measurements recorded under S7.1.1.5(c) (6) and (2) shall be 3 inches or more.

* * * * *

3. A new Figure 5 is added at the end of § 571.208, to appear as follows:



Dimension A - Width of Webbing Plus 1/2 Inch

Dimension B - 1/2 of Dimension A

Figure 5. - Webbing Tension Pull Device

Issued on October 7, 1993.

Howard M. Smolkin,

Executive Director.

[FR Doc. 93–25053 Filed 10–12–93; 8:45 am]

BILLING CODE 4810–89–M

Proposed Rules

Federal Register
Vol. 58, No. 196
Wednesday, October 13, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1413

RIN 0560–AD22

1994 Extra Long Staple Cotton Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulations to set forth the acreage reduction percentage (ARP) for the 1993 crop of extra long staple (ELS) cotton. This action is required by section 103(h)(5) of the Agricultural Act of 1949 (the 1949 Act), as amended.

DATES: Comments must be received on or before November 16, 1993, in order to be assured of consideration.

ADDRESSES: Comments must be mailed to Director, Fibers and Rice Analysis Division, Agricultural Stabilization and Conservation Service (ASCS), U.S. Department of Agriculture (USDA), room 3754–S, P.O. Box 2415, Washington, DC 20013–2415.

FOR FURTHER INFORMATION CONTACT: Kathryn A. Broussard, Fibers and Rice Analysis Division, ASCS, USDA, room 3758–S, P.O. Box 2415, Washington, DC 20013–2415 or call 202–720–9222.

SUPPLEMENTARY INFORMATION:

Executive Order 12291 and Departmental Regulation 1512–1

This rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and provisions of Departmental Regulation 1512–1 and has been classified as "nonmajor." It has been determined that an annual effect on the economy of $100 million or more will not result from implementation of the provisions of this proposed rule.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule since the Commodity Credit Corporation is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of these determinations.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the catalog of Federal Domestic Assistance, to which this rule applies are: Cotton Production Stabilization—10.052.

Executive Order 12778

This proposed rule has been reviewed in accordance with Executive Order 12778. The provisions of the proposed rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

Executive Order 12372

This program/activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Paperwork Reduction Act

The amendments to 7 CFR part 1413 set forth in this proposed rule do not contain information collections that require clearance by the Office of Management and Budget under the provisions of 44 U.S.C. 35.

Preliminary Regulatory Impact Analysis

The Preliminary Regulatory Impact Analysis describing the options considered in developing this proposed rule and the impact of the implementation of each option is available on request from the above-named individual.

Request for Public Comment

Comments are requested with respect to this proposed rule and such comments shall be considered in developing the final rule.

Background

In accordance with section 103(h)(5) of the 1949 Act, an ARP may be established for the 1994 crop of ELS cotton if it is determined that the total supply of ELS cotton, in the absence of an ARP, will be excessive, taking into account the need for an adequate carry-over to maintain reasonable and stable prices and to meet a national emergency.

Land diversion payments also may be made to producers of ELS cotton, whether or not an ARP for ELS cotton is in effect, if needed to assist in adjusting the total national acreage of ELS cotton to desirable goals. A paid land diversion has not been considered because, given the existing supply/use situation, it is not needed.

If an ARP is announced, the reduction shall be achieved by applying a uniform percentage reduction (including a zero percentage reduction) to the acreage base for each ELS cotton-producing farm. Producers who knowingly produce ELS cotton in excess of the permitted acreage for the farm are ineligible for ELS cotton loans and payments with respect to that farm.

Based on 1994 supply/use estimates as of August 1993, four options are considered. However, because of changes in the 1994 supply/use situation that may develop between now and the ARP announcement date, the actual ARP level may be different from the options discussed in this rule. The 1994 ARP options considered are:

Option 1. 15-percent ARP.
Option 2. 20-percent ARP.
Option 3. 25-percent ARP.
Option 4. 30-percent ARP.

The estimated impacts of the ARP options are shown in the following table.

EXTRA LONG STAPLE COTTON SUPPLY/DEMAND ESTIMATES

Item	Option 1	Option 2	Option 3	Option 4
ARP (%)	15	20	25	30
Participation (%)	54	52	50	45
Planted Acres (thousand)	205	200	195	193
Production (thousand bales)	400	392	384	382
Domestic Use (thousand bales)	65	65	65	65
Exports (thousand bales)	365	360	355	355
Ending Stocks (thousand bales)	140	137	134	132
Stocks to Use Ratio	0.326	0.322	0.319	0.314
Deficiency Payments ($ thousand)	9,710	8,243	6,936	5,827

Accordingly, comments are requested as to the 1994 ARP for ELS cotton. The final ARP level will be set forth at 7 CFR part 1413.

List of Subjects in 7 CFR Part 1413

Cotton, Feed grains, Price support programs, Rice, Wheat.

Accordingly, it is proposed that 7 CFR part 1413 be amended as follows:

PART 1413—FEED GRAIN, RICE, UPLAND AND EXTRA LONG STAPLE COTTON, WHEAT AND RELATED PROGRAMS

1. The authority citation for 7 CFR part 1413 continues to read as follows:

Authority: 7 U.S.C. 1308, 1308a, 1309, 1441–2, 1444–2, 1444f, 1445b-3a, 1461–1469; 15 U.S.C. 714b and 714c.

2. Section 1413.54 is amended by:

A. Revising paragraphs (a)(5)(ii) and (a)(5)(iii),

B. Adding paragraph (a)(5)(iv),

C. Adding paragraph (d)(4)(v) (see paragraph (d)(4) as proposed at regulation published on October 12, 1993; and regulations published at 58 FR 41641 (August 5, 1993) and 58 FR 51934 (October 5, 1993)) to read as follows:

§ 1413.54 Acreage reduction program provisions.

(a) * * *

(5) * * *

(ii) 1992 ELS cotton, 5 percent;

(iii) 1993 ELS cotton, 20 percent; and

(iv) 1994 ELS cotton shall be within the range of 15 to 30 percent, as determined and announced by CCC.

* * * * *

(d) * * *

(4) * * *

(v) Shall not be made available to producers of ELS cotton.

* * * * *

Signed at Washington, DC, on October 6, 1993.

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 93–25037 Filed 10–12–93; 8:45 am]

BILLING CODE 3410-05-P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Establishment of Size Standards

AGENCY: Small Business Administration.

ACTION: Proposed rulemaking; reopening of comment period.

SUMMARY: On August 24, 1993, the Small Business Administration (SBA) published a proposed rule which amends the Small Business Size Regulation to implement the Small Business Credit and Business Opportunity Enhancement Act of 1992. The proposed regulations would set forth the limited circumstances under which the Secretary of a department of the head of a Federal agency may prescribe, for the use of such department or agency, a numerical size standard for determining whether or not an entity is small. The proposed rule established a final date for comments to be submitted to SBA of on or before September 23, 1993. SBA is reopening that comment period for an additional 30 days.

DATES: Written comments must be received on or before November 12, 1993.

ADDRESSES: Written comments should be submitted to Gary M. Jackson, Director, Size Standards Staff, U.S. Small Business Administration, 409 Third Street, SW., 8th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Gary M. Jackson or Ajoy Sinha, (202) 205–6618.

SUPPLEMENTARY INFORMATION: Section 222 of the Small Business Credit and Business Opportunity Enhancement Act of 1992, Public Law No. 102–366, 106 Stat. 986, amends section 3(a) of the Small Business Act (15 U.S.C. 632(a)) to delineate the limited circumstances under which a Secretary of a department or the head of a Federal agency may prescribe, for the use of such department or agency, a numerical size standard for determining whether or not an entity is small. SBA published a proposed rule describing the requirements that a department Secretary or Federal agency head must meet in the **Federal Register**, on August 24, 1993, at 58 FR 44620.

This notice will reopen the comment period to allow Federal departments and agencies adequate time to analyze the proposed rule and its implications and effects for their use. Therefore, the comment period on the proposed rule is hereby reopened and SBA will accept comments on the proposed rule until November 12, 1993.

Dated: October 4, 1993.

Erskine B. Bowles,

Administrator.

[FR Doc. 93–25060 Filed 10–12–93; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–144–AD]

Airworthiness Directives; British Aerospace Model BAe 146–100A, –200A, and –300A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain British Aerospace Model BAe 146–100A, –200A, and –300A series airplanes. This proposal would require

modification of the electrical power supply system. This proposal is prompted by a report that a single phase fault current can cause sequential failure of all onboard main electrical generators. The actions specified by the proposed AD are intended to prevent such failures and subsequent loss of electrical power sources onboard the airplane.

DATES: Comments must be received by December 8, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–144–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041–0414. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–144–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–144–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain British Aerospace Model BAe 146–100A, –200A, and –300A series airplanes. The CAA advises that a single phase fault current (electrical short), having a magnitude of between 175 and 270 amps, can activate the Generator Control Unit (GCU) undervoltage protection circuit rather than the GCU overcurrent protection circuit. Consequently, all the main generators installed on the airplane would shut down sequentially. The subject single phase fault current can occur in certain electrical equipment powered by a 3-phase electrical power supply; their cause has not been determined. This condition, if not corrected, could result in sequential failure of all onboard main electrical generators and subsequent loss of electrical power sources onboard the airplane.

British Aerospace has issued Service Bulletin SB.24–91–70488B&C, Revision 1, dated March 29, 1993, that describes procedures for modifying the electrical power supply system (Modification HCM70488B). This modification entails replacing the currently-installed GCU's with improved GCU's. The improved GCU's contain an undervoltage protection circuit which has been reconfigured to detect average voltage rather than lowest phase voltage. Installation of improved GCU's will provide improved control of the electrical power supply system's voltage and current. The CAA classified part of this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require modification of the electrical power supply system. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 49 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $10,780, or $220 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Docket 93–NM–144–AD.

Applicability: Model BAe 146–100A, –200A, and –300A series airplanes, on which Modification HCM70488B has not been accomplished, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent sequential failure of all onboard main electrical generators and subsequent loss of electrical power sources onboard the airplane, accomplish the following:

(a) Within 3,100 hours time-in-service after the effective date of this AD, modify the electrical power supply system by installing Modification HCM70488B in accordance with British Aerospace Service Bulletin SB.24–91–70488B&C, Revision 1, dated March 29, 1993.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on October 6, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–25042 Filed 10–12–93; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 93–NM–135–AD]

Airworthiness Directives; Canadair Model Turboprop CL–215–6B11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Canadair Model CL–215–6B11 series airplanes. This proposal would require inspections to detect cracking in the rear engine mount struts, and replacement of struts with new struts, if necessary; and the eventual replacement of all struts with new struts. This proposal is prompted by reports of failures of these rear engine mount struts due to cracking that was caused by rosette welds on the shank of the struts not achieving full weld penetration during manufacture. The actions specified by the proposed AD are intended to prevent failure of the rear engine mount struts, which could subsequently result in reduced structural integrity of the nacelle and engine support structure.

DATES: Comments must be received by December 8, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–135–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087 Station A, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Jeff Casale, Aerospace Engineer, Airframe Branch, ANE–172, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791–6220; fax (516) 791–9024.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–135–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–135–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Transport Canada Aviation, which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on certain Canadair Model CL–215–6B11 series airplanes. Transport Canada Aviation advises that five reports have been received indicating that the rear engine mount struts have failed on de Havilland, Inc., Model DHC–8–100, and –300 series airplanes. Subsequent investigation revealed that cracking had initiated at one of the rosette welds on the shank of the strut just above the bearing. This cracking was caused by the welds not achieving full weld penetration during manufacture. This condition, if not detected and corrected in a timely manner, may lead to the failure of the struts, which could subsequently result

in reduced structural integrity of the nacelle and engine support structure.

The engine support structures on the de Havilland Model DHC–8–100 and –300 series airplanes are similar in design to those installed on certain Canadair Model CL–215–6B11 series airplanes. Therefore, certain Canadair Model CL–215–6B11 series airplanes may be subject to the same unsafe condition revealed on the de Havilland models. (The FAA is considering similar rulemaking action applicable to de Havilland Model DHC–8–100 and –300 series airplanes.)

Canadair has issued Model CL–215–6B11 Alert Service Bulletin 215–A3040, dated September 2, 1992, that describes procedures for repetitive visual inspections to detect cracking in the rear engine mount struts, and replacement of struts with new struts, if necessary. Transport Canada Aviation classified this service bulletin as mandatory and issued Canadian Airworthiness Directive CF–92–22, dated November 17, 1992, in order to assure the continued airworthiness of these airplanes in Canada.

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada Aviation has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada Aviation, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require repetitive visual inspections to detect cracking in the rear engine mount struts, and replacement of struts with new struts, if necessary. This proposed AD also would require the eventual replacement of all struts with new struts; such replacement would constitute terminating action for the visual inspections. The actions would be required to be accomplished in accordance with the service bulletin described previously.

Currently, there are no Canadair Model CL–215–6B11 series airplanes on the U.S. Register. However, should an affected airplane be imported and placed on the U.S. Register in the future, it would take approximately 10 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the total cost impact of the proposed AD would be $550 per airplane.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Canadair: Docket 93–NM–135–AD.

Applicability: Model CL–215–6B11 series airplanes, serial numbers 1057, 1061, 1080, 1113 through 1115 inclusive, 1121, 1122, 1124, and 1125; turboprop versions only; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the rear engine mount struts, which could subsequently result in reduced structural integrity of the nacelle and engine support structure, accomplish the following:

(a) Within 50 hours time-in-service after the effective date of this AD, perform a visual inspection to detect cracking in the rear engine mount struts, part number (P/N) 87110016–003, in accordance with Canadair Model CL–215–6B11 Alert Service Bulletin 215–A3040, dated September 2, 1992.

(1) If no cracking is detected, repeat the visual inspection thereafter at intervals not to exceed 50 hours time-in-service, until the requirements of paragraph (b) of this AD are accomplished.

(2) If any cracking is detected, prior to further flight, replace the engine rear mount strut with a new strut, P/N 87110016–009 or –011, in accordance with the service bulletin.

(b) Within 2 years after the effective date of this AD, replace all engine rear mount struts, with new struts, P/N 87110016–009 or –011, in accordance with Canadair Model CL–215–6B11 Alert Service Bulletin 215–A3040, dated September 2, 1992. Such replacement constitutes terminating action for the inspections required by this AD.

(c) As of the effective date of this AD, no person shall install a rear engine mount strut, P/N 87110016–003, on any airplane.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on October 6, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–25043 Filed 10–12–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 93–NM–156–AD]

Airworthiness Directives; McDonnell Douglas Model DC–8, DC–9, and DC–9–80 Series Airplanes; Model MD–88 Airplanes; and C–9 (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–8, DC–9, and DC–9–80 series airplanes; Model MD–88 airplanes; and C–9 (military) airplanes. This proposal would require inspection of the center and side windshields, and replacement of discrepant windshields. This proposal is prompted by reports that the core ply of certain windshields were incorrectly tempered during the manufacturing process. The actions specified by the proposed AD are intended to prevent failure of the windshield.

DATES: Comments must be received by November 29, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–156–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846–1771, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1–L5B. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: David Hempe, Aerospace Engineer, Airframe Branch, ANM–122L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5224; fax (310) 988–5210; or Mike Lee, Aerospace Engineer, Airframe Branch, ANM–122L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5325; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–156–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–156–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Recently, one operator of Model DC–9–82 series airplanes reported that the first officer's side windshield failed due to a failure of the glass core ply. Investigation revealed that this failure could be attributed to incorrect tempering of the core ply during the manufacturing process of center and side windshields that were manufactured by Pilkington Aerospace (formerly Swedlow Incorporated) after February 1992. If the core ply should fail in flight, the two remaining plies should sustain normal operating loads (during cabin pressurization). However, the windshield would lose its fail-safe capability and would be unable to protect the pilot from a bird strike or an impact with other foreign objects. This condition, if not corrected, could result in failure of the windshield.

Although the windshield involved in the described incident was installed on a Model DC–9–82 airplane, the discrepant windshields could also be installed on Model DC–8 and DC–9 series airplanes, other Model DC–9–80 series airplanes, Model MD–88 airplanes, and C–9 (military) airplanes. Therefore, the FAA has determined that the same unsafe condition may also exist with regard to those airplanes.

The FAA has reviewed and approved McDonnell Douglas DC–8 Alert Service Bulletin A56–16, Revision 1, dated July 1, 1993 (for Model DC–8 series airplanes); and McDonnell Douglas DC–9 Alert Service Bulletin A56–15, dated June 15, 1993, and Revision 1, dated September 15, 1993 (for all Model DC–9 series airplanes). These service bulletins describe procedures for inspection and replacement of center and side windshields that were manufactured by Pilkington Aerospace. Replacement windshields are either those not manufactured by Pilkington, or those that have been manufactured by Pilkington, but previously recertified and re-identified by Pilkington.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require an inspection of the center and/or side windshields to determine the manufacturer; and replacement of any windshields with either ones that were not manufactured by Pilkington, or ones that were manufactured by Pilkington, but have been previously recertified and re-identified by Pilkington. These actions would be required to be accomplished in accordance with the applicable service bulletin described previously. Only airplanes on which the windshield(s) was replaced after February 1992 would be affected.

There are approximately 235 Model DC–8 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 140 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately .5 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is $55 per work hour. Based on these figures, the cost impact of the proposed inspections of this AD on U.S. operators of Model DC–8 series airplanes is estimated to be $3,850, or $27.50 per airplane.

There are approximately 1,978 Model DC–9 and DC–9–80 series airplanes, Model MD–88 airplanes, and C–9 (military) airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,079 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately .5 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the cost impact of the proposed inspections of the AD on U.S. operators of Model DC–9 and DC–9–80 series airplanes, Model MD–88 airplanes, and C–9

(military) airplanes is estimated to be $29,673, or $27.50 per airplane.

Based on the figures discussed above, the total cost impact of the proposed inspection actions on U.S. operators is estimated to be $33,523. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

Should an inspection reveal that a discrepant windshield was installed, the necessary replacement of that windshield would require approximately 10 additional work hours to accomplish, at an average labor rate of $55 per work hour. Required replacement parts would be provided at no cost to operators. Based on these figures, the total cost impact of any necessary replacement on U.S. operators would be $550 per airplane.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 93–NM–156–AD.

Applicability: Model DC–8–60 and –70 series airplanes on which the center windshield has been replaced after February 1992; and Model DC–9–10, –20, –30, –40, and –50 series airplanes, Model DC–9–81, –82, –83, and –87 airplanes, Model MD–88 airplanes, and C–9 (military) airplanes, on which the center and/or side windshield(s) has been replaced after February 1992; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the windshield, accomplish the following:

(a) For Model DC–8–60 and –70 series airplanes: Within 30 days after the effective date of this AD, perform a visual inspection of the center windshield to determine the manufacturer.

(1) If the windshield was not manufactured by Pilkington Aerospace: No further action is required by this AD.

(2) If the center windshield, part number 5887275–501, was manufactured by Pilkington Aerospace: Prior to further flight, replace the center windshield with either of the windshields specified in paragraph (a)(2)(i) or (a)(2)(ii) of this AD, in accordance with McDonnell Douglas DC–8 Service Bulletin A56–16, Revision 1, dated July 1, 1993.

(i) A center windshield that was not manufactured by Pilkington Aerospace; or

(ii) A center windshield that has been manufactured by Pilkington Aerospace, but previously recertified and re-identified by Pilkington Aerospace.

(b) For Model DC–9–10, –20, –30, –40, and –50 series airplanes; Model DC–9–81, –82, –83, and –87 airplanes; Model MD–88 airplanes; and C–9 (military) airplanes: Within 30 days after the effective date of this AD, perform a visual inspection of the center windshield and side windshield to determine the manufacturer.

(1) If the center and side windshields were not manufactured by Pilkington Aerospace: No further action is required by this AD.

(2) If the center windshield, part number 5887275–501, or the side windshield, part number 5912290–501, was manufactured by Pilkington Aerospace: Prior to further flight, replace the center and/or side windshield(s) with either of the windshields specified in paragraph (b)(2)(i) or (b)(2)(ii) of this AD, in accordance with McDonnell Douglas DC–9 Alert Service Bulletin A56–15, dated June 15, 1993; or Revision 1, dated September 15, 1993.

(i) A center and/or side windshield(s) that was not manufactured by Pilkington Aerospace; or

(ii) A center and/or side windshield(s) that has been manufactured by Pilkington Aerospace, but previously recertified and re-identified by Pilkington Aerospace.

(c) As of the effective date of this AD, no person shall install on any airplane a center windshield, part number 5887275–501, or side windshield, part number 5912290–501, that has been manufactured by Pilkington Aerospace, unless that windshield has been previously recertified and re-identified by Pilkington Aerospace.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on October 6, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–25044 Filed 10–12–93; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–33026; File No. S7–29–93]

RIN 3235–AG00

Payment for Order Flow

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Securities and Exchange Commission ("Commission" or "SEC") proposes a rule and rule amendments to require enhanced disclosure of payment for order flow practices on customer confirmations, annual account statements, and on new accounts. The practice of payment for order flow has generated much debate within the securities industry regarding the potential benefits and harm to public investors. The Commission's proposal is designed to advance that debate by offering a concrete regulatory proposal and possible alternatives or supplements to that proposal for public consideration. The Commission believes that fuller disclosure of payment for order flow practices will further competition for retail orders by enabling customers to evaluate better the markets to which their orders are routed.

DATES: Comments should be submitted on or before December 3, 1993.

ADDRESSES: Interested persons should submit three copies of their written data, views and opinions to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, and should refer to File No. S7–29–93. All submissions will be made available for public inspection and copying at the Commission's Public Reference Room, room 1024, 450 Fifth Street, NW, Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Jill W. Ostergaard, 202/272–7380; Attorney, Branch of the National Market System, Office of Self-Regulatory Oversight and Market Structure, Division of Market Regulation, Securities and Exchange Commission, (Mail Stop 5–1) 450 5th Street, NW, Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

The Commission proposes for comment amendments to Rule 10b–10(a)(7)(iii), (17 CFR 240.10b–10(a)(7)(iii)) requiring enhanced disclosure on customer order confirmations and Rule 10b–10(e)(9) (17 CFR 240.10b–10(e)(9), defining payment for order flow; and proposes Rule 11Ac1–3, (17 CFR 240.11Ac1–3) requiring enhanced disclosure on customer annual account statements, and on new accounts regarding payment for order flow. Generally speaking, payment for order flow is the practice of market makers or exchange specialists compensating brokerage firms for directing customer orders to them for execution.[1] As discussed in greater detail below, this issue has generated much debate and controversy within the securities industry regarding the potential benefits and harm to public investors, and the U.S. Congress has shown continuing interest in the resolution of that controversy.[2] In 1984, the NASD established a special committee to consider the topic of payment for order flow,[3] and in 1989, the Commission hosted a roundtable discussion on this topic.[4] In 1990, the Chicago Stock Exchange ("CHX") (formerly the Midwest Stock Exchange or "MSE") submitted a petition for rulemaking[5] regarding payment for order flow that was withdrawn on October 29, 1991.[6] In late 1990, the NASD Board of Governors appointed another special committee, headed by former SEC Chairman David S. Ruder, to study payment for order flow practices in the securities industry.[7] In 1992, the Commission solicited comment on payment for order flow practices as part of the Division of Market Regulation's ("Division") Market 2000 Study.[8] Today's proposal is designed to advance that debate by offering a concrete regulatory proposal and possible alternatives or supplements to that proposal for public consideration.

Specifically, the Commission is proposing to amend Rule 10b–10, subparagraph (a)(7)(iii), (17 CFR 240.10b–10(a)(7)(iii) to require broker-dealers to include on the confirmation of each transaction in a national market system security whether payment for order flow was received and, if so, the amount of any monetary payment, discount, rebate or reduction in fee received in connection with the transaction in a national market system security. In addition, the proposed amendment to paragraph (e)(9) of Rule 10b–10 would define payment for order flow to include all forms or arrangements compensating brokers for directing order flow.

The Commission is also proposing to add Rule 11Ac1–3, paragraphs (a)(1) and (2), to require disclosure on each new account and on a yearly basis thereafter, on the annual account statement, the firm's policies regarding receipt of payment for order flow from any broker dealer (including market makers), exchange members or exchanges to which it routes customers' orders in national market system securities for execution; and information regarding the aggregate amount of monetary payments, discounts, rebates or reduction in fees received by the firm over the past year.

Although the Commission preliminarily believes a disclosure approach will best address concerns regarding payment for order flow, the Commission also requests comment on various alternatives to that approach. These alternatives range from prohibiting payment for order flow to clarifying the method by which trades and quotes are reported. The remainder of this release describes payment for order flow practices and issues raised by those practices. Thereafter, the release describes the approaches the Commission might take to address those concerns, including increased disclosure requirements applicable to payment for order flow, remission of those payments to the customer whose order generated the payment, and changes to trade and quote reporting rules to reduce the minimum increment for reporting prices. The release identifies specific areas commentators might address and includes the text of a proposed rule and rule amendments.

II. Description of Payment for Order Flow Practices

The practice of payment for order flow evolved in part from fees traditionally paid by wholesale market makers in OTC securities to their

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[1] As discussed more fully below (see Section III.E., infra), there is a debate among the commentators regarding precisely what types of practices should be deemed to involve payment for order flow. On the one hand, some have focused on cash payments by over-the-counter ("OTC") market makers for the receipt of order flow. Similarly, some have argued that cash payment for order flow is distinguishable from non-cash payments such as fee reductions or rebates because, unlike rebates, cash payments may compromise the broker's order routing decision such that the best execution of customer orders is not obtained. On the other hand, others have argued that a variety of economic incentives to direct order flow to a particular market are, at least, the economic equivalent of payment for order flow.

[2] On March 6, 1992, Congressman John D. Dingell, Chairman of the House Committee on Energy and Commerce wrote to then Chairman Breeden regarding payment for order flow. See letter from John D. Dingell, Chairman, House Committee on Energy and Commerce, to Honorable Richard C. Breeden, Chairman, SEC, dated March 6, 1992.

On May 13, 1993, the Subcommittee on Telecommunications and Finance ("Subcommittee") of the House Committee on Energy and Commerce held a hearing regarding the future of the stock market and inducements for order flow ("Subcommittee Hearing"). The following persons testified before the Subcommittee: Richard A. Grasso, Executive Vice Chairman and President, New York Stock Exchange, Inc. ("NYSE"); David S. Ruder, Partner, Baker and McKenzie; Bernard L. Madoff, Chairman, Bernard L. Madoff Investment Securities; Robert B. Fagenson, Managing Partner, Fagenson Frankel Streicher & Cohen (a NYSE specialist firm); and Caroline B. Austin, President and Chief Executive Officer, Dempsey & Company (a Chicago Stock Exchange specialist firm). All of the individuals provided written testimony. Ms. Austin and Mr. Fagenson issued a joint statement.

[3] The Committee concluded that, at the least, confirmation disclosure of payment for order flow is required. On April 30, 1985, the NASD issued Notice to Members 85–32, which reminded members of their obligations to obtain best execution. The notice also stated that payments received for directing order flow must be disclosed in customer confirmations.

[4] See Securities and Exchange Commission, Roundtable on Commission Dollar and Payment for Order Flow Practices (July 24, 1989) (official transcript); and Division of Market Regulation, Roundtable Summary 14 (available in the Commission's Public Reference Room).

[5] The Petition was filed with the Commission on May 21, 1990 pursuant to section 553(e) of the Administrative Procedure Act, 5 U.S.C. 553(e) (1988), and Rule 4(a) of the Commission's Rules of Practice, 17 CFR 201.4(a) (1992).

[6] See letter from J. Craig Long, Vice President, General Counsel and Secretary, MSE (currently the CHX), to Jonathan G. Katz, Secretary, SEC, dated October 29, 1991.

[7] The Committee issued its report on July 23, 1991. See NASD, Inducements for Order Flow (July 1991) ("Ruder Report").

[8] Securities Exchange Act Release No. 30920 (July 14, 1992), 57 FR 32287.

correspondents.[9] Historically, regional correspondents have been paid a fee per share for handling trades with other local firms on behalf of the wholesale firm. At times, these regional correspondents also have been paid for sending their order flow to the wholesale firm.[10] As competition for OTC order flow increased, wholesale firms began to approach other retail firms, particularly discount brokers, to assure themselves a steady stream of orders. To compensate retail firms for guaranteeing such order flow, wholesalers began paying for this order flow. The payment of cash for order flow is now common in the OTC market.[11] The payment of cash or its monetary equivalent for order flow in the listed market is a relatively recent phenomenon, but one that has become widespread. It began when several new third market makers [12] entering the market within the past five years used it to attract order flow to their operations, and then spread to some regional specialists.[13] The regional stock exchanges maintain that third market makers instituted the practice of payment for order flow on a large scale, and that the regionals followed to prevent loss of business.[14] In addition, although the practice originated with wholesale firms with no direct retail order flow,[15] some integrated firms also may be paying for order flow now. Although no precise figures exist, the Commission estimates that between 15% and 20% of the order flow in listed stocks is routed pursuant to cash payment arrangements. Generally, firms that have payment for order flow arrangements with other firms pay a small fee, usually between one and two cents per share, for retail orders routed to them.[16]

In this connection, many OTC and third market makers have developed automated execution systems that provide their customers with quick, efficient and comparatively inexpensive executions at the best displayed quotation.[17] Some systems also expose orders which provide an opportunity for customer orders to be executed at a price between the quoted spread.[18] These automated execution systems have enhanced these firms' ability to execute small orders more cost effectively. As competition among firms providing automated execution systems has increased, it appears that firms increasingly use payment for order flow as a means of attracting order flow to their automated execution systems.

III. Issues Raised by Payment for Order Flow

Payment for order flow practices may pose a potential conflict between the interests of a customer and the interests of a broker. The conflict of interest inherent in the receipt of such compensation raises disclosure, best execution, and agency and market structure issues, which are discussed below.

A. Disclosure

A firm receiving payment for order flow must, at least, meet certain minimum disclosure requirements. The Commission's confirmation disclosure rule, Rule 10b-10 under the Securities Exchange Act of 1934 ("Act"),[19] requires that confirmations sent to customers for agency transactions disclose the "price" at which the order was executed, as well as the remuneration paid to the broker-dealer by the customer in the trade. Paragraph (a)(7)(iii) of Rule 10b-10 also generally requires broker-dealers to disclose the source and amount of any other remuneration received in connection with a transaction. In most transactions,[20] however, the Rule permits broker-dealers merely to state "whether any other remuneration has been or will be received," and to furnish the source and amount of such other remuneration on written request. Thus, Rule 10b-10 currently requires a broker-dealer to indicate specifically if it is receiving payment for order flow in connection with a particular customer trade, but allows the broker-dealer to

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[9] Firms often have relationships with regional firms, which are known as "correspondent networks." Correspondent networks were developed to provide regional firms an established contact point in the New York City market and to provide New York firms access to a wider geographical area. The correspondent relationship usually results in the regional correspondent firm sending much of its OTC order flow to the New York firm, providing the firm with a steady stream of orders and the regional firm with a strong relationship with a market maker.

The practice of paying for order flow in the retail equity markets has been compared at times to the use of soft dollars in the institutional markets. Both practices involve agents obtaining benefits from broker-dealers as a result of customers' securities transactions; yet there are major differences between these practices. Payment for order flow and the use of soft dollars involve different market participants, have different competitive and market structure concerns, and have different legal frameworks. The Commission believes, however, that disclosure is an important means of addressing concerns arising from soft dollar practices as well as payment for order flow. Accordingly, the Commission has directed the staff to report to the Commission, within 45 days, on the advisability of requiring more extensive disclosure by investment advisers of their soft dollar arrangements.

[10] The CHX (formerly the MSE) argues that correspondent practices bear no relationship to current rebate practices. See letter from J. Craig Long, Vice President, MSE, to Jonathan G. Katz, Secretary, SEC, dated January 8, 1991 ("January Long Letter"), at 7.

[11] At the Roundtable on Payment for Order Flow in 1989, the NASD reported that the results of a member survey indicated that of the 435 responses received, 62 firms reported making payments to some 241 firms. The average payments reportedly were one to two cents per share. See Roundtable Summary, supra note 4, at 14.

[12] Third market makers make OTC markets in stocks that are also listed and traded on an exchange.

[13] In September of 1989, the Division sent letters to the SROs requesting that they survey members regarding the extent of payment for order flow practices. The Philadelphia Stock Exchange reported that they surveyed 179 members and received 156 responses claiming that no member currently pays for order flow. See letter from Diane Anderson, Assistant Vice President, Examinations Department, Philadelphia Stock Exchange, to Jill Finder, Attorney, Branch of the National Market System, Office of Self-Regulatory Oversight and Market Structure, Division of Market Regulation, SEC, dated February 23, 1990. The CHX reported that no specialists on the CHX reported engaging in payment for order flow, although the Commission understands that some CHX specialists now may be paying for order flow. See letter from J. Craig Long, Vice President, General Counsel and Secretary, MSE, to Richard G. Ketchum, Director, Division of Market Regulation, SEC, dated February 21, 1990. The Pacific Stock Exchange surveyed 461 members and received 156 responses. Of the 82 specialists responding (a 100% response rate), 40 pay or receive payment for order flow. Of the 130 market makers responding (a 53% response rate), only one pays or receives payment for order flow. Of the 47 floor brokers responding (a 36% response rate), none pays or receives payment for order flow. See letter from David P. Semak, Vice President, Regulation, Pacific Stock Exchange, to Jill C. Finder, Attorney, SEC, dated February 23, 1990. The Boston Stock Exchange reported that out of 21 specialist firms, none pays or receives cash payment for order flow, but three firms engage in other forms of reciprocal practices. See letter from William G. Morton, Jr., Chairman and Chief Executive Officer, Boston Stock Exchange, to Richard G. Ketchum, Director, Division of Market Regulation, SEC, dated August 21, 1990. The Commission received no written response from the New York Stock Exchange ("NYSE") or the American Stock Exchange.

See also Norris, N.Y. Times, Mar. 2, 1992, at D1; Coffee, Brokers and Bribery, N.Y.L.J., Sept. 27, 1990, at 5; Torres, Third-Market Trading Crowds Stock Exchanges, Wall St. J., Mar. 8, 1990, at C1.

[14] See letter from William G. Morton, Jr., BSE, John L. Fletcher, MSE, Leopold Korins, PSE, and Nicholas A. Giordano, Phlx, to Jonathan G. Katz, Secretary, SEC, dated December 11, 1992.

[15] Because of their lack of retail networks, wholesale firms often are dependent on their ties to other broker-dealer firms for order flow.

[16] The Commission understands that payment for unlisted stocks is greater than payment for listed stocks.

[17] Orders not processed through these systems are executed over the phone, manually confirmed, and then sent to clearing. Automated execution systems automate each of these steps. See Division of Market Regulation, The October 1987 Market Break 1–5 to 1–7 and Chapter 7 (Feb. 1988), and Division of Market Regulation, Market Analysis of October 13 and 16, 1989 35–61 and 86–88 (Dec. 1990) for a description of these systems.

[18] See Madoff Letter, infra. note 28.

[19] 17 CFR 240.10b-10.

[20] The only transactions subject to the greater disclosure requirements are purchases from broker-dealers participating in a distribution, and sales where the broker is participating in a tender offer.

omit the description of this payment from the confirmation.

On April 18, 1990, the NASD filed with the Commission a proposed rule change, subsequently amended, that would require enhanced disclosure of payment for order flow to customers.[21] Specifically, the amendment to the NASD's Rules of Fair Practice would require members receiving compensation for sending customer orders to a particular market center or market maker to give or send to each customer, at or before the completion of each transaction, written notification disclosing the following, in bold print:

The firm receives remuneration for directing orders to particular broker/dealers or market centers for execution. Such remuneration is considered compensation to the firm, and the source and amount of any compensation received by the firm in connection with your transaction will be disclosed upon request.

Allowing post-confirmation description of additional compensation eases the difficulty for broker-dealers of disclosing diverse additional compensation arrangements; however, this disclosure method may not effectively inform customers of factors influencing the broker-dealers' execution of their orders. Unless a confirmation clearly indicates that payment for order flow is received, the customer will not be aware that the arrangement exists, much less that there is more information about the arrangement available from the broker-dealer upon written request. Ambiguity on this score, combined with the requirement that the customer request the description in writing, in practice may not provide adequate disclosure of payment for order flow practices. Critics of payment for order flow recommend, at the very least, enhancing current disclosure requirements.[22]

The Commission preliminarily believes that there is a clear need for accurate and complete disclosure to customers of payment for order flow practices. A broker-dealer's practices may be significant to a customer in choosing a broker-dealer and may affect how the customer deals with a broker-dealer. For instance, if a customer were aware that its broker-dealer directed orders in exchange-listed stocks to a third market maker or exchange market in return for payment for those orders, the customer might choose to (1) direct the broker-dealer to route its order to a particular market,[23] (2) give its order to a broker that does not receive payment for order flow, or (3) try to negotiate a lower commission to reflect that its broker-dealer received payment for execution of its orders. Therefore, the means of assuring adequate disclosure to customers is an important issue.

B. Best Execution

Broker-dealers are under a duty to seek to ensure that their customers obtain the "best execution" of their orders.[24] Thus, at a minimum, firms accepting remuneration from a market maker for directing order flow to that market maker are obligated to fulfill their duty of best execution to their customers.[25] Indeed, the NASD

[21] File No. SR–NASD–90–22. Securities Exchange Act Release No. 28020 (May 15, 1990), 55 FR 21284. The proposal is the subject of a separate proceeding in which the Commission has sought public comment. The Commission received 11 comment letters responding to the initial release, two of which supported the proposal (see letters to Jonathan G. Katz, Secretary, SEC, from Alan B. Levenson, Fulbright & Jaworski, and Irving M. Pollack (on behalf of the firms of Bernard L. Madoff Investment Securities, Inc., Mayer & Schweitzer, Inc., and Herzog, Heine, Geduld, Inc.), dated September 19, 1990 ("Pollack Letter"); and Frederick J. Reif, Vice President, A.G. Edwards & Sons, Inc., dated October 4, 1990 ("Reif Letter")); seven of which opposed it (see letters to Jonathan G. Katz from Andrew M. Klein (on behalf of anonymous clients), Schiff, Hardin & Waite, dated July 5, 1990 ("Klein Letter"); Thomas F. Ryan, Jr., Executive Managing Director and John M. Liftin, General Counsel, Kidder, Peabody & Co., dated July 27, 1990 ("Ryan Letter"); J. Craig Long, Vice President, General Counsel and Secretary, MSE, dated July 17, 1990 ("July Long Letter"); James E. Buck, Senior Vice President and Secretary, NYSE, dated June 18, 1990 ("Buck Letter"); Margaret G. Abrams, Attorney, Fenchurch Securities, Inc., dated June 12, 1990 ("Abrams Letter"); Thomas G. Wilson, dated June 12, 1990 ("Wilson Letter"); Christopher P. Kleihege, President, K Securities, dated June 7, 1990 ("Kleihege Letter") and letter from Peter Blowitz, President, Security Traders Association of Los Angeles, Inc., to Brandon Becker, Associate Director, Division of Market Regulation, SEC, dated April 18, 1991 ("Blowitz Letter")); one supported the proposal subject to specific comments (see letter from Jack W. Lavery, Senior Vice President, Merrill Lynch International Bank, to Jonathan G. Katz, dated June 22, 1990 ("Lavery Letter")); and one requested that the Commission republish the release with a request for comments on additional issues (see letter from Robert M. Lam, Chairman, Pennsylvania Securities Commission, to Jonathan G. Katz, Secretary, SEC, dated July 27, 1990).

Of those opposing the filing, four oppose the practice of payment for order flow outright, regardless of the disclosure (see July Long Letter, Klein Letter, Kleihege Letter and Blowitz Letter; separately, the MSE also requested that the Commission disapprove the NASD's proposal); two oppose the practice and believe that the NASD's proposed language is inadequate (see Ryan Letter and Wilson Letter); and one did not express opposition to the practice but believes the NASD's disclosure is inadequate (see Buck Letter). Those commentators who oppose the practice raised best execution concerns and commercial bribery issues and indicated that the practice may be inimical to the national market system. One opposing commentator believed that current disclosure practices are adequate (see Abrams Letter). The commentator supporting the proposal subject to specific comments suggested that the language appear in bold type-face on the face of the confirmation and that it be reworded to provide that the broker had received payment for order flow when it indeed had (see Lavery Letter).

The NASD also filed an amendment to the proposed rule change on December 18, 1990. Securities Exchange Act Release No. 28774 (Jan. 14, 1991), 56 FR 2573. The amendment modifies the disclosure language to state affirmatively that the market maker accepts payment for order flow where applicable. The Commission received one comment letter on the amendment from the NYSE, which argued that the proposal continues to be inconsistent with Rule 10b-10. Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Jonathan G. Katz, dated February 21, 1991.

The NASD recently filed an additional rule proposal regarding enhanced disclosure. The Commission will review the proposal and will notice the filing in due course. See File No. SR–NASD–93–53.

[22] See letter from John B. Burke, President, Alliance of Floor Brokers, to Jonathan G. Katz, Secretary, SEC, dated October 19, 1992 ("Alliance of Floor Brokers Letter"); letter from Colleen Curran Harvey, Senior Counsel, IDS Financial Services, Inc., to Jonathan G. Katz, Secretary, SEC, dated October 20, 1992 ("IDS Letter"); letter from Jeffrey R. Larsen, Senior Legal Counsel, Fidelity Investments, to Jonathan G. Katz, Secretary, SEC, dated November 5, 1992 ("Fidelity Investments Letter"); letter from Harold S. Bradley, Director of Equity Trading Investors Research Corporation, to Jonathan G. Katz, Secretary, SEC, dated November 18, 1992 ("Investors Research Letter"); letter from David Humphreville, Co-Chairman, and Caroline B. Austin, Co-Chairman, National Specialists Association, to Jonathan G. Katz, Secretary, SEC, dated December 11, 1992 ("National Specialists Association Letter"); letter from J.R.C. White, Head of Department of Conduct of Business, Securities and Futures Authority, to Jonathan G. Katz, Secretary, SEC, dated October 20, 1992 ("Securities and Futures Authority Letter").

[23] See Section IV.A., *infra*.

[24] NASD Rules of Fair Practice, Art. III, section 1, Interpretation of the Board of Governors on Execution of Retail Transactions in the Over-The-Counter Market. See also Section 11A(a)(1)(D) of the Act, 15 U.S.C. 78k–1(a)(1)(D) (1988). Broker-dealers also have relevant disclosure obligations under the general antifraud provisions of the securities laws. In particular, the "shingle theory," which has been adopted by the Commission and affirmed by the courts, holds that a dealer who engages in business impliedly represents that he will deal fairly with the public and in accordance with the standards of the profession. See *In re Duker & Duker*, 5 S.E.C. 386 (1939); and N. Wolfson, R. Phillips & T. Russo, Regulation of Brokers, Dealers and Securities Markets ¶ 2.10, at 2–51 (1977).

Further, in the multiple trading environment, "best execution" refers to the obligation of the broker to execute a customer's order in the best market. See section 11A(a)(1)(C)(iv) of the Act, 15 U.S.C. 78k–1(a)(1)(C)(iv) (1988). See also Securities Exchange Act Release No. 26870 (May 26, 1989), 43 SEC Docket 1793 (Adoption of Rule 19c–5, Multiple Trading of Standardized Options).

[25] At least one commentator, however, has stated that payment for order flow practices conflict with self-regulatory organization rules "compelling adherence to just and equitable principles of trade • • •." See Klein Letter, *supra* note 21, at 15. But see Ruder Report, *supra* note 7, at 27–29; letter from Frank J. Wilson, Executive Vice President and General Counsel, NASD, to Jonathan G. Katz, Secretary, SEC, dated August 31, 1990 ("NASD 1990 Letter") at 2; and Pollack Letter, *supra* note 21.

Some have also argued that the payee must be held to have assumed at least part of the duty of best execution. See letter from Richard B. Gunter, Jr., Chairman, and John L. Watson III, President,

Continued

repeatedly has noted that pursuant to its rules, members who receive payment for order flow are under an obligation to ensure that customers obtain "best execution" of their orders.[26]

In describing a brokerage firm's best execution obligation, the Commission has noted that:

> [while] brokers have not been held by the Commission, the self-regulatory organizations or the courts to an absolute requirement of achieving the most favorable price on each order[,] [w]hat has been required is that the broker endeavor, using due diligence, to obtain the best execution possible given all the facts and circumstances. These factors include, among other things, the size of the order, the trading characteristics of the security involved, the availability of accurate information affecting choices as to the most favorable market in which execution might be sought, the availability of technological aids to process such data, the availability of economic access to the various market centers and the costs and difficulty associated with achieving an execution in a particular market center.[27]

The Commission understands that most firms that pay for order flow guarantee, at a minimum, executions at the prevailing displayed best bid or offer.[28] Such quote-derived executions in many ways are not materially different than automated execution systems operated by the regional exchanges for years. Automated execution systems offer extremely fast and assured executions and facilitate prompt reports back to the customer. On the other hand, orders sent to an exchange for manual handling and, to a lesser extent, those sent to an OTC dealer for manual handling, may have a greater opportunity for an execution between the spread than do orders that are routed to automated execution systems.[29] In addition, it is not clear that all OTC market makers who pay for order flow permit two agency orders to interact at prices between the bid and the offer price.[30] This failure has a particular potential to disadvantage customer orders since price improvement is not available.[31]

C. Agency Concerns

The Commission is concerned that the availability of payments in return for order flow commitments may color the evaluation by a brokerage firm of the most advantageous market or market maker to whom to route its customer order.[32] The Commission in the past has found derivatively priced automated execution systems to be consistent with the Act. Several commentators have raised concerns that a broker's acceptance of a payment concerning the subject of the agency relationship, in other words, the customer's order, may be a breach of the duty owed by a broker

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Securities Traders Association, to Jonathan G. Katz, Secretary, SEC, dated Nov. 24, 1992.

[26] *See* Securities Exchange Act Release No. 28020 (May 15, 1990), 55 FR 21284; and NASD 1990 Letter, *supra* note 25, at 5. The NASD goes further and argues that, in fact, its examinations of its members demonstrate that they do in fact obtain best execution of customer orders even when they receive payments for execution of these orders. NASD 1990 Letter, *supra* note 25, at 5; and Ruder Committee Report, *supra* note 7, at 4.

[27] SEC, Second Report on Bank Securities Activities: Comparative Regulatory Framework Regarding Brokerage-Type Services 97–98, 98 n.233 (Feb. 3, 1977), as reprinted in Senate Comm. on Banking, Housing and Urb. Affs., 95th Cong., 1st Sess., Report on Bank's Securities Activities of the SEC 145, 251–52, 252 n.233 (Comm. Print 1977).

Furthermore, the Commission has stated that "the creation of [other] explicit obligation[s] upon broker-dealers] would in no way limit a broker's existing duty to seek to obtain best execution of his customers' orders." SEC, Status Report on the Development of a National Market System, Securities Exchange Act Release No. 15671 (Mar. 22, 1979), 44 FR 20360 (citing Restatement (Second) of Agency Law § 424 (1957)).

[28] Indeed, at least one such firm has improved its system to provide an opportunity for customer orders to be executed at a price between the quoted spread. Letter from Bernard L. Madoff and Peter B. Madoff, Bernard L. Madoff Investment Securities, to Jonathan G. Katz, Secretary, SEC, dated October 16, 1992 ("Madoff Letter"); testimony of Bernard L. Madoff, Subcommittee Hearing, May 13, 1993.

The automated execution systems operated by the regional exchanges, with the exception of the Philadelphia Stock Exchange's PACE system, allow for exposure of customer orders. See Securities Exchange Act Release Nos. 28014 (May 14, 1990), 55 FR 20880; and 27727 (Feb. 22, 1990), 55 FR 7396.

In addition, to enhance its ability to compete for order flow, the CHX, like Bernard L. Madoff, has modified its automated execution system to provide executions between the spread in certain circumstances. "SuperMAX," as the enhanced system is called, guarantees that the execution price of small agency market orders received over the MAX System will be automatically improved from the consolidated best bid or offer according to certain pre-defined criteria. See Securities Exchange Act Release No. 32631 (July 14, 1993), 58 FR 39069.

[29] The Ruder Committee maintains, however, that "when a flow of aggregated small orders is directed to a market maker in response to inducements for order flow, brokers receiving execution at the best published bid or offer are obtaining best execution for those small orders." The Committee recommended that the NASD revise its Best Execution Interpretation to distinguish between executions of small customer orders and larger orders and to recognize the presumption that best execution will be obtained by executions for small orders at the best published bid or offer. Ruder Report, *supra* note 7, at 29.

The Commission preliminarily believes that such interpretation of best execution may not be consistent with previous statements of the Commission regarding best execution. The Commission requests comment on this issue.

[30] In contrast, the NYSE requires that when a member has crossing orders, he shall publicly offer such security at a price that is higher than his bid by the minimum variation permitted in the security before transacting with itself. NYSE Rule 76.

[31] The NYSE notes that 20 to 30 percent of all trades occur between the best bid and offer. Moreover, the NYSE represents that if the smaller universe of trades in markets with spreads of more than 1/8th are considered, approximately 60 percent of the trades occur between the best bid and offer. Shapiro, Recent Competitive Developments in U.S. Equity Markets, NYSE Working Paper 93–02 (May 28, 1993).

Similarly, while customers traditionally have expected executions at the prevailing quote, the NASD reports that public investors are often able to execute trades for NMS stocks inside the best bid or ask price as frequently, as the overall market. For example, the NASD recently determined that 35 percent of public share volume and 21 percent of public trades occurred inside the best bid/ask spread, compared to overall trading where 41 percent of the volume and 26 percent of the trades occurred inside the best bid/ask spread. Public customers dealing in larger volumes are reported to trade inside the best bid and ask almost as frequently as the overall market. According to the NASD data, of the total public share volume executed inside the best bid and ask, 91 percent was transacted in trades of more than 1,000 shares, including 56 percent in trades of 10,000 or more shares. The overall market executed 89 percent of the share volume inside the best bid and ask in trades of more than 1,000 shares, including 48 percent in trades of 10,000 or more shares.

The ability to trade inside the best bid and ask increases significantly as the bid/ask spread increases. The NASD found that 83 percent of all share volume, including 81 percent of public share volume, transacted inside the best bid and ask, is in securities with a spread less than or equal to ½. Further, 42 percent of all share volume, including 37 percent of public share volume, transacted inside the best bid and ask, is with a spread of less than or equal to ¼. NASD Economic Research, Public Trading Inside the Best Bid/Ask Spread and Actual Spreads Paid in NASDAQ/NMS Stocks (April 14, 1993).

The Madoff enhanced system has executed an average of 50% of the orders routed to the system in securities with spreads of greater that one-eighth of a point between the spread. See generally Ruder Committee Report, *supra* note 7, at 25 n.48. See also testimony of Bernard L. Madoff, Subcommittee Hearing, May 13, 1993.

At the Commission roundtable, however, Bernard L. Madoff argued that, for a large percentage of the listed securities for which OTC firms pay for orders, the spread is only ⅛ point and no execution between the spread is thus possible, assuming an eighth point pricing unit rather than decimal pricing. See Roundtable Summary, *supra* note 4, at 16. See also Section IV.B., *infra*.

Finally, the CHX argues that execution on the inside market does not necessarily yield best execution, and that in order to achieve best execution, these prices (net of any payment for order flow) must be given to the customers and publicly reported. See January Long Letter, *supra* note 10, at 4.

[32] The Commission also has upheld a NASD disciplinary action for violations of just and equitable principles of trade in connection with the execution of customer orders. The Commission found that the broker-dealer failed to execute fully and promptly, to the greatest extent possible, customer orders in a stock in which it was a market maker. *In re Bateman Eichler, Hill Richards, Inc.*, 47 S.E.C. 692 (1982) and *In re Bateman Eichler, Hill Richards, Inc.*, 47 S.E.C. 1025 (1984), *aff'd sub nom. Eichler v. SEC*, 757 F.2d 1066 (9th Cir. 1985). Compare *In re E.F. Hutton & Co.*, Securities Exchange Act Release No. 25887 (July 6, 1988), 41 SEC Doc. 473, *appeal filed, Hutton & Co., Inc. v. SEC*, Doc. No. 88–1649 (D.C. Cir. Sept. 2, 1988) (Stipulation of Dismissal filed Jan. 11, 1989), in which the Commission affirmed a NASD decision disciplining E.F. Hutton & Co. for its handling of a customer limit order.

See also, e.g., Division of Market Regulation, Automation in U.S. and Foreign Securities Markets (Nov. 1989).

to its customer and is not permitted under general agency law.[33]

D. Market Structure Issues

Payment for order flow also raises market structure issues. One opponent of the practice believes that payment for order flow: (1) Has an effect on pricing efficiency in the markets; (2) is inconsistent with the goal of fair competition set forth in Section 11A of the Act; (3) reduces market maker quote competition for orders; and (4) improperly diverts customer orders to automated execution systems where they cannot be executed without the participation of a dealer.

The first issue is what effect, if any, payment for order flow arrangements have on the pricing efficiency of the markets. The amount dealers are willing to pay for order flow is not publicly disseminated, either in the dealers' quotations or in transaction reports of the execution of those orders. To some, this means that the actual prices at which transactions are effected are not publicly available.[34]

In addition, opponents argue that payment for order flow practices contravene the statutory directive that the national market system be designed to assure fair competition among brokers and dealers and between exchange markets and markets other than exchange markets.[35] They argue that a market maker or specialist who does not pay for order flow cannot effectively compete with one that does, primarily because receipt of these payments reduces the cost of doing business for the broker who accepts them.[36]

Opponents also argue that payment for order flow may reduce the role of quotations as a medium for market maker quote competition for orders. To the extent that a market maker receives order flow regardless of the competitiveness of its quote, the market maker has less need to seek order flow through competitive quotes. Thus, if payment for order flow arrangements provide a market maker with substantial order flow on a non-quote basis, they may reduce the market maker's incentive to quote a narrower spread. Indeed, increased commitments by market makers to execute order flow derivatively at the best bid or offer may provide direct incentives to widen the spread between bid and ask quotations. Furthermore, it is possible that because automated executions can be obtained from nearly any participating market maker at the inside quote, fewer orders may be directed for execution to market makers actually competing based on price.[37] The theoretical result could well be a widening of spreads, thus reducing the pricing efficiency of the market and raising costs of trades for those securities.

E. Related Practices

The Commission is aware that industry participants have entered into a variety of other arrangements in which order flow is traded for non-monetary services or other value. Examples include: Reciprocal practices, including the swapping of order flow between market makers and between specialists in different stocks, the swapping of options and futures business for order flow in stocks, and the swapping by exchange specialists of OTC business for exchange lay-off business; reduced clearing fees to correspondents; exchange of research packages for order flow; secretarial services, business machines and office space for order flow, typically provided by clearing firms; the provision of subordinated debt for order flow; adjustment of trading errors by exchange specialists; offers to participate as underwriter in public offerings; stock loans and shared interest accrued thereon; and offers of fee discounts, waivers and volume and automation discounts by exchanges for order flow.[38] The Commission invites commentators to address whether these practices raise conflict of interest concerns sufficient to justify treatment similar to the treatment of monetary payment for order flow.[39]

F. Economic Benefits of Payment for Order Flow Practices

Some commentators have argued that payment for order flow practices provide economic benefits that flow to customers. They maintain moreover, that firms regularly routing order flow to a market or market maker are providing value that is very different than the value provided in routing a single order; and that a regular flow of orders to a market maker permits that firm to profit through the regular receipt of the "dealer's turn" (i.e., buying at the bid, selling at the offer). In essence, these commentators believe that the payments received by order routing firms are similar to volume discounts and, thus, the payments are fair compensation for their channelling of the individual orders to market makers.[40]

In addition, to the extent that volume lowers unit costs, these cost savings may be reflected in retail brokerage firm revenue and expenses and through lower commission charges to investors, more expeditious executions and enhanced services.[41]

Finally, these commentators argue that payment for order flow enhances competition within the securities markets. They argue that use of automated execution systems and related practices, discussed above, have increased competition within the markets as envisioned by Congress in enacting section 11A of the Act. They argue that, within this context, payment for order flow practices have developed to allow wholesale dealers to compete

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[33] See Klein Letter, *supra* note 21, and letter from John G. Weithers, Chairman, MSE, to Jonathan G. Katz, Secretary, SEC, dated February 13, 1990, attached to the Petition ("Weithers Letter") at 3. *Cf.*, Coffee, A Break or a Bribe?, Barron's, Sept. 17, 1990, at 18. See also National Specialists Association Letter, supra note 22; letter from James M. Duryea, President, Organization of Independent Floor Brokers, to Jonathan G. Katz, Secretary, SEC, dated November 15, 1992. The National Specialist Association also argues that acceptance of payment for order flow by retirement plan sponsors violates the Employee Retirement Income Security Act ("ERISA") and section 1954 of the federal criminal code (18 U.S.C. 1954). See National Specialists Association Letter, *supra* note 22. The Klein Letter also suggests that payment for order flow may violate state and federal bribery statutes. See Klein Letter, *supra* note 21, at 6–15. But see Pollack Letter, *supra* note 21, at 13–19; NASD 1990 Letter, supra note 25, at 10–12. The Commission is interested in analyses of any state statutes that commentators believe apply or may apply to payment for order flow practices.

[34] See Weithers Letter, *supra* note 33, at 2.

[35] See Section 11A(a)(1)(C)(ii) of the Act, 15 U.S.C. § 78k–1(a)(1)(C)(ii) (1988).

[36] See Klein Letter, *supra* note 21, at 17.

[37] The NASD made a similar point in noting that volume incentives provided by exchanges to attract order flow, coupled with price protection for those orders, has the effect of thwarting the routing of orders to the market quoting the best bid or offer. See NASD 1990 Letter, *supra* note 25, at 8.

[38] For examples, see Pollack Letter, *supra* note 21, at 3–5; and Ruder Report, *supra* note 7, at 16–21.

The Commission is also aware of practices within an organization or between affiliated organizations that seek to influence order flow in a particular manner, such as the internalization of a firm's own order flow; and the direction of order flow from broker-dealers to affiliated exchange specialists. The Commission invites commentators to address the implication of these arrangements and whether any additional disclosure would be desirable.

Under Rule 10b–10(a)(1), a firm trading as principal with customer orders must disclose its status as a principal and, if applicable, a market maker in those securities. See 17 CFR 240.10b–10 In addition, NYSE Rule 409(f) requires members to disclose the marketplace where a customer's order was executed. Firms that choose to route order flow to an affiliated specialist have a continuing obligation to provide their customer with best execution of their order. Securities Exchange Act Release No. 16888 (June 11, 1980), 45 FR 41125.

[39] The CHX and NYSE maintain that hard dollar payments are not economically equivalent to these non-monetary arrangements. See January Long Letter, *supra* note 10, at 5–6 and testimony of Richard Grasso, Subcommittee Hearing, May 13, 1993. But see Ruder Report, *supra* note 7, at 24, 32.

[40] Ruder Report, *supra* note 7, at 25–26.

[41] NASD 1990 Letter, *supra* note 25, at 4; Ruder Report, *supra* note 4, at 25; letter from Joseph R. Hardiman, President, NASD, to Jonathan G. Katz, Secretary, SEC, dated November 20, 1992 ("NASD 1992 Letter"); and Madoff Letter, *supra*, note 28.

with exchanges and vertically integrated firms.[42] This competition, they argue, has resulted in a reduction of execution costs in all markets, including exchanges, which have responded with reduced exchange fees and specialist charges.[43]

The Commission realizes that payment for order flow generally involves the trades of retail customers, who are in an important sense the lowest cost customers of market makers.

There are many studies of spreads that identify two factors that systematically affect spreads: The volatility in the security, and "adverse selection"—the likelihood that the market maker is trading against a party more informed than the market maker, to whom he will lose money. It is fairly widely agreed that retail trades involve virtually no adverse selection costs. Consequently, the market maker can afford to rebate part of its spread to order flow firms.

The Commission believes that the technological advances that have allowed increased competition for retail orders have produced benefits for retail customers. For example, some regional exchanges and third market makers have introduced order exposure in order to compete with the NYSE. The NYSE has lowered commissions on retail trades through rebates on retail order flow. The Commission believes that enhanced disclosure of payments for order flow will further this competitive result by enabling customers to evaluate better the markets to which their orders are routed.

IV. Proposed Responses

A. Enhanced Disclosure

The proposed amendment to paragraph (a)(7)(iii) of Rule 10b–10 would require a broker-dealer to include on the confirmation of each transaction in national market system securities whether any payment for order flow was received and, if so, the amount of any monetary payment, discount, rebate or reduction in fee that was received in connection with the transaction in national market system securities.[44] If the broker-dealer does not receive payment for order flow, or if the customer's order would not be covered by payment for order flow arrangements, then the amendment would not require disclosure on the confirmation of that order.[45]

Proposed Rule 10b–10(e)(9) would define the term payment for order flow to include all forms or arrangements compensating for directing order flow, such as monetary payments, research, products or services, reciprocal agreements, clearing or other services; adjustment of a broker-dealer's unfavorable trading errors; offers to participate as an underwriter in public offerings; stock loans and shared interest accrued thereon; and discounts and rebates, or any other reduction of or credit against any fee, expense or other financial obligation of a broker or dealer routing a customer order. Proposed Rule 10b–10(e)(9) is drafted broadly, so that a broker-dealer accepting non-monetary compensation would be required to disclose on confirmations that payment for order flow was received. Nevertheless, the Commission preliminarily believes it should not require broker-dealers to develop value estimates for such non-monetary compensation for inclusion on the confirmation. The Commission invites commentators to address whether such estimates should be required and, if so, on what basis.

The Commission is also proposing to add Rule 11Ac1–3, paragraphs (a) (1) and (2) to require disclosure on each new account statement and on an annual basis thereafter on the account statement, the firm's policies regarding receipt of payment for order flow from any broker-dealer (including market makers) exchange members or exchanges to which it routes customers' orders in national market system securities for execution, including a statement as to whether any payment for order flow is received for routing customer orders and a description of the nature of the compensation received; and the firm's aggregate amount of monetary payments, discounts, rebates or reduction in fees received by the firm on an annual basis.[46] Although Commission rules do not expressly require broker-dealers to distribute annual account statements to customers, exchange and NASD rules impose such requirements. This proposal would build on those requirements.

The Commission also preliminarily believes that aggregate order flow disclosure on the annual statement could provide a customer with the opportunity to make an informed choice as to whether he/she will do business with a particular broker. Moreover, disclosure of the compensation for an individual order may not adequately or fairly communicate the nature of the arrangement since the market makers' order stream and the broker-dealer's ability to obtain such payment is based upon orders in the aggregate.[47] Furthermore, because not all brokers accept payment for order flow, customers, in reality, do have a choice and, if they object to their broker accepting payment for order flow, they can take their business to another broker.[48]

The Commission invites comment on whether it is adequate to require, as now, disclosure on the confirmation of the receipt of additional compensation with respect to the particular trade, with details available on request. Do customers avail themselves of the additional disclosure made available, and if not, is this from lack of interest or inconvenience? Additionally, comment is requested on whether the existing confirmation requirement should be supplemented or replaced as proposed above, by a combination of disclosure on order confirmations, as well as disclosure of the firm's aggregate receipt of payment for order flow on its

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[42] See NASD 1990 letter, *supra* note 25, at 6–10; Ruder Report, *supra* note 7, at 24; and NASD 1992 Letter, *supra* note 41.

[43] Ruder Report, *supra* note 7, at 24–25.

[44] The Commission intends this to include the NYSE's current practice of offering a cash rebate on every small order (100–2099 shares) delivered via SuperDot and executed by the NYSE specialist. See Securities Exchange Act Release No. 32377 (May 27, 1993), 58 FR 31568. The Commission also solicits comment on whether this obligation should extend to Nasdaq Small-Cap and OTC Bulletin Board securities.

[45] The Commission preliminarily believes, however, that firms that do not accept payment for order flow must still disclose such on the customer's annual account statement.

The Commission invites comment on whether the nature of any non-monetary compensation should be disclosed on customer confirmations.

[46] The Commission also solicits comment on whether this obligation should extend to Nasdaq Small-Cap and OTC Bulletin Board securities.

[47] The CHX argues, however, that simply because a market maker would not pay for a single order while he would pay for a "flow" of orders, it should not be concluded that there is no linkage between the order and the rebate. In support, it notes that payments are a specified amount per share. See January Long Letter, *supra* note 10, at 3. The Ruder Committee responds that the benefits accruing from aggregation cannot be translated after the fact to attach to each individual order, because no firm would be able to negotiate a cash payment, fee reduction or other benefit for a single or small number of orders. Ruder Report, *supra* note 7, at 25–26.

The Commission solicits comment on whether, in addition to disclosure of a firm's aggregate amount of order flow received annually, the following should be disclosed: (1) The amount of monetary payments, discounts, rebates or reduction in fees received by the firm in connection with each customer's account; (2) an aggregate amount received in connection with each customer as a percentage of a firm's total commissions and as a percentage of average cost per share; and (3) the amount of all non-monetary compensation.

[48] The Commission seeks comment on the extent to which customers directly or indirectly may receive the benefit of payment for order flow through discounted commissions. Commentators should discuss whether retail customers have adequate bargaining opportunities to negotiate pass-through of the broker's payment, provided the payment is disclosed adequately.

new account statements and annual statements thereafter.

B. Other Alternatives or Supplements to the Proposal

While the Commission is proposing to require that all payment for order flow be disclosed to investors, the Commission also is considering alternative approaches to addressing payment for order flow and invites commentators to address the relative merits of alternatives to that approach. These alternatives include requiring that payment for order flow be passed through to customers; adopting a decimal-based system for the pricing and reporting of all securities for which transactions are reported on the consolidated tape; or, banning the practice outright as inconsistent with the Act.[49]

Some commentators have argued that the fact that some market makers and specialists are willing to pay for order flow indicates that currently disseminated spreads are too wide.[50] Under the current reporting mechanisms, prices are reported and quotations disseminated in multiples of an eighth of a point (or 12.5 cents).[51] Thus, payments of an additional penny or two cannot be reflected. In a decimal-based system, however, prices are reported in multiples as small as one-hundredth of a point (one cent). Some commentators have recommended that such a system be adopted.[52] Adoption of a decimal-based system would permit narrowed spreads and greater flexibility in the pricing of securities.

Disadvantages of a decimal pricing system include the cost to the market of conversion to such a system. Furthermore, at the Commission roundtable, Bernard Madoff stated that market makers are not willing to make payments for every order they receive, and that the payments are, in effect, compensation to retail firms for bulk order flow.[53] As such, payments might not be reflected in quotations. Under this analysis, decimal pricing may not affect current practices. Finally, because it provides no mechanism for accounting for reciprocal arrangements or other practices of concern to commentators, decimal pricing might have no effect on "soft" inducements for order flow.

It also has been argued that decimal pricing might create an environment where, in effect, time and priority could not be obtained because it always could be possible, as a practical matter, to improve the price by a penny and achieve price priority.[54] Nevertheless, other markets, such as the derivative markets, use decimal pricing effectively, although they may have minimum "tick" requirements, e.g. quotes occur at five cent increments. Thus, the question may not be "the desirability of eighths versus decimals;" rather the question may be whether the Commission affirmatively should encourage a narrower standard quote spread through decimalization. Accordingly, the Commission requests comment on whether a requirement that last sale data and quotations be reported and disseminated in multiples of one-hundredths of a dollar is appropriate or whether any other changes to the method by which trade and quote information is disseminated are appropriate.

Another alternative, as initially proposed by the MSE and subsequently withdrawn,[55] would require a broker or dealer, who, acting as agent, receives cash payments from any market maker for directing order flow, to remit those payments to customers. This alternative would not prohibit a market maker from making cash payments for order flow. It would, however, prohibit a broker-dealer from retaining these payments for its own benefit. The Commission solicits comment on this alternative as well as comments as to whether the pass-through to customers should include any volume-related compensation, such as research, products or services, and rebates and reciprocal agreements for the provision of order flow, clearing or other services, rather than limiting the proposal to cash payments for order flow.

Another alternative is to prohibit payment for order flow practices as being inconsistent with the Act.[56] Some argue that because the purpose, or at least the likely effect of order flow payments could be to subvert the broker's exercise of independent, professional judgement in selecting the market in which to seek execution of customers' orders and determining whether to buy or sell on behalf of customers at prices offered by market makers who offer order flow payments, such payments should be barred explicitly by the Commission as fraudulent.[57] Moreover, some suggest that the making of order flow payments to and the receipt of such payments by brokers raise significant questions under the federal and state statutes meant to prevent commercial bribery and kickbacks.[58] The Commission solicits comment on whether payment for order flow practices should be banned altogether in the interest of investor protection and market structure concerns.

V. Request for Comment

The Commission invites comment on all the issues raised in this release, including without limitation the proposed amendments to Rule 10b-10, the adoption of rule 11Ac1–3 regarding enhanced disclosure of payments for order flow, and other approaches that address payment for order flow practices. In connection with any of these alternatives, commentators are asked to address whether they believe the receipt of payment for order flow affects the quality of execution customers receive.[59]

Commentators also are encouraged to discuss the competitive effects of

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[49] See Klein Letter, *supra* note 21, for a further discussion of the bases for this potential response to the issue of payment for order flow.

The United Kingdom Securities and Investments Board ("SIB") published a Consultative Paper that would ban the practice of payment for order flow in the United Kingdom. It states:

SIB has viewed, with concern, the growth in the United States of the practice of a market maker paying agency brokers in 'hard dollars' in return for the brokers directing business to that market maker. SIB would not be prepared to accept the practice of agency brokers tying to one or several market makers in this way, but considers that proposed core rule 1 (inducements) is sufficiently robust to prevent the practice being introduced in the United Kingdom.

SIB Consultative Paper No. 46, Soft Commission Arrangements in the Securities Market: "Soft for Not" 5 (Nov. 1990).

[50] Coffee, Brokers and Bribery, supra note 13, at 5.

[51] The Commission, of course, recognizes that a fractional quotation system is used in many markets and that such fractions can be refined to ever smaller increments, e.g., 1/64th, which could approximate the flexibility of a decimal-based quotation system.

[52] See letter from Anson M. Beard, Jr., Managing Director, Morgan Stanley & Co., to Thomas E. Haley, Chairman, Consolidated Tape Association ("CTA"), dated January 11, 1989. See also letter from Junius W. Peake, Professor, University of Northern Colorado, College of Business Administration, and Morris Mendelson, Professor, University of Pennsylvania, Wharton School, to Jonathan G. Katz, Secretary, SEC, dated November 3, 1992.

The CTA considered this proposal and rejected it, stating that the issue is one which is more properly the province of each of the national securities exchanges and the NASD. Letter from Thomas E. Haley, Chairman, CTA, to Anson M. Beard, Jr., Managing Director, Morgan Stanley & Co., dated March 9, 1989.

[53] See Roundtable Summary, supra note 4, at 16.

[54] See letter from Lawrence E. Harris, Professor, University of Southern California, School of Business Administration, to Jonathan G. Katz, Secretary, SEC, dated October 5, 1992.

[55] See supra notes 5 and 6.

[56] See Klein Letter, *supra* note 21.

[57] *Id.* at 15.

[58] *Id.*

[59] See C. Lee, Purchase of Order Flow and Favorable Executions: An Intermarket Comparison (1991). See also T. McInish and R. Wood, Price Discovery, Volume and Regional/Third Market Trading (Feb. 1992); M. Bloom and M. Goldstein, Displayed and Effective Spreads by Market (Dec. 1992).

payment for order flow activity. Specifically, the Commission is interested in whether payment for order flow has allowed OTC market makers to attract listed order flow away from exchanges. The Commission is interested in examples of actions taken or innovations adopted by exchanges to compete with market makers.[60] In addition, the Commission asks commentators to address whether certain exchange practices, such as rebates or discounts paid to firms that use exchange automated execution systems, are similar to and raise the same issues as do payment for order flow practices.[61]

Currently, payment for order flow generally involves the payment of defined cash amounts per order or per share. Some believe, however, that restricting or even moderately burdening cash payment for order flow could encourage such payments to be restructured into other forms, such as goods or services.[62] Like "soft" payments in the investment management context, payments in goods and services are more difficult to monitor than cash payments and raise issues regarding the efficacy of the services provided and accountability on the part of the market maker and broker.

Comment is requested on the extent of payment for order flow in goods and services at present. Comment also is requested on whether the proposals set forth above would lead to an increase in payment for order flow in goods and services, and the implications of this possible outcome.[63]

In addition to the specific requests for comment set forth above, the Commission requests comment on whether the proposed rule and rule amendments, if adopted, would have an adverse effect on competition or would impose a burden on competition that is neither necessary nor appropriate in furthering the purposes of the Exchange Act. Comments on the inquiry will be considered by the Commission in complying with its responsibilities under section 23(a)(2) of the Exchange Act.

VI. Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA") in accordance with 5 U.S.C. sec. 603 regarding the proposed rules. The following summarizes the conclusions of the IRFA.

The IRFA uses certain definitions of "small entities" adopted by the Commission for purposes of the Regulatory Flexibility Act. The Analysis notes that the proposed rule and rule amendments would require that payments for order flow be disclosed to customers on the confirmation of each transaction, including the amount of any monetary payment, discount, rebate or reduction in fee received in connection with the transaction. Moreover, the firm would be required to disclose on each new account and thereafter on the annual statement, the firm's policies regarding order routing practices, and information regarding the firm's aggregate amount over the past year of monetary payments, discounts, rebates or fee reductions.

At this time, the Commission is unable to reasonably quantify the impact that the proposed enhanced disclosure rules would have on small broker-dealers. To the extent that disclosure creates a disincentive to pay and accept payment for order flow, the proposals would have an impact in the form of reduced revenues for those accepting payments and reduced costs for those paying for order flow, but the effects are not yet quantifiable. The proposals could also necessitate changes to broker-dealer confirmation systems that generally do not provide that specific information now. Broker-dealers would need to keep records of payment for order flow in order to fulfill the disclosure requirements of the proposed rules. A copy of the Initial Regulatory Flexibility Analysis may be obtained by contacting Jill W. Ostergaard, Attorney, Branch of the National Market System, Office of Self-Regulatory Oversight, Division of Market Regulation, Securities and Exchange Commission, Washington, DC 20549, (202) 272–7380.

List of Subjects in 17 CFR Part 240

Brokers, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, the Commission proposes to amend part 240 of chapter II of title 17 of the Code of Federal Regulations to read as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78*l*, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

2. By amending § 240.10b–10 by redesignating paragraph (a)(7)(iii) as paragraph (a)(7)(iv), adding paragraph (a)(7)(iii) and paragraph (e)(9), to read as follows:

§ 240.10b–10 Confirmation of transactions.

(a) * * *

(7) * * *

(iii)(A) Whether any payment for order flow has been received in connection with a transaction in a national market system security as defined in § 240.11Aa2–1; and

(B) For any monetary payment, discount, rebate or reduction of fee received in connection with a transaction in a national market system security, the amount of such monetary payment, discount, rebate or reduction of fee.

* * * * *

(e) * * *

(9) *Payment for order flow* means any compensation received from any broker-dealer (including market makers), exchange members, or exchanges to which a broker-dealer routes customers orders for execution, including: Monetary payments, research, products or services; reciprocal agreements for the provision of order flow; clearing or other services; adjustment of a broker-dealer's unfavorable trading errors; offers to participate as underwriter in public offerings; stock loans and shared interest accrued thereon; discounts and rebates, or any other reduction of or credit against any fee, expense or other

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[60] See, e.g., discussion at note 28, of the CHX's implementation of SuperMAX and Madoff's response.

[61] See NASD 1990 Letter, *supra* note 25, at 7–9; and Pollack Letter, *supra* note 21, at 3–6. See also Midwest Quietly Attracts Upstairs Order Flow Away From NYSE, Securities Week, Apr. 3, 1990, at 9. The CHX argues that payment for order flow and volume discounted exchange fees are distinguishable, because in the first instance, a broker does not pay a fee to the market maker, and thus there is no fee to discount. The CHX believes that if market makers wish to provide a volume discount, they should reduce the charge of the security, which should, in turn, be directed to the customer. See January Long Letter, *supra* note 10, at 6–7. But see Ruder Report, *supra* note 7, at 24.

The NYSE also distinguishes payment for order flow from fee reductions or rebates to member firms because, in its view, cash payments, unlike rebates, may compromise the broker's order routing decision such that the best execution of customer orders is not obtained. Testimony of Richard A. Grasso, Executive Vice Chairman and President, NYSE, Subcommittee Hearing, May 13, 1993.

[62] See, e.g., Pollack Letter, *supra* note 21, at 7, 18–19.

[63] With respect to customer disclosures, in particular, comment is requested on whether payment in goods and services could be addressed by requiring the market maker to disclose to the broker the value, based on cost (or other methods), of the goods and services provided, and requiring the broker to include this value in any mandated disclosures to the customer.

financial obligation of the broker or dealer routing a customer order.

* * * * *

3. Section 240.11Ac1–3 is added to read as follows:

§ 240.11Ac1–3 Customer account statements.

(a) No broker or dealer acting as agent for a customer may effect any transaction in, induce or attempt to induce the purchase or sale of, or direct orders for purchase or sale of, any national market system security as defined in § 240.11Aa2–1, unless such broker or dealer informs such customer, upon opening a new account and on an annual basis thereafter, of the following:

(1) The firm's policies regarding receipt of payment for order flow as defined in § 240.10b–10(e)(9), from any broker or dealer (including market makers) exchange members or exchanges to which it routes customers' orders for execution, including a statement as to whether any payment for order flow is received for routing customer orders and a description of the nature of the compensation received; and

(2) The aggregate amount of monetary payments, discounts, rebates or reduction in fees received by the firm on an annual basis that were disclosed pursuant to § 240.10b–10(7)(iii).

Dated: October 6, 1993.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–25092 Filed 10–12–93; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

RIN 0960–AC43

Supplemental Security Income for the Aged, Blind, and Disabled; Treatment of Promissory Notes in Home Replacement Situations

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rule.

SUMMARY: This proposed regulation explains how the Social Security Administration (SSA) treats promissory notes and similar installment sales contracts and the proceeds generated therefrom when received as a result of the sale of a home which is excluded from resources under the supplemental security income (SSI) program. This proposed regulation provides for application of the "home replacement exclusion" in situations where timely reinvestment of the installments into another home, which is similarly excludable as the principal place of residence, is made.

DATES: Comments must be received on or before December 13, 1993.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, MD 21235, or delivered to the Office of Regulations, Social Security Administration, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Henry D. Lerner, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1762.

SUPPLEMENTARY INFORMATION: Section 1613(a)(1) of the Social Security Act (the Act) excludes an individual's home from resources for purposes of determining eligibility for SSI payments. Further, § 416.1212(d) of our regulations allows the proceeds from the sale of an excluded home to be excluded from resources to the extent the proceeds are intended to be used and are, in fact, used within 3 months of the date of their receipt to purchase a replacement home which is similarly excluded. When that regulation was published in 1975, conventional financial arrangements were the norm. It was reasonable to expect an individual to receive the full purchase price of the former home in cash and to reinvest fully and immediately all cash proceeds from the sale. Therefore, no provision was included in the regulations for the treatment of home purchase financing other than full cash payment at or near the time of sale. Over the years, however, less conventional arrangements involving proceeds other than cash (such as promissory notes or installment sales contracts) have become more common.

Under our regulations defining resources in the SSI program at § 416.1201, promissory notes and installment sales contracts received as proceeds from the sale of a home are considered resources as long as the SSI claimant owns them and has the legal right to convert them to cash to be used for his or her support and maintenance. Such instruments can be excluded, however, under § 416.1212(d) if they are converted to cash and used for the purchase of a replacement home within 3 months of receipt of the note or contract. In fact, prior to September 1989, SSA required that they be so converted in order to be considered an excluded resource. Accordingly, under this interpretation, the claimant's options were limited to selling the house for cash (possibly below market value) or liquidating the promissory note or installment sales contract likely at a substantial loss. Either of these options could have jeopardized the opportunity to acquire or maintain a replacement home without losing SSI eligibility.

On September 11, 1986, the United States Court of Appeals for the Ninth Circuit rejected this interpretation of § 416.1212(d) in the case of *Hart* v. *Bowen*, 799 F.2d 567. The *Hart* case involved an individual who sold her home under an installment sales contract. She applied the downpayment she received toward the downpayment on a new home. She also applied each of the monthly installment payments she received toward the mortgage on the new home. Her SSI benefits were terminated because the installment contract from the sale of her former home constituted an excess resource. The Ninth Circuit Court of Appeals found that the current market value of an installment sales contract resulting from the sale of an individual's excluded home is part of the value of the replacement home and thus excluded from countable resources, provided the payments generated by the contract were reinvested timely in the excluded replacement home. In May 1987, as a result of the decision rendered by the Ninth Circuit in *Hart* v. *Bowen*, SSA issued Acquiescence Ruling AR 87–3(9) to comply with the decision in the Ninth Circuit States.

In September 1989, SSA changed its national practice and published Social Security Ruling SSR 89–5p, effective September 6, 1989. The ruling explained that the value of an installment sales contract constitutes a "proceed" from the sale of an excluded home which can be excluded from resources under § 416.1212(d) if: (a) The contract results from the sale of an individual's home as described in § 416.1212(a); (b) within 3 months of receipt (execution) of the contract, the individual purchases a replacement home which also fits the description in § 416.1212(a); and (c) all contract generated sale proceeds are reinvested

in the replacement home within 3 months of receipt of such proceeds. In addition, the ruling provided that when payments against the principal that result from the installment sales contract are being reinvested timely (i.e., within 3 months of receipt) in a new home, such payments are also excluded from resources. The ruling further provided that if the home replacement exclusion is not applicable because one or more installment payments have not been timely reinvested, the exclusion may be applied effective with the month following the month of receipt of a timely reinvested payment.

Regulation

This proposed regulation would codify SSR 89–5p and reflect more completely our policy on the treatment of proceeds from the sale of an excluded home by designating the existing text in § 416.1212 paragraph (d) as paragraph (d)(1), and adding two new paragraphs (d)(2) and (d)(3), to explain the conditions under which the value of a promissory note or similar installment sales contract, and other proceeds from the sale, consisting of the downpayment and monthly installment payments towards the principal, will be excluded from being considered SSI resources. In addition, we are adding new paragraphs (e), (f), and (g) to § 416.1212 to explain the effects on SSI eligibility of failure to reinvest installment payments timely and the receipt of interest payments. When a final rule is published after the comment period has expired and any comments have been considered, both SSR 89–5p and AR 87–3(9) will be rescinded.

Regulatory Procedures

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291. The current administrative and program costs are estimated to be negligible (less than 30 workyears and $1 million per fiscal year). Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

This proposed regulation imposes no reporting/recordkeeping requirements requiring Office of Management and Budget clearance.

Regulatory Flexibility Act

We certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities because this regulation will affect only individuals and States. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act of 1980, is not required.

(Catalog of Federal Domestic Assistance Program No. 93.807—Supplemental Security Income.)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income.

Dated: May 27, 1993.

Louis D. Enoff,

Principal Deputy Commissioner of Social Security.

Approved: July 20, 1993.

Donna E. Shalala,

Secretary of Health and Human Services.

For the reasons set out in the preamble, Part 416 of Chapter III of Title 20, Code of Federal Regulations, is proposed to be amended as follows:

1. The authority citation for subpart L of part 416 continues to read as follows:

Authority: Secs. 1102, 1602, 1611, 1612, 1613, 1614(f), 1621 and 1631 of the Social Security Act; 42 U.S.C. 1302, 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j and 1383; sec. 211 of Pub. L. 93–66; 87 Stat. 154.

2. Section 416.1212 is amended by redesignating the existing text in paragraph (d) as paragraph (d)(1), adding new paragraphs (d)(2) and (d)(3), and adding new paragraphs (e), (f) and (g) to read as follows:

§ 416.1212 Exclusion of the home.

* * * * *

(d) *Proceeds from the sale of an excluded home.*

(1) * * *

(2) The value of a promissory note or similar installment sales contract constitutes a "proceed" which can be excluded from resources if—

(i) The note results from the sale of an individual's home as described in § 416.1212(a);

(ii) Within 3 months of receipt (execution) of the note, the individual purchases a replacement home as described in § 416.1212(a) (see paragraph (e) of this section for an exception); and

(iii) All note-generated proceeds are reinvested in the replacement home within 3 months of receipt (see paragraph (f) of this section for an exception).

(3) In addition to excluding the value of the note itself, other proceeds from the sale of the former home are excluded resources if they are used within 3 months of receipt to make payment on the replacement home. Such proceeds, which consist of the downpayment and that portion of any installment amount constituting payment against the principal, represent a conversion of a resource.

(e) *Failure to purchase another excluded home timely.* If the individual does not purchase a replacement home within the 3-month period specified in paragraph (d)(2)(ii) of this section, the value of a promissory note or similar installment sales contract received from the sale of an excluded home is a countable resource effective with the first moment of the month following the month the note is executed. If the individual purchases a replacement home after the expiration of the 3-month period, the note becomes an excluded resource the month following the month of purchase of the replacement home provided that all other proceeds are fully and timely reinvested as explained in paragraph (f) of this section.

(f) *Failure to reinvest proceeds timely.* (1) If the proceeds (e.g., installment amounts constituting payment against the principal) from the sale of an excluded home under a promissory note or similar installment sales contract are not reinvested fully and timely (within 3 months of receipt) in a replacement home, as of the first moment of the month following receipt of the payment, the individual's countable resources will include:

(i) The value of the note; and

(ii) That portion of the proceeds, retained by the individual, which was not timely reinvested.

(2) The note remains a countable resource until the first moment of the month following the receipt of proceeds that are fully and timely reinvested in the replacement home. Failure to reinvest proceeds for a period of time does not permanently preclude exclusion of the promissory note or installment sales contract. However, previously received proceeds that were not timely reinvested remain countable resources to the extent they are retained.

Example 1. On July 10, an SSI recipient received his quarterly payment of $200 from the buyer of his former home under an installment sales contract. As of October 31, the recipient has used only $150 of the July payment in connection with the purchase of a new home. The exclusion of the unused $50 (and of the installment contract itself) is revoked back to July 10. As a result, the $50 and the value of the contract as of August 1, are included in a revised determination of resources for August and subsequent months.

Example 2. On April 10, an SSI recipient received a payment of $250 from the buyer of his former home under an installment sales contract. On May 3, he reinvested $200 of the payment in the purchase of a new home. On May 10, the recipient received another $250 payment, and reinvested the full amount on June 3. As of July 31, since the recipient has used only $200 of the April payment in connection with the purchase of the new home, the exclusion of the unused $50 (and of the installment contract itself) is revoked back to April 10. As a result, the $50 and the value of the contract as of May 1 are includable resources. Since the recipient fully and timely reinvested the May payment, the installment contract and the payment are again excludable resources as of June 1. However, the $50 left over from the previous payment remains a countable resource.

(g) *Interest payments.* If interest is received as part of an installment payment resulting from the sale of an excluded home under a promissory note or similar installment sales contract, the interest payments do not represent conversion of a resource. The interest is income under the provisions of §§ 416.1102, 416.1120, and 416.1121(c).

[FR Doc. 93–24985 Filed 10–12–93; 8:45 am]

BILLING CODE 4190–29–P

Notices

Federal Register
Vol. 58, No. 196
Wednesday, October 13, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Type and Quantities of Agricultural Commodities Available for Donation Overseas Under Section 416(b) of the Agricultural Act of 1949, as Amended, In Fiscal Year 1994

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: This notice sets forth the determination of the Secretary of Agriculture of the types and quantities of agricultural commodities to be made available for donation overseas under section 416(b) of the Agricultural Act of 1949, as amended, during fiscal year 1994.

FOR FURTHER INFORMATION CONTACT: Mary T. Chambliss, Director, Program Analysis Division, Office of the General Sales Manager, FAS, USDA, (202) 720–3573.

Determination

The kinds and quantities of commodities that shall be made available for donation are as follows:

	Commodity	Quantity (metric tons)
Dairy Products .	Butter/butteroil [1]	60,000
	Nonfat dry milk	10,000
Total	.....	70,000

[1] At least 34,000 metric tons must be butter.

Done at Washington, DC, this 1st day of October 1993.

Eugene Moos,

Acting Secretary of Agriculture.

[FR Doc. 93–24879 Filed 10–12–93; 8:45 am]

BILLING CODE 3410–10–M

Forest Service

Exemption From Appeal; Point Salvage Sale, Kaibab National Forest, AZ

AGENCY: Forest Service, USDA.

ACTION: Notice; Point salvage sale administrative appeal exemption.

SUMMARY: On October 6, 1993, North Kaibab District Ranger, Raymond D. Brown, made a decision to approve salvage harvesting which will allow for utilization of dead and dying timber resulting from the Point Fire. The Point Fire is located on the Kaibab National Forest.

The 1,762 acre Point Fire in Arizona damaged timber and other resources. The North Kaibab Ranger District has completed an Environmental Analysis on the impacts of salvage harvesting. It will be necessary to recover timber resources in a short, emergency time frame to minimize further deterioration. Damaged timber that is selected to be harvested needs to be removed within 3 months to prevent additional value losses. If the decision document resulting from this Environmental Analysis is appealed under 36 CFR part 217, valuable time in resource recovery is likely to be lost. I have therefore determined that, pursuant to 36 CFR 217.4(a)(11), decisions involving timber recovery within the Point Salvage Sale area are exempt from administrative appeal.

Copies of the Environmental Assessment are available upon request at the North Kaibab Ranger District Office, 430 S. Main, P.O. Box 268, Fredonia, AZ 86022.

DATES: This notice is effective October 12, 1993.

ADDRESSES: Direct comment to: Larry Henson, Regional Forester, Southwestern Region, USDA Forest Service, 517 Gold Avenue SW, Albuquerque, New Mexico 87102.

FOR FURTHER INFORMATION CONTACT: Milo Larson, Director, Timber Management, (505) 842–3240. Direct requests for a copy of the appeal regulation to Pat Jackson at the above address.

Dated: October 6, 1993.

Larry Henson,

Regional Forester.

[FR Doc. 93–25040 Filed 10–12–93; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the California Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that the California Advisory Committee to the Commission will convene at 7 p.m. and recess at 9 p.m. on October 29, 1993, and will reconvene at 8 a.m. and adjourn at 12 noon on October 30, 1993, at the Hyatt Regency San Francisco, 5 Embarcadero Center, San Francisco, California 94111. The purpose of the meeting is training and orientation for new Committee members on Commission policies and procedures.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Michael Carney or Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–0508). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, October 1, 1993.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 93–25019 Filed 10–12–93; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the Oklahoma Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that the Oklahoma Advisory Committee to the U.S. Commission on Civil Rights will meet on October 28, 1993, from 2 p.m. until 8 p.m. at the Doubletree Hotel at Warren Place, 6110 South Yale Avenue, Tulsa, Oklahoma 74136. The purpose of the meeting is to plan for future Committee activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 816–426–5253

(TTY 816–426–5009). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, October 1, 1993.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 93–25020 Filed 10–12–93; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Transportation and Related Equipment Technical Advisory Committee; Meeting

A meeting of the Transportation and Related Equipment Technical Advisory Committee will be held November 4, 1993, 9:30 a.m., in the Herbert C. Hoover Building, room 1617M(2), 14th Street & Pennsylvania Avenue, NW., Washington DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to transpiration and related equipment or technology.

Agenda

General Session

1. Opening Remarks by the Chairman or Commerce Representative.
2. Introduction of Members and Visitors.
3. Election of Chairman.
4. Presentation of Papers or Comments by the Public.
5. Discussion of regulatory issues.
6. Discussion of recent revisions to the International Traffic in Arms Regulations (ITAR).

Executive Session

7. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control programs and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that you forward your public presentation materials two weeks prior to the meeting to the following address: Ms. Lee Ann Carpenter, TAC Unit/OAS/EA/BXA, room 3886, U.S. Department of Commerce, Washington, DC 20230

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 18, 1993, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committe and of any Subcommittee thereof, dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6020, U.S. Department of Commerce, Washington DC. For further information or copies of the minutes call 202–482–2583.

Dated: October 7, 1993.

Betty A. Ferrell,

Director, Technical Advisory Committee Unit.

[FR Doc. 93–25125 Filed 10–12–93; 8:45 am]

BILLING CODE 3510–DT–M

National Institute of Standards and Technology

National Voluntary Laboratory Accreditation Program; Calibration Laboratories Technical Guide Workshop

AGENCY: National Institute of Standards and Technology, Commerce

ACTION: Notice; Calibration Laboratories Technical Guide Workshop.

SUMMARY: The National Institute of Standards and Technology (NIST) will host a public workshop on November 22 through 24, 1993, to provide interested parties an opportunity to participate in the development of the Technical Guide for Calibration Laboratories. This guide will be used along with the Program Handbook to accredit laboratories in eight fields of calibration (Dimensional, Electromagnetic-DC/Low Frequency, Electromagnetic-RF/Microwave, Ionizing Radiation, Mechanical, Optical Radiation, Thermodynamic, Time and Frequency). A draft Technical Guide will be available for limited distribution to those attending the workshop or to those willing to provide technical comments on the document.

DATES: The workshop will be held on Monday, November 22, 1993, through Wednesday, November 24, 1993, from 9 a.m. to 4 p.m.

PLACE: The workshop will be held at the National Institute of Standards and Technology, Gaithersburg, Maryland.

FOR FURTHER INFORMATION CONTACT: National Voluntary Laboratory Accreditation Program (NVLAP), National Institute of Standards and Technology, Building 411, room A162, Gaithersburg, MD 20899, by phone at (301) 975–4016, or by FAX at (301) 926–2884. To assist in preparing for the workshop, please inform NVLAP about individuals/organizations planning to attend the workshop.

SUPPLEMENTARY INFORMATION:

Background

This notice is issued in accordance with the NVLAP Procedures (15 CFR part 7). In a **Federal Register** notice dated May 18, 1992, (Vol. 57, No. 96), the National Institute of Standards and Technology (NIST) announced the establishment of the program for calibration laboratories, "Accreditation for Calibration Laboratories", pursuant to the request by the National Conference of Standards Laboratories in a letter of June 13, 1991, announced in the **Federal Register** of August 21, 1991. Accreditation will be offered to all applicant laboratories that fulfill the requirements of the National Voluntary Laboratory Accreditation Program.

Technical criteria is being developed and incorporated into a draft Technical Guide which will be presented and reviewed at the workshop, and interested parties will have an opportunity to comment. The workshop is part of the NVLAP process of assuring that accreditation programs are of high technical quality, responsive to the technical needs of the metrology community, and are relevant to the needs of those affected by accreditation.

The following plans for the workshop have been established:

1. Purpose: The workshop will provide all interested persons with an opportunity to participate and contribute to the finalization of technical criteria, requirements, and procedures for evaluation and accreditation of laboratories that provide calibration services.

2. Procedure: The workshop will be an informal, nonadversarial meeting. The presiding NIST chairperson(s) will allocate the time available for presentation and discussion of each

issue to be addressed, and will exercise authority as needed to ensure the equitable, efficient and orderly conduct of the meeting.

3. Provisions: This workshop will be open to the public; there is no registration fee, however NVLAP would like notification of attendance due to space limitations. Housing is the responsibility of attendees.

Documents in Public Record

Summary minutes of highlights of the workshop will be made available in the NVLAP program office, Building 411, room A162, at the campus in Gaithersburg, Maryland.

Dated: October 6, 1993.

Samuel Kramer,

Associate Director.

[FR Doc. 93–25071 Filed 10–12–93; 8:45 am]

BILLING CODE 3510–13–M

COMMODITY FUTURES TRADING COMMISSION

Exemptions for Certain Exchange-Traded Futures and Options Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Extension of comment period.

SUMMARY: On August 16, 1993 the Commodity Futures Trading Commission ("Commission") published in the **Federal Register** a Notice of petitions for exemptions and request for comment relating to proposed exemptions for certain exchange-traded futures and options contracts. 58 FR 43414. The applicable comment period expires on October 15, 1993. See 58 FR 44402 (Aug. 20, 1993). The Commission has received a request for an extension of the comment period on behalf of several commenters. To ensure that all interested parties have an adequate opportunity to submit meaningful comments, the Commission has determined to extend the comment period.

DATE: Written comments must be received by the Commission by the close of business on December 15, 1993.

ADDRESS: Comments should be sent to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20591. Reference should be made to petitions for exemptions for certain exchange-traded futures and options contracts.

FOR FURTHER INFORMATION CONTACT: Pat G. Nicolette, Acting General Counsel, David R. Merrill, Deputy General Counsel, Ellyn S. Roth, Attorney, Office of the General Counsel at (202) 254–9880 or Blake Imel, Acting Director, Division of Economic Analysis at (202) 254–6990, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581.

Issued in Washington, DC, this 6th day of October, 1993, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 93–25202 Filed 10–12–93; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Privacy Act of 1974; Amend and Delete Record Systems

AGENCY: Office of the Secretary of Defense, DOD.

ACTION: Amend and delete record systems.

SUMMARY: The Office of the Secretary of Defense proposes to amend one system and delete one system of records notices to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendments will be effective on November 12, 1993, unless comments are received that would result in a contrary determination.

The deletion will be effective October 13, 1993.

ADDRESSES: Send comments to Chief, Records Management and Privacy Act Branch, Washington Headquarter Services, Correspondence and Directives, Records Management Division, Room 5C315, Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Cragg, OSD Privacy Act Officer at (703) 695–0970 or DSN 225–0970.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a) have been published in the **Federal Register** and are available from the address above.

Dated: October 6, 1993.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DELETION

DWHS P26

SYSTEM NAME:

Protective Services File *(February 22, 1993, 58 FR 10273).*

Reason: Information contained in this system will be subsumed in DWHS P42, 'DPS Incident Reporting and Investigations Case Files'.

AMENDMENTS

DWHS P42

SYSTEM NAME:

DPS Incident Reporting and Investigations Case Files *(February 22, 1993, 58 FR 10277).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Defense Protective Services, Washington Headquarters Services, 1155 Defense Pentagon, Washington DC 20301–1155.'

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Add a sentence to the third paragraph 'Persons who may pose a threat to the Secretary of Defense, the Deputy Secretary of Defense and other Senior Defense Officials.'

Insert a new fourth paragraph 'Persons who may pose a threat to the personal safety of themselves or others while in the DPS-controlled jurisdiction.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Add a new paragraph to entry 'Documents created in enforcing regulations regarding motor vehicle movement and parking on Federal premises including reports of traffic accidents, traffic violation notices and similar records maintained by DPS.'

* * * * *

PURPOSE(S):

Delete entry and replace with 'Information in this system supports the public safety, law enforcement, facility security, and contingency planning functions of the Defense Protective Service. Additional functions supported include information on current and former applicants for the position of Defense Protective Service Officer and Internal Affairs investigative records.'

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Non-criminal records are destroyed one year after case is closed.

Criminal records are cutoff when case is closed and placed in an inactive file for three years. After three years in the inactive file, the records are retired to the Washington National Records Center for an additional 15 years, after which time they will be destroyed.

Information on current and former applicants for position of DPS Officer

are maintained two years and then destroyed.

Contingency planning and analysis files pertaining to regional, nationwide, and worldwide terrorist organizations and their potential effects of the security of DoD facilities are destroyed when superseded, obsolete, or no longer needed.'

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Defense Protective Services, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.'

NOTIFICATION PROCEDURE:

Replace the address in entry to read 'Defense Protective Services, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.'

RECORD ACCESS PROCEDURES:

Replace the address in entry to read 'Defense Protective Services, Washington Headquarters Services, 1155 Defense Pentagon, Washington DC 20301–1155.'

* * * * *

DWHS P42

SYSTEM NAME:

DPS Incident Reporting and Investigations Case Files.

SYSTEM LOCATION:

Defense Protective Services, Washington Headquarters Services, 1155 Defense Pentagon, Washington DC 20301–1155.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who are the source of an initial complaint or allegation that a crime took place.

Witnesses having information or evidence about any aspect of an investigation.

Suspects in the criminal situation who are subjects of an investigation. Persons who may pose a threat to the Secretary of Defense, the Deputy Secretary of Defense and other Senior Defense Officials.

Persons who may pose a threat to the personal safety of themselves or others while in the DPS-controlled jurisdiction.

Subjects of investigations on noncriminal matters.

Current and former applicants for the position of Defense Protective Service Officer.

Sources of information and evidence. The identity of these individuals may be confidential as appropriate to the subject matter they contribute. These files contain information vital to the outcome of administrative procedures and civil and criminal cases.

Individuals associated with terrorism or terrorist groups and activities and names of regional, nationwide, and worldwide terrorist organizations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Preliminary and other reports of criminal investigations from the opening of a case until it is closed. These records are instituted and maintained at varying points in the process. The processes of criminal justice and civil and administrative remedies may require their partial or total disclosure.

Security files contain information such as name, date and place of birth, address, Social Security Number, education, occupation, experience, and investigatory material.

Contingency Planning/Analysis files contain information such as names and other identifying information and investigatory material on an individual associated with terrorists or terrorist groups and activities. File contains information about regional, nationwide, and worldwide terrorist organizations and their effects on security of DOD facilities under the jurisdiction of DPS. Intelligence briefs; tactical, operational, and strategic informational reports; regional and nationwide contingency analysis; contingency action plans; and patterns and trends of potential or actual terrorists or terrorist groups, or other activities that could disrupt the orderly operation of Defense-owned or controlled facilities over which the DPS has jurisdiction.

Documents created in enforcing regulations regarding motor vehicle movement and parking on Federal premises including reports of traffic accidents, traffic violation notices and similar records maintained by DPS.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 21, Internal Security Act of 1950 (Pub. L. 831, 81st Cong.); 40 U.S.C 318, as delegated by Administrator, General Services Administration, to the Deputy Secretary of Defense, September 1987, and E.O. 9397.

PURPOSE(S):

Information in this system supports the public safety, law enforcement, facility security, and contingency planning functions of the Defense Protective Service. Additional functions supported include information on current and former applicants for the position of Defense Protective Service Officer and Internal Affairs investigative records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To a Federal, state, local, or foreign agency responsible for investigating, prosecuting, enforcing, or carrying out a statute, rule, regulation, or order, where the agency is aware of a violation or potential violation of civil or criminal law or regulation.

To an appeal, grievance, or formal complaints examiner; equal employment opportunity investigator; arbitrator; exclusive representative; or other officials engaged in investigating, or settling a grievance, complaint or appeal filed by an employee.

To various bureaus and divisions of the Department of Justice that have primary jurisdiction over subject matter and location which DPS shares.

To law enforcement agencies which have lawfully participated in and conducted investigation jointly with DPS.

Pursuant to the order of a court of competent jurisdiction, when the United States is party to or has interest in litigation, and using the records is relevant, necessary, and compatible with the purposes of collecting the information.

The 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders in file cabinets. Magnetic media in controlled access areas for both on-line and storage disks.

RETRIEVABILITY:

Paper records by case control number and type of incident. Magnetic files by case control number, name, address, and physical description of subject individual.

SAFEGUARDS:

Paper records are stored in secure filing cabinets in room with built-in-position dial-type combination safe lock. Computer records are maintained in limited access sites on a system protected by a software-controlled password system.

RETENTION AND DISPOSAL:

Non-criminal records are destroyed one year after case is closed.

Criminal records are cutoff when case is closed and placed in an inactive file for three years. After three years in the inactive file, the records are retired to the Washington National Records Center for an additional 15 years, after which time they will be destroyed.

Information on current and former applicants for position of DPS Officer are maintained two years and then destroyed.

Contingency planning and analysis files pertaining to regional, nationwide, and worldwide terrorist organizations and their potential effects of the security of DoD facilities are destroyed when superseded, obsolete, or no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

Defense Protective Services, Washington Headquarters Services, 1155 Defense Pentagon, Washington DC 20301–1155.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address inquiries to the Defense Protective Services, Washington Headquarters Services, 1155 Defense Pentagon, Washington DC 20301–1155.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address inquiries to the Defense Protective Services, Washington Headquarters Services, 1155 Defense Pentagon, Washington DC 20301–1155.

CONTESTING RECORD PROCEDURES:

The OSD's rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Investigators, informants, witnesses, official records, investigative leads, statements, depositions, business records, or any other information source available to DPS.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Parts of this system may be exempt under 5 U.S.C. 552a(j)(2) as applicable. The criminal investigation case file and contingency planning and analysis file may be partially or totally subject to the general exemption.

An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b) (1), (2), and (3), (c) and (e) and published in 32 CFR part 311. For additional information contact the system manager.

[FR Doc. 93–24983 Filed 10–12–93; 8:45 am]

BILLING CODE 5000–04–F

Department of the Army

Advisory Committee Meeting, Yakima Training Center Cultural and Natural Resources Committee

AGENCY: Headquarters, I CORPS and Fort Lewis, DOD.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 94–463), announcement is made of the following committee meeting.

NAME OF COMMITTEE: Yakima Training Center Cultural and Natural Resources Committee.

DATE OF MEETING: October 20, 1993.

PLACE OF MEETING: Yakima Training Center, Building 266, Yakima, Washington.

TIME OF MEETING: 1 p.m.

PROPOSED AGENDA: Approval of the Interim Training Strategy for the Yakima Training Center; Review of Federal Advisory Committee Status; and Scheduling of Future Meetings.

All proceedings are open. For further information contract Stephen Hart, Chief, Civil Law, (206) 967–4540.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 93–25014 Filed 10–12–93; 8:45 am]

BILLING CODE 5000–03–M

Proposed Revision to the Total Quality Assurance Program (TQAP)

AGENCY: Military Traffic Management Command, DOD.

ACTION: Notice.

SUMMARY: The Department of Defense has reviewed the TQAP since its implementation beginning February 1992. Several issues have been proposed and changes to the Personal Property Traffic Management Regulation, DOD 4500.34R are pending. The objectives are to streamline the process of evaluating carriers and reduce the administrative work load for transportation offices and carriers.

DATES: Effective January 1994 for the International Program, and February 1994 for the Domestic Program.

ADDRESSES: Comments may be addressed to Commander, Military Traffic Management Command, ATTN: ADCSOPS–QEC, 5611 Columbia Pike, Falls Church, VA 22041–5050.

FOR FURTHER INFORMATION CONTACT: Ms. Wells at (703) 756–1585, HQMTMC, ATTN: MT–QEC, 5611 Columbia Pike, Falls Church, VA 22041–5050.

SUPPLEMENTARY INFORMATION: The revision will supersede procedures published in DOD 4500.34R, Personal Property Traffic Management Regulation, the Total Quality Assurance Program pamphlet dated February 1992, and the Domestic Personal Property CONUS Automated Rate System (CARTS) instructions, effective 1 May 1991. It is anticipated that after reviewing industry comments, the rules and procedures set forth in the TQAP pamphlet will be incorporated into the Personal Property Traffic Management Regulation (PPTMR, DOD 4500.34R) as a separate chapter. Summaries of the significant changes or clarification contained in the revision are as follows:

A. All shipments will be scored within 12 months of pickup date. If no destination information is known, the origin PPSO will contact the destination PPSO to conform the status of the shipment and request feedback on carrier performance at time of delivery. In addition this will ensure that if the shipment is still in SIT, points will not be taken away from the carrier for not providing a DD Form 1840. Unless there is evidence in the file to show otherwise, these type of shipments will usually score at 100. In addition, shipments noted as still being in SIT after 12 months of pickup will be flagged to prevent the shipments from being scored again in future cycles.

B. If the PPSO should fail to score any shipment after 12 months of pickup, carriers must identify the shipment during the appeal cycle for the DD Form 2497. Then the shipments will be scored within 45 days and batch mailed according to TQAP procedures. This will allow the carrier an opportunity to appeal if necessary. The score will reflect on the carrier's next semiannual score.

C. A carrier may request a shipment score 120 days after delivery when proof of delivery is provided. A completed DD Form 1840/1840R will be the only acceptable proof of delivery. Origin PPSOs will not be limited to using only origin data for scoring if the shipment is less than a year old.

D. Unless the shipment is still in SIT, shipments may be scored under 12 months (see note (3) below) only if the following criteria exists:

(1) A completed DD Form 1780 or electronic data of information is received from the destination PPSO.

(2) The DD Form 1840 is present and signed by the member and the carrier representative.

(3) Shipments that have been converted to nontemporary storage (NTS) or commercial storage will not require a DD Form 1840 for scoring. The destination PPSO should annotate the DD Form 1780 at the time the shipment is converted and return the form to origin.

E. Carriers will not be required to respond to letters of warning, unless the PPSO specifically requests a written response. However, if the violations continue the carrier is subject to suspension.

F. Regular suspensions will no longer require a 20-day grace period, however, regular suspensions must be preceded by a letter of warning at a minimum of 20 days before the day of suspension.

G. Destination PPSOs may take action against a carrier that has a Letter of Intent (LOI) on file at that destination for outbound service for inbound/destination performance failures.

H. Facsimiles will be permitted to meet the deadline for submitting the DD Form 840. However, it must be followed within 15 days by the original DD Form 1840 signed by the member and driver.

I. On long delivery out of SIT shipments the carrier will return the completed DD Form 619 to the PPSO that authorized the services done.

J. When a carrier is suspended for a volume move, it is suspended for the same type service (i.e., All domestic HHGs), for all shipments out of that activity. The CONUS Automated Rate System (CARTS) pamphlet will be changed.

K. A carrier's score is calculated semiannually based on DD Forms 1780 mailed to the carrier during the evaluation period. The evaluation periods and effective date for the award of traffic are as follows: (Only the evaluation period has changed)

Evaluation period	Effective date	Rate/performance cycle
ITGBL:		
16 Jan–15 Jul.	1 Oct	1 Oct–31 Mar.
16 Jul–15 Jan.	1 Apr	1 Apr–30 Sep.
TGBL:		
16 Feb–15 Aug.	1 Nov	1 Nov–30 Apr.
16 Aug–15 Feb.	1 May	1 May–31 Oct.

L. Shipments turned back by the carrier, or pulled back by the PPSO due to fault of the carrier unable to perform, will be uniformly scored at a score of 40 points. This will include shipments that have been packed and/or picked up by the local agent. The carrier will continue to be charged administrative weight on the TDR if the shipment is turned back or pulled back seven days or less before the established pickup date or any time after the shipment has been picked and/or picked up.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 93–25016 Filed 10–12–93; 8:45 am]

BILLING CODE 3000–03–M

Defense Transportation Tracking System

AGENCY: Military Traffic Management Command, DoD.

ACTION: Notice.

SUMMARY: The DOD is expanding its Defense Transportation Tracking System (DTTS) to include Satellite Monitoring (SM) of Uncategorized Division 1.1 through 1.3 Ammunition and Explosives (A&E) effective October 1, 1993. This provides notice of Phase III in the DTTS program expansion. The DOD currently requires SM for all security risk categorized Arms, Ammunition, and Explosives (AA&E) shipments. Categorized AA&E shipments total about 32,000 annually. In Phase III, an additional 17,000 uncategorized shipments are to be tracked with SM.

ADDRESSES: Commander, Military Traffic Management Command, ATTN: MTOP–T 5611 Columbia Pike, Falls Church, VA 22041–5050.

FOR FURTHER INFORMATION CONTACT: Mr. John Piparato, HQMTMC, 5611 Columbia Pike, Falls Church, VA 22041–5050, telephone (703) 756–1094.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to provide final notice and information on the final phase of the expansion of DTTS.

The DTTS General Officer Steering Committee (GOSC), comprised of membership from the military services and defense Logistics Agency have approved expansion of the DTTS to track Uncategorized Division 1.1 through 1.3 A&E effective October 1, 1993.

This represents part of a phased plan designed to expand tracking by DTTS to Security Risk Categorized (SRC) AA&E and Uncategorized Division 1.1 through 1.3 A&E shipments. SRC items, totalling about 32,000 shipments annual, are currently being tracked by DTTS and 17,000 additional, uncategorized A&E shipments are expected to be tracked by DTTS each year.

The DTTS GOSC also approved that, effective October 1, 1993, charges for SM will be reduced from the current maximum level of $.22 per mile to a maximum of $.13 per mile. Accordingly, on or before that date, motor carriers wishing to participate in this program will be required to adjust SM charges in their applicable tenders on file with MTMC to reflect the revised per mile charge. SM charges as an accessorial service will be paid to carriers providing this service at a rate of a maximum $.13 per mile for shipments picked up on or after October 1, 1993.

In the July 6, 1993, **Federal Register** (58 FR 36188), MTMC provided notice of the expansion of DTTS, including a statement that as of January 1, 1994, charges for SM should be included in the linehaul rates. As a result of comments received in that notice, the DOD will be meeting with members of the munitions carrier industry to review the DTTS expansion and the procedures to be effective January 1, 1994.

Carriers participating in the transportation of DOD SRC AA&E and uncategorized A&E are advised that this provides final notice on Phase III expansion of the DTTS program. Comments should be made to Commander, Military Traffic Management Command, ATTN: MTOP–T (John Piparato), 5611 Columbia Pike, Falls Church, VA 22041–5050, (703) 756–1094.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 93–25015 Filed 10–12–93; 8:45 am]

BILLING CODE 3000–03–M

DEPARTMENT OF EDUCATION

[CFDA Number: 84.267]

State Postsecondary Review Program; Notice Extending the Closing Dates for Participation in the State Postsecondary Review Program in Fiscal Year 1993

Deadline for Submission of Plan and Budget: On July 14, 1993, the Secretary published a notice in the **Federal Register** establishing three closing dates for participating in the State Postsecondary Review Program in fiscal year 1993. The purpose of this notice is to extend all three closing dates. This action is taken as a result of the delay in receiving the July 14, 1993 **Federal Register** notice by some of the States and territories, which prevented them from submitting their applications by the first closing date.

The Secretary believes that all States and Territories desiring to participate in the State Postsecondary Review Program in the first year of the program should

be allowed to do so. Accordingly, the Secretary extends the closing date for the submission of an initial plan and budget from September 10, 1993 to October 15, 1993, the closing date for the submission of an acceptable plan and budget from October 22, 1993 to November 1, 1993, and the closing date for the submission of an acceptable agreement from October 22, 1993 to November 1, 1993.

FOR INFORMATION CONTACT: Mr. Kenneth R. Waters, Acting Branch Chief, State Liaison Branch, U.S. Department of Education, 400 Maryland Avenue SW., room 3036, ROB–3, Washington, DC 20202–5346. Telephone: (202) 708–7417. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Program Authority: 20 U.S.C. 1099a–1099a–3.

Dated: October 5, 1993.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 93–24982 Filed 10–12–93; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Docket No. EE–93 Nine-Cert]

Applications for Certification of Net Income Neutrality From Puget Sound Power & Light Co., Portland General Electric Co., Potomac Electric Power Co., & Minnesota Power

AGENCY: Department of Energy, Office of Energy Efficiency and Renewable Energy.

ACTION: Notice.

SUMMARY: The U.S. Department of Energy has received applications for certification of net income neutrality from Portland General Electric Company, Portland Electric Power Company, Puget Sound Power and Light Company, and Minnesota Power. Interested parties may submit written comments on this application at the address specified below on or before November 8, 1993. Copies of the applications, responses to any requests for additional information, and comments will be available for review and copying by the public at: the Freedom of Information Reading Room; U.S. Department of Energy; 1000 Independence Avenue SW.; Washington, DC 20585; (202) 586–6020, Monday through Friday, excluding federal holidays, between the hours of 9 a.m. and 4 p.m.

DATES: The applications from Portland General Electric Company, the Potomac Electric Power Company, Puget Sound Power and Light Company, and Minnesota Power were determined to be complete and accepted for filing on October 4, 1993. Comments on each of these applications will be accepted until 5 P.M. Eastern Standard Time on November 8, 1993 at the address listed below.

ADDRESSES: Comments should be sent to: U.S. Department of Energy; Office of Energy Efficiency and Renewable Energy; EE–10, room 6C–036; 1000 Independence Avenue SW.; Washington, DC 20585. Attention: Net Income Neutrality Certification Docket EE–93–NINA–CERT, for Puget Sound Power and Light Company, Application 4; for the Portland General Electric Company, Application Number 6; for Potomac Electric Power Company, Application 7; and for Minnesota Power, Application Number 8.

FOR FURTHER INFORMATION CONTACT: Diane B. Pirkey; U.S. Department of Energy; EE–14; 1000 Independence Avenue SW.; Washington, DC 20585; (202) 586–9839.

SUPPLEMENTARY INFORMATION: Under the 1990 Clean Air Act Amendments, an investor-owned electric utility, with rates regulated by a state utility regulatory authority, seeking sulfur-dioxide emission allowances from the Conservation and Renewable Energy Reserve for emissions avoided by the installation of applicable conservation measures, must obtain certification of net income neutrality from the Secretary of Energy. This certification verifies that the state regulatory authority has established rates and charges which ensure that the net income of such utility after implementation of conservation measures is at least as high as such net income would have been if the conservation measures had not been implemented. 42 U.S.C. 7651c(f)(2)(B)(iv) as amended by Public Law 101–549.

These requirements are further addressed in the Final Rule adopted by the U.S. Environmental Protection Agency, published in the **Federal Register**, January 11, 1993, 58 FR 3590; see: 40 CFR 72.2, providing a definition of net income neutrality; 40 CFR 73.82(b), establishing application requirements; and 40 CFR 73.83, describing generally the Secretary of Energy's review of such applications. Additional information regarding the Department of Energy's review of net income neutrality applications is available in the Notice on Applications From Investor-Owned Utilities for Certification of Net Income Neutrality published in the **Federal Register** for August 9, 1993 at 58 FR 42308.

Issued in Washington, DC, on September 30, 1993.

Frank M. Stewart, Jr.,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 93–25120 Filed 10–12–93; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Project Nos. 2407–006, Alabama 2406–007]

Alabama Power Co.; Availability of Draft Environmental Assessment

October 6, 1993.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for major new license for the Yates and Thurlow Projects, located on the Tallapoosa River, in Tallapoosa and Elmore Counties, Alabama and has prepared a Draft Environmental Assessment (DEA) for the project. In the DEA, the Commission's staff has analyzed the environmental impacts of the existing projects and has concluded that approval of the projects, with appropriate mitigation or enhancement measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Branch, room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Please submit any comments within 45 days from the date of this notice. Comments should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Please affix Project No. 2407 to all comments. For further information, please contact John Smith, Environmental Coordinator, at (202) 219–2460.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24998 Filed 10–12–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD93–00346T Colorado-47]

State of Colorado; NGPA Amended Determination by Jurisdictional Agency Designating Tight Formation

October 6, 1993.

Take notice that on September 23, 1993, the Oil and Gas Conservation Commission of the State of Colorado (Colorado), amended its notice of determination that was filed in the above-referenced proceedings on October 20, 1992, pursuant to § 271.703(c)(3) of the Commission's regulations. The October 20, 1992 notice determined that the Upper Lewis Sand (Blue Gravel Member) underlying certain lands in Moffat County, Colorado, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978.

The amended notice of determination reduces the geographical area recommended for tight formation designation to cover only the state-owned lands described as follows:

Township 9 North, Range 90 West
Section 31: W/2
Township 9 North, Range 91 West
Section 36: All

The notice of determination also contains Colorado's findings that the referenced portion of the Upper Lewis Sand (Blue Gravel Member) meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24995 Filed 10–12–93; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. TM94–2–48–000]

ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff

October 6, 1993.

Take notice that on September 30, 1993, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Second Revised Sheet No. 19, with a proposed effective date of November 1, 1993.

ANR states that the purpose of the instant filing is to update ANR's recently approved annual redetermination of its fuel matrix in order to reflect the implementation of restructured services effective November 1, 1993.

ANR states that copies of the filing have been served on all parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 311 of the Commission's Rules of Practice and Procedure 18 CFR 395.211. All such protests should be filed on or before October 14, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspections.

Lois D. Cashell,

Secretary.

[FR Doc. 93–25009 Filed 10–12–93; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. TM94–1–31–000]

Arkla Energy Resources Co.; Filing

October 6, 1993.

Take notice that on October 1, 1993, Arkla Energy Resources Company (AER) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following revised tariff sheets to become effective November 1, 1993:

First Revised Sheet No. 4
First Revised Sheet No. 4.1

AER states that these revised tariff sheets are filed to adjust AER's fuel tracker pursuant to the Stipulation and Agreement approved in Docket No. RP93–3–000 on September 23, 1993.

AER states that a copy of the filing has been mailed to each of AER's customers and interested state commissions.

Any person desiring to be heard or protest the proposed tariff sheets should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such motions or protests should be filed on or before October 14, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–25004 Filed 10–12–93; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. TM94–1–33–001]

El Paso Natural Gas Co.; Proposed Changes in FERC Gas Tariff

October 6, 1993.

Take notice that on October 1, 1993, El Paso Natural Gas Company (El Paso) tendered for filing, pursuant to part 154 of the Federal Energy Regulatory Commission's (Commission) Regulations Under the Natural Gas Act, a recalculation of its Throughput Surcharge reflecting the annual mainline thoughput at Docket No. RP92–214–000 included in El Paso's Offer of Settlement in Restructuring, Rate and Related Proceedings (Settlement) at Docket No. RS92–60–000, et al., filed on January 29, 1993.

El Paso states that on August 31, 1993 at Docket No. TM94–1–33–000, El Paso filed a revision to its Throughput Surcharge to become effective October 1, 1993. In such filing El Paso revised the interest related to the take-or-pay costs included in the calculation of the Throughput Surcharge. Such calculation utilized the throughput levels underlying its then currently effective filed rates at Docket No. RP92–214–000. El Paso stated that it would recalculate the Throughput Surcharge reflecting the annual mainline throughput at Docket No. RP92–214–000 included in its Settlement filed on January 29, 1993, upon final Commission order in that proceeding. By letter order issued September 30, 1993 at Docket No. TM94–1–33–000, the Commission accepted El Paso's proposed Throughput Surcharge of $0.0417 per dth, subject to El Paso revising the Throughput Surcharge reflecting the annual mainline Throughput at Docket No. RS92–60–000, et al., that become effective October 1, 1993.

El Paso further states that on September 14, 1993 it filed in compliance with the order approving the Settlement certain implementing tariff sheets, which among other things, included Statement of Rates tariff sheets restating the Throughput Surcharge rate to $0.0376 per dth to become effective October 1, 1993. The calculation of such rate is based on the take-or-pay costs approved at Docket No. RP93–108–000 and the mainline annual throughput underlying El Paso's Settlement. However, such Throughput Surcharge

did not reflect the revised interest included at Docket No. TM94–1–33–000, since approval by the Commission had not been received at the time of filing.

El Paso states that it now has recalculated the Throughput Surcharge approved at Docket No. TM94–1–33–000 to reflect the Settlement annual mainline throughput of 1,241,000,000 dth. Therefore, the tendered tariff sheets, when accepted by the Commission and permitted to become effective, serve to update the Throughput Surcharge based on the approved take-or-pay costs at Docket No. TM94–1–33–000 and the throughput levels underlying El Paso's approved Settlement rates at Docket No. RS92–60–000, et al.

Additionally, El Paso states that it has restated on the tendered tariff sheets the annual charge adjustment of $0.0025 per dth, which was also approved at Docket No. TM94–1–33–000.

El Paso respectfully requests all necessary waivers of the Commission's Regulations so as to permit the tendered tariff sheets to become effective October 1, 1993 and supersede the counterpart tariff sheets filed on September 14, 1993 in compliance with the Settlement at Docket No. RS92–60–000, et al.

El Paso states that copies of the filing were served upon all interstate pipeline system transportation customers of El Paso and interested state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.211 of the Commission's Rule and Regulations. All such protests should be filed on or before October 14, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–25005 Filed 10–12–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ES94–1–000]

Electric Energy, Inc.; Application

October 6, 1993.

Take notice that on October 1, 1993, Electric Energy, Inc. filed an application under section 204 of the Federal Power Act seeking authorization to issue not more than $70 million of short-term notes under the terms of certain unsecured revolving credit agreements or under terms substantially similar thereto from time to time over the 24 month period immediately following the date of the Commission's approval of the application.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before October 18, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24994 Filed 10–12–93; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 1994 Utah]

Heber Light & Power Co.; Intent To File an Application for a New License

October 6, 1993.

Take notice that Heber Light & Power Company, the existing licensee for the Snake Creek Hydroelectric Project No. 1994, filed a notice of intent to file an application for a new license, pursuant to 18 CFR 16.6 of the Commission's Regulations. The original license for Project No. 1994 was issued effective December 1, 1949, and expires June 30, 1998.

The project is located at the outlet of a mine tunnel in Wasach County, Utah. The principal works of the Snake Creek Project include a pipeline and penstock, 12 inches in diameter and about 1,500 feet long, originating at the outlet of a mine tunnel; a concrete and brick powerhouse with 800 Kw installed in one unit; an outdoor substation; and appurtenant facilities.

Pursuant to 18 CFR 16.7, the licensee is required henceforth to make available certain information to the public. This information is now available from the licensee at 31 South 100 West, Heber City, Utah 84032, telephone (801) 654–1581.

Pursuant to 18 CFR 16.8, 16.9 and 16.10, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by June 30, 1996.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24997 Filed 10–12–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER93–965–000]

Idaho Power Co.; Notice of Filing

October 6, 1993.

Take notice that on September 21, 1993, Idaho Power Company (Idaho) tendered for filing a Service Agreement under FERC Electric Tariff, Second Revised Volume No. 1 with El Paso Electric Company.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before October 19, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24992 Filed 10–12–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–2–110–000]

Iroquois Gas Transmission System L.P.; Proposed Changes in FERC Gas Tariff

October 6, 1933.

Take notice that on October 1, 1993, Iroquois Gas Transmission System, L.P., (Iroquois) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets with a proposed effective date of November 1, 1993:

Third Revised Sheet No. 4
Third Revised Sheet No. 5

Iroquois states that the above tariff sheets were filed to reflect a reduction to its Deferred Asset Surcharge in compliance with the Commission's

March 11, 1991 Order in Docket No. CP89–634–004 and the December 21, 1992 Order in Docket No. CP89–634–021.

Iroquois states that copies of the filing were served upon Iroquois' jurisdictional customers, interested state regulatory commissions, and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., the Commission's Rules of Practice and Procedures. All such petitions or protests should be filed on or before October 14, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–25010 Filed 10–12–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RS92–40–003]

Louisiana-Nevada Transit Co.; Request for Limited Waiver of Reporting Requirements Under Part 284

October 6, 1993.

Take notice that on September 30, 1993, Louisiana-Nevada Transit Company (LNT) filed a Request for Limited Waiver of Reporting Requirements under part 284. LNT states that its Request for Limited Waiver seeks waivers of reporting requirements similar to those granted by the Commission for other natural gas pipeline companies.

Specifically, LNT requests a one-time waiver of the part 284 initial and termination reporting requirements to allow LNT to submit these changes under the subsequent reporting requirements. LNT also requests a waiver of the subsequent reporting requirements to permit LNT to file, on a one-time basis, a consolidated report listing any material changes to its existing ST dockets. LNT requests a one-time wavier of required initial reports for a service that has not been previously reported or a termination report for an existing service that will be continued. LNT requests limited waiver of the subsequent reporting requirements for changes to receipt and delivery points, and waiver of reporting requirements for capacity releases other than permanent releases under part 284.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before October 27, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–25000 Filed 10–12–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD93–15105T Oklahoma–52]

State of Oklahoma; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

October 6, 1993.

Take notice that on September 29, 1993, the Corporation Commission of the State of Oklahoma (Oklahoma) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Spiro Formation, underlying a portion of Latimer County, Oklahoma, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The recommended area is described as follows:

Township 4 North, Range 19 East
Sections 4–9: All
Sections 16–18: All
Township 4 North, Range 18 East
Sections 1–5: All
Sections 8–17: All
Sections 20–29: All
Section 32: All
Sections 34–36: All

The notice of determination also contains Oklahoma's and the Bureau of Land Management's findings that the referenced formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24996 Filed 10–12–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–172–000]

Panhandle Eastern Pipeline Co.; Notice of Technical Conference

October 6, 1993.

In the Commission's order issued on September 22, 1993, in the above-captioned proceeding, the Commission ordered that a technical conference be convened to resolve issues raised by the filing. The conference to address the issues has been scheduled for October 28, 1993, at 10 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24999 Filed 10–12–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–2–28–000]

Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff

October 6, 1993.

Take notice that on October 1, 1993, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets listed on Appendix A to the filing. The proposed effective date of the revised tariff sheets is November 1, 1993.

Panhandle states that this filing is made in accordance with Section 24 (Fuel Reimbursement Adjustment) of the General Terms and Conditions of its FERC Gas Tariff, First Revised Volume No. 1. Panhandle further states that the revised tariff sheets filed herewith reflect the following changes to the Fuel Reimbursement Percentages.

(1) A (0.06)% decrease in the Gathering Fuel Reimbursement Percentage,

(2) A .01% increase in the Field Zone Fuel Reimbursement Percentage,

(3) A .04% increase in the Market Zone Fuel Reimbursement Percentage,

(4) No change in the Field Area Storage Percentages and

(5) A .01% increase in the Injection and .10% increase in the Withdrawal in the Market Area Storage Fuel Reimbursement Percentages.

Panhandle states that copies of this letter and enclosures have been served

on all customers subject to the tariff sheets and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 14, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–25001 Filed 10–12–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER93–970–000]

Southern California Edison Co.; Notice of Filing

October 6, 1993.

Take notice that on September 24, 1993, Southern California Edison Company (Edison) tendered for filing the following amendment to the Edison-Vernon firm Transmission Service Agreement for Vernon's Purchases from Salt River Project with the City of Vernon, Commission Rate Schedule No. 263:

Amendment No. 1 to the Edison-Vernon Firm Transmission Service Agreement for Vernon's Purchases from Salt River Project Between Southern California Edison Company and City of Vernon (Amendment)

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before October 19, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24993 Filed 10–12–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–2–29–000]

Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

October 6, 1993.

Take notice that on October 1, 1993, Transcontinental Gas Pipe Line Corporation (TGPL) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, First Revised Eighth Revised Sixth Revised Sheet No. 28, with a proposed effective date of October 1, 1993.

TGPL states that the purpose of the instant filing is to track in the charges payable under TGPL's Rate Schedule S–2 the storage inventory charge assessed by Texas Eastern Transmission Corporation (TETCO) to TGPL under TETCO's Rate Schedule X–28. Specifically, TGPL proposes to recover from its Rate Schedule S–2 customers the cost of purchasing approximately 12 Bcf of top gas inventory from TETCO pursuant to TETCO's Rate Schedule X–28.

TGPL states that copies of the instant filing are being mailed to its S–2 customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE. Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 14, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–25002 Filed 10–12–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–2–30–000]

Trunkline Gas Co.; Proposed Changes in FERC Gas Tariff

October 6, 1993.

Take notice that on October 1, 1993 Trunkline Gas Company (Trunkline), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets, with a proposed effective date of November 1, 1993:

Second Revised Sheet No. 6
Second Revised Sheet No. 7
Second Revised Sheet No. 8
Second Revised Sheet No. 9
Second Revised Sheet No. 10

Trunkline states that this inaugural filing being made in accordance with Section 22 (Fuel Reimbursement Adjustment) of the General Terms and Conditions in Trunkline's FERC Gas Tariff, First Revised Volume No. 1, also complies with the Commission's Orders dated March 2, 1993 and August 4, 1993 in Docket Nos. RP89–160–000 and RP92–165–000, directing Trunkline to use an "additive zone" approach for transportation rates and fuel reimbursement percentages.

Trunkline further states that the revised tariff sheets filed herewith reflect: (1) A 0.22% (Field Zone to Zone 2), 0.27% (Field Zone to Zone 1), a 0.40% (Field Zone only), a 0.25% (Zone 1 to Zone 2), a 0.30% (Zone 1 only) and a 0.14% (Zone 2 only) increase to the Current Fuel Reimbursement Percentages, pursuant to § 22.3; and (2) no change in the Annual Fuel Reimbursement Surcharge, pursuant to § 22.4.

Trunkline states that copies of this filing have been served on all jurisdictional transportation customers and applicable state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 14, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–25003 Filed 10–12–93; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearing and Appeals

Cases Filed During the Week of September 24 Through October 1, 1993

During the Week of September 24 through October 1, 1993, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: October 5, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of September 17 through October 1, 1993]

Date	Name and location of applicant	Case No.	Type of submission
9/28/93	Armen Victorian Nottingham, England	LFA–0323	Appeal of an Information Request Denial. If granted: The September 15, 1993 Freedom of Information Request Denial issued by the Office of Intergovernmental and External Affairs would be rescinded, and Armen Victorian would receive access to copies of a Concept Paper entitled "Non-Lethal Weapons" and a White Paper entitled "Concept for an Immobilization Projectile."
9/29/93	Texaco/A & W Texaco Danbury, CT	RR321–135	Request for Modification/Rescission in the Texaco Refund Proceeding. If granted: The September 15, 1993 Decision and Order (Case No. RF321–14495) issued to A & W Texaco would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding.
7/12/93	Spearman Independent School District Spearman, TX.	RR272–117	Request for Modification/Rescission in the Crude Oil Refund Proceeding. If granted: The June 28, 1993 Decision and Order (Case No. RF272–80314) issued to Spearman Independent School District would be modified regarding the firm's application for refund submitted in the Crude Oil refund proceeding.

REFUND APPLICATIONS RECEIVED

Date received	Name of refund proceeding/name of refund application	Case No.
9/24/93 thru 10/1/93.	Atlantic Richfield applications received.	RF304–14584 thru RF304–14613.
9/24/93 thru 10/1/93.	Texaco refund applications received.	RF321–19911 thru RF321–19917.
9/24/93 thru 10/1/93.	Crude oil refund applications received.	RF272–94901 thru RF272–94910.
9/24/93	Circle Syracuse Taxi.	RF300–21755.
9/27/93	Highway 14 Canal.	RF346–101.
9/27/93	Evans Canal Station.	RF346–102.

REFUND APPLICATIONS RECEIVED—Continued

Date received	Name of refund proceeding/name of refund application	Case No.
9/27/93	Airport Road Canal.	RF346–103.
9/27/93	Milton Carl	RF346–104.

[FR Doc. 93–25123 Filed 10–12–93; 8:45 am]

BILLING CODE 6450–01–P

Cases Filed During the Week of September 17 Through September 24, 1993

During the Week of September 17 through September 24, 1993, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: October 5, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of September 17 through September 24, 1993]

Date	Name and location of applicant	Case No.	Type of submission
Sept. 17, 1993	Texaco/Paul's Texaco, Pawtucket, RI 02861.	RR321–134	Request for modification/rescission in the Texaco refund poceeding. If granted: The October 28, 1992 Decision and Order (Case No. RF321–1777) issued to Paul's Texaco would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding.
Sept. 20, 1993	Richard L. Morse, Santa Fe, NM	LFA–0322	Appeal of an information request denial. If granted: The August 17, 1993 Freedom of Information Request Denial issued by the Office of Intergovernmental and External Affairs would be rescinded and Richard L. Morse would receive access to a more thorough search of DOE records related to his security clearance.
Sept. 22, 1993	David Ramirez, East Isup, NY	LWA–0002	Request for hearing under DOE contractor employee protection program. If granted: A hearing under 10 C.F.R. Part 708 would be held on the complaint of David Ramirez that reprisals were taken against him by management officials of Brookhaven National Laboratory Associated Universities, Inc. (BNL) as a consequence of his having disclosed safety concerns to BNL.

REFUND APPLICATIONS RECEIVED

Date received	Name of refund proceeding/name of refund application	Case number
9/17/93 thru 9/24/93.	Atlantic Richfield, Applications Received.	RF304–14553 thru RF304–14583.
9/17/93 thru 9/24/93.	Texaco Refund, Applications Received.	RF321–19901 thru RF321–19910.
9/17/93 thru 9/24/93.	Crude Oil Refund, Applications Received.	RF272–94891 thru RF272–94900.
9/21/93	Johnston Street Canal.	RF346–100.

[FR Doc. 93–25122 Filed 10–12–93; 8:45 am]

BILLING CODE 6450–01–P

Office of Hearings and Appeals

Cases Filed During the Week of September 10 Through September 17, 1993

During the Week of September 10 through September 17, 1993, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

Dated: October 5, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Sept. 10 through Sept. 17, 1993]

Date	Name and location of applicant	Case No.	Type of submission
Sept. 13, 1993	Deborah L. Abrahamson, DeSoto, TX	LFA–0321	Appeal of an information request denial. If granted: The August 11, 1993 Freedom of Information Request Denial issued by the Office of the Director of Personnel would be rescinded, and Deborah L. Abrahamson would receive access to correspondence between the Office of Personnel and the Superconducting Super Collider Project Office (SSCPO), draft responses to Enclosures 5 and 6, and draft responses to the Office of Personnel from SSCPO.
Sept. 14, 1993	Bolivar Central Schools, Memphis, TN	RR272–116	Request for modification/rescission in the crude oil refund proceeding. If granted: The July 22, 1993 Decision and Order (Case No. RF272–94611) issued to Bolivar Central Schools regarding the firm's Application for Refund submitted in the crude oil refund proceeding would be modified.
Do	Gulf/Winston C. Bressett, Cordova, TN	RR300–254	Request for modification/rescission in the Gulf refund proceeding. If granted: An April 13, 1993 letter dismissing an Application for Refund filed by Winston C. Bressett (Case No. RF300–21729) in the Gulf refund proceeding would be modified.

REFUND APPLICATIONS RECEIVED

Date received	Name of refund proceeding/name of refund applicant	Case No.
9/10/93 thru 9/17/93.	Atlantic Richfield refund applications received.	RF304–14517 thru RF304–14552.
9/10/93 thru 9/17/93.	Texaco Oil refund applications received.	RF321–19880 thru RF321–19900.
9/10/93 thru 9/17/93.	Crude Oil refund applications received.	RF272–94879 thru RF272–94890.
9/10/93	Sanderson Farms, Inc.	RC272–214.
9/14/93	Staggs Tire Center.	RF346–93.
9/14/93	Bernard Canal Service Station.	RF346–94.
9/14/93	Highway 14 by Paso Canal.	RF346–95.
9/14/93	Highway 14 Canal Station.	RF346–96.
9/14/93	Cameron Bayon Service Station.	RF346–97.
9/14/93	Cameron Boyon Service Station.	RF346–98.
9/14/93	Mount Vernon Mills, Inc.	RC272–215.
9/14/93	Earn Hardt Lumber Company.	RF300–21753.
9/16/98	Arnaudville Canal Center.	RF346–99.
9/16/93	James Gulf	RF300–21754.

[FR Doc. 93–25121 Filed 10–12–93; 8:45 am]
BILLING CODE 6450–01–P

Office of Fossil Energy

[FE Docket No. 93–83–NG]

Crestar Energy Marketing Corp.; Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.
ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Crestar Energy Marketing Corp. authorization to import, near Emerson, Manitoba, up to 15,000 Mcf per day of natural gas from Canada over a period of eight years ending October 31, 2001. This gas will be sold to Northern States Power Company.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, September 30, 1993.

Clifford P. Tomaszewski,
Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–25111 Filed 10–12–93; 8:45 am]
BILLING CODE 6450–01–P

[FE Docket No. 93–99–NG]

Pacific Gas & Electric Co., Electric Supply Business Unit; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.
ACTION: Notice of an order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Pacific Gas and Electric Company, Electric Supply Business Unit, blanket authorization to import up to 305 Bcf of natural gas from Canada over a two-year term, beginning on the date of first import delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, September 30, 1993.

Clifford P. Tomaszewski,
Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–25112 Filed 10–12–93; 8:45 am]
BILLING CODE 6450–01–P

[FE Docket No. 93–100–NG]

Pacific Gas & Electric Co., Gas Supply Business Unit; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.
ACTION: Notice of an order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Pacific Gas and Electric Company, Gas Supply Business Unit, blanket authorization to import up to 790 Bcf of natural gas from Canada over a two-year term, beginning on the date of first import delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, September 30, 1993.

Clifford P. Tomaszewski,
Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–25113 Filed 10–12–93; 8:45 am]
BILLING CODE 6450–01–P

[FE Docket No. 93–90–NG]

Philbro Oil & Gas, Inc., Blanket Authorization To Import and Export Natural Gas From and To Canada and To Import Liquefied Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.
ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Philbro Oil & Gas, Inc. (Philbro) blanket authorization to import from Canada up to a combined total of 200 Bcf of natural gas and liquefied natural gas and to export to Canada up to 200 Bcf of natural gas over a two-year term beginning on the date of first delivery of either imports or exports.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, room 3F–056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585. (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on October 5, 1993.

Clifford P. Tomaszewski,
Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–25114 Filed 10–12–93; 8:45 am]
BILLING CODE 6450–01–P

[FE Docket No. 93–89–NG]

Tennessee Gas Pipeline Co., Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Tennessee Gas Pipeline Company blanket authorization to import up to 200 Bcf of natural gas from Canada over a two-year term beginning on the date of the first delivery.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on September 30, 1993.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–25115 Filed 10–12–93; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 93–83–NG]

Vermont Gas Systems, Inc., Authorization To Import and Export Natural Gas From and To Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Vermont Gas Systems, Inc. (Vermont Gas) authorization to import up to 20 Bcf of natural gas from Canada and to export up to 20 Bcf of natural gas to Canada over a two-year term beginning on the date of first delivery of either imports or exports after December 16, 1993.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585. (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on October 5, 1993.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–25116 Filed 10–12–93; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 93–84–NG]

Wisconsin Fuel & Light Co., Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has granted Wisconsin Fuel & Light Company (WF&L) authorization to import up to 10,398 Mcf per day of Canadian natural gas for ten years beginning November 1, 1993. This gas would be imported from ProGas Limited and Western Gas Marketing Limited as a result of ANR Pipeline Company's unbundling of its gas supply arrangements under the restructuring requirements of Order 636 issued by the Federal Energy Regulatory Commission.

WF&L's order is available for inspection and copying in the Office of Fuels Program Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on October 5, 1993.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–25117 Filed 10–12–93; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 93–91–NG]

Wisconsin Gas Co., Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Wisconsin Gas Company blanket authorization to import from Canada up to 200 Bcf of natural gas over a period of two years beginning on the date of the first delivery.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on September 30, 1993.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–25118 Filed 10–12–93; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 93–93–NG]

Wisconsin Public Service Corp., Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has granted Wisconsin Public Service Corporation (WPSC) authorization to import up to 38,459 Mcf per day of Canadian natural gas for ten years beginning November 1, 1993. This gas would be imported from ProGas Limited and Western Gas Marketing Limited as a result of ANR Pipeline Company's unbundling of its gas supply arrangements under the restructuring requirements of Order 636 issued by the Federal Energy Regulatory Commission.

WPSC's order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestral Building, 1000 independence Avenue SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on October 5, 1993.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–25119 Filed 10–12–93; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 93–85–NG]

Granite State Gas Transmission, Inc.; Order Granting Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Granite State Gas Transmission, Inc. authorization to import up to 6,036 MMBTU per day (6,000 Mcf) of natural gas from Canada beginning on the date of the authorization through October 31, 2006.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, October 5, 1993.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–25110 Filed 10–12–93; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4788–2]

Toxics Data Reporting Subcommittee of the Environmental Information and Assessments Committee, National Advisory Council for Environmental Policy and Technology; Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: Under the Federal Advisory Committee Act, EPA gives notice of a 2 day meeting of the Toxics Data Reporting subcommittee of the National Advisory Council for Environmental Policy and Technology. This will be the fourth meeting of the Toxics Data Reporting subcommittee, whose mission is to provide advice to EPA regarding the Agency's Toxics Release Inventory (TRI) Program.

DATES: The public meeting will take place on October 28, 1993 from 8:30 a.m. to 5 p.m., and October 29, 1993 from 8:30 a.m. to 3 p.m. Members of the public wishing to make comments at this meeting should submit their comments, in writing, by October 21, 1993.

ADDRESSES: The public meeting will be held at the The Bellevue Hotel, Lexington Room, 15 E Street, Northwest, Washington, DC 20001 (202–638–0900). Written comments must be submitted to: US Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Attn: Sam Sasnett, 7408.

FOR FURTHER INFORMATION CONTACT: Cassandra Vail, Environmental Assistance Division, US Environmental Protection Agency, Mail Stop 7408, 401 M St., SW., Washington, DC 20460 Telephone: 202–260–0675.

SUPPLEMENTARY INFORMATION: EPA is proposing that the subcommittee review the following issue areas: TRI data management, TRI program directions, and Form R elements and reporting policy (Form R is the EPA form used to report information required under section 313 of the Emergency Planning and Community Right-to-Know Act). the agenda for the two days will focus on discussion of Form R elements and reporting policy. Meeting participants will discuss guidance issues associated with the data elements added to Form R as required by the Pollution Prevention Act of 1990 (PPA), including definitions and guidance for reporting recycling on EPA Form R and the sufficiency of the data elements in meeting the mandate of the PPA.

Dated: October 6, 1993.

David J. Graham,

Acting Director, Office of Cooperative Environmental Management.

[FR Doc. 93–25102 Filed 10–12–93; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4787–8]

Para-Chem Southern Inc. Site; Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended 42 U.S.C. 9601 *et seq.*, the Environmental Protection Agency (EPA) has agreed to settle claims for response costs at the Para-Chem Southern Incorporated Site, Simpsonville, Greenville County, South Carolina with one party: Para-Chem Southern Incorporated. EPA will consider public comments on the proposed settlement for thirty (30) days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. Copies of the proposed settlement are available from: Ms. Carolyn McCall, Waste Programs Branch, Waste Management Division, U.S. EPA, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365 (404) 347–5059.

Written comments must be submitted to the person above by thirty days from the date of publication.

Dated: September 28, 1993.

Joseph R. Franzmathes,

Director, Waste Management Division.

[FR Doc. 93–25104 Filed 10–12–93; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4788–1]

Proposed Administrative Settlement Under the Comprehensive Environmental Response, Compensation, and Liability Act; Tonolli 2d De Minimis Settlement

AGENCY: U.S. Environmental Protection Agency.

ACTION: Request for public comment.

SUMMARY: the U.S. Environmental Protection Agency ("EPA") is proposing to enter into a *de minimis* settlement pursuant to section 122(g)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, (CERCLA), 42 U.S.C. 9622(g)(4). This proposed settlement is intended to resolve the liabilities under CERCLA of 33 *de minimis* parties for response costs incurred, and to be incurred, at the Tonolli Corporation Superfund Site, Nesquehoning, Pennsylvania. This is the second proposed *de minimis* settlement for this Site.

DATES: Comments must be provided on or before November 12, 1993.

ADDRESS: Comments must be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107, and should refer to: *In Re Tonolli Corporation Superfund Site,* Nesquehoning, Pennsylvania, U.S. EPA Docket No. III–93–03–DC.

FOR ADDITIONAL INFORMATION CONTACT: Lydia Isales, (215) 597–9951, U. S. Environmental Protection Agency, Office of Regional Counsel, 841 Chestnut Building, Philadelphia, PA 19107.

SUPPLEMENTARY INFORMATION:

Notice of De Minimis Settlement

In accordance with section 122(i)(1) of CERCLA, notice is hereby given of a proposed administrative settlement concerning the Tonolli Corporation Superfund Site in Nesquehoning, Pennsylvania. The agreement was proposed by EPA Region III on December 11, 1992, subject to review by the public pursuant to this Notice. The agreement is also subject to the approval of the Attorney General, United States Department of Justice or her designee. Below are listed the parties who have executed certifications of their consent to participate in the settlement:

1. Al-Jan Company Inc.
2. A.W. Martin, Inc.
3. Allen Products Company, Inc.
4. Atlas Lederer.
5. Belmont Metals, Inc.
6. Bethlehem Motors.
7. Camerota Scrap Recycling.

8. Commercial Metals Company.
9. C&C Cullet Supply.
10. David Markowitz Metal Co.
11. Edward Arnold Scrap Company.
12. Eisner Brothers Company, Inc.
13. Federal Metals Company, Inc.
14. Fitzsimmons Metal Company, Inc.
15. G&G Salvage Corp.
16 Hahn & Sons.
17 HD Metal Co.
18. Joseph Gottlieb Company.
19. Lexington Scrap Metal Company.
20. Libby, McNeil, and Libby.
21. Leiby, David.
22. Luria Brothers.
23. Midlane Salvage Co., Inc.
24. Northeast Golf Cars, Inc.
25. Novey Iron and Steel.
26. Penn Builders Supply (Burrell Group).
27. Penn Iron and Metal Company.
28. R&R Salvage, Inc.
29. Samincorp, Inc.
30. Schioppo.
31. Stong, Joseph.
32. Timpson Salvage Company, Inc.
33. Weinstein Company.

These 33 parties collectively agreed to pay $542,124.04 subject to the contingency that EPA may elect not to complete the settlement based on matters brought to its attention during the public comment period established by this Notice.

EPA is entering into this agreement under the authority of Sections 122(g) and 107 of CERCLA. Section 122(g) authorizes early settlement with *de minimis* parties to allow them to resolve their liabilities under, *inter alia*, section 107 without incurring substantial transaction costs. Under this authority EPA proposes to settle with potentially responsible parties ("PRPs") at the Tonolli Corporation Superfund Site who are responsible for less than one percent of the volume of hazardous substances at the Site.

On July 24, 1992, EPA signed an Administrative Order on Consent which was intended to resolve the liabilities under CERCLA of 170 *de minimis* parties for response costs incurred or to be incurred at the Site.

On December 11, 1992, EPA extended an offer to enter into a second *de minimis* agreement to those *de minimis* PRPs who had not executed the first *de minimis* agreement. The 33 parties listed above signed that second agreement.

The terms of the proposed second *de minimis* agreements are similar to the first *de minimis* agreement, EPA's estimate of total response costs at the Site (past costs already incurred and future costs) was $34,366,701. This figure was calculated by EPA to reflect the reasonable maximum total cost estimate for the remedy at the Site, which EPA had not selected at the time of the first *de minimis* settlement agreement. The $34,366,701 figure was used to compute the allocable share of each of the *de minimis* parties who chose to become parties to the first *de minimis* settlement agreement.

Subsequent to the first *de minimis* agreement, EPA selected a long-term remedy for the Site in a Record of Decision that estimated that the long-term remedy would cost $16,616,000. This amount was lower than the long-term remedy cost estimate used in calculating the $34,366,701 reasonable maximum total cost estimate discussed above. Nevertheless, to assure that the settlors who executed the first *de minimis* settlement agreement are properly credited for their compliance with the deadline imposed for that settlement, the second *de minimis* agreement also uses the $34,366,701 reasonable maximum total cost estimate as the basis for computing the allocable share of each of the parties to the second *de minimis* settlement agreement. In addition, the second *de minimis* settlement agreement requires the 33 *de minimis* settlors to pay an additional 10% of their allocated share of $34,366,701 for missing the deadline to enter into the first *de minimis* settlement.

Questions regarding the use of the original $34,366,701 cost estimate for the second *de minimis* settlement agreement may be directed to the additional information contact listed below.

The Environmental Protection Agency will receive written comments relating to this Agreement for thirty (30) days from the date of publication of this Notice. A copy of the proposed Administrative Order on Consent may be obtained from the EPA's Region III, Office of Regional Counsel, 841 Chestnut Building, Philadelphia, PA 19107 by contacting Lydia Isales at (215) 597–9951.

W.T. Wisniewski,

Acting Regional Administrator, Region III.

[FR Doc. 93–25103 Filed 10–12–93; 8:45 am]

BILLING CODE 6560-50-M

[FRL–4788–3]

Notice of Proposed Assessment of Clean Water Act Class I Administrative Penalties Against Orchids & Roses, Inc. and Opportunity to Comment

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of proposed assessment of Clean Water Act Class I administrative penalties and opportunity to comment.

SUMMARY: U.S. EPA is providing notice of a proposed assessment of administrative civil penalties for alleged violations of the Clean Water Act. EPA is also providing notice of opportunity to comment on the proposed assessment.

Under 33 U.S.C. 1319(g), U.S. EPA is authorized to issue orders assessing administrative civil penalties for various violations of the Clean Water Act. EPA may issue an administrative penalty order after the commencement of either a Class I or Class II penalty proceeding. EPA must provide public notice of and reasonable opportunity to comment on the proposed issuance of the administrative penalty order pursuant to 33 U.S.C. 1319(g)(4)(a).

Class I proceedings are conducted under EPA's proposed Consolidated Rules of Practice Governing the Administrative Assessment of Class I Civil Penalties under the Clean Water Act, 40 CFR part 28, which have been published in the **Federal Register** at 56 FR 29996 (July 1, 1991). The procedures through which the public may submit written comment on a proposed Class I order or participate in a Class I proceeding, and the Procedures by which a Respondent may request a hearing, are set forth in the proposed Consolidated Rules. The deadline for submitting public comment on a proposed Class I order is thirty (30) days after publication of this notice.

On the date identified below, EPA commenced the following Class I proceeding for the assessment of penalties:

In the Matter of Orchids & Roses, Inc., located at 3499 East 15th Street, Los Angeles, California, EPA Docket No. CWA–IX–FY93–38, filed on September 29, 1993, with Mr. Steven Armsey, Regional Hearing Clerk, U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, California 94105, (415) 744–1389; proposed penalty of $25,000 for failure to comply with the categorical pretreatment standards and requirements for new source metal finishers (40 CFR part 433).

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of the U.S. EPA's proposed Consolidated Rules, review the complaint or other documents filed in this proceeding, comment upon a proposed assessment, or otherwise participate in the proceeding, should contact the Regional Hearing Clerk identified above. The administrative record for this proceeding is located in the U.S. EPA Regional Office identified above, and the file will be open for public inspection during normal business hours. All information submitted by the respondent is available as part of the

administrative record, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, U.S. EPA will not issue a final order assessing a penalty in these proceedings before thirty (30) days after the date of publication of this notice.

Dated: September 29, 1993.

William H. Pierce,

Acting Director, Water Management Division.

[FR Doc. 93-25105 Filed 10-12-93; 8:45 am]

BILLING CODE 6560-50-F

[FRL-4788-4]

Notice of Proposed Assessment of Clean Water Act Class II Administrative Penalty to Fred L. Clark Trucking Company and Opportunity to Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposal of a Clean Water Act Class II administrative penalty and notice of public comment period.

SUMMARY: Pursuant to 33 U.S.C.1319(g), EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue such orders after the commencement of either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessment pursuant to 33 U.S.C. 1319(g)(4)(a).

Class II proceedings are conducted under EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation and Suspension of Permits, 40 CFR part 22. The procedures through which the public may submit written comment on a proposed Class II order or participate in a Class II proceeding, and the procedures by which a Respondent may request a hearing, are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed Class II order is thirty days after publication of this notice.

On the date identified below, EPA commenced the following Class II proceeding for the assessment of penalties:

In the Matter of Fred L. Clark Trucking Company (Wastewater Treatment Plant), Mammoth, AZ 85618, Docket No. CWA-IX-FY93-49; filed on September 30, 1993 with Steven Armsey, Regional Hearing Clerk, U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, California 94105, (415) 744-1389; proposed penalty of $125,000, for discharges of pollutants in violation of an NPDES permit.

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of EPA's Consolidated Rules, review the complaint or other documents filed in this proceeding, comment upon a proposed assessment, or otherwise participate in the proceeding should contact the Regional Hearing Clerk identified above. The administrative record for this proceeding is located in the EPA Regional Office identified above, and the file will be open for public inspection during normal business hours. All information submitted by the respondent is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information.

Dated: September 22, 1993.

Alexis Strauss,

Acting Director, Water Management Division.

[FR Doc. 93-25106 Filed 10-12-93; 8:45 am]

BILLING CODE 6560-50-F

[FRL-4786-9]

Notice of Proposed Assessment of Clean Water Act Class II Administrative Penalty to Biltmore Properties, Inc. and Opportunity to Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposal of a Clean Water Act Class II administrative penalty and notice of public comment period.

SUMMARY: Pursuant to 33 U.S.C. 1319(g), EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue such orders after the commencement of either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessment pursuant to 33 U.S.C. 1319(g)(4)(a).

Class II proceedings are conducted under EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation and Suspension of Permits, 40 CFR part 22. The procedures through which the public may submit written comment on a proposed Class II order or participate in a Class II proceeding, and the procedures by which a Respondent may request a hearing, are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed Class II order is thirty days after publication of this notice.

On the date identified below, EPA commenced the following Class II proceeding for the assessment of penalties:

In the Matter of Biltmore Properties, Inc. (Kachina Gardens Wastewater Treatment Plant), Winslow, AZ 86047, Docket No. CWA-IX-FY93-40; filed on September 28, 1993 with Steven Armsey, Regional Hearing Clerk, U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, California 94105, (415) 744-1389; proposed penalty of $125,000, for discharges of pollutants in violation of an NPDES permit.

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of EPA's Consolidated Rules, review the complaint or other documents filed in this proceeding, comment upon a proposed assessment, or otherwise participate in the proceeding should contact the Regional Hearing Clerk identified above. The administrative record for this proceeding is located in the EPA Regional Office identified above, and the file will be open for public inspection during normal business hours. All information submitted by the respondent is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information.

Dated: September 27, 1993.

Harry Seraydarian,

Director, Water Management Division.

[FR Doc. 93-25107 Filed 10-12-93; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-1000-DR]

Kansas; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Kansas (FEMA-1000-DR), dated July 22, 1993, and related determinations.

EFFECTIVE DATE: October 5, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed. The incident period for this disaster is June 28, 1993 through and including October 5, 1993.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–25074 Filed 10–12–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1000–DR]

Kansas; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Kansas (FEMA–1000–DR), dated July 22, 1993, and related determinations.

EFFECTIVE DATE: September 27, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 27, 1993, the President amended the cost-sharing arrangements concerning Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), in a letter to James L. Witt, Director of the Federal Emergency Management Agency, as follows:

I have determined that the damage in certain areas of the State of Kansas, resulting from flooding and severe storms on June 28, 1993, through and including August 26, 1993, is of sufficient severity and magnitude that special conditions are warranted regarding the cost-sharing arrangements concerning Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act") for the Public Assistance program.

Therefore, I amend my previous declaration to authorize Federal funds for Public Assistance at 90 percent of total eligible costs, except for direct Federal assistance costs for emergency work authorized at 100 percent Federal funding. This 90 percent reimbursement applies to all authorized Public Assistance costs, including debris removal to eliminate immediate threats to public health and safety, emergency work to save lives and protect public health and safety, and repair or reconstruction of uninsured public and private non-profit facilities.

This adjustment to State and local cost sharing applies only to Public Assistance costs eligible for such adjustment under the law. The law specifically prohibits a similar adjustment for funds provided to States for the Individual and Family Grant program. These funds will continue to be reimbursed at 75 percent of total eligible costs.

Please notify the Governor of the State of Kansas and the Federal Coordinating Officer of this amendment to my major disaster declaration.

Notice is hereby given that the incident period for this disaster is reopened and amended to be June 28, 1993, and continuing.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 93–25075 Filed 10–12–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–997–DR]

Illinois; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Illinois, (FEMA–997–DR), dated July 9, 1993, and related determinations.

EFFECTIVE DATE: September 27, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 27, 1993, the President amended the cost-sharing arrangements concerning Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq*, in a letter to James L. Witt, Director of the Federal Emergency Management Agency, as follows:

I have determined that the damage in certain areas of the State of Illinois, resulting from severe storms, Mississippi River flooding, and other riverine flooding, and other riverline flooding on April 13, 1993, through and including August 31, 1993, is of sufficient severity and magnitude that special conditions are warranted regarding the cost-sharing arrangements concerning Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act") for the Public Assistance program.

Therefore, I amend my previous declaration to authorize Federal funds for Public Assistance at 90 percent of total eligible costs, except for direct Federal assistance costs for emergency work authorized at 100 percent Federal funding. This 90 percent reimbursement applies to all authorized Public Assistance costs, including debris removal to eliminate immediate threats to public health and safety, emergency work to save lives and protect public and private non-profit facilities.

This adjustment to State and local cost sharing applies only to Public Assistance costs eligible for such adjustment under the law. The law specifically prohibits a similar adjustment for funds provided to States for the Individual and Family Grant program. These funds will continue to be reimbursed at 75 percent of total eligible costs.

Please notify the Governor of the State of Illinois and the Federal Coordinating Officer of this amendment to my major disaster declaration.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 93–25084 Filed 10–12–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–996–DR]

Iowa; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Iowa, (FEMA–996–DR), dated July 9, 1993, and related determinations.

EFFECTIVE DATE: September 27, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 27, 1993, the President amended the cost-sharing arrangements concerning Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*) in a letter to James L. Witt, Director of the Federal Emergency Management Agency, as follows:

I have determined that the damage in certain areas of the State of Iowa, resulting from severe storms and flooding on April 13, 1993, and continuing, is of sufficient severity and magnitude that special conditions are warranted regarding the cost-sharing arrangements concerning Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act") for the Public Assistance program.

Therefore, I amend my previous declaration to authorize Federal funds for Public Assistance at 90 percent of total eligible costs, except for direct Federal assistance costs for emergency work authorized at 100 percent Federal funding. This 90 percent reimbursement applies to all authorized Public Assistance costs, including debris removal to eliminate immediate threats to public health and safety,

emergency work to save lives and protect public health and safety, and repair or reconstruction of uninsured public and private non-profit facilities.

This adjustment to State and local cost sharing applies only to Public Assistance costs eligible for such adjustment under the law. The law specifically prohibits a similar adjustment for funds provided to States for the Individual and Family Grant program. These funds will continue to be reimbursed at 75 percent of total eligible costs.

Please notify the Governor of the State of Iowa and the Federal Coordinating Officer of this amendment to my major disaster declaration.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 93–25082 Filed 10–12–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–993–DR]

Minnesota; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Minnesota (FEMA–993–DR), dated June 11, 1993, and related determinations.

EFFECTIVE DATE: September 27, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 27, 1993, the President amended the cost-sharing arrangements concerning Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), in a letter to James L. Witt, Director of the Federal Emergency Management Agency, as follows:

I have determined that the damage in certain areas of the State of Minnesota, resulting from severe storms, flooding, and tornadoes on May 6, 1993, through and including August 25, 1993, is of sufficient severity and magnitude that special conditions are warranted regarding the cost-sharing arrangements concerning Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act") for the Public Assistance program.

Therefore, I amend my previous declaration to authorize Federal funds for Public Assistance at 90 percent of total eligible costs, except for direct Federal assistance costs for emergency work authorized at 100 percent Federal funding. This 90 percent reimbursement applies to all authorized Public Assistance costs, including debris removal to eliminate immediate threats to public health and safety, emergency work to save lives and protect public health and safety, and repair or reconstruction of uninsured public and private non-profit facilities.

This adjustment to State and local cost sharing applies only to Public Assistance costs eligible for such adjustment under the law. The law specifically prohibits a similar adjustment for funds provided to States for the Individual and Family Grant program. These funds will continue to be reimbursed at 75 percent of total eligible costs.

Please notify the Governor of the State of Minnesota and the Federal Coordinating Officer of this amendment to my major disaster declaration.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 93–25079 Filed 10–12–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–995–DR]

Missouri; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Missouri, (FEMA–995–DR), dated July 9, 1993, and related determinations.

EFFECTIVE DATE: September 27, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 27, 1993, the President amended the cost-sharing arrangements concerning Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), in a letter to James L. Witt, Director of the Federal Emergency Management Agency, as follows:

I have determined that the damage in certain areas of the State of Missouri, resulting from severe storms and flooding on June 10, 1993, and continuing is of sufficient severity and magnitude that special conditions are warranted regarding the cost-sharing arrangements concerning Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act") for the Public Assistance program.

Therefore, I amend my previous declaration to authorize Federal funds for Public Assistance at 90 percent of total eligible costs, except for direct Federal assistance costs for emergency work authorized at 100 percent Federal funding. This 90 percent reimbursement applies to all authorized Public Assistance costs, including debris removal to eliminate immediate threats to public health and safety, emergency work to save lives and protect public health and safety, and repair or reconstruction of uninsured public and private non-profit facilities.

This adjustment to State and local cost sharing applies only to Public Assistance costs eligible for such adjustment under the law. The law specifically prohibits a similar adjustment for funds provided to States for the Individual and Family Grant program. These funds will continue to be reimbursed at 75 percent of total eligible costs.

Please notify the Governor of the State of Missouri and the Federal Coordinating Officer of this amendment to my major disaster declaration.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 93–25081 Filed 10–12–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1001–DR]

North Dakota; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of North Dakota, (FEMA–1001–DR), dated July 26, 1993, and related determinations.

EFFECTIVE DATE: September 27, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 27, 1993, the President amended the cost-sharing arrangements concerning Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), in a letter to James L. Witt, Director of the Federal Emergency Management Agency, as follows:

I have determined that the damage in certain areas of the State of North Dakota, resulting from severe storms and flooding on June 22, 1993, and continuing, is of sufficient severity and magnitude that special conditions are warranted regarding the cost-sharing arrangements concerning Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act") for the Public Assistance program.

Therefore, I amend my previous declaration to authorize Federal funds for Public Assistance at 90 percent of total eligible costs, except for direct Federal assistance costs for emergency work authorized at 100 percent Federal funding. This 90 percent reimbursement applies to all authorized Public Assistance costs, including debris removal to eliminate immediate threats to public health and safety, emergency work to save lives and protect public health and safety, and repair or reconstruction of uninsured public and private non-profit facilities.

This adjustment to State and local cost sharing applies only to Public Assistance costs eligible for such adjustment under the law. The law specifically prohibits a similar adjustment for funds provided to States for the Individual and Family Grant program. These funds will continue to be reimbursed at 75 percent of total eligible costs.

Please notify the Governor of the State of North Dakota and the Federal Coordinating Officer of this amendment to my major disaster declaration.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 93–25083 Filed 10–12–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–999–DR]

South Dakota; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of South Dakota, (FEMA–999–DR), dated July 19, 1993, and related determinations.

EFFECTIVE DATE: September 27, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 27, 1993, the President amended the cost-sharing arrangements concerning Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), in a letter to James L. Witt, Director of the Federal Emergency Management Agency, as follows:

I have determined that the damage in certain areas of the State of South Dakota, resulting from severe storms, tornadoes and flooding beginning on May 6, 1993, and continuing, is of sufficient severity and magnitude that special conditions are warranted regarding the cost-sharing arrangements concerning Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act") for the Public Assistance program.

Therefore, I amend my previous declaration to authorize Federal funds for Public Assistance at 90 percent of total eligible costs, except for direct Federal assistance costs for emergency work authorized at 100 percent Federal funding. This 90 percent reimbursement applies to all authorized Public Assistance costs, including debris removal to eliminate immediate threats to public health and safety, emergency work to save lives and protect public health and safety, and repair or reconstruction of uninsured public and private non-profit facilities.

This adjustment to State and local cost sharing applies only to Public Assistance costs eligible for such adjustment under the law. The law specifically prohibits a similar adjustment for funds provided to States for the Individual and Family Grant program. These funds will continue to be reimbursed at 75 percent of total eligible costs.

Please notify the Governor of the State of South Dakota and the Federal Coordinating Officer of this amendment to my major disaster declaration.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 93–25076 Filed 10–12–93; 8:45 am]

BILLING CODE 6718–02–M

Adjustment of Disaster Grant Amounts

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: Federal Emergency Management Agency (FEMA) gives notice that the maximum amounts for Individual and Family Grants and grants to State and local governments and private nonprofit facilities are adjusted for disasters declared on or after October 1, 1993.

EFFECTIVE DATE: October 1, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93–288, as amended, prescribes that grants made under section 411, Individual and Family Grant Program, and grants made under section 422, Simplified Procedure, relating to the Public Assistance program, shall be adjusted annually to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

Notice is hereby given that the maximum amount of any grant made to an individual or family for disaster-related serious needs and necessary expenses under sec. 411 of the Act, with respect to any single disaster, is increased to $12,200 for all disasters declared on or after October 1, 1993.

Notice is also hereby given that the amount of any grant made to the State, local government, or to the owner or operator of an eligible private nonprofit facility, under Sec. 422 of the Act, is increased to $42,400 for all disasters declared on or after October 1, 1993.

The increase is based on a rise in the Consumer Price Index for All Urban Consumers of 2.8 percent for the prior 12-month period. The information was published by the Department of Labor during September 1993.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 93–25072 Filed 10–12–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–994–DR]

Wisconsin; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Wisconsin, (FEMA–994–DR), date July 2, 1993, and related determinations.

EFFECTIVE DATE: September 27, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 27, 1993, the President amended the cost-sharing arrangements concerning Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), in a letter to James L. Witt, Director of the Federal Emergency Management Agency, as follows:

I have determined that the damage in certain areas of the State of Wisconsin, resulting from severe storms, tornadoes, and flooding on June 7, 1993, through and including August 25, 1993, is of sufficient severity and magnitude that special conditions are warranted regarding the cost-sharing arrangements concerning Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act

("the Stafford Act") for the Public Assistance program.

Therefore, I amend my previous declaration to authorize Federal funds for Public Assistance to 90 percent of total eligible costs, except for direct Federal assistance costs for emergency work authorized at 100 percent Federal funding. This 90 percent reimbursement applies to all authorized Public Assistance costs, including debris removal to eliminate immediate threats to public health and safety, emergency work to save lives and protect public health and safety, and repair or reconstruction of uninsured public and private non-profit facilities.

This adjustment to State and local cost sharing applies only to Public Assistance costs eligible for such adjustment under the law. The law specifically prohibits a similar adjustment for funds provided to States for the Individual and Family Grant program. These funds will continue to be reimbursed at 75 percent of total eligible costs.

Please notify the Governor of the State of Wisconsin and the Federal Coordinating Officer of this amendment to my major disaster declaration.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 93–25080 Filed 10–12–93; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; West Coast of South America Agreement

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street NW., 9th Floor. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 560.602 and/or 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 202–002744–072.

Title: West Coast of South America Agreement.

Parties:

Compania Sud Americana de Vapores, S.A.
Flota Mercante Grancolombia, S.A.
Lineas Navieras Bolivianas, S.A.M.
Lykes Bros. Steamship Co., Inc.
Compania Chilena de Navigacion Interoceania, S.A.
Nedlloyd Lijnen, B.V.
E.N.S. Container Line Ltd.
South Pacific Shipping Company, Ltd.

Synopsis: The proposed amendment modifies Article 14—Service Contracts to allow members to enter into service contracts with shippers for a pro-rated portion of the TEU minimum based on the length of the contract for calendar year 1994. The parties have requested a shortened review period.

Agreement No.: 224–200800.

Title: Tampa Port Authority/Apollo Stevedoring Company Domestic Inbound Incentive Iron or Steel Articles Wharfage Agreement.

Parties:

Tampa Port Authority ("Port")
Apollo Stevedoring Company

Filing Agent: Harold E. Welch,
Registered Practitioner,
Tampa Port Authority,
P.O. Box 2191,
Tampa, Florida 33601.

Synopsis: The Agreement provides for the Port of assess an incentivie wharfage rate of $1.00 per net ton on domestic inbound iron or steel articles subject to a minimum annual volume of 1,000 net tons.

Agreement No.: 224–200801.

Title: Port of San Francisco/ Stevedoring Services of America Nonexclusive Management Agreement.

Parties:

Port of San Francisco ("Port")
Stevedoring Services of America ("SSA")

Synopsis: The proposed Agreement permits SSA nonexclusive rightst to operate at Piers 94 and 96. It also provides for the Port to compensate SSA for providing services at the facility during the five year term of the Agreement.

Dated: October 6, 1993.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 93–24988 Filed 10–12–93; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of August 17, 1993

In accordance with § 271.5 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on August 17, 1993.[1] The directive was issued to the Federal Reserve Bank of New York as follows:

The information reviewed at this meeting suggests that economic activity is expanding at a moderate pace. Total nonfarm payroll employment increased in July at a rate close to its average advance in earlier months of the year, and the civilian unemployment rate declined to 6.8 percent. Industrial production turned up in July after posting small declines in May and June. Retail sales edged higher in July following a sizable rise in the second quarter. Housing starts were down somewhat in July, but permits moved up. Available indicators point to continued expansion in business capital spending. The nominal U.S. merchandise trade deficit declined in May, but for April and May combined it was larger than its average rate in the first quarter. After rising at a faster rate in the early part of the year, consumer prices have changed little and producer prices have fallen in recent months.

Short- and intermediate-term interest rates have changed little since the Committee meeting on July 6-7, while yields on long-term Treasury and corporate bonds have declined somewhat. In foreign exchange markets, the trade-weighted value of the dollar in terms of the other G-10 currencies was about unchanged on balance over the intermeeting period.

After expanding appreciably over the second quarter, M2 increased slightly further in July and M3 declined. For the year through July, M2 is estimated to have grown at a rate close to the lower end of the Committee's range for the year, and M3 at a rate slightly below its range. Total domestic nonfinancial debt has expanded at a moderate rate in recent months, and for the year through June it is estimated to have increased at a rate in the lower half of the Committee's monitoring range.

The Federal Open Market Committee seeks monetary and financial conditions that with foster price stability and promote sustainable growth in output. In furtherance of these objectives, the Committee at its meeting in July lowered the ranges it had established in February for growth of M2 and M3 to ranges of 1 to 5 percent and 0 to 4 percent respectively, measured from the fourth quarter of 1992 to the fourth quarter of 1993. The Committee anticipated that

[1] Copies of the Minutes of the Federal Open Market Committee Meeting of August 17, 1993, which include the domestic policy directive issued at that meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

developments contributing to unusual velocity increases would persist over the balance of the year and that money growth within these lower ranges would be consistent with its broad policy objectives. The monitoring range for growth of total domestic nonfinancial debt also was lowered to 4 to 8 percent for the year. For 1994, the Committee agreed on tentative ranges for monetary growth, measured from the fourth quarter of 1993 to the fourth quarter of 1994, of 1 to 5 percent for M2 and 0 to 4 percent for M3. The Committee provisionally set the monitoring range for growth of total domestic nonfinancial debt at 4 to 8 percent for 1994. The behavior of the monetary aggregates will continue to be evaluated in the light of progress toward price level stability, movement in their velocities, and developments in the economy and financial markets.

In the implementation of policy for the immediate future, the Committee seeks to maintain the existing degree of pressure on reserve positions. In the context of the Committee's long-run objectives for price stability and sustainable economic growth, and giving careful consideration to economic, financial, and monetary developments, slightly greater reserve restraint or slightly lesser reserve restraint might be acceptable in the intermeeting period. The contemplated reserve conditions are expected to be consistent with modest growth in M2 and little net change in M3 over the balance of the third quarter.

By order of the Federal Open Market Committee, October 6, 1993.

Normand Bernard,

Deputy Secretary, Federal Open Market Committee.

[FR Doc. 93-25057 Filed 10-12-93; 8:45 am]

BILLING CODE 6210-01-F

Jones Bancshares, L.P.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than October 21, 1993.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *Jones Bancshares, L.P.*, Waycross, Georgia; to become a bank holding company by acquiring 70.9 percent of the voting shares of Blackshear Bancshares, Inc., Blackshear, Georgia, and thereby indirectly acquire Blackshear Bank, Blackshear, Georgia.

Board of Governors of the Federal Reserve System, October 7, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-25196 Filed 10-8-93; 11:15 am]

BILLING CODE 6210-01-M

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board

AGENCY: General Accounting Office.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. No. 92-463), as amended, notice is hereby given that the monthly meeting of the Federal Accounting Standards Advisory Board will be held on Friday, October 22, 1993 from 9 a.m. to 4 p.m. in room 7313 of the General Accounting Office, 441 G Street, NW., Washington, DC.

The agenda for the meeting includes discussions of (1) Liabilities and Future Claims and (2) Cost Accounting.

We advise that other items may be added to the agenda; interested parties should contact the Staff Director for more specific information and to confirm the date of the meeting.

Any interested person may attend the meeting as an observer. Board discussions and reviews are open to the public.

FOR FURTHER INFORMATION CONTACT: Ronald S. Young, Staff Director, 750 First Street NE., room 1001, Washington, DC 20002, or call (202) 512-7354.

Authority: Federal Advisory Committee Act. Pub. L. No. 92-463, section 10(a)(2), 86 Stat. 770, 774 (1972) (current version at 5 U.S.C. app. section 10(a)(2) (1988); 41 CFR 101-6.1015 (1990).

Dated: October 6, 1993.

Ronald S. Young,

Executive Director.

[FR Doc. 93-25039 Filed 10-12-93; 8:45 am]

BILLING CODE 1610-01-P

GENERAL SERVICES ADMINISTRATION

[GSA Bulletin FTR 10]

Federal Travel Regulation; Reimbursement of Higher Actual Subsistence Expenses for Travel to Topeka, Kansas

AGENCY: Federal Supply Service, GSA.

ACTION: Notice of bulletin.

SUMMARY: The attached bulletin informs agencies of the establishment of a special actual subsistence expense ceiling for official travel to Topeka (Shawnee County), Kansas. The Director of the Federal Emergency Management Agency (FEMA) requested establishment of an increased rate to accommodate the FEMA employees who are assisting victims of the Midwest flooding and who are performing temporary duty in Topeka. The FEMA employees are experiencing a temporary but significant increase in lodging costs due to escalation of lodging rates as a result of the National Stock Car Races being held there.

EFFECTIVE DATES: This special rate applies to claims for reimbursement covering travel to Topeka, Kansas during the period September 27 through October 4, 1993.

FOR FURTHER INFORMATION CONTACT: Jane E. Groat, General Services Administration, Transportation Management Division (FBX), Washington, DC 20406, telephone 703-305-5745.

SUPPLEMENTARY INFORMATION: The Administrator of General Services, pursuant to 41 CFR 301-8.3(c) and at the official request of the Director of the Federal Emergency Management Agency, has increased the maximum daily amount of reimbursement that may be approved for actual and necessary subsistence expenses for official travel to Topeka (Shawnee County), Kansas for travel during the period September 27 through October 4, 1993. The attached GSA Bulletin FTR 10 is issued to inform agencies of the establishment of this special actual subsistence expense ceiling.

Dated: October 5, 1993.

Allan W. Beres,

Assistant Commissioner, Transportation and Property Management.

Attachment

ATTACHMENT

[GSA Bulletin FTR 10]

October 5, 1993

To: Heads of Federal agencies

Subject: Reimbursement of higher actual subsistence expenses for travel to Topeka (Shawnee County), Kansas.

1. *Purpose.* This bulletin informs agencies of the establishment of a special actual subsistence expense ceiling for official travel to Topeka (Shawnee County), Kansas, where lodging rates have escalated as a result of the National Stock Car Races being held there. This special rate applies to claims for reimbursement covering travel during the period September 27, 1993, through October 4, 1993.

2. *Background.* The Federal Travel Regulation (FTR) (41 CFR 301–8) permits the Administrator of General Services to establish a higher maximum daily rate for the reimbursement of actual subsistence expenses of Federal employees on official travel to an area within the continental United States. The Director of the Federal Emergency Management Agency (FEMA) requested establishment of an increased rate to accommodate the FEMA employees who are assisting victims of the Midwest flooding and performing temporary duty in Topeka and who are experiencing a temporary but significant increase in lodging costs. These circumstances justify the need for higher subsistence expense reimbursement in Topeka during the designated period.

3. *Maximum rate and effective dates.* The Administrator of General Services, pursuant to 41 CFR 301–8.3(c), has increased the maximum daily amount of reimbursement that may be approved for actual and necessary subsistence expenses for official travel to Topeka (Shawnee County), Kansas, for travel during the period September 27, 1993, through October 4, 1993. Agencies may approve actual subsistence expense reimbursement not to exceed $126 ($100 maximum for lodging and a $26 allowance for meals and incidental expenses) for travel to Topeka (Shawnee County), Kansas, during this time period.

4. *Expiration date.* This bulletin expires on December 31, 1993.

5. *For further information contact.* Jane E. Groat, General Services Administration, Transportation Management Division (FBX), Washington, DC 20406, telephone 703–305–5745.

By delegation of the Commissioner, Federal Supply Service.

Allan W. Beres,

Assistant Commissioner, Transportation and Property Management.

[FR Doc. 93–25011 Filed 10–12–93; 8:45 am]

BILLING CODE 6820–24F

GOVERNMENT PRINTING OFFICE

Public Meeting for Information Companies on Implementation of the GPO Electronic Information Access Enhancement Act of 1993, (Public Law 103–40)

The Superintendent of Documents will hold a public meeting for information companies interested in the implementation of the Government Printing Office Electronic Information Access Enhancement Act of 1993 (Pub. L. 103–40). The meeting will be held on Friday, October 22, 1993, from 10 a.m. until noon, in the Carl Hayden Room at the U.S. Government Printing Office (GPO), 732 North Capitol Street NW., Washington, DC 20401.

Under this Act, the Superintendent of Documents is required to: (1) Maintain an electronic directory of Federal electronic information; (2) provide a system of online access to the Congressional Record, the **Federal Register**, and other appropriate information. The purpose of the meeting is to describe GPO's plan for implementation of the Act and to consult with providers of similar information services in order to assess the quality and value of the anticipated services.

Individuals interested in attending should contact the GPO Office of Congressional, Legislative and Public Affairs in advance. The office can be reached by telephone at 202–512–1991 or by FAX on 202–512–1293. Limited parking is available if arrangements are made in advance.

Michael F. DiMario,

Acting Public Printer.

[FR Doc. 93–25258 Filed 10–8–93; 2:53 pm]

BILLING CODE 1505–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of Public Affairs; Statement of Organization and Functions

This Notice amends Part A of the Statement of Organization and Functions of the Department of Health and Human Services, Office of the Secretary, Office of Public Affairs, as follows: Chapter AP, as last amended at 54 FR 26110 on June 21, 1989. Specifically, this organizational change will make the following changes to the Office of the Assistant Secretary for Public Affairs: Retitle the name of the Deputy Assistant Secretary for Public Affairs (Policy and Communications) to Deputy Assistant Secretary for Public Affairs (Policy and Strategy); establish the Special Initiatives Coordinator and the Special Outreach Division to report to the Deputy Assistant Secretary for Public Affairs (Policy and Strategy); and transfer the FOIA/Privacy Act Division to the Office of the Deputy Assistant Secretary for Public Affairs (Media). Delete Chapter AP in its entirety and replace with the following:

AP.00 Mission. The mission of the Office of the Assistant Secretary for Public Affairs (OASPA) is to serve as the Secretary's principal public affairs policy advisor; to provide centralized professional leadership and continuous monitoring and evaluation of Departmentwide policies, procedures and operating practices regarding public affairs activities; and to administer the Freedom of Information Act, Privacy Act and other information access statutes.

AP.10 Organization. The Office of the Assistant Secretary for Public Affairs, headed by the Assistant Secretary for Public Affairs (ASPA) who reports to the Secretary, consists of the following organizations:

The Office of the Assistant Secretary for Public Affairs
The Office of the Deputy Assistant Secretary for Public Affairs (Policy and Strategy)
Communications Services Division
Special Outreach Division
The Office of the Deputy Assistant Secretary for Public Affairs (Media)
News Division
Speech and Editorial Division
FOIA/Privacy Act Division

Section AP.20 Functions.

A. *The Office of the Assistant Secretary for Public Affairs*—Provides executive leadership, policy direction, and management strategy for the Department's public affairs programs and activities. Counsels and acts for the Secretary and the Department in carrying out responsibilities under statutes. Presidential directives, and Secretarial orders for informing the general public, specialized audiences, HHS employees, and other Federal employees about the programs, policies, and services of the Department.

Establishes and enforce policies and practices which produce an accurate, clear, efficient, and consistent flow of information to the general public and other audiences about departmental programs and activities.

Provides advice, counsel and information to the Secretary and other HHS policymakers to assure that public affairs impact is considered in the establishment of departmental policies or the conduct of its activities.

Serves as the principal point of contact with senior White House officials regarding communications and press issues.

Exercises professional leadership and provides functional management of public affairs activities throughout the Department to assure that Secretarial priorities are followed, high quality standards are met, and cost-effective, non-duplicative communications products are developed which accurately and effectively inform its audiences.

Serves as Secretarial surrogate throughout the public and private sector to both represent the views of the Administration and the Secretary, and to inform and educate various audiences.

Ensures coordination among public affairs components. Manages public affairs issues and special activities that cut across Operating Division lines.

B. *Deputy Assistant Secretary for Public Affairs (Policy and Strategy)*—Is responsible for developing effective strategies to publicize Departmental policies, goals and accomplishments, activities related to the Department's communications services and public affairs policy analysis, and management oversight of the Communications Services Division and the Special Outreach Division.

Provides advice and assistance on all public affairs matters, in consultation with the Assistant Secretary for Public Affairs; coordinates with the Deputy Assistant Secretary for Public Affairs (Media) in providing prompt response to media and public inquiries, and in helping the Assistant Secretary for Public Affairs generate a strategic focus for stories and other information products that the Department develops and wishes to highlight.

Manages or coordinates the conduct of high priority media companies and information programs in the Department. Acts as liaison to private sector organizations, to the Operating and Staff Divisions, to the public affairs units in the HHS Operating Divisions and Regions and to other Federal agencies, including OMB and the Office of Public Liaison at the White House.

Initiates, designs and effects outreach program for all organizations, associations and individuals concerned with the broad range of policies, programs and issues of the Department.

Serves as confidential advisor to senior staff within OASPA. Performs special assignments which involve and cut across Department programs and activities to achieve broadly defined public affairs management and program objectives. Interacts with internal and external organizations, groups, and individuals to secure and provide information concerning matters affecting HHS policy, interests, and initiatives. Represents the Assistant Secretary for Public Affairs in conveying official viewpoints and policy considerations of the Department and the Administration.

B.1 *Communications Services Division*—Provides direction to all audiovisual activities in and for the Department.

Responsible for all aspects of print and audiovisual production and programming in support of the Secretary, the ASPA and senior HHS management. Operates the HHS studio and coordinates activities of other HHS studios as required. Under the direction of the ASPA, develops and implements media campaigns and special projects. Acts as liaison to broadcast organizations.

Establishes departmental policy and procedures for the procurement, design, production, distribution and quality control of media campaigns, audiovisual products, exhibits and publications.

Reviews and clears all media campaigns, audiovisual products and exhibits produced with departmental funds. Reviews audiovisual aspects of HHS public affairs' components plans to ensure that they support HHS policy.

Reviews and clears all periodicals and publications materials produced with departmental funds. Provides liaison with OMB on matters pertaining to publications and periodicals.

Reviews and approves contracts for public affairs services. Collects and analyzes information on projected departmental public affairs offices' budgets, staffing and communication initiatives.

Monitors clearinghouse and information center activities. Reviews and approves departmental information center requests for contracts and information center operating contracts. Collects operating data from departmental information centers and reports on accomplishments in information dissemination and effectiveness of personnel use and government expenditures.

Responds to inquiries from Congress and other arms of the government that involve the collection of data about HHS public affairs activities.

Responds to requests for speakers and coordinates the scheduling of speaking engagements of various policy-level officials on the Department.

Manages the Hispanic Communications function which provides Spanish language news services and Hispanic Media liaison, Spanish language print and audiovisual clearances, advises HHS components on Hispanic communications strategies and serves as a contact for public liaison with Hispanic groups and individuals.

Coordinates all activities of private sector initiatives of the White House.

B.2 *Special Outreach Division*—The Special Outreach Division, in concert with the Special Initiatives Coordinator and the Communications Services Division establishes liaison with the public information officers in the Operating Divisions (OPDIVs). Through information sharing and collaborative efforts with the OPDIVs, advances the objectives of the Office of the Assistant Secretary for Public Affairs to highlight the programs and initiatives of the OPDIVS and obtain wider coverage of the activities of the Secretary and other senior Administration officials.

C. *The Office of the Deputy Assistant Secretary for Public Affairs (Media)*—Is responsible for policies and activities related to the Department's speech and editorial services and for providing the public with information about the Department's policies and programs through the news media.

Provide advice and assistance on all public affairs matters, in consultation with the Assistant Secretary for Public Affairs and in coordination with the Deputy Assistant Secretary for Public Affairs (Policy and Strategy), provides prompt responses to media and public inquiries; and generates a strategic focus for stories and other information products or outputs that the Department develops and wishes to highlight.

Is responsible for management oversight of the Speech and Editorial Division and the FOIA/Privacy Act Division.

Conducts an active communication program with the public on behalf of the Department through the media and other avenues of communication in order to further public understanding of its policies, programs and issues.

Coordinates press activities with the White House Press Office and other governmental press operations.

Oversees the departmental message center, preparing Presidential and

secretarial messages for deserving individuals and organizations.

Serves as a writing resource for the Secretary, a source of news clippings from major newspapers, a filing source for Secretarial materials and a resource for public affairs preparation and planning.

Responds to inquiries from Congress, other arms of the government, media and the public that involves the collection of data.

C.1 *News Division*—Plans, directs and coordinates the issuance of public information from HHS to the press and broadcast media.

Prepares news releases and other news material for the Secretary and other top Department officials. Reviews and clears all news releases and other news materials prepared by HHS components.

Identifies news opportunities for the Secretary.

Makes recommendations concerning press releases on upcoming publication of regulations or other actions.

Identifies likely media questions for news conferences and interviews, assists in preparing background briefing for encounters with the press.

Briefs the Secretary, Deputy Secretary, and Chief of Staff, in conjunction with other departmental experts for all media events.

Responds to press queries, either directly or by steering reporters to appropriate public affairs personnel in Operating Division press offices.

Coordinates press conferences for the Secretary. Acts as a liaison for reporters requesting interviews and for newspaper editorial boards wishing to meet with the Secretary.

Directs the preparation of the Green Sheet, a daily compilation of news concerning HHS programs and activities.

Monitors AP and UPI wires and distributes articles of interest throughout the day to key staff.

C.2 *Speech and Editorial Division*—Serves as the principal resource within the Department for reviewing and editing written materials reflecting the views of the Secretary, Deputy Secretary and Chief of Staff.

Prepares speeches, statements, articles, and related material for the Secretary, Deputy Secretary and Chief of Staff and other Departmental officials.

Researches and prepares OP Ed pieces, features, articles, and stories for the media.

Reviews all regulations and other policy memoranda, and advises the Deputy Assistant Secretary for Public Affairs (Media) of appropriate response.

C.3 *FOIA/Privacy Act Division*—Administers information access and privacy protection laws and HHS regulations implementing these laws to ensure Departmentwide consistency in information disclosure, confidentiality policies, practices and procedures. Such laws include the Freedom of Information Act and the Privacy Act, as well as the open meetings provisions of the Federal Advisory Committee Act, the Government in the Sunshine Act and the disclosure provisions of the Ethics in Government Act.

In concert with Office of General Counsel staff, assists in development of regulations implementing these statutes and develops policy interpretations and guidelines as well as procedural materials and training programs for all Department components.

Develops policy guidelines and training programs for all HHS components regarding FOIA and related legislation, i.e., the Privacy Act, Federal Advisory Committee Act and the Government in the Sunshine Act.

Provides responses to requests made under the Freedom of Information Act and determines the availability of records and information under the law and HHS Regulations.

Resolves questions which overlap the FOIA and the Privacy Act regarding release of records.

Provides policy guidance on and maintains the index of materials required by FOIA.

Analyzes and recommends action on FOIA and Privacy Act appeals for documents denied by officials in the Office of the Secretary.

Dated: October 11, 1993.

Donna E. Shalala,

Secretary.

[FR Doc. 93–24987 Filed 10–2–93; 8:45 am]

BILLING CODE 4110–60–M

Food and Drug Administration

[Docket No. 90F–0175]

Food Techniques, Inc.; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a food additive petition (FAP 0A4207) proposing that the food additive regulations be amended to provide for the safe use of ozone as an antimicrobial agent in poultry meat during processing.

FOR FURTHER INFORMATION CONTACT: Gerald J. Buonopane, Center for Food Safety and Applied Nutrition (HFS–217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9519.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of June 25, 1990 (55 FR 25887), FDA announced that a food additive petition (FAP 0A4207) had been filed by Food Techniques, Inc., 267 Hayes Mill Rd., Atco, NJ 08004. The petition proposed that the food additive regulations be amended to provide for the safe use of ozone as an antimicrobial agent in poultry meat during processing. Food Techniques, Inc., has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: October 5, 1993.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 93–25073 Filed 10–12–93; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

Privacy Act of 1974; System of Records

AGENCY: Department of Health and Human Services (HHS), Health Care Financing Administration (HCFA).

ACTION: Notice of Corrected Table of Contents, Privacy Act Issuances, 1991 Compilation.

SUMMARY: HCFA is taking this opportunity to publish a corrected table of contents located in the Privacy Act Issuances, 1991 Compilation, Volume I, Page 388. In addition to deleting 12 systems of records, we are making a variety of editorial corrections for specificity.

DATES: This notice will take effect upon publication (October 13, 1993).

ADDRESSES: The public should address comments to Mr. Richard A. DeMeo, HCFA Privacy Act Officer, Office of Budget and Administration, HCFA, Room 2–H–4, East Low Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207–5187.

SUPPLEMENTARY INFORMATION: The Office of the Federal Register publishes a compilation of system of records notices for all agencies every 2 years. It is a valuable source of the types of information that Federal agencies have on individuals. Because the compilation is only published every 2 years, the last one in 1991, it is important that the information contained in it is accurate and up to date. Because the 1993 compilation is due out early next year, HCFA is taking this opportunity to

correct errors in the index of its systems of records. In addition, to providing a complete listing of HCFA systems of records, we are taking this opportunity to list all system notices published through August 1993.

Note: A list of acronyms can be found at the end of this document for the convenience of the reader.

Systems of Records Deleted

09–70–0008 Supplementary Medical Sample Bill Summary File of Medicare Utilization (Statistics), HHS/HCFA/BDMS.

09–70–0013 Annual 5 Percent Summary File of Services Reimbursed Under the Medicare Program (Statistics), HHS/HCFA/BDMS.

09–70–0026 Study of The Comparative Effectiveness of State Approaches to Regulation of Medicare Supplemental Policies: Medigap, HHS/HCFA/ORD.

09–70–0028 Study of the Social, Ethical and Economic Consequences of Medicare Coverage for Heart Transplants, HHS/HCFA/ORD.

09–70–0031 Evaluation of the HCFA Alcoholism Services Demonstration, HHS/HCFA/ORD.

09–70–0032 Physicians' Practice Costs and Incomes Survey, HHS/HCFA/ORD.

09–70–0037 1988 Physicians' Practice Costs and Incomes Survey, HHS/HCFA/ORD.

09–70–0043 Evaluation of the OBRA 87 Medicare Payment for Therapeutic Shoes for Individuals With Severe Diabetic Foot Disease Demonstration, HHS/HCFA/ORD.

09–70–0528 Drug Bill Processor Records on Medicare Prescription Drug Beneficiaries, HHS/HCFA/BPO.

09–70–1509 Complaint Files on Nursing Homes, HHS/HCFA/HSQB.

09–70–2002 HCFA Program Integrity/Program Validation Case Files, HHS/HCFA/BQC.

09–70–2005 Medicaid Third Party Liability (TPL) Cost Avoidance Study, HHS/HCFA/BQC.

Corrected Table of Contents

System Number and System Name

09–70–0005 National Claims History, HHS/HCFA/BDMS.

09–70–0006 Medicare Enrollment Records (Statistics), HHS/HCFA/BDMS.

09–70–0007 Health Insurance Enrollment Statistics-General Enrollment Period, HHS/HCFA/BDMS.

09–70–0019 Actuarial Sample Hospital Stay Record Study, HHS/HCFA/OACT.

09–70–0020 Actuarial Sample Hospital Stay Record Study, HHS/HCFA/OACT.

09–70–0022 Municipal Health Services program, HHS/HCFA/ORD.

09–70–0029 Evaluation of Medicare Competition Demonstrations, HHS/HCFA/ORD.

09–70–0030 National Long-Term Care Study Followup, HHS/HCFA/ORD.

09–70–0033 Person-Level Medicaid Data System, HHS/HCFA/ORD.

09–70–0034 Evaluation of Social/Health Maintenance Organization (S/HMO) Demonstrations, HHS/HCFA/ORD.

09–70–0035 Aftercare Evaluation System (AES), HHS/HCFA/ORD.

09–70–0036 Evaluation of Competitive Bidding for Durable Medical Equipment Demonstration, HHS/HCFA/ORD.

09–70–0038 Evaluation of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) Health Maintenance Organization (HMO) and Competitive Medical Plan (CMP) Program, HHS/HCFA/ORD.

09–70–0039 Evaluation of the Medicare Alzheimer's Disease Demonstration, HHS/HCFA/ORD.

09–70–0040 Health Care Financing Administration (HCFA) Organ Transplant Data File, HHS/HCFA/BDMS.

09–70–0041 Evaluation of the OBRA 87 Medicare Payment of Influenza Vaccination Demonstration, HHS/HCFA/ORD.

09–70–0042 Medicare Cancer Registry Record System, HHS/HCFA/BDMS.

09–70–0044 Demonstration and Evaluation of the Medicare Insured Group (MIG) Model, HHS/HCFA/ORD.

09–70–0045 Evaluation of the Arizona Health Care Cost containment and Long-Term Care Systems Demonstration, HHS/HCFA/ORD.

09–70–0046 Home Health Quality Indicator System (HHQUIS), HHS/HCFA/ORD.

09–70–0047 HCFA Medicare Predictor Data File, HHS/HCFA/ORD.

09–70–0048 Monitoring of the Home Health Agency Prospective Payment Demonstration, HHS/HCFA/ORD.

09–70–0049 Evaluation of the Home Health Agency Prospective Payment Demonstration, HHS/HCFA/ORD.

09–70–0051 Quality Assurance for the Home Health Agency (HHA) Prospective Payment Demonstration, HHS/HCFA/ORD.

09–70–0501 Carrier Medicare Claims Records, HHS/HCFA/BPO.

09–70–0502 Health Insurance Master Record, HHS/HCFA/BPO.

09–70–0503 Intermediary Medicare Claims Records, HHS/HCFA/BPO.

09–70–0504 Beneficiary Parts A and B Uncollectible Overpayment File, HHS/HCFA/BPO.

09–70–0505 Supplemental Medical Insurance Accounting Collection and Enrollment System, HHS/HCFA/BPO.

09–70–0507 Health Insurance Utilization Microfilm, HHS/HCFA/BPO.

09–70–0508 Reconsideration and Hearing Case Files (Part A) Hospital Insurance Program, HHS/HCFA/BPO.

09–70–0509 Medicare Beneficiary Correspondence Files, HHS/HCFA/BPO.

09–70–0512 Review and Fair Hearing Case Files—Supplementary Medical Insurance Program, HHS/HCFA/BPO.

09–70–0513 Explanation of Medicare Benefit Records, HHS/HCFA/BPO.

09–70–0516 Medicare Physician/Supplier Master File, HHS/HCFA/BPO.

09–70–0517 Physician/Supplier 1099 File (Statement for Recipients of Medical and Health Care Payments), HHS/HCFA/BPO.

09–70–0518 Medicare Clinic Physician/Supplier Master File, HHS/HCFA/BPO.

09–70–0520 End Stage Renal Disease (ESRD) Program Management and Medical Information System (PMMIS), HHS/HCFA/BDMS.

09–70–0522 Billing and Collection Master Record System, HHS/HCFA/BPO.

09–70–0524 Intern and Resident Information System, HHS/HCFA/BPO.

09–70–0525 Medicare Physician Identification and Eligibility System (MPIES), HHS/HCFA/BPO.

09–70–0526 Common Working File (CWF), HHS/HCFA/BPO.

09–70–0527 HCFA Utilization Review Investigatory Files, HHS/HCFA/BPO.

09–70–0529 Pennsylvania Medicaid/Medicare Duplicate Paid Claims, HHS/HCFA/ROIII.

09–70–1511 Physical Therapists in Independent Practice (Individuals), HHS/HCFA/HSQB.

09–70–1512 PRO Data Management System (PDMS), HHS/HCFA/HSQB.

09–70–1514 HCFA Severity of Illness Data File, HHS/HCFA/HSQB.

09–70–2003 Completion of State Medicaid Quality Control (MQC) Reviews, HHS/HCFA/MB.

09–70–2006 Income and Eligibility Verification for Medicaid Eligibility Quality Control (MEQC) Reviews, HHS/HCFA/MB.

09–70–3001 Record of Individuals Authorized Entry to HCFA Buildings Via a Card Key Access System, HHS/HCFA/OBA.

09–70–3002 Health Care Financing Administration (HCFA) Employee Building Pass Files, HHS/HCFA/OBA.

09–70–3003 Health Care Financing Administration (HCFA) Correspondence Handling and Processing System, HHS/HCFA/OBA.

09–70–4001 Group Health Plan System, HHS/HCFA/OPHCOO.

09–70–4002 Beneficiary Inquiry Tracking System (BITS), HHS/HCFA/OPHIC.

09–70–4003 Medicare HMO/CMP Beneficiary Reconsideration System (MBRS), HHS/HCFA/OPHCOO.

09–70–5001 Medicare Hearing and Appeals System (MHAS), HHS/HCFA/AAO.

09–70–6001 Medicaid Statistical Information System (MSIS), HHS/HCFA/BDMS.

09–70–6002 A Current Beneficiary Survey (CBS), HHS/HCFA/OACT.

09–70–9001 Health Care Financing Administration (HCFA) Correspondence and Assignment Tracking and Control System (CATCS), HHS/HCFA/OEO.

Systems of Records Published Through August 1993

09–70–0050 The Medicare/Medicaid Multistate Case-Mix and Quality Data Base for Nursing Home Residents, HHS/HCFA/ORD.

09–70–0052 Posthospitalization Outcomes Studies, HHS/HCFA/ORD.

09–70–0053 The Medicare Beneficiary Health Status Registry Pilot, HHS/HCFA/ORD.
09–70–0054 Evaluation of the United Mine Workers of America Health and Retirement Funds Medicare Part B Capitation Demonstration, HHS/HCFA/ORD.
09–70–0055 Implementation and Evaluation of the Staff-Assisted Home Dialysis Demonstration, HHS/HCFA/ORD.
09–70–0056 Evaluation of the Medicaid Expansion Demonstrations, HHS/HCFA/ORD.
09–70–0057 Evaluation of the Medicaid Extension of Eligibility to Certain Low Income Families Not Otherwise Qualified to Receive Medicaid Benefits Demonstration, HHS/HCFA/ORD.
09–70–0058 Evaluation of the Medicare SELECT Program, HHS/HCFA/ORD.
09–70–0059 The Medicaid Necessity, Appropriateness, and Outcomes of Care Study, HHS/HCFA/ORD.
09–70–0061 Evaluation of the Medicare Case Management Demonstration, HHS/HCFA/ORD.
09–70–0063 Evaluation of the Medicaid Demonstration for Improving Access to Care for Substance Abusing Pregnant Women, HHS/HCFA/ORD.
09–70–0530 Medicare Supplier Identification File, HHS/HCFA/BPO.

Note: This system was inadvertently numbered 09–70–0529 when originally published at 57 FR 23420, June 3, 1992.

Acronyms

AAO: Associate Administrator for Operations
BDMS: Bureau of Data Management and Strategy
BPO: Bureau of Program Operations
HSQB: Health Standards and Quality Bureau
MB: Medicaid Bureau
OACT: Office of the Actuary
OBA: Office of Budget and Administration
OEO: Office of Executive Operations
OCCPP: Office of Coordinated Care Policy and Planning
OPHCOO: Office of Prepaid Health Care Operations and Oversight
ORD: Office of Research and Demonstrations
ROIII: Pennsylvania Regional Office.

Dated: October 1, 1993.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 93–25032 Filed 10–12–93; 8:45 am]
BILLING CODE 4120–03–M

Social Security Administration

Social Security Ruling SSR 93–2p., Titles II and XVI: Evaluation of Human Immunodeficiency Virus Infection

AGENCY: Social Security Administration, HHS.

ACTION: Notice of Social Security ruling.

SUMMARY: In accordance with 20 CFR 422.406(b)(1), the Principal Deputy Commissioner of Social Security gives notice of Social Security Ruling 93–2p. This Policy Interpretation Ruling clarifies how the duration requirement in the Social Security Act and the Agency's regulations should be applied in determining whether a person claiming benefits based on human immunodeficiency virus (HIV) infection is disabled under Title II (Federal Old-Age, Survivors, and Disability Insurance Benefits) or Title XVI (Supplemental Security Income for the Aged, Blind, and Disabled) of the Social Security Act. This Ruling will ensure that a consistent procedure is followed when claims for disability benefits based on HIV infection are evaluated.

EFFECTIVE DATE: October 13, 1993.

FOR FURTHER INFORMATION CONTACT: Joanne K. Castello, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1711.

SUPPLEMENTARY INFORMATION: Although we are not required to do so pursuant to 5 U.S.C. 552 (a)(1) and (a)(2), we are publishing this Social Security Ruling in accordance with 20 CFR 422.406(b)(1).

Social Security Rulings make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and black lung benefits programs. Social Security Rulings may be based on case decisions made at all administrative levels of adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, and other policy interpretations of the law and regulations.

Although Social Security Rulings do not have the force and effect of the law or regulations, they are binding on all components of the Social Security Administration, in accordance with 20 CFR 422.406(b)(1), and are to be relied upon as precedents in adjudicating other cases.

If this Social Security Ruling is later superseded, modified, or rescinded, we will publish a notice in the **Federal Register** to that effect.

(Catalog of Federal Domestic Assistance Programs Nos. 93.802 Social Security—Disability Insurance; 93.803 Social Security—Retirement Insurance; 93.805 Social Security—Survivors Insurance; 93.806 Special Benefits for Disabled Coal Miners; 93.807 Supplemental Security Income)

Dated: September 29, 1993.

Lawrence H. Thompson,

Principal Deputy Commissioner of Social Security.

Policy Interpretation Ruling

Titles II and XVI: Evaluation of Human Immunodeficiency Virus Infection

Purpose: The purpose of this Policy Interpretation Ruling is to clarify the application of the duration requirement in the Social Security Act (the Act) and our regulations when evaluating claims for disability benefits based on human immunodeficiency virus (HIV) infection, including acquired immunodeficiency syndrome (AIDS), under titles II and XVI of the Act.

Citations: Sections 216(i), 223(d) and 1614(a) of the Social Security Act, as amended; Regulations No. 4, Subpart P, sections 404.1509, 404.1525(a), and Appendix 1, Parts A and B; Regulations No. 16, Subpart I, sections 416.909 and 416.925(a).

Introduction: The criteria for evaluating HIV infection claims are in the Listing of Impairments in Appendix 1 of Subpart P of Part 404 of Title 20 of the Code of Federal Regulations. We are issuing this Policy Interpretation Ruling to ensure consistent and correct application of our duration requirement when evaluating HIV claims.

Policy Interpretation: This Policy Interpretation Ruling clarifies the duration requirement in the Act and our regulations regarding how it should be applied in determining whether a person claiming benefits based on HIV infection is disabled under title II or title XVI of the Act.

Duration of Impairment—HIV Infection

With documentation of HIV infection as described in 14.00D3 or 114.00D3 of the preface to the Immune System listings, an individual who has an impairment that meets or equals one of the listed criteria required in listing 14.08 or 114.08 (the HIV listings) has an impairment that is considered permanent or expected to result in death. Accordingly, if an individual has an HIV infection of this severity, a separate finding on the duration of the impairment is not required, and the evidence required under sections 404.1525(a) and 416.925(a) of the regulations showing that the impairment has lasted or is expected to last for a continuous period of at least 12 months is not necessary.

Effective Date: This Ruling is effective on October 13, 1993.

Cross-Reference: Program Operations Manual System, Part 04, section DI 24595.

[FR Doc. 93–25059 Filed 10–12–93; 8:45 am]
BILLING CODE 4190–29–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N–93–3672; FR–3592–N–01]

Task Force on Lead-Based Paint Hazard Reduction and Financing; Open Meeting

AGENCY: Office of the Secretary—Office of Lead-Based Paint Abatement and Poisoning Prevention, HUD.

ACTION: Announcement of establishment of Task Force; notice of open meeting.

SUMMARY: The Task Force was established by the Secretary pursuant to section 1015 of the Residential Lead-Based Paint Hazard Reduction Act of 1992. The charter of the Task Force was approved July 14, 1993.

The Task Force includes individuals representing the Department of Housing and Urban Development; the Farmers Home Administration; the Department of Veterans Affairs; the Federal Home Loan Mortgage Corporation; the Federal National Mortgage Association; the Environmental Protection Agency; employee organizations in the building and construction trades industry; landlords; tenants; primary lending institutions; private mortgage insurers; single-family and multifamily real estate interests; nonprofit housing developers; property liability insurers; public housing agencies; low-income housing advocacy organizations; national, State, and local lead-poisoning prevention advocates and experts; and community-based organizations located in areas with substantial rental housing. These members were selected on the basis of personal experience and expert knowledge.

DATES: The first meeting will be held on November 8, 1993, at 9 a.m. (EST), at the Holiday Inn Capitol, 550 "C" Street, SW. (corner of 6th & C Streets), Washington, DC 20024.

ADDRESSES: Members of the public are invited to provide written material. Submit 50 copies of written statements to: Ruth C. Wright, Task Force Staff Director, Department of Housing and Urban Development, 451 7th Street SW., room B–133, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Ruth C. Wright, Task Force Staff Director, Department of Housing and Urban Development, 451 7th Street SW., room B–133, Washington, DC 20410; telephone (202) 755–1822. The TTD numbers are (202) 708–9300 or 1–800–877–8339, (Except for the "800" number, these are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The first meeting of the Task Force will be held on November 8, 1993, beginning at 9 a.m. (EST), at the Holiday Inn Capitol, 550 "C" Street, SW. (corner of 6th & C Streets), Washington, DC 20024. An announcement will be published in the **Federal Register** at least 15 days before each meeting. All meetings will be open to the public, with limited seating available on a first-come, first-served basis.

The mandate of the Task Force is to make recommendations to the Secretary of HUD and the Administrator of the Environmental Protection Agency (EPA) concerning:

(1) Incorporating the need to finance lead-based paint hazard reduction into underwriting standards;

(2) Developing new loan products and procedures for financing lead-based paint hazard evaluation and reduction activities;

(3) Adjusting appraisal guidelines to address lead safety;

(4) Incorporating risk assessments or inspections for lead-based paint as a routine procedure in the origination of new residential mortgages;

(5) Revising guidelines, regulations, and educational pamphlets issued by the Department of Housing and Urban Development and other Federal agencies relating to lead-based paint poisoning prevention;

(6) Reducing the current uncertainties of liability related to lead-based paint in rental housing, by clarifying standards of care for landlords and lenders and by exploring the "safe harbor" concept;

(7) Increasing the availability of liability insurance for owners of rental housing and certified contractors and establishing alternative systems to compensate victims of lead-based paint poisoning; and

(8) Evaluating the utility and appropriateness of requiring both risk assessments or inspections and notification to prospective lessees of rental housing.

Authority: 42 U.S.C. 4852a, 4852b.

Dated: October 4, 1993.

Henry G. Cisneros,

Secretary.

[FR Doc. 93–25126 Filed 10–12–93; 8:45 am]

BILLING CODE 4210–32–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–060–5101–10–B040, LA–0152777A]

Notice of Intent

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement (EIS) on a proposed heated crude oil pipeline.

SUMMARY: Notice is hereby given the Bureau of Land Management (BLM), pursuant to Section 102(2)(C) of the National Environmental Protection Act of 1969, will be directing the preparation of an EIS by a third party contractor. This EIS is to assess the impacts of a proposed flow reversal of a portion of an existing crude oil pipeline and also changing it to a heated crude oil pipeline. This proposed project will involve both Federal and private lands in San Bernardino, Riverside and Los Angeles Counties, in southern California.

DATES: Written comments must be submitted by November 12, 1993. No public scoping meetings will be held. However, briefing meetings will be considered as appropriate.

ADDRESSES: Written comments should be sent to: District Manager, ATTN: FCPL Line 90 Project, Bureau of Land Management, California Desert District Office, 6221 Box Springs Boulevard, Riverside, California 92507–0714.

FOR FURTHER INFORMATION CONTACT: Stephen L. Johnson, Special Projects Manager, California Desert District, (909) 697–5230.

SUPPLEMENTARY INFORMATION: Four Corners Pipe Line Company (FCPL) owns and operates Line 90, an interstate 16-inch pipeline that presently transports Alaskan North Slope (ANS) crude oil from West Hynes Pump Station in Long Beach to All American Pipeline (AAPL) at Cadiz, California and ultimately to FCPL's Line 92 in Bisti, New Mexico. Line 90 is approximately 596 miles long and crosses portions of four States; California, Arizona, Utah and New Mexico.

FCPL proposes to undertake a project to allow the transportation of a daily average of 70,000 barrels per day of heated Outer Continental Shelf (OCS) crude oil on Line 90 from AAPL's Cadiz Pump Station, located about 60 miles west of the Colorado River, to West Hynes Pump Station located in Long Beach. This project shall reverse the direction of flow through the 188 mile long western leg of Line 90. From West Hynes the heated OCS crude oil will be distributed in the Los Angeles basis using existing pipeline systems.

The Line 90 Reversal Project includes the installation of two new pump stations (Twentynine Palms and Cabazon), the installation of one new drainback station (Sheephole), modifications to the connection at the AAPL's Cadiz Pump Station, the modification of pumping facilities (Morongo, Beaumont and Corona Pump Stations), distribution facilities additions, modifications at West Hynes Pump Station, modifications to the Line 90 to handle thermal expansion, installation of additional pipeline cathodic protection systems and pipeline hydrostatic testing. The California Desert Conservation Area (CDCA) Plan 1980 identified this

pipeline across Federal land. However Line 90 is outside the designated utility corridors identified in the CDCA Plan and, furthermore, no guidelines were developed to address amending existing rights-of-way outside of designated corridors where substantial changes are involved.

The tentative project schedule is as follows:

Begin public comment period—October 1993
File Draft EIS—January 1994
Conduct public hearings on Draft EIS—March 1994
File Final EIS—May 1994
Begin public comment period on Final EIS—May 1994
Record of Decision—July 1994

The determination that an EIS is needed was based on an analysis of potential impacts as described in a draft Environmental Assessment (EA) dated July, 1993 and BLM concluded that the proposed Line 90 Pipeline Reversal Project will have a significant impact on the human environment as defined in 40 CFR 1508.27. As a result, the scoping process will consist of this Notice of Intent; a news release announcing the start of the EIS process; and, a scoping document which further clarifies the proposed action, alternatives and significant issues being considered will be available upon request.

Dated: October 4, 1993.

Richard E. Fagan,

California Desert District Manager.

[FR Doc. 93–25012 Filed 10–12–93; 8:45 am]

BILLING CODE 4310–40–M

[NM–920–02–4120–02]

San Juan River Regional Coal Team (RCT) Meeting; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of RCT meeting.

SUMMARY: The San Juan River RCT will meet to discuss current activities on Federal coal lands in New Mexico and southwest Colorado and to consider future development plans for Federal coal in the region. The public is invited to attend.

The primary purposes of the meeting are to:

1. Inform the RCT on the coal market and industry interest assessment.
2. Inform the RCT on the status of coal Preference Right Lease Applications (PRLA).

DATES: The RCT will meet at 9 a.m. on Tuesday, October 19, 1993.

ADDRESSES: The meeting will be held in the first floor conference room of the Bureau of Land Management (BLM), 1474 Rodeo Road, Santa Fe, New Mexico 87505.

FOR FURTHER INFORMATION CONTACT: James Olson at the Bureau of Land Management, New Mexico State Office, Branch of Solid Minerals, NM (921), P.O. Box 27115, Santa Fe, New Mexico 87502–0115, 505–438–7455.

SUPPLEMENTARY INFORMATION: The State of New Mexico will present a summary of progress on developing implementation of the State Mine Reclamation Act. The BLM will report on coal PRLA status in New Mexico. The BLM will present new developments in map automation of the Federal and Indian coal leases, PRLA's and competitive tracts in the San Juan Basin. The RCT will consider information obtained from the public in making decisions at this meeting. Anyone wishing to be scheduled to speak at the meeting or to present additional topics for discussion should provide written copies of their remarks or suggestions to James Olsen, Bureau of Land Management, at the above address by Monday, October 11, 1993. Written material will be accepted in lieu of, or in addition to, any oral presentation.

Following is a preliminary agenda for this meeting:

1. Introduction.
2. Approval of minutes of last meeting.
3. Annual BLM coal market/industry interest assessment.
4. Current activity and production on existing leases.
   a. New Mexico.
   b. Colorado.
5. Activities on Salt River Project.
6. Status of PRLA's.
7. Morris 41 Mine Rehabilitation.
8. State Mine Reclamation Act.
9. Automated map of New Mexico lease/tracts/PRLA's.
10. Public comment.
11. Scheduling of next meeting.
12. Adjorn.

Dated: September 29, 1993.

Gilbert J. Lucero,

Acting State Director.

[FR Doc. 93–25013 Filed 10–12–93; 8:45 am]

BILLING CODE 4310–FB–M

National Park Service

Foothills Parkway; Intent To Prepare an Environmental Impact Statement

AGENCY: Great Smoky Mountains National Park, Tennessee, National Park Service, DOI.

ACTION: Notice of Intent to prepare an Environmental Impact Statement for Section 8B of the Foothills Parkway and notice of public meetings.

SUMMARY:

1. Background and Description of the Proposed Action

The National Park Service (NPS) is initiating planning for construction of Section 8B of the Foothills Parkway between Cosby and Pittman Center, Tennessee. This section of parkway would connect with the previously constructed Section 8A of the Foothills Parkway which runs from Interstate 40 to Cosby.

The Foothills Parkway was authorized in 1944, when Congress passed a law accepting donation of land from the State of Tennessee. The NPS administers the parkway as a portion of the Great Smoky Mountains National Park. The right-of-way for the parkway averages 1000 feet in width except for special uses such as picnic areas, trails and viewing areas were envisioned. To date, approximately 24 miles of the 72-mile parkway have been completed and opened to traffic. Approximately 17 miles, comprised of Sections 8E and 8F are nearing completion. An Environmental Impact Statement (EIS) for Section 8D, which runs approximately 9.9 miles from the Wear Valley Road Interchange to the Gatlinburg Interchange, is currently being prepared. Just over 20 miles remain to be evaluated for environmental impacts. Section 8B of the parkway, approximately 14.1 miles in length, is the next section to be evaluated through the preparation of an EIS.

In accordance with section 102(c) of the National Environmental Policy Act of 1969, the National Park Service is preparing an EIS for Section 8B of the Foothills Parkway. This EIS process will be used to describe the affected environment, give alternative proposals, assess impacts of the project, and propose mitigation methods for impacts. Additionally, the EIS process will be used to provide resource information critical to early design efforts.

2. Scoping Process

Public Involvement: Two workshops/public meetings concerning the proposed action will be held at the date, time, and locations given below.

DATES AND ADDRESSES:

Friday, November 19, 1993, 6 p.m. to 9 p.m. American Legion, Post 202, Highway 321, North, Gatlinburg, Tennessee 37738.
Saturday, November 20, 1993; 10 a.m. to 1 p.m., Pittman Center Town Hall, 2839 Webb Creek Road, Pittman Center, Tennessee 37738.

FOR FURTHER INFORMATION CONTACT: To obtain information or provide comments

other than at the meetings, please contact Randall Pope, Superintendent Great Smoky Mountains National Park, 107 Park Headquarters Road, Gatlinburg, Tennessee 37738, telephone (615) 436–1207. The responsible official for this EIS is James W. Coleman, Jr., Regional Director, Southeast Region, 75 Spring Street, SW., Atlanta, Georgia 30303.

SUPPLEMENTARY INFORMATION:

Representatives from the EIS Team will be present to receive comments and answer planning questions at the public meetings. The pubic is encouraged to attend and submit verbal and/or written comments on the proposed EIS. Comments may also be mailed to the Regional Director at the address above and should be received prior to January 14, 1994.

The draft and final EIS will be distributed to all known interested parties and appropriate agencies. Full public participation by Federal, State and local agencies as well as other concerned organizations and private citizens is invited during this scoping process and throughout the preparation of the document.

Dated: September 29, 1993.

James W. Coleman, Jr.,

Regional Director, Southeast Region.

[FR Doc. 93–24980 Filed 10–12–93; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before October 2, 1993. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by October 28, 1993.

Antoinette J. Lee,

Acting Chief of Registration, National Register.

FLORIDA

Columbia County

Columbia County High School (Lake City MPS), 528 W. Duval St., Lake City, 93001154

Duncan, Horace, House (Lake City MPS), 202 W. Duval St., Lake City, 93001155

Lake City Historic Commercial District (Lake City MPS), Roughly bounded by Railroad, N. Hernando, Duval and N. Columbia Sts., Lake City, 93001157

Lake Isabella Historic Residential District (Lake City MPS), Roughly bounded by East, Duval and Columbia Sts., Baya Ave., Church St. and Lake Isabella, Lake City, 93001156

Manatee County

Whitfield Estates—Broughton Street Historic District, 7207, 7211, 7215, 7219 and 7316 Broughton St., Sarasota, 93001159

Osceola County

Desert Inn, 5570 S. Kenansville Rd., Yeehaw Junction, 93001158

KENTUCKY

Kenton County

Lewisburg Historic District, Roughly bounded by I–75 and the Covington city limits, Covington, 93001165

MISSISSIPPI

Hinds County

Smith Park Architectural District (Boundary Increase), 225 E. Capitol St., Jackson, 93001152

Jasper County

Archeological Site No. 22–Js–572, Address Restricted, Bay Springs vicinity, 93001150

Leflore County

Murphy Site, Address Restricted, Itta Bena vicinity, 93001151

Pontotoc County

Pontotoc Historic District, Roughly, along Main and Liberty Sts. between Reynolds and 8th Sts., Pontotoc, 93001164

TENNESSEE

Dickson County

Farmers and Merchants Bank Building, 201 Main St., White Bluff, 93001161

Hardin County

Savannah Historic District (Boundary Increase), 410 and 506 Main St., Savannah, 93001153

VERMONT

Chittenden County

Chittenden, Giles, Farmstead, Governor Chittenden Rd., NE of Williston village center, Williston, 93001160

WISCONSIN

Dane County

Haight, Nicholas, Farmstead,4926 Lacy Rd., Fitchburg, 93001162

Portage County

Severance—Pipe Farmstead, Pipe Rd., ⅛ mi. E of Co. Hwy. T, E of Amherst, Town of Lanark, Amherst vicinity, 93001163

[FR Doc. 93–24979 Filed 10–12–93; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–345]

Certain Anisotropically Etched One Megabit and Greater Drams, Components Thereof, and Products Containing Such Drams

Notice

Notice is hereby given that the prehearing conference and hearing in this matter, previously scheduled to commence at 9 a.m. on October 12, 1993, are cancelled. The prehearing conference will commence at 8 a.m. on October 18, 1993, in Courtroom C (Room 217), U.S. International Trade Commission Building, 500 E St. SW., Washington, DC, and the hearing will commence immediately thereafter.

The Secretary shall publish this notice in the **Federal Register**.

Issued: October 4, 1993.

Janet D. Saxon,

Administrative Law Judge.

[FR Doc. 93–25056 Filed 10–12–93; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–33 (Sub-No. 79)]

Union Pacific Railroad Co.—Abandonment—In Canyon and Ada Counties, ID (Stoddard Branch)

The Commission has found that the public convenience and necessity permit Union Pacific Railroad Company (UP), to abandon 15.90 track miles and 1.00-mile of rail sidings located between milepost 1.75, near Nampa, and the end of the line at milepost 17.65, near Stoddard, in Canyon and Ada Counties, ID.

A certificate will be issued authorizing abandonment unless within 15 days after this publication the Commission finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to continue; and (2) it is likely that the assistance would fully compensate UP.

Any offers of financial assistance must be filed with the Commission and UP no later than 10 days from the date of publication of this notice. The following notation must be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Section of Legal Counsel, AB–OFA." Any offer previously made must be made within the 10-day period.

Information and procedures regarding financial assistance for continued rail

service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

Decided: October 4, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–25199 Filed 10–12–93; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 23259]

Peninsula Corridor Joint Powers Board—Trackage Rights Exemption—Southern Pacific Transportation Co.; Exemption

Southern Pacific Transportation Company (SPT) has agreed to extend for an additional 120 days its grant of 4.7 miles of overhead trackage rights to Peninsula Corridor Joint Powers Board (JPB) between Santa Clara Junction (milepost 44.0) and Tamien, CA (milepost 48.7).[1] The extension of the trackage rights was to become effective on or after October 1, 1993.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information the exemption is void *ad initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: David J. Miller, Hanson, Bridgett, Marcus, Vlahos & Rudy, 333 Market Street, Suite 2300, San Francisco, CA 94105.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under Norfolk and Western Ry. Co.—Trackage Rights—BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653 (1980).

Dated: October 1, 1993.

[1] SPT and JPB own parallel lines between these points. They agreed to grant limited term trackage rights to each other while they studied the feasibility of coordinated use of the lines to achieve more efficient freight, intercity passenger, and commuter rail operations in this area. See previous notices of exemption in Finance Docket Nos. 32091 and 32094 and extensions of these exemptions in Finance Docket Nos. 32159, 32161, 32200, 32202, 32300, and 32303. This further extension is necessary because the parties have been unable to reach a final agreement. JPB has agreed to grant SPT a similar trackage rights extension in Finance Docket No. 32360.

By the Commission, David M. Knoschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–25086 Filed 10–12–93; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 32358]

Indiana Southern Railroad, Inc—Trackage Rights Exemption—Soo Line Railroad Co.

Soo Line Railroad Company (Soo) has agreed to grant overhead trackage rights to Indiana Southern Railroad, Inc. over 5.8 miles of rail line between Soo milepost 224.1 at or near Elnora, IN, and Soo milepost 218.3 at or near Bee Hunter, IN. The trackage rights were to become effective on or after September 30, 1993.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Karl Morell, Taylor, Morell & Gitomer, 919 18th Street, N.W., Suite 210, Washington, DC 20006.

As a condition to use of this exemption, any employees adversely affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage* Rights—BN, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: October 5, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–25085 Filed 10–12–93; 8:45 am]

BILLING CODE 7035–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 93–080]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of agency report forms under OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's), supporting statements, instructions, transmittal letters and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Paperwork Reduction Project.

DATES: Comments are requested by November 12, 1993. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Paperwork Reduction Project and the Acting Agency Clearance Officer of your intent as early as possible.

ADDRESSES: Ms. Eva L. Layne, Acting NASA Agency Clearance Officer, Code JTD, NASA Headquarters, Washington, DC 20546; Office of Management and Budget, Paperwork Reduction Project (2700–0054), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Shirley C. Peigare, NASA Reports Officer, (202) 358–1374.

Reports

Title: NASA FAR Supplement Part 18–43, Contract Modifications.
OMB Number: 2700–0054.
Type of Request: Extension.
Frequency of Report: On occasion.
Type of Respondent: State or local governments, Businesses or other for-profit, Non-profit institutions, and Small businesses or organizations.
Number of Respondents: 145.
Responses per Respondent: 2.
Annual Responses: 290.
Hours per Response: 50.
Annual Burden Hours: 14,500.
Abstract-Need/Uses: Contractor submittal of proposals in response to change change orders.

Dated: October 6, 1993.

Eva L. Layne,

Acting Chief, IRM Policy and Acquisition Management Office.

[FR Doc. 93–25070 Filed 10–12–93; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Cooperative Agreement for an Arts in Education Newsletter

AGENCY: National Endowment for the Arts, NFAH.

ACTION: Notification of availability.

SUMMARY: The National Endowment for the Arts is requesting proposals leading to the award of a Cooperative Agreement for the development, production, and dissemination of a quarterly newsletter for State Arts Agency Arts in Education Coordinators, and others, such as state department of education specialists, Alliance for Arts Education chapters, and arts and arts education service organizations. Funding is limited to $10,000. Those interested in receiving the Solicitation package should reference Program Solicitation PS 94–02 in their written request and include two (2) self-addressed labels. Verbal requests for the Solicitation will not be honored.

DATES: Program Solicitation PS 94–02 is scheduled for release approximately November 5, 1993 with proposals due December 6, 1993.

ADDRESSES: Requests for the Solicitation should be addressed to the National Endowment for the Arts, Contracts Division, room 217, 1100 Pennsylvania Ave., NW., Washington, DC 20506.

William I. Hummel,

Director, Contracts and Procurement Division.

[FR Doc. 93–25017 Filed 10–12–93; 8:45 am]

BILLING CODE 7537–01–M

Expansion Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that meeting of the Expansion Arts Advisory Panel (Visual Arts/Media/Design/Literary Arts Section) to the National Council on the Arts will be held October 26–28, 1993 from 9 a.m. to 6 p.m. on October 26 and October 27, 1993, and from 9 a.m. to 5:30 p.m. on October 28, 1993. This meeting will be held in room 716, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of these meetings will be open to the public on October 26, 1993 from 9:15 a.m. to 10:30 a.m. for general overview and opening remarks, and from 3 p.m. to 5 p.m. on October 28, 1993 for a policy discussion.

The remaining portions of these meetings from 10:30 a.m. to 6 p.m. on October 26, 1993, from 9 a.m. to 6 p.m. on October 27, 1993, and from 9 a.m. to 3 p.m. on October 28, 1993, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the pubic, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prief to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: October 6, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93–25038 Filed 10–12–93; 8:45 am]

BILLING CODE 7537–01–M

Meetings

AGENCY: National Endowment for the Humanities, NFAH.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: David C. Fisher, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) trade secrets and commercial or financial information obtained from a person and privileged or confidential; or (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of title 5, United States Code.

1. *Date:* November 1, 1993.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review Translations program applications in Literature, Philosophy and Religion, submitted to the Division of Research Programs, for projects beginning after April 1, 1994.

2. *Date:* November 3, 1993.
Time: 9 a.m. to 5 p.m.
Room: M–14.
Program: This meeting will review Translations program applications in Slavic, Germanic, and Jewish Studies, submitted to the Division of Research Programs, for projects beginning after April 1, 1994.

3. *Date:* November 4–5, 1993.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications submitted to Humanities Projects in Media program during the September 11, 1993 deadline, submitted to the Division of Public Programs, for projects beginning after April 1, 1994.

4. *Date:* November 5, 1993.
Time: 9 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review proposals submitted for the October 1, 1993 deadline in Higher Education Program, submitted to the Division of Education Programs, for projects beginning after March 1994.

5. *Date:* November 8, 1993.
Time: 9 a.m. to 5 p.m.
Room: 430.
Program: This meeting will review applications for Conferences projects in Interpretive Research, submitted to the Division of Research Programs, for projects beginning after March 1, 1994.

6. *Date:* November 8, 1993.
Time: 9 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review proposals submitted to the October 1, 1993 deadline in Higher Education Program, submitted to the Division of Education Programs, for projects beginning after March 1994.

7. *Date:* November 15, 1993.

Time: 8 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications submitted to Humanities Projects in Media program during the September 1993 deadline, submitted to the Division of Public Programs, for projects beginning after April 1994.

8. *Date:* November 15, 1993.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications submitted to Humanities Projects in Media program during September, 1993 deadline, submitted to the Division of Public Programs, for projects beginning after April 1994.

9. *Date:* November 16, 1993.
Time: 9 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review proposals submitted to the October deadline in Higher Education Program, submitted to the Division of Education Programs, for projects beginning after March 1994.

10. *Date:* November 22, 1993.
Time: 9 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review proposals submitted to the October 1, 1993 deadline in the Higher Education Program, submitted to the Division of Education Programs, for projects beginning after March 1994.

11. *Date:* November 22–23, 1993.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review State and Regional Exemplary applications submitted by state humanities councils to the Division of State, for projects beginning after April 1994.

David C. Fisher,
Advisory Committee, Management Officer.
[FR Doc. 93–24981 Filed 10–12–93; 8:45 am]
BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

AGENCY: National Science Foundation.
ACTION: Notice of draft environmental assessment and request for comments.

SUMMARY: The National Science Foundation (NSF) has prepared a Draft Environmental Assessment for construction and operation of a Laser Interferometer Gravitational-Wave Observatory (LIGO) on the Department of Energy's Hanford Site near Richland, Washington. NSF is inviting public comments on the Draft Environmental Assessment.

DATES: In order to be assured consideration, comments must be received no later than November 13, 1993.

ADDRESSES: Copies of the Draft Environmental Assessment may be obtained from and comments addressed to Dr. David Berley, Program Manager for LIGO, National Science Foundation, 1800 G Street NW., room 341, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Dr. David Berley, 202–357–9575.

Dated: October 7, 1993.

Lawrence Rudolph,
Acting General Counsel.
[FR Doc. 93–25045 Filed 10–12–93; 8:45 am]
BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from September 20, 1993, through September 30, 1993. The last biweekly notice was published on September 29, 1993 (58 FR 50960).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By November 12, 1993, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714

which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to **(Project Director)**: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the particular facility involved.

Carolina Power & Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: September 15, 1993

Description of amendment request: The change would incorporate new pressure-temperature curves covering plant operations through 24 effective full power years.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

This change does not involve a significant hazards consideration for the following reasons:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated because the use of the new Pressure—Temperature operating limits will not change any postulated accident scenarios. The new Pressure—Temperature curves were developed using industry standards and regulations which are recognized as being inherently conservative. The Pressure—Temperature curves provide Reactor Coolant System (RCS) limits to protect the reactor pressure vessel from brittle fracture by clearly separating the region of normal operations from the region where the vessel is subject to brittle fracture. The heatup and cooldown limits are designed to ensure that the 10 CFR Appendix G Pressure—Temperature limits for the RCS are not exceeded during any condition of normal operation including anticipated operational occurrences.

General Design Criterion 32 of Appendix A to 10 CFR 50 requires that the reactor coolant boundary shall be designed with sufficient margin to assure that when stressed under operating, maintenance, testing, and postulated accident conditions, (1) the boundary behaves in a nonbrittle manner and (2) the probability of rapidly propagating fracture is minimized.

Title 10 of the Code of Federal Regulations Part 50 Appendix G, "Fracture Toughness Requirements," requires the effects of changes in the fracture toughness of reactor vessel materials caused by neutron radiation throughout the service life of nuclear reactors to be considered in the pressure-temperature limits. The change is used in conjunction with the material initial reference temperature (RT^{NDT}) to establish the limiting pressure-temperature curves. Regulatory Guide 1.99 contains procedures for calculating the effects of neutron radiation embrittlement of the low-alloy steels currently used for light-water-cooled reactor vessels.

Using the Regulatory Guide 1.99 Revision 2 and Appendix G to 10 CFR 50, new Pressure—Temperature curves were prepared for the projected reactor vessel exposure at 24 Effective Full Power Years (EFPY) of operation. These new curves, in conjunction with the heatup and cooldown ranges and the existing Low-Temperature Overpressure Protection System setpoints, provide the required assurance that the reactor pressure vessel is protected from brittle fracture up to 24 EFPY of operation. No changes to the design of the facility has been made. No new equipment has been added or removed an no operational setpoints have been altered. The revised analysis and resultant adjustment of the operating limitations provide assurance that the Reactor Coolant System is protected from brittle fracture.

Therefore, the proposed amendment to the pressure-temperature limitations do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated since the use of the new Pressure—Temperature operating limits does not change the postulated accident scenarios. The new curves do not effectively represent any appreciable change in the current methodologies; they merely provide assurance that the Reactor Coolant System is protected from brittle fracture. No new accident or malfunction mechanism is introduced by this amendment and no physical plant changes will result from this amendment. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety. Although the new Pressure—Temperature curves are less restrictive, they were generated with the current accepted conservative methodology using capsule surveillance data. The new Pressure—Temperature curves were developed using industry standards and regulations (ASME Code Section III, and NRC Regulatory Guide 1.99 Rev. 2) which are recognized as being inherently conservative. The use of the new Pressure—Temperature operating limits would not change postulated accident scenarios. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29550

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602

NRC Project Director: S. Singh Bajwa

Commonwealth Edison Company, Docket Nos. 50–295 and 50–304, Zion Nuclear Power Station, Units 1 and 2, Lake County, Illinois

Date of amendment request: April 27, 1993

Description of amendment request: The proposed amendment would revise the Technical Specifications by adding steam generator overfill protection requirements and modifying the equations for the overpower delta T and overtemperature delta T protective functions.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

The inclusion of requirements in Technical Specifications for the Steam Generator Overfill Protection System is not assumed in the initiation of any analyzed event. This function is not credited in the mitigation of any analyzed accident. The addition of requirements for the Steam Generator Overfill Protection System helps ensure that continuous addition of cold feedwater and carryover of excessive moisture to the turbine, is prevented. As such, equipment protection is provided by this function. In addition, the consequences of an event occurring with the proposed change are the same as the consequences of an event occurring with the existing requirements. Therefore, this change does not involve a significant increase in the probability or consequences of a previously evaluated accident.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not necessitate a physical alteration of the plant (no new or different type of equipment will be installed) or changes in parameters governing normal plant operation. The proposed change will not impose any different requirements. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The proposed change does not involve any reduction in a margin of safety. The function, operation and testing of the installed Steam Generator Overfill System has not changed from that described in the [Updated Final Safety Analysis Report] UFSAR. In addition, the proposed change simply formalizes the existing design, operating and testing requirements in Technical Specifications. As such, the change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690

NRC Project Director: James E. Dyer

Consolidated Edison Company of New York, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: May 5, 1993, as revised by letter dated August 27, 1993.

Description of amendment request: This amendment request is an additional followup to the amendment request of May 29, 1992, published in the **Federal Register** on July 8, 1992 (57FR30242), which changed the Technical Specifications Section 1.0, Definitions, to accommodate a 24-month fuel cycle and which proposed the extension of the test intervals for specific surveillance tests. This amendment proposes extending the surveillance intervals to 24 months for the following additional surveillance tests:

(1) Containment Pressure Channels
(2) Steam Pressure Channels
(3) Reactor Coolant Temperature Channels

The licensee has also proposed setpoint changes for the High Containment Pressure channel pressure signal for containment spray and steam line isolation and for the Reactor Coolant Temperature channels providing a reactor trip on Overtemperature delta T. These instrument channel setpoint changes ensure that the trip setpoints remain acceptable after 30 months of instrument drift (24 months and 25% extension). The changes requested by

the licensee related to a 24-month fuel cycle are in accordance with Generic Letter 91–04, "Changes in Technical Specification Surveillance Intervals to Accommodate a 24-Month Fuel Cycle." In addition, the licensee has proposed setpoint changes to the Steam Pressure channel high differential pressure between steam lines signal for safety injection and to the steam pressure signal used in coincidence with high steam flow in 2/4 steam lines for safety injection and steam line isolation. These changes are requested to provide for additional operating flexibility.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

[(1) Containment Pressure Channels:]

The proposed change does not involve a significant hazards consideration since:

1. A significant increase in the probability or consequences of an accident previously evaluated will not occur.

A statistical analysis of the containment pressure channel uncertainty for a 30 month operating cycle has been performed based upon historical test data.

Based upon this analysis it has been determined that the margin between the Technical Specification limit and the Safety Analysis limit must be increased to accommodate the instrument channel uncertainty for the high pressure setpoint projected for a 30 month operating cycle. A revision of the Safety Analysis limit from 2 psig to 7.3 psig is necessary. The Technical Specification limit of 2 psig remains unchanged. A safety evaluation performed pursuant to 10 CFR 50.59 is on file which supports the change in the Safety Analysis limit. Key conclusions of the Safety Evaluation are that neither the probability of occurrence nor the consequences of an accident or malfunction of equipment important to safety previously evaluated in the safety analysis report have been increased.

For the high-high pressure setpoint, a change in the Technical Specification limit from 30 psig to 24 psig provides adequate margin to accommodate the projected instrument channel uncertainty over a 30 month operating cycle. The proposed change in the Technical Specification limit also will not result in an increase in the probability of occurrence or the consequences of an accident or malfunction of equipment important to safety previously evaluated in the Safety Analysis report.

Thus assurance is provided that appropriate protective actions in accordance with the Technical Specifications will be taken so that Safety Analysis limits are not exceeded.

2. A significant increase in the probability or consequences of an accident previously evaluated is not involved.

The proposed change in the Technical Specification limit (high-high setpoint), together with the change in the Safety Analysis limit (high pressure setpoint) provide adequate margin to accommodate instrument channel uncertainty over a 30 month operating cycle. Plant equipment, which will be set at (or more conservatively than) Technical Specification limits, will therefore provide protective functions to assure that Safety Analysis limits are not exceeded. This will prevent the possibility of a new or different kind of accident from that previously evaluated from occurring.

3. A significant reduction in a margin of safety is not involved.

The above changes to the Technical Specification limit and the Safety Analysis limit are being made to assure that sufficient margin exists to accommodate instrument channel uncertainty over the extended operating cycle. This margin is necessary to assure that protective safety functions will occur so that Safety Analysis limits are not exceeded. The margin thus provided is equivalent to the margin that previously existed.

[(2) Steam Pressure Channels:]

The proposed change does not involve a significant hazards consideration since:

1. A significant increase in the probability or consequences of an accident previously evaluated will not occur.

A statistical analysis of channel uncertainty for a 30 month operating cycle has been performed based upon historical test data.

For the high differential pressure setpoint, the possibility of an extended operating cycle requires revision of a Safety Analysis limit to accommodate the projected channel uncertainty since the plant operating envelope prohibits revision of the current Technical Specification setpoint in the direction that would be required. In fact, the Safety Analysis limit has been increased from 150 to 270 psig, so that the Technical Specification limit may be increased 5 psi to 155 psi to obtain plant operating flexibility.

For the high steam flow coincident with low steam pressure ESF trip, the need for additional operating flexibility dictated a change in the Safety Analysis limit which permitted a change in the Technical Specification limit from 600 psig to 525 psig for plant operating flexibility.

A safety evaluation performed pursuant to 10 CFR 50.59 is on file which supports the change in the Safety Analysis limits. Key conclusions of the Safety Evaluation are that neither the probability of occurrence nor the consequences of an accident or malfunction of equipment important to safety previously evaluated in the safety analysis report have been increased.

In both cases, the margin between the current Technical Specification limits and the proposed revised Safety Analysis limits provides assurance that plant protective actions will occur as required which will not significantly increase the probability or consequences of an accident previously evaluated.

2. The possibility of a new or different kind of accident from any accident previously evaluated has not been created.

As substantiated by a safety analysis performed in accordance with 10 CFR 50.59, changes to the licensing basis Safety Analysis identified above have been made. The margin thus provided between the Technical Specification Limit and the Safety Analysis assures that protective action will occur to prevent the occurrence of a new or different kind of accident from that previously analyzed.

3. A significant reduction in a margin of safety is not involved.

A safety evaluation has been performed in accordance with 10 CFR 50.59 which substantiates the changes to the Safety Analysis limits identified above. A key conclusion reached in the safety evaluation is that the margin of safety as defined in the basis for any Technical Specification has not been reduced. In addition, the margin provided by the change in the Safety Analysis limit provides assurance that required protective actions will be taken to preserve the existing margin of safety defined in the plant design.

[(3) Reactor Coolant Temperature Channels:]

The proposed change does not involve a significant hazards consideration since:

1. A significant increase in the probability or consequences of an accident previously evaluated will not occur.

A statistical analysis of the Reactor Coolant Temperature channel uncertainty for a 30 month operating cycle has been performed based upon historical test data. Based on this analysis a change to the Technical Specification constant K1 from 1.25 to 1.22 is required. No change is necessary in K4. Sufficient margin now exists between the Safety Analysis limits and the proposed Technical Specification limits to accommodate projected channel uncertainty over a 30 month operating cycle. A statistical basis will then exist to assure that protective action will occur to prevent Safety Analysis limits from being exceeded. Thus, there will not be a significant increase in the probability or consequences of an accident previously evaluated.

2. The possibility of a new or different kind of accident previously evaluated has not been created.

Based upon a statistical analysis of past historical test data it has been demonstrated that reasonable assurance exists to conclude that Safety Analysis limits will not be exceeded over a 30 month operating cycle. The Technical Specification limits provide margin with respect to the Safety Analysis limits and confidence that appropriate plant protective response will be provided to prevent the possibility of a new or different kind of accident from that previously evaluated from being created.

3. A significant reduction in a margin of safety is not involved.

The change to the Technical Specification limit proposed is being made to assure that the previously established margin remains between plant protective function set points and Safety Analysis limits. This margin is based upon an evaluation of past historical test data and analytical methods for projecting instrument channel uncertainty over a 30 month operating cycle. It is

therefore concluded that the existing margin of safety has been preserved.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003.

NRC Project Director: Robert A. Capra

Consumers Power Company, Docket No. 50–155, Big Rock Point Plant, Charlevoix County, Michigan

Date of amendment request: August 6, 1993

Description of amendment request: The proposed amendment would change the Technical Specifications to implement a reorganization of the Big Rock Point staff. The reorganization changes the Superintendent titles to Manager and adds Safety and Licensing to the list of Plant Review Committee representatives.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

1. Will the proposed changes involve a significant increase in probability or consequences of an accident previously evaluated?

The proposed changes are only administrative in nature and are expected to result in improvements in performance of the Big Rock Plant staff. Therefore, they do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Will the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Since the proposed changes are only administrative, they will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will the proposed changes involve a significant reduction in the margin of safety?

Since the proposed changes are only administrative, they will not reduce the margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770

Attorney for licensee: Judd L. Bacon, Esquire, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201

NRC Project Director: William M. Dean, Acting

Duke Power Company, Docket Nos. 50–269, 50–270 and 50–287, Oconee Nuclear Station, Units 1, 2 and 3, Oconee County, South Carolina

Date of amendment request: May 3, 1993, as supplemented August 11, 1993

Description of amendment request: The proposed amendments would revise the limiting conditions for operation and surveillance requirements related to the Low Pressure Service Water (LPSW) System. Specifically, the proposed changes to the Technical Specifications would:

1. Require the third LPSW pump in the shared Unit 1 and 2 LPSW system to be operable;
2. Extend the allowable outage time for one LPSW pump or train inoperable from 24 hours to 72 hours;
3. Extend the allowable time for one Low Pressure Injection train inoperable from 24 hours to 72 hours;
4. Extend the Reactor Building Spray system spray nozzle air flow test interval from 5 years to 10 years;
5. Revise the Reactor Building Cooling Unit (RBCU) testing requirements to show acceptance criteria in terms of response to an Engineered Safeguards (ES) signal;
6. Add a periodic verification of adequate containment heat removal capability; and
7. Make administrative changes which delete redundant requirements.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated:

Each accident analysis addressed within the Oconee Final Safety Analysis Report (FSAR) has been examined with respect to the changes proposed within this amendment request.

The proposed revision assures the ability of the LPSW system to mitigate design basis accidents and adds a new containment heat removal capability surveillance requirement. These changes constitute additional restrictions not presently included in the Technical Specifications.

Current surveillance requirements are clarified to identify the design basis functions being tested (e.g., response to an Engineered Safeguards system actuation and containment heat removal). The design basis safety function of the affected systems in unchanged.

The proposed revision extends the LPI and LPSW system allowable outage times to be consistent with the standard technical specifications. The allowable outage times are reasonable based on the redundant capabilities afforded by the operable train, and the low probability of a DBA [Design Basis Accident] occurring during the period of inoperability.

The proposed revision extends the RB Spray system spray nozzle air flow test interval in accordance with NRC recommendations in NUREG 1366 and the provisions of NUREG 1430.

Associated administrative and editorial changes are included.

Based on the above, there is no significant increase in the probability of any Design Basis Accident (DBA) as a result of this change, nor is there a significant increase in the consequences of a DBA as a result of this change.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated:

The proposed changes make no physical changes to the plant configuration and do not adversely affect the performance of any equipment. Consequently, this change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Involve a significant reduction in a margin of safety:

Margins of safety associated with these proposed Technical Specifications have been evaluated:

The proposed revision assures the ability of the LPSW system to mitigate design basis accidents and adds a new containment heat removal capability surveillance requirement. These changes constitute additional restrictions not presently included in the Technical Specifications.

Current surveillance requirements are clarified to identify the design basis functions being tested (e.g., response to an Engineered Safeguards system actuation and containment heat removal). The design basis safety function of the affected systems is unchanged.

The proposed revision extends the LPI and LPSW system allowable outage times to be consistent with the standard technical specifications. The allowable outage times are reasonable based on the redundant capabilities afforded by the operable train, and the low probability of a DBA occurring during the period of inoperability.

The proposed revision extends the RB Spray system spray nozzle air flow test interval in accordance with NRC recommendations in NUREG 1366 and the provisions of NUREG 1430.

Associated administrative and editorial changes are included.

Based on the above, there will be no significant reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691

Attorney for licensee: J. Michael McGarry, III, Winston and Strawn, 1200 17th Street, NW., Washington, DC 20036

NRC Project Director: David B. Matthews

Entergy Operations Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: September 7, 1993 and September 24, 1993

Description of amendment request: The proposed amendment would revise the Technical Specifications for the incore detection system to allow less than 75% but more than 50% of the incore locations to be operable provided the appropriate penalties are applied to the Core Operating Limit Supervisory System (COLSS) and the Core Protection Calculator System (CPCs). This change would be effective for the remainder of the current Fuel Cycle 6.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change would relax requirements for the number of operable incore detector locations. The function of the incore detectors is to verify that the core power distribution is consistent with the assumptions used in the safety analysis. Sufficient measurements will be required to adequately verify compliance with power distribution Technical Specification limits. Penalties will be applied to the COLSS and CPCs to account for the increased uncertainties of values measured by the incore detectors prior to using incore detectors to monitor Technical Specification Limits when the number of operable detector locations falls below the current requirement. This will ensure that all current Technical Specification and fuel design limits are protected and the core power distribution assumptions in UFSAR [updated final safety analysis report] analysis remain valid. Therefore, the proposed change will not involve a significant increase in the probability or consequences of any accident previously analyzed.

The proposed change will not alter the operation of the plant or the manner in which it is operated. Reducing the minimum number of operable incore detector locations will not introduce any new failure modes. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change will continue to protect the current Technical Specification power distribution limits. Use of increased measurement uncertainty factors are [sic] required commensurate with the reduction in the minimum number of incore detector locations. The increased measurement uncertainty factors assure that power distribution calculations based on the incore system will continue to be conservative and that the existing LCOs [limiting conditions for operation] specified for Axial Shape Index, Azimuthal Power Tilt, Radial Peaking Factors, Local Power Density, and DNBR [departure from nucleate boiling ratio] will not be exceeded. Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122

Attorney for licensee: N.S. Reynolds, Esq., Winston & Strawn 1400 L Street N.W., Washington, D.C. 20005–3502

NRC Project Director: William D. Beckner

Entergy Operations, Inc., et al., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: September 23, 1993

Description of amendment request: This amendment would remove Specification 4.4.1.2.2 that requires a jet pump operability surveillance within 72 hours of entering operational condition 2 and add a clarification to Specification 4.4.1.2.1 that identifies that the requirements of Specification 4.0.4 are not applicable to this surveillance if, with the reactor power greater than 25% rated thermal power (RTP), the surveillance is completed within 4 hours after placing an associated recirculation loop into operation or within 24 hours after reaching greater than 25% RTP.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. No significant increase in the probability or consequences of an accident previously evaluated results from this change.

The jet pumps are not considered as initiators of any previously evaluated accident. However, a failed jet pump, in the case of a design basis accident, could increase the blowdown area and reduce the capability of reflooding the core. The TS [Technical Specifications], therefore, require that with an inoperable jet pump, the reactor be shutdown. However, this change does not affect the design or operation of the jet pumps or change any parameters that might increase the probability of failure. Thus, the revised surveillance cannot increase the probability of an accident previously evaluated.

The proposed change will delay the requirement to perform the jet pump differential pressure measurement until reactor power is above 25%. The current requirement is replaced by a note which provides time to perform the required surveillances when an associated recirculation loop is placed in operation or when the reactor exceeds 25% power. Below 25% power, low jet pump flow results in indication which precludes the collection of repeatable and meaningful data. The flexibility has previously been approved on two plants of similar design as well as in NUREG 1434, Improved Technical Specifications, Rev. 0. Industry data collected on older vintage BWRs [Boiling Water Reactors] has indicated that failure of the jet pump hold down beams can affect the integrity of the jet pumps. Early stages of degradation can be detected by measuring the differential pressure across the individual jet pumps and comparing the measurements to the loop average. GGNS [Grand Gulf Nuclear Station] has completed the recommended mitigative actions to reduce stress on the jet pump hold down beams. These improvements in association with the requirement to perform the surveillance at the earliest time that meaningful data can be collected will provide a sufficient level of confidence that the integrity of the jet pumps is and will continue to be maintained. Thus, the consequences of an accident previously evaluated are not affected.

Therefore, the probability or consequences of previously analyzed accidents are not significantly increased.

2. The change would not create the possibility of a new or different kind of accident from any previously analyzed.

The change introduces no new mode of plant operation and it does not involve physical modification of the plant. Therefore, operating the plant with the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. This change will not involve a significant reduction in a margin of safety.

The jet pumps have no active safety function. However, a failed jet pump, in the case of a design basis accident, could increase the blowdown area and reduce the capability of reflooding the core. Surveillance

Requirement 4.4.1.2.1 provides a sufficient level of assurance (i.e., a margin of safety) that this passive safety function is maintained. The safety margin afforded by Surveillance Requirement 4.4.1.2.2 is minor to negligible.

The Surveillance Requirement 4.4.1.2.2 was imposed on Grand Gulf in response to a jet pump hold down beam cracking concern identified at older BWR–3 plants. Due to reduction of pre-load stresses in the Grand Gulf hold down beams, jet pump lifetime is expected to significantly exceed that exhibited at the BWR–3 plants. The reduced pre-load in conjunction with a complete lack of cracking indication during prior refueling outage UT [ultransic testing] examinations of every jet pump suggests that the benefit of Surveillance Requirement 4.4.1.2.2 (and the equivalent compensatory measures) is relatively low. The mitigative actions previously performed to reduce stress on the jet pump hold-down beams in conjunction with the requirement to perform the surveillance at the earliest time that meaningful data can be collected provides a high level of assurance that the jet pump integrity will be maintained.

Therefore, operating the plant with the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Judge George W. Armstrong Library, Post Office Box 1406, S. Commerce at Washington, Natchez, Mississippi 39120

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., 12th Floor, Washington, DC 20005–3502

NRC Project Director: William D. Beckner

Florida Power and Light Company, et al., Docket No. 50–389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida

Date of amendment request: August 23, 1993

Description of amendment request: The proposed amendment will delete the option of using a movable incore detector to determine Incore Instrumentation System operability from the provisions of Technical Specification (TS) 3.3.3.2. Florida Power and Light Company (FPL) considers that the burden of maintaining the redundant movable detector system as an option is not justified by any safety significance. Approval of the proposed amendment is requested by February 20, 1994, to support permanent removal of the movable incore detector equipment during the next scheduled refueling outage.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Pursuant to 10 CFR 50.92, a determination may be made that a proposed license amendment involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. Each standard is discussed as follows:

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed license amendment will remove the option of using movable neutron detectors to determine incore instrumentation system operability. Removing this option will thereby support deleting the Movable Incore Detector System (MICDS) from the present plant design. The MICDS is a passive system designed only as an alternative method of monitoring the local neutron flux within the reactor core and does not perform automatic interlock, control, or protective functions. Removal of this passive system can not increase the frequency of occurrence of a neutron flux/power anomaly since the incore detectors are not accident initiators.

Criteria established in the facility Technical Specifications (TS) for monitoring core performance remain unchanged by this proposed amendment. The MICDS is merely a backup system to the Fixed Incore Detector System (FICDS) which will continue to be used, in conjunction with the excore detector systems, to adequately monitor the reactor power distribution. Assumptions made for core power distributions in previously evaluated accidents are not changed nor will they be impacted by removal of the MICDS.

Therefore, operation of the facility in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

Since the MICDS is a passive system, deletion of the MICDS will not produce any new types of failure. Equipment important to safety will continue to perform their safety functions as previously evaluated and will not be affected by this proposed amendment.

Therefore, operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The movable incore detectors are not relied upon for any automatic protective functions and are considered non-safety related. The MICDS only provides flexibility in determining operability of the Incore Instrumentation System. Deletion of the movable detector option from the TS only removes this operational flexibility.

The basis for incore instrumentation operability is unaffected by this change since the minimum complement of equipment (percentage of incore locations operable and core symmetry requirements) to satisfy the Limiting Conditions for Operation remains unchanged. The MICDS is not required to monitor or otherwise evaluate existing margins of safety for plant operation.

Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

Based on the discussion presented above and on the supporting Evaluation of Proposed TS Changes, FPL has concluded that this proposed license amendment involves no significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954–9003

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

NRC Project Director: Herbert N. Berkow

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of amendment request: September 3, 1993

Description of amendment request: The proposed amendments modify Turkey Point Units 3 and 4 Technical Specifications (TS) 3/4.7.1.6, Standby Feedwater System and the associated bases to implement plant design modifications to eliminate the non-safety-related cranking diesel generators and to provide a dedicated diesel for the electric motor driver for one of the two Standby Steam Generator Feedwater (SSGF) pumps. The licensee proposed this modification to eliminate high maintenance costs and remove the operational burden associated with the non-safety-related cranking diesel generators. Other editorial changes

would also be made to reflect the proposed amendments. The proposed modifications would preserve existing licensing commitments applicable to the Standby Steam Generator Feedwater System, relating to auxiliary feedwater (AFW) diversity, reliability, and fire protection requirements.

Background:

The SSGF System is designed with two motor-driven SSGF pumps which are capable of supplying feedwater to both Turkey Point Units 3 and 4 during certain non-design basis and low probability events, such as, a total loss of all normal and auxiliary feedwater concurrent with a loss of offsite power. Additionally, in the event of a fire which disables AFW System equipment in one of the two AFW fire zones coincident with a loss of offsite power, the SSGF pumps would be used for safe shutdown of the plant.

The electric motors for the two SSGF pumps receive power from a non-safety-related "C" bus. Upon a loss of offsite power design basis event, the cranking diesel generators would provide a backup power source to the "C" bus. Presently, the Turkey Point TS establish operability and surveillance requirements to ensure availability of power to the SSGF pumps from the cranking diesel generators.

The licensee proposes to eliminate the cranking diesel generators due to their high maintenance costs. This would be accomplished by replacing the electric motor driver for one of the two Standby Steam Generator Feedwater pumps with a dedicated diesel driver and by repowering various "C" bus loads from safety-related power supplies or other buses capable of being powered from the Emergency Power System. To implement this design modification, the licensee proposed TS changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The Cranking Diesel Generators serve to provide a backup power source for the Standby Steam Generator Feedwater System, which has been designed to provide emergency feedwater to the steam generators for beyond licensing basis events under conditions where normal and auxiliary feedwater have been lost coincident with a loss of offsite power. The SSGF System also ensures an orderly plant shutdown to meet the requirements of 10 CFR 50, Appendix R, by providing a source of feedwater under conditions where a fire has damaged the AFW System.

Since the proposed Standby Steam Generator Feedwater pump modifications and associated Technical Specification operability/ surveillance requirements enhance the diversity of pump drivers and preserve the capacity, location, and reliability of the subject SSGF pumps, these modifications will serve to ensure that the consequences of the beyond licensing basis events for which they were intended have not been increased. In addition, these modifications preserve existing licensing commitments applicable to the Standby Steam Generator Feedwater System, which are associated with issues of AFW diversity, reliability, and backup feedwater and fire protection requirements.

A probabilistic risk assessment [Engineering Calculation PTN–BFJR–93–009 for Turkey Point Units 3 and 4, "A Sensitivity Study of Risk Impact for Eliminating the Blackstart Diesels," Revision 0, dated July 30, 1993] has been performed for installation of one dedicated diesel-driver for the "B" Standby Steam Generator Feedwater pump and for elimination of reliance on the Cranking Diesel Generators as a backup source of power for the Standby Steam Generator Feedwater pumps. The results of this risk assessment study demonstrate that the proposed modifications will result in a 0.4% reduction in the current calculated core damage frequency of 5.72E–5 per year. This analysis demonstrates that the modifications to the Standby Steam Generator Feedwater System will have no significant impact on the frequency of core damage, and therefore the probability of failure to prevent certain beyond licensing basis events, for which the SSGF System is intended, ultimately leading to a core melt have not been increased.

The 10 CFR 50, Appendix R criteria do not postulate design bases accidents coincident with fires. In addition, the location of the new diesel driver and its storage tank meets appropriate regulatory criteria and will not lead to an uncontrolled fire which could damage redundant safety related equipment or systems required to achieve and maintain either plant in a safe shutdown condition.

Consequently, the plant modifications and changes in Technical Specifications associated with the SSGF pumps will have no significant effect on the probability or consequences of beyond licensing basis events; and the probability or consequences of any accident or plant event previously evaluated for Turkey Point by the NRC has not been significantly increased.

(2) Operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The Cranking Diesel Generators serve to provide a backup power source for the Standby Steam Generator Feedwater System, which has been designed to provide emergency feedwater to the steam generators for beyond licensing basis events under conditions where normal and auxiliary feedwater have been lost coincident with a loss of offsite power. The SSGF System also ensures an orderly plant shutdown to meet the requirements of 10 CFR 50, Appendix R, by providing a source of feedwater under conditions where a fire has damaged the AFW System.

Since the proposed SSGF pump modifications and associated Technical Specification operability/surveillance requirements enhance the diversity of pump drivers and preserve the capacity, location, and reliability of the subject SSGF pumps, these modifications will serve to ensure that the possibility of a new or different kind of accident from any previously evaluated will not be created. In addition, these modifications preserve existing licensing commitments applicable to the Standby Steam Generator Feedwater System, which are associated with issues of AFW diversity, reliability, and backup feedwater and fire protection requirements.

The 10 CFR 50, Appendix R criteria do not postulate design bases accidents coincident with fires. In addition, the location of the new diesel driver and its storage tank meets appropriate regulatory criteria and will not lead to an uncontrolled fire which could damage redundant safety related equipment or systems required to achieve and maintain either plant in a safe shutdown condition.

Consequently, the plant modifications and changes in Technical Specifications for the power driver of the SSGF pumps will not create the possibility of a new or different kind of accident from any accident previously evaluated by the NRC, and the possibility of a new or different kind of accident from any accident previously evaluated has not been increased.

(3) Operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

The Cranking Diesel Generators serve to provide a backup power source for the Standby Steam Generator Feedwater System, which has been designed to provide emergency feedwater to the steam generators for beyond licensing basis events under conditions where normal and auxiliary feedwater have been lost coincident with a loss of offsite power. The SSGF System also ensures an orderly plant shutdown to meet the requirements of 10 CFR 50, Appendix R, by providing a source of feedwater under conditions where a fire has damaged the AFW System.

Several options were considered to eliminate operating reliance on the Cranking Diesel Generators for the Standby Steam Generator Feedwater System. FPL (Florida Power and Light Company) decided to remove one of the electric motor-driven SSGF pumps and replace it with a dedicated diesel-driven SSGF pump assembly with a capacity equal to the original pump in its original location. This will serve to preserve the capacity and location of the original installation, while enhancing the level of diversity in the power drivers for the pumps. Since a single SSGF pump can supply sufficient feedwater flow to both units, the availability of the diesel-driven SSGF pump alone will be sufficient to preclude a loss of secondary cooling for those beyond licensing

basis events which involve a total loss of normal and AFW cooling coincident with a loss of offsite power.

Even though the installation of the new diesel-driven SSGF pump will mean a significant increase in the amount of combustible fluids (diesel fuel oil) present at the location of the SSGF pumps, the location of the new diesel driver and its storage tank are located sufficiently far from safety related equipment and will be designed to include a secondary containment for fuel oil spills. This configuration will ensure that an inadvertent diesel fuel oil spill will not result in an uncontrolled fire which could damage redundant safety related equipment or systems required to achieve and maintain either plant in a safe shutdown condition.

Since the proposed SSGF pump modifications and associated Technical Specification operability/surveillance requirements enhance the diversity of pump drivers while preserving the capacity, location, and reliability of the subject SSGF pumps, these modifications will serve to ensure that the margin of safety for the Standby Steam Generator Feedwater System is preserved. In addition, these modifications preserve existing licensing commitments applicable to the Standby Steam Generator Feedwater System, which are associated with issues of AFW diversity, reliability, and backup feedwater and fire protection requirements. Therefore, the Standby Steam Generator Feedwater System modifications and associated changes in Technical Specification 3/4.7.1.6.3 does not involve a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Florida International University, University Park, Miami, Florida 33199

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzer, P.C., 1615 L Street, NW., Washington, DC 20036

NRC Project Director: Herbert N. Berkow

GPU Nuclear Corporation, et al., Docket No. 50–289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: September 20, 1993

Description of amendment request: The amendment revises the TMI–1 Technical Specifications to reflect a partial GPU Nuclear reorganization to become effective when TMI–2 enters the Post-Defueling Monitored Storage (PDMS) mode. This reorganization includes deleting TMI–2 as a division and incorporating those functions and responsibilities required to maintain the PDMS condition and requirements into the current TMI–1 Division. The TMI–1 Division will be renamed the TMI Division. In addition to the change associated with the PDMS-related reorganization, some obsolete organizational titles are updated.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

GPUN has determined that this Technical Specification Change Request involves no significant hazards consideration as defined by NRC in 10 CFR 50.92.

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability of occurrence or the consequence of an accident previously evaluated. The organizational aspects important to safety as identified in Generic Letter 88–06 are not changed by this proposed amendment. Therefore, this change does not increase the probability of occurrence or the consequence of an accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated. This activity modifies the TMI site organization to consolidate TMI–1 and PDMS TMI–2 operations and maintenance. The important to safety aspects of organization are not impacted. Thus, this proposed change cannot create the possibility of a new or different kind of accident from any previously evaluated.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety. This reorganization is a managerial change that incorporates the operation and maintenance of TMI–2 in its PDMS condition into the Operations and Maintenance structure of TMI–1, now that TMI–2 is in a relatively passive, monitored state. The majority of the tasks associated with maintaining TMI–2 in PDMS will be supervised and accomplished by the PDMS Manager, whose primary responsibility is TMI–2. The attention that the TMI–1 Control Room staff gives to TMI–2 will be minimal and will not detract in any measurable way from their attention to operating TMI–1. Also, the proposed change that updates obsolete organizational titles is merely an administrative update since the current titles fully incorporate all functions and responsibilities associated with the obsolete titles. Thus, operation of the facility in accordance with the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: August 31, 1993

Description of amendment request: The proposed amendment would add requirements for primary containment isolation of the drywell air sampling system and clarify requirements for primary containment isolation signals.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The addition of the drywell air sampling system isolation to the tables listing primary containment isolation valves and clarification of the requirements for instrumentation that initiates primary containment isolation will ensure primary containment integrity requirements are maintained for this system. Revisions to the action statements for the instrumentation that initiate primary containment isolation signals will ensure, when these instruments become inoperable, that the affected systems are isolated or the plant is placed in a condition where operability of the instrumentation is not required. By ensuring primary containment isolation during accidents as previously evaluated, these changes will not result in an increase in the probability or consequences of a previously evaluated accident.

The proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated. The addition of the drywell air sampling system isolation to the tables listing primary containment isolation valves and clarification of the requirements for instrumentation that initiates primary containment isolation will ensure primary containment integrity requirements are maintained for this system. Revisions to the action statements for the instrumentation that initiate primary containment isolation signals will ensure, if the instrumentation becomes inoperable, that the affected systems are isolated or the plant is placed in a condition where operability of the instrumentation is not required. These changes will ensure the primary containment functions during accidents as previously evaluated and will not result in an accident of a new or different type.

The proposed changes will not create a significant reduction in the margin of safety.

The addition of the drywell air sampling system isolation to the tables listing primary containment isolation valves and clarification of the requirements for instrumentation that initiates primary containment isolation will ensure primary containment integrity requirements are maintained for this system. Revisions to the action statements for the instrumentation that initiate primary containment isolation signals will ensure, if the instrumentation becomes inoperable, that the affected systems are isolated or the plant is placed in a condition where operability of the instrumentation is not required. These changes will ensure the primary containment functions during accidents as previously evaluated and will not reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305

Attorney for licensee: Mr. G.D. Watson, Nebraska Public Power District, Post Office Box 499, Columbus, Nebraska 68602–0499

NRC Project Director: William D. Beckner

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: August 31, 1993

Description of amendment request: The proposed amendment would revise Technical Specification sections pertaining to the Standby Gas Treatment System, Secondary Containment, and Primary Containment Isolation Valves for consistency with NUREG–1433, "Standard Technical Specifications for General Electric Plants (BWR/4)." The proposed amendment would also renumber pages, capitalize defined terms, make consistent the use of the terms "containment automatic isolation valves" and "ventilation system automatic valves," and make miscellaneous other changes of an editorial nature.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Evaluation

1. The first part of Proposed Change No. 106 revises Section 3/4.7.B, Standby Gas Treatment (SGT) System, in order to be consistent with NUREG–1433, Standard Technical Specifications (STS) for General Electric Plants (BWR/4). This portion of the proposed change consists of adding a new surveillance requirement (SR) to demonstrate, at least once per operating cycle, that each SGT subsystem can maintain [greater than or equal to] 0.25 inches water vacuum for at least 1 hour at a flow rate of [less than or equal to] 1780 cubic feet per minute (CFM). Also included is a rewording to the Limiting Condition for Operation (LCO) governing actions to be taken if the SGT system is made or found inoperable, and two clarifications based on STS.

All of the above changes are based on suggested wording contained in STS and represent requirements that are more explicit or restrictive than what are currently in place. These individual changes do not involve any physical modification of the plant or delete any Technical Specification requirements currently in place. They do not involve a change in plant settings and do not affect any accident initiators. For the reasons given above, the District concludes that this part of the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The second part of Proposed Change No. 106 revises a condition contained in the definition of Secondary Containment Integrity, Section 3/4.7.C, Secondary Containment, and the associated Bases section in order to be consistent with STS. This portion of the proposed change includes a clarification of a condition contained in the definition of Secondary Containment Integrity and a creation of an LCO to clearly specify actions to be taken when a given secondary containment automatic isolation valve becomes inoperable. A new 31-day surveillance requirement has been added to verify that secondary containment penetration lines containing inoperable valves, are verified isolated.

Two additional SRs are also proposed; 1) that isolation time of the individual automatic isolation valves will be demonstrated at least once per operating cycle and, 2) to verify Secondary Containment Integrity through leak testing or evaluation of the affected area of the pressure retaining boundary prior to declaring Secondary Containment Integrity restored. Two new conditions (described as "operations with a potential for draining the reactor vessel with irradiated fuel in the vessel" and "core alterations with irradiated fuel in the vessel"), for determining when Secondary Containment Integrity is required, have also been added to the LCOs. The term "with irradiated fuel in the vessel" is not contained in STS, but is added to simply provide a clarification. These two new conditions effectively replace an existing condition regarding the movement of loads which could potentially damage irradiated fuel.

All of the above described changes, with the exception of the second new SR proposed, are based on STS. The second SR replaces an existing SR that is not implementable due to the fact that CNS secondary containment, by design, cannot be compartmentalized from a Secondary Containment Integrity standpoint. Furthermore, the ventilation system serving the Reactor Recirculation Motor-Generator (RRMG) sets would have to isolate in order to utilize SGT to create the required vacuum. Isolation of this portion of the ventilation system could result in a RRMG high-temperature trip, thus leading to a plant transient. Replacement of the old SR with the new SR removes the potential of creating a plant transient through implementation of the old SR, thus reducing the probability of an accident previously evaluated. Also, the LCO prohibiting continued reactor operation following a loss of secondary containment greater than 4 hours (when secondary containment is required) is unaffected by this SR change, and remains the dominant requirement. All of the above described changes provide additional Technical Specification controls on the management of secondary containment, and therefore will provide additional assurance that Secondary Containment Integrity continues to be met.

The individual changes contained within this proposed change do not involve any physical modification of the plant, do not affect any accident initiators, nor do they change any assumptions in the accident evaluations. There are no changes in plant settings that affect plant operation response. For the reasons given above, the District concludes that this part of the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

3. The third part of Proposed Change No. 106 revises a condition contained in the definition of Primary Containment Integrity and Section 3/4.7.D, Primary Containment Automatic Isolation Valves, in order to be consistent with STS. This portion of the proposed change revises the subject definition to include additional conditions for inoperable primary containment automatic isolation valves. This change revises Section 3/4.7.D to specify actions, including the establishment of time limits based on STS, to be taken when a given primary containment automatic isolation valve becomes inoperable. This part of the proposed change does not involve any physical modification of the plant or delete any Technical Specification requirements currently in place. There are no changes in plant settings that affect the plant operation response, nor are there any changes that affect any assumptions in the accident evaluation.

The new 31-day surveillance requirement places a specified time period for the verification of one closed manual valve, blind flange, or de-activated automatic valve secured in the closed position, in lines containing an inoperable valve. This surveillance requirement replaces an existing surveillance requirement with a more explicit verification requirement and provides a higher assurance that Primary Containment Integrity is being met. For the reasons given above, the District concludes that this part of the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

4. The fourth part of Proposed Change No. 106 involves numerous editorial changes not directly related to the Standby Gas Treatment, Secondary Containment, or Primary Containment Automatic Isolation Valve portions of this proposed change. These changes include, but are not limited to, page renumbering, capitalization of defined terms, making consistent the use of the terms "containment automatic isolation valves" and "instrument line excess flow check valves". These changes are editorial in nature, and have no impact on plant equipment, plant design, or operations. These editorial changes do not modify or add any initiating parameters. Therefore, the District concludes that this part of the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

B. Does the proposed change create the possibility for a new or different kind of accident from any accident previously evaluated?

Evaluation

1. The first part of Proposed Change No. 106 revises Section 3/4.7.B, Standby Gas Treatment (SGT) System, in order to be consistent with STS. This portion of the proposed change adds a new SR regarding the demonstration of SGT to maintain [greater than or equal to] 0.25 inches of water vacuum for at least 1 hour at [less than or equal to] 1780 CFM, a revision to the LCO governing actions to be taken if the SGT system is made or found inoperable, and two clarifications based on STS. All of the above changes are based on suggested wording contained in STS and represent requirements that are more explicit or restrictive than what are currently in place. These individual changes do not constitute any changes or additions to any hardware or changes in plant configuration. These individual changes do not introduce any new modes of plant operation. Both the revised LCO and the proposed SR are more restrictive than current Technical Specification requirements. Therefore, the District concludes that this part of the proposed change does not create the possibility for a new or different kind of accident from any accident previously evaluated.

2. The second part of Proposed Change No. 106 revises a condition contained in the definition of Secondary Containment Integrity, provides a new LCO (Section 3/4.7.C) to clearly specify actions to be taken when a given secondary containment automatic isolation valve becomes inoperable, adds a new 31-day SR to verify that secondary containment penetration lines containing inoperable valves, are isolated, along with two additional SRs and two new conditions that must exist in order to not require secondary containment. All of the above described individual changes are based on STS except for a new SR which requires the affected area of the pressure retaining boundary to be verified through qualitative leak testing or evaluation prior to declaring Secondary Containment Integrity restored.

The SR that is not based on STS replaces an existing SR that is not implementable during normal plant operations, and if implemented, could result in a RRMG high-temperature trip, thus leading to a plant transient. Implementation of the proposed SR does not require system lineups or tests that have not been previously analyzed; thus cannot create the possibility for a new or different accident from any accident previously evaluated.

The individual changes contained in this portion of the proposed change do not involve a change in plant design, do not introduce a new mode of plant operation, nor will they contribute to a change in the plant's transient response. Therefore, the District concludes that this part of proposed change does not create the possibility for a new or different kind of accident from any accident previously evaluated.

3. The third part of Proposed Change No. 106 revises the definition of the term Primary Containment Integrity, revises Section 3/4.7.D to more clearly specify actions regarding inoperable containment automatic isolation valves. These individual changes do not constitute any hardware changes, additions, or changes in plant configuration. These changes do not introduce any new modes of plant operation, or contribute to a change in the plant's transient response. There are no technical changes as to the limiting conditions for operations that must be satisfied. The new 31-day surveillance requirement is more restrictive than current Technical Specification requirements in that it provides explicit instruction for ensuring that a given penetration(s) is isolated. Therefore, the District concludes that this part of the proposed change does not create the possibility for a new or different kind of accident from any accident previously evaluated.

4. The fourth part of Proposed Change No. 106 involves numerous editorial changes not directly related to the Standby Gas Treatment, Secondary Containment, or Primary Containment

Automatic Isolation Valve portions of this proposed change. These individual changes do not involve any alteration to the plant design, setpoints, or operating parameters, nor do they introduce or change any mode of plant operation. Therefore, this part of the proposed change does not create the possibility for a new or different kind of accident from any accident previously evaluated.

C. Does the proposed change create a significant reduction in the margin of safety?

Evaluation

1. The first part of Proposed Change No. 106 revises Section 3/4.7.B, Standby Gas Treatment (SGT) System, in order to be consistent with STS. This portion of the proposed change consists of the addition of a new SR (from STS), revision to an existing LCO to be more explicit regarding actions to be taken if the SGT system is made or found inoperable, and two clarifications. All of the above changes are based on suggested wording contained in STS and represent requirements that are more explicit or restrictive than what are currently in place. These individual changes do not involve any change to plant design, equipment, instrument setpoint settings, or operation. Therefore, the District concludes that this part of the proposed change does not create a significant reduction in the margin of safety.

2. The second part of Proposed Change No. 106 revises a condition contained in the definition of Secondary Containment Integrity, provides a new LCO (Section 3/4.7.C) to clearly specify actions to be taken when a given secondary containment automatic isolation valve becomes inoperable, adds a new 31-day SR to verify that secondary containment penetration lines containing inoperable valves, are isolated, along with two additional SRs and two new conditions that must be met in order to not require secondary containment. All of the above described individual changes are based on STS except for a new SR which requires qualitative leak testing or evaluation of the affected secondary containment pressure retaining boundary prior to declaring Secondary Containment Integrity restored.

None of the new requirements result in operation or testing that is different than what is currently being performed. Therefore, the District concludes that this part of the proposed change does not create a significant reduction in the margin of safety.

3. The third part of the proposed change revises the definition of the term Primary Containment Integrity to clarify conditions to be met regarding inoperable primary containment automatic isolation valves. This change revises Section 3/4.7.D to specify actions to be taken when a given primary containment automatic isolation valve becomes inoperable. The individual changes do not change the operating requirements specified in the Technical Specifications, but are more restrictive in that they provide explicit instruction regarding actions to be taken when a primary containment automatic isolation valve is found inoperable. By placing these requirements into LCO 3.7.D and providing a 31-day surveillance requirement for lines containing inoperative valves, the margin of safety is not reduced. None of the proposed individual changes involve any change to the plant design, equipment, instrument setpoint settings, or operation. Therefore, the District concludes that the proposed change does not create a significant reduction in the margin of safety.

4. The fourth part of Proposed Change No. 106 involves numerous editorial changes not directly related to the Standby Gas Treatment, Secondary Containment, or Primary Containment Automatic Isolation Valve portions of this proposed change. These individual changes do not involve any change to plant design, equipment, instrument setpoint settings, or operation. Therefore, the District concludes that this part of the proposed change does not create a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305

Attorney for licensee: Mr. G. D. Watson, Nebraska Public Power District, Post Office Box 499, Columbus, Nebraska 68602–0499

NRC Project Director: William D. Beckner

Niagara Mohawk Power Corporation, Docket No. 50–410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of amendment request: May 7, 1993, as superseded September 28, 1993

Description of amendment request: The proposed amendment would supersede in its entirety a previous proposed amendment which was submitted by letter dated May 7, 1993. A notice of application and proposed no significant hazards consideration determination for the May 7, 1993, submittal was published in the **Federal Register** on June 9, 1993 (58 FR 32386); this notice supersedes the June 9, 1993, notice in its entirety.

The proposed amendment would add a new Technical Specification (TS) 3/4.10.7, "Inservice Leak and Hydrostatic Testing," to the Nine Mile Point Nuclear Station, Unit 2, TS. The proposed amendment would also include corresponding changes to the TS Index, Table 1.2, and provide Bases for TS 3/4.10.7. Proposed TS 3/4.10.7 would permit the unit to remain in OPERATIONAL CONDITION 4 with reactor coolant temperatures being increased to 212 degrees F during inservice leak or hydrostatic tests provided the following OPERATIONAL CONDITION 3 TSs are being met: (a) TS 3.3.2, "Isolation Actuation Instrumentation," Functions 1.a.2, 1.b, and 3.a and b of TS Table 3.3.2–1; (b) TS 3.6.5.1, "Secondary Containment Integrity;" (c) TS 3.6.5.2, "Secondary Containment Automatic Isolation Dampers;" and (d) TS 3.6.5.3, "Standby Gas Treatment System."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes are requested to allow inservice leak and hydrostatic testing with the reactor in OPERATIONAL CONDITION 4 and the average reactor coolant temperature up to 212°F. The change to allow inservice leak and hydrostatic testing in OPERATIONAL CONDITION 4 will not increase the probability or the consequences of an accident. The probability of a leak in the reactor coolant pressure boundary during inservice leak and hydrostatic testing is not increased by considering the reactor in OPERATIONAL CONDITION 4. The hydrostatic or inservice leak test is performed near water solid, all rods in, and temperature [less than or equal to] 212°F. The stored energy in the reactor core will be very low and the potential for failed fuel and a subsequent increase in coolant activity above Technical Specification limits are minimal. In addition, secondary containment will be OPERABLE and capable of handling airborne radioactivity from leaks that could occur during the performance of hydrostatic or inservice leak testing. Requiring secondary containment to be OPERABLE will conservatively ensure that potential airborne radiation from leaks will be filtered through the Standby Gas Treatment System, thereby limiting radiation releases to the environment. Therefore, the changes will not significantly increase the consequences of an accident.

In the event of a large primary system leak, the reactor vessel would rapidly depressurize, allowing the low pressure ECCS [Emergency Core Cooling System] subsystems to operate. The capability of the subsystems that are required for OPERATIONAL CONDITION 4 would be adequate to keep the core flooded under this condition. Small system leaks would be detected by leakage inspections before significant inventory loss occurred. This is an integral part of the hydrostatic testing program. Therefore, this change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Allowing the reactor to be considered in OPERATIONAL CONDITION 4 during inservice leak or hydrostatic testing, with reactor coolant temperature up to 212°F, essentially provides an exception to OPERATIONAL CONDITION 3 requirements, including OPERABILITY of primary containment and the full complement of redundant Emergency Core Cooling Systems. The hydrostatic or inservice leak test is performed near water solid, all rods in, and temperature [less than or equal to] 212°F. The stored energy in the reactor core will be very low and the potential for failed fuel and a subsequent increase in coolant activity above Technical Specification limits are minimal. In addition, secondary containment will be OPERABLE and capable of handling airborne radioactivity or leaks that could occur.

The inservice leak or hydrostatic test conditions remains unchanged. The potential for a system leak remains unchanged since the reactor coolant system is designed for temperatures exceeding 500°F with similar pressures. There are no alterations of any plant systems that cope with the spectrum of accidents. The only difference is that a different subset of systems would be utilized for accident mitigation from those of OPERATIONAL CONDITION 3. Therefore, this will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety.

The proposed changes allow inservice and hydrostatic testing to be performed with reactor coolant temperature up to 212°F and the reactor in OPERATIONAL CONDITION 4. Since the reactor vessel head will be in place, secondary containment integrity will be maintained and all systems required in OPERATIONAL CONDITION 4 will be operable in accordance with the Technical Specifications, the proposed changes will not have any impact on any design bases accident or safety limit. The hydrostatic or inservice leak testing is performed near water solid, all rods in, and temperature [less than or equal to] 212° [F]. The stored energy in the core is very low and the potential for failed fuel and a subsequent increase in coolant activity would be minimal. The RPV [Reactor Pressure Vessel] would rapidly depressurize in the event of a large primary system leak and the low pressure injection systems normally operable in OPERATIONAL CONDITION 4 would be adequate to keep the core flooded. This would ensure that the fuel would not exceed the 2200°F peak clad temperature limit. Moreover, requiring secondary containment, including isolation capability, to be operable will assure that potential airborne radiation can be filtered through the Standby Gas Treatment System.

This will assure that doses remain well within the limits of 10 CFR [Part] 100 guidelines. Small system leaks would be detected by inspection before significant inventory loss has occurred. Therefore, this special test exception will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Project Director: Robert A. Capra

North Atlantic Energy Service Corporation, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: August 27, 1993

Description of amendment request: The proposed amendment would

change the footnote on page 1 of License NPF–86 by deleting Vermont Electric Generation and Transmission Cooperative, Inc., (VEG&T), as one of the entities for which North Atlantic Energy Service Corporation (North Atlantic) is authorized to act. This change would reflect the purchase of VEG&T's share of the Seabrook Station by North Atlantic Energy Corporation (NAEC) pursuant to a prior settlement of a claim by VEG&T against Public Service Company of New Hampshire (PSNH). NAEC acquired PSNH's interest in the Seabrook Station in accordance with the Plan for Reorganization for PSNH.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

A. The change does not involve a significant increase in the probability or consequences of an accident previously evaluated (10 CFR 50.92(c)(1)). The proposed change merely reflects the transfer of ownership of a small fraction (0.41259%) of the Seabrook Station to consummate a settlement entered into by VEG&T and PSNH in connection with the resolution of certain claims made by VEG&T against PSNH in the PSNH bankruptcy proceedings. The change does not affect the manner by which the facility is operated or involve any changes to equipment or features which affect the operational characteristics of the facility. No other provisions of the license and no Technical Specification are affected, and all plans and programs in effect at the Seabrook Station remain unchanged.

B. The change does not create the possibility of a new or different kind of accident from any accident previously evaluated (10 CFR 50.92(c)(2)) because the change does not affect the manner by which the facility is operated or involve any changes to equipment or features which affect the operational characteristics of the facility.

C. The change does not involve a significant reduction in a margin of safety (10 CFR 50.92(c)(3)) because the proposed change does not affect the manner by which the facility is operated or involve equipment or features which affect the operational characteristics of the facility.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Exeter Public Library, 47 Front Street, Exeter, New Hampshire 03833.

Attorney for licensee: Thomas Dignan, Esquire, Ropes & Grey, One International Place, Boston Massachusetts 02110–2624.

NRC Project Director: John F. Stolz

North Atlantic Energy Service Corporation, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: September 13, 1993

Description of amendment request: The proposed amendment would change certain sensor errors stated in Table 2.2–1, Reactor Trip System Instrumentation Trip Setpoints. Specifically, the specified sensor errors for the Power Range, Neutron Flux High Setpoint (Functional Unit 2. a.,) and the Power Range, Neutron Flux Low Setpoint (Functional Unit 2. b.) both would be changed to incorporate the Nuclear Instrumentation Cabinet Power Meter accuracy and readout error.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

A. The changes do not involve a significant increase in the probability or consequences of an accident previously evaluated (10 CFR 50.92(c)(1)) because the proposed changes merely incorporate the cabinet power meter accuracy and readout error to permit the use of the cabinet power meter when performing the daily comparison of calorimetric to excore power. Currently, a digital voltmeter must be connected to a test point to perform the required measurement introducing the potential for inadvertent Reactor Protection System channel actuation. No other parameters associated with the power range neutron flux level trips are affected. The protection provided by these trips is not altered in any way.

B. The changes do not create the possibility of a new or different kind of accident from any accident previously evaluated (10 CFR 50.92(c)(2)) because the protection provided by these instruments is not affected in any way, and the proposed changes do not affect the manner by which the facility is operated or involve equipment or features which affect the operational characteristics of the facility.

C. The changes do not involve a significant reduction in a margin of safety (10 CFR 50.92(c)(3)) because the power range neutron flux level trip setpoints are not changed. Therefore, the protection provided by the these instruments is not altered in any manner.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration

Local Public Document Room location: Exeter Public Library, 47 Front Street, Exeter, New Hampshire 03833.

Attorney for licensee: Thomas Dignan, Esquire, Ropes & Gray, One International Place, Boston Massachusetts 02110–2624.

NRC Project Director: John F. Stolz

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: September 17, 1993

Description of amendment request: The proposed amendment to the Technical Specification (TS) would revise the minimum requirement of fuel oil that must be in the Emergency Diesel Generator (EDG) fuel oil storage tank in TS 2.7(1).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The current configuration of the fuel oil supply system for emergency diesel generators does not meet the capacity requirements of IEEE–308 as being capable of providing fuel for 7 days of diesel generator operation following the most severe accident. Allowing credit for the use of the auxiliary boiler fuel oil storage tank will enable the site to meet this criterion. As stated in the Basis of Specification 2.7, it is considered incredible not to be able to secure fuel oil from one of several sources in the vicinity of Omaha in less than three days. Crediting the reserve inventory in FO–10 increases the margin of safety.

Since no change in the EDG fuel oil storage and distribution system's configuration is required to achieve the inventory increase, nor does any fuel oil storage system contribute to any previously analyzed accident sequence, the proposed change does not increase the probability or consequences of previously analyzed accident sequences.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

The crediting of the auxiliary boiler fuel oil storage tank reserve inventory as part of the on-site storage capacity for the emergency diesel generators does not create the possibility of a new accident.

OPPD [Omaha Public Power District] has reviewed the design documents for storage tanks FO–1 and FO–10. The review has determined that the two tank vessels are nearly identical with the only difference being the nameplate and current CQE classification. The capacity, foundation, construction materials, construction coed, and initial pressurized leak testing are identical for both tanks. Both tanks have been evaluated for seismic effects and it was concluded that they would remain intact following a design basis earthquake. Both tanks are buried to approximately the same depth and therefore would be equally resistant to impact from a tornado borne missile. The vendor and model numbers for the level indicators for both tanks are also the same.

Emergency Plan Implementing Procedure EPIP–RP–17A, "TSC Administrative Logistics Coordinator Actions," currently provides guidance for transfer of the fuel oil from the auxiliary boiler fuel oil storage tank to the emergency diesel fuel oil storage tank via the transfer pump for the diesel driven auxiliary feedwater pump, should the need arise.

Although the transfer pump for FW–54 is a non-safety-related component, power can be supplied to the transfer pump from either of the two EDG's or from the generator connected to the diesel driver for FW–54. The transfer piping is non-safety-related but is designed and installed to ANSI B31.1–1986 standards. The flow capacity of the transfer pump is 5 gpm. The consumption rate of one emergency diesel generator is less than 3 gpm at peak post accident loading conditions, therefore the transfer pump can provide adequate fuel transfer capabilities.

The tanks are not permanently interconnected, so that a failure of FO–10 or a transfer line would not affect FO–1. Therefore the proposed changes do not create the possibility of a new or different kind of accident from any previously analyzed.

3. Involve a significant reduction in the margin of safety.

The proposed changes increase the margin of safety by use of a supply of fuel oil reserved in the auxiliary boiler fuel oil storage tank to ensure that the 7 day on site fuel supply criteria is met. Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Attorney for licensee: LeBoeuf, Lamb, Leiby, and MacRae, 1875 Connecticut Avenue, N.W., Washington, D.C. 20009–5728

NRC Project Director: William D. Beckner

Philadelphia Electric Company, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: August 27, 1993

Description of amendment request: The amendment would reflect an expanded operating domain for Limerick Generating Station (LGS), Units 1 and 2, resulting from the proposed implementation of the Average Power Range Monitor—Rod Block Monitor Technical Specifications/ Maximum Extended Load Line Limit Analysis (ARTS/MELLLA). The improvements associated with the Maximum Extended Load Line Limit (MELLL) mode of operation and the ARTS program are a prerequisite for the Power Rerate Program implementation at LGS, Units 1 and 2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed Technical Specifications (TS) changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The consequences of any accident previously evaluated will not be increased due to operation of Limerick Generating Station (LGS), Units 1 and 2 in the expanded operating domain, as discussed below.

a) Anticipated Operational Occurrences (AOO)

The core-wide AOO included in the LGS, Unit 1 Cycle 5 reload analyses were re-examined for operation in the Maximum Extended Load Line Limit (MELLL) region. Re-examination for operation in the MELLL region for LGS, Unit 1 will be done as part of its next cycle reload analyses. The analytical methods as well as the input assumptions are consistent with the bases for the LGS, Unit 1 Cycle 5 Core Operation Limits Report (COLR). No design or safety limits will be exceeded.

b) Reactor Vessel Overpressure Protection

The Main Steamline Isolation Valve (MSIV) closure with a neutron flux scram event was analyzed at the 102% power/75% flow point using the nuclear parameters resulting from the End of Cycle (EOC) 5 target exposure shape. The results show the peak reactor vessel pressure (i.e., 1,264 psig) is below the 1,375 psig limit.

c) Loss-of-Coolant-Accident (LOCA)

The current Emergency Core Cooling System (ECCS) LOCA analysis is documented in Attachment 3, "Maximum Extended Load Line Limit and ARTS Improvement Program Analysis for Limerick Generating Station Units 1 and 2," NEDC–32193P, Revision 1, dated July 1993, and already includes the proposed Average Power Range Monitor – Rod Block Monitor Technical Specifications (ARTS) and MELLL Analysis (MELLLA) application. The LOCA evaluation utilized the General Electric (GE) SAFER/GESTR methodology. This me{t]hodology was approved by the NRC as discussed in a letter from C. O. Thomas (NRC) to J. F. Quirk (GE) "Acceptance for Referencing of Licensing Topical Report NEDE–23785, Revision 1, Volume III(P), the GESTR–LOCA and SAFER Models for the Evaluation of the Loss-of-Coolant-Accident," dated June 1, 1984. The results of this bounding evaluation show for the application of ARTS/MELLLA to LGS Units 1 and 2, the Peak Cladding Temperature (PCT) for a design basis LOCA at 102% core power/75% core flow is judged to be less than the 20° F increase compared to the rated core flow case with 10CFR50, Appendix K assumptions. With the introduction of ARTS, the setdown factor on the flow-referenced APRM rod block system is replaced with a set of power- and flow-dependent Maximum Average Planar Linear Heat Generation Rate (MAPLHGR) and Minimum Critical Power Ratio (MCPR) adjustment factors. One of the criteria for the ARTS Improvement Program has been to ensure that the criteria in 10CFR50.46 are met through the application of the flow-dependent MAPLHGR multipliers. This analysis also establishes a new licensing basis peak cladding temperature of 1,310° F at the current thermal power limit of 3,293 MWt.

Bounding short-term containment response analysis of the design basis LOCA event (i.e., a double-ended guillotine break of a recirculation line) was performed. The results show the peak containment drywell pressure is bounded by the LGS Updated Final Safety Analysis Report (UFSAR) analysis values and remain well below the design value of 55 psig. The bounding event for the containment drywell temperature response is a main steamline break. Under MELLL operation, the increased reactor vessel coolant subcooling has no impact on the steam break flow. Therefore, the peak containment drywell temperature for MELLL operation is bounded by that presented for the main steamline break in the UFSAR Table 6.2–1 and is below the design temperature of 340 °F. The peak values of drywell pressure and temperature are relatively insensitive to reactor operating conditions.

The containment dynamic loads analysis for a LOCA is based on the short-term LOCA analysis described above. The loads considered for MELLLA include pool swell, condensation, oscillation, and chugging. The analysis results show the comparisons are bounded by the corresponding design basis load definition in the UFSAR. The peak containment wetwell airspace pressure during a suppression pool swell period is calculated to be 38.0 psig which is within the design limit of 55 psig.

In addition, the radiological analysis for a LOCA is not effected by implementation of the ARTS/MELLLA changes.

d) Results of the Anticipated Transients Without Scram (ATWS) analysis conducted

for operation in the MELLL domain showed that the maximum values of the key performance parameters (i.e., fuel cladding temperature and reactor vessel bottom pressure) were within the generic limits reported in GE's "Assessment of BWR Mitigation ATWS," Vol. II, NEDO–24222, dated February 1981. The other key performance parameter, suppression pool temperature, shows an increase above 190° F due to operation in the MELLL region. As a result, injection of a sodium pentaborate solution with a higher enrichment of Boron–10 from the Standby Liquid Control System is required to reduce reactivity sooner. Evaluation of the required Boron—10 enrichment of 29% has been determined to be sufficient to satisfy this requirement. Thus, operation in the MELLL domain will have no adverse impact on the capability to mitigate postulated ATWS events in the expanded operating region.

e) Introduction of a statically based Rod Withdrawal Error (RWE). The proposed new RBM system with power-dependent setpoints requires new RWE analyses be performed to determine the MCPR requirements and corresponding setpoints. The generic analysis and its effect on the MCPR safety limits and Critical Power Ratio (CPR) correlations are discussed in Attachment 3, "Maximum Extended Load Line Limit and ARTS Improvement Program Analysis for Limerick Generating Station Units 1 and 2," NEDC–32193P, Revision 1, dated July 1993, Subsection 10.3.1. The new RWE analysis for LGS Units 1 and 2, is valid for all GE fuel types including GE 11 and is also applicable to Asea Brown Boveri (ABB) and Siemens Nuclear Power (SNP) qualification fuel bundles. This analyses method will be applied to future core reload analyses to maintain the MCPR safety limit.

f) Control Rod Drop Accident

LGS, Units 1 and 2 employs banked position withdrawal sequences (BPWS) for control rod movement. The Control Rod Drop Accident (CRDA) for BPWS plants have been generically analyzed for GE fuel designs (i.e., "GE Standard Application for Reactor Fuel, GESTAR II," NEDE–24011–P–A–10 and GESTAR II United States Supplement, NEDE–24011–P–A–10–US, dated February 1991) and are applicable to ABB and SNP qualification fuel bundles. A CRDA event is a startup accident evaluated at hot and standby conditions which are unaffected by operation in the MELLL domain. There is no change to the CRDA analysis basis or results as presented in the NEDE reports cited above and therefore the conclusions for CRDA are applicable for operation in the MELLL domain and with the ARTS Improvement Program.

g) Fuel Loading Error

Power operation does not impact the analysis of the fuel loading error accidents. Thus, the bases for the LGS, Unit 1 cycle 5 COLR are applicable to the proposed implementation of the ARTS/MELLLA.

h) Recirculation pump runout

The results in Attachment 3 [of the August 27, 1993 amendment request], "Maximum Extended Load Line Limit and ARTS Improvement Program Analysis for Limerick Generating Station Units 1 and 2," NEDC–32193P Revision 1, dated July 1993 Table 8–1, show the Reactor Internal Pressure Differences are bounded for MELLL operation by the design basis results for recirculation pump runout along the rated rod line and thus, the reactor internals have adequate design margin for operation in the MELLL region.

i) Recirculation pump runback

The recirculation pumps runback intermediate speed will be reset at 42%. The resulting power level when operating on the MELLL Rod line is now sufficiently low enough to be within the nominal capacity of the two feedwater pumps in the event of a feedwater pump trip.

j) Reactor Internals Vibration

To support the operation of LGS, Units 1 and 2 in the MELLL region, the vibration measurements at Browns Ferry Unit 1 were analyzed to determine if there would be any detrimental effects to the reactor internals due to this mode of operation. The results show the maximum steam flow that will be generated in the MELLL region will be no more than from rated power/flow condition. Therefore, the reactor internals inside the reactor vessel shroud and in the upper region of the reactor vessel will not be affected by operation in the MELLL region.

Vibration of the reactor internal components in the annulus region (i.e., outside the reactor vessel shroud) is expected to increase slightly due to the increase in the recirculation drive flow. However, this drive flow will never exceed that at rated core power and rated core flow. Therefore, the flow induced vibration effect on the reactor internal components outside the shroud during MELLL operation would not exceed the acceptance criteria currently established. Thus, operation in the MELLL region will not have any detrimental effects on the reactor internals due to flow induced vibration.

k) Single Loop Operation (SLO)

To support the additional operation domain above the rated line, three key issues were addressed in this study. These were the MCPR fuel cladding integrity safety limit, the MCPR operating limit, and the LOCA analysis for the SLO mode. The studies show the results for one-loop operation cases would not be more limiting than thermal and overpressure consequences of a two pump operation. This conclusion is applicable to SLO conditions within the LGS, Units 1 and 2 expanded operating domain.

The updated SAFER/GESTR–LOCA analysis for SLO was performed using the conservative input assumptions and a 0.9 MAPLHGR multiplier. The required MAPLHGR multipliers at the SLO power-flow condition are more restrictive than the value assumed in the SAFER/GESTR–LOCA analysis for SLO. Therefore, this analysis for SLO is conservative and bounding for LGS, Units 1 and 2.

No new component and/or system interactions that could lead to an accident created by the proposed changes. No new challenges to equipment are involved with implementation of ARTS/MELLLA changes. The probability of any accident is not increased by operating in the expanded operating domain because formulation of the flow-biased Average Power Range Monitor (APRM) rod block trip equation, including a new maximum value for the APRM rod block has been established to maintain margin between the APRM rod block setpoint and the APRM scram setpoint. Additionally, the proposed changes will have no effect on any accident initiating mechanisms. No equipment that is assumed to fail in an accident is affected by implementation of the ARTS/MELLLA changes. Equipment environment, operating conditions, and equipment interactions are not adversely affected by the proposed changes.

The radiological consequences of all analyzed events are unchanged and in addition, the consequences of all the transients will not cause the MCPR safety limit to be exceeded.

Therefore, the proposed TS changes do not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Implementation of the ARTS/MELLLA changes does not create any new failure mode or sequence of events that can lead to an accident of a different type than any previously evaluated. The APRM rod block trip setpoint will continue to block control rod withdrawal when core power significantly exceeds normal limits and approaches the scram level. The APRM scram trip setpoint will continue to initiate a scram if the increasing core power/flow condition continues beyond the APRM rod block setpoint. The proposed changes to the RBM system have been designed to enhance the reliability and accuracy of the RBM system without impacting the degree of isolation of the RBM system from other plant systems. The function of the RBM system will not change. Implementation of the ARTS/MELLLA changes does not increase challenges or create any new challenges to safety-related systems or equipment, or other equipment whose failure could cause an accident. The SLCS retains the capability to shutdown the reactor as originally designed. Also, implementation of the ARTS/MELLLA changes does not involve any new challenges to a fission product barrier.

Therefore, the proposed TS changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

The margin of safety as defined in the TS is not reduced because the results of all the safety analysis are within allowable values. The margin of safety for the MCPR safety limit and the limits associated with a LOCA will be maintained. The peak analyzed containment pressure does not change and thus, the margin of safety for the containment does not change. The SLCS retains the capability to bring the reactor to a cold shutdown condition from full power steady state operating conditions, as originally designed.

Therefore, the proposed TS changes do not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this

review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101

NRC Project Director: Michael L. Boyle, Acting

Public Service Electric & Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: November 17, 1992

Description of amendment request: The proposed amendments would clarify Technical Specifications 3.1.2.3, "Charging Pump—Shutdown," and 3.1.2.4, "Charging Pump—Operation," to make them consistent with Technical Specification 3.5.3, "ECCS Subsystems—T_{avg} <350 °F," by requiring that only one charging pump or one safety injection pump be operable in Mode 4 when the temperature of any cold leg is less than or equal to 312 °F, Mode 5, or Mode 6 when the head is on the reactor vessel. Technical Specifications 3/4.4.3 for Unit 1 and 3/4.4.5 for Unit 2, "Relief Valves" and Technical Specifications 3.4.9.3 for Unit 1 and 3.4.10.3 for Unit 2, "Overpressure Protection Systems," would be changed to incorporate the guidance provided by the NRC staff in Generic Letter 90–06 (GL 90–06), with one exception. If both power operated relief valves (PORV) or both block valves are inoperable for reasons other than seat leakage, an allowed outage time of 6 hours would be provided to restore at least one PORV or block valve to operable, instead of the one hour recommended by GL 90–06.

An additional change to the Unit 1 Technical Specifications, Section 4.4.9.3.1, has been proposed to delete reference to a specific ASME valve category.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will not involve a significant increase in the probability or consequences of an accident or malfunction of equipment important to safety previously evaluated. This change will (put in place) administrative restrictions on the Low Temperature Overpressure Protection System and the PORVs thereby improving reliability and availability to respond to a Steam Generator Tube Rupture and overpressure transient. The proposed amendment requires that power be maintained to block valves that are closed to isolate a leaking PORV. This change ensures that the block valves can be opened on demand from the control room. Power is maintained to the block valves so that it is operable and may be subsequently opened to allow the PORV to be used to control reactor pressure. This change actually improves overall plant safety. Therefore, the proposed amendment does not involve a procedural or physical change to any structure, system or component that significantly affects accident/malfunction probabilities or consequences previously evaluated in the UFSAR.

2. Will not create the possibility of a new or different kind of accident from any previously evaluated. The proposed amendment does not involve any physical changes to plant structures, components, or systems. With the exception of maintaining power to a block valve closed to isolate a leaking PORV, which does not create the possibility of a new or different kind of accident, the proposed change will not impose any different requirements on plant operation. Therefore, the proposed changes do not create the possibility of a new or different accident from any previously evaluated.

3. Will not involve a significant reduction in a margin of safety. The proposed changes actually increase the overall margin of safety by improving the availability and reliability of the PORVs and Block valves in response to Steam Generator Tube Rupture events, and the PORVs in response to overpressure transients.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502

NRC Project Director: Michael L. Boyle, Acting

Rochester Gas and Electric Corporation, Docket No. 50–244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of amendment request: December 17, 1992, as supplemented by two letters, dated April 8, 1993.

Description of amendment request: The proposed amendment would eliminate the use of the high concentration boric acid as a safety-related source for the safety-injection pumps. Analysis for the limiting accident (steam line break) has been performed using only the minimum boron concentration in the refueling water storage tank (RWST) (2000 ppm). Proposed changes are also included to increase allowable outage times (AOTs) and a requirement to allow borating the reactor to a shutdown margin equivalent to at least 2.45% delta k/k at cold shutdown conditions with no Xenon.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. Excerpts of the licensee's analysis are presented below:

In accordance with 10CFR50.91, this change to the Technical Specification has been evaluated to determine if the operation of the facility in accordance with the proposed amendment would:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated; or

2. create the possibility of a new or different kind of accident from any accident previously evaluated; or

3. Involve significant reduction in the margin of safety.

The reduction in the boron concentration of the BASTs [boric acid storage tank] will not affect the probability of an accident because reducing the concentration will not cause a design basis accident to occur. The consequences of previously evaluated accidents has been evaluated in [Attachment C of the licensee's application, dated December 17, 1992.] Since all criteria have been satisfied the consequences of any accident have not increased.

The change to Technical Specifications allows the injection of 2000 ppm boric acid vs. 12%. SI [safety injection] pump suction would be from the RWST. This eliminates the necessity of switching from the BASTs to the RWST, reducing the complexity of the operation. Since the pumps remain connected to the RWST throughout the injection phase there is no possibility of a new or different kind of accident.

The reduction in the concentration of boric acid injected into the primary system for accident mitigation has been analyzed in [Attachment C of the licensee's application, dated December 17, 1992.] [Attachment C of the licensee's application, dated December 17, 1992] concludes that all applicable criteria are satisfied. Since all criteria are satisfied there is no reduction in the margin of safety.

The proposed change to include an action statement when no flow paths are available during core alterations or positive reactivity changes minimizes the potential for reactivity excursions without compensating measures available for reactivity control. This proposed change is also consistent with the action described in NUREG–0452.

The proposed change Specification 3.3.1.2 to include a 1 hour completion to restore the RWST water volume is consistent with NUREG–0452 and considered reasonable.

The proposed increase in the allowable outage times (AOTs) from 24 to 72 hours is based on the low probability of a Design Basis Accident occurring during this period of inoperability and is consistent with NUREG–0452. The NRC evaluation, described in an NRC memorandum to V. Stello, Jr. from R. L. Baer "Recommended Interim Revisions to LCOs [limiting condition for operations] for ECCS [emergency core cooling system] Components," December 1, 1975, concluded that an AOT to 72 hours has only a slight impact on the system average unreliability and is considered negligible. The proposed change to borate to a shutdown margin of at least 2.45% delta k/k with no xenon at cold shutdown conditions compensates for a long term xenon decay and temperature reduction.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610

Attorney for licensee: Nicholas S. Reynolds, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005

NRC Project Director: Walter R. Butler

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: August 30, 1993

Description of amendment request: The proposed amendment would add an Action statement to Technical Specification (TS) 3/4.6.4.3, "Containment Hydrogen Dilution System," which would apply when both containment hydrogen dilution (CHD) systems are inoperable and allow 72 hours to return one of the two inoperable CHD systems to operable status or be in at least Hot Standby within the next six hours. Also, the associated TS Bases Section 3/4.6.4, "Combustible Gas Control," would be revised to clarify the discussion of the CHD and containment hydrogen purge systems, and to add mention of the capability to install an external hydrogen recombination system. The proposed amendment completely supersedes the application submitted on December 21, 1992, which was noticed in the **Federal Register** on February 3, 1993 (58 FR 7007).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

Toledo Edison has reviewed the proposed change and determined that a significant hazards consideration does not exist because operation of the Davis-Besse Nuclear Power Station, Unit No. 1, in accordance with these changes would:

1a. Not involve a significant increase in the probability of an accident previously evaluated because no Updated Safety Analysis Report (USAR) accident initiators are affected by the proposed changes. The proposed change to TS 3/4.6.4.3 adding an additional Action statement allowing both containment hydrogen dilution systems to be inoperable for up to 72 hours has no bearing on the probability of an accident previously evaluated. The proposed changes to TS Bases 3/4.6.4 provide additional clarifying information regarding the containment Hydrogen Purge System Filter Unit and the Hydrogen Recombiner System, and have no adverse effect on the probability of experiencing an accident previously evaluated.

1b. Not involve a significant increase in the consequences of an accident previously evaluated because the proposed changes do not invalidate accident conditions or assumptions used in evaluating the radiological consequences of any accident. The proposed change to TS 3/4.6.4.3 adding an additional Action statement allowing both containment hydrogen dilution system to be inoperable for up to 72 hours does not alter the source term, containment isolation, or allowable releases, and therefore will not increase the radiological consequences of a previously evaluated accident. The proposed changes to TS Bases 3/4.6.4 provide additional clarifying information regarding the Containment Hydrogen Purge System Filter Unit and the Hydrogen Recombiner System, and have no adverse effect on the consequences of an accident previously evaluated.

2a. Not create the possibility of a new kind of accident from any accident previously evaluated because no new types of failures or accident initiators are introduced by the proposed changes.

2b. Not create the possibility of a different kind of accident from any accident previously evaluated because no different accident initiators or failure mechanisms are introduced by the proposed changes.

3. Not involve a significant reduction in the margin of safety. The proposed change to TS 3/4.6.4.3 adding an additional Action statement allowing both containment hydrogen dilution systems to be inoperable for up to 72 hours will not have an adverse effect on the margin of safety because the lower flammability limit of four percent by volume hydrogen would not be reached until approximately 28 days following a postulated Loss of Coolant Accident (LOCA). This provides ample time to either restore at least one containment hydrogen dilution system to functionality (depending on the location and cause for inoperability), or to install the external hydrogen recombination system, in the highly unlikely event that a LOCA occurs during the 72-hour allowable outage time. All accident analyses will remain valid. The proposed changes to TS Bases 3/4.6.4 provides additional clarifying information and have no adverse impact on the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, DC 20037.

NRC Project Director: John N. Hannon

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for

amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document rooms for the particular facilities involved.

Baltimore Gas and Electric Company, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: April 1, 1993

Brief description of amendments: The amendments provide changes and clarifications which separate the requirements for borated water sources and flow paths needed in Mode 1 above 80 percent of rated thermal power to mitigate a small break loss-of-coolant accident from the requirements for borated water and flow paths needed in Modes 1 through 4 to provide emergency boration.

Date of issuance: September 20, 1993

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: 182 and 159

Facility Operating License Nos. DPR–53 and DPR–69: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 28, 1993 (58 FR 25852) The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated September 20, 1993. No significant hazards consideration comments received: No

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Boston Edison Company, Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of application for amendment: October 30, 1992

Brief description of amendment: This amendment revises Technical Specifications to specify limiting conditions of operation and surveillance requirements for inservice code testing. The change also incorporates the term "Refueling Interval" in the definitions to specify the interval between designated ASME Code section XI surveillances and revises the definition of surveillance interval to allow the 25% tolerance to be applied to the refueling interval period of 24 months. In addition, by letters dated February 11, 1993 and March 29, 1993, changes were made to the Bases sections regarding core spray and LPCI system, and drywell temperature.

Date of issuance: September 28, 1993

Effective date: September 28, 1993

Amendment No.: 149

Facility Operating License No. DPR–35: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 23, 1992 (57 FR 61108)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 28, 1993

No significant hazards consideration comments received: No

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Carolina Power & Light Company, et al., Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: December 28, 1992

Brief Description of amendments: The amendments change the technical specifications to (1) delete operational condition 5 from the applicability requirements of TS 3.1.5 regarding standby liquid control system (SLCS), (2) remove the associated action statement for operational condition 5, (3) delete both the operability and surveillance requirements in Table 3.3.2–1, Isolation Actuation Instrumentation, and Table 4.3.2–1, Isolation Actuation Instrumentation Surveillance Requirements that are associated with the SLCS initiation while in operational condition 3, and (4) make editorial corrections by adding the word "operational" before the words "conditions" and "condition", respectively, in the applicability and action statements of TS 3.1.5 to correspond with current TS terminology.

Date of issuance: September 23, 1993

Effective date: September 23, 1993

Amendment Nos.: 165 and 196

Facility Operating License Nos. DPR–71 and DPR–62. Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register:** March 31, 1993 (58 FR 16852)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 23, 1993. No significant hazards consideration comments received: No.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297.

Connecticut Yankee Atomic Power Company, Docket No. 50–213, Haddam Neck Plant, Middlesex County, Connecticut

Date of application for amendment: June 22, 1993

Brief description of amendment: The amendment replaces Section 4.0.6 of the Haddam Neck Technical Specifications (TS), "Augmented Inservice Inspection Program" with a new TS Section 4.0.6, "Augmented Erosion/Corrosion Program."

Date of issuance: September 29, 1993

Effective date: September 29, 1993

Amendment No.: 165

Facility Operating License No. DPR–61. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 18, 1993 (58 FR 43923) The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated September 29, 1993. No significant hazards consideration comments received: No.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Consolidated Edison Company of New York, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: September 29, 1992, as supplemented by letters dated February 19, 1993, June 10, 1993, and July 19, 1993.

Brief description of amendment: The amendment revises the Technical Specifications to amend the 480V Emergency Bus Undervoltage (Degraded Voltage) actuation setpoint.

Date of issuance: September 22, 1993

Effective date: As of the date of issuance to be implemented at the next outage of sufficient duration to effect the plant modification.

Amendment No.: 165

Facility Operating License No. DPR–26: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 25, 1992 (57 FR 55578)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 22, 1993. No significant hazards consideration comments received: No

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Consumers Power Company, Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: September 3, 1993.

Brief description of amendment: This amendment revises Tables 3.23–1 and 3.23–2 to include the fuel assemblies installed for Cycle 11 and to delete the reference of the number of fuel rods in the assemblies. The bases for several Technical Specification sections have been changed to reflect the updated revision of the analytical reports.

Date of issuance: September 21, 1993

Effective date: September 21, 1993

Amendment No.: 159

Facility Operating License No. DPR–20. Amendment revises the Technical Specifications. Public comments requested as to proposed no significant hazards consideration: No.

The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated September 21, 1993.

Attorney for licensee: Judd L. Bacon, Esquire, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201

Local Public Document Room location: Van Wylen Library, Hope College, Holland, Michigan 49423.

NRC Project Director: William M. Dean, Acting

Duke Power Company, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of application of amendments: February 25, 1993, as supplemented May 20 and August 31, 1993

Brief description of amendments: The amendments revise the Technical Specifications to change the frequency of reporting the quantity of each of the principal radionuclides released from the plant site to unrestricted areas in liquid and in gaseous effluents from semiannual to annual.

Date of issuance: September 24, 1993

Effective date: September 24, 1993

Amendment Nos.: 202, 202, and 199 for Units 1, 2, and 3, respectively.

Facility Operating License Nos. DPR–38, DPR–47, and DPR–55: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 4, 1993 (58 FR 41504) The August 31, 1993, letter provided clarifying information that did not change the scope of NRC's proposed finding of no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 24, 1993. No significant hazards consideration comments received: No

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691

Duquesne Light Company, et al., Docket No. 50–412, Beaver Valley Power Station, Unit 2, Shippingport, Pennsylvania

Date of application for amendment: October 15, 1991, as supplemented January 27, February 25 and July 20, 1992.

Brief description of amendment: The amendment revises the Appendix A Technical Specification Limiting Condition for Operation (LCO) 3.1.3.4. On May 1, 1992, the Commission issued Amendment No. 46 which increased the allowable control rod drop time from 2.2 seconds to 2.7 seconds. That change authorized the use of the VANTAGE 5H fuel design in future operating cycles. In addition, certain Bases sections were changed to reflect the modified DNB design basis which used the new Westinghouse correlation, WRB–1, for predicting critical heat flux and the MINI Revised Thermal Design Procedure (MINI–RTDP).

The NRC staff had not completed its evaluation of the control room operator dose resulting from a projected 18% of the fuel rods being damaged (due to the increased control rod droptime) during a locked rotor accident. Since the staff had determined that the offsite consequences were acceptable and, a generally acceptable approach had been followed by Duquesne Light Company (DLC) in the calculation of control room operator doses, DLC's calculation of the control room operator dose was acceptable for cycle 4 only, and the amendment was modified acccordingly through the addition of a footnote to LCO 3.1.3.4.

For the NRC staff to complete its evaluation of the control room operator dose, additional meteorological information was requested. On July 20, 1992, DLC submitted the requested meteorological data to support the NRC staff's review of the control room operator doses for the locked rotor event.

This amendment specifically deletes the footnote previously added by Amendment No. 46 to LCO 3.1.8.4 prohibiting operation beyond cycle 4 with VANTAGE 5H fuel.

Date of issuance: September 28, 1993

Effective date: September 28, 1993

Amendment No: 57

Facility Operating License No. NPF–73. Amendment revised the Technical Specifications and/or License.

Date of initial notice in **Federal Register:** January 22, 1992 (57 FR 2592)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 28, 1993

No significant hazards consideration comments received: No

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Entergy Operations, Inc., Docket No. 50–313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: May 7, 1993

Brief description of amendment: The amendment changed Technical Specification 6.12.3.2 by replacing the current references to Babcock & Wilcox topical reports with references to BAW–10179P–A, "Safety Criteria and Methodology for Acceptable Cycle Reload Analyses." The change also specified that the approved revision number of BAW–10179P–A will be identified in the Core Operating Limits Report for ANO–1.

Date of issuance: September 24, 1993

Effective date: September 24, 1993

Amendment No.: 169

Facility Operating License No. DPR–51. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 21, 1993 (58 FR 39049)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 24, 1993. No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of application for amendment: May 7, 1993

Brief description of amendment: The amendment reduced the maximum allowable linear power level-high trip setpoints associated with inoperable steam line safety valves listed in Technical Specification Table 3.7–1 and revised the associated Bases.

Date of issuance: September 27, 1993

Effective date: September 27, 1993

Amendment No.: 150

Facility Operating License No. NPF–6. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 23, 1993 (58 FR 34074)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 27, 1993. No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of application for amendments: September 17, 1992, as supplemented January 22, February 26, and June 16, 1993.

Brief description of amendments: On May 21, 1991, the NRC published in the **Federal Register** (56 FR 23360) a revision to its standards for protection against radiation, including the requirements of 10 CFR Part 20, Sections 20.1001 through 20.2401. The amendments revise the TS in accordance with the new 10 CFR Part 20.

Date of issuance: September 24, 1993

Effective date: September 24, 1993

Amendment Nos.: 66 and 45

Facility Operating License Nos. NPF–68 and NPF–81: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 14, 1992 (57 FR 47133) The January 22, February 26, and June 16, 1993, letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 24, 1993. No significant hazards consideration comments received: No

Local Public Document Room location: Burke County Library, 412 Fourth Street, Waynesboro, Georgia 30830

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of application for amendments: March 1, 1993, as supplemented July 26 and August 27, 1993

Brief description of amendments: The amendments modify TS 3/4.3.1, "Reactor Trip System Instrumentation," TS 3/4.3.2, "Engineered Safety Feature Actuation System Instrumentation," and their associated Bases to relax surveillance test intervals and allowed outage times for engineered safety features actuation system instrumentation based on Westinghouse Topical Report WCAPO–10271 as previously approved by the NRC.

Date of issuance: September 30, 1993

Effective date: September 30, 1993

Amendment Nos.: 67 (Unit 1) and 46 (Unit 2)

Facility Operating License Nos. NPF–68 and NPF–81: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 9, 1993 (58 FR 42350) The August 27, 1993, letter corrected the hand-marked depiction of the proposed change to agree with the changes as described by the NRC in the **Federal Register** (58 FR 42350) on August 9, 1993. This correction, therefore, did not change the NRC's proposed finding of no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 30, 1993. No significant hazards consideration comments received: No

Local Public Document Room location: Burke County Library, 412 Fourth Street, Waynesboro, Georgia 30830.

GPU Nuclear Corporation, Docket No. 50–320, Three Mile Island Nuclear Station, Unit No. 2, (TMI–2), Dauphin County, Pennsylvania

Date of application for amendment: August 6, 1988

Brief description of amendment: This amendment changes the current TMI–2 operating license to a possession only license.

Date of issuance: September 14, 1993

Effective date: September 14, 1993

Amendment No.: 45

Facility Operating License No. DPR–13: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 25, 1991 (56 FR 19128)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 14, 1993. No significant hazards consideration comments received: No.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50–461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of application for amendment: August 31, 1990

Brief description of amendment: The amendment revises the Technical Specifications to provide increased operational flexibility for the drywell post-LOCA vacuum relief valves.

Date of issuance: September 20, 1993

Effective date: Immediately, to be implemented within 30 days.

Amendment No.: 84

Facility Operating License No. NPF–62. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 3, 1990 (55 FR 40469)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 20, 1993. No significant hazards consideration comments received: No

Local Public Document Room location: The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Niagara Mohawk Power Corporation, Docket No. 50–410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of application for amendment: April 7, 1993

Brief description of amendment: The amendment revises Technical Specification 3.1.5, "Standby Liquid Control System," to remove the requirement for the standby liquid control system to be operable in OPERATIONAL CONDITION 5 (Refueling) when any control rod is withdrawn.

Date of issuance: September 30, 1993

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 48

Facility Operating License No. NPF–69: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** April 28, 1993 (58 FR 25859)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 30, 1993. No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

North Atlantic Energy Service Corporation, Dockets Nos. 50–443, Seabrook Station, Unit 1, Seabrook, Massachusetts

Date of amendment request: August 26, 1993

Brief Description of amendment: The amendment revises Technical Specification 4.3.2.1, Table 4.3–2, Functional Unit 8.b by deleting the requirement to perform a CHANNEL CHECK at least once per 12 hours and by adding a new requirement to perform a TRIP ACTUATING DEVICE OPERATIONAL TEST (TADOT) at least once per 92 days. A note is added to clarify that setpoint verification is not be applicable to the TADOT.

Date of issuance: September 28, 1993

Effective date: September 28, 1993

Amendment No.: 25

Facility Operating License No. NPF–86. Amendment revised the Technical Specifications. Public comments requested as to proposed no significant hazards consideration: Yes. (58 FR 47773, September 10, 1993) That notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by October 12, 1993, but indicated that if the Commission makes a final no significant hazards consideration determination any such hearing would take place after issuance of the amendment.

The Commission's related evaluation of the amendment, finding of exigent circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated September 28, 1993.

Local Public Document Room location: Exeter Public Library, 47 Front Street, Exeter, New Hampshire 03833.

Northeast Nuclear Energy Company, Docket No. 50–245, Millstone Nuclear Power Station, Unit 1, New London County, Connecticut

Date of application for amendment: May 25, 1993

Brief description of amendment: The amendment removes the operability and associated surveillance requirements for the main steam line radiation monitor (MSLRM) scram and Group I containment isolation functions. Justification for removal of the MSLRM trip function was described in Licensing Topical Report NEDO–31400, "Safety Evaluation For Eliminating the Boiling Water Reactor Main Steam Line Isolation Valve Closure Function and Scram Function of the Main Steam Line Radiation Monitor," which was approved by the NRC staff on May 15, 1991. The amendment also moves the requirements for MSLRM calibration to Surveillance Requirement 4.6.K.2 and makes some editorial changes to Limiting Condition for Operation Section 3.6.K.1.

Date of issuance: September 29, 1993

Effective date: September 29, 1993

Amendment No.: 64

Facility Operating License No. DPR–21. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 7, 1993 (58 FR 36441)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 29, 1993. No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: December 24, 1992

Brief description of amendments: The amendments revise the combined Technical Specifications (TS) 3/4.8.2, "Onsite Power Distribution," for Diablo Canyon Power Plant Unit Nos. 1 and 2 to remove references to the supplemental inverters and busses due to replacement of six 7.5 kVA (four vital and two supplemental vital) inverters with four kVA inverters.

Date of issuance: September 17, 1993

Effective date: September 17, 1993

Amendment Nos.: 83 and 82

Facility Operating License Nos. DPR–80 and DPR–82: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 17, 1993 (58 FR 8775)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 17, 1993. No significant hazards consideration comments received: No.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407

Portland General Electric Company, et al., Docket No. 50–344, Trojan Nuclear Plant, Columbia County, Oregon

Date of application for amendment: March 16, 1993

Brief description of amendment: The amendment, by Portland General Electric Company, PGE or the licensee, relocates those portions of the Trojan Technical Specifications (TS) that are related to the Trojan Fire Protection Program from the TS to Topical Report PGE–1012, "Trojan Nuclear Plant Fire Protection Plan." The amendment also revises the Fire Protection License Condition in Operating License NPF–1.

Date of issuance: September 22, 1993

Effective date: September 22, 1993

Amendment No.: 192

Facility Operating License No. NPF–1 The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 23, 1993 (58 FR 34088), and September 2, 1993 (58 FR 46665) The clarifying language added to the license condition did not alter the staff's initial determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 22, 1993. No significant hazards consideration comments received: No.

Local Public Document Room location: Branford Price Millar Library, Portland State University, 934 S.W. Harrison Street, P.O. Box 1151, Portland, Oregon 97207

Public Service Electric & Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: June 17, 1993

Brief description of amendments: These amendments revised the Updated Final Safety Analysis Report to address a potential single failure in the rod control system that is not within the current licensing basis of Salem, Units 1 and 2.

Date of issuance: September 22, 1993

Effective date: September 22, 1993

Amendment Nos. 144 and 122

Facility Operating License Nos. DPR–70 and DPR–75. These amendments revised the License.

Date of initial notice in **Federal Register:** June 29, 1993 (58 FR 34833)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 22, 1993. No significant hazards consideration comments received: No

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

Southern Nuclear Operating Company, Inc., Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendments request: June 23, 1992, as supplemented November 13, 1992.

Brief Description of amendments: The amendments relocates the procedural details of the Radiological Effluent Technical Specifications (RETS) to the Offsite Dose Calculation Manual (ODCM) and relocates the procedural details for solid radioactive wastes to the Process Control Program (PCP). This request is in accordance with Generic Letter 89–01.

Date of issuance: September 20, 1993

Effective date: September 20, 1993

Amendment Nos.: 99 and 91

Facility Operating License Nos. NPF–2 and NPF–8. Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register:** September 30, 1992 (57 FR 45088) The November 13, 1992, letter provided clarifying information that did not change the initial determination of significant hazards consideration as published in the **Federal Register.**

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 20, 1993

No significant hazards consideration comments received: No

Local Public Document Room location: Houston–Love Memorial Library, 212 W. Burdeshaw Street, P. O. Box 1369, Dothan, Alabama 36302

Southern Nuclear Operating Company, Inc., Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendments request: August 24, 1992, as revised December 17, 1992, March 4, 1993, and April 29, 1993

Brief Description of amendments: The amendments change the Technical Specifications to implement the revised 10 CFR Part 20, Standards for Protection Against Radiation.

Date of issuance: September 21, 1993

Effective date: September 21, 1993

Amendment Nos.: 100 and 92

Facility Operating License Nos. NPF–2 and NPF–8. Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register:** September 30, 1992 (57 FR 45089) and August 18, 1993 (58 FR 43932)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 21, 1993

No significant hazards consideration comments received: No

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, P. O. Box 1369, Dothan, Alabama 36302

Southern Nuclear Operating Company, Inc., Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendments request: March 4, 1992, as supplemented June 29, 1993

Brief Description of amendments: The amendments (1) delete references to diesel generator 2C from TS 3/4.8.1.1 and TS 3/4.8.1.2, (2) delete 600 volt load centers J and H as listed in TS 3/4.8.2 and (3) revise TS 6.8.1 to include a reference to the document that provides the testing, maintenance, and procurement requirements applicable to the 2C diesel generator and to include a requirement to inform the NRC if the 2C diesel generator is out of service for more that 10 days. These changes allow modification of the emergency electrical power system to designate one of the existing emergency diesel generators as an alternate AC power source as defined in Regulatory Guide 1.155, "Station Blackout."

Date of issuance: September 22, 1993

Effective date: September 22, 1993

Amendment Nos.: 101 and 93

Facility Operating License Nos. NPF–2 and NPF–8. Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register:** July 21, 1993 (58 FR 39060)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 22, 1993. No significant hazards consideration comments received: No

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama 36302

Tennessee Valley Authority, Docket Nos. 50–259, 50–260 and 50–296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of application for amendments: March, 25, 1992 supplemented January 29, 1993 and August 27, 1993 (TS 301)

Brief description of amendments: Consistent with the guidance and recommendations provided in NRC Generic Letter 89–01, these amendments incorporate programmatic controls for radiological effluents and radiological environmental monitoring in the Administrative Controls section of the plant Technical Specifications (TS) and transfer the procedural details of the Radiological Effluent Technical Specifications (RETS) from the TS to the Offsite Dose Calculation Manual (ODCM) and to the Process Control Program (PCP) as appropriate. Additionally these amendments delete a redundant TS requirement pertaining to the Off-Gas system hydrogen monitors.

Date of issuance: September 22, 1993

Effective date: September 22, 1993

Amendment Nos.: 199—Unit 1, 216—Unit 2, and 172—Unit 3

Facility Operating License Nos. DPR–33, DPR–52 and DPR–68: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** 57 FR 22268 dated May 27, 1992 and 58 FR 36447 dated July 7, 1993.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 22, 1993. No significant hazards consideration comments received: None

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611

Virginia Electric and Power Company, et al., Docket No. 50–339, North Anna Power Station, Unit No. 2, Louisa County, Virginia

Date of application for amendment: April 27, 1990, as supplemented December 21, 1990 and March 29, 1993

Brief description of amendment: These amendments revise the NA–1&2 TS 3/4.7.9 by removing the automatic isolation requirement for the Reactor Heat Removal (RHR) suction valves. In addition, a requirement is added to verify the RHR suction valves are closed and deenergized prior to exceeding 500 pounds per square inch gauge in the Reactor Coolant System.

Date of issuance: September 23, 1993

Effective date: September 23, 1993

Amendment No.: 175, 156

Facility Operating License No. NPF–7: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 25, 1990 (55 FR 30316)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 23, 1993. No significant hazards consideration comments received: No.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903–2498

Dated at Rockville, Maryland, this 5th day of October 1993.

For the Nuclear Regulatory Commission

Jose A. Calvo,

Acting Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation

[FR Doc. 93–24968 Filed 10–12–93; 8:45 am]

BILLING CODE 7590–01–F

[Docket No. 50–192]

Environmental Assessment and Finding of No Significant Impact Regarding Termination of Facility License No. R–92, University of Texas at Austin TRIGA Mark I Research Reactor

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an order terminating Facility License No. R–92 for the University of Texas at Austin (UT or the licensee) research reactor located in Austin, Texas, in accordance with the application dated May 3, 1985, as supplemented on December 17, 1992, and March 22 and May 3, 1993.

Environmental Assessment

Identification of Proposed Action

By application dated May 3, 1985, as supplemented on December 2, 1985, the licensee requested authorization to dismantle the UT TRIGA Mark I research reactor and dispose of its component parts in accordance with the proposed decommissioning plan. Following an "Order Authorizing Dismantling of Facility and Disposition of Component Parts," dated March 9, 1987 (52 FR 8543), the licensee completed the dismantlement and submitted a final survey report dated December 17, 1992, as supplemented on March 22 and May 3, 1993. Representatives of the Oak Ridge Institute for Science and Education (ORISE), under contract to NRC, conducted a survey of the facility April 5 through 7 and June 1, 1993. The survey is documented in an ORISE report, "Confirmatory Survey of the University of Texas TRIGA Reactor, Austin, Texas," dated July 1993. NRC Region IV, in a memorandum dated July 28, 1993, found that the ORISE report findings support the data developed in the licensee final survey report.

The Need for Proposed Action

In order to release the facility for unrestricted access and use, Facility License No. R–92 must be terminated.

Environmental Impact of License Termination

The licensee indicates that the residual contamination and dose exposures comply with the criteria of Regulatory Guide 1.86, Table 1, which establishes acceptable residual surface contamination levels, and the exposure limit, established by the NRC staff, of less than 5 micro R/hr above background at 1 meter. These measurements have been verified by the NRC. The NRC finds that, because these criteria have been met, there is no significant impact on the environment and the facility can be released for unrestricted use.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts and would deny release of the site for unrestricted use and require continuance of the facility license. The environmental impacts of the proposed action and the alternative action are similar. Because the reactor and component parts have been dismantled and disposed of in accordance with NRC regulations and guidelines, there is no alternative to termination of Facility License No. R–92.

Agencies and Persons Consulted

Personnel from the Oak Ridge Institute of Science and Education (an NRC contractor) assisted Region IV in the conduct of the Termination Survey for the UT TRIGA Mark I Research Reactor. The staff consulted with the State of Texas regarding the environmental impact of the proposed action.

Finding of No Significant Impact

The NRC has determined not to prepare an environmental impact statement for the proposed action. On the basis of the foregoing environmental assessment, the NRC has concluded that the issuance of the order will not have a significant effect on the quality of the human environment.

For further details with respect to this proposed action, see the application for termination of Facility License No. R–92, dated May 3, 1985, as supplemented on December 17, 1992, and March 22 and May 3, 1993. These documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555.

Dated at Rockville, Maryland, this 5th day of October 1993.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Operating Reactor Support, Office of Nuclear Reactor Regulation.

[FR Doc. 93–25048 Filed 10–12–93; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards, Subcommittee on Advanced Boiling Water Reactors; Meeting

The ACRS Subcommittee on Advanced Boiling Water Reactors will hold a meeting on October 26–27, 1993, in room P–110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: *Tuesday, October 26, 1993—8:30 a.m. until the conclusion of business. Wednesday, October 27, 1993—8:30 a.m. until the conclusion of business.*

The Subcommittee will begin its review of the NRC staff's Final Safety Evaluation Report for the General Electric Nuclear Energy (GE) Advanced Boiling Water Reactor (ABWR) design. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will hear presentations by and hold discussions with the NRC staff and other interested persons regarding this review. Representatives of GE and its consultants will participate, as appropriate.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Dr. Medhat El-Zeftawy (telephone 301/492–9901) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named

individual five days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: October 5, 1993.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 93–25047 Filed 10–12–93; 8:45 am]

BILLING CODE 7590–01–M

Public Workshop: Topics Related to Certification of Evolutionary Light Water Reactor Designs

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of public workshop.

SUMMARY: The Nuclear Regulatory Commission (NRC) is announcing a public workshop concerning issues related to the form and content of the rules that would provide design certification for evolutionary light water reactor designs. The purpose of the workshop is to inform the public of the NRC's current proposals for approving standard reactor designs by rulemaking, answer any questions posed by the meeting participants, and to discuss any recommendations or concerns raised. This action is being taken to provide the opportunity for early public participation in the development of design certification rules. In addition to open public participation in this workshop, the NRC is inviting known interested parties to attend. The meeting minutes will be transcribed by a court recorder.

DATES: The workshop will be held on Tuesday, November 23, 1993, from 8:30 am to 5 pm.

ADDRESSES: The workshop will be held at the Ramada Inn, 8400 Wisconsin Ave., Bethesda, Maryland, (301) 654–1000.

FOR FURTHER INFORMATION CONTACT: Harry S. Tovmassian, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 492–3634 or Jerry N. Wilson, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 504–3145.

SUPPLEMENTARY INFORMATION: The NRC's regulations in 10 CFR part 52, subpart B - Standard Design Certifications, provide the requirements applicable to issuing a design certification for a standard nuclear power plant design. The NRC is planning to promulgate several rules which will provide for certification of each evolutionary reactor design which it reviews and approves. These rules would be set forth in separate appendices to 10 CFR part 52. The NRC is seeking early public participation in the development of the form and content of these design certification rules. In order to explain the proposed approach and to facilitate public discussion of related issues, the NRC is holding a public workshop on this topic. In addition, the NRC is preparing an Advanced Notice of Proposed Rulemaking (ANPR) soliciting written public comments on its approach to these rulemakings. The ANPR is expected to be published prior to the workshop.

Since the issuance of 10 CFR part 52 in 1989, the NRC staff has been developing guidance for implementing the requirements for design certification. The NRC staff proposals for implementing these requirements for design certification have been set forth in various papers to the Commission (SECYs). The Commission's response to these SECY papers has been provided in the respective Staff Requirements Memoranda (SRMs). The ANPR may not be published far enough in advance of the workshop to provide all interested parties time for a thorough review. However, the SECY papers and SRMs listed below provide sufficiently comprehensive discussion of the issues to permit meaningful public discussion at the meeting.

1. SECY–90–377, November 8, 1990, "Requirements for Design Certification under 10 CFR Part 52."

2. Memorandum from Samuel J. Chilk, to James M. Taylor, February 15, 1991, "SECY–90–377 - Requirements for Design Certification under 10 CFR Part 52."

3. SECY–92–287, August 18, 1992, "Form and Content for a Design Certification Rule."

4. Memorandum from Samuel J. Chilk, to James M. Taylor, September 30, 1992, "SECY–92–287 - Form and Content for a Design Certification Rule."

5. SECY–92–287A, March 26, 1993, "Form and Content for a Design Certification Rule."

6. Memorandum from Samuel J. Chilk, to James M. Taylor, June 23, 1993, "SECY–92–287/287A - Form and Content for a Design Certification Rule."

7. SECY–93–087, April 2, 1993, "Policy, Technical, and Licensing Issues Pertaining to Evolutionary and Advanced Light-Water Reactor Designs."

8. Memorandum from Samuel J. Chilk, to James M. Taylor, July 21, 1993, "SECY–93–087 - Policy, Technical, and Licensing Issues Pertaining to Evolutionary and Advanced Light-Water Reactor Designs." and

9. Letter from Dennis M. Crutchfield, Associate Director for Advanced Reactors and License Renewal, Office of Nuclear Reactor Regulation, Nuclear Regulatory Commission to Patrick W. Marriott, Manager, Licensing & Consulting Services, GE Nuclear Energy, August 26, 1993, "Guidance on the Form and Content of a Design Control Document."

Persons wishing to examine or copy the documents listed above can do so at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC, between the hours of 7:45 a.m. and 5:15 p.m. on Federal workdays.

Requests for copies may also be sent to Harry S. Tovmassian, Office of Nuclear Regulatory Research, Washington, DC 20555.

The topics to be discussed at the workshop relate to the form and content of the rules which would certify evolutionary light water reactor designs, as required by 10 CFR 52.54. The NRC staff's proposals on the form and content of a Design Certification Rule are provided in SECY–92–287 and –287A. The Commission's guidance is set forth in the respective SRMs listed above. These documents discuss issues pertaining to a "two-tiered" design certification rule structure including the process and standards for changing Tier 2 information. Members of the public are encouraged to ask questions on the staff's proposals or make their own proposal on the best way to implement design certification rulemaking in accordance with 10 CFR 52.54.

Specific Topics

The proceedings of this meeting will address all pertinent questions with respect to the form and content of design certification rules including the staff's proposed approach. The NRC is particularly interested in the public views concerning a number of topics and invites the public to address them at the workshop. These topics are taken from the above referenced documents:

1. The acceptability of a two-tiered design certification rule structure;

2. The acceptability of the process and standards for changing Tier 2 information;

3. The acceptability of a Tier 2 exemption;

4. The acceptability of using a change process, similar to the one in 10 CFR 50.59 applicable to operating reactors ("§ 50.59-like"), prior to the issuance of a combined license that references a certified design;

5. The acceptability of identifying selected technical positions from the Safety Evaluation Report as

"unreviewed safety questions" that cannot be changed under a "§ 50.59-like" change process;

6. Need for modifications to § 52.63(b)(2) if the two-tiered structure for the design certification rule is approved;

7. Whether the Commission should either incorporate or identify the information in Tier 1 or Tier 2 or both in the combined license;

8. The acceptability of using design-specific rulemakings rather than generic rulemaking for the technical issues whose resolution exceeds current requirements. These "applicable regulations" will become part of the Commission's baseline of regulations for the specific certified design that are applicable and in effect at the time the certification is issued; and

9. The appropriate form and content of a design control document.

Other questions on the proposed approach to the form and content for a design certification rule will be entertained if time permits.

Dated at Rockville, Maryland, this 6th day of October 1993.

For the Nuclear Regulatory Commission.

Bill M. Morris,

Director, Division of Regulatory Applications, Office of Nuclear Regulatory Research.

[FR Doc. 93–25049 Filed 10–12–93; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Board Reviews DOE Yucca Mountain Project Environmental Activities

Pursuant to its authority under section 5051 of Public Law 100–203, the Nuclear Waste Policy Amendments Act of 1987, the Nuclear Waste Technical Review Board's panel on the Environment & Public Health will hold a meeting on November 22, 1993, in Las Vegas, Nevada, to study the Department of Energy's (DOE) environmental activities at Yucca Mountain. A site at Yucca Mountain currently is being characterized by the DOE for its suitability as the possible location of a permanent repository for civilian spent fuel and defense high-level waste.

The meeting will focus on studies of terrestrial ecosystems and will provide an overview of Yucca Mountain Project environmental activities for new panel members and consultants. A second purpose of the meeting is to review the results of environmental monitoring activities obtained during the past few years, including statistical analyses of monitoring data. Members of the panel hope to gain insight on the decision-making process used to evaluate the environmental significance of monitoring results.

The meeting, which will begin at 8:30 a.m. and conclude by 5:30 p.m., is open to the public and will be held in the Plaza-Suite Hotel, 4255 South Paradise Road, Las Vegas, Nevada 89109; telephone (702) 369–4400. For further information, contact Frank Randall, External Affairs, Nuclear Waste Technical Review Board, 1100 Wilson Boulevard, suite 910, Arlington, Virginia 22209; telephone (703) 235–4473; FAX (703) 235–4495.

Dated: October 6, 1993.

William Barnard,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 93–25046 Filed 10–12–93; 8:45 am]

BILLING CODE 8820–AM–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–32999; File No. SR–CBOE–93–34]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 by the Chicago Board Options Exchange, Inc. Relating to Fees Due for Post-Trade Date Submission of Trade Information

October 1, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 2, 1993, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as describe in Items I and II below, which Items have been prepared by the CBOE. The CBOE subsequently filed one amendment to the proposal.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to establish a fee to be paid by members who submit trade information after the trade date for more than a prescribed percentage of transactions by any month. The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The purpose of the proposal is to establish a fee to be paid by members who, for more than a stated percentage of transactions during any month, submit trade information under Exchange Rule 6.51 after the date on which the trade is executed. Specifically, any Exchange member who fails for more than a stated monthly percentage of transactions to submit required transaction information would incur a transaction fee of $3.00 for each such trade. The fee is intended to help offset the carrying costs to members resulting from the costs of processing these post-trade date submissions, which commonly are referred to as "as of adds."[2] Pursuant to CBOE Rule 2.22, the Exchange may impose fees on members for the use of Exchange Facilities or for any services or privileges granted by the Exchange. In this case, the fees are to be imposed for use of the Exchange's overnight and next-day trade match processing services. Because the Exchange expects the number of as of adds to decrease over time as a result of these fees, the maximum allowable percentage of as of adds per month is structured to decrease periodically. Member firms would be subject to a different maximum allowable percentage of as of adds per

[1] On September 30, 1993, the CBOE filed Amendment No. 1 to the proposal requesting that the proposal be approved on a six-month pilot basis until March 31, 1994. *See* Letter from Joanne Moffic-Silver, Associate General Counsel & Chief Enforcement Attorney, CBOE, to Richard Zack, Branch Chief, Office of Options, Division of Market Regulation, Commission, dated September 30, 1993 ("Amendment No. 1").

[2] The Exchange has represented that in aggregate, unresolved trades carried overnight impose significant monthly carrying costs on the members that are parties to such trades. The Exchange estimates that each unresolved trade carried overnight costs each member that is a party to the trade $2.50 in carry costs, and that these costs total approximately $65,000 per month. See Amendment No. 1, *supra* note 1.

month than individual members.[3] In no event will the maximum allowable percentage of as of adds for any member exceed the baseline number initially established for that member.

Members that incur fees pursuant to this rule may submit a request for verification to the Exchange pursuant to Part A of Chapter XIX of the CBOE Rules. In addition, members may appeal these fees pursuant to Part B of Chapter XIX.

The proposed rule change also contains several editorial changes to CBOE Rule 2.25, a rule that relates to collection procedures for fees incurred under the Trade Match Delayed Submission Fee Rules. Those editorial changes are intended to conform the terms of Exchange Rule 2.25 to those contained in the proposed rule.

The CBOE believes that the proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) of the Act in particular in that it is designed to provide for the equitable allocation of reasonable dues, fees and charges among CBOE members.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has requested that the proposed rule change be given accelerated effectiveness pursuant to Section 19(b)(2) of the Act.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6(b)(5).[4] Specifically, the Commission finds that the CBOE proposal to impose fees on members who submit trade information after the trade date for more than a prescribed percentage of transactions in any month is likely to provide for the equitable allocation of fees among Exchange members and offset the carrying costs incurred by Exchange members as a result of these post-trade date submissions.

The Commission also believes that the proposal will make trade comparisons on the CBOE more efficient in terms of the time and expense involved in trade processing. Intra-day trade matching reduces Exchange member expenses by decreasing the number of personnel that need to be available after the trading day has ended to match uncompared trades. The proposal should significantly reduce the number of as of adds by providing an economic incentive to resolve unmatched trades during the trading day when the personnel that are responsible for the trades are still present.

Additionally, the Commission believes the proposal will reduce the risk exposure to investors and Exchange member firms. Uncompared trades are subject to market price volatility and could cause a loss to a member firm or its customer in the event of a default or some other unexpected event occurring before an as of add is resolved. The proposal should act to reduce the number of as of adds and thus reduce this risk.

Finally, the proposal does not raise any due process concerns since the proposal provides that all members who incur fees pursuant to this rule may submit a request for verification pursuant to Part A of Chapter XIX of the CBOE Rules, and may appeal those fees pursuant to Part B of Chapter XIX of the CBOE Rules.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** in order to permit the Exchange to begin imposing the proposed fees on October 1, 1993. The Exchange has represented significant monthly carrying costs are incurred by members as a direct result of as of adds,[5] which must ultimately be borne by all market participants. Accelerated approval will allow the Exchange to implement the proposal immediately in an effort to minimize these costs. Additionally, the Commission does not believe that the proposal raises any regulatory concerns since the Exchange's existing rules and fees for late submissions of trade information have been in place for an extended period[6] and to date, have not posed any discernible problems. Accordingly, the Commission believes it is consistent with sections 6(b)(5) and 19(b)(2) of the Act to approve the proposed rule change on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–93–34 and should be submitted by November 3, 1993.

V. Conclusion

For the reasons discussed above, the Commission finds that the proposal relating to fees due for post-trade date submission of trade information is consistent with the Act, and in particular, Section 6 of the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act[7] that the proposed rule change (SR–CBOE–93–34) is hereby approved on a pilot basis until March 31, 1994.

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[3] For individual members (member firms), (1) from October 1, 1993 through March 31, 1994, the maximum monthly as of add rate would be 2.5% (1.3%) of a member's monthly trades; (2) from April 1, 1994 through September 30, 1994, the maximum monthly as of add rate would be the lesser of 2.5 (1.3) times the Exchange-wide as of add rate for March 1994 or 2.5% (1.3%) of a member's monthly trades; and, (3) after September 30, 1994, the maximum monthly as of add rate would be the lesser of 2.5 (1.3) times the Exchange-wide as of add rate for September 1994 or 2.5% (1.3%) of a member's monthly trades.

[4] 15 U.S.C. 78f(b)(5) (1988).

[5] See Amendment No. 1, *Supra* note 1.

[6] See Securities Exchange Act Release No. 28807 (January 22, 1991), 56 FR 3127 (granting temporary approval of trade match fees until July 22, 1991); Securities Exchange Act Release No. 29341 (June 19, 1991), 56 FR 29293 (granting extension of temporary approval of trade match fees until January 22, 1992); Securities Exchange Act Release No. 30000 (November 26, 1991), 56 FR 63531) (granting permanent approval of trade match rules); and, Securities Exchange Act Release No. 30001 (November 26, 1991), 56 FR 63529 (granting permanent approval of trade match rules).

[7] 15 U.S.C. 78s(b)(2) (1988).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–25022 Filed 10–12–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33013; File No. SR–CBOE–93–30]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Stopping of Option Orders by Market-Makers and Designated Primary Market-Makers

October 14, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 24, 1993, the Chicago Board Options Exchange, Inc. ("CBOE") or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to add a rule ("Rule") providing the terms and conditions for the granting of a "stop" order by market-makers and designated primary market-makers ("DPM") and accepting a "stop" order by floor brokers. The text of the proposed rule change is available at the Office of the Secretary, the CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

[8] 17 CFR 200.30–3(a)(12) (1992).

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The Exchange states that the purpose of the Rule is to implement a comprehensive method for executing "stopped" transactions on the Exchange, comparable to stopping rules that have been in operation at other exchanges for many years. The proposed rule change provides that an Exchange market-maker or DPM is authorized, though not required, to grant a stop on an option transaction and that a floor broker is authorized, but is not required, to accept a stop. In addition, the proposed rule change sets forth the conditions which attach to a market-maker's or DPM's granting of a stop.

A "stop" is defined as a guarantee that an option order will be executed at the stop price or better. The Exchange believes that the practice of stopping an option order provides many benefits for marketplace participants, market-makers or DPMs, floor brokers, and customers alike. The Exchange also believes a stop benefits the customer by providing an opportunity for the floor broker to try to obtain a better price for that customer without risk. According to the Exchange, a stop provides one means whereby a floor broker may satisfy the "due diligence" standard which he or she is required to meet under Exchange rules and enables the floor broker to lock in a desirable price while attempting to better that price. Additionally, the Exchange believes that a stop also provides the market-maker or DPM with an opportunity to compete for order flow by better meeting the needs of floor brokers, and it provides additional price discovery for the trading crowd.

The conditions under which an Exchange market-maker or DPM may grant a stop and a floor broker may accept a stop are set forth in paragraph (b) of the Rule. The first condition requires a market-maker or DPM granting a stop on a straight order or on only the option portion of a buy-write to make the trading crowd and the Order Book Official aware of the terms, price, and size of the stop. This is intended to provide increased trading opportunities to the trading crowd and to provide objectivity and credibility to the resulting fills obtained for customers by floor brokers and/or market-makers. The second condition requires that all stopped orders be time-stamped at the time that the stop is granted, which establishes an objective method for determining priority within the trading crowd and assists other surveillance functions by providing a timed audit trail. The third condition requires a market-maker or DPM to be prepared to execute, if requested, one or more additional orders up to, but not in total to exceed in aggregate, the total quantity of contracts executed in the original stopped transaction at the same stop price. This is intended to provide a measure of fairness to floor transactions by giving more than one crowd participant the opportunity to receive the guaranteed or stopped price. The fourth condition is that a floor broker must elect to executive the stopped order at the stop price and size at the time a transaction occurs in the crowd at the stop price, or else the floor broker must release the market-maker or DPM from his or her guarantee. Finally, the Rule describes how a floor broker must bid or offer to improve on the stop.[1] These latter two conditions are intended to specify the scope of the risks undertaken by the market-maker or DPM granting the stop and to provide for the termination of the guarantee made by the market-maker or DPM.

Paragraph (c) of the Rule establishes priority for "stopped" orders over new crowd orders, excluding the public limit order book, when the stop order is properly granted, accepted, and time-stamped by the floor broker at the time the stop is granted and accepted.

Paragraph (d) of the Rule also requires that notice be given to a customer by the floor broker or member organization within a reasonably practicable time after that customer's order has been stopped. This notice requirement is designed to ensure that, following the execution of a stopped order, the customer will be notified. According to the Exchange, the granting of the stop actually gives the customer the best price available either by virtue of the stop or by the ability of the floor broker to improve on the price.

Paragraph (e) of the Rule details the reporting requirements applicable to the execution of stopped orders on the tape and on cards used for reporting Exchange transactions.

Paragraph (f) of the Rules addresses the effect of a trading halt on the priority and pricing of a stopped order. This aspect of the Rule, which the Exchange asserts is substantially the same as an American Stock Exchange,

[1] Proposed Exchange Rule 6.17(b)(5) states "In improving on the stop price once a floor broker has accepted a stop, a floor broker must bid no more than one fractional trading increment less than the stop and must offer no more than one fractional trading increment greater than the stop. A fractional trading increment is the minimum fractional change allowed for bids and offers consistent with [Exchange] Rule 6.42."

Inc. provision covering the same subject, establishes procedures for the benefit of customers by requiring the floor broker to use due diligence to obtain any better price at which an option might re-open after a halt, while maintaining priority at the stop price if the re-opening is at that price or an inferior price.

Finally, paragraph (g) of the Rule explicitly states that the market-maker granting the stop is held to that guarantee by placing the liability for correcting an erroneous or inaccurate price on the market-maker or DPM that granted the stop.

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(5) in particular, in that it is designed to promote just and equitable principles of trade and to enhance and protect investors and the public interest by promoting due diligence on the part of floor brokers while enabling market-makers and DPMs to compete for orders by meeting the needs of floor brokers without risk to the customer, and by encouraging additional price discovery for the trading crowd.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, Washington, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–93–30 and should be submitted by November 3, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–25023 Filed 10–12–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33015; File No. SR–CBOE–92–38]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Short Sales of SuperShares

October 5, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 24, 1992, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend Exchange Rule 30.20, relating to short sales, to reflect an exemption granted by the Commission pursuant to Rule 10a–1 under the Act ("Rule 10a–1")[1] for SuperShares.[2] The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to amend CBOE Rule 30.20 to provide that securities exempted from the "tick test" requirements of Rule 10a–1 will likewise be exempt from the parallel provisions of rule 30.20. Paragraph (b) of CBOE Rule 30.20, which applies to the trading of stock, warrants, unit investment trust ("UIT") interests, and other securities subject to Chapter XXX of the rules of the Exchange, including SuperShares, imposes a tick test requirement on short sales of such securities comparable to the requirement imposed by paragraphs (a) and (b) of rule 10a–1.[3] By letter dated June 24, 1992, in response to a request previously submitted by CBOE, the Commission exempted short sales of SuperShares from the tick test requirement of paragraph (a) of rule 10a–1, subject to the condition that any such transactions must not be made for the purpose of creating actual or apparent active trading in, or raising or otherwise affecting the price of, SuperShares or any related security.[4] In

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[2] 17 CFR 200.30–3(a)(12) (1993).

[1] 17 CFR 240.10a–1 (1991).

[2] SuperShares are securities issued by unit investment trusts sponsored by SuperShare Service Corporation, a majority owned subsidiary of Leland O'Brien Rubinstein Associates Incorporated. *See* Securities Exchange Act Release No. 30393 (February 21, 1992), 57 FR 7415.

[3] The tick test provides that members shall not effect a short sale of any security unless such sales occurs on a plus tick (*i.e.*, at a price above the price at which the immediately preceding sale was effected), or a zero-plus tick (*i.e.*, at the last sale price if it was higher than the last different price). *See* CBOE Rule 30.20(b).

[4] *See* CBOE, SEC No-Action Letter, [1992 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶76,283, at 77,071 (June 24, 1992) ("SuperShares No-Action Letter").

order to give effect to this exemption, it is necessary that short sales of SuperShares also be exempt from the tick requirements of paragraph (b) of CBOE Rule 30.20, subject to the same condition. The Exchange believes that the proposed rule change accomplishes this purpose.

The CBOE also proposes to add Commentary .03 to Exchange Rule 30.20. Commentary .03 would (1) describe the exemption for SuperShares from Rule 10a–1 contained in the SuperShares No-Action Letter; and (2) state that so long as that exemption remains in force, short sales of SuperShares would be exempt from the tick requirements of paragraph (b) of CBOE rule 30.20.

The CBOE believes that the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) of the Act in particular in that it will permit trading in SuperShares to take place on the Exchange pursuant to rules designed to prevent fraudulent and manipulative acts and practices, and to promote just and equitable principles of trade.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has requested that the proposed rule change be given accelerated effectiveness pursuant to Section 19(b)(2) of the Act.[5]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6(b)(5).[6] Specifically, the Commission finds that the CBOE proposal to amend CBOE Rule 30.20 to exempt short sales of SuperShares from the application of paragraph (a) of Rule 10a–1, subject to the condition that any such transactions must not be made for the purpose of creating actual or apparent active trading in, or raising or otherwise affecting the price of, SuperShares or any related security, does not raise any regulatory concerns since the Commission has previously exempted such short sales.[7] The Commission notes that SuperShares will be exempt from the tick test requirements of paragraph (b) of CBOE Rule 30.20 so long as the Commission's exemption remains in force. Accordingly, the Commission believes it is appropriate for the CBOE to amend Rule 30.20 to exempt SuperShares from the application of paragraph (a) of Rule 10a–1.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** because the proposal accurately codifies the position previously taken by the Commission in the SuperShares No-Action Letter and because no regulatory problems have arisen since the date of that no-action letter. Accordingly, the Commission believes it is consistent with Sections 6(b)(5) and 19(b)(2) of the Act to approve the proposed rule change on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–92–38 and should be submitted by November 3, 1993.

V. Conclusion

For the reasons discussed above, the Commission finds that the proposal exempting short sales of SuperShares from Rule 10a–1 is consistent with the Act, and in particular, Section 6 of the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act[8] that the proposed rule change (SR–CBOE–92–38) is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–25024 Filed 10–12–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33010; File No. SR–DTC–93–7]

Self-Regulatory Organization; The Depository Trust Company; Notice of Filing of Proposed Rule Change Relating to an Enhanced Institutional Delivery System

October 4, 1993.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on July 7, 1993, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will enhance DTC's Institutional Delivery ("ID") system. The enhanced ID system will have interactive options and other new features and will also unify the existing ID and International ID systems.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

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[5] 15 U.S.C. 78s(b)(2) (1988).

[6] 15 U.S.C. 78s(b)(5) (1988).

[7] See SuperShares No-Action Letter, *supra* note 4.

[8] 15 U.S.C. 78s(b)(2) (1988).

[9] 17 CFR 200.30–3(a)(12) (1992).

[1] 15 U.S.C. 78s(b)(1) (1988).

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to enhance the ID system by including interactive options and other new features in order to improve post-trade data flow and reduce costs to participants and other ID system users. All new features will be optional. The principal new features of the enhanced ID system, with the planned implementation period for each feature indicated in parenthesis, are as follows:[2]

1. *Standing Instructions Database* (late 1993). The Standing Instructions Database ("SID") will be a repository for customer account and settlement information furnished by institutions, agents, and broker-dealers. The information will include items such as interested parties, the agent for the customer, and the agent's internal account number for the customer. When entering trade data into the ID system, a broker-dealer can simply refer to the account designations in the SID, and the ID system will automatically add the necessary associated detail (such as customer name, agent, and interested parties) to the confirmation. The SID will eliminate the need for the broker-dealer to maintain all such information in its internal records and to provide all such information each time that it enters trade data into the ID system.

2. *Electronic Mail Features* (late 1993 through early 1994). These features will enable ID system users to send and receive Notification of Order Execution ("NOE"), Institution Instructions, and Institution Request for Cancellation/Correction. An NOE can be sent by a broker-dealer to communicate the details of an order execution to an institution. If the institution accepts the NOE, the institution can send the broker-dealer Institution Instructions containing information, such as allocations of block trades, which is needed by the broker-dealer to enter trade data into the ID system for preparation of confirmations. The institution can send the broker-dealer an Institution Request for Cancellation/Correction when the institution disagrees with a confirmation that the Institution has received through the ID system. Currently, broker-dealers and institutions make telephone calls or send facsimile transmissions to communicate the information which will be sent through these electronic mail features.

3. *Interactive ID* (early 1994). In addition to using the ID system in the current batch mode, ID system users will be able to use the system interactively with the capability of accomplishing all ID system processing within as little as a single business day.

4. *Matching* (mid 1994). As an alternative to the current confirmation and affirmation processing in the ID system, DTC will offer a matching option. The enhanced ID system will match trade data received from the broker-dealer with Institution Instructions received from the institution. The results of the matching will be reported through the distribution of various output reports to the broker-dealer, the agent, and the institution.

5. *Authorization/Exception Processing and T+5 Reporting* (mid 1994). Because most unaffirmed trades of DTC-eligible securities eventually result in book-entry deliveries affected by deliver orders, the enhanced ID system will enable the delivering parties to ID system trades to authorize automated settlement of unaffirmed trades. In addition, delivering parties will be allowed to authorize settlements of trades on the settlement dates and later. This feature will enable delivering parties to take advantage of the efficiencies of preauthorized automated settlement.

The proposed rule change is consistent with the requirements of the Act, Section 17 of the Act, and the rules and regulations thereunder applicable to DTC because the proposed rule change will further automate the process by which securities transactions are cleared and settled. The proposed rule change will be implemented consistently with the safeguarding of securities and funds in DTC's custody or control or for which it is responsible because the proposed rule change enhances DTC's existing ID system.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no impact on competition by reason of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

In 1990, at the request of the Group of Thirty U.S. Working Committee's T+3 Brokers and Banks Subgroup, DTC analyzed ID system activity. Based on that analysis and other information, the Subgroup formulated a proposal for an enhanced ID system. In November 1990, the proposal was distributed for comment by the Group of Thirty Working Committee. In February 1991, an ID Focus Committee was established to review the November 1990 proposal. The Focus Committee consisted of broker-dealers, banks, and institutional users of the ID system affiliated with the Securities Operations Division of the Securities Industry Association, the Bank Depository User Group, the New York Clearing House Association, the Investment Company Institute, and the Investment Counsel Association of America. The Focus Committee endorsed the Subgroup's proposal in May 1991. Subsequent study by DTC suggested that participants and other ID users would benefit from an even further enhanced ID system.

In January 1992, DTC published a memorandum entitled "An Interactive Option for the Institutional Delivery System." That memorandum proposed a new ID system with interactive options which will also unify the existing ID and International ID systems. In May 1992, a second ID Focus Committee was established to determine the specifications of the new ID system. The second ID Focus Committee consisted of representatives of the same user community as the first Focus Committee as well as a representative of the Industry Standardization for Institutional Trade Communications Group. The second ID Focus Committee completed its review of the system specifications in October 1992. The proposed rule change reflects the deliberations of the second ID Focus Committee as well as information obtained by DTC subsequently from various ID users.

Written comments from DTC Participants or others have not been received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

[2] For each principle new feature of the interactive ID system, DTC has agreed to submit a Section 19(b)(2) rule filing setting forth the finalized rules, procedures, etc. Each such rule filing will be submitted for Commission approval prior to implementation of the subject principle new feature.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–93–07 and should be submitted November 3, 1993.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–25090 Filed 10–12–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33001; File No. SR–PHLX–93–06]

Self-Regulatory Organizations; Filing of Proposed Rule Change and Amendment No. 1 by the Philadelphia Exchange, Inc., Relating to the Listing of $25 Strike Price Intervals for Options on the Over-the-Counter Index and the Value Line Index

October 1, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 11, 1993, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Currently, the PHLX lists options on the National Over-the-Counter Index ("XOC") and the Value Line Index ("VLE," and, with the XOC, the "Indexes") at strike price intervals of $5.00 surrounding the current value of the Indexes.[2] The PHLX proposes to amend its rules by adding Commentary .02 to PHLX Rule 1101A, "Terms of Option Contracts," which will allow the Exchange to list strike prices in the far-term series (nine months to expiration) of the Indexes at $25.00 intervals unless there is demonstrated customer interest in $5.00 strike price intervals. For the purposes of Commentary .02, the PHLX defines "Customer interest" to include "institutional (firm), corporate or customer interest expressed directly to the Exchange or through the customer's floor brokerage unit, but not interest expressed by a ROT with respect to trading for the ROT's own account."[3] Under the proposal, the PHLX will list strike prices in the far-term series of the XOC and the VLE at intervals of $25.00 until there are less than six months to expiration, when the Exchange will list the intervening strike prices at $5.00 intervals.

The proposed rule change is available at the Office of the Secretary, PHLX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Currently, the PHLX lists options on the XOC and the VLE at strike price intervals of $5.00 surrounding the current value of the Indexes. The PHLX proposes to amend its rules to allow the Exchange to list strike prices in the far-term series of the XOC and the VLE at intervals of $25.00. Specifically, the Exchange proposes to add Commentary .02 to PHLX Rule 1101A, which will state that exercise prices for index options shall be $5.00, except that the exercise prices for the far-term series of XOC and VLE options shall be $25.00 unless there is demonstrated customer interest[4] in $5.00 intervals. The PHLX states that its definition of "customer interest" is designed to ensure that only legitimate customer requests lead to the listing of additional $5.00 strike prices in the far-term series of the Indexes.[5] The PHLX states, in addition, that the proposal is intended to reduce the number of strikes listed in inactively traded series, and that the Exchange's proposal to list additional strikes in far-term series only in response to bona fide customer requests is designed to help the Exchange to achieve that purpose and is consistent with the rules of other options exchanges, including American Stock Exchange, Inc. Rule 903C(b), Commentary .03.[6]

Quarterly, the PHLX lists a far-term series for XOC and VLE options to trade for nine months. Under the proposed rule change, the far-term series of XOC and VLE options will be listed with $25.00 strike price intervals until there are less than six months remaining until expiration, when the intervening strike prices will be listed at $5.00 intervals.

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[9] 17 CFR 200.30–3(a)(12) (1992).

[1] The PHLX amended its proposal to add new Commentary .02 to Exchange Rule 1101A, which provides, in part, that exercise prices in the far-term series of options on the National Over-the-Counter Index ("XOC") and on the Value Line Index ("VLE") shall be $25.00, unless demonstrated customer interest exists at $5.00 intervals. For the purposes of proposed Commentary the PHLX defines "demonstrated customer interest" to include "institutional (firm), corporate or customer interest expressed directly to the Exchange or through the customer's floor brokerage unit, but not interest expressed by a Registered Options Trader ("ROT") with respect to trading for the ROT's own account." See Letter from Gerald D. O'Connell, Vice President, Market Surveillance, PHLX, to Yvonne Fraticelli, Attorney, Options Branch, Division of Market Regulation ("Division"), Commission, dated April 15, 1993 ("Amendment No. 1"), and Telephone Conversation between Edith Hallahan, Attorney, Market Surveillance, PHLX, and Yvonne Fraticelli, Staff Attorney, Options Branch, Division, Commission, on August 19, 1993 (confirming that the proposed Commentary will be numbered .02 rather than .01). In addition, the PHLX indicated that the Exchange's Market Surveillance Department will issue a memorandum to the trading floor three weeks prior to implementing the proposal. See Letter from Gerald D. O'Connell, Vice President, Market Surveillance, PHLX, to Richard Zack, Branch Chief, Options Regulation, Division, Commission, dated September 29, 1993 ("September 29 Letter").

[2] See Securities Exchange Act Release Nos. 21576 (January 18, 1985), 50 FR 3445, and 22044 (May 17, 1985), 50 FR 21532 (notice and order approving XOC options); and 21392 (October 10, 1984), 49 FR 40987, and 21513 (November 21, 1984), 49 FR 46857 (notice and order approving VLE options).

[3] See Amendment No. 1, *supra* note 1.

[4] See Amendment No. 1, supra note 1, for the PHLX's definition of "customer interest."

[5] See Amendment No. 1, supra note 1.

[6] See September 29 Letter, supra note 1.

For example, after the March expiration of XOC and VLE options, the PHLX would list the December series for both options at $25.00 strike price intervals. In addition, the Exchange proposes to list additional strike prices in the far-term series of XOC and VLE options in response to a customer request at any time.

In response to member requests, the Exchange reviewed trading date and found that limited volume occurs in the far-term series of the Indexes.[7] The Exchange notes that with the value of the Indexes ranging from $300 to $600, a $25.00 interval will still preserve key trading strategies because $25.00 often represents a 2½ point movement in the Indexes, which is similar to a stock trading at $25.00 or less whose option is traded at 2½ point strike price intervals.

In addition, the Exchange believes that the $25.00 strike price intervals should alleviate the burden of excessive strike prices in inactive series. For example, after the December 1992 expiration, nine strike prices were listed in the September series of both Indexes.[8] The PHLX notes that all of these strike prices must be displayed on screens on the trading floor, disseminated to outside vendors and monitored by the Exchange's specialists. The Exchange states that the bids and offers are often substantially similar for many of the far-term strike prices and series because the volatility levels do not differ significantly. The Exchange believes that the proliferation of strike prices in far-term series does not provide significant market opportunities that would be lost if fewer strike prices were listed.

In addition, the PHLX notes that the elimination of excessive strike prices should help to reduce instances of wrap-around.[9] The PHLX states that wrap-arounds and the use of new symbols create an operational burden for the Exchange and its member firms and may result in confusion to investors seeking to ascertain options markets from display screens.

The PHLX believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and in particular with section 6(b)(5). Specifically, the PHLX believes that the proposal to list strike prices at $25.00 intervals in the far-term series of the Indexes should alleviate the burdens of excessive strike prices, which, in turn, should promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by November 3, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-25025 Filed 10-12-93; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-33012; File No. SR-Phlx-93-15]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange Relating to the Handling of Registered Options Traders' Orders

October 4, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 5, 1993, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx, pursuant to Rule 19b-4 of the Act, proposes to amend Floor Procedure Advice ("Advice") C-3, Handling Registered Options Traders' Orders. Specifically, the Exchange proposes to retitle Advice C-3 "Handling Orders of Phlx ROTs and Other Registered Options Market Makers," and apply the restrictions of this advice to non-Phlx registered

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[7] For example, during the months of January through July 1992, trading volume in the far-term series (six-month and nine-month) of both the XOC and VLE generally constituted less than 5%, and often only 1%, of the total volume in each option.

[8] Specifically, after the December 1992 expiration, the Exchange began trading the September 1993 series of options, including XOC September 500, 505, 510, 520, 525, 530, 535, and 540 calls and puts as well as VLE September 350, 355, 360, 365, 370, 375, 380, 385, and 390 calls and puts. Under the proposal, only three additional September VLE series and three additional XOC series would be listed. The Exchange notes that due to a "wrap-around situation" (which occurs when all 26 characters indicating the strike price of an options have been used and additional strike prices require listing the option with a different root symbol) in the September XOC series, strike prices of 520 and higher will be traded under the root symbol XOW, rather than XOC.

[9] See note 7, supra, for a definition and example of a "wrap-around," where XOC March 420 calls (XOC CD) use the symbol CD, with the D used to denote 420, such that the September 520 calls (XOC ID) would have used the same symbol, D, to mean 520. Thus, the root symbol was changed from XOC to XOW and the September 520 calls listed with the symbol XOW ID, with the D denoting the 520 strike price.

[10] 17 CFR 200.30-3(a)(12) (1992).

options traders. In addition, the Phlx proposes to add paragraph (b) to this advice to require that such orders be marked as "N" orders and represented as "BD" orders in the trading crowd. The text of the proposed rule change is available at the Office of the Secretary, the Phlx, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The Phlx proposes to amend Advice C–3 to extend its restrictions to non-Phlx option market makers. Accordingly, the Phlx proposes to retitle Advice C–3 as follows: Handling Orders of Phlx ROTs and Other Registered Options Market Makers. In addition, the restrictions contained in paragraph (d) (formerly paragraph (c)) would now apply to options market makers from other exchanges such that the use of floor broker discretion [1] with respect to the orders of such market makers would be prohibited.

In addition, paragraph (b) would be added to this advice to require floor brokers to ascertain which orders are for the accounts of non-Phlx market makers. The purpose of this new provision is to establish an accurate audit trail of such orders by requiring that order tickets be marked with an "N." This paragraph would also reinforce the requirement that a Phlx floor broker when in possession of an "N" order must represent to the trading crowd that the order is a "BD" order, as orders of market makers qualify by definition as "BD" orders. The identification of such orders is consistent with the requirements of other exchanges and will add uniformity among option exchanges in this regard.[2]

In order to fulfill this obligation, the floor broker or the floor unit of the member firm with which the floor broker is associated would be required to make reasonable inquiry of the account status of orders for market makers to identify orders for the accounts of non-Phlx market makers. The purpose of this inquiry is to ensure that a complete audit trail can be captured. Currently, paragraph (a) requires floor brokers to announce to the trading crowd whether an order is for a Phlx market maker and whether such order would establish or close out an option position (opening or closing).

The Exchange believes that establishing a marking requirement for "N" orders and applying certain restrictions respecting discretionary orders to non-Phlx market makers is consistent with section 6 of the Act, in general, and with section 6(b)(5), in particular, in that it is designed to promote just and equitable principles of trade by assuring compliance with certain Exchange trading rules (*i.e.*, Ten-Up Rule) and protect investors and the public interest by improving surveillance of market maker options activity from other exchanges.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–93–15 and should be submitted by November 3, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–25026 Filed 10–12–93; 8:45 am]

BILLING CODE 8010–01–M

[1] See Phlx Rule 1065.

[2] See e.g., CBOE Rule 6.51, Interpretation .02.

[3] 17 CFR 200.30–3(a)(12) (1993).

[Release No. IC–19765; 812–8436]

SwissKey Funds, et al.; Notice of Application

October 6, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "Act").

Applicants: SwissKey Funds (the "Trust") (including all present and future series thereof); Short-Term World Income Portfolio, World Growth Portfolio, U.S. Dollar Cash Reserves Portfolio, and any future Hub Fund (as defined below) in which a series of the Trust invests; and any closed-end investment companies organized in the future for which the Adviser (as defined below) serves as investment adviser or which invest all of their investable assets in a Hub Fund for which the Adviser serves as investment adviser.

Relevant Act Sections: Order requested under section 6(c) exempting applicants from sections 13(a)(2), 18(a), 18(f)(1), 22(f), 22(g), and 23(a), and under rule 17d–1(b) to permit certain joint transactions otherwise prohibited by rule 17d–1(a).

Summary of Application: Applicants seek an order that would permit the applicants to implement a deferred

compensation plan for their trustees who are not "interested persons" within the meaning of section 2(a)(19) of the Act. The plan would establish an account on behalf of each participating trustee, who could elect to have his or her account either (i) valued by reference to an assumed investment of deferred fees in the applicant for which he or she serves as trustee; or (ii) credited with interest based on the 90-day U.S. Treasury bill rate.

Filing Date: The application was filed on June 10, 1993, and amended and restated on August 30, 1993, and September 27, 1993.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 1, 1993 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 6 St. James Avenue, Boston, Massachusetts 02116.

FOR FURTHER INFORMATION CONTACT: Barry A. Mendelson, Senior Attorney, at (202) 504–2284, or C. David Messman, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations: 1. The Trust is an open-end management investment company organized as a Massachusetts business trust. It currently has three series: SBC Short-Term World Income Fund, SBC World Growth Fund, and SBC U.S. Dollar Cash Reserves (the "Series"). Pursuant to a "Hub and Spoke" structure operated under a contract with Signature Financial Group, Inc., each Series invests all of its investable assets in a corresponding open-end management investment company (each a "Hub Fund") that has the same investment objective as the Series. Currently there are three Hub Funds: Short-Term World Income Portfolio, World Growth Portfolio, and U.S. Dollar Cash Reserves Portfolio. The existing Hub Funds are, and it is contemplated that future Hub Funds will be, New York trusts. While none of the existing applicants is a closed-end investment company, closed-end funds organized in the future that are advised by the Adviser (as defined below), or that invest all of their investable assets in a Hub Fund advised by the Adviser, may avail themselves of the relief requested herein.

2. The investment adviser to each Hub Fund (the "Adviser") is SBC Portfolio Management International, Inc. Because the Series invest all of their investable assets in the Hub Funds, the Series have no investment adviser.

3. The Trust and each of the Hub Funds has a Board of Trustees, a majority of whose members are not "interested persons," within the meaning of section 2(a)(19) of the Act, of such applicant ("independent trustees"). Each independent trustee is paid an annual retaining and meeting fees for each Board or committee meeting attended.

4. Each applicant proposes to adopt a deferred compensation plan ("Plan") that would permit independent trustees to elect to defer receipt of trustees fees. The Plan will enable independent trustees to defer payment of income taxes and save for retirement or other reasons. Applicants submit that the Plan will enhance their ability to recruit and retain highly qualified independent trustees.

5. Each Applicant will establish a book account for each of its independent trustees participating in the Plan. The deferred fees earned by a trustee will be credited to his or her account and will earn a rate of return determined in accordance with one of two methods. Under the "Phantom Share Account" method, the trustee's account will be valued as if the deferred fees had been invested in shares of the applicant. Under the "Short-Term Earnings Account" method, all amounts in the trustee's account will earn interest at the end of each month at the "average rate" on 90-day U.S. Treasury bills. The "average rate" will be calculated by adding the rate on the last day of the current month and the rate on the last day of the preceding month, and dividing the sum by two.

6. A trustee may select either valuation method described above and may thereafter change the method only as of the beginning of each calendar quarter. A trustee may elect to receive payments under the Plan beginning either on the first day of the calendar year following the end of his or her service as trustee, or on a specific date chosen by the trustee. He or she may elect to receive payment in a lump sum or in annual installments. A trustee's right to receive payments will be nontransferable, except that payments will be made to a designated beneficiary after the trustee's death. Amounts deferred under the Plan may become payable to a trustee, in the discretion of the committee established to administer the Plan, in the event of the trustee's total disability or to alleviate financial hardship.

7. A trustee's rights and benefits under the Plan will not be represented by any form of certificate or other instrument. Applicant's obligations to make payments of amounts accrued under the Plan will be general unsecured obligations, payable solely from their general assets and property. No separate funding vehicle will be established.

8. The amounts paid to the independent trustees are expected to be insignificant in comparison to the total net assets of each applicant. Accordingly, deferral of trustee fees in accordance with the Plan is expected to have a negligible effect on any applicant's assets, liabilities, net assets, and net income. Furthermore, the Plan will not obligate an applicant to retain any particular trustee or pay any particular level of fees to a trustee.

Applicants' Legal Conclusions: 1. In connection with the adoption and implementation of the above-described Plan, applicants seek an order (i) pursuant to section 6(c) of the Act that would exempt them from sections 13(a)(2), 18(a), 18(f)(1), 22(f), 22(g), and 23(a) of the Act; and (ii) pursuant to rule 17d-1(b) that would permit certain transactions otherwise prohibited by rule 17d-1(a). Section 6(c) authorizes the SEC to exempt any person, security, or transaction from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Each applicant believes that the Plan is in its best interest and the best interest of its shareholders, and meets the appropriate statutory standards.

2. Sections 18(a) and 18(f)(1) prohibit, with certain exceptions not relevant here, registered closed-end and open-end investment companies, respectively, from issuing senior securities. Section 13(a)(2) requires that an open-end company obtain shareholder authorization before issuing any senior security not contemplated by the recitals of policy in its registration statement. Applicants contend that the

Plan possesses none of the characteristics of senior securities that led Congress to enact sections 18(a), 18(f)(1), and 13(a)(2). There will be no "borrowing" under the Plan in the sense that concerned Congress, and all liabilities created under the Plan will be offset by essentially equal assets of the applicants that would not otherwise exist if the trustees' fees were paid on a current basis. The Plan will not induce speculative investments by applicants or provide opportunity for manipulative allocation of applicants' expenses and profits; control of the applicants will not be affected; and the Plan will not confuse investors, make it difficult for them to value applicants' securities, or convey a false impression of safety.

3. Section 22(f) prohibits undisclosed restrictions on transferability or negotiability of redeemable securities issued by a registered open-end investment company. The restriction on transferability of a trustee's benefits would be clearly set forth in the Plan, would be included primarily to benefit the trustees, and would not adversely affect the interest of the trustees or of fund shareholders.

4. Sections 22(g) and 23(a) prohibit open-end and closed-end investment companies, respectively, from issuing any of their securities for services or for property other than cash or securities. These provisions prevent the dilution of equity and voting power that can result when securities are issued for consideration that is not readily valued. According to applicants, interests in the Plan should be viewed as issued not in return for services, but in return for applicants' not being required to pay such fees on a current basis. In any event, applicants assert that the Plan will not dilute the equity or voting power of any of applicants' shareholders.

5. Section 17(d) and rule 17d-1, taken together, prohibit an affiliated person of a registered investment company, acting as principal, from participating in, or effecting any transaction in connection with, any joint enterprise or other joint arrangement or profit-sharing plan in which such registered company is a participant, without prior receipt of a Commission order. Under rule 17d-1(b), the Commission will consider whether the participation of such registered company in such joint enterprise or arrangement on the basis proposed is consistent with the provisions, policies, and purposes of the Act, and the extent to which such participation is on a basis different from or less advantageous than that of other participants. Under either of the Plan's two valuation methods, trustees will not receive a benefit, directly or indirectly, that would otherwise inure to an applicant or its shareholders. Deferral of trustees' fees in accordance with the Plan will simply maintain the parties in the same position as if the fees were paid on a current basis. In addition, the total amount owed to trustees on a deferred basis is likely to be so small in relation to an applicant's assets as to be incapable of having a material effect upon that applicant's performance, regardless of the method of valuation.

Applicants' Condition: Applicants agree that any order granting the requested relief will be subject to the following condition:

The balance sheet for each of the applicants either will show liability and asset entreis for deferred fees or will include a footnote explaining that the applicant has offset its liability for the deferred fees with the assets that determine the amount of the applicant's liability.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–25089 Filed 10–12–93; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 19767; File No. 811–3580]

Trinity Assets Trust; Application for Deregistration

October 6, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

Applicant: Trinity Assets Trust.

Relevant Act Section: Section 8(f).

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application on Form N–8F was filed on August 5, 1993, and amended on October 1, 1993.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 1, 1993, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate or service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 125 West 55th Street, New York, New York 10022.

FOR FURTHER INFORMATION CONTACT: James J. Dwyer, Staff Attorney, at (202) 504–2920, or C. David Messman, Branch Chief, at (202) 272–3018 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations: 1. Applicant is an open-end diversified management investment company organized as a Massachusetts business trust. On October 8, 1982, applicant filed a notification of registration under section 8(a) of the Act, and a registration statement under the Securities Act of 1933 and section 8(b) of the Act. The registration statement became effective on January 10, 1983, and applicant's initial public offering commenced on that date.

2. At a meeting held on July 17, 1992, the applicant's board of trustees adopted an agreement and plan of reorganization (the "Agreement") between applicant and Mutual Fund Group ("MFG") to provide for the transfer of all of the assets and liabilities of applicant's portfolios to MFG (File No. 811–5151) in return for equivalent interests in shares of MFG. Applicant and MFG are "affiliated persons" of each other, as that term is defined in the Act, by virtue of having a common investment adviser. Applicant relied on rule 17a–8 under the Act in order to exempt the transaction from the affiliated transaction prohibition of section 17(a) of the Act. To avail itself of the rule 17a–8 exemption, applicant's board of directors determined that the merger was in the best interest of applicant and that the interests of existing shareholders would not be diluted as a result of the merger.

3. Proxy material was distributed to shareholders and filed with the Commission. The definitive proxy, dated October 15, 1992, was filed on October 20, 1992. At a special meeting held on December 4, 1992, applicant's shareholders approved the Agreement.

4. As of December 31, 1992, applicant had 76,117,755 shares outstanding of its Trinity Government Fund with a net asset value of $1 per share, 336,361,904

shares outstanding of its Trinity Money Market Fund with a net asset value of $1 per share, 8,707,868 shares outstanding of its Trinity Equity Fund with a net asset value of $12.96 per share, 4,264,504 shares outstanding of its Trinity Bond Fund with a net asset value of $10.70 per share, and 7,474,258 shares outstanding of its Trinity Short-Term Bond Fund with a net asset value of $10.18 per share.

5. On December 31, 1992, pursuant to the Agreement, applicant transferred all of the assets of its portfolios to MFG as follows: shares of applicant's Trinity Government Fund were exchanged for shares of MFG's Vista U.S. Government Money Market Fund, shares of applicant's Trinity Money Market Fund were exchanged for shares of MFG's Vista U.S. Global Money Market Fund, shares of applicant's Trinity Equity Fund were exchanged for shares of MFG's Vista Equity Fund, shares of applicant's Trinity Bond Fund were exchanged for shares of MFG's Vista Bond Fund, and shares of applicant's Trinity Short-Term Bond Fund were exchanged for shares of MFG's Vista Short-Term Bond Fund. Applicant then distributed the MFG shares it received *pro rata* to its shareholders, in a complete liquidation of applicant.

6. No brokerage commissions were paid in connection with the transfer of applicant's assets and liabilities. The total expenses incurred in connection with the transfer of assets and liabilities and liquidation of applicant, consisting of legal and accounting fees, and printing and mailing costs for the proxy solicitation, were $456,350.37. These expenses were assumed and paid by applicant until the date of the exchange, and thereafter by MFG, in the amounts of $266,658.53 and $189,691.84, respectively.

7. At the time of the application, applicant had no shareholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

8. Applicant intends to file a Certificate of Dissolution with the Commonwealth of Massachusetts.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–25088 Filed 10–12–93; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted on or before November 12, 1993. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

Agency Clearance Officer: Cleo Verbillis, Small Business Administration, 409 3RD Street, SW., 5th Floor, Washington, DC 20416, Telephone: (202) 205–6629

OMB Reviewer: Gary Waxman, Officer of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503

Title: 8(a) Annual Update as prescribed

Form No.: SBA Form 1450

Description of Respondents: 8(a) program participants

Frequency: Annually

Annual Responses: 5,000

Annual Burden: 13,000

Dated: September 29, 1993.

Cleo Verbillis,

Chief, Administrative Information Branch.

[FR Doc. 93–25064 Filed 10–12–93; 8:45 am]

BILLING CODE 8025–01–M

[License No. 06/06–0289]

FCA Investment Co.; License Surrender

Notice is hereby given that FCA Investment Company, 5847 San Felipe, Houston, Texas 77057, has surrendered its license to operate as a small business investment company under section 301(c) of the Small Business Investment Act of 1958, as amended (the Act). FCA Investment Company was licensed by the Small Business Administration on August 19, 1985.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on August 12, 1993 and accordingly, all rights, privileges and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: September 28, 1993.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 93–25063 Filed 10–12–93; 8:45 am]

BILLING CODE 8025–01–M

Buffalo District Advisory Council; Public Meeting

The U.S. Small Business Administration Buffalo District Advisory Council will hold a public meeting at 10 a.m. on Wednesday, November 3, 1993, at the Fleet Bank, 10 Fountain Plaza, 9th Floor Board Room, Buffalo, New York, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Franklin J. Sciortino, District Director, U.S. Small Business Administration, room 1311, 111 West Huron Street, Buffalo, New York 14202, telephone 716/846–4301.

Dated: October 5, 1993.

Dorothy A. Overal,

Acting Assistant Administrator, Office of Advisory Councils.

[FR Doc. 93–25065 Filed 10–12–93; 8:45 am]

BILLING CODE 8025–01–M

Dallas/Fort Worth District Advisory Council; Public Meeting

The U.S. Small Business Administration Dallas/Fort Worth District Advisory Council will hold a public meeting at 10 a.m. on Friday, November 5, 1993, at the SBA District Office, 4300 Amon Carter Boulevard, suite 114, Forth Worth, Texas, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. James S. Reed, District Director, U.S. Small Business Administration, 4300 Amon Carter Boulevard, suite 114, Fort Worth, Texas, telephone 817/885–6500.

Dated: October 5, 1993.

Dorothy A. Overal,

Acting Assistant Administrator, Office of Advisory Councils.

[FR Doc. 93–25066 Filed 10–12–93; 8:45 am]

BILLING CODE 8025–01–M

Casper District Advisory Council; Public Meeting

The U.S. Small Business Administration Buffalo District Advisory Council will hold a public meeting at 9 a.m. on Friday, November 5, 1993, at the Chamber of Commerce, 314 South Gillette Avenue, Gillette, Wyoming, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. James Gallogly, District Director, U.S. Small Business Administration, Federal Building, room 4001, 100 East B Street, Casper, Wyoming 82602–2839, telephone—307/261–5761.

Dated: October 5, 1993.

Dorothy A. Overal,

Acting Assistant Administrator, Office of Advisory Councils.

[FR Doc. 93–25067 Filed 10–12–93; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice 1887]

Office of Defense Trade Controls; Munitions Exports Involving Eliyahu Cohen, a/k/a Eli Cohen; A.V.S. Armoured Vehicles' Systems, Inc., a/k/a A.V.S., Inc.; A.V.S. Armoured Vehicles' Spares, Ltd., a/k/a A.V.S., Ltd.

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that all existing licenses and other approvals, granted pursuant to section 38 of the Arms Export Control Act, that authorize the export or transfer by, for or to, Eliyahu Cohen, a/k/a Eli Cohen, A.V.S. Armoured Vehicles' Systems, Inc., a/k/a A.V.S., Inc., and A.V.S. Armoured Vehicles' Spares, Ltd., a/k/a/ A.V.S. Ltd., and any of their subsidiaries, associated companies or successor entities, of defense articles or defense services are suspended. In addition, it shall be the policy of the Department of State to deny all export license applications and other requests for approval involving, directly or indirectly, the above cited entities. This action also precludes the use in connection with such entities of any exemptions from license or other approval included in the International Traffic in Arms Regulations (22 CFR parts 120–130) (ITAR).

EFFECTIVE DATE: September 26, 1993.

FOR FURTHER INFORMATION CONTACT: Clyde G. Bryant, Jr., Chief, Compliance and Enforcement Branch, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (703–875–6650).

SUPPLEMENTARY INFORMATION: A seven (7) count indictment was returned on March 8, 1993, in the U.S. District Court, Eastern District of New York, charging Eliyahu Cohen (principal of A.V.S., Inc., of New York and Netayana, Israel) with conspiracy (18 U.S.C. 371) to violate and violating section 38 of the Arms Export Control Act (22 U.S.C. 2778) (AECA) and its implementing regulations, the ITAR. The indictment charges that the defendant conspired to illegally export United States-origin components for the M113 Armored Personnel Carrier to Iran, without having first obtained the U.S. Department of State requisite authorization. Also, the defendant was charged with causing a false statement to be made in applications to the Department of State for licenses to export those defense articles to Israel and Portugal. *United States* v. *Eliyahu Cohen*, U.S. District Court, Eastern District of New York, Criminal Docket No. CR–93–225).

On September 26, 1993, the Department of State suspended all licenses and other written approvals (including all activities under manufacturing license and technical assistance agreements) concerning exports of defense articles and provision of defense services by, for or to Eliyahu Cohen, a/k/a Eli Cohen, Netanya, Israel; A.V.S. Armoured Vehicles' Systems, Inc., a/k/a A.V.S., Inc., New York; and A.V.S. Armoured Vehicles' Spares, Ltd., a/k/a/ A.V.S. Ltd., Netanya, Israel; and any of their subsidiaries, associated companies or successor entities. Furthermore, the Department of State precluded the use, in connection with the named persons, of any exemptions from licenses or other approvals included in the ITAR.

This action has been taken pursuant to sections 38 and 42 of the AECA (22 U.S.C. 2778 & 2791) and 22 CFR section 126.7(a)(2) and 126.7(a)(3) of the ITAR. It will remain in force until rescinded.

Exceptions may be made to this policy on a case-by-case basis at the discretion of the Office of Defense Trade Controls. However, such an exception would be granted only after a full review of all circumstances, paying particular attention to the following factors: whether an exception is warranted by overriding U.S. foreign policy or national security interests; whether an exception would further law enforcement concerns; and, whether other compelling circumstances exist which are consistent with the foreign policy or national security interests of the United States, and which do not conflict with law enforcement concerns.

A person named in an indictment for an AECA-related violation may submit a written request for reconsideration of the suspension/denial decision to the Office of Defense Trade Controls. Such request for reconsideration should be supported by evidence of remedial measures taken to prevent future violations of the AECA and/or the ITAR and other pertinent documented information showing that the person would not be a risk for future violations of the AECA and/or the ITAR. The Office of Defense Trade Controls will evaluate the submission in consultation with, *inter alia*, the Departments of Treasury, Justice, and other necessary agencies. After a decision on the request for reconsideration has been rendered by the Assistant Secretary for Political-Military Affairs, the requester will be notified whether the exception has been granted.

Dated: September 26, 1993.

Robert L. Gallucci,

Assistant Secretary, Bureau of Political-Military Affairs, Department of State.

[FR Doc. 93–25198 Filed 10–12–93; 8:45 am]

BILLING CODE 4710–25–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[AC No. 120–XX]

Proposed Advisory Circular on Helicopter Simulator Qualification

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of availability of proposed advisory circular (AC) 120–XX and request for comments.

SUMMARY: This notice announces the availability of, and requests comments on, a proposed advisory circular (AC) pertaining to the evaluation and qualification of helicopter simulators to be used in training programs or for airman checking under various parts of the Federal Aviation Regulations (FAR). This notice is necessary to give all interested persons an opportunity to present their views on the proposed AC.

DATES: Comments must be received on or before November 29, 1993.

ADDRESSES: Send all comments on the proposed AC to: Federal Aviation Administration, National Simulator Program Staff, AFS–205, Project Development Section, P.O. Box 20636, Atlanta, GA 30320. comments may be inspected at the above address between 9 a.m. and 4 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Alan D. Sodergren, AFS–205, at the address above, telephone (404) 763–7773.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the draft AC may be obtained by contacting the person named above under "**FOR FURTHER INFORMATION CONTACT.**" Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments as they may desire. Commenters should identify AC 120–XX, Helicopter Simulator Qualification and submit comments, in duplicate, to the address specified above. All communications received on or before the closing date for comments will be considered by the National Simulator Program Staff before issuing the final AC.

Background

The Federal Aviation Administration (FAA) recognizes the expanding capabilities of flight simulators. As technology has progressed, Federal Aviation Regulation (FAR) revisions have been developed to permit the increased use of airplane simulators in approved training programs. To date the FAR's have not addressed the training and checking of flight crewmembers in helicopter simulators which, as a result, has limited their use. This advisory circular (AC) provides information concerning the evaluation and qualification of helicopter simulators to be used in training programs or for airman checking.

Issued in Washington, DC, on June 21, 1993.

David R. Harrington,

Acting Director, Flight Standards Service.

[FR Doc. 93–25052 Filed 10–12–93; 8:45 am]

BILLING CODE 4910–13–M

[Summary Notice No. PE–93–43]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before November 1, 1993.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick M. Haynes, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3939.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on September 29, 1993.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 26958
Petitioner: Mr. Carroll B. Fitzgerald
Sections of the FAR Affected: 14 CFR 121.383(c)
Description of Relief Sought/ Disposition:

To permit the petitioner to fly in part 121 air carrier operations after his 60th birthday.

Dispositions of Petitions

Docket No.: 12656
Petitioner: Department of Defense
Sections of the FAR Affected: 14 CFR 139
Description of Relief Sought/ Disposition:

To extend Exemption No. 2129, as amended, to continue to permit issuance of FAA Airport Operation Certificates (AOC) for airports operated by the Department of Defense that serve air carrier aircraft having a seating capacity of more than 30 passenger seats, without complying with the certification and operating requirements of part 39.

Grant, September 27, 1993, Exemption No. 5750

Docket No.: 26146
Petitioner: Keystone Helicopter Corporation
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition:

To permit the petitioner to operate without a TSO–C112 (Mode S) transponder installed on its aircraft operating under the provisions of part 135.

Grant, September 24, 1993, Exemption No. 5752

Docket No.: 27199
Petitioner: Trans-Alaska Helicopters, Inc.
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition:

To permit the petitioner to operate without a TSO–C112 (Mode S) transponder installed on its aircraft operating under the provisions of part 135.

Grant, September 24, 1993, Exemption No. 5753

Docket No.: 27247
Petitioner: Trans World Express, Inc.
Sections of the FAR Affected: 14 CFR 93.123, 93.125, 93.129, and provisions of 93, subpart K
Description of Relief Sought:

To allow the petitioner to conduct additional Separate Access Landing System (SALS) commuter operations at John F. Kennedy International Airport using short takeoff and landing (STOL) aircraft and special procedures.

Grant, September 21, 1993, Exemption No. 5746

Docket No.: 27382
Petitioner: Horizon Air Industries, Inc.

Sections of the FAR Affected: 14 CFR 121.411 (a)(2), (b)(2), and 121.415 (b) and (c)

Description of Relief Sought:

To allow the petitioner to utilize certain qualified Dornier Aviation North America (DANA) flight and simulator instructors for the purpose of training Horizon Air Industries, Inc. initial cadre of pilots in the Dornier 328 (Do328) type aircraft without meeting all of the applicable training requirements of part 121, subpart N.

Grant, September 23, 1993, Exemption No. 5748

Docket No.: 27392

Petitioner: Arrow Air, Inc.

Sections of the FAR Affected: 14 CFR 121.358

Description of Relief Sought/ Disposition:

To extend the final date for installation of an approved system providing windshear warning and flight guidance until December 31, 1995, or until Arrow has complied with the requirement, whichever is earlier, so as to allow Arrow sufficient time to install the Westinghouse MODAR MR 3000 Weather and Forward Looking Windshear System on its fleet of McDonnell-Douglas DC–8–60 (DC–8) and Boeing 727 (B–727) 100 and 200 series aircraft.

Denial, September 16, 1993, Exemption No. 5741

Docket No.: 27439

Petitioner: Skywest Airlines Inc.

Sections of the FAR Affected: 14 CFR 121.411 (a)(1), (a)(2), (a)(3), and (a)(6) and 121.413 (b) and (c)

Description of Relief Sought:

To allow the South West Airlines (SWA) to utilize certain qualified Canadair pilot flight and simulator instructors for the purpose of training SWA's initial cadre of pilots in the Canadair CL–600–2B19 Regional Jet (RJ) aircraft in the United States and Canada without holding appropriate U.S. certificates and ratings and without meeting all of the applicable training requirements of subpart N of part 121 of the FAR.

Grant, September 22, 1993, Exemption No. 5747

[FR Doc. 93–25051 Filed 10–12–93; 8:45 am]
BILLING CODE 4910–13–M

National Highway Traffic Safety Administration

[Docket No. 93–73; Notice 1]

Receipt of Petition for Determination That Nonconforming 1992 Mercedes-Benz 500SE Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for determination that nonconforming 1992 Mercedes-Benz 500SE passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a determination that a 1992 Mercedes-Benz 500SE that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily modified to conform to the standards.

DATES: The closing date for comments on the petition is November 12, 1993.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590. (Docket hours are from 9:30 a.m. to 4 p.m.)

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 of the Act, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register**.

G&K Automotive Conversion, Inc. of Santa Ana, California (Registered Importer No. R–90–007) has petitioned NHTSA to determine whether 1992 Mercedes-Benz 500SE (Model ID 140.050) passenger cars are eligible for importation into the United States. The vehicle which G&K believes is substantially similar is the 1992 Mercedes-Benz 400SE. G&K has submitted information indicating that Daimler Benz A.G., the company that manufactured the 1992 Mercedes-Benz 400SE, certified that vehicle as conforming to all applicable Federal motor vehicle safety standards and offered it for sale in the United States.

The petitioner contends that it carefully compared the 500SE to the 400SE, and found the two models to be substantially similar with respect to compliance with most applicable Federal motor vehicle safety standards. The petitioner surmised that Daimler Benz first introduced the 500SE into markets outside the United States where there was "higher salability potential or lesser legislative restrictions such as the strict emission control requirements in the United States, or a combination of both."

G&K submitted information with its petition intended to demonstrate that the 1992 model 500SE, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as the 1992 model 400SE that was offered for sale in the United States, or is capable of being readily modified to conform to those standards.

Specifically, the petitioner claims that the 1992 model 500 SE is identical to the certified 1992 model 400SE with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence * * **, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124

Accelerator Control Systems, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 203 *Impact Protection for the Driver From the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, and 219 *Windshield Zone Intrusion*.

Petitioner also contends that the vehicle is capable of being readily modified to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays*: (a) Substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment*: (a) Installation of U.S.-model headlamp assemblies which incorporate sealed beam headlamps and front sidemarkers; (b) installation of U.S.-model taillamp assemblies which incorporate rear sidemarkers; (c) installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims*: Installation of a tire information placard.

Standard No. 111 *Rearview Mirrors*: Replacement of the passenger side rear view mirror, which is convex, but lacks the required warning statement.

Standard No. 114 *Theft Protection*: Installation of a buzzer microswitch in the steering lock assembly, and a warning buzzer.

Standard No. 115 *Vehicle Identification Number*: Installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 118 *Power Window Systems*: Rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 206 *Door Locks and Door Retention Components*: Replacement of the rear door locks with U.S.-model parts.

Standard No. 208 *Occupant Crash Protection*: (a) Installation of a seat belt warning buzzer; (b) replacement of the existing Type 1 rear seat belts with U.S.-model belts equipped with retractors. The petitioner states that the passive restraints that are used on the 1992 model 500SE are airbags that comply with the Standard.

Standard No. 214 *Side Door Strength*: Installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity*: Installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

Standard No. 302 *Flammability of Interior Materials*: Treatment of the interior materials with a fire retardant spray.

Additionally, the petitioner states that the bumpers on the 1992 model 500SE must be reinforced to comply with the Bumper Standard found in 49 CFR part 581.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(I) and (C)(ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: October 5, 1993.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 93–25033 Filed 10–12–93; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

October 5, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.
Form Number: IRS Form 8840.
Type of Review: New collection.
Title: Statement of Closer Connection Exception (Under Section 7701(b)).
Description: Form 8840 is used by an alien individual, who otherwise meets the substantial presence test, to explain the basis of the individual's claim that he or she is able to satisfy the closer connection exception described in Regs. sec. 301.7701(b)–2.
Respondents: Individuals or households.
Estimated Number of Respondents/Recordkeepers: 350,000.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—13 minutes.
Learning about the law or the form—7 minutes.
Preparing the form—19 minutes.
Copying, assembling, and sending the form to the IRS—35 minutes.
Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 777,000 hours.

OMB Number: New.
Form Number: IRS Form 8843.
Type of Review: New collection.
Title: Statement of Exempt Individuals (Under section 7701(b)).
Description: Form 8843 is used by an alien individual to explain the basis of the individual's claim that he or she is able to exclude days of presence in the U.S. because the individual is a teacher/trainee or student; professional athlete; or has a medical condition or problem.
Respondents: Individuals or households.
Estimated Number of Respondents/Recordkeepers: 150,000.
Estimated Burden Hours Per Respondent/Recordkeeper:

	Form 8843 pt. I & II	Form 8843 pt. I & III	Form 8843 pt. I & IV	Form 8843 pt. I & V
Recordkeeping	13 min	13 min	13 min	13 min.
Learning about the law or the form	5 min	5 min	5 min	4 min.
Preparing the form	25 min	26 min	31 min	21 min.
Copying, assembling, and sending the form to the IRS	17 min	17 min	17 min	17 min.

Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 154,380 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 93–25094 Filed 10–12–93; 8:45 am]
BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

October 5, 1993.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue N.W., Washington, DC 20220.

Office of Thrift Supervision

OMB Number: 1550–0027.
Form Number: None.
Type of Review: Extension.
Title: Earnings-Based Accounts.
Description: The rule is necessary in order to prevent overreliance on earnings-based accounts as fund raising tools by savings associations, which, in turn, represents a significant risk to the savings association and the Savings Association Insurance Fund.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 72.
Estimated Burden Hours Per Respondent: 25 hours.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 1,800 hours.
Clearance Officer: Colleen Devine (202) 906–6025, Office of Thrift Supervision, 2nd Floor, 1700 G. Street NW., Washington, DC 20552.
OMB Reviewer: Gary Waxman (202) 395–7340, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 93–25095 Filed 10–12–93; 8:45 am]
BILLING CODE 4810–25–P

Public Information Collection Requirements Submitted to OMB for Review

October 6, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0008.
Form Number: IRS Forms W–2, W–2c, W–2AS, W–2GU, W–2VI, W–3, W–3c, W–3cPR, W–3PR, W–3SS.
Type of Review: Revision.
Title: Wage and Tax Statements.
Description: Employers report income and withholding on Form W–2. Forms W–2AS, W–2GU and W–2VI are the U.S. possessions versions of Form W–2. The Form W–3 series is used to transmit Forms W–2's to the Social Security Administration (SSA). Forms W–2c, W–3c and W–3cPR are used to correct previously filed Forms, W–2, W–3 and W–3PR. Individuals use Form W–2 to prepare their income tax returns.
Respondents: Individuals or households, State or local governments, Farms, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations.
Estimated Number of Respondents: 6,493,883.
Estimated Burden Hours Per Respondent:

Form	Response time (minutes)
W–2	32
W–2c	52
W–2AS	22
W–2GU	22
W–2VI	20
W–3	27
W–3c	20
W–3PR	22
W–3cPR	26
W–3SS	22

Frequency of Response: Annually.
Estimated Total Reporting Burden: 1 hour.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 93–25096 Filed 10–12–93; 8:45 am]
BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

October 6, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex,

1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512–0002.

Form Numbers: ATF F 1600.7.

Type of Review: Extension.

Title: ATF Distribution Center Contractor Survey.

Description: Information provided on ATF F 1600.7 is used to evaluate the Bureau's Distribution Center contractor and the services it provides to users to ATF forms and publications.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 21,000.

Estimated Burden Hours Per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 168 hours.

Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 93–25097 Filed 10–12–93; 8:45 am]

BILLING CODE 4810–31–P

Public Information Collection Requirements Submitted to OMB for Review

October 6, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–1231.

Regulation ID Number: IA–38–90 Final Regulations (T.D. 8382).

Type of Review: Extension.

Title: Penalty on Income Tax Return Preparers Who Understate Taxpayer's Liability on a Federal Income Tax Return or a Claim for Refund.

Description: These regulations set forth rules under section 6694 of the Internal Revenue Code regarding the penalty for understatement of a taxpayer's liability on a Federal income tax return or claim for refund. In certain circumstances, the preparer may avoid the penalty by disclosing on a Form 8275 or be advising the taxpayer or another preparer that disclosure is necessary.

Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 100,000.

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 50,000 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 93–25998 Filed 10–12–93; 8:45 am]

BILLING CODE 4830–01–P

Sunshine Act Meetings

Federal Register
Vol. 58, No. 196
Wednesday, October 13, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

U.S. COMMISSION ON CIVIL RIGHTS

DATE AND TIME: October 22, 1993.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street NW., Room 540, Washington, DC 20425.

STATUS: Open to the Public.

October 22, 1993

I. Approval of Agenda
II. Approval of Minutes of September 17, 1993 Meeting
III. Announcements
IV. Followup to Previous Meeting
V. Proposed 1994 Commission Meeting Dates
VI. Appointments for the Maryland, Montana, New York, Utah, Washington, and Wyoming Advisory Committees
VII. Preliminary New York Hearing Plans
VIII. Commissioner Task Force Reports
- Reauthorization
- SAC Member Processes

IX. Staff Director's Report
X. Future Agenda Items

CONTACT PERSON FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications, (202) 376–8312.

Dated: October 8, 1993.

Emma Monroig,

Solicitor.

[FR Doc. 93–25270 Filed 10–8–93; 3:14 pm]

BILLING CODE 6335–01–M

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Amendment to Sunshine Act Meeting

SUMMARY: Pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), the Farm Credit Administration gave notice on September 24, 1993 (58 FR 50085) of the special meeting of the Farm Credit Administration Board (Board) scheduled for September 28, 1993. This notice is to amend the agenda by removing an item from the closed session and adding a portion of another to the closed session of that meeting.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883–4003, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board were open to the public (limited space available), and parts of this meeting were closed to the public. The closed session of the agenda for September 28, 1993, is amended as follows:

[Removed]

Closed Session*

A. New Business

1. Other

a. FY 1995 Budget.

[Added]

Closed Session*

A. New Business

2. Other.

a. Merger of AgriBank FCB and Louisville FCB; Conditions for the Merger, and Retirement of Assistance Preferred Stock for Louisville FCB.

Dated: October 7, 1993.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 93–25154 Filed 10–8–93; 9:14 am]

BILLING CODE 6705–01–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), that the October 14, 1993 regular meeting of the Farm Credit Administration Board (Board) will not be held and that a special meeting of the Board is scheduled for Thursday, November 18, 1993. An agenda for this meeting will be published at a later date.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883–4003, TDD (703) 883–4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

Dated: October 7, 1993.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 93–25155 Filed 10–8–93; 9:15 am]

BILLING CODE 6705–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, October 18, 1993.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: October 8, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–25260 Filed 10–8–93; 3:11 pm]

BILLING CODE 6210–01–P

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of October 11, 18, 25, and November 1, 1993.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of October 11

There are no meetings scheduled for the Week of October 11.

Week of October 18—Tentative

Thursday, October 21

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of October 25—Tentative

Monday, October 25

10:00 a.m.
Briefing on Final Report of Regulatory Review Task Force (Public Meeting) (Contact: Frank Gillespie, 301–504–1275)
2:00 p.m.
Briefing on Investigative Matters (Closed—Ex. 5 and 7)

Tuesday, October 26

10:00 a.m.
Briefing on Severe Accident Research Program (Public Meeting) (Contact: Brian Sheron, 301–492–3500)
2:00 p.m.

*Session closed—Exempt pursuant to 5 U.S.C. 552b(c)(8), (c)(9), and (c)(10).

Briefing on Proposed Standards for Gaseous Diffusion Facilities (Public Meeting)
(Contact: Charles Nilsen, 301–492–3834)

Wednesday, October 27

10:00 a.m.
Briefing on NRC Research Programs on Waste (Public Meeting)
(Contact: Nick Costanzi, 301–492–3760)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Friday, October 29

10:00 a.m.
Briefing on Status of Thermo-Lag (Public Meeting)
(Contact: Ashok Thadani, 301–504–2884)

Week of November 1—Tentative

Wednesday, November 3

11:00 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

Note: The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 504–1661.

Dated: October 7, 1993.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 93–25203 Filed 10–8–93 11:46 am]

BILLING CODE 7590–01–M

Corrections

Federal Register
Vol. 58, No. 196
Wednesday, October 13, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 931, 932, and 933

[No. 93-59]

Members of the Federal Home Loan Banks

Correction

In rule document 93-18981 beginning on page 43522 in the issue of Tuesday, August 17, 1993, make the following corrections:

1. On page 43523, in the third column, under the heading "1. Section 4(a)(1) Membership Criteria," in the first line of paragraph (C) "Makes" should read "makes" and "Home" should read "home".

2. On page 43524, in the third column, in the first full paragraph, in the ninth line, "merge" should read "merges".

3. On page 43526, in the 3d column, in the 2d full paragraph, in the 11th line, "proposes" should read "purposes".

4. On page 43527, in the 2d column, in paragraph b., in the 12th line, "Section 933.1(1)" should read "Section 933.1(l)".

5. On page 43528, in the second column, in the second full paragraph, in the first line, "§ 933.1(1)" should read "§ 933.1(l)" and in the fourth full paragraph, in the third line "§ 933.1(1)" should read "§ 933.1(l)".

6. On page 43533, in the second column, in the third full paragraph, "FHLBank" should read "FHLBanks" and "FLHBank" should read "FHLBank".

7. On page 43535, in the first column, in the last paragraph, in the fourth line from the bottom, "an" should read "a".

8. On the same page, in the 2d column, in the 17th line, "an" should read "a".

9. On the same page, in the same column, in the third full paragraph, in the ninth line, insert "of" after the word "date".

10. On page 43537, in the third column, in the last paragraph, in the third line, add a comma after "consolidation".

11. On page 43539, in the second column, in the fourth full paragraph, in the first line, "§ 993.14" should read "§ 933.14".

12. On the same page, in the third column, under the heading "1. Redemption When Advances Remain Outstanding," in the first paragraph, in the first line "§ 993.16" should read "§ 933.16".

§ 933.1 [Corrected]

13. On page 43543, in § 933.1(n), in the first column, in the last line "and" should read "or".

§ 933.9 [Corrected]

14. On page 43545, in § 933.9(b)(1), in the first column, in the fifth line, "of" should read "to".

§ 933.16 [Corrected]

15. On page 43547, in § 933.16(b), in the first column, after "canceled" add a period.

§ 933.18 [Corrected]

16. On the same page, in § 933.18(c), in the second column, in the first line, "of" should read "or".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 93-72]

Extension of Saybolt, Inc., Customs Gauger Approval and Laboratory Accreditations to the Site Located in Wilmington, North Carolina

Correction

In notice document 93-22671 appearing on page 48539 in the issue of Thursday, September 16, 1993, in the second column, the docket number should read as set forth above.

BILLING CODE 1505-01-D

federal register

Wednesday
October 13, 1993

Part II

Department of the Interior

Bureau of Indian Affairs

25 CFR Part 294
Education Facilities Construction; Proposed Rule

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 294

RIN 1076–AC49

Education Facilities Construction

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Indian Affairs (BIA) is proposing to add a new part 294 to formalize procedures governing the priority ranking process for education facilities construction. The new part 294 will be added under a new Subchapter P entitled Facilities Management Programs, in title 25 of the Code of Federal Regulations. The current process for priority ranking of school construction by the Department is under guidelines that were published in the **Federal Register** in May of 1979 and April of 1988. Under the guidelines a new priority ranking list has been prepared and published in the **Federal Register** each year. The process has been subject to criticism by Indian tribes and Indian organizations as well as Congress. This proposed rule is intended to provide more continuity, objectivity and accountability in the priority ranking of education facilities construction projects and to address the handling of emergency needs.

DATES: Comments must be received on or before January 11, 1994.

ADDRESSES: Written comments should be directed to Oscar W. Mueller, Jr., Acting Director, Office of Construction Management, Department of the Interior, Mail Stop 2417, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Kathleen L. Slover, Program Liaison Specialist, Office of Construction Management, Department of the Interior, at telephone number 202–208–3405.

SUPPLEMENTARY INFORMATION: This proposed rule is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs in the Departmental Manual at 209 DM 8.

This rulemaking action was originally scheduled as a new Part 37, New School Construction, to title 25 of the Code of Federal Regulations. The proposed action appeared in the October 1990 Unified Agenda published in the **Federal Register** on Monday, October 29, 1990, at 55 FR 44615; the April 1991 Unified Agenda published in the **Federal Register** on Monday, April 22, 1991, at 56 FR 17458; and the October 1991 Unified Agenda published in the **Federal Register** on Monday, October 21, 1991 at 56 FR 53483. With the publication of the April 1992 Unified Agenda in the **Federal Register** on Monday, April 27, 1992, 57 FR 16887, the part number and title for this proposed action was changed from Part 37 to Part 294, Education Facilities Construction.

Under 25 U.S.C. 2005(c) BIA was directed to publish in the **Federal Register** the system used to determine priorities for school construction projects. The BIA was further directed to publish in the **Federal Register**, a current priority ranking for school construction projects at the time any budget request was presented to Congress. The current priority ranking for school construction projects is also to be submitted with the budget request.

Guidelines were published in the **Federal Register** on May 22, 1979, at 44 FR 29864 and on April 14, 1988 at 52 FR 12471. Under the guidelines, a notice soliciting applications by a specified deadline is published in the **Federal Register** each year. Applications for new school construction filed in accordance with the notice are reviewed, validated, and priority ranked. The priority ranking list for new school construction is then published in the **Federal Register** and submitted to Congress.

Under the current process Indian tribes or Indian organizations that do not receive funding for new school construction have to file new applications each year to be considered, regardless of where their project was ranked the year before. New school construction projects that were ranked high one year might not even appear on the priority ranking list the next year.

The priority ranking process for new school construction has been criticized by Indian tribes, Indian organizations and Congress. In response to the criticism, the BIA began to develop a new Part 294 to provide new procedures to govern the priority ranking process.

The Conference Report on the FY 1992 Interior and Related Agencies Appropriation Act, House Report No. 256, 102d Cong., 1st Sess. 46 (1991), directed the Department to continue efforts to revise the priority ranking process for new school construction. The Conference Report states that emphasis should be given to tribal consultation and to improving the objectivity of the ranking process, to providing continuity to the priority ranking list, and to providing procedures for handling emergency needs.

On Thursday, October 31, 1991, a notice of tribal consultation meetings was published in the **Federal Register** 56 FR 56120. The meetings were to obtain written and oral comments on the proposed priority ranking process for both education facilities construction and for law enforcement facilities construction. The BIA is also developing a rule to govern the priority ranking process for law enforcement facilities construction. Although the consultation meetings were held together, the proposed rules are being prepared separately and the proposed rulemaking action to add a new Part 296 Law Enforcement Facilities Construction will be published at a later date.

A tribal consultation booklet containing a proposed draft of the rule (consultation document) as well as background information on and significant provisions of the process was prepared. Prior to the tribal consultation meetings, the booklet was mailed directly to all Federally recognized Indian tribes. The booklet was also mailed to all BIA-funded schools, whether the school was BIA-operated or a contract or grant school. Copies of the booklet were also available from local BIA personnel.

Tribal consultation meetings were held in Washington, D.C., and Oklahoma City, Oklahoma, on December 4, 1991; in Phoenix, Arizona, and Minneapolis, Minnesota, on December 6, 1991; in Albuquerque, New Mexico, on December 9, 1991; in Spokane, Washington, on December 10, 1991; in Gallup, New Mexico, on December 11, 1991; and in Aberdeen, South Dakota on December 12, 1991. In addition to the tribal consultation meetings, individuals could submit written comments on the proposed draft of regulations through January 3, 1992. Comments made at the meetings or submitted during the tribal consultation process will be discussed below under the heading "Comments Received During Tribal Consultation."

Summary of Proposed Priority Ranking Process

This proposed rule provides for the Assistant Secretary—Indian Affairs (Assistant Secretary) to call for the filing of applications for the next education facilities construction priority ranking process at least once every three (3) years. The Assistant Secretary will publish a notice in the **Federal Register** and will mail notices directly to all Federally recognized Indian tribes and all BIA-funded schools, whether the school is BIA-operated or a contract or grant school.

Applicants will file their applications with the Director, Office of Indian Education Programs (Director, OIEP). Applications must be filed by the deadline specified in § 294.9(d). Applications received after the deadline will not be considered in the priority ranking process.

It is important to emphasize that the priority ranking process for education facilities construction projects being proposed under part 294 is an entirely separate process from applying to the BIA for funding for the operation of an education program or increased funding for program expansion. Filing an application for an education facilities construction project under the regulations in this part does not constitute an application for a contract or grant to operate an education program or to expand an existing education program.

The regulations in proposed part 294 are to govern the priority ranking process for education facilities construction projects to accommodate BIA-funded primary and secondary education programs, whether BIA-operated, contract or grant. Applicants must have approval of the education program or program expansion prior to applying for an education facilities construction project.

The Director, OIEP, will establish an Evaluation Committee. The Evaluation Committee will do a preliminary review of all complete applications received by the deadline. Applications will be rated in accordance with the criteria specified in § 294.12.

Based on the Evaluation Committee's preliminary review of the applications, the Director, OIEP, will select those applications rated highest for application validation and further consideration. Applicants will be notified at that time by the Director, OIEP, whether or not their applications will be validated and how their application rated. The applicant can appeal an unfavorable rating to the Assistant Secretary under the appeal procedures in part 294, subpart D Appeals. Applications not selected for validation will not be priority ranked.

In consultation with the applicant and appropriate BIA personnel, the Director, OIEP, will validate the applications and determine the actual needs of the project. After completion of the application validations, the Director, OIEP, will reconvene the Evaluation Committee. The Evaluation Committee will review and rate the validated applications.

Based on the Evaluation Committee's ratings, the Director, OIEP, will rank the education facilities construction projects and identify those projects that will be added to the priority ranking list. Applicants will be notified at that time by the Director, OIEP, whether or not their education facilities construction projects will be added to the priority ranking list.

The rule also has an emergency provision. In the event of an emergency situation, as described in § 294.10, an application may be filed with the Director, OIEP, at anytime. Immediate remedial action subject to the availability of appropriated funding will be taken to repair the facility or to provide alternative facilities and may be temporary or permanent.

If the immediate action permanently takes care of the emergency situation, no further action will be taken. However, if the immediate action is temporary, then the Director, OIEP, will determine whether to handle the situation under a facilities improvement and repair project or to add the project to the priority ranking list. The Director, OIEP, will notify the applicant of the determination.

If the Director, OIEP, determines that an education facilities construction project is necessary, the project will be added to the end of the priority ranking list of education facilities construction projects.

Each year the Director, OIEP, will update the priority ranking list by deleting projects from the previously published list that have received full funding, by retaining in order any projects from the list previously prepared and published in the **Federal Register** in accordance with part 294 which have not received full funding, by adding any projects that may have been determined necessary to correct an emergency situation, and by adding any projects which have been identified during a new priority ranking process as specified in § 294.17.

The Director, OIEP, shall forward the updated priority ranking list to the Assistant Secretary. The Assistant Secretary, upon approval, shall publish in the **Federal Register** and submit to Congress the priority ranking list of education facilities construction projects. Publication of the priority ranking list in the **Federal Register** shall constitute a final agency action and may not be appealed.

Comments Received During Tribal Consultation

Comments received during the tribal consultation process will be summarized and discussed by general topics. The section or paragraph in the proposed rule will be given when appropriate.

For the purpose of easy reference, general topics will be numbered. The numbering has no direct relationship to the actual number of comments identified or the importance of a particular topic.

Some comments were received or made at the hearings that do not directly relate to the contents of the proposed rule. Those comments that do not directly relate to the priority ranking process for education facilities construction are not discussed in this rulemaking document.

1. The consultation document provided for the Director, OIEP, to be the lead official for the purposes of processing applications and preparing the priority ranking list of education facilities construction projects.

In the past the Director, Office of Construction Management, has been the lead official. Although no commentors expressed opposition, the change was questioned.

The change was intended to give the Director, OIEP, the official in the BIA responsible for education programs, more control over the education facilities construction program. The Director, OIEP, will be in a better position to determine construction priorities that best support critical education program needs.

The Director, OIEP, is the designated lead official for the priority ranking process of education facilities construction projects in proposed part 294.

2. To provide continuity to the priority ranking process, the consultation document proposed a three-year cycle. Applications for education facilities construction would be reviewed and ranked only once every three years. Once a project was ranked and named on the published priority ranking list, the project would remain on the list until funding was provided. Projects remaining from the previously published list would be retained on the list.

Under the current process applications have been reviewed and ranked yearly which has provided no continuity to the process. Projects ranked high one year may not appear on the next year's list of priority education facilities construction projects. The yearly ranking makes it difficult for Indian tribes, Indian organizations, and the BIA to plan ahead.

Although there were comments against having a three-year application cycle and retaining projects on the priority ranking list, most of the comments were very much in favor of the proposal. Submitting applications every year was time consuming for

Indian tribes and Indian organizations. The commentors were particularly in favor of projects being retained on the priority ranking list until funding was provided. Under the proposed process, Indian tribes and Indian organizations can plan ahead with some certainty and the planning and design of the facility can proceed in an orderly manner.

In the consultation document there was wording that projects would be retained until "full or partial funding" was provided. This phase concerned some of the commentors. The intent is that once an application has been validated and the actual needs determined, the education facilities construction project as it is listed on the priority ranking list will be funded subject to the availability of appropriations. The project as it is listed may, however, differ from the project as applied for by the applicant based on validated need, and the cost estimates of the project may change.

One of the commentors against the three year cycle, with the retention of projects on the priority ranking list, expressed the belief that needs might change between when a project was ranked and when it was funded. It was not clear whether the commentor was addressing education needs, in general, or the needs of the priority ranked project. That the needs might change could be true about both. However, even with a yearly process needs can change.

As is discussed below at Number 5, the Department's intent is to provide a continuous priority listing so that eligible projects are ready to be constructed once funds are appropriated. However, there is no way to determine for certain what the funding levels for education facilities construction will be from year to year. Although the intent is to conduct a priority ranking process only once every three years, § 294.9(a) in the proposed rule provides that applications for education facilities construction projects will be rated and priority ranked "at least once every three years."

The purpose is not to change the intent, but to provide some flexibility, in the event resources exceed the estimates of the project on the priority ranking list. If that does occur before the next regular application process, new or updated applications could be added to the list sooner than the three year requirement.

3. One inclusive list of priority ranked education facilities construction projects was proposed in the consultation document. Separate priority lists for new starts, major expansions, and major replacement or separate regional priority lists would not be prepared.

One commentor did state that there should be not only multiple priority lists, but also multiple processes for the various categories of construction, that is, "New Starts," "Facility Replacement," "Additions and Expansions," and "Facilities Improvement and Repairs." Another commentor suggested setting up priority lists by regions.

In drafting the consultation document, consideration was given to creating multiple lists by categories of construction. A major problem identified with creating separate lists was how to determine the sequence that projects would be funded. Should funding be one for one from each of the lists, or some other combination such as one (1) "new start" to two (2) or three (3) each of "major expansion" and "major replacement?" Or, should the available funding be apportioned among the lists and if so what would be the percentage apportioned to each?

If a funding sequence or apportionment were agreed upon, then the classifying of a particular education facilities construction project as to whether it was a new start, major expansion or major replacement could become a problem. An Indian tribe or Indian organization might believe that its project could have been ranked or would have ranked higher on a priority list if the project had been classified differently.

No benefit to the process or to meeting over-all critical educational needs could be identified that would outweigh the potential problems associated with preparing multiple lists by type of construction project. It was determined that a single list was the most equitable and the most objective.

It was also decided that one national listing would be the most equitable. There is no question that there are critical education facilities needs BIA-wide. However, the needs are not distributed equally among the various BIA area offices. Not every BIA area office will necessarily have a project priority ranked. However, every Indian tribe or Indian organization will have the opportunity to apply for an education facilities construction project at a national level.

The rule proposes in § 294.18, that one priority list be prepared of all education facilities construction project. It should be noted, however, that the priority ranking process being proposed in this Part 294 is for the purpose of ranking what is essentially major construction, that is, construction of more than 15,000 square feet. Facilities improvement and repair, which can include replacements or additions and expansions of 15,000 square feet or less, will be handled separately.

4. The consultation document provided for the Assistant Secretary to publish a notice in the **Federal Register** in February of a year when new applications for education facilities construction projects must be filed. The notice was to announce the next priority ranking process.

The notice was intended to alert Indian tribes and Indian organizations of the filing period for applications for education facilities construction projects. One commentor suggested that in addition to publishing a notice in the **Federal Register**, a notice be mailed directly to all federally recognized Indian tribes and all BIA-funded schools, whether the school was BIA-operated or a contract or grant school. This suggestion has been incorporated into the proposed rule. Section 294.9 provides that in addition to the publication of a notice in the **Federal Register**, a notice will be sent to all federally recognized Indian tribes and all BIA-funded schools.

5. The consultation document provided that after a preliminary rating, the Director, OIEP, would select the highest rated applications for further consideration and application validation. The number to be selected would be determined by the Director, OIEP, and could vary from one application cycle to the next.

Many comments and suggestions were made about this provision. The number of applications selected for further consideration and application validation will directly impact on the maximum number of education facilities construction projects that can be ranked and added to the priority list during that application cycle. It was apparent that many of the commentors believed the number of projects ranked on the priority list would determine the amount of facilities construction funding appropriated by Congress.

Although the number of new school construction projects funded has varied, not all of the projects ranked on the priority listing have been funded in one year. The number of projects listed on the priority ranking list has not determined the number of projects funded.

The Department's intent is to provide a continuous priority listing that will have a few, but only a few, "carryovers" to the next list. A few carryovers are desirable so that there are always projects which have been through the planning and design stage and are ready for construction funding. Newly ranked

projects would not be ready immediately for construction. With only a few carryovers, Indian tribes and Indian organizations will have a better idea of how soon they can expect funding after being added to the priority list.

There is no way to determine what the funding level for education facilities construction will be in the future. Also, emergency situations may result in the addition of projects to the end of the priority listing. (See discussion at Number 13, below.) To maintain a realistic priority listing, the number of applications selected may have to be adjusted. Consequently, § 294.15(a) in the proposed rule does not specify the number of applications to be selected by the Director, OIEP, for further consideration and application validation.

6. The consultation document provided for the Director, OIEP, in consultation with the applicant and appropriate Bureau personnel to validate those applications for education facilities construction rated highest and determine the actual needs of the project.

Most of the comments with regard to application validation and a determination of actual needs concerned the number of applications to be selected. Only a few concerned the application validation process and those were basically seeking clarification.

During the validation process, the Evaluation Committee and any other appropriate BIA personnel will be doing on-site visits. Information submitted by the applicant will be verified as well as information obtained from BIA records. Cost benefit analyses, feasibility studies, life-cycle cost analyses, or demographic studies may be conducted. However, it is intended that the Indian tribe or Indian organization be involved in the process.

One commentor observed that in the end it would be BIA that determined what an applicant's needs actually were. The education facilities construction project as it may be eventually priority ranked and fully funded will be based on determined need. The scope of the ranked project may not be the same as the scope of the project for which the applicant applied.

7. The priority ranking criteria proposed in the consultation document gave emphasis to safety and health considerations. In addition, to improve the objectivity of the priority process, the corresponding point values of each of the priority ranking criteria were stated.

The current procedures provide that the number of points assigned for the priority ranking of an application for construction is equal to the percentage of the school's enrollment that is "unhoused." Students are considered unhoused.

a. When the condition of the school facility is such that it can no longer be used without major repairs, renovations or complete replacement.

b. When the school can no longer meet the space requirements of an approved education program.

c. When the current enrollment of the school exceeds the design capacity of the facilities.

d. When seats are not available in any other school—Bureau operated, tribal contract or public—within a one hour's bus ride of home.

The procedures also state that consideration will be given to:

a. Cost and/or education program benefits accruing from consolidation of BIA, tribal contract, or public schools.

b. Compliance with BIA approved attendance areas including other BIA schools and public, private and contract schools, as demonstrated by historical data for past five years.

c. Demonstrated and supportable enrollment history for the past ten years and enrollment trends for the next five years or more, if available.

d. Severity of non-compliance of existing facilities with applicable Federal, tribal, or state health and safety standards.

Under the current process, determining the number of "unhoused" students involves considering more than just numbers of students. In ranking education facilities construction applications, consideration has been given to the conditions of the existing facilities, compliance with applicable Federal, tribal, or state health and safety standards, availability of seats in other schools, BIA-operated, contract, grant or public, benefits accruing from consolidation of BIA, tribal, contract, or public schools, etc. However, such factors have been lumped together under the catch-all of "unhoused."

The consultation document stated that the emphasis of the priority ranking criteria had been changed. There is more weight given safety and health considerations under the proposed criteria. However, beyond that change, the proposed criteria are consistent with the current criteria. The changes are to the terms being used to describe the criteria.

The proposed priority ranking criteria more accurately and clearly identify what is being considered during the ranking process. "Programmatic Space Needs," "Space Utilization Efficiency," "Enrollment/Population Trends," and "Availability of Alternative Facilities" are factors that have all been considered in determining the number of "unhoused" students for ranking purposes. Even the conditions of the existing facilities have been considered.

Many commentors, even those who favored the shift in emphasis, still believed that "unhoused," as a criteria, also needed to be included in the criteria. However, all of the elements of the present "unhoused" criteria have been included in the proposed criteria. The fact that there is confusion and misunderstanding concerning the "unhoused" criteria supports discontinuing its use in favor of more accurate, specific and understandable criteria. Consequently, the term "unhoused" has not been used in the priority ranking criteria in the proposed rule under § 294.12.

Comments about the change in emphasis of the priority ranking criteria, varied from supporting the change recognizing safety and health deficiencies as a priority, to being opposed to the change in emphasis. As stated in the consultation document and the proposed rule, the goal of the priority ranking process is to ensure that appropriated funding resources are applied to the most critical education facilities needs, based on an objective evaluation of the projects submitted for review.

The Department has been criticized for the unsafe and unsanitary conditions of BIA schools. Some of the facilities housing BIA funded education programs have health and safety deficiencies that are best addressed through new construction.

If the Department's limited funding resources are to be applied to the most critical education facilities needs, safety and health concerns must be a priority. Consequently, the emphasis of the priority ranking criteria under § 294.12 in the proposed rule is on safety and health concerns.

In addition to safety and health concerns, the consultation document provided for consideration of the general conditions of the facilities. The priority ranking criteria included criteria that considered handicap accessibility deficiencies, environmental deficiencies, the age of the existing facilities, the cost of operation and maintenance, and improvements to utilities and the site.

Only a few comments were made with regard to the various criteria relating to the general conditions of the facilities. No reason was usually given for suggesting a change in point value of the criteria. In at least one instance, one commentor expressed opposition to a

criterion that another commentor suggested be increased in value. Consequently, no changes have been made in the point values of the various criteria reletng to the general conditions of the facilities.

The criteria that did receive considerable comment were "Availability of Alternative Facilities" and "Cooperative and/or Consolidation Arrangements." Both criteria are currently considered in determining "unhoused." Some of the commentors who expressed strong opposition to changing the emphasis from unhoused to safety and health concerns also expressed opposition to both of these criteria. Commentors were particularly concerned that availability of alternative facilities and cooperative and/or consolidation arrangement included public schools.

Many of the commentors believed that giving consideration to alternative facilities and cooperative and/or consolidation arrangements was inconsistent with the policy of "parental choice." The BIA is to afford Indian students the opportunity to attend local day schools and other schools of choice and the option to attend boarding schools when the student and the parent or guardian determine it is in the student's best interest.

The Educational Amendments of 1988 Act (1988 Amendments), Public Law 100–297, specified certain factors to be considered in deciding whether to award a contract or grant to a school that had not previously received funding from the BIA (see 25 U.S.C. 2001(k)). Among the factors are the geographical proximity of comparable public education and the adequacy and comparability of programs already available. The 1988 Amendments do, however, specifically exclude geographical proximity of comparable public education from being the primary basis for denying approval of the contract or grant.

The factors specified in the 1988 Amendments were for determining whether to approve a contract or grant for the operation of an education program. That process is separate from this process of priority ranking of education facilities construction projects. However, if geographical proximity of public schools and the adequacy and comparability of programs already available are factors to be considered in approving the operation of an education program, then it is reasonable and appropriate to consider them in the context of education facilities construction.

"Cooperative and/or Consolidation Arrangements" has a maximum point value of seven (7) out of 100. "Availability of Alternative Facilities" has a maximum point value of five (5). The point values of the two criteria combined do not exceed "Programmatic Space Needs." The intent under both criteria is to consider public schools as well as other BIA-funded schools, whether BIA-operated, contract or grant. Clearly, some priority should be given to education facilities construction projects in locations where alternatives are not available.

The consultation document provided that "Availability of Alternative Facilities" would be used to evaluate whether alternative facilities within one hours bus ride from home to schools are available. In considering the 1988 Amendments, Congress rejected past BIA attempts to define availability of alternative facilities in terms of set time traveled or distance traveled. [See House Conference Report No. 100–567, 100th Cong., 2nd Sess. 398–399 (1988).] The BIA needed to recognize that climatic conditions or terrain, making students' places of residence inaccessible during a period of the year, might warrant special consideration. BIA was instructed to consider the age of the children, and the distances and times in all types of weather and at all times of the year.

The "Availability of Alternative Facilities" criterion contained in the consultation document has been changed to be consistent with this Congressional direction. The proposed rule provides, under § 294.12(k), that applications will be evaluated to determine whether alternative facilities are available within a reasonable bus ride time from the residence of the students to school. Both the age of the children and conditions or terrain directly impacting on year-round accessibility to the residence of the students or the alternative facilities will be taken into account.

The point values assigned to the priority ranking criteria for education facilities construction, contained in § 294.12 of the proposed rule, are the same as those that were in the consultation document. In response to some of the comments and questions raised during the consultation process, there has been further clarification of the criteria. Commentors were particularly interested in knowing how applications would be rated under the various criteria, that is, what conditions would result in higher points under each of the criterion.

The priority ranking criteria were listed in the consultation document in descending order of points assigned. As is discussed below at Number 8, it was not clear to commentors why some of the information under "Contents of Applications" was being requested. As was suggested by commentors, under "Contents of Applications," the criteria to which the information responds is identified. Some of the information requested may respond to more than one criterion. Consequently, it was helpful to rearrange the criteria in the proposed rule so that related criteria are listed together.

8. Under "Contents of Applications," the consultation document requested certain types of information. The information submitted would then be used as the basis for a preliminary review of applications for education facilities construction projects. Those projects which had little or no chance of successfully competing would be eliminated early in the priority ranking process.

The intent was to request a minimal amount of information that could be provided by applicants. The application process would involve nothing more than gathering the information and including it in the application. The consultation document did not request any analyses or studies. All Indian tribes or Indian organizations could compete equally irrespective of the resources they had to prepare the application and the amount of technical assistance they received.

Numerous comments were received concerning the "Contents of Applications" portion of the consultation document. For the most part the comments were critical. Commentors believed that some of the information did not relate to the criteria and should not be asked; that the BIA already had some of the information and should not be requesting it from applicants; that it was not clear what was being requested; or that the request put an undue burden on the Indian tribe or Indian organization to respond. As a result of the comments, contents of applications as proposed in § 294.11, has been almost entirely changed from what was in the consultation document.

Several of the commentors questioned the relationship between some of the information requested and the criteria. In some cases questions commentors believed should be deleted directly related to one of the priority ranking criteria. The objection may really have been to the criterion and what would be considered under the criterion.

As an example, several commentors objected to applicants being requested to name all other elementary and secondary schools, whether Federal, public or private, within the attendance boundary or proposed attendance

boundary and their round trip distance from the education facility or proposed education facility in miles and bus travel time. However, other schools in the area clearly responds to the criterion of "Availability of Alternative Facilities."

As discussed above under Number 7, in determining whether there are available alternative facilities, the BIA may consider the geographical proximity of public schools and the adequacy and comparability of programs already available. Furthermore, the applicant is in a better position to know what the actual travel time is to the other schools and whether there are any climatic conditions or terrain that directly impact on year-round accessibility. When such estimations are left to the evaluators, it may not accurately represent the drive time in a school bus under various weather conditions.

On the other hand, commentors pointed out it was not clear what was meant by "Federal" elementary and secondary schools. In § 294.11(a)(7)(i), "BIA-funded" has been substituted for "Federal."

With further clarification of the priority ranking criteria in § 294.12, some of the information being requested may seem more relevant. However, the applicable criteria have been specified. This was suggested by some of the commentors. An exception to specifying the criterion is under § 294.11(a). The information in § 294.11(a) responds to information requested on Standard Government Form–424.

Some of the commentors believed information being requested in the consultation document was under the control of the BIA. The applicant should not be expected to provide the information. The BIA does maintain an inventory of facilities including education facilities. The inventory has been automated and is referred to as the Facilities Construction, Operations and Maintenance system (FACCOM).

Some of the information requested in the consultation document is information that is contained in the BIA facilities inventory. It was expected that technical assistance would be provided to Indian tribes and Indian organizations by BIA facilities personnel to obtain the information. Indian tribes and Indian organizations would then know what information was going to be considered in evaluating their applications for education facilities construction projects.

Information requested in the consultation document that has been identified as being contained in the BIA facilities inventory or for that matter being under the control of the BIA has been eliminated in the proposed rule. Applicants are still, however, being requested to submit any reports or information relating to the conditions of the facilities that may have come from other sources such as the state, the tribe or other U.S. Government agencies. BIA personnel may not know about the other reports or information.

Under § 294.11 in the proposed rule, information or categories of information which will be supplied by the BIA and considered in the evaluation of the application for an education facilities construction project have been indicated in § 294.11(c). Stating what information will be used by BIA personnel is intended to help Indian tribes and Indian organizations fully understand and know what is being considered in evaluating their applications.

Some of the commentors believed it was not clear what information was being requested. In some cases the fact that commentors asked for clarification showed it was not clear what was meant or what was being asked. An example was given above of referring to "Federal" schools. In other cases commentors brought up circumstances unique to their area which presented problems in responding to some of the questions. It was not clear to the commentors how they should answer or what information they should supply. An example of unique circumstances is the lack of reservations in the State of Oklahoma.

In revising § 294.11 for inclusion in the proposed rule, every effort has been made to clarify those items which commentors questioned or requested clarification during the consultation process.

Some of the commentors also believed some items requested put an undue burden on the tribe or Indian organization. Requiring tribal resolutions was objected to as being too burdensome. The policy of the U.S. Government is to deal with Indian tribes on a government-to-government basis. A tribal resolution represents the will of the tribal government. Without formal action, the BIA has no other way to be certain that education facilities construction projects have the approval of the tribe or that particular individuals are authorized to act on behalf of the tribe.

Education facilities construction projects may involve sizable expenditures of Federal funds. Requiring tribal resolutions is reasonable and justified.

Other items that commentors objected to as being too burdensome, may have been more a matter of not understanding what was being requested. For example, applicants were asked in the case of existing facilities to provide a simple diagram of the floor plan of the facility. Applicants were then asked to describe how each classroom, office, or other area is used and the dimensions of the area.

The information supplied will be used for evaluating the application under both Programmatic Space Needs (12 points) and Space Utilization Efficiency (6 points). Although the BIA may have information on overall square footage of facilities and space utilization, the applicant is best qualified to provide accurate and specific information concerning the use of the various classrooms, offices, or other areas.

The consultation document stated that the diagram need not be an architectural drawing. The fire evacuation diagrams that are or should be posted in every facility are acceptable. Nevertheless, a commentor believed it would be difficult to provide without the assistance of local facilities staff.

It is not possible for the evaluation committee during the preliminary review to meet with all the applicants who have applied for education facilities construction projects and tour all the facilities. The initial review will have to be based on information contained in the application and information under the control of the BIA and the Department. Consequently, it is important that this information is accurate and adequate to evaluate the projects fairly.

An attempt has been made to eliminate requests for information that is under the control of the BIA or Department. Information that directly addresses the criteria has been reviewed to determine whether the information can be obtained by BIA personnel through other sources or whether something less can be used. All comments about specific items have been considered and an effort has been made to clarify what is requested.

9. The consultation document provided for the Director, OIEP, to review for completeness applications filed for education facilities construction projects. Applicants would be advised of deficiencies in their application and given 30 days to provide the additional information. Incomplete applications would not be considered in the initial review by the Evaluation Committee.

Review of the applications for completeness is intended as a technical review. There will be no evaluation of

the information submitted at that time. As a result of changes made under § 294.11 Contents of Applications, the Director, OIEP, will also be responsible for obtaining information under the BIA control and including the additional information with the application.

The consultation document provided for the Director, OIEP, to notify applicants and to identify the specific deficiencies in their applications. One commentor suggested that the Director, OIEP, be further directed to provide technical assistance to rectify those deficiencies.

The Director, OIEP, may not really be in the position to provide the assistance needed to rectify the deficiencies. As an example, the Director, OIEP, cannot make the tribe or tribal council enact a tribal resolution. Consequently, it would not be appropriate to include such a provision.

The consultation document provided for the BIA to provide technical assistance upon written request of a Indian tribe or Indian organization. A section of the document was entitled "Pre-application planning and assistance." Technical assistance could include assistance in appraising problems of health and safety and in obtaining and completing the application. It was further provided that any Bureau Line Officer would make any information available to the applicant needed to prepare the application except as exempted from disclosure by the Freedom of Information Act or restricted under the Privacy Act or other applicable law.

Although the consultation document implied that technical assistance was only available during the pre-application stage, that was not really the intent. An Indian tribe or Indian organization should be able to request technical assistance from the BIA throughout the priority ranking process. Technical assistance should be available for obtaining and completing the application, correcting identified deficiencies in the application, or filing appeals. The title as well as the contents of § 294.6 in the proposed rule have been changed to clarify when technical assistance may be requested.

The consultation document provided that incomplete applications for education facilities construction would not be reviewed by the Evaluation Committee. What constituted an incomplete application was not specified. In reviewing the comments received during consultation and the priority ranking process being proposed, it has been determined that only two deficiencies should prevent an application from receiving initial review by the Evaluation Committee.

The two deficiencies that will prevent an application for an education facilities construction project from being considered are: (1) No evidence of approval by the Director, OIEP, for the education program, in other words, the education program is not BIA-funded and (2) no appropriate tribal resolution of review and approval of the application. Section 294.13(f) of the proposed rule specifies the deficiencies which will prevent consideration of an application for an educations facilities construction project.

10. The consultation document provided for the Director, OIEP, to establish an Evaluation Committee for the purposes of reviewing and rating education facilities construction projects. The Evaluation Committee would be comprised of appropriate Bureau personnel, including education personnel and facilities personnel.

Those comments that were received generally agreed that the Evaluation Committee should be comprised both of education personnel and facilities personnel. Commentors also recommended that there be tribal representation on the Evaluation Committee. Tribal representation was considered during the drafting of the consultation document. As a result of the comments it was again considered. It was determined that tribal representation on the Evaluation Committee was not really feasible. It would not be possible to have a fair cross-representation of Indian tribes while at the same time maintaining a committee of workable size.

Providing for geographical representation was also recommended by commentors. An attempt has been made in the past to use BIA personnel who represent various areas. There is no reason to believe it will not continue. However, to require geographical representation may decrease the ability of the Director, OIEP, to select the most qualified individuals. In addition many Bureau personnel are also members of Indian tribes. Would such individuals be considered to represent the geographical area in which they were employed or in which their Indian tribes were located?

One way "conflict of interest" has been handled in the past is for committee members not to participate in evaluating applications from the tribe in which they are members or schools for which they have any administrative responsibility. This exclusion has been included in the proposed regulations in § 294.14(e).

The regulations are also proposing that the Director, OIEP, may include personnel from the U.S. Department of Education. It is one possible way of including personnel familiar with education programs who would not have any "conflict of interest" and who would be from outside the BIA. This might also partially respond to the one commentor who believed that as long as BIA personnel were involved, the process would not be fair.

11. The consultation document provided for the Director, OIEP, to notify individuals of their ratings after the initial review and explain the reasons for the ratings.

Under the current process, applicants have complained that they never know what is happening on their applications. They file applications for new school construction and never hear anything afterwards. The only comment directly related to the notification process was to ask when applicants would be notified.

The proposed rule provides for notification to all applicants of the ratings in § 294.15 after the initial review by the Evaluation Committee. An explanation will be provided of their rating for each criterion. Information used to rate the application that was not supplied by the applicant will be identified. The intent is to provide accountability to applicants and improve the objectivity of the process.

12. Self-contained appeal provisions were included in the consultation document. With one exception, any decision or action taken by a Bureau Line Officer incident to an Indian tribe or Indian organization filing an application for an education facilities construction project was to be appealable. The exception was the Assistant Secretary's notification of actual priority ranking which is final for the Department.

There were some comments concerning the appeal procedures as they were proposed in the consultation document. Commentors also requested clarification of some of the provisions.

The self-contained appeal procedures were intended to be similar to those provided for under 25 CFR part 2 Appeals from Administrative Actions. However, the procedures specifically addressed appeals possible under the priority ranking process of education facilities construction projects. The intent was to simplify the process.

The appeal procedures proposed in the consultation document provided for the Assistant Secretary—Indian Affairs to act finally on appeals. Under the regulations contained in Part 2, Appeals from Administrative Actions, final agency action may be taken by the

Assistant Secretary—Indian Affairs or by the Board of Indian Appeals in the Office of Hearings and Appeals, Department of the Interior.

It was suggested by commentors that a final appeal should be either to the Board of Indian Appeals or to some independent board, not the Assistant Secretary. Decisions in the priority ranking of education facilities construction projects basically involve the review of facts not interpretations of the law. Consequently, the Assistant Secretary is the appropriate Department official to take final action on appeals under this Part.

Some of the commentors pointed out inconsistencies in the consultation document with the procedures contained in 25 CFR part 2. Part 2 provides for the notice of appeal to be filed within 30 days and the appeal within 60 days. The procedures set out in the consultation document provided for the appeal to be filed within 30 days. In addition commentors pointed out that there were no timeframes stated in which Bureau Line Officers had to act on appeals.

The intent of the self-contained appeal procedures was, as stated above, to simplify the process not to create conflicting procedures. Different timeframes and requirements can be confusing. For that reason changes have been made to the appeal procedures contained in subpart D. The appeal provisions in the proposed rule are intended to be more procedurally consistent with the regulations contained in part 2. Some timeframes in which Bureau Line Officers have to act on appeals have also been included.

Commentors questioned the fact that procedures were included for appealing actions or decisions by Agency Superintendents for Education or Area Education Programs Administrators. The Director, OIEP, is the lead official in the priority ranking process. It was unclear to commentors how other Bureau Line Officers would be involved in the process.

The consultation document provided for the BIA to provide technical assistance and information to Indian tribes and Indian organizations. Assistance would most likely be provided by Agency Superintendents for Education or Area Education Programs Administrators. Therefore, there was the potential for a Bureau Line Officer other than the Director, OIEP, to take an action or make a decision during the priority ranking process that a tribe or Indian organization might wish to appeal.

As discussed under Number 9, above, providing technical assistance to Indian tribes and Indian organizations during the priority ranking process is included in the proposed rule. Consequently, procedures for appealing decisions or actions by Agency Superintendents for Education and Area Education Programs Administrator as well as Superintendents and Area Directors have been included in the proposed rule.

The consultation document stated that the Assistant Secretary's notification of final priority ranking was not appealable. The procedures in the proposed rule with regard to notification of ranking and preparation, approval and publication of an updated priority ranking list of education facilities construction projects have been changed from those contained in the consultation document. The reason for the changes will be discussed below at Number 13.

Under the proposed rule after the final review and the ranking of applications, applicants will be notified whether or not their education facilities construction project will be added to the next priority ranking list. Until the priority ranking list is updated for publication, there is no way to know what the actual ranking of the project will be on the published priority ranking list. Notifying applicants of a ranking in relation to the other projects to be added to the priority ranking list would be very misleading to the applicant. For that reason no ranking will be stated in the notification.

Upon approval of the updated priority ranking list of education facilities construction projects, the Assistant Secretary will publish the listing in the **Federal Register**. Publication of the priority ranking list in the **Federal Register** shall constitute a final agency action and may not be appealed.

13. The consultation document included an emergency situation provision. Under certain specified emergency conditions, an application for an education facilities construction project could be filed at any time with the Director, OIEP. The consultation document further provided that emergency situations would be handled separately from the fixed priority listing.

There was extensive discussion during the consultation meetings concerning the emergency situation provision. Commentors requested clarification about the provision and wanted to know how much was budgeted under emergency funding.

The consultation document identified what constituted an emergency situation, but did not state the process for handling an emergency situation. The Department does not receive emergency funding for facilities construction as the consultation document may have implied. Emergency situations will have to be handled within the amount appropriated generally for ongoing facilities improvement and repair and new education facilities construction.

In the past a priority ranking of new school construction has been developed each year. As a result of the priority list changing yearly, emergency situations had the effect in the past of "bumping" projects from receiving funding. An emergency situation may have been handled in the year that the particular project rated high enough for funding consideration. As a result of the emergency, the project did not receive funding and never rated high enough again for funding consideration.

In addition to believing there were emergency funds, commentors seem to have the impression that an emergency situation would always result in a new school. In some cases the damage to a facility may be so extensive that a new facility is necessary. However, in other cases something less than an entirely new facility may handle the emergency.

As was indicated above under Summary of Proposed Priority Ranking Process, the proposed rule provides that an application for an emergency situation may be filed with the Director, OIEP, at anytime. An emergency situation can be as a result of a fire or natural disaster.

The second condition that constitutes an emergency situation has been clarified from what was contained in the consultation document. An emergency situation exists when there is a determination by the BIA safety officer that facility conditions constitute an imminent danger to health and safety.

The proposed rule in § 294.10 clarifies the process in the event of an emergency situation. Procedures include the possible addition of the project to the end of the previously published priority ranking list of education facilities construction projects. Action to add a project to the priority ranking list by the Director, OIEP, will require the approval by the Assistant Secretary.

The proposed rule provides in § 294.19 for the yearly publication of an updated priority ranking list of education facilities construction projects. This will provide notice of which education facilities construction projects have received full funding and have been removed from the priority ranking list and which projects, if any, have been added to the list as a result of emergency situations or as a result of the priority ranking process. The provision will also satisfy the

requirements of 25 U.S.C. 2005(c). The Department is required to publish yearly in the Federal Register and submit with the budget request the current list of school construction priorities.

14. Under who may apply the consultation document provided that any Indian tribe(s) or Indian organization(s), or Bureau Line Officer could submit an application for an education facilities construction project.

The consultation document also provided that in the case of a contract or grant school, the Indian tribe or Indian organization must control and manage the school. Title to the land on which the school is located must be vested with the Indian tribe or the United States; or a lease for the useful life of the improvement must be entered with the tribe or the United States for the ground on which the education facility is located. Further, a BIA-operated, contract or grant school must have a minimum current enrollment or projected enrollment of 25 students in grades K through 8 and/or 50 students in grades 9 through 12.

Commentors requested clarification about most of the provisions relating to who could apply. The wording of the consultation document may have contributed to some of the confusion in distinguishing what requirements applied to BIA-operated schools, what applied to contract or grant schools and what applied to both.

A Bureau Line Officer may apply for an education facilities construction project on behalf of a BIA-operated school. In the case of a BIA-operated school, an Indian tribe or Indian organization does not have to control and manage the school. Title to the land must be vested with United States or a lease entered into for the useful life of the construction project. The BIA-operated school must also meet the minimum current or projected enrollment requirement.

An Indian tribe or tribal organization or a Bureau Line Officer may apply for an education facilities construction project on behalf of a BIA-funded contract or grant school. The Indian tribe or Indian organization must control and manage the school. Title to the land must be vested with the Indian tribe or the United States or a lease entered into for the useful life of the construction project. The BIA-funded contract or grant school must also meet the minimum current or projected enrollment requirement.

An effort has been made to clarify what requirements apply to which applicants and what type of education facilities. The revised provisions are contained in § 294.7 of the proposed rule.

There were several comments about requiring a minimal current or projected enrollment of 25 students in grades K through 8 and/or 50 students in grades 9 through 12. The commentors all objected to the minimal requirement.

The minimal enrollment requirements contained in the consultation document were those that have been included in the BIA Manual and in 25 CFR Part 274—School Construction Contracts or Services for Tribally Operated Previously Private Schools. A school with an enrollment figure of less that 25 students in grades K through 8 and/or 50 students in grades 9 through 12 would not prove economically feasible to construct. Consequently, minimal enrollment requirements of 25 and/or 50 have been included in § 294.7 of the proposed rule.

15. The consultation document provides for Indian tribes and Indian organizations to apply for facilities construction projects which are new starts, major expansions, or major replacements of federally owned, leased, contracted, or granted education facilities. An attempt was made to define these construction program categories to distinguish them from what is considered Facilities Improvement and Repair.

Definitions were included in the consultation document for new starts, major expansions and major replacements as well as additions and expansions and facilities component replacement which are considered under Facilities Improvement and Repair. Basically a threshold of more than 10,000 square feet was used to distinguish between the new or major construction and facilities improvement and repair.

From the comments received it is apparent that the definitions were not clear and including definitions for terms not used in the rule was confusing. There were questions about what was meant by some of the terms used in some of the definitions. An effort has been made in drafting the proposed rule to make the definitions more understandable and eliminate definitions for terms not used in the rule. The definitions are contained in § 294.5 of the proposed rule.

With regard to 10,000 square feet as a threshold, the few comments received went both ways. Some commentors believed it was too high. Some commentors believed it was too low suggesting the threshold be 20,000 or 30,000 square feet. The threshold has been increased in the proposed rule, but only to 15,000 square feet.

16. The consultation document provided procedures to govern the priority ranking of education facilities construction. Education facilities were defined as any facility listed on the BIA facilities inventory, whether owned or not owned by the Federal government, that is operated and/or funded by the Office of Indian Education Programs, Bureau of Indian Affairs, for the direct support of Indian education.

Many of the commentors requested clarification as to the types of facilities that would be built. What was included under facilities for the direct support of Indian education was not clear.

Indian tribes and Indian organizations can apply under the regulations being proposed in part 294 for primary or secondary school facilities, which may include classrooms, administrative offices, multi-purpose rooms or gymnasiums, cafeterias, etc. BIA-funded dormitories for primary or secondary Indian students are also considered education facilities.

In addition Indian tribes and Indian organizations may apply for additions and expansions, which are greater than 15,000 square feet, to existing primary and secondary schools. Application may also be made for replacement of existing primary and secondary schools or portions of a school. Both additions and expansions and replacements may include classrooms, gymnasiums, and cafeteria/kitchens.

The definition in § 294.5 of education facilities has been expanded to clarify what types of facilities or buildings are considered education facilities.

Several commentors asked about quarters for education personnel. Quarters are handled separately and have not been included in the definition of education facilities. Applications for quarters for education personnel will not be accepted under the regulations proposed in part 294.

The Office of Management and Budget has established requirements that must be met for the construction of quarters at a government facility. The administration of quarters within the Department of the Interior is governed by Departmental manual provisions contained in 400 DM and regulations contained in 41 CFR part 114–51.

17. The consultation document did not define or use the term temporary structures or temporary facilities. However, several commentors requested clarification as to what was considered a permanent structure or facility and what was considered temporary.

So-called portables and modular structures have been used in various locations to meet additional space needs or in response to an emergency

situation. In some cases a modular is intended as a temporary measure. However, in other cases a modular is intended for long-term use. Not all critical needs can be addressed by the on-site construction of an addition or expansion or the replacement of the facility.

What is considered a temporary structure or facility is significant in evaluating applications for education facilities construction projects. A temporary structure is not included in determining what the existing space is of a facility. In expanding on the priority ranking criteria in § 294.12 of the proposed rule, the term, temporary structure(s), has been used. Temporary structure(s) has also been defined under § 294.5.

18. Other minor changes have been made from what was contained in the consultation document. Some of the changes in the proposed rule are in response to other comments that were made during consultation. Some are purely editorial or are not intended to make any significant substantive changes.

Other Information

The primary author of this document is Kathleen L. Slover, Program Liaison Specialist, Office Construction Management, Department of the Interior.

The policy of the Department of the Interior is, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions or objections regarding this proposed rule to the location identified in the **ADDRESSES** section of this document.

The information collection requirements contained in § 294.11 are those necessary to comply with the application requirements of the Office of Management and Budget (OMB) Circular A–102. The Standard Form 424 and attachments prescribed by such circular are approved by OMB under the Paperwork Reduction Act (44 U.S.C. 3501 et seq. and assigned approval number 0348–0006. This information is collected for the purpose of applying for Federal assistance and will be used in determining priority ranking of education facilities construction projects. The obligation to respond is a requirement to obtain a benefit.

The Department of the Interior has determined that this is not a major rule under Executive Order 12291 because only a limited number of individuals and Indian tribes will be affected. This rule provides procedures for the priority ranking of education facilities construction projects for BIA-funded schools. Annual funding for education facilities construction is limited and the few projects funded in any one year may be disbursed in various geographical areas. Accordingly, this rule will not have a significant gross annual effect on the economy.

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because of the limited applicability as stated above.

The Department of the Interior has certified to the Office of Management and Budget that this proposed rule meets the applicable civil justice reform standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

In accordance with Executive Order 12630, the Department of Interior has determined that this rule does not have significant takings implications.

The Department of the Interior has determined that this rule does not have significant federalism effects.

The Department of the Interior has determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

List of Subjects in 25 CFR Part 294

Indians—facilities construction, Indians—education, Indians—schools.

For the reasons set out in the preamble, Title 25, chapter I, of the Code of Federal Regulations is proposed to be amended by adding Subchapter P consisting of part 294 as set forth below.

SUBCHAPTER P—FACILITIES MANAGEMENT PROGRAMS

Subchapter P—Facilities Management Programs

PART 294—EDUCATION FACILITIES CONSTRUCTION

Subpart A—General Provisions

Sec.

294.1 Purpose and scope.
294.2 Information collection requirements.
294.3 Revision or amendment of regulations.
294.4 Statement of policy.
294.5 Definitions.
294.6 Assistance to Indian tribe(s) and Indian organization(s).

Subpart B—Application Process

294.7 Who may apply.
294.8 Obtaining application materials.
294.9 Filing of applications and the deadline for filing.
294.10 Emergency situations.
294.11 Contents of applications.

Subpart C—Priority Ranking

294.12 Priority ranking criteria.
294.13 Technical review of applications by Director, OIEP.
294.14 Establishment of Evaluation Committee and initial review of applications.
294.15 Notification of preliminary rating.
294.16 Application validation and final review by the Evaluation Committee.
294.17 Ranking of applications and notification of ranking.
294.18 Preparation of the priority ranking list.
294.19 Approval and publication in the **Federal Register** of the priority ranking list.

Subpart D—Appeals

294.20 Appeals.
294.21 Appeals from actions or decisions by Agency Superintendents for Education or Area Education Programs Administrators.
294.22 Appeals from actions or decisions by Superintendents.
294.23 Appeals from actions or decisions by Area Directors.
294.24 Appeals from actions or decisions by the Director, OIEP, or the Commissioner.

Authority: 5 U.S.C. 301; 25 U.S.C. 2 and 9; 25 U.S.C. 13; 25 U.S.C. 295; 25 U.S.C. 2005(c); 29 U.S.C. 794.

Subpart A—General Provisions

§ 294.1 Purpose and scope.

(a) The purpose of this part is to codify the policies, procedures, and requirements applicable to a multi-year priority ranking process for education facilities construction projects which includes new starts, major expansions, or major replacements of federally owned, leased, contracted or granted education facilities. This priority ranking process is not a contractible program under the Indian Self-Determination and Educational Assistance Act (Pub. L. 93–638, 88 Stat. 2203), as amended.

(b) The goal of the priority ranking process is to ensure that appropriated funding resources are directed to the most critical education facilities needs.

(c) The multi-year priority ranking process established in this part does not apply to facilities construction for postsecondary schools or institutions, including tribally controlled community colleges, or to employee housing.

§ 294.2 Information collection requirements.

(a) The information collection requirements contained in § 294.11 are those necessary to comply with the

application requirements of the Office of Management and Budget (OMB) Circular No. A–102. The Standard Form 424 and attachments prescribed by such circular are approved by OMB under 44 U.S.C. 3501 et seq. and assigned approval number 0348–0006.

(b) Section 294.11 describes the types of information that would satisfy the application requirements of Circular A–102 for this education facilities construction program. Information necessary for an application for Federal assistance will be submitted on Standard Form 424 which may be obtained with application materials in accordance with § 294.8.

(c) This information is collected for the purpose of applying for Federal assistance and will be used in determining priority ranking. The obligation to respond is a requirement to obtain a benefit.

§ 294.3 Revision or amendment of regulations.

Before making substantive revisions or amendments to the regulations in this part, the Assistant Secretary shall take the following actions:

(a) Consult with Indian tribes and to the extent practical national and regional Indian organizations about the need for revisions or amendments and consider their views in preparing the proposed change to this part.

(b) Publish the proposed revisions or amendments in the **Federal Register** as proposed rulemaking, with a 90-day comment period, to provide adequate notice to, and receive comments from, all interested parties.

(c) After consideration of all comments received, publish the regulations in the **Federal Register** in final form not less than 30 days before the date they are made effective.

(d) Nothing in this section shall preclude Indian tribes or national and regional Indian organizations from initiating requests for revisions or amendments. Such requests shall be submitted in writing to the Assistant Secretary—Indian Affairs and will be subject to paragraphs (a), (b), and (c) of this section.

§ 294.4 Statement of policy.

It shall be the policy of the Bureau to:

(a) Acquire, construct, improve and repair or otherwise provide Federal education facilities so as to comply with all applicable health and safety codes and standards.

(b) Acquire sites, construct, replace, renovate, repair, discontinue use of, excess and/or demolish Federal education facilities within the Bureau facilities inventory in consultation with affected Indian tribes.

(c) Give consideration to new starts, major expansions, and major replacement construction projects for educational purposes which cannot be accomplished by other Federal agencies and which promote the development of tribal school systems serving students as close as possible to the permanent residence of the students, on a day basis, and within defined attendance boundaries.

(d) Replace facilities when economically advantageous to the Government given the life expectancy and long range need for such facility.

(e) Minimize the disruption of education programs during new starts, major expansions, and major replacements of facilities to the extent feasible.

(f) To the extent practical and within available resources, education facilities construction projects should be designed to provide a comprehensive education program consistent with Federal guidelines and requirements.

(g) Plan, design, and construct or otherwise provide federal facilities so as to comply with all applicable Federal programmatic space standards.

(h) Apply value engineering to all new starts, major replacement and major expansion projects.

§ 294.5 Definitions.

As used in this part 294:

Agency Superintendent for Education means the official in charge of education functions at a Bureau Agency Office or an authorized representative acting under delegated authority or any successor official.

Appellant means a person authorized to file an appeal from an action or decision by or on behalf of an Indian tribe(s) or Indian organization(s).

Applicant means a person who applies for an education facilities construction project under § 294.7.

Application validation means the verification of data submitted in an application by a team consisting of professional architects, engineers, and educational personnel to determine the accuracy of information in the application and in BIA records and to determine the actual needs of the project. The validation process may include a cost benefit analysis, a feasibility study, a life-cycle cost analysis, a cost effectiveness study or a demographic study or other methods of validating the application.

Area Education Programs Administrator means the official in charge of education functions at a Bureau Area Office or an authorized representative acting under delegated authority or any successor official.

Area Director means the official in charge of a Bureau Area Office or an authorized representative acting under delegated authority or any successor official.

Assistant Secretary means the Assistant Secretary for Indian Affairs, Department of the Interior, or an authorized representative acting under delegated authority.

Bureau means the Bureau of Indian Affairs of the Department of the Interior.

Bureau funded school means a Bureau school, a contract school, or a grant school.

Bureau line officer means any Agency Superintendent for Education; Superintendent; Area Education Programs Administrator; Area Director; the Director, OIEP; or the Commissioner.

Bureau school means a Bureau operated elementary or secondary day or boarding school or a Bureau operated dormitory for students attending an elementary or secondary school other than a Bureau school.

Commissioner means the Commissioner of Indian Affairs of the Department of the Interior or an authorized representative acting under delegated authority.

Contract school means an elementary or secondary school or a dormitory which receives financial assistance for its operation under a contract or agreement with the Bureau under the Indian Self-Determination and Educational Assistance Act (25 U.S.C. 450f, 450h(a), or 458d).

Director, OIEP means the Director, Office of Indian Education Programs, or an authorized representative acting under delegated authority.

Education Facility means any facility, whether owned or not owned by the Federal government, that is operated and/or funded by the Office of Indian Education Programs, Bureau of Indian Affairs, for the direct support of primary and secondary Indian education. An education facility may include an entire school facility or building, or a component(s) of a school facility or building, such as, classrooms, administrative offices, a multi-purpose room or gymnasium, a media center or library, a cafeteria/kitchen; or a Bureau funded dormitory for primary or secondary Indian students.

Facility means any building, structure or other improvements to real property such as, but not limited to, water storage tanks, water and sewer distribution lines, electrical distribution systems, sewage lagoons, parking lots, streets, and other site improvements.

Flow-through funding means funds received by the Bureau from other

Federal governmental departments or from private sources for the operation of education programs in the Bureau.

Governmental unit means a Federal, tribal, state, county or other local governmental entity, or a functional element of a governmental entity, such as a public school board.

Grant school means an elementary or secondary school which receives financial assistance for its operation under a grant under the Tribally Controlled Schools Act of 1988 (25 U.S.C. 2501 et seq.) from the Bureau.

Indian Health Service means the Indian Health Service of the United States Department of Health and Human Services.

Indian organization means any group, association, partnership, corporation, or other legal entity owned or controlled by a federally recognized Indian tribe or tribes, or a majority of whose members are members of federally recognized Indian tribes.

Indian tribe means any Indian tribe, band, nation, rancheria, pueblo, colony or community, including any Alaska Native village or regional or village corporations as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) which is recognized by the Secretary as eligible for the special program and services provided by the Bureau to Indians because of their status as Indians.

Life-cycle cost analysis means a general method of economic evaluation which takes into account all relevant costs of a facility design, system, component, material, or practice over a given period of time, adjusting for differences in the time of the costs.

Major Expansion means construction that involves the addition of over 15,000 square feet to an existing facility for new or existing program functions due to increases in the numbers of valid facility users or due to the changes in program functions impacting on programmatic space requirements.

Major Replacement means construction that involves replacement of an existing facility or portion thereof other than a facility component replacement or consolidation of existing facilities. The primary objective of such construction is to achieve a cost savings that otherwise may not be realized from other construction associated with improvements and repairs of a facility or portion thereof or additions or expansions.

New Starts means the construction of a new facility at a site where education program function(s) and non-temporary education facilities do not presently exist.

Secretary means the Secretary of the Interior, or an authorized representative.

Superintendent means the official in charge of a Bureau Agency Office or an authorized representative acting under delegated authority or a successor official.

Temporary Structure(s) means a facility intended for use on a temporary basis. Temporary structures may vary in quality and projected useful life. Temporary structures may be referred to as portables. Portables are of such size, dimensions and structure so as to be readily transportable and may be relocated as needed. Temporary structures may also be referred to as modulars. However, not all modular facilities are temporary structures. Some modular facilities are permanent structures.

Tribal Resolution means the formal manner in which the tribal government expresses its legislative will pursuant to its organic document. In the absence of such organic document, a written expression adopted pursuant to tribal practices will be acceptable.

Value engineering means an organized team study of construction project functions and components, during the project planning and design stage, to creatively generate alternatives which will satisfy the user's needs at the lowest life cycle cost. It will not sacrifice performance, reliability, quality, maintainability or safety.

§ 294.6 Assistance to Indian tribe(s) and Indian organization(s).

(a) Upon written request of an Indian tribe(s) or Indian organization(s), the Bureau shall provide technical assistance in applying for education facilities construction projects. Technical assistance may include:

(1) Assistance in obtaining and completing the application.

(2) Assistance in correcting identified deficiencies in the application.

(3) Assistance in filing an appeal under subpart D of this part.

(b) Any Bureau line officer shall make any information available to the applicant needed to prepare the application, correct deficiencies, or file an appeal except as exempted from disclosure by the Freedom of Information Act, 5 U.S.C. 552, or restricted under the Privacy Act or other applicable law.

Subpart B—Application Process

§ 294.7 Who may apply.

(a) Any Indian tribe(s) or Indian organization(s) may submit an application under the regulations in this part for an education facilities construction project for a contract or grant school. A Bureau line officer may also submit an application for a contract or grant school.

(1) The Indian tribe(s) or Indian organization(s) must control and manage the contract or grant school.

(2) Title to the land on which a contract or grant school is located must be vested in the Indian tribe or the United States; or, a lease for the useful life of the improvement must be entered into with the Indian tribe or the United States for the ground on which the education facilities construction project is located.

(b) A Bureau line officer may submit an application under the regulations in this part for an education facilities construction project for a Bureau school.

(c) An application for an education facilities construction project for an education program that has not been approved by the Director, OIEP, will not be considered under the regulations in this part. An education facilities construction project must be for a Bureau, contract or grant school.

(d) A Bureau, contract, or grant school must have a minimum current enrollment or projected enrollment of 25 students in grades K through 8 and/or 50 students in grades 9 through 12.

§ 294.8 Obtaining application materials.

Application forms for education facilities construction projects, instructions for completing the application, and related materials may be obtained from any Bureau line officer.

§ 294.9 Filing of applications and the deadline for filing.

(a) New or updated applications for education facilities construction projects will be rated and priority ranked for funding consideration at least once every three years.

(b) In February of a year when new applications for education facilities construction projects must be filed, the Assistant Secretary shall:

(1) Publish a notice in the **Federal Register**.

(2) Mail notices directly to all federally-recognized Indian tribes and all Bureau funded schools, whether Bureau, contract, or grant schools with a copy of this Part.

(c) The notice shall:

(1) Announce the next priority ranking process, the relevant procedures to be followed, and the deadline for filing applications for consideration.

(2) State how and where applications may be obtained as well as the name, address, and telephone number of a person who may be contacted for further information.

(d) A new or updated application for an education facilities construction project must be filed with the Director, OIEP, on or before June 1 in a year when new applications for education facilities construction projects will be accepted. If June 1 falls on a Saturday, Sunday, legal holiday, or other nonbusiness day, the deadline will be the first working day thereafter. Applications can be filed only:

(1) *By mail.* The applicant must send the application to the Director, OIEP, certified mail, return receipt requested, and the application must be postmarked no later than midnight on the deadline specified.

(2) *By personal delivery.* The application must be received in the Office of the Director, OIEP, no later than close of business on the deadline specified.

(e) Applications filed after the deadline specified in paragraph (d) of this section shall not be considered.

(f) The filing of more than one application for education facilities construction projects at the same project location is prohibited. Multiple applications will be consolidated and considered as one application.

§ 294.10 Emergency situations.

(a) An application for an education facilities construction project based on an emergency situation may be filed with the Director, OIEP, at any time. The application should state clearly that an emergency situation exists.

(b) Emergency situations are deemed to exist:

(1) If an education facility or a component of an education facility requires replacement or repair as a result of a major fire or natural disaster.

(2) If an education facility or a component of an education facility is subject to immediate closure based on a determination by the Bureau safety officer that facility conditions constitute an imminent danger to health and safety.

(c) Immediate action shall be taken to provide interim corrective action, such as, consolidating, curtailing, or providing alternative facilities for the education program subject to the availability of appropriated funds.

(d) The Director, OIEP, in consultation with the Indian tribe or tribal organization, if appropriate, the BIA safety officer and appropriate education and facilities personnel, shall determine what necessary permanent corrective action is required to eliminate the facility conditions that constitute the imminent danger to health and safety. The Director, OIEP, shall notify the Indian tribe or Indian organization of the determination.

(e) If it is determined that permanent corrective action requires major replacement, the Director, OIEP, will add the project to the end of the priority ranking list of education facilities construction projects prepared under § 294.18 of this part. Inclusion on the priority ranking list will be subject to approval by the Assistant Secretary.

§ 294.11 Contents of applications.

(a) An application for an education facilities construction project must be in writing and shall consist of:

(1) Application Form SF–424 which shall contain:

(i) Date application submitted.

(ii) Full name of the Indian tribe(s) for whom the application is filed, telephone number and mailing address.

(iii) Name and telephone number of a person knowledgeable about the application, who may or may not be the authorized representative, to be contacted on matters involving the application.

(iv) Name of the authorized representative, title, telephone number, signature of authorized representative and date signed.

(A) The individual named as the authorized representative will be considered the applicant and shall be recognized as fully controlling the application.

(B) A tribal resolution must accompany the application naming the individual as the authorized representative.

(C) All notices and correspondence relating to the application will be sent to the individual named as the authorized representative as applicant.

(D) The address submitted shall be considered the address of record. It shall be the applicant's responsibility to keep the Director, OIEP, advised of his or her current address.

(E) If the authorized representative changes, it is the responsibility of the Indian tribe(s) to notify the Bureau by tribal resolution of the change in authorized representative.

(v) A descriptive title of the proposed education facilities construction project.

(vi) Areas such as cities, counties, states, etc., affected by project, if applicable.

(vii) Congressional districts in which project and applicant are located, if known.

(2) Tribal resolution indicating review and approval of the application and support for the education facilities construction project. Applications without a tribal resolution will not be considered in the priority ranking process.

(3) The following information about the education facilities construction project relating to the criteria of Safety and Health Deficiencies and Environmental Deficiencies:

(i) If there is an existing facility, attach copies of any Indian Health Service, tribal sanitarian or health reports, safety reports, or any other reports such as state or county health department inspections.

(ii) If there is an existing facility, attach copies of any reports relating to non-compliance with applicable Federal, tribal or state environmental laws and regulations by the tribe, state, county or any Federal agency.

(4) The following information about the education facilities construction project relating to the criterion of Handicap Accessibility Deficiencies:

(i) If there is an existing facility, whether there are any handicap students enrolled in the school, what types of handicaps do they have and in what grades are they?

(ii) If there is an existing facility, whether there are students who may potentially be enrolled in the school, what types of handicaps do they have and in what grades will they be?

(5) The following information about the education facilities construction project relating to the criteria of Programmatic Space Needs, Space Utilization Efficiency, and Enrollment/Population Trends:

(i) Is this application for a new education program or does this application include a education program expansion or consolidation? If either, describe briefly. Has this education program or education program expansion or consolidation been approved by the Director, OIEP?

(ii) If there is an existing facility, a simple diagram of the floor plan of the education facility. This need not be an architectural drawing. The fire evacuation diagrams that are posted in the facility are acceptable. On the diagram a letter designation (A, B, C, etc.) should be assigned to each classroom, office, or other area.

(iii) A listing of each classroom, office, or other area, by letter designation assigned in paragraph (a)(5)(ii) of this section, its function in the facility, and its dimensions.

(iv) If there is an existing education facility, describe the attendance boundaries established under § 36.11(c) of Part 36 of this chapter and attach a map of the reservation or service area which shows the location of the education facility and shows the attendance boundaries of the facility.

(v) If there is not an existing education facility, describe the

proposed attendance boundaries and attach a map of the reservation or service area which shows the proposed location of the education facility and shows the proposed attendance boundaries.

(vi) Outline of school enrollment characteristics and data including:

(A) Present or estimated total enrollment and enrollment by grade.

(B) If there is an existing education facility, enrollment for the past six (6) years, or number of years available, by total and by grade.

(C) Estimate of enrollment by year for the next eight (8) years by total and by grade.

(D) Source and/or reasons for any student population growths.

(E) Estimate of the number of students residing within the attendance boundaries but enrolled in other schools.

(F) If there is an existing facility, the number of students attending the education facility, but residing outside of attendance boundaries.

(6) The following information about the education facilities construction project relating to the criterion of Cooperative and/or Consolidation Arrangements:

(i) Whether there are any plans for school consolidations, grade level reconfiguration or cooperative education arrangements with other Bureau, tribal, or public schools. If so, briefly describe.

(ii) If application includes a proposed cooperative and/or consolidation arrangement with another Indian tribe or Indian organization or governmental unit list:

(A) The name of other Indian tribe(s), or Indian organization(s) or governmental unit(s).

(B) A tribal resolution(s) of support from the other Indian tribe(s) or a proposed memorandum of agreement from the other governmental unit(s).

(iii) If application includes a proposed cooperative and/or consolidation arrangement with another Indian tribe or Indian organization or governmental unit, describe briefly the intended benefit of the arrangement.

(7) The following information about the education facilities construction project relating to the criterion of Availability of Alternative Facilities:

(i) Name all other elementary and secondary schools, whether Bureau, tribal or public, within the attendance boundary described in paragraphs (a)(5)(iv) or (v) of this section and their round trip distance from the education facility or proposed education facility in miles and bus travel time. Also, show their location on the map attached in accordance with paragraphs (a)(5) (iv) or (v) of this section.

(b) Applicants may also include:

(1) A brief Program Narrative, not more than two pages, which addresses any other problems, issues, or information relative to this project including any local economic development plans which may impact on primary and secondary education needs.

(2) Photographs of the existing facility or site.

(c) The following information or categories of information from Bureau records will be obtained by the Director, OIEP, and included in the application file to be considered by the Evaluation Committee.

(1) Information relating to non-compliance of the facility with applicable Federal, tribal or state health and safety codes and standards.

(2) Information relating to non-compliance of the facility with applicable Federal, tribal, or state environmental laws and regulations.

(3) Information relating to non-compliance of the facility with the Uniform Federal Accessibility Standards, Section 504 of the Rehabilitation Act of 1974, and the Americans with Disabilities Act of 1990.

(4) Information relating to the condition of existing utilities and site improvements, including but not limited to renovation, repairs, improvements or expansions.

(5) Information relating to the age of the facility and the condition of the facility, including but not limited to whether the structures are temporary structures and what the remaining useful life of the facility should be.

(6) Information relating to operation and maintenance costs of the facility.

(7) Information relating to the amount of available space at the facility and the space utilization efficiency at the facility.

(8) Information relating to school enrollment at the facility and census figures for the reservation or services population.

(9) Information relating to the availability of alternative facilities.

Subpart C—Priority Ranking

§ 294.12 Priority ranking criteria.

Applications shall be rated on the basis of need which shall be determined in accordance with the criteria and corresponding point values set forth below. In rating applications, the Bureau will use information in the Bureau facilities inventory and will consider information submitted by the applicant and, when appropriate, tribe, state, or other government agency reports.

(a) *Safety and Health Deficiencies* (Maximum Possible Points—30). This criterion will be used to evaluate deficiencies related to violations of applicable Federal, tribal or state health and safety codes and standards.

(1) Health and safety deficiencies may include occupational safety and health standards violations or deficiencies, national fire code and structural fire prevention guidelines deficiencies, uniform building code deficiencies, plumbing and mechanical deficiencies, electrical deficiencies, and food service sanitation.

(2) The seriousness or criticalness of health and safety code violations or deficiencies will determine the number of points received in rating projects under this criterion as opposed to the actual number of violations or deficiencies. More emphasis will be given to health and safety code violations and deficiencies which cannot be corrected other than through major replacement. Health and safety code violations or deficiencies of an operational or procedural nature, such as improper storage of food or cleaning products, will not receive points.

(b) *Environmental Deficiencies* (Maximum Possible Points—8). This criterion will be used to evaluate the deficiencies related to violations of applicable Federal, tribal or state environmental laws and regulations relating to air quality, solid waste disposal, waste water, drinking water, and any other environmental requirements.

(1) Environmental deficiencies may include occupational safety and health standards code violations or deficiencies related to the environment, such as exposed asbestos, and environmental protection agency code deficiencies or violations.

(2) The seriousness or criticalness of environmental code violations or deficiencies, rather than the actual number of violations or deficiencies, will determine the number of points received by the projects under this criterion. More emphasis will be given to environmental deficiencies which cannot be corrected other than through major replacement. Environmental code violations or deficiencies of an operational or procedural nature, such as trash cans left where animals can get into them and spread the contents, will not result in points.

(c) *Handicap Accessibility Deficiencies* (Maximum Possible Points—5). This criterion will be used to evaluate the deficiencies related to handicap accessibility.

(1) Handicap accessibility deficiencies may include violations under the Uniform Federal Accessibility Standards, violations under Section 504 of the Rehabilitation Act of 1974, and violations under the Americans with Disabilities Act of 1990.

(2) Handicap accessibility deficiencies needing major replacement to correct will receive more points under this criterion than those that can be corrected through facilities improvement and repair projects. As an example, installing handicap ramps can usually be done as a facilities improvement and repair project. However, the structure of a building may prevent the installation of an elevator to give handicap access to a second floor in a two-story building and may require major replacement of the building to remedy. Whether there are handicapped students or the potential for handicapped students to attend the education facility may also result in points. However, the number of such students at a particular education facility will not impact on the number of points received.

(d) *Condition of Existing Utilities and Site Improvements* (Maximum Possible Points—10). This criterion will be used to evaluate the physical condition and/or availability of utility systems and site improvements at an existing or proposed site.

(1) The existence or condition of utilities and site improvements, such as water, sewer, electricity, gas, telephone, solid waste disposal, access roads, or available land, will be considered under this criterion.

(2) The poorer the conditions or the lack of availability of utilities and site improvements, the higher will be the points an education facilities construction project will receive under this criterion. The conditions of existing utilities and site improvements can directly impact how extensive an education facilities construction project may have to be. Any addition or expansion to an existing education facility may require the upgrading of some of the utilities. The conditions or lack of availability may also prohibit any addition or expansion at a particular site.

(e) *Age of Existing Facilities* (Maximum Possible Points—7). This criterion will be used to evaluate the remaining useful life of a facility proposed for an education facilities construction project.

(1) The age of existing facilities or remaining useful life will be considered under this criterion. The quality of initial construction, the type of use of the building and how well the building has been maintained all impact on the useful life.

(2) The older the existing facility, the more points an education facilities construction project will receive. However, the actual condition of the facility or facilities will also be considered.

(f) *Operation and Maintenance Costs* (Maximum Possible Points—5). This criterion will be used to evaluate the relative costs to operate and maintain an existing facility.

(1) The cost of operation and maintenance will be considered under this criterion.

(2) The more costly the facility or facilities are to operate and maintain the more points an education facilities construction project will receive.

(g) *Programmatic Space Needs* (Maximum Possible Points—12). This criterion will be used to evaluate the deficiencies related to violations of applicable Federal, tribal, or state standards, such as school accreditation standards, office space standards, education space guidelines, and other applicable space standards including Part 36 of this Chapter.

(1) Only education programs approved by the Director, OIEP, will be considered in evaluating programmatic space needs. Programmatic space needs as a result of program expansions, including additional grades, program(s), or consolidation(s), will not be considered unless the program expansion has been approved by the Director, OIEP. The application for an education facility construction project, excluding the unapproved program expansion space needs may, however, be considered. In addition the current, estimated, or projected future enrollment of an approved education program based on population trends and effective use of existing space may be considered in evaluating programmatic space needs. Temporary structures will not be considered in determining current available space.

(2) The greater the additional programmatic space needs are for approved education programs, the higher the number of points an education facilities construction project will receive.

(h) *Space Utilization Efficiency* (Maximum Possible Points—6). This criterion will be used to evaluate the degree to which an existing facility or facilities has excess and underutilized space resulting in decreased space utilization efficiency.

(1) Only education programs approved by the Director, OIEP, will be considered in evaluating space utilization efficiency. Efficiency in space utilization based on program expansions, including additional grades, program(s), or consolidation(s), will not be considered unless the program expansion has been approved by the Director, OIEP. The application for an education facility construction project excluding the impact on space utilization efficiency of the unapproved program expansion may, however, be considered. Temporary structures will not be considered in determining current available space.

(2) The more excess or underutilized space in an existing facility or facilities based on approved education programs, the higher the number of points an education facilities construction project will receive. Due to the original design of the facility or facilities, major replacement of the education facility or facilities may be the only way in which excess or underutilized space can be eliminated. Consequently, the lesser the space utilization efficiency of the existing facility or facilities, the greater the number of points the education facilities construction project may receive.

(i) *Enrollment/Population Trends* (Maximum Possible Points—5). This criterion will be used to evaluate fluctuations or changes in the number of facility users and the impact the changes will have on facility needs.

(1) Only enrollment trends of education programs approved by the Director, OIEP, will be considered. Increased enrollment based on program expansions, including additional grades, program(s), or consolidation, will not be considered unless the program expansion has been approved by the Director, OIEP. The application for an education facility construction project excluding the impact of the unapproved program expansion may, however, be considered. The population trend on the reservation or within the service area will also be considered.

(2) An enrollment trend for an approved education program showing an increase over the last few years will result in an education facilities construction project receiving more points under this criterion. A projected continuing enrollment increase based on population trends may also result in higher points. Increased education needs on a reservation within a service area based on increase in population may also result in points under this criterion.

(j) *Cooperative and/or Consolidation Arrangements* (Maximum Possible Points—7) This criterion will be used to evaluate proposed cooperative agreements, joint ventures or consolidation arrangements with

Bureau, tribal, state and/or private entities which would benefit the education facility construction project and/or the education program.

(1) The benefit or potential benefit to the education facility construction project and/or the education program of a proposed cooperative agreement, joint venture or consolidation arrangement will be considered under this criterion. A proposed cooperative and/or consolidation arrangement may be considered under this criterion even though the resulting education program has not been approved by the Director, OIEP.

(2) Education facilities construction projects demonstrating the potential for decreased construction costs or operation and maintenance costs will receive higher points under this criterion. The potential for increased education program delivery without a corresponding increase in cost may also result in points. However, cooperative and/or consolidation arrangements which show no potential for benefit, whether the benefit is increased or expanded education program delivery, or decreased construction or decreased operation and maintenance costs, may not receive any points under this criterion. It is the potential benefit of, not just the proposal of a cooperative and/or consolidation arrangement that will be considered.

(k) *Availability of Alternative Facilities* (Maximum Possible Points—5). The criterion will be used to evaluate whether alternative facilities are available.

(1) The availability of alternative education facilities within a reasonable bus ride time from the residence of the students to school will be considered under this criterion.

(i) Both the age of the students and the climatic conditions or terrain directly impacting on year-round accessibility to the residence of students or the alternative facilities will be taken into account in evaluating the availability of alternative facilities.

(ii) Other Bureau funded primary or secondary schools, whether Bureau operated, contract or grant schools, as well as primary or secondary public schools will be considered in evaluating the availability of alternative facilities.

(2) Applications for education facilities construction projects where there are no available alternative facilities will receive the most points under this criterion.

§ 294.13 Technical review of applications by Director, OIEP.

(a) If an application for an education facilities construction project is filed after the deadline specified in § 294.9(d), the Director, OIEP, shall notify the applicant in writing by certified mail, return receipt requested, that the application was received after the deadline and will not be considered in the priority ranking process.

(b) The Director, OIEP, will review all applications for education facilities construction projects filed by the deadline specified in § 294.9(d) for technical completeness. The Director, OIEP, will not evaluate the information contained in the applications.

(c) If the Director, OIEP, determines that an application for an education facilities construction project is incomplete, he or she shall:

(1) Immediately notify the applicant in writing, by certified mail, return receipt requested.

(2) Identify the specific deficiencies which must be satisfied to complete the application.

(d) An applicant will have 30 days from receipt of the letter identifying deficiencies in the application in which to submit to the Director, OIEP, additional information to rectify the deficiencies in the application.

(1) If the applicant furnishes additional information to the Director, OIEP, which rectifies the deficiencies in the application, the Director, OIEP, shall:

(i) Notify the applicant in writing that the additional information rectifies the deficiencies in the application.

(ii) Advise the applicant that the application will be considered in the priority ranking process.

(2) If the applicant furnishes additional information to the Director, OIEP, which does not rectify the deficiencies in the application, the Director, OIEP, shall:

(i) Notify the applicant in writing by certified mail, return receipt requested.

(ii) Advise the applicant of the continued or remaining deficiencies in the application.

(iii) Advise the applicant whether or not the application will be considered in the priority ranking process.

(3) If the applicant does not furnish additional information, the Director, OIEP, shall take no further action.

(e) Except as provided in paragraph (f) of this section, incomplete applications for education facilities construction projects filed by the deadline specified in § 294.9(d) will be considered in the initial review whether additional information is submitted by the applicant or not. An incomplete application may adversely impact on the rating of the education facilities construction project.

(f) An incomplete application will not be considered if:

(1) The application is for an education facilities construction project for an education program that has not been approved by the Director, OIEP; or

(2) There is no tribal resolution of review and approval of the application.

(g) The Director, OIEP, shall obtain the additional necessary or relevant information contained in Bureau records as described in § 294.11(c) and include the information with the applications for education facilities construction projects filed by applicants.

§ 294.14 Establishment of Evaluation Committee and initial review of applications.

(a) The Director, OIEP, shall establish an Evaluation Committee for the purposes of reviewing and rating applications for education facilities construction projects. The Evaluation Committee shall be comprised of appropriate Bureau personnel, including education personnel and facilities personnel. The Director, OIEP, may also include appropriate personnel from the United States Department of Education on the Evaluation Committee.

(b) The Evaluation Committee shall conduct an initial review of all applications filed by the deadline specified in § 294.9(d) that have not been rejected by the Director, OIEP, as incomplete.

(c) The Evaluation Committee shall consider in the initial review of applications information contained in the applications as well as relevant information contained in Bureau records.

(d) The Evaluation Committee shall rate the applications for education facilities construction projects in accordance with the criteria specified in § 294.12.

(e) An individual on the Evaluation Committee shall not review and rate an application for education facilities construction projects filed:

(1) By or for the Indian tribe in which he or she is a member; the Indian tribe in which he or she's spouse is a member; or, the Indian tribe in which a parent is, or was, a member.

(2) For the education facility where he or she is employed or over which he or she is the official in charge of or has any line authority over the education functions at that facility.

§ 294.15 Notification of preliminary rating.

(a) The Director, OIEP, shall select those applications rated highest for further consideration and application validation based on the initial review

and rating by the Evaluation Committee. The actual number of applications to be selected for further consideration and application validation will be determined by the Director, OIEP, and may vary from one priority ranking process to another.

(b) The Director, OIEP, shall notify those applicants whose projects were selected for further consideration and application validation of the status of their applications. The notice shall:

(1) Be in writing and provide the actual number of points received under each criterion with an explanation of the reasons for the ratings.

(2) State what the cutoff rating for further consideration and application validation is.

(c) The Director, OIEP, shall notify those applicants whose projects were not selected for further consideration and application validation, that their applications will not be priority ranked. The notice shall:

(1) Be in writing and sent by certified mail, return receipt requested.

(2) Provide the actual number of points received under each criterion with an explanation of the reasons for the ratings.

(3) State what the cutoff rating for further consideration and application validation is.

§ 294.16 Application validation and final review by the Evaluation Committee.

(a) In consultation with the applicant and appropriate Bureau personnel, the Director, OIEP, shall validate the application and determine the actual needs of the project.

(b) After completion of the application validations under paragraph (a) of this section, the Director, OIEP, shall convene the Evaluation Committee established under § 294.14(a) for the purposes of a final review and rating of those applications which have been validated.

(c) The Evaluation Committee shall review the entire record for all applications that have been validated including, but not limited to, the information contained in the application, relevant information contained in Bureau records, and the results of the application validation. The Evaluation Committee shall again rate the applications based on the criteria specified in § 294.12.

§ 294.17 Ranking of applications and notification of ranking.

(a) Based on the ratings by the Evaluation Committee, the Director, OIEP, shall rank the education facilities construction projects and identify those projects which will be added to the priority ranking list.

(b) The Director, OIEP, shall notify all applicants whose projects will be added to the priority ranking list to be prepared under § 294.18. The notice shall:

(1) Be in writing and sent by certified mail, return receipt requested.

(2) Describe the education facilities construction projects to be added to the priority ranking list. The projects to be listed will be based on a determination of actual need by the Director, OIEP and may differ from the project as applied for by the applicant.

(c) The Director, OIEP, shall notify all applicants whose projects did not rank high enough to be added to the priority ranking list to be prepared under § 294.18. The notice shall:

(1) Be in writing and sent by certified mail, return receipt requested.

(2) Provide the actual number of points received under each criterion with an explanation of the reasons for the ratings.

(3) State what the cutoff rating is for addition to the priority ranking list prepared under § 294.18.

§ 294.18 Preparation of the priority ranking list.

Each year the Director, OIEP, shall update the priority ranking list of education facilities construction projects by:

(a) Removing any projects from the previously published list that have received full funding;

(b) Retaining in order any projects from the previously published priority list prepared under this Part that have not received full funding;

(c) Adding any projects which may have been determined necessary to correct an emergency situation under § 294.10(e); and

(d) Adding any projects which have been identified for addition to the priority ranking list under § 294.17(a). Projects will be identified for addition to the priority ranking list under § 294.17(a) at least once every three (3) years.

§ 296.19 Approval and publication in the Federal Register of the priority ranking list.

(a) The Director, OIEP, shall forward the priority ranking list of education facilities construction projects to the Assistant Secretary for consideration.

(b) The Assistant Secretary, upon approval, shall:

(1) Publish the priority ranking list of education facilities construction projects in the **Federal Register**. Publication of the priority ranking list in the **Federal Register** shall constitute a final agency action and may not be appealed.

(2) Submit the priority ranking list of education facilities construction projects to Congress with the budget.

(b) The Assistant Secretary will not consider petitions to include additional education facilities construction projects to the priority ranking list or change the ranking of a project on the list.

(c) Funding requests by the Department for education facilities construction projects will be based on the priority ranking list published in the **Federal Register**. However, actual funding for construction of the projects on the priority ranking list is subject to the availability of funds.

Subpart D—Appeals

§ 294.20 Appeals.

(a) Any decision or action taken by a Bureau line officer under this part may be appealed only as provided in this part and only by or on behalf of a person adversely affected by the action or decision.

(b) Unless otherwise provided in the regulations in this Part, an appeal from any decision or action taken by a Bureau line officer under this Part, must be in writing and a notice of appeal must be filed within 30 days of the notice or notification having been received by an applicant or of an action having been taken by a Bureau line officer.

(c) A statement of reasons shall be filed by the appellant in every appeal and shall include or incorporate all supporting documents.

(1) The statement of reasons may be filed with the notice of appeal.

(2) If the statement of reasons is not filed with the notice of appeal, the appellant shall file a separate statement of reasons within 30 days after the notice of appeal was filed.

(d) Any notice or notification to an applicant under this part is considered to have been received and computation of the appeal period shall begin on the earliest of the following dates:

(1) Of delivery indicated on the return receipt;

(2) Of personal delivery; or

(3) Of the return by the post office of an undelivered certified letter.

(e) In computing the 30 day appeal period, the count begins with the day following the date the notice or notification was received or was considered to have been received, or the action occurred and continues for 30 calendar days. If the 30th day falls on a Saturday, Sunday, legal holiday, or other nonbusiness day, the appeal period will end on the first working day thereafter.

(f) The Bureau line officer with whom a notice of appeal is filed may, upon

written request and a showing of good cause, extend the time for filing a statement of reasons to 60 days from the filing of the notice of appeal. No extension of time shall be granted for the filing of a notice of appeal.

§ 294.21 Appeals from actions or decisions by Agency Superintendents for Education or Area Education Programs Administrators.

(a) An appeal from an action or decision by an Agency Superintendent for Education or Area Education Programs Administrator must be filed with the Agency Superintendent for Education or Area Education Programs Administrator who issued the decision or took the action.

(b) The Agency Superintendent for Education or Area Education Programs Administrator shall acknowledge in writing receipt of the notice of appeal. Within ten (10) days after receipt of the statement of reasons, the Agency Superintendent for Education or Area Education Programs Administrator shall forward the appeal to the Director, OIEP, for action together with any relevant information or records and his or her recommendation.

(c) The Director, OIEP, will consider the record as presented together with such additional information as may be considered pertinent. Any additional information relied upon shall be specifically identified in the decision.

(d) The Director, OIEP, shall make a decision on the appeal from an action or decision by an Agency Superintendent for Education or an Area Education Programs Administrator within 60 days of his or her receipt of the appeal and shall notify the appellant in writing by certified mail, return receipt requested, of the decision.

§ 294.22 Appeals from actions or decisions by Superintendents.

(a) An appeal from an action or decision by a Superintendent must be filed with the Superintendent who issued the decision or took the action.

(b) The Superintendent shall acknowledge in writing receipt of the notice of appeal. Within ten (10) days after receipt of the statement of reasons, the Superintendent shall forward the appeal to the Area Director for action together with any relevant information or records and his or her recommendation.

(c) The Area Director will consider the record as presented together with such additional information as may be considered pertinent. Any additional information relied upon shall be specifically identified in the decision.

(d) The Area Director shall make a decision on the appeal from the action or decision by a Superintendent within 60 days of his or her receipt of the appeal and shall notify the appellant in writing by certified mail, return receipt requested, of the decision.

§ 294.23 Appeals from actions or decisions by Area Directors.

(a) An appeal from an action or decision by an Area Director, whether originally or on an appeal, must be in writing and must be filed with the Area Director who issued the decision or took the action.

(b) The Area Director shall acknowledge in writing receipt of the appeal. Within ten (10) days after receipt of the statement of reasons, the Area Director shall forward the appeal to the Assistant Secretary for action together with any relevant information or records and his or her recommendation.

(c) The Assistant Secretary will consider the record as presented together with any additional information as may be considered pertinent. Any additional information relied upon shall be specifically identified in the decision.

(d) The Assistant Secretary shall make a decision on the appeal from an action or decision by an Area Director within 60 days of his or her receipt of the appeal that shall be final for the Department and shall so state in the decision. The appellant will be notified in writing of the decision.

§ 294.24 Appeals from actions or decisions by the Director, OIEP, or the Commissioner.

(a) An appeal from an action or decision by the Director, OIEP, or the Commissioner, whether originally or on an appeal, must be filed with the Director, OIEP, or the Commissioner, as appropriate.

(b) The Director, OIEP, or the Commissioner, as appropriate, shall acknowledge in writing receipt of the notice of appeal. Within 10 days after receipt of the statement of reasons, the Director, OIEP, or the Commissioner shall forward the appeal to the Assistant Secretary for action together with any relevant information or records and his or her recommendation.

(c) The Assistant Secretary will consider the record as presented together with any additional information as may be considered pertinent. Any additional information relied upon shall be specifically identified in the decision.

(d) The Assistant Secretary shall make a decision on the appeal from an action or decision by the Director, OIEP, or the Commissioner within 90 days of his or her receipt of the appeal which shall be final for the Department and shall so state in the decision. The appellant will be notified in writing of the decision.

Ron Eden,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 93–24973 Filed 10–12–93; 8:45 am]

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federal register

Wednesday
October 13, 1993

Part III

Department of the Interior

Bureau of Indian Affairs

Joint Tribal/BIA/DOI Advisory Task Force on Bureau of Indian Affairs Reorganization; Public Meeting

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Joint Tribal/BIA/DOI Advisory Task Force on Bureau of Indian Affairs Reorganization; Public Meeting

AGENCY: Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 101–512, the Office of the Assistant Secretary—Indian Affairs is announcing the forthcoming meeting of the Joint Tribal/BIA/DOI Advisory Task Force on Bureau of Indian Affairs Reorganization (Task Force).

DATES: November 1–3, 1993, 9 a.m. to 5:30 p.m.; the Ramada Hotel Classic, 6815 Menaul NE., Albuquerque, New Mexico, (505) 881–0000. The meeting of the Task Force is open to the public.

FOR FURTHER INFORMATION CONTACT: Sam Adams, Designated Federal Officer, Office of the Assistant Secretary—Indian Affairs; MS 320 SIB; 1849 C Street NW., Washington, DC 20240; Telephone number (202) 208–2631.

SUPPLEMENTARY INFORMATION: The Joint Tribal/BIA/DOI Advisory Task Force on Bureau of Indian Affairs Reorganization will discuss priorities for organizational and management system changes proposed for the Bureau of Indian Affairs at this meeting. Each of the three Work Groups of the Task Force will review and reassess their prior recommendations based on the National Performance Review Report, "Creating a Government that Works Better & Costs Less," Public Law 103–62, "the Government Performance and Results Act," and President Clinton's budget deficit reduction targets and initiatives. Bureau of Indian Affairs proposals for restructuring the portions of the Central Office will be presented to the Task Force for action. The Task Force will proceed with its identification of BIAM and CFR changes based on the Tribal survey forms received, and it will continue work on the Tribal Budget System. Public attendance and participation in this meeting are encouraged, and time for public comments has been scheduled for Wednesday, November 3, 1993, at 9:15 a.m.

Dated: October 4, 1993.

Ada E. Deer,

Assistant Secretary, Indian Affairs.

[FR Doc. 93–25109 Filed 10–12–93; 8:45 am]

BILLING CODE 4310–02–P

federal register

Wednesday
October 13, 1993

Part IV

Department of Housing and Urban Development

Office of the Secretary

Federal National Mortgage Association and Federal Home Loan Mortgage Corporation; Interim Housing Goals; Notices

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N-93-3631; FR-3524-N-01]

Federal National Mortgage Association; Interim Housing Goals

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of interim housing goals.

SUMMARY: This Notice sets forth three separate interim goals, for calendar years 1993 and 1994, established by the Secretary of Housing and Urban Development for the Federal National Mortgage Association's purchase of mortgages on (1) housing for low- and moderate-income families, (2) housing located in central cities, and (3) housing meeting the needs of and affordable to low-income families in low-income areas and very low-income families. This Notice describes the background, operation and statutorily prescribed factors considered in the establishment of the goals—along with the goals themselves—as well as the general and specific requirements for measuring performance under the goals, relevant definitions and reporting requirements.

DATES: Effective date: October 13, 1993.

Comments due date: The Secretary will accept comments from the public on an open docket while it is developing the regulation containing the annual goals and future implementation requirements for 1995 and thereafter.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Office of the General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m. Eastern Time) at the above address.

FOR FURTHER INFORMATION CONTACT: Ben E. Laden, Director, Financial Institutions Regulation Staff, telephone (202) 708–1464 or Kenneth A. Markison, Assistant General Counsel for Administrative Law, telephone (202) 708–3137; Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. A telecommunications device (TDD) for hearing- or speech-impaired persons (TDD) is available at (202) 708–0770. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION:

Background

The Secretary of Housing and Urban Development ("the Secretary") is required to establish certain annual goals for mortgage purchases by the Federal National Mortgage Association ("FNMA" or "enterprise") and the Federal Home Loan Mortgage Corporation ("FHLMC" or "enterprise") on housing, under Part 2, Subpart B of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 ("the Act"), enacted as Title XIII of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992) and codified at 12 U.S.C. 4561–67. Specifically, the Act requires that the Secretary, after consideration of certain prescribed factors for each of the goals, establish annual goals for purchases of mortgages on housing for low- and moderate-income families, housing located in central cities, and special affordable housing, *i.e.*, housing meeting the needs of and affordable to low-income families in low-income areas and very low-income families.

For the transition period of calendar years 1993 and 1994, the Act establishes target percentage amounts for purchases by FNMA and FHLMC of mortgages on housing for low- and moderate-income families and housing located in central cities and specific dollar amounts for purchases of mortgages on special affordable housing. The Act requires the Secretary to establish interim goals covering the transition period for FNMA and FHLMC in relation to the targets. The Act provides that where an enterprise is not meeting the target(s) for the purchase of mortgages on housing for low- and moderate-income families and/or housing located in central cities as of January 1, 1993, the Secretary shall establish the goal(s) so that the enterprise improves its performance relative to the target(s) and, "to the maximum extent feasible," meets the target(s) by December 31, 1994, the end of the transition period. (Sections 1332(d)(2)(A) and 1334(d)(2)(A).[1]) Where an enterprise is meeting the target(s) as of January 1, 1993, the Act requires that the Secretary establish the goals for the period so that the enterprise improves its performance relative to the target(s). (Sections 1332(d)(2)(B) and 1334(d)(2)(B).) The Act contains no similar requirement for the establishment of the special affordable housing goals.

The Act provides that the Secretary must establish any requirements necessary to implement the transition provisions of the Act, including housing goals, by notice after providing the enterprises with an opportunity to review and comment not less than 30 days before the issuance of such notice. (Sections 1332(d)(3), 1333(d)(4), and 1334(d)(4).) The Secretary provided FNMA with an opportunity to review and comment on this Notice on July 22, 1993. The requirements in this Notice were revised following review of the comments. If any requirements for the interim goals contained in this Notice require revision, the Secretary may revise the goals by Notice in the **Federal Register** after providing the enterprises with an opportunity to review and comment not less than 30 days prior to publication.

The Act requires the Secretary to move expeditiously to establish these interim goals. Because this legislative scheme is new, many of the assumptions and interpretations embodied in this Notice are likely to be reconsidered, depending on the performance of FNMA under these goals and other relevant matters. Future goals and requirements are likely to vary substantially from those contained in this Notice. Accordingly, these interim goals and the provisions of this Notice apply only to activities of FNMA under the goals during the transition period.

The Secretary shall issue final regulations necessary to implement Part 2 of the Act, including the housing goals for 1995 and thereafter and excluding the interim housing goals, within 18 months of enactment of the Act. (Section 1349.[2]) The Act, at section 1331(c), authorizes the Secretary to adjust any goal established by the Secretary from year to year by regulation, except as otherwise provided under the Act.

All three sets of interim goals for FNMA are combined in this Notice due to similarities in the goals and the requirements for their implementation. Where the goals or the requirements differ, this Notice discusses such matters separately. In a similar but separate Notice, the Secretary has established the interim goals for FHLMC.

The Goals

After consideration of the applicable factors provided in the Act, *see below*, the Secretary establishes the interim goals as follows:

[1] Unless otherwise specified, all section cites herein are cites to the Federal Housing Enterprises Financial Safety and Soundness Act of 1992. Sections 1331–38 of that Act are codified at 12 U.S.C. 4561–67.

[2] Codified at 12 U.S.C. 4589.

Housing for Low- and Moderate-Income Families

The target set forth in the Act for FNMA's purchases of conventional mortgages financing housing for low- and moderate-income families for 1993 and 1994 is 30 percent of the total number of dwelling units financed by FNMA's mortgage purchases for each year. (Section 1332(d)(1).) The Secretary establishes the annual goal in this Notice for 1993 for such purchases at 30 percent; the annual goal for 1994 is established at 30 percent.

Housing Located in Central Cities

The target set forth in the Act for FNMA's purchases of conventional mortgages financing housing located in central cities for 1993 and 1994 is 30 percent of the total number of dwelling units financed by FNMA's mortgage purchases for each year. (Section 1334(d)(1).) The Secretary establishes the annual goal in this Notice for 1993 for such purchases at 28 percent; the annual goal for 1994 is established at 30 percent.

Special Affordable Housing

The special affordable housing goal set forth in the Act at section 1333(d)(1), and established by the Secretary under this Notice for the two year period 1993–94 for FNMA's purchases of conventional mortgages on rental and owner-occupied housing meeting the then existing unaddressed needs of, and affordable to, low-income families in low-income areas and very-low income families shall include mortgage purchases of not less than two billion dollars ($2,000,000,000) "above and beyond [FNMA's] existing performance and commitments."[3]

In establishing these goals for housing for low- and moderate-income families, housing located in central cities, and special affordable housing, the Secretary has determined, under the factors provided in the Act, to set the goals at levels which will require FNMA to stretch its efforts to purchase mortgages and provide financing meeting the goals during the transition period of 1993 and 1994.[4]

[3] S. Rep. No. 102–282, 102d Cong., 2d Sess. 36 (1992).

[4] *See id.* at 35 (1992) ("the Committee fully expects [FNMA and FHLMC] will need to stretch their efforts to achieve [the low- and moderate-income goal]") and *id.* at 36 ("The purposes of the special affordable housing goal are two-fold: (1) to increase [FNMA's and FHLMC's] purchase of mortgages serving low-income families above and beyond their existing performance and commitments; and (2) to encourage [FNMA and FHLMC] to make such purchases an integral part of their business through the development of new product lines, the creation of new business relationships, the building of institutional capacity and other innovative activities.")

Goals for Housing for Low- and Moderate-Income Families

Section 1332(b) of the Act requires the Secretary to consider national housing needs, economic, housing, and demographic conditions, the performance and effort of the enterprises in achieving the goals in previous years, the size of the relevant conventional mortgage market, the ability of the enterprises to lead the industry, and the need to maintain the sound financial condition of the enterprises, in establishing the annual goals for the purchase by FNMA and FHLMC of mortgages on housing for low- and moderate-income families. Performance under the goals for the purchase of mortgages on housing for low- and moderate-income families is to be evaluated by the Secretary based on the number of dwelling units financed by such mortgages as a percentage of the total number of units financed by mortgages purchased by FNMA. (Section 1332(d)(1).)

To determine whether owner-occupied dwelling units are affordable to low- or moderate-income families and count toward achievement of these goals, the Act provides, at section 1332(c)(1)(A), that the income of the mortgagor(s) at the time of loan origination must be used. For rental dwellings, the income of prospective or actual tenants, adjusted for smaller and larger families (sections 1332(c)(1)(B)(i) and 1303(8)(B) and (10)(B)[5]) shall be used, if available, and where such income information is not available, rent levels must be used to determine whether the dwelling units are affordable to low- or moderate-income families. (Section 1332(c)(1)(B)(ii).) Under the Act, a rent level is affordable to low- or moderate-income families if such rent, as adjusted for unit size as measured by the number of bedrooms, does not exceed 30 percent of the maximum income level for the particular low- or moderate-income classification. (Section 1332(c)(2).)

Section 1332(a) of the Act provides that the Secretary may establish separate subgoals within the goals for housing for low- and moderate-income families. Thus, the Secretary could, for example, establish a separate subgoal for housing for low-income families. Pending consideration of the needs and policy issues involved, the Secretary has determined to defer establishment of subgoals under this section. This Notice does require FNMA to report separately on dwelling units for low-income families and for moderate-income families.

[5] Section 1303 is codified at 12 U.S.C. 4502.

Central Cities Housing Goals

Section 1334(b) of the Act, in part, requires the Secretary to consider urban housing needs, economic, housing, and demographic conditions, the performance and effort of the enterprises in achieving the goals in previous years, the size of the relevant conventional mortgage market, the ability of the enterprises to lead the industry, and the need to maintain the enterprises' sound financial condition, in establishing the annual goals for the purchase by FNMA and FHLMC of mortgages on housing located in central cities. Performance under the goals for housing located in central cities is to be evaluated by the Secretary based on the number of dwelling units located in central cities that are financed by mortgages purchased by FNMA, as a percentage of the total number of units financed by mortgages purchased by FNMA. (Section 1334(d)(1).) Section 1334(d)(3) of the Act defines "central city" as "any political subdivision designated as a central city by the Office of Management and Budget."

Section 1334(a) of the Act also requires the Secretary to establish goals for FNMA's purchase of mortgages on housing located in rural and other underserved areas. The Act does not require that the Secretary establish these goals for the transition period and neither HUD nor the enterprises have experience with such goals. Accordingly, pending consideration of the needs and policy issues involved, the Secretary has determined to defer establishment of other goals under this section while issuing interim central cities goals under section 1334(d)(2).

Special Affordable Housing Goal

Section 1333(a)(1) of the Act provides that the Secretary "shall establish a special annual goal designed to adjust the purchase by each enterprise of mortgages on rental and owner-occupied housing to meet the then-existing, unaddressed needs of, and affordable to, low-income families in low-income areas and very low-income families." In establishing the goal, the Secretary is required to consider data submitted in connection with the goal for previous years, the performance and effort of the enterprise in achieving the goal in previous years, national housing needs, the ability of the enterprise to lead the industry, and the need to maintain the enterprise's sound financial condition. (Section 1333(a)(2).)

Under the special affordable housing goal, the Secretary will evaluate

FNMA's performance based on the dollar amount of mortgage purchases that meet the requirements of the Act and this Notice. Performance is not measured—as under the other housing goals established under the Act—in terms of the percentage of dwelling units financed.

The Act requires that the Secretary establish the special affordable housing goals at no less than "1 percent of the dollar amount of the mortgage purchases by the enterprise for the previous year." (Section 1333(a)(1).) During the two-year transition period beginning on January 1, 1993, the special affordable housing goal for FNMA must "include mortgage purchases of not less than $2,000,000,000 (for such 2-year period), with one-half of such purchases [$1,000,000,000] consisting of mortgages on single family housing and one-half [$1,000,000,000] consisting of mortgages on multifamily housing." (Section 1333(d)(1).) Under this Notice, the Secretary is requiring FNMA to purchase mortgages totalling at least these minimum dollar amounts during the transition period of 1993–1994, above and beyond FNMA's existing performance and commitments.[6] The special affordable housing goal for FNMA for 1993 and 1994, therefore, requires $2,000,000,000 in mortgage purchases in addition to the amount of existing business which would have qualified under the goals; for purposes of these goals existing business shall be based on performance in 1992, the year before the housing goals became effective. The statute requires achievement of this goal by December 31, 1994. (Section 1333(d)(1).) To meet these special affordable housing needs, FNMA should move expeditiously to meet the goal and should, in any event, purchase a significant amount of mortgages qualifying under this goal in 1993.

The Act and this Notice require that the goals for mortgage purchases financing multifamily housing and the goals for mortgage purchases financing single family housing under this goal be subdivided further into subgoals to reach particular categories of housing for families at lower income levels. Thus, the Act requires that, for multifamily mortgage purchases by FNMA to be counted toward achievement of the special affordable housing goal, 45 percent of the dollar volume of such purchases must comprise mortgages on multifamily housing where dwelling units are affordable to low-income families (families whose incomes do not exceed 80 percent of area median income). (Section 1333(d)(3)(A)(i).) The remaining 55 percent of the dollar volume of multifamily mortgages purchased must comprise mortgages on multifamily housing in which either: (1) "At least 20 percent of the units are affordable to families whose incomes do not exceed 50 percent" of area median income (section 1333(d)(3)(A)(ii)(I)); or (2) "at least 40 percent of the units are affordable to very low-income families" (families whose incomes do not exceed 60 percent of area median income) (section 1333(d)(3)(A)(ii)(II)). The Act provides that only those portions of mortgages on multifamily properties that are attributable to units affordable to low-income families shall contribute to the achievement of this goal. (Section 1333(d)(3)(C).)

The Act requires that, for mortgage purchases financing single family housing purchased by FNMA counted toward achievement of the special affordable housing goal, 45 percent of the dollar volume of single family mortgages comprise mortgages of low-income families (families whose incomes do not exceed 80 percent of area median income) "who live in census tracts in which the median income does not exceed 80 percent of the area median income." (Section 1333(d)(3)(B)(i).) The remaining 55 percent of the dollar volume of single family mortgage purchases must comprise mortgages of very low-income families (families whose incomes do not exceed 60 percent of area median income). (Section 1333(d)(3)(B)(ii).)

The Act sets forth certain specific requirements for evaluating FNMA's performance in meeting the special affordable housing goal. To determine whether owner-occupied dwelling units are affordable to very low- or low-income families and qualify toward achievement of this goal, the Act provides, at section 1333(c)(1)(A), that the income of the mortgagor(s) at the time of loan origination must be used. For rental dwellings, the income of prospective or actual tenants, adjusted for smaller and larger families, shall be used, if available, and where such income information is not available, rent levels must be used to determine whether the dwelling units are affordable to low- and very low-income families (section 1333(c)(1)(B)) with adjustments for unit size as measured by the number of bedrooms (sections 1333(c)(1)(B)(ii) and (c)(2)). Under the Act, a rent level is affordable to a family if it does not exceed 30 percent of the maximum income level for the particular income category. (Section 1333(c)(2).)

In evaluating FNMA's performance in achieving this goal, the Act requires the Secretary to give full credit toward achievement of the special affordable housing goal for: (1) The purchase or securitization of federally related mortgages that cannot be readily securitized through the Government National Mortgage Association (GNMA) or another Federal agency, where FNMA's participation substantially enhances the affordability of the housing subject to such mortgages,[7] and the mortgages are on housing that otherwise qualifies under this goal; (2) the purchase or refinancing of seasoned loan portfolios where the seller has a specific program to use the proceeds of such sales to originate new loans that meet the special affordable housing goal and such purchases or refinancings support additional lending for housing that otherwise qualifies under this goal; and (3) the purchase of direct loans made by the Resolution Trust Corporation (RTC) or the Federal Deposit Insurance Corporation (FDIC) where the loans are not guaranteed by the RTC or the FDIC or other Federal agencies, the loans include recourse provisions similar to those offered through private mortgage insurance or other conventional sellers, and such loans are for the purchase of housing that otherwise qualifies under this goal. (Section 1333(b)(1).)

This Notice clarifies that entities qualify as sellers, under (2) above, where the sellers currently operate or actively participate in an ongoing program that results in the origination of loans meeting the special affordable housing goal; thus, FNMA's purchase of such loans supports additional lending for housing that will qualify under this goal. By encompassing active participation, the Notice allows purchases of portfolios from sellers, that actively participate with qualified housing groups that operate programs resulting in the origination of loans meeting this goal, to count toward achievement of the goal. However, if FNMA wants to count portfolio purchases toward achievement of this

[6] One purpose of the special affordable housing goal is "to increase [FNMA's] purchase of mortgages serving low-income families above and beyond their existing performance and commitment." S. Rep. No. 102–282, 102d Cong., 2d Sess. 36 (1992).

[7] Mortgages that cannot be readily securitized through GNMA or another Federal agency and mortgages where FNMA's participation substantially enhances the affordability of the housing subject to the mortgages include, for purposes of these interim goals, mortgages under the Home Equity Conversion Mortgage (HECM) Insurance Demonstration Program, section 255 of the National Housing Act, 12 U.S.C. 1715z–20, and under the Guaranteed Rural Housing Loan program, 7 U.S.C. 1933.

goal, it must verify and monitor that the sellers currently operate or actively participate in such ongoing programs that result in the origination of additional loans meeting the requirements of this goal. FNMA must also develop necessary mechanisms to ensure compliance with the requirement that sellers actively participate in program(s) which will use the proceeds of the purchase to support additional lending to meet the affordable housing goal.

This Notice provides that the dollar amount of each mortgage that will contribute to achievement of a goal will be the unpaid principal balance of the mortgage, or portion thereof. While section 1336(a)(3)(A) of the Act provides that the Secretary shall consider any single mortgage purchased by an enterprise as contributing to the achievement of each housing goal for which it qualifies, this Notice clarifies that a single mortgage purchase will not be counted as contributing toward the achievement of more than one subgoal under the special affordable housing goal.[8] Additionally, mortgage purchases in excess of the two billion dollar special affordable housing goal, which qualify for any of the subgoals under the special affordable housing goal, may be made without regard to the percentage requirements applicable to the subgoals.

As provided in section 1333(b)(2) of the Act, this Notice provides that the Secretary will not give any credit toward achieving the special affordable housing goal to any purchases or securitization of mortgages associated with refinancing of FNMA's existing mortgage or mortgage-backed securities portfolios, nor will any credit be given for refinancing of FHLMC's existing portfolios of mortgages or mortgage-backed securities. This does not mean that FNMA may not count the purchase of individual mortgages financing properties that were previously financed by mortgages that had been purchased by FHLMC.

Definitions and General Requirements

This Notice details the definitions employed in establishing and measuring compliance with the goals, the Secretary's consideration of the factors under the Act for establishing each of these goals, the goals themselves, and requirements for implementation, monitoring, and reporting purchases under the goals.

[8] See S. Rep. No. 102–282, 102d Cong., 2d Sess. 65 (1992).

Definitions

The Act provides certain definitions which are relevant to these goals including "central city," "enterprise," "low-income," "median income," "moderate-income," "mortgage purchase," "multifamily housing," "single family housing," and "very low-income." (Sections 1303 and 1334(d)(3).) In addition to the definitions provided in the Act, this Notice provides definitions for relevant terms such as "seasoned mortgage" and further clarifies certain terms including "mortgage purchase."

The Act provides that the Secretary shall establish goals for "mortgage purchases." (Sections 1332(a), 1333(a)(1) and 1334(a).) The determination of the types of transactions of FNMA that qualify as "mortgage purchases" directly bears on the appropriate level of the interim goals established. The Act defines the term "mortgage purchases" as including "mortgages purchased for portfolio or securitization." (Section 1303(11).) This Notice provides that the term "mortgage purchases" encompasses transactions where FNMA buys or otherwise acquires mortgages with cash or other thing of value, including swap transactions. While the Secretary commends FNMA's involvement in a wide variety of undertakings including equity investments in projects eligible for Low-Income Housing Tax Credits (LIHTC), 26 U.S.C. 42, and purchases of State and local government housing bonds, which serve significant purposes related to low- and moderate income housing, the Secretary has concluded that these activities generally do not involve "mortgage purchases" by FNMA. Although the Secretary appreciates and encourages FNMA's continued involvement in these programs, such activities shall count toward achievement of these goals only to the extent that they involve mortgage purchases by FNMA which qualify under the Act and this Notice. The Secretary notes that this approach is consistent with the language in the Senate report concerning such activities:

> In the recent past, [FNMA and FHLMC] have invested heavily in low-income housing tax credits. Those investments—which make [FNMA and FHLMC] equity partners in housing developments and preservation efforts sponsored by community-based organizations, national non-profit intermediaries, local corporations, and others—have made important contributions to many communities. The Committee applauds these programs. However, goals required in [the special affordable housing] section relate only to mortgage purchases, and therefore, do not include investments in tax credits or mortgage revenue bonds issued by state or local authorities. [FNMA and FHLMC] are expected to continue such investments, but to carry them out in addition to initiatives necessary to meet the goals contained in this legislation. Following the transition period, such activities could be encompassed on a full or partial credit basis, in the goals [for housing for low- and moderate-income families and for housing located in central cities] * * *.[9]

Where FNMA purchases mortgages on properties sold from FNMA's real estate owned (REO) portfolio acquired through foreclosures, such purchases will count under these goals. Even where FNMA itself provides the financing and takes a mortgage directly from the buyer and no other lender is involved, FNMA acquires a mortgage for its portfolio or securitization and the Secretary has determined to count such a transaction as a "mortgage purchase."

This Notice also clarifies that the term "mortgage purchases" includes all purchases of conventional mortgage loans including, with some limitations, mortgages resulting from refinancings and the purchase of seasoned mortgages. Except as specifically provided under the special affordable housing goal, purchases of refinanced mortgages by FNMA shall receive full credit toward achievement of the goals, but only to the extent such purchases meet the requirements of the Act and this Notice. FNMA shall provide detailed data on refinancings; the Secretary will evaluate the data to determine the extent to which refinancings serve the purposes of these goals and whether refinancings should receive full, partial or no credit toward the achievement of the goals after the transition period.

This Notice also provides that for single family dwellings, a seasoned mortgage will count toward achievement of a goal based on the income of the mortgagor(s) and, for rental units, the tenants' income or the rent level at the time of origination as compared to area median income at the time of origination; appropriate median income data will be used by FNMA.

In defining "mortgage purchases," this Notice excludes non-conventional mortgages, such as mortgages insured under HUD's One- to Four-Family Home Mortgage Insurance Program (section 203(b) and (i) of the National Housing Act, 12 U.S.C. 1709(b) and (i)), and mortgages guaranteed by the Department of Veterans Affairs. "Mortgage purchases" may include FNMA's activities under the Multifamily Mortgage Credit Demonstration (section 542 of the

[9] *Id.* at 38. *See also* H.R. Rep. No. 102–206, 102d Cong., 1st Sess. 60 (1991).

Housing and Community Development Act of 1992, codified as a note to 12 U.S.C. 1707). Under the program, the Secretary may enter into risk sharing agreements with FNMA and/or FHLMC to finance multifamily housing under which the Secretary and the respective enterprise would assume portions of the risk. To the extent the units financed would qualify toward achievement of any of the housing goals, FNMA may receive partial credit for section 542 activities considering the percentage of the risk that FNMA assumes. The extent of the credit will be determined at a later date based on the specific requirements of the program.

Requirements

As explained above, in counting FNMA's performance in achieving these goals, the Secretary will, for mortgage purchases on single family dwellings, consider the mortgagors' income and/or the rent levels or tenants' income at the time of origination; for mortgage purchases on multifamily properties, the Secretary will consider, based on data at the time of mortgage purchase, the income of prospective or actual tenants if available and, where such income information is not available, the rent on dwelling units in comparison to the rent levels affordable to especially low-, very low-, low-, and moderate-income families. (Sections 1332(c) and 1333(c).) A rent level shall be considered affordable to such families if it does not exceed 30 percent of the maximum income level of the family's classification, *i.e.*, especially low-, very low-, low-, or moderate-income, with adjustments for unit size. (Sections 1332(c)(2) and 1333(c)(2).)

Because sections 1332(c)(1)(B) and 1333(c)(1)(B) of the Act require the use of tenants' income where such data is available, the Secretary is requiring that tenants' income be collected by FNMA where such income information is available. Based on the legislative history, income information is available "when it is known by the lender because, for example, such information is required as a condition of an existing federal housing program." [10]

Where tenant income is not known to the lender, the 30 percent rent proxy is to be used to monitor and evaluate FNMA's performance in achieving the goals as provided in sections 1332(c) and 1333(c) of the Act. (However, the Secretary notes that the 30 percent rent standard prescribed by the Act for determining affordability under the low- and moderate-income housing goal is too inclusive. In applying this standard, it can be anticipated that more than 90 percent of rental housing will be regarded as affordable to low- and moderate-income families.)

The term "rent" is not defined in the Act. Where the term "rent" is used in eligibility and affordability requirements for government housing programs, the term means "gross rent," which includes all utilities, based on either actual data or allowances. Likewise, this Notice defines "rent" as gross rent, *i.e.*, contract rent including utilities or contract rent plus utilities where some or all of the utilities are not included in the contract rent.

Where all utilities are not included in rent, use of contract rent is unsatisfactory and excludes a significant component from housing costs. Utility costs comprise a significantly larger share of total housing costs for lower income families in comparison with higher income families. Moreover, applying the rent test, with rent exclusive of utility costs, would result in an even more unrealistically inclusive test of affordability for rental dwelling units than is the case using gross rent. If contract rent were used, HUD projects that more than 95 percent of all rental units would be classified as affordable to low- and moderate-income families.[11]

To resolve the problem of assuring consideration of gross rents including utility costs, while at the same time providing workable means for including those costs, this Notice allows FNMA to use: Actual data on utilities; utility allowances, provided in this Notice, based on data from the American Housing Survey (AHS); utility allowances established for the HUD Section 8 Program (section 8 of the United States Housing Act of 1937, 42 U.S.C. 1437f); and/or an alternative adjustment formula subject to approval by the Secretary. The Notice provides that unless such an alternative approach is approved by the Secretary, FNMA shall use actual data, the AHS-derived allowances, or the Section 8 allowances.

Where tenant income is not available, sections 1332(c)(2) and 1333(c)(2) of the Act require that the test for affordability of rental dwelling units be applied to units "with appropriate adjustments for unit size as measured by the number of bedrooms." Thus, to determine whether a unit counts toward achievement of a goal, rent on the unit is considered in terms of the number of persons housed in the unit. The Low-Income Housing Tax Credit (LIHTC) provides an accepted formula for adjustments to determine housing capacity, see 26 U.S.C. 42(g)(2)(C), and this Notice requires the use of those adjustments for these goals. These adjustments assume that an efficiency houses one person, a one bedroom unit houses 1.5 persons and each additional bedroom houses an additional 1.5 persons.

Income adjustments for family size, required under the Act to determine whether a renter family's income qualifies as especially low, very low, low, or moderate, are established for the HUD Section 8 program and use of these adjustments is also required under this Notice. To determine which rental dwelling units qualify as affordable, this Notice combines the LIHTC unit size adjustment factors with the Section 8 family size adjustment factors to develop the necessary unit size adjustment factors to be applied to rent. For example, under the LIHTC an efficiency is assumed to house one person; under Section 8, for moderate income, one person's rent may not exceed 70 percent of 30 percent of area median income; thus, an efficiency is affordable for a moderate-income person if the rent does not exceed 21 percent of area median income.[12] Similarly, a two-bedroom unit is assumed to house three persons; three persons' rent may not exceed 90 percent of 30 percent of area median income; thus, a two-bedroom unit is affordable for a moderate-income family if the rent does not exceed 27 percent of area median income. These percentages are included below under "General Requirements."

In some instances, the LIHTC unit size adjustments and the Section 8 family size adjustments do not directly correspond to each other. For example, under the LIHTC a one-bedroom apartment is assumed to house 1.5 persons but Section 8 does not provide a family size adjustment for 1.5 persons. Therefore, the HUD Section 8 adjustment factors for one person (70 percent) and two persons (80 percent) have been averaged to obtain a rent not in excess of 75 percent of 30 percent of area median income, yielding a net unit size adjustment factor of 22.5 percent of area median income.[13] Similar

[10] S. Rep. No. 102–282, 102d Cong., 2d Sess. 35 (1992).

[11] Using rent as defined in this Notice, consistent with current law, 93 percent of existing rental dwelling units and 78 percent of recently constructed rental dwelling units qualify as affordable to low- and moderate-income families.

[12] Similarly, for purposes of determining affordability to low-income families: an efficiency is assumed to house one person; one person's rent may not exceed 70 percent of 30 percent of 80 percent of area median income (using family size to adjust income); thus, an efficiency is affordable to a low-income family if the rent does not exceed 16.8 percent of the area median income.

[13] Similarly, for purposes of low-income affordability, the same 75 percent figure is used to

interpolations also are made for three-bedroom and five-bedroom units.

In establishing the goals for housing for low- and moderate-income families, housing located in central cities, and special affordable housing, the Secretary, under section 1331(b), may consider the number of housing units financed by any multifamily housing mortgage purchase. The Secretary has decided to count all such dwelling units, whether in multifamily or single family housing, under these goals if the units otherwise meet the requirements of the Act and this Notice.

The statute does not allow a unit or mortgage that satisfies another State or Federal low- or moderate-income housing requirement to be automatically counted under this Act without independently meeting the Act's requirements.

In accordance with section 1335 of the Act, this Notice requires that in order to meet these goals, FNMA shall: Design programs and products that facilitate the use of government assistance; develop relationships with organizations that develop and finance housing and with State and local governments including housing finance agencies; take affirmative steps to assist primary lenders to make housing credit available in areas with concentrations of low-income and minority families, assist insured depository institutions to meet Community Reinvestment Act obligations, including developing appropriate and prudent underwriting standards; and develop the institutional capacity to help finance low- and moderate-income housing, including housing for first-time homebuyers.

Section 1336(a) of the Act requires the Secretary to monitor and enforce the goals. As required by section 1336(a)(3)(A), this Notice provides that a mortgage purchase (or a dwelling unit financed by such purchase) by FNMA will count toward achievement of each such goal for which it qualifies only as established in the Act and this Notice.

Reporting

A key purpose of the transition period is to gain data on the enterprises' performance.[14] Under this Notice, the Secretary requires quarterly and annual reports from FNMA and such other reports as the Secretary considers appropriate to carry out the Secretary's responsibilities. The Act, at section 1337, and this Notice require FNMA to submit to the Secretary, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Banking, Finance and Urban Affairs of the House of Representatives within 45 days of the establishment of the goals a report for each interim housing goal describing the actions FNMA plans to take to meet the goal. This Notice requires this initial report as well as annual, quarterly, and periodic reports as required by the Secretary. The requirements for these reports contained in this Notice may be satisfied either through separate reports on the goals covering housing for low- and moderate-income families, housing located in central cities, and special affordable housing, or through consolidated reports on all three goals.

Response to Comments From FNMA and FHLMC

On July 22, 1993, the Secretary provided each enterprise an opportunity to review and comment on that enterprise's proposed Notice of Interim Housing Goals. Both enterprises provided comments.[15] HUD staff also met with FNMA and FHLMC officers and employees to discuss the comments; after the meetings, additional comments were provided.[16] (Copies of these comments are available for public inspection in room 8234, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.) The following is a discussion of these comments.

Differences Between Enterprises in 1993 Low- and Moderate-Income and Central City Goals

FNMA commented that the Notice for FHLMC should not establish lower interim low- and moderate-income and central city housing goals for FHLMC than for FNMA in 1993 and requested that HUD eliminate the disparity as soon as possible. In establishing the goals for each enterprise, the Secretary considered the factors required by the statute, including FNMA's and FHLMC's performance and effort in previous years. *See* sections 1332(b)(3) and 1334(b)(3). Considering FHLMC's performance in previous years, including its absence from multifamily financing, the Secretary determined that FHLMC's goals for 1993 and 1994 should be set at the figures originally established. However, it should be noted that the low- and moderate-income and central city goals for FHLMC are the same as those for FNMA for 1994. Accordingly, the Notices have not been changed in this regard.

Special Affordable Housing

FHLMC objected to the Notice's requirement that its purchases of mortgages counting toward achievement of the special affordable housing goal in 1993 and 1994 be "above and beyond" its 1992 performance ("1992 base" or "base"). FHLMC contended that such a requirement is inconsistent with Congressional intent. The Senate report states that one purpose of the goal is "to increase [FHLMC's] purchase of mortgages serving low-income families above and beyond [its] existing performance and commitments."[17] This language is consistent with section 1333(d)(2) which establishes a special affordable housing goal for FHLMC of "not less than" $1.5 billion.

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obtain a rent not in excess of 75 percent of 30 percent of 80 percent of area median income, yielding a net unit size adjustment factor of 18 percent.

[14] The legislative history provides: One reason for adopting the low-income housing provisions set forth in the Committee bill is the Committee's frustration with the lack of concrete information on [FNMA's] and [FHLMC's] current activity in the area of housing for low-income persons. ... Further, because [FNMA] and [FHLMC] do not collect data on the income of borrowers or tenants, it is impossible to tell what income levels are being served by the enterprises' current activities. H. Rep. No. 102–206, 102d Cong., 1st Sess. 60 (1991). "[A]n information vacuum has severely impeded Congressional efforts to measure [FNMA's] compliance with regulatory housing goals that have been in force since 1978. The Committee believes that enactment of this bill will fill this vacuum on an expeditious basis ...." S. Rep. No. 102–282, 102d Cong., 2d Sess. 39 (1992); see *id.* at 33 ("there was no complete and accurate data to measure the [enterprises'] performance in serving low- and moderate-income families. ... The Committee's initial investigation yielded a disturbing lack of empirical information on the [enterprises'] business"). The Senate report noted that collection of data is "central to understanding and evaluating the [enterprises'] single-family and multifamily businesses." *Id.* at 39. The Senate report further noted that data collection "will help evaluate the extent to which [FNMA] and [FHLMC] are meeting the needs" of those persons intended to benefit from the housing goals. *Id.* The collected data "will show, for the first time, the nature and scope of the enterprises' multifamily business," *id.* at 40, and "will ensure, for the first time, that the regulator and Congress have all the information necessary to assess the performance of the [enterprises]," *id.* at 34. After the transition period, the Secretary will have "latitude to adjust the goals to take into account newly available data." *Id.* at 36. Specifically concerning the special affordable housing goal, the Senate report states: "After the experience of the first two years, the [regulator] may redesign the categories to target more effectively low-income family needs and reflect any gaps in [enterprise] performance." *Id.* at 37.

[15] FNMA commented in a letter, dated August 9, 1993, from James A. Johnson, Chairman of the Board and Chief Executive Officer, to the Secretary (hereinafter referred to as "FNMA Comment"). FHLMC commented in a letter, dated August 11, 1993, from Leland C. Brendsel, Chairman and Chief Executive Officer, to the Secretary (hereinafter referred to as "FHLMC Comment").

[16] FNMA's letter was from Joseph E. Amato, Director of Regulatory Policy, and FHLMC's letter was from Frank E. Nothaft, Director, Economic Operations/Analysis. Both letters were addressed to Ben E. Laden, Director, Financial Institutions Regulation Staff at HUD and were dated August 18, 1993.

[17] S. Rep. 102–282, 102d Cong., 2d Sess. 36 (1992).

According to estimates derived from Home Mortgage Disclosure Act (HMDA) data, in 1991 alone FHLMC purchased more than $800 million and FNMA purchased more than $1 billion of single family mortgages that would have met the requirements of this goal. Due to the significant increase in the enterprises' business in 1992, their 1992 special affordable purchases presumably exceeded the levels attained in 1991.[18] The legislative history of the Act provides that the goal should "increase the [enterprises'] purchase of mortgages."[19] Given the estimates of the level of the enterprises' 1991 purchases, it is clear that requiring performance "above and beyond," consistent with the legislative intent, is required to increase the enterprises' purchases. Otherwise, the overall goals for 1993 and 1994, averaging $750 million for FHLMC and $1 billion for FNMA each year, including both single family and multifamily purchases, would require less than the dollar amount of single family special affordable purchases that FHLMC and FNMA made in 1991 alone.

Under the special affordable housing goal, 1992 performance provides the base beyond which the enterprises must perform. FNMA noted that its performance relevant to special affordable housing in previous years has increased its 1992 base for the special affordable housing goal and stated that FHLMC's base will be significantly lower than FNMA's. Accordingly, FNMA requested that this "competitive inequality" be eliminated as soon as possible.[20] Although FNMA's purchases of special affordable mortgages have exceeded FHLMC's, the Notice retains the "above and beyond" requirement for the transition period, because it is consistent with the Act and its legislative history. After that, this matter will be considered in implementing the Secretary's authority to establish special affordable housing goals beyond the transition period under section 1333(a)(1).

FNMA and FHLMC stated that the 1992 base may be a distorted benchmark for the special affordable housing goal due to the record volume of business in 1992. FNMA commented that HUD should recognize the effects of large shifts in volume and recommended adjusting the 1992 base to reflect the change in the average level of FNMA's business in 1993 and 1994. Although fluctuations in business volume are likely, 1993–94 should also be a strong period for mortgage finance due to: An extended decline in interest rates following a long period of high interest rates; the high level of FNMA and FHLMC business to date in 1993;[21] and the fact that the country is in the early stages of an economic recovery, which generally corresponds to a period of increased home purchases. Also, adjusting the 1992 base for the percentage change in overall 1993–94 volumes would mean that the actual dollar amounts of the special affordable housing goals for 1993–94 could not be established until 1995. Accordingly, the Notice makes no change in the requirement that 1992 serve as the base for the special affordable housing goal.

FNMA requested that the time provided under the Notice for submission of an estimate of its special affordable 1992 base be extended from 60 to 90 days. Because the Secretary believes that 60 days is a reasonable time to prepare its report, the time period has not been extended. FHLMC requested that it not be required to certify its base; the Notice now requires "a good faith estimate," not a certification.

FNMA and FHLMC objected to the Notice's requirement that, to achieve the low-income portion of the multifamily special affordable housing goal, each dwelling unit must be affordable to low-income families. FNMA argued that a proportional approach—counting units meeting the goal as provided in sections 1333(d)(3)(A)(ii)(I) and (II), as applicable to the very low-, especially low-income portion of the multifamily goal—should also apply to the low-income portion of the goal. Section 1333(d)(3)(C) specifies proportionality for the very low-, especially low-income portion of the goal but omits this requirement for the low-income portion. Although this can be interpreted as not permitting proportionality for the low-income portion, it may also be read as not precluding a proportional approach. After further review of the legislative history, the Notices have been changed to permit proportional counting for both the low-income and the very low-, especially low-income portions of the multifamily goal.

FHLMC requested that the Notice base the portion of a multifamily mortgage to be counted toward the special affordable housing goal on the number of units, not the rent levels for those units. Because the Secretary has determined that the proportion of rent levels in a project provides a more accurate measure of the portion of a mortgage attributable to affordable units and that the collection of the relevant rental data does not impose a significant burden on the enterprises, this provision has not been changed.

FNMA and FHLMC objected to the requirement that, for purposes of determining whether a seller of seasoned portfolios of loans is engaging in a specific program to use proceeds of sales to originate additional special affordable loans under section 1333(b)(1)(B), the enterprise must enter into "binding agreements" with sellers under which the sellers agree to originate additional loans meeting the requirements of the goal. FNMA and FHLMC commented that lenders might be dissuaded from participating in these programs because of rigid requirements. FHLMC suggested that the usual system of representations and warranties would suffice. FNMA suggested that purchases from "lenders who are wholly 'in the business' of making such loans, such as community loan funds or community investment corporations," automatically qualify without any further assurances.[22] FNMA suggested that for other lenders, the Notice should permit FNMA to implement the Act's requirements as it deems appropriate. The Notice has been modified to make clear that in order to carry out this statutory requirement, the enterprises are responsible for assuring that the seller is engaged in a specific program to use the proceeds of such sales to originate additional loans that meet the special affordable housing goal, as required by the Act for the purchases of portfolios of seasoned loans that count toward the goal.

FHLMC suggested that since rehabilitation loans under section 203(k) of the National Housing Act, 12 U.S.C. 1709(k), may not be readily securitized through the Government National Mortgage Association (GNMA), purchases of these loans should qualify under the special affordable housing goal. Section 203(k) rehabilitation loans are readily securitized by GNMA. Accordingly, such loans will not qualify under the special affordable housing goal.

Section 1333(b)(2) states that no credit is to be given under the special affordable housing goals for refinancings of existing enterprise portfolios. FHLMC commented that this should not be interpreted as applying to the

[18] HMDA data for 1992 is not yet available. HMDA data provides no information on purchases by FNMA and FHLMC that would qualify under the multifamily portion of the special affordable housing goal.

[19] S. Rep. No. 102–282, 102d Cong., 2d Sess. 36 (1992).

[20] FNMA Comment at 6.

[21] FNMA expects its 1993 business volumes will "equal, if not exceed," the record volumes of 1992. *Id.* at 15. Also, FHLMC referred to "current favorable economic conditions." FHLMC Comment at 5.

[22] FNMA Comment at 8.

enterprises' purchases or securitization of individual mortgages. According to the comments, neither FNMA nor FHLMC would know if such properties had been previously financed by the other enterprise. As provided in the Act, at section 1333(b)(2), this Notice provides that the Secretary will not give any credit toward achieving the special affordable housing goal to any purchases or securitization of mortgages associated with refinancing of FNMA's existing mortgage or mortgage-backed securities portfolios, nor will any credit be given for refinancing of FHLMC's existing portfolios of mortgages or mortgage-backed securities. This does not mean that FNMA may not count the purchase of individual mortgages financing properties that were previously financed by mortgages that had been purchased by FHLMC.

Data and Related Issues

FNMA criticized the use of data from the 1981 Survey of Residential Finance (SRF) analyzing the 1977–80 period because the material allegedly is outdated and overstates multifamily activity. The SRF is conducted decennially; data from the 1991 SRF are not yet available.[23] With regard to multifamily properties, the 1977–80 period is comparable to the 1987–90 period—in both cases, multifamily conventional mortgage originations averaged 7.9 percent of the total dollar volume of conventional mortgage originations, according to the Department's Survey of Mortgage Lending Activity.

FNMA stated that the Notice's use of HMDA data overstates the size of the central city market because it is based on the "100 Percent Method." The Notice's estimate of the size of the potential central city market is based on data from the SRF and the AHS, not on HMDA data. Also, in the instances where the Notice did utilize HMDA data, in measuring performance, both the proportional method and the "100 Percent Method" were used.

FNMA stated that the "significant financing role performed by FHA/VA in central city and low- and moderate-income housing shrinks [the] universe of eligible loans."[24] The Department's analyses of the market have been conducted only with data on conventional loan originations.

Reporting requirements

FNMA urged reconsideration of the "rigid, detailed data and reporting requirements for [FNMA] and its lenders."[25] The legislative history makes clear that a key purpose of the transition period is data gathering.[26] Accordingly, while the Notice still conforms to the Congressional intent, changes have been made to reduce the reporting requirements.

FNMA requested that the due date for its annual report be extended from 60 to 90 days after the end of the year. Under section 1328(a) of the Act, the Secretary must report to Congress by June 30 of each year. To assure adequate time to consider data, the due dates for reports have not been revised.

FNMA commented that quarterly reports could be confusing and misleading and may have to be restated, because information needed to determine whether a mortgage purchase counts toward achievement of a goal may not be available until after the end of the first quarter. For example, FNMA stated that the Department's median income estimates are generally not available until April or May. The Notice clarifies that any such information that is released during a quarter need not apply until the start of the next quarter; thus, if median income estimates are released in May, those income levels could, at FNMA's option, apply only to mortgage purchases made on or after July 1.

FNMA commented that detailed quarterly reports should not be required and, instead, one semiannual report should be required each year. FNMA stated that this could be supplemented by an "abridged version" of a quarterly report and FNMA provided a sample format of such a report. Because the Department needs to evaluate the enterprises' performance on an ongoing basis and particularly during the transition, the Notice maintains the requirement for full quarterly reports.

FHLMC requested that the Department clarify when the first quarterly report will be due, and requested that such report be due after the first full quarter of performance under the Notice. Since the 1993 report will cover the last quarter of 1993, the Notice clarifies that the first quarterly report shall be for the first quarter of 1994.[27]

FNMA objected to the requirement that in reporting mortgages as qualifying under the income-based goals that it "make certain" that incomes of prospective tenants are reasonable. The Notice now requires FNMA to "determine" that such incomes are reasonable.

In determining whether seasoned mortgages count toward any of the goals, FNMA and FHLMC suggested that for mortgages on owner-occupied and single family rental properties the owner- or tenant-occupancy status of dwelling units be evaluated as of the time of mortgage origination, rather than the time of mortgage acquisition, because FNMA and FHLMC lack information on tenancy at the time a seasoned mortgage is acquired; these changes have been made.

Because of the nature of information available, FNMA also requested that the Notice clarify that rents for multifamily rental units be measured at the time of mortgage acquisition; the Notice clarifies this position. FHLMC requested that for purchases of seasoned loans, these requirements only apply to loans originated after January 1, 1993, because much of the required information was not available prior to this date. Pursuant to the Act, income information is essential to determine whether particular dwelling units count toward achievement of the low- and moderate-income housing and special affordable housing goals. Accordingly, the requirements apply to all loans whether or not originated before 1993. Where such information is not available to the enterprises, the Notice provides that mortgages on such properties will not be included in the calculation of any of the housing goals.

For single family rental properties, FNMA and FHLMC stated that income, race, and gender information on tenants required under the Notice is not available to the enterprises. FNMA requested that it not be required to collect and report that data. Section 1324(b)(3) requires the Secretary to "analyze data on income, race, and gender and compare such data with larger demographic, housing, and economic trends" and report that analysis to Congress.[28] This information was intended to assist the Secretary in reporting to Congress. Pending further consideration, the Notice has been changed to require this information only where it is available. However, in the

[23] An alternate estimate of the share of dwelling units found in 1–4 family rental housing can be obtained from the 1991 American Housing Survey (AHS); however, the AHS estimate is not restricted to properties with conventional mortgages and, therefore, is not an appropriate data source.

[24] FNMA Comment at 2 n. 1.

[25] Id. at 4.

[26] *See, e.g.*, S. Rep. 102–282, 102d Cong., 2d Sess. 39 (1992).

[27] The first report due under this Notice will be the annual report for 1993, due 60 days after the end of this year.

[28] Sections 1381(p) and 1382(s) require the enterprises to report to Congress and the Secretary "the income class of tenants of rental housing (to the extent such information is available)."

future, data of this nature may be required.

Utility Costs

The Notice previously provided that in applying the rent test of affordability, contract rent could be used where the enterprise knew that all utilities were included.[29] Otherwise, the cost of utilities that were not included had to be added to contract rent. Such utility costs could be the actual costs paid by the renter, the section 8 utility allowance, or utility costs as calculated under a method approved by the Secretary.

FHLMC commented that the collection of utility data is unnecessarily burdensome and requested that the Notice clarify that FHLMC may use actual utility data, Section 8 data, or an alternative approved by the Secretary; in fact, the proposed Notice stated this, and this Notice reiterates this point. FNMA stated that, although it recognized the need to consider utilities, the utility requirement was unworkable because FNMA has very little information on utilities included in contract rents or on utilities paid by tenants. Thus, FNMA stated that it "would not be able to comply at present with the Notice's requirements for calculating utility costs for all our multifamily properties around the country."[30] and noted that 140,000 such dwelling units were located in the properties securing the multifamily mortgages it purchased in 1992.

The Department's projections indicate that collection of actual data may be less burdensome than suggested, because these multifamily units were located in approximately 2000 multifamily properties, and obtaining utility information on 2000 properties would not impose an undue data burden on FNMA.

Nonetheless, to ensure that utilities are included in rent, the Department has developed utility allowances, based on information from the 1991 American Housing Survey (AHS). In establishing these allowances, the Department analyzed AHS data on the median costs,[31] based on unit type, paid by renters in both multifamily and single family properties for electricity, gas, oil, and water, for each of the Department of Energy's five Climate Zones.[32] These allowances provide an alternative to the methodologies previously contained in the Notice and should be easily implemented by the enterprises. If these utility allowances are used, the appropriate allowance must be added to the contract rent for the rental unit unless all utilities are included in the contract rent for a unit.[33]

Definitions

FNMA requested that the Secretary allow credit enhancement activities to count as "mortgage purchases" under the low- and moderate-income and central cities goals. The comment described a multifamily credit enhancement transaction carried out with a number of state and local housing agencies in which FNMA puts up mortgages as collateral to reduce the costs of bond financings. FNMA argued that this activity is equivalent to the issuance of a mortgage-backed security under which FNMA assumes the credit risk in the financing of mortgages. Because the described transaction is substantially similar to a mortgage purchase, the Notice has been revised to allow qualifying mortgages funded under this particular type of transaction to be counted as mortgage purchases. This Notice only approves this particular credit enhancement transaction to be treated as a mortgage purchase. Other kinds of credit enhancement transactions will not be considered mortgage purchases and will not count under these goals unless such transactions are reviewed and specifically approved by the Secretary for this purpose.

FNMA commented that equity investments in low-income housing tax credits (LIHTCs) and purchases of state and local government mortgage revenue bonds (MRBs) should in the future be included as "mortgage purchases." Decisions regarding future goals have not been made.

FHLMC commented that commitments to buy mortgages should be included in the definition of "mortgage purchases." Because a commitment is not equivalent to a "mortgage purchase," the definition has not been changed. However, the Notices now provide that the enterprises may submit information on commitments in their reports to the Secretary concerning the special affordable housing goal.

FHLMC requested that its activities under section 542 of the Act[34] be included in the definition of "conventional mortgage" even though such activities would involve guarantees by the Federal government. Under section 542(a), the Secretary is required to demonstrate the effectiveness of providing new forms of credit enhancement for multifamily loans and to evaluate the effectiveness of entering into arrangements with FNMA and FHLMC involving reinsurance and risk-sharing. The Secretary may then enter into such agreements pursuant to section 542(b), under which the Secretary would assume portions of the risk (section 544(3)).[35] To the extent FNMA or FHLMC assumes credit risk under such agreements and to the extent the enterprises' activities otherwise qualify under the Act and this Notice, the enterprises shall receive partial credit under the goals considering the extent of the enterprises' risk as established under this section 542 program.

FNMA suggested that a "seasoned mortgage" be defined as any mortgage originated five years or more before its purchase by FNMA. FNMA said that lenders may hold adjustable-rate mortgages (ARMs) up to five years after origination. The Department's definition is the customary definition used in mortgage financing and is also used in the definition of "seasoned mortgage" contained in the Glossary to FNMA's Selling Guide, August 15, 1991. The definition of "seasoned mortgage" has not been modified.

FNMA and FHLMC commented that the definition of "mortgage" should include loans on cooperatives; this addition has been made.

FNMA commented that, although "rural" and "underserved" were not defined, the Notice required FNMA to report information on mortgages in rural areas and in underserved areas. The reporting requirements for "underserved" areas has been deleted and a definition for "rural area" has been added to the Notices.

FNMA commented that lenders report to FNMA a category of "other minority," in addition to the minority categories included in the definition of minority.

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[29] The Department notes that 1991 AHS data indicate that electricity is paid separately from contract rent by tenants in 87 percent of all rental units, and that some utilities are paid separately from contract rent in 69 percent of all rental units.

[30] FNMA Comment at 5.

[31] The AHS medians have been adjusted for the percentage change in the Consumer Price Index for Fuel and Other Utilities between July–December 1991 (the period when the AHS was conducted) and the most recent three month period (May–July 1993).

[32] Because higher costs for oil and gas in colder regions are largely offset by higher costs for electricity in warmer regions, regional variations in utility costs need not be taken into account during the transition period.

[33] In cases where no utilities are included in contract rent, these allowances may yield underestimates of gross rent, and in cases where most utilities are included in contract rent, these allowances may yield overestimates of gross rent. Because the allowances incorporate information of the frequency of inclusion or exclusion of various utility costs in contract rent, these effects will largely offset each other.

[34] Codified as a note to 12 U.S.C. 1707.

[35] *Id.*

In the Notice, the definition is used in defining "minority census tract" and "concentrated minority census tract" and it is not used in reporting which mortgages are purchased by FNMA from minority borrowers. Accordingly, the definition has not been revised.

FHLMC suggested that, for counties in non-metropolitan parts of a state, the definition of "median income" should permit the use of the greater of the county's median income or the median income for the entire non-metropolitan part of the state. FHLMC stated that this change would aid some families who live in particularly poor counties that may not be low-income based on the county's median income but may be low-income based on the state's non-metropolitan median-income. FHLMC argued that this approach has been applied in defining eligibility for certain housing subsidy programs, including HOME and LIHTCs. The Department notes that under these programs, eligibility is based on a fraction of median family income rather than median income. These programs therefore do not provide pertinent precedents here. The Notice does not change the definition of "median income." Based on data provided during the transition, the Department will study this issue in connection with future goals for rural and underserved areas.

Rent

FHLMC requested that the Notice allow increases in the affordability standard for rents for high-rent areas. In this case, also, the precedent from housing subsidy programs does not apply and such an adjustment is not appropriate. Under other programs, eligibility is based on a fraction of median family income rather than median income. Further, under the test in the Act, 90 percent of all rental housing is affordable to low- and moderate-income families. Accordingly, there is no need to permit adjustment of the test.

FHLMC stated that when it underwrites a multifamily mortgage, the rent used is the average contract rent by unit type. Accordingly, requiring the use of actual contract rent for each individual unit in determining whether units count under the low- and moderate-income housing and special affordable housing goals would be burdensome. The Notice has been revised to require each enterprise to use actual rents on individual units in multifamily properties where actual rents are available; where actual rents are not available, average contract rent by unit type may be used.

Similarly, FHLMC commented that it should be permitted to use either rents or incomes to measure affordability for all units in a single multifamily project and that it should not be required to use both. The Notice has been changed to permit use of either.

Miscellaneous Comments

FNMA and FHLMC objected to the provisions in the Notices that the goals or specifications could be revised using the same procedure as the original issuance of the Notices rather than by regulation. Because there is a special process for establishment of the transitional goals and rulemaking is not required, to maintain flexibility during the transition period this section of the Notice has not been changed.

In connection with determining a property's location for purposes of determining whether the property is located in a central city, FHLMC commented that the Notice's reference to "a smaller geographic segment" should be replaced with "some other geographic segment." The Notice has been changed to reflect FHLMC's suggestion.

Accordingly, the Notice of Interim Housing Goals is set forth as follows:

Interim Housing Goals for the Federal National Mortgage Association

I. The Low- and Moderate-Income Housing Goals
II. The Central Cities Housing Goals
III. The Special Affordable Housing Goal
IV. General Requirements
V. Definitions
VI. Revision of the Notice
VII. Monitoring and Enforcing Compliance
VIII. Housing Finance Reports

I. The Low- and Moderate-Income Housing Goals

A. Establishment

Under the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4561–4567), the goals for the purchase of mortgages on housing for low- and moderate-income families are intended to achieve increased purchases by the Federal National Mortgage Association (FNMA) of such mortgages.

In establishing the low- and moderate-income housing goals, section 1332(b)(1)–(6) of the Act requires the Secretary to consider:

1. National housing needs;
2. Economic, housing, and demographic conditions;
3. The performance and effort of the enterprises toward achieving the low- and moderate-income housing goal in previous years;
4. The size of the conventional mortgage market serving low- and moderate-income families relative to the size of the overall conventional mortgage market;
5. The ability of the enterprises to lead the industry in making mortgage credit available for low- and moderate-income families; and
6. The need to maintain the sound financial condition of the enterprises.

B. Underlying Data

In considering the factors under the Act to establish these goals, the Secretary relied upon data, including data gathered under the American Housing Survey, other government reports, the Home Mortgage Disclosure Act (12 U.S.C. 2801 et seq.) (HMDA), and data gathered from FNMA, to determine national housing needs; economic, housing, and demographic conditions; the size of the conventional mortgage market serving low- and moderate-income families relative to the size of the overall conventional mortgage market; and the ability of FNMA to lead the industry. The Secretary used data provided by FNMA and data gathered under HMDA to determine FNMA's prior performance in meeting the needs of low- and moderate-income families and FNMA's financial condition.

C. Consideration of the Factors

1. National Housing Needs

Housing affordability is a problem for many American families nationwide.[36] Between 1979 and 1989, households paying more than 30 percent of their income for housing rose from 42 percent to 43 percent among renters, and from 17 percent to 19 percent among owners.[37]

Affordability problems are greatest among low- and moderate-income renters and are most frequent and severe among the lowest income renters. In 1989, when the average gross rent/income ratio for renters with incomes in excess of area median income was 21 percent, this ratio was 62 percent for renters with incomes below 30 percent of median and 38 percent for renters with incomes between 31 and 50 percent of median.[38]

The percentage of American families owning their own home increased in

[36] Since the early 1980s, "affordable housing" has meant housing for which the homeowner or renter pays no more than 30 percent of family income for housing costs, including utilities.

[37] U.S. Departments of Housing and Urban Development and Commerce, American Housing Survey for the United States in 1989 (July 1991).

[38] Tabulations of U.S. Departments of Housing and Urban Development and Commerce, American Housing Survey for the United States in 1989 (July 1991) performed by HUD Office of Policy Development and Research

virtually every year of the 1960s and the 1970s, reaching a peak of 65.8 percent in 1980. The homeownership rate then fell below 65 percent during the first half of the 1980s. In the last few years, declining home prices and lower mortgage rates have reduced the cost of owning a home. However, due to unemployment and weak income growth, this cost reduction has not led to an increase in the homeownership rate, which stood at 64.3 percent in the first half of 1993—below the rates for 1972–84.[39] The average income of the greatest source of potential first-time home buyers, married couples, aged 25–29, who rent, was $24,946 in 1991, down from $26,600 in 1989 (both in 1989 constant dollars). Among the 25–29 age group, the homeownership rate declined to 32.8 percent in 1991, down from 43.3 percent in 1980. Sharp declines in homeownership have also occurred for families in which the head of household is 30–39 years of age.[40]

Examined by income, the drop in home ownership during the 1980s was greatest among low- and moderate-income families—ownership rates remained constant or increased among households with incomes above area median. Among low- and moderate-income families, declines in ownership were greatest among families with children. Indeed, among moderate income families, ownership rates actually rose between 1978 and 1989 for all household types other than families with children; the ownership rate for families with children dropped from 78 to 70 percent.[41]

During the 1980s, the rate of new household formations declined and, in the 1990s, the rate is expected to decline further to an estimated 1,205,000 households annually.[42] The number of people turning twenty years of age will start to grow again in the mid-1990s.

The Act requires FNMA to play a major role in assisting low- and moderate-income households in obtaining housing. During the next few years, homes will be more affordable for many people due to lower inflation and lower interest rates. Slow growth of households, discussed above, should mean moderate demand in the housing market, allowing continuation of favorable market conditions for new home buyers. Under these conditions, the opportunity exists for significant growth of the homeownership rate in the population, including that for low- and moderate-income families, and this growth can be affected substantially by the activities of FNMA.

2. Economic, Housing, and Demographic Conditions

A number of developments in economic, housing, and demographic conditions are of concern to the Secretary, including:

a. *The number of homeless individuals.* The precise number of homeless individuals is difficult to determine, but a study by the Urban Institute estimated that there were between 496,000 and 600,000 homeless persons in the United States during a seven-day period in March 1987, and more than one million persons were homeless at some time during that year.[43] The Congressional Budget Office estimated a one-day homeless population of approximately 700,000 for 1991.[44] The Census Bureau supplemented its regular 1990 census operations with a special one-night "Street and Shelter Night" count of the homeless, and found more than 228,000 homeless individuals at emergency homeless shelters and at pre-identified street locations on the night of March 20, 1990.[45]

b. *The number of low-income renter households spending 50 percent or more of their income on housing,* which rose from 4.3 million in 1978 to 5.4 million in 1989.[46]

c. *The increase in the percentage of poor homeowners paying a high proportion of their income for housing costs.* Specifically, 30.6 percent of poor homeowners spent 60 percent or more of their income on housing in 1978; this figure rose to 33.1 percent in 1989.[47]

d. *The decline in the number of low rent units in the housing stock.* The affordable rental housing stock (the number of rental units with rents less than $300 per month, in constant 1989 dollars) fell from 9.9 million units in 1974, to 9.5 million units in 1985, and 9.0 million units in 1989.[48] The decline has been greatest for affordable unsubsidized units, which fell from 7.8 million in 1974 to 5.0 million in 1989.[49]

e. *The drop in multifamily housing starts.* In 1991, only 138,000 units in new private multifamily structures (5 or more units) were started; in 1992, this figure rose minimally to 139,000 units, but for the first half of 1993, multifamily starts have fallen below the 1991 level.[50] Multifamily starts in 1991 and 1992 were far below the annual average of 457,000 units for 1964–90.[51] The total number of private housing units started in 1991 was at the lowest level since World War II. Although starts rose by 18.5 percent in 1992, to 1.2 million units, they were still below the levels attained in 26 of the 30 years from 1960 through 1989.

The current housing market is characterized by an increase in the refinancing of existing mortgages. The volume of refinancings depends primarily on changes in interest rates. When interest rates fall significantly, homeowners can reduce their borrowing costs by refinancing their mortgages, and refinancings often become a high percentage of FNMA's total business. Conversely, when interest rates rise significantly, refinancings usually become a small share of mortgage activity.

In 1982, the average 30-year fixed rate mortgage interest rate reached a record high of 15.1 percent. This rate declined steadily through 1988 to 9.2 percent, but it still exceeded the rates that prevailed in the 1960s and 1970s. In 1989 and 1990, mortgage rates again exceeded 10 percent, before dropping to an average of 8.2 percent in 1992. The July 1993 rate was 7.20 percent—the lowest level since 1968.[52]

As a result of the increase in mortgage interest rates from 1988 to 1989, refinancings decreased from 24 percent of all mortgage originations in the first half of 1988 to 20 percent in the first half of 1989. As a result of the sharp decline in mortgage interest rates in

[39] U.S. Department of Commerce News, Bureau of the Census, Census Bureau Reports on Residential Vacancies and Homeownership (July 23, 1993).

[40] Joint Center for Housing Studies of Harvard University, The State of the Nation's Housing 12, 28 (1992).

[41] Nelson and Khadduri, "To Whom Should Limited Housing Resources Be Directed?", 3 Housing Policy Debate 1, 21 (1992).

[42] Armijo, Berson, Obrinsky, and Valgeirsson, "Demographic and Economic Trends," 1 J. Housing Research 21, 26 (1990).

[43] Interagency Council on the Homeless, Executive Summary: The 1990 Annual Report of the Interagency Council on the Homeless 20 (1991).

[44] *Id.* at 21. This figure was based on a memorandum written by the Congressional Budget Office which used the 1987 Urban Institute study as its starting point and was updated using a 5 percent annual growth rate.

[45] Interagency Council on the Homeless, Fact Sheet, "How Many Homeless People Are There?," April 1991, No. 1–1.

[46] Nelson and Khadduri, "To Whom Should Limited Housing Resources Be Directed," 3 Housing Policy Debate 1, 16 (1992).

[47] Center on Budget and Policy Priorities and Low Income Housing Service, *A Place to Call Home* 5 (April 1989) and U.S. Departments of Housing and Urban Development and Commerce, American Housing Survey for the United States in 1989 at 112 (July 1991).

[48] Joint Center for Housing Studies of Harvard University, The State of the Nation's Housing 35 (1992). The 1989 figure reflects Census adjustment of fuel and utilities measurement.

[49] *Id.* at 35–36.

[50] Council of Economic Advisers, Economic Indicators 19 (August 1993).

[51] Data on multifamily housing starts is not available for years prior to 1964.

[52] Council of Economic Advisers, Economic Indicators 30 (August 1993) and Economic Report of the President 428 (January 1993).

1991 and 1992, refinancings accounted for 52 percent of all mortgages closed in 1992.[53]

HMDA data indicates that in 1990 the income levels of families refinancing closely approximated the income levels of families obtaining home purchase mortgages. In that year, 25.0 percent of home purchase conventional mortgage originations were made to borrowers with incomes below area median; the corresponding figure for refinancings was also 25.0 percent. If only conventional mortgages below the conforming loan limit were counted, these 1990 percentages would both rise to approximately 28 percent.[54] Analysis of the 1991 HMDA data by the Federal Reserve Board indicates that about 32 percent of conforming conventional home purchase mortgages were made to borrowers with incomes below area median; the corresponding figure for refinancings was about 28 percent. Despite the difference in data for the low- and moderate-income shares of home purchase mortgages and refinancings, the data also suggest that even if half of FNMA's mortgage purchases were refinancings, FNMA could still reach the 30 percent low- and moderate-income target. A high volume of refinancings would not prevent FNMA from meeting the goals in this Notice.

The demographic composition of persons seeking housing has changed significantly in recent years, reflecting changes in family structure. Single-person and single-parent households have increased as a portion of the population more than other household types. The number of single-parent households increased by 15 percent between 1985 and 1989; the number of married-couple households with children did not change significantly during the same period. Only 35 percent of single-parent households were homeowners compared to 74 percent of married couples. Although single-parent households had lower monthly housing costs than married couples with children, single-parent households, on average, pay a larger proportion of their family income for housing costs than married couples with children (24 percent compared to 19 percent, respectively, for owners; 34 percent compared to 23 percent, respectively, for renters).[55]

The Bureau of the Census has reported growing inequality in the distribution of income from 1981 to 1991. Those in the lowest 20 percent income group saw their share of aggregate household income decrease from 4.1 percent in 1981 to 3.8 percent in 1991, while those in the highest 20 percent income group saw their share of aggregate household income increase from 44.4 percent to 46.5 percent between 1981 and 1991.[56] This greater disparity in incomes has led to increases in both the number of affluent homeowners and the number of persons who find it difficult to purchase adequate shelter.

The rental vacancy rate fell as low as 5.0 percent in the late 1970s and the early 1980s, but it has exceeded 7 percent from 1986 through the first half of 1993. Despite the large number of vacant units and weak economic growth, monthly rental costs (in 1989 constant dollars) declined by only 1.2 percent by 1991 from the 20 year peak rental costs of 1987 and 1988.[57]

Congress included goals for the purchase of mortgages on housing for low- and moderate-income families in the Act to ensure that FNMA's affirmative obligation to facilitate the financing of housing for low- and moderate-income families is carried out. Current economic, housing, and demographic conditions substantiate the need for and support these goals for financing housing for low- and moderate-income families as set forth in this Notice.

3. Performance and Effort of FNMA Toward Achieving the Goal in Previous Years

While these are the first low- and moderate-income goals established under this Act, some data is available concerning the income of homeowners whose mortgages were purchased by FNMA for the 1990–92 period.[58] An analysis of this data, gathered under the Home Mortgage Disclosure Act (HMDA), shows that 23 percent of mortgages purchased by FNMA in 1990 provided financing for home buyers with income less than area median family income.[59] Analysis of 1991 HMDA data by the Federal Reserve Board shows that this percentage increased in 1991, to about 26 percent.

An analysis by FNMA of its 1991 mortgage purchases found that:

a. Approximately 23.3 percent of the owner-occupied, single-unit loans purchased or securitized by FNMA and originated in 1991 were secured by properties purchased by families with incomes not in excess of 1991 median area income;

b. FNMA purchased mortgages financing housing for approximately 113,000 households in 1- to 4-unit rental properties in 1991 and, based on previous experience, FNMA believes that the majority of these households were of modest means; and

c. FNMA has more than $22.5 billion of multifamily loans in its portfolio and mortgage-backed securities, comprising 3.7 percent of the dollar amount of its conventional mortgages—in 1991, FNMA estimated that its new multifamily business financed housing for more than 127,000 units and that most of these are units housing low- or moderate-income families.[60]

In a letter to the Department,[61] a FNMA official stated that FNMA had updated and refined its analysis of its mortgage purchases by examining a one percent random sample of its loan files as part of its post-purchase review of

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[53] Monthly average refinancing data obtained from FHLMC's Primary Mortgage Market Survey (February 8, 1993).

[54] Canner and Gabriel, "Market Segmentation and Lender Specialization in the Primary and Secondary Mortgage Markets," 3 Housing Policy Debate 255–257, 282 (1992) [hereinafter "Canner and Gabriel"].

[55] U.S. Department of Commerce, Economics and Statistics Administration, Bureau of the Census, Housing Characteristics of One-Parent Households: 1989 Series H–121, No. 92–2 1–2 (1992).

[56] U.S. Department of Commerce, Economics and Statistics Administration, Bureau of the Census, Money Income of Households, Families, and Persons in the United States: 1991 Series P–60, No. 180 xiv-xv (1992).

[57] Joint Center for Housing Studies of Harvard University, The State of the Nation's Housing 35 (1992).

[58] Since 1978, FNMA has operated under a 30 percent goal for purchases of mortgages on housing for low- and moderate-income families, but this goal was based on housing prices (as a proxy for income) pursuant to HUD regulations promulgated under the FNMA Charter Act. See 24 CFR 81.17.

[59] Canner and Gabriel, *supra* note 54, at 241, 279, and 282. The majority of refinanced mortgages are conventional mortgages.

There are several differences between the data gathered under HMDA and the data required to evaluate compliance with the low- and moderate-income housing goal under the Act including that the HMDA data: (1) Concerns the number of home mortgages, while the Act refers to dwelling units—thus, the HMDA data does not distinguish between a 100-unit multifamily property with a single mortgage and a 1-unit property; (2) excludes all loans outside of metropolitan areas (MSAs); and (3) is derived only from reports from financial institutions that have more than $10 million in assets and either have a branch located in an MSA or receive applications for 5 or more mortgage loans from such an area—the HMDA database excludes small institutions that do not lend in metropolitan areas.

[60] Home Mortgage Disclosure Act: Joint Hearings Before the Subcomms. on Consumer Affairs and Coinage and on Housing and Community Development, of the Comm. on Banking, Finance and Urban Affairs, House of Representatives, Serial No. 102–120, 102d Cong., 2d Sess. 554, 555, 558, and 563 (1992) (statement of James A. Johnson, Chairman and Chief Executive Officer of FNMA).

[61] Dated December 24, 1992, from Ellen S. Seidman, Senior Vice President, Regulation, Research, and Economics, to Kenneth A. Markison, HUD Assistant General Counsel for Administrative Law.

loans acquired during the first three quarters of 1992. This analysis found that approximately 25 percent of the units collateralizing conventional single family loans met the tests for housing for low- and moderate-income families under the Act.[62] The letter also stated that approximately 91 percent of multifamily units financed by mortgages purchased by FNMA were affordable to families at or below the area median income; for all of 1992, FNMA states that 97 percent of its multifamily units were affordable.[63] Investments eligible for the Low-Income Housing Tax Credit (LIHTC), 26 U.S.C. 42, were included among mortgage purchases; this calculation also assumed that contract rent would be used to determine affordability. The letter concluded that approximately 29 percent of mortgages purchased by FNMA in 1992 were for housing for low- and moderate-income families.

This Notice does not permit LIHTC investments to be counted as "mortgage purchases" under the Act because such undertakings are not, in fact, mortgage purchases. Based on information available to HUD, these activities, if counted, would comprise less than one percent of the units under these goals. Similarly, it is estimated that the use of "rent" inclusive of utilities rather than "contract rent" will reduce FNMA's estimate of its mortgage purchases qualifying under this Notice by less than one percent.

With the exclusion of investments eligible for the Low-Income Housing Tax Credit and the measurement of rent as gross rent as provided in this Notice, the Secretary has determined that the percentage of FNMA's purchases of mortgages on housing for low- and moderate-income families was approximately 26 percent in 1991 and 27 to 28 percent in 1992.

4. Size of the Conventional Mortgage Market Serving Low- and Moderate-Income Families Relative to the Overall Conventional Market

Data from the American Housing Survey for 1985, 1987, and 1989 indicate that, overall, 30 percent of those families who recently purchased or refinanced their homes, and who obtained conventional mortgages below the conforming loan limits, had incomes below the area median. Based on this data, even if FNMA's purchases consisted primarily of mortgages secured by owner-occupied homes, FNMA could achieve the Act's target for purchases of mortgages on housing for low- and moderate-income families by buying a representative sample of the mortgages available in the market.

For rental properties, current data on the income of prospective or actual tenants has not been readily available to FNMA in the past. Where such income information is not available, the Act provides that a rent level is affordable if it does not exceed 30 percent of the maximum income level for the low-income or moderate-income category, with appropriate adjustments for unit size as measured by the number of bedrooms. Analysis of American Housing Survey data shows that 93 percent of all rental units and 78 percent of unsubsidized rental units constructed in the last three years had gross rents of less than 30 percent of area median family income.

To calculate the size of the potential market for mortgages financing housing for low- and moderate-income families, data on the number of owner-occupied dwelling units, rental units in 1–4 unit properties, and rental units in multifamily properties are necessary. In determining the proportions of dwelling units in these three different types of properties, the Secretary has utilized data from the 1981 Survey of Residential Finance[64] on the number of properties with conventional mortgages acquired during the 1977–80 period, and the average number of dwelling units for each type of property, derived from the same source.[65] Based on this data, the Secretary estimates that, of total dwelling units in properties with recently acquired conventional mortgages, 53.5 percent were owner-occupied units, 18.9 percent were in 1–4 family rental properties, and 27.6 percent were located in multifamily rental properties.[66] Applying the percentages of affordable dwelling units (30 percent of owner-occupied dwelling units and 78 percent of rental dwelling units are affordable to low- and moderate-income families) to these percentages of properties results in the Secretary's conclusion that 52 percent of the dwelling units secured by conventional mortgages, eligible for purchase by FNMA, are affordable to low- and moderate-income families.[67] These calculations show that FNMA, through a program that includes purchases of both owner-occupied and rental properties, including multifamily properties, should be able to achieve the 30 percent target established in the Act.

5. FNMA's Ability To Lead the Industry

FNMA's ability to lead the industry depends on its role in the mortgage market as well as its profitability. FNMA and the Federal Home Loan Mortgage Corporation (FHLMC) together purchased approximately 65 percent of all conventional conforming single family mortgages in 1992—up from 17 percent in 1980, 33 percent in 1985, and 52 percent in 1991.[68]

The report on the Federal Housing Enterprises Regulatory Reform Act of 1992, S. 2733, by the Senate Committee on Banking, Housing, and Urban Affairs discussed FNMA's profitability, and noted that FNMA and FHLMC "have grown more than 130 percent in the last five years, while profits have grown even faster."[69] The enterprises have had "a fivefold expansion [in profits] in just five years, a period that included one of the nation's most severe recessions."[70] The Committee noted "the contrast between the [enterprises'] increasing financial success and the worsening availability of affordable housing,"[71] and stated that "the capabilities of the [enterprises] partially to fill this gap are larger than ever."[72] In light of FNMA's

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[62] Of single family loans acquired by FNMA in 1992, 24 percent of owner-occupied units and 75 percent of rental units met the tests for housing for low- and moderate-income families. Letter, dated April 26, 1993, from Joseph E. Amato, FNMA Director of Regulatory Policy, to Ben Laden, HUD Director, Financial Institutions Regulation Staff.

[63] *Id.*

[64] A commonly-used source of information on mortgage originations is HUD's Survey of Mortgage Lending Activity. However, for this analysis, that survey is inadequate, because the data are expressed in dollar terms, not in terms of the number of dwelling units, and the survey distinguishes only between single family (1–4 unit) and multifamily (5 or more unit) properties—no information is provided on rental units in 1–4 unit properties.

[65] With regard to multifamily properties, the 1977–80 period is comparable to the 1987–90 period—in both cases, multifamily conventional mortgage originations averaged 7.9 percent of the total dollar volume of single family and multifamily conventional mortgage originations.

[66] HUD Office of Policy Development and Research, 1991 Report to Congress on the Federal National Mortgage Association 100 (1992).

[67] The 52 percent figure was derived by adding the following: (1) 16.05% (percentage of owner-occupied units [53.5%] times percentage of those units that are affordable to low- and moderate-income families [30%]); (2) 14.74% (percentage of rental units in 1–4 family properties [18.9%] times percentage of those units that are affordable to low- and moderate-income families [78%]); and (3) 21.53% (percentage of rental units in multi-family properties [27.6%] times percentage of those units that are affordable to low- and moderate-income families [78%]). The 52 percent figure is a conservative estimate because it is based on the 78 percent estimate for newly-constructed affordable rental units rather than the 93 percent estimate for all affordable rental units.

[68] FNMA Economics Department. By itself, FNMA purchased approximately 42 percent of all conventional conforming single family mortgages in 1992.

[69] S. Rep. No. 102–282, 102d Cong., 2d Sess. 28 (1992).

[70] *Id.*

[71] *Id.*

[72] *Id.* at 29.

and FHLMC's market dominance, strength, and high profitability, FNMA, along with FHLMC, is able to lead the industry in making mortgage credit available for low- and moderate-income families.

6. Need To Maintain FNMA's Sound Financial Condition

FNMA's financial condition depends on its profitability, the adequacy of its capital, and the safety and soundness of its operations. The Senate report on the Act stated: "The combined profits of [FNMA] and [FHLMC] approached $2 billion in 1991 compared to $350 million in 1986."[73] FNMA's profits increased from $1.36 billion in 1991 to $1.62 billion in 1992 and FNMA's net income in the first half of 1993 was 15 percent above the level of the first half of 1992. FNMA's return on average equity averaged 28.8 percent over the 1988–92 period—far above the rates achieved by most financial corporations.

The Secretary has concluded that the low- and moderate-income housing goals will not endanger the adequacy of FNMA's capital or the safety and soundness of its operations and that achievement of the goals will not impair FNMA's sound financial condition.

D. Determination

Based on available data, the Secretary has concluded that FNMA's purchases of mortgages on housing for low- and moderate-income families accounted for approximately 27 to 28 percent of the total number of dwelling units financed by FNMA's mortgage purchases in 1992. Accordingly, FNMA has not yet achieved the 30 percent target established for the purchase of mortgages on housing for low- and moderate-income families. Therefore, in accordance with the Act, these goals are established so that FNMA will improve its performance relative to the target to the maximum extent feasible and so that FNMA will meet the 30 percent target by the end of 1994.

The Secretary has determined that the interim goals set forth below address national housing needs and current economic, housing, and demographic conditions, and take into account FNMA's performance in the past in purchasing low- and moderate-income mortgages, as well as the size of the conventional mortgage market serving low- and moderate-income families. Moreover, the Secretary has considered FNMA's ability to lead the industry as well as FNMA's financial condition. These goals will necessitate an increase in FNMA's low- and moderate-income housing business to reach the targets of 30 percent by 1995. The Secretary has determined that these goals are necessary and achievable.

E. The Interim Low- and Moderate-Income Housing Goals

The annual goal for 1993 for FNMA's purchases of conventional mortgages financing housing for low- and moderate-income families is established at 30 percent of the total number of dwelling units financed by FNMA's mortgage purchases; the annual goal for 1994 is 30 percent.

II. The Central Cities Housing Goals

A. Establishment

Under the Act, these goals are intended to achieve increased purchases by FNMA of mortgages on housing located in central cities.

The Act provides that the Secretary shall monitor performance of both FNMA and FHLMC in carrying out these goals and "shall evaluate such performance * * * based on the location of the properties subject to mortgages purchased by each enterprise." (Section 1334(c).) Units will be counted under these goals if the units are located in a "central city" as defined under the Act. Through the use of geocoding or any similarly accurate and reliable method, FNMA shall determine, and report to the Secretary, whether units financed under mortgages purchased by FNMA are located in central cities. Where FNMA cannot determine the exact location of a property but can determine that the property is located in a census tract, or within a census place code, block-group enumeration district, nine-digit zip code, or another appropriate geographic segment, that includes at least part of a central city, the percentage of dwelling units that may be counted as central city units is equal to the percentage of the population of the geographic segment that resides within the central city—this method is referred to as the "proportional method."

In establishing the interim central cities goal, section 1334(b)(1)-(6) of the Act requires the Secretary to consider:

1. Urban housing needs;
2. Economic, housing and demographic conditions;
3. The performance and efforts of the enterprises toward achieving the central cities goal in previous years;
4. The size of the conventional mortgage market for central cities relative to the size of the overall conventional mortgage market;
5. The ability of the enterprises to lead the industry in making mortgage credit available throughout the United States, including central cities; and
6. The need to maintain the sound financial condition of the enterprises.

The geographic goals for mortgage purchases by FNMA established by the Act will apply to rural areas and other underserved areas as well as central cities beginning on January 1, 1995. At this time, for the 1993–94 period, these goals apply only to the purchases of mortgages on housing located in central cities. Thus, in this discussion reference is made only to central cities goals and targets.

B. Underlying Data

In establishing the central cities goal and in considering the factors under the Act, the Secretary relied upon data, including data gathered under American Housing Surveys, other government data, the Home Mortgage Disclosure Act (HMDA) (12 U.S.C. 2801 *et seq.*), and data gathered from FNMA, to determine central city housing needs; economic, housing and demographic conditions; and the size of the conventional mortgage market serving central cities relative to the size of the overall conventional mortgage market. The Secretary used data provided by FNMA and data gathered under HMDA to determine prior performance in meeting the needs of central city residents and FNMA's financial condition.

C. Consideration of the Factors

1. Urban Housing Needs

In its report on the Act, the Senate Committee on Banking, Housing, and Urban Affairs commented on the housing needs of urban areas:

> Housing problems in general, and access to capital in particular, are acute in our nation's cities * * *. Their economic distress is a vital issue, not only to the cities immediately affected, but to the entire nation * * *. [C]apital for housing finance is a serious need. Unfortunately, the Committee finds that city residents, for a variety of reasons including discriminatory practices, do not have the access to mortgage capital that non-urbanites enjoy.[74]

Data on various aspects of housing in the central cities has been collected in the 1989 American Housing Survey.[75] Housing conditions in central cities are illustrated by comparing this data with the corresponding data for the suburbs, as follows:

a. *Income of occupants.* One of every six central cities' households (16.6

[73] *Id.* at 28.

[74] *Id.*

[75] U.S. Departments of Housing and Urban Development and Commerce, American Housing Survey for the United States in 1989, at 35, 187, 249, 372, 374, 377, 378, 384, 385, 414, 416, 419, 420, 426, and 427 (July 1991).

percent) fell below the poverty line in 1989, nearly twice the rate for suburban households (8.7 percent). Similarly, median household income was much lower in central cities—$25,062, versus $33,244 in the suburbs.

b. *Homeownership.* A sharp divergence exists between the percentage of homeownership in central cities and other areas—in 1991 the homeownership rate was 48.7 percent in central cities, 70.2 percent in the suburbs, and 73.2 percent outside of MSAs.[76]

c. *Housing costs.* Despite the lower incomes in central cities, monthly housing costs as a percentage of income are somewhat higher in central cities—averaging 23 percent of income in urban areas, versus 21 percent in the suburbs. The size of this gap partly reflects the fact that renters, who generally have higher housing costs relative to income, make up a higher share of households in urban areas than in the suburbs. But even with some adjustment for the rental/owner-occupied mix, many central city residents still pay higher costs for housing—*e.g.*, 20 percent of renters in central cities paid more than 50 percent of their income for housing costs, versus 18 percent in the suburbs.

d. *Age of structure.* In the suburbs, 79 percent of housing structures have been built since 1950—versus 59 percent in central cities. On average, suburban structures, with a median construction date of 1968, are 12 years newer than central city structures, with a median construction date of 1956.

e. *Condition of structure.* In the suburbs, 2.7 percent of occupied dwelling units reported severe physical problems in plumbing, heating, electrical service, upkeep, or public areas—versus 4 percent in central cities. Approximately 5.9 percent of suburban units reported inadequate heating in the preceding winter—versus 8.7 percent in central cities.

f. *Unemployment.* In 1992 the unemployment rate in central cities was 8.9 percent, well above the 6.6 percent rate for the suburbs, the 7.5 percent rate for metropolitan areas as a whole, and the 7.1 percent rate for nonmetropolitan areas. The difference in jobless rates was especially pronounced in the poorest areas—14.0 percent for metropolitan poverty areas, and 8.6 percent for nonmetropolitan poverty areas.[77]

g. *Minorities.* Members of minority groups are especially disadvantaged by housing conditions in central cities, because a majority of such individuals live in central cities. The 1989 American Housing Survey found that 60 percent of Black households were located in central cities, 26 percent were in the suburbs, and 14 percent were outside of metropolitan areas. For Hispanics, the corresponding percentages were 52 percent, 39 percent, and 9 percent. For other households, 27 percent were located in central cities, 49 percent were in the suburbs, and 24 percent were outside of metropolitan areas.

Based on this data, the Secretary believes that it is essential for FNMA to play a greater role in addressing the serious housing needs of the central cities.

2. Economic, Housing, and Demographic Conditions

Compared to suburban and nonmetropolitan areas, central cities have a much higher percentage of households with "worst case" housing needs. Such households include unassisted renters with incomes that do not exceed 50 percent of area median income who have been displaced, renters who pay more than half of their income in rent and utilities, or households that live in severely substandard housing. Over half of households with worst case problems were in central cities in 1989, even though cities housed only one-third of all households.[78] In the 44 large metropolitan areas surveyed separately by the American Housing Survey, 10 percent of city households had worst case problems, compared to only 4 percent of suburban households.[79]

This factor is the same as the second factor considered under the goal for housing for low- and moderate-income families. Accordingly, see paragraph I.C.2., for additional discussion of this factor.

Congress included housing goals for central cities in the Act to ensure that the benefits of mortgage financing from FNMA's secondary market activities would be available in the central cities. Current economic, housing, and demographic conditions substantiate the need and support the goals for housing located in central cities as set forth in this Notice.

3. Performance and Effort of FNMA Toward Achieving the Goal in Previous Years

Data gathered under the Home Mortgage Disclosure Act (HMDA) shows that 34 percent of all conventional conforming home purchase and refinanced mortgages purchased by FNMA in 1990 (for which the property location was reported) were on properties located in central cities.[80] The Federal Reserve Board's estimate for 1991, based on HMDA data, is that 35 percent of the mortgages purchased by FNMA were on properties located in central cities. These calculations included all mortgages on housing located in any census tract where at least part, but not necessarily all, of the census tract was in a central city. Calculation of central city mortgage purchases in this manner is known as the "outer circle method."

Using the outer circle method, FNMA's own analysis of its 1991 single family mortgage purchases found that 32.2 percent of dwelling units financed by those mortgages were in central cities.

In a letter[81] to the Department, a FNMA official stated that FNMA had updated and refined its analysis by examining a one percent random sample of its loan files as part of its post-purchase review of loans acquired during 1992. FNMA's analysis found that approximately 25 percent of single family dwelling units and 47 percent of multifamily units financed by mortgages purchased by FNMA were located in central cities—for a combined FNMA central city total of 26 percent. In making these approximations, FNMA used the proportional method rather than the outer circle method. The proportional method allocates mortgages in census tracts that straddle central city boundaries based on the portion of the population that resides in the central city in such census tracts.[82]

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[76] U.S. Bureau of the Census, Housing Vacancies and Homeownership Annual Statistics: 1991, Current Housing Reports, Series H111/91–A, 34 (1992). The lower homeownership rate in central cities may, to some degree, reflect the preferences of urban dwellers.

[77] Department of Labor, Employment and Earnings 244–46 (January 1993). Poverty areas are census tracts in which 20 percent or more of the residents were poor, according to the 1990 decennial census.

[78] HUD Office of Policy Development and Research, Priority Housing Problems and "Worst Case" Needs in 1989, 15 (1991).

[79] HUD Office of Policy Development and Research, The Location of Worst Case Needs in the Late 1980s (1992).

[80] Canner and Gabriel, *supra* note 54, at 273. The HMDA data is based on a review of loans originated and sold to FNMA in 1990 by lenders with assets of at least $10 million. Of those 1990 loans, 78 percent provided sufficient geographic information to determine whether the property was located in a central city; the remaining 22 percent consisted of loans where lenders were not required to include a census tract number, lenders failed to supply a number, or the number was incorrect.

[81] Dated April 26, 1993, from Joseph E. Amato, FNMA Director of Regulatory Policy, to Ben Laden, HUD Director, Financial Institutions Regulation Staff.

[82] This approach has been implemented using census tract data. However, FNMA may choose to use other geographic segments such as census place

The Secretary has determined that, where FNMA cannot ascertain the exact location of a property but can determine in which census tract the property is located, the proportional method provides a better means than the outer circle method for measuring the percentage of mortgage purchases on housing located in central cities. Under the proportional method, approximately 26 percent of FNMA's purchases of mortgages on housing were located in central cities in 1992.

4. Size of the Conventional Mortgage Market for Central Cities Relative to the Size of the Overall Conventional Mortgage Market

Data from the American Housing Survey for 1985, 1987, and 1989 indicate that, overall, 24 percent of all recent mortgages from owner-occupier home buyers and owners who refinanced, and who obtained conventional mortgages below the conforming loan limits, were secured by properties located in central cities. For 1- to 4-family rental properties, 42 percent of all rental units and 32 percent of unsubsidized rental units constructed in the preceding three years were located in central cities. For multifamily rental properties, 58 percent of all rental units and 47 percent of unsubsidized rental units constructed in the preceding three years were located in central cities.

Based on data from the 1981 Survey of Residential Finance, discussed above, the Secretary estimates that, of total dwelling units in properties with recently acquired conventional mortgages, 53.5 percent were owner-occupied units, 18.9 percent were in 1–4 family rental properties, and 27.6 percent were located in multifamily rental properties. Utilizing the percentages of dwelling units located in central cities (24 percent of owner-occupied units, 32 percent of recently constructed rental units in 1- to 4-family rental properties, and 47 percent of recently constructed rental units in multifamily rental properties) results in the Secretary's conclusion that 32 percent of the dwelling units secured by conventional mortgages are located in central cities.[83] These calculations show that through a program that includes purchases of mortgages on both owner-occupied and rental properties, including multifamily properties, FNMA should be able to improve its performance from 26 percent to achieve the 30 percent target established in the Act.[84]

5. FNMA's Ability To Lead the Industry

This factor is the same as the fifth factor considered under the goal for mortgage purchases on housing for low- and moderate-income families. Accordingly, see paragraph I.C.5., for a discussion of this factor.

6. Need To Maintain FNMA's Sound Financial Condition

This factor is the same as the sixth factor considered under the goal for mortgage purchases on housing for low- and moderate-income families. Accordingly, see paragraph I.C.6., for discussion of this factor.

D. Determination

Based on available data, the Secretary has concluded that FNMA's purchases of mortgages on housing located in central cities were approximately 26 percent of the total number of dwelling units financed by FNMA's mortgage purchases in 1992. Accordingly, FNMA has not yet achieved the 30 percent target established for the purchase of mortgages on housing in central cities. Therefore, in accordance with the Act, these goals have been established so that FNMA will improve its performance relative to the target to the maximum extent feasible and so that FNMA will meet the 30 percent target by the end of 1994.

Having considered the factors for establishing the goal, the Secretary has determined that the goals established below address urban housing needs and economic, housing and demographic conditions and take into account FNMA's performance in the past in purchasing mortgages on properties in central cities, as well as the size of the conventional mortgage market for central cities. Moreover, in establishing these goals the Secretary has considered FNMA's ability to lead the industry as well as FNMA's financial condition. The Secretary has determined that these goals are both necessary and achievable.

The Secretary is determined to achieve an end to redlining and other forms of discrimination that severely reduce the availability of housing finance in central cities. As noted in the Senate report on the Act: "Inadequate access to mortgage credit is a particular problem which results, in large part, from the vestiges of redlining and the unintended consequences of [FNMA's and FHLMC's] orientation toward suburban and 'plain vanilla' mortgages."[85] In establishing the central cities goals at the levels listed below, the Secretary expects FNMA, along with FHLMC, to significantly increase the availability of financing for housing in central cities and to act forcefully and effectively towards ending problems of redlining and mortgage discrimination in the primary mortgage market.

E. The Interim Central Cities Goals

1. The Goals

The annual goal for 1993 for FNMA's purchase of conventional mortgages on housing located in central cities is established at 28 percent of the total number of dwelling units financed by FNMA's mortgage purchases in 1993; the annual goal for 1994 is 30 percent.

2. Counting Methodology

a. The dwelling unit(s) located in central cities and financed by FNMA's mortgage purchases shall count toward achievement of this goal. FNMA shall determine on a mortgage-by-mortgage basis, through geocoding or any similarly accurate and reliable method, whether a mortgage finances dwelling unit(s) located in a central city.

b. *Proportional Method.* Where FNMA cannot precisely determine whether a mortgage is on dwelling unit(s) located in a central city but can determine that the mortgage is on dwelling unit(s) located in a census tract, or within a census place code, block-group enumeration district, or nine-digit zip code, or another appropriate geographic segment, that is partially located in a central city, a fraction of the dwelling units covered by the mortgage shall count toward achievement of this goal. Such fraction is the ratio of the population of the geographic segment that is located in the central city to the total population of the geographic segment.

III. The Special Affordable Housing Goal

A. Establishment

Under the Act, the goal for the purchase of mortgages on housing to meet the then-existing, unaddressed

codes, block-group enumeration districts, or nine-digit zip codes.

[83] The 32 percent figure was derived by adding the following: (1) 12.84% (percentage of owner-occupied units [53.5%] times the percentage of those units that are located in central cities [24%]); (2) 6.05% (percentage of rental units in 1–4 family properties [18.9%] times percentage of those units that are located in central cities [32%]); (3) 12.97% (percentage of rental units in multifamily properties [27.6%] times percentage of those units that are located in central cities [47%]).

[84] The Federal Reserve Board's preliminary analysis of 1991 HMDA data indicates that 36.2 percent of conforming conventional home purchase mortgages and 33.5 percent of refinancings were on properties located in central cities. Because these two percentages are similar, a high volume of refinancings would not prevent FNMA from attaining the goals in this Notice.

[85] S. Rep. No. 102–282, 102d Cong., 2d Sess. 38 (1992).

needs of, and affordable to, low-income families in low-income areas and very low-income families is intended to achieve increased purchases by FNMA of such mortgages.

In establishing the special affordable housing goal, section 1333(a)(2)(A)-(E) of the Act requires the Secretary to consider:

1. Data submitted to the Secretary in connection with the special affordable housing goal in previous years;

2. The performance of the enterprise toward achieving the special affordable housing goal in previous years;

3. National housing needs within the categories covered by the special affordable housing goal;

4. The ability of the enterprise to lead the industry in making mortgage credit available for low- and very low-income families; and

5. The need to maintain the sound financial condition of the enterprise.

B. Underlying Data

In considering the factors under the Act to establish the special affordable housing goal, the Secretary relied upon data, including data gathered under the American Housing Survey, other government reports, the Home Mortgage Disclosure Act (HMDA) (12 U.S.C. 2801 *et seq.*), and data gathered from FNMA. There is no experience with these goals and inadequate information is available on relevant prior performance. The Secretary utilized data provided by FNMA to determine its financial condition and its ability to lead the industry.

C. Consideration of the Factors

1. Data Submitted to the Secretary in Connection With the Special Affordable Housing Goal for Previous Years

FNMA has not operated under the special affordable housing goal in prior years and FNMA has not submitted any relevant data to the Secretary to date.

2. Previous Performance and Effort of FNMA

In 1987, FNMA created the Office of Low- and Moderate-Income Housing, which was responsible for "developing and offering programs that meet special housing needs."[86] In October 1991 FNMA created the National Housing Impact Division which operates both homeownership and rental housing programs.[87] In March 1991, FNMA announced that by July 1993 it would provide $10 billion in commitments for additional affordable housing initiatives, with deliveries by the end of 1994.[88] FNMA currently estimates that it will achieve this level of performance during 1993.[89] FNMA's special affordable housing programs include some initiatives which may qualify toward achievement of the special affordable housing goal in this Notice.

Based on HMDA data, in 1990 FNMA purchased a lower percentage (11.9 percent) of new conventional mortgages and refinanced mortgages from low-income families than the corresponding share of mortgage originations for such families (14.1 percent for new conventional mortgages and 14.3 percent for refinanced mortgages). Conversely, in that same year, FNMA purchased a higher percentage (13.5 percent) of new conventional mortgages and refinanced mortgages from families with 100 to 120 percent of area median income than the corresponding share of mortgage originations (11.8 percent for new conventional mortgages and 11.7 percent for refinanced mortgages).[90]

The Senate report on the Act noted that:

> According to the data made available under the Home Mortgage Disclosure Act [in] October [1991], 9.8 percent of [FNMA's and FHLMC's] prime business activity—purchases of mortgages securing single family homes—is comprised of loans made to borrowers with incomes below 80 percent of area median. A substantial portion of the units financed by any multifamily mortgage[] [FNMA and FHLMC] purchase likely serve tenants with such incomes * * *.
>
> [T]here is significant consensus among a wide coalition of affordable housing participants that [FNMA and FHLMC] can expand their activity in the low-income arena. The HMDA data and other evidence reveal that [FNMA's and FHLMC's] existing single family business underserves low-income families living in census tracts where the median income is 80 percent or below as well as very low-income families (families with incomes below 50 percent of area median).
>
> The multifamily arena is equally troubling * * *. [FNMA], while avoiding some of the difficulties experienced by [FHLMC], has been criticized for "creaming" the market—avoiding low-income neighborhoods as well as developments involving an array of federal and other governmental subsidies.[91]

3. National Housing Needs for Very Low- and Low-Income Families, Low-Income Families in Low-Income Areas, and Families Whose Incomes Do Not Exceed 50 Percent of the Median Income for the Area

Data obtained under the Home Mortgage Disclosure Act (HMDA) for 1991 indicates some of the difficulties faced by low-income families seeking mortgages. The conventional mortgage origination rate (percentage of conventional mortgage applications approved) decreases as the income of the applicant(s) decreases, with the approval rate being the lowest for low-income families:

Area median income	Percent of mortgage approval
Less than 80 percent	60
80 to 99 percent	75
100 to 120 percent	78
More than 120 percent	79

Low-income approval rates were especially low for Hispanics (54 percent) and Blacks (45 percent)—versus 62 percent for Whites and 69 percent for Asians. Similarly, approval rates were lowest for applicants seeking mortgages in lower income census tracts—66 percent in tracts having median income less than 80 percent of area median income—versus 72 percent in tracts having median income between 80 and 120 percent of area median income, and 80 percent in tracts having median income in excess of 120 percent of area median income.[92]

Data from the American Housing Survey indicates that needs for affordable housing are more pressing in these lowest income categories than among moderate-income families. In 1989, 19 million households with below-median incomes had affordability problems, paying more than 30 percent of their income for housing and utilities. Almost three-fourths (74 percent) of these families with affordability problems had incomes below 50 percent of area median income. Another 12 percent of the families with affordability problems had very low incomes, between 50 percent and 60 percent of area median income.

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[86] Home Mortgage Disclosure Act: Joint Hearings Before the Subcomms. on Consumer Affairs and Coinage and on Housing and Community Development, of the Comm. on Banking, Finance and Urban Affairs, House of Representatives, 102d Cong., 2d Sess. 554, 571 (1992) (statement of James A. Johnson, Chairman and Chief Executive Officer of FNMA).

[87] *Id.* at 571–73.

[88] "Opening Doors to Affordable Housing in the 1990s," Remarks by James A. Johnson, Chairman and Chief Executive Officer of FNMA, March 14, 1991.

[89] FNMA, Housing Impact Report 1992–1993 at 1 (1993).

[90] Canner and Gabriel, *supra* note 54, at 255–257, 279. Data for families with incomes in excess of 120 percent of area median income has not been analyzed, because a significant fraction of such mortgage originations may exceed the conforming loan limit for purchases by FNMA.

[91] S. Rep. No. 102–282, 102d Cong., 2d Sess. 36 (1992).

[92] Canner and Smith, "Expanded HMDA Data on Residential Lending: One Year Later," Federal Reserve Bulletin 808, 810, and 812 (Nov. 1992).

In 1989, some 5 million renter households had "worst case" housing needs, as defined in section II.C.2. According to Congress, these unassisted renters with incomes below 50 percent of area median income should receive priority in rental assistance due to their severe housing problems.[93] In 1989, over 75 percent of unassisted renters in this income category had an affordability problem, *i.e.*, paid more than 30 percent of their income for gross rent, while 48 percent had a severe affordability problem, *i.e.*, paid more than half of their income for housing. Among owners in this lowest income category, one-third had an affordability problem and one-sixth had a severe affordability problem.[94] Among families with income between 50 percent and 80 percent of area median income, one-third of renters and one-tenth of owners had an affordability problem.

The relative decline in inexpensive dwelling units has been concentrated among the least expensive rental units—those with rents affordable to families with incomes below 30 percent of median income. Whereas in 1979 the number of units in this rent range was 28 percent less than the number of renters with incomes below 30 percent of area median income, by 1989 the gap had widened to 39 percent, a shortage of 2.7 million units.[95]

4. FNMA's Ability To Lead the Industry

This factor is the same as the fifth factor considered under the goal for mortgage purchases on housing for low- and moderate-income families. See I.C.5. for discussion of this factor.

5. Need to Maintain FNMA's Sound Financial Condition

This factor is the same as the sixth factor considered under the goal for mortgage purchases on housing for low- and moderate-income families. See I.C.6. for discussion of this factor.

D. Determination

This goal is intended to increase the purchase by FNMA of mortgages financing rental and owner-occupied housing to meet the unaddressed needs of, and affordable to, low-income families in low-income areas and very low-income families.

FNMA has not functioned under this special affordable housing goal in the past and data available to the Secretary does not clearly show the extent to which FNMA has achieved the objectives of this goal in the past. The legislative history of the Act specifically provides that one of the purposes of this goal is "to increase [FNMA's and FHLMC's] purchase of mortgages serving low-income families above and beyond their existing performance and commitments * * *."[96] Accordingly, this goal requires FNMA to purchase $2 billion in mortgages during the transition period above and beyond FNMA's existing performance and commitments. This Notice requires FNMA to provide the Secretary with a good faith estimate of the amount of purchases it made in 1992 that would have qualified under each part of this special affordable housing goal had it applied in 1992. The Notice requires FNMA to purchase that amount of mortgages in both 1993 and in 1994, in addition to the $2 billion of mortgage purchases for 1993–94.

Having considered the factors for establishing the goal, the Secretary has established this special affordable housing goal.

E. The Special Affordable Housing Goal

1. The Goal

a. The special affordable housing goal, during the two year period beginning on January 1, 1993, shall include mortgage purchases by FNMA of not less than:

(1) For 1993–94, two billion dollars ($2,000,000,000) of mortgages on rental and owner-occupied housing meeting the then-existing, unaddressed needs of and affordable to low-income families in low-income areas and very low-income families, subdivided as follows—at least one billion dollars ($1,000,000,000) shall be mortgages on single family housing and at least one billion dollars ($1,000,000,000) shall be mortgages on multifamily housing; plus

(2) For 1993, the dollar amount of FNMA's purchases as estimated under paragraph E.1.b.; plus

(3) For 1994, the dollar amount of FNMA's purchases as estimated under paragraph E.1.b.

b. FNMA shall provide the Secretary within 60 days a good faith estimate of the dollar amount of its 1992 mortgage purchases that would have qualified under each part of this special affordable housing goal if the goal had applied in 1992.

c. *Multifamily goal.*

(1) Of the multifamily mortgages purchased under the dollar amounts set forth in paragraph E.1.a.(1):

(a) 45 percent of the dollar volume of such mortgages shall be on multifamily housing where rental dwelling units are affordable to low-income families; and

(b) 55 percent of the dollar volume of such mortgages shall be on multifamily housing in which:

(i) At least 20 percent of the units are affordable to especially low-income families; or

(ii) At least 40 percent of the units are affordable to very low-income families.

(2) Only a portion of the dollar amount of mortgages purchased by FNMA on multifamily housing that are attributable to units meeting the requirements under paragraph E.1.c.(1)(a) or (b) shall count toward the special affordable housing goal under paragraph E.1.c.(1). The portion of a mortgage to be attributed to achievement of this goal shall be equal to the ratio of the total rents of dwelling units affordable to low-income families to the total rents for the mortgaged property.

(3) During the transition period, multifamily mortgages purchased in excess of the $1,000,000,000 special affordable housing goal for multifamily mortgages may count toward the goal without reference to the percentages applicable to the subgoals in paragraph E.1.c.(1) as long as they meet any of the subgoals. The purpose of this provision is to maximize the purchases of mortgages on special affordable housing during the transition period without requiring FNMA to assure that the ratios in paragraph E.1.c.(1) are satisfied for such additional units.

d. *Single family goal.*

(1) Of the single family mortgages purchased under the dollar amounts set forth in paragraph E.1.a.(1):

(a) 45 percent of the dollar volume of such mortgages shall be mortgages of low-income families who live in census tracts in which the median income does not exceed 80 percent of the area median income;[97] and

(b) 55 percent of the dollar volume of such mortgages shall be mortgages of very low-income families.

(2) For a mortgage to count toward the special affordable housing goal under paragraph E.1.d.(1), the mortgagor(s) must meet the qualifications in either paragraph E.1.d.(1)(a) or (b). Units are affordable under paragraph E.1.d.(1)(a) where occupied by low-income families living in census tracts in which the

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[93] HUD Office of Policy Development and Research, Priority Housing Problems and "Worst Case" Needs in 1989 (1991).

[94] *Id.*

[95] "Affordable rent" has been defined above as gross rent not in excess of 30 percent of family income. Tabulations by HUD Office of Policy Development and Research, based on U.S. Departments of Housing and Urban Development and Commerce, American Housing Survey for the United States in 1989 (July 1991).

[96] S. Rep. No. 102–282, 102d Cong., 2d Sess. 36 (1992).

[97] Determination of median census tract income and area median income shall be based on data from the most recent decennial census.

median income does not exceed 80 percent of the area median income. Units are affordable under paragraph E.1.d.(1)(b) where occupied by very low-income families.

(a) In the case of a mortgage financing a one unit property occupied by an owner, full credit will be given if the mortgagor meets the qualifications in either paragraph E.1.d.(1)(a) or (b).

(b) In the case of a mortgage financing a two-to-four unit property, full credit will be given if the mortgagor meets the qualifications in either paragraph E.1.d.(1)(a) or (b) and each rental unit is affordable under paragraph E.1.d.(2). A portion (as provided in paragraph E.1.d.(3)) of the mortgage may contribute to achieving the special affordable housing goal if only some of the rental units are affordable.

(3) The portion of a mortgage to be attributed to achievement of this single family goal shall be equal to the ratio of the total number of rooms in owner-occupied or affordable units to the total number of rooms in all dwelling units in the mortgaged property. For purposes of this ratio, the number of rooms in a dwelling unit shall equal the number of bedrooms plus one; for example, an efficiency is considered one room, a one-bedroom unit is considered two rooms, etc.

(4) During the transition period, single family mortgages purchased in excess of the $1,000,000,000 special affordable housing goal for single family mortgages may count toward the goal without reference to the percentages applicable to the subgoals in paragraph E.1.d.(1) as long as they meet any of the subgoals. The purpose of this provision is to maximize the purchases of mortgages on special affordable housing during the transition period without requiring FNMA to assure that the ratios in paragraph E.1.d.(1) are satisfied for such additional units.

e. Each mortgage purchase, or portion of a mortgage where only a portion counts toward achievement of this goal, shall count only once toward achievement of the goal, *i.e.*, shall count under only one subgoal. For example, the purchase of a single family mortgage of a very low-income family on a property located in a census tract in which the median income does not exceed 80 percent of the area median income would count toward achievement of the subgoal under either paragraph E.1.d.(1)(a) or E.1.d.(1)(b), but not under both.

2. Full, Partial and No Credit Activities

a. The Act requires the Secretary to establish guidelines under which mortgage purchases receive full credit, partial credit, or no credit toward achievement of the special affordable housing goal.

b. *Full Credit.* The following activities shall receive full credit toward achievement of the special affordable housing goal:

(1) The purchase or securitization of federally insured or guaranteed mortgages where:

(a) Such mortgages cannot be readily securitized through the Government National Mortgage Association (GNMA) or any other Federal agency;

(b) Participation of the enterprise substantially enhances the affordability of the housing subject to such mortgages; and

(c) The mortgages involved are on housing that otherwise qualifies under the special affordable housing goal to be considered for purposes of such goal. Mortgages under the Federal Housing Administrations's Home Equity Conversion Mortgage (HECM) Insurance Demonstration Program, section 255 of the National Housing Act, 12 U.S.C. 1715z–20, and the Farmers Home Administration's Guaranteed Rural Housing Loan Program, 7 U.S.C. 1933, meet the requirements of paragraphs E.2.b.(1)(a) and E.2.b.(1)(b).

(2) The purchase or refinancing of existing, seasoned portfolios of loans where:

(a) The seller is engaged in a specific program to use the proceeds of such sales to originate additional loans that meet the special affordable housing goal; and

(b) Such purchases or refinancings support additional lending for housing that otherwise qualifies under the goal.

(3) The purchase of direct loans made by the Resolution Trust Corporation (RTC) or the Federal Deposit Insurance Corporation (FDIC) where such loans:

(a) Are not guaranteed by the RTC, FDIC, or other Federal agencies;

(b) Are made with recourse provisions similar to those offered through private mortgage insurance or other conventional sellers; and

(c) Are made for the purchase of housing that otherwise qualifies under the special affordable housing goal to be considered for purposes of such goal.

c. For purposes of determining whether a seller is engaging in a specific program to use proceeds of sales to originate additional loans that meet the special affordable housing goal:

(1) A seller must currently operate or actively participate in an on-going program that will result in originating additional loans that meet the goal; actively participating in such a program includes actively participating with a qualified housing group that operates a program resulting in the origination of loans that meet the requirements of the goal; and

(2) To determine whether a seller meets this requirement, FNMA shall verify and monitor that the seller meets the requirement and develop any necessary mechanisms to ensure compliance with this requirement.

d. *No Credit.* Neither the purchase nor the securitization of mortgages associated with the refinancing of FNMA's existing mortgage or mortgage-backed securities portfolio shall receive credit toward the achievement of the special affordable housing goal; refinancings by FNMA of FHLMC's mortgage or mortgage-backed securities portfolio shall not receive credit, but FNMA's purchases of individual mortgages financing properties where the mortgage on the property had in the past been purchased by FHLMC may receive credit toward achievement of the goal. For purposes of this paragraph, "portfolios of mortgages" includes mortgages retained by FNMA or FHLMC and mortgages utilized to back mortgage-backed securities.

IV. General Requirements

A. Properties With Multiple Dwelling Units

For the purposes of meeting the goals, whenever the real property securing a conventional mortgage contains more than one dwelling unit, each such dwelling unit shall be counted as a separate dwelling unit financed by a mortgage purchase.

B. Credit Toward Goals

For the purposes of meeting the goals, a mortgage purchase (or dwelling unit financed by such purchase) by FNMA shall contribute to the achievement of each housing goal for which such purchase (or dwelling unit) qualifies. All mortgages purchased by FNMA on or after January 1, 1993 may count under these goals provided such mortgages meet the requirements of this Notice. Mortgages originated prior to January 1, 1993 and purchased after that date may count only if FNMA has the information needed to determine whether such a mortgage counts toward achievement of any of the goals.

C. Income Level Definitions

1. *Moderate-income* means:

a. In the case of owner-occupied units, income not in excess of 100 percent of area median income; and

b. In the case of rental units, where the income of actual or prospective tenants is available, income not in excess of the following percentages of

area median income corresponding to the following family sizes:

Number of persons in family	Percent of area median income
1	70
2	80
3	90
4	100
5 or more	(1)

[1] 100 percent plus—8 percent multiplied by the number of persons in excess of 4.

2. *Low-income* means:

a. In the case of owner-occupied units, income not in excess of 80 percent of area median income; and

b. In the case of rental units, where the income of actual or prospective tenants is available, income not in excess of the following percentages of area median income corresponding to the following family sizes:

Number of persons in family	Percent of area median income
1	56
2	64
3	72
4	80
5 or more	(1)

[1] 80 percent plus—6.4 percent multiplied by the number of persons in excess of 4.

3. *Very low-income* means:

a. In the case of owner-occupied units, income not in excess of 60 percent of area median income; and

b. In the case of rental units, where the income of actual or prospective tenants is available, income not in excess of the following percentages of area median income corresponding to the following family sizes:

Number of persons in family	Percent of area median income
1	42
2	48
3	54
4	60
5 or more	(1)

[1] 60 percent plus—4.8 percent multiplied by the number of persons in excess of 4.

4. *Especially low-income* means:

a. In the case of owner-occupied units, income not in excess of 50 percent of area median income; and

b. In the case of rental units, where the income of actual or prospective tenants is available, income not in excess of the following percentages of area median income corresponding to the following family sizes:

Number of persons in family	Percent of area median income
1	35
2	40
3	45
4	50
5 or more	(1)

[1] 50 percent plus—4 percent multiplied by the number of persons in excess of 4.

D. Owner-occupied Properties

FNMA's performance under these goals for purchases of mortgages on owner-occupied housing will be evaluated based on the income of the mortgagor(s) at the time of origination of the mortgage. To determine whether mortgagor(s) may be counted under the particular family income level, *i.e.*, especially low-, very low-, low-, or moderate-income, the income of the mortgagor(s) is compared to the median income for the area at the time of mortgage origination, using the appropriate percentage factor provided under paragraph C. (*i.e.*, 50 percent of area median income for especially low-income families, 60 percent for very low-income families, 80 percent for low-income families, and 100 percent for moderate-income families).

E. Rental Units

1. Use of Income, Rent

FNMA's purchases of mortgages on rental dwellings may be counted under the goals based on whether such mortgages qualify as mortgages on housing for low- and moderate-income families or on housing qualifying under the special affordable housing goal, based on the income of actual or prospective tenants where such data is available, that is, known to a lender because, for example, such information is required as a condition of an existing federal housing program. FNMA shall require lenders to provide tenant income information to FNMA but only where such information is known to the lender. Where such data is not available for all units in a project, FNMA's performance will be evaluated based on rents adjusted for unit size.

2. Income of Actual Tenants

Where the income of actual tenants is available, to determine whether tenant(s) may be counted for the particular family income level, *i.e.*, especially low-, very low-, low-, or moderate-income, the income of the tenant(s) is compared to the median income for the area, adjusted for family size as provided in paragraph C.

3. Income of Prospective Tenants

a. Where income for tenants is available to a lender because a project is subject to a Federal housing program that establishes the maximum income for a tenant or a prospective tenant in rental units, the income of prospective tenants may be based on the maximum income level established under such housing program for that unit. FNMA shall require lenders to provide such prospective tenants' income information to FNMA but only where such information is known to the lender. In determining the income of prospective tenants, the income shall be projected based on the types of units and market area involved. Where the income of prospective tenants is projected, FNMA must determine that the income figures are reasonable considering the rents (if any) on the same units in the past and considering current rents on comparable units in the same market area.

b. For purposes of determining whether a rental dwelling unit is affordable to especially low-, very low-, low-, or moderate-income families and qualifies under one or more of these goals, the income of the prospective tenants must be adjusted for unit size as a proxy for family size if family size is not known:

(1) For moderate-income, the income of prospective tenants must not exceed the following percentages of area median income with adjustments depending on unit size:

Unit size	Percent of area median income
Efficiency	70
1 bedroom	75
2 bedrooms	90
3 bedrooms or more	(1)

[1] 104 percent plus—(12 percent multiplied by the number of bedrooms in excess of 3.

(2) For low-income, income of prospective tenants must not exceed the following percentages of area median income with adjustments depending on unit size:

Unit size	Percent of area median income
Efficiency	56
1 bedroom	60
2 bedrooms	72
3 bedrooms or more	(1)

[1] 83.2 percent plus—9.6 percent multiplied by the number of bedrooms in excess of 3).

(3) For very low-income, income of prospective tenants must not exceed the

following percentages of area median income with adjustments depending on unit size:

Unit size	Percent of area median income
Efficiency	42
1 bedroom	45
2 bedrooms	54
3 bedrooms or more	(1)

[1] 64.4 percent plus—7.2 percent multiplied by the number of bedrooms in excess of 3.

(4) For especially low-income, income of prospective tenants must not exceed the following percentages of area median income with adjustments depending on unit size:

Unit size	Percent of area median income
Efficiency	35
1 bedroom	37.5
2 bedrooms	45
3 bedrooms or more	(1)

[1] 52 percent plus—6 percent multiplied by the number of bedrooms in excess of 3.

4. Use of Rent

Where the income of the prospective or actual tenants of a dwelling unit is not available, FNMA's performance under these goals will be evaluated based on whether the rent is affordable. A rent is affordable if the rent does not exceed 30 percent of the maximum income level of especially low-, very low-, low-, or moderate-income families as follows:

a. For moderate-income, maximum affordable rents to count as housing for moderate-income families must not exceed the following percentages of area median income with adjustments depending on unit size:

Unit size	Percent of area median income
Efficiency	21
1 bedroom	22.5
2 bedrooms	27
3 bedrooms or more	(1)

[1] 31.2 percent plus—3.6 percent multiplied by the number of bedrooms in excess of 3.

b. For low-income, maximum affordable rents to count as housing for low-income families must not exceed the following percentages of area median income with adjustments depending on unit size:

Unit size	Percent of area median income
Efficiency	16.8
1 bedroom	18
2 bedrooms	21.6
3 bedrooms or more	(1)

[1] 24.96 percent plus—2.88 percent multiplied by the number of bedrooms in excess of 3.

c. For very low-income, maximum affordable rents to count as housing for very low-income families must not exceed the following percentages of area median income with adjustments depending on unit size:

Unit size	Percent of area median income
Efficiency	12.6
1 bedroom	13.5
2 bedrooms	16.2
3 bedrooms or more	(1)

[1] 18.72 percent plus—2.16 percent multiplied by the number of bedrooms in excess of 3.

d. For especially low-income, maximum affordable rents to count as housing for especially low-income families must not exceed the following percentages of area median income with adjustments depending on unit size:

Unit size	Percent of area median income
Efficiency	10.5
1 bedroom	11.25
2 bedrooms	13.5
3 bedrooms or more	(1)

[1] 15.6 percent plus—1.8 percent multiplied by the number of bedrooms in excess of 3.

F. Purchase of Refinanced or Seasoned Mortgages

1. Refinanced Mortgages

Generally, the purchase of a refinanced mortgage by FNMA may be counted as a mortgage purchase for purposes of these goals to the extent the mortgage qualifies. However, there are specific restrictions under the special affordable housing goal as set forth at paragraph III.E.2.

2. Seasoned Mortgages

The purchase of a seasoned mortgage may be treated as a mortgage purchase for purposes of these goals. A seasoned mortgage for a single family dwelling unit shall be considered for purposes of the goals based on mortgagor(s)' income (for owner-occupied dwelling units), tenant income or rent levels (for rental dwelling units), and area median income as of the time of mortgage origination. For multifamily dwelling units, a seasoned mortgage will be considered based on rental information (for rental dwelling units), income (for owner-occupied dwelling units) and area median income as of the time that FNMA purchases the mortgage.

G. Newly Available Data

Where data is used by FNMA to determine whether a mortgage purchase qualifies under any goal and such data is released after the start of a calendar quarter, FNMA need not use the data until the start of the following quarter—FNMA may continue to use the data that was available at the beginning of the quarter. For example, if the Secretary publishes the annual list of area median incomes in March, FNMA need not use the new median income data until April 1 (the previous year's list could be used for the quarter ending March 31).

H. Actions To Be Taken To Meet the Goals

To meet the goals established in this Notice, FNMA shall:

1. Design programs and products that facilitate the use of assistance provided by the Federal, State, and local governments;

2. Develop relationships with nonprofit and for-profit organizations that develop and finance housing and with State and local governments, including housing finance agencies;

3. Develop the institutional capacity to help finance low- and moderate-income housing, including housing for first-time homebuyers; and

4. Take affirmative steps to assist:

a. Primary lenders to make housing credit available in areas with concentrations of low-income and minority families; and

b. Insured depository institutions to meet their obligations under the Community Reinvestment Act of 1977.

Such steps shall include developing appropriate and prudent underwriting standards, business practices, repurchase requirements, pricing, fees, and procedures.

V. Definitions

Central city means, for purposes of determining the proportion of FNMA's purchases of mortgages on housing located in central cities during a particular calendar year, any political subdivision designated as such, as of January 1 of that year by the Statistical Policy Office, Office of Management and Budget of the Executive Office of the President in the document entitled

Metropolitan Areas or successor publication.

Concentrated minority census tract means a census tract in which minority residents comprise 80 percent or more of the total population in the census tract.

Contract rent means the total rent that is, or is anticipated to be, specified in the rental contract payable by the tenant to the owner for rental of a dwelling unit, including fees or charges for management and maintenance services and those utility charges which are included in the contract rent. To count multifamily units under the low- and moderate-income and special affordable housing goals, contract rent must be determined using actual rent for each unit where such information is available; where actual rent information for each unit is not available, average contract rent by unit type may be used for units in the property.

Conventional mortgage means a mortgage other than a mortgage as to which FNMA has the benefit of any guaranty, insurance or other obligation by the United States or any of its agencies or instrumentalities.

Dwelling unit means a single, unified combination of rooms designed for use as a dwelling by one family.

FHLMC means the Federal Home Loan Mortgage Corporation.

FNMA means the Federal National Mortgage Association.

Housing for low- and moderate-income families means:

1. Any owner-occupied dwelling unit, other than a secondary residence, (including a dwelling unit in a condominium, cooperative or planned unit development project), financed by a conventional mortgage, where the income of the mortgagor(s) at the time of origination does not exceed the median income of the area where the dwelling unit is located;

2. Any rental dwelling unit, where the income of the prospective or actual tenant(s) of the unit is available, that is, known to a lender because, for example, such information is required as a condition of an existing federal housing program, if the income of the tenant(s) is low-income or moderate-income, adjusted for family size of the tenant(s) as established in this Notice; or

3. Any rental dwelling unit, where the income of the prospective or actual tenants of a rental dwelling unit is not available, financed by a conventional mortgage, which has a rent affordable to low- and moderate-income families. A rent is affordable to a low-income family if the rent does not exceed 30 percent of the maximum income level for low-income and a rent is affordable to a moderate-income family if its rent does not exceed 30 percent of the maximum income level for moderate-income, with appropriate adjustments for unit size as set forth in this Notice.

Low- or moderate-income census tract means a census tract in which the median family income is less than or equal to 80 percent of the area median income.

Median income means, with respect to an area, the unadjusted median family income for the area, as most recently determined and published by the Secretary. An area means the metropolitan statistical area (MSA) if the property is located in an MSA; otherwise, an area means the county in which the property is located.

Minority means any individual who is included within any one or more of the following racial and/or ethnic categories:

1. American Indian or Alaskan Native—a person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition;

2. Asian or Pacific Islander—a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands;

3. Black—a person having origins in any of the black racial groups of Africa; and

4. Hispanic—a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.

Minority census tract means a census tract in which minority residents comprise 50 percent or more of the total population in the census tract.

Mortgage means a member of such classes of liens as are commonly given or are legally effective to secure advances on, or the unpaid purchase price of, real estate under the laws of the State in which the real estate is located, a manufactured home that is personal property under the laws of the State in which the manufactured home is located, together with the credit instruments, if any, secured thereby, and includes interests in the stock or membership certificate issued to a tenant-stockholder or resident-member by a cooperative housing corporation, as defined in section 216 of the Internal Revenue Code of 1986, and on the proprietary lease, occupancy agreement, or right of tenancy in the dwelling unit of the tenant-stockholder or resident-member in such cooperative housing corporation.

Mortgage purchase means a transaction in which FNMA buys or otherwise acquires with cash or other thing of value a conventional mortgage for its portfolio or for securitization. Mortgage purchases do not include commitments to buy mortgages at a later date or time. Mortgage purchases, for purposes of the low- and moderate-income housing goal and the central cities housing goal, include credit enhancement transactions where: (1) FNMA provides specific mortgages it owns as collateral to guarantee bonds issued by a state or local housing finance agency to finance housing; and (2) FNMA assumes a credit risk in the transaction by pledging or guaranteeing repayment and such credit risk is substantially equivalent to that assumed by FNMA if it had securitized the mortgages financed by such State or local housing finance agency. Dwelling units financed under this type of credit enhancement transaction shall count toward meeting the low- and moderate-income and central cities goals to the extent dwelling units qualify under this Notice. Other credit enhancement transactions will not be considered mortgage purchases and will not count under these goals unless they are reviewed and specifically approved by the Secretary for this purpose. Mortgage purchases include FNMA's activities under HUD's Multifamily Mortgage Credit Demonstration Program but only as determined by the Secretary considering FNMA's risk under any such agreement entered into with the Secretary under the authority of section 542 of the Housing and Community Development Act of 1992 (codified as a note to 12 U.S.C. 1707); the extent of the credit will be determined by the Secretary at a later date based on the specific requirements of the program.

Portfolio of loans means two or more loans.

Rent means:

1. The contract rent for a dwelling unit, but only where such contract rent includes all utilities for the dwelling unit;

2. Where the contract rent for a dwelling unit does not include all utilities, the contract rent for the dwelling unit plus the actual cost of utilities not include in the contract rent; or

3. The contract rent for a dwelling unit plus a utility allowance as set forth in this Notice for the unit.

Rent may be determined under any one of the methods provided in paragraph 1., 2., or 3. The Secretary may authorize FNMA to use a different method of calculating utility costs but, until such authorization is provided, FNMA shall use one of the methods provided in paragraph 1., 2., or 3.

Rural area means any census tract located in an area which is designated as rural by the U.S. Bureau of the Census for the 1990 census.

Seasoned mortgage means a mortgage which has been closed for more than one year before being purchased by FNMA.

Secondary residence means a dwelling where the mortgagor maintains (or will maintain) a part-time place of abode and typically spends (or will spend) less than the majority of the calendar year. A person may have more than one secondary residence at any one time.

Secretary means the Secretary of Housing and Urban Development and any person delegated authority by the Secretary to perform a particular function for the Secretary.

Utilities means charges for electricity, piped or bottled gas, water, sewage disposal, fuel (oil, coal, kerosene, wood, solar energy, or other), and garbage and trash collection. Utilities do not include charges for telephone service.

Utility allowance means:

1. The amount to be added to contract rent where utilities are not included in contract rent (also called the "AHS-derived utility allowance") in the following table that corresponds to the type of property (multifamily or single family) and the unit size, based on the number of bedrooms:

Type of property	Number of bedrooms—			
	Efficiency	1	2	3 or more
Multifamily	$45	$51	$69	$91
Single family	$65	$70	$96	$122

2. The utility allowance established under the HUD Section 8 Program, section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) for the area where the property is located.

VI. Revision of the Notice

A. Procedure for Revision

The Secretary may change, restructure or otherwise revise any of the annual goals or other requirements necessary to implement the transition provisions in this Notice. The Secretary shall establish any such revisions by Notice in the **Federal Register** after providing FNMA with an opportunity to review and comment not less than 30 days before the issuance of such Notice. The Notice, as changed, shall be effective when published.

B. Factors for Revision

In changing a goal, the Secretary shall consider the same factors considered in establishing the particular goal in this Notice.

VII. Monitoring and Enforcing Compliance

A. Compliance

The Secretary shall monitor and enforce compliance with these interim goals under section 1336 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992.

B. Credit

This Notice sets forth the extent to which FNMA will receive full credit, partial credit, and no credit for mortgage purchases.

C. Refinanced and Seasoned Mortgages

The Secretary will monitor the purchase of refinanced and seasoned mortgages to determine whether such purchases serve the purposes of these interim goals.

VIII. Housing Finance Reports

A. Report on Actions Planned To Meet Interim Goals

On or before November 29, 1993, FNMA shall submit to the Secretary, the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate an initial report describing the actions that FNMA plans to take to meet the interim goals as required by section 1337 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992.

B. Data on Single Family Mortgage Purchases

Within 60 days after the end of each calendar year, FNMA shall submit to the Secretary, in a form determined by the Secretary, data relating to its mortgage purchases on housing consisting of 1–4 dwelling units during the year. Such data shall include the following information for each mortgage:

1. The income, census tract location or smaller geographic segment location, gender, and race or national origin of mortgagors.
2. The loan-to-value ratio of mortgages at the time of origination.
3. Whether the mortgage is newly originated or seasoned.
4. The number of units in the housing subject to the mortgage and whether the units are owner-occupied.
5. Other characteristics that the Secretary considers appropriate to the extent practicable, including, but not limited to:

a. Whether the mortgage is for securitization or portfolio;

b. Whether the mortgage is on property from FNMA's real estate owned (REO) portfolio;

c. Whether the mortgage has been used in conjunction with public subsidy programs under Federal law;

d. For mortgages on owner-occupied properties, whether the mortgagor is a first-time home buyer; and

e. For mortgages on rental properties:

(1) If available to the lender, the income, gender, and race or national origin of tenants; and

(2) If such rental units have been counted toward achievement of the low- and moderate-income or special affordable housing goals—

(a) The income of tenants, if used to determine whether the property counts toward achievement of a goal;

(b) The rent levels of rental units;

(c) The demographics of the area where counted under the special affordable housing goal.

Collection, maintenance and submission of these data in this paragraph B. shall be considered to fulfill the requirements of section 309(m)(1) of the FNMA Charter Act, as amended (12 U.S.C. 1723a). FNMA shall report on the foregoing characteristics of single family mortgages that were purchased after December 31, 1992. However, where mortgages were originated prior to January 1, 1993 and purchased after that date, FNMA need not report data which is not reasonably available from the lender on such mortgages but FNMA shall report the number of such mortgages for which data are not reported.

C. Data on Multifamily Mortgage Purchases

Within 60 days after the end of each calendar year, FNMA shall submit to the Secretary, in a form determined by the Secretary, data relating to mortgage purchases on housing consisting of more than 4 dwelling units during the year. Such data shall include the following information for each mortgage:

1. The census tract location or smaller geographic segment location of the housing.
2. The income levels (if available) and characteristics of tenants (as specified by the Secretary) in the housing.
3. Rent levels for units in the housing.
4. Mortgage characteristics (including the number of units financed per mortgage and the amount of loans).
5. Mortgagor characteristics including whether nonprofit, for-profit, or limited equity cooperative.
6. Use of funds, i.e., whether the mortgage is for new construction, rehabilitation, purchase of an existing property, or refinancing.

7. The type of originating institution.

8. Other information that the Secretary considers appropriate to the extent practicable, including but not limited to:

a. Whether the mortgage was newly originated or seasoned at the time of purchase;

b. Whether the mortgage is for securitization or portfolio;

c. Whether the mortgage is on property from FNMA's real estate owned (REO) portfolio; and

d. Whether the mortgage has been used in conjunction with public subsidy programs under Federal law.

Collection, maintenance and submission of the data in this paragraph C. shall be considered to fulfill the requirements of section 309(m)(2) of the FNMA Charter Act, as amended (12 U.S.C. 1723a). FNMA shall report on the foregoing characteristics of multifamily mortgages that were purchased after December 31, 1992. However, where mortgages were originated prior to January 1, 1993 and purchased after that date, FNMA need not report data which is not reasonably available from the lender on such mortgages but FNMA shall report the number of such mortgages for which data are not reported.

D. Annual Reports on Interim Housing Goals

Within 60 days after the end of each calendar year, FNMA shall submit to the Secretary a report or reports on its performance during the calendar year in achieving the interim goal for mortgage purchases on housing for low- and moderate-income families, the interim goal for mortgage purchases on housing in central cities, and the interim special affordable housing goals set forth in this Notice. This material may be submitted in one combined report or separate reports concerning each of these goals. The report concerning each housing goal shall specify the dollar volume, the number of units, and the number of mortgages on owner-occupied and rental properties purchased by FNMA that do and do not qualify under such goal as set forth in this Notice. The report(s) shall include, at a minimum, the following:

1. The number of units and dollar volume of mortgage purchases by number of units in property.

2. Whether the mortgages are for newly constructed properties, rehabilitated properties, purchases of existing properties, or refinancing.

3. Whether the mortgages are newly originated or seasoned.

4. Whether the mortgages are on property from FNMA's real estate owned (REO) portfolio;

5. In the report concerning the low- and moderate-income housing goal:

a. Whether the units are owner-occupied or rental;

b. Whether the units are for low-income, moderate-income or other; and

c. Where the units are rental, whether the determination as to whether the units are for low-income, moderate-income or other is based on:

(1) Tenant income; where tenant income is used, detailed data on the number of units shall be provided cross-classified by family size and income level (both in dollars and as percentages of area median income); or

(2) Rent levels; where rent levels are used, detailed data on the number of units shall be provided cross-classified by unit size and rent levels (both in dollars and as percentages of area median income).

6. In the report concerning the Special Affordable Housing goal:

a. Whether the units financed are housing of low-, very low- or especially low-income, or other families;

b. Where the units are rental, whether the determination as to whether the units are for especially low-, very low-, low-income, or other is based on:

(1) Tenant income; where tenant income is used, detailed data on the dollar volume of mortgage purchases shall be provided cross-classified by family size and income level (both in dollars and as percentages of area median income); or

(2) Rent levels; where rent levels are used, detailed data on the dollar volume of mortgage purchases shall be provided cross-classified by unit size and rent levels (both in dollars and as percentages of area median income);

c. Whether (if single family and low-income) the median income of the census tract does or does not exceed 80 percent of area median income;

d. Whether the mortgage has been used in conjunction with public subsidy programs under Federal law;

e. For seasoned mortgages, whether the seller(s) of seasoned portfolios of loans are engaged in a specific program to use the proceeds of such sales to originate additional loans that meet the special affordable housing goal, and whether the seller(s) are viable, on-going enterprises that will for the foreseeable future be originating loans that meet the goal, including FNMA's basis for concluding that the seller(s) are such enterprises and are engaged in such a specific program; and

f. Although not required, FNMA may report on commitments to purchase mortgages.

7. In the report concerning the central cities housing goal, whether the property is located in a central city, rural area, low- or moderate-income census tract, minority census tract, concentrated minority census tract, or other geographical area as required by the Secretary.

8. Such other detail as is requested in writing by the Secretary.

E. Quarterly Reports on Interim Housing Goals

Within 60 days following the end of each of the first three calendar quarters of each year, FNMA shall submit to the Secretary a report which shall provide the same information described in paragraph D. for mortgages purchased by FNMA in the previous quarter. The first quarterly report under this Notice shall include data concerning the first quarter of calendar year 1994.

F. Annual Reports on Actions Taken

Within 60 days following the end of each calendar year, in order to assist the Secretary in preparing the Annual Report to the Congress, FNMA shall provide:

1. A description of actions that FNMA has undertaken during the preceding year or is planning to undertake to promote and expand its purchases of mortgages on housing for low- and moderate-income families.

2. A description of actions that FNMA has undertaken or is planning to undertake to promote and expand its purchases of mortgages on properties located in central cities.

3. A description of actions that FNMA has undertaken or is planning to undertake to promote and expand its purchases of mortgages on housing to meet the then-existing unaddressed needs of, and affordable to, low-income families in low-income areas and very low-income families.

4. A description of actions that FNMA has undertaken or is planning to undertake to promote and expand its attainment of its statutory purposes as set forth in the FNMA Charter Act, section 301.

5. A description of any FNMA efforts to standardize credit terms and underwriting guidelines for multifamily housing and to securitize such mortgage products.

6. A description of actions that FNMA has undertaken or is planning to undertake to promote and expand opportunities for first-time home buyers.

7. Any actions taken under section 1325(5)[98] with respect to originators found to violate fair lending procedures; and

8. Such other information that the Secretary considers necessary for the report and requests in writing.

G. Additional Analyses

The Secretary may request that the data underlying the reports required under paragraphs A. through F. be provided to the Secretary or that FNMA conduct additional analysis and submit additional reports as the Secretary determines necessary to facilitate the Secretary's establishment, monitoring, and enforcement of these goals.

Authority: Sections 1331–37 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, 12 U.S.C. 4561–67, enacted as Title XIII of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992).

Dated: October 7, 1993.

Henry G. Cisneros,

Secretary.

[FR Doc. 93–25181 Filed 10–12–93; 8:45 am]

BILLING CODE 4210–32–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N–93–3630; FR–3523–N–01]

Federal Home Loan Mortgage Corporation; Interim Housing Goals

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of interim housing goals.

SUMMARY: This Notice sets forth three separate interim goals, for calendar years 1993 and 1994, established by the Secretary of Housing and Urban Development for the Federal Home Loan Mortgage Corporation's purchase of mortgages on (1) housing for low- and moderate-income families, (2) housing located in central cities, and (3) housing meeting the needs of and affordable to low-income families in low-income areas and very low-income families. This Notice describes the background, operation and statutorily prescribed factors considered in the establishment of the goals—along with the goals themselves—as well as the general and specific requirements for measuring performance under the goals, relevant definitions and reporting requirements.

DATES: Effective date: October 13, 1993.

Comments due date: The Secretary will accept comments from the public on an open docket while it is developing the regulation containing the annual goals and future implementation requirements for 1995 and thereafter.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Office of the General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m. Eastern Time) at the above address.

FOR FURTHER INFORMATION CONTACT: Ben E. Laden, Director, Financial Institutions Regulation Staff, telephone (202) 708–1464 or Kenneth A. Markison, Assistant General Counsel for Administrative Law, telephone (202) 708–3137; Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. A telecommunications device (TDD) for hearing- or speech-impaired persons is available at (202) 708–0770. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION:

Background

The Secretary of Housing and Urban Development ("the Secretary") is required to establish certain annual goals for mortgage purchases by the Federal National Mortgage Association ("FNMA" or "enterprise") and the Federal Home Loan Mortgage Corporation ("FHLMC" or "enterprise") on housing, under part 2, subpart B of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 ("the Act"), enacted as Title XIII of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992) and codified at 12 U.S.C. 4561–67. Specifically, the Act requires that the Secretary, after consideration of certain prescribed factors for each of the goals, establish annual goals for purchases of mortgages on housing for low- and moderate-income families, housing located in central cities, and special affordable housing, *i.e.*, housing meeting the needs of and affordable to low-income families in low-income areas and very low-income families.

For the transition period of calendar years 1993 and 1994, the Act establishes target percentage amounts for purchases by FNMA and FHLMC of mortgages on housing for low- and moderate-income families and housing located in central cities and specific dollar amounts for purchases of mortgages on special affordable housing. The Act requires the Secretary to establish interim goals covering the transition period for FNMA and FHLMC in relation to the targets. The Act provides that where an enterprise is not meeting the target(s) for the purchase of mortgages on housing for low- and moderate-income families and/or housing located in central cities as of January 1, 1993, the Secretary shall establish the goal(s) so that the enterprise improves its performance relative to the target(s) and, "to the maximum extent feasible," meets the target(s) by December 31, 1994, the end of the transition period. (Sections 1332(d)(2)(A) and 1334(d)(2)(A).[1]) Where an enterprise is meeting the target(s) as of January 1, 1993, the Act requires that the Secretary establish the goals for the period so that the enterprise improves its performance relative to the target(s). (Sections 1332(d)(2)(B) and 1334(d)(2)(B).) The Act contains no similar requirement for the establishment of the special affordable housing goals.

The Act provides that the Secretary must establish any requirements necessary to implement the transition provisions of the Act, including housing goals, by notice after providing the enterprises with an opportunity to review and comment not less than 30 days before the issuance of such notice. (Sections 1332(d)(3), 1333(d)(4), and 1334(d)(4).) The Secretary provided FHLMC with an opportunity to review and comment on this Notice on July 22, 1993. The requirements in this Notice were revised following review of the comments. If any requirements for the interim goals contained in this Notice require revision, the Secretary may revise the goals by Notice in the **Federal Register** after providing the enterprises with an opportunity to review and comment not less than 30 days prior to publication.

The Act requires the Secretary to move expeditiously to establish these interim goals. Because this legislative scheme is new, many of the assumptions and interpretations embodied in this Notice are likely to be reconsidered, depending on the performance of FHLMC under these goals and other relevant matters. Future goals and requirements are likely to vary substantially from those contained in this Notice. Accordingly, these interim goals and the provisions of this Notice

[98] Codified at 12 U.S.C. 4545(5).

[1] Unless otherwise specified, all section cites herein are cites to the Federal Housing Enterprises Financial Safety and Soundness Act of 1992. Sections 1331–38 of that Act are codified at 12 U.S.C. 4561–67.

apply only to activities of FHLMC under the goals during the transition period.

The Secretary shall issue final regulations necessary to implement Part 2 of the Act, including the housing goals for 1995 and thereafter and excluding the interim housing goals, within 18 months of enactment of the Act. (Section 1349.[2]) The Act, at section 1331(c), authorizes the Secretary to adjust any goal established by the Secretary from year to year by regulation, except as otherwise provided under the Act.

All three sets of interim goals for FHLMC are combined in this Notice due to similarities in the goals and the requirements for their implementation. Where the goals or the requirements differ, this Notice discusses such matters separately. In a similar but separate Notice, the Secretary has established the interim goals for FNMA.

The Goals

After consideration of the applicable factors provided in the Act, *see below*, the Secretary establishes the interim goals as follows:

Housing for Low- and Moderate-income Families

The target set forth in the Act for FHLMC's purchases of conventional mortgages financing housing for low- and moderate-income families for 1993 and 1994 is 30 percent of the total number of dwelling units financed by FHLMC's mortgage purchases for each year. (Section 1332(d)(1).) The Secretary establishes the annual goal in this Notice for 1993 for such purchases at 28 percent; the annual goal for 1994 is established at 30 percent.

Housing Located in Central Cities

The target set forth in the Act for FHLMC's purchases of conventional mortgages financing housing located in central cities for 1993 and 1994 is 30 percent of the total number of dwelling units financed by FHLMC's mortgage purchases for each year. (Section 1334(d)(1).) The Secretary establishes the annual goal in this Notice for 1993 for such purchases at 26 percent; the annual goal for 1994 is established at 30 percent.

Special Affordable Housing

The special affordable housing goal set forth in the Act at section 1333(d)(2), and established by the Secretary under this Notice for the two year period 1993–94 for FHLMC's purchases of conventional mortgages on rental and owner-occupied housing meeting the then existing unaddressed needs of, and affordable to, low-income families in low-income areas and very-low income families shall include mortgage purchases of not less than one and one-half billion dollars ($1,500,000,000) "above and beyond [FHLMC's] existing performance and commitments."[3]

In establishing these goals for housing for low- and moderate-income families, housing located in central cities, and special affordable housing, the Secretary has determined, under the factors provided in the Act, to set the goals at levels which will require FHLMC to stretch its efforts to purchase mortgages and provide financing meeting the goals during the transition period of 1993 and 1994.[4]

Goals for Housing for Low- and Moderate-Income Families

Section 1332(b) of the Act requires the Secretary to consider national housing needs, economic, housing, and demographic conditions, the performance and effort of the enterprises in achieving the goals in previous years, the size of the relevant conventional mortgage market, the ability of the enterprises to lead the industry, and the need to maintain the sound financial condition of the enterprises, in establishing the annual goals for the purchase by FNMA and FHLMC of mortgages on housing for low- and moderate-income families. Performance under the goals for the purchase of mortgages on housing for low- and moderate-income families is to be evaluated by the Secretary based on the number of dwelling units financed by such mortgages as a percentage of the total number of units financed by mortgages purchased by FHLMC. (Section 1332(d)(1).)

To determine whether owner-occupied dwelling units are affordable to low- or moderate-income families and count toward achievement of these goals, the Act provides, at section 1332(c)(1)(A), that the income of the mortgagor(s) at the time of loan origination must be used. For rental dwellings, the income of prospective or actual tenants, adjusted for smaller and larger families (sections 1332(c)(1)(B)(i) and 1303 (8)(B) and (10)(B)[5]) shall be used, if available, and where such income information is not available, rent levels must be used to determine whether the dwelling units are affordable to low- or moderate-income families. (Section 1332(c)(1)(B)(ii).) Under the Act, a rent level is affordable to low- or moderate-income families if such rent, as adjusted for unit size as measured by the number of bedrooms, does not exceed 30 percent of the maximum income level for the particular low- or moderate-income classification. (Section 1332(c)(2).)

Section 1332(a) of the Act provides that the Secretary may establish separate subgoals within the goals for housing for low- and moderate-income families. Thus, the Secretary could, for example, establish a separate subgoal for housing for low-income families. Pending consideration of the needs and policy issues involved, the Secretary has determined to defer establishment of subgoals under this section. This Notice does require FHLMC to report separately on dwelling units for low-income families and for moderate-income families.

Central Cities Housing Goals

Section 1334(b) of the Act, in part, requires the Secretary to consider urban housing needs, economic, housing, and demographic conditions, the performance and effort of the enterprises in achieving the goals in previous years, the size of the relevant conventional mortgage market, the ability of the enterprises to lead the industry, and the need to maintain the enterprises' sound financial condition, in establishing the annual goals for the purchase by FNMA and FHLMC of mortgages on housing located in central cities. Performance under the goals for housing located in central cities is to be evaluated by the Secretary based on the number of dwelling units located in central cities that are financed by mortgages purchased by FHLMC, as a percentage of the total number of units financed by mortgages purchased by FHLMC. (Section 1334(d)(1).) Section 1334(d)(3) of the Act defines "central city" as "any political subdivision designated as a central city by the Office of Management and Budget."

Section 1334(a) of the Act also requires the Secretary to establish goals for FHLMC's purchase of mortgages on housing located in rural and other underserved areas. The Act does not require that the Secretary establish these

[1] Codified at 12 U.S.C. 4589.

[3] S. Rep. No. 102–282, 102d Cong., 2d Sess. 36 (1992).

[4] *See id.* at 35 (1992) ("the Committee fully expects [FNMA and FHLMC] will need to stretch their efforts to achieve [the low- and moderate-income goal]") and *id.* at 36 ("The purposes of the special affordable housing goal are two-fold: (1) to increase [FNMA's and FHLMC's] purchase of mortgages serving low-income families above and beyond their existing performance and commitments; and (2) to encourage [FNMA and FHLMC] to make such purchases an integral part of their business through the development of new product lines, the creation of new business relationships, the building of institutional capacity and other innovative activities.")

[5] Section 1303 is codified at 12 U.S.C. 4502.

goals for the transition period and neither HUD nor the enterprises have experience with such goals. Accordingly, pending consideration of the needs and policy issues involved, the Secretary has determined to defer establishment of other goals under this section while issuing interim central cities goals under section 1334(d)(2).

Special Affordable Housing Goal

Section 1333(a)(1) of the Act provides that the Secretary "shall establish a special annual goal designed to adjust the purchase by each enterprise of mortgages on rental and owner-occupied housing to meet the then-existing, unaddressed needs of, and affordable to, low-income families in low-income areas and very low-income families." In establishing the goal, the Secretary is required to consider data submitted in connection with the goal for previous years, the performance and effort of the enterprise in achieving the goal in previous years, national housing needs, the ability of the enterprise to lead the industry, and the need to maintain the enterprise's sound financial condition. (Section 1333(a)(2).)

Under the special affordable housing goal, the Secretary will evaluate FHLMC's performance based on the dollar amount of mortgage purchases that meet the requirements of the Act and this Notice. Performance is not measured—as under the other housing goals established under the Act—in terms of the percentage of dwelling units financed.

The Act requires that the Secretary establish the special affordable housing goals at no less than "1 percent of the dollar amount of the mortgage purchases by the enterprise for the previous year." (Section 1333(a)(1).) During the two-year transition period beginning on January 1, 1993, the special affordable housing goal for FHLMC must "include mortgage purchases of not less than $1,500,000,000 (for such 2-year period), with one-half of such purchases [$750,000,000] consisting of mortgages on single family housing and one-half [$750,000,000] consisting of mortgages on multifamily housing." (Section 1333(d)(2).) Under this Notice, the Secretary is requiring FHLMC to purchase mortgages totalling at least these minimum dollar amounts during the transition period of 1993–1994, above and beyond FHLMC's existing performance and commitments.[6] The special affordable housing goal for FHLMC for 1993 and 1994, therefore, requires $1,500,000,000 in mortgage purchases in addition to the amount of existing business which would have qualified under the goals; for purposes of these goals existing business shall be based on performance in 1992, the year before the housing goals became effective. The statute requires achievement of this goal by December 31, 1994. (Section 1333(d)(2).) To meet these special affordable housing needs, FHLMC should move expeditiously to meet the goal and should, in any event, purchase a significant amount of mortgages qualifying under this goal in 1993.

The Act and this Notice require that the goals for mortgage purchases financing multifamily housing and the goals for mortgage purchases financing single family housing under this goal be subdivided further into subgoals to reach particular categories of housing for families at lower income levels. Thus, the Act requires that, for multifamily mortgage purchases by FHLMC to be counted toward achievement of the special affordable housing goal, 45 percent of the dollar volume of such purchases must comprise mortgages on multifamily housing where dwelling units are affordable to low-income families (families whose incomes do not exceed 80 percent of area median income). (Section 1333(d)(3)(A)(i).) The remaining 55 percent of the dollar volume of multifamily mortgages purchased must comprise mortgages on multifamily housing in which either: (1) "at least 20 percent of the units are affordable to families whose incomes do not exceed 50 percent" of area median income (section 1333(d)(3)(A)(ii)(I)); or (2) "at least 40 percent of the units are affordable to very low-income families" (families whose incomes do not exceed 60 percent of area median income) (section 1333(d)(3)(A)(ii)(II)). The Act provides that only those portions of mortgages on multifamily properties that are attributable to units affordable to low-income families shall contribute to the achievement of this goal. (Section 1333(d)(3)(C).)

The Act requires that, for mortgage purchases financing single family housing purchased by FHLMC counted toward achievement of the special affordable housing goal, 45 percent of the dollar volume of single family mortgages comprise mortgages of low-income families (families whose incomes do not exceed 80 percent of area median income) "who live in census tracts in which the median income does not exceed 80 percent of the area median income." (Section 1333(d)(3)(B)(i).) The remaining 55 percent of the dollar volume of single family mortgage purchases must comprise mortgages of very low-income families (families whose incomes do not exceed 60 percent of area median income). (Section 1333(d)(3)(B)(ii).)

The Act sets forth certain specific requirements for evaluating FHLMC's performance in meeting the special affordable housing goal. To determine whether owner-occupied dwelling units are affordable to very low- or low-income families and qualify toward achievement of this goal, the Act provides, at section 1333(c)(1)(A), that the income of the mortgagor(s) at the time of loan origination must be used. For rental dwellings, the income of prospective or actual tenants, adjusted for smaller and larger families, shall be used, if available, and where such income information is not available, rent levels must be used to determine whether the dwelling units are affordable to low- and very low-income families (section 1333(c)(1)(B)) with adjustments for unit size as measured by the number of bedrooms (section 1333(c)(1)(B)(ii) and (c)(2)). Under the Act, a rent level is affordable to a family if it does not exceed 30 percent of the maximum income level for the particular income category. (Section 1333(c)(2).)

In evaluating FHLMC's performance in achieving this goal, the Act requires the Secretary to give full credit toward achievement of the special affordable housing goal for: (1) The purchase or securitization of federally related mortgages that cannot be readily securitized through the Government National Mortgage Association (GNMA) or another Federal agency, where FHLMC's participation substantially enhances the affordability of the housing subject to such mortgages,[7] and the mortgages are on housing that otherwise qualifies under this goal; (2) the purchase or refinancing of seasoned loan portfolios where the seller has a specific program to use the proceeds of such sales to originate new loans that meet the special affordable housing goal

[6] One purpose of the special affordable housing goal is "to increase [FHLMC's] purchase of mortgages serving low-income families above and beyond their existing performance and commitment." S. Rep. No. 102–282, 102d Cong., 2d Sess. 36 (1992).

[7] Mortgages that cannot be readily securitized through GNMA or another Federal agency and mortgages where FHLMC's participation substantially enhances the affordability of the housing subject to the mortgages include, for purposes of these interim goals, mortgages under the Home Equity Conversion Mortgage (HECM) Insurance Demonstration Program, sec. 255 of the National Housing Act, 12 U.S.C. 1715z–20, and under the Guaranteed Rural Housing Loan program, 7 U.S.C. 1933.

and such purchases or refinancings support additional lending for housing that otherwise qualifies under this goal; and (3) the purchase of direct loans made by the Resolution Trust Corporation (RTC) or the Federal Deposit Insurance Corporation (FDIC) where the loans are not guaranteed by the RTC or the FDIC or other Federal agencies, the loans include recourse provisions similar to those offered through private mortgage insurance or other conventional sellers, and such loans are for the purchase of housing that otherwise qualifies under this goal. (Section 1333(b)(1).)

This Notice clarifies that entities qualify as sellers, under (2) above, where the sellers currently operate or actively participate in an ongoing program that results in the origination of loans meeting the special affordable housing goal; thus, FHLMC's purchase of such loans supports additional lending for housing that will qualify under this goal. By encompassing active participation, the Notice allows purchases of portfolios from sellers, that actively participate with qualified housing groups that operate programs resulting in the origination of loans meeting this goal, to count toward achievement of the goal. However, if FHLMC wants to count portfolio purchases toward achievement of this goal, it must verify and monitor that the sellers currently operate or actively participate in such ongoing programs that result in the origination of additional loans meeting the requirements of this goal. FHLMC must also develop necessary mechanisms to ensure compliance with the requirement that sellers actively participate in program(s) which will use the proceeds of the purchase to support additional lending to meet the affordable housing goal.

This Notice provides that the dollar amount of each mortgage that will contribute to achievement of a goal will be the unpaid principal balance of the mortgage, or portion thereof. While section 1336(a)(3)(A) of the Act provides that the Secretary shall consider any single mortgage purchased by an enterprise as contributing to the achievement of each housing goal for which it qualifies, this Notice clarifies that a single mortgage purchase will not be counted as contributing toward the achievement of more than one subgoal under the special affordable housing goal.[8] Additionally, mortgage purchases in excess of the one and one-half billion dollar special affordable housing goal, which qualify for any of the subgoals under the special affordable housing goal, may be made without regard to the percentage requirements applicable to the subgoals.

As provided in section 1333(b)(2) of the Act, this Notice provides that the Secretary will not give any credit toward achieving the special affordable housing goal to any purchases or securitization of mortgages associated with refinancing of FHLMC's existing mortgage or mortgage-backed securities portfolios, nor will any credit be given for refinancing of FNMA's existing portfolios of mortgages or mortgage-backed securities. This does not mean that FHLMC may not count the purchase of individual mortgages financing properties that were previously financed by mortgages that had been purchased by FNMA.

Absence From the Multifamily Housing Market

FHLMC reported significant losses in its multifamily housing program and suspended new mortgage purchases in 1990. Soon thereafter, FHLMC stated its intention to reenter the market when new program staff were added and management changes were implemented. Since then, FHLMC has moved slowly and has repeatedly missed announced target dates for reentering the market.[9] FHLMC recently told HUD that it had embarked on a three phase reentry program, beginning with refinancing of troubled loans in its own portfolio, and that it will achieve full reentry, including purchasing of new loans, by the end of 1993.

Under the FHLMC Act, at section 301(b)(3), FHLMC is obligated "to provide ongoing assistance to the secondary market for residential mortgages (including activities relating to mortgages on housing for low- and moderate-income families involving a reasonable economic return that may be less than the return earned on other activities) by increasing the liquidity of mortgage investments and improving the distribution of investment capital available for residential mortgage financing." Multifamily rental properties comprise a sizeable proportion of housing for low- and moderate-income families. By not actively purchasing multifamily mortgages, FHLMC is not serving a significant portion of the housing market for low- and moderate-income families.

The 1993 goals established in this Notice take into account FHLMC's absence from the multifamily market. However, in establishing the 1994 low- and moderate-income housing goal and the central cities goal both at 30 percent, the Secretary has assumed full reentry by FHLMC and, in fact, the 30 percent goals are designed to ensure that FHLMC fully reenters the multifamily market by the start of 1994; if FHLMC fails to fully reenter by the start of 1994, FHLMC may not be able to meet the goals.

Definitions and General Requirements

This Notice details the definitions employed in establishing and measuring compliance with the goals, the Secretary's consideration of the factors under the Act for establishing each of these goals, the goals themselves, and requirements for implementation, monitoring, and reporting purchases under the goals.

Definitions

The Act provides certain definitions which are relevant to these goals including "central city," "enterprise," "low-income," "median income," "moderate-income," "mortgage purchase," "multifamily housing," "single family housing," and "very low-income." (Sections 1303 and 1334(d)(3).) In addition to the definitions provided in the Act, this Notice provides definitions for relevant terms such as "seasoned mortgage" and further clarifies certain terms including "mortgage purchase."

The Act provides that the Secretary shall establish goals for "mortgage purchases." (Sections 1332(a), 1333(a)(1) and 1334(a).) The determination of the types of transactions of FHLMC that qualify as "mortgage purchases" directly bears on the appropriate level of the interim goals established. The Act defines the term "mortgage purchases" as including "mortgages purchased for portfolio or securitization." (Section 1303(11).) This Notice provides that the term "mortgage purchases" encompasses transactions where FHLMC buys or otherwise acquires mortgages with cash or other thing of value, including swap transactions. While the Secretary commends FHLMC's involvement in a wide variety of undertakings including equity investments in projects eligible for Low-Income Housing Tax Credits (LIHTC), 26 U.S.C. 42, and purchases of State and local government housing bonds, which serve significant purposes related to low- and moderate income housing, the Secretary has concluded that these activities generally do not

[8] See S. Rep. No. 102–282, 102d Cong., 2d Sess. 65 (1992)

[9] *See, e.g., National Mortgage News*, "Fannie Mae Concerned on Multifamily," April 15, 1991 at 23 and "Freddie MF Restart May Be in Mid-'92," Oct. 21, 1991 at 1.

involve "mortgage purchases" by FHLMC. Although the Secretary appreciates and encourages FHLMC's continued involvement in these programs, such activities shall count toward achievement of these goals only to the extent that they involve mortgege purchases by FHLMC which qualify under the Act and this Notice. The Secretary notes that this approach is consistent with the language in the Senate report concerning such activities:

> In the recent past, [FNMA and FHLMC] have invested heavily in low-income housing tax credits. Those investments—which make [FNMA and FHLMC] equity partners in housing developments and preservation efforts sponsored by community-based organizations, national non-profit intermediaries, local corporations, and others—have made important contributions to many communities. The Committee applauds these programs. However, goals required in [the special affordable housing] section relate only to mortgage purchases, and therefore, do not include investments in tax credits or mortgage revenue bonds issued by state or local authorities. [FNMA and FHLMC] are expected to continue such investments, but to carry them out in addition to initiatives necessary to meet the goals contained in this legislation. Following the transition period, such activities could be encompassed on a full or partial credit basis, in the goals [for housing for low- and moderate-income families and for housing located in central cities] * * *.[10]

Where FHLMC purchases mortgages on properties sold from FHLMC's real estate owned (REO) portfolio acquired through foreclosures, such purchases will count under these goals. Even where FHLMC itself provides the financing and takes a mortgage directly from the buyer and no other lender is involved, FHLMC acquires a mortgage for its portfolio or securitization and the Secretary has determined to count such a transaction as a "mortgage purchase."

This Notice also clarifies that the term "mortgage purchases" includes all purchases of conventional mortgage loans including, with some limitations, mortgages resulting from refinancings and the purchase of seasoned mortgages. Except as specifically provided under the special affordable housing goal, purchases of refinanced mortgages by FHLMC shall receive full credit toward achievement of the goals, but only to the extent such purchases meet the requirements of the Act and this Notice. FHLMC shall provide detailed data on refinancings; the Secretary will evaluate the data to determine the extent to which refinancings serve the purposes of these goals and whether refinancings should receive full, partial or no credit toward the achievement of the goals after the transition period.

This Notice also provides that for single family dwellings, a seasoned mortgage will count toward achievement of a goal based on the income of the mortgagor(s) and, for rental units, the tenants' income or the rent level at the time of origination as compared to area median income at the time of origination; appropriate median income data will be used by FHLMC.

In defining "mortgage purchases," this Notice excludes non-conventional mortgages, such as mortgages insured under HUD's One- to Four-Family Home Mortgage Insurance Program (section 203(b) and (i) of the National Housing Act, 12 U.S.C. 1709(b) and (i)), and mortgages guaranteed by the Department of Veterans Affairs. "Mortgage purchases" may include FHLMC's activities under the Multifamily Mortgage Credit Demonstration (section 542 of the Housing and Community Development Act of 1992, codified as a note to 12 U.S.C. 1707). Under the program, the Secretary may enter into risk-sharing agreements with FNMA and/or FHLMC to finance multifamily housing under which the Secretary and the respective enterprise would assume portions of the risk. To the extent the units financed would qualify toward achievement of any of the housing goals, FHLMC may receive partial credit for section 542 activities considering the percentage of the risk that FHLMC assumes. The extent of the credit will be determined at a later date based on the specific requirements of the program.

Requirements

As explained above, in counting FHLMC's performance in achieving these goals, the Secretary will, for mortgage purchases on single family dwellings, consider the mortgagors' income and/or the rent levels or tenants' income at the time of origination; for mortgage purchases on multifamily properties, the Secretary will consider, based on data at the time of mortgage purchase, the income of prospective or actual tenants if available and, where such income information is not available, the rent on dwelling units in comparison to the rent levels affordable to especially low-, very low-, low-, and moderate-income families. (Sections 1332(c) and 1333(c).) A rent level shall be considered affordable to such families if it does not exceed 30 percent of the maximum income level of the family's classification, *i.e.*, especially low-, very low-, low-, or moderate-income, with adjustments for unit size. (Sections 1332(c)(2) and 1333(c)(2).)

Because sections 1332(c)(1)(B) and 1333(c)(1)(B) of the Act require the use of tenants' income where such data is available, the Secretary is requiring that tenants' income be collected by FHLMC where such income information is available. Based on the legislative history, income information is available "when it is known by the lender because, for example, such information is required as a condition of an existing federal housing program."[11]

Where tenant income is not known to the lender, the 30 percent rent proxy is to be used to monitor and evaluate FHLMC's performance in achieving the goals as provided in sections 1332(c) and 1333(c) of the Act. (However, the Secretary notes that the 30 percent rent standard prescribed by the Act for determining affordability under the low- and moderate-income housing goal is too inclusive. In applying this standard, it can be anticipated that more than 90 percent of rental housing will be regarded as affordable to low- and moderate-income families.)

The term "rent" is not defined in the Act. Where the term "rent" is used in eligibility and affordability requirements for government housing programs, the term means "gross rent," which includes all utilities, based on either actual data or allowances. Likewise, this Notice defines "rent" as gross rent, *i.e.*, contract rent including utilities or contract rent plus utilities where some or all of the utilities are not included in the contract rent.

Where all utilities are not included in rent, use of contract rent is unsatisfactory and excludes a significant component from housing costs. Utility costs comprise a significantly larger share of total housing costs for lower income families in comparison with higher income families. Moreover, applying the rent test, with rent exclusive of utility costs, would result in an even more unrealistically inclusive test of affordability for rental dwelling units than is the case using gross rent. If contract rent were used, HUD projects that more than 95 percent of all rental units would be classified as affordable to low- and moderate-income families.[12]

To resolve the problem of assuring consideration of gross rents including utility costs, while at the same time

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[10] S. Rep. No. 102-282, 102d Cong., 2d Sess. 38 (1992). See also H.R. Rep. No. 102-206, 102d Cong., 1st Sess. 60 (1991).

[11] S. Rep. No. 102-282, 102d Cong., 2d Sess. 35 (1992).

[12] Using rent as defined inthis Notice, consistent with current law, 93 percent of existing rental dwelling units and 78 percent of recently constructed rental dwelling units qualify as affordable to low- and moderate-income families.

providing workable means for including those costs, this Notice allows FHLMC to use: actual data on utilities; utility allowances, provided in this Notice, based on data from the American Housing Survey (AHS); utility allowances established for the HUD Section 8 Program (section 8 of the United States Housing Act of 1937, 42 U.S.C. 1437f); and/or an alternative adjustment formula subject to approval by the Secretary. The Notice provides that unless such an alternative approach is approved by the Secretary, FHLMC shall use actual data, the AHS-derived allowances, or the Section 8 allowances.

Where tenant income is not available, sections 1332(c)(2) and 1333(c)(2) of the Act require that the test for affordability of rental dwelling units be applied to units "with appropriate adjustments for unit size as measured by the number of bedrooms." Thus, to determine whether a unit counts toward achievement of a goal, rent on the unit is considered in terms of the number of persons housed in the unit. The Low-Income Housing Tax Credit (LIHTC) provides an accepted formula for adjustments to determine housing capacity, see 26 U.S.C. 42(g)(2)(C), and this Notice requires the use of those adjustments for these goals. These adjustments assume that an efficiency houses one person, a one-bedroom unit houses 1.5 persons and each additional bedroom houses an additional 1.5 persons.

Income adjustments for family size, required under the Act to determine whether a renter family's income qualifies as especially low, very low, low, or moderate, are established for the HUD Section 8 program and use of these adjustments is also required under this Notice. To determine which rental dwelling units qualify as affordable, this Notice combines the LIHTC unit size adjustment factors with the Section 8 family size adjustment factors to develop the necessary unit size adjustment factors to be applied to rent. For example, under the LIHTC an efficiency is assumed to house one person; under Section 8, for moderate income, one person's rent may not exceed 70 percent of 30 percent of area median income; thus, an efficiency is affordable for a moderate-income person if the rent does not exceed 21 percent of area median income.[13] Similarly, a two-bedroom unit is assumed to house three persons; three persons' rent may not exceed 90 percent of 30 percent of area median income; thus, a two-bedroom unit is affordable for a moderate-income family if the rent does not exceed 27 percent of area median income. These percentages are included below under "General Requirements."

In some instances, the LIHTC unit size adjustments and the Section 8 family size adjustments do not directly correspond to each other. For example, under the LIHTC a one-bedroom apartment is assumed to house 1.5 persons but Section 8 does not provide a family size adjustment for 1.5 persons. Therefore, the HUD Section 8 adjustment factors for one person (70 percent) and two persons (80 percent) have been averaged to obtain a rent not in excess of 75 percent of 30 percent of area median income, yielding a net unit size adjustment factor of 22.5 percent of area median income.[14] Similar interpolations also are made for three-bedroom and five-bedroom units.

In establishing the goals for housing for low- and moderate-income families, housing located in central cities, and special affordable housing, the Secretary, under section 1331(b), may consider the number of housing units financed by any multifamily housing mortgage purchase. The Secretary has decided to count all such dwelling units, whether in multifamily or single family housing, under these goals if the units otherwise meet the requirements of the Act and this Notice.

The statute does not allow a unit or mortgage that satisfies another State or Federal low- or moderate-income housing requirement to be automatically counted under this Act without independently meeting the Act's requirements.

In accordance with section 1335 of the Act, this Notice requires that in order to meet these goals, FHLMC shall: Design programs and products that facilitate the use of government assistance; develop relationships with organizations that develop and finance housing and with State and local governments including housing finance agencies; take affirmative steps to assist primary lenders to make housing credit available in areas with concentrations of low-income and minority families, assist insured depository institutions to meet Community Reinvestment Act obligations, including developing appropriate and prudent underwriting standards; and develop the institutional capacity to help finance low- and moderate-income housing, including housing for first-time homebuyers.

Section 1336(a) of the Act requires the Secretary to monitor and enforce the goals. As required by section 1336(a)(3)(A), this Notice provides that a mortgage purchase (or a dwelling unit financed by such purchase) by FHLMC will count toward achievement of each such goal for which it qualifies only as established in the Act and this Notice.

Reporting

A key purpose of the transition period is to gain data on the enterprises' performance.[15] Under this Notice, the Secretary requires quarterly and annual reports from FHLMC and such other reports as the Secretary considers appropriate to carry out the Secretary's responsibilities. The Act, at section 1337, and this Notice require FHLMC to submit to the Secretary, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Banking, Finance and Urban Affairs of the House of Representatives within 45 days of the establishment of the goals a report for each interim housing goal

[13] Similarly, for purposes of determining affordability to low-income families: an efficiency is assumed to house one person; one person's rent may not exceed 70 percent of 30 percent of 80 percent of area median income (using family size to adjust income); thus, an efficiency is affordable to a low-income family if the rent does not exceed 16.8 percent of the area median income.

[14] Similarly, for purposes of low-income affordability, the same 75 percent figure is used to obtain a rent not in excess of 75 percent of 30 percent of 80 percent of area median income, yielding a net unit size adjustment factor of 18 percent.

[15] The legislative history provides:

One reason for adopting the low-income housing provisions set forth in the Committee bill is the Committee's frustration with the lack of concrete information on [FNMA's] and [FHLMC's] current activity in the area of housing for low-income persons. . . . Further, because [FNMA] and [FHLMC] do not collect data on the income of borrowers or tenants, it is impossible to tell what income levels are being served by the enterprises' current activities.

H. Rep. No. 102–206, 102d Cong., 1st Sess. 60 (1991). "[A]n information vacuum has severely impeded Congressional efforts to measure [FNMA's] compliance with regulatory housing goals that have been in force since 1978. The Committee believes that enactment of this bill will fill this vacuum on an expeditious basis . . . ." S. Rep. No. 102–282, 102d Cong., 2d Sess. 39 (1992); see *id.* at 33 ("there was no complete and accurate data to measure the [enterprises'] performance in serving low- and moderate-income families. The Committee's initial investigation yielded a disturbing lack of empirical information on the [enterprises'] business"). The Senate report noted that collection of data is "central to understanding and evaluating the [enterprises'] single-family and multifamily businesses." *Id.* at 39. The Senate report further noted that data collection "will help evaluate the extent to which [FNMA] and [FHLMC] are meeting the needs" of those persons intended to benefit from the housing goals. *Id.* The collected data "will show, for the first time, the nature and scope of the enterprises' multifamily business," *id.* at 40, and "will ensure, for the first time, that the regulator and Congress have all the information necessary to assess the performance of the [enterprises]," *id.* at 34. After the transition period, the Secretary will have "latitude to adjust the goals to take into account newly available data." *Id.* at 36. Specifically concerning the special affordable housing goal, the Senate report states: "After the experience of the first two years, the [regulator] may redesign the categories to target more effectively low-income family needs and reflect any gaps in [enterprise] performance." *Id.* at 37.

describing the actions FHLMC plans to take to meet the goal. This Notice requires this initial report as well as annual, quarterly, and periodic reports as required by the Secretary. The requirements for these reports contained in this Notice may be satisfied either through separate reports on the goals covering housing for low- and moderate-income families, housing located in central cities, and special affordable housing, or through consolidated reports on all three goals.

Response to Comments From FNMA and FHLMC

On July 22, 1993, the Secretary provided each enterprise an opportunity to review and comment on that enterprise's proposed Notice of Interim Housing Goals. Both enterprises provided comments.[16] HUD staff also met with FNMA and FHLMC officers and employees to discuss the comments; after the meetings, additional comments were provided.[17] (Copies of these comments are available for public inspection in room 8234, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.) The following is a discussion of these comments.

Differences Between Enterprises in 1993 Low- and Moderate-Income and Central City Goals

FNMA commented that the Notice for FHLMC should not establish lower interim low- and moderate-income and central city housing goals for FHLMC than for FNMA in 1993 and requested that HUD eliminate the disparity as soon as possible. In establishing the goals for each enterprise, the Secretary considered the factors required by the statute, including FNMA's and FHLMC's performance and effort in previous years. *See* sections 1332(b)(3) and 1334(b)(3). Considering FHLMC's performance in previous years, including its absence from multifamily financing, the Secretary determined that FHLMC's goals for 1993 and 1994 should be set at the figures originally established. However, it should be noted that the low- and moderate-income and central city goals for FHLMC are the same as those for FNMA for 1994. Accordingly, the Notices have not been changed in this regard.

Special Affordable Housing

FHLMC objected to the Notice's requirement that its purchases of mortgages counting toward achievement of the special affordable housing goal in 1993 and 1994 be "above and beyond" its 1992 performance ("1992 base" or "base"). FHLMC contended that such a requirement is inconsistent with Congressional intent. The Senate report states that one purpose of the goal is "to increase [FHLMC's] purchase of mortgages serving low-income families above and beyond [its] existing performance and commitments."[18] This language is consistent with section 1333(d)(2) which establishes a special affordable housing goal for FHLMC of "not less than" $1.5 billion.

According to estimates derived from Home Mortgage Disclosure Act (HMDA) data, in 1991 alone FHLMC purchased more than $800 million and FNMA purchased more than $1 billion of single family mortgages that would have met the requirements of this goal. Due to the significant increase in the enterprises' business in 1992, their 1992 special affordable purchases presumably exceeded the levels attained in 1991.[19] The legislative history of the Act provides that the goal should "increase the [enterprises'] purchase of mortgages."[20] Given the estimates of the level of the enterprises' 1991 purchases, it is clear that requiring performance "above and beyond," consistent with the legislative intent, is required to increase the enterprises' purchases. Otherwise, the overall goals for 1993 and 1994, averaging $750 million for FHLMC and $1 billion for FNMA each year, including both single family and multifamily purchases, would require less than the dollar amount of single family special affordable purchases that FHLMC and FNMA made in 1991 alone.

Under the special affordable housing goal, 1992 performance provides the base beyond which the enterprises must perform. FNMA noted that its performance relevant to special affordable housing in previous years has increased its 1992 base for the special affordable housing goal and stated that FHLMC's base will be significantly lower than FNMA's. Accordingly, FNMA requested that this "competitive inequality" be eliminated as soon as possible.[21] Although FNMA's purchases of special affordable mortgages have exceeded FHLMC's, the Notice retains the "above and beyond" requirement for the transition period, because it is consistent with the Act and its legislative history. After that, this matter will be considered in implementing the Secretary's authority to establish special affordable housing goals beyond the transition period under section 1333(a)(1).

FNMA and FHLMC stated that the 1992 base may be a distorted benchmark for the special affordable housing goal due to the record volume of business in 1992. FNMA commented that HUD should recognize the effects of large shifts in volume and recommended adjusting the 1992 base to reflect the change in the average level of FNMA's business in 1993 and 1994. Although fluctuations in business volume are likely, 1993–94 should also be a strong period for mortgage finance due to: an extended decline in interest rates following a long period of high interest rates; the high level of FNMA and FHLMC business to date in 1993;[22] and the fact that the country is in the early stages of an economic recovery, which generally corresponds to a period of increased home purchases. Also, adjusting the 1992 base for the percentage change in overall 1993–94 volumes would mean that the actual dollar amounts of the special affordable housing goals for 1993–94 could not be established until 1995. Accordingly, the Notice makes no change in the requirement that 1992 serve as the base for the special affordable housing goal.

FNMA requested that the time provided under the Notice for submission of an estimate of its special affordable 1992 base be extended from 60 to 90 days. Because the Secretary believes that 60 days is a reasonable time to prepare its report, the time period has not been extended. FHLMC requested that it not be required to certify its base; the Notice now requires "a good faith estimate," not a certification.

FNMA and FHLMC objected to the Notice's requirement that, to achieve the low-income portion of the multifamily special affordable housing goal, each dwelling unit must be affordable to low-

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[16] FNMA commented in a letter, dated August 9, 1993, from James A. Johnson, Chairman of the Board and Chief Executive Officer, to the Secretary (hereinafter referred to as "FNMA Comment"). FHLMC commented in a letter, dated August 11, 1993, from Leland C. Brendsel, Chairman and Chief Executive Officer, to the Secretary (hereinafter referred to as "FHLMC Comment").

[17] FNMA's letter was from Joseph E. Amato, Director of Regulatory Policy, and FHLMC's letter was from Frank E. Nothaft, Director, Economic Operations/Analysis. Both letters were addressed to Ben E. Laden, Director, Financial Institutions Regulation Staff at HUD and were dated August 13, 1993.

[18] S. Rep. 102–282, 102d Cong., 2d Sess. 38 (1992).

[19] HMDA data for 1992 is not yet available. HMDA data provides no information on purchases by FNMA and FHLMC that would qualify under the multifamily portion of the special affordable housing goal.

[20] S. Rep. No. 102–282, 102d Cong., 2d Sess. 36 (1992).

[21] FNMA Comment at 6.

[22] FNMA expects its 1993 business volumes will "equal, if not exceed," the record volumes of 1992. *Id.* at 15. Also, FHLMC referred to "current favorable economic conditions." FHLMC Comment at 5.

income families. FNMA argued that a proportional approach—counting units meeting the goal as provided in sections 1333(d)(3)(A)(ii)(I) and (II), as applicable to the very low-, especially low-income portion of the multifamily goal—should also apply to the low-income portion of the goal. Section 1333(d)(3)(C) specifies proportionality for the very low-, especially low-income portion of the goal but omits this requirement for the low-income portion. Although this can be interpreted as not permitting proportionality for the low-income portion, it may also be read as not precluding a proportional approach. After further review of the legislative history, the Notices have been changed to permit proportional counting for both the low-income and the very low-, especially low-income portions of the multifamily goal.

FHLMC requested that the Notice base the portion of a multifamily mortgage to be counted toward the special affordable housing goal on the number of units, not the rent levels for those units. Because the Secretary has determined that the proportion of rent levels in a project provides a more accurate measure of the portion of a mortgage attributable to affordable units and that the collection of the relevant rental data does not impose a significant burden on the enterprises, this provision has not been changed.

FNMA and FHLMC objected to the requirement that, for purposes of determining whether a seller of seasoned portfolios of loans is engaging in a specific program to use proceeds of sales to originate additional special affordable loans under section 1333(b)(1)(B), the enterprise must enter into "binding agreements" with sellers under which the sellers agree to originate additional loans meeting the requirements of the goal. FNMA and FHLMC commented that lenders might be dissuaded from participating in these programs because of rigid requirements. FHLMC suggested that the usual system of representations and warranties would suffice. FNMA suggested that purchases from "lenders who are wholly 'in the business' of making such loans, such as community loan funds or community investment corporations," automatically qualify without any further assurances.[23] FNMA suggested that for other lenders, the Notice should permit FNMA to implement the Act's requirements as it deems appropriate. The Notice has been modified to make clear that in order to carry out this statutory requirement, the enterprises are responsible for assuring that the seller is engaged in a specific program to use the proceeds of such sales to originate additional loans that meet the special affordable housing goal, as required by the Act for the purchases of portfolios of seasoned loans that count toward the goal.

FHLMC suggested that since rehabilitation loans under section 203(k) of the National Housing Act, 12 U.S.C. 1709(k), may not be readily securitized through the Government National Mortgage Association (GNMA), purchases of these loans should qualify under the special affordable housing goal. Section 203(k) rehabilitation loans are readily securitized by GNMA. Accordingly, such loans will not qualify under the special affordable housing goal.

Section 1333(b)(2) states that no credit is to be given under the special affordable housing goals for refinancings of existing enterprise portfolios. FHLMC commented that this should not be interpreted as applying to the enterprises' purchases or securitization of individual mortgages. According to the comments, neither FNMA nor FHLMC would know if such properties had been previously financed by the other enterprise. As provided in the Act, at section 1333(b)(2), this Notice provides that the Secretary will not give any credit toward achieving the special affordable housing goal to any purchases or securitization of mortgages associated with refinancing of FNMA's existing mortgage or mortgage-backed securities portfolios, nor will any credit be given for refinancing of FHLMC's existing portfolios of mortgages or mortgage-backed securities. This does not mean that FNMA may not count the purchase of individual mortgages financing properties that were previously financed by mortgages that had been purchased by FHLMC.

Data and Related Issues

FNMA criticized the use of data from the 1981 Survey of Residential Finance (SRF) analyzing the 1977–80 period because the material allegedly is outdated and overstates multifamily activity. The SRF is conducted decennially; data from the 1991 SRF are not yet available.[24] With regard to multifamily properties, the 1977–80 period is comparable to the 1987–90 period—in both cases, multifamily conventional mortgage originations averaged 7.9 percent of the total dollar volume of conventional mortgage originations, according to the Department's Survey of Mortgage Lending Activity.

FNMA stated that the Notice's use of HMDA data overstates the size of the central city market because it is based on the "100 Percent Method." The Notice's estimate of the size of the potential central city market is based on data from the SRF and the AHS, not on HMDA data. Also, in the instances where the Notice did utilize HMDA data, in measuring performance, both the proportional method and the "100 Percent Method" were used.

FNMA stated that the "significant financing role performed by FHA/VA in central city and low- and moderate-income housing shrinks [the] universe of eligible loans."[25] The Department's analyses of the market have been conducted only with data on conventional loan originations.

Reporting Requirements

FNMA urged reconsideration of the "rigid, detailed data and reporting requirements for [FNMA] and its lenders."[26] The legislative history makes clear that a key purpose of the transition period is data gathering.[27] Accordingly, while the Notice still conforms to the Congressional intent, changes have been made to reduce the reporting requirements.

FNMA requested that the due date for its annual report be extended from 60 to 90 days after the end of the year. Under section 1328(a) of the Act, the Secretary must report to Congress by June 30 of each year. To assure adequate time to consider data, the due dates for reports have not been revised.

FNMA commented that quarterly reports could be confusing and misleading and may have to be restated, because information needed to determine whether a mortgage purchase counts toward achievement of a goal may not be available until after the end of the first quarter. For example, FNMA stated that the Department's median income estimates are generally not available until April or May. The Notice clarifies that any such information that is released during a quarter need not apply until the start of the next quarter; thus, if median income estimates are released in May, those income levels could, at FNMA's option, apply only to mortgage purchases made on or after July 1.

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[23] FNMA Comment at 6.

[24] An alternate estimate of the share of dwelling units found in 1–4 family rental housing can be obtained from the 1991 American Housing Survey (AHS); however, the AHS estimate is not restricted to properties with conventional mortgages and, therefore, is not an appropriate data source.

[25] FNMA Comment at 2 n. 1.

[26] Id. at 4.

[27] See, e.g., S. Rep. 102–282, 102d Cong., 2d Sess. 39 (1992).

FNMA commented that detailed quarterly reports should not be required and, instead, one semiannual report should be required each year. FNMA stated that this could be supplemented by an "abridged version" of a quarterly report and FNMA provided a sample format of such a report. Because the Department needs to evaluate the enterprises' performance on an ongoing basis and particularly during the transition, the Notice maintains the requirement for full quarterly reports.

FHLMC requested that the Department clarify when the first quarterly report will be due, and requested that such report be due after the first full quarter of performance under the Notice. Since the 1993 report will cover the last quarter of 1993, the Notice clarifies that the first quarterly report shall be for the first quarter of 1994.[28]

FNMA objected to the requirement that in reporting mortgages as qualifying under the income-based goals that it "make certain" that incomes of prospective tenants are reasonable. The Notice now requires FNMA to "determine" that such incomes are reasonable.

In determining whether seasoned mortgages count toward any of the goals, FNMA and FHLMC suggested that for mortgages on owner-occupied and single family rental properties the owner- or tenant-occupancy status of dwelling units be evaluated as of the time of mortgage origination, rather than the time of mortgage acquisition, because FNMA and FHLMC lack information on tenancy at the time a seasoned mortgage is acquired; these changes have been made.

Because of the nature of information available, FNMA also requested that the Notice clarify that rents for multifamily rental units be measured at the time of mortgage acquisition; the Notice clarifies this position. FHLMC requested that for purchases of seasoned loans, these requirements only apply to loans originated after January 1, 1993, because much of the required information was not available prior to this date. Pursuant to the Act, income information is essential to determine whether particular dwelling units count toward achievement of the low- and moderate-income housing and special affordable housing goals. Accordingly, the requirements apply to all loans whether or not originated before 1993. Where such information is not available to the enterprises, the Notice provides that mortgages on such properties will not be included in the calculation of any of the housing goals.

For single family rental properties, FNMA and FHLMC stated that income, race, and gender information on tenants required under the Notice is not available to the enterprises. FNMA requested that it not be required to collect and report that data. Section 1324(b)(3) requires the Secretary to "analyze data on income, race, and gender and compare such data with larger demographic, housing, and economic trends" and report that analysis to Congress.[29] This information was intended to assist the Secretary in reporting to Congress. Pending further consideration, the Notice has been changed to require this information only where it is available. However, in the future, data of this nature may be required.

Utility Costs

The Notice previously provided that in applying the rent test of affordability, contract rent could be used where the enterprise knew that all utilities were included.[30] Otherwise, the cost of utilities that were not included had to be added to contract rent. Such utility costs could be the actual costs paid by the renter, the Section 8 utility allowance, or utility costs as calculated under a method approved by the Secretary.

FHLMC commented that the collection of utility data is unnecessarily burdensome and requested that the Notice clarify that FHLMC may use actual utility data, Section 8 data, or an alternative approved by the Secretary; in fact, the proposed Notice stated this, and this Notice reiterates this point. FNMA stated that, although it recognized the need to consider utilities, the utility requirement was unworkable because FNMA has very little information on utilities included in contract rents or on utilities paid by tenants. Thus, FNMA stated that it "would not be able to comply at present with the Notice's requirements for calculating utility costs for all our multifamily properties around the country,"[31] and noted that 140,000 such dwelling units were located in the properties securing the multifamily mortgages it purchased in 1992.

The Department's projections indicate that collection of actual data may be less burdensome than suggested, because these multifamily units were located in approximately 2000 multifamily properties, and obtaining utility information on 2000 properties would not impose an undue data burden on FNMA.

Nonetheless, to ensure that utilities are included in rent, the Department has developed utility allowances, based on information from the 1991 American Housing Survey (AHS). In establishing these allowances, the Department analyzed AHS data on the median costs,[32] based on unit type, paid by renters in both multifamily and single family properties for electricity, gas, oil, and water, for each of the Department of Energy's five Climate Zones.[33] These allowances provide an alternative to the methodologies previously contained in the Notice and should be easily implemented by the enterprises. If these utility allowances are used, the appropriate allowance must be added to the contract rent for the rental unit unless all utilities are included in the contract rent for a unit.[34]

Definitions

FNMA requested that the Secretary allow credit enhancement activities to count as "mortgage purchases" under the low- and moderate-income and central cities goals. The comment described a multifamily credit enhancement transaction carried out with a number of state and local housing agencies in which FNMA puts up mortgages as collateral to reduce the costs of bond financings. FNMA argued that this activity is equivalent to the issuance of a mortgage-backed security under which FNMA assumes the credit risk in the financing of mortgages. Because the described transaction is substantially similar to a mortgage

[28] The first report due under this Notice will be the annual report for 1993, due 60 days after the end of this year.

[29] Sections 1381(p) and 1382(s) require the enterprises to report to Congress and the Secretary "the income class of tenants of rental housing (to the extent such information is available)."

[30] The Department notes that 1991 AHS data indicate that electricity is paid separately from contract rent by tenants in 87 percent of all rental units, and that some utilities are paid separately from contract rent in 89 percent of all rental units.

[31] FNMA Comment at 5.

[32] The AHS medians have been adjusted for the percentage change in the Consumer Price Index for Fuel and Other Utilities between July-December 1991 (the period when the AHS was conducted) and the most recent three month period (May-July 1993).

[33] Because higher costs for oil and gas in colder regions are largely offset by higher costs for electricity in warmer regions, regional variations in utility costs need not be taken into account during the transition period.

[34] In cases where no utilities are included in contract rent, these allowances may yield underestimates of gross rent, and in cases where most utilities are included in contract rent, these allowances may yield overestimates of gross rent. Because the allowances incorporate information of the frequency of inclusion or exclusion of various utility costs in contract rent, these effects will largely offset each other.

purchase, the Notice has been revised to allow qualifying mortgages funded under this particular type of transaction to be counted as mortgage purchases. This Notice only approves this particular credit enhancement transaction to be treated as a mortgage purchase. Other kinds of credit enhancement transactions will not be considered mortgage purchases and will not count under these goals unless such transactions are reviewed and specifically approved by the Secretary for this purpose.

FNMA commented that equity investments in low-income housing tax credits (LIHTCs) and purchases of state and local government mortgage revenue bonds (MRBs) should in the future be included as "mortgage purchases." Decisions regarding future goals have not been made.

FHLMC commented that commitments to buy mortgages should be included in the definition of "mortgage purchases." Because a commitment is not equivalent to a "mortgage purchase," the definition has not been changed. However, the Notices now provide that the enterprises may submit information on commitments in their reports to the Secretary concerning the special affordable housing goal.

FHLMC requested that its activities under section 542 of the Act[35] be included in the definition of "conventional mortgage" even though such activities would involve guarantees by the Federal government. Under section 542(a), the Secretary is required to demonstrate the effectiveness of providing new forms of credit enhancement for multifamily loans and to evaluate the effectiveness of entering into arrangements with FNMA and FHLMC involving reinsurance and risk-sharing. The Secretary may then enter into such agreements pursuant to section 542(b), under which the Secretary would assume portions of the risk (section 544(3)).[36] To the extent FNMA or FHLMC assumes credit risk under such agreements and to the extent the enterprises' activities otherwise qualify under the Act and this Notice, the enterprises shall receive partial credit under the goals considering the extent of the enterprises' risk as established under this section 542 program.

FNMA suggested that a "seasoned mortgage" be defined as any mortgage originated five years or more before its purchase by FNMA. FNMA said that lenders may hold adjustable-rate mortgages (ARMs) up to five years after origination. The Department's definition is the customary definition used in mortgage financing and is also used in the definition of "seasoned mortgage" contained in the Glossary to FNMA's Selling Guide, August 15, 1991. The definition of "seasoned mortgage" has not been modified.

FNMA and FHLMC commented that the definition of "mortgage" should include loans on cooperatives; this addition has been made.

FNMA commented that, although "rural" and "underserved" were not defined, the Notice required FNMA to report information on mortgages in rural areas and in underserved areas. The reporting requirements for "underserved" areas has been deleted and a definition for "rural area" has been added to the Notices.

FNMA commented that lenders report to FNMA a category of "other minority," in addition to the minority categories included in the definition of minority. In the Notice, the definition is used in defining "minority census tract" and "concentrated minority census tract" and it is not used in reporting which mortgages are purchased by FNMA from minority borrowers. Accordingly, the definition has not been revised.

FHLMC suggested that, for counties in non-metropolitan parts of a state, the definition of "median income" should permit the use of the greater of the county's median income or the median income for the entire non-metropolitan part of the state. FHLMC stated that this change would aid some families who live in particularly poor counties that may not be low-income based on the county's median income but may be low-income based on the state's non-metropolitan median-income. FHLMC argued that this approach has been applied in defining eligibility for certain housing subsidy programs, including HOME and LIHTCs. The Department notes that under these programs, eligibility is based on a fraction of median family income rather than median income. These programs therefore do not provide pertinent precedents here. The Notice does not change the definition of "median income." Based on data provided during the transition, the Department will study this issue in connection with future goals for rural and underserved areas.

Rent

FHLMC requested that the Notice allow increases in the affordability standard for rents for high-rent areas. In this case, also, the precedent from housing subsidy programs does not apply and such an adjustment is not appropriate. Under other programs, eligibility is based on a fraction of median family income rather than median income. Further, under the test in the Act, 90 percent of all rental housing is affordable to low- and moderate-income families. Accordingly, there is no need to permit adjustment of the test.

FHLMC stated that when it underwrites a multifamily mortgage, the rent used is the average contract rent by unit type. Accordingly, requiring the use of actual contract rent for each individual unit in determining whether units count under the low- and moderate-income housing and special affordable housing goals would be burdensome. The Notice has been revised to require each enterprise to use actual rents on individual units in multifamily properties where actual rents are available; where actual rents are not available, average contract rent by unit type may be used.

Similarly, FHLMC commented that it should be permitted to use either rents or incomes to measure affordability for all units in a single multifamily project and that it should not be required to use both. The Notice has been changed to permit use of either.

Miscellaneous Comments

FNMA and FHLMC objected to the provisions in the Notices that the goals or specifications could be revised using the same procedure as the original issuance of the Notices rather than by regulation. Because there is a special process for establishment of the transitional goals and rulemaking is not required, to maintain flexibility during the transition period this section of the Notice has not been changed.

In connection with determining a property's location for purposes of determining whether the property is located in a central city, FHLMC commented that the Notice's reference to "a smaller geographic segment" should be replaced with "some other geographic segment." The Notice has been changed to reflect FHLMC's suggestion.

Accordingly, the Notice of Interim Housing Goals is set forth as follows:

Interim Housing Goals for the Federal Home Loan Mortgage Corporation

I. The Low- and Moderate-Income Housing Goals
II. The Central Cities Housing Goals
III. The Special Affordable Housing Goal
IV. General Requirements
V. Definitions
VI. Revision of the Notice
VII. Monitoring and Enforcing Compliance
VIII. Housing Finance Reports

[35] Codified as a note to 12 U.S.C. 1707.
[36] *Id.*

I. The Low- and Moderate-Income Housing Goals

A. Establishment

Under the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4561–4567), the goals for the purchase of mortgages on housing for low- and moderate-income families are intended to achieve increased purchases by the Federal Home Loan Mortgage Corporation (FHLMC) of such mortgages.

In establishing the low- and moderate-income housing goals, section 1332(b)(1)–(6) of the Act requires the Secretary to consider:

1. National housing needs;
2. Economic, housing, and demographic conditions;
3. The performance and effort of the enterprises toward achieving the low- and moderate-income housing goal in previous years;
4. The size of the conventional mortgage market serving low- and moderate-income families relative to the size of the overall conventional mortgage market;
5. The ability of the enterprises to lead the industry in making mortgage credit available for low- and moderate-income families; and
6. The need to maintain the sound financial condition of the enterprises.

B. Underlying Data

In considering the factors under the Act to establish these goals, the Secretary relied upon data, including data gathered under the American Housing Survey, other government reports, the Home Mortgage Disclosure Act (12 U.S.C. 2801 et seq.) (HMDA), and data gathered from FHLMC, to determine national housing needs; economic, housing, and demographic conditions; the size of the conventional mortgage market serving low- and moderate-income families relative to the size of the overall conventional mortgage market; and the ability of FHLMC to lead the industry. The Secretary used data provided by FHLMC and data gathered under HMDA to determine FHLMC's prior performance in meeting the needs of low- and moderate-income families and FHLMC's financial condition.

C. Consideration of the Factors

1. National Housing Needs

Housing affordability is a problem for many American families nationwide.[37] Between 1979 and 1989, households paying more than 30 percent of their income for housing rose from 42 percent to 43 percent among renters, and from 17 percent to 19 percent among owners.[38]

Affordability problems are greatest among low- and moderate-income renters and are most frequent and severe among the lowest income renters. In 1989, when the average gross rent/income ratio for renters with incomes in excess of area median income was 21 percent, this ratio was 62 percent for renters with incomes below 30 percent of median and 38 percent for renters with incomes between 31 and 50 percent of median.[39]

The percentage of American families owning their own home increased in virtually every year of the 1960s and the 1970s, reaching a peak of 65.8 percent in 1980. The homeownership rate then fell below 65 percent during the first half of the 1980s. In the last few years, declining home prices and lower mortgage rates have reduced the cost of owning a home. However, due to unemployment and weak income growth, this cost reduction has not led to an increase in the homeownership rate, which stood at 64.3 percent in the first half of 1993—below the rates for 1972–84.[40] The average income of the greatest source of potential first-time home buyers, married couples, aged 25–29, who rent, was $24,946 in 1991, down from $26,600 in 1989 (both in 1989 constant dollars). Among the 25–29 age group, the homeownership rate declined to 32.8 percent in 1991, down from 43.3 percent in 1980. Sharp declines in homeownership have also occurred for families in which the head of household is 30–39 years of age.[41]

Examined by income, the drop in home ownership during the 1980s was greatest among low- and moderate-income families—ownership rates remained constant or increased among households with incomes above area median. Among low- and moderate-income families, declines in ownership were greatest among families with children. Indeed, among moderate income families, ownership rates actually rose between 1978 and 1989 for all household types other than families with children; the ownership rate for families with children dropped from 78 to 70 percent.[42]

During the 1980s, the rate of new household formations declined and, in the 1990s, the rate is expected to decline further to an estimated 1,205,000 households annually.[43] The number of people turning twenty years of age will start to grow again in the mid-1990s.

The Act requires FHLMC to play a major role in assisting low- and moderate-income households in obtaining housing. During the next few years, homes will be more affordable for many people due to lower inflation and lower interest rates. Slow growth of households, discussed above, should mean moderate demand in the housing market, allowing continuation of favorable market conditions for new home buyers. Under these conditions, the opportunity exists for significant growth of the homeownership rate in the population, including that for low- and moderate-income families, and this growth can be affected substantially by the activities of FHLMC.

2. Economic, Housing, and Demographic Conditions

A number of developments in economic, housing, and demographic conditions are of concern to the Secretary, including:

a. *The number of homeless individuals.* The precise number of homeless individuals is difficult to determine, but a study by the Urban Institute estimated that there were between 496,000 and 600,000 homeless persons in the United States during a seven-day period in March 1987, and more than one million persons were homeless at some time during that year.[44] The Congressional Budget Office estimated a one-day homeless population of approximately 700,000 for 1991.[45] The Census Bureau supplemented its regular 1990 census operations with a special one-night "Street and Shelter Night" count of the homeless, and found more than 228,000

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[37] Since the early 1980s, "affordable housing" has meant housing for which the homeowner or renter pays no more than 30 percent of family income for housing costs, including utilities.

[38] U.S. Departments of Housing and Urban Development and Commerce, American Housing Survey for the United States in 1989 (July 1991).

[39] Tabulations of U.S. Departments of Housing and Urban Development and Commerce, American Housing Survey for the United States in 1989 (July 1991) performed by HUD Office of Policy Development and Research.

[40] U.S. Department of Commerce News, Bureau of the Census, Census Bureau Reports on Residential Vacancies and Homeownership (July 23, 1993).

[41] Joint Center for Housing Studies of Harvard University, The State of the Nation's Housing 12, 28 (1992).

[42] Nelson and Khadduri, "To Whom Should Limited Housing Resources Be Directed?", 3 Housing Policy Debate 1, 21 (1992).

[43] Armijo, Berson, Obrinsky, and Valgeirsson, "Demographic and Economic Trends," 1 J. Housing Research 21, 28 (1990).

[44] Interagency Council on the Homeless, Executive Summary: The 1990 Annual Report of the Interagency Council on the Homeless 20 (1991).

[45] *Id.* at 21. This figure was based on a memorandum written by the Congressional Budget Office which used the 1987 Urban Institute study as its starting point and was updated using a 5 percent annual growth rate.

homeless individuals at emergency homeless shelters and at pre-identified street locations on the night of March 20, 1990.[46]

b. *The number of low-income renter households spending 50 percent or more of their income on housing*, which rose from 4.3 million in 1978 to 5.4 million in 1989.[47]

c. *The increase in the percentage of poor homeowners paying a high proportion of their income for housing costs*. Specifically, 30.6 percent of poor homeowners spent 60 percent or more of their income on housing in 1978; this figure rose to 33.1 percent in 1989.[48]

d. *The decline in the number of low rent units in the housing stock*. The affordable rental housing stock (the number of rental units with rents less than $300 per month, in constant 1989 dollars) fell from 9.9 million units in 1974, to 9.5 million units in 1985, and 9.0 million units in 1989.[49] The decline has been greatest for affordable unsubsidized units, which fell from 7.8 million in 1974 to 5.0 million in 1989.[50]

e. *The drop in multifamily housing starts*. In 1991, only 138,000 units in new private multifamily structures (5 or more units) were started; in 1992, this figure rose minimally to 139,000 units, but for the first half of 1993, multifamily starts have fallen below the 1991 level.[51] Multifamily starts in 1991 and 1992 were far below the annual average of 457,000 units for 1964–90.[52] The total number of private housing units started in 1991 was at the lowest level since World War II. Although starts rose by 18.5 percent in 1992, to 1.2 million units, they were still below the levels attained in 26 of the 30 years from 1960 through 1989.

The current housing market is characterized by an increase in the refinancing of existing mortgages. The volume of refinancings depends primarily on changes in interest rates. When interest rates fall significantly, homeowners can reduce their borrowing costs by refinancing their mortgages, and refinancings often become a high percentage of FHLMC's total business. Conversely, when interest rates rise significantly, refinancings usually become a small share of mortgage activity.

In 1982, the average 30-year fixed rate mortgage interest rate reached a record high of 15.1 percent. This rate declined steadily through 1988 to 9.2 percent, but it still exceeded the rates that prevailed in the 1960s and 1970s. In 1989 and 1990, mortgage rates again exceeded 10 percent, before dropping to an average of 8.2 percent in 1992. The July 1993 rate was 7.20 percent—the lowest level since 1968.[53]

As a result of the increase in mortgage interest rates from 1988 to 1989, refinancings decreased from 24 percent of all mortgage originations in the first half of 1988 to 20 percent in the first half of 1989. As a result of the sharp decline in mortgage interest rates in 1991 and 1992, refinancings accounted for 52 percent of all mortgages closed in 1992.[54]

HMDA data indicates that in 1990 the income levels of families refinancing closely approximated the income levels of families obtaining home purchase mortgages. In that year, 25.0 percent of home purchase conventional mortgage originations were made to borrowers with incomes below area median; the corresponding figure for refinancings was also 25.0 percent. If only conventional mortgages below the conforming loan limit were counted, these 1990 percentages would both rise to approximately 28 percent.[55] Analysis of the 1991 HMDA data by the Federal Reserve Board indicates that about 32 percent of conforming conventional home purchase mortgages were made to borrowers with incomes below area median; the corresponding figure for refinancings was about 28 percent. Despite the difference in data for the low- and moderate-income shares of home purchase mortgages and refinancings, the data also suggest that even if half of FHLMC's mortgage purchases were refinancings, FHLMC could still reach the 30 percent low- and moderate-income target. A high volume of refinancings would not prevent FHLMC from meeting the goals in this Notice.

The demographic composition of persons seeking housing has changed significantly in recent years, reflecting changes in family structure. Single-person and single-parent households have increased as a portion of the population more than other household types. The number of single-parent households increased by 15 percent between 1985 and 1989; the number of married-couple households with children did not change significantly during the same period. Only 35 percent of single-parent households were homeowners compared to 74 percent of married couples. Although single-parent households had lower monthly housing costs than married couples with children, single-parent households, on average, pay a larger proportion of their family income for housing costs than married couples with children (24 percent compared to 19 percent, respectively, for owners; 34 percent compared to 23 percent, respectively, for renters).[56]

The Bureau of the Census has reported growing inequality in the distribution of income from 1981 to 1991. Those in the lowest 20 percent income group saw their share of aggregate household income decrease from 4.1 percent in 1981 to 3.8 percent in 1991, while those in the highest 20 percent income group saw their share of aggregate household income increase from 44.4 percent to 46.5 percent between 1981 and 1991.[57] This greater disparity in incomes has led to increases in both the number of affluent homeowners and the number of persons who find it difficult to purchase adequate shelter.

The rental vacancy rate fell as low as 5.0 percent in the late 1970s and the early 1980s, but it has exceeded 7 percent from 1986 through the first half of 1993. Despite the large number of vacant units and weak economic growth, monthly rental costs (in 1989 constant dollars) declined by only 1.2 percent by 1991 from the 20 year peak rental costs of 1987 and 1988.[58]

Congress included goals for the purchase of mortgages on housing for low- and moderate-income families in

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[46] Interagency Council on the Homeless, Fact Sheet, "How Many Homeless People Are There?," April 1991, No. 1–1.

[47] Nelson and Khadduri, "To Whom Should Limited Housing Resources Be Directed," 3 Housing Policy Debate 1, 16 (1992).

[48] Center on Budget and Policy Priorities and Low Income Housing Service, A Place to Call Home 5 (April 1989) and U.S. Departments of Housing and Urban Development and Commerce, American Housing Survey for the United States in 1989 at 112 (July 1991).

[49] Joint Center for Housing Studies of Harvard University, The State of the Nation's Housing 35 (1992). The 1989 figure reflects Census adjustment of fuel and utilities measurement.

[50] *Id.* at 35–36.

[51] Council of Economic Advisers, Economic Indicators 19 (August 1993).

[52] Data on multifamily housing starts is not available for years prior to 1964.

[53] Council of Economic Advisers, Economic Indicators 30 (August 1993) and Economic Report of the President 428 (January 1993).

[54] Monthly average refinancing data obtained from FHLMC's Primary Mortgage Market Survey (February 8, 1993).

[55] Canner and Gabriel, "Market Segmentation and Lender Specialization in the Primary and Secondary Mortgage Markets," 3 Housing Policy Debate 255–257, 282 (1992) [hereinafter "Canner and Gabriel"].

[56] U.S. Department of Commerce, Economics and Statistics Administration, Bureau of the Census, Housing Characteristics of One-Parent Households: 1989 Series H–121, No. 92–2 1–2 (1992).

[57] U.S. Department of Commerce, Economics and Statistics Administration, Bureau of the Census, Money Income of Households, Families, and Persons in the United States: 1991 Series P–60, No. 180 xiv-xv (1992).

[58] Joint Center for Housing Studies of Harvard University, The State of the Nation's Housing 35 (1992).

the Act to ensure that FHLMC's affirmative obligation to facilitate the financing of housing for low- and moderate-income families is carried out. Current economic, housing, and demographic conditions substantiate the need for and support these goals for financing housing for low- and moderate-income families as set forth in this Notice.

3. Performance and Effort of FHLMC Toward Achieving the Goal in Previous Years

While these are the first low- and moderate-income goals established under this Act, some data is available concerning the income of homeowners whose mortgages were purchased by FHLMC for the 1990–92 period. An analysis of this data, gathered under the Home Mortgage Disclosure Act (HMDA), shows that 24 percent of mortgages purchased by FHLMC in 1990 provided financing for home buyers with income less than area median family income.[59] Analysis of 1991 HMDA data by the Federal Reserve Board shows that this percentage increased in 1991, to about 26 percent.

In a letter to the Secretary,[60] Leland C. Brendsel, the Chairman and Chief Executive Officer of FHLMC stated that FHLMC has analyzed a small sample of the loans it purchased in the first half of 1992. This analysis found that 24 percent (± 2–3 percent) of these loans met the tests for purchases of mortgages on housing of low- and moderate-income families under the Act.

Based on the HMDA data and FHLMC's analysis, the Secretary has determined that the percentage of FHLMC's purchases of mortgages on housing for low- and moderate-income families was approximately 26 percent in 1991 and 22 to 26 percent in 1992. FHLMC's absence from the multifamily market had a substantial effect on its ability to finance housing for low- and moderate-income families. As stated in Mr. Brendsel's letter, "[T]he purchase of multifamily mortgages is imperative to accomplishing [FHLMC's] affordable housing mission."[61]

4. Size of the Conventional Mortgage Market Serving Low- and Moderate-Income Families Relative to the Overall Conventional Market

Data from the American Housing Survey for 1985, 1987, and 1989 indicate that, overall, 30 percent of those families who recently purchased or refinanced their homes, and who obtained conventional mortgages below the conforming loan limits, had incomes below the area median. Based on this data, even if FHLMC's purchases consisted primarily of mortgages secured by owner-occupied homes, FHLMC could achieve the Act's target for purchases of mortgages on housing for low- and moderate-income families by buying a representative sample of the mortgages available in the market.

For rental properties, current data on the income of prospective or actual tenants has not been readily available to FHLMC in the past. Where such income information is not available, the Act provides that a rent level is affordable if it does not exceed 30 percent of the maximum income level for the low-income or moderate-income category, with appropriate adjustments for unit size as measured by the number of bedrooms. Analysis of American Housing Survey data shows that 93 percent of all rental units and 78 percent of unsubsidized rental units constructed in the last three years had gross rents of less than 30 percent of area median family income.

To calculate the size of the potential market for mortgages financing housing for low- and moderate-income families, data on the number of owner-occupied dwelling units, rental units in 1–4 unit properties, and rental units in multifamily properties are necessary. In determining the proportions of dwelling units in these three different types of properties, the Secretary has utilized data from the 1981 Survey of Residential Finance[62] on the number of properties with conventional mortgages acquired during the 1977–80 period, and the average number of dwelling units for each type of property, derived from the same source.[63] Based on this data, the Secretary estimates that, of total dwelling units in properties with recently acquired conventional mortgages, 53.5 percent were owner-occupied units, 18.9 percent were in 1–4 family rental properties, and 27.6 percent were located in multifamily rental properties.[64] Applying the percentages of affordable dwelling units (30 percent of owner-occupied dwelling units and 78 percent of rental dwelling units are affordable to low- and moderate-income families) to these percentages of properties results in the Secretary's conclusion that 52 percent of the dwelling units secured by conventional mortgages, eligible for purchase by FHLMC, are affordable to low- and moderate-income families.[65] These calculations show that FHLMC, through a program that includes purchases of both owner-occupied and rental properties, including multifamily properties, should be able to achieve the 30 percent target established in the Act.

5. FHLMC's Ability To Lead the Industry

FHLMC's ability to lead the industry depends on its role in the mortgage market as well as its profitability. FHLMC and the Federal National Mortgage Association (FNMA) together purchased approximately 65 percent of all conventional conforming single family mortgages in 1992—up from 17 percent in 1980, 33 percent in 1985, and 52 percent in 1991.[66]

The report on the Federal Housing Enterprises Regulatory Reform Act of 1992, S. 2733, by the Senate Committee on Banking, Housing, and Urban Affairs discussed FHLMC's profitability, and

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[59] Canner and Gabriel, *supra* note 55, at 241, 279, and 282. The majority of refinanced mortgages are conventional mortgages.

There are several differences between the data gathered under HMDA and the data required to evaluate compliance with the low- and moderate-income housing goal under the Act including that the HMDA data: (1) concerns the number of home mortgages, while the Act refers to dwelling units—thus, the HMDA data does not distinguish between a 100-unit multifamily property with a single mortgage and a 1-unit property; (2) excludes all loans outside of metropolitan areas (MSAs); and (3) is derived only from reports from financial institutions that have more than $10 million in assets and either have a branch located in an MSA or receive applications for 5 or more mortgage loans from such an area—the HMDA database excludes small institutions that do not lend in metropolitan areas.

[60] Dated January 26, 1993.

[61] *Id.* at 4.

[62] A commonly-used source of information on mortgage originations is HUD's Survey of Mortgage Lending Activity. However, for this analysis, that survey is inadequate, because the data are expressed in dollar terms, not in terms of the number of dwelling units, and the survey distinguishes only between single family (1–4 unit) and multifamily (5 or more unit) properties—no information is provided on rental units in 1–4 unit properties.

[63] With regard to multifamily properties, the 1977–80 period is comparable to the 1987–90 period—in both cases, multifamily conventional mortgage originations averaged 7.9 percent of the total dollar volume of single family and multifamily conventional mortgage originations.

[64] HUD Office of Policy Development and Research, 1991 Report to Congress on the Federal National Mortgage Association 100 (1992).

[65] The 52 percent figure was derived by adding the following: (1) 16.05% (percentage of owner-occupied units [53.5%] times percentage of those units that are affordable to low- and moderate-income families [30%]); (2) 14.74% (percentage of rental units in 1–4 family properties [18.9%] times percentage of those units that are affordable to low- and moderate-income families [78%]); and (3) 21.53% (percentage of rental units in multi-family properties [27.6%] times percentage of those units that are affordable to low- and moderate-income families [78%]). The 52 percent figure is a conservative estimate because it is based on the 78 percent estimate for newly-constructed affordable rental units rather than the 93 percent estimate for all affordable rental units.

[66] FNMA Economics Department. By itself, FHLMC purchased approximately 23 percent of all conventional conforming single family mortgages in 1992.

noted that FNMA and FHLMC "have grown more than 130 percent in the last five years, while profits have grown even faster."[67] The enterprises have had "a fivefold expansion [in profits] in just five years, a period that included one of the nation's most severe recessions."[68] The Committee noted "the contrast between the [enterprises'] increasing financial success and the worsening availability of affordable housing,"[69] and stated that "the capabilities of the [enterprises] partially to fill this gap are larger than ever."[70] In light of FNMA's and FHLMC's market dominance, strength, and high profitability, FHLMC, along with FNMA, is able to lead the industry in making mortgage credit available for low- and moderate-income families.

6. Need To Maintain FHLMC's Sound Financial Condition

FHLMC's financial condition depends on its profitability, the adequacy of its capital, and the safety and soundness of its operations. The Senate report on the Act stated: "The combined profits of [FHLMC] and [FNMA] approached $2 billion in 1991 compared to $350 million in 1986."[71] FHLMC's profits increased from $555 million in 1991 to $662 million in 1992 and FHLMC's net income in the first half of 1993 was 25 percent above the level of the first half of 1992. FHLMC's return on average equity averaged 23.4 percent over the 1988–92 period—far above the rates achieved by most financial corporations.

The Secretary has concluded that the low- and moderate-income housing goals will not endanger the adequacy of FHLMC's capital or the safety and soundness of its operations and that achievement of the goals will not impair FHLMC's sound financial condition.

D. Determination

Based on available data, the Secretary has concluded that FHLMC's purchases of mortgages on housing for low- and moderate-income families accounted for approximately 26 percent of the total number of dwelling units financed by FHLMC's mortgage purchases in 1991 and approximately 24 percent in 1992. Accordingly, FHLMC has not yet achieved the 30 percent target established for the purchase of mortgages on housing for low- and moderate-income families. Therefore, in accordance with the Act, these goals are established so that FHLMC will improve its performance relative to the target to the maximum extent feasible and so that FHLMC will meet the 30 percent target by the end of 1994.

The Secretary has determined that the interim goals set forth below address national housing needs and current economic, housing, and demographic conditions, and take into account FHLMC's performance in the past in purchasing low- and moderate-income mortgages, as well as the size of the conventional mortgage market serving low- and moderate-income families. Moreover, the Secretary has considered FHLMC's ability to lead the industry as well as FHLMC's financial condition. These goals will require an increase in FHLMC's low- and moderate-income housing business, including its return to the multifamily market, to reach the statutory targets of 30 percent by 1995. The Secretary has determined that these goals are necessary and achievable.

E. The Interim Low- and Moderate-Income Housing Goals

The annual goal for 1993 for FHLMC's purchases of conventional mortgages financing housing for low- and moderate-income families is established at 28 percent of the total number of dwelling units financed by FHLMC's mortgage purchases; the annual goal for 1994 is 30 percent.

II. The Central Cities Housing Goals

A. Establishment

Under the Act, these goals are intended to achieve increased purchases by FHLMC of mortgages on housing located in central cities.

The Act provides that the Secretary shall monitor performance of both FNMA and FHLMC in carrying out these goals and "shall evaluate such performance * * * based on the location of the properties subject to mortgages purchased by each enterprise." (Section 1334(c).) Units will be counted under these goals if the units are located in a "central city" as defined under the Act. Through the use of geocoding or any similarly accurate and reliable method, FHLMC shall determine, and report to the Secretary, whether units financed under mortgages purchased by FHLMC are located in central cities. Where FHLMC cannot determine the exact location of a property but can determine that the property is located in a census tract, or within a census place code, block-group enumeration district, nine-digit zip code, or another appropriate geographic segment, that includes at least part of a central city, the percentage of dwelling units that may be counted as central city units is equal to the percentage of the population of the geographic segment that resides within the central city—this method is referred to as the "proportional method."

In establishing the interim central cities goal, section 1334(b)(1)–(6) of the Act requires the Secretary to consider:

1. Urban housing needs;
2. Economic, housing and demographic conditions;
3. The performance and efforts of the enterprises toward achieving the central cities goal in previous years;
4. The size of the conventional mortgage market for central cities relative to the size of the overall conventional mortgage market;
5. The ability of the enterprises to lead the industry in making mortgage credit available throughout the United States, including central cities; and
6. The need to maintain the sound financial condition of the enterprises.

The geographic goals for mortgage purchases by FHLMC established by the Act will apply to rural areas and other underserved areas as well as central cities beginning on January 1, 1995. At this time, for the 1993–94 period, these goals apply only to the purchases of mortgages on housing located in central cities. Thus, in this discussion reference is made only to central cities goals and targets.

B. Underlying Data

In establishing the central cities goal and in considering the factors under the Act, the Secretary relied upon data, including data gathered under American Housing Surveys, other government data, the Home Mortgage Disclosure Act (HMDA) (12 U.S.C. 2801 *et seq.*), and data gathered from FHLMC, to determine central city housing needs; economic, housing and demographic conditions; and the size of the conventional mortgage market serving central cities relative to the size of the overall conventional mortgage market. The Secretary used data provided by FHLMC and data gathered under HMDA to determine prior performance in meeting the needs of central city residents and FHLMC's financial condition.

C. Consideration of the Factors

1. Urban Housing Needs

In its report on the Act, the Senate Committee on Banking, Housing, and Urban Affairs commented on the housing needs of urban areas:

> Housing problems in general, and access to capital in particular, are acute in our nation's cities * * *. Their economic distress is a vital issue, not only to the cities immediately

[67] S. Rep. No. 102–282, 102d Cong., 2d Sess. 28 (1992).
[68] *Id.*
[69] *Id.*
[70] *Id.* at 29.
[71] *Id.* at 28.

affected, but to the entire nation * * *. [C]apital for housing finance is a serious need. Unfortunately, the Committee finds that city residents, for a variety of reasons including discriminatory practices, do not have the access to mortgage capital that non-urbanites enjoy.[72]

Data on various aspects of housing in the central cities has been collected in the 1989 American Housing Survey.[73] Housing conditions in central cities are illustrated by comparing this data with the corresponding data for the suburbs, as follows:

a. *Income of occupants.* One of every six central cities' households (16.6 percent) fell below the poverty line in 1989, nearly twice the rate for suburban households (8.7 percent). Similarly, median household income was much lower in central cities—$25,062, versus $33,244 in the suburbs.

b. *Homeownership.* A sharp divergence exists between the percentage of homeownership in central cities and other areas—in 1991 the homeownership rate was 48.7 percent in central cities, 70.2 percent in the suburbs, and 73.2 percent outside of MSAs.[74]

c. *Housing costs.* Despite the lower incomes in central cities, monthly housing costs as a percentage of income are somewhat higher in central cities—averaging 23 percent of income in urban areas, versus 21 percent in the suburbs. The size of this gap partly reflects the fact that renters, who generally have higher housing costs relative to income, make up a higher share of households in urban areas than in the suburbs. But even with some adjustment for the rental/owner-occupied mix, many central city residents still pay higher costs for housing—*e.g.*, 20 percent of renters in central cities paid more than 50 percent of their income for housing costs, versus 18 percent in the suburbs.

d. *Age of structure.* In the suburbs, 79 percent of housing structures have been built since 1950—versus 59 percent in central cities. On average, suburban structures, with a median construction date of 1968, are 12 years newer than central city structures, with a median construction date of 1956.

e. *Condition of structure.* In the suburbs, 2.7 percent of occupied dwelling units reported severe physical problems in plumbing, heating, electrical service, upkeep, or public areas—versus 4 percent in central cities. Approximately 5.9 percent of suburban units reported inadequate heating in the preceding winter—versus 8.7 percent in central cities.

f. *Unemployment.* In 1992 the unemployment rate in central cities was 8.9 percent, well above the 6.6 percent rate for the suburbs, the 7.5 percent rate for metropolitan areas as a whole, and the 7.1 percent rate for nonmetropolitan areas. The difference in jobless rates was especially pronounced in the poorest areas—14.0 percent for metropolitan poverty areas, and 8.6 percent for nonmetropolitan poverty areas.[75]

g. *Minorities.* Members of minority groups are especially disadvantaged by housing conditions in central cities, because a majority of such individuals live in central cities. The 1989 American Housing Survey found that 60 percent of Black households were located in central cities, 26 percent were in the suburbs, and 14 percent were outside of metropolitan areas. For Hispanics, the corresponding percentages were 52 percent, 39 percent, and 9 percent. For other households, 27 percent were located in central cities, 49 percent were in the suburbs, and 24 percent were outside of metropolitan areas.

Based on this data, the Secretary believes that it is essential for FHLMC to play a greater role in addressing the serious housing needs of the central cities.

2. Economic, Housing, and Demographic Conditions

Compared to suburban and nonmetropolitan areas, central cities have a much higher percentage of households with "worst case" housing needs. Such households include unassisted renters with incomes that do not exceed 50 percent of area median income who have been displaced, renters who pay more than half of their income in rent and utilities, or households that live in severely substandard housing. Over half of households with worst case problems were in central cities in 1989, even though cities housed only one-third of all households.[76] In the 44 large metropolitan areas surveyed separately by the American Housing Survey, 10 percent of city households had worst case problems, compared to only 4 percent of suburban households.[77]

This factor is the same as the second factor considered under the goal for housing for low- and moderate-income families. Accordingly, see paragraph I.C.2., for additional discussion of this factor.

Congress included housing goals for central cities in the Act to ensure that the benefits of mortgage financing from FHLMC's secondary market activities would be available in the central cities. Current economic, housing, and demographic conditions substantiate the need and support the goals for housing located in central cities as set forth in this Notice.

3. Performance and Effort of FHLMC toward Achieving the Goal in Previous Years

Data gathered under the Home Mortgage Disclosure Act (HMDA) shows that 36 percent of all conventional conforming home purchase and refinanced mortgages purchased by FHLMC in 1990 (for which the property location was reported) were on properties located in central cities.[78] The Federal Reserve Board's estimate for 1991, based on HMDA data, is that 34 percent of the mortgages purchased by FHLMC were on properties located in central cities. These calculations included all mortgages on housing located in any census tract where at least part, but not necessarily all, of the census tract was in a central city. Calculation of central city mortgage purchases in this manner is known as the "outer circle method."

FHLMC has provided the Department with a breakdown by geographic location of the number of dwelling units in the properties whose mortgages it purchased in 1990, based on a 1-in-1,000 random sample.[79] These FHLMC data indicate that 30 percent of the dwelling units in the properties whose

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[72] *Id.*

[73] U.S. Departments of Housing and Urban Development and Commerce, American Housing Survey for the United States in 1989, at 35, 187, 249, 372, 374, 377, 378, 384, 385, 414, 416, 419, 420, 426, and 427 (July 1991).

[74] U.S. Bureau of the Census, Housing Vacancies and Homeownership Annual Statistics: 1991, Current Housing Reports, Series H111/91–A, 34 (1992). The lower homeownership rate in central cities may, to some degree, reflect the preferences of urban dwellers.

[75] Department of Labor, Employment and Earnings 244–46 (January 1993). Poverty areas are census tracts in which 20 percent or more of the residents were poor, according to the 1990 decennial census.

[76] HUD Office of Policy Development and Research, Priority Housing Problems and "Worst Case" Needs in 1989, 15 (1991).

[77] HUD Office of Policy Development and Research, The Location of Worst Case Needs in the Late 1980s (1992).

[78] Canner and Gabriel, *supra* note 55, at 273. The HMDA data is based on a review of loans originated and sold to FHLMC in 1990 by lenders with assets of at least $10 million. Of those 1990 loans, 79 percent provided sufficient geographic information to determine whether the property was located in a central city; the remaining 21 percent consisted of loans where lenders were not required to include a census tract number, lenders failed to supply a number, or the number was incorrect.

[79] HUD Office of Policy Development and Research, 1991 Report to Congress on the Federal Home Loan Mortgage Corporation 106, 107 (1992).

mortgages it purchased in 1990 were located in central cities.[80]

In a letter to the Secretary,[81] the Chairman and CEO of FHLMC stated that FHLMC has analyzed a small sample of the loans it purchased in the first half of 1992. This analysis found that 28 percent of these loans met the test for purchases of mortgages on housing located in central cities under the Act. In making these estimates for 1992, FHLMC used the more inclusive "outer circle method" rather than the "proportional method." The proportional method allocates mortgages in census tracts that straddle central city boundaries based on the portion of the population that resides in the central city in such census tracts.[82]

FHLMC's estimate that 28 percent of its mortgage purchases in 1992 were on properties located in central cities is less than the HMDA estimates of its central city purchases for 1990 and 1991 (36 percent and 34 percent, respectively), although FHLMC's estimate, like the HMDA estimates, is based on the "outer circle method." Some of this difference is due to the fact that HMDA data is derived from reports from financial institutions that have more than $10 million in assets and either have a branch located in a metropolitan area (MSA) or receive applications for five or more mortgage loans from such an area. Thus the HMDA database excludes very small institutions and institutions that do not have offices in or lend in metropolitan areas, but it is doubtful that this exclusion could account for a discrepancy of this magnitude.

FHLMC's estimate of its 1992 central city purchases is also well below FHLMC's estimate for 1990, based on a sample and a method which appears to be comparable to the "proportional method," that 30 percent of its mortgage purchases were on properties located in central cities. The Secretary does not know if FHLMC's purchases of mortgages on central city properties fell significantly in 1992, or if some other reasons account for these discrepancies.

The Secretary has determined that, where FHLMC cannot ascertain the exact location of a property but can determine in which census tract the property is located, the proportional method provides a better means than the outer circle method for measuring the percentage of mortgage purchases on housing located in central cities.[83] The Secretary is unable to resolve the apparent differences between various estimates of the level of FHLMC's central city activity. Therefore, the Secretary accepts FHLMC's most recent estimate that 28 percent of its mortgage purchases in 1992 were on properties located in central cities, based on the "outer circle method." This estimate must be reduced to make it consistent with the "proportional method" preferred by the Secretary.[84] Such an adjustment would reduce FHLMC's estimate of its 1992 central city purchases below 25 percent, to approximately 22 percent. FHLMC's absence from the multifamily market had a substantial effect on its ability to finance housing located in central cities.

4. Size of the Conventional Mortgage Market for Central Cities Relative to the Size of the Overall Conventional Mortgage Market

Data from the American Housing Survey for 1985, 1987, and 1989 indicate that, overall, 24 percent of all recent mortgages from owner-occupier home buyers and owners who refinanced, and who obtained conventional mortgages below the conforming loan limits, were secured by properties located in central cities. For 1- to 4-family rental properties, 42 percent of all rental units and 32 percent of unsubsidized rental units constructed in the preceding three years were located in central cities. For multifamily rental properties, 58 percent of all rental units and 47 percent of unsubsidized rental units constructed in the preceding three years were located in central cities.

Based on data from the 1981 Survey of Residential Finance, discussed above, the Secretary estimates that, of total dwelling units in properties with recently acquired conventional mortgages, 53.5 percent were owner-occupied units, 18.9 percent were in 1–4 family rental properties, and 27.6 percent were located in multifamily rental properties. Utilizing the percentages of dwelling units located in central cities (24 percent of owner-occupied units, 32 percent of recently constructed rental units in 1- to 4-family rental properties, and 47 percent of recently constructed rental units in multifamily rental properties) results in the Secretary's conclusion that 32 percent of the dwelling units secured by conventional mortgages are located in central cities.[85] These calculations show that through a program that includes purchases of mortgages on both owner-occupied and rental properties, including multifamily properties, FHLMC should be able to improve its performance from 26 percent to achieve the 30 percent target established in the Act.[86]

5. FHLMC's Ability To Lead the Industry

This factor is the same as the fifth factor considered under the goal for mortgage purchases on housing for low- and moderate-income families. Accordingly, see paragraph I.C.5., for a discussion of this factor.

6. Need To Maintain FHLMC's Sound Financial Condition

This factor is the same as the sixth factor considered under the goal for mortgage purchases on housing for low- and moderate-income families. Accordingly, see paragraph I.C.6., for discussion of this factor.

D. Determination

Based on available data, the Secretary has concluded that FHLMC's purchases of mortgages on housing located in central cities were approximately 22 percent of the total number of dwelling units financed by FHLMC's mortgage purchases in 1992. Accordingly, FHLMC has not yet achieved the 30 percent target established for the purchase of mortgages on housing in central cities. Therefore, in accordance with the Act, these goals have been established so that FHLMC will improve its performance relative to the target to the maximum extent feasible and so that FHLMC will meet the 30 percent target by the end of 1994.

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[80] FHLMC estimated that the 95 percent confidence interval for the percentage of the dwelling units in central cities in its 1991 purchases was 30% ±3%, *i.e.*, the probability is 95 percent that the central city percentage was between 27 percent and 33 percent.

[81] Dated January 26, 1993, from Leland C. Brendsel.

[82] This approach has been implemented using census tract data. However, FHLMC may choose to use other geographic segments such as census place codes, block-group enumeration districts, or nine-digit zip codes.

[83] As discussed above, FHLMC may choose to use smaller geographic segments such as census place codes, block-group enumeration districts, or nine-digit zip codes.

[84] FNMA data indicate that using the proportional method results in a percentage that is approximately 22 percent less than the result of the outer circle method.

[85] The 32 percent figure was derived by adding the following: (1) 12.84% (percentage of owner-occupied units [53.5%] times the percentage of those units that are located in central cities [24%]); (2) 6.05% (percentage of rental units in 1–4 family properties [18.9%] times percentage of those units that are located in central cities [32%]); (3) 12.97% (percentage of rental units in multifamily properties [27.6%] times percentage of those units that are located in central cities [47%]).

[86] The Federal Reserve Board's preliminary analysis of 1991 HMDA data indicates that 36.2 percent of conforming conventional home purchase mortgages and 33.5 percent of refinancings were on properties located in central cities. Because these two percentages are similar, a high volume of refinancings would not prevent FHLMC from attaining the goals in this Notice.

Having considered the factors for establishing the goal, the Secretary has determined that the goals established below address urban housing needs and economic, housing and demographic conditions and take into account FHLMC's performance in the past in purchasing mortgages on properties in central cities, as well as the size of the conventional mortgage market for central cities. Moreover, in establishing these goals the Secretary has considered FHLMC's ability to lead the industry as well as FHLMC's financial condition. The Secretary has determined that these goals are both necessary and achievable, assuming FHLMC's reentry to the multifamily market.

The Secretary is determined to achieve an end to redlining and other forms of discrimination that severely reduce the availability of housing finance in central cities. As noted in the Senate report on the Act: "Inadequate access to mortgage credit is a particular problem which results, in large part, from the vestiges of redlining and the unintended consequences of [FNMA's and FHLMC's] orientation toward suburban and 'plain vanilla' mortgages."[87] In establishing the central cities goals at the levels listed below, the Secretary expects FHLMC, along with FNMA, to significantly increase the availability of financing for housing in central cities and to act forcefully and effectively towards ending problems of redlining and mortgage discrimination in the primary mortgage market.

E. The Interim Central Cities Goals

1. The Goals

The annual goal for 1993 for FHLMC's purchase of conventional mortgages on housing located in central cities is established at 26 percent of the total number of dwelling units financed by FHLMC's mortgage purchases in 1993; the annual goal for 1994 is 30 percent.

2. Counting Methodology

a. The dwelling unit(s) located in central cities and financed by FHLMC's mortgage purchases shall count toward achievement of this goal. FHLMC shall determine on a mortgage-by-mortgage basis, through geocoding or any similarly accurate and reliable method, whether a mortgage finances dwelling unit(s) located in a central city.

b. *Proportional Method.* Where FHLMC cannot precisely determine whether a mortgage is on dwelling unit(s) located in a central city but can determine that the mortgage is on dwelling unit(s) located in a census tract, or within a census place code, block-group enumeration district, or nine-digit zip code, or another appropriate geographic segment, that is partially located in a central city, a fraction of the dwelling units covered by the mortgage shall count toward achievement of this goal. Such fraction is the ratio of the population of the geographic segment that is located in the central city to the total population of the geographic segment.

III. The Special Affordable Housing Goal

A. Establishment

Under the Act, the goal for the purchase of mortgages on housing to meet the then-existing, unaddressed needs of, and affordable to, low-income families in low-income areas and very low-income families is intended to achieve increased purchases by FHLMC of such mortgages.

In establishing the special affordable housing goal, section 1333(a)(2)(A)-(E) of the Act requires the Secretary to consider:

1. Data submitted to the Secretary in connection with the special affordable housing goal in previous years;

2. The performance of the enterprise toward achieving the special affordable housing goal in previous years;

3. National housing needs within the categories covered by the special affordable housing goal;

4. The ability of the enterprise to lead the industry in making mortgage credit available for low- and very low-income families; and

5. The need to maintain the sound financial condition of the enterprise.

B. Underlying Data

In considering the factors under the Act to establish the special affordable housing goal, the Secretary relied upon data, including data gathered under the American Housing Survey, other government reports, the Home Mortgage Disclosure Act (HMDA) (12 U.S.C. 2801 et seq.), and data gathered from FHLMC. There is no experience with these goals and inadequate information is available on relevant prior performance. The Secretary utilized data provided by FHLMC to determine its financial condition and its ability to lead the industry.

C. Consideration of the Factors

1. Data Submitted to the Secretary in Connection With the Special Affordable Housing Goal for Previous Years

FHLMC has not operated under the special affordable housing goal in prior years and FHLMC has not submitted any relevant data to the Secretary to date. Since 1990, FHLMC has been absent from the multifamily market and, thus, did not purchase any multifamily mortgages in 1991 or 1992 that would have qualified under a special affordable housing goal.

2. Previous Performance and Effort of FHLMC

FHLMC established an Affordable Housing Initiatives Department (AHID) in 1990 to develop new affordable homeownership and rental programs. According to FHLMC, AHID has achieved the following: "creating customized homeownership programs with targeted lenders to meet the affordable housing needs of their communities; maintaining partnerships with state and local governments, public agencies and nonprofit groups to develop alternative approaches to providing affordable homeownership opportunities; and supporting low-income rental housing production through investments in tax credit equity funds and purchasing low-income rental housing mortgages through the National Community Development Initiative."[88] It has been reported that only eight staff members are working in AHID.[89] FHLMC's ability to develop innovative programs for housing for very low- and especially low-income families may currently be limited by FHLMC's staffing of AHID.

Based on HMDA data, in 1990 FHLMC purchased a lower percentage (12.1 percent) of new conventional mortgages and refinanced mortgages from low-income families than the corresponding share of mortgage originations for such families (14.1 percent for new conventional mortgages and 14.3 percent for refinanced mortgages). Conversely, in that same year, FHLMC purchased a higher percentage (13.6 percent) of new conventional mortgages and refinanced mortgages from families with 100 to 120 percent of area median income than the corresponding share of mortgage originations (11.8 percent for new conventional mortgages and 11.7 percent for refinanced mortgages).[90]

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[87] S. Rep. No. 102–282, 102d Cong., 2d Sess. 38 (1992).

[88] *Home Mortgage Disclosure Act: Joint Hearings Before the Subcomms. on Consumer Affairs and Coinage and on Housing and Community Development, of the Comm. on Banking, Finance and Urban Affairs, House of Representatives*, Serial No. 102–120, 102d Cong., 2d Sess. 517 (1992) (statement of Leland C. Brendsel, Chairman and Chief Executive Officer of FHLMC). More specific initiatives are discussed in FHLMC's 1991 *Annual Report* at 16.

[89] *Inside Mortgage Finance*, April 24, 1992.

[90] Canner and Gabriel, *supra* note 55, at 255–257, 279. Data for families with incomes in excess of 120 percent of area median income has not been

The previous performance of FHLMC and the importance of FHLMC's absence from the multifamily market was noted in the Senate report on the Act:

According to the data made available under the Home Mortgage Disclosure Act [in] October [1991], 9.8 percent of [FNMA's and FHLMC's] prime business activity—purchases of mortgages securing single-family homes—is comprised of loans made to borrowers with incomes below 80 percent of area median. A substantial portion of the units financed by any multifamily mortgages [FNMA and FHLMC] purchase likely serve tenants with such incomes * * *.

[T]here is significant consensus among a wide coalition of affordable housing participants that [FNMA and FHLMC] can expand their activity in the low-income arena. The HMDA data and other evidence reveal that [FNMA's and FHLMC's] existing single-family business underserves low-income families living in census tracts where the median income is 80 percent or below as well as very low-income families (families with incomes below 50 percent of area median).

The multifamily arena is equally troubling. In September 1990, [FHLMC] suspended new business for its multifamily program, after suffering large losses as a result of poor underwriting, fraud, and geographic concentration in housing markets in Atlanta and New York.[91]

3. National Housing Needs for Very Low- and Low-Income Families, Low-Income Families in Low-Income Areas, and Families Whose Incomes Do Not Exceed 50 Percent of the Median Income for the Area

Data obtained under the Home Mortgage Disclosure Act (HMDA) for 1991 indicates some of the difficulties faced by low-income families seeking mortgages. The conventional mortgage origination rate (percentage of conventional mortgage applications approved) decreases as the income of the applicant(s) decreases, with the approval rate being the lowest for low-income families:

Area median income	Percent of mortgage approval rate
Less than 80 percent	60
80 to 99 percent	75
100 to 120 percent	78
More than 120 percent	79

Low-income approval rates were especially low for Hispanics (54 percent) and Blacks (45 percent)—versus 62 percent for Whites and 69 percent for Asians. Similarly, approval rates were lowest for applicants seeking mortgages in lower income census tracts—66 percent in tracts having median income less than 80 percent of area median income—versus 72 percent in tracts having median income between 80 and 120 percent of area median income, and 80 percent in tracts having median income in excess of 120 percent of area median income.[92]

Data from the American Housing Survey indicates that needs for affordable housing are more pressing in these lowest income categories than among moderate-income families. In 1989, 19 million households with below-median incomes had affordability problems, paying more than 30 percent of their income for housing and utilities. Almost three-fourths (74 percent) of these families with affordability problems had incomes below 50 percent of area median income. Another 12 percent of the families with affordability problems had very low incomes, between 50 percent and 60 percent of area median income.

In 1989, some 5 million renter households had "worst case" housing needs, as defined in section II.C.2. According to Congress, these unassisted renters with incomes below 50 percent of area median income should receive priority in rental assistance due to their severe housing problems.[93] In 1989, over 75 percent of unassisted renters in this income category had an affordability problem, *i.e.*, paid more than 30 percent of their income for gross rent, while 48 percent had a severe affordability problem, *i.e.*, paid more than half of their income for housing. Among owners in this lowest income category, one-third had an affordability problem and one-sixth had a severe affordability problem.[94] Among families with income between 50 percent and 80 percent of area median income, one-third of renters and one-tenth of owners had an affordability problem.

The relative decline in inexpensive dwelling units has been concentrated among the least expensive rental units—those with rents affordable to families with incomes below 30 percent of median income. Whereas in 1979 the number of units in this rent range was 28 percent less than the number of renters with incomes below 30 percent of area median income, by 1989 the gap had widened to 39 percent, a shortage of 2.7 million units.[95]

4. FHLMC's Ability To Lead the Industry

This factor is the same as the fifth factor considered under the goal for mortgage purchases on housing for low- and moderate-income families. See I.C.5. for discussion of this factor.

5. Need To Maintain FHLMC's Sound Financial Condition

This factor is the same as the sixth factor considered under the goal for mortgage purchases on housing for low- and moderate-income families. See I.C.6. for discussion of this factor.

D. Determination

This goal is intended to increase the purchase by FHLMC of mortgages financing rental and owner-occupied housing to meet the unaddressed needs of, and affordable to, low-income families in low-income areas and very low-income families.

FHLMC has not functioned under this special affordable housing goal in the past and data available to the Secretary does not clearly show the extent to which FHLMC has achieved the objectives of this goal in the past. The legislative history of the Act specifically provides that one of the purposes of this goal is "to increase [FNMA's and FHLMC's] purchase of mortgages serving low-income families above and beyond their existing performance and commitments * * *."[96] Accordingly, this goal requires FHLMC to purchase $1.5 billion in mortgages during the transition period above and beyond FHLMC's existing performance and commitments. This Notice requires FHLMC to provide the Secretary with a good faith estimate of the amount of purchases it made in 1992 that would have qualified under each part of this special affordable housing goal had it applied in 1992. The Notice requires FHLMC to purchase that amount of mortgages in both 1993 and in 1994, in addition to the $1.5 billion of mortgage purchases for 1993–94.

Havng considered the factors for establishing the goal, the Secretary has established this special affordable housing goal.

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analyzed, because a significant fraction of such mortgage originations may exceed the conforming loan limit for purchases by FHLMC.

[91] S. Rep. No. 102–282, 102d Cong., 2d Sess. 36 (1992).

[92] Canner and Smith, "Expanded HMDA Data on Residential Lending: One Year Later," Federal Reserve Bulletin 808, 810, and 812 (Nov. 1992).

[93] HUD Office of Policy Development and Research, Priority Housing Problems and "Worst Case" Needs in 1989 (1991).

[94] *Id.*

[95] "Affordable rent" has been defined above as gross rent not in excess of 30 percent of family income. Tabulations by HUD Office of Policy Development and Research, based on U.S. Departments of Housing and Urban Development and Commerce, American Housing Survey for the United States in 1989 (July 1991).

[96] S. Rep. No. 102–282, 102d Cong., 2d Sess. 36 (1992).

E. The Special Affordable Housing Goal

1. The Goal

a. The special affordable housing goal, during the two year period beginning on January 1, 1993, shall include mortgage purchases by FHLMC of not less than:

(1) For 1993–94, one and one-half billion dollars ($1,500,000,000) of mortgages on rental and owner-occupied housing meeting the then-existing, unaddressed needs of and affordable to low-income families in low-income areas and very low-income families, subdivided as follows—at least seven-hundred fifty million dollars ($750,000,000) shall be mortgages on single family housing and at least seven-hundred fifty million dollars ($750,000,000) shall be mortgages on multifamily housing; plus

(2) For 1993, the dollar amount of FHLMC's purchases as estimated under paragraph E.1.b.; plus

(3) For 1994, the dollar amount of FHLMC's purchases as estimated under paragraph E.1.b.

b. FHLMC shall provide the Secretary within 60 days a good faith estimate of the dollar amount of its 1992 mortgage purchases that would have qualified under each part of this special affordable housing goal if the goal had applied in 1992.

c. *Multifamily goal.*

(1) Of the multifamily mortgages purchased under the dollar amounts set forth in paragraph E.1.a.(1):

(a) 45 percent of the dollar volume of such mortgages shall be on multifamily housing where rental dwelling units are affordable to low-income families; and

(b) 55 percent of the dollar volume of such mortgages shall be on multifamily housing in which:

(i) At least 20 percent of the units are affordable to especially low-income families; or

(ii) At least 40 percent of the units are affordable to very low-income families.

(2) Only a portion of the dollar amount of mortgages purchased by FHLMC on multifamily housing that are attributable to units meeting the requirements under paragraph E.1.c.(1)(a) or (b) shall count toward the special affordable housing goal under paragraph E.1.c.(1). The portion of a mortgage to be attributed to achievement of this goal shall be equal to the ratio of the total rents of dwelling units affordable to low-income families to the total rents for the mortgaged property.

(3) During the transition period, multifamily mortgages purchased in excess of the $750,000,000 special affordable housing goal for multifamily mortgages may count toward the goal without reference to the percentages applicable to the subgoals in paragraph E.1.c.(1) as long as they meet any of the subgoals. The purpose of this provision is to maximize the purchases of mortgages on special affordable housing during the transition period without requiring FHLMC to assure that the ratios in paragraph E.1.c.(1) are satisfied for such additional units.

d. *Single family goal.*

(1) Of the single family mortgages purchased under the dollar amounts set forth in paragraph E.1.a.(1):

(a) 45 percent of the dollar volume of such mortgages shall be mortgages of low-income families who live in census tracts in which the median income does not exceed 80 percent of the area median income;[97] and

(b) 55 percent of the dollar volume of such mortgages shall be mortgages of very low-income families.

(2) For a mortgage to count toward the special affordable housing goal under paragraph E.1.d.(1), the mortgagor(s) must meet the qualifications in either paragraph E.1.d.(1) (a) or (b). Units are affordable under paragraph E.1.d.(1)(a) where occupied by low-income families living in census tracts in which the median income does not exceed 80 percent of the area median income. Units are affordable under paragraph E.1.d.(1)(b) where occupied by very low-income families.

(a) In the case of a mortgage financing a one unit property occupied by an owner, full credit will be given if the mortgagor meets the qualifications in either paragraph E.1.d.(1) (a) or (b).

(b) In the case of a mortgage financing a two-to-four unit property, full credit will be given if the mortgagor meets the qualifications in either paragraph E.1.d.(1) (a) or (b) and each rental unit is affordable under paragraph E.1.d.(2). A portion (as provided in paragraph E.1.d.(3)) of the mortgage may contribute to achieving the special affordable housing goal if only some of the rental units are affordable.

(3) The portion of a mortgage to be attributed to achievement of this single family goal shall be equal to the ratio of the total number of rooms in owner-occupied or affordable units to the total number of rooms in all dwelling units in the mortgaged property. For purposes of this ratio, the number of rooms in a dwelling unit shall equal the number of bedrooms plus one; for example, an efficiency is considered one room, a one-bedroom unit is considered two rooms, etc.

(4) During the transition period, single family mortgages purchased in excess of the $750,000,000 special affordable housing goal for single family mortgages may count toward the goal without reference to the percentages applicable to the subgoals in paragraph E.1.d.(1) as long as they meet any of the subgoals. The purpose of this provision is to maximize the purchases of mortgages on special affordable housing during the transition period without requiring FHLMC to assure that the ratios in paragraph E.1.d.(1) are satisfied for such additional units.

e. Each mortgage purchase, or portion of a mortgage where only a portion counts toward achievement of this goal, shall count only once toward achievement of the goal, *i.e.*, shall count under only one subgoal. For example, the purchase of a single family mortgage of a very low-income family on a property located in a census tract in which the median income does not exceed 80 percent of the area median income would count toward achievement of the subgoal under either paragraph E.1.d.(1)(a) or E.1.d.(1)(b), but not under both.

2. Full, Partial and No Credit Activities

a. The Act requires the Secretary to establish guidelines under which mortgage purchases receive full credit, partial credit, or no credit toward achievement of the special affordable housing goal.

b. *Full Credit.* The following activities shall receive full credit toward achievement of the special affordable housing goal:

(1) The purchase or securitization of federally insured or guaranteed mortgages where:

(a) Such mortgages cannot be readily securitized through the Government National Mortgage Association (GNMA) or any other Federal agency;

(b) Participation of the enterprise substantially enhances the affordability of the housing subject to such mortgages; and

(c) The mortgages involved are on housing that otherwise qualifies under the special affordable housing goal to be considered for purposes of such goal.

Mortgages under the Federal Housing Administration's Home Equity Conversion Mortgage (HECM) Insurance Demonstration Program, section 255 of the National Housing Act, 12 U.S.C. 1715z-20, and the Farmers Home Administration's Guaranteed Rural Housing Loan Program, 7 U.S.C. 1933, meet the requirements of paragraphs E.2.b.(1)(a) and E.2.b.(1)(b).

(2) The purchase or refinancing of existing, seasoned portfolios of loans where:

[97] Determination of median census tract income and area median income shall be based on data from the most recent decennial census.

(a) The seller is engaged in a specific program to use the proceeds of such sales to originate additional loans that meet the special affordable housing goal; and

(b) Such purchases or refinancings support additional lending for housing that otherwise qualifies under the goal.

(3) The purchase of direct loans made by the Resolution Trust Corporation (RTC) or the Federal Deposit Insurance Corporation (FDIC) where such loans:

(a) Are not guaranteed by the RTC, FDIC, or other Federal agencies;

(b) Are made with recourse provisions similar to those offered through private mortgage insurance or other conventional sellers; and

(c) Are made for the purchase of housing that otherwise qualifies under the special affordable housing goal to be considered for purposes of such goal.

c. For purposes of determining whether a seller is engaging in a specific program to use proceeds of sales to originate additional loans that meet the special affordable housing goal:

(1) A seller must currently operate or actively participate in an on-going program that will result in originating additional loans that meet the goal; actively participating in such a program includes actively participating with a qualified housing group that operates a program resulting in the origination of loans that meet the requirements of the goal; and

(2) To determine whether a seller meets this requirement, FHLMC shall verify and monitor that the seller meets the requirement and develop any necessary mechanisms to ensure compliance with this requirement.

d. *No Credit.* Neither the purchase nor the securitization of mortgages associated with the refinancing of FHLMC's existing mortgage or mortgage-backed securities portfolio shall receive credit toward the achievement of the special affordable housing goal; refinancings by FHLMC of FNMA's mortgage or mortgage-backed securities portfolio shall not receive credit, but FHLMC's purchases of individual mortgages financing properties where the mortgage on the property had in the past been purchased by FNMA may receive credit toward achievement of the goal. For purposes of this paragraph, "portfolios of mortgages" includes mortgages retained by FNMA or FHLMC and mortgages utilized to back mortgage-backed securities.

IV. General Requirements

A. Properties With Multiple Dwelling Units

For the purposes of meeting the goals, whenever the real property securing a conventional mortgage contains more than one dwelling unit, each such dwelling unit shall be counted as a separate dwelling unit financed by a mortgage purchase.

B. Credit Toward Goals

For the purposes of meeting the goals, a mortgage purchase (or dwelling unit financed by such purchase) by FHLMC shall contribute to the achievement of each housing goal for which such purchase (or dwelling unit) qualifies. All mortgages purchased by FHLMC on or after January 1, 1993 may count under these goals provided such mortgages meet the requirements of this Notice. Mortgages originated prior to January 1, 1993 and purchased after that date may count only if FHLMC has the information needed to determine whether such a mortgage counts toward achievement of any of the goals.

C. Income Level Definitions

1. *Moderate-income* means:

a. In the case of owner-occupied units, income not in excess of 100 percent of area median income; and

b. In the case of rental units, where the income of actual or prospective tenants is available, income not in excess of the following percentages of area median income corresponding to the following family sizes:

Number of persons in family	Percent of area median income
1	70
2	80
3	90
4	100
5 or more	(1)

[1] 100 percent plus—85 percent multiplied by the number of persons in excess of 4.

2. *Low-income* means:

a. In the case of owner-occupied units, income not in excess of 80 percent of area median income; and

b. In the case of rental units, where the income of actual or prospective tenants is available, income not in excess of the following percentages of area median income corresponding to the following family sizes:

Number of persons in family	Percent of area median income
1	56
2	64
3	72
4	80
5 or more	(1)

[1] 80 percent plus—6.4 percent multiplied by the number of persons in excess of 4.

3. *Very low-income* means:

a. In the case of owner-occupied units, income not in excess of 60 percent of area median income; and

b. In the case of rental units, where the income of actual or prospective tenants is available, income not in excess of the following percentages of area median income corresponding to the following family sizes:

Number of persons in family	Percent of area median income
1	42
2	48
3	54
4	60
5 or more	(1)

[1] 60 percent plus—4.8 percent multiplied by the number of persons in excess of 4.

4. *Especially low-income* means:

a. In the case of owner-occupied units, income not in excess of 50 percent of area median income; and

b. In the case of rental units, where the income of actual or prospective tenants is available, income not in excess of the following percentages of area median income corresponding to the following family sizes:

Number of persons in family	Percent of area median income
1	35
2	40
3	45
4	50
5 or more	(1)

[1] 50 percent plus—4 percent multiplied by the number of persons in excess of 4.

D. Owner-occupied Properties

FHLMC's performance under these goals for purchases of mortgages on owner-occupied housing will be evaluated based on the income of the mortgagor(s) at the time of origination of the mortgage. To determine whether mortgagor(s) may be counted under the particular family income level, *i.e.*, especially low-, very low-, low-, or moderate-income, the income of the mortgagor(s) is compared to the median income for the area at the time of mortgage origination, using the appropriate percentage factor provided under paragraph C. (*i.e.*, 50 percent of area median income for especially low-income families, 60 percent for very low-income families, 80 percent for low-income families, and 100 percent for moderate-income families).

E. Rental Units

1. Use of Income, Rent

FHLMC's purchases of mortgages on rental dwellings may be counted under the goals based on whether such mortgages qualify as mortgages on housing for low- and moderate-income families or on housing qualifying under the special affordable housing goal, based on the income of actual or prospective tenants where such data is available, that is, known to a lender because, for example, such information is required as a condition of an existing federal housing program. FHLMC shall require lenders to provide tenant income information to FHLMC but only where such information is known to the lender. Where such data is not available for all units in a project, FHLMC's performance will be evaluated based on rents adjusted for unit size.

2. Income of Actual Tenants

Where the income of actual tenants is available, to determine whether tenant(s) may be counted for the particular family income level, *i.e.*, especially low-, very low-, low-, or moderate-income, the income of the tenant(s) is compared to the median income for the area, adjusted for family size as provided in paragraph C.

3. Income of Prospective Tenants

a. Where income for tenants is available to a lender because a project is subject to a Federal housing program that establishes the maximum income for a tenant or a prospective tenant in rental units, the income of prospective tenants may be based on the maximum income level established under such housing program for that unit. FHLMC shall require lenders to provide such prospective tenants' income information to FHLMC but only where such information is known to the lender. In determining the income of prospective tenants, the income shall be projected based on the types of units and market area involved. Where the income of prospective tenants is projected, FHLMC must determine that the income figures are reasonable considering the rents (if any) on the same units in the past and considering current rents on comparable units in the same market area.

b. For purposes of determining whether a rental dwelling unit is affordable to especially low-, very low-, low-, or moderate-income families and qualifies under one or more of these goals, the income of the prospective tenants must be adjusted for unit size as a proxy for family size if family size is not known:

(1) For moderate-income, the income of prospective tenants must not exceed the following percentages of area median income with adjustments depending on unit size:

Unit size	Percentage of area median income
Efficiency	70
1 bedroom	75
2 bedrooms	90
3 bedrooms or more	(1)

[1] 104 percent plus—12 percent multiplied by the number of bedrooms in excess of 3;

(2) For low-income, income of prospective tenants must not exceed the following percentages of area median income with adjustments depending on unit size:

Unit size	Percentage of area median income
Efficiency	56
1 bedroom	60
2 bedrooms	72
3 bedrooms or more	(1)

[1] 83.2 percent plus—9.6 percent multiplied by the number of bedrooms in excess of 3;

(3) For very low-income, income of prospective tenants must not exceed the following percentages of area median income with adjustments depending on unit size:

Unit size	Percentage of area median income
Efficiency	42
1 bedroom	45
2 bedrooms	54
3 bedrooms or more	(1)

[1] 62.4 percent plus—7.2 percent multiplied by the number of bedrooms in excess of 3;

and

(4) For especially low-income, income of prospective tenants must not exceed the following percentages of area median income with adjustments depending on unit size:

Unit size	Percentage of area median income
Efficiency	35
1 bedroom	37.5
2 bedrooms	45
3 bedrooms or more	(1)

[1] 52 percent plus—6 percent multiplied by the number of bedrooms in excess of 3.

4. Use of Rent

Where the income of the prospective or actual tenants of a dwelling unit is not available, FHLMC's performance under these goals will be evaluated based on whether the rent is affordable. A rent is affordable if the rent does not exceed 30 percent of the maximum income level of especially low-, very low-, low-, or moderate-income families as follows:

a. For moderate-income, maximum affordable rents to count as housing for moderate-income families must not exceed the following percentages of area median income with adjustments depending on unit size:

Unit size	Percentage of area median income
Efficiency	21
1 bedroom	22.5
2 bedrooms	27
3 bedrooms or more	(1)

[1] 31.2 percent plus—3.6 percent multiplied by the number of bedrooms in excess of 3;

b. For low-income, maximum affordable rents to count as housing for low-income families must not exceed the following percentages of area median income with adjustments depending on unit size:

Unit size	Percentage of area median income
Efficiency	16.8
1 bedroom	18
2 bedrooms	21.6
3 bedrooms or more	(1)

[1] 24.96 percent plus—2.88 percent multiplied by the number of bedrooms in excess of 3;

c. For very low-income, maximum affordable rents to count as housing for very low-income families must not exceed the following percentages of area median income with adjustments depending on unit size:

Unit size	Percentage of area median income
Efficiency	12.6
1 bedroom	13.5
2 bedrooms	16.2
3 bedrooms or more	(1)

[1] 18.72 percent plus—2.16 percent multiplied by the number of bedrooms in excess of 3;

or

d. For especially low-income, maximum affordable rents to count as

housing for especially low-income families must not exceed the following percentages of area median income with adjustments depending on unit size:

Unit size	Percentage of area median income
Efficiency	10.5
1 bedroom	11.25
2 bedrooms	13.5
3 bedrooms or more	(1)

[1] 15.6 percent plus—1.8 percent multiplied by the number of bedrooms in excess of 3.

F. Purchase of Refinanced or Seasoned Mortgages

1. Refinanced Mortgages

Generally, the purchase of a refinanced mortgage by FHLMC may be counted as a mortgage purchase for purposes of these goals to the extent the mortgage qualifies. However, there are specific restrictions under the special affordable housing goal as set forth at paragraph III.E.2.

2. Seasoned Mortgages

The purchase of a seasoned mortgage may be treated as a mortgage purchase for purposes of these goals. A seasoned mortgage for a single family dwelling unit shall be considered for purposes of the goals based on mortgagor(s)' income (for owner-occupied dwelling units), tenant income or rent levels (for rental dwelling units), and area median income as of the time of mortgage origination. For multifamily dwelling units, a seasoned mortgage will be considered based on rental information (for rental dwelling units), income (for owner-occupied dwelling units) and area median income as of the time that FHLMC purchases the mortgage.

G. Newly Available Data

Where data is used by FHLMC to determine whether a mortgage purchase qualifies under any goal and such data is released after the start of a calendar quarter, FHLMC need not use the data until the start of the following quarter—FHLMC may continue to use the data that was available at the beginning of the quarter. For example, if the Secretary publishes the annual list of area median incomes in March, FHLMC need not use the new median income data until April 1 (the previous year's list could be used for the quarter ending March 31).

H. Actions to Be Taken To Meet the Goals

To meet the goals established in this Notice, FHLMC shall:

1. Design programs and products that facilitate the use of assistance provided by the Federal, State, and local governments;

2. Develop relationships with nonprofit and for-profit organizations that develop and finance housing and with State and local governments, including housing finance agencies;

3. Develop the institutional capacity to help finance low- and moderate-income housing, including housing for first-time homebuyers; and

4. Take affirmative steps to assist:

a. Primary lenders to make housing credit available in areas with concentrations of low-income and minority families; and

b. Insured depository institutions to meet their obligations under the Community Reinvestment Act of 1977.

Such steps shall include developing appropriate and prudent underwriting standards, business practices, repurchase requirements, pricing, fees, and procedures.

V. Definitions

Central city means, for purposes of determining the proportion of FHLMC's purchases of mortgages on housing located in central cities during a particular calendar year, any political subdivision designated as such, as of January 1 of that year by the Statistical Policy Office, Office of Management and Budget of the Executive Office of the President in the document entitled *Metropolitan Areas* or successor publication.

Concentrated minority census tract means a census tract in which minority residents comprise 80 percent or more of the total population in the census tract.

Contract rent means the total rent that is, or is anticipated to be, specified in the rental contract payable by the tenant to the owner for rental of a dwelling unit, including fees or charges for management and maintenance services and those utility charges which are included in the contract rent. To count multifamily units under the low- and moderate-income and special affordable housing goals, contract rent must be determined using actual rent for each unit where such information is available; where actual rent information for each unit is not available, average contract rent by unit type may be used for units in the property.

Conventional mortgage means a mortgage other than a mortgage as to which FHLMC has the benefit of any guaranty, insurance or other obligation by the United States or any of its agencies or instrumentalities.

Dwelling unit means a single, unified combination of rooms designed for use as a dwelling by one family.

FHLMC means the Federal Home Loan Mortgage Corporation.

FNMA means the Federal National Mortgage Association.

Housing for low- and moderate-income families means:

1. Any owner-occupied dwelling unit, other than a secondary residence, (including a dwelling unit in a condominium, cooperative or planned unit development project), financed by a conventional mortgage, where the income of the mortgagor(s) at the time of origination does not exceed the median income of the area where the dwelling unit is located;

2. Any rental dwelling unit, where the income of the prospective or actual tenant(s) of the unit is available, that is, known to a lender because, for example, such information is required as a condition of an existing federal housing program, if the income of the tenant(s) is low-income or moderate-income, adjusted for family size of the tenant(s) as established in this Notice; or

3. Any rental dwelling unit, where the income of the prospective or actual tenants of a rental dwelling unit is not available, financed by a conventional mortgage, which has a rent affordable to low- and moderate-income families. A rent is affordable to a low-income family if the rent does not exceed 30 percent of the maximum income level for low-income and a rent is affordable to a moderate-income family if its rent does not exceed 30 percent of the maximum income level for moderate-income, with appropriate adjustments for unit size as set forth in this Notice.

Low- or moderate-income census tract means a census tract in which the median family income is less than or equal to 80 percent of the area median income.

Median income means, with respect to an area, the unadjusted median family income for the area, as most recently determined and published by the Secretary. An area means the metropolitan statistical area (MSA) if the property is located in an MSA; otherwise, an area means the county in which the property is located.

Minority means any individual who is included within any one or more of the following racial and/or ethnic categories:

1. American Indian or Alaskan Native—a person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition;

2. Asian or Pacific Islander—a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands;

3. Black—a person having origins in any of the black racial groups of Africa; and

4. Hispanic—a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.

Minority census tract means a census tract in which minority residents comprise 50 percent or more of the total population in the census tract.

Mortgage means a member of such classes of liens as are commonly given or are legally effective to secure advances on, or the unpaid purchase price of, real estate under the laws of the State in which the real estate is located, a manufactured home that is personal property under the laws of the State in which the manufactured home is located, together with the credit instruments, if any, secured thereby, and includes interests in the stock or membership certificate issued to a tenant-stockholder or resident-member by a cooperative housing corporation, as defined in section 216 of the Internal Revenue Code of 1986, and on the proprietary lease, occupancy agreement, or right of tenancy in the dwelling unit of the tenant-stockholder or resident-member in such cooperative housing corporation.

Mortgage purchase means a transaction in which FHLMC buys or otherwise acquires with cash or other thing of value a conventional mortgage for its portfolio or for securitization. Mortgage purchases do not include commitments to buy mortgages at a later date or time. Mortgage purchases, for purposes of the low- and moderate-income housing goal and the central cities housing goal, include credit enhancement transactions where: (1) FHLMC provides specific mortgages it owns as collateral to guarantee bonds issued by a state or local housing finance agency to finance housing; and (2) FHLMC assumes a credit risk in the transaction by pledging or guaranteeing repayment and such credit risk is substantially equivalent to that assumed by FHLMC if it had securitized the mortgages financed by such State or local housing finance agency. Dwelling units financed under this type of credit enhancement transaction shall count toward meeting the low- and moderate-income and central cities goals to the extent dwelling units qualify under this Notice. Other credit enhancement transactions will not be considered mortgage purchases and will not count under these goals unless they are reviewed and specifically approved by the Secretary for this purpose. Mortgage purchases include FHLMC's activities under HUD's Multifamily Mortgage Credit Demonstration Program but only as determined by the Secretary considering FHLMC's risk under any such agreement entered into with the Secretary under the authority of section 542 of the Housing and Community Development Act of 1992 (codified as a note to 12 U.S.C. 1707); the extent of the credit will be determined by the Secretary at a later date based on the specific requirements of the program.

Portfolio of loans means two or more loans.

Rent means:

1. The contract rent for a dwelling unit, but only where such contract rent includes all utilities for the dwelling unit;

2. Where the contract rent for a dwelling unit does not include all utilities, the contract rent for the dwelling unit plus the actual cost of utilities not included in the contract rent; or

3. The contract rent for a dwelling unit plus a utility allowance as set forth in this Notice for the unit.

Rent may be determined under any one of the methods provided in paragraph 1., 2., or 3. The Secretary may authorize FHLMC to use a different method of calculating utility costs but, until such authorization is provided, FHLMC shall use one of the methods provided in paragraph 1., 2., or 3.

Rural area means any census tract located in an area which is designated as rural by the U.S. Bureau of the Census for the 1990 census.

Seasoned mortgage means a mortgage which has been closed for more than one year before being purchased by FHLMC.

Secondary residence means a dwelling where the mortgagor maintains (or will maintain) a part-time place of abode and typically spends (or will spend) less than the majority of the calendar year. A person may have more than one secondary residence at any one time.

Secretary means the Secretary of Housing and Urban Development and any person delegated authority by the Secretary to perform a particular function for the Secretary.

Utilities means charges for electricity, piped or bottled gas, water, sewage disposal, fuel (oil, coal, kerosene, wood, solar energy, or other), and garbage and trash collection. Utilities do not include charges for telephone service.

Utility allowance means:

1. The amount to be added to contract rent where utilities are not included in contract rent (also called the "AHS-derived utility allowance") in the following table that corresponds to the type of property (multifamily or single family) and the unit size, based on the number of bedrooms—

Type of property	Efficiency	Number of bedrooms		
		1	2	3 or more
Multifamily	$45	$51	$69	$91
Single family	65	70	96	122

or

2. The utility allowance established under the HUD Section 8 Program, section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) for the area where the property is located.

VI. Revision of the Notice

A. Procedure for Revision

The Secretary may change, restructure or otherwise revise any of the annual goals or other requirements necessary to implement the transition provisions in this Notice. The Secretary shall establish any such revisions by Notice in the **Federal Register** after providing FHLMC with an opportunity to review and comment not less than 30 days before the issuance of such Notice. The Notice, as changed, shall be effective when published.

B. Factors for Revision

In changing a goal, the Secretary shall consider the same factors considered in establishing the particular goal in this Notice.

VII. Monitoring and Enforcing Compliance

A. Compliance

The Secretary shall monitor and enforce compliance with these interim goals under section 1336 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992.

B. Credit

This Notice sets forth the extent to which FHLMC will receive full credit, partial credit, and no credit for mortgage purchases.

C. Refinanced and Seasoned Mortgages

The Secretary will monitor the purchase of refinanced and seasoned mortgages to determine whether such purchases serve the purposes of these interim goals.

VIII. Housing Finance Reports

A. Report on Actions Planned To Meet Interim Goals

On or before November 29, 1993, FHLMC shall submit to the Secretary, the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate an initial report describing the actions that FHLMC plans to take to meet the interim goals as required by section 1337 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992.

B. Data on Single Family Mortgage Purchases

Within 60 days after the end of each calendar year, FHLMC shall submit to the Secretary, in a form determined by the Secretary, data relating to its mortgage purchases on housing consisting of 1–4 dwelling units during the year. Such data shall include the following information for each mortgage:

1. The income, census tract location or smaller geographic segment location, gender, and race or national origin of mortgagors.

2. The loan-to-value ratio of mortgages at the time of origination.

3. Whether the mortgage is newly originated or seasoned.

4. The number of units in the housing subject to the mortgage and whether the units are owner-occupied.

5. Other characteristics that the Secretary considers appropriate to the extent practicable, including, but not limited to:

a. Whether the mortgage is for securitization or portfolio;

b. Whether the mortgage is on property from FHLMC's real estate owned (REO) portfolio;

c. Whether the mortgage has been used in conjunction with public subsidy programs under Federal law;

d. For mortgages on owner-occupied properties, whether the mortgagor is a first-time home buyer; and

e. For mortgages on rental properties:

(1) If available to the lender, the income, gender, and race or national origin of tenants; and

(2) If such rental units have been counted toward achievement of the low- and moderate-income or special affordable housing goals—

(a) The income of tenants, if used to determine whether the property counts toward achievement of a goal;

(b) The rent levels of rental units;

(c) The demographics of the area where counted under the special affordable housing goal.

Collection, maintenance and submission of these data in this paragraph B. shall be considered to fulfill the requirements of section 307(e)(1) of the FHLMC Act, as amended (12 U.S.C. 1456). FHLMC shall report on the foregoing characteristics of single family mortgages that were purchased after December 31, 1992. However, where mortgages were originated prior to January 1, 1993 and purchased after that date, FHLMC need not report data which is not reasonably available from the lender on such mortgages but FHLMC shall report the number of such mortgages for which data are not reported.

C. Data on Multifamily Mortgage Purchases

Within 60 days after the end of each calendar year, FHLMC shall submit to the Secretary, in a form determined by the Secretary, data relating to mortgage purchases on housing consisting of more than 4 dwelling units during the year. Such data shall include the following information for each mortgage:

1. The census tract location or smaller geographic segment location of the housing.

2. The income levels (if available) and characteristics of tenants (as specified by the Secretary) in the housing.

3. Rent levels for units in the housing.

4. Mortgage characteristics (including the number of units financed per mortgage and the amount of loans).

5. Mortgagor characteristics including whether nonprofit, for-profit, or limited equity cooperative.

6. Use of funds, i.e., whether the mortgage is for new construction, rehabilitation, purchase of an existing property, or refinancing.

7. The type of originating institution.

8. Other information that the Secretary considers appropriate to the extent practicable, including but not limited to:

a. Whether the mortgage was newly originated or seasoned at the time of purchase;

b. Whether the mortgage is for securitization or portfolio;

c. Whether the mortgage is on property from FHLMC's real estate owned (REO) portfolio; and

d. Whether the mortgage has been used in conjunction with public subsidy programs under Federal law.

Collection, maintenance and submission of the data in this paragraph C. shall be considered to fulfill the requirements of section 307(e)(2) of the FHLMC Act, as amended (12 U.S.C. 1456). FHLMC shall report on the foregoing characteristics of multifamily mortgages that were purchased after December 31, 1992. However, where mortgages were originated prior to January 1, 1993 and purchased after that date, FHLMC need not report data which is not reasonably available from the lender on such mortgages but FHLMC shall report the number of such mortgages for which data are not reported.

D. Annual Reports on Interim Housing Goals

Within 60 days after the end of each calendar year, FHLMC shall submit to the Secretary a report or reports on its performance during the calendar year in achieving the interim goal for mortgage purchases on housing for low- and moderate-income families, the interim goal for mortgage purchases on housing in central cities, and the interim special affordable housing goals set forth in this Notice. This material may be submitted in one combined report or separate reports concerning each of these goals. The report concerning each housing goal shall specify the dollar volume, the number of units, and the number of mortgages on owner-occupied and rental properties purchased by FHLMC that do and do not qualify under such goal as set forth in this Notice. The report(s) shall include, at a minimum, the following:

1. The number of units and dollar volume of mortgage purchases by number of units in property.

2. Whether the mortgages are for newly constructed properties, rehabilitated properties, purchases of existing properties, or refinancing.

3. Whether the mortgages are newly originated or seasoned.

4. Whether the mortgages are on property from FHLMC's real estate owned (REO) portfolio;

5. In the report concerning the low- and moderate-income housing goal:

a. Whether the units are owner-occupied or rental;

b. Whether the units are for low-income, moderate-income or other; and

c. Where the units are rental, whether the determination as to whether the units are for low-income, moderate-income or other is based on:

(1) Tenant income; where tenant income is used, detailed data on the number of units shall be provided cross-classified by family size and income level (both in dollars and as percentages of area median income); or

(2) Rent levels; where rent levels are used, detailed data on the number of units shall be provided cross-classified by unit size and rent levels (both in dollars and as percentages of area median income).

6. In the report concerning the Special Affordable Housing goal:

a. Whether the units financed are housing of low-, very low- or especially low-income or other families;

b. Where the units are rental, whether the determination as to whether the units are for especially low-, very low-, low-income, or other is based on:

(1) Tenant income; where tenant income is used, detailed data on the dollar volume of mortgage purchases shall be provided cross-classified by family size and income level (both in dollars and as percentages of area median income); or

(2) Rent levels; where rent levels are used, detailed data on the dollar volume of mortgage purchases shall be provided cross-classified by unit size and rent levels (both in dollars and as percentages of area median income);

c. Whether (if single family and low-income) the median income of the census tract does or does not exceed 80 percent of area median income;

d. Whether the mortgage has been used in conjunction with public subsidy programs under Federal law;

e. For seasoned mortgages, whether the seller(s) of seasoned portfolios of loans are engaged in a specific program to use the proceeds of such sales to originate additional loans that meet the special affordable housing goal, and whether the seller(s) are viable, on-going enterprises that will for the foreseeable future be originating loans that meet the goal, including FHLMC's basis for concluding that the seller(s) are such enterprises and are engaged in such a specific program; and

f. Although not required, FHLMC may report on commitments to purchase mortgages.

7. In the report concerning the central cities housing goal, whether the property is located in a central city, rural area, low- or moderate-income census tract, minority census tract, concentrated minority census tract, or other geographical area as required by the Secretary.

8. Such other detail as is requested in writing by the Secretary.

E. Quarterly Reports on Interim Housing Goals

Within 60 days following the end of each of the first three calendar quarters of each year, FHLMC shall submit to the Secretary a report which shall provide the same information described in paragraph D. for mortgages purchased by FHLMC in the previous quarter. The first quarterly report under this Notice shall include data concerning the first quarter of calendar year 1994.

F. Annual Reports on Actions Taken

Within 60 days following the end of each calendar year, in order to assist the Secretary in preparing the Annual Report to the Congress, FHLMC shall provide:

1. A description of actions that FHLMC has undertaken during the preceding year or is planning to undertake to promote and expand its purchases of mortgages on housing for low- and moderate-income families.

2. A description of actions that FHLMC has undertaken or is planning to undertake to promote and expand its purchases of mortgages on properties located in central cities.

3. A description of actions that FHLMC has undertaken or is planning to undertake to promote and expand its purchases of mortgages on housing to meet the then-existing unaddressed needs of, and affordable to, low-income families in low-income areas and very low-income families.

4. A description of actions that FHLMC has undertaken or is planning to undertake to promote and expand its attainment of its statutory purposes as set forth in the FHLMC Act, section 301(b).

5. A description of any FHLMC efforts to standardize credit terms and underwriting guidelines for multifamily housing and to securitize such mortgage products.

6. A description of actions that FHLMC has undertaken or is planning to undertake to promote and expand opportunities for first-time home buyers.

7. Any actions taken under section 1325(5)[**] with respect to originators found to violate fair lending procedures; and

8. Such other information that the Secretary considers necessary for the report and requests in writing.

G. Additional Analyses

The Secretary may request that the data underlying the reports required under paragraphs A. through F. be provided to the Secretary or that FHLMC conduct additional analysis and submit additional reports as the Secretary determines necessary to facilitate the Secretary's establishment, monitoring, and enforcement of these goals.

Authority: Sections 1331–37 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, 12 U.S.C. 4561–67, enacted as Title XIII of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992).

Dated: October 7, 1993.

Henry G. Cisneros,

Secretary.

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[**] Codified at 12 U.S.C. 4545(5).

Reader Aids

Federal Register

Vol. 58, No. 196

Wednesday, October 13, 1993

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202–523–5227
Public inspection desk	523–5215
Corrections to published documents	523–5237
Document drafting information	523–3187
Machine readable documents	523–3447

Code of Federal Regulations

Index, finding aids & general information	523–5227
Printing schedules	523–3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523–6641
Additional information	523–5230

Presidential Documents

Executive orders and proclamations	523–5230
Public Papers of the Presidents	523–5230
Weekly Compilation of Presidential Documents	523–5230

The United States Government Manual

General information	523–5230

Other Services

Data base and machine readable specifications	523–3447
Guide to Record Retention Requirements	523–3187
Legal staff	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (PLUS)	523–6641
TDD for the hearing impaired	523–5229

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FEDERAL REGISTER PAGES AND DATES, OCTOBER

51211–51664.....1
51665–51756.....4
51757–51972.....5
51973–52206.....6
52207–52396.....7
52397–52628.....8
52629–52874.....12
52675–53096.....13

CFR PARTS AFFECTED DURING OCTOBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Administrative Orders:

Memorandums:
August 19, 1993.....52397
September 30, 1993.....52391
October 1, 1993.....52393

Notices:
September 30, 1993.....51563

Executive Orders:
3406 (Revoked in part by PLO 7001).....52683
5327 (Revoked in part by PLO 7002).....52684
11145 (Continued by EO 12869).....51751
11183 (Continued by EO 12869).....51751
11287 (Continued by EO 12869).....51751
11776 (Continued by EO 12869).....51751
12002 (See EO 12867).....51747
12131 (Continued by EO 12869).....51751
12196 (Continued by EO 12869).....51751
12214 (See EO 12867).....51747
12216 (Continued by EO 12869).....51751
12291 (Revoked by EO 12866).....51735
12345 (Continued by EO 12869).....51751
12367 (Continued by EO 12869).....51751
12382 (Continued by EO 12869).....51751
12498 (Revoked by EO 12866).....51735
12675 (Revoked in part EO 12869).....51751
12687 (Revoked by EO 12869).....51751
12696 (Revoked by EO 12869).....51751
12700 (See EO 12869).....51751
12720 (Revoked by EO 12869).....51751
12730 (See EOs 12867, 12868).....51747, 51749
12735 (Revoked by EO 12867; See EO 12868).....51747, 51749
12774 (Superseded by EO 12869).....51751
12775 (See notice of September 30).....51563
12779 (See notice of September 30).....51563
12792 (Revoked by EO 12869).....51751
12813 (Revoked by EO 12869).....51751
12853 (See notice of September 30).....51563
12866.....51735
12867.....51747
12868.....51749
12869.....51751
12870.....51753
12871.....52201

Proclamations:
6598.....51559
6599.....51561
6600.....51721
6601.....51723
6602.....52205
6603.....52387
6604.....52389
6605.....52627
6606.....52875

Presidential Determinations:
No. 93–39 of September 17, 1993.....51973
No. 93–40 of September 28, 1993.....51975
No. 93–41 of September 29, 1993.....51977
No. 93–42 of September 30, 1993.....52629
No. 93–43 of September 30, 1993.....52207
No. 93–44 of September 30, 1993.....52209
No. 93–45 of September 30, 1993.....52211
No. 94–1 of October 1, 1993.....52213

5 CFR

Ch. XLI.....52637
294.....52877
532.....51211
591.....51565
831.....52877
838.....52877
842.....52877
890.....52877

Proposed Rules:
2502.....51255
2504.....51256

7 CFR

2.....51211

246.....51566
300.....52399
301.....51979, 51982
906.....52400
910.....52401
967.....52402
1002.....51982
1004.....52404, 52405
1205.....52215
1211.....51568
1427.....51982
1477.....51757
1478.....51757
1744.....52639
1900.....52644
1910.....52644
1951.....52644
1955.....52644
1962.....52644
1965.....52644

Proposed Rules:
1413.....51934, 52686, 52928
1703.....52688

9 CFR

201.....52884
203.....52884
317.....52856
381.....52856

Proposed Rules:
82.....52240
317.....51581
318.....51581

10 CFR

19.....52406
30.....52406
40.....52406
50.....52406
60.....52406
61.....52406
70.....52406
72.....51762, 52406
150.....52406

Proposed Rules:
73.....52035

11 CFR

Proposed Rules:
100.....52040
107.....52700
113.....52040
114.....52700
9008.....52700

12 CFR

574.....52140
611.....52888
613.....52888
614.....52888
618.....51993
620.....52888
621.....52888
627.....52888
933.....52808

Proposed Rules:
3.....52808
208.....52808
325.....52808
615.....52701

13 CFR

121.....52415

Proposed Rules:
121.....52452, 52929

14 CFR

23.....51970
39.....51212, 51215, 51770, 51771, 52220, 52889
71.....51773, 52140, 52808
73.....52890
91.....51966, 52140
97.....51774, 51776

Proposed Rules:
23.....52702
39.....51583, 51585, 51587, 51589, 51793, 52041, 52240, 52243, 52714, 52717, 52929, 52931, 52932
71.....51256, 51257
91.....51938
121.....51938, 51944
125.....51938
129.....51944
135.....51938, 51944

15 CFR

773.....52166, 52168
778.....52166
799.....52166, 52169

17 CFR

140.....52656
200.....52416, 52891
203.....52416
240.....52416, 52891
250.....51488
259.....51488

Proposed Rules:
240.....52934
250.....51508

18 CFR

35.....51217, 51777
38.....51777
284.....52660
141.....52420
292.....51777
293.....51777
375.....51222
382.....51777

Proposed Rules:
35.....51259

19 CFR

Proposed Rules:
7.....52246
10.....52246
148.....52246

20 CFR

404.....52346
416.....52346, 52909
422.....52914

Proposed Rules:
416.....52458, 52464, 52943
655.....52152

21 CFR

172.....52221
176.....51994
522.....52222
821.....52440
864.....51570

Proposed Rules:
5.....52719
25.....52719
103.....52042
170.....52719
171.....52719
174.....52719
812.....52142, 52144
813.....52142
814.....52729
1301.....52246
1311.....52246

23 CFR

650.....52663

Proposed Rules:
660.....51794

24 CFR

511.....52566
888.....51410
905.....51952
965.....51952

Proposed Rules:
92.....52560
135.....52534
219.....52560
570.....52560
572.....52560
574.....52560
576.....52560
583.....52560
700.....52560
889.....52560
890.....52560
905.....51261, 52560
961.....52560
963.....52560
990.....51261

25 CFR

Proposed Rules:
294.....53026

26 CFR

1.....51571
602.....51571

27 CFR

Proposed Rules:
24.....52222

28 CFR

2.....51779
11.....51223
51.....51225

29 CFR

Proposed Rules:
507.....52152
1609.....51266

30 CFR

917.....51225
946.....52666
950.....52232

Proposed Rules:
250.....52731
253.....52059
256.....52731
280.....52731
281.....52731
700.....52374
701.....52374
705.....52374
706.....52374
715.....52374
716.....52374
785.....52374
825.....52374
870.....52374

31 CFR

Proposed Rules:
103.....51269

32 CFR

40.....51780
80.....51996
86.....52010
185.....52667
199.....51227
706.....51241

33 CFR

2.....51726
3.....51726
100.....51242, 52440
117.....52441
165.....51243, 52442
175.....51576
181.....51576

Proposed Rules:
117.....52466
126.....51906
127.....51906
187.....51920

34 CFR

642.....51518
645.....51518
646.....51518
668.....52194
674.....52194
675.....52194
676.....52194
682.....52194
690.....52194

Proposed Rules:
370.....52414
386.....52606
668.....51712

38 CFR

3.....52017
4.....52017
21.....51780, 51781

Proposed Rules:
3.....51798
17.....51799

40 CFR

52.....52237
61.....51784
300.....52018
258.....51536
271.....51244
272.....52674, 52677, 52679
372.....51785
721.....51672, 51694

Proposed Rules:
52.....51591, 51593, 52467
89.....51595

41 CFR

101–17.....52917

42 CFR

435.....51408
436.....51408
440.....51408

Proposed Rules:
440.....51288
441.....51288

43 CFR

37.....51550

Proposed Rules:
4700.....51297
Public Land Orders:
4522 (Revoked in part by PLO 7002).....52684
6998.....52238
6999.....52238
7000.....52682
7001.....52683
7002.....52684

44 CFR
64.....51576, 52019
Proposed Rules:
67.....51598

45 CFR
1602.....52918

46 CFR
160.....51576
Proposed Rules:
10.....51408
12.....51408
30.....52598
31.....52598
32.....52598
67.....51298
585.....52248

47 CFR
1.....51246
15.....51247
73.....51250, 51578, 51579, 51787
74.....51250
87.....52021
90.....51251
Proposed Rules:
15.....51299
36.....52254
73.....51603, 51799, 52733, 52734, 52735
74.....52256
90.....51299

48 CFR
501.....52442
503.....52442
507.....52442
508.....52442
509.....52442
511.....52442
514.....52442
515.....52442
519.....52442
522.....52442
525.....52442
528.....52442
529.....52442
532.....52442
536.....52442
542.....52442
543.....52442
552.....52442
570.....52442
1816.....52446
1852.....52446

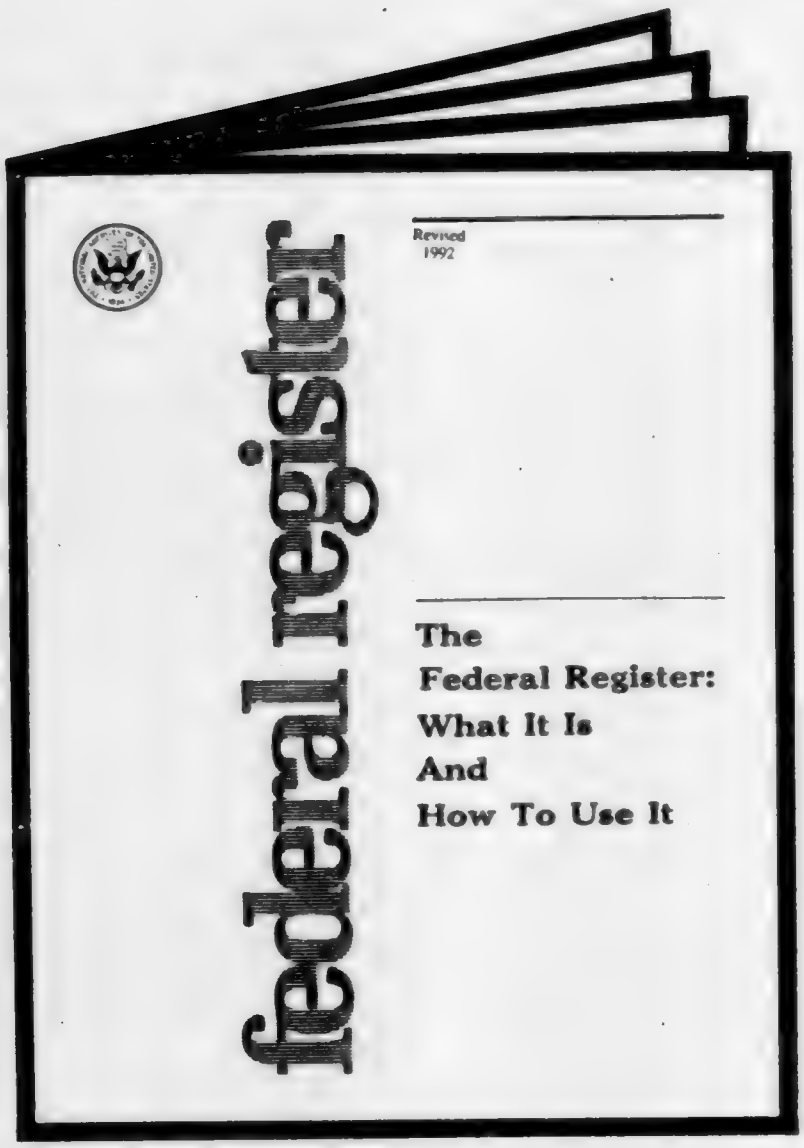
49 CFR
107.....51524
171.....51524
172.....51524
173.....51524
174.....51524
175.....51524
176.....51524
177.....51524
178.....51524
179.....51524
180.....51524
571.....51788, 52021, 52922
604.....52684
1002.....52027
1017.....52027
1018.....52027
1312.....52027
1313.....52027
1314.....52027
Proposed Rules:
23.....52050
37.....52735
172.....52574
173.....52574
179.....52574
390.....51800
1063.....51603
1105.....51800
1121.....51800
1152.....51800

50 CFR
17.....52027, 52031
229.....51788
301.....51253
625.....52685
642.....51579, 51789
663.....52031
672.....51791, 52032
675.....51253, 52033, 52451
Proposed Rules:
17.....51302, 51604, 52058, 52059, 52063, 52740
52.....51270, 51279
641.....52063, 52073, 52474
651.....52073

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last List October 12, 1993



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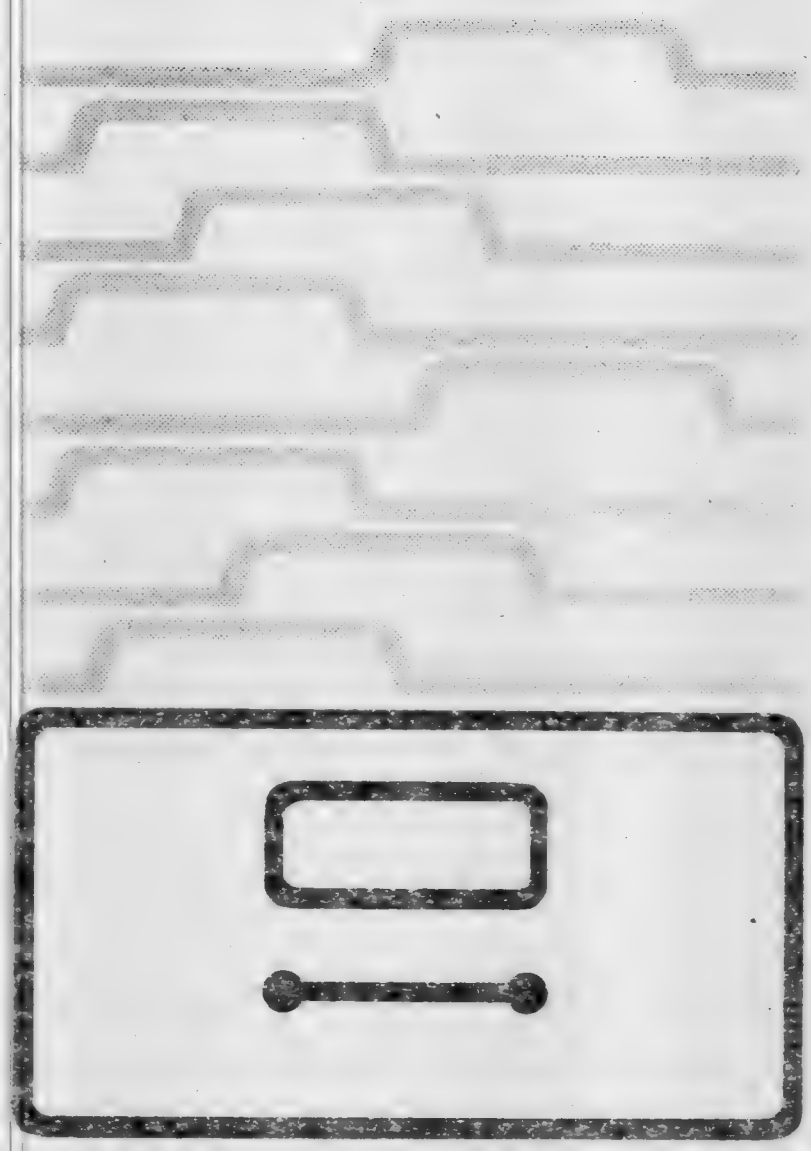

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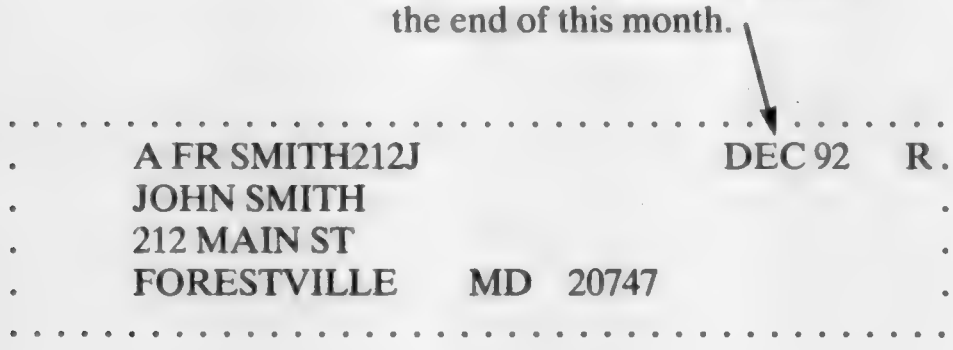

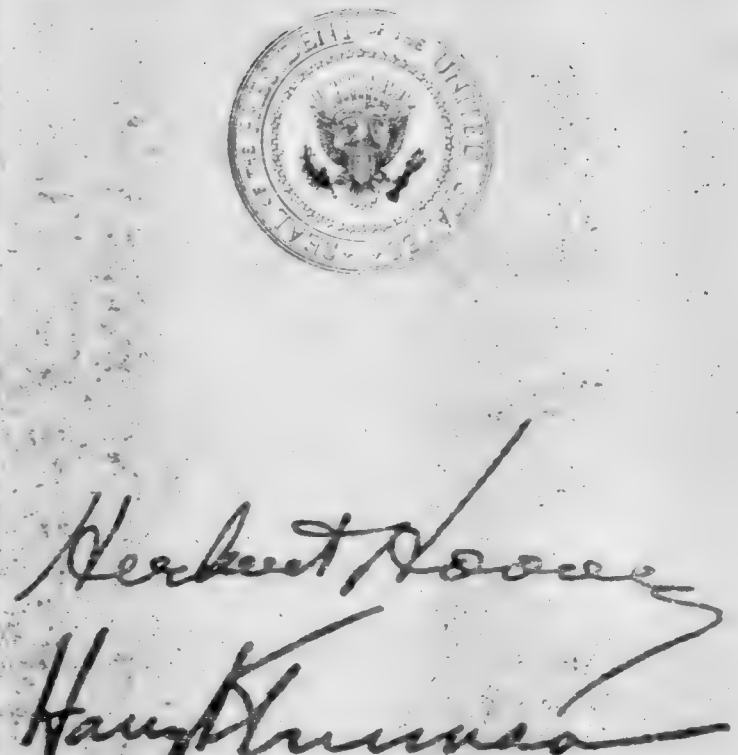

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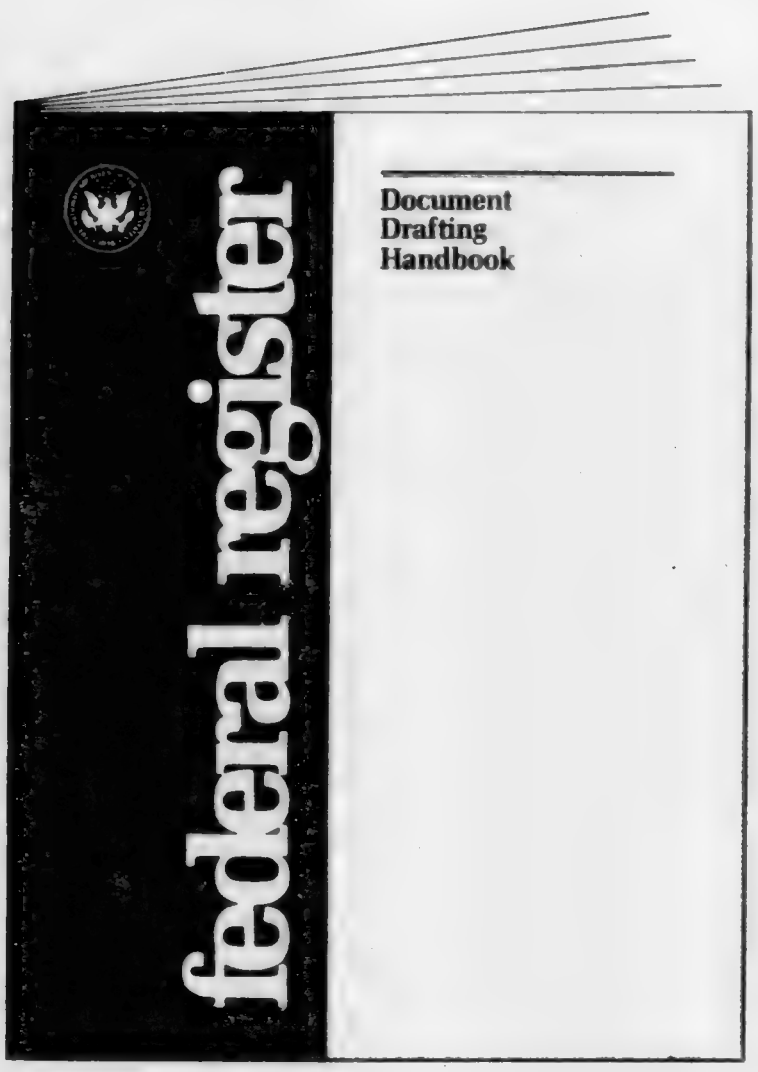

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Contents

Federal Register

Vol. 58, No. 197

Thursday, October 14, 1993

Agricultural Marketing Service
RULES
Oranges (navel and Valencia) grown in Arizona and California, 53112
Oranges and grapefruit grown in Texas, 53111
Papayas grown in Hawaii, 53117
Pears (Bartlett) grown in Oregon et al., 53119

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Cooperative State Research Service
See Federal Crop Insurance Corporation
See Forest Service
NOTICES
Agency information collection activities under OMB review, 53185

Animal and Plant Health Inspection Service
RULES
Plant-related quarantine, domestic:
Mediterranean fruit fly, 53105
NOTICES
Environmental statements; availability, etc.:
Genetically engineered organisms; field test permits—
Potato plants, 53185

Centers for Disease Control and Prevention
NOTICES
Meetings:
Tuberculosis Elimination Advisory Council, 53207

Commerce Department
See Economic Analysis Bureau
See National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities under OMB review, 53187

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Jamaica, 53188

Commodity Futures Trading Commission
NOTICES
Meetings:
Agricultural Advisory Committee, 53188

Cooperative State Research Service
PROPOSED RULES
Administrative manual for Federal excess personal property loaned to State cooperative research activities, 53153

Economic Analysis Bureau
RULES
International services surveys:
Foreign direct investments in U.S.—
BE–15(LF); long form filing exemption level; annual survey, 53124

Education Department
NOTICES
Committees; establishment, renewal, termination, etc.:
National Assessment Governing Board, 53189
Grants and cooperative agreements; availability, etc.:
Children and youth with serious emotional disturbance program, 53370
Individuals with disabilities—
Special studies program, 53366
School-to-work opportunities systems, 53388

Employment and Training Administration
NOTICES
Adjustment assistance:
Briggs & Straton Corp. et al., 53215
Eastern Associated Coal Corp., 53216
Magnetek Century Electric, Inc., 53216
Oberdorfor High Tex, 53216
Smarte Carte, Inc., 53217

Energy Department
See Energy Information Administration
See Energy Research Office
See Federal Energy Regulatory Commission
NOTICES
Grant and cooperative agreement awards:
Global Outpost, Inc., 53189

Energy Information Administration
NOTICES
Meetings:
American Statistical Association Committee on Energy Statistics, 53189

Energy Research Office
NOTICES
Grants and cooperative agreements; availability, etc.:
National Biomedical Tracer Facility; project definition study, 53197

Environmental Protection Agency
RULES
Hazardous waste:
Solid waste disposal facility criteria (landfills) Correction, 53136
PROPOSED RULES
Water pollution control:
Great Lakes System; water quality guidance; meeting, 53168
NOTICES
Air pollutants, hazardous; national emission standards:
Radon emissions from phosphogypsum stacks; proposed settlement agreement, 53198
Grants and cooperative agreements; availability, etc.:
Exploratory research grants in biology, chemistry, physics, etc., 53199
Water pollution; discharge of pollutants (NPDES):
Gulf of Mexico OCS operations, 53200

Executive Office of the President
See Presidential Documents
See Trade Representative, Office of United States

Farm Credit Administration
PROPOSED RULES
Federal Agricultural Mortgage Corporation; conflict of interests, 53161

Federal Aviation Administration
RULES
Airworthiness directives:
Schweizer et al., 53120
Class D airspace, 53123
Class E airspace, 53123
VOR Federal airways, 53122
PROPOSED RULES
Class E airspace, 53167
Jet routes, 53166
VOR Federal airways, 53164

Federal Communications Commission
RULES
Radio services, special:
Amateur services—
Station location on application form; deletion, 53138
Private land mobile services—
Construction, licensing, and operation, and finder's preference program; correction, 53245
PROPOSED RULES
Radio services, special:
Mobile services, 53169
NOTICES
Agency information collection activities under OMB review, 53203
Rulemaking proceedings; petitions filed, granted, denied, etc., 53204

Federal Crop Insurance Corporation
RULES
Administrative regulations:
Fraud, misrepresentation, false claims, etc.; sanctions, 53109
PROPOSED RULES
Administrative regulations:
Actual production history coverage insurance program, 53150

Federal Deposit Insurance Corporation
NOTICES
Meetings; Sunshine Act, 53243

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 53243

Federal Emergency Management Agency
NOTICES
Agency information collection activities under OMB review, 53204
Disaster and emergency areas:
Missouri, 53204
Nebraska, 53205

Federal Energy Regulatory Commission
NOTICES
Electric rate, small power production, and interlocking directorate filings, etc.:
BCH Energy, L.P., 53190
Cedar Bay Generating Co. Limited Partnership, 53190
Natural gas certificate filings:
Montana Power Co. et al., 53190
Natural Gas Policy Act:
State jurisdictional agencies tight formation recommendations; preliminary findings—
Wyoming Oil and Gas Conservation Commission, 53192
Applications, hearings, determinations, etc.:
Algonquin Gas Transmission Co., 53193
ANR Pipeline Co., 53193
Colorado Interstate Gas Co., 53194
National Fuel Gas Supply Corp., 53194
Northern Natural Gas Co., 53194
South Georgia Natural Gas Co., 53194
Tennessee Gas Pipeline Co., 53195
Texas Eastern Transmission Corp., 53195
Williams Natural Gas Co., 53197

Federal Labor Relations Authority
RULES
Organization, functions, and authority delegations:
Headquarters and regional offices relocation
New address, phone number, and hours of operation, 53105

Federal Maritime Commission
NOTICES
Complaints filed:
Hecht, Stanley, et al., 53205

Federal Reserve System
NOTICES
Applications, hearings, determinations, etc.:
Ballinger, T. Brent, et al., 53205
Fairbank Bancshares, Inc., et al., 53206
Keystone Financial, Inc., et al., 53206
Norwest Corp., 53207

Federal Retirement Thrift Investment Board
NOTICES
Meetings:
Employee Thrift Advisory Council, 53207

Fish and Wildlife Service
NOTICES
Meetings:
Aquatic Nuisance Species Task Force, 53212

Food and Drug Administration
PROPOSED RULES
Food additives:
Folic acid (Folacin), 53312
Food for human consumption:
Enriched grain product identity standards; folic acid addition, 53305
Food labeling—
Dietary supplements; health claims requirements, 53296
Folate and neural tube defects; health claims and label statements, 53254
Medical devices:
Clinical investigators disqualification
Correction, 53245
NOTICES
Biological products:
Human somatic cell therapy products and gene therapy products; application of current statutory authorities, 53248
Organization, functions, and authority delegations:
National Center for Toxicological Research, 53208

Forest Service
NOTICES
Appeal exemptions; timber sales:
Gila National Forest, NM, 53186
Environmental statements; availability, etc.:
Inyo National Forest, CA, 53185

General Services Administration
RULES
Federal travel:
Real estate sale and purchase expenses; increase in maximum reimbursement limitations, 53137

Geological Survey
NOTICES
Meetings:
Earth Observing System Land Processes Distributed Active Archive Center Science Advisory Panel, 53213

Health and Human Services Department
See Centers for Disease Control and Prevention
See Food and Drug Administration
See National Institutes of Health
NOTICES
Federal claims; interest rates on overdue debts, 53207

Indian Affairs Bureau
NOTICES
Grants and cooperative agreements; availability, etc.:
Special tribal court discretionary funds program, 53374

Interior Department
See Fish and Wildlife Service
See Geological Survey
See Indian Affairs Bureau
See Land Management Bureau
See National Park Service

Internal Revenue Service
RULES
Income taxes:
Notional principal contract income and deductions; 53125
PROPOSED RULES
Income taxes:
Notional principal contract income and deductions; mark-to-market dealer and trader election in derivative financial instruments; withdrawn, 53168

International Trade Commission
NOTICES
Import investigations:
In-line roller skates with ventilated boots and with axle aperture plugs and component parts, 53214

Justice Department
See Parole Commission
NOTICES
Pollution control; consent judgments:
Core Craft, Inc., et al., 53214
Johnson, Donald A., 53215
Oriental Republic of Uruguay, 53215

Labor Department
See Employment and Training Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
School-to-work opportunities systems, 53388

Land Management Bureau
NOTICES
Meetings:
California Desert District Advisory Council, 53209
Realty actions; sales, leases, etc.:
Arizona, 53209
Nevada, 53210
Wild horse gathering, helicopters used; OR; meeting, 53211
Withdrawal and reservation of lands:
California, 53211

National Aeronautics and Space Administration
RULES
Acquisition regulations:
Contract Appeals Board discontinuance and merger with Armed Services Contract Appeals Board, 53138

National Highway Traffic Safety Administration
NOTICES
Meetings:
Motor Vehicle Titling, Registration, and Salvage Advisory Committee, 53237

National Institutes of Health
NOTICES
Meetings:
Research Grants Division Behavioral and Neurosciences Special Emphasis Panel, 53208

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Bering Sea and Aleutian Islands groundfish, 53148
Gulf of Alaska groundfish, 53148
Ocean salmon off coasts of Washington, Oregon, and California, 53143
Puerto Rico and U.S. Virgin Islands reef fish, 53145
Marine mammals:
Steller sea lion—
Critical habitat designation, 53138
PROPOSED RULES
Fishery conservation and management:
Northeast Region general fisheries permit and reporting procedures, 53172
South Atlantic snapper grouper, 53183
Marine mammals:
Protected species special exception permits, 53320

National Park Service
NOTICES
Environmental statements; availability, etc.:
Yosemite National Park, CA, 53213

National Science Foundation
NOTICES
Meetings:
Anthropological and Geographic Sciences Advisory Panel, 53217
Equal Opportunities in Science and Engineering Committee, 53217

Nuclear Regulatory Commission
PROPOSED RULES
Rulemaking petitions:
Nuclear Management and Resources Council, 53159
NOTICES
Applications, hearings, determinations, etc.:
Carolina Power & Light Co., 53218

Duke Power Co., 53219

Office of United States Trade Representative
See Trade Representative, Office of United States

Parole Commission
NOTICES
Meetings; Sunshine Act, 53243

Postal Rate Commission
NOTICES
Meetings; Sunshine Act, 53243

Presidential Documents
PROCLAMATIONS
Special observances:
Columbus Day (Proc. 6608), 53099
General Pulaski Memorial Day (Proc. 6610), 53103
Leif Erikson Day (Proc. 6607), 53097
School Lunch Week, National (Proc. 6609), 53101

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration
See National Institutes of Health

Railroad Retirement Board
NOTICES
Meetings; Sunshine Act, 53243

Research and Special Programs Administration
NOTICES
Hazardous materials:
Applications; exemptions, renewals, etc., 53237
Applications, hearings, determinations, etc.:
HASA, Inc., et al., 53239

Securities and Exchange Commission
NOTICES
Securities:
German issuers; trading rule exemptions; list, 53220
Self-regulatory organizations; proposed rule changes:
Options Clearing Corp. et al., 53231

Small Business Administration
RULES
Organization, functions, and authority delegations:
Field officers; loan approval authority
Correction, 53120

State Department
NOTICES
Meetings:
Shipping Coordinating Committee, 53236

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Trade Representative, Office of United States
NOTICES
Foreign trade barriers; national trade estimate report, 53219

Transportation Department
See Federal Aviation Administration
See National Highway Traffic Safety Administration
See Research and Special Programs Administration

Treasury Department
See Internal Revenue Service

Veterans Affairs Department
NOTICES
Meetings:
Environmental Hazards Advisory Committee, 53242

Separate Parts In This Issue

Part II
Department of Health and Human Services, Food and Drug Administration, 53248

Part III
Department of Health and Human Services, Food and Drug Administration, 53254

Part IV
Department of Commerce, National Oceanic and Atmospheric Administration, 53320

Part V
Department of Education, 53366

Part VI
Department of Education, 53370

Part VII
Department of the Interior, Bureau of Indian Affairs, 53374

Part VIII
Department of Education, 53388

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free Electronic Bulletin Board service for Public Law numbers and Federal Register finding aids is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamations:
6607.....53097
6608.....53099
6609.....53101
6610.....53103

5 CFR
2429.....53105
2471.....53105
2472.....53105

7 CFR
301.....53105
400.....53109
906.....53111
907 (2 documents).....53112, 53114
908 (2 documents).....53112, 53114
928.....53117
931.....53119
Proposed Rules:
400.....53150
3408.....53153

10 CFR
Proposed Rules:
21.....53159

12 CFR
Proposed Rules:
650.....53161

13 CFR
101.....53120

14 CFR
39.....53120
71 (3 documents).....53122, 53123
Proposed Rules:
71 (3 documents).....53164, 53166, 53167

15 CFR
806.....53124

21 CFR
Proposed Rules:
101 (2 documents).....53254, 53296
136.....53305
137.....53305
139.....53305
172.....53312
812.....53245

26 CFR
1.....53125
Proposed Rules:
1.....53168

40 CFR
258.....53136
Proposed Rules:
122.....53168
123.....53168
131.....53168
132.....53168

41 CFR
302–6.....53137

47 CFR
90.....53245
97.....53138
Proposed Rules:
22.....53169
25.....53169
80.....53169
87.....53169
90.....53169
95.....53169
99.....53169

48 CFR
1833.....53138

50 CFR
227.....53138
661.....53143
669.....53145
672 (2 documents).....53138, 53148
675 (2 documents).....53138, 53148
Proposed Rules:
215.....53320
216.....53320
222.....53320
622.....53172
625.....53172
628.....53172
646.....53183
649.....53172
650.....53172
651.....53172
652.....53172
655.....53172

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Federal Register
Vol. 58, No. 197
Thursday, October 14, 1993

Presidential Documents

Title 3—

The President

Proclamation 6607 of October 8, 1993

Leif Erikson Day, 1993

By the President of the United States of America

A Proclamation

At this time every year, Americans celebrate Leif Erikson Day. In so doing, we commemorate the voyages of the great Norse explorer who first set foot on North America nearly a thousand years ago. At the same time, we also celebrate the enduring ties between America and the Nordic countries and take note of the outstanding contributions that Nordic Americans have made to the United States. In a sense, the bonds that Leif Erikson—son of Iceland, grandson of Norway—forged continue unbroken today. We maintain an impressive exchange of people and ideas with the Nordic countries.

The early settlers inherited an adventurous spirit that had led their ancestors from Scandinavia to much of Europe and into the Atlantic. In addition, these adventurers started from lands that were already halfway points between the Old World and the New. Even today, the Nordic countries, which possess a commitment to open, democratic societies and to peaceful relations among nations, serve as links between Europe and the rest of the world.

At a time when the relations between Europe and America are being redefined, the Nordic countries retain their important role in fostering democracy, transatlantic cooperation, and an open trading system. Their many contributions to international diplomacy, humanitarian assistance, and peacekeeping in the world's trouble spots set a high standard that the rest of the world greatly admires. Americans who trace their roots to the Nordic countries—Denmark, Finland, Iceland, Norway, and Sweden—not only continue to enrich their new homeland, but also play a key part in providing a link across the Atlantic, just as their ancestors did a thousand years ago.

In honor of Leif Erikson and of our Nordic-American heritage, the Congress, by joint resolution approved on September 2, 1964 (Public Law 88–566), has authorized and requested the President to proclaim October 9 of each year as "Leif Erikson Day."

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim October 9, 1993, as Leif Erikson Day. I also encourage the people of the United States to observe this occasion by learning more about our rich Nordic-American heritage and the early history of our continent.

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of October, in the year of our Lord nineteen hundred and ninety-three, and of the Independence of the United States of America the two hundred and eighteenth.

William J. Clinton

[FR Doc. 93–25400
Filed 10–12–93; 3:35 pm]
Billing code 3195–01–P

Presidential Documents

Proclamation 6608 of October 8, 1993

Columbus Day, 1993

By the President of the United States of America

A Proclamation

During 1993 the world has embarked on new trails to expand humanity's horizons and to promote the betterment of the human condition. As we look with hope to the future, we also pay homage to our past and to those who have helped shape our Nation and continent. It is therefore fitting that the voyages of Christopher Columbus be remembered. I welcome this opportunity to salute this man of great courage, who, in defiance of popular myth and hardship, had the vision to explore the unknown.

Even though the Quincentennial celebrations of Columbus' landfall are past, it is still our duty to promote understanding between the old and new worlds. It is important to commemorate the mutual discovery of Europeans and Native Americans and the transformations, through toil and pain, that gave birth to brave new hopes for a better future.

For the United States, it is especially significant that we recognize the daring voyages of Christopher Columbus. As a people whose land was founded on dreams, we proceed today, just as Columbus did, with courage to overcome obstacles and search for new paths to lead us into an unknown, but promising, future.

Many people in the United States have special reason to remember and celebrate the histories of the old and new worlds. America, a Nation of diverse peoples, has been enriched by the blending of many heritages. Americans of international descent, along with Native Americans, have contributed mightily to molding the framework of our great land, united by our allegiance to the principles of equality, democracy, and freedom. We all take justifiable pride in our accomplishments and dedicate ourselves to the pursuit of our dreams.

In tribute to Columbus' achievement, the Congress of the United States by joint resolution of April 30, 1934 (48 Stat. 657), and an Act of June 28, 1968 (82 Stat. 250), has requested the President to proclaim the second Monday in October of each year as "Columbus Day."

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim October 11, 1993, as Columbus Day. I call upon the people of the United States to observe this day with appropriate ceremonies and activities. I also direct that the flag of the United States be displayed on all public buildings on the appointed day in honor of Christopher Columbus.

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of October, in the year of our Lord nineteen hundred and ninety-three, and of the Independence of the United States of America the two hundred and eighteenth.

William J. Clinton

[FR Doc. 93-25401
Filed 10-12-93; 3:36 pm]
Billing code 3195-01-P

Presidential Documents

Proclamation 6609 of October 8, 1993

National School Lunch Week, 1993

By the President of the United States of America

A Proclamation

Since 1946, the National School Lunch Program has demonstrated a partnership between Federal, State, and local officials in providing nutritious low-cost and free meals to America's schoolchildren. Our commitment to the National School Lunch Program reflects our recognition of the importance of nutrition to our children's health and to our Nation's future.

Currently, the National School Lunch Program operates in more than 90 percent of the Nation's public schools and serves about 25 million lunches a day. Many of our children receive their only nutritious meal of the day at school. These school meals not only increase students' attention span and learning capabilities, but also improve their overall health. School lunches also teach children good dietary habits. Cafeterias become learning laboratories, putting into practice the classroom lessons learned by the students on the importance of nutrition to health and well-being.

There is no longer any question that diet is related to good health, and school meal programs should meet the Dietary Guidelines for Americans so that children get nutritious meals. Like preventive medicine, the value of school lunches will multiply and the benefits will last a lifetime. National School Lunch Week affords us the opportunity to take a fresh look at the National School Lunch Program to determine what changes are necessary in order to meet these dietary guidelines. We also can recognize health professionals, school food service personnel, teachers, principals, parents, community leaders, and others for their commitment to ensuring that the lunches served in their schools will provide the nutrition so important to young students.

In recognition of the contributions of the National School Lunch Program to the nutritional well-being of children, the Congress, by joint resolution of October 9, 1962 (Public Law No. 87–780), has designated the week beginning the second Sunday in October in each year as "National School Lunch Week" and has requested the President to issue a proclamation in observance of that week.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim the week beginning October 10, 1993, as National School Lunch Week. I call upon all Americans to recognize those individuals whose efforts contribute to the success of this valuable program.

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of October, in the year of our Lord nineteen hundred and ninety-three, and of the Independence of the United States of America the two hundred and eighteenth.

William J. Clinton

[FR Doc. 93–25411
Filed 10–12–93; 4:09 pm]
Billing code 3195–01–P

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Presidential Documents

Proclamation 6610 of October 9, 1993

General Pulaski Memorial Day, 1993

By the President of the United States of America

A Proclamation

Each October 11, on the anniversary of his death in battle, America honors General Casimir Pulaski, a hero of two nations.

A patriot to the core, Pulaski loved his native Poland dearly. In unequal battle against far stronger enemies, he fought for his country's freedom.

But Pulaski's love of liberty transcended national boundaries, and when the American War of Independence began, he took the colonists' struggle as his own. He came to the United States, put his battlefield experience at the service of the Continental Army, and commanded a cavalry unit. On this day in 1779, during the siege of Savannah, General Pulaski gave his life for the cause of American freedom.

Pulaski's spirit and example have inspired Americans for more than two centuries. Across this country, you will find counties, towns, schools, parks and highways named after that patriot; in my own home state of Arkansas, Pulaski County is the seat of the capital, Little Rock.

But eager as we are to claim General Pulaski as our own, we are also proud to share him with Poland. What Pulaski fought for in the latter part of the 18th century, his compatriots have achieved at the end of the 20th: a free Poland, welcome and respected in the community of independent nations. And the courage General Pulaski displayed in battle is matched by that of his present-day countrymen, who have carried out Poland's history-making revolution without bloodshed.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim Monday, October 11, 1993, as General Pulaski Memorial Day, and I encourage the people of the United States to commemorate this occasion appropriately throughout the land.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of October, in the year of our Lord nineteen hundred and ninety-three, and of the Independence of the United States of America the two hundred and eighteenth.

William J. Clinton

[FR Doc. 93-25412
Filed 10-12-93; 4:10 pm]
Billing code 3195-01-P

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Rules and Regulations

Federal Register
Vol. 58, No. 197
Thursday, October 14, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Parts 2429, 2471, and 2472

New Address and Phone Number; New Hours of Operation

AGENCY: Federal Labor Relations Authority.

ACTION: Final rule.

SUMMARY: The Federal Labor Relations Authority, and one of its entities, the Federal Service Impasses Panel, relocated its headquarters on March 15, 1993. For the purpose of filing documents with the Authority, this amendment to the rules and regulations of the Authority sets forth the Authority's new address and telephone number, and new hours during which such documents must be filed. In addition, the regulations have been amended to incorporate the new address of the Federal Service Impasses Panel.

EFFECTIVE DATE: October 14, 1993.

FOR FURTHER INFORMATION CONTACT: Solly Thomas, Executive Director, (202) 482–6560.

SUPPLEMENTARY INFORMATION: Certain paragraphs of appendix A to 5 CFR chapter XIV, which set forth the addresses, telephone, and fax numbers of the offices of the headquarters of the Federal Labor Relations Authority and certain offices within the Federal Labor Relations Authority, were amended on March 15, 1993. 58 FR 13695, Mar. 15, 1993. Paragraph (a) of § 2429.24 of the Authority's rules and regulations, which concerns the place and method of filing documents, was inadvertently omitted from the amendment. In addition, §§ 2471.2, 2471.4 and 2472.5, which concern communication with the Federal Service Impasses Panel were also inadvertently omitted from the amendment.

List of Subjects in 5 CFR Parts 2429, 2471 and 2472

Administrative practice and procedure, Government employees, Labor management relations.

Accordingly, these provisions are amended as follows:

PART 2429—MISCELLANEOUS AND GENERAL REQUIREMENTS

1. The authority citation for part 2429 continues to read as follows:

Authority: 5 U.S.C. 7134; § 2429.18 also issued under 28 U.S.C. 2112(a).

2. Section 2429.24(a) is revised to read as follows:

§ 2429.24 Place and method of filing; acknowledgement.

(a) All documents filed or required to be filed with the Authority pursuant to this subchapter shall be filed with the Director, Case Control Office, Federal Labor Relations Authority, Docket Room, suite 415, 607 14th Street, NW., Washington, DC 20424–0001 (telephone: FTS or Commercial (202) 482–6540) between 9 a.m. and 5 p.m., Monday through Friday (except Federal holidays). Documents hand-delivered for filing must be presented in the Docket Room not later than 5 p.m. to be accepted for filing on that day.

* * * * *

PART 2471—PROCEDURES OF THE PANEL

3. The authority citation for part 2471 continues to read as follows:

Authority: 5 U.S.C. 7119, 7134.

4. Sections 2471.2 and 2471.4 are revised to read as follows:

§ 2471.2 Request form.

A form has been prepared for use by the parties in filing a request with the Panel for consideration of an impasse or approval of a binding arbitration procedure. Copies are available from the Office of the Executive Director, Federal Service Impasses Panel, suite 220, 607 14th Street, NW., Washington, DC 20424–0001.

* * * * *

§ 2471.4 Where to file.

Requests to the Panel provided for in this part, and inquiries or correspondence on the status of impasses or other related matters, should be addressed to the Executive Director, Federal Service Impasses Panel, suite 220, 607 14th Street, NW., Washington, DC 20424–0001.

PART 2472—IMPASSES ARISING PURSUANT TO AGENCY DETERMINATION NOT TO ESTABLISH OR TO TERMINATE FLEXIBLE OR COMPRESSED WORK SCHEDULES

5. The authority citation for part 2472 continues to read as follows:

Authority: Pub. L. 97–221, 96 Stat. 227 (5 U.S.C. 6131).

6. Section 2472.5 is revised to read as follows:

§ 2472.5 Where to file.

Requests to the Panel provided for in this subchapter and inquiries or correspondence on the status of impasses or other related matters, should be directed to the Executive Director, Federal Service Impasses Panel, suite 220, 607 14th Street, NW., Washington, DC 20424–0001.

Dated: October 4, 1993.

Solly Thomas,

Executive Director, Federal Labor Relations Authority.

[FR Doc. 93–25034 Filed 10–13–93; 8:45 am]
BILLING CODE 6257–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket 91–155–8]

Mediterranean Fruit Fly; Addition to and Removal From the Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Mediterranean fruit fly regulations by adding new portions of Los Angeles and Orange Counties, CA, to the list of quarantined areas and by removing the quarantined portion of Santa Clara County, CA, from the list. The addition of these new areas to the list of quarantined areas is necessary on an

emergency basis to prevent the spread of the Mediterranean fruit fly into noninfested areas of the United States, while the removal of the Santa Clara County area from the list relieves unnecessary restrictions on the interstate movement of regulated articles from this area.

DATES: Interim rule effective October 8, 1993. Consideration will be given only to comments received on or before December 13, 1993.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 91–155–8. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are encouraged to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Operations Officer, Domestic and Emergency Operations, Plant Protection and Quarantine, APHIS, USDA, room 640, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8247.

SUPPLEMENTARY INFORMATION:

Background

The Mediterranean fruit fly, *Ceratitis capitata* (Wiedemann), is one of the world's most destructive pests of numerous fruits and vegetables. The Mediterranean fruit fly (Medfly) can cause serious economic losses. Heavy infestations can cause complete loss of crops, and losses of 25 to 50 percent are not uncommon. The short life cycle of this pest permits the rapid development of serious outbreaks.

We established the Mediterranean fruit fly regulations (7 CFR 301.78 through 301.78–10; referred to below as the regulations), and quarantined the Hancock Park area of Los Angeles County, CA, in an interim rule effective on November 5, 1991, and published in the **Federal Register** on November 13, 1991 (56 FR 57573–57579, Docket No. 91–155). The regulations impose restrictions on the interstate movement of regulated articles from quarantined areas in order to prevent the spread of the Medfly to noninfested areas of the United States. We have published a series of interim rules amending these regulations by adding or removing certain portions of Los Angeles, Santa Clara, Orange, and San Diego Counties, CA, from the list of quarantined areas. Amendments affecting California were made effective on September 10, and November 12, 1992; and on January 19, July 16, August 3, and September 22, 1993 (57 FR 42485–42486, Docket No. 91–155–2; 57 FR 54166–54169, Docket No. 91–155–3; 58 FR 6343–6346, Docket No. 91–155–4; 58 FR 39123–39124, Docket No. 91–155–5; 58 FR 42489–42491, Docket No. 91–155–6; 58 FR 49186–49190, Docket No. 91–155–7).

Recent trapping surveys by inspectors of California State and county agencies and by inspectors of the Animal and Plant Health Inspection Service (APHIS) have revealed that additional infestations of Medfly have been discovered in the Pacoima area of Los Angeles County, CA, and in the Santa Ana area of Orange County, CA.

The regulations in § 301.78–3 provide that the Administrator of APHIS will list as a quarantined area each State, or each portion of a State, in which the Medfly has been found by an inspector, in which the Administrator has reason to believe that the Medfly is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities in which the Medfly has been found.

In accordance with these criteria and the recent Medfly finding described above, we are amending § 301.78–3 by expanding the area in Los Angeles County with the addition of an area of approximately 17 square miles and by expanding the area which extends through both Los Angeles and Orange Counties with the addition of an area of approximately 48 square miles in Orange County. The new quarantined areas are as follows:

Los Angeles County

That portion of Los Angeles County bounded by a line drawn as follows: Beginning at the intersection of Interstate Highway 210 and Sunland Boulevard; then west and south along Sunland Boulevard to its intersection with Clybourn Avenue; then south along Clybourn Avenue to its intersection with Saticoy Street; then west along Saticoy Street to its intersection with Vineland Avenue; then south along Vineland Avenue to its intersection with Vanowen Street; then west along Vanowen Street to its intersection with Coldwater Canyon Avenue; then north along Coldwater Canyon Avenue to its intersection with Sheldon Street; then northeast along Sheldon Street to its intersection with Arleta Avenue; then northwest along Arleta Avenue to its intersection with Branford Street; then northeast along Branford Street to its intersection with San Fernando Road; then northwest along San Fernando Road to its intersection with Osborne Street; then northeast along Osborne Street to its intersection with Foothill Boulevard; then northwest along Foothill Boulevard to its intersection with Van Nuys Boulevard; then northeast along Van Nuys Boulevard to its intersection with Interstate Highway 210; then southeast on Interstate Highway 210 to the point of beginning.

Orange County

That portion of Orange County bounded by a line drawn as follows: Beginning at the intersection of Fairview Road and Interstate Highway 405; then east and south along Interstate Highway 405 to its intersection with Culver Drive; then northeast along Culver Drive to its intersection with Walnut Avenue; then northwest along Walnut Avenue to its intersection with Jamboree Road; then northeast along Jamboree Road to its intersection with Tustin Ranch Road; then west along Tustin Ranch Road to its intersection with Pioneer Way; then north along Pioneer Way to its intersection with Pioneer Road; then northwest on Pioneer Road to its intersection with Foothill Boulevard; then northwest along Foothill Boulevard to its intersection with Old Foothill Boulevard; then northwest on Old Foothill Boulevard to its intersection with Hewes Street; then north on Hewes Street to its intersection with Chapman Avenue; then west along Chapman Avenue to its intersection with Haster Street; then south on Haster Street to its intersection with Garden Grove Boulevard; then east along Garden Grove Boulevard to its intersection with Fairview Street; then south on Fairview Street to its intersection with Fairview Road; then south on Fairview Road to the point of beginning.

We have also determined, based on trapping surveys conducted by APHIS and California State and county agency inspectors, that the Medfly has been eradicated from the quarantined area in Santa Clara County, CA. The last finding of the Medfly thought to be associated with the infestation in this area was made on September 9, 1992. Since then, no evidence of infestation has been found in this area. We have determined that the Medfly no longer exists in this area, and we are therefore removing it from the list of areas in § 301.78–3(c) quarantined because of the Mediterranean fruit fly. As a result of this action there are no longer any quarantined areas in Santa Clara

County. Portions of Los Angeles, Orange, and San Bernardino Counties remain quarantined.

Miscellaneous

We are removing from § 301–78–3(c) the lists of neighborhoods preceding each of the Medfly quarantine area border descriptions for California. These lists are not fully inclusive and thus do not completely or accurately describe the areas affected by the Medfly quarantine. Moreover, it would be impractical to list all of the neighborhoods affected by the quarantine. We believe the street-by-street border descriptions are sufficient to describe the areas affected by the Medfly quarantine.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists in Los Angeles and Orange Counties, CA, that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the Mediterranean fruit fly from spreading to noninfested areas of the United States.

In addition, the Administrator has determined that emergency conditions regarding Medfly infestation no longer exist in Santa Clara County, CA, and the continued quarantined status of this area would impose unnecessary regulatory restrictions on the public. Immediate action is warranted to remove restrictions from the noninfested areas.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

This interim rule affects the interstate movement of regulated articles from the Pacoima area of Los Angeles County, CA, the Santa Ana area of Orange County, CA, and the San Jose area of Santa Clara County, CA. There are approximately 336 small entities that could be affected, including 203 retail and wholesale fruit sellers, 67 nurseries, 3 distributors, 20 growers, 2 packers, 1 processor, 39 mobile vendors, and 1 flea market.

These small entities comprise less than 1 percent of the total number of similar small entities operating in the State of California. In addition, most of these small entities sell regulated articles primarily for local intrastate, not interstate, movement and the sale of these articles would not be affected by this interim regulation.

In the new quarantined areas in Los Angeles and Orange Counties, the effect on those few small entities that do move regulated articles interstate from parts of the quarantined areas will be minimized by the availability of various treatments that, in most cases, will allow these small entities to move regulated articles interstate with very little additional cost. Also, many of these entities sell other items in addition to the regulated articles so that the effect, if any, of this regulation on these entities should be minimal. Further, the number of affected entities is small compared with the thousands of small entities that move these articles interstate from nonquarantined areas in California and other States.

Similarly, termination of the quarantine in the Santa Clara County area should have a minimal economic effect on the few small entities operating there. We anticipate that the economic impact of lifting the quarantine, though positive, will be no more significant than was the minimal impact of its imposition.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule:

(1) Preempts all State and local laws and regulations that are inconsistent with this rule;

(2) Has no retroactive effect; and

(3) Does not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this rule. The assessment provides a basis for our conclusion that implementation of integrated pest management to achieve eradication of the Medfly would not have a significant impact on human health and the natural environment.

The environmental assessment and finding of no significant impact were prepared in accordance with:

(1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*);

(2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1508);

(3) USDA Regulations Implementing NEPA (7 CFR Part 1(b); and

(4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Paperwork Reduction Act

This document contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine,

Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for 7 CFR part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff; 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 301.78–3, paragraph (c), the designation of the quarantined areas is amended by revising the entries for Los Angeles County and for Los Angeles and Orange Counties; and by removing the entry for Santa Clara County, as follows:

§ 301.78–3 Quarantined areas.

* * * * *

(c) * * *

California

Los Angeles County. That portion of the county beginning at the intersection of Interstate Highway 210 and Sunland Boulevard; then, west and south along Sunland Boulevard to its intersection with Clybourn Avenue; then, south along Clybourn Avenue to its intersection with Saticoy Street; then, west along Saticoy Street to its intersection with Vineland Avenue; then, south along Vineland Avenue to its intersection with Vanowen Street; then west along Vanowen Street to its intersection with Tampa Avenue; then north along Tampa Avenue to its intersection with Nordhoff Street; then west along Nordhoff Street to its intersection with Corbin Avenue; then north along Corbin Avenue to its intersection with Lassen Street; then west along Lassen Street to its intersection with Winnetka Avenue; then north along Winnetka Avenue to its intersection with San Fernando Mission Boulevard; then east along San Fernando Mission Boulevard to its intersection with Winnetka Avenue; then north along Winnetka Avenue to its intersection with Sesnon Boulevard; then east along Sesnon Boulevard to its intersection with Tampa Avenue; then due north along an imaginary line from this intersection to its intersection with the Los Angeles City Limits; then northeast and east along the Los Angeles City Limits to its intersection with Cobalt Street; then south along Cobalt Street to its intersection with Olive View Drive; then east along Olive View Drive to its intersection with Bledsoe Street; then southwest along Bledsoe Street to its intersection with Interstate Highway 210; then southeast along Interstate Highway 210 to the point of beginning.

Los Angeles and Orange Counties. That portion of the counties beginning at the intersection of the Angeles National Forest boundary and Sage Hill Road; then north from the intersection along an imaginary line to its intersection with Brown Mountain Road at Millard Campground; then west along Brown Mountain Road to its intersection with El Prieto Road; then southwest along El Prieto Road to its intersection with the Pasadena City Limits; then north and west along the Pasadena City limits to its intersection with the La Canada Flintridge City Limits; then west and south along the La Canada Flintridge City Limits to its intersection with Foothill Boulevard; then northwest along Foothill Boulevard to its intersection with La Crescenta Avenue; then south along La Crescenta Avenue to its intersection with Shirley Jean Street; then southwest from this intersection along an imaginary line to the end of Allen Avenue; then southwest along Allen Avenue to its intersection with Mountain Street; then northwest along Mountain Street to its intersection with Sunset Canyon Drive; then northwest along Sunset Canyon Drive to its intersection with Olive Avenue; then southwest along Olive Avenue to its intersection with Barham Boulevard; then south along Barham Boulevard to its intersection with State Highway 101; then southeast along State Highway 101 to its intersection with Highland Avenue; then south along Highland Avenue to its intersection with Sunset Boulevard; then west along Sunset Boulevard to its intersection with La Cienega Boulevard; then south along La Cienega Boulevard to its intersection with Washington Boulevard; then southwest along Washington Boulevard to its intersection with Culver Boulevard; then southwest along Culver Boulevard to its intersection with Vista Del Mar; then southeast along Vista Del Mar to its intersection with Rosecrans Avenue; then east along Rosecrans Avenue to its intersection with Paramount Boulevard; then south on Paramount Boulevard to its intersection with Carson Street; then east on Carson Street to its intersection with Lakewood Boulevard; then south on Lakewood Boulevard to its intersection with Willow Street; then east on Willow Street to its intersection with Katella Avenue; then east along Katella Avenue to its intersection with Valley View Street; then, south along Valley View Street to its intersection with Bolsa Chica Road; then, south along Bolsa Chica road to its intersection with Bolsa Chica Street; then, south along Bolsa Chica Street to its intersection with Los Patos Avenue; then, southeast from this intersection along an imaginary line to the intersection of East Garden Grove Wintersburg Channel and the Bolsa Chica Ecological Reserve boundary; then, southeast along the Bolsa Chica Ecological Reserve boundary to its intersection with Ellis Avenue; then, east along Ellis Avenue to its intersection with Edwards Street; then, south along Edwards Street to its intersection with Garfield Avenue; then, east along Garfield Avenue to its intersection with North Golden West Street; then, south along North Golden West Street to its intersection with Yorktown Avenue; then, east along Yorktown Avenue to its intersection with Main Street; then, south along Main Street to its intersection with Adams Avenue; then, east along Adams Avenue to its intersection with Fairview Road; then, north along Fairview Road to its intersection with Interstate Highway 405; then, east and south along Interstate Highway 405 to its intersection with Culver Drive; then, northeast along Culver Drive to its intersection with Walnut Avenue; then, northwest along Walnut Avenue to its intersection with Jamboree Road; then, northeast along Jamboree Road to its intersection with Tustin Ranch Road; then, west along Tustin Ranch Road to its intersection with Pioneer Way; then, north along Pioneer Way to its intersection with Pioneer Road; then, northwest on Pioneer Road to its intersection with Foothill Boulevard; then, northwest along Foothill Boulevard to its intersection with Old Foothill Boulevard; then, northwest on Old Foothill Boulevard to its intersection with Hewes Street; then, north on Hewes Street to its intersection with Chapman Avenue; then, west along Chapman Avenue to its intersection with West Street; then, north along West Street to its intersection with Katella Avenue; then, west along Katella Avenue to its intersection with Western Avenue; then north on Western Avenue to its intersection with Commonwealth Avenue; then east on Commonwealth Avenue to its intersection with Beach Boulevard; then north on Beach Boulevard to its intersection with La Mirada Boulevard; then northwest and north on La Mirada Boulevard to its intersection with Colima Road; then northeast on Colima Road to its intersection with the Whittier City Limits; then northwest along the Whittier City Limits to its intersection with Turnbull Canyon Road; then north from this intersection along an imaginary line to the intersection of Interstate Highway 605 and State Highway 60; then northeast along Interstate Highway 605 to its intersection with Interstate Highway 10; then east along Interstate Highway 10 to its intersection with Francisquito Avenue; then southeast along Francisquito Avenue to its intersection with Hacienda Boulevard; then southwest along Hacienda Boulevard to its intersection with Amar Road; then east along Amar Road to its intersection with Temple Avenue; then northeast along Temple Avenue to its intersection with the Walnut City Limits; then north and northeast along the Walnut City Limits to its intersection with the Forest Lawn Memorial Park, Covina Hills boundary; then northeast along the boundary to its intersection with Interstate Highway 10; then east along Interstate Highway 10 to its intersection with Interstate Highway 210; then northwest along Interstate Highway 210 to its intersection with San Dimas Avenue; then east and north along San Dimas Avenue to its intersection with Foothill Boulevard; then west along Foothill Boulevard to its intersection with Alosta Avenue; then west along Alosta Avenue to its intersection with Foothill Boulevard; then west along Foothill Boulevard to its intersection with Azusa Avenue; then north along Azusa Avenue to its intersection with San Gabriel Canyon Road; then due north from the intersection along an imaginary line to its intersection with the Angeles National Forest boundary; then west along the boundary to the point of beginning; except that the portion of Los Angeles County bounded by a line drawn as follows is not within the area under quarantine: Beginning at the intersection of State Highway 60 and Interstate Highway 710; then west along State

Highway 60 to its intersection with Interstate Highway 10; then west along Interstate Highway 10 to its intersection with Broadway; then northeast along Broadway to its intersection with Olympic Boulevard; then northwest along Olympic Boulevard to its intersection with State Highway 110; then northeast along State Highway 110 to its intersection with Bishops Road; then southeast along Bishops Road to its intersection with North Broadway; then east along North Broadway to its intersection with Interstate Highway 5; then south along Interstate Highway 5 to its intersection with Interstate Highway 10; then east along Interstate Highway 10 to its intersection with Interstate Highway 710; then south along Interstate Highway 710 to the point of beginning.

* * * * *

§ 301.78–3 [Amended]

3. In § 301.78–3, paragraph (c), the description of the quarantined area in Los Angeles and San Bernardino Counties is amended by removing the phrase "in the Ontario area" immediately following the phrase "that portion of the county".

Done in Washington, DC, this 8th day of October 1993.

Patricia Jensen,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–25175 Filed 10–13–93; 8:45 am]

BILLING CODE 3410–34–P

Federal Crop Insurance Corporation

7 CFR Part 400

General Administrative Regulations; Sanctions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) issues a new provision to its General Administrative Regulations. The intent of this provision is to expand the range of sanctions available to address fraud, misrepresentation, false claims, and other violations of contracts for insurance and contracts and agreements to provide insurance services; and prescribe the terms and conditions under which persons and other entities may be suspended or debarred from contracting with FCIC. This rule also serves to remove and reserve the suspension and debarment provisions as they will now be incorporated into these provisions.

EFFECTIVE DATE: October 14, 1993.

FOR FURTHER INFORMATION CONTACT: Mari L. Dunleavy, Regulatory Specialist, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250. Telephone (202) 254–8314.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is July 1, 1997.

Kathleen Connelly, Acting Manager, FCIC has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The Acting Manager certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons, nor will it have a significant economic effect on a substantial number of small entities. This action imposes no additional burden to the insured farmer. Further, this action requires of the reinsured company or sales and service contractor what is considered normal in the ordinary conduct of business. This rule does not require any action on the part of any individual or entity in compliance with the program provisions. This action is determined to be exempt from the provisions of the Regulatory Flexibility Act and no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

The Acting Manager, FCIC, has certified to the Office of Management and Budget (OMB) that these regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

This rule has been reviewed in accordance with Executive Order 12778. The provisions of this proposed rule are not retroactive and will preempt state and local laws to the extent such state and local laws are inconsistent herewith. The administrative appeal provisions located at 7 CFR part 400, subpart J must be exhausted before judicial action may be brought for actions taken under proceedings for the imposition of civil penalties or under the Program Fraud Civil Remedies sections of these regulations.

This amendment does not contain information collections that require clearance by the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35, the Paperwork Reduction Act.

The Office of General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies and procedures contained in this rule will not have substantial direct effects on states or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Background

This rule adds civil penalties provisions under the Federal Crop Insurance Act, as an additional sanction, and incorporates provisions for implementing departmental regulations for Debarment and Suspension and the Program Fraud Civil Remedies Act.

FCIC has established a system of sanctions to prevent waste, fraud, and abuse within its programs and insurance delivery systems, and to ensure maximum compliance with the terms and purposes of its issuances. This rule establishes the sanctions system and prescribes the manner of procedures under which the sanctions system will operate.

A proposed rule was published in Wednesday, July 14, 1993, at 58 FR 37874. Following publication of the proposed rule, the public was given 30 days in which to submit comments, data, and opinions. No comments were received.

Accordingly, the proposed rule published at 58 FR 37874 is hereby issued as final rule. FCIC amends the General Administrative Regulations, effective for the 1993 and succeeding calender years as follows:

List of Subjects in 7 CFR Part 400

General Administrative Regulations, Sanctions.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended, the Federal Crop Insurance Corporation hereby amends 7 CFR part 400 of the Code of Federal Regulations as follows:

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

Subpart E—Suspension and Debarment [Removed and Reserved]

1. Subpart E is removed and reserved.

2. A new subpart R is added to read as follows:

Subpart R—Sanctions

Sec.

400.451 General.
400.452 Definitions.
400.453 Exhaustion of administrative remedies.
400.454 Civil penalties.
400.455 Governmentwide debarment and suspension (procurement).
400.456 Governmentwide debarment and suspension (nonprocurement).
400.457 Program Fraud Civil Remedies Act.
400.458–400.499 [Reserved]
400.500 OMB control numbers.

Authority: 7 U.S.C. 1506, 1516.

Subpart R—Sanctions

§ 400.451 General.

(a) The Federal Crop Insurance Corporation (FCIC) has implemented a system of sanctions to prevent waste, fraud, and abuse within its programs and insurance delivery systems. Such sanctions include civil penalties and disqualification from the crop insurance program under the Federal Crop Insurance Act, 7 U.S.C. 1506(m); government wide debarment and suspension; and civil penalties and assessments under the Program Fraud Civil Remedies Act, 31 U.S.C. 3801—31 U.S.C. 3812.

(b) The provisions of this subpart apply to all contracts and agreements to which FCIC is a party unless otherwise specifically provided for in this subpart, including those in which FCIC provides administrative expense reimbursement, premium subsidy, or reinsurance benefits.

(c) The provisions of this subpart are in addition to any other sanctions specifically provided in applicable contracts and agreements.

(d) This subpart is applicable to any act or omission by any affected party after October 14, 1993.

§ 400.452 Definitions.

For purposes of this subpart, a person means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a state, a political subdivision of a state, or any agency thereof.

§ 400.453 Exhaustion of administrative remedies.

All administrative remedies contained herein or incorporated herein by reference must be exhausted before Judicial Review in the United States Courts may be sought, unless review is specifically required by statute.

§ 400.454 Civil penalties.

(a) Any person who willfully and intentionally provides any false or inaccurate information to FCIC or to any insurer reinsured by the FCIC with respect to an insurance plan or policy may be subject to a civil fine of up to $10,000 for each violation and disqualification from the crop insurance program for a period not to exceed 10 years.

(b) FCIC may make the payment of a civil penalty under this section a prior condition for the issuance, renewal, restoration, or continuing validity of any crop insurance policy or other approval.

(c) FCIC may compromise, modify, settle, collect, or remit with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this section whenever it considers it to be appropriate or advisable.

(d) If a director, officer, or agent of a corporation provides false or inaccurate information, they may be separately subject to the fine specified in paragraph (a) of this section without regard to any penalties to which the corporation may be subject.

(e) The liability of any person for any penalty under this subpart or any related charges arising in connection therewith shall be in addition to any other liability of such person under any civil or criminal fraud statute or any other statute or provision of law.

(f) Proceedings under this § 400.454 will be in accordance with subpart H of 7 CFR part 1, "Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary under Various Statutes," by which the Manager, FCIC, shall initiate proceedings by filing a complaint with the Hearing Clerk, United States Department of Agriculture.

§ 400.455 Governmentwide debarment and suspension (procurement).

(a) This section prescribes the terms and conditions under which persons or business entities may be debarred or suspended by FCIC from contracting with the Federal government.

(b) This section is in accordance with 48 CFR part 9, subpart 9.4 and 48 CFR part 409, subpart 409.4 and shall be applicable to all FCIC debarment and suspension proceedings undertaken pursuant to the Federal Acquisition Regulations, except that the authority to debar or suspend is reserved to the Manager, FCIC, or the Manager's designee.

(c) Any individual or entity suspended or debarred under the provisions of 48 CFR part 9, subpart 9.4 will not be eligible to contract with FCIC or be employed by or contract with any insurance company that sells or adjusts FCIC's crop insurance contracts or which company's crop insurance contracts are reinsured by FCIC. FCIC may waive this provision if it is satisfied that the insurance company has taken sufficient action to insure that the suspended or debarred entity or individual will not be involved, in any way, with FCIC or FCIC reinsured crop insurance contracts.

§ 400.456 Governmentwide debarment and suspension (nonprocurement).

(a) This section prescribes the terms and conditions under which individuals or entities may be debarred or suspended by FCIC from participation in Federal assistance and benefits under Federal programs and activities.

(b) This section, in accordance with 7 CFR part 3017, shall be applicable to all FCIC debarment and suspension proceedings other than those undertaken pursuant to the Federal Acquisition Regulations.

(c) Proceedings under this section are not applicable to determinations of eligibility under the provisions of the crop insurance contracts or determinations to be made under 7 CFR 400.454.

(d) The Manager, FCIC, shall be the debarring and suspending official for all debarment or suspension proceedings undertaken by FCIC under the provisions of 7 CFR part 3017.

§ 400.457 Program Fraud Civil Remedies Act.

(a) This section is in accordance with the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801–U.S.C. 3831) which provides for civil penalties and assessments against persons who make, submit, or present, or cause to be made, submitted, or presented, false, fictitious, or fraudulent claims or written statements to Federal authorities or to their agents.

(b) Proceedings under this section will be in accordance with subpart L of

7 CFR part 1, "Procedures Related to Administrative Hearings Under the Program Fraud Civil Remedies Act of 1986."

(c) The Director, Appeals and Litigation Staff, FCIC, or the Director's designee, is authorized to serve as Agency Fraud Claims Officer for the purpose of implementing the requirements of this section.

§§ 400.458 through 400.499 [Reserved]

§ 400.500 OMB control numbers.

Office of Management and Budget (OMB) control numbers are contained in subpart H of 7 CFR part 400.

Done in Washington, DC, on September 22, 1993.

Bob Nash,

Under Secretary, Small Community and Rural Development.

[FR Doc. 93-25144 Filed 10-13-93; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 906

[Docket No. FV93-906-1IFR; Amendment 1]

Expenses and Assessment Rate for the Marketing Order Covering Oranges and Grapefruit Grown in the Lower Rio Grande Valley in Texas

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule amendment with request for comments.

SUMMARY: This amended interim final rule authorizes an increase in expenses and assessment rate for the Texas Valley Citrus Committee (TVCC) under M.O. No. 906 for the 1993–94 fiscal year. This action will enable the TVCC to incur increased expenses and collect additional assessments that are reasonable and necessary to administer this program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective beginning August 1, 1993, through July 31, 1994. Comments received by November 15, 1993 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this amended interim final rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, Fax # (202) 720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Britthany E. Beadle, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone: (202) 720–5127; or Belinda Garza, McAllen Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1313 East Hackberry, McAllen, Texas 78501, telephone: (210) 682–2833.

SUPPLEMENTARY INFORMATION: This amended interim final rule is issued under Marketing Agreement and Order No. 906 (7 CFR part 906) regulating the handling of oranges and grapefruit grown in the lower Rio Grande Valley in Texas, hereinafter referred to as the order. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This amended interim final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This amended interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, oranges and grapefruit grown in Texas are subject to assessments. It is intended that the assessment rate specified herein will be applicable to all assessable citrus fruit handled during the 1993–94 fiscal year, beginning August 1, 1993, through July 31, 1994. This amended interim final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this amended rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 135 handlers of oranges and grapefruit regulated under the order each season and approximately 2,500 orange and grapefruit producers in Texas. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

The Texas orange and grapefruit marketing order, administered by the Department, requires that the assessment rate for a particular fiscal year apply to all assessable citrus fruit handled from the beginning of such year. Annual budgets of expenses are prepared by the TVCC, the agency responsible for local administration of this order, and submitted to the Department for approval. The members of the TVCC are handlers and producers of Texas oranges and grapefruit. They are familiar with the TVCC's needs and with the costs for goods, services, and personnel in their local area, and are thus in a position to formulate appropriate budgets. The TVCC's budget is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the TVCC is derived by dividing the anticipated expenses by expected shipments of oranges and grapefruit. Because that rate is applied to actual shipments, it must be established at a rate which will provide sufficient income to pay the TVCC's expected expenses.

An interim final rule was issued on July 7, 1993, and published in the **Federal Register** (58 FR 37635, July 13, 1993) effective for the period August 1, 1993, through July 31, 1994, with a 30-day comment period ending August 12, 1993. The interim final rule authorized expenses of $984,319 and an assessment rate of $0.15 per 7/10 bushel carton for the 1993–94 fiscal year. No comments were filed on the expenses and assessment rate in the interim final rule.

The TVCC met again on August 3, 1993, and unanimously recommended increasing authorized expenses to $1,180,925, a $196,606 increase from the currently authorized amount. The TVCC also unanimously recommended increasing the assessment rate from $0.15 per 7/10 bushel carton to $0.18 per 7/10 bushel carton, a $0.03 increase per 7/10 bushel carton from the currently authorized assessment rate.

This amended interim final rule increases authorized expenses to $1,180,925, and increases the assessment rate to $0.18 per 7/10 bushel carton of assessable oranges and grapefruit for the 1993–94 fiscal year under the order. The $196,606 expense increase is necessary to provide additional funds for order operations, including $172,606 to fund increased administrative and compliance expenses, primarily for the maintenance of road guard stations, and $24,000 to cover a shortfall in the Mexican Fruit Fly support program. The increase in the assessment rate along with the withdrawal of additional funds from the committee's reserves, will adequately fund the increased expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs should be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the TVCC and other available information, it is hereby found that this amended rule as hereinafter set forth will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this amended rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because:

(1) The TVCC needs to have sufficient funds to pay its increased expenses which are incurred on a continuous basis;

(2) This interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to any finalization of this action.

List of Subjects in 7 CFR Part 906

Grapefruit, Marketing agreements and orders, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 906 is amended as follows:

PART 906—ORANGES AND GRAPEFRUIT GROWN IN THE LOWER RIO GRANDE VALLEY IN TEXAS

1. The authority citation for 7 CFR part 906 is revised to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 906.233 is revised to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

§ 906.233 Expenses and assessment rate.

Expenses of $1,180,925 by the Texas Valley Citrus Committee are authorized and an assessment rate of $0.18 per 7/10 bushel carton on assessable oranges and grapefruit is established for the fiscal year ending July 31, 1994. Unexpended funds may be carried over as a reserve.

Dated: October 7, 1993.

Robert C Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–25178 Filed 10–13–93; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Parts 907 and 908

[FV93–907–1IFR]

Navel and Valencia Oranges Grown in Arizona and Designated Parts of California; Change in Reporting Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule invites comments on changes to the reporting requirements currently prescribed under the California-Arizona navel and Valencia orange marketing orders. The marketing orders regulate the handling of navel and Valencia oranges grown in Arizona and designated parts of California and are administered locally by the Navel and Valencia Orange Administrative Committees (committees). This rule modifies language in the orders' rules and regulations to discontinue the use of Form 38 (Weekly Report of By-Product Oranges) and specify that Form 3 (Daily Manifest Report of Oranges Subject to Allotment) only be utilized for reporting rail car shipments. These actions will reduce the burden of information collection requirements currently provided for under the marketing orders.

DATES: The interim final rule is effective October 14, 1993; comments received by November 15, 1993, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Caroline C. Thorpe, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, room 2522–S, P.O. Box 96456, Washington, DC 20090–6456: Telephone: (202) 720–5127; or Maureen Pello, California Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California, 93721; telephone: (209) 487–5901.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order Nos. 907 and 908 (7 CFR Parts 907 and 908), as amended, regulating the handling of navel and Valencia oranges grown in Arizona and designated parts of California, hereinafter referred to as the "orders." These orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C 601–674), hereinafter referred to as the "Act."

This rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this action.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 150 handlers of navel oranges and 140 handlers of Valencia oranges who are subject to regulation under the respective marketing order and approximately 4,000 producers of navel oranges and 3,700 producers of Valencia oranges in the regulated areas. In addition, there are about 35 by-product manufacturers that will be affected by this rule. Small agricultural service firms, which includes handlers and by-product manufacturers, have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $3,500,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000. The majority of handlers, producers, and processors of California-Arizona navel and Valencia oranges may be classified as small entities.

This rule invites comments on two changes to the reporting requirements currently prescribed under the California-Arizona orange marketing orders. This rule modifies language in the orders' rules and regulations to discontinue the use of Form 38 (Weekly Report of By-Product Oranges) and specify that Form 3 (Daily Manifest Report of Oranges Subject to Allotment) only be utilized for reporting rail car shipments. These changes were unanimously recommended by the committees.

Sections 907.67 and 908.67 of the navel and Valencia orange marketing orders provide authority for the exemption from order regulation the handling of oranges to commercial processors for processing into products, including juice. Sections 907.131 and 908.131 of the orders' rules and regulations prescribe procedures governing the exemption from order regulation of such by-product oranges. Included in these procedures are certain reporting requirements imposed on handlers and by-product manufacturers to help ensure that order requirements and regulations governing the exemption for by-product oranges are being followed.

For example, persons who wish to acquire oranges as an approved by-products manufacturer for commercial processing into by-products exempt from regulation must submit an application to the committee on Form 14 (Application to be Placed on Approved List of Orange By-Product Manufacturers). These applications are referred to the committees' compliance department for investigation and then, if appropriate, referred to the committee for approval to be placed on an approved list of by-product manufacturers. Commercial processors are also required to submit to the committees copies of Form 15 (Orange Diversion Report) which specify how the oranges were disposed. Finally, approved by-product manufacturers are required to submit Form 38 (Weekly Report of By-Product Oranges) during the crop year when processing is occurring.

The committees have recommended that submission of Form 38 no longer be required under the marketing orders. Submission of Form 38 was added to the orders' rules and regulations in 1990 because the committees believed that the additional information would help to ensure that oranges exempted under the by-products exemption did not enter the fresh fruit market. It was believed that comparisons of the total amount of oranges received by processors with the total amount of by-products manufactured would give the committees a method to verify that all oranges received were manufactured into by-products.

However, the committees have found that the information collected on Form 38 is not necessary to ensure compliance with order requirements. In addition, much of the information currently collected on Form 38 is collected on other reports required to be submitted under the orders. The committees believe that submission of Form 38 creates an additional burden on by-product manufacturers that is not necessary. Thus, the committees have recommended revising the orders' rules and regulations to discontinue the use of Form 38. The Department has also made some minor modifications to §§ 907.131 and 908.131 for the purpose of clarity.

The second change that the committees recommended concerns Form 3 (Daily Manifest Report of Oranges Subject to Allotment). Sections 907.71 and 908.71 of the orange marketing orders provide that handlers furnish to the committees information regarding cartons of oranges handled, segregated by size, within 24 hours of shipment. Handlers must also indicate whether the shipments were destined to points in the U.S. and Alaska or Canada.

Sections 907.141 and 908.141 of the orders' rules and regulations require handlers to submit, on Form 3, a manifest report of all oranges shipped within a 24 hour period. Currently, handlers must indicate both truck and rail car shipments on Form 3. However, identical information regarding truck shipments is also required to be submitted by handlers on Form 8 (Certificate of Assignment of Allotment). According to the committees, this duplication of information creates an added burden for handlers and is not necessary. Thus, the committees have recommended modifying the orders' rules and regulations to require that handlers only report rail car shipments on Form 3. Handlers will still be required to submit rail manifests and other appropriate documentation to the committees to substantiate rail car shipments.

Based on these considerations, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

The information collection requirements contained in the referenced sections have been previously approved by the Office of Management and Budget (OMB) under

the provisions of 44 U.S.C. chapter 35 and have been assigned OMB numbers 0581–0116 for navel oranges and 0581–0121 for Valencia oranges.

This rule will reduce the reporting burden on approximately 25 processors of navel and Valencia oranges who have been completing Form 38, taking about 0.33 hour to complete each report. This rule will also reduce the reporting burden on approximately 210 handlers who ship primarily by truck, taking about 0.40 hour to complete each report. About 80 handlers who ship by rail at some point during a season will continue to use Form 3, taking approximately 0.20 hour to complete the report.

After consideration of all relevant material presented, including the Committee's recommendation, and other available information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because:

(1) Handlers are currently shipping Valencia oranges and will begin shipping navel oranges for the upcoming 1993–94 season in October and this action will reduce the burden of information collection placed on such handlers and on by-product manufacturers;

(2) The committees unanimously recommended this action at public meetings and all interested persons had an opportunity to provide input;

(3) This action relaxes reporting requirements;

(4) California-Arizona orange handlers are aware of this action and need no additional time to comply with the relaxed requirements; and

(5) This rule provides a 30-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Parts 907 and 908

Marketing agreements, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 907 and 908 are amended as follows:

1. The authority citation for both 7 CFR parts 907 and 908 is revised to read as follows:

Authority: 7 U.S.C. 601–674.

[Note: These sections will appear in the annual Code of Federal Regulations.]

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

2. In § 907.131, the first sentence in paragraph (b)(1) is revised to read as set forth below, and paragraph (b)(3)(v) is removed; paragraphs (b)(3)(vi) and (b)(3)(vii) are redesignated as paragraphs (b)(3)(v) and (b)(3)(vi), respectively; paragraphs (b)(4) and (c) are removed, and paragraph (d) is redesignated as paragraph (c).

§ 907.131 By-product oranges.

* * * * *

(b) * * * (1) Any person who desires to acquire oranges as an approved by-products manufacturer for commercial processing into by-products exempt from regulation pursuant to § 907.67(b) must first apply to and obtain approval from the committee. * * *

3. In § 907.141, the first two sentences of paragraph (a) are revised to read as follows:

§ 908.141 Manifest reports.

(a) Within 24 hours after a rail car shipment is made by a handler, the handler shall submit to the committee, on N.O.A.C. Form No. 3, a manifest report of all oranges so shipped. Such report shall show the rail car number for each shipment, together with the quantity by sizes per carton, of each shipment made within the United States or to Canada, or to Alaska. * * *

* * * * *

PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

4. In § 908.131, the first sentence of paragraph (b)(1) is revised to read as set forth below, and paragraph (b)(3)(v) is removed; paragraphs (b)(3)(vi) and (b)(3)(vii) are redesignated as paragraphs (b)(3)(v) and (b)(3)(vi), respectively; paragraphs (b)(4) and (c) are removed, and paragraph (d) is redesignated as paragraph (c).

§ 908.131 By-product oranges.

* * * * *

(b) * * * (1) Any person who desires to acquire oranges as an approved by-products manufacturer for commercial processing into by-products exempt from regulation pursuant to § 908.67(b) must first apply to and obtain approval from the committee. * * *

5. In § 908.141, the first two sentences of paragraph (a) are revised to read as follows:

§ 908.141 Manifest reports.

(a) Within 24 hours after a rail car shipment is made by a handler, the handler shall submit to the committee, on V.O.A.C. Form No. 3, a manifest report of all oranges so shipped. Such report shall show the rail car number for each shipment, together with the quantity by sizes per carton, of each shipment made within the United States or to Canada, or to Alaska. * * *

* * * * *

Dated: October 8, 1993.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–25282 Filed 10–13–93; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Parts 907 and 908

[Docket No. FV93–907–2FR]

Navel and Valencia Oranges Grown in Arizona and Designated Parts of California; Suspension of Volume Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; suspension.

SUMMARY: This action suspends the provisions of the Federal marketing orders (orders) regulating navel and Valencia oranges grown in Arizona and designated parts of California associated with volume regulations. This action is taken in response to evidence of widespread circumvention of the current programs as well as division and turmoil within the orange industry. The suspension will be in effect until a satisfactory resolution of industry differences is achieved.

EFFECTIVE DATE: This action becomes effective on October 14, 1993.

FOR FURTHER INFORMATION CONTACT: Mark A. Hessel, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2522–S, P.O. Box 96456, Washington, D.C. 20090–6456; telephone: (202) 690–0992; or Maureen T. Pello, California Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California, 93721; telephone: (209) 487–5901.

SUPPLEMENTARY INFORMATION: This action is issued under Marketing Order Nos. 907 and 908 (7 CFR parts 907 and 908), as amended, regulating the handling of navel and Valencia oranges grown in Arizona and designated parts of California, hereinafter referred to as the "orders." These orders are effective under the Agricultural Marketing

Agreement Act of 1937, as amended (7 U.S.C 601–674), hereinafter referred to as the "Act."

This action has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This action has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this action.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 130 handlers of navel oranges and 125 handlers of Valencia oranges who are subject to regulation under the respective marketing orders and approximately 4,000 producers of navel oranges and 3,700 producers of Valencia oranges in the regulated areas. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of producers and handlers of California-Arizona navel and Valencia oranges may be classified as small entities.

The orders regulate the handling of navel and Valencia oranges grown in Arizona and parts of California. Both orders provide, among other things, for weekly volume regulations by district as needed throughout the marketing year.

This action suspends, for an indefinite period, certain provisions of the orders associated with volume regulations. Specifically, such provisions of the orders are found in §§ 907.13, 907.14, 907.50, 907.51, 907.52, 907.53, 907.54, 907.55, 907.56, 907.57, 907.59, 907.60, 907.61, 907.61a, 907.62, 907.64, 907.65, 907.80, 907.108, 907.110, 907.111, 907.113, 907.114, 907.116, 907.117, 907.120, 907.131, 907.133, 908.14, 908.15, 908.50, 908.51, 908.52, 908.54, 908.55, 908.56, 908.57, 908.59, 908.60, 908.61, 908.61a, 908.62, 908.64, 908.65, 908.80, 908.108, 908.110, 908.111, 908.113, 908.114, 908.116, 908.117, 908.120, 908.131, and 908.133. Several other volume provisions which also provide the committees information useful for statistical purposes, marketing evaluation, and assessments are not being suspended.

On June 18, 1993, the Secretary announced in a press release that the substantial number of lawsuits associated with the orders indicates that the orders are not working as well as they should and that these lawsuits have hurt growers, pickers, packers, and consumers. Most of these lawsuits involve the volume regulation provisions of the orders. Scrutiny of the orders resulting from the lawsuits indicates that there is widespread circumvention of the current order regulations and that there is division and turmoil within the orange industry related to orange marketing orders and volume controls. The widespread circumvention of volume regulations decreases the effectiveness of the orders in providing for orderly marketing and improved producer returns. The Department is therefore suspending the volume regulation provisions of the orders until a satisfactory resolution of industry differences is achieved.

The information collection requirements contained in the referenced sections have been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB numbers 0581–0116 for navel oranges and 0581–0121 for Valencia oranges.

Based on available information, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

Thus, it is found that the provisions detailed below, at this time, do not tend to effectuate the declared policy of the Act.

It is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice or to engage in further public procedure prior to putting this action into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication because: (1) Growers and handlers are aware of this action since it was announced in a press release issued by the Secretary on June 18, 1993; (2) this action relieves restrictions on handlers by suspending the volume requirements regulating the handling of oranges pursuant to the orders; and (3) no useful purpose would be served by delaying this action.

List of Subjects in 7 CFR Parts 907 and 908

Marketing agreements, Oranges, Reporting and recordkeeping requirements.

Accordingly, 7 CFR parts 907 and 908 are amended as follows:

1. The authority citation for 7 CFR parts 907 and 908 continues to read as follows:

Authority: 7 U.S.C. 601–674.

Note: The following sections will appear in the Code of Federal Regulations.

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

§§ 907.13 and 907.14 [Suspended]

2. Sections 907.13 and 907.14, are suspended in their entirety.

§ 907.50 [Suspended in Part]

3. Paragraph (a)(3) of § 907.50 is suspended in its entirety.

§ 907.5 [Suspended in Part]

4. In the heading for § 907.51, the word "volume" is suspended.

5. Paragraph (a) of § 907.51 is suspended in its entirety.

6. In the introductory text of paragraph (b) of § 907.51, the words "shall provide equity of marketing opportunity to handlers in all districts and" are suspended.

7. Paragraphs (c) and (d) in § 907.51 are suspended in their entirety.

§ 907.52 [Suspended]

8. Section 907.52 is suspended in its entirety.

§ 907.53 [Suspended in Part]

9. In paragraph (a) of § 907.53, the words "and for allotments" are suspended.

10. In paragraph (e) of § 907.53, in the second sentence, the words "If it is determined by the committee that any person who has lost control of oranges as required by paragraph (c) of this section has handled a quantity of such oranges less than the quantity that could have been handled under the allotments issued thereon, the quantity of oranges available for current shipment by such person shall be adjusted by deducting therefrom, over such period as may be determined by the committee a quantity of oranges equivalent to the quantity upon which allotments were issued but which were not utilized thereon and," are suspended.

11. In paragraph (f) of § 907.53, the words "or has remaining a quantity smaller than his allotment" and the words "so that his allotment based thereon shall not exceed the quantity of oranges remaining under his control; except that he shall receive his allotments on his full prorate base to the extent necessary to pay back loans for which he is obligated in any week that repayment of loans may be due" are suspended.

12. In paragraph (h) of § 907.53, in the first sentence, the words "Each week during the marketing season when volume regulation is likely to be recommended," and the words "and for allotments" are suspended.

§§ 907.54–907.57, 907.59–907.61a [Suspended]

13. Sections 907.54, 907.55, 907.56, 907.57, 907.59, 907.60, 907.61, 907.61a are suspended in their entirety.

§ 907.62 [Suspended in Part]

14. In § 907.62, the words "and allotments" are suspended.

§ 907.64 [Suspended in Part]

15. In § 907.64, in the second sentence, the words "weekly allotment issued to such handler when volume regulation is in effect, and the" and the words "when volume regulation is not in effect" are suspended.

§ 907.65 [Suspended in Part]

16. In § 907.65, the third sentence "Shipments of oranges under exemption certificates issued pursuant to this section shall be subject to and limited by such regulations as may be effective under § 907.52 at the time of the respective shipment." is suspended.

§ 907.80 [Suspended in Part]

17. In § 907.80, the words "no person shall handle oranges during any week in which a regulation issued by the Secretary pursuant to § 907.52 is in effect, unless such oranges are, or have been, handled pursuant to an allotment therefor, or unless such person is otherwise permitted to handle such oranges under the provisions of this part; and" are suspended.

§ 907.108 [Suspended in Part]

18. In paragraph (a) of § 907.108, the words "and allotments" are suspended.

19. In paragraph (c) of § 907.108 the last sentence reading "Such quantity shall be added during the same periods in which the deductions are effected in accordance with the provisions of paragraph (d) of this section." is suspended.

20. Paragraphs (d) and (e) of § 907.108 are suspended in their entirety.

§§ 907.110 and 907.111; 907.113 and 907.114; and 907.116 and 907.117 [Suspended]

21. Sections 907.110, 907.111, 907.113, 907.114, 907.116, and 907.117, of the Subpart Rules and Regulations are suspended in their entirety.

§ 907.120 [Suspended in Part]

22. In paragraph (e) of § 907.120 the first sentence "If volume regulation is in effect at the time exemption certificates are issued, such exemption certificates may be used only to the extent that allotment has been issued under volume regulations for the oranges covered thereby." and the words "subject to the handler's allotment under volume regulation," in the last sentence, are suspended.

§ 907.131 [Suspended in Part]

23. In paragraph (a) of § 907.131 the words "(1) such oranges, are, or have been, handled pursuant to an allotment therefor; or (2)" are suspended.

§ 907.133 [Suspended in Part]

24. In the first sentence of paragraph (a) of § 907.133, the words "volume or" are suspended.

§ 907.133 [Suspended in Part]

25. In the penultimate sentence of paragraph (a) of § 907.133, the words "volume or" are suspended.

§ 907.133 [Suspended in Part]

26. In paragraph (c) of § 907.133, in the first sentence, the words "volume and" are suspended.

PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

§§ 908.14 and 908.15 [Suspended]

27. Sections 908.14 and 908.15 are suspended in their entirety.

§ 908.50 [Suspended in Part]

28. Paragraph (a)(3) of § 908.50 is suspended in its entirety.

§ 908.51 [Suspended in Part]

29. In the heading for § 908.51, the word "volume" is suspended.

30. Paragraph (a) of § 908.51 is suspended in its entirety.

31. In the introductory text of paragraph (b) of § 908.51, the words "shall provide equity of marketing opportunity to handlers in all districts and" are suspended.

32. Paragraphs (c) and (d) in § 908.51 are suspended in their entirety.

§ 908.52 [Suspended]

33. Section 908.52 is suspended in its entirety.

§ 908.53 [Suspended in Part]

34. In paragraph (a) of § 908.53, the words "and for allotments" are suspended.

35. In paragraph (e) of § 908.53, in the second sentence, the words "If it is determined by the committee that any person who has lost control of oranges as required by paragraph (c) of this section has handled a quantity of such oranges less than the quantity that could have been handled under the allotments issued thereon, the quantity of oranges available for current shipment by such person shall be adjusted by deducting therefrom, over such period as may be determined by the committee a quantity of oranges equivalent to the quantity upon which allotments were issued but which were not utilized thereon and," are suspended.

36. In paragraph (f) of § 908.53, the words "or has remaining a quantity smaller than his allotment" and the words "so that his allotment based thereon shall not exceed the quantity of oranges remaining under his control; except that he shall receive his allotments on his full prorate base to the extent necessary to pay back loans for which he is obligated in any week that repayment of loans may be due" are suspended.

37. In paragraph (h) of § 908.53, in the first sentence, the words "Each week during the marketing season when volume regulation is likely to be recommended," and the words "and for allotments" are suspended.

§§ 908.54-908.57 and 908.59-908.61a [Suspended]

38. Sections 908.54, 908.55, 908.56, 908.57, 908.59, 908.60, 908.61, 908.61a are suspended in their entirety.

§ 908.62 [Suspended in Part]

39. In § 908.62, the words "and allotments" are suspended.

§ 908.64 [Suspended in Part]

40. In § 908.64, the words "weekly allotment issued to such handler when volume regulation is in effect, and the" and the words "when volume regulation is not in effect" are suspended.

§ 908.65 [Suspended in Part]

41. In § 908.65, the third sentence, "Shipments of oranges under exemption certificates issued pursuant to this section shall be subject to and limited by such regulations as may be effective under § 908.52 at the time of the respective shipment." is suspended.

§ 908.80 [Suspended in Part]

42. In § 908.80, the words "no person shall handle oranges during any week in which a regulation issued by the Secretary pursuant to § 908.52 is in effect, unless such oranges are, or have been, handled pursuant to an allotment therefor, or unless such person is otherwise permitted to handle such oranges under the provisions of this part; and" are suspended.

§ 908.108 [Suspended in Part]

43. In paragraph (a) of § 908.108, the words "and allotments" are suspended.

44. In paragraph (b) of § 908.108 the last sentence reading "Such quantity shall be added during the same periods in which the deductions are effected in accordance with the provisions of paragraph (c) of this section." are suspended.

§ 908.108 [Suspended in Part]

45. Paragraphs (c) and (d) of § 908.108 are suspended in their entirety.

§§ 908.110 and 908.111; 908.113 and 908.114; and 908.116 and 908.117 [Suspended]

46. Sections 908.110, 908.111, 908.113, 908.114, 908.116, and 908.117, of the Subpart Rules and Regulations are suspended in their entirety.

§ 908.120 [Suspended in Part]

47. In paragraph (e) of § 908.120 the first sentence "If volume regulation is in effect at the time exemption certificates are issued, such exemption certificates may be used only to the extent that allotment has been issued under volume regulations for the oranges covered thereby." and the words "subject to the handler's allotment under volume regulation," are suspended.

§ 908.131 [Suspended in Part]

48. In paragraph (a) of § 908.131 the words "(1) such oranges, are or have been, handled pursuant to an allotment therefor; or (2)" are suspended.

§ 908.133 [Suspended in Part]

49. In the first sentence of paragraph (a) of § 908.133, the words "volume or" and "or both" are suspended.

50. In the penultimate sentence of paragraph (a) of § 908.133, the words "volume or" are suspended.

51. In paragraph (b) of § 908.133, the words "volume and" are suspended in both places where they appear.

52. In paragraph (c) of § 908.133, the words "volume and" are suspended.

Dated: October 4, 1993.

Patricia Jensen,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93-25077 Filed 10-13-93; 8:45 am]

BILLING CODE 3410-02-P

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7 CFR Part 928

[Docket No. FV93-928-2; Amendment 1]

Expenses and Assessment Rate for Papayas Grown in Hawaii

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This amended interim final rule authorizes a decrease in expenses and reduces the assessment rate established for the 1993-94 fiscal year under Marketing Order No. 928. This action will enable the Papaya Administrative Committee (PAC) to decrease expenses and assessment rate in a reasonable manner necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective July 1, 1993, through June 30, 1994. Comments received by November 15, 1993, will be considered prior to any finalization of this interim final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456, or by Facsimile (202) 720-5698. Three copies of all written material shall be submitted, and they will be made available for public inspection in the office of the Docket Clerk during regular business hours. All comments should reference the docket number, date, and page number of this issue of the Federal Register.

FOR FURTHER INFORMATION CONTACT: Britthany E. Beadle, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone: (202) 720-5127; or Kurt J. Kimmel, California Marketing Field Office, Fruit & Vegetable Division, AMS, USDA, 2202 Monterey Street, suite 102 B, Fresno, California 93721, telephone: (209) 487-5901.

SUPPLEMENTARY INFORMATION: This amended interim final rule is issued under Marketing Agreement and Marketing Order No. 928, as amended (7 CFR part 928), regulating the handling of papayas grown in Hawaii, hereinafter referred to as the order. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This amended rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This amended interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, papayas grown in Hawaii are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable papayas handled during the 1993-94 fiscal year, beginning July 1, 1993, through June 30, 1994. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his/her principal place of business, has jurisdiction in

equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 120 papaya handlers subject to regulation under the marketing order covering fresh papayas grown in Hawaii, and approximately 300 producers of papayas in Hawaii. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

This marketing order, administered by the Department, requires that the assessment rate for a particular fiscal period shall apply to all assessable papayas handled from the beginning of such period. An annual budget of expenses and an assessment rate is prepared by the PAC and submitted to the Department for approval. The PAC members are handlers and producers of Hawaii papayas. They are familiar with the PAC's needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate appropriate budgets. The budget is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the PAC is derived by dividing anticipated expenses by the expected pounds of fruit shipped. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the PAC's expected expenses. The annual budget and assessment rate are usually recommended by the PAC shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the PAC will have funds to pay its expenses.

An interim final rule was issued on June 14, 1993, and published in the **Federal Register** (58 FR 33759, June 21, 1993) effective for the period July 1, 1993, through June 30, 1994, with a 30-day comment period ending July 21, 1993. The interim final rule authorized expenses of $700,580 and an assessment rate of $0.0085 per pound of fresh papayas for the 1993–94 fiscal year. No comments were filed on the expenses and assessment rate in the interim final rule.

However, the PAC met again on August 13, 1993, and unanimously recommended decreasing authorized expenses from $700,580 to $597,860, a $102,720 decrease in expenses from the authorized amount. The PAC also unanimously recommended decreasing the assessment rate from $0.0085 to $0.0069, a $0.0016 decrease in the assessment rate, based upon 58 million pounds of fresh papayas, from the currently authorized assessment rate.

This amended interim final rule decreases authorized expenses to $597,860, and reduces the assessment rate to $0.0069 per pound of fresh papayas for the 1993–94 fiscal year under the order. Program income for the PAC is expected to decrease from $701,660 to $599,356, a $102,304 decrease from the previous estimate. Major program income reductions come from a $92,800 decrease in assessment income due to the lower assessment rate and a $9,504 reduction in income from the Department's Foreign Agricultural Service.

The $102,720 decrease in expenses results from expense reductions. Major expense reductions include $60,600 in salaries and wages, $18,100 in office rent, $17,300 in auto expenses, and $9,500 in Japanese advertising and promotion. The projected income over expenses has increased from $1,080 to $1,496, a $416 increase from the current amount. The excess funds will be added to the PAC's operational reserve.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant material presented, including the information and recommendation submitted by the PAC and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because:

(1) This action authorizes a decrease in expenses and reduces the assessment rate established for the 1993–94 fiscal year and should be made effective as soon as possible;

(2) This interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 928

Marketing agreements, Papayas, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 928 is amended as follows:

PART 928—PAPAYAS GROWN IN HAWAII

1. The authority citation for 7 CFR Part 928 is revised to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 928.233 is revised to read as follows.

Note: This section will not appear in the annual Code of Federal Regulations.

§ 928.233 Expenses and Assessment Rate.

Expenses of $597,860 by the Papaya Administrative Committee are authorized and an assessment rate of $0.0069 per pound on assessable papayas is established for the fiscal year ending June 30, 1994. Unexpended funds may be carried over as a reserve.

Dated: October 7, 1993.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–25177 Filed 10–13–93; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 931

[Docket No. FV93–931–1FIR]

Fresh Bartlett Pears Grown in Oregon and Washington; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting without change, the provisions of the interim final rule that authorized expenses and established an assessment rate for the Northwest Fresh Bartlett Pear Marketing Committee (Committee) under M.O. 931 for the 1993–94 fiscal year. Authorization of this budget enables the Committee to incur expenses that are reasonable and necessary to administer the program. Funds to administer the program are derived from assessments on handlers.

EFFECTIVE DATE: July 1, 1993, through June 30, 1994.

FOR FURTHER INFORMATION CONTACT: Britthany E. Beadle, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone: 202–720–5127; or Teresa L. Hutchinson, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, Green-Wyatt Federal Building, room 369, 1220 Southwest Third Avenue, Portland, Oregon 97204, telephone: 503–326–2724.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 141 and Marketing Order No. 931, both as amended (7 CFR part 931), regulating the handling of fresh Bartlett pears grown in Oregon and Washington. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order now in effect, Bartlett pears grown in Oregon and Washington are subject to assessments. Funds to administer the Bartlett pear marketing order are derived from such assessments. It is intended that the assessment rate as specified herein will be applicable to all assessable pears during the 1993–94 fiscal period beginning July 1, 1993, through June 30, 1994. This final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 65 handlers regulated under the marketing order each year and approximately 1,800 producers of Bartlett pears. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of Bartlett pear handlers and producers in Oregon and Washington may be classified as small entities.

The budget of expenses for the 1993–94 fiscal period was prepared by the Northwest Fresh Bartlett Pear Marketing Committee (Committee), the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Committee are producers and handlers of Bartlett pears. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of fresh Bartlett pears grown in Oregon and Washington. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

The Committee met on June 3, 1993, and unanimously recommended a 1993–94 budget of $112,425, which is $3,965 less than the previous year. Decreases in budgeted expenses include those for Committee meetings and the contingency fund. These decreases will be partially offset by increases in salaries, benefits, unemployment, and payroll taxes.

The Committee also unanimously recommended an assessment rate of $0.025 per standard box, or equivalent, the same as last season. This rate, when applied to anticipated pear shipments of 2,673,400 standard boxes, will yield $66,835 in assessment income. Assessment income, combined with $5,100 from other income, and $40,490 from the Committee's authorized reserve, will be adequate to cover budgeted expenses. The withdrawal of $40,490 from the Committee's authorized reserve will result in no reserve remaining at the end of the 1993–94 fiscal year.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

An interim final rule was published in the **Federal Register** (58 FR 40720, July 30, 1993) and provided a 30-day comment period for interested persons. No comments were received.

It is found that the expenses for the marketing order covered in this rule are reasonable and likely to be incurred and that such expenses and assessment rate to cover such expenses will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the Committee need to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1993–94 fiscal year for the program began on July 1, 1993. The marketing order requires that the rate of assessment for the fiscal year apply to all assessable Bartlett pears handled during the fiscal year. In addition, handlers are aware of this action which was recommended by the Committee at a public meeting and published in the **Federal Register** as an interim final rule. No comments were received concerning the interim final rule that is adopted in this action as a final rule without change.

List of Subjects in 7 CFR Part 931

Marketing agreements, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 931 is amended as follows:

PART 931—FRESH BARTLETT PEARS GROWN IN OREGON AND WASHINGTON

1. The authority citation for 7 CFR part 931 is revised to read as follows:

Authority: 7 U.S.C. 601–674.

2. The interim final rule adding § 931.228 which was published at 58 FR 40721, is adopted as a final rule without change.

Dated: October 7, 1993.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–25176 Filed 10–13–93; 8:45 am]

BILLING CODE 3410-02-P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 101

Administration; Correction

AGENCY: Small Business Administration.

ACTION: Final rule; correction.

SUMMARY: This document corrects errors in the final rule which appeared in the **Federal Register**, on August 23, 1993, at 58 FR 44436, which amended the delegation of authority granting loan approval authority and authority to approve guaranties of section 503 and section 504 debentures issued by certified development companies. However, the final rule listed incorrectly the value of guaranties of section 503 or 504 debentures issued by certified development companies that certain SBA officials may approve or decline. This document will correct those errors.

FOR FURTHER INFORMATION CONTACT: Charles R. Hertzberg, Assistant Administrator for Financial Assistance, (202) 205–6490.

SUPPLEMENTARY INFORMATION: On August 23, 1993, SBA published a final rule which amended the delegation of authority granting, inter alia, loan approval authority and authority to approve guaranties of section 503 and section 504 debentures issued by certified development companies. (58 FR 44436)

SBA is publishing this document to correct errors contained in the final rule. Specifically, the final rule listed incorrectly the value of guaranties of section 503 and section 504 debentures issued by certified development companies that may be approved or denied by the following SBA officials: Branch Manager; Chief, Financing, D/O; and Assistant Branch Manager for Finance & Investment (F&I). The amounts listed in amendment number 3 (58 FR 44437, first column) should read as follows:

PART III—OTHER FINANCIAL AND GUARANTY PROGRAMS

Section A—Section 503/504 Debenture Guaranty Approval Authority (Small Business Investment Act)

1. Section 503/504 Certified Development Company Debenture Guaranty Approval Authority (SBI Act). To approve or decline guaranties of section 503 or section 504 debentures issued by certified development companies not exceeding the following amount (SBA share) for each small business being assisted:

(1) Regional Administrator	$1,000,000
(2) ARA/F&I	1,000,000
(3) District Director	1,000,000
(4) Deputy District Director	1,000,000
(5) ADD/F&I	1,000,000
(6) Branch Managers	600,000
(7) Chief, Financing	600,000
(8) Assistant Branch Managers/F&I	600,000

* * * * *

Dated: October 6, 1993.

Erskine B. Bowles,

Administrator.

[FR Doc. 93–25234 Filed 10–13–93; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–SW–10–AD; Amendment 39–8630; AD 93–14–06]

Airworthiness Directives; Schweizer Aircraft Corp. and Hughes Helicopters, Inc., Model 269A, 269A–1, 269B, 269C, and TH–55A Series Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing priority letter airworthiness directive (AD), applicable to Schweizer Aircraft Corporation and Hughes Helicopters, Inc. Model 269A, 269A–1, 269B, 269C, and TH–55A series helicopters equipped with certain main rotor (M/R) drive shafts (drive shafts) that currently requires, for specified conditions, an immediate visual inspection of the M/R drive shaft for cracks, distortion, corrosion, or other surface damage. This amendment requires a one-time inspection of certain groups of drive shafts and replaces the visual inspection requirements with a non-destructive inspection (NDI) requirement. This amendment is prompted by an accident resulting from a structural failure of a drive shaft and reports of tooling marks on the inside surface of certain groups of drive shafts. The actions specified by this AD are intended to prevent failure of the M/R drive shaft, separation of the M/R from the helicopter, and subsequent loss of control of the helicopter.

DATES: Effective October 29, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 29, 1993.

Comments for inclusion in the Rules Docket must be received on or before December 13, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–SW–10–AD, 4400 Blue Mound Road, Fort Worth, Texas 76106.

The service information referenced in this AD may be obtained from Schweizer Aircraft Corporation, P.O. Box 147, Elmira, New York 14902. This information may be examined at the FAA, Office of the Assistant Chief Counsel, 4400 Blue Mound Road, bldg. 3B, room 158, Fort Worth, Texas; or at

the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond J. O'Neill, Aerospace Engineer, New York Aircraft Certification Office, ANE–170, FAA, New England Region, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581, telephone (516) 791–7422, fax (516) 791–9024.

SUPPLEMENTARY INFORMATION: On December 3, 1992, the FAA issued Priority Letter AD 92–25–14, to require, when there are persistent vibrations or an inability to track and balance the main rotor (M/R), immediate inspection of the M/R drive shaft (drive shaft) for cracks, distortion, corrosion, or other surface damage. That action was prompted by an accident resulting from a drive shaft structural failure and resulting in a loss of the helicopter and two fatalities. An investigation revealed that the drive shaft severed just below the M/R thrust bearing. That condition, if not corrected, could result in a structural failure of the drive shaft, separation of the M/R from the helicopter and subsequent loss of control of the helicopter.

Since the issuance of that AD, there have been reports of stress concentrations caused by deep tooling marks on the inside surface of the drive shaft caused during manufacture. On January 27, 1993, Schweizer Aircraft Corporation instituted a special ultrasonic non-destructive inspection (NDI) for M/R drive shafts. To date, Schweizer Aircraft Corporation reports that five defective drive shafts have been found by using this special inspection. These defective drive shafts had serial numbers higher than S1111.

The FAA has reviewed and approved Schweizer Service Bulletin B–255.1, dated February 1, 1993, (SB) that describes procedures for conducting visual and non-destructive inspections.

Since an unsafe condition has been identified that is likely to exist or develop on other helicopters of this same type design, this AD supersedes Priority Letter AD 92–25–14 to require either an ultrasonic or a radiographic inspection of certain M/R drive shafts as prescribed in the AD. The required actions are to be accomplished in accordance with the service bulletin described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "**ADDRESSES.**" All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–SW–10–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [AMENDED]

2. Section 39.13 is amended by adding a new airworthiness directive (AD), Amendment 39–8630, to read as follows:

AD 93–14–06 Schweizer Aircraft Corporation and Hughes Helicopters, Inc.: Amendment 39–8630. Docket Number 93–SW–10–AD. Supersedes Priority Letter AD 92–25–14, issued December 3, 1992, Docket Number 92–ASW–48.

Applicability: Model 269A, 269A–1, 269B, 269C, and TH–55A series helicopters, equipped with main rotor (M/R) drive shafts, part number (P/N) 269A5305–3 and –11, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent structural failure of the M/R drive shaft, that could result in separation of the M/R from the helicopter and subsequent loss of control of the helicopter, accomplish the following:

(a) Inspect the M/R drive shaft, P/N 269A5305–3 and 269A5305–11, except those that have a serial number with a prefix of "SZ" or "ZS", for cracks, distortion, corrosion, or other surface damage using either the radiographic inspection procedure or the non-destructive inspection procedure in accordance with Part I of Schweizer Service Bulletin B–255.1, dated February 1, 1993 (SB). Conduct this inspection at the time intervals and under the conditions stated in the following:

(1) Inspect M/R drive shafts with serial numbers (S/N) S0001 through S1111 and any

drive shaft without an "S" prefix on the S/N, having less than 1,100 hours' time-in-service on the effective date of this AD—

(i) At the next removal of the drive shaft;

(ii) Within the next 600 hours' time-in-service;

(iii) Prior to attaining 1,200 hours' total time-in-service; or

(iv) Within one year after the effective date of this AD, whichever occurs earlier.

(2) Inspect M/R drive shafts with S/N S0001 through S1111 and any drive shaft without an "S" prefix on the S/N with 1,100 hours' or more time-in-service on the effective date of this AD—

(i) Within the next 100 hours' time-in-service; or

(ii) At the next removal of the drive shaft; or

(iii) Within one year after the effective date of this AD, whichever occurs earlier.

(3) Inspect Model 269C M/R drive shafts with S/N S1112 and higher, regardless of the number of the total hours' time-in-service on the effective date of this AD—

(i) Within the next 25 hours' time-in-service;

(ii) At the next removal of the drive shaft; or

(iii) Within one year after the effective date of this AD, whichever occurs earlier.

(4) Inspect the M/R drive shaft before further flight if main rotor vibrations occur that cannot be corrected with track and balance procedures, or if main rotor track and balance procedures are required more than once in a 25 hour time-in-service interval.

(b) Inspect any replacement M/R drive shaft prior to installation in accordance with the procedures in Part I of the SB.

(c) Replace any unairworthy M/R drive shaft with an airworthy M/R drive shaft before further flight.

(d) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, New York Aircraft Certification Office, FAA, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, New York Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York Aircraft Certification Office.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199, only for those helicopters that do not exhibit M/R vibrations, or uncorrected out-of-track or out-of-balance condition specified in paragraph (b) of this AD. The special flight permit allows flight of the helicopter to a location where the requirements of this AD can be accomplished.

(f) The inspections shall be done in accordance with Schweizer SB B–255.1, dated February 1, 1993. This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Schweizer Aircraft Corporation, P.O. Box 147, Elmira, New York 14902. Copies may be inspected at the FAA, Office of the Assistant Chief Counsel, 4400 Blue Mound Road, bldg. 3B, room 158, Fort Worth, Texas; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on October 29, 1993.

Issued in Fort Worth, Texas, on July 13, 1993.

James D. Erickson,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 93–25200 Filed 10–13–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 71

[Airspace Docket No. 93–AWP–9]

Establishment of VOR Federal Airway V–597; CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes VOR Federal Airway V–597 between the San Marcus, CA, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) and the Mission Bay, CA, VORTAC. Pilots are presently issued several airway segments from San Marcus to Mission Bay. The establishment of this airway will provide pilots with one airway segment between the two points, improve traffic flow, and reduce controller workload.

EFFECTIVE DATE: 0901 UTC, January 6, 1994.

FOR FURTHER INFORMATION CONTACT: Norman W. Thomas, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9230.

SUPPLEMENTARY INFORMATION:

History

On June 15, 1993, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish VOR Federal Airway V–597 between the San Marcus, CA, VORTAC and the Mission Bay, CA, VORTAC (58 FR 33053). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Domestic VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The airway listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes VOR Federal Airway V–597 between the San Marcus, CA, VORTAC and the Mission Bay, CA VORTAC. Pilots are presently issued several airway segments from San Marcus to Mission Bay. The establishment of this airway will provide pilots with one airway segment between the two points. This action improves traffic flow and reduces controller workload.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6010(a)—Domestic VOR Federal Airways

* * * * *

V–597 [New]

From San Marcus, CA; Fillmore, CA; Van Nuys, CA; INT Van Nuys 100° and Seal Beach, CA, 334° radials; Seal Beach; Oceanside, CA; to Mission Bay, CA.

* * * * *

Issued in Washington, DC, on October 7, 1993.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 93–25213 Filed 10–13–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 92–ANM–10]

Amendment of Class D Airspace; Fort Carson, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Butts Army Airfield, Fort Carson, Colorado, Class D airspace. This action will provide additional controlled airspace for a new instrument approach procedure. The Class D airspace will be depicted on aeronautical charts for pilot reference.

EFFECTIVE DATE: 0901 UTC, January 6, 1994.

FOR FURTHER INFORMATION CONTACT: Ted Melland, ANM–536, Federal Aviation Administration, Docket No. 92–ANM–10, 1601 Lind Avenue SW., Renton, Washington 98055–4056, Telephone: (206) 227–2536.

SUPPLEMENTARY INFORMATION:

History

Development of a new instrument approach procedure to Butts Army Airfield, Fort Carson, Colorado, requires additional controlled airspace for the new procedure.

On September 2, 1992, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Class D airspace for the Butts Army Airfield, Fort Carson, Colorado, (57 FR 40152).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. The Air Transport Association concurred with the proposal. No other comments were received.

Airspace reclassification, in effect since September 16, 1993, discontinued the use of the terms "control zone" and "control zone extensions" and replaced them with the designation "Class D airspace" for airspace extending upward from ground level. Other than that change in terminology, this amendment is the same as that proposed in the notice. The geographical coordinates are in North American datum 83. Class D airspace designations are published in Paragraph 5000 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298 July 6, 1993). The Class D airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations amends Class D airspace at Fort Carson, CO, to provide additional controlled airspace for a new instrument approach procedure at Butts Army Airfield. The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 5000 General

* * * * *

ANM CO D Fort Carson CO [Revised]

Butts Army Airfield, CO
(Lat. 38°41'07" N, long. 104°45'54" W)
Iron Horse NDB, CO
(Lat. 38°40'42" N, long. 104°45'14" W)
Colorado Springs Municipal Airport, CO
(Lat. 38°48'42" N, long. 104°42'42" W)

That airspace extending upward from the surface to but not including 8,400 feet MSL within a 4.3-mile radius of Butts Army Airfield and within 2.2 miles each side of the 146° bearing from the Iron Horse NDB extending from the 4.3-mile radius to 5 miles southeast of the airfield, excluding the Colorado Springs Airport Class C airspace. This Class D airspace is effective during the specific dates and times established in advance by Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Director.

* * * * *

Issued in Seattle, Washington, on September 17, 1993.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division.

[FR Doc. 93–25209 Filed 10–13–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 92–ANM–9]

Amendment of Class E Airspace; Akron, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Akron, Colorado, Class E airspace. This action is necessary to provide additional controlled airspace for a new instrument approach procedure at the Akron-Washington County Airport. The Class E airspace will be depicted on aeronautical charts for pilot reference.

EFFECTIVE DATE: 0901 UTC, January 6, 1994.

FOR FURTHER INFORMATION CONTACT: Ted Melland, ANM–536, Federal Aviation Administration, Docket No. 92–ANM–9, 1601 Lind Avenue SW., Renton, Washington 98055–4056, Telephone: (206) 227–2536.

SUPPLEMENTARY INFORMATION:

History

Construction of a new runway, and abandonment of the previous runway, required development of a new

instrument approach procedure at the Akron-Washington County Airport. This process requires amendment of controlled airspace for the new approach procedure.

On September 2, 1993, the FAA proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Akron, Colorado Transition Area (Class E airspace) (57 FR 40153).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. The Air Transport Association of America concurred with the proposal. No other comments were received.

Airspace reclassification, in effect since September 16, 1993, discontinued the use of the term "transition area" and replaced it with the designation "Class E airspace" for airspace extending upward from 700 feet or more above ground level. Other than that change in terminology, this amendment is the same as that proposed in the notice. The coordinates in the proposal and in this final rule are in North American datum 83. Class E airspace designations for airspace extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations amends Class E airspace at Akron, Colorado, to provide additional controlled airspace for a new instrument approach procedure.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005 Class E Airspace Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

ANM CO E5 Akron, CO [Revised]

Akron, Akron-Washington County Airport, CO
(Lat. 40° 10′32″ N, long. 103°13′20″ W)
Akron VORTAC
(Lat. 40°09′20″ N, long. 103°10′47″ W)

That airspace extending upward from 700 feet above the surface within a 6.1-mile radius of the Akron-Washington County Airport, and that airspace extending upward from 1,200 feet above the surface within an area bounded by a point beginning at lat. 40°06′35″ N, long. 102°37′19″ W; to lat. 39°42′28″ N, long. 102°58′15″ W; to lat. 40°00′15″ N, long. 103°33′32″ W; to lat. 40°24′30″ N, long. 103°13′52″ N; thence to point of beginning.

* * * * *

Issued in Seattle, Washington, on September 17, 1993.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division.

[FR Doc. 93–25210 Filed 10–13–93; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 806

[Docket No. 930507–3237]

RIN 0691–AA20

Direct Investment Surveys; Raising the Exemption Level of the BE–15(LF) Long Form of the Annual Survey of Foreign Direct Investment in the United States

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations on direct investment surveys by raising the exemption level for filing the long form of the BE–15, Annual Survey of Foreign Direct Investment in the United States. Under the new rule, the exemption level for filing the long form—Form BE–15(LF)—is raised from $20 million to $50 million. Thus, foreign-owned U.S. firms with assets, sales, and net income between $20 million and $50 million that previously had to file the long form will now file the more abbreviated short form (Form BE–15(SF)). The survey's overall exemption level below which no reporting is required will remain at $10 million.

EFFECTIVE DATE: This rule will be effective November 15, 1993.

FOR FURTHER INFORMATION CONTACT: Betty L. Barker, Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 606–9800.

SUPPLEMENTARY INFORMATION: In the July 16, 1993 **Federal Register**, Volume 58, No. 135, 58 FR 38324, the Bureau of Economic Analysis (BEA) published a notice of proposed rulemaking that would raise the exemption level for filing the long form of the BE–15, Annual Survey of Foreign Direct Investment in the United States, from $20 million to $50 million. No comments on the proposed rule were received. Thus, this final rule is the same as the proposed rule.

The final rule will bring reporting by nonbank U.S. affiliates in the BE–15 annual survey into closer conformity with their reporting in the 1992 BE–12, Benchmark Survey of Foreign Direct Investment in the United States. The BE–12 is BEA's quinquennial census of foreign direct investment in the United States; it is intended to cover the universe of U.S. affiliates in value terms. (A U.S. affiliate is a U.S. business

enterprise in which a foreign person owns or controls, directly or indirectly, 10 percent or more of the voting securities if an incorporated business enterprise or an equivalent interest if an unincorporated business enterprise.)

The BE–15 annual survey is part of BEA's regular data collection program for foreign direct investment in the United States. Like the benchmark survey, it is mandatory and is conducted under the International Investment and Trade in Services Survey Act (22 U.S.C. 3101–3108, as amended). It obtains annual data on the financial structure and overall operations of nonbank U.S. affiliates of foreign companies. The data are needed to measure, monitor changes in, assess the impact of, and make informed policy decisions on foreign direct investment in the United States.

The annual survey is a sample survey covering only larger nonbank U.S. affiliates—those with assets, sales, or net income that exceed $10 million. The sample data reported in this survey will be linked to data from the BE–12 benchmark survey in order to derive annual universe estimates of financial and operating data for nonbank U.S. affiliates in nonbenchmark years.

Under this final rule, the $10 million overall exemption level for the annual survey will not change. However, the exemption level for filing on the long form will be raised from $20 million to $50 million—the level used in the BE–12 benchmark survey for determining whether a U.S. affiliate must file a long form (BE–12(LF)) or a short form (BE–12(SF)). As a result, approximately 1,600 reporters will file on the short form rather than on the long form, significantly reducing their burden and the processing burden on BEA.

The new rule will be effective with the BE–15 annual survey covering a U.S. affiliate's 1993 fiscal year. The 1993 forms will be mailed out in March 1994 and will be due May 31, 1994. The last BE–15 survey conducted covered the year 1991. (It should be noted that a BE–15 annual survey is not conducted for a year, such as 1992, that is covered by a BE–12 benchmark survey.)

Paperwork Reduction Act

The collection of information required in this final rule has been approved by OMB (OMB No. 0608–0034).

Public reporting burden for this collection of information is estimated to vary from 1 to 4 hours per short-form response and from 4 to 550 hours per long-form response, with an overall average of 17 hours for both the short and long forms. This includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing burden, may be sent to the Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, Washington, DC 20230; and to the Office of Management and Budget, Paperwork Reduction Project 0608–0034, Washington, DC 20503.

Executive Order 12612

This final rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 12612.

Regulatory Flexibility Act

The General Counsel, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this final rulemaking will not have a significant economic impact on a substantial number of small entities. Most small businesses are not foreign owned and many that are will not be required to report in the survey because their assets, sales, and net income are each equal to or less than the $10 million exemption level below which reporting is not required. Furthermore, by raising the exemption level for reporting on the long form, this rulemaking will ease the burden on firms between $20 million and $50 million that previously reported on the long form but will now report on the more abbreviated short form. Therefore, a regulatory flexibility analysis was not prepared.

List of Subjects in 15 CFR Part 806

Foreign investment in the United States, Statistical data, Reporting and recordkeeping requirements.

Dated: September 8, 1993.

Carol S. Carson,

Director, Bureau of Economic Analysis.

For the reasons set forth in the preamble, BEA amends 15 CFR part 806 as follows:

PART 806—DIRECT INVESTMENT SURVEYS

1. The authority citation for 15 CFR part 806 continues to read as follows:

Authority: 5 U.S.C. 301, 22 U.S.C. 3101–3108, and E.O. 11961, as amended.

§ 806.15 [Amended]

2. Section 806.15(i) is amended by removing "exceeds $20,000,000 (positive or negative); a short form, Form BE–15(SF), must be filed by each nonbank U.S. affiliate for which at least one of the three items exceeds $10,000,000 but no one item exceeds $20,000,000 (positive or negative." and adding in its place "exceeds $50,000,000 (positive or negative); a short form, Form BE–15(SF), must be filed by each nonbank U.S. affiliate for which at least one of the three items exceeds $10,000,000 but no one item exceeds $50,000,000 (positive or negative).".

[FR Doc. 93–25124 Filed 10–13–93; 8:45 am]

BILLING CODE 3510–EA–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8491]

RIN 1545–AN15

Regulations Under Section 446 of the Internal Revenue Code of 1986; Application of Section 446 With Respect to Notional Principal Contracts

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final Income Tax Regulations relating to the timing of income and deductions with respect to notional principal contracts. The regulations provide taxpayers and IRS personnel with guidance necessary to account for notional principal contracts. The regulations also define actively traded personal property under section 1092(d).

EFFECTIVE DATES: These regulations are effective October 14, 1993.

For applicability of these regulations, see **EFFECTIVE DATES** under the **SUPPLEMENTARY INFORMATION** portion of the preamble.

FOR FURTHER INFORMATION CONTACT: Alan B. Munro, (202) 622–3950 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On July 10, 1991, the IRS published in the **Federal Register** a notice of proposed rulemaking at 56 FR 31350 (FI–16–89, 1991–2 C.B. 951) under sections 446(b) (relating to general rules for methods of accounting) and 1092(d) (relating to definitions and special rules with respect to straddles) of the Internal Revenue Code of 1986 (Code). The proposed regulations defined a

"notional principal contract" and prescribed rules for the timing of income and deductions from these contracts. The proposed regulations also provided an election by which dealers and traders in notional principal contracts and other derivative financial instruments could mark their derivative instruments to market. Finally, the proposed regulations defined "actively traded personal property" and prescribed the extent to which notional principal contracts are treated as actively traded for purposes of section 1092.

The IRS received a number of written comments on the proposed regulations and held a public hearing on the regulations on October 7, 1991. After consideration of all the comments, the regulations proposed by FI–16–89 are adopted as revised by this Treasury decision. The revisions are discussed below.

Explanation of Provisions

Definitions and Scope

Most commenters felt that the definitions of "notional principal contract," "specified index," and "notional principal amount" provided in the proposed regulations adequately covered most notional principal contracts. Several commenters, however, requested that the definitions be expanded to include specified indices based on property that is not publicly traded and notional principal amounts that amortize or otherwise vary over the term of the contract. To accommodate these requests, the final regulations provide that a specified index may be almost any fixed rate or variable rate, price, or amount based on current, objectively determinable financial or economic information. In light of the broad definition of specified index, the IRS is considering whether notional principal contracts involving certain specified indices (e.g., one issuer's stock) should be excluded from the general sourcing rules of sections 861 through 865 and whether contracts involving other specified indices (e.g., United States real property) are subject to section 897.

The final regulations also allow the notional principal amount to vary and clarify that the regulations apply to currency swaps, except to the extent that section 988 and the regulations thereunder provide different rules for those contracts. The final regulations further provide that notional principal contracts that may be extended or terminated at the option of a party to the contract are contracts covered by this regulation.

Periodic Payments

The provisions in the final regulations for the taxable year of inclusion and deduction of periodic payments generally follow the proposed regulations. In lieu of the proposed rule on short first or last intervals, the definition of a periodic payment is revised to refer to all payments that are made at intervals of one year or less during the entire term of the contract.

To provide further flexibility, payments based on a notional principal amount that varies may be periodic payments if the obligations of the other party are measured by a notional principal amount that varies in the same proportion. For example, if a swap calls for one party to make payments based on a dollar notional amount and the counterparty to make payments based on a fixed number of ounces of gold, the swap may also provide that both notional amounts decline by the same predetermined percentage each year during the term of the swap.

Nonperiodic Payments

The final regulations retain the general rules for amortizing nonperiodic payments for swaps, caps, and floors in accordance with the prices of a series of cash-settled forward contracts (in the case of a swap) or option contracts (in the case of a cap or floor) in order to reflect the economic substance of the contract. Several commenters asked whether these rules mean that periodic payments are treated as if underlying forward or option contracts are being settled or are expiring. For tax purposes, the regulations treat a notional principal contract as a single instrument. Although a series of hypothetical forward or option contracts may be used to determine how to amortize a nonperiodic payment with respect to the contract, nothing in the regulations supports characterizing either periodic or nonperiodic payments as attributable to the settlement, exercise, cancellation, lapse, expiration, or other termination of forward or option contracts.

Several commenters complained that the rules for amortizing nonperiodic payments in the proposed regulations were too complex. The final regulations address these concerns by expanding the availability of simplified alternative methods. The proposed regulations, for example, limited the "level payment constant yield to maturity" amortization method to a nonperiodic payment made with respect to an interest rate swap. Under the final regulations, a nonperiodic payment made or received with respect to any swap contract may be amortized using the level payment method, and taxpayers may use more than one discount rate (such as the zero coupon bond curve) in determining the level payments.

The preamble to the proposed regulations included a sample revenue procedure that would have provided a table for amortizing cap and floor premiums. The commenters felt that the amortization table was inflexible and therefore of limited utility. Under the final regulations, the payment for a cap or a floor that hedges debt instruments held or issued by the taxpayer may instead be amortized using the same level payment method permitted for swaps. For example, a cap or floor premium paid at the inception of the contract is amortized as a series of payments made over the term of the contract, and is therefore recognized in increasing amounts that reflect amortization of principal on a deemed level payment self-amortizing loan. For timing purposes, the level payment method has the effect of treating the cap or floor premium as a discount or premium on the debt instrument (or instruments) being hedged. The IRS continues to consider the possibility of integration or hedge accounting rules for notional principal contracts and other derivative financial instruments.

The final regulations also include an example that clarifies the application of the alternative amortization methods to nonperiodic payments that are paid other than at the inception of the contract. The final regulations provide that, solely for timing purposes, these nonperiodic payments are treated as an upfront payment and a loan from the payee to the payor. See *Example 6* in § 1.446–3(f)(4). The IRS considered a number of alternative amortization methods that produce similar results. The IRS selected this method because it was included in the proposed regulation and can be extended to caps, floors, and swaps regardless of when the nonperiodic payments are made. The final regulations do not include any examples of how to treat nonperiodic payments that are not fixed in amount at the inception of the contract. The IRS expects to address contingent payments in future regulations, and welcomes comments on the treatment of those payments.

Special Rules

The special rules in the proposed regulations have been slightly modified in the final regulations. In particular, the proposed regulations did not allow a taxpayer to use the optional methods for amortizing nonperiodic payments if a notional principal contract was hedged with other financial

instruments. The final regulations clarify that this rule does not apply to a notional principal contract that hedges debt. Although many commenters requested that the IRS define more explicitly what constitutes a "significant" nonperiodic swap payment, the final regulations retain the test set out in the proposed regulations. The IRS is working on a project dealing more generally with off-market and prepaid financial instruments, however, and may amend these regulations to accord with the decisions reached in that project. Because the IRS anticipates that the regulations governing off-market and prepaid financial instruments will address in-the-money caps, floors, forwards, and options in a comprehensive fashion, the rules on significantly in-the-money caps and floors found in § 1.446–3(e)(4)(iv) of the proposed regulations remain in proposed form. The IRS welcomes comments and suggestions from taxpayers on when a swap, cap, or floor should be treated as including a loan under the rules being developed.

Termination Payments

Many commenters objected to the rule in the proposed regulations that a termination payment is recognized by all of the parties to the contract. Of particular concern was the effect of this rule where one party to a swap assigns its rights and obligations and the counterparty is deemed to have made or received a termination payment. This rule has been revised to reflect that whether an assignment by one party results in a deemed exchange of contracts by the counterparty (and, therefore, realization of gain or loss by the counterparty) is determined under section 1001 of the Code and the regulations thereunder. A recent notice of proposed rulemaking (FI–31–92, published at 57 FR 57034) deals with similar issues raised by the modification of debt instruments. The final regulations make it clear that any gain or loss realized on an actual or deemed exchange of a notional principal contract is a termination payment. The final regulations also clarify that certain payments made or received to assign only the rights or the obligations under a notional principal contract are not termination payments. These payments are either loans or nonperiodic payments.

Definition of Actively Traded Personal Property

Finally, the IRS received a variety of comments that questioned the decision to treat notional principal contracts as actively traded personal property for purposes of section 1092. The IRS believes that the term "actively traded" under section 1092 was intended to cover financial instruments that are liquid or easily offset, even when those instruments are not traded on an exchange or in a recognized secondary market.

The final regulations generally adopt the rule in the proposed regulations. In response to several comments, however, the final regulations specify that a notional principal contract is treated as actively traded only when contracts with the same (or substantially similar) indices are purchased, sold, or entered into on established financial markets, and clarifies the interaction of that rule with section 1234A. See § 1.1092(d)–1(c)(2), which states that the rights and obligations of a party to a notional principal contract are rights and obligations with respect to personal property. Taxpayers should note that a straddle under section 1092 may also be treated as a conversion transaction under new section 1258.

The final regulations also reflect comments received on the definition of publicly traded property in the proposed regulations and in proposed regulations under sections 1271 through 1275 of the Code. The IRS will consider requests for administrative relief in instances where the proposed regulations have been changed and a taxpayer detrimentally relied on the proposed regulations.

Regulations Not Made Final

As described above, the special rules for significantly in-the-money caps and floors found in § 1.446–3(e)(4)(iv) of the proposed regulations remain in proposed form. In addition, in view of the enactment of section 475 of the Code, which requires dealers to mark certain securities to market, § 1.446–4 of the proposed regulations is being withdrawn by separate notice.

Effective Dates

Except for § 1.1092(d)–1, these regulations are effective for notional principal contracts entered into on or after December 13, 1993. For contracts entered into before that date, the Commissioner generally will treat a method of accounting as clearly reflecting income if it takes payments into account over the life of the contract under a reasonable amortization method, whether or not the method satisfies the rules in the proposed or final regulations. See Notice 89–21, 1989–1 C.B. 651, 652. The IRS intends to issue a revenue procedure prescribing the terms and conditions for effecting method changes to comply with the final regulations. The revenue procedure will generally permit expedited method changes on a Form 3115 attached to the tax return for the year of change. Section 1.1092(d)–1(b)(1)(vii) is effective for positions entered into on or after October 14, 1993, and § 1.1092(d)–1(c) is effective for positions entered into on or after July 8, 1991.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these regulations are Karl T. Walli of the Office of Associate Chief Counsel (International) and Alan B. Munro of the Office of Assistant Chief Counsel (Financial Institutions and Products), within the Office of Chief Counsel, IRS. However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805. * * *

Par. 2. Section 1.61–14(b) is amended by adding paragraph (b)(7) to read as follows:

§ 1.61–14 Miscellaneous items of gross income.

* * * * *

(b) * * *

(7) Notional principal contracts, see § 1.446–3.

Par. 3. Section 1.162–1 is amended by adding paragraph (b)(8) to read as follows:

§ 1.162–1 Business expenses.

* * * * *

(b) * * *

(8) For the timing of deductions with respect to notional principal contracts, see § 1.446–3.

Par. 4. Section 1.446–3 is added to read as follows:

§ 1.446–3 Notional principal contracts.

(a) *Table of contents.* This paragraph (a) lists captioned paragraphs contained in § 1.446–3.

§ 1.446–3 Notional principal contracts.

(a) Table of contents.
(b) Purpose.
(c) Definitions and scope.
(1) Notional principal contract.
(i) In general.
(ii) Excluded contracts.
(iii) Transactions within section 475.
(iv) Transactions within section 988.
(2) Specified index.
(3) Notional principal amount.
(4) Special definitions.
(i) Related person and party to the contract.
(ii) Objective financial information.
(iii) Dealer in notional principal contracts.
(d) Taxable year of inclusion and deduction.
(e) Periodic payments.
(1) Definition.
(2) Recognition rules.
(i) In general.
(ii) Rate set in arrears.
(iii) Notional principal amount set in arrears.
(3) Examples.
(f) Nonperiodic payments.
(1) Definition.
(2) Recognition rules.
(i) In general.
(ii) General rule for swaps.
(iii) Alternative methods for swaps.
(A) Prepaid swaps.
(B) Other nonperiodic swap payments.
(iv) General rule for caps and floors.
(v) Alternative methods for caps and floors that hedge debt instruments.
(A) Prepaid caps and floors.
(B) Other caps and floors.
(C) Special method for collars.
(vi) Additional methods.
(3) Term of extendible or terminable contracts.
(4) Examples.
(g) Special rules.
(1) Disguised notional principal contracts.
(2) Hedged notional principal contracts.
(3) Options and forwards to enter into notional principal contracts.
(4) Swaps with significant nonperiodic payments.
(5) Caps and floors that are significantly in-the-money. [Reserved]
(6) Examples.
(h) Termination payments.
(1) Definition.
(2) Taxable year of inclusion and deduction by original parties.
(3) Taxable year of inclusion and deduction by assignees.
(4) Special rules.
(i) Assignment of one leg of a contract.
(ii) Substance over form.
(5) Examples.
(i) Anti-abuse rule.
(j) Effective date.

(b) *Purpose.* The purpose of this section is to enable the clear reflection of the income and deductions from notional principal contracts by prescribing accounting methods that reflect the economic substance of such contracts.

(c) *Definitions and scope*—(1) *Notional principal contract*—(i) *In general.* A notional principal contract is a financial instrument that provides for the payment of amounts by one party to another at specified intervals calculated by reference to a specified index upon a notional principal amount in exchange for specified consideration or a promise to pay similar amounts. An agreement between a taxpayer and a qualified business unit (as defined in section 989(a)) of the taxpayer, or among qualified business units of the same taxpayer, is not a notional principal contract because a taxpayer cannot enter into a contract with itself. Notional principal contracts governed by this section include interest rate swaps, currency swaps, basis swaps, interest rate caps, interest rate floors, commodity swaps, equity swaps, equity index swaps, and similar agreements. A collar is not itself a notional principal contract, but certain caps and floors that comprise a collar may be treated as a single notional principal contract under paragraph (f)(2)(v)(C) of this section. A contract may be a notional principal contract governed by this section even though the term of the contract is subject to termination or extension. Each confirmation under a master agreement to enter into agreements governed by this section is treated as a separate notional principal contract.

(ii) *Excluded contracts.* A contract described in section 1256(b), a futures contract, a forward contract, and an option are not notional principal contracts. An instrument or contract that constitutes indebtedness under general principles of Federal income tax law is not a notional principal contract. An option or forward contract that entitles or obligates a person to enter into a notional principal contract is not a notional principal contract, but payments made under such an option or forward contract may be governed by paragraph (g)(3) of this section.

(iii) *Transactions within section 475.* To the extent that the rules provided in paragraphs (e) and (f) of this section are inconsistent with the rules that apply to any notional principal contract that is governed by section 475 and regulations thereunder, the rules of section 475 and the regulations thereunder govern.

(iv) *Transactions within section 988.* To the extent that the rules provided in this section are inconsistent with the rules that apply to any notional principal contract that is also a section 988 transaction or that is integrated with other property or debt pursuant to section 988(d), the rules of section 988 and the regulations thereunder govern.

(2) *Specified index.* A specified index is—

(i) A fixed rate, price, or amount;

(ii) A fixed rate, price, or amount applicable in one or more specified periods followed by one or more different fixed rates, prices, or amounts applicable in other periods;

(iii) An index that is based on objective financial information (as defined in paragraph (c)(4)(ii) of this section); and

(iv) An interest rate index that is regularly used in normal lending transactions between a party to the contract and unrelated persons.

(3) *Notional principal amount.* For purposes of this section, a notional principal amount is any specified amount of money or property that, when multiplied by a specified index, measures a party's rights and obligations under the contract, but is not borrowed or loaned between the parties as part of the contract. The notional principal amount may vary over the term of the contract, provided that it is set in advance or varies based on objective financial information (as defined in paragraph (c)(4)(ii) of this section).

(4) *Special definitions*—(i) *Related person and party to the contract.* A related person is a person related (within the meaning of section 267(b) or 707(b)(1)) to one of the parties to the notional principal contract or a member of the same consolidated group (as defined in § 1.1502–1(h)) as one of the parties to the contract. For purposes of this paragraph (c), a related person is considered to be a party to the contract.

(ii) *Objective financial information.* For purposes of this paragraph (c), objective financial information is any current, objectively determinable financial or economic information that is not within the control of any of the parties to the contract and is not unique to one of the parties' circumstances (such as one party's dividends, profits, or the value of its stock). Thus, for example, a notional principal amount may be based on a broadly-based equity index or the outstanding balance of a pool of mortgages, but not on the value of a party's stock.

(iii) *Dealer in notional principal contracts.* A dealer in notional principal contracts is a person who regularly offers to enter into, assume, offset, assign, or otherwise terminate positions in notional principal contracts with customers in the ordinary course of a trade or business.

(d) *Taxable year of inclusion and deduction.* For all purposes of the Code, the net income or net deduction from a notional principal contract for a taxable year is included in or deducted from gross income for that taxable year. The net income or net deduction from a notional principal contract for a taxable year equals the total of all of the periodic payments that are recognized from that contract for the taxable year under paragraph (e) of this section and all of the nonperiodic payments that are recognized from that contract for the taxable year under paragraph (f) of this section.

(e) *Periodic payments*—(1) *Definition.* Periodic payments are payments made or received pursuant to a notional principal contract that are payable at intervals of one year or less during the entire term of the contract (including any extension periods provided for in the contract), that are based on a specified index described in paragraph (c)(2)(i), (iii), or (iv) of this section (appropriately adjusted for the length of the interval), and that are based on either a single notional principal amount or a notional principal amount that varies over the term of the contract in the same proportion as the notional principal amount that measures the other party's payments. Payments to purchase or sell a cap or a floor, however, are not periodic payments.

(2) *Recognition rules*—(i) *In general.* All taxpayers, regardless of their method of accounting, must recognize the ratable daily portion of a periodic payment for the taxable year to which that portion relates.

(ii) *Rate set in arrears.* If the amount of a periodic payment is not determinable at the end of a taxable year because the value of the specified index is not fixed until a date that occurs after the end of the taxable year, the ratable daily portion of a periodic payment that relates to that taxable year is generally based on the specified index that would have applied if the specified index were fixed as of the last day of the taxable year. If a taxpayer determines that the value of the specified index as of the last day of the taxable year does not provide a reasonable estimate of the specified index that will apply when the payment is fixed, the taxpayer may use a reasonable estimate of the specified index each year, provided that the taxpayer (and any related person that is a party to the contract) uses the same method to make the estimate consistently from year to year and uses the same estimate for purposes of all financial reports to equity holders and creditors. The taxpayer's treatment of notional principal contracts with substantially similar specified indices will be considered in determining whether the taxpayer's estimate of the specified index is reasonable. Any difference between the amount that is recognized under this paragraph (e)(2)(ii) and the corresponding portion of the actual payment that becomes fixed under the contract is taken into account as an adjustment to the net income or net deduction from the notional principal contract for the taxable year during which the payment becomes fixed.

(iii) *Notional principal amount set in arrears.* Rules similar to the rules of paragraph (e)(2)(ii) of this section apply if the amount of a periodic payment is not determinable at the end of a taxable year because the notional principal amount is not fixed until a date that occurs after the end of the taxable year.

(3) *Examples.* The following examples illustrate the application of paragraph (e) of this section.

Example 1. Accrual of periodic swap payments. (a) On April 1, 1995, *A* enters into a contract with unrelated counterparty *B* under which, for a term of five years, *A* is obligated to make a payment to *B* each April 1, beginning April 1, 1996, in an amount equal to the London Interbank Offered Rate (LIBOR), as determined on the immediately preceding April 1, multiplied by a notional principal amount of $100 million. Under the contract, *B* is obligated to make a payment to *A* each April 1, beginning April 1, 1996, in an amount equal to 8% multiplied by the same notional principal amount. *A* and *B* are calendar year taxpayers that use the accrual method of accounting. On April 1, 1995, LIBOR is 7.80%.

(b) This contract is a notional principal contract as defined by paragraph (c)(1) of this section, and both LIBOR and a fixed interest rate of 8% are specified indices under paragraph (c)(2) of this section. All of the payments to be made by *A* and *B* are periodic payments under paragraph (e)(1) of this section because each party's payments are based on a specified index described in paragraphs (c)(2)(iii) and (c)(2)(i) of this section, respectively, are payable at periodic intervals of one year or less throughout the term of the contract, and are based on a single notional principal amount.

(c) Under the terms of the swap agreement, on April 1, 1996, *B* is obligated to make a payment to *A* of $8,000,000 (8% x $100,000,000) and *A* is obligated to make a payment to *B* of $7,800,000 (7.80% x $100,000,000). Under paragraph (e)(2)(i) of this section, the ratable daily portions for 1995 are the amounts of these periodic payments that are attributable to *A*'s and *B*'s taxable year ending December 31, 1995. The ratable daily portion of the 8% fixed leg is $6,010,929 (275 days/366 days x $8,000,000), and the ratable daily portion of the floating leg is $5,860,656 (275 days/366 days x $7,800,000). The net amount for the taxable year is the difference between the ratable daily portions of the two periodic payments, or $150,273 ($6,010,929—$5,860,656). Accordingly, *A* has net income of $150,273 from this swap for 1995, and *B* has a corresponding net deduction of $150,273.

(d) The $49,727 unrecognized balance of the $200,000 net periodic payment that is made on April 1, 1996, is included in *A*'s and *B*'s net income or net deduction from the contract for 1996.

(e) If the parties had entered into the contract on February 1, 1995, the result would not change because no portion of either party's obligation to make a payment under the swap relates to the period prior to April 1, 1995. Consequently, under paragraph (e)(2) of this section, neither party would accrue any income or deduction from the swap for the period from February 1, 1995, through March 31, 1995.

Example 2. Accrual of periodic swap payments by cash method taxpayer. (a) On April 1, 1995, *C* enters into a contract with unrelated counterparty *D* under which, for a period of five years, *C* is obligated to make a fixed payment to *D* each April 1, beginning April 1, 1996, in an amount equal to 8% multiplied by a notional principal amount of $100 million. *D* is obligated to make semi-annual payments to *C* each April 1 and October 1, beginning October 1, 1995, in an amount equal to one-half of the LIBOR amount as of the first day of the preceding 6-month period multiplied by the notional principal amount. The payments are to be calculated using a 30/360 day convention. *C* is a calendar year taxpayer that uses the accrual method of accounting. *D* is a calendar year taxpayer that uses the cash receipts and disbursements method of accounting. LIBOR is 7.80% on April 1, 1995, and 7.46% on October 1, 1995.

(b) This contract is a notional principal contract as defined by paragraph (c)(1) of this section, and LIBOR and the fixed interest rate of 8% are each specified indices under paragraph (c)(2) of this section. All of the payments to be made by *C* and *D* are periodic payments under paragraph (e)(1) of this section because they are each based on appropriate specified indices, are payable at periodic intervals of one year or less throughout the term of the contract, and are based on a single notional principal amount.

(c) Under the terms of the swap agreement, *D* pays *C* $3,900,000 (0.5 x 7.8% x $100,000,000) on October 1, 1995. In addition, *D* is obligated to pay *C* $3,730,000 (0.5 x 7.46% x $100,000,000) on April 1, 1996. *C* is obligated to pay *D* $8,000,000 on April 1, 1996. Under paragraph (e)(2)(i) of this section, *C*'s and *D*'s ratable daily portions for 1995 are the amounts of the periodic payments that are attributable to their taxable year ending December 31, 1995. The ratable daily portion of the 8% fixed leg is $6,000,000 (270 days/360 days x $8,000,000), and the ratable daily portion of

the floating leg is $5,765,000 ($3,900,000 + (90 days/180 days x $3,730,000)). Thus, *C*'s net deduction from the contract for 1995 is $235,000 ($6,000,000—$5,765,000) and *D* reports $235,000 of net income from the contract for 1995.

(d) The net unrecognized balance of $135,000 ($2,000,000 balance of the fixed leg—$1,865,000 balance of the floating leg) is included in *C*'s and *D*'s net income or net deduction from the contract for 1996.

Example 3. Accrual of swap payments on index set in arrears. (a) The facts are the same as in *Example 1*, except that *A*'s obligation to make payments based upon LIBOR is determined by reference to LIBOR on the day each payment is due. LIBOR is 8.25% on December 31, 1995, and 8.16% on April 1, 1996.

(b) On December 31, 1995, the amount that *A* is obligated to pay *B* is not known because it will not become fixed until April 1, 1996. Under paragraph (e)(2)(ii) of this section, the ratable daily portion of the periodic payment from *A* to *B* for 1995 is based on the value of LIBOR on December 31, 1995 (unless *A* or *B* determines that the value of LIBOR on that day does not reasonably estimate the value of the specified index). Thus, the ratable daily portion of the floating leg is $6,198,770 (275 days/366 days x 8.25% x $100,000,000), while the ratable daily portion of the fixed leg is $6,010,929 (275 days/366 days x $8,000,000). The net amount for 1995 on this swap is $187,841 ($6,198,770—$6,010,929). Accordingly, *B* has $187,841 of net income from the swap in 1995, and *A* has a net deduction of $187,841.

(c) On April 1, 1996, *A* makes a net payment to *B* of $160,000 ($8,160,000 payment on the floating leg—$8,000,000 payment on the fixed leg). For purposes of determining their net income or net deduction from this contract for the year ended December 31, 1996, *B* and *A* must adjust the net income and net deduction they recognized in 1995 by $67,623 (275 days/366 days x ($8,250,000 presumed payment on the floating leg—$8,160,000 actual payment on the floating leg)).

(f) *Nonperiodic payments*—(1) *Definition.* A nonperiodic payment is any payment made or received with respect to a notional principal contract that is not a periodic payment (as defined in paragraph (e)(1) of this section) or a termination payment (as defined in paragraph (h) of this section). Examples of nonperiodic payments are the premium for a cap or floor agreement (even if it is paid in installments), the payment for an off-market swap agreement, the prepayment of part or all of one leg of a swap, and the premium for an option to enter into a swap if and when the option is exercised.

(2) *Recognition rules*—(i) *In general.* All taxpayers, regardless of their method of accounting, must recognize the ratable daily portion of a nonperiodic payment for the taxable year to which that portion relates. Generally, a nonperiodic payment must be recognized over the term of a notional principal contract in a manner that reflects the economic substance of the contract.

(ii) *General rule for swaps.* A nonperiodic payment that relates to a swap must be recognized over the term of the contract by allocating it in accordance with the forward rates (or, in the case of a commodity, the forward prices) of a series of cash-settled forward contracts that reflect the specified index and the notional principal amount. For purposes of this allocation, the forward rates or prices used to determine the amount of the nonperiodic payment will be respected, if reasonable. See paragraph (f)(4) *Example 7* of this section.

(iii) *Alternative methods for swaps.* Solely for purposes of determining the timing of income and deductions, a nonperiodic payment made or received with respect to a swap may be allocated to each period of the swap contract using one of the methods described in this paragraph (f)(2)(iii). The alternative methods may not be used by a dealer in notional principal contracts (as defined in paragraph (c)(4)(iii) of this section) for swaps entered into or acquired in its capacity as a dealer.

(A) *Prepaid swaps.* An upfront payment on a swap may be amortized by assuming that the nonperiodic payment represents the present value of a series of equal payments made throughout the term of the swap contract (the level payment method), adjusted as appropriate to take account of increases or decreases in the notional principal amount. The discount rate used in this calculation must be the rate (or rates) used by the parties to determine the amount of the nonperiodic payment. If that rate is not readily ascertainable, the discount rate used must be a rate that is reasonable under the circumstances. Under this method, an upfront payment is allocated by dividing each equal payment into its principal recovery and time value components. The principal recovery components of the equal payments are treated as periodic payments that are deemed to be made on each of the dates that the swap contract provides for periodic payments by the payor of the nonperiodic payment or, if none, on each of the dates that the swap contract provides for periodic payments by the recipient of the nonperiodic payment. The time value component is needed to compute the amortization of the nonperiodic payment, but is otherwise disregarded. See paragraph (f)(4) *Example 5* of this section.

(B) *Other nonperiodic swap payments.* Nonperiodic payments on a swap other than an upfront payment may be amortized by treating the contract as if it provided for a single upfront payment (equal to the present value of the nonperiodic payments) and a loan between the parties. The discount rate (or rates) used in determining the deemed upfront payment and the time value component of the deemed loan is the same as the rate (or rates) used in the level payment method. The single upfront payment is then amortized under the level payment method described in paragraph (f)(2)(iii)(A) of this section. The time value component of the loan is not treated as interest, but, together with the amortized amount of the deemed upfront payment, is recognized as a periodic payment. See paragraph (f)(4) *Example 6* of this section. If both parties make nonperiodic payments, this calculation is done separately for the nonperiodic payments made by each party.

(iv) *General rule for caps and floors.* A payment to purchase or sell a cap or floor must be recognized over the term of the agreement by allocating it in accordance with the prices of a series of cash-settled option contracts that reflect the specified index and the notional principal amount. For purposes of this allocation, the option pricing used by the parties to determine the total amount paid for the cap or floor will be respected, if reasonable. Only the portion of the purchase price that is allocable to the option contract or contracts that expire during a particular period is recognized for that period. Thus, under this paragraph (f)(2)(iv), straight-line or accelerated amortization of a cap premium is generally not permitted. See paragraph (f)(4) *Examples 1* and *2* of this section.

(v) *Alternative methods for caps and floors that hedge debt instruments.* Solely for purposes of determining the timing of income and deductions, if a cap or floor is entered into primarily to reduce risk with respect to a specific debt instrument or group of debt instruments held or issued by the taxpayer, the taxpayer may amortize a payment to purchase or sell the cap or floor using the methods described in this paragraph (f)(2)(v), adjusted as appropriate to take account of increases or decreases in the notional principal amount. The alternative methods may not be used by a dealer in notional principal contracts (as defined in paragraph (c)(4)(iii) of this section) for caps or floors entered into or acquired in its capacity as a dealer.

(A) *Prepaid caps and floors.* A premium paid upfront for a cap or a

floor may be amortized using the "level payment method" described in paragraph (f)(2)(iii)(A) of this section. See paragraph (f)(4) *Example 3* of this section.

(B) *Other caps and floors.* Nonperiodic payments on a cap or floor other than an upfront payment are amortized by treating the contract as if it provided for a single upfront payment (equal to the present value of the nonperiodic payments) and a loan between the parties as described in paragraph (f)(2)(iii)(B) of this section. Under the level payment method, a cap or floor premium paid in level annual installments over the term of the contract is effectively included or deducted from income ratably, in accordance with the level payments. See paragraph (f)(4) *Example 4* of this section.

(C) *Special method for collars.* A taxpayer may also treat a cap and a floor that comprise a collar as a single notional principal contract and may amortize the net nonperiodic payment to enter into the cap and floor over the term of the collar in accordance with the methods prescribed in this paragraph (f)(2)(v).

(vi) *Additional methods.* The Commissioner may, by a revenue ruling or a revenue procedure published in the Internal Revenue Bulletin, provide alternative methods for allocating nonperiodic payments that relate to a notional principal contract to each year of the contract. See § 601.601(d)(2)(ii)(*b*) of this chapter.

(3) *Term of extendible or terminable contracts.* For purposes of this paragraph (f), the term of a notional principal contract that is subject to extension or termination is the reasonably expected term of the contract.

(4) *Examples.* The following examples illustrate the application of paragraph (f) of this section.

Example 1. Cap premium amortized using general rule. (a) On January 1, 1995, when LIBOR is 8%, *F* pays unrelated party *E* $600,000 for a contract that obligates *E* to make a payment to *F* each quarter equal to one-quarter of the excess, if any, of three-month LIBOR over 9% with respect to a notional principal amount of $25 million. Both *E* and *F* are calendar year taxpayers. *E* provides *F* with a schedule of allocable premium amounts indicating that the cap was priced according to a reasonable variation of the Black-Scholes option pricing formula and that the total premium is allocable to the following periods:

	Pricing allocation
1995	$55,000
1996	225,000
1997	320,000
	$600,000

(b) This contract is a notional principal contract as defined by paragraph (c)(1) of this section, and LIBOR is a specified index under paragraph (c)(2)(iii) of this section. Any payments made by *E* to *F* are periodic payments under paragraph (e)(1) of this section because they are payable at periodic intervals of one year or less throughout the term of the contract, are based on an appropriate specified index, and are based on a single notional principal amount. The $600,000 cap premium paid by *F* to *E* is a nonperiodic payment as defined in paragraph (f)(1) of this section.

(c) The Black-Scholes model is recognized in the financial industry as a standard technique for pricing interest rate cap agreements. Therefore, because *E* has used a reasonable option pricing model, the schedule generated by *E* is consistent with the economic substance of the cap, and may be used by both *E* and *F* for calculating their ratable daily portions of the cap premium. Under paragraph (f)(2)(iv) of this section, *E* recognizes the ratable daily portion of the cap premium as income, and *F* recognizes the ratable daily portion of the cap premium as a deduction based on the pricing schedule. Thus, *E* and *F* account for the contract as follows:

	Ratable daily portion
1995	$55,000
1996	225,000
1997	320,000
	$600,000

(d) Any periodic payments under the cap agreement (that is, payments that *E* makes to *F* because LIBOR exceeds 9%) are included in the parties' net income or net deduction from the contract in accordance with paragraph (e)(2) of this section.

Example 2. Cap premium allocated to proper period. (a) The facts are the same as in *Example 1*, except that the cap is purchased by *F* on November 1, 1994. The first determination date under the cap agreement is January 31, 1995 (the last day of the first quarter to which the contract relates). LIBOR is 9.1% on December 31, 1994, and is 9.15% on January 31, 1995.

(b) *E* and *F* recognize $9,192 (61 days/365 days x $55,000) as the ratable daily portion of the nonperiodic payment for 1994, and include that amount in their net income or net deduction from the contract for 1994. If *E*'s pricing model allocated the cap premium to each quarter covered by the contract, the ratable daily portion would be 61 days/92 days times the premium allocated to the first quarter.

(c) Under paragraph (e)(2)(ii) of this section, *E* and *F* calculate the payments using LIBOR as of December 31, 1994. *F* recognizes as income the ratable daily portion of the presumed payment, or $4,144 (61 days/92 days x .25 x .001 x $25,000,000). Thus, *E* reports $5,048 of net income from the contract for 1994 ($9,192–$4,144), and *F* reports a net deduction from the contract of $5,048.

(d) On January 31, 1995, *E* pays *F* $9,375 (.25 x .0015 x $25,000,000) under the terms of the cap agreement. For purposes of determining their net income or net deduction from this contract for the year ended December 31, 1995, *E* and *F* must adjust their respective net income and net deduction from the cap by $2,072 (61 days/92 days x ($9,375 actual payment under the cap on January 31, 1995—$6,250 presumed payment under the cap on December 31, 1994)).

Example 3. Cap premium amortized using alternative method. (a) The facts are the same as in *Example 1*, except that the cap provides for annual payments by *E* and is entered into by F primarily to reduce risk with respect to a debt instrument issued by *F*. *F* elects to amortize the cap premium using the alternative level payment method provided under paragraph (f)(2)(v)(A) of this section. Under that method, *F* amortizes the cap premium by assuming that the $600,000 is repaid in 3 equal annual payments of $241,269, assuming a discount rate of 10%. Each payment is divided into a time value component and a principal component, which are set out below.

	Level payment	Time value component	Principal component
1995	$241,269	$60,000	$181,269
1996	241,269	41,873	199,396
1997	241,269	21,934	219,335
	$723,807	$123,807	$600,000

(b) The net of the ratable daily portions of the principal component and the payments, if any, received from *E* comprise *F*'s annual net income or net deduction from the cap. The time value components are needed only

to compute the ratable daily portions of the cap premium, and are otherwise disregarded.

Example 4. Cap premium paid in level installments and amortized using alternative method. (a) The facts are the same as in *Example 3*, except that *F* agrees to pay for the cap in three level installments of $241,269 (a total of $723,807) on December 31, 1995, 1996, and 1997. The present value of three payments of $241,269, discounted at 10%, is $600,000. For purposes of amortizing the cap premium under the alternative method provided in paragraph (f)(2)(v)(B) of this section, *F* is treated as paying $600,000 for the cap on January 1, 1995, and borrowing $600,000 from *E* that will be repaid in three annual installments of $241,269. The time value component of the loan is computed as follows:

	Loan balance	Time value component	Principal component
1995	$600,000	$60,000	$181,269
1996	418,731	41,873	199,396
1997	219,335	21,934	219,335
		$123,807	$600,000

(b) *F* is treated as making periodic payments equal to the amortized principal components from a $600,000 cap paid in advance (as described in *Example 3*), increased by the time value components of the $600,000 loan, which totals $241,269 each year. The time value components of the $600,000 loan are included in the periodic payments made by *F*, but are not characterized as interest income or expense. The effect of the alternative method in this situation is to allow *F* to amortize the cap premium in level installments, the same way it is paid. The net of the ratable daily portions of *F*'s deemed periodic payments and the payments, if any, received from *E* comprise *F*'s annual net income or net deduction from the cap.

Example 5. Upfront interest rate swap payment amortized using alternative method. (a) On January 1, 1995, *G* enters into an interest rate swap agreement with unrelated counterparty *H* under which, for a term of five years, *G* is obligated to make annual payments at 11% and H is obligated to make annual payments at LIBOR on a notional principal amount of $100 million. At the time *G* and *H* enter into this swap agreement, the rate for similar on-market swaps is LIBOR to 10%. To compensate for this difference, on January 1, 1995, *H* pays *G* a yield adjustment fee of $3,790,786. *G* provides *H* with information that indicates that the amount of the yield adjustment fee was determined as the present value, at 10% compounded annually, of five annual payments of $1,000,000 (1% x $100,000,000). *G* and *H* are calendar year taxpayers.

(b) This contract is a notional principal contract as defined by paragraph (c)(1) of this section. The yield adjustment fee is a nonperiodic payment as defined in paragraph (f)(1) of this section.

(c) Under the alternative method described in paragraph (f)(2)(iii)(A) of this section, the yield adjustment fee is recognized over the life of the agreement by assuming that the $3,790,786 is repaid in five level payments. Assuming a constant yield to maturity and annual compounding at 10%, the ratable daily portions are computed as follows:

	Level payment	Time value component	Principal component
1995	$1,000,000	$379,079	$620,921
1996	1,000,000	316,987	683,013
1997	1,000,000	248,685	751,315
1998	1,000,000	173,554	826,446
1999	1,000,000	90,909	909,091
	$5,000,000	$1,209,214	$3,790,786

(d) *G* also makes swap payments to *H* at 11%, while *H* makes swap payments to *G* based on LIBOR. The net of the ratable daily portions of the 11% payments by *G*, the LIBOR payments by *H*, and the principal component of the yield adjustment fee paid by *H* determines the annual net income or net deduction from the contract for both *G* and *H*. The time value components are needed only to compute the ratable daily portions of the yield adjustment fee paid by *H*, and are otherwise disregarded.

Example 6. Backloaded interest rate swap payment amortized using alternative method. (a) The facts are the same as in *Example 5*, but *H* agrees to pay *G* a yield adjustment fee of $6,105,100 on December 31, 1999. Under the alternative method in paragraph (f)(2)(iii)(B) of this section, *H* is treated as paying a yield adjustment fee of $3,790,786 (the present value of $6,105,100, discounted at a 10% rate with annual compounding) on January 1, 1995. Solely for timing purposes, *H* is treated as borrowing $3,790,786 from *G*. Assuming annual compounding at 10%, the time value component is computed as follows:

	Loan balance	Time value component	Principal component
1995	$3,790,786	$379,079	
1996	4,169,865	416,987	
1997	4,586,852	458,685	
1998	5,045,537	504,554	
1999	5,550,091	555,009	$6,105,100

(b) The amortization of *H*'s yield adjustment fee is equal to the amortization of a yield adjustment fee of $3,790,786 paid in advance (as described in *Example 5*), increased by the time value component of the $3,790,786 deemed loan from *G* to *H*. Thus, the amount of *H*'s yield adjustment fee that is allocated to 1995 is $1,000,000 ($620,921 + $379,079). The time value components of the $3,790,786 loan are included in the periodic payments paid by *H*, but are not characterized as interest income or expense.

The net of the ratable daily portions of the 11% swap payments by *G*, and the LIBOR payments by H, added to the principal components from *Example 5* and the time value components from this *Example 6*, determines the annual net income or net deduction from the contract for both *G* and *H*.

Example 7. Nonperiodic payment on a commodity swap amortized under general rule. (a) On January 1, 1995, *I* enters into a commodity swap agreement with unrelated counterparty *J* under which, for a term of three years, *I* is obligated to make annual payments based on a fixed price of $2.35 per bushel times a notional amount of 100,000 bushels of corn and *J* is obligated to make annual payments equal to the spot price times the same notional amount. Assume that on January 1, 1995, the price of a one year forward for corn is $2.40 per bushel, of a two year forward $2.55 per bushel, and of a 3 year forward $2.75 per bushel. To compensate for the below-market fixed price provided in the swap agreement, *I* pays *J* $53,530 for entering into the swap. *I* and *J* are calendar year taxpayers.

(b) This contract is a notional principal contract as defined by paragraph (c)(1) of this section, and $2.35 and the spot price of corn are specified indices under paragraphs (c)(2)(i) and (iii) of this section, respectively. The $53,530 payment is a nonperiodic payment as defined by paragraph (f)(1) of this section.

(c) Assuming that *I* does not use the alternative methods provided under paragraph (f)(2)(iii) of this section, paragraph (f)(2)(ii) of this section requires that *I* recognize the nonperiodic payment over the term of the agreement by allocating the payment to each forward contract in accordance with the forward price of corn. Solely for timing purposes, *I* treats the $53,530 nonperiodic payment as a loan that *J* will repay in three installments of $5,000, $20,000, and $40,000, the expected payouts on the in-the-money forward contracts. With annual compounding at 8%, the ratable daily portions are computed as follows:

	Expected forward payment	Time value component	Principal component
1995	$5,000	$4,282	$718
1996	20,000	4,225	15,775
1997	40,000	2,963	37,037
	$65,000	$11,470	$53,530

(d) The ratable daily portion of the principal component is added to *I*'s periodic payments in computing its net income or net deduction from the notional principal contract for each taxable year. The time value components are needed only to compute the principal components, and are otherwise disregarded.

(g) *Special rules*—(1) *Disguised notional principal contracts.* The Commissioner may recharacterize all or part of a transaction (or series of transactions) if the effect of the transaction (or series of transactions) is to avoid the application of this section.

(2) *Hedged notional principal contracts.* If a taxpayer, either directly or through a related person (as defined in paragraph (c)(4)(i) of this section), reduces risk with respect to a notional principal contract by purchasing, selling, or otherwise entering into other notional principal contracts, futures, forwards, options, or other financial contracts (other than debt instruments), the taxpayer may not use the alternative methods provided in paragraphs (f)(2)(iii) and (v) of this section. Moreover, where such positions are entered into to avoid the appropriate timing or character of income from the contracts taken together, the Commissioner may require that amounts paid to or received by the taxpayer under the notional principal contract be treated in a manner that is consistent with the economic substance of the transaction as a whole.

(3) *Options and forwards to enter into notional principal contracts.* An option or forward contract that entitles or obligates a person to enter into a notional principal contract is subject to the general rules of taxation for options or forward contracts. Any payment with respect to the option or forward contract is treated as a nonperiodic payment for the underlying notional principal contract under the rules of paragraphs (f) and (g)(4) or (g)(5) of this section if and when the underlying notional principal contract is entered into.

(4) *Swaps with significant nonperiodic payments.* A swap with significant nonperiodic payments is treated as two separate transactions consisting of an on-market, level payment swap and a loan. The loan must be accounted for by the parties to the contract independently of the swap. The time value component associated with the loan is not included in the net income or net deduction from the swap under paragraph (d) of this section, but is recognized as interest for all purposes of the Internal Revenue Code. See paragraph (g)(6) *Example* 3 of this section. For purposes of section 956, the Commissioner may treat any nonperiodic swap payment, whether or not it is significant, as one or more loans.

(5) *Caps and floors that are significantly in-the-money.* [Reserved]

(6) *Examples.* The following examples illustrate the application of paragraph (g) of this section.

Example 1. Cap hedged with options. (a) On January 1, 1995, *K* sells to unrelated counterparty *L* three cash settlement European-style put options on Eurodollar time deposits with a strike rate of 9%. The options have exercise dates of January 1, 1996, January 1, 1997, and January 1, 1998, respectively. If LIBOR exceeds 9% on any of the exercise dates, *L* will be entitled, by exercising the relevant option, to receive from *K* an amount that corresponds to the excess of LIBOR over 9% times $25 million. *L* pays *K* $650,000 for the three options. Furthermore, *K* is related to *F*, the cap purchaser in paragraph (f)(4) *Example 1* of this section.

(b) *K*'s option agreements with *L* reduce risk with respect to *F*'s cap agreement with *E*. Accordingly, under paragraph (g)(2) of this section, *F* cannot use the alternative methods provided in paragraph (f)(2)(v) of this section to amortize the premium paid under the cap agreement. *F* must amortize the cap premium it paid in accordance with paragraph (f)(2)(iv) of this section.

(c) The method that *E* may use to account for its agreement with *F* is not affected by the application of paragraph (g)(2) of this section to *F*.

Example 2. Nonperiodic payment that is not significant. (a) On January 1, 1995, *G* enters into an interest rate swap agreement with unrelated counterparty *H* under which, for a term of five years, *G* is obligated to make annual payments at 11% and *H* is obligated to make annual payments at LIBOR on a notional principal amount of $100 million. At the time *G* and *H* enter into this swap agreement, the rate for similar on-market swaps is LIBOR to 10%. To compensate for this difference, on January 1, 1995, *H* pays *G* a yield adjustment fee of $3,790,786. *G* provides *H* with information that indicates that the amount of the yield adjustment fee was determined as the present value, at 10% compounded annually, of five annual payments of $1,000,000 (1% x $100,000,000). *G* and *H* are calendar year taxpayers. (These facts are the same as in paragraph (f)(4) *Example 5* of this section.)

(b) In this situation, the yield adjustment fee of $3,790,786 is not a significant nonperiodic payment within the meaning of paragraph (g)(4) of this section, in light of the amount of the fee in proportion to the present value of the total amount of fixed payments

due under the contract. Accordingly, no portion of the swap is recharacterized as a loan for purposes of this section.

Example 3. Significant nonperiodic payment. (a) On January 1, 1995, unrelated parties *M* and *N* enter into an interest rate swap contract. Under the terms of the contract, *N* agrees to make five annual payments to *M* equal to LIBOR times a notional principal amount of $100 million. In return, *M* agrees to pay *N* 6% of $100 million annually, plus $15,163,147 on January 1, 1995. At the time *M* and *N* enter into this swap agreement the rate for similar on-market swaps is LIBOR to 10%, and *N* provides *M* with information that the amount of the initial payment was determined as the present value, at 10% compounded annually, of five annual payments from *M* to *N* of $4,000,000 (4% of $100,000,000).

(b) Although the parties have characterized this transaction as an interest rate swap, the $15,163,147 payment from *M* to *N* is significant when compared to the present value of the total fixed payments due under the contract. Accordingly, under paragraph (g)(4) of this section, the transaction is recharacterized as consisting of both a $15,163,147 loan from *M* to *N* that *N* repays in installments over the term of the agreement, and an interest rate swap between *M* and *N* in which *M* immediately pays the installment payments on the loan back to *N* as part of its fixed payments on the swap in exchange for the LIBOR payments by *N*.

(c) The yield adjustment fee is recognized over the life of the agreement by treating the $15,163,147 as a loan that will be repaid with level payments over five years. Assuming a constant yield to maturity and annual compounding at 10%, *M* and *N* account for the principal and interest on the loan as follows:

	Level payment	Interest component	Principal component
1995	$4,000,000	$1,516,315	$2,483,685
1996	4,000,000	1,267,946	2,732,054
1997	4,000,000	994,741	3,005,259
1998	4,000,000	694,215	3,305,785
1999	4,000,000	363,636	3,636,364
	$20,000,000	$4,836,853	$15,163,147

(d) *M* recognizes interest income, and *N* claims an interest deduction, each taxable year equal to the interest component of the deemed installment payments on the loan. These interest amounts are not included in the parties' net income or net deduction from the swap contract under paragraph (d) of this section. The principal components are needed only to compute the interest component of the level payment for the following period, and do not otherwise affect the parties' net income or net deduction from this contract.

(e) *N* also makes swap payments to *M* based on LIBOR, and receives swap payments from *M* at a fixed rate that is equal to the sum of the stated fixed rate and the rate calculated by dividing the deemed level annual payments on the loan by the notional principal amount. Thus, the fixed rate on this swap is 10%, which is the sum of the stated rate of 6% and the rate calculated by dividing the annual loan payment of $4,000,000 by the notional principal amount of $100,000,000, or 4%. Using the methods provided in paragraph (e)(2) of this section, the swap payments from *M* to *N* of $10,000,000 (10% of $100,000,000) and the LIBOR swap payments from *N* to *M* are included in the parties' net income or net deduction from the contract for each taxable year.

Example 4. Swaps recharacterized as a loan. (a) The facts are the same as in *Example 3*, except that on January 1, 1995, *N* also enters into an interest rate swap agreement with unrelated counterparty *O* under which, for a term of five years, *N* is obligated to make annual payments at 12% and *O* is obligated to make annual payments at LIBOR on a notional principal amount of $100 million. At the time *N* and *O* enter into this swap agreement, the rate for similar on-market swaps is LIBOR to 10%. To compensate for this difference, *O* pays *N* an upfront yield adjustment fee of $7,581,574. This yield adjustment fee equals the present value, at 10% compounded annually, of five annual payments of $2,000,000 (2% of $100,000,000).

(b) In substance, these two interest rate swaps are the equivalent of a fixed rate borrowing by *N* of $22,744,721 ($15,163,147 from *M* plus $7,581,574 from *O*). Under paragraph (g)(2) of this section, if these positions were entered into to avoid interest character on a net loan position, the Commissioner may recharacterize the swaps as a loan which *N* will repay with interest in five annual installments of $6,000,000 each (the difference between the 12% *N* pays under the swap with *O* and the 6% *N* receives under the swap with *M*, multiplied by the $100,000,000 notional principal amount).

(c) *N* recognizes no net income or net deduction from these contracts under paragraph (d) of this section because, as to *N*, there is no notional principal contract income or expense. However, the recharacterization of *N*'s separate transactions as a loan has no effect on the way *M* and *O* must each account for their notional principal contracts under paragraphs (d) through (g) of this section.

(h) *Termination payments*—(1) *Definition.* A payment made or received to extinguish or assign all or a proportionate part of the remaining rights and obligations of any party under a notional principal contract is a termination payment to the party making the termination payment and the party receiving the payment. A termination payment includes a payment made between the original parties to the contract (an extinguishment), a payment made between one party to the contract and a third party (an assignment), and any gain or loss realized on the exchange of one notional principal contract for another. Where one party assigns its remaining rights and obligations to a third party, the original nonassigning counterparty realizes gain or loss if the assignment results in a deemed exchange of contracts and a realization event under section 1001.

(2) *Taxable year of inclusion and deduction by original parties.* Except as otherwise provided (e.g., in section 453 or 1092), a party to a notional principal contract recognizes a termination payment in the year the contract is extinguished, assigned, or exchanged. When the termination payment is recognized, the party also recognizes any other payments that have been made or received pursuant to the notional principal contract, but that have not been recognized under paragraph (d) of this section. If only a proportionate part of a party's rights and obligations is extinguished, assigned, or exchanged, then only that proportion of the unrecognized payments is recognized under the previous sentence.

(3) *Taxable year of inclusion and deduction by assignees.* A termination payment made or received by an assignee pursuant to an assignment of a notional principal contract is recognized by the assignee under the rules of paragraphs (f) and (g)(4) or (g)(5) of this section as a nonperiodic payment for the notional principal contract that is in effect after the assignment.

(4) *Special rules*—(i) *Assignment of one leg of a contract.* A payment is not a termination payment if it is made or received by a party in exchange for assigning all or a portion of one leg of a notional principal contract at a time when a substantially proportionate amount of the other leg remains

unperformed and unassigned. The payment is either an amount loaned, an amount borrowed, or a nonperiodic payment, depending on the economic substance of the transaction to each party. This paragraph (h)(4)(i) applies whether or not the original notional principal contract is terminated as a result of the assignment.

(ii) *Substance over form.* Any economic benefit that is given or received by a taxpayer in lieu of a termination payment is a termination payment.

(5) *Examples.* The following examples illustrate the application of this paragraph (h). All of the examples assume that no loss deferral rules apply.

Example 1. Termination by extinguishment. (a) On January 1, 1995, *P* enters into an interest rate swap agreement with unrelated counterparty *Q* under which, for a term of seven years, *P* is obligated to make annual payments based on 10% and *Q* is obligated to make semi-annual payments based on LIBOR and a notional principal amount of $100 million. *P* and *Q* are both calendar year taxpayers. On January 1, 1997, when the fixed rate on a comparable LIBOR swap has fallen to 9.5%, *P* pays *Q* $1,895,393 to terminate the swap.

(b) The payment from *P* to *Q* extinguishes the swap contract and is a termination payment, as defined in paragraph (h)(1) of this section, for both parties. Accordingly, under paragraph (h)(2) of this section, *P* recognizes a loss of $1,895,393 in 1997 and *Q* recognizes $1,895,393 of gain in 1997.

Example 2. Termination by assignment. (a) The facts are the same as in *Example 1*, except that on January 1, 1997, *P* pays unrelated party *R* $1,895,393 to assume all of *P*'s rights and obligations under the swap with *Q*. In return for this payment, *R* agrees to pay 10% of $100 million annually to *Q* and to receive LIBOR payments from *Q* for the remaining five years of the swap.

(b) The payment from *P* to *R* terminates *P*'s interest in the swap contract with *Q* and is a termination payment, as defined in paragraph (h)(1) of this section, for *P*. Under paragraph (h)(2) of this section, *P* recognizes a loss of $1,895,393 in 1997. Whether *Q* also has a termination payment with respect to the payment from *P* to *R* is determined under section 1001.

(c) Under paragraph (h)(3) of this section, the assignment payment that *R* receives from *P* is a nonperiodic payment for an interest rate swap. Because the assignment payment is not a significant nonperiodic payment within the meaning of paragraph (g)(1) of this section, *R* amortizes the $1,895,393 over the five year term of the swap agreement under paragraph (f)(2) of this section.

Example 3. Assignment of swap with yield adjustment fee. (a) The facts are the same as in *Example 2*, except that on January 1, 1995, *Q* paid *P* a yield adjustment fee to enter into the seven year interest rate swap. In accordance with paragraph (f)(2) of this section, *P* and *Q* included the ratable daily portions of that nonperiodic payment in their net income or net deduction from the contract for 1995 and 1996. On January 1, 1997, $300,000 of the nonperiodic payment has not yet been recognized by *P* and *Q*.

(b) Under paragraph (h)(2) of this section, *P* recognizes a loss of $1,595,393 ($1,895,393–$300,000) in 1997. *R* accounts for the termination payment in the same way it did in *Example 2*; the existence of an unamortized payment with respect the original swap has no effect on *R*.

Example 4. Assignment of one leg of a swap. (a) On January 1, 1995, *S* enters into an interest rate swap agreement with unrelated counterparty *T* under which, for a term of five years, *S* will make annual payments at 10% and *T* will make annual payments at LIBOR on a notional principal amount of $50 million. On January 1, 1996, unrelated party U pays *T* $15,849,327 for the right to receive the four remaining $5,000,000 payments from *S*. Under the terms of the agreement between *S* and *T*, *S* is notified of this assignment, and *S* is contractually bound thereafter to make its payments to *U* on the appropriate payment dates. *S*'s obligation to pay *U* is conditioned on *T* making its LIBOR payment to *S* on the appropriate payment dates.

(b) Because *T* has assigned to *U* its rights to the fixed rate payments, but not its floating rate obligations under the notional principal contract, *U*'s payment to *T* is not a termination payment as defined in paragraph (h)(1) of this section, but is covered by paragraph (h)(4)(i) of this section. The economic substance of the transaction between *T* and *U* is a loan that does not affect the way that *S* and *T* account for the notional principal contract under this section.

(i) *Anti-abuse rule.* If a taxpayer enters into a transaction with a principal purpose of applying the rules of this section to produce a material distortion of income, the Commissioner may depart from the rules of this section as necessary to reflect the appropriate timing of income and deductions from the transaction.

(j) *Effective date.* These regulations are effective for notional principal contracts entered into on or after December 13, 1993.

Par. 5. Section 1.451–1 is amended by adding paragraph (f) to read as follows:

§ 1.451–1 General rule for taxable year of inclusion.

* * * * *

(f) *Timing of income from notional principal contracts.* For the timing of income with respect to notional principal contracts, see § 1.446–3.

Par. 6. Section 1.461–4 is amended by adding paragraph (f) to read as follows:

§ 1.461–4 Economic performance.

* * * * *

(f) *Timing of deductions from notional principal contracts.* Economic performance on a notional principal contract occurs as provided under § 1.446–3.

Par. 7. Section 1.988–2 is amended by adding paragraph (h) to read as follows:

§ 1.988–2 Recognition and computation of exchange gain or loss.

* * * * *

(h) *Timing of income and deductions from notional principal contracts.* Except as otherwise provided (e.g., in § 1.988–5 or 1.446–3(g)), income or loss from a notional principal contract described in § 1.988–1(a)(2)(iii)(B) (other than a currency swap) is exchange gain or loss. For the rules governing the timing of income and deductions with respect to notional principal contracts, see § 1.446–3. See paragraph (e)(2) of this section with respect to currency swaps.

Par. 8. Section 1.1092(d)–1 is added to read as follows:

§ 1.1092(d)–1 Definitions and Special Rules.

(a) *Actively traded.* Actively traded personal property includes any personal property for which there is an established financial market.

(b) *Established financial market*—(1) *In general.* For purposes of this section, an established financial market includes—

(i) A national securities exchange that is registered under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f);

(ii) An interdealer quotation system sponsored by a national securities association registered under section 15A of the Securities Exchange Act of 1934;

(iii) A domestic board of trade designated as a contract market by the Commodities Futures Trading Commission;

(iv) A foreign securities exchange or board of trade that satisfies analogous regulatory requirements under the law of the jurisdiction in which it is organized (such as the London International Financial Futures Exchange, the Marche a Terme International de France, the International Stock Exchange of the United Kingdom and the Republic of Ireland, Limited, the Frankfurt Stock Exchange, and the Tokyo Stock Exchange);

(v) An interbank market;

(vi) An interdealer market (as defined in paragraph (b)(2)(i) of this section); and

(vii) Solely with respect to a debt instrument, a debt market (as defined in paragraph (b)(2)(ii) of this section).

(2) *Definitions*—(i) *Interdealer market.* An interdealer market is characterized by a system of general circulation (including a computer listing disseminated to subscribing brokers,

dealers, or traders) that provides a reasonable basis to determine fair market value by disseminating either recent price quotations (including rates, yields, or other pricing information) of one or more identified brokers, dealers, or traders or actual prices (including rates, yields, or other pricing information) of recent transactions. An interdealer market does not include a directory or listing of brokers, dealers, or traders for specific contracts (such as yellow sheets) that provides neither price quotations nor actual prices of recent transactions.

(ii) *Debt market.* A debt market exists with respect to a debt instrument if price quotations for the instrument are readily available from brokers, dealers, or traders. A debt market does not exist with respect to a debt instrument if—

(A) No other outstanding debt instrument of the issuer (or of any person who guarantees the debt instrument) is traded on an established financial market described in paragraph (b)(1)(i), (ii), (iii), (iv), (v), or (vi) of this section (other traded debt);

(B) The original stated principal amount of the issue that includes the debt instrument does not exceed $25 million;

(C) The conditions and covenants relating to the issuer's performance with respect to the debt instrument are materially less restrictive than the conditions and covenants included in all of the issuer's other traded debt (e.g., the debt instrument is subject to an economically significant subordination provision whereas the issuer's other traded debt is senior); or

(D) The maturity date of the debt instrument is more than 3 years after the latest maturity date of the issuer's other traded debt.

(c) *Notional principal contracts.* For purposes of section 1092(d)—

(1) A notional principal contract (as defined in § 1.446–3(c)(1)) constitutes personal property of a type that is actively traded if contracts based on the same or substantially similar specified indices are purchased, sold, or entered into on an established financial market within the meaning of paragraph (b) of this section; and

(2) The rights and obligations of a party to a notional principal contract are rights and obligations with respect to personal property and constitute an interest in personal property.

(d) *Effective dates.* Paragraph (b)(1)(vii) of this section applies to positions entered into on or after October 14, 1993. Paragraph (c) of this section applies to positions entered into on or after July 8, 1991.

Approved: October 4, 1993

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 93–25192 Filed 10–8–93; 1:26 pm]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 258

[FRL–4788–5]

Solid Waste Disposal Facility Criteria; Delay of the Effective Date

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; corrections.

SUMMARY: EPA is making technical corrections to the Table "Summary of Changes to the Effective Dates of the MSWLF Criteria" which was included in the preamble to the final rule "Solid Waste Disposal Facility Criteria; Delay of the Effective Date" that appeared in the **Federal Register** on October 1, 1993 (58 FR 51536). This correction notice will amend errors that appear in the portion of the table related to "Effective date of ground-water monitoring and corrective action."

EFFECTIVE DATE: October 14, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. David Hockey (202) 260–7596.

SUPPLEMENTARY INFORMATION: On October 1, 1993, EPA promulgated a final rule under Subtitle D of the Resource Conservation and Recovery Act and section 405 of the Clean Water Act delaying the effective date of the Municipal Solid Waste Landfill Criteria (58 FR 51536). The preamble to the rule included a table on pages 51543 and 51544 that summarized the effective dates of the final rule. That rule contained minor editorial errors that EPA is correcting in this action. The corrections are for the table "Summary of Changes to the Effective Dates of the MSWLF Criteria" for the row titled "Effective date of ground-water monitoring and corrective action." For the category of MSWLF units accepting 100 TPD or less; are not on the NPL; and are located in a state that has submitted an application for approval by 10/9/93: the effective date for new units should read October 9, 1993 and not October 9, 1994. For the category of MSWLF units that meet the small landfill exemption in 40 CFR 258.1(f): the effective date for existing units and lateral expansions should read October 9, 1995 through October 9, 1996 and not October 9, 1996 only. For the category of MSWLF units receiving flood-related waste: the effective date for new units should read October 9, 1993 and not October 9, 1994.

Correction of Publication

Accordingly, the final rule is corrected by revising the table on pages 51543 and 51544 to read as follows:

SUMMARY OF CHANGES TO THE EFFECTIVE DATES OF THE MSWLF CRITERIA [1]

	MSWLF units accepting greater than 100 TPD	MSWLF units accepting 100 TPD or less; are not on the NPL; and are located in a state that has submitted an application for approval by 10/9/93	MSWLF units that meet the small landfill exemption in 40 CFR § 258.1(f)	MSWLF units receiving flood-related waste
General effective date [2]	October 9, 1993	April 9, 1994	October 9, 1995	Up to October 9, 1994 as determined by State.
This is the effective date for location, operation, design, and closure/post-closure.				
Date by which to install final cover if cease receipt of waste by the general effective date.	October 9, 1994	October 9, 1994	October 9, 1996	Within one year of date determined by State; no later than October 9, 1995.

SUMMARY OF CHANGES TO THE EFFECTIVE DATES OF THE MSWLF CRITERIA [1]—Continued

	MSWLF units accepting greater than 100 TPD	MSWLF units accepting 100 TPD or less; are not on the NPL; and are located in a state that has submitted an application for approval by 10/9/93	MSWLF units that meet the small landfill exemption in 40 CFR § 258.1(f)	MSWLF units receiving flood-related waste
Effective date of ground-water monitoring and corrective action.	Prior to receipt of waste for new units; October 9, 1994 through October 9, 1996 for existing units and lateral expansions.	October 9, 1993 for new units; October 9, 1994 through October 9, 1996 for existing units and lateral expansions.	October 9, 1995 for new units; October 9, 1995 through October 9, 1996 for existing units and lateral expansions.	October 9, 1993 for new units; October 9, 1994 through October 9, 1996 for existing units and lateral expansions.
Effective date of financial assurance requirements.	April 9, 1995	April 9, 1995	October 9, 1995	April 9, 1995.

[1] This Table provides a summary of the major changes to the effective dates. See the final rule and preamble published on October 1, 1993 (58 *FR* 51536) for a full discussion of all changes and related conditions. All other versions of this table, including the version in the October 1, 1993 **Federal Register** (58 FR 51536) on pages 51543 and 51544, are obsolete.

[2] If a MSWLF unit receives waste after this date, the unit must comply with all of Part 258.

Authority

EPA is promulgating these regulations under the authority of sections 2002 and 4010(c) of the Resource Conservation and Recovery Act of 1976, as amended. 42 USC 6912.

Dated: October 5, 1993.

Walter W. Kovalick, Jr.,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 93–25100 Filed 10–13–93; 8:45 am]

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GENERAL SERVICES ADMINISTRATION

41 CFR Part 302–6

[FTR Amendment 31]

RIN 3090–AE92

Federal Travel Regulation; Increase in Maximum Reimbursement Limitations for Real Estate Sale and Purchase Expenses

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: This final rule amends the Federal Travel Regulation (FTR) to increase the maximum dollar limitations on reimbursement for allowable real estate sale and purchase expenses incident to a change of official station. Section 5724a(a)(4)(B) of title 5, United States Code requires that the dollar limitations be updated effective October 1 of each year based on the percent change, if any, in the Consumer Price Index for All Urban Consumers, United States City Average, Housing Component, for December of the preceding year over December of the second preceding year. This final rule will have a favorable impact on Federal employees authorized to relocate in the interest of the Government since it increases relocation allowance maximums.

EFFECTIVE DATE: This final rule is effective October 1, 1993, and applies to employees whose effective date of transfer is on or after October 1, 1993. For purposes of this regulation, the effective date of transfer is the date on which the employee reports for duty at the new official station.

FOR FURTHER INFORMATION CONTACT: Jane E. Groat, Transportation Management Division (FBX), Washington, DC 20406, telephone 703–305–5745.

SUPPLEMENTARY INFORMATION: This final rule makes the annual adjustment to the maximum reimbursement limitations for the sale and purchase of an employee's residence when the employee transfers in the interest of the Government. The total amount of expenses that may be reimbursed in connection with the sale of a residence shall not exceed 10 percent of the actual sale price or $21,340, whichever is the lesser amount. The total amount of expenses that may be reimbursed in connection with the purchase of a residence shall not exceed 5 percent of the purchase price or $10,669, whichever is the lesser amount.

The General Services Administration (GSA) has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 302–6

Government employees, Relocation allowances and entitlements, Transfers

For the reasons set out in the preamble, 41 CFR part 302–6 is amended as follows:

PART 302–6—ALLOWANCE FOR EXPENSES INCURRED IN CONNECTION WITH RESIDENCE TRANSACTIONS

1. The authority citation for part 302–6 continues to read as follows:

Authority: 5 U.S.C. 5721–5734; 20 U.S.C. 905(a); E.O. 11609, 36 FR 13747, 3 CFR, 1971–1975 Comp., p. 586.

302–6.2 [Amended]

2. Section 302–6.2 is amended by removing the amount "$20,799" in paragraph (g)(1), and adding in its place the amount "$21,340"; and by removing the amount "$10,399" in paragraph (g)(2) and adding in its place the amount "$10,669".

Dated: September 8, 1993.

Roger W. Johnson,

Administrator of General Services.

[FR Doc. 93–25183 Filed 10–13–93; 8:45 am]

BILLING CODE 6820–34–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 97

[DA 93-1158]

Deletion of Station Location on Amateur Application Form

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Order deletes the requirement in the amateur service rules that a station location be specified on the application. The Order recognizes that the extensive use of mobile and portable equipment results in frequent changes of the station's transmitting location. In addition, this action will expedite the processing of amateur service license applications.

EFFECTIVE DATE: November 15, 1993.

FOR FURTHER INFORMATION CONTACT: Maurice J. DePont, Federal Communications Commission, Washington, DC 20554, (202) 632-4964.

SUPPLEMENTARY INFORMATION:

Order

Adopted: September 24, 1993.

Released: October 7, 1993.

By the Chief, Private Radio Bureau:

1. Section 97.21 of the Commission's Rules, 47 CFR 97.21, currently provides that each application for an amateur service license and each application for a reciprocal permit for alien amateur licensee must show, among other things, a station location in an area where the amateur service is regulated by the FCC. The rule also provides that the station location must be a place where a station can be physically located.

2. In order to expedite the processing of amateur service license applications, it is desirable to delete the requirement that a station location be specified on the application. Further, because portable and mobile equipment is currently widely used in the amateur service, a station's location when transmitting often changes, sometimes even daily.

3. We believe that this rule amendment is not likely to be controversial. Further, it relates to a nonsubstantive change in the Commission's licensing procedures. The notice and comment provisions of Section 553 of the Administrative Procedure Act, 5 U.S.C. 553, therefore, need not be complied with. Authority for this action is contained in Section 0.331(a)(1) of the Commission's Rules, 47 CFR 0.331(a)(1).

4. Accordingly, § 97.21, is amended, effective November 15, 1993, as set forth below.

List of Subjects in 47 CFR Part 97

Radio.

Federal Communications Commission.

Ralph A. Haller,

Chief, Private Radio Bureau.

Rule Change

Part 97 of chapter I of title 47 of the Code of Federal Regulations is amended as follows:

PART 97—AMATEUR RADIO SERVICE

1. The authority citation for Part 97 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609, unless otherwise noted.

2. Section 97.21 is revised to read as follows:

§ 97.21 Mailing address.

Each application for an amateur service license and each application for a reciprocal permit for alien amateur licensee must show a mailing address in an area where the amateur service is regulated by the FCC. The mailing address must be one where the licensee can receive mail delivery by the United States Postal Service.

[FR Doc. 93-25137 Filed 10-13-93; 8:45 am]

BILLING CODE 6712-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1833

Change to the NASA FAR Supplement Reflecting the Discontinuance of the NASA Board of Contract Appeals (NASA BCA) and its Merger With the Armed Services Board of Contract Appeals (ASBCA)

AGENCY: Office of Procurement, Procurement Policy Division, National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This notice amends the NASA FAR Supplement, part 1833, to reflect that the NASA BCA no longer exists as a separate entity and that its functions are now accomplished by the ASBCA.

EFFECTIVE DATE: October 14, 1993.

FOR FURTHER INFORMATION CONTACT: Tom O'Toole, NASA Headquarters, Office of Procurement, Procurement Policy Division (Code HP), Washington, DC 20546. Telephone: (202) 358-0482.

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1993, an interim rule to amend the NASA FAR Supplement to reflect the discontinuance of the NASA BCA and the assumption of its functions by the ASBCA was published in the **Federal Register** for comment (58 FR 44462). No public comments were received. Consequently, under the authority of 42 U.S.C. 2473(c)(1), NASA is adopting as a final rule the text set out as the interim rule at 58 FR 44462 with no changes.

Impact

NASA certifies that this regulation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. et seq.). This rule does not impose any reporting or recordkeeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 48 CFR Part 1833

Government Procurement.

Tom Luedtke,

Acting Deputy Associate Administrator for Procurement.

[FR Doc. 93-25253 Filed 10-14-93; 8:45 am]

BILLING CODE 7510-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 227, 672, and 675

[Docket No. 930949-3249; I.D. 092393A]

Threatened Fish and Wildlife; Groundfish of the Gulf of Alaska; Groundfish Fishery of the Bering Sea and Aleutian Islands Area; Steller Sea Lion Protection Areas

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; technical amendment.

SUMMARY: NMFS announces technical amendments to final rules implementing Steller sea lion protection areas authorized under the Endangered Species Act (ESA), the Fishery Management Plan (FMP) for Groundfish of the Gulf of Alaska (GOA), and the FMP for the Groundfish Fishery of the Bering Sea and Aleutian Islands management area (BSAI). The technical amendments revise regulations by correcting seven tables listing longitude and latitude of Steller sea lion

protection areas and correcting an illustration. The purpose of this action is to correct errors in the published regulations. These corrections are consistent with the goals and objectives of the ESA and the FMPs.

EFFECTIVE DATE: October 13, 1993.

FOR FURTHER INFORMATION CONTACT: Susan Mello, Protected Resources Management Division, Alaska Region, NMFS, 907–586–7235.

SUPPLEMENTARY INFORMATION:

Background

In late 1990, NMFS listed Steller sea lions as a threatened species under the ESA because of a drastic population decline (55 FR 49204, November 26, 1990). Coincident with the listing, NMFS implemented regulations at § 227.12 to protect Steller sea lions by restricting opportunities for intentional and unintentional harassment of sea lions. Specifically, these regulations: (1) Prohibit shooting at or near Steller sea lions; (2) prohibit, with limited exceptions, vessels from entering within 3 nautical miles (nm) (5.5 km) of listed Steller sea lion rookeries; (3) prohibit individuals on land from approaching within one-half mile (0.8 km) or within sight of listed Steller sea lion rookeries in the GOA and BSAI; and (4) limit the allowable annual take of Steller sea lions incidental to commercial fisheries to 675 animals in Alaskan waters and adjacent areas of the Exclusive Economic Zone (EEZ) west of 141° W. longitude.

The domestic groundfish fisheries in the EEZ of the BSAI and GOA are managed by the Secretary of Commerce under the FMPs. The FMPs were prepared by the North Pacific Fishery Management Council under the Magnuson Fishery Conservation and Management Act (Magnuson Act) and are implemented by regulations governing groundfish fishing at 50 CFR parts 672 and 675. General regulations that also apply to domestic fisheries are codified at 50 CFR part 620.

The growth of the BSAI and GOA groundfish trawl fisheries coincides temporally with the observed decline of the Steller sea lion population in Alaska. Negative interactions between these fisheries and Steller sea lions have been documented (e.g., intentional and unintentional lethal takes) and hypothesized (e.g., depletion of Steller sea lion prey resources by temporally and spatially compressed fishing). Subsequent to the ESA listing of Steller sea lions as threatened in 1990, NMFS further restricted groundfish trawling under the Magnuson Act to reduce the potential for the GOA and BSAI groundfish fisheries to affect negatively Steller sea lions, their habitat, and food resources. Currently, BSAI/GOA groundfish trawling is prohibited within 10 nm of all listed Steller sea lion rookeries year round, and within 20 nm of six listed rookeries during the BSAI winter pollock roe fishery (57 FR 2683, January 23, 1992, and 58 FR 13561, March 12, 1993).

The purpose of these technical amendments is to correct errors in the cited locations of certain listed Steller sea lion rookeries in the existing regulations. These corrections are consistent with positions of rookeries found in Table 1 of the final description of critical habitat for Steller sea lions (58 FR 45269, August 27, 1993). Minor corrections are needed to amend earlier transcription errors in the regulations, and to incorporate improved locational data from NMFS surveys. Amendments to 50 CFR parts 227, 672 and 675 include: (1) Corrections to seven tables listing longitude and latitude of Steller seal lion protection areas; and (2) corrections to an illustration of one rookery.

Classification

Because these technical amendments make minor corrections to existing rules, notice and public comment thereon and a delay in effective date would serve no purpose. Accordingly, under 5 U.S.C. 553 (b) and (d), notice and public comment thereon and a delay in the effective date are unnecessary.

Because this rule is being issued without prior comment, it is not subject to the Regulatory Flexibility Act requirement for a regulatory flexibility analysis; none has been prepared.

This rule makes minor corrections to a rule that does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612 and does not contain a collection-of-information requirement for the purposes of the Paperwork Reduction Act. No changes in the regulatory impacts previously reviewed and analyzed will result from implementation of the technical amendment.

List of Subjects

50 CFR Part 227

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

50 CFR Parts 672 and 675

Fisheries, Reporting and recordkeeping requirements.

Dated: October 5, 1993.

Samuel W. McKeen,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 227, 672, and 675 are amended as follows:

PART 227—THREATENED FISH AND WILDLIFE

1. The authority citation for part 227 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

2. In § 227.12, paragraph (a)(3), Table 1 is amended by revising items 12, 20, 21, 26, 27 and 35 to read as follows:

§ 227.12 Steller sea lion.

(a) * * *

(3) * * *

Table 1.—LISTED STELLER SEA LION ROOKERY SITES [1]

	From		To		NOAA Chart	Notes
	Lat.	Long.	Lat.	Long.		
*	*	*	*	*	*	*
12. Akun I	54°18.0N	165°32.5W	54°18.0N	165°31.5W	16547	Billings Head Bight.
*	*	*	*	*	*	*
20. Kasatochi I	52°10.0N	175°31.5W	52°10.5N	175°29.0W	16480	N half of island.
21. Adak I	51°36.5N	176°59.0W	51°38.0N	176°59.5W	16460	SW Point, Lake Point.

Table 1.—LISTED STELLER SEA LION ROOKERY SITES [1]—Continued

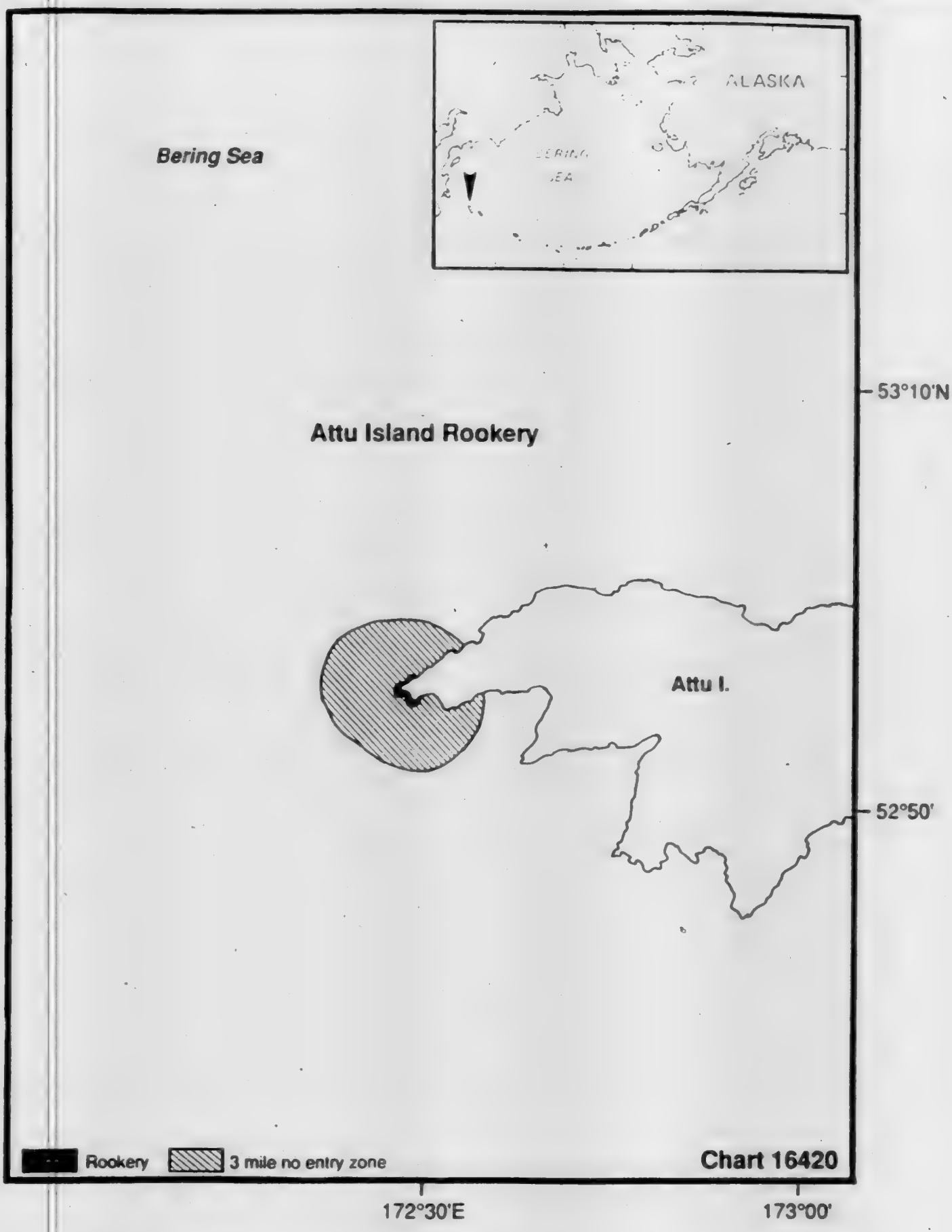
From		To		NOAA Chart	Notes
Lat.	Long.	Lat.	Long.		
•	•	•	•	•	•
26. Amchitka I	51°22.5N	179°28.0E	51°21.5N	179°25.0E	16440	East Cape.
27. Amchitka I	51°32.5N	178°49.5E			16440	Column Rocks.
•	•	•	•	•	•
35. Attu I	52°54.5N	172°38.5E	52°57.5N	172°31.5E	16681	S Quadrant.

[1] Each site extends in a clockwise direction from the first set of geographic coordinates along the shoreline at mean lower low water to the second set of coordinates; or, if only one set of geographic coordinates is listed, the site extends around the entire shoreline of the island at mean lower low water.

• • • • •

3. In § 227.12(a)(3), the illustration for the Attu Island Rookery is revised to read as follows:

BILLING CODE 3510-22-M



BILLING CODE 3510-22-C

PART 672—GROUNDFISH OF THE GULF OF ALASKA

4. The authority citation for part 672 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

5. In § 672.24, paragraph (e)(1), the table is amended by revising the entries for "Chirikof I" and "Akun I" and in paragraph (e)(2), the table is amended by revising the entry for "Akun I" to read as follows:

§ 672.24 Gear limitations.

* * * * *

(e) * * *

(1) * * *

Island	From		To	
	Lat.	Long.	Lat.	Long.
* * * *	*		*	*
Chirikof I	55° 46.5N	155° 39.5W	55° 46.5N	155° 43.0W
* * * *	*		*	*
Akun I	54° 18.0N	165° 32.5W	54° 18.0N	165° 31.5W
* * * *	*		*	*

* * * * *

(2) * * *

Island	From		To	
	Lat.	Long.	Lat.	Long.
Akun I	54° 18.0N	165° 32.5W	54° 18.0N	165° 31.5W
* * * *	*		*	*

* * * * *

PART 675—GROUNDFISH FISHERY OF THE BERING SEA AND ALEUTIANS ISLANDS AREA

6. The authority citation for part 675 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

7. In § 675.24, the tables in paragraphs (f)(1) (i), (ii), (f)(2) (i), and (ii) are amended by revising the following entries:

Paragraph	Entry in Table
(f)(1)(i)	Akun I
(f)(1)(ii)	Akun I
(f)(2)(i)	Agligadak I
	Kasatochi I
	Adak I
	Amchitka I (2 times)
(f)(2)(ii)	Attu I
	Agligadak I

The revisions read as follows:

§ 675.24 Gear limitations.

* * * * *

(f) * * *

(1) * * *

(i) * * *

Island	From		To	
	Lat.	Long.	Lat.	Long.
* * * *	*		*	*
Akun I	54° 18.0N	165° 32.5W	54° 18.0N	165° 31.5W
* * * *	*		*	*

* * * * *

(ii) * * *

Island	From		To	
	Lat.	Long.	Lat.	Long.
* * * *	*		*	*
Akun I	54° 18.0N	165° 32.5W	54° 18.0N	165° 31.5W

Island	From		To	
	Lat.	Long.	Lat.	Long.

(2) * * *
(i) * * *

Island	From		To	
	Lat.	Long.	Lat.	Long.
Agligadak I	52° 06.5N	172° 54.0W		
Kasatochi I	52° 10.0N	175° 31.5W	52° 10.5N	175° 29.0W
Adak I	51° 36.5N	176° 59.0W	51° 38.0N	176° 59.5W
Amchitka I	51° 22.5N	179° 28.0E	51° 21.5N	179° 25.0E
Amchitka I	51° 32.5N	178° 49.5E		
Gillion Point:				
Attu I	52° 54.5N	172° 28.5E	52° 57.5N	172° 31.5E

(ii) * * *

Island	From		To	
	Lat.	Long.	Lat.	Long.
Agligadak I	52° 06.5N	172° 54.0W		

* * * * *

[FR Doc. 93-24967 Filed 10-13-93; 8:45 am]
BILLING CODE 3510-22-M

50 CFR Part 661

[Docket No. 930402-3134; I.D. 100493C]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason adjustments and closures.

SUMMARY: NMFS announces the following series of inseason management actions: The recreational fishery from Leadbetter Point, Washington, to Cape Falcon, Oregon, will open on September 12 under a revised subarea coho salmon quota of 35,100 fish and will close at midnight, September 23, 1993; the recreational fisheries in the two subareas between Cape Alava and Leadbetter Point, Washington, will close at midnight, September 23, 1993; and the commercial fishery in the revised subarea between Leadbetter Point, Washington, and Cape Falcon, Oregon, will reopen for its final fishing period on September 16–19, 1993, with a possession and landing limit of a total of 70 coho salmon for this open period. These adjustments are intended to provide additional fishing opportunity to recreational fishermen and minimize disruption to the commercial fishery without exceeding the ocean share allocated to the recreational and commercial fisheries in the affected subareas. The closures are necessary to respond to serious conservation concerns for coho salmon.

DATES: Adjustment of the recreational fishery from Leadbetter Point, Washington, to Cape Falcon, Oregon, effective at 0001 hours local time, September 17, 1993. Closure of the recreational fisheries from Cape Alava, Washington, to Cape Falcon, Oregon effective at 2400 hours local time, September 23, 1993. Adjustment of the commercial fishery from Leadbetter Point, Washington, to Cape Falcon, Oregon, effective at 0001 hours local time, September 16, 1993, through 2400 hours local time, September 19, 1993, and closure of this fishery effective at 2400 hours local time, September 19, 1993. Comments will be accepted through October 28, 1993.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director,

Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way NE., BIN C15700-Bldg. 1, Seattle, WA 98115–0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at (206) 526–6140.

SUPPLEMENTARY INFORMATION: In its amended emergency interim rule (58 FR 31664, June 4, 1993), NMFS announced the 1993 recreational and commercial fisheries north of Cape Falcon, Oregon. Inseason modifications of quotas, fishing seasons, limited retention regulations, recreational fishing days per calendar week, and boundaries are authorized by regulations governing the ocean salmon fisheries at 50 CFR 661.21(b)(1) (i), (ii), (iii), and (v). At the September 14–17, 1993 meeting of the Pacific Fishery Management Council in Portland, Oregon, the Washington Department of Fisheries presented a status report on coastwide coho salmon fisheries which indicated serious conservation concerns for natural and hatchery coho stocks, specifically Puget Sound and possibly Washington north coastal stocks. Coho salmon catch rates in many major fisheries were far below the rates that were expected if coho abundance was at the level forecast preseason. The coho salmon catch in the Canadian West Coast of Vancouver Island troll fishery, for example, will be less than 1 million fish when the expected harvest was 1.7 million. Catch rates for coho salmon in other pre-terminal, terminal, and in-river test fisheries operated by the State and tribes have confirmed that many major wild Puget Sound coho stocks were returning in numbers significantly less than expected. As the month of September progressed, poor ocean catch rates and test fisheries in the Columbia River confirmed that Columbia River early and late hatchery coho stocks too were returning in lower numbers than expected. The Director, Northwest Region, NMFS (Regional Director) considered these conservation concerns in his determinations to close the remaining recreational and commercial salmon fisheries north of Cape Falcon, Oregon, in an orderly manner before the scheduled ending dates for these fisheries and the attainment of their respective quotas. These inseason management actions are described below.

The first inseason management action concerns the recreational fishery from Leadbetter Point, Washington, to Cape Falcon, Oregon, which was scheduled to have two seasons: The first from July 5 through the earliest of September 9, or attainment of either the overall chinook quota north of Cape Falcon or the subarea coho salmon quota of 96,300 fish. The second from September 12 through the earliest of September 30 or attainment of either the overall chinook quota or the subarea coho salmon quota of 5,000 fish. The first season closed on September 9 as scheduled. Based on the best available information, the catch during the first season totaled 66,200 coho salmon, leaving 30,100 fish of the subarea coho quota unharvested. These fish were transferred to the second season which opened on September 12, resulting in a modified subarea quota of 35,100 coho salmon. This modification does not affect the overall recreational coho salmon quota north of Cape Falcon of 202,500 fish. The second season was scheduled to open Sunday through Thursday only.

The best available information on September 9, before conservation concerns for Puget Sound coho salmon were readily apparent, indicated that large amounts of coho salmon would remain unharvested at the end of the regularly scheduled season. Columbia River hatchery-produced coho salmon are the primary stock caught in this area. Thus, the recreational fishery in this subarea was opened September 12–23, and was scheduled to revert to the Sunday through Thursday fishing week by closing on September 24–25. This action would allow fishermen the opportunity to harvest returning hatchery coho salmon and would provide two additional fishing days, September 17–18. However, the best available information on September 24 indicated extremely poor coho salmon catch rates and effort levels in the Columbia River ocean area and inriver test fisheries confirmed possible conservation concerns for late-run hatchery coho. Thus, it was determined that the recreational fishery in the subarea between Leadbetter Point, Washington, and Cape Falcon, Oregon, should not reopen for the remainder of the season, and the fishery was closed for the remainder of the season effective 2400 hours local time, September 23 in order to conserve late-run Columbia River hatchery coho salmon.

The second inseason action concerns the recreational fisheries in the two subareas between Cape Alava and Leadbetter Point, Washington, which were scheduled to open July 5 and continue through the earliest of September 30 or attainment of either the overall chinook quota or the respective subarea coho salmon quotas. The best available information on September 17 indicated substantial conservation concerns for Puget Sound coho, with several major stocks returning to terminal areas in much smaller numbers than expected. The remaining recreational subarea between Cape Alava and the United States/Canada border had already been closed to ensure the coho quota for this subarea was not exceeded (58 FR 46093, September 1, 1993). Thus, it was determined that the recreational fisheries in the subareas between Cape Alava and Leadbetter Point, Washington, should close for the remainder of the season, effective 2400 hours local time, September 23 in order to reduce impacts on returning Puget Sound coho salmon.

The third inseason action concerns the commercial fishery from the Queets River, Washington, to Cape Falcon, Oregon, which was scheduled to open August 27 and continue through the earliest of October 31 of attainment of subarea quotas of either 13,300 coho salmon or 900 chinook salmon. Preseason restrictions included a cycle of 2 days open and 3 days closed and a possession and landing limit of 35 coho salmon per opening. Earlier inseason actions increased the subarea quotas; lengthened the fishery's open period; and increased the possession and landing limit (58 FR 48001, September 14, 1993; 58 FR 50524, September 28, 1993). The best available information on September 14 indicated that sufficient fish remained to allow the commercial fishery in this subarea to reopen for 4 days, but that the northern boundary of the fishery should be moved from the Queets River southward to Leadbetter Point, Washington, to minimize impacts on Puget Sound coho stocks. Therefore, the commercial fishery from Leadbetter Point, Washington, to Cape Falcon, Oregon, was reopened from 0001 hours local time, September 16 through 2400 hours local time, September 19. Vessels were allowed to possess, land and deliver not more than a total of 70 coho salmon for the open period. However, the best available information on September 21 indicated extremely poor catch rates and effort levels in all areas. Because of urgent conservation concerns for Puget Sound coho, the commercial fishery from Leadbetter Point, Washington, to Cape Falcon, Oregon, was not reopened, and the fishery was closed for the remainder of the season effective 2400 hours local time, September 18.

The Regional Director consulted with representatives of the Pacific Fishery Management Council, the Washington

Department of Fisheries, and the Oregon Department of Fish and Wildlife, and the Washington coastal treaty Indian tribes regarding these adjustments affecting the recreational and commercial fisheries from Cape Alava, Washington, to Cape Falcon, Oregon. The States of Washington and Oregon will manage the commercial and recreational fisheries in state waters adjacent to this area of the EEZ in accordance with these Federal actions. In accordance with the inseason notice procedures of 50 CFR 661.23, actual notice to fishermen of these actions was given prior to the effective dates noted above by telephone hotline number (206) 526–6667 or (800) 662–9825 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF–FM and 2182 Khz. Because of the need for immediate action, the Secretary of Commerce has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. This notice does not apply to treaty Indian fisheries or to other fisheries that may be operating in other areas.

Classification

This action is authorized by 50 CFR 661.21 and 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 8, 1993.

Joe P. Clem,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–25241 Filed 10–13–93; 8:45 am]

BILLING CODE 3510–22–M

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50 CFR Part 669

[Docket No. 930773–3247; I.D. 090893A]

RIN 0648–AE53

Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Amendment 2 to the Fishery Management Plan for the Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands (FMP). Amendment 2 and this final rule incorporate the major species of the deep-water reef fish fishery and the marine aquarium finfish fishery into the reef fish management unit; retitle the FMP to encompass the revised management unit; restrict the collection of marine aquarium fishes to hand-held dip nets and slurp guns; prohibit the harvest/possession/sale of certain species used in the marine aquarium trade; remove a requirement that the two escape panels required for each fish trap be located on opposite sides of the trap; prohibit the harvest or possession of jewfish; close two additional red hind spawning aggregation areas from December through February, in addition to the areas already closed; and close a spawning aggregation area for mutton snapper from March through June of each year. This final rule is intended to protect and conserve the highly exploited reef fish resources of Puerto Rico and the U.S. Virgin Islands.

EFFECTIVE DATE: November 15, 1993.

FOR FURTHER INFORMATION CONTACT: Miquel A. Rolon, 809–753–6910 or William R. Turner, 813–893–3161.

ADDRESSES: Requests for copies of Amendment 2, the final supplemental environmental impact statement, the final regulatory impact review, and the final regulatory flexibility analysis should be sent to the Caribbean Fishery Management Council, 268 Ave Munoz Rivera, suite 1108, San Juan, PR, 00918–4577.

SUPPLEMENTARY INFORMATION: The shallow-water reef fish fishery is managed under the FMP prepared by the Caribbean Fishery Management Council (Council), and its implementing regulations at 50 CFR part 669, under authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

Amendment 2 addresses continuing and growing concerns by the Council over scarce resources, the need to protect important species when they aggregate for spawning, and the need to extend protection to other reef-associated species not presently in the management unit. The specific management measures, and their backgrounds and rationales, were discussed in the proposed rule to implement Amendment 2 (58 FR 39186, July 22, 1993) and are not repeated here.

The NMFS Regional Director, Southeast Region, approved Amendment 2 on September 23, 1993. No public comments were received on the proposed rule or on Amendment 2; accordingly, the proposed rule is adopted as final without change.

Classification

The Secretary of Commerce (Secretary) determined that Amendment 2 is necessary for the conservation and management of the reef fish fishery and that it is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law, except for the provision in Amendment 2 that would have authorized the use of 18-gauge ungalvanized wire as fasteners of escape panels on fish traps. Accordingly, the Secretary disapproved that provision. The basis for the disapproval was included in the proposed rule and is not repeated here.

The Council prepared a regulatory impact review (RIR), which concludes this rule would have national net economic benefits. A summary of those benefits was included in the proposed rule and is not repeated here.

The Council prepared an initial regulatory flexibility analysis (RFA) for this action. The initial RFA has been adopted as final without change. The final RFA concludes that this rule would have a significant economic impact on a substantial number of small entities.

The Council prepared a final supplemental environmental impact statement (SEIS) for Amendment 2. The final SEIS was filed with the Environmental Protection Agency which published in the **Federal Register**, on August 6, 1993, a notice of availability for public comment until September 7, 1993.

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of Puerto Rico and the U.S. Virgin Islands. This determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. The state agencies did not respond within the statutory time period; therefore, state agency agreement with the consistency determination is presumed.

This final rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

This final rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 669

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: October 7, 1993.

Samuel W. McKeen,

Program Management Officer, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 669 is amended as follows:

PART 669—REEF FISH FISHERY OF PUERTO RICO AND THE U.S. VIRGIN ISLANDS

1. The authority citation for part 669 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. The heading for part 669 is revised to read as set forth above.

3. Section 669.1 is revised to read as follows:

§ 669.1 Purpose and scope.

(a) The purpose of this part is to implement the Fishery Management Plan for the Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands, prepared by the Caribbean Fishery Management Council under the Magnuson Act.

(b) This part governs conservation and management of reef fish in or from the EEZ around Puerto Rico and the U.S. Virgin Islands.

4. In § 669.2, the definition for *"Fish in the shallow-water reef fish fishery"* is removed and a definition for *"Fish in the reef fish fishery"* is added in its place to read as follows:

§ 669.2 Definitions.

* * * * *

Fish in the reef fish fishery means any of the following species:

Morays—Muraenidae
- Chain moray, *Echidna catenata*
- Green moray, *Gymnothorax funebris*
- Goldentail moray, *Gymnothorax miliaris*

Snake eels—Ophichthidae
- Goldspotted eel, *Myrichthys ocellatus*

Lizardfishes—Synodontidae
- Sand diver, *Synodus intermedius*

Frogfishes—Antennariidae
- Frogfish, *Antennarius* spp.

Batfishes—Ogcocephalidae
- Batfish, *Ogcocephalus* spp.

Squirrelfishes—Holocentridae
- Squirrelfish, *Holocentrus adscensionis*
- Longspine squirrelfish, *Holocentrus rufus*
- Blackbar soldierfish, *Myripristis jacobus*
- Cardinal soldierfish, *Plectrypops retrospinis*

Trumpetfishes—Aulostomidae
- Trumpetfish, *Aulostomus maculatus*

Pipefishes—Syngnathidae
- Seahorses, *Hippocampus* spp.
- Pipefishes, *Syngnathus* spp.

Flying gurnards—Dactylopteridae
- Flying gurnard, *Dactylopterus volitans*

Scorpionfishes—Scorpaenidae

Sea basses—Serranidae
- Rock hind, *Epinephelus adscensionis*
- Graysby, *Epinephelus cruentatus*
- Yellowedge grouper, *Epinephelus flavolimbatus*
- Coney, *Epinephelus fulvus*
- Red hind, *Epinephelus guttatus*
- Jewfish, *Epinephelus itajara*
- Red grouper, *Epinephelus morio*
- Misty grouper, *Epinephelus mystacinus*
- Nassau grouper, *Epinephelus striatus*
- Butter hamlet, *Hypoplectrus unicolor*
- Swissguard basslet, *Liopropoma rubre*
- Yellowfin grouper, *Mycteroperca venenosa*
- Tiger grouper, *Mycteroperca tigris*
- Creole-fish, *Paranthias furcifer*
- Greater soapfish, *Rypticus saponaceus*
- Orangeback bass, *Serranus annularis*
- Lantern bass, *Serranus baldwini*
- Tobaccofish, *Serranus tabacarius*
- Harlequin bass, *Serranus tigrinus*
- Chalk bass, *Serranus tortugarum*

Basslets—Grammatidae
- Royal gramma, *Gramma loreto*

Bigeyes—Priacanthidae
- Bigeye, *Priacanthus arenatus*
- Glasseye snapper, *Priacanthus cruentatus*

Cardinalfishes—Apogonidae
- Flamefish, *Apogon maculatus*
- Conchfish, *Astrapogen stellatus*

Tilefishes—Malacanthidae
- Blackline tilefish, *Caulolatilus cyanops*
- Sand tilefish, *Malacanthus plumieri*

Jacks—Carangidae
- Yellow jack, *Caranx bartholomaei*
- Blue runner, *Caranx crysos*
- Horse-eye jack, *Caranx latus*
- Black jack, *Caranx lugubris*
- Bar jack, *Caranx ruber*
- Greater amberjack, *Seriola dumerili*
- Almaco jack, *Seriola rivoliana*

Snappers—Lutjanidae
- Black snapper, *Apsilus dentatus*
- Queen snapper, *Etelis oculatus*
- Mutton snapper, *Lutjanus analis*
- Schoolmaster, *Lutjanus apodus*
- Blackfin snapper, *Lutjanus buccanella*
- Gray snapper, *Lutjanus griseus*
- Dog snapper, *Lutjanus jocu*
- Mahogany snapper, *Lutjanus mahogani*
- Lane snapper, *Lutjanus synagris*
- Silk snapper, *Lutjanus vivanus*
- Yellowtail snapper, *Ocyurus chrysurus*
- Wenchman, *Pristipomoides aquilonaris*
- Vermilion snapper, *Rhomboplites aurorubens*

Grunts—Haemulidae
- Porkfish, *Anisotremus virginicus*
- Margate, *Haemulon album*
- Tomtate, *Haemulon aurolineatum*
- French grunt, *Haemulon flavolineatum*
- White grunt, *Haemulon plumieri*
- Bluestriped grunt, *Haemulon sciurus*

Porgies—Sparidae
- Sea bream, *Archosargus rhomboidalis*
- Jolthead progy, *Calamus bajonado*
- Sheepshead progy, *Calamus penna*
- Pluma, *Calamus pennatula*

Drums—Sciaenidae
- High-hat, *Equetus acuminatus*
- Jackknife-fish, *Equetus lanceolatus*
- Spotted drum, *Equetus punctatus*

Goatfishes—Mullidae
- Yellow goatfish, *Mulloidichthys martinicus*
- Spotted goatfish, *Pseudupeneus maculatus*

Spadefishes—Ephippidae
- Atlantic spadefish, *Chaetodipterus faber*

Butterflyfishes—Chaetodontidae
- Longsnout butterflyfish, *Chaetodon aculeatus*
- Foureye butterflyfish, *Chaetodon capistratus*
- Spotfin butterflyfish, *Chaetodon ocellatus*
- Banded butterflyfish, *Chaetodon striatus*

Angelfishes—Pomacanthidae
- Cherubfish, *Centropyge argi*
- Queen angelfish, *Holacanthus ciliaris*
- Rock beauty, *Holacanthus tricolor*
- Gray angelfish, *Pomacanthus arcuatus*
- French angelfish, *Pomacanthus paru*

Damselfishes—Pomacentridae
- Sergeant major, *Abudefduf saxatilis*
- Blue chromis, *Chromis cyanea*
- Sunshinefish, *Chromis insolata*
- Yellowtail damselfish, *Microspathodon chrysurus*
- Dusky damselfish, *Pomacentrus fuscus*
- Beaugregory, *Pomacentrus leucostictus*
- Bicolor damselfish, *Pomacentrus partitus*
- Threespot damselfish, *Pomacentrus planifrons*

Hawkfishes—Cirrhitidae
- Redspotted hawkfish, *Amblycirrhitus pinos*

Wrasses—Labridae
- Spanish hogfish, *Bodianus rufus*
- Creole wrasse, *Clepticus parrae*
- Yellowcheek wrasse, *Halichoeres cyanocephalus*
- Yellowhead wrasse, *Halichoeres garnoti*
- Clown wrasse, *Halichoeres maculipinna*
- Puddingwife, *Halichoeres radiatus*
- Pearly razorfish, *Hemipteronotus novacula*
- Green razorfish, *Hemipteronotus splendens*
- Hogfish, *Lachnolaimus maximus*
- Bluehead wrasse, *Thalassoma bifasciatum*

Parrotfishes—Scaridae
- Midnight parrotfish, *Scarus coelestinus*
- Blue parrotfish, *Scarus coeruleus*
- Striped parrotfish, *Scarus croicensis*
- Rainbow parrotfish, *Scarus guacamaia*
- Princess parrotfish, *Scarus taeniopterus*
- Queen parrotfish, *Scarus vetula*
- Redband parrotfish, *Sparisoma aurofrenatum*
- Redtail parrotfish, *Sparisoma chrysopterum*
- Redfin parrotfish, *Sparisoma rubripinne*
- Stoplight parrotfish, *Sparisoma viride*

Jawfishes—Opistognathidae
- Yellowhead jawfish, *Opistognathus aurifrons*
- Dusky jawfish, *Opistognathus whitehursti*

Combtooth blennies—Blenniidae
- Redlip blenny, *Ophioblennius atlanticus*

Gobies—Gobiidae
- Neon goby, *Gobiosoma oceanops*
- Rusty goby, *Priolepis hipoliti*

Surgeonfishes—Acanthuridae
- Ocean surgeonfish, *Acanthurus bahianus*
- Doctorfish, *Acanthurus chirurgus*
- Blue tang, *Acanthurus coeruleus*

Lefteye flounders—Bothidae
- Peacock flounder, *Bothus lunatus*

Soles—Soleidae
- Caribbean tonguefish, *Symphurus arawak*

Leatherjackets—Balistidae
- Scrawled filefish, *Aluterus scriptus*
- Queen triggerfish, *Balistes vetula*
- Whitespotted filefish, *Cantherhines macrocerus*
- Ocean triggerfish, *Canthidermis sufflamen*
- Black durgon, *Melichthys niger*
- Sargassum triggerfish, *Xanthichthys rigens*

Boxfishes—Ostraciidae
- Spotted trunkfish, *Lactophrys bicaudalis*
- Honeycomb cowfish, *Lactophrys polygonia*

Scrawled cowfish, *Lactophrys quadricornis*
Trunkfish, *Lactophrys trigonus*
Smooth trunkfish, *Lactophrys triqueter*
Puffers—Tetraodontidae
Sharpnose puffer, *Canthigaster rostrata*
Porcupinefish, *Diodon hystrix*

* * * * *

5. Section 669.7 is revised to read as follows:

§ 669.7 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

(a) Fish with a fish trap in the EEZ without a vessel identification number and color code, as specified in § 669.6(a).

(b) Falsify or fail to display and maintain vessel and gear identification, as specified in § 669.6(c), (d), and (e).

(c) Fish in an area during a seasonal closure, as specified in § 669.21.

(d) Harvest or possess a Nassau grouper, jewfish, seahorse, or foureye, banded, or longsnout butterflyfish in or from the EEZ, or fail to release such fish immediately with a minimum of harm; as specified in § 669.22(a) and (b).

(e) Harvest in the EEZ a marine aquarium fish by means other than a hand-held dip net or a hand-held slurp gun, as specified in § 669.22(c).

(f) Possess a yellowtail snapper in or from the EEZ that is smaller than the minimum size limit or is without its head and fins intact; or fail to release immediately with a minimum of harm an undersized yellowtail snapper caught in the EEZ; as specified in § 669.22(d).

(g) Fish in the EEZ with explosives or possess on board a vessel in the reef fish fishery any dynamite or similar explosive substance, as specified in § 669.23(a)(1).

(h) Fish in the EEZ with poisons, drugs, other chemicals, or a powerhead, as specified in § 669.23(a)(2) and (a)(3).

(i) Use or possess in the EEZ a fish trap that does not conform to the requirements for mesh sizes and escape panels, as specified in § 669.23(b)(1) and (b)(2).

(j) Tend, open, pull, molest, or have in possession another person's fish trap in the EEZ, except as specified in § 669.23(b)(3).

(k) Sell, purchase, trade, or barter, or attempt to sell, purchase, trade, or barter, a live red hind or live mutton snapper, as specified in § 669.24.

(l) Interfere with, obstruct, delay, or prevent by any means an investigation, search, seizure, or disposition of seized property in connection with enforcement of the Magnuson Act.

(m) Make any false statement, oral or written, to an authorized officer concerning the taking, catching, harvesting, landing, sale, purchase, trade, barter, possession, or transfer of a reef fish.

6. Subpart B of part 669 is revised to read as follows:

Subpart B—Management Measures

Sec.
669.20 Fishing year.
669.21 Seasonal area closures.
669.22 Harvest limitations.
669.23 Gear restrictions.
669.24 Limitations on sale.
669.25 Specifically authorized activities.

Subpart B—Management Measures

§ 669.20 Fishing year.

The fishing year for the reef fish fishery begins on January 1 and ends on December 31.

§ 669.21 Seasonal area closures.

(a) *Red hind spawning aggregation areas.* From December 1 through February 28, each year, fishing is prohibited in the following three areas. Each area is bounded by rhumb lines connecting the points in the order listed.

(1) *South of St. Thomas:*

Point	Latitude	Longitude
A	18°13.2'N.	65°06.0'W.
B	18°13.2'N.	64°59.0'W.
C	18°11.8'N.	64°59.0'W.
D	18°10.7'N.	65°06.0'W.
A	18°13.2'N.	65°06.0'W.

(2) *West of Puerto Rico:*

Point	Latitude	Longitude
A	18°11.0'N.	67°25.5'W.
B	18°11.0'N.	67°20.4'W.
C	18°08.0'N.	67°20.4'W.
D	18°08.0'N.	67°25.5'W.
A	18°11.0'N.	67°25.5'W.

(3) *East of St. Croix:*

Point	Latitude	Longitude
A	17°50.2'N.	64°27.9'W.
B	17°50.1'N.	64°26.1'W.
C	17°49.2'N.	64°25.8'W.
D	17°48.6'N.	64°25.8'W.
E	17°48.1'N.	64°26.1'W.
F	17°47.5'N.	64°26.9'W.
A	17°50.2'N.	64°27.9'W.

(b) *Mutton snapper spawning aggregation area.* From March 1 through June 30, each year, fishing is prohibited in the following area bounded by rhumb lines connecting the points in the order listed:

Point	Latitude	Longitude
A	17°37.9'N.	64°52.6'W.
B	17°38.2'N.	64°52.1'W.
C	17°38.3'N.	64°51.8'W.
D	17°38.1'N.	64°51.4'W.
A	17°37.9'N.	64°52.6'W.

§ 669.22 Harvest limitations.

(a) *Nassau grouper and jewfish.* Nassau grouper or jewfish may not be harvested or possessed in or from the EEZ. A Nassau grouper or jewfish caught in the EES must be released immediately with a minimum of harm.

(b) *Seahorses and foureye, banded, and longsnout butterflyfish.* Seahorses and foureye, banded, and longsnout butterflyfish may not be harvested or possessed in or from the EEZ. Such fish caught in the EEZ must be released immediately with a minimum of harm.

(c) *Marine aquarium fish.* A marine aquarium fish may be harvested in the EEZ only by a hand-held dip net or by a hand-held slurp gun. For the purposes of § 669.7(e) and this paragraph (c), a hand-held slurp gun is a device that rapidly draws seawater containing fish into a self-contained chamber, and a marine aquarium fish is a fish in the reef fish fishery that is smaller than 5.5 inches (14.0 cm), total length.

(d) *Yellowtail snapper*—(1) *Minimum size limit.* The minimum size limit for the possession of yellowtail snapper in or from the EEZ is 12 inches (30.5 cm) total length. An undersized yellowtail snapper caught in the EEZ must be released immediately with a minimum of harm.

(2) *Head and fins intact.* A yellowtail snapper possessed in the EEZ must have its head and fins intact and a yellowtail snapper taken from the EEZ must have its head and fins intact through offloading at a dock, berth, beach, seawall, or ramp. Such yellowtail snapper may be eviscerated but must otherwise be maintained in a whole condition.

§ 669.23 Gear restrictions.

(a) *Explosives, poisons, and powerheads.*

(1) Explosives may not be used in the EEZ to fish for fish in the reef fish fishery. A vessel in the reef fish fishery may not possess on board any dynamite or similar explosive substances.

(2) Poisons, drugs, or other chemicals may not be used in the EEZ to fish for fish in the reef fish fishery.

(3) A powerhead may not be used in the EEZ to fish for fish in the reef fish fishery. Possession of a powerhead and a mutilated fish in the reef fish fishery aboard a vessel in the EEZ or aboard a vessel after having fished in the EEZ

constitutes *prima facie* evidence that such reef fish was taken with a powerhead in the EEZ.

(b) *Fish traps*—(1) *Mesh size.* A bare-wire fish trap used or possessed in the EEZ that has hexagonal mesh openings must have a minimum mesh size of 1.5 inches (3.8 cm), in the smallest dimension measured between centers of strands. A bare-wire fish trap used or possessed in the EEZ that has other than hexagonal mesh openings must have a minimum mesh size of 2.0 inches (5.1 cm), in the smallest dimension measured between centers of strands. A fish trap of other than bare wire, such as coated wire or plastic, used or possessed in the EEZ must have a minimum mesh size of 2.0 inches (5.1 cm), in the smallest dimension of the opening (rather than between centers of strands).

(2) *Escape panels.* A panel must be located on each of two sides of the trap, excluding the top, bottom, and side containing the trap entrance. The opening covered by a panel must measure not less than 8 inches (20.3 cm) by 8 inches (20.3 cm). The mesh size of a panel may not be smaller than the mesh size of the trap. A panel must be attached to the trap with untreated jute twine with a diameter not exceeding ⅛ inch (.3 cm). An access door may serve as one of the panels, provided it is on an appropriate side, it is hinged only at its bottom, its only other fastening is at the top of the door so that the door will fall open when such other fastening degrades, and such other fastening is untreated jute twine with a diameter not exceeding ⅛ inch (.3 cm). Jute twine used to secure a panel may not be wrapped or overlapped.

(3) *Tending traps.* A fish trap in the EEZ may be tended or pulled only by a person (other than an authorized officer) aboard the fish trap owner's vessel(s), or aboard another vessel if such vessel has on board written consent of the fish trap owner, or if the fish trap owner is aboard and has documentation verifying his identification number and color code. An owner's written consent must specify the time period such consent is effective and the trap owner's identification number and color code. (See § 669.6 regarding identification numbers and color codes.)

§ 669.24 Limitations on sale.

A live red hind or live mutton snapper in or from the EEZ may not be sold, purchased, traded, or bartered, or attempted to be sold, purchased, traded, or bartered, that is, used in the marine aquarium trade.

§ 669.25 Specifically authorized activities.

The Secretary may authorize, for the acquisition of information and data, activities which are otherwise prohibited by these regulations.

§§ 669.4 and 669.6 [Amended]

7. In addition to the amendments set forth above, in 50 CFR part 669, the words "shallow-water" are removed where they appear in the following places: § 669.4 and § 669.6(a), (e)(1) introductory text, (e)(2) (two places), and (e)(3).

[FR Doc. 93–25185 Filed 10–13–93; 8:45 am]
BILLING CODE 3510-22-M

50 CFR Part 672

[Docket No. 921107–3068; I.D. 100793A]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Prohibition of retention.

SUMMARY: NMFS is prohibiting retention of Pacific ocean perch (POP) in the Central Regulatory Area of the Gulf of Alaska (GOA) and is requiring that incidental catches be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the POP total allowable catch (TAC) in the this area has been reached.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t), October 8, 1993, until 12 midnight, A.l.t., December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

In accordance with § 672.20(c)(1)(ii)(B), the POP TAC for the Central Regulatory Area was established by the final 1993 initial specifications (58 FR 33778, June 21, 1993) as 949 metric tons.

The Director of the Alaska Region, NMFS, has determined, in accordance with § 672.20(c)(3), that the TAC for POP in the Central Regulatory Area has been reached. Therefore, NMFS is requiring that further catches of POP in the Central Regulatory Area be treated in the same manner as prohibited species in accordance with § 672.20(e), effective from 12 noon, A.l.t., October 8, 1993, until 12 midnight, A.l.t., December 31, 1993.

Classification

This action is taken under 50 CFR 672.20.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 7, 1993.

Joe P. Clem,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–25237 Filed 10–8–93; 3:40 pm]
BILLING CODE 3510-22-M

50 CFR Part 675

[Docket No. 921185–3021; I.D. 100793]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for pollock by the inshore component in the Aleutian Islands subarea (AI) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the allowance of the total allowable catch (TAC) of pollock for the inshore component in the AI.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), October 8, 1993, until 12 midnight, A.l.t., December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations

implementing the FMP at 50 CFR parts 620 and 675.

In accordance with § 675.20(a)(2), the final 1993 initial specifications for groundfish in the BSAI (58 FR 8703, February 17, 1993), and subsequent reserve release (58 FR 14172, March 16, 1993), established the allowance of pollock TAC for vessels catching pollock for processing by the inshore component in the AI as 16,706 metric tons (mt).

The Director of the Alaska Region, NMFS (Regional Director), determined, in accordance with § 675.20(a)(8), that the allowance of pollock TAC for the inshore component in the AI soon will be reached. Therefore, the Regional Director established a directed fishing allowance of 16,206 mt after determining that 500 mt will be taken as incidental catch in directed fishing for other species in the AI. Consequently, NMFS is prohibiting directed fishing for pollock by operators of vessels catching pollock for processing by the inshore component in the AI, effective from 12 noon A.l.t., October 8, 1993, until 12 midnight, A.l.t., December 31, 1993.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under § 675.20.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 8, 1993.

Joe P. Clem,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–25236 Filed 10–8–93; 3:40 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 58, No. 197
Thursday, October 14, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 400

General Administrative Regulations; Actual Production History (APH) Coverage Program

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby issues proposed regulations to establish a plan of insurance called the Actual Production History (APH) Program. APH is an insurance coverage based on the insured's actual production history. An approved APH yield, when multiplied by a percentage of an elected coverage level and price per commodity unit, results in a dollar amount of insurance coverage per acre.

This rule is being proposed in accordance with the requirements of the Omnibus Budget Reconciliation Act of 1993. The intended effect of this rule is to help reduce FCIC's overall loss ratio to 1.1

DATES: Written comments, data, and opinions on this proposed rule must be submitted not later than November 15, 1993, to be sure of consideration.

ADDRESSES: Written comments on this proposed rule should be sent to Mari Dunleavy, Regulatory Specialist, Regulatory and Procedural Development, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Mari Dunleavy, Regulatory Specialist, Regulatory and Procedural Development, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 254–8314.

SUPPLEMENTARY INFORMATION: This action has been reviewed under Executive Order 12291 and USDA procedures established by Departmental Regulation No. 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is September 1, 1998.

Kathleen Connelly, Acting Manager, FCIC, has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, state, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises in domestic or export markets. The Acting Manager certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action imposes no added burden on the insured farmer or on the private insurance company serving as the delivery agent. APH has been the basis for computing insurance guarantees under The Federal Crop Insurance Program for over eight years and has its genesis in The Individual Yield Coverage Plan (7 CFR 400.15–400.21). This proposed rule codifies procedure already effective. Therefore, this action is exempt from the provisions of the Regulatory Flexibility Act and no Regulatory Flexibility Analysis was prepared.

The program is listed in the Catalog of Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

The collection requirements for this proposed regulation have been previously approved by the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35, the Paperwork Reduction Act of 1980. Control numbers are found in 7 CFR part 400, subpart H.

The Office of General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies and procedures contained in this interim rule will not have an increased substantial direct effect on states or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

This rule has been reviewed in accordance with Executive Order 12778. The provisions of this interim rule are not retroactive and will preempt state and local laws to the extent such state and local laws are inconsistent. The administrative appeal provisions located at 7 CFR part 400, subpart J, must be exhausted before judicial action may be brought for actions taken under these proceedings, for the imposition of civil penalties, or under the Program Fraud Civil Remedies sections of these regulations.

Background

The Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66), amended the Federal Crop Insurance Act (7 U.S.C. 1501 *et seq.*) to require the establishment of a plan and the publication of regulations for the use of the producer's actual production to determine yield coverage. FCIC has used such a plan for a number of years. FCIC hereby proposes regulations in accordance with the statutory requirement.

An approved APH (Actual Production History) yield, multiplied by a percentage of an elected coverage level and price per commodity unit, provides the dollar amount of insurance coverage per acre. If the insured does not submit production records for insurance purposes, 65 percent of an FCIC estimated yield (transitional or determined yield) is the default approved APH yield. The FCIC estimated yield, after applicable adjustment, is used in conjunction with actual production records to compute the approved APH yield when less than four years of actual production records are available.

List of Subjects in 7 CFR Part 400

Actual Production History Coverage Plan, Crop Insurance.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended by the Omnibus Budget Reconciliation Act of 1993, the Federal Crop Insurance Corporation hereby proposes to amend 7 CFR part 400 of the Code of Federal Regulations by adding a new subpart to read as follows:

Part 400—GENERAL ADMINISTRATIVE REGULATIONS

Subpart G—Actual Production History

Sec.

400.50 Availability of actual production history program.
400.51 Definitions.
400.52 Yield certification and acceptability.
400.53 Submission and accuracy of production reports.
400.54 Qualifications for actual production history coverage program.
400.55 Administrative appeal exhaustion.
400.56 OMB control numbers.

Authority: 7 U.S.C. 1506, 1516.

Subpart G Actual Production History

§ 400.50 Availability of actual production history program.

An Actual Production History (APH) Coverage Program is offered under the provisions contained in the following regulations:

7 CFR 401.110 Almond Endorsement
7 CFR part 405 Apple Crop Insurance
7 CFR 401.103 Barley Endorsement
7 CFR 401.118 Canning and Processing Bean Endorsement
7 CFR 401.111 Corn Endorsement
7 CFR part 409 Arizona-California Citrus Crop Insurance
7 CFR 401.119 Cotton Endorsement
7 CFR 401.121 Extra Long Staple Cotton Endorsement
7 CFR 401.127 Cranberry Endorsement
7 CFR part 433 Dry Beans Crop Insurance
7 CFR 401.125 Fig Endorsement
7 CFR 401.116 Flaxseed Endorsement
7 CFR part 415 Forage Production Crop Insurance
7 CFR 401.113 Grain Sorghum Endorsement
7 CFR 401.130 Grape Endorsement
7 CFR part 455 Macadamia Nut Crop Insurance
7 CFR 401.105 Oat Endorsement
7 CFR 401.126 Onion Endorsement
7 CFR part 447 Popcorn Crop Insurance
7 CFR part 403 Peach Crop Insurance
7 CFR 401.140 Pear Endorsement
7 CFR part 416 Pea Crop Insurance
7 CFR 401.146 Fresh Plum Endorsement
7 CFR part 422 Potato Crop Insurance
7 CFR part 450 Prune Crop Insurance
7 CFR 401.120 Rice Endorsement
7 CFR 401.106 Rye Endorsement
7 CFR 401.123 Safflower Seed Endorsement
7 CFR 401.117 Soybean Endorsement
7 CFR 401.122 Stonefruit Endorsement
7 CFR 401.133 Sugarcane Endorsement
7 CFR part 430 Sugar Beet Crop Insurance
7 CFR 401.124 Sunflower Seed Endorsement
7 CFR part 437 Sweet Corn Crop Insurance
7 CFR part 441 Table Grape Crop Insurance
7 CFR 401.129 Guaranteed Tobacco Endorsement
7 CFR 401.114 Canning and Processing Tomato Endorsement
7 CFR part 454 Guaranteed Production Plan of Fresh Market Tomato
7 CFR part 446 Walnut Crop Insurance
7 CFR 401.101 Wheat Endorsement
7 CFR part 457 Common Crop Insurance Regulations; and all special provisions thereto unless specifically excluded by the Special provisions.

The APH program operates within limits prescribed by, and in accordance with, the provisions of the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), only on those crops identified in this section in those areas where the actuarial table provides coverage. Except when in conflict with this subpart, all provisions of the applicable crop insurance contract for these crops apply.

§ 400.51 Definitions

In addition to the definitions contained in the crop insurance contract, the following definitions apply for the purposes of the APH Coverage Program:

(a) *APH*—Actual Production History.

(b) *Actual yield*—The yield per acre for a crop year calculated from the producer's records or claims for indemnities. The actual yield is determined by dividing total production (which includes harvested and appraised production) by planted acres. Assigned yields also are considered actual yields except for purposes of the Nonstandard Classification System.

(c) *Adjusted yield*—The transitional or determined yield reduced by the applicable percentage for lack of records. The adjusted yield will equal 65% of the Transitional yield if no producer records are submitted; 80% if one year of records is submitted; and 90% if two years of records are submitted.

(d) *Appraised production*—Production determined by Agricultural Stabilization and Conservation Service (ASCS), FCIC, or a company reinsured by FCIC, that was unharvested but which reflected the crop's yield potential at the time of the appraisal.

(e) *Approved APH yield*—A yield, calculated and approved by the verifier, used to determine the production guarantee and determined by the sum of the yearly actual, assigned, and adjusted or unadjusted transitional or determined yields in the database divided by the number of consecutive crop years in the database up to ten. (At least four consecutive crop years will always exist in the data base).

(f) *Assigned yield*—A yield assigned by FCIC in accordance with crop insurance contract if the insured does not file production reports as required by the crop insurance contract.

(g) *Base period*—Ten consecutive crop years (except peaches, which has a five crop year base period), immediately preceding the crop year for which the approved APH yield is being established (except for sugarcane, which begins the crop year preceding the immediate previous crop year).

(h) *Continuous production reports*—Reports submitted by a producer for each crop year that the unit was planted to the crop and for the most recent crop year in the base period.

(i) *Crop year*—Defined in the Crop Insurance Contract, however, for APH purposes the term does not include any year when the crop was not planted or when the crop was prevented from being planted by an insurable cause. For example, if an insured plants acreage in a county to wheat one year that year is a crop year in accordance with the policy definition. If the land is placed in summerfallowed the next year, that next year is not a crop year for the purpose of APH. If the insured is prevented from planting all the acreage in the county due to flood and does not plant, for harvest, any other crop, FCIC will assign a yield for that year.

(j) *Database*—A minimum of four crop years up to a maximum of ten crop years of production data used to calculate the approved APH yield.

(k) *Determined Yield* (D-Yield)—An estimated yield for certain crops which can be determined by multiplying an average yield for the crop, developed using data available from The National Agricultural Statistics Service or comparable sources, by a percentage established by FCIC for each county.

(l) *Master Yields*—Approved APH yields, as designated by FCIC, based on a minimum of four-years of production records within a county for a crop as designated by FCIC.

(m) *New producer*—A person who has not been actively engaged in farming for a share of the production of a crop for more than two years.

(n) *Production report*—A written record showing the insured's annual production and used by us to determine the insured's yield for insurance purposes. The report contains yield information including planted acreage and harvested production for the

previous crop year. This report must be supported by written verifiable records from a warehouseman or buyer of the insured crop or by measurement of farm stored production, or by other records of production approved by FCIC on an individual case basis. A Claim for Indemnity is considered a production report for the crop year for which the claim was filed.

(o) *Production Reporting Date* (PRD)—The PRD is defined in the crop insurance contract and is the last date production reports will be accepted for inclusion in the database for the current crop year.

(p) *Transitional Yield* (T-Yield)—An estimated yield, for certain crops, generally determined by multiplying the ASCS program yield by a percentage determined by FCIC for each county and provided on the actuarial table to be used in the APH yield calculation process when less than four years of actual or assigned yields are available.

(q) *Verifiable records*—Records of acreage and production provided by the insured which may be verified by FCIC through an independent source, and which may be used to substantiate the acreage and production that have been reported on the production report.

(r) *Verifier*—A person authorized by FCIC to calculate approved APH yields.

(s) *Yield variance tables*—Tables for certain crops that indicate unacceptable yield variations and yield trends that require the approved APH yield to be determined by FCIC.

§ 400.52 Yield certification and acceptability.

(a) Production reports must be provided to the crop insurance agent no later than the production reporting date for the crop insured.

(1) Production reports must provide an accurate account of planted acreage and harvested and appraised production by unit.

(2) The insured must certify to the accuracy of the information by signing the certification statement approved by FCIC.

(3) Production reported for more than one crop year must be continuous. A year in which no acreage was planted to the crop on a unit or no acreage was planted to a practice, type, or variety requiring an APH yield will not be considered a break in continuity. Assigned yields are an acceptable means to maintain continuity of yield data on file. Production on uninsured (for those years a crop insurance policy under the FCI Act is in effect) or uninsurable acreage (for other years of the period) will not be used to determine APH yield unless production from such acreage is commingled with production from insured or insurable acreage.

(b) Production reports and supporting records are subject to audit or review to verify the accuracy of the information certified. At FCIC's discretion, audits and reviews will be performed to maintain the integrity of the APH program.

(1) Inaccurate reporting or failure to retain acceptable records may result in the verifier combining farm units and recomputing the APH yield. These actions may be taken at any time after reporting or record discrepancies are identified and may result in reduction of the APH yield for any crop year.

(2) Records must be provided by the insured at the time of an audit, review, or as otherwise requested, to verify that the acreage and production certified are accurate. Records of any other person having shares in the insured crop which are used by the insured to establish the approved APH yield must also be provided upon request.

(3) In the event acreage or production data certified by two or more persons sharing in the crop is different, the verifier shall, upon discretion, determine which acreage and production data will be used to determine the approved APH yield.

(4) Failure to report acreage and production completely and accurately may result in voidance of the crop insurance contract and criminal or civil false claims penalties pursuant to 18 U.S.C. 1006, 1014; 7 U.S.C. 1506; and 31 U.S.C. 3729, 3730.

§ 400.53 Submission and accuracy of production reports.

(a) The insured is solely responsible for the timely submission of accurate, complete production reports to the agent. Production reports must be provided for all units.

(b) Records may be requested by FCIC, or an insurance company reinsured by FCIC or by anyone acting on behalf of FCIC or the insurance company. The insured must provide such records upon request.

(c) The agent will explain the APH Program to insureds and prospective insureds. When necessary, the agent will assist the insured in preparation of production reports. The agent will determine the adjusted or unadjusted transitional or determined yields in accordance with § 400.54(b). The agent will review the production reports and forward them to the verifier along with any required supporting records for determination of an approved APH yield.

(d) The verifier will determine if production reports are acceptable and calculate the approved APH yield.

(e) It is the insured's sole responsibility to accurately and completely certify yield history.

§ 400.54 Qualification for actual production history coverage program.

(a) The approved APH yield is calculated from a database containing production reports from at least the four most recent crop years and will be updated each subsequent crop year. The database may contain a maximum of the ten most recent crop years and may include actual, assigned, and adjusted or unadjusted transitional or determined yields. Transitional or Determined yields, adjusted or unadjusted, will only occur in the database to replace actual yields for the four most recent crop years.

(b) The insured must provide production records of yield to determine the approved APH yield if production records for the most recent crop year are available. If acceptable records of actual production are provided, the records must be continuous and contain at least the most recent crop year of actual yields.

(1) If no acceptable production records are available the approved APH yield is the adjusted T-yield (65% of T-yield).

(2) If acceptable production records containing information for only the most recent crop year are provided, the actual yield and three transitional or determined yields adjusted by 80%, are used to complete the database and calculate the approved APH yield.

(3) If acceptable production records containing information for only the two most recent crop years are provided, the two actual yields and two transitional or determined yields adjusted by 90%, are used to complete the database and calculate the approved APH yield.

(4) If acceptable production records containing information for only the three most recent crop years are provided, the three actual yields and one unadjusted transitional or determined yield is used to complete the database and calculate the approved APH yield.

(5) When the database contains four or more (up to ten) continuous actual yields, the approved APH yield is a simple average of the actual yields.

(6) New producers may have their approved APH yields based on unadjusted transitional, determined, or actual yields

(c) If no insurable acreage of the insured crop is planted for a year, a production report indicating zero

acreage will maintain continuity of production reports for APH purposes and will not be included in the yield average computations.

(d) Optional units are not available to an insured not providing sufficient production records for at least the most recent crop year to compute an approved APH yield. Actual yields calculated from the Claim for Indemnity will be entered in the database. The resulting average yield will be used to determine the premium rate and approved APH yield, at the discretion of FCIC.

(e) FCIC reserves the authority to determine approved APH yields for designated crops in the following situations:

(1) If less than four years of yield history is certified and transitional or determined yields are not provided in the actuarial documents,

(2) If actual yields exceed tolerances specified in yield variance tables, and

(3) For perennial crops:

(i) If significant upward or downward yield trends are indicated,

(ii) If tree or vine damage or cultural practices will reduce production levels,

(iii) If more than 10 percent of the trees or vines have been removed within the last two years, or

(iv) If yield trends are evident, and yields greater than the average yield are requested by the insured.

(f) APH yields will not be approved the first insurance year on perennial crops until an inspection has been performed and the acreage is accepted for insurance purposes in accordance with the crop insurance contract.

(g) An APH Master Yield may be established whenever crop rotation requirements and land leasing limit the yield history available during the base period. FCIC will establish crops and locations for which Master Yields are available. To qualify, at least four continuous crop years of annual production reports must be certified for the crop within the base period. Acreage and production from all acreage of the crop in which the insured has an interest in the county may be used to establish Master Yields.

(h) FCIC may use any production reports available under the provisions of any crop insurance contract, whether continuous or not, which involve the interests of the insured person in determining the approved APH yield.

§ 400.55 Administrative appeal exhaustion.

The insured may appeal the approved APH yield in accordance with the procedures contained in 7 CFR part 400, subpart J. Administrative remedies through the appeal process must be exhausted prior to any action for judicial review. The approved APH yield determined as a result of the appeal process will be the yield applicable to the crop year.

§ 400.56 OMB control numbers.

OMB control numbers are contained in 7 CFR part 400, subpart H.

Done in Washington, DC, on September 21, 1993.

Bob Nash,

Under Secretary, Small Community and Rural Development.

[FR Doc. 93-25143 Filed 10-13-93; 8:45 am]

BILLING CODE 3410-08-M

Cooperative State Research Service

7 CFR Part 3408

Administrative Manual for Federal Excess Personal Property Loaned to State Cooperative Research Activities

AGENCY: Cooperative State Research Service, USDA.

ACTION: Notice of proposed rulemaking.

SUMMARY: In 1981, Congress passed a law, which included an amendment to the Federal Property and Administrative Services Act to permit the Secretary of Agriculture to loan Federal excess personal property to Land-Grant Institutions engaged in cooperative extension or cooperative research programs funded by the U.S. Department of Agriculture (USDA). Although the Federal Property Management Regulations (FPMRs) contained the basic rules governing Federal property, they did not deal with the specific procedures for participation by the Land-Grant Institutions. The office of USDA delegated responsibility for management of this program is the Cooperative Management Staff (CMS), which provides administrative services to the Extension Service and the Cooperative State Research Service. CMS developed a handbook to clearly spell out the specific agency requirements for participating in this new program as well as the applicable rules contained in the FPMRs. Since this handbook and the procedures it contains are used by non-Federal recipients of Government property, a decision was made to publish the handbook in the Federal Register and solicit comments before final publication of the rule. This proposed rulemaking sets forth procedures for utilization of Federal excess personal property loaned by the Cooperative State Research Service (CSRS) as authorized by the amendment to the Federal Property and Administrative Services Act. This proposed rule includes not only the CSRS procedures for participation by State Cooperative Research Activities in the Program, but also summarizes the Department of Agriculture and General Services Administration requirements. Although this Program will be administered for CSRS by the Extension Service (ES), USDA, this proposed rule does not apply to Federal excess personal property loaned by ES to State and County Extension Services authorized by the same Federal Property and Administrative Services Act amendment.

DATES: Comments are invited from interested individuals and organizations and must be received in writing on or before November 15, 1993.

ADDRESSES: Comments should be sent to Betty Bolt, Property Management Officer, USDA, ES, CMS, AG BOX 0993, Washington, DC 20250-0993.

FOR FURTHER INFORMATION CONTACT: Betty Bolt, Property Management Officer, at 202/401-4502.

SUPPLEMENTARY INFORMATION:

Comments

Please note that because CSRS is unable to change the portions of this part which reflect General Services Administration policy, comments on those portions are not appropriate for this proposed rulemaking.

Paperwork Reduction

The forms necessary to implement these procedures have been cleared by OMB as required in the Paperwork Reduction Act (44 U.S.C. 3500 *et seq.*). The only form that has been included in this document relates to the transfer of date-expired pharmaceuticals to Colleges of Veterinary Medicine. The form, which is set out as appendix A, is the Agreement that must be entered into by each College of Veterinary Medicine that wishes to obtain date-expired pharmaceuticals.

The procedures outlined in this part do not require the collection of information as outlined in the Paperwork Reduction Act of 1980 and therefore it has been determined that clearance by the Office of Management and Budget is not needed.

Classification

This rule has been reviewed under Executive Order No. 12291, and it has been determined that it is not a major rule because it does not involve a substantial or major impact on the Nation's economy or on large numbers of individuals or businesses. It will not

have a significant economic impact upon a substantial number of small entities as defined in the Regulatory Flexibility Act; therefore, no regulatory flexibility analysis needs to be performed under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The following information is given in compliance with Executive Order 12778. All State and local laws and regulations that are in conflict with this rule are preempted. No retroactive effect is to be given to this rule. This rule does not require administrative proceedings before parties may file suit in court.

Regulatory Analysis

Not required for this rulemaking.

Environmental Impact Statement

This proposed rule does not significantly affect the environment. Therefore, an environmental impact statement is not required under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*).

Catalog of Federal Domestic Assistance

Not required for this rulemaking.

List of Subjects in 7 CFR Part 3408

Government property, Government property management, Excess Government property.

For the reasons set forth in the preamble, 7 CFR part 3408 is proposed to be added to read as follows:

PART 3408—ADMINISTRATIVE MANUAL FOR FEDERAL EXCESS PERSONAL PROPERTY LOANED TO STATE COOPERATIVE RESEARCH ACTIVITIES

Sec.

3408.1 Purpose.
3408.2 Abbreviations and definitions.
3408.3 Policy.
3408.4 Responsibility.
3408.5 Accountable property officer.
3408.6 Accountability and control of Federal excess personal property.
3408.7 Acquisition of Federal excess personal property.
3408.8 Use of Federal excess personal property.
3408.9 Reporting Federal excess personal property.
3408.10 Transfer of Federal excess personal property.
3408.11 Donation of surplus property.
3408.12 Unserviceable property.
3408.13 Lost, damaged, stolen, or destroyed property.

Appendix A to part 3408—Agreement for Transfer of Date-expired Pharmaceuticals to Colleges of Veterinary Medicine by the Cooperative State Research Service

Authority: 5 U.S.C. 501.

§ 3408.1 Purpose.

(a) This part sets forth the basic requirements to be followed by State Cooperative Research Activity personnel in establishing and maintaining control of Federal excess personal property provided by the Cooperative State Research Service (CSRS) under 40 U.S.C. 483 (d)(2)(E). 40 U.S.C. 483 (d)(2)(E) permits the Secretary to obtain Federal excess personal property and loan such property to State or County Extension Services, State Agricultural Experiment Stations, 1890 Land-Grant Colleges, including Tuskegee University, accredited colleges of veterinary medicine, and cooperating forestry schools, to further the purposes of the Smith-Lever Act, the Hatch Act of 1887, the McIntire-Stennis Act of 1962, and the research and extension programs authorized by sections 1433, 1434, 1444, and 1445 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977. Title to Federal excess personal property furnished—pursuant to 40 U.S.C. 483(d)(2)(E) remains vested in the United States.

(b) This part covers only the acquisition, utilization, control, and disposal of Federal excess personal property acquired by State Cooperative Research Activities (as defined herein) through the CSRS Federal Excess Personal Property Loan Program (Program) administered for CSRS by the Extension Service (ES), USDA. This part does not apply to Federal excess personal property loaned to State and County Extension Services by ES pursuant to 40 U.S.C. 483(d)(2)(E).

§ 3408.2 Abbreviations and definitions.

The following definitions apply to this part:

Accountable Property. All nonexpendable personal property having an acquisition cost of $1,000 or more (except furniture which is $500 or more) or items of property valued less than $1,000 but determined by an Agency Property Management Officer to be sensitive.

Administrative Head. The official designated in the following list at each State Cooperative Research Activity:

(1) Director, State Agricultural Experiment Station;

(2) Administrator, 1890 Cooperative Agricultural Research Program;

(3) Dean, College of Veterinary Medicine; and

(4) Administrative-Technical Representative, School of Forestry, who has overall responsibility for management of the Program.

Administrator of Cooperative State Research Service. The USDA official to whom the Secretary of Agriculture has delegated his authority under 40 U.S.C. 483(d)(2)(E), to obtain Federal excess personal property and loan it to State Cooperative Research Activities.

APO. Accountable Property Officer. The State Cooperative Research Activity employee designated by the Administrative Head to act as his/her representative in personal property matters.

Approved Research Program. A set of approved projects which define the research to be conducted by a State Cooperative Research Activity with Federal funds appropriated pursuant to an act listed in 40 U.S.C. 483(d)(2)(E).

Approved Research Project. A State Cooperative Research Activity administrative or research project (having specific objectives, defined research procedures, specific date of initiation and completion) which has been approved by the Cooperative State Research Service for the expenditure of funds appropriated pursuant to 7 U.S.C. 361a. *et seq.*; 7 U.S.C. 3195, 3196, 3221, and 3222; or 16 U.S.C. 582a *et seq.*

AUO. Area Utilization Officer, A GSA regional property specialist.

Cannibalize. The act of dismantling a piece of property for usable parts when the property is unserviceable as a unit.

CMS. Cooperative Management Staff, CSRS/ES—USDA.

CSRS. Cooperative State Research Service of the United States Department of Agriculture.

DEPPC. Departmental Excess Personal Property Coordinator. The USDA national excess property clearinghouse, located in St. Louis, Missouri.

Excess Personal Property. Any personal property under the control of any Federal agency which is not required for its needs and the discharge of its responsibilities, as determined by the head thereof (41 CFR 101–43.001–6).

Expendable Property. An article of property which is consumed or loses its identity when placed in use or has an expected service life of less than two years.

FPMR. Federal Property Management Regulations (41 CFR chapter 101).

Freeze. The process of reserving at a holding activity, or at a controlling GSA regional office, an item of excess personal property that has been requested by a user or selected by a GSA area utilization officer or other GSA representative to fill an existing or known requirement (41 CFR 101–43.001–11).

Gross Negligence. The intended, willful, or wanton failure to exercise a reasonable degree of care to protect property in one's custody or his/her

reckless disregard for that degree of care.

GSA. The General Services Administration, acting by or through the Administrator of General Services, or a designated official to whom the Administrator has delegated relevant functions (41 CFR 101–43.001–12).

MSB. Management Services Branch, Personnel and Management Services Division, CMS, CSRS/ES—USDA.

Non-Expendable Property. Personal property which is complete in itself, retains its identity when placed in use and has an expected service life of over 2 years.

OMB. Office of Management and Budget.

Personal Property. Any property, except real property, records of the Federal Government, and Naval Vessels of the following categories: Battleships, Cruisers, Aircraft carriers, Destroyers, and Submarines (41 CFR 101–43-001–23).

PMO. Property Management Officer, CMS, CSRS/ES—USDA.

PMSD. Personnel and Management Services Division, CMS, CSRS/ES—USDA.

Screen. Onsite examination of excess property.

Sensitive Personal Property. Any item of accountable property valued less than $1,000 which is highly susceptible to loss or theft as determined by the Agency Property Management Officer.

SRD. Surplus Release Date. The predetermined date on which Federal utilization of excess personal property is terminated. The date signifies the transition of the property from excess to surplus status. This term is equivalent to "automatic release date" or "ARD". (41 CFR 101–43.001–32).

State Cooperative Research Activity. An eligible participant under the provisions of 40 U.S.C. 483(d)(2)(E). These include:

(1) State Agricultural Experiment Stations;

(2) Cooperative Agricultural Research, 1890 institutions;

(3) McIntire-Stennis Schools of Forestry; and

(4) Colleges of Veterinary Medicine.

Surplus Personal Property. Any excess personal property not required for the needs and the discharge of the responsibilities of all Federal agencies, as determined by the Administrator of General Services (41 CFR 101–43.001–31).

Unserviceable Property. Property beyond economical repair and not worth the cost to continue storage or handling.

USDA. United States Department of Agriculture.

§ 3408.3 Policy.

(a) It is the policy of CSRS that Federal excess personal property loaned to State Cooperative Research Activities under the authority of 40 U.S.C. 483(d)(2)(E) will be used only to further the purposes of the cooperative agricultural research programs of the acts identified in 40 U.S.C.(d)(2)(E). Further, it is the policy of the CSRS to ensure that all Federal excess personal property acquired through CSRS for the use of a State Cooperative Research Activity is properly and effectively managed in accordance with applicable guidelines as expressed in the FPMR's, OMB Circular A–110 (Copies of the circular are available at the address listed in 5 CFR 1310.3.), USDA Uniform Federal Assistance Regulations (7 CFR part 20), and this part. All Federal excess personal property and equipment shall be properly maintained using equipment manufacturer's suggested maintenance procedures. All Federal excess personal property items will be utilized properly and to the fullest extent possible.

(b) Administrative Heads are encouraged to consider the use of Federal excess personal property in order to minimize procurement of new items. Federal excess personal property should be acquired in accordance with plans for immediate and specific use. In addition, Administrative Heads should provide for a continuous survey of all Federal excess property in their inventory to determine if any items have become excess to their needs. All such property should be declared in accordance with § 3408.9.

§ 3408.4 Responsibility.

(a) *Accountability.* Each Administrative Head will be directly responsible and accountable for all Federal excess personal property furnished by or through CSRS. Each Administrative Head shall establish and maintain a property management and accounting system in accordance with the provisions of this part to control, protect, preserve, and maintain all Federal excess personal property obtained for CSRS projects and programs. Property records and other supporting information shall be made available as required for audits or reviews. State Cooperative Research Activity property systems shall be reviewed periodically by a CMS staff official, and written reports of performance shall be provided to the State Administrative Head.

(b) *Liability of Administrative Heads.* Administrative Heads may be held liable for Federal excess personal property that is lost, damaged, stolen, or abused if it is determined that the loss was attributed to gross negligence. Liability will be based upon all of the circumstances surrounding each case.

§ 3408.5 Accountable property officer.

(a) *APO.* Each Administrative Head shall designate from his organization a person to serve as his/her representative and liaison with the PMO, CMS, and with GSA on personal property management matters. This person shall be APO for a given location or jurisdiction over which he/she is responsible.

(b) *Duties.* The principal duties and responsibilities of the APO are to:

(1) Assign and control all personal property under his/her jurisdiction.

(2) Assure that property is effectively utilized for only the authorized purposes and properly maintained.

(3) Obtain approval from the PMO, CMS, for all Federal excess personal property acquisitions, transfers, modifications, cannibalizations, and disposals.

(4) Conduct the biennial physical inventory and other inventories as appropriate.

(5) Safeguard Government property against theft, damage, and misuse.

(6) Report all lost, damaged, stolen, and unserviceable Federal excess personal property to the PMO, CMS.

(7) Approve and document loans of Federal excess personal property to employees for authorized purposes outside the office.

(8) Maintain a personal property inventory listing of all items assigned. Write in all changes as they occur, such as reassignments, physical changes, excess/disposal, etc.

§ 3408.6 Accountability and control of Federal excess personal property.

(a) *Accountable (non-expendable) personal property.* Accountable (non-expendable) personal property represents the Federal Government's investment in major equipment items, furniture, appliances, motor vehicles, etc. These items are to be strictly accounted for in each State Cooperative Research Activity inventory system.

(1) *Classification guidelines.* Administrative Heads and APO's are guided in their classification of accountable property by the following criteria. An item must:

(i) Have a unit acquisition cost of $1,000 or more except furniture which is $500 or more;

(ii) Be complete in itself;

(iii) Not lose its identity or become a component part of other equipment; and

(iv) Have an expected service life of 2 years or more.

(2) *Property controls.* Each Administrative Head or his/her APO is responsible for the proper control, accountability, and use of Federal property in his/her area of responsibility. These controls include:

(i) Obtaining approval from the PMO, CMS for all acquisitions, transfers, modifications, cannibalizations, and disposals;

(ii) Certifying that all requests for Federal excess personal property are needed and are used in connection with an approved CSRS-sponsored project or program;

(iii) Providing for appropriate identification of all Federal excess personal property by prominently placed decals or other suitable and approved methods of identification. (The PMO, CMS will provide decals for identifying Federal property.);

(iv) Establishing an accurate inventory system approved by CMS;

(v) Assuring full utilization of Federal excess personal property obtained; and

(vi) Requesting prompt disposal instructions for property items which are no longer needed.

(3) *Official property records.* The official property records for Federal excess personal property shall contain, as a minimum, the following information:

(i) Property identification (serial number, property or ID number),

(ii) Name and description of the property, including manufacturer;

(iii) Manufacturer's model/part number, serial number, stock number, and year manufactured (when available);

(iv) Source of acquisition;

(v) Acquisition date, document reference, Federal Supply Classification number, and unit cost or value;

(vi) Location, use, and custodian of the property; and

(vii) Disposition data, including document reference, date, and any other pertinent information to provide a complete audit trail.

(4) *Inventory and reconciliation.* (i) Physical inventories of Federal excess personal property shall be taken every two (2) years. Physical inventories may be scheduled to correspond with established inventory schedules provided they meet the minimum requirements outlined in this part. State APO's are responsible for reconciling their inventories with the official property records. Any discrepancies between the quantities revealed in the physical inventory and those shown on the property records shall be investigated by the APO to determine the cause of differences. Unserviceable and missing Federal excess personal property shall be reported to the PMO, CMS on Form AD–112, Report of Unserviceable, Lost, of Damaged Property (see § 3408.12). A detailed explanation of the circumstances involving lost, damaged, stolen, or destroyed property, including the employee's name to whom the property was assigned, the time and date of loss (or approximation), and last known location of the property is required.

(ii) Report all Federally owned property that is excess to program needs on Form SF–120, Report of Excess Personal Property (see § 3408.9); and

(iii) Copies of reconciled physical inventories shall be sent to the PMO, CMS upon completion. Administrative Heads or Accountable Property Officers shall certify the accuracy of inventory submissions by signing the following statement which would accompany the reconciled report:

I have reviewed the enclosed documents for all Federal excess personal property acquisitions by this organization since 1982. I certify that I have taken or caused to be taken, a physical inventory of all the property transferred to this State Cooperative Research Activity, and for which I am responsible. All of the items listed, unless otherwise indicated, continue to be needed and in use. I further certify that all property not currently needed to carry out the approved responsibilities and functions of this location has been or will be reported as excess.

Date: _____

Signature: _____

Name & Title: _____

State: _____

(b) *Sensitive property.* Certain personal property items may be charged to individuals. These items are normally classified as sensitive property because of their uniqueness, value, or high vulnerability to theft and misuse. Such property should be controlled and recorded but not kept in the official inventory records unless the acquisition cost is $1,000 or more (except furniture with an acquisition cost of $500 or more). Examples of sensitive items are cameras, pocket-size electronic calculators, laptop computers, dictating machines, etc. Employees who have been so charged should be cleared of the items upon separation.

(c) *Non-accountable property.* Non-accountable property consists of items that have an acquisition cost of less than $1,000 (or less than $500 for furniture) and an expected service life of less than two years. Non-accountable property is not to be included in the official records. Non-accountable items judged sensitive should be kept separate from the official property records but charged to the appropriate individuals. Although non-accountable property is not a part of the official inventory, these items should be kept under reasonable control to assure proper utilization and to provide protection against theft, misuse, or unnecessary deterioration.

§ 3408.7 Acquisition of Federal excess personal property.

(a) *Authorization.* Each State Cooperative Research Activity is authorized to acquire Federal excess personal property through CSRS acting as the sponsoring agency. The Program is managed by the PMO, CMS, who is responsible for approval of requests, maintenance of official property records, training, site reviews, and the conduct of inventories. This authorization is granted to each Administrative Head of each State Cooperative Research Activity or his/her APO who shall carry out the following requirements:

(1) Certify for accuracy and propriety all documents related to the acquisition, transfer, modification, cannibalization, or disposal of Federal excess personal property;

(2) Identify all Federal excess personal property with appropriate labels or decals;

(3) Report promptly all Federal excess personal property that becomes excess to program requirements;

(4) Assume responsibility for Federal excess personal property, including accountability and utilization, in connection with approved Cooperative Research projects or programs;

(5) Provide assurance that the procedures contained in this Part are followed; and

(6) Only request property for use in approved research projects (see § 3408.2(g)).

(b) *USDA excess personal property.* DEPPC is the organization in USDA that acts as a clearinghouse for excess property generated by the Department nationwide. DEPPC publishes a monthly bulletin listing USDA excess property by location and condition and provides a contact for further inquiries.

(1) *Procedures for acquisition.* (i) Requests for Federal excess personal property made available through DEPPC should be prepared on Form SF–122, Transfer Order Excess Personal Property and submitted to the PMO, CMS, for review and Federal approval. Approved requests will be forwarded to DEPPC. A separate SF–122 must be submitted for each reporting (holding) agency and for each property location.

(ii) Submit the completed SF–122, Transfer Order Excess Personal Property for Agency review and approval to: USDA, CSRS; Attn: PMO; Ag Box 0993; Washington, DC 20250–0993.

(iii) Also, be sure to include the FSC Group Number and condition code for each property item.

(2) *DEPPC selection procedures.* DEPPC has sole authority for the assigning of Departmental excess personal property to requesting agencies. DEPPC selection procedures are:

(i) All requests will be held until the closing date of the list, unless immediate transfer authorization is justified because of need or other circumstances;

(ii) When more than one request is received for the same item, preference will be given to a unit of the agency reporting the item. Otherwise, the transfer authorization will be determined after consideration of such factors as need statements, proximity of transferee in regard to transportation, packing and loading facilities, etc.; and

(iii) Promptly after the list closes, a copy of each request will be returned to the requestor showing whether the items were authorized for transfer.

(c) *General Services Administration excess personal property.* Personal property declared excess by an agency of the Federal Government is made available to other government agencies through the Federal excess personal property program administered by GSA.

(1) Property available for acquisition can be identified through:

(i) Review of GSA Regional Excess Property catalogs and bulletins distributed by GSA;

(ii) Personal contact with the GSA, AUO, or the holding installation; and

(iii) Examination and inspection of reports and samples of excess property assembled for this purpose in GSA Regional Offices.

(2) Property needed in the conduct of an approved research program as defined in § 3408.2(f) may be requested by submission of GSA Form 1539, Request for Excess Personal Property, outlining current and future personal property requirements. GSA Form 1539, submitted to the appropriate GSA regional office, will be reviewed by property utilization specialists in an effort to match agency needs with property becoming available for transfer. Requests to excess personal property should be limited to single line items valued at $500 or more. Include a full description of the item requested and the minimum condition acceptable.

(3) Each Administrative Head will identify a limited number of State Cooperative Research Activity employees (usually no more than three) to screen property available for acquisition through GSA. Those appointed must have a GSA Screener's Identification Card or a U.S. Government ID to inspect Federal excess personal property available through GSA. GSA Form 2946 may be obtained from the PMO, GMS. Completed forms must be submitteed to the PMO, CMS, for review and approval. GSA Form 2946 will then be submitted to GSA for approval. When a screener's authorization is terminated or the card has expired, GSA Form 2946 must be returned to the PMO, CMS, for cancellation. Excess personal property screeners should be familiar with GSA AUO's. They can provide valuable assistance in locating and filling specific property requests.

(4) *Procedures for acquisition.* Federal excess personal property identified for possible acquisition may be secured through the following procedures:

(i) Place a "Freeze Request" call to the GSA regional office, listing the property to be acquired. this will reserve the property for inspection and preparation of forms for possible acquisition;

(ii) Personally inspect the property to determine its condition and usefulness to the project or program for which it is to be acquired (see § 3408.7 (c)(3), Screener's Identification Card). On-site inspections are strongly recommended to assure stated condition. Should personal inspection be impractical, information as to the nature and condition of the property may be secured from the reporting agency official with personal knowledge of the property in question; and

(iii) (A) Submit completed SF–122, Transfer Order Excess Personal Property for Agency review and approval to: USDA, CSRS; Attn: PMO, Ag Box 0993; Washington, DC 20250–0993.

(B) This form will be forwarded to the appropriate GSA Regional Office for final action. Submit a separate SF–122 for each reporting (holding) agency and each property location. Each property item must be identified by the correct FSC group number and condition code.

(C) The Administrative Head, or his/her APO, must approve a certification typed on the SF–122 that the property acquired will be used in the conduct of approved CSRS projects or programs.

(d) *Transfer of date-expired pharmaceuticals to Colleges of Veterinary Medicine.* (1) Under authority of 41 CFR 101–43.307–2(b), drugs (other than controlled substances) in FSC class 6505 that are determined unfit for human use due to expiration of shelf life may be transferred to Colleges of Veterinary Medicine for animal experimental use on a case-by-case basis subject to prior approval of GSA.

(2) An authorized representative of the College of Veterinary Medicine (eligible under 7 U.S.C. 3195 and 3196) will screen and select expired 6505 items and submit a list of those items which could be used in research on a Defense Property Reutilization and Marketing Supply (DPRMS) Form 103. The following items will be approved for transfer: Parenteral fluids; over-the-counter preparations; and prescription label pharmaceuticals, including inhalant anesthetics. No controlled substances in Drug Enforcement Administration (DEA) Class I and Class II will be requested. No tranquilizers will be requested.

(3) In order to participate in this program, each College of Veterinary Medicine must enter into an agreement with CMS (acting as the agent for CSRS). This agreement will set forth the procedures and requirements for participation (see appendix A of this part for Agreement).

(4) Each College of Veterinary Medicine is responsible for submitting its own requests for pharmaceuticals to the PMO, CMS, for approval. The PMO will obtain GSA approval. Items will not be transferred from one school to another.

(5) (i) Each SF–122 prepared by the College of Veterinary Medicine must include the following statements:

(A) These pharmaceuticals will not be used for human purposes;

(B) These pharmaceuticals will be used only to further the purposes of the research program conducted under section 1433 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3195), as amended;

(C) No pharmaceutical which could potentially compromise the validity of the research findings will be used in a research protocol; and

(D) The College of Veterinary Medicine expressly agrees to assume all liabilities arising out of the use of the transferred items, and to indemnify and hold harmless the United States, its agents, and employees for any loss that arises from such use.

(ii) Each SF–122 must be signed by the APO and either a Doctor of Veterinary Medicine or a Registered Pharmacist and the Drug Enforcement Agency Authorization number must be included.

(6) Each College of Veterinary Medicine must assume all liabilities and indemnify the Federal Government against loss.

(7) All transferred pharmaceuticals are to be used in the conduct of formula-funded animal health research programs conducted under section 1433 of the National Agricultural Research,

Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3195), as amended.

(8) Each College of Veterinary Medicine is solely responsible for the security, storage and accountability of such items, including compliance with applicable Federal, state, and local laws. Items are to be stored and inventoried in a physically separate location from regular operating inventory.

(9) The Accountable Property Officer, or his/her designate, will be responsible for disbursement for use and/or disposal of all items received under the Program. Inventory records will be made available on request to authorized USDA representatives.

(10) Any pharmaceutical no longer required for research purposes will be destroyed by the College of Veterinary Medicine in accordance with Federal, State, and local statutes, under supervision of the Accountable Property Officer.

(11) The College of Veterinary Medicine will be responsible for all transportation and disposal costs.

§ 3408.8 Use of Federal excess personal property.

Property acquired through the CSRS Federal excess personal property program must be intended for a specific purpose and consistent with this part, and must be put into immediate use to further that purpose. Therefore, the stockpiling of non-expendable excess personal property is not permitted. Limited stockpiling (not to exceed a one-year supply) is permitted for expendable excess personal property. Federal excess personal property shall be used as long as needed on the projects or programs for which it was acquired. During the time Federal excess personal property is held by the eligible State participant, it may be made available for other approved projects or programs if such use will not interfere with the project or program for which it was originally acquired.

§ 3408.9 Reporting Federal excess personal property.

(a) When Federal excess personal property is no longer needed on the project or program for which it was acquired, the property may be utilized on other approved projects conducted by the State Cooperative Research Activity holding custody of the property.

(b) When Federal excess personal property is no longer needed by the State Cooperative Research Activity holding custody of the property, it shall be declared excess and reported promptly to the PMO, CMS.

(c) Federally owned personal property declared excess by a State Cooperative Research Activity shall be reported to DEPPC and GSA through CMS on Form SF–120, Report of Excess Personal Property. Property reported by locations outside the 50 States shall be reported only to GSA. Submit the completed form to the PMO, CMS. A separate SF–120 shall be filed for each property location and FSC Group. Typewriters should listed on a separate SF–120.

(d) Form SF–120 must list: (1) All descriptive information of the property included on the Official Property Record, including the order number from the original acquisition document;

(2) True condition of the property as of the date it is reported excess by assigning an appropriate condition code; and

(3) Any available operating manual, diagram, maintenance record, log, or other instructional material.

(e) CMS will submit Form SF–120 to DEPPC for inclusion in the list of excess property available to USDA agencies, including CSRS. For locations outside the 50 States, CMS will submit the SF–120s only to GSA. Disposition instructions will be issued by DEPPC within 60 days after receipt of Form SF–120 if the property is claimed by a USDA agency. Federal excess personal property not secured by a USDA agency will be reported as excess by DEPPC to GSA for inclusion in the list of excess personal property available to other Federal agencies. Final disposition instructions will be issued by GSA through the PMO, CMS.

§ 3408.10 Transfer of Federal excess personal property.

(a) *Within a State Cooperative Research Activity.* Federally owned personal property declared excess by a State Cooperative Research Activity, that can be utilized within another State Cooperative Research Activity, may be transferred with prior approval of the PMO, CMS. Form AD–107, Report of Transfer or Other Disposition or Construction of Property, signed by the reporting and receiving State Cooperative Research Activity, is to document the transfer. A copy is to be submitted to CMS for record and inventory purposes.

(b) *To other USDA agencies.* The transfer of Federally owned personal property, declared excess by a State Cooperative Research Activity and secured by another USDA agency, is to be documented on Form AD–107, Report of Transfer or Other Disposition or Construction of Property. Following CMS approval, a completed copy, signed by the reporting activity and the receiving USDA agency, is to be forwarded to the PMO, CMS.

§ 3408.11 Donation of surplus property.

(a) Federally owned personal property, declared surplus by GSA, may be donated by GSA to certain public agencies and nonprofit institutions as determined by the Administrator of General Services. Property becomes eligible for donation when there is no further requirement within the Federal establishment for its use. Donated property is generally handled by GSA through the State Agencies for Surplus Property (SASPs) which are responsible for its distribution.

(b) All items requested by the SASPs are submitted to GSA for approval on an SF–123 (Transfer Order Surplus Personal Property). SF–123s received by the PMO, CMS for property on loan to the States (which has been reported to GSA for reutilization or donation on an SF–120), will be forwarded to the appropriate APO and will serve as authorization to release the property to the designated SASP.

§ 3408.12 Unserviceable property.

(a) *Unserviceable property.* Unserviceable Federal excess personal property which is accountable is to be reported to the PMO, CMS on Form SF–120, Report of Excess Personal Property. Nonaccountable Federal excess personal property that is unserviceable is to be reported on Form AD–112, Report of Unserviceable, Lost or Damaged Property. Unserviceable property refers to items worn through normal use, that have no reasonable prospect of use as a unit, and whose repair or rehabilitation for use as a unit is clearly impracticable. Unserviceable property is generally characterized as having one of the following conditions:

(1) Not worth continued care and handling; or

(2) Having no commercial value except for its basic material content.

(b) *Disposition instructions.* The PMO, CMS, will submit all SF–120s to GSA for disposition instructions. When appropriate action has been determined by GSA, CMS will notify the State Cooperative Research Activity. If the property is to be disposed of locally, the AD–112 will be completed for USDA records. Following final disposition, the property records will be adjusted to reflect the action taken.

§ 3408.13 Lost, damaged, stolen, or destroyed property.

(a) *Reporting lost, damaged, stolen, or destroyed property.* Stolen property should be reported to the local law enforcement authorities immediately after discovery of the theft. All lost, damaged, stolen, or destroyed property is to be reported to the PMO, CMS, on

Form AD–112, Report of Unserviceable, Lost or Damaged Property. This report should provide a detailed explanation of the facts and circumstances involved with the case, the condition of the item(s), and actions taken to recover the item(s). Form AD–112 should include the name of the person to whom the property was assigned, room number, time, date (or approximate date), and last known location. A police report should accompany the AD–112 submission for stolen property.

(b) *Liability.* The State Cooperative Research Activity may be held liable for property that is lost, damaged, stolen, or destroyed through gross negligence. The PMO, CMS, will determine whether gross negligence is involved with the loss of property based on the facts, explanations, and record as presented on the AD–112. If the evidence indicates gross negligence, the case will be referred to the agency head or his designee for consideration of appropriate action under the Debt Collection Act.

Appendix A to Part 3408—Agreement for Transfer of Date-Expired Pharmaceuticals to Colleges of Veterinary Medicine by the Cooperative State Research Service

I. Authority

40 U.S.C. 483(d)(2)(E); 41 CFR 101–43.307–2(b), Controlled Substances, Drugs, and Biologicals

II. Acquisition Procedure

A. All transactions involving the transfer of property in FSC Group 6505 are to be handled as follows:

1. An authorized representative of the College of Veterinary Medicine (eligible under 7 U.S.C. 3195 and 3196) will screen and select expired 6505 items and submit a list of those items which could be used in research on a Defense Property Reutilization and Marketing Supply (DPRMS) Form 103. The classes of items which will be accepted for transfer are parenteral fluids, over-the-counter preparations, and prescription label pharmaceuticals including inhalant anesthetics. No controlled substances in Drug Enforcement Administration (DEA) Class I and Class II will be requested. No tranquilizers will be requested.

2. The College of Veterinary Medicine will be responsible for submitting its own requests for pharmaceuticals which must be transmitted to the Cooperative Management Staff, Property Management Officer for approval. The Property Management Officer will obtain the necessary approval of the General Services Administration prior to authorizing the transfer of any items under this agreement to a College of Veterinary Medicine. Items will not be transferred from one school to another.

3. Once the DPRMS has accepted accountability, an SF–122 will be prepared by the College of Veterinary Medicine. Each SF–122 must include the following statements:

- These pharmaceuticals will not be used for human purposes.
- These pharmaceuticals will be used only to further the purposes of the research program conducted under section 1433 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended.
- No pharmaceutical which could potentially compromise the validity of the research findings will be used in a research protocol.
- The College of Veterinary Medicine expressly agrees to assume all liabilities arising out of the use of the transferred items, and to indemnity and hold harmless the United States, its agents and employees, for any loss that arises from such use.

4. All requests must be signed by the Accountable Property Officer and a registered pharmacist or Doctor of Veterinary Medicine.

5. All SF–122s (Transfer Order Excess Personal Property) are to be submitted to the Property Management Officer, Cooperative Management Staff, USDA: the designated official to approve transfer orders for the Cooperative State Research Service, USDA.

III. Other Requirements

A. The College of Veterinary Medicine is solely responsible for the security, storage, and accountability of such items, including compliance with applicable Federal, State, and local laws. Items are to be stored and inventoried in a physically separate location from regular operating inventory.

B. The Accountable Property Officer, or his/her designate, will be responsible for disbursement of use and/or disposal of all items received under the Program. Inventory records will be made available on request to authorized USDA representatives.

C. Any pharmaceutical no longer required for research purposes will be destroyed by the College of Veterinary Medicine in accordance with Federal, State, and local statutes, under supervision of the Accountable Property Officer.

D. The College of Veterinary Medicine will be responsible for all transportation and disposal costs.

E. The DEA authorization number for the College of Veterinary Medicine is:

Administrator, Cooperative State Research Service

Dean, College of Veterinary Medicine

University

Done at Washington, DC this 1st day of October 1993.

John Patrick Jordan,

Administrator.

[FR Doc. 93–24762 Filed 10–13–93; 8:45 am]

BILLING CODE 3410–22–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 21

[Docket No. PRM–21–2]

Nuclear Management and Resources Council; Receipt of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; Notice of receipt.

SUMMARY: The Nuclear Regulatory Commission (NRC) is publishing for public comment a notice of receipt of a petition for rulemaking, dated June 21, 1993, which was filed with the Commission by the Nuclear Management and Resources Council. The petition was docketed by the NRC on June 22, 1993, and has been assigned Docket No. PRM–21–2. The petitioner requests that the NRC amend its regulations to revise the definition of the term "commercial grade item"; to include a flexible generic process for dedication of commercial grade items for safety-related use; and to clarify that the entity performing the dedication of a commercial grade item is responsible for discovering, evaluating, and reporting deficiencies as required by NRC's regulations.

DATES: Submit comments by December 28, 1993. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Submit written comments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. Federal workdays.

For a copy of the petition, write the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

The petition and copies of comments received may be inspected and copied for a fee at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rules Review Section, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington,

DC 20555, Telephone: 301–492–7758 or Toll Free: 800–368–5642.

SUPPLEMENTARY INFORMATION:

Petitioner

The Nuclear Management and Resources Council (NUMARC) is an organization of the nuclear power industry. NUMARC is responsible for coordinating the combined efforts of all utilities licensed by the NRC to construct or operate nuclear power plants, and of other nuclear industry organizations, in all matters involving generic regulatory policy issues and regulatory aspects of generic operational and technical issues affecting the nuclear power industry. NUMARC's members include all utilities responsible for constructing or operating a commercial nuclear power plant in the United States, major architect/engineering firms, and all of the major nuclear steam supply system vendors.

Background

Section 206 of the Energy Reorganization Act of 1974, as amended, requires that all licensees, as well as nonlicensees who construct facilities for licensees, supply basic components to licensees, and provide services associated with basic components to licensees, report defects that could create a substantial safety hazard. The NRC regulations that implement Section 206 are contained in 10 CFR part 21. This part, in conjunction with 10 CFR part 50, appendix B, also covers the procurement of parts for nuclear power plants, including basic components and commercial grade items to be used in safety-related applications.

The petitioner has focused this petition on the procurement of parts described as commercial grade items because, according to the petitioner, the current procurement environment is different from the environment extant when Part 21 was adopted. The petitioner states that because nuclear power plants have been operating for several years, many pieces of equipment now require replacement or refurbishment of their components. According to the petitioner, current nuclear utility procurement needs primarily involve replacement parts for existing equipment rather than the purchase of major new pieces of equipment. However, many of the original suppliers and manufacturers no longer maintain Appendix B-qualified programs because of the diminished market, because no new plants are being ordered or are currently under construction, and because of the burden of maintaining such a quality assurance program. Frequently, replacement parts are not available from original or other Appendix B-qualified vendors. The combined effect of the decreased availability of parts from Appendix B-qualified vendors and the greater expense of obtaining these parts is that licensees are increasingly forced to procure commercial grade replacement parts and dedicate them for use in safety-related applications.

Discussion

According to the petitioner, the provisions of part 21 that relate to commercial grade items, the dedication of these items for use in safety-related applications, and the reporting requirements associated with these items that are imposed on manufacturers, suppliers, and sub-tier suppliers are unworkable, ineffective, and may be counterproductive. The petitioner states that safety may be adversely affected by delay caused by the inability to obtain the replacement parts needed for use as basic components.

The petitioner believes that Part 21, as it relates to commercial grade items and their dedication, is not accomplishing its intended objectives effectively. The petitioner believes that the current Part 21 regulations involving posting, document retention, and deficiency evaluation and reporting make the implementation of these regulations unnecessarily burdensome and create substantial liability for licensees subject to Part 21. The petitioner believes that the effect of these provisions has been to discourage vendors from maintaining Appendix B-qualified programs.

Although Part 21 provided a reasonable foundation for regulating procurement and imposing reporting requirements at the time it was promulgated, the petitioner believes that the current requirements of Part 21 often impede a utility's ability to obtain the highest quality part available for use in a safety-related application in a cost- and time-efficient manner. The inability to procure appropriate parts promptly could adversely affect plant safety.

The petitioner discusses several options available to nuclear utilities in procuring replacement parts, most of which have serious drawbacks directly or indirectly related to the current regulatory approach set out under Part 21. These options and drawbacks, as discussed by the petitioner, are as follows:

1. Nuclear utilities could procure items from a supplier who maintains an Appendix B-qualified program, but the cost of procuring an item from such a source is much higher than if comparable items are procured through commercial channels.

2. Nuclear utilities could procure replacement parts that are slightly different than the original parts, but even if replacement parts are obtained from an Appendix B-qualified supplier, a design change is likely to be required to justify the use of the proposed replacement parts.

3. Nuclear utilities could obtain the item from the surplus market or another utility, but this option may be impossible if the product does not fit into the basic component or commercial grade definitions.

4. Nuclear utilities could procure the item as commercial grade, but it may be difficult to meet all of the definitional requirements of Part 21.

5. Nuclear utilities may file an application for an exemption, but this process is impractical because of the time generally required to obtain a decision.

The petitioner believes that the substitution of a more practicable definition of the term "commercial grade item" and the addition of a flexible generic process for dedication would assist in resolving many of the drawbacks cited for the options available to a nuclear utility.

The petitioner states that its suggested change to the NRC's regulations would broaden the definition of commercial grade item under 10 CFR 21.3(a)(4) and (a–1). The petitioner also states that Part 21 does not allow an item to qualify as commercial grade unless the item meets all three of the requirements defined in 10 CFR 21.3(a)(4) and (a–1). Because many of the replacement parts needed are no longer available from the original manufacturers or suppliers who maintain Appendix B-qualified programs, the petitioner believes that the current definition of the term "commercial grade item" presents a significant obstacle for licensees in procuring appropriate parts in the most cost- and time-efficient manner. According to the petitioner, the proposed changes would expand the definition of "commercial grade item" to include any item obtained on the open market. Under the petitioner's suggested amendment, it would be incumbent upon the dedication process to provide reasonable assurance that the item will perform its intended function in the safety-related application and upon the dedication entity to report any deficiencies covered under Part 21.

The petitioner believes that allowing commercially available items to qualify as commercial grade items would provide significant benefits without any

adverse impact on safe plant operation. According to the petitioner, the suggested amendment not only allows procurement from the original manufacturer or supplier even if that entity no longer maintains an Appendix B-qualified program, as well as from other commercial sources, but it also reduces the potential need for design changes and permits a more reasonable price and delivery time.

In the petitioner's suggested amendment, the regulations would define the dedication process as one that will provide reasonable assurance that the commercial grade item will perform its intended function. According to the petitioner, the following are ways to assure that the commercial grade item will perform its intended function:

(1) Testing and/or inspection;

(2) Surveying the commercial grade supplier to determine that the appropriate quality control is in place;

(3) Observing the manufacturing process; and

(4) Analyzing the historical record of the item for acceptable performance.

The petitioner indicates that other methods of verification for dedication may exist that are acceptable to the NRC and that should be considered in evaluating whether the reasonable assurance standard is met in this context.

The petitioner also proposes that the dedication entity maintain documentation of the dedication process for the purpose of an audit or inspection. The petitioner believes that the primary benefit of establishing the dedication process suggested in the petition is that the user or other party performing the dedication, who understands the safety significance of the proposed component and, therefore, is better able to identify the characteristics necessary to perform its intended function than the manufacturer, is responsible for the quality of the commercial grade item. In order for the dedication entity to maintain documentation of the dedication process for the purpose of an audit or inspection, the utility party performing the dedication would have to evaluate the suitability of the component by analyzing the effect of the commercial grade item on the component's performance in a safety-related application.

The petitioner believes that it is appropriate to place the responsibility for reporting deficiencies in commercial grade items with the entity performing the dedication process. The petitioner believes that suppliers and sub-tier suppliers do not necessarily know whether a commercial grade item is destined for a safety-related application. The petitioner also indicates that no time limitation exists on the part 21 reporting responsibility for suppliers. The petitioner recommends that language be added to § 21.21(b) to make clear that the entity performing the dedication of a commercial grade item is responsible for discovering, evaluating, and reporting deficiencies.

The Suggested Amendments

The petitioner believes that part 21 should be modified to accommodate the current procurement needs of the nuclear power industry. The petitioner recommends changes to 10 CFR 21.3 to broaden the definition of a commercial grade item and to define and set out a standard for the dedication process. The petitioner believes that all parties would benefit from the inclusion of language in 10 CFR 21.21(b) clarifying the responsibility associated with dedication. According to the petitioner, the recommended changes would not have any adverse impact on safety as the use of properly dedicated commercially available parts neither decreases equipment performance nor affects safe plant operation.

The changes requested by the petitioner are set out as follows:

1. In § 21.3, paragraphs (a–1) and (c–1) are revised to read as follows:

§ 21.3 Definitions

* * * * *

(a–1) *Commercial grade item* means any item that has not been dedicated for use as a basic component.

* * * * *

(c–1) *Dedication* is the evaluation process undertaken to provide reasonable assurance that a commercial grade item to be used as a basic component will perform its intended function.

* * * * *

2. In § 21.21, the existing text of paragraph (b) is redesignated as paragraph (b)(1) and a paragraph (b)(2) is added to read as follows:

§ 21.21 Notification of failure to comply or existence of a defect and its evaluation.

* * * * *

(b) * * *

(2) The entity that performs the dedication is responsible for identifying, evaluating, and reporting the deviations and failures to comply associated with substantial safety hazards of a commercial grade item.

* * * * *

Dated at Rockville, Maryland, this 7th day of October 1993.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 93–25230 Filed 10–13–93; 8:45 am]

BILLING CODE 7590–01–P

FARM CREDIT ADMINISTRATION

12 CFR Part 650

RIN 3052–AB49

Federal Agricultural Mortgage Corporation

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA), by the Farm Credit Administration Board (Board), proposes for public comment a new regulation relating to reporting and disclosure of conflicts of interest by directors, officers, and employees of the Federal Agricultural Mortgage Corporation (Corporation). The regulation is proposed in response to section 514 of the Farm Credit Banks and Associations Safety and Soundness Act of 1992. Section 514 of the 1992 Act directs the FCA to ensure that its regulations require the disclosure of financial information and the reporting of potential conflicts of interest by directors, officers, and employees of all Farm Credit System (System) institutions and that such requirements are adequate to fulfill the purposes of the section.

The proposed regulations would require the Corporation to adopt a conflict-of-interest policy. In its policy the Corporation must define the types of transactions, relationships, or activities that might reasonably be expected to give rise to a potential conflict of interest and require the reporting of sufficient information about transactions, relationships, and activities to inform the Corporation about potential conflicts of interest. The proposed regulation would also require, in addition to disclosures already required under the Federal securities laws, disclosure to shareholders, investors, and potential investors of any unresolved conflicts of interest involving its directors, officers, and employees.

DATES: Comments must be received by November 15, 1993.

ADDRESSES: Comments should be submitted in writing, in triplicate, to Suzanne McCrory, Director, Office of Secondary Market Oversight, in care of Cindy Nicholson, Paralegal Specialist, Regulation Development Division,

Office of Examination, Farm Credit Administration, McLean, Virginia 22102–5090. Copies of all communications received will be available for examination by interested parties in the Regulation Development Division, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT: Suzanne J. McCrory, Director, Office of Secondary Market Oversight, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4280, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: Section 514 of the Farm Credit Banks and Associations Safety and Soundness Act of 1992 (1992 Act), Pub. L. 102–552, 106 Stat. 4102, directed the FCA to review its current regulations regarding the disclosure of financial information and the reporting of potential conflicts of interest by the directors, officers, and employees of Farm Credit System institutions to determine whether the regulations: (1) Are adequate to fulfill the purpose of section 514 and other purposes determined by the FCA to be necessary or appropriate, consistent with the Farm Credit Act of 1971 (1971 Act); (2) require the disclosure of financial information and reporting of potential conflicts of interest by the directors, officers, and employees of all Farm Credit System institutions; and (3) require such disclosure of all of the appropriate directors, officers, or employees of Farm Credit System institutions. The 1992 Act further directed the FCA to amend its current financial disclosure and conflict-of-interest regulations to carry out the purpose of section 514 and to address any deficiencies in the regulations revealed by the required review.

The stated purpose of section 514 is to ensure that FCA regulations require the disclosure of financial information and the reporting of potential conflicts of interest to provide sufficient information for: (1) Stockholders to make informed decisions regarding the operation of the institutions; (2) investors and potential investors to make informed investment decisions; and (3) the FCA to examine and regulate all Farm Credit System institutions effectively and efficiently.

Specifically, Congress found that:

(1) Disclosure of compensation paid to, loans made to, and transactions made with a Farm Credit System institution by its directors and senior officers provides stockholders with information necessary to manage the institution, provides the FCA with information necessary to regulate the institution efficiently and effectively, and enhances the integrity of the Farm Credit System by making the information available to potential investors;

(2) Reporting of potential conflicts of interest by directors, officers, and employees benefits the stockholders of the institution, helps to ensure the financial viability of the institution, and provides information valuable to the FCA in periodic examinations, thereby enhancing the safety and soundness of the System; and

(3) Directors, officers, or employees of some Farm Credit System institutions may not be subject to the regulations of the Farm Credit Administration requiring the disclosure of financial information and the reporting of potential conflicts of interest.

(As a result of its review, the FCA concluded that certain of the purposes of section 514 are already served by disclosure required as a result of the registration of the Corporation's securities with the Securities Exchange Commission (SEC) under the Securities Exchange Act of 1934 (1934 Act) and by the requirements of FCA regulations relating to shareholder disclosure. SEC rules require the disclosure to shareholders of the compensation of senior officers and directors, transactions of the institution exceeding $60,000 with parties in which such persons have an interest; certain business relationships with persons doing business with the institution; and loans in excess of $60,000 made by the institution to senior officers and directors, their immediate families, and any organization of which they are an executive officer, partner, or 10 percent (or more) stockholder, unless such loans are transactions in the ordinary course of business. FCA regulations in part 620 require disclosure to shareholders consistent with SEC rules.

The FCA has adequate access to information possessed by the Corporation through the examination process, and the disclosures to shareholders required by the SEC and FCA regulations provide sufficient information to allow stockholders to make informed decisions regarding the operation of the institution, compensation of officers and directors, and related-party transactions. This information is publicly available to investors and potential investors in SEC filings under the 1934 Act. Although these requirements may elicit disclosure of situations that may present a potential for conflicts of interest, there is no regulatory requirement that potential conflicts of interest be reported to the Corporation.

In proposing these regulations, the FCA considered several issues. First, should the regulation specifically prohibit certain transactions, relationships, and activities that involve the potential for conflicts of interest as is done for other System institutions? The FCA currently has standards-of-conduct regulations for the banks and associations of the Farm Credit System. These standards-of-conduct regulations include both general and specific prohibitions designed to prevent conflicts of interest and the appearance of conflicts of interest. Under a proposed amendment to these regulations adopted on July 15, 1993, (58 FR 44139, August 19, 1993) these institutions would be given more responsibility for defining appropriate conduct, but some transactions, relationships, and activities that involve the potential for conflicts of interest would continue to be prohibited by regulation.

The FCA Board considered adopting a similar approach for the Corporation, but proposes instead a rule that would require the Corporation to define its own conflict-of-interest policy within the requirements of section 514. Several reasons underlie this different regulatory approach. First, by defining prohibited conduct for System banks and associations, which number in the hundreds and which report combined financial information to investors, the FCA established a standard of uniform applicability. The FCA Board believes a uniform standard of conduct should be in effect for System institutions who are jointly and severally liable for Systemwide obligations. Implementing a uniform standard would have been difficult to achieve without a regulation. By contrast, the Corporation is a single institution and there appears to be no need for the FCA to establish a standard of uniform applicability by regulation. Second, the FCA's historical experience with System banks and associations enabled it to identify situations associated with abuse in System operations; the operational history of the Corporation has been too short to provide similar information. Moreover, the structure and business operations of the Corporation differ from the rest of the System. For example, conflicts of interest in System banks and associations often involve decisions related to loans since these institutions are lenders whose borrowers are the cooperative owners. By contrast, the Corporation is a guarantee agency that plays an active role in asset securitization and conflicts of interest may involve a wider variety of transactions than loans.

Consequently, the FCA proposes that the Corporation be required to adopt a

conflict-of-interest policy defining those types of transactions, relationships, and activities that might adversely affect a person's ability to perform his or her official duties and responsibilities in a totally impartial manner and in the best interest of the Corporation. The proposed regulation would require sufficient reporting of potential conflicts of interest to permit the Corporation to monitor, resolve, and, if unresolved, disclose conflicts of interest.

The second regulatory issue considered by the FCA Board involved the type and extent of internal reporting and public disclosure. The proposed rule is based on the premise that all transactions, relationships, and activities that may present the potential for a conflict of interest should be reported to the Corporation. Therefore, the proposed rule would require the Corporation to develop requirements for the reporting of sufficient information about transactions, relationships, and activities to inform the Corporation of potential conflicts. The Board takes this position because the 1992 Act requires FCA regulations to require reporting of all "potential conflicts of interest" and because it may be difficult for the person involved to evaluate the gravity of a possible conflict fully and objectively. Reporting would be required annually and at such other times as potential conflicts arise. Directors, officers, and employees having no transactions, relationships, or activities to report would be required to file a statement to that effect.

The proposed rule would require the Corporation to prescribe "materiality" guidelines consistent with the regulation to establish when a conflict of interest must be publicly disclosed if not otherwise resolved. The proposed regulation defines a material conflict of interest as one of sufficient magnitude or significance that a reasonable observer with knowledge of the relevant facts would question the person's ability to discharge official duties in an objective and impartial manner. A material conflict would be deemed to be resolved if the circumstances were altered so that a reasonable observer with knowledge of the relevant facts would conclude that the person's performance of official duties in an objective and impartial manner would not be adversely affected. Circumstances could be altered, for example, by the person with the conflicting interest terminating the relationship, transaction, or activity at issue, or by control mechanisms established by the Corporation, such as recusal from all decisionmaking that could have a direct and predictable effect on the person's interest in the matter.

Since the Corporation is subject to SEC disclosure requirements for public companies, the materiality standard adopted by the Corporation could result in no less stringent a disclosure requirement than SEC rules would allow. Conflict-of-interest policies; reports filed by directors, officers, and employees; and other documentation of the policy's implementation would be subject to FCA examination, allowing the FCA to evaluate the effectiveness of the Corporation in identifying and resolving conflicts and any safety and soundness concerns presented by such conflicts.

The third major issue involved defining the duties and responsibilities of directors, officers, and employees of the Corporation. As a federally chartered entity, the Corporation has both public and private purposes. Conflicts of interest must be understood and interpreted not only in the context of the fiduciary responsibilities to the Corporation and its shareholders, but also in the context of the statutory duty to further the congressional purposes the Corporation was chartered to achieve. The proposed regulation reflects the FCA Board's belief that the statutory structure of the Corporation's board [1] and the statutory direction that voting stock be equitably distributed among classes of voting stock and among stockholders within each class were designed to ensure that the Corporation would be managed in an evenhanded manner, without favoring either System users or non-System users. The proposed regulation reflects the FCA Board's recognition that, irrespective of the source of appointment, directors owe fiduciary duties to all shareholders, and that the Corporation must not act in a way that discriminates against or favors any class of stockholders or users. However, the proposed regulation also recognizes that fiduciary duties to shareholders must be understood in the context of the duty of the directors to further the statutory purposes of the Corporation.[2]

Unlike directors of corporations incorporated under State statutes of incorporation, directors of statutorily chartered Federal Government-sponsored enterprises are not free to alter the purposes or powers of such enterprises, even when such alteration would be in the best interest of the stockholders. Such changes can only be made by law. Rather, it is the responsibility of the directors to manage the Corporation in the manner that best effectuates the public policy it was designed to serve. Therefore, the proposed regulation would impose upon directors, officers, and employees the duty to conduct the business of the Corporation in a manner that promotes the best interest of the Corporation and furthers its statutory mission. The proposed regulation would further require these individuals, in the discharge of these duties, to adhere to the highest standards of honesty, integrity, impartiality, loyalty, and care, and to discharge official responsibilities impartially in a manner consistent with applicable law and regulation in furtherance of the Corporation's public purpose. The FCA Board believes that the public purpose of the Corporation warrants application of high standards of conduct. The proposed regulation would also require directors, officers, and employees to adhere to the conflict-of-interest policy of the Corporation; individuals in violation of the regulation or the Corporation's policy would be subject to the penalties of part C of title V of the Act, including civil money penalties.

List of Subjects in 12 CFR Part 650

Agriculture, Banks, banking, Conflicts of interest, Rural areas.

For the reasons stated in the preamble, a new part 650 of chapter VI, title 12 of the Code of Federal Regulations is proposed to be added to read as follows:

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[1] The Agricultural Credit Act of 1987, Pub. L. 100–233 (1987 Act), established three classes of five directors each—one class to be elected by banks, insurance companies and other financial institutions that are stockholders, one class to be elected by institutions of the Farm Credit System that are stockholders, and one class to be appointed by the President. The five appointive directors must be representatives of the general public and must not have been officers or directors of any financial institutions. At least two of the five must be experienced in farming or ranching and not more than three may be of the same political party.

[2] The 1987 Act, which amended the Farm Credit Act of 1971, 12 U.S.C. 2001 *et seq.*, established the Corporation as a Federal instrumentality and as a part of the Farm Credit System for the purpose of facilitating a secondary market in agricultural real estate and rural home loans originated by Farm Credit institutions and other lenders. The statutory purpose to be served by the secondary market thus created was to increase the availability of long-term credit to farmers and ranchers at stable interest rates, to provide greater liquidity and lending capacity for lenders extending credit to farmers and ranchers, to facilitate capital market investments in providing long-term agricultural funding, including funds at fixed rates of interest, and to enhance the ability of individuals in small rural communities to obtain financing for moderate-priced homes. See section 701 of the 1987 Act.

PART 650—FEDERAL AGRICULTURAL MORTGAGE CORPORATION

Subpart A—Conflicts of Interest

Sec.
650.1 Definitions.
650.2 Conflict-of-interest policy.
650.3 Disclosure of conflicts of interest.
650.4 Director, officer, and employee responsibilities.

Authority: Secs. 5.9, 5.17, 8.11 of the Farm Credit Act; 12 U.S.C. 2243, 2252, 2279aa–11; sec. 514 of Pub. L. 102–552, 106 Stat. 4102.

Subpart A—Conflicts of Interest

§ 650.1 Definitions.

(a) *Corporation* means the Federal Agricultural Mortgage Corporation.

(b) *Employee* means any salaried officer or part-time, full-time, or temporary salaried employee.

(c) *Entity* means a corporation, company, association, firm, joint venture, partnership (general or limited), society, joint stock company, trust (business or otherwise), fund, or other organization or institution.

(d) *Material,* when applied to a potential conflict of interest, means the conflicting interest is of sufficient magnitude or significance that a reasonable observer with knowledge of the relevant facts would question the ability of the person having such interest to discharge official duties in an objective and impartial manner in furtherance of the interest of the Corporation and its statutory purposes.

(e) *Officer* means the salaried president, vice presidents, secretary, treasurer, and general counsel, or other person, however designated, who holds a position of similar authority.

(f) *Person* means an individual or entity.

(g) A *potential conflict of interest* means a director, officer, or employee of the Corporation has an interest in a transaction, relationship, or activity that might adversely affect, or appear to adversely affect, the ability of the director, officer, or employee to perform his official duties on behalf of the Corporation in an objective and impartial manner in furtherance of the interest of the Corporation and its statutory purposes. For the purpose of determining whether a potential conflict of interest exists, transactions, relationships, and activities of the following persons shall be imputed to a director, officer, or employee subject to this regulation:

(1) Spouse of the director, officer, or employee;

(2) Minor child of the director, officer, or employee;

(3) General partner of the director, officer, or employee;

(4) Organization or entity for which the Corporation's director, officer, or employee serves as officer, director, trustee, general partner, or employee; and

(5) Person(s) with whom the director, officer, or employee is negotiating for or has an arrangement concerning prospective employment.

(h) *Resolved,* when applied to a potential conflict of interest, means that although the Corporation has determined that a conflicting interest is material, circumstances have been altered so that a reasonable observer with knowledge of the relevant facts would conclude that the conflicting interest would not adversely affect the person's performance of official duties in an objective and impartial manner in furtherance of the interest of the Corporation and its statutory purposes.

§ 650.2 Conflict-of-interest policy.

The Corporation shall establish and administer a conflict-of-interest policy that will provide reasonable assurance that its directors, officers, and employees discharge their official responsibilities in an objective and impartial manner in the best interest of the Corporation and in furtherance of its statutory mission. The policy shall, at a minimum:

(a) Define the types of transactions, relationships, and activities that could reasonably be expected to give rise to potential conflicts of interest.

(b) Require each director, officer, and employee to report in writing, annually, and at such other times as conflicts may arise, sufficient information about transactions, relationships, and activities to inform the Corporation of potential conflicts of interest;

(c) Require any director, officer, and employee who had no transaction, relationship, or activity required to be reported under paragraph (b) of this section at any time during the year to file a signed statement to that effect;

(d) Establish guidelines for determining when a potential conflict is material in accordance with this regulation; and

(e) Provide internal controls to ensure that reports and statements are filed as required and that conflicts are resolved or disclosed in accordance with this regulation.

§ 650.3 Disclosure of conflicts of interest.

(a) The Corporation shall disclose any unresolved conflicts of interest involving its directors, officers, and employees to:

(1) Shareholders through annual reports and proxy statements; and

(2) Investors and potential investors through disclosure documents supplied to them.

(b) The Corporation shall make available to any shareholder, investor, or potential investor, upon request, a copy of its conflict-of-interest policy. The Corporation may charge a nominal fee to cover the costs of reproduction and handling.

(c) The Corporation shall maintain all reports and statements on potential conflicts of interests and documentation of materiality determinations and resolutions of conflicts of interest for a period of 6 years.

§ 650.4 Director, officer, and employee responsibilities.

(a) Each director, officer, and employee of the Corporation shall:

(1) Conduct the business of the Corporation following the highest standards of honesty, integrity, impartiality, loyalty, and care, consistent with applicable law and regulation in furtherance of the Corporation's public purpose; and

(2) Adhere to the requirements of the conflict-of-interest policy established by the Corporation and provide any information the Corporation deems necessary to discharge its responsibilities under this regulation.

(b) Directors, officers, and employees of the Corporation shall be subject to the penalties of part C of title V of the Act for violations of this regulation, including failure to adhere to the conflict-of-interest policy established by the Corporation.

Dated: October 7, 1993.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 93–25180 Filed 10–13–93; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 93–ANE–22]

Proposed Alteration of VOR Federal Airway V–1

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would modify Federal Airway V–1 by extending the airway from the Hartford, CT, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) to Boston, MA, VORTAC. Modifying V–1 would

simplify air traffic control (ATC) clearances and reduce the controllers' workload. This action would also change the airway description in the vicinity of the South Florida Low Control Area. The description would be modified to incorporate changes associated with the offshore airspace reconfiguration.

DATES: Comments must be received on or before December 1, 1993.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ANE–500, Docket No. 93–ANE–22, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9255.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are Invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93–ANE–22." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify Federal Airway V–1 by extending the airway from the Hartford, CT, VORTAC to the Boston, MA, VORTAC. This action would simplify ATC clearances along this extremely high activity airway. Extending the airway would eliminate nonessential communications and the requirement for pilots to read back clearance instructions. This action would reduce the workload for pilots and controllers.

In addition, this proposed rule would change the floor of V–1 in the vicinity of the South Florida Low Control Area. On June 22, 1993, the northern boundary of the South Florida Low Control Area was moved from latitude 28°00′00″N. to latitude 34°00′00″N., to ensure that certain ATC operations were conducted in controlled airspace (58 FR 33907). Relocating the northern boundary of that control area prompted changes to the floor of the airway. The floor of V–1 would be raised from 2,000 feet mean sea level (MSL) to 2,700 feet MSL to coincide with the floor of the control area. Domestic VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The airway listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6010(a)—Domestic VOR Federal Airways

* * * * *

V–1 [Revised]

From Craig, FL, via INT Craig 020° and Charleston, SC, 214° radials; Charleston; Grand Strand, SC; INT Grand Strand 031° and Kinston, NC, 214° radials; Kinston; Cofield, NC; Norkfolk, VA; Cape Charles, VA; INT Cape Charles 006° and Salisbury, MD, 206° radials; Salisbury; Waterloo, DE; INT Waterloo 024° and Coyle, NJ, 216° radials; Coyle; INT Coyle 036° and Kennedy, NY, 209° radials; Kennedy; Deer Park NY; Madison, CT; Hartford, CT; INT Hartford 040°T(053°M) and Boston, MA, 252°T(268°M) radials; to Boston, MA; excluding the airspace below 2,700 feet MSL outside the United States between STARY INT and Charleston, SC. The portions within

R–5002A, R–5002C and R–5002D are excluded during their times of use. The airspace within R–4006 is excluded.

* * * * *

Issued in Washington, DC, on October 5, 1993.

Harold W. Becker,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 93–25214 Filed 10–13–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–ASW–31]

Proposed Alteration of Jet Route J–142

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would remove a segment of Jet Route J–142 between San Simon, AZ, and Socorro, NM. J–142 was initially established for air traffic control (ATC) purposes when Restricted Area R–5113 was in use. Since R–5113 is used for thunderstorm research approximately one month per year, this segment of J–142 is rarely utilized. If this proposal is adopted, aircraft would be vectored clear of the area when R–5113 is active.

DATES: Comments must be received on or before December 1, 1993.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ASW–500, Docket No. 93–ASW–31, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX 76193–0500.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93–ASW–31." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to remove a portion of J–142 between San Simon, AZ, and Socorro, NM. J–142 is a dogleg route established for use when R–5113 is in use. R–5113 is used for thunderstorm research approximately one month a year. Since that portion of J–142 is rarely used, FAA proposes to remove that segment. Aircraft would be vectored clear of the area when R–5113 is active. This action would reduce chart clutter. Jet routes are published in paragraph 2004 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The jet route listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 2004—Jet Routes

* * * * *

J–142 [Revised]

From Anton Chico, NM; to Borger, TX.

* * * * *

Issued in Washington, DC, on October 5, 1993.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 93–25212 Filed 10–13–93; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 93–ANM–32]

Proposed Amendment to Class E Airspace; Roosevelt, UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend the Roosevelt, Utah, Class E Airspace. This action is necessary to accommodate a new instrument approach procedure at Roosevelt Municipal Airport, Roosevelt, Utah. Airspace reclassification, in effect as of September 16, 1993, has discontinued the use of the term "transition area," replacing it with the designation "Class E airspace." The area would be depicted on aeronautical charts.

DATES: Comments must be received on or before November 30, 1993.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, ANM–530, Federal Aviation Administration, Docket No. 93–ANM–32, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: James Riley, ANM–537, Federal Aviation Administration, Docket No. 93–ANM–32, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone number: (206) 227–2537.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93–ANM–32." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, ANM–530, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class E airspace at Roosevelt, Utah, to accommodate a new instrument approach procedure at Roosevelt Municipal Airport. Airspace reclassification, in effect as of September 16, 1993, has discontinued the use of the term "transition area," and airspace extending upward from 700 feet or more above the surface of the earth is now Class E airspace. The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations, and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005 Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM UT E5 Roosevelt, UT [Revised]

Roosevelt Municipal Airport, UT
(Lat. 40°16′42″N, long. 110°03′05″W)
Myton VORTAC
(Lat. 40°08′42″N, Long. 110°07′40″W)

That airspace extending upward from 700 feet above the surface within a 6.53-mile radius of the Roosevelt Municipal Airport, and within 1.8 miles either side of the Myton VORTAC 024 degree radial extending from the 6.53-mile radius of the airport to the Myton VORTAC; that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at lat. 39°52′04″N., long. 110°15′12″W.; to lat. 40°27′47″N., long. 110°16′01″W.; to lat. 40°19′20″N., long. 109°33′16″W.; to lat. 40°03′27″N., long. 109°24′49″W.; to lat. 40°04′04″N., long. 109°44′52″W.; to lat. 39°52′27″N., long. 109°44′36″W.; to the point of beginning.

* * * * *

Issued in Seattle, Washington, on September 24, 1993.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division.

[FR Doc. 93-25211 Filed 10-13-93; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[FI-16-89]

RIN 1545-AN15

Regulations Under Section 446 of the Internal Revenue Code of 1986; Application of Section 446 With Respect to Notional Principal Contracts

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Partial withdrawal of proposed rulemaking.

SUMMARY: This document withdraws the proposed regulations relating to the mark-to-market election for dealers and traders in derivative financial instruments.

FOR FURTHER INFORMATION CONTACT: Alan B. Munro, (202) 622-3950 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On July 10, 1991, the IRS published in the **Federal Register** a notice of proposed rulemaking at 56 FR 31350 (FI-16-89, 1991-2 C.B. 951) under sections 446(b) (relating to general rules for methods of accounting) and 1092(d) (relating to definitions and special rules with respect to straddles) of the Internal Revenue Code of 1986. The proposed regulations provided an election by which dealers and traders in notional principal contracts and other derivative financial instruments could mark their derivative instruments to market.

In view of the enactment of the Omnibus Budget Reconciliation Act of 1993, Public Law 103-66, section 13223, 107 Stat. 312 (codified at I.R.C. section 475), which requires dealers to mark certain securities to market, § 1.446-4 of the proposed regulations is hereby withdrawn.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

§ 1.446-4 [Partial Withdrawal of Notice of Proposed Rulemaking]

Accordingly, under the authority of 26 U.S.C. 7805, proposed § 1.446-4 published in the **Federal Register** on July 10, 1991 (56 FR 31350) is withdrawn.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 93-25193 Filed 10-8-93; 1:26 pm]

BILLING CODE 4830-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 122, 123, 131, and 132

[FRL-4788-6]

RIN 2040-AC08

Proposed Water Quality Guidance for the Great Lakes System

AGENCY: Environmental Protection Agency.

ACTION: Notice of public meeting.

SUMMARY: The purpose of this notice is to announce an open public meeting scheduled for November 15-16, 1993, to discuss comments on the proposed Water Quality Guidance for the Great Lakes System. The notice also establishes procedures to notify interested persons of any future meetings on the same subject.

DATES: The open public meeting to discuss comments on the proposed Water Quality Guidance for the Great Lakes System will be held on November 15 and 16, 1993. The meeting will begin at 10 a.m. and will conclude at 4:30 p.m. on November 15, 1993. The meeting will continue at 8:30 a.m. on November 16, 1993, and conclude at 4:30 p.m. or as otherwise arranged. Continuation of this meeting, if necessary, will be held December 2 and 3, 1993.

ADDRESSES: The open public meeting and its continuation will be held in Chicago, Illinois. The exact location in Chicago for the meeting was not available as of publication of this notice. Interested persons may call Phillippa Cannon (telephone: 312-353-6218) for the meeting location not sooner than two weeks prior to the meeting.

Requests for changes or additions to the mailing list for notification of continuations of this meeting or of any subsequent meetings should be sent to Phillippa Cannon, Office of Public Affairs, U.S. EPA, Region 5, 77 West Jackson Blvd., Chicago, Illinois, 60604-3590 (telephone: 312-353-6218). Additional information on this, and any subsequent meeting dates, times, and locations may also be obtained by calling:

(1) Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin (telephone: 800-621-8431);

(2) Pennsylvania (telephone: 215-597-6911); and

(3) New York (telephone: 716-285-8842).

Materials in the public docket for the proposed Water Quality Guidance for the Great Lakes System are available for viewing by calling Wendy Schumacher (telephone: 312-886-0142). Microfiche copies of many of the supporting documents for the proposal, as well as microfiche copies of the comments are available at the locations listed in the proposal (April 16, 1993; 58 FR 20802).

FOR FURTHER INFORMATION CONTACT: John J. O'Grady, Great Lakes Water Quality Guidance Team Leader, (WQS-16J), U.S. EPA, Region 5, 77 West Jackson Blvd., Chicago, Illinois, 60604-3590 (telephone: 312-353-1938).

SUPPLEMENTARY INFORMATION: On April 16, 1993, EPA published the proposed Water Quality Guidance for the Great Lakes System in the **Federal Register** (58 FR 20802). The period for receiving public comments on the proposal closed on September 13, 1993. EPA subsequently announced the availability of three additional reports that EPA is considering as it develops the final Guidance. (August 9, 1993, 58 FR 42266; September 13, 1993, 58 FR 47845) The period for receiving comments on issues raised in the three reports closed on October 13, 1993.

The preamble to the April 16, 1993, proposal described EPA's intent to hold an open public meeting with representatives of the States that implement water pollution control programs in the Great Lakes Basin for the purpose of receiving the views of both the Great Lakes States and other members of the public on the written comments submitted during the public comment period (58 FR 20823).

The open public meeting will be held on November 15 and 16, 1993, in Chicago, Illinois, at the times listed above. The exact location in Chicago for the meeting was not available as of publication of this notice. Interested persons may call Phillippa Cannon for the meeting location not sooner than two weeks prior to the meeting. EPA will reserve a portion of the meeting for comments by interested members of the public.

EPA believes it may be necessary to hold one or more continuations of the open public meeting. If so, EPA will provide not less than 30 days notice of the date(s), time(s), and location(s) of such meeting(s) to persons on the mailing list for the meeting. If such a

continuation is necessary, the first such continuation will be held on December 2 and 3, 1993. The mailing list for the open public meeting currently consists of members of the Great Lakes Initiative Steering Committee, Technical Work Group, and Public Participation Group. Interested persons may request that their names be added to the mailing list by writing to Phillippa Cannon at the address listed above.

EPA will place a summary or transcript of the open public meeting and its continuations, if any, in the public docket at the address listed above.

Dated: October 6, 1993.

Valdas V. Adamkus,

Regional Administrator, U.S. EPA, Region 5.

[FR Doc. 93–25226 Filed 10–13–93; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 22, 25, 80, 87, 90, 95, and 99

[GN Docket No. 93–252; FCC 93–454]

Implementation of Sections 3(n) and 332 of the Communications Act; Regulatory Treatment of Mobile Services

AGENCY: Federal Communication Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has adopted a Notice of Proposed Rule Making (Notice) in response to Congress's mandate directing the agency to implement sections 3(n) and 332 of the Communications Act of 1934 as amended by title VI, section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Pub. L. 103–66, 107 Stat. 312, 392 (Budget Act). The intended effect of this Notice is to implement this legislation by soliciting comment on (1) definitional issues raised by the Budget Act; (2) regulatory classification of mobile services, including Personal Communications Service (PCS), affected by the legislation; and (3) which provisions of title II of the Communications Act should be applied to commercial mobile services and which should be forborne.

DATES: Comments must be filed on or before November 8, 1993, and reply comments must be filed on or before November 23, 1993.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Common Carrier Bureau Contacts: Peter Batacan, (202) 632–6450 or Nancy Boocker, (202) 632–0935 (Mobile Services Division); Judy Argentieri, (202) 632–6917 (Tariff Division). Private Radio Bureau Contact: David Furth, (202) 634–2443 (Land Mobile and Microwave Division).

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, GN Docket No. 93–252, FCC 93–454, adopted September 23, 1993, and released October 8, 1993. The full text of the Notice is available for inspection and copying during normal business hours in the FCC Public Reference Center, room 239, 1919 M Street, NW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M St., NW., suite 140, Washington, DC 20037, (202) 857–3800.

Summary of Notice of Proposed Rule Making

1. Section 6002(b)(2) of the Budget Act amends sections 3(n) and 332 of the Communications Act to create a comprehensive framework for the regulation of all mobile radio services. Under revised section 332, each mobile service is classified as either "commercial mobile service" or "private mobile service." The new legislation requires the Commission to define or specify particular elements of these terms by regulation. In addition, the statute states that commercial mobile service providers are to be treated as common carriers under the Communications Act, except that the Commission may exempt these entities from certain provisions of title II. Private mobile services are not subject to any common carrier regulation.

2. The new legislation states that a "commercial mobile service" is any mobile service that (1) is "provided for profit," and (2) makes "interconnected service" available to "the public" or to "such classes of eligible users as to be effectively available to a substantial portion of the public." The first issue discussed in the Notice is how the "for profit" element should be interpreted. The Commission believes that this language was intended to broadly distinguish between those mobile radio licensees that seek to provide mobile radio service on a for-profit basis to customers and those licensees that do not. The Commission solicits comment on this interpretation and on how it should devise rules reflecting this basic distinction. In particular, the Commission requests comment on how the "for profit" test should be applied to shared use systems currently operating under part 90.

3. Another element of the definition of a "commercial mobile service" is that "interconnected service" must be available. "Interconnected service," in turn, is defined as service that is "interconnected with the public switched network" or "service for which a request for interconnection is pending * * *." The Commission solicits comment on whether interconnected service should be interpreted to mean (1) that in order for a particular service offering to be considered "interconnected service," interconnected service must be offered at the end user level, i.e., the service must provide an end user with the ability to directly control access to the public switched network for purposes of sending or receiving messages to or from points on the network; or (2) that Congress was concerned that certain "private line" type services might interconnect with and use facilities of the public switched network but that a subscriber would be able to send or receive messages only between limited points in the network. Under the latter interpretation, such private line services would not be considered interconnected service, but a service that would allow the subscriber to send or receive messages over the public switched network would constitute interconnected service. The Commission also seeks comment on whether a carrier that interconnects with a commercial mobile service provider necessarily offers interconnected service because its messages would be transmitted between its system and the rest of the public switched network.

4. Relatedly, the Commission requests comment on the degree to which its precedent concerning interconnection may be helpful in defining the term "interconnected." One option is to define "interconnected" in a manner similar to that set forth in the Commission's International Satellite Systems order, in which the agency determined that a system is interconnected if it uses a PBX or the manual interconnection of a switchboard operator or if a data circuit terminates in a computer than can store and process the data and subsequently retransmit it over the network. Another alternative is to define as interconnected only those services that permit subscribers direct, real-time access to the public switched telephone network, which could cause systems that use

"store-and-forward" technology to be considered non-interconnected.

5. The Commission also seeks comment on the definition of "public switched network." Specifically, commenters are asked to discuss whether the traditional use of the similar term "public switched telephone network," referring to the local exchange and interexchange common carrier switched network, should be applied, or whether Congress intended for this element of the new statutory test to be more expansive.

6. Next, the Commission requests comment on what is meant by "service available to the public or to such classes of eligible users as to be effectively available to a substantial portion of the public." One option is to define "service to the public" to include any service that is offered to all people indifferently, and to interpret "classes of eligible users so as to be effectively available to a substantial portion of the public" to turn on whether the service is being held out to classes of eligible users that constitute a large sector of the general public in that service area. Another option is to distinguish between services that are, as a practical matter, available to a substantial portion of the public and those that are offered to small or specialized user groups or that, because of low system capacity, cannot compete with high-capacity services and have little impact on the availability of mobile service to the public as a whole.

7. Comment is also solicited on two possible interpretations of section 332(d)(3), which defines a "private mobile service" as any mobile service that is not a commercial mobile service or the "functional equivalent of a commercial mobile service." Under one approach, a mobile service would be classified as private if (1) it fails to meet the statutory definition of a commercial mobile service, or (2) it is not the functional equivalent of a commercial mobile service, even if it meets the literal definition of a commercial mobile service. Under another reading of the legislation, a mobile service would be classified as private if (1) if fails to meet the statutory definition of a commercial mobile service and (2) it is not the functional equivalent of a commercial mobile service. Also, the Commission seeks comment on what specific standards it should use to determine whether a given mobile service is the functional equivalent of a commercial mobile service.

8. The Commission requests comment on which existing mobile services will become commercial mobile services and which will become private mobile services under section 332(d). In accordance with the exclusion of not-for-profit services from the statutory definition of commercial mobile service, the Commission proposes that existing government, public safety, and private non-commercial services under part 90 of the Commission's rules will remain private mobile service under section 332(d)(3). With respect to existing for-profit services regulated under part 90, classification will depend on whether such services fit within the definition of commercial mobile service or are the functional equivalent of commercial mobile service. The Commission seeks comment on how this test will affect the classification of all existing services licensed under part 90 that are offered on a for-profit basis.

9. The Commission also requests comment on how existing common carrier services should be classified. Generally, the Commission believes that existing common carrier mobile services that provide interconnected radiotelephone service to the public (e.g., cellular) will be classified as commercial mobile services. Depending on how the Commission resolves the definitional issues presented by the new legislation, however it is possible that some common carrier mobile services could be reclassified as private mobile services. The Commission seeks comment on whether it should amend its rules to allow existing common carriers that are classified as commercial mobile services to provide dispatch service in the future.

10. The Commission notes that mobile services using the system capacity of a satellite licensee are defined as mobile services under new section 3(n) of the Communications Act. Under existing policy, the Commission may authorize a domestic satellite licensee to offer system capacity for the provision of mobile service on a non-common carriage basis. However, the Commission will refuse to allow a satellite licensee to offer system capacity on a private carriage basis if there is a showing that such regulatory treatment will run counter to the public interest. Under the new section 332(c)(5), Congress did not prohibit the Commission from continuing to determine whether the provision of space segment capacity by satellite systems to providers of commercial mobile services shall be treated as common carriage. The Commission tentatively concludes that it should continue its existing procedures for making this determination.

11. The Commission seeks comment on how the new regulatory framework should affect the classification of PCS. The Commission tentatively concludes that no single regulatory classification should be applied to all PCS services, but rather that PCS licensees should be given the option to provide commercial mobile or private mobile service. This would allow licensees to select the type of services they will provide based on market demand rather than on regulatory preconditions. The Notice further seeks comment on whether PCS licensees should be required to choose one category of service to provide on a primary basis or whether licensees should be allowed to provide both commercial and private mobile service on a co-primary basis.

12. New sections 332(c)(1)(A) and 332(c)(1)(C) authorize the Commission to promulgate regulations exempting some or all commercial mobile services from regulation under any provision of title II other than sections 201, 202 and 208, so long as certain conditions are satisfied. In consideration of the three-pronged test set forth in the statute, the Notice asks commenters, *inter alia*, to apply the three-pronged test when evaluating whether forbearance is appropriate for any provisions of title II, to address the impact of forbearance on the competitive conditions for each commercial mobile service, and to comment on what information the Commission should consider when performing these evaluations.

13. The Notice tentatively concludes that the Commission has the authority to establish classes or categories of commercial mobile services for purposes of applying such regulations and seeks comment on the types of categories and classifications that should be established, if any. The Commission seeks comment on whether the public interest would be served by forbearance from application of most of title II, including tariff regulation, and the related entry and exit provisions in sections 203, 204, 205, 211, and 214, as well as sections 210, 212, 213, 215, 218, 219, 220 and 221, to any commercial mobile service provider.

14. The Commission tentatively concludes that it should not forbear from applying sections 206, 207 and 209, as these are provisions associated with the compliant remedy described in section 208, which remains mandatory under the statute. The Commission also tentatively concludes that it should not forbear from applying sections 216 and 217, which extend the application of the Act to receivers and agents. The Commission requests comment on these tentative conclusions as well as whether it should forbear from applying sections 223, 225, 226, 227, and 228, which are provisions of more recent origin that

contain specific types of protection for consumers.

15. The Notice seeks comment with respect to the rights of commercial mobile service providers and private mobile service providers to demand interconnection with the public switched telephone network. Revised section 332(c)(1)(B) requires the Commission to order common carrier to interconnect with a commercial mobile service provider on reasonable request, but states that "this subparagraph shall not be construed as a limitation or expansion of the Commission's authority to order interconnection pursuant to * * * [the Communications] Act." The Commission has previously addressed the application of its section 201 authority to require local exchange carriers (LECs) to interconnect with common carrier mobile services. The Commission sees no distinction between the interconnection rights of these entities and those of commercial mobile service providers. The Commission also tentatively concludes that, in the commercial mobile context, LEC provision of interstate and intrastate interconnection and the type of interconnection the LEC provides are inseverable, and therefore proposes that state regulation of the right to interconnect and the type of interconnection should be preempted. The Commission requests comment on whether it should require commercial mobile service providers to provide interconnection to other mobile service providers, and on whether, under section 332(c)(3) of the Act, state regulation of interconnection rates of commercial mobile service providers is preempted. The Notice further seeks comment on whether PCS providers of commercial mobile service should be subject to equal access obligations like those imposed on LECs.

16. The Commission also tentatively concludes that its power to require common carriers to provide interconnection to private mobile service providers is unaffected by the statute. Further, the Commission proposes that PCS licensees should have a federally protected right to interconnect with LEC facilities regardless of whether the PCS licensees are classified as commercial or private mobile service providers, and that inconsistent state regulation should be preempted. The Commission believes that the new legislation should not affect its original proposal that PCS providers be entitled to obtain interconnection of a type that is reasonable for the PCS system and no less favorable than that offered by the LEC to any other customer or carrier. The Notice requests comment on whether LECs should be required to file tariffs specifying interconnection rates. The Commission continues to believe that with respect to the rates for interconnection, it is unnecessary to preempt state and local regulation at this time.

17. Under the new legislation, all reclassified private licensees are immediately subject to the foreign ownership restrictions imposed on common carriers by section 310(b) of the Communications Act. The statute allows affected licensees to maintain the level of foreign ownership that existed as of May 24, 1993, only if they petition the Commission for waiver within six months of enactment (by February 10, 1994). The Commission proposes to establish a petition procedure for affected private land mobile licensees to "grandfather" existing foreign ownership under the statute.

18. Section 332(c)(3)(A) preempts state and local rate and entry regulation of all commercial mobile services. Under section 332(c)(3)(B), however, any state that has rate regulation in effect for a commercial mobile service as of June 1, 1993, may, prior to August 10, 1994, petition the Commission to extend that authority based on a showing that (1) market conditions will not protect subscribers from unjust, unreasonable, or discriminatory rates, or (2) such conditions exist and the service is a replacement for landline telephone exchange service in the state. In addition, states may petition the Commission to initiate rate regulation based on these same criteria. The Commission intends to establish procedures for the filing of such petitions, and seeks comment on what factors should be considered in establishing them.

Initial Regulatory Flexibility Analysis

As required by section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals contained in the Notice. Written public comments are requested on the IRFA.

A. Reason for Action

This rule making proceeding was initiated to secure comment on various proposals for the implementation of sections 3(n) and 332 of the Communications Act, 47 U.S.C. 153(n), 332, as amended by title VI of the Omnibus Budget Reconciliation Act. The proposals advanced herein are designed to carry out Congress' intent to establish a new regulatory framework for all mobile radio services.

B. Objectives

Congress has directed the Commission to implement sections 3(n) and 332, as amended. In accordance with this directive, the Commission seeks to devise a regulatory scheme that will allow for the equitable treatment of comparable mobile services providers, as categorized under the terms of the new legislation. In turn, this will promote regulatory certainty and allow for the enhanced provision of service to the public.

C. Legal Basis

The proposed action is authorized under the Omnibus Budget Reconciliation Act of 1993, Public Law 103–66, title VI, section 6002(b), and sections 3(n), 4(i), 303(r), 332(c) and 332(d) of the Communications Act of 1934, 47 U.S.C. 153(n), 154(i), and 303(r), 332(c), and 332(d), as amended.

D. Reporting, Recordkeeping and Other Compliance Requirements

The proposals under consideration in this Notice may impose certain new reporting and recordkeeping requirements on mobile services licensees whose regulatory status has changed from private to commercial as a result of the new legislation. The extent of this increase will depend in substantial part on the degree of title II regulation imposed on such licensees.

E. Federal Rules Which Overlap, Duplicate or Conflict With These Rules

None.

F. Description, Potential Impact, and Number of Small Entities Involved

Many small entities could be affected by the proposals contained in the Notice. Depending on the final resolution of the issues, the regulatory classification of some existing private land mobile licensees and possibly some existing common carrier services may be changed. The full extent of these changes cannot be predicted until various other issues raised in the proceeding have been resolved. After evaluating the comments filed in response to the Notice, the Commission will examine further the impact of all rule changes on small entities and set forth its findings on the Final Regulatory Flexibility Analysis.

G. Any Significant Alternatives Minimizing the Impact on Small Entities Consistent With the Stated Objectives

The Notice solicits comment on a variety of alternatives. Any additional

significant alternatives presented in the comments will also be considered.

H. IRFA Comments

The Commission requests written public comment on the foregoing Initial Regulatory Flexibility Analysis. Comments must have a separate and distinct heading designating them as responses to the IRFA and must be filed by the deadlines specified in the summary above.

List of Subjects in 47 CFR Parts 22, 25, 80, 87, 90, 95, and 99

Mobile radio services, Radio.

Federal Communications Commission.

William P. Caton,

Acting Secretary.

[FR Doc. 93–25308 Filed 10–13–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 622, 625, 628, 649, 650, 651, 652, and 655

[Docket No. 930771–3171; I.D. 011293C]

Northeast Region General Fisheries Permit and Reporting Procedures

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to amend the regulations implementing the fishery management plans (FMPs) for the Summer Flounder Fishery, Atlantic Bluefish Fishery, American Lobster Fishery, Atlantic Sea Scallop Fishery, Northeast Multispecies Fishery, Atlantic Surf Clam and Ocean Quahog Fisheries, and Atlantic Mackerel, Squid, and Butterfish Fisheries by consolidating provisions that pertain to permits and reporting requirements in the Northeast Region, NMFS, in a new CFR part common to these domestic, Northeast Region fisheries. The rule would also authorize fees to be collected as a requirement for specified fishing permits, allow NMFS to stagger permit issuance throughout the calendar year, require copies of official legal documentation with permit applications, make technical changes for consistency, and clarify weekly reporting requirements in the Atlantic Surf Clam and Ocean Quahog Fisheries. This is intended to assure consistency among the permitting activities and requirements for various fisheries, eliminate redundancy, and reduce **Federal Register** publication costs.

DATES: Comments on the proposed rule must be received on or before November 15, 1993.

ADDRESSES: Comments on the proposed rule may be mailed to Richard B. Roe, Regional Director, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on Northeast Region Permitting Procedures." Comments regarding the burden-hour estimates or any other aspect of the collection-of-information requirements contained in this proposed rule should be sent to the Northeast Regional Director (address listed above) and the Office of Management and Budget (Attention: NOAA Desk Officer), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: E. Martin Jaffe, (Resource Management Specialist, Northeast Region, NMFS), 508–281–9272.

SUPPLEMENTARY INFORMATION: This proposed rule would consolidate NMFS Northeast Regional administrative and permitting provisions in a new part 622 of title 50 CFR, which would be referenced in the parts governing domestic fisheries activities in the Northeast Region. This proposed rule would amend 50 CFR parts 625, 628, 649, 650, 651, 652, and 655 by revising affected sections and consolidating provisions now contained in §§ 628.4, 649.4, 649.6, 650.4, 650.6, 651.4, 651.6, 652.4 through 652.7, 655.4 and 655.6 in new 50 CFR part 622. Because many vessel owners and dealers/processors are permitted in multiple fisheries, this proposed rule would significantly ease the burden of the current application process.

Consolidation would also eliminate redundancy, ensure consistency and ease revision of permitting requirements. The inclusion of permit-related activities, such as recordkeeping and reporting, vessel identification, and other provisions would assist in avoiding duplication, lessen the bulk of the regulations, and reduce future **Federal Register** printing costs without inconveniencing users. In addition, this rule would: Authorize fees to be collected as a requirement for obtaining fishing permits where fees are authorized in the FMP—the fee charged would not exceed the administrative costs of permit issuance as provided for by section 304(d) of the Magnuson Fishery Conservation and Management Act (Magnuson Act); allow NMFS to stagger permit issuance by establishing permit renewal dates throughout the calendar year; require applicants for permits, when applicable, to submit a copy of their official U.S. Coast Guard vessel documentation, charter/party boat license, Certificate of Incorporation, and/or Partnership Agreement; clarify when dealers, processors and vessel owners/operators in the Atlantic surf clam and ocean quahog fisheries must submit weekly reports; update the office address and telephone numbers of the Northeast Regional Office, NMFS, where they appear in the regulations; consolidate reporting requirements wherever possible; and make minor changes in wording to assure internal consistency. This rule would also add data items, to be completed by the applicant, to the permit application and remove items that have either become unnecessary or are collected through another data collection method.

Classification

The Regional Director has initially determined that this proposed rule is necessary for the conservation and management of the Northeast Region fisheries and is consistent with the Magnuson Act and other applicable law.

The Regional Director has determined that this rule is consistent with the FMPs implemented through the regulations proposed to be amended by this rule.

This proposed rule does not change the scope or intent of the regulations implementing the FMPs or amendments and is categorically excluded from the requirement to prepare an environmental assessment under the National Environmental Policy Act by NOAA Administrative Order 216–6.

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under E.O. 12291. The proposed action will not have a cumulative effect on the economy of $100 million or more, nor will it result in a major increase in costs to consumers, industries, government agencies, or geographical regions. No significant adverse effects on competition, employment, investment, productivity, innovation, or competitiveness of U.S.-based enterprises are anticipated. The rule primarily proposes technical revisions to improve the effectiveness of existing regulations.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. As a result, a regulatory flexibility

analysis was not prepared. All of the vessels operating in the Northeast Region fisheries are considered small entities.

This proposed rule revises two existing collection-of-information requirements subject to the Paperwork Reduction Act (OMB Approval No. 0648–0202). Additionally, this rule references, but does not change, four collections previously approved by OMB (OMB Approval No. 0648–0212, 5 minutes/ response; OMB Approval No. 0648–0229, 2 minutes/response; OMB Approval No. 0648–0235, 15 minutes/ response; and OMB Approval No. 0648–0202, 5 minutes/response regarding § 651.4). A request for approval of these revisions has been submitted to the Office of Management and Budget. The public's reporting burdens for these collection-of-information requirements are indicated in the parentheses in the following statements and include the time necessary for reviewing instructions, searching existing data sources, gathering and maintaining data needed, and completing and reviewing the collection-of-information requirements. Revisions to the existing requirements are: (1) Dealer permits (5 minutes/response); and vessel permits (30 minutes/initial application and 15 minutes/renewal). Send comments regarding these burden-hour estimates or any other aspect of these collection-of-information requirements, including suggestions for reducing the burden hours, to Richard Roe (NMFS) and to the Office of Management and Budget (Attention: NOAA Desk Officer) (see **ADDRESSES**).

The Assistant Administrator has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management programs of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, and North Carolina. Since this rule consolidates regulatory measures from previous actions, it has been determined that previous coastal zone determinations are sufficient and no new determinations are necessary.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Chs. II and VI

Fisheries.

Dated: October 7, 1993.

Samuel W. McKeen,

Program Management Officer, National Marine Fisheries Service.

For the reasons set forth in the preamble, title 50 CFR parts 625, 628, 649 through 652, and 655 are proposed to be amended, and a new part 622 is proposed to be added, as follows:

Part 622 is added to read as follows:

PART 622—NORTHEAST REGION GENERAL FISHERIES ADMINISTRATIVE AND PERMIT PROCEDURES

Subpart A—Introduction

Sec.
622.1 General.
622.2 Purpose of regulations.
622.3 Scope of regulations.
622.4 Definitions.
622.5 Vessel identification.

Subpart B—Permit Categories and Requirements

622.11 Summer flounder fishery.
622.12 Atlantic bluefish fishery.
622.13 American lobster fishery.
622.14 Atlantic sea scallop fishery.
622.15 Northeast multispecies fishery.
622.16 Atlantic surf clam and ocean quahog fisheries.
622.17 Atlantic mackerel, squid, and butterfish fisheries.

Subpart C—Permit Administration and Conditions

622.31 Application.
622.32 Issuance.
622.33 Information requirements.
622.34 Conditions.
622.35 Prohibitions.

Subpart D—Recordkeeping and Reporting

622.41 Summer flounder fishery.
622.42 Atlantic surf clam and ocean quahog fisheries.

Authority: 16 U.S.C. 1801 *et seq.*

Subpart A—Introduction

§ 622.1 General.

Each person intending to engage in an activity for which a permit is required by parts 625, 628, 649 through 652, or part 655 of this title shall, before commencing such activity, obtain a valid permit authorizing such activity. Each person who desires to obtain the permit privileges authorized by parts 625, 628, 649 through 652, or part 655 of this title must apply for such permit in accordance with the requirements of this part and the other regulations in parts 625, 628, 649 through 652, or part 655 of this title, which set forth additional requirements for the specific permits desired. If the activity for which permission is sought is covered by the requirements of more than one of the parts listed in this section, the requirements of each part must be met. If the information required for each specific permitted activity is included, one application may be accepted for all permits required and single or multiple permit(s) may be issued.

§ 622.2 Purpose of regulations.

The regulations contained in this part provide uniform rules and procedures for application, issuance, renewal, conditions, reporting requirements, and general administration of permits issued pursuant to parts 625, 628, 649 through 652, and part 655 of this title.

§ 622.3 Scope of regulations.

The provisions of this part are in addition to, and are not in lieu of, other regulatory requirements of parts 625, 628, 649 through 652, and part 655 of this title and apply to all permits issued thereunder.

§ 622.4 Definitions.

In addition to the definitions in the Magnuson Act, parts 625, 628, 649 through 652, and part 655 of this title, and in § 620.2 of this chapter, the terms used in this part have the following meanings (definitions are repeated here to aid understanding of the rules):

American lobster means the species *Homarus americanus*.

Atlantic bluefish means the species *Pomatomus saltatrix*. Bluefish, for the purposes of this part, refers to bluefish in the Atlantic EEZ from the eastern coast of Florida to Maine.

Atlantic butterfish or *butterfish* means the species *Peprilus triacanthus*.

Atlantic mackerel or *mackerel* means the species *Scomber scombrus*.

Atlantic sea scallop or *scallop* means the species *Placopecten magellanicus* throughout its range.

Atlantic surf clam or *surf clam* means the species *Spisula solidissima*.

Authorized officer means:

(1) Any commissioned, warrant, or petty officer of the U.S. Coast Guard; or any U.S. Coast Guard personnel accompanying and acting under the direction of a commissioned, warrant, or petty officer of the U.S. Coast Guard.

(2) Any special agent or fisheries enforcement officer of NMFS;

(3) Any person designated by the head of any Federal or state agency that has entered into an agreement with the Secretary and the Commandant of the U.S. Coast Guard to enforce the provisions of the Magnuson Act.

Dealer means any person who first receives fish or shellfish from a fishing vessel by way of purchase, barter, or trade, except for the following fisheries:

(1) *Atlantic surf clam and ocean quahog—dealer* means any person who

receives surf clams and ocean quahogs for a commercial purpose and who does not remove them from the cage. This definition does not include persons who receive surf clams and ocean quahogs solely for transport on land.

(2) *Summer flounder—dealer* means any person who receives summer flounder for a commercial purpose directly from a vessel issued a permit under § 622.11(a), other than solely for transport on land.

Exclusive economic zone (EEZ) means the zone established by Presidential Proclamation 5030, dated March 10, 1983, and is that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal states to a line on which each point is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

Fish means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life other than marine mammals and birds.

Fishing, or *to fish*, means any activity, other than a scientific research activity, conducted by a scientific research vessel, that involves:

(1) The catching, taking, or harvesting of fish;

(2) The attempted catching, taking, or harvesting of fish;

(3) Any other activity that can reasonably be expected to result in the catching, taking, or harvesting of fish; or

(4) Any operations at sea in support of, or in preparation for, any activity described in paragraph (1), (2), or (3) of this definition.

Fishing record means all records of navigation and operations, as well as all records of catching, harvesting, transporting, landing, purchase or sale of fish.

Fishing vessel means any vessel, boat, ship, or other craft that is used for, equipped to be used for, or of a type that is normally used for:

(1) Fishing; or

(2) Aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

Illex means the species *Illex illecebrosus* (short-finned or summer squid).

Loligo means the species *Loligo pealei* (long-finned or bone squid).

Multispecies finfish includes, but is not limited to, the following finfish in the northeast portion of the Atlantic Ocean EEZ:

Gadus morhua, Atlantic cod.

Glyptocephalus cynoglossus, witch flounder.

Hippoglossoides platessoides, American plaice.

Limanda ferruginea, yellowtail flounder.

Macrozoarces americanus, ocean pout.

Melanogrammus aeglefinus, haddock.

Merluccius bilinearis, silver hake.

Pollachius virens, pollock.

Pseudopleuronectes americanus, winter flounder.

Scophthalmus aquosus, windowpane flounder.

Sebastes marinus, redfish.

Urophycis chuss, red hake.

Urophycis tenuis, white hake.

NMFS means the National Marine Fisheries Service, NOAA.

Ocean quahog or *quahog* means the species *Arctica islandica*.

Owner, with respect to any vessel, means:

(1) Any person who owns that vessel in whole or in part;

(2) Any charterer of the vessel, whether bareboat, time, or voyage;

(3) Any person who acts in the capacity of a charterer, including, but not limited to, parties to a management agreement, operating agreement, or any similar agreement that bestows control over the destination, function, or operation of the vessel; or

(4) Any agent designated as such by a person described in paragraph (1), (2), or (3) of this definition.

Party or *charter boat* means any vessel that carries passengers for hire to engage in fishing.

Postmark means independently verifiable evidence of date of mailing such as U.S. Postal Service postmark, United Parcel Service (U.P.S.) or other private carrier postmark, certified mail receipt, overnight mail receipt or receipt received upon hand delivery to an authorized representative of the NMFS.

Processor means, in the Atlantic surf clam and ocean quahog fisheries, a person who receives surf clams or ocean quahogs for a commercial purpose and removes them from a cage.

Regional Director means the Director, Northeast Region, NMFS, One Blackburn Drive, Federal Building, Gloucester, MA 01930, 508–281–9300, or a designee.

Re-rigged for the summer flounder fishery means physical alteration of the vessel or its gear has begun to transform the vessel into one capable of fishing commercially for summer flounder.

Secretary means the Secretary of Commerce, or a designee.

Substantially similar harvesting capacity for the summer flounder fishery means the same or less Gross Registered Tonnage (GRT) and vessel registered length.

Summer flounder means the species *Paralichthys dentatus*.

Under construction means that the keel has been laid.

Vessel registered length means the registered length specified on the U.S. Coast Guard documentation or on the state registration (for undocumented vessels) if the state registered length is verified by a NMFS authorized official.

§ 622.5 Vessel identification.

(a) *Vessel name.* Each fishing vessel subject to this part and over 25 feet (7.62 m) in length must display its name on the port and starboard sides of its bow and, as possible, on its stern.

(b) *Official number.* Each fishing vessel subject to this part and over 25 feet (7.62 m) in length must display its official number on the port and starboard sides of the deckhouse or hull and on an appropriate weather deck, so as to be visible from enforcement vessels and aircraft. The official number is the U.S. Coast Guard documentation number or the vessel's state registration number issued to a vessel not required to be documented under title 46 of the U.S. Code.

(c) *Numerals.* Except as provided in paragraph (e) of this section, the official number must be permanently affixed in contrasting block Arabic numerals at least 18 inches (45.7 cm) in height for vessels over 65 feet (19.81 m) in length, and at least 10 inches (25.4 cm) in height for all other vessels over 25 feet (7.62 m) in length. The length of a vessel, for purposes of this section, will be that length set forth in U.S. Coast Guard or state records.

(d) *Duties of owner and operator.* The owner and operator of each vessel subject to this part will:

(1) Keep the vessel's name and official number clearly legible and in good repair; and

(2) Ensure that no part of the vessel, its rigging, its fishing gear, or any other object obstructs the view of the official number from an enforcement vessel or aircraft.

(e) *Non-permanent marking.* Vessels carrying recreational fishing parties on a per capita basis or by charter must use markings that meet the above requirements, except for the requirement that they be affixed permanently to the vessel. The non-permanent markings must be displayed in conformity with the above requirements when the vessel is fishing for summer flounder, multispecies finfish, and/or Atlantic mackerel, squid or butterfish.

Subpart B—Permit Categories and Requirements

§ 622.11 Summer flounder fishery.

(a) *Vessel permit.* Any owner of a vessel of the United States must obtain a permit under this part to fish for or retain summer flounder in the EEZ. A vessel, other than party or charter boat, subject to the possession limit in § 625.25 of this chapter, is exempt from the permitting requirements. Vessel owners who apply for a fishing vessel permit under this section must agree as a condition of the permit that the vessel's fishing, catch and pertinent gear (without regard to whether such fishing occurs in the EEZ, or landward of the EEZ, and without regard to where such fish or gear are possessed, taken or landed) will be subject to all requirements of this part and 625 of this chapter. All such fishing, catch and gear will remain subject to all applicable state requirements.

(1) *Commercial (moratorium) permit.* A vessel must qualify for a commercial permit to fish for and retain summer flounder in excess of the recreational possession limit in the EEZ by meeting any of the following criteria:

(i) The vessel landed and sold summer flounder between January 26, 1985, and January 26, 1990; or

(ii) The vessel was under construction for, or was being rerigged for, use in the directed fishery for summer flounder on January 26, 1990, provided the vessel landed summer flounder for sale prior to November 30, 1992; or

(iii) The vessel is replacing a vessel of substantially similar harvesting capacity that involuntarily left the summer flounder fishery during the moratorium, and both the entering and replaced vessels are owned by the same person. Vessel permits issued to vessels that involuntarily leave the fishery may not be combined to create larger replacement vessels.

(iv) Vessels that are judged unseaworthy by the U.S. Coast Guard for reasons other than lack of maintenance may be replaced by a vessel of substantially similar harvesting capacity.

(v) Applications for a commercial (moratorium) permit under this section will not be accepted more than 12 months after November 30, 1992, or the events specified under § 622.34(a)(2)(i) and (ii) of this part. This section does not affect annual permit renewals.

(vi) Owners and operators of vessels fishing under the terms of a commercial (moratorium) permit issued pursuant to this section must also agree, as a condition of the permit, not to land summer flounder in any state that the Regional Director has determined no longer has commercial quota available.

(vii) If there is no further amendment of this section, the restrictions on eligibility to apply for and receive a commercial (moratorium) permit expire after 1997.

(2) *Party and charter boat permits.* Any party or charter boat is eligible for a permit to fish, other than a commercial (moratorium) permit, if it is carrying passengers for hire, and is then subject to the possession limits specified in § 625.25 of this chapter.

(b) *Dealer permit.* Dealers of summer flounder must have a permit issued under this section.

(c) Additional management requirements are set forth in part 625 of this chapter. Additional permit requirements are set forth in subpart C of this part.

§ 622.12 Atlantic bluefish fishery.

(a) *Individual permit.* Any person selling Atlantic bluefish harvested in the EEZ must have either a valid permit issued under this part or a valid state of landing permit to sell bluefish.

(1) An application for a Federally issued individual permit under this section must be obtained from the Regional Director, signed and submitted to the Regional Director. The applicant must provide the following information: Applicant name, mailing address, including ZIP code, and telephone number; height, weight, hair color, and eye color; a copy of the Certificate of Incorporation (if the applicant represents a corporation); percentage of annual income derived from the sale of bluefish; and any other information required by the Regional Director.

(2) Any person who applies for a permit under this section, or who uses a valid state permit to sell fish harvested from the EEZ, must agree as a condition of using either permit that his/her bluefish catch and gear (without regard to whether fishing occurs in the EEZ or landward of the EEZ, and without regard to where such bluefish or gear are possessed, taken, or landed) will be subject to all the requirements of this part and part 628 of this chapter. All such catch and gear will remain subject to any applicable state or local requirements.

(b) Additional management requirements are set forth in part 628 of this chapter.

§ 622.13 American lobster fishery.

(a) *Vessel permit.* Any vessel of the United States fishing for American lobster in the EEZ must have a permit required by this part on board the vessel.

(1) The Regional Director may, by agreement with state agencies, recognize permits or licenses issued by those agencies endorsed for fishing for lobster in the EEZ, providing that such permitting programs accurately identify persons who fish in the EEZ and that the Regional Director can, either individually or in concert with the state agency, act to suspend the permit or license for EEZ fishing for any violation under this part or part 649 of this chapter.

(2) To implement alternate state EEZ permitting programs, the Regional Director and the director of the concerned state marine fisheries agency will establish a letter of agreement. The letter of agreement will specify the information to be collected by the alternate EEZ permitting program and the mode and frequency of provision of that information to the Regional Director. The Regional Director will, in cooperation with the state director, arrange for notification of the existence and terms of any such agreements to the affected persons. Persons intending to fish in the EEZ should determine whether an alternate EEZ permitting program is in force for their state before applying for a Federal permit under this section.

(3) Vessel owners who apply for a fishing vessel permit under this section, or for a state permit endorsed for EEZ fishing under § 622.13(a)(1), must agree, as a condition of the permit, that all the vessel's lobster fishing, catch, and gear (without regard to whether such fishing occurs in the EEZ or landward of the EEZ, and without regard to where such lobster, lobster meats, or parts, or gear are possessed, taken or landed) will be subject to all the requirements of this part and part 649 of this chapter. All such fishing, catch, and gear will remain subject to any applicable state or local requirements.

(b) Additional management requirements are set forth in part 649 of this chapter. Additional permit requirements are set forth in subpart C of this part.

§ 622.14 Atlantic sea scallop fishery.

(a) *Vessel permit.* Any vessel of the United States harvesting Atlantic sea scallops in quantities greater than 5 bushels (176.2 L) in the shell or 40 pounds (18.1 kg) of shucked scallop meats per trip shall have a permit required by this part aboard the vessel.

(b) Additional management requirements are set forth in part 650 of this chapter. Additional permit requirements are set forth in subpart C of this part.

§ 622.15 Northeast multispecies fishery.

(a) *Vessel permit.* (1) Any vessel of the United States fishing for multispecies finfish, except commercial vessels fishing exclusively within state waters and recreational fishing vessels, must have a permit required by this part aboard the vessel. A recreational vessel is any vessel from which no fishing other than recreational fishing is conducted. Recreational fishing means fishing for finfish that does not result in their barter, trade or sale. Party and charter boats are not considered recreational fishing vessels.

(2) Vessel owners or operators who apply for a fishing vessel permit under this section must agree as a condition of the permit that the vessel's fishing, catch, and pertinent gear (without regard to whether such fishing occurs in the EEZ or landward of the EEZ and without regard to where such fish or gear are possessed, taken, or landed) will be subject to all the requirements of this part and part 651 of this chapter. All such fishing, catch, and gear will remain subject to any applicable State requirements.

(b) Additional management requirements are set forth in part 651 of this chapter. Additional permit requirements are set forth in subpart C of this part.

§ 622.16 Atlantic surf clam and ocean quahog fisheries.

(a) *Vessel permit.* (1) Any vessel of the United States fishing for surf clams or ocean quahogs, except vessels taking surf clams or ocean quahogs for personal use or fishing exclusively within state waters, must have a permit issued under this section aboard the vessel.

(2) Vessel owners who apply for a fishing vessel permit under this section must agree, as a condition of the permit, that the vessel's fishing, catch, and pertinent gear (without regard to whether such fishing occurs in the EEZ or landward of the EEZ, and without regard to where such fish or gear are possessed, taken, or landed) will be subject to all the requirements of this part and part 652 of this chapter; provided, however, that such owners and their employees or agents fishing within waters under the jurisdiction of any state that requires cage tags shall not be subject to conflicting Federal minimum sizes or tagging requirements. All such fishing, catch, and gear will remain subject to any applicable state requirements. If a requirement of this part or part 652 of this chapter differs from a management measure required by a state that does not require cage tagging, any vessel owner permitted to fish in the EEZ must comply with the more restrictive requirement while fishing in state waters. However, surrender of a Federal vessel permit pursuant to § 652.4(n) of this chapter allows an individual to comply with a less restrictive state minimum size requirement so long as fishing is conducted exclusively within state waters.

(b) *Dealer/processor permit.* Dealers and processors of surf clams or ocean quahogs must have a permit issued under this section.

(c) Additional management requirements are set forth in part 652 of this chapter. Additional permit requirements are set forth in subpart C of this part.

§ 622.17 Atlantic mackerel, squid, and butterfish fisheries.

(a) *Vessel permit.* Any vessel of the United States that fishes for Atlantic mackerel, *Illex* and *Loligo* squid, or butterfish must have a permit issued under this section, except vessels used by recreational fishermen taking Atlantic mackerel, *Illex* and *Loligo* squid, or butterfish for the personal use of such recreational fishermen.

(b) Additional management requirements are set forth in part 655 of this chapter. Additional permit requirements are set forth in subpart C of this part.

Subpart C—Permit Administration and Conditions

§ 622.31 Application.

(a) *Forms.* Applicants must submit a completed permit application on an appropriate form obtained from the Regional Director containing all necessary information, attachments, certification, signature and fees. In no case will oral, telephone or FAX applications be accepted.

(b) *Forwarding instructions.* Applications must be submitted to the Regional Director.

(c) *Time requirement.* Applications must be submitted to the Regional Director at least 30 calendar days prior to the date on which the applicant desires the permit to be effective.

(d) *Fees.* After publication in the **Federal Register**, the Regional Director may charge a fee to recover the administrative expenses of permit issuance for any permit issued under § § 622.11(a), 622.12 and 622.16. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook for determining administrative costs of each special product or service. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application. Failure to pay the fee will preclude issuance of the permit.

§ 622.32 Issuance.

(a) The Regional Director shall issue the appropriate permit within 30 days of receipt of a completed application unless—

(1) Denial of a permit has been made pursuant to subpart D of 15 CFR part 904;

(2) The applicant has failed to disclose material information required, or has made false statements as to any material fact, in connection with the application;

(3) The applicant has failed to enclose a check or money order for the appropriate fee with the application; or, such check does not clear;

(4) The applicant has failed to submit a completed application. An application is complete when all requested forms, information, and documentation has been received and the applicant has submitted all applicable reports specified at subpart D;

(5) The Regional Director finds, through further inquiry or investigation, or otherwise, that the applicant is not qualified or eligible.

(b) Upon receipt of an incomplete or improperly executed application, the Regional Director shall notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within 15 days following the date of notification, the application shall be considered abandoned.

(c) The applicant shall be notified in writing of the denial of any permit request and the reasons therefor. If authorized in the notice of denial, the applicant may submit further information, or reasons why the permit should not be denied. Such further submissions shall not be considered a new application.

(d) *Summer flounder.* (1) Any applicant denied a commercial (moratorium) permit may appeal to the Regional Director within 30 days of the notice of denial. Any such appeal shall be in writing. The only ground for appeal is that the Regional Director erred in concluding that the vessel did not meet the criteria set forth in § 622.11(a)(1). The appeal shall set forth the basis for the applicant's belief that the Regional Director erred in his decision.

(2) The appeal may be presented, at the option of the applicant, at a hearing before an officer appointed by the Regional Director.

(3) The decision on the appeal by the Regional Director is the final decision of the U.S. Department of Commerce.

§ 622.33 Information requirements.

(a) *Vessel permit.* (1) The application must contain the following information and any other information required by the Regional Director: Vessel name; owner name, mailing address, and telephone number; U.S. Coast Guard documentation number and a copy of vessel's U.S. Coast Guard documentation or, if undocumented, state registration number and a copy of the state registration; home port and principal port of landing; length; gross tonnage; engine horsepower; pump horsepower; squid, mackerel and butterfish landings during the year prior to the year for which the permit is being applied; year the vessel was built; type of construction; type of propulsion; approximate fish-hold capacity; type of fishing gear used by the vessel; crew size; permit category; if the owner is a corporation, a copy of the Certificate of Incorporation and the names and addresses of all shareholders owning 25 percent or more of the corporation's shares; if the owner is a partnership, a copy of the Partnership Agreement and the names and addresses of all partners; if a party or charter boat, the number of passengers the vessel is licensed to carry and a copy of the license; and signature of the owner or the owner's agent.

(2) *Summer flounder.* Applicants for commercial (moratorium) permits shall provide information in accordance with § 622.11(a)(1) sufficient for the Regional Director to determine if the vessel meets the eligibility requirements. Dealer weighout forms signed by the dealer and notarized statements from marine architects, surveyors or shipyard officials will be considered acceptable forms of proof.

(b) *Dealer/processor permit.* The application must contain the following information and any other information required by the Regional Director: Company name; principal place of business; owner's or owners' names; copy of Certificate of Incorporation and the names and addresses of all shareholders owning 25 percent or more of the corporation's shares; and applicant's name (if different from owner or owners) and mailing address and telephone number.

§ 622.34 Conditions.

(a) *Expiration.* (1) A permit will expire upon any change in the information provided on the application form or upon the renewal date specified by the Regional Director.

(2) *Summer flounder.* Except as provided in § 622.11(a)(1)(iii), a permit to fish for summer flounder also expires:

(i) When the owner or operator retires the vessel from the fishery; or

(ii) When the vessel fails to land any summer flounder for 52 consecutive weeks; or

(iii) When the ownership of the vessel changes; however, the Regional Director may authorize the continuation of a commercial (moratorium) permit for the summer flounder fishery if the new owner requests. Applications for permit continuations must be addressed to the Regional Director.

(b) *Duration.* A permit shall entitle the person to whom issued to engage in the activity, within the limitations of the applicable statute and regulations contained in parts 625, 628, 649 through 652, and part 655 of this title, until it expires or is sooner modified, suspended, or revoked pursuant to subpart D of 15 CFR part 904. Federal fishing vessel permits must be renewed annually.

(c) *Replacement.* Replacement permits may be issued by the Regional Director when requested in writing by the owner or authorized representative, stating the need for replacement, the name of the vessel, and the fishing permit number assigned. An application for a replacement permit will not be considered a new application. An appropriate fee, consistent with the Magnuson Act, will be charged for issuance of the replacement permit.

(d) *Transfer.* Permits issued under parts 628, 649 through 652, or part 655 of this title are not transferable or assignable. A permit is valid only for the vessel, individual, or dealer/processor to which it is issued.

(e) *Change in application information.* Within 15 days after a change in the information contained in an application submitted under this section, the person issued the permit must report the change in writing to the Regional Director. If written notice of the change in information is not received by the Regional Director within 15 days from the change in information, the permit is void.

(f) *Discontinuance of activity.* When any permittee discontinues his/her activity, he/she shall, within 15 days thereof, mail his/her permit and a request for cancellation to the issuing office, and said permit shall be deemed void upon receipt. No refund of any part of an amount paid as a permit application fee shall be made where the operations of the permitee are, for any reason, discontinued during the tenure of an issued permit.

(g) *Alteration.* Any permit that has been altered, erased, or mutilated shall immediately become void.

(h) *Display.* Any permit issued under this part must be maintained in legible condition and displayed for inspection upon request by any authorized officer.

(i) *Federal versus state requirements.* If a requirement of this part or of parts 625, 628, 649 through 652, or part 655 of this title differs from a management measure required by state law, any vessel owner, operator or individual issued a Federal permit to fish in, or sell fish harvested from, the EEZ must comply with the more restrictive requirement.

(j) *Sanctions.* Procedures governing enforcement-related permit sanctions and denials are found at subpart D of 15 CFR part 904.

§ 622.35 Prohibitions.

It is unlawful for any person to do any of the following:

(a) Make any false statement in connection with an application submitted under 50 CFR part 622, or to fail to report to the Regional Director, within 15 days, any change in the information contained in a permit application; or

(b) Violate any other provision of this part, the Magnuson Act, or any regulations or permit issued under the Magnuson Act.

Subpart D—Recordkeeping and Reporting

§ 622.41 Summer flounder fishery.

(a) *Dealers.* Dealers issued a permit under § 622.11(b) must provide at least the following information to the Regional Director, or official designee, on forms supplied by NMFS or approved by the Regional Director (each dealer will be sent forms and instructions, including the address to which to submit reports, following receipt of a dealer permit):

(1) *Weekly report.* Name and mailing address of dealer; name and permit number of the vessel from which summer flounder are landed or received; port landed; dates of purchases; pounds of summer flounder purchased; price per pound; pounds purchased of all other species landed by the vessel landing summer flounder; and any additional information the Regional Director determines is necessary for the orderly management of the summer flounder resource. Reports must be postmarked within 3 days after the end of each reporting week;

(2) *Annual report.* All dealers required to submit reports under paragraph (a)(1) are required to

complete the "Employment Data" section of the "Annual Processed Products Report." Other information on the form is voluntary. Reports should be submitted to: NMFS Statistics, 166 Water St., Woods Hole, MA 02543, to be postmarked no later than February 10 of the following year.

(3) *At-sea activities.* All persons purchasing, receiving, or processing any summer flounder at sea for landing at any port of the United States must submit information identical to that required by paragraphs (a)(1) and (2) of this section and must provide those reports to the Regional Director or designee on the same frequency basis.

(b) *Vessel owners issued a commercial (moratorium) permit*—(1) *Fishing log.* The owners of a vessel issued a moratorium permit that is not fishing as a vessel for hire shall maintain on board the vessel, an accurate fishing log for each fishing trip, on forms supplied by, or approved by, the Regional Director, showing at least: Vessel name; vessel permit number; date sailed; date landed; port landed; gear fished; size/quantity of gear; mesh size; area fished; depth range fished; number of tows or sets; days fished; average tow/set time; Loran coordinates; pounds kept by species; pounds discarded by species; number of crew; date sold; dealer name; dealer permit number; and other information as required by the Regional Director.

(2) *When to fill in the fishing log.* Vessel owners shall ensure that such logbooks are completed prior to beginning offloading at the end of each fishing trip, except for information pertaining to date sold, dealer name and dealer permit number, which is unavailable until catch is sold. All logbook information required in paragraph (b)(1) of this section must be filled in for each fishing trip prior to the start of the next fishing trip.

(3) *Inspection.* The owner or operator shall, immediately upon request, make the logbook currently in use available for inspection by an authorized officer, or by an employee of NMFS designated by the Regional Director to make such inspections, at any time during or after a trip.

(4) *Record retention.* For one year after the date of the last entry in the completed log, the owner shall retain a copy of each logbook and make them available upon request by an authorized officer.

(5) *Fishing log reports.* The owner shall submit fishing log reports to the Regional Director or an official designee, on forms supplied by, or approved by, the Regional Director and postmarked within 15 days of the last calendar day of the month during which the trip is landed. Each owner will be sent forms and instructions, including the address to which to submit reports, shortly after receipt of a fishing permit. If no fishing trip or summer flounder were landed during a month, a fishing log report so stating must be submitted and postmarked by the 15th of the following month.

(c) *Owners of party and charter boats.*—(1) *Fishing log.* The owner of any party or charter boat issued a permit under § 622.11(a)(2) and carrying passengers for hire shall maintain on board the vessel, an accurate fishing log for each charter or party fishing trip, on forms supplied by or approved by the Regional Director, showing at least: Vessel name; vessel permit number; date sailed; date landed; port landed; gear fished; size/quantity of gear; area fished; depth range fished; days fished; number and pounds retained, by species; number and pounds discarded, by species; number of crew; number of anglers; other information as required by the Regional Director.

(2) *When to fill in the fishing log.* Vessel owners shall ensure that all logbook information required in paragraph (c)(1) of this section must be filled in for each fishing trip at the end of each fishing trip.

(3) *Inspection.* The owner or operator shall, immediately upon request, make the logbook currently in use available for inspection by an authorized officer, or by an employee of NMFS designated by the Regional Director to make such inspections, at any time during or after a trip.

(4) *Record retention.* For one year after the date of the last entry in the completed log, the owner shall retain a copy of each logbook and make them available upon request by an authorized officer.

(5) *Fishing log reports.* The owner shall submit fishing log reports to the Regional Director or an official designee, on forms supplied by, or approved by, the Regional Director and postmarked within 15 days of the last calendar day of the month during which the trip is landed. Each owner will be sent forms and instructions, including the address to which to submit reports, shortly after receipt of a fishing permit. If no fishing trip or summer flounder were landed during a month, a fishing log report so stating must be submitted and postmarked by the 15th of the following month.

§ 622.42 Atlantic surf clam and ocean quahog fisheries.

(a) *Dealers.* All dealers issued a permit under § 622.16(b) must submit to the Regional Director a weekly report on forms supplied by NMFS. Said report must be postmarked within 3 days after the end of each reporting week and each report must specify accurately and completely: Date of purchase or receipt; name, permit number, and address; number of bushels, by species; cage tag numbers; allocation permit number; vessel name and permit number; price per bushel by species; and disposition of surf clams or ocean quahogs, including name and permit number of recipient.

(b) *Processors.* All processors issued a permit under § 622.16(b) must provide at least the following information to the Regional Director on forms supplied by NMFS:

(1) *Weekly report.* Said report must be postmarked within 3 days after the end of each reporting week and each report must specify accurately and completely: Date of purchase or receipt; name, permit number, and mailing address; number of bushels, by species; cage tag numbers; allocation permit number; vessel name and permit number; price per bushel by species; size distribution; and meat yield per bushel by species.

(2) *Annual report.* All persons required to submit reports under paragraph (b)(1) of this section are required to submit annual Processed Products Reports to NMFS Statistics, 166 Water St., Woods Hole, MA 02543, to be postmarked within 90 days of receipt of the forms. Each report must specify accurately and completely: Average number of processing plant employees during each month of the year just ended; average number of employees engaged in production of processed surf clam and ocean quahog products, by species, during each month of the year just ended; plant capacity to process surf clam and ocean quahog shellstock, or to process surf clam and ocean quahog meats into finished products, by species, as well as an estimate, for the next year, of these capacities; and total payroll for surf clam and ocean quahog processing, by month.

(c) *Vessel owners and operators.* The operator of any vessel conducting fishing operations for Atlantic surf clams or ocean quahogs must, as the agent of the vessel owner, maintain on board the vessel an accurate daily fishing log for each fishing trip, on forms supplied by NMFS. This log must be filled in before any surf clams or ocean quahogs are landed and must be submitted on a weekly basis to the Regional Director. If no fishing trip is made during any week, a report so stating must be submitted. This weekly report must be postmarked within 3 days after the end of each reporting

week. Vessels fishing exclusively within state waters of a state that requires cage tags, or that have surrendered their Federal fishing vessel permit are exempt from this requirement. The daily/weekly logs must contain at least the following: Name and permit number of the vessel; total amount in bushels of each species taken; date(s) caught; time at sea; duration of fishing time; locality fished; crew size; crew share, by percentage; landing port; date sold; price per bushel; buyer; tag numbers from cages used; quantity of surf clams or ocean quahogs discarded; and allocation permit number.

(d) *Inspection.* All reports required by this section must be available for inspection at any time, during or after a trip, upon the request of an authorized officer or by an employee of NMFS designated by the Regional Director.

(e) *Record retention.* All reports required by this section must be retained at the permit holder's principal place of business for 1 year after the date of the last entry.

PART 625—SUMMER FLOUNDER FISHERY

1a. The authority citation for 50 CFR part 625 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Section 625.4 is revised to read as follows:

§ 625.4 Vessel permits.

(a) *General.* Subject to the eligibility requirements specified in § 622.11(a)(1) and (2) of this chapter, the owner of a vessel of the United States, including a party or charter vessel, must obtain an appropriate permit issued pursuant to §§ 622.11(a), and 622.31 through 622.34, inclusive, of this chapter.

(b) *Exemption permits.* Owners of vessels seeking an exemption from the minimum mesh requirement under the provisions of § 625.24(b) must apply to the Regional Director in writing at least 7 days prior to the date they wish the permit to become effective. The applicant shall mark "Exemption Permit Request" on the permit application at the top. A permit issued under this paragraph does not meet the requirements of paragraph (a) of this section. Persons issued an exemption permit must surrender it to the Regional Director at least one day prior to the date they wish to fish not subject to the exemption. The Regional Director may impose temporary additional procedural requirements by publication of a notice in the **Federal Register.**

3. Section 625.5 is revised to read as follows:

§ 625.5 Dealer permit.

Each dealer must obtain an appropriate permit issued pursuant to §§ 622.11(b), and 622.31 through 622.34, inclusive, of this chapter.

4. Section 625.6 is revised to read as follows:

§ 625.6 Recordkeeping and reporting requirements.

Any person issued a dealer permit under § 622.11(b) of this chapter must comply with the recordkeeping and reporting provisions of § 622.41 of this chapter.

5. Section 625.7 is revised to read as follows:

§ 625.7 Vessel identification.

Each fishing vessel subject to this part must comply with the provisions of § 622.5 of this chapter.

6. Section 625.8 is amended by revising paragraphs (a) introductory text, (a)(2), (a)(8), (a)(9), (a)(10), (b) introductory text, (c)(1), (c)(2), (c)(3), (c)(4), (c)(10) and (d) to read as follows:

§ 625.8 Prohibitions.

(a) In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person owning or operating a vessel issued a permit, including a commercial (moratorium) permit, under § 622.11(a) of this chapter, to do any of the following:

* * * * *

(2) Fail to affix and maintain markings as required by § 622.5;

* * * * *

(8) Fish west or south, as appropriate, of the line specified in § 625.24(b)(1) if exempted from the minimum mesh-size requirement specified in § 625.24 by an exemption permit issued under § 622.11(a)(3);

(9) Sell or transfer to another person for a commercial purpose, other than transport, any summer flounder, unless the transferee has a dealer permit issued under § 622.11(b) of this chapter;

(10) Carry passengers for hire, or carry more than three crew members for a charter boat of five crew members for a party boat, while fishing commercially pursuant to a commercial (moratorium) permit issued pursuant to § 622.11(a)(1) of this chapter; or

* * * * *

(b) It is unlawful for the owner and operator of a party or charter boat issued a permit, including a commercial (moratorium) permit, pursuant to § 622.11(a) of this chapter, when the boat is carrying passengers for hire or carrying more than three crew members if a charter boat or more than five members if a party boat, to:

* * * * *

(c) * * *

(1) Possess in, or harvest from, the EEZ summer flounder before or after the time period specified in § 625.22 or in excess of the possession limit specified in § 625.25, unless the person is operating a vessel issued a commercial (moratorium) permit under § 622.11(a)(1) of this chapter and the commercial (moratorium) permit is on board the vessel and has not been surrendered, revoked, or suspended;

(2) Offload, cause to be offloaded, sell or buy any summer flounder, whether on land or at sea, as an owner, operator, dealer, buyer or receiver in the summer flounder fishery without accurately preparing and submitting in a timely fashion the documents required by § 622.41 of this chapter;

(3) Purchase or otherwise receive, except for transport, summer flounder from the owner or operator of a vessel issued a commercial (moratorium) permit under § 622.11(a)(1) of this chapter unless in possession of a valid permit issued under § 622.11(b) of this chapter;

(4) Purchase or otherwise receive for commercial purposes summer flounder caught by other than a vessel with a commercial (moratorium) permit or caught by a vessel subject to the possession limit;

* * * * *

(10) Violate any other provision of this part or part 622 of this chapter, the Magnuson Act, or any regulation or permit issued under the Magnuson Act.

(d) All summer flounder possessed aboard a party or charter boat issued a permit under § 622.11(a)(2) are deemed to have been harvested from the EEZ.

7. Section 625.22 is amended by revising the first sentence to read as follows:

§ 625.22 Time restrictions.

Owners and operators of vessels that are not eligible for a commercial (moratorium) permit under § 622.11(a)(1) of this chapter and fishermen subject to the possession limit may fish for summer flounder only during the period May 15th to September 30th. * * *

8. Section 625.23 is amended by revising paragraphs (a) and (b) to read as follows:

§ 625.23 Minimum sizes.

(a) The minimum size for summer flounder is 13 inches (33 cm) total length for all vessels issued a commercial (moratorium) permit under § 622.11(a)(1) of this chapter, except on

board party and charter boats carrying passengers for hire or carrying more than three crew members, if a charter boat, or more than five crew members, if a party boat;

(b) The minimum size for summer flounder is 14 inches (35.6 cm) total length for all vessels that do not qualify for a commercial (moratorium) permit, or for party and charter boats holding commercial (moratorium) permits, but fishing with passengers for hire or carrying more than three crew members, if a charter boat or more than five crew members, if a party boat.

* * * * *

9. Section 625.24 is amended by revising paragraphs (a), (b)(1) introductory text and (b)(1)(ii) to read as follows:

§ 625.24 Gear restrictions.

(a) *General.* Otter trawlers whose owners are issued a permit, including a commercial (moratorium) permit, under § 622.11(a)(1) of this chapter that land or possess 100 or more pounds (45.4 or more kg) of summer flounder, per trip, must fish with nets that have a minimum mesh size of 5½ inches (14.0 cm) diamond mesh or 6 inches (15.2 cm) square mesh applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net, or, for codends with less than 75 meshes, the minimum-mesh-size codend must be a minimum of one-third of the net, measured from the terminus of the codend to the head rope, excluding any turtle excluder device extension.

(b) * * *

(1) Vessels issued a permit under paragraph (b) of § 625.4 and fishing from 1 November through 30 April in the "exemption area" * * *

(i) * * *

(ii) Vessels issued a permit under paragraph (b) of § 625.4 may transit the area west and south of the line described in paragraph (b)(1) of this section if the vessel's fishing gear is stowed in a manner prescribed under 50 CFR 651.20(f) so that it is not "available for immediate use" outside the exempted area.

* * * * *

10. Section 625.25 is amended by revising paragraph (a) and the first sentence of paragraph (d) to read as follows:

§ 625.25 Possession limit.

(a) No person shall possess more than six summer flounder in, or harvested from, the EEZ unless that person is the owner or operator of a fishing vessel issued a commercial (moratorium) permit under § 622.11(a)(1) of this chapter. Persons on board a commercial vessel that is not eligible for a commercial (moratorium) permit under § 622.11(a)(1) of this chapter are subject to this possession limit. The owner and operator and crew of a charter or party boat issued a commercial (moratorium) permit under § 622.11(a)(1) of this chapter are not subject to the possession limit when not carrying passengers for hire and when the crew size does not exceed five for a party boat or three for a charter boat.

* * * * *

(d) Owners and operators of otter trawlers issued a permit, including a commercial (moratorium) permit, under § 622.11(a)(1) and fishing with, or possessing on board, nets or pieces of net that do not meet the minimum mesh-size requirements, except pieces of netting no larger than 3 feet square (0.9 m square) that may be necessary to repair smaller mesh sections of the net forward of the terminal portion of the net to which the minimum mesh-size requirement applies, may not possess more than 100 pounds (45.4 kg) of summer flounder. * * *

11. Section 625.26 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 625.26 Sea sampler program.

(a) *Request to take sea sampler.* The Regional Director may request a fishing vessel issued a permit under § 622.11 of this chapter to take on board an observer or sea sampler to accompany the vessel on all fishing trips conducted during the period specified in the request. * * *

* * * * *

12. Section 625.27 is amended by revising the first sentence of paragraph (h)(1) to read as follows:

§ 625.27 Sea turtle conservation.

* * * * *

(h) * * *

(1) *Request to take observer.* The Regional Director may request a fishing vessel issued a commercial (moratorium) permit under § 622.11(a)(1) of this chapter to take on board an observer to accompany the vessel on all fishing trips conducted during the period specified in the request. * * *

* * * * *

PART 628—ATLANTIC BLUEFISH FISHERY

13. The authority citation for 50 CFR part 628 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

14. Section 628.4 is revised to read as follows:

§ 628.4 Permits and fees.

Any person selling Atlantic bluefish harvested in the EEZ must have a valid permit issued pursuant to the provisions of §§ 622.12(a), 622.31, 622.32 and 622.34 of this chapter.

15. Section 628.5 is amended by revising paragraphs (a) and (c) through (g) to read as follows:

§ 628.5 Prohibitions.

* * *

(a) Possess in, or harvest from, the EEZ, Atlantic bluefish in excess of the daily possession limit specified in § 628.21, unless the person in possession has a permit meeting the requirements of § 622.12(a) of this chapter;

* * * * *

(c) Fish under a permit meeting the requirements of § 622.12(a) of this chapter in violation of a notice of restriction published under § 628.22;

(d) Fish in the EEZ under a permit meeting the requirements of § 622.12(a) of this chapter during a closure under § 628.23;

(e) Fail to report to the Regional Director, within 15 days, any change in the information in the application for a permit under § 622.12 of this chapter;

(f) Fail to present any permit meeting the requirements of § 622.12(a) of this chapter upon the request of an authorized officer;

(g) Sell any Atlantic bluefish harvested from the EEZ unless the seller has a permit that meets the requirements of § 622.12(a) of this chapter;

* * * * *

16. Section 628.21 is amended by revising paragraphs (a)(1), (a)(2), and the first two sentences of paragraph (a)(4) to read as follows:

§ 628.21 Possession limit.

(a) * * *

(1) No person shall possess more than ten bluefish unless he/she has a permit meeting the requirements of § 622.12(a) of this chapter.

(2) Bluefish caught while in possession of a permit meeting the requirements of § 622.12(a) of this chapter must be kept separate from the pooled catch and in the possession of the permit holder at all times.

* * * * *

(4) Atlantic bluefish harvested from party and charter boats or other vessels carrying more than one person may be commingled. Compliance with the daily possession limit will be determined by dividing the number of Atlantic bluefish on board by the number of persons on board, provided, however, that if a

person or persons on board are fishing under a permit meeting the requirements of § 622.12(a) of this chapter, his/her catch shall not be counted for determining compliance with the possession limit if it is maintained in the possession of such person(s). * * *

* * * * *

PART 649—AMERICAN LOBSTER FISHERY

17. The authority citation for 50 CFR part 649 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

18. Section 649.4 is revised to read as follows:

§ 649.4 Vessel permits.

Any vessel of the United States fishing for American lobster in the EEZ must obtain a permit issued pursuant to §§ 622.13(a), and 622.31 through 622.34, inclusive, of this chapter.

19. Section 649.6 is revised to read as follows:

§ 649.6 Vessel identification.

Each fishing vessel subject to this part must comply with the provisions of § 622.5 of this chapter.

20. Section 649.7 is amended by revising paragraphs (a) introductory text, (a)(7), (b)(1), (b)(2), (b)(3, (b)(5) and (c) to read as follows:

§ 649.7 Prohibitions.

(a) In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person issued a permit under § 622.13 of this chapter, or for any person fishing in the EEZ, to do any of the following:

* * * * *

(7) Fail to affix and maintain permanent markings as required by § 622.5 of this chapter.

(b) * * *

(1) Use any vessel for taking, catching, harvesting, fishing for, or landing of any American lobster in, or from, the EEZ unless the vessel or operator has a valid permit issued under § 622.13 of this chapter, and the permit is aboard the vessel.

(2) Make any false statement in connection with an application under § 622.13 of this chapter; or to fail to report to the Regional Director, within 15 days, any change in the information contained in a permit application for a vessel.

(3) Possess, have custody or control of, ship, transport, offer for sale, sell, purchase, land, import or export any American lobster taken or retained in violation of the Magnuson Act, this part, part 622 of this chapter, or any other regulation under the Magnuson Act.

* * * * *

(5) Interfere with, obstruct, delay, or prevent by any means a lawful investigation or search by an authorized officer in the process of enforcing this part or part 622 of this chapter.

(c) The possession of egg-bearing female American lobsters, V-notched female American lobsters, or American lobsters that are smaller than the minimum size set forth in § 649.20(b) of this part, will be prima facie evidence that such lobsters were taken or imported in violation of these regulations. Evidence that such lobsters were harvested by a vessel not holding a permit under § 622.13 of this chapter that fished exclusively within state or foreign waters will be sufficient to rebut the presumption.

21. Section 649.20 is amended by revising paragraph (a) to read as follows:

§ 649.20 Harvesting and landing requirements.

(a) *Conditions.* By accepting a Federal permit or a state permit endorsed for EEZ fishing, the permittee agrees that any lobster found on board, buoyed in a container or landed by a vessel with a permit issued, authorized, or required by this part and/or part 622 of this chapter will be treated as if it had been harvested in the EEZ subject to these regulations.

* * * * *

22. Section 649.22 is amended by revising paragraph (a)(1) and the first sentence of paragraph (a)(3) to read as follows:

§ 649.22 Exemption and area closure.

(a) * * *

(1) Upon the recommendation of the New England Fishery Management Council, the Regional Director may exempt any person or vessel from the requirements of this part and/or part 622 of this chapter for the conduct of research or education beneficial to the lobster resource or lobster fishery.

* * * * *

(3) Each vessel participating in any exempt activity is subject to all provisions of this part and/or part 622 of this chapter except those necessarily relating to the purpose and nature of the exemption. * * *

* * * * *

PART 650—ATLANTIC SEA SCALLOP FISHERY

23. The authority citation for 50 CFR part 650 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

24. Section 650.4 is revised to read as follows:

§ 650.4 Vessel permits.

Any vessel of the United States harvesting Atlantic sea scallops in quantities greater than 5 bushels (176.21) in the shell or 40 pounds (18.2 kg) of shucked scallop meats per trip must obtain a permit issued pursuant to §§ 622.14, and 622.31 through 622.34 inclusive, of this chapter.

25. Section 650.6 is revised to read as follows:

§ 650.6 Vessel identification.

Each fishing vessel subject to this part must comply with the provisions of § 622.5 of this chapter.

26. Section 650.7 is amended by revising paragraphs (d), (e), (f), and (h) to read as follows:

§ 650.7 Prohibitions.

* * * * *

(d) Use any vessel for taking, catching, harvesting, or landing any Atlantic sea scallops in excess of the amounts prescribed in § 622.14(a) of this chapter, unless the vessel has a valid permit issued under § 622.14(a) of this chapter, and the permit is on board the vessel.

(e) Make any false statement in connection with an application under § 622.14(a) of this chapter, or to fail to report to the Regional Director, within 15 days, any change in the information contained in a permit application for a vessel.

(f) Fail to affix and maintain permanent markings as required by § 622.5 of this chapter.

* * * * *

(h) Interfere with, obstruct, delay, or prevent by any means a lawful investigation or search by an authorized officer in the process of enforcing this part and/or part 622 of this chapter.

27. Section 650.22 is amended by revising paragraph (b)(4) to read as follows:

§ 650.22 Review of resource status; temporary adjustment of standards.

* * * * *

(b) * * *

(4) The Regional Director may modify his recommendation on the basis of comments from the Council or the public. After consideration of the full record, the Regional Director may adjust the standards contained in § 650.20 and will publish in the **Federal Register** notice of such change and the date when the adjusted standard will revert to a 30 meat count. Notice of any such adjustment will be mailed to each holder of a permit issued under § 622.14 of this chapter.

* * * * *

28. Section 650.23 is amended by revising paragraph (a) and the first sentence of paragraph (c) to read as follows:

§ 650.23 Experimental fishing exemption.

(a) Upon the recommendation of the Council, the Regional Director may exempt any person or vessel from the requirements of this part and/or part 622 of this chapter for the conduct of experimental fishing beneficial to the management of the sea scallop resource or fishery.

* * * * *

(c) Each vessel participating in any exempted experimental fishing activity is subject to all provisions of this part and part 622 of this chapter except those necessarily relating to the purpose and nature of the exemption. * * *

29. Section 650.25 is amended by revising paragraph (b)(2) to read as follows:

§ 650.25 Modification of offloading period.

* * * * *

(b) * * *

(2) Be mailed to each holder of a permit issued under § 622.14(a) of this chapter.

PART 651—NORTHEAST MULTISPECIES FISHERY

30. The authority citation for 50 CFR part 651 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

31. Section 651.4 is revised to read as follows:

§ 651.4 Vessel permits.

(a) Each vessel of the United States fishing for multispecies finfish, except commercial vessels fishing exclusively within state waters and recreational fishing vessels, must obtain a permit pursuant to §§ 622.15(a), and 622.31 through 622.34 inclusive, of this chapter.

(b) *Exempted fisheries program.* Any permit holder may initially request entry into the exempted fisheries program under § 651.22 by telephoning 508–281–9335. The permit holder must give his/her name, vessel name, vessel permit number, the specific exemption requested, the starting date and estimated duration of participation in the program, and the area of operation. The permit holder must have the letter of certification, which will be issued within 1 week, aboard at all times while engaged in an exempted fishery.

32. Section 651.6 is revised to read as follows:

§ 651.6 Vessel identification.

Each fishing vessel subject to this part must comply with the provisions of § 622.5 of this chapter.

33. Section 651.7 is amended by revising paragraphs (a) introductory text, (a)(2), (b)(1), (b)(7), (b)(10), (c) and the first two sentences of paragraph (d) to read as follows:

§ 651.7 Prohibitions.

(a) In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person owning or operating a vessel issued a permit under § 622.15(a) of this chapter to do any of the following:

* * * * *

(2) Fail to affix and maintain permanent markings as required by § 622.5 of this chapter.

(b) * * *

(1) Use any vessel of the United States (except recreational fishing vessels) for taking, catching, harvesting or landing any regulated species taken from the EEZ unless the vessel has a valid permit issued under part 622 of this chapter and the permit is aboard the vessel.

* * * * *

(7) make any false statement in connection with an application under § 622.15(a) of this chapter.

* * * * *

(10) Interfere with, obstruct, delay, or prevent by any means a lawful investigation or search by an authorized officer in the process of enforcement of this part and/or part 622 of this chapter.

* * * * *

(c) It is unlawful to violate any other provision of this part or part 622 of this chapter, the Magnuson Act, or any regulations or permit issued under the Magnuson Act.

(d) *Presumption.* The possession for sale of regulated species that do not meet the minimum sizes specified in § 651.23 will be prima facie evidence that such regulated species were taken or imported in violation of these regulations. Evidence that such fish were harvested by a vessel not holding a permit under part 622 of this chapter and fishing exclusively within state waters will be sufficient to rebut the presumption. * * *

34. Section 651.20 is amended by revising the first sentence of paragraph (f) introductory text to read as follows:

§ 651.20 Regulated mesh area and gear limitations.

* * * * *

(f) Except as provided in paragraphs (b) and (d) of this section, no vessel issued a permit under § 622.15(a) of this chapter may have available for immediate use any net, or any piece of a net, not meeting the requirements specified in this section or while in the areas described in paragraph (a) of this section. * * *

* * * * *

35. Section 651.22 is amended by revising paragraph (b) (1) and the first sentence of paragraph (g) to read as follows;

§ 651.22 Exempted fishery program.

* * * * *

(b) * * *. (1) Any person owning a vessel issued a valid Federal multispecies finfish permit may apply to fish under the exempted fisheries program by following the procedures set forth in § 651.4(b).

* * * * *

(g) *Expiration or withdrawal.* Participation in the program expires at the end of the participation period under § 651.4(b), or when the owner's or vessel's name changes, or when a participant who has been duly operating in the program for at least 7 days notifies the Regional Director of his/her intent to withdraw from the program.

* * *

* * * * *

PART 652—ATLANTIC SURF CLAM AND OCEAN QUAHOG FISHERIES

36. The authority citation for 50 CFR part 652 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

37. Section 652.4 is revised to read as follows:

§ 652.4 Vessel permits.

Each vessel of the United States fishing for surf clams or ocean quahogs, except vessels taking surf clams or ocean quahogs for personal use or fishing exclusively within state waters, must obtain a permit issued pursuant to §§ 622.16(a), and 622.31 through 622.34 inclusive, of this chapter.

38. Section 652.5 is revised to read as follows:

§ 652.5 Dealer/processor permits.

Dealers and processors of surf clams or ocean quahogs must obtain a permit issued pursuant to §§ 622.16(b), and 622.31 through 622.34 inclusive, of this chapter.

39. Section 652.6 is revised to read as follows:

§ 652.6 Recordkeeping and reporting.

Any person issued a dealer permit under § 622.16(b) of this chapter must comply with the recordkeeping and reporting provisions of § 622.42 of this chapter.

40. Section 652.7 is revised to read as follows:

§ 652.7 Vessel identification.

Each fishing vessel subject to this part must comply with the provisions of § 622.5 of this chapter.

41. Section 652.8 is amended by revising paragraphs (a), (b) introductory text, (b)(2), (c)(3), (c)(4), (c)(5), (c)(10), (c)(13), (c)(16) and (c)(20) to read as follows:

§ 652.8 Prohibitions.

(a) In addition to the general prohibitions specified in part 620 of this chapter, it is unlawful for any person owning or operating a vessel issued a permit under § 622.16(a) of this chapter to land or possess any surf clams that do not meet the minimum sizes specified in § 652.22, except when fishing exclusively within state waters as provided in § 622.16(a)(2) of this chapter.

(b) It is unlawful for any person owning or operating a vessel issued a permit under § 622.16(a) of this chapter, or issued an allocation permit under § 652.20, to do any of the following:

* * * * *

(2) Transfer any surf clams or ocean quahogs to any person for a commercial purpose other than transport, unless that person has a permit issued under § 622.16(b).

(c) * * *

(3) Use a vessel of the United States for taking, catching, harvesting, or landing any surf clams or ocean quahogs taken from the EEZ unless the vessel has a valid permit required under this part and/or part 622 of this chapter and the permit is aboard the vessel and has not been surrendered, revoked, or suspended;

(4) Offload, cause to be offloaded, sell or buy any surf clams or ocean quahogs, whether on land or at sea, as an owner, operator, dealer, processor, buyer, or receiver in the surf clam or ocean quahog fishery, without preparing and submitting the documents required by § 622.42 of this chapter;

(5) Alter, erase, or mutilate any permit issued under § 622.16 of this chapter, or § 652.20;

* * * * *

(10) Possess surf clams taken in violation of the size limits prescribed in § 652.22, unless taken consistently with § 622.16(a)(2) of this chapter;

* * * * *

(13) Fail to submit or maintain information, or to submit or maintain false information in records and reports required to be kept or filed under § 622.42 of this chapter;

* * * * *

(16) Receive, for a commercial purpose other than transport, surf clams or ocean quahogs landed under an allocation pursuant to § 652.20 without a permit issued under § 622.16(b) of this chapter;

* * * * *

(20) Violate any other provision of the Magnuson Act, these regulations, or any applicable permit issued under § 622.16 of this chapter, or § 652.20.

* * * * *

42. Section 652.12 is amended by revising the first two sentences of paragraph (h) to read as follows:

§ 652.12 Cage identification.

* * * * *

(h) *Presumptions.* Surf clams or ocean quahogs found in cages without a valid state tag are deemed to have been harvested in the EEZ, and are part of an individual's allocation. This shall not apply if the individual can demonstrate that he/she has surrendered his/her Federal vessel permit issued under § 622.16(a) of this chapter and has conducted fishing operations exclusively within waters under the jurisdiction of any state. * * *

43. Section 652.24 is amended by revising paragraph (a)(4) to read as follows:

§ 652.24 Shucking at sea.

(a) * * *

(4) The observer specified by the Regional Director shall certify at the end of each trip the amount of surf clams or ocean quahogs harvested in the shell by the vessel. Such certification shall be made by the observer's signature on the daily fishing log required by § 622.42 of this chapter.

* * * * *

PART 655—ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FISHERIES

44. The authority citation for 50 CFR part 655 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

45. Section 655.4 is revised to read as follows:

§ 655.4 Vessel permits.

Each vessel of the United States that catches Atlantic mackerel, *Illex* and *Loligo* squid, or butterfish must obtain a permit issued pursuant to §§ 622.17(a) and 622.31 through 622.34, inclusive, or this chapter except vessels used by recreational fishermen taking Atlantic mackerel, *Illex* and *Loligo* squid, or butterfish for the personal use of such recreational fishermen.

46. Section 655.6 is revised to read as follows:

§ 655.6 Vessel identification.

Each fishing vessel subject to this part must comply with the provisions of § 622.5 of this chapter.

47. Section 655.7 is amended by revising paragraphs (a) through (d), (g) and (i) to read as follows:

§ 655.7 Prohibitions.

* * * * *

(a) To fish commercially for Atlantic mackerel, squid, and butterfish without a permit issued pursuant to § 622.17(a) of this chapter.

(b) To use any vessel for taking, catching, harvesting, or landing of any Atlantic mackerel, squid, or butterfish (except as provided in § 622.17(a) of this chapter) unless the vessel has on board a valid permit issued under § 622.17(a) of this chapter.

(c) To fail to report to the Regional Director within 15 days any change in the information contained in the permit application for a vessel, as specified in § 622.33(a) of this chapter.

(d) To falsify or fail to affix and maintain vessel markings as required by § 622.5 of this chapter.

* * * * *

(g) Violate any other provision of this part and/or part 622 of this chapter, the Magnuson Act, any notice issued under subpart B of this part, or any other regulation or permit promulgated under the Magnuson Act.

* * * * *

(i) To interfere with, obstruct, delay, or prevent by any means a lawful investigation or search by an authorized officer conducted in the process of enforcing this part and/or part 622 of this chapter.

[FR Doc. 93–25184 Filed 10–13–93; 8:45 am]
BILLING CODE 3510–22–M

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50 CFR Part 646

South Atlantic Fishery Management Council (Council); Snapper-Grouper Regulations; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public hearings and request for comments.

SUMMARY: The Council will hold public hearings and provide a comment period to solicit public input on proposed snapper-grouper regulations contained in draft Amendment 7 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic (FMP) (includes the regulatory impact review, initial regulatory flexibility

analysis determination, and environmental assessment).

DATES: Written comments must be received by October 27, 1993. All public hearings will be held from 7 p.m. to 10 p.m. (except Atlantic Beach, NC, which will be held 6:30 p.m. to 9 p.m.), as follows:

1. Tuesday, October 19, 1993, in Jacksonville Beach, Florida;
2. Wednesday, October 20, 1993, in Savannah, Georgia;
3. Monday, October 25, 1993, in Charleston, South Carolina;
4. Monday, November 1, 1993, in Atlantic Beach, North Carolina.

ADDRESSES: Comments should be addressed to Robert K. Mahood, Executive Director, South Atlantic Fishery Management Council, One Southpark Circle, suite 306, Charleston, SC 29407–4699.

The hearings will be held at the following locations:

1. Jacksonville Beach—Holiday Inn Oceanfront, 1617 N. First Street, Jacksonville Beach, Florida (904–249–9071).
2. Savannah—Holiday Inn Mid-Town, 7100 Abercorn Street, Savannah, Georgia (912–352–7100).
3. Charleston—Town & Country Inn, 2008 Savannah Highway, Charleston, South Carolina (803–571–1000).
4. Atlantic Beach—Sheraton Atlantic Beach Resort, Salter Path Road, Atlantic Beach, North Carolina (919–240–1155).

FOR FURTHER INFORMATION CONTACT: Carrie Knight, Public Information Officer, South Atlantic Fishery Management Council (803–571–4366, fax: 803–769–4520).

SUPPLEMENTARY INFORMATION: The Council is soliciting comments on the following:

- Establish a bycatch allowance and trip limits for red porgy.
- Restrict harvest of gag grouper January through March annually.
- Require seafood dealers who handle snapper and grouper to obtain a federal dealer permit. A seafood dealer would only be allowed to purchase snapper and grouper from permitted fishermen. Permitted fishermen would only be allowed to sell to permitted dealers. This would result in requiring the federal commercial permit (50 percent earned income or $20,000 gross sales) to sell bag-limit caught fish.
- Allow a part-time permit for fishermen who do not qualify for a commercial permit. These fishermen would be considered part-time commercial fishermen, however, they would be restricted to the recreational bag limits.
- Change prohibition on bottom longline gear in the snapper-grouper fishery from south of Cape Canaveral, Florida, to south of St. Lucie Inlet, Florida.

Additional comments are being accepted on the following proposed measures, which were deferred from Amendment 6 (approved in August 1993). These proposals would also be included in Amendment 7.

- Require charterboats and headboats to obtain a federal snapper-grouper permit.
- Allow a maximum of two possession limits for all charter and headboats on multi-day trips regardless of the number of captains on board.
- Maintain the crew requirement of three unless a vessel possesses a certificate of inspection, in which case crew size is limited to the crew number on the certificate.
- Maintain current minimum size and bag limit for red snapper.
- Continue prohibition on commercial harvest of greater amberjack during April south of Cape Canaveral, Florida. However, sale would be prohibited in the area south of Cape Canaveral.
- Impose no restrictions on white grunt at this time.
- Establish a 12-inch fork length minimum size limit for hogfish and include in the 10-snapper aggregate bag limit.
- Impose no restrictions on gray triggerfish at this time.
- Increase mutton snapper minimum size limit from 12 inches total length to 16, and consider possibility of a two-fish bag limit. Maintain May–June prohibition on harvest above the bag limit.
- Impose no new restrictions on cubera or yellowtail snapper at this time.
- Prohibit use of explosive charges (including powerheads) to harvest species in snapper-grouper management unit in federal waters off South Carolina.
- Require that black sea bass pots be tended (taken out on a vessel and brought back at the end of a trip).

These hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Carrie Knight at the above Council address by October 14, 1993.

Dated: October 8, 1993.

Joe P. Clem,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–25249 Filed 10–13–93; 8:45 am]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 58, No. 197
Thursday, October 14, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

October 8, 1993.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

Reinstatement

- *Rural Electrification Administration*

Preloan Procedures and Requirements for Telephone Program
REA Forms 490, 494, 495, 507, 567, 569
On occasion
Small businesses or organizations; 855 responses; 7177 hours
Jon Claffey, (202) 720–9539.

Larry K. Roberson,

Deputy Department Clearance Officer.

[FR Doc. 93–25247 Filed 10–13–93; 8:45 am]

BILLING CODE 3410–01–M

Animal and Plant Health Inspection Service

[Docket No. 93–133–1]

Receipt of a Permit Application for Release Into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an application for a permit to release genetically engineered organisms into the environment is being reviewed by the Animal and Plant Health Inspection Service. The application has been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

ADDRESSES: Copies of the application referenced in this notice, with any confidential business information deleted, are available for public inspection in room 1141, South Building, U.S. Department of Agriculture, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect an application are encouraged to call ahead on (202) 690–2817 to facilitate entry into the reading room. You may obtain copies of the documents by writing to the person listed under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) into the United States certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following application for a permit to release genetically engineered organisms into the environment:

Application No.	Applicant	Date received	Organisms	Field test location
93–252–1	Monsanto Agricultural Company.	09–09–93	Potato plants genetically engineered to express resistance to potato leaf roll virus.	Florida.

Done in Washington, DC, this 8th day of October 1993.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 93–25248 Filed 10–13–93; 8:45 am]

BILLING CODE 3410–34–P

Forest Service

Mono Tunnel Geothermal Lease Area, Inyo National Forest, CA; Intent To Prepare Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement on a proposal to lease geothermal resources on the Mono Lake

Ranger District, Inyo National Forest, Mono County, California.

DATES: Comments concerning the scope of the analysis should be received in writing by December 1, 1993.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to Dennis W. Martin, Forest Supervisor, Inyo National Forest, 873 N. Main Street, Bishop, California 93514.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and environmental impact statement should be sent to Vernon McLean, Forest Geologist, phone 619–873–2424.

SUPPLEMENTARY INFORMATION: The Mono Tunnel Geothermal Lease Area is within the Mono-Long Valley Known Geothermal Resource Area. Standards and Guidelines in the Inyo National Forest's Land and Resource Management Plan provide for leasing of geothermal resources and require analysis and documentation of environmental effects associated with development of geothermal resources before making a leasing decision. The decision to be made is whether to lease geothermal resources in this area, and if so under what conditions.

The Forest Service will consider a range of reasonable alternatives. One alternative will examine the option of not leasing geothermal resources at this site. Other alternatives will examine various options for leasing with surface occupancy restrictions.

Preliminary issues include the effects of geothermal development on surface and subsurface hydrology, wildlife, and recreation resources, and potential conflicts between local and federal policy. The Bureau of Land Management will cooperate with the Forest Service to prepare this environmental impact statement.

The responsible official is Ronald E. Stewart, Regional Forester, Pacific Southwest Region, 630 Sansome Street, San Francisco, CA 94111.

Public participation will be especially important at several points during this analysis. The first point is during the scoping process (40 CFR 1501.7). The scoping process for this proposal began on September 14, with a public meeting in Mammoth Lakes, California, hosted by the Inyo National Forest. Through the end of November, the Forest Service will continue the scoping process to obtain information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations interested in or affected by the proposed action. Information obtained during scoping will be used to prepare the draft environmental impact statement (DEIS). The most useful information in preparing a DEIS will be that pertaining to significant issues, reasonable alternatives, potential environmental effects, and identification of other agencies whose cooperation may be needed.

Individuals and agencies who participated in the September 14 meeting will be kept informed about progress on this analysis through mailings. Workshops and open houses, if held, will be announced locally. Federal, State, and local agencies, user groups, and other organizations known to be interested in this action are being invited to participate in the scoping process.

The DEIS will be filed with the Environmental Protection Agency (EPA) and is expected to be available for public review by November 1994. At that time the EPA will publish a notice of availability of the DEIS in the **Federal Register**.

The comment period on the DEIS will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of DEISs must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 533 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement (FEIS) may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

To assist the Forest Service in identifying and considering issues and concerns, comments on the DEIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the DEIS or the merits of the alternatives formulated and discussed in the DEIS. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

After the comment period ends on the DEIS, written comments will be analyzed and considered by the Forest Service in preparing the final environmental impact statement (FEIS). The FEIS is scheduled to be completed by March 1995. The Forest Service is required to respond in the FEIS to the comments received (40 CFR 1503.4). The Regional Forester will consider the comments, responses, and environmental consequences discussed in the FEIS, and applicable laws, regulations, and policies in making his decision regarding leasing of geothermal resources in the Mono Tunnel Geothermal Lease Area. The responsible official will document the decision and rationale in the Record of Decision. That decision will be subject to appeal under 36 CFR part 217.

Dated: October 5, 1993.

Dale N. Bosworth,

Deputy Regional Forester.

[FR Doc. 93–25041 Filed 10–13–93; 8:45 am]

BILLING CODE 3410–11–M

Bull Salvage Sale Administrative Appeal Exemption

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: On September 21, 1993, District Ranger, Michael G. Gardner, made a decision to approve the logging of fire killed timber in the Bull Basin Canyon area of the Gila National Forest, Reserve Ranger District in Catron County, New Mexico.

An estimated 86 MBF of timber on 170 acres was killed by fire. The Reserve Ranger District has completed an environmental analysis on the impact of salvage logging this timber. It will be necessary to salvage this timber resource in a short, emergency timeframe to prevent a reduction in value due to rapid deterioration. If the decision document resulting from the environmental analysis is appealed under 36 CFR part 217, valuable time in recovering this timber resource will be lost. I have therefore determined that, pursuant to 36 CFR 217.4(a)(11), decisions involving the Bull Salvage Sale are exempt from administrative appeal.

Copies of the Decision Memo are available at the Reserve Ranger District Office, Gila National Forest, Box 170, Reserve, NM 87830.

DATES: This notice is effective October 14, 1993.

ADDRESSES: Direct comments to: Larry Henson, Regional Forester, Southwestern Region, USDA Forest Service, 517 Gold Avenue, SW., Albuquerque, New Mexico, 87102.

FOR FURTHER INFORMATION CONTACT: Milo Larson, Director, Timber Management, (503) 842–3240. Direct requests for a copy of the appeal regulation to Pat Jackson at the above address.

Dated: September 30, 1993.

Larry Henson,

Regional Forester.

[FR Doc. 93–25385 Filed 10–13–93; 9:34 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposals for collection of information under the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration (BXA).

Title: Exceptions to Reporting Requirement under the IC/DV Procedures.

Agency Form Number: Export Administration Regulations (EAR) Section 775.3(i)(3) and 775.10(g)(2).

OMB Approval Number: 0694–0001.

Burden: 16 hours.

Number of Respondents: 31.

Avg Hours Per Response: 30 minutes for reporting; 1 minute for recordkeeping.

Needs and Uses: This reporting requirement allows U.S. exporters to request an exception to the import certificate (or its equivalent) procedure. The requirement also covers requests for exceptions to the delivery verification procedure.

Affected Public: Businesses or other for–profit institutions, small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Gary Waxman, (202) 395–7340.

Agency: Bureau of Export Administration (BXA).

Title: Procedures for Supporting Documentation.

Agency Form Number: Export Administration Regulations (EAR) Section 787.13, 775.10.

OMB Approval Number: 0694–0064.

Burden: 63 hours.

Number of Respondents: 3,558.

Avg Hours Per Response: One minute.

Needs and Uses: This collection of information is a recordkeeping requirement whereby exporters will retain in their files certain supporting documents for a period of five years.

Affected Public: Businesses or other for–profit institutions, small businesses or organizations.

Frequency: Recordkeeping and on occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Gary Waxman, (202) 395–7340.

Copies of the above information collection proposals can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, Room 5312, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collections should be sent to Gary Waxman, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Dated: October 7, 1993.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 93–25191 Filed 10–13–93; 8:45 am]

BILLING CODE 3510–CW–F

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration.

Title: Reporting Requirements for a Commercial Fisheries Exemption under Section 114 of the Marine Mammal Protection Act (MMPA).

Agency Form Number: None.

OMB Approval Number: 0648–0225.

Burden: 128,532.

Number of Respondents: 15,193.

Avg Hours Per Response: .042 (average number of responses per respondent is 198).

Needs and Uses: The MMPA mandates the protection of marine mammals and makes their killing, except under permit or exemption, a violation. Section 114 authorizes an exemption for commercial fishermen provided they register and report all takings. This specific collection obtains information on the interactions between fishermen and marine mammals. Information is required by statute and needed by the National Marine Fisheries Service to determine impacts on marine mammals.

Affected Public: Individuals, businesses or other for–profit institutions, small businesses or organizations.

Frequency: On occasion, annually.

Respondent's Obligation: Mandatory

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Dated: October 6, 1993.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 93–25194 Filed 10–13–93; 8:45 am]

BILLING CODE 3510–CW–F

Bureau of Export Administration

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Export Administration.

Title: Report of Requests for Restrictive Trade Practice or Boycott—Single or Multiple Transactions.

Agency Form Numbers: BXA—621P and BXA—6051P.

OMB Approval Number: 0694–0012.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 14,771 reporting/recordkeeping hours.

Number of Respondents: 1,187.

Avg Hours Per Response: One hour for BXA–612P and 30 hours for BXA–6051P—1 minute for filing each record retained (14,529 records).

Needs and Uses: The Export Administration Regulations require U.S. persons to report any requests that they have received to take any action to comply with, further, or

support an unsanctioned foreign boycott against countries friendly to the U.S. The information provided by firms is used by BXA to monitor requests for participation in foreign boycotts, analyze changing trends for purposes of deciding U.S. policy of discouraging participation in restrictive trade practices, and to initiate boycott investigations.

Affected Public: Businesses or other for-profit institutions; small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Gary Waxman, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Gary Waxman, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: September 24, 1993.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 93–25190 Filed 10–13–93; 8:45 am]

BILLING CODE 3510–CW–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of an Import Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in Jamaica

October 8, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: October 15, 1993.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Government of the United States has agreed to increase the 1993 Designated Consultation Level for Category 632. As a result, the limit for Category 632, which is currently filled, will re-open.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 60512, published on December 21, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 8, 1993.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 15, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber and other vegetable fiber textiles and textile products, produced or manufactured in Jamaica and exported during the twelve-month period which began on January 1, 1993 and extends through December 31, 1993.

Effective on October 15, 1993, you are directed to amend the December 15, 1993 directive to increase the limit for Category 632 to 200,000 dozen pairs [1].

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–25264 Filed 10–13–93; 8:45 am]

BILLING CODE 3510–DR–F

[1] The limit has not been adjusted to account for any imports exported after December 31, 1992.

COMMODITY FUTURES TRADING COMMISSION

Agricultural Advisory Committee Meeting

This is to give notice, pursuant to section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, Section 10(a) and 41 CFR 101–6.1015(b), that the Commodity Futures Trading Commission's Agricultural Advisory Committee will conduct a public meeting on November 10, 1993 in room 326 (Board Room) of the Stewart Center Building on the campus of Purdue University, State Street, West Lafayette, Indiana. The meeting will be held from 8:30 a.m. to 12:30 p.m. The agenda will consist of:

Agenda

I. Introductory remarks, Commissioner Joseph B. Dial;
II. Discussion of single regulator concept;
III. Discussion of Arkansas Best;
IV. Discussion of proposed changes in CME live cattle contract;
V. Discussion of CFTC 4(c) exemptive authority;
VI. Discussion of USDA's Options Pilot Program;
VII. Discussion of dual trading;
VIII. Discussion of 1994 Risk Management Summit for American Agribusiness;
IX. Discussion of swaps, hybirds, and derivatives;
X. Discussion of release times for USDA's market sensitive reports;
XI. Discussion of CFTC paperwork and regulatory requirements;
XII. Other Committee Business; and
XIII. Closing Remarks by Commissioner Joseph B. Dial.

The purpose of this meeting is to solicit the views of the Committee on the above-listed agenda matters. The Advisory Committee was created by the Commodity Futures Trading Commission for the purpose of receiving advice and recommendations on agricultural issues. The purposes and objectives of the Advisory Committee are more fully set forth in the fifth renewal charter of the Advisory Committee.

The meeting is open to the public. The Chairman of the Advisory Committee, Commissioner Joseph B. Dial, is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee should mail a copy of the statement to the attention of: the Commodity Futures

Trading Commission Agricultural Advisory Committee c/o Kimberly N. Griles, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, before the meeting. Members of the public who wish to make oral statements should also inform Ms. Griles in writing at the foregoing address at least three business days before the meeting. Reasonable provision will be made, if time permits, for an oral presentation of no more than five minutes each in duration.

Issued by the Commission in Washington, DC, on October 7, 1993.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 93–25208 Filed 10–13–93; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Vacancies

AGENCY: National Assessment Governing Board, Education.

ACTION: Recommendations for candidates to fill board vacancies.

SUMMARY: The National Assessment Governing Board is seeking recommendations for candidates to fill positions in its membership for four-year terms beginning October 1, 1994. The Nominations Committee of the National Assessment Governing Board is accepting nominations for individuals representing the following categories: Chief State School Officer, Eighth-Grade Classroom Teacher, Fourth-Grade Classroom Teacher, Elementary School Principal, Secondary School Principal, and General Public. There will be one vacancy in each category. Anyone wishing to nominate a candidate or candidates should submit a letter outling the nominees' qualifications, along with a complete and current resume (including telephone number and address). The nomination period begins with the publication of this notice and closes December 20, 1993. Nominations should be mailed to Christine Johnson, Chair, Nominations Committee, National Assessment Governing Board, 800 North Capitol Street NW., Suite 825, Washington, DC 20002–4233, Attention: Dr. Daniel B. Taylor. Telephone inquiries should be made to Dr. Taylor at (202) 357–6938.

BACKGROUND INFORMATION:

The National Assessment Governing Board is established under section 406(i) of the General Education Provisions Act (GEPA) as amended by section 3403 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), title III–C of the Augustus F. Hawkins—Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100–297), (20 U.S.C. 1221e–1).

The Board is established to formulate policy for the National Assessment of Educational Progress. Among other duties, it is responsible for developing specifications for test design and methodology, developing guidelines and standards for analysis plans, and reporting and disseminating results. The Board also has responsibility for selecting subject areas to be assessed, and for identifying achievement goals for each age and grade tested.

Dated: October 8, 1993.

Roy Truby,

Executive Director.

[FR Doc. 93–25235 Filed 10–13–93; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Acceptance of Unsolicited Proposal; Global Outpost, Inc.

September 16, 1993.

AGENCY: Department of Energy (DOE), San Francisco Operations Office.

ACTION: Notice of acceptance of unsolicited proposal.

SUMMARY: In accordance with 10 CFR 600.14, the Department of Energy (DOE) the Nuclear Energy Division announces the Financial Assistance Award to Global Outpost, Inc. for the project entitled "Evaluation of the rendezvous and docking interface of a generic reactor system to a orbital space platform". The proposal has been evaluated in accordance with the requirements of 10 CFR 600.14(e)(i) and (ii) and will provide valuable information needed in developing operational scenarios and the proposal also represents a unique approach in its objectives.

AWARD: It is anticipated that award to Global Outpost, Inc. will occur on or about September 30, 1993.

FOR FURTHER INFORMATION CONTACT:

Further information may be obtained by contacting the U.S. Department of Energy, San Francisco Operations Office, ATTN: Gerald R. Acock, Contract Specialist, Contracts and Assistance Management Division, 1301 Clay Street, room 700N, Oakland, California, 94612–5208, Phone (510) 637–1867 (no collect calls please).

Joann P. van Guillory,

Acting Director, Contracts and Assistance Management Division.

[FR Doc. 93–25329 Filed 10–13–93; 8:45 am]

BILLING CODE 6450–01–M

Energy Information Administration

American Statistical Association Committee on Energy Statistics; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: American Statistical Association's Committee on Energy Statistics, a utilized Federal Advisory Committee.

Date and time: Thursday, November 4, 9:30 a.m.–5:30 p.m.; Friday, November 5, 8:45 a.m.–12:15 p.m.

Place: Holiday Inn—Capitol, 550 C Street SW., Washington, DC.

Contact: Ms. Renee Miller, EIA Committee Liaison, U.S. Department of Energy, Energy Information Administration, EI–72, Washington, DC 20585, Telephone: (202) 254–5507.

Purpose of committee: To advise the Department of Energy, Energy Information Administration (EIA), on EIA technical statistical issues and to enable the EIA to benefit from the Committee's expertise concerning other energy statistical matters.

Tentative agenda:

Thursday, November 4, 1993

A. Opening Remarks
B. Major Topics
1. Status Report on the National Energy Modeling System
2. Panel Discussion on Energy Policy Act
3. Small Area Estimation

(Public Comment)

Friday, November 5, 1993

4. Survey Evaluation Techniques
5. Assessing the Quality of EIA Published Data on Imports and Exports
6. Performance Measurement

(Public Comment)

C. Topics for Future Meetings

Public participation: The meeting is open to the public. The chairperson of the committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Written statements may be filed with the committee either before or after the meeting. If there are any questions, please contact Ms. Renee Miller, EIA Committee Liaison, at the address or telephone number listed above or Mrs. Antoinette Martin at (202) 254–5409.

Transcripts: Available for public review and copying at the Public Reading Room (room 1E–290), 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6025.

between the hours of 9 a.m. and 4 p.m., Monday through Friday.

Marcia Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 93–25238 Filed 10–13–93; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. QF93–130–000]

BCH Energy, L.P.; Amendment to Filing

October 7, 1993.

On September 27, and October 5, 1993, BCH Energy, L.P. tendered for filing amendments to its initial filing in this docket.

The amendments pertain to the ownership structure and technical aspects of its small power production facility. No determination has been made that the submittal constitutes a complete filing.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed by October 26, 1993, and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–25166 Filed 10–13–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. QF89–126–004]

Cedar Bay Generating Co. Limited Partnership; Amendments to Filing

October 7, 1993.

On August 31, 1993, and October 4, 1993, Cedar Bay Generating Company, Limited Partnership (Applicant) tendered for filing supplements to its filing in this docket.

The amendments provide additional information pertaining to the ownership and technical aspects of its cogeneration facility. No determination has been made that the submittals constitute a complete filing.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed on or before October 27, 1993, and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–25165 Filed 10–13–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP93–729–000, et al.]

The Montana Power Company, et al.; Natural Gas Certificate Filings

October 6, 1993.

Take notice that the following filings have been made with the Commission:

1. The Montana Power Company

[Docket No. CP93–729–000]

Take notice that on September 15, 1993, as supplemented September 23, 1993, the Montana Power Company (Montana Power), 40 E. Broadway, Butte, Montana 59701, filed an application in Docket No. CP93–729–000 pursuant to section 3 of the Natural Gas Act (NGA), as amended, 15 U.S.C. 717(b); and §§ 153.1 through 153.8 of the Commission's Regulations for an amendment to the Commission's "Order Designating Points of Entry" which will expire on December 31, 1993.[1] Montana Power seeks whatever authority deemed necessary under section 3 of the NGA in order to ensure continued operation and use of the Alberta/Del Bonita import point beyond December 31, 1993. Montana Power's request is more fully set forth in the application on file with the Commission and open to public inspection.

These facilities are operated by Montana Power at the Canadian-United States international border in the area of the Reagan Blackleaf Field in the Province of Alberta. In order to assure continued service through the import facilities to its retail markets, Montana Power requests expeditious treatment of its application. Montana Power requests any waivers of the Commission's regulations deemed necessary to effectuate the relief requested.

Concurrently with this application, Montana Power is filing an application with the Department of Energy (DOE) to extend the term of the import authorization to December 31, 2004, so as to coincide with the recently amended export authorization issued to Canadian Montana Pipe Line Company, the exporter in the transaction.

No construction of facilities or change of the point of entry are being proposed.

Comment date: October 27, 1993, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

2. Paiute Pipeline Company

[Docket No. CP93–751–000]

Take notice that on September 30, 1993, Paiute Pipeline Company (Applicant), P.O. Box 94197, Las Vegas, Nevada 89193–4197, filed in Docket No. CP93–751–000 an applicant pursuant to section 7 of the Natural Gas Act and part 157 of the Commission's Regulations under the Natural Gas Act (18 CFR part 157) for an order granting a certificate of public convenience and necessity authorizing Applicant to construct and operate approximately 5.5 miles of new 16" loop pipeline along its Reno Lateral and approximately 2.3 miles of new 12" loop pipeline along its South Tahoe Lateral, in order to expand Applicant's existing transmission system capacity primarily to accommodate 4,553 Dth per day of new firm transportation contract entitlements under seven executed, long-term service agreements with seven members of the Northern Nevada Industrial Gas Users (NNIGU).

Further, Applicant requests that the Commission acknowledge, to the extent deemed necessary, that Applicant's total daily firm transportation service obligation during each period from April 1 through October 31, upon the in-service date of its proposed capacity expansion project, will be increased from 138,780 Dth to 142,783 Dth.

Applicant states that it proposes to achieve two objectives by its application. First, Applicant proposes to expand its system capacity to partially complement the system capacity expansion proposed by Northwest Pipeline Corporation (Northwest) in Docket No. CP93–673–000, in which proceeding, Applicant asserts, Northwest is seeking authorization to increase the quantity of gas that it can deliver to Applicant's system by 18,053

[1] 17 FERC ¶61,178 (1981).

Dth per day. Of that quantity, Northwest is proposing to provide new firm transportation delivery capacity into Applicant's system of 4,553 Dth per day for the NNIGU shippers. Applicant indicates that it intends by its proposal to satisfy requests that it has received from the NNIGU shippers for a like quantity of additional firm transportation service on its system. Second, Applicant states that the new loop pipeline on its Reno Lateral will provide additional reliability of service and operational flexibility along the lateral, by which Applicant serves a significant portion of the load requirements on its system, including the Reno/Sparks population center.

Applicant states that it held an open season process which provided an equitable and nondiscriminatory method for potential customers to make long-term commitments for firm transportation service which subsequently would be made available by means of an appropriately designed system facility expansion that would complement Northwest's planned system expansion. That process resulted in the seven long-term firm transportation firm transportation service agreements with the NNIGU shippers for 4,553 Dth per day of new firm transportation contract entitlements.

The following table identifies the seven NNIGU shippers, each of which is a commercial or industrial end-user of natural gas, and sets forth the contract entitlement quantities contained in the seven new firm transportation service agreements under which Applicant will render service upon completion of the proposed system expansion:

Shipper	Daily reserved capacity (Dth)	Summer daily reserved capacity (Dth)
Caesars Tahoe	83	73
CYANCO	1,035	910
Eagle-Picher	1,220	1,073
Harrah's Tahoe	83	73
Harrah's Reno	435	382
R.R. Donnelley	455	400
Winnemucca Farms	1,242	1,092
Total	4,553	4,003

Applicant states that each of the seven firm transportation service agreements is for a primary term of fifteen years from the date of commencement of service.

Applicant requests that the Commission make a preliminary determination concerning the appropriate future rate treatment for Applicant's NNIGU expansion facilities (i.e., rolled-in versus incremental). Applicant states that the NNIGU expansion service agreements provide each shipper with an option to terminate its agreement if an order issues within eight months after the filing of Applicant's application indicating that incremental rate treatment is appropriate for the NNIGU expansion facilities. Applicant asserts that rolled-in rate treatment for the NNIGU expansion project is appropriate, because the rate impact on Applicant's existing customers will be de minimis, and the relatively minor pipeline installations will provide benefits to many of Applicant's existing customers in the form of enhanced reliability and flexibility of operations.

If the Commission makes a preliminary determination supporting rolled-in treatment for this project, Applicant requests that the Commission establish its initial rates under the expansion service agreements as its maximum Rate Schedule FT–1 rates, including applicable surcharges, which are in effect at the time service commences under the agreements. In the alternatives, if the Commission makes a preliminary determination finding that incremental rate treatment is appropriate for the proposed NNIGU expansion project, Applicant states that it would submit an amendment to request approval for specific initial rates for service under the NNIGU expansion service agreements. These rates would be designed on an incremental basis to recover the costs of the NNIGU expansion facilities.

Applicant requests the use of expedited procedures leading to a preliminary determination on non-environmental issues, including the issues of future rate treatment and initial rates, by April 1, 1994, and a final certificate order by September 1, 1994 or earlier, so that the NNIGU expansion project can be completed and placed in service by November 1, 1995, concurrently with Northwest's proposed expansion project.

Applicant requests that the Commission convene a technical conference, if necessary, after expiration of the protest/intervention period to allow all active parties the opportunity to identify and address substantive, non-environmental issues raised by the application and the intervention.

Applicant estimates the total cost of its proposed construction activities to be $3,516,580. Applicant states that it intends to finance its project costs through ongoing regular financing programs and internally generated funds.

Comment date: October 27, 1993, in accordance with Standard Paragraph F at the end of this notice.

3. Arkla Energy Resources Company

[Docket No. CP94–7–000]

Take notice that on October 4, 1993, Arkla Energy Resources Company (AER), P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP94–7–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon an exchange of natural gas between AER and Natural Gas Pipeline Company of America (Natural), which was authorized in Docket No. CP75–123, all as more fully set forth in the application on file with the Commission and open to public inspection.

AER states that the exchange, which was carried out under an agreement on file with the Commission as AER's Rate Schedule XE–41, is no longer required. It is asserted that Natural has provided a written concurrence on the request to abandon. It is further asserted that the exchange agreement has been terminated by both parties and that the exchange has been inactive for several years. It is explained that the proposed abandonment will have no impact on AER's system or on any of its customers. It is further explained that cancellation of the rate schedule will allow AER's FERC Gas Tariff to more accurately reflect its current and active services.

Comment date: October 27, 1993, in accordance with Standard Paragraph F at the end of this notice.

4. Northwest Pipeline Corporation

[Docket No. CP93–752–000]

Take notice that on September 30, 1993, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP93–752–000 a request pursuant to §§ 157.205, 157.211 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211, 157.216) for authorization to replace certain metering facilities at its Kalama II Lake Meter Station (Kalama Station) in Cowlitz County, Washington, to enable Northwest to increase its maximum design delivery to Cascade Natural Gas Corporation (Cascade), under Northwest's blanket certificate issued in Docket No. CP82–433–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northwest states that it is presently contractually obligated to deliver up to 3,900 Dt per day of sales and

transportation gas to Cascade at the Kalama Station. Northwest further states that the maximum design delivery capacity of the Kalama Station is 3,370 Dt per day, at an operating pressure of 300 psig, which is less than Northwest's existing firm delivery obligations to Cascade at that point. Therefore, Northwest is proposing to upgrade the Kalama Station by replacing the existing three-inch meter with a new four-inch meter. It is stated that the construction and operation of the proposed four-inch meter will increase the maximum design delivery capacity of the Kalama Station to 4,526 MMBtu, at an operating pressure of 300 psig, thereby enabling Northwest to deliver its contractually obligated volume to Cascade. It is further stated that any volumes delivered to Cascade by way of the enlarged meter station will be within the authorized entitlement of Cascade or other shippers.

Northwest estimates the cost of upgrading the Kalama Station to be $126,500, including a cost of $1,500 for removing old facilities. It is stated that since the proposed facility upgrade is necessary to enable Northwest to deliver up to its current firm obligations to Cascade at the subject point, Northwest will not require any reimbursement cost from Cascade.

Comment date: November 22, 1993, in accordance with Standard Paragraph G at the end of this notice.

5. Ozark Gas Transmission System

[Docket No. CP94-9-000]

Take notice that on October 4, 1993, Ozark Gas Transmission System (Ozark), 1700 Pacific Ave., suite 2100, Dallas, Texas 75201, filed in Docket No. CP94-9-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon certain lateral facilities under Ozark's blanket certificate issued in Docket No. CP85-134-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Ozark proposes to abandon 15.5 miles of lateral pipeline and related facilities by sale to Arkansas Oklahoma Gas Corporation. The lateral line is known as the Stephens-McBride lateral and is located in Sebastian County, Arkansas. Ozark asserts that it will maintain an interconnection with this lateral and that existing and future production along the lateral will have access to Ozark's transportation facilities.

Comment date: November 22, 1993, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93-25157 Filed 10-13-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD92-06705T Wyoming-28]

State of Wyoming; NGPA Amended Notice of Determination by Jurisdictional Agency Designating Tight Formation

October 7, 1993.

Take notice that on September 20, 1993, the Wyoming Oil and Gas Conservation Commission (Wyoming) amended its notice of determination that was filed in the above-referenced proceedings on May 20, 1992 pursuant to § 271.703(c)(3) of the Commission's regulations. The May 20, 1992 notice determined that the Dakota Formation underlying portions of Sweetwater, Lincoln and Uinta Counties, Wyoming, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978.

The amended notice of determination reduces the geographical area recommended for tight formation designation to approximately 440,400 acres, as described on the attached appendix.

The notice of determination also contains Wyoming's and the Bureau of Land Management's findings that the referenced portion of the Dakota Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

Appendix

Sweetwater, Lincoln and Uinta Counties, Wyoming

Township 23 North, Range 113 West, 6th P.M.

All of Sections 1-36

Township 23 North, Range 112 West, 6th P.M.

All of Sections 1-28, N/2; N/2 of the S/2; and the SE/4 of the SE/4 of Section 29, N/2; SW/4; N/2 of the SE/4; and the SW/4 of the SE/4 of Section 30, W/2; SE/4; and the W/2 of the NE/4 of Section 31,

S/2 of the SW/4; E/2 of the NE/4; and the SE/4 of Section 32
All of Sections 33–36
Township 23 North, Range 111 West, 6th P.M.
All of Sections 1–36
Township 23 North, Range 110 West, 6th P.M.
All of Sections 4–9, 16–21, and 28–23
Township 22 North, Range 113 and 112 West, 6th P.M.
All of Sections 1–36
Township 22 North, Range 111 West, 6th P.M.
All of Sections 1–24 and 26–34
Township 22 North, Range 110 West, 6th P.M.
All of Sections 4–9, 16–21, 28–29, and 31–33
Township 21 North, Range 113 West, 6th P.M.
All of Sections 1–36
Township 21 North, Range 112 West, 6th P.M.
All of Sections 1–35
Township 21 North, Range 111 West, 6th P.M.
All of Sections 2–30 and 32–36
Township 21 North, Range 110 West, 6th P.M.
All of Sections 4–9, 16–21, and 28–33
Township 20 North, Range 114 West, 6th P.M.
All of Sections 1–4, 9–16, 21–28 and 33–36
Township 20 North, Range 113 West, 6th P.M.
All of Sections 1–36
Township 20 North, Range 112 West, 6th P.M.
All of Sections 1–2, 5–8, 11–14, 18–19, and 30–31
Township 20 North, Range 111 West, 6th P.M.
All of Sections 1–36
Township 19 North, Range 114 West, 6th P.M.
All of Sections 1–4, 9–16, 21-28, and 33–36
Township 19 North, Range 113 West, 6th P.M.
All of Sections 1–36
Township 19 North, Range 112 West, 6th P.M.
All of Sections 1, 12–13, 19, 24, 25 and 30
Township 19 North, Range 111 West, 6th P.M.
All of Sections 1–36
Township 18 North, Range 114 West, 6th P.M.
All of Sections 1–4, 9–16, 21–28, and 33–36
Township 18 North, Range 113 West, 6th P.M.
All of Sections 1–23 and 25–36
Township 18 North, Range 112 West, 6th P.M.
All of Sections 6–7, 18, 24–25, 30–31, 34–36
Township 18 North, Range 111 West, 6th P.M.
All of Sections 1–36.

[FR Doc. 93–25158 Filed 10–13–93; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. CP72–144–000]

ANR Pipeline Co.; Cancellation of Rate Schedule

October 7, 1993.

Take notice that on October 4, 1993, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2, the following tariff sheets to with a proposed effective date of November 1, 1993.

First Revised Sheet No. 206 Superseding Original Sheet Nos. 206 through 209

ANR states that the purpose of this filing is to cancel Rate Schedule X–23 which represents an exchange service among ANR (formerly Michigan Wisconsin Pipe Line Company), Florida Gas Transmission Company (Florida Gas) and Texas Eastern Transmission Corporation (Texas Eastern). The service expired by its own terms on December 1, 1972.

ANR respectfully requests that the revised tariff sheets be accepted for filing and made effective November 1, 1993, or the date assigned by the Federal Energy Regulatory Commission, whichever is later.

ANR states that it has provided Florida Gas and Texas Eastern with a copy of the filing.

Any person desiring to protest said filing should file a protest with the Federal Regulatory Commission, 825 North Capitol St., NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before October 15, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–25164 Filed 10–13–93; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. CP89–661–025]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

October 7, 1993.

Take notice that on October 1, 1993, Algonquin Gas Transmission Company (Algonquin) tendered for filing a Service Agreement between Algonquin and New England Power (NEP) Rate Schedule constituting Rate Schedule X–38.

Algonquin states that the Commission issued a certificate of public convenience and necessity, authorizing the new firm transportation service by order of October 9, 1991, as amended May 20, 1992, in Docket Nos. CP89–661–000 et al. Pursuant to § 154.51 of the Commission's regulations, Algonquin requests waiver of the notice requirements of § 154.22 to the extent necessary for the service agreements to become effective as of November 1, 1993, the date such service is scheduled to be made available to NEP.

Algonquin states that copies of the filing are being mailed to Algonquin's affected customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before October 15, 1993. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–25156 Filed 10–13–93; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. CP92–151–002]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

October 7, 1993.

Take notice that on October 1, 1993 Algonquin Gas Transmission Company (Algonquin) tendered for filing a Service Agreement between Algonquin and Southern Connecticut Gas Company (Southern Connecticut) constituting Rate Schedule X–39.

Algonquin states that the Commission issued a certificate of public convenience and necessity, authorizing the new firm transportation service by order of August 4, 1992 in Docket No. CP92–151–000. Pursuant to § 154.51 of the Commission's regulations, Algonquin requests waiver of the notice requirements of § 154.22 to the extent necessary for the service agreement to become effective as of November 1, 1993 the date such service is scheduled to be made available to Southern Connecticut.

Algonquin states that copies of the filing are being mailed to South Connecticut and the affected state commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before October 15, 1993. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–25161 Filed 10–13–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–99–002]

Colorado Interstate Gas Co.; Motion To Place Rates Into Effect

October 7, 1993.

Take notice that on October 1, 1993, Colorado Interstate Gas Company (CIG) filed a Motion to Place Rates Into Effect. The Motion is accompanied by revised tariff sheets incorporating the new rates. On April 30, 1993, the Commission had accepted CIG's rate filing, and suspended its effectiveness until October 1, 1993. CIG's Motion places those higher rates into effect subject to refund.

CIG states that copies of this filing have been served on CIG's jurisdictional customers and public bodies, and the filing is available for public inspection at CIG's offices in Colorado Springs, Colorado.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before October 15, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–25170 Filed 10–13–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–1–16–002]

National Fuel Gas Supply Corp.; Proposed Changes in FERC Gas Tariff

October 7, 1993.

Take notice that on October 5, 1993, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Sub Second Revised Sheet No. 222, with a proposed effective date of October 1, 1993.

National states that the foregoing tariff sheet is being filed in compliance with the Commission's order issued September 30, 1993, in Docket No. TM94–1–16–000 et al. Such order directed National to correct Texas Gas items 10 and 12 on Sheet No. 222 to reflect the proper amounts.

National states that copies of National's filing were served on National's jurisdictional customers and on the interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20436, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before October 15, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–25172 Filed 10–13–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–3–000]

Northern Natural Gas Co.; Request Under Blanket Authorization

October 7, 1993.

Take notice that on October 1, 1993, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124 filed in Docket No. CP94–3–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to upgrade and existing delivery point to Peoples Natural Gas Company (Peoples), located in Goodhue County, Minnesota, under Northern's blanket certificate issued in Docket No. CP82–401–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern states that the Cannon Falls #1 town border station (TBS) would be upgraded to accommodate increased natural gas deliveries to Peoples. The increased peak day and annual volumes, it said, would be 868 MMBtu and 150,164 MMBtu, respectively.

Northern indicates that it has sufficient capacity to accommodate the changes proposed without detriment or disadvantage to Northern's other customers and that the increase would not exceed the total volumes authorized for Peoples.

Upgrading the delivery point, it is said, would cost $22,000 and Peoples would pay for the installation of the facilities.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–25163 Filed 10–13–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–74–010]

South Georgia Natural Gas Co.; Proposed Changes to FERC Gas Tariff

October 7, 1993.

Take notice that on October 1, 1993, South Georgia Natural Gas Company (South Georgia) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised sheets:

Eighth Revised Sheet No. 4A
Eighth Revised Sheet No. 4B

South Georgia states that the proposed tariff sheets are being filed with a proposed effective date of October 1, 1993. These tariff sheets implement the prerestructuring period interim rates provided for in the Stipulation and Agreement filed in South Georgia's Docket No. RP92–74–000 that was approved by the Federal Energy

Regulatory Commission's Order in Docket No. RP92–74–007, et al., issued August 23, 1993. These interim rates will be in effect until November 1, 1993, when South Georgia's restructuring rates approved in the August 23 Order will become effective.

South Georgia states that copies of South Georgia's filing will be served upon all of South Georgia's customers, interested state commissions and interested parties.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (§ 385.211). All such protests should be filed on or before October 15, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–25167 Filed 10–13–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–203–034]

Tennessee Gas Pipeline Co.; Tariff Filing

October 7, 1993.

Take notice that on September 30, 1993, Tennessee Gas Pipeline Company (Tennessee) tendered for filing ten copies of the following tariff sheets to be effective November 1, 1993:

Primary Sheets

Fifth Revised Volume No. 1
- First Revised Sheet No. 26
- Original Sheet No. 26A
- First Revised Sheet Nos. 176–181
- First Revised Sheet Nos. 182–191

Original Volume No. 2
- Sixteenth Revise Sheet No. 9
- Eighth Revised Sheet No. 9A

Alternate Sheets

Fifth Revised Volume No. 1
- Alternate First Revised Sheet No. 177
- Alternate First Revised Sheet No. 180
- Alternate First Revised Sheet No. 181

Original Volume No. 2
- Alternate Sixteenth Revised Sheet No. 9
- Alternate Eighth Revised Sheet No. 9A

Tennessee states that the purpose of this filing is to implement the settlement approved by the Commission in its order dated April 21, 1993, in the above-referenced dockets. In addition, this filing implements the Rate Schedule NET transportation service to New England Power Company effective November 1, 1993

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before October 15, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–25169 Filed 10–13–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP92–184–004]

Texas Eastern Transmission Corp.; Amendment and Motion To Vacate

October 7, 1993.

Take notice that on October 1, 1993, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056–5310, filed in Docket No. CP92–184–003 pursuant to section 7(c) to amend and to partially vacate the Commission's order issued July 16, 1993, in Docket Nos. CP92–184–000 *et al.* in order to (1) revise initial rates approved in the July 16, 1993, order and (2) to reduce the scope of authorized facilities to reflect reduced service levels for underlying part 284 transportation, all as more fully set forth in the application, which is on file and open to public inspection.

It is indicated that on July 16, 1993, the Commission issued an order approving construction and operation of incremental facilities on Texas Eastern's mainline system which would permit Texas Eastern to render part 284 transportation service for specific shippers. Texas Eastern explains that the facilities and associated services were designated as the Integrated Transportation Project (ITP).

Texas Eastern states that it has been advised by the ITP shippers that current market conditions have necessitated revisions in the level of services required for the year 1994. As a result, the ITP shippers' aggregate service requirements for 1994 are now 181,164 Dekatherms per day (Dthd) rather than the 201,000 Dthd upon which the authorized facilities were based. To recognize this change, Texas Eastern requests authority to partially vacate the July 16, 1993, order to reduce the facilities authorized to be constructed to provide Phase I ITP service to correspond with the ITP shippers aggregate service levels. Texas Eastern asserts that partial vacatur of some of the facilities is appropriate as Texas Eastern no longer has service requirements for a portion of the Phase I facilities.

As a result of the reduced level of facilities necessary to render aggregate ITP service levels and in light of current cost factors, primarily the federal corporate income tax rate of 35%, Texas Eastern also proposes to amend the July 16, 1993 certificate to modify the initial rate. Texas Eastern states that it has executed service agreements with UGI Utilities, Inc. (UGI) and Public Service Electric and Gas Company (PSE&G) under its open access Rate Schedule FT–1 with a primary term of twenty years for the service levels set forth below. Texas Eastern has also tendered similar service agreements to Delmarva Power and Light Company (Delmarva), Philadelphia Gas Works (PGW), and Yankee Gas Services Company (Yankee).

ITP shipper	11/01/93 Dthd volumes	11/01/94 Dthd volumes
UGI	20,000	10,000
PSE&G	13,000	97,000
Delmarva	0	20,000
PGW	0	6,000
Yankee	0	15,000
Total	33,000	148,164

Texas Eastern asserts that because the rates authorized for ITP service are authorized on an incremental basis, all of the costs associated with the service will be borne by the recipients of the service. It is indicated that provision of this service will, therefore, have no effect on the rates or services of Texas Eastern's other customers.

Any person desiring to be heard or to make any protest with reference to said amendment and motion to vacate should on or before October 28, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to

participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Any person who has heretofore filed need not file again.

Lois D. Cashell,

Secretary.

[FR Doc. 93–25159 Filed 10–13–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP92–165–003]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

October 7, 1993.

Take notice that on October 1, 1993, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets, with a proposed effective date of November 1, 1993:

Original Sheet No. 34B
Fourth Revised Sheet No. 211
Second Revised Sheet No. 212
Second Revised Sheet No. 431
Fourth Revised Sheet No. 463
Third Revised Sheet No. 631
Fourth Revised Sheet No. 633

Texas Eastern states that the above tariff sheets are being filed pursuant to and in compliance with the Commission's March 3, 1993 "Order Issuing Certificate" in Docket Nos. CP92–142–000 and CP92–165–000 ("March 3 Order") and the July 16, 1993 "Order Granting Rehearing, In Part, And Denying Rehearing, In Part" in Docket Nos. CP92–142–001 and CP92–165–001 ("July 16 Order"). These sheets reflect the implementation as of November 1, 1993 of new firm transportation service to CNG Transmission Corporation (CNG), which service is rendered by means of new facilities authorized by the March 3 Order and July 16 Order. Texas Eastern requests the Commission issue an order accepting such tariff sheets prior to November 1, 1993.

Texas Eastern is also proposing other limited revisions to its FERC Gas Tariff, Sixth Revised Volume No. 1, is necessary in order to incorporate the appropriate reference to Original Sheet No. 34B. Second Revised Sheet No. 431, Fourth Revised Sheet No. 463, Third Revised Sheet No. 631 and Fourth Revised Sheet No. 633 revise Sections 1, 3.14, 15.4 and 15.5 of the General Terms and Conditions, respectively.

Texas Eastern states that copies of this filing have been served on Texas Eastern's firm customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before October 15, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–25160 Filed 10–13–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP92–184–003]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

October 7, 1993.

Take notice that on October 1, 1993, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets, with a proposed effective date of November 1, 1993.

Original Sheet No. 34A
Third Revised Sheet No. 211
First Revised Sheet No. 212
Original Sheet No. 212A
First Revised Sheet No. 431
Third Revised Sheet No. 463
Second Revised Sheet No. 625
Original Sheet No. 625A
Second Revised Sheet No. 627
Original Sheet No. 627A
First Revised Sheet No. 628
First Revised Sheet No. 628A
Second Revised Sheet No. 631
Third Revised Sheet No. 633

Texas Eastern states that the above tariff sheets are filed pursuant to and in compliance with the Commission's July 16, 1993, "Order Granting Rehearing in Part, Denying Rehearing in Part, and Issuing Certificate" in Docket Nos. CP92–184 and CP92–185 ("July 16 Order"). These tariff sheets reflect the implementation as of November 1, 1993, of new firm transportation service to certain ITP Customers which is rendered by means of new facilities authorized by the July 16 Order. Texas Eastern requests the Commission issue an order accepting such tariff sheets prior to November 1, 1993.

Texas Eastern states that copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before October 15, 1993.

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–25162 Filed 10–13–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–18–000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

October 8, 1993.

Take notice that on October 6, 1993, Texas Eastern Transmission Corporation (Texas Eastern) submitted for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets:

First Revised Sheet No. 502
Original Sheet No. 502A

Texas Eastern states that these tariff sheets reflect the addition of a new operational flow order as set forth in Section 4.3(J). The OFO contemplated by Section 4.3(J) is one which Texas Eastern states its experience under Order No. 636 since implementation on June 1, 1993, has demonstrated to be critical to the provision of firm service to Texas Eastern's customers as contemplated by Order No. 636. Contrary to its expectations, Texas Eastern states its customers are not injecting gas into storage in quantities which will ensure continuity of reliable storage and no-notice service throughout the winter heating season. In light of the impending winter heating season, Texas Eastern proposes that Section 4.3(J) be made effective as of October 20, 1993. To that end, Texas Eastern requests a shortened comment period of October 13, 1993.

Texas Eastern requests that the Commission waive all necessary rules and regulations to permit the tariff sheets listed on herein to become effective on October 20, 1993. Texas Eastern requests a shortened comment period of October 13, 1993 in order that it may implement, if necessary, the OFO on October 20, 1993. To enable storage customers to comment within the shortened time period, Texas Eastern is faxing this filing to all firm storage customers under Rate Schedules SS, SS–1, FSS–1, and X–28.

Texas Eastern states that copies of the filing were also served on firm customers of Texas Eastern and interested state commissions. A copy of the filing has also been served on all parties in Docket No. RS92–11.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 13, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–25204 Filed 10–13–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–109–007]

Williams Natural Gas Co.; Compliance Filing

October 7, 1993.

Take notice that on October 1, 1993, Williams Natural Gas Company (WNG), tendered for filing as part of its FERC Gas Tariff, the following revised tariff sheets, with a proposed effective date of November 1, 1993:

Second Revised Volume No. 1

First Revised Sheet Nos. 2, 5, 6, 6A, 200, 204, 205, 208, 280–285

Original Volume No. 2

Sixth Revised Sheet No. 144, Original Sheet No. 335A

WNG states that such revised sheets reflect the same general rate increase (less the cost of facilities not projected to be in service) and tariff changes originally filed in this docket, and are submitted pursuant to ordering paragraphs (A), (B) and (D) of the Commission's May 28, 1993, suspension order in this docket, to become effective, subject to refund, on November 1, 1993, in lieu of the tariff sheets as originally filed.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before October 15, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–25168 Filed 10–13–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–109–008]

Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

October 7, 1993.

Take notice that on October 4, 1993, Williams Natural Gas Company (WNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Substitute First Revised Sheet No. 6, with proposed effective date of November 1, 1993.

WNG states that it submitted tariff changes on October 1, 1993, pursuant to ordering paragraphs (A), (B), and (D) of the Commission's May 28, 1993 suspension order in the above referenced docket. First Revised Sheet No. 6, submitted with that filing, inadvertently reflected the FTS–P Commodity rate of $.0184 for the FTS–M Commodity rate of $.0137. The instant filing is being made to correct this error.

WNG states that a copy of its filing was served on all participants listed on the Commission's official service list in this docket, as well as on all jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 15, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–25171 Filed 10–13–93; 8:45 am]

BILLING CODE 6717–01–M

Office of Energy Research

Energy Research Financial Assistance 94–02; Medical Application Program

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Health and Environmental Research (OHER) of the Office of Energy Research (ER), U.S. Department of Energy announces its interest in receiving applications for conducting a Project Definition Study for the National Biomedical Tracer Facility (NBTF).

The NBTF is a large proton accelerator, with supporting facilities, to be utilized for the production, processing, and distribution of radioisotopes used in medical and industrial applications. The NBTF may be either a new facility or a modification to an existing facility. The mission of the NBTF is to: (1) Produce radionuclides for the nuclear medicine community; (2) conduct research in radioisotope production; and, (3) provide opportunities for education and training in radioisotope production.

The goals of the Project Definition Study will be to: (1) Further refine the design, construction schedule, and cost estimates associated with the NBTF; (2) examine the radioactive waste management, disposal, and other environmental issues associated with the NBTF; (3) develop a business plan for commercial operation of the NBTF over its expected lifetime (including reimbursement to the Government for its construction); and (4) assist DOE in deciding whether or not construction and operation of the NBTF would satisfy current and future radioisotope needs for medical and industrial applications and whether or not such a facility could be operated by the private sector. It is anticipated that DOE will approve up to five applications for funding project definition studies at approximately $300,000 each, contingent upon availability of Fiscal Year 1994 appropriated funds.

DATES: Formal applications submitted in response to this notice must be received by 4:30 p.m., E.S.T., February 1, 1994, in order to undergo a merit review, pursuant to 10 CFR part 600 and part 605, in March 1994 and to permit timely consideration for award in Fiscal Year 1994.

ADDRESSES: Formal applications referencing Program Notice 94–02 should be forwarded to: U.S. Department of Energy, Office of Energy Research, Acquisition and Assistance

Management Division, ER–64, room F–220, Washington, DC 20585. Attn: Program Notice 94–02. The following address must be used when submitting applications by U.S. Postal Service Express mail, any commercial mail delivery service, or when hand carried by the applicant: U.S. Department of Energy, Office of Energy Research, Acquisition and Assistance Management Division, ER–64, 19901 Germantown Road, Germantown, Maryland 20874.

FOR FURTHER INFORMATION CONTACT: Dr. Robert Wood, Office of Health and Environmental Research, ER–73, U.S. Department of Energy, GTN, Washington, DC 20585. Telephone: (301) 903–3213. Potential applicants are required to contact Dr. Wood for supplementary information by November 15, 1993.

SUPPLEMENTARY INFORMATION: Following the award, each recipient will have up to 9 months from the date of the award to complete the NBTF Project Definition Study and to provide a report to DOE. On the basis of the information contained in the studies, an independent National Academy of Sciences evaluation of the need for the NBTF, and DOE's own analyses of all relevant considerations, the Department will decide whether construction and operation of the NBTF is required to satisfy the current and future radioisotope needs for medical and industrial applications. If the data supports the need for an NBTF, as well as the fact that such a facility can be operated economically by the private sector, additional Congressional funding will be sought.

The project description portion of an application must not exceed twenty (20) double-spaced pages.

In completing the project description portion of the application, each applicant must address in detail the following categories:

- Experience in design, construction, and operation of a large proton accelerator;
- Experience with large scale production of radioisotopes including target chemistry, radioisotope processing, hot lab operation, waste disposal operations, or evidence that expertise can be obtained;
- Qualifications for establishing a radioisotope distribution network, packaging, and transportation;
- Experience in conducting research on radioisotope targetry, separations, purification, and in the development of improved production technology;
- Familiarity with Federal, State, and local regulations required for siting, construction, and operation of the facility;
- Proven capability to provide an educational program in radiochemistry and a research program in nuclear medicine. Demonstrated capability in nuclear medicine research and in education and training, or evidence that such capabilities can be obtained. If a broad research and education component to the NBTF is recommended by the Institute of Medicine, such information will be requested later in the competition process.

More information about the development and submission of applications, eligibility, limitations, evaluation, selection process, and other policies and procedures may be found in 10 CFR part 605, the Energy Research Merit Review System (56 FR 10244) and the Application Guide for the Office of Energy Research Financial Assistance Program. The application guide is available from the Office of Health and Environmental Research, ER–73, Department of Energy, GTN, Washington, DC 20585. Telephone requests may be made by calling (301) 903–3213.

The Catalog of Federal Domestic Assistance Number for this program is 81.049.

Issued in Washington, DC, on October 8, 1993.

James F. Decker,

Acting Director, Office of Energy Research.

[FR Doc. 93–25240 Filed 10–13–93; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4788–9]

Proposed Settlement Agreement, Judicial Review of the National Emissions for Radon Emissions From Phosphogypsum Stacks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement agreement; opportunity for public comment.

SUMMARY: EPA hereby gives notice of a proposed settlement agreement in litigation involving review of a final rule amending the National Emission Standard for Hazardous Air Pollutants ("NESHAP") for Radon Emissions from Phosphogypsum Stacks, 40 CFR part 61, subpart R (57 FR 23305, June 3, 1992). EPA is providing an opportunity for public comment on the proposed settlement agreement pursuant to section 113(g) of the Clean Air Act.

DATES: Written comments on the proposed consent decree must be received by November 15, 1993.

ADDRESSES: Written comments should be sent to Timothy D. Backstrom, Air and Radiation Division (LE–132A), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Copies of the proposed settlement agreement may be obtained from Shermanita Isler-Simmons at the same address (telephone 202–260–7606).

FOR FURTHER INFORMATION CONTACT: Timothy D. Backstrom, Senior Attorney, Air and Radiation Division, EPA Office of General Counsel, telephone 202–260–7517.

SUPPLEMENTARY INFORMATION: In *The Fertilizer Institute* v. *Environmental Protection Agency*, No. 92–1320 (D.C. Cir.), and *ManaSota-88* v. *Browner*, No. 92–1330 (D.C. Cir.), the petitioners sought judicial review of a final rule amending the NESHAP for Radon Emissions from Phosphogypsum Stacks, 40 CFR part 61 subpart R, issued by EPA on May 29, 1992 (57 FR 23305, June 3, 1992). The Fertilizer Institute ("TFI") also filed with the Administrator on August 3, 1992, a petition to reconsider certain aspects of the final rule amending the phosphogypsum NESHAP.

On July 2, 1993, EPA and petitioner The Fertilizer Institute ("TFI") in No. 92–1320 lodged with the U.S. Court of Appeals for the District of Columbia Circuit a proposed settlement agreement in that case. Based on that agreement, EPA and TFI jointly moved the Court to stay further proceedings in both No. 92–1320 and the consolidated case No. 92–1330 (the motion was supported by ManaSota–88, the petitioner in 92–1330). The Court granted the unopposed joint motion to stay the proceedings on July 9, 1993.

Under the proposed settlement agreement, EPA agrees that it will make a final determination as to whether it will grant or deny TFI's August 3, 1992, petition for reconsideration by January 31, 1994. If EPA fails to grant TFI's petition for reconsideration by January 31, 1994, TFI may move the Court to dissolve the stay of the proceedings in No. 92–1320. If EPA denies TFI's petition for reconsideration and TFI seeks judicial review of that denial, TFI agrees that it will move to consolidate such review with any remaining proceedings in No. 92–1320 and No. 92–1330.

Final approval and entry of the proposed settlement agreement are subject to section 113(g) of the Clean Air Act, which requires notice and

opportunity for comment on certain consent orders and settlement agreements to which the United States is a party. Accordingly, for a period of thirty (30) days following publication of this notice, EPA will receive written comments on the proposed settlement agreement. Under section 113(g), EPA or the Department of Justice may withdraw or withhold consent to the agreement if the comments disclose facts or circumstances indicating that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

Dated: October 1, 1993.

Gerald H. Yamada,

Acting General Counsel.

[FR Doc. 93–25227 Filed 10–13–93; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4788–7]

Solicitation for Research Grant Proposal—1994 Exploratory Research Grants

AGENCY: Environmental Protection Agency.

ACTION: General research grant solicitation.

SUMMARY: The U.S. Environmental Protection Agency (EPA), through its Office of Exploratory Research (OER) is seeking grant applications to conduct exploratory environmental research in biology, chemistry, physics, engineering, or socioeconomics. Investigations are sought in these research disciplines which focus on any aspect of pollution identification, characterization, abatement or control, or address the effects of pollutants on the environment. In addition, research is sought on environmental policy and its social and economic consequences.

This solicitation only concerns the research grants administered by EPA's Office of Exploratory Research, and outlines procedures for receiving grant assistance from that office.

The Office of Exploratory Research will not solicit for targeted grants through Requests for Applications in fiscal year 1994.

The main purpose of OER's Research Grants Program is to support advanced research in the environmental sciences, engineering and socioeconomics at U.S. academic institutions. The principal products sought are high quality scientific and technical articles in refereed technical journals.

The Application

Proposed projects must be investigative research which advances the state of knowledge in the environmental sciences and technology. Applications will not be accepted for routine monitoring, state-of-the-art or market surveys, literature reviews, development or commercialization of proven concepts, or the preparation of materials and documents, including process designs or instruction manuals.

Application forms, instructions, and other pertinent information for assistance programs are available in the EPA Research Grants Application/Information Kit. Interested investigators should review the materials in this kit before preparing an application for assistance. The kits are available from: U.S. Environmental Protection Agency, Grants Operations Branch (3903F), 401 M Street SW., Washington, DC 20460, (202) 260–9266.

Each application will consist of the application for federal assistance form (Standard Forms 424 and 424A) and separate sheets providing the budget breakdown for each year of the project, resumes for the principal investigator and co-workers, abstract of the proposed project, and project narrative. All certification forms (drug-free workplace, etc.) must be signed and included with the application.

Application Submission/Closing Dates

Due to a heavy burden of pending applications in OER, the only closing date in fiscal year 1994 will be June 1, 1994.

To be considered, the original and eight copies of the application must be received by EPA's Grants Operations Branch no later than close of business on the closing date. Fully developed research grant applications, prepared in accordance with instructions in the Application for Federal Assistance Form SF–424, should be sent to the Grants Operations Branch. Informal, incomplete or unsigned proposals will not be considered. The application must be sent to: U.S. Environmental Protection Agency, Grants Operations Branch (3903F), 401 M Street SW., Washington, DC 20460.

For overnight express mail, the address is: U.S. Environmental Protection Agency, Grants Operation Branch, Fairchild Building, room 801, 499 South Capitol Street SW., Washington, DC 20460, (202) 260–9266.

Special Instructions

The following special instructions apply to all applicants responding to this solicitation:

- Applications must be unbound and clipped or stapled. The 424 form must be the first page of the application. Budget information should immediately follow the 424 form. All certification forms should be placed at the end of the application.
- Applications must be identified by printing "OER–94" in the upper right hand corner or block 10 of Application Form SF–424. The absence of this identifier from an application may lead to delayed processing or misassignment of the application.
- A one-page abstract must be included with the application.

Well written abstracts contribute significantly to a proposal's chances of being selected for support.

- The project narrative section of the application must not exceed twenty-five 8½ x 11 inch, consecutively numbered pages of standard type (12 point, or 10 characters per inch), including tables, graphs and figures. For purposes of this limitation, the "project narrative section" of the application consists of the following items in the Application/Information/Kit:

(1) Description of Project.
(2) Objectives.
(3) Results or Benefits expected.
(4) Approach.
(5) General Project Information.
(6) Quality Assurance (If needed).

Attachments, appendices, and reference lists for the narrative section may be included but are within the 25 page limitation. Appendices will not be considered an integral part of the narrative.

Items not included under the 25 page limitation are the SF–424 and other forms, budgets, resumes, and the abstract.

Resumes must not exceed two consecutively numbered pages for each principal investigator and should focus on education, positions held and most recent or related publications.

Applications not meeting these requirements will be returned to the applicant without review.

Guidelines and Limitations

The typical grant issued by OER is for a total cost of approximately $100,000 per year for two or three years. All budget costs and justifications, particularly requests for equipment, will be carefully reviewed. The maximum project period is three years; shorter periods are encouraged, as are modest funding requests. Subcontracts for research to be conducted under the grant should not exceed approximately 40% of the total direct cost of the grant for each year in which the subcontract is awarded.

Eligibility

The following eligibility requirements apply to both the general solicitation and targeted announcements (RFA's).

Academic and nonprofit institutions located in the U.S., and state or local governments are eligible under all existing authorizations. Profit-making firms are eligible only under certain laws, and then under restrictive conditions, including the absence of any profit from the project.

Potential applicants who are uncertain of their eligibility should study the restrictive language of the law governing the area of research interest or contact EPA's Grants Operations Branch at (202) 260–9266.

Federal agencies and federal employees are not eligible to participate in this program.

Review and Selection

All grant applications are initially reviewed by the Agency to determine their legal and administrative acceptability.

Acceptable applications are then reviewed by an appropriate technical review group. This review is designed to evaluate and rank each proposal according to its scientific merit and utility as a basis for recommending Agency approval or disapproval. Each review group is composed primarily of non-EPA scientists, engineers and economists who are experts in their respective disciplines. All reviewers are proficient in the technical areas that they are reviewing. The reviewers use the following criteria in their reviews:

- Quality of the research plan (including theoretical and/or experimental design, originality, and creativity).
- Qualifications of the principal investigator and staff including knowledge of relevant subject areas.
- Utility of the research, including potential contribution to scientific knowledge in the environmental area.
- Availability and adequacy of facilities and equipment.
- Budgetary justification—in particular justification and cost requests for equipment will be carefully reviewed.

A summary statement of the scientific review and recommendation of the panel is provided to each applicant.

Funding decisions are the sole responsibility of EPA. Grants are selected on the basis of technical merit, program balance and budget.

Proprietary Information

By submitting an application in response to this solicitation, the applicant grants EPA permission to share the application with technical reviewers both within and outside of the Agency.

Applications containing proprietary or other types of confidential information will be immediately returned to the applicant without review.

Funding Mechanism

For all general and targeted grants, the funding mechanism will consist of a grant agreement between EPA and the recipient.

Federal grant regulation 40 CFR 30.307 requires that all recipients provide a minimum of 5% of the total project cost, which may not be taken from Federal sources. OER will not support a request for a deviation from this requirement for any grant supported by its Research Grants Program.

Contacts

For additional general information on the grants program, applicants may call (202) 260–7474. Applicants with additional questions may contact the appropriate individuals identified in Table I. Their address is: U.S. Environmental Protection Agency, Office of Exploratory Research (8703), 401 M Street, SW., Washington, DC 20460.

TABLE I.—CONTACTS FOR THE GENERAL SOLICITATION

Discipline	Contact	Phone number (Area code 202)
Biology	Clyde Bishop	260–5727
Chem/Physics of Air.	Deran Pashayan.	260–2606
Chem/Physics of Water/Soil.	Louis Swaby	260–7453
Engineering	Louis Swaby	260–7453
Socioeconomics	Robert Papetti	260–7473

Minority Institution Assistance

Preapplication assistance is available upon request for potential investigators representing institutions identified by the Secretary, Department of Education, as Historically Black Colleges and Universities (HBCUs) or the Hispanic Association of Colleges and Universities (HACUs).

The application Form SF–424, instructions, subject areas, and review procedures are the same as those for the general grants program.

For further information concerning Minority assistance, contact: Virginia Broadway, U.S. Environmental Protection Agency (8701), 401 M Street, SW., Washington, DC 20460. (202) 260–7664.

Dated: October 5, 1993.

Robert A. Papetti,

Director, Research Grants Staff, Office of Exploratory Research.

[FR Doc. 93–25228 Filed 10–13–93; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4789–1]

Proposed NPDES New Source General Permit for the Western Portion of the Outer Continental Shelf of the Gulf of Mexico (GMG390000)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed NPDES general permit and availability of supplemental draft environmental impact statement.

SUMMARY: EPA Region 6 today proposes to issue a national pollutant discharge elimination system (NPDES) permit for the western portion of the outer continental shelf (OCS) of the Gulf of Mexico. If issued as proposed, the permit will regulate new sources in the Offshore Subcategory of the Oil and Gas Extraction Point Source Category located in and discharging pollutants to federal waters in lease blocks located seaward of the outer boundary of the territorial seas off Louisiana and Texas. The effluent limitations of the proposed permit are based on new source performance standards (NSPS), ocean discharge criteria, and, for waste streams not subject to the NSPS, EPA's best professional judgment (BPJ) on the best available control technology economically achievable (BAT) and best conventional technology (BCT). EPA has prepared a supplemental draft environmental impact statement (SDEIS) on proposed issuance of this permit. EPA Region 6 solicits comments on its proposal and the SDEIS.

DATES: Written comments must be received by November 29, 1993. The Lafayette, Louisiana public meeting and hearing will be held starting at 6 p.m. on November 16, 1993. The Houston, Texas public meeting and hearing will be held starting at 6 p.m. on November 17, 1993.

ADDRESSES: Written comments should be sent to:

Regional Administrator, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733.

Verbal comments may be submitted at public meetings/hearings EPA Region 6 will hold at:

Holiday Inn Holidome, 2032 NE., Evangeline Thruway, Lafayette, Louisiana; and

Holiday Inn near Greenway Plaza, 2712 Southwest Freeway (US 59) Houston, Texas.

FOR FURTHER INFORMATION, CONTACT: Ms. Ellen Caldwell (6W–PI), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, Telephone (214) 655–7513. A copy of the draft permit, an explanatory fact sheet and/or the SDEIS may be obtained from Ms. Caldwell. In addition, the current administrative record on the proposal is available for examination at the Region's Dallas offices during normal working hours after providing Ms. Caldwell 24 hours advance notice. If only minor changes to the SDEIS are necessary, the final supplemental environmental impact statement (FSEIS) will incorporate the SDEIS by reference and include: (1) A revised and updated summary; (2) revisions and additions to the SDEIS; (3) EPA's responses to comments; and (4) EPA's preferred alternative. Interested parties should thus retain a copy of the SDEIS for possible use in combination with the FSEIS.

SUPPLEMENTARY INFORMATION: Pursuant to section 301(a) of the Clean Water Act (CWA), 33 U.S.C. 1311(a), discharges of pollutants to waters of the United States, the territorial seas, and the contiguous zone are unlawful, except as authorized by an NPDES permit issued by EPA (or an EPA-approved state) in accordance with CWA section 402, 33 U.S.C. 1342. Although EPA frequently authorizes such discharges through NPDES permits issued to individual facilities, it may, as here, choose to authorize them through promulgation of a general permit. The Agency's use of general NPDES permits is described at 40 CFR 122.28.

NPDES permits typically include technology-based effluent limitations regulating the quality of discharged pollutants and conditions, e.g., requiring recordkeeping and reporting, necessary for enforcement of the permit. Those limitations and conditions are derived from EPA promulgated effluent limitations guidelines including NSPS, and, prior to promulgation of such guidelines, the best professional judgment (BPJ) of the Agency's technical staff. Permits also contain limitations assuring compliance with state water quality standards or, as in this case, to avoid degradation of the marine environment.

At 57 FR 54642 (November 19, 1992), EPA Region 6 issued NPDES general permit GMG290000 authorizing discharges from existing sources in the Offshore Subcategory of the Oil and Gas Extraction Point Source Category to the OCS of the Western Gulf. Because EPA had then published no BAT or BCT effluent limitations guidelines, the technology-based limits of that permit were established through BPJ. Subsequently, the Agency promulgated BAT guidelines, BCT guidelines, and NSPS for the Offshore Subcategory at 58 FR 12504 (January 15, 1993). On August 4, 1993, EPA Region 6 proposed modifications to NPDES permit GMG290000 at 58 FR 41474, in part to render it consistent with those new BAT and BCT guidelines. Today, the Region proposes a separate general permit regulating discharges from "new sources" in the Offshore Subcategory.

The OCS of the Western Gulf consists of those federal waters seaward of the outer boundary of the territorial seas (i.e., three mile limit) off Louisiana and Texas. The inner boundary of the OCS area is based on CWA, not property ownership. Hence, some oil and gas operators with leases from the State of Texas, which claims ownership of the sea bottom in part of the OCS area, will be required to obtain coverage under the new source permit after its issuance.

"New sources" in the Offshore Subcategory include oil and gas development and production facilities on which significant site preparation has commenced since publication of the NSPS, but does not include exploratory activities. To resolve problems which might result from the lag between promulgation of the NSPS and new source NPDES permits, the NSPS temporarily excludes from the definition of "new source" new development and production facilities that would otherwise be new sources if, on the effective date of the NSPS, those facilities were already subject to an existing NPDES permit, e.g., GMG290000. See 58 FR 12456–12458. When the proposed new source permit is issued, such facilities will become new sources and should apply for coverage thereunder.

The draft permit includes technology based effluent limitations derived from the NSPS for wastestreams subject thereto and BAT and BCT limitations based on BPJ for wastestreams not covered by NSPS. As required by CWA section 403(c) and implementing criteria at 40 CFR part 125, subpart M, the draft permit also includes water quality based limitations protecting the marine environment from degradation. Proposed limitations for each covered waste stream are summarized below:

Drilling Fluids

In accordance with the NSPS, the draft permit prohibits the discharge of drilling fluids containing free oil (monitored using the static sheen method), containing stock barite with more than 3 mg/kg of cadmium or 1 mg/kg of mercury, containing diesel oil, or having an LC50 aquatic toxicity value of less than 30,000 ppm. For compliance with CWA section 403(c), the draft permit limits the discharge rate to a maximum of 1000 bbl/hr and less near areas of biological concern.

Since 1986, Region 6 has included BPJ technology-based limitations in its OCS general permits prohibiting the discharge of oil based drilling fluids, inverse emulsion drilling fluids, oil contaminated drilling fluids, and drilling fluids to which mineral oil has been added (except as a carrier fluid, lubricity additive, or pill). With promulgation of the NSPS, Region 6 lost its authority, under CWA section 402(a)(1), to impose these limitations on a BPJ basis. It is nevertheless proposing to include them in the new source OCS permit on two different grounds. First, the Region believes these conditions may be necessary to assure compliance with the "no free oil" NSPS limitation and thus proposes them as best management practices authorized by CWA section 402(a)(2). Second, the Region lacks assurance the discharges authorized by the permit would not degrade the marine environment in the absence of these time-honored permit conditions. Accordingly, it is also basing its proposal to include them in the permit on CWA section 403(c).

Drill Cuttings

The draft permit contains the same limits for drill cuttings as for drilling fluids, proposed on the same regulatory bases. Independent toxicity testing of drill cuttings is not required because the Agency presumes the cuttings will have the same toxic characteristics as the drilling fluids adhering to them. If a specific drilling fluid cannot be discharged in compliance with the permit, cuttings removed from that fluid may not be discharged.

Produced Water

Based on the NSPS, the draft permit imposes a monthly limit of 29 mg/l and a maximum limit of 42 mg/l on oil and grease in discharged produced water.

To implement CWA section 403(c), the draft permit also imposes a toxicity limit on produced water discharges, essentially requiring that they exhibit no toxic effects 100 meters from the outfall and establishes critical dilution values for toxicity testing of produced water. EPA derived those critical dilution values using the CORMIX1 model, adjusted to more accurately reflect the conditions under which Offshore

Subcategory facilities may discharge produced water.

After issuance of the existing source OCS permit, Industry representatives requested that EPA Region 6 establish permit limits accommodating the use of diffusers to achieve greater dilution, thus allowing discharges of produced water which would otherwise not comply with the proposed toxicity limits. When it proposed modification of that permit, Region 6 solicited comments on the need for diffuser use and suggestions for permit provisions which might accommodate that use at 58 FR 41474 (August 14, 1993). EPA has not concluded its review of the comments it received and solicits similar comments in connection with today's proposal.

To obtain data for potential use in future regulatory actions, the draft permit also requires monitoring of radium 226 and 228 in produced water discharges.

Well Treatment, Completion, and Workover Fluids

As required by the NSPS, the draft permit limits the oil and grease content of well treatment, completion, and workover fluids to a monthly average of 29 mg/l and a maximum of 42 mg/l. Additionally, the draft permit prohibits the discharge of free oil as measured by the static sheen test. This limit is based on BCT guidelines.

As in the case of several of the proposed conditions on drilling fluid discharges, the Region also proposes to include other conditions which are somewhat similar to limitations it has formerly included in OCS general permits on BPJ technology bases. EPA proposes to prohibit the discharge of well treatment, completion, and workover fluids containing priority pollutants in other than trace amounts, in effect prohibiting the addition of priority pollutants to such fluids. This condition is proposed both as a BMP authorized by CWA section 402(a)(2) and to assure compliance with the requirements of CWA section 403(c).

Produced Sand, Deck Drainage, Sanitary Waste, and Domestic Waste

The draft permit prohibits the discharge of produced sand, the discharge of deck drainage containing free oil (as monitored by the visual sheen test), and the discharge of sanitary waste containing floating solids or foam. It also prohibits the discharge of sanitary waste with a chlorine concentration less than 1 mg/l from platforms manned by ten or more persons. Each of these proposed limits is based on the NSPS.

Rubbish, Trash, and Other Refuse

Consistent with interim final Coast Guard regulations implementing Annex V of MARPOL 73/78, 54 FR 18384 (April 28, 1989), the draft permit allows the discharge of comminuted food waste, incinerator ash, and non-plastic clinkers able to pass through a 25mm mesh more than 3 nautical miles from the nearest land. Incinerator ash and non-plastic clinkers unable to pass through a 25mm mesh may only be discharged more than 12 nautical miles from nearest land.

Miscellaneous Discharges

The draft permit prohibits miscellaneous discharges containing free oil (as monitored by visual sheen test) and prohibits miscellaneous discharges containing floating solids or visible foam. These limits apply to discharges of diatomaceous earth filter media, blowout preventer fluids, uncontaminated ballast water, uncontaminated bilge water, uncontaminated freshwater, uncontaminated seawater, muds and cuttings at the sea floor, excess cement slurry, source water, source sand, boiler blowdown, and discharges from desalinization units. The proposed permit also prohibits miscellaneous discharges which contain floating solids or visible foam. The NSPS did not cover these discharges and the proposed limitations are BCT or BAT based on BPJ. Those limitations are moreover consistent with the limits of the existing source permit GMG290000.

All Discharges

To assure compliance with CWA section 403(c) and various proposed effluent limits, the proposed permit also prohibits all discharges which contain halogenated phenolic compounds, and requires that operators minimize the discharge of surfactants, dispersants, and detergents.

EPA now solicits comments on the draft permit and draft EIS. Limitations in the final permit may vary from the proposed limits of the draft permit as a result of comments.

Other Legal Requirements

Oil Spills

CWA section 311, 33 U.S.C. 1321, prohibits the discharge of oil and hazardous materials in harmful quantities, but discharges authorized by NPDES permits are excluded from that prohibition. Permittees should note, however, that the permit does not preclude the institution of legal action or relieve permittees from any responsibilities, liabilities, or penalties for other unauthorized discharges of oil and hazardous materials which are covered by CWA section 311.

Coastal Zone Management Act

Discharges authorized by the proposed permit will be to waters outside Louisiana's Coastal Zone and the effluent limitations imposed on those discharges will prevent them from affecting coastal waters. Accordingly, the primary effect issuance of this permit will have on Louisiana's coastal zone will be increased demand for onshore disposal of wastes which cannot be discharged under its terms. In promulgating the NSPS, EPA considered the issue of onshore disposal capacity for such wastes and tailored its final rule to assure sufficient capacity would be available. Moreover, to the extent it will occur in Louisiana's coastal zone, such disposal will be regulated by the State, assuring consistency with its Coastal Zone Management Plan. EPA thus finds issuance of the proposed permit will be consistent with that plan. The proposed new source permit and this determination will be submitted to the State of Louisiana with a request for a consistency certification for compliance with 16 U.S.C. 1456(c).

Marine Protection, Research, and Sanctuaries Act

The Marine Protection, Research, and Sanctuaries Act of 1972 (MPRSA), 33 U.S.C. 1401, *et seq.*, establishes the Marine Sanctuaries Program implemented by the National Oceanographic and Atmospheric Administration (NOAA). Under MPRSA, NOAA designates certain ocean waters as marine sanctuaries for preserving or restoring their conservation, recreational, ecological, or aesthetic values. NOAA has designated the Flower Garden Banks, which is within the area covered by the proposed permit, a marine sanctuary. As proposed, the permit prohibits discharges in areas of biological concern, including marine sanctuaries.

State Water Quality Standards and Certification

Because no state waters are included in the area covered by the draft permit, none will be affected if it is issued as proposed. Hence, the certification provisions of CWA section 401, 33 U.S.C. 1341, do not apply to EPA's proposed action.

Executive Order 12291

The Office of Management and Budget (OMB) has exempted this action from the review requirements of Executive Order 12292 pursuant to section 8(b) of

that Order. It should be noted, however, that EPA in fact obtained OMB review of a regulatory impact analysis prepared in connection with its promulgation of the NSPS. Incremental compliance costs associated with the new limitations the proposed permit imposes on Offshore Subcategory oil and gas operators were considered in that review.

Paperwork Reduction Act

The information collection requirements of the proposed permit have been approved by OMB under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, and assigned OMB control numbers 2040–0086 (NPDES permit application) and 2040–0004 (discharge monitoring reports). EPA estimates it will take an affected facility three hours to prepare a request for coverage under the proposed permit and 38 hours per year to prepare discharge monitoring reports in compliance with its terms.

National Environmental Policy Act

In accordance with the National Environmental Policy Act of 1969, 42 U.S.C. 4331, *et seq.*, and EPA's implementing regulations at 40 CFR part 6, subpart F, and 40 CFR 122.19(c), EPA has determined issuance of the proposed permit will be a major federal action which may significantly affect the quality of the human environment. The environmental impacts of the oil and gas exploration activities from which the discharges regulated by the general permit arise have been previously considered in a November 1992 Final EIS prepared by the Minerals Management Service of the Department of the Interior in connection with Lease Sales 142 and 143. EPA has adopted that Final EIS and prepared a supplement thereto (the SDEIS) to provide additional information and evaluation on its proposed general permit decision. As noted above, the SDEIS is available for review and comment.

Endangered Species Act

In a 1987 biological opinion rendered under section 7 of the Endangered Species Act, 16 U.S.C. 1536, the National Marine Fisheries Service (NMFS) determined that OCS oil and gas development and production operations were unlikely to jeopardize the continued existence of any listed species under its jurisdiction. MMS reaffirmed that opinion in connection with Lease Sales 142/143 in 1992. The United States Fish & Wildlife Service (FWS) similarly issued no jeopardy opinions for OCS oil and gas operations in 1987 and 1992. Accordingly, the effects of actions interrelated to today's permit proposal, e.g., rig construction, have already been considered under section 7 and are considered part of the "environmental baseline" in accordance with 50 CFR 402.02.

Because the effluent limitations of the proposed permit are protective of sensitive marine organisms, as required by EPA's ocean discharge criteria at 40 CFR part 125, subpart M, the discharge authorization EPA proposes will be unlikely to adversely affect listed threatened or endangered species or designated critical habitat. EPA Region 6 will seek written concurrence of the U.S. Fish and Wildlife Service and National Marine Fisheries Service in this determination. The Services provided similar concurrences in connection with EPA's issuance of the less stringent November 14, 1992 existing source permit (GMG290000).

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, requires that EPA prepare a regulatory flexibility analysis for regulations that have a significant impact on a substantial number of small entities. In promulgating the NSPS, EPA prepared an economic analysis showing they would directly impact no small entities. See 58 FR 12492. Based on those findings, EPA Region 6 certifies, pursuant to 5 U.S.C. 605(b), that the permit proposed today will not have a significant impact on a substantial number of small entities.

Myron O. Knudson,

Director, Water Management Division, EPA Region 6.

[FR Doc. 93–25229 Filed 10–13–93; 8:45 am]

BILLING CODE: 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

October 6, 1993.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: 3060–0461

Title: Section 90.173, Policies governing the assignment of

Action: Revision of a currently approved collection

Respondents: State or local governments and businesses or other for-profit (including small businesses)

Frequency of Response: On Occasion reporting requirement

Estimated Annual Burden: 200 responses; 4.5 hours average burden per response; 900 hours total annual burden.

Needs and Uses: Private land mobile channels are becoming scare in many areas, making it difficult for eligible applicants to be licensed on frequencies that are available on an exclusive basis. The Commission proposes to address this spectrum scarcity by recycling channels that are not being used effectively by the existing licenses. To identify these channels, the Commission proposes to enlist the assistance of persons who wish to be licensed. Under the proposal, individuals who provide the Commission with information that a current licensee is violating certain Rules would be granted a licensing preference for any channels recovered as a result of that information. The Commission will use the information to determine whether the channels of the existing licensee should be recovered due to violations of our Rules and whether any recovered channels should be reassigned to the applicant. Without this information, the FCC might not learn of rule violations and, due to the existence of a current licensee, would deny applications for frequencies that are licensed on an exclusive basis. The spectrum would, therefore, continue to be used inefficiently. In some cases, the Commission might learn of violations but, under current rules, would be required to reassign any channels recovered on a first-come, first-served basis without giving a preference to persons who brought violations to the Commission's attention.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–25135 Filed 10–13–93; 8:45 am]

BILLING CODE 6712–01–M

Public Information Collection Approved by Office of Management and Budget

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collection pursuant to the Paperwork Reduction Act of 1980, Public Law 96–511. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 632–6934.

Federal Communications Commission

OMB Control No.: 3060–0577
Title: Expanded Interconnection with Local Telephone Company, Facilities, CC Docket No. 91–141.
Expiration Date: 09/30/96
Estimated Annual Burden: 16 responses, 15 hours average burden per response; plus occasional fresh look public notice filings, with de minimus burden per response.

Description: In the Second Memorandum Opinion and Order on Reconsideration in CC Docket No. 91–141 (released September 2, 1993), the Commission reconsidered de novo, and adopted a modified version of, the "fresh look" policy adopted in the Special Access Order, 7 FCC Rcd 7369 (1992), in that docket. The September 2 Order also clarified and expanded earlier Commission requirements concerning the neutral application of nonrecurring charges, modified the requirements for tariffing virtual collocation arrangements, and specified certain standards that must be met for a carrier's connection charge rate structure to be considered reasonable. The Order requires local exchange carriers (LECs) to make tariff filings to provide public notice of the start of the "fresh look" period at each of their offices where expanded interconnection is implemented. LECs must also file tariff revisions to implement the modified fresh look rules. LECs must make tariff revisions to bring their tariffs into compliance with the requirements concerning nonrecurring charges no later than October 18, 1993. LECs must revise their connection charge tariffs if they do not satisfy the standards set forth in the Order. Finally, LECs may choose to revise their virtual collocation tariffs to reflect the less extensive tariffing requirements adopted on reconsideration.

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 93–25183 Filed 10–13–93; 8:45 am]
BILLING CODE 6712–01–M

[Report No. 1977]

Petition for Reconsideration of Action in Rulemaking Proceeding

October 7, 1993.

Petition for reconsideration has been filed in the Commission rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in room 239, 1919 M Street, NW., Washington, DC or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857–3800. Opposition to this petition must be filed October 29, 1993. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Tariff Filing Requirements for Nondominant Common Carriers (CC Docket No. 93–36).
Number of Petitions Filed: 1

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 93–25136 Filed 10–13–93; 8:45 am]
BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Public Information Collection Requirements Submitted to OMB for Review

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following public information collection requirements for review and clearance in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

DATES: Comments on this information collection must be submitted on or before December 13, 1993.

ADDRESSES: Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: the FEMA Information Collections Clearance Officer at the address below; and to Gary Waxman, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503, (202) 395–7340, within 60 days of this notice.

FOR FURTHER INFORMATION CONTACT: Copies of the above information collection request and supporting documentation can be obtained by calling or writing Linda Borror, FEMA Information Collections Clearance Officer, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2624.

Type: Revision of 3067–0142.
Title: Capability and Hazard Identification Program (CHIP).
Abstract: The Federal Emergency Management Agency (FEMA) requires consistent information on the status of State and local emergency management capabilities, and the impact of FEMA funding on improving those capabilities. CHIP data is a nationwide baseline on State and local hazards, current capabilities, and resource requirements. FEMA uses the data to set program priorities, prepare FEMA budgets, allocate funds and provide reports to Congress.

Type of Respondents: State and local governments.
Estimate of Total Annual Reporting and Recordkeeping Burden: 34,600.
Number of Respondents: States—56; Locals—2,900.
Estimated Average Burden Time per Response: State—100 hours; Locals—10 hours.
Frequency of Response: Annually.

Dated: October 5, 1993.
Wesley C. Moore,
Director, Office of Administrative Support.
[FR Doc. 93–25243 Filed 10–13–93; 8:45 am]
BILLING CODE 6718–01–M

[FEMA–995–DR]

Missouri; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Missouri, (FEMA–995–DR), dated July 9, 1993, and related determinations.

EFFECTIVE DATE: October 6, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Missouri, dated July 9, 1993, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 9, 1993:

Dade County for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–25244 Filed 10–13–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–998–DR]

Nebraska; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Nebraska, (FEMA–998–DR), dated July 19, 1993, and related determinations.

EFFECTIVE DATE: September 27, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 27, 1993, the President amended the cost-sharing arrangements concerning Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), in a letter to James L. Witt, Director of the Federal Emergency Management Agency, as follows:

I have determined that the damage in certain areas of the State of Nebraska, resulting from severe storms and flooding on June 23, 1993, through and including August 5, 1993, is of sufficient severity and magnitude that special conditions are warranted regarding the cost-sharing arrangements concerning Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act") for the Public Assistance program.

Therefore, I amend my previous declaration to authorize Federal funds for Public Assistance at 90 percent of total eligible costs, except for direct Federal assistance costs for emergency work authorized at 100 percent Federal funding. This 90 percent reimbursement applies to all authorized Public Assistance costs, including debris removal to eliminate immediate threats to public health and safety, emergency work to save lives and protect public health and safety, and repair or reconstruction of uninsured public and private non-profit facilities.

This adjustment to State and local cost sharing applies only to Public Assistance costs eligible for such adjustment under the law. The law specifically prohibits a similar adjustment for funds provided to States for the Individual and Family Grant program. These funds will continue to be reimbursed at 75 percent of total eligible costs.

Please notify the Governor of the State of Nebraska and the Federal Coordinating Officer of this amendment to my major disaster declaration.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

James L. Witt,

Director.

[FR Doc. 93–25242 Filed 10–13–93; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL MARITIME COMMISSION

[Docket No. 93–21]

Mr. Stanley Hecht v. Puerto Rico Maritime Shipping Authority; Filing of Complaint and Assignment

Notice is given that a complaint filed by Stanley Hecht ("Complainant") against Puerto Rico Maritime Shipping Authority ("Respondent") was served October 7, 1993. Complainant alleges that Respondent has violated sections 17 and 18 of the Shipping Act, 1916, 46 U.S.C. app. 816 and 817, by publishing and enforcing tariff and bill of lading provisions that impose liability for costs and expenses incurred in collecting charges due Respondent.

This proceeding has been assigned to the office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by October 7, 1994, and the final decision of the Commission shall be issued by February 6, 1995.

Joseph C. Polking,

Secretary.

[FR Doc. 93–25205 Filed 10–13–93; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

T. Brent Ballinger, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 2, 1993.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. T. Brent Ballinger, Pawhuska, Oklahoma; to acquire an additional 8.44 percent of the voting shares of N.B.C. Bancshares of Pawhuska, Inc., Pawhuska, Oklahoma, for a total of 31.95 percent, and thereby indirectly acquire NBC Bank, Pawhuska, Oklahoma.

2. Whitman T. Eastman, Gunnison, Colorado; to acquire an additional 22.1 percent of the voting shares of First National Bankshares of Gunnison, Inc., Gunnison, Colorado, for a total of 36.4 percent, and thereby indirectly acquire The First National Bank of Gunnison, Gunnison, Colorado.

3. Buford J. and Anna Van Loenen, Prairie View, Kansas; to acquire an additional 43.3 percent of the voting shares of Phillips Holdings, Inc., Stuttgart, Kansas, and thereby indirectly acquire Farmers State Bank, Stuttgart, Kansas.

Board of Governors of the Federal Reserve System, October 6, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-25139 Filed 10-13-93; 8:45 am]

BILLING CODE 6210-01-F

Fairbank Bancshares, Inc., et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 2, 1993.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Fairbank Bancshares, Inc., Fairbank, Iowa; to engage *de novo* in making and servicing loans pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted in the geographic area surrounding Fairbank, Iowa.

2. First of America Bank Corporation, Kalamazoo, Michigan; to engage *de novo* through its subsidiary, First of America Mortgage Company, Kalamazoo, Michigan, in performing appraisals of real estate pursuant to § 225.25(b)(13) of the Board's Regulation Y.

3. Whitewater Bancorp, Inc., Whitewater, Wisconsin; to engage *de novo* through its subsidiary, CRA Development Corporation, Whitewater, Wisconsin, in forming a community development corporation to invest in limited partnerships involved in community development efforts including affordable housing, job creation and other economic development projects pursuant to § 225.25(b)(6) of the Board's Regulation Y. These activities will be conducted in Walworth, Jefferson, and Rock Counties in the State of Wisconsin.

Board of Governors of the Federal Reserve System, October 6, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-25140 Filed 10-13-93; 8:45 am]

BILLING CODE 6210-01-F

Keystone Financial, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than November 5, 1993.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. Keystone Financial, Inc., Harrisburg, Pennsylvania; merge with WM Bancorp, Cumberland, Maryland, and thereby acquire American Trust Bank, Cumberland, Maryland, and American Trust Bank of West Virginia, N.A., Keyser, West Virginia.

B. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. First Commonwealth Financial Corporation, Indiana, Pennsylvania; to acquire 100 percent of the voting shares of Peoples Bank of Western Pennsylvania, New Castle, Pennsylvania.

C. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. First Savings Bancorp, Inc., Southern Pines, North Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of First Savings Bank of Moore County, Inc., SSB, Southern Pines, North Carolina.

D. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Southland Bank Corporation, Butler, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of United Bank of Crawford, Roberta, Georgia.

2. SouthTrust Corporation, Birmingham, Alabama; and SouthTrust of Florida, Inc., Jacksonville, Florida; to merge with Cypress Banks, Inc., Wesley Chapel, Florida, and thereby indirectly acquire First National Bank of the South, Wesley Chapel, Florida.

E. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. First National of Hoxie Employee Stock Ownership Plan, Hoxie, Kansas; to become a bank holding company by acquiring 54.8 percent of the voting shares of First Bancshares of Hoxie, Inc., Hoxie, Kansas, and thereby indirectly acquire First National Bank, Hoxie, Kansas.

2. Myers BancShares, Inc., Alva, Oklahoma; to become a bank holding company by acquiring 96 percent of the voting shares of The Central National Bank, Alva, Oklahoma.

3. Plaza Bancshares, Inc., Bartlesville, Oklahoma; to become a bank holding company by acquiring 94.4 percent of the voting shares of Plaza National Bank of Bartlesville, Bartlesville, Oklahoma.

Board of Governors of the Federal Reserve System, October 6, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-25141 Filed 10-13-93; 8:45 am]

BILLING CODE 6210-01-F

Norwest Corporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 20, 1993.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; to acquire the mortgage origination and servicing business conducted by St. Cloud National Bank & Trust Co., St. Cloud, Minnesota, and thereby engage in making, acquiring, or servicing loans or other extensions of credit such as would be made by a mortgage company pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted in the Chicago, Illinois area

Board of Governors of the Federal Reserve System, October 6, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-25142 Filed 10-13-93; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Employee Thrift Advisory Council; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), a notice is hereby given of the following committee meeting:

Name: Employee Thrift Advisory Council.

Time: 10 a.m.

Date: October 27, 1993.

Place: Fourth Floor, Conference Room, Federal Retirement Thrift Investment Board, 1250 H Street NW., Washington, DC.

Status: Open.

Matters to be considered: Approval of the minutes of the May 19, 1993, meeting; report of the Executive Director on the status of the Thrift Savings Plan; Thrift Savings Plan open season activities; Analysis of additional Thrift Savings Plan investment funds; legislation; and new business.

Any interested person may attend, appear before, or file statements with the Council. For further information contact John J. O'Meara, Committee Management Officer, on (202) 942–1662.

Dated: October 7, 1993.

Francis X. Cavanaugh,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 93–25152 Filed 10–13–93; 8:45 am]

BILLING CODE 6760–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Interest Rate on Overdue Debts

Section 30.13 of the Department of Health and Human Services' claims collection regulations (45 CFR part 30) provides that the Secretary shall charge an annual rate of interest as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date that HHS becomes entitled to recovery. The rate generally cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the "Schedule of Certified Interest Rates with Range of Maturities." This rate may be revised quarterly by the Secretary of the Treasury and shall be published quarterly by the Department of Health and Human Services in the **Federal Register**.

The Secretary of the Treasury has certified a rate of 13 5% for the quarter ended September 30, 1993. This interest rate will remain in effect until such time as the Secretary of the Treasury notifies HHS of any change.

Dated: October 6, 1993.

George H. Strader,

Deputy Assistant Secretary, Finance.

[FR Doc. 93–25233 Filed 10–13–93; 8:45 am]

BILLING CODE 4150–04–M

Centers for Disease Control and Prevention

Advisory Council for the Elimination of Tuberculosis; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following council meeting.

Name: Advisory Council for the Elimination of Tuberculosis (ACET).

Times and Dates: 8:30 a.m.–5 p.m., November 8, 1993. 8:30 a.m.–11:45 a.m., November 9, 1993.

Place: Corporate Square Office Park, Corporate Square Boulevard, Building 11, Room 1413, Atlanta, Georgia 30329.

Status: Open to the public, limited only by the space available.

Purpose: This council advises and makes recommendations to the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the elimination of tuberculosis. Specifically, the council makes recommendations regarding policies, strategies, objectives, and priorities; addresses the development and application of new technologies; and reviews the extent to which progress has been made toward eliminating tuberculosis.

Matters To Be Discussed: General update on governmental actions on tuberculosis; update on new training and educational activities; legislative/funding update; update on tuberculosis

model centers; revision of BCG recommendations; revision of model tuberculosis program recommendations; update on 1992 surveillance data and outbreaks; tuberculosis management data; MDR–TB outbreak follow-up investigations; tuberculosis hospital surveys; upgrading laboratory capabilities for diagnosis and epidemiology support; tuberculin skin testing and screening guidelines; and review of corrections statement.

Agenda items are subject to change as priorities dictate.

Contact Person for more Information: Dixie E. Snider, Jr., M.D., Acting Associate Director for Science, CDC, and Executive Secretary, ACET, 1600 Clifton Road, NE., Mailstop D–39, Atlanta, Georgia 30333, telephone 404/639–3701.

Dated: October 6, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–25188 Filed 10–13–93; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

[GN# 2140]

Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HF (Food and Drug Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (35 FR 3685, February 25, 1970, and 56 FR 29484, June 27, 1991, as amended most recently in pertinent part 58 FR 14214, March 16, 1993) is amended to reflect a reorganization of the National Center for Toxicological Research (NCTR), Office of Operations, Food and Drug Administration (FDA). As NCTR continues to integrate its research efforts into the regulatory mission of the FDA, re-focusing of NCTR's research capabilities has emphasized the necessity to have all research functions at NCTR located in one organization, the Office of Research. In order to place stronger emphasis on the importance of the planning functions of the Center, the title of the Office of Management has been changed to the Office of Planning and Resource Management. All research support functions have been centralized into the Office of Research Services which has been retitled as the Office of Research Support.

FDA believes the new NCTR structure will provide a more efficient span-of-control for all organizational units. Under Section HF–B, Organization:

1. Delete subparagraph (q–1) Office of the Center Director in its entirety and insert a new subparagraph reading as follows:

(q–1) *Office of the Center Director (HFT1).* Provides leadership and direction to assure the efficient and effective planning, performance, and evaluation of Center activities.

Staffs and supports the operation of the Center's Science Advisory Board.

Advises and assists top Agency management on research and research strategies that have impact on the development and execution of long-range program goals of the Agency.

Provides leadership and direction to all Office of the Director office functions.

Provides executive secretariat support for the Immediate Office of the Director, including maintaining and controlling the Director's working files.

Plans and coordinates the Center's Equal Employment Opportunity Program.

2. Delete subparagraphs (q–3 through q–5) in their entirety and insert the following new subparagraphs:

(q–3) *Office of Planning and Resource Management (HFT1D).* Advises the Director on the strategic and operational planning and resource utilization decisions necessary to accomplish the mission and goals of the Center.

Organizes, plans, directs, and develops strategic and operational planning systems to allow Center's management to define and monitor the Center goals and objectives.

Supports and directs program/project evaluations of the Center's activities. Performs special management analyses of Center program and administrative operations. Maintains the Center systems of policies and procedures.

Provides and directs the formulation, execution, and accounting functions for the Center's budget. Operates and maintains accounting system.

(q–4) *Office of Research (HFTD).* Organizes, plans, and directs Center research programs in accordance with Centerwide strategic direction.

Directs studies on the kinetics and metabolism of chemicals prerequisite to the implementation of carcinogenic, teratogenic, and mutagenic experiments; directs the development of protocols for safety evaluation of toxic chemicals.

Directs the development of experimental methods used to extrapolate test results from animals to humans.

Directs the development of in vitro models to serve as links in the assessment of toxic manifestations expected in mammals in general and in humans in particular.

Directs research to expand comparative physiology and biochemistry to primates and other potentially applicable experimental species.

Coordinates research in Center program areas with leading scientists in other segments of FDA and the scientific community at large.

Coordinates with other Center and Agency components and top level officials of other agencies to provide input for long-term research planning in responsible program areas. Ensures implementation of programs responsive to the Center's portion of the Agency's integrated research plan.

Responsible for the scientific oversight of Center research contracts and agreements in Center programs.

(q–5) *Office of Research Support (HFTE).* Organizes, plans, and directs Center research support in the areas of pathology, diet preparation, animal husbandry, engineering, facilities and equipment maintenance, automated data processing, and administrative services.

Plans and coordinates the implementation of research support in response to the Office of Research.

Responsible for the management and activity monitoring of on site Center service contracts in responsible program areas.

Provides advice and guidance to Center employees on and coordinates conflict of interest, outside activities, ethics reviews, incentive awards and employee suggestion programs, and international travel.

Prior Delegation of Authority. Pending further delegations, directives, or orders by the Commissioner of Food and Drugs, all delegations of authority to officers or employees of the Center in effect prior to the date of this order shall continue in effect in them or their successors.

Dated: September 23, 1993.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 93–25145 Filed 10–13–93; 8:45 am]

BILLING CODE 4160–01–M

National Institutes of Health

Division of Research Grants; Meetings

Pursuant to Public Law 92–463, notice is hereby given of meetings of the Division of Research Grants Behavioral and Neurosciences Special Emphasis Panel.

The meetings will be closed in accordance with the provisions set forth

in section 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications and Small Business Innovation Research Program Applications in the various areas and disciplines related to behavior and neuroscience. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Office of Committee Management, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20892, telephone 301–594–7265, will furnish summaries of the meetings and rosters of panel members.

Meetings to Review Individual Grant Applications

Scientific Review Administrator: Dr. Teresa Levitin (301) 594–7141.

Date of Meeting: October 29, 1993.

Place of Meeting: Westwood Bldg., Room 303, NIH, Bethesda, MD. (Telephone Conference).

Time of Meeting: 9 a.m.

Meetings to Review Small Business Innovation Research Program Applications

Scientific Review Administrator: Dr. Jane Hu (301) 594–7269.

Date of Meeting: November 5, 1993.

Place of Meeting: Holiday Inn, Chevy Chase, MD.

Time of Meeting: 8:30 a.m.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 1, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–25187 Filed 10–13–93; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–060–01–4410–04–ADVB]

Meeting of the California Desert District Advisory Council

SUMMARY: Notice is hereby given, in accordance with Public Laws 92–463 and 94–579, that the California Desert District Advisory Council to the Bureau of Land Management, U.S. Department of the Interior, will meet in formal session Friday, November 19, 1993, from 8 a.m. to 5 p.m., and Saturday, November 20, 1993, from 8 a.m. to 10:15 a.m., at the La Casa Del Zorro Hotel in Borrego Springs, California.

Agenda items for the meetings will include:

—An update on mineral issues.
—A report on range policy reform.
—Desert tortoise critical habitat and livestock grazing.
—A briefing on National Biological Survey.
—An update on the Southern California Association of Governments (SCAG) open space planning effort.
—A status report on District environmental assessments and environmental impact statements.
—A progress report on the Motor Vehicle Access California Desert Conservation Area Plan.
—An update on the West Mojave Coordinated Management Plan.

On Thursday, November 18, from 7:30 a.m. to 5 p.m., Council members will participate in a field tour of portions of the El Centro Resource Area, with scheduled stops at the San Felipe Area of Critical Environmental Concern, Sacatone Overlook, and Cottonwood Campground. Tentative stops may include the Jacumba Mountains Wilderness Study Area, Yuha Geoglyph site, and Crucifixion Thorn Natural Area. The tour will focus on the management programs for each area.

The public is welcome to participate in the field tour, but should plan on providing their own transportation, drinks, and lunch. Anyone interested in participating should contract BLM at (909) 697–5215 for more information. The tour will assemble at the La Casa Del Zorro Hotel at 7:15 a.m.

All Desert District Advisory Council meetings are open to the public. Time for public comment may be made available by the Council Chairman during the presentation of various agenda items, and is scheduled at the end of the meeting for topics not on the agenda.

Written comments may be filed in advance of the meeting with the California Desert District Advisory Council Chairman, Mr. David Fisher, c/o Bureau of Land Management, Public Affairs Office, 6221 Box Springs Boulevard, Riverside, California 92507–0714. Written comments are also accepted at the time of the meeting and, if copies are provided to the recorder, will be incorporated into the minutes.

FOR FURTHER INFORMATION AND MEETING CONFIRMATION: Contact the Bureau of Land Management, California Desert District, Public Affairs Office, 6221 Box Springs Boulevard, Riverside, California 92507; (909) 697–5215.

Dated: October 7, 1993.

Henri R. Bisson,

District Manager.

[FR Doc. 93–25255 Filed 10–13–93; 8:45 am]

BILLING CODE 4310–40–M

[AZ–040–4210–03–03; AZA 28166]

Realty Action; Recreation and Public Purposes Act Classification; Arizona

AGENCY: Bureau of Land Management, Safford District, Arizona, Interior.

ACTION: Notice.

SUMMARY: The following public land in Pima County, Arizona has been examined and found suitable for classification for lease or conveyance to the Helmet Peak Volunteer Fire Department under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*).

Gila and Salt River Meridian, Arizona

T. 17 S., R. 12 E.,
Sec. 11, lots 5 and 6, SE¼NW¼ (within).
Containing 4.66 acres, more or less.

The land is not needed for Federal purposes. Lease or conveyance is consistent with current BLM land use planning, and would be in the public interest.

When issued, the lease/patent will be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

Detailed information concerning these actions is available for review at the Office of the Bureau of Land Management, Tucson Resource Area Office, 12661 East Broadway Boulevard, Tucson, Arizona.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may

submit comments regarding the proposed lease/conveyance or classification of the land to the District Manager, Safford District Office, 711 14th Avenue, Safford, Arizona 85546.

CLASSIFICATION COMMENTS: Interested parties may submit comments involving the suitability of the land for a fire station. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

APPLICATION COMMENTS: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedure in reaching the decision or any other factor not directly related to the suitability of the land for a fire station.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

Dated: October 4, 1993.

William T. Civish,

District Manager.

[FR Doc. 93–25134 Filed 10–13–93; 8:45 am]

BILLING CODE 4310–32–M

[NV–930–4210–05; N–56458]

Land Exchange; Clark County, NV

October 1, 1993.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice; issuance of land exchange conveyance document, Nevada.

SUMMARY: This notice identifies Federal and non-Federal lands involved in a recently completed exchange transaction. With the exception of oil, gas, sodium and potassium, the mineral estate in the Federal lands was conveyed with the surface estate. As to the non-Federal lands, the United States acquired only those minerals owned by the proponent.

FOR FURTHER INFORMATION CONTACT: Mary Clark, Nevada State Office, Bureau of Land Management, P.O. Box 12000, Reno, NV 89520, (702) 785–6530.

SUPPLEMENTARY INFORMATION: The following described lands were conveyed out of Federal ownership pursuant to sec. 206 of the Act of October 21, 1976 (43 U.S.C. 1716):

Mount Diablo Meridian, Nevada

T. 20 S., R. 60 E.,
- Sec. 7, E½NE¼NW¼NE¼, E½NW¼NW¼NE¼, W½SE¼NW¼NE¼, W½NE¼SW¼NE¼, E½NW¼SW¼NE¼, SW¼SW¼NE¼, SE¼SW¼NE¼, E½SW¼SE¼NE¼, E½SE¼SE¼NE¼, NE¼NE¼NW¼, E½SE¼NE¼NW¼, W½SE¼SE¼NW¼, W½NE¼NE¼SW¼, W½SE¼NE¼SW¼, E½SE¼NE¼SW¼, N½NE¼SE¼SW¼, S½SE¼SE¼SW¼, E½NW¼NE¼SE¼, W½NW¼NE¼SE¼, E½SW¼NE¼SE¼, W½SW¼NE¼SE¼, E½NE¼NW¼SE¼, E½SW¼NW¼SE¼, W½SW¼NW¼SE¼, W½SE¼NW¼SE¼, W½NW¼SW¼SE¼, E½SE¼SW¼SE¼, N½SE¼SE¼, E½SW¼SE¼SE¼, W½SE¼SE¼SE¼;
- Sec. 8, NE¼SW¼SW¼, N½NW¼SW¼SW¼, SW¼SW¼SW¼SW¼, SE¼SW¼SW¼SW¼, N½SE¼SW¼SW¼, SE¼NE¼SE¼SW¼, NW¼NW¼SE¼SW¼, N½SW¼SE¼SW¼, SE¼SW¼SE¼SW¼, SE¼SE¼SW¼, S½NW¼NW¼SE¼, N½SW¼NW¼SE¼, SW¼NW¼SW¼SE¼, N½SW¼SW¼SE¼, SE¼SW¼SW¼SE¼;
- Sec. 9, S½NW¼NE¼SW¼, SW¼NE¼SW¼, SE¼NE¼NW¼SW¼, E½SE¼NW¼SW¼, SE¼NE¼SW¼SW¼, S½NW¼SW¼SW¼, SW¼SW¼SW¼, N½SE¼SW¼SW¼, SE¼SE¼SW¼SW¼, NE¼SE¼SW¼, S½NW¼SE¼SW¼, N½SW¼SE¼SW¼, N½SE¼SE¼SW¼, SW¼SE¼SE¼SW¼, S½NE¼SW¼SE¼, W½NW¼SW¼SE¼, N½SW¼SW¼SE¼, SE¼SW¼SW¼SE¼, N½SE¼SW¼SE¼, SE¼SE¼SW¼SE¼, S½NE¼SE¼SE¼, SE¼NW¼SE¼SE¼, N½SW¼SE¼SE¼, SE¼SW¼SE¼SE¼, N½SE¼SE¼SE¼, SW¼SE¼SE¼SE¼, NW¼SE¼SE¼SE¼SE¼, S½SE¼SE¼SE¼SE¼;
- Sec. 28, W½NE¼, NE¼NW¼, E½SE¼NW¼, N½SE¼,

The area described contains 591.88 acres in Clark County, Nevada. Four patents were issued on March 30, 1993, as follows: Patent No. 27–93–0011 to Olympic National Joint Venture Patent No. 27–93–0012 to Olympic Hobble Joint Venture Patent No. 27–93–0013 to Olympic Nevada Inc. Patent No. 27–93–0014 to Olympic GKB Joint Venture. The first phase of the exchange was completed on April 1, 1993, when Patent No. 27–93–0015 was issued to Olympic Nevada Inc. The second and final phase of the exchange was completed on August 5, 1993, at which time five patents were issued as follows:

Patent No. 27–93–0030 to Olympic Apache Joint Venture
Patent No. 27–93–0031 to Olympic GKB Joint Venture
Patent No. 27–93–0032 to Olympic Falcon Joint Venture
Patent No. 27–93–0033 to Olympic Lands Inc.
Patent No. 27–93–0034 to Olympic Nevada Inc.

The non-Federal lands acquired by the United States in this exchange are described as follows:

Mount Diablo Meridian, Nevada

T. 22 S., R. 58 E.,

Sec. 1, SW¼, excepting therefrom the interest in and to those portions of said land deeded to the State of Nevada (for State Route 159—Blue Diamond Road) by a Deed recorded November 15, 1984 as Document No. 1981385 in Book 2022 of Official Records, Clark County, Nevada, being a parcel or strip of land one hundred fifty (150) feet in width, being seventy five (75) feet wide on each side of the surveyed highway centerline of State Route 159 (Blue Diamond Road) (Project RS–159(2)), which centerline is more fully described as follows, to wit:

Beginning at the intersection of the centerline of State Route 159 (Blue Diamond Road) (Project RS–159(2)), at Highway Engineer's Station "E" 245+84.13 P.O.T. and the north-south quarter section line of Section 1, T. 22 S., R. 58 E., M.D.M.; said point of beginning more fully described as bearing N. 5°33'24" W. a distance of 1709.81 feet from the south quarter corner of said Section 1; thence N. 54°07'24" W. along said centerline a distance of 667.72 feet to a point; thence from a tangent which bears the last described course curving to the right along said centerline with a radius of 9000 feet, through an angle of 7°23'25" an arc distance of 1160.86 feet to an intersection with the east-west quarter section line of said Section 1, the point of ending at Highway Engineer's Station "E" 264+12.71 P.O.C.; said point more fully described as bearing S. 88°28'29" E. a distance of 1418.12 feet from the west quarter corner of said Section 1, said parcel contains an area of 6.3 acres, more or less. The sidelines of said parcel are to be lengthened or shortened to intersect with the north-south quarter section line and the east-west quarter section line of said Section 1.

Sec. 1, SW¼SE¼, excluding a parcel or strip of land one hundred fifty (150) feet in width, being seventy five (75) feet wide on each side of the surveyed highway centerline of State Route 159 (Blue Diamond Road) (Project RS–159(2)), which centerline is more fully described as follows, to wit:

Beginning at the intersection of the centerline of State Route 159 (Blue Diamond

Road) (Project RS–159(2)), at Highway Engineer's Station "E" 228+52.24 P.O.T. and the east one-sixteenth line of Section 1, T. 22 S., R. 58 E., M.D.M.; said point of beginning more fully described as bearing N. 60°58'30" E. a distance of 1415.54 feet from the south quarter corner of said Section 1; thence N. 54°07'24" W. along said centerline a distance of 1192.03 feet to an intersection with the south one-sixteenth line of said Section 1, the point of ending at Highway Engineer's Station "E" 240+44.27 P.O.T.; said point more fully described as bearing N. 11°06'11" a distance of 1411.82 feet from the south quarter corner of said Section 1, said parcel contains an area of 4.10 acres, more or less. The sidelines of said parcel are to be lengthened or shortened to intersect with the east one-sixteenth line and the south one-sixteenth line of said Section 1.

Sec. 2, E½SE¼, excluding Parcel A (which contains 9.6 acres);
Sec. 12, NW¼NW¼.

The area described contains 300.06 acres in Clark County, Nevada. Title to the non-Federal land in Phase 1 of the exchange was accepted on March 30, 1993, and title was accepted on August 5, 1993, to the non-Federal lands involved in Phase 2 of the exchange.

In both phases of the exchange the value of the Federal lands exceeded the value of non-Federal lands. Equalization payments totaling $925,000.00 were made by the exchange proponent. The purpose of this exchange was to acquire private inholdings within the Red Rock Canyon National Conservation Area (RRCNCA).

In accordance with Public Law 101–621, dated November 16, 1990, the RRCNCA lands are withdrawn from all forms of entry, appropriation, or disposal under the public land laws, from location, entry and patent under the mining laws, and from operation under the mineral leasing and geothermal leasing laws, and all amendments thereto.

Maria B. Bohl,

Acting Deputy State Director, Operations.

[FR Doc. 93–25133 Filed 10–13–93; 8:45 am]

BILLING CODE 4310–HC–P

[OR–020–00–4370–04: G3–439]

Oregon; Wild Horse Gathering Schedule Meeting

AGENCY: Bureau of Land Management, (BLM), DOI.

ACTION: Burns District Office: Statewide wild horse gathering schedule public meeting.

SUMMARY: In accordance with Public Law 92–195, this notice sets forth the public meeting date to discuss the use of helicopters in gathering wild horses and the proposed gathering schedule in Oregon for FY 94.

EFFECTIVE DATE: (October 20, 1993, 3 p.m. to 4:30 p.m.).

ADDRESSES: The meeting will take place at the BLM Burns District Office in Hines, Oregon.

FOR FURTHER INFORMATION CONTACT: E. Ron Harding, Wild Horse Management Specialist, Burns District, Bureau of Land Management, HC 74–12533 Hwy. 20 West, Hines, Oregon 97738—Telephone (503) 573–5241.

SUPPLEMENTARY INFORMATION: The use of helicopters to gather wild horses throughout Oregon in Fiscal Year 1994 will be discussed along with other aspects of the program and adoption process. Information concerning the gathering of all Oregon wild horse herds will be presented at the meeting. The total number of horses expected to be gathered will be between 500 to 600 depending on the availability of funds and the capability of the Burns District to process and adopt out the horses gathered.

This meeting is open to the public. Persons interested in making an oral statement at this meeting are asked to notify the District Manager, Burns District Office, HC 74–12533 Hwy. 20 West, Hines, Oregon 97738 by October 20, 1993. Written statements must be received by this date.

Summary minutes of the meeting will be available for public inspection and duplication within 30 days following the meeting.

Dated: October 6, 1993.

Craig M. Hansen,

Three Rivers Resource Area Manager.

[FR Doc. 93–25256 Filed 10–13–93; 8:45 am]

BILLING CODE 4370–04–M

[CA–940–4210–06; CACA 33164]

Proposed Withdrawal; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation proposes to withdraw 6,737 acres of public lands, 1,361 acres of Federal reserved mineral estates, and 397 acres of National Forest System lands to protect the lands for the proposed Auburn Dam and Reservoir and its facilities (Auburn-Folsom South Unit, Central Valley Project) near Auburn, California. This notice closes the public lands from surface entry and mining and the Federal reserved mineral estates and National Forest System lands from location and entry under the United States mining laws for 2 years. The lands will remain open to mineral leasing.

FOR FURTHER INFORMATION CONTACT: Viola Andrade, BLM California State Office, 2800 Cottage Way, room E–2845, Sacramento, California 95825, 916–978–4820.

SUPPLEMENTARY INFORMATION: On October 7, 1993 a petition was approved allowing the Bureau of Reclamation to file an application to withdraw the following described public lands from settlement, sale, location, or entry under the general land laws, including the mining laws, and to withdraw the following described Federal reserved mineral estates and National Forest System lands from location and entry under the United States mining laws, subject to valid existing rights:

Public Lands

Mount Diablo Meridian

T. 12 N., R. 8 E.,
Sec. 12, S½SW¼.
T. 12. N., R. 9 E.,
Sec. 1, lots 10 and 11;
Sec. 4, S½N½ (excluding Mineral Survey 5431);
Sec. 5, lot 48;
Sec. 18, lot 1.
T. 13 N., R. 9 E.,
Sec. 1, Mineral Survey 2653;
Sec. 2, lots 1, 2, and 7, N½SW¼, SW¼SW¼, N½SE¼SW¼, and SW¼SE¼SW¼;
Sec. 11, lot 2, SE¼SW¼ and SW¼SW¼;
Sec. 13, S½SE¼SE¼;
Sec. 22, NE¼SW¼ and W½SW¼;
Sec. 23, Mineral Survey U–3 (formerly lot 41), excluding patented land;
Sec. 24, lot 2 (excluding Mineral Surveys 2516, 5487, 5488, 4962, and 5209), SE¼NE¼, N½NE¼, NE¼NW¼, SE¼SW¼ (excluding Mineral Survey 5488);
Sec. 25. SE¼NE¼, W½NW¼SE¼, and W½W½W½SW¼SE¼;
Sec. 28, NE¼NE¼, S½NW¼NE¼, SE¼NW¼, NW¼SW¼, N½SW¼SW¼, E½SW¼SW¼SW¼, and W½SE¼SW¼SW¼;
Sec. 30, NW¼SE¼;
Sec. 32, lot 5;
Sec. 34, lots 4, 11, 19, and 20;
Sec. 36, lots 1, 2, and 3.
T. 14 N., R. 9 E.,
Sec. 1, lot 5, NE¼SW¼NW¼, NW¼SW¼NW¼, S½SW¼NW¼, SE¼NW¼, and unpatented land in the W½SW¼ embraced in the Gitaway and Blue Rock quartz mining claims;
Sec. 12, NW¼, NE¼, and SE¼;
Sec. 13, NE¼;
Sec. 24, SE¼ and E½E½SW¼;
Sec. 25, lots 1 2, and 7 (excluding Mineral Survey 5816), lot 8, NE¼SE¼, W½SE¼, NE¼SW¼ (excluding Mineral Survey 5816), and S½SW¼;
Sec. 35, lots 1, 3, and 4, NE¼, E½NW¼, SW¼SW¼, and E½SE¼;
Sec. 36, lots 2, 3, 7, 8, 9, 14, and 22, and NW¼.
T. 15 N., R. 9 E.,
Sec. 36, SE¼SW¼.
T. 13 N., R. 10 E.,

Sec. 2, lot 1 and lots 3 to 15, inclusive;
Sec. 9, lots 8, 12, and 13, and SW¼NE¼;
Sec. 10;
Sec. 11, E½SE¼;
Sec. 14, lots 1, 4, 5, and 6, and SW¼SE¼;
Sec. 18, lots 3, 4, 11, and 13, S½ lot 5, and S½ lot 8;
Sec. 19, lot 24;
Sec. 20, lots 1, 2, and 8, N½NE¼, and SE¼NE¼;
Sec. 22, lots 1, 2, 7, and 8;
Sec. 28, NE¼SW¼NE¼, N½SE¼NE¼, and N½NW¼NW¼;
Sec. 30, lot 1 (excluding Mineral Survey 4709), lots 5 and 5, S½NE¼, and NE¼SE¼.

T. 14 N., R. 10 E.,
Sec. 7, lot 6;
Sec. 18, lots 2 to 7, inclusive, and lots 10, 11, 13, and 15;
Sec. 30, lots, 4, 8, 9, 10, 15, 16, 17, and N½ lot 178, E½NW¼, and W½SW¼NW¼.

Federal Reserved Mineral Estates

Mount Diablo Meridian

T. 12 N., R. 9 E.,
Sec. 4, lots 5 to 9, inclusive;
Sec. 6, lots 4 to 9, inclusive, and SE¼NE¼.

T. 13 N., R. 9 E.,
Sec. 26, lots 3 and 4, W½SW¼SW¼NE¼, NE¼NW¼, N½SW¼, SW¼SW¼, and W½NW¼NW¼SE¼;
Sec. 28, W½SW¼SW¼SW¼ and E½SE¼SW¼SW¼;
Sec. 32, lots 2 and 3, NE¼, NE¼NW¼, W½NW¼, and N½SE¼;
Sec. 34, lots 3, 5, 6, 8, 14, and 15.

T. 14 N., R. 10 E.,
Sec. 6, lots 8 and 9, N½ lot 15, SW¼ lot 15, lots 17 and 18, N½ lot 19, SW¼ lot 19, and lot 33.

National Forest System Lands

Mount Diablo Meridian

Tahoe National Forest

T. 13 N., R. 11 E.,
Sec. 4, lot (excluding Mineral Survey 5300);

T. 14 N., R. 11 E.,
Sec. 31, S½SE¼SW¼ and SW¼SW¼SE¼;
Sec. 32, SE¼SW¼SW¼ and S½N½SE¼, and N½SW¼SE¼;
Sec. 33, S½N½SW¼, S½N½SE¼, and N½SW¼SE¼;
Sec. 34, N½SW¼, SE¼SW¼, and W½NW¼SE¼.

Tahoe and Eldora National Forests

T. 13 N., R. 11 E.,
Sec. 4, lot 3 (excluding mineral Survey 5300).

T 14 N., R. 11 E.,
Sec. 33, S½SW¼SE¼ (excluding Mineral Survey 5300) and SE¼SE¼.

The areas described aggregate approximately 6,737 acres of public land, 1,361 acres of Federal served mineral estates, and 397 acres of National Forest System lands in Placer and El Dorado counties.

The purpose of the proposed withdrawal is to protect the lands for the proposed Auburn Dam and Reservoir. Until an applicaiton is filed, no further action will be taken on this proposal.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are licenses, permits, rights-of-way, cooperative agreements or other discretionary land use authorizations of a temporary nature.

The temporary segregation of the lands in connection with a withdrawal application or proposal shall not affect administrative jurisdiction over the land, and the segregation not have the effect of authorizing any use of the land by the Bureau of reclamamation.

Dated: October 7, 1993.

Nancy J. Alex,

Chief, Lands Section.

[FR Doc. 93–25189 Filed 10–13–93; 8:45 am]

BILLING CODE 4310–40–M

Fish and Wildlife Service

Acquatic Nuisance Species Task Force Meeting

AGENCY: U.S. Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Aquatic Nuisance Species (ANS) Task Force. A number of subjects will be discussed during the meeting including: The Aquatic Nuisance Species Program, the proposed Ruffe Control Program, ballast water management activities/initiatives, the Intentional Introductions Policy Review Report to Congress, and upcoming events.

DATES: The ANS Task Force will meet from 9 a.m. to 3 p.m. on Tuesday, November 9, 1993.

ADDRESSES: The ANS Task Force meeting will be held at the U.S. Fish and Wildlife Service Building, room 200A&B, 4401 N. Fairfax Drive, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Sharon Gross, ANS Task Force Coordinator, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Arlington, VA 22203 at (703) 358–1718.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the ANS Task Force established under the authority of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (Pub. L. 101–646, 104 Stat. 4761, 16 U.S.C. 4701 *et seq.*, November 29, 1990). Minutes of the meetings will be maintained by the Coordinator, ANS Task Force, room 840, 4401 N. Fairfax Drive, Arlington, Virginia 22203 and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: October 7, 1993.

Gary Edwards,

Assistant Director, Fisheries, Co-Chair, Aquatic Nuisance Species Task Force.

[FR Doc. 93–25219 Filed 10–13–93; 8:45 am]

BILLING CODE 4310–55–M

Aquatic Nuisance Species Task Force Monitoring Committee Meeting

AGENCY: U.S. Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Monitoring Committee (Committee), a committee of the Aquatic Nuisance Species Task Force. A number of subjects will be discussed during the Committee meeting including: review of monitoring programs collecting data concerning nonindigenous species, and development of a pilot program to obtain information from existing monitoring programs.

DATES: The Monitoring Committee will meet from 9:30 a.m. to 3:30 p.m. on Tuesday, November 2, 1993.

ADDRESSES: The Monitoring Committee meeting will be held at the U.S. Fish and Wildlife Service Building, room 700, 4401 N. Fairfax Drive, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Dr. James Weaver, National Fisheries Research Center, 7920 NW. 71st Street, Gainesville, Florida 32606 at (904) 378–8181.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Aquatic Nuisance Species Task Force Monitoring Committee established under the authority of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (Pub. L. 101–646, 104 Stat. 4761, 16 U.S.C. 4701 *et seq.*, November 29, 1990). Minutes of the meetings will be maintained by the Coordinator, Aquatic Nuisance Species Task Force, room 840, 4401 N. Fairfax Drive, Arlington, Virginia 22203 and the Monitoring Committee Chairman, National

Fisheries Research Center, 7920 NW. 71st Street, Gainesville, Florida 32606 and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: October 7, 1993.

Gary Edwards,

Co-Chair, Aquatic Nuisance Species Task Force.

[FR Doc. 93–25220 Filed 10–13–93; 8:45 am]

BILLING CODE 4310–55–M

Geological Survey

Earth Observing System (EOS) Land Processes Distributed Active Archive Center (DAAC) Science Advisory Panel; Meeting

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, the Land Processes DAAC Science Advisory Panel will meet at the U.S. Geological Survey Earth Resources Observation Systems (EROS) Data Center near Sioux Falls, South Dakota. The Panel, comprised of scientists from academic and government institutions, will provide Land Processes DAAC management with advice and consultation on a broad range of scientific and technical topics relevant to the development and operation of DAAC systems and capabilities.

Topics to be reviewed and discussed by the Panel include Land Processes DAAC FY 1993 accomplishments and FY 1994 planned activities; the role and activities of the EOS core system (ECS) contractor in Land Processes DAAC development; EOS test site data set development; digital elevation model (DEM) and ground control point (GCP) issues; data product quality control and validation; Advanced Spaceborne Thermal Emission and Reflection Radiometer (ASTER) requirements for global assimilation model (GAM) weather data; information management system (IMS) development status; and others.

DATES: October 26–28, 1993, commencing at 8:30 a.m. on October 26 and adjourning at 3:30 p.m. on October 28.

FOR FURTHER INFORMATION CONTACT: Dr. Bryan Bailey, Land Processes DAAC Project Scientist, U.S. Geological Survey, EROS Data Center, Sioux Falls, South Dakota 57198 at (605) 594–6001.

SUPPLEMENTARY INFORMATION: Meetings of the Land Processes DAAC Science Advisory Panel are open to the public.

Dated: October 4, 1993.

Robert M. Hirsch,

Acting Director, U.S. Geological Survey.

[FR Doc. 93–25132 Filed 10–13–93; 8:45 am]

BILLING CODE 4310–31–M

National Park Service

Yosemite Valley Housing Plan, Yosemite National Park; Intent To Prepare a Supplement to the Draft Plan and Supplemental Environmental Impact Statement

SUMMARY: The National Park Service will prepare a supplementary environmental impact statement, for the Draft Yosemite Valley Housing Plan and Draft Supplement to the Environmental Impact Statement (SEIS) for the General Management Plan for Yosemite National Park, in order to introduce and analyze two additional alternatives to those presented in the prior document. This action is in accordance with the regulations promulgated by the Council on Environmental Quality at 40 CFR 1502.9(c).

BACKGROUND: The Draft Yosemite Valley Housing Plan and Draft Supplement to the Environmental Impact Statement (SEIS) for the General Management Plan for Yosemite National Park was issued in July, 1992 (57 FR 34146) with the public comment period ending September 30, 1992. This plan and SEIS examined the effects of a proposal and four alternatives for housing National Park Service and concession employees who work in Yosemite Valley. The proposed action would provide housing for 952 employees at a new development site at Foresta. Alternative A would provide housing for 1395 employees at Foresta. Alternative B would provide housing for 934 employees at El Portal with the housing located on both sides of the Merced River. Alternative C would provide housing for 491 employees at El Portal, confined to the north bank of the river, and improve existing housing in Yosemite Valley. Alternative D, no-action, would continue to house 1359 employees in Yosemite Valley. The administrative offices for NPS and the primary concessioner would be located in Foresta under the proposed action and Alternative A, in El Portal under Alternatives B and C, and remain in Yosemite Valley under Alternative D. The proposed action and the alternatives were analyzed for impacts on biotic communities, sensitive species, the Merced River, air quality, scenic quality, cultural resources, socio/economic concerns, Yosemite Valley visitors, park and concession operations, and energy consumption.

After reviewing public comments on the plan and SEIS, the National Park Service intends to evaluate two additional alternatives that were not analyzed in the earlier draft. The first, Alternative E, relocates the same facilities and provides the same amount of housing as Alternative C in the draft plan/SEIS; but the housing would be located on both sides of the Merced River. The second, Alternative F, would relocate both of the administrative offices to Wawona and house approximately 200 additional employees in Wawona. Wawona is a small community in the extreme southern portion of the park.

SUPPLEMENTARY INFORMATION: Persons wishing to provide input to this expanded scope of the project and associated supplemental environmental impact statement should send those comments to the Superintendent, Yosemite National Park, P.O. Box 577, Yosemite National Park, California 95389 by November 30, 1993. Requests for further information should be directed to this address or telephone number (209) 372–0200.

The responsible official is Stanley Albright, Regional Director, Western Regional Office. The supplement to the draft plan and supplemental environmental impact statement is expected to be completed and available for public review by July, 1994. Comments received on the document will be considered and incorporated as appropriate, along with comments received on the previously circulated Draft Yosemite Valley Housing Plan and Draft Supplement to the Environmental Impact Statement (SEIS) for the General Management Plan for Yosemite National Park, in the preparation of a final Yosemite Housing Plan/supplemental environmental impact statement. This document and subsequent Record of Decision are expected about a year later.

Dated: September 27, 1993.

Patricia L. Neubacher,

Acting Regional Director, Western Region.

[FR Doc. 93–25186 Filed 10–13–93; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–348]

Commission Determination To Vacate as Moot an Initial Determination Granting a Motion To Amend the Notice of Investigation To Allow Discovery on Public Interest and Remedy

In the matter of certain in-line roller skates with ventilated boots and in-line roller skates with axle aperture plugs and component parts thereof.

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to vacate as moot the initial determination (ID) (Order No. 20) of the presiding administrative law judge (ALJ) in the above-captioned investigation granting a motion to amend the notice of investigation and allow discovery to be taken on the issues of public interest and remedy.

ADDRESSES: Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000.

FOR FURTHER INFORMATION CONTACT: Anjali K. Singh, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–3117. Hearing-impaired individuals are advised that information about this matter can be obtained by contacting the Commission's TDD terminal, 202–205–1810.

SUPPLEMENTARY INFORMATION: On February 18, 1993, Rollerblade, Inc. filed a complaint with the Commission alleging unfair acts in violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). The unfair acts alleged in the complaint are the unauthorized importation into the United States, the sale for importation, and the sale within the United States after importation of certain in-line roller skates with ventilated boots, and in-line roller skates with axle aperture plugs and component parts thereof, that allegedly infringe claims 1, 2, 3, 4, 5, 6, 7, or 8 of U.S. Letters Patent 5,171,033, and/or claim 5 of U.S. Letters Patent 5,048,848. On March 18, 1993, the Commission voted to institute an investigation of the complaint and published notice of its investigation in the **Federal Register** (58 FR 16204 (March 25, 1993)).

On July 23, 1993, respondent Roces SRL filed a motion (Motion No. 348–29) to amend the notice of investigation to authorize discovery and evidence to be taken relating to the issues of public interest and remedy. The Commission investigative attorney supported the motion. Complainant Rollerblade filed a response in opposition to the motion to amend the notice of investigation. On July 28, 1993, the ALJ issued an ID granting the motion in part to allow discovery on the issues of public interest and remedy. On August 30, 1993, the Commission determined to review the ID because on the same date it had determined to review and remand a subsequent ID (Order No. 21) granting complainant's motion for summary judgment on the issue of domestic industry. The latter ID was remanded to the ALJ with instructions to allow discovery and evidence to be taken on the domestic industry issue. The information that would be obtained on the public interest issues, i.e., information regarding complainant Rollerblade's alleged plans to move its domestic operations abroad, is the same information that the Commission has authorized the parties to obtain with respect to the domestic industry issue. Therefore, the Commission determined to vacate the ALJ's ID (Order No. 20) as moot.

This action is taken pursuant to section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and Commission interim rule 210.56(c) (19 CFR 210.56(c)).

By order of the Commission.

Issued: October 7, 1993.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–25246 Filed 10–13–93; 8:45 am]

BILLING CODE 7020–02–P–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree In United States v. Core Craft, Inc., et al., Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with section 122(d)(2) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9622(d)(2), and the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that on September 10, 1993, a proposed Consent Decree in *United States of America* v. *Core Craft, Inc., et al.*, Civil Action No. 3–93–603, was lodged with the United States District Court for the District of Minnesota. This action was brought pursuant to CERCLA section 107(a), 42 U.S.C. 9607(a), to recover costs expended by the United States at the Kummer Sanitary Landfill Site in Bemidji, Minnesota. The Site is listed on the National Priorities List set forth at 40 CFR part 300, appendix B.

The Kummer Sanitary Landfill comprises 40-acres situated in Northern Township, Minnesota, approximately one-half mile north of the City of Bemidji and one mile west of Lake Bemidji. The landfill's operators were licensed to accept mixed municipal waste from 1971 to 1984 under a permit issued by the Minnesota Pollution Control Agency. Based on the results of several studies of conditions at the landfill, the Minnesota Pollution Control Agency and the United States Environmental Protection Agency have determined that the ground water contained elevated levels of various substances designated as hazardous under CERCLA, including but not limited to vinyl chloride, trans-1,2-dichloroethene, ethylene glycol namoethylether, polyester resin (styrene anhydrides), methylene chloride and xylene.

Under the proposed Consent Decree, the settling defendants will reimburse $5 million of the approximately $10 million in past and projected response costs associated with the Site, as well as pay $22,000 in resolution of a natural resource damage claim.

The Department of Justice will receive comments on the proposed Consent Decree for a period of 30 days from the date of publication of this Notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530. All comments should refer to *United States* v. *Core Craft, Inc., et al.*, D.J. Ref. No. 90–11–2–604.

The proposed Consent Decree may be examined at the Region V Office of the U.S. Environmental Protection Agency, 111 West Jackson Street, Third Floor, Chicago, Illinois 60604 (312–886–0556); the Office of the United States Attorney for the District of Minnesota, 234 U.S. Courthouse, 110 South Fourth St., Minneapolis, MN 55401 (612) 348–1500; and the U.S. Department of Justice, Consent Decree Library, 1120 G. Street, NW., 4th Floor, Washington, DC 20005 (202–624–0892). A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please specify the document

sought, together with a check payable to the "Consent Decree Library" for $8.00 (Consent Decree only) or $57.50 (Consent Decree and appendices thereto) ($.25 per page reproduction costs).

John C. Cruden,

Environment and Natural Resources Division, Chief, Environmental Enforcement Section.

[FR Doc. 93–25131 Filed 10–13–93; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Resource Conservation and Recovery Act; United States v. Donald A. Johnson

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on September 9, 1993, a proposed Consent Decree in *United States* v. *Donald A. Johnson* Civil Action No. 1:91–CV–639, was lodged in the United States District Court for the Western District of Michigan. The Complaint filed by the United States alleged violations of the Resource Conservation and Recovery Act. The Consent Decree requires the defendant to pay a civil penalty of $5,000 in settlement of the claims set forth in the Complaint filed by the United States.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments concerning the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *Donald A. Johnson,* DOJ Ref. No. 90–7-1–635.

The proposed Consent Decree may be examined at any of the following offices: (1) The United States Attorney for the Western District of Michigan, 110 Michigan Street NW., room 399, Grand Rapids, Michigan 49503 (contact Assistant United States Attorney W. Francesca Ferguson); (2) The U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590 (contact Assistant Regional Counsel Thomas Krueger); and (3) the Environmental Enforcement Section, Environment & Natural Resources Division, U.S. Department of Justice, room 1541, 10th & Pennsylvania Avenue NW., Washington, DC. Copies of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 1120 G Street, NW., Washington, DC 20005, telephone (202) 624–0892. For a copy of the Consent Decree please enclose a check in the amount of $3.00 (25 cents per page reproduction charge) payable to Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 93–25129 Filed 10–13–93; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Clean Water Act; In Re: Oriental Republic of Uruguay

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *In Re: Oriental Republic of Uruguay* (M/V Presidente Rivera), Civil Action No. 90–404–SLR, was lodged on September 29, 1993 with the United States Court for the District of Delaware. The proposed consent decree will, if approved, settle an action brought under section 311 of the Clean Water Act, 33 U.S.C. 1321, seeking recovery for natural resource damages caused by, and response costs incident to, a June 24, 1989 oil spill into the Delaware River from the Uruguayan oil tanker *Presidente Rivera.*

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *In Re: Oriental Republic of Uruguay* (M/V Presidente Rivera), DOJ Ref. #90–5–1–1–3609.

The proposed consent decree may be examined at the office of the United States Attorney, District of Delaware, 1201 Market Street, suite 1100, Wilmington, DE 19899–2046, and at the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $5.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Myles E. Flint,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 93–25130 Filed 10–13–93; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 25, 1993.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 25, 1993.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC, this 27th day of September, 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers/firm—	Location	Date received	Date of petition	Petition	Articles produced
Briggs & Stratton Corp (AIW)	Wauwatosa, WI	09/27/93	09/16/93	29,058	Gasoline engines.
Briggs & Stratton Corp (AIW)	West Allis, WI	09/27/93	09/16/93	29,059	Gasoline engines.
Briggs & Stratton Corp (AIW)	Menomonee Falls, WI.	09/27/93	09/16/93	29,060	Gasoline engines.
Allied Signal (Wkrs)	Rumford, RI	09/27/93	09/03/93	29,061	Vehicles filters.
SPS Technologies (Wkrs)	Santa Ana, CA	09/27/93	09/16/93	29,062	Aerospace fasteners.
Virginia Apparel Corp (Wkrs)	Blackstone, VA	09/27/93	09/14/93	29,063	Ladies' and mens' pants.
Penn Footwear Co (UFCW)	Nanticoke, PA	09/27/93	09/13/93	29,064	Footwear.
Penetrators, Inc (Wkrs)	Midland, TX	09/27/93	09/16/93	29,065	Oil and gas.
Penetrators, Inc (Wkrs)	Houston, TX	09/27/93	09/16/93	29,066	Oil and Gas.
Olympic Plating Industries, Inc (UPIU).	Canton, OH	09/27/93	09/19/93	29,067	Chrome plating service.
Northern Shipping Co (Wkrs)	Philadelphia, PA	09/27/93	09/15/93	29,068	Provides terminal services.
Northland (IBEW)	Watertown, NY	09/27/93	09/14/93	29,069	Electric motors.
Muelhens, Inc (Wkrs)	Orange, CT	09/27/93	09/08/93	29,070	Perfumes and toiletries.
Midcon Cables Co (Wkrs)	Jopin, MO	09/27/93	09/13/93	29,071	Electric wire harness.
Jockey International (Wkrs)	Maysville, KY	09/27/93	09/06/93	29,072	Underwear.
Energy Data Services, Inc (Co/Wkrs).	Englewood, CO	09/27/93	09/01/93	29,073	Oil and gas.
Coal Street Mfg (ILGWU)	Wilkes Barre, PA	09/27/93	09/14/93	29,074	Dresses.
Chess King (Wkrs)	Worcester, MA	09/27/93	09/14/93	29,075	Men's clothing.
CertainTeed Corp (IBT)	Kansas City, KS	09/27/93	09/07/93	29,076	Fiberglass insulation products.
Carter Mining Co (Wkrs)	Gillette, WY	09/27/93	09/14/93	29,077	Bituminous coal.
Brush Fuses, Inc (Wkrs)	Glendale Heights, IL.	09/27/93	09/09/93	29,078	Electrical fuses.
Brush Fuses, Inc (Wkrs)	Nogales, AZ	09/27/93	09/09/93	29,079	Electrical fuses.
Andmore Sportswear Corp (ILGWU).	Port Jervis, NY	09/27/93	09/16/93	29,080	Men's and Womens' bathing suits.
Airshield Corp (Wkrs)	Bridgeport, CT	09/27/93	09/15/93	29,081	Fairings and wind deflectors for trucks.
Advanced Machine Technology (IAMAW).	Portland, OR	09/27/93	09/13/93	29,082	Industrial printing presses.
Darrah Fashions, BR3 (Wkrs)	Bridsboro, PA	09/27/93	09/15/93	29,083	Ladies' Dresses.
Darrah Fashions, BR2 (Wkrs)	Tower City, PA	09/27/93	09/15/93	29,084	Ladies' dresses.
Darrah Fashions, BR1(Wkrs)	Wisconisco, PA	09/27/93	09/15/93	29,085	Ladies' dresses.

[FR Doc. 93–25221 Filed 10–13–93; 8:45 am]
BILLING CODE 4510–30–M

[TA–W–28,927]

Eastern Associated Coal Corp. Kopperston No. 1 Mine, Charleston, WV; Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Correction

This notice corrects the notice for petition TA–W–28,927 which was published in the **Federal Register** on August 24, 1993 (58 FR 44699) in FR Document 93–20416. A printing error concerning the location of Eastern Associated Coal Corporation's Kopperston No. 1 mine appears in the 3rd line of the second column in the appendix table on page 44699. The location should read "Charleston, West Virginia" instead of Kopperston, West Virginia.

Signed in Washington, DC, this October 7, 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93–25225 Filed 10–13–93; 8:45 am]
BILLING CODE 4510–30–M

[TA–W–28,858]

Magnetek Century Electric, Inc., El Paso, Texas; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Magnetek Century Electric, Incorporated, El Paso, Texas. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–28,858; Magnetek Century Electric, Incorporated, El Paso, Texas (September 30, 1993)

Signed at Washington, DC, this 5th day of October, 1993.

Marvin M. Fooks,

Director, Office of Adjustment Assistance.

[FR Doc. 93–25222 Filed 10–13–93; 8:45 am]
BILLING CODE 4510–30–M

[TA–W–28,717]

Oberdorfor High Tex, Sandpoint, ID; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Oberdorfor High Tex, Sandpoint, Idaho. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–28,717; Oberdorfor High Tex Sandpoint, ID (October 5, 1993)

Signed at Washington, DC, this 5th day of October, 1993.

Marvin M. Fooks,

Director, Office of Adjustment Assistance.

[FR Doc. 93–25223 Filed 10–13–93; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–28,686 and TA–W–28,686A]

Smarte Carte, Inc., White Bear Lake, MN and Chicago, IL; Negative Determination Regarding Application for Reconsideration

By an application dated September 19, 1993, one of the petitioners requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on September 9, 1993 and published in the **Federal Register** on September 22, 1993 (58 FR 49321).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

Investigation findings show that the workers produce baggage carts at White Bear Lake and provide rental baggage cart concession services at the Chicago O'Hare airport. The findings show that the product is marketed through competitive bidding.

The petitioner states that although the foreign awardee of the O'Hare baggage cart bid had its carts made domestically, it produced its vending systems in Australia.

The Department's denial was based on the fact that the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act was not met. The "contributed importantly" test is generally demonstrated through a survey of the workers' firm's customers. The Department's survey of unsuccessful bids for baggage cart concessions in 1993 showed that Smart Carte's unsuccessful bid for continued concessions at the Chicago O'Hare airport went to an Illinois firm with a foreign parent company.

The findings show that the Illinois firm had the carts manufactured domestically; however, the Illinois firm had vending systems for the baggage carts assembled at the O'Hare airport. Some of the components for the vending systems came from Australia but most were produced domestically including the validators (coin and bill acceptors), coin boxes and bags.

Foreign ownership of a domestic firm and lost domestic bids would not, in themselves, provide a basis for a worker group certification.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this day of October 6, 1993.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Service, Unemployment Insurance Service.

[FR Doc. 93–25224 Filed 10–13–93; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Anthropological and Geographic Sciences; Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following Five meetings.

Name: Advisory Panel for Anthropological and Geographic Sciences #1757.

Date & Time: November 8–9, 1993; 9 a.m.–5 p.m.

Place: National Science Foundation, Stafford Place, 4201 Wilson Boulevard, Room 310, Arlington, VA 22230.

Contact Person: John E. Yellen, Program Director for Archaeology National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (202) 357–7804.

Agenda: To review and evaluate Archaeology proposals as a part of the selection process for awards.

Date & Time: October 26–27, 1993; 9 a.m.–5 p.m.

Place: National Science Foundation, Stafford Place, 4201 Wilson Boulevard, Room 11 Arlington, VA 22230.

Contact Person: Dr. Jonathan Friedlaender, Program Director for Physical Anthorpology, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (202) 357–7804.

Agenda: To review and evaluate physical anthropology proposals as part of the selection process for awards.

Date & Time: November 4–5, 1993; 9 a.m.–5 p.m.

Place: National Science Foundation, Stafford Place, 4201 Wilson Boulevard, Room 5, Arlington, VA 22230.

Contact Person: Dr. Stuart Plattner, Program Director for Cultural Anthropology, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (202) 357–7804.

Agenda: To review and evaluate cultural anthropology proposals as part of the selection process for awards.

Date & Time: November 1–2, 1993; 8 a.m.–5 p.m.

Place: National Science Foundation, Stafford Place, 4201 Wilson Boulevard, Room 310.02 Arlington, VA 22230.

Contact Person: Dr. David C. Hodge, or Thomas J. Baerwald, Program Directors for Geography, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (202) 357–7326.

Agenda: To review and evaluate geography proposals as part of the selection process for awards.

Date & Time: December 13–14, 1993; 8:30 a.m.–5 p.m.

Place: National Science Foundation, Stafford Place, 4201 Wilson Boulevard, room 360, Arlington, VA 22230.

Contact Person: Dr. Robin Cantor or Dr. Thomas J. Baerwald, Coordinators for Human Dimensions/Economics of Global Change, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (202) 357–7417.

Agenda: To review and evaluate human dimension and global change proposals as part of the selection process for awards.

Type of Meetings: Closed.

Purpose of Meetings: To provide advice and recommendations concerning support for research proposals submitted to the NSF for financial support.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: October 8, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–25251 Filed 10–13–93; 8:45 am]

BILLING CODE 7555–01–M

Committee on Equal Opportunities in Science and Engineering; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463), as amended), the National Science Foundation announces the following meeting:

Name: Committee on Equal Opportunities in Science and Engineering (CEOSE) (1173).

Date and time: November 4, 1993; 8:30 a.m.–5 p.m. (Open). November 5, 1993; 8:30 a.m.–12 Noon (Open).

Place: Room 340, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Wanda E. Ward, Executive Secretary, CEOSE, National Science Foundation, 4102 Wilson Boulevard, Room 814, Arlington, VA 22230. Telephone: (703) 306–1633.

Summary Minutes: May be obtained from the Executive Secretary at the above address.

Purpose of Meeting: To review the Report to Congress and to review assessments of participation rates of all segments of society in science and engineering.

Agenda: November 4: 8:30 a.m. to 5 p.m.—Presentations/discussions of Report to Congress; review of assessments of participation rates of all segments of society in science and engineering; 5 p.m.—Reception. November 5: 8:30 a.m. to 12 Noon—Discussion of CEOSE Report to Congress, NSF education programs and NSF future directions.

Dated: October 8, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–25252 Filed 10–13–93; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–3 (50–261)]

Carolina Power and Light Co.; Issuance of Exemption and Amendment to Materials License No. SNM–2502

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 9 to Materials License No. SNM–2502 held by the Carolina Power and Light Company for the receipt and storage of spent fuel at the H.B. Robinson Independent Spent Fuel Storage Installation (ISFSI), located on the H.B. Robinson Steam Electric Plant Unit 2 site, Darlington County, South Carolina. The amendment is effective as of the date of issuance.

The amendment issues the following exemption from the provisions of 10 CFR 72.122(i) with respect to providing instrumentation and control systems to monitor systems that are important to safety over anticipated ranges for normal and off-normal operations for the Carolina Power and Light Company's H.B. Robinson ISFSI. The Commission, on its own initiative, has determined that, due to the passive design and inherent safety of the NUHOMS–7P cask, no instrumentation and control systems are required for the dry shielded canister and the horizontal storage module (DSC and HSM) system during storage operations.

Pursuant to 10 CFR 72.7, the Commission has determined that the granting of the exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest.

The exemption and amendment comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the exemption and license amendment. Prior public notice of the amendment was not required since the amendment does not involve a significant hazards consideration and does not present a genuine issue as to whether the health and safety of the public will be significantly affected.

For further details with respect to this action, see (1) Amendment No. 9 to Materials License No. SNM–2502, and (2) the Commission's letter to the licensee dated October 6, 1993. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the Local Public Document Room at the Oconee County Public Library, 501 W. Southbroad Street, Walhalla, South Carolina 29691.

Exemption

I

Carolina Power and Light Company (CP&L or the licensee) holds materials license (SNM–2502) for receipt and storage of spent fuel from its H.B. Robinson Steam Electric Plant Unit No. 2 at an independent spent fuel storage installation (ISFSI) located on the H.B. Robinson Steam Electric Plant Unit No. 2 site.

Section 72.122(i) of 10 CFR part 72 requires each licensee to provide instrumentation and control systems to monitor systems that are important to safety over anticipated ranges for normal and off-normal operations. Those instruments and control systems that must remain operational under accident conditions must be identified in the Safety Analysis Report.

II

The NRC staff, while reviewing a materials license application for dry concrete module storage of spent fuel from Baltimore Gas and Electric Company's Calvert Cliffs Nuclear Power Plant, concluded, in its November 1992, "Safety Evaluation Report for the Baltimore Gas and Electric Company's Safety Analysis Report for an Independent Spent Fuel Storage Installation," that "* * * given the passive design and inherent safety, there is no technical reason to require instrumentation and control systems for monitoring the NUHOMS–24P (DSC and HSM) system during storage operations at the Calvert Cliffs ISFSI. Therefore, pursuant to 10 CFR 72.7, the Commission has determined to grant an exemption from the requirements of 10 CFR 72.122(i) with respect to the DSC and HSM for storage operations, and, in support thereof, has further determined that the granting of such exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest." Since there is similarly no technical reason to require instrumentation and control systems for monitoring the NUHOMS–7P DSC and HSM system during storage operations at the H.B. Robinson ISFSI, a comparable exemption is warranted in this docket as well.

The proposed exemption from 10 CFR 72.122(i) will not result in a significant offsite release of radioactive material and will not result in any significant increase in individual or occupational dose. The proposed exemption from 10 CFR 72.122(i) will not involve a significant increase in the probability or consequences of an accident, will not involve a significant decrease in a safety margin, and, therefore, will not involve a significant hazards consideration and does not present a genuine issue as to whether the health and safety or the public will be significantly affected. Accordingly, the NRC staff concludes that the proposed exemption would not be inimical to the common defense and security or to the health and safety of the public.

III

Accordingly, the Commission in accordance with 10 CFR 72.7 has determined that the exemption is authorized by law, will not present undue risk to the public health and safety, and is consistent with the common defense and security.

Accordingly, the Commission hereby grants the licensee an exemption from the requirements of 10 CFR 72.122(i) with respect to the NUHOMS–7P DSC and HSM for storage operations.

Pursuant to 10 CFR 51.22(c)(11), the Commission has determined that the granting of this exemption is identified as an action eligible for categorical exclusion from the requirements of 10 CFR part 51.

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 6th day of October 1993.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Director, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 93–25207 Filed 10–13–93; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 72–4 (50–269/270/287)]

Duke Power Co.; Issuance of Exemption and Amendment to Materials License No. SNM–2503

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 3 to Materials License No. SNM–2503 held by the Duke Power Company for the receipt and storage of spent fuel at the Oconee Independent Spent Fuel Storage Installation, located on the Oconee Nuclear Station site, Oconee County, South Carolina. The amendment is effective as of the date of issuance.

The amendment issues the following exemption from the provisions of 10 CFR 72.122(i) with respect to providing instrumentation and control systems to monitor systems that are important to safety over anticipated ranges for normal and off-normal operations for the Duke Power Company's Oconee independent spent fuel storage installation. The Commission, on its own initiative, has determined that, due to the passive design and inherent safety of the NUHOMS–24P cask, no instrumentation and control systems are required for the dry shielded canister and the horizontal storage module (DSC and HSM) system during storage operations.

Pursuant to 10 CFR 72.7, the Commission has determined that the granting of the exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest.

The exemption and amendment comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the exemption and license amendment. Prior public notice of the amendment was not required since the amendment does not involve a significant hazards consideration and does not present a genuine issue as to whether the health and safety of the public will be significantly affected.

For further details with respect to this action, see (1) Amendment No. 3 to Materials License No. SNM–2503, and (2) the Commission's letter to the licensee dated October 6, 1993. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the Local Public Document Room at the Oconee County Public Library, 501 W. Southbroad Street, Walhalla, South Carolina 29691.

Exemption

I

Duke Power Company (DPC or the licensee) holds materials license (SNM–2503) for receipt and storage of spent fuel from its Oconee Nuclear Station at an independent spent fuel storage installation (ISFSI) located on the Oconee Nuclear Station site.

Section 72.122(i) of 10 CFR part 72 requires each licensee to provide instrumentation and control systems to monitor systems that are important to safety over anticipated ranges for normal and off-normal operations. Those instruments and control systems that must remain operational under accident conditions must be identified in the Safety Analysis Report.

II

The NRC staff, while reviewing a materials license application for dry concrete module storage of spent fuel from Baltimore Gas and Electric Company's Calvert Cliffs Nuclear Power Plant, concluded, in its November 1992, "Safety Evaluation Report for the Baltimore Gas and Electric Company's Safety Analysis Report for an Independent Spent Fuel Storage Installation," that " * * * given the passive design and inherent safety, there is no technical reason to require instrumentation and control systems for monitoring the HUHOMS–24P (DSC and HSM) system during storage operations at the Calvert Cliffs ISFSI. Therefore, pursuant to 10 CFR 72.7, the Commission has determined to grant an exemption from the requirements of 10 CFR 72.122(i) with respect to the DSC and HSM for storage operations, and, in support thereof, has further determined that the granting of such exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest." Since there is similarly no technical reason to require instrumentation and control systems for monitoring the NUHOMS–24P DSC and HSM system during storage operations at the Oconee ISFSI, a comparable exemption is warranted in this docket as well.

The proposed exemption from 10 CFR 72.122(i) will not result in a significant offsite release of radioactive material and will not result in any significant increase in individual or occupational dose. The proposed exemption from 10 CFR 72.122(i) will not involve a significant increase in the probability or consequences of an accident will not involve a significant decrease in a safety margin, and, therefore, will not involve a significant hazards consideration and does not present a genuine issue as to whether the health and safety or the public will be significantly affected. Accordingly, the NRC staff concludes that the proposed exemption would not be inimical to the common defense and security or to the health and safety of the public.

III

Accordingly, the Commission in accordance with 10 CFR 72.7 has determined that the exemption is authorized by law, will not present undue risk to the public health and safety, and is consistent with the common defense and security.

Accordingly, the Commission hereby grants the licensee an exemption from the requirements of 10 CFR 72.122(i) with respect to the NUHOMS–24P DSC and HSM for storage operations.

Pursuant to 10 CFR 51.22(c)(11), the Commission has determined that the granting of this exemption is identified as an action eligible for categorical exclusion from the requirements of 10 CFR part 51.

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 6th day of October 1993.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Director, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 93–25206 Filed 10–13–93; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Public Comment With Respect to the Annual National Trade Estimate Report on Foreign Trade Barriers

AGENCY: Office of the United States Trade Representative (USTR).

ACTION: Pursuant to Section 303 of the Trade and Tariff Act of 1984, as amended, USTR is required to publish annually the National Trade Estimate

Report on Foreign Trade Barriers (NTE). In this regard, the Trade Policy Staff Committee (TPSC) is calling on interested parties to assist it in identifying significant barriers to U.S. exports of goods, services and overseas direct investment for inclusion in the NTE. Particularly important are impediments materially affecting the actual and potential financial performance of an industry sector.

REQUIREMENTS, DATES AND ADDRESSES: Submissions should contain descriptions of any or all of the following eight categories of foreign trade barriers: (1) Import policies (e.g. tariffs, quantitative restrictions, import licensing, customs barriers); (2) standards, testing, labeling, and certification; (3) discriminatory government procurement practices (e.g. "buy national" policies and closed bidding); (4) export subsidies (e.g. export financing on preferential terms and agricultural export subsidies that displace U.S. exports in third country markets); (5) lack of intellectual property protection (e.g. inadequate patent, copyright, and trademark regimes); (6) services barriers (e.g. constraints on port access and commercial shipping, regulation of international data flows, and restrictions on the use of data processing); (7) investment barriers (e.g. limitations on foreign equity participation, local content and export requirements, and restrictions on repatriation of earnings and capital); and (8) other barriers (e.g., barriers that encompass more than one category listed above or that affect a single sector).

Submissions also should contain estimates of the potential increase in exports that result from the removal of the barrier, as well as a clear discussion of the method(s) by which the estimates were computed. Estimates should fall within the following value ranges: less than $5 million; $5 to $25 million; $25 to $50 million; $50 to $100 million; $100 to $500 million; or over $500 million.

Interested parties should submit, not later than noon, Friday, November 12, 1993, thirty double-sided copies of comments to the Executive Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative, 600 17th Street NW., room 414, Washington, DC 20506. Please note that interested parties discussing barriers in more than one country should provide a separate submission for each country.

Submissions will be available for public inspection by appointment with the staff of the USTR Public Reading Room, except for information granted "business confidential" status pursuant to 15 CFR 2003.6. Any business confidential material must be clearly marked as such on the cover page and succeeding pages. Such submissions must be accomplished by a nonconfidential summary thereof.

FOR FURTHER INFORMATION CONTACT: John Panulas, Assistant Director for Policy Coordination, USTR (202–395–7210).

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 93–25335 Filed 10–12–93; 1:50 pm]

BILLING CODE 3190–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33–7021; 34–33022; International Series Release No. 588]

October 6, 1993.

Exemptions From Rules 10b–6, 10b–7, and 10b–8 During Distributions of Certain German Securities

Pursuant to delegated authority, the Division of Market Regulation issued the following letter granting class exemptions ("Exemptions") from Rules 10b–6, 10b–7, and 10b–8 ("Trading Rules") under the Securities Exchange Act of 1934 to facilitate distributions in the United States of securities of certain highly capitalized German issuers. The Exemptions permit distribution participants and their affiliated purchasers to effect transactions in Germany otherwise prohibited by the Trading Rules, subject to certain disclosure, recordkeeping, record production, and notice requirements.

The Exemptions have been issued in the context of a continuing review of the Trading Rules, and are published to provide notice of their availability.

Margaret H. McFarland,

Deputy Secretary.

October 6, 1993.

Edward F. Greene, Esq.
Cleary, Gottlieb, Steen & Hamilton, Level 2, City Tower, 40 Basinghall Street, London EC2V 5DE, United Kingdom,

Re: Distributions of Certain German Securities File No. TP 93–327

Dear Mr. Greene: In your letter dated September 29, 1993, as supplemented by conversations with the staff, you request on behalf of Deutsche Bank AG ("Deutsche Bank") exemptions from Rules 10b–6, 10b–7, and 10b–8 under the Securities Exchange Act of 1934 ("Exchange Act") with respect to market activities by distribution participants and their affiliated purchasers during distributions in the United States of equity securities of certain highly capitalized German issuers, as more fully described below.

We understand the facts to be as follows:

Offerings by German Issuers

You indicate that, for purposes of your request, the term "equity securities" includes equity-related securities, such as convertible or exchangeable bonds and warrants. Such equity-related securities may be issued by the issuer of the equity securities itself, or by a subsidiary of such issuer. However, you do not request any relief with respect to offerings of nonconvertible debt.

The structure of an offering of equity securities of a German company varies depending on whether it is a primary or a secondary offering. As a result of the principle of equal treatment of all shareholders contained in the German Stock Corporation Act (para. 53(a), and a provision of that act (para. 186(1)) granting shareholders pre-emptive rights to subscribe pro rata to any capital increase, primary offerings of shares in German companies generally are made by means of offerings of rights to existing shareholders to subscribe for additional shares. Similar provisions apply to the issuance of convertible bonds, participation certificates and other equity-related securities. As described in your letter, pre-emptive rights may be excluded, in whole or in part, only in very limited circumstances. Accordingly, offerings of such securities, whether by the issuer of the underlying security or by a subsidiary of such issuer, generally will be conducted as rights offerings.

Your letter sets forth a timetable of the steps involved in a rights offering by a German issuer. In practice, the lead underwriter normally will have settled all major points (apart from price) with the issuer at least two or three weeks in advance of the decision by the issuer to proceed with a rights offering, and in some cases longer. The lead underwriter also normally will give advice to the issuer with regard to the strategy and execution of the capital increase, in particular with respect to timing and size, and will assist the issuer in obtaining listings of the new shares. Although the lead underwriter thus will know about the general capital raising plans well in advance, this knowledge typically is kept confidential by the underwriter's corporate finance division, subject to confidential consultation with a limited number of senior personnel in the trading and sales

areas, and is not communicated generally to the trading or sales desks.

The new shares are usually offered at a substantial discount (20–30%) from the market price of the outstanding shares at the time the rights offering is priced. A syndicate of underwriters typically agrees (in exchange for underwriters' compensation, the terms of which vary from offering to offering) to subscribe for the shares and in turn to offer them on behalf of the company to all shareholders on a pro rata basis. Any shares not taken up by holders of rights, normally are disposed of by the syndicate in the market pursuant to the directions of the issuer. However, this activity typically is minimal because, owing to the substantial discount at which new shares are offered, most rights are exercised by the then holders of the rights.

In a secondary offering, the underwriting syndicate generally agrees to purchase the shares from the selling shareholder at an agreed offering price less the underwriting commissions. The shares are then distributed by the underwriters at the agreed offering price. Shares that cannot otherwise be disposed of are either sold on the market or held for investment. The offering price is set just prior to the beginning of the offering period, and is based on the then prevailing market conditions.

In certain rights offerings, one or more of the existing substantial shareholders may wish not to take up some or all of their rights, in which event a separate syndicate of underwriters may be organized to purchase from such shareholders and to sell to the public either the rights or the shares such shareholders are entitled to buy through the exercise of those rights ("special secondary offerings"). For shares, the price generally is fixed at the end of the subscription period based on a formula (*e.g.*, the issue price of the shares plus the average market price of the rights during the last five trading days of the subscription period).

Market Activities During Offerings

In Germany, the underwriters of an offering generally will be the major commercial banks, which, in the tradition of universal banking, provide a full range of banking and securities services to clients. The activities of German banks include, in addition to the deposit and credit business, securities activities (such as brokerage, underwriting and custodial services) and investment advisory services, including managing on a discretionary basis the portfolios of bank customers and, through affiliates, managing mutual funds. Most trading in German securities and derivatives is conducted by banks (or their affiliates) either for their own accounts or for the accounts of their customers.

With limited exceptions and subject to applicable antitrust laws, German banks are free to engage, sometimes indirectly through subsidiaries, in any business, whether of a financial or non-financial nature. It is not uncommon for German banks to have shareholdings in industrial or commercial companies and for officers of German banks to sit on the Supervisory Boards (as discussed below) of industrial companies, whether or not the banks in question are shareholders. German stock corporations have a dual board system: the "Vorstand" (Managing Board), like a U.S. board of directors, is responsible for the overall management of the company; the "Aufsichtsrat" (Supervisory Board) is generally limited to overseeing the Managing Board and appointing its members.

The German banks acting as underwriters typically continue to engage in a wide range of activities during an offering. In particular, the underwriters continue to trade in the ordinary course during the period immediately prior to the announcement of the rights offering and for the period during which rights are traded. German underwriters manage their underwriting risks, and the lead underwriter manages the risks associated with maintaining an orderly market, in two principal ways: by buying rights and selling shares short, and by hedging through the Deutsche Terminbörse ("DTB") (the listed options market) and over-the-counter derivative markets.

The underwriters may be active in trading all kinds of securities of the issuer, or derivative instruments related to such securities, in the cash market (*i.e.*, rights, common shares, preferred shares, participation certificates, bonds with equity warrants, convertible bonds, and straight bonds) and in the options and futures market (*i.e.*, equity options, futures, index options, and index futures). In these markets, the underwriters would both execute orders for customers and trade securities and derivatives for their own account. Other activities involve arbitrage trading between the various national and international exchanges where the securities are listed, index-arbitrage, basket-trading, and buying and selling in order to provide liquidity to the markets.

German banks, themselves and through their affiliates, provide investment advisory services to private and institutional clients both in Germany and elsewhere. Investment advisory services include portfolio management of individual and institutional clients' segregated accounts and the management of mutual funds. Any investment advisor is required to act in the interests of its clients, pursuant to general provisions of German Law. German mutual fund management companies must be separate legal entities (but generally are owned by banks) and are regulated by the Federal Banking Supervisory Authority. They are required by the Act on Mutual Fund Management Companies to have special banking licenses limited to the conduct of this type of business. Pursuant to that act, and under general legal principles, fund managers are obliged to manage the funds exclusively in the interests of the investors. While the officers of a universal bank generally are not also officers of the management companies owned by such bank, it is not unusual for officers of a bank to be on the Supervisory Board or advisory board of the management companies owned by that bank.

In addition, German banks (including the underwriters) acting as custodians for customers are obliged to furnish information to their customers about any rights offering pursuant to the General Business Conditions applicable to banks. Such information contains all the necessary details of the offer and a request to instruct the custodian how to respond. If customers fail to instruct their custodians by the day prior to the last trading day of the rights offering, the custodians will sell the rights on the last trading day. In their capacity as custodians, German banks do not give advice to their customers on how they should respond to the rights offering; however, the customers may otherwise be in contact with their banks, including banks that may be acting as underwriters, for investment advice.

In addition, German law prohibits German stock corporations and their subsidiaries from purchasing shares in the corporation except in limited circumstances. These circumstances are set forth in the German Stock Corporation Act (para. 71) and include, *inter alia*, purchases necessary to avert serious impending damage to the corporation (in such case, the Managing Board has to report to the shareholders at the next general meeting the reasons for and the purpose of the purchase, the number of and the nominal amount of the shares purchased, the percentage of the share capital purchased, and the consideration for the shares); purchases made for the purpose of offering shares to employees of the corporation or of a

subsidiary (which offer must be made within one year of the purchase); and purchases to indemnify shareholders of affiliates (subject to certain conditions). In all cases, purchases are limited to 10 percent of the share capital of the corporation and are dependent upon a special reserve having been created therefor in the balance sheet. Moreover, the German Stock Corporation Act (para. 56) prohibits a German stock corporation and its subsidiaries from subscribing to shares of the corporation in connection with a capital increase.

The German Securities Market

Equity securities are traded both on the German stock exchanges and in the over-the-counter market. The General Business Conditions applicable to banks provide that, unless the customer otherwise directs, equity orders are to be executed on one of the stock exchanges.

Germany has eight stock exchanges, located in Berlin, Bremen, Düsseldorf, Frankfurt, Hamburg, Hanover, Munich, and Stuttgart (collectively, "German Stock Exchanges"). The Frankfurt Stock Exchange accounts for 70 percent of total turnover. With regard to institutional trading, there is also a screen-based electronic trading system, IBIS (Integrated Stock Exchange Trading and Information System), which is administratively part of the Frankfurt Stock Exchange. Most equity trades are carried out through an exchange, *i.e.*, either on the floor or through IBIS. Exceptions are cross-border trades and transactions involving significant holdings.

Standardized options and futures contracts are traded on the DTB, a fully electronic options exchange operating throughout Germany. On the DTB, market makers are admitted with the obligation to quote firm bid and ask prices in a reasonable number of options contracts. In contrast, German banks are not obliged by German Stock Exchange rules or otherwise to act as market makers in the cash market.

Each German Stock Exchange, as well as the DTB, is subject to the statutory supervision of the government of the Federal State (Land) in which it is located. The DTB is considered located in Frankfurt and is therefore subject to the supervision of the government of the State of Hessen. The Stock Exchange Act provides that a state-appointed "Staatskommissar" be appointed for each stock exchange. Subject to directions given by the State government, the Staatskommissar is responsible for monitoring trading on the exchange and for ensuring compliance with the Stock Exchange Act and the rules and regulations of the exchange. Each State government also appoints specialists ("Amtlicher Kursmakler") for the securities that trade on the exchange supervised by that government.

For a bank or state-appointed specialist and its personnel to trade on a German Stock Exchange, the permission of the Managing Board of the exchange is required. Permission will be granted only if the applicant is a fit and proper person (this normally involves an examination requirement) to carry on such business.

Floor trading on the German Stock Exchanges takes place on a continuous basis, with round lots representing 50 shares or an integral multiple thereof, during stock exchange hours (between 10:30 a.m. and 1:30 p.m.). Opening and closing prices are determined by the state-appointed specialist by balancing the then available supply and demand. There is an additional fixing by the state-appointed specialist around mid-session for all listed shares. Floor trading of liquid shares between the setting of the opening, mid-session, and closing prices takes place on an auction basis; floor trading in less liquid shares, odd-lots, and rights takes place only at the mid-session fixing.

About 40 shares with liquid markets are also traded through the screen-based, quote-driven IBIS system from 8:30 a.m. to 5:00 p.m. Minimum trading size in IBIS is in general 500 shares. Details of all floor and IBIS trades, including the identities of counterparties and price and volume data, are available to the Staatskommissar. Price and volume data are also reported publicly by the relevant German Stock Exchange (including IBIS).

The state-appointed specialist is not involved in establishing prices on the DTB. An opening price is determined by the DTB as the level at which the most registered buy and sell orders could be carried out at a certain time. After fixing the opening price, continuous trading commences at which buy and sell orders are matched automatically in the computer system. Trading in equity products on the DTB is between 9:30 a.m. and 4:00 p.m.

The Stock Exchange Act (para. 29, subpara. 3) provides that only a price that reflects the actual market situation can be determined as an exchange quoted price. This requirement is subject to the stock exchange supervisory system. Further, the Federal Banking Supervisory Authority in its Requirements for Security Trading at Banks of December 30, 1980 requires, *inter alia*, that trading and settlement be strictly separated and that all securities and derivative transactions be recorded in writing without delay, and restricts the conclusion of transactions not reflecting market conditions: such transactions are the exception to the rule, and must be reported to senior management if they do not reflect market conditions; each bank's books are subject to audit by the Supervisory Authority.

Request for Exemptions

You note that because transactions outside the United States could affect the prices of rights or shares being distributed in the United States, a question arises as to the potential applicability of Rules 10b–6, 10b–7, and 10b–8 to trading outside the United States of securities that are the subject of the distribution, any securities of the same class and series, or any right to purchase any such securities (collectively, "related securities") by distribution participants and their affiliated purchasers during the distribution. Assuming the existence of a "distribution" in the United States, as defined in paragraph (c)(5) of Rule 10b–6, distribution participants and their affiliated purchasers would be subject to the restrictions of Rule 10b–6 from a period of time prior to the commencement of offers or sales and continuing until the end of the distribution in the United States. You believe that the application of Rules 10b–6, 10b–7, and 10b–8 to the activities of distribution participants and their affiliated purchasers outside the United States during U.S. distributions of securities of certain German issuers could seriously jeopardize the success of any distribution of securities of such issuers.

For example, the application of Rules 10b–6, 10b–7, and 10b–8 would prevent German underwriters from conducting their normal proprietary trading, including arbitrage between securities markets and fulfilling their market making obligations in options listed for trading on the DTB, during distributions in the United States. You note that the underwriters, particularly the lead underwriter, are expected to maintain an orderly market in the security being distributed and related securities by buying and selling as principal, and with respect to options listed for trading on the DTB, are required to trade to fulfill their market making obligations. You advise that, although the underwriters would not engage in formal stabilizing activities, their activities outside the United States to maintain an orderly market in the rights and/or shares may be considered the "placing of any bid, or the effecting of

any purchase, for the purpose of pegging, fixing, or stabilizing the price" of the offered securities. With respect to underwritten rights offerings, the application of Rule 10b–8 would limit the customary risk management activities of German distribution participants with respect to the purchasing of rights and offsetting sales of shares or other hedging transactions in derivative securities, other than in compliance with Rule 10b–8.

Given the high proportion of trading in the securities of German issuers that is conducted by the larger German banks and the likelihood that most (if not all) of such banks would be participants in any such distribution of a "blue-chip" German issuer, you indicate that the market for such securities in Germany could collapse if such German distribution participants were restricted from trading by the application of Rule 10b–6. You state that withdrawal from proprietary trading in such securities also could affect the calculation of the value of Deutscher Aktienindex ("DAX"), a continuously updated, market capitalization-weighted performance index of 30 German "blue-chip" issuers. You note that these consequences are particularly onerous in the context of a rights offering because of the exceptionally long distribution period involved in such offerings.

In your view, the application of Rules 10b–6, 10b–7, and 10b–8 also would restrict normal activities by German distribution participants in their dealing with their customers by restricting the ability of German distribution participants to solicit their customers to purchase the security being distributed and related securities (which in a rights offering would restrict their ability to solicit other customers to purchase rights from shareholders who choose not to exercise their rights) and to offer investment advice to their customers. You advise that the application of these rules also may restrict transactional and advisory activities with respect to discretionary accounts managed by German distribution participants or their affiliated purchasers and investment funds managed by affiliated purchasers of German distribution participants.

Accordingly, you request that the Commission grant exemptions from Rules 10b–6, 10b–7, and 10b–8 to permit distribution participants and their affiliated purchasers to effect transactions in the securities of highly capitalized German issuers during a distribution in the United States of such issuer's securities, pursuant to the terms, conditions, and limitations set forth in your letter.

Response

On the basis of your representations and the facts presented, the Commission hereby grants exemptions from Rules 10b–6, 10b–7, and 10b–8 to distribution participants, as defined in Rule 10b–6(c)(6)(ii), and their affiliated purchasers, as defined in Rule 10b–6(c)(6)(i) (collectively, "Relevant Parties"), in connection with transactions in Relevant Securities (as defined below) outside the United States during distributions of Qualified German Securities (as defined below) subject to the following terms, conditions, and limitations:

I. Securities

A. The security being distributed ("Qualified German Security") must:

1. Be issued by (i) a "foreign private issuer" within the meaning of Rule 3b–4 under the Exchange Act incorporated under the laws of Germany, which issuer ("German Issuer") has outstanding a component security of the DAX; [1] or (ii) a subsidiary of a German Issuer; and

2. Satisfy one of the following:

i. Be a DAX component security; or

ii. Be an equity security of a German Issuer having an average daily trading volume that equals or exceeds the equivalent of DM8 million (which exceeded US$5 million as of September 10, 1993), as published by foreign financial regulatory authorities ("FFRAs") [2] and any U.S. securities exchanges or automated inter-dealer quotation systems during the Reference Period; or

iii. Be a security that is convertible into, exchangeable for, or a right to acquire a security of a German Issuer described in paragraph I.A.2. (i) or (ii) above.

B. "Relevant Security" means:

1. A Qualified German Security; or

2. A security of the same class and series as, or a right to purchase, a Qualified German Security.

II. Transactions Effected in the United States

All transactions in Relevant Securities effected in the United States shall comply with Rules 10b–6, 10b–7, and 10b–8.

III. Transactions Effected in Germany

A. All transactions during the Covered Period (as defined below) in Relevant Securities effected in Germany shall be conducted in compliance with German law. For purposes of these exemptions, "Covered Period" means: (i) in the case of a rights distribution, the period commencing when the subscription price is determined and continuing until the completion of the distribution in the United States, and (ii) in the case of any other distribution, the period commencing three business days in Frankfurt before the price is determined and continuing until the completion of the distribution in the United States; *provided, however,* that the Covered Period shall not commence with respect to any Relevant Party until such person becomes a distribution participant.

B. All transactions in Relevant Securities during the Covered Period effected in Germany on a principal basis shall be effected or reported on the trading facilities of a German Stock Exchange (including IBIS), or the DTB.

C. *Disclosure of Trading Activities* [3]

1. The inside front cover page of the offering materials used in the offer and sale in the United States of a Qualified German Security shall prominently display a statement in substantially the following form, subject to appropriate modification where circumstances require. Such statement shall be in capital letters, printed in bold-face roman type at least as large as ten-point modern type and at least two points leaded:

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[1] References to the DAX refer to the composition of the index on the date of this letter; *provided, however,* that any security added to the DAX after the date of this letter also will be treated as a Qualified German Security if its issuer satisfies the requirements in paragraph I.A.1. and such security has an aggregate market value that equals or exceeds the equivalent of DM1.6 billion (which exceeded US$1 billion as of September 10, 1993) and an average daily trading volume that equals or exceeds the equivalent of DM8 million (which exceeded US$5 million as of September 10, 1993) as published by "foreign financial regulatory authorities" (as defined below) and any U.S. securities exchanges or automated inter-dealer quotation systems, during a period ("Reference Period") that is 20 consecutive business days in Frankfurt within 60 consecutive calendar days prior to the commencement of the Covered Period as defined in paragraph III.A. below.

[2] An FFRA is defined in Section 3(a)(51) of the Exchange Act, 5 U.S.C. 78(c)(51), as any (A) foreign securities authority; (B) other governmental body or foreign equivalent of a self-regulatory organization empowered by a foreign government to administer or enforce its laws relating to the regulation of fiduciaries, trusts, commercial lending, insurance, trading in contracts of sale of a commodity for future delivery, or other instruments traded on or subject to the rules of a contract market, board of trade, or foreign equivalent, or other financial activities; or (C) membership organization a function of which is to regulate participation of its members in activities listed above. The German Stock Exchanges, which include IBIS, are considered to be FFRAs.

[3] Unless subsequently modified by the Commission, this disclosure requirement shall not apply to distributions effected solely pursuant to Rule 144A under the Securities Act of 1933 ("Securities Act").

In connection with this offering, certain persons may engage in transactions for their own accounts or for the accounts of others in (identify relevant securities) pursuant to exemptions from rules 10b–6, 10b–7, and 10b–8 under the Securities Exchange Act of 1934. See "[Identify Section of Offering Materials That Describes the Transactions to be Effected]."

2. In addition, there shall be included in the identified section of the offering materials a comprehensive description of the activities that may be undertaken by the Relevant Parties in the Relevant Securities during the distribution. [4]

D. *Recordkeeping and Reporting.*

1. Each Relevant Party shall provide to an Independent Entity acceptable to the Director, Division of Market Regulation ("Independent Entity"),[5] the information described in paragraph III.D.2. below with respect to its transactions in Relevant Securities in Germany; *provided, however,* that in the case of a distribution made pursuant to rights, such information is only required to be reported to the Independent Entity during the period or periods commencing at any time during the Covered Period that the rights exercise price does not represent a discount of at least 10 percent from the then current market price of the security underlying the rights and continuing until (a) the end of the Covered Period or (b) until the rights exercise price represents a discount of at least 12 percent from the then current market price of the security underlying the rights. [6]

2. When required pursuant to paragraph III.D.1. above, the Relevant Parties will provide the following information to the Independent Entity, in a Comma Delimited ASCII (American Standard Code for Information Interchange) format including a common record layout acceptable to the Independent Entity and the Division, with respect to transactions during the Covered Period in Relevant Securities:

a. Name of the security, date, time (of execution and reporting, where available to the Relevant Party), price, and volume of each transaction; *provided, however,* that no information regarding a customer transaction need be provided unless such transaction has a value of DM500,000 or more;

b. The exchange or inter-dealer quotation system on which the transaction was effected, if any;

c. An indication whether such transaction was for a proprietary account or the account of a customer, *provided that* any transaction effected by an underwriter for a customer account for which it has exercised discretionary authority shall be reported as a proprietary trade; and

d. The identity of a counterparty only where such counterparty is an underwriter or a selling group member.

3. The Independent Entity and the Relevant Parties shall keep all documents produced or prepared pursuant to paragraph III.D.2. for a period of not less than two years.

4. Upon the request of the Division, the Independent Entity shall transmit the information provided by the Relevant Parties pursuant to paragraph III.D.2. above to the Division within 30 days of the request.

5. If the information required to be produced in paragraph III.D.2. above is not available from the Independent Entity, upon the request of the Division such information shall be provided by the Relevant Party and be made available to the Division at its office in Washington, D.C.

6. Representatives of a Relevant Party will be made available (in person at the office of the Division or by telephone) to respond to inquiries of the Division relating to its records.

IV. Transactions Effected in Significant Markets

A. All transactions in Relevant Securities in a "Significant Market," as defined below, shall be effected in accordance with the requirements of Rules 10b–6, 10b–7, and 10b–8, except as permitted by paragraph IV.B. below or by other available exemptions. For purposes of these exemptions, "Significant Market" means: (i) SEAQ International or any other dealer market outside the United States and Germany for which price and volume information is published by an FFRA or (ii) any other securities market(s) in a single country other than the United States or Germany to which a German Issuer has applied for listing the German Qualified Security and been accepted, if during the Reference Period the volume in either (i) or (ii) in such Qualified German Security, as published by the relevant FFRA(s) in such securities market is 10 percent or more of the aggregate worldwide trading volume in that security published by all FFRAs in (i) and (ii), FFRAs in Germany, and U.S. securities markets to which such German Issuer has applied for listing such Qualified German Security and been accepted.

B. In the case of a distribution of Qualified German Securities made pursuant to rights ("rights distribution"), the Relevant Parties located in the United Kingdom ("U.K. Relevant Parties"): (a) in connection with the rights distribution, may purchase or solicit the purchase of Relevant Securities in transactions solely in response to orders for the accounts of their customers in the ordinary course of their business in the United Kingdom ("customer facilitation activities"); and (b) may bid for or purchase Relevant Securities as principal in market making transactions through SEAQ International during the rights distribution, in each case subject to the following conditions:

1. During the period from five business days prior to the expiration date of the rights distribution and until the expiration date, inclusive, at any time at which the difference between the rights exercise price and the market price of the security underlying the rights (which for this purpose will be taken to mean the mid-price between the highest bid and lowest offer quoted on SEAQ International for the security underlying the rights) does not represent a discount of at least 10 percent from the then current market price of the security underlying the rights, the U.K. Relevant Parties will effect "passive market making" transactions in the Relevant Securities subject to the terms and conditions of *Letter regarding Distributions of SEAQ and SEAQ International Securities* (July 12, 1993) ("LSE Letter");

2. The U.K. Relevant Parties, in accordance with Item 502(d)(1) of Regulation S–K under the Securities Act, shall include a statement regarding transactions which stabilize or maintain the market price of the Relevant Securities with appropriate modification, to reflect the possibility that the U.K. Relevant Parties may engage in market making, including passive market making, and customer facilitation activities that otherwise would be prohibited by Rule 10b–6, and shall include pursuant to Rule 408 under the Securities Act in the "Plan of Distribution" or similar section of the prospectus, a brief description of such proposed market making and customer facilitation activities in the Relevant Securities; and

3. The recordkeeping and production requirements set forth by the

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[4] The staff of the Division of Market Regulation ("Division") and the Division of Corporation Finance have reviewed Exhibit A attached to your request letter and believe that the disclosure contained therein would satisfy the requirement of this subparagraph.

[5] The Division expects that the Independent Entity will be the Frankfurt Stock Exchange ("FSE"). Alternatively if the FSE is not available to act as the Independent Entity, the Independent Entity may be the independent accountant of the lead German underwriter; however, for each distribution there can be only one Independent Entity to which transaction information is reported.

[6] For purposes of this exemption, unless stated otherwise, the market price for a security shall be the closing price on the floor of the FSE.

Commission in the LSE Letter shall apply to all of the activities engaged in by the U.K. Relevant Parties during the rights distribution.

V. General Conditions

A. For purposes of these exemptions, a two business day cooling-off period shall apply under Rule 10b–6(a)(4) (xi) and (xii) in the United States and each Significant Market, provided that trading in Relevant Securities in Significant Markets shall be subject to the exemptive relief then available in such market, if any, or the record maintenance and record production requirements contained in *Letter regarding Application of Cooling-Off Periods Under Rule 10b–6 to Distributions of Foreign Securities* (March 4, 1993) (or any modifications thereto) are satisfied by Relevant Parties in such Significant Market, except that with respect to the identity of customers, Relevant Parties may agree to use their best efforts to provide the Commission, upon its request, with the identity of customers to the extent permitted by applicable law.

B. The lead underwriter or the global coordinator shall promptly, but in any event before the commencement of the Covered Period, provide a written notice ("Notice") to the Division containing the following information: (i) the name of the issuer and the Qualified German Security; (ii) whether the Qualified German Security is a DAX component security or information with respect to the market capitalization and the average daily trading volume of the Qualified German Security to be distributed; (iii) the identity of the Significant Markets where the Qualified German Security trades; (iv) if the Notice is for more than one entity, the identity of all underwriters and selling group members relying on these exemptions;[7] and (v) a statement that the Relevant Parties are aware of the terms and conditions of these exemptions.

C. Any person who fails to comply with the conditions of the exemptions, including a failure to provide requested information, would not be permitted to rely on the exemptions in future distributions. Upon a showing of good cause, however, the Commission or the Division may determine that it is not necessary under the circumstances that the exemptions be denied.

The foregoing exemptions from Rules 10b–6, 10b–7, and 10b–8 are based solely on your representations and the facts presented, and are strictly limited to the application of those rules to the proposed transactions. Any different facts or representations might require a different response. Responsibility for compliance with any other applicable provisions of the federal securities laws must rest with the Relevant Parties. The Division expresses no view with respect to any other questions that the proposed transactions may raise, including, but not limited to, the adequacy of disclosure concerning, and the applicability of any other federal or state laws to, the proposed transactions.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Brandon Becker

Director.

[7] Supplemental Notices shall be provided for underwriters and selling group members identified after a Notice has been filed.

Clearly, Gottlieb, Steen & Hamilton, Level 2, City Tower, 40 Basinghall Street, London EC2V 5DE.

1934 Act—Section 10(b)
Rules 10b–6, 10b–7 and 10b–8

September 29, 1993

Securities and Exchange Commission, *450 Fifth Street NW., Judiciary Plaza, Washington, DC 20549*

Attention: Division of Market Regulation—Office of Trading Practices

Re: Exemptions From Rules 10b–6, 10b–7 and 10b–8 for Rights Offerings and Secondary Offerings of Certain German Companies

Ladies and Gentlemen: We are acting as counsel to Deutsche Bank AG ("Deutsche Bank") in connection with possible offerings of equity securities of certain German companies involving a distribution of some or all of the securities in the United States.[1] The offerings may be either primary or secondary offerings, and the securities being distributed in the United States may be offered publicly or on a private basis (under Rule 144A or otherwise).[2] On behalf of Deutsche Bank, we hereby submit the following application to the Securities and Exchange Commission (the "Commission") for exemptions from Rules 10b–6, 10b–7 and 10b–8 under the Securities Exchange Act of 1934 (the "Exchange Act") to the extent and for the reasons set forth in Part III below.

[1] The term equity securities shall include equity-related securities, such as convertible or exchangeable bonds and warrants. Such equity-related securities may be issued by the issuer of the equity securities itself, or by a subsidiary of such issuer. Offerings of straight debt securities are outside the scope of this letter.

[2] In the case of private placements and primary offerings made through rights, it is assumed for purposes of this application, and only for such purposes, that the marketing efforts in the United States would constitute a "distribution" for purposes of Rule 10b–6. See note 15 below.

I. Offerings by German Companies

The structure of an offering of equity securities in a German company varies depending on whether it is a primary or a secondary offering.

A. *Primary Offerings.*

As a result of the principle of equal treatment of all shareholders enshrined in German corporate law,[3] and pursuant to a statutory provision granting shareholders pre-emptive rights to subscribe pro rata to any capital increase,[4] primary offerings of shares in German companies are generally made by means of offerings of rights to existing shareholders to subscribe for additional shares.[5] The new shares are usually offered at a substantial discount (20–30%) from the market price of the outstanding shares at the time the issue is priced.

In a rights offering, a syndicate of underwriters typically agrees (in exchange for underwriters' compensation the terms of which vary from offering to offering) to subscribe for the shares and in turn to offer them on behalf of the company to all shareholders on a pro rata basis. The following table sets forth the minimum timing of the various steps involved in a rights offering:

Trading Day and Step
X—acceptance by the issuer of the offer by the underwriters/subscription by the underwriters, including, normally, payment of 25% of the par value of the shares

[3] See para. 53(a) of the German Stock Corporation Act.

[4] See para. 186(1) of the German Stock Corporation Act. Similar provisions apply to the issue of convertible bonds, participation certificates and other equity-related securities. Accordingly, offerings of such securities, whether by the issuer of the underlying equity security or by a subsidiary of such issuer, will generally be conducted as rights offerings.

[5] Pre-emptive rights may be excluded, in whole or in part, only through the shareholders' resolution approving the capital increase, which must be adopted with a 75% majority of the capital stock represented at the shareholders' meeting. Moreover, the Managing Board of the company (see note 9 below) must report in writing to the shareholders' meeting on the reasons for the exclusion of pre-emptive rights. See para. 186(4)(2) of the German Stock Corporation Act. Furthermore, decisions of the shareholders' meeting excluding pre-emptive rights may be challenged in the German courts by any shareholder whose objection was recorded at the meeting. See para. 245 of the German Stock Corporation Act. Finally, pursuant to German court decisions, an issuer may exclude pre-emptive rights in only limited circumstances, such as (subject to certain requirements) a new listing on a foreign stock exchange, an offer to employees or a reorganization. For these reasons, among others, it is rare for German companies to raise capital otherwise than through rights offerings.

X+3—entry of the capital increase into the Commercial Register
X+7—pricing—*i.e.*, determination of the subscription price
X+8—approval of the listing on the German stock exchanges
X+9—publication of the rights offering
X+13—first day of subscription period for existing shareholders/trading in the rights commences
X+20—trading in the rights ends
X+22—last day of subscription period for holders of rights/settlement, including, normally, payment of the remaining 75% of the par value of the shares plus premium.
X+24—listing on the German stock exchanges/trading in the new shares commences.

In practice, the lead underwriter will normally have settled all major points (apart from price) with the issuer at least two or three weeks in advance of the decision by the issuer to proceed with a rights offering, and in some cases longer.[6]

Any shares not taken up by holders of rights are normally disposed of by the syndicate in the market pursuant to the directions of the issuer.[7]

B. *Secondary Offerings.*

In a secondary offering, the underwriting syndicate generally agrees to purchase the shares from the selling shareholder at an agreed offering price less the underwriting commissions. The shares are then distributed by the underwriters at the agreed offering price. Shares that cannot otherwise be disposed of are either sold on the market or held for investment. The offering price is set just prior to the beginning of the offering period, and is based on the then prevailing market conditions.

C. *Special Secondary Offerings.*

In certain rights offerings, one or more of the existing substantial shareholders may wish not to take up some or all of their rights, in which event a separate syndicate of underwriters may be organized to purchase from such shareholders and to sell to the public either the rights or the shares such shareholders are entitled to buy through the exercise of those rights. For shares, the price is generally fixed at the end of the subscription period based on a formula (*e.g.*, the issue price of the shares plus the average market price of the rights during the last five Trading Days of the subscription period).

D. *Market Activities of Underwriters during Offerings.*

In Germany, the banks are the underwriters of securities. In contrast to the United States, the vast majority of German banks are universal banks (the distinction between commercial and investment banking being historically largely unknown) providing a full range of banking and securities services under one roof. The activities of banks include, in addition to the deposit and credit business, securities activities (such as brokerage, underwriting and custodial services) and investment advisory services—including managing on a discretionary basis the portfolios of bank customers and, through affiliates, managing mutual funds.[8] Most trading in German securities and derivatives is conducted by banks (or their affiliates) either for their own accounts or for the accounts of their customers.

With limited exceptions and subject to applicable antitrust laws, German banks are free to engage, sometimes indirectly through subsidiaries, in any business, whether of a financial or non-financial nature. It is not uncommon for German banks to have shareholdings in industrial or commercial companies and for officers of German banks to sit on the Supervisory Boards[9] of industrial companies, whether or not the banks in question are shareholders.

The German banks acting as underwriters typically continue to engage in a wide range of trading activities during an offering. In particular, the underwriters continue to trade in the ordinary course during the period immediately prior to the announcement of the rights offering and for the period during which rights are traded. Accordingly, the underwriters may be active in trading all kinds of securities of the issuer, or derivative instruments related to such securities, both in the cash market (*i.e.*, rights, common shares, preferred shares, participation certificates, bonds with equity warrants, convertible bonds and straight bonds) and in the options and futures market (*i.e.*, equity options, futures, index options and index futures). In these markets, the underwriters would both execute orders for customers[10] and trade securities and derivatives in the ordinary course for their own accounts. Other activities involve proprietary arbitrage trading between the various national and international exchanges where the securities are listed, index-arbitrage and basket-trading. In addition, the underwriters continue to make investment decisions for the accounts they manage, and their mutual fund management company affiliates continue to make investment decisions on behalf of the mutual funds they manage.

In the cash market, German banks are not obliged by stock exchange rules or otherwise to act as "market-makers."[11] Nonetheless, the issuer and the market expect the underwriters to maintain an

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[6] The lead underwriter also will normally give advice to the issuer with regard to the strategy and execution of the capital increase, in particular with respect to timing and size, and will assist the issuer in obtaining listings of the new shares. Although the lead underwriter thus will normally know of the general capital raising plans well in advance, this knowledge is typically kept confidential by the underwriter's corporate finance division, subject to confidential consultation with a limited number of senior personnel in the trading and sales areas, and is not communicated generally to the trading or sales desks.

[7] It should, however, be noted that this is normally of minimal significance because, due to the substantial discount at which new shares are offered, most rights are exercised by the then holders of the rights.

[8] German banks, themselves and through their affiliates, provide investment advisory services to private and institutional clients both in Germany and elsewhere. Investment advisory services include portfolio management of individual and institutional clients' segregated accounts and the management of mutual funds. Any investment advisor is required, pursuant to general provisions of German Law, to act in the interests of its clients. See paras. 662 ff. and 675 of the German Civil Code and paras. 383 ff. of the German Commercial Code; see also para. 8(2) of the Annex to the Provisions for Securities Deposit Audits of the Federal Banking Supervisory Authority of December 1970. German mutual fund management companies must be separate legal entities (but are generally owned by banks) and are regulated by the Federal Banking Supervisory Authority. They are required by the Act on Mutual Fund Management Companies to have special banking licenses limited to the conduct of this type of business. Pursuant to para. 10 of that act, and under general legal principles, fund managers are obliged to manage the funds exclusively in the interests of the investors. While the officers of a universal bank are generally not also officers of the management companies owned by such bank, it is not unusual for officers of a bank to be on the Supervisory Board (see note 9 below) or Advisory Board of the management companies owned by that bank.

[9] German stock corporations have a dual board system: the Vorstand (Managing Board), like a U.S. Board of Directors, is responsible for the overall management of the company; the Aufsichtsrat (Supervisory Board) is generally limited to overseeing the Managing Board and appointing its members.

[10] In addition, German banks (including the underwriters) acting as custodians for customers are obliged pursuant to their General Business Conditions (No. 39) to furnish information to their customers about any rights offering. Such information contains all the necessary details of the offer and a request to instruct the custodian how to respond. If customers fail to instruct their custodians by the day prior to the last Trading Day of the rights offering, the custodians will sell the rights on the last Trading Day. In their capacities as custodians, German banks do not give advice to their customers on how they should respond to the rights offering; this is not to say, however, that the customers are not otherwise in contact with their banks, including banks that may be acting as underwriters, for investment advice (see note 8 above).

[11] This is in contrast to the listed options market on the Deutsche Terminbörse (the "DTB"), a fully electronic options exchange operating throughout Germany, where market-makers are admitted with the obligation to quote firm bid and ask prices in a reasonable number of option contracts.

orderly market during the rights offering period, both in rights and in shares. Accordingly, the lead underwriter in particular both buys and sells rights and shares as principal for its own account and on behalf of its customers to provide liquidity to the market and to create a stable market environment during the offering.

German underwriters manage their underwriting risks, and the lead underwriter manages the risks associated with maintaining an orderly market, in two principal ways: by buying rights and selling shares short, and by hedging through the DTB and over-the-counter derivative markets.

II. The German Market

Equity securities are traded both on the German stock exchanges and in the over-the-counter market. The General Business Conditions (No. 29) applicable to banks provide that, unless the customer otherwise directs, equity orders are to be executed on one of the stock exchanges.

Germany has eight stock exchanges, located in Berlin, Bremen, Düsseldorf, Frankfurt, Hamburg, Hanover, Munich and Stuttgart (collectively, the "German Stock Exchanges"). The Frankfurt Stock Exchange accounts for 70% of total turnover. With regard to institutional trading, there is also a screen-based electronic trading system, IBIS, which is administratively part of the Frankfurt Stock Exchange. Most equity trades are carried out through an exchange—*i.e.*, either on the floor or through IBIS. Exceptions are cross-border trades and transactions involving significant holdings. Standardized options and futures contracts are traded on the DTB.

Each German Stock Exchange, as well as the DTB, is subject to the statutory supervision of the government of the Federal State (*Land*) in which it is located. The DTB is considered located in Frankfurt and is therefore subject to the supervision of the government of the State of Hessen. The Stock Exchange Act provides that a state-appointed *"Staatskommissar"* be appointed for each stock exchange. Subject to directions given by the State government, the *Staatskommissar* is responsible for monitoring trading on the exchange and for ensuring compliance with the Stock Exchange Act and the rules and regulations of the exchange. Each State government also appoints specialists (*Amtlicher Kursmakler*) for the securities that trade on the exchange supervised by that government.

For a bank or state-appointed specialist and its personnel to trade on a German Stock Exchange, the permission of the Managing Board of the exchange is required. Permission will be granted only if the applicant is a fit and proper person (this normally involves an examination requirement) to carry on such business.

Floor trading on the German Stock Exchanges takes place on a continuous basis, with round lots representing 50 shares or an integral multiple thereof, during stock exchange hours (between 10:30 a.m. and 1:30 p.m.). Opening and closing prices are determined by the state-appointed specialist by balancing the then available supply and demand. There is an additional fixing by the state-appointed specialist around mid-session for all listed shares. Floor trading of liquid shares between the setting of the opening, mid-session and closing prices takes place on an auction basis; floor trading in less liquid shares, odd lots and rights takes place only at the mid-session fixing.

About 40 shares with liquid markets are also traded through the screen-based, quote-driven IBIS system from 8:30 a.m. to 5:00 p.m. Minimum trading size in IBIS is in general 500 shares.

Details of all floor and IBIS trades, including the identities of the counterparties and price and volume data, are available to the Staatskommissar. Price and volume data are also reported publicly by the relevant German Stock Exchange (including IBIS).

The state-appointed specialist is not involved in establishing prices on the DTB. An opening price is determined by the DTB as the level at which the most registered buy and sell orders could be carried out at a certain time. After fixing the opening price, continuous trading commences at which buy and sell orders are matched automatically in the computer system. Trading in equity products on the DTB is between 9:30 a.m. and 4:00 p.m.

Legislation and rules and regulations concerning the securities markets in Germany contain a variety of provisions relating to market manipulation. In particular, para. 29, subpara. 3 of the Stock Exchange Act provides that only a price which reflects the actual market situation can be determined as an exchange quoted price. This procedure is subject to the stock exchange supervisory system. Further, the Federal Banking Supervisory Authority in its Requirements for Security Trading at Banks of December 30, 1980 requires, *inter alia*, that trading and settlement be strictly separated and that all securities and derivative transactions be recorded in writing without delay, and restricts the conclusion of transactions not reflecting market conditions: such transactions have to be the exception to the rule, and have to be reported to senior management if they do not reflect market conditions; each bank's books are subject to audit by the Supervisory Authority.

In addition, German law prohibits German stock corporations and their subsidiaries from purchasing shares in the corporation except in limited circumstances. These circumstances are set forth in para. 71 of the German Stock Corporation Act and include, *inter alia*, purchases necessary to avert serious impending damage to the corporation,[12] purchases made for the purpose of offering shares to employees of the corporation or of a subsidiary (which offer must be made within one year of the purchase) and purchases to indemnify shareholders of affiliates (subject to certain conditions). In these cases, purchases are limited to 10% of the share capital of the corporation and are dependent upon a special reserve having been created therefor in the balance sheet. Moreover, para. 56 of the German Stock Corporation Act prohibits a German stock corporation and its subsidiaries from subscribing to shares of the corporation in connection with a capital increase.

III. Proposed Exemption From Rules 10b–6, 10b–7 and 10b–8

Because trading outside the United States could affect the prices of rights and/or shares being offered in the United States, a question arises as to the potential applicability of Rules 10b–6, 10b–7 and 10b–8 under the Exchange Act to trading outside the United States of Affected Securities[13] by distribution participants (as defined in Rule 10b–6(c)(6)(ii)) and their affiliates during the offering. Assuming the existence of a jurisdictional predicate for the application of Rules 10b–6, 10b–7 and 10b–8, we hereby apply for exemptions from the provisions of such rules pursuant to Rules 10b–6(i), 10b–7(o) and 10b–8(f), to the extent and for the reasons set forth below.[14]

Assuming the existence of a U.S. "distribution" for purposes of Rule 10b–

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[12] In this case, the Managing Board has to report to the shareholders at the next general meeting the reasons for and the purpose of the purchase, the number of and the nominal amount of the shares purchased, the percentage of the share capital purchased and the consideration for the shares.

[13] As used in this letter, the term "Affected Securities" means the securities that are the subject of the distribution, any securities of the same class and series and any right to purchase any such securities.

[14] Seeking or taking advantage of any such exemptions does not involve a concession by Deutsche Bank or any other person that Rules 10b–6, 10b–7 or 10b–8 apply to activities outside the United States.

6,[15] distribution participants and their affiliates would be subject to the restrictions of Rule 10b–6 from some time before the pricing[16] until the end of the distribution in the United States. Rule 10b–6 generally makes it unlawful, in connection with a distribution of securities, for any person engaged in such distribution to "bid for or purchase for any account in which he has a beneficial interest, any security which is the subject of such distribution, or any security of the same class and series, or any right to purchase any such security, or to attempt to induce any person to purchase any security or right * * *."

Distribution participants and their affiliates will not engage in conventional U.S.-style stabilization in connection with a rights offering, secondary offering or special secondary offering of the kind described above. In the absence of such activities, the restrictions contained in Rule 10b–7 may be inapplicable. Nevertheless, to the extent that the activities of distribution participants or their affiliates outside the United States in furtherance of efforts to maintain an orderly market in rights and/or shares may be deemed to constitute the "placing of any bid, or the effecting of any purchase, for the purpose of pegging, fixing or stabilizing the price," and assuming that the requisite jurisdictional predicate exists, the restrictions contained in Rule 10b–7 may be deemed to apply.

Finally, the restrictions contained in Rule 10b–8 may be deemed to apply to the conduct of the underwriters' risk-management activities outside the United States.

A. *Reasons for Relief.*

The application of Rules 10b–6, 10b–7 and 10b–8 to the activities of distribution participants and their affiliates outside the United States could seriously jeopardize the success of any rights offering, secondary offering or special secondary offering. In particular, the application of Rules 10b–6, 10b–7 and 10b–8 outside the United States would have, inter alia, the following consequences:

1. Distribution participants, including the underwriters and in particular the lead underwriter, would be unable to maintain an orderly market by buying and selling Affected Securities as principals during the offering. Moreover, distribution participants would be precluded from fulfilling their formal market-making obligations on the DTB with respect to listed options that are Affected Securities. Finally, and what is perhaps most important, the market in Germany for the shares of the company in question could simply collapse (with corresponding effects on the Deutscher Aktienindex (the "DAX"))[17] as a consequence of the application of Rules 10b–6, 10b–7 and 10b–8, given the high proportion of trading in the shares of German companies that is conducted by the larger German banks, and the likelihood that most (if not all) of such banks would act as distribution participants in an offering by a blue-chip German company.

2. Distribution participants would be restricted in their dealings with customers, who may wish to trade rights, shares or other Affected Securities during the offering. For example, the underwriters could be prohibited from encouraging customers to purchase rights that existing shareholders did not wish to exercise, from encouraging customers to purchase outstanding shares, and from buying rights or shares to facilitate such purchases. Moreover, the underwriters might not be able to continue certain of their regular contacts with customers, such as discussions regarding investment strategies with respect to the rights and shares, and might not be permitted to buy and sell Affected Securities, as either principal or agent, in connection with their customers' trading activities.

3. Distribution participants' risk management activities would be restricted to those permitted by Rule 10b–8. This would place limits on their ability to buy rights and sell shares short, and they would be precluded by Rule 10b–6 from hedging in derivatives or other Affected Securities.

4. Distribution participants' customary proprietary trading activities, involving arbitrage and other trading strategies, would be curtailed.

5. Accounts managed by distribution participants and their affiliates on a discretionary basis, investment funds for which affiliates of underwriters act as investment advisors (see note 8 above) and other entities (e.g., industrial companies) that may be viewed under U.S. law as affiliates of a distribution participant could be considered "affiliated purchasers" under Rule 10b–6(c)(6)(i). Such affiliated purchasers would be subject to the same restrictions under Rule 10b–6 as the relevant distribution participant and thus would not be permitted to bid for or purchase any Affected Security.

These consequences are particularly harsh in the context of a rights offering, with its exceptionally long distribution period. They are, however, also problematic in the context of a secondary offering or special secondary offering, even if directed solely to the United States, because any halt in share trading in Germany could jeopardize the functioning of the market.

B. *Scope and Conditions of Exemption.*

We propose that the Commission grant exemptions to the effect that Rules 10b–6, 10b–7 and 10b–8 shall not apply to distribution participants and their affiliated purchasers in connection with transactions in Relevant Securities (as defined below) outside the United States during distributions in the United States of Qualified German Securities (as defined below), subject to the following terms, conditions and limitations:

1. *Securities.*

a. The security being distributed (a "Qualified German Security") must:

i. Be issued by (aa) a "foreign private issuer" within the meaning of Rule 3b–4 under the Exchange Act incorporated under the laws of Germany, which issuer (a "German Issuer") has outstanding a component security of the DAX [18] or (bb) a subsidiary of a German Issuer; and

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[15] We note that many U.S. private placements (under Rule 144A or otherwise) will not be distributions. Moreover, a number of registered rights offerings also may not be distributions; as the Commission stated in its release regarding cross-border rights offerings, "[i]t is likely that many of the rights offerings using proposed Rule 801 on Form F–11 will not be 'distributions' as defined in Rule 10b–6, and the persons participating in such offerings will not be affected by the rule * * *." See Cross-Border Rights Offers; Amendments to Form F–3, Securities Act Release Nos. 33–6896; 34–29274, 48 SEC Docket 1617, 1631 (June 5, 1991).

[16] Under current Commission interpretations, neither the two-day nor the nine-day "cooling-off period" could be available in Germany, because German bank-secrecy laws prohibit the disclosure by banks of the identities of their customers. See Exemption Regarding Application of Cooling-Off Periods Under Rule 10b–6 to Distributions of Foreign Securities, Exchange Act Release No. 34–31943, 53 SEC Docket 1583 (March 4, 1993).

[17] The DAX is a continuously updated, market-capitalization-weighted performance index of 30 German blue-chip companies; the shares included in the DAX are selected on the basis of their trading volume and their market capitalization. Adjustments are made to the DAX for capital changes, subscription rights and dividends.

[18] References to the DAX refer to the composition of the index on the date of this letter; *provided, however*, that any security added to the DAX after the date of this letter also will be treated as a Qualified German Security if its issuer satisfies the requirements in 1.a.i. and such security has an aggregate market value that equals or exceeds the equivalent of DM 1.6 billion (which exceeded U.S. $1 billion at September 10, 1993) and an average daily trading volume that equals or exceeds the equivalent of DM 8.0 million (which exceeded U.S. $5 million at September 10, 1993) as published by FFRAs (as defined in note 19 below) and any U.S. securities exchanges or automated inter-dealer quotation systems during a period (the "Reference Period") that is 20 consecutive business days in

ii. Satisfy one of the following:

(aa) Be a DAX component security; or

(bb) Be an equity security of a German Issuer having an average daily trading volume that equals or exceeds the equivalent of DM 8.0 million (which exceeded U.S. $5 million at September 10, 1993), as published by foreign financial regulatory authorities ("FFRAs")[19] and any U.S. securities exchanges or automated inter-dealer quotation systems during the Reference Period; or

(cc) Be a security that is convertible into, exchangeable for, or is a right to acquire a security of a German Issuer described in subparagraph ii.(aa) or (bb) above.

b. "Relevant Security" means:

i. A Qualified German Security; or

ii. A security of the same class and series as, or a right to purchase, a Qualified German Security.

2. *Transactions Effected in the United States.*

All transactions in Relevant Securities effected in the United States shall comply with Rules 10b–6, 10b–7 and 10b–8.

3. *Transactions Effected in Germany.*

a. All transactions during the Covered Period (as defined below) in Relevant Securities effected in Germany shall be conducted in compliance with German law. For purposes of this exemption, "Covered Period" means (i) in the case of a rights offering, the period commencing when the subscription price is determined and continuing until the completion of the distribution in the United States, and (ii) in the case of any other offering, the period commencing three business days in Frankfurt before the price is determined and continuing until the completion of the distribution in the United States; *provided, however,* that the Covered Period shall not commence with respect to any Relevant Party until such person becomes a distribution participant.

b. All transactions in Relevant Securities during the Covered Period effected in Germany on a principal basis shall be effected or reported on the trading facilities of a German Stock Exchange (including IBIS) or the DTB.

c. *Disclosure of Trading Activities*[20]

i. The inside front cover page of the offering materials used in the offer and sale in the United States of a Qualified German Security shall prominently display a statement in substantially the following form, subject to appropriate modification where circumstances require. Such statement shall be in capital letters, printed in bold-face roman type at least as large as ten-point modern type and at least two points leaded:

> In connection with this offering, certain persons may engage in transactions for their own accounts or for the Accounts of Others in (Identify Relevant Securities) pursuant to exemptions from rules 10b–6, 10b–7 and 10b–8 under the Securities Exchange Act of 1934. See "[Identify Section of Offering Materials That Describes the Transactions To Be Effected]."

ii. In addition, there shall be included in the identified section of the offering materials a description of the activities that may be undertaken by the underwriters (and their affiliates) in the Relevant Securities during the distribution in substantially the form of Exhibit A.

d. *Recordkeeping and Reporting.*

i. Each Relevant Party shall provide to the Frankfurt Stock Exchange or the independent accountant of the lead underwriter (the "Independent Entity"), but only one of them in connection with any offering, the information described in paragraph 3.d.ii. below with respect to its transactions in Relevant Securities in Germany; *provided, however,* that in the case of a distribution made pursuant to a rights offering, such information is only required to be reported to the Independent Entity during the period or periods (aa) commencing at any time during the Covered Period that the rights exercise price does not represent a discount of at least 10% from the then current market price of the security underlying the rights and (bb) continuing (x) until the end of the Covered Period or (y) until the rights exercise price represents a discount of at least 12 percent from the then current market price of the security underlying the rights.[21]

ii. When required pursuant to paragraph 3.d.i. above, the Relevant Parties will provide the following information to the Independent Entity, in a Comma Delimited ASCII (American Standard Code for Information Interchange) format including a common record layout acceptable to the Independent Entity and the Commission's Division of Market Regulation (the "Division"), with respect to transactions during the Covered Period in Relevant Securities:

(aa) name of the security, date, time (of execution or reporting, where available to the Relevant Party), price and volume of each transaction; *provided, however,* that no information regarding a customer transaction need be provided unless such transaction has a value of DM 500,000 or more.

(bb) the exchange or inter-dealer quotation system on which the transaction was effected, if any;

(cc) an indication whether such transaction was for a proprietary account or the account of a customer, *provided, however,* that any transaction effected by an underwriter for a customer account for which it has exercised discretionary authority shall be reported as a proprietary trade; and

(dd) the identity of the counterparty only where the counterparty is an underwriter or a selling group member.[22]

iii. The Independent Entity and the Relevant Parties shall keep all documents produced or prepared pursuant to paragraph 3.d.ii. for a period of not less than two years.

iv. Upon the request of the Division, the Independent Entity shall transmit the information provided by the Relevant Parties pursuant to paragraph 3.d.ii. above to the Division within 30 days of the request.

v. If the information required to be produced in paragraph 3.d.ii. above is not available from the Independent Entity, upon the request of the Division such information shall be provided by the Relevant Party and be made available to the Division at its office in Washington, D.C.

vi. Representatives of the affected Relevant Party will be made available (in person at the office of the Division in Washington, D.C., or by telephone) to respond to inquiries of the Division relating to the records provided by such Relevant Party.

4. Transactions Effected in Significant Markets.

Frankfurt within 60 consecutive calendar days prior to the commencement of the Covered Period (as defined in 3.a. below).

[19] An FFRA is defined in Section 3(a)(51) of the Exchange Act, 5 U.S.C. 78(c)(51), as any (A) foreign securities authority; (B) other governmental body or foreign equivalent of a self-regulatory organization empowered by a foreign government to administer or enforce its laws relating to the regulation of fiduciaries, trusts, commercial lending, insurance, trading in contracts of sale of a commodity for future delivery, or other instruments traded on or subject to the rules of a contract market, board of trade, or foreign equivalent, or other financial activities, or (C) membership organization a function of which is to regulate participation of its members in activities listed above. For purposes of this letter, the German Stock Exchanges (including IBIS) are considered to be FFRAs.

[20] Unless subsequently modified by the Commission, this disclosure requirement shall not apply to distributions effected solely pursuant to Rule 144A under the Securities Act of 1933 (the "Securities Act").

[21] For purposes of this exemption, unless stated otherwise the market price for a security shall be the closing price on the floor of the Frankfurt Stock Exchange.

[22] The underwriting papers for the offering will contain provisions whereby each underwriter and selling group member gives any consent that may be required for the release of its identity to the Independent Entity and the Division.

a. All transactions in Relevant Securities in a "Significant Market," as defined below, shall be effected in accordance with the requirements of Rules 10b–6, 10b–7 and 10b–8, except as permitted by paragraph 4.b. below or by other available exemptions. A "Significant Market" shall mean (i) (aa) SEAQ International or (bb) any other dealer market outside Germany and the United States for which price and volume information is published by an FFRA or (ii) any other securities markets in a single country other than Germany or the United States to which a German Issuer has applied for listing the relevant Qualified German Security described in 1.a.ii.aa. or bb above and been accepted, if the volume in either (i) (aa) or (bb) or (ii) in such relevant Qualified German Security, as published by SEAQ International, such other dealer market or such other relevant securities markets (as the case may be), is 10% or more of the aggregate worldwide trading volume in that security published by SEAQ International all such other dealer markets and all other securities markets to which such German Issuer has applied for listing such relevant Qualified German Security and been accepted, during the Reference Period.

b. In the case of a distribution of Qualified German Securities made pursuant to rights (a "rights offering"), the Relevant Parties located in the United Kingdom ("U.K. Relevant Parties"): (a) in connection with the rights offering, may purchase or solicit the purchase of Relevant Securities in transactions solely in response to orders for the accounts of their customers in the ordinary course of their business in the United Kingdom ("customer facilitation activities"); and (b) may bid for or purchase Relevant Securities as principal in market making transactions through SEAQ International during the rights offering, in each case subject to the following conditions:

i. During the period from five business days prior to the expiration date of the rights offering and until the expiration date, inclusive, at any time at which the difference between the rights exercise price and the market price of the security underlying the rights (which for this purpose will be taken to mean the mid-price between the highest bid and lowest offer quoted on SEAQ International for the security underlying the rights) does not represent a discount of at least 10 percent from the then current market price of the security underlying the rights, the U.K. Relevant Parties will effect "passive market making" transactions in the Relevant Securities subject to the terms and conditions of Letter regarding Distributions of SEAQ and SEAQ International Securities (July 12, 1993) (the "LSE Letter");

ii. The U.K. Relevant Parties, in accordance with Item 502(d)(1) of Regulation S–K under the Securities Act, shall include a statement regarding transactions which stabilize or maintain the market price of the Relevant Securities with appropriate modification, to reflect the possibility that the U.K. Relevant Parties may engage in market making, including passive market making, and customer facilitation activities that otherwise would be prohibited by Rule 10b–6, and shall include pursuant to Rule 408 under the Securities Act in the "Plan of Distribution" or similar section of the prospectus, a brief description of such proposed market making and customer facilitation activities in the Relevant Securities; and

iii. The recordkeeping and production requirements set forth by the Commission in the LSE Letter shall apply to all of the activities engaged in by the U.K. Relevant Parties during the rights offering.

5. General Conditions.

a. For purposes of this exemption, a two business day cooling-off period shall apply under Rule 10b–6(a)(4) (xi) and (xii) in the United States and in each Significant Market, provided that trading in Relevant Securities in any Significant Market shall be subject to the exemptive relief then available in such markets, if any, or the record maintenance and record production requirements contained in Exemption Regarding Application of Cooling-Off Periods Under Rule 10b–6 to Distributions of Foreign Securities, Exchange Act Release No. 34–31943, 53 SEC Docket 1583 (March 4, 1993) are satisfied by Relevant Parties in such Significant Market (subject to applicable bank secrecy laws).

b. The lead underwriter or the global coordinator shall promptly, but in any event before the commencement of the Covered Period, provide a written notice ("Notice") to the Division of the following information: (i) the name of the issuer and the Qualified German Security; (ii) whether the Qualified German Security is a DAX component security or information with respect to the market capitalization and the average daily trading volume of the Qualified German Securities to be distributed; (iii) the identity of the Significant Markets where the Qualified German Security trades; (iv) if the Notice is for more than one entity, the identity of all underwriters and selling group members relying on these exemptions;[23] and (v) a statement that the Relevant Parties are aware of the terms and conditions of these exemptions.

c. Any person who fails to comply with the conditions of the exemption, including a failure to provide requested information, would not be permitted to rely on the exemption in future distributions. Upon a showing of good cause, however, the Commission or the Division may determine that it is not necessary under the circumstances that the exemption be denied.

* * * * *

We believe this proposed exemption would make it possible to maintain liquidity for shares of German companies throughout a public offering or private placement in the United States, while minimizing the risk of abuses of the kind at which Rules 10b–6, 10b–7 and 10b–8 are aimed.

Please do not hesitate to call me at 011–44–71–638–5291, or my colleague Daniel A. Braverman at 212–225–2182, if we may be of any assistance in connection with this application.

Very truly yours,

Edward F. Greene.

cc: Brandon Becker, Esq., Director, Division of Market Regulation, Securities and Exchange Commission
Michael D. Mann, Esq., Director, Office of International Affairs, Securities and Exchange Commission
Linda C. Quinn, Esq., Director, Division of Corporation Finance, Securities and Exchange Commission
Dr. Jur. Klaus Kohler, Deputy General Counsel and Senior Vice President, Deutsche Bank AG

Exhibit A

The German Underwriters (and their affiliates) will, and the other Underwriters (and their affiliates) may, continue to engage in the transactions and other activities described below, in Germany and elsewhere outside the United States, in respect of the securities being distributed, securities of the same class and series as the securities being distributed, and securities convertible into, exchangeable for, or giving a right to acquire, the foregoing securities, and derivatives thereof (collectively, the "Relevant Securities"), during the distribution period, in accordance with exemptions obtained from the Securities and Exchange Commission (the "Commission") from the application outside the United States of Rules 10b–6, 10b–7 and 10b–8 under the U.S.

[23] Supplemental notices shall be provided for underwriters and selling group members identified after a notice has been filed.

Securities Exchange Act of 1934. Such exemptions are subject to certain exceptions, limitations and conditions set out in the Commission's exemptive order, including compliance with German law.

The activities referred to above are (a) buying and selling Relevant Securities for the accounts of such Underwriters (or their affiliates), whether for purposes of risk management in connection with the offering, arbitrage or otherwise, (b) buying and selling Relevant Securities on behalf of customers, (c) advising customers as to the purchase or sale of Relevant Securities, including publication of specific company and industry research reports, (d) engaging in securities lending transactions in Relevant Securities and (e) stabilizing the market (as described below). As a result of these activities, the Underwriters may at any time be short or long Relevant Securities.

It is general market practice in Germany for the Underwriters, and the lead Underwriter in particular, to maintain an orderly market in subscription rights and existing shares, and it is expected that the lead Underwriter will take measures to avoid extreme price fluctuations during the distribution period. *[Add in the case of rights offerings:* In addition, the lead Underwriter will endeavor to ensure, through the entry of buy or sell orders on the various German stock exchanges, that the same price for the subscription rights is set on each day on all German stock exchanges. In general, the price for subscription rights is set by each German stock exchange at mid-session, and trading in the rights on such exchange takes place at that price.]

The activities referred to above may result in the market prices of the Relevant Securities being different from those that might otherwise have prevailed in the open market if Rules 10b–6, 10b–7 and 10b–8 had applied in Germany and elsewhere outside the United States.

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[Release No. 34–33011; File Nos. SR–OCC–92–05, SR–NSCC–91–07, SR–SCCP–92–01, and SR–MCC–92–02]

Self-Regulatory Organization; The Options Clearing Corp., National Securities Clearing Corp., Stock Clearing Corp. of Philadelphia, and Midwest Clearing Corp.; Filing of Proposed Rule Changes Relating to Revised Options Exercise Settlement Agreements

October 4, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that The Options Clearing Corporation ("OCC") on January 27, 1992, the National Securities Clearing Corporation ("NSCC") on October 21, 1991, the Stock Clearing Corporation of Philadelphia ("SCCP") on February 27, 1992, and the Midwest Clearing Corporation ("MCC") on March 5, 1992, filed with the Securities and Exchange Commission the proposed rule changes as described in Items I, II, and III below, which Items have been prepared primarily by the self-regulatory organizations. Notices of the proposed rule changes were published previously.[2] Since that time, the self-regulatory organizations have amended their original filings.[3] The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organizations' Statement of the Terms of Substance of the Proposed Rule Changes

The proposed rule changes will permit OCC, NSCC, SCCP, and MCC to put into effect amended and restated agreements providing for the settlement of exercises and assignments of equity options. In addition, OCC's proposed rule change will make related changes to OCC's By-Laws, Rules, and certain form agreements used by OCC's clearing members.

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release Nos. 30488 (March 17, 1992), 57 FR 10201 [File No. SR–OCC–92–05]; 30489 (March 17, 1992), 57 FR 10197 [File No. SR–NSCC–91–07]; 30490 (March 17, 1992), 57 FR 10205 [File No. SR–SCCP–92–01]; 30491 (March 17, 1992) 57 FR 10197 [File No. SR–MCC–92–02].

[3] OCC filed Amendment No. 1 to File No. SR–OCC–92–05 with the Commission on February 27, 1992, and Amendment No. 2 on June 4, 1993. SCCP filed Amendment No. 1 to File No. SR–SCCP–92–01 with the Commission on May 26, 1992, and Amendment No. 2 on July 1, 1993. MCC filed Amendment No. 1 to file No. SR–MCC–92–02 with the Commission on January 7, 1993, and Amendment No. 2 on July 6, 1993. NSCC filed Amendment No. 1 to File No. SR–NSCC–91–07 on May 19, 1993.

II. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In its filing with the Commission, the self-regulatory organizations included statements concerning the purpose of and basis for the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organizations have prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

1. Background

The purpose of the proposed rule changes is to revise the Options Exercise Settlement Agreements between OCC and NSCC, SCCP, and MCC (hereinafter collectively referred to as the "correspondent clearing corporations" or "CCCs"). In its filing OCC also proposes to revise its procedures for effecting settlement of exercises and assignments of equity options through the CCCs, to make related changes to its By-Laws and Rules, and to implement revised forms for use by its clearing members in establishing the arrangements by which they effect settlements of exercises and assignments of equity options through the facilities of the CCCs.

In the original filings, OCC, NSCC, SCCP, and MCC proposed to make effective Amended and Restated Options Exercise Settlement Agreements (hereinafter collectively referred to as the "First Restated Agreements"). OCC, NSCC, SCCP and MCC have amended the First Restated Agreements (hereinafter collectively referred to as the "Second Restated Agreements") and are proposing to make the three Second Restated Agreements, which are the subjects of these amended rule filings, effective in place of the three First Restated Agreements.[4] The Second Restated Agreements will replace the options exercise settlement agreements that are currently in effect between OCC and each CCC (hereinafter sometimes collectively referred to as the "Original

[4] Each Second Restated Agreement provides that it will become effective on the later of the effective date set forth in the Second Restated Agreement or the date of approval by the Commission of both parties' proposed rule changes that include the Second Restated Agreement as an Exhibit. Each Second Restated Agreement provides that it shall become effective in lieu of the respective First Restated Agreement.

Agreements"). The MCC and SCCP Second Restated Agreements are substantially identical in form. The NSCC Second Restated Agreement is substantially in the same form with variations reflecting that NSCC will provide OCC with a daily report identifying all securities which are eligible for settlement through NSCC's continuous net settlement ("CNS") system.

2. The Original Agreements and the Changes Made by the Second Restated Agreements

(a) Operation and continuing use of broker-to-broker settlement procedures. Prior to implementing the Original Agreements, exercises of equity options were settled broker-to-broker. In broker-to-broker settlement, upon receipt of an equity option exercise notice, OCC would issue a delivery advice to the delivering clearing member (i.e., the assigned clearing member in the case of a call or the exercising clearing member in the case of a put) and to the receiving clearing member (i.e., the exercising clearing member in the case of a call or the assigned clearing member in the case of a put). The delivery advice would instruct the delivering clearing member to make delivery of the security underlying the exercised option directly to the receiving clearing member and would specify the address at which delivery was to be made and the exercise settlement amount to be paid. OCC continues to have rules governing broker-to-broker settlement.[5] However, broker-to-broker settlement has been largely replaced by settlement through the facilities of the CCCs. Under the Second Restated Agreements, OCC will use broker-to-broker settlement only for exercises and assignments of equity options overlying securities which are not eligible for settlement in NSCC's continuous net settlement system ("CNS Securities").[6]

(b) Operations of the original options exercise settlement agreements. After OCC entered into the Original Agreements with the CCCs, OCC began to settle the great majority of equity option exercises through the facilities of the CCCs.[7] Each clearing member was required to designate a CCC as its designated clearing corporation ("DCC") for purposes of effecting settlements of exercises of equity options. Rather than delivering an underlying security broker-to-broker, in the revised system a delivering clearing member delivers the security to and receives payment of the exercise settlement amount from its DCC. A receiving clearing member makes payment to and receives the security from its DCC. If the delivering clearing member and the receiving clearing member have designated the same CCC as their DCCs, all deliveries and receipts of securities and all payments and receipts of settlement monies will take place at that DCC in accordance with its settlement procedures. If the delivering clearing member and receiving clearing member have designated different CCCs as their respective DCCs, the DCC for the delivering clearing member delivers the security to and receives payment from the DCC for the receiving clearing member in accordance with the interface arrangements between the two DCCs.

The Original Agreements provide for a five-day settlement period for settlement of exercises of equity options. The date of the exercise and the settlement period are analogous to the trade date ("T") and settlement period for ordinary, regular-way stock trades effected on a stock exchange. OCC reports the exercises and assignments of clearing members to their respective DCCs during the night of T. The DCCs effect settlement on the fifth business day after T ("T+5").

(c) Changes made by the second restated agreements. The Second Restated Agreements alter and supplement the provisions of the Original Agreements in several ways. The most important modifications are set forth below.

(i) Timing of the effectiveness of the guarantees of the correspondent clearing corporations. Section 4 of each Original Agreement provides that if the CCC does not notify OCC prior to 12 Noon Central Time (1 p.m. Eastern Time) on T+4 that the CCC has ceased to act for an OCC clearing member which had designated the CCC as its DCC, the CCC is unconditionally obligated as of that time to complete the settlement of the exercise. These provisions were in accordance with the provisions of the rules of the CCCs as in effect in 1976. However, each CCC has subsequently amended its rules to provide that the CCC will be unconditionally obligated to complete settlement of any "locked-in" trade[8] in any security eligible for settlement through the CCC's continuous net settlement system. The CCC's guarantees commence at midnight, or in the case of MCC at 11:59 p.m., of the day the trade is reported to its participants, which is usually T+1.

Section 4(a) of each Second Restated Agreement provides that the CCC will become unconditionally obligated to effect settlement or to close out each exercise and assignment of equity options overlying CNS Securities commencing at the time specified by the CCC's rules applicable to locked-in trades in securities eligible for settlement through the CCC's continuous net settlement system. This revised provision has the effect of causing options exercises and assignments reported by OCC to the CCCs during the night of T to become guaranteed as of the time at which the CCCs generally become obligated to effect settlement (i.e., usually midnight at the end of T+1).[9] OCC Rule 913 is amended to state expressly that OCC's direct guarantee to the clearing member acting on behalf of the holder of the option terminates at the time that the clearing member's DCC becomes unconditionally obligated to effect settlement of the transaction.[10]

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[5] OCC Rules 901–912.

[6] "CNS Securities" are defined only in the terms of NSCC's CNS System and not in terms of the securities that are eligible for each individual CCC's continuous net settlement system. The definition is new in the Second Restated Agreements as is the exclusion of non-CNS Securities. Both of these changes are made necessary by changes to OCC's margin system which changes were designed to improve the margin system's ability to evaluate and neutralize OCC's risk during the five business day period between the exercise and settlement of an equity option. (OCC's margin system as it is related to these filings is discussed in detail below in the section on OCC rule 601.) Because all securities underlying equity options issued by OCC are ordinarily CNS Securities, all exercise settlements will continue to be settled through the CCCs. However, in unusual circumstances in which an underlying security ceases to be a CNS Security or in which the owners of an underlying security become entitled to an additional security as a result of a rights offering or other extraordinary transaction and that additional security is not a CNS Security, exercise settlement may be effected entirely or partly through OCC's broker-to-broker settlement system. A new Interpretation .02 to Rule 913 reflects that ordinarily only CNS Securities will be delivered in settlement of stock options through the facilities of the CCCs.

[7] OCC first executed Options Exercise Settlement Agreements with each of Stock Clearing Corporation (NSCC's predecessor), SCCP, and MCC in 1976.

[8] Locked-in trades are trades executed through automated order routing and trade execution systems. Each of the Second Restated Agreements provides that exercises and assignments of options reported by OCC to the CCC will be deemed to be locked-in trades.

[9] The trade guarantee rules of the CCCs described in the text have been approved by the Commission on a temporary basis. Securities Exchange Act Release No. 32547 (June 29, 1993), 58 FR 26491, [File Nos. SR–NSCC–93–04, SR–SCCP–93–02, SR–MCC–93–02] (order granting approval until June 30, 1994). If the Commission should in the future decline to approve these rules, OCC and the CCCs will need to revisit the question of the point in time at which the CCCs guarantee options exercise settlements, and OCC will need to revisit its procedures for settling stock option exercises and, in particular, make adjustments to its margin system.

[10] Section 4(a) of each First Restated Agreement permitted the CCC to eliminate an exercise

(ii) Guarantee by OCC to each Correspondent Clearing Corporation. Each Second Restated Agreement provides that OCC will compensate the CCC for losses incurred by it in closing out the exercises and assignments of a defaulting participating member. The amount of the compensation will be the smallest of the "net options loss," the "net overall loss," or the "maximum guarantee amount." The net options loss is essentially the actual net loss incurred by the CCC in closing out exercises and assignments of options to which the CCC is unconditionally obligated at the time of the default. The net overall loss is essentially the actual net loss incurred by the CCC in closing out all transactions of the defaulting participating member to which the CCC is unconditionally obligated at the time of the default. The maximum guarantee amount is essentially the sum of the mark-to-market amounts,[11] positive and negative, for all options exercises and assignments to which the CCC is unconditionally obligated at the time of the default.[12]

OCC's guarantee in each Second Restated Agreement does not cover the exposure of the CCC to losses from exercise and assignment settlements that can result if a participating member transfers settlements from its account at the CCC to the account of any other member of the CCC, including another participating member or another member that is an affiliate of the participating member, and the transferee member defaults on its obligations to the OCC with respect to those settlements. This occurs for several reasons. First, OCC will not be a party to the transfer and accordingly will not have the ability to review the impact of the transfer on the financial condition of the transferee member. Second, the three prongs of the computation of OCC's guarantee obligation are all premised on the assumption that the negative values arising from short positions of a participating member may be offset against the positive values arising from the long positions of the participating member. This assumption may not hold true if, for example, a participating member transfers its short positions but not its offsetting long positions to the account of another member and that member fails to make settlement.

(iii) Permissible arrangements for effecting settlement through a Correspondent Clearing Corporation. Each Original Agreement contemplated that settlements of exercises and assignments would be effected by participating members *(ie.*, entities that are OCC clearing members and also participants in the relevant CCC). The Original Agreement between OCC and NSCC was amended in 1987 to include Canadian clearing members.[13] Each Second Restated Agreement retains the basic participating member settlement concept and contains expanded provisions addressing situations particular to the Canadian clearing member settlement concept.

In addition, each Second Restated Agreement contains provisions addressing the alternative settlement arrangement that is currently described in OCC's rules in which a clearing member appoints another clearing member to effect settlement on its behalf at the appointed clearing member's DCC. Each Second Restated Agreement also contains provisions addressing a new alternative settlement arrangement under which an OCC clearing member nominates an entity that is not an OCC clearing member but that is a participant in a CCC to effect settlement on its behalf.

3. Revised Agreements for Appointing Clearing Members and Appointed Clearing Members

In connection with implementing the Second Restated Agreements, OCC is revising the form of agreement that OCC requires from each clearing member that appoints another clearing member to act for it for purposes of settling exercises and assignments of equity options. The most important purpose of the revisions is to cause the appointing clearing member to acknowledge expressly that its obligations to OCC with respect to settlements of exercises and assignments are not satisfied until its appointed clearing member has satisfied its obligations to its DCC arising from those exercises and assignments and, accordingly, that the uses that OCC may make of the appointing clearing member's margin deposits and other assets include the satisfaction of any obligation to the DCC incurred by OCC as a result of the DCC's settlement of the appointing clearing member's exercises and assignments.

4. New Agreement for Canadian Clearing Members That Settle Through CDS

In connection with implementing the Second Restated Agreements, OCC also will require each Canadian clearing member that settles through CDS to execute a new agreement. The primary purpose of the new agreement is to cause each such clearing member to acknowledge expressly that the obligations of the Canadian clearing member to OCC with respect to settlement of exercises and assignments are not satisfied until CDS has satisfied its obligations arising from those exercises and assignments to the DCC of the clearing member, and, accordingly, that the uses that OCC may make of the Canadian clearing member's margin deposits and other assets include the satisfaction of any obligation to the DCC incurred by OCC as a result of the DCC's settlement of the Canadian clearing member's exercises and assignments through DCS. The agreement also causes the Canadian clearing member to acknowledge that it will be deemed not

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transaction from its system in accordance with its rules even after its guarantee had attached to the transaction. Although this could have occurred only in the extremely unlikely event that a security were to cease to be eligible for settlement through the continuous net settlement system of the CCC during the time remaining until actual settlement of the transaction, OCC has concluded that it cannot efficiently develop a margin system that reflects and neutralizes OCC's risk exposure if a CCC's guarantee can be revoked after attaching to an exercise transaction. Accordingly, each Second Restated Agreement provides that the CCC will not eliminate any exercise transaction of options overlying CNS Securities from its system after its guarantee attaches.

Section 4(b) of each First Restated Agreement provided that in the event of a default by a participating member for which it is the DCC, the CCC could voluntarily determine to complete settlement of transactions with respect to which it had not yet become obligated at the time of the default. (In general, a participating member is an entity that is an OCC clearing member and is a member of the CCC that it has designated as its DCC. The definition is discussed further below in subsection 2(c)(iii).) OCC has concluded that it cannot efficiently develop a margin system that reflects and neutralizes OCC's risk exposure if the CCCs have the right to make this voluntary determination. Accordingly, each Second Restated Agreement expressly provides that the CCC will not effect settlement of transactions which have been reported to it but to which it has not yet become obligated at the time of a default of a participating member.

[11] The term mark-to-market amount is defined to mean the difference between the exercise price of an option and the closing price of the underlying stock on the trading day immediately preceding the then most recently completed regular morning settlement of the participating member with OCC.

For example, if a participating member defaults prior to the opening of business on T+4 and if the participating member has not made regular morning settlement with OCC on T+4 but had made regular morning settlement with OCC on T+3, the mark-to-market amount for the stock underlying the option will be determined as of the close of trading on T+2.

[12] The effect of the maximum guarantee amount prong is to cap OCC's exposure at an amount that should be covered by the margin deposits collected by OCC and that should at least be equal to the net of the in-the-money amounts for all exercises and assignments being settled through a CCC as of the close of trading on the day or days on which the exercises were effected.

[13] Canadian clearing members are clearing members that are organized in Canada and that settle exercises and assignments of equity options through the facilities of the Canadian Depository for Securities ("CDS").

to have designated a DCC for purposes of OCC's rules if CDS at any time should cease to be a participant in good standing of a CCC. The new agreement is designed to make it as parallel as possible in form and content to the appointing clearing member agreement and the nominating clearing member agreement.[14]

5. New Agreement for Nominating Clearing Members and Nominated Correspondents

The new agreement to be used by a nominating clearing member that appoints a nominated correspondent parallels the existing agreement that is used by an appointing clearing member that appoints an appointed clearing member but differs in two respects to accommodate the differences in the nominated correspondent settlement arrangement. First, the new agreement requires the nominating clearing member to not only appoint its nominated correspondent but also to designate the CCC through which its settlements are to be made.[15] Second, the new agreement requires that the DCC of the nominating clearing member acknowledge the appointment of the nominated correspondent. This additional acknowledgement is appropriate because OCC will report exercises and assignments of each nominating clearing member to the DCC of the nominating clearing member using the OCC clearing member number of the nominating clearing member.[16] Therefore, OCC needs to be assured by the DCC that the DCC is aware of the appointment of the nominated correspondent and is prepared to recognize that settlements reported to it under the OCC clearing member number of the nominating clearing member are to be processed for the account of the nominated correspondent.

The need to accommodate the nominating clearing member alternative settlement arrangement came to OCC's attention as a result of a review of the records of OCC and NSCC relating to settlements of options exercises and assignments. In the course of that review, it was determined that NSCC's procedures permitted an NSCC participant that is not an OCC clearing member but that is affiliated with two OCC clearing members, neither of which is an NSCC participant, to effect settlement of options exercises and assignments on behalf of the two OCC clearing members. After considering the arrangement, OCC has determined that it does not create any unusual risk for OCC or for the system for settling options exercises and assignments. OCC also has determined that such an arrangement will not involve any additional risk to OCC or to the system even if the entities involved are not affiliated. Accordingly, OCC has concluded that such arrangements should be expressly described in and permitted by its By-Laws and Rules.

Structurally, the nominated correspondent settlement arrangement is more similar to the CDS settlement arrangement than to the appointed clearing member settlement arrangement. As in the CDS arrangement, the nominating clearing member (the counterpart to the Canadian clearing member in the CDS settlement arrangement) must designate a CCC as its designated clearing corporation, but the nominating clearing member does not have to be a participant in good standing of the CCC that it designates. As in the CDS arrangement, the nominated correspondent (the counterpart to CDS in the CDS settling arrangement) must be a participant in good standing of the CCC designated by the nominating clearing member. In addition, as in the CDS arrangement, the nominating clearing member is deemed to be the delivering or receiving clearing member, as the case may be, for purposes of Rule 913, and accordingly, it is the recipient of delivery advices made available by OCC.[17]

In the nominated correspondent settlement arrangement, OCC will collect margin throughout the settlement period from the nominating clearing member. In the event that a nominated correspondent were to default on its obligations to the CCC designated by the nominating clearing member, OCC will use the margin deposits and other assets of the nominating clearing member to satisfy any resulting obligation to the CCC incurred by OCC in accordance with the applicable Second Restated Agreement.

6. Changes in OCC's By-Laws and Rules

In connection with implementing the Second Restated Agreements, OCC is making various changes, many of which are technical in nature, to its By-Laws and Rules. The substantive changes consist of the following.

Paragraphs 1(a) and 5(a) of Article VIII of the By-Laws are amended primarily to make clear that OCC may apply the clearing fund deposit of a clearing member to satisfy any obligation incurred by OCC to a CCC as a result of the failure of the clearing member, its appointed clearing member, its nominated correspondent, or CDS in the case of a Canadian clearing member to perform an obligation to the CCC arising from exercise and assignment settlements. Amendments are also made to make clear that the order in which clearing fund deposits will be applied is the same as in other circumstances in which OCC is forced to draw on the clearing fund.

Rule 212 is amended to state expressly that any Canadian clearing member that settles through CDS does not need to be a participant in a CCC. Rule 212 is also amended to accommodate the nominated correspondent settlement concept.

Rule 305(b) is amended to state expressly that OCC's Chairman and President have the same authority to impose restrictions with respect to a clearing member's activities as an appointed clearing member as those officials have with respect to a clearing member's other activities. A new Interpretation .10 is added to Rule 305 to state expressly that the difficulty of a clearing member, its appointed clearing member, its nominated correspondent, or CDS in meeting its obligations to the DCC as designated by the clearing member or its appointing clearing member will be grounds for OCC's Chairman or President to impose restrictions pursuant to the rule.

Rule 601, which sets forth OCC's margin requirements for equity options, is being amended to provide that for margin purposes equity options will be treated as being in one of two product groups. One product group, the DCC-guaranteed product group, will consist of all exercised equity options for which the DCC's have guaranteed to deliver and receive the underlying CNS Securities in settlement of the exercise

[14] NSCC is the only CCC of which CDS is currently a participant. Accordingly, Canadian clearing members that wish to settle through CDS will be required to select NSCC as their DCC. However, provisions relating to Canadian clearing members that settle through CDS also are included in the MCC Second Restated Agreement and the SCCP Second Restated Agreement in order to preserve the similarity of the three Second Restated Agreements as far as possible and in order to accommodate the possibility that MCC or SCCP may enter into a relationship with CDS at some time in the future.

[15] In contrast, an appointing clearing member is not required to designate a DCC because settlement is effected through the DCC of the appointed clearing member.

[16] In contrast, OCC reports exercises and assignments of each appointing clearing member to the DCC of the appointed clearing member using the OCC clearing member number of the appointed clearing member.

[17] In contrast, Rule 913(f) provides that the appointed clearing member is deemed to be the delivering or receiving clearing member, as the case may be, and accordingly, the appointed clearing member is the recipient of delivery advices made available by OCC.

and assignments.[18] The other product group, the non-DCC-guaranteed product group, will include all other equity options (i.e., all open positions, all exercised and assigned options that overlie CNS Securities where delivery and receipt of the CNS Securities has not yet been guaranteed by the DCCs, and all exercised and assigned options that overlie non-CNS Securities. The non-DCC-guaranteed product group also will include all stock loan and borrow positions.

Rule 601 also is being amended to state that any margin requirement for the non-DCC-guaranteed product group in firm accounts and in market-makers' and specialists' accounts will not be reduced by the value of any margin credit arising from the DCC-guaranteed product group. The purpose of this change is to assure that OCC gives no margin credit for value which will be controlled by a CCC and which OCC might be unable to recover in the event that it suspends a clearing member. Rule 601 does continue to permit OCC to use any margin credit arising from a clearing member's non-DCC-guaranteed options positions in firm accounts and market-makers' and specialists' accounts to reduce the clearing member's margin requirement arising form the DCC-guaranteed product group.[19]

Rule 601 is also being amended to permit OCC to hold a clearing member's margin for an extra day if OCC receives a notice from the clearing member's DCC that the clearing member or its appointed clearing member, its nominated correspondent, or CDS, in the case of a Canadian clearing member, has not performed an obligation to the DCC. This change is necessary to enable OCC to comply with the Second Restated Agreements which provide that if (1) the DCC notifies OCC prior to 6 a.m. Central Time (7 a.m. Eastern Time) on T+6 that a participating member, appointed clearing member, nominated correspondent, or CDS has not fulfilled its settlement obligations with the DCC and (2) the DCC notifies OCC prior to 4 p.m. Central Time (5 p.m. Eastern Time) on T+6 that it has ceased to act with respect to the entity, the DCC may still call on OCC's guarantee.

OCC Rule 608, which describes when margin may be withdrawn, is being amended to state expressly that the Chairman or President of OCC may refuse to authorize the withdrawal of margin for any of the same reasons that would cause such officials to require the deposit of intra-day margin pursuant to OCC's Rule 609. The purpose of the change is to eliminate a possible misreading of Rules 608 and 609 as requiring OCC to permit a withdrawal of margin deposits before OCC can require the deposit of intra-day margin pursuant to Rule 609.

OCC Rule 913, which governs settlements through the CCCs, is being revised. Paragraph (a) is being amended to state expressly that each Canadian clearing member that appoints CDS and each nominating clearing member that appoints a nominated correspondent must designate a DCC, but neither need be a participant in good standing of the DCC.

Paragraph (c) is being amended to state that OCC shall be deemed to have made full settlement with respect to the exercise and assignment of an equity option at the time when the DCCs for the concerned clearing members are unconditionally obligated to complete the transaction and that thereafter OCC will have no obligation with respect to the transaction except for any obligation OCC may have to the DCCs under their respective Second Restated Agreements. Paragraph (c) continues to provide that the rights and obligations of the two clearing members will be governed by the rules of their respective DCCs after the guarantees of the DCCs become effective.

Paragraph (f) is being amended to expressly state that after notice of revocation is received by OCC, the appointment of an appointed clearing member remains effective with respect to each exercise and assignment occurring prior to the effective date of revocation until the settlement of all such exercises and assignments are completed. Language also is being added which states that reports made available to an appointed clearing member will be deemed to have been made available to the appointing clearing member at the same time they are made available to an appointed clearing member for purposes of OCC's Rule 208.[20]

New paragraph (g) is being added to Rule 913 to describe the nominated correspondent settlement arrangement. New paragraph (h) is being added to describe the CDS settlement arrangement.

New paragraph (j) is being added to Rule 913 to state expressly that:

(1) The obligations of a clearing member with respect to the settlement of any securities contract arising out of an exercised and assigned option contract being settled through a DCC will not be deemed to be completed until settlement is completed with the DCC and until OCC has no further responsibility to the DCC with respect to such securities contract;

(2) OCC's guarantee to a DCC of the performance obligation of a clearing member with respect to the securities contract arising out of an exercised and assigned option contract is part of the securities contract; and

(3) That any clearing member that fails (or whose appointed clearing member of nominated correspondent fails or on behalf of which CDS fails) to complete performance of its obligations under any such securities contract is obligated to reimburse OCC for any resulting payments made by OCC to the DCC.

An essential purpose of paragraph (j) is to make clear that any payment made by OCC pursuant its guarantee to a DCC will be pursuant to and for the purpose of liquidating securities contracts arising out of exercised option contracts. Accordingly, under the special provisions of the Bankruptcy Code that protect the close-out activities of securities clearing agencies, such payments by OCC should not be subject to attack by the trustee for a bankrupt clearing member. A second purpose of the paragraph is to make clear that a clearing member that causes OCC to make a guarantee payment to the clearing member's DCC will have a continuing obligation to OCC to reimburse OCC for the payment. This

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[18] In circumstances in which the security originally underlying an exercised option is a CNS Security and owners of that security have become entitled to receive an additional security which is not a CNS Security, OCC's margin system will treat the option as being in the DCC-guaranteed product group after the delivery and receipt of the CNS Security has been guaranteed by the DCCs for the two clearing members. This margin treatment does not precisely reflect the actual settlement of the exercise of such an option because ordinarily the CNS Security will be delivered through the facilities of the CCCs while the additional non-CNS Security will be delivered through OCC's broker-to-broker settlement system. However, this margin treatment is dictated by the constraints of OCC's margin system which without extensive and expensive modification cannot decompose an options exercise into two components and treat one component as being in the DCC-guaranteed class group and the other component as being in the non-DCC-guaranteed class group. OCC has concluded that this discrepancy between its margin system and its settlement system is unlikely in any reasonably foreseeable circumstances to result in a risk to OCC that is inadequately covered by clearing members' margin deposits and by the other elements of OCC's risk reduction systems.

[19] OCC's initial filing proposed amending Rule 601 to separate stock options into two product groups, but the separation was between open positions and exercised positions. The separation as revised in OCC Amendment No. 2 more accurately isolates those exercised stock options which OCC might be unable to recover the value in the event of a clearing member suspension and, therefore, allows OCC to better neutralize its risk exposure to exercised assigned stock options.

[20] Rule 208 states that the failure of a clearing member to advise OCC on the business day on which a report is made available of any item requiring change constitutes a waiver of the clearing member's right to have the report changed.

provision in conjunction with the section of OCC's By-Laws that describes OCC's lien on clearing member assets makes it clear that OCC may satisfy the clearing member's obligation out of assets that are subject to OCC's lien which are maintained in either the clearing member's firm account or in the account where the obligation originated. A new Interpretation .02 is being added to Rule 913 to state that OCC ordinarily will effect settlement of exercised stock options overlying CNS Securities through the facilities of the CCCs.

Rule 1102 is being amended to state that OCC may suspend a clearing member if its appointed clearing member, its nominated correspondent, or CDS, in the case of a Canadian clearing member that settles through CDS, is in default of any delivery of funds or securities to its DCC. The phrase in Rule 1102 that currently states that OCC may suspend a clearing member if the suspension is necessary for the protection of OCC, other clearing members, creditors, or investors is being modified to refer to OCC, other clearing members, or the general public in order to conform this language to the language used elsewhere in OCC's rules.

Rule 1107 is being amended to state that following the default of a clearing member, OCC will deliver the clearing member's securities that have been deposited in specific deposits and in escrow deposits to the clearing member's DCC. This change is required to enable OCC to comply with the provisions of the Second Restated Agreements which require OCC to deliver such deposits to the DCC of a suspended clearing member against payment by the DCC of the appropriate exercise settlement amounts.

A new paragraph (c) is being added to Rule 1107. Paragraph (c) states that if OCC incurs an obligation to a DCC as a result of exercised and assigned option contracts of a suspended member, OCC may use the funds of the suspended clearing member that are subject to OCC's control to satisfy the obligation.

7. Statutory Basis for the Proposed Rule Changes

OCC believes the proposed rule change is consistent with the purposes and requirements of section 17A of the Act[21] because it enhances the system used by OCC to effect settlement of exercises and assignments of equity options. In particular, the proposed rule change provides that the CCCs will guarantee settlements of exercises of equity options overlying CNS Securities at an earlier time in the settlement cycle and provides that OCC will provide the CCCs with a back-up guarantee of performance of exercised and assigned options. The effect is to reduce the need for the CCCs to hold security deposits covering settlements that are also covered by margin deposited with OCC and to improve the efficiency of the equity option exercise settlement system without increasing the risk to OCC and the CCCs. In addition, the proposed rule change improves the description in OCC's rules of the alternatives currently available for effecting settlement of stock options and makes the nominated correspondent alternative available.

B. Self-Regulatory Organizations' Statement on Burden on Competition

OCC, NSCC, SCCP, and MCC do not believe that the proposed rule changes will impose any burden on competition.

C. Self-Regulatory Organizations' Statement on Comments on the Proposed Rule Changes Received From Members, Participants or Others

Written comments were not and are not intended to be solicited by OCC, NSCC, SCCP, or MCC with respect to the proposed rule changes, and none have been received.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal offices of OCC, NSCC, SCCP, and MCC. All submissions should refer File Nos. SR–OCC–92–05, SR–NSCC–91–07, SR–SCCP–92–01, and SR–MCC–92–02 and should be submitted by November 4, 1993.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[22]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–25151 Filed 10–13–93; 8:45 am]

BILLING CODE 8010–01–M

[21] 15 U.S.C. 78q–1 (1988).

[22] 17 CFR 200.30–3(a)(12) (1992).

DEPARTMENT OF STATE

[Public Notice 1876]

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea Working Group on Radiocommunications; Meeting

The Working Group on Radiocommunications of the Subcommittee on Safety of Life at Sea will conduct open meetings at 9:30 a.m. on December 15, 1993. These meetings will be held in the Department of Transportation Headquarters Building, 400 Seventh Street, SW., Washington, DC 20950.

The purpose of this meeting is to discuss the outcome of the 39th Session of the International Maritime Organization (IMO) Subcommittee on Radiocommunications which is scheduled for November 29 through December 3, 1993, at the IMO headquarters in London, England.

Agenda items include decisions of the 39th Session, primarily related to the implementation of the Global Maritime Distress and Safety System (GMDSS).

Members of the public may attend this meeting up to the seating capacity of the room.

For further information and meeting room number, contact Mr. Ronald J. Grandmaison, U.S. Coast Guard Headquarters (G–TTM), 2100 Second Street, SW., Washington, DC 20593–0001. Telephone: (202) 267–1389.

Dated: September 27, 1993.

Marie Murray,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 93–25127 Filed 10–13–93; 8:45 am]

BILLING CODE 4710–07–M

[Public Notice 1882]

Shipping Coordinating Committee, Subcommittee on Ocean Dumping; Meeting

The Subcommittee on Ocean Dumping of the Shipping Coordinating Committee will hold an open meeting on October 29, 1993 from 1 p.m. to 3 p.m. to obtain public comment on the issues to be addressed November 8–12, 1993 at the Sixteenth Consultative Meeting of the Contracting Parties to the London Convention of 1972, which regulates ocean dumping.

The meeting will be held at the Environmental Protection Agency, Waterside Mall, 401 M Street, SW., Washington, DC 20460, in Conference Room 17 of the Washington Information Center. Interested members of the public are invited to attend, up to the capacity of the room.

For further information, please contact Mr. John Lishman, Oceans and Coastal Protection Division, telephone (202) 260–8448.

Dated: October 4, 1993.

Geoffrey Ogden,

Chairman, Shipping Coordinating Committee.

[FR Doc. 93–25195 Filed 10–13–93; 8:45 am]

BILLING CODE 4710–09–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Announcing the Third Meeting of the Motor Vehicle Titling, Registration, and Salvage Advisory Committee

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Meeting announcement.

SUMMARY: This notice announces the third meeting of the Motor Vehicle Titling, Registration, and Salvage Advisory Committee. The Committee was established as required by section 140 of the Anti Car Theft Act of 1992, Public Law 102–519, and in accordance with the Federal Advisory Committee Act, for the purpose of studying problems related to motor vehicle titling, registration, and controls over motor vehicle salvage which may affect the motor vehicle theft problem. The Committee will develop and submit a report to the President, the Congress, and the chief executive of each State concerning the results of this study, which will include recommendations to solve these problems. At this meeting the Committee will discuss uniform state titling procedures necessary to ensure that titles for damaged motor vehicles are properly branded; flood damaged vehicles; and the need for enforcement mechanisms.

DATE AND TIME: The meeting is scheduled to begin at 10 a.m. on Monday, October 25, 1993, and conclude at 4 p.m. on Tuesday, October 26, 1993.

ADDRESS: The meeting on Monday, October 25, 1993, will be held in room 2230, and the meeting on Tuesday, October 26, 1993, will be held in rooms 4436–4438 of the Department of Transportation Building, which is located at 400 Seventh Street, SW., Washington, DC.

SUPPLEMENTARY INFORMATION: In April 1993, the Motor Vehicle Titling, Registration, and Salvage Advisory Committee was established as required by section 140 of the Anti Car Theft Act of 1992, Public Law 102–519. The purpose of the Committee is to study problems which relate to motor vehicle titling, registration, and vehicle salvage controls, including the lack of uniformity in State laws, which may contribute to motor vehicle theft and fraud problems.

The Committee will prepare a report containing the results of the study, including appropriate recommendations to solve the problems identified. The report shall be submitted to the President, the Congress, and to the chief executive officer of each State not later than April 1994.

This meeting is open to the public; however, participation will be determined by the Committee Chairperson.

A public reference file (P.F. 93–001) has been established to contain products of the Committee and will be open to the public during the hours of 9:30 a.m. to 4 p.m. at the National Highway Traffic Safety Administration's Technical Reference Division in room 5108 at 400 Seventh Street, SW., Washington, DC 20590, telephone (202) 366–2678.

FOR FURTHER INFORMATION CONTACT: Richard C. Morse, Odometer Fraud Staff, Office of the Associate Administrator for Enforcement, National Highway Traffic Safety Administration, NEF–20, room 5321, 400 Seventh Street, SW., Washington, DC 20590, phone: 202–366–4761.

Issued on: October 8, 1993.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 93–25217 Filed 10–13–93; 8:45 am]

BILLING CODE 4910–59–M

Research and Special Programs Administration

Applications for Modification of Exemptions or Applications To Become a Party to an Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for modification of exemptions or applications to become a party to an exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (e.g., to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix "X" denote a modification request. Application numbers with the suffix "P" denote a party to request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before October 29, 1993.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs, Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION:

Copies of the applications are available for inspection in the Dockets Unit, room 8426, Nassif Building, 400 7th Street SW., Washington, DC.

Application No.	Applicant	Modification of exemption
7954–X	Air Products and Chemicals, Inc., Allentown, PA (See Footnote 1).	7954
9723–X	Heritage Transport, Inc., Indianapolis, IN (See Footnote 2).	9723
11041–X	Aerojet Propulsion Division (APD), Sacramento, CA (See Footnote 3).	11041
11119–X	U.S. Chemical and Plastics Co., Inc., Canton, OH (See Footnote 4).	11119

(1) To modify exemption to provide for nitrogen trifluoride, classed as Division 2.2, as an additional commodity to be transported in DOT specification cylinders.

(2) To modify exemption to provide for rail as an additional mode of transportation for use in transporting lab packs.

(3) To reissue exemption originally issued on an emergency basis to authorize certain Class 9 material to be shipped in cargo tanks.

(4) To reissue exemption originally issued on an emergency basis to authorize certain organic peroxides to be shipped as limited quantities/consumer commodities when the inside containers do not exceed 125 ml for liquids and 500 grams for solids.

Application No.	Applicant	Parties to exemption
4453–P	Winchester Building Supply Co., Inc., Winchester, VA.	4453
6611–P	Air Products Helium, Inc. (APHI), Allentown, PA.	6611
6626–P	Auto Gas Light Welding Supply Co., Inc., Clifton, NJ.	6626
6765–P	Air Products Helium, Inc. (APHI), Allentown, PA.	6765
7991–P	Atlanta & Saint Andrews Bay Railway Company, Panama City, FL.	7991
8451–P	SCB Technologies, Inc., Albuquerque, NM.	8451
8554–P	Boran-Ireco Co., Inc., Parrish, AL.	8554
8554–P	Conex, Inc., Derby, IN	8554
8556–P	Air Products Helium, Inc. (APHI), Allentown, PA.	6556
8556–P	Linde Puerto Rico, Inc., Gurabo, PR.	8556
8723–P	W.H. Burt Explosives, Inc., Moab, UT.	8723
8915–P	Epichem Limited, Merseyside, UK.	8915
9275–P	Emery Worldwide, Newark, NJ.	9275
9623–P	Piedmont Explosives, Inc., Statesville, NC.	9623
10307–P	Georgia Gulf Corporation, Plaquemine, LA.	10307
10845–P	Public Service Electric and Gas Company (PSE&G), Newark, NJ.	10845

This notice of receipt of applications for modification of exemption and for party to an exemption is published in accordance with part 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on October 8, 1993.

J. Suzanne Hedgepeth,

Chief, Exemption Programs, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 93–25216 Filed 10–13–93; 8:45 am]

BILLING CODE 4910–60–M

Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before November 15, 1993.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Unit, Room 8426, Nassif Building, 400 7th Street SW., Washington, DC.

New Exemptions

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
11115–N	U.S. Department of Energy, Washington, DC.	49 CFR 173.416	To authorize a one-time shipment of a Nordion International Gammacell 220 High Dose Rate Irradiator in a foreign approved Type B(U) package, radioactive material, special form, n.o.s., Cobalt-60, Class 7 consisting of a cylindrical steel-encased lead radiation shield with a plywood overpack. (Mode 1.)
11117–N	Champion International Corporation, Hamilton, OH.	49 CFR 174.67(i)&(j)	To authorize rail cars containing various commodities, classed as Division 2.3, 5.1 and Class 8, to remain connected during unloading without the physical presence of an unloader. (Mode 2.)
11130–N	Clean Harbors Environmental Services, Inc Quincy, MA.	49 CFR 173.12(b), 177.848	To load, transport and store Division 6.1 liquids in Packing Group 1, Zone A packed in "lab-pack" drums on the same transport vehicle carrying packages containing various classes of hazardous materials. (Mode 1.)

NEW EXEMPTIONS—Continued

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
11131–N	Interstate Navigation Company, New London, CT.	49 CFR 107.101	To authorize the transport of LPG propane gas, classed as Division 2.1, contained in cylinders on passenger ferries. (Mode 3.)
11132–N	Uniroyal Chemical Company, Inc., Middlebury, CT.	49 CFR 173.224, 49 CFR	To authorize the transport of Division 4.1, flammable solid, in a specially designed composite type packaging in quantities not to exceed 55 pounds. (Mode 1.)
11134–N	ETSS of Ohio, Inc., Tipp City, OH.	49 CFR 177.848(c)(d), 49 CFR	To authorize the shipment of limited quantities of Class 3, 8, and Division 5.1, 6.1 waste chemicals in lab packs on the same vehicle. (Mode 1.)
11135–N	Enron Clean Fuels Marketing Company, Houston, TX.	49 CFR 173.29(b)(ii)	To authorize the one-time shipment of a DOT Specification 111A10OW1 rail car, containing methyl alcohol residue, Class 3. (Mode 2.)
11136–N	American Pyrotechnics Association, Chestertown, MD.	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320.	To authorize the transport of fireworks, 1.3G explosives which are forbidden for shipment by cargo-only aircraft. (Mode 4.)
11137–N	BioSurface Technology, Inc., Cambridge, MA.	49 CFR 172.101(j), 172.101(k), 173.196(a)(b)(e) and (f), 173.24(e), 173.24(f), 173.24(i), 173.24a(a), 173.27(b), 173.27(c), 173.29(a), 178.609, 49 CFR.	To authorize the transport by courier of human skin grafts classed as infectious substances, Division 6.2 in specially designed containers in quantities greater than those authorized by CFR. (Modes 1, 3, 5.)
11138–N	Nippon Riku-Un Sangyo Co., Ltd., Tokyo, Japan.	49 CFR 173.315(a).	To authorize the transport of refrigerant gases, n.o.s., classed as Division 2.2 in non-DOT specification portable tank comparable DOT–51 specification. (Modes 1, 2, 3.)
11142–N	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.302(2)(3)&(4), 173.34(e)(1)(3)(4)(6), CFR.	To authorize ultrasonic retesting of DOT-Specification 3AA and 3AAX cylinders used for shipment of material classed as Division 2.1 and 2.2. (Mode 1.)
11144–N	Sam Nally Shop, Inc., Bardstown, KY.	49 CFR 173.63	To manufacture, mark and sell non-DOT specification containers similar to an IME container for use in transporting detonators, classed as Division 1.1 and 1.4 explosives in open body pickup trucks. (Mode 1.)

NOTE: Exemption 10866–P McClure Industries, Inc. that appeared on page 48931 of the FEDERAL REGISTER on September 20, 1993, should have appeared as 11141–N "To manufacture, mark and sell a specially designed fiberglass container, Sani-Trux 30, to be used as outer packaging in transporting medical waste classed as Division 6.2.

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on October 8, 1993.

J. Suzanne Hedgepeth,

Chief, Exemption Programs, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 93–25215 Filed 10–13–93; 8:45 am]

BILLING CODE 4910–60–M

[Docket Nos. PDA–7(R), PDA–9(R), PDA–10(R), PDA–11(R)]

Applications by HASA, Inc. and the Swimming Pool Chemical Manufacturers' Association for Preemption Determinations Regarding Certain California State and Local Requirements

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Public notice reopening comment period.

SUMMARY: HASA, Inc. (HASA) and the Swimming Pool Chemical Manufacturers' Association (SPCMA) have applied to the Department for a determination that certain California and Los Angeles County requirements are preempted by the Hazardous Materials Transportation Act (HMTA). These provisions relate to the transportation of hazardous materials on private property. This Notice reopens the comment period on HASA's and SPCMA's applications. RSPA is reopening the comment period in all four preemption determination applications (PDAs) because each relates to Los Angeles County regulations or a California statute applicable to the "on-site" handling of hazardous materials.

DATES: Comments received on or before November 15, 1993, will be considered before an administrative ruling is issued in each of the four PDAs by RSPA's Associate Administrator for Hazardous Materials Safety. These additional comments may address only the three specific matters discussed below; commenters may not raise or discuss other issues.

ADDRESSES: HASA's and SPCMA's applications and any comments received may be reviewed in the Dockets Unit, Research and Special Programs Administration, room 8421, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590–0001. Further comments on the three matters discussed below may be submitted to the Dockets Unit at the above address, and should include the Docket Number (PDA–7(R), PDA–9(R), PDA–10(R), or PDA–11(R)). Three copies should be submitted. A copy of each comment must also be sent to Ms. Mary Flynn, Director, Government Relations and Public Affairs, HASA, Inc. and Co-Chairman, Hazardous Materials Transportation and Storage Committee, SPCMA, 23119 Drayton Street, Saugus, CA 91350; Mr. Larry J. Monteilh, Executive Officer, Board of Supervisors for the County of Los Angeles, 500 West Temple Street, Room 383, Los Angeles, CA 90012; and, Dr. Richard Andrews, Director, Governor's Office of Emergency Services, State of California, 2800 Meadowview Road, Sacramento, CA 95832. A certification that a copy has been sent to these persons must also

be included with the comment. (The following format is suggested: "I hereby certify that copies of this comment have been sent to Ms. Flynn and Messrs. Monteilh and Andrews at the addresses specified in the **Federal Register**.")

FOR FURTHER INFORMATION CONTACT: Nancy E. Machado, Office of the Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590–0001 (Tel. No. 202–366–4400).

SUPPLEMENTARY INFORMATION:

I. Background

On December 22, 1992, HASA applied for a determination that the HMTA preempts certain provisions of Titles 2 and 32 of the Los Angeles County Code applicable to the transportation of hazardous materials on private property (PDA–7(R)). HASA, a California corporation, manufactures, packages, warehouses, and transports chemical compounds for use in, among other things, potable waste water treatment, and swimming pool and spa disinfection.

On January 26, 1993, RSPA published a Public Notice and Invitation to Comment on HASA's application (58 FR 6176). That Notice set forth the text of HASA's application, and asked that comments be filed with RSPA on or before March 31, 1993, and that rebuttal comments be filed on or before June 4, 1993.

Between December 30, 1992, and January 20, 1993, SPCMA a non-profit organization with members involved in the transportation of hazardous materials, submitted three separate applications seeking determinations that the HMTA preempts certain provisions of:

(a) Chapter 6.95 of the California Health and Safety Code as they apply to the storage and handling of hazardous materials (PDA–9(R));

(b) Title 32 of the Los Angeles County Code which it asserts are applicable to the transportation of cryogenic liquids, including loading, unloading, and storage incidental thereto, and the construction of containers used for transporting cryogenic liquids (PDA–10(R)); and

(c) Title 32 of the Los Angeles County Code as they apply to the on-site transportation of compressed gases (PDA–11(R)).

SPCMA is a non-profit organization composed of individual member companies with manufacturing and distribution facilities located across the United States, including California. SPCMA members manufacture, package, warehouse, and transport chemical compounds for use in potable and waste water treatment, and swimming pool and spa disinfection.

On February 12, 1993, RSPA published a Public Notice and Invitation to Comment on each of SPCMA's applications (58 FR 8494, 8480, 8488). Those Notices set forth the text of SPCMA's applications and asked that comments be filed with RSPA on or before April 9, 1993, and that rebuttal comments be filed on or before June 4, 1993.

II. Matters on Which Additional Comments May Be Submitted

(1) *Correspondence to Secretary Peña*—On April 27, 1993, Congressman George Miller (D-CA), Chairman of the House Committee on Natural Resources, wrote to Secretary of Transportation Federico Peña stating his opposition to SPCMA's request for a preemption determination in PDA–9(R). That letter was placed in the public docket. (The letter is reproduced in appendix A to this notice.) After the period for rebuttal comments had ended, Congressman Miller made additional remarks concerning PDA–9(R) in a letter to Secretary Peña dated September 10, 1993. (The letter is reproduced in appendix B to this notice.) Congressman Miller cites a recent hazardous materials accident in Contra Costa County, California, as evidence that stronger State and local regulation of hazardous materials is needed.

In a letter to Secretary Peña dated September 13, 1993, California State Assemblyman Robert J. Campbell, and 23 other State legislators, requested that the Department deny SPCMA's request for a preemption determination in PDA–9(R). (The letter is reproduced in appendix C to this notice.) This letter was also received outside the rebuttal comment period in PDA–9(R). Assemblyman Campbell's letter also cites the Contra Costa County spill as proof that State regulation of hazardous materials is necessary to minimize the risk of hazardous materials accidents at fixed facilities.

RSPA is extending the comment period in PDA–7(R), PDA–9(R), PDA–10(R), and PDA–11(R) to allow interested parties to respond to Congressman Miller's September 10, 1993 letter and Assemblyman Campbell's September 13, 1993 letter.

In accordance with 49 CFR 107.207, all interested persons are invited to submit comments on Congressman Miller's September 10, 1993 letter and Assemblyman Campbell's September 13, 1993 letter.

(2) *The Requirements as Applied and Enforced*—

There is little information in the record as to how the California and Los Angeles County regulations at issue in PDA–7(R), PDA–9(R), PDA–10(R), and PDA–11(R) are actually applied and enforced. RSPA is interested in receiving comments and examples regarding: (1) The specific activities covered by the requirements, *as enforced*, and the point during those activities when the respective enforcing agencies consider that the requirements become applicable; (2) who the requirements are applicable to and actually enforced against (*e.g.*, shippers, carriers, consignees); and (3) the penalties for non-compliance, as applied and enforced.

In accordance with 49 CFR 107.207, all interested persons are invited to submit further comments on these issues.

(3) *Revisions to Title 32 of the Los Angeles County Code*—

The applicants in PDA–7(R), PDA–10(R) and PDA–11(R) each ask for preemption of several requirements contained in title 32 of the 1990 Los Angeles County Code. Title 32 of the 1990 Los Angeles County Code adopted by reference the 1988 Uniform Fire Code. On May 20, 1993, the Los Angeles County Board of Supervisors adopted Los Angeles County Ordinance No. 93–0044, which amended title 32 to incorporate, with amendments, additions and deletions, the 1991 edition of the Uniform Fire Code.

In accordance with 49 CFR 107.207, RSPA directs the applicants to supplement their applications, if necessary, to make them consistent with title 32, as amended. For example, the applicants should ensure that the amendment of title 32 has not affected their substantive arguments, or the accuracy of their citations to particular provisions of title 32.

Issued in Washington, DC, on October 6, 1993.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

Appendix A

U.S. House of Representatives, Committee on Natural Resources, Washington, DC 20015–6201

April 27, 1993.

The Honorable Federico Peña,
Secretary of Transportation, 400 Seventh Street SW., Washington, DC 20590.

Dear Mr. Secretary:

Re: "Application for an Administrative Determination Pursuant to 49 U.S.C. 1811(c) and 49 C.F.R. 107.23 et seq.," Swimming Pool Manufacturers Association.

I wish to express my opposition to the above application filed with the Department of Transportation (DOT) by the Swimming Pool Chemical Manufacturers' Association (SPCMA). The SPCMA application has requested that DOT's Hazardous Materials Safety Research and Special Programs Administration exempt member facilities from the State of California regulations found in Chapter 6.95 of the California Health and Safety Code. These state regulations protect the public and the environment from hazardous materials through effective emergency response planning and responsible hazardous materials management.

The SPCMA argues that the California Health and Safety Code is pre-empted by the federal Hazardous Materials Transportation Act (HMTA). The SPCMA claims that the HMTA applies not only to transportation, but also to the storage of hazardous materials. However, it is clear that the HMTA was not intended to apply to the storage of hazardous materials and that the HMTA and the California Health and Safety Code are, in fact, compatible.

I am particularly concerned about the effect that this pre-emption, if approved, would have on the Risk Management and Prevention Program (RMPP) found in Article 2 of Chapter 6.95 of the California Health and Safety Code. The RMPP was established by the California legislature in 1986 following the Bhopal disaster. It is intended to prevent the accidental release of acutely hazardous materials and to provide information useful for emergency response planning in the event of a release. The SPCMA's member facilities handle chlorine, a highly toxic and volatile material. It is critical that these facilities comply with the RMPP to minimize adverse health and environmental effects should an accident occur.

Furthermore, if DOT approves the exemption requested by the SPCMA, it would encourage other industries handling acutely hazardous materials to apply for similar exemptions. There are more than 130 such business in Contra Costa County alone. An accident at any one of these facilities could affect many people in the San Francisco Bay area. It is critical that these businesses have adequate emergency response planning and notification, which can only be achieved through compliance with the RMPP.

If you have any questions, please contact Celia Boddington of my staff at 202–226–0200.

Thank you for your attention to this matter.

Sincerely,

George Miller,

Chairman.

Appendix B

U.S. House of Representatives, Committee on Natural Resources, Washington, DC 20515–6201

September 10, 1993.

The Honorable Federico Peña,
Secretary of Transportation, 400 Seventh Street SW, Washington, DC 20590.

Dear Mr. Secretary:

Re: "Application for an Administrative Determination Pursuant to 49 U.S.C. 1811(c) and 49 C.F.R. 107.23 et seq.," Swimming Pool Manufacturers Association.

Since I wrote to you on April 27, in opposition to the above application, a major chemical accident in Contra Costa County, California has underscored the importance of denying this exemption request submitted by the Swimming Pool Chemical Manufacturers' Association (SPCMA).

On July 26, the escape valve on a tank car carrying oleum ruptured during unloading at the General Chemical facility in Richmond, California. Thousands of Contra Costa County residents sought medical treatment following exposure to the toxic cloud resulting from the spill. Following the Richmond accident, the Subcommittee on Oversight and Investigations of the Committee on Natural Resources held a hearing on August 10 to explore how people can live safely with the hazardous materials industry.

State and local witnesses emphasized the importance of California's Risk Management Prevention Program (RMPP) in preventing accidents and in ensuring adequate emergency response when a leak occurs. Witnesses also testified that the tank car involved in the General Chemical leak was not regulated by state law because reporting of tank cars storing hazardous materials is not required if storage is for 30-days or less. It is clear that state regulation must be strengthened, not reduced.

Communities such as Contra Costa County are currently covered by the states' RMPP, which requires responsible management of hazardous materials. However, Department of Transportation approval of the SPCMA exemption request would deny this protection to communities throughout California.

DOT approval of the SPCMA application would set a policy precedent that could render the RMPP useless. It is vital that the hazardous materials handlers in the state comply with the RMPP to minimize the risk of accidents. I therefore urge you to deny the exemption application by SPCMA.

Thank you for your consideration. If you have any questions, please contact Celia Boddington of my staff at 202–226–0200.

Sincerely,

George Miller,

Chairman.

Appendix C

Assembly, California Legislature, Robert J. Campbell, Assemblyman, Eleventh District, Chairman, Ways & Means Subcommittee on School Finance

September 13, 1993.

Mr. Federico Peña,
Secretary of Transportation, Department of Transportation, 400 7th Street, SW., Washington, DC 20590.

Re: Application for an Administrative Determination Pursuant to 49 USC 1811(c) and 49 CFR 107.203 et seq by the Swimming Pool Chemical Manufacturers Association.

Dear Secretary Peña: We are writing about an issue of deep concern to us. Last year, the Swimming Pool Chemical Manufacturers Association (SPCMA) requested that the Department of Transportation determine whether federal law, specifically the Hazardous Materials Transportation Act, preempts Chapter 6.95 of the California Health and Safety Code. In essence, SPCMA is asking to exempt its member organizations from California laws designed to reduce the risk of chemical accidents and to plan for emergency response in the event of such an accident. We hope you will take whatever action necessary to immediately lay this issue to rest. Without any doubt the state has every responsibility for regulating hazardous materials that are on-site at a fixed facility. To argue that the storage of a hazardous material is a transportation issue simply because the material is being held on-site in a railcar is dangerously fraudulent.

As you may be aware, on July 27, 1993 a major chemical spill occurred at General Chemical Company in Richmond, California. Sulphuric acid was spewed over Contra Costa and Solano counties, sending residents to hospitals and closing freeways. This resulted from a leaky railroad tank valve which leaked oleum, a concentrated form of sulphuric acid, for more than three hours. As you may be aware, Richmond is located in Contra Costa, a county with a heavy industrial base, many facilities that handle acutely hazardous materials, and a long history of hazardous material spills.

The state has worked diligently to put in place legislation and regulatory programs to minimize the risk of chemical accidents. In particular, the state has implemented Chapter 6.95 of the California Health and Safety Code. These codes cover hazardous materials business plans, emergency response planning and notification, and risk management and prevention programs. All of these statutes are geared toward reducing the risk of accidents and assisting in emergency response in the event an accident occurs.

The General Chemical accident has focused debate on both the need to improve state regulations and to clarify potential grey areas between federal and state responsibilities, specifically the regulation of rail cars that are on-site and used for "temporary" storage of hazardous materials.

We are especially concerned that the SPCMA petition, if granted, would set a very dangerous precedent throughout the manufacturing industries in the state. According to a recent survey conducted by Congressman Miller, there are over 500 rail tank cars carrying over 80 million gallons of hazardous chemicals stored on tracks in Contra Costa County alone. There is the strong possibility that if SPCMA's petition is granted, many more industry groups will file similar petitions.

We fully recognize and respect the responsibility the Department of Transportation has in ensuring the safe transportation of hazardous materials. However, we firmly believe that the regulations that have been implemented under Chapter 6.95 of the California Health and Safety Code are not in conflict with the Hazardous Materials Transportation Act

Furthermore, in the wake of the General Chemical accident and a series of other accidents that have occurred in Contra Costa over the last couple of years, the state is attempting to review and improve its risk management and prevention laws. The SPCMA petition only creates confusion and serves to slow California's efforts to provide adequate protection for its citizens in relation to the prevention of hazardous materials accidents at fixed facilities.

For all of the reasons above, we strongly urge you to expeditiously deny SPCMA's petition. If you have any questions regarding this request, please feel free to contact us.

Sincerely,

Assemblymember Tom Bates

Assemblymember Robert Campbell

Assemblymember Burt Margolin

Assemblymember Tom Umberg

Assemblymember Thomas M. Hannigan

Assemblymember Mike Gotch

Assemblymember Valerie Brown

Assemblymember Willie L. Brown, Jr.

Assemblymember Marguerite Archie-Hudson

Senator Gary Hart

Senator Bill Lockyer

Senator Nicholas C. Petris

Senator Art Torres

Senator Herschel Rosenthal

Senator Milton Marks

Assemblymember Byron Sher

Assemblymember Phil Isenberg

Assemblymember Dan Hauser

Assemblymember Delaine Eastin

Assemblymember Deirdre Alpert

Assemblymember Hilda Solis

Senator Henry J. Mello

Senator Tom Hayden

Senator A. E. Alquist

[FR Doc. 93–25146 Filed 10–13–93; 8:45 am]

BILLING CODE 4910-60-P

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Advisory Committee on Environmental Hazards; Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 that a meeting of the Veterans' Advisory Committee on Environmental Hazards will be held on Thursday, October 28, 1993, in room 401, and on October 29, 1993, in room 855, 801 I Street, NW., Washington, DC 20004. The meeting will convene at 9 a.m. and adjourn at 5 p.m.

The purpose of the meeting is to review information relating to the health effects of exposure to ionizing radiation.

The meeting is open to the public to the capacity of the room. For those wishing to attend, contact Mrs. Leney Holohan, Department of Veterans Affairs Central Office (026B), 810 Vermont Avenue, NW., Washington, DC 20420, phone (202) 523–3911, prior to October 22, 1993.

Members of the public may direct questions or submit prepared statements for review by the Committee in advance of the meeting, in writing only, to Mr. Frederic L. Conway, Deputy Assistant General Counsel, (026B), Department of Veterans Affairs Central Office, 810 Vermont Avenue, NW., Washington, DC 20420. Submitted material must be received at least five days prior to the meeting. Such members of the public may be asked to clarify submitted material prior to consideration by the Committee.

Dated: October 1, 1993.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 93–25197 Filed 10–13–93; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 197
Thursday, October 14, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:00 a.m. on Tuesday, October 19, 1993, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Reports of actions approved by the standing committees of the Corporation and by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

Memorandum and resolution re: Proposed amendments to Part 360 of the Corporation's rules and regulations, entitled "Receivership Rules," which would comply with the statutory requirement of prescribing regulations on the prohibition against increasing losses to the insurance funds by protecting uninsured depositors and non-depositor creditors of insured depository institutions.

Memorandum and resolution re: Final amendments to Part 337 of the Corporation's rules and regulations, entitled "Unsafe and Unsound Banking Practices," which revise the capital category definitions used in the Corporation's regulations governing the acceptance of brokered deposits so that those definitions conform to the definitions used in regulations implementing section 38 of the Federal Deposit Insurance Act.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street NW., Washington, DC

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 942–3111 (Voice); (202) 942–3132 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: October 12, 1993.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 93–25397 Filed 10–12–93; 3:04 pm]

BILLING CODE 6714–01–M

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, October 19, 1993 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Wednesday, October 20, 1993 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This oral hearing will be open to the public.

MATTER BEFORE THE COMMISSION:

Compliance Procedures Regulations (11 CFR Parts 4, 5, 7, 102 and 111).

DATE AND TIME: Thursday, October 21, 1993 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Advisory Opinion 1993–17: Ms. Maureen E. Garde on behalf of the Massachusetts Democratic Party (continued from meeting of October 7, 1993).

Best Efforts Rulemaking (11 CFR § 104.7(b))—Final Rules and Explanation and Justification (continued from meeting of October 7, 1993).

AO Procedure Revisions Regarding Public Comments on OGC draft AOs.

Briefing on REGO.

Administrative Matters.

DATE AND TIME: Wednesday, October 27, 1993 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington DC (Ninth Floor).

STATUS: This oral hearing will be open to the public.

MATTER BEFORE THE COMMISSION:

Convention Regulations (11 CFR Parts 107, 114, and 9008).

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 219–4155.

Delores Hardy,

Administrative Assistant.

[FR Doc. 93–25398 Filed 10–12–93; 3:08 pm]

BILLING CODE 6715–01–M

DEPARTMENT OF JUSTICE

Parole Commission

Record of Vote of meting Closure (Public Law 94–409) (5 U.S.C. Sec. 552b)

I, Edward F. Reilly, Jr., Chairman of the United States Parole Commission, presided at a meeting of said Commission which started at approximately nine-thirty a.m. on Thursday, October 7, 1993 at the Commission's Central Office, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815. The purpose of the meeting was to decide four appeals from National Commissioners' decisions pursuant to 28 CFR Section 2.27. Five Commissioners were present, constituting a quorum when the vote to close the meeting was submitted.

Public announcement further describing the subject matter of the meeting and certifications of General Counsel that this meeting may be closed by vote of the Commissioners present were submitted to the Commissioners prior to the conduct of any other business. Upon motion duly made, seconded, and carried, the following Commissioners voted that the meeting be closed: Edward F. Reilly, Jr., Carol Pavilack Getty, Jasper Clay, Jr., Vincent Fechtel, Jr., and John R. Simpson.

IN WITNESS WHEREOF, I make this official record of the vote taken to close this meeting and authorize this record to be made available to the public.

Dated: October 7, 1993.

Edward F. Reilly, Jr.,

Chairman, U.S. Parole Commission.

[FR Doc. 93–25396 Filed 10–12–93; 3:01 pm]

BILLING CODE 4410–01–M

POSTAL RATE COMMISSION

TIME AND DATES: 2:18 p.m., October 8, 1993.
PLACE: Conference Room, 1333 H Street, NW, Suite 300, Washington, DC 20268.
STATUS: Closed.
MATTERS TO BE CONSIDERED: Personnel Matters.
CONTACT PERSON FOR MORE INFORMATION: Charles L. Clapp, Secretary, Postal Rate Commission, Suite 300, 1333 H Street, NW, Washington, DC 20268–0001, Telephone (202) 789–6840.

Charles L. Clapp,
Secretary.
[FR Doc. 93–25394 Filed 10–12–93; 2:58 pm]
BILLING CODE 7710–FW–P

POSTAL RATE COMMISSION

TIME AND DATES: 2:07 p.m., October 8, 1993.
PLACE: Conference Room, 1333 H Street, NW, Suite 300, Washington, DC 20268.
STATUS: Open.
MATTERS TO BE CONSIDERED: Election of Vice Chairman.
CONTACT PERSON FOR MORE INFORMATION: Charles L. Clapp, Secretary, Postal Rate Commission, Suite 300, 1333 H Street, NW., Washington, DC 20268–0001, Telephone (202) 789–6840.

Charles L. Clapp,
Secretary.
[FR Doc. 93–25395 Filed 10–12–93; 3:00 pm]
BILLING CODE 7710–FW–P

U.S. RAILROAD RETIREMENT BOARD

Notice of Public Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on October 19, 1993, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611. The agenda for this meeting follows:

Portion open to the public

(1) Plan to Improve the Quality and Timeliness of Claims Processing
(2) Debt Prevention Task Force Report
(3) Pre-Recovery Waiver Debt
(4) Request for Waiver of Interest and/or Penalty Assessments
(5) Division of Audit and Compliance Fiscal Year 1993 Audit Plan
(6) Announcement No. 93–17A GM–13 Audit Manager
(7) 1993 Railroad Retirement Board Award for Excellence Program
(8) Performance Awards for General Schedule Employees
(9) RRB Physical Examination Program
(10) Updated Energy Conservation Program
(11) Coverage Determination—Livingston Rebuild Center
(12) Coverage Determination—Parker LaFarge, Inc.
(13) Coverage Determination—Kokomo Rail Company, Inc.
(14) Coverage Determination—VWV Enterprises, Inc.
(15) Coverage Determination—Rio Grande Industries, Inc.
(16) Coverage Determination—Illinois Central Corporation
(17) Coverage Determination—Rail Link, Inc.
(18) Coverage Determination—Albany Bridge Company, Inc.
(19) Coverage Determination—Tulare Valley Railroad Company
(20) Coverage Determination—Reading and Northern Service Company
(21) Coverage Determination—Santa Cruz, Big Trees & Pacific Ry. Co.
(22) Regulations—Parts 202 and 301, Employers Under the Railroad Retirement Act and Railroad Unemployment Insurance Act
(23) Regulations—Part 203, Employees Under the Railroad Retirement Act
(24) Regulations—Part 226, Computing Employee Spouse and Divorced Spouse Annuities
(25) Regulations—Part 230, Reduction and Non—Payment of Annuities by Reason of Work
(26) Regulations—Part 266, Representative Payee
(27) Regulations—Part 328, Voluntary Leaving of Work
(28) Regulations—Part 345, Contribution and Contribution Reports

Portion closed to the public

(A) Draft Fiscal Year 1994 Performance Appaisal Plans
(B) Appeal of Nonwaiver of Overpayment, Willard H. Triplett

The person to contact for more information is Beatrice Ezerski, Secretary of the Board, COM No. 312–751–4920, FTS No. 386–4920.

Dated: October 8, 1993.

Beatrice Ezerski,
Secretary to the Board.
[FR Doc. 93–25307 Filed 10–12–93; 9:48 am]
BILLING CODE 7905–01–M

Corrections

Federal Register
Vol. 58, No. 197
Thursday, October 14, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PR Docket No. 90-481; FCC 93-411]

Construction, Licensing and Operation of Private Land Mobile Radio Stations

Correction

In rule document 93-23785, beginning on page 51251 in the issue of Friday, October 1, 1993, make the following correction:

On page 51251, in the second column, in the **EFFECTIVE DATE:** , in the first line, "October 1, 1993." should read "November 1, 1993."

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 812

[Docket No. 92N-0308]

Investigational Device Exemptions; Disqualification of Clinical Investigators

Correction

In proposed rule document 93-24475 beginning on page 52144 in the issue of Wednesday, October 6, 1993, make the following correction:

On page 52144, in the first column, in **DATES:**, in the first and second lines, "November 5, 1993." should read "December 6, 1993."

BILLING CODE 1505-01-D

federal register

Thursday
October 14, 1993

Part II

Department of Health and Human Services

Food and Drug Administration

Application of Current Statutory Authorities to Human Somatic Cell Therapy Products and Gene Therapy Products; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 93N–0173]

Application of Current Statutory Authorities to Human Somatic Cell Therapy Products and Gene Therapy Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is making available, through this document, a statement of the manner in which FDA's current statutory authorities governing therapeutic products apply to human somatic cell therapy products and gene therapy products. FDA is publishing this statement in response to requests that the agency clarify its regulatory approach and provide guidance to manufacturers of products intended to be used in somatic cell therapy or gene therapy. As scientific knowledge in the area of somatic cell and gene therapy continues to accumulate and evolve, the agency's approach may also evolve.

DATES: Submit written comments on the document by December 13, 1993.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. Submit investigational new drug applications (IND's) for somatic cell therapy and gene therapy products to the Division of Application Review and Policy (HFM–585), Office of Therapeutics Research and Review, Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Submit written requests for single copies of the document entitled "Points to Consider in Human Somatic Cell Therapy and Gene Therapy" to the Congressional and Consumer Affairs Branch (HFM–12), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–295–9000. Send two self-addressed adhesive labels to assist that office in processing requests.

FOR FURTHER INFORMATION CONTACT: Ann Reed Gaines, Center for Biologics Evaluation and Research (HFM–635), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–594–3074.

SUPPLEMENTARY INFORMATION:

I. Introduction

As a consequence of scientific and biotechnological progress during the past decade, new therapies involving somatic cells and genetic material are being investigated, and commercial development of products for use in somatic cell therapies and gene therapies is occurring. Existing FDA statutory authorities, although enacted prior to the advent of somatic cell and gene therapies, are sufficiently broad in scope to encompass these new products and require that areas such as quality control, safety, potency, and efficacy be thoroughly addressed prior to marketing. Manufacturers and other interested parties have questioned FDA regarding how such products will be regulated. This statement outlines the current regulatory approach to products intended for use in somatic cell and gene therapies.

II. Background

A. Legal Authorities

FDA regulates numerous kinds of products intended to prevent, treat, or diagnose diseases or injuries under legal authorities established in the Public Health Service Act (the PHS Act) and the Federal Food, Drug, and Cosmetic Act (the act). Section 351(a) of the PHS Act (42 U.S.C. 262(a)) identifies a biological product as "any virus, therapeutic serum, toxin, antitoxin, vaccine, blood, blood component or derivative, allergenic product, or analogous product, or arsphenamine or its derivatives (or any other trivalent organic arsenic compound), applicable to the prevention, treatment, or cure of diseases or injuries of man." Section 201(g)(1) of the act (21 U.S.C. 321(g)(1)) defines the term "drug," in part, as "articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals." The term "device" is defined in section 201(h) of the act, in part, as:

> * * * "an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article * * * intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease, in man or other animals, * * * which does not achieve its primary intended purposes through chemical action within or on the body of man or other animals and which is not dependent upon being metabolized for the achievement of its primary intended purposes."

Both the "drug" definition and the "device" definition also include articles "intended to affect the structure or any function of the body."

Section 351(a) of the PHS Act requires premarket approval for biological products. Licenses are to be issued upon a showing that the establishments and products "meet standards, designed to insure the continued safety, purity, and potency of such products * * *." (42 U.S.C. 262(d)). A biological product's effectiveness for its intended uses must be shown as part of the statutory requirement for potency (21 CFR 600.3(s)). At the investigational stages, when the products are being studied in clinical trials to gather safety and effectiveness data, biological products must meet the requirements of part 312 (21 CFR part 312). FDA's biologics regulations require the submission of both product license applications (PLA's) and establishment license applications (ELA's) (21 CFR 601.1 through 601.10). Biologics establishments and products must satisfy detailed standards set forth in the regulations (21 CFR parts 600 through 680).

Section 351(b) of the PHS Act prohibits falsely labeling or marking a biological product. Under section 361 of the PHS Act (42 U.S.C. 264), the agency may promulgate regulations to prevent the introduction, transmission, or spread of communicable diseases.

Products considered to be biological products subject to the provisions of section 351 of the PHS Act are simultaneously also drugs or devices subject to the applicable provisions under the act. For example, the adulteration, misbranding, and registration provisions of the act would apply to the product as a drug or device.

Under section 501 of the act (21 U.S.C. 351), both drugs and devices are considered adulterated for any of a number of specified reasons. Included among these adulteration provisions is the requirement that the methods and facilities and controls used for manufacture, processing, packing, and holding or installation conform with current good manufacturing practice (CGMP) regulations (21 U.S.C. 351(a)(2)(B) and (h)). FDA's implementing regulations codified at 21 CFR parts 211 and 820 specify the drug and device CGMP requirements.

Section 502 of the act (21 U.S.C. 352) sets forth misbranding provisions that apply to drugs and devices. Among other circumstances, a drug or device is considered misbranded if the labeling is false or misleading or if the labeling fails to bear adequate directions for use or adequate warnings against unsafe use (21 U.S.C. 352(a) and (f)). Any drug or device is also misbranded if it is dangerous to health when used in the manner or with the frequency suggested in the labeling (21 U.S.C. 352(j)). For prescription drugs and restricted

devices, section 502 of the act describes certain information that must be included in all advertisements or other printed material (21 U.S.C. 352(n) and (r)). FDA's regulations also establish labeling and advertising requirements in more detail (21 CFR parts 201, 202, and 801).

Section 510 of the act (21 U.S.C. 360) requires persons who own or operate establishments for the manufacture, preparation, propagation, compounding, or processing of drugs or devices (with certain exceptions) to register those establishments with FDA. Individuals who must register their establishments under section 510 of the act must also file a list of all the drugs and devices being made or processed at the establishment. FDA's registration regulations are codified at 21 CFR parts 207 and 807.

Although products regulated by FDA as biological products must also meet drug or device requirements, the agency does not require duplicate premarket approvals. For example, if FDA requires a PLA to be submitted for the product as a biologic, the agency does not also require submission of a new drug application (NDA) or a device premarket approval application (PMA).

The interstate commerce nexus needed to require premarket approval under the statutory provisions governing biologics and drugs may be created in various ways in addition to shipment of the finished product by the manufacturer. For example, even if a biological drug product is manufactured entirely with materials that have not crossed State lines, transport of the product into another State by an individual patient creates the interstate commerce nexus. If a component used in the manufacture of the product moves interstate, the interstate commerce prerequisite for the prohibition against drug misbranding is also satisfied even when the finished product stays within the State. Products that do not carry labeling approved in a PLA (or NDA) are misbranded under section 502(f)(1) of the act (21 U.S.C. 352(f)(1); 21 CFR 201.5, 201.100(c)(2)). Moreover, falsely labeling a biological product is prohibited under section 351(b) of the PHS Act without regard to any interstate commerce nexus (42 U.S.C. 262(b)). The act contains a presumption of interstate commerce for devices (section 709 of the act (21 U.S.C. 379a)).

Both the PHS Act and the act provide authority for enforcement of the various statutory requirements. FDA is authorized to conduct inspections to determine compliance with regulatory requirements (42 U.S.C. 262(c) and 21 U.S.C. 360(h) and 374). Approved PMA's may be suspended or revoked (42 U.S.C. 262(a) and 21 U.S.C. 355(e) and 360e(e)). Biological products and devices may be recalled under certain circumstances (42 U.S.C. 262(d)(2) and 21 U.S.C. 360h). Judicial actions, including seizures, injunctions, and criminal prosecutions, may also be initiated (42 U.S.C. 262(f) and 21 U.S.C. 332, 333, and 334).

Some products may contain a combination of biological products and drugs or devices. Under a provision of the Safe Medical Devices Act of 1990, FDA determines the primary mode of action of the combination products (21 U.S.C. 353(g)), then assigns the primary jurisdiction for review of the product within the agency based on that determination. FDA has established procedures for designating the organization within FDA (i.e., the Center for Biologics Evaluation and Research (CBER), the Center for Drug Evaluation and Research (CDER), or the Center for Devices and Radiological Health (CDRH)) to review combination products or any other products where the agency center with primary jurisdiction is unclear (21 CFR 3.1 through 3.10). CBER, CDER, and CDRH have also entered into intercenter agreements to clarify the centers' responsibilities for reviewing various kinds of products.

B. Regulation of Somatic Cell and Gene Therapy Products

This statement is intended to present the agency's current approach to regulating somatic cell and gene therapy products. For the purpose of this statement, somatic cell therapy products are defined as autologous (i.e., self), allogeneic (i.e., intra-species), or xenogeneic (i.e., inter-species) cells that have been propagated, expanded, selected, pharmacologically treated, or otherwise altered in biological characteristics ex vivo to be administered to humans and applicable to the prevention, treatment, cure, diagnosis, or mitigation of disease or injuries. Cellular products intended for use as somatic cell therapy are biological products subject to regulation pursuant to the PHS Act (42 U.S.C. 262) and also fall within the definition of drugs in the act (21 U.S.C. 321(g)). As biological products, somatic cell therapy products are subject to establishment and product licensure to ensure product safety, purity, and potency. At the investigational stage, these products must be in compliance with part 312. Clinical trials are, therefore, to be conducted under IND's. As drugs, somatic cell therapy products are also subject to drug requirements such as conformity with CGMP regulations.

FDA has not required premarketing approval for many types of transplantation, including bone marrow transplants. However, recent scientific and biotechnological developments now enable bone marrow to be manufactured into a somatic cell therapy product. Such products are subject to FDA regulation consistent with the approach to other somatic cell therapies described in this statement. In addition, other forms of transplantation, such as the transfer of whole organs and tissues, have been, or are currently being reassessed and addressed by FDA or other Federal agencies in light of current knowledge and technological advances.

Gene therapy products are defined for the purpose of this statement as products containing genetic material administered to modify or manipulate the expression of genetic material or to alter the biological properties of living cells. Some gene therapy products (e.g., those containing viral vectors) to be administered to humans fall within the definition of biological products and are subject to the licensing provisions of the PHS Act, as well as to the drug provisions of the act. Other gene therapy products, such as chemically synthesized products, meet the drug definition but not the biological product definition and are regulated under the relevant provisions of the act only.

Biological products intended for use as source materials for further manufacture into licensed somatic cell therapy products or gene therapy products require premarketing approval as biological products intended for further manufacture when they are shipped from one legal entity to another. Such products would be considered part of a shared manufacturing arrangement in which: (1) Two or more manufacturers perform different aspects of the manufacture of a product, (2) neither performs nor is licensed to perform all aspects of the manufacture, and (3) each manufacturer holds product and establishment license applications. In a shared manufacturing arrangement, FDA accepts only license applications for biological products intended for further manufacture that specify the licensed manufacturer or manufacturers to which the intermediate product will be shipped and approves such applications only after demonstration of safety and efficacy of the end product. For example, biological gene therapy products intended for use ex vivo in the manufacture of genetically altered cells for somatic cell therapies will require premarketing approval as biological

products intended for further manufacture when shipped from one legal entity to another and will be approved only when the final somatic cell therapy product is approved. For further discussion regarding shared manufacturing, refer to FDA's policy statement concerning cooperative manufacturing arrangements for licensed biological products, which was published in the **Federal Register** on November 25, 1992 (57 FR 55544).

In accordance with the statutory provisions governing biological products and drugs, a somatic cell therapy product or gene therapy product must be the subject of an IND in compliance with part 312 or of an approved PLA regardless of whether the finished product is shipped across State lines.

The manufacture of somatic cell therapy products or gene therapy products will involve many ancillary products used as part of the manufacturing process. The ancillary products are not intended to be present in final products but may have an impact on the safety, purity, or potency of the products under manufacture. Such ancillary products meet the definition of devices and, if marketed, will be regulated under the act device authorities, with the appropriate type of regulatory control being determined according to codified procedures (e.g., investigational device exemption (IDE)—21 CFR part 812; premarket approval (PMA)—21 CFR part 814; premarket notification (510(k))—21 CFR 870.81 through 807.97). When these ancillary products are used in the manufacturing of somatic cell or gene therapy products, they become subject to drug CGMP's, in particular for components and containers (21 CFR 211.80 through 211.94 and 211.101(b) and (c)).

Some of the ancillary products will already be marketed as medical devices, drugs, or biological products. When an ancillary product used as a component of the manufacturing process is marketed but not labeled for the specific use, such use may initially be described under the IND for the final somatic cell or gene therapy product. Such use of ancillary products by manufacturers of investigational somatic cell therapy or gene therapy products is contingent upon the submission of complete descriptions of the use of the ancillary product in the manufacturing process.

If the ancillary product used as a component of the manufacturing process does not have marketing approval, manufacturers of the somatic cell or gene therapy product must submit or provide cross-reference to a complete description of the manufacturing process, specifications, qualification, and acceptance criteria of the ancillary product. This information may be filed by the sponsor of the IND for the somatic cell or gene therapy product, may be filed in an IND or IDE by the manufacturer of an ancillary product, or may be made available by the manufacturer of the ancillary product in a master file format, as defined in 21 CFR 814.3(d) and discussed in 21 CFR 814.20(c).

Manufacturers who wish to market ancillary products for use in the manufacturing of somatic cell or gene therapy products must file either: (1) A 510(k), (2) a PMA, (3) an amendment to an existing 510(k), PMA, NDA, or PLA.

The manufacture of somatic cell therapy products or gene therapy products may involve components of manufacture intentionally present as part of the final products. Products containing both a somatic cell component and another drug or device component in the final product will be handled as combination products.

The following statement succinctly describes FDA's current approach to regulating somatic cell therapy and gene therapy products with primary emphasis on premarket approval issues. As previously discussed, products that meet the biologic, drug, or device definition must also comply with other relevant provisions of the PHS Act and the act. Manufacturers may also find useful information in FDA's document entitled "Points to Consider in Human Somatic Cell Therapy and Gene Therapy," Docket No. 91N–0428, available from CBER's Congressional and Consumer Affairs Branch (address above).

III. Statement

A. Somatic Cell Therapy

1. Definition

Somatic cell therapy is the prevention, treatment, cure, diagnosis, or mitigation of disease or injuries in humans by the administration of autologous, allogeneic, or xenogeneic cells that have been manipulated or altered ex vivo. Manufacture of products for somatic cell therapy involves the ex vivo propagation, expansion, selection, or pharmacologic treatment of cells, or other alteration of their biological characteristics.

2. Cells Subject To Licensure as Final Products When Intended for Use as Somatic Cell Therapy

Cells subject to licensure as final biological products when intended for use as somatic cell therapy include cells manipulated in a way that changes the biological characteristics of the cell population (e.g., by expansion, selection, encapsulation, activation, or genetic modification as a part of gene therapy as defined in section III.B.1. of this document).

Examples include the following: (1) Autologous or allogeneic lymphocytes activated and expanded ex vivo (e.g., lymphokine-activated killer cells (LAK), tumor infiltrating lymphocytes (TIL cells), antigen specific clones); (2) encapsulated autologous, allogeneic, or xenogeneic cells or cultured cell lines intended to secrete a bioactive factor or factors (e.g., insulin, growth hormone, a neurotransmitter); (3) autologous or allogeneic somatic cells (e.g., hepatocytes, myocytes, fibroblasts, bone marrow- or blood-derived hematopoietic stem cells, lymphocytes) that have been genetically modified; (4) cultured cell lines; and (5) autologous or allogeneic bone marrow transplants using expanded or activated bone marrow cells. (For bone marrow products whose status is not clear, consult CBER.)

3. Cells and Tissues Subject to Licensure as Source Material

Cells and tissues subject to biological product licensure as source material include allogeneic or xenogeneic cells harvested by other than the final product license holder and intended for manufacture into a somatic cell product. Examples include the following: (1) Muscle cells removed from donors and shipped to a manufacturer for expansion into a muscle cell therapy, (2) animal cells harvested at an animal care facility and shipped to a manufacturer for encapsulation or other manufacturing steps into a somatic cell therapy, and (3) other human tissue harvested from donors and shipped to another legal entity for manufacture into a somatic cell therapy.

4. Cells for Which Applications for Approval Prior to Marketing are not Presently Required

Cells for which applications for approval prior to marketing are not required at the present time include the following: (1) Cell transplants not having the characteristics described in sections III.A.2. and III.A.3. of this document, and (2) minimally manipulated or purged bone marrow transplants. Examples include the following: (1) Allogeneic bone marrow transplantation employing ex vivo T cell purging with a monoclonal antibody approved for such purging, (2) autologous bone marrow transplantation employing ex vivo tumor cell purging by an approved agent, and (3)

autologous bone marrow transplantation employing bone marrow enriched for stem cells by immunoadherence. (However, extensive manipulation of bone marrow for the purpose of obtaining purified stem cell populations would result in a somatic cell therapy subject to licensure.)

B. Gene Therapy

1. Definition

Gene therapy is a medical intervention based on modification of the genetic material of living cells. Cells may be modified ex vivo for subsequent administration or may be altered in vivo by gene therapy products given directly to the subject. When the genetic manipulation is performed ex vivo on cells that are then administered to the patient, this is also a type of somatic cell therapy. The genetic manipulation may be intended to prevent, treat, cure, diagnose, or mitigate disease or injuries in humans.

2. Final Products Containing the Genetic Material Intended for Gene Therapy

Final products containing the genetic material intended for gene therapy are regulated as biological products requiring PLA's (e.g., viral vectors containing genetic material to be transferred, ex vivo transduced cells and analogous products) or as drugs requiring NDA's (e.g., synthetic products) regardless of whether they are intended for use in vivo or ex vivo. Gene therapy products that are licensed biological products will be approved as biological products intended for further manufacture if they are intended to be used ex vivo during the manufacture of genetically altered cells.

Examples include the following: (1) A synthetic polynucleotide sequence intended to alter a specific genetic sequence in human somatic cells after systemic administration is regulated as a drug requiring an NDA; (2) a retroviral vector containing the adenosine deaminase (ADA) gene, intended to be administered intravenously to the patient, is regulated as a biological product requiring a PLA; and (3) a retroviral vector containing the ADA gene and intended to modify cells ex vivo is regulated as a biological product intended for further manufacture requiring a PLA.

3. Viral Vector Systems Intended for Further Manufacture Into Final Products

The manufacture and quality control of viral vector systems (i.e., not containing the complete genetic material) that are designed to serve as the starting point for further manufacture into final products (i.e., insertion of additional genetic material into the vector) may be described in a drug master file.

C. Ancillary Products Used during Production of Somatic Cell Therapies

Numerous products will be used during production of somatic cell therapy. Examples include the following: (1) Bioreactors and cell culturing systems, (2) components of culture media, (3) drug- or biologic-like components used to activate or otherwise change the biological characteristics of the cells, (4) certain antisense polynucleotides, and (5) agents used to purge or select or stimulate specific cell populations. A common characteristic of these products is that they are intended to act on the cells, rather than to have an independent effect on the patient. Additionally, the intended action of these products is not dependent upon incorporation into the somatic cell with maintenance of the products' structural or functional integrity.

These products meet the definition of medical devices. They are regulated as devices, with the type of regulatory control being determined according to codified procedures. In contrast, products administered directly to patients or products whose function requires incorporation into the somatic cells with maintenance to some degree of structural or functional integrity (e.g., viral or other vectors containing genetic material to be used in gene therapy) are not considered ancillary products; rather, they are regulated as drugs or biological products.

The center primarily responsible for regulating a particular device will be designated according to the current intercenter agreements. For example, according to the current agreement, CDER will regulate the synthetic antisense compounds, CBER will be responsible for monoclonal antibody-based purging agents, and CDRH will oversee the approval of bioreactors.

D. Combination Products

Many somatic cell products administered to patients will be combinations of a biological product and a device or of a drug, a biological product, and a device. Examples include the following: (1) Encapsulated pancreatic islet cells secreting insulin, and (2) a device containing encapsulated cells secreting a neurotransmitter. The combination products for which the primary mechanism of action is that of the somatic cell therapy component will be regulated as biological products.

IV. Comments

FDA recognizes that somatic cell and gene therapy products constitute a new and emerging scientific area. The agency will review and consider written comments on the regulatory approach set forth in this notice. Any comments received will be considered in determining whether amendments to, or revisions of, the approach are warranted. Two copies of any comments should be submitted, except that individuals may submit one copy Comments are to be identified with the docket number found in brackets in the heading of this document. Comments received are available for public examination in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 24, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy

[FR Doc. 93–24938 Filed 10–13–93; 8:45 am]

BILLING CODE 4160–01–F

federal register

Thursday
October 14, 1993

Part III

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 101, et al.
Folic Acid; Proposed Rules

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 91N–100H]

RIN 0905–AB67

Food Labeling: Health Claims and Label Statements; Folate and Neural Tube Defects

AGENCY: Food and Drug Administration, DHHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to revise its food labeling regulations to authorize the use of a health claim about the relationship between folate and the risk of neural tube birth defects on labels or in labeling of foods in conventional food form or dietary supplements. This rule is being proposed in response to provisions of the Nutrition Labeling and Education Act of 1990 (the 1990 amendments) and the Dietary Supplement Act of 1992 (the DS Act) that bear on health claims. FDA has reviewed the scientific data in conformity with the requirements of the 1990 amendments and has considered recommendations provided by the Folic Acid Subcommittee of its Food Advisory Committee (the Folic Acid Subcommittee) as well as comments received. The agency has tentatively decided to authorize a health claim for folate and neural tube defects (NTD's) and to provide for safe use of folic acid in foods by amending several of its regulations that permit use of folic acid in foods.

DATES: Written comments by December 13, 1993. The agency is proposing that any final rule that may issue based upon this proposal become effective 30 days after the date of publication, except that for foods that are fortified with folic acid to ensure that the folic acid is safely used, any final rule authorizing a health claim will not be effective until the effective date of the amendment to the food additive regulation for folic acid proposed elsewhere in this issue of the **Federal Register**.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Jeanne I. Rader, Center for Food Safety and Applied Nutrition (HFS–175), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5375.

SUPPLEMENTARY INFORMATION:

I. Background

A. The 1990 Amendments

The 1990 amendments to the Federal Food, Drug, and Cosmetic Act (the act) provided for extensive changes in the way foods are labeled. With respect to health claims, the 1990 amendments amended the act by adding a provision (section 403(r)(1)(B) of the act (21 U.S.C. 343(r)(1)(B))) that provides that a product is misbranded if it bears a claim that characterizes the relationship of a nutrient to a disease or health-related condition, unless the claim is made in accordance with the procedures and standards established under the act. Congress enacted the health claims provisions of the 1990 amendments to help U.S. consumers maintain healthy dietary practices and to protect consumers from unfounded health claims. The 1990 amendments required that FDA evaluate 10 nutrient-disease relationships with respect to their appropriateness for health claims. The topic of folic acid and NTD's was among those 10 topics.

In the **Federal Register** of November 27, 1991 (56 FR 60537), the agency proposed to establish general requirements in conformity with the requirements of the 1990 amendments that would govern the appropriateness and validity of health claims. On January 6, 1993, FDA published a final rule on the general requirements for health claims (58 FR 2478). The regulation that FDA adopted provides that the agency will promulgate regulations authorizing health claims only when it determines, based on the totality of publicly available scientific evidence (including evidence from well-designed studies conducted in a manner that is consistent with generally recognized scientific procedures and principles), that there is significant agreement, among experts qualified by training or experience to evaluate such claims, that the claim is supported by the scientific evidence.

The regulation also requires, among other things, that all label and labeling statements about the substance-disease relationship be based on and be consistent with the conclusions set forth in the regulation (§ 101.14(d)(2)(i)(21 CFR 101.14(d)(2)(i)); that the claim be limited to describing the value that ingestion of the substance, as part of a total dietary pattern, may have on a particular disease or health-related condition (§ 101.14(d)(2)(ii)); that the claim be complete, truthful, and not misleading, and, where factors other than dietary intakes of the substance affect the relationship between the substance and the disease or health-related condition, such factors may be required to be addressed in the claim (§ 101.14(d)(2)(iii)); that all information required to be in the claim appear in one place without other intervening material (§ 101.14(d)(2)(iv)); that the claim enable the public to comprehend the information provided and to understand the relative significance of such information in the context of a total daily diet (§ 101.14(d)(2)(v)); and that the level of the substance be sufficiently high and in an appropriate form to justify the claim (§ 101.14(d)(2)(vii)). Foods bearing health claims must also bear nutrition labeling including information on the substance that is the subject of the health claim (§ 101.14(d)(3)).

The health claim provisions of the 1990 amendments do not alter the requirements of the act that foods be safe, and that information on food labels and labeling be truthful and not misleading. Sections added by the 1990 amendments cannot be implemented independently of the remaining portions of the act. The act must be considered as a whole, and FDA's responsibility for ensuring that foods are safe, and that labeling is not misleading, is explicitly provided for in sections 402 (21 U.S.C. 342) and 403 of the act. Further, a health claim cannot be authorized for a substance if its use would increase the risk of another disease or health-related condition, and disqualifying levels for sodium, total fat, saturated fat, and cholesterol cannot be exceeded in foods bearing health claims. Additional disqualifying provisions could be specified as appropriate.

B. The DS Act

The agency notes that the final rule on general requirements for health claims that it published January 6, 1993 (58 FR 2478), did not include general requirements for health claims on dietary supplements. In October 1992, Congress passed the DS Act (Pub. L. 102–571), which imposed a moratorium until December 15, 1993, on FDA implementation of the 1990 amendments with respect to dietary supplements not in conventional food form. The DS Act directed FDA to issue, by June 15, 1993, proposed rules to implement the 1990 amendments with respect to dietary supplements and to issue final rules based on these proposals by December 31, 1993. Accordingly, FDA published (58 FR 33700, June 18, 1993) a proposed rule on general requirements for health claims on dietary supplements. FDA proposed to revise its food labeling

regulations to make dietary supplements of vitamins, minerals, herbs, or other similar nutritional substances subject to the general requirements that apply to all other types of food with respect to health claims.

The DS Act also amended the so-called "hammer" provision of the 1990 amendments to provide that if the agency does not meet the established December 31, 1993, timeframe for issuance of final rules, the proposed regulations are to be considered final regulations.

With respect to the 10 nutrient-disease relationships that the 1990 amendments directed FDA to consider, in the **Federal Register** of January 6, 1993 (58 FR 2537 through 2849), the agency issued regulations announcing its decisions with respect to foods in conventional food form on each of these relationships. However, under section 202(a)(1) and (b) of the DS Act, while FDA could provide that the health claims that it authorized for food in conventional food form could also appear on dietary supplements that qualified to bear those claims, the agency could not act before December 15, 1993, to deny claims on dietary supplements on any of the 10 relationships.

In the wake of the January 6, 1993, final rules, six nutrient-disease relationships remain unresolved for dietary supplements. In this document, FDA is proposing to authorize a health claim on the relationship between folate and NTD's. This proposal pertains to all food, whether in conventional food form or a dietary supplement. Elsewhere in this issue of the **Federal Register**, FDA is addressing the remaining five nutrient-disease relationships for dietary supplements.

C. Chronology of Regulatory and Other Activities Related to Folate and NTD's

Since the passage of the 1990 amendments in November 1990, the rapidly evolving nature of the science relative to folate and NTD's and a number of Public Health Service (PHS) activities have intertwined with the regulatory process relative to a health claim for this topic. To facilitate an understanding of FDA's evolving activities on this matter, these events are described briefly in chronological order below and in greater detail later in this document.

1. The Proposed Rule

In response to the 1990 amendments, the agency proposed (56 FR 60610, November 27, 1991) not to authorize the use on the label or in labeling of foods, including dietary supplements, of health claims relating to an association between folic acid and NTD's.

a. *Summary of data.* In reaching this tentative decision, the agency reviewed all of the available human studies. These studies consisted of four intervention trials with women at high risk of recurrence of an NTD pregnancy because of a personal history of such a pregnancy (Refs. 1, 2, 3, and 4; Table 1) and four observational studies of women at risk of occurrence of an NTD pregnancy (Refs. 5, 6, 7, 8, and 9; Table 2). FDA also reviewed a number of studies in which levels of various vitamins were measured in blood samples obtained from women during or following the periconceptional interval (i.e., around the time of conception) and a number of animal studies to determine whether vitamin status was associated with risk for an NTD pregnancy (see 56 FR 60610). With the exception of the Medical Research Council of the United Kingdom (MRC) trial (Ref. 4) the results of these studies were not conclusive relative to a specific effect of folate intake on reduction in risk of pregnancies affected by NTD's.

In July 1991, the MRC (Ref. 4) published the results of a well-conducted clinical trial in which women at high risk of an NTD-affected pregnancy, because of a personal history of such a pregnancy, were given supplements containing 4 milligrams (mg) (4,000 micrograms (μg)) of folic acid daily (i.e., 10 times the Reference Daily Intake (RDI)), and the outcomes of their pregnancies were compared with those of women who had not received folic acid in their supplements. This study clearly demonstrated, for the first time, a significant reduction in recurrence of NTD's with high levels of folic acid but not with supplementation with other vitamins. This study established a specific role for folic acid in reducing the risk of recurrence of NTD pregnancies in women with a previous history of this defect, but extrapolation of these results to women in the general population at much lower risk of occurrence of NTD-affected pregnancies, and extrapolation of the results to lower levels of folate (e.g., 400 μg folic acid daily, or 100 percent of the RDI), were problematic.

b. *Recommendations for women at risk of recurrence of an NTD-affected pregnancy.* In August 1991, the Centers for Disease Control (CDC) published guidelines for use of folic acid at high intake levels (i.e., at 4 mg (4,000 μg or 10 times the RDI)) by those women who are planning a pregnancy and who are at high risk of a recurrence of an NTD-complicated pregnancy (Ref. 10). CDC recommended that women who had previously had a pregnancy resulting in a fetus or an infant with a NTD should be counseled about the increased risk of such a complication in subsequent pregnancies and should be advised that folic acid supplementation may reduce the risk of a recurrence. The guidelines stated that such women should consult their physician when planning a pregnancy and, unless contraindicated, should be advised to take 4 mg (4,000 μg) of folic acid daily beginning at least 4 weeks before conception and continuing through the first 3 months of pregnancy (Ref. 10). The guidelines did not specifically address the issue of folate consumption among these women during the times when they were not planning to become pregnant or among women who did not have a history of an NTD-affected pregnancy.

FDA, in its proposed rule published in the **Federal Register** of November 27, 1991 (56 FR 60610), restated significant portions of the August 1991 CDC recommendation and noted the significance of this guideline for women at high risk of a recurrence of an NTD-affected pregnancy. The agency tentatively decided, however, not to authorize a health claim on the relationship between folic acid and NTD's. The agency noted that the amount of folic acid needed for reduction in risk of recurrence of NTD's in women at high risk of this complication is significantly in excess of usual dietary intakes and exceeds amounts permitted under current food additive regulations. In addition, the agency tentatively concluded that there was not significant agreement among qualified experts that intakes of folic acid lower than the level of 4 mg (4,000 μg) per (/) day used in the MRC trial would have the same protective effect as intake of the study dose of 4 mg/day. Additionally, at that time, there was not significant agreement among qualified experts that intakes of folic acid lower than those studied in this recurrence intervention trial, and consistent with current food additive regulations, would have the same effect in women in the general U.S. population, who are at much lower risk of an occurrence of an NTD-affected pregnancy than were the women at high recurrent risk who participated in the MRC study (56 FR 60610).

2. Reopening of the Comment Period

Subsequent to publication of the proposed regulation (56 FR 60610, November 27, 1991) and after the period for submitting comments in response to the proposal closed on February 25, 1992, FDA became aware of the possibility of significant new data on

folate and NTD's. Therefore, in the **Federal Register** of July 23, 1992 (57 FR 32751), the agency reopened the comment period to permit the inclusion of any new scientific data and information, particularly information that might become available as a result of a meeting on folic acid and NTD's that was to be held at CDC on July 27, 1992. The reopening of the comment period also provided an opportunity for the public to comment on that scientific data and information.

a. *New data.* As a result of the reopening of the comment period, preliminary data from a randomized, controlled trial that was conducted in Hungary (hereafter referred to as "the Hungarian study") of the effectiveness of multivitamin and multimineral supplements providing daily intakes of 0.8 mg (800 µg) of folic acid (i.e., twice the RDI) in reducing the risk of occurrence of NTD's became publicly available (58 FR 2606, Ref. 30). The agency also received information on the results of a case-control study of periconceptional use of multivitamins containing folic acid at daily doses of 0.4 mg (400 µg) and higher and the risk of occurrence of NTD's in women in Boston, Philadelphia, and Toronto (58 FR 2606, Ref. 31).

b. *PHS recommendation.* In September 1992, while FDA's rulemaking was in progress, the PHS (Ref. 11) issued a recommendation that all women of childbearing age in the United States who are capable of becoming pregnant should consume 0.4 mg (400 µg) of folic acid/day for the purpose of reducing their risk of having a pregnancy affected with spina bifida or other NTD's. The recommendation was based on data suggesting that folic acid, when given at a high dose (4 mg or 4,000 µg), can reduce the risk of recurrence of NTD's (Ref. 4) and on a synthesis of information from studies that used multivitamins containing folic acid at dose levels from 0 to 1,000 µg/day can. Based on information provided in these studies, PHS inferred that folate alone at levels of 0.4 mg (400 µg)/day can reduce the risk of NTD's in some women. The PHS recommendation identified three approaches to delivering folate to women of childbearing age in the general population, including improvements in dietary habits, daily use of folic acid supplements throughout the childbearing years, and fortification of the U.S. food supply.

The PHS recommendation also identified several issues that remained outstanding. Among these issues were: (1) The appropriate intake of folate for reduction in risk of NTD's; (2) the potential role of other nutrients in reduction in risk of NTD's; (3) the "folate-preventable" fraction of NTD-affected pregnancies in women in the U.S. population; and (4) safety concerns, including effects of increased folate intakes in complicating the diagnosis of vitamin B_{12} deficiency if the food supply were to become highly fortified with folic acid. The PHS statement also noted that because the effects of high intakes of folate are not well known, but include complicating the diagnosis of vitamin B_{12} deficiency, care should be taken to keep total folate consumption at less than 1 mg (1,000 µg)/day except under the supervision of a physician (Ref. 11).

The target population for this recommendation includes about 70 million women of childbearing age in the United States throughout the approximately 30 years in which they are capable of becoming pregnant. The Department of Health and Human Services (DHHS)/PHS report estimated that about a 50-percent reduction in NTD births could occur if all women of childbearing age consumed 0.4 mg (400 µg) folic acid daily throughout their childbearing years (Ref. 11).

3. The Folic Acid Subcommittee

Given the seriousness of NTD's and the safety and other concerns stated in the PHS recommendation, the agency decided that it needed expert advice in deciding whether to authorize a health claim on folate and NTD's and in resolving certain separate but related issues involving the safety of folic acid. The agency convened the Folic Acid Subcommittee to consider the outstanding issues on folic acid (57 FR 52781, November 5, 1992). The Folic Acid Subcommittee had its first meeting on November 23 and 24, 1992 (Ref. 12). The agency asked the Folic Acid Subcommittee to provide recommendations on several issues, including identification of the appropriate target population for a folate–NTD's health claim, the appropriate daily intake of folate to reduce the risk of NTD's, safety concerns for the target population and the general population, and appropriate methods for presenting a health claim, if one is to be authorized, to the target population. The Folic Acid Subcommittee evaluated these issues in the broadest public health context and provided the agency with recommendations on educational activities for health professionals as well as for the target population, the need for surveillance both for changes in incidence of NTD's and for adverse effects of increased folate intake, labeling of foods (including health claims), and fortification of the food supply with folic acid. The Folic Acid Subcommittee, however, was unable to resolve all of the issues at its November 1992 meeting, particularly those involving food fortification.

4. The Final Rule

The 1990 amendments required that, within 2 years of their passage, FDA publish final regulations on the 10 nutrient-disease relationships. Therefore, in the **Federal Register** of January 6, 1993 (58 FR 2606), the agency published a final rule on a health claim for folic acid and NTD's. The agency did not authorize a health claim for folic acid and NTD's at that time. The agency reaffirmed its support of the PHS recommendation that all women of childbearing age in the United States who are capable of becoming pregnant consume 0.4 mg of folic acid daily to reduce their risk of having a pregnancy affected with spina bifida or other NTD's. The agency noted, however, that while the PHS recommendation evidenced that significant scientific agreement exists regarding the relationship between folate and NTD's, unresolved questions about the safe use of folic acid in food remained. The agency concluded that it could not authorize a health claim for folate until the questions regarding the safe use of this nutrient, as well as other concerns raised by PHS, were satisfactorily resolved. The agency stated its intention to work expeditiously to try to resolve these issues, including a review of the recommendations of the Folic Acid Subcommittee.

On April 15, 1993, FDA reconvened the Folic Acid Subcommittee (Ref. 13). FDA updated the Folic Acid Subcommittee on work done by FDA staff on fortification models. FDA asked for clarification on what appeared to be an inconsistency in positions taken by the Folic Acid Subcommittee relative to health claims. (At the November 23 and 24, 1992, meeting, the Folic Acid Subcommittee supported the PHS recommendation but recommended against use of health claims). Following expressions of diverse opinions of the potential effectiveness of health claims as an educational tool and by close votes by subcommittee members, the Folic Acid Subcommittee supported FDA actions to propose to authorize a health claim and to propose to fortify cereal-grain products.

D. The Purpose and Scope of This Document

The sections above describe the significant, and in some cases,

conflicting factors that the agency must consider in addressing the topic of folate and NTD's. In trying to resolve these conflicts, the agency has posed a series of questions for itself. These questions, and the agency's proposed answers, provide the basic outline for the remainder of this document.

The questions addressed by FDA include the following:

(1) Is a health claim on food labels appropriate for the relationship between folate and NTD's?

(2) Should the food supply be fortified with folic acid to ensure that women have adequate folate intakes? If so, is it necessary to limit the foods to which folic acid can be added and the levels at which it can be added to specific foods?

(3) If there are to be limitations on the foods that can be fortified with folic acid, which foods are most appropriate for fortification and at what levels should they be fortified?

(4) If the agency concludes that a health claim can be safely implemented, what should such a claim say about folate and NTD's?

In this document, the agency is proposing to authorize a health claim relating diets adequate in folate to reductions in the risk of NTD-affected pregnancies. FDA has tentatively concluded, based on the totality of the scientific evidence, that there is significant scientific agreement among qualified experts supporting a relationship between folate and NTD's. The agency has also tentatively concluded that, based on its discussions with the Folic Acid Subcommittee and its analyses of food intake data, daily folate intakes can be maintained within safe ranges by allocating fortification with folic acid to specific foods in the food supply through an amendment to the food additive regulation for folic acid.

In companion documents published elsewhere in this issue of the **Federal Register**, the agency is proposing to amend the food additive regulation for folic acid and to amend the standards of identity for specific cereal-grain products. The agency will seek specific comment on the companion proposals and on this proposal from the Folic Acid Subcommittee, the experts who participated in the November 23 and 24, 1992, meeting, and the agency's Food Advisory Committee. After the advisory committee meets, the agency will make these comments available for public review and comment, as part of this rulemaking, as soon as possible. FDA encourages public comment on the views that it receives from these experts.

II. Regulatory History of Folic Acid

FDA regulates folic acid as a drug or as a food additive, depending upon its intended use.

A. The Drug Regulation

The agency evaluated the use of folic acid as a drug in the **Federal Register** of April 9, 1971 (36 FR 6843), in response to reports received from the National Academy of Sciences (NAS) on the therapeutic uses of folic acid. The agency concluded that folic acid administered orally or parenterally is effective in the treatment of megaloblastic anemias of tropical and nontropical sprue, those of nutritional origin, and those that may occur during pregnancy, infancy, and childhood. The agency found that administration of folic acid alone is improper therapy in the treatment of pernicious anemia and other megaloblastic anemias where vitamin B_{12} is deficient, because such treatment may delay the appearance of (i.e., mask) the anemia of vitamin B_{12} deficiency.

The agency found that in the presence of excess folic acid and inadequate vitamin B_{12}, the anemia of vitamin B_{12} deficiency, which is generally the earliest indicator of the deficiency, may not develop (i.e., may be masked), thus delaying the diagnosis of the deficiency. Other serious consequences of the deficiency (e.g., severe and often irreversible neurologic damage), however, may progress and worsen because of the failure to detect the anemia at an early stage of the deficiency and initiate appropriate therapy with vitamin B_{12}. This interaction between the functions of folic acid and vitamin B_{12} (i.e., the ability of folic acid to mask the anemia of vitamin B_{12} deficiency) has been recognized for many years and is the basis for the precautionary statement on oral and parenteral preparations of folic acid for therapeutic use. In the final rule, the agency stated the conditions under which it would approve new drug applications for folic acid preparations (36 FR 6843). The labeling conditions included the following precaution: "Folic acid especially in doses above 1.0 mg daily may obscure pernicious anemia, in that hematologic remission may occur while neurological manifestations remain progressive."

In the **Federal Register** of October 17, 1980 (45 FR 69043 at 69044), the agency amended the "Precautions" statement to be included in the labeling of oral and parenteral preparations of folic acid for therapeutic use in treating patients with megaloblastic anemia of folate deficiency, because the agency found that the revision more accurately stated the level at which folic acid may obscure pernicious anemia. The agency stated: "While obscuration of pernicious anemia does not occur at levels of 0.1 mg of folate/day, hematologic remissions in pernicious anemia have been reported at levels as low as 0.25 mg of folate per day." The precautions section of the labeling conditions for folic acid was amended to read as follows: "Folic acid in doses above 0.1 mg daily may obscure pernicious anemia in that hematologic remission can occur while neurological manifestations remain progressive."

B. The Food Additive Regulation

In the **Federal Register** of August 2, 1973 (38 FR 20725), FDA published a final rule establishing safe conditions of use for folic acid (folacin) in food (§ 121.1134 (21 CFR 121.1134)). In determining the safe conditions of use for folic acid, the agency considered the Recommended Dietary Allowance (RDA) established by NAS and other relevant information. In 1977, § 121.1134 was recodified as § 172.345 (21 CFR 172.345).

The food additive regulation provides that folic acid can be added to foods if the maximum daily intake does not exceed 0.4 mg (i.e., 400 µg)/day for food labeled without reference to age or physiologic state. The regulation also includes limitations based on age and the conditions of pregnancy or lactation. Daily intake is not to exceed 0.1 mg for infants, 0.3 mg for children under 4 years of age, 0.4 mg for adults and children 4 or more years of age, and 0.8 mg for pregnant or lactating women (§ 172.345). As currently written, however, this regulation provides no guidance to manufacturers as to how to reach the stated limit, and, as such, is inadequate to allocate folic acid safely in the food supply.

III. The Nature of the Relationship Between Folate and NTD's—Review of the Scientific Evidence

A. Background

1. Folates

The term "folates" is a generic descriptor for a group of compounds that have nutritional properties and chemical structures similar to those of pteroylglutamic acid (PGA, the parent form of the vitamins) (Ref. 14). Naturally-occurring folates in foods are in the reduced form (i.e., the dihydro or tetrahydro form) and are often conjugated to a number of glutamic acid residues (i.e., folylpolyglutamates). Synthetic folic acid added as a fortificant to foods, including dietary

supplements, is the oxidized, monoglutamate form of the vitamin.

During passage through the intestinal mucosa and liver, the reduced folylpolyglutamates found in foods are deconjugated (i.e., excess glutamic acid residues are removed) and converted to N^5-methyltetrahydrofolate, a reduced form with one methyl group that is the predominant circulating form of the vitamin in the serum and red blood cells. Folic acid (the oxidized, monoglutamate form of the vitamin), at low levels of intake, is also transported and reduced to the biologically active forms of the vitamin. Reduction of the oxidized folic acid is essential for its ability to function as a vitamin (i.e., to be involved in metabolic reactions involving one-carbon units) in human tissues (Ref. 14).

At median dietary intakes of above 200 µg/day, dietary folates are converted to the circulatory N^5-methyltetrahydrofolate form. The processes required to reduce and metabolize the vitamin can be saturated. At increasing levels of intake of synthetic folic acid, progressively more of the free vitamin circulates through the body in its oxidized form, and increasing amounts are excreted unmetabolized in the urine (Ref. 16).

As a vitamin, folate functions metabolically in the synthesis of amino acids and nucleic acids. Insufficient quantities of folate in the diet lead to impaired cell multiplication and alterations in protein synthesis (Ref. 15). These effects are most noticeable in rapidly growing or dividing cell populations (Ref. 15). Pregnancy increases the need for folate and many other nutrients because of the need of the mother to maintain adequate nutrition and to meet the nutritional requirements of the developing fetus (Ref. 15).

2. NTD's

NTD's are serious birth defects of the brain (e.g., anencephaly or absence of the forebrain and skull) or spinal cord (e.g., spina bifida or defective closure of the vertebrae around the spinal cord) that can result in infant mortality or serious disability. The neural tube forms between the 18th and 20th days of pregnancy and closes between the 24th and 27th days. The neural tube, therefore, forms and closes before most women are aware of their pregnancy.

Each year, NTD's occur in approximately 2,500 cases in the United States (i.e., in about 0.6/1,000 live births). During recent decades, the NTD rate in the United States has declined from 1.3/1,000 live births in 1970 to 0.6/1,000 live births in 1989 (Ref. 17). Factors that have contributed to this decline are not completely understood. Increased use of prenatal diagnosis and termination of pregnancy have been proposed as contributing factors; however, the declining trend in NTD's predates the widespread use of prenatal diagnosis (Ref. 18). The current U.S. rate of about 0.6/1,000 live births compares to rates of 2.8/1,000 in Hungary, 6.4/1,000 in Northern Ireland, and 6 to 13/1,000 in northern China. In 1989, spina bifida and anencephaly accounted for 533 infant deaths, or about 1.3 percent of all infant mortality in the United States. Although NTD's are not a major cause of infant mortality, they contribute significantly to life-long and often severe disabilities (Ref. 17).

The majority of NTD's are believed to have a multifactorial basis including both genetic and environmental factors. Environmental factors associated with NTD's include maternal health (e.g., febrile illness) (Ref. 19; and see 56 FR 60610), maternal use of certain antiseizure drugs (e.g., valproic acid, carbamazepine) (Ref. 20; and see 56 FR 60610), and environmental contaminants (Refs. 21 and 22). Another risk factor is a personal history of a pregnancy affected with an NTD (Ref. 23). Recurrence rates of 2 to 3 percent have been observed among U.S. women who have had a previous child with an NTD versus occurrence rates of about 0.06 percent in women in the general population. However, 90 to 95 percent of infants with an NTD are born to women who do not have a family history of these defects.

3. Relationship of Folates and NTD's

Several lines of evidence led to the hypothesis that nutritional factors might be involved in causing some cases of human NTD's (see 56 FR 60610, November 27, 1991, and 58 FR 2606, January 6, 1993 for references). Among the nutrients that were thought to play a role in the development of NTD's, folate, a B vitamin, received the greatest attention because of early observational studies in humans and because of the well-recognized role of folate in cell division and growth. Because the neural tube (the precursor of the brain and spinal cord) forms early in embryonic development (before the end of the 4th week of gestation), interventions aimed at reducing the risk of these defects must occur periconceptionally (i.e., during the interval extending from at least 1 month before conception and continuing through the first 6 weeks of pregnancy), often before a woman realizes that she is pregnant.

B. Review of the Scientific Evidence

Both in the November 27, 1991, proposed rule and in the January 6, 1993, final rule, the agency reviewed the totality of the publicly available scientific evidence on whether there is a relationship between folic acid and NTD's (see 56 FR 60610). Because of the agency's previous extensive reviews, only a brief overview of these studies will be provided here. Studies that became publicly available subsequent to publication of the final rule will also be reviewed.

Several different types of human studies have examined the relationship between folate and risk of NTD-affected pregnancies. The available human studies consist of several intervention trials and observational studies. In intervention trials (or clinical trials), the effects of periconceptional treatment with defined intakes of folic acid-containing supplements or placebos are compared in groups of subjects under controlled conditions. Observational studies, unlike intervention or clinical trials, do not compare the effects of defined treatments with the effects of a placebo. Rather, observational studies provide information on associations between an outcome or lack of an outcome (i.e., NTD's) and other factors (such as dietary intakes or supplement use) that differ between two outcome groups.

The populations in which studies of folate and NTD's have been performed have also varied. A number of intervention trials have examined the effects of periconceptional use of folic acid-containing supplements in women with a personal history of an NTD pregnancy because such women are at high risk of having another such pregnancy. Such trials are called *recurrence* trials. Studies with women in the general population without a personal history of an NTD pregnancy are called *occurrence* studies.

1. Intervention Trials in Women at Risk of Recurrence of NTD-Affected Pregnancies

Before 1991, three studies, two carried out in the British Isles and one carried out in Cuba, had suggested that supplementation with folic acid-containing multivitamins or with high levels of folic acid may reduce the risk of recurrence of NTD's in women at high risk of this complication. Two of these trials used high doses of folic acid (4 or 5 mg; 4,000 or 5,000 µg) daily and observed statistically nonsignificant trends in reduction in risk of NTD's (Refs. 1 and 3). The third trial showed a statistically significant beneficial

effect of a multivitamin supplement containing 0.36 mg (360 µg) of folic acid and vitamins A and D, thiamin, riboflavin, vitamin B_6, niacin, and vitamin C (see Table 1; Ref. 2).

In July 1991, the MRC published the results of a well-conducted randomized clinical trial in which women at high risk of a recurrence of an NTD-affected pregnancy, because of a personal history of such a pregnancy, were given supplements containing a high dose (i.e., 4 mg; 4,000 µg; 10 times the RDI) of folic acid with or without other vitamins daily (see 56 FR 60610 for review). The outcomes of their pregnancies were compared with those of women who had received identical supplements except for folic acid (Ref. 4). One thousand eight hundred seventeen women were recruited for this trial, of whom 1,195 subsequently had informative pregnancies (i.e., the outcome of the pregnancy with respect to the recurrence of an NTD in the fetus or infant was known). The great majority of patients in this study were from the United Kingdom or Hungary, areas with high occurrence rates of NTD's (e.g., 6.4/1,000 live births in Northern Ireland and 2.8/1,000 live births in Hungary). The data from this trial demonstrated that daily doses of 4 mg (4,000 µg) of folic acid before and during early pregnancy resulted in a 70 percent reduction in recurrence of NTD's in this group of high-risk women.

As stated above, this study clearly demonstrated, for the first time, a significant reduction in recurrence of NTD's with high levels of folic acid but not with other vitamins. This study established a specific role for folic acid in reducing the risk of recurrence of NTD pregnancies in women with a previous history of this defect, but extrapolation of these results to women in the general population at much lower risk and to lower levels of folate intake (i.e., 400 µg folate daily, or 100 percent of the RDI) was problematic. The level of folic acid used in the MRC trial, 4 mg (4,000 µg/day), is within the dose level regulated as a drug by FDA. The results of the MRC trial also showed that approximately 25 percent of NTD recurrences were resistant to folic acid supplementation, an observation that likely reflects the heterogeneous or multifactorial etiology of NTD's.

2. Intervention Trial in Women at Risk of Occurrence of NTD-Affected Pregnancies

In August of 1992, preliminary data from a randomized, controlled trial that was conducted in Hungary of the effectiveness of multivitamin and multimineral supplements providing daily intakes of 0.8 mg (800 µg) of folic acid (two times the RDI) in reducing the risk of occurrence of NTD's became publicly available (see 58 FR 2606) (Refs. 24 and 25). The rate of NTD's is 2.8/1,000 live births in Hungary.

In the Hungarian study (Ref. 24), women took multivitamin and multimineral preparations containing 0.8 mg (800 µg) of folic acid, 11 other vitamins, and 7 minerals (see Table 1). A control group of women took a placebo containing three trace minerals, calcium ascorbate (a source of vitamin C), and lactose (a sugar). Results of 4,156 pregnancies were reported. There were no occurrences of NTD's in the folic acid-containing multivitamin and multimineral group compared to 6 occurrences in the placebo group. At the time of closure of the trial, outcomes of several hundred pregnancies in both groups were unknown.

3. Observational Studies of Occurrence of NTD's

In developing its proposed rule, FDA reviewed the four available observational studies of associations between supplement use and risk for occurrence of NTD's (three case-control studies and one prospective cohort study) (56 FR 60610). The studies of Bower and Stanley (Ref. 8) and Milunsky et al. (Ref. 6) found statistically significant associations between reduced rates of NTD's and use of folic acid-containing multivitamin supplements during the periconceptional interval. The composition of the multivitamin supplements used in these studies was either undefined or, in one study (Ref. 6), the majority of preparations also contained vitamins A, C, D, or E in addition to folic acid (Table 2). These studies were unable to determine whether folic acid per se, other nutrients, or combinations of nutrients were specifically related to reduction in risk of NTD's. One study showed that timing of supplement use was important in that use of folic acid-containing supplements during the first 6 weeks of pregnancy was associated with a decreased incidence of NTD's, but no relationship was observed if use of the supplement was begun after 6 weeks of pregnancy (Ref. 6). This study also found from calculations of dietary folate intakes in nonsupplement users that dietary intakes of folate greater than 100 µg/day (0.1 mg) were associated with reduced risk of occurrence of NTD pregnancies. Conversely, one case-control study of more than 1,600 women carried out in areas of low prevalence of NTD's in the United States failed to support the findings of a positive effect against occurrence of these defects in women who consumed folic acid-containing multivitamin supplements or fortified breakfast cereals (Ref. 7).

In August 1992, the agency received information on the results of a case-control study of periconceptional use of multivitamins containing folic acid at daily doses of 0.4 mg (400 µg) and higher and the risk of occurrence of NTD's in women in Boston, Philadelphia, and Toronto (see 58 FR 2606). The results of this study in U.S. and Canadian populations were published in March 1993. The study (Ref. 26) covered 436 occurrent NTD cases and 2,615 control cases with other major malformations occurring between 1988 and 1991 in Boston, Philadelphia, and Toronto. Eight percent of cases (i.e., 35 cases) and 13 percent of controls (i.e., 340 controls) used multivitamin supplements periconceptionally. The multivitamin supplements used were defined as preparations containing "at least two vitamins, one of which was water-soluble" (see Table 2 for definition of supplements). The authors reported an approximate 40 percent reduction in prevalence of NTD's associated with use of supplements. The most common dose of folic acid in the supplements was 0.4 mg (400 µg). For nonusers of supplements, there was a statistically significant trend of decreasing risk of occurrence of NTD's associated with dietary folate intakes of 0.25 mg (250 µg, or 62 percent of the RDI)/day and higher (Table 3). Reductions in risk associated with dietary folate intakes alone were 30 to 40 percent.

PHS, in issuing its September 1992 recommendation (Ref. 11), examined the available human studies discussed above (except the Werler et al. (Ref. 26) study which was not yet publicly available) and concluded:

> In summary, the data available indicate that folic acid can help avert NTDs (neural tube defects) when given at high-dose levels (i.e., 4.0 mg per day). The results of the British MRC study showed that the addition of other vitamins to 4.0 mg of folic acid confers no extra benefit in averting NTDs. Based on a synthesis of information from several studies, including those which used multivitamins containing folic acid at a daily dose level of ≥0.4 mg, it was inferred that folic acid alone at levels of 0.4 mg per day will reduce the risk of NTDs. The protective effect found in the studies of lower-dose folic acid, measured by the reduction in NTD incidence, ranged from none to substantial.

4. Studies in Animal Model Systems

Studies with animal model systems are one of several lines of investigation that are used to establish causal relationships and to elucidate

mechanisms of actions between deficiencies or excesses of various nutrients and adverse outcomes such as birth defects. The agency reviewed relevant animal studies in its proposed rule (56 FR 60610) and noted that such studies have provided some support for the hypothesis that nutrient deficiencies may be one factor in the complex etiology of NTD's. For example, deficiencies of nutrients such as vitamin B_{12}, vitamin B_6, pantothenic acid, and vitamin E have been reported to cause NTD's in some species (Ref. 19). In its proposed rule and final rule, the agency reviewed studies that demonstrated that:

(1) In rats and mice, folate deficiency alone does not produce NTD-affected embryos in a reproducible manner (Refs. 27 and 28), but that rats fed folate-deficient diets in conjunction with antifolate drugs during pregnancy produce embryos with multiple congenital abnormalities (Ref. 29);

(2) Excess vitamin A administered in early pregnancy increases the incidence of NTD's in a mouse model system, and that compounds such as folic acid, folinic acid, vitamin B_{12}, and vitamin E do not significantly affect the incidence of this defect (Ref. 30);

(3) NTD's in the golden hamster model system can be induced by maternal hyperthermia or ethanol following exposures in early gestation, and that folate supplementation begun before such treatments does not prevent the alcohol- or heat-induced defects (Ref. 31); and

(4) There are conflicting reports regarding whether the anticonvulsant drug valproic acid, suspected of causing NTD's in humans, does so through effects on folate metabolism (see 56 FR 60610 and 58 FR 2606 for review).

Overall, these animal studies do not provide evidence for a consistent association between folate nutriture and NTD's, although they do show that disturbed folate metabolism may be one factor in the complex etiology of these defects.

5. Related Data

a. *Maternal vitamin status.* Women with a personal history of an NTD pregnancy have generally been the subject of studies to try to relate maternal nutritional status to pregnancies affected by NTD's. Measurement of maternal or fetal blood levels of specific vitamins is one method used to test the hypothesis that folate status is directly related to risk of an NTD pregnancy. In its proposal (56 FR 60610) and final rule (58 FR 2606), FDA reviewed studies in which levels of various vitamins were measured in the blood of women during or following the periconceptional interval to determine whether maternal vitamin status is related to risk of an NTD-affected pregnancy (Refs. 32, 33, 34, and 35). These studies and studies that became available after publication of the final rule are summarized below.

Yates et al. (Ref. 34), in a study on Scottish women, reported that red blood cell folate levels were significantly lower in women who had two or more NTD pregnancies than in control women. No differences were found in serum folate, vitamin B_{12}, or other serum vitamin measurements (plasma or white blood cell vitamin C, vitamin A, thiamin, riboflavin, vitamin B_6, vitamin E) between cases and controls. The authors reported that dietary intakes of folate among the groups of mothers who had NTD-affected pregnancies and those who did not were not significantly different, and dietary folate intakes did not correlate with pregnancy outcome (Ref. 34).

In another study, Mills et al. (Ref. 35) measured levels of folate, vitamin B_{12}, and vitamin A in maternal serum samples drawn early in pregnancies resulting in offspring with NTD's and in control pregnancies. The results of this population-based study in Finland, a low prevalence area for NTD's, showed no relationship between maternal serum folate, vitamin B_{12}, and vitamin A during pregnancy and risk of NTD's.

In a study published after publication of FDA's final rule, Mooij et al. (Ref. 36) investigated whether periconceptional clinical profiles of vitamin status in women in the Netherlands could provide a means of identifying women at risk of recurrence of an NTD pregnancy. Mooij et al. (Ref. 36) evaluated vitamin status in women who had a history of an NTD pregnancy and who planned a further pregnancy. Participants in the nonrandomized study were volunteers.

Vitamin supplements (one multivitamin plus 5 mg (5,000 µg) of folic acid daily) were offered to 50 women. Eighteen (18) other women were willing to participate in the study but did not want to use supplements. Supplementation began at least 28 days before conception and continued until week 12 of gestation. Vitamin levels were measured in serum or red blood cells preconceptionally and at weeks 6 and 9 of gestation. Six of the 50 vitamin-supplemented women were subsequently excluded because of inadequate data collection. A total of 62 pregnancies were evaluated.

A comparison of preconceptional mean serum or red blood cell vitamin concentrations between the two groups revealed no significant differences for any of the vitamins measured (Ref. 36). During early pregnancy, serum levels of vitamin C and vitamin B_{12} decreased significantly in unsupplemented women but not in the vitamin-supplemented women. Serum and red blood cell folates did not decrease significantly during early pregnancy in unsupplemented women, while significant increases in serum and red blood cell folate occurred in early pregnancy in vitamin-supplemented women. The authors concluded that evaluation of vitamin profiles is not a suitable means of identifying women at risk for NTD's before pregnancy (Ref. 36).

Thus, clinical studies that measured maternal folate status provide no consistent evidence for an association between folate nutritional status and NTD's.

b. *Potential role of nutrients other than folate in etiology of NTD's.* It is well recognized that NTD's may be caused by a number of environmental agents and genetic factors. Nutritional factors other than folate are hypothesized to be involved in causing some human NTD's (see 56 FR 60610 for references). For example, animal studies have shown that deficiencies of some vitamins during pregnancy (such as vitamin B_{12}, vitamin B_6, and pantothenic acid) produce a variety of fetal abnormalities, including NTD's. Several studies showed that decreases in maternal serum levels of vitamin C and vitamin B_{12} were associated with pregnancies complicated by NTD's (Refs. 32, 36, 37, and 38). Epidemiologic studies of NTD's in humans suggest a link with nutrition because of variations in prevalence of such defects with social class, dietary habits, and season (see 56 FR 60610 for references).

Several biological mechanisms have been suggested to explain the causes of NTD's or to explain the roles of putative protective agents. In addition to studies and possible causes already discussed, several other studies have attempted to elucidate additional mechanisms for these defects.

i. *Genetic defects.* It has been postulated that a genetic defect may contribute to some NTD's both in animal model systems and in humans. For example, the disorder homocystinuria (excessively high urinary levels of homocystine, a metabolic product of the essential amino acid, methionine, and an intermediate in the synthesis of the amino acid cystine) is an inherited disorder of the metabolism of methionine. The disorder is caused by a deficiency of an enzyme known as

cystathionine B-synthetase that requires vitamin B_6 for its activity. Folate as well as vitamins C, B_6, and B_{12} are believed to influence the complex metabolism of the amino acid methionine. All of these vitamins must be present in adequate amounts for normal functioning of these complex metabolic pathways.

Steegers-Theunissen et al., (Ref. 39) have performed studies that looked at whether a genetic error in the metabolism of homocysteine and the several vitamins required for homocysteine metabolism may be a risk factor for having a child with an NTD. These authors measured the levels of relevant vitamins and homocysteine during oral methionine loading tests given to 16 women who had given birth to an infant with an NTD and to 15 control women. These authors reported that 5 of 16 women who had an infant with an NTD had clinically demonstrable methionine intolerance in the absence of liver and kidney dysfunction and postulated that an inborn error of homocysteine metabolism may be a risk factor for an NTD-complicated pregnancy (Ref. 39). These authors suggested that an accumulation of plasma homocysteine which arises as a result of the genetic defect may be toxic for the developing embryo. Supplementation with high doses of vitamin B_6 and folate may lower the high blood levels of homocysteine. Steegers-Theunissen et al. (Ref. 39) noted that there was a high incidence of heterozygosity (a heterozygote is a person who carries one gene for a metabolic disorder but who lacks the second gene necessary for the metabolic disorder to be fully expressed) for homocystinuria among the women whose infants had NTD's (31 percent) as compared with the incidence of about 1 percent in the normal population.

ii. *Vitamin B_{12} deficiency.* A possible role for vitamin B_{12} has also been suggested. Recently, Adams et al. (Ref. 41) reported the results of a case-control study of midtrimester sera from 33 NTD cases and 132 control cases from two maternal serum alpha-fetoprotein prenatal screening programs in the United States. Adams et al. (Ref. 41) measured serum levels of methylmalonic acid (elevated levels are an indicator of vitamin B_{12} deficiency (Ref. 40). Adams et al. (Ref. 41) found a highly significant difference in serum methymalonic acid between cases and controls. Mothers with serum methylmalonic acid concentrations greater than the 75th percentile were at significantly increased risk of carrying an NTD-affected pregnancy. These findings may suggest a role for vitamin B_{12} in NTD's.

iii. *Pantothenic acid deficiency.* A possible role for pantothenic acid has also been suggested. In a recent letter to the editor of the *New England Journal of Medicine*, Thurston and Hauhart (Ref. 42) noted that the multivitamin and multimineral preparation used in the recently completed Hungarian trial (Ref. 24) contained pantothenic acid. These authors discussed mechanistic considerations regarding metabolic functions of pantothenic acid and possible interactions between pantothenic acid and valproic acid, an antiepileptic drug whose use in the first trimester of pregnancy increases the risk of NTD's to about 30 times over that in the general population. They also noted that the birth defect exencephaly (exencephaly is considered a defect in rodents that is analogous to NTD's in humans) is characteristic of fetuses of rats that are pantothenic acid-deficient (Ref. 19). They proposed that provision of pantothenic acid might have additional protective effects against NTD's (Ref. 42).

In responding to Thurston's and Hauhart's comments, the authors of the Hungarian trial (Ref. 43) noted:

> We cannot be sure that the preventive effect [of the multivitamin and multimineral supplement] was due to folic acid alone or in association with the other components of the multivitamin. Folic acid, vitamin B_6, vitamin B_{12}, vitamin C, and zinc interact with one another in many metabolic pathways; thus, folic acid may have a synergistic effect with other vitamins. It is also possible that pantothenic acid (vitamin B_5) has some protective effect against neural tube defects.

c. *Role of other factors (maternal health, environmental factors).* A wide variety of factors have been postulated as contributing to the etiology of NTD's (see 56 FR 60610 and 58 FR 2606 for references). Several areas of increased prevalence of NTD's have been described recently, one along the U.S.-Mexico border in Texas (Ref. 44) and another in northern New Jersey (Refs. 21 and 22). A high prevalence of NTD's has also been reported in South Carolina (Ref. 13). Several studies have been conducted to identify factors that may contribute to elevated risk of NTD's in these areas. Information related to such occurrences in two of these areas is summarized below.

i. *Maternal health.* In early 1991, an apparent cluster of NTD (primarily anencephaly) births occurred in Brownsville, Texas (Ref. 44). The Texas Department of Health began a comprehensive investigation and completed a case-control study of 28 cases with dates of conception from January 1, 1989 through January 31, 1991, and 26 normal control births matched by estimated date of confinement. An extensive questionnaire focusing on nutritional, occupational, medical, and environmental factors was also administered to case and control mothers.

Various medical history characteristics were analyzed in this study. Ninety-seven percent of the women who had NTD births reported health problems prior to pregnancy. Twenty-five percent reported febrile illness, and 43 percent reported use of prescribed medications. Corresponding percentages for the control group were: Health problems prior to pregnancy, 0 percent; febrile illness, 12 percent; and use of prescribed medications, 26 percent. Mothers who reported taking any medication (except prenatal vitamins) during pregnancy had a significantly increased risk of pregnancies with NTD's than did mothers who did not use medications during pregnancy (Ref. 44).

The report noted that there were no statistically significant differences in distributions of red blood cell folates between cases and controls. However, six red cell folate values reported as low (less than 140 nanogram/milliliter red blood cells, considered indicative of folate deficiency) were all found in the control group (Ref. 44).

ii. *Environmental exposures.* Several studies have suggested associations between maternal exposure to organic compounds at the workplace or at the home in increased rates of birth defects of the central nervous system (Refs. 21 and 22).

In November 1992, the New Jersey Department of Health reported the results of studies that examined births in New Jersey between 1985 and 1988 (Refs. 21 and 22). The project focused on the development and application of methodology appropriate to assess the relationship between exposure to environmental pollutants and adverse reproductive outcomes. The New Jersey Department of Health utilized its population-based birth defects registry and its vital records, as well as data obtained from the New Jersey Department of Environmental Protection, to evaluate the relationship between residing in an area served by a water supply subsequently reported to be contaminated with organic compounds and adverse reproductive outcomes. Exposures to the contaminants were based on place of residence.

The study analyzed 82,825 total births in the study area between 1985 and

1988. Ninety-eight percent (i.e., 81,055) were singleton (single) births. Congenital anomalies were reported in approximately one (1) percent of all live births (i.e., 791 births). Among births with congenital anomalies, the most frequent adverse outcomes involved cardiac defects (0.46 percent of all live births (370 cases)). Central nervous system defects, including the subset NTD's, numbered 121 (0.15 percent) and 57 (0.07 percent), respectively, of all live births. The rate of NTD's tube defects reported (i.e., 0.07 percent) is about the current prevalence in the U.S. population (i.e., about 0.06 percent; about 6/10,000 live births).

Analyses conducted in the final phase of the project focused on four counties in northern New Jersey (Refs. 21 and 22). The study population included all singleton births and fetal deaths occurring during 1985 through 1988 to mothers residing in one of 75 study towns at the time of birth or fetal death. The contaminants in drinking water of primary interest included total trihalomethanes (TTHM) and the total concentrations of 14 volatile organics tested by New Jersey's Department of Environmental Protection and Energy's A–280 program. Other specific volatile organics were also analyzed in drinking water supplies. Analyses included data from an individual-based cross-sectional study utilizing vital records data for the entire study population without interviews. A second individual-based study utilized a case-control design to sample the study population and to collect more detailed information on each subject through interviews with mothers of the subjects.

Risk of NTD's was found to be increased more than 3-fold in women in residential areas with water supplies containing TTHM at levels greater than 80 parts per billion (ppb) compared with those served by water supplies containing TTHM at the lowest measured concentrations of less than 20 ppb.

C. Federal Government Statements and Other Authoritative Reviews

1. Background

Both in the proposal (56 FR 60610) and in the final rule (58 FR 2606), FDA reviewed Federal government documents including the Surgeon General's Report on Nutrition and Health (Ref. 45), the USDA/DHHS "Nutrition and Your Health: Dietary Guidelines for Americans" (Ref. 46), the NAS' "Diet and Health: Implications for Reducing Chronic Disease Risk" (Ref. 47), and other authoritative statements related to the topic of folic acid and NTD's. In addition, the agency reviewed statements from professional organizations and recommendations from other countries. These reports and statements, which were published before the results of the MRC trial (Ref. 4), the Hungarian trial (Ref. 24), and the Boston case-control study (Ref. 26) became available, found that the available evidence did not provide a basis on which to conclude that the periconceptional use of vitamins and minerals will reduce the risk of NTD's among women in the general U.S. population.

Following the passage of the 1990 amendments, the agency contracted with the Life Sciences Research Office (LSRO) of the Federation of American Societies for Experimental Biology (LSRO/FASEB; Contract No. 233–88–2124, Task Order No. 9) to independently evaluate the scientific literature respecting folic acid and NTD's (Ref. 48). The LSRO report concluded that "there is evidence that women who take folic acid or folic-acid-containing vitamin supplements during the periconceptional period have a lower risk of bearing infants with neural tube defects." The agency noted in its final rule (58 FR 2606 at 2610 January 6, 1993) that, although the final LSRO report (Ref. 49) did not address several issues specifically relevant to health claims questions, there were significant areas in which the agency's proposed rule and the LSRO report were in agreement. These included:

(1) Four mg of folic acid has been demonstrated to have a protective effect against recurrence of NTD's in women at high risk of this complication;

(2) There is no evidence that the effect of folic acid is long-lasting as a protectant or potential protectant against NTD's;

(3) In addition to maternal and fetal nutrition, other individual, dietary, nutrition, and health factors also contribute to risk of NTD's;

(4) There are significant gaps in our knowledge of the etiology of NTD's and of how folic acid, either alone or in conjunction with other vitamins, may protect against NTD's; and

(5) It is currently unknown whether NTD's are caused by a gene-induced or drug-induced dependency requiring a higher than physiologic intake of folate or other micronutrient (58 FR 2606).

In 1992, the Institute of Medicine (IOM) of NAS updated its report *Nutrition During Pregnancy* (Ref. 50) to reflect new data (primarily the results of the MRC trial; Ref. 4) that had become available since the first publication of the report. Data from the Hungarian randomized intervention trial (Ref. 24) and the Boston case-control study (Ref. 26) were not publicly available at the time the report was updated. The IOM report noted that a previous history of an NTD should alert health care providers to the need for preventive measures before a subsequent pregnancy. The report recommended that women with a history of an NTD-complicated pregnancy follow the CDC recommendations (Refs. 51 and 52) for high-dose folic acid supplementation (preconceptionally and throughout the first trimester, under a physician's supervision) to reduce their risk of recurrent NTD's (Refs. 51 and 52). The report noted that questions remain concerning the etiology of NTD's, the most appropriate dosage of folic acid, and the appropriate role of nutrition in preventing first occurrences.

2. Recent Statements of Federal Agencies and Professional Organizations

a. *Health Resources and Services Administration.* In May, 1993, the Maternal and Child Health Bureau of the Health Resources and Services Administration, DHHS, (Ref. 17), as part of its responsibility to provide education to health professionals, prepared a fact sheet on folic acid and NTD's for physicians and other health care providers. This fact sheet provides specific nutrition education information to health care providers as a method of implementing the PHS recommendation and provides specific examples of dietary plans that provide over 0.4 mg of folate/day for women with energy needs and caloric intake lower than 2,200 calories. The report notes that women who cannot be assured of adequate dietary folate intake should be informed of the option of using a folate supplement. The report notes that even if the PHS recommendation is followed, about 50 percent of NTD cases will continue to occur in spite of increased folate intake, and that periconceptional folate intake does not negate the need to offer prenatal screening for maternal alpha-fetoprotein and other markers. Noting that the safe range of folate intake is unclear, the report stated that high doses of folate present certain potential problems including masking of pernicious anemia and risks to persons undergoing therapy with medications that interfere with folate metabolism (Ref. 17).

b. *The Committee on Obstetrics (Maternal and Fetal Medicine) of the American College of Obstetricians and Gynecologists (ACOG).* The ACOG recently published its opinion regarding the use of folic acid to reduce the risk of recurrent NTD's and possible

reduction in risk of first occurrences of NTD's (Ref. 20). The ACOG report identified women at increased risk for a first occurrence as those with a close relative (e.g., sibling, niece, nephew) with an NTD; with insulin-dependent diabetes mellitus; or with seizure disorders who are being treated with valproic acid or carbamazepine. The ACOG report (Ref. 20) noted that the efficacy of folic acid supplementation has not been evaluated in these patients, whose risk for an occurrence of an NTD is 0.3 to 1.0 percent, compared to a risk of about 0.06 percent in women without these characteristics.

The ACOG report noted that because of difficulties associated with taking daily supplements throughout the childbearing years and because of variations in the amount and availability of folate in foods, it is not clear how the PHS recommendation that all women of childbearing age who are capable of becoming pregnant should consume 0.4 mg folic acid/day throughout their childbearing years can be accomplished. With respect to fortification of food with folic acid, the report noted that this strategy will require careful consideration of the risk-benefit ratio for the entire population, including those with vitamin B_{12} deficiency.

The ACOG report noted that to date no prospective randomized controlled trials on the use of folic acid supplementation to prevent NTD's in the United States have been reported, and that without such trials, the potential benefit in the U.S. population can be estimated only indirectly. The ACOG report stated that because the benefit of folic acid in reducing the risk of first occurrences of NTD's defects has not been established by prospective randomized trials, obstetricians should continue to offer screening for elevated serum alpha-fetoprotein to pregnant women, including those who consume 0.4 mg of folic acid daily.

c. *The American College of Rheumatology.* The American College of Rheumatology, in a statement regarding use of folic acid in conjunction with the antifolate medication Methotrexate in patients with arthritis, stated that consumption of folic acid at a dose of 1 mg/day does not appear to inhibit the efficacy of low-dose weekly Methotrexate therapy in rheumatoid arthritis, and that the PHS recommendation for women of childbearing age to consume 0.4 mg of folic acid/day should have no impact on the efficacy of low dose weekly Methotrexate regimens (Ref. 53).

3. Recommendations in Other Countries

a. *The Netherlands.* The Netherlands Food and Nutrition Council (the council), in its "Report on the Relationship Between Folic Acid Intake and Neural Tube Defects" (Ref. 54), concluded that research results do not justify recommendations to stimulate the use of folic acid supplements or multivitamin supplements as a method of primary prevention of NTD's. The report noted that no studies have been carried out on the link between folic acid intake, the folic acid status of the mother, and the occurrence of NTD's, and that it is vital to know whether maternal folic acid status or folic acid intake in the periconceptional period constitutes a risk indicator for the occurrence of NTD's. The Council's report recommends that women of childbearing age eat diets that provide 200 to 300 µg (0.2 to 0.3 mg) of folic acid/day.

b. *The United Kingdom.* The United Kingdom Guidelines to physicians, nursing officers, and directors of public health (Ref. 55) recommend that women likely to become pregnant increase their intakes of folate/folic acid by eating more folate-rich foods, not over-cooked, and by eating foods fortified with folic acid. It also recommends that women planning a pregnancy should consume a 0.4 mg folic acid supplement daily from the start of trying to conceive until the twelfth week of pregnancy.

The guidelines further recommend that an increased range of folic acid-fortified breads and cereals should be made available and recommended fortification levels for specified foods as follows: Soft grain bread, 105 µg folic acid/serving (typical serving size=2 slices); cornflakes or branflakes, 100 µg folic acid/serving.

c. *Canada.* The Health Protection Branch, Health and Welfare Canada (Ref. 56) has recommended that:

(1) As early as possible when planning a pregnancy, women should consult their physicians about folic acid supplements;

(2) Women who have had a previous pregnancy with an NTD are at a high risk of recurrence and should consult their physician about folic acid supplements; and

(3) All women of childbearing potential should follow Canada's *Food Guide to Healthy Eating* and take care to choose more foods that are high in folate.

With respect to supplement use, Health and Welfare Canada recommends that women consult their physicians before deciding on taking a folic acid supplement. They note that a high intake of folic acid (greater than 1 mg/day) may complicate the diagnosis of vitamin B_{12} deficiency, and that although vitamin B_{12} deficiency is rare in reproductive-age women, irreversible neurologic damage may occur if vitamin B_{12} deficiency is not diagnosed and properly treated. The report also notes that folic acid may have an adverse effect on the drug control of epilepsy. Women taking anticonvulsants and those taking folic acid antagonists such as Methotrexate should be individually counselled by their physician regarding folic acid supplementation.

In addition, Health and Welfare Canada was concerned about increased use of multivitamins to obtain folic acid. The report noted that multivitamins usually contain vitamin A, and that too much vitamin A can harm a developing fetus or have toxic effects on an individual. For these reasons, the recommendation stated that the daily dosage recommended on the multivitamin label should be followed.

D. Summary of FDA's Discussions With the Folic Acid Subcommittee

1. Background

As explained above, in October 1992, FDA empaneled the Folic Acid Subcommittee to help resolve the outstanding issues identified in the PHS recommendation. The Folic Acid Subcommittee members were drawn primarily from existing FDA advisory committees, including the Food Advisory Committee, and included individuals with expertise in the fields of food composition, epidemiology, human nutrition, folate metabolism, geriatrics, food fortification, rheumatology, women's health, consumer interests, oncologic drugs, pediatrics, and hematology.

2. Folic Acid Subcommittee Meeting, November 23 and 24, 1992

The first meeting of the Folic Acid Subcommittee was held on November 23 and 24, 1992 (57 FR 52781; Refs. 12 and 57). Areas of expertise represented by consultants invited to speak to the Folic Acid Subcommittee at its first meeting on November 23 and 24, 1992 included NTD's, epidemiology, folate metabolism, special populations, bioavailability of folates, pernicious anemia and vitamin B_{12}-related problems, convulsive disorders, food fortification, folate as a drug, and Federal food programs such as school lunch programs and the Women, Infants, and Children (WIC) program.

At the open meeting held November 23 and 24, 1992, the Folic Acid Subcommittee heard testimony from

expert speakers and others on the daily intake of folate adequate for reduction in risk of NTD's, safety concerns for persons in the target population and in the general population, and the appropriateness of a health claim on the labels or labeling of foods (Ref. 12).

a. *Issues.* The Folic Acid Subcommittee's discussion of the target population and of the appropriate daily folate intake focused on questions of the appropriate level of folate in food to attain the claimed effect and yet to ensure safety; the importance of timing of intervention because the neural tube closes early in pregnancy, often before a woman realizes that she is pregnant; the adequacy of the evidence relating folate nutritional status itself to risk of NTD's; and safety concerns relative to the potential for increased folate intake to mask the hematologic manifestations of vitamin B_{12} deficiency and thus to delay diagnosis and treatment of this deficiency while irreversible neurologic damage progresses.

With respect to identifying women in the target population who may be at particular risk of occurrence of an NTD-affected pregnancy, the Folic Acid Subcommittee acknowledged that it was not possible to identify such women. There was agreement that because many pregnancies are unplanned, and because the neural tube forms and closes very early in gestation, the recommendation for adequate intake of folate should be directed at all women throughout their childbearing years. Expert speakers noted the inherent difficulties in reaching the entire target population of women of childbearing age with educational programs alone and in motivating them to change eating practices. The speakers discussed the advantages of food fortification in reaching the greatest number of the target population without requiring conscious changes in food selection practices. The expert speakers and the members of the Folic Acid Subcommittee also considered issues of effectiveness of dietary intake and of doses of folate lower than the recommended 0.4 mg (400 µg) in reducing risk of NTD's. They discussed results of several studies suggesting protective effects against NTD's of dietary folate intakes lower than 0.4 mg (400 µg)/day (i.e. at levels of 0.25 mg or more daily).

In considering the available data regarding folic acid and NTD's, some members of the Folic Acid Subcommittee raised questions as to whether the available data were sufficiently sound or generalizable to the U.S. population to warrant a conclusion that fortification of the entire food supply or universal supplement use would reduce the risk of occurrence of NTD's in women in the U.S. population. They noted that since a fortification strategy would affect 250 to 260 million people, the data on which the need for such a proposed intervention is based should be examined critically. Other members, although noting uncertainties in the data, found the data sufficiently convincing to recommend some types of public health action to implement these findings for U.S. women.

With respect to safety considerations raised by the possible fortification of the food supply, the greatest concern was for persons at risk of vitamin B_{12} deficiency. The population groups for which there was most safety concern because of relatively high prevalences of low serum vitamin B_{12} levels, were the elderly, young African-American women, and acquired immunodeficiency syndrome (AIDS) patients. Additional safety questions included consideration of persons taking antiepileptic medications and those prescribed antifolate medications for a wide range of disorders.

In considering how to ensure that women have an adequate folate intake, the Folic Acid Subcommittee discussed the possibility of educating women of childbearing age on improving their dietary habits, use of supplements throughout a woman's childbearing years, and fortification of the food supply with folic acid to achieve the recommended intake. The majority of the members of the Folic Acid Subcommittee and many of the invited expert consultants expressed concern about the current lack of monitoring and surveillance for potential adverse effects of increased folate intake.

b. *Recommendations.* At the close of its November 23 and 24, 1992, meeting, the Folic Acid Subcommittee provided several recommendations. Those relevant to the health claim issue were:

i. *Health claims.* The Folic Acid Subcommittee members supported the PHS policy regarding folic acid and NTD's. The Subcommittee, however, recommended against a health claim on food labels or labeling because the majority of the Subcommittee members expressed concern that the data on the specific relationship between folate, at levels attainable from usual diets, and NTD's were not strong enough to support a food label health claim on this relationship.

ii. *Educational activities.* The Folic Acid Subcommittee recommended that PHS and FDA develop and implement an educational program, directed at women of childbearing age, emphasizing the importance of sound dietary choices to achieve nutrient intakes provided in dietary guidelines. The Folic Acid Subcommittee also stated that the PHS should work with health professionals and others to develop and implement educational efforts that emphasize the importance of diets that meet established dietary guidelines, the importance of maintaining intake of folate sufficient to reduce the risk of NTD's, and the importance of detection, diagnosis, and treatment for persons with low vitamin B_{12} status.

c. *Comments.* Following the November 23 and 24, 1992, meeting of the Folic Acid Subcommittee, the agency received letters from several experts who were invited to speak at the subcommittee meeting. One expert noted that the National Research Council (NRC) in 1989 identified 0.4 mg (400 µg) folic acid as RDA for pregnant women and urged the agency to adopt 0.4 mg (400 µg) folic acid as the RDA for all women capable of becoming pregnant. The agency notes that it is currently using the value of 800 µg (0.8 mg)/day as the RDI for pregnant women and 400 µg (0.4 mg)/day as the RDI for the general population, including women of childbearing age, in accord with the requirements of § 101.9 (21 CFR 101.9) as amended in the **Federal Register** of January 6, 1993, and the requirements of the DS Act of 1992 that FDA not change the U.S. Recommended Daily Allowance levels for nutrients until at least November 8, 1993.

One expert stated that health claims should not be allowed for folic acid-fortified foods or folic acid-containing supplements unless such claims were balanced by a statement that use of such products may increase the frequency of irreversible neurologic damage from vitamin B_{12} deficiency, and that among Black and Hispanic females, folic acid fortification or supplementation is likely to do more harm than good. The agency notes that its proposed requirements for a health claim for folate and NTD's include a requirement that fortified products containing more than 100 µg folic acid per serving carry a statement warning against intake above 1 mg/day (proposed § 101.79(c)(2)(i)(G)).

Several experts expressed concerns about the potential risks of excess folate intakes, particularly in persons over 50 years of age, or of prolonged exposure. These comments also expressed concern that adequate surveillance systems to detect adverse effects of whatever policy is implemented with respect to folic acid were needed. They also noted that no adequate surveillance system for potential masking of vitamin B_{12}

deficiency exists at this time, and that a real commitment should be made to this task.

The agency notes that issues related to establishing surveillance systems for adverse effects of increased folate intakes, particularly with respect to vitamin B_{12}-related problems, were discussed at a public meeting held at the Centers for Disease Control on August 12, 1993 (58 FR 40149 and Ref. 58). The experts agreed that establishment of surveillance systems for masking the anemia of vitamin B_{12} deficiency would be extremely difficult, but CDC indicated a commitment to this task. FDA also notes that it has a long-standing history of collaborating with the National Center for Health Statistics (NCHS) of CDC to use nutritional assessment data from their National Health and Nutrition Examination Surveys (NHANES) to monitor the nutritional status of the U.S. population. FDA intends to continue this collaboration, particularly as it relates to folate and vitamin B_{12}.

Several experts stated that, with respect to reduction in risk of NTD's, the 400 µg (0.4 mg) dose of folic acid is an artificial goal and cited studies (Refs. 6, 8, 9, and 26) that show strong protective effects of dietary folate intakes at levels greater than 100 µg/day.

The agency recognizes the importance of the dietary studies that have shown protective effects against occurrence or recurrence of NTD's at intakes of folate lower than 0.4 mg (400 µg) and has summarized the findings of these studies in Table 3. The agency agrees that consumption of diets providing adequate amounts of folate is important and notes that it used the findings of studies that showed a benefit from diet in its development of the model health claims included in this proposal.

Another comment included a recommendation for a modification of the method used by the agency in estimating daily folate intakes by individuals. Specifically, the comment suggested that the within-individual component of variance resulting from use of the mean of 3 days of daily intake be removed, and that the intake distributions be recalculated using only the between-individual component of variance.

The agency did not use this suggested modification in its analyses because FDA believes that systematic bias is a more serious problem than random error, and that use of sophisticated mathematical corrections would attribute a degree of precision to the food intakes values that is not justified.

3. Folic Acid Subcommittee Meeting, April 15, 1993

a. *General description.* FDA reconvened the Folic Acid Subcommittee on April 15, 1993 (58 FR 15149, March 19, 1993; Refs. 13 and 58). The purpose of this meeting was to obtain comments on the options that FDA had developed on possible ways to increase the folate intake of women of childbearing age. These options included fortification of specific products, such as cereal-grains, at levels of 70, 140, or 350 µg folic acid/100 g and use of food labeling to provide information to consumers (e.g., health claims and content and descriptive labeling that would serve to identify "good sources" and "excellent sources" of dietary folate). The agency noted that, with respect to health claims, at the November 23 and 24, 1992, meeting, the majority of Folic Acid Subcommittee members did not believe that the data on a specific relationship between folic acid, at levels attainable from usual diets, and NTD's was strong enough to support a claim. The agency, among other things, asked for clarification of the opinions of the Folic Acid Subcommittee members on this issue.

b. *Health claims.* As stated above, FDA pointed out that there was an apparent inconsistency in the Folic Acid Subcommittee's recommendations regarding health claims in that the majority of Folic Acid Subcommittee members did not believe that the scientific data on a specific relationship between folate, at levels attainable from usual diets, and NTD's were strong enough to support a food label health claim for this relationship. On the other hand, the Subcommittee supported the PHS recommendation that women of childbearing age should consume 0.4 mg of folate/day to reduce the risk of an NTD pregnancy, which, if it were to appear on a food label, would constitute a health claim as defined by the 1990 amendments.

The agency asked the Folic Acid Subcommittee whether it would still recommend against authorizing a health claim, and whether such a claim, if authorized, could provide useful information at point of purchase in helping consumers understand the relationship between folate and risk of NTD's within a total diet without being misleading or raising undue safety concerns. The agency also asked the Folic Acid Subcommittee for its views on specific elements that might be included in a health claim.

Extensive discussion by the Folic Acid Subcommittee of this matter revealed a shift in views, with five of the nine Folic Acid Subcommittee members favoring, and four of nine opposing, a food label health claim on the relationship between folate and NTD's. Those favoring a health claim cited its potential educational value. One member favored a health claim only as part of a general educational effort directed both at women of childbearing age and at members of the general population who may be at risk of adverse effects from increased intakes of folate. Another member favoring a carefully worded health claim cited its potential to encourage increased consumption of folate while simultaneously providing a label warning regarding excess intakes.

Those opposing a health claim cited the weakness of the data supporting the nutrient-disease relationship, including the very small number and the observational nature of studies relating intake of folate at levels attainable from usual diets to reduced risk of NTD's. Other members opposing a health claim expressed concern that strong marketing efforts for health claim-labeled foods could cloak the weakness of the science base for the claim, and that such efforts could be potentially misleading to many women who might be led to believe that they could avoid all birth defects through use of folate.

4. Summary Presented to the Food Advisory Committee

The results of the Folic Acid Subcommittee's meeting were summarized for FDA's Food Advisory Committee on April 16, 1993 by the Chairman of the Folic Acid Subcommittee. Additional views were presented to the Committee by several Folic Acid Subcommittee members. The Food Advisory Committee Chairman noted that although the **Federal Register** notice announcing the Folic Acid Subcommittee meeting on April 15, 1993 (58 FR 15149) had stated that the parent Food Advisory Committee would take action on the Folic Acid Subcommittee's recommendations on April 16, 1993, no action would be taken because the Subcommittee's activities were still in progress. The Chairman noted the division among the members of the Folic Acid Subcommittee on the issue of whether a health claim should be authorized by FDA.

E. Tentative Decision To Authorize a Health Claim on Labels and in Labeling of Foods in Conventional Form and Dietary Supplements

In its final rule published January 6, 1993 (58 FR 2606), FDA announced its decision not to authorize a health claim

on the relationship between folic acid and NTD's. The agency noted that section 403(r)(3)(B)(i) of the act authorizes the agency to grant a health claim on food other than dietary supplements when there is significant scientific agreement that the scientific data relating a nutrient to a disease or health-related condition support such a claim. The agency noted in its final rule that the PHS recommendation evidenced that such agreement exists.

The agency also noted, however, that sections 402(a), 403(r)(3)(A)(ii), and 409 of the act (21 U.S.C. 348), require that the use of a substance in food that is the subject of a health claim be safe. The PHS recommendation itself (Ref. 11) stated that questions remained about the safety of high intakes of folate by both the target population and other segments of the population who might be unintentionally exposed to high intakes of folic acid if overfortification of the food supply were to occur as a result of the PHS recommendation or efforts to qualify to bear a health claim. The agency also noted that there were several other unresolved scientific questions that required discussion before a health claim could be authorized. Based on the concerns expressed in its final rule, FDA concluded that it could not authorize a health claim on folic acid and NTD's at that time.

In developing this proposal, the agency reviewed all of the publicly available studies on the relationship between folate and NTD's. Based on its own review of the totality of the scientific evidence, FDA has tentatively concluded that the available data show that diets adequate in folate can reduce the risk of NTD's.

The strongest evidence for this relationship comes from the MRC intervention study that showed that women at risk of recurrence of an NTD-affected pregnancy who consumed a supplement containing 4 mg (4,000 µg) folic acid daily had a reduced risk of having a child with NTD's. This study clearly demonstrated, for the first time, a significant reduction in recurrence of NTD's with high levels of folic acid but not with other vitamins or minerals. This study established a specific role for folic acid in reducing the risk of recurrence of neural tube pregnancies in women with a previous history of this defect.

In addition, based on its review of the Hungarian intervention trial that used a multivitamin and multimineral preparation containing 0.8 mg (800 µg) of folic acid, and its review of the five published observational studies that reported use of multivitamins containing 0 to 1,000 µg of folic acid, the agency has tentatively concluded that most of these studies had results consistent with the conclusion that folate, at levels attainable in usual diets, may reduce the risk of occurrence of NTD's.

Although most of the available studies used dietary supplements containing approximately 400 µg or more of folic acid daily, several studies also showed a beneficial effect of dietary intakes of 250 µg or more daily, a level consistent with the estimated folate intake necessary to saturate body stores of folate (Ref. 12).

In reaching this tentative conclusion, FDA acknowledges that there are significant gaps in existing knowledge about the etiology of NTD's; about how folate, either alone or in combination with other nutrients, reduces the risk of NTD's; and of the dose-response relationship of folate intake to reduction in risk of NTD-affected pregnancies. However, even with these uncertainties, PHS, in examining the data from the available human studies, found the evidence sufficiently consistent to develop its recommendation that all women capable of becoming pregnant should consume 400 µg folic acid daily. FDA supported this decision at the time it was made (Ref. 11) and in its final rule (58 FR 2606). Additional support was expressed by FDA's Folic Acid Subcommittee. Thus, the agency has tentatively concluded that, as evidenced by the PHS recommendation and the agency's discussions with the Folic Acid Subcommittee (Ref. 12), there is significant scientific agreement on the relationship between folate and a reduction in the risk of NTD's.

The agency has also extensively reviewed safety issues identified in its proposed and final rules and discussed these issues with the Folic Acid Subcommittee (Ref. 12). Based on its review of the scientific evidence, its discussions with the Folic Acid Subcommittee, and the comments it has received, the agency has tentatively concluded that safety problems can be resolved by setting a safe upper limit of intake of 1 mg of folate/day for all population groups. Thus, the agency has tentatively concluded that a health claim on the topic of folate and NTD's will not increase risk to persons in the general population or in the target population of a disease or health-related condition when daily intakes of folate are limited to 1 mg. FDA tentatively concludes that daily folate intakes can be maintained within safe limits by allocation of folic acid to specific foods in the food supply through an amendment to the food additive regulation for folic acid.

Therefore, in this document, the agency is proposing to authorize a health claim for folate and NTD's on the labels and labeling of foods and on dietary supplements. In companion documents published elsewhere in this **Federal Register**, the agency is proposing to amend the food additive regulation for folic acid and to amend the standards of identity for specific cereal-grain products.

IV. Summary of Proposed Resolution of Safety Concerns

The agency has tentatively concluded, based on its review of the scientific evidence, its discussions with the Folic Acid Subcommittee, and its review of comments that it has received, that there are risks attendant on excessive intakes of folate. The primary concern is for persons with vitamin B_{12}-related conditions, although risks may also be created for pregnant women, persons on antiseizure (i.e., antiepileptic) medications, and those on antifolate medications.

The agency's review of the scientific literature, its discussions with the Folic Acid Subcommittee, and its review of the comments that it received, also show that these safety concerns can be largely resolved by limiting addition of folic acid to food through the agency's authority to regulate the use of food additives. The agency has tentatively concluded that its overriding responsibility in seeking to ensure that there is adequate folate in the food supply is to ensure that even with the fortification of foods that it is proposing to provide for, the amount of folate that people are reasonably expected to consume is within the safe upper limit of consumption. The agency has tentatively concluded that the safe upper limit of daily intake of folate for the general population is 1 mg.

The agency is providing a summary of specific safety issues in this document. Additional references can be found in the agency's proposed rule (56 FR 60610, November 27, 1991), its final rule (58 FR 2606; January 6, 1993), and in the extensive briefing materials provided to participants at the Folic Acid Subcommittee meetings (Refs. 57 and 58).

A. Vitamin B_{12}-Related Issues

1. Review of Available Data

As noted above, in the presence of excess folate and inadequate vitamin B_{12}, the megaloblastic anemia of vitamin B_{12} deficiency may not develop, but severe and irreversible nerve damage

may continue (Ref. 14). This interaction between the functions of folate and vitamin B_{12} has been recognized for many years (Ref. 14). Because the anemia of vitamin B_{12} deficiency is often the first clinical symptom to appear, and one that requires further tests to accurately identify its cause, the activity of folate to "mask" the development of the anemia of vitamin B_{12} deficiency is the basis for the requirement for the precautionary statement on oral and parenteral preparations of folic acid used for treating folate-deficiency anemias.

Following the identification and chemical synthesis of folic acid in 1946, but before the isolation of vitamin B_{12}, folic acid, usually in doses of 5 mg or higher, was used to treat pernicious anemia. A number of studies reported that the anemia in many pernicious anemia patients is correctable, at least temporarily, by administration of folic acid (Refs. 60, 61, 62, 63, 64, and 65). However, a number of other studies showed that, while doses of 5 mg of folic acid daily can reverse the hematologic abnormalities of vitamin B_{12} deficiency (Refs. 66, 67, 68, 69, and 70), neurologic damage progresses. Hall and Watkins (Ref. 66) reported neurological degeneration within 2 to 5 months in 14 patients with vitamin B_{12} deficiency who were treated with oral doses of 5 to 20 mg folic acid. In another study, 55 of 98 patients (56 percent) in a clinical study in which patients with pernicious anemia were treated with 5 mg folic acid orally for up to 3.5 years suffered hematologic relapses, neurologic relapses, or combined system relapses (Ref. 68). Although the neurologic degeneration was not caused by the folic acid treatment, their data clearly demonstrate the potential of folic acid to mask the anemia of vitamin B_{12} deficiency without stopping degenerative results of this deficiency.

The first demonstration of dramatic beneficial effects of vitamin B_{12} in treating pernicious anemia occurred in 1948. The advent of the specific therapy for the pernicious anemia of vitamin B_{12} deficiency during the late 1940's and early 1950's diminished the use of high levels (5 mg or 5,000 µg) of folic acid in patients with this condition. Because 1 mg of folic acid became the more common therapeutic dose for folate deficiency, there are limited data available on the effects of doses of folic acid lower than 5 mg in persons with pernicious anemia.

Despite the lack of systematic evaluation of the effect of folic acid on the anemia of vitamin B_{12} deficiency at intakes less than 5 mg/day, several case reports have described hematologic improvement in pernicious anemia with doses of folic acid lower than 1 mg (e.g., 200 to 500 µg) (Refs. 64, 65, 72, 73, and 74). Chosy et al. (Ref. 73) reported that daily injections of 400 µg (0.4 mg) of folic acid caused hematologic responses in three of five patients with pernicious anemia. Other investigators have reported suboptimal responses to 0.5 mg of folic acid administered intramuscularly or orally to patients with pernicious anemia (Refs. 64 and 65). On the basis of the reticulocyte response, 0.2 mg (200 µg) of folic acid has been used to differentiate between the megaloblastic anemias caused by folate deficiency and vitamin B_{12} deficiency (Ref. 14). Some investigators, however, have not been convinced that amounts of folic acid within the range of 200 to 500 µg/day (0.2–0.5 mg) would mask pernicious anemia (Refs. 72 and 75). Marshall and Jandl (Ref. 72) concluded that from 200 to 500 µg of folic acid daily should suffice for the prevention of folic acid deficiency without endangering patients with undiagnosed pernicious anemia, while larger doses should be reserved for prescription use in patients with abnormal absorption or utilization of folic acid. The results of these studies show, in general, that responses of doses of folic acid below 1 mg have been less predictable than those to doses of 5 mg and higher.

In summary, the available evidence shows that as many as 50 percent or more of patients with pernicious anemia will show a normalization of their anemias with doses of 5 mg of folic acid and higher. Although there are no systematic studies to evaluate the effect of folate on masking the pernicious anemia of vitamin B_{12} deficiency between intakes of 1 and 5 mg daily, several case reports suggest that some patients with pernicious anemia will respond to folate in doses of less than 1 mg/day. Results at these low levels are often suboptimal and less predictable than those occurring at higher intakes.

2. Current Information Regarding Vitamin B_{12} Deficiency in the United States

There is currently no way to determine how many persons in the general U.S. population have undiagnosed vitamin B_{12} deficiency, and thus, how many are potentially at risk of developing pernicious anemia. However, vitamin B_{12} deficiency anemias are not uncommon in the U.S. population. Although not appropriate for determining prevalence, information from NCHS provides some evidence of the potential magnitude of this condition. There were 740,000 patient visits to physicians' offices with a diagnosis of pernicious anemia during the 2-year interval 1989–1990 (Ref. 76). Approximately 524,000 of these visits were by women (Ref. 76). (The number of "visits" recorded in the ambulatory care surveys mentioned above may include multiple visits by some patients and therefore, these data do not represent numbers of patients.) An additional 16,000 patient visits during this interval involved a diagnosis of other vitamin B_{12} deficiencies (for example, those associated with consumption of vegetarian diets). NCHS records from the National Hospital Discharge survey for 1990 identified 31,000 discharges that included a diagnosis of pernicious anemia and an additional 7,000 discharges that included a diagnosis of other vitamin B_{12} deficiency anemias (Ref. 77).

3. Evaluation of Vitamin B_{12} Status

Experts at the November 23 and 24, 1992, Folic Acid Subcommittee meeting noted that there are an unknown but likely significant number of cases of undiagnosed, untreated, and stopped-treatment cases of vitamin B_{12} deficiency in the U.S. population. Evaluation of vitamin B_{12} status is usually not performed during routine clinical examinations. In addition, physicians may not further evaluate low serum vitamin B_{12} levels when such are reported, particularly when anemia and macrocytosis are absent and the serum vitamin B_{12} level is only slightly low (Ref. 81). The diagnosis of vitamin B_{12} deficiency is not always straightforward. For example, Lindenbaum et al. (Ref. 40) reported that while serum vitamin B_{12} levels have been generally considered to be essentially 100 percent sensitive in the detection of clinical disorders caused by vitamin B_{12} deficiency, there are a significant minority of patients with vitamin B_{12} deficiency whose serum vitamin B_{12} levels are normal. In such individuals, measurements of serum metabolite concentrations of methylmalonic acid and total homocysteine may be necessary to facilitate the diagnosis of vitamin B_{12} deficiency (Ref. 40).

In addition to the difficulties with determining vitamin B_{12} status mentioned above, participants in the Folic Acid Subcommittee meetings noted that, despite modern analytical tools available, diagnoses of vitamin B_{12} deficiency can be missed because automated systems are used for routine blood analysis, and direct examination of peripheral blood smears (a laboratory measure that detects red blood cell abnormalities characteristic of various vitamin deficiencies) is not as routine as

was once the case. Often, a number of visits to a physician may be needed, or visits to more than one physician, before an accurate diagnosis of vitamin B_{12} deficiency is made. Additionally, physicians may not recognize that some patients with neuropsychiatric symptoms may have vitamin B_{12} insufficiency.

4. Uncertainties Regarding the Number of Persons Potentially at Risk From High Intakes of Folate

Pernicious anemia is responsible for about 70 percent of vitamin B_{12} deficiency states (Ref. 12). It is recognized that among African-Americans, particularly African-American women, pernicious anemia is not confined to the elderly, as it generally is among Caucasians (Refs. 78, 79, and 80) but occurs at younger ages (e.g., in young African-American women less than 40 years of age). A large number of people have subnormal levels of serum vitamin B_{12} without having any classical manifestations of vitamin B_{12} deficiency (Refs. 82 and 83). Ten to 20 percent of elderly persons, more than 25 percent of demented patients, 15 to 20 percent of AIDS patients, and 15 to 20 percent of patients with malignant diseases have low serum vitamin B_{12} levels. In addition, 5 to 10 percent of all patients, regardless of age or clinical status, are found to have low serum vitamin B_{12} levels. Metabolic and subtle neurologic dysfunction are demonstrable in a significant fraction of such cases (Ref. 82). Very little is known about whether folate supplementation has any effect on such persons with low serum vitamin B_{12} levels (Ref. 82). Participants in both FDA's Folic Acid Subcommittee meetings and the recently convened CDC meeting expressed similar uncertainties regarding potential effects of increased folate intake in the large number of persons with low vitamin B_{12} status (Refs. 12 and 59).

The potential effect of increased folate intakes on nontarget populations with poor or marginal vitamin B_{12} status (including but not limited to pernicious anemia) was the major safety issue discussed by the Folic Acid Subcommittee during the November 23 and 24, 1992 meeting (Ref. 12). Some expert speakers, citing data on the prevalence in the United States of undiagnosed pernicious anemia, expressed concern about masking this condition when high folic acid intakes correct the hematologic effects of a vitamin B_{12} insufficiency, thus delaying diagnosis and treatment while irreversible neurologic damage progresses. Other speakers felt that the safety concerns were overplayed. They noted that diagnoses can be made from the neurologic symptoms and by use of other tools available to physicians. Most expert speakers agreed that physicians and health care professionals need to be trained to be more sensitive to the diagnosis of vitamin B_{12} deficiency.

Some expert speakers and Folic Acid Subcommittee members also noted that there is a lack of recent experience in the United States with individuals taking high doses of folic acid (Ref. 12). Expert consultants to FDA's Folic Acid Subcommittee also pointed out that there is a lack of data from which to estimate the potential risk if folic acid intake is increased in persons with vitamin B_{12}-related problems. Estimates of the size of the population potentially at risk (roughly 13,000 individuals by one estimate and higher by other estimates) were presented by the expert consultants and were discussed by the expert consultants in relation to the potential reduction in the number of NTD-affected pregnancies that might be realized per year by increased folate intakes (estimated at about 1,250 to 2,000). The expert consultants cautioned that the data were inadequate to accurately assess the size of the population potentially at risk.

5. Tentative Conclusion Regarding Safe Upper Limit of Intake for Persons With Vitamin B_{12} Deficiency

Based upon its review of the scientific literature and its discussions with the Folic Acid Subcommittee, FDA has tentatively concluded that safety issues with respect to persons in the population with vitamin B_{12}-related problems can be resolved by setting a safe upper limit of intake of 1 mg of folate/day from all sources for all population groups when considering options for food fortification. This tentative conclusion is based on data that show that, in persons with pernicious anemia, adverse effects have been reported consistently and with high frequencies with daily intakes of 5 mg folic acid and above. Hematologic responses in persons with pernicious anemia have also been reported, although infrequently, at oral or intramuscular exposures below 1.0 mg (see references above). The agency recognizes that once vitamin B_{12} became available in the late 1940's and was used successfully in the treatment of pernicious anemia, treatment of this disease with high doses (5 mg or more) of folic acid diminished, and thus, data on effects of intakes between 1 and 5 mg daily were not generated. Thus, the shape of the intake-response curve for adverse effects of folic acid intakes between 1 and 5 mg is not known. Experts at the recent CDC meeting were asked specifically about this issue, and they stated that, because of the lack of data, it was not possible to state that continuous intakes of 1 mg or more daily by persons with vitamin B_{12} deficiency were safe (Ref. 59).

They noted, additionally, several concerns at intakes above 1 mg daily. One such concern was based on knowledge of the metabolism of folic acid. For example, after an oral dose of 0.5 mg (500 µg) of synthetic folic acid, a small but measurable amount of unmetabolized folic acid appears in the urine (Ref. 16). As intakes increase, substantially larger amounts of the oxidized form of the monoglutamate folate circulate in the blood and are excreted in the urine. The oxidized form of folic acid, normally not found in body tissues to an appreciable degree, passes through the systemic circulation before being excreted, thus exposing body tissues to a form of the vitamin not normally encountered. The effect of long-term continuous exposure to this form of folate has not been evaluated.

In reaching its tentative decision regarding use of a safe upper limit of intake of 1 mg folate/day, FDA recognizes that there are considerable uncertainties in determining the number of persons in the general population who have low vitamin B_{12} status and who may be at particular risk from increased intakes of folate. The agency is also aware of the lack of safety data for long-term intakes of folate between 1 and 5 mg/day, the existence of limited data regarding adverse effects of intakes below 1 mg, and the arguments regarding the lack of safety data on continuous exposure of body tissues to free circulating folic acid in oxidized form when intakes exceed 1 mg daily. The agency knows of no data that would support the long-term safety of continuous daily folate intakes of more than 1 mg and knows of no data to support a level of intake somewhat above or below 1 mg. FDA, however, notes that the value of 1 mg for a safe upper limit of daily folate intake could be modified if data were available to support such a decision. FDA solicits comments, particularly data, on this point.

The Folic Acid Subcommittee at its April 15, 1993 meeting supported the agency's use of 1 mg of folate daily as an upper intake limit for fortification, and the PHS recommendation states that women of childbearing age should not exceed intakes of 1 mg/day. A safe upper limit of daily folate intake of 1 mg was also discussed by experts who attended a recent CDC workshop on

surveillance for adverse effects of increased folic acid intakes. Those experts stated that there was little likelihood of problems at daily intakes lower than 1 mg, that the risk associated with continuous intakes of 5 mg and higher is well documented, and that the limited case reports and concerns regarding high circulating levels of free folic acid raised questions about safety of intakes between 1 and 5 mg daily (Ref. 59).

B. Risks to Pregnant Women

About 4 million pregnancies occur in the United States each year. In *Nutrition During Pregnancy* (Ref. 50), IOM stated that the safety of large doses of folic acid during pregnancy has not been systematically determined (Ref. 50). IOM noted that large doses of folic acid may inhibit the absorption of other nutrients by competitive interaction and can also obscure the diagnosis of onset or relapse of pernicious anemia, which IOM stated is extremely rare in women of childbearing age. IOM recommended modest supplementation for some segments of the U.S. population at risk of folate inadequacy. Such subpopulations include some pregnant women who lack the knowledge or financial resources to purchase adequate food; abusers of alcohol, cigarettes, or drugs; those with malabsorption syndromes; adolescents; and women bearing more than one fetus.

A potential risk of high folate intakes involves effects of high blood levels of free folic acid on the embryo during early gestation. The concern regarding the lack of safety data for increased doses of folic acid in pregnant women has been discussed in the scientific literature since the report of the successful MRC trial (Ref. 4). The principal investigator of that study (Ref. 4), in which women at high risk of a recurrence of an NTD pregnancy were treated with 4 mg folic acid daily, noted that the study did not have the power to ascertain the safety of such high level supplementation in the population studied.

Following publication of the results of the MRC trial (Ref. 4), Leeming et al. (Ref. 84) stated that while 4 mg of folic acid until 12 weeks of pregnancy may reduce the incidence of NTD's in women at high risk of recurrence, there may also be damaging effects. These authors suggested that substantial amounts of unmetabolized folic acid appear in the plasma after a single high dose, and that continuous high circulating levels of free folic acid may damage developing neural tissue during early embryonic development. They further noted that high levels of folic acid are not normally found in the circulation (Ref. 16). Scott et al. (Ref. 85) also suggested the seriousness of risk during early embryonic development, since folic acid is concentrated in crossing the placenta and accumulates in fetal tissue. Leeming et al. (Ref. 84) stated that while the fully developed brain may be protected from neurotoxic effects of high circulating levels of folic acid, no information is available as to whether developing neural tissue is similarly protected (Ref. 85).

The agency discussed uncertainties and lack of data regarding potential effects of high folic acid levels on the fetus and its tentative decision to propose a safe upper limit of folate intake of 1 mg/day with respect to safety for persons with vitamin B_{12}-related problems with the Folic Acid Subcommittee at its November 23 and 24, 1993 meeting. The Folic Acid Subcommittee did not believe that folate intakes less than 1 mg/day posed a risk to pregnant women. Support for this view is also provided by the fact that the NRC RDA for pregnant women has been set at 800 µg folate daily for many years. The agency is not aware of data showing that such intakes have posed risks to pregnant women. The agency, however, is not aware of any data showing safe use above this level. The agency has tentatively concluded that an upper limit of intake of 1 mg of folate/day is safe for pregnant women.

C. Persons With Epilepsy

There are approximately 2.5 million persons in the United States with epilepsy and an estimated 200,000 persons whose epilepsy is not controlled (Ref. 12). The possibility has been raised that high intakes of folic acid may reverse the effectiveness of anticonvulsant medications (Ref. 86) because folic acid and certain anticonvulsants compete with each other for receptors on brain cells. A potential concern is whether high intakes of folic acid exacerbate seizures in persons with uncontrolled- or drug-controlled epilepsy.

Most studies of the effects of folic acid in persons with drug-controlled epilepsy have involved institutionalized individuals. Their responses to very high doses of folate (e.g., generally 5 to 15 mg orally; 30 mg, orally, or 75 mg intravenously) have been variable. For example, while increases in fit frequency in response to oral folic acid in the range of 5 to 30 mg daily have been noted in several isolated cases (Refs. 87, 88, and 89), no such effects were found in several controlled studies including double-blind, crossover studies utilizing 15 to 20 mg folic acid/day in patients with drug-treated epilepsy (Ref. 90, 91, 92, 93, and 94). More recently, several studies of epileptic patients treated with Dilantin and given 3 to 5 mg folic acid daily for gingival hyperplasia for periods of 4 months to 1 year reported no change in seizure frequency (Bachman, 1989; Brown, 1991, cited on pages 216 and 217 of Ref. 12).

Based on its review of the available data, the agency has tentatively concluded that daily intakes of 1 mg of folate are not likely to interfere with the effectiveness of anticonvulsant medications used in the treatment of epilepsy. The available data were reviewed at the November 23 and 24, 1992 meeting of the Folic Acid Subcommittee (Ref. 12). The Folic Acid Subcommittee agreed that, based on the scientific data currently available, there is no indication that there is increased risk for patients with epilepsy with daily intakes of folic acid of up to 1 mg of folic acid (Ref. 12). Based on these factors, the agency has tentatively concluded that its decision to set an upper limit of intake of 1 mg of folate/day is safe for persons with epilepsy.

D. Persons Taking Drugs That Interfere With Folate Metabolism

Folate antagonists such as Methotrexate are used in the treatment of various cancers, including leukemias (Ref. 95). In addition, low doses of Methotrexate are currently used in the treatment of psoriasis, rheumatoid arthritis, and bronchial asthma. Other drugs that interfere with folate metabolism include Pyrimethamine, Trimethoprim, Triamterene, sulfasalazine, colchicine, phenytoin, and Trimetrexate (Ref. 95). Recognition of the therapeutic usefulness of these antifolate drugs for the treatment of psoriasis, rheumatoid arthritis, bronchial asthma, malaria, hypertension, Crohn's disease, gout, epilepsy, and AIDS has developed during the last 30 years. Taken together, these conditions affect significant portions of the general U.S. population (Ref. 95). The safety of significantly increased folate intakes by persons with these disorders, whether or not they are receiving antifolate medications, remains an open question (Ref. 96). In addition, the question of whether significantly increased intakes of folate would reduce the efficacy of these antifolate medications must also be considered.

Morgan et al. (Ref. 97) studied the effects of administration of 1 mg folate daily in patients with rheumatoid arthritis during low-dose Methotrexate therapy for 6 months. Administration of

the folic acid supplement significantly lowered toxicity scores for the Methotrexate therapy, without affecting efficacy of the therapy, as measured by joint counts, joint indices, and physician and patient evaluation of the disease activity. There has not been a controlled trial of the effects on Methotrexate toxicity or therapeutic effectiveness with the use of folic acid supplementation at doses higher than 1 mg daily. Some investigations have prescribed folic acid at doses higher than 1 mg/day for Methotrexate-treated rheumatoid arthritis patients (Refs. 98 and 99), but this use has been controversial because of potential effects on disease responses (Refs. 100 and 101).

The agency discussed the issue of potential effects of increased folate intakes on persons taking antifolate drugs for a number of medical conditions with the Folic Acid Subcommittee at its November 23 and 24, 1992, meeting. The agency noted that there is relatively little data on effects of increased intakes of folate by persons taking antifolate medications for treatment of inflammatory and other diseases. This topic was the subject of several comments submitted to the agency following the November 23 and 24, 1993, Folic Acid Subcommittee meeting.

A physician wrote to express concern regarding increased intake of folate and the possible adverse effects of such intake on patients with myositis and other rheumatic diseases who are taking the antifolate Methotrexate (Ref. 102). The physician noted that studies suggesting beneficial effects of increased folate intake by such patients were small, and that the effects of prolonged intakes of folate are uncertain. The physician also noted that the possible adverse effects of folate supplementation may be more severe in children undergoing treatment for rheumatic disease given their smaller mass and narrower margin of safety with Methotrexate therapy.

Another comment noted the controversy about the use of folate supplements in patients with rheumatoid arthritis treated with Methotrexate (Ref. 103). The comment stated that the concern about potential toxicity in children taking Methotrexate for treatment of juvenile rheumatoid arthritis was not supported, to the commenter's knowledge, by any data, and that the knowledge of human folate homeostasis is limited. The comment stated that because low-dose Methotrexate is now used in the treatment of psoriasis, asthma, inflammatory bowel disease, and juvenile rheumatoid arthritis, the issue of folate status takes on increased importance in several groups of patients. The comment stated that there was a need to develop sensitive, reliable, and inexpensive assessment tools for determining folate status. The comment urged FDA to carefully weigh any decision about food fortification with folic acid until there is more understanding about the consequences of folate repletion and depletion on human health.

As noted above, the American College of Rheumatology, in a statement regarding use of folic acid in conjunction with the antifolate, Methotrexate, in patients with arthritis, stated that consumption of folic acid at a dose of 1 mg/day does not appear to inhibit the efficacy of low-dose weekly Methotrexate therapy in rheumatoid arthritis (Ref. 53).

With respect to adverse effects of increased folate intakes to persons taking antifolate medications, the agency has tentatively concluded from its review of the limited data currently available (see above), its discussions with the Folic Acid Subcommittee, and the comments that it received, that its tentative decision to set a safe upper limit of 1 mg folate/day for all population groups will not increase risk of adverse effects to persons taking antifolate medications because doses of up to 1 mg folate/day have not been reported to reduce the effectiveness of medications that interfere with folate metabolism.

The agency is, however, requesting scientific data and information on this matter because there are large numbers of patients taking low levels of antifolate drugs on a chronic basis, and the current scientific literature on potential adverse effects of significant increases in folic acid intakes (e.g., intakes greater than 1 mg/day) is very limited.

E. Others

Competitive interactions between folic acid and other nutrients have also been reported (Refs. 104 and 105). There have been contradictory reports related to potential adverse effects of folic acid supplementation on zinc status. Simmer et al. (Ref. 105) measured zinc absorption during the second trimester in 10 healthy pregnant women with normal medical histories and in ten healthy volunteers and found that oral iron-folate supplements containing 100 mg ferrous iron and 350 µg folate reduced the intestinal absorption of an oral dose of 25 mg zinc (provided as 100 mg zinc sulfate). Simmer et al. (Ref. 105) also reported that folate alone decreased zinc absorption. The study of Simmer et al. (Ref. 105) did not include a control group of pregnant women.

Some other studies have suggested that folic acid supplements interfere with intestinal zinc absorption in humans and animals (Refs. 106 and 107). Ghishan et al. (Ref. 104) described the formation of zinc-folate complexes in the intestine and suggested this as a possible mechanism for folate-zinc interactions. However, other studies have provided inconsistent findings relating to a zinc-folate interaction. For example, in a study of 450 pregnant women, Mukherje et al. (Ref. 108) found a high degree of correlation between elevated serum folate, low plasma zinc, and the occurrence of fetomaternal complications, while another study of 285 pregnant women did not provide evidence of deleterious effects of folic acid supplementation on maternal zinc nutriture (Ref. 109). Butterworth and Tamura (Ref. 96) and Zimmerman and Shane (Ref. 110) have reviewed the varying results of potential effects of folate on zinc status reported in the literature. Zimmerman and Shane (Ref. 110) concluded that there is no convincing evidence that folate supplementation compromises zinc status in pregnancy. They stated, however, that until the issue is clarified, it may be prudent to ensure adequate maternal dietary zinc intake during folic acid supplementation, particularly in women receiving 4 mg folic acid/day. In summary, there have been no long-term studies to quantitate the effects, if any, of increased folate intake on metabolism of other nutrients.

The limited scientific data available on the topics outlined above were presented to the Folic Acid Subcommittee at its November 23 and 24, 1992 meeting. Based on its review of the scientific data currently available on interactions between folate and other nutrients or drugs, and its discussions with the Folic Acid Subcommittee and expert consultants, the agency has tentatively concluded that its decision to set an upper limit of daily folate intake of 1 mg for all population groups will not cause adverse effects because the available scientific data does not provide evidence for the occurrence of such effects at intakes of folate at levels attainable from usual diets. The agency also recognizes that because of the uncertainties in the data on the safety of folic acid intakes, some deviation (either up or down) from the proposed 1 mg limit may be warranted. The agency specifically requests data on this issue.

V. Addition of Folic Acid to Foods

If FDA adopts this proposal and authorizes a health claim on folate and

NTD's, it creates the likelihood that vendors will fortify their products with folic acid to qualify to make a claim. One of the prime ways that FDA has of protecting the public against risks created by the possibility of greatly increased fortification of the food supply is its authority to regulate the use of food additives.

FDA's current food additive regulation for folic acid (§ 172.345 (21 CFR 172.345)) provides that:

> Folic acid (folacin) may be safely added to a food for its vitamin property, provided the maximum intake of the food as may be consumed during a period of 1 day, or as directed for use in the case of a dietary supplement, will not result in daily ingestion of the additive in excess of 0.4 milligram for foods labeled without reference to age or physiological state; and when age or the conditions of pregnancy or lactation are specified, in excess of 0.1 milligram for infants, 0.3 milligram for children under 4 years of age, 0.4 milligram for adults and children 4 or more years of age, and 0.8 milligram for pregnant or lactating women.

However, the agency recognizes that, as currently written, the regulation lacks the necessary detailed guidance to enable vendors of foods to decide which foods are appropriate for fortification, and the levels at which folic acid can be added. Nothing in FDA's current food additive regulation would prevent the addition of folic acid to virtually any food. As currently written, the food additive regulation is not a practical way to regulate the folic acid content of the food supply or to assist consumers in achieving specified folate levels in their diets.

In addition to its authority to regulate the use of food additives, and specifically with respect to the safety of substances that are the subject of health claims, the agency cannot authorize a health claim if ingestion of the substance that is the subject of the claim will increase the risk of a disease or a health-related condition in persons in the general population (see section 403(r)(3)(A)(ii) of the act). From the discussion above, it is clear that if the intake of folate is not limited, it can have such an effect in persons in the general population.

FDA has tentatively concluded, however, that a health claim for folate can be safely implemented if folic acid addition to the food supply is controlled through an amendment to the food additive regulation for folic acid. The agency is proposing to amend § 172.345 to set limitations for use of folic acid on a per serving basis; to allow for the addition of folic acid to foods for which there exists a standard of identity as authorized in the standard; and to make breakfast cereals and dietary supplements the only nonstandardized foods to which folic acid may be added. The description and documentation for these proposed actions are described below, and the specific actions are proposed in companion documents published elsewhere in this **Federal Register**.

The agency's objectives in considering safety issues are not limited only to consideration of how to safely authorize a health claim. Given the potential of folate to reduce the risk of NTD's, FDA has tentatively decided that, as a public health matter, it would also be prudent to provide for fortification of the food supply to increase the likelihood that all women of childbearing age will have adequate folate intakes. Because neural tube birth defects arise very early in pregnancy, and because many pregnancies are unplanned, women must have adequate folate intakes throughout their childbearing years to reduce the risk of this complication. Thus, fortification of staple foods is one means of increasing the likelihood that women will have adequate intakes of folate.

The agency's goal of developing a fortification program that will increase folate intakes by women in their childbearing years while preventing excessive intakes by other segments of the population creates significant issues that FDA must consider in addressing how best to develop a folate fortification plan. For example, in trying to meet the goal of increasing the folate intake of the target population, the agency must also consider the effects of fortification on the folate intakes of others outside the target population and on heavy consumers within the target population and take steps to ensure that safety concerns are not created. Conversely, limiting intakes of folate to levels that are clearly safe for the general population may make it difficult for many target women to reach their intake goals without significant changes in their dietary patterns. To work within these competing considerations, FDA has tentatively concluded that its overriding responsibility in developing a folic acid fortification policy is to establish a safe range of intake for all population groups and then to maximize folate intakes of the target population within this safe range.

A. Background: Fortification Policy

The addition of nutrients to specific foods has been an effective way of maintaining and improving the overall nutritional quality of the food supply. When fortification programs were first initiated, deficiency diseases were widespread in the U.S. population. Today, in part because of food fortification programs, deficiency diseases rarely occur in the general U.S. population.

To help implement these fortification programs, FDA established standards of identity for several enriched cereal-grain products that require fortification at specified levels with four nutrients, thiamin, riboflavin, niacin, and iron (6 FR 2574), (8 FR 9170), (15 FR 5102), and (17 FR 4453). The addition of these nutrients serves to replace milling losses and to supplement inadequate dietary intakes.

In 1974, the Food and Nutrition Board of the NRC (the Board) published its "Proposed Fortification Policy for Cereal-Grain Products" (Ref. 111). Using available food consumption data, the Board recommended expansion of the then-current enrichment program for cereal-grain products. The Board stated that nutrients should be added to all cereal-grain products wherever technically feasible, because cereal-grain products meet the criteria for carriers of nutritional fortification for most nutrients (Ref. 111). The Board identified fortification levels in cereal-grain products for a number of nutrients, including a recommendation that cereal-grain products be fortified with folic acid at a level of 0.3 mg/pound (70 µg/100 g). Fortification at this level would approximately restore the folate lost during milling.

Technical feasibility studies of aspects of the recommended fortifications were carried out following the 1974 NRC recommendation, with results presented at a workshop in 1977 (Ref. 112). Levels of folate in milled wheat flours, determined during base-line studies, were found to be 0.076±0.018 mg/pound (mean±SD; 76±18 µg/pound; mean=18 µg/100 g) (Ref. 112). Thus, a level of fortification of 0.3 mg/pound (70 µg/100 g) represents an approximate fourfold increase above levels of folate found in milled wheat flours. The agency has used the NRC report (Ref. 111) and the data provided at the 1977 workshop (Ref. 112) as a general guide in developing its options for fortification. The agency recognizes that this report and data are about 20 years old. However, to the agency's knowledge, no more recent report or data directly applicable to fortification issues are available.

In 1980, FDA codified in § 104.20 (21 CFR 104.20) a uniform set of principles to serve as a model for the rational fortification of foods. This set of principles is generally followed by the agency in promulgating regulations for

enriched foods. The agency defined "fortification" as the addition of discrete nutrients, such as vitamins, minerals, or proteins, to foods (45 FR 6323, January 25, 1980). The agency stated that fortification should serve as a means of maintaining and improving the overall nutritional quality of the food supply.

The agency stated that fortification is appropriate to correct a dietary insufficiency recognized by the scientific community (that is, available scientific data must demonstrate that the nutrient deficiency clearly exists within a defined population); to restore nutrients lost in processing; to balance the vitamin, mineral, and protein content of a food based on caloric density; to avoid nutritional inferiority; and to comply with an existing regulation (§ 104.20). In addition, the agency stated that foods that are appropriate vehicles for fortification are those that are consumed by a significant portion of the population in an amount adequate to meaningfully increase intakes of a nutrient, and those in which the nutrients will be provided in a bioavailable form and in which nutrients will be stable under normal conditions of storage and use. The agency also stated that the level of nutrients added in fortifying a food must preclude toxic effects (§ 104.20).

As noted above, the PHS recommendation identified fortification of the general food supply as one approach for delivering folate to women of childbearing age. At its November 23 and 24, 1992, meeting, the Folic Acid Subcommittee extensively discussed the advantages and disadvantages of folic acid fortification. Several members expressed concern regarding potential adverse effects of increased folate intakes if fortification of the food supply were not adequately controlled. They noted that everyone, both target and nontarget populations would unavoidably be exposed to higher folate intakes.

The Folic Acid Subcommittee recognized the need for adequate folate nutriture throughout the childbearing years, and the fact that, to be effective, folate must be provided in the periconceptional interval. In this context, the members of the Folic Acid Subcommittee discussed the advantages of fortification: (1) The availability of increased folate to all women in the target population, regardless of economic or educational status, and (2) the passive nature of fortification in increasing folate intakes (i.e., exposure occurs without the need to change food selection practices or to remember to take a supplement). The Folic Acid Subcommittee recommended that FDA develop a fortification strategy such that 90 percent of women of childbearing age (10th percentile of intake) could receive at least 400 µg of folate (0.4 mg)/day from all sources, while preventing excessively high folate intakes by nontarget groups.

At its April 15, 1993, meeting, the Folic Acid Subcommittee reviewed FDA's analyses of possible fortification scenarios. Following further discussion, six of nine Folic Acid Subcommittee members supported some fortification of the food supply, although they differed as to whether a level of 70 or 140 µg/100 g of flour was an appropriate base level. Three members were opposed to any fortification. Those in favor of fortification generally stated that this method had the capability of providing increased folate to the greatest number of women in the target population. Those opposing fortification expressed concern about the amount of uncertainty regarding the potential adverse effects and intake estimates.

FDA has tentatively concluded that implementation of a fortification plan for addition of folic acid to the food supply can effectively increase the folate intakes of women of childbearing age to assist them in reducing their risk of having an NTD-affected pregnancy. The agency's tentative conclusion is based on the following:

(1) Because the neural tube forms and closes within the first 4 weeks of pregnancy, folate is needed before conception and during early pregnancy, often before a woman knows that she is pregnant, if it is to have a beneficial effect on risk of NTD's;

(2) About half of the pregnancies in the United States are unplanned (Ref. 113);

(3) Use of a supplement on a daily basis throughout their approximately 30 years of childbearing potential may be a problem for many women, either because of their inability to afford such supplements or their failure to take them on a daily basis; and

(4) Fortification has the advantage of providing folic acid in a continuous and passive manner. For example, a low level of fortification in foods consumed with great frequency would increase the likelihood of obtaining adequate folate on a daily basis.

Thus, the agency is proposing to fortify the U.S. food supply with folic acid as an apparently effective means for improving the folate nutriture of women in their childbearing years. This proposal is consistent with the PHS recommendation and with the views of a majority of the members of FDA's Folic Acid Subcommittee. In implementing this program, however, the agency is mindful that development of strategies involving fortification of the general food supply requires careful consideration of potential adverse effects of such proposed fortification on the entire population. Authorization of a health claim for fortified or other folate-rich food also requires resolution of concerns about potential adverse effects of increased folate intakes.

B. Safe Fortification: Upper Limit of Folate Intake

Under section 409(c)(3)(A) of the act (21 U.S.C. 348(c)(3)(A)), the so-called "general safety clause," a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the additive is safe. Sections 409(c)(5)(A) and 409(c)(5)(B) of the act state that the probable consumption of a food additive, and the cumulative effect of the additive in the diet of humans, may be considered in determining whether a proposed use of a food additive is safe.

The agency has tentatively decided to use 1 mg (1,000 µg)/day of total folate intake as the safe upper limit for such intake. Total folate includes both the naturally occurring pteroylpolyglutamates found in foods and the folic acid (pteroylglutamic acid) used as a fortificant in conventional foods and as a source of folate in dietary supplements and breakfast cereals. The agency's tentative conclusion to use 1 mg/day as the safe upper limit is based on: (1) The scientific evidence and discussion of experts that there are no data to ensure that adverse effects are not likely to occur at daily intakes of 1 mg and above, (2) the PHS recommendation that women of childbearing age should not exceed intakes of 1 mg (1,000 µg) of folate/day (Ref. 11), (3) the support by the Folic Acid Subcommittee of FDA's use of 1 mg of total folate/day as a safe upper limit guide for fortification (Ref. 58), (4) the uncertainties in food intake estimates and the difficulty in correcting for bioavailability, and (5) the need for some margin of safety between estimates of intakes and the safe upper limit of daily intake. A further discussion of how the agency arrived at this proposed level follows.

1. General

The agency considered the following factors in determining how to identify a safe upper limit of daily intake of folate:

a. *Current range of daily intakes.* FDA's estimates of current intakes from foods alone (Table 4) show that, across all population groups, the range of daily folate intakes is 110 to 200 µg/day for

low consumers and 350 to 560 µg/day for high consumers. Corresponding folate intakes from foods and dietary supplements are 150 to 220 µg/day for low consumers and 470 to 810 µg for high consumers.

b. *Recommended Dietary Allowances.* The NRC RDA's are defined as the levels of intake of essential nutrients that, on the basis of scientific knowledge, are judged by the Board to be adequate to meet the known nutrient needs of practically all healthy persons. The RDA's are neither minimal requirements nor necessarily optimal level of intake. Rather, the RDA's are safe and adequate levels (incorporating margins of safety intended to be sufficiently generous to encompass the presumed variability in requirement among people) reflecting the state of knowledge concerning a nutrient, its bioavailability, and variations among the U.S. population. RDA's for folate ("folacin") for various age groups have been between 100 and 400 µg, except for pregnant or lactating women, since 1968 (Refs. 46, 47, and 48 in 58 FR 2606).

c. *Current fortification practices.* Because standards of identity for cereal-grain products, fruit juices, and dairy products have not permitted or required the inclusion of folic acid, and because the current food additive regulation for folic acid imposes a limit of 400 µg (0.4 mg)/day on folic acid added to dietary supplements labeled for use by persons 4 years and older and a limit of 400 µg (0.4 mg)/day on folic acid added to breakfast cereals, there has not been widespread fortification of foods in the United States with folic acid. Thus, daily folate intakes by persons in the general population have apparently been below 1 mg.

2. Differences in Bioavailability Between Free Folic Acid and Food Folates

It is well recognized that the bioavailability of free folic acid, the form included in fortified foods and in dietary supplements, is severalfold higher than that of naturally occurring food folates. Estimates of the increased bioavailability ("potency") of free folic acid relative to food folates range from at least twofold to fourfold or greater (Ref. 45 in 58 FR 2606). The bioavailability of folates in foods ranges from approximately 25 to 75 percent depending upon a variety of factors that are incompletely understood. The majority of food folates occur as reduced folylpolyglutamates (i.e., forms that contain a number of glutamate residues), and the glutamates must be cleaved by intestinal conjugase before absorption.

Folate utilization may be reduced under conditions that inhibit conjugase activity and by natural conjugase inhibitors found in certain foods (Ref. 114). Crystalline folic acid, the oxidized monoglutamate form of the vitamin and the form used in food fortification and in dietary supplements, is generally assumed to have a bioavailability of approximately 100 percent. However, folic acid is likely to take on the bioavailability of folate in its food vehicle and that of the overall meal in which it is consumed because it binds to food constituents such as proteins and carbohydrates (Ref. 115). Additionally, consumers vary in whether they take folic acid supplements with or without food and in the type of beverage that they consume with supplements taken between meals. Thus, the bioavailability of folic acid added to foods in conventional food form or consumed from supplements could range from close to 100 percent if taken between meals to 25 percent or less if consumed as part of a meal containing folates of low bioavailability.

At its November 23 and 24, 1992, meeting, the Folic Acid Subcommittee discussed whether some adjustment should be made for variations in bioavailability of different sources of folate (Ref. 12). There was some discussion as to whether different forms of folate should be weighted differently in estimating a safe daily intake and in determining their effectiveness in reducing the risk of NTD's in women in the target population. This issue was largely unresolved at that time.

3. Safe Upper Limit of Intake

Based on the considerations above, the agency has tentatively decided to use 1 mg (1,000 µg)/day of total folate intake as the safe upper limit for achieving folate intakes.

The agency recognizes that the use of 1 mg as the upper intake limit is not without controversy. This subject engendered considerable discussion at FDA's November 23 and 24, 1992, Folic Acid Subcommittee meeting and, as noted above, was largely unresolved at that time. It also has been the subject of several comments received subsequent to the November 1992 meeting.

One question is whether the 1 mg daily limit should be based on total folate (i.e., food folates plus folic acid from fortified foods and supplements), or whether the 1 mg daily limit should be based only on folic acid from fortified foods and supplements (i.e., intake of folic acid above the background of intake of food folates). Proponents of the latter position contend that the data showing potential safety concerns above 1 mg daily are based only on administration of free folic acid and do not take into account background food folate intakes (Ref. 13). They suggested that safety concerns are not well documented (Ref. 13), and that daily limits of folic acid intake higher than 1 mg/day are needed because folate intakes from fortification options limited by a 1 mg/day ceiling would be too low to be effective in providing sufficient folate to reduce the risk of NTD's for any but a small fraction of the target population of women of childbearing age (Ref. 13).

Conversely, an expert speaker at the November 1992 meeting expressed concerns about intakes in excess of 1 mg folate/day by individuals, particularly those individuals over 50 years, who may be at risk of vitamin B_{12} deficiency (Ref. 116). This speaker noted that there is no evidence to support the position that risk to the general population is negligible as long as food fortification provides less than 1 mg (1,000 µg) of dietary folate daily. The expert speaker urged the agency, if it proceeded with fortification plans, to develop a surveillance mechanism that could provide early identification of any adverse effect of fortifying the diets of most Americans with folate. FDA notes that it is working with other agencies within PHS to improve surveillance mechanisms for monitoring possible adverse reactions to increased folate intakes.

FDA has carefully considered the conflicting views on the safe upper limit of intake for folate. Based on the current state of the scientific evidence and the factors listed above, FDA tentatively concludes that an upper safe limit of intake of 1 mg folate is necessary to ensure the safety of the food supply. FDA has also tentatively concluded that the safe upper limit of 1 mg daily should be based on folate, rather than on added folic acid, and that it should not be adjusted for bioavailability factors. FDA's use of this value is based on its review of the scientific record, on its discussions with the Folic Acid Subcommittee and the fact that much of the concern that has been expressed about intakes above 1 mg folate/day has not been qualified based on the source of the folate. The upper limit of safe intake that FDA is proposing represents the agency's best scientific judgment at this time. FDA solicits comments and data on this tentative judgment. The agency recognizes the significance of this proposed upper limit to its analysis of options for fortification. The agency also recognizes that this value may need to be adjusted based on comments that

it receives. FDA will carefully consider any data that it receives on the issue of the safe upper limit of daily folate intake and will make necessary adjustments in this level based on its review of the data that are submitted.

C. Models Used and Fortification Options Evaluated

In developing its options for fortification and in reaching its tentative conclusions, the agency considered both effectiveness in reaching most women in the target population and maintenance of a safe level of daily intake (that is, an intake of 1 mg or less) for "high consumers" of folate both within the target population and in the general population. The agency considered the following in reaching its tentative conclusions:

(1) The expected daily intakes of "high consumers" of all age and gender groups and special risk groups must be evaluated for safety because the entire population will be passively and continuously exposed to folic acid in a fortified food supply;

(2) The effectiveness of a fortification option in reaching the target population can be evaluated by examining intakes at the lower end of the estimated intake distribution curve;

(3) Because estimates of folate intake from survey data are underestimates of true intakes because of the very low calorie intakes associated with some reported intakes, appropriate adjustments in intake distributions may be necessary; and

(4) Bioavailability cannot be meaningfully factored into fortification scenarios because issues of bioavailability are very complex, and no systematic data are available on many of the factors that affect bioavailability.

FDA presented estimates of the potential effects of food fortification on folate intakes to the Folic Acid Subcommittee at its November 23 and 24, 1992, meeting and in its final rule denying a health claim on folic acid and NTD's (58 FR 2606 at 2621). The estimates were based on intakes resulting from fortification of foods at specified levels of folic acid on a "per serving" basis. The "folic acid per serving" approach had the advantage of being rapidly performed, while reflecting changes in intakes that could occur with various fortification scenarios. This initial approach, however, needed refinement. FDA provided refined estimates, which were based on fortification of foods (e.g., fruit juices, dairy products) and food ingredients (e.g., cereal-grain products), to the Folic Acid Subcommittee at its April 15, 1993, meeting. In general, both types of estimates provided similar results regarding the effects of fortification on estimated folate intakes.

1. Data Base Chosen

The agency used USDA's 1987 to 1988 NFCS data base (Ref. 117) to estimate the potential effects of fortification of specific components of the food supply on folate intake by women in their childbearing years and by persons in the general population. The NFCS was designed to produce nationally representative estimates of food and nutrient intakes. Each respondent provided 3 days of dietary data. Such data provide better estimates of individual food intake than do, for example, 24-hour recall data, or food frequency data. In addition, for each respondent, the survey provided general information about supplement intake and brand-specific information about consumption of breakfast cereals.

FDA used the 1987 to 1988 NFCS because it provides the most recent nationally representative food consumption data available for all age/sex groups. Other recent food consumption surveys that FDA considered using lacked data on older children, adolescents, and older adults (for example, 1985 and 1986 USDA CSFII). Unlike other surveys, the 1987 to 1988 NFCS also includes brand name information on commonly fortified foods such as breakfast cereals, thereby allowing an estimate of folate intake from this category of foods based on manufacturers' current fortification practices. Thus, the 1987 to 1988 NFCS provided data that were particularly pertinent to the agency's needs and that were not available in other more recent surveys.

A disadvantage of using the 1987 to 1988 NFCS is the caution needed in interpreting the results because of the low response rate (Ref. 118). FDA considered using other national surveys with higher response rates (i.e., the 1977 to 1978 NFCS or 1976 to 1980 NHANES were considered), but they were judged by the agency to be too outdated to be useful or to lack the information necessary to reflect current folate fortification of breakfast cereals.

The low response rate of the NFCS may suggest a possible source of bias in the agency's estimates. However, an expert panel convened to assess the impact of the low response rate in this survey concluded that the presence or absence of a nonresponse bias could not be demonstrated with certainty (Ref. 118), and distribution data of the type used in the NFCS analysis have generally been consistent with results from other nationally representative surveys with higher response rates.

2. General Approach

The approach that FDA used to estimate folate intakes is based on the most relevant regulatory and food manufacturing units, e.g., servings of breakfast cereals, grams of cereal-grain products used as food ingredients, or measured portions of fruit juices or dairy products. Using information from NFCS respondents on the types and amounts of foods that they consumed over a 3-day period, general information on their use of dietary supplements and breakfast cereals, and a folate composition data base that provided specific information on folate content of foods and food ingredients (Ref. 119), FDA summed the total folate intake from all sources for each individual and obtained a value for mean folate intake per day. The agency used this average value from 3 days of data as the "usual" intake for an individual. FDA calculated distributions of folate intakes by age/sex groups from these values. The agency used the data to estimate the potential impact of various fortification options by altering the folate composition of selected foods and ingredients in the data base. For example, the agency recalculated intake estimates to determine the intake levels if all cereal-grain products contained 70 µg folic acid/100 g, or if selected juices or dairy products contained 140 µg folic acid/100 g.

The results of such estimations reflect likely changes in total folate intake if selected foods are fortified at one of several levels. These estimations were all based on current dietary patterns. The agency is aware, however, that individuals may change their dietary patterns by selecting folate-rich foods in response to a health claim. However, the agency knows of no way to estimate the magnitude of such changes in dietary patterns or to estimate their net effects in increasing folate intakes.

The NFCS provided qualitative information on dietary supplement use. In deciding whether to assign a folate contribution (i.e., value) to a reported supplement used, FDA considered whether the supplement was likely to contain folic acid. The response categories that FDA treated as being likely to contain folic acid included: "multivitamin," "multivitamin with iron or other minerals," "other combination of vitamins and minerals," or "other single vitamins/minerals." FDA considered the following response categories as representing supplements that were not likely to contain folic acid:

"combination of vitamin C and iron," "vitamin C," "iron," or "calcium."

In NFCS, consumers reported the frequency with which they consumed supplements described in the general terms above as "every day" or "almost every day," "every so often," or "not at all." Current marketing practice is to include folic acid in supplements labeled for use without reference to age or physiologic state at 400 µg. Thus, FDA included in daily folate intakes a value of 400 µg for those respondents 4 or more years of age who reported that they took supplements "every day" or "almost every day" and a value of 200 µg/day for those who said they took supplements "every so often." For persons 1 to 3 years of age who reported that they took supplements "every day" or "almost every day," FDA assigned an intake value of 200 µg/day. FDA assigned an intake value of 100 µg/day for persons 1 to 3 years of age who responded that they consumed supplements that might contain folic acid "every so often."

a. *Foods chosen for consideration as vehicles for fortification.* FDA expects that there will likely be a significant increase in consumption of folate by women in their childbearing years, and by the general population, if a health claim were to be authorized because manufacturers will add folic acid to their products in order to claim that these products are useful in reducing the risk of birth defects, and consumers will have point-of-purchase information available to them in making decisions regarding food selections. In its January 1993 final rule (58 FR 2606), the agency presented estimates of intakes of total folate and free folic acid that might result from uncontrolled fortification of foods with folic acid (i.e., FDA considered for these estimates that foods were fortified to the current unit limit of 400 µg) (58 FR 2606 at 2621; Table, Estimates A and B). The estimates showed that daily intakes of total folate of low consumers and high consumers could reach 4,700 µg (4.7 mg) and 9,100 µg (9.1 mg), respectively, if such fortification were to occur. Intakes of multiple doses of free folic acid in the form of dietary supplements and from its increased presence in the food supply could result in daily intakes of more than 3 mg (3,000 µg) by low consumers and approximately 7 mg (7,000 µg) by high consumers (58 FR 2606 at 2621; Table, Estimates A and B). These estimated intakes significantly exceed the agency's safe upper limit of intake of 1 mg of folate/day.

After reviewing these results, the agency tentatively concluded that limitations on the types of foods that might be fortified, and on the amounts of folic acid that might be added to such foods, were necessary to prevent unsafe levels of folic acid fortification of the food supply.

In examining options for providing folate to women of childbearing age through food fortification, the agency considered various options including allocation of folate to products such as cereal-grain products, fruit juices, and dairy products. It also considered current practices with respect to inclusion of folic acid in breakfast cereals and in dietary supplements.

In selecting foods to consider as vehicles for fortification, the agency started with the basic principle that fortification of staple products that are commonly consumed in significant amounts by virtually all members of the target population is most likely to effectively result in increased intakes of a specific nutrient by the target population. The agency notes that cereal-grain products were the fortification vehicle recommended by the Board (Ref. 111). These foods are consumed on a daily basis by more than 90 percent of women of childbearing age (Ref. 120).

In identifying specific cereal-grain products for fortification, the agency considered those products with established standards of identity: Enriched bread, rolls, and buns; enriched wheat, corn, and rice flours; enriched corn grits and enriched corn meals; enriched farinas; enriched rice; enriched macaroni products; and enriched noodle products (21 CFR parts 136, 137, 139). The dry (i.e., uncooked) cereal-grain products that were part of the fortification scenarios included wheat flours, rice, farinas, corn meals, corn grits, and macaroni, spaghetti, and noodles. Under standards of identity, the addition of specified amounts of certain nutrients to such products allows them to be labeled as "enriched." Folic acid is not currently among the nutrients permitted or required to be included in "enriched" products. To permit or require addition of folic acid to such products, the standards of identity for specific cereal-grain products must be amended (see companion document published elsewhere in this **Federal Register**).

Because of data showing that 90 percent of women of childbearing age report consumption of cereal-grain products on a daily basis (Ref. 120), all fortification options the agency considered included fortification of cereal-grain products.

FDA also considered including breakfast cereals in its fortification strategy because they represent a traditional source of many nutrients, including folic acid, for those who consume them. Breakfast cereals are also consumed by many women of childbearing age. Folic acid can be readily added to breakfast cereals. Its level in these foods is limited only by the limits established in the food additive regulation (21 CFR 172.345). Similarly, because approximately 30 to 40 percent of women of childbearing age use dietary supplements (Ref. 121), the agency also included the availability and continued use of dietary supplements in fortification options.

The agency was concerned that some women of childbearing age may not eat sufficient amounts of cereal-grain products, or breakfast cereals, or use dietary supplements, and consequently, fortification options limited to these folate sources might not be able to significantly increase the folate intakes of such women. Other foods with standards of identity that are frequently fortified include dairy products and juices (including milk, yogurt, fruit juices, and canned fruit nectars). Folic acid is currently not among the nutrients that are permitted or required in these foods under applicable standards of identity. Thus, in some of the fortification options, the agency evaluated the additional impact on folate intakes of fortification of both fruit juices and dairy products.

b. *Folate composition data.* FDA used an ingredient file prepared by the USDA's Human Nutrition Information Service (HNIS) to estimate total folate intakes (Ref. 119). Data in the ingredient file was based either on the levels of folate in foods and their ingredients in the U.S. food supply or on various changes that reflected the effects of several fortification options. Since the USDA ingredient file identified the grain ingredients of interest for all food categories in the survey, FDA was able to use the data in the file to estimate the total dietary effects of fortifying these grain ingredients. For example, the file allowed the agency to determine the effect on folate intakes that could result from fortifying the flour consumed in breads, rolls, buns, or cake as well as the flour consumed as a component of a frozen dinner (e.g., pizza crust, noodles, rolls, or breadings).

In one set of analyses, FDA estimated the effects of fortification on intakes by assuming fortification of cereal-grain products with 0.070, 0.140, and 0.350 mg folic acid/100 g. The value of 0.070 mg/100 g (0.30 mg/pound) is the amount recommended by the Board in 1974 (see above). Values of 0.140 and 0.350 mg/100 g represent twofold and

fivefold increases, respectively, above the Board's recommended level.

In a second set of analyses of potential intakes from fortified foods, the agency applied the levels of fortification used above to a broader range of food products including certain dairy products and fruit juices. Examples of dairy products and fruit juices to which fortification levels were applied included fluid cows' milk, reconstituted dry milk, condensed and evaporated milks, yogurts, and fruit juices such as orange, grapefruit, lemon, pineapple, apple, and grape.

Many breakfast cereals (dry ready-to-eat and cooked), as defined in 21 CFR 170.3(n)(4), are currently fortified with 100 µg of folic acid/labeled serving (25 percent of the RDI). Other breakfast cereals contain 35 to 45 percent of the RDI for folate (140 to 180 µg/labeled serving), while a limited number contain 100 percent of the RDI for as many as 17 minerals and vitamins, including folic acid (RDI for folate, 400 µg). The NFCS provided brand-specific information about breakfast cereal consumption. Values for folate content of these breakfast cereals were obtained from brand-specific data provided in the USDA data base. For about the 50 top-selling ready-to-eat dry cereals, in instances in which the current folic acid content of the breakfast cereal (identified from a review of food labels in a local supermarket) differed from the value used in the USDA data base, FDA updated the USDA data base values with the more recent values. Thus, values assigned to these breakfast cereals were generally reflective of what is currently in the marketplace. (Note: This correction was not applied to cooked breakfast cereals because of lack of brand-specific information.)

For dietary supplements, FDA assumed current marketing practices of including 400 µg (0.4 mg) folic acid/daily dose for supplements labeled without reference to age or physiologic state. The agency added a value of 400 µg/day to folate intakes for regular use of folic acid-containing supplements and added a value of 200 µg/day to folate intakes for irregular use of folic acid-containing supplements.

With the availability of health claims for folic acid and NTD's, the breakfast cereal market is likely to increase folic acid fortification to higher levels than are currently used. For purposes of considering possible effects of changes in levels of fortification of breakfast cereals on estimates of total daily folate intake, FDA considered two possibilities: (1) All breakfast cereals would be fortified to a level of 100 µg folic acid/serving (i.e., 25 percent of the RDI/serving); and (2) all breakfast cereals would be fortified to a level of 400 µg folic acid/serving (i.e., 100 percent of the RDI/serving). The agency estimated folate intakes that might result from these two possibilities in a food supply in which cereal-grain products were also fortified (i.e., the agency used levels of cereal-grain fortification of 0.07, 0.140, and 0.35 µg folic acid/100 g for these estimations).

c. *Analysis.* FDA conducted all data analyses using the procedures of Statistical Analysis System (SAS). In addition, the agency weighted all of the results using factors provided with the data tapes that were designed to provide results representative of the U.S. population. Results were presented as distributions of average daily intakes of folate by age/sex groups.

FDA evaluated each fortification option by examining folate intakes at the low end of the distribution curve for the target population (hereafter referred to as "low consumers"). Thus, the higher the folate intake of low consumers in the target population, the more effective the fortification option would be in meeting the folate intake goals for the target population. The values for "low consumers" represent the minimum intakes for target women.

FDA evaluated the safety of intakes that would result from a particular fortification scheme by examining estimated folate intakes at the high end of the intake distribution curves (hereafter referred to as "high consumers"). Obviously, the highest intakes represent the greatest potential risks.

3. Reasonableness of Results: Possible Sources of Error in Intake Estimates

a. *Underestimation of food intake.* Food intake data frequently underestimate the actual food intake of respondents (Ref. 122). Clinical studies have shown substantial discrepancies between food intake reported by volunteers and intake subsequently determined to be required for weight maintenance. An average underreporting of 18 percent below maintenance food intake for men and women was found in one study of 266 volunteers (Ref. 122).

To assess the reasonableness of the estimated folate intakes from the 1987 to 1988 NFCS, the agency compared mean energy (calorie) intakes of survey respondents as calculated from reported food intakes to energy requirements estimated by the Food and Nutrition Board of NAS (Ref. 123) for various sex/age groups. In the 1987 to 1988 NFCS, calculated mean energy intakes of women 19 to 50 years, based on 3-day dietary data, were about 1,500 calories, whereas the most recent estimated average energy requirement for this gender/age group is 2,200 calories. The reported intakes represent about 70 percent of the average required intake, or an average reported energy intake about 30 percent below the most recent average energy allowance. Although FDA frequently uses 90th percentile intakes to evaluate intakes of high consumers (Ref. 124), in the present analysis, the 95th percentile for energy more closely corresponds to the upper range of energy requirements. Conversely, at the low end of the distribution curve, energy intakes based on reported food patterns are so low (approximately 1,200 calories for women of childbearing age) that normal weight maintenance would not be possible. Such diets could not be maintained, therefore, for more than short periods of time and are unlikely to represent "usual" intakes. FDA therefore used the 25th percentile intakes to estimate the level of folate intake that would be achieved by "low consumers," and the 95th percentile intakes to estimate the level of intake that would be achieved by "high consumers." The agency considers the adjusted intakes that it used to represent a reasonable intake range over time by most persons in an age/sex group. The agency also notes that in adjusting folate intake estimates to correct for underreporting of food intake, it assumed underreporting both for conventional foods and dietary supplements.

To evaluate possible bias because of the high nonresponse rate of the 1987 to 1988 NFCS, FDA compared the estimated mean daily intake of folate without fortification options or supplement use for women 19 to 50 years in the 1987 to 1988 NFCS (i.e., 189 µg folate/day) to mean daily folate intakes reported for this gender/age group in two other recent USDA surveys that had better response rates. The 1986 Continuing Survey of Food Intake by Individuals (CSFII) (Ref. 125) reported a mean daily intake of folate of 193 µg and the 1985 CSFII reported a mean daily folate intake of 189 µg (Ref. 126). Thus, results from these three surveys are comparable.

b. *Underestimation of folate content of foods.* There is general agreement that the methods currently used for folate analysis in foods are unsatisfactory (Ref. 115). Methods for liberation of naturally occurring folylpolyglutamates from complex food matrices and their hydrolysis to forms that can be accurately quantified by microbiological assay are difficult and are frequently

incomplete. Comparison of newer methods of sample preparation with older methods has revealed underestimates in the range of 20 percent for vegetables such as spinach and cauliflower and 50 percent for canned tuna (Ref. 115). Thus, commonly used methods of folate analysis may significantly underestimate the folate content of foods.

Additionally, to ensure that fortified foods (including breakfast cereals and dietary supplements) contain at least the amounts of nutrients, such as folic acid, that are declared in the label, manufacturers add excess amounts of the nutrients in preparing the foods. Since label values were used to define the folate composition of fortified breakfast cereals and dietary supplements, however, the values that are used are likely to understate the actual folate content of these foods.

c. *Overall reasonableness of intake estimates.* Taken together, the two factors of underreporting of food intake and underestimation of folate content of foods will likely result in significant underestimates in folate intakes. For example, if the magnitude of the combined underestimate was 30 percent, an estimated intake value of 750 µg of folic acid/day might actually be 940 µg/day, and an estimated intake of 200 µg/day might actually be 260 µg/day.

FDA has tentatively concluded that except for the crude adjustment to bring folate intake estimates in line with estimated energy needs, more sophisticated mathematical adjustments are not appropriate because they would attribute the estimates with more precision (or certainty) than is justified by the nature of the data upon which the estimates are based. In addition, because of the questions about bioavailability that are described above, the agency tentatively considers bioavailability to be too unpredictable to be factored into the analyses. Because of the multiple and variable sources of systematic error, the lack of information on the nature of interactions among these various sources of error, questions of variations in bioavailability of folate from various food and supplement sources under different meal/eating conditions, and the lack of systematic data addressing these questions, FDA was not able to identify a mathematical "adjustment" factor that it considered to be reasonably accurate or universally applicable. Therefore, the agency has not included any such factors when calculating estimates of folate intakes or in identifying appropriate levels of food fortification.

4. Results

a. *Estimates.* Estimates of current intakes of folate by low and high consumers with and without supplement use and the results of estimations for 12 options for fortifying cereal-grain products, fruit juices, and dairy products are shown in Table 4.

As shown in the results of intake estimations in Table 4, at all three fortification levels examined, when fortification included fruit juices and dairy products in addition to cereal-grain products (Estimate Nos. 9 to 11), intakes of high consumers exceeded 1,000 µg/day for most age groups even without supplement use. For example, if cereal-grain products, fruit juices, and dairy products were fortified with 350 µg folic acid/100 g (Table 4, Estimate Nos. 11 and 14), women of childbearing age who were "high consumers" could consume 480 to 830 µg or more of folate /day without supplement use and 630 to 870 µg or more of folate/day with supplement use, intakes consistent with the PHS recommendation. With this fortification level, estimated daily intakes of folate by children 1 to 10 years of age who were "high consumers" could reach 4,020 to 4,550 µg without supplement use and 4,260 to 4,620 µg/day with supplement use, values that are several multiples of their current RDA's and in excess of the upper safe limit of intake of 1,000 µg (1 mg). In addition, with this level of fortification, estimated daily intakes of folate by adults 51+ years who were "high consumers" could fall in the range of 2,670 to 3,240/day without supplement use and 2,900 to 3,750 µg/day with supplement use. These intakes exceed the upper limit of safe intake of 1 mg/day.

Fortification of cereal-grain products, juices, and dairy products with lower levels of folate (for example, at 70 µg/100 g) also results in daily folate intakes of high consumers in many groups in excess of 1 mg. FDA has tentatively concluded, therefore, not to allow fortification of dairy and juice products because such fortifications could result in potentially unsafe intakes by large segments of the population.

FDA then examined the effects of limiting fortification to cereal-grain products. The agency examined the same fortification levels: 70, 140, or 350 µg folic acid/100 g (Table 4). Pros and cons of these options are listed in Table 5. For reference purposes, examples of levels of folic acid that could be present in typical products (i.e., breakfast cereals and noodles manufactured from enriched flours, enriched breads) are also included in Table 5.

If cereal-grain products were fortified with 70 µg folic acid/100 g (Table 4, Estimate Nos. 3 and 6), folate intakes by adult population groups of "high consumers" would remain below 1 mg/day. If fortification of cereal-grain products was increased to 140 µg/100 g, intakes by adults 51+ years who were "high consumers" and who used supplements would approach 1 mg/day (Table 4, Estimate Nos. 4 and 7). Fortification of cereal-grain products at 350 µg/100 g (Table 4, Estimate Nos. 8) could result in estimated daily intakes by "high consumer" adults 51+ years of 980 to 1,100 µg when supplement use is included. When cereal-grain products are fortified at levels of 350 µg folic acid/100 g, daily intakes of folate by high consumers among children 1 to 3 years and 4 to 10 years are 670 and 1,030 µg with supplement use (Table 4, Estimate No. 8), values 2 to 3 times the RDA's for these age groups.

b. *Potential effects of fortification options for consumers who follow Federal government dietary guidelines* As a further check on the reasonableness of the fortification options, FDA considered it prudent to evaluate the likely effects of fortification on folate intakes of consumers who follow government dietary guidance such as the U.S. Dietary Guidelines for Americans and the DHHS/USDA Food Guide Pyramid (Ref. 127). Fortification should not make compliance with the U.S. Dietary Guidelines unsafe.

The USDA Food Guide Pyramid recommends consumption of 6 to 11 servings of cereal-grain products/day, 2 to 3 servings of dairy products, 3 to 5 servings of vegetables, 2 to 3 servings from the meat group, and 2 to 4 servings of fruit. Estimates of folate intakes that could result from food consumption patterns consistent with Food Pyramid Guidelines with fortification of cereal-grain products at 70, 140, and 350 µg/100 g and breakfast cereals at 100 µg/serving (25 percent of the RDI) and 400 µg/serving are shown in Tables 6A and 6B. The estimates are based on consumption patterns at both the low (Table 6A) and high (Table 6B) ends of the USDA Food Pyramid Ranges.

FDA estimates that women who consumed 6 servings/day of cereal-grain products fortified with 70 µg folic acid/100 g and consumed a breakfast cereal fortified with 100 µg folic acid/serving would obtain 53 percent of the RDI (i.e., 210 µg/day) from these sources alone (Table 6A). Intake from these sources alone could be 510 µg folate/day if a breakfast cereal fortified with 400 µg folic acid were chosen instead of a breakfast cereal fortified with 100 µg folate. Consumption of 6 servings of

cereal-grain products fortified with 140 or 350 µg folic acid/100 µg and use of a breakfast cereal fortified with 100 µg folic acid/serving could provide 80 percent and 153 percent, respectively, of the RDI from these fortified food sources alone. Intakes from these sources alone could be 620 µg folate/day or 910 µg folate/day if a breakfast cereal fortified with 400 µg folic acid were consumed as part of a food supply in which cereal-grain products were fortified with 140 or 350 µg folic acid/100 µg, respectively.

FDA also estimates that women who followed a dietary pattern consistent with the upper end of the USDA Food Pyramid Range for cereal-grain products (i.e., 11 servings/day) and chose a breakfast cereal fortified with 400 µg of folate/serving (i.e., 100 percent of the RDI) could consume 620, 840, or 1,420 µg folate/day from these sources alone, depending upon whether cereal-grain products were fortified with 70, 140, or 350 µg folic acid/100 µg (Table 7B). Consumption of diets high in rich natural sources of folate such as specific vegetables and use of a dietary supplement of 400 µg folic acid could lead to daily intakes of folate of 1,670 µg, 1,890 µg, and 2,470 µg, with cereal-grain products fortified at 70, 140, or 350 µg/100 µg.

The estimates shown in Table 6A suggest that, without supplement use, consumers who followed even the low end of recommendations from the USDA Food Pyramid Food Guide could readily consume 420 or more µg of folate/day from all sources if cereal-grain products were fortified at 70 µg/100 g. For such "low" consumers who did not use supplements, daily intakes of folate from all sources could reach 530 or 820 µg/day with a food supply in which cereal-grains products were fortified with 140 µg or 350 µg folic acid/100 g, respectively.

c. *Potential effects of changes in fortification of breakfast cereals.* The agency also compared the effects on estimated intakes if there were a change in the current marketing practices for breakfast cereals. The agency considered effects on intakes if all cereals were fortified at levels of 100 µg/serving or 400 µg/serving, with results shown in Table 7. Since the great majority of breakfast cereals are currently fortified with 100 µg of folic acid/serving, comparisons of current intakes with those that might result from fortification of all breakfast cereals at 100 µg/serving show that they are essentially the same. However, the agency's estimates show that if all breakfast cereals were to be fortified at a level of 400 µg of folate/serving as part of a food supply in which a wide range of cereal-grain products were also fortified, intakes by high consumers in many population groups could approach or exceed the safe upper limit of intake of 1 mg. This result is true for some high consumers even without fortification of cereal-grain products and becomes more apparent as the level of fortification in cereal-grain products increases from 70 to 350 µg/100 g.

D. Tentative Conclusions—Options for Fortification

The estimates above suggest that fortification of standardized cereal-grain products at 70 µg/100 g or 140 µg/100 g, the availability of dietary supplements at 400 µg folic acid/unit, and the availability of breakfast cereals fortified at 100 µg folic acid/serving could provide folate intakes below 1 mg folate daily for most persons.

The agency notes that several presenters at the April 15, 1993 Folic Acid Subcommittee meeting recommended fortification of cereal-grain products at 350 µg/100 g because they felt that safety issues were exaggerated, and that intakes somewhat above 1 mg/day posed little or no hazard. Conversely, members of the Folic Acid Subcommittee who favored fortification were about evenly divided between fortification at 70 or 140 µg/100 g (Ref. 13). Those favoring fortification at levels of 70 or 140 µg folic acid/100 g stated that such levels could provide increased intakes of folate for women in their childbearing years while ensuring that intakes for nontarget groups in the population below 1 mg/day.

The level of fortification of cereal-grain products of 140 µg/100 g represents approximately twice the level recommended by the NRC in 1974 and is the higher of two levels proposed by the Folic Acid Subcommittee. The estimates for intake of folate from food by high consumers among adults 51+ years (those who are potentially at greatest risk of vitamin B_{12} deficiency) are 800 to 840 µg/day (Table 4, Estimate No. 7). However, if standardized cereal-grain products were fortified at 350 µg/100 µg, the estimated maximum intake from foods could be 980 to 1,050 µg/day (Table 4, Estimate No. 8). The agency has tentatively concluded that this level of cereal-grain fortification could provide intakes that exceed the safe upper folate intake limit and thus, because proposed fortification of cereal-grain products will provide continuous and unavoidable exposures, does not meet the requirement that a food fortification scheme be safe.

FDA tentatively finds, based on available data, that fortifying cereal-grain products with 140 µg of folic acid and allowing breakfast cereals to contain up to 400 µg of folic acid/serving will also result in daily folate intakes by significant portions of the population in excess of the safe upper limit of 1 mg/day. For example, intakes by high consumers in all adult population groups could reach (e.g., 950 to 980 µg/day for women 19 to 51+ years) or exceed (e.g., 1,440 for males 11 to 18 years) 1 mg/day. Daily intakes of high consumer males 19 to 50 years and 51+ years could be 1,090 and 1,060 µg folate, respectively. These values are not consistent with the maximum intake limit of 1 mg folate/day. Therefore, the agency cannot authorize a fortification scheme that would produce them.

The agency recognizes that breakfast cereals, unlike breads and other cereal-grain products, are generally consumed only once/day by most adults. Thus, consuming a single daily serving of a highly fortified breakfast cereal is different than consuming multiple daily servings of highly fortified cereal-grain products. However, some consumers such as teenagers may consume multiple servings/day of breakfast cereals, and children may consume breakfast cereals as snacks. Because of increased intakes that might be achieved through such eating patterns, the agency considered the option of proposing that fortification of all breakfast cereals be limited to 100 µg/serving (Table 7). With this option, estimated intakes would remain below 1 mg by all population groups, even if cereal-grain products are fortified with 140 µg folic acid/100 g, and supplements of 400 µg folic acid/unit are available.

FDA recognizes that this proposed action will have the effect of requiring the reformulation of a small number of breakfast cereals. It is not the agency's desire to have such an effect, but it appears to be unavoidable given the current state of the record. The agency is prepared to reconsider this approach if interested persons submit comments that provide data or other information that show that folate consumption can be kept within safe limits with breakfast cereals fortified to 400 µg/serving.

The agency also recognizes that some may find an inequity in the agency's treatment of dietary supplements, with respect to which the agency is proposing to allow continued marketing of a 400 µg folic acid supplement, as compared to its treatment of breakfast cereals, with respect to which it is proposing to establish a 100 µg/serving limit for folic acid. FDA tentatively finds that this approach is appropriate because supplements tend to be used to supplement the diet for specific purposes, while breakfast cereals are

eaten more generally as part of the usual diet. However, the agency requests comment on this matter. While commenters should feel free to suggest alternate approaches, including other combinations of options, such comments will be most useful if they explain how the suggested approach will ensure that total dietary intake of folate will remain within safe limits.

The agency recognizes that its proposal to fortify cereal-grains products at 140 µg/100 g, to allow for fortification of breakfast cereals at 100 µg/serving, and to retain the current limitations for use of folic acid in supplements (i.e., 400 µg folic acid/unit), present a dilemma in that by limiting fortification to levels that provide safe intakes for the general population, the estimated daily folate intake by "low consumers" among women of childbearing age may not reach the PHS recommended levels of 400 µg/day without changes in their food selection practices. However, the proposed fortification levels will mean that, under FDA's estimate, "low consumers" among women of childbearing age will consume 230 to 250 µg/day (Table 4, Option 7). These values represent an increase of 80 to 100 µg over current daily intakes. Significantly, several studies have found that dietary intakes of 250 µg or more daily are associated with a reduced risk of NTD's. Moreover, these levels are also close to intake levels estimated to be sufficient to saturate body tissue stores of folate (Ref. 14). The increased intake of 80 to 100 µg/day is also consistent with the opinion of one Folic Acid Subcommittee member that increases of about 100 µg/day above current intakes could provide protective effects. The agency also notes that intakes of 230 to 250 µg/day are minimum intakes for women of childbearing age, and that most women will have intakes above this level, with some estimated to be close to 800 µg/day. Thus, the agency tentatively finds that even though "low consumers" may not achieve the 400 µg/day recommended by PHS, on balance, particularly in light of the potential effects of higher levels of fortification on the nontarget population, the proposed fortification scheme will produce acceptable results.

Moreover, the agency explained above why it believes that its estimates may underrepresent folate intakes. The agency also noted that its estimates did not factor in any effect that the presence of health claims on food labels will have on food selection choices of women of childbearing age. The agency expects that the availability of health claims on cereal-grain products fortified at the level proposed will result in increased consumption of such products and hence increased folate intake, beyond that that would occur without a health claim. Thus, the availability of a health claim on cereal-grain products fortified at the level proposed and on other sources of dietary folate could lead to food choices that could result in adequate folate intakes even by "low consumer" women of childbearing age.

The agency has tentatively concluded that by providing for moderate increases in folate intakes through fortification and by then providing point-of-purchase information of foods that are good sources of folate on the relationship of adequate folate intake and reduction in risk of NTD's, women of childbearing age will have considerable flexibility in making their dietary choices (including use of supplements) to achieve the PHS recommended intake. This flexibility will also be available to persons who need to or who may wish to limit their folate intakes, and who would find it much more difficult to do so if higher folate levels were used in cereal-grain products, whose use in the diet is difficult to avoid or to significantly reduce.

FDA also calculated examples of likely individual intakes from fortified foods using various levels of fortification (Tables 6A and 6B). For example, a woman who made food choices from the "low" range of the USDA Food Guide Pyramid and who consumed 5 servings/day of cereal-grain products fortified at 140 µg/100 g and ate 1 bowl of cereal containing 100 µg of folic acid would consume about 320 µg of folic acid (i.e., 80 percent of the RDI) from these sources alone (Table 6A). Addition of a serving or two of vegetables, or of a serving of fruit, could lead to a folate intake above 500 µg/day, well in excess of the PHS recommended level of 400 µg of folate/day.

However, if cereal-grain products were fortified at 350 µg/100 g, and the dietary choices indicated above were made, a "low consumer" would obtain 610 µg folic acid daily (153 percent of the RDI) from these sources alone (Table 6A). The agency notes, however, that if cereal-grain products are fortified at the level of 350 µg folic acid/100 g, "high" consumers could reach intakes of folic acid of more than 1,000 µg/day from bread, noodle, rice, and pasta products alone (Table 6B). Additional consumption of breakfast cereals, fruits, vegetables, and a dietary supplement by "high consumers" could result in daily intakes of about 2.5 mg, significantly above the agency's proposed safe upper limit of daily intake of 1 mg.

In summary, FDA has tentatively concluded that its overriding responsibility is to establish a safe range of intakes for all population groups, to maximize folate intakes of the target population within this safe range, and to ensure the safe use of health claims. However, given the dilemma of trying to increase intakes of women of childbearing age while ensuring that intakes by "high consumers" across all segments of the U.S. population are safe, and given the uncertainties in the available data, FDA asks for comment on the appropriateness of its approach and of other options, including higher and lower levels of fortification. In this regard, FDA will carefully consider any data that it receives on the issue of fortification level and target foods and will make any appropriate adjustments based on the review of the data it receives.

The agency also requests comments on several other possibilities for fortification. Specifically, the agency is requesting comments on:

(1) Whether cereal-grain products might be fortified at a lower level (e.g., 70 µg/100 g), thus leaving a greater margin of safety for consumers of supplements and highly fortified cereals and greater flexibility in amounts of folic acid that might be permitted in other foods;

(2) Whether both dietary supplements and breakfast cereals should be limited to the same but lower level (e.g., 100 or 200 µg folic acid/unit or/serving);

(3) Whether, in a food supply that includes a wide range of fortified cereal-grain products, an additional caution statement should be required for all products fortified at 100 percent of the RDI (i.e., 400 µg folic acid/unit or/serving), given that consumption of multiple servings/day of such products (e.g., more than two) will result in daily folate intakes well above 1 mg; and whether a higher level of fortification (e.g., 350 µg/100 g) is more appropriate than the level that FDA is proposing (140 µg/100g).

The agency also requests data on the safety of fortification options for children. In examining the intakes of children, who are among the high consumers of breakfast cereals and dietary supplements, the agency is specifically requesting comments on whether long term, continuous intakes of free folic acid by children at levels of three to four times their RDI's present safety concerns, and if so, what those concerns are. The agency notes that when intake of folate by children increases markedly (e.g., by several multiples of their RDI's), the majority of the increased intake will likely appear

in the blood stream as unmetabolized folic acid. In this regard, the agency calls attention to its estimates that among children 1 to 3 and 4 to 10 years, high consumers could ingest 810 to 1,220 µg folate/day if cereal-grain products were fortified at 140 µg/100 g and if all breakfast cereals were fortified at 400 µg/serving.

Several comments (Ref. 59) suggested that higher folate fortification could be safely implemented if simultaneous fortification with vitamin B_{12} (cobalamin) at a level of 1 mg is also required. These comments are based on assumptions that the greatest potential for adverse effects with high folate intake is its masking of the anemia of vitamin B_{12} deficiency, with continued progression of neurologic damage, and that provision of oral vitamin B_{12} in sufficiently high levels will negate this concern. FDA is aware that doses of about 1 mg/day of vitamin B_{12} (500 times the RDI for this vitamin) without intrinsic factor (i.e., without the protein factor necessary for the absorption of vitamin B_{12}, and the factor whose lack causes pernicious anemia) have provided adequate treatment for some persons with pernicious anemia (Ref. 129). However, Hathcock and Troendle (Ref. 129), in a recent editorial, note that regardless of the widespread availability of oral vitamin B_{12} preparations, patients with pernicious anemia or others at risk of vitamin B_{12} deficiency should be diagnosed, treated, and monitored by a physician.

Several experts at the CDC's recent meeting on surveillance for adverse effects of increased intakes of folate (Ref. 59) commented on the suggestion that high doses of vitamin B_{12} be added to foods and supplements fortified with folic acid to reduce the potential for adverse effects in persons with vitamin B_{12} deficiency. One expert noted that vitamin B_{12} may be converted into analogs, some of which may have antivitamin B_{12} activity, in the presence of certain other nutrients (e.g., vitamin C, thiamin, iron), and that attempts to fortify with vitamin B_{12} would require a demonstration that the vitamin B_{12} added with folic acid remained biologically active and safe.

At this time, FDA is not proposing to include the addition of vitamin B_{12} to foods fortified with folic acid. FDA requests comments, specifically data, on the appropriateness, potential effectiveness, and safety of use of simultaneous fortification with high levels of vitamin B_{12} for the purpose of possibly minimizing the adverse effects of increased folic acid intakes. FDA will consider such comments in arriving at a final rule in this matter. FDA is proposing in separate documents published elsewhere in this issue of the **Federal Register** that standardized enriched cereal-grain products be fortified with folic acid at the level of 140 µg folic acid/100 g, that breakfast cereals be allowed to include up to 100 µg/serving, and that dietary supplements be allowed to contain up to 400 µg folic acid/daily dose when labeled without reference to age or physiologic state. While the agency believes that fortification at either 70 µg or 140 µg folic acid/100 g is safe, it is proposing to require 140 µg/100 g as the folic acid fortification level because this level will provide a better opportunity for a larger portion of the target population to achieve significantly increased folate intakes.

The results of FDA's analysis of food fortification options show that fortification of the U.S. food supply alone cannot increase daily intakes of folate for all women of childbearing age to 400 µg/day if current dietary patterns are continued without increasing the potential for adverse effects in nontarget segments of the population. Apparently some women (i.e., "low consumers") in the target population eat such small amounts of the staple foods that are candidates for fortification that no matter how high the fortification levels are set, the added folic acid would not reach them. The inability of fortification alone to increase the intakes of all target women to 400 µg/day was recognized by a number of experts who consulted with the Folic Acid Subcommittee at its November 23 and 24, 1992 meeting.

VI. Proposed Requirements for Health Claims

A. Relationship Between Folate and NTD's

The 1990 amendments required FDA to evaluate the topic of folic acid and NTD's with respect to its appropriateness for a health claim. The term "folic acid" is the name given to the parent compound of the folate vitamin forms, whereas the term "folates" is used as a descriptor for the entire group of folate vitamin forms and includes both folic acid and the folylpolyglutamates found in foods. In reviewing the scientific evidence on the relationship between folate and NTD's, the agency noted that some studies reported effects of use of supplements of folic acid in combination with intakes of food folates, while other studies reported effects of dietary intakes of food folates alone. Based on its review of these studies, the agency has tentatively concluded that the diet/disease relationship is more correctly expressed as "folate and neural tube defects" rather than as "folic acid and neural tube defects".

Therefore, FDA is proposing in § 101.79 to authorize health claims on labels or in labeling of foods in conventional form or dietary supplements on the relationship between folate and NTD's. Proposed paragraph § 101.79(a)(1) defines the disease or health-related condition that is the subject of the claim. NTD's are rare but serious birth defects that can result in infant mortality or serious disability. The birth defects anencephaly and spina bifida are the most common forms of NTD's and account for about 90 percent of these defects. These defects result from failure of closure of the covering of the brain or spinal cord during early embryonic development. Because the neural tube forms and closes during early pregnancy, the defect may occur before a woman realizes that she is pregnant.

Proposed § 101.79(a)(2) describes the effect of folate intake on the risk of NTD's. FDA's tentative conclusion based on its review of the totality of the scientific evidence and its resolution of safety issues, as reflected in this section of the regulation, is that the available data show that folic acid alone may reduce the risk of recurrence of NTD's when given at high levels (i.e., 4 mg (4000 µg)/day or 10 times the RDI) to women at high risk of such a recurrence. Additionally, based on a synthesis of information from several observational studies that reported use of multivitamins containing 0 to 1,000 µg of folic acid, the PHS, including FDA, concluded that folic acid intake at levels of 0.4 mg (400 µg or 100 percent of the RDI)/day may reduce the risk of occurrence of NTD's (Ref. 11). PHS also stated that a reasonable estimate of the expected reduction in the United States is 50 percent.

B. Significance of the Relationship

Proposed § 101.79(b)(1) summarizes the significance of appropriate folate intake relative to reduction in risk of NTD's in the general U.S. population and within the total dietary context. This paragraph recognizes that reduction in adverse pregnancy outcomes, such as birth defects, is an important public health goal. Because most NTD's occur in women without a history of such outcomes, interest in reducing the risk of first occurrences has been very high.

In the United States, about 2,500 cases of NTD's occur among about 4 million annual births (i.e., in approximately 6 of 10,000 live births). The majority of NTD's are isolated defects and

apparently are produced by a number of factors (Ref. 12). The single greatest risk factor is a personal history of a pregnancy affected with an NTD (Ref. 12). However, about 90 percent of infants with an NTD are born to women who do not have a family history of these defects (Ref. 12).

Proposed § 101.79(b)(2) identifies populations at risk for NTD's. NTD's have been reported to vary with a wide range of factors including genetics, geography, socioeconomic status, maternal birth cohort, month of conception, race, nutrition, and maternal health including maternal age and reproductive history (56 FR 60610). Women with a close relative (i.e., sibling, niece, nephew) with an NTD, with insulin-dependent diabetes mellitus, and with seizure disorders who are being treated with valproic acid or carbamazepine are at significantly increased risk compared with women without these characteristics (Ref. 20). Rates for NTD's also vary within the United States, with lower rates observed on the west coast than on the east coast (56 FR 60610). Recent data from State-based birth defects surveillance systems show declining trends for NTD's in the United States for about the last 30 years (Ref. 18).

In proposed § 101.79(b)(3), FDA notes that PHS (Ref. 11) estimated that if all women of childbearing age in the United States who are capable of becoming pregnant consumed 0.4 mg of folic acid daily throughout their childbearing years, there would be about a 50 percent reduction in the number of infants born with NTD's (i.e., a reduction from about 2,500 annually to about 1,250 annually). The protective effect of about 0.4 to 1 mg of folic acid daily, measured by the reduction in incidence of occurrence of NTD's, has ranged from none to substantial (Refs. 5, 6, 9, and 26). Thus, PHS stated that a reasonable estimate of the expected reduction in the United States is 50 percent (Ref. 11).

C. General Requirements

The agency is proposing in § 101.79(c)(1) to require that to bear a health claim on the relationship between folate and NTD's, foods must meet the general requirements for health claims in § 101.14 (published in the **Federal Register** of January 6, 1993 (58 FR 2478), except for the requirement in § 101.14(d)(2)(vii) that the food be "high" in the subject nutrient.

Folate is ubiquitously distributed among many foods in the U.S. food supply. While a number of foods (e.g., some legumes, okra, broccoli, spinach, turnip greens, asparagus, Brussels sprouts, endive, lentils) contain more than 80 µg of folate/serving, the great majority of foods contain folate at lower levels. For example, oranges, grapefruit, many berries, cabbage, lettuce, corn, cauliflower, peas, many vegetable juices, beets, and parsnips contain folate at levels of 40 to 80 µg/serving (Ref. 129).

The agency is concerned that if it required (in accord with § 101.14(d)(2)(vii)) that the food contain 20 percent of the RDI for folate (i.e., 80 µg) or more/reference amount customarily consumed, many good food sources of folate would not be able to qualify to bear a health claim without fortification. The current dietary guidance recommendations of five or more servings of fruits and vegetables/day, and six or more servings of grain products/day, if followed, would likely result in daily intakes of folates of 0.4 mg or more. Thus, use of a qualifying criterion consistent with that used to define a "good" source of folate provides for an amount that allows a wide variety of fruits, vegetables, and grain products to qualify and is consistent with current dietary guidelines for general dietary patterns. Because health claims on foods in conventional food form are required to be made within the context of a daily diet, and because FDA has proposed a similar requirement for health claims for dietary supplements, it seems contrary to the intent of the 1990 amendments to set requirements that would essentially limit a health claim to fortified foods or dietary supplements and to a relatively few fruits and vegetables. Accordingly, FDA is proposing in § 101.79(c)(1) and (c)(2)(ii) that foods may bear a folic acid health claim if they contain 10 percent or more of the RDI for folic acid/reference amount customarily consumed (i.e., must meet the definition for a "good source" claim in § 101.54). (Ref. 129).

The general requirements for health claims in § 101.14, among other things, prohibit a health claim if any of the specified disqualifying nutrient levels are exceeded. This requirement ensures that folic acid/NTD health claims will not appear on foods that contain amounts of fat, saturated fat, cholesterol, or sodium that may increase the risk from the total diet of a disease or health-related condition. A thorough discussion of the criteria for identifying risk nutrients and the levels of these nutrients allowed in foods that bear health claims is found in the preamble to the final rule on general principles for health claims (58 FR 2478).

D. Specific Requirements

1. Relationship Statement

In § 101.79(c)(2), the agency is proposing to require that the claim on the relationship of folate and NTD's state that women who are capable of becoming pregnant and who consume adequate folate daily may reduce their risk of having a pregnancy affected by spina bifida or other NTD's.

The agency is proposing to require that the claim specifically relate adequate intake of folate during the childbearing years to reduced risk of NTD's (proposed § 101.79(c)(2)(i)(A)). This proposed action is consistent with observational data (Refs. 6, 8, and 26) showing that adequate intake of folate during the childbearing years may reduce the risk of occurrence of such birth defects.

The agency considered the use of synonyms for "folate" and the need to aid consumers in understanding this nutrient. The agency, therefore, has provided, in proposed § 101.79(2)(i)(B), for the use of synonyms and for additional description of this term through use of phrases such as "folate," "folic acid," "folacin," "folate, a B vitamin," "folic acid, a B vitamin," or "folacin, a B vitamin." The terms "folate" and "folacin" are generic descriptors for compounds that have nutritional properties and chemical structures similar to those of folic acid (Ref. NAS). The terms "folate" and "folacin" are allowable synonyms under § 101.9 and proposed § 101.36. The term "folic acid" is specifically used in the PHS recommendation (Ref. 11), and by allowing use of this term, the PHS recommendation can be quoted directly on the label, if all other requirements for the health claim are met. The use of the descriptive term, "a B vitamin," in conjunction with "folate," "folacin," or "folic acid," is commonly used in lay information for consumers and may be useful for consumers in indicating the nutritive role of folate.

The agency considered whether women might be confused or not understand the term "neural tube defect" and has provided in proposed § 101.79(c)(2)(i)(C) for some qualification of this term through use of phrases such as "the birth defect spina bifida," "the birth defects spina bifida and anencephaly," "spina bifida and anencephaly, birth defects of the brain or spinal cord." Although a phrase like "reduce the risk of serious birth defects" might be simpler, the agency is concerned that if a claim were to state in general terms that "folic acid may reduce the risk of serious birth defects," women would be misled into believing

that folic acid would reduce their risk of other serious birth defects, and that they might consequently fail to consider other risk factors for birth defects (e.g., use of alcohol, drugs).

The agency is proposing to allow, as one option, reference to simply "the birth defect spina bifida" because that is the most common NTD in the United States for which some protective effect of folate has been demonstrated (Refs. 5, 6, 7, and 26). However, because the protective effect of folate has been shown for both spina bifida and anencephaly, both terms may be used. The agency considers that the optional use of the descriptive phrase, "birth defects of the brain or spinal cord" could be useful to consumers in better understanding the nature of the NTD and in differentiating this birth defect from others such as heart defects.

2. Multifactorial Nature

In § 101.79(c)(2)(i)(D), FDA is proposing to require that the claim contain a statement that NTD's are multifactorial in origin. The general requirements for health claims for foods in conventional food form (§ 101.14), which FDA has proposed to apply to health claims for substances in dietary supplements, provide that where factors other than dietary intake of the substance affect the relationship between the substance and disease or health-related condition, FDA may require that such factors be addressed in the health claim.

NTD's have many causes, some of which are not related to folate status. The single greatest risk factor currently recognized, as stated above, is a personal history of an NTD defect-affected pregnancy.

3. Prevalence

In § 101.79(c)(2)(i)(E), the agency is proposing to require that the health claim provide information that NTD's, while not of high prevalence in the United States are very serious birth defects. Because the affected population is few in number and not readily identifiable, FDA is proposing to require such information to prevent women from being misled into believing that NTD's are very common birth defects, or that, lacking a personal or family history of such defects, their risk of having a pregnancy affected with such a birth defect is very high. The prevalence of NTD's in the United States is currently about 6/10,000 live births, or about 2,500 cases/year. In addition, there may be no effect of periconceptional use of folic acid in areas of low prevalence or in areas where other factors are contributing to an increased prevalence. Such a statement is consistent with scientific evidence that shows that in an area of low prevalence of NTD's in the United States, women who consumed folate from multivitamins or fortified cereals did not have a lower risk of having an NTD-affected pregnancy than did women who did not (Ref. 7).

Examples of the statements that the agency is proposing to require are "Such birth defects, while not widespread, are very serious." or "* * * birth defects * * * that, while not widespread, are very serious."

4. Reduction in Risk

In § 101.79(c)(2)(i)(F), the agency is proposing to require that the claim contain a statement that some but not all women may benefit from adequate intakes of folic acid. Such a statement is consistent with estimates provided with the findings in the PHS recommendation that about half of NTD's (about 1,250 annually) could be prevented if all women of childbearing age in the United States who are capable of becoming pregnant consumed 0.4 mg of folic acid daily throughout their childbearing years. Such a statement is necessary to prevent the claim from misleading women to believe that use of folic acid will prevent all occurrences of NTD's.

The agency is also proposing in this section that the claim not attribute any specific degree of reduction in risk of NTD's to maintaining an adequate folate intake throughout the childbearing years.

5. Safe Upper Limit of Intake

As discussed above, a comment received following the November 23 and 24, 1993 Folic Acid Subcommittee meeting suggested that any health claims related to folic acid and NTD's should be balanced by a warning statement that increased intakes of folate may increase the frequency of irreversible neurologic damage from vitamin B_{12} deficiency, and that among African-American and Hispanic females, folic acid fortification or supplementation is likely to do more harm than good. The agency recognizes that for some groups in the population (see safety discussion above), there may be certain risks attendant upon increased consumption of folic acid. At the present time, the potential adverse effect that has been most extensively documented is that of the activity of increased intakes of folate in masking the anemia of vitamin B_{12} deficiency while irreversible neurologic damage progresses.

In recognition of comments and safety concerns discussed above, FDA, in § 101.79(c)(2)(F), is proposing to require a statement on both fortified foods in conventional food form and on dietary supplements that contain more than 25 percent of the RDI (i.e., more than 100 µg/reference amount customarily consumed or, for supplements, per unit) about the maximum safe daily limit for folate consumption. Such a statement is necessary to prevent the claim from being misleading regarding potential risks from excessive intakes. As stated above, the safe intake limit is 1 mg/day. A fortified food that contains more than 100 µg/serving contributes more than 25 percent of the RDI and more than 10 percent of the daily limit. Consumption of such foods should be monitored by the consumer, so that they will not be consistently or significantly exceeding the daily limit. An example of the statement FDA is proposing to require is: "Folate consumption should be limited to 250 percent of the DV (i.e., to 1,000 µg per day)."

The agency is not proposing to require that this statement be included in claims on the relatively small number of conventional foods that contain more than 100 µg of folic acid without fortification (e.g., dark green leafy vegetables, certain legumes). The agency believes that there is no need for the consumer to monitor intakes of these foods because their folate content consists of reduced pteroylpolyglutamates whose bioavailability is generally considered lower than that of the folic acid (i.e., pteroylmonoglutamate) added as a fortificant to foods.

6. Limitation on the Claim

In § 101.79(c)(2)(i)(H), the agency is proposing that a health claim not state that a specified amount of folate is more effective in reducing the risk of NTD's than a lower amount (e.g., 100 µg). This proposed requirement is consistent with data showing that reduction in risk of NTD's has been associated with general dietary improvement (which is assumed to increase folate intake by unspecified amounts).

7. Identifying Sources of Folate

In § 101.79(c)(2)(ii)(B), the agency is proposing to require that health claims relating folate and NTD's identify sources of folate by stating that adequate amounts of folate may be obtained by making specific dietary choices of folate-rich foods, as well as through use of dietary supplements or fortified breakfast cereals. Several studies have shown that among women with a prior NTD-affected pregnancy who improved their poor diets to diets with adequate intakes of all nutrients in a subsequent

pregnancy, there was a 50 percent reduction in recurrence of NTD's (Ref. 9). In addition, several studies have shown that among nonusers of supplements, significant gradients (i.e., trends) in reduction in risk of NTD's are associated with increased intakes of folate and other nutrients (Refs. 8 and 26). One study has shown that among nonsupplement users, diets providing more than 100 µg/day of folate are associated with reduced risk of NTD's (Ref. 6). Thus, the agency has tentatively concluded that claims that fail to reveal that adequate amounts of folate can be obtained through attention to dietary choices would be misleading.

Examples of the statements that the agency is proposing to require to assist women in making dietary choices are: "Women * * * should choose well-balanced diets that include 2 to 4 servings per day of fruits (including citrus fruits and juices), 3 to 5 servings of vegetables (including dark green leafy vegetables and legumes), 6 to 11 servings of enriched grain products (such as breads, rice, and pasta) and fortified cereals throughout their childbearing years. Such diets provide many essential minerals and vitamins, including folate. Women who do not eat well-balanced diets or who may be concerned about their diets may choose to obtain folate from dietary supplements;" or "Adequate amounts of folate, a B vitamin, can be obtained from diets rich in fruits, including citrus fruits and juices, vegetables, including dark green leafy vegetables and legumes, enriched grain products, including breads, rice, and pasta, fortified cereals, or from a dietary supplement;" or "Adequate amounts of folate, a B vitamin, can be obtained from diets rich in fruits, dark green leafy vegetables and legumes, enriched grain products, fortified cereals, or from a dietary supplement."

8. Nutrient Availability

Benefits of folate intake from food in conventional food form and from dietary supplements can only be obtained if the folate is available for metabolism by the body. As discussed above, the bioavailability of folates in foods ranges from approximately 25 to 75 percent, depending upon a variety of factors that are incompletely understood (Ref. 114). The majority of food folates occur as reduced folylpolyglutamates and must be cleaved by intestinal conjugase before absorption. Folate utilization may be reduced under conditions that inhibit conjugase activity and by natural conjugase inhibitors found in certain foods (Ref. 114). However, there are not enough data on factors in specific foods or components of foods that affect folate bioavailability for FDA to determine conditions under which a health claim for folate in foods would be misleading because the folate was not assimilable. On the other hand, crystalline folic acid is generally considered to have a bioavailability greater than that of food folates because it is in the monoglutamate form and does not have to be cleaved by intestinal conjugases (Ref. 114).

A dietary supplement that contains folate that does not disintegrate and dissolve clearly does not provide the nutrient in an assimilable form. Thus, a claim for such a dietary supplement would be misleading because the supplement would not provide the nutrient that is the subject of the health claim.

Dietary supplements can be formulated in a manner that prevents rapid dissolution and disintegration, thereby preventing subsequent absorption of the nutrients they contain. Accordingly, FDA is proposing in § 101.79(c)(2)(ii)(C) to require that dietary supplements that contain folate and that bear a health claim meet the United States Pharmacopeia (U.S.P.) standards for disintegration and dissolution.

However, when U.S.P. standards do not exist, the agency recognizes the need for an alternative method of establishing the bioavailability of the nutrients in dietary supplements under the conditions of use stated on the product label. FDA is proposing that demonstrations of bioavailability in human or animal studies when conducted under the conditions of use stated on the product label (i.e., fed as an intact tablet, not crushed) will fulfill this requirement. Thus, proposed § 101.79(c)(2)(ii)(C) provides that if there are no applicable U.S.P. standards, the folate in the dietary supplement shall be shown to be bioavailable under the conditions of use stated on the product label.

9. Prohibition of Claims on Fortified Products That Contain More than 100 Percent of the RDI for Vitamins A and D

The agency is aware that folate is often combined with other nutrients, particularly vitamins and minerals, in dietary supplement formulations. In light of the expectation that the presence of a health claim on the label of such products is likely to encourage the intake of these products, FDA is concerned that some consumers may try to increase their folate intake through the use of multiple doses of fortified products or vitamin supplements. The agency is concerned that for some fortified products that contain both folate and vitamin A or vitamin D, consumers could be exposed to excessive vitamin A or vitamin D intakes in their attempts to obtain increased amounts of folate.

It is widely recognized that vitamin A in excessive amounts is teratogenic (Ref. 15). A high incidence (greater than 20 percent) of spontaneous abortions and of birth defects, including malformations of the cranium, face, heart, thymus, and central nervous system, have been observed in the fetuses of women ingesting therapeutic doses (0.5 to 1.5 mg/kilogram) of 13-*cis*-retinoic acid (isotretinoin) during the first trimester of pregnancy, and large daily doses of retinyl esters or retinol (≥ 6,000 retinol equivalents or 20,000 International Units (IU)) may cause similar abnormalities (Ref. 15).

Vitamin D is potentially toxic, with effects of excessive intakes including hypercalcemia and hypercalciuria (Ref. 15). Although the toxic level of vitamin D has not been established for all ages, consumption of as little as 1,800 IU of cholecalciferol/day has been associated with signs of hypervitaminosis in young children (Ref. 15). The toxic level of vitamin D may in some cases be only 5 times the RDA (Ref. 15).

The 1991 CDC recommendation for increased intake of folate by women with a history of an NTD-affected pregnancy warned against overconsumption of multivitamins because of the potential for excessive intakes of vitamins A and D from such preparations (Ref. 11). In addition, recent recommendations in Canada for women of childbearing age regarding folic acid and NTD's included consideration of the teratogenicity of high levels of vitamin A (Ref. 56).

Based on this information, FDA tentatively concludes that to prevent folate health claims from inadvertently encouraging excessive intakes of vitamins A and D, it is necessary to prohibit the health claim for folate on supplement formulations that contain more than 100 percent of the RDI of vitamin A and vitamin D. Therefore, FDA is proposing in § 101.79(c)(2)(iii) that the health claim be prohibited on foods in conventional food form and on dietary supplements that contain more than 100 percent of the RDI for vitamin A or vitamin D. Educational materials regarding increasing intake of folate to reduce the risk of NTD's should include precautionary information about excessive intakes of vitamins A and D.

10. Nutrition Labeling—Requirement that Nutrition Labeling Be Provided for Foods and Supplements Bearing Health Claims

FDA is proposing to require in § 101.79(c)(2)(iv) that the nutrition label of any food that bears a health claim on folate and neural tube defects include information about the folate content of the food. This proposed requirement is consistent with § 101.9(c)(8)(ii), which states that the declaration of vitamins and minerals on the nutrition label shall include any of the vitamins and minerals listed in § 101.9(c)(8)(iv) when a claim is made about them, and with proposed § 101.36(b)(3), which requires a listing of any vitamin or mineral listed in § 101.9(c)(8)(iv) that is present in the product. FDA also sets forth in proposed § 101.79(c)(2)(iv) how the information on folate content is to be presented. The agency is doing so in the interest of clarity.

E. Optional Health Claim Information

Consistent with general requirements for health claims (21 CFR 101.14), FDA is proposing optional information that may be included in the health claim. The agency is proposing to permit manufacturers, in addition to including the fact that risk of NTD's is multifactorial, to specifically identify other risk factors for NTD's (§ 101.79(c)(3)(i)). Although not identified in the regulation, specific examples of other risk factors might include a personal history of such a defect, maternal diabetes mellitus, use of the antiepileptic drug valproic acid, maternal febrile illness, or a close relative (sibling, niece, nephew) with an NTD.

The agency is also proposing to permit the claim to include statements from paragraphs (a) and (b) of § 101.79 that summarize the relationship between folic acid and NTD's and the significance of the relationship (proposed § 101.79(c)(3)(ii)). The proposed provision excludes from these permitted statements information specifically prohibited from the claim. This exception is consistent with the proposed prohibition in § 101.79(c)(i)(F) against statements that give specific degrees of reduction in risk of NTD's.

Proposed paragraph (a)(2) on the relationship between folic acid and NTD's includes a statement that a reasonable estimate of the expected reduction in NTD's incidence in the United States is 50 percent. This 50 percent estimate is based on observational studies that showed reductions in risk from none to substantial (Ref. 11), is population-based, and does not apply to the reduction in risk for an individual. FDA believes that while the statement is appropriate in the context in which it is presented in paragraph (a)(2), it could be misleading to consumers in food label as part of a health claim. It is unlikely that a label statement about a 50 percent reduction in incidence could be properly qualified on a food label so that it would not incorrectly imply a 50 percent reduction in risk to the individual.

Available data clearly show that the single greatest risk factor for an NTD-affected pregnancy is a personal history of the defect. The agency tentatively concludes that a statement that women with a history of an NTD pregnancy should consult their physicians or health care providers before becoming pregnant would encourage them to obtain medical guidance and thus decrease their possibility of a recurrence of another NTD-affected pregnancy. The agency is proposing to permit such a statement as a part of the health claim (proposed § 101.79(c)(3)(iii)).

The agency is also proposing to include as optional information in the health claim a statement that the target folate intake goal is the RDI level of 400 µg/day and not to require that this information be included as part of the claim (proposed § 101.79(i)(3)(iv)).

Following the April 1993 Folic Acid Subcommittee meeting, an expert speaker commented that the 400 µg/day dose of folic acid was an artificial goal. The expert noted that there are no data demonstrating that 400 µg/day is the required amount, and that there are data to suggest that this amount is more than is required to reduce the risk of NTD's. The expert noted further that if 400 µg/day were required, little or no impact (with respect to reduction in risk of NTD's) should have been seen in those studies that looked at diet because daily dietary intakes of folate are generally below 400 µg. Studies by Werler et al.,(Ref. 26), Bower and Stanley (Ref. 8), Laurence (Ref. 9), and Milunsky et al. (Ref. 6), all have suggested, however, that there are pronounced effects from levels of dietary folate lower than 400 µg/day.

In its January 6, 1993 final rule, the agency noted that a number of studies have shown significant effects of diet in reducing risk of NTD's. The findings of these studies are listed in Table 3. These studies suggest the potential efficacy of lower doses of folate in reducing the risk of NTD's, and the benefits of overall dietary improvement for women during their childbearing years. Some studies (Refs. 6 and 26) have shown significant risk reduction at folate intakes well below 400 µg/day.

However, because the PHS recommends a 400 µg/day intake, the RDI is 400 µg, and the Folic Acid Subcommittee supported the 400 µg/day intake goal, the agency believes that it may be helpful to some consumers if the health claim for folate were to include information that the RDI of 400 µg/day is the target intake goal.

F. Model Health Claims

FDA is providing examples of model claims that meet the proposed requirements in proposed § 101.79(d). The agency is including these model claims to assist manufacturers in formulating an appropriate claim.

G. Effective Date

FDA is proposing that for fortified foods, the regulation authorizing a health claim on folate and NTD's become effective on the effective date for the amendment to the folic acid food additive regulation. In the final rule on a health claim for folic acid and NTD's on January 6, 1993 (58 FR 2606), FDA noted that it could not allow a health claim on this topic area until issues of safe use could be resolved. FDA, at that time, was concerned that a health claim could motivate manufacturers to increase fortification of foods in order to qualify for health claims, and consumers could also increase use of foods bearing a health claim. Taken together, these two events could result in potentially high intakes of folic acid for which safety was an issue.

In this document, FDA has tentatively concluded that by amending its food additive regulation for folic acid, it can ensure that a health claim for folate and NTD's can be safely implemented. However, because the safe use of the health claim is based on the concurrent implementation of the amendment to the folic acid food additive regulation, FDA is proposing that the health claim regulation not become effective until the food additive amendment is effective.

On the other hand, because of the significance of the information provided in the health claim, and because of the absence of an issue about the safe level of use of folate in foods that naturally contain this nutrient and in dietary supplements, FDA is proposing that § 101.79 would become effective for these foods 30 days after the date of publication of this final rule.

VII. Comments

Interested persons may, on or before December 13, 1993, submit to the Dockets Management Branch (address above) written comments regarding this

proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

During the comment period on this and the two related documents on folic acid, the agency intends to convene the Folic Acid Subcommittee and the Food Advisory Committee for a discussion of the issues raised in the documents. FDA also intends to request comments from the experts who participated in its November 23 and 24, 1992, meeting of its Folic Acid Subcommittee. The agency will make these comments and the views of the committees available for public review and comment as part of this rulemaking immediately after the Advisory Committee meeting is held. In addition, FDA will endeavor to have copies of the transcripts of the Folic Acid Subcommittee and Food Advisory Committee meetings available as quickly as possible as well.

VIII. Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. Because the agency is taking three actions involving folic acid, and the net effect of these actions is likely to increase the usage of folic acid, one environmental assessment has been prepared which considers all three agency actions.

IX. Economic Impact

FDA has examined the economic implications of the proposed rule as required by the Regulatory Flexibility Act and Executive Order 12291. The Regulatory Flexibility Act requires regulatory relief for small business where feasible. Executive Order 12291 compels agencies to use cost-benefit analysis as a component of decisionmaking, where permitted by law. The agency finds that this proposed rule is not a major rule as defined by Executive Order 12291. In compliance with the Regulatory Flexibility Act (Pub. L. 96–354), FDA certifies that the proposed rule will not have a significant impact on a substantial number of small businesses.

The agency is proposing to authorize health claims for folate and NTD's. Because no products are currently making health claims concerning folate and NTD's, the proposed rule will not adversely affect any labels currently being used. FDA believes that there are no costs associated with the proposed rule.

The allowance of a health claim for folate and NTD's will, to the extent that folate health claims appear on products and to the extent that consumers read and understand that health claim, result in an unquantifiable benefit in terms of the education of consumers about the relationship between folate, diet, health, and NTD's. Folate health claims may result in increased demand for products containing this nutrient. An increase in consumption of products containing folate is likely to result in health benefits in terms of fewer NTD's. However, FDA is not able to estimate the number of products that will bear health claims or the effect that folate health claims will have on consumer demand for products containing folic acid. FDA requests comment on these factors.

X. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

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List of Subjects in 21 CFR Part 101

Food labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 101 be amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: Secs. 4, 5, 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1453, 1454, 1455); secs. 201, 301, 402, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 348, 371).

§ 101.71 [Amended]

2. Section 101.71 *Health claims: claims not authorized* is amended by removing paragraph (c) and by redesignating paragraphs (d) through (f) as (c) through (e), respectively.

3. New § 101.79 is added to subpart E to read as follows:

§ 101.79 Health claims: folate and neural tube defects.

(a) *Relationship between folate and neural tube defects*—(1) *Definition.* Neural tube defects are serious birth defects of the brain or spinal cord that can result in infant mortality or serious disability. The birth defects anencephaly and spina bifida are the most common forms of neural tube defects and account for about 90 percent of these defects. These defects result from failure of closure of the covering of the brain or spinal cord during early embryonic development. Because the neural tube forms and closes during early pregnancy, the defect may occur before a woman realizes that she is pregnant.

(2) *Relationship.* The available data show that diets adequate in folate may reduce the risk of neural tube defects. The strongest evidence for this relationship comes from an intervention study by the Medical Research Council of the United Kingdom that showed that women at risk of recurrence of a neural tube defect pregnancy who consumed a supplement containing 4 milligrams (mg) (4,000 micrograms (µg)) folic acid daily had a reduced risk of having a child with a neural tube defect. (Products that contain this level of folic acid are drugs.) In addition, based on its review of a Hungarian intervention trial that used a multivitamin and multimineral preparation containing 800 µg (0.8 mg) of folic acid, and its review of the observational studies that reported use of multivitamins containing 0 to 1,000 µg of folic acid, the Food and Drug Administration concluded that most of these studies had results consistent with the conclusion that folate, at levels attainable in usual diets, may reduce the risk of neural tube defects.

(b) *Significance of folate*—(1) *Public health concern.* Neural tube defects occur in approximately 0.6 of 1,000 live births in the United States (i.e., about 2,500 cases among 4 million live births annually). Neural tube defects are believed to be caused by many factors. The single greatest risk factor for a neural tube defect-affected pregnancy is a personal or family history of a pregnancy affected with a such a defect. However, about 90 percent of infants with a neural tube defect are born to women who do not have a family history of these defects. The available evidence shows that diets adequate in folate may reduce the risk of neural tube defects but not of other birth defects.

(2) *Populations at risk.* Prevalence rates for neural tube defects have been reported to vary with a wide range of factors, including genetics, geography, socioeconomic status, maternal birth cohort, month of conception, race, nutrition, and maternal health, including maternal age and reproductive history. Women with a close relative (i.e., sibling, niece, nephew) with a neural tube defect, those with insulin-dependent diabetes mellitus, and women with seizure disorders who are being treated with valproic acid or carbamazepine are at significantly increased risk compared with women without these characteristics. Rates for neural tube defects vary within the United States, with lower rates observed on the west coast than on the east coast.

(3) *Those who may benefit.* Based on a synthesis of the results of several observational studies, the Public Health Service has estimated that about 50 percent of neural tube defect-affected pregnancies in the United States (e.g., about 1,250) may be averted annually if all women consume adequate amounts of folate daily (i.e., 0.4 mg) throughout their childbearing years.

(c) *Requirements.* The label or labeling of food in conventional food form or dietary supplements may contain a folate/neural tube defect health claim provided that:

(1) *General requirements.* The health claim for a food or supplement meets all of the general requirements of § 101.14 for health claims, except that a food or dietary supplement may qualify to bear the health claim if it meets the definition of the term "good source."

(2) *Specific requirements*—(i) *Nature of the claim*—(A) *Relationship.* A health claim that women who are capable of becoming pregnant and who consume adequate amounts of folate daily during their childbearing years may reduce their risk of having a pregnancy affected by spina bifida or other neural tube defects may be made on the label or labeling of foods in conventional food form or of dietary supplements provided that:

(B) *Specifying the nutrient.* In specifying the nutrient, the claim shall use the terms "folate," "folic acid," "folacin," "folate, a B vitamin," "folic acid, a B vitamin," or "folacin, a B vitamin."

(C) *Specifying the condition.* In specifying the health-related condition, the claim shall identify the birth defects as "neural tube defects," "birth defects, spina bifida, or anencephaly," "birth defects of the brain or spinal cord anencephaly or spina bifida," or "spina bifida or anencephaly, birth defects of the brain or spinal cord;"

(D) *Multifactorial nature.* The claim shall state that neural tube defects have many causes and shall not imply that folate intake is the only recognized risk factor for neural tube defects.

(E) *Prevalence.* In specifying the prevalence of neural tube defects among women in the general population, the claim shall state that such birth defects "which, while not widespread, are extremely significant" or "* * * birth defects * * * that, while not widespread, are extremely significant."

(F) *Reduction in risk.* The claim shall not attribute any specific degree of reduction in risk of neural tube defects, including mention of the Public Health Service estimate that 50 percent of neural tube defects may be averted annually, to maintaining an adequate folate intake throughout the childbearing years. The claim shall state that some women may reduce their risk of a neural tube defect pregnancy by maintaining adequate intakes of folic acid during their childbearing years.

(G) *Safe upper limit of daily intake.* Claims on fortified foods in conventional form and on dietary supplements that contain more than 25 percent of the RDI for folate (100 µg per serving or per unit) shall state that 1 mg folate per day is the safe upper limit of intake (e.g., "Folate consumption should be limited to 1,000 µg per day from all sources").

(H) *The claim.* The claim shall not state that a specified amount of folate (e.g., 400 µg in a dietary supplement) is more effective in reducing the risk of neural tube defects than a lower amount (e.g., 100 µg in a breakfast cereal or from diets rich in fruits and vegetables).

(ii) *Nature of the food*—(A) *Requirements.* The food or supplement shall meet or exceed the requirements for a good source of folate as defined in § 101.54;

(B) *Diets adequate in folate.* The claim shall identify diets adequate in folate by using phrases such as "* * * diets that include 2 to 4 servings per day of fruits) including citrus fruits and juices), 3 to 5 servings of vegetables (including dark green leafy vegetables and legumes), 6 to 11 servings of enriched grain products (such as breads, rice, and pasta) and fortified cereals. Such diets provide many essential minerals and vitamins, including folate. Women who do not eat well-balanced diets or who may be concerned about their diets may choose to obtain folate from dietary supplements."; or "Adequate amounts of folate, a B vitamin, can be obtained from diets rich in fruits, including citrus fruits and juices, vegetables, including dark green leafy vegetables and legumes, enriched grain products, including breads, rice, and pasta, fortified cereals, or a dietary supplement."; or "Adequate amounts of folate, a B vitamin, can be obtained from diets rich in fruits, dark green leafy vegetables and legumes, enriched grain products, fortified cereals, or from dietary supplements."

(C) *Dietary supplements.* Dietary supplements shall meet the United States Pharmacopeia (U.S.P.) standards for disintegration and dissolution, except that if there are no applicable U.S.P. standards, the folate in the dietary supplement shall be shown to be bioavailable under the conditions of use stated on the product label.

(iii) *Limitation.* The claim shall not be made on foods in conventional food form or dietary supplements that contain more than 100 percent of the RDI for vitamin A as retinol or preformed vitamin A or vitamin D.

(iv) *Nutrition labeling.* The nutrition label shall include information about the amount of folate in the food. This information shall be declared after the declaration for iron if only the levels of vitamin A, vitamin C, calcium, and iron are provided, or in accordance with § 101.9 (c)(8) and (c)(9) if other optional vitamins or minerals are declared.

(3) *Optional information*—(i) *Risk factors.* The claim may specifically identify risk factors for neural tube defects;

(ii) *Relationship between folate and neural tube defects.* The claim may include statements from paragraphs (a) and (b) of this section that summarize the relationship between folate and neural tube defects and the significance of the relationship except for information specifically prohibited from the claim.

(iii) *Personal history of a neural tube defect-affected pregnancy.* The claim may state that women with a history of a neural tube defect pregnancy should consult their physicians or health care providers before becoming pregnant.

(iv) *Daily value.* The claim may identify the daily value level of 400 µg of folate per day as the target intake goal.

(d) *Model health claims.* The following are examples of model health claims that may be used in food labeling to describe the relationship between folate and neural tube defects:

(1) *Example 1.* Women who consume adequate amounts of folate, a B vitamin, daily throughout their childbearing years may reduce their risk of having a child with a neural tube birth defect. Such birth defects, while not widespread, are very serious. They can have many causes. Adequate amounts of folate can be obtained from diets rich in fruits, dark green leafy vegetables and legumes, enriched grain products, fortified cereals, or a supplement. Folate consumption should be limited to 1,000 µg per day from all sources.

(2) *Example 2.* Women who consume adequate amounts of folate daily throughout their childbearing years may reduce their risk of having a child with a birth defect of the brain and spinal cord. Such birth defects, while not widespread, are very serious. They can have many causes. Adequate amounts of folate, a B vitamin, can be obtained from diets rich in fruits, dark green leafy vegetables and legumes, enriched grain products, fortified cereals, or a supplement. Women who have had a child with a spinal cord birth defect should consult a physician before becoming pregnant. Folate consumption should be limited to 1,000 µg per day from all sources.

(3) *Example 3.* Women who take steps to ensure that their folate intake is adequate throughout their childbearing years may reduce their risk of having a child with a neural tube defect. Such birth defects, while not widespread, are very serious. They can have many causes. Adequate amounts of folate, a B vitamin, can be obtained from diets rich in citrus fruits and juices, dark green leafy vegetables and legumes, enriched grain products such as breads, rice, and pasta, fortified cereal, or a supplement. Folate consumption should be limited to 1,000 µg per day from all sources.

(4) *Example 4.* Women who take steps to ensure that their folate intake is at least 400 µg daily throughout their childbearing years may reduce their risk of having a child with spina bifida or anencephaly, birth defects of the brain or spinal cord that, while not widespread, are very serious. These birth defects can have many causes. Adequate amounts of folate, a B vitamin, can be obtained from diets rich in fruits, including citrus fruits and juices, vegetables, including dark green leafy vegetables and legumes, enriched grain products, including breads, rice, and pasta, fortified cereals, or from a supplement. Women who have had a pregnancy affected with a neural tube defect should consult a physician before becoming pregnant. Folate consumption should be limited to 1,000 µg per day from all sources.

(5) *Example 5.* Some women who consume the Daily Value of folate (400 µg) throughout their childbearing years may reduce their risk of having a child affected with spina bifida or anencephaly, birth defects of the brain or spinal cord that, while not widespread, are very serious. These birth defects can have many causes. Women of childbearing age should choose well-balanced diets that include 2 to 4 servings per day of fruits (including citrus fruits and juices), 3 to 5 servings of vegetables (including dark green leafy vegetables and legumes), 6 to 11 servings of enriched grain products (such as breads, rice, and pasta) or fortified cereals throughout their childbearing years. Such diets provide many essential minerals and vitamins, including folate. Women who may be concerned about their diets may choose to obtain folate from a supplement.

Folate consumption should be limited to 1,000 µg per day from all sources.

(e) *Effective date.* For fortified foods, this regulation is effective on the date the food additive regulation on the use of folic acid that was proposed on October 14, 1993, becomes effective.

Dated: October 1, 1993.

David A. Kessler,

Commissioner of Food and Drugs.

Donna E. Shalala,

Secretary of Health and Human Services.

Note: The following tables are to the Preamble and will not appear in the annual Code of Federal Regulations.

TABLE 1.—FOLIC ACID AND NEURAL TUBE DEFECTS: COMPOSITION OF SUPPLEMENTS USED IN INTERVENTION TRIALS

Composition (vitamins and minerals)	Smithells et al., 1983 (ref. 2)	Medical research council trial (ref. 4)	Hunganan trial (ref. 24)	National research Council (ref. 123)	
				25 to 50 y	
				Female	Pregnant
Vitamin A—IU	4,000	4,000	6,000	2,660[1]	2,660[1]
Vitamin D—IU	400	400	500	200	400
Thiamin (B_1)—mg	1.5	1.5	1.6	1.1	1.5
Riboflavin (B_2)—mg	1.5	1.5	1.8	1.3	1.6
Pyridoxine (B_6)—mg	1.0	1	2.6	1.6	2.2
Vitamin C—mg	40	40	100	60	70
Niacin (Niacinamide)—mg	15	15	19	15	17
Vitamin E—TE	0	0	15	8	8
Folic acid—mg	0.36	4 or 0 (see below)	0.8	0.18	0.40
Vitamin B_{12}—µg	0	0	4	2.0	2.2
Vitamin K—µg	0	0	0	65	65
Ca. pantothenate—mg	0	0	10	4 to 7[2].	
Biotin—mg	0	0	0.2	0.03 to 0.10[3].	
Mg—mg	0	0	100	280	320
Ca—mg	480 mg calcium	240 mg dicalcium	125 mg Ca	800	1,200
P—mg	phosphate	phosphate	125 mg P	800	1,200
				15	30
Fe—mg	75.6 mg Fe	120 mg ferrous sulfate	60 mg Fe	12	15
Zn—mg	0	0	7.5	1.5 to 3.0[3].	
Cu—mg	0	0	1	2.0 to 5.0[3].	
Mn—mg	0	0	1.		
I—µg	0	0	0.		
Se—µg	0	0	0.		
	Treatments: Vitamins (as above) or unsupplemented.	Treatments: (A) Ca+Fe + 4 mg folate, (B) Ca+Fe+vitamins + 4 mg folate, (C) Ca+Fe, (D) Ca+Fe+vitamins without folate.	Treatments: Multivitamin & multimineral supplement or placebo. Placebo contained Zn, Cu, and Mn as above + vitamin C (as calcium ascorbate, 7.3 mg) and lactose.		

[1] 800 RE; 1 IU vitamin A = 0.30 retinol equivalents (RE)
[2] ESADDI (adults)
[3] TE: 1 mg alpha tocopherol = alpha tocopherol equivalent (TE)

TABLE 2.—FOLIC ACID AND NEURAL TUBE DEFECTS: DEFINITIONS OF SUPPLEMENTS WHOSE USE WAS REPORTED IN OBSERVATIONAL STUDIES

Study	Mulinare et al., 1988 (ref. 5)	Mills et al., 1989 (ref. 7)	Milunsky et al., 1989 (ref. 6)	Werler et al., 1993 (ref. 26)
Years covered.	1968 to 1980	1985 to 1987	1984 to 1987	1988 to 1991

TABLE 2.—FOLIC ACID AND NEURAL TUBE DEFECTS: DEFINITIONS OF SUPPLEMENTS WHOSE USE WAS REPORTED IN OBSERVATIONAL STUDIES—Continued

Study	Mulinare et al., 1988 (ref. 5)	Mills et al., 1989 (ref. 7)	Milunsky et al., 1989 (ref. 6)	Werler et al., 1993 (ref. 26)
Outcome	Use of vitamins was protective ...	Use of vitamins or fortified cereals was not protective..	Use of vitamins was protective	Use of vitamins was protective.
Definition of multivitamins.	Multivitamins or prenatal vitamins were not defined; compositions were unknown. Based on years of data collection (1968 to 1980), supplements could have contained 0 to 800 µg of folate/unit.	Multivitamins were defined as supplements containing the U.S. RDA of at least 4 vitamins. No further specification of compositions.	Multivitamins were not defined. A substantial majority of the preparations whose use was reported contained vitamins A, C, D, and/or E. Based on a random sample of 150 multivitamin users, daily doses of folate ranged from 100 to 1,000 µg with distribution as follows: 100 µg, 17%; 300 µg, 23%; 400 µg, 22%; 1,000 µg, 45%.	Multivitamin was defined as any supplement containing at least two vitamins, one of which was water-soluble. Most common dose of folate, 400 µg/unit.

TABLE 3.—FOLIC ACID AND NEURAL TUBE DEFECTS: REPORTED ASSOCIATIONS BETWEEN MATERNAL DIET AND RISK OF NEURAL TUBE DEFECTS

Study	Dietary observations
Laurence, 1983 (Ref. 9)	This intervention study of dietary guidance found that improvement in women's diets from "poor" to "good" led to a 50 percent reduction in recurrence of neural tube defects in a subsequent pregnancy in women at high risk of this complication. "Poor" diets were defined as diets considered to be deficient in first-class protein, usually no fruits or vegetables, and generally with excessive amounts of carbohydrates. "Good" diets were defined as diets providing good intakes of all essential foods, including protein, no excessive amounts of refined carbohydrates, sweets, and soft drinks.
Bower and Stanley, 1989 (Ref. 8) ...	The study found an association between increasing intakes of dietary folate and decreased risk of occurrence of neural tube defects. Protective effects were also observed for increasing intakes of dietary fiber, calcium, vitamin C, and carotene, markers usually associated with consumption of fruits and vegetables.
Milunsky et al., 1989 (Ref. 6)	Dietary folate intake was calculated from the diet portion of the study questionnaire for those women who were not taking a multivitamin supplement. Nonusers of supplements who had dietary folate intakes greater than 100 µg/day had a 50 percent lower incidence of neural tube defects than did nonusers of supplements whose diets provided less than 100 µg of folate per day.
Werler et al., 1993 (Ref. 26)	For nonusers of supplements, there was a statistically significant trend of decreasing risk of occurrence of a neural tube defect for quintiles of dietary folate intake. Percent reductions in risk for daily dietary folate intakes of 0.253 to 0.310 mg, 0.311 to 0.391 mg, and 0.392 to 2.195 mg were 30, 40, and 40 percent, respectively.

TABLE 4.—FORTIFICATION SCENARIOS—ESTIMATED FOLATE INTAKES FOR LOW AND HIGH CONSUMERS[1,2,3,4]

[Goal for the target population: Intakes of low consumers should be as high as possible. Goal for nontarget population groups: Intakes of high consumers should be within the safe range (≤ 1 mg/day).]

Option	Target population				Non-target population											
	F 11 to 18 y		F 19 to 50 y		MF 1 to 3 y		MF 4 to 10 y		M 11 to 18 y		M 19 to 50 y		M 51 + y		F 51 + y	
	Low	High	Low	High	Low	High	Low	High	Low	High	Low	High	Low	High	Low	High
1. Current intakes: foods only	140	420	110	370	120	350	160	430	200	560	160	510	170	480	140	400
2. Current intakes: foods + supplements (400 µg/unit)	150	700	150	700	150	470	190	720	220	810	190	760	200	750	170	710
3. Grains[2] + 0.070 mg/100 g	180	490	160	430	140	390	190	490	260	600	210	560	220	540	180	450
4. Grains + 0.140 mg/100 g	220	550	190	470	160	420	230	530	310	670	260	640	260	600	210	510
5. Grains + 0.350 mg/100 g	350	770	290	680	220	520	350	730	460	980	400	920	370	810	290	690
6. Grains + 0.070 mg/100 g + supplements (400 µg)	190	730	190	750	190	500	240	780	270	900	240	830	260	790	210	770
7. Grains + 0.140 mg/100 g + supplements (400 µg)	240	770	240	790	220	540	270	830	330	950	300	880	300	840	250	800
8. Grains + 0.350 mg/100 g + supplements (400 µg)	370	970	360	970	300	670	390	1,030	490	1,180	460	1,100	420	1,050	350	980
9. Grains, juices[3], & dairy[4] + 0.070 mg/100 g	280	1,110	210	810	370	1,110	400	1,110	440	1,320	280	1,080	310	940	240	810
10 Grains, juices, & dairy + 0.140 mg/100 g	420	1,840	280	1,260	590	1,960	630	1,790	660	2,250	380	1,690	400	1,540	330	1,280
11. Grains, juices, & dairy + 0.350 µg/100 g	830	4,050	480	2,650	1,230	4,550	1,300	4,020	1,230	5,040	650	3,550	670	3,240	580	2,670
12. Grains, juices, & dairy + 0.070 µg/100 g + supplements (400 µg)	320	1,250	280	1,070	450	1,250	480	1,310	470	1,480	330	1,250	360	1,140	310	1,100

[1] Data bases:

A. 1987 to 1988 U.S. Department of Agriculture's Nationwide Food Consumption Survey (NFCS);

B. Only individuals with 3 days of data were selected;

C. This survey apparently underreports food intake. For example, for women 19 to 50 years, the average reported energy intake is only about 70 percent of the current average requirement (1-day data = 70 percent; 3-day average = 67 percent). See text for additional details.

[2] Assumptions used for fortification scenarios—Cereal-grain products: Fortification levels of 0.07, 0.14, and 0.35 mg folic acid/100 g were applied to the following dry enriched cereal-grain products: wheat flours; corn grits; corn meals; farinas; rice; macaroni; spaghetti; and noodles.

For breakfast cereals: The majority of breakfast cereals are currently fortified with 100 µg of folic acid/serving (i.e., 25 percent per serving of the RDI for folic acid). Other breakfast cereals contain 35 to 45 percent of the RDI for folic acid, while a limited number contain 100 percent of the RDIs for many vitamins and minerals, including folic acid. The data base provided brand-specific consumption data for these cereals. For about the fifty top-selling breakfast cereals, in instances in which the current folic acid content of the cereal (identified from a review of food labels in a local supermarket) differed from the values used in the USDA data base, the USDA data base values were updated with the more recent values. Thus, values assigned to these breakfast cereals were generally reflective of what is currently in the marketplace. Note: This correction was not applied to cooked breakfast cereals because of the lack of brand-specific information.

[3] Assumptions used for fortification scenarios—Juices: Fortification levels as above were applied to fruit juices (e.g., orange, grapefruit, lemon, pineapple, apple, grape, prune, peach, etc.).

[4] Assumptions used for fortification scenarios—Dairy products: Fortification levels as above were applied to the following dairy products: fluid cow's milk, reconstituted dry milk, condensed, and evaporated milks; and yogurts (Note: codes for "dry milk, not reconstituted" were excluded).

Use of Dietary Supplements:

The following response categories were considered to represent supplements that might contain folic acid: "multivitamin," "multivitamin with iron or other minerals," "other combination of vitamins and minerals," or "other single vitamins/minerals." The following response categories were considered not to represent supplements that might contain folic acid: "combination of vitamin C and iron," "vitamin C", "iron", or "calcium." Currently available adult supplements contain 400 µg folic acid/unit.

A. For persons ≥ 4 years of age: Persons ≥ 4 years who reported consuming supplements that could contain folic acid (e.g., multivitamins, single vitamins) were assigned an intake value of 400 µg/day if they reported consuming supplements "every day" or "almost every day". Persons ≥ 4 years were assigned an intake value of 200 µg of folic acid daily if they indicated that they consumed supplements that might contain folic acid "every so often".

B. For persons 1 to 3 years of age: Persons 1 to 3 years who reported consuming supplements that could contain folic acid (e.g., multivitamins, single vitamins) were assigned an intake value of 200 µg/day if they reported consuming supplements "every day" or "almost every day". Persons 1 to 3 years were assigned an intake value of 100 µg of folic acid daily if they indicated that they consumed supplements that might contain folic acid "every so often".

TABLE 5.—PROS AND CONS OF FORTIFICATION OPTIONS IN WHICH CEREAL-GRAIN PRODUCTS ARE FORTIFIED WITH 70, 140, OR 350 µg FOLIC ACID/100 g[1]

Options for fortification	Pros	Cons	Comments
Fortify cereal-grain products with 70 □g folic acid/100 g (Estimates #3, 6: Table 4) Estimates of results: —10 µg/serving of breakfast cereal made with fortified wheat flour or corn meal —20 µg/slice of fortified bread —30 µg/serving of noodles made with fortified flour	Low consumers in target population could consume 160 to 180 µg or more of folic acid per day (approximately 35 to 45% increase over current intakes) without supplement use (Est. #3). With supplement use (Est. #6), low consumers in target population could consume 190 µg or more folic acid per day (approximately 30% increase over current intakes). Intakes by high consumers in subgroups of adults 51+ years could be 450 to 540 µg/day without supplement use (Est. #3) and 770 to 790 µg/day with supplement use (Est. #6).	For low consumers, intakes of folate do not reach the PHS-recommended level of 400 µg/day.	Use of 1 mg/day as the maximum safe upper limit of intake is consistent with PHS recommendation. Intakes by high consumers in adult population subgroups would remain within this limit with supplement use, even when considering likely underreporting biases (underreporting of food intake and underestimation of folate content of foods).
Fortify cereal-grain products with 140 µg folic acid/100 g (Estimates #4, 7: Table 4) Estimates of results: —20 µg/serving of breakfast cereal made with fortified wheat flour or corn meal —40 µg/slice of fortified bread —60 µg/serving of noodles made with fortified flour	Low consumers in target population could consume 190 to 220 µg or more folic acid per day (approximately 60 to 80% increases over current intakes) without supplement use (Est. #4). With supplement use (Est. #7)), low consumers in target population could consume 240 µg or more folic acid per day (approximately 60% increase over current intakes).	For low consumers, intakes of folate do not reach the PHS-recommended level of 400 µg/day. Folate intakes by high consumers among adults 51+ years could reach 800 to 840 µg/day with supplement use (Est. #7).	With supplement use, daily intakes of high consumers among children 4 to 10 years exceed 800 µg/day. This value is somewhat below the PHS-recommended safe upper limit without taking into account likely underreporting biases regarding food intakes and underestimation of folate content of foods.
Fortify cereal-grain products with 350 µg folic acid/100 g (Estimates #5, 8: Table 4) Estimates of results: —50 µg/serving of breakfast cereal made with fortified wheat flour or corn meal —90 µg/slice of fortified bread —150 µg/serving of noodles made with fortified flour	Low consumers in target population could consume 290 to 350 µg or more of folic acid/day without supplement use (Est. #5). With supplement use, low consumers in target population could consume 360 to 370 µg folate/day (Est. #8).	Daily intakes of folate for all consumers 11 years and older are in the range of 680 to 980 µg without supplement use and 970 to 1,180 µg with supplement use.	With supplement use, daily intakes of high consumers among children 1 to 3 years and 4 to 10 years are 670 µg and 1,030 µg, respectively, without taking into account likely underreporting biases regarding food intakes and underestimation of folate content of foods.

[1] Examples of levels of folate that could be present in typical products (i.e., breads, breakfast cereals and noodles manufactured from enriched flours) are included for reference purposes. Bread: 1 serving=1 slice=50 g; Composition: Approximately 50% flour. Folic acid content: 17.5 µg folic acid/serving with use of flour fortified with 70 µg/100 g and 35 µg folic acid/serving with use of flour fortified with 140 µg folic acid/100 g. Values rounded to 20 and 40 µg, respectively.

TABLE 6A.—EXAMPLES OF LIKELY DAILY INTAKES OF FOLATE FROM FOLIC ACID-FORTIFIED CEREAL-GRAIN PRODUCTS AND OTHER FOODS IF THE USDA FOOD PYRAMID RECOMMENDATIONS WERE FOLLOWED—LOW INTAKES

Examples of effects of fortification of cereal-grain products with folic acid					
(A) Daily consumption—low intakes based on the USDA food choice pyramid with fortification of cereral-grains at:					
	70 µg/100 g		140 µg/100 g		350 µg/100 g
	Folic acid µg		Folic acid µg		Folic acid µg
4 srvs breads @ 20 µg/srv	80	4 servs breads @ 40 µg/srv	160	4 srvs breads @ 90 µg/srv	360
1 srv cereal	100	1 srv cereal	100	1 srv cereal	100
1 srv noodles/pasta	30	1 srv noodles/pasta	60	1 srv noodles/pasta	150
1 srv milk	5	1 srv milk	5	1 srv milk	5
1 srv cheese	20	1 srv cheese	20	1 srv cheese	20
1 srv peas	90	1 srv peas	90	1 srv peas	90
1 srv cauliflower	55	1 srv cauliflower	55	1 srv cauliflower	55
1 srv veg. w/o sig. folate	0	1 srv veg. w/o sig. folate	0	1 srv veg. w/o sig. folate	0
1 apple	5	1 apple	5	1 apple	5
1 orange	25	1 orange	25	1 orange	25
2 srvs beef	10	2 srvs beef	10	2 srvs beef	10

TABLE 6A.—EXAMPLES OF LIKELY DAILY INTAKES OF FOLATE FROM FOLIC ACID-FORTIFIED CEREAL-GRAIN PRODUCTS AND OTHER FOODS IF THE USDA FOOD PYRAMID RECOMMENDATIONS WERE FOLLOWED—LOW INTAKES—Continued

Examples of effects of fortification of cereal-grain products with folic acid

(A) Daily consumption—low intakes based on the USDA food choice pyramid with fortification of cereal-grains at:

	70 µg/100 g		140 µg/100 g		350 µg/100 g
	Folic acid µg		Folic acid µg		Folic acid µg
Folate µg/day	420	Folate µg/day	530	Folate µg/day	820
+ 1 supplement µg/day	400	+ 1 supplement µg/day	400	+ 1 supplement µg/day	400
Total µ/day	820	Total µ/day	930	Total µ/day	1,200
Percent of RDI	205	Percent of RDI	233	Percent of RDI	305
Percent of RDI attainable from fortified cereal-grain products 210/400 = 53%.		Percent of RDI attainable from fortified cereal-grain products 320/400 = 80%.		Percent of RDI attainable from fortified cereal-grain products 610/400 = 153%.	

The current USDA food pyramid recommends daily consumption of 6 to 11 servings from the bread, cereal, rice, and pasta group, 2 to 3 servings from the dairy group, 3 to 5 servings of vegetables, 2 to 4 servings of fruit, and 2 to 3 servings from the meat, poultry, fish, dry beans, eggs, and nuts group. The examples above show estimates of average daily intakes of folate that could result if the USDA food pyramid recommendations were followed and cereal-grain products were fortified with folic acid. Most breakfast cereals are currently fortified with 25 percent of the RDI for folate/serving (i.e., 100 µg/serving). One option regarding amendment of the food additive regulation for folic acid could permit fortification of breakfast cereals at levels up to 400 µg/serving. The estimates were calculated to show the effects on intakes with these additional sources of folic acid. The "percent of RDI" estimates use the 1980 RDA for folate of 400 µg.

TABLE 6B. EXAMPLES OF LIKELY DAILY INTAKES OF FOLATE FROM FOLIC ACID-FORTIFIED CEREAL-GRAIN PRODUCTS AND OTHER FOODS IF THE USDA FOOD PYRAMID RECOMMENDATIONS WERE FOLLOWED—HIGH INTAKES

Examples of effects of fortification of cereal-grain products with folic acid

(B) Daily consumption—high intakes based on the USDA food choice pyramid with fortification of cereal-grains at:

	70 µg/100 g		140 µg/100 g		350 µg/100 g
	Folic acid, µg		Folic acid, µg		Folic acid, µg
8 srvs breads @ 20 µg/srv	160	8 srvs breads @ 40 µg/srv	320	8 srvs breads @ 90 µg/srv	720
1 srv cereal	400	1 srv cereal	400	1 srv cereal	400
2 srvs noodles/pasta	60	2 srvs noodles/pasta	120	2 srvs noodles/pasta	300
2 srvs milk	10	2 srvs milk	10	2 srvs milk	10
1 srv cheese	20	1 srv cheese	20	1 srv cheese	20
1 srv peas	90	1 srv peas	90	1 srv peas	90
1 srv cauliflower	55	1 srv cauliflower	55	1 srv cauliflower	55
1 srv spinach	50	1 srv spinach	50	1 srv spinach	50
1 srv cabbage	15	1 srv cabbage	15	1 srv cabbage	15
1 srv broccoli	180	1 srv broccoli	180	1 srv broccoli	180
1 apple	5	1 apple	5	1 apple	5
3 oranges	75	3 oranges	75	3 oranges	75
2 srvs beef	10	2 srvs beef	10	2 srvs beef	10
2 srvs beans	140	2 srvs beans	140	2 srvs beans	140
Folate µg/day	1,270	Folate µg/day	1,490	Folate µg/day	2,070
+ 1 supplement µg/day	400	+ 1 supplement µg/day	400	+ 1 supplement µg/day	400
Total µg/day	1,670	Total µg/day	1,890	Total µg/day	2,470
Percent of RDI	418	Percent of RDI	473	Percent of RDI	618
Percent of RDI attainable from fortified cereal-grain products 620/400 = 155%.		Percent of RDI attainable from fortified cereal-grain products 840/400 = 210%.		Percent of RDI attainable from fortified cereal-grain products 1,420/400 = 355%.	

The current USDA food pyramid recommends daily consumption of 6 to 11 servings from the bread, cereal, rice, and pasta group, 2 to 3 servings from the dairy group, 3 to 5 servings of vegetables, 2 to 4 servings of fruit, and 2 to 3 servings from the meat, poultry, fish, dry beans, eggs, and nuts group. The examples above show estimates of average daily intakes of folate that could result if the USDA food pyramid recommendations were followed and cereal-grain products were fortified with folic acid. Most breakfast cereals are currently fortified with 25 percent of the RDI for folate/serving (i.e., 100 µg/serving). One option regarding amendment of the food additive regulation for folic acid could permit fortification of breakfast cereals at levels up to 400 µg/serving. The estimates above were calculated to show the effects on intakes with these additional sources of folic acid. The "percent of RDI" estimates use the 1980 RDA for folate of 400 µg.

TABLE 7.—ESTIMATES OF FOLATE INTAKES IF ALL BREAKFAST CEREALS WERE FO

TABLE 7.—ESTIMATES OF FOLATE INTAKES IF ALL BREAKFAST CEREALS WERE FORTIFIED WITH FOLIC ACID AT 100 µg/srv OR 400 µg/srv: LOW AND HIGH CONSUMERS [1]

Options [1]	Target population				Non-target population											
	F 11 to 18 y		F 19 to 50 y		MF 1 to 3 y		MF 4 to 10 y		M 11 to 18 y		M 19 to 50 y		M 51+ y		F 51+ y	
	Low	High	Low	High	Low	High	Low	High	Low	High	Low	High	Low	High	Low	High
1. Current intakes: foods only	140	420	110	370	120	350	160	430	200	560	160	510	170	480	140	400
If cereals=100 µg/srv	130	390	110	360	120	340	160	410	200	500	160	460	170	420	140	370
If cereals=400 µg/srv	140	880	120	640	170	690	230	830	210	1,090	160	810	180	750	150	620
2. Current intakes: foods + supplements(400 µg/unit)	150	700	150	700	150	470	190	720	220	810	190	760	200	750	170	710
If cereals=100 µg/srv	150	670	150	690	150	460	190	690	220	760	190	730	200	720	170	700
If cereals=400 µg/srv	170	1,040	160	910	250	770	350	1,040	270	1,340	190	970	230	1,000	190	850
3. Grains [2]+0.070 mg/100 g	180	490	160	420	140	390	190	490	260	600	210	560	220	540	180	450
If cereals=100 µg/srv	170	440	150	400	140	360	200	470	260	570	210	520	220	490	170	420
If cereals=400 µg/srv	190	930	160	690	200	710	270	860	280	1,150	220	850	230	800	190	660
4. Grains + 0.140 mg/100 g	220	550	190	470	160	420	230	530	310	670	260	640	260	600	210	510
If cereals=100 µg/srv	220	530	190	460	160	390	230	510	310	650	260	610	260	540	210	470
If cereals=400 µg/srv	240	970	200	730	230	790	310	900	340	1,210	270	930	290	840	220	690
5. Grains + 0.350 mg/100 g	350	770	290	680	220	520	330	730	460	980	400	920	370	810	290	690
If cereals=100 µg/srv	340	760	290	660	220	500	330	690	450	950	400	890	360	790	290	630
If cereals=400 µg/srv	380	1,220	300	890	280	870	430	1,060	520	1,390	420	1,190	410	1,040	320	840
6. Grains + 0.070 mg/100 g + supplements (400 µg)	190	730	190	750	190	500	240	780	270	900	240	830	260	790	210	770
If cereals=100 µg/srv	190	720	190	740	190	480	240	740	270	840	240	790	250	780	210	750
If cereals=400 µg/srv	230	1,090	210	950	270	790	390	1,080	320	1,390	240	1,030	280	1,040	230	900
7. Grains + 0.140 mg/100 g + supplements (400 µg)	240	770	240	790	220	540	270	830	330	950	300	880	300	840	250	800
If cereals=100 µg/srv	250	760	230	780	220	520	280	800	330	910	300	850	300	830	250	790
If cereals=400 µg/srv	270	1,140	250	980	300	810	440	1,120	380	1,440	310	1,090	330	1,060	270	950
8. Grains + 0.350 mg/100 g + supplements (400 µg)	370	970	360	970	300	670	390	1,030	490	1,180	460	1,100	420	1,050	350	980
If cereals=100 µg/srv	370	950	350	950	300	660	390	1,010	490	1,140	460	1,060	420	1,040	340	950
If cereals=400 µg/srv	430	1,300	380	1,130	380	890	550	1,280	570	1,640	480	1,290	470	1,230	390	1,090

[1] Values in the top lines of rows 1 through 8 above are the same as those shown in Table 4 and are estimates of intakes based on current consumption patterns and current marketing practices (lines 1 and 2) and estimates of intakes based on current consumption patterns and current marketing practices with cereal-grain products fortified as described above (lines 3 through 8). Examination of additional options included calculation of intakes if all breakfast cereals were fortified at 100 µg or 400 µg folic acid per serving. All such estimates were based on current consumption patterns.

[2] Fortification of cereal-grain products: Fortification levels of 70, 140, and 350 mneg folic acid/100 g were applied to dry cereal-grain products as described in Table 4.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 93N–0289]

RIN 0905–AD96

Food Labeling; Health Claims for Dietary Supplements

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing not to authorize health claims relating to an association between fiber and cancer, fiber and heart disease, antioxidant vitamins and cancer, *omega*-3 fatty acids and coronary heart disease, and zinc and immune function in the elderly on the label or in the labeling of dietary supplements of vitamins, minerals, herbs, or other similar nutritional substances. The agency has tentatively determined that there is not significant scientific agreement among experts that claims on these nutrient-disease relationships are supported by the totality of publicly available scientific evidence. Thus, the agency is proposing to amend its regulations to make it explicit that health claims on these nutrient-disease relationships are not authorized for foods in conventional food form or for dietary supplements. Elsewhere in this issue of the **Federal Register** FDA is proposing to authorize a health claim with respect to the relationship of folic acid and neural tube defects on the labels and in the labeling of dietary supplements and of foods in conventional food form.

DATES: Written comments by December 13, 1993.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12340 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Judith W. Riggins, Office of Policy (HF–23), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2831.

SUPPLEMENTARY INFORMATION:

I. Background

A. Passage of 1990 Amendments

On November 8, 1990, the President signed into law the Nutrition Labeling and Education Act of 1990 (the 1990 amendments) (Pub. L. 101–535), which amended the Federal Food, Drug, and Cosmetic Act (the act). The 1990 amendments, in part, authorized the Secretary of Health and Human Services (the Secretary), and FDA by delegation, to issue regulations authorizing health claims on the label or labeling of foods. Under these new health claim provisions, a product is misbranded if it bears a claim that characterizes the relationship of a nutrient to a disease or health-related condition, unless the claim is made in accordance with the procedures and standards established under sections 403(r)(3) and (r)(5)(D) of the act (21 U.S.C. 343(r)(3) and (r)(5)(D)).

The 1990 amendments also required (section 3(b)(1)(A)(ii), (b)(1)(A)(vi), and (b)(1)(A)(x)) that the Secretary issue proposed regulations to implement section 403(r) of the act. These provisions also required the Secretary to determine through rulemaking, among other things, whether claims regarding 10 nutrient-disease relationships met the requirements of the act. FDA was asked to evaluate the scientific evidence for the relationships: (1) Dietary fiber and cancer; (2) dietary fiber and cardiovascular disease (CVD); (3) folic acid and neural tube defects; (4) antioxidant vitamins and cancer; (5) zinc and immune function in the elderly; (6) *omega*-3 fatty acids and coronary heart disease (CHD); (7) calcium and osteoporosis; (8) dietary lipids and CVD; (9) dietary lipids and cancer; and (10) sodium and hypertension.

B. The 1991 Health Claims Proposals

In the **Federal Register** of November 27, 1991 (56 FR 60537), FDA proposed general requirements regarding the use of health claims on the labels of both conventional foods and dietary supplements and regarding the content of petitions requesting the use of health claims related to specific substances in food. FDA also published proposals on health claims on the 10 nutrient/disease topics listed above.

Based on its review of the available scientific information, FDA tentatively found that four relationships were supported, and it proposed to allow health claims on food labels for calcium and osteoporosis, sodium and hypertension, fat and cardiovascular disease, and fat and cancer. FDA conditionally concluded that two other claims—fiber and heart disease and fiber and cancer—required additional information. Additionally, because sufficient scientific information was lacking, FDA proposed not to permit claims for four nutrient disease relationships: Folic acid and neural tube defects; antioxidant vitamins and cancer; zinc and immune function in the elderly; and *omega*-3 fatty acids and heart disease.

C. The Dietary Supplement Act of 1992

In October 1992, the Dietary Supplement Act (the DS Act) (Pub. L. 102–571) was enacted. This statute imposed a moratorium on FDA's implementation of the 1990 amendments with respect to dietary supplements until December 15, 1993. The DS Act required FDA to issue proposed rules to implement the 1990 amendments with respect to such dietary supplements by June 15, 1993, and to publish the final rules based on these proposals by December 31, 1993. An exception to this moratorium was a provision that permitted FDA to authorize health claims for dietary supplements with respect to those nutrient-disease relationships for which the agency authorized claims on foods in conventional food form. The DS Act also amended the 1990 amendments to state that if the agency did not meet the established timeframe for issuance of final rules with respect to health claims on dietary supplements, the proposed regulations would be considered final regulations.

D. The 1993 Final Rules for Health Claims for Foods in Conventional Food Form

On January 6, 1993, FDA published final rules on the general requirements for health claims on the labels and in the labeling of foods in conventional food form (58 FR 2478) and final rules authorizing health claims on seven nutrient/disease relationships (calcium and osteoporosis; fat and cancer; saturated fat and cholesterol and CHD; fiber-containing grain products, fruits, and vegetables and cancer; fruits, vegetables and grain products that contain fiber and risk of CHD; sodium and hypertension; and fruits and vegetables and cancer).

It should be noted that of the seven health claims that FDA authorized, three were for fresh fruits and vegetables and grains, and thus these claims are not authorized on dietary supplements. FDA will be considering the nutrient-disease relationships that led the agency to authorize these claims, fiber and cancer, fiber and CHD, and antioxidant vitamins and cancer, as well as two others, *omega*-3 fatty acids and CHD and zinc and immune function in the elderly, for dietary supplements in this document. FDA will consider the evidence on folic acid and neural tube

defects in a document published elsewhere in this issue of the **Federal Register**.

E. The 1993 Proposed Rules for Health Claims on Dietary Supplements

In response to the 1990 amendments and the DS Act, FDA proposed in the **Federal Register** of June 18, 1993 (58 FR 33700), to revise its food labeling regulations to make dietary supplements of vitamins, minerals, herbs, and other similar nutritional substances subject to a standard and procedure for the use of health claims that characterize the relationship of a substance to a disease or health-related condition on the label or in labeling that are the same as those that Congress established for foods in conventional food form.

The agency did not address the specific nutrient-disease relationships for nutrients in dietary supplements that it is required to consider under sections 3(b)(1)(A)(vi) and (b)(1)(A)(x) of the 1990 amendments and under the DS Act. It stated that it would address these relationships in the near future. It is doing so in this document and the companion document on folic acid and neural tube defects that is published elsewhere in this issue of the **Federal Register**.

F. Provisions of the Proposed Rule—Regulation Amended

Section 101.71(a) (21 CFR 101.71(a)) of the January 6, 1993, final rule specified that the agency had not authorized health claims on the label or in the labeling of foods in conventional food form for six nutrient-disease relationships: Fiber and cancer; fiber and heart disease; antioxidant vitamins and cancer; *omega*-3 fatty acids and CHD; folic acid and neural tube defects; and zinc and immune function in the elderly.

In this document, FDA is proposing to amend § 101.71(a) to state that health claims regarding five of these nutrient-disease relationships are not authorized for foods in conventional food form or for dietary supplements of vitamins, minerals, herbs, or other similar substances. Elsewhere in this issue of the **Federal Register** FDA is proposing to remove the sixth, folic acid and neural tube defects, from the list.

II. Dietary Fiber and Cancer

A. The 1991 Proposed Findings

In the **Federal Register** of November 27, 1991 (56 FR 60566), FDA published a proposal on the use of a health claim regarding the relationship of dietary fiber and cancer. After reviewing the available scientific evidence, it tentatively found that there was not a sufficient basis to authorize the use of health claims regarding the relationship of dietary fiber and a reduction in the risk of cancer on the labels or in the labeling of foods, including dietary supplements. The agency tentatively found that while data supported an association between consumption of fiber-rich plant foods and a reduced risk of cancer, they did not establish a basis on which to find that this effect was attributable to the fiber itself.

FDA limited its review of the scientific evidence relating ingestion of dietary fiber and cancer to the topic of dietary fiber and the risk of colorectal cancer. FDA deemed this limitation appropriate because the great majority of epidemiologic and intervention studies have focused on colon cancer, as have virtually all animal studies on this topic. The strongest support and largest volume of evidence for a possible protective effect of fiber-rich diets is for colon and rectal cancers (colorectal cancer), the second leading causes of cancer deaths in the United States. FDA found that relationships between dietary fiber and the risk of cancer at other sites (for example, breast, stomach, endometrium, and ovaries) had been less extensively examined but were the focus of considerable research effort (56 FR 60566 at 60576).

In deciding whether to authorize a claim relating dietary fiber to cancer, FDA considered all available evidence on this topic, including extensive review of consensus documents like "The Surgeon General's Report on Nutrition and Health," the National Academy of Sciences' "Diet and Health, Implications for Reducing Chronic Disease Risk," and other relevant reports and other reviews by recognized scientific bodies (56 FR 60566 at 60569 and 60570) and reports in the scientific literature.

FDA cited several key factors (56 FR 60566 at 60576 and 60577) that formed a basis for its tentative conclusion that the use of a health claim relating the intake of fiber to a reduced risk of cancer was not sufficiently supported by scientific evidence. These factors included: (1) The fact that the prospective epidemiologic studies that exist are few in number and have had mixed results; (2) insufficient data exist to demonstrate that it is the total dietary fiber, or a specific fiber component, that is related to any reduction of cancer risk; (3) the need for better defined measures of dietary fiber and for standardized descriptions of the source, type, and amount of dietary fiber; and (4) a lack of composition data on the fiber content of foods that precluded estimates of dietary intakes of total dietary fiber or fiber components in most human studies (56 FR 60566 at 60577 and 60578).

B. The January 1993 Final Rule

In the **Federal Register** of January 6, 1993 (58 FR 2537), FDA published a final rule that announced its decision to authorize a health claim regarding the relationship of diets low in fat and high in fiber-containing grain products, fruits, and vegetables to a reduced risk of cancer. The agency reviewed numerous authoritative documents, as well as more recent research on dietary fiber and cancer risk (58 FR 2537 at 2542 and 3543). In addition, the agency reviewed the comments that it had received on the November 1991 proposal (58 FR 2537 at 2540 and 2541). The agency concluded that the publicly available scientific evidence supports an association between diets low in fat and high in fiber-containing grain products, fruits, and vegetables and reduced risk of cancer (58 FR 2537 at 2544). FDA explained the basis for this conclusion, listed the elements that had to be addressed in any health claim, listed the circumstances in which a food would be eligible to bear a claim, provided for additional optional information that could be included as part of the claim, and set out two model health claims that could be used on labeling (58 FR 2537 at 2544 to 2545).

The agency went on to state, however, that based on the totality of the publicly available scientific evidence, including recently available evidence, there was not significant scientific agreement among qualified experts that a claim relating dietary fiber, per se, to a reduced risk of cancer was scientifically valid. FDA reviewed the new scientific evidence, including studies that focused on prior cholecystectomy as a risk factor for right-sided colon cancer (58 FR 2537 at 2542); colonic adenoma incidence based on sigmoidoscopy biopsy reports (58 FR 2537 at 2543); dietary factors in a case-control study of colonic polyp patients (58 FR 2537 at 2543); rectal cell proliferation, fecal bile acid concentration, and fecal pH (58 FR 2537 at 2543); fecal short-chain fatty acid composition in controls and patients with resected adenomatous polyps and resected colonic cancer (58 FR 2537 at 2543); and the effect of fat and cellulose fiber on the growth and biochemical characteristics of two human colon cancer cell lines implanted subcutaneously in mice (58 FR 2537 at 2543). These new studies provided data on the possible link between consumption of dietary fiber and reduced risk of colon cancer. However,

with the exception of one study that had limited applicability (see 58 FR 2537 at 2543), none of the studies provided evidence of an independent contribution of fiber itself (distinct from its presence in food) to risk reduction. Rather, the studies showed a relationship between diets rich in fiber-containing foods and a reduced risk of cancer (58 FR 2537 at 2543). In addition, preliminary results of a study on the effects of amount and type of dietary fiber on colonic bacterial enzymes and bile acids in humans supported FDA's observation that insoluble fiber has not been shown to be protective (58 FR 2537 at 2543).

In addition to these factors, the agency's decision was based on the absence of a well-defined measure of dietary fiber and of standardized descriptions of source, type, and amount of dietary fiber. The agency identified factors, including the inability of commonly used methodologies to detect variable characteristics of fiber (e.g., particle size and chemical composition), the inability to identify the characteristics among fibers that are predictive of physiological effects, and the general lack of clear evidence on the mechanisms of action of fibers, that made it difficult to establish the role of fiber in the health effects of diets that are low in fat and high in fiber-rich foods (58 FR 2537 at 2544).

The full discussion from the proposed and final rules, including the studies cited in those documents is referenced herein.

C. Summary of Comments

In issuing the final rules in January of 1993, the agency recognized that an undertaking of the magnitude of the agency's rulemaking under the 1990 amendments was bound to include certain unintended technical problems. Therefore, the agency invited comments on technical matters and addressed them in technical amendment final rules in the **Federal Register** of June 18, 1993 (58 FR 33700).

Two comments requested clarification of the term "without fortification" as used in the final rules. One of these comments also requested clarification that the use of fiber-containing ingredients in bakery products that already contain fiber does not constitute fortification. Another comment stated that in the agency's discussion of dietary fiber in its final rule on mandatory nutrition labeling, it equated "fortification" with "supplementation," a definition that connotes an addition to a fiber source so that the resulting level of fiber in that source exceeds the indigenous level (58 FR 2079 at 2096, January 6, 1993). Therefore, the comment asked FDA to clarify that the combination of multiple grains in a food, each of which contains an indigenous level of fiber, is not fortification as the agency used the term in its final rule.

The questions raised in these comments specifically request clarification of the agency's criteria regarding the definition of "fortification." These comments are not relevant to the issue of whether the agency may authorize a health claim on the relationship of dietary fiber to cancer. Therefore, the agency will address these comments in a separate **Federal Register** document.

The agency did not receive any comments that provided any information that would support a health claim on the labels or in the labeling of dietary supplements regarding the relationship of dietary fiber and reduced risk of cancer in response to the January 6, 1993, final rule. Thus, the agency is not aware of any basis to find that a different conclusion than it reached in January 1993 is appropriate on whether to authorize a claim on fiber, specifically the fiber in dietary supplements, and the risk of cancer.

D. The Proposal

Based on the totality of the publicly available scientific evidence, FDA has tentatively concluded that there is not significant scientific agreement among qualified experts that a health claim on the labels or in the labeling of dietary supplements regarding the relationship of dietary fiber and reduced risk of cancer is scientifically valid. Numerous human and animal studies have examined the possible role of dietary fiber intake in reducing the risk of developing cancer. Most correlational and many (but not all) case-control studies show that diets high in fiber-containing foods (whole grains, fruits, and vegetables) are associated with reduced risk of colorectal cancer. These diets differ, however, in levels of many nutrients and types of dietary fiber, making it difficult to ascribe the observed nutrient and disease relationship to a single nutrient. Overall, the available data are not sufficiently conclusive or specific for fiber to justify authorization of a health claim relating the intake of dietary fiber to a reduced risk of cancer on the labels or in the labeling of dietary supplements.

Because a supplement would contain only fiber, and there is no evidence that any specific fiber itself caused the effects that were seen in studies involving fiber-rich fruits, vegetables, and grain products, FDA tentatively finds that an appropriate basis for proposing to authorize a claim on dietary fiber and cancer on dietary supplements does not exist (56 FR 60566 and 58 FR 2537).

III. Dietary Fiber and Cardiovascular Disease

A. The 1991 Proposed Findings

In the **Federal Register** of November 27, 1991 (56 FR 60582), FDA published a proposal on the use of a health claim regarding the relationship of dietary fiber and cardiovascular disease. After reviewing the available evidence, it tentatively concluded that there was no basis to authorize such health claims on the labels or in labeling of foods, including dietary supplements. The agency tentatively found that while an association appeared to exist between the consumption of fiber-rich foods and a reduced risk of cardiovascular disease, the data did not provide a basis on which it could not attribute this effect to the fiber itself (56 FR 60582).

FDA limited its review of the scientific evidence related to ingestion of dietary fiber and cardiovascular disease to the topic of soluble dietary fiber and risk of developing CHD. Previous Federal government and other reviews by recognized scientific bodies and the majority of research efforts had focused on this topic. Therefore, FDA tentatively concluded that this limitation was appropriate (56 FR 60582 at 60592).

In deciding whether to authorize a claim relating dietary fiber to cardiovascular disease, FDA considered all available information on this topic, including the incidence of cardiovascular disease in the United States, current chemical information on dietary fiber and analytical methodology used to determine the biological and health consequences of dietary fiber intake, and all available information on the risk factors that contribute to CHD (56 FR 60582 at 60583). FDA also considered recent Federal government comprehensive reports, reviews, and dietary guidelines on this topic (56 FR 60582 at 60584). The agency's tentative conclusion that the totality of the evidence did not provide a sufficient basis to authorize a health claim on dietary soluble fiber and reduction in risk of developing CHD was based on its tentative finding that while many human studies showed a relationship between diets high in plant foods (e.g., fruits, vegetables, and grains) and a reduced risk of developing CHD, these diets differed in the levels of many

nutrients and in types of dietary soluble fiber, making it difficult to ascribe the observed effects to a single nutrient (56 FR 60582 at 60592).

FDA reviewed over 30 human studies published in the United States over the last several years. Under the study conditions, many investigators observed a decline in blood cholesterol levels with increasing intakes of soluble fiber. Most studies, however, were of very short duration and, therefore, could not establish long-term benefits from high soluble fiber diets. Questions of long-term effects were raised by the observation of an initial decline in blood cholesterol levels followed by a return upwards towards baseline in some of the longer studies, even when the investigators reported excellent compliance for consumption of test substances (56 FR 60582 at 60591).

Based on the studies it reviewed, FDA tentatively concluded that serum cholesterol responses were affected by a number of factors, including initial serum cholesterol level, base diet, self-initiated changes to base diet (particularly changes in intake of saturated fat and polyunsaturated fat) during the test period, body weight, exercise, medications, general health, and other lifestyle variables. These confounding factors, which were generally not well controlled within the individual studies and which made cross-study comparisons difficult, made it impossible to draw conclusions about the relationship of fiber intake to serum cholesterol levels (56 FR 60582 at 60593).

FDA cited certain additional factors that contributed to its tentative conclusion that the available data did not demonstrate that soluble dietary fiber, or a specific measurable and quantifiable subcomponent of dietary fiber, is related to lower blood cholesterol levels (56 FR 60582 at 60592). These factors included: (1) The need for better defined measures of dietary fiber and for standardized descriptions for source, type, and amount of dietary fiber; and (2) a lack of composition data on the fiber content of foods that precluded estimates of dietary intakes of total dietary fiber or fiber components in most human studies (56 FR 60582 at 60593 through 60595).

B. The January 1993 Final Rule

In the **Federal Register** of January 6, 1993 (58 FR at 2552), FDA published a final rule announcing its decision to authorize a health claim regarding the relationship of diets low in saturated fat and cholesterol and high in fruits, vegetables, and grain products that contain dietary fiber (particularly soluble fiber) and a reduced risk of CHD. The agency reviewed numerous authoritative documents, as well as recent research on dietary fiber and CHD risk (58 FR 2552 at 2552 through 2562). In addition, the agency reviewed the comments that it received (58 FR 2552 at 2562 through 2572).

FDA concluded that the publicly available scientific evidence supports an association between diets low in saturated fat and cholesterol and high in fruit, vegetables, and whole grains that contain soluble fiber to a reduced risk of CHD (58 FR 2552 at 2572). The agency explained the basis for its conclusion and set out the elements that had to be addressed in any health claim (58 FR 2552 at 2572 through 2574).

In the same document (58 FR 2552), FDA announced its decision to not authorize the use of health claims regarding the relationship of dietary fiber and a reduced risk of CHD on the label and labeling of foods. FDA found that the available scientific evidence was not sufficiently conclusive or specific for soluble fiber to justify use of a health claim for this relationship (58 FR 2552 at 2572).

FDA reviewed new scientific evidence including studies on mildly to moderately hypercholesterolemic individuals and normocholesterolemic individuals using multiple sources of soluble fiber, including oat bran and other cereal brans, legumes, pectin, psyllium, and guar gum (58 FR 2552 at 2553 through 2558). The agency noted that the studies had significant design flaws, including very small sample sizes; inadequate control of confounding factors, such as concomitant weight losses and changes in other dietary components, that may have affected some studies; and the absence of adequate data to ensure that dietary changes other than differences in soluble fiber intakes had not occurred. The agency determined that, given inconsistencies in results among similar studies using apparently similar fibers, the physiological effects of particular fibers were not consistently predictable by an analytical definition of dietary fiber but rather varied, in some unknown way, among different sources or combinations of sources of dietary fiber. Therefore, the agency concluded that generalizing results from one type of fiber source to another in determining whether the relationship between soluble fiber and heart disease is supported by the evidence requires caution (58 FR 2552 at 2559).

The agency also reviewed new animal studies on the relationship between specific soluble fibers and plasma cholesterol and the relationship between *beta*-glucan and plasma cholesterol (58 FR 2552 at 2559 through 2562). The agency determined that these studies provided evidence to support the likely effectiveness of soluble fibers relative to the cholesterol-lowering characteristics of diets high in some cereals. However, the animal studies, like the human studies, failed to provide adequate specifications to characterize the test fiber sources and did not provide characteristics or commercial sources of the soluble fibers used as test substances (58 FR 2552 at 2562).

Therefore, the agency concluded that, overall, the available data were not sufficient to demonstrate that it is total soluble dietary fiber, or a specific measurable and quantifiable subcomponent of that fiber, that is related to lower blood cholesterol levels (58 FR 2552 at 2562). The full discussion from the proposed and final rules, including the studies cited in those documents, is referenced herein.

C. Summary of Comments

In issuing the final rules in January of 1993, the agency recognized that an undertaking of the magnitude of the agency's rulemaking under the 1990 amendments was bound to include certain unintended technical problems. Therefore, the agency invited comments on technical matters and addressed them in technical amendment final rules in the **Federal Register** of June 18, 1993 (58 FR 33700).

The only comments that FDA received about fiber were those that it described in its discussion of fiber and cancer. The agency did not receive any comments that provided information that would support a health claim on the labels or in the labeling of dietary supplements regarding the relationship of dietary fiber and reduced risk of cardiovascular disease, including CHD, in response to the January 6, 1993, final rule. Thus, the agency is not aware of any basis to find that a different conclusion than it reached in January 1993 is appropriate on whether to authorize a claim on dietary supplements on this nutrient-disease relationship.

D. The Proposal

Based on the totality of publicly available scientific evidence, FDA has tentatively concluded that there is not significant scientific agreement among qualified experts that a health claim regarding the relationship of dietary fiber and reduced risk of cardiovascular disease on the labels or in the labeling of dietary supplements is valid

A major limitation in designing and evaluating research studies has been the need for better defined measures of dietary soluble fiber and standardized descriptions of source, type, and amount of dietary soluble fiber. Commonly used analytical methodologies do not detect many of the characteristics that may vary among fibers and that may be related to biological function. Other components associated with soluble fibers in foods may also have some ability to affect blood cholesterol levels. The inability to detect many of the differences among fibers, fiber components, and other substances in foods that contain soluble fiber, and the general lack of conclusions regarding the mechanisms of action of soluble fibers, raise questions about the ability of commonly used analytical methods to adequately predict biological actions of specific fibers. The currently available scientific evidence is not sufficiently conclusive or specific for soluble fiber to justify use of a health claim relating the intake of dietary fiber to a reduced risk of cardiovascular disease, including CHD.

Because a dietary supplement would contain only fiber, and there is no evidence that the fiber itself caused the effects that have been seen in studies of diets low in saturated fat and cholesterol and high in fruits, vegetables, and whole grains, FDA tentatively finds that an appropriate basis for proposing to authorize a claim on dietary fiber and cardiovascular disease on dietary supplements does not exist (56 FR 60582 and 58 FR 2552).

IV. Antioxidant Vitamins and Cancer

A. The 1991 Proposed Findings

In the **Federal Register** of November 27, 1991 (56 FR 60624), FDA published a proposal on the use of a health claim regarding the relationship of antioxidant vitamins and cancer. In deciding whether to authorize a claim, FDA examined all available information on this topic (56 FR 60624 at 60625 and 60626), including the mechanisms of carcinogenesis and its relationship to antioxidants, the interactions among antioxidants, and the associations between *beta*-carotene and risk of cancer (56 FR 60624 at 60627). The agency also considered the regulatory history of antioxidant vitamins and all comments that it had received in response to a request for scientific data and information (56 FR 60624 at 60628 and 60629).

The agency tentatively found that there was no basis to authorize such claims regarding the relationship of antioxidant vitamins and cancer on the labels and in the labeling of foods. The agency found that strong epidemiologic evidence existed that showed that consumption of fruits and vegetables, which tended to contain higher amounts of vitamin C, were associated with reduced risk of cancers in some sites, notably the stomach and gastrointestinal tract. However, the agency also tentatively found that it was not possible to determine from the available data whether the reduced risks of cancer at specific sites were caused by the vitamin C content of the foods, by other components that were present in those foods, or by general dietary patterns that included those foods (56 FR 60624 at 60636). The agency further recognized that consumption of food sources of vitamin E was frequently, but not consistently, associated with lowered risk of cancer at a number of sites. However, the agency tentatively concluded that the data did not demonstrate that vitamin E itself was responsible for this association, and that the data did not permit identification of the other factors that might produce or prevent the effect. In addition, the agency tentatively found that the data were insufficient to determine the amount of vitamin E needed to produce the effect (56 FR 60624 at 60638).

B. The January 1993 Final Rule

In the **Federal Register** of January 6, 1993 (58 FR 2622), FDA published a final rule that announced its decision to authorize a health claim regarding the relationship of diets low in fat and high in fruits and vegetables (foods that are low in fat and may contain dietary fiber, vitamin A, and vitamin C) to a reduced risk of cancer. The agency reviewed numerous authoritative documents as well as new studies on the association of intake of *beta*-carotene, vitamin C, and vitamin E and the risk of cancer (58 FR 2622 at 2623 through 2627 and 2636 through 2639). The agency also reviewed the comments on this relationship that it had received (58 FR 2622 at 2627 through 2633). The agency concluded that the publicly available scientific evidence supported an association between diets high in fruits and vegetables that are good sources of two of the antioxidant vitamins (vitamin A as *beta*-carotene and vitamin C) and a reduced risk of cancer (58 FR 2622 at 2633). FDA described the information concerning *beta*-carotene, vitamin C, and fruits and vegetables that served as a basis for its decision (58 FR 2622 at 2633 and 2634) and explained the basis for the requirements that it was establishing for the health claim (58 FR 2622 at 2635 and 2636).

FDA went on to announce (58 FR 2622) its decision not to authorize the use of a health claim regarding the relationship of antioxidant vitamins and cancer on the label or labeling of foods. Based on the totality of the publicly available scientific evidence, including the recently available evidence, the agency concluded that there was not significant scientific agreement among qualified experts as to whether the observed protective effects of fruit and vegetable consumption on cancer risk were the result of a single or combined effect of the antioxidant vitamins and other nutrients with antioxidant functions (i.e., selenium), of unmeasured components of such foods such as nonnutritive components, or of displacement of other known risk components (such as fats and calories) within the total diet (58 FR 2622 at 2634). Therefore, the agency concluded that a claim relating antioxidant vitamins to reduced risk of cancer was not supported by available scientific evidence.

1. Vitamin E

FDA concluded that the available scientific data did not support that there is a relationship between vitamin E and a reduced risk of cancer. Most of the studies on the possible protective effect to vitamin E related plasma or serum levels of vitamin E (rather than food consumption) to cancer risk. FDA recognized that some evidence showed an association of low plasma serum levels of vitamin E and an increased cancer risk. The agency found, however, that the available evidence was not adequate to determine whether this association was the result of an effect specific to vitamin E or the result of other unmeasured factors that are associated with those dietary patterns that would produce such plasma serum levels (58 FR 2622 at 2633). FDA recognized that the animal data and biochemical data provided a basis on which to hypothesize a protective effect of vitamin E (*alpha*-tocopherol) in humans but found that the data from epidemiological studies, although providing some suggestion of an effect, were not sufficient to conclude that such effects were of importance in humans. Therefore, the agency concluded that, although vitamin E has been shown to have an antioxidant effect in humans, the data were not sufficient to associate such effects with protection against cancer (58 FR 2622 at 2633).

2. *Beta*-carotene

Based on the totality of the scientific evidence and comments that it received

relative to the available evidence, FDA concluded that the data did not support the relationship of *beta*-carotene (provitamin A) to a reduced cancer risk. Although the available scientific human data showed an association of consumption of fruits and vegetables and calculated *beta*-carotene intakes from these foods with reduced risk for some types of cancer, the agency concluded that the available scientific evidence was not sufficient to conclude that the *beta*-carotene, as opposed to some other component of these foods, was responsible for the protective effect (58 FR 2622 at 2633).

Consistent with earlier studies reviewed in the proposed rule (56 FR 60624 at 60634), the more recent studies supported findings that there was an inverse relationship between consumption of fruits and vegetables and the risk of cancer. This relationship was strongest for lung cancer. Intakes of the green and yellow vegetables had also been shown to be inversely associated with cervical cancer, but the evidence was not as consistent as with lung cancer. These studies were based on calculated intakes of nutrients from these foods. However, the agency said that it was not possible to determine from these studies what substance or substances in these foods were responsible for the results. FDA found that *beta*-carotene may have been responsible for the effect, but that its presence in these foods may simply have served as a marker for some other unmeasured substances that were responsible for the protective effect of fruits and vegetables (58 FR 2622 at 2626).

3. Vitamin C

The data reviewed by FDA in the final rule were compatible with the tentative conclusion in the proposed rule that consumption of fruits and vegetables rich in vitamin C might protect against some types of cancer (58 FR 2622 at 2626). These data also provided additional indications of a mechanism to explain the relationship between vitamin C and reduced risk of stomach cancer. The relatively small number of studies reported after the publication of the proposed rule were in agreement with earlier findings that consumption of fruits and vegetables was protective against cancer at several sites, particularly stomach cancer. The new studies, taken together with previous studies, indicated that consumption of fruits and vegetables is most consistently protective against cancers of the stomach, lung and cervix, and less consistently protective at other sites. These data, however, were not sufficient to identify vitamin C, as opposed to other substances in these foods, as being responsible for the observed protective effect (58 FR 2622 at 2626).

FDA also recognized that the mechanistic and animal studies suggested that vitamin C may reduce the risk of cancer through the mechanism of inhibition of nitrosamine synthesis. The stomach is the likely site of highest *N*-nitroso compound exposure and is the site for which the data were the most complete. These data provided a mechanistic basis for understanding a possible protective effect of vitamin C for stomach cancer risk. However, FDA concluded that nitrosation had not been accepted by the general scientific community as a validated risk factor for stomach cancer. One of the unsolved questions was whether studies of this mechanism for the Chinese and other populations, which differ from the U.S. population in genetic, dietary, and environmental risk factors, adequately explain the etiology of stomach cancer in the United States (58 FR 2622 at 2627).

The studies showing the relationship of *N*-nitroso compounds (a class of compounds with known carcinogenicity) to stomach cancer provided evidence for a mechanism by which a specific vitamin C effect might occur for this and other cancers (e.g., esophageal and uterine cervical). When considered together, the different types of data were suggestive, but not conclusive, that vitamin C may be responsible for at least part of the reduction in risk of stomach cancer associated with consumption of diets high in fruits and vegetables in U.S. populations. Given differences in rates and likely etiologies of stomach cancer among different cultures and geographic areas, FDA concluded that there was not significant scientific agreement either that this mechanism is an etiologic factor in stomach cancer risk in the United States, or that qualitative changes in production and excretion of nitroso-compounds are a risk factor for stomach cancer (58 FR 2622 at 2634).

In order to allow the issue of intermediate or surrogate markers (such as the formation of nitroso-compounds) for cancer risk to be more fully evaluated, FDA stated that it would convene an advisory committee in the near future to make recommendations that could be applied to evaluations of data for determining the scientific basis for health claims relating antioxidant vitamin intakes to cancer risk (58 FR 2622 at 2634).

FDA summarized its considerations of all comments received (58 FR 2622 at 2630 through 2632) and recent scientific evidence (58 FR 2622 at 2633 and 2634) in its examination of the issues. The full discussion from the proposed and final rules, including the studies cited in those documents, is referenced herein.

C. Summary of Comments

In response to the January 6, 1993, final rule, FDA received comments that raised the following concerns: Two comments requested that the agency raise the threshold (percentage of Recommended Dietary Allowance (RDA)) at which a product could bear a health claim. One of these comments also requested that FDA broaden the scope of products that could bear a claim regarding relationship of antioxidant vitamins and a reduced risk of cancer.

A third comment stated that although advisory committees can be helpful in reaching scientific conclusions, the result can be predetermined depending on the persons selected. It urged the agency to make every attempt to ensure that the membership of the committee on antioxidants is balanced to encompass the spectrum of nutritional thought. Another comment stated that the agency should allow consumers to receive accurate and balanced information where there is a reasonably good chance of benefit and virtually no safety risk. Another comment objected to the agency's position in the final rule that it would not be permissible for a health claim to imply that levels clearly beyond the range attainable in the context of the total daily diet would be effective in reducing the risk of a disease or health-related condition, stating that this was an implied premise that products such as vitamins and minerals are not really foods. Another comment requested that the agency provide examples to clarify the meaning of the section of the final rule that requires that qualifying nutrients be based on natural levels in foods.

None of these comments are relevant to the issue of whether there is an appropriate scientific basis for the agency to authorize a health claim on the relationship of dietary fiber to cardiovascular disease, nor did any of them provide any additional information upon which the agency could rely to authorize a health claim for this relationship. Thus, the agency did not receive any information in these comments that would support a different conclusion on a health claim regarding the relationship of antioxidant vitamins and cancer than the one that it reached regarding a health claim on this nutrient-disease relationship for foods

in conventional food form in the January 6, 1993, final rule.

As for the matters that were raised in the comments, the latter comments relate to the standard and procedure for health claims on dietary supplements. These issues will be dealt with by FDA as part of the rulemaking instituted in June by FDA (58 FR 33700). As for the makeup of FDA advisory committees, the agency is required by the Federal Advisory Committee Act to ensure that its advisory committees are balanced, and it always endeavors to ensure that balance in fact exists. The basis on which the agency chose the level necessary to qualify for the health claim was fully explained in the final rule (see 58 FR 2622 at 2636). The comments provided no information that would cause the agency to conclude that the basis that is set out for the amount of vitamin A or vitamin C that must be present in the food for it to qualify for a health claim was not appropriate. Finally, as explained in this document, FDA has not been provided with evidence that would justify broadening the scope of products that could bear the claim.

D. The Proposal

FDA has tentatively concluded, based on the totality of publicly available scientific evidence, that there is not a sufficient basis to authorize a health claim regarding the relationship of antioxidant vitamins and cancer on the labels or in the labeling of dietary supplements. While populations with diets rich in fruits and vegetables experience many health advantages, including lower rates of some types of cancers, it is not possible to specifically determine that the two antioxidant vitamins (*beta*-carotene and vitamin C) that are contained in fruits and vegetables are responsible for this effect or to rule out the possibility of significant protective effects from nonmeasured components in these foods. Since many food substances (both nutritive and nonnutritive) coexist in fruits and vegetables, an observed correlation between a measured nutrient and a disease risk may be a surrogate for a "true" correlation between a coexistent, but a nonmeasured or an unknown, food substance. Currently, there is not significant scientific agreement as to whether the observed protective effects of fruits and vegetables are the result of a single or combined effect of the antioxidant vitamins and other nutrients with antioxidant functions (e.g., selenium), to other nutritive compounds in such foods, to unmeasured components of such diets, or to displacement of other known risk components within the total diet.

Because a dietary supplement would contain only the antioxidant vitamins, and there is not significant scientific agreement that the antioxidant vitamins alone caused the effects that were observed in the relevant studies, FDA tentatively finds that an appropriate basis for proposing to authorize a claim on antioxidant vitamins and cancer on dietary supplements does not exist (56 FR 60624 and 58 FR 2622).

V. Zinc and Immune Function in the Elderly

A. The 1991 Proposed Findings

In the **Federal Register** of November 27, 1991 (56 FR 60652), FDA published a proposal on the use of the health claim regarding the relationship of zinc and immune function in the elderly. Based on its review of the available scientific evidence, the agency tentatively concluded that there was not a sufficient basis to authorize the use of a health claim regarding the relationship of zinc and immune function in the elderly on the label or in the labeling of foods. The agency stated that a specific protective role of zinc supplementation of the elderly population had not been demonstrated.

In deciding whether to authorize a claim regarding this nutrient-disease relationship, FDA reviewed all available scientific evidence on this topic, including public health aspects of zinc and immune function in the elderly, mechanisms and measures of immunity, and immune function in aging (56 FR 60652 at 60653). FDA also conducted an extensive review of consensus documents and of reports in the scientific literature (56 FR 60652 at 60653 and 60654 through 60663). In addition, FDA reviewed comments that it received on this nutrient-disease relationship (56 FR 60652 at 60654).

FDA tentatively found that the scientific evidence showed that proper dietary zinc levels are essential for adequate function of the immune system, and that dietary zinc intake, serum zinc, and cell-mediated immunity all decline with advancing age. However, the agency tentatively concluded that the available data did not provide a basis on which to find that increased zinc intake can reverse the age-related decline in immunocompetence in the general healthy elderly population in the United States. In fact, the agency noted that some evidence suggested that it may suppress immune function (56 FR 60652 at 60661).

The data evaluated by FDA included seven human studies in which elderly subjects were supplemented with zinc to determine its influence on immune system function. The results of four of the earliest published studies suggested a zinc-associated enhancement of several measures of immune function. However, FDA noted that the reliability of three of these studies was limited by the fact that they included very few individuals, and by the fact that the tested subjects were not representative of the general elderly population. Moreover, FDA noted that the results of these initial reports have not been substantiated by more recent, larger studies of more rigorous experimental design (56 FR 60652 at 60661).

B. The January 1993 Final Rule

In the **Federal Register** of January 6, 1993 (58 FR 2661), FDA published a final rule that announced its decision not to authorize the use of a health claim regarding the relationship of ingestion of zinc and immune function in the elderly on the labels or in the labeling of foods in conventional food form. The agency concluded that, based on the totality of the publicly available scientific evidence, there was not significant scientific agreement that increased intake of zinc enhanced immune function in the elderly.

The agency stated that zinc is considered to be relatively nontoxic, particularly if taken orally, but that adverse effects, which include impaired immune function, are known to occur with zinc intake in excess of the RDA. The agency's examination of the scientific evidence found that although it is well accepted that adequate dietary zinc is essential for normal immune function, a specific protective role of zinc supplementation of the elderly population has not been demonstrated.

Thus, FDA concluded that the publicly available data on the role of zinc in immune system function do not provide a sufficient scientific basis on which to conclude that immune function in the elderly U.S. population can be improved by zinc supplementation. On this basis, FDA decided not to authorize the use of a health claim on this nutrient-disease relationship on the label or in labeling of foods in conventional food form.

The agency summarized its consideration of the comments received (58 FR 2661 at 2662) and publicly available scientific evidence (58 FR 2662 at 2663 and 2664) in reaching its conclusion. The full discussion from the proposed and final rules, including the studies cited in those documents, is referenced herein.

C. Summary of Comments

The agency did not receive any comments regarding the relationship of ingestion of zinc and immune function in the elderly in response to the January 6, 1993, final rule.

D. The Proposal

FDA has tentatively concluded, based on the totality of publicly available evidence, that there is not significant scientific agreement that zinc supplementation will improve immune function in the elderly. Although it is well accepted that adequate dietary zinc is essential for normal immune function, a specific protective role of zinc supplementation of the elderly population has not been demonstrated. In fact, as discussed above, there is some evidence in recent well-controlled studies that high levels of zinc intake will suppress the immune function. FDA has not been presented with any evidence in the wake of its January 6, 1993, final rule on zinc and immune function in the elderly that would lead the agency to a different conclusion. Therefore, FDA is proposing to not authorize a health claim on the relationship of zinc and immune function in the elderly in the labeling of dietary supplements.

Because a dietary supplement would contain only zinc, and there is no evidence that the zinc supplementation itself plays a specific protective role in the elderly population, FDA tentatively finds that an appropriate basis for proposing to authorize a claim on zinc and immune function in the elderly on dietary supplements does not exist (56 FR 60652 and 58 FR 2661).

VI. Omega-3 Fatty Acids and Coronary Heart Disease

A. 1991 Proposed Findings

In the **Federal Register** of November 27, 1991 (56 FR 60663), FDA published a proposal on the use of a health claim regarding the relationship of *omega*-3 fatty acids and CHD. After reviewing the publicly available scientific evidence, the agency tentatively found that the evidence did not provide a basis to authorize a health claim on the label or in the labeling of foods. Examination of the epidemiological research on this topic revealed that the available studies applied only to the consumption of fish, which contain *omega*-3 fatty acids, and that it was not possible to ascribe any effects specifically to *omega*-3 fatty acids.

In deciding whether to authorize a health claim relating *omega*-3 fatty acids and CHD, FDA considered publicly available scientific evidence on the public health significance of CHD, information on the properties of *omega*-3 fatty acids (56 FR 60663 at 60664), and comments that it had received on this topic (56 FR 60663 at 60665 and 60666). FDA reviewed consensus documents like the "Surgeon General's Report on Nutrition and Health," the National Academy of Science's "Diet and Health: Implications for Reducing Chronic Disease Risk" (56 FR 60663 at 60666), and other reports in the scientific literature, including epidemiological studies, animal studies, and other relevant information (56 FR 60663 at 60667 through 60671 and 60673 through 60676).

FDA tentatively determined that the publicly available evidence was not adequate to show that increased consumption of *omega*-3 fatty acids reduced the risk of CHD, particularly noting its lack of effect on serum cholesterol levels. FDA found that an increase in bleeding times and a decrease in platelet aggregation (which also may be associated with bleeding tendencies) had been observed consistently in normal healthy individuals, as well as in diseased persons, who consumed fish oils. The agency stated, however, that direct relationships between these effects and risk of CHD have not been established (56 FR 60663 at 60671).

The agency noted that *omega*-3 fatty acids had been shown to reduce blood pressure in hypertensive people to a small degree, which may bear on a relationship between *omega*-3 fatty acids and CHD. It stated that the effect was not of large magnitude (56 FR 60663 at 60672). Moreover, the agency also said that it had not been established that *omega*-3 fatty acids reduce blood pressure in normal subjects, and that it had not been demonstrated that the magnitude and duration of changes in blood pressure observed in short-term studies would persist during long-term consumption of *omega*-3 fatty acids. Finally, the agency noted the possibility that *omega*-3 fatty acids could increase the risk of CHD, through increases in LDL-cholesterol or apo-β-lipoprotein, among diabetics and hyperglycemics, and that *omega*-3 fatty acids might worsen control of blood glucose in diabetics. It said that these were significant safety concerns (56 FR 60663 at 60672). Given the lack of evidence that *omega*-3 fatty acids themselves reduced the risk of heart disease, specifically their lack of demonstrated effect on serum cholesterol (including LDL-cholesterol), the uncertainties about the relevance and significance of the blood pressure findings to the general populations, and the unresolved safety concerns, the agency tentatively concluded not to authorize a health claim for *omega*-3 fatty acids and heart disease.

B. The January 1993 Final Rule

In the **Federal Register** of January 6, 1993 (58 FR 2682), FDA published a final rule that announced its decision not to authorize the use of a health claim regarding the relationship of *omega*-3 fatty acids and CHD on the label and in the labeling of foods in conventional food form.

FDA concluded that the totality of the available scientific evidence did not provide an adequate basis for a health claim. The agency said that the association between fish consumption and reduced risk of heart disease was not sufficient to establish a role for *omega*-3 fatty acids per se, versus other factors associated with dietary patterns high in fish, in achieving the desired effect. The agency noted that there was not significant scientific agreement that the physiological changes, such as increased bleeding times and a decrease in platelet aggregation, that were seen with consumption of *omega*-3 fatty acids would reduce the risk of CHD. The agency also said that the data were ambiguous because some effects of *omega*-3 fatty acids were not consistently observed, which suggested that other variables are important in determining whether an effect is seen (58 FR 2682 at 2702).

In the final rule, FDA also discussed some matters with respect to which greater agreement would be needed that the effects produced by *omega*-3 fatty acids are directly related to the risk of CHD before the agency could consider authorizing a claim. For example, many surrogate markers had been hypothesized, on the basis of limited evidence, to be related to specific diseases, including CHD, but few withstood the continued scrutiny of scientific investigation. FDA said that it could authorize a health claim only when there was significant scientific agreement, based on the totality of the scientific evidence, that a surrogate marker for a disease was a valid predictor of disease risk, specifically of heart disease risk for the general population. FDA said that evidence of such acceptance could be provided by a statement by an unbiased, nationally representative authoritative scientific or medical body (58 FR 2682 at 2705).

The agency reviewed numerous authoritative documents, the extensive comments that it had received on the proposal (58 FR 2682 at 2683 through 2699), and new scientific data, including epidemiological studies and

animal studies (58 FR 2682 at 2699 through 2705 and 2707 through 2714). Based on its review of all available information, the agency concluded that there are numerous physiological effects (e.g., increased bleeding times) of consumption of *omega*-3 fatty acids, but that at present, these endpoints are not generally accepted as being closely related to the risk of CHD. Thus the agency said that more data would be needed to show that the association between fish consumption and reduced risk of heart disease is specifically attributable to the *omega*-3 fatty acids in the fish.

The full discussion from the proposed and final rules, including the studies cited in those documents, is referenced herein.

C. Summary of Comments

In response to the January 6, 1993 final rule, the agency received two comments requesting that FDA allow voluntary inclusion of *omega*-3 fatty acid content information on food labels. These comments are not relevant to the issue of whether the agency can authorize a health claim on the relationship of *omega*-3 fatty acids and CHD. Therefore, no action on these comments is appropriate in this document. The agency points out, however, that in the **Federal Register** of June 18, 1993 (58 FR 33731 at 33736), it stated that under § 101.13(i)(3), information about the amount of a vitamin or mineral for which an RDI has not been established (e.g., vitamin k, selenium) could be declared on a food label, although not within the nutrition label, as long as the statement does not in anyway implicitly characterize the level of the nutrient and is not false or misleading in any respect. The agency notes that this provision would also apply to *omega*-3 fatty acid content information on food labels, including the labels of dietary supplements.

The agency did not receive any comments that provided any information that would support a health claim on the labels or in the labeling of dietary supplements regarding the relationship of *omega*-3 fatty acids and CHD in response to the January 6, 1993, final rule.

D. The Proposal

FDA has tentatively concluded, based on the totality of publicly available scientific evidence regarding the relationship of *omega*-3 fatty acids and coronary heart disease that there is not significant scientific agreement among experts that a claim about this relationship is scientifically valid.

There are numerous effects of *omega*-3 fatty acids that may be related to the risk of CHD, e.g., reduction in fasting and postprandial triglycerides, reductions in platelet aggregation and adhesion, and changes in the composition of lipoproteins. However, at this time, these endpoints are not generally recognized as being closely related to the risk of CHD.

Because a dietary supplement would contain only the *omega*-3 fatty acids, and there is not sufficient evidence that the *omega*-3 fatty acids alone caused the effects that were observed in studies of the effects of fish consumption on CHD, FDA tentatively finds that an appropriate basis for proposing to authorize a claim on *omega*-3 fatty acids and CHD on dietary supplements does not exist (56 FR 60663 and 58 FR 2682).

VII. The Next Steps

FDA has been diligent in developing proposed and final rules under the rigorous timeframes imposed by both the 1990 amendments and the DS Act of 1992. FDA has generally met its deadlines and is committed to completing the dietary supplement rulemakings in a timely manner. However, the agency has limited resources to both prepare the final rules that yet remain to be done under the 1990 amendments and the DS Act and to carry out the administrative activities required by the final rules under the 1990 amendments that the agency has already published. These activities include reviewing petitions, responding to inquiries, and conducting appropriate compliance activities, as well as preparing final rules in this and the five other rulemakings that are pending on dietary supplements.

The agency recognizes the emerging nature of the scientific information regarding the relationships between the intake of nutrients and disease or health-related conditions. A primary objective of FDA's administrative process is to provide a full airing of the scientific data and other relevant information on each of the nutrient-disease relationships listed in section 3 of the 1990 amendments.

FDA must consider both the validity of the link between the substance and the disease condition and the safety of the substance, especially when the purpose of the proposed health claim is to encourage intake of substance (in contrast to the claims on fat, for example, which encourage moderation in consumption). Care in reviewing safety is especially important when the claim is made for a substance in a dietary supplement because consumption of dietary supplements, in contrast to most foods in conventional food form, is not self-limiting.

The process that FDA has engaged in with respect to folic acid and neural tube defects is an example of the agency's commitment to examine thoroughly all questions regarding a possible health claim. Initially, there was promising scientific evidence regarding a link between folic acid and the incidence of neural tube defects. However, there were also substantive safety questions in January 1993 that required further scrutiny and left the agency unable to authorize a health claim. Nevertheless, the agency did not abandon the issue but continued to address the issues by working with an expert advisory committee. Now, the agency is proposing to authorize a health claim on this nutrient-disease relationship.

The results of the rulemaking process for the five nutrient-disease relationships that the agency is initiating in this **Federal Register** document may differ. The agency may find that there is significant scientific agreement based on the totality of evidence for some of the relationships and may conclude that for other relationships, there is not such agreement. On still others, the agency may find that while evidence is promising, there are questions and concerns that must be resolved before a claim can be authorized. The agency will authorize a health claim in the first type of situation and will deny a health claim in the second type. With respect to the third type, the agency will also deny the health claim but will continue its process with respect to the relationship, with a goal of ensuring that interested persons obtain useful information that is scientifically valid and that will, in fact, be beneficial to health.

VIII. FDA's Plan for Completing a Final Rule

This proposal provides an opportunity for interested persons to submit new scientific data and comments in the five nutrient-disease relationships that are the subject of this rulemaking. The agency will review all comments received and will conduct its own literature review to obtain recent scientific evidence. In addition, FDA plans to cosponsor, with other research and health organizations, an open symposium on antioxidant vitamins to discuss the available science, to identify any unmet research needs, and to discuss ways of facilitating research to meet these needs. FDA will consider the results of this symposium in deciding whether to authorize a health claim on

antioxidant vitamins and cancer. FDA will provide notice of the meeting in the **Federal Register**. The agency intends to publish a final rule on this rulemaking in December of 1993, in accordance with the amendments to the 1990 amendments in the DS Act.

IX. Comments

Given the public health significance of cancer, CVD, and immune function in the elderly, FDA wants to make sure that its decisions in this proceeding reflect the latest scientific information. Therefore, FDA is requesting comments on any new data that have become available on the matters discussed in this document.

Interested persons may, on or before December 13, 1993, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between Monday through Friday.

X. Economic Impact

FDA has examined the economic implications of the proposed rule amending 21 CFR as required by the Regulatory Flexibility Act and Executive Order 12291. The Regulatory Flexibility Act requires regulatory relief for small businesses where feasible. Executive Order 12291 compels agencies to use cost-benefit analysis as a component of decisionmaking. The agency finds that this proposed rule does not constitute a major rule as defined by Executive Order 12291. In accordance with the Regulatory Flexibility Act, FDA has explored whether these proposed rules will have a significant impact on small businesses and has tentatively concluded that they do not.

In the **Federal Register** of November 27, 1991 (56 FR 60366), FDA published a number of proposed food labeling regulations to implement the provisions of the 1990 amendments (Pub. L. 101–535). The agency also published a regulatory impact analysis which preliminarily estimated the costs and benefits of the various proposed regulations and on which FDA asked for comments.

Final regulations that implemented the 1990 amendments, except with respect to dietary supplements, were issued on January 6, 1993, including a final regulatory impact analysis (RIA) of those final regulations (58 FR 2927). In the RIA, FDA responded to the comments regarding dietary supplements with tentative conclusions.

As described previously in this preamble, FDA is proposing to amend its food labeling regulations to state that health claims regarding the five nutrient-disease relationships are not authorized for dietary supplements. There are several different types of products which may be considered to be dietary supplements. These products include dietary supplements of vitamins, minerals, herbs, and other similar nutritional substances. In the proposals of June 18, 1993, FDA estimated that there are about 5,000 vitamin, mineral, and other dietary supplement products marketed in the United States and approximately 15,000 labels.

There are two potential costs of this regulation if implemented as proposed: Relabeling costs for those products using unauthorized health claims which must be removed from labels or labeling and the inability to market certain products based on those health claims.

The agency estimates that very few, if any, products are currently using the health claims that the agency is proposing not to authorize. Therefore, FDA does not believe that this proposed rule will not result in any significant changes in labeling. Accordingly, this regulation would result in few costs or benefits.

XI. Environmental Impact

The agency has determined under 21 CFR 25.24 (a)(11) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 101

Food labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 101 be amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 is revised to read as follows:

Authority: Secs. 4, 5, 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1453, 1454, 1455); secs. 201, 301, 402, 403, 409, 501, 502, 505, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 348, 351, 352, 355, 371); sec. 202(a)(2) of the Dietary Supplement Act (Pub. L. 102–571).

2. Section 101.71 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 101.71 Health claims: claims not authorized.

* * * * *

(a) Health claims not authorized for foods in conventional food form or for dietary supplements of vitamins, minerals, herbs, or other similar substances:

* * * * *

Dated: October 1, 1993.

David A. Kessler,

Commissioner of Food and Drugs.

Donna E. Shalala,

Secretary of Health and Human Services.

[FR Doc. 93–25029 Filed 10–7–93; 2:51 pm]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 136, 137, and 139

[Docket No. 91N–100S]

Food Standards: Amendment of the Standards of Identity for Enriched Grain Products to Require Addition of Folic Acid

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the standards of identity for enriched bread, rolls and buns, enriched flour, enriched self-rising flour, enriched corn grits, enriched corn meals, enriched farina, enriched rice, enriched macaroni products, enriched nonfat milk macaroni, and enriched noodle products, and, by cross-reference, the standards of identity for enriched bromated flour, enriched vegetable macaroni products, and enriched vegetable noodle products, to require the addition of folic acid. The agency is proposing to require that these products be fortified with folic acid at levels ranging from 0.43 milligrams (mg) to 1.4 mg per pound (mg/lb) or 95 micrograms (µg) to 309 µg/100 grams (g) of product. These values are based on a fortification level of 140 µg/100 g (0.635 mg/lb) of the cereal-grain product. This action is proposed on FDA's own initiative. It is intended in part to help women of childbearing age comply with the recommendation by the U.S. Public Health Service (PHS) that they consume at least 0.4 mg (400 µg) daily of folate. This action also responds to a citizen petition submitted by Glenn Scott.

DATES: Written comments by December 13, 1993. The agency is proposing that any final rule that may issue, based on

this proposal, become effective 1 year after date of publication in the **Federal Register**.

ADDRESSES: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Felicia B. Satchell, Center for Food Safety and Applied Nutrition (HFS–158), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5099.

SUPPLEMENTARY INFORMATION:

I. Background

In September 1992, following an open meeting sponsored by the Centers for Disease Control (CDC) in Atlanta, GA (57 FR 29323) and based on reviews of the relevant scientific data, PHS recommended that all women of childbearing age in the United States consume 0.4 mg (400 µg) of folate daily to reduce their risk of having a pregnancy affected with spina bifida or other neural tube defects (Ref. 1). In discussing this recommendation, PHS raised several issues that directly bear on FDA's responsibilities under the Federal Food, Drug, and Cosmetic Act (the act). One of these issues was to identify the best approach for increasing intake of folate by women during their childbearing years. PHS identified several possible approaches by which folate intake by the target population might be increased. These approaches included: (1) Improvement of dietary habits, (2) fortification of the U.S. food supply, and (3) daily use of folate supplements by women throughout their childbearing years. The PHS recommendation also cautioned against the effects of higher intakes of folate. The recommendation stated that a widely recognized adverse effect of high intakes of folate is masking the anemia of vitamin B_{12} deficiency and thus allowing the neurologic damage to progress untreated. PHS said that care should be taken to keep total folate consumption at less than 1 mg (1,000 µg)/day, except under the supervision of a physician (Ref. 1).

After the PHS recommendation was issued, FDA convened a subcommittee on folate of its Food Advisory Committee (hereinafter referred to as the "Folic Acid Subcommittee") to consider some of the issues raised by the recommendation. At a meeting in November 1992, the Folic Acid Subcommittee discussed approaches for ensuring that the folate intakes of women would be increased. It identified several approaches. These included: (1) Development of a fortification scheme such that 90 percent of women of childbearing age could receive at least 400 µg of folate per day from all sources, while preventing excessively high folate intakes by nontarget groups; (2) appropriate labeling of foods, including dietary supplements; and (3) implementation of an educational program directed primarily at women of childbearing age that emphasizes the importance of folate intake before, during, and after conception and its effect on the incidence of neural tube defects. The Folic Acid Subcommittee also recommended that a surveillance and monitoring system be established to provide baseline data on vitamin B_{12} status in subgroups of the population that might potentially be at greatest risk as a result of increased intakes of folate.

These issues and the Folic Acid Subcommittee's recommendations are fully discussed elsewhere in this issue of the **Federal Register** in a proposed rule entitled "Food Labeling; Health Claims and Label Statements: Folic Acid and Neural Tube Defects" (hereinafter referred to as the health claims proposal).

II. The Proposal

In this document, the agency is proposing to implement its tentative conclusion, discussed at length in the health claims proposal, that food fortification should be limited to cereal-grain products. Specifically, FDA is proposing to establish a fortification scheme that will assist women in the target population in increasing their daily intake of folate. This document also responds to a citizen petition (Docket No. 92P–0132), submitted by Glenn Scott, that requested that the agency amend the standards of identity for enriched cereal-grain products to include a requirement for the addition of folic acid, although the levels of addition suggested by the petitioner were lower than those that FDA is proposing to require in this document.

FDA is proposing to amend the following standards of identity to require the addition of folic acid: Enriched bread, rolls and buns (§ 136.115 (21 CFR 136.115)); enriched flour (§ 137.165 (21 CFR 137.165)); enriched self-rising flour (§ 137.185 (21 CFR 137.185)); enriched corn grits (§ 137.235 (21 CFR 137.235)); enriched corn meals (§ 137.260 (21 CFR 137.260)); enriched farina (§ 137.305 (21 CFR 137.305)); enriched rice (§ 137.350 (21 CFR 137.350)); enriched macaroni products (§ 139.115 (21 CFR 139.115)); enriched nonfat milk macaroni products (§ 139.122 (21 CFR 139.122)); and enriched noodle products (§ 139.155 (21 CFR 139.155)). FDA notes that the standards of identity for enriched bromated flour (§ 137.160 (21 CFR 137.160)), enriched vegetable macaroni products (§ 139.135 (21 CFR 139.135)), and enriched vegetable noodle products (§ 139.165 (21 CFR 139.165)) cross-reference the standards of identity for enriched flour, enriched macaroni products, and enriched noodle products, respectively, and will thus also be amended by this proposal. FDA also points out that the standard for enriched macaroni products fortified with protein is stayed and thus will not be addressed in this rulemaking.

As fully discussed in the health claims proposal published elsewhere in this issue of the **Federal Register**, FDA has tentatively decided that the fortification of the food supply is an appropriate approach for increasing the intake of folate by women in the target population. As noted by the Folic Acid Subcommittee and expert speakers who testified before the Folic Acid Subcommittee, food fortification has the advantage of reaching a great number of women in the target population before conception and during early pregnancy, when the risk of neural tube defects is greatest. It also has the advantage of providing folate in a continuous and passive manner and, thus, represents an effective means for improving the folate nutriture of women in their childbearing years.

In determining what foods would be appropriate for fortification with folic acid and at what levels, the agency used the U.S. Department of Agriculture (USDA) 1987–1988 national food consumption data (Ref. 2) to estimate daily intake of folate for the target population, as well as the general population, with fortification at different levels for cereal grains, dairy products, and juices. The agency estimated the effects of fortification using three values—0.070, 0.140, and 0.350 mg of folic acid/100 g of cereal-grain products. As discussed in the health claims proposal, the value of 0.070 mg/100 g (0.3 mg/lb) is the amount, recommended in 1974 by the Food and Nutrition Board, National Research Council, National Academy of Sciences, that would restore folate lost in the milling of cereal-grain products and represents about a four-fold increase in the level of folate that ordinarily occurs in wheat flour (Ref. 3). The value of 0.140 mg/100 g is twice that amount, and 0.350 mg/100 g is five times that amount.

The different approaches that FDA used in estimating the effects of fortification of food with these levels of folic acid are fully discussed in the

health claims proposal, published elsewhere in this issue of the **Federal Register**. In arriving at these estimates, FDA made provision for consumption of ready-to-eat cereals fortified with folic acid as well as dietary supplements containing folic acid.

In its analysis, FDA assumed likely underreporting biases in food intakes. The agency did so because national food consumption surveys generally underestimate the food intake of survey respondents. This fact is supported, in part, by the observation that when consumer-reported dietary intakes are used as a basis for designing intervention diets (not necessarily for weight reduction), subjects that follow the intervention diet frequently lose weight (Ref. 4). Further, calorie intakes that were estimated based on the survey respondents' daily reported food intake fell below the current average calorie intakes recommended by the Food and Nutrition Board. For example, in the 1987–1988 USDA Nationwide Food Consumption Survey (Ref. 2) used for these estimates, calculated median energy intakes of women 19 to 50 years of age were only about 1,500 calories, whereas the most recent recommended average energy intake for this gender/age group is 2,200 calories (Ref. 5).

FDA also took into account in performing its analysis that underestimation of folate contents of foods was likely in the analysis that had been done. Comparison of newer methods of sample preparation with older methods for determining the folate content of foods has revealed underestimates in the range of 20 percent for vegetables such as spinach and cauliflower and 50 percent for canned tuna. Thus, commonly used methods for folate analysis may significantly underestimate the folate content of foods.

As fully discussed in the health claims proposal published elsewhere in this issue of the **Federal Register**, results of FDA's analysis show that when fortification included fruit juices and dairy products in addition to cereal grain and dietary supplements, folate intakes of some nontarget group consumers exceeded 1 mg/day regardless of the fortification level examined. However, when fortification was limited to cereal-grain products at levels of 70 µg/100 g or 140 µg/100 g, daily intake levels remained below 1 mg/100 g. At fortification levels of 350 µg/100 g, the estimated daily intake could reach levels of 1,220 µg/100 g, which exceeds the recommended safe upper limit.

The agency also estimated the daily intake of folate for consumers who follow Federal government dietary guidance, such as the U.S. Dietary Guidelines and the Department of Health and Human Services (DHHS)/USDA Food Guide Pyramid, and consume cereal-grain products fortified with folic acid, to determine whether these consumers will have daily intakes in excess of the recommended safe upper limit of approximately 1 mg/day.

These estimates, as shown in Table 7 in the health claims proposal, indicate that consumers who followed even the low end of recommendations from the DHHS/USDA Food Guide Pyramid could, without supplement use, easily consume 420 µg or more of folate per day from cereal-grain products fortified with 70 µg folic acid/100 g. Further, such consumers' daily intake could triple if such products were fortified with 350 µg folic acid/100 g.

As a result of its analysis of fortification of several cereal-grain, dairy, and juice products, FDA has tentatively concluded that fortification should be limited to cereal-grain products and not extended to dairy products and fruit juices. (The agency notes that results of its analysis are presented in Tables 4 through 7 in the health claims proposal published elsewhere in this issue of the **Federal Register**.) The agency found that intakes by very large segments of the general population would reach several milligrams per day if all of these foods were fortified with folic acid.

The agency has also tentatively decided that the appropriate fortification level for cereal-grain products is 140 µg/100 g. Based on the results of its analysis, fortification of cereal-grain products with 140 µg/100 g will provide daily intakes for the nontarget population that remain within the recommended safe upper limit of approximately 1 mg/day, while providing increased intakes of folate for women in their childbearing years. The agency notes that with supplement use, 95th percentile intakes by adults 51+ years of age could reach 840 to 860 µg/day if these enriched cereal-grain products are fortified with 140 µg/100 g. While the agency recognizes that this level approaches the recommended safe upper limit and does not take into account likely underreporting biases regarding food intakes and underestimation of folate content of foods, it tentatively concludes that fortification of cereal-grain products with 140 µg/100 g folic acid is the most appropriate fortification level of the three levels analyzed to ensure that folate intakes by the target population will increase. Fortification at a lower level of 70 µg/100 g may not provide sufficient folate levels to that portion of the target population that have lower daily food intakes or that consume minimal amounts of cereal-grain products. For example, folate intake estimates for the 25th percentile of the target population if cereal-grain products were supplemented with 70 µg/100 g of folic acid showed levels of 160 to 180 µg/day without supplement use and 200 µg/day with supplement use.

In this document, the agency is proposing to provide for folic acid fortification of the individual enriched cereal-grain products discussed below, which are subject to standards of identity.

A. Bakery and Wheat Flour Products

1. Enriched Flour

Wheat flour products are produced in various forms, plain, self-rising, instantized, and enriched. The products may be sold directly to consumers or may be specially designed for manufacturing bakery products, i.e., breads, rolls and buns, or other specialty food products. Standards of identity for enriched forms of these products provide for addition of specified amounts of thiamin, niacin, riboflavin, and iron and, in some instances, for the optional addition of calcium and vitamin D. (FDA is providing for correction of the spelling of "thiamin" in all the food standards that it is proposing to amend.)

As stated above, FDA has tentatively concluded that it is appropriate to fortify enriched cereal-grain products with folic acid based on a fortification level of 140 µg/100 g for wheat flour. This level will provide a better opportunity for a larger portion of the target population to achieve significantly increased folate intakes.

In determining what minimum level of folate should be present in enriched wheat flour, FDA consulted the Food and Nutrition Board's report of the proceedings of a workshop entitled "Technology of Fortification of Cereal-Grain Products" conducted in May 1974 (Ref. 6) and the USDA Handbook 8–20, Composition of Foods: Cereal Grains and Pasta, Raw, Processed, Prepared (Ref. 7). The Food and Nutrition Board's report included a paper by Kulp that provided information on naturally occurring levels of vitamins and minerals in commercially milled wheat flour. The paper reported summary data, collected by members of the industry, academia, and the governments of the United States and Canada, on the analysis of 65 samples of various types of flours originating from mills in the

United States and Canada. The average folate content of wheat flour was shown to be 0.076 mg/lb (or 0.017 mg/100 g), with a range of 0.044 to 0.120 mg/lb (or 0.009 to 0.026 mg/100 g).

The USDA Handbook 8–20 lists values for folate content (listed as folacin) of four types of wheat flour other than whole grain flour, i.e., all purpose, bread, cake, and self-rising wheat flours. The folate values for the flour products, in order of the foregoing list, are 0.117, 0.131, 0.086, and 0.191 mg/lb (or 0.026, 0.029, 0.019, and 0.042 mg/100 grams) (Ref. 7). These values are somewhat higher than the average value, 0.076 mg/lb (range 0.044 to 0.120 mg/lb), reported for wheat flour in the Food and Nutrition Board's report (Fig. 1, p.14, Ref. 6). However, the USDA Handbook 8–20 values for folate content in wheat (before milling) and whole wheat flour, ranging from 0.171 to 0.196 mg/lb (or 0.038 to 0.044 mg/100 g), were lower than the Food and Nutrition Board's recommended restoration level of 0.3 mg/lb folic acid for milled (i.e., bran removed) wheat flour products.

Given these data, FDA has tentatively decided to use the average normally occurring level for folate content in wheat flours cited in the Food and Nutrition Board's report because it is based on a more comprehensive data base on the folate content of wheat flour. The agency is not aware of subsequent studies of this nature that would alter the findings of this study. Thus, to fortify wheat flour at a level of 140 µg/100 g (0.635 mg/lb), FDA is proposing that enriched flour contain 0.7 mg/lb of folic acid. FDA derived this value by adding the proposed fortification level of 0.635 mg/lb to the Food and Nutrition Board's folate value for unfortified flour of 0.076 mg/lb, which yields 0.711 mg/lb, and rounding this value to 0.7 mg/lb. Accordingly, based on this calculation, FDA is proposing to amend the standards of identity for enriched flour (§ 137.165) and enriched self-rising flour (§ 137.185), and by cross-reference, enriched bromated flour (§ 137.160), to require that these foods contain 0.7 mg/lb of folic acid.

2. Enriched Rolls and Buns

For consistency with the requirements for enriched flour products, FDA is proposing to amend the standards of identity for enriched bread, rolls, and buns in § 136.115 to require that these foods contain 0.43 mg/lb of folic acid. This rate of fortification is proportionally consistent with the fortification rate used for the B vitamins (thiamin, riboflavin, and niacin) when enriched flour is used in making these foods. For example, the levels of thiamin, riboflavin, and niacin in enriched flour (§ 137.165) are 2.9, 1.8, and 24.0 mg/lb, respectively, and in enriched bread (§ 136.115) are 1.8, 1.1, and 15.0 mg/lb, resulting in a ratio of approximately 1.62 to 1. In the case of the level of folic acid, the proposed level for enriched flour is 0.7 mg/lb compared to 0.43 mg/lb for bread, resulting in a ratio 1.63 to 1. The lower level specified for the B vitamins and folic acid content in enriched bread products allows the bread products to be made from the standardized enriched flour without further fortification.

3. Enriched Farina

FDA is also proposing a fortification level for folic acid in enriched farina (§ 137.305) on the same basis as that for enriched wheat flour, i.e., 1 lb of the food would contain not less than 0.7 mg of folic acid. Both wheat flour and farina are made from the endosperm of wheat, that portion of the wheat kernel that remains after the bran layer and germ have been removed. The bran layer and germ contain most of the B vitamins, including the naturally occurring folate. Therefore, the agency tentatively finds that it is reasonable to fortify both flour and farina at the same level of 140 µg/100 g or 0.7 mg/lb.

FDA notes that, like flour, farina is not consumed directly but is prepared in some recipe. The enriched farina may be rinsed before use and is usually boiled in water. These steps are likely to dilute the levels of nutrients in the food. Because of such possible losses, the agency is also proposing an upper limit of addition (0.87 mg/lb). The upper limit for folic acid is approximately 25 percent higher to counter possible losses of the vitamin in preparation of the finished food product and is consistent with the upper levels of other B vitamins in the standard.

B. Corn and Rice Products

1. Enriched Corn Grits

USDA Handbook 8–20 data (Ref. 7) show that corn products, except for corn meals, contain significantly less folate than wheat products, ranging from a low of 0.005 mg/100 g (0.022 mg/lb) in dry corn grits to a high of 0.031 mg/100 g (0.141 mg/lb) in degermed corn meals and 0.057 mg/100 g (0.258 mg/lb) in bolted corn meals. However, because corn products are often used as substitutes for wheat based food products, FDA is proposing to amend § 137.235 to require fortification of enriched corn grits with the same level of folic acid as that proposed for enriched wheat flour products, such that each pound of the food would contain at least 0.7 mg of folic acid. Because there may be losses from the rinsing of corn grits before cooking, FDA is also proposing an upper limit for folic acid fortification of 1.0 mg/lb, which is approximately 50 percent higher than the proposed minimum of 0.7 mg/lb, as it has done for the other B vitamins (thiamin, riboflavin, and niacin) that are required to be present in enriched corn grits.

2. Enriched Corn Meals

In the case of enriched corn meals under § 137.260, FDA is proposing a minimum folic acid level that is consistent with that for enriched flour, such that each pound of the food contains 0.7 mg. As noted above, corn products may be used as substitutes for wheat products. Thus, FDA believes that consumers expect to be able to obtain the same levels of nutrients from enriched corn meals as from enriched wheat flour. FDA is also proposing an upper limit for folic acid addition (i.e., 1.0 mg/lb which is approximately 50 percent higher than the minimum fortification level), as it has done for the added B vitamins. The upper limit on the other B vitamins is intended to prohibit addition of excessive amounts of the nutrient and to ensure uniformity in composition of corn meals. FDA tentatively finds that for the same reasons an upper limit on the addition of folic acid of 1.0 mg/lb is necessary.

3. Enriched Rice

The folic acid content of rice varies from 0.008 mg/100 g (0.036 mg/lb) for white rice to 0.020 mg/100 g (0.090 mg/lb) for brown rice (Ref. 7). FDA is proposing to amend the standard of identity for enriched rice (§ 137.350) to include a range for the folic acid fortification level, 0.7 mg/lb to 1.4 mg/lb, with the lower limit being consistent with the proposed folic acid fortification level for enriched wheat flour. FDA believes that use of the same minimum level of fortification is appropriate because it is consistent with the Food and Nutrition Board's recommendation that the same restoration level be used for wheat flour, corn products, and rice. However, as discussed above, FDA believes a level (0.635 mg/lb) that is approximately twice that of the Food and Nutrition Board's recommended level (0.3 mg/lb) is necessary to ensure that sufficient levels of folate are available to meet the dietary needs of the target population.

FDA is also proposing that the upper limit for folic acid fortification of enriched rice be twice the proposed minimum fortification level for folic

acid (0.7 mg/lb) or 1.4 mg/lb, as it has done with other added nutrients in enriched rice. This proposed upper level is based on the way that rice is fortified in this country.

In the United States rice may be enriched by addition of a powder mixture containing the added nutrients or by use of a rice premix consisting of rice kernels coated with a concentrated nutrient mix. When the powder enrichment procedure is used, the label of the package is required to state that the rice should not be rinsed before cooking or drained after cooking, so that the rice retains the added nutrients. However, there is no assurance that these instructions will be followed. In the case of the rice premix, a special coating is applied to the rice kernels, so that the added nutrients will not be washed off if the product is rinsed before cooking. The coated rice premix is blended with unenriched rice such that the finished enriched rice product will contain the required minimum levels of added nutrients. The stated range provides flexibility in the production of the enriched rice and ensures that the food, when prepared for consumption, will contain the required minimum levels of nutrients.

The agency believes that most, if not all, enriched rice is manufactured using a rice premix procedure, and that it may not be necessary to continue to provide for the range of added nutrients in the standard of identity for enriched rice (Ref. 8). If comments provide substantive information that enriched rice is generally being prepared in this manner, or that the specified level of added nutrients is maintained during cooking when the rice is prepared according to labeled instructions on the package, FDA will consider not including the upper limit of the proposed range, and establishing a single level for folic acid addition (0.7 mg/lb), in any final rule that is published in this proceeding.

C. Macaroni and Noodle Products

The standards of identity for enriched macaroni products (§ 139.115), enriched nonfat milk macaroni (§ 139.122), and enriched noodle products (§ 139.155), and the cross-referenced standards of identity for enriched vegetable macaroni products (§ 139.135) and enriched vegetable noodle products (§ 139.165), provide for significantly higher levels of nutrient addition than the related flour standards of identity because these products are usually cooked in a large amount of water that is usually discarded after cooking and before consumption of the macaroni and noodle products. FDA is proposing to require addition of folic acid to macaroni and noodle products in the same proportion as it is proposing for use in enriched flour, except that the proposed level (expressed in terms of a range) will be approximately 25 percent higher than the proposed level of folic acid to be added to flour. This 25 percent increase is consistent with that of the other added nutrients (thiamin, riboflavin, niacin, and iron) in the enriched macaroni and noodle products standards compared to those in the standards of identity for flour products. Accordingly, FDA is proposing to require that the enriched macaroni and noodle products contain from 0.9 to 1.2 mg/lb of folic acid.

The agency requests comments on whether the proposed fortification levels discussed for the above products are appropriate. Interested persons who wish to suggest alternative fortification levels should include a rationale for such levels and data to support the suggested levels. Further, the agency requests comments on whether addition of folic acid to these cereal-grain products should be required as proposed or should be optional because increased levels of folate intake present health risks to persons with vitamin B_{12} deficiency.

Minor editorial changes have been made in the standards of identity to achieve consistency in language format.

III. Economic Impact

FDA has examined the economic implications of this proposed rule as required by the Regulatory Flexibility Act and Executive Order 12291. The Regulatory Flexibility Act requires relief for small businesses where feasible. Executive Order 12291 compels agencies to use cost-benefit analysis as a component of decisionmaking. The agency finds that this proposed rule is not a major rule as defined by Executive Order 12291. In accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612), FDA has also determined that this proposed rule will not have a significant adverse impact on a substantial number of small businesses.

A. Options

FDA has evaluated the following options: (1) Improve dietary practices among women of childbearing age to increase their daily folate intake, (2) change the standards of identity to require fortification of cereal-grain products with folic acid at levels of 0.14 mg of folate per 100 g of cereal-grain product, and (3) change the standards of identity to require fortification of cereal-grain products with folic acid at either 0.07 mg/100 g or 0.35 mg/100 g.

B. Costs

1. Improve Dietary Practices Among Women of Childbearing Age

Under this option, Federal and State health agencies would encourage improved dietary practices among women of childbearing age to increase their daily folate intake. This might be accomplished under any of the numerous existing programs, through government outreach programs, and physicians. This option will work in conjunction with health claims which are expected to increase the intake of folate by women of childbearing age. However, the agency is unsure of the potential cost or efficacy of this option and requests comments on it.

2. Require Fortification with Folic Acid at 0.14 mg/100 g

Excess folate intake can interfere with the diagnoses of vitamin B_{12} deficiency at levels as low as 0.25 mg per day. There is no scientific consensus on the percentage of diagnoses of vitamin B_{12} deficiency that would be complicated by folate intake at this level. However, the agency has tentatively determined that adverse health effects are not significant until folate intake reaches 1 mg per day. Under this option, folate intake will be below 1 mg per day for all individuals.

The cost of the folic acid that must be added to the specified cereal-grain products is estimated to be approximately $4 million per year. The cost of analytical testing depends on how many tests are run. As an example of the costs involved, if each affected manufacturing plant tests five products for folic acid content three times per year, total testing costs would be $2.5 million per year. The cost of required label changes is estimated to be about $20 million.

In addition, some countries, including Canada, do not allow folic acid fortification of these products. Thus, this option would require that separate production runs be made for fortified products exported to and imported from these countries. FDA cannot estimate these costs at this time.

The total cost of this option is estimated to be $27 million per year plus the cost of separate production runs for these products exported to and imported from certain foreign countries.

3. Require Fortification with Folic Acid at 0.07 mg/100 g or at 0.35 mg/100 g

Folic acid fortification at 0.07 mg/100 g will not raise the folate intake of consumers at risk of vitamin B_{12} deficiency and pernicious anemia to levels greater than 1 mg per day. The

cost of the required folic acid is approximately $2 million per year. The cost of testing is estimated to be about $2.5 million per year and the cost of the required label changes $20 million. Total costs of folic acid fortification at 0.07 mg/100 g are therefore estimated to be $25 million.

Folic acid fortification at 0.35 mg/100 g will raise the folate intake of some consumers at risk of vitamin B_{12} deficiency and pernicious anemia to levels exceeding 1 mg per day. As an example of the costs involved, a simple linear extrapolation of the results of a study that found that between 50 percent and 77 percent of patients with pernicious anemia experienced prolonged hematological remission to a dose of 5 mg of folate per day will be used (Ref. 9).

A delay in the diagnosis of vitamin deficiency can result in severe and potentially irreversible neurologic damage. The most common irreversible consequences of a delay in the diagnosis of vitamin B_{12} deficiency are permanent paresthesia (numbness or tingling) in the hands or feet and ataxia (inability to coordinate voluntary muscular movements). Based on the number of people estimated to be at risk of pernicious anemia, and on a study dealing with the prevalence of permanent paresthesia and ataxia in cases of pernicious anemia initially diagnosed at the stage at which neurologic symptoms are present, consumers may experience health consequences valued at approximately $1.85 billion per year under this level of folic acid fortification (Ref. 10).

The cost of the folic acid required to obtain 0.35 mg/100 g is approximately $10 million per year. The cost of testing is estimated to be $2.5 million and the cost of the required label changes $20 million.

Total costs of folic acid fortification at 0.35 mg/100 g are therefore estimated to be $1.88 billion per year plus the cost of separate production runs for these products exported to and imported from certain foreign countries.

C. Benefits

1. Improve Dietary Practices Among Women of Childbearing Age

As indicated above, the agency cannot estimate the benefit of this option at this time. FDA requests comments on the benefits of this option.

2. Require Fortification with Folic Acid at 0.14 mg/100 g.

The benefit of this option is a reduction in the incidence of infants born with neural tube defects (NTD's). PHS has estimated that if all women of childbearing age achieved an intake of 0.4 mg folate per day the incidence of NTD's could be reduced by 50 percent.

The agency is proposing elsewhere in this issue of the **Federal Register** to allow health claims for folic acid. In order to determine the number of women whose folate intake will exceed 0.4 mg per day due to the proposed level of folic acid fortification, the increase in folate consumption due to health claims must be estimated. FDA has insufficient information to estimate the increase in folate intake due to health claims alone. As an example of the benefits involved, the following assumes that all women currently taking dietary supplements will take supplements containing 0.4 mg folic acid per day once health claims for folic acid are allowed.

NTD's are rare but serious birth defects that can result in infant mortality or serious disability. There are about 2,500 cases of NTD's each year. Based on a linear extrapolation of the PHS estimate cited above and the percentage of women whose folate intake would exceed 0.4 mg per day due to folic acid fortification at 0.14 mg/100 g, this option is estimated to eliminate about 116 NTD's each year. In 1989, NTD's accounted for 533 infant deaths. If this figure is representative, this option should prevent about 25 infant deaths each year.

There is no consensus on the value of a reduction in risk corresponding to one statistical infant life saved. If the value of a statistical life saved does not vary with life years remaining, a reasonable estimate is $5 million. If the value of a statistical life saved does vary with life years remaining, a reasonable estimate is $11 million (Ref. 11). The value of the infant deaths avoided each year is therefore estimated to be between $123 million and $260 million.

The birth defects anencephaly and spina bifida are the most common forms of NTD's and account for about 90 percent of these defects. Spina bifida is a serious condition that is associated with a variety of adverse health effects. One study of the effects of spina bifida found that 41 percent of patients born with spina bifida died before their 16th birthday (Ref. 12). Assuming that the estimated number of infant deaths are due primarily to anencephaly, the increase in life expectancy due to the elimination of the estimated number of cases of spina bifida is estimated to be about $323 million. This study also found that 20 percent of patients with spina bifida who did not die before their 16th birthday suffered from mental retardation, 30 percent were wheelchair bound, and 44 percent incontinent (Ref. 12). The estimated benefit from the elimination of these adverse health effects is estimated to be $205 million per year (Ref. 11). This estimate is based on a willingness-to-pay methodology that includes, for example, cost of illness and pain and suffering. Benefit estimates based solely on cost of illness would be significantly lower. Additional adverse health effects from NTD's were also observed but were relatively rare and will not be considered here.

Total benefits of this option are therefore estimated to be approximately $651 to $788 million per year.

3. Require Fortification with Folic Acid at 0.07 mg/100 g or at 0.35 mg/100g

Based on the methodology discussed above, the benefit of requiring fortification of these products at 0.07 mg/100 g is estimated to be between $326 million and $394 million.

Based on the methodology discussed above, the benefit of requiring fortification of these products at 0.35 mg/100 g is estimated to be between $1.63 billion and $1.97 billion. This option is the only option that would generate health costs.

D. Conclusion

In accordance with Executive Order 12291, the agency has analyzed the economic effects of this proposed rule and has determined that this rule, if promulgated, will not be a major rule as defined by that order.

The costs of the proposed action are estimated to be approximately $27 million per year plus the cost of separate production runs for products exported to and imported from certain foreign countries. The benefits are estimated to be from $651 to $788 million per year.

IV. Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Because the agency is proposing to take three actions involving folic acid and the net effect of these actions is likely to increase the usage of folic acid, one environmental assessment has been

prepared which considers all three agency actions.

V. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. CDC, "Recommendations for the Use of Folic Acid to Reduce the Number of Cases of Spina Bifida and Other Neural Tube Defects," *Morbidity and Mortality Weekly Reports*, 41, 1–7, 1992.

2. USDA, Nationwide Food Consumption Survey/Individual Intake—1987–1988, accession no. PB90–504044, National Technical Information Service, Springfield, VA, 1990.

3. Food and Nutrition Board, National Research Council, National Academy of Sciences, *Proposed Fortification Policy for Cereal-Grain Products*, 36 pp., National Academy of Sciences, Washington, DC, 1974.

4. Mertz, W., J. C. Tsui, J. T. Judd, and S. Reiser, et al.,"What are People Really Eating? The Relation Between Energy Intake Derived From Estimated Diet Records and Intake Determined to Maintain Body Weight," *American Journal of Clinical Nutrition*, 54:291–295, 1991.

5. Food and Nutrition Board, National Research Council, National Academy of Sciences, "Recommended Dietary Allowances," 10th ed., Washington, DC, 1989.

6. Subcommittee on Food Technology, Committee on Food Protection, Food and Nutrition Board, National Research Council, National Academy of Sciences, Proceedings of a Workshop on Technology of Fortification of Cereal-Grain Products, Washington, DC, May 16–17, 1977.

7. USDA Handbook 8–20: Composition of Foods, Cereal Grains and Pasta, Raw Processed, Prepared. Rev., October 1989.

8. Hoffpauer, D.W., "Rice Enrichment for Today," *Cereal Foods World*, vol. 37, No. 10, pp. 757–759, 1992.

9. Schwartz, S. O., S. R., Kaplan, and B. E., Armstrong, "The Long-Term Evaluation of Folic Acid in the Treatment of Pernicious Anemia," *Journal of Laboratory and Clinical Medicine*, 35: 894–898, 1950.

10. Healton, E. B., D. G. Savage, J. C. Brust, T. J. Garrett, J. Lindenbaum, "Neurologic Aspects of Cobalamin Deficiency," *Medicine*, vol. 7, No. 4, pp. 229–245, July 1991.

11. Research Triangle Institute, "Quality of Well-Being Scale in Estimating the Value of Consumers' Loss From Food Violating the FD&C Act," vol. II, Final Report, September 1988.

12. Hunt, G. M., "Open Spina Bifida: Outcome for a Complete Cohort Treated Unselectively and Followed Into Adulthood," *Developmental Medicine and Child Neurology*, vol. 32, No. 2, pp. 108-118, February 1990.

VI. Comments

Interested persons may, on or before December 13, 1993, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above, between 9 a.m. and 4 p.m., Monday through Friday.

During the comment period for this proposal, the agency intends to convene public meetings of the Folic Acid Subcommittee and the Food Advisory Committee for a discussion of the issues raised in this document, as well as the Health Claim document and the Standards of Identity document. FDA also intends to request comments from the experts who participated in its November 23 and 24, 1992, meeting of its Folic Acid Subcommittee. The agency will make any comments received from these experts and the views of the committees available for public review and comment immediately after the Advisory Committee meeting. In addition, FDA will endeavor to have copies of the transcripts of the Folic Acid Subcommittee and Food Advisory Committee meetings available as quickly as possible.

List of Subjects

21 CFR Part 136

Bakery products, Food grades and standards.

21 CFR Part 137

Cereals (food), Food grades and standards.

21 CFR Part 139

Food grades and standards.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs it is proposed that 21 CFR parts 136, 137, and 139 be amended as follows:

PART 136—BAKERY PRODUCTS

1. The authority citation for 21 CFR part 136 is revised to read as follows:

Authority: Secs. 201, 401, 403, 409, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371, 379e).

2. Section 136.115 is amended by revising paragraph (a)(1) to read as follows:

§ 136.115 Enriched bread, rolls, and buns.

(a) * * *

(1) Each such food contains in each pound 1.8 milligrams of thiamin, 1.1 milligrams of riboflavin, 15 milligrams of niacin, 0.43 milligrams of folic acid, and 12.5 milligrams of iron.

* * * * *

PART 137—CEREAL FLOURS AND RELATED PRODUCTS

3. The authority citation for 21 CFR part 137 is revised to read as follows:

Authority: Secs. 201, 401, 403, 409, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371, 379e).

4. Section 137.165 is amended by revising paragraph (a) to read as follows:

§ 137.165 Enriched flour.

* * * * *

(a) It contains in each pound 2.9 milligrams of thiamin, 1.8 milligrams of riboflavin, 24 milligrams of niacin, 0.7 milligrams of folic acid, and 20 milligrams of iron.

* * * * *

5. Section 137.185 is amended by revising paragraph (a) to read as follows:

§ 137.185 Enriched self-rising flour.

* * * * *

(a) It contains in each pound 2.9 milligrams of thiamin, 1.8 milligrams of riboflavin, 24 milligrams of niacin, 0.7 milligrams of folic acid, and 22 milligrams of iron.

* * * * *

6. Section 137.235 is amended by revising paragraph (a)(1) to read as follows:

§ 137.235 Enriched corn grits.

(a) * * *

(1) It contains in each pound not less than 2.0 milligrams (mg) and not more than 3.0 mg of thiamin, not less than 1.2 mg and not more than 1.8 mg of riboflavin, not less than 16 mg and not more than 24 mg of niacin or niacinamide, not less than 0.7 mg and not more than 1.0 mg of folic acid, and not less than 13 mg and not more than 26 mg of iron (Fe).

* * * * *

7. Section 137.260 is amended by revising paragraph (a)(1) to read as follows:

§ 137.260 Enriched corn meals.

(a) * * *

(1) It contains in each pound not less than 2.0 milligrams (mg) and not more than 3.0 mg of thiamin, not less than 1.2 mg and not more than 1.8 mg of riboflavin, not less than 16 mg and not more than 24 mg of niacin or niacinamide, not less than 0.7 mg and not more than 1.0 mg of folic acid, and not less than 13 mg and not more than 26 mg of iron (Fe).

* * * * *

8. Section 137.305 is amended by revising paragraph (a)(1) to read as follows:

§ 137.305 Enriched farina.

(a) * * *

(1) It contains in each pound not less than 2.0 milligrams and not more than 2.5 milligrams of thiamin, not less than 1.2 milligrams and not more than 1.5 milligrams of riboflavin, not less than 16.0 milligrams and not more than 20.0 milligrams of niacin or niacinamide, not less than 0.7 milligrams and not more than 0.87 milligrams of folic acid, and not less than 13.0 milligrams of iron (Fe).

* * * * *

9. Section 137.350 is amended by revising paragraph (a)(1) to read as follows:

§ 137.350 Enriched rice.

(a) * * *

(1) Not less than 2.0 milligrams and not more than 4.0 milligrams of thiamin, not less than 1.2 milligrams and not more than 2.4 milligrams of riboflavin, not less than 16 milligrams and not more than 32 milligrams of niacin or niacinamide, not less than 0.7 milligrams and not more than 1.4 milligrams of folic acid, and not less than 13 milligrams and not more than 26 milligrams of iron (Fe).

* * * * *

PART 139—MACARONI AND NOODLE PRODUCTS

10. The authority citation for 21 CFR part 139 is revised to read as follows:

Authority: Secs. 201, 401, 403, 409, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371, 379e).

11. Section 139.115 is amended by revising paragraph (a)(1) to read as follows:

§ 139.115 Enriched macaroni products.

(a) * * *

(1) Each such food contains in each pound not less than 4.0 milligrams (mg) and not more than 5.0 mg of thiamin, not less than 1.7 mg and not more than 2.2 mg of riboflavin, not less than 27 mg and not more than 34 mg of niacin or niacinamide, not less than 0.9 mg and not more than 1.2 mg of folic acid, and not less than 13 mg and not more than 16 mg of iron (Fe);

* * * * *

12. Section 139.122 is amended by revising the first sentence of paragraph (a)(3) to read as follows:

§ 139.122 Enriched nonfat milk macaroni products.

(a) * * *

(3) Each such food contains in each pound not less than 4.0 milligrams and not more than 5.0 milligrams of thiamin, not less than 1.7 milligrams and not more than 2.2 milligrams of riboflavin, not less than 27 milligrams and not more than 34 milligrams of niacin or niacinamide, not less than 0.9 milligrams and not more than 1.2 milligrams of folic acid, and not less than 13 milligrams and not more than 16 milligrams of iron (Fe). * * *

* * * * *

13. Section 139.155 is amended by revising paragraph (a)(1) to read as follows:

§ 139.155 Enriched noodle products.

(a) * * *

(1) Each such food contains in each pound not less than 4 milligrams (mg) and not more than 5 mg of thiamin, not less than 1.7 mg and not more than 2.2 mg of riboflavin, not less than 27 mg and not more than 34 mg of niacin or niacinamide, not less than 0.9 mg and not more than 1.2 mg of folic acid, and not less than 13 mg and not more than 16.5 mg of iron (Fe);

* * * * *

Dated: September 13, 1993.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 93–25030 Filed 10–7–93; 2:51 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

[Docket No. 91N–100F]

Food Additives Permitted for Direct Addition to Food for Human Consumption; Folic Acid (Folacin)

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the food additive regulations to set limitations for the use of folic acid on a per serving basis in accord with the Nutrition Labeling and Education Act of 1990 (the 1990 amendments); to allow for the addition of folic acid to foods for which standards of identity exist, where such standards permit the addition of folic acid; to restrict to breakfast cereals the foods, for which standards of identity do not exist, to which folic acid may be added; to continue to permit the use of folic acid in infant formulas, dietary supplements, and foods for special dietary use; and to incorporate specifications for folic acid consistent with those in the Food Chemicals Codex.

DATES: Written comments by December 13, 1993.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Dennis M. Keefe, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9523.

SUPPLEMENTARY INFORMATION:

I. Background

A. Introduction

The 1990 amendments to the Federal Food, Drug, and Cosmetic Act (the act) provide in section 403(r)(1)(B) (21 U.S.C. 343(r)(1)(B)) that a product is misbranded if it bears a claim that characterizes the relationship of a nutrient to a disease or health-related condition (a "health-claim"), unless the claim is made in accordance with the procedures and standards established under the act. FDA published a final rule on general requirements for health claims on January 6, 1993 (58 FR 2478). The regulation provides that FDA will promulgate regulations authorizing health claims only when it determines, based on the totality of publicly available scientific evidence, that there is significant agreement, among experts qualified by training or experience to evaluate such claims, that the claim is supported by the scientific evidence.

The 1990 amendments required that FDA evaluate 10 nutrient-disease relationships with respect to their appropriateness for health claims; the topic of folic acid and neural tube defects was among those 10 topics. On November 27, 1991, the agency proposed (56 FR 60610) not to authorize the use of a health claim relating to an association between folic acid [1] and neural tube defects on the label or in labeling of foods, including dietary supplements. The agency tentatively concluded that there was not significant agreement among qualified experts that intakes of folic acid at levels permitted under the food additive regulation would be protective against occurrence of neural tube defects in pregnancies of women in the U.S. population.

In September 1992, while FDA's rulemaking was in progress, the U.S. Public Health Service (PHS)

[1] The term "folates" is a generic descriptor for a group of compounds that have nutritional properties and chemical structures similar to those of pteroylglutamic acid, the parent form of the vitamins. Synthetic folic acid, added as a fortificant to foods, including dietary supplements, is the oxidized, monoglutamate form of the vitamin.

recommended, based on reviews of existing and newly available scientific data, that all women of childbearing age in the United States who are capable of becoming pregnant should consume 0.4 milligram (mg) (400 micrograms (µg)) of folic acid daily to reduce their risk of having a pregnancy affected with spina bifida or other neural tube defects (Ref. 1). The PHS recommendation noted that although all the effects of high intakes of folate are not well known, the effects do include complicating the diagnosis of vitamin B_{12} deficiency. Therefore, the PHS recommended that care should be taken to keep total folate consumption at less than 1 mg per day except under the supervision of a physician.

On January 6, 1993 (58 FR 2606), the agency published a final rule in which it concluded that a health claim for folic acid and prevention of neural tube defects should not be authorized. The agency reaffirmed its support of the PHS recommendation that all women of childbearing age in the United States who are capable of becoming pregnant consume 0.4 mg of folic acid daily to reduce their risk of having a pregnancy affected with spina bifida or other neural tube defects. The agency noted, however, that questions about the safe use of folic acid in food remained, and the agency concluded that it could not authorize a health claim for folic acid until these questions, among others, were satisfactorily resolved.

Given the seriousness of neural tube defects and the safety and other concerns expressed in the PHS recommendation, FDA convened a subcommittee of its Food Advisory Committee to consider the issues concerning folic acid (hereinafter referred to as the "Folic Acid Subcommittee"). The Folic Acid Subcommittee met in November 1992 and in April 1993. FDA requested that the Folic Acid Subcommittee provide the agency with recommendations on several issues, including identification of the appropriate target population for a folate-neural tube defects health claim, the appropriate daily intake of folate to reduce the risk of neural tube defects, and safety concerns for the target population and the general population. One of the recommendations from the November 1992 meeting of the Folic Acid Subcommittee was that FDA attempt to design a fortification scheme that could provide 90 percent of women of childbearing age with at least 0.4 mg of folate per day from all sources, but would not result in excessively high folate intakes by nontarget groups.

At its April 1993 meeting, following expression of diverse opinions of the potential effectiveness of health claims as an educational tool and by close votes by the Subcommittee members, the Folic Acid Subcommittee voted to support FDA actions to propose to authorize a health claim for folate and to propose to fortify cereal-grain products with folic acid. Based on the agency's discussion of the uncertainties in the intake data base and the difficulties in predicting bioavailability factors under differing conditions, the Folic Acid Subcommittee supported 1 mg as the safe daily upper limit for total folate from all sources.

The agency has now tentatively concluded, based on the totality of the scientific evidence, that there is significant scientific agreement supporting a relationship between folate and neural tube defects. The agency has also tentatively concluded that fortification of cereal-grains and breakfast cereals with folic acid is an appropriate means to increase the folate intake of women of childbearing age. Therefore, in documents published elsewhere in this issue of the **Federal Register**, FDA is proposing to: (1) Authorize the use on the label or in labeling of foods in conventional food form or of dietary supplements a claim concerning the relationship between folate and reduction in risk of neural tube birth defects (hereinafter referred to as the Health Claim proposal); and (2) require the addition of folic acid to enriched cereal-grain products (hereinafter referred to as the Standards of Identity proposal). The bases for these proposed actions and the safety issues considered by the agency are fully discussed in the Health Claim proposal.

FDA believes that if a health claim for the folate-neural tube defect relationship were authorized, food manufacturers would have an incentive to add folic acid to a wide variety of foods, which could lead to an increase in the intake of folate both by women in their childbearing years and by other segments of the general population. For example, in the **Federal Register** of January 6, 1993 (58 FR 2606), FDA presented an analysis showing that widespread fortification of the food supply with folic acid could lead to individual intakes in the range of 3 to 5 mg or more of folate per day. Because such an increase could bring with it certain risks, the agency is proposing to amend the food additive regulation for folic acid so that authorization of a health claim does not result in unsafe levels of folic acid in the diet.

B. Current Food Additive Regulation

In the **Federal Register** of August 2, 1973 (38 FR 20725), FDA published a final rule establishing safe conditions of use for folic acid (folacin) in food and dietary supplements under § 121.1134 (21 CFR 121.1134). In determining the safe conditions of use for folic acid, the agency considered the Recommended Dietary Allowance established by the National Academy of Sciences, and other relevant information.

In 1977, § 121.1134 was recodified as § 172.345. The current food additive regulation states:

> Folic acid (folacin) may be safely added to a food for its vitamin property, provided the maximum intake of the food as may be consumed during a period of 1 day, or as directed for use in the case of a dietary supplement, will not result in daily ingestion of the additive in excess of 0.4 milligram for foods labeled without reference to age or physiological state; and when age or the conditions of pregnancy or lactation are specified, in excess of 0.1 milligram for infants, 0.3 milligram for children under 4 years of age, 0.4 milligram for adults and children 4 or more years of age, and 0.8 milligram for pregnant or lactating women. (21 CFR 172.345)

The current regulation provides no guidance to manufacturers on how to comply with the stated limits. Information available to the agency, however, establishes that daily intakes of more than 1 mg of folate may place certain subpopulations at increased risk of masking the anemia associated with vitamin B_{12} deficiencies. Other individuals that may be at risk due to increased intakes of folate include those receiving certain anticonvulsant or antifolate chemotherapies. The potential risks associated with chronic high exposure to folate are discussed in greater detail in the Health Claim proposal published elsewhere in this issue of the **Federal Register**. Thus, the current regulation is inadequate to allocate folic acid safely in the food supply.

Under section 409(c)(3)(A) of the act (21 U.S.C. 348(c)(3)(A)), the so-called "general safety clause" of the statute, a food additive cannot be approved for a particular use unless a fair evaluation of the evidence available to FDA establishes that the additive is safe for that use. FDA regulations grounded in the legislative history of the Food Additives Amendment of 1958 define "safe" as "* * * a reasonable certainty in the minds of competent scientists that the substance is not harmful under the intended conditions of use." (21 CFR 170.3(i)).

Section 409(c)(5)(A) and (c)(5)(B) of the act require the agency to consider, in determining whether a proposed use of an additive is safe, the probable consumption of the additive and the cumulative effect of the additive in the diet of man. In the Health Claim

proposal published elsewhere in this issue of the **Federal Register**, the agency tentatively concludes, based upon the evidence currently available, that 1 mg per day is the safe upper limit of folate intake for all population groups. In light of this tentative conclusion, the agency has considered how it should amend its food additive regulations to establish safe conditions of use of folic acid in the food supply and still achieve the goals recommended by the Folic Acid Subcommittee that the target population, women of childbearing age, should consume at least 0.4 mg per day of folate from all sources while preventing excessively high intakes by nontarget groups.

Given the two goals of ensuring that the target population receives enough folate and ensuring that the general population is not placed at risk, FDA is proposing to amend the food additive regulation for folic acid (folacin) (§ 172.345) to confine the foods to which folic acid may be added to breakfast cereals and foods for which the standards of identity specifically require the addition of folic acid. This proposed rule also explicitly provides for the use of folic acid in infant formulas and in foods used under medical supervision, and does not change the current limitations on the use of folic acid in dietary supplements. Finally, this proposed rule establishes specifications for folic acid for use in food.

C. Safety Issues

The potential risks that may occur if the food supply were heavily fortified with folic acid were discussed in detail by FDA in the **Federal Register** of January 6, 1993 (58 FR 2606), and in the Health Claim proposal published elsewhere in this issue of the **Federal Register**; they are also summarized briefly here.

The ability of folates to mask the anemia of vitamin B_{12} deficiency is the most widely recognized adverse effect of high intakes of the vitamin. In the presence of excess folic acid and inadequate vitamin B_{12}, the anemia of vitamin B_{12} deficiency may not develop. However, severe and irreversible neurologic damage may occur and continue to progress (Ref. 2). Because of this risk, FDA has required warning statements in the labeling for oral and parenteral preparations of folic acid for therapeutic use, which statements describe the potential for the masking of pernicious anemia, a manifestation of vitamin B_{12} deficiency (45 FR 69043, October 17, 1980; 36 FR 6843, April 9, 1971).

The potential for masking the anemia of vitamin B_{12} deficiency was recognized by the September 14, 1992, recommendation of PHS, which stated: "Because the effects of high intakes are not well known but include complicating the diagnosis of vitamin B_{12} deficiency, care should be taken to keep total folate consumption at <1 mg per day, except under the supervision of a physician" (Ref. 1).

As discussed in the Health Claim proposal published elsewhere in this issue of the **Federal Register**, vitamin B_{12} deficiency is not an uncommon condition in the United States, nor is its diagnosis always straightforward. In general, the population most at risk of developing pernicious anemia is the elderly (Ref. 3). However, the average age of onset is variable among different ethnic groups in the United States (Refs. 4, 5, and 6). Other populations for whom high intakes of folate may pose risks include persons with epilepsy or who are taking certain anticonvulsant medications, persons taking drugs that interfere with folate metabolism, and pregnant women. The Health Claim proposal, published elsewhere in this issue of the **Federal Register**, includes a detailed discussion of the risks presented by excessive folate intake.

The agency's overriding responsibility in this food additive rulemaking is to ensure that the amount of folate that people are reasonably expected to consume is safe. The agency has examined the currently available data on the levels of folate that are capable of masking the anemia of vitamin B_{12} deficiency, and tentatively concludes that the safe upper limit of daily intake of folate for the general population is 1 mg. The agency also tentatively concludes that 1 mg per day is a safe upper limit for other populations at risk. These tentative conclusions are based on: (1) The scientific evidence that the "masking" effect on vitamin B_{12} deficiency is most likely to occur at levels of folate above 1 mg (see the Health Claim proposal published elsewhere in this issue of the **Federal Register** and Refs. 7 and 8); and (2) the support by the Folic Acid Subcommittee for FDA's use of 1 mg total folate per day as a safe upper limit to guide development of fortification options (Ref. 7); and (3) the PHS recommendation that "* * * care should be taken to keep folate consumption at <1 mg per day, except under supervision of a physician." (Ref. 1). This tentative conclusion concerning the safe daily upper limit for folate intake represents the agency's best scientific judgment at this time. The agency recognizes the significance of this proposed upper limit to its analysis of the options for fortification of the food supply. FDA further acknowledges that this value may need to be adjusted based upon comments received on the three folic acid proposals.

D. Allocation of Folic Acid in Food Supply

1. Fortification Alternatives

In evaluating various options for increasing the folate intake of women of childbearing age, while at the same time not increasing the risk to the general population, FDA assessed the effect of various fortification and supplementation options on the estimated daily intake of folate. In developing these different options, the agency considered current use of folic acid as a food additive; a possible fortification of food categories that are widely consumed by the general population, e.g., dairy products, fruit juices, and cereal-grains; and dietary supplement use. The Health Claim proposal published elsewhere in this issue of the **Federal Register** discusses in detail the fortification options considered by the agency.

The agency determined, based upon available information, that the only conventional food category that currently enjoys widespread fortification with folic acid is breakfast cereal. The majority of breakfast cereals are fortified at 100 µg per serving (25 percent of the reference daily intake (RDI)). Other breakfast cereals contain 35 to 45 percent of the RDI for folate. There are a few breakfast cereals that contain 100 percent of the RDI for folate. The agency specifically requests comments as to whether there is currently widespread folic acid fortification of other food categories.

The agency also examined current practices with respect to consumption patterns of dietary supplements containing folic acid and the amount of folic acid that is routinely contained in dietary supplements. Many nationwide surveys conducted since 1970 show that 35 to 60 percent of the U.S. population consumes vitamin and mineral supplements. Park et al., (Ref. 9) reported the median potency of folic acid in single nutrient supplements was 125 percent of the RDI (range, 57 to 250 percent). In multinutrient supplements for children, folic acid was added at a level that provides approximately 75 percent of the RDI (range, 2 to 100 percent). The corresponding median potency values for prenatal supplements was 111 percent of the RDI (range, 50 to 125 percent), and for other supplements, 100 percent of the RDI (range, 1 to 500

percent) (Ref. 9). Thus, many supplements currently contain folic acid at or near 100 percent of the RDI (i.e., 0.4 mg or 400 µg for adults). This is consistent with the report by Werler et al. (Ref. 10), who determined that the most common dose of folic acid found in a variety of supplements was 0.4 mg (400 µg or 100 percent of the RDI).

FDA has considered a number of approaches to fortifying the food supply with folic acid. In particular, as described in the Health Claim proposal published elsewhere in this issue of the **Federal Register**, the agency examined the effect of fortification of the following food categories: Cereal grains, dairy products and fruit juices at 70, 140, and 350 µg folic acid per 100 g of food product. The agency also considered the effect on intake of adding 100 µg or 400 µg folic acid per serving to all breakfast cereals. In addition, in conducting this evaluation, the agency assumed that all dietary supplements contain 400 µg of folic acid. (The agency anticipates that if a health claim is allowed, the majority of dietary supplements will likely contain 100 percent of the RDI for folate (i.e., 400 µg)).

2. Proposed Folic Acid Fortification Approach

Upon examining the estimated folate intakes resulting from the different fortification options and in light of the agency's tentative conclusion that 1 mg per day is the safe upper limit of folate intake for the general population, the agency determined that the fortification scenario that best achieves the two goals of safety and effective delivery to the target population was one that limited the food additive use of folic acid to: (1) Enriched cereal-grains for which there exist standards of identity which authorize the addition of folic acid at 140 µg per 100 g; (2) breakfast cereals at levels up to 100 µg per serving; and (3) dietary supplements at levels up to 400 µg per daily dose, except for those labeled with reference to age or the condition of pregnancy or lactation.

Folic acid fortification of enriched cereal-grains offers the following advantages for delivery of folic acid to the target population: (1) Added folic acid is stable in the products derived from enriched cereal-grains; and (2) consumption of products manufactured with enriched cereal-grains is widespread throughout the population, including the target population. Therefore, the agency has tentatively concluded that folic acid fortification of enriched cereal-grain products is an effective way to increase the folic acid intake of women of childbearing age. Consistent with this tentative conclusion, in a document published elsewhere in this issue of the **Federal Register**, the agency is proposing to amend the regulations for the standards of identity of the following enriched cereal-grain products: enriched bread, rolls, and buns (§ 136.115); enriched flour (§ 137.165); enriched self-rising flour (§ 137.185); enriched corn grits (§ 137.235); enriched corn meals (§ 137.260); enriched farina (§ 137.305); enriched rice (§ 137.350); enriched macaroni products (§ 139.115); enriched nonfat milk macaroni products (§ 139.122); and enriched noodle products (§ 139.155).

FDA has tentatively determined that the addition of folic acid to breakfast cereals at levels up to 100 µg per serving is an appropriate means to provide added folic acid because: (1) Breakfast cereal is the only food category that currently enjoys widespread fortification with folic acid and such cereals represent a traditional source of many nutrients, including folic acid, for those who consume them; and (2) due to patterns of consumption, fortification of breakfast cereals at 100 µg folic acid per serving should not result in excessive folate intakes in the nontarget population. FDA considered, and has tentatively rejected, a proposed regulation that would have allowed for addition of up to 400 µg folic acid per serving in breakfast cereal, because this level would have resulted in the estimated daily intake of folic acid among significant portions of the population exceeding what has been tentatively identified as the safe upper limit of 1 mg per day. These excess levels would have occurred even in the absence of the fortification of enriched cereal-grains.

The agency has tentatively concluded that it should continue to allow the addition of folic acid up to 400 µg per daily dose in dietary supplements because: (1) There is a documented history of safe use of dietary supplements at this level (Ref. 9), and (2) dietary supplements containing higher levels of folic acid are not appropriate except in specific circumstances (i.e., conditions of pregnancy or lactation) because of the identified safety concerns, particularly the masking of vitamin B_{12} deficiencies.

As noted above, in developing this proposal, the agency examined several fortification scenarios. In tentatively choosing a fortification approach, the agency's concern was the safety of the food supply. FDA recognizes that it is impossible for the agency to examine all possible fortification scenarios. The agency requests comments on possible alternative fortification approaches that will achieve FDA's dual goals of maximizing delivery of folate to the target population and ensuring the safety of such uses of folic acid. Thus, comments on alternative fortification schemes should address issues related to the safety of the exposures that would result from the proposed alternative scheme.

E. Proposed § 172.345

In this rulemaking, the agency is proposing to: (1) Establish a limitation for the addition of folic acid to breakfast cereals, of 0.1 mg folic acid per serving; (2) retain current limitations for the use of folic acid in dietary supplements; (3) permit the addition of folic acid to foods as authorized by standards of identity established under section 401 of the act (21 U.S.C. 341); (4) explicitly allow for the use of added folic acid in infant formulas and in foods to be used under medical supervision; and (5) establish specifications for folic acid that are consistent with those in the Food Chemicals Codex (3d ed.) (Ref. 9).

1. The agency is proposing in § 172.345(d) to limit the added folic acid in breakfast cereals, as defined under 21 CFR 170.3(n)(4), to 100 µg per serving.

FDA recognizes that this proposed action will have the effect of requiring the reformulation of a small number of breakfast cereals. It is not the agency's desire to have such an effect, but it appears to be unavoidable given the data and information currently available to the agency. The agency is prepared to reconsider this approach for breakfast cereals if interested persons submit comments that provide data or other information demonstrating that even with higher fortification of breakfast cereals, folate consumption can be kept within safe limits.

The agency is particularly interested in obtaining substantive comments on the fortification option tentatively chosen by the agency. In addition, FDA expressely seeks: (1) Comments on the use of 1 mg per day total folate as a safe upper limit for establishing restrictions on food additive uses of folic acid; (2) comments that address issues related to folic acid intake and adverse effects; and (3) comments that provide information pertaining to the proposed limitations of 100 µg per serving of folic acid in breakfast cereals.

FDA recognizes that some may find an inequity in the agency's treatment of dietary supplements, with respect to which the agency is proposing to allow continued marketing of a 400 µg folic acid supplement, as compared to the agency's treatment of breakfast cereals, with respect to which FDA is proposing to establish a 100 µg per serving limit

for folic acid. FDA has tentatively determined that this approach is appropriate because supplements tend to be used to supplement the diet for specific purposes, while breakfast cereals are used more generally as part of the overall diet. However, the agency specifically requests comments on this issue. Although comments may suggest alternate approaches, such comments will be most useful if they explain how the suggested approach will ensure that total dietary intake of folate will remain within what are shown to be safe levels.

The agency finds that current limitations based on daily intake levels for added folic acid are impractical and require clarification, especially if a health claim is authorized. In light of the recent establishment of new food labeling format requirements (58 FR 2079, January 6, 1993), FDA also finds that establishing limitations based on a "per serving" basis would be more consistent with the new food labeling format and more informative because it would provide the consumer with a consistent basis upon which the nutritive value of food products can be compared. Therefore, the agency is proposing to amend the language of its regulation to establish use limitations on a "per serving" basis.

2. In § 172.345(f), the agency is proposing to maintain current limitations on the use of folic acid in dietary supplements. As discussed in the Health Claim proposal published elsewhere in this issue of the **Federal Register**, the agency has concluded that the current limitation of 400 µg per daily dose in supplements labeled without reference to age or physiological status is safe and the agency does not anticipate that unsafe intakes of folate will occur if the current limitation is maintained.

3. In § 172.345(c), the agency is proposing to amend the current food additive regulation to allow for addition of folic acid in accordance with standards of identity established under section 401 of the act. In the Standards of Identity proposal published elsewhere in this issue of the **Federal Register**, the agency is proposing to amend the standards of identity for a number of cereal-grain products to require folic acid fortification at a level of 140 µg per 100 g.

4. In § 172.345(e), the agency is proposing to amend the current food additive regulation by explicitly permitting addition of folic acid to infant formulas, consistent with section 412 of the act and regulations promulgated thereunder.

5. In § 172.345(g), the agency is proposing to amend the current food additive regulation by exempting foods used under medical supervision from limitations, other than good manufacturing practices, on the amount of folic acid that may be added.

6. In § 172.345(b), the agency is proposing to amend the current food additive regulation by incorporating by reference specifications for folic acid added to food to make the regulation consistent with the Food Chemicals Codex specifications (Ref. 11).

The agency tentatively concludes that this proposed rule provides a reasonable certainty of no harm because, as discussed above and in the Health Claim proposal, the estimated daily intakes of folate in the population do not exceed 1 mg per day, which is the level that has been tentatively identified as the safe upper limit of exposure.

II. Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Because the agency is proposing three actions involving folic acid and the net effect of these actions is likely to increase the use of folic acid, one environmental assessment has been prepared, which considers all three proposed actions.

III. Economic Impact

FDA has examined the economic implications of the proposed rule as required by the Regulatory Flexibility Act and Executive Order 12291. The Regulatory Flexibility Act (Pub. L. 96–354) requires regulatory relief for small businesses where feasible. Executive Order 12291 compels agencies to use cost-benefit analysis as a component of decisionmaking, where permitted by law. The agency finds that this proposed rule is not a major rule as defined by Executive Order 12291. In compliance with the Regulatory Flexibility Act, FDA certifies that the proposed rule will not have a significant impact on a substantial number of small businesses.

The agency is proposing to restrict the use of folic acid as a food additive only to breakfast cereals, dietary supplements, foods for special dietary use, infant formula, and any standardized foods which are required to contain folic acid. If the proposed rule is finalized, some products that currently contain folic acid as an ingredient will have to be reformulated because they do not fall into the categories listed above. The agency does not have information on how many products will have to be reformulated. However, as far as FDA is aware, the only intended technical effect of adding folic acid to food is to supplement the nutritional content of the food. Thus, the reformulation should not be costly nor should it have any measurable adverse impact on the consumer demand for the products. FDA estimates the cost of the proposed rule to be minimal.

FDA is proposing to take this action in order to prevent health risks associated with high intakes of folate in the event that the standards of identity for enriched grain products are amended to require the addition of folic acid and that a health claim is permitted for folates and neural tube defects. FDA is not able to quantify the benefit of the proposed rule because it is not able to estimate the extent to which folate health claims will be made or the effect that claims will have on consumer demand for products containing added folic acid.

IV. Comments

During the comment period for this proposal, the agency intends to convene public meetings of the Folic Acid Subcommittee and the Food Advisory Committee for a discussion of the issues raised in this document, as well as the Health Claim proposal and the Standards of Identity document. FDA also intends to request comments from the experts who participated in its November 23 and 24, 1992, meeting of the Folic Acid Subcommittee. The agency will make any comments received from these experts available for public review and comment. In addition, FDA will endeavor to have copies of the transcripts of the Folic Acid Subcommittee and Food Advisory Committee meetings available as quickly as possible.

Interested persons may, on or before December 13, 1993, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

V. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Centers for Disease Control, "Recommendations for the Use of Folic Acid to Reduce the Number of Cases of Spina Bifida and Other Neural Tube Defects," *Morbidity and Mortality Weekly Reports*, 41:1–7, 1992.

2. Butterworth, C. E., and T. Tamura, "Folic Acid Safety and Toxicity: A Brief Review," *American Journal of Clinical Nutrition*, 50:353–358, 1989.

3. Herbert, V., N. Coleman, and E. Jacob, "Folic Acid and Vitamin B_{12}," in *Modern Nutrition in Health and Disease*, 6th ed., edited by Goodhart, R. S. and M. Shils, Lea and Febiser, Philadelphia: pp. 249–250, 1980.

4. Carmel, R., and S. C. Johnson, "Racial Patterns in Pernicious Anemia: Early Age at Onset and Increased Frequency of Intrinsic Factor Antibody in Black Women," *New England Journal of Medicine*, 296:647–650, 1978.

5. Solanki, D. L., R. J. Jacobson, and R. J. Green, et al., "Pernicious Anemia in Blacks: A Study of 64 Patients From Washington, DC and Johannesburg, South Africa," *American Journal of Clinical Pathology*, 75:96–99, 1981.

6. Sinow, R. M., C. S. Johnson, and D. S. Karnaze, et al., "Unsuspected Pernicious Anemia in a Patient With Sickle Cell Disease Receiving Routine Folate Supplementation," *Archives of Internal Medicine*, 147:1828–1829, 1987.

7. Transcript of meeting of the Food Advisory Committee, Subcommittee on Folic Acid, November 23–24, 1992.

8. Transcript of meeting of the Food Advisory Committee, Subcommittee on Folic Acid, April 15, 1993.

9. Park, Y. M., I. Kim, and E. A. Yetley, "Characteristics of Vitamin and Mineral Supplement Products in the United States," *American Journal of Clinical Nutrition*, 54:750–759, 1991.

10. Werler, M. M., S. Shapiro, and A. A. Mitchell, "Periconceptional Folic Acid Exposure and Risk of Occurrent Neural Tube Defects," *Journal of the American Medical Association*, 269:1257–1261, 1993.

11. Food Chemicals Codex, 3d ed., pp. 125 and 126, Washington, DC: National Academy Press, 1981.

List of Subjects in 21 CFR Part 172

Food additives, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 172 be amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR part 172 continues to read as follows:

Authority: Secs. 201, 401, 402, 409, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 348, 371, 379e).

2. Section 172.345 is revised to read as follows:

§ 172.345 Folic acid (folacin).

Folic acid (CAS Reg. No. 59–30–3), also known as folacin or folate, may be safely used in food as a nutrient in accordance with the following prescribed conditions:

(a) Folic acid is the chemical *N*-[4-[[(2-amino-1,4-dihydro-4-oxo-6-pteridinyl)methyl]amino]benzoyl]-L-glutamic acid.

(b) Folic acid meets the specifications of the Food Chemicals Codex, 3d Ed. (1981), pp. 125 to 126, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or may be examined at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(c) Folic acid may be added to foods as authorized by standards of identity established under section 401 of the act.

(d) Folic acid may be added, at levels not to exceed 100 micrograms (μg) per serving, to breakfast cereals, as defined under § 170.3(n)(4) of this chapter.

(e) Folic acid may be added to infant formula in accordance with section 412(i)(2) of the Federal Food, Drug, and Cosmetic Act (the act) or with regulations promulgated under section 412(b)(1) of the act.

(f) Folic acid may be added to a dietary supplement that is a food, other than in conventional food form, that supplies a component with nutritive value to supplement the diet by increasing the total dietary intake of folic acid, provided that the maximum intake as directed for use will not result in daily ingestion of the additive in excess of 400 μg for foods labeled without reference to age or physiological state; and when age or conditions of pregnancy or lactation are specified, daily ingestion of folic acid may not exceed 100 μg for infants, 300 μg for children under 4 years of age, 400 μg for adults and children 4 or more years of age, and 800 μg for pregnant or lactating women.

(g) Folic acid may be added to special dietary foods that are intended for use solely under medical supervision to meet nutritional requirements in specific medical conditions and that comply with the requirements of part 105 of this chapter. Folic acid may be used in such foods at levels not to exceed the amount reasonably required to accomplish its intended nutritive effect.

Dated: September 13, 1993.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 93–25028 Filed 10–7–93; 2:51 pm]

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Thursday
October 14, 1993

Part IV

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Parts 215, 216, and 222
Protected Species Special Exception Permits; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 215, 216, and 222

[Docket No. 930404–3104; I.D. 122492C]

RIN 0648–AD11

Protected Species Special Exception Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule and request for comments.

SUMMARY: NMFS is proposing to amend the regulations for permits to: Take or import marine mammals for the purposes of scientific research, public display, or enhancing the survival or recovery of a marine mammal species or stock (enhancement) under the Marine Mammal Protection Act of 1972 (MMPA); take, import, export, or carry out any other otherwise prohibited act concerning endangered or threatened species for scientific purposes or to enhance the propagation or survival of the affected species (enhancement) under the Endangered Species Act of 1973 (ESA); and take, import, export, possess, or transport North Pacific fur seals for educational, scientific, or exhibition purposes under the Fur Seal Act of 1966 (FSA). These proposed revisions would update and consolidate existing permit regulations that have been promulgated for these purposes under the MMPA, ESA, and FSA (the Acts), implement amendments to the MMPA enacted November 23, 1988, and clarify when a permit is required and the scope and extent of permit authority under the Acts. Provisions would be added regarding permits under the MMPA and ESA to take, import, export or carry out other activities that would otherwise be prohibited concerning protected species (i.e., marine mammals and endangered or threatened species) for the purpose of enhancement. Further revisions would include permit-specific and generally applicable terms and conditions, clarified permit requirements and review procedures, amendments to the criteria for deciding whether to issue or deny permits, and revised administrative requirements and procedures. These revisions are intended to provide a comprehensive regulatory foundation for these special exception permits and to make administration of the NMFS permit program more efficient, consistent, and predictable. NMFS is proposing to consolidate these permit regulations under a single part of title 50 CFR.

DATES: Comments on this proposed rule must be postmarked or received by December 13, 1993. Notice of the dates and time, and location of public hearings will be published in the **Federal Register**. A public briefing will be held on November 3, 1993, 1 p.m. to 5 p.m.

ADDRESSES: Comments on this proposed rule may be mailed to the Permits Division; Office of Protected Resources; National Marine Fisheries Service, NOAA; 1315 East-West Highway, SSMC III; Silver Spring, MD 20910. The public briefing will be held at the NOAA Auditorium; 1305 East-West Highway, SSMC IV; Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Art Jeffers or Ann Terbush, Permits Division, Office of Protected Resources, National Marine Fisheries Service, Silver Spring, Maryland, 301/713–2289. If you need accomodations to attend the public briefing or public hearings, please call Ann Hochman on 301/713–2289 (voice). People who are deaf or hearing impaired may place a call through the Maryland Relay Service on 1–800–735–2258.

SUPPLEMENTARY INFORMATION:

General Background and Statutory Information

The MMPA (16 U.S.C. 1361 *et seq.*) sets forth as one of its purposes the protection and management of marine mammal populations and establishes, with limited exceptions, a moratorium on the taking of marine mammals by persons subject to U.S. jurisdiction. The MMPA also prohibits importation of marine mammals except under specific circumstances. On November 23, 1988, extensive amendments to the MMPA were enacted (Pub. L. 100–711). Among other things, the amendments modified the requirements for issuing permits for the take or import of marine mammals for scientific research and public display purposes, and added new provisions for the issuance of permits for enhancing the survival or recovery of a species or stock (enhancement).

The ESA (16 U.S.C. 1531 *et seq.*) sets forth as its purpose the conservation of endangered species, threatened species, and the ecosystems upon which these species depend. The ESA makes it unlawful, with limited exceptions, for persons subject to U.S. jurisdiction to import, export, take, or engage in interstate or foreign commerce affecting endangered species, or to violate any regulation promulgated under the ESA pertaining to such species or to any threatened species. Limited exceptions include activities authorized by permits for scientific purposes or by permits to enhance the propagation or survival of the affected species (enhancement).

The FSA (16 U.S.C. 1151 *et seq.*) makes it unlawful, with limited exceptions, for any person or vessel subject to U.S. jurisdiction to take, import, export, offer for sale, or possess North Pacific fur seals or their parts. Limited exceptions include activities authorized by permits to take, import, export, transport, or possess fur seals or their parts for educational, scientific, or exhibition purposes, and takings for subsistence use under limited conditions.

Permits may be issued under each of the Acts for purposes of scientific research and under both the MMPA and ESA for purposes of enhancement. Permits may be issued for purposes of public display under both the MMPA and the FSA.

(**Note:** North Pacific fur seals (Pribilof Island population) have been designated as depleted under the MMPA, and as a consequence, NMFS will not issue permits to capture North Pacific fur seals (Pribilof Island population) from the wild for purposes of public display until they have recovered and are no longer designated as depleted).

NMFS is proposing to consolidate regulations for permits for these purposes under 50 CFR part 216 and replace corresponding permit sections in 50 CFR parts 215 and 222 with references to 50 CFR part 216.

The term "protected species" refers to species subject to the jurisdiction of NMFS under the Acts. These species include marine mammals (including North Pacific fur seals), marine species determined to be endangered under the ESA, and species determined to be threatened under the ESA for which prohibitions, restrictions, or other protective measures have been established through regulation.

(**Note:** Captive maintenance provisions are proposed to be generally applicable to marine mammals under the Acts, and are proposed to have strictly limited applicability to other endangered or threatened species under the ESA; for example, endangered or threatened species of marine and anadromous fish or marine reptiles.)

Permit Program Review

Because of numerous issues and questions arising from approximately 17 years of administration of the permit program and the 1988 amendments to the MMPA, NMFS initiated a comprehensive Permit Program Review in March 1989 (54 FR 13099, March 30,

1989). At that time, a discussion paper ("Permit Policies and Procedures for Scientific Research and Public Display under the Marine Mammal Protection Act and the Endangered Species Act," Office of Protected Resources and Habitat Programs, NMFS) was released for public distribution along with a request for comments on the issues raised in the paper. The objectives of the Permit Program Review were to:

1. Clarify and confirm the policies that should govern the overall direction of the permit program;

2. Develop criteria and procedures that are clear, consistent, and responsive to applicant and public concerns;

3. Determine what documentation is needed for all permits to satisfy the requirements of the National Environmental Policy Act (NEPA);

4. Establish administrative procedures that result in a more streamlined and efficient process; and

5. Revise existing permit regulations in order to implement these improvements and the 1988 amendments to the MMPA.

Seven working sessions were held between October 1989 and January 1990. The topics for discussion were the definition of public display, scientific research permits, care and maintenance of captive marine mammals, education and conservation programs for the public display of marine mammals, and NEPA.

These working sessions provided an opportunity for permit holders in the scientific and public display communities, as well as members of the public interested in protected species, to actively participate in Permit Program Review discussions. Representatives of the Marine Mammal Commission (MMC), the U.S. Fish and Wildlife Service (FWS), and the Animal and Plant Health Inspection Service (APHIS) participated in the working sessions, submitted comments on the Discussion Paper, and were consulted concerning specific aspects of the permit program.

The results of the working sessions, together with 312 letters received in response to the discussion paper, helped NMFS identify areas of the permit program in the greatest need of improvement. These areas include NMFS' administrative tools and procedures, changes to which would not require revisions to permit regulations, such as the Instructions to Applicants, communication with applicants, and database management. NMFS also identified policy and procedural areas in need of improvement that would require revision of existing permit regulations. In considering these needed improvements and revisions, NMFS reexamined the Acts and their legislative histories to ensure that any proposed revisions were consistent with their respective purposes, policies, and provisions. Review of the MMPA and its legislative history was a particular emphasis in this reexamination.

During the Permit Program Review and reexamination of the Acts, NMFS identified a number of major issues that should be addressed through revised regulations. As a result of extensive discussion and analysis during the Permit Program Review, NMFS developed proposed policies that became the goals for the revised regulations. These proposed policies and goals are discussed in the following section.

Issue Analysis

I. General Goals

1. Establish Basic Permit Conditions and Reporting Requirements Common to all Permits

The existing regulations do not include basic permit conditions and reporting requirements. The conditions and reporting requirements that are included in existing permits as both special and general conditions have not always been clearly understood by permit holders or been administered consistently by NMFS. For example, two permits authorizing identical activities may contain different special conditions affecting reporting, other administrative requirements, and how the permitted activity may be conducted. While the general permit conditions have been essentially consistent in the past, they have frequently been a source of permit holder confusion as to how these general conditions apply to their particular permitted activity. Also, because of the lack of specificity in many of the existing general conditions, and the resulting frequent case-by-case manner in which NMFS has been compelled to interpret them, they have not been administered or enforced in a consistent or predictable fashion. The existing general permit conditions were developed without public review and comment and, in a time of increased public scrutiny of the permit program, NMFS has received numerous questions and criticisms regarding their specificity and adequacy.

The proposed regulations include provisions for standard permit-specific conditions and would allow the creation of supplementary permit-specific conditions that would be tailored to the circumstances of each permit. The proposed regulations also contain general conditions and reporting requirements that would be applicable to all existing and future permits. Improved permit holder understanding and consistent permit program administration should facilitate compliance with permit terms and conditions.

2. Establish Clear Issuance Criteria and Terms and Conditions Specific to Public Display, Scientific Research, and Enhancement Permits

The existing regulations do not clearly distinguish between terms, conditions, and issuance criteria generally applicable to all types of permits from those specific to public display, scientific research, or enhancement permits. This has sometimes proven confusing to permit applicants trying to discern what information and other requirements are applicable to a proposed activity. It has also sometimes resulted in delays in the review and processing of applications, both because of the frequent need to assist applicants in discerning what requirements are applicable and because applications must frequently be returned because they lack information or the information submitted is inappropriate. Additionally, permit holders have been forced to sort through all generally applicable terms and conditions and decide for themselves which of these conditions are not applicable; an incorrect decision in this regard involves significant risk of permit violation.

NMFS is proposing to correct these problems by separating generally applicable permit requirements from those that are specific to a particular type of permit. Therefore, in these proposed regulations, permit issuance criteria, restrictions, and conditions generally applicable to all permits are presented separately from those specific to public display, scientific research, or enhancement permits. In addition, in order to enhance readability, permit terms and conditions have been grouped into separate sections in a manner reflecting their different procedural and substantive purposes; see §§ 216.36 through 216.39 of the proposed regulations and the amendment procedures of § 216.40 discussed in section I.5. of this preamble.

3. Establish Eligibility Requirements for Permit Applicants and Holders

Due to an absence of clear eligibility criteria for permit applicants in the existing regulations, questions frequently arise over who is an appropriate permit applicant. The absence of guidance has resulted in NMFS providing sometimes conflicting

information to potential applicants as to whether they are appropriate candidates for a permit. To try to minimize these problems in the future, these proposed regulations contain "eligibility criteria" for applicants.

NMFS is proposing that eligible applicants for public display permits would be limited to facilities. Related to this limitation, a definition of "facility" is proposed. In the past, NMFS allowed any person to apply for a public display permit to take or import marine mammals, regardless of whether that person owned and controlled or was responsible for management and operation of the public display facility, or simply had custody of marine mammals that were displayed at facilities owned by others. This led to differing administration of public display permits held by individuals and by facilities. For example, some permit holders maintaining marine mammals at more than one facility would move marine mammals between facilities without NMFS' knowledge, which has caused difficulties in ensuring that transfer/transport is properly authorized. Not surprisingly, this has also made it difficult to monitor the location and movement of marine mammals. Further, it has caused problems in ensuring that individual permit holders with the responsibility for captive marine mammals provide proper care and maintenance when those individuals do not control the facility at which the marine mammals are displayed. NMFS has concluded that, since all public display activities involve captive maintenance of marine mammals, the most efficient and effective way to avoid the problems of the past is to restrict eligible public display permit applicants to facilities (see the proposed definitions of public display and facility discussed under II.1. and II.4. of this preamble).

For scientific research and enhancement permits, NMFS is proposing that eligible applicants would be the principal investigator or, under certain circumstances, the appropriate institution, governmental entity, or corporation responsible for the supervision of the principal investigator. If the research involves co-investigators, a single principal investigator, who will be primarily responsible for the special exception activity, would be identified as the applicant. The reason for these limitations on eligible applicants is to ensure accountability for activities conducted under the authority of a permit. By making the principal investigator or the entity responsible for the supervision of the principal investigator the permit holder, it is hoped that care will be exercised by the permit holder when choosing others to conduct activities on the permit holder's behalf. Co-investigators, such as the principal investigator's on-site representative, could be designated as agents in the permit and would thus also be responsible for the special exception activity authorized by the permit. Persons or groups of people totally removed from and not responsible for conducting the actual proposed scientific research or enhancement activities would not be eligible applicants.

Consistent with the "facility" approach for public display permits, where the proposed scientific research or enhancement activity involves captive maintenance in a facility, temporary pen, or other temporary enclosure, the permit application would be required to include a supporting statement from the person responsible for the facility or other temporary enclosure.

4. Establish a Process to Ensure that the Requirements of the National Environmental Policy Act of 1969 (NEPA) are Addressed During Permit Application Review and the Decision-Making Process

NMFS has reexamined the manner in which applicable NEPA requirements are addressed during the special exception permit decision-making process—including whether categorical exclusions (CEs) apply, or whether environmental assessments (EAs) or environmental impact statements (EISs) are required. This reexamination stemmed in part from two Federal court decisions—*Jones* v. *Gordon*, 621 F.Supp. 7 (D. Alaska 1985), *modified* 729 F.2d 821 (9th Cir. 1986); *Greenpeace, U.S.A.* v. *Evans*, 688 F. Supp. 579 (W.D. Wash. 1987). Under the MMPA, NMFS had issued permits authorizing captures of killer whales (*Orcinus orca)* for public display and scientific research purposes and authorizing scientists to collect biopsy samples from killer whales in Puget Sound. The issuance of these permits was challenged on the grounds that NMFS had failed to address NEPA concerns adequately. The courts discussed NMFS' blanket determination that the issuance of the permits qualified for CEs from the NEPA requirement to prepare an EA or an EIS because the issuance of permits, as a class of actions, does not have a significant effect on the human environment. The courts disagreed with NMFS' determination, finding that NMFS had violated NEPA by failing to prepare an EA or EIS in light of the controversy over the potential environmental effects of the proposals. The courts found that the elements of controversy surrounding the environmental effects of the proposals indicated that they might not be eligible for a CE, especially in the absence of any evidence that NMFS had addressed the potential environmental effects of the proposals in a reasoned manner.

These two decisions made it clear that, while the issuance of permits under section 104 of the MMPA and section 10 of the ESA may often qualify for a CE, such is not always the case. Where factors such as unusual controversy over potential environmental effects exist, NMFS must have enough information to make a reasoned decision as to whether the proposed activity qualifies for a CE or requires the preparation of an EA or EIS. Such a decision must be explained in the administrative record.

This reassessment resulted in two major NEPA considerations being reflected in these proposed regulations. The first is that an initial decision consistent with the requirements of NEPA would be made before publication of the notice of receipt of a permit application in the **Federal Register** and the opening of the public comment period. This initial NEPA analysis would result in a decision either that a permit decision is categorically excluded from further environmental impact assessment under NEPA, an EA has been prepared resulting in a finding of no significant impact, or an EIS has been completed on the proposed issuance of a permit.

The reason for proposing to reach a CE decision or prepare an EA/EIS before publishing the notice of receipt of a complete permit application in the **Federal Register** is to comply with the time constraints of the MMPA and those established in existing ESA regulations. Section 104(d)(2) of the MMPA and 50 CFR 222.24(a) of the existing ESA permit regulations state that, upon publication of the notice of receipt of the application in the **Federal Register**, a 30-day public comment period begins. Section 104(d)(5) of the MMPA requires the Assistant Administrator for Fisheries, NOAA (AA), to make a decision either to issue or deny issuance of a permit within 30 days of the close of a public hearing, or, if no hearing is held, within 30 days of the close of the public comment period. 50 CFR 222.24(c) of the existing ESA regulations requires the AA to issue or deny issuance of a permit within 30 days of the close of the public hearing or as soon as practicable after the close of the

30-day public comment period. If, during the public comment period or as a result of a public hearing, it became evident that more NEPA analysis is required, there would be no practicable way to obtain and analyze the necessary information within the 30-day decision window. Since the AA would not have the necessary information to allow a decision to issue a permit within the statutory time period in the case of the MMPA or the regulatory time period in the case of existing ESA regulations, the AA would be forced to deny issuance of a permit. This time problem caused by the requirements of section 104(d) of the MMPA, and 50 CFR 222.24(c) of existing ESA regulations, can be avoided if the necessary NEPA analysis has been completed before the 30-day public comment period begins. If, however, after publishing a notice of receipt with an initial NEPA determination that the proposed activity is categorically excluded from the requirement to prepare an EA or an EIS, or that an EA had been prepared resulting in a finding of no significant impact, the AA determines on the basis of new information regarding the impact of the proposed activity on the human environment that an EA or EIS must be prepared, the AA must deny the permit; unless an EA is prepared and a finding of no significant impact is made before the AA must make a decision to issue or deny the permit. If a permit is denied under these circumstances, the application may be resubmitted with information sufficient to prepare the required EA or EIS, and will be processed as a new application.

The second NEPA consideration reflected in the proposed regulations is that the applicant for a permit would be responsible for submitting information adequate for NMFS to address NEPA concerns and, where NMFS determines that additional information is necessary, the applicant would be responsible for providing that information. NMFS believes the permit applicant is in the best position to describe the proposed activity. In planning the activity, the applicant should have obtained information regarding the status of the species and stock of protected species and the associated marine ecosystem to be affected by the proposed activity, other activities affecting or that may affect the same protected species and associated marine ecosystem, and the likely individual and cumulative effects of the proposed activity. This information is necessary to ensure that an applicant's proposed activity is designed in consideration of these factors and that the taking of protected species proposed is only that required to meet the objectives of the activity. NEPA also provides that an agency may require an applicant to submit environmental information for use by that agency in complying with NEPA requirements.

5. Develop a Straightforward, Predictable Permit Amendment Procedure

In the past, different procedures have been followed depending on the circumstances of each "modification" request to make changes in the terms or conditions of permits; such as extending the time period for which a permit is valid, adding species or increasing numbers of protected species authorized to be taken or imported, changing scientific sampling methods, and other non-punitive, administrative alterations. However, section 104(e) of the MMPA discusses "modification" of permits only in cases where violations of the terms and conditions of the permit have occurred, or where circumstances have changed due to the promulgation of subsequent regulations. Section 104(e) does not suggest that permits can be "modified" for non-punitive reasons that do not respond to newly promulgated regulations.

During the Program Review, it was recognized that a straightforward permit amendment procedure was needed to address non-punitive, administrative alterations in permit terms and conditions. Under these proposed regulations, the "modification" procedure would be limited to the two types of situations listed in section 104(e) of the MMPA (also see 15 CFR part 904). Pursuant to the authority granted by section 112(a) of the MMPA to "prescribe such regulations as are necessary and appropriate to carry out the purposes of [the MMPA]" and section 10(a)(1) of the ESA that "[t]he Secretary may permit, under such terms and conditions as he shall prescribe * * *," NMFS is proposing a permit amendment procedure that distinguishes between major amendments that would require public notice and comment equivalent to that for a permit application, and minor amendments that would not require public notice and comment.

This proposed mechanism would designate as major amendments those alterations to permits that involve changes in permit-specific conditions regarding (1) the numbers or species of protected species authorized to be taken or imported, (2) changes in the type or level of take that could result in increased jeopardy to protected species or protected species populations, (3) the location in which the take is to occur or from/to which the import/export is to be made, or (4) time extensions of more than 12 months. Essentially, major amendments would be changes to fundamental permit-specific terms and conditions. For permits under the MMPA, these fundamental terms and conditions are listed in section 104(b)(2) of the MMPA. Just as the MMPA and ESA require a formal process of public review and comment for permit applications, NMFS is proposing that major amendments also should be subject to the same level of formal public review and input.

Minor amendments would be any change to a permit that is not a major amendment and would not require a formal opportunity for public review and comment. NMFS is proposing that minor amendments involve only permit changes that do not alter the permit-specific conditions that NMFS considers fundamental elements of a special exception permit and which, for permits under the MMPA, are listed in section 104(b)(2) of the MMPA.

Both major and minor amendments would be authorized by the AA only if it were determined that the amendment is consistent with the applicable Acts and all applicable regulations. Amendments could either be requested by a permit holder or proposed by the AA. As discussed previously, procedures similar to those used for processing permit applications would apply to major amendments, including public notice and comment, public hearings where warranted, and, for MMPA permits, review by the MMC. Minor amendments requested by permit holders could be approved or denied by the AA. However, for MMPA permits, the AA would consult with the MMC prior to approving or denying a minor amendment in the case of scientific research and enhancement permits.

Major amendments proposed by the AA would also go through a public notice and comment process similar to that for permit applications, giving both the permit holder and the public the ability to request hearings and seek judicial review of decisions to make or deny major amendments. Minor amendments proposed by the AA would afford the permit holder the right to submit written objections and to request a hearing. A hearing could be held at the discretion of the AA, either with or without a request from the permit holder.

6. Develop Reasonable, Appropriate Fees Charged for Permits and Permit-Related Activities

Section 104(g) of the MMPA directs the Secretary of Commerce (Secretary) to "establish and charge a reasonable fee for permits issued under this section." No further guidance as to what is "reasonable" appears in the MMPA or its legislative history. Section 10(a)(1) of the ESA states simply that the Secretary may issue permits "under such terms and conditions as he shall prescribe—," and a provision for a "reasonable fee" is included in ESA regulations that presently implement this section of the law (50 CFR 222.23(d)(8)). The FSA, in section 104, provides that the Secretary shall permit special exception activities "subject to such terms and conditions as he deems desirable."

The fees that are presently charged for permits (i.e., $25 for scientific research permits and $200 for public display permits) have remained essentially unchanged for approximately 20 years. Fee receipts are deposited directly to the General Fund of the United States Treasury and are not used in the direct support of permit program administration. NMFS considered many types and amounts of permit fees to be proposed in these regulations, including fees linked to, for example, per animal charges, fair market value, percentage of gate/attendance receipts, type of take, or administrative processing time. NMFS is requesting comments on alternative methods for establishing reasonable permit fees.

For the purpose of soliciting comments, and as a proposed reasonable basis and mechanism for assessing permit fees, NMFS is proposing fees that, while they would not offset the costs of permit program administration, reasonably reflect the variation in the complexity involved for reviewing and processing different types of permit applications. In general, the proposed fees are based on the five permit categories reflected in appendix A to subpart D of these proposed regulations. The categories of permits and proposed fees roughly factor in the degree of risk to protected species and the associated potential for impact on wild stocks, and, as a result, the relative level of difficulty of administrative review and processing associated with that type of permit application and the relative likelihood that the proposed activity would require preparation of an EA or EIS.

These revised fees are presented in the form of a modified "fee schedule" for scientific research and enhancement permits, with a proposed range from "no charge" up to $1,000. Proposed fees for public display permits would be assessed dependent on the type of activity proposed and whether the applicant already is a public display permit holder and would range from $1,000 to $2,500. These proposed fees would also serve to inform applicants of the most likely fees when submitting their permit application. See § 216.42 for the permit issuance and permit-related administrative fees proposed in these regulations, and appendix A to subpart D of these proposed regulations for related information.

Relatively smaller fees are proposed to be assessed for the issuance of major amendments to applicants who already hold a public display permit. This reflects the fact that certain aspects of the applicant's qualifications and facility characteristics have already been evaluated, and review of a subsequent major amendment request generally would merely involve updating information supplied in the past. Thus, the effort involved in reviewing and processing such a major amendment request is not as great as the effort required to review and process a permit application from a previously unknown applicant.

Permit administrative fees would also be charged for certain administrative activities associated with permits, such as amendments and authorizations for the transfer of animals between permit holders. Major amendments requested by scientific research or enhancement permit holders that involve increases in levels of jeopardy, risk of adverse impacts, or levels of harassment would be charged administrative fees that reflect the type and level of take authorized after the amendment to the permit. For example, if a scientific research or enhancement permit that initially authorized a take with a corresponding permit issuance fee of $150 was amended to authorize a take with a corresponding issuance fee of $1,000, the administrative fee charged for the major amendment would reflect the difference in the relevant issuance fees, or $850. For a major amendment requested by the permit holder that does not involve increased levels of jeopardy, risk of adverse impact, or levels of harassment, an administrative fee of $100 would be charged, except for certain permits involving only non-intrusive, non-contact harassment, for which $50 would be charged. No administrative fee would be charged for major amendments initiated by the AA or for minor amendments. In proposing these administrative fees for major amendments requested by permit holders, NMFS has considered the fact that, in many cases, the levels of administrative processing involved for major amendments will be similar to those required to process a permit application.

If NEPA documentation were needed, the AA might require that the permit applicant bear the cost of developing an EA or EIS in the form of supplemental fees that would be included in the permit issuance fee. Supplemental fees to be either included in the permit issuance fee or assessed as administrative fees would be also be charged for costs such as transportation, lodging, and per diem associated with inspections of foreign facilities, and for the costs associated with placing observers on vessels engaged in a permitted activity, if the AA or a Regional Director, NMFS, determines that an observer is required.

Fees could be reduced or waived if the applicant is a Federal agency or if the AA determined that such a waiver or reduction is in the public interest consistent with the policies and objectives of the Acts. An example of circumstances in which fees could be reduced or waived for a non-Federal applicant would be for activities that the AA has determined are essential to the enhancement of the survival or recovery of a protected species or stock. Also fees could be reduced for activities involving salmon or sturgeon species listed as endangered or threatened taking into consideration the life stage affected (e.g., smolts), the type of take or otherwise prohibited activity involved, and the related risk or impact on stocks.

7. Provide for a Smooth Transition From the Current Regulatory Scheme to the Proposed Regulatory Scheme

These regulations, as proposed, would alter the administration of the permit program. Consequently, NMFS is proposing a number of actions to ease the transition to the new system. This transition scheme is proposed in § 216.43. The transition process would differ depending on the type of permit involved and on whether the affected entity is a facility or an individual. The effective date of final regulations will be 30 days after the date the final rule is published in the **Federal Register**. This date is referenced in brackets in the proposed regulations as "[*the effective date of the final rule*]." On the effective date of the final rule, the current general permit conditions would be replaced by the revised general permit terms and conditions proposed in these regulations. The 1-year to 18-month transition periods for permit adjustment or application submission are provided to ease the administrative burden of the

transition on both holders of permits or other authorizing documents and NMFS.

a. *Public Display/Facilities.* NMFS is proposing that, within 1 year of the effective date of the final rule, NMFS would adjust all public display permits previously issued before the effective date of the final rule and associated with facilities for purposes of public display to reflect the status quo for the species and numbers of marine mammals held at that facility as of the effective date of the final rule.

NMFS is proposing that, within 18 months of the effective date of the final rule, public display permits that were issued before the effective date of the final rule and associated with a multiple facility aggregation, or that are otherwise not facility-specific, would also be adjusted. These permits would become separate permits specific to each individual facility. These separate permits would reflect each facility's status quo, and each separate permit would provide a reasonable allowance for the transfer of marine mammals between the separate facilities comprising multiple facility aggregations. Until the facility-specific permit transition is completed for any particular multiple facility aggregation, inter-facility transfers among the component facilities could continue without additional NMFS authorization.

NMFS would notify facilities that are holding marine mammals for public display, but that have not been issued public display permits, that they need a permit to continue holding marine mammals for public display purposes. Within 6 months of this notification, but not more than 1 year from the effective date of the final rule, these facilities would be required to submit a complete permit application. If, after going through the normal permit process, the facility meets the criteria proposed in these regulations, a public display permit would be issued. If the facility could not meet the criteria, NMFS would work with that facility and other permit holders to relocate the marine mammals to permitted facilities.

b. *Public display/individuals.* NMFS is proposing to notify individuals who currently hold marine mammals for purposes of public display, either under permit or other authorizing documents, that within 1 year of the effective date of the final rule, they would be required to arrange, either with the facility where the marine mammals are currently held or with another facility, to have those marine mammals brought under the authority of that facility's permit.

c. *Scientific research/facilities or individuals.* Scientific research permits issued before the effective date of the final rule involving marine mammals would not be greatly affected by these proposed regulations, except that, on the effective date of the final rule, the general permit terms and conditions of these proposed regulations would supersede the existing general conditions. Within 1 year from the effective date of the final rule, the reporting requirements of the proposed regulations would apply to all scientific research permits involving marine mammals. Within 1 year of the effective date of the final rule, scientific research permits issued before the effective date of the final rule that authorize research on captive marine mammals in a facility other than a public display facility would be adjusted once, to reflect the status quo at that facility. Any intrusive research being conducted under authority of a public display permit on the effective date of the final rule would be allowed to continue for up to 1 year from the effective date of the final rule; but must then be authorized under a separate scientific research permit. Any intrusive research begun after the effective date of the final rule, either at a public display facility or elsewhere, would be required to be specifically authorized under a scientific research permit.

Scientific research permits issued before the effective date of the final rule that authorize research on protected species other than marine mammals (e.g., endangered or threatened species of marine and anadromous fish or marine reptiles) will not be affected by these regulations.

8. Establish a Process Through Which Beached and Stranded Marine Mammals Taken for Rehabilitation May Be Used for Purposes of Public Display, Scientific Research, or Enhancement After Rehabilitation

Section 109(h) of the MMPA allows Federal, State or local officials, or persons designated by the AA through a section 112(c) agreement, to take marine mammals for the protection or welfare of the mammal. Pursuant to this statutory authority, beached and stranded marine mammals are recovered and rehabilitated. During and after rehabilitation, some of these marine mammals have been publicly displayed or involved in scientific research or an enhancement activity. On November 4, 1992, the Marine Mammal Health and Stranding Response Act (MMHSRA) was enacted (Pub. L. 102–587), which amended the MMPA to require that by November 4, 1994, NMFS, in consultation with the Secretary of the Interior, the MMC, and others, develop and implement objective criteria to determine at what point a marine mammal undergoing rehabilitation is returnable to the wild. Until this process occurs, NMFS is proposing both a basic regulatory framework within which such releasibility decisions would be made and the requirements that would apply for the use of rehabilitated beached and stranded marine mammals for public display, scientific research, or enhancement purposes. These requirements include that such activities would first have to be specifically authorized by NMFS, and that they be conducted in accordance with the public display, scientific research, or enhancement provisions of these regulations.

Section 109(h)(3) of the MMPA requires that steps be taken to return marine mammals taken under section 109 to their natural habitat, where feasible. Consistent with section 109(h)(3), the proposed regulations would require the release of the rehabilitated marine mammals to the wild, if feasible. Under these proposed regulations, release is considered to be feasible if: (1) The release of the marine mammal to the wild is likely to be successful; and (2) the marine mammal to be released is determined by the AA not to be a suitable substitute for a marine mammal of the same species and characteristics for which a permit has been issued for capture from the wild or for acquisition from captive stock. These requirements would be used on an interim basis to be revised consistent with, and may be used as a starting point for, the objective criteria required by the MMHSRA for determining when rehabilitated marine mammals are returnable to the wild.

NMFS is proposing various provisions to ensure marine mammals are released, if feasible, and to prevent a situation where a marine mammal being rehabilitated remains in captivity in an indeterminate status for an extended period of time. For example, NMFS is proposing that a marine mammal be released within 6 months, unless the attending veterinarian has determined that the release to the wild is not likely to be successful or that additional time is needed to make a releasability determination. If the attending veterinarian makes such a determination, the Regional Director could either concur with that determination not to release the marine mammal to the wild or require the marine mammal's release after an independent assessment of the feasibility of release by the Regional Director or his or her agents.

In no case would a marine mammal be held for more than 2 years without a final determination as to releasability. Within 30 days of a determination that the release of the marine mammal is not likely to be successful, the holder would be required to request authorization to retain or transfer custody of the marine mammal, or carry out other disposition. For example, such marine mammals would have to be held under an existing, amended, or newly issued special exception permit if they were to be used for purposes of public display, scientific research, or enhancement. Consequently, under such circumstances, the holder of the marine mammal may need to apply for a special exception permit or request a major amendment to an existing permit, or to transfer custody to an acceptable permit holder. First consideration would be given to retention of the marine mammal by the facility that bore the cost of rehabilitation. Additionally, provisions are included in the proposed regulations allowing for the retention or transfer of custody of such rehabilitated marine mammals pending the processing of such permit applications or requests for major amendments, if necessary.

In the past, for purposes of public display, scientific research, or enhancement, NMFS has authorized retention or transfer of some marine mammals originally taken for rehabilitation under section 109(h) of the MMPA by issuing Letters of Agreement. The process for reviewing requests for such Letters of Agreement has been less structured than the process for reviewing applications for public display permits. One of the reasons for issuing Letters of Agreement to authorize the holding of rehabilitated non-releasable marine mammals has been to minimize the burden borne by rehabilitation facilities. There are significant costs involved in the maintenance of animals after they have been rehabilitated pending approval of a permit application. However, to make treatment of these situations more consistent with the treatment of other situations under the MMPA, during the last few years NMFS has been requiring that any facility receiving marine mammals for the first time must have a permit, even if the marine mammals were originally removed from the wild for rehabilitation under section 109(h) of the MMPA. The proposed regulations include a specific procedure for accomplishing the transition from the status of a beached or stranded marine mammal taken under section 109 of the MMPA for rehabilitation to the status of a marine mammal taken under section 104 for purposes of public display, scientific research, or enhancement.

II. Public Display Goals

1. Define the Term "Public Display"

Many issues were considered during the Program Review in formulating the definition of "public display." The MMPA imposes a general moratorium on taking or importing marine mammals, except in limited and specific situations. One exception is for public display purposes. However, the term "public display" is not defined in the MMPA or in existing regulations. One of the major issues considered was whether public display includes activities in the wild, such as marine mammal observation, feeding or swimming with marine mammals, documentary or other film-making, or photography for educational/conservation purposes.

The statutory language and legislative history of the MMPA make it clear that public display activities were understood and intended by Congress to be conducted only in captive settings. For instance, the public display permit provisions of section 104(c)(2), most recently amended in 1988, discuss public display activities only in terms of activities at land-based facilities.

The reasons for limiting public display activities to captive settings were discussed and considered during the course of processing one application requesting a public display permit to conduct marine mammal feeding activities in the wild; the permit was ultimately denied after extensive comments from the public and scientific community. It was determined that terms and conditions that can be applied to public display activities in captive settings cannot readily be applied to activities conducted in the wild. For instance, while captive maintenance of marine mammals can be required to meet NMFS, APHIS, or other regulatory standards, such standards are written for, and do not apply outside of, captive settings. Further, because wild animals are unpredictable, activities conducted in the wild that depend on the ability to attract or closely approach marine mammals for success or profitability could result in unnecessary harassment or injury to wild marine mammals. Wild marine mammals that could be habituated toward careful persons operating under a public display permit could not be prevented, regardless of any protective terms or conditions included in any permit, from approaching other, perhaps less careful, persons. This increases the risk of harassment, injury and death of marine mammals in the wild. Interaction in the wild between marine mammals and qualified and experienced personnel conducting bona fide scientific research or enhancement activities under a section 104 permit is provided for under the MMPA. Attempts to authorize activities involving the interaction of wild marine mammals and the general public, where such activities are likely to result in substantial risk of adverse impact to a species, stock, or individual protected species, no matter how carefully or responsibly attempted, poses unacceptable risks to animals and the public.

Consideration of all the information gained in processing and rejecting the permit application to conduct public display activities in the wild, along with review of the language of the MMPA and its legislative history, have led NMFS to the conclusion that observation or direct interaction by the public with marine mammals in their natural habitat does not fall within the intended meaning of public display in the MMPA. Therefore, public display permits authorizing such activities cannot be issued under the MMPA. Observation/whale watching, film-making, feeding, swimming and other activities conducted in the wild must be conducted in a manner so as not to take (e.g., harass) marine mammals. NMFS published a notice reflecting this policy not to accept or consider applications to conduct public display activities in the wild because such activities are not encompassed in the term "public display" as it is used in the MMPA (55 FR 35336, August 29, 1990).

In a related matter, NMFS in 1991 amended the regulatory definition of take to clarify that feeding marine mammals in the wild is a form of take. That action was challenged by a commercial dolphin feeding cruise operator, and on October 29, 1992, the Federal District Court for the Southern District of Texas in *Strong* v. *United States* (Civil Action No. C–91–083), enjoined NMFS from applying that definition of "take" as it relates to dolphins. The court also enjoined NMFS from enforcing the policy against considering applications for public display permits authorizing activities conducted in the wild, discussed above, on the grounds that the policy was actually a regulation that had not been subject to public notice-and-comment rulemaking under the Administrative Procedure Act (APA). While NMFS is appealing the courts ruling, these proposed regulations, most specifically the proposed definition of the term "public display," would address that

courts concerns about adopting agency policy without complying with the APA.

A second major issue NMFS considered when defining public display was whether the definition includes interactive programs and activities conducted in captive settings, such as petting, "swim-with," or feeding programs. After careful review, NMFS believes that many of these interactive programs can be conducted consistent with the MMPA's guidance on public display. In an effort to assess the compatibility between public display and swim-with interactive programs, four facilities are currently authorized to conduct "swim-with-the-dolphin" programs on an experimental basis. Whether NMFS will authorize the continued conduct of these or additional swim-with interactive programs will depend on the review of these experimental programs. Regardless, interactive activities, by their nature, involve a considerable risk of conveying attitudes and values to the participating public that are inconsistent with the goal of protecting and improving public understanding of wild marine mammals and the marine ecosystem. Certain interactive programs could also involve an increased risk to the health and welfare of the participating marine mammals. Consequently, such programs would be evaluated on a case-by-case basis. If found acceptable, they would have to be specifically authorized in the permit.

As a result of the assessment of issues associated with public display, definitions of "public display" and "interactive program" are proposed at § 216.3.

The permit holder's staff referred to in the definition of "interactive program" includes persons contracted to, or volunteers supervised by, the permit holder, where such contractors or volunteers are necessary for the performance of the animal and facility support functions noted in the definition. NMFS recommends that, if a permit holder or other person is uncertain as to whether a proposed activity falls within this definition, they should check first with NMFS.

2. Clarify That Captive Holding Is a Form of Take Under the MMPA

Reexamination of the language of the MMPA, its legislative history, and the existing regulatory definition of take during the Program Review has led NMFS to the conclusion that holding a marine mammal captive is, in itself, a take under the MMPA. This take of a marine mammal occurs regardless of whether such captive holding is directly associated with and immediately preceded by a capture of the marine mammal from the wild (also see the discussion regarding captive-born marine mammals in II.6. of this preamble). As a result, captive maintenance needs to be permitted for the purpose of public display, scientific research, or enhancement under section 104 of the MMPA.

Section 3(12) of the MMPA states that "take" means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal. NMFS' existing regulatory definition of "take," found at 50 CFR 216.3, lists some of the activities that constitute a take:

> *Take* means to harass, hunt, capture, collect, or kill, or attempt to harass, hunt, capture, collect, or kill, any marine mammal. This includes, without limitation, any of the following: The collection of dead animals, or parts thereof; the restraint or detention of a marine mammal, no matter how temporary; tagging a marine mammal; the negligent or intentional operation of an aircraft or vessel, or the doing of any other negligent or intentional act which results in disturbing or molesting a marine mammal; and feeding or attempting to feed a marine mammal in the wild.

NMFS' regulatory definition of take has included the concepts of restraint or detention of marine mammals, no matter how brief or long the duration, since December 21, 1972 (37 FR 28177). In 1981, Congress expressly reviewed and approved NMFS' present regulatory definition of take that prohibits restraint or detention of marine mammals, or the doing of any other intentional or negligent act that results in harassment. The Supreme Court has found persuasive evidence of Congressional approval of an agency interpretation of statutory language, where Congress subsequently reviews the agency's interpretation and does not overturn it (*Young* v. *Community Nutrition Inst.*, 476 U.S. 974, 983 (1986)). Holding a marine mammal in captivity is a take via restraint or detention, and thus must be authorized by a section 104 permit. Other interpretations in this regard cannot be reconciled with the text of the MMPA or of the intent of Congress as expressed in the statute's legislative history.

While taking a marine mammal by capture may be limited to only the initial act of removing the marine mammal from the wild, the existing regulatory definition of take also encompasses the activities of "restraint or detention," which include prolonged holding of the marine mammal. Holding a marine mammal captive is a take by restraint or detention that may be, but is not necessarily, related to the capture of a marine mammal from the wild; and is prohibited under sections 3, 101, and 102 of the MMPA and the existing definition of take at 50 CFR 216.3. For the purposes of public display, scientific research, and enhancement, such a take may be authorized only by a permit under section 104 of the MMPA.

In addition to providing the basis for consistent and predictable decision-making, the most immediate consequence of this determination is that the captive holding of all marine mammals presently being held for purposes of public display, scientific research, or enhancement would be required to be authorized by a permit under section 104 of the MMPA. Most facilities holding marine mammals for purposes of public display have been issued a public display permit at some time in the last 20 years. However, as it concerns these and other facilities, NMFS has used instruments besides section 104 permits during this period to authorize captive holding and routine inter-facility transfers. These letters, agreements, or other authorizing documents have primarily been based upon the general provisions of section 112(c) of the MMPA. However, after analysis, NMFS believes that the use of section 112(c) alone as a statutory basis for authorizing captive holding, transport/transfer, purchase or sale activities, or other disposition of marine mammals for purposes of public display, scientific research, or enhancement may not give appropriate consideration to the requirements of sections 102 and 104 of the MMPA. For this reason, Letters of Agreement would no longer be used as a basis for authorizing a facility to hold a marine mammal. All authorizations for transport/transfer, purchase or sale activities, or other disposition of marine mammals would be consistent with and linked to a permit.

In this regard, for an applicant (non-permit holder) who wishes to import or capture a marine mammal from the wild and subsequently maintain it in captivity for public display, scientific research, or enhancement purposes, a single section 104 permit could be issued that would authorize all of the taking activities to be conducted by the applicant in the terms and conditions of the permit. For an applicant that seeks to simply hold a marine mammal captive for public display, scientific research, or enhancement purposes, but would not need to import or capture the marine mammal from the wild (i.e., would obtain the marine mammal from captive stock), a section 104 permit

could be issued to an applicant solely to authorize the taking of the marine mammal by captive holding. For permit holders that wish to import or capture marine mammals in the wild in addition to marine mammals already held under an existing permit, a major amendment could be issued for the import or capture activity and to, as necessary, authorize their subsequent captive maintenance (i.e., if the existing permit does not already authorize sufficient species and numbers of marine mammals to encompass the additional animals to be imported or captured).

3. Delineate the Scope of NMFS' Jurisdiction and Authority Under the MMPA for the Captive Maintenance of Marine Mammals; and Explain How the MMPA and the Animal Welfare Act (AWA) Apply to Captive Maintenance

Section 104(b)(2) of the MMPA directs NMFS to specify in the terms and conditions of a permit the number and species of marine mammals, the location and manner in which they may be taken, and the period during which the permit is valid. Further, section 104(c)(1) directs NMFS to specify requirements for the methods of capture, supervision, care, and transportation that must be observed while conducting activities authorized by the permit. The MMPA thus provides NMFS with clear and independent jurisdiction and responsibility for establishing care and maintenance standards for captive marine mammals. Concurrently, the terms of the AWA apply to captive maintenance of marine mammals.

Following enactment of the MMPA in 1972, as required by section 104(c), each permit issued by NMFS for public display purposes included detailed terms and conditions regarding the captive care, supervision, and transportation of marine mammals. Seven years later, in 1979, after interagency consultation with NMFS, FWS, and the MMC, APHIS promulgated standards under the AWA for the care and maintenance of captive marine mammals. At that time, in the interest of avoiding duplication in regulation or enforcement, NMFS both modified all permits to incorporate these new care and maintenance standards and entered into a formal interagency agreement with FWS and APHIS concerning respective functions, responsibilities, and authorities among NMFS, APHIS, and the FWS.

Since 1979, NMFS has discharged its statutory duty under the MMPA by incorporating the basic standards promulgated by APHIS as terms and conditions of special exception permits involving captive marine mammal care, supervision, or transport. During this period, issues have arisen and incidents have occurred involving the care, maintenance, or transport of captive marine mammals. Both the independent jurisdiction provided NMFS and FWS under the MMPA and the interagency agreement between these agencies have proven important in addressing these issues and resolving a number of these incidents. Also, during the course of the Permit Program Review, a number of concerns were raised by animal welfare groups, conservation organizations, the MMC, and NMFS regarding the adequacy of the present AWA/APHIS care and maintenance standards for marine mammals and the adequacy of APHIS enforcement of these standards. NMFS, the MMC, and FWS plan to work with APHIS to address the problem areas identified and to revise the marine mammal captive maintenance standards as necessary.

Until these standards are revised, and pursuant to the existing Agreement among NMFS, APHIS, and FWS, the current AWA/APHIS standards are referenced in these proposed regulations (see § 216.37). A violation of the AWA/APHIS standards, therefore, would also be considered a violation of the MMPA permit. In addition, NMFS may exercise its independent statutory duty concerning marine mammals to supplement APHIS's captive maintenance standards, if NMFS finds such action necessary.

4. Establish a System of Facility-Specific Periodically Renewed Permits for Purposes of Public Display Which Can Be Implemented Fairly and Consistently (Also See I.3. of This Preamble)

In the past, NMFS has not required all facilities or persons to comply with the same requirements and standards. Some facilities and persons have been required to comply with certain administrative requirements prior to conducting an activity, while others have conducted the same type of activity without having to comply with similar requirements. Part of the inconsistency resulted from the lack of a regulatory definition to determine what constitutes a "facility." The sometimes disparate treatment of separate facilities also has been due, in part, to single corporate ownership or other affiliation of multiple facilities. For example, transfers of marine mammals between separately owned facilities have required explicit prior authorization from NMFS before proceeding, while transfers of marine mammals between facilities owned by the same entity have proceeded with no prior authorization. Consequently, NMFS frequently has been unable to monitor the transport or location of marine mammals.

This situation caused NMFS to reexamine its policies to search for mechanisms with which to ensure equal treatment for all facilities, regardless of ownership, and to improve administrative efficiency and information flow between NMFS and the facilities. The proposed regulations describe a single set of requirements that would be applicable to all facilities and persons. This is done in large part through a proposed new definition of the term "facility," included at § 216.3.

This definition of facility refers to enclosures not necessarily located on a contiguous parcel of land but grouped nearby; for example, separate "satellite" enclosures for medical or other purposes. Seasonal traveling facilities, such as temporary exhibits that use one facility for traveling and another for "permanent off-season" care of marine mammals, would be considered two separate facilities, unless the same "traveling" facility is used during the "off-season" as a semi-permanent exhibit.

The proposed regulations have been developed with the idea that the ownership of one or multiple facilities is irrelevant to the question of whether each must be permitted, and is irrelevant to the manner in which they are treated by the regulations. Under the definition of facility, NMFS would require that each separate facility, regardless of size, affiliation, or corporate structure, comply with the requirements and standards of the regulations. Each one of multiple facilities under single corporate ownership or management would be subject individually to the same requirements as facilities owned by different entities. For example, each separate facility would be required to hold a permit, and transfers of marine mammals among all facilities would require prior authorization. This uniform application of the regulations is necessary to ensure that all permits and conditions, requirements and privileges, are administered consistently, and would allow NMFS to monitor all transfers and facility-specific activities and maintain accurate data concerning them, neither of which has been possible to date.

NMFS policy has been to limit the valid period of scientific research permits to a maximum of 5 years. Scientific research involving a period greater than 5 years generally required a new permit to be obtained, even if all other aspects of the research activity

remained unchanged. At the same time, in permits issued for the purpose of public display, NMFS has consistently identified the valid period for importation or certain types of taking and related activities, including captures from the wild or acquisition of marine mammals from captive stock. These valid periods have usually been identified as a few years, with NMFS generally adhering to a policy limiting extensions of these valid periods to no more than 5 years. However, these same public display permits have not explicitly identified a valid period for the subsequent captive holding of these marine mammals. At most, public display permits have included a statement that the terms and conditions of the permit apply as long as the marine mammals are held captive. Under these circumstances, an indefinite valid period for the captive holding of marine mammals under the permit has been implied.

Section 104(b) requires, among other things, that any special exception permit specify the period during which the permit is valid. As discussed extensively in this preamble, marine mammals may be held captive for purposes of public display, scientific research, or enhancement only if such taking is authorized under a special exception permit. Consequently, NMFS has determined that a valid period must be specified for such captive holding. An indefinite valid period for a permit authorizing the captive holding of marine mammals is unacceptable for a number of reasons. Most importantly, periodic review and renewal of permits are necessary to ensure that the permit holder continues to comply with the terms and conditions of the permit. Also, over time, the circumstances associated with the captive holding of marine mammals may change. An indefinite valid period for permits is equivalent to a prohibition on periodic public review and comment concerning a taking of marine mammals under the MMPA, regardless of changing circumstances. Such an opportunity for public review and comment regarding special exception permits is given considerable weight in the MMPA. As a result, NMFS has concluded that an indefinite valid period for permits authorizing the captive holding of marine mammals would be contrary to the requirements of the MMPA.

NMFS is proposing a 5-year limitation on the valid period of any special exception permit, including public display permits. Extensions of this valid period would be allowed by major amendment (see I.5. of this preamble). The valid period of each such major amendment would also be limited to 5 years. Additionally, this proposed allowance for an extension of the valid period of a permit by major amendment would also apply to scientific research permits, dropping the present requirement that an entirely new permit be issued every 5 years even if all aspects of the research remain unchanged. New scientific research permits would continue to be required for new or significantly changed research protocol or objectives. To provide some essential flexibility in the administration of this provision, NMFS is also proposing to allow, at the discretion of the AA in response to a request by the permit holder, a one-time allowance for the extension of the initial valid period of the permit of no more than 12 months by minor amendment. This would allow the initial valid period of the permit to be extended up to a period of 6 years before a major amendment would be required for further extension.

5. Incorporate the 1988 Amendments to the MMPA Requiring an Education or Conservation Program and Regularly Scheduled Public Access as Requirements for Public Display Permits

The 1988 amendments to the MMPA added requirements for public display permits. A requirement was added to section 104(c)(2) that applicants must offer an education or conservation program that, based on professionally recognized standards of the public display community, is acceptable to the Secretary. During the Permit Program Review it became clear that the phrase "based on professionally recognized standards of the public display community" did not refer to any standards already established by the public display community. Until the public display community establishes uniform comprehensive standards on which specific issuance criteria could be based, NMFS proposes to use the basic education or conservation program issuance criteria and permit terms and conditions proposed in these regulations to determine whether applicants' education or conservation programs are acceptable.

In determining whether an education or conservation program offered by an applicant is acceptable, NMFS is proposing that the AA consider: (1) Whether an education or conservation program has clearly stated objectives and has been designed and will be administered by a professional staff; (2) whether the basic messages of the program are consistent with the policies and objectives of the MMPA; and (3) whether the program effectively conveys accurate information to the public about the life history, behavior, sensory capabilities, conservation, or other aspects of marine mammals, such as their role in the marine ecosystem. These standards would also be included as a permit term or condition in any permit issued. These standards reflect the interim policy on education and conservation programs published in the **Federal Register** on May 22, 1989 (54 FR 22001), and a distillation of the numerous comments and recommendations on this subject received during the Permit Program Review.

As stated in the existing interim policy on education and conservation programs, given the diversity of public display facilities, NMFS recognizes that the content of education and conservation programs will vary, as will the techniques used to communicate with the public. However, NMFS is proposing in these regulations that regardless of the type or content of such programs, they must effectively convey accurate information about marine mammals and their role in the marine ecosystem. It is not the intent of NMFS to regulate educational content other than to require that the information be accurate, current, and understandable, and that the overall message be consistent with the purpose and policies of the MMPA, resulting in an improved understanding of marine mammals and their role in the marine ecosystem. NMFS will encourage public display facilities to conduct programs that foster positive attitudes toward the marine mammals being displayed, that improve public understanding of marine mammals and support for protection and conservation of marine mammals in the wild and the marine ecosystem of which they are a part, and that are attuned to the interests and backgrounds of the varied public to which the education and conservation programs are directed, including visitors to the display facility. Following the issuance of final regulations, NMFS will continue to work with the public display community, education professionals, and interested members of the public to facilitate development of "professionally recognized standards" for education and conservation programs.

Other requirements added to section 104(c)(2) of the MMPA by the 1988 amendments were that public display facilities must be open to the public on a regularly scheduled basis and that access to the facilities must not be restricted other than by an admission fee. These requirements would be incorporated in the proposed

regulations as permit restrictions and permit issuance criteria. These permit issuance criteria and restrictions are not intended to require permit holders to relinquish any rights or obligations held by them as business proprietors concerning the safety of their patrons and premises. For example, the requirement that access not be restricted other than by the charging of an admission fee would not preclude a public display facility from exercising reasonable discretion in removing disruptive or unruly patrons who either interfere with facility operations or pose a threat to the health or welfare of the marine mammals held at the facility.

6. Delineate the Authority of the MMPA and the Jurisdiction of NMFS Concerning Captive-Born Marine Mammals, Including "Pre-Act Progeny"

Over the years, NMFS has been presented with the argument that the only activity other than importation that NMFS may issue a permit for under section 104 is the taking of marine mammals in the wild, including capturing marine mammals from the wild, and that, therefore, the only captive marine mammals over which NMFS has jurisdiction under section 104 are those captured from the wild. It has been argued further that once a NMFS-authorized capture has been completed, NMFS jurisdiction concerning the captured animal ceases. Thus, some argued, conditions of captivity for those marine mammals, and any activities (including captive holding or transportation) involving marine mammals born in captivity are outside the scope of the MMPA, and consequently not subject to NMFS' jurisdiction to regulate. However, NMFS' review of the MMPA and its legislative history does not support that argument; it indicates that NMFS has a statutory mandate to regulate the methods of care, supervision, and transport of marine mammals, regardless of whether the marine mammal arrived in captivity through capture from the wild or through birth into captivity. This is even more clear since, as discussed previously, captive holding of marine mammals is a take.

Section 104(e) of the MMPA allows NMFS to modify, suspend, or revoke permits for violations of their terms or conditions. If permit terms and conditions applied only to capture activities, then revocation of a permit for substandard captive maintenance of the previously captured marine mammal would have no impact on the permit holder because the activity authorized in the permit terms and conditions (i.e., the capture) would already have occurred. Such an interpretation would also ignore NMFS' duty under section 104(c)(1) to prescribe in the terms and conditions of the permit the methods (and to monitor a permit holder's compliance with the prescribed methods) of supervision, care, and transportation of marine mammals after captures. Further, it would ignore the terms of section 102(a)(2)(B) prohibiting any person from using any place under the jurisdiction of the United States for any purpose in any way connected with the taking or importation of marine mammals unless authorized by a section 104 permit in the context of public display, scientific research, or enhancement activities. Finally, an interpretation that NMFS permit terms and conditions apply only to capture activities would ignore the section 102(a)(4) prohibition on purchase, sale, or transport activities involving any marine mammals (not only those captured from the wild), unless authorized under a section 104 permit in the context of public display, scientific research, or enhancement activities.

During the Program Review, it also became clear that if captive-born marine mammals are not subject to the jurisdiction, and thereby the protection, of the MMPA, facilities or individuals could hold these marine mammals obtained from other facilities without the authorization of a permit. This would mean that NMFS could not sanction facilities for substandard care of these captive-born marine mammals, which would be contrary to the intent of Congress, as reflected in the following passages:

> Additionally, during the moratorium, permits may be issued for the taking or importation of marine mammals for scientific research or for display in public or privately owned oceanariums. However, strict regulations are to be imposed by this legislation on such practices. (S. Rep. No. 863, 92d Cong., 2d Sess. 7 (June 15, 1972)).

And the section-by-section analysis accompanying the MMPA states:

> Scientific research permits or permits for the display of marine mammals by profit and non-profit institutions must be issued by the Secretary subject to his requirements as to the manner in which those animals may be captured, transported and cared for. (118 Cong. Rec. H9405 (daily ed. Oct. 10, 1972)).

These statements indicate a strong Congressional intent to authorize the Secretary of Commerce to oversee the conditions of captivity for marine mammals, without any indication that captive-born marine mammals should be treated differently from marine mammals originally captured from the wild.

Based on this interpretation that captive-born marine mammals are encompassed under the permitting authority of section 104, these proposed regulations provide for the regulation by NMFS of the care, supervision, and transport of marine mammals captive-born after December 21, 1972, including the authority to revoke a permit for substandard care of captive-born marine mammals. The proposed regulations would subject a facility to control and sanctions to ensure proper care of marine mammals, even if the only marine mammals held at the facility were captive-born.

Section 102(e) of the MMPA states: "This Act shall not apply with respect to any marine mammal taken before the effective date of this Act * * *." Thus, marine mammals taken (e.g., captured from the wild and/or held captive) prior to the effective date of the MMPA are specifically exempt from the terms of the statute. Marine mammals in captivity prior to the effective date of the MMPA are commonly referred to as having "pre-Act" status and their offspring, if born after the effective date of the MMPA, have been called "pre-Act progeny." The proposed regulations would apply to pre-Act progeny. There is no indication in the legislative history of the MMPA that section 102(e) was intended to include any marine mammal born in captivity after the effective date of the MMPA whose ancestry could be traced to a marine mammal "taken" prior to the effective date of the MMPA. Pre-Act progeny are subject to the jurisdiction of the MMPA, just as are progeny born in captivity to post-Act parents.

The plain language of the MMPA makes clear that all marine mammals, except those in captivity before December 21, 1972, fall under the jurisdiction of the MMPA. Section 101(a) imposes a moratorium on the taking of all marine mammals except as authorized under the MMPA, e.g., by a section 104 public display, scientific research, or enhancement permit. As previously discussed, captive holding is a take and, therefore, the section 101 moratorium applies to the captive holding of marine mammals. Further, section 102(a)(4) makes it unlawful to transport, purchase, sell or offer to purchase or sell any marine mammal (including those born in captivity) or marine mammal product unless such activity is authorized under a section 104 public display, scientific research, or enhancement permit. There are no exceptions, either from the section 101 moratorium or from the section 102(a)(4) prohibitions, for captive-born offspring of marine mammals regardless

of whether one or both parents is "pre-Act." NMFS' interpretation of the applicability of the MMPA to captive-born marine mammals in this regard, as reflected in NMFS regulations since December 21, 1972, was reiterated in a **Federal Register** notice on September 5, 1991 (56 FR 43887).

7. Explain That Marine Mammals Held Under Permits May Be Transported/Transferred as Authorized Under the Terms and Conditions of a Permit, and That a Separate Permit for Each Transport/Transfer of Marine Mammals Is Not Required Under the MMPA

From time to time, NMFS has been urged to require separate permits for the transport of marine mammals, including transfers of marine mammals between permit holders. During the Permit Program Review, NMFS considered this issue and reexamined the language of the MMPA and its legislative history to determine whether the MMPA requires separate permits. This review has led NMFS to the conclusion that the MMPA does not require separate permits for every transfer of marine mammals between permit holders, including transport of marine mammals between permitted facilities. While the MMPA requires that the transfer or transport of a marine mammal held under authority of a section 104 permit be specifically authorized by NMFS, a separate permit specifically for transport/transfer alone is not required.

In the context of public display, scientific research, and enhancement permits, section 102(a) prohibits certain specified activities involving marine mammals, including the take or transport of a marine mammal, except as authorized under section 104. A marine mammal must be "taken" (e.g., captured from the wild and/or held captive) before it can be transported, and the "taking" activities must be authorized by a section 104 permit. Section 104(b)(2)(D) directs NMFS to specify any permit terms or conditions that NMFS deems appropriate, and section 104(c)(1) further directs NMFS to specify methods of transportation in the permit terms and conditions. It is clear from this language that Congress envisioned some transport of marine mammals held under special exception permits.

The public is on notice from the time an applicant requests a permit that transfers and transport of marine mammals may occur if a permit is issued. There is ample opportunity to address the issues of potential transfers and transportation during the public comment period that precedes the issuance of every permit. Once a permit is issued, permitted activities (including the transport of marine mammals) may be conducted in compliance with the terms and conditions of the permit (which may require prior authorization from NMFS) without going through another public comment period. A separate permit procedure for transfers or other transport of marine mammals between permit holders would impose an unnecessary administrative burden on both NMFS and permit holders. However, if a transfer/transport of a marine mammal requires a major amendment to the receiving facility's permit to add a species or increase the numbers of marine mammals authorized to be held, then the major amendment would be processed in accordance with the same public review and comment procedures as for a permit application, as noted in the permit amendment discussion (see I.5. of this preamble).

Any actual transfer/transport of a marine mammal may be authorized in accordance with the terms and conditions of the permit under which the marine mammal is captured, held, or under which it will be held. Therefore, pursuant to the authority granted to NMFS by section 104(b)(2)(D), transfers of marine mammals would be from permit holder to permit holder in accordance with the terms and conditions of the permits held by both the transferring and the receiving permit holders.

8. Incorporate a Mechanism for the Authorization of Purchase and Sale Transactions Involving Captive Marine Mammals

During the administration of the permit program, questions have been raised regarding the many purchase and sale transactions involving living marine mammals since December 21, 1972. During the Program Review, NMFS looked carefully at the issue of purchase and sale transactions involving living marine mammals. NMFS started from the premise that captive holding and other "takings" of living marine mammals by any person are prohibited by the moratorium imposed by section 101(a) of the MMPA. Congress' authority for enacting a law imposing such a moratorium is its constitutionally conferred power to regulate interstate commerce. Congress specifically noted the relationship between interstate commerce and activities involving marine mammals in section 2(5) of the MMPA.

Under this authority, Congress has prohibited taking (e.g., captive holding), purchase, or sale activities involving marine mammals through section 102 of the MMPA, unless, for purposes of public display, scientific research, or enhancement, prior authorization from the AA is obtained in accordance with section 104. Pursuant to section 104, authority to hold marine mammals captive is conditional, and the permit that authorizes such a taking is subject to revocation at any time. Further, purchase and sale transactions involving marine mammals are prohibited by section 102 unless authorized consistent with the terms and conditions of a section 104 permit, or under certain other sections of the MMPA. Persons issued permits to hold marine mammals in captivity are not, by virtue of the authorization to conduct that single activity, also authorized to purchase, sell, offer to purchase or sell, or to transport marine mammals (see section 102(a) of the MMPA). In this sense, section 104 authorization to hold marine mammals in captivity is no different from section 104 authorization to harass marine mammals in the wild; both are merely grants of conditional authority to conduct otherwise prohibited activities. Marine mammals are subject to management and protection as a national resource in the broad regulation of commerce by Congress, and Congress has prohibited all purchase or sale transactions involving marine mammals, except as authorized and conditioned by NMFS through the provisions of section 104 of the MMPA.

NMFS authorizes purchase or sale transactions in its statutorily mandated role as public trustee for marine mammals. Custody of a marine mammal, i.e., the authority to hold a marine mammal, is revocable at any time by NMFS. To simplify the authorization of purchase and sale transactions, and to minimize the administrative burden on all parties, NMFS is proposing that, when authorizing a permit holder to obtain custody of a marine mammal from captive stock (e.g., a transfer between public display facilities), this authorization would also "automatically" include authorization for purchase and sale transactions involving that marine mammal. NMFS is not undertaking to regulate what price in cash, goods, or services the purchaser and seller agree upon. Insofar as NMFS is concerned, the relevant issue is whether the purchase and sale transaction is authorized in accordance with the requirements of the MMPA and these proposed regulations, and not the consideration exchanged in the transaction.

NMFS is further proposing to authorize purchase and sale transactions solely under the authority of section 104

of the MMPA. Past reliance upon section 112(c) as authority to effect these transactions may not have given appropriate consideration to the provisions of sections 102 and 104 of the MMPA. Explicitly addressing this issue through the terms and conditions of a permit issued under section 104 of the MMPA is in the interests of all concerned.

III. Scientific Research Goals

1. Define "Bona Fide" Scientific Research

The MMPA provides an exception to the section 101 general moratorium on taking or importing marine mammals to allow the take or import of marine mammals for bona fide scientific research purposes. The requirement that scientific research be bona fide was added to the MMPA by Congress in 1988. While NMFS uses the "bona fide" standard as general guidance in evaluating the validity of both MMPA and ESA scientific research proposals (existing 50 CFR 216.31(c) and 222.23(c)(4)), neither the MMPA, the ESA, or the existing regulations define the term. NMFS is proposing a definition of bona fide scientific research in these revised regulations at § 216.3.

Under this definition, only scientific research on or benefiting protected species could be authorized under a special exception permit. In section 2(3) of the MMPA, Congress notes that "there is inadequate knowledge of the ecology and population dynamics of such marine mammals and of the factors which bear upon their ability to reproduce themselves successfully". In section 2(6), Congress stresses that "marine mammals * * * should be protected and encouraged to develop to the greatest extent feasible commensurate with sound policies of resource management and that the primary objective of their management should be to maintain the health and stability of the marine ecosystem." In section 3(2), Congress then clarifies that "conservation" and "management" mean "the collection and application of biological information for the purposes of increasing and maintaining the number of animals within species and populations of marine mammals * * * Such terms include the entire scope of activities that constitute a modern scientific resource program * * *." Similar provisions are found in the ESA. Thus, in the context of the purposes and policies of the MMPA and ESA, research that is not on, or that does not otherwise benefit, protected species would not be considered to fall within the "bona fide" requirement of section 104 of the MMPA or the scientific purposes requirement of section 10(a)(1)(A) of the ESA. Although such research would not be eligible for a section 104 permit under the MMPA, or a section 10(a)(1)(A) permit under the ESA, sections 101(a)(3)(A) and 101(a)(5)(A) of the MMPA and section 10(a)(1)(B) and, for Federal agency actions, section 7 of the ESA, provide mechanisms for authorizing the take of protected species incidental to research that is not on or benefiting protected species.

2. Develop Objective Standards to Determine Whether an Activity Conducted in the Wild is Likely to Involve a Take of a Protected Species and to Facilitate Reporting

The existing regulations lack clear standards for determining whether and to what extent takes of protected species occur during activities conducted in the wild. This has posed difficulties for the implementation of the requirements of section 104 of the MMPA, section 10 of the ESA, and for the administration of the permit program.

For example, section 104(b) of the MMPA requires NMFS to specify the location and manner in which takes can occur, as well as how many marine mammals can be taken. Section 104(c)(1) requires permit holders to submit reports on all activities conducted under the authority of a permit. Similarly, section 10(d) of the ESA requires NMFS to find that the special exception activity will not operate to the disadvantage of the affected species and will be consistent with the purposes and policies of section 2 of the ESA. Without objective standards to determine whether an activity constitutes, or is likely to constitute, a take, neither NMFS nor permit holders can fully comply with the requirements of section 104 of the MMPA or section 10 of the ESA.

Presently, the NMFS permit database consists of data derived from permit reports, which include assessments of take based on the judgment of the permit holders. While many qualified and experienced investigators conducting bona fide research on protected species in the wild are capable of assessing whether a protected species has been harassed, each of these investigators applies a different subjective criterion to determine whether and to what extent such a take has occurred. Consequently, without a consistently applied objective standard for reporting purposes (for references purposes at the very least), the validity and utility of the reported take data are of questionable value. For these reasons, NMFS has concluded that the present exclusive reliance on such ad hoc subjective data is not acceptable.

During the Program Review it was suggested that NMFS could use existing guidelines developed by the NMFS Regional Offices as a rough standard for determining when takes are likely and, if conducted under a special exception permit under the Acts, need to be reported to NMFS. However, these regional guidelines are not an acceptable alternative to a uniform objective standard for this purpose. This is because these guidelines vary from region to region and, as a result, cannot be administered in a consistent manner, provide a basis for consistent data and comparable reporting, or be administered in an equitable fashion. This is especially the case where activities conducted under a special exception permit occur in more than one region. In addition, much of the scientific community and the public are not aware of either the existence of regional "guidelines" or the need and reasons for approach standards/restrictions. These factors make a uniform objective standard even more important.

NMFS has also concluded that an objective standard for determining when a take is likely is important, not only for determining whether a permit is needed, but also as a reference guide for establishing the type and manner of an authorized take and the number to be taken. Such an objective standard would also improve NMFS' ability to assess likely and actual takes, as well as how they are reported by collecting essential data on permitted activities in the wild. The data would have utility in assessing individual or cumulative levels of harassment associated with authorized scientific research, public display (e.g., capture), or enhancement activities in the wild.

To meet this need for an objective standard, at least for marine mammals, NMFS is proposing the recommended approach standards included as appendix B to 50 CFR part 216, subpart D, of these proposed regulations. NMFS recommends that an application be submitted for a special exception permit if a person intends to conduct, or may conduct, an activity for a special exception purpose that may involve an approach of marine mammals closer than the recommended minimum distance standard or will be conducted contrary to the recommended activity limitations or operating procedures described in appendix B. The recommended approach standards of appendix B are also the standards that

would be used for reporting purposes for activities conducted in the wild under a special exception permit.

Importantly, the approach standards recommended in appendix B are limited to the approach of, or other activities directed at, marine mammals. If a marine mammal elects to approach a vessel or person that has made every effort to comply with the recommended approach and activity limitations described here, and such a person or vessel does not otherwise take the marine mammal, then such an approach by the marine mammal cannot by itself be considered harassment or another type of take under the Acts. In that case, the activity is not prohibited under the Acts and a special exception permit is not required to conduct the activity.

There are several important differences between the approach standards recommended in appendix B and the proposed regulations and guidelines for approaching cetaceans and pinnipeds published in the **Federal Register** on August 3, 1992 (57 FR 34101 and 34121) and subsequently withdrawn on March 29, 1993 (58 FR 16519). A number of commenters voiced serious concerns regarding these now withdrawn proposed approach regulations. Although, importantly, the approach standards recommended in appendix B are guidelines and are not regulatory requirements, NMFS has nonetheless considered fully these serious concerns and prepared appendix B accordingly. The recommended approach standards of appendix B establish, as guidance, a "threshold" beyond which the risk of harassment is unlikely and which, if exceeded by an approaching person or vessel, the risk of harassment becomes likely. The approach standards recommended in appendix B are guidelines intended to benefit permit applicants and permit holders, as well as improve the efficiency and consistency of permit administration and reporting; whereas, the proposed approach regulations would have established specified distances to maintain when approaching marine mammals, a requirement applicable to the public in general. In addition to this fundamental distinction between recommendations and requirements, NMFS acknowledges explicitly in appendix B that actions on the part of the marine mammal to approach a person or vessel cannot be controlled, and marine mammals may "bow ride" or otherwise approach a person or vessel independent of any action on the part of that person or vessel. As a result, such actions on the part of a marine mammal independent of any action on the part of a person or vessel cannot be construed to constitute a take of such a marine mammal. The recommended approach standards proposed in appendix B would meet the immediate needs of NMFS, permit holders, and potential permit applicants as objective standards for determining when takes are likely and, as a result, are proposed to be used for purposes of reporting and permit program administration.

The approach standards recommended in appendix B would be applicable to scientific research and enhancement permits for activities conducted in the wild. Because the approach standards recommended in appendix B would be applicable only to activities conducted in the wild, they would apply to public display permits only where the taking authorized under a public display permit involved chase and capture activities conducted in the wild. Additionally, their use would be limited to marine mammals; NMFS would establish objective standards to address these concerns for other protected species, i.e., endangered or threatened marine species other than marine mammals, on a species-specific basis.

During the Permit Program Review, discussion of this issue frequently focused on the lack of a specified definition of the term "harass;" accompanied by claims that this has contributed to confusion on the part of the public and permit applicants. Confusion was expressed regarding what activities conducted in the wild constitute a take and therefore are either prohibited or may be conducted only for certain excepted purposes. In addition, in deciding the case *Strong* v. *United States*, discussed under II.1. of this preamble, the district court raised several issues and concerns regarding the term "harass." The FWS has defined the term "harass" at 50 CFR 17.3. NMFS is proposing a definition of the term "harass" under the MMPA that is modeled on the FWS regulatory definition of this term.

3. Categorize Various Types of "Take" of Protected Species, Particularly for Activities Conducted in the Wild

On a matter that is closely related to the issues discussed in III.2. of this preamble, categorization of the various types of take is necessary for the same reasons discussed in III.2.; i.e., to allow NMFS, permit holders and permit applicants to comply fully with the requirements of section 104 of the MMPA and section 10 of the ESA. After determining whether particular activities result in takes, the next step would be to categorize takes to increase the efficiency of processing permit applications. Efficiency would be increased through categorization by allowing NMFS to sort permit applications according to type of take and the corresponding levels of effort involved in review and processing, and by allowing NMFS to assess early in the review process a proposed activity's relative complexity and anticipated impact on protected species.

For activities involving takes in the wild, NMFS is proposing to break the term "take" down into the three major categories of activities in the statutory definition—kill, capture, and harass. Each of these three major categories would then be further subdivided to reflect more accurately the major types of activities that commonly involve the take of protected species in the wild. For example, harassment encompasses takes ranging from acts likely to result in a significant change in behavior to injury of the protected species. These takes may occur without the capture or killing of a protected species. Capture encompasses takes that range from short-term capture-and-release to the permanent removal of protected species from the wild. Depending on the nature of the proposed activities, more than one type of take, as well as different levels of each type of take, may be involved. For example, capture of a protected species from the wild necessarily involves harassment, but does not necessarily involve killing. Conversely, killing normally involves harassment of protected species, but does not necessarily involve capture. In appendix A to subpart D of the proposed regulations at 50 CFR part 216, types of take are broken down by the major categories of harassment, capture, and kill. These types of take are then subdivided further into subcategories such as non-intrusive/non-contact (close approach) harassment, intrusive/contact (close approach with physical contact) harassment, temporary capture/removal, and permanent capture/removal (indefinite captive maintenance or lethal take).

4. Separate Authorized Research Activities From Unauthorized Commercial and Recreational Activities

During the history of the permit program, as well as during the Permit Program Review, questions have been raised regarding the commercial use of photographs or other material obtained while conducting scientific research authorized by a scientific research permit issued under the MMPA or ESA, sections 104 and 10, respectively. The most significant concern in this regard

is the commercial incentive that is created to harass the subject protected species for reasons unrelated to the purpose authorized by the permit. Commercial use of a research product that involves the financial gain of the permit holder also creates an incentive to harass/take the subject protected species to a degree greater than may otherwise be required to collect data to further scientific research.

NMFS believes that most members of the scientific research community, regardless of such a commercial gain incentive, limit harassment of protected species to levels authorized and necessary to carry out permitted scientific research. However, such self-restraint may not be exercised by everyone. During the last several years, NMFS believes that some individuals may have used scientific research permits as a subterfuge for conducting unauthorized commercial activities. Such real or potential permit abuses cannot be reconciled with the purposes and policies of the Acts.

The authorization granted by a scientific research permit issued under the Acts does not extend to commercial or recreational activity. A scientific research permit is a grant of a privilege to conduct certain otherwise prohibited activities, not the grant of a license or exclusive right to a commercial activity or product. The primary purpose of the MMPA is to protect and manage marine mammals for their benefit and the health and stability of the marine ecosystem. Similarly, the primary purpose of the ESA is the conservation of endangered and threatened species and the ecosystems on which they depend. Commercial and recreational activities, while not necessarily otherwise prohibited by the general moratorium established under the MMPA or prohibitions established under the ESA, are not properly the subject of scientific research permits issued under the Acts.

To ensure that activities conducted under the authority of a scientific research permit are limited to only those activities necessary for the conduct of bona fide scientific research and consistent with the Acts, these proposed regulations would prohibit the sale of photographs or other marketable products obtained during authorized scientific research, unless such marketable products were obtained in a manner or for a purpose essential to the conduct, presentation, or publication of the research, or for a few other limited purposes. This limitation is intended to address concerns regarding misuse of permit authority for commercial rather than scientific research purposes.

A proposed definition of "marketable products" is included in the revised regulations at § 216.3. This proposed definition is intended to assist in the separation of authorized bona fide scientific research from the most significant commercial incentive for the abuse of the research privileges, thereby minimizing the potential for increased risk of adverse impacts to the subject protected species. The proposed regulation provides a mechanism by which photographic or other marketable products obtained consistent with a scientific research permit can be made available to the public free of charge, with the permission of the permit holder. Additionally, NMFS has made it clear that the definition of the term "marketable product" does not include intellectual property (e.g., knowledge and experience) gained in the conduct of a permitted activity or an otherwise marketable product obtained in the course of an activity conducted outside the context of a permitted activity and that does not involve the take of a protected species in the wild. Also, protected species parts and products are not included in this definition.

As stated in III.2. of this preamble, the proposed approach standards of appendix B to subpart D of the proposed regulations are recommended standards for approaches of marine mammals by vessels or persons, a "threshold" beyond which (i.e., if maintained) the risk of harassment is unlikely and within which (i.e., if exceeded by an approaching person or vessel) the risk of harassment becomes likely, and for certain vessel operations likely to harass marine mammals. Importantly, as also noted in III.2. of this preamble, these approach standards would not preclude a marine mammal from approaching a photographer, vessel, or individual closer than the recommended approach limit. It would be likely that, by following these recommended approach standards, commercially lucrative photography/filming and observation of marine mammals could be conducted without taking marine mammals. The important point is that, to avoid a likely take of marine mammals, commercial or recreational activities must be conducted, and any marketable products must be obtained, consistent with these objective standards. If such activities were conducted without taking marine mammals, and were separate from any activities conducted under a scientific research permit, any marketable products obtained during these activities could be used for any purpose.

These proposed limitations would not prohibit or restrict such commercial/recreational activities more than NMFS believes necessary to minimize the risk of harassment to protected species. Except for certain reasonable exceptions, NMFS has determined that activities involving the take of protected species in the wild for commercial or recreational purposes are outside the scope of, and cannot be authorized by, scientific research permits issued under the Acts.

5. Delineate Permit Requirements for Scientific Research Activities That Involve Marine Mammals Held Under Public Display Permits

NMFS is proposing that some research could be conducted involving marine mammals held under a public display permit without additional authorization. The terms and conditions of the public display permit would include authorization for research other than intrusive research that is conducted in a humane manner consistent with the proposed captive maintenance standards, and does not interfere with the activities for which the public display permit was issued. Intrusive research (as opposed to husbandry, care, maintenance, or medical treatment activities), which by definition is likely to involve a risk to the health or welfare of a captive marine mammal, would need to be specifically authorized under a scientific research permit.

The purpose of takes that occur during intrusive research is scientific research, not public display. The reason for requiring a separate permit for intrusive research is that intrusive research involves taking/harassment of marine mammals beyond the simple captive maintenance normally associated with public display. As a result, such intrusive research should only be authorized after public notice and review of the merits of the proposal by the scientific community, the public, and the MMC consistent with the purposes and policies of the Acts. The most appropriate mechanism under the MMPA for the authorization of intrusive research on marine mammals held under a public display permit is the scientific research permit application process. For these reasons, a proposed definition of "intrusive research" is included in these revised regulations at § 216.3.

This proposed definition of intrusive research is not intended to include procedures conducted for training or demonstration/performance purposes, if they are conducted in compliance with the captive maintenance requirements as set forth in these proposed regulations.

6. Explain That Funding Is Not a Prerequisite for Issuance of a Scientific Research Permit, But That Research Must Be Conducted as It Is Permitted, Unless Otherwise Specifically Authorized

Permits are issued with the understanding that the permit activities will be conducted as proposed in the application and as authorized by the permit. This is particularly true for scientific research permits. If permitted research is modified for any reason, including funding considerations, such a change could require an amendment to the permit. The proposed regulations provide a permit amendment procedure, discussed in I.5. of this preamble, for such situations.

IV. Enhancement Goals

Clarify that enhancement permits will be issued only for the conduct of special exception activities concerning living protected species or protected species parts that are necessary to accomplish the enhancement purpose.

The 1988 amendments to the MMPA added section 104(c)(4) to authorize taking or importing marine mammals for the purpose of enhancing the survival or recovery of a species or stock (enhancement). The proposed regulations provide for the issuance of enhancement permits applicable only to living protected species or protected species parts that are necessary for the enhancement of the of the survival, recovery, or propagation of the affected species or stock. Moreover, enhancement permits would authorize only management-type activities such as projects to increase stock sizes in the wild, establishing experimental protected species communities, or reintroduction of protected species in areas they previously occupied. Protected species parts would include, in this regard, clinical specimens or other biological samples required for the conduct of breeding programs or the diagnosis or treatment of disease.

These activities in most cases do not fall cleanly into the category of scientific research and could therefore not be appropriately authorized under scientific research permits. Section 104(c)(4) was added to fill this critical gap that could not be adequately addressed by the provisions for public display and scientific research permits. The understanding that enhancement permits are limited to living marine mammals and marine mammal parts necessary to accomplish the enhancement purpose is reflected in the types of activities discussed and the conditions placed on them in section 104(c)(4).

This approach differs somewhat from the approach taken in the past under the enhancement provision of the ESA (section 10(a)(1)(A)). In some instances, the ESA enhancement provision has been used to allow import and possession of "trophies," or parts of dead endangered species, based on the argument that big game hunting and commercial trade in parts of endangered species provided revenue with which conservation and management programs could be financed. One problem with this approach is that it may create commercial trade opportunities and an incentive for poaching because it is difficult, from an enforcement standpoint, to tell permitted parts from poached parts. Limiting enhancement permits to living protected species and protected species parts necessary to accomplish the enhancement purpose would avoid this type of problem that has been observed in the administration of the ESA enhancement provision.

An example of a typical enhancement activity that reflects the applicability of section 104(c)(4) of the MMPA and section 10(a)(1)(A) of the ESA is the Hawaiian Monk Seal Head Start Program. When it was initiated in 1985, it was authorized by a scientific research permit to explore the feasibility of taking abandoned or weakened monk seal pups, rehabilitating them, and then releasing them back into the wild. During the course of the Head Start Program, it was learned that the experimental techniques worked, and the activities moved away from an experimental status to a proven method of assisting in the survival and recovery of the Hawaiian monk seal. Such an activity is more appropriately authorized by an enhancement permit than a scientific research permit.

Classification

NMFS prepared an EA for this action and concluded that this proposed rule will not significantly affect the human environment, and, as a result, preparation of an EIS on this action is not required by section 102(2) of the National Environmental Policy Act (NEPA) or its implementing regulations. Copies of the EA are available on request (see **ADDRESSES**). NEPA requirements as they pertain to individual permits that may be issued under these proposed regulations will be addressed on a case-by-case basis.

The AA has determined that this rule is not a "major rule" requiring a regulatory impact analysis under E.O. 12291. The present action will not have a cumulative effect on the economy of $100 million or more, nor will it result in a major increase in costs to consumers, industries, government agencies, or geographical regions. No significant adverse effects on competition, employment, investments, productivity, innovation, or competitiveness of U.S.-based enterprises are anticipated.

An Initial Regulatory Flexibility Analysis was prepared by NMFS and is available upon request [see **ADDRESSES**], in accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). The projected economic impact of the proposed revisions on affected small business entities is a combination primarily of paperwork burden costs, permit fees, and bond costs. NMFS believes that it is unlikely that significant economic impact will result from the requirements of the proposed regulations beyond the economic impacts associated with the paperwork requirements, associated permit administration, and similar requirements imposed under existing regulations. However, sufficient financial and other economic information concerning affected entities is not available for an in-depth analysis of the economic impact of the proposed regulations on small business entities. Sufficent financial data on permit holding entities, when available, could demonstrate such significant economic impacts. As a result, NMFS is soliciting information through this proposed rule regarding its economic impacts on small business entities, and will consider any information submitted in preparation of a Final Regulatory Flexibility Analysis, if warranted, prior to publication of a final rule.

This proposed rule contains collections of information subject to the Paperwork Reduction Act that have been submitted to the Office of Management and Budget for approval. The public reporting burden for collection of this information is estimated to average 29 hours per response for permit applications and major amendment requests, 3 hours for minor amendment/authorization requests, and 8 hours per response for reporting. Please send comments regarding these burden estimates, or any other aspect of this collection of information, including suggestions for reducing this burden, to the National Marine Fisheries Service, (F/PR1), 1315 East-West Highway, Silver Spring, MD 20910; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attn: Paperwork Reduction Act Projects 0648–0084).

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

NOAA has determined that these proposed regulations do not directly affect the coastal zone of any State with an approved coastal zone management program.

List of Subjects

50 CFR Part 215

Administrative practice and procedure, Marine mammals, Penalties, Pribilof Islands, Reporting and recordkeeping requirements.

50 CFR Part 216

Administrative practice and procedure, Imports, Indians, Marine mammals, Penalties, Reporting and recordkeeping requirements, Transportation.

50 CFR Part 222

Administrative practice and procedure, Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Dated: October 5, 1993.

Nancy Foster,

Acting Assistant Administrator for Fisheries.

For reasons set forth in the preamble, 50 CFR parts 215, 216, and 222 are proposed to be amended as follows:

PART 215—PRIBILOF ISLANDS

1. The authority citation for part 215 is revised to read as follows:

Authority: 16 U.S.C. 1151–1175, 1361 *et seq.*

2. Section 215.1 is revised to read as follows:

§ 215.1 Purpose and scope.

The purpose of these regulations is to implement the provisions of the Fur Seal Act of 1966, as amended. These regulations apply to the administration of the Pribilof Islands; the take of fur seals; and permits for the take, transportation, importation, exportation, or possession of fur seals or their parts for educational, scientific, or exhibition purposes.

3. In § 215.2, (f) is revised to read as follows:

§ 215.2 Definitions.

* * * * *

(f) *Public display* means the same as defined in § 216.3 of this chapter.

* * * * *

4. Subpart B is revised to read as follows:

Subpart B—Permits for Scientific Research and Public Display

§ 215.11 Permits for scientific research and public display purposes.

In accordance with the provisions of part 216, subpart D, of this chapter, the AA may issue permits for the taking, transportation, importation, exportation, or possession of fur seals or their parts for scientific research or public display purposes.

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

5. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

6. In part 216, all references to "Act" are revised to read "MMPA".

7. In § 216.3, the definition of *Act* is removed, new definitions of *Acts, bona fide scientific research, custody, ESA, facility, FSA, harass, humane, interactive program, intrusive research, marketable product, MMPA, protected species, public display,* and *rehabilitation* are added, in alphabetical order, and the definition of *take* is revised to read as follows:

§ 216.3 Definitions.

* * * * *

Acts means, collectively, the Marine Mammal Protection Act of 1972, 16 U.S.C. *et seq.*, the Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.*, and the Fur Seal Act of 1966, 16 U.S.C. 1151 *et seq.*

* * * * *

Bona fide scientific research:

(1) Means scientific research on or otherwise benefiting protected species, the results of which:

(i) Likely would be accepted for publication in a peer-reviewed scientific journal; or

(ii) Are likely to contribute to understanding the basic biology or ecology of the species or stock, or to identifying, evaluating, or resolving possible conservation problems. (Note: This includes, for example, long-term assessment and management studies necessary to identify or determine how to resolve conservation problems; studies to monitor the effects of human activities on protected species or the effectiveness of conservation measures; or the inclusion of protected species parts in a properly curated, professionally accredited scientific collection); or

(iii) Are necessary to fulfill a critically important research need. (Note: This is intended to include, particularly for marine mammals that are designated as depleted under this part and marine species designated as endangered under part 222 of this chapter or threatened under part 227 of this chapter, research to identify factors contributing to the decline of the species or stocks, or to the destruction or adverse modification of critical habitats, or to identify and evaluate measures for stopping and reversing population declines and habitat degradation. Also, this may include research on protected species that would likely contribute significant results essential to understanding or solving a critical problem affecting human health.)

(2) Research that is not on or that does not otherwise benefit protected species, but that may incidentally take protected species, is not included in this definition (see sections 101(a)(3)(A) and 101(a)(5)(A) of the MMPA and section 10(a)(1)(B) of the ESA).

* * * * *

Custody means the holding of a living marine mammal pursuant to the conditional authority granted under a special exception permit, and the responsibility therein for captive maintenance of the marine mammal. This definition does not apply to the term "custody" in 50 CFR 216.78.

* * * * *

ESA means the Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.*

* * * * *

Facility:

(1) Means:

(i) One or more permanent primary enclosures used to hold marine mammals captive (e.g., pools, lagoons) and associated infrastructure (e.g., equipment and supplies necessary for the care and maintenance of marine mammals) where these enclosures are either located within the boundaries of a single contiguous parcel of land and water, or are grouped together within the same general area within which enclosure-to-enclosure transport is expected to be completed in less than 1 hour; or

(ii) A traveling display/exhibit, where the enclosure(s) and associated infrastructure is transported together with the marine mammals.

(2) This definition is specific to the term "facility" and is applicable to the term "facilities" only when the context clearly is specific to captive marine mammals.

* * * * *

FSA means the Fur Seal Act of 1966, 16 U.S.C. 1151 *et seq.*

* * * * *

Harass in the definition of "take" in the MMPA means an intentional or

negligent act or omission that results in, or is likely to result in, an injury to a marine mammal, a disruption in the behavior that a marine mammal was exhibiting prior to the act or omission, or a significant effect on the normal behavioral patterns of a marine mammal, including, but not limited to, breeding, feeding, sheltering, or migration patterns.

* * * * *

Humane means the method of taking, import, export, or conduct of an otherwise prohibited activity involving a protected species that involves the least possible degree of pain and suffering practicable to the animal involved.

* * * * *

Interactive program means a program that allows a member of the public to touch, feed, share an enclosure with, physically contact, or directly interact with a captive marine mammal, from within or outside of its enclosure. Examples of interactive activities include, but are not limited to, petting, feeding, or swimming, snorkeling, or SCUBA diving with a marine mammal. For the purpose of this definition, a member of the public means any person other than the permit holder's staff whose functions concern the training, supervision, handling, care and maintenance, treatment, or transportation of marine mammals or maintenance of associated facilities, or an authorized agent under the permit.

* * * * *

Intrusive research means a procedure conducted for bona fide scientific research involving: A break in or cutting of the skin or equivalent, insertion of an instrument or material into an orifice, introduction of a substance or object into the animal's immediate environment that is likely either to be ingested or to contact and affect directly animal tissues (e.g., chemical substances), or a stimulus directed at animals that may involve a risk to health or welfare or that may have an impact on normal function or behavior (e.g., audio broadcasts directed at animals that may affect behavior). Provided that, for captive animals, this definition does not include:

(1) A procedure conducted by the professional staff of the holding facility or an attending veterinarian for purposes of animal husbandry, care, maintenance, or treatment, or a routine medical procedure that, in the reasonable judgment of the attending veterinarian, would not constitute a risk to the health or welfare of the captive animal; or

(2) A procedure involving either the introduction of a substance or object (i.e., as described in this definition) or a stimulus directed at animals that, in the reasonable judgment of the attending veterinarian, would not involve a risk to the health or welfare of the captive animal.

* * * * *

Marketable product means a product obtained in the course of an activity conducted in the wild under a special exception permit that is or may be of commercial value. This includes photographs, film, video or audio recordings, or other audio-visual products. This definition does not include intellectual property (e.g., knowledge and experience) gained in the conduct of a permitted activity or an otherwise marketable product obtained in the course of an activity conducted outside the context of a permitted activity and that does not involve the take of a protected species in the wild. Protected species parts and products are not included in this definition, but are addressed elsewhere in this part.

MMPA means the Marine Mammal Protection Act of 1972, 16 U.S.C. 1361 *et seq.*

* * * * *

Protected species means those species subject to the jurisdiction of the National Marine Fisheries Service (NMFS) under the Acts. These species include marine mammals (including North Pacific fur seals), marine and anadromous species determined to be endangered under the ESA, and marine and anadromous species determined to be threatened under the ESA for which prohibitions, restrictions, or other protective measures have been established through regulation.

Public display means an activity that provides opportunities for the public to view and otherwise appreciate and learn about living marine mammals, conducted in a manner consistent with the goals and objectives of the MMPA, under the direction of professional staff, and at a facility holding marine mammals captive that offers an education or conservation program acceptable to the AA that contributes to public appreciation and understanding of marine mammals and their role in the marine ecosystem.

* * * * *

Rehabilitation means the treatment of beached and stranded marine mammals taken under section 109(h)(1) of the MMPA or rendering medical treatment otherwise unavailable to marine mammals imported under section 109(h)(2) of the MMPA, with the intent of restoring the marine mammal's health and, if necessary, behavioral patterns, such that the marine mammal is reasonably expected to survive when returned to its natural habitat. Marine mammals are considered rehabilitated upon completion of such treatment.

* * * * *

Take means to harass, hunt, capture, collect, or kill, or attempt to harass, hunt, capture, collect, or kill any marine mammal. This includes, without limitation, any of the following: The collection of dead animals, or parts thereof; the restraint or detention of a marine mammal, including holding a marine mammal captive, no matter how temporary; tagging a marine mammal; or feeding or attempting to feed a marine mammal in the wild.

* * * * *

8. In § 216.22, paragraph (c)(8)(i) is revised to read as follows:

§ 216.22 Taking by State or local government officials.

* * * * *

(c) * * *

(8) * * *

(i) The transfer is a temporary transfer to a laboratory or research institution within the United States so that analyses can be performed for the person salvaging the specimen; or

* * * * *

9. In subpart C, new §§ 216.27 and 216.28 are added to read as follows:

§ 216.27 Emergency authorization.

(a) Under the authority of sections 109(h) and 112(c) of the MMPA, the AA may grant an emergency research or enhancement authorization to take or import marine mammals or marine mammal parts for purposes of bona fide scientific research or enhancing the survival or recovery of the species or stock (enhancement), if the AA determines that such taking or importation is necessary for the protection or welfare of marine mammals or a marine mammal stock. An emergency authorization may be granted in consultation with the Marine Mammal Commission and Committee of Scientific Advisors on Marine Mammals only if necessary to respond to an emergency, such as a sudden and unforeseen event presenting a significant threat to a marine mammal stock, for example an environmental disaster or a major mortality event.

(b) To obtain an emergency research or enhancement authorization, a signed written request must be submitted, including the following information:

(1) The location and nature of the emergency;

(2) The objectives of the proposed research or enhancement activity;

(3) The nature of the take or import requested;

(4) The principal applicant and any other persons to be responsible for conducting or supervising the proposed research or enhancement activity; and

(5) Current or past scientific research or enhancement permits issued to the applicant or under which the applicant was designated as a co-investigator/agent.

(c) In order to grant an emergency authorization, the AA must find that:

(1) The proposed activity is necessary for the protection or welfare of marine mammals or a marine mammal stock because of an emergency as described in paragraph (a) of this section;

(2) The proposed activity is bona fide scientific research or an enhancement activity;

(3) The activity cannot otherwise be authorized under the MMPA within the period of time required by the emergency; and

(4) The person proposed to be principally responsible for conducting or supervising the proposed research or enhancement activity either:

(i) Currently holds, has held, or has been designated as a co-investigator/agent under, a scientific research or enhancement permit for the species in question; or

(ii) Is under the direct supervision of a qualified person designated by the AA in consultation with the Marine Mammal Commission and Committee of Scientific Advisors on Marine Mammals.

(d) Emergency authorizations shall be in writing and shall specify the authorized level and methods of take or import and any appropriate conditions, including reporting requirements. The AA may amend, modify, suspend, or revoke an emergency authorization at any time.

(e) The AA shall publish a notice of issuance of an emergency authorization in the **Federal Register** within 10 days of issuance.

(f) An emergency authorization may be granted for an initial period of up to 60 days. This initial authorization period may be extended up to an additional 60 days if the AA finds that the criteria in paragraph (c) of this section continue to apply.

(g) The AA may extend an emergency authorization beyond 120 days if an application for a scientific research or enhancement permit has been submitted before or during the period of emergency authorization and found initially complete under § 216.34. In this case, the period of authorization may be extended until the scientific research or enhancement permit is either issued or denied.

§ 216.28 Release or other disposition of rehabilitated marine mammals.

(a) *Release requirements.* (1) Any marine mammal held for rehabilitation must be released within 6 months of the date of capture or import unless the attending veterinarian determines:

(i) That the marine mammal might transmit a contagious disease to marine mammals in the wild;

(ii) That the release of the marine mammal to the wild is not likely to be successful, considering both the physical condition and behavior of the marine mammal; or

(iii) That more time is needed to determine whether the release of the marine mammal to the wild is likely to be successful.

(2) In the case of beached and stranded pinnipeds, the person with authorized custody of the marine mammal must notify the appropriate NMFS Regional Director (Regional Director) at least 15 days in advance of the proposed release. The Regional Director shall forward such release notifications for beached and stranded pinnipeds to the AA to provide the AA an opportunity to require disposition in accordance with paragraph (b)(4) of this section and § 216.44.

(3) In the case of beached and stranded cetaceans or imported marine mammals, the person with authorized custody of the marine mammal must notify the AA at least 30 days in advance of the proposed release.

(4) The release notifications required by paragraphs (a)(2) and (a)(3) of this section must include:

(i) A description of the marine mammal, including its physical condition and estimated age;

(ii) The proposed date and location of release; and

(iii) The proposed method and duration of transport.

(5) The Regional Director (in the case of pinnipeds) or the AA (in the case of cetaceans or imported marine mammals) may:

(i) Require additional information before the marine mammal may be released;

(ii) Require a change in the date, location, method or duration of transport or release;

(iii) Place additional requirements on the release to improve the likelihood of success or to monitor the success of the release; or

(iv) Require other disposition of the marine mammal.

(6) All marine mammals must be released near wild populations of the same species, unless a waiver is granted by the Regional Director or the AA, as appropriate.

(7) All marine mammals to be released must be tagged in a manner acceptable to the Regional Director or the AA, as appropriate. The tag number must be reported to the Regional Director following release. The results obtained from a radio, satellite or other type tag following release must be submitted as a part of the annual report required in paragraph (c) of this section.

(b) *Other disposition.* (1) A determination by the attending veterinarian under paragraph (a)(1) of this section must be forwarded, along with supporting documentation, to the Regional Director, who shall forward a copy to the AA.

(2) If the Regional Director (in the case of pinnipeds) or the AA (in the case of cetaceans or imported animals) concurs with the attending veterinarian's determination that more time is needed, the continued rehabilitation of the marine mammal may be authorized subject to a new release determination at least every 6 months. If the Regional Director or AA disagrees with the attending veterinarian's determination that more time is needed or that the release of the marine mammal is not likely to be successful, he/she may require the release of the marine mammal, the continued rehabilitation of the marine mammal subject to a new release determination at least every 6 months, or require other disposition. In any case, after 24 months of continued rehabilitation from the date of capture or import it will be presumed that the release of the marine mammal is not likely to be successful.

(3) Except in the case of paragraph (b)(2) of this section, no later than 30 days after an attending veterinarian's determination that the release of the marine mammal is not likely to be successful, the person with authorized custody of the marine mammal must request authorization to retain or transfer custody of the marine mammal in accordance with § 216.44 or carry out other disposition of the marine mammal.

(4) Not withstanding any of the provisions of § 216.28, the AA may, subject to the provisions of § 216.44(b), require that a rehabilitated marine mammal be used as a substitute for a marine mammal of the same species for which a special exception permit has been issued under subpart D of this part to capture from the wild or obtain from captive stock.

(c) *Reporting.* In addition to the report required under § 216.22(b), the person with authorized custody of marine

mammals held for rehabilitation must submit an annual report to the Regional Director regarding release or other disposition. This report must include, for each marine mammal held for rehabilitation: An assessment (medical assessment if a veterinarian was involved) of and, if applicable, reason for the animal's condition at the time of capture/import; location of release or description of other disposition; tag data following release, if any; date of death, release, or other disposition; and, if the animal died (or was euthanized), a copy of a necropsy report or the cause of death (if a veterinarian is available) or the likely cause of death (if veterinarian is not available). Where applicable, this annual report must be provided in the form specified by the Regional Director.

§ 216.40 [Redesignated as § 216.50]

10. Section 216.40 is redesignated as § 216.50 of subpart E.

11. Subpart D is revised to read as follows:

Subpart D—Special Exception Permits

Sec.

216.30 General.
216.31 Definitions.
216.32 Scope.
216.33 Is a special exception permit required?
216.34 Permit application, review, and decision procedures.
216.35 Issuance criteria.
216.36 Permit restrictions.
216.37 Captive maintenance.
216.38 Permit conditions.
216.39 Reporting.
216.40 Permit amendment, modification, suspension, or revocation.
216.41 Penalties.
216.42 Fees.
216.43 Applicability/transition.
216.44 Use for special exception purposes of marine mammals taken or imported for rehabilitation.

Appendix A to Subpart D—Examples of Activities That Require a Special Exception Permit

Appendix B to Subpart D—Approach Standards Recommended for Activities Conducted in the Wild

Appendix C to Subpart D—Permit Application Information

Subpart D—Special Exception Permits

§ 216.30 General.

(a) *Purpose.* The regulations in this subpart set forth procedures and criteria for the issuance of special exception permits:

(1) To authorize the taking and importation of marine mammals or marine mammal products for purposes of scientific research, public display, or enhancing the survival or recovery of a species or stock (enhancement), under the MMPA;

(2) To authorize persons subject to U.S. jurisdiction to import, export, take, engage in interstate or foreign commerce, or conduct any other act otherwise prohibited, concerning fish and wildlife under the jurisdiction of NMFS and listed as endangered, or, where similarly regulated, threatened (see § 222.21 of this chapter), for scientific purposes or to enhance the propagation or survival of the affected species (enhancement) under the ESA; and

(3) To take, import, export, transport, or possess North Pacific fur seals or their parts for educational, scientific, or exhibition purposes under the FSA.

Note: North Pacific fur seals (Pribilof Island population) have been designated as depleted under the MMPA and, therefore, while depleted, North Pacific fur seals (Pribilof Island population) may not be taken for purposes of public display/exhibition.

(b) *Terms of reference.* (1) For the purposes of this subpart, the permits listed under paragraph (a) of this section are referred to as "special exception permits" to distinguish them from "general permits" issued under section 104(h) of the MMPA or "incidental taking" permits issued under section 10(a)(1)(B) of the ESA.

(2) The term "special exception activity" refers to activities affecting protected species and otherwise prohibited under the Acts for which a special exception permit is required; for example, take, importation, export, transport, purchase or sale (interstate or foreign commerce only under the ESA), possession (FSA), or otherwise prohibited activity under any of the Acts or their respective regulations.

Note: Captive maintenance provisions are generally applicable to marine mammals under the Acts, and have strictly limited applicability to other endangered or threatened species under the ESA; for example endangered or threatened species of marine and anadromous fish or marine reptiles.

(c) *Objectives.* The objectives of the Special Exception Permit Program are to ensure that:

(1) Permitted special exception activities will have the least practicable adverse effects on protected species populations or stocks;

(2) Permitted special exception activities, including the care and maintenance of marine mammals in captivity, will be humane and in accordance with applicable requirements of the Acts and the Animal Welfare Act;

(3) Permitted special exception activities will contribute to an improved scientific or public understanding of the ecology, population dynamics, biology, reproduction, and behavior of protected species in the wild and in captivity, and an enhanced public appreciation for and understanding of the marine ecosystem and the need for protected species conservation both in the United States and worldwide; and

(4) Available data on protected species are accessible as a basis for informed policy decisions, effective management, and the protection of protected species populations and marine ecosystems.

§ 216.31 Definitions.

Wherever a term defined in § 216.3 of this part is also defined in 50 CFR part 215 or part 217, the definitions in 50 CFR part 215 shall apply to special exception permits involving North Pacific fur seals and the definitions in 50 CFR part 217 shall apply to special exception permits involving species listed as endangered or threatened under the ESA, except for marine mammals. Terms not defined in § 216.3 of this part but defined in 50 CFR part 215 or part 217, shall apply to this subpart as applicable (i.e., wherever a special exception permit involves North Pacific fur seals or endangered or threatened species).

§ 216.32 Scope.

(a) *Marine mammals and marine mammal parts.* Except as provided in paragraph (b) of this section:

(1) Unless otherwise specified, the regulations of this subpart apply to all marine mammals or marine mammal parts, including any marine mammal born in captivity after December 21, 1972, regardless of parentage.

(2) The regulations of this subpart do not apply to or otherwise affect any marine mammal or marine mammal part taken before December 21, 1972 (pre-Act marine mammals or marine mammal parts), provided that:

(i) The AA receives adequate documentation from the holder that establishes the "pre-Act" status of the marine mammal or marine mammal part, including a description of the manner in which the subject marine mammal or marine mammal part is marked such that it is distinguishable from any other marine mammal or marine mammal part; and

(ii) For marine mammals—

(A) The AA receives prior notification from the holder and intended recipient of their intent to hold captive, transport, transfer or obtain custody of, sell, purchase, or otherwise convey or acquire an interest in, or otherwise dispose of or obtain such pre-Act

marine mammals; and the dates, method, persons involved, and any other arrangements pertaining thereto; and

(B) Such pre-Act marine mammals are not held together with marine mammals of the same species that are subject to the regulations of this subpart (i.e., if a single facility holds both post-Act and pre-Act marine mammals of the same species, such facility must comply with the requirements and conditions applicable in such circumstances set forth at §§ 216.36(a)(7) and 216.38(b)(19)).

(3) The regulations of this subpart do not apply to any marine mammal being taken or imported under the authority of section 109(h) of the MMPA unless the marine mammal is:

(i) Placed on public display during rehabilitation or before disposition has been completed under § 216.44; or

(ii) Subjected during rehabilitation to an intrusive research procedure as defined in § 216.3.

(b) *Endangered or threatened species and endangered or threatened species parts.* Unless otherwise specified in parts 217 through 229 of this chapter, the regulations of this subpart apply to all protected species and protected species parts determined to be endangered under part 222 of this chapter or threatened under part 227 of this chapter.

(c) *Permit applicants*—(1) *Public display.* The applicant must be the public display facility where the marine mammals will be held and displayed to the public. Each public display facility must apply separately for a special exception permit (i.e., public display permits are facility-specific, except as provided in § 216.37(g) and (h)). Temporary holding of marine mammals at a different facility (e.g., because of an emergency, facility renovations, or for acclimation and transition training following wild capture) may be authorized if the applicant submits as a part of the application a letter from the temporary holding facility indicating agreement to hold the marine mammals temporarily in accordance with the provisions of this subpart.

(2) *Scientific research.* (i) The applicant must be the principal investigator conducting the scientific research or be the appropriate institution, governmental entity, or corporation responsible for the supervision of the principal investigator, if the research:

(A) Involves a periodic change in the responsible principal investigator (e.g., long-term monitoring studies or the curation of protected species parts in a permanent scientific collection); or

(B) Is otherwise controlled by and dependent upon the institution, governmental entity, or corporation.

(ii) If the research involves a number of co-investigators, a single principal investigator who will be primarily responsible for the taking, importation, export, or otherwise prohibited activity involving protected species, and any related activities under the permit, must be identified as the applicant. Co-investigators may be designated as agents in the permit (i.e., the principal investigator's on-site representative also responsible for the special exception activity authorized by the permit); see § 216.38(d)(1).

(iii) Where the proposed scientific research involves captive maintenance in a facility, temporary pen, or other temporary enclosure, the application must include a supporting statement from the person responsible for the facility or other temporary enclosure.

(3) *Enhancement.* The applicant must be the person, institution, governmental entity, or corporation responsible for implementing the proposed enhancement activity and responsible for the take, importation, or export of, or conduct of an otherwise prohibited activity involving, the protected species.

§ 216.33 Is a special exception permit required?

(a) *Public display.* A public display permit is required to take or import for public display purposes any marine mammal subject to this subpart, including rehabilitated marine mammals. Only living marine mammals may be taken or imported under the authority of public display permits.

(b) *Scientific research.* A scientific research permit is required to:

(1) Take or import for bona fide scientific research purposes any marine mammal or marine mammal part subject to this subpart, including an intrusive research procedure involving a marine mammal held captive under the authority of a public display or enhancement permit or under other authority of this part (e.g., for rehabilitation); or

(2) Take, import, export, or conduct any otherwise prohibited activity, for bona fide scientific research purposes any endangered or threatened species or species part subject to this subpart.

(c) *Enhancement.* (1) An enhancement permit is required to: (i) Take or import, for purposes of enhancing the survival or recovery of a species or stock, any marine mammal or marine mammal part subject to this subpart; or

(ii) Take, import, export, or conduct any otherwise prohibited activity, for enhancement purposes, any endangered or threatened species or part of such species subject to this subpart.

(2) Only living protected species and protected species parts necessary for enhancement of the survival, recovery, or propagation of the affected species or stock may be taken or imported under the authority of enhancement permits. Protected species parts include, in this regard, clinical specimens or other biological samples required for the conduct of breeding programs or the diagnosis or treatment of disease.

(d) *Guidelines and examples.* (1) The most common activities that require a special exception permit are included in appendix A to this subpart. In addition, for marine mammals in the wild, an activity that exceeds or is conducted in a manner contrary to the recommended approach standards described in appendix B to this subpart will likely require a special exception permit. These appendices are provided as guidance in determining whether a permit is required to conduct an activity for a special exception purpose and should not be construed as all-inclusive.

(2) An activity not described in appendix A or appendix B to this subpart, but that may involve a take, import, or export of, or otherwise prohibited activity affecting, a protected species or protected species parts for the purposes of public display, scientific research, or enhancement, may require a special exception permit. On the basis of an adequate description of the proposed activity by an applicant, the AA will determine whether a special exception permit is required under this subpart.

(e) *Export of marine mammals or marine mammal parts.* The export of a marine mammal or marine mammal part taken or imported under the authority of a special exception permit requires authorization under the conditions of the holder's permit or, if a person is proposing to export a marine mammal part and is not a permit holder, then the export of the marine mammal part must be authorized by the AA. If the marine mammal or marine mammal part to be exported is a species listed as endangered or threatened under the ESA, a permit is required authorizing that activity.

§ 216.34 Permit application, review, and decision procedures.

(a) *Application submission.* An original signed by the applicant and two copies of the completed signed application for a special exception permit must be submitted to the AA at the address listed in the application instructions referred to in paragraph (c) of this section.

(b) *Applications involving the export of living protected species.* Applications to take and export living protected species from the United States for a special exception purpose, including applications from persons not subject to U.S. jurisdiction under the Acts (e.g., a foreign facility), must:

(1) Be submitted to the AA through the Convention on International Trade in Endangered Species management authority of the foreign government and, if different, the appropriate agency or agencies of the foreign government that perform functions and activities similar to the functions performed by NMFS under the Acts.

(2) Include a certification from the foreign government:

(i) That the information set forth in the application is accurate;

(ii) That the laws and regulations of the government involved allow enforcement of the terms and conditions of the permit, should it be issued, and that the government, including the affected Convention on International Trade in Endangered Species management authority, will enforce such terms and conditions, including an annual inspection of the foreign facility equivalent to U.S. facility inspections conducted by the Animal and Plant Health Inspection Service of the U.S. Department of Agriculture (also see § 216.38(b)(22)); and

(iii) That the government concerned will afford comity to a decision by the AA to amend, modify, suspend, or revoke a permit.

(3) Demonstrate that the foreign applicant/facility meets all standards and regulations applicable to applicants that are subject to U.S. jurisdiction.

(c) *Application instructions and information requirements.*

(1) Applications must be in the format and include the information described in the Application Instructions for a Special Exception Permit (application instructions). The basic information required is included in appendix C to this subpart. The application instructions may be requested from the Director, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910. Persons requesting application instructions should identify the protected species involved and the special exception purpose for which the application will be submitted—scientific research, public display, or enhancement—and if scientific research or enhancement, whether the proposed activity will involve captive holding of protected species.

(2) The AA may require an elaboration of the information submitted by an applicant or may require the submission of any additional information.

(d) *Initial application review.* (1) The AA will inform applicants of receipt of applications.

(2) During the initial review of the application, the AA will determine:

(i) Whether the application is complete, taking into consideration the applicable information requirements set out in appendix C of this subpart, and the application instructions.

(ii) Whether the proposed special exception activity is for purposes of public display, bona fide scientific research, or enhancement, as applicable.

(iii) If the proposed activity is for the purpose of enhancement, whether the species or stock identified in the application is in need of enhancement for its survival or recovery and the proposed activity is likely to succeed in its objectives.

(iv) Whether the activities proposed are to be conducted consistent with the permit restrictions as described in § 216.36.

(v) Whether sufficient information is included regarding the environmental impact of the proposed activity to enable the AA:

(A) To make an initial determination under the National Environmental Policy Act (NEPA) as to whether the preparation of an environmental assessment (EA) or environmental impact statement (EIS) is appropriate or necessary (i.e., whether the activity proposed is categorically excluded from preparation of further environmental documentation); and

(B) To prepare an EA or EIS if an initial determination is made by the AA that the activity proposed is not categorically excluded from such requirements.

(3) Where marine mammals are concerned, the AA may consult with the Marine Mammal Commission and the Committee of Scientific Advisors on Marine Mammals in making these initial determinations.

(4) Applications determined to be incomplete, for a special exception purpose different than that proposed in the application, proposing activities contrary to permit restrictions, or in need of additional information necessary for compliance with NEPA, will be returned to the applicant for revision. If the applicant fails to correct the deficiency within 60 days following the date of notification, the application shall be considered withdrawn by the applicant.

(5) Applications determined to be for purposes other than public display, bona fide scientific research, or enhancement, will be returned to the applicant and not further considered.

(e) *Notice of receipt and application review.* (1) Upon completing the initial review, the AA will publish a notice of receipt of the application in the **Federal Register**:

(i) If the application is initially determined to be complete, for a special exception purpose consistent with that proposed, and includes information sufficient for compliance with NEPA; and

(ii) Following the preparation of any NEPA documentation that has been determined initially to be required.

(2) The **Federal Register** notice of receipt will:

(i) Include a summary of the application, including:

(A) The purpose of the request;

(B) The species and number of marine mammals or endangered or threatened species proposed to be taken, imported, exported, or affected by an otherwise prohibited activity;

(C) The type(s) and manner of special exception activity proposed;

(D) The location(s) in which the protected species are proposed to be taken, from which they are proposed to be imported, and to which they are proposed to be exported, as applicable;

(E) Whether, and in what manner, marine mammals proposed to be taken, imported, or exported for public display purposes are proposed to be used in interactive programs; and

(F) The proposed period of the permit.

(ii) List the locations in which the application is available for review.

(iii) Invite interested parties to submit written comments concerning the application within 30 days of the date of the notice.

(iv) Include a NEPA statement that an initial determination has been made that the activity proposed is categorically excluded from the requirements to prepare an EA or EIS, that an EA was prepared resulting in a finding of no significant impact, or that a final EIS has been prepared and is available for review.

(3) Where marine mammals are concerned, the AA will send a copy of the complete application to the Marine Mammal Commission and request that their recommendations, including those of the Committee of Scientific Advisors on Marine Mammals, be submitted within 30 days of receipt of the application by the Commission. If within 45 days of receipt of the application (or such longer time as the AA may establish) the Commission and the Committee do not recommend that the permit be issued, this will be

considered a recommendation that the permit be denied.

(4) The AA may consult with any other person, institution, or agency concerning the application.

(5) Within 30 days of publication of the notice of receipt in the **Federal Register**, any interested party may submit written comments or may request a public hearing on the application.

(6) If the AA determines that a public hearing would be advisable, the AA may, within 60 days of publication of the notice of receipt in the **Federal Register**, hold a public hearing. Notice of the date, time, and place of the public hearing will be published in the **Federal Register** not less than 15 days in advance of the public hearing. Any interested person may appear in person or through representatives and may submit any relevant material, data, views, or comments. A summary record of the hearing will be kept.

(7) If the AA determines that a public hearing would not be advisable, the AA may extend the period during which any interested party may submit written comments. Notice of the extension must be published in the **Federal Register** within 60 days of publication of the notice of receipt in the **Federal Register**.

(f) *Issuance or denial of a permit.* (1) Within 30 days of the close of the public hearing or, if no public hearing is held, within 30 days of the close of the public comment period, the AA will issue or deny a special exception permit, except as provided in subpart D of 15 CFR part 904.

(2) In making a decision to issue or deny issuance of a special exception permit, the AA will consider all comments received during the comment period in light of applicable issuance criteria and any other information or data that the AA determines are relevant in making such a decision, including, but not limited to:

(i) How the applicant's needs, program, and facilities compare and relate to proposed and ongoing projects and programs;

(ii) Whether the expertise, facilities, or other resources available to the applicant appear adequate to accomplish successfully the objectives stated in the application;

(iii) Opinions or views of scientists or other persons or organizations knowledgeable of the protected species that is the subject of the application or of other matters germane to the application; and

(iv) If a live animal is to be held captive or transported, the applicant's qualifications for the proper care and maintenance of the protected species and the adequacy of the applicant's facilities, equipment, and personnel.

(3) Notice of the decision of the AA shall be published in the **Federal Register** within 10 days after the date of permit issuance or denial and shall indicate where copies of the permit, if issued, may be reviewed or obtained. If the permit issued involves protected species listed as endangered or threatened under the ESA, the notice shall include a finding by the AA that the permit:

(i) Was applied for in good faith;

(ii) If exercised, will not operate to the disadvantage of such endangered or threatened species; and

(iii) Is consistent with the purposes and policy set forth in section 2 of the ESA.

(4) The applicant for a permit or any party opposed to such permit may obtain judicial review of the terms and conditions of any special exception permit issued or of a decision to deny such a permit. Such review may be initiated by filing a petition for review, within 60 days of the date of permit issuance or denial, in the U.S. district court for the district wherein the applicant for a permit resides, or has its principal place of business, or in the U.S. District Court for the District of Columbia.

(5) If, after publishing a notice of receipt, the AA determines on the basis of new information regarding the impact of the proposed activity on the human environment that an EA or EIS must be prepared, the AA must deny the permit; unless an EA is prepared and a finding of no significant impact is made before the AA must make a decision to issue or deny the permit as required under paragraph (f)(1) of this section. If a permit is denied under these circumstances, the application may be resubmitted with information sufficient to prepare the required EA or EIS, and will be processed as a new application.

(6) The AA may waive the 30-day public comment period required under the ESA in an emergency situation where the health or life of an endangered animal is threatened and no reasonable alternative is available to the applicant; but notice of such waiver shall be published in the **Federal Register** within 10 days following the issuance of the special exception permit. Note: This provision would apply to endangered marine mammals only where the AA has authorized a taking or importation under the provisions of section 109(h) of the MMPA.

§ 216.35 Issuance criteria.

(a) *General.* For the AA to issue any special exception permit, the applicant must demonstrate the following:

(1) The proposed taking, importation, export, or otherwise prohibited activity is humane and does not present any unnecessary risks to the health and welfare of protected species.

(2) The proposed special exception activity is consistent with the applicable restrictions of § 216.36.

(3) Any proposed taking, importation, export, or otherwise prohibited activity involving the captive maintenance of a protected species will be conducted in accordance with the applicable requirements of § 216.37, and the applicant's qualifications and record for the care and supervision of protected species support a reasonable expectation of compliance with captive maintenance requirements. If the applicant has had a pattern of non-compliance with captive maintenance requirements or permit conditions of §§ 216.37 and 216.38, the applicant must have demonstrated, in a manner and for a period acceptable to the AA, a pattern of compliance with such requirements and conditions; such period to be not less than 1 year, during which at least two consecutive inspections conducted at least 4 months apart must have been completed documenting the applicant's full compliance with the requirements and conditions.

(4) Granting any requested import or export is not likely to result in a take of protected species or protected species parts other than that authorized by the permit (e.g., the import or export is not likely to result in replacement takes or otherwise increase demand for protected species or protected species parts resulting in takes to meet such anticipated demand).

(5) If the proposed take or import involves holding marine mammals captive (other than short-term capture and release activities associated with a capture from the wild), the applicant has:

(i) either committed to posting a surety bond(s) acceptable to the AA as required in § 216.38(b)(8)(v) and (b)(27)(i)(D), prior to obtaining custody by transfer or capturing from the wild the subject marine mammals, respectively, or made arrangements acceptable to the AA (i.e., contingency planning and assurances of adequate funding arrangements) for the disposition of the marine mammal, if and when the applicant's permitted activity terminates; and

(ii) Committed to accepting temporary custody of seized or abandoned marine

mammals on a space available basis, except where acceptance of temporary custody would involve, in the written opinion of the attending veterinarian, a risk to the health or welfare of marine mammals held by the applicant. Seized or abandoned marine mammals in this context are marine mammals held under a special exception permit for purposes of public display, scientific research, or enhancement, that either have been abandoned by the permit holder with custody or seized by NMFS under the terms of this part or of 15 CFR part 904, and for which a request to assume custody has not been received by NMFS from any permit holder within 15 days from the date of notification of all such permit holders by NMFS. The AA may exempt an applicant from the requirements of paragraph (a)(5) of this section if it is in the interest of the health and welfare of the marine mammal(s) concerned and if there is no reasonable alternative (e.g., alternative facility at which the subject marine mammal could be held/transferred).

(6) If a protected species is proposed to be held captive, a commitment to maintain or contribute data to a stud book, and, if the protected species has been determined to be depleted under the MMPA or listed as endangered or threatened under the ESA, a commitment to participate in a cooperative breeding program.

(7) The proposed special exception activity, if it involves protected species determined to be endangered or threatened under the ESA, will be conducted consistent with the purposes and policy set forth in section 2 of the ESA.

(b) *Public display.* For the AA to issue a public display permit, the applicant must demonstrate the following:

(1) The source of the proposed taking or importation of living marine mammals is one that will present the least practicable effects on wild populations.

(2) Any proposed permanent removal from the wild:

(i) Is consistent with any applicable quota established by the AA; or

(ii) Where there is no quota in effect, will not have, by itself or in combination with all other known takes and sources of mortality, a significant direct or indirect adverse effect on the protected species or stock, based on the best available information on cumulative take for the species or stock, including information provided by the applicant concerning the status of the species or stock (e.g., population survey data).

(3) The education or conservation program offered by the applicant is acceptable to the AA, considering:

(i) Whether an education or conservation program with clearly stated objectives has been designed and is being, or will be, conducted and evaluated by a professional staff; and

(ii) Whether the basic messages and purposes of the program are consistent with the policies and objectives of the MMPA, whether they include accurate information about the life history, behavior, sensory capabilities, conservation or other aspects of marine mammals, such as their role in the marine ecosystem, and whether they are being, or are likely to be, conveyed to the participating public in an effective manner.

(4) For any interactive program:

(i) All measures determined by the AA to be necessary for the health and welfare of the participating marine mammals will be taken;

(ii) The program is conducted for the purpose of education or conservation as a part of an education or conservation program determined acceptable under paragraph (b)(3) of this section, and is consistent with the policies and objectives of the MMPA; and

(iii) Any aspect of the program that involves a marine mammal/public interaction prohibited in the wild is clearly presented as such, with an explanation of why such a prohibition is necessary for the protection of marine mammals in the wild.

(5) The taking/capture of any marine mammal proposed for importation was, or will be, consistent with the same requirements, restrictions, criteria, and conditions as those applicable to the taking/capture of a marine mammal subject to U.S. jurisdiction.

(c) *Scientific research.* For the AA to issue a scientific research permit, the applicant must demonstrate the following:

(1) The proposed special exception activity does not involve unnecessary duplication of research. If similar research on the same or comparable species has been done in the past or has been authorized, the proposed research must either:

(i) Be necessary to verify (i.e., replicate) the results of this previous or authorized research; that is, results cannot be reasonably and accurately predicted from the body of scientific knowledge currently available in the scientific literature or from the likely results of ongoing studies; or

(ii) Be likely to contribute significant data to the scientific literature or provide new insight.

(2) If the lethal taking of protected species is proposed, non-lethal methods for conducting the research are not feasible.

(3) For species or stocks not designated, or proposed to be designated, as depleted under the MMPA, and not listed as endangered or threatened or not proposed to be listed as endangered or threatened under the ESA:

(i) The proposed research, by itself or in combination with other activities (i.e., all other takes and known sources of mortality), is not likely to have a significant adverse impact on the species or stock; and

(ii) Any proposed permanent removal from the wild either:

(A) Is consistent with any applicable quota established by the AA; or

(B) Where there is no quota in effect, will not have, by itself or in combination with all other takes and known sources of mortality, a significant direct or indirect adverse effect on the protected species or stock, based on the best available information on cumulative take for the species or stock, including information provided by the applicant concerning the status of the species or stock.

(4) For species or stocks designated, or proposed to be designated, as depleted by the AA under the MMPA, or listed as endangered or threatened or proposed to be listed as endangered or threatened under the ESA:

(i) The proposed research cannot be accomplished using a species or stock that is not depleted, proposed for designation as depleted, listed as endangered or threatened, or proposed to be listed as endangered or threatened;

(ii) The proposed research, by itself or in combination with other activities (e.g., all other takes and known sources of mortality), is not likely to have a long-term direct or indirect adverse impact on the species or stock; and

(iii) The proposed research will either:

(A) Address a research need/objective identified in a species recovery or conservation plan or, if there is no conservation or recovery plan in place, a research need/objective identified by the AA in light of the factors that would be addressed in a conservation or recovery plan;

(B) Be likely to contribute significantly to understanding the basic biology or ecology of the species or stock, or to identifying, evaluating, or resolving conservation problems for the species or stock; or

(C) contribute significantly to fulfilling a critically important research need; and

(iv) If the proposed scientific research involves a lethal taking of marine mammals, the results will directly benefit that species or stock, or will fulfill a critically important research need.

(5) The proposed research is not likely to have significant adverse effects on any other component of the marine ecosystem of which the affected species or stock is a part.

(d) *Enhancement.* For the AA to issue an enhancement permit, the applicant must demonstrate the following:

(1) The proposed activity is likely to contribute significantly to maintaining or increasing distribution or abundance, or enhancing the health or welfare of the species or stock, necessary to ensure the survival or recovery of the affected species or stock in the wild.

(2) The proposed activity is consistent with an approved conservation plan developed under section 115(b) of the MMPA or recovery plan developed under section 4(f) of the ESA for the species or stock; or, if there is no conservation or recovery plan, the proposed activity is consistent with the AA's evaluation of the actions required to enhance the survival or recovery of the species or stock in light of the factors that would be addressed in a conservation or recovery plan.

(3) Any proposed public display of marine mammals will be consistent with the applicable criteria of paragraph (b) of this section, and the restrictions and conditions of §§ 216.36 and 216.37, unless specifically exempted by the AA based on a determination that such an exemption is necessary for the attainment of survival or recovery objectives.

(4) Any proposed scientific research will be consistent with the applicable criteria of paragraph (c) of this section, and the applicable restrictions and conditions of §§ 216.36 and 216.37, unless specifically exempted by the AA based on a determination that such an exemption is necessary for the attainment of survival or recovery objectives.

§ 216.36 Permit restrictions.

(a) *General.* The following restrictions are requirements of all special exception permits:

(1) The taking, importation, export, or conduct of an otherwise prohibited activity involving protected species, including the methods of capture, transportation, supervision, handling, care and maintenance, and treatment, must comply at all times with the regulations of this subpart.

(2) The valid period for any special exception permit issued, or any major amendment granted, is limited to 5 years from the effective date of such permit or major amendment. In accordance with the provisions of § 216.40, the valid period of a permit may be extended by a minor amendment up to 12 months beyond that established in the original permit (i.e., a maximum possible initial permit period of 6 years before a major amendment is required to extend the valid period of the permit further).

(3) Any protected species or protected species part imported under the authority of a special exception permit must not have been taken or imported in a manner deemed inhumane by the AA, in violation of the Acts, or in violation of the law of another country having jurisdiction over the taking or importation. Importation of protected species and protected species parts is subject to the provisions of 50 CFR part 14.

(4) Special exception permits do not authorize the permit holder or any other person to take protected species in waters under the jurisdiction of any country without the consent of such country. The permit holder is responsible for securing such consent and complying with any applicable laws and regulations of that country.

(5) The permit holder is responsible for the activities of any individual who is operating under the authority of the permit including, but not limited to, the capture, transportation, supervision, handling, care and maintenance, treatment, health and welfare, or export of any protected species or protected species part.

(6) All individuals conducting an activity under the authority of the permit must possess qualifications (e.g., education or experience) commensurate with their duties and responsibilities, or must be under the direct supervision of a person with such qualifications. All professional staff and any authorized agent under the permit who require state or Federal licenses to practice their profession must be duly licensed while conducting any activities under the permit.

(7) Marine mammals held under the authority of a special exception permit may not be held with pre-Act marine mammals of the same species unless such pre-Act marine mammals are held by the permit holder in accordance with the provisions of this subpart (see § 216.32(a)(2)).

(8) Special exception permits must not be transferred or assigned to any other person. However, certain limited rights of succession by certain persons may be authorized in accordance with § 220.26 of this chapter and, in the case of a change in ownership of a public display facility, the public display permit may be transferred in accordance with § 216.38(c)(5).

(9) The original or a notarized copy of any special exception permit must be in the possession of the permit holder or designated agent during the time of the authorized special exception activity, any transit that is incident to such special exception activity, and any other time while the protected species or protected species part is in the possession of the permit holder or agent. A duplicate copy of the permit must be physically attached to the container, package, enclosure, or other means of containment, in which the protected species or protected species part is placed for purposes of storage, transit, supervision, or care; except, for protected species held captive and protected species parts in storage, original or duplicate copies of permits may be kept on file at the location of captive holding or storage.

(10) Marketable products obtained in the course of an activity conducted in the wild under a special exception permit may not be sold, offered for sale, or exchanged directly or indirectly for any product or service of value, unless such marketable products were obtained in a manner or for a purpose essential to:

(i) The conduct of permitted bona fide scientific research or enhancement activities, or the publication or presentation of the results of such activities;

(ii) The development or conduct of a public display education or conservation program, where such material has been obtained incidental to permitted activities; or

(iii) The take of protected species in the wild, where such use of marketable products is specifically authorized under the terms and conditions of the permit (e.g., using photographs or video of protected species to assess remotely their health and identify animals for capture, minimizing harassment and stress associated with wild capture).

(11) Purchase and sale transactions may only be authorized if the purchaser is a holder of a special exception permit that authorizes the holding of the subject species, or a consortium of special exception permit holders where all members of the consortium are authorized to hold marine mammals captive and at least one member of the consortium holds a special exception permit authorizing the holding of the subject species.

(b) *Public display.* The following restrictions are requirements of all public display permits:

(1) Only living marine mammals may be taken or imported under the authority of a public display permit.

(2) Public display facilities must be designed and activities must be conducted in a way that ensures humane treatment of, prevents injury to, and protects the health and welfare of captive marine mammals.

(3) The permit holder must exhibit the marine mammals to the public on a regularly scheduled basis, with access not limited or restricted other than by the charging of an admission fee.

(4) No marine mammal may be taken or imported under the authority of a public display permit that is:

(i) From a species or stock designated as depleted or proposed by the AA to be designated as depleted under the MMPA, unless the marine mammal to be taken or imported is captive born and the provisions of paragraph (d)(2)(i) of this section are met; or

(ii) At the time of taking, pregnant, lactating, or either unweaned or less than 8 months old, whichever occurs later, unless the AA determines that such taking or importation is necessary for the protection or welfare of the animal.

(c) *Scientific research.* The following restrictions are requirements of all scientific research permits:

(1) Scientific research activities must be conducted as described and referenced in the permit.

(2) Research results must be published or otherwise be made known to the scientific community in a reasonable period of time.

(3) Activities conducted under the authority of a scientific research permit may only be conducted under the direct supervision of the principal investigator or a co-investigator specifically identified in the permit.

(4) The take of living protected species in the wild under the authority of a scientific research permit must be conducted independent and separate from activities conducted for commercial or recreational purposes.

(Note: This provision is intended to prevent the abuse of using a scientific research permit to take a protected species in the wild for a purpose other than scientific research (e.g., for commercial or recreational purposes)).

In this context, commercial or recreational activities include any activity for which, or in connection with which, payment in cash, product, in-kind services, or other consideration is involved. However, participation of research personnel that meets the requirements of paragraphs (a)(6) and (c)(5) of this section is not an activity conducted for commercial or recreational purposes, whether such research personnel directly or indirectly reimburse the principal investigator for their participation in the permitted research or otherwise fund or support the permitted research. Similarly, bona fide scientific research conducted on a protected species taken incidental to a commercial activity, where such incidental take has been authorized under the MMPA or ESA, as applicable, is considered to be research conducted independent and separate from such commercial activity. In a similar manner, research conducted incidental to an enhancement activity authorized under the MMPA or ESA is considered to be research conducted independent and separate from commercial or recreational activity, regardless of whether the enhancement activity is conducted in association with a commercial or recreational activity. Also, in this context, the sale, offer for sale, or direct or indirect exchange for any product or service of value of marketable products obtained consistent with the requirements of paragraph (a)(10) of this section are not activities conducted for commercial purposes.

(5) All personnel involved in the conduct of any activity conducted under the authority of a scientific research permit (i.e., principal investigator, co-investigators/agents, and support personnel) during which a protected species is, or may be, taken, imported, exported, or affected by an otherwise prohibited activity, must:

(i) Perform a function directly supportive of and necessary for the permitted research activity (i.e., other than direct or indirect funding or payment); or

(ii) Be one of a reasonable number of support personnel included for the purpose of training or as back-up personnel for persons described in paragraph (c)(5)(i) of this section.

(6) Any protected species part imported under the authority of a scientific research permit must not have been obtained as the result of a lethal taking that would otherwise be prohibited under the Acts.

(d) *Enhancement.* The following restrictions are requirements of all enhancement permits:

(1) Only living protected species and protected species parts necessary for enhancement of the survival, recovery, or propagation of the affected species or stock may be taken, imported, exported, or affected by an otherwise prohibited activity under the authority of an enhancement permit. Protected species parts would include in this regard clinical specimens or other biological samples required for the conduct of breeding programs or the diagnosis or treatment of disease.

(2) An enhancement permit may authorize the captive maintenance of a protected species from an endangered, threatened, or depleted species or stock only if the AA determines that:

(i) The proposed captive maintenance is likely to contribute directly to the survival or recovery of the species or stock by maintaining a viable gene pool, increasing productivity, providing necessary biological information, or establishing animal reserves required to support directly these objectives; and

(ii) The expected benefit to the species or stock outweighs the expected benefits of alternatives that do not require removal of protected species from the wild.

(3) Any protected species or its progeny held in captive maintenance under an enhancement permit must be returned to its natural habitat as soon as feasible, consistent with the objectives of an approved conservation or recovery plan or the evaluation by the AA under § 216.35(d)(2). In accordance with section 10(j) of the ESA, the AA may authorize the release of any population of an endangered species or a threatened species outside the current range of such species if the AA determines that such release will further the conservation of such species.

(4) The AA may authorize the public display of marine mammals held under the authority of an enhancement permit only if:

(i) The public display is incidental to the authorized captive maintenance;

(ii) The public display will not interfere with the attainment of the survival or recovery objectives;

(iii) The marine mammals will be held consistent with all requirements and standards that would otherwise be applicable to if the marine mammals were held under the authority of a public display permit, unless the AA determines that an exception is necessary to implement an essential enhancement activity; and

(iv) The marine mammals will be excluded from any interactive program and will not be trained for performance.

(5) The AA may authorize non-intrusive scientific research to be conducted while a protected species is held under the authority of an enhancement permit, only if such scientific research:

(i) Is incidental to the permitted enhancement activities; and

(ii) Will not interfere with the attainment of the survival or recovery objectives.

§ 216.37 Captive maintenance.

Paragraphs (e) through (l) of this section are applicable only to marine mammals under the Acts and do not apply to other protected species; for example, marine and anadromous fish or marine reptiles.

(a) Protected species may be held captive for a special exception purpose only if such taking is authorized under a special exception permit issued under this subpart. Protected species may be held captive for other purposes only if authorized under other provisions of the Acts or other statutory authority that specifically exempts such otherwise prohibited activity from the provisions of the Acts, as applicable (e.g., 10 U.S.C. 7524).

(b) Permit holders are responsible for the supervision, handling, care and maintenance, treatment, health and welfare, and transportation of protected species held under a special exception permit, unless otherwise specifically authorized by the AA.

(c) The methods of supervision, handling, care and maintenance, treatment, and transportation of protected species held under a special exception permit must be humane and must comply with applicable regulations and standards under the Animal Welfare Act (9 CFR parts 1, 2, and 3) and of this subpart, unless otherwise specifically authorized by the AA. Supplemental standards for the supervision, handling, care and maintenance, treatment, and transportation of protected species may be specified in the special exception permit.

(d) Failure to comply with the applicable captive maintenance requirements of this section and any supplemental standards of the permit is considered a violation of these regulations and the permit and may be the basis for amending, modifying, suspending, or revoking a permit, or denying future permits. If the AA determines there is a reasonable basis to believe that a permit holder is not complying with the applicable captive maintenance requirements of this section or any supplemental standards of the permit, to ensure the protection or welfare of the protected species held by the permit holder, the AA may, upon notice of the permit holder of this determination, seize the protected species pending completion of an investigation or resolution of any charges that may result from such an investigation (see 15 CFR part 904).

(e) Except as provided in paragraph (f) of this section, public display permit holders in the United States must be licensed or registered under the Animal Welfare Act by the Animal and Plant Health Inspection Service.

(f) A special exception permit may be issued for activities involving captive maintenance of marine mammals at a facility before construction of all or part of the facility is completed only if the plans for the facility and the proposed program of captive maintenance are found to comply with the requirements and standards of this section. Authorization to obtain custody of marine mammals from captive stock or to capture from the wild will be withheld until construction has been completed and the facility is determined to be in compliance with all applicable standards and requirements.

(g) The AA may authorize limited temporary holding (i.e., less than 6 months) in a facility different than that listed on the permit, if:

(1) Either an emergency exists in which the health or welfare of a captive marine mammal is in imminent jeopardy; or a short-term transfer of a marine mammal is necessary to repair, renovate, or improve the facility listed on the permit in a manner benefitting the health or welfare of the marine mammal.

(2) The transfer follows the applicable procedures of § 216.38(b)(8), unless specifically waived by the AA in the interest of the health or welfare of the marine mammal.

(3) The marine mammal is held in compliance with the requirements of this section, and only until:

(i) The emergency is resolved or facility renovation is completed and the marine mammal is transferred back;

(ii) Custody of the marine mammal is transferred to the permit holder temporarily holding the subject marine mammal pending the resolution of the emergency or completion of facility renovation; or

(iii) Custody of the marine mammal is transferred to another permit holder under § 216.38(b)(8).

(4) Detailed reports are submitted on the condition of the marine mammal and the status of the emergency or renovation at intervals not greater than 60 days.

(5) Such limited temporary holding does not exceed a 6-month period.

(6) Custody is shared jointly if the temporary holding facility is also a permit holder, meaning the marine mammal will be held at the temporary holding facility under the authority of the permit holder experiencing the emergency or conducting facility renovations and consistent with any applicable terms and conditions of the temporary holding facility's special exception permit; or custody is retained by the permit holder if the temporary holding facility is not also a permit holder.

(h) A marine mammal captured from the wild under the terms and conditions of a special exception permit may be held temporarily in another facility for the purpose of acclimation and transition training for a period not greater than 6 months, either:

(1) Under the authority, terms, and conditions of the temporary holding facility's special exception permit, with custody being held by the temporary holding facility; or

(2) If the temporary holding facility does not hold a special exception permit, under the terms and conditions of the permit under which the marine mammal was captured, with custody being retained by the permit holder, provided that:

(i) The marine mammal is to be held temporarily only until, in the reasonable judgment of the attending veterinarian, acclimation and transition training has progressed sufficiently for the marine mammal to be transferred;

(ii) The temporary holding facility's sole purpose is the acclimation and transition training of marine mammals captured from the wild; and

(iii) The temporary holding facility is in compliance with all applicable standards of these regulations.

(i) If the 6-month limit on temporary holding under paragraph (g) or (h) of this section is exceeded, each day it is exceeded shall constitute a separate violation of these regulations.

(j) Under the terms and conditions of the special exception permit, following the capture of a marine mammal from the wild, such a marine mammal may be held in a temporary pen or other temporary enclosure located adjacent to or near the capture site only if:

(1) The marine mammal is held in the temporary enclosure for the minimum period of time necessary:

(i) For the attending veterinarian to assess the health and behavior of the marine mammal and determine whether the marine mammal should be held and transferred consistent with the purpose and terms of the permit or released to the wild; and

(ii) To arrange for transportation to the permit holder's facility or to a temporary holding facility under paragraph (h) of this section.

(2) The marine mammal is held in the temporary enclosure for no longer than 30 days, unless one or more extensions in increments no greater than 15 days each are specifically authorized by the AA, based on a determination by the attending veterinarian that the health of

the marine mammal would be endangered by transfer or release.

(3) The temporary enclosure is able to withstand inclement weather and is in compliance with Animal Welfare Act standards for primary enclosures; except that any single aspect of the minimum space requirements (e.g., volume, length, width, depth) may be reduced by no more than one half if the attending veterinarian determines such a reduction is necessary to make the determination in paragraph (j)(1)(i) of this section.

(k) Marine mammals held under the authority of a special exception permit must be held together with marine mammals of the same species, except for the purposes of short-term (i.e., several days) medical treatment by an attending veterinarian or as authorized by the AA. The AA may authorize holding a marine mammal in isolation from other marine mammals of the same species:

(1) If such isolation is necessary to fulfill the purpose or objectives of the activity for which the scientific research or enhancement permit was issued and is authorized specifically under the permit;

(2) For periods not to exceed 6 months, if the permit holder provides a statement from the attending veterinarian:

(i) Explaining how such isolation is in the interests of the health and welfare of the marine mammal concerned (e.g., social incompatibility, special medical condition, consistency with known patterns of social interaction for the species, for example, because of breeding status, sex, age, or other equivalent factors, an extended period of isolation would be consistent with that otherwise found in the wild); and

(ii) Identifying any alternatives available for minimizing the social isolation of the marine mammal, including the transfer of the marine mammal to another facility; or

(3) If the marine mammal is held together with one or more marine mammals of a different species, where the multi-species aggregation mimics multi-species aggregations found in the wild.

(l) Whenever known to occur in social units in the wild, marine mammals held under special exception permits must be held with other marine mammals of the same species in a manner and composition that in number, sexual ratio, and age structure provides the closest practicable approximation of the known fundamental (i.e., minimum) social unit found in the wild, with due consideration given to the limitations and health and welfare concerns uniquely applicable to captive maintenance (e.g., breeding status). Exceptions to this requirement may be made by the permit holder, if:

(1) The permit holder, as a part of the annual report required under § 216.39, provides:

(i) A statement that an exception is necessary to fulfill the purpose or objectives of the activity for which the scientific research or enhancement permit was issued; or

(ii) A certification from the attending veterinarian that such an exception is necessary in the interests of the health and welfare of the marine mammals concerned and noting, for each, the reason for such an exception (e.g., social incompatibility, special medical condition, seasonal/breeding status concerns, etc.) and the period of time such exception will be necessary during the upcoming 12 months; or

(iii) A statement that an exception is necessary due to the captive maintenance limitations of the facility in which the subject marine mammals are held and the absence of a reasonable alternative to such holding facility.

(2) The AA concurs with the need for such an exception. The concurrence of the AA will be presumed unless the AA:

(i) Concurs with such an exception for a specified period less than 1 year, pending review of additional information requested from the permit holder regarding the need for an exception; or

(ii) Informs the permit holder that an exception is denied.

§ 216.38 Permit conditions.

(a) *Permit-specific conditions.* Permits issued under this subpart will contain specific terms and conditions deemed appropriate by the AA, including, but not limited to:

(1) The number and species of marine mammals, endangered species, or threatened species that are authorized to be taken, imported, exported, or affected by an otherwise prohibited activity;

(2) The manner in which these protected species may be taken (according to type of take and authorized level of harassment, including harassment during capture);

(3) The location(s) in which the protected species may be taken, from which they may be imported, or to which they may be exported, as applicable, and, for endangered or threatened species to be imported/exported, the port of entry/export;

(4) Whether, and in what manner, marine mammals proposed to be taken, imported, or exported, for public display purposes may be used in interactive programs;

(5) The period(s) during which the permit is valid;

(6) Any special terms or conditions that the AA deems appropriate; and

(7) For protected species other than marine mammals:

(i) The methods of transportation, care and maintenance to be used with live protected species; and

(ii) The sale or other disposition of the protected species, its progeny, or the protected species product.

(b) *General conditions.* All special exception permits are subject to the following general conditions.

(1) The permit is effective upon the permit holder's signing of the permit. In signing the permit, the permit holder agrees to comply with the terms and conditions of the permit, the regulations of this part, other applicable regulations, and, as applicable, the Acts. The holder also acknowledges and accepts that the authority or privilege to conduct certain activities specified in the permit does not arise or become effective unless and until the AA specifically authorizes such activities. The AA may or may not authorize such activities consistent with the terms and conditions of the permit, the permit holder's compliance with such terms and conditions, the regulations of this part, other applicable regulations, or, as applicable, the Acts.

(2) The permit holder may not initiate the special exception activities authorized by the permit until the AA acknowledges receipt of any required permit fee, except where another payment date is specifically authorized.

(3) The permit holder must provide the appropriate NMFS Regional Director with at least 3 weeks advance notice of the dates on and locations of:

(i) The take of protected species in the wild; or

(ii) Intrusive research involving captive protected species.

(4) The permit holder must provide the Regional Director with at least 1 week advance notice of the date, approximate time, and port of entry/export for import/exports.

(5) Except in the case of an emergency, the permit holder must provide the Regional Director at least 1 week advance notice of the dates and location of departure, transfer points (if any), and destination for the transport of living marine mammals; whether such transport is for the transfer of custody between facilities, the transport of marine mammals in a traveling display or exhibit to a different location, or a short-term transport outside a facility for medical purposes as determined necessary by the attending veterinarian. In the case of an emergency involving the imminent jeopardy of the health or welfare of a marine mammal, the permit holder must notify the Regional Director

as soon as practicable, but no later than the second business day after such an emergency transport, and include, in addition to the information noted above, a detailed description of the nature of the emergency.

(6) A permit holder shall not deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce, any endangered species or threatened species (see parts 222 and 227 of this chapter) except with the prior approval of the AA and subject to any terms or conditions the AA may prescribe.

(7) A permit holder shall not transport, transfer, obtain custody of, sell, purchase, or otherwise convey or acquire an interest in, or otherwise dispose of or obtain any marine mammal subject to this subpart (see § 216.32(a)), except with the prior approval of the AA and subject to any terms or conditions the AA may prescribe. Except as a part of a specifically authorized capture activity, the release to the wild of a marine mammal held under a special exception permit is considered "other disposition" and must be specifically authorized by the AA.

(8) The AA may authorize the transfer of custody of marine mammals between permit holders if:

(i) Both permit holders request authorization of such transfer of custody, describing the marine mammals to be transferred (e.g., species, sex, age, identifying number and name, condition) and the permits under which the subject marine mammals are being and are to be held, respectively. Such requests must be received by the AA at least 3 weeks prior to the proposed transfer date, except where the health or welfare of a marine mammal requires otherwise.

(ii) Both permit holders identify the permit holder responsible for the actual transport of the marine mammal and the point at which the receiving permit holder will assume custody and captive maintenance responsibility.

(iii) The permit holder responsible for the actual transport identifies the proposed method (i.e., including, but not limited to, a detailed description of the containers/devices to be used and any special care required before, during, and after transportation), modes (e.g., aircraft/truck), duration (including any transfer points), date of transport, the name and qualifications of the common carrier or agent, if any, and the attending veterinarian, or professional staff of the permit holder knowledgeable in the area of marine mammal care for the species concerned, who will accompany the marine mammal.

(iv) The supervising or attending veterinarian for the permit holder responsible for the actual transport certifies that the transport will be conducted in compliance with the captive maintenance requirements of § 216.37.

(v) The receiving permit holder submits a copy of an Animal and Plant Health Inspection Service inspection report conducted within the preceding 6 months that documents the compliance of the permit holder with the captive maintenance requirements of § 216.37 or, if such inspection documents violations or required corrective actions, either:

(A) The receiving permit holder has certified to the satisfaction of the AA that such violations have been resolved and any required corrective actions have been taken;

(B) The receiving permit holder has certified to the AA that the violations will be resolved and corrective actions taken within a period acceptable to the AA; or

(C) The AA determines that timely transfer is in the interests of the health and welfare of the marine mammal.

(vi) The receiving permit holder has either posted a surety bond acceptable to the AA in the amount of $10,000 for each marine mammal for which custody is to be transferred, or made other arrangements acceptable to the AA for the disposition of such marine mammals, if and when the permit holder's permitted activity terminates (i.e., advance planning and assurances of adequate funding arrangements)(see § 216.35(a)(5)).

(vii) The receiving permit holder's special exception permit authorizes the take of the species for which custody is to be transferred and, in obtaining custody of the marine mammal, will not exceed the number of marine mammals of that species authorized under the permit.

(9) The AA's authorization for a transfer of custody under paragraph (b)(8) of this section will be limited to a specified period of time, not to exceed 30 days. If the transfer does not occur during the period initially authorized, the AA may extend the authorized period in increments of no greater than 30 days.

(10) Unless otherwise specified, the AA authorizes, concurrent with the authorization for a transfer of custody under paragraph (b)(8) of this section, the purchase by the transferee and sale by the transferor of all interests held by the transferor in the subject marine mammal.

(11) The AA may authorize an export of a living marine mammal only to the holder of a special exception permit that authorizes the take of the species that is to be exported, and only if the number of marine mammals of that species authorized under the permit will not be exceeded.

(12) The permit holder, or subsequent authorized recipient of protected species parts under the terms of paragraph (b)(12) of this section, may transfer protected species parts initially taken or otherwise obtained under the authority of a special exception permit to another person if:

(i) The person transferring the part does not receive remuneration for the protected species part;

(ii) The person receiving the protected species part is:

(A) An employee of NMFS, the U.S. Fish and Wildlife Service, or any other Federal agency with jurisdiction and conservation responsibilities in marine shoreline areas receiving the part in the course of their official duties;

(B) A holder of a special exception permit that authorizes the take, import, or other otherwise prohibited activity involving possession of a protected species part of the same species as the subject part; or

(C) In the case of marine mammals parts from a species that is not depleted, endangered, or threatened, a person authorized under section 112(c) of the MMPA and subpart C of this part to take or import marine mammals or marine mammal parts;

(iii) The protected species part is transferred for the purpose of scientific research, maintenance in a properly curated, professionally accredited scientific collection, or education; provided that, for transfers for educational purposes, the recipient is a museum, educational institution or equivalent that will ensure that the part is available to the public as part of an educational program that is conducted regularly with access not limited other than by an admission fee;

(iv) A unique number assigned by the permit holder (i.e., the holder of the special exception permit under which the part was taken or imported) is marked on or affixed to the protected species part or container;

(v) The person receiving the protected species part agrees that, as a condition of receipt, subsequent transfers will be conducted in compliance with the provisions of paragraph (b)(12) of this section; and

(vi) Within 30 days of the transfer, the person transferring the protected species part notifies the Regional Director of the transfer, including a description of the

part (e.g., species, specimen type, method of preservation, and the unique number assigned), the person to whom the part was transferred, the purpose of the transfer, certification that the recipient has agreed to comply with the requirements of paragraph (b)(12) of this section for subsequent transfers, and, if applicable, the recipient's permit number; or

(vii) The transfer is to any person other than those identified in paragraphs (b)(12)(ii)(A) through (C) of this section and is specifically authorized by the Regional Director consistent with the conditions listed under paragraphs (b)(12)(i) and (iii) through (vi) of this section.

(13) The permit holder or subsequent authorized recipient of protected species parts under paragraph (b)(12) of this section may loan protected species parts to another person for the purpose described in paragraph (b)(12)(iii) of this section, without the agreement and notification required under paragraphs (b)(12)(v) and (vi) of this section, if:

(i) The loan is for not more than 1 year and a record of the loan is maintained; and

(ii) For the period of the loan, the part will be included in a properly curated, professionally accredited scientific collection.

(14) The export of marine mammal parts for species determined not to be depleted under the MMPA and not to be endangered or threatened under the ESA must be authorized by the AA. Except as otherwise provided in this chapter, parts of protected species determined to be endangered or threatened under the ESA may be exported only for purposes of scientific research or enhancement under a special exception permit issued under this part. A permit holder or subsequent authorized recipient of marine mammal parts under paragraph (b)(12) of this section may export marine mammal parts if:

(i) The permit holder or other person exporting the marine mammal part does not receive remuneration for the marine mammal part;

(ii) The marine mammal part is exported for the purpose of scientific research, maintenance in a properly curated, professionally accredited scientific collection, or education; provided that, for transfers for educational purposes, the recipient is a museum, educational institution or equivalent that will ensure that the part is available to the public as part of an educational program that is conducted regularly with access not limited other than by an admission fee;

(iii) A unique number assigned by the permit holder is marked on or affixed to the marine mammal specimen or container; and

(iv) The marine mammal part is exported in compliance with other applicable U.S. and international law (e.g., ESA and the Convention on International Trade in Endangered Species).

(15) Unless other disposition is specified in the permit, a holder of a special exception permit may retain protected species parts, including, for example, parts removed from a captive animal or parts not destroyed or otherwise disposed of during or after a scientific research or enhancement activity or following the death of a marine mammal held for purposes of public display, if such protected species parts are:

(i) Maintained as part of a properly curated, professionally accredited collection;

(ii) Made available for purposes of scientific research or enhancement at the request of the AA; and

(iii) If the permit holder displays such protected species parts to the public, the part is made available to the public as a part of an educational program that is conducted regularly with access not limited other than by an admission fee.

(16) Upon request by the AA, the permit holder must provide information regarding, and must allow any employee of the National Oceanic and Atmospheric Administration or any other person designated by the AA to inspect or observe the permit holder's records, facilities, protected species, protected species parts, and activities insofar as such records, facilities, or activities pertain to those activities authorized under, or species subject to, a special exception permit, or pertain to the AA's responsibilities under the Acts.

(17) The AA may require that the permit holder submit, or the permit holder may submit voluntarily, a copy of any marketable product (see definition at § 216.3) obtained under the authority of a special exception permit. The AA will hold such material confidential unless and until the permit holder requests its release. Once the permit holder has requested the release of a marketable product submitted to the AA, a copy of the marketable product will be made available by the AA to any person upon request. In providing such material, the AA must notify the recipient that the material is non-exclusive (i.e., will be provided to any person that requests it) and will require that the recipient, in any use of the material, clearly credit the permit holder or other appropriate person and reference the NMFS permit under which it was obtained. The AA may charge the recipient a fee to cover the costs of duplication and processing.

(18) The permit holder may sell, offer to sell, or directly or indirectly exchange for any product or service of value, marketable products obtained consistent with the requirements of § 216.36(a)(10), if:

(i) The permit holder submits information sufficient to demonstrate to the AA that the subject marketable product(s) was obtained in a manner or for a purpose essential to activities identified in § 216.36(a)(10) (i) through (iii); and

(ii) The AA authorizes the transaction.

(19) The permit holder may not obtain custody of a pre-Act marine mammal if such marine mammal is to be held at the same facility with marine mammals of the same species being held under a special exception permit, except with the prior authorization of the AA and consistent with the terms and conditions of the permit (e.g., the number of marine mammals of the subject species that the permit holder is authorized to hold).

(20) Living protected species held under the authority of a special exception permit must be individually marked in a uniquely identifiable manner and with a unique number, code, or other marking determined acceptable by the AA. Such marking or tagging must be humane and be by electronically encoded tag or an equivalent tagging method, freeze-branding, tattooing, or other long-term method acceptable to the AA that uniquely identifies the protected species in a manner that, upon examination of the animal, would be definitively apparent to persons other than the permit holder or the permit holder's staff. The AA may authorize a permit holder to hold or release protected species without such marking if the protected species are captured or captive bred for purposes of scientific research or enhancement and either held for only a short period of time or are in a life stage during which such marking is not practical (e.g., smolt), or they are marine mammals captured from the wild for purposes of public display but released immediately following capture.

(21) The permit holder must not take in the wild any marine mammal that at the time of taking is unweaned or less than 8 months old, whichever occurs later, or is a part of a mother- calf/pup pair, unless such take in the wild is specifically authorized in the special conditions of the special exception permit. Additionally, the permit holder

must not import any marine mammal that at the time of taking was or will be pregnant, lactating, or is unweaned or less than 8 months old, whichever occurs later, unless such import is specifically authorized in the special conditions of the special exception permit. In the same manner, the permit holder must not conduct intrusive research on a marine mammal held captive under a permit if, at the time of the intrusive research, the condition of the marine mammal is as described for importation in paragraph (b)(21) of this section, unless such intrusive research is specifically authorized by the AA. See also § 216.36(b)(4).

(22) Foreign permit holders that hold living marine mammals taken in and exported from the United States under a special exception permit must reimburse any reasonable and relevant costs (i.e., transportation, lodging, and per diem) for an inspection as provided under paragraph (b)(16) of this section. A foreign permit holder will be responsible for the costs associated with no more than one such inspection every 3 years, unless such an inspection documents the permit holder's non-compliance with any applicable requirement or captive maintenance standard of this subpart, in which case the foreign permit holder will be responsible for the costs associated with no more than one such inspection during any 12-month period until compliance is documented.

(23) A violation of any of the terms and conditions of a special exception permit issued under this subpart by the permit holder or any person operating under the authority of the permit may subject any such permit holder and person(s) committing such violation to penalties provided for in the Acts or implementing regulations, specifically section 105 or 106 of the MMPA and implementing regulations (see § 216.41 and 15 CFR part 904); section 11 of the ESA and implementing regulations; or section 304 of the FSA and implementing regulations, as applicable.

(24) If activities authorized under a special exception permit have unforeseen effects on the affected protected species or, for activities conducted in the wild, any other component of the ecosystem of which they are a part, the permit holder must suspend permitted activities and notify the Regional Director, and, if marine mammals are involved, the AA, of the circumstances and any relevant observations and recommendations. The permit holder shall not continue such permitted activities until specifically authorized by the Regional Director or, if marine mammals are involved, the AA.

(25) The AA may require an immediate cessation of permitted activities on the basis of new information that demonstrates that the permitted activities may have an adverse effect on the protected species, on the species or stock, or on the marine ecosystem, that was not anticipated at the time of permit issuance; or establishes that any part of the statements or information submitted by the permit holder as a part of, or subsequent to, the permit application is not accurate or complete. Permitted activities may be resumed upon specific authorization by the AA, and subject to any terms or conditions that the AA determines necessary, consistent with the provisions of § 216.40.

(26) All living protected species must be taken, imported, or exported in a humane manner, and the conduct of any otherwise prohibited activity authorized under a special exception permit involving a living protected species must be humane. In the event the AA determines that any method of taking, import, export, or conduct of an otherwise prohibited activity authorized by a special exception permit is not humane, any such special exception activity conducted by such method must cease immediately upon notification. Such special exception activity may resume if an alternate humane method for the conduct of the special exception activity is prescribed by the AA.

(27) The permit holder must request authorization by the AA prior to importing or initiating a capture activity for long-term or permanent captive maintenance (i.e., other than short-term capture and release) of a living marine mammal. The AA may authorize such importations or captures, if:

(i) The permit holder:

(A) Requests authorization to import or capture at least 30 days prior to the proposed importation or capture date;

(B) Provides the proposed dates and, for imports, country of origin, port of entry, description of the marine mammals to be imported, and any other information otherwise required under paragraph (b)(8) of this section, and, for captures, the locations for the capture and associated taking;

(C) Identifies the proposed method, including, but not limited to, a detailed description of the containers/devices to be used and any special care required, modes (e.g., aircraft, truck, other), duration (including any transfer points), and date of transport, and the attending veterinarian, or professional staff of the permit holder knowledgeable in the area of marine mammal care for the species concerned, who will accompany the marine mammal;

(D) Provides a copy of an Animal and Plant Health Inspection Service inspection report conducted within the preceding 6 months, and, if such inspection documents violations or required corrective actions, a certification to the satisfaction of the AA that such violations have been resolved and any required corrective actions have been taken, or that the violations will be resolved and corrective actions taken within a period specified by the AA; and

(E) Submits evidence that the permit holder has either posted a surety bond acceptable to the AA in the amount of $10,000 for each marine mammal to be imported or captured, or made other arrangements acceptable to the AA for the disposition of such marine mammals if and when the permit holder's permitted activity terminates (i.e., advance planning and assurances of adequate funding arrangements) (see § 216.35(a)(5)); and

(ii) The responsible veterinarian certifies that the transport will be conducted in compliance with the captive maintenance requirements of § 216.37; and

(iii) The permit holder's special exception permit authorizes the importation or the take of the species to be captured and, in obtaining custody of the marine mammal, the number of marine mammals authorized under the permit will not be exceeded.

(28) The AA's authorization for an importation or capture from the wild under paragraph (b)(27) of this section will be limited to a specified period of time, not to exceed 30 days, and may include additional terms or conditions restricting or otherwise controlling the importation or methods, personnel, equipment, or location of the capture activity. The date and port of entry/specific location of the importation or capture activity, as well as whether a NMFS observer must be present, also may be determined by the Regional Director following the 1-week advance notification required for imports under paragraph (b)(4) of this section or the 3-week advance notification required for captures from the wild under paragraph (b)(3) of this section. If the importation or capture does not occur during the period initially authorized, the AA may extend the authorized period in increments of no greater than 30 days.

(c) *Public display general conditions.* All public display permits are subject to the following general conditions:

(1) Except as a part of an interactive program specifically authorized under

the special conditions of the permit, the permit holder must not allow a member of the public to engage in an interactive activity without specific authorization from the AA.

(2) The permit holder must conduct the education or conservation program in accordance with the program determined acceptable by the AA at the time of permit issuance, renewal (i.e., major amendment extending the valid period of the permit), or as modified and enhanced after permit issuance/renewal and determined acceptable. Deletion of any significant element of an education or conservation program that has been determined acceptable by the AA requires prior authorization by the AA. Unless and until notified otherwise, the permit holder may presume that substantial additions to or significant improvements in an education or conservation program are acceptable to the AA, if:

(i) A complete description of the education or conservation program as substantively supplemented or significantly improved is provided in the annual report; and

(ii) The substantial additions to or significant improvements in the education or conservation program are consistent with issuance criteria of § 216.35(b)(3) and any applicable guidelines or standards established by the AA.

(3) Except for intrusive research or research requiring the conduct of an interactive program, which must be specifically authorized by the AA, the permit holder is authorized to conduct bona fide scientific research involving marine mammals held under a public display permit, provided such scientific research is conducted in a humane manner consistent with the captive maintenance requirements of § 216.37, and is incidental to and does not interfere with the public display purposes for which the marine mammal is held captive.

(4) All captive births must be reported in accordance with § 216.39. Where a major amendment to a facility's public display permit is made necessary as a result of a captive birth (i.e., an increase in the number of marine mammals authorized to be held under the permit), the permit holder must submit a request for a major amendment within 1 year following the date of the birth.

(5) Public display permits may be transferred only in the case of a change in ownership of the public display facility. The AA may authorize transfer of the permit to a proposed new facility owner/permit holder, with any additional terms and conditions that the AA has determined necessary, provided that:

(i) Prior to the change in ownership, both the present permit holder and the proposed new facility owner request that the AA transfer the permit to the new owner effective upon the change in facility ownership;

(ii) The proposed new facility owner submits any information deemed necessary by the AA, including information needed to ensure that the transfer of the permit will be consistent with the criteria and restrictions of §§ 216.35 through 216.38; and

(iii) The AA determines that the proposed new facility owner meets the criteria and restrictions of §§ 216.35 through 216.38 and that all reports have been submitted in compliance with § 216.39.

(d) *Scientific research general conditions.* All scientific research permits are subject to the following general conditions:

(1) The AA must approve any change in the principal investigator, except where the AA specifically authorizes notification rather than prior authorization of a change in the principal investigator. The AA must approve the addition or change of any co-investigator (i.e., the principal investigator's on-site representative(s) also responsible for the special exception activity authorized by the permit) from those designated as agents in the permit. A request to add or change an agent listed under the permit must be submitted by the permit holder and include a description of the activity to be conducted by the proposed agent, the manner in which such activity is a part of the permitted activity, and information regarding the proposed agent equivalent to that required for the principal investigator in the application.

(2) The permit holder must notify the AA of any change in research objectives, protocol, principal personnel, scope, methods or other significant aspect of the research described in the application, including any change in equipment or sample size of significance to the research. Such notification must be received at least 30 days prior to the proposed date on which the permit holder intends to implement the proposed change. If the proposed change requires either a major or minor amendment to the permit, specific authorization by the AA is required in accordance with § 216.40.

(3) Marine mammals held under a scientific research permit, and not also held under a public display permit, may not be subject to public display, included in an interactive program or activity involving the public, or trained for performance unless:

(i) Such activities are necessary to address the objectives of the scientific research and have been specifically authorized by the AA under the scientific research permit;

(ii) Are conducted incidental to and do not in any way interfere with the permitted scientific research; and

(iii) Are conducted in a manner consistent with the criteria, restrictions, and conditions of §§ 216.35, 216.36, and 216.38(c) applicable to public display, except where exceptions are specifically authorized by the AA.

(e) *Supplemental general conditions.* Any other terms or conditions that the AA deems appropriate and applicable to a type or category of special exception permit may be specified for such permits as supplemental general conditions; either at the time such permit is issued or subsequently as an amendment to such permit in accordance with § 216.40.

(f) *Amendments to general conditions* Permit holders are required to comply with the terms and conditions of the permit. Activities conducted in any manner inconsistent with the terms or conditions of a special exception permit are prohibited, unless the permit is amended to allow for such activities in accordance with § 216.40.

§ 216.39 Reporting.

(a) *Annual reports.* All permit holders must submit annual reports.

(1) *General.* Annual reports must be submitted to the AA on or before the date specified in the permit.

(i) The annual report submission date is the date 30 days after the reporting period identified in paragraph (a)(1)(ii) of this section; or, if requested by the applicant/permit holder and authorized by the AA, a date consistent with, but not later than, 30 days after the permit holder's fiscal year; or, for scientific research or enhancement activities dependent upon a well-defined annual field season, up to 90 days following the end of the field season as specified in the permit.

(ii) Annual reports shall cover the 12-month continuous period(s) identified in the permit, except the first annual report may cover a period of less than 12 months but no greater than 15 months.

(2) *Captive maintenance.* (i) For permits involving captive maintenance of protected species, the annual report must include:

(A) An updated protected species report, including a description of any protected species exported. Any changes to protected species report data,

other than new information, must be explained.

(B) An updated facility profile.

(C) Information regarding any changes to the animal care staff or animal care programs.

(ii) Only that information necessary to update the information provided in the permit application or as updated in earlier reports must be submitted to comply with paragraph (a)(2)(i) of this section. Information requirements for protected species and facility profile reports are summarized in appendix C to this subpart and are described specifically in application instructions.

(3) *Public display.* For public display permits, the annual report must include:

(i) A summary of the education or conservation program conducted by the permit holder, including a complete description of any substantive supplements to or significant improvements in the program, a summary of the results of any program evaluations conducted during the reporting period, and a description of the number and type of persons participating.

(ii) An estimate of the number of persons that visit the facility and observe the marine mammals annually, and, where practicable, a categorization of this information by type of visitation (e.g., general public, school group, special activities, etc.).

(iii) A summary report of any interactive program conducted by the permit holder, including participant information (both persons and marine mammals).

(iv) A summary report of research involving marine mammals held under the permit, except intrusive research conducted under a scientific research permit (see paragraph (a)(4) of this section). This summary report must include, for each such research program conducted, a statement of objectives and, as appropriate, the hypothesis(es) tested, the marine mammals involved, the principal investigator responsible for the conduct of the research, a brief description of the methods used, and an indication of where and when the research findings are expected to be published.

(4) *Scientific research and enhancement.* For scientific research and enhancement permits, the annual report must include:

(i) The species, number, identification (i.e., for living protected species, age/size/sex/reproductive condition, to the extent to which such can be determined, and, for protected species parts, description of part), date, location, and method by or manner in which protected species, individually or as part of a discrete group were:

(A) Taken (e.g., harassed, captured, or killed), imported, exported, or affected by an otherwise prohibited activity authorized under the special exception permit (see appendix A to this subpart); and, where protected species are tagged, the dates/time periods of actual tracking effort and the duration of tag attachment (where known);

(B) If marine mammals, approached within the recommended approach standards described in appendix B to this subpart; and

(C) Affected physically or responded behaviorally to the taking, importation, export, or otherwise prohibited activity authorized under the special exception permit and described in paragraph (a)(4)(i)(A) of this section or, if marine mammals, the approach described in paragraph (a)(4)(i)(B) of this section. Wherever possible, for marine mammals taken in the wild by some type of harassment (see appendix A to this subpart), describe behavior before, during, and after the conduct of research procedures and the nature of any and all incidents where behavior may have changed in response to research activity, and whether and how behavioral responses varied by time, location, and nature of approach (i.e., an educated assessment, short of formal analysis).

(ii) The persons and vessels involved in the conduct of the permitted research or enhancement and their respective functions.

(iii) The number of attempts at accomplishing the research or enhancement objective (e.g., photo-ID, biopsy, or tagging) and number of successes; number of times any given individual or group was approached; where capture of the animal was not a part of the research or enhancement activity, the actual distance required to obtain results (e.g., biopsy, tagging, or photograph suitable for identification); and, where biopsy, tagging, or equivalent intrusive procedure short of capture was conducted, a description of the information and rationale used to conclude that each animal subjected to such actual or attempted intrusive procedure was not inadvertently harmed and upon which the decision was made to proceed with subsequent intrusive research or enhancement activity.

(iv) An evaluation of and summary of the results of the research or enhancement program conducted to date as it relates to the research or enhancement objectives.

(v) Activities planned to be conducted in the upcoming year.

(vi) What steps have been taken to coordinate proposed activities with other researchers or, if applicable, enhancement activities, so as to minimize disturbance and avoid possible duplicative research.

(vii) Any steps taken during the reporting period or proposed to be taken to minimize or avoid adverse effects.

(viii) Where the authorized take or import involves a species or stock designated, or proposed to be designated, as depleted under the MMPA or as endangered or threatened under the ESA, the permit holder must submit an assessment of whether and how the scientific research or enhancement activity contributed to the achievement of any recovery objectives established for the species or stock.

(ix) Where marine mammals designated as depleted, endangered, or threatened are held captive under an enhancement permit, the report must describe the manner in which the captive maintenance has contributed directly to the survival or recovery of the species or stock.

(x) A description of any public display of marine mammals conducted incidental to research or enhancement activities.

(xi) Any copies of marketable products that the permit holder has been required by the AA to submit as part of an annual report.

(b) *Final reports.* All permit holders must submit final reports.

(1) *Public display.* Public display permit holders must submit a final report within 90 days of the closing of the holder's facility or the transfer of the permit in accordance with § 216.37(c)(5). The final report must include a final protected species report describing the status of all marine mammals formerly held by the permit holder at the time of disposition and the disposition of each. The final report must include any updated information that may be necessary to supplement the special report submitted in accordance with paragraphs (c)(1)(i) through (iii) or paragraph (c)(2)(i) of this section.

(2) *Scientific research and enhancement.* Scientific research and enhancement permit holders must submit a final report 120 days after the submission of the last annual report for activities conducted during the valid period of the permit. This final report must include:

(i) A summary of protected species, personnel, and activity information for the conduct of the entire research or enhancement program (i.e., summary of annual report information required under paragraph (a)(4) of this section);

(ii) A statement of the objectives of the research or enhancement program and, for scientific research, the hypothesis(es) tested, and a brief description of the methodology used (with specific notations wherever these differ from that described in the original or, where applicable, amended application, and the reasons for such variation);

(iii) An evaluation and summary of results and the manner in which such results relate to the research or enhancement objectives;

(iv) For scientific research, an indication of where and when the research findings are to be published or otherwise made available to the public or scientific community;

(v) For enhancement, a description of the manner in which the enhancement program contributed significantly to maintaining or increasing distribution or abundance, or enhanced the health or welfare of the species or stock, necessary to ensure the survival or recovery of the affected species or stock in the wild; and an assessment of the need for additional enhancement, along with specific recommendations; and

(vi) A description of the disposition of any protected species parts, including an identification of the part and the manner of disposition.

(c) *Special Reports.* Special reports must be submitted by permit holders in accordance with the following.

(1) *Captive maintenance.* (i) Within 30 days of the birth, transfer of custody, importation, or export of any marine mammal, the permit holder must submit an updated protected species report reflecting this new information. Where the duration of enclosure-to-enclosure transport of a marine mammal was greater than 1 hour, this information must include: The date(s), mode(s), method(s), and duration of the transport, including number of transfer points; attending veterinarian or professional staff; the date and time the receiving permit holder assumed custody; any problems or unusual events encountered during transport; and a post-transport assessment by an attending veterinarian of the health of the marine mammal and the degree to which the marine mammal has acclimated initially to the new facility/enclosure, where such assessment is made no earlier than 2 weeks following the transport.

(ii) The AA must be notified within 2 business days of births or deaths of marine mammals, including still-births and euthanasia. This notice must include the species, sex, identification number, and, where applicable, name of the marine mammal or, for still-births, the sex of the marine mammal; and, for births, an assessment of apparent health; and, for deaths, any immediately apparent indication of physical injury, distress, or behavioral factors that may have contributed to the cause of death or were reasons for euthanasia (e.g., a summary of preliminary gross necropsy results) and any steps to be taken to reduce the potential for additional mortalities. If this notice is provided by telephone, a follow-up written notice must be provided by facsimile or letter postmarked within 4 business days of the birth or death. All birth and death records and related documentation, including necropsy records, are subject to review in accordance with § 216.38(b)(16).

(iii) A final necropsy report must be submitted within 30 days of the date of the death of a marine mammal. This report must include a summary clinical history of the marine mammal in a form consistent with accepted veterinary medical practice, any histopathology reports, and any conclusions reached by the veterinary pathologist or attending veterinarian regarding the cause of the death, including any contributing physical or behavioral factors. Alternatively, if information is insufficient for the completion of a final necropsy report, the permit holder may submit an interim necropsy report providing: Information developed to date and any preliminary conclusions; a status report on the development of a final necropsy report, describing the outstanding information required and including an estimate of the time needed to complete a final report (e.g., laboratory analysis of tissue samples); and a request for an extension of time to submit the final report. After receiving a satisfactory interim necropsy report, the AA may grant an extension of time of up to 60 days for submission of a final necropsy report (i.e., up to 90 days from the date of death).

(iv) When releases to the wild have been authorized under a special exception permit, reporting requirements for such releases shall be included as special permit-specific or supplemental general conditions to the permit, as appropriate.

(v) When limited temporary holding has been authorized by the AA for purposes described in § 216.37(g), detailed reports must be submitted on the condition of the marine mammal being temporarily held and the status of the emergency or renovation at intervals not greater than 60 days.

(2) *Permanent removals from the wild* (i.e., live captures and intentional, inadvertent, or assumed lethal take).

(i) Where the authorized special exception activity involves a capture from the wild, the permit holder must submit a report within 30 days of the capture or collection activity authorized under the permit, describing the time and specific location (e.g., latitude/longitude) of the capture from the wild, including the number and, to the extent possible, ages/sizes, sex, and reproductive condition of protected species encircled, temporarily held and released, and removed/collected, and, if the protected species taken are marine mammals, the marine mammals chased or approached within the approach distance standards described in appendix B to this subpart; and any deaths, injuries, or complications that arose in connection with the taking. The AA may waive this reporting requirement when the capture or collection activity involves species other than marine mammals.

(ii) Where a lethal take is authorized as a part of permitted activities, the permit holder must submit a report within 30 days of the actual lethal take. Where a lethal take occurs, inadvertently, incidentally, or otherwise, or is presumed to have occurred as a result of permitted activities, the permit holder must notify the AA within 2 business days of the actual or presumed lethal take. This lethal take report or notification, as applicable, must describe the date, time, location, number, and, to the extent possible, age/size, sex, and reproductive condition of each animal killed, and, for accidental or presumed mortalities, the circumstances accompanying the incident and identification of actions taken or to be taken to reduce the potential for additional occurrences. In the event of an unanticipated lethal take, the provisions of § 216.38(b)(24) also apply.

(3) *Importation of protected species parts.* Within 30 days of the importation of protected species parts, the permit holder must submit a report including a description of the part (e.g., species, specimen type, method of preservation) and the unique number assigned to the part.

(4) *Transfer or export of protected species parts.* Within 30 days of the transfer or export of a protected species part, the permit holder, or other person authorized to hold a protected species part, must notify the Regional Director of the transfer or export, including: A description of the part (e.g., species, specimen type, method of preservation, and the unique number assigned), the person to whom the part was transferred or exported and, if applicable, the recipient's permit number; the purpose

of the transfer or export; and, for transfers, a certification that the recipient has agreed to comply with the requirements of § 216.38(b)(12) for subsequent transfers.

(5) *Other.* If the permit holder experiences or observes an unusual or unexpected event that affects significantly, or is likely to have a significant affect upon, the health or welfare of the living protected species that is the subject of the permitted special exception activity, or, for activities conducted in the wild, any other directly-related component of the marine ecosystem of which they are a part, the permit holder must submit a brief report describing the circumstances concerned and any relevant observations or recommendations (also see § 216.38(b)(24)).

(d) *Reporting format.* Following notice of permit holders by the AA that a format for one or more reports has been established by NMFS, permit holders must submit such reports in the format established.

§ 216.40 Permit amendment, modification, suspension, or revocation.

(a) Special exception permits may be amended by the AA if he or she determines that the amendment is consistent with the Acts and complies with the applicable provisions of this subpart. Such amendment may be made by the AA in response to, or independent of, a request from the permit holder for an amendment to the terms or conditions of the permit.

(b) Requests by a permit holder for an amendment must be submitted in writing and include the following:

(1) The purpose and nature of the requested amendment;

(2) Information sufficient for the AA to determine whether the amendment is a major amendment as described under paragraph (c) of this section;

(3) Information, not previously submitted as a part of the permit application or subsequent reports, required to determine whether the proposed change meets the applicable criteria and restrictions of §§ 216.35 and 216.36; and

(4) Any additional information determined by the AA to be necessary to make the determination in paragraph (a) of this section.

(c) An amendment will be considered a major amendment if it would change the permit-specific conditions (see § 216.38(a)) regarding:

(1) The number and species of marine mammals, endangered species, or threatened species that are authorized to be taken, imported, exported, or affected by an otherwise prohibited activity;

(2) The manner in which these protected species may be taken, imported, exported, or subjected to an otherwise prohibited activity, considering, where applicable, type of take and authorized level of harassment, including harassment during capture, if the proposed change may result in an increased level of take, jeopardy, or risk of adverse impact;

(3) The location(s) in which the protected species may be taken, from which they may be imported, and to which they may be exported, as applicable;

(4) Whether, and in what manner, marine mammals taken or imported for purposes of public display or scientific research may be used in interactive programs; or

(5) The period(s) during which the permit is valid, if the proposed extension is greater than 12 months beyond that established in the original permit.

(d) The notice of receipt, review, and decision-making provisions of § 216.34(e) and (f) applicable to permit applications will also apply to major amendments.

(e) For major amendments proposed by the AA, the permit holder will be notified by registered mail, return receipt requested, concurrent with publishing the **Federal Register** notice announcing the proposed major amendment and a summary of the reasons therefor.

(f) Minor amendments, i.e., amendments that do not change the terms of the permit specific conditions as stated in paragraph (c) of this section, will be made according to the following procedures:

(1) For minor amendments requested by a permit holder, the AA will notify the permit holder of the decision, specifying the minor amendment, if made, or specifying the reasons for any denial. If the minor amendment involves an extension of the valid period of the permit of 12 months or less beyond that established in the original permit, notice of such a minor amendment will be published in the **Federal Register** within 10 days from the date of the AA's decision.

(2) For minor amendments proposed by the AA:

(i) The permit holder shall be notified by registered mail, return receipt requested, of the proposed minor amendment and a summary of the reasons therefore. The notice will also specify that the permit holder is entitled to submit an objection to the proposed minor amendment and request a hearing thereon, if such objection or request for such a hearing is received by the AA within 10 days after receipt of the notice or such other date specified in the notice.

(ii) If no objection to the proposed minor amendment is made during the time specified in the notice to the permit holder, and no hearing is held, the minor amendment will become effective the day following the date specified in the notice. If the minor amendment involves an extension of the valid period of the permit of less than 12 months from that established in the original permit, notice of such a minor amendment will be published in the **Federal Register** within 10 days from the effective date of the minor amendment.

(iii) The AA may hold a hearing on the proposed minor amendment in response to an objection and request for a hearing submitted in accordance with paragraph (f)(2)(i) of this section or independent of such an objection and request by the permit holder. Notice of the time and place for the hearing will be given to the permit holder by registered mail, return receipt requested, and published in the **Federal Register** not less than 10 days prior to the date of the hearing. The hearing shall be open to the public and the permit holder and any other person my submit any relevant material, data, views, or comments. A summary record of the hearing will be kept.

(iv) If an objection to the proposed minor amendment is made during the time specified in the notice to the permit holder or a hearing is held, the AA will make a decision as soon as practicable after the close of the hearing, or if no hearing is held, after the date specified in the notice to the permit holder. The AA's decision regarding the proposed amendment shall be published in the **Federal Register** within 10 days from the date of the decision.

(3) The Marine Mammal Commission and the Committee of Scientific Advisors on Marine Mammals will be afforded an opportunity to comment on proposed minor amendments to scientific research or enhancement permits for the take or importation of marine mammals. The AA will forward to the Commission and Committee a copy of a permit holder's request for a minor amendment or a copy of the minor amendment proposed by the AA and summary of reasons therefor. If the Commission or the Committee does not provide comments within 10 days from the receipt of a proposed minor amendment, such non-response shall be considered a recommendation from the

Commission and the Committee that the AA proceed with a decision on the minor amendment without comment from the Commission or Committee.

(g) In any case in which a violation of the terms and conditions of the permit is found, the AA may modify, suspend, or revoke, in whole or in part, the special exception permit in accordance with the provisions of subpart D of 15 CFR part 904.

(h) In order to make permits for the take or importation of marine mammals consistent with any change made after the date of permit issuance with respect to any regulation prescribed under section 103 of the MMPA, the AA may modify, suspend, or revoke, in whole or in part, any special exception permit involving marine mammals in accordance with the following:

(1) The permit holder will be notified by registered mail, return receipt requested, of any proposed modification, suspension, or revocation. Such notice will specify:

(i) The action proposed to be taken, with a summary of the reasons therefor;

(ii) The steps that the permit holder may take to demonstrate or achieve compliance with all lawful requirements; and

(iii) If a written request for a hearing is received by the AA within 10 days after receipt of the notice or such other date specified in the notice, the AA must hold a public hearing.

(2) The permit holder will be notified of the time and place for a public hearing by registered mail, return receipt requested, and a notice of the public hearing will be published in the **Federal Register** not less than 15 days prior to the date of the public hearing. Any person may submit relevant material, data, views, or comments. A summary record of the public hearing will be kept.

(3) The AA will issue a decision regarding a proposed modification, suspension, or revocation, as soon as practicable after the close of the public hearing, or, if no hearing is held, after the date specified in the notice to the permit holder referred to in paragraph (h)(1) of this section. Notice of the modification, suspension, or revocation shall be published in the **Federal Register** within 10 days from the date of the AA's decision.

(4) The permit holder, or any other person, may obtain judicial review of a decision to modify, suspend, revoke, or issue a major amendment to a special exception permit. Such review, pursuant to chapter 7 of title 5 U.S.C., may be initiated by filing a petition for review in the U.S. district court for the district wherein the permit holder resides or has its principal place of business, or in the U.S. District Court for the District of Columbia, within 60 days of the date on which the notice of the AA's decision to modify, suspend, revoke, or issue a major amendment to the permit is published in the **Federal Register.**

§ 216.41 Penalties.

(a) Any person who violates any provision of this subpart is subject to civil penalties, permit sanctions and/or denial, written warnings and/or seizure and forfeiture of vessels, in accordance with 16 U.S.C. 1174(b), 1375(a), 1540(a), and 15 CFR part 904.

(b) Any person who knowingly violates any provision of this subpart is subject to criminal prosecution and criminal penalties in accordance with 16 U.S.C. 1174(a), 1375(b), and 1540(b).

§ 216.42 Fees.

(a) A reasonable fee may be charged for the issuance of a special exception permit, an amendment requested by the permit holder, or an authorization required by the special or general permit conditions. Categories I through V listed in appendix A to this subpart, approximate the difficulty of administrative review and processing complexity normally associated with a permit application for the listed type of activity. Consequently, where appropriate and applicable, these categories have been used below in establishing fees.

(b) *Public display permits.* (1) A fee of $1,000 will be charged a non-permit holder for issuance of a permit to hold marine mammals captive indefinitely for purpose of public display, where the marine mammals are to be obtained from captive stock.

(2) A fee of $2,500 will be charged a non-permit holder for issuance of a combined permit to import or capture from the wild and hold indefinitely marine mammals for purpose of public display.

(3) A fee of $1,500 will be charged a permit holder for issuance of a major amendment to import or capture from the wild marine mammals for purpose of public display. This fee includes any associated amendment to the permit holder's public display permit that may be necessary to authorize the captive holding of these new marine mammals.

(4) A fee of $250 will be charged for a major amendment to a permit requested by a permit holder for the purpose of authorizing new species or an increased number of marine mammals to be held by the facility.

(5) A fee of $500 will be charged for a major amendment to a permit requested by a permit holder for the purpose of authorizing an interactive program.

(6) A fee of $150 will be charged for an authorization to transfer the custody of marine mammals between permit holders, where a major amendment of the permit is not necessary to increase the number or add species to those authorized.

(7) A fee of $1,500 will be charged a permit holder for an authorization to export a living marine mammal. A fee of $2,500 will be charged a non-permit holder for issuance of a permit to capture from the wild and export marine mammals for purposes of public display.

(8) No fee will be charged for major amendments proposed by the AA or for minor amendments.

(c) *Scientific research and enhancement permits.* (1) The following basic permit fees will be charged for issuance of a scientific research or enhancement permit:

Category I	No charge.
Category II	$150.
Category III	$400.
Category IV	$700.
Category V	$1,000.

A description of Category I–IV permits is provided in appendix A to this subpart.

(2) For a major amendment requested by the permit holder that increases the category of the permit (i.e., authorizing a change in the manner in which a protected species may be taken involving an increased level of jeopardy, risk of adverse impact, or level of harassment), a fee will be charged equal to the difference in the fee charged for the existing permit and that which would be charged for the amended permit (e.g., a major amendment changing a category II permit to a category III permit would be charged a fee of $250).

(3) For a major amendment requested by the permit holder that does not increase the category of the permit, a fee of $50 will be charged for Category I permits and a fee of $100 will be charged for all other permits.

(4) For permits that involve captive holding, major amendments and authorizations requested by the permit holder for the purposes described in paragraphs (a)(4) through (6) of this section will be charged the same fee as established for public display permit holders in paragraphs (a)(4) through (6) of this section.

(5) A fee of $700 will be charged a permit holder for an authorization to export a living marine mammal. A basic

fee of $1,200 will be charged a non-permit holder for issuance of a permit to capture from the wild and export marine mammals for purposes of scientific research or enhancement.

(6) No fee will be charged for major amendments proposed by the AA or for minor amendments.

(d) *Supplemental NEPA fee.* The AA may charge a supplemental fee to cover the costs to the Federal government associated with the preparation of an EA or EIS that the AA has determined to be required under NEPA. The AA may also charge a supplemental fee for issuance of a permit belonging to a class of permits for which documentation has been prepared in accordance with the provisions of NEPA or any associated National Oceanic and Atmospheric Administration requirements or procedures.

(e) *Observer fee.* At the discretion of the AA or the Regional Director, an observer may be placed on board a vessel engaged in a permitted activity in the wild. The permit holder may be assessed an observer fee not to exceed $100 per day for each day that the observer accompanies the permit holder in the conduct of such an activity.

(f) *Waiver of fees.* Fees may be waived or reduced by the AA if the applicant is a Federal agency or if the AA determines that such a waiver or reduction is in the public interest consistent with the policies and objectives of the Acts, as applicable.

§ 216.43 Applicability/Transition.

(a) *General.* (1) The regulations of this subpart are applicable to all persons, including persons holding permits or other authorizing documents issued before [*date 30 days from date of publication of the final rule, hereafter referenced as "the effective date of the final rule"*], by NMFS for the take, import, export, or conduct of any otherwise prohibited activity involving a protected species or protected species part for special exception purposes. The manner and timing in which this subpart applies to such permit holders and persons holding other authorizations, including authorizations to hold marine mammals captive (e.g., letters of agreement), are discussed in this section.

(2) Beginning [*the effective date of the final rule*], the provisions of this subpart, particularly permit terms and conditions (see § 216.30(c) and §§ 216.36 through 216.39, and the amendment provisions of § 216.40), apply to all public display and scientific research permits and to other authorizing documents issued before [*the effective date of the final rule*] by NMFS under which marine mammals are held for public display or scientific research purposes. However, holders of public display and scientific research permits and other authorizing documents may elect to follow the reporting requirements of § 216.39 or those specified in their permits or other authorizing documents, until one of the following first occurs:

(i) The permit holder requests an amendment to or authorization under his/her permit or other authorizing document, or the permit is adjusted in accordance with paragraph (b)(1) or (c)(1) of this section, at which time the permits or other authorizing document will be amended to incorporate the reporting requirements of § 216.39.

(ii) The AA determines that the reporting requirements of § 216.39 should apply to the permit or other authorizing document and proposes a minor amendment to this effect in accordance with § 216.40.

(iii) Beginning [*date 1 year after the effective date of the final rule*], the reporting requirements of § 216.39 apply to all permits and other authorizing documents.

(b) *Public display.* (1) Consistent with the schedule established in paragraphs (b)(2) through (5) of this section, all facilities holding marine mammals for public display purposes must hold a public display permit consistent with the provisions of this subpart. Public display permits issued before [*the effective date of the final rule*] must undergo a one-time adjustment; other authorizing documents will be superseded by new or adjusted permits in accordance with paragraphs (b)(2) through (5) of this section. Permit adjustments are effective upon publication of a notice of the permit adjustment in the **Federal Register**. This notice will include the adjusted permit-specific conditions as described under § 216.38(a), and will provide for a 30-day public comment period.

(2) *Single facility permit holders.* A public display permit issued before [*the effective date of the final rule*] to a facility that holds marine mammals at one facility must undergo a permit adjustment to authorize the number and species of marine mammals that were held and/or authorized to be captured from the wild or imported as of [*the effective date of the final rule*]. This permit adjustment will:

(i) Be made upon the request of the facility, at the time the permit is otherwise amended, at the time of any authorization required under their permit or any other authorizing document, or on [*date 1 year after the effective date of the final rule*], whichever occurs first; and

(ii) Supersede all other permits and other authorizing documents under which the marine mammals were formerly held.

(3) *Multiple facility permit holders.* Public display permits issued before [*the effective date of the final rule*] to a multiple facility (i.e., more than one facility under single ownership/control), without regard to the specific facility in which the marine mammals taken under the permit(s) are held, will be separated into facility-specific public display permits. This permit adjustment will establish separate facility-specific public display permits that authorize the number and species of marine mammals held on, and/or authorized to be captured from the wild or imported as of [*the effective date of the final rule*], plus a limited "allowance" for the transfer of marine mammals between the facilities that make up the multiple facility, in accordance with the following provisions:

(i) The facility-specific permit adjustments will be made upon the request of the multiple facility, at the time the permit is otherwise amended, at the time of any authorization required under the permit or other authorizing document, or on [*date 18 months after the effective date of the final rule*], whichever occurs first.

(ii) The "allowance" for each facility-specific permit may include any species of marine mammal held at the facility in the 5-year period prior to [*the effective date of the final rule*], and a number of marine mammals of each such species greater than that held by the facility on [*the effective date of the final rule*], necessary to accommodate anticipated or recently completed inter-facility transfers between facilities that make up the multiple facility, provided that the number for any facility-specific permit does not exceed any of the following:

(A) Seventy-five percent of that facility's capacity for the subject species as calculated in accordance with applicable space standards (see particularly the captive maintenance standards applicable to marine mammals promulgated by the Animal and Plant Health Inspection Service at 9 CFR parts 1, 2, and 3, and referenced in § 216.37);

(B) Fifty-percent increase above the number held on [*the effective date of the final rule*], for the following species: Killer whales (*Orcinus orca*), false killer whales (*Pseudorca crassidens*), pilot whales (*Globicephala melaena* or *G. macrorhynchus*), or belugas (*Delphinapterus leucas*);

(C) Twenty-five percent increase above the number held on [*the effective date of the final rule*], of species other than those referenced in paragraph (b)(4)(ii)(B) of this section;

(D) An increase of one for any species held in isolation at the time of the facility-specific permit adjustment (see paragraph (b)(3)(i) of this section). An increase of more than one may be allowed if adequately justified on the basis of fundamental social unit requirements of the species (see § 216.37(l)); or

(E) For a seasonal facility, the species and greatest number of marine mammals that have been held in the 2-year period prior to [*the effective date of the final rule*].

(iii) Transfers between facilities that make up the multiple facility that are authorized under a permit or other authorizing document issued before [*the effective date of the final rule*] may continue without additional authorization under this subpart until the date of facility-specific permit adjustment.

(iv) The facility-specific permits will supersede all other permits and other authorizing documents under which the marine mammals were formerly held.

(4) *Facilities not holding a permit.* A facility that is holding marine mammals for public display purposes, but that does not hold a public display permit, must submit an application for a public display permit in accordance with this subpart and reflecting the marine mammals held by the facility on [*the effective date of the final rule*]. The facility must submit this application within 6 months of receiving notification that a public display permit is required, or by [*date 1 year after the effective date of the final rule*], whichever occurs first. A public display permit issued to the facility will supersede all other authorizing documents under which the marine mammals were formerly held.

(5) *Persons (other than facilities) holding marine mammals.* Persons (other than facilities) holding marine mammals under a permit or other authorizing documents may continue to hold the marine mammals under such documents until [*date 1 year after the effective date of the final rule*], in compliance with the requirements of paragraphs (b)(5)(i) and (ii) of this section. After [*date 1 year after the effective date of the final rule*], a public display permit issued to a facility is required for continued holding of marine mammals for public display purposes.

(i) By [*date 60 days after the effective date of the final rule*], persons (other than facilities) holding marine mammals under a permit or other authorizing document must notify the AA of the identity of the marine mammals and the facilities at which the marine mammals were held on [*the effective date of the final rule*], were held on the date of notification, and will be held during the 1-year period following [*the effective date of the final rule*].

(ii) Not later than [*date 1 year after the effective date of the final rule*], the person must either:

(A) Arrange to include the marine mammals as a part of the one-time permit adjustment or permit application provided for in paragraph (b)(2), (3), or (4) of this section; or

(B) Make arrangements with a facility to apply for a major amendment to its public display permit to authorize the holding of the marine mammals.

(iii) The adjusted permit, new permit, or major amendment referenced in paragraph (b)(5)(ii) of this section will supersede all other permits and other authorizing documents under which the marine mammals were formerly held.

(c) *Scientific research.* (1) Scientific research permits issued before [*the effective date of the final rule*] that authorize research on captive marine mammals at a facility other than a public display facility must undergo a one-time adjustment to authorize the number and species of marine mammals held as of [*the effective date of the final rule*]. The permit adjustment will:

(i) Be made upon the request of a permit holder, at the time the permit is otherwise amended, at the time of any authorization required under the permit, or on *[date 1 year after the effective date of the final rule]*, whichever occurs first; and

(ii) Become effective upon publication of a notice of the permit adjustment in the **Federal Register**. This notice will include the adjusted permit specific conditions as described under § 216.38(a), and will provide for a 30-day public comment period.

(2) Intrusive research being conducted on captive marine mammals may continue to be conducted under the authority of a public display permit until [*date 1 year after the effective date of the final rule*], after which the intrusive research, as defined in § 216.3, must be authorized under a scientific research permit. Any intrusive research initiated after [*the effective date of the final rule*], must be authorized under a scientific research permit.

(3) Scientific research permits issued before [*the effective date of the final rule*], that authorize research on protected species other than marine mammals (e.g., endangered or threatened species of marine and anadromous fish or marine reptiles) are not affected by these regulations.

(d) *Other transition provisions (public display and scientific research).* (1) Permit adjustments or applications provided for in paragraphs (b) and (c) of this section will not include marine mammals being held for rehabilitation under section 109(h) of the MMPA.

(2) Permit adjustments provided for in paragraphs (b) and (c) of this section will not authorize numbers of marine mammals that exceed the capacity of the facility as determined by the captive maintenance requirements of § 216.37.

(3) Major amendments to adjusted permits must be applied for, and will be issued, in accordance with § 216.40.

(4) A facility holding marine mammals as of [*the effective date of the final rule*], will be excepted from the requirement in § 216.37(l) to approximate the fundamental social unit of marine mammal species until January 1, 1998, provided that the facility complies with the notification provisions of § 216.37(l)(1).

(5) Facilities or persons (other than facilities) that hold pre-Act marine mammals must either submit documentation adequate to establish the "pre-Act" status of the marine mammals in accordance with § 216.32(a)(2), or must include the pre-Act marine mammals in any permit adjustment or application provided for or required in this section.

§ 216.44 Use for special exception purposes of marine mammals taken or imported for rehabilitation.

(a) Upon receipt of a determination that the release of a rehabilitated marine mammal is not likely to be successful or a release notification in accordance with § 216.28, the AA may authorize the retention or transfer of custody of the marine mammal for a special exception purpose consistent with this section.

(b) The AA will first consider requests from the person/facility with authorized custody of the marine mammal for rehabilitation. The AA may authorize such person/facility to:

(1) Retain custody of the marine mammal under a special exception permit that authorizes the person/facility to hold such a marine mammal;

(2) Retain custody pending a major amendment or issuance of a permit, in accordance with paragraph (c) of this section, whichever is necessary, to authorize the person/facility to hold such a marine mammal;

(3) Transfer custody of the marine mammal to a holder of a special exception permit that authorizes the person/facility to hold such a marine

mammal, subject to the requirements of paragraph (d) of this section; or

(4) Transfer custody of the marine mammal to a holder of a special exception permit pending a major amendment, in accordance with paragraph (c) of this section, to authorize the person/facility to hold such a marine mammal, subject to the requirements of paragraph (d) of this section.

(c) The AA may authorize the person/facility to retain custody of the marine mammal pending a major amendment or issuance of a permit, or may authorize the transfer of the marine mammal to a holder of a special exception permit pending a major amendment, authorizing the person/facility to hold such a marine mammal, only if:

(1) A request for a major amendment under § 216.40, or, if necessary, an application for special exception permit under § 216.34, has been submitted to the AA and has been found complete;

(2) The person/facility agrees to hold the marine mammal in conformance with all requirements and standards applicable to special exception permits under this subpart and any additional terms or conditions determined by the AA to be appropriate, including that such a marine mammal shall not be included in an interactive program or subjected to intrusive research; and

(3) The person/facility acknowledges that the marine mammal is subject to seizure by the AA:

(i) If, at any time pending issuance of the major amendment or permit, the AA determines that seizure is necessary in the interest of the health or welfare of the marine mammal;

(ii) If the major amendment or permit is denied; or

(iii) If the person/facility is issued a notice of violation and assessment, or is subject to permit sanctions, in accordance with 15 CFR part 904.

(d) In transferring custody of the marine mammal under paragraphs (b)(3) and (4) of this section, the person/facility and the receiving permit holder are not authorized to purchase or sell any interest in the subject marine mammal. However, the receiving permit holder may reimburse the person/facility for any and all costs, direct or indirect, associated with the rehabilitation (i.e., care, treatment, and supervision) and transport of the marine mammal.

(e) Marine mammals undergoing rehabilitation or pending disposition under this section must not be subject to public display unless such activities are specifically authorized by the Regional Director or the AA and conducted consistent with the criteria, restrictions, and conditions applicable to public display permits (see §§ 216.35 through 216.38). Such marine mammals must not be trained for performance or be included in any aspect of an interactive program.

(f) Marine mammals undergoing rehabilitation must not be subject to intrusive research, unless such activities are specifically authorized by the AA in consultation with the Marine Mammal Commission and Committee of Scientific Advisors on Marine Mammals and are conducted consistent with the criteria, restrictions, and conditions applicable to scientific research permits (see §§ 216.35 through 216.38).

(g) Any rehabilitated beached or stranded marine mammal placed on public display following a releasability determination under § 216.28(a) and pending disposition under paragraphs (a) through (d) of this section, or any marine mammal imported for medical treatment otherwise unavailable placed on public display after such medical treatment is concluded and pending disposition, must be held in captive maintenance consistent with all requirements and standards applicable to special exception permits for public display purposes, and must not be included in an interactive program.

Appendix A to Subpart D—Examples of Activities That Require a Special Exception Permit

The outline in this appendix is a summary description of different types of take/activity that require a special exception permit, with each type of take/activity annotated with the category assigned by NMFS for administrative purposes. An explanation of terms used in the annotated outline follows, except for the terms used under Import/Export that are self-explanatory.

Note: Applicants must consider all applicable types of activity—there may be more than one type of applicable activity. Additionally, the export of marine mammals or marine mammal parts, for species not listed as endangered or threatened under the ESA, requires authorization, not a permit. NMFS categories (I) through (V) reflect, approximately, the level of administrative review and processing complexity normally associated with a permit application for this type of activity. Consequently, these categories are used by NMFS in determining the applicable permit fee (see 50 CFR 216.42).

ANNOTATED OUTLINE

Type of take/activity	NMFS category
A. Parts collection	
1. Not Directly From a Live Animal.	(I).
2. Directly From a Live Animal.	(II or III).
B. Harassment/non-capture	
1. Non-Intrusive	
a. Non-Intrusive/Non-Contact.	(I).
b. Non-Intrusive/Contact	(II).
2. Intrusive	
a. Intrusive/Non-Contact	
(i) Low Risk/Impact	(II).
(ii) High Risk/Impact ...	(III).
b. Intrusive/Contact	
(i) Low Risk/Impact	(II).
(ii) High Risk/Impact ...	(III).
C. Harassment/Capture	
1. Temporary Capture/Removal	
a. Short-Term	
(i) Low Risk/Impact	(III).
(ii) High Risk/Impact ...	(IV).
b. Long-Term	(IV)
2. Permanent Removal/Captive Holding	(V).
D. Kill	
1. Lethal Take	(V).
E. Import/Export	
1. Protected Species Import.	(IV).
2. Protected Species Part Import.	(II).
3. Protected Species Export.	(V).
4. Protected Species Part Export.	(II).

Explanation of Terms

A. *Parts collection* includes the following:

1. *Parts collection not directly from a live animal* includes the collection of any hard or soft part, obtained in a manner other than directly from a living animal. The collection of any part from a dead animal also may be authorized under the applicable permit conditions or, for dead beached and stranded marine mammals, under 50 CFR 216.22; and, certain hard parts from marine mammals may also be collected from the beach under 50 CFR 216.26.

2. *Parts collection directly from a live animal* includes the collection of any hard or soft part directly from a live animal (which requires specific authorization under a permit); usually conducted in conjunction with another type of take.

B. *Harassment/Non-capture* includes harass, pursue, harm, wound, hunt, and shoot. Within this category:

1. *Non-intrusive* applies to activities conducted in the wild only. Generally, NMFS recommends a permit be obtained to conduct an activity that, for marine mammals, exceeds or is conducted in a manner contrary to the recommended approach standards of appendix B to this subpart, or that involves the harassment of other endangered or threatened species of marine and anadromous fish or marine reptiles. *Non-intrusive/Non-contact* applies to activities involving a close approach (e.g., risk of behavior impacts or inadvertent/incidental harassment), but that does not involve contact with the subject animal(s). *Non-*

intrusive/Contact applies to activities involving intentional, simple non-intrusive contact, such as touching, petting, pushing, or other simple contact that does not restrain or otherwise restrict movement or mobility.

2. *Intrusive* applies to activities conducted in the wild or, for activities conducted for scientific research or enhancement purposes, living protected species held captive in a facility (see 50 CFR 216.3). *Intrusive/Non-contact* includes, for example, a stimulus directed at an animal that may involve a risk to the health and welfare of the subject animal(s) (see 50 CFR 216.3). The terms low risk/impact and high risk/impact are included under both *Intrusive/Non-contact* and *Intrusive/Contact*. *Low risk/impact* includes activities involving a low risk of injury or mortality, an established proven procedure, a short-term impact on subject animals' normal function and/or behavior, etc.; applicable primarily to take in the wild (see 50 CFR 216.3). *High risk/impact* includes activities involving a high risk of injury or mortality, a new or high risk procedure, a long-term impact on the subject animals' normal function, etc.

C. *Harassment/Capture* includes capture, trap, and collect. Within this category:

1. *Temporary capture/removal* includes activities involving a capture from the wild and holding captive for a finite period. *Short-term* includes activities involving capture and release, including encircling or restricting an animals' movement or mobility by a structure or device. The terms low risk/impact and high risk/impact are included under *Short-term*. *Low risk/impact* includes activities involving a low risk of injury or mortality, an established proven procedure, a short-term impact on subject animals' normal function, etc. *High risk/impact* includes activities involving a high risk of injury or mortality, a new or high risk procedure, a long-term impact on the subject animals' normal function, etc. *Long-term* includes activities involving holding an animal captive for weeks or months; includes both "long-term" removals, after which an animal is released to the wild, and temporary "short-term" removals, after which an animal is released, but is not released either in the company of the social group of which it was formerly a part, among the stock from which it was removed, or at the location of capture during the same time of the year in which it was initially captured.

2. *Permanent Removal/Captive Holding* is the captive holding of a protected species for an indefinite period of time, including the capture of an animal from the wild and subsequent indefinite captive holding of that animal.

D. *Kill* or *Lethal Take* includes activities that involve the directed, intentional, or likely killing of a protected species.

E. *Import/Export* is self-explanatory.

Appendix B to Subpart D—Approach Standards Recommended for Activities Conducted in the Wild

Under the Acts, harassment or other take of marine mammals is prohibited except under certain circumstances. Activities involving the harassment or other take of marine mammals may be permitted under subpart D of 50 CFR part 216 for a special exception purpose. Since certain activities are likely to harass or otherwise result in the taking of marine mammals, NMFS has developed the following minimum approach distance guidelines and other recommendations for activities conducted in the wild. If a person follows these recommended approach distance standards and related recommended activity restrictions recommended in II. through IV. of this appendix, then it is reasonable to assume that such a person is not likely to harass or otherwise take a marine mammal in the wild. However, if a person or vessel approaches marine mammals within these recommended distance standards or does not follow these recommended operating procedures, such activities have a high likelihood of harassment or other taking of marine mammals in the wild.

Importantly, NMFS recognizes that, if a person or vessel closely approaches a marine mammal in the wild or conducts another activity that has a high likelihood of harassing or otherwise taking the marine mammal, but there is no change in the behavior of the marine mammal and the marine mammal has not been physically contacted in any way, then there is no observable indication that the marine mammal has been harassed or otherwise taken. Nonetheless, in the interest of the protection of marine mammals in the wild consistent with the purpose and objectives of the Acts, NMFS believes that guidance regarding activities likely to result in the harassment or other take of marine mammals in the wild is appropriate and helpful. At a minimum, such guidance is necessary as a standard for use by persons in determining whether a permit is advisable for their proposed activity in the wild, and by permit holders for reporting purposes.

NMFS recommends that an application be submitted for a special exception permit under subpart D of 50 CFR part 216 if a person intends to conduct, or may conduct, an activity for a special exception purpose that may involve an approach of marine mammals closer than the recommended minimum distance standards or will be conducted contrary to the recommended activity limitations or operating procedures as described in II. through V. of this appendix. The approach distances and other recommendations in II. through V. of this appendix are also the standards by which take in the wild shall be reported as a condition of a permit issued under subpart D of 50 CFR part 216 (see § 216.39(a)(4)(i)(B)).

The recommendations of this appendix are limited to the approach of, or other activities directed at, marine mammals. If a marine mammal elects to approach a vessel or person that has made every effort to comply with the recommended approach and activity limitations described in this appendix, and such a person or vessel does not otherwise take the marine mammal, then such an approach by the marine mammal cannot by itself be considered harassment or other take under the Acts. In this case, the activity is not prohibited under the Acts and a special exception permit is not required to conduct the activity. This and other exceptions to the recommended approach standards and recommended operating procedures are included to clarify the intended limited scope of this appendix.

I. General Recommended Approach Standards

The following are generally applicable recommended minimum approach distances and recommended vessel operation restrictions for approaching marine mammals, and are recommended because of the likelihood such a close approach or activity will result in the harassment or other take of marine mammals in the wild. NMFS recommends that a person proposing to conduct an activity for a special exception purpose within these recommended minimum approach distances, or involving vessel operations contrary to the recommended vessel operation restrictions, apply for a permit under subpart D of 50 CFR part 216. (Note: Whales, for purposes of this appendix, include all baleen whales (*Mysticeti*) and toothed whales (*Odontoceti*) including sperm whale (*Physeter macrocephalus*), beluga whale (*Delphinapterus leucas*), killer whale (*Orcinus orca*), pilot whales (*Globicephala melus and G. macrorhynchus*), narwhal (*Monodon monoceros*), and all beaked whales. Dolphins and porpoise, for purposes of this appendix, include all members of the families Delphinidae, Phocoenidae, Monodontidae, and Physeteridae that are not listed under whales.)

(1) Operate an aircraft within 1,000 feet (305 m) of any marine mammal or attempt to encircle any marine mammal with an aircraft;

(2) Approach a marine mammal in a vessel or by any other means, including, but not limited to, swimming or diving, or cause a vessel or other object to approach a marine mammal within:

(i) One hundred yards (91 m) of whales or pinnipeds on land;

(ii) Fifty yards (46 m) for dolphins and porpoise or pinnipeds in the water; or

(iii) Fifty feet (15 m) for pinnipeds hauled out on a fixed structure. The term fixed structure includes a pier, wharf, dock, buoy, or other similar stationary structure, but does not include a jetty, breakwater, or similar structure surfaced with a substrate similar to natural haul-out areas favored by pinnipeds or any structure located within or adjacent to a breeding rookery; or

(3) Operate a vessel or aircraft or carry out an activity in a manner that disrupts the normal movement or behavior of a marine mammal. A disruption of behavior may be manifested by, but is not restricted to, the following: A rapid change in direction or speed; escape tactics, such as prolonged diving or fleeing into the water from a haulout or rookery, underwater course changes, underwater exhalation, or evasive swimming patterns; interruptions of feeding or migratory activities; aggressive postures or charges directed at intruders; attempts by a marine mammal to shield a calf or pup from a vessel or human observer; the abandonment of a previously frequented area; or other stress-related behavior including, but not limited to, vocalizations, finning, tail lobbing, tail raking, or breaching.

II. Regional Recommended Approach Standards

The following are regionally-specific recommended minimum approach distances and recommended activity restrictions for approaching marine mammals. Note: The following recommendations specific to humpback whales in Hawaii are modeled after the special prohibitions found at subpart D of 50 CFR 222 that restrict the approach of humpback whales in Hawaii.

(1) *Hawaii—humpback whales.*

(i) In areas designated as cow/calf waters for humpback whales in III.(1)(ii) of this appendix, do not:

(A) Approach any humpback whale by any means within 300 yards (274 m); or

(B) Cause a vessel or other object to approach any humpback whale within 300 yards (274 m);

(ii) The following areas are designated as cow/calf waters in Hawaii:

(A) Adjoining the island of Lanai—all waters within 2 nautical miles (nm) (3.7 km) of the mean high-water line along the north and east coast between lines extending perpendicular from the coast between Kaena Point and Kamaiki Point; and

(B) Adjoining the island of Maui—all waters inshore of the following boundary: Beginning at the shoreline of the southwestern tip of Puu Olai Point, then, by an azimuth measured clockwise from True South, 082 degrees for a distance of 2 nm (3.7 km); 141 degrees for a distance of 19 nm (35 km); 164 degrees for a distance of 3 nm (5.5 km); 184 degrees for a distance of 4.3 nm (7.9 km); then 295 degrees to Hawea Point; and

(2) *Hawaii—Hawaiian monk seals.*

(i) In the Northwestern Hawaiian Islands, do not:

(A) Approach monk seals, on land or in water, closer than 100 yards (91 m); or

(B) Pass between a mother and pup monk seal, separate them or disturb them in any way.

(ii) The following precautions should be taken in certain locations, such as French Frigate Shoals, Kure, and Midway, where a 100-yard (91-m) minimum approach distance may not be possible to maintain:

(A) Walk near or behind the vegetation line or beach crest to pass monk seals hauled out on the beach near the water's edge. Follow the reverse procedure when passing monk seals hauled out high on the beach or into the vegetation.

(B) Remain out of sight of the seals when passing them.

III. Recommended Operating Procedures

The following are recommended operating procedures that should be followed to avoid harassment or other take of marine mammals in the wild:

(1) When a vessel underway approaches or is approached by a marine mammal within the approach standards described in I. and II. of this appendix, the operator of that vessel should take all possible precautions to minimize disturbance of the animal, consistent with safe operating procedures for that vessel. These actions include, but are not limited to, maintaining speed and direction and avoiding low-speed maneuvering such as reversing direction, using bow thrusters, or sudden changes in propeller pitch.

(2) Avoid a "head-on" approach.

(3) When it is necessary for safe navigation to approach a marine mammal within the approach standards described in I. and II. of this appendix, vessels underway should be operated only at a reduced constant rate of speed (displacement speeds for smaller vessels) sufficient to maintain steerage and, to the extent practicable, in a manner consistent with the procedures recommended in paragraph III.(1) of this appendix.

IV. Exceptions to Recommended Approach Standards

Exceptions to the recommended approach standards and recommended operating procedures described in I. through III. of this appendix include:

(1) When operating a vessel in restricted bays or shipping lanes where the overall safe operating area precludes vessels from maneuvering to avoid marine mammals, and an alternative route safe for navigation is not practicable, the vessel operator should conduct a safe, continuous transit of the area while minimizing disturbance to any marine mammals present. When operating a vessel in such a restricted area, responsible actions of the vessel operator required for safe navigation may encroach on the recommended minimum approach distances described in I. and II. of this appendix.

(2) When required for the safe departure or approach of an aircraft during take-off or landing or when an alternative flight path is not feasible due to other circumstances that preclude safe operations, such as weather or an emergency, it may be necessary for an aircraft to fly lower than 1,000 feet (about 300 m) over marine mammals.

(3) Except for pinniped pups or pinniped aggregations of more than 50 animals, or, for harbor seals, more than 20 animals, pinnipeds that are located adjacent to a fixed structure, whether in the water or hauled out, may be approached within the length of the animal if the person approaching remains on the fixed structure.

(4) A person or vessel may be approached by a marine mammal even though every effort has been made to comply with the recommended approach standards and recommended operating procedures described in I. through III. of this appendix. If the person or vessel does not otherwise take the marine mammal, the approach of a person or vessel by a marine mammal cannot, by itself, be considered harassment or other take under the Acts.

Appendix C to Subpart D—Permit Application Information

The following is a description of the basic or minimum information required for permit applications. Additional information may be required, depending on the type of permit concerned and the proposed activity. Before submitting a permit application, applicants should closely examine NMFS's Application Instructions for a Special Exception Permit (application instructions). These application instructions describe in detail the information required and the format for a permit application. Application instructions specific to the type of activity proposed may be requested from the Director, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910. Requests for application instructions should identify the anticipated special exception purpose for which the application will be submitted (i.e., public display, scientific research, or enhancement (enhancing the survival or recovery of a species or stock (MMPA) or to enhance the propagation or survival of the affected species (ESA)) and, if for scientific research or enhancement, whether the proposed activity will involve the captive holding of protected species.

Where information has remained unchanged or needs to be updated/supplemented, an applicant that has previously submitted a permit application may, where applicable, simply reference the earlier application (by date) and state that this information remains unchanged or provide the updated information. This is particularly the case concerning the protected species inventory report and facility profile information described in III. of this appendix. However, curriculum vitae should be submitted anew for each application. Information required of applicants proposing an activity involving the take and export of living protected species is described in § 216.34(b).

I. General

The following information is required of all applicants.

(1) The date of the application.

(2) The identity and qualifications of the applicant and any other persons to be directly involved in the taking or importation, and, as applicable, export. Curriculum vitae must be submitted for principal personnel. An address and phone number for the applicant is required.

(3) The purpose for which a permit is being requested (i.e., public display, scientific research, or enhancement) and a description of the proposed activity, including the manner in which such activity involves the taking, importation, or export of, or conduct of an otherwise prohibited activity involving, protected species or protected species parts. The applicant must demonstrate that such a special exception activity will be consistent with the purposes of the applicable Acts, and, for marine mammals, any applicable regulations established under section 103 of the MMPA—see applicable application instructions.

(4) The dates and locations of the proposed taking or importation, and, as applicable, export. Both dates and locations should be identified as specifically as possible; including the dates on, locations from/to, and ports of entry/export through which protected species or protected species parts are to be imported/exported.

(5) The proposed duration of the permit. In the case of a permit that involves captive maintenance of protected species, the applicant must identify both the proposed duration of permit authority to capture from the wild or obtain from captive stock and the proposed duration of permit authority to hold such protected species.

(6) A description of the protected species or protected species parts to be taken and/or

imported and, as applicable, exported. The description must include the species (common and scientific names) and number of each to be taken or imported and, as applicable, exported. In addition, the age/size, sex, and reproductive condition of living protected species must also be identified along with other animal-specific information listed under V. of this appendix. Marine mammal parts to be taken or imported, and endangered or threatened species part to be taken, imported, exported, or obtained or used in an otherwise prohibited manner, must be described as specifically as possible. See the application instructions regarding specific information required for the taking, importation, or export of protected species parts. Such information must include, for example, in addition to the above, the number or code to be assigned to the part and any identifying number or coding where such parts have been labeled or have otherwise been marked previously, original source (e.g., beached or stranded, captive animal, obtained in the wild, imported, or unknown), location and date of original collection, and the name/identity of the collector.

(7) A description of the manner in which protected species or protected species parts identified in I.(6) of this appendix are to be taken, imported, or exported (see appendix A of this subpart). Where a taking of protected species or protected species parts in the wild is involved, describe techniques and equipment to be used to approach, capture, restrain, mark, tag, and/or collect tissues and other samples. For example, indicate the kinds, numbers, and sizes of samples to be taken and sampling method; the marks, tags, or other instruments to be used, including their dimensions, weights, method of application and location of attachment, expected duration of attachment, etc.; the kinds, dosages, and methods of administering any drugs or other substances; and/or the method, frequency and period of time each protected species may be restrained or otherwise taken. Clearly indicate if any protected species will be taken more than once or in more than one manner. If the proposed activity is to involve more than one type of taking or multiple takes of the same animal, the number of animals proposed to be taken must be specifically requested by type and number of takes. In this regard, the applicant should identify the maximum number of individual animals that may be taken in a given manner, the number of times each may be subject to such a take, and the number that are to be taken in more than one manner (i.e., animals that will be subjected to more than one type of take). In addition, where living protected species are concerned, the application must describe any alternatives considered to the proposed manner of taking, importation, export, or conduct of an otherwise prohibited activity, and state why the proposed method is humane (see §.216.3).

(8) A description of the effects of the proposed taking, importation, export, or otherwise prohibited activity, by itself or in combination with other known or suspected taking, importation, export, or otherwise prohibited activities. This description must include the anticipated effects or impacts on the individual animals concerned, the relevant species or stock, the human environment, and the marine ecosystem; and be sufficiently detailed to enable the preparation of any necessary documentation required under NEPA (e.g., an EA, EIS, or documentation to support a determination that the activity is such that it is categorically excluded from requirements under NEPA to prepare an EA or EIS). If the proposed activity involves removing a protected species from the wild and a captive stock of the species concerned is being held at the time of the permit application (including stranded animals undergoing rehabilitation in preparation for release to the wild), the applicant must explain why the animal cannot be obtained from such captive stock.

(9) A summary of the best available information concerning the status of the affected species or stock(s) and factors known to be affecting this status. Where a permit application is for a public display permit, or scientific research permit involving marine mammals being held under a public display permit, and is otherwise exclusively concerned with captive stocks in the United States (i.e., does not involve a take of a marine mammal in the wild or an importation) the affected stock shall be the captive stock of the marine mammal species concerned.

(10) If issued previous permits for the taking, importation, or export of, or otherwise prohibited activity involving, protected species and a final report is not yet due, submit an update to the last annual report required.

(11) If the permitted activity involves the taking or importation of protected species parts or captive maintenance of protected species, describe what arrangements have been made, if any, for the disposition of protected species parts. For example, describe arrangements made with a museum or other institutional collection to ensure that hard and soft tissues of present or potential future interest will remain available for scientific research or enhancement purposes, or for other disposition as provided in 50 CFR 216.38(b) (11) through (14).

(12) Signature of applicant and certification that the application information submitted is accurate and that the applicant has read the permit regulations found at subpart D of 50 CFR part 216 and the applicable sections of the MMPA, the ESA, and implementing regulations at 50 CFR parts 217 through 227, and the FSA.

Note: Failure to provide a complete description of what, when, where, how, and how many protected species may be taken, and detailed information regarding the effects of such activities, often requires that the applicant be contacted to obtain additional information and is one of the most common causes of delays in processing applications. Additionally, if an applicant is a previous permit holder or is listed as an agent on a permit issued previously, the application will not be processed until all required reports for such permit(s) have been submitted.

II. Public Display

The following information is required of all applicants for a public display permit.

(1) A description of the public display program for which the marine mammals will be used; including a description of the manner or type of display (e.g., passive viewing, performance, interactive programs, etc.), and, for each type of display, how often (number of times) and how long (hours) per day/week the marine mammals will be on public display.

(2) Describe public access to the facility, including any regularly scheduled hours and any restrictions to public access other than an admission fee. Estimate the number of persons who visit the facility and observe the marine mammals annually, where practicable categorizing this information by type of visitation (e.g., general public, school group, special activities, etc.).

(3) Describe current and proposed education or conservation programs, including the program's purpose; objectives; basic information, concepts, and values to be conveyed; methods and techniques for implementation and evaluation; and identifying which aspects of the program are intended to be conveyed to which segments of the public. Also identify and provide curriculum vitae for the professional education or conservation staff who has designed and will conduct and evaluate the program.

(4) Describe any interactive programs, their purpose and whether any aspect of the program involves a marine mammal/public interaction otherwise prohibited in the wild.

(5) Where the proposed activity involves the importation of living marine mammals, state whether the marine mammals have been, or will be, taken in a manner consistent with the same requirements as those applicable to the take of a marine mammal subject to U.S. jurisdiction (i.e., whether the take of the marine mammals proposed for importation could have been authorized under the MMPA).

(6) If a marine mammal is proposed to be pregnant, lactating, or either unweaned or less than 8 months old, whichever occurs later, at the time of capture from the wild or when obtained from captive stock by transfer/transport, describe why such taking is necessary for the protection or welfare of the marine mammal.

(7) Provide the captive maintenance information listed in V. of this appendix.

III. Scientific Research

The following information is required of all applicants for a scientific research permit.

(1) Describe the research objectives; including, as appropriate, the hypothesis(es) to be tested.

(2) Provide the rationale and a detailed description of the proposed research. Indicate when, where, how, and why, as well as what research is to be done, including a brief review of relevant literature (include citations) and an explanation of the rationale for the methodology and sampling sizes proposed. The description should include the expected nature and significance of research results.

(3) If the research involves a species or stock designated as depleted under the

MMPA, or listed as endangered or threatened under the ESA, indicate why the proposed research cannot be conducted using an alternative species or stock and explain how the expected research results would benefit the species or stock or contribute significantly to fulfilling a critically important research need.

(4) If the proposed research will or may cause stress, pain, or suffering, or would require lethal taking, explain why there are no feasible alternative methods for obtaining the data or information being sought. Describe any measures to be taken to minimize such adverse effects of the research and to ensure that the taking or other permitted activity will be conducted in a humane manner.

(5) Describe the qualifications and experience of both principal and co-investigators (i.e., designated agents) relevant to the respective aspects of the research proposed to be conducted by these personnel. Curriculum vitae for each should be provided, including a list of publications relevant to the objectives, methodology, or other aspects of the proposed research. If applicable, the names and addresses of cooperating institutions and individuals should be included.

(6) Submit a copy of the formal research proposal, grant, or contract, if such has been prepared.

(7) State whether any special equipment or logistical support is necessary to conduct the research, whether it has been secured, and, if not, what steps are being or will be taken to secure it.

(8) Indicate where and, if possible, when the research results are expected to be published or otherwise made available to the public and the scientific community.

(9) List research previously undertaken under a permit issued under the MMPA, ESA, or FSA, whether or not the applicant was a previous permit holder or performed such research as a co-investigator or participated in a supporting capacity.

(10) Describe any similar research that has been or is being conducted on the same or comparable species or stock. If such research has been or is being conducted, explain why the research proposed will not be duplicative.

(11) Describe any commercial or recreational activities to be conducted in conjunction with proposed research activities (i.e., permitted research). If permitted research activities are anticipated to produce marketable products, describe what type and how many such marketable products are likely to be produced (see definition of "marketable products" at § 216.3).

(12) If protected species are to be held captive, provide the captive maintenance information listed in V. of this appendix.

IV. Enhancement

The following information is required of all applicants for an enhancement permit.

(1) Describe the proposed enhancement program, including the enhancement objective and a detailed description of when, where, how, and why, as well as what enhancement is to be done, including a brief review of relevant literature (include citations) and an explanation of the methods and natural resource (wildlife or habitat) management techniques proposed. The description must demonstrate that the proposed taking, import, or export, or other otherwise prohibited activity, is likely to contribute significantly to maintaining or increasing distribution or abundance, or enhancing the health or welfare of the species or stock, necessary to ensure the survival or recovery of the affected species or stock in the wild.

(2) Describe the manner in which the proposed enhancement program is consistent with or differs from any applicable recovery or conservation plan for the subject species or stock.

(3) If the research involves a species or stock designated as depleted under the MMPA, or listed as endangered or threatened under the ESA, indicate the urgency of the proposed enhancement effort and whether the proposed enhancement program is a generally accepted enhancement approach (i.e., tested and proven) applicable to the subject species or stock.

(4) If the proposed enhancement program will or may cause stress, pain, or suffering, or would require lethal taking, explain why there are no feasible alternative methods for obtaining the results being sought. Describe any measures to be taken to minimize such adverse effects of the enhancement program on individual animals and to ensure that the taking will be conducted in a humane manner.

(5) Describe the qualifications and experience of all personnel involved in the proposed enhancement program. Curriculum vitae for each should be provided, including a list of publications and any experience relevant to the objectives, methodology, or other aspects of the proposed enhancement program. If applicable, the names and addresses of cooperating institutions and individuals should be included.

(6) Submit a copy of the formal proposal, grant, or contract, if available.

(7) State whether any special equipment or logistical support is necessary to conduct the enhancement effort, whether it has been secured, and, if not, what steps are being or will be taken to secure it.

(8) List of any activities previously undertaken under a permit issued under the Acts (i.e., scientific research, public display, or enhancement), whether or not the applicant was a previous permit holder, co-investigator, or participated in such a permitted activity in a supporting capacity.

(9) Describe any similar enhancement program that has been or is being conducted on the same or comparable species or stocks. If such an enhancement program has been or is being conducted, explain the manner in which such previous enhancement efforts have been considered in the development of the proposed enhancement program or how coordination with such other on-going enhancement efforts will be accomplished.

(10) If captive maintenance of a depleted, endangered, or threatened species or stock is proposed, describe how such captive maintenance will contribute directly to the survival, propagation, or recovery of the species or stock by maintaining a viable gene pool, increasing productivity, providing necessary biological information, or establishing and maintaining animal reserves or experimental populations required to directly support these objectives. And explain why and how the expected benefit of such captive maintenance to the affected species or stock outweighs the expected benefits of alternatives that do not require removal of animals from the wild.

(11) If the purpose of all or part of the proposed activity is the establishment and maintenance of animal reserves or experimental populations of endangered or threatened species, provide any information necessary for NMFS to make the determinations required under section 10(j) of the ESA.

(12) If protected species are to be held captive, provide the captive maintenance information listed in V. of this appendix.

V. Captive Maintenance

The following information is required of all applicants proposing an activity involving captive maintenance. (However, applicants proposing a special exception activity involving the captive maintenance of protected species other than marine mammals (i.e., endangered or threatened species of marine and anadromous fish or marine reptiles) must submit only the information required under V.1., V.2., V.8., and V.14. of this appendix).

(1) Provide a copy of a license or registration (required for public display permits; if available for scientific research and enhancement permits) issued by the Animal and Plant Health Inspection Service of the U.S. Department of Agriculture, any outstanding variances granted by the Animal and Plant Health Inspection Service, and a copy of the latest Animal and Plant Health Inspection Service inspection report, as applicable. If such inspection documents violations or required corrective actions, the applicant must certify to the satisfaction of the AA that such violations have been resolved and any required corrective actions have been taken, or that the violations will be resolved and corrective actions taken within a period specified by the AA.

(2) If the facility is not required to be licensed or registered under the Animal Welfare Act (e.g., non-registered research facilities), provide sufficient information for the AA to determine compliance with all applicable captive maintenance requirements in 50 CFR 216.37.

(3) Facilities under construction must submit facility plans and demonstrate that the facility and its proposed program of care and treatment will comply with applicable marine mammal captive maintenance requirements when construction is completed.

(4) Applicants for a permit to take and export a marine mammal in a facility outside U.S. jurisdiction must submit the information described in 50 CFR 216.34(b), including information sufficient to determine compliance with the captive maintenance requirements of 50 CFR 216.37. Such an applicant must also submit a copy of a facility inspection report prepared by a government agency with inspection/

monitoring responsibilities equivalent to that of Animal Plant Inspection Service that documents compliance with standards no less than the captive maintenance standards of, or referred to in, 50 CFR 216.37.

(5) State that either:

(i) The facility and its marine mammal species care program is in compliance with all applicable captive maintenance requirements of 50 CFR 216.37 and will not exceed or be in conflict with applicable standards if a permit is issued or amended as requested; or

(ii) Marine mammals are to be held for scientific research or enhancement purposes and maintained in a manner not in full compliance with applicable standards, describing each such exception specifically, with an explanation of why such an exception is necessary to accomplish the objectives of the research or enhancement activity (e.g., for scientific research activities, provide a copy of the research protocol review by the university's or institution's animal care committee).

(6) Identify the animal care staff, including curators, trainers, veterinarians, and other personnel responsible for the supervision, care, and maintenance of marine mammals and describe their respective functions/duties, qualifications, and experience; curriculum vitae are preferred.

(7) Describe the facility's program for animal care. Include:

(i) The diet, amount and type, for all animals and how and under what conditions food is stored.

(ii) Water supply, quality, and characteristics, including coliform counts (method, frequency, recent results), chemicals added (method, frequency, amounts, standards, measurement techniques/frequency), pH level, salinity, and temperature (standards, method of control, measurement technique/frequency).

(iii) Frequency of pool and food preparation area cleaning and sanitization, including provisions for pest control.

(iv) Emergency animal care plan addressing both facility and personnel needs. Include provisions that ensure that all marine mammals will be adequately maintained under all reasonably foreseeable circumstances, such as loss of power or water, or natural disasters. The plan should include arrangements for adequate care in the event of a strike or illness of personnel. Specify if there are laws prohibiting strikes by animal care staff. Describe emergency sources of water and power; and include minimum requirements for critical animal care stores (i.e., food, supplements, medicine, water quality, equipment, chemicals/materials, etc.).

(8) Submit an up-to-date protected species report. Specific information requirements for protected species reports may be found in the application instructions. The protected species report must include information for each protected species held by the applicant, including, for example, various animal-specific characteristics (e.g., species, sex, name/number, date of birth (estimated/actual), length and weight (estimated/actual), captive status, distinguishing natural markings, applied markings, parentage, wild capture or historical information, dates and manner of death or other disposition/transfer/release (death/necropsy, release, or transfer information), captive purpose, and, for marine mammals, animal-specific enclosure information, health or medical condition, summary of medical treatment and research history, husbandry behaviors (optional), etc.). In the case of protected species held by the applicant other than marine mammals and in a life stage which precludes or complicates the submission of animal-specific characteristics, the protected species report may include only that actual or estimated information reasonable under the circumstances (e.g., smolt).

(9) Other than short-term capture and release activities associated with a capture from the wild, either state an intention to post a surety bond(s) as described in 50 CFR 216.38(b) (7) and (26), or describe other arrangements acceptable to the AA (i.e., contingency planning and assurances of adequate funding arrangements) for the disposition of the marine mammal if and when the applicant's permitted activity terminates. Also state a willingness to accept temporary custody of seized or abandoned marine mammals on a space available basis, except where acceptance of temporary custody would involve, in the written opinion of the attending veterinarian, a risk to the health or welfare of marine mammals held by the applicant. Seized or abandoned marine mammals in this context are marine mammals that either have been abandoned by a permit holder or seized by NMFS under the terms of this part or of 15 CFR part 904. An exemption from this requirement to accept temporary custody of seized or abandoned marine mammals on a space available basis may be granted if it is in the interest of the health and welfare of the marine mammal(s) concerned and if there is no reasonable alternative.

(10) Provide a facility profile (i.e., a description of the facility, its infrastructure and associated equipment, including detailed enclosure-specific information). Specific information requirements for a facility profile may be found in the application instructions. A facility profile includes, for example, an identification of the principal persons with responsibility and authority for the facility's infrastructure and equipment, supervision of the facility's animal care staff (i.e., applicant) and any principal support personnel in this regard; qualifications and experience of principal staff (curriculum vitae are preferred); type of facility (e.g., permanent, travelling, seasonal); species held; season dates; facility purpose (e.g., public display, scientific research, and/or rehabilitation); enclosure(s) description; etc.

(11) Provide transport/transfer information for each transport proposed, including, but not limited to, methods, equipment, and personnel, as follows:

(i) The proposed method (i.e., including, but not limited to, a detailed description of the containers/devices to be used and any special care required before, during, and after transportation), modes (e.g., aircraft, truck, other), duration (including any transfer points), and date of transport, and the attending veterinarian, or professional staff of the permit holder knowledgeable in the area of marine mammal care for the species concerned, who will accompany the marine mammal;

(ii) A certification from the responsible veterinarian for the applicant that the transport will be conducted in compliance with the captive maintenance requirements of 50 CFR 216.37; and

(iii) If marine mammals are to be obtained from captive stock, identify:

(A) The marine mammals (e.g., species, sex, age, identifying number and name), if known, and the permit under which the subject marine mammals are being held, if any; and

(B) The facility, permit holder, or other person from which the marine mammals are to be obtained and a request from such facility, permit holder, or other person for authorization to transfer custody to the applicant; and

(C) The permit holder or other person to be responsible for the actual transport of the marine mammal, the name and qualifications of the common carrier or agent, if any, and the point at which (i.e., before, during, or after transport) the applicant will assume custody and captive maintenance responsibility.

(12) If marine mammals are to be held temporarily at a facility different than the proposed permitted facility, or are to be held in a temporary pen/enclosure following capture, state the reasons for such temporary holding, the manner in which such temporary holding is consistent with the applicable captive maintenance requirements of 50 CFR 216.37, and the information required in paragraphs V.(1) through (13) of this appendix, as applicable, for the temporary holding facility or pen/enclosure.

(13) Provide a written certification from the responsible veterinarian stating that the facilities and methods of care and maintenance are adequate, and that the methods of transport and, if applicable, capture, will be adequate to ensure the well-being of the marine mammals.

(14) Provide a written commitment to maintain or contribute data to a stud book, and, if the protected species has been determined to be depleted under the MMPA or listed as endangered or threatened under the ESA, a commitment to participate in a cooperative breeding program.

VI. Importation/Export

The following information is required of all applicants proposing an activity involving the importation or export of protected species or protected species parts.

(1) The country of origin (i.e., the country from which the protected species or protected species part is to imported) or, for exports, the destination country.

(2) A copy of any laws of the country of origin/destination identified in VI.(1) of this appendix applicable to the taking of protected species or protected species parts and a description of any protected species management and protection programs of that country.

(3) The manner the protected species or protected species parts to be imported have been taken in the country of origin identified

in VI.(1) of this appendix, and, if marine mammals, whether marine mammals so taken were, at the time of taking, pregnant, lactating, or either unweaned or less than 8 months old, whichever occurs later. If the protected species was captured or captive born, or if the protected species part was first taken, in a country different from the country of origin, also identify this source country and the date on, manner in, and circumstances under which the protected species or protected species part was taken and subsequently imported into the country of origin.

(4) If the protected species part to be imported or exported was obtained as a result of a lethal taking that, for marine mammals, occurred after December 21, 1972, or, for endangered or threatened species, after December 28, 1973, describe the circumstances of such lethal taking.

(5) A statement and, to the extent practicable, documentation concerning whether the protected species to be imported was captured, or the protected species part was taken, and is presently being held in compliance with the laws of the country of origin.

(6) A statement whether taking of protected species will occur in order to replace the protected species or protected species part to be imported or exported; or whether the proposed import or export will result in an increased demand for protected species or parts.

(7) If the importation or export is necessary for protection or welfare of the protected species, discuss the circumstances involved and any alternatives considered.

PART 222—ENDANGERED FISH OR WILDLIFE

12. The authority citation for part 222 is revised to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

13. Section 222.23 is revised to read as follows:

§ 222.23 Endangered species, state laws and regulations, and permits for scientific purposes or to enhance propagation or survival.

(a) The species listed as endangered under either the Endangered Species Conservation Act of 1969 or the Endangered Species Act of 1973 and currently under the jurisdiction of the Secretary of Commerce are: Shortnose sturgeon (*Acipenser brevirostrum*), Totoaba (*Totoaba macdonaldi=Cynoscion macdonaldi*), Snake River sockeye salmon (*Oncorhynchus nerka*), Gray whale (*Eschrichtius robustus* (*glaucus gibbosus*), Blue whale (*Balaenoptera musculus*), Humpback whale (*Megaptera novaeangliae*), Bowhead whale (*Balaena mysticetus*), Right whales (*Eubalaena spp.*), Fin or finback whale (*Balaenoptera physalus*), Sei whale (*Balaenoptera borealis*), Sperm whale (*Physeter catodon*), Gulf of California harbor porpoise/Cochito (*Phocoena sinus*), Chinese river dolphin (*Lipotes vexillifer*), Indus River dolphin (*Platanista minor*), Caribbean monk seal (*Monachus tropicalis*), Hawaiian monk seal (*Monachus schauinslandi*), Mediterranean monk seal (*Monachus monachus*), Leatherback sea turtle (*Dermochelys coriacea*), Pacific hawksbill sea turtle (*Eretmochelys imbricata bissa*), Atlantic hawksbill sea turtle (*Eretmochelys imbricata imbricata*), Kemp's ridley sea turtle (*Lepidochelys kempii*), Green sea turtle (*Chelonia mydas*) breeding colony populations in Florida and on the Pacific coast of Mexico and the Olive ridley sea turtle (*Lepidochelys olivacea*) breeding colony population on the Pacific coast of Mexico. Of these, NMFS has sole agency jurisdiction over sea turtles while the turtles are in the water and the U.S. Fish and Wildlife Service has jurisdiction over sea turtles while the turtles are on land.

(b) Within the jurisdiction of a state, more restrictive state laws or regulations in regard to endangered species shall prevail in regard to taking. Proof of compliance with applicable state laws will be required before a permit will be issued.

(c) In accordance with the provisions of part 216, subpart D of this chapter, the AA may issue permits for scientific purposes, or to enhance the propagation or survival of the affected endangered species, that authorize, under such terms and conditions as he/she may prescribe, taking, importation, export, or certain other acts with respect to endangered or threatened species otherwise prohibited by section 9 of the Act; except for application procedures for permits involving sea turtles, in which case the applicant shall follow the application procedures set out in 50 CFR part 220 subpart E.

§ 222.24 [Amended]

14. Section 222.24 is amended by removing paragraph (d) and redesignating paragraph (e) as paragraph (d).

[FR Doc. 93–24952 Filed 10–12–93; 8:45 am]
BILLING CODE 3510–22–P

federal register

Thursday
October 14, 1993

Part V

Department of Education

Special Studies Program; Notice Inviting Applications for New Awards for Fiscal Year 1994

DEPARTMENT OF EDUCATION

[CFDA No.: 84.159]

Special Studies Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1994

Purpose of Program: To support studies to evaluate the impact of the Individuals with Disabilities Education Act (IDEA), including efforts to provide a free appropriate public education to children and youth with disabilities and early intervention services to infants and toddlers with disabilities.

This notice supports the National Education Goals by improving understanding of how to enable children and youth with disabilities to reach higher levels of academic achievement.

Eligible Applicants: State educational agencies are eligible for awards under these competitions. Also, those State agencies designated by the Governor in each State for the purpose of administering an early intervention program under Part H of the Individuals with Disabilities Education Act (IDEA) are also eligible for awards under these competitions.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 327.

Priorities: Under 34 CFR 75.105(c)(3) and 34 CFR 327.10(c) and 327.40(a) the Secretary gives an absolute preference to applications that meet the following priorities. The Secretary funds under these competitions only applications that meet one or more of these absolute priorities:

Absolute Priority 1—State Agency—Federal Evaluation Studies Projects (CFDA 84.159A)

This priority supports cooperative agreements that assess the impact and effectiveness of programs, policies, and procedures assisted under the Individuals with Disabilities Education Act (IDEA) in accordance with sections 618(d) (1) and (2) of the Act. An award under this competition provides not more than 60 percent of the total cost of the project, and the State agency receiving the award provides an amount not less than 40 percent of the total cost of the project.

Invitational Priority

Within the absolute priority specified in this notice, the Secretary is particularly interested in applications that meet the following invitational priorities. However, under 34 CFR 75.105(c)(1) an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications:

The Secretary particularly invites projects that evaluate the impact and effectiveness of—

(1) Management and regulatory flexibility that encourages innovative management of schools to expand opportunities for the inclusion of children with disabilities;

(2) Student outcomes and performance of comprehensive, community-based, family-oriented systems of education and support;

(3) Community-supported schools focusing on family participation in activities and services;

(4) Reconfigured relationships and responsibilities of regular and special education staff, and redesigned programs that train personnel for work in schools, for the continued development of all regular and special education personnel in the education of children with disabilities; or

(5) Expanded multi-agency solutions to the collaborative delivery of services for individual children with disabilities and their families.

Absolute Priority 2—State Agency—Federal Evaluation Studies Projects (CFDA 84.159F)

This priority supports cooperative agreements that assess the impact and effectiveness of programs, policies, and procedures assisted under the Individuals with Disabilities Education Act (IDEA) in accordance with sections 618 (d)(1) and (2) of the Act. An award under this competition provides not more than 60 percent of the total cost of the project, and the State agency receiving the award provides an amount not less than 40 percent of the total cost of the project.

Invitational Priority

Within the absolute priority specified in this notice, the Secretary is particularly interested in applications that meet the following invitational priority. However, under 34 CFR 75.105(c)(1) an application that meets this invitational priority does not receive competitive or absolute preference over other applications:

The Secretary particularly invites projects that perform feasibility studies that develop the conceptual framework for an evaluation study about a specific issue or question concerning the impact and effectiveness of special education and related services, and determine if the conceptual framework is workable. Feasibility studies identify topics that have significant potential for evaluation, but that require preliminary study to determine feasibility related to identification of the issue, study designs, measurement, and analysis. While collection and reporting of generalizable impact and effectiveness data are not expected for feasibility studies, the Secretary particularly encourages pilot tests of data collection instruments and procedures to determine the implications of these results for the study design, measurement and analysis. The Secretary particularly encourages projects that address the feasibility of designs to evaluate the impact and effectiveness of:

(1) Management and regulatory flexibility that encourages innovative management of schools to expand opportunities for the inclusion of children with disabilities;

(2) Student outcomes and performance of comprehensive, community-based, family-oriented systems of education and support;

(3) Community-supported schools focusing on family participation in activities and services;

(4) Reconfigured relationships and responsibilities of regular and special education staff, and redesigned programs that train personnel for work in schools, for the continued development of all regular and special education personnel in the education of children with disabilities; or

(5) Expanded multi-agency solutions to the collaborative delivery of services for individual children with disabilities and their families.

SPECIAL STUDIES PROGRAM

[Application Notices for Fiscal Year 1994]

Title and CFDA No.	Applications available	Deadline for transmittal of applications	Available funds	Estimated size of awards	Estimated No. of awards	Project period in months
State Agency—Federal Evaluation Studies Projects (84.159A).	11/22/93	03/25/94	$400,000	[1] $80,000	5	Up to 24.
State Agency—Federal Evaluation Studies Projects (84.159F).	11/22/93	03/25/94	200,000	[2] 50,000	4	Up to 12.

[1] $80,000 is the estimated average size of award for the first 12 months (year) of the project. Projects are likely to be level funded in the second year unless there are increases in costs attributable to significant changes in activity level.

[2] $50,000 is the estimated average size of award for the *entire* project period (up to 12 months).

Note: The Department is not bound by any estimates in this notice.

For Technical Information Contact: Susan Sanchez, U.S. Department of Education, 400 Maryland Avenue, SW., room 3528, Switzer Building, Washington, DC 20202–2640. Telephone: (202) 205–8998. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m. Eastern time, Monday through Friday.

For Applications and General Information Contact: Requests for applications and general information should be addressed to: Darlene Crumblin, U.S. Department of Education, 400 Maryland Avenue, SW., room 3525, Switzer Building, Washington, DC 20202–2641. Telephone (202) 205–8953. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m. Eastern time, Monday through Friday.

Program Authority: 20 U.S.C. 1418.

Dated: October 7, 1993.

Andrew Pepin,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 93–25148 Filed 10–13–93; 8:45 am]

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Thursday
October 14, 1993

Part VI

Department of Education

Children and Youth With Serious Emotional Disturbance: Final Priorities for Fiscal Years 1994 and 1995 and Inviting Applications for New Awards for Fiscal Year 1994; Notices

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services Program for Children and Youth With Serious Emotional Disturbance

AGENCY: Department of Education.

ACTION: Notice of final priority for fiscal years 1994–1995.

SUMMARY: The Secretary announces a final priority for the Program for Children and Youth with Serious Emotional Disturbance to ensure effective use of program funds and to direct funds to areas of identified need during fiscal years 1994 and 1995.

EFFECTIVE DATE: This priority takes effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of this priority, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Linda Glidewell, U.S. Department of Education, 400 Maryland Avenue, SW., room 3524, Switzer Building, Washington, DC 20202–2641. Telephone: (202) 205–9099. Individuals who use a telecommunications device for the deaf may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Program for Children and Youth with Serious Emotional Disturbance provides assistance for projects designed to improve special education and related services to children and youth with serious emotional disturbance (SED). Types of projects that may be supported under the program include, but are not limited to, research, development, and demonstration projects. Funds may also be used to develop and demonstrate approaches to assist and prevent children with emotional and behavioral problems from developing serious emotional disturbance.

On July 7, 1993, the Secretary published a notice of proposed priority for this program in the **Federal Register** (58 FR 36580).

This priority supports the National Education Goals by improving our understanding of how to enable children and youth with disabilities to reach the high levels of academic achievement called for by the Goals.

Note: This notice of final priority does not solicit applications. A notice inviting applications under this competition is published in a separate notice in this issue of the **Federal Register**.

Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed priority, seven parties submitted comments. An analysis of the comments and of the changes in the proposed priority follows. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Comment: Three commenters recommended that the project period should be of enough duration to assess long term outcomes of proposed interventions.

Discussion: The project period is not included in the final priority. The notice inviting applications under this priority indicates that the estimated project period for awards is for up to 48 months. The Secretary believes that this will provide the necessary time for applicants to implement, refine, and measure the effects of proposed approaches.

Changes: None.

Comment: One commenter suggested that a "one year planning time" be built into the project period.

Discussion: The priority as written does not specify the amount of time that an applicant may devote to planning during the project period. Given the variability among potential applicants, the Secretary believes that some applicants will incorporate substantial planning into the development of their proposals thus limiting the need for planning time during the project period. Ultimately, it is the responsibility of applicants to justify time needed for planning in their proposals.

Changes: None.

Comment: One commenter suggested that a crosswalk of project requirements with selection criteria would be helpful to both applicants and application reviewers. The commenter further suggested that this information could be provided in the application package.

Discussion: In previous years, the application package that is provided to all potential applicants has provided clarification between requirements contained in a specific priority and the selection criteria that is used to evaluate applications. The Secretary believes that the application package is the appropriate vehicle for providing that type of information and intends to continue the practice.

Changes: None.

Comment: One commenter indicated the importance of "early screening and early intervention (i.e., pre-school to grade 3 range)" as important components of any prevention strategy. A second commenter indicated the importance of programs designed for youth.

Discussion: The priority as written does not specify any grade or age range. The Secretary agrees with the commenter on the importance of early screening, early intervention, and programs for youth and believes that the priority as written allows applicants to address the broad spectrum of grades and ages.

Changes: None.

Comment: One commenter suggested the priority "should emphasize systematic and comprehensive research efforts that acknowledge and consider the interaction between regular and special education."

Discussion: The Secretary agrees with the commenter on the importance of the interaction between regular and special education.

Changes: Paragraph (e) under "Priority" is changed to read: "(e) Implement interventions that involve the active participation of a broad range of constituents, including school personnel, parents, and community agencies, and that acknowledge and consider the interaction between regular and special education."

Comment: One commenter indicated that interventions that consider and address a variety of factors that contribute to the development of emotional disturbance are especially needed. This commenter suggested that the priority include contributing biological, physiological and sensory processing factors within the requested conceptual framework of proposals.

Discussion: The Secretary believes that the priority as written allows an applicant to consider a broad range of factors that may contribute to the development of serious emotional disturbance.

Changes: None.

Comment: One commenter stated that the use of the term "interventions" in the proposed priority has the potential to be interpreted narrowly by both applicants and reviewers. The commenter suggested that the breadth of the meaning of the term as used in the priority should be clarified. Further, the commenter suggested that the word "test" may be "denotatively and connotatively" restrictive and that "assess, evaluate or study" might be more appropriate.

Discussion: The priority as written states: "*School-based research that incorporates the demands of the environment* is needed to design and test interventions * * *", and "this proposed priority would support research projects that implement and

test innovative interventions *enabling schools to provide positively oriented instruction, curricula, and support services needed* * * *" (underlining is added for emphasis). The Secretary believes that the context within which the term "interventions" is used in the priority appropriately captures the intended breadth of the term. However, the Secretary agrees with the commenter's view of the possible restrictiveness of the word "test" and believes the word "assess" would be more appropriate.

Changes: The word "test" has been replaced with the word "assess" in both the Background and paragraph (d) of the priority.

Comment: One commenter suggested that prevention of serious emotional disturbance is possible only by working on the positive, and that it is crucial to avoid giving any encouragement to the deficit model.

Discussion: The Secretary believes that the priority as written firmly establishes the need for a positive, proactive approach to prevention.

Changes: None.

Comment: One commenter indicated that we don't have validated assessment technologies that assist teachers in their efficient and effective use of extant interventions nor implementation and personnel training strategies for the large scale use of these interventions. Also, the commenter suggested that efforts focused on prevention and early intervention must consider interventions that emphasize: (a) effective and positive schoolbased behavioral and educational support; (b) individual, classroom, and school-wide contexts; and (c) achievement of long term and generalized effects.

Discussion: The Secretary believes that the priority as written allows applicants to consider all of the approaches and issues suggested by the commenter.

Changes: None.

Priority: Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to applications that meet the following priority. The Secretary will fund under this competition only applications that meet this absolute priority:

Absolute Priority—Preventing the Development of Serious Emotional Disturbance Among Children and Youth with Emotional and Behavioral Problems

Background

Improving the academic performance of our Nation's students is a major focus of educational reform initiatives. However, academically focused reform initiatives may potentially divert, not strengthen, the ability of schools to meet the psychological, social, and behavioral needs of students. Schools often do not provide specific educational experiences that promote the personal and social development of youth, complemented, if necessary, with programs and services to prevent children with emotional and behavioral problems from developing serious emotional disturbance.

Our Nation's schools need a reorientation of the fundamental approach to addressing the diverse and complex patterns of psychological and social behavior presented by students, including those with serious emotional disturbance. Approaches are needed that focus on the positive outcomes desired, rather than negative outcomes to be eliminated. Schools must be responsible and accountable for ensuring that, rather than develop serious emotional disturbance, students with emotional and behavioral problems achieve positive academic, personal, and social outcomes. School-based research that incorporates the demands of the environment is needed to design and assess interventions that would enhance the personal and social development of students with emotional and behavioral problems, so as to prevent the development of serious emotional disturbance.

This priority supports research projects that implement and assess innovative interventions enabling schools to provide positively oriented instruction, curricula, and support services needed to prevent students with emotional and behavioral problems from developing serious emotional disturbance. The research will study how to assist schools in preparing these students to meet the personal and social demands of post-school environments.

Priority

To be considered for funding under this priority, a project must—

(a) Provide a conceptual framework for the preventive approach. The conceptual framework must reflect findings from multi-disciplinary research, as well as, validated interventions and strategies relevant for promoting personal and social development of children with emotional and behavioral problems;

(b) As part of the conceptual framework—

(1) Address the challenge and diversity of mental health, psychological, and social characteristics so as to assist children with emotional and behavioral problems from developing serious emotional disturbance;

(2) Identify and define the outcomes related to personal and social development that would comprise the basis for the design of the proposed preventive components;

(3) Document the rationale for each outcome construct; and

(4) Describe means for measuring these outcomes;

(c) Provide interventions that (1) are comprehensive and positive; (2) promote the social and emotional development of students with emotional and behavioral problems; and (3) provide the cornerstone for building school-wide capacity for meeting the social and emotional needs of children with emotional and behavioral problems. The interventions must encompass an array of experiences that ensure that children with emotional and behavioral problems acquire and demonstrate in various settings the competencies needed to achieve the measurable desired outcomes related to personal and social development;

(d) Provide and assess interventions within the general education environment and expand these to include home-based and community-based components appropriate to the approach;

(e) Implement interventions that involve the active participation of a broad range of constituents, including school personnel, parents, and community agencies, and that acknowledge and consider the interaction between regular and special education;

(f) Assess the efficacy of the interventions for improving personal and social outcomes for students with emotional and behavioral problems; and

(g) Evaluate the implementation of the interventions to enhance the personal and social adjustment of students with emotional and behavioral problems across school environments.

A project must budget for two trips, annually, to Washington, DC, for (1) a two-day Research Project Directors' meeting; and (2) another two-day meeting to meet with the project director of the Office of Special Education Programs and the other projects funded under this priority to share their approaches, designs, and experiences, and to design collaborative products.

Intergovernmental Review

The Program for Children and Youth with Serious Emotional Disturbance is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the

Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Applicable Program Regulations: 34 CFR part 328.

Program Authority: 20 U.S.C. 1426.

(Catalog of Federal Domestic Assistance Number 84.237, Program for Children and Youth with Serious Emotional Disturbance)

Dated: October 7, 1993.

Andrew Pepin,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 93–25149 Filed 10–13–93; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

[CFDA No.: 84.237F]

Program for Children and Youth With Serious Emotional Disturbance; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1994

Purpose of Program: To support projects, including research projects, for the purpose of improving special education and related services to children and youth with serious emotional disturbance, and demonstration projects to provide services for children and youth with serious emotional disturbance.

This notice supports the National Education Goals by improving understanding of how to enable children and youth with disabilities to reach higher levels of academic achievement.

Eligible Applicants: Institutions of higher education, State and local educational agencies, and other appropriate public and private nonprofit institutions or agencies are eligible for awards under this competition.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 328.

Applications Available: November 5, 1993.

Deadline for Transmittal of Applications: January 7, 1994.

Deadline for Intergovernmental Review: March 8, 1994.

Available Funds: $350,000

Estimated Average Size of Awards: $175,000 for the first 12 months of the projects. Multi-year projects are likely to be level funded unless there are increases in costs attributable to significant changes in activity level.

Estimated Number of Awards: 2.

Note: The Department is not bound by any estimates in this notice.

Project Period: up to 48 months.

Priority: The priority Preventing the Development of Serious Emotional Disturbance Among Children and Youth with Emotional and Behavioral Problems in the notice of final priority for this program, published elsewhere in this issue of the **Federal Register** applies to this competition.

For Technical Information Contact: Dr. Helen Thornton, U.S. Department of Education, 400 Maryland Avenue, S.W., room 3520, Switzer Building, Washington, DC 20202–2641. Telephone: (202) 205–5910. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m. Eastern time, Monday through Friday.

For Applications and General Information Contact: Requests for applications and general information should be addressed to: Darlene Crumblin, U.S. Department of Education, 400 Maryland Avenue, SW, room 3525, Switzer Building, Washington, DC 20202–2641. Telephone: (202) 205–8953. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m. Eastern time, Monday through Friday.

Program Authority: 20 U.S.C. 1426.

Dated: October 7, 1993.

Andrew Pepin,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 93–25150 Filed 10–13–93; 8:45 am]

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federal register

Thursday
October 14, 1993

Part VII

Department of the Interior

Bureau of Indian Affairs

Special Tribal Court Funds; Availability for Fiscal Year 1994; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Availability of FY 1994 Special Tribal Court Funds

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of availability of FY 1994 Special Tribal Court Funds.

SUMMARY: The Bureau of Indian Affairs (BIA) invites applications for its Fiscal Year (FY) 1994 Special Tribal Court discretionary funds program to enhance the administration of justice on Indian reservations and insure the expeditious and impartial adjudication of violations of tribal law and resolution of civil disputes. FY 1994 Special Tribal Court Fund grants will be awarded to: (1) Assist tribes with the planning and development of new judicial systems; (2) enhance the operation and management of existing tribal courts; and, (3) develop community-based dispositional alternatives including traditional or alternative dispute resolution, as well as unique and innovative approaches addressing substance abuse, juvenile and status offenders, child abuse and family violence.

This announcement includes provisions for grant applications and consists of four parts. Part I provides information on the Special Tribal Court discretionary grant fund. Part II describes the programmatic priorities and eligibility criteria under which BIA is inviting applications to be considered for funding. Part III describes the application contents and provides guidance regarding what should be included in the application. Part IV describes the criteria to be used in evaluating applications and the appeal process.

All forms necessary to submit an application are published as a part of this announcement. No separate application kit is necessary.

Grants will be awarded in accordance with this announcement and are subject to the availability of FY 1994 Special Tribal Court funds. Based upon FY 1993 funds, it is estimated $1.2 million will be available in FY 1994. Approximately $1.1 million will be awarded for Project Grants and $75,000 for Regional and National Special Initiatives.

DATES: An application will meet the deadline if it is received as described below before the close of business December 17, 1993. Hand-delivered applications will be accepted during normal working hours, 8 a.m. to 4:30 p.m., Monday through Friday. Once applications are submitted they are considered final; no additional materials will be accepted.

ADDRESSES: All tribal, multi-tribal or consortia. Applications shall be submitted simultaneously as follows:

(1) The original and one photocopy of the application shall be received by the Area Director of the applicant's respective Bureau of Indian Affairs area office before the close of business December 17, 1993; in addition,

(2) Two photocopies of the application shall be submitted to the U.S. Department of the Interior, Bureau of Indian Affairs, Branch of Judicial Services, 1849 C Street, NW., MS–2611–MIB, Washington, DC 20240–4001.

Regional and National Special Initiatives. The original application and three (3) photocopies shall be received by the U.S. Department of the Interior, Bureau of Indian Affairs, Branch of Judicial Services, 1849 C Street, NW, MS 2611–MIB, Washington, DC 20240–4001, before the close of business December 17, 1993.

PUBLIC COMMENTS ON THIS ANNOUNCEMENT. The BIA's Branch of Judicial Services invites comments on this discretionary grants announcement; comments will be considered in the development of future announcements. Please direct your written comments to the Bureau of Indian Affairs, Branch of Judicial Services, 1849 C Street, NW., MS–2611–MIB, Washington, DC 20240–4001.

FOR FURTHER INFORMATION CONTACT: Bettie Rushing, (202) 208–4400, Department of the Interior, Bureau of Indian Affairs, Branch of Judicial Services, 1849 C Street, NW., MS–2611–MIB, Washington, DC 20240–4001.

SUPPLEMENTARY INFORMATION:

Part I—Background

Statutory Authority

The authority for this discretionary grant program is the Snyder Act, 42 Stat. 208, 25 U.S.C. 13, and annual appropriations for the Bureau of Indian Affairs. Grants awarded under this announcement are made pursuant to 43 CFR part 12, Administrative and Audit Requirements and Cost Principles for Assistance Programs, which incorporates OMB Circulars A–102 and A–110. Project Grants, Part II—Priority Areas, applicants and awards are governed by OMB Circular A–102. Regional and National Initiatives, Part II—Priority Areas, applicants and awards are governed by OMB Circular A–110.

FY 1993 Awards

Special Tribal Court funds were awarded to 45 tribal projects to enhance the operation and management of trial and appellate courts; examine and develop codes, ordinances, rules, procedures and evidentiary standards; develop community based dispositional alternatives and support programs addressing substance abuse, juvenile and status offenders and family violence; as well as, court review and evaluation, community education, traditional dispute resolution, automation and technology acquisition, education and training for judges and court personnel. In addition, Special Tribal Court funds provided financial support to the national tribal court judges and court clerks associations, five intertribal courts of appeal, and purchased subscriptions for 170 Indian judiciaries to the Indian Law Reporter.

Purpose

Special Tribal Court funds are supplementary to the base funding for tribal judicial systems provided by the Bureau of Indian Affairs through Tribal Priorities Allocations. The purpose of the Special Tribal Court program is to enhance the capabilities of Indian tribes to manage and administer justice at a level which will insure the expeditious and impartial adjudication of violations of tribal law and resolution of civil disputes.

Technical Assistance for Prospective Applicants

Technical assistance may be requested from the prospective applicant's Area Director.

Part II—Priority Areas and Eligibility

Applications must be directly and explicitly responsive to the expressed concerns of the particular priority area under which they are submitted.

A. Project Grants

Approximately $1 million will be awarded to:

(1) Assist tribes with the planning and development of new judicial systems, including:

(a) Needs assessment, planning, community education;

(b) Development of codes, ordinances, rules, procedures, and/or evidentiary standards which assure the fair and impartial administration of justice, expeditious adjudication, and implementation of the requirements of the Indian Civil Rights Act;

(c) Equipment, automation and technology acquisition; and,

(d) Education and training for judges and court personnel.

(2) Enhance the operation and management of existing tribal courts, including:

(a) Records management, court personnel management, processing time standards, caseflow management, juror utilization, reporting;

(b) Court review and evaluation, community education, access to justice;

(c) Equipment, automation and technology acquisition;

(d) Education and training for judges and court personnel; and,

(e) Development of codes, ordinances, rules, procedures, evidentiary standards and appellate review to assure the fair and impartial administration of justice, expeditious adjudication, and implementation of the requirements of the Indian Civil Rights Act.

(3) Develop community-based dispositional alternatives, including:

(a) Traditional or alternative dispute resolution; and,

(b) Innovative, community-based responses to substance abuse, juvenile and status offenders, and family violence including spouse, elder and child abuse.

Awards

Funding awards for Project Grants will range in amounts from $10,000 to $35,000 for individual tribal judiciaries, and from $20,000 to $50,000 for multi-tribal projects or consortia.

Eligible Applicants

The governing body of a federally-recognized tribe, 25 U.S.C. 450b(e), with an established judicial system or newly created tribal judiciary, including those which intend to establish a judicial system, may apply for funding under this announcement.

Tribes with populations less than 400 are encouraged to apply for funding under a multi-tribal or consortium arrangement. Tribes currently served by Courts of Indian Offenses may apply for funding under this announcement; however, such funding shall be limited to the development of tribal law and order codes.

B. Regional and National Special Initiatives

Approximately $75,000 will be awarded to assist regional and national tribal court professional organizations with professional training, professional certification programs, and projects which enhance the communications between tribal, state and federal court judges and personnel.

Awards

Funding awards will range in amounts from $10,000 to $25,000.

Eligible Applicants

Intertribal organizations applying as regional or national tribal court professional organizations, as well as regional and national Indian not-for-profit organizations may apply for funds as regional or national tribal court professional organizations.

Part III—Application Process

A. Preparing the Application

Applicants are required to address the following when preparing applications:

(1) *Background and Project Summary.* On a separate page, applicants should provide the following information:

(a) Name of the applicant (consortia and multi-tribal organizations must list *all* member tribes);

(b) Whether the applicant is requesting assistance for an established judicial system, or newly created tribal judiciary, or yet to be developed tribal judiciary;

(c) A description of the jurisdiction exercised by the applicant;

(d) The number of criminal, civil, juvenile, family and children's court cases filed during the calendar or fiscal year 1992;

(e) Tribal court budget for fiscal year 1992 and fiscal year 1993;

(f) Title(s) and number of judicial personnel;

(g) Whether Special Tribal Court funds have been awarded to the applicant since 1990, indicating the year and the amount of the grant award, a short summary of the project, and the year the project was completed;

(h) A concise statement summarizing the proposed project, including objectives, approaches, and expected benefits/outcomes;

Regional and national tribal court professional organizations should provide the following information:

(i) name of applicant (consortia and multi-tribal organizations must list all member tribes);

(j) indicate anticipated participation in the proposed project;

(k) a concise summary of the organization's history, past and current projects which demonstrate a capability to provide professional training, professional certification, and/or develop and enhance tribal, state and federal court communications;

(l) a concise statement summarizing the proposed project, including objectives, approaches, and expected benefits/outcomes;

(2) *Program Narrative.* The program narrative must be clear, concise and responsive to one or more of the priority areas under which the application is submitted (see Part II, A and B).

(a) Applicants should respond to the evaluation criteria enumerated in Part IV of this announcement and thoroughly describe:

Statement of Need

- The problem to be addressed and how it affects the judiciary and the community;

Project Approach

- Why the approach identified is more appropriate than any other for the judiciary and community;
- What you plan to do (state the goals, objectives, and overall impact of the proposed project in measurable terms);
- How you will do it (what and when will tasks be accomplished and how do they relate to the goals of the proposed project);

Evaluation of Project

- How you will evaluate the impact and/or success of the proposed project (who, when and what standards or measurements will be used); and,

Evidence of Community Support

- Where appropriate, applicants are encouraged to seek the cooperation and support of tribal, state and federal agencies, institutions and programs (for example: training, research or technical writing provided by local college faculty and students).

(3) *Budget and Budget Justification.* Applicants should demonstrate that project costs are fair and reasonable in view of the expected results and/or benefits.

(a) The budget should include:

- All staff positions and project costs which relate to the tasks described in the program narrative;
- A detailed break-down for each budget category, such as personnel, fringe benefits, travel, supplies, equipment, and administrative costs;

(b) The budget justification should provide a clear rationale for all project related costs, including:

- Personnel cost estimates should indicate the amount of time each staff person or consultant will spend on the project and the hourly rate (if personnel are supported in part by other funds, identify the source, annual salary, and percentage of time which will be charged to the proposed project);
- Supplies and project expenses should indicate purpose and usage, for example: Telephone expenses should estimate the percentage of base and long distance telephone charges necessary to accomplish the goals and objectives of the project;

• Travel must be directly related to carrying out the activities of the proposed project;

• Transportation and per diem may be based on tribal rates, not to exceed Federal Travel Regulations, but applicants must indicate which personnel will be traveling, the purpose of the travel and how it supports the proposed project, the number of trips to be taken, lengths of stay, and cost estimates;

• Purchase of equipment must be related to the goals and objectives of the project;

• Reasonable administrative costs or the negotiated indirect cost rate; and,

• A description of the fiscal control and accounting procedures to be used to ensure prudent use, proper disbursement, and accurate accounting of funds.

(4) *Applicant's Capability Statement.* The capability statement should describe how the judicial system is organized, the nature and list of all personnel. An organization chart showing the relationship of the project to the current structure of the judicial system and other tribal programs should be included, as well as vitae for all key project personnel, including consultants and third-party technical assistance providers.

(5) *Program Sustainability.* A statement indicating how other available resources such as tribal income, other grants, or contracts will be committed to supplement and/or sustain the project.

B. Application Contents and Assembly.

Each applicant shall submit an original and three copies of the application as prescribed in the Summary-Addresses. The original and each copy of the application should be stapled securely in the upper left corner. Applicants should not use covers, binders or tabs. Applications must be assembled in the following order:

(1) Standard Form (SF) 424, Application for Federal Assistance; SF 424B, Assurances—Non-Construction Program; and DI–1955 (May 1990), Certification regarding a Drug-free Workplace; as well as, the Certification Regarding Lobbying. All required forms are found at the end of this announcement.

(2) A current tribal resolution or such other written expression as tribal laws or practice require which indicates the support or commitment of the council to the proposed project. Self-governance tribes shall include a current self-governance resolution and a letter from the chief executive officer of the tribe endorsing the proposed project. Consortia and multi-tribal organizations shall include current resolutions from the tribal council of each participating tribe. Regional and national professional organizations shall include a current board of directors' resolution endorsing the proposed project.

Self-governance Tribes. For purposes of this announcement, a self-governance tribe is one which has a signed 1994 annual funding agreement at the time the application for Special Tribal Court funds is submitted. With the exception of the self-governance resolution and letter from the chief executive officer of the tribe, the application requirements for self-governance tribes are the same as those for all other tribes.

(3) A current written assurance of the procedures required in OMB Circular A–128 for fiscal management, accounting, and recordkeeping. Non-profit organizations must provide proof of not-for-profit status.

(4) Background and summary description.

(5) Program narrative.

(6) Budget and budget justification.

(7) Organization capability statement and vitae of current and prospective personnel, consultants, and third-party technical assistance providers.

(8) Letters of commitment and/or cooperation from institutions, organizations, or service providers who will participate in the proposed project.

C. Grant Amount

The amount of funds requested must not exceed the limits indicated in this announcement. Grant funds may be used for the costs of planning, training, and implementing activities to support attainment of project objectives. Funds shall not be used for the purchase of real property or construction. If renovation is proposed, the cost must be minimal and necessary to the success of the proposed project.

D. Duration of the Project

Grant awards will be for a one year (12 month) budget period. Applications proposing projects which cannot be completed within one year or intended to be on-going must include a plan for continuation which does not contemplate continued funding from Special Tribal Court funds.

Part IV—Review and Award Process

A. Notice of Receipt

The Branch of Judicial Services will notify applicants by mail of the receipt of applications. Prior to award decisions, BIA will not release information relative to an application other than it has been received and it is being reviewed. Each applicant will be notified of the acceptance or rejection of the application.

B. Late Applications

Applications not received by the deadline will not be reviewed or considered for FY 1994 funding. The Branch of Judicial Services will notify each late applicant that its application will not be considered under the FY 1994 grant review competition.

C. Incomplete Applications

Incomplete applications will not be reviewed or rated. The Branch of Judicial Services will notify the applicant that its application will not be considered under the FY 1994 grant review competition. An incomplete application is an application which does not contain the information and documentation listed in Part IV–E, Application Requirements.

D. Multiple Applications

Only one (1) application per tribe, consortium or multi-tribal organization will be considered and reviewed. If multiple applications are received, one will be randomly selected and the remainder returned to the applicant, without review.

If applications are received from a consortium or multi-tribal organization, as well as a member tribe, only the tribal application will be reviewed. The consortium or multi-tribal organization will be notified that an application has been received from one of its members and its application will not be considered under the FY 1994 grant review competition.

E. Application Requirements

In order to be reviewed, each application must meet the following requirements:

(1) The original copy of the application must have an original signature in item 18d on the SF 424, Application for Federal Assistance.

(2) A current tribal resolution or such other written expression as tribal laws or practice require which indicates the support or commitment of the council to the proposed project. Applications from self-governance tribes shall include a current self-governance resolution and a letter from the chief executive officer of the tribe endorsing the proposed project. Applications from consortia and multi-tribal organizations shall include current resolutions from the tribal council of each participating tribe. Applications from regional and national professional organizations shall include a current board of directors' resolution

endorsing the proposed tribal judiciary project.

(3) Each application shall not exceed fifty (50) pages, space and one-half or double-spaced, exclusive of required forms and assurances which are listed below. Applications which are single-spaced will be considered only if it is determined the applicant has not thereby gained a competitive advantage.

(4) The following documents are excluded from the 50 page limitation: A tribal resolution or endorsement or such other written expression as tribal laws or practice require; written assurance of the procedures required in OMB Circular A–128; proof of non-profit status; Standard Forms (SF) 424 and 424B; Certification regarding a Drug-free Workplace, DI–1955 (May 1990); Assurance—Non-construction Programs; and, Certification Regarding Lobbying. All required forms are included at the end of this announcement.

(5) Within the 50 page limitation, the following guidelines are suggested:

(a) Background and summary description (one page);

(b) Program narrative (20–30 pages);

(c) Budget and budget justification (5–10 pages); and,

(d) Applicant's capability statement, including an organization chart and vitae for key project personnel, including consultants and third-party technical assistance providers (5–10 pages).

(6) In addition, applicants are encouraged to include letters endorsing or supporting the proposed project which are specific and/or verify tangible commitments to the project, e.g., staff, facilities, training.

F. BIA Certification

The Area Director, or his designee, will review each application received.

(1) The Area Director, or his designee, shall certify the date each application was received.

(2) If the application was received before the close of business December 17, 1993, the Area Director, or his designee, shall certify: a) the amount of Special Tribal Court funds awarded to the applicant in fiscal years 1991 and 1992;

(b) whether FY 1991 and/or FY 1992 funds were expended as provided in the grant award and final project reports detailing project accomplishments, along with all relevant deliverables and reports have been received by the area office;

(c) whether expenditures and financial reports were in compliance with applicable OMB requirements;

(d) the amount of Special Tribal Court funds awarded to the applicant in FY 1993, the date of the grant award, and whether the project has been completed and project reports submitted in a timely manner;

(e) whether the resources available to the applicant are adequate to carry out the proposed project; and,

(g) whether the impact and cost-benefits of the proposed project warrant a grant award.

(3) The Area Director's certification, along with one (1) photocopy of the application, shall be received by the Branch of Judicial Services, Bureau of Indian Affairs, 1849 C Street, NW., MS–2611–MIB, Washington, DC 20240–4001, before the close of business January 14, 1994.

G. Evaluation Criteria

Applications will be evaluated by a review panel of at least three individuals. Review panels may be composed of Federal personnel working with tribal judiciaries and tribal judges or judicial personnel selected by the area directors. Reviewers will comment on and score applications using the following criteria:

(a) Objectives and Activities of the Proposed Project (20 points).

- Does the application present relevant problem(s) requiring a solution?
- Are the principal and subordinate objectives and activities of the project stated in measurable terms and responsive to the problem(s) presented?
- Does the application include relevant data and a thorough discussion of the current state of knowledge or technology relevant to the proposed project?

(b) Expected Results and/or Benefits (15 points).

- Are the expected project benefits and/or results stated in measurable terms and consistent with the objectives of the project?
- Does the application specify how the expected results will directly and tangibly benefit the judiciary, the community, or a specific population?

(c) Approach (35 points).

- Does the application provide a sound and workable plan of action and specify how the proposed work will be accomplished?
- Are persuasive reasons offered for taking the proposed approach as opposed to other alternatives?
- Does the application explain the methodology for determining if the results and benefits identified are being achieved?
- Does the application include an evaluation component which identifies and discusses appropriate criteria for assessing performance and results of the project?
- Are the types of data, measurement, and indicators to be used for evaluation, as well as the methods and time frame for collecting and analyzing data indicated?
- Does the proposed work/task schedule offer a logical and realistic projection of accomplishments to be achieved?
- Is a time-line chart or its equivalent employed to list project activities in chronological order and show the target dates for the projected accomplishments?
- Has the applicant identified and secured the commitment of each of the key cooperating organizations, groups, and individuals who will work on the project and provided an adequate description of the nature of their effort or contribution?

(d) Resources and Staffing (15 points).

- Are project management, staff, resources and time-commitments adequate to carry out the proposed project effectively and efficiently?
- Is the staff chart consistent with the project plan/program narrative?
- Has the applicant indicated how other available resources such as tribal income, self-determination grants or contracts will be committed to supplement and/or sustain the project?
- Are key staff well qualified for this project? Are consultants and advisers used appropriately? Is the project actually within the control of the applicant or are all activities conducted consultants or third-party technical assistance providers?
- If volunteers will be used, is there adequate supervision and support from project staff?
- Are the authors of the proposal, their relationship with the applicant, and their intended role in the project, if any, identified?

(e) Budget and Budget Justification (15 points).

- Does the budget justification adequately describe the resources necessary to conduct the project?
- Is the budget reasonable in terms of the intended results?

H. Review Panel Volunteers

Tribal judges or judicial personnel wishing to volunteer, on a non-reimbursable basis, to serve as reviewers should submit a letter of interest and vitae to their respective Bureau of Indian Affairs Area Director.

I. Awards

The Assistant Secretary—Indian Affairs or her designee shall select for grant awards those applicants which will in her judgment best promote the purposes for which Special Tribal Court

funds are appropriated. Such selection will be made through a competitive review process in which each application will be scored individually using the review criteria listed above. Reviewers' recommendations will be used by the Assistant Secretary—Indian Affairs or her designee to approve or disapprove all grant applications and make funding recommendations. The funding approved shall be in accordance with the funding levels published under this announcement and shall be based on demonstrated need and the availability of funds.

J. Appeals

Appeals will be governed by 25 C.F.R. Part 2, Appeals from Administrative Actions. Notices of appeal must be submitted within 30 days of receipt of the decision being appealed. It must be signed by the appellant and mailed to the Interior Board of Indian Appeals, 4015 Wilson Boulevard, Arlington, Virginia 22203. The notice of appeal should identify clearly the decision being appealed, as well as the name, address and telephone number of the appellant.

No extension of time will be granted for filing a notice of appeal. The date of filing is the date the notice of appeal is postmarked or the date it is personally delivered to the Interior Board of Indian Appeals.

A photocopy of the notice of appeal must be mailed to the Assistant Secretary—Indian Affairs, Department of the Interior, 18th and C Streets, NW., MS–4140–MIB, Washington, DC 20240, and to the Department of the Interior Bureau of Indian Affairs, Branch of Judicial Services, 1849 C Street, NW., MS–2611–MIB, Washington, DC 20240–4001, as well as each interested party known to the appellant. Notices of appeal submitted to the Interior Board of Indian Appeals must certify that the appellant has mailed copies to the foregoing parties.

Ten percent (10%) of the funds available under this announcement shall be retained to assure funding for any appellant who may successfully appeal a denial. If these funds are not expended for appeals, they will be used to fund approved applicants.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

BILLING CODE 4310-02-P

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1 TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2 DATE SUBMITTED	Applicant Identifier
	3 DATE RECEIVED BY STATE	State Application Identifier
	4 DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A State — H Independent School Dist
B County — I State Controlled Institution of Higher Learning
C Municipal — J Private University
D Township — K Indian Tribe
E Interstate — L Individual
F Intermunicipal — M Profit Organization
G Special District — N Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A Increase Award B Decrease Award C Increase Duration
D Decrease Duration Other (specify):

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ – ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a Applicant	b Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3.	State use only (if applicable).
4	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: — "New" means a new assistance award. — "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. — "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

U.S. Department of the Interior
Certification Regarding Lobbying

This certification is required by Section 1352, title 31, U.S. Code, entitled "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions."

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than r eceral appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature_____ **Date**_____

Instructions for Certification

1. This certification and a disclosure form should be filed by each person as required, with each submission that initiates agency consideration of such person for: (1) award of a Federal contract, grant, or cooperative agreement exceeding $100,000 or (2) an award of a Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding $150,000.

2. This certification and a disclosure form should be filed by each person as required, upon receipt by such person of (1) a Federal contract, grant, or cooperative agreement exceeding $100,000; or (2) a Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding $150,000, unless such person previously filed a certification, and a disclosure form, if required, at the time agency consideration was initiated.

3. Any person who requests or receives from a person referred to in paragraphs (1) and (2) above: (1) a subcontract exceeding $100,000 at any tier under a Federal contract; (2) a subgrant, contract, or subcontract exceeding $100,000 at any tier under a Federal grant; (3) a contract or subcontract exceeding $100,000 at any tier under a Federal loan exceeding $150,000; or, (4) a contract or subcontract exceeding $100,000 at any tier under a Federal cooperative agreement, shall file a certification, and a disclosure form, as required, to the next tier above.

4. All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the person referred to in paragraphs (1) or (2) above. That person shall forward all disclosure forms to the appropriate Bureau/Office within the Department of the Interior.

5. Any certification or disclosure form filed under paragraph (4) above shall be treated as a material representation of fact upon which all receiving tiers shall rely. All liability arising from an erroneous representation shall be borne solely by the tier filing that representation and shall not be shared by any tier to which the erroneous representation is forwarded. Submitting an erroneous certification or disclosure constitutes a failure to file the required certification or disclosure, respectively. If a person fails to file a required certification or disclosure, the United States may pursue all available remedies, including those authorized by Section 1352, title 31, U.S. Code.

U.S. Department of the Interior

Certification Regarding Drug-Free Workplace Requirements

This certification is required by the regulations implementing the drug-free workplace requirements for Federal grant recipients under the Drug-Free Workplace Act of 1988 (43 CFR Part 12, Subpart D). A copy of the regulation is available from the issuing office.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

Alternate I. (Grantees Other Than Individuals)

A. The grantee certifies that it will or continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about --

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will --

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d) (2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted --

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check _____ if there are workplaces on file that are not identified here.

Name and Title of Authorized Representative

Signature_____ Date_____

DI-1954
May 1990

Instructions for Certification

1. By signing and/or submitting this application or grant agreement, the grantee is providing the Certification Regarding Drug-Free Workplace Requirements.

2. This certification is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternate I applies.

4. For grantees who are individuals, Alternate II applies.

5. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

6. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

7. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph five).

8. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including (i) all "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

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federal register

Thursday
October 14, 1993

Part VIII

Department of Education
Department of Labor

Cooperative Demonstration—School-to-Work Opportunities Implementation Grant; Notice

DEPARTMENT OF EDUCATION

DEPARTMENT OF LABOR

Cooperative Demonstration—School-to-Work Opportunities Implementation Grants

AGENCIES: Department of Education and Department of Labor.

ACTION: Notice of proposed priority and proposed selection criteria for fiscal year 1994.

SUMMARY: The Secretaries of Education and Labor propose an absolute priority for awards to be made in fiscal year 1994 to enable States to implement plans for statewide School-to-Work Opportunities systems. These systems would offer young Americans access to education and training programs designed to prepare them for a first job in high-skill, high-wage careers, and to increase their opportunities for further education. The Secretaries also propose selection criteria that will be applied in evaluating applications submitted for this competition.

DATES: Comments must be received on or before November 15, 1993.

ADDRESSES: Comments should be addressed to Marian Banfield, U.S. Department of Education, 400 Maryland Avenue, SW., room 4512, Switzer Building, Washington, DC 20202–7327.

FOR FURTHER INFORMATION CONTACT: Marian Banfield, U.S. Department of Education. Telephone: (202) 205–8838. Or Janet Moore, U.S. Department of Labor. Telephone (202) 219–5281. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

The Departments of Education and Labor have entered into a partnership to establish a national framework within which all States can create statewide School-to-Work Opportunities systems. These systems will help our youth acquire the knowledge, skills, abilities, and labor market information they need to make a smooth and effective transition from school to career-oriented work or to further education or training.

Currently, three-fourths of America's high school students enter the workforce without baccalaureate degrees. Many of them do not possess the basic academic and entry-level occupational skills necessary to succeed in the changing workplace. Unemployment among American youth is intolerably high, and earnings of high school graduates have been falling relative to those with more education. In addition, the American workplace is changing in response to heightened international competition and new technologies, and these forces, which are ultimately beneficial to the Nation, are shrinking the demand for and undermining the earning power of unskilled labor. The School-to-Work Opportunities initiative is the result of a broad-based and growing interest in creating a school-to-work transition system in which young Americans choose and navigate a path to productive and progressively more rewarding roles in the workplace.

Under the School-to-Work Opportunities initiative and the fiscal year 1994 Cooperative Demonstration Program competition, Federal funds will be used as "venture capital" to stimulate State and local creativity in establishing statewide School-to-Work Opportunities systems. To achieve this systemic reform, States may choose to build on and enrich current promising programs such as tech-prep education, career academies, school-to-apprenticeship, cooperative education, youth apprenticeship, and business-education compacts, that can be developed into programs under a School-to-Work Opportunities system. Through the formation of local education and training systems among secondary and postsecondary educational institutions, private and public employers, labor organizations, government, community groups, parents, and other key groups, communities will take ownership and responsibility for giving American youth access to skills and employment opportunities that will launch them on paths leading to high-skill, high-wage careers. Together, States and localities will take the lead in determining goals and priorities, developing new strategies, and measuring progress.

The Federal role in the School-to-Work Opportunities initiative is important, but limited to the establishment of broad national criteria and a framework within which States create School-to-Work Opportunities systems. The Federal role is to (a) invest in State and local initiatives by providing seed capital; (b) help States and localities learn from each other and from the experience of our international competitors; and (c) build a knowledge base of effective school-to-work models.

Grant Program Schedule

The School-to-Work Opportunities initiative will proceed on two funding tracks—(1) during fiscal year 1994, the initiative will be funded under current legislative authority in the Job Training Partnership Act and the Carl D. Perkins Vocational and Applied Technology Education Act (Perkins Act); and (2) for fiscal years 1995 through 2002, the Departments plan to fund the initiative under the proposed "School-to-Work Opportunities Act of 1993," which was introduced in Congress August 5, 1993 as H.R. 2884 and S.1361. The funds will be made available through a grants program. The Department of Education and the Department of Labor will jointly design and provide for the administration of the grants program, that consists in a large part of—

(a) Development Grants, awarded to each State for developing a statewide School-to-Work Opportunities plan; and

(b) Implementation Grants, as proposed in this notice, awarded competitively to States that can demonstrate substantial ability to begin full-scale operations and implement the statewide plan.

The efforts that take place under both current authority and the proposed legislation are built on a phased-in approach that allows States to "come on line" at different points in time, depending on each State's readiness to undertake broad-scale change and on the availability of funds. Development Grants financed from funds requested by the Department of Labor under the Job Training Partnership Act will be awarded to States from October to December 1993 to permit them to begin or enhance planning and developmental efforts to create comprehensive statewide School-to-Work Opportunities systems.

Each Development Grant discussed above will be awarded for a nine-month period. The Secretaries may make additional Development Grants available subsequent to that period to States that do not receive an Implementation Grant, if those States can demonstrate substantial progress towards developing a comprehensive statewide School-to-Work Opportunities plan and if those States can demonstrate that Federal funds will be used effectively.

Implementation Grants Competition

In this notice, the Secretaries propose to reserve funds appropriated under the Perkins Act only for grants to States to implement statewide School-to-Work Opportunities systems based on State plans. The Secretaries propose selection criteria to be applied in evaluating applications submitted under the fiscal year 1994 Cooperative Demonstration Program. The Secretaries propose to

limit eligibility for implementation grants to States because the Secretaries have concluded that the purposes of 34 CFR 426.4(b)(2) for this competition can best be achieved by awarding grants only to State level applicants. Implementation Grants will be funded for up to a five-year period.

Under this proposed priority, grantees would be required to fund local partnerships in carrying out activities under the School-to-Work Opportunities program. The Secretaries intend grantees to fund local partnerships by any means authorized by applicable Federal law, as appropriate. Although under currently applicable Federal law grantees are not authorized to support partnerships by means of subgrants of Federal funds awarded under this competition, the Secretaries anticipate that with the enactment of the fiscal year 1994 appropriation for the Cooperative Demonstration Program, grantees will be authorized to award subgrants to partnerships.

The Secretaries will announce the final absolute priority and the final selection criteria for this competition, as well as whether or not grantees will be authorized to fund local partnerships by means of subgrants, in a notice in the **Federal Register**. The final priority and the final selection criteria will be determined by responses to this notice and other considerations of the Departments. The publication of this proposed priority does not preclude the Secretaries from proposing additional priorities, nor does it limit the Secretary of Education to funding only under this priority, subject to applicable rulemaking requirements.

Note: This notice of proposed priority and proposed selection criteria does *not* solicit applications. A notice inviting applications under this competition will be published in the **Federal Register** concurrent with, or following, publication of the notice of final priority and final selection criteria.

Definitions

As used in this notice—

"*Elements of an industry*" means, with respect to a particular industry that a student is preparing to enter, such elements as planning, management, finances, technical and production skills, underlying principles of technology, labor and community issues, health and safety, and environmental issues related to that industry;

"*All students*" means students from the broad range of backgrounds and circumstances, including disadvantaged students, students of diverse racial, ethnic, and cultural backgrounds, students with disabilities, students with limited English proficiency, and academically talented students;

"*Career major*" means a coherent sequence of courses or field of study that prepares a student for a first job and that—

(a) Integrates occupational and academic learning, integrates work-based and school-based learning, and establishes linkages between secondary and postsecondary education;

(b) Prepares the student for employment in broad occupational clusters or industry sectors;

(c) Typically includes at least two years of secondary school and one or two years of postsecondary education;

(d) Results in the award of a high school diploma, a certificate or diploma recognizing successful completion of one or two years of postsecondary education (if appropriate), and a skill certificate; and

(e) May lead to further training, such as entry into a registered apprenticeship program;

"*Partnership*" means a local entity that is responsible for local School-to-Work Opportunities programs and that consists of employers, public secondary and postsecondary educational institutions or agencies, and labor organizations or employee representatives as defined in section 403(c)(1)(B) of the Goals 2000: Educate America Act, and may include other entities, such as non-profit or community-based organizations, rehabilitation agencies and organizations, registered apprenticeship agencies, local vocational education entities, local government agencies, parent organizations and teacher organizations, private industry councils established under the Job Training Partnership Act, and Federally recognized Indian tribes and Alaska Native villages;

"*Skill certificate*" means a portable, industry-recognized credential issued by a School-to-Work Opportunities program under an approved plan, that certifies that a student has mastered skills at levels that are at least as challenging as skill standards envisioned in the proposed Goals 2000: Educate America Act, except that until such skill standards are developed under the Act, the term "skill certificate" means a credential issued under a process described in a State's approved plan; and

"*Workplace mentor*" means an employee at the workplace who possesses the skills to be mastered by a student, and who instructs the student, critiques the student's performance, challenges the student to perform well, and works in consultation with classroom teachers and the employer.

Priority

Implementation of Comprehensive Statewide School-to-Work Opportunities Plans

Under 34 CFR 75.105(c)(3), the Secretaries of the Departments of Education and Labor propose to give an absolute preference to applications that—

(a) Are submitted by States; and

(b) Propose to implement statewide School-to-Work Opportunities plans that are included in the applications and that—

(1) Designate the geographical areas to be served by partnerships, which shall, to the extent feasible, reflect local labor market areas;

(2) Describe the procedure by which the Governor; the chief State school officer; the State agency officials responsible for job training and employment, economic development and postsecondary education; and other appropriate officials, will collaborate in the implementation of the State School-to-Work Opportunities system;

(3) Describe the procedure for obtaining the active and continued involvement in the statewide School-to-Work Opportunities system of employers and other interested parties such as locally elected officials, secondary and postsecondary educational institutions or agencies, business associations, employees, labor organizations or associations thereof, teachers, students, parents, community-based organizations, rehabilitation agencies and organizations, registered apprenticeship agencies, and local vocational educational agencies;

(4) Describe how the State's School-to-Work Opportunities system will coordinate the use of education and training funds from State and private sources with funds available from such related Federal programs as the Adult Education Act (20 U.S.C. 1201 *et seq.*), the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2301 *et seq.*), the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2701 *et seq.*), the Family Support Act of 1988 (42 U.S.C. 602 note, 606 note), the proposed Goals 2000: Educate America Act, the Individuals with Disabilities Education Act (20 U.S.C. 1400 *et seq.*), the Job Training Partnership Act (29 U.S.C. 1501 *et seq.*), the National Apprenticeship Act (29 U.S.C. 50 *et seq.*), and the Rehabilitation Act of 1973 (29 U.S.C. 701 *et seq.*);

(5) Describe the resources, including private sector resources, the State

intends to employ in maintaining the State's School-to-Work Opportunities system when Federal School-to-Work Opportunities funds are no longer available;

(6) Describe how the State will ensure opportunities for all students to participate in School-to-Work Opportunities programs;

(7) Describe how the State will ensure opportunities for young women to participate in School-to-Work Opportunities programs in a manner that leads to employment in high-performance, high-paying jobs, including jobs in which women traditionally have been under-represented;

(8) Describe how the State will ensure opportunities for low achieving students, students with disabilities, and former students who have dropped out of school to participate in School-to-Work Opportunities programs;

(9) Describe the State's process for assessing the skills and knowledge required in career majors, and awarding skill certificates that take into account the work of the proposed National Skill Standards Board and the criteria established under the proposed Goals 2000: Educate America Act;

(10) Describe the performance standards that the State intends to meet;

(11) Designate a fiscal agent to receive and be accountable for School-to-Work Opportunities funds awarded under the program; and

(12) Describe how the State will stimulate and support local School-to-Work Opportunities programs that meet the requirements of this notice and how the State's system will be expanded over time to cover all geographic areas in the State.

General Program Requirements

A School-to-Work Opportunities program under this proposed priority must include the following common features and basic program components:

(a) The basis of the School-to-Work Opportunities system is—

(1) The integration of work-based learning and school-based learning;

(2) The integration of occupational and academic learning; and

(3) The linking of secondary and postsecondary education.

(b) School-to-Work Opportunities programs will result in students attaining—

(1) A high school diploma;

(2) A certificate or diploma recognizing successful completion of one or two years of postsecondary education, if appropriate; and

(3) A skill certificate.

(c) School-to-Work Opportunities programs must incorporate three basic program components:

(1) *Work-Based Learning*, that includes—

- A planned program of job training and experiences, including skills to be mastered at progressively higher levels, that are relevant to a student's career major and lead to the award of a skill certificate;
- Paid work experience;
- Workplace mentoring;
- Instruction in general workplace competencies; and
- Broad instruction in a variety of elements of an industry.
- (2) *School-Based Learning*, that includes—
- Career exploration and counseling in order to help students who may be interested to identify, and select or reconsider, their interests, goals, and career majors;
- Initial selection by interested students of a career major not later than the beginning of the 11th grade;
- A program of study designed to meet the same challenging academic standards developed by States for all students such as those envisioned in the proposed Goals 2000: Educate America Act, and to meet the requirements necessary for a student to earn a skill certificate; and
- Regularly scheduled evaluations to identify academic strengths and weaknesses of students and the need for additional learning opportunities to master core academic skills.
- (3) *Connecting Activities*, that include:
- Matching students with employers' work-based learning opportunities;
- Serving as a liaison among the employer, school, teacher, parent, and student;
- Providing technical assistance and services to employers and others in designing work-based learning components and counseling and case management services, and in training teachers, workplace mentors, and counselors;
- Providing assistance to students who have completed the program in finding an appropriate job, continuing their education, or entering into an additional training program;
- Collecting and analyzing information regarding post-program outcomes of students who participate in the School-to-Work Opportunities program; and
- Linking youth development activities under the School-to-Work Opportunities program with employer strategies for upgrading the skills of their workers.

Examples of Statewide Activities

Funds awarded under this program shall be expended by the grantee only for activities undertaken to implement the State's School-to-Work Opportunities system, which may include—

(a) Recruiting and providing assistance to employers to provide work-based learning for students;

(b) Conducting outreach activities to promote and support collaboration in School-to-Work Opportunities programs by businesses, labor organizations, and other organizations;

(c) Providing training for teachers, employers, workplace mentors, counselors, and others;

(d) Providing labor market information to local partnerships that is useful in determining which high-skill, high-wage occupations are in demand;

(e) Designing or adapting model curricula that can be used to integrate academic and vocational learning, school-based and work-based learning, and secondary and postsecondary education;

(f) Designing or adapting model work-based learning programs and identifying best practices; and

(g) Conducting outreach activities and providing technical assistance to other States that are developing or implementing School-to-Work Opportunities systems.

Allocation of Funds to Local Partnerships

A grantee under this proposed priority must fund local partnerships in carrying out activities under the School-to-Work Opportunities program, according to criteria established by the grantee. The grantee's funding shall total no less than 65 percent of the sums awarded to it in the first year, 75 percent of such sums in the second year, and 85 percent of such sums in each year thereafter.

A partnership that seeks support in carrying out a local School-to-Work Opportunities program shall submit an application to the recipient of the School-to-Work Implementation grant that—

(a) Describes how the local program would include the basic School-to-Work Opportunities program components and otherwise meet the requirements of this notice;

(b) Sets forth measurable program goals and outcomes;

(c) Describes the local strategies and timetables to provide School-to-Work Opportunities program opportunities for all students; and

(d) Provides such other information as the statewide grantee may require.

Examples of Activities for Local Partnerships

Funds under this program that are used to support partnerships shall be expended only for activities undertaken to carry out School-to-Work programs as defined in this notice, and such activities may include—

(a) Recruiting and providing assistance to employers to provide the work-based learning components in the School-to-Work Opportunities program;

(b) Establishing consortia of employers to support the School-to-Work Opportunities program and provide access to jobs related to students' career majors;

(c) Supporting or establishing intermediaries to perform the connecting activities described above in paragraph (c)(3) under General Program Requirements and to provide assistance to students in obtaining jobs and further education and training;

(d) Designing or adapting school curricula that can be used to integrate academic and vocational learning, school-based and work-based learning, and secondary and postsecondary education;

(e) Providing training to work-based and school-based staff on new curricula, student assessments, student guidance, and feedback to the school regarding student performance;

(f) Establishing in schools participating in a School-to-Work Opportunities program a graduation assistance program to assist at-risk and low-achieving students in graduating from high school, enrolling in postsecondary education or training, and finding or advancing in jobs;

(g) Conducting or obtaining an in-depth analysis of the local labor market and the generic and specific skill needs of employers to identify high-demand, high-wage careers to target; .

(h) Integrating work-based and school-based learning into existing job training programs for youth who have dropped out of school;

(i) Establishing or expanding school-to-apprenticeship programs in cooperation with registered apprenticeship agencies and apprenticeship sponsors; and

(j) Assisting participating employers, including small- and medium-size businesses, to identify and train workplace mentors and to develop work-based learning components.

Safeguards

The Secretaries propose to apply the following safeguards to School-to-Work Opportunities programs funded under this proposed priority:

(a) No student shall displace any currently employed worker (including a partial displacement, such as a reduction in the hours of non-overtime work, wages, or employment benefits).

(b) No School-to-Work Opportunities program shall impair existing contracts for services or collective bargaining agreements, except that no program under this proposed priority that would be inconsistent with the terms of a collective bargaining agreement shall be undertaken without the written concurrence of the labor organization and employer concerned.

(c) No student shall be employed or job opening filled—

(1) When any other individual is on temporary layoff from the participating employer, with the clear possibility of recall, from the same or any substantially equivalent job; or

(2) When the employer has terminated the employment of any regular employee or otherwise reduced its workforce with the intention of filling the vacancy so created with a student.

(d) Students shall be provided with adequate and safe equipment and a safe and healthful workplace in conformity with all health and safety standards of Federal, State, and local law.

(e) Nothing in this proposed priority shall be construed so as to modify or affect any Federal or State law prohibiting discrimination on the basis of race, religion, color, ethnicity, national origin, gender, age, or disability.

(f) Funds awarded under this proposed priority shall not be expended for wages of students.

(g) The grantee shall implement and maintain such other safeguards as the Secretaries may deem appropriate in order to ensure that School-to-Work Opportunities participants are afforded adequate supervision by skilled adult workers, or, otherwise, to further the purposes of this program.

Applicants must provide assurances, in the application, that the foregoing safeguards will be implemented and maintained throughout all program activities.

Selection Criteria for Evaluating Applications

Under the School-to-Work Opportunities Implementation Grant competition, the Secretaries propose to use the following selection criteria in evaluating applications. The Secretaries will evaluate applications using a two phase review process. In the first phase of the review process, the Secretaries will use peer reviewers to evaluate applications using the proposed selection criteria and the associated point values. In the second phase, review teams will visit high ranking States to gain further information and further assess State plans. The second phase review teams will use the criteria, but not necessarily the associated point values, in their information gathering and assessment activities. Final funding decisions made by the Secretaries will be based on information gained during the site visits, the ranking of applications during the first phase review, and such other factors as geographic balance and diversity of program approaches.

(a) *Comprehensive Statewide System.* (25 points) Is the School-to-Work Opportunities plan described in the application likely to produce systemic statewide change that will have substantial impact on the preparation of youth for a first job in a high-skill, high-wage career and in increasing their opportunities for further education? Does the plan provide information reflecting the needs of each local labor market area in the designated geographic areas of the State? Does the State propose a feasible plan for expanding the system so that students in all parts of the State will have an opportunity to participate in School-to-Work Opportunities programs within a reasonable period of time? Is the process for assessing skills and issuing skill certificates likely to lead to portable credentials for students and is the process adequately bench marked to high standards such as those envisioned in the proposed Goals 2000: Educate America Act? Has the State described State and local performance standards that should lead to statewide systemic reform of secondary education?

(b) *Collaboration and Involvement of Key Partners.* (25 points)

(1) *State collaboration:* Is there a vision for implementing a statewide School-to-Work Opportunities system that is shared by the Governor; the chief State school officer; the State agency officials responsible for job training and employment, economic development, and postsecondary education; and other appropriate officials? Does the plan substantially demonstrate sufficient commitment and specific involvement of these partners in the statewide implementation? Are the proposed activities appropriate to the partners and likely to produce the desired changes in the way students are prepared for the future? Is there evidence that the State partners have the capacity to support the statewide implementation?

(2) *Involvement by key parties:* Does the State plan include an effective and convincing strategy for obtaining the

active and continued involvement of employers and other interested parties such as locally elected officials, secondary and postsecondary educational institutions or agencies, business associations, employees, labor organizations or associations thereof, teachers, students, parents, community-based organizations, rehabilitation agencies and organizations, registered apprenticeship agencies, and local vocational educational agencies in the implementation of statewide systems? Does the strategy recognize the interests of the key parties and utilize their strengths appropriately?

(c) *Resources.* (10 points) Is the plan for a comprehensive statewide School-to-Work Opportunities system supported by resources adequate to implement the plan? Does the plan effectively integrate State and private education and training resources with other Federal education and training resources? Is there an effective long-term plan for maintaining the School-to-Work Opportunities system with resources other than Federal School-to-Work Opportunities funds?

(d) *Student Participation.* (15 points) Does the plan propose realistic strategies and programs to ensure that "all students," including young women, minorities, low-achieving students, students with disabilities, and former students who have dropped out have the opportunity to participate in School-to-Work Opportunities programs? Does the strategy recognize barriers to their participation and propose effective ways of overcoming them so that these students are prepared for high-skill, high-wage jobs—including, for young women and minorities, jobs in which they have traditionally been under-represented?

(e) *Local Programs.* (15 points) Does the plan include an effective strategy for supporting local School-to-Work Opportunities programs that integrate occupational and academic learning, integrate work-based and school-based learning, establish linkages between secondary and postsecondary education, include components for work-based learning, school-based learning and connecting activities, and result in the award of a high school diploma, a certificate or diploma recognizing successful completion of one or two years of postsecondary education (if appropriate), and a skill certificate? Have promising existing programs been considered for adaptation? What new directions and approaches are planned to ensure that these programs meet the proposed priority? Does the plan show evidence that local School-to-Work Opportunities programs throughout the State, including those that have been funded by the Department of Education or the Department of Labor, are an effective part of a statewide School-to-Work Opportunities system?

(f) *Management Plan.* (10 points) Does the entity submitting the application on behalf of the State have the capacity to manage the implementation of a comprehensive statewide School-to-Work Opportunities system? Does the State's management plan anticipate barriers to statewide implementation and include a system for addressing them as they arise? Does the management plan include methods to improve or redesign the implementation system based on program outcomes, for example, through an evaluation plan? How will the State's performance standards apply to local partnerships and how will the standards be used to evaluate and improve their outcomes? Are key personnel under the plan qualified to perform the required activities, particularly to maintain the essential partnerships at the State level in a manner sufficient to implement the plan? Will Federal funds under the School-to-Work Opportunities Program grant be used to support partnerships that seek to carry out local School-to-Work Opportunities programs?

Other Factors

In addition to considering the factor of geographic distribution authorized under 34 CFR 426.25, prior to making final funding decisions, the Secretaries also propose to consider as a factor the diversity of approaches to school-to-work opportunities proposed by each applicant.

Paperwork Reduction Act of 1980

This proposed priority contains information collection requirements. As required by the Paperwork Reduction Act of 1980, the Departments of Education and Labor will submit a copy of the proposed priority and proposed selection criteria to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h))

This proposed priority and proposed selection criteria would primarily affect the following types of entities eligible to apply for a grant under this program: State and local educational agencies. The Departments of Education and Labor need and will use the information solicited under the proposed priority and proposed selection criteria to enable the Secretaries to determine which applicants would most likely implement successful comprehensive School-to-Work Opportunities systems.

Annual public reporting and recordkeeping burden for this collection of information is estimated to average 100 hours per response for 52 State respondents and 100 hours per response for 468 local respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, room 3002, New Executive Office Building, Washington, DC 20503; Attention: Daniel J. Chenok.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Departments' specific plans and actions for this competition.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding this proposed absolute priority and these proposed selection criteria.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in room 4050, Switzer Building, 330 C Street, SW, Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week, except Federal holidays.

Applicable Program Regulations: 34 CFR part 426, and the Education Department General Administrative Regulations in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86.

Program Authority: 20 U.S.C. 2420a.

(Catalog of Federal Domestic Assistance Number 84.199–H Cooperative Demonstration Program)

Dated: October 5, 1993.

Richard W. Riley,

Secretary of Education.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 93–25147 Filed 10–13–93; 8:45 am]

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Reader Aids

Federal Register

Vol. 58, No. 197

Thursday, October 14, 1993

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202–523–5227
Public inspection desk	523–5215
Corrections to published documents	523–5237
Document drafting information	523–3187
Machine readable documents	523–3447

Code of Federal Regulations

Index, finding aids & general information	523–5227
Printing schedules	523–3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523–6641
Additional information	523–5230

Presidential Documents

Executive orders and proclamations	523–5230
Public Papers of the Presidents	523–5230
Weekly Compilation of Presidential Documents	523–5230

The United States Government Manual

General information	523–5230

Other Services

Data base and machine readable specifications	523–3447
Guide to Record Retention Requirements	523–3187
Legal staff	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (PLUS)	523–6641
TDD for the hearing impaired	523–5229

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FEDERAL REGISTER PAGES AND DATES, OCTOBER

51211–51664.....1
51665–51756.....4
51757–51972.....5
51973–52206.....6
52207–52396.....7
52397–52628.....8
52629–52874.....12
52675–53096.....13
-53392.....14

CFR PARTS AFFECTED DURING OCTOBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6598.....51559
6599.....51561
6600.....51721
6601.....51723
6602.....52205
6603.....52387
6604.....52389
6605.....52627
6606.....52875
6607.....53097
6608.....53099
6609.....53101
6610.....53103

Presidential Determinations:
No. 93–39 of September 17, 1993.....51973
No. 93–40 of September 28, 1993.....51975
No. 93–41 of September 29, 1993.....51977
No. 93–42 of September 30, 1993.....52629
No. 93–43 of September 30, 1993.....52207
No. 93–44 of September 30, 1993.....52209
No. 93–45 of September 30, 1993.....52211
No. 94–1 of October 1, 1993.....52213

Executive Orders:
3406 (Revoked in part by PLO 7001).....52683
5327 (Revoked in part by PLO 7002).....52684
11145 (Continued by EO 12869).....51751
11183 (Continued by EO 12869).....51751
11287 (Continued by EO 12869).....51751
11776 (Continued by EO 12869).....51751
12002 (See EO 12867).....51747
12131 (Continued by EO 12869).....51751
12197 (Continued by EO 12869).....51751
12214 (See EO 12867).....51747
12216 (Continued by EO 12869).....51751
12291 (Revoked by EO 12866).....51735
12345 (Continued by EO 12869).....51751
12367 (Continued by EO 12869).....51751
12382 (Continued by EO 12869).....51751
12498 (Revoked by EO 12866).....51735
12675 (Revoked in part EO 12869).....51751
12687 (Revoked by EO 12869).....51751
12696 (Revoked by EO 12869).....51751
12700 (See EO 12869).....51751
12720 (Revoked by EO 12869).....51751
12730 (See EOs 12867, 12868).....51747, 51749
12735 (Revoked by EO 12867; See EO 12868).....51747, 51749
12774 (Superseded by EO 12869).....51751
12775 (See notice of September 30).....51563
12779 (See notice of September 30).....51563
12792 (Revoked by EO 12869).....51751
12813 (Revoked by EO 12869).....51751
12853 (See notice of September 30).....51563
12866.....51735
12867.....51747
12868.....51749
12869.....51751
12870.....51753
12871.....52201

Administrative Orders:
Memorandums:
August 19, 1993.....52397
September 30, 1993.....52391
October 1, 1993.....52393

Notices:
September 30, 1993.....51563

5 CFR

Ch. XLI.....52637
294.....52877
532.....51211
591.....51565
831.....52877
838.....52877
842.....52877
890.....52877
2429.....53105

2471.....53105
2472.....53105
Proposed Rules:
2502.....51255
2504.....51256

7 CFR

2.....51211
301.....53105
246.....51566
300.....52399
301.....51979, 51982
400.....53109
906.....52400, 53111
907.....53112, 53114
908.....53112, 53114
910.....52401
928.....53117
931.....53119
967.....52402
1002.....51982
1004.....52404, 52405
1205.....52215
1211.....51568
1427.....51982
1477.....51757
1478.....51757
1744.....52639
1900.....52644
1910.....52644
1951.....52644
1955.....52644
1972.....52644
1975.....52644
Proposed Rules:
400.....53150
1413.....51934, 52686, 52928
1703.....52688
3408.....53153

9 CFR

201.....52884
203.....52884
317.....52856
381.....52856
Proposed Rules:
82.....52240
317.....51581
318.....51581

10 CFR

19.....52406
30.....52406
40.....52406
50.....52406
60.....52406
61.....52406
70.....52406
72.....51762, 52406
150.....52406
Proposed Rules:
21.....53159
73.....52035

11 CFR

Proposed Rules:
100.....52040
107.....52700
113.....52040
114.....52700
9008.....52700

12 CFR

574.....52140
611.....52888
613.....52888
614.....52888
618.....51993
620.....52888
621.....52888
627.....52888
933.....52808
Proposed Rules:
3.....52808
208.....52808
325.....52808
615.....52701
650.....53161

13 CFR

101.....53120
121.....52415
Proposed Rules:
121.....52452, 52929

14 CFR

39.....53120
23.....51970
39.....51212, 51215, 51770, 51771, 52220, 52889
71.....51773, 52140, 52808, 53122, 53123
73.....52890
91.....51976, 52140
97.....51774, 51776
Proposed Rules:
23.....52702
39.....51583, 51585, 51587, 51589, 51793, 52041, 52240, 52243, 52714, 52717, 52929, 52931, 52932
71.....51256, 51257, 53164, 53166, 53167
91.....51938
121.....51938, 51944
125.....51938
129.....51944
135.....51938, 51944

15 CFR

773.....52166, 52168
778.....52166
799.....52166, 52169
806.....53124

17 CFR

140.....52656
200.....52416, 52891
203.....52416
240.....52416, 52891
250.....51488
259.....51488
Proposed Rules:
240.....52934
250.....51508

18 CFR

35.....51217, 51777
38.....51777
284.....52660
141.....52420
292.....51777
293.....51777
375.....51222
382.....51777
Proposed Rules:
35.....51259

19 CFR

Proposed Rules:
7.....52246
10.....52246
148.....52246

20 CFR

404.....52346
416.....52346, 52909
422.....52914
Proposed Rules:
416.....52458, 52464, 52943
655.....52152

21 CFR

172.....52221
176.....51994
522.....52222
821.....52440
864.....51570
Proposed Rules:
5.....52719
25.....52719
101.....53254, 53296
103.....52042
136.....53305
137.....53305
139.....53305
170.....52719
171.....52719
172.....53312
174.....52719
812.....52142, 52144, 53245
813.....52142
814.....52729
1301.....52246
1311.....52246

23 CFR

650.....52663
Proposed Rules:
660.....51794

24 CFR

511.....52566
888.....51410
905.....51952
965.....51952
Proposed Rules:
92.....52560
135.....52534
219.....52560
570.....52560
572.....52560
574.....52560
576.....52560
583.....52560
700.....52560
889.....52560
890.....52560
905.....51261, 52560
961.....52560
963.....52560
990.....51261

25 CFR

Proposed Rules:
294.....53026

26 CFR

1.....51571, 53125
602.....51571
Proposed Rules:
1.....53168

27 CFR

Proposed Rules:
24.....52222

28 CFR

2.....51779
11.....51223
51.....51225

29 CFR

Proposed Rules:
507.....52152
1609.....51266

30 CFR

917.....51225
946.....52666
950.....52232
Proposed Rules:
250.....52731
253.....52059
256.....52731
280.....52731
281.....52731
700.....52374
701.....52374
705.....52374
706.....52374
715.....52374
716.....52374
785.....52374
825.....52374
870.....52374

31 CFR

Proposed Rules:
103.....51269

32 CFR

40.....51780
80.....51996
86.....52010
185.....52667
199.....51227
706.....51241

33 CFR

2.....51726
3.....51726
100.....51242, 52440
117.....52441
165.....51243, 52442
175.....51576
181.....51576
Proposed Rules:
117.....52466
126.....51906
127.....51906
187.....51920

34 CFR

642.....51518
645.....51518
646.....51518
668.....52194
674.....52194
675.....52194
676.....52194
682.....52194
690.....52194
Proposed Rules:
370.....52414
386.....52606
668.....51712

38 CFR

3.....52017
4.....52017
21.....51780, 51781

Proposed Rules:
3.....51798
17.....51799

40 CFR

52.....52237
61.....51784
300.....52018
258.....51536, 53136
271.....51244
272.....52674, 52677, 52679
372.....51785
721.....51672, 51694
Proposed Rules:
122.....53168
123.....53168
131.....53168
132.....53168
52.....51591, 51593, 52467
89.....51595

41 CFR

101–17.....52917
302–6.....53137

42 CFR

435.....51408
436.....51408
440.....51408
Proposed Rules:
440.....51288
441.....51288

43 CFR

37.....51550
Proposed Rules:
4700.....51297
Public Land Orders:
4522 (Revoked in part by PLO 7002).....52684
6998.....52238
6999.....52238
7000.....52682
7001.....52683
7002.....52684

44 CFR

64.....51576, 52019
Proposed Rules:
67.....51598

45 CFR

1602.....52918

46 CFR

160.....51576
Proposed Rules:
10.....51408
12.....51408
30.....52598
31.....52598
32.....52598
67.....51298
585.....52248

47 CFR

1.....51246
15.....51247
73.....51250, 51578, 51579,
90.....53245
97.....53138
51787
74.....51250
87.....52021
90.....51251
Proposed Rules:
15.....51299
22.....53169
25.....53169
36.....52254
73.....51603,
51799, 52733, 52734, 52735
74.....52256
80.....53169
87.....53169
90.....51299, 53169
95.....53169
99.....53169

48 CFR

501.....52442
503.....52442
507.....52442
508.....52442
509.....52442
511.....52442
514.....52442
515.....52442
519.....52442
522.....52442
525.....52442
528.....52442
529.....52442
532.....52442
536.....52442
542.....52442
543.....52442
552.....52442
570.....52442
1816.....52446
1833.....53138
1852.....52446

49 CFR

107.....51524
171.....51524
172.....51524
173.....51524
174.....51524
175.....51524
176.....51524
177.....51524
178.....51524
179.....51524
180.....51524
571.....51788, 52021, 52922
604.....52684
1002.....52027
1017.....52027
1018.....52027
1312.....52027
1313.....52027
1314.....52027
Proposed Rules:
23.....52050
37.....52735
172.....52574
173.....52574
179.....52574
390.....51800
1063.....51603
1105.....51800
1121.....51800
1152.....51800

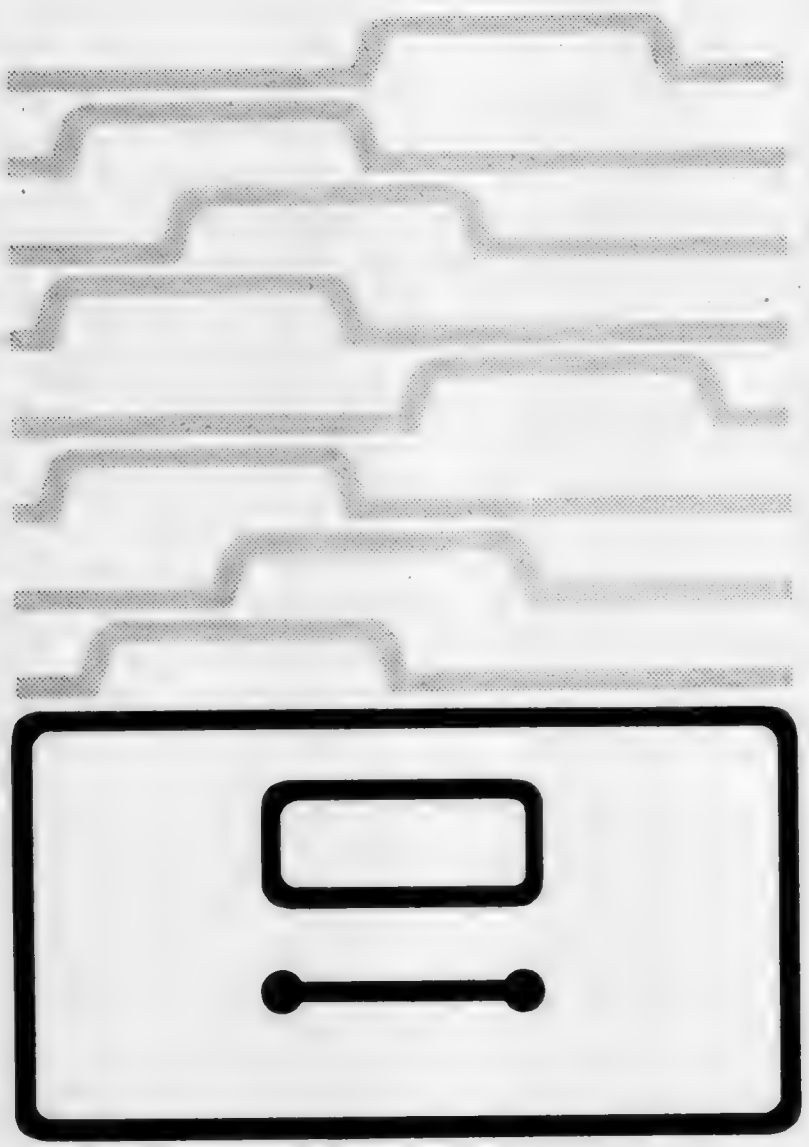
50 CFR

17.....52027, 52031
227.....53138
229.....51788
301.....51253
625.....52685
661.....53143
642.....51579, 51789
663.....52031
669.....53145
672.....51791, 52032, 53138, 53148
675.....51253, 52033, 52451, 53138, 53148
Proposed Rules:
215.....53320
216.....53320
17.....51302, 51604, 52058, 52059, 52063, 52740
222.....53220
52.....51270, 51279
622.....53172
625.....53172
628.....53172
641.....52063, 52073, 52474
646.....53183
649.....53172
650.....53172
651.....52073, 53172
652.....53172
655.....53172

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List October 12, 1993



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in the Code of Federal Regulations (CFR)

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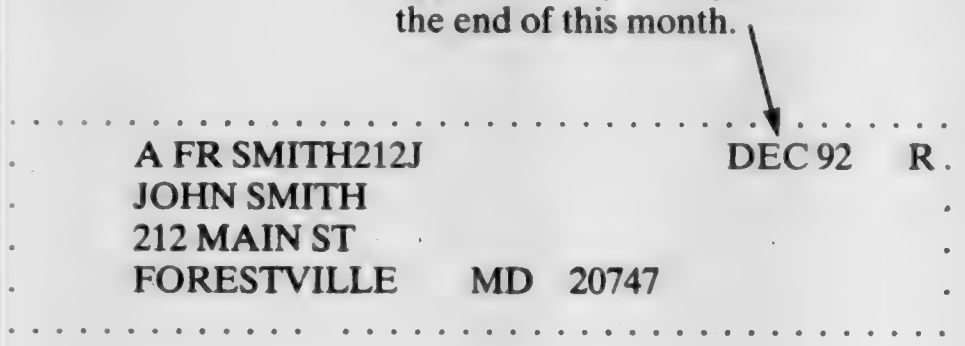

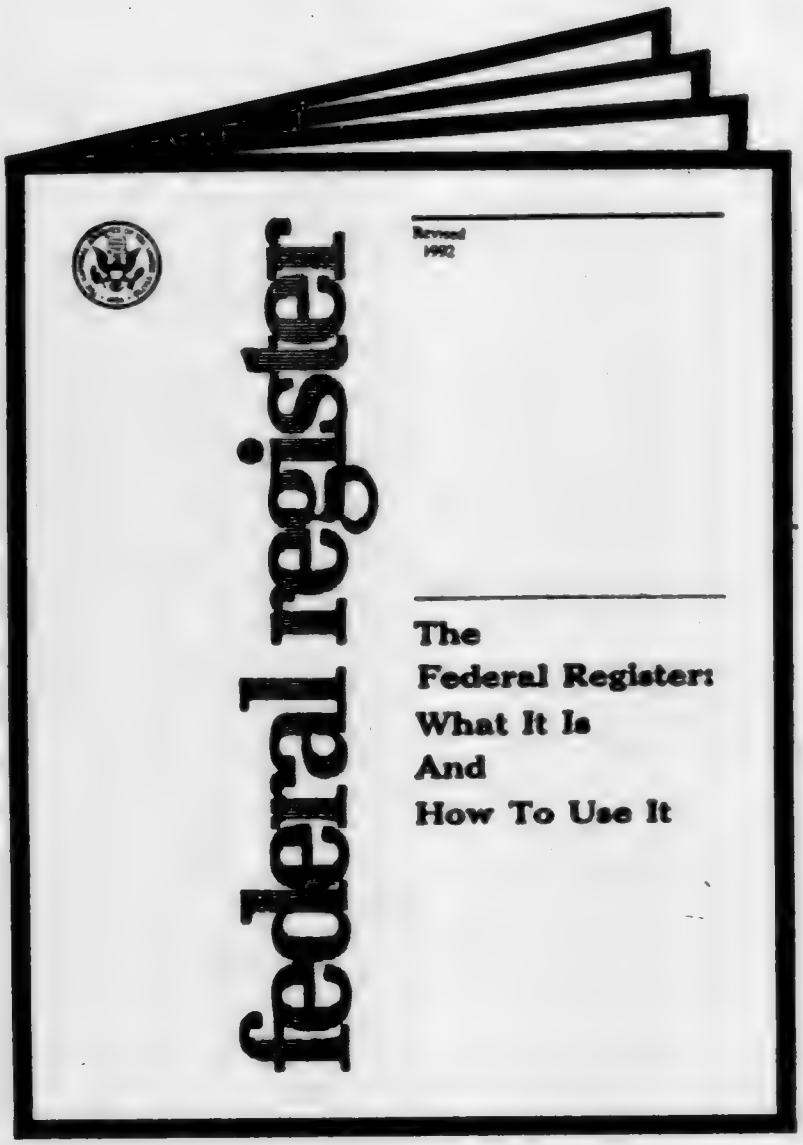

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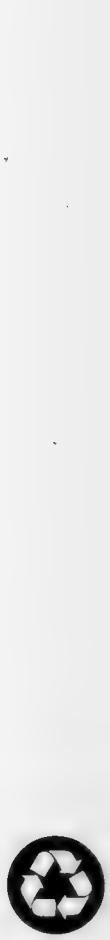

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Friday
October 15, 1993

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Contents

Federal Register

Vol. 58, No. 198

Friday, October 15, 1993

Agricultural Marketing Service
PROPOSED RULES
Milk marketing orders:
Georgia et al., 53436
Pacific Northwest et al., 53439
Southwest Plains, 53438

Agriculture Department
See Agricultural Marketing Service
See Federal Crop Insurance Corporation
See Forest Service

Army Department
See Engineers Corps

Blind or Severely Disabled, Committee for Purchase From People Who Are
See Committee for Purchase From People Who Are Blind or Severely Disabled

Children and Families Administration
NOTICES
Meetings:
Child Abuse and Neglect Advisory Board, 53517

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
Georgia, 53498
Hawaii, 53498
New York, 53498

Coast Guard
PROPOSED RULES
Vessel identification system
Correction, 53624

Commerce Department
See National Oceanic and Atmospheric Administration

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Procurement list; additions and deletions, 53501, 53502, 53503

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Korea, 53500
Thailand, 53501

Consumer Product Safety Commission
NOTICES
Meetings; Sunshine Act, 53623

Defense Department
See Engineers Corps
RULES
Civilian health and medical program of uniformed services (CHAMPUS):
Reimbursement of providers, claims filing, and participating provider program
Correction, 53411
NOTICES
Meetings:
Scientific Advisory Board, 53503

Drug Enforcement Administration
RULES
Schedules of controlled substances:
Methcathinone, 53404
NOTICES
Applications, hearings, determinations, etc.:
Johnson Matthey, Inc., 53561

Education Department
NOTICES
Agency information collection activities under OMB review, 53504

Employment Standards Administration
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 53562

Energy Department
See Energy Information Administration
See Federal Energy Regulatory Commission
See Hearings and Appeals Office, Energy Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Basic energy sciences et al., 53510

Energy Information Administration
NOTICES
Agency information collection activities under OMB review, 53504

Engineers Corps
RULES
Danger zones and restricted areas:
Chesapeake Bay, VA, 53427
Pacific Ocean, HI, 53427
Pacific Ocean offshore of Camp Pendleton, CA, 53426

Environmental Protection Agency
PROPOSED RULES
Air pollutants, hazardous; national emission standards:
Synthetic organic chemical manufacturing industry and seven other processes, 53478
NOTICES
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 53512
Weekly receipts, 53513

Federal Aviation Administration
RULES
Class E airspace, 53394, 53395
PROPOSED RULES
Airworthiness directives:
Boeing, 53457
VOR Federal airways, 53459

NOTICES
Exemption petitions; summary and disposition, 53613

Federal Communications Commission
RULES
Radio services, special:
Public land mobile services—
Co-channel protection criteria above 800 MHz, 53431
Television broadcasting:
Cable Television Consumer Protection and Competition Act of 1992—
Must-carry and retransmission consent provisions, 53429
PROPOSED RULES
Practice and procedure:
Electromagnetic spectrum auctions; competitive bidding, 53489
NOTICES
Rulemaking proceedings; petitions filed, granted, denied, etc.; correction, 53624

Federal Crop Insurance Corporation
RULES
Crop insurance endorsements, etc.:
Wheat, barley, rye, and oats, 53393

Federal Energy Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Keck, T.A., III, et al., 53505
Natural Gas Policy Act:
State jurisdictional agencies tight formation recommendations; preliminary findings—
Oklahoma Corporation Commission, 53505
Post-employment benefits other than pensions; policy statement; availability, 53505
Applications, hearings, determinations, etc.:
Equitrans, Inc., 53508
Northern Natural Gas Co., 53508
Panhandle Eastern Pipe Line Co., 53509
Southern California Edison Co., 53509
Texas Gas Transmission Corp., 53509
Western Resources, Inc., et al., 53510

Federal Maritime Commission
NOTICES
Agreements filed, etc., 53514
Freight forwarder licenses:
Worldwide Cargo Specialties et al., 53514

Federal Reserve System
RULES
Organization, functions, and authority delegations:
Board of Governors General Counsel, 53393
NOTICES
Meetings; Sunshine Act, 53623
Applications, hearings, determinations, etc.:
Central Bancshares of the South, Inc., 53514
Citizens Union Bancorp of Shelbyville, Inc., et al., 53515

Fish and Wildlife Service
NOTICES
Endangered and threatened species permit applications, 53558
Environmental statements; availability, etc.:
Incidental take permits—
Nevada Division of State Parks, NV; desert tortoise, 53558

Food and Drug Administration
PROPOSED RULES
Human drugs:
Sunscreen drug products (OTC); tentative final monograph, 53460
NOTICES
Food additive petitions:
Hoechst Aktiengesellschaft, 53517
Sequa Chemicals, Inc., 53518
Meetings:
Advisory committees, panels, etc.; correction, 53624

Forest Service
NOTICES
Meetings:
Newberry National Volcanic Monument Advisory Council, 53498
North Fork John Day Wild and Scenic River, OR; management plan, 53498

General Services Administration
NOTICES
Privacy Act:
Systems of records, 53515

Health and Human Services Department
See Children and Families Administration
See Food and Drug Administration
See Health Care Financing Administration
See Health Resources and Services Administration
See Inspector General Office, Health and Human Services Department
See National Institutes of Health
See Social Security Administration
NOTICES
Agency information collection activities under OMB review, 53517

Health Care Financing Administration
See Inspector General Office, Health and Human Services Department
PROPOSED RULES
Medicaid:
Case management services; optional coverage, 53481

Health Resources and Services Administration
NOTICES
Meetings; advisory committees:
December, 53518

Hearings and Appeals Office, Energy Department
NOTICES
Decisions and orders, 53510

Housing and Urban Development Department
PROPOSED RULES
Low income housing:
Tenant assistant designation, 53461
NOTICES
Grant and cooperative agreement awards:
Low income housing—
Allen Park Tenants Association et al., 53522
Supportive housing for elderly and persons with disabilities—
National Council of Senior Citizens et al., 53523
Grants and cooperative agreements; availability, etc.:
Facilities to assist homeless—
Excess and surplus property, 53522

Organization, functions, and authority delegations:
Assistant Secretary for Housing-Federal Housing Commissioner et al.; Section 8 rental housing projects, 53521
Office of Housing-Federal Housing Administration Comptroller et al.; Section 8 rental housing projects, 53553

Inspector General Office, Health and Human Services Department
NOTICES
Program exclusions; list, 53519

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See Minerals Management Service
NOTICES
Meetings:
Exxon Valdez Oil Spill Public Advisory Group, 53553

International Development Cooperation Agency
See Overseas Private Investment Corporation

Interstate Commerce Commission
RULES
Contracts and exemptions:
Rail transportation of commodity groups, 53433
NOTICES
Environmental statements; availability, etc.:
Camp Lajeune Railroad Co. et al., 53559
Rail carriers:
Cost ratio for recyclables; determination, etc., 53560
Railroad operation, acquisition, construction, etc.:
Hardin Southern Railroad, 53560
Southern Pacific Transportation Co., 53560
Railroad services abandonment:
CSX Transportation, Inc., 53560
Illinois Central Railroad Co., 53561

Justice Department
See Drug Enforcement Administration

Labor Department
See Employment Standards Administration
See Pension and Welfare Benefits Administration

Land Management Bureau
RULES
Public land orders:
Arizona, 53428
Montana, 53429
NOTICES
Classification of public lands:
Nevada, 53553
Motor vehicle use restrictions:
California, 53554
Nevada, 53554
Oil and gas leases:
Colorado, 53555
New Mexico, 53555
Realty actions; sales, leases, etc.:
Montana, 53555
Wisconsin, 53556
Wyoming, 53556
Resource management plans, etc.:
Las Vegas District, NV, 53557
Survey plats filings:
Idaho, 53557
Withdrawal and reservation of lands:
Colorado, 53557

Minerals Management Service
PROPOSED RULES
Royalties management:
Collection of royalties, rentals, bonuses, and other monies due the Federal Government, 53470
NOTICES
Meetings:
Outer Continental Shelf Advisory Board, 53559

National Institutes of Health
NOTICES
Meetings:
National Institute of Mental Health, 53519
National Institute on Deafness and Other Communication Disorders, 53519

National Oceanic and Atmospheric Administration
RULES
Tuna, Atlantic bluefin fisheries, 53434
PROPOSED RULES
Fishery conservation and management:
Bering Sea and Aleutian Islands groundfish, 53497
Marine mammals:
Incidental taking—
Underwater detonation of conventional explosives; pinnipeds and cetaceans; meetings, 53491
NOTICES
Meetings:
Gulf of Mexico Fishery Management Council, 53499
Permits:
Marine mammals, 53499

National Science Foundation
NOTICES
Antarctic Conservation Act of 1978; permit applications, etc., 53585

Nuclear Regulatory Commission
NOTICES
Applications, hearings, determinations, etc.:
Palo Verde Nuclear Generating Station, Unit 1, 53585

Overseas Private Investment Corporation
NOTICES
Agency information collection activities under OMB review, 53559

Pension and Welfare Benefits Administration
NOTICES
Employee benefit plans; prohibited transaction exemptions:
IDS Financial Corp. et al., 53563
Prudential Insurance co. of America, 53565
Texas Instrument Employees Pension Plan et al., 53578

Pension Benefit Guaranty Corporation
RULES
Multiemployer plans:
Withdrawal liability; notice and collection; interest rates, 53410
Single-employer plans:
Late premium payments and employer liability underpayments; interest rates, 53406
Valuation of plan benefits—
Adopting additional PBGC rates; amendment, 53407

Personnel Management Office
NOTICES
Agency information collection activities under OMB review, 53587

Public Health Service
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health

Railroad Retirement Board
RULES
Railroad Retirement Act:
Social security overall minimum guarantee, 53396
NOTICES
Agency information collection activities under OMB review, 53587

Research and Special Programs Administration
RULES
Hazardous materials:
Cargo tank motor vehicles; frequently asked questions concerning requirements, 53626
NOTICES
Applications, hearings, determinations, etc.:
Chemical Waste Transportation Institute, 53614

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
American Stock Exchange, Inc., 53588, 53592
Boston Stock Exchange, Inc., 53595
Chicago Board Options Exchange, Inc., 53598, 53599
National Association of Securities Dealers, Inc., 53600
Philadelphia Stock Exchange, Inc., 53602, 53604
Applications, hearings, determinations, etc.:
Benton Oil and Gas Co., 53605
Lutheran Brotherhood et al., 53606
Mutual Fund Group, et al., 53607

Social Security Administration
NOTICES
Agency information collection activities under OMB review, 53521

State Department
NOTICES
Agency information collection activities under OMB review, 53613
Foreign assistance determinations:
Cambodia, 53612
Meetings:
International Telegraph and Telephone Consultative Committee, 53612

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Research and Special Programs Administration

Treasury Department
NOTICES
Boycotts, international:
Countries requiring cooperation; list, 53612

United States Information Agency
NOTICES
Grants and cooperative agreements; availability, etc.:
Public and private non-profit organizations in support of international educational and cultural activities, 53621

Veterans Affairs Department
NOTICES
Agency information collection activities under OMB review:
Disinterment request, 53622
Statement of accredited representative in appealed case, 53621

Separate Parts In This Issue

Part II
Department of Transportation, Research and Special Programs Administration, 53626

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free Electronic Bulletin Board service for Public Law numbers and Federal Register finding aids is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR

Executive Orders:

July 9, 1910
(Revoked in part by PLO 7004).....53429
3053 (Revoked in part by PLO 7004).....53429

7 CFR

401.....53393

Proposed Rules:

1007.....53436
1093.....53436
1094.....53436
1096.....53436
1099.....53436
1106.....53438
1108.....53436
1124.....53439
1135.....53439

12 CFR

265.....53393

14 CFR

71 (3 documents).....53394, 53395

Proposed Rules:

39.....53457
71.....53459

20 CFR

229.....53396

21 CFR

1308.....53404

Proposed Rules:

352.....53460
700.....53460
740.....53460

24 CFR

Proposed Rules:

215.....53461
221.....53461
236.....53461
880.....53461
881.....53461
882.....53461
883.....53461
884.....53461
885.....53461
886.....53461
889.....53461
890.....53461
905.....53461
960.....53461

29 CFR

2610.....53406
2619.....53407
2622.....53406
2644.....53410
2676.....53407

30 CFR

Proposed Rules:

230.....53470

32 CFR

199.....53411

33 CFR

334 (3 documents).....53426, 53427

Proposed Rules:

187.....53624

40 CFR

Proposed Rules:

63.....53478

42 CFR

Proposed Rules:

431.....53481
440.....53481
441.....53481
447.....53481

43 CFR

Public Land Orders:

7003.....53428
7004.....53429

47 CFR

76.....53429
90.....53431

Proposed Rules:

1.....53489

49 CFR

107.....53626
171.....53626
173.....53626
178.....53626
180.....53626
1039.....53433

50 CFR

285.....53434

Proposed Rules:

228.....53491
675.....53497

L

8

S

C

5

93

MI

Rules and Regulations

Federal Register
Vol. 58, No. 198
Friday, October 15, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 401

General Crop Insurance Regulations; Wheat, Barley, Rye, and Oat Endorsements

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Notice of extension of sales closing date (acceptance of applications).

SUMMARY: Effective for the 1994 crop year only, the Federal Crop Insurance Corporation (FCIC) herewith gives notice of its determination to extend the date for acceptance of applications for rye, wheat, barley, and oat crop insurance for all policies having a September 30 sales closing date.

EFFECTIVE DATE: September 30, 1993.

FOR FURTHER INFORMATION CONTACT: Mari Dunleavy, Regulatory Specialist, Federal Crop Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 254–8314.

SUPPLEMENTARY INFORMATION: Under its regulations for insuring crops, FCIC requires that applications for crop insurance protection must be filed on or before the policy sale closing date. The Wheat Endorsement (§ 401.101), Barley Endorsement (§ 401.103), Rye Endorsement (§ 401.106), and Oat Endorsement (§ 401.105), have a sales closing date in some areas of September 30. To assist all persons needing to obtain multiple peril crop insurance coverage. The Manager of FCIC has determined that the sales closing date of September 30 for these crops may be extended to October 30 will not increase the risk to FCIC for the payment of loans, therefore, FCIC is extending the September 30 sales closing date for barley, wheat, rye, and oat crop insurance policies to October 30.

Under the provisions of the General Crop Insurance Regulations (§ 401.8), the sales closing date for accepting applications may be extended by notice in the **Federal Register** upon determination that no adverse selectivity will result from such extension. FCIC has determined that no adverse selection will result from this extension.

Notice

Accordingly, pursuant to the authority contained in (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation herewith gives notice that applications for rye, wheat, oat, and barely crop insurance will be accepted up to the close of business on October 30, 1993, effective for the 1994 crop year only, for producers needing multiple peril crop insurance coverage.

Authority: 7 U.S.C. 1506, 1516.

Done in Washington, DC on October 5, 1993.

Eugene Moos,

Under Secretary, International Affairs and Commodity Programs.

[FR Doc. 93–25372 Filed 10–14–93; 8:45 am]

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FEDERAL RESERVE SYSTEM

12 CFR Part 265

[Docket No. R-0811]

Rules Regarding Delegation of Authority

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: This rule delegates to the General Counsel of the Board of Governors of the Federal Reserve System (Board) the authority to grant individual waivers under the federal conflicts of interest statute in cases in which the employee's financial interest is not so substantial as to be likely to affect the integrity of the employee's services to the Board. This delegation of authority will reduce the administrative burden of acting on such waiver requests.

EFFECTIVE DATE: September 1, 1993.

FOR FURTHER INFORMATION CONTACT: Cary K. Williams, Senior Attorney (202/452-3295), Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired only, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th and C Street, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: The Federal conflicts of interest statute, 18 U.S.C. 208, prohibits Board employees from participating in their official capacity in any particular matter in which, to their knowledge, they have a financial interest. Section 208(b)(1) of the statute provides a procedure for individual employees to obtain a waiver from this provision for interests that are not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such officer or employee. This waiver, a copy of which must be forwarded to the Office of Government Ethics (OGE), allows the employee to participate in the particular matter, notwithstanding the employee's financial interest.

The Board, as the "Government official responsible for [the employee's] appointment," is the only body presently authorized to grant individual waivers under section 208(b)(1) to Board employees. Pursuant to regulations promulgated by the OGE, however, this authority may be delegated (5 CFR 2635.402(d)). In order to minimize the need to have the Board consider each request for an individual waiver, the Board is delegating to the General Counsel, who also serves as the Board's Designated Agency Ethics Official, the authority to issue waivers for employees and officials other than Board members.

The provisions of the Administrative Procedures Act (APA)(5 U.S.C. 553) relating to notice, public participation, and deferred effective date have not been followed in connection with the adoption of this amendment because the change to be effected is procedural in nature and does not constitute a substantive rule subject to the requirements of that section. The APA grants a specific exemption from its requirements relating to notice and public participation in this instance (12 U.S.C. 553(b)(3)(A)), and good cause exists to implement this delegation of authority immediately.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Board certifies that this rule

will not have a significant economic impact on a substantial number of small entities. The amendment pertains to an internal delegation of authority, and would not have a substantial effect on particular small entities.

List of Subjects in 12 CFR Part 265

Authority delegations (Government agencies).

For the reasons set forth in the preamble, the Board is amending 12 CFR part 265 as follows:

PART 265—RULES REGARDING DELEGATION OF AUTHORITY

1. The authority citation for part 265 continues to read as follows:

Authority: 12 U.S.C. 248(i) and (k).

2. Section 265.6 is amended by adding paragraph (g) to read as follows:

§ 265.6 Functions delegated to General Counsel.

* * * * *

(g) *Conflicts of interest waivers.* To issue individual conflicts of interest waivers under 18 U.S.C. 208(b)(1) to employees and officials other than Board members.

By order of the Board of Governors of the Federal Reserve System, October 8, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-25245 Filed 10-14-93; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 93-ANM-6]

Revocation of Class E Airspace; Fort Morgan, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revokes the Class E airspace at Fort Morgan Municipal Airport, Fort Morgan, Colorado. The Class E airspace was established originally to provide controlled airspace for an instrument approach procedure at Fort Morgan Municipal Airport. The approach procedure has since been cancelled and the controlled airspace is no longer required.

EFFECTIVE DATE: 0901 UTC January 6, 1994.

FOR FURTHER INFORMATION CONTACT: Ted Melland, ANM-536, Federal Aviation Administration, Docket No. 93-ANM-6, 1601 Lind Avenue SW., Renton, Washington 98055-4056, Telephone: (206) 227-2536.

SUPPLEMENTARY INFORMATION:

History

The Fort Morgan, Colorado, Class E airspace was designed for an instrument approach procedure at Fort Morgan Municipal Airport. The approach procedure has since been cancelled and the controlled airspace is no longer required. I find that notice and public procedure under 5 U.S.C. 553(b) is unnecessary because this is a minor technical amendment in which the public is not particularly interested. Class E airspace designations for airspace extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document will be removed subsequently from the Order.

The Rule

This amendment of part 71 of the Federal Aviation Regulations revokes the Class E airspace at Fort Morgan, Colorado.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is no minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 498 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005 Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM CO E5 Fort Morgan, CO [Removed]

* * * * *

Issued in Seattle, Washington, on September 17, 1993.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division.

[FR Doc. 93-25366 Filed 10-14-93; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 93-ANM-31]

Revocation of Class E Airspace; Bryce Canyon, UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revokes the Class E Airspace at Bryce Canyon Airport, Bryce Canyon, Utah. Airspace reclassification, in effect as of September 16, 1993, has discontinued the use of the term "transition area," replacing it with the designation "Class E airspace." The airspace was previously utilized for an instrument approach procedure at Bryce Canyon Airport. The approach procedure has since been cancelled.

EFFECTIVE DATE: 0901 UTC January 6, 1994.

FOR FURTHER INFORMATION CONTACT: James Riley, ANM-537, Federal Aviation Administration, Docket No. 93-ANM-31, 1601 Lind Avenue SW., Renton, Washington 98055-4056, Telephone: (206) 227-2537.

SUPPLEMENTARY INFORMATION:

History

The Bryce Canyon, Utah, Class E airspace was designed for an instrument approach procedure at Bryce Canyon Airport in controlled airspace extending from 700 feet or more above the surface of the earth. Airspace reclassification, in effect as of September 16, 1993, has discontinued the use of the term

"transition area," and airspace areas extending upward from 700 feet or more above the surface of the earth are now Class E airspace. The approach procedure has been cancelled and a designation of Class E airspace for an approach procedure is no longer necessary. Therefore, I find that notice and public procedure under 5 U.S.C. 553(b) is unnecessary because this is a minor technical amendment in which the public is not particularly interested. Class E airspace designations for airspace extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document will be removed subsequently from the Order.

The Rule

This amendment of part 71 of the Federal Aviation Regulations revokes the Bryce Canyon, Utah Class E airspace, which was designed to provide controlled airspace for an instrument approach procedure at Bryce Canyon Airport. The instrument approach procedure has been cancelled.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Polices and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designation and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005 Class E Airspace areas extending upward from 700 feet or more above surface of the earth.

* * * * *

ANM UT E5 Bryce Canyon, UT [Removed]

* * * * *

Issued in Seattle, Washington, on September 17, 1993.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division.

[FR Doc. 93–25365 Filed 10–14–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 92–ANM–22]

Establishment of Class E Airspace; Deer Park, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes the Deer Park, Washington, Class E airspace. This action is necessary to provide additional controlled airspace for a new instrument approach procedure at the Deer Park Airport, Deer Park, Washington. The Class E airspace will be depicted on aeronautical charts for pilot reference.

EFFECTIVE DATE: 0901 UTC, January 6, 1994.

FOR FURTHER INFORMATION CONTACT: Ted Melland, ANM–536, Federal Aviation Administration, Docket No. 92–ANM–22, 1601 Lind Avenue SW., Renton, Washington 98055–4056, Telephone: (206) 227–2536.

SUPPLEMENTARY INFORMATION:

History

Development of a new instrument approach procedure at the Deer Park Airport requires amendment of existing controlled airspace for the new procedure.

On February, 26, 1993, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish the Deer Park, Washington transition area. (58 FR 11553).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received.

Airspace reclassification, effective as of September 16, 1993, discontinued the use of the term "transition area" and replaced it with the designation "Class E airspace" for airspace extending upward from 700 feet or more above ground level. Other than that change in terminology, this amendment is the same as that proposed in the notice. The coordinates in the proposal and in this final rule are in North American datum 83. Class E airspace designations for airspace extending upward from 700 feet or more above ground level are published in Paragraph 6005 FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1. (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes Class E airspace at Deer Park, Washington, to provide additional controlled airspace for a new instrument approach procedure.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth

* * * * *

ANM WA E5 Deer Park, WA [New]

Deer Park Airport, WA
(lat. 47°58'07"N, long. 117°25'23"W)
Deer Park Nondirectional Radio Beacon, WA
(lat. 44°58'04"N, long. 117°25'49"W)

That airspace extending upward from 700 feet above the surface within a 4.0-mile radius of the Deer Park Airport and within 1.5 miles either side of the 339° bearing of the Deer Park Nondirectional Radio Beacon extending from the 4.0-mile radius to 6.5 miles northwest of the Deer Park Airport excluding the Spokane, Washington, Class E5 airspace.

* * * * *

Issued in Seattle, Washington, on September 17, 1993.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division.

[FR Doc. 93–25364 Filed 10–14–93; 8:45 am]

BILLING CODE 4910-13-M

RAILROAD RETIREMENT BOARD

20 CFR Part 229

RIN 3220–AA60

Social Security Overall Minimum

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) hereby adds new regulations which explain under what circumstances an individual's annuity is increased so that it equals a minimum rate provided for in the Railroad Retirement Act. Although such a guarantee is provided for by statute, how and when it applies has never been explained by regulation.

EFFECTIVE DATE: October 15, 1993.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, Assistant General Counsel, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751–4513; TDD (312) 751–4701.

SUPPLEMENTARY INFORMATION: Section 3(f)(3) of the Railroad Retirement Act of 1974 guarantees that the total annuities payable to an employee and spouse, including the vested dual benefit, but not the supplemental annuity, will not be less than 100 percent of the total family benefits payable under the Social Security Act if the employee's railroad service after 1936 were credited as social security earnings. This guarantee is called the Social Security Overall Minimum Guarantee, or sometimes the Special Guarantee or Special Guarantee Rate, and is abbreviated for purposes of this part as O/M or, in the case of a disability overall minimum, DIB O/M. In this part the Board explains when an annuity can be increased under this guarantee and how the increased amount is determined.

Subpart A—General: Contains an Introduction (§ 229.1), Definitions applicable to this part (§ 229.2), explains part 229's relations to other parts of the Board's regulations (§ 229.3) and how to apply for the O/M (§ 229.4).

Subpart B—Social Security Overall Minimum Guarantee Defined: Defines in general terms what the O/M guarantee is (§ 229.10) and explains in general terms its computation (§ 229.11).

Subpart C—Eligibility For Increase Under the Overall Minimum: Section 229.20 describes when the employee-annuitant is eligible for an increase in his or her annuity under the O/M. Section 229.21 describes when a spouse annuity may be increased under the O/M. Section 220.22 indicates the earliest date on which the O/M may be paid.

Subpart D—Family Members Included in Overall Minimum Computation: In computing the O/M for and employee-annuitant, the formula may include the benefits that would be payable to his or her spouse, divorced spouse, or child had he or she been covered under the Social Security Act. Sections 229.30–229.33 describe when a spouse, divorced spouse, or child may be included in the O/M computation.

Subpart E—When Entitlement Under the Overall Minimum Ends: Section 229.40 describes when an increase in the employee or spouse annuity under the O/M must terminate. Section 229.41 describes when a spouse can no longer be included in the employee's O/M computation. Section 229.42 and § 229.43 provide when a child and when a divorced spouse may no longer be included in this computation.

Subpart F—Computation of the Overall Minimum Rate: Sections 229.45–229.47 describe the actual computation of the O/M. Section 229.48 describes the family maximum, which is a provision in the Social Security Act which puts a ceiling on the amount of benefits which may be paid on an individual's wage record. Section 229.49 shows how the O/M may be adjusted for the family maximum as the result of changes in the composition of the family group which is used in the computation of the O/M. Section 229.50 explains when the O/M is reduced for age if it becomes payable before the employee or spouse attain retirement age. The age reduction factor provided for in § 229.50 may itself be adjusted if the O/M is not paid for certain months prior to the employee's attaining retirement age, or if the employee becomes eligible for a DIB O/M before retirement age. Section 229.51 explains this adjustment. Section 229.52 explains that if an employee was receiving a reduced age O/M prior to becoming eligible for a DIB O/M, the age reduction is recomputed as if the employee were retirement age on the effective date of the DIB O/M. Sections 229.53–229.56 explain how receipt of a social security benefit will reduce any O/M payable. Section 229.57 explains how an O/M is computed if a spouse is eligible for both a spouse annuity and an employee annuity. Section 229.58 explains various rounding rules used in computing the O/M.

Subpart G—Reduction for Worker's Compensation or Disability Benefits Under a Federal, State, or Local Law or Plan: Section 229.65 explains how the DIB O/M is reduced for receipt of a worker's compensation benefit or public disability benefit. Section 229.66 describes how this reduction amount changes as a result of a change in a family group included in the computation of the DIB O/M or as the result of a change in the amount of worker's compensation or public disability benefit. Section 229.67 provides that all benefits reduced for such worker's compensation or public disability benefit must be periodically recomputed. However, the redetermined rate is used only if it is higher than the previous rate. Section 229.68 provides that the reduction for worker's compensation or public disability benefit is applied after any age reduction and reduction for the family maximum.

Subpart H—Miscellaneous Deductions and Reductions: Sections 229.80–229.85 describe various events which may also cause a reduction in the O/M rate.

Subpart I—Payment of the Overall Minimum Rate: Section 229.90 provides that where both the employee and spouse are entitled to annuities and the O/M rate is higher than the combined annuity rates (a rare instance), the

employee receives two-thirds of the O/M rate and the spouse the remaining one-third. Section 229.91 describes how the O/M rate is paid when it is only payable for part of the month.

On March 23, 1993, the Board published this regulation as a proposed rule inviting comments by April 26 1993 (58 FR 16155). No comments were received.

The Board has determined that this is not a major rule for purposes of Executive Order 12291. Therefore, no regulatory analysis is required. The information collections imposed by this part have been approved by the Office of Management and Budget under control number 3220–0083.

List of Subjects in 20 CFR Part 229

Railroad employees, Railroad retirement.

For the reasons set forth in the preamble, title 20, chapter II of the Code of Federal Regulations is amended by adding part 229 to read as follows:

PART 229—SOCIAL SECURITY OVERALL MINIMUM GUARANTEE

Subpart A—General

Sec.

229.1 Introduction.
229.2 Definitions.
229.3 Other regulations related to this part.
229.4 Applying for the overall minimum.

Subpart B—Social Security Overall Minimum Guarantee Defined

229.10 What the social security overall minimum guarantee is.
229.11 100 percent overall minimum.

Subpart C—Eligibility for Increase Under the Overall Minimum

229.20 When an employee is eligible for an increase under the overall minimum.
229.21 When a spouse is eligible for an increase under the overall minimum.
229.22 Beginning date of increase under overall minimum.

Subpart D—Family Members Included in Overall Minimum Computation

229.30 Who can be included in the computation of an annuity under the overall minimum.
229.31 When a spouse can be included in the computation of the overall minimum rate.
229.32 When a child can be included in the computation of the overall minimum rate.
229.33 When a divorced spouse can be included in the computation of the overall minimum rate.

Subpart E—When Entitlement Under the Overall Minimum Ends

229.40 When an annuity increase under the overall minimum ends.
229.41 When a spouse can no longer be included in computing an annuity rate under the overall minimum.
229.42 When a child can no longer be included in computing an annuity rate under the overall minimum.
229.43 When a divorced spouse can no longer be included in computing an annuity under the overall minimum.

Subpart F—Computation of the Overall Minimum Rate

229.45 Employee benefit.
229.46 Spouse or divorced spouse benefit.
229.47 Child's benefit.
229.48 Family maximum.
229.49 Adjustment of benefits under family maximum for change in family group.
229.50 Age reduction in employee or spouse benefit.
229.51 Adjustment of age reduction.
229.52 Age reduction when a reduced age O/M is effective before DIB O/M.
229.53 Reduction for social security benefits on employee's wage record.
229.54 Reduction for social security benefit paid to employee on another person's earnings record.
229.55 Reduction for spouse social security benefit.
229.56 Reduction for child's social security benefit.
229.57 Reduction in spouse overall minimum benefit for employee annuity.
229.58 Rounding of overall minimum amounts.

Subpart G—Reduction for Worker's Compensation or Disability Benefits Under a Federal, State, or Local Law or Plan

229.65 Initial reduction.
229.66 Changes in reduction amount.
229.67 Redetermination of reduction.
229.68 Reduction of DIB O/M.

Subpart H—Miscellaneous Deductions and Reductions

229.80 Earnings restrictions.
229.81 Refusual to accept vocational rehabilitation.
229.82 Failure to have child in care.
229.83 Deportation.
229.84 Conviction of subversive activities.
229.85 Substantial gainful activity by blind employee or child.

Subpart I—Payment of Overall Minimum Rate

229.90 Proportionate shares of overall minimum.
229.91 Payment of the overall minimum for part of a month.

Authority: 45 U.S.C. 231(f)(b)(5).

Subpart A—General

§ 229.1 Introduction.

This part explains when an annuity can be increased under the social security overall minimum guarantee, also sometimes referred to as the "special guaranty", and how the increased amount is determined. Deductions and reductions in the overall minimum rate are explained.

§ 229.2 Definitions.

The following definitions are used in this part:

Annuity means a payment under the Railroad Retirement Act due and payable to an entitled claimant for a calendar month and made to him or her on the first day of the following month. The recipient of an annuity is called an annuitant.

Average Indexed Monthly Earnings or AIME means the average of the employee's monthly creditable earnings in both railroad and social security covered employment in the years used in computing the Primary Insurance Amount, after the earnings are adjusted or "indexed". The indexing is a means of expressing prior years earnings in terms of their current dollar value. It is based on increases in the average wages of all wage earners from 1951 although the second year before the year the worker dies or becomes eligible for benefits.

Contribution and benefit base means the maximum earnings used in computing a social security benefit under section 230 of the Social Security Act.

1974 Act means the Railroad Retirement Act approved October 16, 1974, including all amendments.

Railroad formula rate means the amount computed in accord with the regular railroad computations (sections 3(a), 3(b) and 3(h) of the Railroad Retirement Act).

Retirement age means age 65, with respect to an employee or spouse who attains age 62 before January 1, 2000 (age 60 in the case of a widow(er), remarried widow(er) or surviving divorced spouse). For an employee or spouse who attains age 62 (or age 60 in the case of a widow(er), remarried widow(er), or surviving divorced spouse) after December 31, 1999, retirement age means the age provided for in section 216(l) of the Social Security Act.

§ 229.3 Other regulations related to this part.

This part is related to a number of other parts of this chapter (listed numerically):

Part 216 describes when a person is eligible for an annuity under the Railroad Retirement Act.

Part 217 describes how to apply for an annuity or for lump-sum payments.

Part 218 sets forth the beginning and ending dates of annuities.

Part 219 sets out what evidence is necessary to prove eligibility and the relationships described in this part.

Part 220 describes when a person is eligible for a disability annuity under the Railroad Retirement Act or a period of disability under the Social Security Act.

Part 222 describes the family relationships which may cause an annuity to be increased under this part.

Part 225 explains how Primary Insurance Amounts (PIA's) are computed.

§ 229.4 Applying for the overall minimum.

The Board may require an annuitant to provide information regarding his or her family and regarding his or her earnings from employment and self-employment in order to determine whether the claimant or annuitant qualifies for the overall minimum.

(Approved by the Office of Management and Budget under control number 3220–0083)

Subpart B—Social Security Overall Minimum Guarantee Defined

§ 229.10 What the social security overall minimum guarantee is.

The social security overall minimum guarantee is the amount of total family benefits which would be paid under the Social Security Act if the employee's railroad service had been covered by that Act. A 100 percent overall minimum benefit may be paid, as described in § 229.11. A 100 percent overall minimum based on age (age O/M) may be payable when the employee is 62 years old. The age O/M is reduced for age for months in which the O/M is payable before the employee attains retirement age. An overall minimum may also be payable before age 62 based on an employee's disability (DIB O/M). The DIB O/M is not reduced for age.

§ 229.11 100 percent overall minimum.

Section 3(f)(3) of the 1974 Act guarantees that the total annuities payable to the employee and spouse, including the vested dual benefits but not including a supplemental annuity, will not be less than 100 percent of the total family benefits payable under the Social Security Act if the employee's railroad service after 1936 were credited as social security earnings. Subpart F describes how the 100 percent overall minimum rate is computed.

Subpart C—Eligibility for Increase Under the Overall Minimum

§ 229.20 When an employee is eligible for an increase under the overall minimum.

(a) *Overall minimum based on age.* An employee annuity can be increased under the age O/M if all the following conditions are met:

(1) The employee is entitled to an age or disability annuity as shown in part 216 of this chapter.

(2) The employee is at least 62 years old throughout the whole month. The O/M is reduced for each month it is payable before the month the employee attains retirement age.

(3) The employee is fully insured under section 214 or 227 of the Social Security Act based on railroad and social security earnings.

(b) *Overall minimum based on disability.* An employee annuity can be increased under the DIB O/M if the employee is under retirement age, and

(1) Is entitled to an age or disability annuity; and

(2) Is disabled under § 404.1505 of this title; and

(3) Is insured for a disability benefit under § 404.130 of this title based upon combined railroad and social security earnings.

(c) *Spouse with child in care or spouse retirement age or older.* If the employee has not attained the age required to qualify the spouse for a spouse annuity but the employee meets the conditions of paragraph (a) or (b) of this section, the employee annuity can be increased under the overall minimum if:

(1) The employee and spouse complete the required statements concerning the family and earnings as provided for in § 229.4 of this part; and

(2) The spouse meets the marriage requirements as provided for in part 222 of this chapter; and

(3) The spouse has an eligible child in care, or the spouse is retirement age or older.

(d) *Spouse election.* If the employee has not attained the age required to quality the spouse for a spouse annuity but the employee meets the conditions of paragraph (a) or (b) of this section, the employee annuity can be increased under the overall minimum if:

(1) the employee and spouse complete the required statements concerning the family and earnings as provided for in § 229.4 of this part; and

(2) The spouse meets the marriage requirements as provided for in part 222 of this chapter; and

(3) The spouse is between age 62 and retirement age and does not have a child in care; and

(4) The spouse files an election to be included.

§ 229.21 When a spouse is eligible for an increase under the overall minimum.

Normally, only the employee annuity receives the amount of the overall minimum increase. However, a spouse annuity may be increased under the O/M in cases in which the O/M benefit amount exceeds the total amount of the employee and spouse annuity.

§ 229.22 Beginning date of increase under overall minimum.

(a) *Employee age O/M.* An increase under the overall minimum in an employee annuity based on age can be paid beginning with the later of:

(1) The first day of the first full month throughout which the employee is age 62; or

(2) The beginning date of the employee's age or disability annuity; or

(3) The first month of the quarter in which the employee becomes insured under section 214 or 227 of the Social Security Act based on railroad and social security earnings; or

(4) The month the employee attains retirement age, if a DIB O/M was paid in the previous month. A DIB O/M is changed to an age O/M in the month the employee attains retirement age.

(b) *Employee DIB O/M.* An increase under the overall minimum in an employee annuity based on disability can be paid beginning with the later of—

(1) The beginning date of the employee's disability annuity; or

(2) The month after the month in which the disability waiting period described in § 404.315(d) of this title ends; or

(3) If no disability waiting period is required, the first month in which the employee is disabled and is insured for a disability benefit under § 404.130 of this title.

(c) *Spouse.* An increase in a spouse annuity under the overall minimum can be paid on the later of:

(1) The date the increase in the employee's annuity is paid; or

(2) The date the spouse is both eligible under the O/M and entitled to a spouse annuity.

Subpart D—Family Members Included in Overall Minimum Computation

§ 229.30 Who can be included in the computation of an annuity under the overall minimum.

(a) *Spouse.* In order to be included as a spouse in the computation of the overall minimum rate, a person must be the employee's wife or husband, as defined in part 222 of this chapter, as of the date described in § 229.31 of this part. The spouse must also be 62 years or older throughout the whole month in which he or she is first included or have the employee's child who is under 16 years old or disabled (before attaining age 22) in his or her care. If a spouse is

62 years old or older and under retirement age, and does not have an eligible child in his or her care, the spouse will be included only if he or she requests the payment of a reduced spouse annuity.

(b) *Child.* In order to be included as a child in the computation of the overall minimum, a person must meet the following requirements as of the date described in § 229.32 of this part. The person must be:

(1) The employee's child as defined in part 222 of this chapter; and

(2) Dependent on the employee, as shown in part 222 of this chapter; and

(3) Not married; and either

(4) Under 18 years old, or 18 years old to 19 years old and a full-time student, as defined in part 216 of this chapter, or 18 years old or older and disabled for any regular employment (see part 220 of this chapter) before attaining age 22.

(c) *Divorced spouse.* In order to be included as a divorced spouse in the computation of the overall minimum, a person must be eligible for a benefit as a divorced spouse under the Railroad Retirement Act as of the date described in § 229.33 of this part.

§ 229.31 When a spouse can be included in the computation of the overall minimum rate.

(a) A spouse who is married to the employee when the employee's application is filed can be included in the computation of the overall minimum rate beginning in the later of the month in which:

(1) The employee first is eligible for an increase in his or her annuity under the overall minimum, as shown in § 229.22 of this part; or

(2) The spouse first becomes eligible to be included under the overall minimum, as shown in § 229.30 of this part.

(b) A spouse who marries the employee after the employee application is filed can be included in the overall minimum computation in the month in which he or she becomes eligible, as shown in § 229.30 of this part, if the overall minimum rate is already payable in the previous month. If the railroad formula rate is payable in the month before the spouse becomes eligible, the spouse can be included in the overall minimum computation in the later of the month in which:

(1) The employee first is eligible for an increase in his or her annuity rate under the overall minimum, as shown in § 229.22; or

(2) The spouse annuity begins.

§ 229.32 When a child can be included in the computation of the overall minimum rate.

A child who meets the requirements of § 229.30(b) of this part can be included in the computation of the overall minimum rate in the month in which:

(a) The employee first is eligible for an increase in his or her annuity rate under the overall minimum, as shown in § 229.22 of this part; or

(b) In the case of a child born or adopted by the employee after the employee's annuity beginning date, such child can be included only when the overall minimum rate is already payable in the month before the month in which the child is born, or adopted except where:

(1) The child is born or adopted prior to the employee's attaining age 62 or becoming eligible for a period of disability (see § 220.36 of this chapter); or

(2) The child who is adopted after the employee's annuity beginning date meets the dependency requirements set forth in § 222.53 of this chapter.

(c) In the case of a child who has attained age 18 and has become re-entitled as a full-time student or disabled child, as described in § 229.30 of this part, such child can only be included when the overall minimum rate is already payable in the month before the month the child becomes re-entitled.

§ 229.33 When a divorced spouse can be included in the computation of the overall minimum rate.

A divorced spouse annuitant can be included in the computation of the overall minimum rate in the later of the month in which:

(1) The employee first is eligible for an increase in his or her annuity rate under the overall minimum, as shown in § 229.22; or

(2) The divorced spouse annuity begins.

Subpart E—When Entitlement Under the Overall Minimum Ends

§ 229.40 When an annuity increase under the overall minimum ends.

(a) *Employee Age O/M.* An increase in an employee's annuity under the overall minimum based on age ends with the month before the month in which the employee dies. If a disability annuity is increased under the overall minimum based on age rather than disability, and the employee is under retirement age, the increase ends with the second month after the month the disability ends as shown in part 220 of this chapter.

(b) *Employee DIB O/M.* An increase in an employee's annuity under the overall minimum based on disability ends with the earlier of:

(1) The month before the month in which the employee dies; or

(2) The month before the month the employee attains retirement age (the DIB O/M is changed to an age O/M); or

(3) The second month after the month the disability ends, as explained in part 220 of this chapter.

(c) *Spouse.* An increase in a spouse annuity under the overall minimum ends when the increase in the employee annuity ends, as shown in paragraphs (a) and (b) of this section, when the spouse can no longer be included in computing the annuity rate under the overall minimum as shown in § 229.41 of this part, or when the spouse annuity ends as shown in part 218 of this chapter.

§ 229.41 When a spouse can no longer be included in computing an annuity rate under the overall minimum.

A spouse's inclusion in the computation of the overall minimum rate ends the earlier of:

(a) The month before the month in which the spouse dies; or

(b) The month before the month in which the spouse's marriage to the employee legally terminates; or

(c) If the spouse has an eligible child in care, the earlier of the month before the month in which the child leaves the spouse's care, attains age 16 and is not disabled, or, if disabled, recovers from being disabled; or

(d) The month before the month the employee dies.

§ 229.42 When a child can no longer be included in computing an annuity rate under the overall minimum.

A child's inclusion in the computation of the overall minimum rate ends the earlier of:

(a) The month before the month in which the child dies; or

(b) The month before the month in which the child marries; or

(c) The month before the month the child becomes 18 years old, unless the child is disabled or a full-time student, as shown in part 216 of this chapter; or

(d) The second month after the month the child's disability ends, if the child is 18 years old or older, and not a full-time student; or

(e) The month in which a student child's annuity would end, as shown in part 218 of this chapter, if the child is 18 years old or older, a full-time student in an elementary or secondary school, and not disabled; or

(f) The month before the month the child becomes entitled to an overall

minimum benefit or child's annuity on another earning record, if including the child on the other earnings record would result in higher monthly benefits.

§ 229.43 When a divorced spouse can no longer be included in computing an annuity under the overall minimum.

A divorced spouse's inclusion in the computation of the overall minimum rate ends the earlier of:

(a) The month before the month in which the divorced spouse dies; or

(b) The month before the month the employee dies; or

(c) The month before the month in which the divorced spouse remarries; or

(d) The month before the month in which the divorced spouse becomes entitled to a retirement or disability benefit under the Social Security Act based upon a primary insurance amount which is equal to or exceeds the divorced spouse annuity before reduction for age.

Subpart F—Computation of the Overall Minimum Rate

§ 229.45 Employee benefit.

The original employee 100 percent overall minimum amount, before adjustment for age, other family members, or other benefits, is the Overall Minimum PIA, as described in part 225 of this chapter. This is the PIA which would be used under the Social Security Act if the employee's railroad service had been covered under that Act instead of the Railroad Retirement Act. The Overall Minimum PIA may be recomputed for additional earnings and adjusted for cost-of-living increases. Delayed retirement credits are added to the Overall Minimum PIA as shown in part 225, subpart D of this chapter.

§ 229.46 Spouse or divorced spouse benefit.

If a spouse or divorced spouse is included in the computation of the overall minimum, a benefit of 50 percent times the Overall Minimum PIA is computed. In the case of a spouse, the benefit may be adjusted for the family maximum, age, or other benefits. In the case of a divorced spouse, the benefit may be adjusted only for age or other benefits.

§ 229.47 Child's benefit.

If a child is included in the computation of the overall minimum, a child's benefit of 50 percent times the Overall Minimum PIA is computed. This amount may be adjusted for the family maximum or other benefits.

§ 229.48 Family maximum.

(a) *Family maximum defined.* Under the Social Security Act, the amount of monthly benefits that can be paid for any month on one person's earnings record is limited. This limited amount is called the family maximum. The family maximum used to adjust the social security overall minimum rate is based on the employee's Overall Minimum PIA. The divorced spouse overall minimum is never reduced because of the family maximum.

(b) *Computation of the family maximum.*—(1) *The employee attains retirement age prior to 1979.* The maximum is the amount appearing in column V of the applicable table published each year by the Secretary of Health and Human Services on the line on which appears in column IV the primary insurance amount of the insured individual whose compensation is the basis for the benefits payable. Where the maximum is exceeded, the total tier 1 benefits for each month after 1964 are reduced to the amount appearing in column V. However, when any of the persons entitled to benefits on the insured individual's compensation would, except for the limitation described in § 404.353(b) of title 20 (dealing with the entitlement to more than one child's benefit), be entitled to a child's annuity on the basis of the compensation of one or more other insured individuals, the total benefits payable may not be reduced to less than the smaller of:

(i) The sum of the maximum amounts of benefits payable on the basis of the compensation of all such insured individuals, or

(ii) The last figure in column V of the applicable table published each year by the Secretary of Health and Human Services. The "applicable" table refers to the table which is effective for the month the benefit is payable.

(2) *The employee attains retirement age in 1979.* (i) The maximum is computed as follows:

(A) 150 percent of the first $230 of the individual's primary insurance amount, plus

(B) 272 percent of the primary insurance amount over $230 but not over $332, plus

(C) 134 percent of the primary insurance amount over $332 but not over $433, plus

(D) 175 percent of the primary insurance amount over $433.

(ii) If the total of this computation is not a multiple of $0.10, it will be rounded to the next lower multiple of $0.10.

(3) *The employee attains retirement age after 1979.* The maximum is computed as in paragraph (b)(2) of this section. However, the dollar amount shown there will be updated each year as average earnings rise. This updating is done by first dividing the average of the total wages (see 20 CFR 404.203(m)) for the second year before the individual dies or becomes eligible, by the average of the total wages for 1977. The result of that computation is then multiplied by each dollar amount in the formula in paragraph (b)(2) of this section. Each updated dollar amount will be rounded to the nearer dollar, if the amount is an exact multiple of $0.50 (but not of $1), it will be rounded to the next higher $1. Before November 2 of each calendar year after 1978, the Secretary of Health and Human Services will publish in the **Federal Register** the formula and updated dollar amounts to be used for determining the monthly maximum for the following year.

(c) *Disability family maximum.* If an employee's first month of entitlement to the DIB O/M is July 1980 or later, the family maximum is 85 percent of the employee's Average Indexed Monthly Earnings but not less than the employee's Overall Minimum PIA, and no more than 150 percent of the employee's Overall Minimum PIA.

(d) *Reduction for family maximum.* The spouse's and child(ren)'s share of the Overall Minimum PIA are reduced if the total benefits are higher than the family maximum amount. These auxiliary shares are adjusted so that they each receive a proportionate share of the family maximum amount over and above the employee benefit. This adjustment is before adjustment for age or other benefits. The spouse and child(ren)'s benefits are computed as follows:

(1) The Overall Minimum PIA is subtracted from the family maximum amount.

(2) The result from paragraph (d)(1) of this section is divided by the total number of auxiliary beneficiaries (spouse and children).

(3) If the amount of each benefit from paragraph (d)(2) of this section is not a multiple of $0.10, it is rounded to the next lower multiple of $0.10. After determining the beneficiary's share (the amount after reduction for other benefits) the amount is rounded to the next lowest multiple of $1.00, if it is not already a multiple of $1.00.

(e) *Combined family maximum.* If a child is eligible to be included in the computation of the overall minimum on more than one railroad retirement annuity, a combined family maximum may apply, if it results in higher annuity rates. The combined family maximum is the smaller of:

(1) The sum of the individual family maximums on each earnings record; or

(2) 1.75 times the highest primary insurance amount possible in a year using average indexed monthly earnings equal to one-twelfth of the contribution and benefit base for that year. Average indexed monthly earnings and contribution and benefit base are explained in § 229.2 of this part.

(f) This section may be illustrated by the following examples:

(1) An employee, age 62, applies for an age and service annuity under the Railroad Retirement Act (RRA). His annuity rate is $700. The employee has a son who was disabled for all regular employment prior to his attaining age 18. The RRA does not provide an annuity for a disabled child of a living employee. If the employee had been covered under the Social Security Act he would have received a benefit of $500 (the Overall Minimum PIA) and his child would have received a benefit of $250 (50 percent of $500), which produces a total family benefit of $750. The family maximum is $804.90. Under the O/M guarantee, the employee would receive $750 since it is higher than his annuity rate of $700. Since $750 is less than the family maximum computed for this employee, there is no reduction for the family maximum.

(2) It is determined that a disabled employee is entitled to a DIB O/M computed as follows:

Overall Minimum PIA	$ 600.00
Spouse (50% × 600)	300.00
Child (50% × 600)	300.00
	1200.00

However, the employee's family maximum is $900 (150 percent of $600). Consequently, the DIB O/M will be paid as follows:

Employee	$ 600.00
Spouse	150.00
Child	150.00
	900.00

§ 229.49 Adjustment of benefits under family maximum for change in family group.

(a) *Increase in family group.* If an overall minimum rate is adjusted for the family maximum and an additional family member can be included, the benefits payable to previous auxiliary beneficiaries (spouse and children) are reduced to provide a share for the new family member. The difference between the Overall Minimum PIA (see § 225.15 of this part) and the family maximum amount is divided by the increased number of auxiliary beneficiaries. If the amount of each benefit is not a multiple of $0.10, it is rounded to the next lower multiple of $0.10. After determining a beneficiary's share (the amount after reduction for other benefits) the amount is rounded to the next lowest multiple of $1.00, if it is not already a multiple of $1.00.

(b) *Decrease in family group.* If an overall minimum rate is adjusted for the family maximum and there is a decrease in the number of eligible family members, the benefits for the remaining auxiliary beneficiaries (spouse and children) are increased. If the family maximum still applies, the difference between the Overall Minimum PIA and the family maximum amount is divided by the number of remaining auxiliary beneficiaries. If the amount of each benefit is not a multiple of $0.10, it is rounded to the next lower multiple of $0.10. After determining the beneficiary's share (the amount after reduction for other benefits) the amount is rounded to the next lowest multiple of $1.00, if it is not already a multiple of $1.00.

(c) *Effective date of rate change.* The overall minimum rate changes described in paragraphs (a) and (b) of this section are effective the month in which the number of auxiliary beneficiaries changes.

§ 229.50 Age reduction in employee or spouse benefit.

(a) *When age reduction applies.* The employee overall minimum benefit is reduced for each month the employee is under retirement age on the date the employee becomes eligible for an increase under the overall minimum, as shown in § 229.22 of this part, unless the employee has a period of disability and § 229.52 of this part does not apply, in which case no age reduction is applied. The spouse overall minimum benefit is reduced for each month a spouse, who is not a spouse with the employee's child under 16 years old or disabled before attaining age 22 in his or her care, is under retirement age on the date the spouse is eligible for an increase under the overall minimum (see § 229.21 of this part). If a spouse's overall minimum benefit is reduced for age and he or she later begins caring for an eligible child, no age reduction will apply for the months the child is in his or her care.

(b) *Employee age reduction.* The Overall Minimum PIA plus any delayed retirement credits is reduced by $\frac{1}{180}$ for each month the employee is under retirement age on the date the employee becomes eligible for the overall minimum. When the PIA amount is increased, the amount of the increase is reduced by $\frac{1}{180}$ for the same number of months used to determine the initial age reduction.

(c) *Spouse age reduction.* The amount of the spouse overall minimum benefit, after any adjustment for the family maximum, is reduced by $\frac{1}{144}$ for each month the spouse is under retirement age on the date when he or she becomes eligible under the overall minimum. When the spouse benefit increases, the amount of the increase is reduced by $\frac{1}{144}$ for the same number of months used to compute the initial age reduction.

(d) *Age reduction after 1999.* Beginning in the year 2000 the amount of age reduction shall be as specified in paragraphs (b) and (c) of this section for the first 36 months of the reduction period, as defined in paragraph (e) of this section, and $\frac{1}{240}$ for any additional months included in such period.

(e) *Reduction period defined.* The reduction period is the number of months beginning with the first month for which the O/M is payable and ending with the month before the month the beneficiary attains retirement age.

§ 229.51 Adjustment of age reduction.

(a) *General.* If an age reduced employee or spouse overall minimum benefit is not paid for certain months before the employee or spouse attains retirement age, or the employee becomes entitled to a DIB O/M, the age reduction may be adjusted to drop the months for which no payment was made or the overall minimum rate was not reduced for age.

(b) *Employee adjusted age reduction.* The following months are deducted from the months used to determine the age reduction in the Overall Minimum PIA amount, effective the month in which the employee attains retirement age or becomes entitled to a DIB O/M:

(1) Months in which the increase under the overall minimum is completely or partially deducted because of the employee's excess earnings; and

(2) Months in which the employee is entitled to a DIB O/M as well as a reduced O/M.

(c) *Spouse adjusted age reduction.* The following months are deducted from the months used to determine the age reduction in the spouse overall minimum benefit, effective the month in which the spouse attains retirement age:

(1) Months in which the spouse O/M benefit is completely or partially deducted because of the employee's or spouse's excess earnings;

(2) Months after entitlement to a spouse O/M benefit ends for any reason;

(3) Months in which a spouse has in her care the employee's child who is under 16 years old or disabled before age 22;

(4) Months in which a DIB O/M benefit is not payable because the employee refused rehabilitation service (see § 229.81 of this part).

§ 229.52 Age reduction when a reduced age O/M is effective before DIB O/M.

If an employee received a reduced age O/M before the effective date of a DIB O/M, the PIA amount for the DIB O/M is reduced as if the employee had attained retirement age on the effective date of the DIB O/M.

§ 229.53 Reduction for social security benefits on employee's wage record.

The total annuity rate under the overall minimum is reduced, but not below zero, by the total amount of the social security benefits being paid to all family members on the employee's wage record.

§ 229.54 Reduction for social security benefit paid to employee on another person's earnings record.

The employee PIA amount under the overall minimum, after any age reduction, is reduced, but not below zero, by the amount of any social security benefit being paid to the employee on another person's earnings record.

§ 229.55 Reduction for spouse social security benefit.

A spouse benefit under the overall minimum, after any adjustment for the family maximum and for age, is reduced, but not below zero, by the amount of any social security benefit being paid to the spouse on other than the employee's earnings record. If the social security benefit is equal to or higher than the spouse overall minimum benefit and the family maximum applies, the overall minimum rate is recomputed so that the spouse is not included, if it would result in a higher overall minimum rate.

§ 229.56 Reduction for child's social security benefit.

A child's benefit under the overall minimum, after any adjustment for the family maximum, is reduced, but not below zero, by the amount of any social security benefit being paid to the child on other than the employee's earnings record. If the social security benefit is equal to or higher than the child's overall minimum benefit and the family maximum applies, the overall minimum rate is recomputed so that the child is not included, if it would result in a higher overall minimum rate.

§ 229.57 Reduction in spouse overall minimum benefit for employee annuity.

If an annuitant is entitled to both an employee annuity on his or her own earnings record and a spouse annuity on a different earnings record, the total overall minimum rates on both earnings records must be higher than the total railroad formula rates for the overall minimum to apply. The spouse overall minimum benefit amount, after adjustment for the family maximum and for age, is reduced by the employee-only overall minimum rate on the spouse's own earnings record (the employee benefit adjusted for age and social security benefits) plus the amount of any social security benefit payable to the spouse on other than the empoyee's earnings record.

§ 229.58 Rounding of overall minimum amounts.

The overall minimum amount for each beneficiary which is not a multiple of $0.10 is rounded to the next lower multiple of $0.10. After reducing each beneficiary's share for other benefits, if the result is not a multiple of $1.00 it is rounded to the next lower multiple of $1.00.

Subpart G—Reduction for Worker's Compensation or Disability Benefits Under a Federal, State, or Local Law or Plan

§ 229.65 Initial reduction.

(a) *When reduction is effective.* A benefit computed under the overall minimum based on disability (DIB O/M) is reduced (not below zero) for any month the employee is under retirement age and is entitled to worker's compensation or disability benefits under a Federal, State, or local law or plan (public disability benefit). The reduction is effective with the month the employee is entitled to worker's compensation or a public disability benefit.

(b) *When reduction is not made.* A reduction for worker's compensation is not made if the law or plan under which the worker's compensation or public disability benefit is paid provides for the reduction of the benefit provided due to entitlement to a social security disability benefit, and so provided on February 18, 1981.

(c) *Amount of reduction.* The reduction in the DIB O/M for worker's compensation or public disability benefit equals the difference between:

(1) The sum of the monthly DIB O/M rate, including benefits for all family members (subject to the family maximum), plus the monthly worker's compensation or public disability benefit; and

(2) The higher of 80 percent of the employee's average current earnings before becoming disabled or the monthly DIB O/M rate (before reduction for worker's compensation or public disability benefit).

(d) *Average current earnings, defined.* Beginning January 1, 1979, an employee's average current earnings for purposes of this section are the highest of:

(1) The average monthly wage (see § 225.2 of this chapter) used to compute the DIB O/M under the Social Security Act rules which were in effect before 1979; or

(2) One-sixtieth of the employee's total earnings from employment or self-employment under either the Social Security or Railroad Retirement Acts (including earnings that exceed the maximum used in computing social security benefits) for the 5 consecutive years after 1950 in which the earnings were the highest; or

(3) One-twelfth of the employee's total earnings from employment or self-employment under either the Social Security or Railroad Retirement Acts (including earnings that exceed the maximum used in computing social security benefits) for the year of highest earnings in the period from 5 years before through the year in which the employee became disabled. The result is rounded to the next lower multiple of $1.00.

§ 229.66 Changes in reduction amount.

(a) *Change in DIB O/M.* The amount of the worker's compensation or public disability benefit reduction does not change when there is an increase in the DIB O/M rate because of an amendment or cost of living increase. However, the reduction amount does change if there is a change in the family members included in the DIB O/M. When the number of family members changes and the DIB O/M is still payable, the amount of the reduction is recomputed using the DIB O/M rate, including the changed family group, as if the new family composition had existed when the worker's compensation or public disability benefit reduction first applied. However, this new reduction is not effective until the date of the change of the family group. The worker's compensation or public disability benefit and average current earnings are the same as those used before the change in the family group.

(b) *Change in amount of worker's compensation/public disability benefit.* The amount of the reduction for worker's compensation or public disability benefit changes when there is a change in the amount of the worker's compensation or public disability benefit. If the worker's compensation or public disability benefit increases, the

change in the reduction amount is effective with the month of the increase. If the worker's compensation or public disability benefit decreases, the change in the reduction amount is effective with the month of the decrease, no matter when the notice of the decrease is received.

§ 229.67 Redetermination of reduction.

(a) *General.* All cases reduced for worker's compensation or public disability benefit are recomputed in the second year after the year the reduction was first applied and every third year after that. The redetermined rate is effective with January of the year after the year the redetermination is made. The redetermined reduction is used only if it provides an annuity rate that is higher than the previous annuity rate.

(b) *Redetermined average current earnings.* The average current earnings amount used in redetermining a worker's compensation or public disability benefit reduction is determined by multiplying the initial average current earnings amount by:

(1) The average total wages (including wages that exceed the maximum used in computing social security benefits) of all persons for whom wages were reported to the Secretary of the Treasury for the year before the year or redetermination, divided by the average total wages for 1977 or, if later, the year before the year the reduction was first computed. If the result is not a multiple of $1.00, it is rounded to the next lower multiple of $1.00; or

(2) If the reduction was first computed before 1978, the average taxable wages reported to the Secretary of Health and Human Services for the first quarter of 1977, divided by the average taxable wages for the first quarter of the year before the year the reduction was first computed. If the result is not a multiple of $1.00, it is rounded to the next lower multiple of $1.00.

§ 229.68 Reduction of DIB O/M.

A reduction for entitlement to worker's compensation or a public disability benefit is applied after the DIB O/M is reduced for age and the family maximum. The spouse and child O/M benefits are first reduced proportionately. The employee O/M benefit is decreased by any remaining reduction amount.

Subpart H—Miscellaneous Deductions and Reductions

§ 229.80 Earnings restrictions.

The O/M may be reduced due to earnings from employment or self-employment in the same manner as a social security benefit. These restrictions on earnings are found at subpart E of part 404 of this chapter. Earnings can never reduce an employee's benefit below the railroad formula rate less the amount that those benefits would be reduced by earnings.

§ 229.81 Refusal to accept vocational rehabilitation.

The DIB O/M is not payable for any month in which the disabled employee refuses, without good reason, to accept vocational rehabilitation services available under an approved state program. A disabled child's benefit under the O/M is not payable for any month in which the child refuses, without good reason, to accept such vocational rehabilitation services, unless the child is a full-time student.

§ 229.82 Failure to have child in care.

(a) *General.* The full amount of the spouse overall minimum benefit is not payable for any month a spouse, who is included in the overall minimum because he or she has a child in his or her care, is under retirement age and is no longer caring for an eligible child. However, if the spouse is at least 62 years old, a reduced spouse annuity or a reduced overall minimum benefit is payable if the spouse has stated that he or she will accept a reduced benefit.

(b) *Report required.* When the overall minimum, which includes a benefit for a spouse who has the employee's child in his or her care, is payable, both the employee and spouse are responsible for reporting when the child leaves the spouse's care. The report is due before the benefits are paid for the second month after the first month in which the child is no longer in the spouse's care.

(c) *Penalty for failure to report.* If the employee or spouse does not report the fact that a spouse included in the overall minimum no longer has an eligible child in his or her care within the time limit shown in paragraph (b) of this section, a penalty is deducted from the overall minimum amount, unless there is a good reason for the person's failure to report. The penalty deduction for the first failure to make a timely report equals the amount of the overall minimum increase for the first month in which a report should have been made. The deduction for the second failure to make a timely report is twice the amount of the overall minimum increase for the first month in which a report should have been made. The deduction for the third and later failures to make a timely report is three times the amount of the overall minimum increase for the first month in which a report should have been made or, if less, the overall minimum increase times the number of months for which a timely report was not made.

§ 229.83 Deportation.

The age DIB O/M is not payable for any month after the month the Board receives notice that the employee has been deported for a reason shown in section 202(h) of the Social Security Act. This restriction no longer applies if the employee is later legally admitted to the United States for permanent residence.

§ 229.84 Conviction for subversive activities.

If a person is convicted of subversive activities (under chapter 37, 105, or 115 of title 18 of the U.S. Code or section 4, 112, or 113 of the Internal Security Act of 1950, as amended), the court may order that earnings in the year of the conviction and previous years are to be disregarded in determining whether the person is entitled to social security benefits. These earnings would also be ignored in determining entitlement to the age or DIB O/M.

§ 229.85 Substantial gainful activity by blind employee or child.

A blind employee or child who is 55 years old or older is entitled to an O/M benefit based on disability while he or she is working in substantial gainful activity that does not require skills or ability used in his or her previous work. However, the DIB O/M or child's O/M benefit is not payable for any month in which the employee or child works in any type of substantial gainful activity which requires skills or abilities comparable to those of any gainful activity in which he or she has previously engaged with some regularity and over a substantial period of time.

Subpart I—Payment of Overall Minimum Rate

§ 229.90 Proportionate shares of overall minimum.

When both the employee and the spouse are entitled to annuities and the overall minimum rate is higher than the railroad formula rate, the overall minimum amount must be divided between the employee and spouse. The employee receives two-thirds of the total O/M rate. The spouse receives one-third of the total O/M rate.

§ 229.91 Payment of the overall minimum for part of a month.

(a) *Employee annuity payable for part of a month.* If an employee annuity begins after the first day of the month, the O/M amount payable for the partial

month is 1/30 of the monthly rate times the number of days in the partial month.

(b) *Spouse annuity payable for part of a month*—(1) *Spouse not included in O/M before beginning date of spouse annuity and O/M applies as of the spouse annuity beginning date.* If a spouse annuity begins after the first day of a month, and the spouse is not includable in the O/M before the beginning date of the spouse annuity, and the O/M rate paid to the family group, including the spouse, as of the spouse annuity beginning date exceeds the amounts payable using the benefit formulas under the Railroad Retirement Act, the amount payable to the spouse for the partial month is 1/30 of the spouse's share of the O/M rate times the number of days in the month beginning with the spouse's annuity beginning date. In such a case, if the employee annuity is payable from the first day of the month, the amount payable to the employee is:

(i) One-thirtieth of the higher of the railroad formula or the O/M rate, without the spouse included, times the number of days in the month before the spouse annuity begins, plus

(ii) One-thirtieth of the employee's share of the O/M rate, with the spouse included, times the number of days in the month beginning with the spouse's annuity beginning date.

(2) *Spouse included in O/M before beginning date of spouse annuity and the O/M continues to apply.* If a spouse annuity begins after the first day of a month, and the spouse is includable in the O/M before the beginning date of the spouse annuity, and the O/M rate paid to the family group, including the spouse, as of the spouse annuity beginning date continues to exceed the amounts payable using the benefit formulas under the Railroad Retirement Act, the amount payable to the spouse for the partial month is 1/30 of the spouse's share of the O/M rate times the number of days in the month beginning with the spouse's annuity beginning date. In such a case, if the employee annuity is payable from the first of the month, the amount payable to the employee is:

(i) One-thirtieth of the O/M rate, with the spouse included, times the number of days in the month before the spouse annuity begins; plus

(ii) One-thirtieth of the employee's share of the O/M rate, with the spouse included, times the number of days in the month beginning with the spouse's annuity beginning date.

(3) *O/M rate applies before beginning date of spouse annuity and the railroad formula applies as of the spouse annuity beginning date.* If a spouse annuity begins after the first day of a month and the O/M rate applies to the family group, with or without the spouse included, before the beginning date of the spouse annuity, and the O/M rate paid to the family group, including the spouse, as of the spouse annuity beginning date is less than the amounts payable using the formulas under the Railroad Retirement Act, the amount payable to the spouse for the partial month is 1/30 of the spouse's railroad formula rate times the number of days in the month beginning with the spouse's annuity beginning date. In such a case, if the employee annuity is payable from the first day of the month, the amount payable to the employee is:

(i) One-thirtieth of the O/M times the number of days in the month before the spouse annuity begins; plus

(ii) One-thirtieth of the employee's railroad formula rate times the number of days in tne month beginning with the spouse's annuity beginning date.

Dated: September 30, 1993.

By authority of the Board.

For the Board:

Beatrice Ezerski,

Secretary to the Board.

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DEPARTMENT OF JUSTICE

Drug Enforçement Administration

21 CFR Part 1308

Schedules of Controlled Substances; Placement of Methcathinone Into Schedule I

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Final rule.

SUMMARY: This final rule is issued by the Administrator of the Drug Enforcement Administration (DEA) to place methcathinone into Schedule I of the Controlled Substances Act (CSA). This action is based on findings made by the DEA Administrator, after review and evaluation of the relevant data by both DEA and the Acting Assistant Secretary for Health, Department of Health and Human Services, that methcathinone meets the statutory criteria for inclusion in Schedule I of the CSA. Since this substance has been temporarily scheduled in Schedule I, the regulatory control mechanisms and criminal sanctions of Schedule I continue to be applicable to the possession, manufacture, distribution, importation and exportation of this substance.

EFFECTIVE DATE: October 15, 1993.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: On April 28, 1993, in a notice of proposed rulemaking published in the **Federal Register** (58 FR 25788) and after a review of relevant data, the DEA Administrator proposed to place methcathinone into Schedule I of the CSA pursuant to 21 U.S.C. 811(a). Prior to that time, the DEA Administrator submitted data which DEA gathered regarding methcathinone to the Assistant Secretary for Health, delegate of the Secretary of the Department of Health and Human Services. In accordance with 21 U.S.C. 811(b), the DEA Administrator also requested a scientific and medical evaluation and a scheduling recommendation for methcathinone from the Assistant Secretary for Health.

Methcathinone had been temporarily placed into Schedule I of the CSA by the DEA Administrator on May 1, 1992 for a period of one year (57 FR 18824) using the temporary scheduling provisions of the CSA (21 U.S.C. 811(h)). The temporary scheduling of methcathinone subsequently was extended for six months until November 1, 1993 (58 FR 25934). The temporary scheduling was based on a finding by the DEA Administrator that such scheduling was necessary to avoid an imminent hazard to the public safety.

By letter dated August 31, 1993, the DEA Administrator received the scientific and medical evaluation and scheduling recommendation for methcathinone from the Acting Assistant Secretary for Health, delegate of the Secretary of the Department of Health and Human Services. The Acting Assistant Secretary recommended that methcathinone be placed into Schedule I of the CSA based on a scientific and medical evaluation of the available data.

The notice of proposed rulemaking for methcathinone provided the opportunity for interested parties to submit comments, objections or requests for a hearing regarding the scheduling of methcathinone. No comments, objections or requests for a hearing were received regarding methcathinone

Methcathinone has a chemical structure similar to that of methamphetamine and cathinone. All forms of methamphetamine have been controlled in Schedule II of the CSA since 1971. Cathinone was placed in Schedule I of the CSA of February 14, 1993.

In preclinical studies, methcathinone hydrochloride produces pharmacological effects and appears to have an abuse potential similar to that of the amphetamines. Methcathinone hydrochloride increases spontaneous rodent locomotor activity, potentiates the release of radiolabelled dopamine from dopaminergic nerve terminals in the brain and causes appetite suppression. In drug discrimination studies, methcathinone hydrochloride evokes both (+)=amphetamine and cocaine induced appropriate responding. When examined in particular pharmacological assays for psychomotor stimulant-like activity, both the d and the l enantiomeric forms of methcathinone hydrochloride have been found to be pharmacologically active. In these assays, the l-form of methcathinone is more active than either d=methcathinone or (+)=amphetamine. Racemic methcathinone hydrochloride is intravenously self-administered by baboons, thus indicating that methcathinone produces reinforcing effects in this laboratory animal and suggesting that this drug has a potential for abuse in the human population.

To date, the abuse of methcathinone has been primarily documented in Michigan and Wisconsin. The abuse of methcathinone is believed to have originated in Michigan in 1989. Since that time, the abuse of methcathinone in Michigan has increased substantially, almost exclusively in the Upper Peninsula of the state. Methcathinone abuse spread from Michigan into Wisconsin approximately in the Fall of 1992. Health officials in Michigan and Wisconsin have encountered abusers of methcathinone. There have been a number of documented emergency room cases involving the purported abuse of methcathinone. Drug abuse treatment centers in Marquette and Iron Mountain, Michigan, as well as several psychiatric treatment centers in Wisconsin have reported encounters with methcathinone abusers.

The principal form of methcathinone distributed and abused is the hydrochloride salt of the 1-enantiomer, which exists as a white to off-white, chunky powdered material. It is usually sold as itself under such street names as "Cat" and "Goob". Less often it is passed off as methamphetamine under such names as "Crank" or "Speed". The most common route of administration is via nasal insufflation. Other routes of administration include oral ingestion, intravenous injection and smoking. Methcathinone is abused in binges lasting two to six days. During this time, methcathinone is repeatedly administered, resulting in the daily administration of amounts surpassing one or two grams. The methcathinone binge resembles amphetamine binges in that the abuser does not sleep or eat and takes in little in the way of liquids. The methcathinone binge is followed by a "crash" characterized by long periods of sleep, excess eating and, in some cases, depression.

Methcathinone is abused for its psychomotor stimulant effects. It is reported by abusers to produce such desirable effects as a "burst of energy", "headrush", "bodyrush", a "speeding of the mind", an "increased feeling of self-confidence" and "euphoria". Abusers have also reported that methcathinone produces unpleasant effects such as paranoia, hallucinations, anxiety, tremor, insomnia, malnutrition, weight loss, dehydration, sweating, stomach pains, nose bleeding and body aches. Following the crash, some individuals have experienced depression with or without thoughts of suicide.

Methcathinone hydrochloride is produced for street distribution in clandestine laboratories. Between June, 1991 and August, 1993, 27 active or inactive clandestine methcathinone laboratories were seized by Federal, state and local law enforcement officials in Michigan. Since January, 1993, at least five clandestine methcathinone laboratories have been encountered in Wisconsin. In August 1992 a clandestine methcathinone laboratory was seized in Seattle, Washington. In June 1993 a clandestine methcathinone laboratory was seized in Illinois. In September 1993 four clandestine methcathinone laboratories were seized in Indiana.

Methcathinone has been encountered by law enforcement officials in Michigan, Wisconsin, Washington, Illinois and Missouri. Michigan State Police obtained the first street sample of methcathinone in February, 1991. Since that time there have been over 75 encounters of methcathinone by Federal, state and local law enforcement officials in Michigan. Methcathinone was first encountered in Wisconsin in March 1992. Since October 1992, there have been more than 30 Federal, state or local law enforcement encounters of methcathinone in Wisconsin.

The Food and Drug Administration (FDA) has notified DEA that there are no exemptions or approvals in effect under section 505 of the Federal Food, Drug and Cosmetic Act for methcathinone. A search of the scientific and medical literature revealed no indications of current medical use of methcathinone in or outside of the United States.

Based upon the investigation and review conducted by DEA and upon the scientific and medical evaluation and recommendation of the Acting Assistant Secretary for Health, delegate of the Secretary of the Department of Health and Human Services, received in accordance with 21 U.S.C. 811(b), the DEA Administrator, pursuant to the provisions of 21 U.S.C. 811(a) and (b), finds that:

(1) Methcathinone has a high potential for abuse;

(2) Methcathinone has no currently accepted medical use in treatment in the United States; and,

(3) Methcathinone lacks accepted safety for use under medical supervision.

These findings are consistent with the placement of methcathinone into Schedule I of the CSA.

All regulations applicable to Schedule I substances continue to be effective as of October 15, 1993 with respect to methcathinone. This substance has been in Schedule I pursuant to the temporary scheduling provisions of 21 U.S.C. 811(h) since May 1, 1992. The current applicable regulations are as follows:

1. *Registration.* Any person who manufactures, distributes, delivers, imports or exports methcathinone or who engages in research or conducts instructional activities with respect to this substance, or who proposes to engage in such activities, must be registered to conduct such activities in accordance with parts 1301 and 1311 of title 21 of the Code of Federal Regulations.

2. *Security.* Methcathinone must be manufactured, distributed and stored in accordance with §§ 1301.71–1301.76 of title 21 of the Code of Federal Regulations.

3. *Labeling and Packaging.* All labels and labeling for commercial containers of methcathinone must comply with the requirements of § § 1302.03–1302.05, 1302.07 and 1302.08 of title 21 of the Code of Federal Regulations.

4. *Quotas.* All persons required to obtain quotas for methcathinone shall submit applications pursuant to § § 1303.12 and 1303.22 of title 21 of the Code of Federal Regulations.

5. *Inventory.* Every registrant required to keep records and who possesses any quantity of methcathinone shall take an inventory of all stocks of this substance on hand pursuant to § § 1304.11–1304.19 of title 21 of the Code of Federal Regulations.

6. *Records.* All registrants required to keep records pursuant to § § 1304.21–1304.27 of title 21 of the Code of Federal Regulations shall maintain such records on methcathinone.

7. *Reports.* All registrants required to submit reports pursuant to §§ 1304.34–1304.37 of title 21 of the Code of Federal Regulations shall do so regarding methcathinone.

8. *Order Forms.* All registrants involved in the distribution of methcathinone must comply with the order form requirements of §§ 1305.01–1305.16 of title 21 of the Code of Federal Regulations.

9. *Importation and Exportation.* All importation and exportation of methcathinone shall be in compliance with part 1312 of title 21 of the Code of Federal Regulations.

10. *Criminal Liability.* Any activity with respect to methcathinone not authorized by, or in violation of, the CSA or the Controlled Substances Import and Export Act shall be unlawful.

The Administrator of the DEA hereby certifies that the permanent placement of methcathinone into Schedule I of the CSA will have no significant impact upon entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* This action involves the control of a substance with no currently approved medical use in the United States.

This final rule is not a major rule for the purposes of Executive Order 12291 (46 FR 13193) of February 17, 1981. It has been determined that drug scheduling matters are not subject to review by the Office of Management and Budget (OMB) pursuant to the provisions of Executive Order 12291. Accordingly, this drug scheduling action is not subject to the provisions of Executive Order 12778 which are contingent upon review by OMB.

This action has been analyzed in accordance with the principles and criteria in Executive Order 12612, and it has been determined that this scheduling action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Under the authority vested in the Attorney General by section 201(a) of the CSA (21 U.S.C. 811(a)), and delegated to the Administrator of DEA by Department of Justice Regulations (28 CFR 0.100), the Administrator hereby orders that 21 CFR part 1308 be amended as follows:

PART 1308—[AMENDED]

1. The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), unless otherwise noted.

2. Section 1308.11(f) is amended by redesignating paragraphs (f)(3) through (f)(5) to (f)(4) through (f)(6) and by adding a new paragraph (f)(3) to read as follows:

§ 1308.11 Schedule I.

* * * * *

(f) * * *

(3) Methcathinone (Some other names: 2-(methylamino)-propiophenone; alpha-(methylamino)propiophenone; 2-(methylamino)-1-phenylpropan-1-one; alpha-*N*-methylaminopropiophenone; monomethylpropion; ephedrone; *N*-methylcathinone; methylcathinone; AL–464; AL–422; AL–463 and UR1432), its salts, optical isomers and salts of optical isomers . . . 1237.

* * * * *

§ 1308.11 [Amended]

3. Section 1308.11(g) is amended by removing paragraph (g)(3) and redesignating paragraphs (g)(4) and (5) as (g)(3) and (4).

Dated: October 7, 1993.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 93–25279 Filed 10–14–93; 8:45 am]

BILLING CODE 4410-09-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 2610 and 2622

Late Premium Payments and Employer Liability Underpayments and Overpayments; Interest Rate for Determining Variable Rate Premium; Amendments to Interest Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This document notifies the public of the interest rate applicable to late premium payments and employer liability underpayments and overpayments for the calendar quarter beginning October 1, 1993. This interest rate is established quarterly by the Internal Revenue Service. This document also sets forth the interest rates for valuing unfunded vested benefits for premium purposes for plan years beginning in August 1993 through October 1993. These interest rates are established pursuant to section 4006 of the Employee Retirement Income Security Act of 1974, as amended. The effect of these amendments is to advise plan sponsors and pension practitioners of these new interest rates.

EFFECTIVE DATE: October 1, 1993.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel (Code 22000), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006; telephone (202) 778–8850 (202) 778–8859 for TTY and TTD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: As part of title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), the Pension Benefit Guaranty Corporation ("PBGC") collects premiums from ongoing plans to support the single-employer and multiemployer insurance programs. Under the single-employer program, the PBGC also collects employer liability from those persons described in ERISA section 4062(a). Under ERISA section 4007 and 29 CFR 2610.7, the interest rate to be charged on unpaid premiums is the rate established under section 6601 of the Internal Revenue Code ("Code"). Similarly, under 29 CFR § 2622.7, the interest rate to be credited or charged with respect to overpayments or underpayments of employer liability is the section 6601 rate. These interest rates are published by the PBGC in appendix A to the premium regulation and appendix A to the employer liability regulation.

The Internal Revenue Service has announced that for the quarter beginning October 1, 1993, the interest charged on the underpayment of taxes will be at a rate of 7 percent. Accordingly, the PBGC is amending appendix A to 29 CFR part 2610 and appendix A to 29 CFR part 2622 to set forth this rate for the October 1, 1993, through December 31, 1993, quarter.

Under ERISA section 5006(a)(3)(E)(iii)(II), in determining a single-employer plan's unfunded vested benefits for premium computation purposes, plans must use an interest rate equal to 80% of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid. Under § 2610.23(b)(1) of the premium regulation, this value is determined by reference to 30-year Treasury constant maturities as reported in Federal Reserve Statistical Releases G.13 and H.15. The PBGC publishes these rates in appendix B to the regulation.

The PBGC publishes these monthly interest rates in appendix B on a quarterly basis to coincide with the publication of the late payment interest rate set forth in appendix A. (The PBGC

publishes the appendix A rates every quarter, regardless of whether the rate has changed.) Unlike the appendix A rate, which is determined prospectively, the appendix B rate is not known until a short time after the first of the month for which it applies. Accordingly, the PBGC is hereby amending appendix B to part 2610 to add the vested benefits valuation rates for plan years beginning in August of 1993 through October of 1993.

The appendices to 29 CFR parts 2610 and 2622 do not prescribe the interest rates under these regulations. Under both regulations, the appendix A rates are the rates determined under section 6601(a) of the Code. The interest rates in appendix B to part 2610 are prescribed by ERISA section 4006(a)(3)(E)(iii)(II) and § 2610.23(b)(1) of the regulation. These appendices merely collect and republish the interest rates in a convenient place. Thus, the interest rates in the appendices are informational only. Accordingly, the PBGC finds that notice of and public comment on these amendments would be unnecessary and contrary to the public interest. For the above reasons, the PBGC also believes that good cause exists for making these amendments effective immediately.

The PBGC has determined that none of these amendments is a "significant regulatory action" under the criteria set forth in Executive Order 12866, because they will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the right and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for these amendments, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 2610

Employee benefit plans, Penalties, Pension insurance, Pensions, and Reporting and recordkeeping requirements.

29 CFR Part 2622

Business and industry, Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements, and Small businesses.

In consideration of the foregoing, appendix A and appendix B to part 2610 and appendix A to part 2622 of chapter XXVI of title 29, Code of Federal Regulations, are hereby amended as follows:

PART 2610—PAYMENT OF PREMIUMS

1. The authority citation for part 2610 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1306, 1307 (1988 & Supp. I 1989), as amended by sec. 12021, Pub. L. 101–508, 104 Stat. 1388, 1388–573.

2. Appendix A to part 2610 is amended by adding a new entry for the quarter beginning October 1, 1993, to read as follows. The introductory text is republished for the convenience of the reader and remains unchanged.

Appendix A to Part 2610—Late Payment Interest Rates

The following table lists the late payment interest rates under § 2610.7(a) for the specified time periods:

From	Through	Interest rate (percent)
•	•	•
October 1, 1993.	December 31, 1993.	7

3. Appendix B to part 2610 is amended by adding to the table of interest rates therein new entries for premium payment years beginning in August of 1993 through October of 1993, to read as follows. The introductory text is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 2610—Interest Rates for Valuing Vested Benefits

The following table lists the required interest rates to be used in valuing a plan's vested benefits under § 2610.23(b) and in calculating a plan's adjusted vested benefits under § 2610.23(c)(1):

For premium payment years beginning in—	Required interest rate[1]
•	•
August 1993	5.30
September 1993	5.06
October 1993	4.80

[1] The required interest rate listed above is equal to 80% of the annual yield for 30-year Treasury constant maturities, as reported in Federal Reserve Statistical Release G.13 and H.15 for the calendar month preceding the calendar month in which the premium payment year begins.

PART 2622—EMPLOYER LIABILITY FOR WITHDRAWALS FROM AND TERMINATIONS OF SINGLE-EMPLOYER PLANS

4. The authority citation for part 2622 continues to read follows:

Authority: 29 U.S.C. 1302(b)(3), 1362–1364, 1367–68, as amended by secs. 9312, 9313, Pub. L. 100–203, 101 Stat. 1330.

5. Appendix A to part 2622 is amended by adding a new entry for the quarter beginning October 1, 1993, to read as follows: The introductory text is republished for the convenience of the reader and remains unchanged.

Appendix A to Part 2622—Late Payment and Overpayment Interest Rates

The following table lists the late payment and overpayment interest rates under § 2622.7 for the specified time periods:

From	Through	Interest rate (percent)
•	•	•
October 1, 1993.	December 31, 1993.	7

Issued in Washington, DC, this 12th day of October 1993.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 93–25404 Filed 10–14–93; 8:45 am]

BILLING CODE 7708–01–M

29 CFR Parts 2619 and 2676

Valuation of Plan Benefits in Single-Employer Plans; Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal; Amendments Adopting Additional PBGC Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends the Pension Benefit Guaranty Corporation's ("PBGC's") regulations on Valuation of Plan Benefits in Single-Employer Plans (29 CFR part 2619) and Valuation of

Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR part 2676). Part 2619 contains the interest assumptions that the PBGC uses to value benefits under terminating single-employer plans. Part 2676 contains the interest assumptions for valuations of multiemployer plans that have undergone mass withdrawal.

Under the PBGC's final rule issued on September 28, 1993, the PBGC will publish separate interest assumptions for lump sum valuations and for annuity valuations, and will publish the same sets of lump sum and annuity assumptions under both parts 2619 and 2676. The PBGC will adjust these assumptions as necessary to reflect changes in financial and annuity markets, but will publish them each month irrespective of whether there has been any change in the assumptions. The amendments set out in this final rule adopt the interest assumptions applicable to single-employer plans with termination dates in November 1993, and to multiemployer plans with valuation dates in November 1993.

EFFECTIVE DATE: November 1, 1993.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, or Peter H. Gould, Senior Counsel, Office of the General Counsel (Code 22000), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006, 202–778–8850 (202–778–8859 for TTY and TDD only). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: This rule adopts the interest assumptions to be used under the Pension Benefit Guaranty Corporation's ("PBGC's") regulations on Valuation of Plan Benefits in Single-Employer Plans (29 CFR part 2619, the "single-employer regulation") and Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR part 2676, the "multiemployer regulation").

Part 2619 sets forth the methods for valuing plan benefits of terminating single-employer plans covered under title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Under ERISA section 4041(c), all single-employer plans wishing to terminate in a distress termination must value guaranteed benefits and "benefit liabilities", *i.e.*, all benefits provided under the plan as of the plan termination date, using the formulas set forth in part 2619, subpart C. (Plans terminating in a standard termination may, for purposes of the Standard Termination Notice filed with PBGC, use these formulas to value benefit liabilities, although this is not required.) In addition, when the PBGC terminates an underfunded plan involuntarily pursuant to ERISA section 4042(a), it uses the subpart C formulas to determines the amount of the plan's underfunding. Part 2676 prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of ERISA.

On September 28, 1993, the PBGC published a final rule revising its actuarial assumptions for valuing annuity benefits under terminating single-employer plans and multiemployer plans that have undergone a mass withdrawal. The amended regulations prescribe that valuations of benefits payable as annuities would employ (1) new tables of mortality assumptions, replacing the tables previously prescribed by the PBGC, (2) a new table of specific administrative expense ("loading") assumptions, replacing the prior regulations' incorporation of administrative expense charges via a reduction in the PBGC's interest assumptions, and (3) a new "select and ultimate" structure of interest assumptions, replacing (in the case of the single-employer regulation) the use of interest assumptions based on the expected date on which the benefit being valued was assumed to enter pay status. Under the regulations, the new assumptions and methods do not apply to the PBGC's valuation of lump sum benefits; however, the PBGC adopted a unisex version of its historical mortality table for valuing lump sum benefits.

Appendix B to part 2619 sets forth the interest rates and factors under the single-employer regulation. Appendix B to part 2676 sets forth the interest rates and factors under the multiemployer regulation. Because these rates and factors are intended to reflect current conditions in the financial and annuity markets, it is necessary to update the rates and factors periodically.

Under the amended regulations, it will be necessary for the PBGC to issue two sets of interest rates and factors, one set to be used for the valuation of benefits to be paid as annuities and one set for the valuation of benefits to be paid as lump sums. The same assumptions will apply to terminating single-employer plans and to multiemployer plans that have undergone a mass withdrawal. This amendment adds to appendix B to parts 2619 and 2676 the first sets of interest rates and factors for valuing benefits in plans that terminate subject to the amended regulations, *viz.*, those single-employer plans that have termination dates during November 1993 and those multiemployer plans that have undergone mass withdrawal and that have valuation dates during November 1993.

For annuity benefits, the interest rates will be 5.60% for the first 25 years following the valuation date and 5.25% thereafter. For benefits to be paid as lump sums, the interest assumptions to be used by the PBGC will be 4.25% for the period during which benefits are in pay status and 4.0% during the period preceding the benefits' placement in pay status. (ERISA section 205(g) and Internal Revenue Code section 417(e) provide that private sector plans valuing lump sums under $25,000 must use interest assumptions at least as generous as those used by the PBGC for valuing lump sums (and for lump sums exceeding $25,000 are restricted to 120% of the PBGC interest assumptions).) The new interest assumptions that will be used by the PBGC for valuing lump sums under plans with termination dates during November 1993 are unchanged from the PBGC's single-employer rates in effect during October 1993.

Generally, under the amended regulations as in the past, the interest rates and factors will be in effect for at least one month. However, the PBGC will be publishing its interest assumptions under the amended regulations each month regardless of whether they represent a change from the previous month's assumptions. (In the past, the PBGC published interest assumptions under the single-employer regulation only when there was a change.) The assumptions normally will be published in the **Federal Register** by the 15th of the preceding month or as close to that date as circumstances permit.

The PBGC has determined that notice and public comment on these amendments are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest rates and factors promptly so that the rates can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in single-employer plans whose termination dates fall during November 1993 and of benefits in multiemployer plans terminated by mass withdrawal with valuation dates during November 1993, the PBGC finds that good cause exists for making the rates set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this is not a "significant regulatory action" under the criteria set forth in Executive Order 12866, because it will not have an

annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 2619

Employee benefit plans, pension insurance, and pensions.

29 CFR Part 2676

Employee benefit plans and Pensions.

In consideration of the foregoing, parts 2619 and 2676 of chapter XXVI, title 29, Code of Federal Regulations, are hereby amended as follows:

PART 2619—[AMENDED]

1. The authority citation for part 2619 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, and 1362.

2. In appendix B, entries are added for Rate Set 1 of Table I, and a new entry is added to Table II, as set forth below. The introductory text of both tables is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 2619—Interest Rates Used to Value Lump Sums and Annuities

Lump Sum Valuations

In determining the value of interest factors of the form $v^{(t)}$ (as defined in § 2619.43(b)(1)) for purposes of applying the formulas set forth in § 2619.43 (b) through (i) and in determining the value of any interest factor used in valuing benefits under this subpart to be paid as lump sums (including the return of accumulated employee contributions upon death), the PBGC shall employ the values of i_t set out in Table I hereof as follows:

(1) For benefits for which the participant or beneficiary is entitled to be in pay status on the valuation date, the immediate annuity rate shall apply.

(2) For benefits for which the deferral period is y years (y is an integer and $0 < y \leq n_1$), interest rate i_1 shall apply from the valuation date for a period of y years; thereafter the immediate annuity rate shall apply.

(3) For benefits for which the deferral period is y years (y is an integer and $n_1 < y \leq n_1 + n_2$), interest rate i_2 shall apply from the valuation date for a period of $y - n_1$ years, interest rate i_1 shall for the following n_1 years; thereafter the immediate annuity rate shall apply.

(4) For benefits for which the deferral period is y years (y is an integer and $y < n_1 + n_2$), interest rate i_3 shall apply from the valuation date for a period of $y - n_1 - n_2$ years, interest rate i_2 shall apply for the following n_2 years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

TABLE.—I

[Lump sum valuations]

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
1	11–1–93	12–1–93	4.25	4.00	4.00	4.00	7	8

Annuity Valuations

In determining the value of interest factors of the form $v^{(t)}$ (as defined in § 2619.49(b)(1)) for purposes of applying the formulas set forth in § 2619.49 (b) through (i) and in determining the value of any interest factor used in valuing annuity benefits under this subpart, the plan administrator shall use the values of i_t prescribed in Table II hereof.

The following table tabulates, for each calendar month of valuation ending after the effective date of this part, the interest rates (denoted by i_1, i_2, * * *, and referred to generally as i_t) assumed to be in effect between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date.

TABLE—II

[Annuity valuations]

For valuation dates occurring in the month—	The values of i_t are:					
	i_t for t =		i_t for t =		i_t for t =	
November 1993	.0560	1–25	.0525	>25	N/A	N/A

PART 2676—[AMENDED]

3. The authority citation for part 2676 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1399(c)(1)(D), and 1441(b)(1).

4. In appendix B, entries are added for Rate Set 1 of Table I, and a new entry is added to Table II, as set forth below. The introductory text of both tables is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 2676—Interest Rates Used to Value Lump Sums and Annuities

Lump Sum Valuations

In determining the value of interest factors of the form $v^{(t)}$ (as defined in § 2676.13(b)(1)) for purposes of applying the formulas set forth in § 2676.13 (b) through (i) and in determining the value of any interest factor used in valuing benefits under this subpart to be paid as lump sums, the PBGC shall use the values of i_t prescribed in Table I hereof. The interest rates set forth in Table I shall be used by the PBGC to calculate benefits payable as lump sum benefits as follows:

(1) For benefits for which the participant or beneficiary is entitled to be in pay status on the valuation date, the immediate annuity rate shall apply.

(2) For benefits for which the deferral period is y years (y is an integer and $0 < y \leq n_1$), interest rate i_1 shall apply from the valuation date for a period of y years; thereafter the immediate annuity rate shall apply.

(3) For benefits for which the deferral period is y years (y is an integer and $n_1 < y \leq n_1 + n_2$), interest rate i_2 shall apply from the valuation date for a period of $y - n_1$ years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

(4) For benefits for which the deferral period is y years (y is an integer and $y > n_1 + n_2$), interest rate i_3 shall apply from the valuation date for a period of $y - n_1 - n_2$ years, interest rate i_2 shall apply for the following n_2 years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

TABLE—I

[Lump sum valuations]

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
1	11–1–93	12–1–93	4.25	4.00	4.00	4.00	7	8

Annuity Valuations

In determining the value of interest factors of the form $v^{0,2}$ (as defined in § 2676.13(b)(1) for purposes of applying the formulas set forth in § 2676.13 (b) through (i) and in determining the value of any interest factor used in valuing annuity benefits under this subpart, the plan administrator shall use the values of i_t, prescribed in the table below.

The following table tabulates, for each calendar month of valuation ending after the effective date of this part, the interest rates (denoted by $i_1, i_2, \ldots$ and referred to generally as i_t), assumed to be in effect between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date.

TABLE—II

[Annuity valuations]

For valuation dates occurring in the month—	The values of i_t are:					
	i_t for t=		i_t for t=		i_t for t=	
November 1993	.0560	1–25	.0525	>25	N/A	N/A

Issued in Washington, DC, on this 12th day of October 1993.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 93–25402 Filed 10–14–93; 8:45 am]

BILLING CODE 7708–01–M

29 CFR Part 2644

Notice and Collection of Withdrawal Liability; Adoption of New Interest Rate

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Notice and Collection of Withdrawal Liability. That regulation incorporates certain interest rates published by another Federal agency. The effect of this amendment is to add to the appendix of that regulation a new interest rate to be effective from October 1, 1993, to December 31, 1993.

EFFECTIVE DATE: October 1, 1993.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel (22000), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006; telephone 202–778–8850 (202–778–8859 or TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Under section 4219(c) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), the Pension Benefit Guaranty Corporation ("the PBGC") promulgated a final regulation on Notice and Collection of Withdrawal Liability. That regulation, codified at 29 CFR part 2644, deals with the rate of interest to be charged by multiemployer pension plans on withdrawal liability payments that are overdue or in default, or to be credited by plans on overpayments of withdrawal liability. The regulation allows plans to set rates, subject to certain restrictions. Where a plan does not set the interest rate, § 2644.3(b) of the regulation provides that the rate to be charged or credited for any calendar quarter is the average quoted prime rate on short-term commercial loans for the fifteenth day (or the next business day if the fifteenth day is not a business day) of the month preceding the beginning of the quarter, as reported by the Board of Governors of the Federal Reserve System in Statistical Release H.15 ("Selected Interest Rates").

Because the regulation incorporates interest rates published in Statistical Release H.15, that release is the authoritative source for the rates that are to be applied under the regulation. As a convenience to persons using the regulation, however, the PBGC collects the applicable rates and republishes them in an appendix to part 2644. This amendment adds to this appendix the interest rate of 6 percent, which will be effective from October 1, 1993, through December 31, 1993. This rate represents no change from the rate in effect for the third quarter of 1993. This rate is based on the prime rate in effect on September 15, 1993.

The appendix to 29 CFR part 2644 does not prescribe interest rates under the regulation; the rates prescribed in the regulation are those published in Statistical Release H.15. The appendix merely collects and republishes the rates in a convenient place. Thus, the interest rates in the appendix are informational only. Accordingly, the PBGC finds that notice of and public comment on this amendment would be unnecessary and contrary to the public interest. For the above reasons, the

PBGC also believes that good cause exists for making this amendment effective immediately.

The PBGC has determined that this amendment is not a "significant regulatory action" under the criteria set forth in Executive Order 12866, because it will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 2644

Employee benefit plans, Pensions.

In consideration of the foregoing, part 2644 of subchapter F of chapter XXVI of title 29, Code of Federal Regulations, is amended as follows:

PART 2644—NOTICE AND COLLECTION OF WITHDRAWAL LIABILITY

1. The authority citation for part 2644 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3) and 1399(c)(6).

2. Appendix A to part 2644 is amended by adding to the end of the table therein a new entry as follows:

Appendix A to Part 2644—Table of Interest Rates

* * * * *

From	To	Date of quotation	Rate (percent)
*	*	*	*
10/01/93	12/31/93	9/15/93	6

Issued in Washington, DC, on this 12th day of October 1993.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 93–25403 Filed 10–14–93; 8:45 am]

BILLING CODE 7708–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

RIN 0720–AA15

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Reimbursement of Providers, Claims Filing, and Participating Provider Program

AGENCY: Office of the Secretary, DoD.

ACTION: Correction to final rule.

SUMMARY: This document contains corrections to the final rule which was published Friday October 1, 1993 (58 FR 51227). The final rule publication omitted two attachments to the preamble: first, a report on analysis conducted to support agency consideration of public comments and, second, a list of ambulatory surgical procedures subject to the reimbursement rules in section 199.14(d). Also, the supplementary section of the final rule stated, in error that new ambulatory surgery reimbursement procedures would be implemented January 1, 1994. This document supplies the missing attachments, and corrects the implementation date for the new ambulatory surgery reimbursement procedures.

EFFECTIVE DATE: October 15, 1993.

FOR FURTHER INFORMATION CONTACT: Steve Lillie, Office of the Assistant Secretary of Defense (Health Affairs), telephone (703) 695–3350.

SUPPLEMENTARY INFORMATION: Accordingly, the supplementary section of the publication on Friday, October 1, 1993, of the final rule which was the subject of FR Doc. 93–24257, is corrected as follows:

In line 10 of the third column on page 51236, change "January 1, 1994" to "April 1, 1994".

Before the list of subjects in the third column on page 51236, add Attachment 1 and Attachment 2 as set forth below.

Dated: October 8, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Attachment 1—Report on Analysis of Pediatric Professional Services Payments for Office of Assistant Secretary of Defense (Health Affairs)

Lewin-VHI, Inc.

September 1993.

This document transmits to the Office of the Assistant Secretary of Defense (Health Affairs) our report on payments for pediatric professional services for the CHAMPUS program. At your request, this study was undertaken to help evaluate concerns expressed by commenters in response to the December 10, 1992 Proposed Rule on reimbursement of physicians and other individual professional providers.

In summary, the empirical results of our study suggest that the costs of treating children are higher only for a limited number of procedures. Compared to adults, costs for children are higher for procedures that account for 12 percent of CHAMPUS payments to individual providers. This analysis shows a larger volume of physician services where children are significantly less expensive to treat or where there is no difference in costs compared to adults.

I. Background

After publication of the Notice of Proposed Rule Making (NPRM), OCHAMPUS received comments that using Medicare payment rates for children was inappropriate because they do not account for the extra resources required to care for children. Some of these commenters cited the March 1992 Physician Payment Review Commission (PPRC) Annual Report on this subject, which said that "some of the Medicare relative values will likely need to be adjusted when applied to services delivered to children" (PPRC, 1992, p. 80). This situation may occur for these reasons: (1) CPT codes may not distinguish a procedure performed on a child from an essentially different one performed on an adult; (2) the work effort is often higher for young children due to anatomical and physiological differences; and (3) it takes more time because the physician must deal with both parent and the child, and children may also be less cooperative than adult patients. It is important to note that PPRC does not take the position that all services may incur greater costs when performed on children, as evidenced by this statement: "On the other hand, physician work may be less for some services for children." (*Ibid.*, p. 81)

II. Analysis

A. Methods and Data

To be responsive to the commenters, we designed an analysis to examine the statistical evidence of whether children are more expensive to treat than adults, for a given CPT code procedure or for groupings of similar procedures. Because there is no measure of the true economic cost of treating children versus adults, nor even accounting

costs, we think that actual physician charges from the national CHAMPUS claims data are the best proxy for a measure of the cost to a physician of treating a patient.

The assumption behind the use of claims data charges to examine this relationship is that a physician would set higher charges accordingly for a specific procedure if he found from experience that it consistently takes more time and effort to perform the procedure on a child. If a procedure is more work when performed on children, but physicians have historically not reflected that in their charges, it seems unreasonable to expect CHAMPUS to pay more for such procedures.

The research question for this study is whether physicians' services for children are systematically and significantly more expensive than comparable adult services. The null hypothesis for this study can thus be stated as: Children are not more expensive to treat than adults, for a given CPT code procedure or for groupings of similar procedures. To test this hypothesis, we compared average charges across age groups, for a particular CPT code,[1] through the use of dummy age group variables in a regression model. This model also served to explore the relationship of charges to age to help ascertain a logical threshold criteria for "children's" or "pediatric" costs, since none of the commenters cited any standards on the specific age in question. In the regression model on charges, we needed to include independent variables that could affect charges other than the age of the patient and that CHAMPUS already adjusts payments for—specifically, cost-of-living as measured by geography. For accuracy, we used the actual CPT-specific and locality-specific Geographic Adjustment Factors (GAF)[2] for each claim, rather than a locality average. In addition to the GAF, the only independent variables were dummy variables of age groups (0–2, 3–5, 6–17 and 18+) which will show whether there is a statistically significant difference in charges by age group. Significant, positive coefficients on these dummy variables would cause one to reject the null hypothesis that there is no difference in costs of treating children. In other words, the statistical evidence would support the position that children are more expensive to treat than adults, as measured by physician charges.

The unit of observation was a single service, or procedure, as indicated by a line-item on a claim. Each claim was represented in the regression by the number of services submitted on the claim.[3] To eliminate erroneous data, we deleted all claims that had "number of services" greater than four for surgical procedures and diagnostic tests, and greater than twelve for evaluation and management (E&M) services.[4] The most recent claims data we had available for this study consisted of all CHAMPUS professional services claims incurred during the year's time period of July 1, 1991 through June 30, 1992. In order to assure data reliability, we limited the analysis to CPT codes that had at least 50 annual services for children age 0–2 and 50 for adults over the time period.

B. Preliminary Analysis of Individual CPT Codes

As exploratory data analysis, we estimated the following regression model:

$$CHARGE = \alpha+\beta(GAF)+\beta(AGE\ 0–2)+\beta(AGE\ 3–5)+\beta(AGE\ 6–17)+\varepsilon$$

where AGE 0–2, etc. are dummy variables coded 0 or 1 to reflect the age group of a given claim, and GAF is the GAF specific to the CPT and locality of the claim. The coefficients on the age dummies thus reflect the difference in price from the omitted category (adults), and their significance is automatically calculated in the typical statistical software output. A significant coefficient shows that an age group's average charges are significantly different than average charges for adults, for a particular CPT code.

We ran separate regressions for each CPT code, using about four dozen CPT codes that were selected across the entire CPT code range (i.e., a sampling from all different body systems). We chose the top two to three CPT codes, according to dollar volume, per body system to model because they should be most representative of the economic impact for particular body system area. As mentioned above, the unit of observation in these regression analyses was a single service as represented by a line-item on a claim, and only CPT codes with at least 50 annual services for both children aged 0–2 and for adults were used for modeling.

This exploratory work helped determine whether there appeared to be any evidence at all to support the position that children are more expensive to treat for the same CPT code, before conducting more extensive analyses. The preliminary analysis indicated that there did appear to be significantly higher charges for children in certain ranges of procedures (cardiovascular, ocular, auditory, physical therapy), significantly lower or no difference in charges in other body system areas (skin, musculoskeletal, respiratory, nervous, most diagnostic tests, speech therapy, psychiatric, and visits), and indefinite results in other areas due to inconsistent effects (digestive, urinary-genital, pulmonary, eye and ear tests).

For completeness, we also estimated regression equations for the specific procedures mentioned in the 1992 PPRC report. We did not include the procedures in our analysis for high volume services because none of them had sufficient service volume. Specifically, these services are: spirometry (94010 and 94060), bimalleolar ankle fracture (27808, 27810 and 27814) and percutaneous renal biopsy (50200). The results for these specific examples do not support the argument for higher children's payments:

- Among the ankle fracture procedures, CPT code 27814 had no claims submitted in the entire year for anyone under the age of six and the other two codes (28808 and 27810) had only 1–3 claim submitted for children under six; the regressions showed no significant differences in charges for any age group under 18 years compared to adults;
- The kidney biopsy (CPT code 50200) also had few pediatric claims (only 3 claims in each age group 0–2 and 3–5, and 28 claims for age 6–17) over the year; there were no significant differences in charges;

[1] We used an ordinary-least-squares regression model because, at this stage of the analysis, we did not want to define only two age group categories, which would be necessary if we used a single T-test comparing two group means.

[2] The GAF is an index that reflects a physician's expenses (work, practice costs and malpractice insurance) for a particular CPT code in relation to the national average for all procedures and geographic areas, and is thus centered at 1.0. The GAF was calculated by first determining the CHAMPUS locality by matching a claim's zip code to the zip/locality crosswalk file, and then multiplying the corresponding GPCIs with the proportions of work, practice expense and malpractice costs determined from the Medicare RVUs for that CPT code.

[3] That is, a claim for three visits would be represented by three observations in the regression (i.e., receive three times the weight as a claim for only one visit), and the dependent variable would be the average charge for those three visits.

[4] These criteria were chosen after examining frequency distributions of the number of services on a claim by the type of procedure. Claims with excessive numbers of services on them often had extremely low average charges (e.g., less than $5), indicating data errors. These criteria insured that the vast majority of legitimate claims would be included in the analysis. We did not want, however, to give each claim a weight of "one" in the regression because that could conceivably bias the results if the average charge on a claim submitted for several services systematically differed from claims submitted for only one service. This would be especially relevant for medical, rather than surgical, procedures.

• The two spirometry codes (CPT codes 94010 and 94060) had sufficient claims (more than 75 in each child's age group). For both procedures, all children's age groups had significantly lower average charges than adults (all p<=.02 except one p=.06 for age 3–5).

C. Analysis Integrating All Procedures

Because the preliminary results indicated that further analysis was warranted, we developed a model that would estimate the difference by age group combining similar procedures together, in order to assess the overall situation for all services rather than just a few. Further research was also advisable because it would be possible for aggregate results to differ from the few sampled CPT codes, even though they were the highest volume procedures. Furthermore, we needed to standardize the measurement of the cost effects across dissimilarly-priced procedures because the preliminary regressions measured procedure-specific effects in dollars (i.e., a $15 difference would not be important for a $3,000 procedure but would be for a service that average $30 in price).

We used the percentage difference in charges (children compared to adults) as a standardized measure of differential effects by age and as the best measure available to us that reflects qualitative judgment on the "fairness" of a price. For example, we hypothesized that a physician would judge a price too low if it were 20 percent below the appropriate level, whether that level was $30 or $3000, even though this difference would amount to only $6 in the former case—an amount that would be trivial for a major procedure. Also, percentage differences easily lend themselves to actual payment level determinations, if necessary. The dependent variable was thus defined as the ratio of an individual claim's charge to the average adult charge for that particular procedure. This is a type of index centered at one (i.e., a value of 1.1 would be the dependent variable for a claim with a charge of $110 if the average charge was $100 for adults aged 18+). In order to easily incorporate the GAF into this multi-procedural model, we first geographically standardized all charges by dividing them by the appropriate GAF. After this standardization, the adult average for each CPT code was calculated and merged onto the original claims, and the dependent variable calculated as the ratio to this procedure-specific adult average.[5] Thus, the model was:

$$\frac{\text{Standardized Charge}}{\text{Adult Avg. Std. Charge}} = \alpha + \beta(\text{Age}0-2) + \beta(\text{Age}3-5) + \beta(\text{Age}6-17) + \varepsilon$$

and the coefficients can be interpreted as the percentage difference in that age group's average charges compared to adults.[6]

The advantage of this form of the dependent variable is that dissimilar CPT codes can be included in the same regression model. We then ran separate regressions for each body system, including all claims for CPT codes that had at least 50 claims for ages 0–2 and 50 adult claims.[7] We also eliminated any CPT codes that are not based on Medicare RVUs, and codes that already have a pediatric age category in the definition. We ran separate regressions by body system because we thought this best represented the clinical and economic problem, since physician specialists tend to work in one body area.

III. Regression Results

Table 1 shows the resulting regression coefficients for each grouping of procedures, and those that are significant at the p=.05 level or better are marked. The columns marked "# of Codes" and "# of Services" refer only to the sample used in the regressions, not in the entire claims data nor in the entire CPT manual. Note that there were only a few body system categories that had more than 10 codes with at least 50 claims for children aged 0–2. The end of the table presents results for the specific CPT codes cited in the PPRC report as procedures that theoretically require more work when performed on children. We also ran separate regressions on non-physicians for a few groups where many non-physicians bill CHAMPUS (physical, speech and psychiatric therapies). A summary of the results is: Procedures for which the Cost for Children Aged 0–5, Compared to Adults, Is:

• Significantly Higher: cardio-vascular, digestive, ocular, auditory, IV infusion therapy/dialysis, chemotherapy

• Significantly Lower: integumentary, musculoskeletal, nervous, speech therapy, otorhinolaryngology, visits

• Not Significantly Different: respiratory, urinary-genital, diagnostic gastroenterology

• Mixed Results: opthalmology, diagnostic cardiology, pulmonary, neurology, psychiatric

The mixed results are procedure categories in which one age group shows different results from the others, rather than a smooth and consistent linear pattern. Or, in the case of pyschiatric procedures, the results are not consistent across specialty types (psychiatrists versus psychologists versus counselors), as one would naturally expect for a true effect.

IV. Impact Analysis for CHAMPUS Pediatric Payments

To put the above results into payment and policy context, we then calculated the following two types of cost information: (1) Estimates of the impact on CHAMPUS allowed charges if the CMACs for certain pediatric procedures were increased; and (2) a breakdown of current CHAMPUS allowed charges for children aged 0–5 by type of procedure.

Table 2 presents estimates of the volume-weighted increase in CMAC levels that would occur based on the regression model results presented above. In performing these calculations, we assumed that CMAC levels for children would have percentage increases exactly equal to the value of the significantly positive regression coefficients, and that there would be no decreases for the coefficients that were significantly negative. The estimates are based on service volumes from the July 1991 through June 1992 claims data and the March 1, 1993 CMAC levels. The impact on CHAMPUS expenditures was estimated for several different scenarios: if payments were increased for several different age groupings (i.e., if payments were increased for ages 0–2 only, 0–5 only, or 0–17), and payment increases for all CPT codes in the relevant body systems versus only the codes used in the regressions. The latter would be close to a revised payment policy only for procedures with at least 50 annual claims. These estimates of the impact on total CHAMPUS payments are probably somewhat high for two reasons: (1)

[5] For adults as a group, this ratio would thus average to 1.0. Our computations were thus verified in the regression models when the estimated intercept was 1.0.

[6] For example, a coefficient of .25 for the age0-2 dummy variable would mean that charges for children aged 0–2 were 25 percent higher than for adults, on average.

[7] Because the adult average charge that forms the denominator of the dependent variable is calculated on a CPT level, it is still important to have a sufficient number of claims for statistical stability, so we retained the 50-claim criteria.

Because they are based on percentage increases to CMACs, these amounts would decrease as the CMAC levels decline over the next few years; and (2) no reduction was taken in these dollar figures for copayments and deductibles paid by the beneficiary.

We then categorized CHAMPUS allowed charges to non-institutional providers for children aged 0–5 from the July 1991 to June 1992 claims data.[8] Results are presented in Table 3. The first four categories in Table 3 are all procedures for which the consideration of different payments for pediatric services is not applicable, either because there are no CMACs for these codes and payment levels are set by the FIs, because the CPT code definition is already defined as specific to children, or other types of services that would not be relevant for consideration due to their nature (i.e., radiology and pathology).

To summarize Table 3:

- Pediatric services with charges significantly *higher* than adults account for only 12 percent of current CHAMPUS payments for children aged 0–5.
- The counter-effect—non E&M services where pediatric charges are significantly lower or no different from adults—occurs in services accounting for a greater percentage of current payments (17 percent) than the significantly higher category.
- E&M services alone account for almost half (48 percent) of CHAMPUS payments to this age group. This service category also had charges significantly lower than adults, which is probably due to specialty differentials more than any surgical category—that is, pediatricians may charge less for office visits than the physicians who treat adults)[9].
- CPT codes that already have a definition by age group (e.g., tonsillectomies, circumcisions)—and thus presumably have appropriate RVUs for the pediatric service—account for 8.5 percent of total payments for children aged 0–5.
- Codes without CMACs (anesthesia, unlisted procedures, allergy, immunizations, etc.) account for 9 percent of payments, and radiology and pathology another 5 percent.

V. Conclusions

This study compared pediatric to adult charges, within CPT procedure code, as a method for measuring treatment "cost" differentials. The empirical results suggest that children may be more expensive to treat for certain procedures but are less expensive for others. The results indicate that there are more services for which children are significantly less expensive to treat than adults, or where there is no difference in costs, than there are services for which children are more expensive than adults.

In terms of CHAMPUS total payments for children aged 0 to 5, the procedure categories that are estimated to have significantly higher costs for treating children account for only 12 percent of payments. By contrast, 56 percent of payments are for services with estimated significantly lower costs for children (48 percent are visits and the other 8 percent both surgical and medical procedures), and another 9 percent of payments are in categories with no estimated difference. The remainder of payments are in miscellaneous categories where differential payment rates are not pertinent or where rates are currently not determined by the Medicare fee schedule values.

Significantly lower costs for treating children are most evident in medical rather than surgical procedures (e.g., speech therapy, neurology and otorhinolaryngology diagnostic tests), and for visit codes. The latter effect may be a specialty pricing effect, since a larger volume of children's visits may be performed by pediatricians or family practitioners, rather than more expensive specialists. One would not expect such a specialty effect to account for some of the differences seen in the surgical procedures, however. Furthermore, CHAMPUS has historically not used specialty differentials in setting payment rates.

The results show that physician estimated "costs" for cardiovascular system surgical procedures (but not diagnostic tests) and physical therapy are most likely to have large and significant differentials for pediatric patients—about 25 to 33 percent higher than adult treatment costs. Also, eye surgeries and intravenous infusion therapy/dialysis procedures also are estimated to have considerably higher "costs" for children than adults, but the effect is strongest for children less than three years old.

The impact analysis of hypothetical increases in payments for selected pediatric procedures shows projected increases in CHAMPUS professional service outlays of about $1,000,000 to $3,000,000 per year, depending on which age groups or claims volume criteria is used—this would be approximately a 1 to 3 percent increase in pediatric payments. The projected cost increase figure, however, does not account for administrative and operational costs that would be necessary to develop and implement a new physician payment system based on the patient's age.

TABLE 1.—ANALYSIS OF CHAMPUS PROFESSIONAL SERVICE CHARGES: REGRESSIONAL RESULTS BY BODY SYSTEM

Body system	CPT code range	Regression sample		Age regression coefficients		
		No. of codes	No. of services	0–2 years	3–5 years	6–17 years
Integumentary	10000–19999	24	89,894	**−.042	−.018	**−.036
Musculoskeletal	20000–29999	8	16,576	**−.111	**−.045	**−.023
Respiratory	30000–32999	6	11,828	.019	.001	.024
Cardiovascular	33000–37799	7	20,418	**.344	**.261	**.237
Digestive	40000–49999	6	20,029	**.053	**.100	*.032
Urinary-Genital	50000–59999	8	14,465	.027	−.038	.007
Nervous	61000–64999	4	6,379	**−.132	**−.163	**−.117
Ocular	65000–68899	4	1,474	**.481	*.167	**.172
Auditory	69000–69999	5	24,566	**.139	**.122	**.106

[8] Services for durable medical equipment, clinical lab, drugs, facilities and supplies were deleted from these figures, as well as claims using CHAMPUS-unique codes for services under the Program for the Handicapped.

[9] Theoretically, one would expect no difference between adult and pediatric charges for E&M services, since the CPT coding system itself allows physicians to select the appropriate code for billing the intensity or work required of a visit. Thus, if a physician felt pediatric visits were more work, a higher-valued CPT visit code could already be chosen to reflect that increase. Our regression analysis measured differences within CPT codes.

TABLE 1.—ANALYSIS OF CHAMPUS PROFESSIONAL SERVICE CHARGES: REGRESSIONAL RESULTS BY BODY SYSTEM—Continued

Body system	CPT code range	Regression sample		Age regression coefficients		
		No. of codes	No. of services	0–2 years	3–5 years	6–17 years
IV Infusion therapy/dialysis	90780–90781, 90935–90999	4	6,710	**.288	*.165	.048
DX Gastro-enterology	91000–91299	2	618	−.031	−.087	*−.130
Speech therapy—Physicians	92507–92508	1	9,438	**−.337	**−.455	**−.263
Speech therapy—Non-physicians	92507–92508	1	10,786	**−.281	**−.191	*−.032
Ophthalmology	92000–92499	8	75,963	*.014	**−.086	**−.043
Otorhino-laryngology	92500–92599	11	67,801	**−.166	**−.145	**−.116
DX Cardiovascular	92950–93999	20	306,110	**−.058	**.047	**.061
Pulmonary	94000–95799	20	100,528	**.026	**−.141	**−.090
Neurology	95805–95999	5	44,635	**−.155	.026	**.038
Chemotherapy	96400–96549	5	53,228	**.121	**.251	**.116
Physical therapy—Physicians	97000–97799	12	107,380	**.360	**.302	−.053
Physical therapy—Non-physicians	97000–97799	7	46,175	−.004	**.030	**.045
Visits	99200–99499	39	452,185	**−.051	**−.091	**−.025
Psychiatric—Physicians	90800–90899	4	132,203	.011	**.030	**.051
Psychiatric—Psychologists	90800–90899	4	149,913	**−.084	**−.013	**−.006
Psychiatric—Counselors	90800–90899	2	153,810	.014	**.038	**.026
Closed bimalleolar ankle fracture	27808	1	81	.113	−.672	.103
Closed bimall. ankle FX w/man	27810	1	43	.160	***	.179
Open treatmt of bimall. ankle FX	27814	1	329	***	***	.106
Percutaneous renal biopsy	50200	1	194	−.102	.240	−.002
Spirometry	94010	1	24,522	*−.098	**−.223	**−.114
Spirometry and bronchospasm eval.	94060	1	13,429	*−.125	−.068	**−.054

*p <=.05.
**p <=.01.
***=No claims.

Note: Due to the large claims volume, the regression sample for visits and psychiatric procedures was a 25 percent random sample of all appropriate claims. Also, the visits sample only included codes from the new 1992 "99000" series, which were used during a six-month time period of these claims data (i.e., .50×.25=.125 random sample).

TABLE 2.—CHANGES IN CHAMPUS EXPENDITURES DUE TO INCREASED PEDIATRIC PAYMENT

	No. of codes	If CMACs were increased for:		
		Ages 0–2	Ages 0–5	Ages 0–17
If payments were increased for all CPT codes in a body system:				
Significant groups *	831	$1,225,000	$1,638,000	$2,268,000
Borderline results **	122	37,000	58,000	194,000
Psychiatric ***	30	0	23,000	425,000
Total	983	1,262,000	1,719,000	2,887,000
If payments were increased only for codes with 50+ claims per year:				
Significant groups *	43	722,000	960,000	1,165,000
Borderline results **	35	33,000	54,000	160,000
Psychiatric ***	4	0	22,000	400,000
Total	82	755,000	1,036,000	1,725,000

* Significant Body Systems: cardiovascular, digestive, ocular, auditory, IV infusion & dialysis, chemotherapy, and physical therapy.
** Borderline Systems: diagnostic cardiology, ophthalmology, pulmonary and neurology.
*** Psychiatric procedures also show borderline or indefinite results (i.e., significant for some ages and/or provider classes and not others), but are shown separately due to their large dollar volume.

TABLE 3.—DISTRIBUTION OF CURRENT CHAMPUS PEDIATRIC (AGE 0–5) PAYMENTS

Type of procedure	Allowed charges	Percent of total
Anesthesia	$6,553,002	5.4
Other codes without CMACs (e.g., '99' codes, allergy, shots)	4,125,550	3.4
Radiology and pathology	5,966,495	5.0
Age-specific CPT codes	10,272,992	8.5
Code groups with no significant difference from adults (respiratory, urinary-genital, DX gastroenterology, pulmonary, psychiatric)	11,181,601	9.2
E&M codes (significantly lower charges)	58,260,079	48.1
Other codes with significantly lower charges than adults (integumentary, musculoskeletal, nervous, ophthalmology, otorhinolaryngology, DX cardiology, neurology, speech therapy)	9,791,759	8.1

TABLE 3.—DISTRIBUTION OF CURRENT CHAMPUS PEDIATRIC (AGE 0–5) PAYMENTS—Continued

Type of procedure	Allowed charges	Percent of total
Codes with significantly higher charges than adults (cardiovascular, digestive, ocular, auditory, IV/dialysis, chemotherapy, physical therapy)	14,940,392	12.3
Total	121,139,280	100.0

Attachment 2

CPT–4 Code Description

10140 Drainage of hematoma
10141 Drainage of hematoma
10180 Complex drainage, wound
11042 Cleansing of skin/tissue
11043 Cleansing of tissue/muscle
11044 Cleansing tissue/muscle/bone
11404 Removal of skin lesion
11406 Removal of skin lesion
11424 Removal of skin lesion
11426 Removal of skin lesion
11444 Removal of skin lesion
11446 Removal of skin lesion
11450 Removal, sweat gland lesion
11451 Removal, sweat gland lesion
11462 Removal, sweat gland lesion
11463 Removal, sweat gland lesion
11470 Removal, sweat gland lesion
11471 Removal, sweat gland lesion
11604 Removal of skin lesion
11606 Removal of skin lesion
11624 Removal of skin lesion
11626 Removal of skin lesion
11644 Removal of skin lesion
11646 Removal of skin lesion
11770 Removal of pilonidal lesion
11771 Removal of pilonidal lesion
11772 Removal of pilonidal lesion
11960 Insert tissue expander(s)
11970 Replace tissue expander
11971 Remove tissue expander(s)
12005 Repair superficial wound(s)
12006 Repair superficial wound(s)
12007 Repair superficial wound(s)
12016 Repair superficial wound(s)
12017 Repair superficial wound(s)
12018 Repair superficial wound(s)
12020 Closure of split wound
12021 Closure of split wound
12034 Layer closure of wound(s)
12035 Layer closure of wound(s)
12036 Layer closure of wound(s)
12037 Layer closure of wound(s)
12044 Layer closure of wound(s)
12045 Layer closure of wound(s)
12046 Layer closure of wound(s)
12047 Layer closure of wound(s)
12054 Layer closure of wound(s)
12055 Layer closure of wound(s)
12056 Layer closure of wound(s)
12057 Layer closure of wound(s)
13100 Repair of wound or lesion
13101 Repair of wound or lesion
13120 Repair of wound or lesion
13121 Repair of wound or lesion
13131 Repair of wound or lesion
13132 Repair of wound or lesion
13150 Repair of wound or lesion
13151 Repair of wound or lesion
13152 Repair of wound or lesion
13160 Late closure of wound
13300 Repair of wound or lesion
14000 Skin tissue rearrangement
14001 Skin tissue rearrangement
14020 Skin tissue rearrangement
14021 Skin tissue rearrangement
14040 Skin tissue rearrangement
14041 Skin tissue rearrangement
14060 Skin tissue rearrangement
14061 Skin tissue rearrangement
14300 Skin tissue rearrangement
14350 Skin tissue rearrangement
15000 Skin graft procedure
15050 Skin split graft procedure
15100 Skin split graft procedure
15101 Skin split graft procedure
15120 Skin split graft procedure
15121 Skin split graft procedure
15200 Skin split graft procedure
15201 Skin split graft procedure
15220 Skin full graft procedure
15221 Skin full graft procedure
15240 Skin full graft procedure
15241 Skin full graft procedure
15260 Skin full graft procedure
15261 Skin full graft procedure
15350 Skin homograft procedure
15400 Skin heterograft procedure
15570 Form skin pedicle
15572 Form skin pedicle
15574 Form skin pedicle
15576 Form skin pedicle
15580 Cross finger flap
15600 Skin flap procedure
15610 Skin flap procedure
15620 Skin flap procedure
15625 Skin flap procedure
15630 Skin flap procedure
15650 Transfer skin pedicle flap
15732 Muscle-skin flap, head/neck
15734 Muscle-skin flap, trunk
15736 Muscle-skin flap, arm
15738 Muscle-skin flap, leg
15740 Island pedicle flap
15750 Neurovascular pedicle
15755 Microvascular free flap
15760 Composite skin graft
15770 Derma-fat-fascia graft
15840 Graft for face nerve palsy
15841 Graft for face nerve palsy
15842 Graft for face nerve palsy
15845 Skin and muscle repair, face
15920 Removal of tail bone ulcer
15922 Removal of tail bone ulcer
15931 Remove sacrum pressure sore
15933 Remove sacrum pressure sore
15934 Remove sacrum pressure sore
15935 Remove sacrum pressure sore
15936 Remove sacrum pressure sore
15937 Remove sacrum pressure sore
15940 Removal of pressure sore
15941 Removal of pressure sore
15944 Removal of pressure sore
15945 Removal of pressure sore
15946 Removal of pressure sore
15950 Remove thigh pressure sore
15951 Remove thigh pressure sore
15952 Remove thigh pressure sore
15953 Remove thigh pressure sore
15956 Remove thigh pressure sore
15958 Remove thigh pressure sore
16015 Treatment of burn(s)
16030 Treatment of burn(s)
16035 Incision of burn scab
19020 Incision of breast lesion
19100 Biopsy of breast
19101 Biopsy of breast
19110 Nipple exploration
19112 Excise breast duct fistula
19120 Removal of breast lesion
19140 Removal of breast tissue
19160 Removal of breast tissue
19162 Remove breast tissue, nodes
19180 Removal of breast
19182 Removal of breast
19260 Removal of chest wall lesion
19318 Reduction of large breast
19328 Removal of breast implant
19330 Removal of implant material
19340 Immediate breast prosthesis
19342 Delayed breast prosthesis
19350 Breast reconstruction
19357 Breast reconstruction
19364 Breast reconstruction
19366 Breast reconstruction
19370 Surgery of breast capsule
19371 Removal of breast capsule
19380 Revise breast reconstruction
20005 Incision of deep abscess
20200 Muscle biopsy
20205 Deep muscle biopsy
20206 Needle biopsy, muscle
20220 Bone biopsy, trocar/needle
20225 Bone biopsy, trocar/needle
20240 Bone biopsy, excisional
20245 Bone biopsy, excisional
20250 Open bone biopsy
20251 Open bone biopsy
20525 Removal of foreign body
20650 Insert and remove bone pin
20660 Apply, remove fixation device
20661 Application of head brace
20662 Application of pelvis brace
20663 Application of thigh brace
20665 Removal of fixation device
20670 Removal of support implant
20680 Removal of support implant
20690 Apply bone fixation device
20900 Removal of bone for graft
20902 Removal of bone for graft
20912 Remove cartilage for graft
20920 Removal of fascia for graft
20922 Removal of fascia for graft
20924 Removal of tendon for graft
20926 Removal of tissue for graft
20955 Microvascular fibula graft
20960 Microvascular rib graft
20962 Microvascular bone graft
20969 Bone-skin graft
20970 Bone-skin graft, pelvis
20971 Bone-skin graft, rib
20972 Bone-skin graft, metatarsal
20973 Bone-skin graft, great toe

20975	Electrical bone stimulation
21010	Incision of jaw joint
21025	Excision of bone, lower jaw
21026	Excision of facial bone(s)
21034	Removal of face bone lesion
21040	Removal of jaw bone lesion
21041	Removal of jaw bone lesion
21044	Removal of jaw bone lesion
21050	Removal of jaw joint
21060	Remove jaw joint cartilage
21070	Remove coronoid process
21100	Maxillofacial fixation
21206	Reconstruct upper jaw bone
21208	Augmentation of facial bones
21209	Reduction of facial bones
21210	Face bone graft
21215	Lower jaw bone graft
21230	Rib cartilage graft
21235	Ear cartilage graft
21240	Reconstruction of jaw joint
21242	Reconstruction of jaw joint
21243	Reconstruction of jaw joint
21244	Reconstruction of lower jaw
21245	Reconstruction of jaw
21246	Reconstruction of jaw
21248	Reconstruction of jaw
21249	Reconstruction of jaw
21267	Revise eye sockets
21270	Augmentation cheek bones
21275	Revision orbitofacial bones
21280	Revision of eyelid
21282	Revision of eyelid
21300	Treatment of skull fracture
21310	Treatment of nose fracture
21315	Treatment of nose fracture
21320	Treatment of nose fracture
21325	Repair of nose fracture
21330	Repair of nose fracture
21335	Repair of nose fracture
21337	Repair nasal septal fracture
21338	Repair nasoethmoid fracture
21339	Repair nasoethmoid fracture
21340	Repair of nose fracture
21343	Repair of sinus fracture
21355	Repair cheek bone fracture
21360	Repair cheek bone fracture
21365	Repair cheek bone fracture
21385	Repair eye socket fracture
21386	Repair eye socket fracture
21387	Repair eye socket fracture
21390	Repair eye socket fracture
21395	Repair eye socket fracture
21400	Treat eye socket fracture
21401	Repair eye socket fracture
21406	Repair eye socket fracture
21407	Repair eye socket fracture
21421	Treat mouth roof fracture
21422	Repair mouth roof fracture
21440	Repair dental ridge fracture
21445	Repair dental ridge fracture
21450	Treat lower jaw fracture
21451	Treat lower jaw fracture
21452	Treat lower jaw fracture
21453	Treat lower jaw fracture
21454	Treat lower jaw fracture
21455	Repair lower jaw fracture
21461	Repair lower jaw fracture
21462	Repair lower jaw fracture
21465	Repair lower jaw fracture
21470	Repair lower jaw fracture
21480	Reset dislocated jaw
21485	Reset dislocated jaw
21490	Repair dislocated jaw
21493	Treat hyoid bone fracture
21494	Repair hyoid bone fracture
21495	Repair hyoid bone fracture
21497	Interdental wiring
21501	Drain neck/chest lesion
21502	Drain chest lesion
21510	Drainage of bone lesion
21550	Biopsy of neck/chest
21555	Remove lesion neck/chest
21556	Remove lesion neck/chest
21600	Partial removal of rib
21610	Partial removal of rib
21620	Partial removal of sternum
21700	Revision of neck muscle
21720	Revision of neck muscle
21725	Revision of neck muscle
21800	Treatment of rib fracture
21805	Treatment of rib fracture
21810	Treatment of rib fracture(s)
21820	Treat sternum fracture
21920	Biopsy soft tissue of back
21925	Biopsy soft tissue of back
21930	Remove lesion, back or flank
21935	Remove tumor of back
22100	Remove part of neck vertebra
22101	Remove part, thorax vertebra
22102	Remove part, lumbar vertebra
22305	Treat spine process fracture
22310	Treat spine fracture
22315	Treat spine fracture
22325	Repair of spine fracture
22326	Repair neck spine fracture
22327	Repair thorax spine fracture
22505	Manipulation of spine
22900	Remove abdominal wall lesion
23000	Removal of calcium deposits
23020	Release shoulder joint
23030	Drain shoulder lesion
23035	Drain shoulder bone lesion
23040	Exploratory shoulder surgery
23044	Exploratory shoulder surgery
23065	Biopsy shoulder tissues
23066	Biopsy shoulder tissues
23075	Removal of shoulder lesion
23076	Removal of shoulder lesion
23077	Remove tumor of shoulder
23100	Biopsy of shoulder joint
23101	Shoulder joint surgery
23105	Remove shoulder joint lining
23106	Incision of collarbone joint
23107	Explore, treat shoulder joint
23120	Partial removal, collarbone
23125	Removal of collarbone
23130	Partial removal, shoulderbone
23140	Removal of bone lesion
23145	Removal of bone lesion
23146	Removal of bone lesion
23150	Removal of humerus lesion
23155	Removal of humerus lesion
23156	Removal of humerus lesion
23170	Remove collarbone lesion
23172	Remove shoulder blade lesion
23174	Remove humerus lesion
23180	Remove collarbone lesion
23182	Remove shoulderblade lesion
23184	Remove humerus lesion
23190	Partial removal of scapula
23195	Removal of head of humerus
23330	Remove shoulder foreign body
23331	Remove shoulder foreign body
23395	Muscle transfer, shoulder/arm
23397	Muscle transfers
23400	Fixation of shoulderblade
23405	Incision of tendon & muscle
23406	Incise tendon(s) & muscle(s)
23410	Repair of tendon(s)
23412	Repair of tendon(s)
23415	Release of shoulder ligament
23420	Repair of shoulder
23430	Repair biceps tendon rupture
23440	Removal/transplant tendon
23450	Repair shoulder capsule
23455	Repair shoulder capsule
23460	Repair shoulder capsule
23462	Repair shoulder capsule
23465	Repair shoulder capsule
23466	Repair shoulder capsule
23480	Revision of collabrone
23485	Revision of collabrone
23490	Reinforce clavicle
23491	Reinforce shoulder bones
23500	Treat clavicle fracture
23505	Treat clavicle fracture
23510	Repair clavicle fracture
23515	Repair clavicle fracture
23520	Treat clavicle dislocation
23525	Treat clavicle dislocation
23530	Repair clavicle dislocation
23532	Repair clavicle dislocation
23540	Treat clavicle dislocation
23545	Treat clavicle dislocation
23550	Repair clavicle dislocation
23552	Repair clavicle dislocation
23570	Treat shoulderblade fracture
23575	Treat shoulderblade fracture
23580	Repair scapula fracture
23585	Repair scapula fracture
23600	Treat humerus fracture
23605	Treat humerus fracture
23610	Repair humerus fracture
23615	Repair humerus fracture
23620	Treat humerus fracture
23625	Treat humerus fracture
23630	Repair humerus fracture
23650	Treat shoulder dislocation
23655	Treat shoulder dislocation
23658	Repair shoulder dislocation
23660	Repair shoulder dislocation
23665	Treat dislocation/fracture
23670	Repair dislocation/fracture
23675	Treat dislocation/fracture
23680	Repair dislocation/fracture
23700	Fixation of shoulder
23800	Fusion of shoulder joint
23802	Fusion of shoulder joint
23921	Amputation follow-up surgery
23930	Drainage of arm lesion
23931	Drainage of arm bursa
23935	Drain arm/elbow bone lesion
24000	Exploratory elbow surgery
24065	Biopsy arm/elbow soft tissue
24066	Biopsy arm/elbow soft tissue
24075	Remove arm/elbow lesion
24076	Remove arm/elbow lesion
24077	Remove tumor of arm/elbow
24100	Biopsy elbow joint lining
24101	Explore/treat elbow joint
24102	Remove elbow joint lining
24105	Removal of elbow bursa
24110	Remove humerus lesion
24115	Remove/graft bone lesion
24116	Remove/graft bone lesion
24120	Remove elbow lesion
24125	Remove/graft bone lesion
24126	Remove/graft bone lesion
24130	Removal of head of radius
24134	Removal of arm bone lesion
24136	Remove radius bone lesion
24138	Remove elbow bone lesion
24140	Partial removal of arm bone
24145	Partial removal of radius
24147	Partial removal of elbow
24150	Extensive humerus surgery
24151	Extensive humerus surgery
24152	Extensive radius surgery

24153 Extensive radius surgery
24155 Removal of elbow joint
24160 Remove elbow joint implant
24164 Remove radius head implant
24201 Removal of arm foreign body
24301 Muscle/tendon transfer
24310 Revision of arm tendon
24320 Repair of arm tendon
24330 Revision of arm muscles
24331 Revision of arm muscles
24340 Repair of ruptured tendon
24342 Repair of ruptured tendon
24350 Repair of tennis elbow
24351 Repair of tennis elbow
24352 Repair of tennis elbow
24354 Repair of tennis elbow
24356 Revision of tennis elbow
24360 Reconstruct elbow joint
24361 Reconstruct elbow joint
24362 Reconstruct elbow joint
24363 Replace elbow joint
24365 Reconstruct head of radius
24366 Reconstruct head of radius
24500 Revision of humerus
24410 Revision of humerus
24420 Revision of humerus
24430 Repair of humerus
24435 Repair humerus with graft
24470 Revision of elbow joint
24495 Decompression of forearm
24498 Reinforce humerus
24500 Treat humerus fracture
24505 Treat humerus fracture
24506 Treat humerus fracture
24510 Repair humerus fracture
24515 Repair humerus fracture
24516 Repair humerus fracture
24530 Treat humerus fracture
24531 Treat humerus fracture
24535 Treat humerus fracture
24536 Treat humerus fracture
24538 Treat humerus fracture
24540 Treat humerus fracture
24542 Treat humerus fracture
24545 Repair humerus fracture
24560 Treat humerus fracture
24565 Treat humerus fracture
24570 Repair humerus fracture
24575 Repair humerus fracture
24576 Treat humerus fracture
24577 Treat humerus fracture
24578 Repair humerus fracture
24579 Repair humerus fracture
24580 Treat elbow fracture
24581 Treat elbow fracture
24583 Repair elbow fracture
24585 Repair elbow fracture
24586 Repair elbow fracture
24587 Repair elbow fracture
24588 Repair elbow fracture
24600 Treat elbow dislocation
24605 Treat elbow dislocation
24610 Repair elbow dislocation
24615 Repair elbow dislocation
24620 Treat elbow fracture
24625 Repair elbow fracture
24635 Repair elbow fracture
24655 Treat radius fracture
24660 Repair radius fracture
24665 Repair radius fracture
24666 Repair radius fracture
24670 Treatment of ulna fracture
24675 Treatment of ulna fracture
24680 Repair ulna fracture
24685 Repair ulna fracture
24800 Fusion of elbow joint
24802 Fusion/graft of elbow joint
24925 Amputation follow-up surgery
25000 Incision of tendon sheath
25005 Incision of tendon sheath
25020 Decompression of forearm
25023 Decompression of forearm
25028 Drainage of forearm lesion
25031 Drainage of forearm bursa
25035 Treat forearm bone lesion
25040 Explore/treat wrist joint
25065 Biopsy forearm soft tissues
25066 Biopsy forearm soft tissues
25075 Removal of forearm lesion
25076 Removal of forearm lesion
25077 Remove tumor, forearm/wrist
25085 Incision of wrist capsule
25100 Biopsy of wrist joint
25101 Explore/treat wrist joint
25105 Remove wrist joint lining
25107 Remove wrist joint cartilage
25110 Remove wrist tendon lesion
25111 Remove wrist tendon lesion
25112 Remove wrist tendon lesion
25115 Remove wrist/forearm lesion
25116 Remove wrist/forearm lesion
25118 Excise wrist tendon sheath
25119 Partial removal of ulna
25120 Removal of forearm lesion
25125 Remove/graft forearm lesion
25126 Remove/graft forearm lesion
25130 Removal of wrist lesion
25135 Remove & graft wrist lesion
25136 Remove & graft wrist lesion
25145 Remove forearm bone lesion
25150 Partial removal of ulna
25151 Partial removal of radius
25170 Extensive forearm surgery
25210 Removal of wrist bone
25215 Removal of wrist bones
25230 Partial removal of radius
25240 Partial removal of ulna
25248 Remove forearm foreign body
25250 Removal of wrist prosthesis
25251 Removal of wrist prosthesis
25260 Repair forearm tendon/muscle
25263 Repair forearm tendon/muscle
25265 Repair forearm tendon/muscle
25270 Repair forearm tendon/muscle
25272 Repair forearm tendon/muscle
25274 Repair forearm tendon/muscle
25280 Revise wrist/forearm tendon
25290 Incise wrist/forearm tendon
25295 Release wrist/forearm tendon
25300 Fusion of tendons at wrist
25301 Fusion of tendons at wrist
25310 Transplant forearm tendon
25312 Transplant forearm tendon
25315 Revise palsy hand tendon(s)
25316 Revise palsy hand tendon(s)
25317 Revise hand contracture
25318 Revise hand contracture
25320 Repair/revise wrist joint
25330 Revise wrist joint
25331 Revise wrist joint
25332 Revise wrist joint
25335 Realignment of hand
25350 Revision of radius
25355 Revision of radius
25360 Revision of ulna
25365 Revise radius & ulna
25370 Revise radius or ulna
25375 Revise radius & ulna
25390 Shorten radius/ulna
25391 Lengthen radius/ulna
25392 Shorten radius & ulna
25393 Lengthen radius & ulna
25400 Repair radius or ulna
25405 Repair/graft radius or ulna
25415 Repair radius & ulna
25420 Repair/graft radius & ulna
25425 Repair/graft radius or ulna
25426 Repair/graft radius & ulna
25440 Repair/graft wrist bone
25441 Reconstruct wrist joint
25442 Reconstruct wrist joint
25443 Reconstruct wrist joint
25444 Reconstruct wrist joint
25445 Reconstruct wrist joint
25446 Wrist replacement
25447 Repair wrist joint(s)
25449 Remove wrist joint implant
25450 Revision of wrist joint
25455 Revision of wrist joint
25490 Reinforce radius
25491 Reinforce ulna
25492 Reinforce radius and ulna
25505 Treat fracture of radius
25510 Repair fracture of radius
25515 Repair fracture of radius
25535 Treat fracture of ulna
25540 Repair fracture of ulna
25545 Repair fracture of ulna
25565 Treat fracture radius & ulna
25570 Repair fracture radius/ulna
25575 Repair fracture radius/ulna
25605 Treat fracture radius/ulna
25610 Repair fracture radius/ulna
25611 Repair fracture radius/ulna
25615 Repair fracture radius/ulna
25620 Repair fracture radius/ulna
25624 Treat wrist bone fracture
25626 Repair wrist bone fracture
25628 Repair wrist bone fracture
25635 Treat wrist bone fracture
25640 Repair wrist bone fracture
25645 Repair wrist bone fracture
25660 Treat wrist dislocation
25665 Repair wrist dislocation
25670 Repair wrist dislocation
25675 Treat wrist dislocation
25676 Repair wrist dislocation
25680 Treat wrist fracture
25685 Repair wrist fracture
25690 Treat wrist dislocation
25695 Repair wrist dislocation
25800 Fusion of wrist joint
25805 Fusion/graft of wrist joint
25810 Fusion/graft of wrist joint
25820 Fusion of hand bones
25825 Fusion hand bones with graft
25907 Amputation follow-up surgery
25922 Amputate hand at wrist
25929 Amputation follow-up surgery
26011 Drainage of finger abscess
26020 Drain hand tendon sheath
26025 Drainage of palm bursa
26030 Drainage of palm bursa(s)
26034 Treat hand bone lesion
26035 Decompress fingers/hand
26037 Decompress fingers/hand
26040 Release palm contracture
26045 Release palm contracture
26055 Incise finger tendon sheath
26060 Incision of finger tendon
26070 Explore/treat hand joint
26075 Explore/treat finger joint
26080 Explore/treat finger joint
26100 Biopsy hand joint lining
26105 Biopsy finger joint lining
26110 Biopsy finger joint lining
26115 Removal of hand lesion
26116 Removal of hand lesion

26117	Removal tumor, hand/finger
26121	Release palm contracture
26123	Release palm contracture
26125	Release palm contracture
26130	Remove wrist joint lining
26135	Revise finger joint, each
26140	Revise finger joint, each
26145	Tendon excision, palm/finger
26160	Removal tendon sheath lesion
26170	Removal of palm tendon, each
26180	Removal of finger tendon
26200	Remove hand bone lesion
26205	Remove/graft bone lesion
26210	Removal of finger lesion
26215	Removal/graft finger lesion
26230	Partial removal of hand bone
26235	Partial removal, finger bone
26236	Partial removal, finger bone
26250	Extensive hand surgery
26255	Extensive hand surgery
26260	Extensive finger surgery
26261	Extensive finger surgery
26262	Partial removal of finger
26320	Removal of implant from hand
26350	Repair finger/hand tendon
26352	Repair/graft hand tendon
26356	Repair finger/hand tendon
26357	Repair finger/hand tendon
26358	Repair/graft hand tendon
26370	Repair finger/hand tendon
26372	Repair/graft hand tendon
26373	Repair finger/hand tendon
26390	Revise hand/finger tendon
26392	Repair/graft hand tendon
26410	Repair hand tendon
26412	Repair/graft hand tendon
26415	Excision, hand/finger tendon
26418	Repair finger tendon
26420	Repair/graft finger tendon
26426	Repair finger/hand tendon
26428	Repair/graft finger tendon
26432	Repair finger tendon
26433	Repair finger tendon
26434	Repair/graft finger tendon
26437	Realignment of tendons
26440	Release palm/finger tendon
26442	Release palm & finger tendon
26445	Release hand/finger tendon
26449	Release forearm/hand tendon
26450	Incision of palm tendon
26455	Incision of finger tendon
26460	Incise hand/finger tendon
26471	Fusion of finger tendons
26474	Fusion of finger tendons
26476	Tendon lengthening
26477	Tendon shortening
26478	Lengthening of hand tendon
26479	Shortening of hand tendon
26480	Transplant hand tendon
26483	Transplant/graft hand tendon
26485	Transplant palm tendon
26489	Transplant/graft palm tendon
26490	Revise thumb tendon
26492	Tendon transfer with graft
26494	Hand tendon/muscle transfer
26496	Revise thumb tendon
26497	Finger tendon transfer
26498	Finger tendon transfer
26499	Revision of finger
26500	Hand tendon reconstruction
26502	Hand tendon reconstruction
26504	Hand tendon reconstruction
26508	Release thumb contracture
26510	Thumb tendon transfer
26516	Fusion of knuckle joint
26517	Fusion of knuckle joints
26518	Fusion of knuckle joints
26520	Release knuckle contracture
26525	Release finger contracture
26527	Revise wrist joint
26530	Revise knuckle joint
26531	Revise knuckle with implant
26535	Revise finger joint
26536	Revise/implant finger joint
26540	Repair hand joint
26541	Repair hand joint with graft
26542	Repair hand joint with graft
26545	Reconstruct finger joint
26548	Reconstruct finger joint
26550	Construct thumb replacement
26552	Construct thumb replacement
26555	Positional change of finger
26557	Construct finger replacement
26558	Added finger surgery
26559	Added finger surgery
26560	Repair of web finger
26561	Repair of web finger
26562	Repair of web finger
26565	Correct metacarpal flaw
26567	Correct finger deformity
26568	Lengthen metacarpal/finger
26580	Repair hand deformity
26585	Repair finger deformity
26590	Repair finger deformity
26591	Repair muscles of hand
26593	Release muscles of hand
26596	Excision constricting tissue
26597	Release of scar contracture
26605	Treat metacarpal fracture
26607	Treat metacarpal fracture
26610	Repair metacarpal fracture
26615	Repair metacarpal fracture
26645	Treat thumb fracture
26650	Repair thumb fracture
26655	Repair thumb fracture
26660	Repair thumb fracture
26665	Repair thumb fracture
26675	Treat hand dislocation
26676	Pin hand dislocation
26680	Repair hand dislocation
26685	Repair hand dislocation
26686	Repair hand dislocation
26705	Treat knuckle dislocation
26706	Pin knuckle dislocation
26710	Repair knuckle dislocation
26715	Repair knuckle dislocation
26727	Treat finger fracture, each
26730	Repair finger fracture, each
26735	Repair finger fracture, each
26742	Treat finger fracture, each
26744	Repair finger fracture, each
26746	Repair finger fracture, each
26756	Pin finger fracture, each
26765	Repair finger fracture, each
26776	Pin finger dislocation
26780	Repair finger dislocation
26785	Repair finger dislocation
26820	Thumb fusion with graft
26841	Fusion of thumb
26842	Thumb fusion with graft
26843	Fusion of hand joint
26844	Fusion/graft of hand joint
26850	Fusion of knuckle
26852	Fusion of knuckle with graft
26860	Fusion of finger joint
26861	Fusion of finger joint, added
26862	Fusion/graft of finger joint
26863	Fuse/graft added joint
26910	Amputate metacarpal bone
26951	Amputation of finger/thumb
26952	Amputation of finger/thumb
26990	Drainage of pelvis lesion
26991	Drainage of pelvis bursa
26992	Drainage of bone lesion
27000	Incision of hip tendon
27001	Incision of hip tendon
27003	Incision of hip tendon
27030	Drainage of hip joint
27033	Exploration of hip joint
27035	Denervation of hip joint
27040	Biopsy of soft tissues
27041	Biopsy of soft tissues
27047	Remove hip/pelvis lesion
27048	Remove hip/pelvis lesion
27049	Remove tumor, hip/pelvis
27050	Biopsy of sacroiliac joint
27052	Biopsy of hip joint
27060	Removal of ischial bursa
27062	Remove femur lesion/bursa
27065	Removal of hip bone lesion
27066	Removal of hip bone lesion
27080	Removal of tail bone
27086	Remove hip foreign body
27087	Remove hip foreign body
27097	Revision of hip tendon
27098	Transfer tendon to pelvis
27100	Transfer of abdominal muscle
27105	Transfer of spinal muscle
27110	Transfer of iliopsoas muscle
27111	Transfer of iliopsoas muscle
27190	Treatment of sacrum fracture
27192	Repair of sacrum fracture
27193	Treat pelvic ring fracture
27194	Treat pelvic ring fracture
27195	Treat pelvis dislocation
27196	Treat pelvis dislocation
27201	Repair tail bone fracture
27202	Repair tail bone fracture
27210	Treat pelvis fracture
27215	Pelvic fracture(s) treatment
27216	Treat pelvic ring fracture
27230	Treat fracture of thigh
27238	Treatment of thigh fracture
27246	Treatment of thigh fracture
27250	Treat hip dislocation
27252	Treat hip dislocation
27265	Treatment of hip dislocation
27266	Treatment of hip dislocation
27275	Manipulation of hip joint
27301	Drain thigh/knee lesion
27303	Drainage of bone lesion
27305	Incise Thigh tendon & fascia
27306	Incision of thigh tendon
27307	Incision of thigh tendons
27310	Exploration of knee joint
27315	Partial removal, thigh nerve
27320	Partial removal, thigh nerve
27323	Biopsy thigh soft tissues
27324	Biopsy thigh soft tissues
27327	Removal of thigh lesion
27328	Removal of thigh lesion
27330	Biopsy knee joint lining
27331	Explore/treat knee joint
27332	Removal of knee cartilage
27333	Removal of knee cartilage
27334	Remove knee joint lining
27335	Remove knee joint lining
27340	Removal of kneecap bursa
27345	Removal of knee cyst
27350	Removal of kneecap
27355	Remove femur lesion
27356	Remove femur lesion/graft
27360	Partial removal leg bone(s)
27372	Removal of foreign body
27380	Repair of kneecap tendon
27381	Repair/graft kneecap tendon
27385	Repair of thigh muscle
27386	Repair/graft of thigh muscle

27390	Incision of thigh tendon
27391	Incision of thigh tendons
27392	Incision of thigh tendons
27393	Lengthening of thigh tendon
27394	Lengthening of thigh tendons
27395	Lengthening of thigh tendons
27396	Transplant of thigh tendon
27397	Transplants of thigh tendons
27400	Revise thigh muscles/tendons
27403	Repair of knee cartilgage
27405	Repair of knee ligament
27407	Repair of knee ligament
27409	Repair of knee ligaments
27418	Repair degenerated kneecap
27420	Revision of unstable kneecap
27422	Revision of unstable kneecap
27424	Revision/removal of kneecap
27425	Lateral retinacular release
27427	Reconstruction, knee
27428	Reconstruction, knee
27429	Reconstruction, knee
27430	Revision of thigh muscles
27435	Incision of knee joint
27437	Revise kneecap
27438	Revise kneecap with implant
27440	Revision of knee joint
27441	Revision of knee joint
27442	Revision of knee joint
27443	Revision of knee joint
27500	Treatment of thigh fracture
27502	Treatment of thigh fracture
27504	Repair of thigh fracture
27508	Treatment of thigh fracture
27510	Treatment of thigh fracture
27512	Repair of thigh fracture
27516	Repair of thigh growth plate
27517	Repair of thigh growth plate
27520	Treat kneecap fracture
27522	Repair of kneecap fracture
27524	Repair of kneecap fracture
27530	Treatment of knee fracture
27532	Treatment of knee fracture
27534	Repair of knee fracture
27538	Treat knee fracture(s)
27550	Treat knee dislocation
27552	Treat knee dislocation
27560	Treat kneecap dislocation
27562	Treat kneecap dislocation
27564	Repair kneecap dislocation
27566	Repair kneecap dislocation
27570	Fixation of knee joint
27603	Drain lower leg lesion
27604	Drain lower leg bursa
27605	Incision of achilles tendon
27606	Incision of achilles tendon
27607	Treat lower leg bone lesion
27610	Explore/treat ankle joint
27612	Exploration of ankle joint
27613	Biopsy lower leg soft tissue
27614	Biopsy lower leg soft tissue
27615	Remove tumor, lower leg
27618	Remove lower leg lesion
27619	Remove lower leg lesion
27620	Explore, treat ankle joint
27625	Remove ankle joint lining
27626	Remove ankle joint lining
27630	Removal of tendon lesion
27635	Remove lower leg bone lesion
27637	Remove/graft leg bone lesion
27638	Remove/graft leg bone lesion
27640	Partial removal of tibia
27641	Partial removal of fibula
27650	Repair achilles tendon
27652	Repair/graft achilles tendon
27654	Repair of achilles tendon
27656	Repair leg fascia defect
27658	Repair of leg tendon, each
27659	Repair of leg tendon, each
27664	Repair of leg tendon, each
27665	Repair of leg tendon, each
27675	Repair lower leg tendons
27676	Repair lower leg tendons
27680	Release of lower leg tendon
27681	Release of lower leg tendons
27685	Revision of lower leg tendon
27686	Revise lower leg tendons
27687	Revision of calf tendon
27690	Revise lower leg tendon
27691	Revise lower leg tendon
27692	Revise additional leg tendon
27695	Repair of ankle ligament
27696	Repair of ankle ligaments
27698	Repair of ankle ligament
27700	Revision of ankle joint
27704	Removal of ankle implant
27705	Incision of tibia
27707	Incision of fibula
27709	Incision of tibia & fibula
27715	Revision of lower leg
27730	Repair of tibia epiphysis
27732	Repair of fibula epiphysis
27734	Repair lower leg epiphyses
27740	Repair of leg epiphyses
27742	Repair of leg epiphyses
27745	Reinforce tibia
27750	Treatment of tibia fracture
27752	Treatment of tibia fracture
27754	Repair of tibia fracture
27756	Repair of tibia fracture
27758	Repair of tibia fracture
27760	Treatment of ankle fracture
27762	Treatment of ankle fracture
27764	Repair of ankle fracture
27766	Repair of ankle fracture
27780	Treatment of fibula fracture
27781	Treatment of fibula fracture
27782	Repair of fibula fracture
27784	Repair of fibula fracture
27786	Treatment of ankle fracture
27788	Treatment of ankle fracture
27790	Repair of ankle fracture
27792	Repair of ankle fracture
27800	Treat lower leg fractures
27802	Treat lower leg fractures
27804	Repair lower leg fractures
27808	Treatment of ankle fracture
27810	Treatment of ankle fracture
27812	Repair of ankle fracture
27814	Repair of ankle fracture
27816	Treatment of ankle fracture
27818	Treatment of ankle fracture
27820	Repair of ankle fracture
27822	Repair of ankle fracture
27823	Repair of ankle fracture
27830	Treat lower leg dislocation
27831	Treat lower leg dislocation
27832	Repair lower leg dislocation
27840	Treat ankle dislocation
27842	Treat ankle dislocation
27844	Repair ankle dislocation
27846	Repair ankle dislocation
27848	Repair ankle dislocation
27860	Fixation of ankle joint
27870	Fusion of ankle joint
27871	Fusion of tibiofibular joint
27884	Amputation follow-up surgery
28002	Treatment of foot infection
28003	Treatment of foot infection
28005	Treat foot bone lesion
28008	Incision of foot fascia
28020	Exploration of a foot joint
28030	Removal of foot nerve
28035	Decompression of tibia nerve
28043	Excision of foot lesion
28045	Excision of foot lesion
28046	Resection of tumor, foot
28050	Biopsy of foot joint lining
28054	Biopsy of toe joint lining
28060	Partial removal foot fascia
28062	Removal of foot fascia
28070	Removal of foot joint lining
28072	Removal of foot joint lining
28080	Removal of foot lesion
28086	Excise foot tendon sheath
28088	Excise foot tendon sheath
28090	Removal of foot lesion
28092	Removal of toe lesions
28100	Removal of ankle/heel lesion
28102	Remove/graft foot lesion
28103	Remove/graft foot lesion
28104	Removal of foot lesion
28106	Remove/graft foot lesion
28107	Remove/graft foot lesion
28110	Part removal of metatarsal
28111	Part removal of metatarsal
28112	Part removal of metatarsal
28113	Part removal of metatarsal
28114	Removal of metatarsal heads
28116	Revision of foot
28118	Removal of heel bone
28119	Removal of heel spur
28120	Part removal of ankle/heel
28122	Partial removal of foot bone
28130	Removal of ankle bone
28140	Removal of metatarsal
28150	Removal of toe
28171	Extensive foot surgery
28173	Extensive foot surgery
28175	Extensive foot surgery
28192	Removal of foot foreign body
28193	Removal of foot foreign body
28200	Repair of foot tendon
28202	Repair/graft of foot tendon
28208	Repair of foot tendon
28210	Repair/graft of foot tendon
28222	Release of foot tendons
28225	Release of foot tendon
28226	Release of foot tendons
28236	Transfer of foot tendon
28238	Revision of foot tendon
28240	Release of big toe
28250	Revision of foot fascia
28260	Release of midfoot joint
28261	Revision of foot tendon
28262	Revision of foot and ankle
28264	Release of midfoot joint
28280	Fusion of toes
28285	Repair of hammertoe
28286	Repair of hammertoe
28288	Partial removal of foot bone
28290	Correction of bunion
28292	Correction of bunion
28293	Correction of bunion
28294	Correction of bunion
28296	Correction of bunion
28297	Correction of bunion
28298	Correction of bunion
28299	Correction of bunion
28300	Incision of heel bone
28302	Incision of ankle bone
28304	Incision of midfoot bones
28305	Incise/graft midfoot bones
28306	Incision of metatarsal
28308	Incision of metatarsal
28309	Incision of metatarsals
28310	Revision of big toe
28312	Revision of toe
28313	Repair deformity of toe

28315	Removal of sesamoid bone
28320	Repair of foot bones
28322	Repair of metatarsals
28400	Treatment of heel fracture
28405	Treatment of heel fracture
28406	Treatment of heel fracture
28410	Repair of heel fracture
28415	Repair of heel fracture
28420	Repair/graft heel fracture
28435	Treatment of ankle fracture
28436	Treatment of ankle fracture
28440	Repair of ankle fracture
28445	Repair of ankle fracture
28460	Repair midfoot fracture, each
28465	Repair midfoot fracture, each
28476	Repair metatarsal fracture
28480	repair metatarsal fracture
28485	Repair metatarsal fracture
28496	Repair big toe fracture
28500	Repair big toe fracture
28505	Repair big toe fracture
28520	Repair of toe fracture
28525	Repair of toe fracture
28545	Treat foot dislocation
28546	Treat foot dislocation
28555	Repair foot dislocation
28575	Treat foot dislocation
28585	Repair foot dislocation
28605	Treat foot dislocation
28606	Treat foot dislocation
28615	Repair foot dislocation
28635	Treat toe dislocation
28640	Repair toe dislocation
28645	Repair toe dislocation
28665	Treat toe dislocation
28670	Repair of toe dislocation
28675	Repair of toe dislocation
28705	Fusion of foot bones
28715	Fusion of foot bones
28725	Fusion of foot bones
28730	Fusion of foot bones
28735	Fusion of foot bones
28737	Revision of foot bones
28740	Fusion of foot bones
28750	Fusion of big toe joint
28755	Fusion of big toe joint
28760	Fusion of big toe joint
28810	Amputation of toe & metatarsal
28820	Amputation of toe
28825	Partial amputation of toe
29815	Shoulder arthroscopy
29819	Shoulder arthroscopy/surgery
29820	Shoulder arthroscopy/surgery
29821	Shoulder arthroscopy/surgery
29822	Shoulder arthroscopy/surgery
29823	Shoulder arthroscopy/surgery
29825	Shoulder arthroscopy/surgery
29826	Shoulder arthroscopy/surgery
29830	Elbow arthroscopy
29834	Elbow arthroscopy/surgery
29835	Elbow arthroscopy/surgery
29836	Elbow arthroscopy/surgery
29837	Elbow arthroscopy/surgery
29838	Elbow arthroscopy/surgery
29840	Wrist arthroscopy
29843	Wrist arthroscopy/surgery
29844	Wrist arthroscopy/surgery
29845	Wrist arthroscopy/surgery
29846	Wrist arthroscopy/surgery
29847	Wrist arthroscopy/surgery
29870	Knee arthroscopy, diagnostic
29871	Knee arthroscopy/drainage
29874	Knee arthroscopy/surgery
29875	Knee arthroscopy/surgery
29876	Knee arthroscopy/surgery
29877	Knee arthroscopy/surgery
29879	Knee arthroscopy/surgery
29880	Knee arthroscopy/surgery
29881	Knee arthroscopy/surgery
29882	Knee arthroscopy/surgery
29883	Knee arthroscopy/surgery
29884	Knee arthroscopy/surgery
29885	Knee arthroscopy/surgery
29886	Knee arthroscopy/surgery
29887	Knee arthroscopy/surgery
29888	Knee arthroscopy/surgery
29889	Knee arthroscopy/surgery
29894	Ankle arthroscopy/surgery
29895	Ankle arthroscopy/surgery
29897	Ankle arthroscopy/surgery
29898	Ankle arthroscopy/surgery
30115	Removal of nose polyp(s)
30117	Removal of intranasal lesion
30118	Removal of intranasal lesion
30120	Revision of nose
30124	Removal of nose lesion
30125	Removal of nose lesion
30130	Removal of turbinate bones
30140	Removal of turbinate bones
30150	Partial removal of nose
30160	Removal of nose
30310	Remove nasal foreign body
30320	Remove nasal foreign body
30400	Reconstruction of nose
30410	Reconstruction of nose
30420	Reconstruction of nose
30430	Revision of nose
30435	Revision of nose
30450	Revision of nose
30520	Repair of nasal septum
30540	Repair nasal defect
30560	Release of nasal adhesions
30580	Repair upper jaw fistula
30600	Repair mouth/nose fistula
30620	Reconstruction inner nose
30630	Repair nasal septum defect
30801	Cauterization inner nose
30802	Cauterization inner nose
30903	Control of nosebleed
30905	Control of nosebleed
30906	Repeat control of nosebleed
30915	Ligation nasal sinus artery
30920	Ligation upper jaw artery
31020	Exploration maxillary sinus
31030	Exploration maxillary sinus
31032	Explore sinus, remove polyps
31050	Exploration sphenoid sinus
31051	Sphenoid sinus surgery
31070	Exploration of frontal sinus
31075	Exploration of frontal sinus
31080	Removal of frontal sinus
31086	Removal of frontal sinus
31090	Exploration of sinuses
31200	Removal of ethmoid sinus
31201	Removal of ethmoid sinus
31205	Removal of ethmoid sinus
31252	Nasal endoscopy, polypectomy
31254	Revision of ethmoid sinus
31255	Removal of ethmoid sinus
31256	Exploration maxillary sinus
31258	Nasal endoscopy, surgical
31260	Endoscopy, maxillary sinus
31263	Endoscopy, maxillary sinus
31265	Endoscopy, maxillary sinus
31267	Endoscopy, maxillary sinus
31268	Endoscopy, maxillary sinus
31270	Endoscopy, sphenoid sinus
31275	Sphenoid endoscopy, surgical
31277	Sphenoid endoscopy, surgical
31300	Removal of larynx lesion
31320	Diagnostic incision larynx
31510	Laryngoscopy with biopsy
31511	Remove foreign body, larynx
31512	Removal of larynx lesion
31513	Injection into vocal cord
31515	Laryngoscopy for aspiration
31525	Diagnostic laryngoscopy
31526	Diagnostic laryngoscopy
31527	Laryngoscopy for treatment
31528	Laryngoscopy and dilatation
31529	Laryngoscopy and dilatation
31530	Operative laryngoscopy
31531	Operative laryngoscopy
31535	Operative laryngoscopy
31536	Operative laryngoscopy
31540	Operative laryngoscopy
31541	Operative laryngoscopy
31560	Operative laryngoscopy
31561	Operative laryngoscopy
31570	Laryngoscopy with injection
31571	Laryngoscopy with injection
31576	Laryngoscopy with biopsy
31577	Remove foreign body, larynx
31578	Removal of larynx lesion
31580	Revision of larynx
31582	Revision of larynx
31584	Repair of larynx fracture
31585	Repair of larynx fracture
31586	Repair of larynx fracture
31588	Revision of larynx
31590	Reinnervate larynx
31595	Larynx nerve surgery
31600	Incision of windpipe
31611	Surgery/speech prosthesis
31612	Puncture/clear windpipe
31613	Repair windpipe opening
31614	Repair windpipe opening
31615	Visualization of windpipe
31622	Diagnostic bronchoscopy
31625	Bronchoscopy with biopsy
31628	Bronchoscopy with biopsy
31629	Bronchoscopy with biopsy
31630	Bronchoscopy with repair
31631	Bronchoscopy with dilation
31635	Remove foreign body, airway
31640	Bronchoscopy & remove lesion
31641	Bronchoscopy, treat blockage
31645	Bronchoscopy, clear airways
31646	Bronchoscopy, reclear airways
31656	Bronchoscopy, inject for X-ray
31659	Bronchoscopic procedures
31700	Insertion of airway catheter
31710	Insertion of airway catheter
31715	Injection for bronchus X-ray
31717	Bronchial brush biopsy
31719	Insert windpipe tube
31720	Clearance of airways
31730	Intro windpipe wire/tube
31750	Repair of windpipe
31755	Repair of windpipe
31785	Remove windpipe lesion
31800	Repair of windpipe injury
31820	Closure of windpipe lesion
31825	Repair of windpipe defect
31830	Revise windpipe scar
32000	Drainage of chest
32002	Treatment of collapsed lung
32005	Treat lung lining chemically
32020	Insertion of chest tube
32400	Needle biopsy chest lining
32405	Biopsy, lung or mediastinum
32420	Puncture/clear lung
33010	Drainage of heart sac
33011	Repeat drainage of heart sac
34101	Removal of artery clot
36261	Revision of infusion pump
36262	Removal of infusion pump
36488	Insertion of catheter, vein

36489	Insertion of catheter, vein
36490	Insertion of catheter, vein
36491	Insertion of catheter, vein
36522	Photopheresis
36530	Insertion of infusion pump
36531	Revision of infusion pump
36532	Removal of infusion pump
36533	Insertion of access port
36534	Revision of access port
36535	Removal of access port
36640	Insertion catheter, artery
36800	Insertion of cannula
36810	Insertion of cannula
36815	Insertion of cannula
36820	Insertion of cannula
36821	Artery-vein fusion
36825	Artery-vein graft
36830	Artery-vein graft
36832	Revise artery-vein fistula
36835	Artery to vein shunt
36840	Insert mandril
36845	Fusion with mandril
36860	Cannula declotting
36861	Cannula declotting
37609	Temporal artery procedure
37700	Revise leg vein
37720	Removal of leg vein
37730	Removal of leg veins
37735	Removal of leg veins/lesion
37760	Revision of leg veins
37780	Revision of leg vein
37785	Revise secondary varicosity
38300	Drainage lymph node lesion
38305	Drainage lymph node lesion
38308	Incision of lymph channels
38500	Biopsy/removal, lymph node(s)
38505	Needle biopsy, lymph node(s)
38510	Biopsy/removal, lymph node(s)
38520	Biopsy/removal, lymph node(s)
38525	Biopsy/removal, lymph node(s)
38530	Biopsy/removal, lymph node(s)
38542	Explore deep node(s), neck
38550	Removal neck/armpit lesion
38555	Removal neck/armpit lesion
38700	Removal of lymph nodes, neck
38740	Remove armpit lymph nodes
38745	Remove armpits lymph nodes
38760	Remove groin lymph nodes
38790	Injection for lymphatic xray
40500	Partial excision of lip
40510	Partial excision of lip
40520	Partial excision of lip
40525	Reconstruct lip with flap
40527	Reconstruct lip with flap
40530	Partial removal of lip
40650	Repair lip
40652	Repair lip
40654	Repair lip
40801	Drainage of mouth lesion
40805	Removal foreign body, mouth
40806	Incision of lip fold
40814	Excise/repair mouth lesion
40816	Excision of mouth lesion
40818	Excise oral mucosa for graft
40819	Excise lip or cheek fold
40820	Treatment of mouth lesion
40831	Repair mouth laceration
40840	Reconstruction of mouth
40842	Reconstruction of mouth
40843	Reconstruction of mouth
40844	Reconstruction of mouth
40845	Reconstruction of mouth
41000	Drainage of mouth lesion
41005	Drainage of mouth lesion
41006	Drainage of mouth lesion
41007	Drainage of mouth lesion
41008	Drainage of mouth lesion
41009	Drainage of mouth lesion
41010	Incision of tongue fold
41015	Drainage of mouth lesion
41016	Drainage of mouth lesion
41017	Drainage of mouth lesion
41018	Drainage of mouth lesion
41105	Biopsy of tongue
41110	Excision of tongue lesion
41112	Excision of tongue lesion
41113	Excision of tongue lesion
41114	Excision of tongue lesion
41115	Excision of tongue fold
41116	Excision of mouth lesion
41120	Partial removal of tongue
41250	Repair tongue laceration
41251	Repair tongue laceration
41252	Repair tongue laceration
41500	Fixation of tongue
41510	Tongue to lip surgery
41520	Reconstruction, tongue fold
41800	Drainage of gum lesion
41805	Removal foreign body, gum
41806	Removal foreign body, jawbone
41827	Excision of gum lesion
42000	Drainage mouth roof lesion
42104	Excision lesion, mouth roof
42106	Excision lesion, mouth roof
42107	Excision lesion, mouth roof
42120	Remove palate/lesion
42140	Excision of uvula
42145	Repair, palate, pharynx/uvula
42160	Treatment mouth roof lesion
42180	Repair palate
42182	Repair palate
42200	Reconstruct cleft palate
42205	Reconstruct cleft palate
42210	Reconstruct cleft palate
42215	Reconstruct cleft palate
42220	Reconstruct cleft palate
42225	Reconstruct cleft palate
42235	Repair palate
42260	Repair nose to lip fistula
42281	Insertion, palate prosthesis
42300	Drainage of salivary gland
42305	Drainage of salivary gland
42310	Drainage of salivary gland
42320	Drainage of salivary gland
42325	Create salivary cyst drain
42335	Removal of salivary stone
42340	Removal of salivary stone
42405	Biopsy of salivary gland
42408	Excision of salivary cyst
42409	Drainage of salivary cyst
42410	Excise parotid gland/lesion
42420	Excise parotid gland/lesion
42425	Excise parotid gland/lesion
42440	Excision submaxillary gland
42450	Excision sublingual gland
42500	Repair salivary duct
42505	Repair salivary duct
42507	Parotid duct diversion
42508	Parotid duct diversion
42509	Parotid duct diversion
42510	Parotid duct diversion
42600	Closure of salivary fistula
42700	Drainage of tonsil abscess
42720	Drainage of throat abscess
42725	Drainage of throat abscess
42802	Biopsy of throat
42804	Biopsy of upper nose/throat
42806	Biopsy of upper nose/throat
42808	Excise pharynx lesion
42810	Excision of neck cyst
42815	Excision of neck cyst
42820	Remove tonsils and adenoids
42821	Remove tonsils and adenoids
42825	Removal of tonsils
42826	Removal of tonsils
42830	Removal of adenoids
42831	Removal of adenoids
42835	Removal of adenoids
42836	Removal of adenoids
42860	Excision of tonsil tags
42870	Excision of lingual tonsil
42880	Excise nose/throat lesion
42900	Repair throat wound
42950	Reconstruction of throat
42955	Surgical opening of throat
42960	Control throat bleeding
42962	Control throat bleeding
43200	Esophagus endoscopy
43202	Esophagus endoscopy, biopsy
43204	Esophagus endoscopy & inject
43215	Esophagus endoscopy
43217	Esophagus endoscopy
43219	Esophagus endoscopy
43220	Esophagus endoscopy, dilation
43226	Esophagus endoscopy, dilation
43227	Esophagus endoscopy, repair
43228	Esophagus endoscopy, repair
43234	Upper GI endoscopy, exam
43235	Upper GI endoscopy, diagnosis
43239	Upper GI endoscopy, biopsy
43241	Upper GI endoscopy with tube
43243	Upper GI endoscopy and injection
43245	Operative upper GI endoscopy
43246	Place gastrostomy tube
43247	Operative upper GI endoscopy
43251	Operative upper GI endoscopy
43255	Operative upper GI endoscopy
43258	Operative upper GI endoscopy
43260	Endoscopy, bile duct/pancreas
43262	Endoscopy, bile duct/pancreas
43263	Endoscopy, bile duct/pancreas
43264	Endoscopy, bile duct/pancreas
43265	Endoscopy, bile duct/pancreas
43267	Endoscopy, bile duct/pancreas
43268	Endoscopy, bile duct/pancreas
43269	Endoscopy, bile duct/pancreas
43271	Endoscopy, bile duct/pancreas
43272	Endoscopy, bile duct/pancreas
43450	Dilate esophagus
43451	Redilate esophagus
43453	Dilate esophagus
43455	Dilate esophagus
43456	Dilate esophagus
43600	Biopsy of stomach
43750	Place gastrostomy tube
43760	Change gastrostomy tube
43870	Repair stomach opening
44100	Biopsy of bowel
44312	Revision of ileostomy
44340	Revision of colostomy
44345	Revision of colostomy
44346	Revision of colostomy
44360	Small bowel endoscopy
44361	Small bowel endoscopy, biopsy
44363	Small bowel endoscopy
44364	Small bowel endoscopy
44366	Small bowel endoscopy
45369	Small bowel endoscopy
44372	Small bowel endoscopy
44373	Small bowel endoscopy
44380	Small bowel endoscopy
44382	Small bowel endoscopy
44385	Endoscopy of bowel pouch
44386	Endoscopy, bowel pouch, biopsy
44388	Colon endoscopy
44389	Colonoscopy with biopsy
44390	Colonoscopy for foreign body
44391	Colonoscopy for bleeding

44392	Colonoscopy and polypectomy
44393	Colonoscopy, lesion removal
45000	Drainage of pelvic abscess
45005	Drainage of rectal abscess
45020	Drainage of rectal abscess
45100	Biopsy of rectum
45108	Removal of anorectal lesion
45150	Excision of rectal stricture
45170	Excision of rectal lesion
45180	Removal of rectal lesion
45305	Proctosigmoidoscopy: biopsy
45307	Proctosigmoidoscopy
45310	Proctosigmoidoscopy
45315	Proctosigmoidoscopy
45317	Proctosigmoidoscopy
45320	Proctosigmoidoscopy
45321	Proctosigmoidoscopy
45331	Sigmoidoscopy and biopsy
45332	Sigmoidoscopy
45333	Sigmoidoscopy and polypectomy
45334	Sigmoidoscopy for bleeding
45336	Sigmoidoscopy, lesion removal
45337	Sigmoidoscopy, decompression
45355	Surgical colonoscopy
45378	Diagnostic colonoscopy
45379	Colonoscopy
45380	Colonoscopy and biopsy
45382	Colonoscopy, control bleeding
45383	Colonoscopy, lesion removal
45385	Colonoscopy, lesion removal
45500	Repair of rectum
45505	Repair of rectum
45560	Repair of rectocele
45900	Reduction of rectal prolapse
45905	Dilation of anal sphincter
45910	Dilation of rectal narrowing
45915	Remove rectal obstruction
46000	Incision of anal fistula
46030	Removal of rectal marker
46040	Incision of rectal abscess
46045	Incision of rectal abscess
46050	Incision of anal abscess
46060	Incision of rectal abscess
46080	Incision of anal sphincter
46200	Removal of anal fissure
46210	Removal of anal crypt
46211	Removal of anal crypts
46220	Removal of anal tab
46250	Hemorrhoidectomy
46255	Hemorrhoidectomy
46257	Remove hemorrhoids and fissure
46258	Remove hemorrhoids and fistula
46260	Hemorrhoidectomy
46261	Remove hemorrhoids and fissure
46262	Remove hemorrhoids and fistula
46270	Removal of anal fistula
46275	Removal of anal fistula
46280	Removal of anal fistula
46285	Removal of anal fistula
46608	Anoscopy; remove foreign body
46610	Anoscopy; remove lesion
46612	Anoscopy; remove lesions
46700	Repair of anal stricture
46705	Repair of anal stricture
46750	Repair of anal sphincter
46753	Reconstruction of anus
46754	Removal of suture from anus
46760	Repair of anal sphincter
46922	Excision of anal lesion(s)
46924	Destruction, anal lesion(s)
46937	Cryotherapy of rectal lesion
46938	Cryotherapy of rectal lesion
47000	Needle biopsy of liver
47510	Insert catheter, bile duct
47525	Change bile duct catheter
47530	Revise, reinsert bile tube
47552	Biliary endoscopy, thru skin
47553	Biliary endoscopy, thru skin
47554	Biliary endoscopy, thru skin
47555	Biliary endoscopy, thru skin
47630	Remove bile duct stone
48102	Needle biopsy, pancreas
49000	Exploration of abdomen
49080	Puncture, peritoneal cavity
49081	Removal of abdominal fluid
49085	Remove abdomen foreign body
49180	Biopsy, abdominal mass
49300	Peritoneoscopy
49301	Peritoneoscopy with biopsy
49302	Peritoneoscopy with x-ray
49303	Peritoneoscopy, x-ray & biopsy
49400	Air injection into abdomen
49401	Air injection into abdomen
49420	Insert abdominal drain
49421	Insert abdominal drain
49425	Insert abdomen-venous drain
49426	Revise abdomen-venous shunt
49500	Repair inguinal hernia
49505	Repair inguinal hernia
49510	Repair hernia, remove testis
49515	Repair inguinal hernia
49520	Rerepair inguinal hernia
49525	Repair inguinal hernia
49540	Repair lumbar hernia
49550	Repair femoral hernia
49552	Repair femoral hernia
49555	Repair femoral hernia
49560	Repair abdominal hernia
49565	Rerepair abdominal hernia
49570	Repair epigastric hernia
49575	Repair epigastric hernia
49580	Repair umbilical hernia
49581	Repair umbilical hernia
49590	Repair abdominal hernia
50020	Drainage of kidney abscess
50040	Drainage of kidney
50200	Biopsy of kidney
50390	Drainage of kidney lesion
50392	Insert kidney drain
50393	Insert ureteral tube
50395	Create passage to kidney
50396	Measure kidney pressure
50398	Change kidney tube
50520	Close kidney-skin fistula
50551	Kidney endoscopy
50553	Kidney endoscopy
50555	Kidney endoscopy & biopsy
50557	Kidney endoscopy & treatment
50559	Renal endoscopy-radiotracer
50561	Kidney endoscopy & treatment
50570	Kidney endoscopy
50572	Kidney endoscopy
50574	Kidney endoscopy & biopsy
50576	Kidney endoscopy & treatment
50578	Renal endoscopy-radiotracer
50580	Kidney endoscopy & treatment
50590	Fragmenting of kidney stone
50684	Injection for ureter x-ray
50688	Change of ureter tube
50690	Injection for ureter x-ray
50951	Endoscopy of ureter
50953	Endoscopy of ureter
50955	Ureter endoscopy & biopsy
50957	Ureter endoscopy & treatment
50959	Ureter endoscopy & tracer
50961	Ureter endoscopy & treatment
50970	Ureter endoscopy
50972	Ureter endoscopy & catheter
50974	Ureter endoscopy & biopsy
50976	Ureter endoscopy & treatment
50978	Ureter endoscopy & tracer
50980	Ureter endoscopy & treatment
51005	Drainage of bladder
51010	Drainage of bladder
51020	Incise & treat bladder
51030	Incise & treat bladder
51045	Incise bladder, drain ureter
51500	Removal of bladder cyst
51600	Injection for bladder x-ray
51605	Preparation for bladder x-ray
51610	Injection for bladder x-ray
51710	Change of bladder tube
51725	Simple cystometrogram
51726	Complex cystometrogram
51772	Urethra pressure profile
51785	Anal/urinary muscle study
51865	Repair of bladder wound
51880	Repair of bladder opening
51900	Repair bladder/vagina lesion
51920	Close bladder-uterus fistula
52000	Cystoscopy
52005	Cystoscopy & ureter catheter
52007	Cystoscopy and biopsy
52010	Cystoscopy & duct catheter
52204	Cystoscopy
52214	Cystoscopy and treatment
52224	Cystoscopy and treatment
52234	Cystoscopy and treatment
52235	Cystoscopy and treatment
52240	Cystoscopy and treatment
52250	Cystoscopy and radiotracer
52260	Cystoscopy and treatment
52270	Cystoscopy & revise urethra
52275	Cystoscopy & revise urethra
52276	Cystoscopy and treatment
52277	Cystoscopy and treatment
52281	Cystoscopy and treatment
52283	Cystoscopy and treatment
52285	Cystoscopy and treatment
52290	Cystoscopy and treatment
52300	Cystoscopy and treatment
52305	Cystoscopy and treatment
52310	Cystoscopy and treatment
52315	Cystoscopy and treatment
52317	Remove bladder stone
52318	Remove bladder stone
52320	Cystoscopy and treatment
52325	Cystoscopy, stone removal
52330	Cystoscopy and treatment
52332	Cystoscopy and treatment
52334	Create passage to kidney
52335	Endoscopy of urinary tract
52336	Cystoscopy, stone removal
52337	Cystoscopy, stone removal
52338	Cystoscopy and treatment
52340	Cystoscopy and treatment
52500	Revison of bladder neck
52601	Prostatectomy (TURP)
52606	Control postop bleeding
52612	Prostatectomy, first stage
52614	Prostatectomy, second stage
52620	Remove residual prostate
52630	Remove prostate regrowth
52640	Relieve bladder contracture
52650	Prostatectomy
52700	Drainage of prostate abscess
53000	Incision of urethra
53010	Incision of urethra
53020	Incision of urethra
53040	Drainage of urethra abscess
53200	Biopsy of urethra
53210	Removal of urethra
53215	Removal of urethra
53220	Treatment of urethra lesion
53230	Removal of urethra lesion
53235	Removal of urethra lesion
53240	Surgery for urethra pouch
53250	Removal of urethra gland

53260	Treatment of urethra lesion
53265	Treatment of urethra lesion
53275	Repair of urethra defect
53400	Revise urethra, 1st stage
53405	Revise urethra, 2nd stage
53410	Reconstruction of urethra
53420	Reconstruct urethra, stage 1
53425	Reconstruct urethra, stage 2
53430	Reconstruction of urethra
53440	Correct bladder function
53442	Remove perineal prosthesis
53447	Remove artificial sphincter
53449	Correct artificial sphincter
53450	Revision of urethra
53460	Revision of urethra
53502	Repair of urethra injury
53505	Repair of urethra injury
53510	Repair of urethra injury
53515	Repair of urethra injury
53520	Repair of urethra defect
53605	Dilate urethra stricture
53665	Dilation of urethra
54000	Slitting of prepuce
54001	Slitting of prepuce
54057	Laser surg, penis lesion(s)
54060	Excision of penis lesion(s)
54065	Destruction, penis lesion(s)
54100	Biopsy of penis
54105	Biopsy of penis
54110	Treatment of penis lesion
54115	Treatment of penis lesion
54120	Partial removal of penis
54125	Removal of penis
54150	Circumcision
54152	Circumcision
54160	Circumcision
54161	Circumcision
54220	Treatment of penis lesion
54300	Revision of penis
54360	Penis plastic surgery
54420	Revision of penis
54435	Revision of penis
54440	Repair of penis
54450	Preputial stretching
54500	Biopsy of testis
54505	Biopsy of testis
54510	Removal of testis lesion
54520	Removal of testis
54530	Removal of testis
54550	Exploration for testis
54600	Reduce testis torsion
54620	Suspension of testis
54640	Suspension of testis
54660	Revision of testis
54670	Repair testis injury
54680	Relocation of testis(es)
54700	Drainage of scrotum
54800	Biopsy of epididymis
54820	Exploration of epididymis
54830	Remove epididymis lesion
54840	Remove epididymis lesion
54860	Removal of epididymis
54861	Removal of epididymis
54900	Fusion of spermatic ducts
54901	Fusion of spermatic ducts
55040	Removal of hydrocele
55041	Removal of hydroceles
55060	Repair of hydrocele
55100	Drainage of scrotum abscess
55110	Explore scrotum
55120	Removal of scrotum lesion
55150	Removal of scrotum
55175	Revision of scrotum
55180	Revision of scrotum
55200	Incision of sperm duct
55400	Repair of sperm duct
55500	Removal of hydrocele
55520	Removal of sperm cord lesion
55530	Revise spermatic cord veins
55535	Revise spermatic cord veins
55540	Revise hernia and sperm veins
55600	Incise sperm duct pouch
55605	Incise sperm duct pouch
55650	Remove sperm duct pouch
55680	Remove sperm pouch lesion
55700	Biopsy of prostate
55705	Biopsy of prostate
55720	Drainage of prostate abscess
56000	Drainage of perineal abscess
56100	Biopsy of perineum
56200	Repair of perineum
56300	Pelvis laparoscopy, dx
56301	Laparoscopy, surgical
56302	Laparoscopy, surgical
56303	Laparoscopy, surgical
56304	Laparoscopy, surgical
56305	Laparoscopy, surgical
56306	Laparoscopy, surgical
56307	Laparoscopy, surgical
56309	Laparoscopy, surgical
56350	Hysteroscopy, diagnostic
56352	Hysteroscopy, surgical
56353	Hysteroscopy, surgical
56354	Hysteroscopy, surgical
56355	Hysteroscopy, surgical
56356	Hysteroscopy, surgical
56405	I & D of vulva/perineum
56440	Surgery for vulva lesion
56515	Destruction, vulva lesion(s)
56620	Partial removal of vulva
56625	Removal of vulva
56700	Partial removal of hymen
56720	Incision of hymen
56740	Remove vagina gland lesion
56800	Repair of vagina
56810	Repair of perineum
57000	Exploration of vagina
57010	Drainage of pelvic abscess
57020	Drainage of pelvic fluid
57065	Destruction vagina lesion(s)
57105	Biopsy of vagina
57130	Remove vagina lesion
57135	Remove vagina lesion
57180	Treat vaginal bleeding
57200	Repair of vagina
57210	Repair vagina/perineum
57220	Revision of urethra
57230	Repair of urethral lesion
57240	Repair bladder and vagina
57250	Repair rectum and vagina
57260	Repair of vagina
57265	Extensive repair of vagina
57268	Repair of bowel bulge
57300	Repair rectum-vagina fistula
57310	Repair urethrovaginal lesion
57311	Repair urethrovaginal lesion
57320	Repair bladder-vagina lesion
57400	Dilation of vagina
57410	Pelvic examination
57451	Pelvis endoscopy and biopsy
57513	Laser surgery of cervix
57520	Conization cervix
57530	Removal of cervix
57550	Removal of residual cervix
57700	Revision of cervix
57720	Revision of cervix
57800	Dilation of cervical canal
57820	D&C of residual cervix
58120	Dilation and curettage (D&C)
58145	Removal of uterus lesion
58600	Division of fallopian tube
58615	Occlude fallopian tube(s)
58800	Drainage of ovarian cyst(s)
58820	Drainage of ovarian abscess
58900	Biopsy of ovary(s)
58980	Laparoscopy of pelvis
58982	Laparoscopy—tubal cautery
58983	Laparoscopy—tubal block
58984	Laparoscopy of pelvis
58985	Laparoscopy of pelvis
58986	Pelvis laparoscopy and biopsy
58987	Laparoscopy of pelvis
58988	Laparoscopy, remove adnexa
58990	Diagnostic hysteroscopy
58992	Treatment hysteroscopy
58994	Treatment hysteroscopy
58996	Treatment hysteroscopy
59400	Vaginal delivery—global
59410	Vaginal delivery only
59414	Deliver placenta
59812	Treatment of miscarriage
59820	Care of miscarriage
59821	Treatment of miscarriage
59840	Abortion
59841	Abortion
60000	Drain thyroid/tongue cyst
60200	Remove thyroid lesion
60220	Partial removal of thyroid
60225	Partial removal of thyroid
60280	Remove thyroid duct lesion
60281	Remove thyroid duct lesion
61020	Remove brain cavity fluid
61026	Injection into brain canal
61050	Remove brain canal fluid
61055	Injection into brain canal
61070	Brain canal shunt procedure
61215	Insert brain-fluid device
61790	Treat trigeminal nerve
61791	Treat trigeminal tract
61885	Implant neuroreceiver
61888	Revise/remove neuroreceiver
62194	Replace/irrigate catheter
62225	Replace/irrigate catheter
62230	Replace/revise brain shunt
62256	Remove brain cavity shunt
62268	Drain spinal cord cyst
62269	Needle biopsy spinal cord
62270	Spinal fluid tap, diagnostic
62272	Drain spinal fluid
62273	Treat lumbar spine lesion
62274	Inject spinal anesthetic
62276	Inject spinal anesthetic
62277	Inject spinal anesthetic
62278	Inject spinal anesthetic
62279	Inject spinal anesthetic
62280	Treat spinal cord lesion
62282	Treat spinal canal lesion
62288	Injection into spinal canal
62289	Injection into spinal canal
62294	Injection into spinal artery
63600	Remove spinal cord lesion
63610	Stimulation of spinal cord
63650	Implant neuroelectrodes
63660	Revise/remove neuroelectrode
63685	Implant neureceiver
63688	Revise/remove neuroreceiver
63744	Revision of spinal shunt
63746	Removal of spinal shunt
63750	Insert spinal canal catheter
63780	Insert spinal canal catheter
64410	Injection for nerve block
64415	Injection for nerve block
64417	Injection for nerve block
64420	Injection for nerve block
64421	Injection for nerve block
64430	Injection for nerve block
64442	Injection for nerve block
64443	Injection for nerve block

64510	Injection for nerve block
64520	Injection for nerve block
64530	Injection for nerve block
64575	Implant neuroelectrodes
64590	Implant neuroreceiver
64595	Revise/remove neuroreceiver
64600	Injection treatment of nerve
64605	Injection treatment of nerve
64610	Injection treatment of nerve
64620	Injection treatment of nerve
64622	Injection treatment of nerve
64623	Injection treatment of nerve
64630	Injection treatment of nerve
64680	Injection treatment of nerve
64702	Revise finger/toe nerve
64704	Revise hand/foot nerve
64708	Revise arm/leg nerve
64712	Revision of sciatic nerve
64713	Revision of arm nerve(s)
64714	Revise low back nerve(s)
64716	Revision of cranial nerve
64718	Revise ulnar nerve at elbow
64719	Revise ulnar nerve at wrist
64721	Carpal tunnel surgery
64722	Relieve pressure on nerve(s)
64726	Release foot/toe nerve
64727	Internal nerve revision
64732	Incision of brow nerve
64734	Incision of cheek nerve
64736	Incision of chin nerve
64738	Incision of jaw nerve
64740	Incision of tongue nerve
64742	Incision of facial nerve
64744	Incise nerve, back of head
64746	Incise diaphragm nerve
64771	Sever cranial nerve
64772	Incision of spinal nerve
64774	Remove skin nerve lesion
64776	Remove digit nerve lesion
64778	Added digit nerve surgery
64782	Remove limb nerve lesion
64783	Added limb nerve surgery
64784	Remove nerve lesion
64786	Remove sciatic nerve lesion
64787	Implant nerve end
64788	Remove skin nerve lesion
64790	Removal of nerve lesion
64792	Removal of nerve lesion
64795	Biopsy of nerve
64802	Remove sympathetic nerves
64830	Microrepair of nerve
64831	Repair of digit nerve
64832	Repair additional nerve
64834	Repair of hand or foot nerve
64835	Repair of hand or foot nerve
64836	Repair of hand or foot nerve
64837	Repair additional nerve
64840	Repair of leg nerve
64856	Repair/transpose nerve
64857	Repair arm/leg nerve
64858	Repair sciatic nerve
64859	Additional nerve surgery
64861	Repair of arm nerves
64862	Repair of low back nerves
64864	Repair of facial nerve
64865	Repair of facial nerve
64870	Fusion of facial/other nerve
64872	Subsequent repair of nerve
64874	Repair & revise nerve
64876	Repair nerve-shorten bone
64890	Nerve graft, hand or foot
64891	Nerve graft, hand or foot
64892	Nerve graft, arm or leg
64893	Nerve graft, arm or leg
64895	Nerve graft, hand or foot
64896	Nerve graft, hand or foot
64897	Nerve graft, arm or leg
64898	Nerve graft, arm or leg
64901	Additional nerve graft
64902	Additional nerve graft
64905	Nerve pedicle transfer
64907	Nerve pedicle transfer
65091	Revise eye
65903	Revise eye with implant
65101	Removal of eye
65103	Remove eye/insert implant
65105	Remove eye/attach implant
65110	Removal of eye
65112	Remove eye, revise socket
65114	Remove eye, revise socket
65130	Insert ocular implant
65135	Insert ocular implant
65140	Attach ocular implant
65150	Revise ocular implant
65155	Reinsert ocular implant
65175	Removal of ocular implant
65235	Remove foreign body from eye
65260	Remove foreign body from eye
65265	Remove foreign body from eye
65270	Repair of eye wound
65272	Repair of eye wound
65275	Repair of eye wound
65280	Repair of eye wound
65285	Repair of eye wound
65290	Repair of eye socket wound
65400	Removal of eye lesion
65410	Biopsy of cornea
65420	Removal of eye lesion
65426	Removal of eye lesion
65710	Corneal transplant
65730	Corneal transplant
65750	Corneal transplant
65755	Corneal transplant
65800	Drainage of eye
65805	Drainage of eye
65810	Drainage of eye
65815	Drainage of eye
65850	Drainage of eye
65865	Incise inner eye adhesions
65870	Incise inner eye adhesions
65875	Incise inner eye adhesions
65880	Incise inner eye adhesions
65900	Remove eye lesion
65920	Remove implant from eye
65930	Remove blood clot from eye
66020	Injection treatment of eye
66030	Injection treatment of eye
66130	Remove eye lesion
66150	Incision of eye
66155	Incision of eye
66160	Incision of eye
66165	Incision of eye
66170	Incision of eye
66220	Repair eye lesion
66225	Repair/graft eye lesion
66250	Follow-up surgery of eye
66500	Incision of iris
66505	Incision of iris
66600	Remove iris and lesion
66605	Removal of iris
66625	Removal of iris
66630	Removal of iris
66635	Removal of iris
66680	Repair iris and ciliary body
66682	Repair iris and ciliary body
66700	Destruction, ciliary body
66710	Destruction, ciliary body
66720	Destruction, ciliary body
66740	Destruction, ciliary body
66762	Revision of iris
66821	Lasering, secondary cataract
66830	Removal of lens lesion
66840	Removal of lens material
66850	Removal of lens material
66852	Removal of lens material
66920	Extraction of lens
66930	Extraction of lens
66940	Extraction of lens
66983	Remove cataract, insert lens
66984	Remove cataract, insert lens
66985	Insert lens prosthesis
66986	Exchange lens prosthesis
67005	Partial removal of eye fluid
67010	Partial removal of eye fluid
67015	Release of eye fluid
67025	Replace eye fluid
67030	Incise inner eye strands
67031	Laser surgery, eye strands
67036	Removal of inner eye fluid
67038	Strip retinal membrane
67039	Laser treatment of retina
67040	Laser treatment of retina
67101	Repair detached retina
67105	Repair detached retina
67107	Repair detached retina
67108	Repair detached retina
67109	Repair detached retina
67112	Re-repair detached retina
67115	Release, encircling material
67120	Remove eye implant material
67121	Remove eye implant material
67141	Treatment of retina
67208	Treatment of retinal lesion
67218	Treatment of retinal lesion
67227	Treatment of retinal lesion
67250	Reinforce eye wall
67255	Reinforce/graft eye wall
67311	Revise eye muscle
67312	Revise two eye muscles
67314	Revise eye muscle
67316	Revise two eye muscles
67318	Revise eye muscle(s)
67320	Revise eye muscle(s)
67331	Eye surgery follow-up
67332	Rerevise eye muscles
67350	Biopsy eye muscle
67400	Explore/biopsy eye socket
67405	Explore/biopsy eye socket
67412	Explore/treat eye socket
67413	Explore/treat eye socket
67415	Biopsy of eye
67420	Explore/treat eye socket
67430	Explore/treat eye socket
67440	Explore/drain eye socket
67450	Explore/biopsy eye socket
67550	Insert eye socket implant
67560	Revise eye socket implant
67715	Incision of eyelid fold
67808	Remove eyelid lesion(s)
67830	Revise eyelashes
67835	Revise eyelashes
67880	Revision of eyelid
67882	Revision of eyelid
67901	Repair eyelid defect
67902	Repair eyelid defect
67903	Repair eyelid defect
67904	Repair eyelid defect
67906	Repair eyelid defect
67908	Repair eyelid defect
67909	Revise eyelid defect
67911	Revise eyelid defect
67914	Repair eyelid defect
67916	Repair eyelid defect
67917	Repair eyelid defect
67921	Repair eyelid defect
67923	Repair eyelid defect
67924	Repair eyelid defect
67935	Repair eyelid wound

67950 Revision of eyelid
67961 Revision of eyelid
67966 Revision of eyelid
67971 Reconstruction of eyelid
67973 Reconstruction of eyelid
67974 Reconstruction of eyelid
67975 Reconstruction of eyelid
68130 Remove eyelid lining lesion
68320 Revise/graft eyelid lining
68325 Revise/graft eyelid lining
68326 Revise/graft eyelid lining
68328 Revise/graft eyelid lining
68330 Revise eyelid lining
68335 Revise/graft eyelid lining
68340 Separate eyelid adhesions
68360 Revise eyelid lining
68362 Revise eyelid lining
68500 Removal of tear gland
68505 Partial removal tear gland
68510 Biopsy of tear gland
68520 Removal of tear sac
68525 Biopsy of tear sac
68540 Remove tear gland lesion
68550 Remove tear gland lesion
68700 Repair tear ducts
68720 Create tear sac drain
68745 Create tear duct drain
68750 Create tear duct drain
68825 Explore tear duct system
69110 Partial removal external ear
69120 Removal of external ear
69140 Remove ear canal lesion(s)
69145 Remove ear canal lesion(s)
69150 Extensive ear canal surgery
69205 Clear outer ear canal
69310 Rebuild outer ear canal
69320 Rebuild outer ear canal
69421 Incision of eardrum
69424 Remove ventilating tube
69436 Create eardrum opening
69440 Exploration of middle ear
69450 Eardrum revision
69501 Mastoidectomy
69502 Mastoidectomy
69505 Remove mastoid structures
69511 Extensive mastoid surgery
69530 Extensive mastoid surgery
69550 Remove ear lesion
69552 Remove ear lesion
69601 Mastoid surgery revision
69602 Mastoid surgery revision
69603 Mastoid surgery revision
69604 Mastoid surgery revision
69605 Mastoid surgery revision
69620 Repair of eardrum
69631 Repair eardrum structures
69632 Rebuild eardrum structures
69633 Rebuild eardrum structures
69635 Repair eardrum structures
69636 Rebuild eardrum structures
69637 Rebuild eardrum structures
69641 Revise middle ear and mastoid
69642 Revise middle ear and mastoid
69643 Revise middle ear and mastoid
69644 Revise middle ear and mastoid
69645 Revise middle ear and mastoid
69646 Revise middle ear and mastoid
69650 Release middle ear bone
69660 Revise middle ear bone
69661 Revise middle ear bone
69662 Revise middle ear bone
69666 Repair middle ear structures
69667 Repair middle ear structures
69670 Remove mastoid air cells
69676 Remove middle ear nerve
69700 Close mastoid fistula
69710 Implant/replace hearing aid
69711 Remove/repair hearing aid
69720 Release facial nerve
69725 Release facial nerve
69740 Repair facial nerve
69745 Repair facial nerve
69801 Incise inner ear
69802 Incise inner ear
69805 Explore inner ear
69806 Explore inner ear
69820 Establish inner ear window
69840 Revise inner ear window
69905 Remove inner ear
69910 Remove inner ear and mastoid
69915 Incise inner ear nerve
69930 Implant cochlear device

[FR Doc. 93–25277 Filed 10–14–93; 8:45 am]
BILLING CODE 5000–04–M

Department of the Army

Corps of Engineers

33 CFR Part 334

Restricted Area, Pacific Ocean Offshore of Camp Pendleton, San Diego County, CA

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Interim final rule.

SUMMARY: This interim final rule invites comments on the Corps establishment of a naval restricted anchorage area in the waters of the Pacific Ocean offshore of Camp Pendleton, San Diego County, California. The U.S. Navy needs to establish an explosive anchorage area for safety purposes.

DATES: Interim final rule effective October 15, 1993. Written comments must be received on or before November 15, 1993.

ADDRESSES: HQUSACE, CECW–OR, Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth White at (619) 455–9422 or Mr. Ralph Eppard at (202) 272–1783.

SUPPLEMENTARY INFORMATION: The Commanding Officer of the Naval Weapons Station has requested the Corps to establish a restricted anchorage area (identified as Fallbrook), offshore of Camp Pendleton, San Diego County, California. In accordance with Naval Sea Systems Command, OPS Volume 1 Manual, Ammunition and Explosives Ashore Safety Regulations for Handling, Storing, Production, Renovation, and Shipping, a safety distance of 9,000 feet to inhabited structures is required for the anticipated net explosive weight of 5,500,000 pounds. During loading/unloading, vessel traffic and anchorage would be restricted to a distance not closer than 5,400 feet from the vessel. The Fallbrook anchorage site has been intermittently utilized in the past and its use needs to be continued in support of replenishment operations associated with the transfer of ordnance from the Fallbrook Annex to and from naval combatants and ammunition ships. The Navy's utilization of this anchorage is expected to grow to a maximum of 10 days per month. This planned long-term utilization for replenishment operations necessitates establishment of the restricted anchorage. There is no anticipated navigational hazard or interference with existing waterway traffic. There are no recreational or commercial fishery operations presently in or using the waters within this area because of ongoing military operations. Therefore, no loss of resources or use of resources would be borne by the public. The Corps Los Angeles District Engineer issued a public notice on June 2, 1993, which solicited comments on this proposed restricted area to all known interested parties. The District did not receive any objections to the establishment of the restricted anchorage area. This interim final rule is made effective immediately due to the need for safety during transfer of ordnance in this area.

Economic Assessment and Certification

This interim final rule is issued with respect to a military function of the Defense Department and the provisions of E.O. 12291 do not apply. These interim final rules have been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354), which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small business (i.e., small businesses and small government) jurisdictions. There is no anticipated navigational hazard or interference with existing waterway traffic. There are no recreational or commercial fishery operations presently in or using the waters within this area because of ongoing military operations. Therefore, no loss of resources or use of resources would be borne by the public. Therefore, it has been determined that this rule will not have a significant economic impact on a substantial number of small entities and that preparation of a regulatory flexibility analysis is not warranted.

List of Subjects in 33 CFR Part 334

Danger zones, Navigation (water), Transportation.

In consideration of the above, the Corps is amending part 334 of title 33 to read as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Section 334.905 is added to read as follows:

§ 334.905 Pacific Ocean, Offshore of Camp Pendleton, California; Failbrook restricted area.

(a) *The area.* The waters of the Gulf of Santa Catalina, offshore of Camp Pendleton in the Pacific Ocean, San Diego County, California. The center of the restricted area is located at 33°18.6′ N. latitude, 117°32.0′ W. longitude, with a radius of 9,000 feet.

(b) *The regulations.* (1) No vessel or craft of any size shall lie-to or anchor in the restricted area at any time other than a vessel operated by or for the U.S. Coast Guard, local, State or Federal law enforcement agencies.

(2) Loitering, dredging, dragging, anchoring, seining, fishing, and similar activities within the restricted area during vertical replenishment operations use is prohibited.

(c) *Enforcement.* The regulations in this section shall be enforced by the U.S. Coast Guard, local, State, or Federal law enforcement agencies.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 93–25312 Filed 10–14–93; 8:45 am]

BILLING CODE 3710–92–M

Corps of Engineers

33 CFR Part 334

Danger Zones and Restricted Area, Pacific Ocean, Hawaiian Islands

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: The Corps is making minor editorial changes to the regulations which establish two danger zones and a restricted area in the waters of the Pacific Ocean offshore of several of the Hawaiian Islands. These amendments are necessary as a result of organizational changes made in Navy Commands. No other changes to the danger zones or restricted area are being made.

EFFECTIVE DATE: October 15, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Dave Kern at (808) 438–8551 or Mr. Ralph Eppard at (202) 272–1783.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps is amending the regulations in 33 CFR 334.1340, 334.1370 and 334.1400 with regard to the identity of the agencies responsible for enforcing the regulations within those specified areas. There are no amendments being made to these regulations which would affect the size or location of the danger zones or any changes that would affect the Government's use or public access to the areas. Since these amendments are editorial in nature, notice of proposed rulemaking procedures is unnecessary and impracticable and these amendments are published as final rules.

Economic Assessment and Certification

This rule is issued with respect to a military function of the Defense Department and the provisions of E.O. 12291 do not apply. The changes to these regulations are editorial and reflect only changes in Department of the Navy organization. There will be no additional impact on recreational, commercial or fishing vessels within the areas. There will be no impacts on small businesses or governments in the area. I hereby certify that this regulation will have no significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 334

Navigation (water), Transportation, Restricted areas.

In consideration of the above, the Corps is amending part 334 of title 33 to read as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Section 334.1340 is amended by revising paragraph (c) to read as follows:

§ 334.1340 Pacific Ocean, Hawaii; danger zones.

* * * * *

(c) *Enforcing agency.* The regulations in this section shall be enforced by the Commander, Naval Base Pearl Harbor, Hawaii 96860–5020 and such agencies as he/she may designate.

3. Section 334.1370 is amended by revising paragraph (b)(2) to read as follows:

§ 334.1370 Pacific Ocean at Keahi Point, Island of Oahu; danger zone.

* * * * *

(b) *The regulations.* * * *

(2) The regulations in this section shall be enforced by the Commanding Officer, Explosive Ordnance Disposal Training and Evaluation Unit One, Barbers Point, Hawaii 96862–5600.

4. Section 334.1400 is amended by revising paragraph (b)(4) to read as follows:

§ 334.1400 Pacific Ocean at Barbers Point, Island of Oahu, Hawaii; restricted area.

* * * * *

(b) *The regulations.* * * *

(4) The regulations in this section shall be enforced by the Officer in Charge, Fleet Area Control and Surveillance Facility, Pearl Harbor, Hawaii 96860–7625, and such agencies as he/she may designate.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 93–25313 Filed 10–14–93; 8:45 am]

BILLING CODE 3710–92–M

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33 CFR Part 334

Danger Zones, Atlantic Ocean South of the Entrance to the Chesapeake Bay, Virginia Beach, VA

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: The Corps is amending the regulations which establish two danger zones in the waters of the Atlantic Ocean south of the entrance to the Chesapeake Bay to accommodate current U.S. Navy nighttime training requirements. The amendments include restrictions on use of the water area after darkness when the ranges are in use and one of the danger zones will be expanded seaward 2,500 yards. It should be noted, however, that the expanded area continues to be within the boundaries of the existing larger danger zone. The expansion of the danger zone is necessary to provide an additional measure of safety for vessels operating in the area.

EFFECTIVE DATE: November 15, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Henderson at (804) 441–7653 or Mr. Ralph Eppard at (202) 272–1783.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps is amending the regulations in 33 CFR 334.380 and 334.390.

The Commanding Officer, Fleet Combat Training Center, Atlantic, U.S.

Navy, has requested that the danger zones be amended to reflect changes in the use of the areas. The purpose of the change is to accommodate nighttime naval training at the ranges. There are no changes which will prohibit the public's use of the area. Presently, from sunrise until sunset, vessels shall proceed through the area with caution and shall remain therein no longer than necessary for purposes of transit. This amendment will make this restriction on transit of the area to apply 24 hours a day. The Navy will continue to display red flags while firing is in progress during daylight hours and will display red flashing lights during periods of darkness to alert mariners that the range is in use. On April 2, 1993, we published these proposed changes in the Notice of Proposed Rulemaking Section of the **Federal Register** (58 FR 17373–17374), with the comment period expiring on May 3, 1993. We received no comments. However, an omission was made in the proposed regulations with regard to 33 CFR 334.390(b) (4) and (5). The final regulations (b)(5) are corrected to require the Navy lookouts to utilize night vision systems for nighttime surveillance of the danger zone and the regulations in (b)(5) are corrected by adding that firing will not be allowed during periods of low visibility if a properly marked vessel is not recognizable to a distance of 7,500 yards, or if visibility would preclude a vessel from observing the red range flags or lights. We are making these changes without further public notice or procedures since the additional requirements will require additional action by the Navy, but will not impose any further restrictions or require the public to take any further action. It should be noted that these corrections to § 334.390 make it similar to the regulations in § 334.380.

Economic Assessment and Certification

This rule is issued with respect to a military function of the Defense Department and the provisions of E.O. 12291 do not apply. The addition of nighttime use of the danger zones will have only minimal impact on recreational, commercial or fishing vessels within the area because the vessels are not prohibited from use of the area except when firing is in progress at the range. There will be no impacts on small businesses or governments in the area. I hereby certify that this regulation will have no significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 334

Navigation (water), Transportation, restricted areas.

In consideration of the above, the Corps is amending part 334 of title 33 to read as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for part 334 continues to read as follows:

Authority: 40 Stat. 266; (33 U.S.C. 1) and 40 Stat. 892; (33 U.S.C. 3).

2. Section 334.380 is revised to read as follows:

§ 334.380 Atlantic Ocean south of entrance to Chesapeake Bay off Dam Neck, Virginia; naval firing range.

(a) *The danger zone.* All of the water within a sector extending seaward a distance of 7,500 yards between radial lines bearing 35° true and 92° true, respectively, from a point on the shore at latitude 36 47′33″ N, longitude 75 58′23″ W.

(b) *The regulations.* (1) Vessels shall proceed through the area with caution and shall remain therein no longer than necessary for purpose of transit.

(2) When firing is in progress during daylight hours, red flags will be displayed at conspicuous locations on the beach. When firing is in progress during periods of darkness, red flashing lights will be displayed from conspicuous locations which are visible from the water a minimum distance of four (4) nautical miles.

(3) Firing on the ranges will be suspended as long as any vessel is within the danger zone.

(4) Lookout posts shall be manned by the activity or agency operating the firing range at Fleet Combat Center. After darkness, night vision systems will be utilized by lookouts to aid in locating vessels transiting the area.

(5) There shall be no firing on any ranges during the periods of low visibility which would prevent the recognition of a vessel (to a distance of 7,500 yards) which is properly displaying navigational lights, or which would preclude a vessel from observing the red range flags or lights.

(6) The regulations in this section shall be enforced by the Commanding Officer, Fleet Combat Training Center, Atlantic, Dam Neck, Virginia Beach, Virginia, and other such agencies as he/she may designate.

3. Section 334.390 paragraphs (b)(1), (2), (4) and (5) are revised to read as follows:

§ 334.390 Atlantic Ocean south of entrance to Chesapeake Bay; firing range.

* * * * *

(b) *The regulations.* (1) Vessels shall proceed through the area with caution and shall remain therein no longer than necessary for purposes of transit.

(2) When firing is in progress during daylight hours, red flags will be displayed at conspicuous locations on the beach. When firing is in progress during periods of darkness, red flashing lights will be displayed from conspicuous locations on the beach which are visible from the water a minimum distance of four (4) nautical miles.

* * * * *

(4) Lookout posts will be manned by the activity or agency operating the firing range at the Fleet Combat Center, Atlantic, Dam Neck, Virginia Beach, Virginia. After darkness, night vision systems will be utilized by lookouts to aid in locating vessels transiting the area.

(5) There shall be no firing on the range during periods of low visibility which would prevent the recognition of a vessel (to a distance of 7,500 yards) which is properly displaying navigation lights, or which would preclude a vessel from observing the red range flags or lights.

* * * * *

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 93–25314 Filed 10–14–93; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7003

[AZ–930–4210–06; AZA 25553]

Withdrawal of National Forest System Land for the Northern Arizona Visitor Center and Interagency Administrative Site; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 353.04 acres of National Forest System land from mining for 20 years to protect significant capital improvements associated with the proposed Northern Arizona Visitor Center and Interagency Administrative Site. The center will be a cooperative venture between the Forest Service, the National Park Service, and Arizona State Parks. The land has been and will remain open to mineral leasing and surface users authorized by the Forest Service.

EFFECTIVE DATE: October 15, 1993.

FOR FURTHER INFORMATION CONTACT: John Mezes, BLM, Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011, 602–650–0509.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System land is hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. Ch. 2 (1988)), but not from leasing under the mineral leasing laws, to protect the capital investments of the proposed Northern Arizona Visitor Center and Interagency Administrative Site:

Gila and Salt River Meridian

Prescott National Forest

T. 14 N., R. 4 E.,

Sec. 34, SE¼, and SE¼SW¼;
Sec. 35, lots 7 and 8, and W½SW¼.

The area described contains 353.04 acres in Yavapai County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the National Forest System land under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: October 5, 1993.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 93–25274 Filed 10–14–93; 8:45 am]

BILLING CODE 4310–32–M

43 CFR Public Land Order 7004

[MT–930–4210–06; 60641, MTM 41507]

Partial Revocation of Executive Order Dated July 9, 1910, and Executive Order No. 3053 Dated February 28, 1919; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes two Executive orders insofar as they affect 5.51 acres of National Forest System land withdrawn for Coal Reserve Montana No. 1 and a game preserve. The land is no longer needed for these purposes, and the revocations are needed to permit disposal of land through direct sale under the Townsite Act of July 31, 1958. This action will open the land to such forms of dispositions as mayby law be made of National Forest System land. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: November 15, 1993.

FOR FURTHER INFORMATION CONTACT: Sandra Ward, BLM War, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–255–2449.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. The Executive Order dated July 9, 1910, and Executive Order No. 3053 dated February 28, 1919, which withdrew National Forest System land for classification and appraisement of coal values and a game preserve, are hereby revoked insofar as they affect the following described land:

Principal Meridian

Gallatin National Forest

T. 9 S., R. 8 E.,
Sec. 16, lot 11.

The area described contains 5.51 acres in Park County.

2. At 9 a.m. on November 15, 1993, the land shall be opened to such forms of disposition as may by law be made of National Forest System land, subject to valid existing rights, the provision of existing withdrawals, other segregations of record, and the requirements of applicable law.

Dated: October 5, 1993.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 93–25273 Filed 10–14–93; 8:45 am]

BILLING CODE 4310–ON–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MM Docket No. 92–259; FCC 93–467]

Cable Act of 1992—Must-Carry and Retransmission Consent Provisions

AGENCY: Federal Communications Commission.

ACTION: Final rule; stay order.

SUMMARY: This document administratively stays the retransmission consent provisions of § 76.64(e) and § 76.62(a) as those rules were adopted in the Commission's Report and Order, only with respect to the issue of antenna ownership as provided by § 76.64(e) and with respect to the continued validity of existing arrangements for partial carriage between a broadcaster and a cable operator, as generally prohibited by § 76.62(a). This stay is issued in response to two separate requests seeking relief from each of these provisions. The Wireless Cable Association and the National Private Cable Association on September 29, 1993, requested a stay of § 76.64(e), and Media-Com Television, on August 4, 1993, requested a temporary waiver of § 76.62(a). This action is intended to provide the Commission with an opportunity to fully consider the specific issues raised and the oppositions thereto. This action will also allow the Wireless Cable Association and the National Private Cable Association, to continue retransmission consent negotiations, and will allow Media-Com, and similarly situated entities, to continue providing programming which serves the public interest, pursuant to existing arrangements with cable operators for partial carriage of a broadcast signal, until such time as the Commission has addressed these issues on reconsideration.

EFFECTIVE DATE: October 5, 1993.

FOR FURTHER INFORMATION CONTACT: Elizabeth Beaty, Mass Media Bureau, (202) 416–0856.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Stay Order, MM Docket No. 92–259, adopted October 5, 1993, and released October 5, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service (ITS), 1919 M Street, NW., Washington, DC 20036.

Synopsis of the Order

1. On March 11, 1993 the Commission adopted a Report and Order, 58 FR 17350 (April 2, 1993), in this proceeding to implement the mandatory television broadcast signal carriage ("must-carry") and retransmission consent provisions of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Act"). We have received two separate requests seeking relief from two different provisions of our rules which were adopted in this proceeding. The Wireless Cable Association ("WCA")

and the National Private Cable Association ("NPCA") filed an Emergency Motion for Partial Stay on September 29, 1993, requesting that the Commission stay the effectiveness of the specific provisions of § 76.64(e), pending the Commission's decision on WCA's Petition for Partial Reconsideration, which requests a revision of this rule. In an Emergency Petition for Temporary Waiver filed on August 4, 1993, Media-Com Television, Inc. ("Media-Com") seeks a temporary waiver of § 76.62(e), pending the Commission's action on petitions for reconsideration requesting modification of this rule with respect to signals carried pursuant to retransmission consent agreements. Because both of these requests relate to the retransmission consent provisions of our rules, which will become effective October 6, 1993, we will address both requests herein.

2. With respect to the WCA and NPCA's request, § 76.64(e) of the Commission's rules provides that the "[p]rovision of local broadcast signals by master antenna television (MATV) facilities or by VHF/UHF antennas on individual dwellings is not subject to retransmission consent, provided that these signals are available without charge at the residents' option. That is, the antenna facilities must be owned by the individual subscriber or building owner and not under the control of the multichannel video programming distributor." WCA and NPCA request that the Commission exclude from retransmission consent requirements those wireless cable and private cable systems that provide access to VHF/UHF rooftop antennas at no charge, regardless of antenna ownership, until the Commission addresses the requested revision to this rule.

3. In their motion, WCA and NPCA argue that ownership or control of the antenna should not be the determining factor as to whether retransmission consent must be obtained. Instead, they argue that as long as the broadcast signals are provided free of charge, over a VHF/UHF antenna, then the ownership of the antenna should not matter. WCA and NPCA point to the unintended affects which the current version of the rule will have on wireless and private cable operators. Most specifically, even where a wireless operator has obtained the consent of all but one local broadcaster for the retransmission of their signals, if one broadcaster in the market refuses consent, such refusal will effectively negate the consent of all other broadcasters. The wireless or private cable operator would immediately be forced to disable or retrieve all of the VHF/UHF antennas in the field. WCA and NPCA further claim that the inability of a wireless or private cable operator to provide a common VHF/UHF antenna to homeowners, even without charge, to improve reception of local broadcast signals would seriously jeopardize the continued viability of most wireless or private cable operators. Alternatively, the wireless or private cable operator must immediately transfer ownership and control of the antennas to each individual subscriber, at a significant financial loss to the operator, who generally reuses such equipment at the termination of service. If the subscriber is asked to pay the operator for the antenna, WCA and NPCA claim, most subscribers will discontinue service.

4. We are persuaded by the evidence submitted by WCA and NPCA that wireless and private cable operators have raised issues which warrant further consideration, due to the detrimental consequences to wireless and private cable systems. We are also persuaded that these operators may be threatened with an imminent loss either of their subscriber base, if retransmission consent cannot be obtained from all local broadcasters, or from the forced transfer of ownership of the VHF/UHF antenna equipment. Accordingly, we will grant the request and stay the provisions of § 76.64(e) of our rules as it applies to wireless and private cable operators who are providing local broadcast signals via a VHF/UHF antenna for which no charge is made to the subscriber, until such time as we have addressed the issue in the pending petition for reconsideration. Our action is intended to provide us with an opportunity to fully consider the specific issues raised and the oppositions thereto. It also is intended to provide wireless and private cable operators with an opportunity to continue retransmission consent negotiations. We note that no television broadcast stations or associations have objected to the relief requested. We emphasize that this stay is limited both in duration and scope, and is being granted in response to the specific showing of imminent harm on the part of WCA and NPCA. We are cognizant of the oppositions filed by NCTA and Time Warner to WCA's Petition for Partial Reconsideration and we will address those concerns more fully when we act on that petition.

5. With respect to Media-Com's request for waiver, § 76.62(a) requires the carriage of the entire program schedule of any television station carried by a cable system. This requirement covers stations carried pursuant to retransmission consent agreements as well as must-carry stations. The only exception to the "carriage in its entirety" requirement is that specific programming that is prohibited under § 76.67 (sports blackout rule) or subpart F of part 76 of our rules (network nonduplication and syndicated exclusivity).

6. Media-Com is the licensee of low power television station W29AI, Akron, Ohio. W29AI has been carried on the Warner Cable system serving Summit County, Ohio, including Akron, on a part-time basis under a private agreement. The programming carried by this cable system is locally-produced and community-oriented. While Warner has notified Media-Com that it wishes to continue carriage of this locally-produced programming, it has indicated that it has no interest in carrying the syndicated programming broadcast by W29AI. Thus, Warner believes that a strict reading of § 76.62(a) requires it to terminate its carriage agreement with the station.

7. Media-Com requests a temporary waiver to permit Warner Cable to continue carrying its station's locally-originated programming until the resolution of the matter on reconsideration. Media-Com states that the waiver is needed to avoid an interim loss to the public of its present cable access to the locally-produced programming broadcast by W29AI. Media-Com notes that this programming, which includes local news, talk, information, religious and sports programs, is community-oriented and often unique. In some cases, W29AI is the only source of up-to-the-minute coverage of important local news stories. Thus, it argues, the requested waiver serves the public interest and should be granted.

8. We are persuaded by the evidence submitted by Media-Com that its station provides programming that serves the needs of subscribers to the Warner Cable system in Summit County. We also believe that there may be other similar arrangements between broadcasters and cable operators which have long benefitted the subscribers of cable systems and which would be affected in the same manner as Media-Com. As we have not had an opportunity to fully reconsider this issue, a stay will prevent any disruption of this programming service. Moreover, we note that Warner Cable has not opposed this request, and, indeed, appears willing to continue the carriage of this locally-produced programming. We believe that other cable operators would similarly welcome the opportunity to maintain

the status quo in this regard, pending our decision on reconsideration. In addition, we are concerned that absent a stay of our rule, Media-Com and similarly situated parties will have difficulty regaining carriage if the system is forced to remove the signal due to the provisions of this rule, and petitioners are subsequently successful on the merits of the petitions for reconsideration. Accordingly, on our own motion, we will stay the provisions of § 76.62(a) of our rules as it applies to existing arrangements between broadcasters and cable operators for partial carriage until resolution of this matter in the pending reconsideration proceeding. Our action is intended to provide us an opportunity to fully consider the specific issues described above. We emphasize that this stay is limited both in duration and scope and is being granted in response to a specific showing of imminent loss of local programming.

Ordering Clauses

9. Accordingly, *It is ordered*, That pursuant to section 4(i) and 4(j) of the Communications Act of 1934, as amended, the provisions of §§ 76.64(e) and § 76.62(a) of the Commission's rules are administratively STAYED until the release date of the Commission's Reconsideration Order in MM Docket No. 92–259 only to the extent provided herein with respect to the issue of antenna ownership and the issue of the continued validity of existing arrangements between broadcasters and cable operators for partial carriage of the broadcaster's signal. The reconsideration order will be published in the **Federal Register.**

List of Subjects in 47 CFR Part 76

Cable television.

William F. Caton,

Acting Secretary.

[FR Doc. 93–25263 Filed 10–14–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 90

[PR Docket No. 93–60; FCC 93–450]

Private Land Mobile Radio Services; Co-Channel Protection Criteria Above 800 MHz

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has released a Report and Order that amends its regulations concerning the co-channel protection criteria for SMR and non-SMR radio systems operating above 800 MHz. This action will result in standardized co-channel protection criteria, will simplify the rules concerning these systems, and will reduce the workload burden on both the applicant and the Commission.

EFFECTIVE DATE: November 15, 1993.

FOR FURTHER INFORMATION CONTACT: Eugene Thomson, Rules Branch, Land Mobile and Microwave Division, Private Radio Bureau, (202) 634–2443.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in the Matter of Co-Channel Protection Criteria for Part 90, Subpart S Stations Operating Above 800 MHz, PR Docket No. 93–60, FCC 93–450, adopted September 22, 1993, and released October 8, 1993. The full text of the Report and Order is available for inspection and copying during normal business hours in the FCC Reference Center, room 239, 1919 M Street NW. Washington, DC. The complete text may be purchased from the Commission's copy contractor, ITS Inc. 2100 M St. NW., Washington, DC 20037, telephone (202) 857–3800.

Summary of Report and Order

1. This Report and Order concerns co-channel interference protection requirements for private land mobile radio stations operating in the 800/900 MHz frequency bands.

2. Under subpart S of part 90 of the Rules, co-channel SMR stations are required to be spaced a minimum of 70 miles from one another. Locating stations less than 70 miles apart, generally referred to as short-spacing, is permitted through the use of a short-spacing table when existing and/or proposed SMR stations operate at relatively low powers or antenna heights. Separation distances for non-SMR stations are determined from the non-overlap of the existing station's 40 dBu signal strength contour and the proposed station's 30 dBu contour.

3. In this Report and Order, the Commission amends Section 90.621 of the Rules to specify 70 miles as the minimum standard licensing distance between all co-channel 800/900 MHz stations, to provide a 40/22 dBu protection criteria for short-spacing applications, and to establish a table reflecting these criteria for determining co-channel short-spacing distances. Additional protection is provided when short-spacing to stations at certain high elevation sites, and also to stations operating on the 800/900 MHz offset frequencies in the U.S./Mexico border area.

4. With the termination of this proceeding and the adoption of new rules under § 90.621(b), the Commission also stated that on the effective date of this Report and Order, it will again accept applications whose receipt was suspended by the Private Radio Bureau's Order, DA92–1570, 57 FR 56342 (November 27, 1992), and the Notice in this proceeding, 58 FR 19397 (April 14, 1993).

Final Regulatory Flexibility Analysis

We certify that the Regulatory Flexibility Act of 1980 does not apply to this rule making proceeding because the adopted rule amendments will not have significant economic impact on small business entities, as defined by section 601(3) of the Regulatory Flexibility Act. No comments were received addressing this certification in the Initial Regulatory Flexibility Analysis contained in the Notice of Proposed Rule Making in this proceeding.

Paperwork Reduction

5. The proposals contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or recordkeeping, labeling, disclosure or record retention requirements, and will not increase burden hours imposed upon the public.

List of Subjects in 47 CFR Part 90

Private land mobile radio, 800/900 MHz station spacings, Radio.

Amendatory Text

Part 90 of chapter I of title 47 of the Code of Federal Regulations is amended as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for part 90 continues to read as follows:

Authority: Secs. 4, 303, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303 and 332 unless otherwise noted.

2. Section 90.621 is amended by revising paragraph (b) introductory text, paragraph (b)(1), paragraph (b)(2) introductory text, the first sentence of paragraph (b)(3), paragraph (b)(4), paragraph (b)(6), adding paragraph (b)(7), removing paragraphs (c) and (d), and redesignating paragraphs (e), (f), (g), (i) and (j) as paragraphs (c), (d), (e), (f), (g) and (h), respectively, to read as follows:

§ 90.621 Selection and assignment of frequencies.

* * * * *

(b) Stations authorized on frequencies listed in this Subpart, except for those

stations authorized pursuant to paragraph (g) of this section, will be afforded protection solely on the basis of fixed distance separation criteria. The separation between co-channel systems will be a minimum of 113 km (70 mi) with the following exceptions:

(1) Except as indicated in paragraph (b)(4) of this section, no station shall be less than 169 km (105 mi) distant from a co-channel station that has been granted channel exclusivity and authorized 1 kW ERP on any of the following mountaintop sites: Santiago Peak, Sierra Peak, Mount Lukens, Mount Wilson (California).

(2) The separation between co-channel stations that have been granted exclusivity and that are located at high sites in California north of 35° N Latitude and west of 118° W Longitude shall be determined as follows:

* * * * *

(3) Except as indicated in paragraph (b)(4) of this section, stations that have been granted channel exclusivity and are located in the State of Washington at the following locations shall be separated from co-channel stations by a minimum of 169 km (105 mi). * * *

(4) Upon an applicant's specific request to the Commission or a frequency coordinator, co-channel stations may be separated by less than 113 km (70 mi) by meeting certain transmitter ERP and antenna height criteria. The following Table indicates separations assignable to such co-channel stations for various transmitter power and antenna height combinations. The minimum separation permitted is 88 km (55 mi). Applicants will provide the Commission with a statement that the application is submitted for consideration under the Table, a list of all co-channel stations within 113 km (70 mi), and the DHAATs and ERPs for these stations and the applicant's proposed station. Applicants seeking to be licensed for stations located at distances less than those prescribed in the Table are required to secure a waiver and must submit with the application, in addition to the above, an interference analysis, based upon any of the generally-accepted terrain-based propagation models, that shows that co-channel stations would receive the same or greater interference protection than provided in the Table. Requests for separations less than 88 km (55 mi) must also include an analysis of interference potential from mobile transmitters to existing co-channel base station receivers. Applicants seeking a waiver must submit with their application a certificate of service indicating that concurrent with the submission of the application to the Commission or a coordinator, all co-channel licensees within the applicable area were served with a copy of the application and all attachments thereto. Licensees thus served may file an opposition to the application within 30 days from the date the application is filed with the Commission.

(i) The directional height of the antenna above average terrain (DHAAT) is calculated from the average of the antenna heights above average terrain from 3 to 16 km (2 to 10 mi) from the proposed site along a radial extending in the direction of the existing station and the radials 15 degrees to either side of that radial.

(ii) Except for the sites listed in paragraphs (b)(1), (b)(2), and (b)(3) of this section, additional co-channel distance separation must be afforded to an existing station from an applicant wishing to locate a station less than 113 km (70 mi) from a co-channel station, where either the applicant's or the existing station is located at sites with DHAATs of 458 m (1500 ft) and above. The separation between short-spaced co-channel stations shall be determined as follows:

(A) Calculate the DHAAT in each direction between every existing co-channel station with 113 km (70 mi) and the proposed station.

(B) In the Table, locate the approximate ERP and DHAAT values for the proposed and existing stations.

(C) When DHAAT values are greater than 458 m (1500 ft), use the required separation for 305 m (1000 ft) and add 1.6 km (1 mi) for every 30.5 km (100 ft), or increment thereof, of DHAAT above 458 m (1500 ft) to the distance indicated in the Table. If both the proposed existing stations have DHAATs of 458 m (1500 ft) or more, the additional distance is separately determined for each station and the combined distance is added to the distance obtained from the Table. Protection to existing stations will be afforded only up to 113 km (70 mi).

SHORT-SPACING SEPARATION TABLE

Proposed station ERP (watts)/DHAAT(m) [3]	Distance between stations (km) [1 2]						
	Existing station DHAAT (meters) [3]						
	305	215	150	108	75	54	37
1000/305	113	113	113	113	113	113	113
1000/215	113	113	113	113	113	113	110
1000/150	113	113	113	113	112	108	103
1000/108	113	113	113	110	107	103	98
1000/75	113	112	108	103	100	96	91
1000/54	113	109	105	100	97	93	88
1000/37	109	104	100	95	92	88	88
500/305	113	113	113	113	113	113	110
500/215	113	113	113	112	109	105	100
500/150	113	112	108	103	100	96	91
500/108	112	107	103	98	95	91	88
500/75	107	102	98	93	90	88	88
500/54	103	98	94	89	88	88	88
500/37	99	94	90	88	88	88	88
250/305	113	113	113	112	109	105	100
250/215	113	113	107	102	99	95	90
250/150	109	104	100	95	92	88	88
250/108	105	100	96	91	88	88	88
250/75	99	94	90	88	88	88	88
250/54	95	90	88	88	88	88	88
250/37	91	88	88	88	88	88	88
125/305	113	111	107	102	99	95	90

SHORT-SPACING SEPARATION TABLE—Continued

Proposed station ERP (watts)/DHAAT(m)[3]	Distance between stations (km)[1 2]						
	Existing station DHAAT (meters)[3]						
	305	215	150	108	75	54	37
125/215	108	103	99	94	91	88	88
125/150	103	98	94	89	88	88	88
125/108	98	93	89	88	88	88	88
125/75	93	88	88	88	88	88	88
125/54	88	88	88	88	88	88	88
125/37	88	88	88	88	88	88	88
62/305	108	103	99	94	91	88	88
62/215	103	98	94	89	88	88	88
62/150	97	92	88	88	88	88	88
62/108	92	88	88	88	88	88	88
62/75	88	88	88	88	88	88	88
62/54	88	88	88	88	88	88	88
62/37	88	88	88	88	88	88	88

[1] Separations for stations on Santiago Peak, Sierra Peak, Mount Lukens, and Mount Wilson (CA) and the locations in the State of Washington listed in paragraph (b)(3) of this section are 56 km (35 mi) greater than those listed in the Table above. In the event of conflict between this Table and the table of additional California high elevation sites shown in paragraph (b)(2) of this section, the latter will apply.

[2] Distances shown are derived from the R–6602 curves and are based upon a non-overlap of the 22 dBu (F50,10) interference contour of the proposed station with the 40 dBu (F50,50) contour of the existing station(s). No consideration is given to the 40 dBu service contour of the proposed station and the 22 dBu contour of the existing station(s). The minimum separation of stations will be 88 km (55 mi).

[3] All existing stations are assumed to operate with 1000 watts ERP. When the ERP and/or DHAAT of a proposed station or the DHAAT of an existing station is not indicated in the Table, the next higher value(s) must be used.

* * * * *

(6) A station located closer than the distances provided in this section to a co-channel station that was authorized as short-spaced under paragraph (b)(4) of this section shall be permitted to modify its facilities as long as the station does not extend its 22 dBu contour beyond its maximum 22 dBu contour (i.e., the 22 dBu contour calculated using the station's maximum power and antenna height at its original location) in the direction of the short-spaced station.

(7) Offset frequencies in the 811–821/856–866 MHz band for use only within U.S./Mexico border area, as designated in § 90.619(a), shall be considered co-channel with non-offset frequencies in this band as designated in § 90.613. New applications for frequencies in this band for stations adjacent to the U.S./Mexico border area must comply with the co-channel separation provisions of this section.

* * * * *

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–25261 Filed 10–14–93; 8:45 am]

BILLING CODE 6712–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1039

[Ex Parte No. 346 (Sub-No. 29)]

Rail General Exemption Authority—Petition of AAR To Exempt Rail Transportation of Selected Commodity Groups[1]

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Commission is exempting from regulation the rail transportation of 17 commodities. These commodities are added to the list of exempt commodities as set forth below. The intended effect is to increase competition with other modes of transport and to avoid the costs associated with tariff and contract rate administration.

EFFECTIVE DATE: October 29, 1993.

FOR FURTHER INFORMATION CONTACT: Maynard H. Dixon, Jr., (202) 927–5293 or Joseph H. Dettmar, (202) 927–5660. (TDD for hearing impaired: (202) 927–5721.)

SUPPLEMENTARY INFORMATION: For further information, see the Commission's printed decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD service (202) 927–5721.)

On February 11, 1993, at 58 FR 8030, we requested comments on a proposal by the Association of American Railroads (AAR) to exempt from regulation the railroad transportation of 29 classes of commodities. The comments have been received and analyzed. Here, we are approving AAR's proposal in part, for the 17 classes of commodities listed below.

14–1 Dimension stone, quarry
14–2 Crushed or broken stone or riprap
14–411 Sand
14–412 Gravel
20–131 Lard
20–139 Meat products
24–1 Primary forest or wood raw materials
24–4 Wooden containers
26–613 Wallboard
29–914 Coke produced from coal
29–915 Distillate or residual fuel oil from coal
32–952–15 Cinders, clay, shale, slate
33–11 Blast furnace products
33–12 Primary iron or steel
33–2 Iron or steel castings
33–3 Nonferrous metal primary smelter products
35–31 Construction machinery or equipment

We reaffirm our initial finding that the exemption will not significantly affect either the quality of the human environment or the conservation of energy resources.

We also reaffirm our initial finding that the exemption will not have a

[1] Originally entitled Rail General Exemption Authority—Petition of Association of American Railroads To Exempt Rail Transportation of 31 Selected Commodity Groups.

substantial economic impact on a significant number of small entities. There is additional support for this finding in our limitation of the exemption to commodities where shippers raised no allegation of potential for abuse of market power.

List of Subjects in 49 CFR Part 1039

Agricultural commodities, Intermodal transportation, Manufactured commodities, Railroads.

Decided: September 17, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden. Vice Chairman Simmons dissented with a separate expression.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set forth in the Preamble, title 49, chapter X, part 1039 of the Code of Federal Regulations is amended as follows:

PART 1039—EXEMPTIONS

1. The authority citation for part 1039 continues to read as follows:

Authority: 49 U.S.C. 10321 and 10505; and 5 U.S.C. 553.

2. In § 1039.11, the chart in paragraph (a) is revised to read as follows:

§ 1039.11 Miscellaneous commodities exemptions.

(a) * * *

STCC No.	STCC tariff	Commodity
14 1 ..	6001–T, eff. 1–1–92.	Dimension stone, quarry.
14 2 ..	.....do	Crushed or broken stone or riprap.
14 411	.....do	Sand (aggregate or ballast).
14 412	.....do	Gravel (aggregate or ballast).
20	.....do	Food or kindred products except 20 143 Grease or inedible tallow. 20 32 Canned specialties. 20 33 Canned fruits, jams, jellies, preserves or vegetables. 20 4 Grain mill products. 20 6 Sugar, beet or cane. 20 8 Beverages or flavoring extracts. 20 911 Cottonseed oil, crude or refined. 20 914 Cottonseed cake or meal or by-products. 20 92 Soybean oil or by-products. 20 93 Nut or vegetable oils or by-products.
22	.....do	Textile mill products.
23	.....do	Apparel or other finished textile products or knit apparel.
24	.....do	Lumber or wood products.
25	.....do	Furniture or fixtures.
26	.....do	Pulp, paper or allied products except 26 1 Pulp or pulp mill products. 26 211 Newsprint. 26 212 Ground wood paper, uncoated. 26 213 Printing paper, coated or uncoated, etc. 26 214 Wrapping paper, wrappers or coarse paper. 26 218 Sanitary tissue stock. 26 471 Sanitary tissues or health products. 26 6 Building paper or building board except 26 613 Wallboard.
27	.....do	Printed matter.
28 195 22–23.	.....do	Iron chloride, liquid.
28 195 27–30.	.....do	Iron sulphate.
28 195 68–69.	.....do	Ferrous sulphate.
29 914	.....do	Coke produced from coal.
29 915	.....do	Distillate or residual fuel oil from coal refining.
30	.....do	Rubber or miscellaneous plastics products except 30 111 Rubber pneumatic tires or parts.
31	.....do	Leather or leather products.
32	.....do	Clay, concrete, glass or stone products except 32 411 Hydraulic cement, natural, portland or masonry. 32 741 Lime or lime plaster. 32 95 Nonmetallic earths or minerals, ground or treated in any other manner except 32 952 15 Cinders, clay, shale expanded shale), slate or volcanic (not pumice stone), or haydrite.
33	.....do	Primary metal products, including galvanized.
34	.....do	Fabricated metal products except 34 6 Metal stampings. 34 919 40 Radioactive material shipping containers, etc.
35	.....do	Machinery except 35 11 Steam engines, turbines, turbine generator sets, or parts. 35 85 Refrigerators or refrigeration machinery or complete air-conditioning units.
36	.....do	Electrical machinery, equipment or supplies except 36 12 Power, distribution or specialty transformers. 36 21 Motors or generators.
37 11	.....do	Motor vehicles.
37 14	.....do	Motor vehicle parts or accessories.
38	.....do	Instruments, photographic goods, optical goods, watches or clocks.
39	.....do	Miscellaneous products of manufacturing.
41 118	6001–U, eff. 1–1–93.	Used vehicles.

* * * * *

[FR Doc. 93–25341 Filed 10–14–93; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[Docket No. 92047–2519]

Atlantic Tuna Fisheries; Bluefin Tuna

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Announcement of quota transfers from the Incidental category and the Reserve to the General category.

SUMMARY: NMFS announces that it is taking action to transfer 5 mt from the Incidental (other) subcategory, and 3 mt from the Reserve, to the General category. It has been determined that the fisheries landing bluefin under the Incidental (other) subcategory will not achieve the full 1993 quota allocation. This action is being taken to extend the season for the General category, which will assure additional collection of biological assessment and monitoring data, provide additional fishing opportunities and increase the economic benefits from this fishery. In addition, this action will prevent overharvest of the quota established for this fishery while providing for fishing in an area which has not yet had an

ample opportunity to harvest a fair share of the quota.

EFFECTIVE DATES: October 8, 1993.

FOR FURTHER INFORMATION CONTACT: Aaron E. King, 301–713–2347.

SUPPLEMENTARY INFORMATION: Regulations promulgated under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) regulating the harvest of Atlantic bluefin tuna by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 285. Section 285.22 subdivides the International Commission for the Conservation of Atlantic tunas (ICCAT) recommended U.S. quota among the various domestic fishing categories.

Under the implementing regulations at 50 CFR 285.22(i), the Assistant Administrator for Fisheries, NOAA (AA), has the authority to make adjustments to quotas involving transfers between vessel categories or, as appropriate, subcategories if, during a single year quota period of the second year of a biannual quota period as defined by ICCAT, the AA determines, based on landing statistics, present year catch rates, effort, and other available information, that any category, or as appropriate, subcategory, is not likely to take its entire quota as previously allocated for that year. Given that determination, the AA may transfer in season any portion of the quota of any fishing category to any other portion of the quota of any fishing category to any other fishing category or to the reserve after considering the following five factors:

(1) The usefulness of information obtained from catches of the particular category of the fishery for biological sampling and monitoring the status of the stock:

(2) The catches of the particular gear segment to date and the likelihood of closure of that segment of the fishery if no allocation is made;

(3) The projected ability of the particular gear segment to harvest the additional amount of Atlantic bluefin tuna before the anticipated end of the fishing season;

(4) The estimated amounts by which quotas established for other gear segments of the fishery might be exceeded.

Under the implementing regulations at 50 CFR 285.22(f), the Assistant Administrator for Fisheries, NOAA, has the authority to allocate any portion of the reserve amount to any fishing category after considering the following factors: (1) The usefulness of information obtained from catches of the particular category of the fishery for biological sampling and monitoring the status of the stock; (2) the catches of the particular gear segment to date and the likelihood of closure of that segment of the fishery if no allocation is made; (3) the projected ability of the particular gear segment to harvest the additional amount of Atlantic bluefin tuna before the anticipated end of the fishing season; and (4) the estimated amounts by which quotas established for other gear segments of the fishery might be exceeded.

Allocating 3 mt from the reserve to the General category responds to the criteria listed above as follows:

(1) General category landings are a major contributor to the collection of biological data on this fishery;

(2) 1993 General category catches have been high relative to recent years at this date in the season, and it would be necessary to close this category of the fishery within the next few days unless additional quota allocation is made;

(3) The New York Bight area normally has a late season fishery (October), and has averaged 18 mt over the past 3 years, but has taken less than 2 mt so far this year; and

(4) New quota monitoring techniques (e.g., daily faxing of dealer reports) will improve NMFS' ability to keep all categories within assigned quotas.

The two most useful fishing categories for purposes of biological assessment and monitoring of the stock are the Angling category for fish less than 70 inches Total Fork Length (TFL), and the General category for fish 70 inches and greater TFL. These are the only categories that provide Catch Per Unit Effort (CPUE) data for stock assessment purposes. Therefore, these categories have priority for any inseason transfers that become available.

In the case of the General category, under § 285.22(a) the AA may set aside an allocation for an identified area, not to exceed the greater of 20 mt or the maximum reported landings from the identified area in any of the preceding 3 years. This set aside is made when the AA has determined, based on landings reports, that fishermen in an identified area will be precluded from harvesting their share of the quota due to variations in seasonable distribution, abundance, or migration patterns and the catch rate. This action was taken effective September 24, 1993 (58 FR 50523), for the New York Bight area for a total of 20 mt.

In 1990, the catch in the New York Bight area for fish greater than 70 inches was 30.7 mt, while in 1991 and 1992, the catches were 9 mt and 13.8 mt, respectively. Therefore, over the past three years, the average catch in the New York Bight area was 17.8 mt. Therefore, fishermen in the New York Bight will be precluded from harvesting their average catch unless a set aside is established expressly for this area.

Based on landings reports, the AA had determined that the adjusted quota of Atlantic bluefin tuna allocated for the General category, minus a 20-mt set aside amount, would be attained by September 23, 1993, and therefore closed the area north of Long Island, New York (58 FR 50523). The intent of this action was to prevent overharvest of the quota established for this fishery while providing a fishing opportunity in areas that had not yet had an ample opportunity to harvest a fair share of the quota. Subsequent to the closure of areas north of Long Island, more complete accounting of dealer reports indicated that the General category had already taken approximately 601 mt of the 603 mt quota. Therefore, without an inseason transfer it will be necessary to close the General category in the New York Bight in the near future, despite the intent to provide up to 20 mt for this area.

Since 1993 is the second year of the biennial quota, and one of the stated bluefin tuna management objectives is to maximize use of the available ICCAT quota, NMFS believes it is necessary to transfer these portions of the Reserve allocation and Incidental (other) subcategory quota to achieve this objective. The intent of this action is to prevent overharvest of the western Atlantic bluefin tuna catch quota established for this fishery for the 1992–93 biennial period, while providing continued collection of biological data, helping continue traditional late summer and early fall fisheries, maximizing the use of the available resource, and distributing the fishing opportunity and beneficial economic impacts among businesses and users for a longer period of time.

Classification

This action is required by 50 CFR 285.22(h) and complies with E.O. 12291.

List of Subjects in 50 CFR Part 285

Fisheries, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: October 8, 1993.

Joe P. Clem,

Acting Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–25300 Filed 10–8–93; 5:12 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 58, No. 198
Friday, October 15, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1007, 1093, 1094, 1096, 1099, and 1108

[Docket Nos. AO–366–A36, et al.; DA–93–21]

Milk in the Georgia and Certain Other Marketing Areas; Supplemental Notice of Hearing on Proposed Amendments To Tentative Marketing Agreements and Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Supplemental notice of public hearing on proposed rulemaking.

7 CFR Part	Marketing area	Docket No.
1007	Georgia	AO–366–A36
1093	Alabama-West Florida.	AO–386–A14
1094	New Orleans-Mississippi.	AO–103–A56
1096	Greater Louisiana	AO–257–A43
1108	Central Arkansas	AO–243–A46
1099	Paducah, Kentucky.	AO–183–A45

SUMMARY: On September 10, 1993, a notice of hearing was published in the **Federal Register** (58 FR 47653), advising the public of a hearing to be held in Atlanta, Georgia, on November 1, 1993, to consider proposals that included merging several federal milk orders in the southern United States. Since that time, another proposal has been received to combine the Central Arkansas and Paducah, Kentucky, federal milk orders with territory of the recently terminated Memphis, Tennessee, milk order and with unregulated counties in Tennessee, Arkansas, and Texas to form a new milk order for the "Mid-South marketing area." In view of the relationship of this proposal to the other proposals that have already been noticed for consideration, the hearing notice is being modified to consider this additional proposal.

DATES: The hearing will convene at 1 p.m., November 1, 1993.

ADDRESSES: The hearing will be held at the Holiday Inn—Perimeter Dunwoody, 4386 Chamblee-Dunwoody Road, Atlanta, Georgia 30341. (Telephone: 404/457–6363).

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 690–1932.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding: Notice of Hearing: Issued September 3, 1993; published September 10, 1993 (58 FR 47653).

Notice is hereby given that the public hearing to be held at Atlanta, GA, on November 1, 1993, with respect to proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Georgia; Alabama-West Florida; New Orleans-Mississippi; Greater Louisiana; and Central Arkansas marketing areas (58 FR 47653), will be expanded to consider a proposal to combine the Central Arkansas and Paducah, Kentucky, federal milk orders, together with the territory of the recently-terminated Memphis, Tennessee, milk order and several unregulated counties in Arkansas, Tennessee and Texas. This administrative action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674) ("the Act"), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, as previously set forth in 58 FR 47653 and as hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreements and to the orders.

Actions under the Federal milk order program are subject to the Regulatory Flexibility Act (Pub. L. 96–354). This Act seeks to ensure that, within the statutory authority of a program, the regulatory and information requirements are tailored to the size and nature of small businesses. For the purpose of the Act, a dairy farm is a "small business" if it has an annual gross revenue of less than $500,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

The amendments to the rules proposed herein have been reviewed under Executive Order 12778, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed amendments would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with these rules.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Interested parties who wish to introduce exhibits should provide the Presiding Officer at the hearing with 6 copies of such exhibits for the Official Record. Also, it would be helpful if additional copies are available for the use of other participants at the hearing.

Several of the proposals to be considered would combine the several existing marketing areas under one or more orders, and/or expand an existing

or proposed order. These proposals raise the issue of whether the provisions set forth in those proposals would tend to effectuate the declared policy of the Act if they are applied to the proposed merged and/or expanded marketing areas, and, if not, what modifications of the provisions would be appropriate.

The issues raised by these proposals include whether the declared policy of the Act would tend to be effectuated by:

(a) Merger of one or more of the marketing areas, or any combination of marketing areas and/or expansion of marketing areas, for separate or combined orders which include part or all of the areas presently defined in the respective orders and/or noticed for hearing; and

(b) Adoption of any of the proposed provisions, or appropriate modifications thereof, for any separate order or any combination of such orders including a review of the appropriate pricing and pooling provisions of the orders whether separate or in any combination.

The proposed merger of orders also raises the issue of the appropriate disposition of the producer-settlement funds, marketing service funds, and any administrative funds accumulated under the existing individual orders.

List of Subjects in 7 CFR Parts 1007, 1093, 1094, 1096, 1099 and 1108

Milk marketing orders.

The authority citation for 7 CFR parts 1007, 1093, 1094, 1096, 1099, and 1108 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

The proposed amendments, as previously set forth in 58 FR 47653 and as set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by Associated Milk Producers, Incorporated: Proposal No. 13.

Merge the marketing areas of the Central Arkansas (Part 1108), Paducah, Kentucky (Part 1099) and recently-terminated Memphis, Tennessee, milk orders with unregulated counties in Arkansas, Texas, and Tennessee to form a "Mid-South marketing area" (Part 1108.2) with terms and conditions patterned after the Central Arkansas order, with the exception of the provisions specified below:

§ 1108.2 Mid-South marketing area.

The Mid-South marketing area, hereinafter called the *marketing area,* means all the territory included within the bounds of the following counties, including all piers, docks, and wharves connected therewith and all craft moored thereat, and all territory occupied by government (Municipal, State, and/or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed counties:

Zone 1

Kentucky Counties

Ballard, Caldwell, Calloway, Carlisle, Christian, Fulton, Graves, Hickman, Livingston, Lyon, Marshall, McCracken, Todd, and Trigg.

Missouri Counties

Dunklin, Mississippi, New Madrid, Pemiscot, and Scott.

Zone 2

Arkansas Counties

Baxter, Clay, Cleburne, Fulton, Greene, Independence, Izard, Jackson, Johnston, Lawrence, Newton, Randolph, Searcy, Sharp, Stone, and Van Buren.

Zone 3

Arkansas Counties

Clark, Conway, Craighead, Crittenden, Cross, Faulkner, Garland, Grant, Hot Spring, Jefferson, Lee, Lonoke, Mississippi, Monroe, Perry, Phillips, Poinsett, Pope, Prairie, Pulaski, Saline, St. Francis, White, Woodruff, and Yell.

Mississippi Counties

De Soto, Lafayette, Marshall, Panola, Tate, and Tunica.

Tennessee Counties

Crockett, Dyer, Fayette, Gibson, Hardeman, Haywood, Lake, Lauderdale, Madison, Obion, Shelby, Tipton, and Weakley.

Zone 4

Arkansas Counties

Arkansas, Ashley, Bradley, Calhoun, Chicot, Cleveland, Columbia, Dallas, Desha, Drew, Hempstead, Howard, Lafayette, Lincoln, Little River, Miller, Montgomery, Nevada, Ouachita, Pike, Polk, Sevier, and Union.

Texas Counties

Bowie and Cass.

Proposal No. 14

Amend § 1108.7(c)(2)(i) to read as follows:

§ 1108.7 Pool plant.

* * * * *

(c) * * *

(2) * * *

(i) A distributing plant qualified pursuant to paragraph (a)(1) of this section which also meets the pooling requirements of another Federal order and from which there is a greater quantity of route disposition, except filled milk, during the month in such other Federal order marketing area than in this marketing area, except that if such plant was subject to all the provisions of this part in the immediately preceding month, it shall continue to be subject to all the provisions of this part until the third consecutive month in which a greater proportion of its route disposition, except filled milk, is made in such other marketing area, unless, notwithstanding the provisions of this paragraph, it is regulated under such other order. On the basis of a written application made by the plant operator at least 15 days prior to the date for which a determination of the Secretary is to be effective, the Secretary may determine that the route disposition in the respective marketing areas to be used for purposes of this paragraph shall exclude (for a specified period of time) route disposition made under limited term contracts to governmental bases and institutions; and

* * * * *

Proposal No. 15

Amend § 1108.52(a) to read as follows:

§ 1108.52 Plant location adjustments for handlers.

(a) For milk received at a plant from producers or a handler described in § 1108.9(c) and which is classified as Class I milk without movement in bulk form to another pool plant at which a higher Class I price applies, the price specified in § 1108.50(a) shall be adjusted by the amount stated in paragraphs (a) (1) through (3) of this section for the location of such plant:

(1) For a plant located within one of the zones set forth in § 1108.2, the adjustment (cents per hundredweight) shall be as follows:

Zone 1	Minus 38.
Zone 2	Minus 32.
Zone 3	No adjustment.
Zone 4	Plus 31.

(2) For a plant located within the marketing area of another order issued pursuant to the Act, the location adjustment shall be computed in the following manner: subtract the Class I price applicable in Zone 3 of this order from the Class I price applicable at such plant had the plant been regulated under such other order.

(3) For a plant located outside the designated pricing areas specified in paragraphs (a)(1) and (a)(2) of this section, the adjustment shall be minus

2.5 cents per hundredweight for each 10 miles or fraction thereof (rounded to the nearest cent) that such plant is located from the nearer of the County Courthouse in Forrest City, Arkansas, or the State Capitol in Little Rock, Arkansas, based on the shortest hard-surfaced highway distance as determined by the market administrator.

Copies of this notice of hearing may be obtained from the Hearing Clerk, Room 1083, South Building, United States Department of Agriculture, Washington, DC 20250 or from the following market administrators: Paul W. Halnon, USDA-AMS-Dairy Division, P.O. Box 1208, Norcross, GA 30091–1208; Richard E. Arnold, USDA-AMS-Dairy Division, P.O. Box 701440, Tulsa, OK 74170–1440; or Donald R. Nicholson, USDA-AMS-Dairy Division, P.O. Box 1485, Maryland Heights, MO 63043–0485.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture
Office of the Administrator, Agricultural Marketing Service
Office of the General Counsel
Dairy Division, Agricultural Marketing Service (Washington office)
Offices of the Market Administrators for each of the markets included in this notice.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Dated: October 13, 1993.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 93–25448 Filed 10–14–93; 8:45 am]

BILLING CODE 3410-02-P

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7 CFR Part 1106

[DA–93–28]

Milk in the Southwest Plains Marketing Area; Notice of Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This notice invites written comments on a proposal to suspend for the months of October 1993 through January 1994 the supply plant shipping requirements of the Southwest Plains Federal milk marketing order. The suspension would remove the requirement that supply plants ship 50 percent of their dairy farmer receipts to pool distributing plants during each of the months of October through January. The suspension was requested by Kraft General Foods, which contends that shipments from supply plants will not be required to meet the market's fluid requirements because there are plentiful supplies of milk available directly from producers' farms to meet the needs of the market's pool distributing plants.

DATES: Comments are due no later than October 22, 1993.

ADDRESSES: Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 690–1932.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. This action would lessen the regulatory burden on small entities by removing the requirement the supply plant operators ship milk to distributing plants when the milk is not needed at such plants.

This proposed rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This proposed suspension has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect. If adopted, this proposed action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Agricultural Marketing Agreement Act, as amended (7 U.S.C. 601–674) ("the Act"), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Notice is hereby given that, pursuant to the provisions of the Act, the suspension of the following provisions of the order regulating the handling of milk in the Southwest Plains marketing area is being considered for the months of October 1993 through January 1994:

1. In § 1106.6, the words "during the month".

2. In § 1106.7(b)(1), beginning with the words "of February through August and continuing to the end of that paragraph.

All persons who want to send written data, views or arguments about the proposed suspension should send two copies of them to the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, by the 7th day after publication of this notice in the **Federal Register**.

The comment period is limited to seven days to permit October to be included in the suspension period. Kraft General Foods had proposed that the suspension apply to the months of September 1993 through January 1994, but was informed that it was too late to include September in the suspension period. With an abbreviated comment period, however, it would be possible to include October in the suspension period.

The comments that are sent will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed suspension would allow a supply plant that has been associated with the Southwest Plains order during the months of September 1992 through January 1993 to qualify as

a pool plant without shipping any milk to a pool distributing plant during the months of October 1993 through January 1994. Without the suspension, a supply plant would be required to ship 50 percent of its producer receipts to pool distributing plants to qualify as a pool plant during the months of October through January.

In its letter requesting the suspension, Kraft General Foods stated that there were abundant supplies of milk available to distributing plants on a direct-ship basis and that supplemental shipments of milk from more distant supply plants, such as its Bentonville, Arkansas, plant, were unnecessary to meet the fluid needs of the market.

List of Subjects in 7 CFR Part 1106

Milk marketing orders.

The authority citation for 7 CFR Part 1106 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Dated: October 7, 1993.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 93–25294 Filed 10–14–93; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Parts 1124 and 1135

[Docket Nos. AO–368–A21, AO–380–A11; DA–92–07]

Milk in the Pacific Northwest and Southwestern Idaho-Eastern Oregon Marketing Area; Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments To Tentative Marketing Agreements and To Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision recommends the adoption of a proposal for pricing milk on the basis of nonfat solids and protein, in addition to butterfat, for the Pacific Northwest and Southwestern Idaho-Eastern Oregon marketing orders, respectively. In addition, it recommends reducing the supply plant shipping percentage for the Pacific Northwest order and modifying the producer-handler regulation to permit a State institution with outside distribution to purchase an average of 1,000 pounds of milk per day from pool plants. The decision recommends the denial of a proposal to change location adjustments in Yakima County, Washington.

DATES: Comments are due on or before November 1, 1993.

ADDRESSES: Comments (four copies) should be filed with the Hearing Clerk, room 1083, South Building, United States Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 690–1932.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

This action has been reviewed under Executive Order 12278, Civil Justice Reform. It is not intended to have retroactive effect. This action will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674) ("the Act"), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the entry of the ruling.

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The amendments would promote orderly marketing of milk by producers and regulated handlers.

Prior document in this proceeding:

Notice of Hearing: Issued July 31, 1992; published August 6, 1992 (57 FR 34694).

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreements and the orders regulating the handling of milk in the Pacific Northwest (Order 1124) and Southwestern Idaho-Eastern Oregon (Order 1135) marketing areas. This notice is issued pursuant to the provisions of the Act and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, DC 20250, by the 15th day after publication of this decision in the **Federal Register**. Four copies of the exceptions should be filed. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposed amendments set forth below are based on the record of a public hearing held at Portland, Oregon, on September 9 and 10, 1992, pursuant to a notice of hearing issued July 31, 1992 and published August 6, 1992 (57 FR 34694).

The material issues on the record of hearing relate to:

1. Multiple component pricing of milk under both orders.
2. Performance standards for supply plants under the Pacific Northwest order.
3. Status of a milk plant operated by a state institution under the Pacific Northwest order.
4. Plant location adjustments for Yakima County, Washington, under the Pacific Northwest order.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. Multiple Component Pricing of Milk Under the Pacific Northwest and Southwestern Idaho-Eastern Oregon Orders

The Pacific Northwest and Southwestern Idaho-Eastern Oregon orders should be amended to provide for multiple component pricing of Class II and Class III (including Class III–A) milk to handlers and for establishing minimum pay prices to producers. Under the Pacific Northwest order, the components to be priced will be nonfat

milk solids and butterfat. Under the Southwestern Idaho-Eastern Oregon order, the components to be priced will be protein and butterfat.

Multiple component pricing for both orders was proposed by Darigold Farms, and Western Dairymen Cooperative, Inc., joined as a co-proponent for the Southwestern Idaho-Eastern Oregon proposal. The basic thrust of the proposal was that it was time to change the way milk is priced under both orders such that the pricing system would send a clear economic signal to producers as to which milk components are in the greatest demand and which ones have the greatest economic value in the marketplace.

Two witnesses testified on behalf of Darigold. One witness testified extensively on the general concept of multiple component pricing. He stated that the current pricing system, which is based on the value of butterfat and skim milk, does not reflect changes that have occurred over time in the value of certain milk components. In his view, the current system is based on market conditions that prevailed more than 50 years ago. The current system, in his opinion, simply encourages producers to increase the volume of skim milk produced without regard to the content of such milk.

The Darigold witness indicated that under the current pricing system, given the current levels of milk prices and fat differentials, one pound of protein, lactose, other solids, or even milk water is now valued at somewhere between nine and ten cents per pound. Thus, the price of one pound of butterfat is about equal to the value attributed to one gallon of milk water. He also indicated that one pound of butterfat is said to be worth seven to eight times as much as one pound of milk protein, even though that appears to be unreasonable. He maintained that these unrealistic price comparisons are nonetheless actual measurements of the incentives that dairymen are expected to respond to under present regulations when they plan their breeding and production activities. He further indicated his strong belief that the present system stands in the way of achieving optimum efficiency. Thus, he urged the adoption of multiple component pricing wherein the marketplace values of various milk components will be reflected in pricing milk to handlers and to producers. In this way, consumers' demands and preferences for milk and other dairy products can be translated into real signals that indicate to producers the milk components consumers want and are willing to pay for.

A second witness spoke on behalf of Darigold Farms, Western Dairymen Cooperative, Inc., Farmers Cooperative Creamery, Northwest Independent Milk Producers Association, Tillamook County Creamery Association, and Magic Valley Quality Milk Producers, Inc. He indicated that in July 1991 these cooperatives represented 88 percent of the producers for the Pacific Northwest market (Order 124) and 84 percent of producers for the Southwestern Idaho-Eastern Oregon market (Order 135). This witness discussed how the proposed multiple component pricing (MCP) system would work, why it should be adopted, and the form it should take for these two markets. He stated that in order for a MCP program to work well it needed to be mandatory under the Federal order. Currently, just over 90 percent of the producers for Order 124 and just over 88 percent of the producers for Order 135 are eligible to receive some component pricing premium. He further stated that the premium programs result from inadequacies inherent in the current butterfat and skim pricing programs.

The witness indicated that another reason why MCP is needed is because of increasing interest by consumers in their diet, especially noting concerns about cholesterol and fat levels in dairy products. He said that consumers now prefer milk products with lower fat content. He went on to say that over the years there has been a general emphasis on the value of fat, but that so far there has been only a general offset of this as values of the nonfat fluid portion of milk, which is largely water, have increased. He stated that the values of specific nonfat components should be recognized and increased so that consumer preferences could be more directly translated into indicating the milk components that dairy farmers should be producing for the market. MCP would achieve this and at the same time promote more orderly marketing for both producers and handlers, according to Darigold's spokesman.

Darigold's witness stated that MCP would contribute to orderly marketing by providing more equity among plants making Class II and Class III products because their raw milk costs would be more uniform. Also, marketing organizations would have more options in marketing individual loads of milk. He explained that plants would be less reluctant to receive a low-testing load of milk because they would pay only for the components received rather than for water that must be removed from the milk. He said that, in turn, producers in effect will have more options in choosing marketing organizations or plants to take their milk.

The witness also pointed to the changing relationship over time between the values of the butterfat and skim portions of milk. For example, he noted that during the 1960's butterfat accounted for about 75 percent of the total value of milk, while the skim value was only about 25 percent. Currently, over 70 percent of the total value of milk is associated with the skim component because over time the value of butterfat has declined and the Commodity Credit Corporation has changed the support prices of butter and nonfat dry milk. He expected that the trend to lower fat values will continue.

The proposed MCP program was modeled after the one now in effect in the Great Basin Federal milk order. It was chosen because it would maintain the current Class I price structure, while applying MCP to Class II and Class III uses of milk where there is a direct relationship between the component content of raw milk and its yield of manufactured milk products.

Because the principal product manufactured from milk not needed for Class I or Class II uses in the Order 124 market is nonfat dry milk, the proponents proposed that the MCP program for that market should be based on butterfat and nonfat milk solids. On the other hand, in the Order 135 market the principal use for surplus milk is in hard cheeses. For that reason, the proponents proposed that the MCP program for that order should be based on butterfat and protein.

As proposed, MCP would not apply to Class I milk, which would continue to be priced to handlers as it now is. Handlers would account for the components (butterfat and nonfat milk solids or protein) used in Class II and Class III at prices per pound as specified in the order. Each producer would be paid a weighted average of the Class I and Class II differentials, plus the value per pound for the components in the producer's milk.

Butterfat would be priced on a per-pound basis. The butterfat price, as proposed, would be the sum of the skim milk value (based on the basic formula price) divided by 100 plus the butterfat differential for the month multiplied by 10.

The prices per pound for nonfat solids or protein, as the case may be, would be determined by subtracting from the basic formula price the value of the butterfat, and dividing the remainder by the market average test for nonfat milk solids or protein in producer milk for the current month.

There were three proposed modifications for determining the value of the components other than butterfat. One, advocated by a spokesman for Kraft General Foods, would use the average component values (tests) of the milk included in the survey of pay prices that make up the Minnesota-Wisconsin (M–W) estimated price for manufacturing grade milk. The M–W price is the basic formula price for the orders. According to the Kraft witness, use of the M–W milk component tests would provide uniformity of component prices among orders, whereas using market average tests could result in component prices that were not uniform among orders. Darigold's witness indicated that Darigold would accept this approach.

A second modification was advanced by the witness for Northwest Independent Milk Producers (NWI). As proposed, the Class III milk price would be a formula price based on the prices for 40-pound blocks of cheddar cheese, plus a value for whey cream, minus the make allowance used by the Commodity Credit Corporation. The proponent claimed that the current Class III price (the M–W price) may be reflective of cheese production and manufacturing in Minnesota and Wisconsin, but is totally out of sync. with the real market situation in the Pacific Northwest region. The proposed Class III price is needed to improve the competitive relationship between cheesemakers in the Northwest and those in California, according to the proponent.

NWI also proposed that the basic formula price provision should be amended by adding the words "or $12.10 per hundredweight, whichever is higher for the month." In the view of NWI's witness, this proposal would decouple Class I prices from the radical price fluctuations that have occurred.

A witness for Swiss Village Cheese, a proprietary bulk tank handler under Order 135, supported MCP for that market. The witness stated that the failure to recognize varying protein tests for raw milk produces a great inequity in the Federal milk order pricing system and sends the wrong economic message to producers. He noted that the August 1992 M–W price of $12.54 per hundredweight yields a skim milk price of $10.09 with a seven cents butterfat differential. The $10.09 figure is the same, regardless of the protein content of the milk.

This being the case, he said, the value of a pound of protein thus varies as the test varies. If milk tests 4 percent protein, dividing the $10.09 by 4 yields a value per pound of $2.52. However, if the test is only 3 percent, the per-pound value is $3.36, or a difference of 84 cents. Thus, when a cheese plant wants the lowest-priced protein, it would want to attract the highest testing milk. In order to attract high-testing milk, cheese plant operators pay producers protein premiums or base their price on a cheese yield formula. He stressed that plants can pay a premium over the Federal order price, but cannot lower the price to a producer below the minimum Federal order price based on butterfat content. In his view, this causes handlers or cheese plants to play a price averaging game, which results in producers of low-testing milk getting paid more than their milk is worth, while producers of high-testing milk are paid less than their milk is worth. Adoption of multiple component pricing would correct this situation and provide a basis for making economically correct decisions at both the dairy farm and the plant, he concluded.

The Swiss Village Cheese representative presented what he believes are important factors regarding the future of the dairy industry in Idaho, and in the West in general. He indicated that: (1) Herd size will be large; (2) production per cow will be high; (3) total milk production increases will exceed population increases; (4) nearly all of the increased production will be used to make cheese; and (5) most of this "new" cheese will be sold to consumers in the East. In view of these factors, the witness proposed modifications to the MCP plan proposed for Order 135.

The first proposed modification would use the protein test for milk that is included in estimating the M–W price. The second modification proposes adjusting the M–W price for a transportation differential (minus 10 cents) prior to determining the protein price. This proposal is based on the belief that the market for additional quantities of cheese produced in Idaho will be population centers in the eastern United States. Therefore, a price adjustment is warranted, in the view of this witness, because the cheese produced in Idaho will have to be moved long distances to find customers, and a lower price would help Idaho cheese plants be more competitive with California cheese plants.

A third proposed modification by the Swiss Village Cheese witness called for giving milk buyers the right to reduce a producer's payment if the producer's milk had a high somatic cell count. He testified that cheese yields and cheese quality both suffer when raw milk has somatic cell counts above 300,000 per milliliter. The money deducted from payments for milk with a high somatic cell count would be returned to other producers in the pool whose milk had lower somatic cell counts.

A witness for Avonmore West, a handler under Order 135, testified in support of MCP and urged also that if MCP is adopted, the pricing must recognize the relationship of somatic cells to the true value of protein in the milk. The witness cited the Recommended Decision (57 FR 36536) to adopt MCP in the Ohio Valley, Eastern Ohio-Western Pennsylvania, and Indiana orders. The Recommended Decision in that proceeding adopted MCP for the three orders and included adjustments for somatic cells both in prices paid to producers and in prices paid by handlers. He urged USDA to follow its own lead and adopt adjustments for somatic cells based on the evidence presented at this hearing and the Recommended Decision for the three orders noted above. He contended that if MCP is adopted for Orders 124 and 135 without adjustments for somatic cells, producers with a low somatic cell count in their milk will be subsidizing producers with high somatic cell counts in their milk.

The only brief filed on this issue was filed jointly by Darigold, Farmers Cooperative Creamery, and Northwest Independent Milk Producers Association. The brief supported adoption of MCP for both orders and recapped the alternative proposals made at the hearing. The brief concluded that the preferred basis of determining component values (other than butterfat) would be as proposed by NWI, i.e., the Class III price would be based on the Green Bay National Cheese Exchange price. This approach was preferred but the brief also indicated that either the original proposal or the proposal to use the average M–W component tests as the divisor of the skim value to get the per-pound prices for protein or solids nonfat would be acceptable. However, the brief expresses the view that a somatic cell adjustor for paying producers should not be adopted on the basis of the record in this proceeding.

The orders should be amended to provide Class II and Class III milk prices to handlers and payments to producers based on multiple component values. This concept is widely supported and is justified by evidence contained in the hearing record.

MCP should be adopted as a step towards improving the way the Federal order translates market values for dairy products into milk prices that indicate to producers how these products are valued in the marketplace.

As the record indicates, the current pricing system has, over time, placed a

greater share of milk value on the skim portion of milk, and a lesser value on the butterfat portion. Nevertheless, a further recognition of market value as it relates to the value of milk components can be achieved by converting the skim milk value into components, either protein or solids nonfat, on a per-pound basis. As the testimony indicates, it is not sound pricing practice to consider that all skim milk has the same value, regardless of its level of protein or solids nonfat content. The varying values for the components in skim milk can be more properly reflected in handler prices for Class II and Class III milk, and prices to individual producers, if MCP is incorporated into the order. Moreover, incorporating MCP into the orders will tend to insure at least a minimum value of the components for all handlers and producers. This element may be lacking where there are varying premium plans in use in the market, and where perhaps not all producers are involved. Also, providing for MCP in the Federal orders will allow handlers to pay lower prices to producers whose milk tests low for the component other than butterfat. Thus, pricing equity among producers and handlers should be enhanced by adoption of MCP.

Another reason for adopting MCP is that, as a pricing system, MCP will improve how well the pricing system in the orders translates consumer preferences into economic signals that indicate to dairy farmers exactly what consumers want. Data presented at the hearing show clearly that, over time, consumers prefer milk products with less fat. Adopting MCP for Orders 124 and 135 will facilitate sending clear signals to producers that consumers want less fat and more protein or solids nonfat in their dairy products.

Clearly, the vast majority of the milk pooled in these two markets is used for Class II and Class III uses. In the Pacific Northwest market, almost two-thirds of the milk pooled annually in 1989, 1990, and 1991 was classified in Classes II and III combined; and the percentage is increasing, going from 62.51 for 1989 to 64.47 percent for 1991. In the Southwestern Idaho-Eastern Oregon market, over 80 percent of the total milk pooled in the years 1989 through 1991 was used in Class II and Class III products.

As proposed, MCP for Order 124 will utilize a solids nonfat component and MCP for Order 135 will utilize a protein component. Not only will such pricing plans recognize that these markets utilize most of their milk in Class II and Class III uses, they also will recognize the particular principal dominant product manufactured from surplus milk supplied in each market. Moreover, the use of protein as the second component in Order 135 will make the provisions of that order more compatible with provisions of the neighboring Great Basin Order.

The proponents indicated that at the time of the hearing 59 percent of the Class II and Class III milk pooled under the Pacific Northwest order was being made into nonfat dry milk and 26 percent into cheese. Thus, the use of solids nonfat is appropriate since the majority of manufactured milk is oriented more toward the products and uses in which all the solids nonfat are consumed together.

On the other hand, in the Southwestern Idaho-Eastern Oregon market, nearly 80 percent of the milk is made into cheese, in which protein is an important component. Thus, the use of butterfat and protein for MCP is appropriate for Order 135.

Under the plan adopted herein, the price for a pound of butterfat will be the same for both orders, i.e, the sum of the skim milk price divided by 100 and the butterfat differential multiplied by 10. Since each producer will receive payment for the milkfat on a price-per-pound basis, there will no longer be a need for a producer butterfat differential in either order. Thus, the proposed order language does not contain a provision for a "producer butterfat differential."

The prices per pound for solids nonfat and protein should be based on the basic formula price (i.e., the M–W price). For each component, the skim milk value will be determined by subtracting from the M–W price the butterfat price multiplied by 3.5, and dividing the result by the average percent of solids nonfat or protein (as appropriate) for the month in the milk upon which the M–W price is based, as announced by the Dairy Division. Use of the average tests for the components (other than butterfat) in the M–W milk will be consistent with such a provision recently adopted for the Great Basin, Ohio Valley, Eastern Ohio-Western Pennsylvania, and Indiana markets. This approach was suggested by several people and was supported in briefs. No one specifically opposed it.

There are two related issues that also should be addressed in connection with determining component prices. First, we should point out that the solids nonfat content of producer milk in the Pacific Northwest market may be higher than the solids nonfat content of the milk that is the basis for the M–W price, based on limited information in the record. For example, Exhibit Number 7, Table 1, shows that Darigold Farms' solids nonfat tests averaged 8.69 percent for the months of January through July 1992. On a monthly basis, the Darigold tests were from .04 to .19 higher than the M–W milk solids nonfat content for the same period. Also, page two of Exhibit 10–B shows that NWI's solids nonfat tests averaged 9.10 percent during January through July 1992. Each of the monthly tests of NWI's milk was more than .5 above the nonfat solids content of the M–W milk. The average percent solids nonfat tests of producer milk included in the M–W "Base Month" Price Series during January through July 1992 were: January, 8.55; February, 8.52; March, 8.55; April, 8.57; May, 8.56; June, 8.56; and July 8.53. Official notice is taken of page 2 of Dairy Market News, Volume 59, Report 46, dated November 13, 1992, issued by the Department of Agriculture, Agricultural Marketing Service, Dairy Division, P.O. Box 8911, Madison, Wisconsin 53708–8911.

The record does not contain data showing the average solids nonfat content of all producer milk for the Pacific Northwest market. Thus, the comparisons made above are not conclusive. However, if the comparison reflects the actual market situation, the price for a pound of solids nonfat would be higher if the M–W test is used as a divisor in the proposed formula for calculating the price than if the market average test is used. As a result, the value of Class II and Class III milk in the pool would increase from current levels.

A second related issue that must be kept in mind is that USDA has already conducted a hearing to consider proposed alternatives to the M–W price as the basic formula price for all the orders. If the Secretary decides to replace the M–W price with some other factor or factors to establish the basic formula price, a question may arise as to what tests for solids nonfat or protein should then be used. Absent any knowledge at this time as to the outcome of that proceeding, it would seem appropriate to continue to use the tests prescribed in this decision. Later, it may be necessary to consider amending the orders in this regard.

NWI's proposal to put a $12.10 per hundredweight floor under the basic formula price is not adopted. The principal purpose of this proposal relates to Class I milk prices. However, Class I milk prices are not an issue in this proceeding.

Several other proposed modifications to the initial proposal on component prices were offered at the hearing. However, none of these modifications should be adopted.

One of the modifications would provide a location adjustment to the basic formula price for Order 135 because additional milk supplies likely would be made into cheese that would have to be transported elsewhere to be sold. Another reason advanced is because a lower price would improve competition with cheese made from milk priced under the California State milk order, which has a lower price.

This proposed modification should not be adopted. The purpose of the basic formula is to move prices for milk in most uses in all Federal order markets. It should not be modified for the purpose of accommodating expected sales competition for one product under one order.

Similarly, the Class III cheese formula price modification advanced by NWI and endorsed by Darigold in its brief also must be denied. With the exception of consideration of a lower price for milk used to make nonfat dry milk (Class III–A), it has long been the policy of USDA that the lowest-priced class of use under the Federal order program is based on the concept of a national market for products (butter, powder, and cheese) made from milk not needed for Class I use. Those products made from Grade A milk marketed under Federal orders compete with products made from non-grade A milk. Since these products compete in a national market, there has been a common surplus class price in almost all Federal orders for many years. (However, in a few orders, including the Pacific Northwest order, there was a butter-powder snubber price applicable to milk used in the production of Class III products.) We believe that this policy of uniformly pricing surplus milk should be continued, at least for the present.

There are other considerations as well. As noted earlier, a hearing has already been held on a replacement or an alternative to the M–W price for the basic formula price under the orders. Also, a proceeding is underway on Class III–A price proposals for many of the orders. A separate Class III–A price for skim milk used to produce nonfat dry milk is now in effect in the Pacific Northwest order on an interim basis. There appears to be a question about whether a separate Class III–A price could be justified if the proposed price to be derived from the cheese exchange prices were adopted as a basic formula price. The record in this proceeding is not adequate to deal with this question.

Also, there appears to be a dilemma in the difference between handler prices for milk to make cheese prescribed under the Federal orders and those provided under the California milk pricing program. However, we do not feel the proper approach to this problem is to lower the surplus milk price to handlers under one particular order.

Another reason not to adopt the NWI proposal is that it is a product formula price based on cheese, yet the principal use of surplus milk in the Pacific Northwest order is nonfat dry milk. The record simply contains no explanation as to why a proposal for multiple component pricing in this market situation should have the component values based on a price derived from the cheese market only.

Finally, on the basis of the record in this proceeding there should be no adjustments to prices under Order 135 based on the level of somatic cells present in the market's raw milk supply. While the record evidence indicates that somatic cell levels are important, the record lacks sufficient evidence to develop appropriate provisions to implement a price adjustment based on somatic cell levels.

In should also be noted that the brief filed on behalf of Darigold, NWI, and Farmers Cooperative Creamery also concluded that "there is insufficient evidence to warrant adopting an 'SCC Adjuster' in either Order 124 or Order 135." Finally, we would point out that some proponents expressed a desire to keep the MCP provisions in Order 135 compatible with those in the Great Basin order. Since the Great Basin MCP provisions do not include a somatic cell adjustor, it would be contrary to compatibility to include such an adjustor in Order 135.

Incorporation of component pricing in Orders 124 and 135 will necessitate amending provisions of the orders dealing with handler reports, class (and component) prices, the computation of handler's obligations and payments to the producer-settlement fund, and the determination of payments to producers.

For purposes of allocating nonfat milk solids and protein, it is assumed that both components remain evenly distributed within the skim milk portion of milk receipts. This assumption will allow the proration of nonfat solids and protein to skim milk for purposes of determining shrinkage and allocating receipts to utilization.

In addition to the information that is already reported each month to the Market Administrator, each handler under Order 124 will be required to report the average nonfat solids content of milk received from each producer during the month, the amount of nonfat solids in the handler's other receipts, except receipts of other source milk, and the nonfat solids contained in bulk transfers of milk and cream to other handlers. Partially regulated distributing plant operators will not be required to report information regarding the nonfat solids of their milk receipts unless they elect to have their obligations calculated under the provision that would determine obligations on the same basis as those of fully regulated handlers. Handlers under Order 135 will have to report the protein content of their milk receipts in a similar fashion as that described above.

The amended orders will contain definitions for a skim milk price, a butterfat price, a nonfat dry milk price for Order 124, a milk protein price for Order 135, and the usual class and producer prices. The "skim milk price" will be used to determine the value of the skim milk portion of producer milk that is allocated to Class I. Value adjustments for determining payments by handlers for milk used in Class II and Class III, and to producers, will be made by prices per pound for the butterfat and nonfat dry milk (for Order 124) or protein (for Order 135) contained in the milk. The skim milk price, the butterfat price, the nonfat milk solids price, and the milk protein price will be derived from the Class III price and the butterfat differential.

Payments to producers for deliveries of milk will be determined through the operation of two marketwide pools for each order. Both orders will contain a "differential pool" which will be used to determine producers' share of the Class I and II market. A second pool—the "skim milk nonfat milk solids pool" in the case of Order 124 and the "skim milk protein pool" for Order 135—will be used to determine the price to be paid producers for the nonfat solids or protein in their milk.

Each handler's net obligation to the pool (i.e., the handler's payment to the producer-settlement fund) will be determined by subtracting the differential and nonfat solids (or protein) values due to the handler's producers from the differential and nonfat solids (or protein) values of the producers' milk used by the handler. The value of butterfat in each producer's milk will not be pooled, but will be paid directly to the producer.

The differential value of each handler's receipts of producer milk assigned to Class I and Class II will be calculated by multiplying the hundredweights of producer milk allocated to these classes by the difference between the respective class prices applicable at the location of the plant and the Class III price. In addition, the adjustments to the class values of producer milk that currently are

included in determining a handler's obligation would be included in the differential value. The adjustments include the values of overage, beginning Class III inventory allocated to a higher class, other source and filled milk receipts allocated to Class I, certain receipts from unregulated supply plants that are allocated to Class I, and receipts of bulk concentrated fluid milk and nonfluid milk products that are reconstituted for fluid use. Each handler's differential value will be combined and then divided by the hundredweight of producer milk in the differential pool to determine the "weighted average differential price." An "estimated uniform price" can be derived by adding the weighted average differential price to the basic formula price for the month. Although the uniform price would not be applicable to producers under the component pricing plan, it is of value for price comparison purposes with other Federal orders.

Each handler's skim milk-nonfat milk solids value for Order 124 and skim milk-protein value for Order 135 will be determined by combining the skim milk value of the handler's producer milk in Class I with the nonfat solids value (or milk protein value) of the handler's milk in Class II and III. The skim milk value will be determined by multiplying the skim milk in producer milk assigned to Class I by the skim milk price. The nonfat milk solids (or protein) value will be determined by multiplying the nonfat milk solids (or protein) in producer milk assigned to Class II and III by the nonfat milk solids price (or the milk protein price). The amount of nonfat solids or protein in each class will be determined by multiplying the skim milk portion of producer milk allocated to each class by the nonfat solids (or protein) content of all of the handler's producer milk. The price to be paid to producers for the nonfat solids (or protein) in their milk will be determined by combining the individual handler values of skim milk in Class I milk and nonfat solids (or protein) in Class II and III milk, and dividing the resulting total by the pounds of nonfat solids (or protein) in all producer milk. The resulting price will be the "producer nonfat milk solids price" (or the "producer milk protein price").

As a result of the order amendments described, payments to producers will be based on three factors: (1) The weighted average differential price for all of their milk; (2) the nonfat milk solids or protein contained in their milk multiplied by the respective producer nonfat milk solids price or producer protein price; and (3) the butterfat in their milk multiplied by the butterfat price.

Adoption of multiple component pricing plans requires amending provisions of the orders dealing with handler reports, shrinkage, computation of class and component prices, the computation of a handler's obligation to the pool, computation of a weighted average differential price, and the computation of a producer nonfat milk solids price for Order 124 and a producer protein price for Order 135. These changes have already been discussed.

Several conforming changes must be made in the order language of both orders to implement component pricing. Other minor changes, though not strictly of a conforming nature, have been made to clarify and improve order language.

Other sections of the orders, however, have been changed to accommodate reference changes, date changes, and minor terminology changes resulting from component pricing. These changes require some explanation here.

Section 19 ("product prices") of both orders has been modified to accommodate reference changes, eliminate unnecessary language, and to include the butterfat differential that previously was described in section 74 of both orders. The latter change was made because the description of the butterfat differential fits better with the product prices which are used to compute the butterfat differential and because of the diminished importance of the butterfat differential under a component pricing system. This change also eliminates redundant language that was included in both sections. As a result of making this change, several sections following section 74 (i.e., §§ 1124.75–1124.78 and §§ 1135.75–1135.79) had to be redesignated to close the gap created and several reference changes had to be made as a result.

Sections 30 and 31 of both orders were modified to accommodate the reporting of nonfat milk solids in Order 124 and protein content in Order 135. In addition, under Order 135 the date for filing reports of receipts and utilization was changed from the 7th day to the 9th day after the end of the month, and the date for filing payroll reports was changed from the 20th to the 22nd day after the end of each month. In support of these changes, the spokesman for Darigold Farms testified that the present reporting date for the report of receipts and utilization leaves no time to review the report, investigate apparent errors, or make corrections. He also stated that the modified reporting dates will correspond to those of the Pacific Northwest order. There was no opposition to these proposals.

The "other reports" section of Order 124 was modified to improve the language of that section. There was no intention to substantively change the meaning of this section.

The present §§ 1124.51a and 1135.51a have been eliminated, but the contents of those sections have been incorporated in §§ 1124.51 and 1135.51, respectively. These changes, which are also of a non-substantive nature, were made in conformance with **Federal Register** guidelines.

2. Performance Standards for Supply Plants Under the Pacific Northwest Order

The Pacific Northwest order should be amended to provide that the delivery requirements for qualification as a supply plant be not less than 20 percent of the total quantity of milk that is (1) physically received at the plant from dairy farmers eligible to be producers or (2) is diverted as producer milk to another plant.

To qualify as a pool plant, the order currently requires a supply plant to ship "not less than 30 percent" of the total quantity of milk that is physically received at the plant from producers or that is diverted as producer milk to another plant.

Tillamook County Creamery Association (TCCA) proposed a decrease in the shipping percentage from 30 percent to 20 percent. TCCA requested, and was granted, a temporary reduction in the delivery requirements in 1990, 1991, and 1992.

A TCCA spokesman testified that the request to reduce the supply plant shipping percentage was made by TCCA as a result of continuing changes in the industry. He pointed out that the present 30 percent shipping percentage was adopted when the Federal order was adopted February 1, 1989. The witness noted that at the time of order implementation (early 1989), Class I utilization was 155 million pounds, which represented in excess of 39 percent of total producer milk in the Pacific Northwest market. By February 1992, however, Class I utilization was 164 million pounds in the Pacific Northwest market, and the Class I pool utilization had dropped to 35 percent. By May of 1992, the percent Class I utilization decreased even further to 30.8 percent.

Two other witnesses, one representing Darigold Farms and the other Northwest Independent Milk Producers, testified in favor of TCCA's proposal. No one testified in opposition to it.

The proposal to amend the delivery requirements for qualification as a supply plant should be adopted due to the changing conditions in the market. As a result of increases in milk production, pool supply plants are utilized less by pool distributing plants as a source of milk for bottling. Consequently, they may be unable to meet the order's present shipping requirements and maintain the producer status of dairy farmers that have been historically associated with this market.

Currently, three options are open to the operators of pool supply plants who find that their milk is not needed at pool distributing plants. First, despite the fact that the milk is not needed, they can move milk from the production area to pool plants in the metropolitan area, unload it, and pick up an equal amount of milk from the pool plant and return it to the pool supply plant location where the milk can then be processed into Class III products. This adversely affects the milk quality without even considering the costs of transportation, yield reduction, and milk volume loss. When milk is handled, abuse occurs to some extent. When milk is pumped into a plant, through equipment, and then reloaded and hauled back or hauled to another plant, this process affects the quality of the product. That can affect the milk's use for fluid products, depending on the amount of handling involved. It can also affect the quality of cheese that can be made from milk.

The second alternative is to find another pool plant that has adequate pool sales and combine the two marketing reports. If the combined delivery percentage reaches 30 percent of the total production of the combined supply plants, then both plants qualify to participate in the pool. This option depends entirely on the pool supply plant's ability to find another supplier with adequate sales to cover the deficit and one who is willing to cooperate by allowing its volume to be used.

The third option available to the supply plant operator is to request a temporary reduction in the delivery requirements. Paragraph 1124.73(c) allows the director of the Dairy Division to reduce or increase the delivery percentage by 10 percent upon request.

After carefully reviewing the testimony on this issue, it is concluded that the delivery requirements for qualification as a supply plant should be decreased from not less than 30 percent to not less than 20 percent. In view of the increases in milk production and the lower Class I utilization percentage, it is much more appropriate to permanently change the delivery requirements of the order than to rely on temporary revisions in shipping percentages.

The evidence shows that TCCA is committed to meet the needs of the fluid market. For example, on several occasions it has reduced its cheese production to supply loads of fluid milk to the Portland market.

TCCA is the largest Oregon-based dairy cooperative, handling approximately one-third of the milk produced in the State each day. Of the one and a half million pounds of milk handled daily, roughly 1.1 million pounds are used to produce cheese for the retail market and 400,000 pounds are shipped to the Portland market for sale to Class I milk handlers.

The lower shipping percentage for pool supply plants will not jeopardize the needs of the fluid market, particularly with the provision now in the order that permits the Director of the Dairy Division to increase the percentage on short notice should additional shipments become necessary. The lower percentage will, however, permit milk that has been historically associated with this market to continue to participate in the marketwide pool and, for this reason, it should be adopted.

3. Status of a Milk Plant Operated by a State Institution Under the Pacific Northwest Order

The Pacific Northwest order should be amended to provide that a milk plant operated by a State institution, but which is not exempt from the provisions applicable to a producer-handler, may receive up to an average of 1,000 pounds per day of Class I milk from fully regulated handlers.

The order currently provides that "any State institution shall be a producer-handler exempt from the provisions of this section and §§ 1124.30 and 1124.32 with respect to milk of its own production and receipts from pool plants processed or received for consumption in State institutions and with respect to movements of milk to or from a pool plant." Thus, a State institution plant may buy bulk milk or packaged milk products as Class I milk without limits from pool plants for use in State institutions. If such a plant has sales to outlets other than State institutions, a limit on such purchases of 100 pounds per day average is applicable, and the plant must file reports, the same as any other producer-handler.

The Washington State Department of Corrections proposed amending the producer-handler and nonpool plant provisions to provide total exemption from all provisions of the order for "a plant owned and operated by a State institution or establishment which processes or packages fluid milk products."

The witness for the proponent testified that because the Department of Corrections buys milk products from pool plants, there is a continuing conflict between the State law under which the prison dairy is operated, and the Federal order's definition of a producer-handler. He explained that under Chapter 72, Correction Reform Act of 1981, Revised Code of Washington, the Washington State Reformatory Dairy (WSRD) is mandated to "(1) provide a work training program for inmates, (2) imitate private industry as much as possible and thereby be self-supporting, and (3) provide quality products to government and nonprofit agencies at or below market prices." Thus, the WSRD is allowed, under the State law, to buy whatever milk products it needs in order to serve its clients. Such purchases have, on occasion, exceeded the quantity that a producer-handler is allowed to acquire under the Pacific Northwest order, according to the testimony.

The only other witness that testified in favor of the proposal represented the Oregon Department of Corrections. Under cross examination, he indicated that there are no Oregon statutes that apply to the Department of Corrections' dairy facility. On the other hand, he also indicated that the Dairy is prohibited from selling to the private sector.

The proposal to exempt State institutions was opposed by one proprietary handler and by three cooperative associations. The principal thrust of the opposition testimony was that adoption of the proposal would open the door for State institutions to compete against fully regulated handlers for Class I and Class II sales, and that the State institutions would have a competitive advantage by being exempted from the Federal order pricing and pooling regulations.

The proposal to totally exempt a plant operated by a State institution should not be adopted because it would make it possible for the operations to compete for commercial sales against fully regulated handlers. On the other hand, there appears to be a need to provide some relief from the very limited amount of Class I fluid milk products that such a plant may receive from pool plants under the producer-handler provisions of the order.

After reviewing the testimony on this issue, it is concluded that a State institution that is not exempt from the producer-handler limits on receipts of milk from pool plants should be able to

receive more fluid milk products from pool sources than the amount allowed for other producer-handlers.

The evidence shows that the WSRD has had problems in conducting its operation in accord with its operating mandate while, at the same time, staying within the limits that the order places on receipts by a producer-handler.

The current limit on receipts of fluid milk products from pool plants by a producer-handler has been in effect for many years (Official Notice is taken of the Order Amending The Order Regulating The Handling Of Milk In The Puget Sound, Washington, Marketing Area, effective September 1, 1959, as published in the **Federal Register** on July 29, 1959, beginning at page 6027).

While this proceeding does not deal with producer-handlers as such, it is clear that the 100 pounds per day limit as applied to a State institution is unreasonably low. This is clearly demonstrated in the testimony that in the last five years the number of inmates in the Washington State Department of Corrections institutions has increased from 6,000 to 10,000 inmates, and that growth to 12,000 is expected in the next three years. Since the Department of Corrections is authorized to purchase products that it does not process or manufacture, the need for greater supplemental purchases is clear. Accordingly, a State institution milk plant should be permitted to receive an average of 1,000 pounds per day of Class I fluid milk products from pool plants during the month. However, no change in the limit should be provided for producer-handlers that are not State institutions.

4. Plant Location Adjustments for Yakima County, Washington, Under the Pacific Northwest Order

The proposal to change the location adjustment (No. 3 in the Notice of Hearing) on all producer milk received at plants in Yakima County in Federal Milk Order 124 is denied.

The order defines zones for the purpose of determining location adjustments. The order currently states that Yakima County, Washington, is in Zone 4, which has a 15 cents per hundredweight location adjustment.

Darigold Farms proposed a decrease in the location adjustment from 15 cents per hundredweight to 6 cents per hundredweight, a change of 9 cents. Accordingly, Yakima County would move from Zone 4 to Zone 2.

The witness for the proponent testified that the theory behind a location adjustment is to be able to attract producer milk from outlying areas to market centers or alternatively to attract packaged milk from a pool plant located in outlying areas. The Pacific Northwest order has four market centers: Portland, Oregon; Eugene, Oregon; Seattle, Washington; and Spokane, Washington. Yakima County is roughly in the center of the triangle formed by Portland, Seattle, and Spokane.

The witness noted that the Pacific Northwest Order has relatively low Class I utilization, about 35 percent. There is more than an adequate supply of bulk milk to serve both fluid and manufacturing markets. He also pointed out that in a low utilization market such as Pacific Northwest, location adjustments are seldom needed. There has been no history of handlers in the Pacific Northwest market not being able to obtain bulk milk.

The witness testified that Darigold was not proposing the elimination of location adjustments, but rather to maintain the status quo for all the other fluid milk handlers in the market. The only fluid plant that would be affected is the Darigold plant in Yakima County, which would pay an added nine cents per hundredweight.

The witness's testimony drew a parallel between Yakima County, Washington, and Whatcom County. The two counties are very similar, he noted, in that there's a large concentration of milk in a small area. Moreover, both plants are located outside major market centers, and both counties have small fluid operations which serve the county area but not the market centers.

The witness for the proponent testified that the proposal was being made because of the opening of the Darigold plant in Sunnyside in December of 1991. The plant was needed to help balance the increased production in the Pacific Northwest and the increase of milk in Yakima County. Comparing December of 1980 to December of 1990, Yakima County dairymen increased their deliveries of producer milk from 18.9 million pounds to 49.7 million pounds per month. The Yakima County producers currently account for 13.5 percent of the milk marketed in the Pacific Northwest order.

The witness noted that, prior to the opening of the Darigold/Sunnyside plant, the milk from Yakima County was sent to plants in Seattle and Chehalis, Washington, which have no location adjustment. No location adjustment was needed since milk production increases in western Washington are expected to keep all plants full.

The witness testified that the 15-cent-per-hundredweight location adjustment at Sunnyside, in effect, constitutes a "penalty" to the Darigold producers who financed the Sunnyside plant, which was needed by all producers to ensure outlets for all milk produced in the marketing area. Had the plant not been built, disorderly market operations surely would have developed, he said. The witness argued that this "penalty" is unnecessary because hauling costs will move the milk to market centers without location adjustments. He pointed out, for example, that Darigold's hauling costs from Sunnyside to Spokane, the closest market center, is 76 cents per hundredweight for a distance of 120 miles, or .6 cents per mile. In comparison, the proposed decrease from 15 cents to 6 cents would move the milk only about 15 miles at the .6-cent-per-hundredweight cost.

The witness testified that for any producer farm located closer to Spokane than to Sunnyside, it is cheaper to move milk to Spokane than to Sunnyside even with no location adjustment. Reducing the location adjustment to six cents merely moves the geographic break-even point 15 miles closer to Sunnyside and enlarges by the same 15 miles the area from which Spokane pool plants can readily attract milk.

The witness testified that within the original area, without the 15-mile adjustment, there already is enough milk to satisfy the needs of Spokane pool plants, so there is no need to provide a further incentive to move milk that is located in that 15-mile area closer to Sunnyside. The Sunnyside milk also can and does supply Seattle pool plants and could service plants in Portland and Spokane. A similar analysis shows that there is far more milk in the areas closer to Seattle and Portland than needed by pool plants in those areas. Therefore, the 15-mile incentive which the 6-cent location adjustment represents is not really needed as an incentive to move milk to those market centers. The witness noted that the combination of some Yakima Valley milk that is surplus to the Sunnyside plant's capacity, plus the western Washington milk, is adequately supplying the needs of all the plants in western Washington.

Three other witnesses testified on Proposal No. 3. The witnesses for Portland Independent Milk Producers Association and Olympia Cheese Company were opposed to Proposal No. 3, and the witness from Inland Northwest Dairies, Inc., also expressed reservations. Two briefs discussing Proposal No. 3 were filed, one by Darigold Farms in favor of the proposal, and one by Portland Independent Milk Producers Association opposed to the proposal.

Portland Independent Milk Producers Association opposed Proposal No. 3 to change the zone classification for plants in Yakima County from Zone 4 to Zone 2 to reflect the same location adjustment that Whatcom County currently enjoys. The witness testified that the theory behind a location adjustment is to be able to attract producer milk from outlying areas to market centers. He pointed out that the proposed zone change in the proposal appears to have the opposite effect in that it would increase the return to producers delivering milk to plants located in Yakima County.

The witness noted that increased returns could send two signals. One signal is that there is actually an additional demand for fluid milk to be delivered to Yakima County, which is not believed to be the case. There appears to be more than an adequate supply of milk for the Yakima County fluid operations. The second signal sent to producers when there is a situation of increasing returns is to increase production. The witness did not feel that either of these signals is appropriate in light of the theory behind a functioning location adjustment program or the already increasing supplies of milk surplus to fluid market needs in these areas.

The witness also expressed concern that there is an increasing imbalance between freight costs of milk produced in the Yakima Valley area and delivered to local plants and that milk which moves up to 200 miles to the market center. He argued that acceptance of Proposal No. 3 further accentuates the potential imbalance. The witness stated that it was their understanding that Yakima County is the type of market situation that a location differential program is designed to protect.

In comparing Whatcom County to Yakima County in this proposal, the witness extended that comparison by quoting from the 1988 final decision (53 FR 49165) which merged the Oregon/Washington and Puget Sound/Inland Empire Federal milk orders into the Pacific Northwest order and established the current location adjustment program under the merged order.

"Proponents' arguments for reducing the present six cent location adjustment at locations in Whatcom County, Washington, are less persuasive. The location adjustment should not be reduced. One reason given for such a reduction was that the nearby manufacturing plant in Lynden provides an outlet for milk surplus to the market's fluid needs while location adjustments are still needed at locations in southern and central Oregon and central Washington precisely because no nearby manufacturing plant exists to provide an outlet for surplus milk produced in these areas. In fact, the situation thus described by the Darigold witness should result in a greater location adjustment for Whatcom County, for instance, than Jackson County, Oregon. The receipt of milk at a manufacturing plant located in an area of heavy milk production at some distance from the market's center is the classic situation to which location adjustments were designed to apply. Prices paid for such milk are adjusted downward for location to compensate for the fact that the milk has not been hauled to distant bottling plants but instead has been shipped a relatively short distance at a significantly lower hauling cost."

The witness quoted another passage from that decision where it states,

"these markets, with manufacturing plants located in heavy production areas distant from most distributing plant locations, are more comparable to the situation of Whatcom County. Such increases, that update location adjustments to correspond to the significant increases in hauling costs that have been experienced since most location adjustment provisions were written, are actually the only means of "modernizing" location adjustments. It is very possible that it would be appropriate to modernize or increase the location adjustment at Whatcom County as urged by Northwest Independent Milk Producers Association and Carnation Company. However, there is inadequate data and testimony in the record of this proceeding to determine an appropriate change in the level of location adjustment for Whatcom County."

The witness pointed out that the same theory underlying the 1988 decision relative to Whatcom County is applicable to Proposal No. 3, and expressed the view that based on the current harmonious relationships within the marketplace, the 15-cent location adjustment should be maintained if location adjustments are going to continue to be recognized within this Federal order.

Olympia Cheese Company opposed Proposal No. 3 relative to changing the zone classification for plants in Yakima County from Zone 4 to Zone 2 to reflect the same location adjustment as Whatcom County. The witness testified that Olympia Cheese Company currently procures a substantial portion of its milk supply in Yakima County. That milk has to be shipped over the mountains in order to get to western Washington where its plant is located. The company subsidizes part of those hauling costs. The witness maintains that the proposed reduction in the location adjustment in Yakima County will further add to milk costs because in order to keep the milk supply from that county, hauling costs will have to be subsidized further by the same amount as the reduction in the location adjustment in order to stay competitive in milk procurement in that region.

The witness testified that Olympia Cheese Company's suppliers are going to be competing precisely against those suppliers in the Yakima County area, forcing them to come up with the same amount, even though its suppliers go across the mountains to western Washington. The witness contends that if its suppliers were breaking even before with respect to hauling cost, with the adoption of Proposal No. 3 they would be nine cents worse off.

The Olympia Cheese Company's witness stated that a location adjustment's traditional role is to reduce the payment to individual farmers for any milk that stays in the county—i.e., that milk which is not shipped to a heavily populated area. This provides a disincentive and promotes the shipment of milk from high production/low population areas to high population areas. The witness stated that in the case of Proposal No. 3, it appears the location adjustment is doing the opposite of intended, in the sense that all of a sudden the incentive is reduced, therefore increasing the incentive for the milk to stay in Yakima County. The witness pointed out that location adjustments are there precisely to promote shipment of milk to populated areas, and that they were used as a mechanism by USDA for this purpose.

Inland Northwest Dairies, Inc., also expressed concerns over the adoption of Proposal No. 3. The witness emphasized that there has been a very harmonious relationship in the marketplace. The witness stated that, with the adoption of Proposal No. 3, the company might be in a much tougher position in the future to recruit milk from producers in the Yakima Valley, from where 80 percent of its milk supply comes. He contended that because of competitive conditions, Darigold's producers may not have to pay as much in the future to get their milk to the Sunnyside plant as what others would have to pay to bring milk from the Yakima region to Spokane, Washington.

The witness was further concerned with adjusting the location allowance because of the situation that also exists in Moses Lake, where Safeway 85, Inc., a pool plant, has a 15-cent location adjustment. He stated that reducing the location adjustment in Yakima County could create some disparity in the marketplace because Safeway is definitely competition. The witness emphasized that the majority of its milk comes from the Yakima and Benton County region and that in the long-term there may be some inequities should the amount charged Darigold producers in

the future be adjusted by the location adjustment in Proposal No. 3.

The purpose and intention of location adjustments is to provide the incentive to move milk from one area to another for fluid uses only. Generally speaking, this means moving milk from outlying production areas to the more heavily populated market centers.

The evidence indicates that there is no need to move milk for fluid use from Yakima County to any of the population centers in this market: i.e., Seattle, Portland, Eugene or Spokane. If anything, the context of the total testimony raises a question about whether there is any need for location adjustments in this market. With an abundance of fluid milk in the marketplace, location adjustments may not be needed as an incentive to attract producer milk from outlying areas to market centers. No proposal was presented, however, that addressed the concept of having no location adjustments.

The witness for the proponent testified that the proposal was being made because of the opening of the Darigold plant in Sunnyside in December of 1991 to help balance the increased production in the Pacific Northwest and the increase of milk in Yakima County. Prior to the opening of the Darigold/Sunnyside plant, milk from Yakima County was sent to plants in Seattle and Chehalis, Washington, which have no location adjustment. The witness testified that the 15-cent-per-hundredweight location adjustment at Sunnyside in effect constitutes a "penalty" to the Darigold producers who financed the Sunnyside plant. In light of this, however, Darigold producers now have access to the local Sunnyside plant without having to incur the costs of hauling milk to Seattle and Chehalis, Washington.

Current conditions indicate harmonious relationships within the marketplace. The location adjustment change proposed is not needed to prevent disorderly marketing conditions in Yakima County or anywhere within the marketplace. Fluid milk needs are being more than adequately met, and there appears to be no need to encourage production of milk in the Pacific Northwest market by increasing the level of returns to producers. If anything, with an abundance of Class I milk available in the metropolitan areas, this may be an indication that the entire Class I price and location adjustment structure should be reviewed.

We would add, moreover, in response to testimony that a reduction of the location adjustment would increase the costs of obtaining milk for a cheese plant in western Washington, that it is not the purpose of a location adjustment to facilitate the movement of milk to a distant location for manufacturing uses.

In view of the testimony presented, we find no compelling reason to adopt the proposal. We must conclude that Yakima County, Washington, should remain in Zone 4 with a 15-cent-per hundredweight location adjustment.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when Orders 124 and 135 were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreements and the orders, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the respective marketing areas, and the minimum prices specified in the tentative marketing agreements and the orders, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreements and the orders, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, marketing agreements upon which a hearing has been held.

Recommended Marketing Agreements and Order Amending the Orders

The recommended marketing agreements are not included in this decision because the regulatory provisions thereof would be the same as those contained in the orders, as hereby proposed to be amended. The following order amending the orders, as amended, regulating the handling of milk in the Pacific Northwest and Southwestern Idaho-Eastern Oregon marketing areas is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out.

List of Subjects in 7 CFR Parts 1124 and 1135

Milk marketing orders.

For the reasons set forth in the preamble 7 CFR parts 1124 and 1135 are proposed to be amended as follows:

1. The authority citation for 7 CFR Parts 1124 and 1135 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

PART 1124—MILK IN THE PACIFIC NORTHWEST MARKETING AREA

§ 1124.7 [Amended]

2. In § 1124.7(b) introductory text, the number "30" is changed to "20".

§ 1124.9 [Amended]

3. In § 1124.9(c), the words "and nonfat milk solids" are added following the word "butterfat".

4. In § 1124.10, paragraph (c)(2) is revised to read as follows:

§ 1124.10 Producer-handler.

* * * * *

(c)* * *

(2) The producer-handler handles fluid milk products from sources other than the milk production facilities and resources specified in paragraph (b) of this section, except as specified below:

(i) A producer-handler, other than a State institution, may receive fluid milk products from pool plants if such receipts do not exceed a daily average of 100 pounds during the month; and

(ii) A State institution that otherwise qualifies as a producer-handler, but which processes or receives milk for consumption outside of a State institution, may receive fluid milk products from pool plants if such receipts do not exceed a daily average of 1,000 pounds per day during the month.

* * * * *

5. Section 1124.19 is revised to read as follows:

§ 1124.19 Product prices and butterfat differential.

The prices specified in this section, which are computed by the Director of the Dairy Division, Agricultural Marketing Service, shall be used, where specified, in calculating the basic formula prices pursuant to § 1124.51. The term "workday" as used in this section shall mean each Monday through Friday that is not a national holiday.

(a) *Butter price* means the simple average, for the first 15 days of the month, of the daily prices per pound of Grade A (92-score) butter on the Chicago Mercantile Exchange, using the price reported each week as the price for the day of the report, and for each following workday until the next price is reported.

(b) *Cheddar cheese price* means the simple average, for the first 15 days of the month, of the daily prices per pound of cheddar cheese in 40-pound blocks. The prices used shall be those of the National Cheese Exchange (Green Bay, WI), using the price reported each week as the price for the day of the report and for each following workday until the next price is reported.

(c) *Nonfat dry milk price* means the simple average of the prices per pound of nonfat dry milk for the first 15 days of the month computed as follows:

(1) The prices used shall be the prices (using the midpoint of any price range as one price) of high heat, low heat, and Grade A nonfat dry milk, respectively, for the Central States production area;

(2) For each week, determine the simple average of the prices reported for the three types of nonfat dry milk. Such average shall be the daily price for the day that such prices are reported and for each preceding workday until the day such prices were previously reported; and

(3) Add the prices determined in paragraph (c)(2) of this section for the first 15 days of the month and divide by the number of days for which there is a daily price.

(d) *Edible whey price* means the simple average, for the first 15 days of the month, of the daily prices per pound of edible whey powder (nonhygroscopic). The prices used shall be the prices (using the midpoint of any price range as one price) of edible whey powder for the Central States production area. The average shall be computed using the price reported each week as the daily price for that day and for each preceding workday until the day such price was previously reported.

(e) The *butterfat differential* is the number that results from subtracting the computation in paragraph (e)(2) from the computation in paragraph (e)(1) and rounding to the nearest one-tenth cent:

(1) Multiply 0.138 times the monthly average Chicago Mercantile Exchange Grade A (92-score) butter price as reported and published by the Dairy Division;

(2) Multiply 0.0028 times the average price per hundredweight, at test, for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month.

6. In § 1124.30, paragraphs (a)(1)(i), (ii), (c)(1), (2) and (3) are revised to read as follows:

§ 1124.30 Reports of receipts and utilization.

* * * * *

(a) * * *

(1) * * *

(i) Milk received directly from producers (including such handler's own production) and the pounds of nonfat milk solids contained therein;

(ii) Milk received from a cooperative association pursuant to § 1124.9(c) and the pounds of nonfat milk solids contained therein;

* * * * *

(c) * * *

(1) The pounds of skim milk, butterfat, and nonfat milk solids received from producers;

(2) The utilization of skim milk, butterfat, and nonfat milk solids for which it is the handler pursuant to § 1124.9(b); and

(3) The quantities of skim milk, butterfat, and nonfat milk solids delivered to each pool plant pursuant to § 1124.9(c).

* * * * *

7. In § 1124.31, paragraphs (a)(1), (b) introductory text, and (b)(1) are revised to read as follows:

§ 1124.31 Payroll reports.

* * * * *

(a) * * *

(1) The total pounds of milk received from each producer, the pounds of butterfat and nonfat milk solids contained in such milk, and the number of days on which milk was delivered by the producer during the month;

* * * * *

(b) Each handler operating a partially regulated distributing plant who wishes computations pursuant to § 1124.75(a) to be considered in the computation of its obligation pursuant to § 1124.75 shall submit its payroll for deliveries of Grade A milk by dairy farmers which shall show:

(1) The total pounds of milk received from each producer and the pounds of butterfat and nonfat milk solids contained in such milk;

* * * * *

8. Section 1124.32 is revised to read as follows:

§ 1124.32 Other reports.

In addition to the reports required pursuant to § 1124.30 and 1124.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligations under the order.

9. Section 1124.41 is amended by revising the second sentence of paragraph (c) to read as follows:

§ 1124.41 Shrinkage.

* * * * *

(c) * * * If the operator of a plant or a commercial food processing establishment pursuant to § 1124.20 purchases such milk on the basis of weights determined from its measurement at the farm, and butterfat tests and nonfat milk solids determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

10. The center heading preceding § 1124.50 is revised to read **"Class and Component Prices"**.

11. Section 1124.50 is revised to read as follows:

§ 1124.50 Class and component prices.

The class and component prices for the month, per hundredweight or per pound, shall be as follows:

(a) The *Class I price*, subject to the provisions of § 1124.52, shall be the basic formula price defined in § 1124.51 for the second preceding month plus $1.90;

(b) The *Class II price* shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1124.51(b) for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

(1) Determine for the most recent 12-month period the simple average (rounded to the nearest cent) of the basic formula prices computed pursuant to § 1124.51(a) and add 25 cents; and

(2) Determine for the same 12-month period as specified in paragraph (b)(1) of this section the simple average (rounded to the nearest cent) of the basic Class II formula prices computed pursuant to § 1124.51(b).

(c) The *Class III price* shall be the basic formula price for the month.

(d) The *Class III-A price* for the month shall be the average Western States nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential times 35 and rounded to the nearest cent.

(e) The *skim milk price* per hundredweight shall be the basic formula price for the month pursuant to § 1124.51(a) less an amount computed by multiplying the butterfat differential computed pursuant to § 1124.19(e) by 35.

(f) The *butterfat price* per pound shall be the total of: (1) the skim price computed in paragraph (e) divided by 100; and (2) the butterfat differential computed pursuant to § 1124.19(e) multiplied by 10.

(g) The *nonfat milk solids price* per pound shall be computed by subtracting the butterfat price, multiplied by 3.5, from the basic formula price and dividing the result by the average percentage of nonfat milk solids in the milk on which the basic formula price is based, as announced by the Dairy Division. The resulting price shall be rounded to the nearest whole cent.

12. Section 1124.51 is revised to read as follows:

§ 1124.51 Basic formula prices.

(a) The *basic formula price* shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent using the butterfat differential computed pursuant to § 1124.19(e).

(b) The *basic Class II formula price* for the month shall be the basic formula price determined pursuant to § 1124.51(a) for the second preceding month plus or minus the amount computed pursuant to paragraphs (b)(1) through (4) of this section:

(1) The gross values per hundredweight of milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using price data determined pursuant to § 1124.19 and yield factors in effect under the Dairy Price Support Program authorized by the Agricultural Act of 1949, as amended, for the first 15 days of the preceding month and, separately, for the first 15 days of the second preceding month as follows:

(i) The gross value of milk used to manufacture cheddar cheese shall be the sum of the following computations:

(A) Multiply the cheddar cheese price by the yield factor used under the Price Support Program for cheddar cheese;

(B) Multiply the butter price by the yield factor used under the Price Support Program for determining the butterfat component of the whey value in the cheese price computation; and

(C) Subtract from the edible whey price the processing cost used under the Price Support Program for edible whey and multiply any positive difference by the yield factor used under the Price Support Program for edible whey.

(ii) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(A) Multiply the butter price by the yield factor used under the Price Support Program for butter; and

(B) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(2) Determine the amounts by which the gross value per hundredweight of milk used to manufacture cheddar cheese and the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk for the first 15 days of the preceding month exceed or are less than the respective gross values for the first 15 days of the second preceding month.

(3) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (b)(2) of this section by determining the relative proportion that the data included in each of the following paragraphs is of the total of the data represented in paragraphs (b)(3) (i) and (ii) of this section:

(i) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Statistical Reporting Service of the Department for the most recent preceding period, and divide by the yield factor used under the Price Support Program for cheddar cheese to determine the quantity of milk used in the production of American cheddar cheese; and

(ii) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Statistical Reporting Service of the Department for the most recent preceding period, and divide by the yield factor used under the Price Support Program for nonfat dry milk to determine the quantity of milk used in the production of butter-nonfat dry milk.

(4) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (b)(2) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (b)(3) of this section.

§ 1124.51a [Removed]

13. Section 1124.51a is removed.

14. Section 1124.53 is revised to read as follows:

§ 1124.53 Announcement of class and component prices.

The market administrator shall announce publicly:

(a) On or before the 5th day of each month, the Class I price for the following month and the Class III and Class III-A prices for the preceding month;

(b) On or before the 15th day of each month, the Class II price for the following month; and

(c) On or before the 5th day after the end of each month, the basic formula price, the prices for skim milk and butterfat, and the nonfat milk solids price.

15. The center heading preceding § 1124.60 is revised to read **"Differential Pool And Handler Obligations"**.

16. Section 1124.60 is revised to read as follows:

§ 1124.60 Computation of handlers' obligations to pool.

The market administrator shall compute each month for each handler defined in § 1124.9(a) with respect to each of the handler's pool plants, and for each handler described in § 1124.9 (b) and (c), an obligation to the pool by combining the amounts computed as follows:

(a) Multiply the pounds of producer milk in Class I pursuant to § 1124.44 by the difference between the Class I price, adjusted pursuant to § 1124.52, and the Class III price;

(b) Multiply the pounds of producer milk in Class II pursuant to § 1124.44 by the difference between the Class II price and Class III price;

(c) Add or subtract, as appropriate, the amount that results from multiplying the pounds of producer milk in Class III-A by the amount that the Class III-A price is more or less, respectively, than the Class III price;

(d) Multiply the pounds of skim milk in Class I producer milk pursuant to § 1124.44 by the skim milk price for the month;

(e) Multiply the nonfat milk solids price for the month by the pounds of nonfat milk solids associated with the pounds of producer skim milk in Class II and Class III during the month. The pounds of nonfat milk solids shall be computed by multiplying the producer skim milk pounds so assigned by the percentage of nonfat milk solids in the handler's receipts of producer skim milk during the month for each report filed separately;

(f) With respect to skim milk and butterfat overages assigned pursuant to § 1124.44(a)(15), (b), and paragraph (f)(vi) of this section:

(1) Multiply the total pounds of butterfat by the butterfat price;

(2) Multiply the skim milk pounds assigned to Class I by the skim milk price;

(3) Multiply the pounds of nonfat milk solids associated with the skim milk pounds assigned to Class II and III by the nonfat milk solids price;

(4) Multiply the combined skim milk and butterfat pounds assigned to Class I by the difference between the Class I price, adjusted for location, and the Class III price;

(5) Multiply the combined skim milk and butterfat pounds assigned to Class II by the difference between the Class II price and the Class III price; and

(6) Overage at a nonpool plant that is located on the same premises as a pool plant shall be prorated between the quantity of skim and butterfat received by transfer from the pool plant and other source milk received at the nonpool plant. The pool plant operator's obligation to the pool with respect to such overage will be computed by adding the prorated pounds of skim milk and butterfat to the amounts assigned pursuant to § 1124.44(a)(15) and (b);

(g) With respect to skim milk and butterfat assigned to shrinkage pursuant to § 1124.44(a)(10) and (b):

(1) Multiply the total pounds of butterfat by the butterfat price;

(2) Multiply the skim milk pounds assigned to Class I by the skim milk price;

(3) Multiply the pounds of nonfat milk solids associated with the skim milk pounds assigned to Class II and III by the nonfat milk solids price;

(4) Multiply the combined skim milk and butterfat pounds assigned to Class I by the difference between the Class I price, adjusted for location, and the Class III price;

(5) Multiply the combined skim milk and butterfat pounds assigned to Class II by the difference between the Class II price and the Class III price; and

(6) Subtract the Class III value of the milk at the previous month's nonfat milk solids and butterfat prices;

(h) Multiply the difference between the Class I price, adjusted for the location of the pool plant, and the Class III price by the combined pounds of skim milk and butterfat assigned to Class I pursuant to § 1124.43(f) and subtracted from Class I pursuant to § 1124.44(a)(8)(i) through (iv), (vii), and § 1124.44(b), excluding:

(1) Receipts of bulk fluid cream products from an other order plant;

(2) Receipts of bulk concentrated fluid milk products from pool plants, other order plants, and unregulated supply plants; and

(3) Receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another order under § 1124.75(b)(4) or (c);

(i) Multiply the combined pounds of skim milk and butterfat subtracted from Class I pursuant to § 1124.44(a)(8)(v) and (vi) and § 1124.44(b) by the difference between the Class I price at the transferor plant and the Class III price;

(j) Multiply the difference between the Class I and Class III prices, applicable at the location of the nearest nonpool plant(s) from which an equivalent volume was received, with respect to skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1124.43(f) and § 1124.44(a)(8)(v) and the combined pounds of skim milk and butterfat in receipts from an unregulated supply plant assigned pursuant to § 1124.44(a)(12) and (b), excluding such skim milk or butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent quantity disposed of to such plant by handlers fully regulated by any Federal order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(k) Subtract, for reconstituted milk made from receipts of nonfluid milk products, an amount computed by multiplying $1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class III price) by the combined pounds of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I use pursuant to § 1124.43(f);

(l) Add or subtract, as appropriate, the amount necessary to correct errors disclosed by the verification of the handler's receipts and utilization of skim milk and butterfat as reported for previous months; and

(m) For pool plants that transfer bulk concentrated fluid milk products to other pool plants and other order plants, add or subtract the amount per hundredweight of any class price change from the previous month that results from any inventory reclassification of bulk concentrated fluid milk products that occurs at the transferee plant. Any applicable class price change shall be applied to the plant that used the concentrated milk in the event that the concentrated fluid milk products were made from bulk unconcentrated fluid milk products received at the plant during the prior month.

17. Section 1124.61 is revised to read as follows:

§ 1124.61 Computation of weighted average differential price.

A *weighted average differential price* for each month shall be computed by the market administrator as follows:

(a) Combine into one total the value computed pursuant to § 1124.60(a) through (c) and (f) through (m) for all handlers who filed the reports prescribed by § 1124.30 for the month and who made the payments pursuant to § 1124.71 for the preceding month;

(b) Add an amount equal to the total value of the location adjustments computed pursuant to § 1124.74;

(c) Add an amount equal to not less than one-half of the unobligated balance in the producer settlement fund;

(d) Divide the resulting amount by the sum, for all handlers, of the total hundredweight of producer milk and the total hundredweight for which a value is computed pursuant to § 1124.60(j); and

(e) Subtract not less than 4 cents per hundredweight nor more than 5 cents per hundredweight. The result shall be the weighted average differential price.

18. Section 1124.62 is redesignated as § 1124.63 and revised to read as follows:

§ 1124.63 Announcement of the weighted average differential price, the producer nonfat milk solids price, and an estimated uniform price.

The market administrator shall announce on or before the 14th day after the end of each month, the following prices for such month:

(a) The weighted average differential price;

(b) The producer nonfat milk solids price; and

(c) An *estimated uniform price* per hundredweight of milk which is computed by adding the weighted average differential price to the basic formula price.

19. A new § 1124.62 is added as follows:

§ 1124.62 Computation of producer nonfat milk solids price.

The *producer nonfat milk solids price* shall be computed by the market administrator each month as follows:

(1) Combine into one total the values computed pursuant to § 1124.60(d) and (e) for all handlers who filed reports pursuant to § 1124.30 and who made payments pursuant to § 1124.71 for the preceding month;

(2) Divide the resulting amount by the total pounds of nonfat milk solids in producer milk; and

(3) Round to the nearest whole cent.

20. Section 1124.70 is revised to read as follows:

§ 1124.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement" fund into which shall be deposited all payments made by handlers pursuant to §§ 1124.71 and 1124.75 and out of which shall be made all payments to handlers pursuant to § 1124.72. Payments due a handler from the fund shall be offset against payments due from such handler.

21. Section 1124.71 is revised to read as follows:

§ 1124.71 Payments to the producer-settlement fund.

On or before the 16th day after the end of the month, each handler shall pay to the market administrator the amount, if any, which results from subtracting the sum computed pursuant to paragraph (a) of this section from the sum computed pursuant to paragraph (b):

(a) The sum of:

(1) The total obligation of the handler for such month as determined pursuant to § 1124.60; and

(2) For a cooperative association handler, the amount due from other handlers pursuant to § 1124.73(d).

(b) The sum of:

(1) The value of milk received by the handler from producers at the applicable prices pursuant to § 1124.73(a)(2)(i), (ii), and (iii);

(2) The amount to be paid by the handler to cooperative associations pursuant to § 1124.73(d); and

(3) The value at the weighted average differential price adjusted for the location of the plant(s) at which received (not to be less than zero) with respect to the total hundredweight of skim milk and butterfat in other source milk for which a value was computed for such handler pursuant to § 1124.60(j); and

22. Section 1124.72 is revised to read as follows:

§ 1124.72 Payments from the producer-settlement fund.

On or before the 18th day after the end of the month, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1124.71(b) exceeds the amount computed pursuant to § 1124.71(a), less any unpaid obligations of such handler to the market administrator pursuant to §§ 1124.71, 1124.75, 1124.85, and 1124.86. However, if the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds are available.

23. Section 1124.73 is revised to read as follows:

§ 1124.73 Payments to producers and to cooperative associations.

(a) Each handler shall make payment pursuant to this paragraph or paragraph (b) of this section to each producer from whom milk is received during the month:

(1) On or before the last day of the month, to each producer who did not discontinue shipping milk to such handler before the 18th day of the month at not less than the Class III price for the preceding month per hundredweight of milk received from the producer during the first 15 days of the month, subject to adjustment for proper deductions authorized in writing by the producer; and

(2) On or before the 19th day after the end of each month, an amount computed as follows:

(i) Multiply the butterfat price for the month by the total pounds of butterfat in milk received from the producer;

(ii) Add the amount that results from multiplying the producer nonfat milk solids price for the month by the total pounds of nonfat milk solids in the milk received from the producer;

(iii) Add the amount that results from multiplying the total hundredweight of milk received from the producer by the weighted average differential price for the month as adjusted pursuant to § 1124.74(a);

(iv) Subtract payments made to the producer pursuant to paragraph (a)(1) of this section;

(v) Subtract proper deductions authorized in writing by the producer; and

(vi) Subtract any deduction required pursuant to statute.

(3) If by the 19th day after the end of the month, a handler has not received full payment from the market administrator pursuant to § 1124.72, the payments to producers required pursuant to paragraph (a)(2) may be reduced uniformly as a percentage of the amount due each producer by a total sum not in excess of the remainder due from the market administrator. The handler shall pay the balance due producers on or before the date for making payments pursuant to such paragraph next following receipt of the full payment from the market administrator.

(b) The payments required in paragraph (a) of this section shall, upon the request of a cooperative association qualified under § 1124.18, be made to the association or its duly authorized agent for milk received from each producer who has given such association authorization by contract or other written instrument to collect the proceeds from the sale of the producer's milk. All payments required pursuant to this paragraph shall be made on or before the second day prior to the dates specified for such payment in paragraph (a)(2) of this section.

(c) Each handler shall pay to each cooperative association which operates a pool plant, or the cooperative's duly authorized agent, for butterfat and nonfat milk solids received from such plant in the form of fluid milk products as follows:

(1) On or before the second day prior to the date specified in paragraph (a)(1) of this section, for butterfat and nonfat milk solids received during the first 15 days of the month at not less than the butterfat and nonfat milk solids prices, respectively, for the preceding month; and

(2) On or before the 15th day after the end of the month, an amount of money determined in accordance with computations made on the same basis as those specified in paragraph (a)(2)(i) through (iii) of this section, minus any payment made pursuant to paragraph (c)(1) of this section.

(d) Each handler pursuant to § 1124.9(a) that received milk from a cooperative association that was a handler pursuant to § 1124.9(c) shall pay the cooperative association for such milk as follows:

(1) On or before the second day prior to the date specified in paragraph (a)(1) of this section, for milk received during the first 15 days of the month at not less than the Class III price for the preceding month; and

(2) On or before the 17th day after the end of each month, for milk received during the month an amount of money determined in accordance with the computations specified in

§ 1124.73(a)(2)(i) through (iii), minus any payment made pursuant to paragraph (d)(1) of this section.

(e) None of the provisions of this section shall be construed to restrict any cooperative association qualified under § 8c(5)(F) of the Act from making payment for milk to its producers in accordance with such provision of the Act.

(f) In making payments to producers pursuant to this section, each handler shall provide each producer, on or before the 19th day of each month, with a supporting statement for milk received from the producer during the previous month in such form that it may be retained by the producer, which shall show:

(1) The identity of the handler and the producer;

(2) The total pounds of milk delivered by the producer, the pounds of butterfat and nonfat milk solids contained therein, and, unless previously provided, the pounds of milk in each delivery;

(3) The minimum rates at which payment to the producer is required under the provisions of this section;

(4) The rate and amount of any premiums or of payments made in excess of the minimums required under this order;

(5) The amount or rate of each deduction claimed by the handler, together with an explanation of each such deduction; and

(6) The net amount of payment to the producer.

(g) In making payments to a cooperative association in aggregate pursuant to this section, each handler shall, upon request, provide the cooperative association, with respect to each producer for whom such payment is made, any or all of the information specified in paragraph (f) of this section.

§ 1124.74 [Removed]

24. Section 1124.74 is removed.

§ 1124.75 [Redesignated as § 1124.74 and Amended]

25. Section 1124.75 is redesignated as § 1124.74, and paragraph (c) is revised to read as follows:

§ 1124.74 Plant location adjustments for producers and on nonpool milk.

* * * * *

(c) For purposes of the computations pursuant to §§ 1124.71(a) and 1124.72, the weighted average differential price for all milk shall be adjusted at the rates set forth in § 1124.52 for Class I milk applicable at the location of the nonpool plant from which the milk or filled milk was received, except that the adjusted weighted average differential price shall not be less than zero.

§ 1124.76 [Redesignated as § 1124.75 and Amended]

26. Section 1124.76 is redesignated as § 1124.75. In the redesignated § 1124.75(a)(1)(i), the words "or estimated uniform price" are inserted after the words "uniform price"; the reference to "§ 1124.60(f)" is changed to read "§ 1124.60(j)"; and the reference to "§ 1124.71(a)(2)(iii)" is changed to read "§ 1124.71(b)(3)". In § 1124.75(a)(2)(i), the reference to "§ 1124.74" is changed to read "§ 1124.19(e)". In § 1124.75(b)(4), the word "estimated" is inserted before the words "uniform price".

§ 1124.77 [Redesignated as § 1124.76]

27. Section 1124.77 is redesignated as § 1124.76.

§ 1124.78 [Redesignated as § 1124.77 and Amended]

28. Section 1124.78 is redesignated as § 1124.77, and the reference in paragraph (a) to "§ 1124.77" is changed to read "§ 1124.75".

§ 1124.85 [Amended]

29. In § 1124.85(b), the reference to "§ 1124.60(f)" is changed to read "§ 1124.60(h) and (j)" and in § 1124.85(c)(2), the reference to "§ 1124.76(b)(2)(ii)" is changed to read "§ 1124.75(b)(2)(ii)".

PART 1135—MILK IN THE SOUTHWESTERN IDAHO-EASTERN OREGON MARKETING AREA

§ 1135.9 [Amended]

1. In § 1135.9(c), the words "and protein tests" are added following the word "butterfat".

2. Section 1135.19 is revised to read as follows:

§ 1135.19 Product prices and butterfat differential.

The prices specified in this section, which are computed by the Director of the Dairy Division, Agricultural Marketing Service, shall be used, where specified, in calculating the basic formula prices pursuant to § 1135.51. The term "workday" as used in this section shall mean each Monday through Friday that is not a national holiday.

(a) *Butter price* means the simple average, for the first 15 days of the month, of the daily prices per pound of Grade A (92-score) butter on the Chicago Mercantile Exchange, using the price reported each week as the price for the day of the report, and for each following workday until the next price is reported.

(b) *Cheddar cheese price* means the simple average, for the first 15 days of the month, of the daily prices per pound of cheddar cheese in 40-pound blocks. The prices used shall be those of the *National Cheese Exchange* (Green Bay, WI), using the price reported each week as the price for the day of the report and for each following workday until the next price is reported.

(c) *Nonfat dry milk price* means the simple average of the prices per pound of nonfat dry milk for the first 15 days of the month computed as follows:

(1) The prices used shall be the prices (using the midpoint of any price range as one price) of high heat, low heat, and Grade A nonfat dry milk, respectively, for the Central States production area;

(2) For each week, determine the simple average of the prices reported for the three types of nonfat dry milk. Such average shall be the daily price for the day that such prices are reported and for each preceding workday until the day such prices were previously reported; and

(3) Add the prices determined in paragraph (c)(2) of this section for the first 15 days of the month and divide by the number of days for which there is a daily price.

(d) *Edible whey price* means the simple average, for the first 15 days of the month, of the daily prices per pound of edible whey powder (nonhygroscopic). The prices used shall be the prices (using the midpoint of any price range as one price) of edible whey powder for the Central States production area. The average shall be computed using the price reported each week as the daily price for that day and for each preceding workday until the day such price was previously reported.

(e) The *butterfat differential* is the number that results from subtracting the computation in paragraph (e)(2) of this section from the computation in paragraph (e)(1) of this section and rounding to the nearest one-tenth cent:

(1) Multiply 0.138 times the monthly average Chicago Mercantile Exchange Grade A (92-score) butter price, as reported and published by the Dairy Division;

(2) Multiply 0.0028 times the average price per hundredweight, at test, for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month.

3. In § 1135.30, paragraphs (b) and (d) are redesignated as paragraphs (d) and (e), respectively, and the introductory text and paragraphs (a) and (c) are revised and a new paragraph (b) is added to read as follows:

§ 1135.30 Reports of receipts and utilization.

On or before the 9th day after the end of the month, each handler shall report to the market administrator, in the detail and on forms prescribed by the market administrator, the following information for such month:

(a) Each handler qualified pursuant to § 1135.9(a) shall report for each pool plant operated by the handler the quantities of skim milk and butterfat contained in or represented by:

(1) Producer milk received at such plants or diverted by the handler to other plants, and the protein content of such milk;

(2) Producer milk received at such plants from handlers qualified pursuant to § 1135.9(c) and (d), and the protein content of such milk; and

(3) Fluid milk products and bulk fluid cream products from other pool plants and other source milk received at such plants.

(b) Each handler qualified pursuant to § 1135.9(b), (c), or (d) shall report the quantities of producer milk received and the butterfat and protein contained therein.

(c) Each handler submitting reports pursuant to paragraphs (a) and (b) of this section shall report the utilization or disposition of all milk, filled milk, and milk products required to be reported, and inventories on hand at the beginning and end of each month in the form of fluid milk products and products specified in § 1135.40(b)(1).

* * * * *

4. In § 1135.31(a), the word "20th" is changed to "22nd" and paragraph (a)(4) is revised to read as follows:

§ 1135.31 Payroll reports.

(a) * * *

(4) The average butterfat and protein content of his/her milk;

* * * * *

5. In § 1135.41, the colon at the end of paragraph (b)(3) is changed to a semicolon and paragraph (c) is revised to read as follows:

§ 1135.41 Shrinkage.

* * * * *

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1135.9 (b) or (c) or a proprietary bulk tank handler is the handler pursuant to § 1135.9(d), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and protein and butterfat tests determined from farm bulk tank samples, the applicable percentage for the cooperative association or the proprietary bulk tank handler shall be zero.

6. The center heading preceding § 1135.50 is revised to read "CLASS AND COMPONENT PRICES".

7. In § 1135.50(b), the reference to "§ 1135.51a" is revised to read "§ 1135.51(b)"; in § 1135.50(b)(1), the reference to "§ 1135.51" is changed to read "§ 1135.51(a)"; in § 1135.50(b)(2), the reference to "§ 1135.51a" is changed to read "§ 1135.51(b)"; paragraph (a) is revised as follows; and new paragraphs (e), (f), and (g) are added as follows:

§ 1135.50 Class and component prices.

* * * * *

(a) The *Class I price* shall be the basic formula price pursuant to § 1135.51(a) for the second preceding month plus $1.50.

* * * * *

(e) The *skim milk price* per hundredweight shall be the basic formula price for the month pursuant to § 1135.51(a) less an amount computed by multiplying the butterfat differential computed pursuant to § 1135.19(e) by 35.

(f) The *butterfat price* per pound shall be the total of:

(1) the skim price computed in paragraph (e) of this section divided by 100; and

(2) the butterfat differential computed pursuant to § 1135.19(e) multiplied by 10.

(g) The *milk protein price* per pound shall be computed by subtracting the butterfat price, multiplied by 3.5, from the basic formula price and dividing the result by the percentage of protein in the milk on which the basic formula price is based, as announced by the Dairy Division. The resulting price shall be rounded to the nearest whole cent.

8. Section 1135.51 is revised to read as follows:

§ 1135.51 Basic formula prices.

(a) The *basic formula price* shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent using the butterfat differential computed pursuant to § 1135.19(e).

(b) The *basic Class II formula price* for the month shall be the basic formula price determined pursuant to § 1135.51(a) for the second preceding month plus or minus the amount computed pursuant to paragraphs (b)(1) through (4) of this section:

(1) The gross values per hundredweight of milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using price data determined pursuant to § 1135.19 and yield factors in effect under the Dairy Price Support Program authorized by the Agricultural Act of 1949, as amended, for the first 15 days of the preceding month and, separately, for the first 15 days of the second preceding month as follows:

(i) The gross value of milk used to manufacture cheddar cheese shall be the sum of the following computations:

(A) Multiply the cheddar cheese price by the yield factor used under the Price Support Program for cheddar cheese;

(B) Multiply the butter price by the yield factor used under the Price Support Program for determining the butterfat component of the whey value in the cheese price computation; and

(C) Subtract from the edible whey price the processing cost used under the Price Support Program for edible whey and multiply any positive difference by the yield factor used under the Price Support Program for edible whey.

(ii) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(A) Multiply the butter price by the yield factor used under the Price Support Program for butter; and

(B) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(2) Determine the amounts by which the gross value per hundredweight of milk used to manufacture cheddar cheese and the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk for the first 15 days of the preceding month exceed or are less than the respective gross values for the first 15 days of the second preceding month.

(3) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (b)(2) of this section by determining the relative proportion that the data included in each of the following paragraphs is of the total of the data represented in paragraphs (b)(3)(i) and (ii) of this section:

(i) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Statistical Reporting Service of the Department for the most recent preceding period, and divide by the yield factor used under the Price Support Program for cheddar cheese to determine the quantity of milk used in

the production of American cheddar cheese; and

(ii) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Statistical Reporting Service of the Department for the most recent preceding period, and divide by the yield factor used under the Price Support Program for nonfat dry milk to determine the quantity of milk used in the production of butter-nonfat dry milk.

(4) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (b)(2) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (b)(3) of this section.

§ 1135.51a [Removed]

9. Section 1135.51a is removed.

10. Section 1135.53 is revised to read as follows:

§ 1135.53 Announcement of class and component prices.

The market administrator shall announce publicly:

(a) On or before the 5th day of each month, the Class I price for the following month and the Class III and Class III–A prices for the preceding month;

(b) On or before the 15th day of each month, the Class II price for the following month; and

(c) On or before the 5th day after the end of each month, the basic formula price, the prices for skim milk and butterfat, and the milk protein price.

11. A center heading is added preceding § 1135.60 to read "DIFFERENTIAL POOL AND HANDLER OBLIGATIONS".

12. Section 1135.60 is revised to read as follows:

§ 1135.60 Computation of handlers' obligations to pool.

The market administrator shall compute each month for each handler described in § 1135.9(a) with respect to each of the handler's pool plants and for each handler qualified pursuant to § 1135.9(b), (c), or (d) an obligation to the pool by combining the amounts computed as follows:

(a) Multiply the hundredweight of producer milk assigned to Class I milk pursuant to § 1135.44(c) by the difference between the Class I price and the Class III price;

(b) Multiply the hundredweight of producer milk assigned to Class II milk pursuant to § 1135.44(c) by the difference between the Class II price and the Class III price;

(c) Add or subtract, as appropriate, the amount that results from multiplying the pounds of producer milk in Class III–A by the amount that the Class III–A price is more or less, respectively, than the Class III price;

(d) Multiply the skim milk price by the hundredweight of producer skim milk assigned to Class I milk pursuant to § 1135.44(a);

(e) Multiply the milk protein price by the pounds of protein in producer skim milk assigned to Class II and Class III pursuant to § 1135.44(a). The pounds of protein shall be computed by multiplying the hundredweight of skim milk so assigned by the average percentage of protein in all producer skim milk received by the handler during the month;

(f) With respect to skim milk and butterfat overages assigned pursuant to § 1135.44(a)(14) and (b):

(1) Multiply the total pounds of butterfat by the butterfat price;

(2) Multiply the skim milk pounds assigned to Class I by the skim milk price;

(3) Multiply the protein pounds associated with the skim milk pounds assigned to Class II and III by the milk protein price;

(4) Multiply the combined skim milk and butterfat pounds assigned to Class I by the difference between the Class I price and the Class III price; and

(5) Multiply the combined skim milk and butterfat pounds assigned to Class II by the difference between the Class II price and the Class III price;

(g) With respect to skim milk and butterfat assigned to shrinkage pursuant to § 1135.44(a)(9) and (b):

(1) Multiply the total pounds of butterfat by the butterfat price;

(2) Multiply the skim milk pounds assigned to Class I by the skim milk price;

(3) Multiply the protein pounds associated with the skim milk pounds assigned to Class II and III by the milk protein price;

(4) Multiply the combined skim milk and butterfat pounds assigned to Class I by the difference between the Class I price and the Class III price;

(5) Multiply the combined skim milk and butterfat pounds assigned to Class II by the difference between the Class II price and the Class III price; and

(6) Subtract the Class III value of the milk at the previous month's protein and butterfat prices.

(h) Multiply the difference between the Class I price and the Class III price by the combined pounds of skim milk and butterfat assigned to Class I pursuant to § 1135.43(d) and subtracted from Class I pursuant to § 1135.44(a)(7)(i) through (iv) and (b), excluding:

(1) Receipts of bulk fluid cream products from another order plant;

(2) Receipts of bulk concentrated fluid milk products from pool plants, other order plants, and unregulated supply plants; and

(3) Receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another order under § 1135.76(a)(5) or (c);

(i) Multiply the difference between the Class I price and the Class III price by the combined pounds of skim milk and butterfat subtracted from Class I pursuant to § 1135.44(a)(7)(v) and (vi) and § 1135.44(b);

(j) Multiply the difference between the Class I price and the Class III price by the combined pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1135.43(d) and § 1135.44(a)(7)(i) and by the pounds of skim and butterfat subtracted from Class I pursuant to § 1135.44(a)(11) and (b), excluding the skim milk and butterfat in receipts of bulk fluid milk products from unregulated supply plants to the extent an equivalent quantity of skim milk and butterfat disposed of to any such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(k) Subtract, for reconstituted milk made from receipts of nonfluid milk products, an amount computed by multiplying $1.00 (but not more than the difference between the Class I price and the Class III price) by the combined pounds of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I use pursuant to § 1135.43(d); and

(l) For pool plants that transfer bulk concentrated fluid milk products to other pool plants and other order plants, add or subtract the amount per hundredweight of any class price change from the previous month that results from any inventory reclassification of bulk concentrated fluid milk products that occurs at the transferee plant. Any applicable class price change shall be applied to the plant that used the concentrated milk in the event that the concentrated fluid milk products were made from bulk unconcentrated fluid milk products received at the plant during the prior month.

13. Section 1135.61 is revised to read as follows:

§ 1135.61 Computation of weighted average differential price.

A *weighted average differential price* for all milk received from producers shall be computed by the market administrator as follows:

(a) Combine into one total the values computed pursuant to § 1135.60 (a) through (c) and (f) through (l) for all handlers who filed reports pursuant to § 1135.30 for the month, and who made the payments pursuant to § 1135.71 for the preceding month;

(b) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(c) Divide the resulting amount by the sum, for all handlers, of the total hundredweight of producer milk and the total hundredweight for which values were computed pursuant to § 1135.60(j); and

(d) Subtract not less than 4 cents nor more than 5 cents per hundredweight of milk included under paragraph (c) of this section. The result shall be the weighted average differential price.

§ 1135.62 [Redesignated as § 1135.63]

14. Section 1135.62 is redesignated as § 1135.63 and revised to read as follows:

§ 1135.63 Announcement of the weighted average differential price, the producer protein price, and an estimated uniform price.

The market administrator shall announce on or before the 14th day after the end of each month the following prices for such month:

(a) The weighted average differential price;

(b) The producer protein price; and

(c) An *estimated uniform price* per hundredweight of milk computed by adding the weighted average differential price to the basic formula price.

15. A new § 1135.62 is added as follows:

§ 1135.62 Computation of producer protein price.

A *producer protein price* shall be computed by the market administrator each month as follows:

(a) Combine into one total the values computed pursuant to § 1135.60(d) and (e) for all handlers who filed reports pursuant to § 1135.30 and who made payments pursuant to § 1135.71 for the preceding month;

(b) Divide the resulting amount by the total pounds or protein contained in producer milk; and

(c) Round to the nearest whole cent. The result shall be the producer protein price.

16. Section 1135.70 is revised to read as follows:

§ 1135.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit the appropriate payments made by handlers pursuant to § § 1135.71, 1135.74, 1135.75, and 1135.76 and out of which he shall make all payments due handlers pursuant to § § 1135.72, and 1135.75.

17. Section 1135.71 is revised to read as follows:

§ 1135.71 Payments to the producer-settlement fund.

On or before the 16th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount as specified in paragraph (a) of this section exceeds the amount specified in paragraph (b) of this section:

(a) The total obligation of the handler for such month as determined pursuant to § 1135.60.

(b) The sum of:

(1) The value computed by multiplying the weighted average differential price by the hundredweight of producer milk received from handlers qualified pursuant to § 1135.9(c) and from producers during the month;

(2) The value computed for the protein contained in the producer milk included under paragraph (b)(1) of this section at the producer protein price; and

(3) The value at the weighted average differential price of the hundredweight of skim milk and butterfat for which a value is computed pursuant to § 1135.60(j).

18. Section 1135.72 is revised to read as follows:

§ 1135.72 Payments from the producer-settlement fund.

On or before the 18th day after the end of the month, the market administrator shall pay to each handler the amount, if any, by which the amount computed for such handler pursuant to § 1135.71(b) exceeds the amount computed pursuant to § 1135.71(a). If at such time the balance in the producer-settlement fund is insufficient to make all of the payments pursuant to this section, the market administrator shall reduce uniformly such payment and shall complete such payment as soon as the necessary funds become available.

19. In 1135.73, paragraphs (b), (d), and (e) (2) through (6) are revised to read as follows:

§ 1135.73 Payments to producers and to cooperative associations.

* * * * *

(b) On or before the 19th day after the end of each month, each handler shall pay to each producer from whom milk was received during the month, a sum computed as follows:

(1) Multiply the butterfat price for the month by the total pounds of butterfat in milk received from the producer;

(2) Multiply the producer protein price for the month by the total pounds of protein in such milk;

(3) Multiply the weighted average differential price for the month multiplied by the hundredweight of such milk;

(4) Subtract payments made to the producer pursuant to paragraph (a) of this section;

(5) Subtract deductions for marketing services pursuant to § 1135.86; and

(6) Subtract proper deductions authorized in writing by such producer.

* * * * *

(d) In the event a handler has not received full payment from the market administrator pursuant to § 1135.72 by the 19th day of the month, the handler may reduce pro rata the payments to producers pursuant to paragraphs (b) and (c) of this section by not more than the amount of such underpayment. Following receipt of the balance due from the market administrator, the handler shall complete payments to producers not later than the next payment date provided under this paragraph.

(e) * * *

(1) * * *

(2) The total pounds of milk received from the producer and the pounds of butterfat and protein contained therein;

(3) The minimum rates at which payment is required pursuant to this section;

(4) The rates used in making payment, if such rates are other than the required applicable minimums;

(5) The amount (or rate per hundredweight) of each deduction claimed by the handler, including any deduction claimed under § 1135.86, together with an explanation of each deduction; and

(6) The net amount of the payment to the producer.

§ 1135.74 [Removed]

20. Section 1135.74 is removed.

§ 1135.75 [Redesignated as § 1135.74 and Amended]

21. Section 1135.76 is redesignated as § 1135.74 and the following changes are made in that section:

a. In redesignated § 1135.74(a)(4), the word "estimated" is inserted before the words "uniform price";

b. In § 1135.74(b)(1)(ii), the words "or estimated uniform price" are added

following the words "uniform price" where that expression twice appears;

c. In § 1135.74 (b)(1)(iii) introductory text, the reference to "§ 1135.60(f)" is changed to read "§ 1135.60(j)"and the reference to "§ 1135.71(a)(2)(ii)" is changed to read "§ 1135.71(b)(2)".

d. In § 1135.74, paragraphs (b)(1)(iii)(*a*) through (*c*) are redesignated as (b)(1)(iii)(A) through (C); and

e. In § 1135.74(b)(2)(i) and (ii), the reference to "§ 1135.74" is changed to read "§ 1135.19(e)".

§ 1135.77 [Redesignated as § 1135.75]

22. Section 1135.77 is redesignated as § 1135.75.

§ 1135.78 [Redesignated as § 1135.76 and Amended]

23. Section 1135.78 is redesignated as § 1135.76, and the reference to sections "1135.76, 1135.77, and 1135.78" is changed to read "1135.74, 1135.75, and 1135.76," respectively.

§ 1135.85 [Amended]

24. In § 1135.85(b), the reference to "§ 1135.60(d) and (f)" is changed to read "§ 1135.60(h) and (j)"; and in § 1135.85(c), the reference to "§ 1135.76(a)(2)" is changed to read "§ 1135.74(a)(2)".

Dated: October 7, 1993.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 93–25179 Filed 10–14–93; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–122–AD]

Airworthiness Directives; Boeing Model 737–300, –400, and –500 Series Airplanes Equipped With CFM International CFM56–3 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 737–300, –400, and –500 series airplanes. This proposal would require modification, adjustments, and tests of the thrust reverser system; and repair, if necessary. This proposal is prompted by results of a safety review of the thrust reverser system on these airplanes, which revealed that the installation of additional features to further minimize the likelihood of an in-flight thrust reverser deployment is necessary. The actions specified by the proposed AD are intended to prevent deployment of a thrust reverser in flight and subsequent reduced controllability of the airplane.

DATES: Comments must be received by December 10, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–122–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Stephen Bray, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2681; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–122–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–122–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has completed a safety review of the thrust reverser system installed on Boeing Model 737 series airplanes equipped with CFM International CFM56–3 series engines. The results of that review revealed that in-flight deployment of a thrust reverser could result in a significant reduction in controllability of the airplane.

Consequently, Boeing has developed a modification for these airplanes, which, when accomplished, will further enhance the level of safety inherent in the original type design of the thrust reverser system. The FAA has determined that the installation of these additional features will further reduce the likelihood of an in-flight thrust reverser deployment.

In addition, the manufacturer reported that certain thrust reverser systems failed to deploy during five landings. These incidents occurred on airplanes on which an additional thrust reverser system locking feature (denoted as a sync-lock) had been installed prior to delivery. Subsequent investigation of those incidents revealed an electro-mechanical synchronization problem that occurred as a result of hydraulic pressure being applied to the thrust reverser actuators prior to electrical power being applied to the sync-lock solenoids, which prevented the sync-locks from unlocking and the thrust reversers from deploying.

The FAA has reviewed and approved Boeing Service Bulletin 737–78–1053, Revision 1, dated July 1, 1993, that describes procedures for installation of an additional thrust reverser system locking feature (sync-lock), which will reduce the possibility of an uncommanded in-flight deployment of the thrust reversers. The sync-lock is controlled independently of the existing electro-mechanical safety features of the thrust reverser system. This additional locking feature has been certified by the FAA and is installed on new-production Model 737 series airplanes equipped with CFM International CFM56–3 series

engines. The FAA has determined that installation of the sync-lock is necessary in order to positively address the identified unsafe condition with regard to these airplanes.

Boeing also has issued Service Bulletin 737–78–1058, dated July 1, 1993, which the FAA has reviewed and approved. The service bulletin describes procedures for modification of the sync-lock wiring for those airplanes equipped with a sync-lock that was installed in accordance with Boeing Service Bulletin 737–78–1053, dated December 17, 1992, or prior to delivery. The modification involves adding a circuit that delays power to the isolation valve and directional control valve until after power is applied to the sync-lock system; and, for certain affected airplanes, removing the manual drive units and installing the sync-lock units. Accomplishment of this modification will ensure that proper thrust reverser switch synchronization occurs when the command is given to deploy the thrust reversers.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require repetitive adjustments and tests to verify proper operation of the thrust reverser system, and repair, if necessary. These actions would be required to be accomplished in accordance with procedures described in the Boeing 737 Maintenance Manual.

For airplanes on which the sync-lock feature was not installed during production or as a modification in accordance with Boeing Service Bulletin 737–78–1053, dated December 17, 1992, the proposed AD also would require installation of an additional thrust reverser system locking feature (sync-lock). Installation of the additional locking feature terminates the requirement for repetitive adjustments and tests. The installation would be required to be accomplished in accordance with Boeing Service Bulletin 737–78–1053, Revision 1, dated July 1, 1993.

For airplanes on which the sync-lock feature was installed during production or as a modification in accordance with Boeing Service Bulletin 737–78–1053, dated December 17, 1992, this AD would require modification of the sync-lock wiring in accordance with Boeing Service Bulletin 737–78–1058, dated July 1, 1993. Modification of the sync-lock wiring terminates the requirement for repetitive adjustments and tests.

Finally, this proposed AD also would require periodic operational tests of the sync-lock installation, and repair of any discrepancies. Accomplishment of these tests is necessary to ensure that the sync-lock has not failed in the "unlocked" state. These tests would be required to be accomplished in accordance with procedures described in the Boeing 737 Maintenance Manual. The FAA may consider revising the intervals at which the operational tests would be required based on sync-lock service experience.

There are approximately 1,079 Model 737 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 531 airplanes of U.S. registry would be required to accomplish adjustments and tests of the thrust reverser system, installation of the sync-lock, and operational tests of the sync-lock installation. The FAA estimates that it would take approximately 1 work hour to accomplish the adjustments and tests, 198 work hours to accomplish the installation, and 1 work hour to accomplish the operational tests. The average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators of airplanes on which the sync-lock feature was not installed during production or as a modification is estimated to be $5,841,000, or $11,000 per airplane.

The FAA estimates that 8 airplanes of U.S. registry would be required to accomplish adjustments and tests of the thrust reverser system, modification of the sync-lock wiring, and operational tests of the sync-lock installation. The FAA estimates that it would take approximately 1 work hour to accomplish the adjustments and tests, 70 work hours to accomplish the wiring modification, and 1 work hour to accomplish the operational tests. The average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators of airplanes on which the sync-lock feature was installed during production or as a modification is estimated to be $31,680, or $3,960 per airplane.

Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $5,872,680.

The FAA recognizes the large number of work hours required to accomplish the proposed modification. The 5-year compliance time proposed in paragraphs (b) and (c) of this AD should allow the sync-lock installation and wiring modification to be accomplished coincidentally with scheduled major airplane inspection and maintenance activities, thereby minimizing the costs associated with special airplane scheduling.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 93–NM–122–AD.

Applicability: All Model 737–300, –400, and –500 series airplanes equipped with General Electric CFM56 series engines, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent deployment of a thrust reverser in flight and subsequent reduced controllability of the airplane, accomplish the following:

(a) For all airplanes: Within 30 days after the effective date of this AD, and thereafter at intervals not to exceed 3,000 hours time-

in-service until the modification required by paragraph (b) or (c) of this AD, as applicable, is accomplished, perform adjustments and tests of the thrust reverser system to verify proper operation of the thrust reverser system in accordance with Section 78–31–00, pages 501, 513, and 515 through 517, dated March 15, 1992; and pages 502 through 512, 514, and 518, dated November 15, 1992; of the Boeing 737 Maintenance Manual. Prior to further flight, repair any discrepancy found, in accordance with procedures described in the Boeing 737 Maintenance Manual.

(b) For airplanes on which the sync-lock feature was not installed during production or as a modification in accordance with Boeing Service Bulletin 737–78–1053, dated December 17, 1992: Within 5 years after the effective date of this AD, install an additional thrust reverser system locking feature (sync-lock installation) in accordance with Boeing Service Bulletin 737–78–1053, Revision 1, dated July 1, 1993. Installation of the additional locking feature constitutes terminating action for the tests required by paragraph (a) of this AD.

(c) For airplanes on which the sync-lock feature was installed during production or as a modification in accordance with Boeing Service Bulletin 737–78–1053, dated December 17, 1992: Within 5 years after the effective date of this AD, modify the sync-lock wiring in accordance with Boeing Service Bulletin 737–78–1058, dated July 1, 1993. Modification of the sync-lock wiring constitutes terminating action for the tests required by paragraph (a) of this AD.

(d) For all airplanes: Within 30 days after the effective date of this AD, or within 1,000 hours time-in-service after accomplishing the modification required by paragraph (b) or (c) of this AD (as applicable), whichever occurs later; and thereafter at intervals not to exceed 1,000 hours time-in-service; perform operational tests of the thrust reverser sync-lock installation to verify that the sync-locks are not failing in the unlocked state, in accordance with the procedures described in Section 78–31–00, pages 534–538, dated December 20, 1992; and pages 539–540, dated March 20, 1993; of the Boeing 737 Maintenance Manual. Prior to further flight, repair any discrepancy found in accordance with procedures described in the Boeing 737 Maintenance Manual.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on October 9, 1993.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–25303 Filed 10–14–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 71

[Airspace Docket No. 93–AGL–2]

Proposed Alteration of VOR Federal Airways

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would alter the width of a portion of Federal Airways V–7, V–51, V–97, and V–399, located in Indiana and Illinois. The standard width of V–7, V–51, and V–97 would be reduced to 3 miles west of the centerline. The standard width of V–399 would be reduced to 3 miles east of the centerline. Altering the airways by redefining the lateral boundaries would provide more efficient utilization of the airspace and would reduce air traffic control (ATC) workload.

DATES: Comments must be received on or before December 2, 1993.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, AGL–500, Docket No. 93–AGL–2, Federal Aviation Administration, O'Hare Lake Office Center, 2300 East Devon Avenue, Des Plaines, IL 60018.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9255.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93–AGL–2." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter V–7, V–51, V–97, and V–399, located in Indiana and Illinois. The airspace northwest of Boiler, IN, encompassing these airways is under the control of two distinct sectors in the Chicago Air Route Traffic Control Center, and the Lafayette Air Traffic Control Tower (ATCT). Under this proposal, flights heading northwest on these four airways would be handled in this airspace by the Lafayette ATCT.

The standard width of V–7, V–51, and V–97 would be reduced to 3 miles west of the centerline. The standard width of V–399 would be reduced to 3 miles east of the centerline. Altering these airways would minimize ATC communication requirements and improve the process of coordinating flight progress in the Boiler, IN, area. Domestic VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The airways listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6010(a)—Domestic VOR Federal Airways

* * * * *

V–7 [Revised]

From INT Miami, FL, 222° and Lee County, FL, 120° radials; Lee County; INT Lee County 353° and Lakeland, FL, 170° radials; Lakeland; Cross City, FL; Tallahassee, FL; Wiregrass, AL; INT Wiregrass 333° and Montgomery, AL, 129° radials; Montgomery; Vulcan, AL; Muscle Shoals, AL; Graham, TN; Central City, KY; Pocket City, IN; INT Pocket City 016° and Terre Haute, IN, 191° radials; Terre Haute; Boiler, IN; 15 miles 7 miles wide (4 miles east, and 3 miles west of centerline), 47 miles 8 miles wide; Chicago Heights, IL; INT Chicago Heights 358° and Falls, WI, 170° radials; Falls; Green Bay, WI; Menominee, MI; Marquette, MI. The airspace below 2,000 feet MSL outside the United States is excluded. The portion outside the United States has no upper limit.

* * * * *

V–51 [Revised]

From Miami, FL; INT Miami 337° and Pahokee, FL, 175° radials; Pahokee; INT Pahokee 009° and Vero Beach, FL, 193° radials; Vero Beach; INT Vero Beach 330° and Ormond Beach, FL, 183° radials; Ormond Beach; Craig, FL; Alma, GA; Dublin, GA; Athens, GA; INT Athens, GA, 340° and Harris, GA, 148° radials; Harris; Hinch Mountain, TN; Livingston, TN; Louisville, KY; Nabb, IN; Shelbyville, IN; INT Shelbyville 313° and Boiler, IN, 136° radials; Boiler; 15 miles 7 miles wide (4 miles east, and 3 miles west of centerline), 47 miles 8 miles wide; Chicago Heights, IL.

* * * * *

V–97 [Revised]

From Miami, FL, via La Belle, FL; St. Petersburg, FL; Tallahassee, FL; Pecan, GA; Atlanta, GA; INT Atlanta 001° and Volunteer, TN, 197° radials; Volunteer; London, KY; Lexington, KY; Cincinnati, OH; Shelbyville, IN, INT Shelbyville 313° and Boiler, IN, 136° radials; Boiler; 15 miles 7 miles wide (4 miles east, and 3 miles west of centerline), 47 miles 8 miles wide; Chicago Heights, IL; to INT Chicago Heights 358° and Chicago O'Hare, IL, 127° radials. From INT Northbrook, IL, 290° and Janesville, WI, 112° radials; Janesville; Lone Rock, WI; Nodine, MN; to Gopher, MN. The airspace below 2,000 feet MSL outside the United States is excluded.

* * * * *

V–399 [Revised]

From Indianapolis, IN, via INT Indianapolis 312° and Boiler, IN, 159° radials, Boiler; 15 miles 7 miles wide (3 miles east, and 4 miles west of centerline), 13 miles 8 miles wide; INT Boiler 313° and Peotone, IL, 152° radials; to Peotone.

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Issued in Washington, DC, on October 7, 1993.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 93–25367 Filed 10–14–93; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 352, 700, and 740

[Docket No. 78N–0038]

RIN 0905–AA06

Sunscreen Drug Products for Over-the-Counter Human Use; Tentative Final Monograph; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to February 7, 1994, the comment period on the notice of proposed rulemaking over-the-counter (OTC) that would establish conditions under which sunscreen drug products are generally recognized as safe and effective and not misbranded (May 12, 1993; 58 FR 28194). FDA is taking this action in response to a request to extend the comment period for an additional 180 days to allow more time to comment on this proposal. This extension of the comment period does not apply to comments on ultraviolet A (UVA) testing, protection, ingredients, and labeling. The agency wants comments on these issues to be submitted by November 8, 1993, in order to have a workshop on these subjects in the spring of 1994. This proposal is part of the ongoing review of OTC drug products conducted by the FDA.

DATES: Written comments by February 7, 1994.

ADDRESSES: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD–810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 12, 1993 (58 FR 28194), FDA issued a notice of proposed rulemaking (tentative final monograph) that establish the conditions under which OTC sunscreen drug products are generally recognized as safe and effective and not misbranded. Interested persons were given until November 8, 1993, to submit comments on the proposal.

On August 27, 1993, the Cosmetic, Toiletry, and Fragrance Association (CTFA), a trade association, requested a 180-day extension to May 12, 1994, in which to file written comments. CTFA contended that the immense breadth of the proposal and the many issues involved made it impossible to formulate a reasoned response in the 6 months provided. Although CTFA recognized that additional time (i.e., until May 12, 1994) was provided to submit new data to FDA, it contended that in numerous instances CTFA members will need to conduct additional testing simply to understand the impact of the proposals. Further, CTFA stated that its members will need to reanalyze tests conducted several years ago in order to provide meaningful comment with respect to the new proposals.

CTFA added that many of the proposals represent fundamental departures from the August 25, 1978, advance notice of proposed rulemaking (43 FR 38206), which has served as the industry's guide for the past 15 years. CTFA contended that these proposals, if promulgated, would require sweeping changes in the way virtually every "beach" and "nonbeach" sunscreen product is tested and labeled. CTFA mentioned that its members need to address the many new proposed sunscreen protection factor testing requirements, the new statistical procedure, and UVA protection. Also, CTFA added that it was necessary to evaluate the proposal in light of recent regulatory proposals for sunscreens in Europe, Australia, and Japan.

FDA has carefully considered the request and believes that some additional time for comment is in the public interest. However, in view of the 180 days already provided, the agency is granting a 90-day extension rather than the 180 additional days requested by CTFA.

As previously stated, new data may be submitted until May 12, 1994. If new data demonstrate a need to revise previously submitted comments, interested persons should inform the agency accordingly when submitting the new data. Accordingly, the comment period is extended to February 7, 1994.

This extension of the comment period does not apply to comments on UVA testing, protection, ingredients, and labeling. The agency wants comments on these issues to be submitted by November 8, 1993, in order to have a workshop on these subjects in the spring of 1994. Comments received on UVA issues will be used to formulate questions and subjects for discussion at the workshop. Prior to and following the workshop, the administrative record for the sunscreen drug products rulemaking will be reopened to allow additional submissions of comments and data on UVA issues.

Interested persons may, on or before February 7, 1994, submit to the Dockets Management Branch (address above) written comments regarding all sunscreen drug product proposals with the exception of comments pertaining to UVA testing, protection, ingredients, and labeling. Comments pertaining to UVA issues are to be submitted by November 8, 1993, in accord with the May 12, 1993, proposal. Three copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments received may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 8, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93-25319 Filed 10-14-93; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 215, 221, 236, 880, 881, 882, 883, 884, 885, 886, 889, 890, 905, and 960

[Docket No. R-93-1687; FR-3466-P-01]

RIN No. 2501-AB62

Designation of Tenant Assistant

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: In compliance with section 644 of the Housing and Community Development Act of 1992, this rule would amend the regulations for federally assisted housing programs to require that owners of federally assisted housing projects allow applicants for admission to submit with the application, the name, address, phone number, and other relevant information of a family member, friend, or social, health, advocacy, or other organization, if the applicant wishes to submit such information.

DATES: Comment due date: December 14, 1993.

FOR FURTHER INFORMATION CONTACT: For issues related to parts 215, 221, 236, 880, 881, 883, 884, and 886: James J. Tahash, Director, Planning and Procedures Division, Office of Multifamily Housing Management, room 6182, Telephone (202) 708-3944; For issues related to parts 885, 889 and 890: Margaret Milner, Acting Director, Office of Elderly and Assisted Housing, room 6130, Telephone (202) 708-4542; Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. A telecommunications device for hearing or speech-impaired individuals (TDD) is available at (202) 708-4594. (These telephone numbers are not toll-free.)

For issues related to part 905: Dominic Nessi, Director, Office of Native American Programs, room 4140, Telephone number (202) 708-1015; For parts 882 and 960: Ed Whipple, Director, Occupancy Division, Room 4206, telephone number (202) 708-0744; Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. A telecommunications device for hearing or speech-impaired individuals (TDD) is available at (202) 708-0850. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520). No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

Public reporting burden for the collection of information requirements contained in this rule is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the Preamble heading, Other Matters. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, SW., Room 10276, Washington, DC 20410-0500; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for HUD, Washington, DC 20503.

II. Background

In accordance with section 644 of the Housing and Community Development Act of 1992 (approved October 28, 1992, Pub. L. 102–550; hereafter referred to as "1992 HCD Act"), this rule would amend the regulations for federally assisted housing programs to require that owners of federally assisted housing projects permit applicants for admission to submit with the application, the name, address, phone number, and other relevant information of a family member, friend, or social, health, advocacy, or other organization (hereafter sometimes referred to as "tenant assistance information"). The purpose of maintaining such information is to assist an owner in providing services or special care for such tenants, and in resolving issues that may arise during the tenancy of such tenants.

Section 683(4) of the 1992 HUD Act defines owner of federally assisted housing to mean the entity or private person, including a cooperative or public housing agency, that has the legal right to lease or sublease dwelling units in such housing.

Section 683(4) of the 1992 HCD Act defines federally assisted housing to mean:

(1) A public housing project, as such term is defined in section 3(b) of the U.S. Housing Act of 1937 (1937 Act);

(2) Housing for which project-based assistance is provided under section 8 of the 1937 Act;

(3) Housing that is assisted under section 202 of the Housing Act of 1959, as amended by section 801 of the National Affordable Housing Act of 1990 (NAHA);

(4) Housing that is assisted under section 202 of the Housing Act of 1959, as such section existed before the enactment of NAHA;

(5) Housing financed by a loan or mortgage insured under section 221(d)(3) of the National Housing Act that bears interest at a rate determined under section 221(d)(5) of the National Housing Act;

(6) Housing insured, assisted or held by the Secretary or a State or State agency under section 236 of the National Housing Act;

(7) Housing constructed or substantially rehabilitated pursuant to assistance provided under section 8(b)(2) of the 1937 Act, as in effect before October 1, 1983, that is assisted under a contract for assistance under such section.

The programs which are included in the definition of "federally assisted housing" and are therefore affected by this regulation are as follows:

1. Public Housing Program: Section 683(2)(A)

Section 3(b)(1) of the 1937 Act, defines a public housing project to mean housing developed, acquired or assisted by a public housing agency, and the improvements of any such project. The regulations governing the admission to and occupancy of public housing are set forth at 24 CFR part 960. Because Congress did not expressly make section 644 applicable to Indian Housing Authorities (IHAs), as required under section 201(b)(2) of the 1937 Act, IHAs are not covered by the statutory definition.

2. Project Based Section 8 Assistance: Section 683(2)(B)

The Department's programs that involve project based assistance under section 8 are as follows: (a) The section 8 New Construction Program, 24 CFR part 880; (b) the Section 8 Substantial Rehabilitation Program, 24 CFR part 881; (c) the Section 8 Project Based Certificate program, 24 CFR part 882, subpart G; (d) the Section 8 Moderate Rehabilitation program, 24 CFR part 882, subparts D and E; (e) the Section 8 Moderate Rehabilitation Single Rooms Occupancy program, 24 CFR part 882, subpart H; (f) the Section 8 State Housing Agencies program, 24 CFR part 883; (g) the Section 8 New Construction Set-Aside for Section 515 Rural Rental Housing Projects Program, 24 CFR part 884; (h) the Section 202/8 Loans for Housing for the Elderly or Handicapped Program, 24 CFR part 885; (i) the Section 8 Loan Management Set Aside Program, 24 CFR part 886, subpart A; and (j) the Section 8 Property Disposition Set Aside Program, 24 CFR part 886, subpart C.

On February 24, 1993, the Department published a proposed rule for project-based assistance with funding under the Section 8 certificate program (24 CFR part 882, subpart G). Because the Department is currently revising subpart G in a separate rule making procedure, this rule would not amend 24 CFR part 882, subpart G. Rather, the Department will implement changes to 24 CFR part 882, subpart G, when it publishes the final rule implementing the February 24, 1993, proposed rule. (Unlike the section 8 housing certificate program, the section 8 housing voucher program involves only tenant based assistance. As such, it does not fall under the category of project-based Section 8 assistance, and this rule would not amend the regulations for the section 8 housing voucher program (24 CFR part 887).)

3. Section 202 Loans & Capital Advances: Section 683(2)(C)–(D)

Housing that is assisted under section 202 of the Housing Act of 1959, as amended by section 801 of NAHA, refers to the Section 202 Supportive Housing for the Elderly Program (capital advance program). Regulations governing the Section 202 capital advance program are found at 24 CFR part 889.

Housing that is assisted under section 202 of the Housing Act of 1959, as it existed before the enactment of NAHA, refers to the Section 202 loan program. The Section 202 loan program covers loans for housing for the elderly and handicapped. Regulations for the Section 202 loan program appear at 24 CFR part 885. Regulations for the management of a Section 202 handicapped housing project with section 162 assistance appear at 24 CFR part 885, subpart C.

No regulations currently exist for the management of a Section 202 loan for the elderly housing project, Section 202 capital advance project or Section 202/8 loan for the handicapped housing project. On December 9, 1987 (52 FR 46614), the Department published a proposed rule which would add subpart B, containing the management regulations for Section 202 loans for elderly and handicapped to 24 CFR part 885. Subpart B will be published as a final rule in the near future. The Department also anticipates publishing an interim rule for the management of a section 202 capital advance project in the near future. The interim rule will add subpart F to 24 CFR part 889. Because 24 CFR part 885, subpart B and 24 CFR part 889, subpart F will be implemented before this rule is published as a final regulation, this proposed rule contains the modifications which the Department will make to subparts B (24 CFR 885.610) and F (24 CFR 889.610) to comply with section 644 of the 1992 HCD Act.

4. Below Market Interest Rate Loans (BMIR: Section 683(2)(E)

Housing financed by a loan or mortgage insured under section 221(d)(3) of the National Housing Act that bears interest at a rate determined under section 221(d)(5) of the National Housing Act refers to below market interest rate (BMIR) loans. Regulations for BMIR loans appear at 24 CFR part 221.

5. Section 236 of the National Housing Act: Section 683(2)(F)

Projects which are insured or held by the Secretary under section 236 of the

National Housing Act are regulated by 24 CFR part 236, subparts A–C. (Subpart D only applies to those projects which receive rental assistance payments (commonly referred to as "deep subsidy"). Rental assistance payments are made to further assist tenants whose income is too low to permit the tenant to pay the approved Gross Rent with 30% of the tenant's Adjusted Monthly Income.)

With limited exceptions, the Department does not regulate housing which is assisted by a State or State agency under Section 236 of the National Housing Act (hereafter referred to as State financed, non-insured projects) by regulation. For most matters, the Department regulates State financed, non-insured projects contractually. (While the requirements for Subpart A do not explicitly apply to State financed, non-insured projects, the Department has applied the requirements of subpart A concerning income definition, rent calculations and admission restrictions to State financed, non-insured projects. Moreover, State financed, non-insured projects are eligible to receive rental assistance payments; and those that do, are regulated by 24 CFR part 236, subpart D.)

To make completely clear that the requirements of § 644 of the 1992 HCD Act apply to all section 236 projects, this rule would add a new subpart F, entitled "Designation of Tenant Assistant."

6. Section 8 Newly Constructed and Substantially Rehabilitated Housing: Section 683(2)(G)

The Department administers six section 8 programs that involve newly constructed or substantially rehabilitated housing. However, because all of the programs involving newly constructed and substantially rehabilitated housing are also project based section 8 assistance programs (listed in item two above), a discussion of the programs involving newly constructed or substantially rehabilitated housing is not provided in this preamble.

Other Federally Assisted Housing Programs

Although the term "federally assisted housing" as used in section 644 of the 1992 HCD Act does not encompass the Rent Supplement program (24 CFR part 215), the Indian Housing program (24 CFR part 905), and the Supportive Housing for Persons with Disabilities program (24 CFR part 890), the Department has decided to administratively include these programs in the section 644 implementing regulations. The Department believes that the enabling legislation for the Rent Supplement program, the Indian Housing program, and the Supportive Housing for Persons with Disabilities program authorize the Department to impose the requirements contained in section 644 on owners of projects in these other programs.

In enacting section 644, Congress seemed concerned with avoiding management problems encountered by PHAs and assisted housing managers. In this regard, Congress indicated that by allowing tenants to provide a contact person or organization in their applications for tenancy, project owners and managers could communicate with the tenant's contact person or organization in order to provide special care or assistance in resolving problems. See H.R. Rep. No. 102–760, 102d Cong., 2d Sess. 140.

The Department's longstanding policy is to treat tenants who are receiving similar program assistance under different programs as uniformly as possible. As with the types of housing listed in section 683(2) of the 1992 HCD Act, Rent Supplement, Indian Housing and Supportive Housing for Persons with Disabilities are programs designed to assist low-income tenants. The Department is aware of no significant basis for distinguishing these three programs from the other covered programs. In this regard, there is no logical basis for covering disabled families in projects with section 202 loans under the legislation, while excluding disabled families in projects with section 811 capital advances. Accordingly, this rule would also amend the regulations governing the Rent Supplement program, the Indian Housing program, and the Supportive Housing for Persons with Disabilities program.[1]

The statute and this rule give the applicant the choice of whether to submit the tenant assistance information with the application, and prohibits an owner from requiring the submission of such information by an applicant. However, when an applicant fills out an application, the owner must notify the applicant of his or her right to submit tenant assistance information. Future handbook guidance will provide instructions on this matter. However, this guidance will require that the tenant designate under what situations an owner may contact the tenant assistant. For example, one tenant may wish to have the tenant assistant contacted only in cases of medical emergency, while another tenant may want the tenant assistant contacted if the tenant is late on rent. As a final example, a homebuyer in the Indian Housing Mutual Help Homeownership Opportunity Program may want the tenant assistant contacted if the homebuyer is unable to perform routine maintenance on the home.

Under this rule, once an applicant submits tenant assistance information, an owner must then maintain that information with the applicant's application. Moreover, if the applicant becomes a tenant, the owner must maintain the tenant assistance information for as long as the tenant resides in the housing project. An owner is never obligated to obtain periodic updates to the tenant assistance information, and an owner may consider the tenant assistance information current, unless otherwise instructed by the tenant. However, this rule would require owners to periodically update the tenant assistance information when a tenant requests an update.

The statute and proposed regulation do not address the obligation of an owner to act upon any submitted tenant assistance information. The Department believes that owners should be allowed to exercise some judgment in determining when to use the tenant assistance information. At the same time, however, Congress obviously intended owners to use the tenant assistance information when appropriate. The Department is particularly interested in public comment on this issue, and will carefully consider any comments in deciding whether to impose by regulation an obligation on the owner to act upon tenant assistance information.

Finally, section 644 also requires that owners keep the tenant assistance information confidential. Accordingly, owners would be allowed to release the tenant assistance information only for the stated statutory and regulatory purpose: To assist an owner in providing services or special care for such tenants, and in resolving issues that may arise during the tenancy of such tenants.

[1] No regulations currently exist for the management of a section 811 capital advance project. The Department anticipates publishing an interim rule for the management of a section 811 capital advance project in the near future. The interim rule will add subpart F to 24 CFR part 890. Because 24 CFR part 890, subpart F will be implemented before this rule is published as a final regulation, this proposed rule contains the modifications which the Department will make to subpart F.

Other Matters

A. Regulatory Impact

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order 12291 on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

B. Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The finding is available for public inspection during regular business hours in the Office of General Counsel, the Rules Docket Clerk, room 10276, 451 Seventh Street, SW., Washington, DC 20410.

C. Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive order 12612, Federalism, has determined that the policies contained in this rule will not have substantial direct effects on states or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Specifically, the rule is directed to owners of multifamily housing projects, and will not impinge upon the relationship between the Federal Government and State and local governments. As a result, the rule is not subject to review under the order.

D. Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

E. Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule reflects a statutory requirement which applies to all owners of federally assisted housing, without regard to the size of entities involved.

F. Regulatory Agenda

This proposed rule was listed as sequence no. 1373 in the Department's Semiannual Agenda of Regulations published on April 26, 1993 (58 FR 24382, 24393) in accordance with Executive Order 12291 and the Regulatory Flexibility Act.

G. The Catalog of Federal Domestic Assistance

Program number(s) are 14.103, 14.134, 14.135, 14.149, 14.156, 14.157, 14.181, 14.182.

H. Collection of Information

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). The Department has determined that the following sections contain information collection requirements: §§ 215.26, 221.536b, 236.1001, 880.603, 881.603, 882.414, 883.704, 884.118, 885.610, 885.950, 886.119, 886.318, 889.610, 890.610, 905.302, and 960.212.

Estimated Annualized Costs

Government Costs

There are no costs to the government because the information collected is used solely by the organization collecting the data, i.e., the information is not reported to or analyzed by HUD.

Annualized Cost to the Respondents (Owners/Agents)

The average annual cost to the respondents (owners/managing agents) is based on 3 minutes to enter address on the application. The hourly cost is $7.00 per hour which includes overhead. The number of respondents (respondents at the time of application and recertification) is estimated to be 1% of the total number of units.

Annual No. of respondents	Cost per hour	Hours required	Total costs
54,714	$7.00	.05	$19,149

Burden estimates are based on the following number of units:

Office of Multifamily Housing and Office of Elderly and Assisted Housing

Note: under 24 CFR parts 890 and 889 units are under development, therefore, they are not reported below.

Section 8 (880, 881, 883, 884, 886A, 886C also includes 885): 1,645,777
Section 236: 360,541
RAP: 9,496
Rent Supplement: 42,278
Section 221(d)(3) BMIR: 113,164
Number of units: 2,171,256

Office of Native American Programs—24 CFR 905
Number of units: 79,085

Office of Community Planning and Development—24 CFR 882H
Number of units: 8,100

Office of Public Housing—24 CFR part 960
Public Housing: 1,728,164
Certificates/vouchers (882G and 887): 1,366,067
Moderate Rehabilitation (882D): 118,817
Number of units: 3,213,048

Total number of all units: 5,471,489

The number of respondents (respondents at the time of application and recertification) is estimated to be 1% of the total number of units.

Annual No. of respondents	Frequency of response	Hours required	Total hours
54,714	1	.05	2,735

List of Subjects

24 CFR Part 215

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 221

Low and moderate income housing, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 236

Grant programs—housing and community development, Low and moderate income housing, Mortgage insurance, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 880

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 881

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 882

Grant programs—housing and community development, Homeless, Lead poisoning, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 883

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 884

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements, Rural areas.

24 CFR Part 885

Aged, Handicapped, Loan programs—housing and community development, Low and moderate income housing, Reporting and recordkeeping requirements.

24 CFR Part 886

Grant programs—housing and community development, Lead poisoning, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 889

Aged, Grant programs—housing and community development, Loan programs—housing and community development, Low and moderate income housing, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 890

Civil rights, Grant programs—housing and community development, Handicapped, Loan programs—housing and community development, Low and moderate income housing, Mental health programs, Reporting and recordkeeping requirements.

24 CFR Part 905

Aged, Grant programs—Indians, Grant programs—housing and community development, Handicapped, Indians, Loan programs—housing and community development, Loan programs—Indians, Low and moderate income housing, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 960

Aged, Grant programs—housing and community development, Handicapped, Public housing.

Accordingly, 24 CFR parts 215, 221, 236, 880, 881, 882, 883, 884, 885, 886, 889, 890, 905, and 960 would be amended as follows:

PART 215—RENT SUPPLEMENT PAYMENTS

1. The authority citation for 24 CFR part 215 would be revised to read as follows:

Authority: 12 U.S.C. 1701s; 42 U.S.C. 3535(d).

2. Section 215.26 would be added as follows:

§ 215.26 Designation of tenant assistant.

(a) When an applicant fills out an application for housing, the owner must notify the applicant of the applicant's right to submit tenant assistance information with the application. An owner must accept as part of the application for admission tenant assistance information. However, an owner may not require that an applicant provide tenant assistance information.

(b) An owner must keep the tenant assistance information with the application. For any applicant who becomes a tenant, the owner must keep the tenant assistance information as long as the tenant resides in the housing project. An owner must update or change the tenant assistance information periodically if requested by the tenant.

(c) The purpose of collecting tenant assistance information is to assist an owner in providing services or special care for such tenants, and in resolving issues that may arise during the tenancy of such tenants. An owner must keep the tenant assistance information confidential, and may release or use tenant assistance information only for the purpose stated above.

(d) For purposes of this section, the following definitions apply.

(1) *Owner* means the entity or private person, including a cooperative or public housing agency, that has the legal right to lease or sublease dwelling units in the housing project.

(2) *Tenant assistance information* means the name, address, phone number, and other relevant information of a family member, friend, or social, health, advocacy, or other organization which an owner may use to assist in providing any services or special care for the tenant, and to assist in resolving any relevant tenancy issues that arise during the tenancy of such tenant.

PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE

3. The authority citation for 24 CFR part 221 would be revised to read as follows:

Authority: 12 U.S.C. 1707(a), 1715b, 17151; 42 U.S.C. 13604.

4. Section 221.536b would be added to subpart C as follows:

§ 221.536b Designation of tenant assistant.

(a) *Applicability.* This section only applies to a project financed with a mortgage insured under section 221(d)(3) of the National Housing Act that bears interest at a rate determined under section 221(d)(5) of such Act (BMIR loan).

(b) When an applicant fills out an application for housing, the owner must notify the applicant of the applicant's right to submit tenant assistance information with the application. An owner must accept as part of the application for admission tenant assistance information. However, an owner may not require that an applicant provide tenant assistance information.

(c) An owner must keep the tenant assistance information with the application. For any applicant who becomes a tenant, the owner must keep the tenant assistance information as long as the tenant resides in the housing project. An owner must update or change the tenant assistance information periodically if requested by the tenant.

(d) The purpose of collecting tenant assistance information is to assist an owner in providing services or special care for such tenants, and in resolving issues that may arise during the tenancy of such tenants. An owner must keep the tenant assistance information confidential, and may release or use tenant assistance information only for the purpose stated above.

(e) For purposes of this section, the following definitions apply.

(1) *Owner* means the entity or private person, including a cooperative or public housing agency, that has the legal right to lease or sublease dwelling units in the housing project.

(2) *Tenant assistance information* means the name, address, phone number, and other relevant information of a family member, friend, or social, health, advocacy, or other organization which an owner may use to assist in providing any services or special care for the tenant, and to assist in resolving any relevant tenancy issues that arise during the tenancy of such tenant.

PART 236—MORTGAGE INSURANCE AND INTEREST REDUCTION PAYMENT FOR RENTAL PROJECTS

5. The authority citation for 24 CFR part 236 would be revised to read as follows:

Authority: 12 U.S.C. 1715b and 1715–1; 42 U.S.C. 3535(d); 42 U.S.C. 13604.

6. A new subpart F would be added to part 236 to read as follows:

Subpart F—Applications for Admission

Sec.
236.1000 Applicability.
236.1001 Designation of tenant assistant.

Subpart F—Applications for Admission

§ 236.1000 Applicability.

This subpart applies to any housing project which is insured, assisted or held by the Secretary or a State or State agency under section 236 of the National Housing Act.

§ 236.1001 Designation of tenant assistant.

(a) When an applicant fills out an application for housing, the owner must notify the applicant of the applicant's right to submit tenant assistance information with the application. An owner must accept as part of the application for admission tenant assistance information. However, an owner may not require that an applicant provide tenant assistance information.

(b) An owner must keep the tenant assistance information with the application. For any applicant who becomes a tenant, the owner must keep the tenant assistance information as long as the tenant resides in the housing project. An owner must update or change the tenant assistance information periodically if requested by the tenant.

(c) The purpose of collecting tenant assistance information is to assist an owner in providing services or special care for such tenants, and in resolving issues that may arise during the tenancy of such tenants. An owner must keep the tenant assistance information confidential, and may release or use tenant assistance information only for the purpose stated above.

(d) For purposes of this section, the following definitions apply.

(1) *Owner* means the entity or private person, including a cooperative or public housing agency, that has the legal right to lease or sublease dwelling units in the housing project.

(2) *Tenant assistance information* means the name, address, phone number, and other relevant information of a family member, friend, or social, health, advocacy, or other organization which an owner may use to assist in providing any services or special care for the tenant, and to assist in resolving any relevant tenancy issues that arise during the tenancy of such tenant.

PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR NEW CONSTRUCTION

7. The authority citation for 24 CFR part 880 would be revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, and 1437f note; 42 U.S.C. 3535(d); 42 U.S.C. 13604.

8. Section 880.603 would be amended by revising paragraph (a) to read as follows:

§ 880.603 Selection and admission of assisted tenants.

(a) *Application*—(1) *Form.* The owner must accept applications for admission to the project in the form prescribed by HUD. Both the owner (or designee) and the applicant must complete and sign the application. On request, the owner must furnish copies of all applications to HUD and the PHA, if applicable.

(2) *Designation of tenant assistant.* (i) When an applicant fills out an application for housing, the owner must notify the applicant of the applicant's right to submit tenant assistance information with the application. An owner must accept as part of the application for admission tenant assistance information. However, an owner may not require that an applicant provide tenant assistance information.

(ii) An owner must keep the tenant assistance information with the application. For any applicant who becomes a tenant, the owner must keep the tenant assistance information as long as the tenant resides in the housing project. An owner must update or change the tenant assistance information periodically if requested by the tenant.

(iii) The purpose of collecting tenant assistance information is to assist an owner in providing services or special care for such tenants, and in resolving issues that may arise during the tenancy of such tenants. An owner must keep the tenant assistance information confidential, and may release or use tenant assistance information only for the purpose stated above.

(iv) For purposes of this section, tenant assistance information means the name, address, phone number, and other relevant information of a family member, friend, or social, health, advocacy, or other organization which an owner may use to assist in providing any services or special care for the tenant, and to assist in resolving any relevant tenancy issues that arise during the tenancy of such tenant.

* * * * *

PART 881—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR SUBSTANTIAL REHABILITATION

9. The authority citation for 24 CFR part 881 would be revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, and 1437f note; 42 U.S.C. 3535(d); 42 U.S.C. 13604.

10. Section 881.603 would be amended by revising paragraph (a) to read as follows:

§ 881.603 Selection and admission of assisted tenants.

(a) *Application*—(1) *Form.* The owner must accept applications for admission to the project in the form prescribed by HUD. Both the owner (or designee) and the applicant must complete and sign the application. On request, the owner must furnish copies of all applications to HUD and the PHA, if applicable.

(2) *Designation of tenant assistant.* (i) When an applicant fills out an application for housing, the owner must notify the applicant of the applicant's right to submit tenant assistance information with the application. An owner must accept as part of the application for admission tenant assistance information. However, an owner may not require that an applicant provide tenant assistance information.

(ii) An owner must keep the tenant assistance information with the application. For any applicant who becomes a tenant, the owner must keep the tenant assistance information as long as the tenant resides in the housing project. An owner must update or change the tenant assistance information periodically if requested by the tenant.

(iii) The purpose of collecting tenant assistance information is to assist an owner in providing services or special care for such tenants, and in resolving issues that may arise during the tenancy of such tenants. An owner must keep the tenant assistance information confidential, and may release or use tenant assistance information only for the purpose stated above.

(iv) For purposes of this section, tenant assistance information means the name, address, phone number, and other relevant information of a family member, friend, or social, health, advocacy, or other organization which an owner may use to assist in providing any services or special care for the tenant, and to assist in resolving any

relevant tenancy issues that arise during the tenancy of such tenant.

* * * * *

PART 882—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—EXISTING HOUSING

11. The authority citation for 24 CFR part 882 would be revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f and 1437f note; 42 U.S.C. 3535(d); 42 U.S.C. 11401; 42 U.S.C. 13604.

12. Section 882.414 would be added to subpart D to read as follows:

§ 882.414 Designation of tenant assistant.

(a) When an applicant fills out an application for housing, the owner must notify the applicant of the applicant's right to submit tenant assistance information with the application. An owner must accept as part of the application for admission tenant assistance information. However, an owner may not require that an applicant provide tenant assistance information.

(b) An owner must keep the tenant assistance information with the application. For any applicant who becomes a tenant, the owner must keep the tenant assistance information as long as the tenant resides in the housing project. An owner must update or change the tenant assistance information periodically if requested by the tenant.

(c) The purpose of collecting tenant assistance information is to assist an owner in providing services or special care for such tenants, and in resolving issues that may arise during the tenancy of such tenants. An owner must keep the tenant assistance information confidential, and may release or use tenant assistance information only for the purpose stated above.

(d) For purposes of this section, tenant assistance information means the name, address, phone number, and other relevant information of a family member, friend, or social, health, advocacy, or other organization which an owner may use to assist in providing any services or special care for the tenant, and to assist in resolving any relevant tenancy issues that arise during the tenancy of such tenant.

13. A new paragraph (b)(8) would be added to § 882.808 to read as follows:

§ 882.808 Management.

* * * * *

(b) * * *

(8) *Tenant assistance information.* Section 882.414 shall apply to this program.

* * * * *

PART 883—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—STATE HOUSING AGENCIES

14. The authority citation for 24 CFR part 883 would be revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f and 1437f note; 42 U.S.C. 3535(d); 42 U.S.C. 13604.

15. Section 883.704 would be amended by revising paragraph (a) to read as follows:

§ 883.704 Selection and admission of assisted tenants.

(a) *Application*—(1) *Form.* The owner must accept applications for admission to the project in the form prescribed by HUD. Both the owner (or designee) and the applicant must complete and sign the application. On request, the owner must furnish to the Agency or HUD copies of all applications received.

(2) *Designation of tenant assistant.* (i) When an applicant fills out an application for housing, the owner must notify the applicant of the applicant's right to submit tenant assistance information with the application. An owner must accept as part of the application for admission tenant assistance information. However, an owner may not require that an applicant provide tenant assistance information.

(ii) An owner must keep the tenant assistance information with the application. For any applicant who becomes a tenant, the owner must keep the tenant assistance information as long as the tenant resides in the housing project. An owner must update or change the tenant assistance information periodically if requested by the tenant.

(iii) The purpose of collecting tenant assistance information is to assist an owner in providing services or special care for such tenants, and in resolving issues that may arise during the tenancy of such tenants. An owner must keep the tenant assistance information confidential, and may release or use tenant assistance information only for the purpose stated above.

(iv) For purposes of this section, tenant assistance information means the name, address, phone number, and other relevant information of a family member, friend, or social, health, advocacy, or other organization which an owner may use to assist in providing any services or special care for the tenant, and to assist in resolving any relevant tenancy issues that arise during the tenancy of such tenant.

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PART 884—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—NEW CONSTRUCTION SET-ASIDE FOR SECTION 515 RURAL RENTAL HOUSING PROJECTS

16. The authority citation for 24 CFR part 884 would be revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, and 1437f note; 42 U.S.C. 3535(d); 42 U.S.C. 13604.

17. In § 884.118, paragraph (c) would be added to read as follows:

§ 884.118 Responsibilities of the owner.

* * * * *

(c) *Designation of tenant assistant.* (1) When an applicant fills out an application for housing, the owner must notify the applicant of the applicant's right to submit tenant assistance information with the application. An owner must accept as part of the application for admission tenant assistance information. However, an owner may not require that an applicant provide tenant assistance information.

(2) An owner must keep the tenant assistance information with the application. For any applicant who becomes a tenant, the owner must keep the tenant assistance information as long as the tenant resides in the housing project. An owner must update or change the tenant assistance information periodically if requested by the tenant.

(3) The purpose of collecting tenant assistance information is to assist an owner in providing services or special care for such tenants, and in resolving issues that may arise during the tenancy of such tenants. An owner must keep the tenant assistance information confidential, and may release or use tenant assistance information only for the purpose stated above.

(4) For purposes of this section, tenant assistance information means the name, address, phone number, and other relevant information of a family member, friend, or social, health, advocacy, or other organization which an owner may use to assist in providing any services or special care for the tenant, and to assist in resolving any relevant tenancy issues that arise during the tenancy of such tenant.

PART 885—LOANS FOR HOUSING FOR THE ELDERLY OR HANDICAPPED

18. The authority citation for 24 CFR part 885 would be revised to read as follows:

Authority: 12 U.S.C. 1701q; 42 U.S.C. 1437f; 42 U.S.C. 3535(d); 42 U.S.C. 13604.

19. Section 885.610 would be added to read as follows:

§ 885.610 Selection and admission of tenants.

(a) [Reserved]

(b) *Application for admission*—(1) *Form.* The Borrower must accept applications for admission to the project in the form prescribed by HUD. Applicant families applying for assisted units must complete a certification of eligibility as part of the application for admission. Applicant families must meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 750. Applicant families must sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 760. Both the Borrower and the applicant must complete and sign the application for admission. On request, the Borrower must furnish copies of all applications for admission to HUD.

(2) *Designation of tenant assistant.* (i) When an applicant fills out an application for housing, the Borrower must notify the applicant of the applicant's right to submit tenant assistance information with the application. A Borrower must accept as part of the application for admission tenant assistance information. However, a Borrower may not require that an applicant provide tenant assistance information.

(ii) A Borrower must keep the tenant assistance information with the application. For any applicant who becomes a tenant, the Borrower must keep the tenant assistance information as long as the tenant resides in the housing project. A Borrower must update or change the tenant assistance information periodically if requested by the tenant.

(iii) The purpose of collecting tenant assistance information is to assist a Borrower in providing services or special care for such tenants, and in resolving issues that may arise during the tenancy of such tenants. A Borrower must keep the tenant assistance information confidential, and may release or use tenant assistance information only for the purpose stated above.

(iv) For purposes of this section, tenant assistance information means the name, address, phone number, and other relevant information of a family member, friend, or social, health, advocacy, or other organization which a Borrower may use to assist in providing any services or special care for the tenant, and to assist in resolving any relevant tenancy issues that arise during the tenancy of such tenant.

20. Section 885.950 would be amended by revising paragraph (a) to read as follows:

§ 885.950 Selection and admission of tenants.

(a) *Application for admission.*—(1) *Form.* The Borrower must accept applications for admission to the project in the form prescribed by HUD. Applicant families applying for assisted units (or residential spaces in a group home) must complete a certification of eligibility as part of the application for admission. Applicant families must meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 750. Applicant families must sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 760. Both the Borrower and the applicant family must complete and sign the application for admission. On request, the Borrower must furnish copies of all applications for admission to HUD.

(2) *Designation of tenant assistant.* (i) When an applicant fills out an application for housing, the Borrower must notify the applicant of the applicant's right to submit tenant assistance information with the application. A Borrower must accept as part of the application for admission tenant assistance information. However, a Borrower may not require that an applicant provide tenant assistance information.

(ii) A Borrower must keep the tenant assistance information with the application. For any applicant who becomes a tenant, the Borrower must keep the tenant assistance information as long as the tenant resides in the housing project. A Borrower must update or change the tenant assistance information periodically if requested by the tenant.

(iii) The purpose of collecting tenant assistance information is to assist a Borrower in providing services or special care for such tenants, and in resolving issues that may arise during the tenancy of such tenants. A Borrower must keep the tenant assistance information confidential, and may release or use tenant assistance information only for the purpose stated above.

(iv) For purposes of this section, tenant assistance information means the name, address, phone number, and other relevant information of a family member, friend, or social, health, advocacy, or other organization which a Borrower may use to assist in providing any services or special care for the tenant, and to assist in resolving any relevant tenancy issues that arise during the tenancy of such tenant.

* * * * *

PART 886—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—SPECIAL ALLOCATIONS

21. The authority citation for 24 CFR part 886 would be revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, and 1437f note; 42 U.S.C. 3535(d); 42 U.S.C. 13604.

22. In § 886.119, paragraph (d) would be added to read as follows:

§ 886.119 Responsibilities of the owner.

* * * * *

(d) *Designation of tenant assistant.* (1) When an applicant fills out an application for housing, the owner must notify the applicant of the applicant's right to submit tenant assistance information with the application. An owner must accept as part of the application for admission tenant assistance information. However, an owner may not require that an applicant provide tenant assistance information.

(2) An owner must keep the tenant assistance information with the application. For any applicant who becomes a tenant, the owner must keep the tenant assistance information as long as the tenant resides in the housing project. An owner must update or change the tenant assistance information periodically if requested by the tenant.

(3) The purpose of collecting tenant assistance information is to assist an owner in providing services or special care for such tenants, and in resolving issues that may arise during the tenancy of such tenants. An owner must keep the tenant assistance information confidential, and may release or use tenant assistance information only for the purpose stated above.

(4) For purposes of this section, tenant assistance information means the name, address, phone number, and other relevant information of a family member, friend, or social, health, advocacy, or other organization which an owner may use to assist in providing any services or special care for the tenant, and to assist in resolving any relevant tenancy issues that arise during the tenancy of such tenant.

23. In § 886.318, paragraph (d) would be added to read as follows:

§ 886.318 Responsibilities of the owner.

* * * * *

(d) *Designation of tenant assistance.* (1) When an applicant fills out an application for housing, the owner must notify the applicant of the applicant's right to submit tenant assistance information with the application. An owner must accept as part of the application for admission tenant assistance information. However, an owner may not require that an applicant provide tenant assistance information.

(2) An owner must keep the tenant assistance information with the application. For any applicant who becomes a tenant, the owner must keep the tenant assistance information as long as the tenant resides in the housing project. An owner must update or change the tenant assistance information periodically if requested by the tenant.

(3) The purpose of collecting tenant assistance information is to assist an owner in providing services or special care for such tenants, and in resolving issues that may arise during the tenancy of such tenants. An owner must keep the tenant assistance information confidential, and may release or use tenant assistance information only for the purpose stated above.

(4) For purposes of this section, tenant assistance information means the name, address, phone number, and other relevant information of a family member, friend, or social, health, advocacy, or other organization which an owner may use to assist in providing any services or special care for the tenant, and to assist in resolving any relevant tenancy issues that arise during the tenancy of such tenant.

PART 889—SUPPORTIVE HOUSING FOR THE ELDERLY

24. The authority citation for 24 CFR part 889 would be revised to read as follows:

Authority: 12 U.S.C. 1701q, 42 U.S.C. 3535(d); 42 U.S.C. 13604.

25. Section 889.610 would be added to read as follows:

§ 889.610 Selection and admission of tenants.

(a) [Reserved]

(b) [Reserved]

(c) *Application for admission*—(1) *Form.* The Owner must accept applications for admission to the project in the form prescribed by HUD. Applicant families applying for assisted units must complete a certification of eligibility as part of the application for admission. Applicant families must meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 750. Applicant families must sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 760. Both the Owner and the applicant family must complete and sign the application for admission. On request, the Owner must furnish copies of all applications for admission to HUD.

(2) *Designation of tenant assistance.* (i) When an applicant fills out an application for housing, the owner must notify the applicant of the applicant's right to submit tenant assistance information with the application. An owner must accept as part of the application for admission tenant assistance information. However, an owner may not require that an applicant provide tenant assistance information.

(ii) An owner must keep the tenant assistance information with the application. For any applicant who becomes a tenant, the owner must keep the tenant assistance information as long as the tenant resides in the housing project. An owner must update or change the tenant assistance information periodically if requested by the tenant.

(iii) The purpose of collecting tenant assistance information is to assist an owner in providing services or special care for such tenants, and in resolving issues that may arise during the tenancy of such tenants. An owner must keep the tenant assistance information confidential, and may release or use tenant assistance information only for the purpose stated above.

(iv) For purposes of this section, tenant assistance information means the name, address, phone number, and other relevant information of a family member, friend, or social, health, advocacy, or other organization which an owner may use to assist in providing any services or special care for the tenant, and to assist in resolving any relevant tenancy issues that arise during the tenancy of such tenant.

PART 890—SUPPORTIVE HOUSING FOR PERSONS WITH DISABILITIES

26. The authority citation for 24 CFR part 890 would be revised to read as follows:

Authority: 42 U.S.C. 3535(d); 42 U.S.C. 8013.

27. Section 890.610 would be added to read as follows:

§ 890.610 Selection and admission of tenants.

(2) [Reserves]

(b) *Application for admission*—(1) *Form.* The Owner must accept applications for admission to the project in the form prescribed by HUD. Applicant households applying for assisted units (or residential spaces for a group home) must complete a certification of eligibility as part of the application for admission. Applicant households must meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 750. Applicant households must sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 760. Both the Owner and the applicant must complete and sign the application for admission. On request, the Owner must furnish copies of all applications for admission to HUD.

(2) *Designation of tenant assistant.* (i) When an applicant fills out an application for housing, the owner must notify the applicant of the applicant's right to submit tenant assistance information with the application. An owner must accept as part of the application for admission tenant assistance information. However, an owner may not require that an applicant provide tenant assistance information.

(ii) An owner must keep the tenant assistance information with the application. For any applicant who becomes a tenant, the owner must keep the tenant assistance information as long as the tenant resides in the housing project. An owner must update or change the tenant assistance information periodically if requested by the tenant.

(iii) The purpose of collecting tenant assistance information is to assist an owner in providing services or special care for such tenants, and in resolving issues that may arise during the tenancy of such tenants. An owner must keep the tenant assistance information confidential, and may release or use tenant assistance information only for the purpose stated above.

(iv) For purposes of this section, tenant assistance information means the name, address, phone number, and other relevant information of a family member, friend, or social, health, advocacy, or other organization which an owner may use to assist in providing any services or special care for the tenant, and to assist in resolving any relevant tenancy issues that arise during the tenancy of such tenant.

PART 905—INDIAN HOUSING PROGRAMS

28. The authority citation for 24 CFR part 905 would be revised to read as follows:

Authority: 42 U.S.C. 1437aa–1437ee; 25 U.S.C. 450e(b); 42 U.S.C. 3535(d).

29. Section 905.302 would be added to subpart D to read as follows:

§ 905.302 Designation of tenant assistant.

(a) When an applicant fills out an application for housing, the IHA must notify the applicant of the applicant's right to submit tenant assistance information with the application. An IHA must accept as part of the application for admission tenant assistance information. However, an IHA may not require that an applicant provide tenant assistance information.

(b) An IHA must keep the tenant assistance information with the application. For any applicant who becomes a tenant or homebuyer, the IHA must keep the tenant assistance information as long as the tenant or homebuyer resides in the housing project. An IHA must update or change the tenant assistance information periodically if requested by the tenant or homebuyer.

(c) The purpose of collecting tenant assistance information is to assist an IHA in providing services or special care for such tenants or homebuyers, and in resolving issues that may arise during the tenancy of such tenants or homebuyers. An IHA must keep the tenant assistance information confidential, and may release or use tenant assistance information only for the purpose stated above.

(d) For purposes of this section, tenant assistance information means the name, address, phone number, and other relevant information of a family member, friend, or social, health, advocacy, or other organization which an IHA may use to assist in providing any services or special care for the tenant or homebuyer, and to assist in resolving any relevant tenancy issues that arise during the tenancy of such tenant or homebuyer.

PART 960—ADMISSION TO, AND OCCUPANCY OF, PUBLIC HOUSING

30. The authority citation for 24 CFR part 960 would be revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437d, and 1437n; 42 U.S.C. 3535(d); 42 U.S.C. 13604.

31. Section 960.212 would be added to subpart A to read as follows:

§ 960.212 Designation of tenant assistant.

(a) When an applicant fills out an application for housing, the PHA must notify the applicant of the applicant's right to submit tenant assistance information with the application. A PHA must accept as part of the application for admission tenant assistance information. However, a PHA may not require that an applicant provide tenant assistance information.

(b) A PHA must keep the tenant assistance information with the application. For any applicant who becomes a tenant, the PHA must keep the tenant assistance information as long as the tenant resides in the housing project. A PHA must update or change the tenant assistance information periodically if requested by the tenant.

(c) The purpose of collecting tenant assistance information is to assist a PHA in providing services or special care for such tenants, and in resolving issues that may arise during the tenancy of such tenants. A PHA must keep the tenant assistance information confidential, and may release or use tenant assistance information only for the purpose stated above.

(d) For purposes of this section tenant assistance information means the name, address, phone number, and other relevant information of a family member, friend, or social, health, advocacy, or other organization which a PHA may use to assist in providing any services or special care for the tenant, and to assist in resolving any relevant tenancy issues that arise during the tenancy of such tenant.

Dated: September 30, 1993.

Henry G. Cisneros,

Secretary.

[FR Doc. 93–25108 Filed 10–14–93; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 230

RIN 1010–AB90

Offsets, Recoupments and Refunds of Excess Payments of Royalties, Rentals, Bonuses, or Other Amounts Under Federal Offshore Mineral Leases

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of proposed rule.

SUMMARY: The Royalty Management Program of the Minerals Management Service (MMS) is proposing to add new regulations establishing procedures for obtaining refunds and credits of excess payments made under Federal mineral leases on the Outer Continental Shelf (OCS) which are subject to section 10 of the Outer Continental Shelf Lands Act of 1953 (OCSLA). The proposed rules also describe the circumstances in which a person may recover certain payments that are not subject to section 10's requirements.

DATES: Comments must be received on or before December 14, 1993.

ADDRESSES: Written comments may be mailed to the Minerals Management Service, Royalty Management Program, Rules and Procedures Staff, Denver Federal Center, Building 85, P.O. Box 25165, Mail Stop 3901, Denver, Colorado 80225–0165. Attention: David S. Guzy.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Procedures Staff, (303) 231–3432.

SUPPLEMENTARY INFORMATION: The principal authors of this proposed rule are Paul A. Knueven, Technical Compliance Branch, Division of Verification, Royalty Management Program, MMS, Lakewood, Colorado, and Peter J. Schaumberg, Office of the Solicitor, Washington, DC.

I. Background

(a) Reasons Why Excess Payments Occur on OCS Leases

Excess payments of royalties, rentals, bonuses, or other amounts made under OCS mineral leases may result for many reasons, including changes in factual circumstances, corrections of accounting or mechanical errors, and resolution of disputes. Changes in factual circumstances account for a major percentage of the excess payments that are made and often involve actions over which the payor has little or no control. Examples of these adjustments that frequently result in a decrease in royalties due include:

- Pricing changes attributable to "market-out" by the purchaser, settlement of contract disputes, well qualifications, etc;
- Changes in ownership or ownership percentages;
- Corrections of well-level allocations by producers;
- Corrections of sales volumes or quality adjustment factors by the purchaser;
- Federal Energy Regulatory Commission (FERC) approvals and orders.

Accounting errors cause a small percentage of the excess payments that royalty payors make. Training and supervision minimize payor errors; but

considering the large volume of information that is submitted each month, some random accounting errors are unavoidable, such as:

- Multiple input of the same run ticket;
- Miscalculation of a sales price bulletin;
- Clerical errors when entering data; or
- Use of incorrect code(s).

Mechanical malfunctions cause another small percentage of excess payments. Malfunctions of meters at various points in the market stream (e.g., at the lease or at the gas plant) account for most of these errors. Also, computer problems can cause reruns which result in excess payments.

Resolution of disputes also may result in excess payments having been made. Litigation between purchasers and sellers, FERC litigation, and other disputes may be concluded in a manner such that the royalty payor initially paid royalty on a value that was too high.

(b) Section 10 of the Outer Continental Shelf Lands Act (OCSLA)

Section 10(a) of the OCSLA requires that a request for refund or credit of an excess payment made in connection with any lease issued under that Act be filed with the Secretary of the Interior (Secretary) within 2 years after the making of the payment. Section 10(b) of the Act requires that all refunds or credits which the Secretary proposes to approve be reported to Congress, and that the Secretary wait at least 30 days while Congress is in continuous session before making a refund payment or authorizing a credit. Any repayment made pursuant to the Act must be without interest.

In 1981, the Solicitor of the Department of the Interior issued a published opinion interpreting section 10, *Refunds and Credits Under the Outer Continental Shelf Lands Act M–36942)*, 88 I.D. 1091 (December 15, 1981) ("1981 M–Opinion"). This 1981 M–Opinion reviewed the OCSLA's legislative history and addressed several fundamental issues involving section 10 including application of section 10 to both requests for refunds and credits (i.e., reducing a current month's royalty payment by the amount of a previous overpayment), the distinction between offsetting and crediting, and the meaning of section 10's 2-year limit. In 1993, the Solicitor issued a second M–Opinion.

Applicability of section 10 of the Outer Continental Shelf Lands Act, _____I.D. _____(Jan. 15, 1993) ("1993 M–Opinion"). This 1993 M–Opinion addressed transactions that are not subject to section 10's requirements.

The Interior Board of Land Appeals (IBLA) and the MMS Director also have issued decisions in administrative appeals construing section 10. Many different section 10 issues have been involved in these administrative appeals.

The purpose of these proposed regulations is to codify the Department's interpretation and application of section 10, incorporating the policies and decisions from the various legal opinions, administrative decisions, and administrative practice.

II. Section-by-Section Analysis

A section-by-section analysis of the proposed rule follows. Those provisions which are self-explanatory will not be discussed in detail.

Section 230.451. Scope

This section would explain that section 10 and the provisions of these rules apply only to Federal leases on the OCS. The procedures for recovering excess payments made with respect to onshore Federal and Indian leases are prescribed in an MMS Oil and Gas Payor Handbook and an MMS AFS Payor Handbook—Solid Minerals.

This section also would explain the long-established principle that the requirements of section 10 and these rules apply both to the refund requests and to credits, discussed in more detail below. The reasons why section 10 applies to both refunds and credits are explained in detail in the 1981 M–Opinion cited earlier.

Section 230.452. Definitions

This section of the proposed rule would provide that terms used in the rule would have the same meaning as in section 3 of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. 1702, Therefore, terms such as "lease," "person" and "royalty" have the same meaning as in FOGRMA.

In addition, § 230.452 would include certain definitions expressly for purposes of these rules. Some of these terms are self-explanatory and will not be discussed further. A definition of "audit" was included in the proposed rules to clarify that there is a difference between an audit and other MMS review actions that are far more limited in scope and which do not have the same effect as an audit under other parts of this rule. The MMS currently is in the process of developing comprehensive audit regulations that will further clarify this distinction.

The term "credit" would be defined as a reduction of a current or future royalty or other payment made in connection with an OCS lease as a result of reporting a "credit adjustment," another defined term. A credit adjustment would mean any adjustment on a Report of Sales and Royalty Remittance (Form MMS–2014) or any other royalty report form which reduces any royalty or other payment reported and paid in any previous period. Thus, if a royalty payor initially reports that it owed $150 in royalties on 1000 Mcf of gas production in January 1992, and 6 months later reports an adjustment reducing that report to $125, that is a credit adjustment. If the credit adjustment further results in reducing the royalties that the payor pays in the current month by $25, then the payor will have taken a credit. As explained in more detail below, not all credit adjustments result in credits. The reasons why section 10 applies to credits and certain credit adjustments are explained in the 1981 M–Opinion.

The term "offset" would mean to net or cancel previous overpayments against previous underpayments on the same OCS lease or unit. Thus, if a royalty payor discovered in March 1992 that it overpaid royalties on an OCS lease by $500 in November 1991 and underpaid by $700 in December 1991, the payor could offset the $500 overpayment against the $700 underpayment and only pay $200 additional royalty plus interest, with no implication under section 10. Limitations on offsets, an issue involving more than OCS leases, are addressed in a separate proposed rulemaking, "Limitations on Credit Adjustments Submitted by Lessees and Other Royalty Payors Under Federal and Indian Mineral Leases," (58 FR 43588), August 17, 1993.

The term "recoup" or "recoupment" would mean to recover a previous overpayment through a credit against a current or future royalty or other payment liability. In the example described above for "credit adjustments," the payor would be recouping its $25 overpayment.

The term "refund" would mean an actual repayment by the United States Treasury, usually by check or electronic funds transfer.

Section 230.453. Request for Refund or Credit

This section would establish the procedure a person must follow to recover an excess payment made in connection with an OCS lease unless an excess payment may be used as an offset pursuant to § 230.456, discussed below, or unless the transaction is not subject

to section 10, as provided in § 230.461, also discussed below.

Unless a transaction meets one of the other express exceptions in these rules paragraph (a) of § 230.453 would provide that no person may recover an excess payment he/she made in connection with an OCS lease unless:

- That person has made a request for refund or credit in accordance with § 230.453(b);
- The MMS has transmitted a report on the request for refund or credit to the President of the Senate and the Speaker of the House of Representatives, and 30 days from such submission has expired in accordance with section 10(b), 43 U.S.C. 1339(b) (i.e., if Congress goes out of session, the payment shall not be made or the credit may not be authorized until 30 days after the opening of the next session of Congress); and
- MMS gives the person notice that the request for refund is approved or a credit is authorized.

Paragraph (b) of § 230.453 would prescribe what a request for refund or credit must include, such as:

(1) The request must be in writing. An oral request would not be acceptable.

(2) The person must provide its MMS established payor code. This would ensure that the request for refund or credit is made by the person who has a legal right to a refund or recoupment.

(3) The person must identify the leases and sales months with respect to which the excess payments occurred.

(4) The person must identify the amount of the excess payment. MMS recognizes that in some situations it is not possible to determine an exact amount, for example, if there is a pending administrative or judicial proceeding that will establish the amount. In those situations, it would be acceptable to describe the class of payments that may be excess.

(5) The person must provide the reasons why a refund or credit is due. This requirement, together with the two previous requirements are intended to stop the practice of some payors of filing a "generic" refund request with every monthly royalty payment in the event they later determine that some part of their payment is excess. Such a nonspecific request would not be acceptable as a request for refund or credit under these rules.

(6) Because a request for refund or credit results in a reduction in revenues for the Treasury, MMS wants to ensure that such requests are not filed frivolously. Therefore, the proposed rules require that the person submitting the request for refund or credit must certify that, to the best of their knowledge or belief, the information on the request is accurate and complete.

Pursuant to paragraph (c) of § 230.453, if MMS determines that the request for refund or credit is not complete, the person who submitted the request would be given notice and allowed 30 days, or such time as MMS may specify, to supplement its request.

Under paragraph (d) of § 230.453, a credit adjustment reported on a Form MMS–2014 does not constitute a request for refund or credit; nor does it constitute an incomplete request for purposes of paragraph (c) of § 230.453. Therefore, as discussed further below, the filing of a credit adjustment would not stop or toll the running of the 2-year period in section 10. Moreover, if MMS discovers an unauthorized credit and more than 2 years had then passed since the making of the excess payment, the person will be required to repay the amount recouped plus interest, and will be time-barred from filing a proper request for refund or credit. Comments on the question of whether filing of a credit adjustment should toll the running of the 2-year period are requested below.

Payors also should be aware that if a credit is unauthorized, substantial sanctions may result because of the improper recoupment of monies. As explained below, MMS is proposing to establish assessments for each unauthorized credit. Further, in appropriate circumstances, MMS may consider assessment of civil penalties pursuant to section 109 of FOGRMA, 30 U.S.C. 1719, and MMS regulations of 30 CFR part 241. Civil penalties would be especially appropriate for persons who continue to take unauthorized credits following express notice from MMS that such a practice is unlawful.

Paragraph (e) of § 230.453 would provide that a person could amend its request if two conditions are met. First, the additional amount must be for a lease and sales month already covered by the initial request. Also, the reason for the excess payment for the additional amount must be the same as for the originally requested amount. These conditions are intended to prevent a person from circumventing the requirements of section 10 and these rules by filing a request for refund or credit to stop the running of the 2-year period and then continually amending it.

Paragraph (f) of § 230.453 would reflect the well-established principle that section 10(a) requires that MMS receive the request for refund or credit within 2 years of the date MMS received the excess payment. Royalty payors and other should understand that MMS always has construed this requirement strictly. Therefore, the request for refund or credit must be received within 2 years of the date the excess payment was received, not within 2 years of when some action, such as an administrative or judicial determination, occurred which made the payment excess. See, *Chevron U.S.A., Inc.* v. *United States*, 923 F.2d 830 (Fed. Cir. 1991), cert. denied sub nom. *Pennzoil Co.* v. *United States*, 112 S.Ct. 167 (1992).

As explained further below, the 2-year period does not limit-offsetting. Also, there are certain actions which stop or toll the running of the 2-year period that are addressed in a later section of this preamble.

Paragraph (f)(1) of proposed § 230.453 provides the MMS address where the request for refund or credit must be received. If a request is sent to the wrong address MMS will not consider it "received" until it reaches the correct location. Under the proposed rules no grace period will be provided. Thus, it is the submitter's sole responsibility to ensure that the request is "received" at the proper MMS address within the prescribed time. Paragraph (f)(2) would clarify that if the last day of the 2-year period falls on a Saturday, Sunday, holiday or other non-business day (e.g., a snow day that closes the office), then the last day of the 2-year period is the next business day. Paragraph (f)(2) also would provide that requests received after 4 p.m. Mountain Time are next day receipts.

Section 230.454. Interest on Excess Payments

Section 10(a) provides that if a person makes an excess payment, "such excess shall be repaid without interest * * *" Section 230.454 would incorporate the statutory bar on interest payments in the regulations.

Section 230.455. Authorization of Refund or Credit and Subsequent Audit.

When a person requests a refund or credit, it is not possible or practicable for MMS immediately to conduct an audit to determine if the request is justified. MMS will verify that the amount sought to be recovered actually was paid before approving a request. MMS will review the propriety of requests for refund or credit when MMS reviews those transactions in the course of a regular audit cycle. If a later audit or other review results in a conclusion that a request for refund or credit was improper and should not have been approved, the person will be required to repay the previously recovered amount plus interest at the FOGRMA rate

pursuant to 30 CFR 218.150 from the date of the improper recoupment until the date of repayment.

Section 230.456. Offsets of Overpayments and Underpayments on the Same Lease (or Unit) by the Same Person

Section 230.452 defines "offset" as the netting or canceling of previous overpayments against previous underpayments. An offset is distinguished from a credit in that a credit reduces a current or future month's royalties due. In the 1981 M-Opinion, at p. 1103, the Solicitor recognized that offsetting overpayments against underpayments discovered during an audit to determine a net overpayment or underpayment, even where the overpayments were more than 2 years old, is not prohibited under section 10. See also, *Shell Oil Co.*, 52 IBLA 74 (1981). In the 1993 M-Opinion, the Solicitor again recognized that offsetting by a single person between past sales months on the same lease is not subject to section 10 to the extent the person is not recouping a net overpayment against current month's royalties due. See 1993 M-Opinion at section II.B and II.E. Consistent with these previous interpretations, the proposed rules provide that if a person makes an overpayment on an OCS lease (or unit) in a prior month, it may offset that overpayment against an underpayment that same person made in any prior month on that same lease (or unit) for the same or a different product without submitting a request for refund or credit, subject to certain limitations and conditions.

The overpayment may not be offset against an underpayment created as a result of a credit adjustment that was reported to recoup the amount of the overpayment, or against any other intentionally created underpayment. For example, assume a payor overpays on Lease A by $5,000 in January 1992 and then reports a credit adjustment (without MMS approval) for $5,000 in April 1992 to recoup the overpayment. When MMS discovers that credit adjustment and requires that it be repaid, the payor would not be permitted to assert the overpayment as an offset. Otherwise, section 10 would be rendered totally meaningless because every underpayment created by an unauthorized credit adjustment would be offset 100 percent by the previous overpayment sought to be recouped. Disallowing offsets of overpayments against underpayments created by unauthorized credit adjustments was recognized and adopted by the Secretary and the Office of Hearings and Appeals. (See, *Forest Oil Corp.*, 9 OHA 68 (1991); *Mesa Operating Limited Partnership*, MMS–88–0182–OCS, 98 I.D. 193 (1990).

Time and other limitations on offsets are addressed in a separate proposed rulemaking recently issued, titled "Limitations on Credit Adjustments Submitted by Lessees and Other Royalty Payors Under Federal and Indian Mineral Leases," (58 FR 43588), August 17, 1993.

Section 230.457. Offsets Among Different Persons Who Reported and Paid Royalties on a Lease for the Same Prior Sales Month

Proposed § 230.457 applies to situations where an operator's amended production report, or other circumstance, results in a reallocation of production for a prior sales month among the different persons who reported and paid royalty for that month on a lease or unit. However, this section would not apply to reallocations of production that result from the approval or amendment of a unit agreement subject to § 230.461(b), discussed below.

Paragraph (b) of § 230.457 would provide that, in the event of a reallocation, the respective affected payors generally could reconcile any royalty consequences among themselves without filing any reports or requests for refund or credit with MMS. However, any person who remained net overpaid after the reconciliation would be required to file a request for refund or credit with MMS to recover the overpayment. Similarly, if any person remained net underpaid after the reconciliation, that person would owe the deficiency plus interest.

By way of illustration, assume that for June 1992 an operator originally allocates 20 Mcf of gas to Payor A and 80 Mcf of gas to Payor B and royalty is paid on that basis. Six months later, the operator changes the allocation so that Payor A was entitled to 30 Mcf of gas and Payor B was entitled to 70 Mcf. It would not be necessary for Payor A to amend its royalty reports and pay royalty on the additional 10 Mcf plus interest and for Payor B to submit a request for refund or credit. Instead, Payor A could reimburse Payor B directly for the royalties already paid. No revised royalty report (MMS–2014) to MMS is required; however, the payors should document the transaction for the MMS auditors to verify later. Changes to production volumes must be reported in accordance with the regulations at 30 CFR part 216—Production Accounting.

If, in the above example, Payor B had a higher priced gas sales contract than payor A, then Payor B would have to submit a request for refund or credit within 2 years of making the original payment in order to recover the net overpayment. If Payor B's gas sales price was lower than Payor A's, then the additional royalties plus interest must be reported and paid to MMS.

Section 230.458. Unauthorized Credit Adjustments

This section would clarify for royalty payors and other persons the consequences of reporting a credit adjustment on a Form MMS–2014 to recoup an overpayment prior to MSS approval, unless the transaction is not subject to section 10, as explained below in the discussion of the proposed § 230.461.

If the unauthorized credit adjustment recouped an excess payment made more than 2 years before the date MMS receives the Form MMS–2014, which includes the unauthorized credit adjustment, then the person will be required to repay the amount recouped plus interest from the date of the recoupment to the date it is repaid. Since more than 2 years has passed since the making of the excess payment, the person will be barred from recovering the overpayment, unless that person had previously filed a separate request for refund or credit.

If the unauthorized credit adjustment was reported to MMS within 2 years of the date the excess payment was made, the amount recouped also must be repaid with interest. As explained further below, the report of the unauthorized credit adjustment would not be acceptable under these regulations as a request for refund or credit and would not stop the running of the 2-year period in section 10(a). Thus, the person would be required to file a request for refund or credit for the original excess payment which would only be subject to MMS review and approval if it is received within the 2-year period following the making of the excess payment.

Proposed § 230.458(b) imposes an assessment of $500 for each unauthorized credit adjustment reported to MMS on a Form MMS–2014. When a person takes an unauthorized credit adjustment, the MMS Royalty Management Program incurs costs to detect the credit adjustment and process the corrective actions. Those costs are not readily quantifiable. Thus, MMS is proposing the $500 assessment in the nature of a liquidated damage.

Section 230.459. Stopping or Tolling of the Section 10(a) 2-year Period

Section 10(a) requires that a request for refund or credit must be filed within

2 years of the making of the excess payment. This section describes the actions that will stop or toll the running of the 2-year period.

Obviously, a complete request for refund or credit will stop the running of the 2-year period. The rule also would provide that a "substantially complete" request, i.e., one for which the MMS would allow supplementation, as discussed above, is sufficient to toll the running of the 2-year period.

There are some circumstances where MMS will recognize that a pending administrative or judicial action could result in a large number of requests for refund or credit. In these situations, MMS could issue a notice, published in the **Federal Register** tolling the running of the 2-year period for the time specified in the notice. This action would eliminate the need for every payor to file a request for refund or credit or a tolling notice, described below, until the administrative or judicial action, or other action, is complete and the amounts of any excess payments can be determined.

A lessee or group of lessees may request MMS approval to form a unit or to modify a unit. The consequence of MMS approval, which is effective as of the application date, often is reallocation of production among the leases. So that the lessees will not be prejudiced in the event MMS takes more than 2 years to review and approve the lessees' request, MMS would treat the application as stopping the running of the 2-year period.

In some circumstances a person may become aware of a pending administrative or judicial action, or other action, that may affect its royalty obligation. However, the person cannot determine yet exactly what the impact will be. Paragraph (a)(4) of § 230.459 would allow that person to file a tolling notice with MMS setting forth sufficient detail regarding the affected leases, the estimated dollar impact, and the nature of the pending action.

Paragraph (b) of § 230.459 would provide that a request for refund or credit filed by one person who made an excess payment on a lease does not stop or toll the running of the 2-year period with respect to any excess payment made by any other person on the lease. Thus, if an operator discovered a metering error that caused it to overstate volumes produced on a lease, and if the several working interest owners on the lease each reported and paid royalties separately, then a request for refund or credit by one of these payors would not stop or toll the running of the 2-year period for the other payors on the lease.

As explained above, it is MMS's principal proposal that the filing of a credit adjustment on a Form MMS–2014 does not constitute a request for refund or credit or even an incomplete request for refund or credit. Consequently, the report would not, under the rule as proposed, stop or toll the running of the 2-year period. Thus, if more than 2 years passes between the time the payor made the excess payment and when MMS gives notice that the credit adjustment is unauthorized, the person would be required to repay the recouped amount plus interest and would be barred from recovering its excess payment because of section 10(a)'s 2-year limit. The MMS recognizes, that in some circumstances, this could result in large sums of excess payments never being recoverable. This result would occur even if the initial credit adjustment was filed within 2 years. The MMS therefore would like comment on whether the filing of a credit adjustment should be considered sufficient notice so as to at least toll the running of the 2-year period in section 10(a). The payor still would be required to repay the improperly recouped amount plus interest, but would not be prevented from thereafter filing supplemental information to complete its request for refund or credit to recover its excess payment.

Section 230.460. Lease Suspension

The MMS may suspend operations on an OCS lease pursuant to 30 CFR 250.10(b)(6). If a lease is suspended, rentals are not owed for the period of the suspension. Since rentals are paid in advance, the lessee is entitled to a refund of its overpaid rentals following suspension and could submit a request for refund or credit. If the request for refund or credit is filed more than 2 years after MMS received the excess rentals, the excess payment would not be subject to refund, recoupment, or credit against future rentals due on the same lease. The MMS recognizes that disallowing crediting against future rentals owed on the same lease is a departure from IBLA decisions in cases such as *Tenneco Oil Co.*, 117 IBLA 120, and *Shell Offshore, Inc.*, 117 IBLA 125 (1990). However, under the proposed rule, such a practice would be a credit. Therefore, section 10, including the 2-year limitation, would apply.

Section 230.461. Transactions Not Subject to Section 10

There are certain royalty and other payment-related transactions involving OCS leases that are not subject to section 10. Therefore, recovering an overpayment in these situations does not require following the section 10 process of filing a request for refund or credit and awaiting approval. For most of the transactions identified in proposed § 230.461, the reasons why section 10 is not applicable are discussed in substantial detail in the 1993 M-Opinion. Also, on December 10, 1991 and January 15, 1993, the MMS Director issued "Dear Payor" letters explaining that section 10 does not apply to these transactions.

Paragraph (a) of § 230.461 would provide that section 10 does not apply where a refiner/purchaser under a royalty-in-kind contract for royalty oil produced from an OCS lease makes an excess payment. Section 10 does not apply because the payment is made pursuant to the sales contract, not a lease.

Paragraph (b) of § 230.461 addresses the situation where MMS approves a unit agreement or a revision to a unit. It would provide that a person may reallocate production among its affected leases within the time period MMS prescribes. As explained in the 1993 M-Opinion, since the unit in effect supersedes the individual leases, the reallocation does not result in any overpayment on the "lease." It is merely a reporting issue. Of course, to the extent that the reallocation does result in a net reduction in the royalties previously paid, then the person must file a request for refund or credit. If more than 2 years has passed since the original payment was made, the refund or credit still would be allowed since, as noted above, MMS would treat the application for unitization as stopping the running of the 2-year period.

Paragraph (c) of § 230.461 would allow a person to adjust volume and royalty reports among OCS leases within a unit without filing a request for refund or credit. Again, the rationale is that the unit replaces the individual lease so that the adjustments are considered to be within a lease and there is no excess payment. The adjustment would not be limited to the same sales month since cross-month adjustments within a unit are "offset" to the same extent as offsets among past months within an individual lease.

Paragraph (d) of § 230.461 would provide that section 10 does not apply where a person pays more money than the total royalty due reported on a Form MMS–2014 accompanying the payment, where all amounts reported on the Form MMS–2014 are correct. As explained in the 1993 M-Opinion in section II. F., the excess payment cannot be associated with any specific lease, unless the payor is reporting for only one lease. So if the payor is reporting for more than one lease, it may request a refund of the

overpaid amount or the payor may contact MMS on how to apply the overpaid money to a subsequent royalty report. The payor cannot take a credit for the overpayment since the amount was not reported with respect to a lease.

Paragraph (e) of § 230.461 would provide that a person may reduce its MMS-established estimate balance for a lease product by requesting a refund or a credit that is not subject to section 10. See section II.G. of the 1993 M-Opinion for a complete explanation of why section 10 does not apply to this transaction.

Paragraph (f) of § 230.461 would provide that if adjustment of an estimated oil transportation allowance (30 CFR 206.105(e)), estimated gas transportation allowance (30 CFR 206.157(e)), or estimated gas processing allowance (30 CFR 206.159(e)) results in an overpayment for any sales month because the estimated transportation or processing costs were less than the actual costs, a person may request a refund or credit of the overpayment that is not subject to section 10. See section II. H. of the 1993 M-Opinion for the explanation of why section 10 is not applicable to this transaction.

However, if the payor makes an error in its original report of actual transportation or processing costs, any subsequent adjustment would be subject to section 10. For example, the payor estimates its oil transportation allowance at $.25 per barrel. When it submits its adjustment from estimate to actual, it reports an allowance of $.30 per barrel and recoups the $.05 per barrel without section 10 being applicable. If the payor discovers 6 months later that it made an error and that its actual transportation cost was $.40 per barrel, the recoupment of the additional $.10 per barrel would be subject to section 10 and the reporting and approval requirements of these rules.

Paragraph (g) of § 230.461 would provide that payment pending appeal or judicial review of an MMS order to pay does not implicate section 10 if the payor prevails. This is so because provisional payment pursuant to a disputed order is not an "excess payment" within the meaning of section 10 for reasons similar to those set forth in the 1993 M-Opinion with respect to estimated transportation and processing allowances.

Paragraph (h) of § 230.461 would provide a de minimis exception. MMS recognizes that in the process of reporting tens of thousands of lines of royalty data, minor adjustments necessarily occur. It is not worth MMS' efforts in terms of money or personnel to process section 10 filings for small amounts. Accordingly, MMS approval would not be required for an adjustment by any person to the amount reported for any lease for a report month that results in a credit of less than $25 per payor code. However, section 10's 2-year limit still is applicable. Thus, even if a payor used this exception to avoid section 10's reporting requirements, the most it could recover for any lease is $600 (24 months x $25).

The MMS would like comments on an alternative for a de minimis provision. Under the alternative, a person could not submit a request for refund or credit unless the aggregate amount sought to be refunded or credited exceeds $100. Thus, if a person found a $50 overpayment, it could not request a refund or credit of that amount unless there were additional overpayments, on the same or different leases, that in total exceeded $100.

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions, or objections regarding the proposed rule to the location identified in the **ADDRESS** section of this preamble. Comments must be received on or before the date identified in the **DATE** section of this preamble.

Procedural Matters

The Regulatory Flexibility Act

The Department has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The rule will establish procedures to implement section 10 of the OCSLA and does not include any substantive change to procedures that have been followed by MMS relative to refund or credit of excess payments under OCS leases.

Executive Order 12630

The Department certifies that the rule does not represent a governmental action capable of interference with constitutionally-protected rights. Thus, a Taking Implication Assessment need not be prepared pursuant to Executive Order 12630, "Government Action and Interference with Constitutionally Protected Property Rights."

Executive Order 12778

The Department has certified to the Office of Management and Budget that the rule meets the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

Paperwork Reduction Act of 1980

The information collection requirements of this rule are being submitted to the Office of Management and Budget for approval.

National Environment Policy Act of 1969

The Department has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, an Environmental Impact Statement is not required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321(2)(c)).

List of Subjects in 30 CFR Part 230

Coal, Continental shelf, Electronic Funds transfers, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Penalties, Petroleum, Public lands-mineral resources, Reporting and recordkeeping requirements.

Dated: August 6, 1993.

Bob Armstrong,

Assistant Secretary—Land and Minerals Management.

For the reasons set out in the preamble, 30 CFR part 230 is proposed to be amended as follows:

PART 230—ROYALTY REFUNDS

1. The authority citation for part 230 is revised to read as follows:

Authority: 5 U.S.C. 301 et seq.; 25 U.S.C. 396 et seq.; 25 U.S.C. 396a et seq.; 25 U.S.C. 2101 et seq.; 30 U.S.C. 181 et seq.; 30 U.S.C. 351 et seq.; 30 U.S.C. 1001 et seq.; 30 U.S.C. 1701 et seq.; 31 U.S.C. 3716; 31 U.S.C. 3720 A; 31 U.S.C. 9701; 43 U.S.C. 1301 et seq.; 43 U.S.C. 1331 et seq.; and 43 U.S.C. 1801 et seq.

2. A new subpart J is added under part 230 to read as follows:

Subpart J—Refunds and Recoupments of Overpayments Under Federal Leases on the Outer Continental Shelf; Implementation of Section 10 of the Outer Continental Shelf Lands Act

Sec.

230.451 Scope.
230.452 Definitions.
230.453 Request for refund or credit.
230.454 Interest on excess payments.
230.455 Authorization of refund or credit and subsequent audit.
230.456 Offsets of overpayment and underpayments on the lease (or unit) by the same person.
230.457 Offsets among different persons who reported and paid royalties on a lease for the same prior sales month.
450.458 Unauthorized credit adjustments.
230.459 Stopping or tolling of the section 10(a) 2-year period.

Sec.
230.460 Lease suspension.
230.461 Transactions not subject to section 10.

Subpart J—Refunds and Recoupments of Overpayments Under Federal Leases on the Outer Continental Shelf; Implementation of Section 10 of the Outer Continental Shelf Lands Act

§ 230.451 Scope.

This subpart establishes the procedures that lessees and other persons who make royalty and other payments on Federal oil and gas leases on the Outer Continental Shelf (OCS) must follow to recover certain excess payments made in connection with their leases in accordance with section 10 of the Outer Continental Shelf Lands Act (section 10), 43 U.S.C. 1339. The requirements of this subpart apply to both requests for refund from the Treasury of excess payments and requests to recover excess payments by recouping the amount through a credit adjustment. This subpart applies only to Federal leases on the OCS.

§ 230.452 Definitions.

Terms used in this subpart shall have same meaning as in 30 U.S.C. 1702. In addition, the following definitions apply to this subpart:

Audit means a procedure for verifying for a prescribed time period whether financial reports and production reports and related items, such as elements, accounts, or funds, are fairly presented, whether financial information is presented in accordance with established or stated criteria, and whether the auditee has adhered to specific financial compliance requirements, including but not limited to those specified in lease terms, mineral leasing laws, regulations of the Department of the Interior, orders, and other applicable laws and regulations. An audit includes a review of internal controls and systems and both compliance and substantive testing.

Credit or *crediting* means reduction of a current or future royalty or other payment made in connection with a lease as a result of reporting a credit adjustment.

Credit Adjustment means any adjustment reported on a Report of Sales and Royalty Remittance (Form MMS–2014) or any other royalty report form which reduces any royalty or other payment made in connection with a lease which was reported and paid in any previous period.

Offset means to net or cancel previous overpayments against previous underpayments on the same OCS lease or across lease boundaries if all the individual leases are part of an approved unit agreement.

Overpayment means any payment made in excess of the amount that the lessee was lawfully required to pay.

Payment means money MMS receives in satisfaction of a lessee's royalty, rental, bonus, net profit share, or late payment interest obligation as established by statute, regulation, or the terms of a lease.

Recoup or *recoupment* means to recover a previous overpayment through a credit against a current or future royalty or other payment or liability under an OCS lease. A recoupment occurs whenever a payor reports a credit adjustment on a Form MMS–2014 or other royalty report form resulting in a net negative dollar value for the transaction and the credit is taken against the royalty or other payment or liability shown in the balance of the report.

Refund means a repayment by the United States Treasury to a person of any overpayment.

Unit means a area of 2 or more leases subject to an agreement for the consolidated development and recovery of oil and gas contained on the leases which are part of the agreement approved by MMS.

§ 230.453 Request for refund or credit.

(a) Except as otherwise provided in this subpart, no person may recover an excess payment it has made in connection with an OCS lease unless:

(1) That person has made a request for refund or credit in accordance with the provisions of this subpart;

(2) The MMS has transmitted a report on the request for refund or credit to the President of the Senate and the Speaker of the House of Representatives and 30 days from such submission has expired in accordance with section 10(b), 43 U.S.C. 1339(b); and

(3) The MMS notifies the person that its request for refund or credit is authorized and that the person may receive its refund for, or may report a credit adjustment to recoup, the excess payment.

(b) A request for refund or credit must:

(1) Be in writing;

(2) Provide the person's MMS-established payor code;

(3) Identify the leases and sales months with respect to which the excess payments occurred;

(4) Identify the amount of the excess payment or, with specificity, describe a class of payments that are, or as a result of an administrative or judicial decision or other identified contingency may become, excess payments;

(5) Provide the reasons why a refund or credit is due;

(6) Include a certification that, to the best of the person's knowledge or belief, the information provided in response to paragraphs (b)(2) through (b)(5) of this section is accurate and complete.

(c) If MMS determines that a request for refund or credit is incomplete, the person who submitted the request shall have 30 days, or such time as MMS may specify, following notice from MMS, to supplement the request for refund or credit.

(d) A credit adjustment reported on a Form MMS–2014 shall not constitute a request for refund or credit for purposes of this section, and shall not constitute an incomplete request for refund or credit for purposes of paragraph (c) of this section.

(e) A person who has filed a request for refund or credit pursuant to this section may amend that request to add an additional amount if:

(1) The additional amount is for the same lease and sales month; and

(2) The reason for the excess payment for the additional amount is the same as for the originally requested amount.

(f) Except as otherwise provided in this subpart, no request for a refund or credit shall be approved unless the request is received at MMS at the address provided in paragraph (f)(1) of this section within 2 years of the date that MMS received the excess payment.

(1) The request for refund or credit must be received at the following address:

(i) By mail: Minerals Management Service, Royalty Management Program, P.O. Box 173702, MS 3933, Denver, CO 80217–3702.

(ii) By express delivery or courier: Minerals Management Service, Section 10 Refund Requests, Building 85, Denver Federal Center, MS 3933, room A–212, Denver, CO 80225.

(2) If the last day of the 2-year period from the date MMS received the excess payment falls on a Saturday, Sunday, holiday or any other day that MMS is not open for business at the address specified in paragraph (f)(1) of this section, then the last day of the 2-year period shall be the next regular business day. Requests received at the specified MMS address after 4 p.m. Mountain Time are considered received the following business day.

§ 230.454 Interest on excess payments.

No person shall be entitled to interest on any excess payment made in connection with a lease that is refunded or recouped pursuant to this subpart.

§ 230.455 Authorization of refund or credit and subsequent audit.

The MMS may grant a refund or authorize a credit based upon satisfactory evidence that the payment subject to the request was made, and upon a determination that the payment was excess. An approved request for refund or credit may be subject to later review or audit by MMS. If, based upon later review or audit, MMS determines that the refund or recoupment should not have been granted or authorized, the person who requested the refund or credit shall repay the amount refunded or recouped plus interest determined pursuant to 30 U.S.C. 1721(a) and 30 CFR 218.150 from the date the refund was made or the recoupment taken until the date it is repaid.

§ 230.456 Offsets of overpayments and underpayments on the same lease (or unit) by the same person.

If a person makes an overpayment on any OCS lease or unit in a prior month, it may offset that overpayment against an underpayment that same person made in any prior month on that same lease or unit for the same or a different product without submitting a request for refund or credit, if the underpayment was not created as a result of a credit adjustment to recoup the amount of the overpayment, or was not otherwise created intentionally to provide an underpayment against which to offset the overpayment, and subject to any limitations imposed by other applicable law or regulations.

§ 230.457 Offsets among different persons who reported and paid royalties on a lease for the same prior sales month.

(a) This section is applicable where an operator's amended production report or any other action results in a reallocation of production for a prior sales month among different persons who reported and paid royalty for that month on a lease or unit, except for reallocations of production that result from the approval or amendment of a unit agreement subject to § 230.461(b).

(b) In the event of a reallocation of production as described in paragraph (a) of this section, the respective persons who reported and paid royalty may reconcile any resulting differences in royalty payment obligations between themselves without submitting revised royalty reports or requests for refund or credit to MMS under this subpart, except that:

(1) Any person who paid any amount which remains as a net overpayment after such reconciliation must file a request for refund or credit in accordance with the requirements of this subpart to recover the excess payment;

(2) Any person whose royalty obligation remains underpaid after such reconciliation must report the additional royalties due for the prior sales month on a Form MMS–2014 and pay interest on the underpayment from the last day of the month following the sales month until the date the additional royalties are paid; and

(3) All persons involved in such reconciliation must retain all documents pertaining to the reallocation of production, calculation of royalties due, and the subsequent reconciliation among the persons involved together with other records pertaining to production from that lease during the prior sales month and the royalty due and paid thereon, and make such documents available for review and audit in the same manner as other records pertaining to the lease.

(c) If persons who reported and paid royalty do not reconcile between themselves any differences in royalty payment obligations arising as a result of a reallocation as provided in paragraph (b) of this section, each person who pays royalties for the lease must report and pay any additional royalties due, or file a request for refund or credit in accordance with the requirements of this subpart to recover the excess payment, as applicable. Any person who reports additional royalties due for the prior sales month must pay interest pursuant to 30 CFR 218.54 on the underpayment from the last day of the month following the sales month until the date the additional royalties are paid.

§ 230.458 Unauthorized credit adjustments.

(a) If a person reports a credit adjustment on Form MMS–2014 that results in a credit before MMS approves the recoupment pursuant to § 230.455, and if the credit adjustment does not qualify as one of the transactions not subject to section 10 as provided in § 230.461, then that person has taken an unauthorized credit adjustment.

(1) If the unauthorized credit adjustment recouped a payment that MMS received more than 2 years before the date MMS received the Form MMS–2014, which includes the unauthorized credit adjustment, the person shall repay the amount recouped plus late payment interest determined pursuant to 30 U.S.C. 1721(a) and 30 CFR 218.150 from the date the unauthorized recoupment was taken until the date it is repaid. Unless the person filed a request for refund or credit pursuant to § 230.453 within 2 years of the making of the excess payment for which the unauthorized credit adjustment was reported, the excess payment shall not be subject to refund or recoupment.

(2) If the unauthorized credit adjustment recouped a payment that MMS received less than 2 years before the date MMS received the Form MMS–2014 with the unauthorized credit adjustment, the person shall be required to repay the amount recouped plus late payment interest determined pursuant to 30 U.S.C. 1721(a) and 30 CFR 218.150 from the date the unauthorized recoupment was taken until the date it is repaid. The report of the unauthorized credit adjustment on the Form MMS–2014 does not constitute a request for refund or credit that tolls the 2-year period in section 10(a), 43 U.S.C. 1339(a). The person may file a request for refund or credit pursuant to § 230.453 for the payment for which the unauthorized credit adjustment was reported. The MMS will review the request pursuant to the requirements of this subpart only if the request for refund or credit is received within 2 years of the making of the original payment for which the unauthorized credit adjustment was reported.

(b) A person who reports an unauthorized credit adjustment to MMS on a Form MMS–2014 shall be assessed $500 for each unauthorized credit adjustment reported on the Form MMS–2014.

§ 230.459 Stopping or tolling of the section 10(a) 2-year period.

(a) The period of 2 years from the making of the excess payment, within which a request for refund or credit must be filed under section 19(a), 43 U.S.C. 1339(a), shall be:

(1) Tolled by MMS' receipt of a substantially complete request for refund or credit pursuant to § 230.453; or

(2) Tolled by a general tolling notice issued by MMS and published in the **Federal Register** in circumstances where MMS believes a substantial number of requests for refund or credit could result as a consequence of a pending administrative or judicial proceeding or other action. The running of the 2-year period shall be tolled for the time period specified in the notice; or

(3) Stopped by an application for unitization of OCS leases with respect to any excess payment that may result from the reallocation of production among leases after the unit is approved; or

(4) Tolled by a notice filed by a person at the address stated in § 230.453(f) stating that a specifically

identified action or proceeding may result in payments made on an OCS lease becoming excess payments. The notice must include:

(i) A list of affected leases and sales months;

(ii) The specific action or proceeding that could result in payments becoming excess;

(iii) An estimate of the amount that could be subject to a request for refund or credit; and

(iv) The person's MMS-established payor code.

(b) A request for refund or credit that is timely filed by a person who made an excess payment on an OCS lease shall not stop or toll the running of the 2-year period with respect to any excess payment made by any other person on that lease.

§ 230.460 Lease suspension.

If MMS suspends an OCS lease pursuant to 30 CFR 250.10(b)(6), a person who has made excess rental payments for the period of suspension, may request a refund or credit of any excess payments pursuant to this subpart. If the request for refund or credit is filed more than 2 years after MMS received the excess rentals, the excess payment shall not be subject to refund, recoupment, or credit against future rentals due on the same lease.

§ 230.461 Transactions not subject to section 10.

(a) A request for refund of, or any other action to recover, excess payments made by a refiner/purchaser under a royalty-in-kind contract for royalty oil produced from an OCS lease is not subject to section 10.

(b) If MMS approves a unit agreement on the OCS, or a revision to a unit, a person may file amended Forms MMS–2014 within the time period MMS prescribes, reallocating production among the affected leases. A person must file a request for refund or credit pursuant to this subpart only if, and to the extent that, there is a net reduction in the royalty that person previously paid for the leases committed to the unit as a result of the amendments.

(c) A person may amend its Form MMS–2014 to adjust volume and royalty reports among OCS leases within a unit within the same sales month without filing a request for refund or credit pursuant to this subpart, except that a request for refund or credit must be filed to the extent that there is a net reduction in the royalty previously paid for the leases committed to the unit as a result of the amendments.

(d) A person who pays more money than the total royalty due as reported on the Form MMS–2014 accompanying the payment, where all amounts reported on the Form MMS–2014 are correct, may submit a request for refund of the overpaid amounts. The request for refund is not subject to section 10's requirements unless the Form MMS–2014 includes reports for only one OCS lease. Any overpayment subject to this paragraph shall not be recovered by recoupment.

(e) A person may reduce an estimate balance, established for any lease product pursuant to MMS instructions, by submitting a credit adjustment on a Form MMS–2014, or a request for refund, for all or part of the established estimate balance. A credit adjustment or request for refund to recover all or part of an estimate balance authorized by this paragraph is not subject to the requirements of section 10.

(f)(1) If adjustment of an estimated oil transportation allowance or estimated gas transportation allowance pursuant to 30 CFR 206.105(e) and 206.157(e), respectively, results in an overpayment for any sales month because the estimated transportation costs were less than the actual costs, a person may submit a credit adjustment on a Form MMS–2014 to recoup, or may request a refund of, the overpayment. The credit adjustment or request for refund authorized by this paragraph is not subject to the requirements of section 10, and MMS approval is not required before reporting the credit adjustment.

(2) If adjustment of an estimated gas processing allowance pursuant to 30 CFR 206.159(e) results in an overpayment for any sales month because the estimated processing costs were less than the actual costs, a person may submit a credit adjustment on a Form MMS–2014 to recoup, or may request a refund of, the overpayment. The credit adjustment or request for refund authorized by this paragraph is not subject to the requirements of section 10, and MMS approval is not required before reporting the credit adjustment.

(3) If a person makes an error in its original report of actual transportation or processing costs pursuant to paragraphs (f)(1) or (f)(2) of this section, any subsequent adjustment to a report of an actual transportation or processing allowance that results in a credit is subject to section 10 and the requirements of this subpart.

(g) If a person pays pursuant to an MMS order and challenges the obligation to pay in an administrative appeal or judicial action, and if the person is successful in its challenge to all or part of the MMS order to pay, section 10 shall not apply to the refund or recoupment of the disputed payment or portion thereof.

(h) MMS approval is not required for an adjustment by any person to the amount reported for any lease for a report month that results in a credit of less than $25 per payor code. However, no adjustment may be reported more than 2 years after the date MMS received the Form MMS–2014 including the excess payment.

[FR Doc. 93–25250 Filed 10–14–93; 8:45 am]
BILLING CODE 4310-MR-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–4790–2]

National Emission Standards for Hazardous Air Pollutants for Source Categories: Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry and Seven Other Processes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Reopening of public comment period and correction to Regulatory Flexibility Act certification.

SUMMARY: On December 31, 1992 (57 FR 62608), EPA proposed standards to regulate the emissions of certain organic hazardous air pollutants from synthetic organic chemical manufacturing industry (SOCMI) production processes and seven other processes which are part of major sources under section 112 of the Clean Air Act as amended in 1990 (the Act). The period for receiving public comment on the proposed rule ended on April 19, 1993. Public comments were received requesting the comment period be reopened after proposal of the general provisions for implementing standards issued under section 112 of the Act. This action announces the reopening of the comment period to take comment on the general provisions, as they apply to the proposed rule for SOCMI and seven other processes. This action also describes, for public review and comment, five possible changes to the emissions averaging policy proposed in the HON. Finally, this action corrects the Regulatory Flexibility Act certification for the SOCMI and seven other processes proposed rule by providing a summary of the reasons for the certification. The rationale for the certification was not published in the notice of proposal.

DATES: *Comments.* Comments must be received on or before November 15, 1993.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to the EPA's Air Docket Section (LE–131), ATTN: Docket Number A–90–19, room M1500, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Dockets. The following dockets contain supporting information used in developing the proposed rule. Docket Number A–90–19 contains information specific to process vents, emissions averaging and general information used to characterize emissions and control costs for the industry; Docket A–90–20 contains information on equipment leaks; Docket A–90–21 contains information on storage vessels; Docket A–90–22 contains information on transfer operations; and Docket A–90–23 contains information specific to wastewater operations. Supporting information used in developing the negotiated standard for equipment leaks is available in Docket Number A–89–10. These dockets are available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at the EPA's Air Docket Section, Waterside Mall, room M1500, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Dr. Janet S. Meyer, Standards Development Branch, or Ms. Katherine Kaufman, Pollutant Assessment Branch, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5299.

SUPPLEMENTARY INFORMATION: On December 31, 1992 (57 FR 62608), EPA proposed standards to regulate the emissions of certain organic hazardous air pollutants from synthetic organic chemical manufacturing industry (SOCMI) production processes and seven other processes which are part of major sources under section 112 of the Clean Air Act as amended in 1990 (the Act). The proposed rule is commonly referred to as the hazardous organic NESHAP or HON. The comment period on the proposed rule ended on April 19, 1993. This notice reopens the public comment period for the HON. However, only comments limited to the subjects described below will be considered at this time.

General Provisions

The proposed rule contained references to subpart A of 40 CFR part 63, which will specify administrative procedures and criteria necessary to implement standards that are generally applicable to sources subject to part 63. Public comments were received on the HON requesting that EPA reopen the comment period when these general provisions (subpart A to 40 CFR part 63) are proposed. The commenters noted that the HON proposal lacked sufficient detail and rationale to permit meaningful comment on the unproposed general provisions which, if uncorrected, would cause a violation of the Administrative Procedures Act. Subpart A of 40 CFR part 63 was proposed on August 11, 1993 (58 FR 42760). This notice reopens the comment period for the HON to allow comment on those aspects of the general provisions that pertain to the HON.

Emissions Averaging

The proposed rule described two approaches for achieving compliance. One of the approaches, called emissions averaging, was the subject of significant public comment. In light of the public comment, the EPA is considering five changes to the HON emissions averaging policy as described below. Since these options were not described in the HON proposal, the EPA is describing them in this notice for public review and comment for a 30-day period.

1. State Discretion on Emissions Averaging

Several commenters indicated that State and local agencies should not be required to allow averaging as a compliance alternative if it would be inconsistent with their own policies, or if the resource and/or administrative burden were too heavy. As a result, the EPA is considering adding language to the HON that would grant State or local agencies the discretion to not include emissions averaging in their implementation of the HON without having to go through the section 112(l) rule delegation process. As proposed, the rule implementing the section 112(l) delegation process (40 CFR part 63 subpart E—58 FR 29296) allows a State or locality to adjust the HON rule to remove the averaging option and receive delegation of authority to implement and enforce the standard with minimal EPA review. The proposed change to the HON would allow a State or local agency to exclude emissions averaging when it implements the HON without any EPA review. The EPA is considering making this change to allow more flexibility in the implementation of the HON in States that, because of State statutory limitations, do not have the authority to elect requirements that are more stringent than Federal standards. States with these statutory limitations might not otherwise be able to use the section 112(l) rule delegation process to remove emissions averaging as a compliance option for the HON.

2. Inclusion of Risk in Averaging Determinations

Several commenters indicated that the relative risk of compliance through means of averaging compared to compliance without the use of averaging should be considered in determining whether an emissions average is acceptable. A commenter stated that compliance through averaging should be demonstrated to present no greater health or environmental risk than compliance without averaging. Many of these comments also indicated that, if risk equivalency concerns cannot be addressed, emissions averaging should not be allowed for compliance with the HON.

The proposed rule places no restriction on averaging emissions of HON pollutants of different toxicities. However, the preamble to the proposed rule did briefly describe and seek comment on two alternative methods for addressing the issue of averaging with different pollutants. Having further considered the two approaches described in the proposal preamble, with input from the public comments, the EPA has concluded that neither of these two approaches, both of which attempt to address all hazardous air pollutants (HAP), is developed in sufficient detail to provide the basis for final rulemaking at this time. However, in an effort to address risk equivalency concerns, the EPA is considering, and requesting comment on, a third approach for assuring that a particular averaging scheme does not result in an overall risk increase. This approach would require that sources that elect to use averaging must demonstrate, to the satisfaction of the agency implementing the HON, that compliance through averaging would not result in greater risk than compliance without averaging. To aid in the implementation of this requirement, the EPA is considering publishing guidance setting forth examples of what would constitute an adequate risk equivalency demonstration. The EPA specifically requests comment on whether such guidance would be useful or necessary to implement the risk demonstration requirement.

The decision to approve or disapprove any particular averaging plan would rest with the agency implementing the HON, in most cases a State or local air pollution control agency. Since many States have and use their own risk assessment policies and tools, these State or local agencies would be authorized to utilize not only the EPA guidance, but also any procedures approved by their own agencies, for analyzing the risk equivalence of the compliance scenarios with and without averaging. To satisfy a State or local agency that an averaging plan would not increase risk, a source might have to identify and quantify all the HAP included in the average. The EPA requests comment on whether identifying all the HAP in the emissions streams would pose difficulties for sources, and, if so, what those difficulties would be.

3. Compliance Period for Emissions Averaging

Several commenters indicated that the annual compliance averaging period originally proposed for the emissions averages was too long and inconsistent with other air pollution control policies. In addition, the EPA has concerns about the ability to take enforcement actions for violations that cover an entire year and, thus, involve the analysis and presentation of an entire year's monitoring data, which may make litigation complex. As a result, the EPA is considering a change in the averaging period for the HON. Specifically, the EPA is seeking comment on the following four alternatives: (1) A quarterly block averaging period; (2) a quarterly block averaging period with banking for up to one or two additional quarters; (3) a semiannual block averaging period with banking for an additional six-month period; and (4) a semiannual block averaging period. With a semiannual block averaging period, a source using averaging would have to ensure that the total emissions from points that are "under-controlled" and "over-controlled" relative to the emissions from a non-averaged compliance scenario are at least equal over a six-month period. The same requirement would apply for a quarterly block averaging period, only the averaged emissions would have to balance every three months. If banking were allowed across blocks, the source could reserve or "bank" extra emission reductions from "over-controlled" points to avoid certain noncompliance scenarios in the next one or two averaging periods. At the end of the period(s), the unused banked emission reductions would expire. The procedures for implementing and complying with these four alternative averaging periods would be the same as those described for the annual block included in the original HON proposal (57 FR 62744–62760), only the period of time for equating the "over controlled" and "under controlled" emissions would be shortened.

4. Limit on Number of Emission Points Allowed in an Average

The proposed emissions averaging provisions allow unlimited averaging across points in a HON source. This opportunity for broad averaging has raised concerns about the administrative complexity and enforcement difficulty that could occur if the owner or operator of a source used emissions averaging for a large number of points in the source. To address these concerns, EPA requests comment on the feasibility of limiting averages to include only a percentage of the emission points in a source. The EPA is considering a dual limitation with a range of (1) 5 to 15 individual emission points, or (2) 5 to 15 percent of the points in the HON source, whichever is greater for the particular source. The dual limit is being considered to address the needs of small HON sources. A percentage-based limit would not afford much flexibility for these sources. Commenters should address (1) what number/percentage within these ranges would be appropriate and why and (2) to what extent such a limitation would affect a source's ability to utilize the averaging provisions and the reasons why this would occur.

5. Effect of Missing Monitoring Data/ Parameter-Exceedances on Averaging

The EPA requests comment on the impact on calculation of an emissions average for operating emission points that are part of an average (1) during any time that monitoring data are missing or the monitor is not functioning, or (2) during any unexcused period of time when the monitor indicates that the operating parameter values are outside the permissible range. Specifically, EPA requests comment on an approach whereby, in such circumstances, no credits would be assigned to a credit generator and maximum debits would be assigned to a debit generator, unless the source can establish that partial credits or debits should be given.

Regulatory Flexibility Act

This notice also corrects the Regulatory Flexibility Act certification by providing a summary of the rationale for the certification. The rationale for the certification was inadvertently omitted from the December 31, 1992 proposal in the **Federal Register**. The basis for the certification is summarized in the paragraphs below.

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires EPA to consider potential impacts of proposed regulations on small "entities". A regulatory flexibility analysis is required if preliminary analysis indicates that a proposed regulation is expected to have a significant economic impact on a substantial number of small entities. Regulatory impacts are considered significant if any of the following criteria are met: (1) Annual compliance costs increase total cost of production by more than 5 percent; (2) annual compliance costs exceed 10 percent of profits for small entities; (3) capital costs of compliance represent a significant portion of capital available to small entities; or (4) regulatory requirements are likely to result in closures of small entities.

Firms in the chemical industry are classified as small by the Small Business Administration (SBA) if employment is less than 500 to less than 1000 employees depending on the particular Standard Industrial Classification (SIC) of the firm. The firms classified as small by this definition are only small in a relative way because an average firm with 500 employees in the SOCMI industry has an average sales of over $180 million.

Of the 56 firms analyzed in the economic impact analysis, only 10 have fewer than 1000 employees. Since these 10 are only 15 percent of the firms analyzed, they do not constitute a substantial number (usually 20 percent). The economic analysis also projected generally small impacts (91 percent of the analyzed sample are projected to have output changes of less than 2 percent). Therefore, the standard is not expected to have a significant economic impact on a substantial number of small firms.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this proposed rule, if promulgated, will not have a significant impact on a substantial number of small business entities.

Dated: October 7, 1993.

Carol M. Browner,

Administrator.

[FR Doc. 93–25461 Filed 10–14–93; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 431, 440, 441 and 447

[MB–027–P]

RIN 0938–AF07

Medicaid Program; Case Management

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Medicaid regulations to provide for optional coverage of case management services furnished to specific groups, geographic areas, or political subdivisions within a State. Case management services are those activities that assist in coordinating access to necessary care and services appropriate to the needs of an individual.

These proposed regulations would implement provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985, the Omnibus Budget Reconciliation Act of 1986, the Tax Reform Act of 1986, the Omnibus Budget Reconciliation Act of 1987, and the Technical and Miscellaneous Revenue Act of 1988, concerning case management services.

DATES: Written comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on December 14, 1993.

ADDRESSES: Mail written comments (an original and 3 copies) to the following address: Department of Health and Human Services, Health Care Financing Administration, Attention: MB–027–P, P.O. Box 7518, Baltimore, Maryland 21207–0518.

If you prefer, you may deliver your written comments (an original and 3 copies) to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, D.C. 20201, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

Due to staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code MB–027–P. Written comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of this document, in Room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: 202–690–7890).

Organizations and individuals desiring to submit comments on the reporting requirements discussed under the "Collection of Information Requirements" of this preamble should direct them to the Health Care Financing Administration at one of the addresses cited above, and to the Office of Information and Regulatory Affairs, Attention: Laura Oliven, Office of Management and Budget, New Executive Office Building (Room 3002), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Robert Wardwell, (410) 966–5659

SUPPLEMENTARY INFORMATION:

I. Background

Case management has historically been defined as an activity that assists in coordinating access to necessary care and services appropriate to the needs of an individual. The term has been applied to such disparate functions as case finding, prior authorization of services, referral, case coordination and counseling. In the broadest context, case management services have been used to provide necessary coordination with individuals or entities providing nonmedical services, such as local education agencies or departments of vocational rehabilitation, when the services furnished by these entities are needed to enable an individual to function at the highest attainable level or to benefit from programs for which he or she might be eligible.

Aspects of case management have been integral to the Medicaid program since its inception. The law has always required that States have interagency agreements under which Medicaid recipients may be assisted in locating and receiving needed Medicaid services when these services are furnished by non-Medicaid agencies. Basic case management functions have existed as components of the States' administrative apparatus for the Medicaid program and also as integral parts of the services furnished by the providers of medical care. Physicians, in particular, have long provided patients with advice and assistance in obtaining access to other necessary services.

In 1981, the Congress, recognizing the value and general utility of case management services, amended the Social Security Act (the Act) to authorize Medicaid coverage of case management services under two provisions. Under section 1915(b) of the Act, States were authorized to develop case management systems in order to direct patients to appropriate services. Under section 1915(c) of the Act, States were authorized to furnish case management as a distinct service under home and community-based services waivers. Case management was widely used under both authorities because of its value in ensuring that Medicaid recipients were assisted in making necessary decisions about the care they needed and in locating providers appropriate to their needs.

II. Legislative Changes

Section 9508 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) (Pub. L. 99–272), enacted on April 7, 1986, amended the Act concerning the provision of case management services. Specifically section 9508 of COBRA added a new section 1915(g) to the Act which—

- Provides that a State may elect to furnish case management services as a service covered under the State plan to specified groups;
- Defines case management services as services which will assist individuals, eligible under the State plan, in gaining access to needed medical, social, educational, and other services;
- Provides an exception to the statewideness requirement of section 1902(a)(1) of the Act by allowing a State to limit its provision of case management services to recipients who reside in particular geographic areas or political subdivisions within the State;
- Provides an exception to the comparability requirement of section 1902(a)(10)(B) of the Act by allowing a State to furnish case management services to any specific group (targeted case management); and
- Provides that there be no restriction on a recipient's free choice of providers in violation of section 1902(a)(23) of the Act.

Further amendments to the Act with regard to case management services were made by section 1895(c)(3) of the Tax Reform Act of 1986 (Pub. L. 99–514). This law amended section 1905(a) of the Act by adding a new paragraph (19) (and redesignating existing paragraph (19) as paragraph (20)), which adds case management services, as defined in section 1915(g)(2) of the Act, to the list of optional services a State may include in its Medicaid plan. Section 9411(b) of the Omnibus Budget Reconciliation Act of 1986 (OBRA '86), Public Law 99–509, amended section 1915(g) of the Act by providing that a State may limit the provision of case management services to individuals

with acquired immune deficiency syndrome (AIDS), or with AIDS-related conditions, or with either. Section 1915(g) of the Act was also amended to permit a State to limit case management services to individuals with chronic mental illness.

Section 4118(i) of the Omnibus Budget Reconciliation Act of 1987 (OBRA '87), Public Law 100–203, amended section 1915(g)(1) of the Act to allow States to limit the providers of case management services available to developmentally disabled or chronically mentally ill individuals, or to any subgroups of such individuals that a State may choose to define.

Section 8435 of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100–647) prohibits the Secretary from denying approval of a State plan amendment to provide targeted case management services on the basis that the State was or is paying for these services from other revenue sources. This provision also specifies that the Secretary is not required to make payment under Medicaid for case management services that are furnished without charge to recipients.

This proposed rule would implement in Federal regulations the provisions of the law that permit coverage of case management services as an optional service under a State Medicaid plan, in accordance with section 1915(g) of the Act. This proposed rule also examines the relationship of section 1915(g) case management services to case management services furnished under the various waivers granted under section 1915 of the Act, and the distinction between section 1915(g) case management services that are paid at the medical assistance service match rate and case management activities performed as an administrative expense to the Medicaid program.

III. Provisions of the Proposed Regulations

A. Targeted Case Management Services Requirements

Under section 1915(g)(1) of the Act, a State is not required to furnish case management services to all eligible individuals in the State, and thus is not bound by the "statewideness" requirement of section 1902(a)(1) of the Act. (The "statewideness" requirement of section 1902(a)(1) provides, in part, that the provisions of a State plan be in effect in all political subdivisions of the State.) Thus, States may limit the provision of case management services to any defined location of the State (that is, city, county, community, etc.).

Section 1915(g)(1) of the Act also permits States to target case management services to individuals with particular diseases or conditions, without regard to the "comparability" provision in section 1902(a)(10)(B) of the Act. (The "comparability" provision generally requires States to make medical assistance available in the same amount, duration, and scope to all eligibility groups.) Thus, a State may limit the furnishing of case management services to any specific group, such as individuals with acquired immune deficiency syndrome (AIDS), AIDS-related conditions, or chronic mental illness. A State's flexibility to target case management services to a specific group sets these services apart from most other services available under the Medicaid program. The exception to the comparability requirement makes it possible to furnish case management services to any number of categories of recipients.

In identifying the groups eligible to receive targeted case management services, States are not required to distinguish eligible individuals by traditional Medicaid concepts of eligibility groups (that is, mandatory categorically needy, optional categorically needy, medically needy), although this avenue continues to be available to States, should they choose it. Instead, States may target case management services by age, type or degree of disability, illness or condition, or any other identifiable characteristic or combination of characteristics. There is no limit on the number of groups to whom case management services may be targeted, nor is there any set minimum or maximum number of recipients to be included in a target group.

We note that the exception to the comparability requirement applies only to the provision of targeted case management services under section 1915(g) of the Act. The comparability requirement of section 1902(a)(10)(B) of the Act continues to apply to all other Medicaid services for which an individual may be eligible, unless these services are subject to comparability exceptions in their own right. In other words, receipt of case management services does not in any way alter an individual's eligibility to receive any other service under the State plan.

Because the Act does not set any minimum standards for the provision of case management services, we are proposing to give States flexibility to establish reasonable qualifications for providers to ensure that providers are capable of providing services of acceptable quality, consistent with 42 CFR 431.51(c)(2), which allows States to set reasonable standards relating to the qualifications of providers. We are proposing that the qualifications of a provider of case management services be dictated by the needs of the population to be served, and by the duties and responsibilities inherent in the provision of the case management services, as defined by States in their State plans. Under these proposed regulations, States may establish separate minimum qualifications for the providers of these services as they apply to each target population.

The qualifications set by the State must be reasonably related to the case management functions that a provider would be expected to perform. For example, it may be considered reasonable that the qualifications of providers of case management services for ventilator-dependent children would be different than those of case management providers for women experiencing high risk pregnancies. States may limit participating providers in the program, but only through development of reasonable provider qualifications related to an entity's capacity to furnish case management services of adequate quality.

We considered proposing minimum qualifications for providers of case management services, but instead decided that qualifications are best left to the judgment of States, which can take into account the unique requirements of local circumstances and the particular needs of the target group to be served. However, we invite public comment on this subject.

Section 9508 of COBRA amended section 1915(g) of the Act to provide that there be no restriction on a recipient's free choice of providers, in violation of section 1902(a)(23) of the Act. Based on COBRA's legislative history, we believe the Congress intended that individuals receiving targeted case management services under section 1915(g) of the Act not be locked into designated providers, whether for the case management services standing alone, or for other services. (See H. Rept. No. 453, 99th Cong., 1st Sess. 546 (1985).) (We note, however, that in situations where the State has chosen to furnish case management services on a less-than-statewide basis, free choice of qualified providers is limited to those providers located within all of the identified geographic areas or political subdivisions as specified in the State plan.) Therefore, with the exception noted below for developmentally disabled or chronically mentally ill recipients, we are proposing that an

individual eligible to receive case management services must be free to receive these services from any qualified provider of case management services. The recipient may not be limited to case management providers in a particular county (unless the case management services are limited to that county) or provider setting, even if the individual receives all other Medicaid services through or in that county or provider setting.

Similarly, States may not limit the entities that qualify as providers of case management services to State or other public agencies for targeted groups other than the developmentally disabled or chronically mentally ill. States must permit any person or entity that meets the established qualifications and who undertakes to furnish case management services to the targeted group to become a Medicaid provider.

The Congress recognized that, while the freedom of choice requirement was beneficial to the Medicaid population as a whole, this requirement might not adequately protect the interests of developmentally disabled or chronically mentally ill individuals. Therefore, section 4118(i) of OBRA '87 amended section 1915(g)(1) of the Act to provide States with the option of limiting the case management providers available to these targeted groups, to ensure that the case management providers for these individuals are capable of ensuring that the targeted recipients receive the full range of needed services. This limitation is permissible only with regard to targeted groups of developmentally disabled or chronically mentally ill individuals, or to any subgroups of such individuals that a State may choose to define.

Consistent with section 1915(g) of the Act, as amended by section 4118(i) of OBRA '87, we are proposing that when the target group consists only of individuals with developmental disabilities or chronic mental illness, States may limit the case management providers available to the target group. This limitation is permissible only with regard to the target groups of developmentally disabled or chronically mentally ill, or to any subgroups that a State may wish to define (for example, based on age or degree of impairment). However, any defined subgroup must continue to meet the definition of chronic mental illness or developmental disability.

We are also proposing that States desiring to exercise this option must clearly specify this choice in their State plan amendments. They must identify any limitations to be imposed on the providers and specify how these limitations are consistent with the mandates of the statute (that is, to ensure that such providers of case management services for targeted individuals are capable of ensuring that such individuals receive needed services). It should also be noted that, although States may limit the case management providers available for these two target groups, individuals within the target groups continue to retain the right to free choice of the qualified providers of targeted case management services identified by the State.

Section 1902(a)(19) of the Act specifies that States must provide safeguards to ensure that services will be furnished in a manner consistent with simplicity of administration and the best interests of recipients. Consistent with this provision of the Act, we believe that States may not require that an individual receive another Medicaid service (for example, clinic or respiratory care services) as a precondition for the receipt of case management services. There may be situations where recipients require only case management services to address their needs. Under these circumstances, hinging the receipt of case management services on the receipt of other Medicaid services would prevent recipients from accessing necessary care and services. Consequently, such a requirement would not be in the best interest of recipients. Therefore, we are proposing that a State plan not condition receipt of case management services on the receipt of other Medicaid services. However, as noted previously, States may target their case management services to persons who, by virtue of their disease or condition, would be eligible to receive another Medicaid service.

In addition, we are proposing that the receipt of case management services must be at the option of individuals included in a specific target group. We believe this requirement is also consistent with section 1902(a)(19) of the Act. A recipient cannot be compelled to receive case management services for which he or she might be eligible. Any condition requiring a recipient to receive case management services against his or her will would not be in the best interest of the recipient and, thus, would be in violation of section 1902(a)(19) of the Act.

An extant issue is the permissibility of "prior authorization" as it relates to the provision of case management services. Section 1915(g)(1) of the Act prohibits the use of targeted case management services in any fashion that would restrict recipient access to other care and services furnished under the State plan. The very nature of prior authorization entails the power to restrict access to services—that is, to the extent to which authorization may be denied, access may also be denied. Because this concept is contrary to the statutory definition of case management services, providers of case management services furnished under this section are prohibited from performing prior authorization functions under Medicaid. Therefore, we are proposing that a State plan prohibit providers of case management services from exercising the State agency's authority to authorize or deny the provision of other services under the plan.

We note, however, that prior authorization continues to be a legitimate function of a State Medicaid agency, which may continue to perform it as an appropriate component of the administration of a State plan. We would also note that, while a recipient is free to accept or reject the advice of a provider of case management services, a decision regarding prior authorization (made by a State agency), when not contested by the recipient, is considered binding. However, a decision regarding prior authorization for Medicaid services is subject to the rules governing fair hearings under 42 CFR 431.200 *et seq.*

We are proposing that States desiring to furnish case management services in accordance with section 1915(g) of the Act do so by amending their State plans. States must submit a separate State plan amendment for each group that will receive case management services. Each amendment must: (1) Define the targeted group (and/or subgroup); (2) Identify the geographic area to be served; (3) Describe the services to be furnished; (4) Specify the qualifications of the service providers; and (5) Specify the arrangements under which providers will be paid. A separate amendment must be submitted for each subgroup within a group if any of the following differs: (1) the services to be furnished; (2) the qualifications of providers; or (3) the arrangements for provider payment.

B. Rates of Federal Financial Participation (FFP) in the Cost of Case Management Activities

Under section 1915(g) of the Act, FFP is available only for case management services which assist Medicaid recipients in gaining access to needed medical, social, educations, and other covered services. However, FFP is not available under section 1915(g) for the cost of the actual services to which an

individual is referred. FFP is only available for these other services if they are provided for in the State's Medicaid plan under the authority of section 1905(a) of the Act.

As with all Medicaid services, payment for case management is dictated by the nature of the activity and the purpose for which the activity is performed. In authorizing States to offer case management services, the Congress recognized that there was some potential for duplicate payments. This situation can arise when the same or similar services are furnished by other programs, or under other authorities of the Medicaid program itself, either as an integral aspect of the administration of a State Medicaid plan (as a matchable administrative cost) or as an integral aspect of a covered services (when payments are matched at the Federal medical assistance percentage (FMAP) specified in 42 CFR 433.10). This recognition led to an explicit statement in the legislative history prohibiting the duplication of payments. (See H. Rept. No. 453, 99th Cong., 1st Sess. 546 (1985).)

The Congress reaffirmed its prohibition on the duplication of funding in section 8435 of the Technical and Miscellaneous Revenue Act of 1988. This section of the statute prohibits the Secretary from denying approval of a State plan amendment to furnish targeted case management services on the basis that the State was or is paying for these services from other revenue sources. The amendment also specifies that the Secretary is not required to make payment under Medicaid for case management services that are furnished without charge to recipients. This is in keeping with the longstanding position that the Medicaid program is the payer of last resort. As with all Medicaid services (with the statutory exceptions of case management services included in Individualized Education Programs or Individualized Family Service Plans and services furnished through title V agencies), payment for case management services cannot be made when another payer is liable, nor may payment be made for services for which no payment liability is incurred.

To comply with these statutory requirements, we are proposing that providers document contacts with recipients and contacts made on behalf of recipients and the nature of these contacts. Providers must maintain case records that document the name of the recipient, the date of service, the name of the provider agency and the person providing the service, the nature, extent, or units of service, and the place of service delivery.

We also are proposing that FFP not be available for case management services furnished in accordance with section 1915(g) of the Act if these services duplicate services available under (or are paid under) another authority or are available without charge to the Medicaid recipient. So long as duplication of funding is avoided, or payment is not made for services for which no payment liability has been incurred, however, appropriate payments may be made for covered services.

Specifically, we are proposing that FFP is not available for expenditures for case management services furnished in accordance with section 1915(g) of the Act under the following conditions:

- Case management activities that are furnished as an integral component of another covered Medicaid service. An example of this type of case management is the preparation of plans of treatment by home health agencies. Since the preparation of these plans is required as a part of home health services, separate reimbursement for the case management component cannot be made because it is included in the payment made for the home health service.
- Case management activities that duplicate payments made under another program authority for the same purpose. For instance, a State may have a non-Medicaid funded case management program that furnishes case management services to pregnant women and infants. FFP would not be available under section 1915(g) of the Act for similar case management services furnished to the same target group.
- Case management activities that are furnished as a function necessary for the proper and efficient operation of the Medicaid State plan, as provided in section 1903(a) of the Act. These include case management activities such as utilization review, prior authorization, and nursing home preadmission screening. Since these case management activities are not furnished as a "medical assistance" service to the individual recipient, FFP is not available under section 1915(g) of the Act.

It is important to note that, in addition to the section 1915(g) authority, States may furnish case management services to recipients under other authorities of the Medicaid program. In each case, the FFP rate is determined by the purpose and nature of the case management activity. The following clarifies particular situations in which case management services may be furnished under Medicaid (other than under the authority of section 1915(g) of the Act) and the FFP rates that would apply.

- Case management may be an integral and inseparable part of an otherwise covered Medicaid service listed in section 1905(a) of the Act (for example, home health services), when that service is included in a State's approved Medicaid State plan. In such cases, separate reimbursement for the case management component cannot be made, but is included in the payment made for the otherwise covered service listed in section 1905(a) of the Act. Payment is made for these section 1905(a) services as "medical assistance" at the FMAP rate.
- When case management is furnished as a discrete service under a waiver approved in accordance with section 1915 (c), (d), or (e) of the Act, payment is made at the FMAP rate, since the Act describes home and community-based waiver services under each of these authorities as "medical assistance." (FFP for services furnished under a section 1915(d) waiver, including case management services, is subject to the aggregate projected expenditure limitation calculated in accordance with section 1915(d)(5) of the Act.)
- Case management services performed under a waiver granted in accordance with section 1915(b)(1) of the Act, when furnished by a vendor, may be considered for purposes of this section to be "medical assistance," as described under section 1905(a)(19) of the Act. As such, they may qualify to be paid at the FMAP rate whether or not the State furnishes case management as a plan service in accordance with section 1915(g) of the Act (see section III.C. of this preamble).
- Case management activities performed by employees of the State Medicaid agency, either in general administrative support of the plan, or to administer a waiver under section 1915(b) of the Act, are generally construed to be functions necessary for the proper and efficient administration of the Medicaid State plan, in accordance with section 1903(a) of the Act. Therefore, payment is made at the rate determined under section 1903(a) of the Act (that is, the 50-percent administrative match or, if appropriate, one of the premium match rates provided at that section). Consequently, although FFP is not available under section 1915(g) of the Act, FFP may be available for activities specified under section 1903(a) of the Act.
- Case management activities furnished in support of the administration of the plan by the

Medicaid agency, or by employees of other agencies (such as social services agencies or developmental disabilities administrations) under interagency agreements with the Medicaid agency may also qualify for the administrative match when the activities are found to be necessary for the proper and efficient administration of the Medicaid State plan.

• Case management services furnished under section 1905(a)(19) of the Act are defined as "medical assistance," and, therefore, are paid at the FMAP rate.

C. Relationship of Section 1915(g) Case Management Services to Section 1915(b) Waivers

A case management system furnished in accordance with section 1915(b) of the Act is separate and distinct from case management services furnished under section 1915(g) of the Act. Under a primary care case management system implemented through a section 1915(b)(1) waiver, the Medicaid agency ensures that a specific person or persons or agency will be responsible for locating, coordinating, and monitoring all primary care, or primary and other medical care, and rehabilitative services on behalf of a recipient. Such case management systems may restrict access to providers (other than in emergency circumstances and for family planning services), as well as to items and services covered by a State's Medicaid plan. Regulations for section 1915(b) waivers are found at 42 CFR 431.55.

In contrast, targeted case management services furnished in accordance with section 1915(g) of the Act prohibit restriction of access to providers. Section 1915(g) case management services consist of assisting Medicaid recipients in gaining access to needed medical, social, educational, and other services, not all of which need be provided for in a State's Medicaid plan.

D. Relationship of Case Management Services to Other Waivers Available Under Section 1915 of the Act

Case management services continue to be available under home and community-based services waivers approved in accordance with sections 1915(c) and 1915(d) of the Act. In addition, although case management services are not separately identified under section 1915(e) of the Act, they may be furnished under a section 1915(e)(1) waiver as "other services." However, because approval for services under these waivers may only be granted for services not otherwise available under a State plan, the amendment of a State plan to include section 1915(g) case management services may necessitate the modification of an existing waiver that furnishes such services.

This situation does not present a problem when the target group under a waiver differs from that in the State plan amendment for section 1915(g) case management services, or when the definition of case management services under the waiver differs from that under the section 1915(g) State plan amendment. However, when a target group (and/or subgroup) and the service definition under the terms of the waiver and the State plan amendment are the same, duplication of funding would occur. In these cases, therefore, the waiver must be amended to delete case management services insofar as such services are furnished under a State plan. The waiver amendment would have no effect on recipients, but would only affect the method of protecting and tracking costs for waiver recipients and preventing duplicative funding.

Payment for case management services furnished under a State plan must not duplicate payments made to public agencies or private entities under other program authorities for this same purpose, including payments made for services furnished under a home and community-based services waiver. In addition, States must indicate in the State plan amendment that case management services provided in accordance with section 1915(g) of the Act will not duplicate case management services provided under any home and community-based services waiver.

Regulations governing waivers granted under sections 1915 (b), (c), and (d) of the Act have already been published at 42 CFR 431.55, 42 CFR 441.300, and 42 CFR 441.350 through 441.365, respectively. Regulations governing waivers granted under section 1915(e) of the Act will be published in a separate document.

E. Administration of the State Plan

The addition of case management services in sections 1915(g) and 1905(a)(19) of the Act (as amended by COBRA and Public Law 99–514, respectively) to the list of covered services that may be furnished under a State plan does not alter a State's ability, or responsibility, to perform activities in support of the administration of its State plan. FFP continues to be available under section 1903(a) of the Act at the administrative rate for these activities. In addition, the Act continues to require that a State plan be operated in the best interest of Medicaid recipients. However, we do not propose to set forth an exhaustive listing of administrative activities that may be eligible for FFP.

We believe that case management as a service under a State plan and case management activities performed in support of the administration of a State plan must be considered two separate functions, each with its own purpose and set of rules for payment. Case management services, as defined in section 1915(g)(2) of the Act, are recipient-based activities, which have as their purpose the linking of an eligible individual with the most appropriate providers of care and services, regardless of the funding source of the care and services. Case management performed as an administrative activity, however, is primarily concerned with the proper and efficient administration of a State plan. However, although payment practices for these services differ, a small number of functions may be common to both types of case management services (such as referral to Medicaid providers of services in the plan).

We also note that case management furnished as a service under the State plan is subject to the rules for service provisions that govern the Medicaid program as a whole. These include requirements for free choice of providers, as discussed under section III.A. of this preamble, as well as mandated provider agreements with the Medicaid agency (including State agency employees), Medicaid payment direct to the providers of the service, and financial and recordkeeping rules.

When case management activities are performed as an administrative function in support of a State plan, an entirely different set of requirements apply. To qualify as an administrative expense, an activity must be related to the administration of a State Medicaid plan. Activities that may be beneficial to the recipient, but are unrelated to Medicaid (such as assistance in locating suitable housing), may qualify for Federal funding under other funding authorities, but, because they have no connection with a State Medicaid plan, section 1903 of the Act does not authorize payment of administrative FFP.

F. Differentiation Between Targeted Case Management Services and Case Management Activities Matched as Administrative Costs

There are certain case management activities that may appropriately be classified as eligible for FFP at either the administrative or the service match rate. For example, referral to a participating provider for services may be claimed as a case management service at either the administrative or the service match rate

if a State plan provides for coverage of the activity as a case management service. Situations in which a choice may arise in claiming activities at either the administrative or service match rates may occur when the entire case management function is concerned with linking Medicaid recipients with services and providers under the plan. In cases where an activity may qualify as either a Medicaid service or an administrative activity, States have the latitude to classify the function in either category. This decision should be made prior to claiming FFP, however, because of the different rules that apply to each type of function under the Medicaid program.

G. Case Management as a "Medical Assistance" Cost

FFP is available at the FMAP rate for allowable actual expenditures for case management services only when the following tests are met:

- The expenditures were made on behalf of eligible recipients included in the target group;
- The services were furnished as defined in the approved State plan;
- The case management services were furnished by individuals or entities with whom the Medicaid agency had in effect a valid provider agreement;
- The case management services were furnished to assist an individual in gaining access to needed services. Although FFP may be available for case management activities that identify the specific services needed by an individual, assist recipients in gaining access to these services, and monitor to ensure that needed services are received, FFP is not available for the cost of these specific services unless they are separately reimbursable under Medicaid. Also, FFP is not available for the cost of the administration of other services or programs to which a recipient is referred, for example, educational or juvenile services agencies;
- The State payment for the services was made following the receipt of a valid provider claim.

When case management is furnished as a "medical assistance" item under a State plan (that is, as a service under section 1905(a) or 1915(g) of the Act), the service is subject to the usual rules pertaining to all Medicaid services. If a State chooses to cover "gaining access to Medicaid services" as a case management service under its State plan, it cannot claim FFP at the administrative rate for the same types of services furnished to the same target group as medical assistance.

Examples of case management activities at the service match rate include assisting a recipient in gaining access to social services, food stamps, energy assistance, or housing. Such activities must be clearly delineated in the State plan amendment.

H. Case Management As An Administrative Cost

When case management activities are furnished as an administrative cost, section 1903(a) of the Act requires that, to be eligible for FFP, they must be necessary for the proper and efficient administration of the plan. Because activities related to services that Medicaid does not cover are not considered necessary for the administration of the Medicaid plan, the costs of administration of case management involving non-Medicaid services are not eligible for Medicaid FFP. Case management activities related to obtaining social services, food stamps, energy assistance, or housing cannot be considered an administrative expense because they are not covered services under Medicaid.

Case management activities may be classified as allowable administrative costs of the Medicaid program when:

- They are furnished in a manner consistent with simplicity of administration and the best interest of the recipient, as prescribed by section 1902(a)(19) of the Act; and
- Documentation maintained in support of the claimed expense is sufficiently detailed to permit HCFA to determine whether the activities are necessary for the proper and efficient administration of the State plan, as provided by section 1903 of the Act, and do not duplicate case management services furnished in accordance with sections 1905(a)(19) and 1915(g) of the Act.

Although the two types of case management services (that is, administrative and medical assistance) are not mutually exclusive, we reiterate that the primary focus of the administrative activity is the proper and efficient administration of the Medicaid State plan. When case management is furnished as "medical assistance," however, it is furnished as a service to the individual recipient.

We will evaluate the activities for which FFP is claimed to determine whether they meet the requirements (either administrative or service match) for payment. When FFP is claimed for any functions performed as administrative case management under section 1903(a) of the Act, documentation must clearly demonstrate that the activities were furnished to Medicaid applicants or recipients, and were in some way connected with determining eligibility or administering services covered under the State plan. In addition, all rules for claiming Federal matching funds must be observed. When a State expects to claim FFP for Medicaid administrative case management activities, the costs for these activities must be included in a cost allocation plan submitted to and approved by the appropriate HCFA Regional Office.

The determining factor in ascertaining whether a case management activity could qualify for administrative FFP is its relationship to the functioning of the Medicaid State plan. If the activity has a direct link with the appropriate operation or utilization of the Medicaid plan, it is considered necessary for the proper and efficient administration of that plan.

The following list of functions provides examples of activities that may properly be claimed as "case management administrative costs," but not as case management services. This list should be considered representative only. The exclusion of any particular function from this list should not be taken, in and of itself, to represent our determination that the function is not necessary for the administration of the plan. Similarly, the inclusion of items on this list does not represent a determination that any activity characterized in these terms is always necessary for the administration of the State plan.

- Medicaid eligibility determinations and redeterminations;
- Medicaid intake processing;
- Medicaid preadmission screening for inpatient care;
- Prior authorization for Medicaid services, and utilization review; and
- Medicaid outreach (methods to inform or offer opportunity to recipients or potential recipients to enter into care through the Medicaid system).

Administrative case management activities may be performed by another government entity under an interagency agreement. The administrative case management activities for which FFP is claimed must be limited to assisting individuals in gaining access to Medicaid-funded services and the ongoing monitoring of Medicaid services, and may not include the costs of administration of other functions of State government. For example, setting up an appointment with a Medicaid-participating physician and arranging for transportation for a recipient could be considered case management administrative activities necessary for the proper and efficient administration

of the Medicaid plan. However, arranging for baby-sitting for a recipient's child, although beneficial to the recipient, has no connection with the Medicaid program, and therefore is not an activity for which administrative FFP can be claimed.

Similarly, when a caseworker suspects that physical abuse of a recipient has occurred, the referral to medical care could be considered a reimbursable administrative activity under the Medicaid program. However, assisting the victim in obtaining emergency housing and legal services, although in the best interest of the recipient, is not related to the administration of the Medicaid program, and therefore is not eligible for FFP. In cases where workers perform activities funded under multiple auspices, proper records must be kept to document the State's claims for Federal matching funds under the appropriate authorities.

It is the nature of the activity, rather than the person or agency performing the activity, which governs the determination of the availability of FFP. If an activity cannot be determined necessary for the administration of a State plan, there is no statutory basis for claiming FFP as an administrative cost under section 1903(a)(7) of the Act.

IV. Proposed Revisions to the Regulations

In order to incorporate the policies and implement the statutory provisions described above, we propose to make the following revisions to 42 CFR chapter IV, subchapter C, Medical Assistance Programs.

- We would revise § 431.51(c) by adding a new paragraph (c)(4) to provide States with the option of limiting the number of providers of case management services available to furnish services defined in § 440.169 to targeted groups of individuals with developmental disabilities or chronic mental illness.
- In § 431.54, we would add a new paragraph (g) to include case management services as an exception to the statewide operation requirement in § 431.50(b).
- In part 440, we would add to subpart A a new § 440.169, Case management services, which would define a new optional Medicaid service for which FFP is available to States.
- We would revise § 440.250 by adding a new paragraph (r) to provide for an exception to the comparability requirements under § 440.240 for case management services.
- In part 441, subpart A, we would revise § 441.10 to add a statutory basis for the case management provision.
- We also would add to subpart A a new § 441.18, Case management services, to specify State plan requirements and limitations on availability of FFP for case management services.
- In part 447, we would add new § 447.327, Case management services: Upper limits of payment, to set forth the upper limits of payment for targeted case management services.

V. Collection of Information Requirements

Regulations at § 441.18 contain information collection and recordkeeping requirements that are subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). The information collection requirements concern the development of recipient case records and the development of State plan amendment material regarding the provision of case management services. The respondents who will provide the information include providers of case management services and State Medicaid agencies. Public reporting burden for this collection of information is estimated to be one-quarter of an hour for case management providers per recipient per contact for claims and clinical record documentation, and 3 hours per State plan amendment for State Medicaid agencies. However, several Medicaid agencies have advised us that they do not believe that these requirements will result in any increased burden. These agencies indicated that they already require providers of case management services to document contacts with Medicaid recipients and they believe that this is a common practice among all Medicaid agencies.

A notice will be published in the **Federal Register** after approval is obtained. Organizations and individuals desiring to submit comments on the information collection and recordkeeping requirements should direct them to the OMB official whose name appears in the "**ADDRESSES**" section of this preamble.

VI. Response to Comments

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the "**DATES**" section of this preamble, and if we proceed with the final rule, we will respond to the comments in the preamble to the final rule.

VII. Regulatory Impact Statement

Executive Order 12291 requires us to prepare and publish an initial regulatory impact analysis for any proposed regulations that are likely to meet criteria for a "major rule." A major rule is one that would result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or any geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.
- In addition, consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), we prepare and publish an initial regulatory flexibility analysis for proposed regulations unless the Secretary certifies that the regulations would not have a significant impact on a substantial number of small entities. For purposes of the RFA, we do not consider States or individuals to be small entities.

Section 1915(g) of the Act provides for Medicaid coverage of a new State plan service, optional targeted case management services. This proposed regulation incorporates that statutory provision in the Federal regulations.

Under section 1915(g) of the Act, States may, without securing a waiver, provide more effective Medicaid coverage by furnishing case management services to specified Medicaid groups on a statewide basis and/or on an individual basis to those individuals who may reside in a particular geographic area of the State. If a State elects to furnish case management services, FFP will be available to the State to assist Medicaid recipients in gaining access to needed medical, social, educational and other services. Recipients retain the right to select among qualified Medical providers of case management services.

We are unable to estimate the net costs/savings that might result from case management under section 1915(g) of the Act for the following reasons. The use of case management services may result in increased access to other services, including those covered under Medicaid. Conversely, provision of case management services may work to lower both Federal and State costs by encouraging the use of cost-effective medical care through referrals to qualified providers, and by discouraging inappropriate utilization of costly

services such as emergency room care for routine procedures. The use of case management services also may eliminate unnecessary care and over-utilization of services. Further, by facilitating early treatment, the use of case management services can preclude the need for more costly "last resort" treatment alternatives. Because we cannot predict the effect these factors will have on the utilization of services, we are unable to estimate the costs or savings that may result from implementing case management under section 1915(g) of the Act.

In fiscal year 1989, Federal and State expenditures for case management services themselves were $64 million, increasing to $146 million by fiscal year 1990. Expenditures for fiscal years 1991 and 1992 further increased to $264 million and $375 million, respectively, and we project an increase to $423 million in fiscal year 1993. However, these figures do not reflect offsetting decreases that may have occurred in other service categories during this period.

We have determined, however, that this proposed rule is not a major rule under Executive Order 12291, and the Secretary certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. We have made this determination because the increase in Medicaid expenditures results from the statutory provisions that define targeted case management as "medical assistance," rather than from publication of this proposed rule. Thus, the projected increase in Medicaid expenditures for targeted case management services would occur even in the absence of this proposed rule and may, in fact, even be greater due to inappropriate claiming of FFP for targeted case management services.

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any proposed rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside a metropolitan statistical area. We have determined, and the Secretary certifies, that this proposed regulation would not have a significant economic impact on the operations of a substantial number of small rural hospitals.

List of Subjects

42 CFR Part 431

Grant programs-health, Health facilities, Medicaid, Privacy, Reporting and recordkeeping requirements.

42 CFR Part 440

Grant programs-health, Medicaid.

42 CFR Part 441

Family planning, Grant programs-health, Infants and children, Medicaid, Penalties, Prescription drugs, Reporting and recordkeeping requirements.

42 CFR Part 447

Accounting, Administrative practice and procedure, Grant programs-health, Health facilities, Health professions, Medicaid, Reporting and recordkeeping requirements, Rural areas.

For the reasons set forth in the preamble, 42 CFR chapter IV, subchapter C would be amended as set forth below:

PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

A. Part 431 is amended as follows:

1. The authority citation for part 431 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. In § 431.51, paragraph (c) introductory text is republished, paragraphs (c)(2) and (c)(3) are revised and a new paragraph (c)(4) is added to read as follows:

§ 431.51 Free choice of providers.

* * * * *

(c) *Exceptions.* Paragraph (b) of this section does not prohibit the agency from—

* * * * *

(2) Setting reasonable standards relating to the qualifications of providers;

(3) Subject to paragraph (b)(2) of this section, restricting recipients' free choice of providers in accordance with one or more of the exceptions set forth in § 431.54, or under a waiver as provided in § 431.55; or

(4) Limiting the number of providers who are available to furnish case management services defined in § 440.169 to individuals with developmental disabilities or with chronic mental illness. This limitation may only be permitted to ensure that the providers of case management services for eligible individuals with developmental disabilities or with chronic mental illness are capable of ensuring that such individuals receive needed services.

* * * * *

3. Section 431.54 is amended by revising paragraph (a) and by adding a new paragraph (g) to read as follows:

§ 431.54 Exceptions to certain State plan requirements.

(a) *Statutory basis*—(1) Section 1915(a) of the Act provides that a State shall not be deemed to be out of compliance with the requirements of sections 1902(a) (1), (10), or (23) of the Act solely because it has elected any of the exceptions set forth in paragraphs (b) and (d) through (f) of this section.

(2) Section 1915(g) of the Act provides that a State may provide, as medical assistance, case management services under the plan without regard to the requirements of sections 1902(a)(1) and 1902(a)(10)(B) of the Act.

* * * * *

(g) *Case management services.* The requirements of § 431.50(b) relating to the statewide operation of a State plan do not apply with respect to case management services defined in § 440.169.

PART 440—SERVICES: GENERAL PROVISIONS

B. Part 440 is amended as follows:

1. The authority citation for part 440 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. A new § 440.169 is added to subpart A to read as follows:

§ 440.169 Case management services.

Case management services means services furnished to assist individuals eligible under the State plan in gaining access to needed medical, social, educational and other services, in accordance with § 441.18 of this subchapter. Gaining access may include necessary followup or monitoring of an individual's progress or status.

3. Section 440.250 is amended by reserving paragraph (q) and adding a new paragraph (r) to read as follows:

§ 440.250 Limits on comparability of services.

* * * * *

(q) [Reserved]

(r) If covered under the plan, case management services may be limited to—

(1) Certain geographic areas within a State, without regard to the statewide requirements in § 431.50 of this subchapter; and

(2) Targeted groups specified by the State in its State plan.

PART 441—SERVICES: REQUIREMENTS AND LIMITS APPLICABLE TO SPECIFIC SERVICES

C. Part 441 is amended as follows:

1. The authority citation for part 441 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 441.10 is revised to read as follows:

§ 441.10 Basis.

This subpart is based on the following sections of the Act which state requirements and limits on the services specified or provide Secretarial authority to prescribe regulations relating to services:

Section 1102 for end-stage renal disease (§ 441.40).

Section 1138(b) for organ procurement organization services (§ 441.13(c)).

Section 1902(a)(10)(D) and 1905(a)(7) for home health services (§ 441.15).

Section 1903(i)(1) for organ transplant procedures, and 1903(i)(5) for certain prescribed drugs (§§ 441.35 and 441.25).

Section 1903(i)(6) which prohibits (except in emergency situations) FFP in expenditures for inpatient hospital tests that are not ordered by the attending physician or other licensed practitioner (§ 441.12).

Section 1905(a)(4)(C) for family planning (§ 441.20).

Section 1905(a)(12) and (e) for optometric services (§ 441.30).

Section 1905(a)(17) and (m) for nurse-midwife services (§ 441.21).

Section 1905(a) following (a)(18), which prohibits FFP in expenditures for certain services (§ 441.13).

Section 1905 (a)(19) and 1915(g) for case management services (§ 441.18).

3. A new § 441.18 is added to subpart A to read as follows:

§ 441.18 Case management services.

(a) If a State plan provides for case management services, as defined in § 440.169 of this subchapter, the plan—

(1) Must allow individuals the free choice of any qualified Medicaid provider within the specified geographic area identified in the plan when obtaining case management services, in accordance with § 431.51 of this subchapter;

(2) Must not restrict an individual's access to other services under the plan through the use of case management services;

(3) Must not condition receipt of case management services on the receipt of other Medicaid services;

(4) Must indicate that case management services provided in accordance with section 1915(g) of the Act will not duplicate case management services provided under any home and community-based services waiver.

(5) Must prohibit providers of case management services from exercising the State agency's authority to authorize or deny the provision of other services under the plan;

(6) Must require providers to maintain case records for all recipients that document—

(i) The name of the recipient;

(ii) The date of service;

(iii) The name of the provider agency and the person providing the service;

(iv) The nature, extent, or units of service; and

(v) The place of service delivery;

(7) Must include a separate plan amendment for each group receiving case management services that—

(i) Defines the group (and any subgroups within the group) eligible to receive the services;

(ii) Identifies the geographic area to be served;

(iii) Describes the services furnished;

(iv) Specifies provider qualifications that are reasonably related to the type of case management services furnished; and

(v) Specifies the arrangements under which providers will be paid; and

(8) Must include a separate plan amendment for each subgroup within a group if any of the following differs among the subgroups:

(i) The services to be furnished;

(ii) The qualifications of providers; or

(iii) The arrangements under which providers will be paid.

(b) If the State limits qualified providers of case management services for target groups of developmentally disabled or chronically mentally ill individuals, in accordance with § 431.51(a)(4) of this subchapter, the plan must identify any limitations to be imposed on the providers and specify how these limitations enable providers to ensure that individuals within the target groups receive needed services.

(c) FFP is not available in expenditures for services defined in § 440.169 of this subchapter when—

(1) Case management activities are an integral component of another covered Medicaid service;

(2) Expenditures would duplicate payments made by another program authority for this same purpose; or

(3) Case management activities are intrinsic to the proper and efficient administration of the State plan.

PART 447—PAYMENTS FOR SERVICES

D. Part 447 is amended as follows:

1. The authority citation for part 447 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. A new undesignated heading and a new § 447.327 are added to subpart F to read as follows:

Case Management Services

§ 447.327 Case management services: Upper limits of payment.

With respect to case management services defined in § 440.169 of this subchapter, furnished by institutional providers, clinics, physicians, or other practitioners, the agency—

(a) May pay the customary charge; and

(b) May not pay more than the prevailing charges in the locality for comparable services under comparable circumstances.

(Catalog of Federal Domestic Assistance Program, No. 93.778, Medical Assistance Program)

Dated: April 26, 1993.

William Toby, Jr.,

Acting Deputy Administrator, Health Care Financing Administration.

Approved: June 14, 1993.

Donna E. Shalala,

Secretary.

[FR Doc. 93–25069 Filed 10–14–93; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[PP Docket No. 93–253, FCC 93–455]

Implementation of Section 309(j) of the Communications Act—Competitive Bidding

AGENCY: Federal Communications Commission.

ACTION: Proposed Rule.

SUMMARY: The Commission has adopted a *Notice of Proposed Rule Making* (NPRM) that proposes to implement recent statutory changes to the Communications Act of 1934, as amended (Communications Act), that, among other things, provide the Commission with the authority to conduct auctions of the electromagnetic spectrum. The NPRM is necessary in order to comply with the mandates included in the Omnibus Budget Reconciliation Act of 1993. The NPRM proposes the policies and methodologies for a system of competitive bidding.

DATES: Comments due November 10, 1993. Reply Comments due November 24, 1993.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Toni Simmons, Office of Plans and Policy, Federal Communications Commission, at (202) 653–5940.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's NPRM, FCC 93–455, adopted September 23, 1993, and released October 12, 1993. The full text of this NPRM is available for inspection and copying during normal business hours in the FCC Reference Center, Room 230, 1919 M Street, NW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, 1919 M Street, room 236, Washington, DC 20554, telephone (202) 857–3800.

Summary of NPRM

1. The Notice of Proposed Rule Making (NPRM) implements provisions of the Omnibus Budget Reconciliation Act of 1993, which gives the Commission explicit authority to use competitive bidding to award licenses for use of the radio spectrum. The Commission proposes that auctions be limited to a) mutually exclusive applications, b) initial license applications (and not renewal or modification applications), and c) radio communications services that principally use their spectrum to provide service to subscribers for compensation. Based on those criteria, the Commission proposes to exclude most mass media services and services used by public safety entities, for example, from competitive bidding.

2. However, the Commission tentatively concludes that competitive bidding should begin immediately for Personal Communications Services (PCS), some services regulated by the Private Radio and Common Carrier Bureaus such as the Specialized Mobile Radio, Interactive Video Data Service, and certain cellular radio service applications.

3. The Commission proposes a variety of ways to meet the new law's requirement that small businesses, rural telephone companies, and businesses owned by women and minorities be given an opportunity to participate in the competitive bidding process. The Commission asks for specific comments on setting aside blocks of spectrum for these designated groups, including a proposal to set aside a MHz frequency block (Block C) and a 10 MHz block (block D) in context of broadband PCS to be licensed on a Basic Trading Area (BTA) basis. For both broadband and narrowband PCS, the Commission also proposes that these designated groups be able to pay for their licenses over time, and ask how tax certifies could be used to assist the designated groups as well.

4. The Commission seeks comment on alternative approaches for bidding, payment, deposits, safeguards, and bidder qualifications and eligibility. Further, the Commission tentatively concludes that although the FCC should have a broad menu of bidding methods, oral bidding should be the basic bidding method. The Commission also seeks comment on electronic bidding and sealed bidding. The Commission asks for comment on the general concept of bidding for groups of licenses—also known as combinatorial bidding—and reach tentative conclusions for implementing group bidding for broadband PCS licenses. Under group bidding, the Commission would accept bids both for licenses individually and for all the individual licenses in the block. Licenses would be awarded as a group if a bid for the licenses as a group exceeded the sum of the highest bids for the licenses individually. If the sum of the individual bids were greater than the highest bid for the group, licenses would be awarded individually.

5. The Commission asks how licenses should be offered when bidding is conducted sequentially, and propose that for PCS services, the largest markets be auctioned first. The Commission tentatively concludes that auction winners not designated by the Budget Act as deserving preferential treatment be required to pay in a lump sum upon license grant.

6. Bidding would be limited to qualified bidders. Specifically, in order to participate in an auction, the Commission proposes, among other things, that bidders would be required to tender in advance to the Commission a substantial upfront payment that, for the winning bidder, would also serve as either the sole or an additional financial qualification in the service subject to auction. The amount of the payment would vary with the license being auctioned, and the Commission would retain the upfront payments of auction winners even if they are later disqualified.

7. The Budget Act of 1993 requires the Commission to begin licensing PCS within 270 days of enactment, and the Commission proposes to use both oral and sealed bidding in licensing broadband PCS. Oral bidding would be used in all cases except for bids on groups of licenses. The Commission proposes to permit group bidding to award all of the 51 Major Trading Area (MTA) licenses on each of two 30 MHz spectrum blocks, thereby facilitating nationwide service.

8. The Commission asks for comment on whether this procedure should be used to facilitate grouping of PCS licenses with BTA service areas, and asks whether the Commission should accept sealed bids for all BTA licenses on an MTA basis and conduct oral auctions sequentially for individual BTA licenses. The Commission also seeks comment on the use of this combinatorial bidding to aggregate 10 MHz PCS licenses into 20 MHz PCS licenses into 20 MHz or 30 MHz blocks.

9. The Commission proposes measures to prevent unjust enrichment of parties obtaining licenses via auction as well as licenses granted by lottery. The Commission also seeks comment on performance requirements to ensure prompt delivery of service and to prevent warehousing of spectrum. Finally, the Commission seeks comment on procedures to prevent collusion among bidders.

10. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IFRA) of the expected impact on small entities of the proposals contained in this NPRM. We request written public comment on the IRFA, which follows. Comments must have a separate and distinct heading designating them as responses to the IFRA and must be filed by the comment deadlines provided above. The Secretary shall send a copy of this NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act Public Law No. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612 (1981).

A. Reason for Action

(i). This rule making proceeding is initiated to obtain comment regarding the implementation of a new section 309(i) and 309(j) of the Communications Act, as amended by the Omnibus Budget Reconciliation Act of 1993 (Budget Act).

B. Objectives

(ii). The Commission seeks to implement changes to the Communications Act that, among other things, provide the Commission with the authority to conduct auctions of electromagnetic spectrum, limit the Commission's authority to conduct lotteries and require certain anti-trafficking requirements in the context of lotteries. The Budget Act requires the Commission to complete this proceeding within 210 days of its enactment, or March 8, 1993.

C. Legal Basis

(iii). The NPRM is authorized under the Omnibus Budget Reconciliation Act of 1993, Public Law 103–66, title VI, section 6002, and sections 2(a), 4(i), 303(r), 309(i) and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 152(a), 154(i), 303(r), 309(i) and 309(j).

D. Reporting, Recordkeeping and Other Compliance Requirements

(iv). The proposals under consideration in this NPRM include the possibility of new reporting and recordkeeping requirements for a number of small business entities.

E. Federal Rules Which Overlap, Duplicate or Conflict With These Rules

(v). None.

F. Description, Potential Impact, and Number of Small Entities Involved

(vi). The rule changes proposed in this proceeding could affect small businesses if they have mutually exclusive applications for initial licenses or permits for a particular radio service accepted for filing by the Commission where the Commission has determined that, under Section 309(j), the particular spectrum is subject to competitive bidding. The NPRM proposes that mutually exclusive applications for licenses or permits in such radio services would be resolved by a system of competitive bidding rather than a system of random selection. In addition, the NPRM proposes certain antitrafficking requirements in the context of lotteries. After evaluating the comments in this proceeding, the Commission will further examine the impact of any rule changes on small entities and set forth our findings in the Final Regulatory Flexibility Analysis.

G. Any Significant Alternatives Minimizing the Impact on Small Entities Consistent With the Stated Objectives

(vii). The NPRM proposes certain preferential measures entities designated by the Budget Act of 1993 as deserving special consideration to ensure their economic opportunity, such as installment payment plans.

4. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520, and found to contain the possibility of some new or modified form, information collection and/or record retention requirements, that may increase burden hours imposed on the public.

List of Subjects in 47 CFR Part 1

Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–25436 Filed 10–14–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 228

[Docket No. 930816–3216; I.D. 071993D]

Incidental Take of Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule, notice of public meetings and request for comments.

SUMMARY: NMFS has received an application from the U.S. Department of the Navy for a Letter of Authorization that would allow the unintentional take of small numbers of pinnipeds and cetaceans incidental to the underwater detonation of conventional explosives in the offshore waters of the Outer Sea Test Range of the Naval Air Warfare Center, Pt. Mugu, Ventura County, CA, over the next 5 years. NMFS by this notice, is proposing regulations that would govern that take. NMFS also announces the times, dates and locations for a public meeting under the Marine Mammal Protection Act in order to receive comments from the general public on the Navy application and the proposed regulations.

DATES: Comments must be postmarked no later than November 29, 1993. Public meetings on the proposed rule are scheduled as follows:

1. November 8, 1993, 6–10 p.m. Long Beach, CA.
2. November 15, 1993, 9:30 a.m.–4:30 p.m. Silver Spring, MD.

ADDRESSES: Written comments on the proposed rule should be addressed to Dr. William W. Fox, Jr., Director, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910. A copy of the Environmental Assessment and Navy's application may be obtained by writing to this address or by telephoning the contact listed below.

The public meetings will be held at the following locations:

1. Silver Spring—Silver Spring Metro Center Building 4, Auditorium, 1301 East—West Highway, Silver Spring, MD.
2. Long Beach—Ramada Renaissance Hotel, 111 East Ocean Blvd. Long Beach, CA.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, Office of Protected Resources, NMFS (301) 713–2055.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5) of the Marine Mammal Protection Act (16 U.S.C. 1361 *et seq.*; the MMPA) directs the Secretary of Commerce (Secretary) to allow, upon request by U.S. citizens engaged in a specific activity (other than commercial fishing) in a specified geographical region, the incidental, but not intentional, taking of small numbers of marine mammals, if certain findings are made and regulations are issued. Under the MMPA, the term "taking" means to harass, hunt, capture or kill.

Permission may be granted for periods up to 5 years if the Secretary finds, after notice and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, the Secretary must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat, and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds and areas of similar significance. The regulations must include requirements pertaining to the monitoring and reporting of such taking.

Summary of Request

On May 13, 1993, NMFS received an application from the U.S. Department of the Navy for a Letter of Authorization under section 101(a)(5) of the MMPA and 50 CFR § 228.6 authorizing the take of small numbers of marine mammals, for a period of 5 years commencing February 1994, incidental to a wide variety of military projects involving the underwater detonation of conventional explosives in the offshore waters of the Outer Sea Test Range of the Naval Air Warfare Center (NAWC), off Pt. Mugu, Ventura County, CA, seaward of the Channel Islands. This application was subsequently modified by letter on September 2, 1993.

As the U.S. Navy describes its proposed activities under the "Live Fire" testing program mandated by the National Defense Authorization Act (10 U.S.C. 139), ships and critical

components or systems constructed for the Navy must undergo shock tests prior to service with the fleet to determine the integrity of the structure and electronic systems that are vital to the overall function and performance of the vessel and its crew under wartime combat conditions. This is especially true when a new class of ship is constructed. The new ship must be subjected to a "near-miss" underwater explosion while its crew tracks airborne and waterborne targets in the area. These tests help the Navy identify weaknesses in the ship's design early in the construction of a new class of ship, which, when corrected, enhance the survivability of the ship, its systems, and most importantly, its crew. The design corrections and improvements are than applied to all follow-on ships of that class.

The shock trial is a complicated combat simulation that requires the participation of several Navy aircraft and ships. Their purpose is to challenge the shock trial ship's tracking and communications systems after the detonation. To ensure the safety of commercial aircraft and vessels, the Navy must maintain control of air and sea space where the trial is being conducted. In addition, the site must be close enough the repair facilities should the ship become disabled. Under normal conditions, for Navy ships homeported on the west coast, the designated site is the Outer Sea Test Range, under the control of the NAWC. The U.S. Navy anticipates that on an annual basis, no more than 10 projects involving underwater explosions will be conducted under the requested Letter of Authorization (Table 1).

The U.S. Navy has requested a take of four species of pinnipeds and 17 species (or species groups) of cetaceans by harassment, injury and death (Table 2). The proposed activities would occur in an area of a potentially high density of marine mammals. Potential impacts to marine mammals include both lethal and non-lethal injuries as well as physical and acoustic harassment. Injury or death may occur as a direct result of the explosive blast (concussion) itself. Injury may include damage to internal organs as well as to the auditory system. Harassment of marine mammals may occur as a result of non-injurious physiological responses to both the explosion-generated shockwave as well as to the acoustic signature of the detonation.

TABLE 1.—MAXIMUM ANTICIPATED ANNUAL UNDERWATER DETONATION REQUIREMENTS

Number of projects/ number of detonations per project	Maximum project charge weight lb/ (kg)	Total number of detonations
2/6	10,000/(4,536)	12.
2/1	1,200/(544)	2.
2/5	100/(45)	10.
2/5	10/(4.5)	10.
2/10	1/(0.45)	20.
Projects 10		Total 54.

Source: Naval Surface Warfare Center, Carderock Division, Underwater Explosions Research Department.

TABLE 2.—REQUESTED TAKE UNDER LETTER OF AUTHORIZATION: ESTIMATED MAXIMUM ANNUAL INCIDENTAL TAKE OF MARINE MAMMALS ASSUMING MAXIMUM UNDERWATER DETONATION REQUIREMENTS.

Incidental take	Lethal	Injury	Harassment
Pinnipeds:			
California sea lion	2	38	173
Harbor seal	2	16	68
Northern elephant seal	9	158	724
Northern fur seal	2	13	57
Odontocetes:			
Common dolphin	1	16	67
Striped dolphin	0	2	5
Risso's Dolphin	0	1	2
Pacific white-sided dolphin	3	52	236
Northern right whale dolphin	2	24	108
Dall's porpoise	0	6	18
Bottlenose dolphin	0	4	15
Killer whale	0	0	1
Sperm whale (e)	0	6	20
Beaked whales	0	0	3
Mysticetes:			
Minke Whale	0	0	4
Blue Whale (e)	0	1	11
Fin Whale (e)	0	0	6
Sei Whale (e)	0	0	1
Humpback Whale (e)	0	0	4
Gray Whale	0	3	40
Right Whale (e)	0	0	1

(e)=endangered species.

The Navy describes in its application efforts that will be made to minimize project related impacts to marine mammals (see below—Measures to Reduce Impacts). The Navy strongly believes that impacts can be held to an acceptably low level by mandating conservative safety ranges for marine mammal exclusion and by incorporating an active aerial survey monitoring effort in the program both prior to, and after detonation of explosives. The Navy states that tests will not be conducted if marine mammals, sea turtles, fish schools, or seabirds are detected within the testing zone, or if weather and sea conditions preclude adequate aerial surveillance. Also, if post-test surveys determine that an injurious or lethal take of a marine mammal has occurred, the test procedure and the monitoring methods will be reviewed by the Navy and NMFS and appropriate changes will be made.

Comments

On June 7, 1993 (58 FR 31944), NMFS published a notice of receipt of the Navy's application for a small take authorization and requested comments, information and suggestions concerning the request and the structure and content of the regulations governing the take. The comment period closed on July 7, 1993. During the comment period, NMFS received several hundred comments. These comments did not address either the contents of the application or the regulations as requested, but instead urged denial of the application. Many stated their opposition to the Navy's detonation of explosives at-sea and the resultant loss of marine life. Most of the concerns raised, such as impacts on marine mammal species and the unknown result from detonating explosives and of the chemically released by-products into surface waters on the oceanic ecosystem, were addressed in the application. These concerns have also been addressed in the Environmental Assessment (EA) prepared on this action under the National Environmental Policy Act (NEPA).

Summary of Proposed Rule

Specific regulations are proposed to govern the incidental taking of marine mammals during the detonation of conventional explosives in the Outer Sea Test Range off Pt. Mugu, CA. These regulations are proposed based on evidence submitted in an application from the U.S. Navy that the detonation of conventional explosives off the Channel Islands, CA, over the next 5 years may involve the incidental taking (harassment, injury or death) of marine

mammals. NMFS believes that the total taking would have a negligible impact on the species for which the take is requested, their habitat, and the availability of these species for subsistence uses. Although two of the species of pinnipeds on the Channel Islands, the northern fur seal and the harbor seal, are taken for subsistence in Alaska, an incidental take from the populations in the Channel Islands would not reduce the availability of these species for subsistence in Alaska. Therefore, NMFS has preliminarily determined that this incidental taking would not have an unmitigable adverse impact on the availability of marine mammals for subsistence by Alaska natives.

The proposed regulations would apply only to military projects involving the underwater detonation of conventional explosives in the offshore waters of the Outer Sea Test Range of the Naval Air Warfare Center, off Pt. Mugu, Ventura County, CA. All activities would have to be conducted in a manner that minimizes adverse effects on marine mammals authorized to be taken and their habitat and in conformance with any requirements in a Letter of Authorization issued under these regulations.

If final regulations are promulgated, NMFS will issue the U.S. Navy a 1-year Letter of Authorization. This Letter is the official document allowing the incidental taking of marine mammals. This Letter of Authorization will be renewed annually upon receipt of a report detailing activities conducted during the previous 12 months, including levels of taking of marine mammals, provided the required mitigation measures are undertaken and the annual taking authorizations are not exceeded. If a species' annual authorization is exceeded, NMFS will review the documentation submitted with the annual report to determine that the taking is not having more than a negligible impact on the species or stock involved.

The annual report must be submitted to the Assistant Administrator for Fisheries, NOAA (AA), not less than 120 days prior to the date of expiration of the annual Letter of Authorization in order for issuance of a Letter of Authorization for the following year.

Any substantive changes to the conditions contained within the annual Letter of Authorization, including suspension or withdrawal, over the 5-year period the regulations are in effect will be subject to public review and comment unless NMFS determines that an emergency exists that necessitates immediate action. The proposed regulations would require the holder of the Letter of Authorization to cooperate with NMFS and any other Federal, state or local agency monitoring impacts resulting from this activity on these species. At its discretion, NMFS would place observers onboard either the fleet tug or the target vessel, or both, and on any ship or aircraft involved in marine mammal reconnaissance and monitoring either prior to, during, or after explosives detonation.

Description of Habitat and Marine Mammals Affected by Military Weapons Testing at the Outer Sea Test Range

The Outer Sea Test Range is an area in the eastern North Pacific Ocean, seaward of the Channel Islands, CA, a minimum of 20 nautical miles (nm) (37 km) northwest of San Nicolas Island, 20 nm (37 km) south of San Miguel Island, and 12 nm (22 km) southwest of Santa Rosa Island. The area extends 60 nm (111 km) westward of San Nicolas Island to 120°45'W. longitude in the Outer Sea Test Range of the Naval Air Warfare Center, Ventura County, CA. Water depths in the test area range from approximately 200 to over 1,900 fathoms (366 to 3,475 m). Shallowest depths (<750 m) in the test area are associated with the Patton Ridge, identifiable as a rise oriented north-south and located nearly mid-range.

The following species/stocks of marine mammals are found in the Southern California Bight (SCB): (1) California sea lion (*Zalophus californianus*); (2) harbor seal (*Phoca vitulina*); (3) northern elephant seal (*Mironga anquistrostris*); (4) northern fur seal (*Callorhinus ursinus*); (5) Steller sea lions (*Eumetopias jubatus*); (6) Guadalupe fur seals (*Arctocephalus townsendi*); (7) common dolphin (*Delphinus delphis*); (8) striped dolphin (*Stenella coeruleoalba*); (9) Risso's dolphin (*Grampus griseus*); (10) Pacific white-sided dolphin (*Lagenorhynchus obliquidens*); (11) northern right whale dolphin (*Lissodelphis borealis*); (12) Dall's porpoise (*Phocoenoides dalli*); (13) bottlenose dolphin (*Tursiops truncatus*); (14) killer whale (*Orcinus orca*); (15) sperm whale (*Physeter macrocephalus*); (16) beaked whales (seven species requested as a single group because of difficulty in identification including Baird's beaked whale (*Berardius bairdii*), Cuvier's beaked whale (*Ziphius cavirostris*), Hubb's beaked whale (*Mesoplodon carlhubbsi*), Blainville's beaked whale (*M. densirostris*), Ginkgo-toothed beaked whale (*M. ginkgodens*), Hector's beaked whale (*M. hectori*) and Stejneger's beaked whale (*M. stejnegeri*)); (17) minke whale (*Balaenoptera acutorostrata*); (18) blue whale (*Balaenoptera musculus*); (19) fin whale (*Balaenoptera physalus*); (20) sei whale (*Balaenoptera borealis*); (21) humpback whale (*Megaptera novaengliae*); (22) gray whale (*Eschrichtius robustus*); and (23) right whale (*Eubalaena glacialis*). However, because of low population estimates in the SCB and marine mammal monitoring measures planned in association with the tests, no impacts or incidental takes of Steller sea lions or Guadalupe fur seals are expected and incidental take authorizations have not been requested. A description of the SCB area and the biology and abundance of the marine mammal species in the SCB can be found in the EA prepared in association with this proposed activity. A copy of the EA is available upon request (see **ADDRESSES**).

Effects of Military Testing Activities on Marine Mammals

Potential impacts to marine mammals from explosives detonation include exposure to chemical by-products, lethal and injurious incidental take, as well as physical and acoustic harassment. Injury or death could occur as a direct result of the explosive blast (concussion) and resultant cavitation.[1] Injury could include damage to internal organs and/or the auditory system. Non-injuries harassment of marine mammals could occur as a result of physiological response to both the explosion-generated shockwave as well as to the acoustic signature of the detonation. Based upon information provided by the U.S. Navy, NMFS believes it is unlikely that injury will occur from exposure to the chemical by-products released into the surface waters.

Measures To Reduce Impacts

Because of the highly mobile nature of ship shock tests, successful avoidance of, or reduction in, the incidental taking of marine mammals is dependent upon the detection of marine mammals. Extensive pre-test surveys in the test area are being conducted in an effort to document on-range marine mammal seasonal abundance and to detect areas of high mammal density. Three 80 nm^2 (275 km^2) areas for ship shock tests will be identified prior to each test based on an analysis of the 1993 NMFS 12-month aerial survey results and historical marine mammal survey data. Intensive

[1] The area of cavitation is where the water pressure becomes extremely low with the passage of the negative shock wave that moves down from the surface. The water separates, producing a region of cavitation bubbles for a brief time. This volume of water then collapses and generates a weak positive pressure wave.

aerial surveys will be flown in the three targeted areas 1 month prior to the first scheduled shock test and the areas will subsequently be ranked from low to high with respect to marine mammal density. An intensive survey will be conducted in the primary test area 2 days prior to each scheduled shock test. If marine mammal density is high, the alternate secondary and tertiary areas will be surveyed to determine their short-term suitability for shock tests.

On test days, extensive aerial and surface surveillance will be conducted to monitor for the presence, behavior and condition of marine mammals before and after each detonation. Pre- and post-detonation aerial reconnaissance surveys will be conducted from a fixed-wing aircraft, Navy helicopters, and from the test vessel. If marine mammals, sea turtles, or endangered or threatened seabirds are seen within the 2-nm (3.7-km)-radius danger zone (for the 10,000-lb. (4,536-kg) charge), detonation of the charge will be delayed until the animals exit the danger area. Tests will not be conducted if marine mammals are detected within the danger zone. Also, tests will not be conducted when weather or sea conditions preclude adequate aerial surveillance. No detonations will be permitted without the concurrence of the Naval Air Warfare Station Ecologist assigned to the program as the Environmental Coordinator. Any dead marine mammals and turtles seen by aerial survey observers during the pre-test aerial survey (48 hours prior to test) will be documented and marked/tagged so that those animals that were dead prior to the test will not be included in incidental take numbers reported after the trial.

Monitoring and Reporting

After each detonation, an aerial reconnaissance survey of the shock zone, to 3 nm (5.6 km) radial distance from the detonation, will be conducted by NMFS Southwest Fisheries Science Center (SWFSC) scientists who will notify the Marine Animal Recovery Team (MART) personnel, onboard an independent recovery vessel, if any dead or injured marine animals are seen. The occurrence of live marine mammals, seabirds and sea turtles will also be documented by aerial and vessel survey personnel. Under the direction of a certified marine mammal veterinarian, examination and recovery of any dead or injured animals will be undertaken by MART. Necropsies will be performed and tissue samples taken from any dead marine mammals or sea turtles. Activities related to the monitoring of the Navy ship shock program will be authorized under these regulations and will not require a separate permit under section 104 of the MMPA.

If post-test surveys determine that an injurious or lethal take of a marine mammal has occurred, the test procedure and the monitoring methods will be reviewed by the U.S. Navy and NMFS and appropriate changes may be made. Inter-agency coordination between the Navy and NMFS/SWFSC will ensure that the tests will proceed by the safest possible means.

Within 90 days after any detonation project, the Navy would have to submit a summary report to NMFS. This report must include the following information: (1) Date and time of the test; (2) a summary of the pre-test and post-test activities related to mitigating and monitoring the effects of explosives detonation on marine mammal populations; and (3) the results of the monitoring program, including numbers by species/stock of any marine mammals noted injured or killed as a result of the detonation and numbers that may have been harassed due to presence within the safety zone.

An annual report must be submitted to NMFS no later than 120 days prior to the date of expiration of the annual Letter of Authorization in order for issuance of a Letter of Authorization for the following year. This annual report must contain: (1) The date and time of all tests conducted during the previous calendar year; (2) a report on all pre-test and post-test activities related to mitigating and monitoring the effects of explosives detonation on marine mammal populations; (3) the results of the post-test monitoring program, including numbers by species/stock of any marine mammals noted injured or killed as a result of the detonation and numbers that may have been harassed due to presence within the safety zone; and (4) the results of population assessment studies, if any, made on marine mammals in the SCB during the previous year.

Letter of Authorization

NMFS will renew the Letter of Authorization annually upon timely receipt of the summary and annual report, a determination that the maximum incidental take authorizations have not been exceeded, and that the mitigation measures have been undertaken. If one or more species' take levels were reached or exceeded during the previous year, NMFS will require the holder of the Letter of Authorization to provide additional documentation on the taking, and the measures that will be undertaken in the following year to prevent exceeding the authorized incidental take levels in the future.

NMFS will review these reports and if it is determined that the taking may be having more than a negligible impact on any species, or if the methods of taking, monitoring, or reporting are not being substantially complied with, NMFS may, under § 228.6(e), and after notice and comment in the **Federal Register**, withdraw or suspend the Letter of Authorization.

Conclusions

While NMFS believes that detonation of the larger (i.e., 1,200- and 10,000-lb. (544- and 4,536-kg)) charges may affect some marine mammals, the latest abundance and distribution estimates indicate that the taking will have a negligible impact on the populations of marine mammals inhabiting the waters of the SCB. NMFS concurs with the U.S. Navy that impacts can be mitigated by mandating conservative safety ranges for marine mammal exclusion, incorporating an active aerial survey monitoring effort in the program both prior to, and after detonation of explosives, and provided tests are not conducted whenever marine mammals are detected within the testing zone, or if weather and sea conditions preclude adequate aerial surveillance.

Classification

The AA has determined, based on an EA prepared by NMFS, that this action will not have a significant impact on the environment. As a result of this determination, an environmental impact statement will not be prepared. The EA is available upon request (see **ADDRESSES**).

NMFS will be consulting with the U.S. Navy under section 7 of the ESA for this proposed rule. The requirements for mitigation, as well as monitoring tests, in conjunction with other existing regulations, are expected to provide adequate protection for listed species.

The AA has determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order (E.O.) 12291. The proposed regulations are not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in cost or prices for consumers, individual industries, or government agencies; or (3) significant adverse effect on competition, employment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The General Counsel of the Department of Commerce certified to

the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

This proposed rule contains collection-of-information requirements subject to the provisions of the Paperwork Reduction Act. The collections have been approved by the Office of Management and Budget under OMB Control No. 0648–0151.

The reporting burden for this collection is estimated to be approximately 27 hours per project, including the time for gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information including suggestions for reducing this burden, to the National Marine Fisheries Service (F/PR), 1335 East-West Highway, Silver Spring, MD 20910, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. (Attn: Paperwork Reduction Act Project 0648–0151.)

NMFS has preliminarily determined that this proposed rule may result in an impact on living marine resources that also reside within the coastal zone of the State of California, a State with an approved coastal zone management program under the Coastal Zone Management Act (CZMA). However, aerial monitoring and other mitigation measures that will be employed by the U.S. Navy prior to, and during, testing will result in a negligible impact on marine mammals and other marine life. The U.S. Navy will be submitting a consistency determination for this activity to the State of California's Division of Governmental Coordination for review pursuant to the CZMA section 307(c)(1) and 15 CFR part 930, subpart C. The Navy, under 15 CFR 930.40 (multiple Federal agency participation), will be the lead Federal agency for CZMA Federal consistency purposes.

List of Subjects in 50 CFR Part 228

Marine mammals, Reporting and recordkeeping requirements.

Dated: October 8, 1993.

Samuel W. McKeen,

Program Management Officer, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 228 is proposed to be amended as follows:

PART 228—REGULATIONS GOVERNING SMALL TAKES OF MARINE MAMMALS INCIDENTAL TO SPECIFIED ACTIVITIES

1. The authority citation for part 228 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

2. Subpart E is added to read as follows:

Subpart E—Taking of Marine Mammals Incidental to Underwater Detonation of Conventional Explosives

Sec.
228.41 Specified activity, geographical region and incidental take levels.
228.42 Effective dates.
228.43 Permissible methods of taking; mitigation.
228.44 Prohibitions.
228.45 Requirements for monitoring and reporting.
228.46 Renewal of Letter of Authorization.
228.47 Modifications to Letter of Authorization.

Subpart E—Taking of Marine Mammals Incidental to Underwater Detonation of Conventional Explosives

§ 228.41 Specified activity, geographical region, and incidental take levels.

(a) Regulations in this subpart apply only to the incidental taking of marine mammals specified in paragraph (b) of this section by U.S. citizens engaged in the detonation of conventional military explosives within the waters of the Outer Sea Test Range of the Naval Air Warfare Center, Pt. Mugu, Ventura County, CA.

(b) The incidental take of marine mammals under the activity identified in paragraph (a) of this section is limited annually to the following species and species groups:

	Lethal	Injury	Harassment
California Sea Lion	2	38	173
Harbor Seal	2	16	68
Northern Elephant Seal	9	158	724
Northern Fur Seal	2	13	57
Common Dolphin	1	16	67
Striped Dolphin	0	2	5
Risso's Dolphin	0	1	2
Pacific White-Sided Dolphin	3	52	236
Northern Rt. Whale Dolphin	2	24	108
Dall's Porpoise	0	6	18
Bottlenose Dolphin	0	4	15
Killer Whale	0	0	1
Sperm Whale	0	6	20
Beaked Whales	0	0	3
Minke Whale	0	0	4
Blue Whale	0	1	11
Fin Whale	0	0	6
Sei Whale	0	0	1
Humpback Whale	0	0	4
Gray Whale	0	3	40
Right Whale	0	0	1

§ 228.42 Effective dates.

Regulations in this subpart are effective from [date of PUBLICATION of the FINAL RULE IN THE **Federal Register**] through [DATE 5 years from date of publication of the final rule in the **Federal Register**].

§ 228.43 Permissible methods of taking; mitigation.

(a) U.S. citizens holding a Letter of Authorization issued pursuant to

§ 228.6 may incidentally, but not intentionally, take marine mammals by harassment, injury or killing in the course of the detonation of conventional explosives up to the following maximum annual level within the area described in § 228.41(a):

(1) 12 detonations of 10,000 lbs (4,536 kg);

(2) 2 detonations of 1,200 lbs (544 kg);

(3) 10 detonations of 100 lbs (45 kg);

(4) 10 detonations of 10 lbs (4.5 kg); and

(5) 20 detonations of 1 lb (0.45 kg),

provided all terms, conditions, and requirements of these regulations and such Letter of Authorization are complied with.

(b) The activity identified in paragraph (a) of this section must be conducted in a manner that minimizes, to the greatest extent possible, adverse impacts on marine mammals and their habitat. When detonating explosives, the following mitigation measures must be utilized:

(1) If marine mammals are observed within the designated safety zone prescribed in the Letter of Authorization, or on a course that will put them within the safety zone prior to detonation, detonation must be delayed until the marine mammals are no longer within the safety zone.

(2) If weather and/or sea conditions preclude adequate aerial surveillance, detonation must be delayed until conditions improve sufficiently for aerial surveillance to be undertaken.

(3) If post-test surveys determine that an injurious or lethal take of a marine mammal has occurred, the test procedure and the monitoring methods must be reviewed and appropriate changes must be made prior to conducting the next project.

§ 228.44 Prohibitions.

Notwithstanding takings authorized by § 228.43 or by a Letter of Authorization issued under § 228.6, the following activities are prohibited:

(a) The taking of a marine mammal that is other than unintentional;

(b) The violation of, or failure to comply with, the terms, conditions, and requirements of this part or a Letter of Authorization issued or renewed under § 228.6 or § 228.46; and

(c) The incidental taking of any marine mammal of a species either not specified in this subpart or whose taking authorization for the year has been reached.

§ 228.45 Requirements for monitoring and reporting.

(a) The holder of the Letter of Authorization is required to cooperate with the National Marine Fisheries Service and any other Federal, state or local agency monitoring the impacts of the activity on marine mammals. The holder must notify the Director, Southwest Region, National Marine Fisheries Service, 501 West Ocean Boulevard, suite 4200, Long Beach, CA (Telephone: (310) 980–4001), at least 2 weeks prior to activities involving the detonation of explosives in order to satisfy paragraph (f) of this section.

(b) The holder of the Letter of Authorization must designate a qualified on-site individual(s) to record the effects of explosives detonation on marine mammals that inhabit the Outer Sea Test Range.

(c) The primary test area, and if necessary, secondary and tertiary test areas, in the Outer Sea Test Range, must be surveyed by marine mammal biologists and other trained individuals, and the marine mammal populations monitored, approximately 48 hours prior to a scheduled detonation, on the day of detonation, and for a period of time specified in the Letter of Authorization after each test or project. Monitoring shall include, but not necessarily be limited to, aerial surveillance sufficient to ensure that no marine mammals are within the designated safety zone nor are likely to enter the designated safety zone prior to or at the time of detonation.

(d)(1) Under the direction of a certified marine mammal veterinarian, examination and recovery of any dead or injured marine mammals will be conducted. Necropsies will be performed and tissue samples taken from any dead animals. After completion of the necropsy, animals not retained for shoreside examination, will be tagged and returned to the sea. The occurrence of live marine mammals will also be documented.

(2) Activities related to the monitoring described in paragraph (d)(1) of this section or the Letter of Authorization issued under this part may include the retention of marine mammals without the need for a separate scientific research permit. The use of such marine mammals in other scientific research may be authorized pursuant to 50 CFR parts 216 and 220.

(e) At its discretion, the National Marine Fisheries Service may place an observer on either the towing vessel, target vessel, or both, and on any ship or aircraft involved in marine mammal reconnaissance, or monitoring either prior to, during, or after explosives detonation in order to monitor the impact on marine mammals.

(f) A summary report must be submitted to the Assistant Administrator for Fisheries, NOAA, within 90 days after the conclusion of any explosives detonation project. This report must include the following information:

(1) Date and time of the test(s);

(2) A summary of the pre-test and post-test activities related to mitigating and monitoring the effects of explosives detonation on marine mammal populations; and

(3) Results of the monitoring program including numbers by species/stock of any marine mammals noted injured or killed as a result of the detonation and numbers that may have been harassed due to presence within the safety zone.

(g) An annual report must be submitted to the Assistant Administrator for Fisheries, NOAA, no later than 120 days prior to the date of expiration of the annual Letter of Authorization in order for issuance of a Letter of Authorization for the following year. This annual report must contain the following information:

(1) Date and time of all tests conducted under the expiring Letter of authorization;

(2) A report on all pre-test and post-test activities related to mitigating and monitoring the effects of explosives detonation on marine mammal populations;

(3) Results of the monitoring program, including numbers by species/stock of any marine mammals noted injured or killed as a result of the detonation and numbers that may have been harassed due to presence within the designated safety zone;

(4) If one or more species' take levels have been reached or exceeded during the previous year, additional documentation must be provided on the taking and a description of any measures that will be taken in the following year to prevent exceeding the authorized incidental take level.

(5) Results of any population assessment studies made on marine mammals in the Outer Sea Test Range during the previous year.

§ 228.46 Renewal of Letter of Authorization.

(a) A Letter of Authorization issued under § 228.6 for the activity identified in § 228.41(a) will be renewed annual upon:

(1) Timely receipt of the reports required under § 228.45(f) and (g) which have been reviewed by the Assistant Administrator for Fisheries, NOAA, and determined to be acceptable;

(2) A determination that the maximum incidental take authorizations in § 228.41(b) will not be exceeded; and

(3) A determination that the mitigation measures required under

§ 228.43(b) and the Letter of Authorization have been undertaken.

(b) If a species' annual authorization is exceeded, the National Marine Fisheries Service will review the documentation submitted with the annual report required under § 228.45(g), to determine that the taking is not having more than a negligible impact on the species of stock involved.

(c) Notice of issuance of a renewal of the Letter of Authorization will be published in the **Federal Register**.

§ 228.47 Modifications to Letter of Authorization.

(a) In addition to complying with the provisions of § 228.6, except as provided in paragraph (b) of this section, no substantive modification, including withdrawal or suspension, to the Letter of Authorization issued pursuant to § 228.6 and subject to the provisions of this subpart shall be made until after notice and an opportunity for public comment. For purposes of this paragraph, renewal of a Letter of Authorization under § 228.46, without modification, is not considered a substantive modification.

(b) If the National Marine Fisheries Service determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 228.41, or that significantly and detrimentally alters the scheduling of explosives detonation within the area specified in § 228.41, the Letter of Authorization issued pursuant to § 228.6, or renewed pursuant to this section may be substantively modified without prior notice and an opportunity for public comment. A notice will be published in the **Federal Register** subsequent to the action.

[FR Doc. 93–25276 Filed 10–14–93; 8:45 am]
BILLING CODE 3510–22–M

50 CFR Part 675

Groundfish of the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of an amendment to a fishery management plan and request for comments.

SUMMARY: NMFS announces that the North Pacific Fishery Management Council (Council) has submitted Amendment 24 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI) for Secretarial review and is requesting comments from the public. Copies of the amendment may be obtained from the Council (see **ADDRESSES**).

DATES: Comments on the FMP amendment should be submitted on or before December 7, 1993.

ADDRESSES: Comments on the FMP amendment should be submitted to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, Alaska, 99802 (Attn: Lori Gravel).

Copies of the amendment and the environmental assessment/regulatory impact review/initial regulatory flexibility analysis prepared for the amendment are available from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, Alaska 99510 (telephone 907–271–2809).

FOR FURTHER INFORMATION CONTACT: Susan Salveson, National Marine Fisheries Service, Alaska Region, 907–586–7228.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act) requires that each Regional Fishery Management Council submit any fishery management plan or plan amendment it prepares to the Secretary of Commerce (Secretary) for review and approval, disapproval, or partial disapproval. The Magnuson Act also requires that the Secretary, upon reviewing the plan or amendment, must immediately publish a notice that the plan or amendment is available for public review and comment. The Secretary will consider the public comments received during the comment period in determining whether to approve the plan or amendment.

Amendment 24 would: (1) Establish explicit allocations of the BSAI Pacific cod total allowable catch among vessels using trawl, jig, and hook-and-line or pot gear, and (2) authorize the seasonal apportionment of the amount of Pacific cod allocated to different gear groups.

A proposed rule to establish gear allocations of Pacific cod and seasonal apportionments of the amount of Pacific cod allocated to vessels using hood-and-line or pot gear has been submitted for Secretarial review and approval, under the authority provided under proposed Amendment 24.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 6, 1993.

Joe P. Clem,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–25266 Filed 10–8–93; 3:40 pm]
BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 58, No. 198
Friday, October 15, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Newberry National Volcanic Monument Advisory Council; Meeting

AGENCY: Forest Service, USDA.

ACTION: Newberry National Volcanic Monument Advisory Council meeting.

SUMMARY: The Newberry National Volcanic Monument Advisory Council will meet on October 28, 1993 at the Bend/Fort Rock Ranger District, 1230 NE 3rd Street in Bend, Oregon. The meeting will begin at 9 a.m. and continue until 4 p.m. Agenda items to be covered include: Reviewing the preliminary draft Environmental Impact Statement for the Monument, and updates on staff reports from the summer season.

Interested members of the public are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Carolyn Wisdom, Project Coordinator, Fort Rock Ranger District USFS, 1230 NE 3rd, Bend, OR 97701, (503) 383–4702 or 383–4704.

Dated: October 5, 1993.

Michael C. Johnson,

Acting Deschutes National Forest Supervisor.

[FR Doc. 93–25353 Filed 10–14–93; 8:45 am]

BILLING CODE 3410–11–M

North Fork John Day Wild and Scenic River Management Plan, Umatilla and Wallowa-Whitman National Forest, Baker, Grant, and Umatilla Counties, Oregon

AGENCY: Forest Service, USDA.

ACTION: Notice of availability.

SUMMARY: On September 7 and September 13, 1993, Umatilla and Wallowa-Whitman Forest Supervisors, Jeff D. Blackwood and R.M. Richmond, made a joint decision to adopt into their Forest Plans the North Fork John Day Wild and Scenic River Management Plan which required amendments to the Umatilla and Wallowa-Whitman Forest Plans.

This plan identifies use levels, facility development levels, resource protection measures, and sets the general management direction for managing the North Fork John Day Wild and Scenic River. This amendment is necessary to implement the Wild and Scenic Rivers Act which required the Forest Service to develop a management plan for the North Fork John Day River. Interim direction was identified in the Forest Plan as Management Area 7 (Wild and Scenic Rivers). The environmental assessment documents the analysis of alternatives to managing the North Fork John Day Wild and Scenic River in accordance with the Wild and Scenic Rivers Act.

This decision is subject to appeal pursuant to Forest Service regulations 36 CFR part 217. Appeals must be filed within 45 days from the date of publication in the East Oregonian or Baker City Herald. Notices of Appeals must meet the requirement of 36 CFR 217.9.

The environmental assessment for the North Fork John Day Wild and Scenic River Management Plan is available for the public review at the Umatilla National Forest Supervisor's Office in Pendleton, Oregon or Wallowa-Whitman National Forest Supervisor's Office in Baker City, Oregon.

EFFECTIVE DATE: Implementation of this decision shall not occur within 7 days following publication of the legal notice of the decision in the East Oregonian or Baker City Herald.

FOR FURTHER INFORMATION CONTACT: Marty Gardner, Wallowa-Whitman National Forest, P.O. Box 907, Baker City, Oregon 97814 or phone (503) 523–6391.

Dated: September 30, 1993.

Jeff D. Blackwood,

Forest Supervisor, Umatilla National Forest.

Dated: September 22, 1993.

John W. Austin,

Acting Forest Supervisor, Wallowa-Whitman National Forest.

[FR Doc. 93–25305 Filed 10–14–93; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Georgia Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Georgia Advisory Committee to the Commission will convene at 2 p.m. and adjourn at 5 p.m. on Wednesday, November 3, 1993, at the NationsBank Tower, 600 Peachtree Street, 52nd Floor Conference Room A, Atlanta, Georgia 30308. The purpose of this meeting is: (1) To discuss the status of the SACs and the Commission; (2) to hear a report on civil rights progress and/or problems in the State and Nation; (3) to discuss the Affirmative Action (AA) and Equal Opportunity (EO) plans of the Atlanta Committee for the Olympic Games (ACOG) as they relate to minorities and women; and (4) discuss possible topics for next project.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Dale M. Schwartz, 404–657–8097 or Bobby D. Doctor, Director of the Southern Regional Office, 404–730–2476 (TDD 404–730–2481). Hearing-impaired persons .vho will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, October 6, 1993.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 93–25272 Filed 10–14–93; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the Hawaii Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Hawaii Advisory Committee to the Commission will convene at 9 a.m. and adjourn at 12 noon on Thursday, November 18, 1993, at the Waikiki Trade Center, 2255 Kuhio Avenue, 11th Floor Conference Room, Honolulu,

Hawaii 96815. The purpose of the meeting is to provide orientation for new members, discuss civil rights issues, and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Andre S. Tatibouet or Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–0508). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, October 8, 1993.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 93–25379 Filed 10–14–93; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the New York State Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the New York State Advisory committee will be convened at 9:30 a.m. and adjourn at 5:30 p.m. on Tuesday, November 9, 1993, in the Third Floor Auditorium of the Chemical Bank Building, 270 Park Avenue (between 47th and 48th Streets) in New York City, New York 10017. The purposes of the meeting are to orient new members and hold a forum on intergroup cooperation.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Dr. Setsuko M. Nishi or John I. Binkley, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, October 8, 1993.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 93–25380 Filed 10–14–93; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 100693B]

Gulf of Mexico Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council's Law Enforcement Advisory Panel will meet on October 21–22, 1993, at the San Antonio Marriott Riverwalk Hotel, 711 East Riverwalk, San Antonio, TX; telephone: (210) 224–4555. The meeting will begin on October 21 at 8:30 a.m. and continue until 5 p.m. and on October 22 at 8 a.m. until 12:00 noon.

The agenda items are as follows:

(1) Discuss the Prohibition of the Use of Bleach in Taking Spiny Lobsters;

(2) Review Draft Amendment #7 to the Fishery Management Plan for Coastal Migratory Pelagics (which involves commercial king mackerel allocations off South Florida);

(3) Review Draft Amendment #2 to the Coral Fishery Management Plan to manage the harvest of live rock;

(4) Review Draft Amendment #8 to the Reef Fish Fishery Management Plan which encompasses effort management for the red snapper fishery through framework measures, license limitation or individual transferable quotas (ITQs); and

(5) An Extension of the Reef Fish Permit Moratorium.

Requests for sign language interpretation or other auxiliary aids should be directed to Beverly Badillo at the above address by October 14.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, suite 331, Tampa, FL; telephone: 813–228–2815.

Dated: October 7, 1993.

Joe P. Clem,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–25302 Filed 10–14–93; 8:45 am]

BILLING CODE 3510–22–P

Marine Mammals; Application for Public Display Permit

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Application for Public Display Permit, James W. Tiebor (P196A).

SUMMARY: Notice is hereby given that an applicant has applied in due form for a permit to obtain the care and custody of marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

1. *Applicant:* James W. Tiebor, dba Leisure Connection, Leienfelsstr. 26, 8000 Munich 60, Germany.

2. *Type of Permit:* Public Display.

3. *Number and Name of Animals:* Two California sea lions (Zalophus californianus) from captive stock.

The applicant requests authorization to obtain permanent custody of two male California sea lions, currently in the custody of Dinnes Memorial Veterinary Hospital, at Hawk's Cay Resort, Marathon, Florida, for the purposes of public display at Europa*Park, Rust, Germany.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, NMFS, NOAA, U.S. Department of Commerce, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries.

Documents submitted in connection with the above application are available for review, by appointment, in the following offices:

Permits Division, Office of Protected resources, NMFS, NOAA, 1315 East-West Highway, room 13130, Silver Spring, MD 20910 (301/713–2289); and

Director, Southeast Region, NMFS, NOAA, 9450 Koger Blvd., St. Petersburg, FL 33702 (813/893–3141).

Dated: October 7, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–25304 Filed 10–14–93; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the Republic of Korea

October 8, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 15, 1993.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6707. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain limits are being adjusted, variously, for carryforward used, swing, carryover and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 52619, published on November 4, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 8, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 29, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Korea and exported during the twelve-month period which began on January 1, 1993 and extends through December 31, 1993.

Effective on October 15, 1993, you are directed to adjust the limits for the following categories, as provided by the current bilateral agreement between the Governments of the United States and the Republic of Korea:

Category	Adjusted twelve-month limit [1]
Group I 200–229, 300–326, 360–363, 369–O [2], 400–414, 464–469, 600–629, 665–669 and 670–O [3], as a group.	402,457,580 square meters equivalent.
Sublevels within Group I	
200	441,595 kilograms.
201	1,528,093 kilograms.
313	43,614,071 square meters.
314	26,340,731 square meters.
315	17,902,014 square meters.
611	3,553,739 square meters.
613/614	6,353,655 square meters.
619/620	96,250,720 square meters.
624	7,979,760 square meters.
625/626/627/628/629.	14,749,094 square meters.
Group II 237, 239, 330–359, 431–459 and 630–659, as a group.	558,115,273 square meters equivalent.
Subgroup within Group II 333/334/335, 336, 341, 350 and 448, as a group.	11,807,272 square meters equivalent.
Sublevels within Group II	
237	57,867 dozen.
239	966,479 kilograms.
333/334/335	259,262 dozen of which not more than 132,512 dozen shall be in Category 335.
336	42,871 dozen.
338/339	1,141,504 dozen.
340	646,269 dozen of which not more than 337,283 dozen shall be in Category 340–D [4].
341	179,021 dozen.
342/642	208,383 dozen.
345	112,987 dozen.
347/348	455,325 dozen.
350	16,083 dozen.
351/651	218,911 dozen.
352	170,351 dozen.
353/354/653/654	249,858 dozen.
433	14,205 dozen.
434	7,355 dozen.
435	35,538 dozen.
436	15,184 dozen.
442	51,315 dozen.
443	338,159 numbers.
444	54,364 numbers.
445/446	53,292 dozen.
448	36,100 dozen.
459–W [5]	96,749 kilograms.
631	290,324 dozen pairs.
632	1,537,965 dozen pairs.
633/634/635	1,358,750 dozen of which not more than 154,381 dozen shall be in Category 633 and not more than 575,327 dozen shall be in Category 635.
636	280,914 dozen.
640–D [6]	2,989,227 dozen.
641	1,077,958 dozen of which not more than 40,718 dozen shall be in Category 641–Y [7].
647/648	1,287,261 dozen.
650	23,537 dozen.
659–H [8]	1,286,095 kilograms.
Sublevel within Group III 835	29,916 dozen.
Group VI 369–L/670–L/870 [9].	57,320,432 square meters equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1992.

[2] Category 369–O: all HTS numbers except 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015, 4202.92.6000 (Category 369–L); and 5601.21.0090.

[3] Category 670–O: all HTS numbers except 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9020 (Category 670–L).

[4] Category 340–D: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2025 and 6205.20.2030.

[5] Category 459–W: only HTS number 6505.90.4090.

[6] Category 640–D: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2030, 6205.30.2040, 6205.90.2030 and 6205.90.4030.

[7] Category 641–Y: only HTS numbers 6204.23.0050, 6204.29.2030, 6206.40.3010 and 6206.40.3025.

[8] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[9] Category 870; Category 369–L: only HTS numbers 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015 and 4202.92.6000; Category 670–L: only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9025,

The Committee for the Implementation of Textile Agreements has determined that

these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–25265 Filed 10–14–93; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Thailand

October 8, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 12, 1993.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6717. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted for swing.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 53475, published on November 10, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 8, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 4, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Thailand and exported during the twelve-month period which began on January 1, 1993 and extends through December 31, 1993.

Effective on October 12, 1993, you are directed to amend further the November 4, 1992 directive to adjust the limits for the following categories, as provided under the terms of the current bilateral textile agreement between the Governments of the United States and the Thailand:

Category	Twelve-month limit [1]
Levels in Group I	
604	541,013 kilograms of which not more than 360,676 kilograms shall be in Category 604–A [2].
607	2,266,730 kilograms.
611	13,098,084 square meters.
619	5,410,134 square meters.
Sublevels in Group II	
340	209,327 dozen.
347/348/847	522,180 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1992.

[2] Category 604–A: only HTS number 5509.32.0000.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–25267 Filed 10–14–93; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to procurement list.

SUMMARY: This action adds to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: November 15, 1993.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On August 20, 1993, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (58 FR 44329) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodity and services, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the commodity and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodity and services.

3. The action will result in authorizing small entities to furnish the commodity and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and services proposed for addition to the Procurement List.

Accordingly, the following commodity and services are hereby added to the Procurement List:

Commodity

Insulation Tape, Electrical
5970–00–150–2009

Services

Grounds Maintenance, Marine Corps Air Station, Buildings 80, 154, 155 and 2000, Cherry Point, North Carolina

Janitorial/Custodial, Federal Building, U.S. Post Office and Courthouse, Batesville, Arkansas

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 93–25373 Filed 10–14–93; 8:45 am]

BILLING CODE 6820–33–P

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List sleeping shirts to be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: November 15, 1993.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On June 11, 1993, the Committee for Purchase From People Who Are Blind or Severely Disabled published a notice (58 FR 32656) of the proposed addition of these shirts to the Procurement List. Comments were received from the current contractor for the shirt, both directly and through a Member of Congress. The contractor claimed that losing the ability to supply the shirt to the Government would deprive it of a large portion of its total sales. It also indicated that it has recently experienced an extended period of financial losses and needs the contract, on which it has just begun producing, to rebuild its work force and recoup its startup costs for the contract. The contractor further noted that it is in a labor surplus area and the Committee's action would result in unemployment for many of its workers. The contractor claimed that it needs to supply 100% of the Government's requirement for the shirt to make its competitively bid price cost effective.

The impact figures the contractor supplied presume that the contractor would lose the ability to supply all of the Government requirement for the shirt. Moreover, the contractor may have perceived that the addition would affect its current contract. When an item is included on the Committee's Procurement List, only future procurements of that item are affected. Consequently, the contractor will be able to complete its contract and amortize its startup costs, if it can do so during the current contract.

Regarding startup costs, the Committee does not consider the loss of an opportunity to recoup startup costs through subsequent contracts to constitute severe adverse impact because no company is guaranteed a contract under the competitive bidding system, so any contractor who intends to amortize its startup costs on subsequent Government contracts is taking a business risk that it will lose this opportunity if it fails to win the succeeding contracts. Additionally, the Committee's initial proposal was to add only 50 percent of the Government's requirement to the Procurement List. Because of potential impact on the contractor, the Committee has decided to reduce the portion added to the Procurement List to 40 percent of the Government requirement. Loss of sales for the portion to be added does not, in the Committee's view, constitute severe adverse impact on the contractor.

As the portion to be added to the Procurement List has been reduced to 40 percent of the Government requirement, the loss of employment predicted by the contractor will also be significantly reduced. The Committee feels that the possible loss of employment by some of the contractor's workers is outweighed by the creation of jobs for people with severe disabilities, whose unemployment rate exceeds 65 percent.

After consideration of the material presented to it concerning the capability of a qualified nonprofit agency to produce the commodities, fair market price, and the impact of the addition on the current or most recent contractor, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities to the Government.
2. The action will not have a severe economic impact on current contractors for the commodities.
3. The action will result in authorizing small entities to furnish the commodities to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for addition to the Procurement List.

Accordingly, the following commodities are hereby added to the Procurement List:

Shirt, Sleeping
8415–00–890–2099
8415–00–890–2100
8415–00–890–2101
8415–00–890–2102
8415–00–890–2103
8415–00–935–6855
(40% of the Government's requirement)

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 93–25374 Filed 10–14–93; 8:45 am]

BILLING CODE 6820–33–P

Procurement List; Proposed Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed addition to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: Comments must be received on or before November 15, 1993.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed action.

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action will result in authorizing small entities to furnish the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List. Comments on this certification are invited.

Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following service to the Procurement List for production by the nonprofit agencies listed:

Service

Janitorial/Custodial, Naval Hospital and Building 15, Camp Lejeune, North Carolina
Nonprofit Agency: Coastal Enterprises of Jacksonville, Inc., Jacksonville, North Carolina

Beverly L. Milkman,

Executive Director.

[FR Doc. 93–25375 Filed 10–14–93; 8:45 am]

BILLING CODE 6820–33–P

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the procurement list services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: Comments must be received on or before November 15, 1993.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action does not appear to have a severe economic impact on the current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following services to the Procurement List for production by the nonprofit agencies listed:

Services

Janitorial/Custodial, 185th Air National Guard Base, Sioux Gateway Airport, Sioux City, Iowa
Nonprofit Agency: Wall Street Mission, Sioux City, Iowa
Janitorial/Custodial, U.S. Naval Home, Gulfport, Mississippi,
Nonprofit Agency: Allied Enterprises of Harrison County, Long Beach, Mississippi
Janitorial/Custodial, Air Force Inspection and Safety Agency, Building 24499 Kirtland Air Force Base, New Mexico, Nonprofit Agency: The Rehabilitation Center, Inc., Albuquerque, New Mexico
Janitorial/Custodial, U.S. Army Reserve Center, 10031 E. Northwest Highway, Dallas, Texas
Nonprofit Agency: Fairweather Associates, Inc., Dallas, Texas
Janitorial/Grounds Maintenance, for the following locations:
USARC #1, 2010 Harry Wurzbach Highway, San Antonio, Texas
USARC #2, 432 Boswell Street, San Antonio, Texas
USARC #3, 600 Callaghan Road, San Antonio, Texas
USARC #4, 1920 Harry Wurzbach Highway, San Antonio, Texas
USARC #5, 5 Arvin Oaks, 1505 Harry Wurzbach Highway, San Antonio, Texas
U.S. Army Reserve Facility, MICTF, Building 6120, Camp Bullis, Texas
Nonprofit Agency: Goodwill Industries of San Antonio, San Antonio, Texas
Janitorial/Minor Maintenance, Federal Building and U.S. Post Office, Oxford, Mississippi
Nonprofit Agency: Allied Enterprises of Oxford, Oxford, Mississippi
Mailroom Operation, Federal Highway Administration, 555 Zang Street (Lakewood County), Denver, Colorado
Nonprofit Agency: Bayaud Industries, Inc., Denver, Colorado
Mailroom Operation, U.S. Army Corps of Engineers, Norfolk District, 803 Front Street, Norfolk, Virginia
Nonprofit Agency: Louise W. Eggleston Center, Inc., Norfolk, Virginia

Beverly L. Milkman,

Executive Director.

[FR Doc. 93–25376 Filed 10–14–93; 8:45 am]

BILLING CODE 6820–33–P

DEPARTMENT OF DEFENSE

Department of the Army

Scientific Advisory Board

AGENCY: Armed Forces Institute of Pathology, DOD.

ACTION: Notice of meeting.

In compliance with section 10(a)(20 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of a meeting of the Armed Forces Institute of Pathology's Scientific Advisory Board.

Name of Committee: Armed Forces Institute of Pathology Scientific Advisory Board.

Date: November 4 and 5, 1993.

Time: 0800 hours.

Place: Director's Conference room, Armed Forces Institute of Pathology, Washington, DC 20306–6000.

This meeting will be open to the public.

The proposed agenda will include professional discussion of the mission of the Armed Forces Institute of Pathology relating to consultation, education, and research. The Executive Secretary from whom substantive program information may be obtained from Colonel Richard C. Platte, Executive Officer,

Armed Forces Institute of Pathology, Washington, DC 20306–6000.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 93–25305 Filed 10–14–93; 8:45 am]

BILLING CODE 3000-03-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Management Service, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before November 15, 1993.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Cary Green, Department of Education, 400 Maryland Avenue SW., room 4682, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Cary Green (202) 401–3200. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Management Service, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Cary Green at the address specified above.

Dated: October 12, 1993.

Wallace McPherson,

Acting Director, Information Resources Management Service.

Office of Postsecondary Education

Type of Review: New
Title: Noncompeting Continuation Application for Grants Under the Student Literacy Corps and Student Mentoring Corps Program
Frequency: Annually
Affected Public: Non-profit institutions
Reporting Burden:
Responses: 174
Burden Hours: 1392
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: The information is required to award noncompeting continuation grants to non-profit institutions under the Student Literacy Corps and Student Mentoring Corps Program. The information will be reviewed by the Department in order to continue the funding of multiyear grantees for the next funding period.

Office of Educational Research and Improvement

Type of Review: New
Title: Star Schools Evaluation
Frequency: One time
Affected Public: Individuals or households; state or local governments
Reporting Burden:
Responses: 2,100
Burden Hours: 1,074
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: The purpose of this study is to provide substantial information about Star Schools services, how they are distributed, and with what perceived effects. The Department will use the information to monitor the implementation and effects of the program.

[FR Doc. 93–25360 Filed 10–14–93; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of request submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. No. 96–511, 44 U.S.C. 3501 *et seq.*). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection; (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses per respondent annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed on or before November 15, 1993. if you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so, as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESS: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards, (EI–73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 254–5348.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Office of Energy Markets and End Use.
2. EIA–28.
3. 1905–0149.
4. Financial Reporting System Survey.
5. Extension.
6. Annually.
7. Mandatory.
8. Businesses or other for-profit.
9. 25 respondents.
10. 1 response.
11. 689 hours per response.
12. 17,255 hours.
13. This survey provides data to evaluate the energy industry's competitive environment, and to analyze energy industry resource development, supply, distribution, and profitability issues. Survey results from 25 major energy producers are published annually for both private and public sector use.

Statutory Authority:

Section 2(a) of the Paperwork Reduction Act of 1980, (Pub. L. No. 96–511), which amended chapter 35 of title 44 United States Code (see 44 U.S.C. 3506 (d) and (c)(1)).

Issued in Washington, DC, October 6, 1993.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 93–25348 Filed 10–14–93; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Project No. 11426–000 Pennsylvania]

T.A. Keck, III and H.S. Keck; Availability of Draft Environmental Assessment

October 8, 1993.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission; (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for minor license for the Blackstone Mill Project, located on East Mahantango Creek, in Dauphin County, Pennsylvania and has prepared a Draft Environmental Assessment (DEA) for the project. In the DEA, the Commission's staff has analyzed the environmental impacts of the existing unlicensed project and has concluded that approval of the project, with appropriate mitigation or enhancement measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Branch, room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Please submit any comments within 30 days from the date of this notice. Comments should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Please affix Project No. 11426 to all comments. For further information, please contact John Smith, Environmental Coordinator, at (202) 219–2460.

Lois D. Cashell,

Secretary.

[FR Doc. 93–25286 Filed 10–14–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD94–00027T Oklahoma–54]

Oklahoma; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

October 8, 1993.

Take notice that on October 4, 1993, the Corporation Commission of the State of Oklahoma (Oklahoma) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Booch Sand Formation, underlying a portion of Pittsburg County, Oklahoma, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The recommended area is described as the E/2 of Section 6, Township 6 North, Range 16 East, E/2 of Section 31 and all of Section 32, Township 7 North, Range 16 East, Pittsburg County, Oklahoma.

The notice of determination also contains Oklahoma's findings that the referenced formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93–25287 Filed 10–14–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD94–00028T Oklahoma–53]

Oklahoma; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

October 8, 1993.

Take notice that on October 4, 1993, the Corporation Commission of the State of Oklahoma (Oklahoma) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Booch Sand Formation, underlying a portion of Pittsburgh County, Oklahoma, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The recommended area is described as the E/2 of the NE/4 and S/2 of Section 13, and all of Section 24, Township 6 North, Range 16 East, and all of Sections 7 and 18, Township 6 North, Range 17 East, Pittsburgh County, Oklahoma. There are Indian leases included in the recommended area.

The notice of determination also contains Oklahoma's findings that the referenced formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93–25288 Filed 10–14–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. PL93–1–001]

Post-Employment Benefits Other Than Pensions; Order Denying Rehearing and Granting in Part Requests for Clarification

Issued: October 6, 1993.

On December 17, 1992, the Federal Energy Regulatory Commission (Commission) issued a statement of policy in this proceeding.[1] Three applications for rehearing were filed, each requesting clarification in certain respects,[2] and two separate requests for

[1] Post-Employment Benefits Other Than Pensions, Statement of Policy, Docket No. PL93–1–000, 61 FERC ¶ 61,330 (1992).

[2] City of Danville Gas Department and Blue Ridge Power Agency ("City of Danville"); a group of

Continued

clarification were received.[3] For the reasons appearing below, the Commission denies rehearing of its policy statement, and clarifies its policy statement to the extent reflected herein.

Background

The December 17, 1992 statement of policy in this proceeding addresses the Commission's general policy regarding the recovery through rates of the accrued cost of post-employment benefits other than pensions of employees of natural gas pipeline companies and public utilities subject to the Commission's jurisdiction, as well as certain accounting issues related thereto. The statement is premised upon the Statement of Financial Accounting Standards No. 106, Employers Accounting for Post-Employment Benefits Other Than Pensions (SFAS 106).

As reflected in the statement of policy, the Commission's policy shall be to recognize, as a component of jurisdictional cost-based rates of natural gas pipeline companies and public utilities under its jurisdiction, and oil pipelines should they elect to comply with this statement, allowances for prudently incurred costs of such benefits of company employees when determined on an accrual basis that are consistent with the accounting principles set forth in SFAS 106 provided the following conditions are met: (1) The company must agree to make cash deposits to an irrevocable external trust fund equal to the annual test period allowance for the cost of such benefits; and (2) the company must maximize the use of income tax deductions for contributions to the trust fund. If tax deductions are not available for some portion of currently funded amounts, deferred income tax accounting must be followed for the tax effects of such transactions.

Under the Policy Statement a company may defer the jurisdictional portion of the difference between the costs determined pursuant to accounting principles previously followed and SFAS 106 accruals from the time it adopts SFAS 106 until the company files such general rate case and places such rates into effect. The regulatory asset (or liability) thus created is to be amortized over a period not to exceed twenty years beyond the SFAS 106 adoption date. Amortization of the regulatory asset (or liability) will be eligible for recovery in future rates. A company must file a general rate change within three years of its adoption of SFAS 106 accounting if it seeks inclusion of these costs in its rate levels.

Applications for Rehearing

Electric Consumers seek rehearing on two points. First, Electric Consumers argue that electric utilities should not be allowed to file stand-alone PBOP rate filings. Second, Electric Consumers contend that the amortization period of the regulatory asset created by deferral of the filing to recover PBOPs should begin only after the Commission has issued a final order approving inclusion of PBOP costs in wholesale rates, and should extend 20 years from that date.

As to the first issue raised by Electric Consumers, it is the intent of the Commission, in general, to allow recovery of accrued PBOP costs in connection with a general rate filing. However, there may be situations in which stand-alone rate filings are appropriate, based upon a showing by the filing company of exceptional circumstances. A natural gas company or public utility will have the burden to justify such a filing.[4] Rehearing is denied as to this issue.

Rehearing of the second issued raised by Electric Consumers as to the amortization period for the regulatory asset is likewise denied. Electric Consumers are referring to the regulatory asset that may be recorded under the policy statement for the difference between the PBOP costs determined pursuant to accounting principles previously followed and SFAS 106 accruals, from the time SFAS 106 is adopted until the time rates are placed into effect that include the SFAS 106 cost levels. The Policy Statement requires the regulatory asset (or liability) to be amortized over a period to be determined in the rate proceeding, but in no event to exceed twenty years beyond the SFAS 106 adoption date. The use of 20 years from the date of adoption of SFAS 106, coupled with the requirement that a utility seek recovery of any deferred costs within three years, results in a maximum amortization period of between 17 and 20 years. While the Commission would consider a shorter period, a maximum recovery period of 17 to 20 years is not unreasonable. Further, an extension of the recovery period for deferred PBOP costs beyond 20 years from the date of adoption of SFAS 106 would make it more difficult to assess whether recognition of the regulatory asset is appropriate. There is no compelling need to introduce such an uncertainty into the financial statements prepared by companies subject to the Commission's jurisdiction.

NAGC seeks rehearing on the grounds that, by issuing the policy statement, the Commission has promulgated an unlawful legislative rule in violation of the Administrative Procedure Act.[5] The Commission does not agree with NAGC's comments. As the Commission stated in the December 17 policy statement:[6]

> The purpose of this policy statement is to provide guidance for the efficient disposition of pending or future cases which include PBOPs as a component of the cost of service and to provide a statement of Commission intent to permit recovery in future rates of PBOP costs appropriately deferred. The Commission is mindful that a general policy statement is an articulation of the Commission's intention, which will be followed unless particular circumstances demonstrate the policy to be inappropriate. *Where, as here, the Commission has adopted a general statement of Commission policy, both the underlying validity of the policy and its application to particular facts may be challenged and are subject to further consideration in individual cases.*

The Commission's statement of policy is plainly not a rule issued in violation of the Administrative Procedure Act. Therefore, rehearing is denied on this issue.

NAGC next argues that the Commission has ignored its comments in promulgating the statement of policy. Many of the arguments advanced by NAGC were, in the main, duplicative of those advanced by other commenters. The Commission's discussion of these comments apply equally to NAGC's comments. The statement of policy did in fact address the comments of NAGC.[7] Rehearing of this issue is denied.

The City of Danville applied for rehearing "for the reasons set forth in

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electric consumers, consisting of the National Rural Electric Cooperative Association, Allegheny Electric Cooperative, Inc., Chicopee Municipal Lighting Plant and the City of Chicopee, MA, Golden Spread Electric Cooperative, Inc., Holy Cross electric Association, Inc., the Cities of Newark, Milford, Seafood, New Castle and Lewes, DE, and the Towns of Smyrna , Clayton and Middletown, DE, Seminole Electric Cooperative, Inc., and the Town of Wallingford, CT (collectively, "Electric Consumers"); and the National Association of Gas Consumers ("NAGC"), "an association of small municipal gas distribution utilities which purchase wholesale gas from natural gas companies under rates regulated by the Commission pursuant to the Natural Gas Act." (NAGC Application for Rehearing, p. 1, n. 1.)

[3] Edison Electric Institute ("EEI"), and Central and South West Corporation ("CSW System").

[4] It would not be appropriate at this time for the Commission to attempt to delineate all the circumstances which may be considered exceptional. These matters will be addressed on a case-by-case basis if any jurisdictional company makes such a stand-alone filing.

[5] 5 U.S.C.A. 553 (1992)

[6] *Id.*, at p. 62,200, emphasis added.

[7] In fact, the Commission specifically referred to the comments of NAGC. *See* 61 FERC ¶ 61,330 at p. 62,204, n. 17.

the * * * Reply Brief of Blue Ridge Power Agency, (*et al.*] on Revenue Requirements Issues filed January 15, 1993 in [Appalachian Power Company] Federal Energy Regulatory Commission Docket Nos. ER92–323–000 and ER92–324–000 * * *." In the Reply Brief in the *Appalachian* case, and in its motion to file supplemental information in furtherance of its request for rehearing, filed February 22, 1993, the City of Danville refers to meetings between the Commissioners, Commission staff and industry representatives concerning the effect of SFAS 106 prior to the Commission notice, issued October 21, 1992, requesting comments on the INGAA request for policy statement. Certain documents are attached to the pleadings of the City of Danville referring to such meetings. Clearly, neither the Commissioners nor the Commission staff are precluded from informal discussions of matters of concern to the industries it regulates.[8] Based on a review of the documents provided by the City of Danville, the Commission concludes that nothing occurred other than permissible, general background discussions.

NAGC claims that meetings between interested persons and the Commission and its staff shows that the Commission had already made up its mind as to the treatment of PBOP accruals. The record in this proceeding indicates otherwise as does the statement of policy itself. First, the meetings and correspondence to which NAGC refers took place prior to the issuance of even a request for comments on the INGAA petition. Second, the Commission received some 77 sets of individual comments on the INGAA proposal, which were considered and discussed in the statement of policy issued December 16, 1992. Third, the Commission modified the request of INGAA based on the comments it received.[9] Thus, it is inaccurate, at best, to say that the Commission had already decided the issues prior to requesting comments on the proposed policy statement.[10]

The City of Danville further incorporated the request for rehearing and clarification of Electric Consumers, and sought assurance that the policy statement is not dispositive of issues in on-going cases. The City of Danville is correct in this regard. On-going cases will be decided on the basis of record evidence in those cases. The policy statement merely evidences the Commission's intent not to preclude recovery of PBOP costs on an accrual basis. Record evidence in individual proceedings will still be required to justify the level of and recovery of accrued PBOPs as with any other item of cost.[11]

Requests for Clarification

EEI and CSW System each seek clarification of the three-year filing requirement for recovery of SFAS 106 PBOP costs. CSW System states:

> The CSW System desires an interpretation of the three year filing requirement * * *. The CSW System feels that it is the Commission's intentions to limit the period of SFAS No. 106 cost deferrals and therefore the Commission wishes to require a jurisdictional company to file a general rate case within three years if that company is deferring SFAS No. 106 costs in excess of costs determined by current accounting principles. The CSW System does not believe it is the Commission's intentions to have all jurisdictional companies file a general rate case within three years. If a company wishes to expense and not defer the increase in costs and therefore delay the timing of a general rate case and as a result delay the recovery of SFAS No. 106 costs in rates then that should be a decision left to the management of the company. (Request, p. 1.)

The CSW System has correctly interpreted the Policy Statement. The Commission has not precluded the recovery of future costs determined in accordance with SFAS No. 106.

Electric Consumers request confirmation that, notwithstanding the Policy Statement, any Commission decision to include PBOP costs in wholesale rates must be firmly grounded upon a substantial and fully developed record, with the burden of proof placed upon the public utility that shifts to the SFAS 106 method. (EC Request, pp 4, 8–9) Electric Consumers also seek clarification that a utility's accrued PBOP costs are not presumptively prudent. (EC Request, p. 10) The Commission does not intend to treat PBOP costs any differently than other costs for which a company seeks recovery in rate levels. PBOP costs will receive the same level of scrutiny as salaries and wages, depreciation, pensions, decommissioning and all other costs that comprise a company's cost of service. A company seeking a change in rates will bear the burden of proof to justify the requested rate levels, regardless of whether it has measured PBOP costs on an accrual, cash or some other method.

Electric Consumers request that the Commission adopt a true-up requirement that will address ratemaking concerns instead of the SFAS 106 reconciliation method for over accruals. Electric Consumers argue that SFAS 106 does not require any reconciliation of a company's actual PBOP expenditures with that company's estimates of future PBOP costs until there is an actuarial gain or loss greater than 10 percent of net program liabilities over the entire period.

SFAS 106 relies on a basic premise of generally accepted accounting principles that accrual accounting provides more relevant and useful information than does cash basis accounting. In applying accrual accounting to post-employment benefits, SFAS 106 adopts the fundamental aspect of delayed recognition. This means that certain changes in the obligation for post-employment benefits, including changes arising as a result of a plan initiation or amendment, and certain changes in the value of plan assets set aside to meet that obligation, are not recognized as they occur. Rather, those changes are recognized systematically over future periods. Although SFAS 106 places certain maximum limitations on the extent to which those changes may be deferred, such as the 10 percent requirement for reconciliation to which Electric Consumers refer, earlier recognition is permitted. In other words, it does not bar recognition of actuarial gains or losses before the 10 percent threshold is reached and in some cases earlier recognition may be entirely appropriate. A company requesting rate recovery of PBOP costs determined in accordance with the principles contained in SFAS 106 will have to fully support and justify all of the component parts of its estimate, including its practices with respect to actuarial gains and losses. Thus, we do not believe that the delayed recognition aspect of SFAS 106, including the 10 percent corridor applicable to actuarial gains and losses, deprives this Commission or interested parties from addressing ratemaking concerns in connection with requests for recovery of PBOP costs.

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[8] *See, e.g.*, Louisiana Association of Independent Producers and Royalty Owners v. FERC, 958 F.2d 1101, 1112–13 (D.C. Cir. 1992) (discussions between agency and industry officials involving general problems in the industry are not prohibited by the fact that a case-specific application is pending).

[9] Compare, *e.g.*, the requirement of external funding and the deferred income tax requirement of the statement of policy with the petition of INGAA.

[10] No claim seems to be made by the City of Danville or NAGC that there was a violation of the Commission's *ex parte* rules. Indeed, there were no prohibited *ex parte* communications, since there was no on-the-record proceeding at the time the contacts were made. *See* 18 C.F.R. § 358–2201(a) (1993).

[11] The Commission notes that it was not its intention to shift the burden of proof from the applicant in justifying its proffered recovery mechanism. *See* requests for clarification of Electric Consumers and NAGC.

Electric Consumers request that the Commission clarify that it will allow a utility to have the use of any non-deductible PBOP amounts, with all tax-deductible amounts continuing to go to the external fund, but requiring that all such non-deductible amounts be deducted from that company's rate base. In the Policy Statement, the Commission found that utilities may elect to recover PBOPs on an accrual basis if they commit to make cash deposits equal to amounts that are proportional, and on an annual basis equal, to the annual test period allowance (*i.e.*, amounts which include both the tax-deductible portion as well as the non-deductible portion) to an irrevocable external trust fund which is outside the company's control and not available for general corporate purposes. The Commission requires companies to commit to such full external funding because it wants to ensure that amounts paid by customers for PBOP costs are actually used for that purpose or, in the event funds are not so used, to ensure that customers will obtain refunds of any excess amounts included in the fund. As noted in the Policy Statement and restated here, the earning rate for external funding may be lower than the effective earning rate that could be realized from internal funds. However, the Commission believes that fund security is more important than earning rates in this instance and it will therefore require full external funding.

Finally, Electric Consumers request clarification of how refunds related to PBOP costs which were over-accrued will be made to ratepayers from the external trust fund, and who bears the burden of showing that a refund is required due to overfunding. In the Policy Statement, the Commission stated that disbursements from the irrevocable trust could be made for only three reasons, one of which was "refunds to customers pursuant to a *Commission-approved refund plan* in the event the funds are not to be paid to employees."[12] A Commission-approved refund plan could result from several different types of proceedings each of which may have different procedural requirements and allocations of the burden of proof. Such proceedings might include, for example: a unilateral, fully supported pipeline or public utility filing justifying the refund of a portion of the trust; a Commission accounting audit determining the plan was overfunded and refunds were due; a complaint; or as an issue in a general Natural Gas Act section 4(e) or Federal Power Act section 205(e) rate case. The Commission thus clarifies that refund plans will be evaluated on a case-by-case basis, consistent with the type of proceeding in which the refund issue is developed.

[12] 61 FERC ¶61,330, 62,203 (1993) (emphasis added; footnote omitted).

The Commission orders

The requests for rehearing of the Commission's Statement of Policy of December 17, 1992, are denied, and clarification is granted to the extent described in this order.

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93–25173 Filed 10–14–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–62–000]

Equitrans, Inc.; Informal Settlement Conference

October 8, 1993.

Take notice that an informal conference will be convened in this proceeding on Wednesday, October 20, 1993, immediately following the Prehearing Conference scheduled for 10 a.m. that morning in Docket Nos. RP93–187–000, *et al.*, for the purpose of exploring the possible settlement of the above-referenced docket. The conference will be held at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC 20426.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Hollis J. Alpert at (202) 208–0783 or Arnold H. Meltz at (202) 208–2161.

Lois D. Cashell,

Secretary.

[FR Doc. 93–25289 Filed 10–14–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–744–000]

Northern Natural Gas Co.; Request Under Blanket Authorization

October 8, 1993.

Take notice that on September 28, 1993, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP93–744–000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate one new delivery point and to construct and operate upgraded facilities for 7 existing delivery points for service to Wisconsin Gas Company (WGC), under Northern's blanket certificate issued in Docket No. CP82–401–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern proposes to add one delivery point and upgrade facilities at seven others to accommodate the delivery to WGC of an additional 4,536 Mcf of natural gas on a peak day and 376,700 Mcf on an annual basis. It is asserted that total proposed deliveries for the 8 delivery points would be 17,030 Mcf on a peak day and 2,750,200 Mcf on an annual basis. It is stated that the deliveries would consist of gas volumes transported for WGC on a firm basis. It is asserted that Northern would construct under blanket certificate authorization approximately .25 mile of 12-inch pipeline and interconnecting facilities in Wisconsin. It is estimated that the cost of construction would be $322,000. Northern states that the proposed construction is required to accommodate expansion of its distribution system into new areas as a result of general market growth.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–25290 Filed 10–14–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92-166-000]

Panhandle Eastern Pipe Line Co.; Informal Settlement Conference

October 8, 1993.

Take notice that an informal settlement conference will be convened in this proceeding on Wednesday, November 10, 1993, at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and received intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Carmen Gastilo at (202) 208-2182 or Joanne Leveque at (202) 208-5705.

Lois D. Cashell,

Secretary.

[FR Doc. 93-25291 Filed 10-14-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER93-552-000]

Southern California Edison Co.; Filing

October 8, 1993.

Take notice that on September 16, 1993, Southern California Edison Company submitted supplemental information regarding its filing in this docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before October 21, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-25292 Filed 10-14-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP94-13-000]

Texas Gas Transmission Corp.; Application

October 8, 1993.

Take notice that on October 8, 1993, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP94-13-000 an application pursuant to section 7(b) of the Natural Gas Act for authorization to abandon certain facilities by sale to two of its existing customers, and abandon certain farm tap services to a third existing customer, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Gas states that the application concerns a portion of the firm sales service currently being provided by Texas Gas to Mississippi Valley Gas Company (MVG) and Texas Gas' current firm sales service to the City of Scottsville, Kentucky (Scottsville). Texas Gas states that the above-described service is accomplished by Texas Gas purchasing gas from Tennessee Gas Pipeline Company (Tennessee) and redelivering such gas for sale to MVG and Scottsville. Texas Gas explains that, as part of both Tennessee and Texas Gas Order No. 636 restructuring proceedings, the parties have agreed upon an arrangement whereby Scottsville and MVG would cease November 1, 1993, to be serviced by Texas Gas at the subject locations, and instead receive gas service directly from Tennessee. Texas Gas states that the changes in service described above are all authorized by the regulations promulgated by the Commission in Order No. 636. It is also indicated, however, that in order for such service arrangement to be physically accomplished, both MVG and Scottsville must purchase the facilities owned by Texas Gas at the subject locations, which stand between those customers' facilities and the facilities of Tennessee. Texas Gas states that those facilities, in the case of MVG, consist of the Hardy Springs and Greenwood delivery stations, located in Grenada and LeFlore County, Mississippi, respectively, and, in the case of Scottsville, consist of the Halifax purchase station, the 6.8 miles of pipeline known as the Scottsville 4" pipeline (Scottsville 4") (along with the appurtenant farm taps) and the Scottsville sales meter station, all located in Allen County, Kentucky.

Texas Gas is seeking approval to abandon by sale to MVG and Scottsville the above-described facilities necessary for those parties to receive gas directly from Tennessee. Texas Gas is also requesting authority to abandon "farm tap" service to Western Kentucky Gas Company (Western) at those locations along the Scottsville 4" where such service is currently being rendered. It is indicated that those customers of Western will be serviced by Scottsville upon transfer of the pipeline to Scottsville. Texas Gas requests that the abandonment authority for both facilities and service be granted effective November 1, 1993, to correspond with the effective date of the subject assignments and reductions of service on Texas Gas and Tennessee for which pregranted authority exists under Order No. 636.

Texas Gas states that because of the changes being effectuated pursuant to Order No. 636, the rendering of direct service by Tennessee, as described, to MVG and Scottsville is the most efficient and economic way for these parties to receive natural gas service at the subject locations. It is stated that, with regard to the abandonment of farm tap service to Western along the Scottsville 4", Western gas agreed to sell the residential meters and service to Scottsville and Scottsville has agreed to provide continuing service to those residential customers served through those meters once Texas Gas transfers the Scottsville 4" pipeline to Scottsville.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 22, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of

the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Texas Gas to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93–25371 Filed 10–14–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–750–000]

Western Resources, Inc. and Southern Union Co.; Application

October 8, 1993.

Take notice that on September 30, 1993, Western Resources, Inc. (WRI), 818 Kansas Avenue, Topeka, Kansas 66601, and Southern Union Gas Company (Southern Union), 504 Lavaca, Suite 800, Austin, Texas 78701, hereinafter referred to jointly as Applicants, filed jointly in Docket No. CP93–750–000 an application pursuant to section 7(c) of the Natural Gas Act for authorization for Southern Union to acquire all but one portion of WRI's local distribution system and gas transmission system, located within Missouri, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicants request authorization for WRI to sell its Western Missouri properties to Southern Union and to transport gas in interstate commerce on a no-fee exchange basis with each other. Applicants request authorization to partially vacate WRI's 7(f) certificate, issued by the Commission in Docket No. CP89–485–000, authorizing WRI's service area determination, to reflect the sale of the western Missouri properties to Southern Union. Applicants also request that Southern Union be authorized to transport gas to serve WRI's former customers in western Missouri. It is stated that WRI will continue to own and operate facilities and serve customers in eastern Missouri, Kansas and Oklahoma. Applicants request that the Commission waive its filing requirements under part 154 of the Commission's Regulations and find that the non-jurisdictional status of WRI's and Southern Union's facilities and operations remains unaffected. It is asserted that no disruption of service would result as a result of the sale of facilities.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 29, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for WRI or Southern Union to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93–25293 Filed 10–14–93; 8:45 am]

BILLING CODE 6717–01–M

Office of Energy Research

Continuation of Solicitation for Financial Assistance Program, No. 94–01

AGENCY: Department of Energy (DOE).

ACTION: Annual notice of continuation of availability of grants and cooperative agreements.

SUMMARY: The Office of Energy Research (ER) of the Department of Energy hereby announces its continuing interest in receiving applications for cooperative agreements and grants supporting work in the following program offices; Basic Energy Sciences, Biological and Environmental Research, Fusion Energy, Scientific Computing, Field Operations Management, Superconducting Super Collider, University and Science Education Programs, High Energy and Nuclear Physics, and Program Analysis activities. On September 3, 1992, DOE published in the **Federal Register** (57 FR 40582) a solicitation for this program which contained information about submission of applications, eligibility, limitations, evaluation and selection processes and other policies and procedures which are specified in 10 CFR part 605.

DATES: Applications may be submitted at any time in response to this notice of availability, but, in all cases, must be received by DOE on or before October 31, 1994.

ADDRESSES: Applicants may obtain forms and additional information from Director, Acquisition and Assistance Management Division, Office of Energy Research, ER–64, U.S. Department of Energy, Washington, DC 20585 (301) 903–5212. Completed applications must be sent to this same address.

SUPPLEMENTARY INFORMATION: As mentioned above, the solicitation for the Office of Energy Research Financial Assistance Program was published in the **Federal Register**. This solicitation specifies the policies and procedures which govern the application, evaluation, and selection processes for grants and cooperative agreements. It is anticipated that approximately $500 million will be available for award in FY 1994. The DOE is under no obligation to pay for any costs associated with the preparation or submission of an application. DOE reserves the right to fund, in whole or in part, any, all, or none of the applications submitted in response to this notice.

D.D. Mayhew,

Director, Office of Management, Office of Energy Research.

[FR Doc. 93–25347 Filed 10–14–93; 8:45 am]

BILLING CODE 6450–01–M

Office of Hearings and Appeals

Issuance of Decisions and Orders During the Week of August 30 Through September 3, 1993

During the week of August 30 through September 3, 1993, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department

of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

L.K. Seymour, 8/31/93, LFA-0285

L.K. Seymour filed an Appeal from a determination issued by the Director of Personnel (Denying Official) of the Department of Energy in response to a request that Mr. Seymour submitted under the Freedom of Information Act (FOIA) and Privacy Act. In that determination, the Denying Official released responsive documents and responded that other documents which might have been responsive to his FOIA/Privacy Act request had been destroyed. The DOE found that the Director of Personnel had conducted a search reasonably calculated to uncover the material that Mr. Seymour requested and that no other responsive information existed. Therefore, Mr. Seymour's Appeal was denied.

Refund Applications

Daley Corporation, 9/3/93, RF272-25971, RD272-25971

The DOE issued a Decision and Order granting an Application for Refund filed by Daley Corporation, a highway and bridge construction company, in the Subpart V crude oil refund proceeding. A group of States and Territories (States) objected to the application on the grounds that the applicant was able to pass through increased petroleum costs to its customers. In support of their objection, the States submitted an affidavit of an economist stating that, in general, the road construction industry was able to pass through increased petroleum costs. The DOE determined that the evidence offered by the States was insufficient to rebut the presumption of end-user injury and that the applicant should receive a refund. The DOE also denied the States' Motion for Discovery, finding that discovery was not warranted where the States had not presented evidence sufficient to rebut the applicant's presumption of injury. The refund granted to the applicant in this Decision was $26,605.

Enron Corp./ Waterloo Service Company, 9/3/93, RF340-188

The DOE issued a Decision and Order concerning a refund application that Waterloo Service Company (WSC) had submitted in the Enron Corporation (Enron) special refund proceeding. The DOE found that WSC is an agricultural cooperative operating for the benefit of its common shareholder/patrons. WSC previously received a refund of $778,632 for volumes of Enron propane that it resold to its member customers, and had requested an additional refund amount for volumes resold to non-member customers. The DOE found that since WSC had been required to pass through on a dollar for dollar basis the refund arising from product sold to its members, WSC had not directly benefitted from the end-user presumption of injury that served as the basis for granting that refund. The DOE therefore determined that it was appropriate to permit WSC to use the medium range reseller presumption of injury with respect to its sales of product to non-members. Accordingly, the DOE granted WSC an additional refund of $23,417 based on its total purchases from Enron that were resold to non-member-customers.

Texaco Inc./Barry Connell Colonial Truck Stop, 8/31/93, RF321-16208 RF321-19842

The DOE issued a Decision and Order modifying a refund that had been granted to Richard Sporck and his representative, Wilson, Keller & Associates, on behalf of Colonial Texaco. In the course of investigating a possible conflict between Mr. Sporck's application and one filed by Barry Connell, the OHA found that the Texaco-generated printout documenting purchases of 3,737,436 gallons submitted by Mr. Sporck in support of his application was for Mr. Connell's outlet. Mr. Sporck was able to document Texaco purchases by Colonial of 2,434,271 gallons from an indirect supplier. Therefore, the DOE directed Mr. Sporck and Wilson, Keller & Associates to remit $1,959, the excess portion of Colonial's refund, plus additional interest. Mr. Connell was granted a refund of $5,618 ($4,111 principal plus $1,507 interest).

Texaco Inc./Campbell's Run Texaco, McIntyre & Snyder Texaco, Campbell's Run Texaco, 9/2/93, RF321-38, RF321-19781, RF321-19782

The DOE issued a Decision and Order in the Texaco Inc. refund proceeding concerning Applications for Refund filed by Charles McIntyre and Earl Snyder who were partners in two Texaco retail outlets. The DOE found that because of this common ownership, both outlets should be considered together in determining the appropriate presumption level. Under the medium-range presumption of injury, the total principal refund for both stations was $10,000, to be divided equally between the two partners. Mr. McIntyre was accordingly granted a refund of $5,000 plus interest, and Mr. Snyder, who had already received a principal refund of $3,090 with respect to one of the stations, was granted an additional refund or $1,910, plus interest.

Texaco Inc./Hall's Texaco, 8/31/93, RF321-5656

The DOE issued a Decision and Order denying an Application for Refund filed by James L. Hall in the Texaco Inc. Subpart V special refund proceeding on behalf of Hall's Texaco. It was determined that Mr. Hall was a consignee for a Texaco branded jobber, Lee Oil Company. As a consignee for Lee Oil Company, Mr. Hall was paid a fixed per gallon commission amount for any Texaco product he sold at his retail station and he did not actually purchase the product from Lee Oil Company. Because Mr. Hall was not a customer or consignee of Texaco, but instead a consignee of Lee Oil Company, the DOE determined that he could not have been affected by Texaco's alleged overcharges. Accordingly, Mr. Hall's Application for Refund on behalf of Hall's Texaco was denied.

Texaco Inc./Hicone Texaco, 9/3/93, RF321-18938

The DOE issued a Decision and Order denying an Application for Refund filed by Robert Robinson in the Texaco Inc. Subpart V special refund proceeding on behalf of Hicone Texaco. It was determined that Mr. Robinson was a consignee for a Texaco branded jobber, Lee Oil Company. As a consignee for Lee Oil Company, Mr. Robinson was paid a fixed per gallon commission amount for any Texaco product he sold at his retail station and he did not actually purchase the product from Lee Oil Company. Because Mr. Robinson was not a customer or consignee of Texaco, but instead a consignee of Lee Oil Company, the DOE determined that he could not have been affected by Texaco's alleged overcharges. Accordingly, Mr. Robinson's Application for Refund on behalf of Hicone Texaco was denied.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Company/ Hummel Oil Company et al	RF304-13683	08/31/93
Atlantic Richfield Company/ National Car Rental et al	RF304-13156	09/01/93
Enron Corp./Wynn-Fowler Energy Associates, Inc	RF340-84	09/02/93
Gulf Oil Corporation/Econ-O-Gas, Inc	RF300-21752	09/03/93
Gulf Oil Corporation/RI-Bon, Inc	RF300-12774	09/01/93
Gulf Oil Corporation/Salem Oil & Grease Co. et al	RF300-21153	09/01/93
Gulf Oil Corporation/Suffolk County Treasury	RF300-15661	09/03/93
Shell Oil Company/Luverne Farm Store Gas Co., Inc	RF315-329	09/02/93
Texaco Inc./Beidler's Texaco et al	RF321-800	08/31/93
Texaco Inc./Bernard and Bernice Child et al	RF321-6807	08/31/93
Texaco Inc./Kinard's Texaco	RF321-19872	09/03/93
Texaco Inc./Tulsa Truck Rental et al	RF321-1798	08/31/93
Township of Pequannock et al	RF272-89072	09/03/93
Williams Brothers Construction Inc	RF272-76246	09/02/93

Dismissals

The following submissions were dismissed:

Name	Case No.
6th St. Gulf	RF300-19629
Advance Cast Stone Company.	RF272-91591
Bachman's, Inc	RF272-91511
Baker Greenhouses	RF272-90790
Bell Helicopter Textron, Inc	RF272-91977
Blair Academy	RF272-90180
Borough of Clayton	RF272-88300
C & M Mini Mart	RF321-17081
City of Brazil	RF272-88316
City of Corbin	RF272-88311
City of Grover	RF272-88367
City of Keene	RF272-88363
City of Kellogg	RF272-88364
City of Leawood	RF272-88351
City of Leesville	RF272-88340
City of Litchfield	RF272-88345
City of Wyandotte	RF272-90820
Commonwealth of Kentucky	RF272-92315
Dillon Elementary #10	RF272-87168
Dorton's Texaco	RF321-17008
Dunkirk Ice Cream Co., Inc	RF272-92460
E and S Trucking Co	RF272-91612
Eby Construction	RF272-90865
Elk Lp Gas Co., Inc	RF321-17422
Fairbanks Municipal Utilities System.	RF272-92202
Hillsborough Shell	RF315-9708
Hofmann Industries, Inc	RF272-92314
Homestead Baking Co	RF272-94758
Hudson Transit Lines, Inc	RF272-92334
Isabel School District 20-2	RF272-83504
La Canada Unified	RF272-79596
Little Eagle Day School	RF272-83568
Madison Gas & Electric Co	RF272-92482
Maola Milk & Ice Cream Co	RF272-90864
Marvin Lumber & Cedar Co	RF272-92343
Mike's Shell North	RF315-9709
Mohawk Paper Mills, Inc	RF272-94049
Old National Gulf	RF300-14935
Partie/McPherson, Inc. #1	RF321-17003
Polo School District 29-2	RF272-83572
Spencer School District	RF272-83474
State of Maryland Department of General Services.	RF321-12610
T.J.'s Minimart	RF300-13551
Tee's Lakeshore Texaco	RF321-11015
The Arrowhead High School	RF272-83586
Town of Kearny	RF272-88362
Village of Canastota	RF272-88333
Walton-Verona Board of Education.	RF272-79470

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except Federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: October 7, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 93-25349 Filed 10-14-93; 8:45 am]

BILLING CODE 6450-01-P

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-4704-6]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared September 27, 1993 through October 1, 1993 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the Federal Register dated April 10, 1993 (58 FR 18392).

Draft EISs

ERP No. D-BLM-K65200-NV Rating EC2, Tonopah Resource Area, Resource Management Plan, Implementation, Battle Mountain District, Nye and Esmeralda Counties, NV.

Summary

EPA expressed environmental concerns due to potential impacts to surface water quality the need for additional information in the FEIS on best management practices and water quality monitoring. Bureau of Land Management should consult with the State of Nevada's Division of Environmental Protection in order to ensure the protection of water quality and beneficial uses.

ERP No. D-NIH-D81022-MD Rating LO1, William H. Natcher Building, Phase II Construction and

Consolidation, Located on National Institutes of Health Bethesda Campus, Funding and NPDES Permit, Montgomery County, MD.

Summary

EPA had no objections to the preferred alternative.

ERP No. DS–AFS–L65155–00 Rating EC2, Northern Spotted Owl Management Plan, Updated Information concerning Late-Successional and Old Growth Forest Related Species Within the Range of the Northern Spotted Owl, OR, WA and CA.

Summary

EPA supported the basic features in the preferred alternative but had environmental concerns regarding implementation of future activities. EPA requested additional information and clarification about: the criteria and process for adjusting riparian reserves; the minimum physical, chemical, and biological monitoring needed for implementation; a framework for incorporating non-federal lands into the implementation plan; a summary of major tasks, agency/group roles, budget, and timeliness for implementation; and air quality effects from prescribed burning.

Final EISs

ERP No. F–AFS–F65019–MN Superior National Forest Land and Resource Management Plan, Adoption of Boundary Waters Canoe Area (BWCA) Wilderness Management Plan, Implementation, Cook, Lake and St. Louis Counties, MN.

Summary

EPA had no objections to the preferred alternative.

ERP No. F–AFS–L40181–ID Salmon River Road Improvement Project, Development Road No. 30 from North Fork to Corn Creek, Salmon National Forest, North Fork Ranger District, Custer and Lemhi Counties, ID.

Summary

EPA had no objections to the preferred alternative as it is described in the final EIS.

ERP No. F–AFS–L65191–OR Santiam Pass Demo Project, Harvesting Timber and Road Construction, Willamette National Forest, McKenzie Ranger District, Linn County, OR.

Summary

EPA expressed environmental concerns about potential water quality impacts and requested additional information on how the unified forest plan relates to the proposed Santiam Pass Demo project.

ERP No. F–COE–K36098–CA Prado Dam Water Conservation Plan Implementation, Prado Flood Control Basin, Santa Ana River, Riverside and San Bernardino Counties, CA.

Summary

Review of the Final EIS was not deemed necessary.

ERP No. F–FRC–E03005–00 Florida Gas Transmission Phase III Expansion Project, Construction and Operation, Special Use Permits, Section 10 and 404 Permits and NPDES Permit, extending through FL, AL, MS and LA.

Summary

EPA had two principal areas of concern. The first was about the failure of the Federal Energy Regulatory Commission (FERC) to translate general staff recommendations into specific commitments or license conditions in the final FEIS. The second was about FERC's plans to hire environmental inspectors to oversee project monitoring rather than to monitor the work directly.

ERP No. FS–BLM–K65062–NV Egan Resource Management Plan (RMP), Oil and Gas Leasing Amendment, Updated Information, Implementation, Ely District, White Pine, Lincoln, and Nye Counties, NV.

Summary

Review of the Final Supplemental EIS was not deemed necessary.

ERP No. FS–DOE–K03007–CA Petroleum Production at Maximum Efficient Rate, Naval Petroleum Reserve No. 1 Continued Operation, Updated Information, Elk Hills, Kern County, CA.

Summary

EPA expressed environmental concerns remained unresolved in the FSEIS and recommended that the DOE's Record of Decision contain appropriate commitments to resolve these issues. Unresolved issues included the need for: An updated Biological Opinion from US Fish and Wildlife Service; analysis of the effects of oil-field chemicals on wildlife, protection of drinking water supplies, and the potential need for a Clean Air Act conformity determination.

Dated: October 12, 1993.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 93–25389 Filed 10–14–93; 8:45 am]

BILLING CODE 6560–50–U

[ER–FRL–4704–5]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 OR (202) 260–5075.

Weekly receipt of Environmental Impact Statements Filed October 04, 1993 Through October 08, 1993 Pursuant to 40 CFR 1506.9.

EIS No. 930348, DRAFT EIS, COE, IL, WI, IL, Fox River and Chain O'Lakes Area Recreational Boating Project, Special Area Management Plan, Implementation, Section 10 and 404 Permits, Algonquin Dam, Lake and McHenry Counties, IL and WI, Due: November 29, 1993, Contact: Barbara Williams (312) 353–6464.

EIS No. 930349, FINAL EIS, AFS, CO, Fish Creek Reservoir Enlargement, Special Use Permit, Routt National Forest, Steamboat Springs, Routt County, CO, Due: November 15, 1993, Contact: Wendy Schmitzer (303) 879–1722.

EIS No. 930350, FINAL EIS, AFS, AK, North Revilla Project, Long-Term Timber Sale Contract, Implementation, Tongass National Forest, Ketchikan Administrative Area, Ketchikan Ranger District, Revillagigedo Island, AK, Due: November 15, 1993, Contact: Dave Arrasmith (907) 225–3101.

EIS No. 930351, DRAFT EIS, AFS, CA, Paper Reforestation and Resource Recovery Project, Implementation, Stanislaus National Forest, Mi-Wok Ranger District, Tuolumne County, CA, Due: November 29, 1993, Contact: Ann L. Denton (209) 586–3234.

EIS No. 930352, FINAL SUPPLEMENT, NOA, Reef Fish Fishery of the Gulf of Mexico, Fishery Management Plan, Amendment 5, Updated Information concerning Permit Approvals and Special Management Zones Establishment, Implementation, FL, AL, MS, LA, TX and Gulf of Mexico, Due: November 15, 1993, Contact: Nancy Foster (301) 713–2239.

EIS No. 930353, DRAFT EIS, AFS, ID, Black Pine Gold Mine Expansion Project, Implementation, Plan of Operation and Right-of-Way Permits, Sawtooth National Forest, Burley Ranger District, Cassia County, ID, Due: November 29, 1993, Contact: Pete Peterson (208) 678–0430.

EIS No. 930354, DRAFT EIS, USN, NC, Camp Lejeune Marine Corps Base, Disposal of Non-Hazardous Solid Waste Project, Implementation, COE Section 404 and NPDES Permits, Onslow County, NC, Due: November 29, 1993, Contact: Jim Omans (703) 696–0866.

EIS No. 930355, DRAFT EIS, FHW, PA, US 222 Corridor Design Location Study, Improvements, from Breingsville to the I–78 Interchange, Funding, Lower and Upper Macungie Township, Lehigh County, PA, Due: December 03, 1993, Contact: Manuel A. Marks (717) 782–4422.

EIS No. 930356, DRAFT SUPPLEMENT, EPA, AL, TX, LA, MS, ADOPTION—1993 Central and Western Gulf of Mexico Outer Continental Shelf (OSC) Oil and Gas Lease Sales No. 142 and No. 143 Issuance of General New Source NPDES Permit, Lease Offerings and Offshore, AL, LA, TX and MS, Due: November 29, 1993, Contact: Norm Thomas (214) 655–2260.

The U.S. Environmental Protection Agency has adopted the US Department of the Interior, Minerals Management Service's, final EIS filed with U.S. Environmental Protection Agency on 10–30–92. EPA was a Cooperating Agency on the DOI's EIS.

EIS No. 930357, DRAFT EIS, FRA, CT, MA, Northeast Corridor Improvement Project, Implementation, Electrification of the Railline from New Haven to Boston, Funding, COE Section 10 and 404 Permits, New Haven, CT and Boston, MA, Due: November 29, 1993, Contact: Mark Yachmetz (202) 366–6593.

EIS No. 930358, FINAL EIS, FHW, CO, CO–82 Transportation Improvements, East of Basalt to the Buttermilk Ski Area West of Aspen, Funding and COE Section 404 Permit, Pitkin County, CO, Due: November 15, 1993, Contact: George Osborne (303) 969–6730.

EIS No. 930359, FINAL EIS, COE, NH, Nashua-Hudson Circumferential Highway Improvements, Approval and COE Section 10 and 404 Permits, Towns of Hudson, Nashua and Litchfield, Hillsborough County, NH, Due: November 15, 1993, Contact: Theresa Flieger (617) 647–8336.

Amended Notices

EIS No. 930286, DRAFT EIS, FHW, PA, WV, Mon/Fayette Transportation Improvement Project, I–68 in Monongalia Co., WV to PA–6119 (Formerly the Chadville Demonstration Project), Funding and COE Section 404 Permit, Monongalia County, WV and Fayette County, PA, Due: October 01, 1993, Contact: Daniel W. Johnson (717) 782–2276.
Published FR 08–20–93—Review period extended.

EIS No. 930313, FINAL EIS, COE, OH, Cleveland Harbor Dike 14 Confined Disposal Facility (CDF) for Dredged Material, Modifications Cuyahoga County, OH , Due: October 18, 1993, Contact: Timothy Daly (716) 879–4171.
Published 9–17–93—Titled Correction.

Dated: October 12, 1993.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 93–25388 Filed 10–14–93; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL MARITIME COMMISSION

Neptune Orient Lines, Ltd., et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 232–011431.

Title: Neptune Orient Lines, Ltd. and Nippon Yusen Kaisha Space Charter and Sailing Agreement in the Far East, South East Asia, Australasia, South West Asia and Mid-East-U.S. Atlantic Coast Trades.

Parties:

Neptune Orient Lines, Ltd.
Nippon Yusen Kaisha

Synopsis: The proposed Agreement would permit the parties to charter space on each other's vessels and to rationalize service in the trade between ports in the Far East, South East Asia, Australasia, South West Asia and the Middle East on the one hand and ports on the U.S. Atlantic Coast on the other hand. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: October 12, 1993.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 93–25370 Filed 10–14–93; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

W–C Ventures, Inc., dba Worldwide Cargo Specialties, 1562 E. Rothmoor Circle, Salt Lake City, UT 84121, Officers: Patty Williams, President; Ron Williams, Director; Derek Williams, Director

R S R Shipping Co., Inc., 451 North Long Beach Road, Rockville Centre, NY 11570, Officer: Robert Rullo, President

Marco Forwarding International Co., 5750 N.W. 32nd Court, Miami, FL 33142, Officer: Ana Maria Samitier, President/Director

Navigo International, Inc., 3103 McKinney, Houston, TX 77003, Officers: Allen William White, President; Verona Sandra McFadden, Vice President

1959 Enterprise Inc., 7620 Marbach Road, San Antonio, TX 78227, Officers: Hani Shalabi, President; Mohamed Shalabi, President; Margaret Shalabi, Vice President

Traders of Miami, 4710 N.W. 170th Street, Carol City, FL 33055, Officer: Lissette Canela

M & M Shipping, 8058 W. 95th Street, #3E, Hickory Hills, IL 60457; Mohammad R. Sayyed, Sole Proprietor

Transglobe Express, Inc., The Hartford Center, 729 Route 83, Suite 305, Bensenville, IL 60106, Officer: Jung-Keun Oh, President/Secretary/Treasurer/Stockholder

S.J. Stile Associates, Ltd., 153–66 Rockaway Blvd., 2nd Floor, Jamaica, NY 11434, Salvatore J. Stile, President/Director/Treas./Stockh.; Milton B. Heid, Vice President/Director/Secre./Stockh.

Dated: October 12, 1993.

By the Federal Maritime Commission.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 93–25326 Filed 10–14–93; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Central Bancshares of the South, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C.

1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 8, 1993.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Central Bancshares of the South, Inc., Birmingham, Alabama; to acquire 1st Performance Interim, FSB, Jacksonville, Florida, and thereby engage in operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 8, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-25317 Filed 10-14-93; 8:45 am]

BILLING CODE 6210-01-F

Citizens Union Bancorp of Shelbyville, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than November 8, 1993.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Citizens Union Bancorp of Shelbyville, Inc., Shelbyville, Kentucky; to acquire 100 percent of the voting shares of First Farmers Bank and Trust Company, Owenton, Kentucky.

2. NBC Capital Corporation, Starkville, Mississippi; to acquire 100 percent of the voting shares of Charter Holding Company, Inc., Tuscaloosa, Alabama, and thereby indirectly acquire First State Bank of Tuscaloosa, Tuscaloosa, Alabama.

3. Sparkman Bancshares, Inc., Sparkman, Arkansas; to become a bank holding company by acquiring at least 82.6 percent of the voting shares of Merchants and Planters Bank, Sparkman, Arkansas.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Lake Elmo Profit Sharing Plan and the Lake Elmo Profit Sharing Trust, Lake Elmo, Minnesota; to acquire an additional 1.89 percent of the voting shares of Lake Elmo Bancorp, Inc., Lake Elmo, Minnesota, for a total of 49.2 percent, and thereby indirectly acquire Lake Elmo Bank, Lake Elmo, Minnesota.

C. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Sentinel Bancorporation, Omak, Washington; to acquire 100 percent of the voting shares of First Bank Washington, Omak, Washington.

Board of Governors of the Federal Reserve System, October 8, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-25318 Filed 10-14-93; 8:45 am]

BILLING CODE 6210-01-F

GENERAL SERVICES ADMINISTRATION

Report on Revised System of Records Under the Privacy Act of 1974

AGENCY: General Services Administration.

ACTION: Notification of revised system of records.

SUMMARY: The purpose of this document is to give notice, under the provisions of the Privacy Act of 1974, 5 U.S.C. 552a, of intent by the General Services Administration (GSA) to revise a system of records maintained by GSA.

The system of records, Credit Data on Individual Debtors, PPFM–7, is changed to enable the agency to assemble in one system information on individuals who are indebted to the General Services Administration for the purpose of determining if there is a reasonable prospect of effecting enforced collections from the debtors. A revised system report was filed with the Speaker of the House, the President of the Senate, and the Office of Management and Budget.

DATES: Any interested party may submit written comments about this revision. Comments must be received on or before the 30th day following publication of this notice. (November 15, 1993). The system will become effective without further notice on the 30th day following publication of this notice (November 15, 1993), unless comments are received that would result in a contrary decision.

ADDRESSES: Address comments to the General Services Administration (CAIR) Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Cunningham, GSA Privacy Act Officer, telephone (202) 501–2691.

Background

The system of records, Credit Data on Individual Debtors, PPFM–7, is changed to implement the Cash Management Improvement Act Amendments of 1992, Pub. L. 102–589 and title 26 Code of Federal Regulations, § 301.6402–6 *et seq.* The revision will enable the agency

to assemble in one system information on individuals who are indebted to the General Services Administration for the purpose of determining if there is a reasonable prospect of effecting enforced collections from the debtors.

GSA/PPFM–7

SYSTEM NAME:

Credit Data on Individual Debtors.

SYSTEM LOCATION:

Records are located at the following General Services Administration, Office of Finance and Office of General Counsel, Central Office and regional office addresses:

GS Building, 18th and F Streets NW., Washington, DC 20405.
John W. McCormack Post Office and Courthouse, Boston, MA 02109.
Jacob K. Javits Federal Building, 26 Federal Plaza, New York, NY 10007.
Wannamaker Building, 100 Market Square East, Philadelphia, PA 19107.
401 West Peachtree Street, Atlanta, GA 30365–2550.
John C. Kluczynski Federal Building, 230 South Dearborn Street, Chicago, IL 60604.
General Services Administration, 1500 East Bannister Road, Kansas City, MO 64131.
Fritz G. Lanham Federal Building, 819 Taylor Street, Fort Worth, TX 76102.
Denver Federal Center Complex, Building 41, Denver, CO 80225.
General Services Administration, 525 Market Street, San Francisco, CA 94105.
GSA Center, Auburn, WA 98002.
GSA Regional Office Building, Seventh and D Streets SW., Washington, DC 20407.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals include employees and former employees and other individuals who are indebted to the United States.

CATEGORIES OF RECORDS IN THE SYSTEM:

Types of personal data in the system may take the form of commercial reports, agency investigative reports showing the debtor's assets and liabilities and his or her income and expenses, the individual debtor's assets and liabilities and income and expenses, and other information such as social security number and home address.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Claims Collection Act of 1966, 80 Stat. 309, 31 U.S.C. 952; Debt Collection Act of 1982, Pub. L. 97–365; and title 4 Code of Federal Regulations, chapter II, part 105, Cash Management Improvement Act Amendments of 1992, Pub. L. 102–589 and Title 26 Code of Federal Regulations, § 301.6402–6 *et. seq.*

PURPOSE(S):

To assemble in one system information on individuals who are indebted to the General Services Administration for the purpose of determining if there is a reasonable prospect of effecting enforced collections from the debtors.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

a. When debtors fail to make payment through normal collection routines, credit data is analyzed to determine the feasibility of enforced collection by referring the cases to the Department of Justice for litigation. Credit data becomes an integral part of claim files forwarded to the General Accounting Office and/or the Department of Justice as prescribed in the Joint Federal Claims Collections Standard (4 CFR ch II).

b. Records may be disclosed to a congressional office from the records of an individual in response to an inquiry from the congressional office made at the request of that individual.

c. Records may be disclosed to other Federal agencies where an applicant for employment or a current employee of the agency is delinquent in repaying his/her Federal financial obligation. The purpose of this disclosure is to enlist the agency's cooperation in facilitating repayment.

d. In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, the relevant records in the system of records may be referred, a routine use, to the appropriate agency, such as the General Accounting Office, the Office of Management and Budget, the Department of Justice, and state agencies charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing by statute, or rule, regulation, or order issued pursuant thereto.

e. A record from this system of records may be disclosed to a Federal agency in response to its request, in connection with the hiring or retention of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

f. Records may be disclosed to a debt collection agency, that GSA has contracted for collection services, to recover indebtedness owed to the United States.

g. Information contained in the system of records may be disclosed to the Internal Revenue Service to obtain mailing addresses for the purpose of locating such taxpayer to collect or compromise a Federal claim against the taxpayer.

h. Information contained in the system of records may also be disclosed to the Internal Revenue Service for the purpose of offsetting a Federal claim against a taxpayer's income tax refund.

DISCLOSURE TO CONSUMER REPORTING AGENCIES.

Disclosures pursuant to 5 U.S.C. 552a(b)(12)

Disclosures may be made from this system to "Consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1861a(f) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(A)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in paper form in file folders stored in metal cabinets and in electronic form in computers.

RETRIEVABILITY:

Credit data is maintained by debtor name and claim number, cross referenced to social security number (when available) to verify name and address.

SAFEGUARDS:

When not in use by personnel responsible for the collection of claims, records are stored in lockable filing cabinets. Personal computer files are protected by the use of passwords.

RETENTION AND DISPOSAL:

The records are a part of the GAO site auditing collection files and are cut off at the end of the fiscal year, held 1 year, and then retired under Record Group 217 (GAO). Records created prior to July 2, 1975, will be retained by GAO for 10 years and 3 months after the period of the account. Records created on or after July 2, 1975, will be retained by GAO for 6 years and 3 months after the period of the account.

SYSTEM MANAGER AND ADDRESS:

Chief, Receivables and Collection Management Branch, Financial Control

Division, Office of Chief Financial Officer, 18th and F Streets NW., Washington, DC 20405.

NOTIFICATION PROCEDURE:

Inquiries by individuals regarding claims pertaining to themselves should be addressed to the system manager.

RECORD ACCESS PROCEDURES:

Requests from individuals for access to records should be addressed to the system manager and should include name and address.

CONTESTING RECORDS PROCEDURES:

GSA rules for contesting the contents of the records and for appealing initial determinations are promulgated in 41 CFR 104.64.

RECORD SOURCE CATEGORIES:

Information in this system is obtained from commercial credit reports, agency investigative reports, individual debtors' own financial statements, and from other GSA systems of records.

Dated: October 1, 1993.

Emily C. Karam,

Director, Information Management Division.

[FR Doc. 93–25384 Filed 10–14–93; 8:45 am]

BILLING CODE 6820–34

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

On Fridays, the Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following are those information collections recently submitted to OMB.

1. Application for Waiver of the two-year Foreign Residence Requirement of the Exchange Visitor Program—0990–0001—Extension—The application is used by institutions (colleges, hospitals, etc.) to request a favorable recommendation to the USIA for waiver of the two-year Foreign Residence Requirement of the Exchange Visitor Program on behalf of foreign visitors working in areas of interest to HHS.

Respondents: Individuals, State or local governments, Businesses or other for-profit, non-profit institutions;
Total Number of Respondents: 200;
Frequency of Response: one time;
Average Burden per Response: 6 hours;
Estimated Annual Burden: 1200 hours.

2. Applicant Background Survey—This form will be used to ask applicants for employment how they learned about a vacancy, to make sure that recruitment sources yield qualified women, minority and handicapped applicants in compliance with EEOC Management Directive 714.

Respondents: Individuals;
Annual Number of Respondents: 310,000;
Annual Frequency of Response: one time;
Average Burden per Response: 2 minutes;
Total Annual Burden: 10,333 hours.
OMB Desk Officer: Allison Eydt

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 619–0511. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: September 30, 1993.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 93–24874 Filed 10–14–93; 8:45 am]

BILLING CODE 4150–04–M

Administration for Children and Families

Meeting of the U.S. Advisory Board on Child Abuse and Neglect

AGENCY: Administration for Children and Families, DHHS.

ACTION: Notice of meeting

SUMMARY: The U.S. Advisory Board on Child Abuse and Neglect will hold a meeting at the Department of Health and Human Services, Room 703–A Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20301, from 9:30 a.m., October 26, 1993, through 4 p.m., October 27, 1993.

This meeting is open to the public. If a sign language interpreter is needed, you may contact David Siegel at (202) 401–9215.

FOR FURTHER INFORMATION CONTACT: Joan M. Williams, Special Projects Specialist, U.S. Advisory Board on Child Abuse and Neglect, Room 303–D, Humphrey Building, Washington, DC 20201, (202) 690–8178.

SUPPLEMENTARY INFORMATION: During this meeting, the Advisory Board will: meet with the press and interest groups regarding the 1993 report; review the report highlights; discuss possible strategies for achieving implementation of the 1993 report; and discuss the process for developing the 1994 report.

Dated: October 9, 1993.

Preston Bruce,

Acting Executive Director, U.S. Advisory Board on Child Abuse and Neglect.

[FR Doc. 93–25361 Filed 10–14–93; 8:45 am]

BILLING CODE 4184–01–P

Food and Drug Administration

[Docket No. 93F–0331]

Hoechst Aktiengesellschaft; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Hoechst Aktiengesellschaft has filed a petition proposing that the food additive regulations be amended to provide for the safe use of dioctadecyldisulfide as an antioxidant and/or stabilizer in propylene polymers and copolymers.

DATES: Written comments on the petitioner's environmental assessment by November 15, 1993.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Helen R. Thorsheim, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9511.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 3B4397) has been filed by Hoechst Aktiengesellschaft, c/o Keller and Heckman, 1001 G St. NW., suite 500 West, Washington, DC 20001. The petition proposes that the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) be amended to provide for the safe use of dioctadecyldisulfide as an antioxidant and/or stabilizer in propylene polymers and copolymers.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the

agency is placing the environmental assessment submitted with the petition that is the subject of the notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before November 15, 1993, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: September 29, 1993.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 93-25320 Filed 10-14-93; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 93F-0335]

Sequa Chemicals, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Sequa Chemicals, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of ammonium zirconium lactate-citrate complexes for use as insolubilizers for binders used in clay coatings for paper and paperboard intended for use in contact with food.

DATES: Written comments on petitioner's environmental assessment by November 15, 1993.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Daniel N. Harrison, Center for Food Safety and Applied Nutrition (HFS-216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204-0002, 202-254-9500.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 3B4386) has been filed by Sequa Chemicals, Inc., One Sequa Dr., Chester, SC 29706-0070. The petition proposes to amend the food additive regulations to provide for the safe use of ammonium zirconium lactate-citrate complexes for use as insolubilizers for binders used in clay coatings for paper and paperboard intended for use in contact with food.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before November 15 1993, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: October 7, 1993.

Fred R. Shank,

Center for Food Safety and Applied Nutrition.

[FR Doc. 93-25321 Filed 10-14-93; 8:45 am]

BILLING CODE 4160-01-F

Health Resources and Services Administration

Advisory Council Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory bodies scheduled to meet during the month of December 1993:

Name: Advisory Commission on Childhood Vaccines (ACCV)

Date and Time: December 1-2, 1993; 9 a.m. 5 p.m.

Place: Parklawn Building, Conference Rooms O, P, & Q, 5600 Fishers Lane, Rockville, Maryland 20857.

The meeting is open to the public.

Purpose: The Commission: (1) Advises the Secretary on the implementation of the Program, (2) on its own initiative or as the result of the filing of a petition, recommends changes in the Vaccine Injury Table, (3) advises the Secretary in implementing the Secretary's responsibilities under section 2127 regarding the need for childhood vaccination products that result in fewer or no significant adverse reactions, (4) surveys Federal, State, and local programs and activities relating to the gathering of information on injuries associated with the administration of childhood vaccines, including the adverse reaction reporting requirements of section 2125(b), and advises the Secretary on means to obtain, compile, publish, and use credible data related to the frequency and severity of adverse reactions associated with childhood vaccines, and (5) recommends to the Director of the National Vaccine Program research related to vaccine injuries which should be conducted to carry out the National Vaccine Injury Compensation Program.

Agenda: The first day of the meeting, December 1, will consist of simultaneous meetings of two of the Commission's Working Subcommittees. The full Commission will meet commencing at 9 a.m on Wednesday, December 1 until 2:45 p.m., and from 9 a.m. to 5 p.m. on Thursday, December 2. Agenda items will include, but not be limited to further discussion of the report of the IOM's Section 313 Vaccine Safety Committee, including possible recommendations for changes in the Vaccine Injury Table and Qualifications and Aids to Interpretation; routine Program reports; reports from the National Vaccine Program; reports from the ACCV Subcommittees, and; discussion of vaccine excise tax policy.

* * * * *

Name: Financial Review Subcommittee of the Advisory Commission on Childhood Vaccines

Time: December 1, 1993, 3 p.m.-5 p.m.

Place: Conference Room Q, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Open for entire meeting.

Purpose: This Subcommittee reviews quarterly, with the administrative staff, the financing of the Vaccine Injury Compensation Trust Fund, the output of

funds resulting from each vaccine and each adverse event, and the relationship of each vaccine and each adverse event to the rate of depletion of the Trust Fund.

If these studies justify any increase or any decrease of surtax for each vaccine, these recommendations can be made to the full Commission and, if accepted, can be forwarded to the Secretary.

Agenda: The Subcommittee will discuss and review the status of funding and spending on pre-1988 awards and the status of the Trust Fund.

* * * * *

Name: Scientific Review Subcommittee of the Advisory Commission on Childhood Vaccines

Time: December 1, 1993, 3 p.m.–5 p.m.

Place: Conference Room O & P, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857

Open for entire meeting.

Purpose: This Subcommittee will review statistics from all sources (the Compensation System, Vaccine Adverse Events Reporting System (VAERS), the U.S. Court of Federal Claims, etc.) that can give any reason for any alterations (additions, subtractions, or revisions) in the Vaccine Injury Table. The Subcommittee will consider any applications for inclusion of additional vaccines and associated events to the table and make recommendations on these to the Commission. All recommendations by the Subcommittee will be considered by the full Commission and, if accepted, will be forwarded to the Secretary. This Subcommittee will also be the first line of study for all outside studies and literature reports with subjects affecting the Vaccine Injury Table.

Agenda: The Subcommittee will continue its review of the findings of the report of the Institute of Medicine's Section 313 Study Committee.

Public comment will be permitted at the respective Subcommittee meetings on December 1 before they adjourn in the evening; before noon and at the end of the full Commission meeting on December 1; and also before noon and before they adjourn on the second day on December 2. Oral presentations will be limited to 5 minutes per public speaker.

Persons interested in providing an oral presentation should submit a written request, along with a copy of their presentation to Mr. Matthew B. Barry, Division of Vaccine Injury Compensation, Bureau of Health Professions, Health Resources and Services Administration, Room 702, 6001 Montrose Road, Rockville, MD 20852; Telephone (301) 443–6593.

Requests should contain the name, address, telephone number, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The allocation of time may be adjusted to accommodate the level of expressed interest. The Division of Vaccine Injury Compensation will notify each presenter by mail or telephone of their assigned presentation time. Persons who do not file an advance request for presentation, but desire to make an oral statement, may sign up in Conference Room O, P, & Q before 10 a.m. on December 1 and 2. These persons will be allocated time as time permits.

Anyone requiring information regarding the Commission should contact Matthew B. Barry, Principal Staff Liaison, Division of Vaccine Injury Compensation, Bureau of Health Professions, 6001 Montrose Road, Room 702, Rockville, Maryland 20852; Telephone (301) 443–6593.

* * * * *

Name: National Advisory Council on Nurse Education and Practice

Date and Time: December 9–10, 1993, 8:30 a.m.

Place: Conference Room 503A, The Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201

The meeting is open to the public.

Purpose: The Council advises the Secretary and Administrator, Health Resources and Services Administration, concerning general regulations and policy matters arising in the administration of the Nurse Education Amendments of 1985 (P.L. 99–92). The Council also performs final review of grants applications for Federal Assistance, and makes recommendations to the Administrator, HRSA.

Agenda: The meeting will cover reports on the Health Resources and Services Administration, the Bureau of Health Professions, Division of Nursing and a discussion of Workforce Projections. The Secretary, Health and Human Services, and the Surgeon General have been invited to address the Council.

Anyone requiring information regarding the subject Council should contact Dr. Mary S. Hill, Executive Secretary, Advisory Council on Nurses Education, Room 9–36, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6193.

Agenda items are subject to change as priorities dictate.

Dated: October 8, 1993.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 93–25269 Filed 10–14–93; 8:45 am]

BILLING CODE 4160–15–P

National Institutes of Health

National Institute of Mental Health; Cancellation of Meetings

Notice is hereby given of the cancellation of meetings of two National Institute of Mental Health committees which were published in the **Federal Register** on September 7, (58 FR 47152): the Services Research Review Committee, October 13–15, 1993, Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, Maryland and the Extramural Science Advisory Board, October 25–26, 1993, Conference Room 6, Building 31, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland.

The meetings were cancelled due to prior commitments of several members.

Dated: October 7, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–25323 Filed 10–14–93; 8:45 am]

BILLING CODE 4140–01–M

National Institutes on Deafness and Other Communication Disorders; Meeting of the National Deafness and Other Communication Disorders Advisory Board

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Deafness and Other Communication Disorders Advisory Board on November 15, 1993. The meeting will take place from 10 a.m. to 12 noon in Conference room 6, Building 31C, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892, and will be conducted as a telephone conference with the use of a speaker phone.

The meeting, which will be open to the public, is being held to discuss the Board's activities and to present special reports. Attendance by the public will be limited to the space available.

Summaries of the Board's meeting and a roster of members may be obtained from Ms. Monica Davies, Executive Director, National Deafness and Other Communication Disorders Advisory Board, Building 31, room 3C08, National Institutes of Health, Bethesda, Maryland 20892, 301–402–1129, upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Director in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.173, Biological Research Related to Deafness and Communication Disorders)

Dated: October 7, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–25324 Filed 10–14–93; 8:45 am]

BILLING CODE 4140–01–M

Office of Inspector General

Program Exclusions: September 1993

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of September 1993, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, Maternal and Child Health Services Block Grant and Block Grants to States for Social Services programs. In addition, no program payment is made to any business or facility, e.g., a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all other Federal non-procurement programs.

Subject, City, State	Effective date
Program-related convictions:	
Ancor Medical Services Inc .... Columbus, OH	10/12/93
Arkoncel, Maria Lourdes ..... Cerritos, CA	10/10/93
Cordle-Boggs, Jacqueline A ... Centerburg, OH	10/12/93
Crawford, James G ..... St. Thomas, VI	10/12/93
Drescher, Edward M ..... Fairfield, CT	10/03/93
Dyke, Edwin C ..... Detroit, MI	10/12/93
Fine, Harvey M ..... Stockton, CA	10/10/93
Health Center Pharmacy, Inc . Newport, NH	09/29/93
Jung, Jeannette L ..... Burnt Hills, NY	10/03/93
Jung, Elmer F ..... Burnt Hills, NY	10/03/93
Kirkpatrick, Theodore P ..... Santa Monica, CA	10/10/93
Kumar, Sudhir ..... Flossmoor, IL	09/29/93
Lamson, Lavonne M ..... Lewiston, ME	10/03/93
Nevrekar, Lila V ..... Shawnee, OK	10/11/93
O'Brien, Judith A ..... Lapeer, MI	09/29/93
Weinstein, Paul D ..... North Andover, MA	10/03/93
Patient abuse/neglect convictions:	
Barrett, David A ..... Clear Lake, IA	09/02/93
Benavidez, Arnoldo ..... Brownsville, TX	10/11/93
Brown, Ramona ..... Seguin, TX	10/11/93
Brownlee, Wyzetta	09/30/93
Tuscaloosa, AL	
Cheatham, Shannon ..... Clinton, LA	10/11/93
Climaco, Jesus L ..... Rock Springs, WY	10/11/93
Coe, William Donald Jr ..... Golden, CO	10/11/93
Portillo, Lauro J ..... Mission, TX	10/11/93
Roldan, Elijio ..... Grand Rapids, MI	10/12/93
Thomas, Stacey Vincent ..... Birmingham, AL	09/30/93
Wessman, Linda M ..... Norway, MI	10/12/93
Conviction for health care fraud:	
Nettles, Georgina T ..... Hilliard, FL	09/30/93
Default on PHS education loan:	
Ackley, Brainard Lee ..... Kitty Hawk, NC	10/09/93
Alegria, Albert J ..... S Pasadena, CA	10/20/93
Anderson, Sharon R ..... Santa Ana, CA	10/20/93
Beatty, Brian J ..... Englewood, CO	10/21/93
Beaver, Charlotte M Reynolds Houston, TX	10/21/93
Blase, Richard M ..... St. Louis, MO	10/22/93
Broadus, Robert C ..... San Antonio, TX	10/21/93
Brown, Michael L ..... Fort Pierce, FL	10/22/93
Bullion, James F Jr ..... Longwood, FL	10/22/93
Cross, Bruce W ..... Lithonia, GA	10/22/93
Crosswhite, Larry K ..... Braselton, GA	10/22/93
Curran, Douglas J ..... Fresno, CA	10/20/93
D'Angelantonio, Julius M ..... Williamstown, NJ	10/13/93
Dangerfield, Alan N ..... Santa Clara, CA	10/20/93
Dean, J Coy ..... Dickinson, TX	10/21/93
Edmunds, John D ..... Barnegat, NJ	10/13/93
English, Thomas W ..... Green Bay, WI	10/22/93
Evans, Catharine L ..... Columbus, OH	10/22/93
Faison, Willie R ..... Louisville, KY	10/09/93
Friedlander, Michael A ..... Dunwoody, GA	10/09/93
Gross-Johnson, Bonnie J ..... Columbus, OH	10/09/93
Gutierrez, Humberto ..... Hialeah, FL	10/10/93
Hagopian, Laurie ..... Richmond, ME	10/13/93
Hansen, Kathy M ..... Hanover Park, IL	10/22/93
Hanson, William V Jr ..... Bellville, IL	10/09/93
Henshaw, Clifford D ..... Sault Ste Marie, MI	10/09/93
Herem, Larry A ..... Burley, ID	10/20/93
Hornback, Gary ..... Edwardsville, IL	10/09/93
House, Charles P ..... Ellenton, FL	10/22/93
Johnson, Ervin ..... Grosse Pt. Farms, MI	10/09/93
Johnson, Craig B ..... Salem, OR	10/20/93
Kaleer-Coello, Karen K ..... Parkland, FL	10/22/93
Knol-Vandenbil, Jennifer S ..... Kennesaw, GA	10/22/93
Lamagdeliene, Michael K ..... Anchorage, AK	10/20/93
Langolf, Daniel ..... Golden, CO	10/21/93
Latimer, Harvey L ..... Nashville, TN	10/10/93
Law, Daniel C ..... Milwaukee, WI	10/09/93
Leclair, Leonard J ..... Standish, MI	10/09/93
Lewis, Carol E ..... Cleveland Hgts, OH	10/09/93
Lyon, Richard F ..... Urbana, MO	10/09/93
Massengale, Lendell Jr ..... Cincinnati, OH	10/09/93
Matanzo, Ramon D ..... Naguabo, PR	10/13/93
Moore, David S ..... San Diego, CA	10/20/93
Murphy, Michael F ..... Vestal, NY	10/13/93
Noble, Craig J ..... Redford, MI	10/09/93
Obester, David A ..... Columbus, OH	10/22/93
Patterson, Farris ..... May Wood, IL	10/09/93
Payne, Paul B ..... Antioch, TN	10/10/93
Phyfer, Kathryn A ..... Perryville, MO	10/22/93
Reed, Susan A ..... Flagstaff, AZ	10/20/93
Robinette, Terry A ..... Sandy, UT	10/21/93
Rudner, Todd W ..... Bayonne, NJ	10/13/93
Rynders, Arie ..... Bakersfield, CA	10/20/93
Schack, Richard N ..... Flushing, NY	10/13/93
Sciaroni, Matthew H ..... Fresno, CA	10/20/93
Silver, Mitchell ..... Deerfield Bch, FL	10/22/93
Spears, Roseann ..... Kennesaw, GA	10/22/93
Spencer, Durwood ..... Bakersfield, CA	10/20/93
Steffens, Thomas E ..... Silverdale, WA	10/20/93
Stoermer, Sandra C ..... Tacoma, WA	10/20/93
Thomas, Audria B ..... St. Thomas, VI	10/13/93
Thornton, Loren D ..... Fruitland Park, FL	10/22/93
Tindall, Michael A ..... Magna, UT	10/21/93
Turner, Nancy A	10/21/93

Subject, City, State	Effective date
Springville, UT Walker, Joseph C	10/09/93
Cleveland Hgts, OH Whitted, Glenn E Amherst, OH	10/09/93

* * * * *

Dated: October 6, 1993.

James F. Patton,

Director, Health Care Administrative Sanctions, Office of Investigations.

[FR Doc. 93-25356 Filed 10-14-93; 8:45 am]

BILLING CODE 4150-04-P

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Normally on Fridays, the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 96-511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the **Federal Register** on Friday, September 3, 1993.

(Call Reports Clearance Officer on (410) 965-4142 for copies of package)

1. SSA-Initiated Personal Earnings and Benefit Estimate Statement Public Opinion Questionnaire—0960-NEW. The information on form SSA-700 will be used by the Social Security Administration to obtain recipient reaction, opinion, and comprehension regarding a Personal Earnings and Benefit Estimate Statement (PEBES). The respondents will be selected recipients of PEBES who complete and return this questionnaire.

Number of Respondents: 5,000
Frequency of Response: 1
Average Burden Per Response: 12 minutes
Estimated Annual Burden: 1,000 hours

2. Student Reporting Form—0960-0088. The information on form SSA-1383 is used by the Social Security Administration to determine if a reported change will affect the benefits payable to the student who receives them. The respondents are full-time students who receive Social Security benefits.

Number of Respondents: 75,000
Frequency of Response: On occasion
Average Burden Per Response: 6 minutes
Estimated Annual Burden: 7,500 hours

3. Reporting Changes That Affect Your Social Security Payment—0960-0073. The information on form SSA-1425 is used by the Social Security Administration to determine if a beneficiary should continue to be entitled to the same amount of benefits or if those benefits should be terminated or changed based on the report. The respondents are Social Security beneficiaries who use this form to report events which could affect the payment of their benefits.

Number of Respondents: 70,000
Frequency of Response: On occasion
Average Burden Per Response: 5 minutes
Estimated Annual Burden: 5,833 hours

4. Application for Supplemental Security Income—0960-0229. The information on form SSA-8000 is used by the Social Security Administration to determine eligibility and the amount payable in claims for Supplemental Security Income (SSI). The respondents consist of applicants for SSI.

Number of Respondents: 1,855,000
Frequency of Response: 1
Average Burden Per Response: 34 minutes
Estimated Annual Burden: 1,015,167 hours

5. Focus Group Testing of SSA's Service Delivery and Engineering of the Disability Process—0960-NEW. The information obtained during these focus group discussions will be used by the Social Security Administration to help plan for improvements in the service delivery and disability areas by learning what the respondents expect. The respondents will be selected claimants or recipients and members of the general public.

Number of Respondents: 288
Frequency of Response: 1
Average Burden Per Response: 90 minutes
Estimated Annual Burden: 432 hours
OMB Desk Officer: Laura Oliven

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: October 12, 1993.

Charlotte Whitenight,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 93-25414 Filed 10-14-93; 8:45 am]

BILLING CODE 4190-29-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. D-93-1037; FR-3544-D-01]

Delegation of Authority To Approve Refinancing of Bond-financed Section 8 Rental Housing Projects to the Assistant Secretary for Housing—Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commission

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of delegation of authority.

SUMMARY: The Secretary of Housing and Urban Development is delegating responsibility for approval of refinancings of bond-financed Section 8 Rental Housing Projects, under Section 8(e)(1) of the United States Housing Act of 1937, as amended, to the Assistant Secretary for Housing—Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

EFFECTIVE DATE: October 4, 1993.

FOR FURTHER INFORMATION CONTACT: Donald A. Kaplan, Director, Office of Evaluation, Department of Housing and Urban Development, 451 Seventh Street SW, room 5136, Washington, DC 20410, (202) 401-0450 (voice) or (202) 708-4594 (TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: This Notice delegates to the Assistant Secretary for Housing—Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner the power and authority of the Secretary of Housing and Urban Development to approve refinancings of bond-financed Section 8 Rental Housing Projects, under Section 8(e)(1) of the United States Housing Act of 1937, as amended, including the authority to redelegate to other employees of the Department. The Assistant Secretary for Housing—Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner may issue rules or regulations to carry out this responsibility and the Assistant Secretary for Housing—Federal Housing Commissioner may waive such rules or regulations to the extent authorized by statute or in the rules or regulations. The Assistant Secretary and General Deputy Assistant Secretary may not redelegate the authority to issue rules or regulations. The Assistant Secretary also

may not redelegate the authority to waive rules or regulations (See Statement of Policy on Waiver of Regulations and Directives issued by HUD published in the **Federal Register** on April 22, 1991, at 56 FR 16337).

Section A. Delegation of Authority

The Secretary of Housing and Urban Development hereby delegates to the Assistant Secretary for Housing—Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner the power and authority to approve refinancings of bond-financed Section 8 Rental Housing Projects under Section 8(e)(1) of the United States Housing Act of 1937, as amended. This power and authority includes, but is not limited to, the authority to review and approve the financing terms such as the undertaking of any refunding of bonds which financed new construction or substantial rehabilitation of 100 percent assisted or partially assisted Section 8 rental housing and which involves assignment of the Housing Assistance Payments Contract as security for the refunding bonds. The Assistant Secretary for Housing—Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner may issue rules or regulations to carry out this responsibility and the Assistant Secretary for Housing—Federal Housing Commissioner may waive such rules or regulations to the extent authorized by statues or in the rules or regulations.

Section B. Authority Excepted

The following authorities are excepted from this delegation of authority from the Secretary of Housing and Urban Development to the Assistant Secretary for Housing—Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner:

1. The authority to issue notes or obligations for purchase by the Secretary of the Treasury.
2. The authority to sue and be sued.

Section C. Authority Which May Not Be Redelegated

The Assistant Secretary for Housing—Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner may not redelegate the authority to issue rulers or regulations. The Assistant Secretary may not redelegate the authority to waive rules or regulations (See Statement of Policy on Waiver of Regulations and Directives issued by HUD published in the **Federal Register** on April 22, 1991, at 56 FR 16337).

Authority: Section 8(e)(1) of the United States Housing Act of 1937, as amended, 42 U.S.C. 1437f(e)(1); Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: October 4, 1993.

Henry G. Cisneros,

Secretary of Housing and Urban Development.

[FR Doc. 93–25359 Filed 10–14–93; 8:45 am]

BILLING CODE 4210–32–M

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–93–1917; FR–3350–N–53]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: October 15, 1993.

ADDRESS: For further information, contact Mark Johnston, Department of Housing and Urban Development, room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: October 8, 1993.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 93–25299 Filed 10–14–93; 8:45 am]

BILLING CODE 4210–29–F

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N–93–3486; FR–3288–N–04]

NOFA for Low Income Housing: Technical Assistance Planning Grants for Resident Groups, Community Groups, Community-Based Nonprofit Organizations and Resident Councils: Announcement of Funding Awards

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department under the NOFA entitled Low Income Housing: Technical Assistance Planning Grants for Resident Groups, Community Groups, Community-Based Nonprofit Organizations and Resident Councils. The announcement contains the names and addresses of the award winners and the amounts of the awards.

FOR FURTHER INFORMATION CONTACT: Kevin J. East, Director Preservation Division, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708–2300. The TDD number for the hearing impaired is (202) 708–9300. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The purpose of these grant funds is to facilitate acquisition of certain HUD-insured or -assisted multifamily projects by Community-Based Nonprofit Organizations (CBO), Residents Councils (RC), resident groups, and community groups. These grants are to promote the development of a CBO or RC and the resident-supported purchase of projects under the Emergency Low Income Housing Preservation Act of 1987 (ELIHPA) or the Low Income Housing Preservation and Resident Homeownership Act of 1990 (LIHPRHA).

The 1992 awards announced in this Notice were selected for funding based on applications submitted pursuant to a **Federal Register** Notice published on September 3, 1992 (57 FR 40570). Applications were reviewed and selected for funding on the basis of selection criteria contained in that Notice.

Between January 1, 1993, and September 15, 1993, a total of $908,824 was awarded to 25 grantees, which consisted of resident groups, Resident

Councils, community groups, and Community-Based Nonprofit Organizations. In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the Department is publishing the names (including, in parentheses, the names of the properties for which the grants were received), addresses, and amounts of those awards as follows:

LOW INCOME HOUSING: TECHNICAL ASSISTANCE PLANNING GRANTS FOR RESIDENT GROUPS, COMMUNITY GROUPS, COMMUNITY-BASED NONPROFIT ORGANIZATIONS AND RESIDENT COUNCILS

Allen Park Tenants Association, 129 Allen Park Road, Springfield, MA 01118 (Property: Allen Park Apartments, Springfield, MA)	$50,000
Amesbury Gardens Tenants Association, c/o Dorothy Chretien, 198 Amesbury Street, Lawrence, MA 01841 (Property: Amesbury Gardens Apartments, Lawrence, MA)	25,000
Homesavers Council of Greenfield Gardens, 17 Riverside Drive, Greenfield, MA 01301 (Property: Greenfield Gardens, Greenfield, MA)	25,000
Commonwealth Endowment Properties, Inc., 800 Park Street, Bolling Green, KY 42101 (Property: Guardian Court, Louisville, KY)	6,000
Carmen-Marine Tenants Association, 5030 N. Marine Drive, Apt. 2405, Chicago, IL 60640 (Property: Carmine-Marine Apartments, Chicago IL)	125,000
Edgewood Village Nonprofit Housing Corp., 606 West Shiawassee, Lansing, MI 48933 (Property: Edgewood Village Apartments, East Lansing, MI)	73,460
Assisi Homes—Jefferson Court, c/o Christine Nordberg, 5016 West Burleigh Street, Milwaukee, WI 53210 (Property: Jefferson Court Apartments, Milwaukee, WI)	664,000
West Chicago Preservation Corporation, 65 East Wacker Place, Suite 1800, Chicago, IL 60601 (Property: Town & Country Apartments, West Chicago, IL)	25,000
Franciscan Ministries, Inc., c/o Robert Cisek, 26 West 171 Roosevelt Road, Wheaton, IL 60189 (Property: Batavia Apartments, Batavia, IL)	25,000
The Peace Housing Corporation (4 Grants), c/o Reverend Robert L. Hadley, Jr., 5310 Fannie Street, Dallas, TX 75212, (Property: Rolling Meadows Apartments, Dallas, TX) (Property: Leigh Ann Apartments, Dallas, TX) (Property: El Capitan Apartments, Dallas, TX) (Property: Prairie Creek Manor, Dallas, TX)	100,000
Diamond View Tenants Association, c/o Roberta Stewart, 181 Addison Street, San Francisco, CA 94131 (Property: Diamond View Apartments, San Francisco, CA)	14,000
Mission Plaza Tenants Association, P.O. Box 31255, Los Angeles, CA 90031 (Property: Mission Plaza Apartments, Los Angeles, CA)	99,472
Sutter Terrace Association of Residents, 5808 Sutter Avenue #48, Carmichael, CA 95608 (Property: Sutter Terrace, Carmichael, CA)	25,000
Glenridge Residents Council, 11 Berkeley Way, San Francisco, CA 94131 (Property: Glenridge Apartments, San Francisco, CA)	50,000
Solano Affordable Housing Foundation, 1000 Webster Street, Fairfield, CA 94510 (Property: Crescent Village, Suisun City, CA)	25,000
Pleasant View Resident Council, 3537 N. Pleasant, #C, Fresno, CA 93705 (Property: Pleasant View Apartments, Fresno, CA)	25,000
Plymouth Housing Group, 1305 Fourth Avenue, Suite 417, Seattle, WA 98101 (Property: Ponderosa Apartments, Seattle, WA)	51,127
Laurelwood Gardens Resident Association, 29436 21st Avenue South #2, Federal Way, WA 98003 (Property: Laurelwood Gardens, Federal Way, WA)	25,000
Elizabeth James Senior Housing, 1535 11th Avenue, Seattle, WA 98122 (Property: Elizabeth James Apartments, Seattle, WA)	46,450
Grandview Apartments Resident Association, 1002 Hillcrest Road #B3, Grandview, WA 98930 (Property: Grandview Apartments, Grandview, WA)	18,315
Pacific Retirement Services, c/o Jill Collins, Rogue Valley Manor, 1200 Mira Mar, Medford, OR 97504 (Property: Royal Loto Apartments, Eagle Point, OR)	11,000

Dated: October 6, 1993.

Nicolas Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 93–25297 Filed 10–14–93; 8:45 am]

BILLING CODE 4210–27–M

[Docket Nos. N–93–3385; FR–3149–N–04 and N–93–3386; FR–3150–N–03]

Announcement of Funding Awards for Supportive Housing for Persons With Disabilities and for the Elderly

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department as a result of competitions for funding under the following two Notices of Funding Availability: (1) Supportive Housing for the Elderly and (2) Supportive Housing for Persons With Disabilities. The announcement contains the names and addresses of the award winners for these two competitions and the amounts of the awards.

DATES: October 15, 1993.

FOR FURTHER INFORMATION CONTACT: Margaret Milner, Acting Director, Office of Elderly and Assisted Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708–4542. The TDD number for the hearing impaired is (202) 708–4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The purposes of these competitions was to (1) provide assistance to private nonprofit organizations and nonprofit consumer cooperatives to expand the supply of supportive housing for the elderly; and (2) provide assistance to private nonprofit organizations to expand the supply of supportive housing for persons With disabilities.

The 1992 awards announced in this Notice were selected for funding in competitions announced in **Federal Register** Notices published on March 6, 1992, at 57 FR 8218 and 8206.

A total of $365.6 million was awarded to Supportive Housing for the Elderly. The awards, under the Department's Section 202 housing program, were made to non-profit groups which will develop 6,023 rental units in 35 states and Puerto Rico.

A total of $91.5 million was awarded to Supportive Housing for Persons With Disabilities. The awards, under the Department's Section 811 program, financed 1,699 rental housing units for low-income people with disabilities. The funds, in the form of capital

advances, financed 149 applications from non-profit groups to develop projects in 37 states. The awards funded projects for persons with developmental disabilities, chronic mental illness and physical disabilities.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the Department is publishing the names, addresses, and amounts of those awards, as set out at the end of this Notice.

Dated: September 30, 1993.

Jeanne Engel,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner

SECTION 202.—PROGRAM FOR THE ELDERLY—FISCAL YEAR 1992 SELECTIONS

[To Accompany HUD 92-67]

Office	FHA and project rental assistance contract (PRAC) numbers, sponsor name and address	Location	Metro or non-metro	Minority code	Number of projects	Units	Capital advance amount	Rental assistance contract authority
* Region: Boston								
* State: CT								
Hartford	017-EE004/CT26-S921-001, Nat. Council of Senior Citizens, 117 C. Street, S.E., Washington, DC 20003.	Stonington Town, CT	M		1	76	5698700	303800
* Subsubtotal *					1	76	5698700	303800
* State: MA								
Boston	023-EE023/MA06-S921-003, Ahepa National Hsg, 10333 N. Meridian Street, Indianapolis, IN 46290.	Haverhill, MA	M		1	54	4163400	241700
Boston	023-EE026/MA06-S921-006, Brownstone Gardens, 75 Pleasant Street, East Longmeadow, MA 06095.	East Longmeadow, MA	M		1	40	2867600	179000
Boston	023-EE029/MA06-S921-009, Oak Hill Comm Development, 226 Grafton Street, Worcester, MA 01604.	Worcester, MA	M		1	50	3584500	219300
Boston	023-EE030/MA06-S921-010, Dorchester Housing, Inc., 1353 Dorchester Avenue, Dorchester, MA 02122.	Dorchester, MA	M	2	1	40	3100700	174600
Boston	023-EE032/MA06-S921-012, Jewish Comm Housing, 30 Wallingford Road, Brighton, MA 02135.	Newton, MA	M		1	75	5799200	335700
* Subsubtotal *					5	259	1951400	1150300
* State: ME								
Manchester	024-EE003/ME36-S921-001, Volunteers of America, 3813 N. Causeway Blvd., Metairie, LA 70002.	Portland, ME	M		1	60	3652100	199200
* Subsubtotal *					1	60	3652100	199200
** Subtotal **					7	395	28866200	1653300
** Region: New York								
* State: NJ								
Newark	031-EE009/NJ39-S921-002, Spotswood Reformed Church, 429 Main Street, Spotswood, NJ 08854.	Spotswood, NJ	M		1	74	5717500	331100
Newark	031-EE010/NJ39-S921-005, The Presbyterian Homes of NJ Fund, Inc., P.O. Box 2184, Princeton, NJ 08543.	Middlesex, NJ	M		1	87	6753900	390000

SECTION 202.—PROGRAM FOR THE ELDERLY—FISCAL YEAR 1992 SELECTIONS—Continued

[To Accompany HUD 92-67]

Office	FHA and project rental assistance contract (PRAC) numbers, sponsor name and address	Location	Metro or non-metro	Minority code	Number of projects	Units	Capital advance amount	Rental assistance contract authority
Newark	031-EE011/NJ39-S921-006, National Church Residences, 2335 North Bank Drive, Columbus, OH 43220.	West Orange, NJ	M		1	58	4508100	258500
Newark	035-EE006/NJ39-S921-008, The Presbyterian Homes of NJ Fund, Inc., P.O. Box 2184, Princeton, NJ 08543.	Galloway Twp., NJ	M		1	84	5838100	341200
* Subsubtotal *					4	303	22817600	1320800
* State: NY								
New York	012-EE039/NY36-S921-001, Christ the King Church, 740 N Broadway, Yonkers, NY 10701.	Yonkers, NY	M		1	70	5681000	328600
New York	012-EE045/NY36-S921-007, 80-86 Housing Corp., 253 Clermont Ave., Brooklyn, NY 11205.	New York-Brooklyn, NY	M	2	1	91	7402900	422500
New York	012-EE051/NY36-S921-013, Mid-Bronx Senior Citizens, 900 Grand Concourse, Bronx, NY 10451.	New York-Bronx, NY	M	2	1	79	6429000	366100
New York	012-EE052/NY36-S921-014, National Baptist Convention, 383 Washington Street, Newark, OH 43055.	Mount Vernon, NY	M	2	1	98	7971000	455300
Buffalo	014-EE027/NY06-S921-005, United Church Homes, 170 E. Center St., Marion, OH 43302.	Olean,NY	NM		1	39	2254400	137100
Buffalo	014-EE029/NY06-S921-007, Roman Catholic Diocese of Albany, 40 N Main Street, Albany, NY 12203.	Colonie, NY	M		1	50	3144900	180500
Buffalo	014-EE030/NY06-S921-008, Catholic Charities of Syracuse, 240 E. Onondaga St., Syracuse, NY 13202.	Baldwinsville, NY	M		1	53	3369400	191400
Buffalo	014-EE031/NY06-S921-009, Catholic Charities of Syracuse, 240 E. Onondaga St., Utica, NY 13202.	Utica, NY	M		1	54	3446700	195000
Buffalo	014-EE032/NY06-S921-010, Catholic Charities of Syracuse, 240 E. Onondaga St., Syracuse, NY 13202.	Syracuse, NY	M		1	40	2556600	144400
Buffalo	014-EE033/NY06-S921-011, Catholic Charities of Syracuse, 240 E. Onondaga St., Syracuse, NY 13202.	Henderson, NY	NM		1	24	1525700	86700

Buffalo	014–EE037/NY06–S921–015, National Church Residences, 2335 N. Bank Dr., Columbus, OH 43220.	Clifton Park, NY	M		1	50	3158400	180500
Buffalo	014–EE038/NY06–S921–016, Rochester Health Care, 1425 Portland Avenue, Rochester, NY 14621.	Irondequoit, NY	M		1	55	3491600	194100
Subsubtotal					12	703	50431600	2882200
Subtotal					16	1006	73249200	4203000
**Region: Philadelphia								
*State: MD								
Baltimore	052–EE002/MD06–S921–002, Associated Catholic Charities, 320 Cathedral Street, Baltimore, MD 21201.	Baltimore, MD	M		1	90	5569400	297000
Subtotal					1	90	5569400	297000
*State: PA								
Pittsburgh	033–EE018/PA28–S921–002, Bayfront NATO Inc., 312 Chestnut Street, Erie, PA 16501.	Erie, PA	M	2	1	40	2299400	122900
Pittsburgh	033–EE019/PA28–S921–003, Presbyterian Association on Aging, 1215 Hulton Road, Oakmont, PA 15139.	Parker, PA	NM		1	27	1564500	79900
Pittsburgh	033–EE020/PA28–S921–004, Allied Human Services, Assoc., 44 S. Beaver St., New Castle, PA 16101.	New Castle, PA	NM		1	35	2184500	116800
Pittsburgh	033–EE021/PA28–S921–005, Action Housing, Inc., 603 Stanwix St, 2 Gateway Center, Pittsburgh, PA 15222.	East Pittsburgh, PA	M		1	40	2299400	122900
Pittsburgh	033–EE022/PA28–S921–006, Action Housing, Inc., 603 Stanwix St, 2 Gateway Center, Pittsburgh, PA 15222.	Pittsburgh, PA	M		1	40	2299400	122900
Pittsburgh	033–EE023/PA28–S921–007, Goodwill Industries of Pittsburgh, 2600 East Carson Street, Pittsburgh, PA 15203.	Bridgeville, PA	M		1	50	2886700	150600
Pittsburgh	033–EE025/PA28–S921–009, Uniontown Hospital, 500 W Berkeley Street, Uniontown, PA 15401.	Uniontown, PA	M		1	50	2886700	150600
Pittsburgh	033–EE028/PA28–S921–012, The Lutheran Service Society of Western PA, 3171 Babcock Blvd, Pittsburgh, PA 15237.	Oil City, PA	NM		1	50	2886700	150600
Philadelphia	034–EE010/PA26–S921–002, Frankford Group Ministry, 4620 Griscom Street, Philadelphia, PA 19124.	Philadelphia, PA	M		1	50	3432300	206600

SECTION 202.—PROGRAM FOR THE ELDERLY—FISCAL YEAR 1992 SELECTIONS—Continued

[To Accompany HUD 92–67]

Office	FHA and project rental assistance contract (PRAC) numbers, sponsor name and address	Location	Metro or non-metro	Minority code	Number of projects	Units	Capital advance amount	Rental assistance contract authority
Philadelphia	034–EE011/PA26–S921–003, Bethesda House, 1800 Mill Road, Boothwyn, PA 19061.	Upper Chichester TWP, PA	M		1	61	4202200	247900
Subsubtotal					10	446	26941800	1471700
*State: VA								
Washington	000–EE007/VA39–S921–002, VA Diocesan Homes, 4800 Fillmore Avenue, Alexandria, VA 22311.	Fairfax, VA	M		1	50	3280100	177100
Richmond	051–EE014/VA36–S921–004, Virginia Mountain Housing, 930 Cambria St., Christiansburg, VA 24073.	Giles County, VA	NM		1	30	1522200	88500
Subsubtotal					2	80	4802300	265600
Subtotal					13	616	37313500	2034300
**Region: Atlanta								
*State: AL								
Birmingham	062–EE009/AL09–S921–002, Ahepa National HSG Corp/ Order of Ahepa #30, 10333 North Meridian St., Indianapolis, IN 46290.	Mobile, AL	M		1	50	2483400	134800
Birmingham	062–EE012/AL09–S921–005, The Episcopal Ch in the Diocese of Alabama, 521 20th Street N, Birmingham, AL 35203.	Birmingham, AL	M		1	41	1908200	105800
Subsubtotal					2	91	4391600	240600
*State: FL								
Jacksonville	066–EE011/FL29–S921–002, United Church Homes, Inc., 170 East Center Street, Marion, OH 43302.	Collier County, FL	M		1	40	2175900	108700
Jacksonville	067–EE018/FL29–S921–005, National Church Residences, 2335 North Bank Drive, Columbus, OH 43220.	Daytona Beach, FL	M		1	63	3121000	152600
Jacksonville	067–EE022/FL29–S921–010, Diocese of Orlando, 421 East Robinson St., Orlando, FL 32801.	Melbourne, FL	M		1	76	3752200	187000
Jacksonville	067–EE023/FL29–S921–012, First Baptist Church of Plant City, Inc., 102 N. Reynolds St., Plant City, FL 33506.	Plant City, FL	M		1	52	2602400	128000
Jacksonville	067–EE024/FL29–S921–015,	Tampa, FL	M		1	82	4103900	201800

Jacksonville	067–EE024/FL29–S921–015, Diocese of St. Petersburg, 6363 Ninth Ave North, St. Petersburg, FL 33710.	Tampa, FL	M		1	82	4103900	201800
Jacksonville	067–EE026/FL29–S921–017, Diocese of St. Petersburg, 6363 Ninth Ave. North, St. Petersburg, FL 33710.	Pinellas Park, FL	M		1	76	3803600	187000
Subsubtotal					6	389	19559000	965100
*State: GA								
Atlanta	061–EE009/GA06–S921–002, Broadway Towers, Inc., 1800 Century Blvd., NE, Atlanta, GA 30345.	Lawrenceville, GA	M		1	75	3713400	198700
Subsubtotal					1	75	3713400	198700
*State: KY								
Louisville	083–EE017/KY36–S921–006, Lake Cumberland Community Svcs Organization, PO Box 968, Somerset, KY 42502.	Somerset, KY	NM		1	24	1210100	68400
Subsubtotal					1	24	1210100	68400
*State: MS								
Jackson	065–EE006/MS26–S921–002, United Church Homes, Inc., 170 East Center Street, Marion, OH 43302.	Clinton, MS	M		1	60	2820200	159600
Jackson	065–EE007/MS26–S921–003, United Church Homes, Inc., 170 East Center Street, Marion, OH 43302.	Greenwood, MS	NM		1	40	1732400	105500
Subsubtotal					2	100	4552600	265100
*State: NC.								
Greensboro	053–EE014/NC19–S921–002, Roman Catholic Diocese of Raleigh, NC, 300 Cardinal Gibbons Drive, Raleigh, NC 27606.	Wilmington, NC	M		1	40	2447800	114000
Greensboro	053–EE018/NC19–S921–006, Metropolitan African Meth. Epis. Zion Church, 102 West Fourth St., Washington, NC 27889.	Washington, NC	NM	2	1	12	659300	34200
Greensboro	053–EE019/NC19–S921–007, Winston-Salem Housing Foundation, Inc., 411 N. Cherry Street, Winston-Salem, NC 27101.	Winston-Salem, NC	M		1	60	3368000	171000
Greensboro	053–EE020/NC19–S921–008, Winston-Salem Housing Foundation, 411 N. Cherry Street, Winston-Salem, NC 27101.	Mount Airy, NC	NM		1	24	1287600	68400
Greensboro	053–EE021/NC19–S921–009, United Order of Tents of J.R. Gidding, 1620 Church Street, Norfolk, VA 23504.	Rocky Mount, NC	NM		1	48	2637300	136800

SECTION 202.—PROGRAM FOR THE ELDERLY—FISCAL YEAR 1992 SELECTIONS—Continued

[To Accompany HUD 92-67]

Office	FHA and project rental assistance contract (PRAC) numbers, sponsor name and address	Location	Metro or non-metro	Minority code	Number of projects	Units	Capital advance amount	Rental assistance contract authority
Greensboro	053-EE022/NC19-S921-010, John H. Wellons Foundation, PO Box 1254, Dunn, NC 28334.	Goldsboro, NC	NM		1	44	2417600	125400
Subsubtotal					6	228	12817600	649800
*State: PR								
Caribbean	056-EE007/RQ46-S921-001, Ciales Primary Health Care Specialities, PO Box 1427, Ciales, PR 00638.	Ciales Municipio, PR	NM	4	1	104	5837900	274900
Subsubtotal					1	104	5837900	274900
*State: TN								
Nashville	081-EE008/TN40-S921-004, Wesley Housing Corporation, 400 South Highland, Memphis, TN 38111.	Martin, TN	NM		1	41	1848700	107400
Nashville	081-EE009/TN40-S921-005, Wesley Housing Corporation, 400 South Highland, Memphis, TN 38111.	Adamsville, TN	NM		1	25	1109200	64500
Knoxville	087-EE006/TN37-S921-004, Douglas-Cherokee Economic Authority, PO Box 1218, Morristown, TN 37816.	Spring City, TN	NM		1	31	1467200	78700
Knoxville	087-EE007/TN37-S921-005, Douglas-Cherokee Economic Authority, PO Box 1218, Morristown, TN 37816.	Benton, TN	NM		1	24	1101500	63000
Subsubtotal					4	121	5526600	313600
Subtotal					23	1132	57608800	2976200
**Region: Chicago								
*State: IL								
Chicago	071-EE028/IL06-S921-007, Catholic Charities, 1571 West Ogden Ave., La Grange Pk., IL 60525.	Chicago, IL	M		1	61	4015900	199100
Chicago	071-EE029/IL06-S921-008, Catholic Charities, 1571 West Ogden Avenue, La Grange Park, IL 60525.	Mount Prospect, IL	M		1	75	4920200	244800
Chicago	071-EE030/IL06-S921-009, Lutheran Social Services of Illinois, 1001 Touhy Ave., Des Plaines, IL 60018.	Dolton, IL	M		1	100	6574400	326400
Chicago	071-EE036/IL06-S921-015,	Chicago, IL	M	2	1	52	3411300	169700

Chicago	071–EE036/IL06–S921–015, Chicago Dwelling Association, 360 N. Michigan, Chicago, IL 60601.	Chicago, IL	M	2	1	52	3411300	169700
Chicago	071–EE038/IL06–S921–017, Ben Frankel Lodge and B'nai B'rith, 1127N. North Street, Peoria, IL 61605.	Peoria, IL	M		1	72	3418800	235000
Subsubtotal					5	360	22340600	1175000
*State: IN								
Indianapolis	073–EE022/IN36–S921–010, Lutheran Social Services of the Miami Valley, 6445 Far Hills Avenue, Dayton, OH 45459.	Columbus, IN	NM		1	40	2204800	121300
Subsubtotal					1	40	2204800	121300
*State: MI								
Detroit	044–EE013/M128–S921–002, Lutheran Social Services of Michigan, 8131 E. Jefferson, Detroit, MI 48214.	Ann Arbor, MI	M		1	56	3408600	190500
Subsubtotal					1	56	3408600	190500
*State: MN								
Minneapolis	092–EE007/MN46–S921–002, Resource Development Council of Cook County, PO Box 57, Grand Marais, MN 55604.	Grand Marais, MN	NM		1	24	1375700	79200
Minneapolis	092–EE008/MN46–S921–003, Westminster Corporation, 328 W Kellogg Blvd., St. Paul, MN 55102.	Fridley, MN	M		1	51	3134700	168300
Minneapolis	092–EE009/MN46–S921–004, St. Mary's Villa, Inc., Faust St. & 1st Ave. S, Pierz, MN 56364.	Pierz, MN	NM		1	16	884300	52800
Subsubtotal					3	91	5394700	300300
*State: OH								
Cleveland	042–E0017/OH12–S921–017, Holy Redeemer Catholic Church, 15712 Kipling Avenue, Cleveland, OH 44110.	Cleveland, OH	M		1	51	2991900	170100
Cleveland	042–EE021/OH12–S921–021, Alpha Omega Foundation, P.O. Box 93717, Cleveland, OH 44101.	Cleveland, OH	M	2	1	54	3329100	183700
Cleveland	042–EE023/OH12–S921–023, ETA Tau Lambda Chapter, Alpha Phi Alpha, 695 Dunbar Drive, Akron, OH 44311.	Warren, OH	M	2	1	40	2067200	132600
Columbus	043–EE015/OH16–S921–002, National Church Residences, 2335 North Bank Drive, Columbus, OH 43220.	Dublin, OH	M		1	60	3258000	180700

SECTION 202.—PROGRAM FOR THE ELDERLY—FISCAL YEAR 1992 SELECTIONS—Continued

[To Accompany HUD 92-67]

Office	FHA and project rental assistance contract (PRAC) numbers, sponsor name and address	Location	Metro or non-metro	Minority code	Number of projects	Units	Capital advance amount	Rental assistance contract authority
Columbus	043-EE017/OH16-S921-004, Catholic Diocese of Columbus, 198 East Broad Street, Columbus, OH 43215.	Columbus, OH	M		1	60	3246300	180700
Columbus	043-EE018/OH16-S921-005, Catholic Diocese of Columbus, 198 East Broad Street, Columbus, OH 43215.	Coshocton, OH	NM		1	40	2164200	120500
Columbus	043-EE020/OH16-S921-007, Catholic Diocese of Columbus, 198 East Broad Street, Columbus, OH 43215.	Washington Court Hse, OH	NM		1	40	2164200	120500
Columbus	043-EE020/OH16-S921-008, Lutheran Social Services of Central Ohio, 57 East Main Street, Columbus, OH 43215.	Grove City, OH	M		1	55	2975800	165700
Cincinnati	046-EE005/OH10-S921-001, Warren County Community Services, Inc., 570 North State Route 74, Lebanon, OH 45036.	South Lebanon, OH	M		1	42	2286600	134400
Cincinnati	046-EE06/OH10-S921-002, Lutheran Social Services of the Miami Valley, 6445 Far Hills Ave., Dayton, OH 45459.	Milford, OH	M		1	40	2177700	128000
Subsubtotal					10	482	26661000	1516900
*State: WI								
Milwaukee	075-EE010/WI39-S921-005, Arlington Clergy, 514 East Grant Street, Poynette, WI 53955.	Poynette, WI	NM		1	22	1223000	68000
Subsubtotal					1	22	1223000	68000
Subtotal					21	1051	61232700	3372000
**Region: Fort Worth								
*State: AR								
Little Rock	082-EE025/AR37-S921-001, White River Regional HSG Development Corp., P.O. Box 650, Melbourne, AR 72556.	Cave City, AR	NM		1	16	672200	39000
Little Rock	082-EE029/AR37-S921-005, Area Agency on Aging of NW Arkansas, P.O. Box 1795, Harrison, AR 72601.	Gravette, AR	NM		1	20	840300	48700
Little Rock	082-EE032/AR37-S921-008, North Arkansas Human Services System, Inc., P.O. Box 2578, Batesville, AR 72503.	Harrisburg, AR	NM		1	20	840300	48700
Subsubtotal					3	56	2352800	136400

Subsubtotal					3	56	2352800	136400
State: LA								
New Orleans	064–EE010/LA48–S921–002, Our Lady of the Lake Hospital, 7777 Hennessy Blvd., Baton Rouge, LA 70808.	Baton Rouge, LA	M		1	67	3096600	188200
New Orleans	064–EE015/LA48–S921–007, Evangeline Council on Aging, P.O. Box 312, Ville Platte, LA 70586.	Ville Platte, LA	NM		1	50	2294800	140400
Subsubtotal					2	117	5391400	328600
*State: OK								
Oklahoma City	117–EE005/OK56–S921–008, Harrah Senior Citizens, P.O. Box 881, Harrah, OK 73045.	Harrah, OK	M		1	40	1793300	102300
Oklahoma City	118–EE004/OK56–S921–001, Sand Springs Welfare Association, Inc., 106 North Garfield, San Springs, OK 74063.	Sand Springs, OK	M		1	80	3619900	213700
Subtotal					2	120	5413200	316000
*State: TX								
Fort Worth	112–EE005/TX16–S921–001, National Church Residences, 2335 North Bank Drive, Columbus, OH 43220.	Grand Prairie, TX	M		1	40	1971900	114000
Houston	114–EE013/TX24–S921–003, National Benevolent Association, 11780 Borman Drive, St. Louis, MO 63146.	Houston, TX	M		1	58	2902700	164100
Houston	114–EE014/TX24–S921–014, National Church Residences, 2335 North Bank Drive, Columbus, OH 43220.	Bay City, TX	NM		1	61	2927700	172600
San Antonio	115–EE009/TX59–S921–004, Rural Economic Assistance League, Inc., 1300 Wyoming St., Alice, TX 78332.	Freer, TX	NM	4	1	24	1071800	60400
Subsubtotal					4	183	8874100	511100
Subtotal					11	476	22031500	1292100
**Region: Kansas City								
State: IA								
Des Moines	074–EE007/IA05–S921–003, First Church of the Open Bible, 2200 Beaver Ave., Des Moines, IA 50310.	Des Moines, IA	M		1	44	2172300	121800
Des Moines	074–EE008/IA05–S921–004, Area IV Agency on Aging, 508 Frances Building, Sioux City, IA 51101.	Sioux City, IA	M		1	40	1939200	110700
Subsubtotal					2	84	4111500	232500
*State: KS								

SECTION 202.—PROGRAM FOR THE ELDERLY—FISCAL YEAR 1992 SELECTIONS—Continued

[To Accompany HUD 92-67]

Office	FHA and project rental assistance contract (PRAC) numbers, sponsor name and address	Location	Metro or non-metro	Minority code	Number of projects	Units	Capital advance amount	Rental assistance contract authority
Kansas City	102-EE005/KS16-S921-001, Mennonite Housing Rehabilitation Services, 2145 North Topeka, Wichita, KS 67214.	Wichita, KS	M		1	48	2094400	130800
Subsubtotal					1	48	2094400	130800
*State: MO								
St. Louis	085-EE008/MO36-S921-001, National Benevolent Assoc./ Hylton Point Hsg, 11780 Borman Dr., St. Louis, MO 63146.	St. Louis, MO	M		1	72	4236400	234700
St. Louis	085-EE013/MO36-S921-006, Cardinal Ritter Institute, 4483 Lindell Blvd., St. Louis, MO 63108.	St. Louis, MO	M		1	75	4413000	244500
Subsubtotal					2	147	8649400	479200
*State: NE								
Omaha	103-EE006/NE26-S921-002, Beatrice Community Hospital & Health Center, 1110 North 10th Street, Beatrice, NE 68310.	Plymouth, NE	NM		1	8	372300	22300
Subsubtotal					1	8	372300	22300
Subtotal				6	287	15227600	864800	
**Region: Denver								
*State: CO								
Denver	101-EE003/CO99-S921-001, Brothers Redevelop, 1111 Osage Street, Denver, CO 80204.	Denver, CO	M		1	81	4284300	241100
Subsubtotal					1	81	4284300	241100
*State: WY								
Denver	109-EE002/WY99-S921-002, Volunteers of America, 3813 N Causeway Blvd., Metairie, LA 70002.	Goshen County, WY	NM		1	40	1890300	99900
Subsubtotal					1	40	1890300	99900
Subtotal					2	121	6174600	341000
**Region: San Francisco								
State: CA								
San Francisco	121-EE015/CA39-S921-002, Satellite Senior Housing, 540 21st Street, Oakland, CA 94612.	Newark, CA	M		1	50	3922600	211200
San Francisco	121-EE018/CA39-S921-005, Catholic Charities, 3180 18th	San Rafael, CA	M		1	62	4733700	257600

San Francisco	121–EE018/CA39–S921–005, Catholic Charities, 3180 18th Street, San Francisco, CA 94110.	San Rafael, CA	M		1	62	4733700	257600
Los Angeles	122–EE021/CA16–S921–002, First United Methodist Church of Los Angeles, 1010 S. Flower, Los Angeles, CA 90015.	Los Angeles, CA	M		1	75	5125800	296000
Los Angeles	122–EE022/CA16–S921–003, National Council of Senior Citizens, 1331 F Street NW., Washington, DC 20004.	Los Angeles, CA	M		1	71	4879000	280000
Los Angeles	122–EE030/CA16–S921–011, The Salvation Army, 30840 Hawthorne Blvd., Rancho Palos Verdes, CA 90274.	San Diego, CA	M		1	125	8934300	459600
Los Angeles	122–EE031/CA16–S921–012, Wesley Homes, Inc., 340 Harvard Road, Burbank, CA 91502.	Burbank, CA	M		1	121	8689900	481900
Sacramento	136–EE003/CA30–S921–001, The Salvation Army, 30840 Hawthorne Blvd., Rancho Palos Verdes, CA 90274.	Stockton, CA	M		1	83	5234000	290600
Sacramento	136–EE004/CA30–S921–002, Volunteers of America, 3813 N Causeway Blvd., Metairie, LA 70002.	Auburn, CA	M		1	60	3746600	209100
Subsubtotal					8	647	45265900	2486000
*State: HI								
Honolulu	140–EE004/HI10–S921–001, Hale Mahaolu, Inc., 200 Hina Avenue, Kahului, HI 96732.	Kahului, HI	NM	5	1	55	4282400	248700
Subsubtotal					1	55	4282400	248700
*State: NV								
San Francisco	121–EE023/NV39–S921–001, Volunteers of America, 3813 N. Causeway Boulevard, Metairie, LA 70002.	Boulder City, NV	M		1	60	3361400	188600
San Francisco	121–EE026/NV39–S921–004, The Salvation Army, 30840 Hawthorne Boulevard, Rancho Palos Verdes, CA 90274.	Reno, NV	M		1	57	3308500	179000
Subsubtotal					2	117	6669900	367600
Subtotal					11	819	56218200	3102300
**Region: Seattle								
*State: WA								
Seattle	127–EE005/WA19–S921–001, Stillasuamish Senior Center, 18308 35th NE., Arlington, WA 98223.	Arlington, WA	M		1	40	2556600	122400
Seattle	127/EE006–WA19–S921–002, Senior Services of Snohomish County, 8225 44th Ave. W, Mukilteo, WA 98275–2851.	Lynnwood, WA	M		1	40	2556600	122400

SECTION 202.—PROGRAM FOR THE ELDERLY—FISCAL YEAR 1992 SELECTIONS—Continued

[To Accompany HUD 92-67]

Office	FHA and project rental assistance contract (PRAC) numbers, sponsor name and address	Location	Metro or non-metro	Minority code	Number of projects	Units	Capital advance amount	Rental assistance contract authority
Seattle	127-EE007/WA19-S921-003, Sisters of Providence of Washington, 516 Pike St., Seattle, WA 98111.	Chehalis, WA	NM		1	40	2556600	125500
Subsubtotal					3	120	7669800	370300
Subtotal					3	120	7669800	370300
Total					113	6023	365592100	20209300

SECTION 811.—PROGRAM FOR PERSONS WITH DISABILITIES—FISCAL YEAR 1992 SELECTIONS

[To accompany HUD 92-66]

Office	FHA and project rental assistance contract (PRAC) numbers, sponsor name and address	Location	Metro or non-metro	Minority code	Number of projects	Units	Tenant type	Capital advance amount	Rental assistance contract authority
**Region: Boston									
*State: MA									
Boston	023-HD016/MA06-Q921-001, Health & Educational Services, 162 Federal Street, Salem, MA 01970.	Salem, MA	M		1	12	CMI	975400	53700
Boston	023-HD017/MA06-Q921-002, Mental Health Prog, 28 Travis Street, Boston, MA 02134.	Boston, MA.	M		1	14	CMI	1146600	67200
Boston	023-HD018/MA06-Q921-003, Mental Health Association, Inc., 146 Chestnut Street, Springfield, MA 01103.	Springfield, MA.	M		1	10	WDD	413200	44800
Boston	023-HD019/MA06-Q921-004, North Suffolk Mental Health Association, 301 Broadway, Chelsea, MA 02150.	Newburyport, MA.	M		1	9	CMI	633900	5600
Boston	023-HD020/MA06-Q921-020, Advocates, Inc., 27 Hollis Street, Framingham, MA 01701.	Marlborough, MA.	M		1	5	CMI	414000	22300
Boston	023-HD021/MA06-Q921-006, Ctr Middlesex Arc, 17 Everberg Road, Woburn, MA 01801.	Wilmington, MA.	M		1	4	WDD	314000	17900
Boston	023-HD022/MA06-Q921-007, UCP of Western Massachusetts, 342 Birnie Avenue, Springfield, MA 01107.	Springfield, MA.	M		1	4	WDD	292000	17900
Boston	023-HD023/MA06-Q921-008, South Shore Arc, Inc., 371 River Street, Box 58, N.Weymouth, MA 02191.	Hingham, MA.	M		1	4	WDD	314100	17900
Boston	023-HD024/MA06-Q921-009, Cascap, Inc., 678 Massachusetts Avenue, Cambridge, MA 02139.	Somerville, MA.	M		1	8	CMI	359700	35800
Boston	023-HD025/MA06-Q921-010, Pine St Inn, Inc., 444 Harrison Avenue, Boston, MA 02118.	Boston, MA.	M		1	12	CMI	408500	53700
Subsubtotal					10	83		5271400	336800

SECTION 811.—PROGRAM FOR PERSONS WITH DISABILITIES—FISCAL YEAR 1992 SELECTIONS—Continued

[To accompany HUD 92–68]

Office	FHA and project rental assistance contract (PRAC) numbers, sponsor name and address	Location	Metro or non-metro	Minority code	Number of projects	Units	Tenant type	Capital advance amount	Rental assistance contract authority
Subtotal					10	83		5271400	336800
**Region: New York									
*State: NJ									
Newark	031–HD010/NJ39–Q921–011, Cerebral Palsy Essex West Hudson, 31–35 Cuozzo Street, Belleville, NJ 07109.	Belleville Twp, NJ.	M		1	6	WDD	376600	27200
Newark	031–HD011/NJ39–Q921–013, Assn for Retarded Citizens, Union County, 1225 South Avenue, Plainfield, NJ 07062.	Roselle, NJ.	M		1	6	CMI	560500	22600
Newark	035–HD006/NJ39–Q921–001, Multiple Sclerosis Association of America, 601–605 White Horse Pike, Oaklyn, NJ 08107.	Florence Twp, NJ.	M		1	24	WPD	1677200	98600
Newark	035–HD008/NJ39–Q921–005, Multiple Sclerosis Association of America, 601 White Horse Pike, Oaklyn, NJ 08107.	Gloucester Twp., NJ.	M		1	25	WPD	1694900	98600
Newark	035–HD009/NJ39–Q921–006, Collaborative Support Programs of New Jersey, #5 Route 33, Freehold, NJ 07728.	Egg Harbor City, NJ.	M		1	3	CMI	274700	12300
Newark	035–HD010/NJ39–Q921–007, Collaborative Support Programs of New Jersey, #5 Route 33, Freehold, NJ 07728.	Greenwich Twp, NJ.	M		1	3	CMI	274700	12300
Newark	035–HD011/NJ39–Q921–008, Collaborative Support Programs of New Jersey, #5 Route 33, Freehold, NJ 07728.	Trenton, NJ.	M		1	3	CMI	274700	12300
Newark	035–HD012/NJ39–Q921–009, Collaborative Support Programs of New Jersey, #5 Route 33, Freehold, NJ 07728.	Atlantic City, NJ.	M		1	3	CMI	274700	12300
Newark	035–HD013/NJ39–Q921–012, Community Options, Inc., 3rd Street, Bordentown, NJ 08505.	Hightstown, NJ.	M		1	10	WDD	641600	41100
Subsubtotal					9	84		6049600	337300

SECTION 811.—PROGRAM FOR PERSONS WITH DISABILITIES—FISCAL YEAR 1992 SELECTIONS—Continued
[To accompany HUD 92-68]

Office	FHA and project rental assistance contract (PRAC) numbers, sponsor name and address	Location	Metro or non-metro	Minority code	Number of projects	Units	Tenant type	Capital advance amount	Rental assistance contract authority
*State: NY									
New York	012–HD010/NY36–Q921–001, The Bridge, Inc., 248 W 108 St, New York, NY 10025.	New York-Manhattan, NY.	M		1	21	CMI	1486800	93900
New York	012–HD011/NY36–Q921–002, Help Me, Inc., 164 Eckerson Rd, Spring Valley, NY 10937.	Clarkstown Town, NY.	M		1	25	WPD	2099000	112700
Buffalo	014–HD005/NY06–Q921–001, Lifetime Assistance, 425 Paul Rd, Rochester, NY 14624.	Clarkson, NY.	M		1	12	WDD	427800	42400
Buffalo	014–HD006/NY06–Q921–002, People, Inc, 737 Delaware Ave, Buffalo, NY 14209.	Silver Creek, NY.	NM		1	6	WDD	285800	28200
Subsubtotal					4	64		4299400	277200
Subtotal					13	148		10349000	614500
**Region: Philadelphia									
*State: DE									
Philadelphia	032–HD003/DE26–Q921–001, Alliance for the Mentally Ill in Delaware, 2500 W. 4th Street Suite 12, Wilmington, DE 19805.	Wilmington, DE.	M		1	12	CMI	939200	45500
Subsubtotal					1	12		939200	45500
*State: MD									
Baltimore	052–HD003/MD06–Q921–003, Way Station Inc, P.O. Box 3826, Frederick, MD 21701.	Frederick, MD.	M		1	13	CMI	868600	42900
Subsubtotal					1	13		868600	42900
*State: PA									
Pittsburgh	033–HD008/PA28–Q921–002, Hands, Inc., 139 East 12th Street, Erie, PA 16501.	Erie, PA	M		1	20	CMI	1098900	61400
Pittsburgh	033–HD010/PA28–Q921–004, Action Housing Inc, 603 Stanwix Street, Two Gateway Center, Pittsburgh, PA 15222.	McKeesport, PA.	M		1	15	CMI	846800	46100
Pittsburgh	033–HD011/PA28–Q921–005, Verland Cla, 212 Iris Road, Sewickley, PA 15143.	Cheswick, PA.	M		1	4	WDD	234100	12200

SECTION 811.—PROGRAM FOR PERSONS WITH DISABILITIES—FISCAL YEAR 1992 SELECTIONS—Continued

[To accompany HUD 92-68]

Office	FHA and project rental assistance contract (PRAC) numbers, sponsor name and address	Location	Metro or non-metro	Minority code	Number of projects	Units	Tenant type	Capital advance amount	Rental assistance contract authority
Pittsburgh	033-HD012/PA28-Q921-006, Presbyterian Association on Aging, 1215 Hulton Road, Oakmont, PA 15139.	Plum, PA ..	M		1	11	CMI	672300	30700
Philadelphia	034-HD012/PA26-Q921-003, Step-by-Step, Inc., 69 Public Square, Suite 1400, Wilkes-Barre, PA 18701.	Bethlehem, PA.	M		1	5	CMI	308600	18900
Subsubtotal					5	55		3160700	169300
*State: VA									
Richmond	051-HD007/VA36-Q921-001, VA United Methodist Hsg Dev Corp, 308 Hanover Street, Fredericksburg, VA 22401.	Stafford County, VA.	M		1	6	WDD	244500	17700
* Subsubtotal *					1	6		244500	17700
State: WV									
Charleston	045-HD004/WV15-Q921-001, Northwood Health Systems Inc., 111 Nineteenth Street, Wheeling, WV 26003.	Wheeling, WV.	M		1	12	WDD	670900	38100
* Subsubtotal *					1	12		670900	38100
Subtotal **					9	98		5883900	313500
** Region: Atlanta									
* State: AL									
Birmingham	062-HD011/AL09-Q921-001, Volunteers of America, 3813 N Causeway Blvd, Metairie, LA 70002.	Mobile, AL	M		1	8	WDD	232000	21200
Birmingham	062-HD013/AL09-Q921-003, Clarke Co Association for Retarded Citizens, 501 Forest Avenue, Jackson, AL 36545.	Jackson, AL.	NM		1	9	WDD	232000	21200
Birmingham	062-HD014/AL09-Q921-004, NW Alabama Mental Health Foundation, 1100 7th Avenue, Jasper, AL 35501.	Fayette, AL.	NM		1	11	CMI	469300	26500
Birmingham	062-HD015/AL09-Q921-005, NW Alabama Mental Health Foundation, 1100 7th Avenue, Jasper, AL 35501.	Sulligent, AL.	NM		1	6	CMI	255900	15900

SECTION 811.—PROGRAM FOR PERSONS WITH DISABILITIES—FISCAL YEAR 1992 SELECTIONS—Continued

[To accompany HUD 92–68]

Office	FHA and project rental assistance contract (PRAC) numbers, sponsor name and address	Location	Metro or non-metro	Minority code	Number of projects	Units	Tenant type	Capital advance amount	Rental assistance contract authority
Birmingham	062–HD016/AL09–Q921–006, NW Alabama Mental Health Foundation, 1100 7th Avenue, Jasper, AL 35501.	Cordova, AL.	M		1	15	CMI	275900	37100
Birmingham	062–HD017/AL09–Q921–007, NW Alabama Mental Health Foundation, 1100 7th Avenue, Jasper, AL 35501.	Carbon Hill, AL.	M		1	7	WDD	224200	15900
* Subsubtotal *					6	56		1689300	137800
* State: FL									
Jacksonville	067–HD007/FL29–Q921–001, Volunteers of America, 3813 N. Causeway Blvd., Metairie, LA 70002.	Bradenton, FL.	M		1	12	CMI	566200	27100
* Subsubtotal *					1	12		566200	27100
* State: GA									
Atlanta	061–HD008/GA06–Q921–001, Cherokee Day Training Center, Route 6 Univeter Road, Canton, GA 30114.	Cherokee County, GA.	M		1	10	WDD	402000	21500
Atlanta	061–HD010/GA06–Q921–003, GA Rehabilitation Institute, 1355 Independence Drive, Augusta, GA 30901.	Augusta, GA.	M		1	3	WPD	170700	8100
Atlanta	061–HD011/GA06–Q921–004, Christian Assoc for the Retarded, Inc., P.O. Box 973, Tucker, GA 30085.	De Kalb County, GA.	M		1	5	WDD	201000	10800
Atlanta	061–HD013/GA06–Q921–006, Resources for Retarded Adults, Inc., 1200 Old Ellis Road, Roswell, GA 30076.	Fulton County, GA.	M		1	15	WDD	603000	32300
* Subsubtotal *					4	33		1376700	72700
*State: KY									
Louisville	083–HD019/KY36–Q921–003, Day Spring, Inc./New Direction HSG Corporation, 901 Iola Road/2306 W Mar, Louisville, KY 40207.	Louisville, KY.	M		1	16	WDD	508100	39900

SECTION 811.—PROGRAM FOR PERSONS WITH DISABILITIES—FISCAL YEAR 1992 SELECTIONS—Continued
[To accompany HUD 92-68]

Office	FHA and project rental assistance contract (PRAC) numbers, sponsor name and address	Location	Metro or non-metro	Minority code	Number of projects	Units	Tenant type	Capital advance amount	Rental assistance contract authority
Louisville	083-HD020/KY36-Q921-004, Bluegrass Regional MH/MR Board, Inc., P.O. Box 11428, Lexington, KY 40575.	Lexington-Fayette, KY.	M		1	4	WDD	200700	8600
Louisville	083-HD022/KY36-Q921-006, Bluegrass Regional MH/MR Board, Inc., PO Box 11428, Lexington, KY 40575.	Lexington-Fayette, KY.	M		1	4	WDD	200700	8600
Louisville	083-HD023/KY36-Q921-007, Bluegrass Regional MH/MR Board, Inc., PO Box 11428, Lexington, KY 40575.	Lexington-Fayette, KY.	M		1	4	WDD	200700	8600
Louisville	083-HD024/KY36-Q921-008, Communicare, 1311 North Dixie, Elizabethtown, KY 42701.	Elizabethtown, KY.	NM		1	3	WDD	200700	8600
Louisville	083-HD025/KY36-Q921-009, Bluegrass Regional MH/MR Board, Inc., PO Box 11428, Lexington, KY 40575.	Frankfort, KY.	NM		1	13	CMI	665800	34200
Subsubtotal					6	44		1976700	108500
*State: MS									
Jackson	065-HD002/MS26-Q921-001, Regional Mental Hlth and Mental Retardation, 302 North Jackson Street, Starkville, MS 39759.	West Point, MS.	NM		1	15	CMI	642000	37900
Jackson	065-HD003/MS26-Q921-002, Right to Succeed, Inc., PO Box 127-B, Whitfield, MS 39193.	Laurel, MS	NM		1	9	WDD	235300	21700
Jackson	065-HD004/MS26-Q921-003, Right to Succeed, Inc., PO Box 127-B, Whitfield, MS 39193.	Pearl, MS .	M		1	12	WDD	539100	29800
Subsubtotal					3	36		1416400	89400
*State: NC									
Greensboro	053-HD035/NC19-Q921-001, Arcnc, Inc. & Asc/Hds, 16 Rowan Street, Raleigh, NC 27609.	Durham, NC.	M		1	7	WDD	280300	17100

SECTION 811.—PROGRAM FOR PERSONS WITH DISABILITIES—FISCAL YEAR 1992 SELECTIONS—Continued

[To accompany HUD 92–68]

Office	FHA and project rental assistance contract (PRAC) numbers, sponsor name and address	Location	Metro or non-metro	Minority code	Number of projects	Units	Tenant type	Capital advance amount	Rental assistance contract authority
Greensboro	053–HD036/NC19–Q921–002, Arcnc, Inc. & Arc/Hds, 16 Rowan Street, Raleigh, NC 27609.	Mount Airy, NC.	NM		1	7	WDD	258500	17100
Greensboro	053–HD037/NC19–Q921–003, Arcnc, Inc. & Arc/Hds, 16 Rowan Street, Raleigh, NC 27609.	Mount Airy, NC.	NM		1	7	WDD	258500	17100
Greensboro	053–HD038/NC19–Q921–004, Arcnc, Inc. & Arc/Hds, 16 Rowan Street, Raleigh, NC 27609.	Lumberton, NC.	NM		1	7	WDD	280300	17100
Greensboro	053–HD039/NC19–Q921–005, Arcnc, Inc. & Arc/Hds, 16 Rowan Street, Raleigh, NC 27619.	Windsor, NC.	NM		1	7	WDD	264700	17100
Greensboro	053–HD040/NC19–Q921–006, Arcnc, Inc. & Arc/Hds, 16 Rowan Street, Raleigh, NC 27609.	Roxboro, NC.	NM		1	7	WDD	280300	17100
Greensboro	053–HD041/NC19–Q921–007, Arcnc, Inc. & Arc/Hds, 16 Rowan Street, Raleigh, NC 27609.	Warsaw, NC.	NM		1	7	WDD	271000	17100
Greensboro	053–HD042/NC19–Q921–008, Arcnc, Inc. & Arc/Hds, 16 Rowan Street, Raleigh, NC 27609.	Gastonia, NC.	M		1	6	WDD	246500	14300
Greensboro	053–HD043/NC19–Q921–009, Arcnc, Inc. & Arc/Hds, 16 Rowan Street, Raleigh, NC 27609.	Elon College, NC.	M		1	7	WDD	258500	17100
Greensboro	053–HD044/NC19–Q921–010, Arcnc, Inc. & Arc/Hds, 16 Rowan Street, Raleigh, NC 27609.	Gibsonville, NC.	M		1	7	WDD	258400	17100
Greensboro	053–HD045/NC19–Q921–011, Mental Health Association in NC, Inc., 3820 Bland Road, Raleigh, NC 27609.	Candor, NC.	NM		1	7	CMI	247700	17100
Greensboro	053–HD046/NC19–Q921–012, Residential Support Services, Inc., 5601 Executive Center Dr, Charlotte, NC 28212.	Charlotte, NC.	M		1	7	WDD	261600	17100
Greensboro	053–HD047/NC19–Q921–013, Residential Support Services, Inc., 5601 Executive Center Dr, Charlotte, NC 28212.	Charlotte, NC.	M		1	7	WDD	261600	17100

SECTION 811.—PROGRAM FOR PERSONS WITH DISABILITIES—FISCAL YEAR 1992 SELECTIONS—Continued

[To accompany HUD 92-68]

Office	FHA and project rental assistance contract (PRAC) numbers, sponsor name and address	Location	Metro or non-metro	Minority code	Number of projects	Units	Tenant type	Capital advance amount	Rental assistance contract authority
Greensboro	053-HD048/NC19-Q921-014, Autism Society of North Carolina, 3300 Woman's Club Drive, Raleigh, NC 27612.	Charlotte, NC.	M		1	7	WDD	261600	17100
Greensboro	053-HD049/NC19-Q921-015, Arc NC Inc. & Arc/Hds, 16 Rowan Street, Raleigh, NC 27609.	Gastonia, NC.	M		1	6	WDD	246500	14300
Greensboro	053-HD050/NC19-Q921-016, Arc NC Inc. & Arc/Hds, 16 Rowan Street, Raleigh, NC 27609.	Lexington, NC.	M		1	7	WDD	258500	17100
Greensboro	053-HD051/NC19-Q921-017, Arc NC Inc. & Arc/Hds, 16 Rowan Street, Raleigh, NC 27609.	Salisbury, NC.	M		1	7	WDD	261600	19100
Greensboro	053-HD052/NC19-Q921-018, Mental Health Association in NC, Inc., 3820 Bland Road, Raleigh, NC 27609.	Charlotte, NC.	M		1	7	CMI	247700	17100
Greensboro	053-HD053/NC19-Q921-019, Mental Health Association in NC, Inc., 3820 Bland Road, Raleigh, NC 27609.	Sparta, NC	NM		1	7	CMI	244700	17100
Greensboro	053-HD054/NC19-Q921-020, Mental Health Association in NC, Inc., 3820 Bland Road, Raleigh, NC 27609.	Asheville, NC.	M		1	7	CMI	250600	17100
Greensboro	053-HD055/NC19-Q921-021, Mental Health Association in NC, Inc., 3820 Bland Road, Raleigh, NC 27609.	Angier, NC	M		1	7	CMI	265400	17100
Greensboro	053-HD056/NC19-Q921-022, Mental Health Association in NC, Inc., 3820 Bland Road, Raleigh, NC 27609.	Morehead City, NC.	NM		1	9	CMI	505800	22800
Greensboro	053-HD057/NC19-Q921-023, 1st Presbyterian Church, 125 Meeting Street, Statesville, NC 28677.	Statesville, NC.	NM		1	7	WDD	261600	17100

SECTION 811.—PROGRAM FOR PERSONS WITH DISABILITIES—FISCAL YEAR 1992 SELECTIONS—Continued

[To accompany HUD 92-68]

Office	FHA and project rental assistance contract (PRAC) numbers, sponsor name and address	Location	Metro or non-metro	Minority code	Number of projects	Units	Tenant type	Capital advance amount	Rental assistance contract authority
Greensboro	053-HD058/NC19-Q921-024, Mental Health Association in NC, Inc., 3820 Bland Street, Raleigh, NC 27609.	Chapel Hill, NC.	M		1	14	CMI	814400	37100
Subsubtotal					24	175		7046300	432500
* State: SC									
Columbia	054-HD023/SC16-Q921-002, First Baptist Church of Manning, Post Office Box 610, Manning, SC 29102.	Manning, SC.	NM		1	12	WDD	581700	31800
Columbia	054-HD026/SC16-Q921-005, Union Services Inc., 814 West South Blvd., Union, SC 29379.	Union, SC	NM		1	3	WDD	194300	8000
Columbia	054-HD027/SC16-Q921-006, Laurens County Assoc. for Retarded Citizens, Post Office Box 735, Laurens, SC 29360.	Clinton, SC	NM		1	12	WDD	852200	31800
Columbia	054-HD030/SC16-Q921-009, Orangeburg Association for Retarded Citizens, Post Office Box 1812, Orangeburg, SC 29115.	Orangeburg, SC.	NM		1	12	WDD	852200	31800
Columbia	054-HD034/SC16-Q921-013, Tri-Development Ctr of Aiken County, Inc., Post Office Box 698, Aiken, SC 29802.	New Ellenton, SC.	M		1	8	WDD	428700	15900
* Subsubtotal*					5	47		2909100	119300
*State: TN									
Nashville	081-HD006/TN40-Q921-002, Shelby Residential & Vocational Svcs, Inc., 3592 Knight Arnold Road, Memphis, TN 38118.	Memphis, TN.	M		1	6	WDD	277300	13500
Knoxville	087-HD007/TN37-Q921-003, Rainbow Homes, Inc. & Watauga MH Services, P.O. Box 1397, 802 Buffa, Johnson City, TN 37605.	Johnson City, TN.	M		1	9	CMI	212100	21000

SECTION 811.—PROGRAM FOR PERSONS WITH DISABILITIES—FISCAL YEAR 1992 SELECTIONS—Continued

[To accompany HUD 92–68]

Office	FHA and project rental assistance contract (PRAC) numbers, sponsor name and address	Location	Metro or non-metro	Minority code	Number of projects	Units	Tenant type	Capital advance amount	Rental assistance contract authority
Knoxville	087–HD008/TN37–Q921–004, Arc of Washington County, Inc., Northridge Center, Johnson City, TN 37601.	Johnson City, TN.	M		1	9	WDD	224200	21000
* Subsubtotal*					3	24		713600	55500
* Subtotal*					52	427		17694300	1042800
** Region: Chicago									
* State: IL									
Chicago	071–HD022/IL06–Q921–009, Chicago Urban Day & Antioch M.B. Church, 1248 W. 69th St., Chicago, IL 60636.	Chicago, IL	M	2	1	26	WPD	2260900	84800
Chicago	072–HD021/IL06–Q921–008, Champaign County Mental Health Center, 600 E. Park St., P.O. Bo, Champaign, IL 61824.	Champaign County, IL.	M		1	16	CMI	1003200	52000
* Subsubtotal*					2	42		3264100	136800
* State: IN									
Indianapolis	073–HD011/IN36–Q921–004, Quinco Consulting Center, Inc., 2075 Lincoln Park Drive, Columbus, IN 47201.	Columbus, IN.	NM		1	21	CMI	950200	60600
Indianapolis	073–HD013/IN36–Q921–006, Madison Center, Inc., 403 E Madison Street, South Bend, IN 46619.	South Bend, IN.	M		1	8	CMI	157700	24200
* Subsubtotal*					2	29		1107900	84800
* State: MI									
Detroit	044–HD004/MI28–Q921–002, Innovative Housing, 3060 Commerce Drive, Port Huron, MI 48080.	Port Huron, MI.	M		1	12	WDD	698100	40800
Grand Rapids	047–HD008/MI33–Q921–005, Hope Network, 6850 S Division, Grand Rapids, MI 49508.	Grand Rapids, MI.	M		1	24	WDD	1393800	67800
* Subsubtotal*					2	36		2091900	108600
* State: MN									
Minneapolis	092–HD008/MN46–Q921–001, Westminster Corporation, 328 Kellogg Blvd, St. Paul, MN 55102.	Crystal, MN.	M		1	7	CMI	428400	23100

SECTION 811.—PROGRAM FOR PERSONS WITH DISABILITIES—FISCAL YEAR 1992 SELECTIONS—Continued

[To accompany HUD 92-68]

Office	FHA and project rental assistance contract (PRAC) numbers, sponsor name and address	Location	Metro or non-metro	Minority code	Number of projects	Units	Tenant type	Capital advance amount	Rental assistance contract authority
Minneapolis	092-HD010/MN46-Q921-003, Accessible Space, Inc., 2550 University Avenue W, St Paul, MN 55101.	Austin, MN	NM		1	24	WPD	1366900	79200
Minneapolis	092-HD011/MN46-Q921-004, Accessible Space, Inc., 2550 University Ave W, St Paul, MN 55114.	Burnsville, MN.	M		1	24	WPD	1508600	79200
* Subsubtotal*					3	55		3303900	181500
* State: OH.									
Cleveland	042-HD010/OH12-Q921-010, Maximum Independence, 11607 Euclid Avenue, Cleveland, OH 44106.	Eastlake, OH.	M		1	24	WPD	1396000	78200
Columbus	043-HD007/OH16-Q921-001, Residential Connections of Delaware, Inc., 700 Belleview Court, Delaware, OH 43015.	Delaware, OH.	M		1	10	WDD	440700	24100
Columbus	043-HD008/OH16-Q921-002, Lutheran Social Services of Central Ohio, 57 East Main Street, Columbus, OH 43215.	Columbus, OH.	M		1	20	WPD	1082100	60200
Columbus	043-HD009/OH16-Q921-003, Community Housing Network, 255 East Livingston Aven, Columbus, OH 43215.	Columbus, OH.	M		1	12	CMI	620500	36100
Cincinnati	046-HD006/OH10-Q921-002, Miami Valley Housing Opportunities, Inc., 405 W. First Street, Dayton, OH 45402.	Dayton, OH.	M		1	8	CMI	416200	25600
Cincinnati	046-HD007/OH10-Q921-003, Miami Valley Housing Opportunities, Inc., 405 W. First St., Dayton, OH 45402.	Kenia, OH	M		1	8	CMI	416200	25600
* Subsubtotal*					6	82		4371700	249800
* State: WI									

SECTION 811.—PROGRAM FOR PERSONS WITH DISABILITIES—FISCAL YEAR 1992 SELECTIONS—Continued

[To accompany HUD 92–68]

Office	FHA and project rental assistance contract (PRAC) numbers, sponsor name and address	Location	Metro or non-metro	Minority code	Number of projects	Units	Tenant type	Capital advance amount	Rental assistance contract authority
Milwaukee	075–HD011/WI39–Q921–001, Goodwill Industries of Southeastern Wisc., 6055 North 91 Street, Milwaukee, WI 53225.	Milwaukee, WI.	M		1	12	WDD	748600	34000
* Subsubtotal*					1	12		748600	34000
** Subtotal**					16	256		14888100	79550
** Region: Fort Worth									
* State: AR									
Little Rock	082–HD008/AR37–Q921–002, Pathfinder Schools, Inc., P.O. Box 647, Jacksonville, Ar 72076.	Jacksonville, Ar.	M		1	19	WDD	615000	43900
Little Rock	082–HD009/AR37–Q921–003, East Arkansas Regional MH Center, Inc., 305 Valley Drive, Helena, AR 72342.	Forrest City, AR.	NM		1	9	CMI	205000	19500
* Subsubtotal*						2	28	820000	63400
* State: LA									
New Orleans	064–HD010/LA48–Q921–001, Volunteers of America, 3813 N. Causeway Blvd., Metairie, LA 70002.	Ruston, LA	NM		1	16	CMI	687700	45000
New Orleans	064–HD011/LA48–Q921–002, Volunteers of America, 3813 N. Causeway Blvd., Metairie, LA 70002.	Alexandria, LA.	M		1	18	CMI	791200	45800
New Orleans	064–HD012/LA48–921–003, Volunteers of America, 3813 N. Causeway Blvd., Metaire, LA 70002.	Lake Charles, LA.	M		1	19	CMI	1010900	53400
New Orleans	064–HD014/LA48–Q921–005, Evergreen Presbyterian Ministries, P.O. Box 72360, Bossier City, LA 71172.	Shreveport, LA.	M		1	16	WDD	687700	40700
New Orleans	064–HD016/LA48–Q921–007, Roman Catholic Diocese of Lafayette, 1408 Carmel Avenue, Lafayette, LA 70501.	Lafayette, LA.	M		1	20	CMI	917900	56200
* Subsubtotal*					5	89		4095400	241100
* State: TX									

SECTION 811.—PROGRAM FOR PERSONS WITH DISABILITIES—FISCAL YEAR 1992 SELECTIONS—Continued
[To accompany HUD 92-68]

Office	FHA and project rental assistance contract (PRAC) numbers, sponsor name and address	Location	Metro or non-metro	Minority code	Number of projects	Units	Tenant type	Capital advance amount	Rental assistance contract authority
Fort Worth	112-HD002/TX16-Q921-001, Volunteers of America, 3813 N. Causeway Blvd., Metairie, LA 70002.	Grand Prairie, TX.	M		1	12	WDD	451700	34200
San Antonio	115-GD005/TX59-Q921-001, New Milestones Foundation, Inc., 1430 Collier Street, Austin, TX 78704.	Austin, TX	M		1	11	CMI	504800	28900
San Antonio	15-HD006/TX59-Q921-002, New Milestones Foundation, Inc., 1430 Collier Street, Austin, TX 78704.	Austin, TX	M		1	11	CMI	504800	28900
* Subsubtotal*					3	34		1461300	92000
** Subtotal**					10	151		6376700	396500
** Region: Kansas City									
* State: KS									
Kansas City	084-HD008/KS16-Q921-002, Center for Developmentally Disabled, 3549 Broadway, Kansas City, MO 64111.	Kansas City, KS.	M		1	16	CMI	832500	43400
Kansas City	102-HD011/KS16-Q921-004, Southwest Developmental Services, Inc., 2708 North 11th Street, Garden City, KS 67846.	Garden City, KS.	NM		1	8	WDD	405300	21800
Kansas City	102-HD012/KS16-Q921-005, Southwest Developmental Services, Inc., 2708 North 11th Street, Garden City, KS 67846.	Liberal, KS	NM		1	10	WDD	506700	27300
Kansas City	102-HD013/KS16-Q921-006, Mental Health Association of Sedgwick County, 430 North Woodlawn, Wichita, KS 67208.	Wichita, KS.	M		1	12	CMI	595500	32700
* Subsubtotal*					4	46		2340000	125200
* State: MO									
Kansas City	084-HD006/MO16-Q921-001, Children's Therapy Center of Pettis Co., Inc., PO Box 1565, Sedalia, MO 65301.	Marshall, MO.	NM			18	WDD	936900	52600
* Subsubtotal*					1	18		936900	52600
* State: NE									

SECTION 811.—PROGRAM FOR PERSONS WITH DISABILITIES—FISCAL YEAR 1992 SELECTIONS—Continued

[To accompany HUD 92-68]

Office	FHA and project rental assistance contract (PRAC) numbers, sponsor name and address	Location	Metro or non-metro	Minority code	Number of projects	Units	Tenant type	Capital advance amount	Rental assistance contract authority
Omaha	103-HD003/NE26-Q921-002, League of Human Dignity, Inc., 1701 P Street, Lincoln, NE 68508.	Hastings, NE.	NM			7	WPD	334800	19600
* Subsubtotal*					1	7		334800	19600
** Subtotal**					6	71		3611700	197400
** Region: Denver									
* State: CO									
Denver	101-HD002/CO99-Q921-002, United Cerebral Palsy, 2727 Columbine Street, Denver, CO 80205.	Wheat Ridge, CO.	M		1	10	WDD	439700	24200
Denver	101-HD003/CO99-Q921-003, Good Shepherd Lutheran, 445 W Berry, Littleton, CO 80210.	Arapahoe County, CO.	M		1	15	WDD	659500	36200
* Subsubtotal*					2	25		1099200	60400
* State: ND									
Denver	094-HD001/ND99-Q921-001, Dacotah Foundation, 600 So 2nd St., Bismarck, ND 58504.	Bismarck, ND.	M		1	8	CMI	212900	20500
* Subsubtotal*					1	8		212900	20500
** Subtotal**					3	33		1312100	80900
**Region: San Francisco									
*State: AZ									
Phoenix	123-HD003/AZ20-Q921-001, Toby House, Inc., 1202 E. Maryland, Phoenix, AZ 85014.	Phoenix, AZ.	M		1	25	CMI	1179700	69600
* Subsubtotal*					1	25		1179700	69600
*State: CA									
San Francisco	121-HD009/CA39-Q921-003, Mid-Peninsula Housing Coalition, 430 Sherman Avenue, Palo Alto, CA 94306.	San Mateo County, CA.	M		1	20	CMI	1467300	84400
San Francisco	121-HD010/CA39-Q921-004, North Bay Rehabilitation Services, 1113 Second Street, San Rafael, CA 94901.	Kentfield, CA.	M		1	14	WDD	1065200	54900

SECTION 811.—PROGRAM FOR PERSONS WITH DISABILITIES—FISCAL YEAR 1992 SELECTIONS—Continued

[To accompany HUD 92–68]

Office	FHA and project rental assistance contract (PRAC) numbers, sponsor name and address	Location	Metro or non-metro	Minority code	Number of projects	Units	Tenant type	Capital advance amount	Rental assistance contract authority
Los Angeles	122–HD010/CA16–Q921–001, Rehabilitation Institute of So. California, 1800 East La Veta Avenue, Orange, CA 92666.	Orange, CA.	M		1	24	WPD	171300	74800
Los Angeles	122–HD011/CA16–Q921–002, Living Connections, Inc., P.O. Box 10521, Bakersfield, CA 93389.	Bakersfield, CA.	M		1	21	CMI	1453000	80000
Los Angeles	122–HD012/CA16–Q921–003, Valley Village, 17317 Roscoe Blvd., Northridge, CA 91325.	Los Angeles, CA.	M		1	8	WDD	670400	48000
Los Angeles	122–HD013/CA16–Q921–004, Crippled Childrens Society, 7120 Franklin Avenue, Los Angeles, CA 90046.	Riverside, CA.	M		1	25	WPD	1817700	92000
Los Angeles	122–HD014/CA16–Q921–005, Crippled Childrens Society, 7120 Franklin Avenue, Los Angeles, CA 90046.	Los Angeles, CA.	M		1	25	WPD	1817700	92000
Los Angeles	122–HD015/CA16–Q921–006, United Cerebral Palsy, 7630 Gloria Avenue, Van Nuys, CA 91406.	Torrance, CA.	M		1	6	WDD	495800	24000
Los Angeles	122–HD016/CA16–Q921–007, United Cerebral Palsy, 7630 Gloria Avenue, Van Nuys, CA 91406.	Palmdale, CA.	M		1	6	WDD	495800	24000
Los Angeles	122–HD017/CA16–Q921–008, United Cerebral Palsy, 7630 Gloria Avenue, Van Nuys, CA 91406.	Oxnard, CA.	M		1	6	WDD	495800	24000
Los Angeles	122–HD018/CA16–Q921–009, Los Angeles Retarded Citizens Foundation, 29890 Bouquet Canyon Rd, Saugus, CA 91350.	Saugus, CA.	M		1	8	WDD	361400	24900
* Subsubtotal*					11	163		11853100	623000

* State: HI

SECTION 811.—PROGRAM FOR PERSONS WITH DISABILITIES—FISCAL YEAR 1992 SELECTIONS—Continued

[To accompany HUD 92-68]

Office	FHA and project rental assistance contract (PRAC) numbers, sponsor name and address	Location	Metro or non-metro	Minority code	Number of projects	Units	Tenant type	Capital advance amount	Rental assistance contract authority
Honolulu	140-HD001/HI10-Q921-001, Steadfast Housing Corporation, 677 Ala Moana Blvd., Honolulu, HI 96813.	Hilo, HI	NM	5	1	6	CMI	440100	22600
* Subsubtotal*					1	6		440100	22600
* State: NV									
San Francisco	121-HD011/NV39-Q921-001, Accessible Space, Inc., 2550 University Avenue, St. Paul, MN 55101.	Reno, NV	M		1	21	WPD	1251700	67100
* Subsubtotal*					1	21		1251700	67100
** Subtotal**					14	215		14724600	782300
** Region: Seattle									
* State: AK									
Anchorage	176-HD002/AK06-Q921-001, Mat-Su Community Mental Health Services, 230 E. Paulson, Palmer, AK 99654.	Palmer, AK	NM		1	14	WDD	541000	73400
* Subsubtotal*					1	14		541000	73400
*State: OR									
Portland	126-HD003/OR16-Q921-001, Mt. Hood Community Mental Health Center, 400 NE Seventh, Gresham, OR 97030.	Gresham, OR.	M		1	17	CMI	953200	53100
* Subsubtotal*					1	17		953200	53100
* State: WA									
Seattle	174-HD001/WA19-Q921-001, Accessible Space, Inc., 2550 University Ave W, St. Paul, MN 55114.	Spokane, WA.	M		1	21	WPD	1140700	64600
* Subsubtotal*					1	21		1140700	64600
** Subtotal**					3	52		2634900	191100
*** Total***					136	1534		82746700	4751300

[FR Doc 93-25298 Filed 10-14-93; 8:45 am]

BILLING CODE 4210-27-M

[Docket No. D-93-1036; FR-3545-D-01]

Redelegation of Authority to Approve Refinancings of Bond-financed Section 8 Rental Housing Projects Under the United States Housing Act of 1937, as Amended, to the Housing—Federal Housing Administration Comptroller, the Deputy Comptroller, and the Director, Office of Evaluation

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of redelegation of authority.

SUMMARY: The Assistant Secretary for Housing—Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner are redelegating responsibility for approval of refinancings of bond-financed Section 8 Rental Housing Projects, under Section 8(e)(1) of the United States Housing Act of 1937, as amended, to the Office of Housing—Federal Housing Administration Comptroller, the Deputy Comptroller, and the Director, Office of Evaluation. Elsewhere in today's Federal Register, the Secretary of Housing and Urban Development delegated responsibility for approval of refinancings of bond-financed Section 8 Rental Housing Projects, under Section 8(e)(1) of the United States Housing Act of 1937, as amended, to the Assistant Secretary for Housing—Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

EFFECTIVE DATE: October 4, 1993.

FOR FURTHER INFORMATION CONTACT: Donald A. Kaplan, Director, Office of Evaluation, Department of Housing and Urban Development, 451 Seventh Street SW, room 5136, Washington, DC 20410, (202) 401-0450 (voice) or (202) 708-4504 (TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: This Notice redelegates to the Office of Housing—Federal Housing Administration Comptroller, the Deputy Comptroller, and the Director, Office of Evaluation the power and authority of the Assistant Secretary for Housing—Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner to approve refinancings of bond-financed Section 8 Rental Housing Projects, under Section 8(e)(1) of the United States Housing Act of 1937, as amended. This redelegation does not include the authority to issue rules or regulations or to waive such rules or regulations.

Section A. Redelegation of Authority

The Assistant Secretary for Housing—Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner hereby redelegate to the Office of Housing—Federal Housing Administration Comptroller, the Deputy Comptroller, and the Director, Office of Evaluation the authority to approve refinancings of bond-financed Section 8 Rental Housing Projects under Section 8(e)(1) of the United States Housing Act of 1937, as amended. This power and authority includes, but is not limited to, the authority to review and approve the financing terms such as the undertaking of any refunding of bonds which financed new construction or substantial rehabilitation of 100 percent assisted or partially assisted Section 8 rental housing and which involves assignment of the Housing Assistance Payments Contract as security for the refinancing bonds.

Section B. Authority Excepted

The following authorities are excepted from this redelegation of authority from the Assistant Secretary for Housing—Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner to the Office of Housing—Federal Housing Administration Comptroller, the Deputy Comptroller, and the Director, Office of Evaluation.

1. The authority to issue rules or regulations.
2. The authority to waive rules or regulations.

Section C. Authority To Redelegate

This redelegation of authority does not authorize the Office of Housing—Federal Housing Administration Comptroller, the Deputy Comptroller, or the Director, Office of Evaluation to further redelegate the authority redelegated in Section A of this redelegation of authority.

Authority: Section 8(e)(1) of the United States Housing Act of 1937, as amended, 42 U.S.C. 1437(e)(1); Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: October 4, 1993.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 93-25358 Filed 10-14-93; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Exxon Valdez Oil Spill Public Advisory Group

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of meeting.

SUMMARY: The Department of the Interior is announcing a public meeting of the Exxon Valdez Oil Spill Public Advisory Group to be held on November 9 and 10, 1993, at 9 a.m., in the first floor conference room, 645 "G" Street, Anchorage, Alaska.

FOR FURTHER INFORMATION CONTACT: Douglas Mutter, Department of the Interior, Office of Environmental Affairs, 1689 "C" Street, suite 119, Anchorage, Alaska (907) 271-5011.

SUPPLEMENTARY INFORMATION: The Public Advisory Group was created by Paragraph V.A.4 of the Memorandum of Agreement and Consent Decree entered into by the United States of America and the State of Alaska on August 27, 1991, and approved by the United States District Court for the District of Alaska in settlement of *United States of America* v. *State of Alaska*, Civil Action No. A91-081 CV. This meeting is re-scheduled from September 14, 1993, and will include a discussion and development of recommendations on the Trustee Council's draft Restoration Plan and proposed projects for the 1994 Annual Work Plan. Officers will be elected for the upcoming year.

Dated: October 9, 1993.

Jonathan P. Deason,

Director, Office of Environmental Affairs.

[FR Doc. 93-25381 Filed 10-14-93; 8:45 am]

BILLING CODE 4310-RG-M

Bureau of Land Management

[NV-930-4210-06; N-43253]

Partial Termination of Recreation and Public Purposes Classification and Opening Order, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates a Recreation and Public Purposes Classification in part and provides for opening the affected lands to appropriation under the public land laws and the general mining laws.

EFFECTIVE DATE: November 15, 1993.

FOR FURTHER INFORMATION CONTACT: Mary Clark, Nevada State Office, Bureau of Land Management, 850 Harvard Way, Reno, NV 89520, (702) 785-6530.

SUMMARY: On May 16, 1986, a Notice of Realty Action (NORA) was published in the **Federal Register** (51 FR 18046) identifying several parcels of public land that the State of Nevada had applied for under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869, 869–1 to 869–4).

Upon publication of the NORA in the **Federal Register,** the following described land became segregated from appropriation under the public land laws and the general mining laws; the classification became effective 60 days thereafter:

Mount Diablo Meridian, Nevada

T. 27 N., R. 32 E.,
Sec. 4, lots 2, 3, NE¼SW¼, S½S½;
Sec. 8, NE¼NE¼, S½NE¼,
E½SE¼SW¼, SE¼;
Secs. 10 and 16, all.

The lands in secs. 4, 8 and 16 were classified on Bureau motion; the segregation and classification on these lands terminated automatically on November 16, 1987. On that date the lands returned to their former public land status.

A lease was subsequently issued and remains in effect for a portion of the land in sec. 10.

Pursuant to section 7 of the Taylor Grazing Act (48 Stat. 1272) and the authority delegated by Appendix 1 of Bureau of Land Management Manual 1203, the aforementioned Recreation and Public Purposes classification is hereby terminated as it affects the following described land which was not included in the aforementioned lease:

Mount Diablo Meridian, Nevada

T. 27 N., R. 32 E.,
Sec. 10, lot 1, SE¼SE¼NE¼SW¼,
E½E½SE¼SW¼, S½SW¼NW¼SE¼,
SW¼SE¼.

The area described contains 98.90 acres.

At 10 a.m. on November 15, 1993 the above described 98.90 acres will become open to the operation of the public land laws generally, subject to existing rights, the provisions of existing withdrawals, and the requirements of applicable laws, rules, and regulations.

At 10 a.m. on November 15, 1993 the 98.90 acres will become open to location under the United States mining laws. Appropriation of the land under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

The 98.90 acres have been and will remain open to the operation of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869, 869–1 to 869–4), and to leasing under the mineral leasing laws.

K. Lynn Bennett,

Acting State Director, Nevada.

[FR Doc. 93–25351 Filed 10–14–93; 8:45 am]

BILLING CODE 4310–HC–M

[CA–065–04–4333–05]

Closure Order for Motorized Vehicle Use, BLM Route P64, Tuber Canyon, Panamint Mountains, Inyo County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of vehicle closure on BLM Route P64 in Tuber Canyon, Panamint Mountains in Inyo County, California.

SUMMARY: Notice is hereby given that BLM Route P64 is closed to motorized vehicle use within Tuber Canyon.

ORDER: Effective October 15, 1993 the public lands from a point ½ mile east of the intersection of BLM Routes P63 and P64 to the boundary of Death Valley National Monument, in Sectors 1, 2, 3, 9, 10, 11 and 12, Township 20 South, Range 44 East, Mount Diablo Meridian, are closed to all motorized vehicle use. No person may use, drive, transport, park, let stand, or have charge or control over any motorized vehicle in this area.

Exemptions to this order are granted to law enforcement and other emergency vehicles in the course of official duties. Exemptions to this order for reasonable access for mining or other purposes are by written authorization of the Ridgecrest Resource Area Manager only.

EFFECTIVE DATE: This closure is effective October 15, 1993 and will remain in effect until rescinded by the authorizing official.

FOR FURTHER INFORMATION CONTACT: Area Manager, Bureau of Land Management, Ridgecrest Resource Area, 300 South Richmond Road, Ridgecrest, CA 93555, (619) 375–7125.

SUPPLEMENTARY INFORMATION: The purpose of this closure order in Tuber Canyon is to provide protection for riparian and wildlife values from motorized vehicle impacts. The canyon will remain open for hiking, equestrian and other non-motorized uses.

Maps showing the affected area are available by contacting the Ridgecrest Resource Area Office. A gate will be erected at the closure point and the affected area will be posted with public notices and standard motorized vehicle closure signs.

Authority for this closure is found in 43 CFR 8364.1. Violation of this order is punishable by a fine, not to exceed $100,000 and/or imprisonment not to exceed 12 months.

Dated: October 5, 1993.

Richard E. Fagan,

District Manager.

[FR Doc. 93–25390 Filed 10–14–93; 8:45 am]

BILLING CODE 4310–40–M

[NV–020–4333–05]

Motor Vehicle Use Restrictions; Humboldt County, NV

AGENCY: Bureau of Land Management, Interior

ACTION: Humboldt County, Nevada; vehicle limitations and supplemental rules.

1. Notice is hereby given that motorized vehicle use in the Water Canyon Watershed is limited to the following areas:

(a) The main road along the bottom of Water Canyon approximately 1.3 miles from the entrance to public lands. Above this point motorized travel will only be allowed from approximately June 1 through October 31 of each year on either the main canyon road up the left fork, or the main road up the right fork;

(b) Designated parking and picnic areas;

(c) The road leading out of the canyon to the east, leaving the main Water Canyon road near the southwest corner of the SW ¼ of the NE ¼ of section 12 Township 35 N Range 38 E MDBM. This road is known as the "ridge road";

(d) The roads at the mouth of Water Canyon heading north and south from the intersection near the southwest corner of the SW ¼ of the SW ¼ of section 2 Township 35 N Range 38 E MDBM.

This order affects all public lands within the watershed in the following sections:

Sections 1, 2, 11, 12, 13, Township 35 N Range 38 E MDBM;

Sections 7, 17, 18, 19, 20, Township 35 N, Range 39 E MDBM only public lands within the Water Canyon watershed are affected by this rule.

Motorized vehicle access in the watershed outside the areas or time periods listed above will be only for administrative or emergency vehicles, or by written authorization from the Area

Manager of the Sonoma-Gerlach Resource Area. This order does not affect snowmobile use during periods of heavy snow cover. The purpose of this order is to reduce soil compaction and soil erosion, protect vegetation within the watershed, and protect water quality and road surfaces.

The authority for this order is 43 CFR 8341.2. The order will take effect on November 1, 1993 and will remain in effect until Water Canyon Management Plan is completed and the off-highway vehicle designations identified in the plan are implemented.

2. Notice is hereby given that two supplemental rules will take effect November 15, 1993.

(a) Use of firearms is prohibited within 300 feet of the open portion of the main road along the bottom of Water Canyon, except for upland game and deer hunting during established seasons. All state and local firearms laws still apply.

(b) Camping or other overnight stay within the watershed is limited to three (3) nights in a sixty (60) day period. The 60 day period begins with the first night of occupancy. After 3 days have passed, campers must move a minimum of a 10 mile radius from the previous campsite, or onto non-BLM administered land. Longer stays within the watershed are permitted if written authorization is obtained from the Sonoma-Gerlach Area Manager, or for authorized caretakers or BLM personnel as needed for administrative purposes.

This order affects all public lands within the watershed in the following sections:

Sections 1, 2, 11, 12, 13, Township 35 N Range 38 E MDBM;
Sections 7, 17, 18, 19, 20, Township 35 N, Range 39 E MDBM

Only public lands within the Water Canyon watershed are affected by this rule. The purpose of these supplemental rules is to reduce vandalism and adverse impacts from long-term camping within the watershed.

The authority for this order is 43 CFR 8365.1–6. These rules will remain in effect until the Water Canyon Management Plan is completed and the use regulations identified in the plan are implemented. Comments or requested for authorizations under these rules will be received by: Area Manager, Bureau of Land Management, Sonoma Gerlach Resource Area, 705 E. 4th Street, Winnemucca, NV 89445, (702) 623–1500.

Dated: October 6, 1993.

Ron Wenker,

District Manager, Winnemucca.

[FR Doc. 93–25357 Filed 10–14–93; 8:45 am]

BILLING CODE 4310–HC–M

[CO–920–94–4110–03; COC46735]

Colorado; Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Public Law 97–451, a petition for reinstatement of oil and gas lease COC46735, Garfield County, Colorado, was timely filed and was accompanied by all required rentals and royalties accruing from April 1, 1993, the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16⅔ percent, respectively. The lessee has paid the required $500.00 administrative fee for the lease and has reimbursed the Bureau of Land Management for the cost of this Federal Register notice.

Having met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920, as amended, (30 U.S.C. 188 (d) and (e), the Bureau of Land Management is proposing to reinstate the lease effective April 1, 1993, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Questions concerning this notice may be directed to Joan Gilbert of the Colorado State Office at (303) 239–3783.

Dated: October 4, 1993.

Janet Budzilek,

Chief, Fluid Minerals Adjudication Section.

[FR Doc. 93–25352 Filed 10–14–93; 8:45 am]

BILLING CODE 4310–JB–M

[NM–940–4110–03; NMNM 90590]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of Public Law 97–451, a petition for reinstatement of Oil and Gas Lease NMNM 90590, Eddy County, New Mexico, was timely filed and was accompanied by all required rentals and royalties accruing from June 1, 1993, the date of termination. No valid lease has been issued affecting the land. The lessee has agreed to new lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, and 16⅔ percent, respectively. Payment of a $500.00 administrative fee has been made. Having met all the requirements for reinstatement of the lease as set in Section 31 (d) and (e) of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 188 (d) and (e)), the Bureau of Land Management is proposing to reinstate the lease effective June 1, 1993, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above, and the reimbursement for cost of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Martha A. Rivera, BLM, New Mexico State Office, (505) 438–7584.

Dated: October 7, 1993.

Dolores L. Vigil,

Chief, Adjudication Section.

[FR Doc. 93–25350 Filed 10–14–93; 8:45 am]

BILLING CODE 4310–FB–M

[MT–070–4210–05; MTM81959]

Realty Action; Recreation and Public Purposes Act Classification; Montana

AGENCY: Bureau of Land Management, Butte District, Interior.

ACTION: Amendment of notice of reality action for MTM81959, recreation and public purposes classification in Beaverhead County.

SUMMARY: This Notice amends the original notice of reality action for MTM81959 published on September 10, 1993 (Vol. 58, No. 174 page 47752) to include the following tract for classification for lease or conveyance to the State of Montana under the provisions of the Recreational and Public Purposes Act. The State of Montana proposes to use the lands for inclusion into the Bannack State Park and Historical Area.

Principal Meridian Montana

T. 8 S., R. 11 W.,
Sec. 7, Lot 9.
Containing .03 acre.

This land is not needed for Federal purposes. Lease or conveyance is consistent with current BLM land use planning and would be in the public interest. The lease or patent, when issued, will be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals.

4. The lands will be conveyed subject to all valid, existing rights (e.g., rights-of-way, easements and leases of record).

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Dillon Resource Area, 1005 Selway Drive, Dillon, Montana.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit comments regarding the proposed lease/conveyance or classification of the lands to the District Manager, Butte District Office, 106 North Parkmont, Box 3388, Butte, Montana 59702–3388.

CLASSIFICATION COMMENTS: Interested parties may submit comments involving the suitability of the land for a State Park. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

APPLICATION COMMENTS: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM follows proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a State Park.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: James R. Owings, District Manager, Butte District Office, 106 North Parkmont, P.O. Box 3388, Butte, Montana 59702–3388.

Dated: October 5, 1993.

James R. Owings,

District Manager.

[FR Doc. 93–25354 Filed 10–14–93; 8:45 am]

BILLING CODE 4310-DN-M

[4210–05; WIES 041898]

Realty Action; Sale of Public Land in Burnett County, WI

AGENCY: Bureau of Land Management, Interior.

ACTION: Sale of public land in Burnett County, Wisconsin—modified competitive method.

SUMMARY: The following public land has been found suitable for sale under section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701, 1713), at not less than the estimated fair market value (FMV) of $26,000. The public land will not be offered for sale for at least 60 days following the date of this notice. The public land is described as follows.

WIES–041898

T. 40N., R.16W., Sec. 34, Lot #1, 4th P.M., Oakland Township, Burnett County, Wisconsin (containing 0.54 acres);

The public land described above is hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action, or 270 days from the date of publication of this notice, whichever occurs first.

The public land will be offered for sale at a public auction beginning at 10 a.m., CST, on December 21, 1993 at Reuss Federal Plaza, suite 225, West Tower, 310 West Wisconsin Avenue, Milwaukee, Wisconsin 53203. This sale will be modified by competitive procedures. Mr. Dell R. and Joanne Ruedy will be given the opportunity to meet the highest bid received at public auction. Sale will be by sealed bid only.

All sealed bids must be submitted to the BLM's Milwaukee District Office at Reuss Federal Plaza, suite 225, West Tower, 310 West Wisconsin Avenue, Milwaukee, Wisconsin 53203, no later than 3 p.m. CST on December 20, 1993. Bid envelopes must be marked on the left front corner with WIES–041898 and December 21, 1993. Bids must be for not less than the appraised FMV specified in this notice. Each sealed bid shall be accompanied by a certified check, postal money order, bank draft, or cashier's check made payable to the U.S. Department of the Interior, BLM for not less than 10 percent of the amount bid ($2,600 minimum).

The terms and conditions applicable to the sale are:

(1) All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals. A more detailed description of this reservation, which will be incorporated in the patent document, is available for review at the Milwaukee District Office.

(2) There is no legal access to the parcel because it is landlocked by the adjacent parcels to the north and west. There is physical access to the parcel by boat and a road through a portion of Kulbeck Park on the north side of the parcel.

Federal law requires that all bidders must be U.S. citizens, 18 years or older, or in the case to corporations, be subject to the laws of any state of the United States. Proof of these requirements must accompany the bid.

Under modified competitive procedures, an apparent high bid will be declared at public auction. The apparent high bidder and the designated bidder (Mr. Dell R. Ruedy) will be notified. The designated bidder shall have fifteen (15) days from the date of notification to exercise the preference consideration given to meet the high bid. Should the designated bidder fail to submit a bid that matches the apparent high bid within the specified time period, the apparent high bidder shall be declared high bidder. The total purchase price for the land shall be paid within 180 days of the date of the sale.

Detailed information concerning the sale, including the reservations, procedures for and conditions of sale, planning and environmental documents, are available at the Milwaukee District Office.

DATES: Until November 15, 1993, interested parties may submit comments to the District Manager, Bureau of Land Management, P.O. Box 631, Milwaukee, Wisconsin 53201–0631. In the absence of objections, this proposal shall become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Larry Johnson, Realty Specialist, Bureau of Land Management, P.O. Box 631, Milwaukee, Wisconsin 53201–0631; telephone number 414–297–4413.

Dated: October 6, 1993.

Chris Hanson,

Acting District Manager.

[FR Doc. 93–25392 Filed 10–14–93; 8:45 am]

BILLING CODE 4310-GJ-M

[WY–040–04–4140–03]

Tract Designs for Proposed Sodium Lease Sale, Sweetwater County, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Request for submittal of tract designs for proposed competitive sodium lease sale, Sweetwater County.

SUMMARY: In preparation for a sodium lease sale in late 1994 or early 1995, the Rock Springs District Office has begun the initial planning and designing of lease tracts which are developable, desirable, and logical is of the utmost importance during the preleasing process. The lands to be included in suggested tract designs are all those lands for which expressions of interest have been submitted.

DATES: Suggested tract designs should be submitted by November 5, 1993.

ADDRESSES: Suggested tract designs should be submitted to Ted Murphy, Chief, Branch of Solids, Mineral Resources, Bureau of Land Management, P.O. Box 1869, Rock Springs, Wyoming, 82902–1869.

FOR FURTHER INFORMATION CONTACT: Ted Murphy, Chief, Branch of Solids, at (307) 382–5350.

SUPPLEMENTARY INFORMATION: During the tract design phase, we are requesting submittal of tract designs which meet the referenced requirements for leasing. The maximum allowable acreage in any one sodium lease is 2,560 acres. The lands to be included in suggested tract designs are all those lands for which expressions of interest have been submitted and are described as follows:

T. 15 N., R. 108 W., 6th P.M., WY,
Sec. 6: Lots 1 thru 7, S2NE, SENW, E2SW, SE (629.52 ac.);
Sec. 8: All (640.00 ac.).
T. 17 N., R. 108 W., 6th P.M., WY,
Sec. 6: Lots 8 thru 14, S2NE, SENW, E2SW, SE (633.82 ac.);
Sec. 8: All (640.00 ac.);
Sec. 18: Lots 5 thru 8, E2W2, E2 (636.56 ac.);
Sec. 20: All (640.00 ac.);
Sec. 28: All (640.00 ac.);
Sec. 30: Lots 5 thru 8, E2W2, E2(638.80 ac.);
Sec. 34: All (640.00 ac.);
T. 17 N., R. 109 W., 6th P.M., WY,
Sec. 12: Lots 1, 4 thru 6, 8 thru 10, WS, SWSE (401.63 ac.);
Sec. 14: All (640.00 ac.);
Sec. 20: All (640.00 ac.);
Sec. 22: All (640.00 ac.);
Sec. 24: Lots 1 thru 16 (553.60 ac.);
Sec. 26: All (640.00 ac.);
Sec. 28: All (640.00 ac.).

John S. McKee,

Associate District Manager.

[FR Doc. 93–25345 Filed 10–14–93; 8:45 am]

BILLING CODE 4310–22–M

[NV–055–93–4350–09]

Proposed Supplementary Rules for Certain Public Lands Managed by the Bureau of Land Management, Las Vegas District

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Proposed supplementary rules for certain public lands known as Ash Springs located in the unincorporated town of Ash Springs along U.S. Highway 93, Las Vegas District, Lincoln County, Nevada.

SUMMARY: The proposed supplementary rules are necessary for the management of activities on public land at Ash Springs, Lincoln County, Nevada. These proposed supplementary rules would be limited to activities occurring within the following area, hereafter referred to as Ash Springs.

Mount Diablo Meridian

T. 6 S., R. 61 E.,
Section 6 NW¼, NW¼

DATES: Comments must be submitted by November 15, 1993.

ADDRESSES: Interested parties may submit comments on the proposed supplementary rules to Curtis G. Tucker, Area Manager, Caliente Resource Area Office, P.O. Box 237, Caliente, NV 89008.

FOR FURTHER INFORMATION CONTACT: Kyle Teel, Wildlife Biologist, Caliente Resource Area, P.O. Box 237, Caliente, NV 89008. Telephone: (702) 726–8100.

SUPPLEMENTARY INFORMATION: Ash Springs contains the White River Springfish (*Crenichthys baileyi baileyi*) a Federally listed endangered species. A Coordinated Resource Management Plan was developed for the area; one of the planned actions was to establish rules to restrict certain activities to protect the fish species.

1. The following actions are prohibited, within Ash Springs:

A. Overnight Camping. "Camping" means the erecting of a tent or shelter of natural or synthetic material, preparing a sleeping bag or other bedding material for use, or parking of a motor vehicle, motor home or trailer for the apparent purpose of overnight occupancy.

B. Occupancy or use of Ash Springs by any individual, or any group, is limited to 2 hours during any 24 hour period.

C. Introducing wildlife, fish, or plants, including their reproductive bodies, into Ash Springs, except when authorized by the District Manger.

D. Collecting wood or other plant material for use in a campfire or any other purpose.

E. Taking of baths, washing dishes or animals, or the introduction of any detergents, soaps, toxic materials into the water.

F. Operating a motorized vehicle off of designated roads, trails, or parking area. Designation shall be marked by the posting of appropriate signs or markers, or by the erection of physical barriers, or both.

2. Violation of any of these proposed supplementary rules is punishable by a fine not to exceed $100,000 ($200,000 if the violator is an organization), imprisonment not to exceed 12 months, or both, as provided for under the Federal Land Policy and Management Act (Pub. L. 94–579) as amended at 18 U.S.C. 3571 (b)(s).

Dated: October 1, 1993.

Billy R. Templeton,

State Director.

[FR Doc. 93–25355 Filed 10–14–93; 8:45 am]

BILLING CODE 4310–HC–M

[ID–942–03–4730–02]

Idaho: Filing of Plats of Survey

The plat of survey of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m., October 5, 1993.

The plat representing the dependent resurvey of a portion of the subdivisional lines and the subdivision of section 24, Township 12 South, Range 32 East, Boise Meridian, Idaho, Group No. 867, was accepted October 1, 1993.

This survey was executed to meet certain administrative needs of the Bureau of Land Management.

All inquiries concerning the survey of the above-described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

October 5, 1993.

Gary T. Oviatt,

Acting Chief Cadastral Surveyor for Idaho.

[FR Doc. 93–25386 Filed 10–14–93; 8:45 am]

BILLING CODE 4310–GC–M

[CO–930–4214–10; COC–39308]

Amendment to Proposed Withdrawal; Opportunity for Public Meeting; Colorado

October 5, 1993.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes to amend their application for the Keystone Ski Area withdrawal to include an additional .68 acre parcel of National Forest System land which was omitted from the original application. This notice closes this land to location and entry under the mining laws for up to two years.

DATES: Comments or requests for public meeting must be received on or before January 13, 1994.

ADDRESSES: Comments and requests for a meeting should be sent to the Colorado State Director, BLM, 2850 Youngfield Street, Lakewood, Colorado 80215–7076.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, 303/239–3706.

SUPPLEMENTARY INFORMATION: On September 23, 1993, the Department of Agriculture, Forest Service, filed an amendment to their application to include a .68 acre parcel which was inadvertently omitted from the original application (FR Doc. 92–23823) published in the **Federal Register** on October 1, 1992, appearing on pages 45395 and 45396). The original application is hereby amended to include lots 19 and 22, sec. 19, T. 5 S., R. 76 W., Sixth Principal Meridian.

The amended area described aggregates .68 acres in Summit County.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with this amendment may present their views in writing to the Colorado State Director.

Robert S. Schmidt,

Chief, Branch of Realty Programs.

[FR Doc. 93–25346 Filed 10–14–93; 8:45 am]

BILLING CODE 4310–JB–M

Fish and Wildlife Service

Receipt of Application(s) for Permit

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Endangered Species Act of 1973, as amended (U.S.C. 1531, *et seq.*) and the regulations governing marine mammals and threatened species (50 CFR parts 17 and 18).

Applicant: California Department of Fish and Game, Office of Oil Spill Prevention and Response File no. PRT–782423

Type of Permit: Take for scientific research

Name and Number of Animals: Southern Sea Otter (*Enhydra lutris nereis*); capture of up to 30 animals to obtain 14 sub-adult or adult males each weighing over 25 pounds.

Summary of Activity to be Authorized: Sea otters will be captured and placed in pet kennels and transported to a mobile veterinary clinic. They will then be tranquilized, tagged, implanted subdermally with a transponder chip and have 60 ml of blood collected.

Source of Marine Mammals for Research: Monterey Bay, California

Period of Activity: From September through December, 1993.

Concurrent with the publication of this notice in the **Federal Register**, the Office of Management Authority is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be submitted to the Director, c/o Office of Management Authority (OMA), 4401 N. Fairfax Dr., room 420(c), Arlington, VA 22203 and must be received by the Director within 30 days of the date of publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Dated: October 8, 1993.

Joan Canfield,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 93–25301 Filed 10–14–93; 8:45 am]

BILLING CODE 4310–55–M

Availability of an Environmental Assessment and Receipt of an Application for a Permit To Allow Incidental Take of the Threatened Desert Tortoise, by Nevada Division of State Parks, Clark County, NV

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advise the public that the Nevada Division of State Parks (Applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The application has been assigned permit number PRT–781039. The requested permit would authorize the incidental take of the threatened desert tortoise (*Gopherus agassizii*) in Valley of Fire State Park, Clark County, Nevada. The proposed incidental take would occur as a result of road reconstruction in desert tortoise habitat.

The Service also announces the availability of an environmental assessment (EA) for the proposed issuance of the incidental take permit. This notice is provided pursuant to section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the permit application and EA should be received on or before November 15, 1993.

ADDRESSES: Comments regarding the application or adequacy of the EA should be addressed to Mr. David Harlow, Field Supervisor, U.S. Fish and Wildlife Service, 4600 Kietzke Lane, Building C, room 125, Reno, NV 89502. Please refer to permit number PRT–781039 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Maley, U.S. Fish and Wildlife Service, 4600 Kietzke Lane, Building C, room 125, Reno, NV 89502 (702–784–5227). Individuals wishing copies of the application or EA for review should immediately contact the above individual.

SUPPLEMENTARY INFORMATION: Under section 9 of the Act, "taking" of the desert tortoise, a threatened species, is prohibited. However, the Service, under limited circumstances, may issue permits to take threatened wildlife species if such taking is incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for threatened species are in 50 CFR 17.32.

The Applicant proposes to implement of Habitat Conservation Plan (HCP) for the desert tortoise that will allow reconstruction of a road in Valley of Fire State Park, Clark County, Nevada. The permit will authorize the incidental take of up to 10 desert tortoises, and be in affect for a term of 5 years. The application includes an HCP and Implementation Agreement.

Reconstruction of the road would disturb 16.58 acres of low- to moderate-density desert tortoise habitat along an existing dirt road that has been deteriorated by weather. The Applicant estimates that this proposed disturbance of desert tortoise habitat could result in a maximum incidental take of 10 desert tortoises.

To minimize incidental take of desert tortoises, the Applicant proposes: (1) Pre-construction desert tortoise surveys and various modifications of construction activities to minimize tortoise mortality, and (2) to post and enforce a 25 mph speed limit for the entire section of reconstructed roadway as long as the road is open for public use. The Applicant proposes to mitigate for the incidental take by: (1) Improving desert tortoise habitat in Lake Mead National Recreation Area by providing $5803.00 to the National Park Service for removal of feral burros in accordance

with their burro management program, and (2) developing a brochure and permanent narrative and graphic display on the desert tortoise in the Valley of Fire State Park's visitor center to enhance the public's knowledge of the desert tortoise. Under the HCP, the National Park Service will continue managing the burro population in Lake Mead National Recreation Area according to their burro management program after the initial removal of burros.

The EA considers the environmental consequences of four alternatives, including the proposed action and the no-action alternatives. The proposed action would allow the reconstruction of the road, the loss of 16.58 acres of desert tortoise habitat, and the incidental take of up to 10 desert tortoises. The proposed action would result in minimization of incidental take by modification of construction activities and establishment of a speed limit when the road is open for public travel. Mitigation under the proposed action would enhance desert tortoise habitat on Lake Mead National Recreation Area, and benefit public education by creation of a public display and informational brochure. Under the no-action alternative, the road reconstruction would not occur and the permit would not be issued. If road reconstruction does not occur, public access to the area would continue to be restricted, the existing dirt road would continue to be used by off-highway vehicles and exposed to human impact that have been shown to adversely affect desert tortoises. In addition, the proposed funding for tortoise habitat enhancement through burro removal, and the proposed public education facilities would not be available. A third alternative is to develop a hiking trail instead of the road. The fourth alternative is to relocate tortoises from the project site to other areas of the park.

Dated: October 8, 1993.

William E. Martin,

Acting Regional Director, U.S. Fish and Wildlife Service, Portland, Oregon.

[FR Doc. 93–25306 Filed 10–14–93; 8:45 am]

BILLING CODE 4310–55–M

Minerals Management Service

Cancellation of the Outer Continental Shelf Advisory Board Scientific Committee Meeting

This notice is issued to cancel the Outer Continental Shelf Advisory Board Scientific Committee meeting scheduled for October 20–21, 1993, at the Marriott Suites at Worldgate. The meeting had previously been announced in the **Federal Register** on September 23, 1993.

For more information, contact Thomas Gernhofer, Associate Director for Offshore Minerals Management at 202–208–3504.

Dated: October 8, 1993.

Thomas Gernhofer,

Associate Director for Offshore Minerals Management.

[FR Doc. 93–25362 Filed 10–14–93; 8:45 am]

BILLING CODE 4310–MR–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Overseas Private Investment Corporation

Agency Report Form Under OMB Review

AGENCY: Overseas Private Investment Corporation, IDCA.

ACTION: Request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the Agency has made such a submission. The proposed form under review is summarized below.

DATES: Comments must be received within 14 calendar days of this notice. If you anticipate commenting on the form but find that the time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Submitting Officer of your intent as early as possible.

ADDRESSES: Copies of the subject form and the request for review submitted to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the Agency Submitting Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

OPIC Agency Submitting Officer: Lena Paulsen, Manager, Information Center, Overseas Private Investment Corporation, 1100 New York Avenue, NW., Washington, DC 20527; (202) 336–8565.

OMB Reviewer: Jeff Hill, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, room 3201, Washington, DC 20503; (202) 395–7340.

Summary of Form Under Review

Type of Request: New Form.

Title: Self Monitoring Questionnaire.

Form Number: OPIC 162.

Frequency of Use: Annually.

Type of Respondents: Businesses or other individuals.

Standard Industrial Classification Codes: All.

Description of Affected Public: U.S. companies assisted by OPIC.

Reporting Hours: Two hours per form.

Number of Responses: 125 per year.

Federal Cost: $2,031.25.

Authority for Information Collection: Section 231(k)2 of the Foreign Assistance Act of 1961 (as amended).

Abstract (Needs and Uses): The questionnaire is completed by OPIC-assisted investors annually. The Questionnaire allows OPIC's assessment of effects of OPIC-assisted projects on the U.S. economy and employment, as well as on the environment and economic development abroad.

Dated: October 5, 1993.

James R. Offutt,

Assistant General Counsel, Department of Legal Affairs.

[FR Doc. 93–25275 Filed 10–14–93; 8:45 am]

BILLING CODE 3210–01–M

INTERSTATE COMMERCE COMMISSION

Availability of Environmental Assessments

Pursuant to 42 U.S.C. 4332, the Commission has prepared and made available environmental assessments for the proceedings listed below. Dates environmental assessments are available are listed below for each individual proceeding.

To obtain copies of these environmental assessments contact Ms. Johnnie Davis or Ms. Tawanna Glover-Sanders, Interstate Commerce Commission, Section of Energy and Environment, Room 3219, Washington, DC 20423, (202) 927–5750 or (202) 927–6212. Comments on the following assessment are due 15 days after the date of availability:

No. AB–290 (Sub-No. 121X), Camp Lajeune RR. Co.—Abandonment—Between Marine Jct. and Kellum, North Carolina. EA available October 12, 1993.

Comments on the following assessment are due 30 days after the date of availability:

AB–55 (Sub-No. 472), CSX Transportation, Inc.—Abandonment—in Barbour, Randolph, Pocahontas and

Webster Counties, West Virginia. EA available October 3, 1993.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–25336 Filed 10–14–93; 8:45 am]

BILLING CODE 7035-01-P

[Ex Parte No. 394 (Sub-No. 13)]

Cost Ratio For Recyclables—1994 Determination

AGENCY: Interstate Commerce Commission.

ACTION: Establishment of rate caps and initiation of third annual compliance proceeding.

SUMMARY: The Commission has calculated proposed 1994 revenue-to-variable cost (R/VC) ratios as ceilings for rates on nonferrous recyclables under 49 U.S.C. 10731(e). The R/VC ratios were calculated in accordance with established procedures using the Uniform Railroad Costing System (URCS). Because URCS develops different variability percentages for different railroads, the final rules adopted at 49 CFR part 1145, in Ex Parte 394 (Sub-No. 3), Cost Ratios for Recyclables—Compliance Procedures, 9 I.C.C.2d 182 (1991), allow separate R/VC ratio ceilings for individual railroads to apply in the context of monitoring compliance. The proposed national average R/VC ratio is 141.0%. Individual and regional R/VC ratios are proposed. In addition, the Commission is initiating the third annual compliance proceeding in accordance with rules adopted in Ex Parte No. 394 (Sub-No. 3), *supra*, including the schedule for completing the proceeding.

EFFECTIVE DATE: November 4, 1993, unless, within that time, comments are received challenging the accuracy of the ratios, in which case a further decision will be issued.

FOR FURTHER INFORMATION CONTACT: David T. Groves, (202) 927–6395; or W.C. Walston, (202) 927–6221. TDD for hearing impaired: (202) 927–5721.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423 or telephone (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721].

This decision will not significantly affect either the quality of the human environment or energy conservation.

Pursuant to 5 U.S.C. 605(b), we conclude that our action will not have an adverse economic impact on a substantial number of small entities. Our decision simply reports the results of a mechanical calculation that serves as a ceiling for recyclables rates. No new regulatory requirements are imposed, directly or indirectly, on small entities. The economic impact on small entities is not likely to be significant within the meaning of the Regulatory Flexibility Act.

Authority: 49 U.S.C. 10321(a), 10731, 5 U.S.C. 553.

Decided: September 30, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin and Walden.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–25475 Filed 10–14–93; 8:45 am]

BILLING CODE 7035-01-P

[Finance Docket No. 32347]

Hardin Southern Railroad; Acquisition and Operation Exemption; Line of J and J Railroad

Hardin Southern Railroad, Inc., a non-carrier, has filed a notice of exemption to acquire and operate approximately 8.34 miles of rail line owned by J and J Railroad, Inc. in Marshall and Calloway Counties, KY. The line extends generally between milepost 30.0 and milepost 38.34, beginning at the north edge of the City of Murray, KY, and continuing northward generally following the Clarks River, terminating at Hardin, KY. This exemption became effective on September 23, 1993.[1]

Any comments must be filed with the Commission and served on: Francis G. McKenna, Esq., Anderson and Pendleton, P.O. Box 65891, Washington, DC 20035.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: September 22, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–25340 Filed 10–14–93; 8:45 am]

BILLING CODE 7035-01-M

[1] Applicant states that the parties intend to convey the line on October 1, 1993.

[Finance Docket No. 32360]

Southern Pacific Transportation Co.; Trackage Rights Exemption; Peninsula Corridor Joint Powers Board

Peninsula Corridor Joint Powers Board (JPB) has agreed to extend for an additional 120 days its grant of trackage rights to Southern Pacific Transportation Company (SPT), between Santa Clara Junction (milepost 44.0) and Tamien, CA (milepost 48.7), a distance of approximately 4.7 miles.[1] The extension of the trackage rights was to become effective on or after October 1, 1993.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Gary A. Laakso, Southern Pacific Bldg., One Market Plaza, room 846, San Francisco, CA 94105.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under Norfolk and Western Ry. Co—Trackage Rights—BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653 (1980).

Dated: October 7, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–25338 Filed 10–14–93; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB–55; Sub-No. 458X]

CSX Transportation, Inc.; Abandonment Exemption; Barbour County, WV

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission, under 49 U.S.C. 10505, exempts CSX

[1] SPT and JPB own parallel lines between these points. They agreed to grant limited term trackage rights to each other while they studied the feasibility of coordinated use of the lines to achieve more efficient freight, intercity passenger, and commuter rail operations in this area. See previous notices of exemption in Finance Docket Nos. 32091 and 32094 and extensions of these exemptions in Finance Docket Nos. 32159, 32161, 32200, 32202, 32300, and 32303. This further extension is necessary because the parties have not yet completed their negotiations. SPT has agreed to grant JPB a similar trackage rights extension in Finance Docket No. 32359.

Transportation, Inc. (CSXT), from the prior approval requirements of 49 U.S.C. 10903–10904, to permit CSXT to abandon a 9.73-mile segment of its Berryburg Subdivision, between milepost 2.6, near Berryburg, and milepost 12.33, at the line's terminus at Overfield, in Barbour County, WV, subject to standard labor protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on November 16, 1993. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by October 25, 1993, petitions to stay must be filed by November 1, 1993, and petitions for reconsideration must be filed by November 9, 1993. Requests for a public use condition must be filed by November 4, 1993.

ADDRESSES: Send pleadings referring to Docket No. AB–55 (Sub-No. 458X) to (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423, and (2) petitioner's representative, Charles M. Rosenberger, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. [TDD for hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: September 24, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–25339 Filed 10–14–93; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–43; Sub-No. 159X]

Illinois Central Railroad Co. Abandonment Exemption; in Jefferson Davis and Lawrence Counties, MS

Illinois Central Railroad Company (IC) has filed a notice of exemption under 49 CFR part 1152 subpart F—Exempt Abandonments to abandon approximately 20.0 miles of rail line, known as the Bassfield-Silver Creek Line, between milepost 32.1 near Bassfield and milepost 53 near Silver Creek, in Jefferson Davis and Lawrence Counties, MS.

IC has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal compliant filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (service of environmental report on agencies), 49 CFR 1105.8 (service of historic report on State Historic Preservation Officer), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (service of verified notice no governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on November 14, 1993, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by October 25, 1993. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by November 4, 1993, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Myles L. Tobin, Illinois Central Railroad Company, 455 North Cityfront Plaza Drive, 20th Floor, Chicago, IL 60611.

If the notice of exemption contains false or misleading information, the exemption is void ab initio.

IC has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Energy and Environment (SEE) will issue an environmental assessment (EA) by October 20, 1993. Interested persons may obtain a copy of the EA by writing to SEE (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: October 7, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–25337 Filed 10–14–93; 8:45 am]

BILLING CODE 7035–01–M

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[1] *See Exempt. of Rail Line Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit the Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.* 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 93–50]

Johnson Matthey, Inc., West Deptford, NJ; Cancellation of Hearing

Due to the withdrawal of the request for hearing by Knoll Pharmaceutical Co., the hearing regarding the application for Johnson Matthey, Inc., for registration as a bulk manufacturer of the Schedule II controlled substances hydromorphone, set to commence on November 2, 1993, at the Drug Enforcement Administration Headquarters, 600 Army Navy Drive, Arlington, Virginia, is hereby cancelled.

FOR FURTHER INFORMATION CONTACT: Ms. Helen Farmer, Hearing Clerk, Drug Enforcement Administration, Washington, DC 20537; Telephone (202) 307–8188.

Dated: October 7, 1993.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 93–25278 Filed 10–14–93; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment Standard Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S–3014, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determination Issued Under the Davis-Bacon and Related Acts" are listed by Volume and State.

Volume I

Florida
- FL930087 (Oct. 15, 1993)
- FL930088 (Oct. 15, 1993)
- FL930089 (Oct. 15, 1993)
- FL930090 (Oct. 15, 1993)
- FL930091 (Oct. 15, 1993)

Tennessee
- TN930047 (Oct. 15, 1993)

Volume II

Arkansas
- AR930030 (Oct. 15, 1993)
- AR930031 (Oct. 15, 1993)
- AR930032 (Oct. 15, 1993)
- AR930033 (Oct. 15, 1993)
- AR930034 (Oct. 15, 1993)
- AR930035 (Oct. 15, 1993)
- AR930036 (Oct. 15, 1993)
- AR930037 (Oct. 15, 1993)
- AR930038 (Oct. 15, 1993)
- AR930039 (Oct. 15, 1993)
- AR930040 (Oct. 15, 1993)
- AR930041 (Oct. 15, 1993)
- AR930042 (Oct. 15, 1993)
- AR930043 (Oct. 15, 1993)

Kansas
- KS930030 (Oct. 15, 1993)
- KS930031 (Oct. 15, 1993)
- KS930032 (Oct. 15, 1993)
- KS930033 (Oct. 15, 1993)
- KS930034 (Oct. 15, 1993)
- KS930035 (Oct. 15, 1993)
- KS930036 (Oct. 15, 1993)
- KS930037 (Oct. 15, 1993)
- KS930038 (Oct. 15, 1993)
- KS930039 (Oct. 15, 1993)

Louisiana
- LA930049 (Oct. 15, 1993)

Modification to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis—Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Florida
- FL930063 (Oct. 8, 1993)
- FL930066 (Oct. 8, 1993)

Mississippi
- MS930022 (Feb. 19, 1993)

New Hampshire
- NH930002 (Feb. 19, 1993)

New York
- NY930003 (Feb. 19, 1993)
- NY930005 (Feb. 19, 1993)
- NY930006 (Feb. 19, 1993)
- NY930011 (Feb. 19, 1993)
- NY930014 (Feb. 19, 1993)
- NY930015 (Feb. 19, 1993)
- NY930017 (Feb. 19, 1993)
- NY930018 (Feb. 19, 1993)
- NY930020 (Feb. 19, 1993)
- NY930021 (Feb. 19, 1993)
- NY930025 (Feb. 19, 1993)
- NY930026 (Feb. 19, 1993)

Pennsylvania
- PA930005 (Feb. 19, 1993)
- PA930006 (Feb. 19, 1993)
- PA930025 (Feb. 19, 1993)
- PA930030 (Feb. 19, 1993)
- PA930031 (Feb. 19, 1993)

Vermont
- VT930024 (Aug. 20, 1993)

Volume II

Illinois
- IL930017 (Feb. 19, 1993)

Indiana
- IN930002 (Feb. 19, 1993)
- IN930006 (Feb. 19, 1993)

Michigan
- MI930012 (Feb. 19, 1993)
- MI930041 (Oct. 1, 1993)
- MI930053 (Oct. 1, 1993)

Minnesota
- MN930005 (Feb. 19, 1993)

Missouri
- MO930001 (Feb. 19, 1993)
- MO930002 (Feb. 19, 1993)

MO930003 (Feb. 19, 1993)
MO930004 (Feb. 19, 1993)
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MO930014 (Feb. 19, 1993)
MO930015 (Feb. 19, 1993)
MO930016 (Aug. 20, 1993)
MO930017 (Aug. 20, 1993)
MO930019 (Oct. 1, 1993)

Nebraska
NE930001 (Feb. 19, 1993)
NE930003 (Feb. 19, 1993)
NE930005 (Feb. 19, 1993)
NE930009 (Feb. 19, 1993)
NE930010 (Feb. 19, 1993)
NE930011 (Feb. 19, 1993)
NE930024 (Jun. 11, 1993)

Ohio
OH930001 (Feb. 19, 1993)
OH930002 (Feb. 19, 1993)
OH930003 (Feb. 19, 1993)
OH930028 (Feb. 19, 1993)
OH930029 (Feb. 19, 1993)

Texas
TX930063 (Feb. 19, 1993)

Volume III

Alaska
AL930001 (Feb. 19, 1993)

Arizona
AZ930003 (Feb. 19, 1993)

California
CA930027 (Aug. 20, 1993)

Montana
MT930005 (Feb. 19, 1993)

Oregon
OR930001 (Feb. 19, 1993)

Washington
WA930009 (Feb. 19, 1993)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 8th day of October 1993.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 93–25218 Filed 10–14–93; 8:45 am]

BILLING CODE 4510–27–M

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 93–73; Exemption Application No. D–9152, et al.]

Grant of Individual Exemptions; IDS Financial Corp. (IDS), et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemption issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

IDS Financial Corporation (IDS) Located in Minneapolis, Minnesota

[Prohibited Transaction Exemption 93–73; Exemption Application No. D–9152]

Exemption

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to the guarantee against loss (the Guarantee) by IDS or its affiliates (together, the Applicants) of money invested with the Applicants by employee benefit plans (the Plans), provided: (a) The fees paid by the Plans to the Applicants for the Guarantees are not more than reasonable compensation for such Guarantees; (b) the decision to purchase the Guarantees will be made for each Plan by a Plan fiduciary who is independent of the Applicants; (c) the individually managed portfolios and collective investment funds that will be subject to the Guarantee will be invested in products whose prices are quoted daily and thus can be objectively valued; and (d) all terms and conditions of the Guarantee will be fully disclosed in a written document which will be distributed to any Plan investing in the Guarantee.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on August 4, 1993 at 58 FR 41496.

WRITTEN COMMENTS: The Department received one written comment with respect to the proposed exemption. The comment was submitted by the Applicants to clarify two representations that appeared in the notice of proposed exemption. In representation 6 of the proposed exemption, the current fee structure of IDS Bank & Trust (IDS Bank)'s collective investment trusts was described. The Applicants stated in their comment that

the level and amount of those fees reflects IDS Bank's current structure; the fees may change in the future. In addition, the Applicants stated that representation 10 describes the initial estimates of fees for the Guarantee. These fees were by way of illustration and have not been finalized by IDS. The Applicants represent that any fees, once finalized, will be based on a percentage of assets under management. Any increase in the percentage amount of such fees must be approved by an independent fiduciary for the investing Plan.

Upon consideration of the entire record, the Department has determined to finalize the exemption as modified by the above-described comment.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

ALLTEL Corporation (ALLTEL), ALLTEL Corporation Pension Plan and Trust (the ALLTEL Pension Plan), ALLTEL Corporation Profit-Sharing Plan and Trust (the ALLTEL Profit-Sharing Plan), Allied Telephone Company Profit-Sharing Plan (the Allied Profit-Sharing Plan), Profit-Sharing Plan for Employees of Systematics, Inc. (the Systematics Profit-Sharing Plan), SLT Communication, Inc. Retirement Plan and Trust (the SLT Retirement Plan; Collectively, the Plans) Located in Little Rock, AR

[Prohibited Transaction Exemption 93–74; Application Nos. D–9362, D–9363, D9364, D–9365, D–9366]

Exemption

The restrictions of sections 406(a) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the consolidation of certain assets of the Plans into a new master trust sponsored by ALLTEL (the Master Trust) provided that the following conditions are satisfied: (a) The fair market value of the assets of each Plan shall upon completion of the transfer to the Master Trust equal the fair market value of said assets immediately preceding the transfer, (b) other than cash, only assets which are traded on a recognized securities exchange will be subject to the proposed transaction, and (c) the Plans' trustee will not receive any fees or commissions for making the transfers from the Individual Plans to the Master Trust.

Comments

In the Notice of Proposed Exemption, the Department invited all interested persons to submit written comments and requests for a hearing on the exemption. All comments and requests for hearing were due by September 3, 1993. The Department received telephone comments from several interested persons who expressed concern over the effect, if any, of the transaction on their pension benefits. These inquiries were responded to by a Department representative who informed the callers that the transaction involves the consolidation of plan investments and will have no effect upon benefits.

The Department received a total of 116 written comments with 28 of those comments also containing a request for a hearing.[1] Three commentators were opposed to the exemption but raised issues which are not relevant to the exemption. Twenty-seven of the comments were in opposition to the exemption but the commentators failed to raise any specific objections to which the applicant or the Department could respond. One commentator expressed concern about the impact of the exemption on his retirement benefits but did not specifically object to the exemption. Two commentators expressed concern that the establishment of a master trust would cause an impermissible commingling of the funds of the five Plans. A group of 82 commentators wrote to voice their objection to the proposed exemption. This group of commentators expressed concern that any merger or consolidation of the Plans would cause people to lose their jobs and possibly forfeit their retirement benefits. In addition, one individual objected to the proposed exemption stating that the creation of the Master Trust would cause the Plans' participants and beneficiaries to lose control over the investment of their retirement plan accounts. Finally, one commentator stated that he was in favor of the exemption as long as his retirement benefits would not be threatened.

The applicant was asked to address the above concerns. With respect to the concerns regarding commingling of the funds, the applicant represents that the assets of the five Plans will be held together in the Master Trust for investment purposes only and that each individual Plan's assets will be available only to pay the benefits of the participants and beneficiaries of that individual Plan. The applicant also noted that the Master Trust provides for separate accounting of each Plan's interest in the Master Trust. With respect to the comments regarding the possibility of employees losing jobs or retirement benefits as a result of the merger or consolidation of the Plans, the applicant responds by explaining that the creation of the Master Trust for investment purposes has no bearing on whether the Plans will be merged or terminated or whether any benefits will be forfeited. In response to the comment regarding the ability of participants to direct the investment of their accounts, the applicant represents that the participants currently have a very limited ability to direct the investment of their accounts and that the participants will continue to have the same rights under the Master Trust.

Since only 1 of the 28 requests for a hearing contained any concrete objection to the exemption, which objection was adequately responded to by the applicant (see the discussion regarding the commingling of plan assets above), the Department has determined not to hold a public hearing. Furthermore, after giving full consideration to the entire record, including the written comments, the Department has decided to grant the exemption.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice published on July 20, 1993, at 58 FR 38791.

FOR FURTHER INFORMATION CONTACT: Ms. Virginia J. Miller of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the

[1] Because the relief provided by the exemption includes section 406(b) of the Act, 29 CFR 2570.46 of the Department's regulations provides that the Department in its discretion may convene a hearing if requested by interested persons.

employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 7th day of October, 1993.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 93–25382 Filed 10–14–93; 8:45 am]

BILLING CODE 4510–29–M

[Application No. D–9341]

Notice of Proposed Exemption for Certain Transactions Involving the Prudential Insurance Company of America (Prudential) Located in Newark, NJ

AGENCY: Department of Labor.

ACTION: Notice of Proposed Exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1986 (the Code). The proposed exemption would exempt certain transactions that may occur as a result of the sharing of real estate investments among various Accounts maintained by Prudential, including the Prudential general account and the general accounts of Prudential's affiliates which are licensed to do business in at least one state (collectively, the General Account), and the ERISA-Covered Accounts with respect to which Prudential is a fiduciary. As an acknowledged investment manager and fiduciary, Prudential is primarily responsible for the acquisition, management and disposition of the assets allocated to the ERISA-Covered Accounts.

EFFECTIVE DATE: If granted, this proposed exemption would be effective for transactions occurring on or after December 20, 1988.

DATES: Written comments and requests for a public hearing must be received by the Department on or before December 14, 1993.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Exemption Determinations, Pension and Welfare Benefits Administration, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Application No. D–9341. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, NW., Washington, DC 20210.

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code. The proposed exemption was requested in an application filed by Prudential pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

1. Prudential is a mutual life insurance company organized under the laws of the State of New Jersey and subject to supervision and examination by the Insurance Commissioner of the State of New Jersey. It is the largest life insurance company in the United States. Among the variety of insurance products and services it offers, Prudential provides funding, asset management and other services for thousands of employee benefit plans subject to the provisions of Title I of the Act. Prudential maintains several pooled separate accounts in which pension, profit-sharing and thrift plans participate, and also manages all or a portion of the assets of a number of large plans pursuant to various single customer separate accounts and advisory accounts (the ERISA-Covered Accounts). A number of ERISA-Covered Accounts invest in equity interests in real estate or in mortgage loans. The ERISA-Covered Accounts, Prudential's general account (which includes all of Prudential's assets invested on behalf of its policyholders not participating in separate accounts), the general accounts of one or more of Prudential's affiliates which are insurance companies licensed to do business in at least one of the fifty states, accounts maintained by Prudential for foreign pension plans and other "non-ERISA" investors, and accounts which Prudential may establish in the future (collectively, the Accounts) may participate in the transactions which are the subject of this proposed exemption.

2. The applicant represents that in recent years real estate has gained increasing popularity among plan sponsors. Various high quality commercial real estate investments from time to time become available which offer the potential for a higher rate of return than do other real estate investments. Because there are relatively few potential investors for large scale investments such as office buildings, shopping centers, and industrial parks, the owner or developer of such real estate investments must offer a higher return in order to attract investors. In many cases, Prudential's real estate accounts would be precluded from acquiring these investments on an individual basis because such investments would require the commitment of a disproportionately large percentage of account assets to one or a few investments. The sharing of large or uniquely desirable real estate investments would permit the ERISA-Covered Accounts to participate in more attractive and profitable real estate investments while maintaining portfolio diversification.

3. The real estate investments which Prudential proposes to share may either take the form of a direct investment in real property or an interest in a joint venture partnership which holds title to, manages, and/or develops real property. Prudential's investments in joint venture partnerships frequently include an equity interest in the joint venture and a debt interest in mortgages to which the joint venture property is subject. Development joint venture arrangements are customarily "leveraged"; that is, acquisition and development costs are met by the equity contribution of the joint venture partners and by substantial loans to the partnership which are secured by the joint venture's interest in its real property. Frequently, Prudential, on

behalf of its Accounts, will own 50 percent of the joint venture partnership and provide 100 percent of the debt financing. Prudential anticipates that real estate investments will be allocated to each Account maintained by Prudential in the same proportions of debt and equity. No ERISA-Covered Account will participate in an investment for the purpose of enabling another Account to make an investment.

4. Real estate equity investment opportunities for the Accounts are originated by an affiliate of Prudential. The Acquisitions and Sales Group of the Prudential Investment Corporation (PIC), a wholly-owned subsidiary of Prudential, originates equity investments in existing properties. The Development and Retail Investment Unit of PIC originates real estate developmental properties. Real estate equity investments are originated in accordance with general investment criteria developed by The Prudential Property Corporation, Inc. (PPC), a wholly-owned subsidiary of PIC, and the Portfolio Management Group of the Prudential Realty Group. The Prudential Realty Group is composed of PPC, certain divisions within PIC, and the Prudential Mortgage Capital Company, Inc., a Prudential affiliate which originates mortgages and other real estate debt investments. The specific investment criteria for each Account (other than the General Account) must be approved by the Investment Committee of the Institutional Investment Management Unit (the IIM) of the Prudential Realty Group and updated no less frequently than annually. The IIM was formerly a part of the Prudential Realty Group but has now been aligned with other asset management business units of Prudential. With respect to single customer ERISA-Covered Accounts, the investment strategy is developed with the plan contractholder and is also approved by the Investment Committee of the IIM. General Account realty is managed by the Equity Investments Unit of the Prudential Realty Group. Prudential continues to be the investment manager for each of the Accounts.

5. General investment criteria for each ERISA-Covered Account are set forth in the separate account contract between Prudential and the plan contractholder. Each ERISA-Covered Account has a portfolio manager, who annually reviews and revises more detailed criteria consistent with the current investment strategy of the particular Account, within the general limits established by the contract. This review and revision is subject to the approval of the IIM Investment Committee. A similar process is followed to set investment criteria for non-ERISA Covered Accounts.

Determinations of whether a particular investment opportunity is suitable for sharing are made by the chief executive officer of the IIM before the opportunity is allocated. This determination is made on the basis of the size of the investment compared to the investment criteria and acquisition budget of the IIM-managed Accounts. Under Prudential's allocation procedures, if an investment opportunity meets the investment criteria for an Account that has sufficient assets to acquire the investment in its entirety, the investment opportunity will be allocated to that Account. However, if a real estate investment opportunity meets the current investment criteria (other than size of the investment) for more than one Account but no Account has sufficient assets available to acquire the entire investment, the chief executive officer of the IIM may determine that the investment should be shared. Each Account has a portfolio manager who makes recommendations to the IIM Investment Committee regarding the suitability of an investment (including an interest in a shared investment) for the Account. Allocation determinations are based on, among other things, the extent to which the Account's projected acquisition needs and investment objectives, established no less frequently than annually as part of the criteria for investment of the Account, have not been satisfied by other allocations. Under the proposed exemption, investments meeting an Account's investment criteria could be shared by that Account and one or more other Accounts for which a share in the investment meets the criteria of such other Account[s] necessary to achieve economic, geographical and property class diversification within the restraints on investment size imposed by the financial constraints of that Account [or Accounts]. The final allocations are made by the IIM Investment Committee in accordance with Prudential's allocation procedures. Prudential's allocation procedures provide for the allocation of each real estate investment opportunity to one or more Accounts for which the opportunity is suitable, taking into consideration each Account's investment criteria and strategy, as well as each Account's acquisition budget for the year. These procedures are periodically reviewed by Prudential to ensure that each Account receives equitable treatment.

6. During the course of Prudential's holding of a real estate investment, certain situations may arise which require a decision to be made with regard to the management or disposition of the investment. For example, there may be a need for additional contributions of operating capital, or there may be an offer to purchase the investment by a third party or a joint venture partner. When Prudential shares these investments among more than one Account, a potential for conflict arises since the same decision may not be in the best interest of each Account. Therefore, the applicant has submitted a request for exemption, with certain proposed safeguards designed to protect the interests of any participating ERISA-Covered Account in the resolution of potential or actual conflicts.

7. Each plan contractholder participating in an ERISA-Covered Account that shares or proposes to share real estate investments must be furnished with a written description of the transactions that may occur involving such investments which might raise questions under the conflict of interest prohibitions of the Act with respect to Prudential's involvement in such transactions and which are the subject of this proposed exemption. This description must discuss the reasons why such conflicts of interest may be present (*i.e.*, because the General Account participates in the investment and may benefit from the transaction or because the interests of the various Accounts participating in the investment may be adverse with respect to the transaction). The description must also disclose the principles and procedures to be used to resolve any anticipated impasses, as will be outlined below. In addition, each contractholder in an ERISA-Covered Account that currently shares investments must receive a copy of this notice of pendency within thirty days of its publication, and a copy of the exemption when granted.

8. With respect to new contractholders in an ERISA-Covered Account that currently participates in the sharing of investments, each prospective contractholder must be provided with the above mentioned written description, a copy of the notice of pendency and a copy of the exemption as granted before the contractholder begins to participate in the Account. With respect to contractholders who are already in an ERISA-Covered Account that proposes to participate in the sharing of investments in the future, each such

contractholder must be provided with the description outlined above, a copy of the notice of pendency and a copy of the exemption as granted before the Account begins to participate in the sharing of investments. A plan contractholder may withdraw from a single customer or open-end pooled ERISA-Covered Account by providing written notice to Prudential. A plan contractholder in a closed-end pooled ERISA-Covered Account does not have a right to have its interest redeemed prior to the predetermined termination date, but it may sell its interest to a third party.

9. An independent fiduciary or independent fiduciary committee must be appointed on behalf of each ERISA-Covered Account participating in the sharing of investments. The independent fiduciary, acting on behalf of the ERISA-Covered Account, shall have the responsibility and authority to approve or reject recommendations made by Prudential or its affiliates regarding the allocation of shared real estate investments to the ERISA-Covered Account and recommendations concerning those transactions occurring subsequent to the allocation which are the subject of this proposed exemption. The independent fiduciary is informed of the procedures set forth in the proposed exemption for the resolution of anticipated impasses prior to his or its acceptance of the appointments. Prudential and its affiliates shall provide the independent fiduciary with the information and materials necessary for the independent fiduciary to make an informed decision on behalf of the ERISA-Covered Account. No allocation or transaction which is the subject of the proposed exemption will be undertaken prior to the rendering of such informed decision by the independent fiduciary. In the case of transactions involving the possible transfer of an interest in a real estate investment between the General Account and an ERISA-Covered Account, the independent fiduciary will not be limited to approving or rejecting the recommendations of Prudential, but will have full authority to negotiate the terms of the transfer (in accordance with the independent appraisal procedure described below) on behalf of the ERISA-Covered Account. The independent fiduciary shall also review on an as-needed basis, but not less than twice annually, the shared real estate investments in the ERISA-Covered Account's portfolio to determine whether the shared real estate investments are held in the best interest of the ERISA-Covered Account.

10. The independent fiduciary must be unrelated to Prudential or its affiliates. The independent fiduciary may not be, or consist of, any officer, director or employee of Prudential, or be affiliated in any way with Prudential or any of its affiliates. (See definition of "affiliate" in Section V(a), below.) The independent fiduciary must be either (1) a business organization which has (or whose principals have) at least five years of experience with respect to commercial real estate investments, (2) a committee comprised of three to five individuals who each have at least five years of experience with respect to commercial real estate investments, or (3) the plan sponsor (or its designee) of a plan or plans that is the sole participant in an ERISA-Covered Account. An organization or individual may not serve as an independent fiduciary for an ERISA-Covered Account for any fiscal year if the gross income (excluding retirement income) received by such organization or individual (or any partnership or corporation of which such organization or individual is an officer, director, or ten percent or more partner or shareholder) from Prudential and its affiliates for that fiscal year exceeds five percent of its or his annual gross income from all sources for the prior fiscal year. If such organization or individual had no income for the prior fiscal year, the five percent limitation shall be applied with reference to the fiscal year in which such organization or individual serves as an independent fiduciary. The income limitation will exclude compensation for services of an independent fiduciary who is initially selected by a plan sponsor for a single customer ERISA-Covered Account, because this situation would not give rise to the possibility of divided loyalty on the part of the independent fiduciary. The income limitation will include services rendered to the Accounts under any prohibited transaction exemptions granted by the Department. In addition, no organization or individual who is an independent fiduciary, and no partnership or corporation of which such organization or individual is an officer, director or ten percent or more partner or shareholder, may (i) acquire any property from, sell any property to, or borrow any funds from, Prudential or its affiliates, during the period that such organization or individual serves as an independent fiduciary and a period of six months after such organization or individual ceases to be an independent fiduciary, or (ii) negotiate any such transaction during the period that such organization or individual serves as independent fiduciary. A plan sponsor (or its designee) of a plan participating in an ERISA-Covered Account may not serve as independent fiduciary with respect to any pooled ERISA-Covered Account. A business organization or committee member may not serve as an independent fiduciary of more than one ERISA-Covered Account.

11. In the case of a single customer ERISA-Covered Account, if the plan sponsor or its designee decides not to act as the independent fiduciary, the independent fiduciary or independent fiduciary committee will be selected initially by Prudential. In that event, the independent fiduciary must be approved by the plan sponsor or another plan fiduciary prior to the commencement of its fiduciary responsibilities on behalf of the ERISA-Covered Account. The applicant represents that because pooled ERISA-Covered Accounts often include several hundred plan contractholders, the independent fiduciary will be selected initially by Prudential. Prior to the commencement of the independent fiduciary's responsibilities on behalf of an Account, the selection of the independent fiduciary, however, must be approved by a majority of the contractholders in such an Account by vote proportionate to their interests in the Account.

12. For both single customer and pooled ERISA-Covered Accounts, prior to the making of any decision to approve the selection of an independent fiduciary, plan contractholders must be furnished appropriate biographical information pertaining to the independent fiduciary or members of the independent fiduciary committee. This biography must set forth the background and qualifications of the fiduciary (or fiduciaries) to serve in that capacity. The information must also disclose the total amount of compensation received by the fiduciary (or each member of a fiduciary committee) from Prudential or a Prudential affiliate during the preceding year, including compensation for any business services performed by the fiduciary or any affiliate for Prudential or its affiliates. The disclosure relating to compensation must be updated annually thereafter. Subsequent disclosures must also include the amount of fees and expenses paid for independent fiduciary services. The plans will be able to use this information to determine whether to approve Prudential's initial selection of the fiduciary or fiduciary committee and

whether to continue such approval each year thereafter.[5]

13. Once an independent fiduciary committee or organization is appointed, the members of the committee or the organization will continue to serve subject to an annual vote by each of the plans participating in the ERISA-Covered Account. An independent fiduciary or committee member may be removed by a majority vote of the Account's contractholders or, in the case of a committee member, "for cause" by a majority vote of the other members of the committee. The term "for cause" means that there must be sufficient and reasonable grounds for removal and the reasons for removal must be related to the ability and fitness of an individual to perform his or her required duties. Prudential will not have the authority to remove an independent fiduciary or a member of an independent fiduciary committee. If a vacancy occurs by virtue of the death, resignation or removal of a member of an independent fiduciary committee, replacement members of the committee will be appointed by a majority vote of remaining members of the committee. Possible replacements may be suggested by members of the committee, Prudential or plan contractholders. If an organization acting as independent fiduciary is removed by majority vote of the Account's contractholders, the procedure described above for the initial selection of an independent fiduciary will apply to the replacement.

14. The independent fiduciary will be compensated by the ERISA-Covered Account. Prudential may indemnify any independent fiduciary or members of an independent fiduciary committee with respect to any action or threatened action to which such person is made a party by reason of his or her service as an independent fiduciary. Indemnification will be provided as permitted under the laws of the State of New Jersey and subject to the requirement that such person acted in good faith and in a manner he or she reasonably believed to be solely in the interests of the participants and beneficiaries of the plans participating in the Account.

15. Written minutes must be taken and maintained in connection with all meetings involving independent fiduciary committees of ERISA-Covered Accounts. Such minutes must include a rationale as to why decisions were made. Where the independent fiduciary is a committee, decisions will be made on the basis of a majority vote. Any dissenting committee member will provide a written rationale for his dissent. Where the independent fiduciary is a single entity (e.g., a business organization) for which no minutes of meetings would be maintained, all decisions of such independent fiduciary and rationale thereof must be set forth in writing and maintained by Prudential pursuant to the recordkeeping requirements outlined in the General Conditions below.

16. In connection with the management of real estate shared investments, it is possible that Prudential, on behalf of the General or Non-ERISA Accounts, or the independent fiduciaries for ERISA-Covered Accounts participating in a shared investment, may develop different approaches as to whether or how long an investment should be held by an Account. Certain situations may also arise during the course of Prudential's holding of a shared real estate investment in which decisions will need to be made where it is not possible to obtain the agreement of Prudential and all of the independent fiduciaries involved. These situations may arise as a result of an action taken by a third party, or they may arise in connection with an action proposed by Prudential or the independent fiduciary for an ERISA-Covered Account. In such cases, Prudential will make recommendations to the independent fiduciaries regarding a proposed transaction. If a course of action cannot be found that is acceptable to each independent fiduciary, a stalemate procedure will be followed to ensure that a decision can be made. The applicant represents that the stalemate procedure is similar to procedures typically used to resolve disputes between co-venturers under real estate joint venture agreements and is therefore familiar to most real estate investors.

17. With respect to stalemates between two or more ERISA-Covered Accounts which share an investment, the stalemate procedure is designed to provide a result that is similar to what would occur in comparable situations where unrelated parties to a transaction were dealing at arm's length. This means that the action which will be taken in such cases is the one that does not require an Account: 1) To invest new money; 2) to change the terms of an existing agreement; or 3) to change the existing relationship between the Accounts.

18. However, one additional option will be provided in the event of such stalemates. Where investments are shared by two or more Accounts (other than the General Account), Prudential will make recommendations to the independent fiduciaries of each participating ERISA-Covered Account regarding investment management decisions that must be made for a real estate shared investment. For example, if the independent fiduciaries cannot agree on a Prudential recommendation, Prudential may offer alternate recommendations (possibly including partition and sale of undivided interests) in an attempt to facilitate agreement. If the independent fiduciaries still cannot agree, each ERISA-Covered Account will be offered the opportunity to buy out the other ERISA-Covered Account's interest on the basis of a specified price. The specified price may be based on the price offered by a third party, or, if no third party offer is received (or if the third party offer is unacceptable to either ERISA-Covered Account), the specified price will be the price established under the independent appraisal procedure described below. As in a buy-sell provision in a typical joint venture, the ERISA-Covered Account to which the offer is made will have the option to sell to the offering ERISA-Covered Account at the specified price, or to buy out the offering ERISA-Covered Account's interest at that price.

19. If the independent fiduciary for the ERISA-Covered Account which disagrees with Prudential's recommendation does not wish to make a buy-sell offer to the other ERISA-Covered Account, the other Account(s) (except for the General Account) may do so. If no ERISA-Covered Account chooses to exercise the buy-sell option, Prudential will take the action designed to preserve the status quo, i.e., the action designed to avoid expenditure of additional funds by the Accounts and avoid any change in existing arrangements or contractual relationships.

20. Where a real estate investment is shared by the General Account and one or more ERISA-Covered Accounts and a stalemate occurs between the General Account and an ERISA-Covered Account, Prudential may offer alternate recommendations to facilitate an agreement. If the Accounts still cannot reach agreement, each Account will be offered the opportunity to buy out the other Account's interest on the basis of a specified price, which will be established in accordance with the independent appraisal procedure described below, or will be the price

[5] Prudential represents that the contractholders in its single customer and pooled closed-end real estate Accounts are knowledgeable and sophisticated investors who fully understand the operation of the ERISA-Covered Accounts.

offered by a third party. If none of the Accounts elects to make a buy-sell offer to the other Account, Prudential would be required to take the action selected by the independent fiduciary of the ERISA-Covered Account. Where the General Account wishes, e.g., to hold its interest and the independent fiduciary for the ERISA-Covered Account determines to sell its interest, the General Account will buy out the interest of the ERISA-Covered Account at the price offered by the third party, or, at the ERISA-Covered Account's option, at an independently determined price. Conversely, where the independent fiduciary for the ERISA-Covered Account determines to retain its interest while the General Account wants to sell its interest, the ERISA-Covered Account has the option of buying out the General Account, or, if the independent fiduciary chooses not to, the status quo will be maintained.

Specific Transactions

I. Direct Real Estate Investments

(a) Transfers Between Accounts

21. Following the initial sharing of investments, it may be in the best interests of the Accounts participating in the investment for one Account to sell its interest to the other(s). Such a situation may arise, for example, when one Account experiences a need for liquidity in order to satisfy the cash needs of the plans participating in the Account, while for the other Account(s) the investment remains appropriate. One possible means of reconciling this situation is for the "selling" Account to sell its interest in the shared investment to the remaining participating Account(s) or to another Account(s) at current fair market value. Such sales may not, however, be appropriate in all circumstances. An inter-Account transfer will only be permitted when it is determined to be in the best interests of each Account that would be involved in the transaction. The transfer would also be subject to the approval of the Insurance Departments of a number of states, including New Jersey and New York. Because Prudential would be acting on behalf of both the "buying" and "selling" Accounts (but not the General Account) in such an inter-Account transfer, the transfer might be deemed to constitute a prohibited transaction under section 406(b)(2) of the Act. Accordingly, exemptive relief is requested herein for the sale or transfer of an interest in a shared real estate investment by one ERISA-Covered Account to another Account of which Prudential is a fiduciary. Such transfers would have to be at fair market value and approved by the independent fiduciary for each ERISA-Covered Account involved in the transfer.

Ordinarily, no transfer of an interest in a shared investment will be permitted between the General Account and an ERISA-Covered Account. The transfer of an interest in a shared investment between the General Account and an ERISA-Covered Account may be deemed to constitute a violation of sections 406(a)(1)(A) and (D) as well as sections 406(b)(1) and (2) of ERISA. As noted above, however, where a stalemate arises between the General Account and an ERISA-Covered Account, the transfer of such an interest would be permitted to resolve the conflict. Specific stalemate procedures have been developed for these situations. If, for example, a third party makes an offer to purchase the entire investment held by Prudential on behalf of the General Account and an ERISA-Covered Account, it is possible that the General Account would like to accept the offer and the independent fiduciary on behalf of the ERISA-Covered Account would like to reject the offer. In that event, Prudential may offer alternative recommendations to the independent fiduciary. If there is still no agreement, the independent fiduciary (as the party wishing to reject the offer) would be given the opportunity to buy-out the General Account's interest at a specified price. This price may be a proportionate share of the third party offer; or, if such price is unacceptable to the ERISA-Covered Account, a proportionate share of the price determined through the independent appraisal procedure described below. This procedure would give the ERISA-Covered Account an opportunity to retain its interest in the shared investment. If the ERISA-Covered Account does not choose to buy-out the General Account's interest, the General Account would be required to accede to the direction of the ERISA-Covered Account and would, therefore, reject the third party offer.

If, in the event of a third party purchase offer, the General Account wants to reject the offer but the independent fiduciary on behalf of the ERISA-Covered Account wants to accept the offer, the procedures described above would apply, except that the General Account (as the party wishing to reject the offer) would have the opportunity to buy-out the ERISA-Covered Account's interest at a proportionate share of the third party purchase offer, or, at the option of the independent fiduciary for the ERISA-Covered Account, at an independently determined price. This will permit the ERISA-Covered Account to sell its interest in a real estate investment, if it chooses to do so, at no less than the same price it would have received from a third party.

Even in the absence of a third party offer, Prudential may recommend the sale of a shared investment. If the independent fiduciary approves the recommendation, Prudential will arrange for the sale. If the independent fiduciary does not approve Prudential's recommendation, Prudential may offer alternative recommendations, possibly including partition and sale of divided interests. If, however, no agreement is reached, the independent fiduciary (as the party wishing to reject the recommendation) would be given the opportunity to buy-out the General Account's interest in accordance with the independent appraisal procedure described below. If there is no buy-out, Prudential would take the course of action consistent with the ERISA-Covered Account's determination and would, therefore, not sell the investment.

The independent fiduciary may also determine independently that a shared investment in an ERISA-Covered Account should be sold. If Prudential agrees with this recommendation, Prudential will arrange the sale. If Prudential, on behalf of the General Account, disagrees with the recommendation, Prudential will first attempt to sell the ERISA-Covered Account's interest to another Account other than the General Account. In this case, the sale price and other terms would have to be approved by the independent fiduciary for each ERISA-Covered Account. If the ERISA-Covered Account's interest cannot be sold to another Account, Prudential may offer alternative recommendations, possibly including partition and sale of the ERISA-Covered Account's interest to a third party. If no agreement is reached with respect to these options, the General Account (as the party opposed to the sale) would have the opportunity of buying out the ERISA-Covered Account's interest at a price established under independent appraisal procedures described below. If there is no buy-out and no agreement, Prudential will be required to take the course of action consistent with the ERISA-Covered Account's determination and will sell the entire investment.

Where an independent price for the transfer of an interest in a shared investment between the General Account and an ERISA-Covered Account is not established by an offer from an unrelated third party (or where

the third party price is unacceptable to the ERISA-Covered Account), the stalemate procedure provides for the appointment of an independent appraiser. Under this procedure, Prudential and the independent fiduciary will each appoint an independent appraiser. These two appraisers will then choose a third appraiser. The panel of appraisers will each evaluate the entire investment, and the average of the three appraisals will be used to determine the proportional value of each shared investment interest. However, the General Account and the ERISA-Covered Account may agree that, if one valuation is more than a specified percentage outside the range of the other two valuations, that valuation may be disregarded and the transfer price will be the average of the remaining two valuations. The applicant represents that this procedure, which is of the variety typically used in real estate joint venture agreements, provides adequate protection for the ERISA-Covered Account because the independent fiduciary is an equal participant in the appraisal process. See Section I(a).

(b) Joint Sales of Property

22. In situations involving shared real estate investments, an opportunity may arise to sell the entire investment to a third party, and it may be determined for all of the participating Accounts that the sale is desirable. When the General Account is participating in the investment, and the sale is therefore determined to be in the best interests of the General Account (in addition to being in the interests of the other Account(s)), the sale might be deemed to constitute a prohibited transaction under section 406 of the Act and section 4975 of the Code.[2] Similarly, Prudential may be acting on behalf of two ERISA-Covered Accounts or an ERISA-Covered Account and a non-ERISA-Covered Account other than the General Account. Accordingly, exemptive relief is requested for these joint sales. The sales would have to be approved by the independent fiduciary for each ERISA-Covered Account involved in the sale. In accordance with Prudential's stalemate procedures, if the independent fiduciary for one ERISA-Covered Account wishes to sell its interest in a shared investment and the independent fiduciary for another ERISA-Covered Account does not want to sell, Prudential will attempt to negotiate a compromise, including the transfer of interests from one Account to the other. If no agreement can be reached, the status quo will be maintained and no sale will be made. See Section I(b).

(c) Additional Capital Contributions

23. On occasion, commercial real estate investments require infusions of additional capital in order to fulfill the investment expectations of the property. For example, developmental real estate investments sometimes require additional capital in order to complete the construction of the property. In addition, the cash flow needed to improve or operate completed buildings may also result in the need for additional capital. Such additional capital is frequently provided by the owners of the property. In the case of a property that is owned entirely by Prudential on behalf of the Accounts, it is contemplated that needed additional capital will ordinarily be contributed in connection with the investment in the form of an equity capital contribution made by each participating Account in an amount equal to such Account's existing percentage equity interest in the shared investment;[3] that is, in the first instance, each Account would be afforded the opportunity to contribute additional capital on a fully proportionate basis. In the case of ERISA-Covered Accounts, all decisions regarding the making of additional capital contributions must be approved by the independent fiduciary for the Account. The making of an additional capital contribution could be deemed to involve a prohibited transaction under section 406 of the Act. If one or more participating Accounts in a shared investment is unable to provide its share of the needed additional capital, various alternatives may be appropriate, including having the other Account(s) make a disproportionate contribution. For example, where the General Account and an ERISA-Covered Account participate in a shared investment and the need for additional capital arises, it might be determined for liquidity reasons or other factors involving the ERISA-Covered Account that the additional contribution should not be made by that Account. As a result, the additional equity capital may be provided entirely by the General Account with the further consequence that the General Account would thereafter have a larger interest in the investment and, therefore, a larger share in the appreciation and income to be derived from the property.[4] Such an adjustment in ownership interests might be deemed to constitute a prohibited (indirect sales) transaction under section 406 of the Act. In addition, these situations could also occur where two ERISA-Covered Accounts are involved or an ERISA-Covered Account and a non-ERISA-Covered Account. Accordingly, the applicant is requesting exemptive relief that would permit the contribution of additional equity capital for a shared investment by Accounts participating in the investment (including the General Account). Any decision made or action taken by an ERISA-Covered Account (*i.e.*, the contribution of either no additional capital, the Account's pro rata share of additional capital, less than or more than the Account's pro rata share, etc.) must be approved by such independent fiduciary. See Section I(c).

(d) Lending of Funds to Meet Additional Capital Requirements

24. If the General Account and an ERISA-Covered Account participate in a shared investment that experiences the need for additional capital, and it is determined that the ERISA-Covered Account does not have sufficient funds available to meet the call for additional capital, the General Account might be willing and able to loan the required funds to the ERISA-Covered Account. Prior to any loan being made, it must be approved by the independent fiduciary for the ERISA-Covered Account. Such loan will be unsecured and non-recourse, will bear interest at a rate that will not exceed the prevailing interest rate on 90-day Treasury Bills, will not be callable at any time by the General Account, and will be prepayable at any time without penalty at the discretion of the independent fiduciary of the ERISA-Covered Account. See Section I(d).

(e) Shared Debt Investments

25. Prudential occasionally makes real estate investments consisting of interim construction loans or medium or long-term loans on a property. In some instances, Prudential may have the opportunity to obtain an equity ownership interest in the underlying

[2] The Department notes that all future references to the provisions of the Act shall be deemed to include the parallel provisions of the Code.

[3] In any case where the General Account participates in a shared investment with one or more ERISA-Covered Accounts and a call for additional capital is made, the General Account will always make a capital contribution that is at least equivalent proportionately to the highest capital contribution made by an ERISA-Covered Account.

[4] In the case of shared real estate investments owned entirely by Prudential accounts, if an Account contributes capital equaling less than its pro rata interest in the investment (or makes no contribution at all), that Account's equity interest will be re-adjusted and reduced based on the change in the fair market value of the property caused by the infusion of new capital.

real property upon maturity of the debt or at the election of Prudential. It is possible that shared real estate debt investments might raise questions under section 406 of the Act in essentially two situations: (1) a material modification in the terms of a loan agreement, or (2) a default on a loan. From time to time, the terms of outstanding real estate loans need to be modified to take into account new developments. Such modifications may commonly include extensions of the term of the loan, revised interest rates, revised repayment schedules, changes in covenants or warranties to permit, for example, additional financing to be provided. These situations require a decision on behalf of the lender whether it would be in its own interest to make the modifications in question. Similarly, when a borrower commits an act of default under a loan agreement, the lender must determine, in its own interest, what action, if any, it wishes to take. Such action might involve foreclosure on the loan, a restructuring of the loan arrangement, or, in some cases as appropriate, no action at all. When a debt investment is shared among Accounts, a decision must be made on behalf of each Account with respect to the action to be taken when a loan modification or loan default situation occurs. These situations may also occur where two or more Accounts hold interests in debt investments in respect of the same property, and one interest is subordinate to the other in the event of insolvency. In some cases, moreover, it is conceivable that different actions might be desired by different Accounts. Normally, however, only one unified course of action is possible in the situation. Since Prudential maintains each of these Accounts, the action it decides to take for the participating Accounts may raise questions under section 406 of the Act. Accordingly, exemptive relief is being requested that will permit Prudential on behalf of the Accounts to take appropriate action with respect to the modification of the material terms of a loan or with respect to a default situation when the loan is a shared investment involving one or more ERISA-Covered Accounts. Each such action would require approval of the independent fiduciary for each ERISA-Covered Account. If there is an agreement among the independent fiduciaries as to the course of action to follow with regard to a proposed loan modification, or an adjustment in the rights upon default, such modification or adjustment will be implemented. If, upon full discussion of the matter, no course of action can be agreed upon by the independent fiduciaries, no modification of the terms of the loan or adjustment in the rights upon default would be made. The terms of the loan agreement as originally stated would be carried out. See Section I(e).

II. Joint Venture Investments

26. Many real estate investments are structured as joint venture arrangements (rather than 100 percent ownership interest in property) in which Prudential and another party, such as a real estate developer or manager, participate as joint venturer partners (or co-venturers). Generally, Prudential's co-venturer acts as managing partner of the joint venture. Joint venture investments typically involve several particular features by virtue of the terms and conditions of the joint venture agreements that may, when Prudential's joint venture interest is shared, result in possible violations of section 406 of the Act.

(a) Additional Capital Contributions to Joint Ventures

27. As in the case of investments made entirely by Prudential, joint venture real estate investments sometimes require additional operating capital. Typically, a joint venture agreement will provide for a capital call by the general partner of the joint venture to be made to each joint venturer and that each venturer provide the needed capital on a pro rata basis either in the form of an equity contribution or a loan to the joint venture. If one joint venturer refuses to contribute its pro rata equity share of the capital call, the other joint venturer(s) may contribute additional capital to cover the short-fall and thereby "squeeze down" the interest in the venture of the non-contributing joint venturer.[5] Alternatively, if sufficient additional capital is not provided by the joint venturers, other financing may be sought, or the joint venture may be liquidated. In the case of a capital call where Prudential's joint venture interest is shared by two or more Accounts, a determination must be made on behalf of each Account participating in the shared investment with respect to whether it is appropriate for the Account to provide its proportionate share of additional capital requested by the joint venture. The general rule that Prudential will follow is that each Account will be given the opportunity to provide its pro rata share of the capital call, but for some Accounts it may be determined to be appropriate to provide less than a full share or no additional capital at all. In such cases, the interest of the Account would be reduced proportionately on a fair market basis. In the case of ERISA-Covered Accounts, all decisions regarding the making of additional capital contributions must be approved by the independent fiduciary for the Account. In addition to situations where some Accounts participating in the ownership of Prudential's joint venture interest may not be in a position to provide their share of a capital call, other situations may arise where the co-venturer is unable to make its additional capital contributions. Both of these situations may result in prohibited transactions under section 406 of the Act.

28. *Prudential Shortfall.* The General Account and an ERISA-Covered Account may experience a capital call from the general partner of the joint venture for either an additional equity or debt contribution. If it is determined that the ERISA-Covered Account does not have sufficient funds available to meet its contribution requirement,[6] the General Account may make a loan to the ERISA-Covered Account to enable the ERISA-Covered Account to make its required pro rata capital contribution. Accordingly, subject to the conditions of the proposed exemption, Section II(a)(2) would provide relief for loans of this type. Prior to any loan being made, it would have to be approved by the independent fiduciary for the ERISA-Covered Account. Such loan will be unsecured and non-recourse, will bear interest at a rate that will not exceed the prevailing interest rate on 90-day Treasury Bills, will not be callable at any time by the General Account, and

[5] In the case of a call for additional capital involving a typical joint venture arrangement entered into between parties dealing at arm's length, the joint venture agreement may commonly provide that the equity interest of any non-contributing venturer be re-adjusted, or "squeezed down", on a capital interest basis. This involves re-adjusting the equity interests of the venturers solely on the basis of the percentage of total capital contributed without taking into account any appreciation on the underlying property. This "capital interest" adjustment can substantially diminish the equity interest of the non-contributing venturer in the actual current market value of the underlying property. Thus, this type of re-adjustment is intended to provide an incentive to all venturers to make their proportionate capital contributions so that improvements can be made and the operation of a property continued without burdening the other venturers.

[6] In any case where the General Account and one or more ERISA-Covered Accounts share Prudential's interest in a joint venture, the General Account will always make a capital contribution that is at least equivalent proportionately to the highest capital contribution made by an ERISA-Covered Account, up to its pro rata share of the additional capital call. Thus, the General Account will never be the cause as between the Accounts of a capital contribution shortfall by Prudential that would result in a capital basis squeeze down by a co-venturer.

will be prepayable at any time without penalty at the discretion of the independent fiduciary of the ERISA-Covered Account. In addition, the General Account may make an additional equity contribution to the joint venture to cover the ERISA-Covered Account's shortfall. In that event, the equity interest of the ERISA-Covered Account will be "squeezed down" (relative to the equity interest of the General Account) on a fair market value basis. This option would avoid the capital basis squeeze-down of the ERISA-Covered Account's interest by the co-venturer. Such contribution would be made by the General Account only after the independent fiduciary for the ERISA-Covered Account is given an opportunity to make an additional contribution. See Section II(a)(3).

A similar situation may arise where two ERISA-Covered Accounts, or an ERISA-Covered and a non-ERISA-Covered Account, participate in a joint venture investment. If one Account is unable or unwilling to provide its proportionate share of a capital call, the other Account may be interested in making up the shortfall. This might be accomplished by means of an equity contribution with a resulting re-adjustment on a current fair market value basis in the equity ownership interests of the participating Accounts. Thus, any of these disproportionate contribution situations between Accounts might result in a violation of section 406 of the Act. Subject to the generally applicable conditions of this proposed exemption, Section II(a)(3) provides relief for these disproportionate contributions.

29. *Co-Venturer Shortfall.* In some cases, Prudential's co-venturer in a joint venture investment may be unable to meet its additional capital obligation, and Prudential may deem it advisable for some or all of the participating Accounts to contribute capital in excess of the pro rata share of Prudential's Accounts in the joint venture in order to finance the operation of the property (and thereby squeeze down the equity interest of the co-venturer).[7] The applicant is requesting exemptive relief that would permit additional capital contributions to be made by participating Accounts (including the General Account) on a disproportionate basis if the need arises. Any instance involving the infusion of additional capital to a joint venture will be considered by the independent fiduciary for each ERISA-Covered Account participating in the investment and any action to be taken by the Account must be approved by the independent fiduciary. These actions might include contributing a pro rata share of additional equity capital (including a capital contribution that squeezes down the interest of a co-venturer on the basis provided in the joint venture agreement), contributing more or less than a pro rata share, or contributing no additional capital. See Section II(a)(4).

(b) Third Party Purchases of Joint Venture Properties

30. Under the terms of typical joint venture agreements, if an offer is received from a third party to purchase the assets of the joint venture, and one joint venture partner (irrespective of the percentage ownership interest of the joint venture partner) wishes to accept the offer, the other joint venture partner must either (1) also accept the offer, or (2) buy out the first partner's interest at the portion of the offer price that is proportionate to the first partner's share of the venture. For example, if Prudential on behalf of the Accounts and a real estate developer are joint venture partners in a property and an offer is received from another person to acquire the entire property that the developer wants to accept, Prudential on behalf of the Accounts would be obligated either to sell its interest also to the third party or to buy out the interest of the developer at the portion of the price offered by the third party proportionate to the developer's share of the venture. When Prudential's interest in a real estate joint venture is shared by two or more Accounts, it is likely that the same decision will be appropriate for each Account in any third-party purchase situation. See Sections I(b) and II(b)(1). It is also possible, however, that it might be in the interests of some Accounts to reject the offer and buy-out the developer, while other Accounts might not have the funds to do so or, for some other reason, would elect to sell to the third party. The joint venture agreements typically require, however, that Prudential on behalf of the Accounts provide the co-venturer with a unified buy or sell reply. Thus, in making a buy or sell decision in any of these cases involving an ERISA-Covered Account, Prudential might be deemed to be acting in violation of section 406 of the Act. Further, in order to resolve situations where the same reply is not appropriate for all participating Accounts, various alternatives may be adopted. For example, the Account(s) that wishes to continue owning the property may be willing and able to buy out not only the co-venturer, but also the other participating Account(s) that wishes to accept the third party offer to sell. Or, one Account may itself be willing and able to buy-out the co-venturer while the other Account chooses to continue holding its original interest in the property. Alternatively, all of the Accounts may choose to participate in the buy-out, but on a basis that is not in proportion to their existing ownership interests. Such alternatives, when an ERISA-Covered Account is involved, while all possibly desirable from case to case, may also raise questions under section 406 of the Act, whether or not the General Account is a participant in the investment. Accordingly, the applicant is requesting exemptive relief that would permit Prudential to respond to third-party purchase offers as appropriate under the circumstances. Such a response might involve acceptance of the offer on behalf of all participating Accounts, a buy-out of a co-venturer by some or all of the participating Accounts on a pro rata or non-pro rata basis, or a buy-out of the interest of one participating Account (and of the co-venturer) by other participating Accounts. Any action by any ERISA-Covered Account in these situations will be required to be approved by the independent fiduciary for the Account in accordance with the stalemate procedure, as described below (see rep. 31, below).

31. In a case involving the sharing of a joint venture interest between two ERISA-Covered Accounts, if one ERISA-Covered Account wishes to buy out the co-venturer and the other ERISA-Covered Account is unable or unwilling to do so, the ERISA-Covered Account wishing to buy out the co-venturer would have the opportunity to do so if the other ERISA-Covered Account's interests can also be accommodated. This could be accomplished if, for example (1) the second ERISA-Covered Account wishes to sell its interest to the first ERISA-Covered Account (at a proportionate share of the price offered by the third party offeror) and the first ERISA-Covered Account agrees; or (2) the second ERISA-Covered Account wishes to continue holding its original interest. If, however, the second ERISA-Covered Account wishes to sell its interest and the first ERISA-Covered Account is unwilling or unable to buy it, both Accounts would be required to sell to the third party offeror in order to avoid the expenditure of additional funds by an unwilling Account.

[7] In any case involving a shared joint venture interest held by the General Account and an ERISA-Covered Account, if it is determined that the ERISA-Covered Account will contribute its pro rata share of extra capital, the General Account would also contribute at least its pro rata share of such capital.

If the General Account participates in a joint venture interest subject to a third party purchase offer, the stalemate procedure would provide the same alternatives, except that if the General Account wishes to accept the third party purchase offer and the ERISA-Covered Account wishes to buy out the co-venturer (and is unwilling or unable to buy out the General Account's interest), the General Account would be required to buy out the co-venturer with the ERISA-Covered Account. See Section II(b).

(c) Rights of First Refusal in Joint Venture Agreements

32. Under the terms of typical joint venture agreements, if a joint venture partner wishes to sell its interest in the venture to a third party, the other joint venture partner must be given the opportunity to exercise a right of first refusal to purchase the first partner's interest at the price offered by the third party. For example, if Prudential and a real estate developer are joint venture partners and the developer decided to sell its interest to a third party, Prudential would have the right to purchase the developer's interest at the price offered by the third party. In the case of shared real estate joint ventures, the decision by Prudential on behalf of the Accounts with respect to whether or not to exercise a right of first refusal might raise questions under section 406 of the Act since each Account participating in the investment might be affected differently by such decision. Because, under the terms of the joint venture agreement, only one option (exercise or not exercise) may be chosen by Prudential on behalf of the Accounts, exemptive relief is being requested that would permit Prudential to exercise or not exercise a right of first refusal as may be appropriate under the circumstances. Any action taken on behalf of an ERISA-Covered Account regarding the exercise of such a right would have to be approved by the independent fiduciary. Further, under the requested exemption, if the General Account and an ERISA-Covered Account share a joint venture investment, even though Prudential may initially decide on behalf of the General Account not to make a purchase under a right of first refusal option, the General Account will be required to participate in the purchase of the other joint venturer's interest if the independent fiduciary determines that it is appropriate for the ERISA-Covered Account to participate in the exercise of the right of first refusal on at least a pro rata basis. If, however, two Accounts other than the General Account participate in a joint venture and agreement cannot be reached on behalf of the Accounts on whether to exercise a right of first refusal, the right will not be exercised and the co-venturer will be permitted to sell its interest to the third party, unless one Account decides to buy-out the co-venturer alone. In this regard, it is conceivable that some participating Accounts may elect to take advantage of a right of first refusal opportunity and buy-out a co-venturer without other participating Accounts taking part in the transaction. For example, in the case of a shared joint venture investment involving the General Account (or any other Account) and an ERISA-Covered Account, if the co-venturer wishes to accept an offer to sell its interest and the independent fiduciary of the ERISA-Covered Account decides not to have the account participate in purchasing the co-venturer's interest, the General Account (or other participating Account) would be free to make the purchase on its own. The exercise of a right of first refusal on such a disproportionate basis might also raise questions under section 406 of the Act for which exemptive relief may be needed. See Section II(c).

(d) Buy-Sell Provisions in Joint Venture Agreements

33. Joint venture agreements entered into by Prudential typically provide that one joint venture partner may demand that the other partner either sell its interest to the first partner at a price as determined by the terms of the joint venture agreement or buy out the interest of the first partner at such price. If the other joint venture partner refuses to exercise either option within a specified period, it must sell its interest to the first partner at the stated price. These "buy-sell" provisions are generally used to resolve serious difficulties or impasses in the operation of a joint venture, but generally a joint venture agreement permits the buy-sell provision to be exercised at any time. As in the situations discussed above, the decision by Prudential on behalf of the Accounts to make a buy-sell offer, or its reaction to such an offer made by a co-venturer, may affect various participating Accounts differently. Accordingly, any decision made by Prudential in these cases involving ERISA-Covered Accounts might raise questions under section 406 of the Act. The applicant is requesting exemptive relief that would permit Prudential to make an appropriate decision under the circumstances on behalf of all participating Accounts to make a buy-sell offer to a co-venturer or to react to a buy-sell offer from a co-venturer. Any such decision must be approved by the independent fiduciary for each ERISA-Covered Account participating in the investment.

34. In the event that Prudential recommends the initiation of the buy-sell option against the co-venturer, Prudential will exercise the option if the independent fiduciary on behalf of each participating ERISA-Covered Account approves the recommendation. If, in the case of a General Account/ERISA-Covered Account shared joint venture investment, the independent fiduciary does not agree with Prudential's recommendation, the independent fiduciary would be given the opportunity to buy out the General Account's interest at a price to be determined in accordance with the independent appraisal procedure described above. If the independent fiduciary declines to buy out the General Account's interest, the General Account would then have the opportunity to buy out the ERISA-Covered Account's interest (provided the independent fiduciary for the ERISA-Covered Account approves of such sale), also in accordance with the independent appraisal procedure. If neither the General Account nor the ERISA-Covered Accounts buys out the other's interest in the joint venture investment, Prudential would take the course of action most consistent with the determination of the ERISA-Covered Account, and would, therefore, not exercise the buy-sell option.

In the event that the co-venturer initiates the buy-sell option with respect to a shared joint venture investment, Prudential must either sell its entire interest to the co-venturer or reject the offer and buy-out the co-venturer's interest at that price. If the participating Accounts agree upon the course of action to be taken, Prudential will then take the agreed action. If no agreement is reached, various alternatives may be considered. For example, in the case of a General Account/ERISA-Covered Account shared joint venture investment, if Prudential recommends rejection of the offer (and consequent purchase of the co-venturer's interest), but the independent fiduciary wants to accept the offer, the General Account would have the option to purchase the co-venturer's interest solely on behalf of the General Account. If the General Account chooses this option, the ERISA-Covered Account (which wished to accept the co-venturer's offer) would have the opportunity to sell its interest to the General Account, at a proportionate share of the price offered by the co-venturer, but would not be required to do so. However, if the

General Account declines to purchase the ERISA-Covered Account's interest where the ERISA-Covered Account wishes to accept the buy-sell offer, the entire joint venture interest would be sold to the co-venturer. If the ERISA-Covered Account wishes to reject the buy-sell offer (and purchase the co-venturer's interest) and the General Account wishes to accept the offer, the General Account would be required to purchase its proportionate share of the co-venturer's interest, unless the independent fiduciary for the ERISA-Covered Account elects to purchase more than its proportionate share (including the entire co-venturer interest).

Where two or more ERISA-Covered Accounts share a joint venture investment, the stalemate procedure is similar, except that no ERISA-Covered Account would be required to purchase the interest of a co-venturer (and thus expend additional funds) against its wishes. See Section II(d).

(e) Transactions with Joint Venture Party in Interest

35. The applicant represents that when the General Account holds a 50 percent or more interest in a joint venture, the joint venture itself may be deemed to be a party in interest under section 3(14)(G) of the Act. Thus, any subsequent transaction involving the joint venture and an ERISA-Covered Account that is also participating in the venture (*e.g.*, an additional contribution of capital) may be deemed to be a transaction between the plans participating in an ERISA-Covered Account and a party in interest (the joint venture itself) in violation of section 406. Accordingly, the applicant is requesting exemptive relief from the restrictions of section 406(a) of the Act, only, which would permit: (1) any additional equity or debt capital contributions to a joint venture by an ERISA-Covered Account which is participating in an interest in the joint venture, where the joint venture is a party in interest solely by reason of the ownership on behalf of the General Account of a 50 percent or more interest in such joint venture; or (2) any material modification in the terms of, or action taken upon default with respect to, a loan to the joint venture in which the ERISA-Covered Account has an interest as a lender. Either action would be conditioned upon the approval of the independent fiduciary for the ERISA-Covered Account. See Section III.

36. Prudential has requested relief for the subject transactions effective December 20, 1988. Although Prudential is not aware of any shared real estate investments in which an ERISA-Covered Account maintained by Prudential participates, at least one ERISA-Covered Account has retained an independent fiduciary and may share investments prior to the publication of this notice of proposed exemption. Accordingly, Prudential has requested retroactive relief.

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Initial Proportionate Allocations

The applicant, Prudential, has not requested exemptive relief for the initial allocation of shared real estate investments by Prudential among two or more Accounts, at least one of which is an ERISA-Covered Account, where each of the Accounts participating in a real estate investment participates in the debt and equity interests in the same relative proportions as described in paragraph 3 above. It is the applicant's position that the initial sharing of a real estate investment pursuant to the described allocation by two or more Accounts maintained by Prudential (which may include both its General Account and one or more ERISA-Covered Accounts) does not involve a *per se* violation of sections 406(a)(1)(D) and 406(b)(1) and (b)(2) of the Act.

Regulations under section 408(b)(2) of the Act (29 CFR 2550.408b–2(e)) provide that the prohibitions of section 406(b) are imposed on fiduciaries to deter them from exercising the authority, control or responsibility which makes them fiduciaries when they have interests which may conflict with the interests of the plans for which they act. In such cases, the regulation states that the fiduciaries have interests in the transactions which may affect the exercise of their best judgment as fiduciaries. It is the Department's view, however, that a fiduciary does not violate section 406(b)(1) with respect to a transaction involving the assets of a plan if he does not have an interest in the transaction that may affect his best judgment as a fiduciary.

Similarly, a fiduciary does not engage in a violation of section 406(b)(2) in a transaction involving the plan if he represents or acts on behalf of a party whose interests are not adverse to those of the plan. Nonetheless, if a fiduciary causes a plan to enter into a transaction where, by the terms or nature of that transaction, a conflict of interest between the plan and the fiduciary exists or will arise in the future, that transaction would violate either section 406(b)(1) or (b)(2) of the Act. Moreover, if, during the course of a transaction which, at its inception, did not involve a violation of section 406(b)(1) or 406(b)(2), a divergence of interests develops between the plan and the fiduciary, the fiduciary must take steps to eliminate the conflict of interest in order to avoid engaging in a prohibited transaction.

In the view of the Department, the mere investment of assets of a plan on identical terms with a fiduciary's investment for its own account and in the same relative proportions as the fiduciary's investment would not, in itself, cause the fiduciary to have an interest in the transaction that may affect its best judgment as a fiduciary. Therefore, such an investment would not, in itself, violate section 406(b)(1). In addition, such shared investment, or an investment by a plan with another account maintained by a common fiduciary, pursuant to reasonable procedures established by the fiduciary would not cause the fiduciary to act on behalf of (or represent) a party whose interests are adverse to those of the plan, and therefore, would not, in itself, violate section 406(b)(2).[a]

With respect to section 406(a)(1)(D) of the Act which prohibits the transfer to, or use by or for the benefit of a party in interest (including a fiduciary) of the assets of a plan, it is the opinion of the Department that a party in interest does not violate that section merely because he derives some incidental benefit from a transaction involving plan assets. We are assuming, for purposes of this analysis, that the fiduciary does not rely upon and is not otherwise dependent upon the participation of plans in order to undertake its share of the investment.

Thus, with respect to the investment of plan assets in shared investments which are made simultaneously with investments by a fiduciary for its own account on identical terms and in the same relative proportions, it is the view of the Department that any benefit that the fiduciary might derive from such investment under these circumstances is incidental and would not violate section 406(a)(1)(D) of the Act.

Accordingly, since it appears that the method by which the interests in the real estate investments are allocated to the Accounts maintained by Prudential does not result in *per se* prohibited transactions under the Act, the Department has not proposed exemptive relief with respect to the initial sharing of these investments.

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[a] This analysis does not address any issues which may arise under section 406(b)(2) where investments are shared solely by two or more separate accounts maintained by a common fiduciary and the participation of one account is relied upon to support the initial investment of the other account.

Notice to Interested Persons

Those persons who may be interested in the pendency of the requested exemption include fiduciaries and participants of plans investing in ERISA-Covered Accounts which are engaging in transactions described in the proposed exemption. Because of the number of affected persons, the Department has determined that the only practical form of providing notice to interested persons is the distribution, by Prudential, of the notice of proposed exemption as published in the **Federal Register** to the appropriate fiduciaries of each plan described above. The distribution will occur within 30 days of the publication of the notice of proposed exemption in the **Federal Register**.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

PROPOSED EXEMPTION

Section I—Exemption for Certain Transactions Involving the Management of Investments Shared by Two or More Accounts Maintained by Prudential

If the exemption is granted, as indicated below, the restrictions of certain sections of the Act and the sanctions resulting from the application of certain parts of section 4975 of the Code shall not apply to the following transactions if the conditions set forth in Section IV are met:

(a) *Transfers Between Accounts*

(1) The restrictions of section 406(b)(2) of the Act shall not apply to the sale or transfer of an interest in a shared investment (including a shared joint venture interest) between two or more Accounts (except the General Account), provided that each ERISA-Covered Account pays no more, or receives no less, than fair market value for its interest in a shared investment.

(2) The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the sale or transfer of an interest in a shared investment (including a shared joint venture interest) between ERISA-Covered Accounts and the General Account, provided that such transfer is made pursuant to stalemate procedures, described in this notice of proposed exemption, adopted by the independent fiduciary for the ERISA-Covered Account, and provided further that the ERISA-Covered Account pays no more or receives no less than fair market value for its interest in a shared investment.

(b) *Joint Sales of Property*—The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the sale to a third party of the entire interest in a shared investment (including a shared joint venture interest) by two or more Accounts, provided that each ERISA-Covered Account receives no less than fair market value for its interest in the shared investment.

(c) *Additional Capital Contributions*—The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply either to the making of a pro rata equity capital contribution by one or more of the Accounts to a shared investment; or to the making of a Disproportionate [as defined in Section V(d)] equity capital contribution by one or more of such Accounts which results in an adjustment in the equity ownership interests of the Accounts in the shared investment on the basis of the fair market value of such interests subsequent to such contribution, provided that each ERISA-Covered Account is given an opportunity to make a pro rata contribution.

(d) *Lending of Funds*—The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the lending of funds from the General Account to an ERISA-Covered Account to enable the ERISA-Covered Account to make an additional pro rata contribution, provided that such loan—

(A) Is unsecured and non-recourse with respect to participating plans,

(B) Bears interest at a rate not to exceed the prevailing rate on 90-day Treasury Bills,

(C) Is not callable at any time by the General Account, and

(D) is prepayable at any time without penalty.

(e) *Shared Debt Investments*—In the case of a debt investment that is shared between two or more Accounts, including one or more of the ERISA-Covered Accounts, (1) the restrictions of sections 406(a) and 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to any material modification in the terms of the loan agreement resulting from a request by the borrower, any decision regarding the action to be taken, if any, on behalf of the Accounts

in the event of a loan default by the borrower, or any exercise of a right under the loan agreement in the event of such default, and (2) the restrictions of section 406(b)(2) of the Act shall not apply to any decision by Prudential thereof on behalf of two or more ERISA-Covered Accounts: (A) not to modify a loan agreement as requested by the borrower; or (B) to exercise any rights provided in the loan agreement in the event of a loan default by the borrower, even though the independent fiduciary for one (but not all) of such Accounts has approved such modification or has not approved the exercise of such rights.

Section II—Exemption for Certain Transactions Involving the Management of Joint Venture Interests Shared by Two or More Accounts Maintained by Prudential

If the exemption is granted, the restrictions of certain sections of the Act and the sanctions resulting from the application of certain parts of section 4975 of the Code shall not apply to the following transactions resulting from the sharing of an investment in a real estate joint venture between two or more Accounts, if the conditions set forth in Section IV are met:

(a) *Additional Capital Contributions*—(1) The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the making of additional pro rata equity capital contributions by one or more Accounts participating in the joint venture.

(2) The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the lending of funds from the General Account to an ERISA-Covered Account to enable the ERISA-Covered Account to make an additional pro rata capital contribution, provided that such loan—

(A) Is unsecured and non-recourse with respect to the participating plans,

(B) Bears interest at a rate not to exceed the prevailing rate on 90-day Treasury Bills,

(C) Is not callable at any time by the General Account, and

(D) Is prepayable at any time without penalty.

(3) The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975 (c)(1)(A) through (E) of the Code shall not apply to the making of Disproportionate [as defined in section V(d)] additional equity capital contributions (or the failure to make such additional contributions) in the joint venture by one or more Accounts which result in an adjustment in the equity ownership interests of the Accounts in the joint venture on the basis of the fair market value of such joint venture interests subsequent to such contributions, provided that each ERISA-Covered Account is given an opportunity to provide its proportionate share of the additional equity capital contributions; and

(4) In the event a co-venturer fails to provide all or any part of its pro rata share of an additional equity capital contribution, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the making of Disproportionate additional equity capital contributions to the joint venture by the General Account and an ERISA-Covered Account up to the amount of such contribution not provided by the co-venturer which result in an adjustment in the equity ownership interests of the Accounts in the joint venture on the basis provided in the joint venture agreement, provided that such ERISA-Covered Account is given an opportunity to participate in all additional equity capital contributions on a proportionate basis.

(b) *Third Party Purchase Offers*—(1) In the case of an offer by a third party to purchase any property owned by the joint venture, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the acquisition by the Accounts, including one or more ERISA-Covered Account[s], on either a proportionate or Disproportionate basis of a co-venturer's interest in the joint venture in connection with a decision on behalf of such Accounts to reject such purchase offer, provided that each ERISA-Covered Account is first given an opportunity to participate in the acquisition on a proportionate basis; and

(2) The restrictions of section 406(b)(2) of the Act shall not apply to any acceptance by Prudential on behalf of two or more Accounts, including one or more ERISA-Covered Account[s], of an offer by a third party to purchase a property owned by the joint venture even though the independent fiduciary for one (but not all) of such ERISA-Covered Account[s] has not approved the acceptance of the offer, provided that such declining ERISA-Covered Account[s] are first afforded the opportunity to buy out both the co-venturer and "selling" Account's interests in the joint venture.

(c) *Rights of First Refusal*—(1) In the case of the right to exercise a right of first refusal described in a joint venture agreement to purchase a co-venturer's interest in the joint venture at the price offered for such interest by a third party, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the acquisition by such Accounts, including one or more ERISA-Covered Account[s], on either a proportionate or Disproportionate basis of a co-venturer's interest in the joint venture in connection with the exercise of such a right of first refusal, provided that each ERISA-Covered Account is first given an opportunity to participate on a proportionate basis; and

(2) The restrictions of section 406(b)(2) of the Act shall not apply to any decision by Prudential on behalf of the Accounts not to exercise such a right of first refusal even though the independent fiduciary for one (but not all) of such ERISA-Covered Accounts has approved the exercise of the right of first refusal, provided that none of the ERISA-Covered Accounts that approved the exercise of the right of first refusal decides to buy-out the co-venturer on its own.

(d) *Buy-Sell Options*—(1) In the case of the exercise of a buy-sell option set forth in the joint venture agreement, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the acquisition by one or more of the Accounts on either a proportionate or Disproportionate basis of a co-venturer's interest in the joint venture in connection with the exercise of such a buy-sell option, provided that each ERISA-Covered Account is first given the opportunity to participate on a proportionate basis; and

(2) The restrictions of section 406(b)(2) of the Act shall not apply to any decision by Prudential on behalf of two or more Accounts, including one or more ERISA-Covered Account[s], to sell the interest of such Accounts in the joint venture to a co-venturer even though the independent fiduciary for one (but not all) of such ERISA-Covered

Account(s) has not approved such sale, provided that such disapproving ERISA-Covered Account is first afforded the opportunity to purchase the entire interest of the co-venturer.

Section III—Exemption for Transactions Involving a Joint Venture or Persons Related to a Joint Venture

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply, if the conditions in Section IV are met, to any additional equity or debt capital contributions to a joint venture by an ERISA-Covered Account that is participating in an interest in the joint venture, or to any material modification in the terms of, or action taken upon default with respect to, a loan to the joint venture in which the ERISA-Covered Account has an interest as a lender, where the joint venture is a party in interest solely by reason of the ownership on behalf of the General Account of a 50 percent or more interest in such joint venture.

Section IV—General Conditions

(a) The decision to participate in any ERISA-Covered Account that shares real estate investments must be made by plan fiduciaries who are totally unrelated to Prudential and its affiliates. This condition shall not apply to plans covering employees of Prudential.

(b) Each contractholder or prospective contractholder in an ERISA-Covered Account which shares or proposes to share real estate investments is provided with a written description of potential conflicts of interest that may result from the sharing, a copy of the notice of pendency, and a copy of the exemption if granted.

(c) An independent fiduciary must be appointed on behalf of each ERISA-Covered Account participating in the sharing of investments. The independent fiduciary shall be either

(1) A business organization which has at least five years of experience with respect to commercial real estate investments,

(2) A committee composed of three to five individuals who each have at least five years of experience with respect to commercial real estate investments, or

(3) The plan sponsor (or its designee) of a plan (or plans) that is the sole participant in an ERISA-Covered Account.

(d) The independent fiduciary or independent fiduciary committee member shall not be or consist of Prudential or any of its affiliates.

(e) No organization or individual may serve as an independent fiduciary for an ERISA-Covered Account for any fiscal year if the gross income (other than fixed, non-discretionary retirement income) received by such organization or individual (or any partnership or corporation of which such organization or individual is an officer, director, or ten percent or more partner or shareholder) from Prudential, its affiliates and the ERISA-Covered Accounts for that fiscal year exceeds five percent of its or his or her annual gross income from all sources for the prior fiscal year. If such organization or individual had no income for the prior fiscal year, the five percent limitation shall be applied with reference to the fiscal year in which such organization or individual serves as an independent fiduciary. The income limitation shall not include compensation for services rendered to a single-customer ERISA-Covered Account by an independent fiduciary who is initially selected by the Plan sponsor for that ERISA-Covered Account.

The income limitation will include income for services rendered to the Accounts as independent fiduciary under any prohibited transaction exemption(s) granted by the Department. Notwithstanding the foregoing, such income limitation shall not include any income for services rendered to a single customer ERISA-Covered Account by an independent fiduciary selected by the Plan sponsor to the extent determined by the Department in any subsequent prohibited transaction exemption proceeding.

In addition, no organization or individual who is an independent fiduciary, and no partnership or corporation of which such organization or individual is an officer, director or ten percent or more partner or shareholder, may acquire any property from, sell any property to, or borrow any funds from, Prudential, its affiliates, or any Account maintained by Prudential or its affiliates, during the period that such organization or individual serves as an independent fiduciary and continuing for a period of six months after such organization or individual ceases to be an independent fiduciary, or negotiate any such transaction during the period that such organization or individual serves as independent fiduciary.

(f) The independent fiduciary acting on behalf of an ERISA-Covered Account shall have the responsibility and authority to approve or reject recommendations made by Prudential or its affiliates for each of the transactions in this proposed exemption. In the case of a possible transfer or exchange of any interest in a shared investment between the General Account and an ERISA-Covered Account, the independent fiduciary shall also have full authority to negotiate the terms of the transfer. Prudential and its affiliates shall involve the independent fiduciary in the consideration of contemplated transactions prior to the making of any decisions, and shall provide the independent fiduciary with whatever information may be necessary in making its determinations.

In addition, the independent fiduciary shall review on an as-needed basis, but not less than twice annually, the shared real estate investments in the ERISA-Covered Account to determine whether the shared real estate investments are held in the best interest of the ERISA-Covered Account.

(g) Prudential maintains for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (h) of this Section to determine whether the conditions of this exemption have been met, except that a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Prudential or its affiliates, the records are lost or destroyed prior to the end of the six-year period.

(h)(1) Except as provided in paragraph (2) of this subsection (h) and notwithstanding any provisions of subsection (a)(2) and (b) of section 504 of the Act, the records referred to in subsection (g) of this Section are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(B) Any fiduciary of a plan participating in an ERISA-Covered Account who has authority to acquire or dispose of the interests of the plan, or any duly authorized employee or representative of such fiduciary,

(C) Any contributing employer to any plan participating in an ERISA-Covered Account or any duly authorized employee or representative of such employer, and

(D) Any participant or beneficiary of any plan participating in an ERISA-Covered Account, or any duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in subparagraphs (B) through (D) of this subsection (h) shall be authorized to examine trade secrets of Prudential, any

of its affiliates, or commercial or financial information which is privileged or confidential.

Section V—Definitions

For the purposes of this exemption:

(a) An "affiliate" of Prudential includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with Prudential,

(2) Any officer, director or employee of Prudential or person described in section V(a)(1), and

(3) Any partnership in which Prudential is a partner.

(b) An "Account" means the General Account (including the general accounts of Prudential affiliates which are managed by Prudential), any separate account managed by Prudential, or any investment advisory account, trust, limited partnership or other investment account or fund managed by Prudential.

(c) The "General Account" means the general asset account of Prudential and any of its affiliates which are insurance companies licensed to do business in at least one State as defined in section 3(10) of the Act.

(d) An "ERISA-Covered Account" means any Account (other than the General Account) in which employee benefit plans subject to Title I or Title II of the Act participate.

(e) "Disproportionate" means not in proportion to an Account's existing equity ownership interest in an investment, joint venture or joint venture interest.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions to be consummated pursuant to the exemption.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Signed at Washington, DC, this 7th day of October, 1993.

Ivan L. Strasfeld,

Director, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 93–25232 Filed 10–14–93; 8:45 am]

BILLING CODE 4510–29–P

[Application No. D–9213, et al.]

Proposed Exemptions Texas Instrument Employees Pension Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. *Attention:* Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, NW, Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Texas Instruments Employees Pension Plan (the Plan) Located in Dallas, Texas

[Application No. D–9213]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of section 406(a)(1)(A), 406(a)(1)(D), 406(a)(2), 406(b)(1), 406(b)(2), and 407(a)(1) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the leasing by the Plan to Texas Instruments, Inc. (the Employer) of either or both of two parcels of improved real property located in Dallas, Texas (the Dallas Parcels) and to the continued holding by the Plan of the Dallas Parcels, effective upon the sale, lease, or other disposition to third parties of another parcel owned by the Plan, located in a suburb of Detroit, Michigan (the Michigan Parcel), or upon the expiration of the existing lease between the Plan and the Employer on the Michigan Parcel. This exemption is conditioned upon the adherence to the material facts and representations described herein and upon the satisfaction of the following requirements:

(a) An independent qualified fiduciary (the I/F), acting on behalf of the Plan, determines that the transactions are feasible, in the interest of, and protective of the Plan;

(b) The I/F manages the Dallas Parcels on an on-going basis and is empowered to take whatever action it deems appropriate to serve the best interest of the Plan and its participants and beneficiaries, including but not limited to the retention, leasing, or sale of the Dallas Parcels;

(c) The fair market value of the Dallas Parcel(s) will at no time exceed twenty-five percent (25%) of the value of the total assets of the Plan;

(d) The I/F negotiates, reviews, and approves the terms of the leases with the Employer on the Dallas Parcels;

(e) The terms and conditions of each of the leases with the Employer on the Dallas Parcels will be no less favorable to the Plan than those obtainable by the Plan under similar circumstances when negotiated at arm's length with unrelated third parties;

(f) An independent qualified appraiser determines the fair market value of the rental on each of the Dallas Parcels;

(g) The I/F monitors compliance with the terms of the leases on the Dallas Parcels to the Employer throughout the duration of such leases and is responsible for legally enforcing the payment of the rent and the proper performance of all other obligations of the Employer under the terms of the leases on the Dallas Parcels;

(h) The Plan incurs no fee, costs, commissions, or other charges or expenses as a result of its participation in the transactions, other than the fee payable to the I/F; and

(j) The I/F ensures that the terms and conditions described herein are at all time satisfied.[1]

Summary of Facts and Representations

1. The Employer and sponsor of the Plan is a Delaware corporation with offices at 13500 North Central Expressway, Dallas, Texas. The Employer is engaged in the manufacture and sale of a variety of products in the electrical and electronic industry for industrial, consumer, and government markets. It is represented that the Employer employs over 40,000 individuals and sponsors several employee benefit plans.

2. The Plan is a defined benefit pension plan which, as of September 18, 1992, had participants and beneficiaries totaling approximately 42,625. The administrator of the Plan is a retirement committee composed of three members who are officers of the Employer. As of May 31, 1992, the Plan's assets had an aggregate fair market value of approximately $680.9 million.

All the assets of the Plan are held in a single trust (the Trust) for which the Northern Trust Company, an Illinois corporation, serves as trustee. The assets of the Plan held in the Trust consist of various securities and real property.

The Plan's real property holdings in the Trust include six parcels. Among these six, are the two Dallas Parcels and the Michigan Parcel (collective, the Properties). It is represented that the Plan acquired the Michigan Parcel and a substantial portion of one of the Dallas Parcels from the Employer and that each of these three Properties are currently leased in their entirety to the Employer. These Properties have an estimated value of $20.1 million and constitute approximately 3% of the total value of the Trust's assets.[2]

3. The Plan acquired the Michigan Parcel, located at 33767 West Twelve Mile Road, Farmington Hills, Michigan, on March 14, 1980, at a cost of $1,406,096. The Michigan Parcel presently consists of approximately 16.5 acres of commercial real estate. It is represented that the Plan in 1981 constructed an office complex and warehouse on the Michigan Parcel at a total cost for the building of $3,757,769. The aggregate cost to the Plan for the land and the buildings was approximately $5.2 million. An appraisal of the Michigan Parcel prepared by J. Rodney Layton, MAI, of Holmes and Layton, Inc., real estate appraisers and counselors, established the fair market value of the Michigan Parcel on March 1, 1993, at $3,745,000.[3] It is represented that the fair market value of the Michigan Parcel constitutes approximately .6% of the total value of the Plan's assets.

The lease agreement between the Plan and the Employer on the Michigan Parcel provided for an initial lease term of twelve (12) years that commenced on June 1, 1981, and expired on May 31, 1993. Pursuant to that agreement, the Employer could have extended the lease term for up to three (3) additional five (5) year periods. However, by letter dated February 9, 1993, the Employer agreed to renew the lease for a period of only one (1) year from the May 31, 1993, expiration date, in order to avoid the occurrence of a prohibited transaction while consideration of this proposed exemption is pending and to enable the Plan to market the Michigan Parcel to a potential third party purchaser free of any contingency. It is represented that the Employer does not intend to continue leasing the Michigan Parcel after May 31, 1994.

It is represented that rent on the Michigan Parcel during the first ten (10) years of the initial lease term was charged at a fixed rate that provided to the Plan an annual net return equal to approximately 11.8% of the Plan's total investment in the Michigan Parcel. Rental charges for the final two (2) years of the initial term or for any extended term were to be determined by reference to the prevailing market rate for properties of comparable quality, size, utility, and location; provided that the Plan received the same annual net return, and the rent did not decrease. It is represented that the renewal by the Employer for the one (1) year term due to expire in 1994 is at the current rental rate under the lease agreement.

4. One of the two Dallas Parcels consists of a tract of approximately 13.2 acres of land which is improved by an office/industrial facility, situated at the intersection of Walnut Lane and Floyd Road (the Floyd Road Parcel) in the northern portion of Dallas, Texas. The Plan acquired the Floyd Road Parcel on July 23, 1979, from the Royal Gorge Company, an unrelated third party, and completed construction on the office/industrial facility on March 18, 1981, at a total cost for the land and building of approximately $6 million. The Floyd Avenue Parcel is estimated to have a current fair market value of approximately $6.2 million.

The Plan agreed to lease the Floyd Avenue Parcel to the Employer, pursuant to a lease agreement which provided for an initial lease term of ten (10) years, commencing on March 18, 1981, and expiring on March 17, 1991. Upon expiration of the initial term, the lease was renewed for an additional period of five (5) years which is due to

[1] For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

[2] The Employer represents that the exemption provided by section 408(e) of the Act applies to the acquisition by the Plan of the Dallas Parcels and the Michigan Parcel and the leaseback of these Properties to the Employer. The Department herein does not opine whether the requirements of the statutory exemption, as set forth by section 408(e) of the Act, have been met by the Employer under the circumstances described. Further, the Department herein is not proposing relief for any violation of Part 4 of the Act which may have arisen as a result of the acquisition or holding of these three Properties.

[3] It is represented that the Plan has received from an unrelated third party an offer to purchase the Michigan Parcel for cash in the amount of $4.175 million, subject to various conditions, including but not limited to, the purchaser's remaining satisfied with the Michigan Parcel after the expiration of a ninety (90) day review period and the purchaser's obtaining occupancy of the property on or before February 1, 1994.

expire on March 17, 1996. Pursuant to the lease agreement, the Employer may extend the lease term for up to two (2) additional five (5) year periods.

Rent on the Floyd Road Parcel during the initial term was charged at a fixed rate that provided the Plan with an annual net return equal to approximately 12.25% of the Plan's total investment in the Floyd Road Parcel. At the commencement of each additional five (5) year extended term, rent will be determined by reference to prevailing market rates at the beginning of each subsequent five (5) year term, but such reference will in no instance cause a decrease in rent.

5. The other of the Dallas Parcels is located on Lemmon Avenue (the Lemmon Avenue Parcel) near downtown Dallas, Texas. The Lemmon Avenue Parcel actually consists of two adjacent tracts of land 13 acres and 1.4 acres, respectively, aggregating approximately 14.4 acres. The Lemmon Avenue Parcel is improved by an office/industrial facility. It is represented that the Plan acquired from the Employer on December 27, 1960, the 13 acre tract of the Lemmon Avenue Parcel with its improvements, at a cost of approximately $3.7 million. On October 19, 1964, the Plan acquired the additional 1.4 acres of land of the Lemmon Avenue Parcel from an unrelated third party. Subsequently, the Employer constructed capital improvements on the 13 acre tract as an extension to the existing building on that parcel. It is represented that when the capital improvements were completed in 1987, the Plan purchased from the Employer such capital improvements at a cost of approximately $4.3 million. The Lemmon Avenue Parcel, including all additional land and improvements, is estimated to have a current fair market value of $9.6 million.

The entire Lemmon Avenue Parcel is and has been leased to the Employer. The orignal lease agreement between the Plan and the Employer on the Lemmon Avenue Parcel provided for a single, non-extendable term at a fixed annual net rate of return equal to approximately 11.5% of the Plan's original investment. The original lease term commenced on March 31, 1962, and was to have expired on December 31, 1989. However, on December 21, 1987, upon completion of the capital improvements and the Plan's purchase of such improvements, the Plan entered into an extended lease with the Employer for a fixed term of ten (10) years from January 1, 1990, through December 31, 1999, with no renewal options. During this current extended lease term, rent is fixed in two amounts. The first amount applies to the capital improvements for the period January 1, 1988, through December 1, 1997, and includes an annual net return of approximately 9.5% of the Plan's total investment in the capital improvements. Under the provisions of the extended lease term, the Employer is not obligated to pay rent with respect to the capital improvements for the period commencing January 1, 1998 through December 31, 1999. The second amount applies to the remainder of the Lemmon Avenue Parcel for the period January 1, 1990, through December 31, 1999, and includes an annual net return of approximately 11.5% of the Plan's total investment in the Lemmon Avenue Parcel, excluding the capital improvements. During the final five (5) years of the extended term, the second amount of rent will be adjusted, if necessary, by reference to the prevailing market rate for properties of comparable quality, size, utility, and location; provided that such reference will in no instance cause a decrease in rent.

The Employer represents that in 1990 it first discovered underground water contamination at the Lemmon Avenue Parcel. It is further represented that the contamination possibly occurred as a result of manufacturing operations formerly conducted on the premises by the Employer. In this regard, the Employer has retained an independent environmental expert to determine the extent of the contamination and to design remedial actions to remove such contamination. Accordingly, the Employer has agreed to indemnify and hold the Trust harmless with respect to all costs of such remedial action and will protect the Trust from any losses as a result of the contamination.

6. It is represented that the Dallas Parcels and the Michigan Parcel are presently deemed to be "qualifying employer real property," within the meaning of section 407(d)(4) of the Act. This representation is based, in part, on the fact that these three Properties are leased to the Employer by the Plan and the fact that such Properties are not all located in the same geographic area. The applicant maintains that the "substantial number" requirement and the requirement that the parcels be "dispersed geographically," as set forth in section 407(d)(4)(A) of the Act are met.[4] As a result, the applicant maintains that the acquisition and leasing of the three Properties has been pursuant to the statutory exemption provided by section 408(e) of the Act and 4975 of the Code. Similarly, the applicant maintains that the purchase of the capital improvements on the Lemmon Avenue Parcel in December 1987, by the Plan from the Employer was also covered by section 408(e).

It is anticipated that either, as noted in footnote 3 above, the Plan will on or before February 1, 1994, sell the Michigan Parcel to third parties, or in May 1994, upon expiration of the lease on the Michigan Parcel, the Employer will not extend the term. In either event, if the Plan continues to lease the Dallas Parcels to the Employer after the disposition of the Michigan Parcel, the applicant maintains that the geographic dispersal requirement, as set forth in section 407(d)(4)(A) of the Act, may no longer be satisfied, because the Dallas Parcels are located within eight miles of each other in the same city. In addition, if after the disposition of the Michigan Parcel, the Employer fails to renew the lease on one of the Dallas Parcels or if the Plan sells, leases, or otherwise disposes of either the Floyd Road Parcel or the Lemmon Avenue Parcel to third parties, then only one of the Dallas Parcels would remain subject to a lease with the Employer. In this circumstance, the applicant maintains that the "substantial number" requirement, as set forth in section 407(d)(4)(A) of the Act may not be satisfied.

In the event the Dallas Parcels no longer are deemed to be "qualifying employer real property," it is represented that by continuing to hold the Dallas Parcels and continuing to lease such parcels to the Employer, the Plan may no longer be able to rely on the statutory exemption afforded by section 408(e) of the Act. Accordingly, the applicant seeks exemptive relief for violations of section 406 and 407 of the Act which may arise from the Plan's continued holding and leasing of either or both of the Dallas Parcels to the Employer, effective upon the sale, lease, or other disposition to third parties of the Michigan Parcel or upon the

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[4] As set forth in relevant part below, section 407(d)(4) of the Act, defines the term "qualifying employer real property" as parcels of employer real property—(A) if a substantial number of the parcels are dispersed geographically; (B) if each parcel of real property and the improvements thereon are suitable (or adaptable without excessive cost) for more than one use; and (C) even if all of such real property is leased to one lessee (which may be an employer, or an affiliate of an employer). Section 408(e) of the Act provides, in relevant part, for the acquisition, sale, or lease by a plan of qualifying employer real property (as defined in section 407(d)(4))—(1) if such acquisition, sale, or lease is for adequate consideration ..., (2) if no commission is charged with respect thereto, and (3) if— ...(B) in the case of an acquisition or lease of qualifying employer real property by a plan which is not an eligible individual account plan, ... the lease or acquisition is not prohibited by section 407(a).

expiration of the existing lease with the Employer on the Michigan Parcel.

7. It is represented that the proposed transactions are feasible, in that such transactions will be monitored by an I/F. It is further represented that there are sufficient safeguards for the Plan and its participants and beneficiaries. In this regard, it is represented that the I/F has the obligation to assess the prudence of the continued ownership by the Plan of the Properties and to negotiate, when appropriate, favorable terms for the sale, lease, or other disposition of such Properties. Under the terms of the proposed exemption, it is represented that the I/F is responsible for monitoring and legally enforcing the payment of rent and the proper performance of all other obligations of the Employer under the terms of the leases on the Dallas Parcels. The I/F is also responsible for ensuring that all the terms and conditions as described herein are at all times satisfied.

The applicant represents that the proposed exemption is in the interest of the Plan, and its participants and beneficiaries, in that the I/F is responsible for making careful, reasoned, and well-supported decisions for the holding, disposal, or leasing of the Properties. Such an exemption would permit the Plan to continue to own the Dallas Parcels and to lease such parcels to the Employer, until such time as these parcels can either be disposed of in an orderly fashion or leased to parties other than the Employer. The applicant maintains that without the requested exemption and in order to avoid the occurrence of prohibited transactions, the Plan would have to choose between: (a) Terminating prematurely the existing leases with the Employer on the Dallas Parcels; (b) disposing of both Dallas Parcels simultaneously in a forced sale in a depressed real estate market; or (c) disposing of one of the Dallas Parcels simultaneously with the expiration of the Employer's lease on the other parcel. Alternatively, the Plan would have the choice of acquiring another "geographically dispersed" parcel, leasing it to the Employer, and continuing to rely on the statutory exemption provided by section 408(e) of the Act. The applicant maintains that none of these options would be in the best interest of the Plan, because such actions would be taken solely to avoid the consequences of committing a prohibited transaction, rather than with regard to whether such actions were proper, prudent, or desirable.

8. The NationsBank of Texas, N.A. (NationsBank) (formerly NCNB Texas National Bank)[5], a national banking association, has been retained to act on behalf of the Plan as the I/F with respect to the proposed transactions. In this regard, the fees and expenses of NationsBank in connection with the proposed exemption will be paid by the Plan. NationsBank acknowledges it is a fiduciary and that it possesses complete authority and control respecting whether the Plan will retain, lease, or sell any or all of the three Properties that are described herein. NationsBank represents that it understands its duty as fiduciary is to act prudently and solely in the interest of the Plan's participants and beneficiaries and for the exclusive purpose of providing benefits to such participants and beneficiaries.

With respect to NationsBank's qualifications to serve as I/F, it is represented that NationsBank has general experience in acting as a fiduciary and specific experience in acting on behalf of employee benefit plans. In this regard, as of May 31, 1992, NationsBank had in excess of $45 billion in assets under discretionary management, including more that $21 billion in assets of employee benefit plans subject to the Act. NationsBank is now the subtrustee and was previously the trustee of the Plan with respect to the three Properties described herein and as such developed a thorough knowledge of the Properties. In addition, it is represented that NationsBank, through its Real Estate Investment Services unit located in Dallas, Texas, is familiar with the real estate markets in which the Dallas Parcels are located.

With respect to its independence, NationsBank represents that it has no interlocking directorships with the Employer.[6] However, NationsBank does provide cash management, payroll checking, foreign currency exchange, and related banking services to the Employer. In its capacity as a commercial bank, NationsBank receives deposits from, and, in the past, has served as a lender to, the Employer and certain of its subsidiaries. It is represented that the Employer does not engage in long-term borrowing from NationsBank, but maintains a line of credit with NationsBank which if it were in full use by the Employer would amount to .025% of NationsBank outstanding credit facilities, as of May 14, 1993. It is represented that NationsBank has also served as a former trustee or is currently serving in the capacities as investment manager for a stock index fund, and as a custodian of securities issued by the Employer under various trusts established for other plans sponsored by the Employer or its subsidiaries. It is represented that fees received from the Employer by NationsBank for services rendered constitute less than one quarter of one percent (.25%) of NationsBank's total annual net income of $434,550,000, as of December 31, 1992.

In light of the Employer's expressed intention not to renew the lease on the Michigan Parcel, NationsBank has determined that it is in the interest of the Plan to either sell or lease the Michigan Parcel to a third party in order to insure an adequate rate of return to the Plan. In this regard, NationsBank represents that it presently has an offer from a good faith purchaser for the sale of the Michigan Parcel and will consummate such sale only if it determines, at the time of the closing, that the sale price is at fair market value or better.

With respect to the Dallas Parcels, however, according to NationsBank, the sale or leasing of such parcels to third parties is presently not a prudent course of action and is not in the best interests of the Plan and its participants and beneficiaries. In this regard, NationsBank represents that the real estate market conditions in Dallas, Texas, are such that the Plan would not realize as favorable a return on its investment, were it to sell one or both

[5] It is represented that NationsBank has become involved in certain lawsuits and investigations through its relationship with various predecessors and affiliates. In this regard, it is represented that the Department has recently investigated the procedures and practices employed by the predecessor of NationsBank, NCNB Texas National Bank, involving the receipt and disposition of proxies for stock owned by its employee benefit plan clients. Enclosed with the application is a copy of a letter, dated August 28, 1992, from the Dallas Area Office which indicates that the investigation was concluded and that no further action by the Department was contemplated at that time.

In addition, NationsBank is involved in litigation, as a result of its affiliation through a common parent corporation with NationsBank Trust Company (Georgia), N.A. (NationsBank Trust). It is represented that NationsBank Trust, the purchaser of Citizens and Southern Trust Company (Citizens), has been named in a lawsuit solely because of its position as successor to Citizens. The litigation involves allegations of breach of fiduciary duty in the conduct of Citizens, as trustee for an ESOP, with respect to its procedures and decision making on tenders. The suit was filed in 1992 and is pending in the U.S. District Court for the Northern District of Georgia (No. 1:92–CV–1474–HTW). The Department has obtained summary judgment on one of its allegations involving indemnification running from the ESOP sponsor to Citizens. A motion for reconsideration has been filed by NationsBank and is pending. No trial date has been set.

[6] It is represented that directors and officers of the Employer have from time to time served as directors of the parent and affiliates of RepublicBank Dallas, N.A., the predecessor of NationsBank.

of the Dallas Parcels. Further, in the view of NationsBank, the discovery of environmental contamination on the Lemmon Avenue Parcel significantly reduces the chances of a sale or a lease of that property to third parties. NationsBank notes that both of the Dallas Parcels are currently leased to the Employer under favorable terms. For this reason and those stated above, NationsBank believes that the Plan should continue to hold the Dallas Parcels and continue its leasing arrangements with the Employer until such time as the disposition of the Dallas Parcels is prudent and in the best interest of the Plan and its participants and beneficiaries.

NationsBank represents that the leasing and continued holding of the Dallas Parcels is administratively feasible in that procedures are in place with respect to these parcels: (a) To maintain income and expense records; (b) to secure adequate hazard insurance and other appropriate types of insurance; (c) to procure periodic updates of appraisals; (d) to monitor timely payment of real estate taxes, repairs, and capital expenditures; and (e) to monitor leases and rents and follow up in a timely fashion on delinquencies.

NationsBank represents that the proposed transactions are protective of the Plan in that the fair market value of all three Properties constitutes no more than five percent (5%) of the total value of the assets of the Plan. It is further represented that currently the Floyd Avenue Parcel and Lemmon Avenue Parcel involve .9% and 1.4% of the Plan's assets, respectively. NationsBank represents that it will monitor the proportion of Plan assets constituted by the Dallas Parcels and will take steps necessary to insure that at all times during the transactions the value of the Dallas Parcels do not constitute more than twenty-five percent (25%) of the value of the Plan's total assets. In this regard, if it appears to NationsBank that, due to shrinkage in the value of other Plan assets or increase in the value of the Dallas Parcels, the value of such parcels is approaching twenty-five percent (25%) of the total value of the assets in the Plan, NationsBank will lease one or both of the Dallas Parcels to unrelated third parties or dispose entirely of one or both in order to prevent exceeding the twenty-five percent (25%) limitation, as set forth in this proposed exemption.

It is represented that the transactions are in the interest of the Plan in that the Dallas Parcels provide a favorable return. In this regard, the Lemmon Avenue Parcel and the Floyd Avenue Parcel provide cash flow, respectively, in the amount of $116,087 and $61,904 from monthly rental income.

NationsBank represents that it has caused a review of the terms of the existing leases on the Dallas Parcels. In this regard, NationsBank notes that the leases on the Dallas Parcels provide for triple net terms. Further, NationsBank has determined that the lease on Lemmon Avenue Parcel terminates only upon its expiration, and the lease on the Floyd Avenue Parcel provides for termination of the lease upon its expiration or upon condemnation of the property. In the opinion of NationsBank, these restrictive termination provisions of the leases on the Dallas Parcels are protective of the rights of the Plan and its participants.

NationsBank has also examined the rental rates in the leases on the Dallas Parcels and has determined that the rentals currently in effect under the leases are at least as favorable to the Plan as those obtainable from unrelated third parties under similar circumstances. In making this determination, NationsBank has relied upon the report of an independent appraiser. NationsBank represents that it has taken into consideration the following factors: (a) That the value of each of the three Properties compared favorably with like properties in the area, and (b) that the duration of the initial and renewal terms of each lease, and the adjustment of the rental rate to market rates compared favorably with lease provisions on similar properties. In the opinion of NationsBank, the rental rates on the Dallas Parcels were determined by the fair market value of rents in leases on similar properties, and provisions in the leases on the Dallas Parcels ensure that changes in the value of such parcels will not affect the rents received by the Plan.

Further, NationsBank represents that in a timely fashion before the transactions occur, it will obtain and assess appraisals from independent, qualified MAI appraisers on each of the Dallas Parcels, and will review the existing leases on such parcels. NationsBank represents that after such review, unless the rental rates on the existing leases on the Dallas Parcels are at or above fair market value and the other terms are at least as favorable to the Plan as arm's length terms with unrelated third parties, it will renegotiate and approve new lease terms on the Dallas Parcels to obtain fair market value terms prior to entering into the transactions.

NationsBank represents that, during the duration of the leases on the Dallas Parcels and for as long as the Plan continues to hold the Dallas Parcels, it will monitor both the Dallas commercial market and the leases on the Dallas Parcels. If, at the expiration of either lease or any extended term on the Dallas Parcels it appears that the renewal terms are less favorable to the Plan than arm's length terms, NationsBank represents that it will not renew, unless it can negotiate arm's length terms. In this regard, NationsBank represents that it will engage an independent qualified MAI appraiser for advice before determining the fair market rental value on the Dallas Parcels. Further, NationsBank represents that it has established internal procedures to ensure that steps will be taken upon default or upon late payment of rent by the Employer on either of the leases on the Dallas Parcels. Finally, NationsBank has represented that it will be responsible for ensuring that the terms and conditions as described herein are at all times satisfied.

9. Angela H. Butkus, MAI and L. Randall Denton, MAI, real estate appraisers of L.R. Denton & Co. (the Denton Appraisers), have reviewed and analyzed certain appraisal reports on the Dallas Parcels prepared by Henry S. Miller Appraisal Corporation (the Miller Corp.) and H.W. Dunham & Associates, Inc. (Dunham Inc.), independent, qualified MAI appraisal companies which are unrelated to the Employer. The Denton Appraisers have also reviewed and analyzed the lease documents with respect to the Floyd Avenue Parcel and the Lemmon Avenue Parcel. The purpose of the review by the Denton Appraisers was to render an opinion whether the values on the Dallas Parcels included in the appraisal reports were reasonable and whether the terms and rental rates in the leases on the Dallas Parcels reflected fair market value.

The Denton Appraisers reviewed three appraisals on the Lemmon Avenue Parcel: (a) A valuation prepared by the Miller Corp., dated June 30, 1989, at $6,500,000 ($26.06/SF); (b) a valuation prepared by Dunham Inc., dated June 30, 1989, at $6,250,000 ($25.06/SF); and (c) valuations prepared by Dunham Inc., dated December 5, 1991, of the fee simple including the building expansion at $7,000,000 ($22.48/SF) and of the leased fee at $9,550,000 ($30.67/SF). The Denton Appraisers also reviewed one appraisal on the Floyd Road Parcel prepared by Dunham Inc. in November 27, 1991, which estimated the value of the fee simple at $5,400,000 ($20.61/SF) and the value of the leased fee at $6,150,000 ($23.47/SF).

With respect to the fair market value of the Dallas Parcels, in the opinion of

the Denton Appraisers all the appraisal reports described in the paragraph above used three approaches to value and generally complied with appraisal standards. The Denton Appraisers noted that such appraisal reports contained a sufficient amount of data in which to arrive at conclusions of value. The Denton Appraisers were able to determine that the estimates of value were reasonable, based on their own knowledge of the real estate market and on the comparable data found in the reports.

With respect to the leasing terms and rental rates for the Dallas Parcels, the Denton Appraisers concurred that the current rental rate for the Floyd Road Parcel is considered to be above market, as of November 27, 1991, and that the current lease on the Lemmon Avenue Parcel appeared also to be above market rates, as of December 5, 1991. As indicated above, it is represented that before the transactions occur, the fair market rental value of the Dallas Parcels will be determined by an independent, qualified MAI appraiser.

10. In summary, the applicant represents that the proposed transactions meet the statutory criteria of section 408(a) of the Act because:

(a) The I/F will determine that the transactions are feasible, in the interest of, and protective of the Plan;

(b) The I/F will manage the Dallas Parcels on an on-going basis and will be empowered to take whatever action it deems appropriate to serve the best interest of the Plan and its participants and beneficiaries, including but not limited to the retention, leasing, or sale of the Dallas Parcels;

(c) The fair market value of the Dallas Parcel(s) will at no time exceed twenty-five percent (25%) of the value of the total assets of the Plan;

(d) The I/F will negotiate, review, and approve the terms of the leases with the Employer on the Dallas Parcels;

(e) The terms and conditions of each of the leases with the Employer on the Dallas Parcels will be no less favorable to the Plan than those obtainable by the Plan under similar circumstances when negotiated at arm's length with unrelated third parties;

(f) An independent qualified appraiser will determine the fair market value of the rental of each of the Dallas Parcels;

(g) The I/F will monitor compliance with the terms of the leases on the Dallas Parcels to the Employer throughout the duration of such leases and is responsible for legally enforcing the payment of the rent and the proper performance of all other obligations of the Employer under the terms of the leases on the Dallas Parcels;

(h) The Plan will incur no fee, costs, commissions, or other charges or expenses as a result of its participation in the proposed transactions, other than the fee payable to the I/F; and

(j) The I/F will ensure that the terms and conditions described herein are at all times satisfied.

Notice to Interested Persons

Included among those persons who may be interested in the pendency of the requested exemption are all present employees of the Employer eligible to participate in the Plan, all former employees of the Employer with vested benefits in the Plan, and all beneficiaries of deceased former employees of the Employer currently receiving benefits from the Plan.

It is represented that these various classes of interested persons will be notified, within fifteen (15) days of publication of the Notice of Proposed Exemption (the Notice) in the **Federal Register**, either by mailing or by posting a photocopy of the Notice, plus a copy of the supplemental statement, as required, pursuant to 29 CFR 2570.43(b)(2). The applicant represents that the posting will occur at those locations of the affected divisions of the Employer that are customarily used for notices to employees with regard to labor management relations matters. Further, it is represented that notice to interested persons given by mail will be sent first class to the last known mailing address of all former employees and beneficiaries, and to certain employees located outside the United States.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 219–8883 (This is not a toll-free number.)

Mastercraft Industries, Inc. Master Employee Benefit Plan & Trust (the Plan), Located in Mt. Pleasant, TX

[Application Nos. D–9434 and D–9435]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act shall not apply to the proposed sale by the Plan to Mastercraft Company, L.P. (the Employer), a party in interest with respect to the Plan, of certain real property and related personal property (collectively, the Property), provided the sales price is not less than the fair market value of the Property on the date of the sale.

Summary of Facts and Representations

1. Mastercraft Industries, Inc., a Texas corporation, was the settlor of Mastercraft Industries, Inc. Master Employee Benefit Trust and the original employer under the Plan. The applicant states that pursuant to a corporate reorganization for reasons of Texas state taxes, the Texas corporation transferred assets to a newly formed corporation. This corporation was also named Mastercraft Industries, Inc., but was a Delaware corporation. The applicant explains that the Delaware corporation, with itself as limited partner, formed a Delaware limited partnership, the Employer, which is the employer of Plan participants and has qualified to do business in Texas.

2. The applicant represents that the Plan is an employee welfare benefit plan as defined in the Act and that the trust is a voluntary employees' beneficiary association exempt under section 501(c)(9) of the Code. In this regard, section 3.1 of the Plan's trust agreement states that the Plan is intended to qualify as a voluntary employees' beneficiary association within the meaning of section 501(c)(9) of the Code and that all contributions to the Plan and all of its assets and earnings are solely and irrevocably dedicated to the payment of benefits of the kind and type described in section 3.1. That section provides for the payment of hospitalization, medical, surgical, dental, disability income, vacation pay, holiday pay, educational expenses for employees, legal services, severance pay, death or other similar benefits to participating employees, their dependents, and in the case of death benefits, their designated beneficiaries.

The applicant explains that in addition to benefits described under section 3(1) of the Act, 26 CFR 1.501(c)(9)–3(e) permits a voluntary employees' beneficiary association to subsidize recreational activities. In this regard, Article II of the Plan provides the following benefits for Plan participants: vacation pay benefits (§ 2.1), health and medical benefits (§ 2.2), recreational facilities (§ 2.3), holiday pay (§ 2.4), and educational benefits (§ 2.5).

Sections 4.1 and 4.2 of the Plan provide that contributions to fund the benefits of the Plan shall be made solely by the Employer, and that all contributions to the Plan by the Employer shall be irrevocable and neither such contributions, nor any income therefrom nor any increments

thereon, shall be used for or diverted to purposes other than for the exclusive benefit of participating employees, their dependents, or in the case of any death benefit, to their designated beneficiaries.

3. With respect to recreational facilities, section 2.3 of the Plan provides that all employees and their families shall be entitled to use any recreational facility, defined as any property purchased by the Plan and any improvements made to it or any other property owned by the Employer for the expressed intent of providing an area for employees to participate in hobbies, sports, physical fitness programs, and other similar activities. This section further provides that the Plan administrator shall instruct the Plan trustee to acquire by purchase, lease or rent, for the benefit of all participating employees, recreational facilities such as (but not limited to): a lodge and a ski, fishing, or sail boat located not further than 200 miles from the Employer's main office. Each participating employee, according to this section, is eligible to use the facility on a reserved basis. Under this section, the Plan is responsible for all fees, taxes, operating costs, and maintenance for all facilities.

4. The Plan covered 102 participants as of August 31, 1992, when the Plan's total assets were comprised of the Property and $44,555 in cash equivalents. The Plan trustee, Mr. James W. Shanahan, and his spouse beneficially own over 80% of the Employer. The applicant represents that the Plan is winding down, the Employer no longer is funding the full cost of the Plan, the Employer currently does not intend to make future contributions to the Plan, the Plan is in a highly illiquid state because it has been paying Plan benefits in cash, and the Plan needs liquidity to pay for Plan benefits which continue to accrue. In this regard, section 7.4 of the Plan provides that upon its termination, the Plan's assets shall be used for the payment of all obligations of the Plan and, in the sole discretion of the Plan trustee, to provide additional benefits of the kind and type described in section 3.1 (described in paragraph 2, above) to the participating employees, or for such other similar or related purposes as shall not adversely affect the tax exempt status of the Plan.

5. The Property consists of a 7.214 acre recreational facility (the Facility) located on Roark Road, Lake Bob Sandlin, Camp County, Texas, and a pontoon boat, a jet ski, and a barbecue cooker (collectively, the Personal Property). The Facility has been newly improved with a concrete retaining wall, a gazebo with patio and deck area, and a boathouse with deck. The Facility's fair market value has been appraised twice within the past two years at: $130,555 as of August 25, 1992 by Gary M. Brown (Mr. Brown), SRPA, and $101,795 as of August 21, 1991 by Dwight Elledge (Mr. Elledge), MSA-MRA-MFLA.

6. Mr. Brown represents that he is an independent real-estate appraiser and owner of Gary Brown & Associates, a real-estate appraisal and consultant firm in Mt. Pleasant, Texas, and has been actively engaged in the real-estate profession since 1983, experienced in real-estate sales, management, counseling, and appraisal. Mr. Elledge represents that he is an experienced real estate broker under the Texas Real Estate Commission, a Master Senior Appraiser with the National Assoc. of Master Appraisers, and has completed formal education including real-estate appraisal, law, marketing, licensing, and finance. Both Mr. Brown and Mr. Elledge represent that they have no personal interest in or bias with respect to the participants to the proposed sale.

7. The Plan purchased the Facility on September 22, 1986 for a consideration of $125,812.20 from Clidene Mobley, who was not a party in interest with respect to the Plan. Since then, the Plan has made improvements to the Facility totaling $251,295: $57,251 for land improvements and $194,044 for a boat house, gazebo, fence, and a water well. The Plan acquired the Facility and improved it so as to provide recreational benefits under the terms of the Plan. The Property has been used by Plan participants for picnics, fishing, boating, volleyball, and a fishing tournament. The Plan has realized no net income or net loss from the Property because the Property was not purchased as a financial investment but to furnish recreational benefits pursuant to the Plan's provisions.[7]

8. The applicant represents that all of the Personal Property was also purchased in furtherance of the recreational benefits under the Plan and that none of it was purchased from a party in interest with respect to the Plan. The applicant states that no additional capital expenditures for the Personal Property were incurred by the Plan. The above mentioned pontoon boat comprising part of the Personal Property was purchased on June 30, 1987 from Fred Psye Marine for $21,053.83. This is a 1987 Lowe Regency 30-foot pontoon boat with a fair market value of $5,259 as of May 26, 1993, according to James Sewell (Mr. Sewell), of Sewell's Marine, in Pittsburg, Texas. The above mentioned jet ski comprising part of the Personal Property was purchased on August 31, 1986 from Sewell Marine for $3,379.42. This is a 1986 Yamaha Jet Ski 650A X–2, with a fair market value of $1,420 as of May 25, 1993, according to Brad Nicholson (Mr. Nicholson), of Nicholson Yamaha-Suzuki, in Mt. Pleasant, Texas. Both Mr. Sewell and Mr. Nicholson represent that they are not related in any way to the Employer or its principals.

9. The barbecue cooker comprising part of the Personal Property was purchased in 1990 or 1991 from True Value Hardware, Dallas, Texas, for approximately $1,200. The applicant is endeavoring to obtain an appraisal for this cooker. The applicant represents that if an appraisal is unavailable, the proposed sales price to the Employer of the barbecue cooker will be its initial cost.

10. Due to the Plan's need for liquidity (see representation paragraph 4, above), the Plan has attempted to sell the Property for some time. However, because of the depressed state of the Texas economy and Texas real estate, the Plan has not had any purchaser willing to pay what the Plan believes to be fair value for the Property. To provide liquidity to the Plan, therefore, the Employer proposes to purchase the Property for its fair market value on the date of the proposed sale. The applicant represents that the Plan trustee will obtain an updated appraisal of the Facility and an updated appraisal of each of the items of Personal Property as of the date of the proposed sale. The Employer would pay the proposed sales price in a single lump sum cash payment on the date of the proposed sale. The Plan would not pay any commissions or other expenses incurred in effecting the proposed sale. The Employer will bear all attorneys' fees, recordation fees, and title company fees, if any.

The applicant points out that if the proposed transaction is executed, the Plan will have, after the sale, a liquid asset (cash) still subject to the requirements of Treasury regulations section 1.501(c)(9)–4, which prohibits inurement to the employer, or a private

[7] The Department notes that section 404(a)(1) of the Act requires, among other things, that a fiduciary of a plan must act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries. In order to act prudently in making decisions relating to providing recreational benefits provided under a plan, plan fiduciaries must consider, among other factors, the availability, risks, administrative feasibility, and advantages and disadvantages to plan participants of alternative types of recreational assets. In this proposed exemption, the Department expresses no opinion as to whether the Plan's acquisition and holding of the Property satisfied the requirements of section 404(a)(1) of the Act.

shareholder or individual other than through the payment of permitted benefits. Thus, a sale of illiquid property at fair market value will not drain funds from the Plan. Further, upon termination of the Plan, pursuant to sections 7.4 and 3.1 thereof, the Plan's funds can be used only to provide benefits to participating employees.

11. In summary, the applicant represents that the proposed transaction satisfies the exemption criteria set forth in section 408(a) of the Act because: (a) The proposed sale will be a one-time transaction for cash; (b) the sales price will not be less than the fair market value of the Property on the date of the sale; (c) the Plan will not pay any commissions or other expenses incurred in effecting the proposed sale; (d) the Property produces no income for the Plan, which has tried unsuccessfully to sell it for its fair market value to unrelated parties; and (e) the proposed sale will provide the Plan, which is winding down and is in a highly illiquid state, with the cash needed to pay benefits to its participants, who have not made contributions to the Plan.

FOR FURTHER INFORMATION CONTACT: Mrs. Miriam Freund, of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 7th day of October, 1993.

Ivan Strasfe'd,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 93–25231 Filed 10–14–93; 8:45 am]

BILLING CODE 4510-29-P

NATIONAL SCIENCE FOUNDATION

Permit Application Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit application received under the Antarctic Conservation Act.

SUMMARY: Notice is hereby given that the National Science Foundation (NSF) has received a waste management permit application for the National Oceanic and Atmospheric Administration (NOAA) field camp at Seal Island, South Shetland Islands, Antarctica, submitted to NSF pursuant to regulations issued under the Antarctic Conservation Act of 1978.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application within 30 days of the publication of this notice. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, room 627, Office of Polar Programs, National Science Foundation, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Peter R. Karasik at the above address or (202) 357–7817.

SUPPLEMENTARY INFORMATION: NSF's Antarctic Waste Regulation, 40 CFR part 671, requires all U.S. citizens and entities to obtain a permit for the use or release of a banned substance or designated pollutant in Antarctica, and for the release of waste in Antarctica. NSF has received a permit application under this Regulation which covers NOAA's activities in these areas. The permit applicant is:

Applicant Dr. J.L. Bengston, National Marine Mammal Laboratory, Alaska Fisheries Science Center, 7600 Sand Point Way NE., Seattle, WA 98115.

The permit application applies to the shore-based research and logistic activities at a small field camp conducted by the NOAA Antarctic Marine Living Resources (AMLR) Program; and the proposed duration of the permit is from December 1, 1993 through June 30, 1998.

Activity for Which Permit Requested—The NOAA AMLR Program involves the use of a temporary, multi-year field camp at Seal Island, South Shetland Islands, Antarctica. The field camp was initially established in the 1986/87 austral summer and is intended to be occupied only during the austral summer by 4 to 6 marine mammal and bird researchers. The waste management permit application addresses the materials involved in maintaining the field camp and three observation blinds and supporting the scientific research at the site.

Peter R. Karasik,

Associate Compliance Manager.

[FR Doc. 93–25325 Filed 10–14–93; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–528]

Palo Verde Nuclear Generating Station, Unit 1; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–41 issued to Arizona Public Service Company (APS) for operation of the Palo Verde Nuclear Generating Station, Unit No. 1, located in Maricopa County, Arizona.

The proposed amendment would add a methodology supplement entitled, "System 80™ Inlet Flow Distribution," to the list of methods used to determine the core operating limits.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Standard 1—Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change is administrative in nature and does not involve any change to the configuration or method of operation of any plant equipment that is used to mitigate the consequences of an accident. Also, the proposed change does not alter the conditions or assumptions in any of the Final Safety Analysis Report (FSAR) accident analyses. Since the FSAR accident analyses remain bounding, the radiological consequences previously evaluated are not adversely affected by the proposed change. Therefore, it can be concluded that the proposed change does not involve a significant increase in the probability of an accident previously evaluated.

Standard 2—Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change is administrative in nature and does not involve any change to the configuration or method of operation of any plant equipment that is used to mitigate the consequences of an accident. Accordingly, no new failure modes have been defined for any plant system or component important to safety nor has any new limiting failure been identified as a result of the proposed change. Therefore, it can be concluded that the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

Standard 3—Involve a significant reduction in a margin of safety.

The proposed change does not involve a significant reduction in a margin of safety. The proposed change is administrative in nature and does not adversely impact the plant's ability to meet applicable regulatory requirements. Therefore, it can be concluded that the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within thirty (30) days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By November 15, 1993, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner

shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Theodore R. Quay: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072–3999, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated September 8, 1993, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004.

Dated at Rockville, Maryland, this 12th day of October.

For the Nuclear Regulatory Commission.

Brian E. Holian,

Project Manager, Project Directorate V, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 93–25437 Filed 10–14–93; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Request for Clearance of Revised Form SF 2823

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a request for clearance of a revised information collection. Form SF 2823, Designation of Beneficiary—FEGLI, is used by any Federal employee or annuitant covered by the Federal Employees' Group Life Insurance Program to instruct the Office of Federal Employees' Group Life Insurance how to distribute the proceeds of his/her life insurance when the statutory order of precedence does not meet his/her needs. This form was revised to clarify that designations by guardians or other fiduciaries are not acceptable, to reflect the current form number of the FEGLI booklet, to update OPM's address, and to make other minor language changes.

Approximately 1,000 SF 2823 forms are completed annually. It takes approximately 15 minutes to complete this form. The total annual burden is 250 hours.

For copies of this proposal, contact C. Ronald Trueworthy on (703) 908–8550.

DATES: Comments on this proposal should be received on or before November 15, 1993.

ADDRESS: Send or deliver comments to—

David Lewis, Office of Insurance Programs, Retirement and Insurance Group, U.S. Office of Personnel Management, 1900 E Street NW., room 3415, Washington, DC 20415, and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., room 3002, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth Smith-Toomey, Chief, Administrative Management Branch, (202) 606–0623.

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 93–25309 Filed 10–14–93; 8:45 am]

BILLING CODE 6325–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Request to Non-Railroad Employer for Information About Annuitant's Work and Earnings.

(2) *Form(s) submitted:* RL–231–F.

(3) *OMB Number:* 3220–0107.

(4) *Expiration date of current OMB clearance:* Three years from date of OMB approval.

(5) *Type of request:* Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

(6) *Frequency of response:* On occasion.

(7) *Respondents:* Businesses or other for-profit.

(8) *Estimated annual number of respondents:* See justification statement.

(9) *Total annual responses:* 600.

(10) *Average time per response:* .5 hours.

(11) *Total annual reporting hours:* 300.

(12) *Collection description:* Under the Railroad Retirement Act, benefits are not payable if an annuitant works for an employer covered under the Act or last non-railroad employer. The request will obtain information on an annuitant's work and earnings from a non-railroad employer. The information will be used for determining whether benefits should be withheld.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the form and supporting documents can be obtained from Dennis Eagan, the agency clearance officer (312–751–4693). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503.

Dennis Eagan,

Clearance Officer.

[FR Doc. 93–25378 Filed 10–14–93; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–33036; International Series Release No. 589; File No. SR–Amex–93–14]

Self-Regulatory Organizations; Order Approving and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 to Proposed Rule Changes by the American Stock Exchange, Inc., Relating to the Listing of Index Warrants Based on the Amex Hong Kong 30 Index

October 8, 1993.

I. Introduction and Background

On April 13, 1993, the American Stock Exchange, Inc. ("Amex") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] proposed rule changes to list warrants based on the Amex Hong Kong 30 Index ("Hong Kong 30 Index" or "Index")—an index comprised of Hong Kong stocks traded on the Stock Exchange of Hong Kong ("HKSE"). The Amex has amended the proposal on two separate occasions, first on April 15, 1993[3] and most recently on September 15, 1993.[4] Notice of the proposal to approve the Index warrants for listing and trading, and Amendment No. 1 thereto, appeared in the **Federal Register** on May 12, 1993 ("Notice").[5] No comments were received on the proposed rule changes set forth in the Notice. This order approves the Exchange's proposal.

II. Description of the Proposal

The Amex proposes to list index warrants based on the Amex Hong Kong 30 Index, a new index developed and maintained by the Amex and designed to represent a substantial segment of the Hong Kong stock market.

A. Description of Hong Kong 30 Index

The Hong Kong 30 Index, a capitalization-weighted stock index, designed and operated by the Amex, is based on the capitalizations of 30 stocks that are traded on the HKSE and whose issuers have major business interests located in Hong Kong.[6] The HKSE is the primary trading market for 25 of the 30 Index component stocks. The primary trading market for all of the Index component stocks is either Hong Kong or London.[7]

As of June 22, 1993, the total capitalization of the Index was US$157.323 billion. Market capitalizations of the individual stocks in the Index ranged from high of US$23.48 billion to a low of US$549 million, with the median being US$3.89 billion. The total number of shares outstanding for the stocks in the Index ranged from a high of approximately 11.152 billion shares to a low of 463.960 million shares. The price per share of the stocks in the Index, as of June 22, 1993, ranged from a high of US$9.37 to a low of US$0.47. In addition, the average daily trading volume of the stocks in the index, for the six-month period ending May 31, 1993, ranged from a high of 19.369 million shares to a low of 1.027 million shares, with the median being 2.884 million shares.

Business sector representation in the Index as of June 22, 1993 was as follows: (1) Finance (25.78%); (2) property development (23.08%); (3) utilities (19.71%); (4) conglomerates (18.62%); (5) hotel/leisure (4.19%); (6) property investment (4.07%); (7) airlines (2.45%); (8) food retailing (23%); and (9) luxury retailing (.35%).

The highest weighted component stock in the Index accounts for 14.92% of the Index. The five largest Index components account for approximately

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[1] 15 U.S.C. 78s (b)(1) (1982).

[2] 17 CFR 240.19b–4 (1989).

[3] On April 15, 1993, the Amex amended the proposal to require that Amex member firms will be permitted only to sell Index warrants to investors whose accounts have been approved for options trading pursuant to Amex Rule 921. The proposal was also amended to require that discretionary orders in Index warrants must be approved and initialed on the day entered by a Senior Registered Options Principal or Registered Options Principal. See letter from Ellen T. Kander, Special Counsel, Derivative Securities, Amex to Richard Zack, Branch Chief, Office of Self-Regulatory Oversight, SEC, dated April 15, 1993 ("Amendment No. 1").

[4] On September 15, 1993, the Amex amended the proposal to require that each Index component stock be issued by an entity with major business interests in Hong Kong, listed for trading on the HKSE, and that has its primary trading market located in a country that the Amex has an effective and comprehensive surveillance sharing agreement with. The Amex has agreed to remove any component stocks failing to meet the above listing and maintenance criteria within 30 days after such failure occurs. In addition, the Amex proposes establishing certain listing and maintenance criteria for Index component stocks, including criteria relating to Index component stock capitalization, share price, trading volume, and trading share free float. The Amex will conduct quarterly reviews to determine compliance with the above criteria and will replace Index component stocks that no longer meet such criteria. The Amex also proposes amending the proposal to require that Index warrant issuers have a minimum tangible net worth in excess of $150,000,000 and otherwise substantially exceed the earnings requirements set forth in section 101(A) of the Amex Company Guide. Additionally, the Amex proposes prohibiting the listing and trading of Index warrants where the original issue price of all an issuer's Hong Kong stock market based index warrants (including offerings by affiliates of the issuers) listed on a national securities exchange or traded through the facilities of NASDAQ is greater than 25% of the warrant issuer's net worth. This criteria will apply regardless of whether the issuer has hedged its financial obligations resulting from such warrant issuances. The Amex also proposes amending the proposal to require that Index warrants will be margined as though they were options contracts subject to Amex Rule 462(d). See letter from Benjamin D. Krause, Senior Vice President, Capital Markets Group, Amex to Sharon Lawson, Assistant Director, Division of Market Regulation, SEC dated September 15, 1993 ("Amendment No. 2").

[5] See Securities Exchange Act Release No. 32269 (May 5, 1993), 58 FR 28071.

[6] The Amex has represented that it will not include in the Index any component stock whose issuer is an entity formed and governed under the laws of the People's Republic of China. See letter from Nathan Most, Senior Vice President, New Products Development, Amex to Richard Zack, Division of Market Regulation, SEC dated September 7, 1993.

[7] See letter from Benjamin D. Krause, Senior Vice President, Capital Markets Group, Amex to Sharon Lawson, Assistant Director, Division of Market Regulation, SEC dated September 13, 1993

45.86% of the Index's value. The lowest weighted component stock comprises .35% of the Index.

B. Maintenance

The Index will be maintained by the Amex and will contain at least thirty component stocks at all times. In addition, the component stocks in the Index must meet certain listing and maintenance standards as discussed below. The Amex may change the composition of the Index at any time in order to more accurately reflect the composition and track the movement of the Hong Kong stock market. Any replacement component stock must also meet the component stock listing and maintenance standards as discussed below. Further, the Amex may replace Index component stocks in the event of certain corporate events, such as takeovers, or mergers, that change the nature of the security. If the number of components stocks in the Index falls below thirty, no new series of warrants based on the Index will be listed for trading unless and until the Commission approves a rule filing pursuant to section 19(b) of the Act reflecting such change.

C. Eligibility Standards for the Inclusion and Maintenance of Component Stocks in the Index

The Amex states that it selects securities comprising the Index on the basis of their market weight, trading liquidity, and representation of the business industries reflected on the HKSE. The Amex will require that each Index component stock be one issued by an entity with major business interests in Hong Kong, listed for trading on the HKSE, and have its primary trading market located in a country that the Amex has an effective surveillance sharing agreement with. The Amex will remove any component stocks failing to meet the above listing and maintenance criteria within 30 days after such failure occurs. In order to ensure that the Index does not contain a large number of thinly-capitalized, low-priced securities with small public floats and low trading volumes, the Amex has also established additional qualification criteria for the inclusion and maintenance of equity securities in the Index, based on the following standards: (1) All component securities selected for inclusion in the Index must have, and thereafter maintain, an average daily capitalization, as calculated by the total number of shares outstanding times the latest price per share (in Hong Kong dollars), measured over the prior 6 month period, of at least 3 billion Hong Kong dollars (approximately US$380 million); (2) all component securities selected for inclusion in the Index must have, and thereafter maintain, an average daily closing price, measured over the prior 6 month period, not lower than 2.50 Hong Kong dollars (approximately US$0.32); (3) all component securities selected for inclusion in the Index must have, and thereafter maintain, an average daily trading volume, measured over the prior 6 month period, of more than 1 million shares per day, although up to, but no more than, three component securities may have an average daily trading volume, measured over the prior 6 month period, of less than 1 million shares per day, but in no event less than 500,000 shares per day; and (4) all component securities selected for inclusion in the Index must have, and thereafter maintain, a minimum free float value (total freely tradable outstanding shares minus insider holdings), based on a monthly average measured over the prior 3 month period, of US$238 million, although up to, but no more than, three component securities may have a free float value of less than US$238 million but in no event less than US$150 million, measured over the same period. The Amex will review and apply the above qualification criteria relating to Index component stocks on a quarterly basis, conducted the last business day in January, April, July, and October (beginning January 1994). Any Index component stock failing to meet the above listing and maintenance criteria will be reviewed on the second Friday of the second month following the quarterly review to again determine compliance with the above criteria. Any Index component stock failing this second review will be replaced by a "qualified" Index component stock effective upon the close of business on the following Friday provided, however, that if such Friday is not a business day, the replacement will be effective at the close of business on the first preceding business day. The Amex will notify its membership immediately after it determines to replace an Index component stock.

D. Calculation and Settlement of Index

The Index is calculated by multiplying the price of each constituent stock of the Index (in Hong Kong dollars) by the number of shares outstanding. For valuation purposes, one Index unit (1.0) is assigned a fixed value of one U.S. dollar. The Index level was set at a value of 350.00 on June 25, 1993 by dividing the total market value of the component stocks at the close of business on that date (HK$1,152,829,149,500) by an initial Index divisor of 3,293,797.57.[8] The Index level as of September 7, 1993 was 374.78. The Amex will calculate the Index once each day based on the nearest previously reported closing prices on the HKSE.[9] In the event that a security does not trade on a given day, then the previous day's last sale price is used. In the event that a given security has not traded for more than one day, then the last sale price on the last day on which the security was traded is used. In order to provide continuity for the Index's value, the divisor is adjusted periodically to reflect events such as stock splits, stock replacements, or other actions which would otherwise cause a discontinuity in the Index value.

Pricing of the Index will be performed each day and be disseminated before the opening of trading via the Consolidated Tape Association Network-B continuously during each New York business day. Thus, the last computed Index value will be publicly available throughout the trading day to vendors and subscribers in exactly the same way as other Amex calculated indexes are made available to the general investing public. The dissemination value, however, will remain the same throughout the trading day because the trading hours of the HKSE do not overlap with Amex trading hours. Accordingly, updated price information is unavailable.

The Index value for purposes of settling outstanding Index warrants upon expiration will be calculated based on the closing sale prices for each of the Index's component stocks on the HKSE on the last trading day prior to expiration.

E. Warrant Listing Standards and Customer Safeguards

The Exchanges propose to trade Hong Kong 30 Index warrants pursuant to section 106 of the Amex Company Guide ("Section 106"). Under Section 106, the Amex may approve for listing warrants based on established foreign and domestic market indices. The Commission has previously approved the listing and trading on the Amex of certain foreign index warrants based on the Nikkei Stock Average,[10] the FT–SE

[8] The Amex selected the particular divisor number in order to ensure that the Index was set at a general price level consistent with other well recognized stock market indexes and at a level so that derivative products based upon the Index could be attractively and competitively priced.

[9] The trading hours at the HKSE do not overlap with trading hours at the Amex.

[10] Securities Exchange Act Release No. 27565 (December 22, 1989), 55 FR 376.

100 Index,[11] and the CAC–40 Index,[12] all listed in accordance with Section 106.

The Amex represents that the Index warrant issues will conform to the index warrant listing guidelines contained in Section 106. Specifically, the listing guidelines of the Amex will require that: (1) The issuer of the warrants shall have a minimum tangible net worth of $150 million and that the aggregate value of all of a particular issuer's Hong Kong stock market based Index warrant offerings (combined with offerings by its affiliates) that are listed on a national securities exchange or on NASDAQ should not exceed 25% of the issuer's net worth, irrespective of whether the issues are hedged; [13] (2) the term of the warrants shall be for a period ranging from one to five years from the date of issuance; and (3) the minimum public distribution of such issues shall be 1,000,000 warrants together with a minimum of 400 public holders, and have an aggregate market value of $4,000,000.

The Amex has proposed applying the same margin treatment as it requires for Amex listed options, as set forth in Amex Rule 462(d), to the purchase of Index warrants.

The Amex also proposes that the Hong Kong 30 Index warrants will be direct obligations of their issuer subject to cash-settlement in U.S. dollars, and either exercisable throughout their life (*i.e.*, American style) or exercisable only on their expiration date (*i.e.*, European style). Upon exercise, or at the warrant expiration date (if not exercisable prior to such date), the holder of a warrant structured as a "put" would receive payment in U.S. dollars to the extent that the Index has declined below a pre-stated cash settlement value. Conversely, holders of a warrant structured as a "call" would, upon exercise or at expiration, receive payment in U.S. dollars to the extent that the Hong Kong 30 Index has increased above the pre-stated cash settlement value. If "out-of-the-money" at the time of expiration, the warrants would expire worthless.

Because index warrants are derivative in nature and closely resemble index options, the Amex has proposed safeguards that are designed to meet the investor protection concerns raised by the trading of index options. First, the Exchange proposes requiring that Index warrants only be sold to investors whose accounts have been approved for options trading pursuant to Amex Rule 921. Second, the Exchange's options suitability standards will apply to recommendations regarding Index warrants.[14] Third, the Exchange will also require that discretionary orders in Index warrants must be approved and initialed on the day entered by a Senior Registered Options Principal ("SROP") or a Registered Options Principal ("ROP"). Finally, the Amex, prior to commencement of trading of Index warrants, will distribute a circular to their membership calling attention to the specific risks associated with warrants on the Index.[15]

III. Discussion

The Index warrants are the first derivative instruments to be traded on a U.S. exchange that are based on a stock index comprised exclusively of Hong Kong stocks. The Commission believes that the availability of warrants on the Index is consistent with section 6(b)(5) of the Act in that it should help remove impediments to a free and open securities market and facilitate transactions in securities because the Index warrants will provide investors a means by which to hedge against investment decisions made in the Hong Kong equity market and provide a surrogate instrument for trading in the Hong Kong securities market.[16] In particular, Hong Kong 30 Index warrants will benefit U.S. investors by allowing them to obtain differential rates of return on a capital outlay if the Hong Kong 30 Index moves in a favorable direction within a specified time period. Of course, if the Hong Kong 30 Index moves in the wrong direction or fails to move in the right direction, the warrants will expire worthless and the investors will have lost their entire investment. Thus, the trading of warrants on the Hong Kong 30 Index will provide investors with a valuable hedging vehicle that should reflect accurately the overall movement of the Hong Kong equity market.

Nevertheless, the trading of warrants on the Index raises several concerns, namely issues related to customer protection, index design, surveillance and market impact. The Commission believes, for the reasons discussed below, that the Amex has adequately addressed these concerns.

A. Customer Protection

Due to the derivative nature of index warrants, the Commission believes that Hong Kong 30 Index warrants should only be sold to investors capable of evaluating and bearing the risks associated with trading in such instruments and that adequate risk disclosure be made to investors. In this regard, the Commission notes that the rules and procedures of the Exchange that address the special concerns attendant to the secondary market trading of index warrants will be applicable to the Hong Kong 30 Index warrants. In particular, by imposing the special suitability, disclosure, and compliance requirements noted above, the Amex has addressed adequately potential public customer problems that could arise from the derivative nature of Hong Kong 30 Index warrants. Moreover, the Amex plans to distribute a circular to its members identifying the specific risks associated with warrants on the Hong Kong 30 Index and, pursuant to the Amex's listing guidelines, only substantial companies capable of meeting their warrant obligations will be eligible to issue Hong Kong 30 Index warrants.

B. Index Design and Structure

The Commission finds that it is appropriate and consistent with the Act to classify the Index as a broad-based index. Specifically, the Commission believes the Index is broad-based because it reflects a substantial segment of the Hong Kong equities market. First, the Index consists of 30 actively traded stocks traded on the HKSE. Second, the total capitalization of the Index, as of June 22, 1993, was US$157.323 billion, with the market capitalizations of the individual stocks in the Index ranging from a high of US$23.48 billion to a low of US$549 million, with a median value of US$3.89 billion. Third, the Index includes stocks of companies from a broad range of industries and no industry segment comprises more than 25.78% of the Index's total value. Fourth, no single stock comprises more than 14.92% of the Index's total value and the percentage weighting of the 5

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[11] Securities Exchange Act Release No. 27769 (March 6, 1990), 55 FR 9380.

[12] Securities Exchange Act Release No. 28544 (October 17, 1990), 55 FR 42792.

[13] Section 106 of the Amex Company Guide only requires warrant issuers to have $100,000,000 of assets. The Amex has amended its rule proposal to include the above stated heightened issuer standards for Hong Kong Index warrants. See Amendment No. 2, note 4, *supra*.

[14] See Amex Rule 923.

[15] The Exchange has agreed to provide a draft of the Hong Kong Index warrant information circular for the Commission's review prior to its dissemination to members. See letter from Nathan Most, Amex to Richard Zack, SEC dated September 7, 1993.

[16] Pursuant to section 6(b)(5) of the Act the Commission must predicate approval of any new securities product upon a finding that the introduction of such product is in the public interest. Such a finding would be difficult with respect to a warrant that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

largest issues in the Index accounts for 45.86% of the Index's value. Fifth, the Index component stock listing and maintenance criteria will serve to ensure that the Index maintains its broad representative sample of stocks in the Hong Kong stock market.[17] Accordingly, the Commission believes it is appropriate to classify the Index as broad-based.

C. Surveillance

In evaluating new derivative instruments, the Commission, consistent with the protection of investors, considers the degree to which the derivative instrument is susceptible to manipulation. The ability to obtain information necessary to detect and deter market manipulation and other trading abuses is a critical factor in the Commission's evaluation.[18] It is for this reason that the Commission requires that there be a surveillance sharing agreement[19] in place between an exchange listing or trading a derivative product and the exchange(s) trading the stocks underlying the derivative contract that specifically enables officials to surveil trading in the derivative product and its underlying stocks.[20] Such agreements provide a necessary deterrent to manipulation because they facilitate the availability of information needed to fully investigate a potential manipulation if it were to occur. For foreign stock index derivative products, these agreements are especially important to facilitate the collection of necessary regulatory, surveillance and other information from foreign jurisdictions.

To address the above noted concerns, the Amex has entered into a surveillance sharing agreement with the Hong Kong Stock Exchange that provides for the exchange of information relating to the trading of Hong Kong 30 Index warrants on the Exchange and trading in the component securities of the Index on the Hong Kong Stock Exchange. The agreement, among other things, provides for the sharing of time and sales information, clearing data, and the identity of persons who have bought or sold securities. This agreement obligates the Amex and HKSE to compile and transmit all relevant market surveillance information and to resolve in "good faith" any disagreements regarding requests for information in response thereto. In addition, the Amex has represented that if information pursuant to the surveillance sharing agreement is not promptly forthcoming from the HKSE, the Index will be removed from trading on the Amex.[21]

The Commission believes that the surveillance sharing agreement entered into between the Amex and HKSE adequately addresses its concerns relating to the ability of the Amex to detect and deter manipulation of the Index through the use of the Index component stocks.[22]

D. Market Impact

The Commission believes that the listing and trading of Hong Kong 30 Index warrants on the Amex will not adversely impact the securities markets in the U.S. or Hong Kong. First, The existing index warrant surveillance procedures of the Amex will apply to warrants based on the Index. Second, the Commission notes that the Index is broad-based and diversified and includes highly capitalized securities that are actively traded on the HKSE. Third, the Commission notes that at the present time, index options and futures contracts based on another Hong Kong stock market index, the Hang Seng Index, are traded on Hong Kong securities and futures exchanges, and that numerous warrant and off-exchange options based on the Hang Seng Index and other Hong Kong related indexes are traded worldwide. Accordingly, the Commission does not believe that the introduction of Hong Kong 30 Index warrants by the Amex will have a significant effect on the underlying Hong Kong securities market.

The Commission finds good cause for approving Amendment No. 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. First, Amendment No. 2 provides additional requirements to the proposal that each Index component stock be issued by an entity with major business interests in Hong Kong, listed for trading on the HKSE, and have its primary trading market located in a country that the Amex has an appropriate information sharing agreement with. Additionally, the amendment establishes listing and maintenance criteria relating to Index component stock capitalization, share price, trading volume and trading share free float. Amendment No. 2 also provides for the removal of any Index component stocks that do not meet these requirements. Such requirements strengthen the proposal by helping to ensure that the Index is comprised of highly capitalized and liquid Index component stocks that have a close nexus to the Hong Kong securities market and that have adequate surveillance information available regarding the trading in such securities. Amendment No. 2 also provides for the application of heightened Index warrant issuer listing standards regarding Index warrants and requires that options margin rules be made applicable to the Index warrants. These amendments also strengthen the proposal by increasing the financial requirements of Index warrant issuers and ensuring that

[17] The Amex has represented that the companies included in the Index represent at least thirty different broad categories of business covering almost the entire range of business activity conducted in Hong Kong. See letter from Nathan Most, Senior Vice President, New Products Development, Amex to Richard Zack, Branch Chief, Options Branch, Division of Market Regulation, SEC dated August 17, 1993.

[18] The Commission also notes that the Amex will apply its existing index warrant surveillance procedures to trading in Hong Kong 30 Index warrants.

[19] The Commission believes that a surveillance sharing agreement should provide the parties thereto with the ability to obtain information necessary to detect and deter market manipulation and other trading abuses. Consequently, the Commission generally requires that a surveillance sharing agreement require that the parties to the agreement provide each other, upon request, information about market trading activity, clearing activity, and the identity of the ultimate purchasers for securities. See Securities Exchange Act Release No. 31529 (November 27, 1992).

[20] The Commission believes that the ability to obtain relevant surveillance information, including, among other things, the identity of the ultimate purchasers and sellers of securities, is an essential and necessary component of a comprehensive surveillance sharing agreement. See Securities Exchange Act Release No. 31529, note 18, *supra*.

[21] If, in the event that the HKSE denies a request for assistance pursuant to the surveillance sharing agreement and the failure to provide assistance is material to the Amex's self-regulatory effort, the Amex will immediately attempt to implement alternative arrangements for sharing surveillance information with other appropriate self-regulatory and/or governmental authorities. If, despite these efforts, the Amex still is unable to implement such alternative arrangements and determines that it is unable to obtain specific surveillance information pursuant to its agreement with the HKSE which is necessary to carry out its regulatory functions, it will consult with the SEC regarding appropriate regulatory responses. Appropriate regulatory responses in this situation could include the "winding-down" of trading in any options where an information sharing agreement with the HKSE is necessary to ensure the integrity of the market and the SEC advises the Exchange in writing that the public interest and the protection of investors requires the "winding-down" of trading. Such "winding-down" process would involve the cessation of listing any new series, and the delisting of any series where there is no open interest. See letter from William Floyd-Jones, Jr., Assistant General Counsel, Legal & Regulatory Policy Division, Amex to Richard Zack, Branch Chief, Division of Market Regulation, SEC dated August 27, 1993.

[22] The Commission also notes that the Amex has proposed an additional surveillance related safeguard to the Index by requiring that the primary trading market for all Index component stocks must be located in a country that the Amex has an effective and comprehensive surveillance sharing agreement with. *See* Amendment No. 2, note 4, *supra*.

adequate margin levels will be applied to Index warrants, respectively. Collectively, the amendments help to increase investor protections regarding the trading of Index warrants. Therefore, the Commission believes it is consistent with sections 6(b)(5) and 19(b)(2) of the Act to approve Amendment No. 2 to the proposal on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copiers of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–AMEX–93–14 and should be submitted by November 5, 1993.

V. Conclusion

For the reasons set forth above, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5).[23]

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[24] that the proposed rule change (SR–Amex–93–14), including Amendment No. 2 on an accelerated basis, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[25]

Margaret H. McFarland,

Deputy Secretary.

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[23] 15 U.S.C. 78f(b)(5) (1982).

[24] 15 U.S.C. 78s(b) (1982).

[25] 17 CFR 200.30–3(a)(12) (1992).

[Release No. 34–33028; File No. SR–AMEX–92–15]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the American Stock Exchange, Inc. Relating to Guidelines for Equity Specialists Regarding their Use of Options to Hedge Positions in their Specialty Stocks

October 6, 1993.

I. Introduction

On May 18, 1992, the American Stock Exchange, Inc. ("AMEX" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to liberalize Exchange Rule 175 governing the trading by equity specialists in options overlying their specialty stocks. Specifically, the proposed rule change would provide equity specialists greater flexibility in the use of various options hedging strategies.[3]

The proposed rule change was published for comment and appeared in the **Federal Register** on July 9, 1992.[4] No comments were received on the proposed rule change. This order approves the proposal.

II. Background

In 1935, at the request of the Commission, all national exchanges adopted rules that prohibited any specialist from acquiring, holding or granting any interest in an option on any of his specialty stocks. Adoption of these prohibitions against equity specialists' transactions in options was a result of certain abuses associated with options granted to specialists and other floor traders. These abuses consisted of the formation of "pools" by specialists and others for the purpose of manipulating the specialists' specialty stocks. The use of options by specialists with respect to their specialty stocks was found to be an integral part of many of these manipulative operations.[5]

In 1976, however, the Commission approved proposals by several regional stock exchanges to allow stock specialists on these exchanges to take positions—not limited to hedging positions—in listed options on their specialty stocks.[6] In approving these proposals, the Commission stated that each regional exchange's market share was so small that regional exchange specialists' informational advantages or manipulative abilities appeared relatively insignificant.

In 1985, the Commission approved the current version of AMEX Rule 175, which, as described in detail below, permits the use by AMEX specialists of options on their specialty stocks subject to certain limitations and restrictions.[7] The Commission, in approving the current version of Rule 175, cautiously balanced the regulatory concerns regarding possible stock/option manipulation and the specialists' perceived informational advantages against the benefits to the market to be derived from the Rule, namely enhanced market depth and liquidity. After performing this analysis, the Commission determined that the use of options by AMEX specialists would result in substantial benefits to the markets for these stocks as well as the options markets. In making this determination, the Commission took into consideration the AMEX's surveillance plan and limitations imposed by the Rule and concluded that the benefits of the Rule outweighed the regulatory concerns raised by the Rule.

In addition, when approving the current version of Rule 175, the Commission stated that based on the NYSE Approval Order "substantial benefits to the markets for the specialists' speciality stocks, and possibly to the market for the related

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1993).

[3] In 1985, the Commission approved the current version of Rule 175. See Securities Exchange Act Release No. 22670 (November 27, 1985), 50 FR 49808 ("AMEX Rule 175 Approval Order"). The AMEX rule mirrors the New York Stock Exchange, Inc. ("NYSE") Rule 105 that was approved in February 1985. See Securities Exchange Act Release No. 21710 (February 4, 1985), 50 FR 5708 ("NYSE Approval Order"). NYSE Rule 105 was later amended to provide greater flexibility for equity specialists using options trading strategies. See Securities Exchange Act Release No. 28971 (March 13, 1991), 56 FR 11806. The Amex proposal is substantially similar to the recent changes adopted in NYSE Rule 105.

[4] See Securities Exchange Act Release No. 30872 (June 30, 1992), 57 FR 30515. The AMEX subsequently corrected its filing to delete language that was added inadvertently regarding the permissibility of integrated market making. See letter from Claudia Crowley, Special Counsel, Legal & Regulatory Policy Division, AMEX, to Jeffrey Burns, Division of Market Regulation, SEC, dated August 27, 1992.

[5] Congress gave the Commission plenary authority to regulate exchange options trading under Sections 9 (b) and (c) of the Act. For a complete description of the abuses that led to the prohibition against specialists' and other floor professionals' use of options, see S. Rep. No. 1455, 73rd Cong., 2d Sess. (1934) ("Pecora Commission report").

[6] See Securities Exchange Act Release Nos. 13016 (November 30, 1976), 41 FR 53383 (Philadelphia Stock Exchange); 13044 (December 8, 1976), 41 FR 54783 (Midwest Stock Exchange); and 13269 (February 16, 1977), 42 FR 10754 (Pacific Stock Exchange).

[7] See AMEX Rule 175 Approval Order, supra note 3.

options themselves, were likely to accrue."[8] The Commission believed that its findings made in connection with the NYSE Approval Order were equally applicable to the Amex proposal which adequately addressed regulatory and surveillance concerns raised by the Commission. In the NYSE Approval Order, the Commission further explained that it "would be prepared to reconsider [the design of the Rule] if evidence suggests that relaxation of certain of the NYSE's proposed restrictions was appropriate."[9] Based on the small number of specialist units who have used options to hedge their specialty stock positions,[10] the Exchange believes the cautious approach taken by the Commission and the Exchange with respect to the use of options by equity specialists has apparently proven to be unduly restrictive. Accordingly, the AMEX has filed the present proposal to relax and expand certain provisions of Rule 175 in an effort to broaden the use of options by AMEX equity specialists so that the market benefits originally contemplated when the Rule was approved can be more fully realized.

III. Description of the Proposal

AMEX Rule 175 currently allows a specialist to acquire and hold, in his specialist trading account, a position in listed options[11] on any of his specialty stocks "where appropriate * * * to offset the risk of making a market in the underlying stock." Under the Rule, a specialist may not establish and maintain an options position which is excessive either in terms of his existing position in the underlying specialty stock or in terms of a reasonable estimate of potential losses that may be incurred in relation to any such equity position.

The Rule also provides that any such options transactions must be made in accordance with the "Guidelines for Specialists' Specialty Stock Option Transactions pursuant to Rule 175" ("Guidelines"). The Guidelines reiterate the restrictions contained in Rule 175 and provide guidance on the application of the Rule. Specifically, the Guidelines require that an opening options transaction by a specialist must:

(1) Result in an options position "entirely on the opposite side of the market from the underlying specialty stock position;"[12]

(2) Be established "solely to offset the risk of making a market in the underlying specialty stock;" and

(3) Result in an options position that does not exceed the number of contracts permitted by specified "hedge ratios."[13]

The Guidelines to Rule 175 set forth the permissible options positions that a specialist may establish and maintain for the purpose of hedging risks associated with holding specialty stocks. A specialist is deemed to be in violation of existing Rule 175 if any of the following three events occur: (1) He establishes an options position in excess of permitted "hedge ratios;" (2) he fails to make a timely liquidation of an options position when required; or (3) regardless of compliance with the Guidelines, he has engaged in options transactions for manipulative or other purposes not related to offsetting the risk of making a market in the underlying specialty stock. To uphold the timely liquidation requirement, the specialist must: (1) Liquidate his excess options position within two hours if the stock position decreases by more than 25% and results in an offsetting options position that exceeds the hedge ratios but is on the opposite side of the market from the stock position; or (2) liquidate the excess options position within one hour if the options position becomes on the same side of the market as the stock position. The Rule 175 Guidelines do, however, provide for a de minimis exception to the liquidation requirements for 10 or fewer options contracts.

In the current filing, the AMEX proposes to amend its Rule 175 to provide equity specialists with greater flexibility in using options by allowing them to use any legitimate options hedging strategy to offset the risks of making a market in their specialty stocks, as long as the resulting net option position is on the opposite side of the market from the underlying stock position. In addition, the proposal will allow specialists the choice of using either (1) fixed hedge ratios,[14] (2) "dynamic deltas"[15] or (3) any other legitimate hedging strategy approved by the Exchange, to determine the number of permitted options contracts that an equity specialist may hold for the purpose of hedging the specialist's existing specialty stock position.

The proposed amendments to Rule 175 retain the liquidation requirements for options positions that become overhedged or where the net option position becomes on the same side of the market as the underlying stock position.[16] The proposal, however, would change the time frame for liquidation. For a net option position which becomes overhedged by a change in the specialist's stock position of at least 25%, and remains on the opposite side of the market from the underlying stock position, the specialist would be required to enter a liquidation order by the close of trading on the day after the position becomes overhedged. For a net option position which becomes on the same side of the market as the underlying stock position, the liquidation order must be entered by the close of trading on the same day. The de minimis exception to the liquidation requirements would be expanded to include options contracts which offset the equivalent of 5,000 shares of a specialty stock position (an increase from 10 to 50 contracts).

The proposal would further facilitate "calendar rollovers"[17] by permitting a specialist to establish and hold an overhedged position (both near term and more distant term options) for a limited period of time (until the close of trading on the next trading day after the position in the far-out series is established) in order to effectuate a calendar rollover. This will provide a specialist with added flexibility while executing a rollover and remove the risk of becoming "unhedged" should there be a temporary absence of liquidity in the options market as the specialist seeks to liquidate one options position and establish another.

In addition, the proposal would permit a specialist to establish a long-

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[8] Id.

[9] See NYSE Approval Order, supra note 3, at 50 FR 5714.

[10] Currently, only one specialist unit is periodically using stock options to hedge its specialty stock positions.

[11] A list option is an option issued by the Options Clearing Corporation ("OCC") and traded on a national securities exchange.

[12] Therefore, a specialist may purchase puts or sell calls if he is long the underlying specialty stock, and may purchase calls or sell puts if he is short the underlying specialty stock. Gains or losses in "opposite-side" options positions will offset or hedge, in whole or in part, gains or losses in the stock position being offset. In contrast, gains or losses in "same-side" options positions amplify the effects of gains or losses in the underlying stock. Therefore, the rule as currently in place forbids the establishment of spreads, straddles or similar combination options positions.

[13] The "hedge ratios" are 1 to 1 in the case of "in-the-money" options, 1.5 to 1 in the case of "at-the-money" options and 2 to 1 for "out-of-the-money" options. Accordingly, for each 100-share stock position, the corresponding number of options contracts that can be acquired depends on whether such option is "in-the-money," "at-the-money" or "out-of-the-money."

[14] See supra note 13.

[15] The "delta" of an option is the amount by which an option's price will change in response to change of $1 in the price of the underlying security. The Exchange will select a pricing model to determine the appropriate delta for each option series.

[16] See supra note 12 and 13.

[17] A "calendar rollover" is a method whereby a market participant replaces an options position that is about to expire with a position in a farther out series.

term options position, irrespective of his actual stock position when the long-term options position is established, provided that he uses "out-of-the-money" options that are not near term and provided that the strategy is intended to offset general market making risk. Prior approval from the Exchange would be required before a specialist could engage in such a strategy. The specialist would also be exempted from any liquidation requirements as to this options position. However, if the specialist were to deviate from the approved strategy, he would no longer be exempt from the liquidation provisions.

IV. Discussion

As described below, the Commission finds that the AMEX proposal is designed "to prevent fraudulent and manipulative acts and practices" and, in general, "to protect investors and the public interest," and, therefore, is consistent with the requirements of the Act applicable to a national securities exchange, and, in particular, section 6(b)(5).[18] In determining whether to approve the amendments to Rule 175 in 1985, the Commission weighed the potential benefits of the Rule against possible regulatory concerns, namely increased opportunity for stock/option manipulation or exploitation by specialists of their informational advantages. The Commission found that the use by AMEX equity specialists of options on their specialty stocks "will offer substantial benefits to the markets for these stocks and possibly to the market for the related options themselves."[19] The Commission also found that, taking into consideration the AMEX's surveillance plans, the proposal adequately addressed possible regulatory concerns. After analyzing the rule change now being proposed, the Commission again concludes that the benefits to be derived from the Rule, as modified, outweigh any regulatory concerns.

Rule 175 as revised will provide AMEX equity specialists greater flexibility in using listed options as a hedge in order to offset market-making risk. Accordingly, the Commission finds that the proposal has the potential to enable specialists to add to overall stock market liquidity and depth by taking specialty stock positions they might not otherwise assume or by reducing risks on positions they are required to assume. This, in turn, also could contribute to greater overall depth and liquidity in the options markets.

In this regard, the proposal is consistent with studies of market performance that have been issued since the October 1987 market break.[20] In view of the market environment of the past several years which has been subject to periodic outbursts of extreme one-day volatility, it is important that specialists have the ability to offset their risks in an effective and efficient manner. Due to the increased volatility of the market, substantial demands are placed on specialists from time to time to act as dealers to cushion sharp intra-day fluctuations in supply and demand in order to maintain fair and orderly markets in their specialty stocks. The proposed modifications to certain provisions in AMEX Rule 175 should provide equity specialists more flexibility in their use of options to hedge their market making activities, allow equity specialists to hedge their specialty stock positions more efficiently, and allow specialists to commit more market making capital during periods of market stress.

In addition, the proposed rule change is a reasonable response to suggestions made by the NYSE's Market Volatility and Investor Confidence Panel. The Panel, headed by former General Motors Chairman Roger Smith and composed of individuals from major U.S. corporations, the securities and futures industries, and the academic community, recommended that:

> proposals to increase liquidity be considered by the NYSE, as well as other markets where equities and equity derivatives are traded. One promising idea is to enhance the ability of specialists at the NYSE to provide liquidity to the market by encouraging them to hedge their positions using options in individual stocks. *Such hedges are made virtually impossible by current rules, which the Panel recommends relaxing, if adequate safeguards are in place to protect against frontrunning and manipulation.*"[21] (*Emphasis added*)

While salutary in these respects, the proposed modifications of options hedging restrictions present concerns about the increased potential for specialists to engage in intermarket abuses. First, the Commission is concerned that greater flexibility in the use of listed options on specialty stocks could be abused for "mini-manipulation"[22] and other stock/option manipulation purposes. Second, the Commission is concerned that AMEX specialists may be able to use options to exploit their "informational advantages" in the underlying stock market. Moreover, the central position of the specialist often dictates that he is consulted by off-floor participants prior to their execution of large trades. Accordingly, it is conceivable that a specialist could be motivated to engage in options transactions to capitalize on informational advantages rather than to offset marketing-making risk.

The Commission, as it did in the original AMEX Rule 175 Approval Order, however, concludes that the AMEX proposal to amend Rule 175 appropriately addresses these concerns. Considering the proposed rule change as a whole, the ability of specialists to use options for abusive purposes is unlikely as a result of the proposed Rule 175 restrictions which limit an options hedging strategy to a net option position on the opposite side of the market from the specialty stock position and require that all options trading activity be related to offsetting market making risk. Any gains in opposite side options positions should be offset by losses in the underlying stock position. In addition, the Commission notes that the reporting and record keeping requirements of the Guidelines are left unchanged by the proposal.[23] Moreover, the proposal leaves intact a provision of the Guidelines specifically highlighting the prohibition against the frontrunning of blocks by specialist.[24] Finally, the AMEX has surveillance procedures in place that are designed to detect and deter stock/options manipulations.

The Commission believes that the specific modifications proposed by the AMEX—permitting AMEX specialists to use "dynamic delta" options hedging strategies, expanding the time frames for

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[18] 15 U.S.C. 78f(b)(5) (1982).

[19] AMEX Rule 175 Approval Order, supra note 3, 50 FR at 49808.

[20] *Report of the Presidential Task Force on Market Mechanisms* at 49–50, Study VI at 39–47 (January 8, 1988) ("Brady Report"); Division of Market Regulation, *The October 1987 Market Break* at 4–1 to 4–29 (February 1988) ("Market Break Report"); NYSE, *Report on Market Volatility and Investor Confidence* at 6, Appendix D at 6–7 (June 7, 1990) ("NYSE Report"); Division of Market Regulation, *Market Analysis of October 13 and 16, 1989* at 16–26, 33–34 (December 1990).

[21] See NYSE Report supra note 20, at 6.

[22] A mini-manipulation involves an effort by a trader over a short period of time to move the price of a stock to benefit a previously established options position. Once the price of the stock has moved up or down, the trader seeks to liquidate the options position at a profit.

[23] A specialist is required under Rule 175 to report all accounts in which he has an interest and in which are effected options transactions in any of his specialty stocks. The reporting of options transactions by each specialist is also mandated by the Exchange. In addition, specialists are required to establish a separate "memo" account to track options positions relating to the specialist's equity account. The underlying specialty stock position is also recorded in this "memo" account.

[24] See Securities Exchange Act Release No. 25233 (December 30, 1987), 53 FR 296 (SR–AMEX–87–28; SR–CBOE–87–52; SR–NYSE–87–36; SR–PSE–87–26; SR–PHLX–87–29; and SR–NASD–87–45).

the liquidation of overhedged or same side options positions overlying specialists' specialty stock positions, raising the de minimis exception to the liquidation requirements, and allowing an overhedged position to facilitate "calendar rollovers"—are reasonable and appropriate means to encourage specialists to offset the risks of assuming dealer positions in specialty stocks through the use of limited options positions and strategies.

The AMEX proposal to expand the use of options hedging by equity specialists by authorizing various options strategies, such as "dynamic deltas," [25] as long as the net option position is on the opposite side of the market from the underlying stock position, is a more sophisticated and sound approach than fixed hedge ratios to provide specialists with adequate hedging capability. The use of dynamic deltas will enable specialists to hedge their positions more precisely and in line with options pricing theories.

The expansion of the time frames for the liquidation of overhedged options positions or those options positions which become on the same side of the market as the underlying stock position reasonably addresses the practical problem specialists encounter under the existing liquidation parameters of having to constantly adjust their options positions in response to changing stock positions. At the same time, the liquidation time frames are not so lengthy as to enable specialists to easily circumvent the requirement that the options positions only be used for hedging purposes.

By raising the de minimis exception to the liquidation requirements to include options contracts which offset the equivalent of 5,000 shares of a specialty stock position, the AMEX has sought to increase specialists' flexibility in unwinding options hedge positions after a change in the underlying specialty stock position. Increasing the de minimis exception of AMEX Rule 175 by a multiplier of five to 5,000 shares of a specialty stock position is warranted due to the greater share volume since 1985 [26] and the positions the specialist must hold as a result of escalating market volatility.[27] In addition, granting a larger de minimis exception will provide the specialist with the necessary flexibility to maintain a fair and orderly market in his underlying specialty stock. The existing exception for options contracts which offset the equivalent of 1,000 shares of a specialty stock position is too small in the context of market conditions characterized by extreme one-day volatility and intra-day price swings. It is more reasonable in constructing a de minimis exception to reflect the present market conditions to expand the exception to 50 options contracts or options representing 5,000 underlying shares. This size is still small enough to prevent a specialist from acquiring a large, unhedged position in options.

The AMEX proposal would further permit specialists to establish and hold an overhedged position in both near-term and more distant term options series until the close of trading on the next trading day after a "calendar rollover" is concluded. The Commission believes this exception to the specialist hedging rules is appropriate and reasonable because it provides specialists with the flexibility to roll positions in a cost-efficient manner, while at the same time removing the risk of becoming "unhedged" during the execution of a rollover to a farther-out options series.

The final component of the AMEX proposal would permit a specialist, with prior Exchange approval, to establish a long-term options position using far-term "out-of-the-money" options. Based on this proposal, a long-term option position could be established regardless of the specialist's actual stock position, provided the strategy is intended to offset general market making risk. For a number of reasons, the Commission believes this proposal by the Exchange is a reasonable alternative to allow specialists to hedge their market making risks through the purchase of options, while not presenting additional opportunities for a specialist to take advantage of any informational benefit or engage in stock/option manipulation. First, Exchange approval is required in order to establish the long-term options position. Accordingly, the specialist must present, and the Exchange must approve the specific hedging technique. Moreover, the Exchange will be able to surveil whether the specialist deviated from the specific strategy. Second, information with respect to short-term market movements would tend not to benefit a specialist establishing a long-term "out-of-the-money" option position. The deltas for these options are usually low, so that a one point move in the stock would result in a much smaller move in the option. Third, the use of an Exchange-approved, long-term options strategy will have to be strictly for hedging purposes to offset market-making risk. Accordingly, the Commission finds that the use of long term "out-of-the-money" options to offset market-making risk without liquidation time frames is an acceptable alternative hedging strategy for specialists.

In conclusion, the Commission finds that the proposed expanded use of listed options by AMEX equity specialists to hedge positions in their specialty stocks will offer substantial benefits to the markets for these stocks. The Commission further finds that the proposal adequately addresses the regulatory concerns of stock/option manipulation and specialist informational advantages. In sum, the benefits of the proposal outweigh any regulatory concerns raised by an expanded use of options by equity specialists to hedge their specialty stock positions.

It therefore is ordered, pursuant to section 19(b)(2) of the Act,[28] that the proposed rule change (SR–AMEX–92–15) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[29]

Margaret H. McFarland,

Deputy Secretary.

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[25] A dynamic delta strategy involves constantly changing the mix of options used to hedge stock positions. This strategy is one of several dynamic hedging strategies which requires rebalancing a market portfolio to increase or decrease with the proportion of equity exposure depending on market movements. Frequent adjustments of the hedge over time and changes in the value of the portfolio are facilitated through the relationship of the option price and underlying stock exhibited in a "delta." See, supra, at note 15.

[26] AMEX Fact Books indicate that average daily share volume for the years 1985–1992 was as follows:

1985—6.3 million shares
1986—11.7 million shares
1987—13.8 million shares
1988—9.9 million shares
1989—12.4 million shares
1990—13.1 million shares
1991—13.3 million shares
1992—14.1 million shares

[27] Currently, AMEX Rule 175 provides a de minimis exception to the liquidation requirements as to an option position of 10 or fewer contracts, which generally would offset the equivalent of 1,000 shares of an underlying specialty stock.

[28] 15 U.S.C. 78s(b)(2) (1982).

[29] 17 CFR 200.30–3(a)(12) (1993).

[Release No. 34–33027; File No. SR–BSE–93–16]

Self-Regulatory Organizations; Filing of Proposed Rule Change by Boston Stock Exchange, Inc. Relating to its Specialist Performance Evaluation Program

October 6, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934

("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 30, 1993, as subsequently amended on September 13, 1993,[1] the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The BSE seeks a twelve-month extension of its Specialist Performance Evaluation Program ("SPEP").[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to incorporate certain objective measures into the Exchange's SPEP. The evaluation program, using the BEACON system,[3] looks at all incoming orders routed to a specialist for execution. A record of all action on these orders is accumulated in a separate file, from which four calculations are run.

Selection criteria for eligible orders include regular buy and sell market and marketable limit orders only. Orders marked buy minus or sell plus are excluded, as are crosses and all orders with qualifiers (e.g., market-on-close, stop, stop limit, all or none, etc.). The order entry date must equal the order execution date.

For each of the measures, including the Specialist Performance Evaluation Questionnaire ("SPEQ"), a ten-point scale will be applied to a range of scores. Based on the raw score for each measure, the respective specialist will receive an associated score between one and ten points, which will be weighted as indicated for each measure.

The first measure is Turnaround Time, which calculates the average number of seconds for all eligible orders, based on the number of seconds between the receipt of a guaranteed market or marketable limit order (i.e., for 1,299 shares or less)[4] in BEACON and the execution, partial execution, stopping or cancellation of the order. An order that is moved from the auto-ex screen to the manual screen will accumulate time until executed, partially executed, stopped or cancelled. This calculation will not be in effect until the individual stock has opened on the primary market. Certain situations, such as trading halts and periods where the BEACON system is off auto-ex floorwide, will result in blocks of time being excluded from the calculation. A specialist who averaged a raw score of 25 seconds will receive 7 points since it falls in the 21 to 25 second range. This calculation will comprise 15% of the overall evaluation program.

TURNAROUND TIME

Time in seconds	Points
1–10	10
11–15	9
16–20	8

TURNAROUND TIME—Continued

Time in seconds	Points
21–25	7
26–30	6
31–35	5
36–40	4
41–45	3
46–50	2
51 and up	1

The second measure is Holding Orders Without Action, which measures the number of market and marketable limit orders (all sizes included)[5] that are held without action for greater than twenty-five (25) seconds. As in the Turnaround Time calculation, a stop, cancellation, execution or partial execution stops the clock. The same exclusions which apply in the Turnaround Time calculation also apply here.[6] Thus if a specialist receives a total of 100 market and marketable limit orders and holds ten (10) of them for more than 25 seconds, his/her raw score of 10% would receive 9 points since it falls in the 6 to 10 percent range. This calculation will comprise 15% of the overall evaluation program.

HOLDING ORDERS WITHOUT ACTION

Percentage of orders	Points
0–5	10
6–10	9
11–15	8
16–20	7
21–25	6
26–30	5
31–35	4
36–40	3
41–45	2
46 and up	1

The third measure is Trading Between the Quote, which measures the number of market and marketable limit orders that are executed between the best consolidated bid and offer where the spread is greater than ⅛th. Thus if a specialist receives ten market and marketable limit orders where the spread between the best consolidated bid and offer is greater than ⅛th, and

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[1] See letter from Karen A. Aluise, Assistant Vice President, BSE, to Diana Luka-Hopson, Branch Chief, Division of Market Regulation, SEC, dated September 8, 1993 ("Amendment No. 1"). Amendment No. 1 corrected certain typographical errors in the proposal.

[2] The Commission initially approved the BSE's SPEP pilot program in Securities Exchange Act Release No. 22993 (March 10, 1986), 51 FR 8298 (March 14, 1986) (File No. SR–BSE–84–04). The Commission subsequently extended the pilot program in Securities Exchange Act Release Nos. 26162 (October 6, 1988), 53 FR 40301 (October 14, 1988) (File No. SR–BSE–87–06); 27656 (January 30, 1990), 55 FR 4296 (February 7, 1990) (File No. SR–BSE–90–01); 28919 (February 26, 1991), 56 FR 9990 (March 8, 1991) (File No. SR–BSE–91–01); and 30401 (February 24, 1992), 57 FR 7413 (March 2, 1992) (File No. SR–BSE–92–01). The BSE was permitted to incorporate objective measures of specialist performance into its pilot program in Securities Exchange Act Release No. 31890 (February 19, 1993), 58 FR 11647 (February 26, 1993) (File No. SR–BSE–92–04), at which point the initial pilot program ceased to exist as a separate program. Commission approval of the BSE's current SPEP pilot program expires on December 31, 1993.

[3] BEACON is the BSE's automated order-routing and execution system. BEACON provides a guarantee of execution for market and marketable limit orders up to and including 1,299 shares. In addition, BEACON can be used to transmit orders not subject to automatic execution. See BSE Rules, Chp. XXXIII. Sec. 5(a) and 7.

[4] Telephone conversation between Karen Aluise, Assistant Vice President, BSE, and Beth Stekler, Attorney, Division of Market Regulation, SEC, on September 23, 1993.

[5] Unlike Turnaround Time, see *supra* text accompanying note 4, Holding Orders Without Action is not limited to those orders guaranteed automatic execution through BEACON.

[6] According to the BSE, the Holding Orders Without Action calculation will not be in effect until the individual stock has opened the primary market. In addition, certain situations, such as trading halts and periods where the BEACON system is off auto-ex floorwide, will result in blocks of time being excluded from the Holding Orders Without Action calculation. Telephone conversation between Karen Aluise, Assistant Vice President, BSE, and Beth Stekler, Attorney, Division of Market Regulation, SEC, on September 23, 1993.

such specialist executes five of the orders between the bid and offer, his/her raw score would be 50% and would receive 9 points since it falls in the 46 to 50 percent range. This calculation will comprise 25% of the overall evaluation program.

TRADING BETWEEN THE QUOTE

Percentage of orders	Points
51 and up	10
46–50	9
41–45	8
36–40	7
31–35	6
26–30	5
21–25	4
16–20	3
11–15	2
0–10	1

The fourth measure is Executions in Size Greater than BBO, which measures the number of market and marketable limit orders which exceed the BBO size and are executed in size larger than the BBO size. Thus if a specialist receives a total of 10 market and marketable limit orders which exceed the BBO size and executes nine of the orders in size larger than the BBO size, his/her raw score would be 90% and would receive 8 points since it falls in the 86 to 90 percent range. This calculation will comprise 25% of the overall evaluation program.

EXECUTIONS IN SIZE GREATER THAN BBO

Percentage of orders	Points
96–100	10
91–95	9
86–90	8
81–85	7
76–80	6
71–75	5
66–70	4
61–65	3
55–60	2
55 and below	1

In addition, several changes have been made to the questionnaire (SPEQ) in view of the adoption of the objective measures which have made some questions obsolete. The minimum acceptable raw score for each question remains at 4.5. Thus if a specialist receives a raw score of 4.5 for each question for a weighted raw score (based on the weights for each question within the questionnaire) of 50.0052, he/she would receive 4 points since it falls in the 50 to 54 weighted raw score range. The questionnaire will comprise 20% of the overall evaluation program.

QUESTIONNAIRE

Weighted raw score	Points
83 and above	10
77–82	9
72–76	8
66–71	7
61–65	6
55–60	5
50–54	4
44–49	3
38–43	2
37 and below	1

Using the examples for each measure above, the following weighted point totals would result in an overall program score of 7.45:

Measure	Points	Weighted points
Turnaround Time (15%)	7	1.05
Holding Orders Without Action (15%)	9	1.35
Trading Between the Quote (25%)	9	2.25
Executions in Size > BBO (25%)	8	2.00
Questionnaire (20%)	4	0.80
		7.45

The rule has been amended to reflect that any specialist who is deficient [7] in any one of the objective measures for two out of three consecutive review periods will be required to appear before the Performance Improvement Action Committee to discuss ways of improving performance. If performance does not improve in the subsequent period, the specialist will appear before the Market Performance Committee for appropriate action, as described below.[8]

Any specialist who falls below the threshold level for the overall evaluation program for two out of three consecutive review periods will be required to appear before the Market Performance Committee and the Committee will take action to address the deficient performance as provided for in Paragraph 2156.10–.60.[9] A specialist who is ranked in the bottom ten percent of the overall evaluation program but who is above the threshold level for the overall program will be subject to staff review to determine if there is sufficient reason to warrant informing the Performance Improvement Action Committee of potential performance problems.

The following threshold scores have been set at which a specialist will be deemed to have adequately performed: [10]

Overall Evaluation Score—at or above weighted score of 5.80 Turnaround Time—below 21.0 seconds (8 points) Holding Orders Without Action—below 21.0% (7 points) Trading Between the Quote—at or above 26.0% (5 points) Executions in Size > BBO—at or above 76.0% (6 points) Questionnaire—at or above weighted score of 50 (4 points)

Due to the subjectiveness of the questionnaire, a specialist who is deficient on the questionnnarie alone will be subject to review by Exchange staff to determine if there is sufficient reason to warrant informing the Performance Improvement Action Committee of potential performance problems. However, a deficient score on the questionnaire may result in performance improvement action where it lowers the overall program score below 5.80.

The Exchange requests an extension of the current pilot program for a twelve-month period to begin on January 1, 1994. This twelve-month period will enable the Exchange to further evaluate the appropriateness of the measures and their respective weights, as well as the effectiveness of the overall evaluation program.

2. Statutory Basis

The basis under the Act for the proposed rule change is section 6(b)(5) in that the SPEP results weight heavily in stock allocation decisions and, as a result, specialists are encouraged to improve their market quality and administrative duties, thereby promoting just and equitable principles of trade and aiding in the perfection of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

No burden on competition is perceived by the adoption of the proposed rule change.

[7] A specialist is deficient in any measure if he/she scores below the minimum adequate performance thresholds set forth below. See infra, text accompanying note 10.

[8] The Commission notes that, in the event a specialist's performance does not improve, SPEP's Supplemental Material authorizes the Market Performance Committee to take the following actions: Suspending the specialist's trading account privilege, suspending his/her alternate specialist account privilege or reallocating his/her specialty stocks.

[9] See *supra*, note 8.

[10] A specialist who receives a score that is below a minimum adequate performance threshold will be deemed to be deficient in that measure. See *supra*, note 7.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments have been neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to File No. SR–BSE–93–16 and should be submitted by November 5, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–25281 Filed 10–14–93; 8:45 am]

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[Release No. 34–33031; File No. SR–CBOE–93–31]

Self-Regulatory Organizations; Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to the Installation of Stock Order Entry Terminals at Options Trading Posts

October 7, 1993

On July 21, 1993, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to the installation of stock order entry terminals at options trading posts. Notice of the proposal appeared in the **Federal Register** on September 15, 1993.[3] No comment letters were received on the proposed rule change. This order approves the Exchange's proposal.

The CBOE proposes to install automated order-entry terminals on the equity options floor whereby options market-makers may enter orders to buy or sell stocks underlying the options in which they make markets. These terminals will provide front-end input for automated order routing and/or execution systems such as the DOT System of the New York Stock Exchange, Inc. ("DOT System") or the MAX system of the Chicago Stock Exchange, Inc. ("MAX System"). The installation of order-entry terminals at options trading posts represents an expansion of the use of stock terminals previously approved by the Commission.[4] The order-entry terminals to be added pursuant to this proposal will be used solely for the purposes of hedging risks associated with options market-making activities. The terminals will not be used to make markets in the underlying stocks themselves. Initially, the Exchange intends to add a limited number of order-entry terminals at selected trading posts but, with experience, may add additional order-entry terminals at other posts on the equity options floor.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5)[5] in that the proposal promotes just and equitable principles of trade, and facilitates transactions in securities. Specifically, the Commission finds that the CBOE proposal to install stock order-entry terminals at options trading posts may permit market-makers to more efficiently acquire positions in underlying stocks to hedge the risks of options positions assumed in connection with their market-making activities. This will facilitate market-makers securities transactions since it will no longer be necessary for market-makers stock orders to be communicated to a member firm's booth or other off-floor location for further transmission to a stock order execution facility (*e.g.*, the DOT System or the MAX System).

The Commission also finds that any regulatory concerns regarding manipulation of underlying stocks raised by the use of stock order-entry terminals at the trading posts are sufficiently minimized by the restriction that the order-entry terminals may not be used to make markets in the underlying stocks. Additionally, use of the order-entry terminals will be monitored by the CBOE for compliance with all applicable Exchange and SEC rules and regulations utilizing the same procedures that currently apply to the monitoring of stock orders of market makers entered through other means.[6]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** in order to permit CBOE to install a limited number of stock order-entry terminals at options trading posts without delay. The Commission believes that the CBOE proposal does not raise any new issues since a comparable proposal by another options exchange has previously been approved by the Commission.[7] The Commission further notes that it has not been made aware of any adverse

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1992).

[3] See Securities Exchange Act Release No. 32856 (September 9, 1993), 58 FR 48396.

[4] See Securities Exchange Act Release No. 21858 (March 18, 1985), 50 FR 11774 (order approving use of Instinet terminals at CBOE options trading floor posts for quotation information only and terminals with order-entry capability in member firm booths) ("Exchange Act Release No. 21585"); Securities Exchange Act Release No 22110 (June 3, 1985), 50 FR 24344 (order approving use of Instinet terminals at specialists' posts and in member firms' booths on the American Stock Exchange, Inc. ("AMEX") options trading floor for purposes of facilitating the execution of securities transactions) ("Exchange Act Release No. 22110").

[5] 15 U.S.C. 78f(b)(5) (1988).

[6] See Letter from Jeffrey Schroer, Vice President, Market Surveillance, CBOE, to Bradley Ritter, Attorney, Office of Options, Division of Market Regulation, Commission, dated October 6, 1993.

[7] See Exchange Act Release No. 22110, *supra* note 4.

comments concerning the operation of stock order-entry terminals located in CBOE member firm booths or on the AMEX options floor since their installation. Accordingly, the Commission believes that good cause exists to approve the proposed rule change on an accelerated basis.

For the reasons discussed above, the Commission finds that the proposal relating to the installation of stock order-entry terminals at trading posts on the equity options trade floor is consistent with the Act, and in particular, section 6 of the Act.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change (SR–CBOE–93–31) is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–25329 Filed 10–14–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33024; File No. SR–CBOE–93–39]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Message Service User Fees

October 6, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 24, 1993, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE is proposing to establish monthly subscriber fees to be paid by members who are approved to use the Exchange's PhoneMail message services. The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission.

[8] 15 U.S.C. 78s(b)(2) (1988).

[9] 17 CFR 200.30 3(a)(12) (1992).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to establish monthly subscriber fees to be paid by members who are approved to use the Exchange's PhoneMail message service. The PhoneMail system is designed to allow subscribers to receive calls at a personal mailbox and to enable them to record, send, and listen to voice messages from any touch-tone telephone at any time. It is also designed to enable subscribers to store messages in their personal mailboxes. The Exchange states that the fees being imposed hereunder are intended to cover the Exchange's costs in installing, implementing, and maintaining the PhoneMail message service.

This action is being taken pursuant to CBOE Rule 2.22, which permits the Exchange to impose fees on members for the use of Exchange facilities or for any services or privileges granted by the Exchange.

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and section 6(b)(4), in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and charges among CBOE members.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e)(1) of Rule 19b–4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–93–39 and should be submitted by November 5, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[1]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–25331 Filed 10–14–93; 8:45 am]

BILLING CODE 8010–01–M

[1] 17 CFR 200.30–3(a)(12) (1992).

[Release No. 34–33030; File No. SR–NASD–93–40]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Part IX of Schedule D to the NASD By-Laws Regarding Rules and Procedures of the NASD Local Quotations Program

October 7, 1993.

I. Introduction

The National Association of Securities Dealers, Inc. ("NASD") submitted to the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change[1] on July 28, 1993, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"). The proposed rule change would delete Part IX of Section D to the NASD By-Laws regarding rules and procedures of the NASD's Local Quotations Program.

Notice of the filing of this proposal appeared in the **Federal Register** on August 25, 1993.[2] No comment letters were received. For the reasons discussed below, the Commission has determined to approve the proposal.

II. Background

Part IX of Schedule D to the NASD By-Laws ("Schedule D") provides for the NASD Local Quotations Program ("Program"), which was a service of the NASD designed to provide a source of quotations to the media for securities of particular interest to specific communities. The Program was administered by an NASD Information Committee which, in addition to other specified functions, appointed members to NASD Local Quotations Committees. The function of the NASD Local Quotations Committees was to select and provide to local media a list of Nasdaq securities and non-Nasdaq securities based on the National Inclusion Standards and Local Inclusion Standards contained in Sections C and D of Part IX to Schedule D.

In recent years, the program has been phased-out by the NASD and the specified NASD Committees created under the program have ceased to function. Under current practice, the NASD provides certain news media organizations and other market data vendors with two electronic data lines containing information on all Nasdaq National Market System ("Nasdaq NMS") securities and Nasdaq SmallCap Market ("Nasdaq SmallCap") securities contained in the Nasdaq System.[3] One data line provides bid/ask quotes for all Nasdaq Stock Market securities, and the other data line provides last sale information for all Nasdaq Stock Market securities. Most news media organizations currently receive quotation information on all Nasdaq Stock Market securities from a media organization or market data vendor that has access to the NASD data lines. Determinations regarding customized publication lists of Nasdaq SmallCap and Nasdaq NMS securities currently are made by individual news media organizations based on their respective publication criteria.

III. Discussion

The Commission has determined that the NASD's proposal is consistent with the provisions of section 15A(b)(6) of the Act[4] which requires that the rules of a national securities association be designed to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest in that the proposed rule change deletes rule language regarding an out-dated NASD practice of providing the news media of specific communities with securities quotations of local interest.[5] Deletion of Part IX of Schedule D reflects the NASD's determination to end the practice of only disseminating certain securities to the local news media pursuant to the Local Quotations Program in favor of the current practice whereby two electronic data lines disseminate information on all Nasdaq System securities to certain media organizations and market data vendors. Most news media organizations currently receive quotation information regarding all Nasdaq Stock Market securities from a media organization or market data vendor that has access to the NASD data lines. Determinations regarding customized publication lists of Nasdaq SmallCap and Nasdaq NMS securities are currently made by individual news media organizations based on their respective publication criteria. The NASD's electronic data lines provide greater market information to the public than the procedures provided for under the Local Quotations Program contained in Part IX of Schedule D. The dissemination of quotes over the NASD electronic data lines, therefore, help perfect a free and open market and national market system, and help to protect investors and the public interest.

IV. Conclusion

In view of the above, the Commission has concluded that the proposed rule change is consistent with section 15A(b)(6) of the Act and that it is appropriate to approve the deletion of Part IX of Schedule D to the NASD By-Laws.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–25283 Filed 10–14–93; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–33000; File No. SR–NASD–93–52]

Self-Regulatory Organizations; Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Pricing of Open Orders

October 1, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 23, 1993, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to add a new Section to the Rules of Fair Practice to require members holding open orders to adjust the order by the amount of any dividend, payment or distribution on the day that the security is quoted ex-dividend, ex-rights, ex-distribution or ex-interest. Below is the text of the

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[1] File No. SR–NASD–93–40.

[2] See Securities Exchange Act Release No. 32764 (August 18, 1993), 58 FR 44868.

[3] The Nasdaq System is comprised of both Nasdaq SmallCap and Nasdaq/NMS securities.

[4] 15 U.S.C. 78o–3.

[5] The Commission recently approved a proposed rule change to delete Part V of Schedule D to the NASD By-Laws regarding publication and dissemination of quotations to the news media. See, Securities Exchange Act Release No. 32246 (April 30, 1993), 58 FR 27598 (File No. SR–NASD–93–14). The NASD notes that the rationale for deleting Part V is very similar to the Association's rationale for the proposed deletion of Part IX of Schedule D.

[6] 17 CFR 200.30–3(a)(12).

proposed rule change. New language is italicized.

Adjustment of Open Orders

Sec. .

(a) A member holding an open order from a customer or another broker/dealer shall, prior to executing or permitting the order to be executed, reduce, increase or adjust the price and/or number of shares of such order by an amount equal to the dividend, payment or distribution, on the day that the security is quoted ex-dividend, ex-rights, ex-distribution or ex-interest, as follows:

(i) In the case of a cash dividend or distribution, the price of the order shall be reduced by subtracting the dollar amount of the dividend or distribution from the price of the order and rounding the result to the next lower 1/8 of a dollar;

(ii) In the case of a stock dividend or split, the price of the order shall be reduced by rounding the dollar value of the stock dividend or split to the next higher 1/8 of a dollar and subtracting that amount from the price of the order; provided, further, that the size of the order shall be increased by (1) multiplying the size of the original order by the numerator of the ratio of the dividend or split, (2) dividing the result by the denominator of the ratio of the dividend or split, and (3) rounding the result to the next lower round lot; and

(iii) In the case of a dividend payable in either cash or securities at the option of the stockholder, the price of the order shall be reduced by the dollar value of the cash or securities, whichever is greater, according to the formulas in (a)(i) or (a)(ii), above: provided, that if the stockholder opts for securities, the size of the order shall be increased pursuant to the formula in (a)(ii), above.

(b) If the value of the distribution cannot be determined, the member shall not execute or permit such order to be executed without reconfirming the order with the customer.

(c) If a security is the subject of a reverse split, all open orders shall be cancelled.

(d) The term "open order" means an order to buy or an open stop order to sell, including but not limited to "good 'til cancelled," "limit" or "stop limit" orders which remain in effect for a definite or indefinite period until executed, cancelled or expired.

(e) The provisions of this rule shall not apply to orders: 1) governed by the rules of a registered national securities exchange; 2) marked "do not reduce"; 3) marked "do not increase"; (4) open stop orders to buy; or (5) open sell orders.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspect of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The NASD does not currently require its members to adjust open orders of securities quoted ex-dividend, ex-rights, ex-distribution or ex-interest. An open order is an order to buy or sell which remains in effect until it is executed or cancelled, or expires. Such orders are also known as "good 'til cancelled," "limit," or "stop limit." The NASD believes it is important to adopt a standard for business practices and ethics in dealing with customer open orders. The NASD is proposing to amend the Rules of Fair Practice to require members holding such orders to adjust the price and, if necessary, the size of the order by the amount of any dividend, payment or distribution on the day that the security is quoted ex-dividend, ex-rights, ex-distribution or ex-interest.

Because there is currently no NASD rule governing open orders, members adjust them according to their own procedures unless the rules of another self-regulatory organization apply to the transaction (e.g., New York Stock Exchange Rule 118). These procedures can vary from automatic adjustment, automatic withdrawal, reconfirmation of the order with the customer, or no action. Further, the procedures may vary among orders entered at the same firm because the orders are routed to different firms for execution. As a result, investors may find that their open orders are executed without adjustment after the ex-date at a higher cost per share than they intended based on their valuation of the security. For example, an investor entering a limit order for a security at $10 per share prior to the dividend date may have based his pricing judgment on the impending dividend declaration. If his order remains open after the ex-dividend date, he may find his order in the money and executed at the dividend-assuming price even though he would not be entitled to the dividend.

Moreover, the fact that some members might adjust open orders on ex-dates while others do not, creates confusion for customers and is inconsistent with the high quality and confidence the NASD has sought to promote in the Nasdaq Stock Market and the non-Nasdaq over-the-counter market. The NASD believes that the rule proposed herein sets forth a unitary and predictable method of handling the adjustment of open orders, eliminates the potential unfairness associated with the failure to adjust such orders, and provides consistency in the adjustment of open orders for NASD members that are also members of the New York Stock Exchange and American Stock Exchange.

Proposed Subsection (a) of the new Rule of Fair Practice would require a member holding an open order from a customer or broker/dealer, prior to executing or permitting the order to be executed, to adjust the price of the order by the amount of any dividend, payment or other distribution on the ex-date. Subsections (a)(i) through (a)(iii) specify the adjustment procedures for certain situations.

Subsection (a)(i) provides that in the case of a cash dividend or distribution, the price of the order shall be reduced by subtracting the dollar amount of the dividend or distribution from the price of the order and rounding the result to the next lower 1/8 of a dollar. For example, if an issuer declares a $.30 per share dividend, on the ex-dividend date the price of an investor's open order to purchase 100 shares of that security at $10 per share would be reduced by $.30, which, when rounded down to the nearest variation in trading units, results in a price of $9⅝ per share. Thus, the investor's initial valuation at $10.00 per share before the ex-dividend date is proportionately maintained by revising the order to $9⅝ per share after the ex-date, reflecting the diminished post-dividend value of the security.

Subsection (a)(ii) provides that for stock dividends or splits the price of the order shall be reduced by rounding the dollar value of the dividend distribution or split to the next higher 1/8 of a dollar and subtracting that amount from the price of the order. Determining the dollar value per share of the distribution is accomplished by multiplying the adjusted value per share after the dividend by the percentage increase in shares. For example, for an open order @ $10 per share and a 3 for 2 distribution, the dollar value per share of the dividend is first determined by:

($10 × 2)/3 × (% increase in shares) = $20/3 × ½ = $6.67 × .50 = $3.33. When rounded to the next higher ⅛ of a share, $3.33 is $3⅜ per share. Then, subtracting $3⅜ from 10 per share, the resulting price is $6⅝ per share. Using another example, for an open order @ $10 per share and a 5 for 3 distribution, the dollar value per share of the distribution is first determined by: ($10 × 3)/5 × (% increase in shares) = $30/5 × ⅔ = $6 × .667 = $4 which, not requiring rounding, is $4 per share. Then, subtracting $4 from $10 per share, the resulting price is $6 per share.[1]

Subsection (a)(ii) also provides for increasing the size of the order to maintain its proportionality with the dollar amount of the original order taking into account the price reduction. This is accomplished by multiplying the number of shares of the original order by the number of shares to be distributed for each share. The result is then divided by the number of shares to be exchanged for new shares in the distribution and rounded to the next lower round lot. For example, for a 100 share open order and a 3 for 2 distribution the resulting number of shares is: (100 × 3)/2 = 150 shares, which when rounded down to the next lower round lot = 100 shares, the size of the original order. For a 1000 share open order and a 3 for 2 distribution the resulting number of shares is: (1000 × 3)/2 = 1500 shares, which is equal to a round lot and therefore does not require rounding. Finally, for a 1000 share open order and a 5 for 3 distribution the resulting number of shares is: (1000 × 5)3 = 1666 shares, which when rounded down to the next lower round lot = 1600 shares.

Subsection (a)(iii) provides that when a dividend is payable at the option of the stockholder in either cash or securities, the order shall be reduced by the dollar value of the cash or securities, whichever, is grater, according to the formulas in Subsections (a)(i) and (a)(ii) of the proposed rule. However, if the stockholder opts for securities, the size of the order shall be increased according to the formula in subsection (a)(ii).

Proposed Subsection (b) requires the member to reconfirm an open order prior to execution if the value of the distribution cannot be determined. Proposed Subsection (c) requires open orders to be cancelled where the security is the subject of a reverse split. Proposed Subsection (d) defines the term "open order" as an order to buy which remains in effect for a definite or indefinite period of time until it is either executed, cancelled, or expires, including, but not limited to, orders marked " good 'til cancelled," "limit" or "stop limit."

Finally, proposed Subsection (e) exempts: (1) Open orders subject to the rules of a registered national securities exchange, (2) open stop orders to buy, and (3) open sell orders, as well as orders marked "do not reduce" or "do not increase." Open stop orders to buy and open sell orders are exempted because the assumptions underlying such an order may not include the value of an upcoming dividend and the combination of stop and limit prices in such an order makes the effect of repricing unpredictable. Order marked "do not reduce" or "do not increase" are the method for the customer to state that he is aware of the implications of not adjusting the order on the ex-date.

The NASD believes that the proposed rule change is consistent with the provisions of section 14A(b)(6) of the Act,[2] which require that the rules of the association be designed to prevent fraudulent and manipulative acts, promote just and equitable principles of fair trade, and protect investors and the public interest, in that the rule creates a single method of handling the adjustment of open orders after the ex-date. In addition to eliminating the potential unfairness associated with the failure to adjust such orders, the incorporation of a uniform standard contributes to the order and predictability which form the basis for investor confidence and participation in the Nasdaq Stock Markets and non-Nasdaq over-the-counter marketplace.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by November 5, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–25328 Filed 10–14–93; 8:45 am]

BILLING CODE 8010–01–M

[1] Notice to Members 93–61 (September 1993), publishing the proposed rule change for vote, included a suggested alternative for calculating the price adjustment.

[2] 15 U.S.C. 78o–3(b)(6).

[Release No. 34–33016; File No. SR-Phlx–93–23]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Amending By-Law, Article X, Authorizing the Establishment of an Audit Committee

October 5, 1993.

On June 1, 1993, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4

[1] 15 U.S.C. 78s(b)(1) (1988).

thereunder,[2] a proposed rule change to amend its By-Laws to authorize the establishment of an Audit Committee as a Standing Committee of the Board of Governors ("Board").

The proposed rule change was published for comment in Securities Exchange Act Release No. 32688 (July 28, 1993), 58 FR 41532 (August 4, 1993). No comments were received on the proposal.

Presently, only the Exchange's clearing agency subsidiaries possess audit committees pursuant to their By-Laws.[3] The Exchange's Board determined that corresponding benefits to the Phlx could be derived from establishing an Audit Committee. The Exchange, therefore, proposes to amend Article X, Section 10 of its By-Laws to establish an Audit Committee as a Standing Committee of the Phlx Board.[4] The proposed Audit Committee would review reports from the management, internal audit staff, and independent auditors, regarding the internal financial controls of the Exchange and the adequacy of the internal audit program. The Audit Committee also would be able to take appropriate action in response to these reports.[5]

The Exchange's Audit Committee would be separate from the Exchange's subsidiaries' audit committees, but would consult with the latter prior to making a recommendation to the Board respecting selection of the Exchange and its subsidiaries' independent auditors. In this regard, the By-Law provision relating to the Phlx Finance Committee, By-Law X, Section 10–14 would be amended to remove this function from the Finance Committee. The Exchange states that the internal audit staff that presently reports exclusively to the subsidiaries' audit committees would have the additional responsibility to report to the proposed Exchange Audit Committee.[6]

The Phlx Audit Committee would be comprised of at least five members, at least three of whom must be Board members, with the remainder being persons considered to be qualified. Phlx By-Law, Section 10–9(a) would specify that Audit Committee members must not serve in a management capacity with the Exchange or its affiliates and must be free of any other relationships that, by Board decision, would interfere with the exercise of independent judgment. Audit Committee members would be appointed by the Board.[7]

The Exchange believes that the proposed rule change is consistent with section 6(b)(5) of the Act as it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and, in general, to protect investors and the public interest.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of sections 6(b)(1) and 6(b)(5).[8] Section 6(b)(1) of the Act requires that an exchange be organized and have the capacity to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members with the Act, the rules and regulations thereunder, and the rules of the exchange. The Commission believes that the proposed establishment of the Audit Committee as a Standing Committee of the Board is consistent with section 6(b)(1) because the proposal should facilitate Exchange compliance with Rule 6a–2 of the Act.[9]

Exchange Act Rule 6a–2 requires that a registered national securities exchange file with the Commission annual amendments to its registration statement. More specifically, Rule 6a–2(a)(2) requires that an exchange submit to the Commission an audited consolidated financial statement, for the latest fiscal year of the exchange, which is prepared in accordance with generally accepted accounting principles and is covered by a report prepared by an independent public accountant. Rule 6a–2(a)(2) also requires that a registered national securities exchange submit to the Commission an unconsolidated financial statement, for the latest fiscal year, for the exchange, its affiliates, and its subsidiaries.

The Commission believes that the establishment and composition of the Audit Committee should further the objectives of section 6(b)(1) by enhancing the Exchange's capacity to comply with the financial reporting requirements set forth in Rule 6a–2 under the Act. As described above, the Audit Committee's responsibilities include recommending to the Board the selection of an independent auditor and overseeing the audit. The Commission believes that the composition of the Audit Committee should help to ensure that Committee members act impartially in their oversight of the audit process. The Commission believes that this independent oversight should, in turn, facilitate compliance with Rule 6a–2, by ensuring that the financial statements submitted to the Commission by the Exchange are audited by a truly independent accountant. Moreover, the Commission believes that because the proposal would allow other qualified persons, *i.e.*, non-members of the Board, to serve on the Committee, the proposal should contribute to the diversity of experience and expertise as well as the independence of the Committee.

The Commission believes that the proposed amendment is consistent with section 6(b)(5) of the Act, which requires that the rules of an exchange be designed, among other things, to protect investors and the public interest, to prevent fraudulent and manipulative acts and practices, and to promote just and equitable principles of trade. The Commission believes that the proposed rule change should promote the requirements of section 6(b)(5) by providing for an Audit Committee which is composed of impartial Committee members. As noted above, the proposed amendment will require that all Committee members be selected from among members of the Board or other qualified persons who must be free of any relationship with Exchange management or any other relationship that would interfere with the exercise of independent judgment. The Commission believes that the proposed composition of the Audit Committee should provide the necessary independence for the proper oversight of the Exchange's financial procedures. The importance of an independent Audit Committee cannot be understated if that Committee, and the Board of Governors as a whole, are to do their job effectively.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[10] that the proposed rule change (SR-Phlx–93–23) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

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[2] 17 CFR 240.19b–4 (1991).

[3] See Article IV, Section 8(a), (i) of the Stock Clearing Corporation of Philadelphia By-Laws; and Article IV, Section 8(a), (i) of the Philadelphia Deposition Trust Company By-Laws.

[4] The standing committees are appointed by the Chairman of the Board, subject to Board approval. See Article X, Section 10–1(b) of the Phlx By-Laws.

[5] Conversation between Murray L. Ross, Secretary, Phlx, and Elizabeth Cosgrove, Attorney, Commission, on July 8, 1993. See proposed Article X, Section 10–9(b).

[6] The management of the Exchange has decided to retain the internal audit staff to oversee Exchange departments and operations.

[7] Appointments to the Audit Committee would be made as promptly as possible after each annual meeting and election, and each appointee would serve for one year or until a successor is appointed. See Article X, Section 10–1(b) of the Phlx By-Laws.

[8] 15 U.S.C. 78f(b) (1) and (5) (1988).

[9] 17 CFR 240.6a–2 (1991).

[10] 15 U.S.C. 78s(b)(2) (1988).

[11] 17 CFR 200.30–3(a)(12) (1991).

Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 93–25280 Filed 10–14–93; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34–33025; File No. SR–Phlx–93–30]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Amending Rule 1047A Regarding Index Option Opening Rotations, Halts and Reopenings

October 6, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 29, 1993, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Phlx.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx, pursuant to Rule 19b–4 of the Act, proposes to amend Phlx Rule 1047A to: (1) Require specialists to open an industry index option for trading once securities representing 90% of the current value of the index have opened for trading on the primary market; (2) to permit specialists to open such index options once securities representing 50% of the current value of the index have opened; (3) to require specialists to halt trading any index option once securities representing more than 50% of the current value are halted or suspended; (4) to permit specialists to halt trading once securities representing more than 10% of the current value of the index are halted or suspended; and (5) to permit specialists to reopen halted options once securities representing 50% of the market value of an index are opened. Although the text of Rule 1047A would be reorganized, the following provisions would not be substantively changed: (1) The provison in Rule 1047A(a) that the Exchange may halt index options trading in the best interests of fair and orderly markets if certain conditions are met, which would appear in Rule 1047A(c); (2) Rule 1047A(d) would be renumbered as paragraph (e); (3) Rule 1047A(c), to be renumbered as paragraph (b) would be retitled as "Modified Rotations and SORT"; and (4) the third paragraph of Rule 1047A(a) would contain the provisions formerly in paragraph (b) regarding the procedure for opening.

In addition, with respect to reorganization, Rule 1047A, currently titled "Trading Rotations, Halts or Suspensions" would be retitled "Trading Rotations, Halts or Reopenings." In addition, the Phlx is proposing to reorganize the paragraphs to logically follow the procedure of the opening, halting and reopening of trading. The text of the proposed rule change is available at the Office of the Secretary, the Phlx, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The Phlx proposes to amend Rule 1047A governing the opening, halting and reopening of index options in order to definitively establish the specialist's obligation with respect to opening such options as well as to bring this rule in line with other Exchange rules. For example, the Phlx is proposing to adopt paragraph (d) to govern the reopening of halted index options because there is currently no such provision. Pursuant to this provision, a specialist would be allowed, with floor official approval, to reopen an index option once securities representing 50% of the value of the index are open for trading on the primary market.

With respect to the specialist's ability to open an option, Rule 1047A currently provides that the specialist must open an industry index option once securities representing 50% of the value of the index are open for trading. Under the proposed rule change, the specialist would not be required to open the index until securities representing 90% of the market value of the index are open on the primary market. The Phlx believes that because a specialist will often feel comfortable to open an issue with as low as 50% of the market value open, in these cases, the specialist should be allowed to open the index. The Phlx puts forth the proposal in response to recent situations where there were delays in opening certain stocks underlying Phlx-traded index options. The Exchange asserts that the proposed rule change recognizes pricing difficulties when less than all of the underlying component stocks are open for trading in the primary market. Thus, the intent is to expand the specialist's ability to refrain from opening an index option for trading in order to promote just and equitable principles of trade and to maintain fair and orderly markets. The Phlx believes, accordingly, that when securities representing between 50% and 90% of the index value are open for trading, the specialist's ability to delay an opening until the index price more accurately reflects its true value should facilitate a more fair and orderly execution of orders in the respective option series.

With respect to halts, Rule 1047A currently provides that the Exchange may halt trading whenever trading in securities representing 10% of the current index value of all stocks underlying the industry index is halted or suspended and whenever trading in securities representing 20% of the current index value of a market index is halted or suspended. Under the current proposal, a halt would be permitted whenever trading in securities representing 10% of the current index value of all stocks underlying all indexes is halted or suspended. However, a halt would be required when securities representing 50% of the current index value are halted or suspended.

The Exchange believes that the foregoing rule change proposal is consistent with section 6 of the Act, in general, and with section 6(b)(5), in particular, in that it is designed to promote just and equitable principles of trade and protect investors and the public interest by preventing the occurrence of options trading based on incomplete pricing and by providing a liquid market for index options when pricing is available. In this regard, the Phlx believes that to limit a required opening of industry index options to situations where securities representing 90% of the index value are open should ensure that options are opened once this

[1] On July 13, 1993 the Phlx amended the rule change proposal to adopt a floor procedure advice to parallel the provisions of the proposed rule in order to make the procedures readily available to floor members in their advice handbooks. See letter from Edith Hallahan, Attorney, Market Surveillance, Phlx to Richard Zack, Branch Chief, Options Regulation, Division of Market Regulation, SEC dated July 8, 1993 ("Amendment No. 1").

level of pricing is available. In situations where a specialist with floor official approval determines that the ability to price the option does exist, then the option could be opened for trading as long as securities representing more than 50% of the index value are open for trading. In these situations, permitting the option to trade promotes liquidity and confidence in the marketplace.

The Phlx also believes that permitting the specialist to request floor official approval to halt index options trading where securities representing 10% or more of the index value are halted or suspended should promote just and equitable principles of trade by ceasing trading where all investors lack access to pricing information. Although a halt is currently required when securities representing 10% of the index value stop trading, this number would be changed to 50%. The Phlx believes that in certain situations, as determined by the specialist with floor official approval, it is appropriate to continue trading when securities representing more than 10% but less than 50% of the index value stop trading. The remaining securities that are trading can be enough to price the index option and, as stated above, the Phlx believes that to continue trading promotes liquidity in that option.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–93–30 and should be submitted by November 5, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–25333 Filed 10–14–93; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Application To Withdraw From Listing and Registration; (Benton Oil and Gas Company, Common Stock, $.01 Par Value; 8% Convertible Subordinated Debentures Due 2002) File No. 1–10762

October 7, 1993.

Benton Oil and Gas Company ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified securities from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing these securities from listing and registration include the following:

According to the Company, its Board of Directors (the "Board") unanimously approved resolutions on February 3, 1993, to withdraw the Company's Common Stock and Debentures from listing on the Amex and, instead, list such Common Stock on the National Association of Securities Dealers Automated Quotation/National Market System ("NASDAQ/NMS") and such Debentures on the NASDAQ Small Cap Market ("NASDAQ/Small Cap"). According to the Company, the decision of the Board followed a lengthy study of the matter, and was based upon the belief that listing of the Common Stock on NASDAQ/NMS and the listing of the Company's Debentures on NASDAQ/Small Cap will be more beneficial to its stockholders than the present listing on the Amex because:

(1) The Company believes that the NASDAQ/NMS system of competing market-makers will result in increased visibility and sponsorship for the Common Stock than is presently the case with the single specialist assigned to the stock on the Amex;

(2) The Company believes that the NASDAQ/NMS system will offer the Company's stockholders more liquidity than is presently available on the Amex and less volatility in quoted prices per share when trading volume is slight;

(3) The Company believes that the NASDAQ/NMS system will offer the opportunity for the Company to secure its own group of market-makers and, in doing so, expand the capital base available for trading in its Common Stock;

(4) The Company believes that firms making a market in the Company's Common Stock on the NASDAQ/NMS system will be inclined to issue research reports concerning the Company, thereby increasing the number of firms providing institutional research and advisory reports.

Any interested person may, on or before October 29, 1993 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–25285 Filed 10–14–93; 8:45 am]

BILLING CODE 8010–01–M

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[2] 17 CFR 200.30–3(a)(12) (1993).

[Release No. IC–19775; 812–8520]

Lutheran Brotherhood, et al.; Application for Exemptions

October 8, 1993.

AGENCY: Securities and Exchange Commission (the "Commission" or the "SEC").

ACTION: Notice of application for exemptions under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Lutheran Brotherhood ("LB"), LB Variable Annuity Account I (the "Variable Account"), and Lutheran Brotherhood Securities Corp. ("LBSC").

RELEVANT 1940 ACT SECTIONS: Order requested pursuant to section 6(c) granting exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order to permit them to deduct a mortality and expense risk charge from the assets of the Variable Account, which funds certain variable annuity contracts.

FILING DATES: The application was filed on August 4, 1993 and amended on October 1, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, in person or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 2, 1993, and should be accompanied by proof of service on the Applicants in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 625 Fourth Avenue South, Minneapolis, Minnesota 55415.

FOR FURTHER INFORMATION CONTACT: C. Christopher Sprague, Senior Attorney, at (202) 504–2802, or Michael V. Wible, Special Counsel, at (202) 272–2026, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. LB, which was organized in 1917, is a fraternal benefit society owned and operated for its members under the laws of the State of Minnesota. LB is currently licensed to transact life insurance business in 50 states and the District of Columbia. LB had total assets at December 31, 1992 of over $7.8 billion.

2. The Variable Account is a separate account of LB, and was established by LB's Board of Directors pursuant to the laws of Minnesota to fund individual flexible premium deferred variable annuity contracts (the "Contracts"). The Variable Account is registered as a unit investment trust under the 1940 Act, and meets the definition of "separate account" set out in section 2(a)(37) and Rule 0–1(e) under the 1940 Act. The income, gains, and losses of the Variable Account, whether or not realized, will be credited to or charged against the amounts allocated to it in accordance with the Contracts, without regard to any other income, gains, or losses of any other separate account or arising out of any other business that LB may conduct.

3. Premiums paid under any Contract may be allocated, according to the Contract owner's instructions, to LB's Fixed Account or to one or more of the subaccounts of the Variable Account (the "Subaccounts"). The Variable Account initially will have four Subaccounts: The Growth Subaccount, the High Yield Subaccount, the Income Subaccount, and the Money Market Subaccount. Each of these Subaccounts will invest solely in a corresponding portfolio of LBVIP Series Fund, Inc. (the "Fund"), which is registered under the 1940 Act as an open-end diversified management investment company of the series type. LB reserves the right to establish additional Subaccounts, each of which would invest in shares of a new corresponding portfolio of the Fund or in shares of another investment company having a specified investment objective.

4. LBSC, which is an indirect subsidiary of LB, will be the principal underwriter of the Contracts. LBSC is a registered broker-dealer and a member of the National Association of Securities Dealers, Inc.

5. The Contracts will be offered only to persons who are eligible for membership in LB, unless otherwise required by state law. The Contracts may be sold to retirement plans that may or may not qualify for special Federal tax treatment under the Internal Revenue Code. The minimum about that LB will accept as an initial premium is $600 on an annualized basis. Subsequent premiums may be paid under a Contract, but LB may choose not to accept any subsequent premium if it is less than $50. On or before the date of which annuity payments are scheduled to begin (the "Maturity Date"), the Contract owner may request the transfer of all or part of the accumulated value of the Contract among the Subaccounts or LB's Fixed Account, which transfer will be effected LB without charge. LB reserves the right to limit the number of transfers in any Contract year, provided that at least two such transfers each Contract year always will be allowed. The Contract offers a death benefit that applies both before and after the Maturity Date.

6. No charge for sales expense is deducted at the time premiums are paid. However, during the first six Contract years, a charge is deducted from the accumulated value of the Contract in the case of a full or partial surrender before annuity payments begin and, if certain settlement options are selected, at the time annuity payments begin. Up to 10% of the accumulated value of a Contract may be surrendered each Contract Year without a surrender charge (the "free corridor"). A 6% surrender charge is assessed against the amount in excess of the free corridor during the first Contract year, and the applicable percentage declines by one percent for surrenders in each Contract year thereafter. In no event will the total surrender charge on any one Contract exceed 6½% of the total gross premiums paid under the Contract.

7. On each Contract anniversary prior to and including the Maturity Date, LB will deduct proportionately from the Subaccounts and the Fixed Account that make up a Contract's accumulated value an administrative charge of $30 to reimburse LB for administrative expenses relating to the Contract, the Variable Account and the Subaccounts. This charge will be lower to the extent legally required in some states. No such charge is deducted if on that Contract anniversary the total amount of premiums paid under the Contract, less the amount of all prior partial surrenders (which includes the amount of related surrender charges), is equal to or greater than $5,000. LB will not increase this charge, regardless of its actual expenses, and LB does not expect to make a profit on this charge. No administrative charge is payable during the annuity period.

8. The variable annuity payments made to annuitants will vary in accordance with the investment experience of the Subaccounts selected by the Contract owner. However, neither such variable annuity payments nor fixed annuity payments (if fixed annuity payments have been selected) will be affected by the mortality experience of persons receiving the annuity payments.

This mortality risk is imposed on LB because of the guaranteed annuity rates incorporated into the Contract, which cannot be changed. LB also assumes the mortality risk that a death benefit in excess of the current accumulated value of the Contract will be paid. LB incurs an expense risk on account of its guarantee to not increase the administrative expense charge regardless of its actual expenses.

9. To compensate LB for assuming such mortality and expense risks, LB proposes to deduct a daily mortality and expense risk charge from the average net assets in the Variable Account. LB has determined that a mortality and expense risk charge at an annual rate of 1.25% of the average daily net assets of each Subaccount would be reasonable in relation to the mortality and expense risks assumed by LB under the Contracts. LB will, however, initially impose a daily mortality and expense risk charge equal to an annual rate of 1.10% (approximately 0.80% for mortality risk and 0.30% for expense risk). The mortality and expense risk charge is guaranteed not to increase above an annual rate of 1.25%.

10. If the amount of all charges assessed in connection with the Contracts as described above is not enough to cover all expenses incurred in connection therewith, the loss will be borne by LB. Any such expenses borne by LB will be paid out of its general account, which may include proceeds derived from mortality and expense risk charges deducted from the Variable Account. If the amount of the mortality and expense risk charge proves more than sufficient to cover the actual cost of the mortality and expense risks undertaken, the excess will be retained by LB.

Applicants' Legal Analysis

1. Applicants request an exemption from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to permit the deduction under the Contracts of the proposed mortality and expense risk charge. Section 27(c)(2) of the 1940 Act prohibits any registered investment company issuing periodic payment plan certificates, and any depositor of or underwriter for such company, from selling any such certificate unless, among other things, the proceeds of all payments on such certificates (excluding sales load) are held by a qualified trustee or custodian under an indenture or agreement containing, in substance, the provisions required by sections 26(a)(2) and 26(a)(3) for trust indentures of unit investment trusts. Among the provisions required to be included in such an indenture or agreement is the proviso in section 26(a)(2)(C) that permits the trustee or custodian to deduct from the assets of the trust as an expense only bookkeeping and other administrative services charges not exceeding such reasonable amount as the Commission may prescribe. Because the proposed mortality and expense risk charge is not such a bookkeeping or administrative expense charge, Applicants seek exemptions from section 27(c)(2) and 26(a)(2)(C).

2. Applicants represent that the proposed mortality and expense risk charge is designed only to cover the cost of bona fide mortality and administrative expense risks, and that the maximum possible level of such charge (an annual rate of 1.25%) is reasonable in relation to the mortality and expense risks assumed under the Contracts. Applicants also represent that the maximum level of such charge is within the range of industry practice for comparable annuity contracts. These representations are based upon an analysis of the mortality and expense risks involved, and an analysis of publicly available information about comparable contracts, taking into account the particular annuity features of such contracts (including such factors as current charge levels, charge level guarantees or annuity rate guarantees, the manner in which charges are imposed, and the markets in which such contracts are offered). Applicants will maintain and make available to the Commission upon request a memorandum explaining the basis for these representations and the documents used to support these representations.

3. Applicants do not believe that the surrender charge being imposed under the Contracts will cover the expected costs of distributing the Contracts. Any loss will be paid by LB out of its general account, which may include proceeds from mortality and expense risk charges. However, LB has concluded that there is a reasonable likelihood that the distribution financing arrangement being used in connection with the Contracts will benefit the Variable Account and the Contract owners. LB will keep and make available to the Commission upon request a memorandum setting forth the basis for this representation.

4. Applicants further represent that the Variable Account will only invest in underlying fund(s) which have undertaken to have a board of directors, a majority of whom are not interested persons of the fund, formulate and approve any plan under Rule 12b–1 under the 1940 Act to finance distribution expenses.

Applicants' Conclusion

In light of the foregoing representations, Applicants conclude that the requested exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–25330 Filed 10–14–93; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 19769; 812–8324]

Mutual Fund Group, et al.; Application for Exemption

October 7, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("Act").

APPLICANTS: Mutual Fund Group (the "Trust"), The Chase Manhattan Bank, N.A. ("Chase"), and Vista Broker-Dealer Services, Inc. ("VBDS"); on behalf of themselves and any other existing or future open-end investment company registered under the Act for which Chase in the future becomes investment adviser and VBDS in the future becomes principal underwriter.

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from the provisions of sections 2(a)(32), 2(a)(35), 18(f), 18(g), 18(i), 22(c), and 22(d) of the Act, and rule 22c-1 thereunder.

SUMMARY OF APPLICATION: Applicants seek to amend a prior order that permits them to issue two classes of shares representing interests in the same investment portfolio. As amended, the order would permit applicants to issue multiple classes of shares representing interests in the same investment portfolio, assess a contingent deferred sales charge ("CDSC") on certain redemptions of the shares, and waive or reduce the CDSC in certain instances.

FILING DATE: The application was filed on March 25, 1993, and amended on June 23, 1993, and August 20, 1993. Applicants have agreed to file an additional amendment during the notice period. This notice reflects the changes

to be made by the additional amendment.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 2, 1993, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o The Chase Manhattan Bank, N.A., 1 Chase Manhattan Plaza, New York, New York 10081.

FOR FURTHER INFORMATION CONTACT: Courtney S. Thornton, Senior Attorney, at (202) 272–5287, or C. David Messman, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Trust is an open-end management investment company registered under the Act and currently consists of 19 series (the "Series"), each of which has separate investment objectives and policies. Certain of the Series (the "Vista Money Market Funds") are covered by a prior order (the "Prior Order"),[1] which permits them to issue two classes of shares representing interests in the same investment portfolio.[2] Other Series (the "Vista Front-End Load Funds") are offered to investors at net asset value per share plus a front-end sales load, and charge distribution and shareholder servicing fees based on the average daily net assets of each Series. The remaining Series (the "Vista No-Load Funds") currently are offered and sold only to certain benefit plans at the net asset value per share of each Series, without the imposition of sales loads, rule 12b-1 plan distribution fees, or shareholder servicing fees.[3]

2. Chase, a wholly-owned subsidiary of The Chase Manhattan Corporation, a registered bank holding company, serves as the investment adviser for the Series pursuant to separate investment advisory agreements with the Trust on behalf of each Series.

3. Pursuant to a distribution and sub-administration agreement with the Trust, VBDS acts as the principal underwriter and distributor of shares of each Series, and bears the expenses of printing, distributing and filing prospectuses and statements of additional information and reports used for sales purposes, and of preparing and printing sales literature and advertisements not paid for by the Series' rule 12b–1 plans. VBDS, for rendering sub-administration services, receives from each Series a fee computed and paid monthly based on an annual rate equal to 0.05% of each Series' average daily net assets, on an annualized basis for its then-current fiscal year.

4. The Trust also has entered into shareholder servicing agreements with Chase and The Chase Manhattan Bank of Connecticut, N.A. (collectively, the "Shareholder Servicing Agents"). These agreements provide that each Shareholder Servicing Agent shall perform the following services as agent for its customers: answers customer inquiries regarding account status and history, the manner in which purchases and redemptions of shares may be effected for each Series for which the Shareholder Servicing Agent is acting, and certain other matters pertaining to a Series; assist shareholders in designating and changing divided options, account designations and addresses; provide necessary personnel and facilities to establish and maintain shareholder accounts and records; and provide such other related services as the Trust or a shareholder may request. Rather than paying the foregoing service fee to the Shareholder Servicing Agents, some classes may pay a service fee to VBDS to pay ongoing commissions, or "trailers," to financial consultants.

5. Applicants propose to implement a multiple class distribution system (the "Variable Distribution Method"). Under the Variable Distribution Method, certain of the Series would provide public investors with the option of purchasing shares either (a) with a conventional front-end sales load and subject to a rule 12b–1 distribution fee and a service fee, as is currently offered by the Vista Front-End Load Funds, or (b) subject to a contingent deferred sales charge and a rule 12b–1 distribution fee and service fee (the "Deferred Option"). Certain of the Series also would offer a third class of shares with a reduced front-end load and a higher rule 12b–1 distribution fee (the "Level Load Option"), and a fourth class of shares that would be a variation of the Front-End Load Option, except that there would be no front-end sales load for purchases in excess of $500,000, although a redemption fee would be imposed for redemptions during the first and second year only (the "Modified Front-End Load Option"). The Vista Money Market Funds would offer a third class of shares ("Class E Shares") to certain institutional and retail clients, and will continue to offer the Vista Shares and Premier Shares classes of shares currently offered to retail and institutional investors. All asset-based fees contemplated by the implementation of the Variable Distribution Method will comply with the asset-based sales charge rules of the National Association of Securities Dealers, Inc. ("NASD").

6. Under the Front-End Load Option, as currently offered by the Vista Front-End Load Funds, an investor would purchase Class A shares at the then current net asset value plus a front-end sales load. The sales loads generally would be subject to reductions for larger purchases and under a right of accumulation. In addition, pursuant to a rule 12b–1 plan, Class A shareholders would be subject to a total distribution fee of up to 0.25% of the average daily net asset value of the Class A shares and an ongoing service fee of up to 0.25% of the average daily net asset value of the Class A shares.

7. Investors choosing the Deferred Option would purchase Class B shares at net asset value without the imposition of a sales load at the time of purchase. Each Series would pay a service fee of up to 0.25% of average daily net assets, and a distribution fee expected to be at an annual rate of up to 0.75% of average daily net assets pursuant to a rule 12b–1 plan. In addition, an investor's proceeds from a redemption of Class B shares made within a specified period (expected to

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[1] Mutual Fund Group, et al., Investment Company Act Release Nos. 17539 (June 19, 1990) (notice) and 17590 (July 17, 1990) (order).

[2] Three of the Vista Money Market Funds offer two classes of shares ("Premier Shares," which are made available to institutional investors, and "Vista Shares," which are offered to retail investors) in accordance with the terms and conditions of the Prior Order. The order, if granted, will supersede the Prior Order in its entirety. However, because the order will incorporate all relief previously granted in the Prior Order, the order will not have any effect on shares that have been issued pursuant to the Prior Order.

[3] One Series (the IEEE Balanced Fund), which is offered and sold only to investors who are members of The Institute of Electrical and Electronics Engineers, Inc., is sold at net asset value without the imposition of a sales load, although the fund charges 12b-1 fees and shareholder servicing fees.

be six year) of his or her purchase may be subject to a CDSC that would be paid to VBDS. The CDSC is expected to range from 5% for redemptions made during the first year from initial purchase to 1% for redemptions made during the sixth year since purchase, reducing at a rate of 1% per year (except that in the third and fourth years the rate would be 3% in each year). The amount of the CDSC will be calculated as the lesser of the amount that represents a specified percentage of the net asset value of the shares at the time of purchase, or the amount that represents the percentage of the net asset value of the shares at the time of redemption. Series shares that are redeemed will not be subject to a CDSC to the extent that the value of these shares represents (a) capital appreciation of Series assets, (b) reinvestment of dividends or capital gain distributions, or (c) shares redeemed more than six years after purchase. In determining the applicability and rate of any CDSC, it will be assumed that a redemption is made first of shares representing reinvestment of dividends and capital gain distributions that are not subject to any CDSC, and then of other shares held by the shareholder for the longest period of time.

8. Applicants also request the ability to waive or reduce the CDSC on redemptions (a) following the death or disability, as defined in section 72(m)(7) of the Internal Revenue Code of 1986 (the "Code"), of a shareholder, if redemption is made within one year of death or disability of a shareholder, and (b) in connection with any redemption in connection with a lump-sum or other distribution following retirement or, in the case of an IRA or Keogh Plan or a custodial account pursuant to section 403(b)(7) of the Code, after attaining age 59. The charge also may be waived on any redemption that results from a tax-free return of an excess contribution pursuant to section 408(d) (4) or (5) of the Code.

9. All Class B shares of each Series will automatically convert to Class A shares after a certain holding period, expected to be, in most cases, approximately eight years, but which may be shorter. Upon the expiration of the holding period, Class B shares (except those purchased through the reinvestment of dividends and other distributions paid in respect of Class B shares of that Series) automatically will convert to Class A shares of the Series at the relative net asset values of each of the classes, and will, as a result, thereafter be subject to the lower distribution fee under the Class A rule 12b–1 plan. For purposes of conversion to Class A, all Class B shares in a shareholder's Series account that were purchased through the reinvestment of dividends and other distributions paid in respect of Class B shares will be considered to be held in a separate sub-account. Each time any Class B shares in the shareholder's Series account (other than those in the sub-account referred to above) convert to Class A, a *pro rata* portion of the Class B shares then in the sub-account also will convert to Class A. The conversion of Class B shares to Class A shares is subject to the continuing availability of a ruling of the Internal Revenue Service that payment of different dividends on Class A and Class B shares does not result in the Series' dividends or distributions constituting "preferential dividends" under the Code, and the continuing availability of a private letter ruling or an opinion of counsel to the effect that the conversion of shares does not constitute a taxable event under the Code. The conversion of Class B shares to Class A shares may be suspended if this opinion is no longer available. In the event that conversions of Class B shares do not occur, Class B shares would continue to be subject to the rule 12b–1 distribution fee and any incrementally higher transfer agency costs attending the Deferred Option for an indefinite period.

10. Under the Level Load Option, investors would purchase Class C shares at the current net asset value plus a 1% initial sales charge. In addition, Class C shareholders would be subject to a distribution fee expected to be at an annual rate of up to 0.75% of average daily net assets pursuant to a rule 12b–1 plan, and a service fee of up to 0.25% of average daily net assets.

11. An investor choosing the Modified Front-End Load Option would purchase Class D shares without a front-end sales load at the time of purchase, provided such investor purchases a minimum dollar amount of the Class D shares. The minimum dollar amount, presently proposed at $500,000, will be stated in the prospectus of each Series. Each Series also would pay a distribution fee under its rule 12b–1 plan at an annual rate of 0.25% of average daily net assets and a service fee of up to 0.25% of average daily net assets on Class D shares. In addition, a Class D investor's proceeds from a redemption of Class D shares made within a two-year period of his or her purchase may be subject to a redemption fee at a rate of 1% per year, which would be paid to the Series.

12. Under the Vista Shares Option, shares of the Vista Money Market Funds are made available to retail investors subject to a minimum initial investment of $2,500. The Vista Shares are offered with a rule 12b–1 distribution fee equal to an annual rate of up to 0.25% of the average daily net assets to such class, a service fee equal to an annual rate of up to 0.25% of the average daily net assets of such class, and a fund servicing fee equal to an annual rate of up to 0.10% of the average daily net assets of such class.[4] Fund servicing fees are paid to Chase, as Shareholder Servicing Agent, for the following services: To assist in processing purchase and redemption transactions; to arrange for the wiring of funds; to transmit and receive funds in connection with customer orders to purchase or redeem shares; to verify and guarantee shareholder signatures in connection with redemption orders and transfers and changes in shareholder-designated accounts; to furnish (either separately or on an integrated basis with other reports sent to a shareholder by a Shareholder Servicing Agent) monthly and year-end statements and confirmations of purchases and redemptions; to transmit, on behalf of the Trust, proxy statements, annual reports, updating prospectuses and other communications from the Trust to shareholders of each such Series; to receive, tabulate and transmit to the Trust proxies executed by shareholders with respect to meetings of shareholders of each such Series; and to provide such other related services as the Trust or a shareholder may request.

13. The Premier Shares class currently is made available to institutional investors, subject to a minimum initial investment of $100,000. The institutional investors include, but are not limited to, various internal divisions of Chase and its affiliates as well as the clients of such institutional investors, provided the shares of the Premier Shares class are purchased by the internal division of Chase in an omnibus account for the benefit of such clients and the division performs certain functions including, but not limited to, subaccounting, recordkeeping and responding to all shareholder inquiries concerning purchases, redemptions and exchanges. The Premier Shares are offered with a rule 12b–1 distribution fee at an annual rate of up to 0.10% of the average daily net assets of such class (except the Premier Shares of Vista U.S. Government Money Market Fund, which does not have a rule 12b–1 distribution fee), and a service fee at an annual rate of up to 0.25% of the average daily net assets of such class.

[4] Applicants do not consider the fund servicing fee to be a "service fee" as that term is defined in Article III, Section 26 of the NASD's Rules of Fair Practice.

The Premier Shares also may be subject to a fund servicing fee (as described above) at an annual rate of up to 0.10% of the average daily net assets of such class.

14. Each Vista Money Market Fund also may offer Class E shares, which would be available for purchase by institutional investors that initially invest a minimum of $1 million in the Series. The Class E shares will be offered without a rule 12b–1 distribution fee, a service fee, or a fund servicing fee.

15. From time to time, the Trust may create additional classes of shares, the terms of which may differ from the Class A, Class B, Class C, Class D, Premier Shares, Vista Shares, and Class E shares only in the following respects: (a) Each class of shares would have a different designation; (b) each class of shares might be sold under different sales arrangements (e.g., sales with a front-end sales load, subject to a CDSC, or at net asset value); (c) each class of shares would bear any rule 12b–1 plan or service plan payments related to the class; (d) each class of shares would bear expenses specifically attributable to the particular class ("Class Expenses") limited to: (i) Transfer agency fees as identified by the transfer agent as being attributable to a specific class; (ii) printing and postage expenses relating to preparing and distributing materials such as shareholder reports, prospectuses and proxies to current shareholders; (iii) Blue Sky registration fees incurred by a class of shares; (iv) Commission registration fees incurred by a class of shares; (v) the expenses of administrative personnel and services as required to support the shareholders of a specific class; (vi) litigation or other legal expenses relating solely to one class of shares; (vii) Trustees' fees incurred as a result of issues relating to one class of shares; and (viii) other expenses that are subsequently identified and determined to be properly allocated to one class of shares which shall be approved by the SEC pursuant to an amended order; (e) the related voting rights as to matters exclusively affecting one class of shares (e.g., the amendment or termination of a rule 12b–1 plan) in accordance with the procedures set forth in rule 12b–1, except as provided in condition 16 below; (f) each class of shares may have different exchange privileges; and (g) each class of shares may have different conversion features.

16. Currently, shares of the Series generally may be exchanged at net asset value for shares of other Series, including shares of the Vista Money Market Funds. The exchange privilege applicable to each class of shares will comply with rule 11a–3 under the Act and will be set forth in the prospectus of each Series.

Applicants' Legal Conclusions

1. Applicants are requesting an exemptive order to the extent that the proposed issuance and sale of multiple classes of shares representing interests in the Series might be deemed (a) to result in the issuance of a "senior security" within the meaning of section 18(g) of the Act and thus be prohibited by section 18(f)(1) of the Act, and (b) to violate the equal voting provisions of section 18(i) of the Act.

2. Applicants believe that the proposed Variable Distribution Method does not raise any of the legislative concerns that section 18 was designed to ameliorate. Under the Variable Distribution Method, mutuality of risk will be preserved with respect to each class of shares in a Series. Further, because each class of shares will be redeemable at all times (subject to the limitations set forth in each Series' prospectus and statement of additional information), no class of shares will have any preference or priority over any other class in the Series, and the similarities and dissimilarities of the classes of shares will be disclosed when required in the prospectuses and statements of additional information of the Series, investors will not be given misleading impressions as to the safety or risk of any class of shares, and the nature of each class of shares will not be rendered speculative.

3. The capital structure of the Series under the proposed arrangement will not induce any group of shareholders to seek investment in higher risk securities to the detriment of any other group of shareholders, since the investment risks of each Series will be borne equally by all of its shareholders. Moreover, the capital structure of the Series could not lead to manipulation of expenses and profits among the various classes of shares, because the Series are not organized in a pyramid fashion. Similarly, the concerns that complex capital structures may facilitate control without equity or other investment and may make it difficult for investors to value the securities if the Series are not present under the proposed Variable Distribution Method.

4. Applicants believe that the implementation of the proposed Variable Distribution Method will better enable the Series to meet the competitive demands of today's financial services industry. Under the Variable Distribution Method, an investor will be able to choose the method of purchasing shares that is most beneficial, given the amount of his or her purchase, the length of time the investor expects to hold his or her shares, and other relevant circumstances. The proposed arrangement would permit the Series to facilitate both the distribution of their securities and provide investors with a broader choice as to the method of purchasing shares without assuming excessive accounting and bookkeeping costs or unnecessary investment risks.

5. Applicants believe that the proposed allocation of expenses and voting rights relating to the rule 12b-1 plans is equitable and would not discriminate against any group of shareholders. In addition, these arrangements should not give rise to any conflict of interest because the rights and privileges of each class of shares are substantially identical and, in any event, the interests of the shareholders with respect to service and distribution fees would be adequately protected, since the rule 12b–1 plans for each class will conform to the requirements of rule 12b–1, including the requirement that their implementation and continuance be approved on an annual basis by the Trustees.

6. Applicants believe that implementation of the CDSC in the manner and under the circumstances described above would be fair and in the best interests of shareholders of the Series. Thus, the granting of the order requested in the application would be appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

1. Each class of shares will represent interests in the same portfolio of investments of a Series and be identical in all respects, except as set forth below. The only differences among the terms of the various classes of shares of the same Series will relate solely to: (a) The designation of each class of shares of a Series; (b) expenses assessed to a class as a result of (i) a rule 12b–1 plan providing for a distribution fee, (ii) a service fee, or (iii) a fund servicing fee; (c) different Class Expenses for each class of shares, which are limited to: (i) transfer agency fees identified by the transfer agent as being attributable to a specific class; (ii) printing and postage expenses related to preparing and distributing materials such as

shareholder reports, prospectuses and proxies to current shareholders; (iii) Blue Sky registration fees incurred by a class of shares; (iv) SEC registration fees incurred by a class of shares; (v) the expenses of administrative personnel and services as required to support the shareholders of a specific class; (vi) litigation or other legal expenses relating solely to one class of shares; and (vii) Trustees' fees incurred as a result to issues relating to one class of shares; (d) the related voting rights as to matters exclusively affecting one class of shares (*e.g.*, the adoption, amendment or termination of a rule 12b-1 plan) in accordance with the procedures set forth in rule 12b-1, except as provided in condition 16; (e) different exchange privileges; and (f) different conversion features. Any additional incremental expenses not specifically identified above that are subsequently identified and determined to be properly allocated to one class of share shall not be so allocated until approved by the SEC.

2. Trustees of the Trust, including a majority of the Independent Trustees, shall have approved the Variable Distribution Method prior to the implementation of the Variable Distribution Method by a particular Series. The minutes of the meetings of the Trustees regarding the deliberations of the Trustees with respect to the approvals necessary to implement the Variable Distribution Method will reflect in detail the reasons for determining that the proposed Variable Distribution Method is in the best interests of both the Series and their respective shareholders.

3. The initial determination of the Class Expenses that will be allocated to a particular class and any subsequent changes thereto will be reviewed and approved by a vote of the Trustees, including a majority of the Independent Trustees. Any person authorized to direct the allocation and disposition of monies paid or payable by a Series to meet Class Expenses shall provide to the Trustees, and the Trustees shall review, at least quarterly, a written report of the amounts so expended and the purpose for which the expenditures were made.

4. On an ongoing basis, the Trustees, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor each Series for the existence of any material conflicts among the interests of the various classes of shares. The Trustees, including a majority of the Independent Trustees, shall take such action as is reasonably necessary to eliminate any conflicts that may develop. Chase and VBDS will be responsible for reporting any potential or existing conflicts to the Trustees. If a conflict arises, Chase and VBDS at their own costs will remedy the conflict up to and including establishing a new registered management investment company.

5. If any class will be subject to a service agreement, the service agreement will be adopted and operated in accordance with the procedures set forth in rule 12b–1 (b) through (f) as if the expenditures made thereunder were subject to rule 12b–1, except that shareholders will not enjoy the voting rights specified in rule 12b–1.

6. The Trustees will receive quarterly and annual statements concerning distribution, shareholder and fund servicing expenditures complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the statements, only distribution or servicing expenditures properly attributable to the sale or servicing of one class of shares will be used to support any distribution or servicing fee charged to shareholders of that class of shares. Expenditures not related to the sale or servicing of a specific class of shares will not be presented to the Trustees to support any fees charged to shareholders of that class of shares. The statements, including the allocations upon which they are based, will be subject to the review and approval of the Independent Trustees in the exercise of their fiduciary duties.

7. Dividends paid by a Series with respect to each class of shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day and will be in the same amount, except that Class Expenses and Costs associated with any rule 12b–1 plan and shareholder servicing agreement relating to a particular class will be borne exclusively by such class.

8. The methodology and procedures for calculating the net asset value and dividends/distributions of the classes and the proper allocation of income and expenses among the various classes have been reviewed by the Independent Examiner. The Independent Examiner has rendered a report to applicants, which has been provided to the staff of the Commission, stating that the methodology and procedures are adequate to ensure that the calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Independent Examiner, or an appropriate substitute Independent Examiner, will monitor the manner in which the calculations and allocations are being made and, based upon that review, will render at least annually a report to the Series that the calculations and allocations are being made properly. The reports of the Independent Examiner shall be filed as part of the periodic reports filed with the Commission pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Independent Examiner with respect to these reports, following request by the Series which the Series agree to make, will be available for inspection by the Commission's staff upon the written request for these work papers by a senior member of the Division of Investment Management or of a Regional Office of the Commission, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Independent Examiner is a "report on policies and procedures in operation" and the ongoing reports will be "reports on policies and procedures placed in operation and tests of operating effectiveness" as defined and described in Statement of Auditing Standards No. 70 of the American Institute of Certified Public Accountants (the "AICPA"), as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

9. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends/distributions among the various classes of shares and the proper allocation of income and expenses among the classes of shares. This representation has been concurred with by the Independent Examiner in the initial reports referred to in condition 8 above and will be concurred with by the Independent Examiner, or an appropriate substitute Independent Examiner, on an ongoing basis at least annually in the ongoing reports referred to in condition 8 above. Applicants agree to take immediate corrective action if the Independent Examiner, or appropriate substitute Independent Examiner, does not so concur in the ongoing reports.

10. The prospectuses of the Series will contain a statement to the effect that a salesperson and any other person entitled to receive any compensation for selling or servicing Series shares may receive different compensation with respect to one particular class of shares over another in the Series.

11. VBDS will adopt compliance standards as to when shares of a particular class may appropriately be sold to particular investors. The Applicants will require all persons

selling shares of the Series to agree to conform to these standards.

12. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the Trustees with respect to the Variable Distribution Method will be set forth in guidelines that will be furnished to the Trustees as part of the materials setting forth the duties and responsibilities of the Trustees.

13. Each Series will disclose in its prospectus the respective expenses, performance data, distribution arrangements, services, fees, sales loads, CDSCs and exchange privileges applicable to each class of shares in every prospectus, regardless of whether all classes of shares are offered through each prospectus. The shareholder reports of each Series will disclose the respective expenses and performance data applicable to each class of shares in every shareholder report. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to the Series as a whole generally and not on a per class basis. Each Series' per share data, however, will be prepared on a per class basis with respect to the classes of shares of the Series. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of shares, it will disclose the respective expenses and/or performance data applicable to all classes of shares. The information provided by applications for publication in any newspaper or similar listing of the Series' net asset values and public offering prices will present each class of shares separately.

14. Applicants acknowledge that the grant of the exemptive order requested by this application will not imply Commission approval, authorization or acquiescence in any particular level of payment that the Series may make pursuant to rule 12b–1 plans or shareholder servicing agreements in reliance on the exemptive order.

15. Any class of shares with a conversion feature ("Purchase Class") will convert into another class of shares ("Target Class") on the basis of the relative net asset values of the two classes without the imposition of any sales load, fee or other charge. After conversion, the converted shares will be subject to an asset-based sales charge and/or service fee (as those terms are defined in Article III, Section 26 of the NASD's Rules of Fair Practice), if any, that in the aggregate are lower than the asset-based sales charge and service fee to which they were subject prior to the conversion.

16. If a Series implements any amendment to its rule 12b–1 plan (or, if presented to shareholders, adopts or implements any amendment of a non-rule 12b–1 service plan) that would increase materially the amount that may be borne by the Target Class shares under the plan, existing Purchase Class shares will stop converting into Target Class shares unless the Purchase Class shareholders, voting separately as a class, approve the proposal. The Trustees shall take such action as is necessary to ensure that existing Purchase Class shares are exchanged or converted into a new class of shares ("New Target Class"), identical in all material respects to the Target Class as it existed prior to implementation of the proposal, no later than such shares previously were scheduled to convert into the Target Class. If deemed advisable by the Trustees to implement the foregoing, such action may include the exchange of all existing Purchase Class shares for a new class ("New Purchase Class"), identical to existing Purchase Class shares in all material respects, except that the New Purchase Class will convert into the New Target Class. New Target Class or New Purchase Class may be formed without further exemptive relief. Exchanges or conversions described in this condition shall be effected in any manner that the Trustees reasonably believe will not be subject to federal taxation. In accordance with condition 4, any additional cost associated with the creation, exchange, or conversion of New Target Class or New Purchase Class shall be borne solely by Chase and VBDS. Purchase Class shares sold after the implementation of the proposal may convert into Target Class shares subject to the higher maximum payment, provided that the material features of the Target Class and the relationship of such plan to the Purchase Class shares are disclosed in an effective registration statement.

17. Applicants will comply with the provisions of proposed rule 6c–10 under the Act, as such rule currently is proposed and as it may be reproposed, adopted or amended.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–25284 Filed 10–14–93; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice 1879]

Assistance to the United Nations Transition Authority in Cambodia; Determination

Pursuant to section 451 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2261) (the "Act"), and section 1–201 of Executive Order 12163, as amended, I hereby authorize, notwithstanding any other provision of law, the use in fiscal year 1993 of $2,000,000 in funds made available under Chapter 4 of Part II of the Act for a voluntary contribution to the United Nations Transition Authority in Cambodia to pay administrative costs, including salaries, of the Provisional Government of Cambodia, and salaries of the combined military forces of the newly constituted Cambodian Army.

This authorization shall be reported to Congress immediately and published in the **Federal Register**.

Dated: September 9, 1993.

Warren Christopher,

Secretary of State.

[FR Doc. 93–25343 Filed 10–14–93; 8:45 am]

BILLING CODE 4710–10–M

[Public Notice 1884]

Organization for the International Telegraph & Telephone Consultative Committee (CCITT) and the International Radio Consultative Committee (CCIR) Joint AD–HOC Working Group

The Department of State announces that the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) and the International Radio Consultative Committee (CCIR) Joint Ad-Hoc Working Group will meet on October 28, 1993 from 10 AM to 1 PM in room 1107, at the Department of State, 2201 C Street, NW. Washington, DC 20520.

The purpose of this meeting is to undertake preparations for the upcoming International Telecommunication Union Plenipotentiary Conference in Kyoto, Japan, September 1994.

Members of the general public may attend these meetings and join in the discussion, subject to the instructions of the Chair. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of

the meetings. Persons who plan to attend should advise the Office of Earl Barbely, Department of State, (202) 647–0201, FAX (202) 647–7407. The above includes government and non-government attendees. Public visitors will be asked to provide their date of birth and Social Security number at the time they register their intention to attend and must carry a valid photo ID with them to the meeting in order to be admitted. All attendees must use the C Street entrance.

Please bring 30 copies of documents to be considered at these meetings. If the document has been mailed to the membership, bring only 10 copies.

Earl S. Barbely,

CCITT National Committee Chairman.

Dated: October 7, 1993.

Warren Richards,

CCIR National Committee Chairman.

[FR Doc. 93–25262 Filed 10–14–93; 8:45 am]

BILLING CODE 4710–45–M

Bureau of Administration

[Public Notice 1880]

Public Information Collection Requirement Submitted to OMB for Review

AGENCY: Department of State.

ACTION: The Department of State has resubmitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

SUMMARY: Entry to the Department of State main building and its annexes is controlled by a Security Access Control System. Visitors who need access to the buildings on official business may apply for a Department of State Building Pass. The following summarizes the information collection proposal submitted to OMB:

Type of request—Reinstatement.

Originating office—Bureau of Diplomatic Security.

Title of information collection—Application for Department of State Building Pass.

Form No.—DSP–97.

Frequency—On occasion.

Respondents—Press corps, maintenance personnel visitors, and others.

Estimated number of respondents—8,000.

Average hours per response—15 minutes.

Total estimated burden hours—2,000.

44 U.S.C. 3504(h) does not apply, as no rulemaking is being conducted in connection with this information collection.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed forms and supporting documents may be obtained from Gail J. Cook (202) 647–3538. Comments and questions should be directed to (OMB) Jefferson Hill (202) 395–3176.

Dated: October 4, 1993.

Patrick F. Kennedy,

Assistant Secretary for Administration.

[FR Doc. 93–25342 Filed 10–14–93; 8:45 am]

BILLING CODE 4710–24–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–93–44]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitionsfor exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before November 4, 1993.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–10), Petition Docket No. ———, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick M. Haynes, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone 267–3939.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on October 8, 1993.

Joseph Conte,

Acting Assistant Chief Counsel.

Petitions for Exemption

Docket No.: 22286
Petitioner: Finnair Oy
Sections of the FAR Affected: 14 CFR 21.197
Description of Relief Sought/ Disposition: To extend Exemption No. 3450 to continue to permit Finnair Oy to continue to operate its DC–10–30 aircraft number N345HC when it does not meet all applicable airworthiness requirements, but is capable of safe flight, for the purpose of flying the aircraft to a base for repairs, alterations, or maintenance.

Docket No.: 25238
Petitioner: Chromalloy American Corporation
Sections of the FAR Affected: 14 CFR 145.49
Description of Relief Sought/ Disposition: To extend Exemption No. 5394 to continue to permit Chromalloy American Corporation to perform certain maintenance functions on turbine engine blades and vanes at its facility located in Mexicali, Mexico.

Docket No.: 26584
Petitioner: PHH Corporation
Sections of the FAR Affected: 14 CFR 135.165(b)(5)
Description of Relief Sought: To extend Exemption No. 5439 to continue to permit PHH Corporation to operate two BAe–125 airplanes, each equipped with one high frequency (HF) communication system and one equipped with a single long range navigational system (LRNS) in extended over water operations.

Docket No.: 27335
Petitioner: Aloha Skydivers Club
Sections of the FAR Affected: 14 CFR 105.43(a) and (d)
Description of Relief Sought: To allow non-student, foreign parachutists/ skydivers to use parachute equipment approved or accepted in their country while making intentional parachute jumps at the facilities of Aloha

Skydivers Club of other FAA-approved sites in the State of Hawaii.

Docket No.: 27423
Petitioner: Mr. Lawrence Edwin Davis
Sections of the FAR Affected: 14 CFR 21.183(d)(2)
Description of Relief Sought/ Disposition: To permit issuance of a Standard Airworthiness Certificate for a Falcon Biplane, model F–1, being restored by the petitioner.

Docket No.: 27434
Petitioner: GE-Aircraft Engines
Sections of the FAR Affected: 14 CFR 21.325(b)(1)
Description of Relief Sought/ Disposition: To permit export airworthiness approvals to be issued for model CF6–80C2A5FG01 engines, which are located in Europe.

Docket No.: 27443
Petitioner: Mr. Roy Nerenberg
Sections of the FAR Affected: 14 CFR 129.18(a)
Description of Relief Sought/ Disposition: To permit Translift Airways, Limited, to operate its DC–8–71 aircraft in the U.S. without the Traffic Alert and Collision Avoidance System (TCAS) installed until March 31, 1994.

Docket No.: 27445
Petitioner: Sporty's Academy, Inc.
Sections of the FAR Affected: 14 CFR 61.39(a)(2), 61.65(e)(1) and 61.71(a)
Description of Relief Sought: To allow Sporty's Academy Inc. student pilots who graduate from the FAR Part 121, appendix C approved curriculum prior to receiving a commercial pilot certificate, to receive an instrument rating flight test with 40 hours of solo cross country time and 115 hours of total pilot time.

Docket No.: 27457
Petitioner: Daniel Webster College and Ms. Robin L. Bray
Sections of the FAR Affected: 14 CFR 141.35(d)(2)
Description of Relief Sought: To allow Ms. Bray to serve as the Chief Flight Instructor at Daniel Webster College administering a course of training other than those that lead to the issuance of a private pilot certificate or rating or an instrument rating, or a rating with instrument privileges, without the required minimum of 2000 hours as pilot in command (PIC).

Dispositions of Petitions

Docket No.: 25103
Petitioner: Air Wisconsin, Inc.
Sections of the FAR Affected: 14 CFR 121.371(a) and 121.378
Description of Relief Sought/ Disposition: To change the name as reflected on Exemption No. 4803C from Air Wisconsin, Inc. to Air Wisconsin Airline Company. This exemption allows Air Wisconsin, Inc. to use certain foreign original equipment manufacturers (OEM) and those OEM's designated repair and overhaul facilities that do not hold appropriate U.S. foreign repair station certification to perform maintenance, preventive maintenance, and alterations outside the United States on the components and parts used on the petitioner's foreign-manufactured aircraft.
Grant, September 30, 1993, Exemption No. 4803D

Docket No.: 25863
Petitioner: Department of Defense
Sections of the FAR Affected: 14 CFR 91.117 (a) and (b), 91.127(c), 91.159(a), and 91.209(a)
Description of Relief Sought/ Disposition: To continue to permit the Department of Defense to conduct air operations at altitudes, airspeeds, locations, and certain aircraft lighting conditions normally prohibited/ restricted by the affected FAR Sections while in support of drug law enforcement and drug traffic interdiction.
Grant, September 28, 1993, Exemption No. 5100C

Docket No.: 27200
Petitioner: Corporate Aviation Services, Inc.
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To permit the petitioner to operate without a TSO–112 (Mode S) transponder installed on its aircraft operating under the provisions of Part 135.
Grant, October 4, 1993, Exemption No. 5756

Docket No.: 27261
Petitioner: Air Transport International, Inc.
Sections of the FAR Affected: 14 CFR 121.358
Description of Relief Sought: To extend the compliance date for retro-fitting Air Transport International (ATI's) McDonnell Douglas DC–8 (DC–8) aircraft in order to permit ATI to continue operating pending delivery and installation of certified wind shear warning systems, and would delegate supervision of this revised compliance schedule pending the final compliance deadline to ATI's cognizant Principal Avionics Inspector.
Denial, September 30, 1993, Exemption No. 5754

Docket No.: 27280
Petitioner: Henson Aviation d/b/a/ USAIR Express
Sections of the FAR Affected: 14 CFR 61.57(e), 121.433(c)(1)(iii), 121.440(a), 121.441(b)(1), 121.409(b)(2), 121.427(d)(1) and 121, Appendix F.
Description of Relief Sought: To allow the petitioner to conduct Single Visit Training Program (SVTP) for flight crew member and eventually transition into the Advanced Qualification Program (AQP).
Partial Grant, September 30, 1993, Exemption No. 5755

[FR Doc 93–25363 Filed 10–14–93; 8:45 am]
BILLING CODE 4910–13–M

Research and Special Programs Administration

[Docket No. PDA–13(R)]

Application by Chemical Waste Transportation Institute for a Preemption Determination

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Public notice and invitation to comment.

SUMMARY: The Chemical Waste Transportation Institute (CWTI) has applied for an administrative determination whether the Hazardous Materials Transportation Act (HMTA) preempts certain requirements of the New York Department of Environmental Conservation (NYDEC) relating to the transfer and storage of hazardous wastes incidental to transportation.

DATES: Comments received on or before November 24, 1993, and rebuttal comments received on or before January 14, 1994, will be considered before an administrative ruling is issued by RSPA's Associate Administrator for Hazardous Materials Safety. Rebuttal comments may discuss only those issues raised by comments received during the initial comment period and may not discuss new issues.

ADDRESSES: The application and any comments received may be reviewed in the Dockets Unit, Research and Special Programs Administration, room 8421, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590–0001 (Tel. No. 202–366–4453). Comments and rebuttal comments on the application may be submitted to the Dockets Unit at the above address, and should include the Docket Number (PDA–13(R)). Three copies of each should be submitted. In addition, a copy of each comment and each rebuttal comment must also be sent to (1) Mr. Stephen C. Hansen, Chairman, Chemical Waste Transportation Institute, 1730 Rhode Island Avenue, NW., suite 1000, Washington, DC 20036,

and (2) Mr. Thomas C. Jorling, Commissioner, New York Department of Environmental Conservation, 50 Wolf Road, Albany, NY 12233. A certification that a copy has been sent to these persons must also be included with the comment. (The following format is suggested: "I hereby certify that copies of this comment have been sent to Messrs. Hansen and Jorling at the addresses specified in the **Federal Register**.")

FOR FURTHER INFORMATION CONTACT: Frazer C. Hilder, Office of the Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590–0001 (Tel. No. 202–366–4400).

SUPPLEMENTARY INFORMATION:

I. CWTI'S Application for a Preemption Determination

On September 27, 1993, CWTI applied for a determination that the HMTA preempts certain NYDEC requirements in Title 6 of the New York Codes, Rules and Regulations (NYCRR), governing the transfer and storage of hazardous wastes incidental to transportation (hereinafter "NYDEC transfer and storage requirements"). In summary, the NYDEC transfer and storage requirements allow a transporter of hazardous wastes to:

(1) Transfer hazardous wastes only when there is "no consolidation or * * * repackaging in, mixing, or pumping from one container or transport vehicle to another," and any "transfer of hazardous wastes from one vehicle to another is indicated on the Manifest as Second Transporter," 6 NYCRR 372.3(a)(7), and

(2) Store hazardous wastes for five calendar days or less at the transporter's facility if all of the conditions set forth in 6 NYCRR 373–1.1(d)(1)(xv) are met; among these conditions are maintaining a log of all shipments and receipts, daily inspections of containers and vehicles, keeping certain wastes at least 50 feet from the property line and separated from sources of ignition or reaction, providing secondary containment in the area where storage or transfers take place, and prohibitions against opening containers or mixing the contents of containers. 6 NYCRR 372.3(a)(6).

In order to engage in any transfer or storage of hazardous wastes beyond these conditions and limitations, a transporter must obtain the separate permit required for a treatment, storage or disposal facility. *See* 6 NYCRR 373–1.2 and 373–1.1(d)(1)(xv). According to CWTI, penalties for violation of the NYDEC transfer and storage requirements include civil penalties up to $25,000 per day (or $50,000 for subsequent violations) and the revocation or suspension of "any permit or certificate issued to" the transporter. New York Environmental Conservation Law § 71–2705.

The text of CWTI's application is set forth in Appendix A. The attachments to the application, consisting of copies of 6 NYCRR Parts 364, 370, 372 and 373, New York Environmental Conservation Law § 71–2705, and two letters from the U.S. Environmental Protection Agency (EPA), may be examined at RSPA's Dockets Unit. Copies of the EPA letters and relevant excerpts from the New York law and regulations will be provided at no cost, upon request to RSPA's Dockets Unit (see the address and telephone number set forth in "Addresses" above).

II. Preemption Under the HMTA

The HMTA was enacted in 1975 to give the Department of Transportation greater authority "to protect the Nation adequately against the risks to life and property which are inherent in the transportation of hazardous materials in commerce." 49 App. U.S.C. 1801. It replaced a patchwork of state and local laws. "[U]niformity was the linchpin in the design of" the HMTA. *Colorado Public Utilities Comm'n* v. *Harmon*, 951 F.2d 1571, 1575 (10th Cir. 1991).

Unless otherwise authorized by Federal law or unless a waiver of preemption is granted by DOT, the HMTA (49 App. U.S.C. § 1811(a)) explicitly preempts "any requirement of a State or political subdivision thereof or Indian tribe" if

(1) Compliance with both the State or political subdivision or Indian tribe requirement and any requirement of [the HMTA] or of any regulation issued under [the HMTA] is not possible,

(2) The State or political subdivision or Indian tribe requirement as applied or enforced creates an obstacle to the accomplishment and execution of [the HMTA] or the regulations issued under [the HMTA], or

(3) It is preempted under section 105(a)(4) [49 App. U.S.C. 1804(a)(4), describing five "covered subject" areas] or section 105(b) [49 App. U.S.C. 1804(b), dealing with highway routing requirements].

With two exceptions, section 1804(a)(4) preempts "any law, regulation, order, ruling, provision, or other requirement of a State or political subdivision thereof or an Indian tribe" which concerns a "covered subject" and "is not substantively the same" as a provision in the HMTA or regulations under the HMTA. The two exceptions are State and Indian tribe hazardous materials highway routing requirements governed by 49 App. U.S.C. 1804(b) and requirements "otherwise authorized by Federal law." The "covered subjects" defined in Section 1804(a)(4) are:

(i) The designation, description, and classification of hazardous materials.

(ii) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials.

(iii) The preparation, execution, and use of shipping documents pertaining to hazardous materials and requirements respecting the number, content, and placement of such documents.

(iv) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials.

(v) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials.

In a final rule published in the **Federal Register** on May 13, 1992 (57 FR 20424, 20428), RSPA defined "substantively the same" to mean "conforms in every significant respect to the Federal requirement. Editorial and other *de minimis* changes are permitted." 49 CFR 107.202(d).

The HMTA provides that any directly affected person may apply to the Secretary of Transportation for a determination whether a State, political subdivision or Indian tribe requirement is preempted by the HMTA. Notice of the application must be published in the **Federal Register**, and the applicant is precluded from seeking judicial relief on the "same or substantially the same issue" of preemption for 180 days after the application, or until the Secretary takes final action on the application, whichever occurs first. 49 App. U.S.C. 1811(c)(1). A party to a preemption determination proceeding may seek judicial review of the determination in U.S. district court within 60 days after the determination becomes final. 49 App. U.S.C. 1811(e).

The Secretary of Transportation has delegated to RSPA the authority to make determinations of preemption, except for those concerning highway routing which were delegated to the Federal Highway Administration. 49 CFR 1.53(b). RSPA's regulations concerning preemption determinations are set forth at 49 CFR 107.201–107.211 (including amendments of February 28, 1991 (56 FR 8616), April 17, 1991 (56 FR 15510), and May 13, 1992 (57 FR 20424)). Under these regulations, RSPA's Associate Administrator for Hazardous Materials Safety issues preemption determinations. "Any person aggrieved" by RSPA's decision on an application for a preemption determination may file a petition for reconsideration within 20

days of service of that decision. 49 CFR 107.211(a).

The decision by RSPA's Associate Administrator for Hazardous Materials Safety becomes RSPA's final decision 20 days after service if no petition for reconsideration is filed within that time; the filing of a petition for reconsideration is not a prerequisite to seeking judicial review under 49 U.S.C. 1811(e). If a petition for reconsideration is filed, the action by RSPA's Associate Administrator for Hazardous Materials Safety on the petition for reconsideration is RSPA's final agency action. 49 CFR 107.211(d).

In making decisions on applications for waiver of preemption, RSPA is guided by the principles and policy set forth in Executive Order No. 12,612, entitled "Federalism" (52 FR 41685, Oct. 30, 1987). Section 4(a) of that Executive Order authorizes preemption of state laws only when a statute contains an express preemption provision, there is other firm and palpable evidence of Congressional intent to preempt, or the exercise of state authority directly conflicts with the exercise of Federal authority. The HMTA contains express provisions, which RSPA has implemented through its regulations.

III. Public Comment

All comments should be limited to the issue of whether the NYDEC transfer and storage requirements are preempted by the HMTA. Comments should:

(1) Specifically address (a) the preemption criteria ("substantively the same," "dual compliance," and "obstacle") described in Part I, above, and (b) whether the NYDEC transfer and storage requirements are "otherwise authorized by Federal law";

(2) Set forth in detail the manner in which the NYDEC transfer and storage requirements are applied and enforced; and

(3) Discuss the definitions of "Storage Incidental to Transport" and "Transfer Incidental to Transport" in 6 NYCRR 364.1(c), including whether these definitions impose requirements on transporters of hazardous waste in New York and whether these definitions apply to the NYDEC transfer and storage requirements in 6 NYCRR Parts 372 and 373.

Persons intending to comment should review the standards and procedures governing RSPA's consideration of applications for preemption determinations, set forth at 49 CFR 107.201–107.211.

Issued in Washington, DC on October 8, 1993.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

Appendix A

September 27, 1993.

Application of the Chemical Waste Transportation Institute to initiate a proceeding to determine whether various requirements imposed by the New York Department of Environmental Conservation on persons involved in the loading, unloading and storage of hazardous waste incident to transportation are preempted by the Hazardous Materials Transportation Act.

Interest of the Petitioner

The Chemical Waste Transportation Institute (CWTI or Institute) is part of the National Solid Wastes Management Association, a not-for-profit association that represents waste service companies throughout the United States and Canada. Members of the Institute are commercial firms specializing in the transportation of hazardous waste, by truck and rail, from its point of generation to its management destination. Members of the CWTI that operate in New York are precluded from loading, unloading and storing waste hazardous materials incident to transportation despite full compliance with the hazardous materials regulations (HMRs) unless certain conditions imposed by the New York Department of Environmental Conservation (DEC) are met. The CWTI asserts that the DEC restrictions on these activities are in contravention of the Hazardous Materials Transportation Act (HMTA).

DEC Requirements For Which A Determination Is Sought

Transporters [1] engaged in the loading, unloading, and storage of waste hazardous materials in transportation are required by the DEC to meet permit conditions imposed on TSDF storage operations.[2] An exception from the storage permit requirements is provided for the "storage" [3] or the "transfer" [4] of packaged freight between transport conveyances if the transporter complies with a number of requirements:

- The storage of the freight is limited to 5 calendar days. (6 NYCRR 372.3(a)(6) and 373–1.1(d)(1)(xv).)
- The storage is limited to facilities owned by the transporter. (6 NYCRR 373–1.1(d)(1)(xv).)
- A log is maintained of the time and date on which each container or transport vehicle of hazardous waste is received or shipped, including the manifest document number. (6 NYCRR 373–1.1(d)(1)(xv)(a).)
- If the packaged freight contains free liquids or contains dioxin-bearing waste and is removed from the in-coming vehicle and stored on site prior to being reloaded, the storage area must be designed to meet secondary containment requirements. These requirements provide that:
- A base must underlay the containers which is free of cracks or gaps and is sufficiently impervious to contain leaks, spills, and accumulated precipitation until the collected material is detected and removed.
- The base must be sloped or the containment system must be otherwise designed and operated to drain and remove liquid resulting from leaks, spills, or precipitation, unless the containers are elevated or are otherwise protected from contact with accumulated liquids.
- The containment system must have sufficient capacity to contain 10 percent of the volume of containers or the volume of the largest container, whichever is greater, unless the containers do not contain free liquids.
- Run-on into the containment system must be prevented unless the collection system has sufficient excess capacity to contain such run-on.
- Spilled or leaked waste and accumulated precipitation must be removed from the sump or collection area in a timely manner in order to prevent overflow of the system.

(6 NYCRR 373–1.1(d)(1)(xv)(c)(1) referencing 6 NYCRR 373–2.9(f) (1) and (3).)

- If the packaged freight contains no free liquids or dioxin bearing wastes, and is removed from the in-coming vehicle and stored on site prior to being reloaded, the storage area must be:
- Sloped or otherwise designed and operated to drain and remove liquid resulting from precipitation; or
- The containers must be elevated or otherwise protected from contact with accumulated liquid.

(6 NYCRR 373–1.1(d)(1)(xv)(c)(1) referencing 6 NYCRR 373–2.9(f) (2) and (3).)

- The transporter must inspect the containers or transport vehicles at least daily for leaks or deterioration caused by corrosion or other factors, and keep a log of such inspections. (6 NYCRR 373–1.1(d)(1)(xv)(g).)
- Containers or transport vehicles containing ignitable or reactive wastes [5] may

[1] "Transporter" is defined as a person engaged in the off-site transportation of hazardous waste by air, rail, highway, or water. 6 NYCRR 370.2(b)(173) This DEC definition has the same meaning as the Federal requirement at 40 CFR 260.10.

[2] These permit conditions are extensive. A listing of minimum federal standards can be found at 40 CFR part 264. DEC standards are found at 6 NYCRR subpart 363 [sic, should be part 373].

[3] The DEC defines "storage incidental to transport" to mean " * * * on-vehicle storage not to exceed five days at the transporter's facility for the express purpose of consolidating loads (where such loads are not removed from their original packages or containers) for delivery to an authorized treatment, storage or disposal facility [TSDF]." 6 NYCRR part 364.1(c)(12).

[4] Loading and unloading operations are termed by the DEC "transfer incidental to transport," which is defined to mean "any transfer of waste material associated with storage incidental to transport where such material is not unpackaged, mixed or pumped from one container or truck into another." 6 NYCRR part 364.1(c)(14).

[5] EPA defines "ignitability" as (1) wastes in liquid form with a flash point of less than 60 C (140 F); (2) non-liquid wastes which are capable under standard temperature and pressure of causing fire through friction, absorption or moisture or spontaneous combustion; (3) ignitable compressed

not be stored less than 50 feet from the facility's property line. (6 NYCRR 373–1.1(d)(1)(xv) (h).)

• The area where loading and unloading of packaged freight takes place must meet the same secondary containment requirements outlined for storage areas as well as "all applicable NFPA requirements for storing ignitable wastes." (6 NYCRR 373–1.1(d)(1)(xv)(i).)

• The transfer of hazardous waste from one vehicle to another must be indicated on the Manifest as "Second Transporter." (6 NYCRR 372.3(a)(7)(ii).)

Several DEC regulations prohibit the loading and unloading of hazardous waste in transportation between DOT-authorized packagings at locations without DEC permits for the treatment as well as the storage of hazardous waste.[6] This prohibition is accomplished by forbidding transporters from removing, mixing or pumping hazardous waste from original packages or containers and repackaging such waste into another package or container, including transport vehicles. (6 NYCRR 364.1(c) (12) and (14), 373–1.1(d)(1)(xv) (c) and (e), and 372.3(a)(7)(i).)

Failure to comply with these storage and transfer requirements can result in penalties. Civil penalties not to exceed $25,000 a day may be imposed on persons committing first time violations. The penalties for subsequent violations may not exceed $50,000 a day. In addition, courts may enjoin such persons from continuing such violations and the permits issued to such persons to engage in hazardous waste transportation may be revoked or suspended or a pending renewal application denied.[7] We are unaware of any Institute member who has tested the resolve of the DEC to enforce such penalties and administrative sanctions. We are aware that the DEC does make periodic unannounced visits to transfer facilities to assess the compliance of such facilities. However, we would request that the DEC provide information to the docket on the extent of its enforcement program during the course of these proceedings.

The above referenced requirements are included in their entirety in the Appendix to this application.

Applicability Of The Hazardous Materials Transportation Act

The activities of "loading, unloading, or storage incidental" to the transportation of hazardous materials[8] are encompassed within the definition of "transportation" that underpins the scope of regulatory jurisdiction vested in the US Department of Transportation (DOT) by Congress through the HMTA.[9] Pursuant to this statutory mandate, DOT has promulgated a variety of regulations to assure the safe loading, unloading, and storage of hazardous materials in transportation that render the DEC provisions duplicative of and inconsistent with such federal standards.[10]

A basic premise of the HMTA is that uniformity equals safety. In 1990, Congress reauthorized the HMTA, reaffirming the premise that consistency in laws and regulations governing the transportation of hazardous materials is necessary to minimize the potential of risk to life, property, and the environment from hazardous materials incidents. Absent national consistency, the resulting divergent and conflicting requirements create an enormous burden for the regulated community, undermine the effectiveness of the HMTA, and potentially jeopardize the public safety.[11] In order to ensure uniformity, Congress empowered the DOT to preempt non-federal requirements that conflict with or present an obstacle to the accomplishment and execution of the HMTA or the HMRs, and in certain areas, preempt non-federal requirements that are not "substantively the same as" the federal standards.[12]

"Otherwise Authorized By Federal Law"

Although the overriding purpose of the HMTA is to enhance safety in the transportation of hazardous materials through uniformity of requirements and standards, Congress limited DOT's ability to enforce uniformity though its preemptive authority to the extent that such non-federal requirements are "otherwise authorized by Federal law."[13] Since the enactment of the 1990 amendments to the HMTA, the courts have acted to circumscribe the reach of the "otherwise authorized by federal law" provision. The Tenth Circuit Court of Appeals held that state requirements, which are not specifically authorized pursuant to other federal statutes, are not "otherwise authorized" simply because such federal statutes do not preempt such requirements.[14]

The DEC bases its authority to regulate the loading, unloading, and storage of waste hazardous materials in transportation on the Resource Conservation and Recovery Act (RCRA).[15] RCRA sets forth a number of requirements which attach to the storage of hazardous waste at hazardous waste management facilities.[16] However, implementing regulations of the US Environmental Protection Agency (EPA) expressly exempt transporters who hold waste during transportation or who own or operate "transfer facilities"[17] from these storage requirements and land disposal restriction requirements, as long as the waste is accompanied by a Uniform Manifest, is stored in containers that meet DOT packaging requirements (including tank cars and cargo tanks), and is held no longer than 10 days.[18] Transporters storing wastes in the course of transportation are also subject to EPA's discharge clean up requirements.[19] As a condition to receive authorization from EPA to administer the RCRA program within their jurisdictions, states must have requirements at least as stringent as the federal requirements.[20]

RCRA does not specifically address the loading or unloading of hazardous waste between DOT-authorized packagings or transport conveyances incident to transportation as opposed to loading or unloading wastes for purposes of treatment.[21]

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gas as defined in 49 CFR 173.300; or an oxidizer as defined in 49 CFR 173.151. EPA defines "reactivity" as wastes with properties that (1) are normally unstable and undergo violent change without detonating; (2) react violently with water; (3) form potentially explosive mixtures with water; (4) when mixed with water, generate toxic gases, vapors or fumes; (5) are cyanide or sulfide bearing wastes which when exposed to pH conditions can generate toxic gases, vapors or fumes; (6) are capable of detonation or explosive reaction if subjected to a strong initiating source or heated under confinement; (7) are readily capable of detonation or explosive decomposition or reaction at standard temperature and pressure; (8) are a forbidden explosive as defined in 49 CFR 173.51, a Class A explosive as defined in 49 CFR 173.53 or a Class B explosive as defined in 49 CFR 173.88. No 49 CFR citation has been updated by EPA since the finalization of HM–181, December 21, 1990. See 40 CFR 261.21 and .23.

[6] As with the storage permits, the requirements to obtain treatment permits are extensive. A listing of minimum federal standards can be found at 40 CFR part 264. DEC standards are found are 6 NYCRR subpart 363 [sic, should be part 373].

[7] New York Environmental Conservation Law 71–2705.

[8] The HMRs define "hazardous material" to include "hazardous wastes." For purposes of the HMRs, a "hazardous waste" is any material subject to the Uniform Manifest. 49 CFR 171.8.

[9] Public Law 93–633, Section 103(6).

[10] On similar grounds, the DOT found preempted requirements imposed by the City of San Jose, CA on the loading, unloading, and storage incidental to transportation of hazardous materials. 55 *FR* 8884 (March 8, 1990).

[11] Public Law 101–615, Section 2.

[12] Public Law 101–615, Section 13(a).

[13] Public Law 101–615, Sections 4(a)(4)(A) and 13(a).

[14] *Colo. Pub. Utilities Comm'n v. Harmon*, 951 F.2d 1581 n.10 (10th Cir. 1991).

[15] Public Law 94–580.

[16] Public Law 94–580, Sections 3004 and 3005.

[17] "Transfer facility" means "any transportation related facility including loading docks, parking areas, storage areas, and other similar areas where shipments of hazardous waste are held during the normal course of transportation." 40 CFR 260.10.

[18] 45 FR 86966 (December 31, 1980). Also see, 40 CFR 263.12.

[19] 45 FR 86967 (December 31, 1980).

[20] 40 CFR 270.1(c)(2)(vi) and 271.11(e).

[21] RCRA does require permits of persons involved in the "treatment" of hazardous waste. "Treatment" is defined as "any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste or so as to render such waste nonhazardous, safer for transport, amendable for recovery, amendable for storage, or reduced in volume. Such term includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous." (Pub. L. 94–580, Section 1004(34).) EPA has distinguished between its rules implementing permit requirements for treatment operations involved in the bulking and containerization of different hazardous waste and the loading and unloading of hazardous waste between DOT-approved packagings to achieve efficiencies in transportation. "The bulking of characteristic hazardous waste shipments to achieve efficient transportation may result in incidental reduction of the hazards associated with that waste mixture. However, this incidental reduction may not meet the definition of treatment * * * because it is not designed to render the waste nonhazardous or less hazardous. Accordingly, such activity may not require a RCRA permit." See attached letter to Mr. Christopher J. Jeckels, GSX Government Services, Inc., from Sylvia K.

Continued

However, EPA implementing regulations "recognize that shipments of wastes may involve different types of transportation" [22] and clearly contemplate the loading and unloading of hazardous waste between transport conveyances. Rules dictating compliance with the Uniform Manifest provide for the transfer or delivery of hazardous waste to another transporter en route between generator and TSDF sites.[23]

EPA's implementing regulations also address the loading and unloading of hazardous waste between DOT-authorized packagings by providing that a "transporter" must comply with "generator" standards if the transporter "mixes hazardous waste of different DOT shipping descriptions by placing them into a single container." [24] The CWTI interprets this requirement to mean that any consolidation, mixing, or commingling of hazardous wastes from their original packagings to other DOT-authorized packagings that alters, with one exception, any aspect of the DOT hazardous materials description (including additional description requirements) obligates the transporter to comply with all generator requirements, including land disposal certifications and notifications. The DOT shipping description exception would allow for the addition or deletion of any "RQ" (reportable quantity) designation from the hazardous materials description depending on the final volume of waste in each packaging following the repackaging of the transferred waste. If the consolidation, mixing, or commingling results in "treatment" of the waste, the transporter would be subject to RCRA permit requirements for treatment operations. Notwithstanding the requirement that "transporters" [25] limit loading and unloading activities involving hazardous waste where the DOT hazardous materials description of the waste is not altered as noted to "transfer facilities," EPA does "not place any new requirements on transporters repackaging waste from one container to another (e.g., consolidation of wastes from smaller to larger containers) or on transporters who mix hazardous waste at transfer facilities." [26]

In summary, the only non-HMTA hazardous waste loading, unloading and storage incidental to transportation requirements "otherwise authorized by federal law" are those which require that such activities be performed by persons in compliance with EPA transporter standards at "transfer facilities" within the 10-day storage time frame, and that transporters comply with Manifest/shipping paper and discharge clean up requirements, as necessary. All other federal requirements imposed on such activities arise from the HMTA and the HMRs. This deferral to the HMTA and the HMRs for the regulation of hazardous waste in transportation is based in RCRA which bars EPA from promulgating regulations applicable to transporters of hazardous waste that are inconsistent with the requirements of the HMTA and the HMRs.[27] The regulatory history implementing RCRA shows that the DOT and EPA were so concerned about the possibility that compliance with duplicative requirements could cause such inefficiency or confusion that they believed the HMRs are "capable of being modified under the HMTA to address the transportation hazards of waste materials and that the RCRA states the need for such a modification." [28] When EPA delegates its authority to issue regulations to a state, the state's hazardous waste program must be equivalent to the federal program and consistent with other state authorized programs.[29]

While RCRA does not contain a procedure for prohibiting states from imposing requirements on the transportation of hazardous waste that are more stringent or broader in scope than those imposed by EPA, states may not rely on RCRA to shield such requirements from review under the HMTA. The legislative history underpinning RCRA's grant of "more stringent than" authority to states shows that Congress intended to allow states to create rules "more stringent than" the federal standards only for the selection of hazardous waste disposal sites.[30] Additionally, requirements that are broader in scope than EPA's are not part of the federally-approved program.[31] EPA clarified, in a letter to CWTI concerning its grant of final authorization to California's hazardous waste program, that "State hazardous waste transportation requirements that are inconsistent with the HMTA should be dealt with through the (DOT) under the special procedures established under the HMTA for that purpose; * * * in (EPA's) view the RCRA process does not preempt DOT authority in the area of transportation." [32]

Efforts To Seek Alternative Resolution Of This Issue

In 1992, EPA chartered the Hazardous Waste Manifest Rule Negotiated Rulemaking Advisory Committee (Committee) to assist EPA in the development of a rule to improve and standardize the present hazardous waste manifest system. The Committee consists of federal, state, industry and public interest representatives. DOT also has a seat at the table. In the course of the Committee's deliberations, the "consolidation and commingling" or loading, unloading and storage of hazardous waste in transportation was debated. These issues were placed on the table because more than a dozen states, including New York, impose non-federally authorized restrictions on these activities. The Committee was unable to address issues related to the processing of Uniform Manifests during consolidation and commingling operations because some of its members believed any recommendations would lend "legitimacy" to such operations as a function of "transportation." At the same time, EPA stated that it deferred to DOT for a determination as to what "consolidation and commingling" activities would be permissible in transportation. While we do not believe that the final recommendations of the Committee with respect to the processing of the Uniform Manifest will affect the legitimacy or non-legitimacy of consolidation and commingling activities, we believe all parties will benefit from DOT's clarification about allowable activities involving the loading, unloading, and storage of hazardous waste incidental to transportation activities and that the Uniform Manifest revisions emanating from this process should facilitate the accomplishment of those allowable activities.

The DEC Loading, Unloading And Storage Incidental To Transportation Requirements Are In Conflict With The "Obstacle" Test And, To The Extent The DEC Requirements Are At Odds With The Requirements Of The Uniform Manifest, The "Substantively the Same As" Test

The HMTA provides several tests to determine the consistency of state requirements to federal standards. The DEC loading, unloading and storage incident to transportation requirements for packaged waste hazardous materials are in conflict with the "obstacle" tests, and the "substantively the same as" test as the DEC requirements affect the Uniform Manifest.[33]

• Five-day Storage: 6 NYCRR 372.3(a)(6) and 373–1.1(d)(1)(xv).

As noted above, RCRA allows hazardous waste to remain in storage incidental to transportation for a period of 10 days without triggering the regulations imposed on hazardous waste management facilities engaged in storage. The 10-day period was provided as a means to expedite shipments by allowing "shipments [to] be consolidated into larger units or shipments [to] be transferred to different vehicles for redirecting or rerouting." [34] The 10-day rule was also promulgated to account for "scheduling problems, weather delays, temporary closing and other factors which might cause unforeseen delays" [35] The HMRs require that rail carriers forward shipments of hazardous materials within 48 hours (Saturdays, Sundays and holidays excluded).[36] Other time limitations are not specified. However, the HMRs require that motor carriers transport hazardous materials without unnecessary delay.[37] The DEC five-

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Lowrance, Director, Office of Solid Waste, EPA, dated March 1, 1990.

[22] 45 FR 86972 (December 31, 1980).

[23] 40 CFR 263.20(d), (f)(i) and (f)(iii)(A).

[24] 40 CFR 263.10(c)(2).

[25] Transporters who are engaged in the off-site transportation of hazardous waste must comply with EPA standards set forth at 40 CFR 263.

[26] 45 FR 86967 (December 31, 1980).

[27] P.L. 94–580, Section 3003(b).

[28] 43 FR 22626 (May 25, 1978).

[29] P.L. 94–580, Section 3006(b).

[30] 125 *Cong. Rec.* S13247–13250, Daily Ed., June 4, 1979. The courts have upheld this view. See *Ensco Inc.* v. *Dumas*, 807 F.2d 743 (8th Cir. 1986) (Section 3009 "acknowledges only the authority of state and local government entities to make good-faith adaptations of federal policy to local conditions"; provision applies only to certain limited state requirements pertaining to land disposal or treatment facilities); *Ogden Environmental Servcs.* v. *City of San Diego*, 687 F. Supp. 1436 (S.E. Cal. 1988) (Citing *Ensco*).

[31] 40 CFR 271.1(i).

[32] Letter to Cynthia Hilton, CWTI, from Devereaux Barnes, EPA, October 29, 1992. (Copy attached.)

[33] 49 CFR 107.202 (a) and (b).

[34] 45 FR 86966 (December 31, 1980).

[35] 45 FR 86967 (December 31, 1980).

[36] 49 CFR 174.14(a).

[37] 49 CFR 177.853.

day storage restriction denies transporters the opportunity to take advantage of the additional five-day period provided by the Federal 10-day storage period in order to expedite non-rail shipments or to enhance the safety of those shipments by more efficient utilization of transportation equipment. As such, the restriction is an obstacle to the accomplishment and execution of the HMTA and the HMRs.

• Facility Ownership: 6 NYCRR 373–1.1(d)(1)(xv).

There is no HMR requirement that storage incidental to transportation be limited to facilities owned by the transporter. In fact, the EPA's preamble setting forth the "transfer facility" rule suggests otherwise. In that document, "transporters who hold waste during transportation" are distinguished from transporters "who own or operate transfer facilities."[38] RCRA sets forth liabilities for violations of the Act based on activities involving hazardous waste not on the ownership of the property where such activities take place. Most transfer facilities in other states where an ownership requirement does not exist are leased or rented. The DEC's restriction severely curtails the number of otherwise allowable locations where waste hazardous materials can be loaded, unloaded, and stored incidental to transportation, thus denying opportunities to accomplish efficiencies in transportation that would increase safety by reducing truck traffic either by better utilization of truck to truck capacity or by allowing transfers of freight to or from other modes of transportation, in particular rail. Thus, the DEC requirement that precludes the storage of packaged waste hazardous materials in transportation unless at facilities owned by the transporter creates an obstacle to the accomplishment and execution of the HMRs and the HMTA.

• Log Requirements: 6 NYCRR 373–1.1(d)(1)(xv)(a).

There is no HMR requirement that a log be maintained describing the time and date on which each container or transport vehicle of hazardous waste is received or shipped including cross-reference to each shipment's Manifest document number. In the EPA's preamble setting forth the "transfer facility" rule, the EPA states that a generator's desire for "prompt transportation and delivery of hazardous waste shipments * * * should operate to ensure that wastes will not be held in storage for lengthy periods by transporters."[39] We believe that the Uniform Manifest itself creates a sufficient paperwork trail to obviate the need for a log. If this requirement is not preempted, other non-federal jurisdictions might be inclined to require their own distinct recordkeeping requirements to document the movement of freight in transfer facility situations. Such paperwork is not necessary to assure the safe transportation of waste hazardous materials and the potential to cause delay in the transport of such materials renders the requirement an obstacle to the accomplishment and execution of the HMRs and the HMTA.

• Secondary Containment: 6 NYCRR 373–1.1(d)(1)(xv)(c)(1) referencing 6 NYCRR 373–2.9(f) and 6 NYCRR 373–1.1(d)(1)(xv)(h).

The DEC's secondary containment requirements—for packagings containing free liquids, solids, or dioxins either for storage or loading and unloading of packaged freight—are a direct challenge to the integrity of DOT packaging standards.[40] The HMRs were developed on the premise that packagings can be built to contain hazards under conditions normal to transportation. The HMRs guarantee packaging integrity through detailed packaging standards, segregation and separation requirements, and through prohibitions on certain types of materials transport.[41] Even when packages containing hazardous waste fail, the HMRs reference EPA requirements at 40 CFR 263.31 to clean up discharges. Motor carriers of hazardous waste are required by DOT to maintain financial responsibility to cover liabilities related to environmental restoration in the amount of $1 or $5 million.[42] The HMRs also provide for immediate notification in the event of a spill as well as provisions for the disposition of packagings which are found to be leaking.[43] In addition, the HMRs now provide for generic response plans for containers over 3500 gallons that are used to transport material with petroleum oil, including fractions and derivatives thereof.[44] Many hazardous wastes contains such oils, and such plans exist.

In short, DOT has determined that secondary containment requirements are not necessary to assure safety or protection of the environment during transportation. Additionally, EPA noted that reliance on DOT packaging standards "should provide adequate protection of human health and the environment during the short period that hazardous wastes are held at a transfer facility" and requested comment on "whether additional requirements should be imposed [at transfer facilities] * * *."[45] The absence of EPA action to impose additional requirements is evidence that such requirements are not necessary to assure safety in the transportation of waste hazardous materials.

In practice, industry conducts activities associated with loading, unloading and storage of waste hazardous materials in transportation on impervious surfaces. However, the requirements for sloping and spill/run-off containment are unnecessary. Even in instances where waste hazardous materials are transferred between DOT-authorized packagings, containment can be accomplished by alternative means such as absorbent booms or dip pans. If these requirements are allowed to stand, transportation efficiencies inherent in loading, unloading, and storage operations are foregone because of the absence of locations capable of meeting such standards. Thus, the likelihood of shipment delay is increased creating an obstacle to the accomplishment and execution of the HMRs and the HMTA.

• Inspections: 6 NYCRR 373–1.1(d)(1)(xv)(g).

The HMRs have no requirement for daily inspections to assess the condition of packagings or for written documentation of such inspections. While industry practice dictates that packagings be inspected for leaks on a daily bases, the potential burden of non-federally imposed inspection requirements, particularly as they relate to "written documentation" cannot be anticipated. If it is permissible for the DEC to require "at least" daily inspections, could another jurisdiction justify hourly inspections? What limitations can be placed on non-federal jurisdiction requirement for written documentation? It is one thing to require a written record generic stating that an inspection of the storage and loading/unloading area was done. It is quite another burden if the record keeping requirements are packaging specific. Moreover, how long may a non-federal jurisdiction require such records to be retained?

EPA noted its belief that reliance on DOT packaging standards "should provide adequate protection of human health and the environment during the short period that hazardous wastes are held at a transfer facility" and requested comment on "whether additional requirements should be imposed [at transfer facilities] * * *."[46] The absence of EPA action to impose additional requirements is evidence that such requirements are not necessary to assure safety in the transportation of waste hazardous materials. Unless these inspection requirements are preempted, they invite other non-federal jurisdictions to impose their own version of such requirements which could lead to confusion about the requirements that apply at various locations and may delay shipments pending compliance with non-federal inspection and inspection documentation requirements thus creating an obstacle to the accomplishment and execution of the HMRs and the HMTA.

• Facility Size: 6 NYCRR 373–1.1(d)(1)(xv)(h).

The HMRs have no requirement that packagings containing "ignitable" or "reactive" wastes must be stored at least 50 feet from the storage site property line. The segregation and separation provisions of the HMRs address safety concerns about the interaction of various hazardous materials not just "explosive/reactive" or "flammable/ignitable" in storage incidental to transportation.[47] There is no technical justification for the 50-foot standard for materials stored incident to transportation

[38] 45 FR 86966 (December 31, 1980).
[39] 45 FR 86966–7 (December 31, 1980).
[40] Transfer of waste hazardous materials between DOT-authorized packagings is precluded.
[41] 49 CFR 173, 177 subpart C, 177.821, 174.81, 174.100, and 174.102.
[42] 49 CFR part 387.
[43] 49 CFR 171.15, 177.854, and 174.48.
[44] 49 CFR part 130. Additionally, the Oil Pollution Act of 1990, P.L. 101–380, requires DOT to promulgate similar response plan requirements for hazardous substances. When these rules are finalized, it is anticipated that all hazardous wastes at least in bulk packagings will be subject to response plan requirements.
[45] 45 FR 86967 (December 31, 1980).
[46] *Ibid.*
[47] 49 CFR 177.848 and 174.81.

when, once on the road or in a transportation phase which does not involve storage, packagings no longer need to be kept 50 feet from property lines to assure safety. Additionally, EPA noted its belief that reliance on DOT packaging standards "should provide adequate protection of human health and the environment during the short period that hazardous wastes are held at a transfer facility" and requested comment on "whether additional requirements should be imposed [at transfer facilities] * * *."[48] The absence of EPA action to impose additional requirements is evidence that such requirements are not necessary to assure safety in the transportation of waste hazardous materials. Unless these storage set-back requirements are preempted, they invite other non-federal jurisdictions to impose their own, but not necessarily identical, version of such requirements which could lead to confusion about which requirements apply at various locations thus creating an obstacle to the accomplishment and execution of the HMRs and the HMTA.

- NFPA Standards: 6 NYCRR 373–1.1(d)(1)(xv)(i).

The DEC requirement that areas where "freight consolidation" or the loading and unloading of packaged hazardous materials must meet "all applicable NFPA [National Fire Protection Association] requirements for storing ignitable wastes" is without merit. There is no NFPA standard for "ignitable wastes." The closest standard, NFPA 30—Flammable and Combustible Liquids Code, specifically exempts the "transportation of flammable and combustible liquids" and the "storage of containers in bulk plants * * *."[49] Bulk plants are defined as "that portion of a property where liquids are received by tank vessel, pipelines, tank car, or tank vehicle and are stored or blended in bulk for the purpose of distributing such liquids by tank vessel, pipeline, tank car, tank vehicle, portable tank, or container."[50] The DEC requirement to comport with a non-existent standard is at best confusing and thus creates an obstacle to the accomplishment and execution of the HMRs and the HMTA.

- Manifest Requirements: 6 NYCRR 372.3(a)(7)(ii).

The Uniform Manifest is a shipping paper for purposes of the HMRs.[51] The Manifest is protected from the infringement of non-federal requirements that are not "otherwise authorized by federal law" by the "substantively the same as" preemption standard.[52] The DEC requirement obligating a transporter to enter in the space reserved for a "second transporter" information about the transfer of hazardous waste from one vehicle to another is not "otherwise authorized by federal law" nor is it "substantively the same as" any requirement of the Uniform Manifest. In fact, the EPA-chartered Hazardous Waste Manifest Rule Negotiated Rulemaking Advisory Committee specifically considered and rejected an effort to require notation by license plate number in the sections of the Manifest reserved for notation of subsequent transporters when vehicles transporting hazardous waste were changed.

- Repackaging: 6 NYCRR 364.1(c) (12) and (14), 373–1.1(d)(1)(xv) (c) and (e), and 372.3(a)(7)(i).

Over a dozen pages of the HMRs set forth specific loading and unloading requirements for hazardous materials.[53] In addition, persons involved in the loading and unloading of waste hazardous materials between DOT-authorized packagings are subject to those requirements of the HMRs that are imposed on shippers to properly classify, mark, label and placard the material, and comply with other such hazard communication standards.

The HMRs also provide that there be "no tampering with * * * a container [of hazardous materials] or the contents thereof nor any discharge of the contents of any container between point of origin and point of billed destination."[54] This provision has been cited as justification to prohibit the loading and unloading of waste hazardous materials between DOT-authorized packagings at transfer facilities because the final destination of hazardous waste shipments can only be the permitted TSDF identified on the Uniform Manifest. However, this argument does not distinguish between the Uniform Manifest/shipping paper and invoices for billing freight shipment charges. The Uniform Manifest is not an invoice, although it may be used as proof of delivery. A "billed destination" can be a location where any carrier transfers hazardous materials to another carrier and bills for that particular leg of the shipment's transportation. "Billed destination" is not necessarily synonymous with the arrival at the site of the shipment's consignment.

Despite full compliance with these requirements and applicable EPA standards, the DEC prohibitions on loading and unloading waste hazardous materials which involve repackaging such wastes incident to transportation are absolute.[55] The effect of the prohibition is to deny opportunities to achieve efficiencies in transportation that promote safety such as consolidating loads from cargo tanks to tank cars or pumping out packagings in order to bulk waste hazardous materials at multiple generator locations in route to TSDFs. Members of the Institute do not knowingly engage in the repackaging of non-like wastes because of the onerousness of having to comply with generator standards. Nevertheless, on occasion a transporter may have to comply with generator standards in those states which allow repackaging incidental to transportation because the wastes were misrepresented by the original generator(s). We do not contest the imposition of generator requirements in these instances. In such cases, however, no state should be able, as does New York, to penalize transporters because they failed to obtain hazardous waste facility treatment/storage permits. To the extent fungible products such as coal, petroleum or acids are repackaged to achieve efficiencies in transportation without obtaining permits, fungible hazardous wastes should be accorded the same opportunity.

The consequence of New York's or other states' attempts to shield their citizens from risks associated with the transportation of waste hazardous materials by precluding repackaging activities is that these activities are diverted to other jurisdictions as long as transportation efficiencies can still be achieved forcing the populations in those other jurisdictions to bear a disproportionate share of the risk inherent in such transportation. As noted, several states already impose such restraints on the loading and unloading of waste hazardous materials between DOT-authorized packagings. This situation has led to confusion about which standards must be met during the course of transportation and poses an obstacle to the accomplishment and execution of the HMTA.

The DEC Requirements Are Preempted by the HMTA and the HMRs Because They Apply to Waste Hazardous Materials Differently and in Addition to Requirements for Other Hazardous Materials

In 1980, a preemption provision relating to hazardous waste was added to the HMRs. This provision provides that requirements of a state are inconsistent with the HMRs if they apply because the materials are waste materials and apply differently from or in addition to the requirements of the HMRs.[56] In the preamble to the final rule establishing this section, DOT defined the term "inconsistent" to describe "the type of state * * * transportation safety regulation that is *preempted* by requirements under the HMTA."[57] (Emphasis added.) All of the above referenced DEC requirements apply solely to waste hazardous materials. No comparable requirements are imposed by the DEC, or other state agencies, on the transportation of non-waste hazardous materials despite the fact that in New York non-waste hazardous materials are stored in DOT-authorized packagings and transferred between transport conveyances and between

[48] *Ibid.*

[49] NFPA 30, Chapter 1–1.7.1 and Chapter 4–1.2(a). 1990 Edition.

[50] NFPA 30, Chapter 9. 1990 Edition.

[51] 49 CFR 171.3(c).

[52] 49 CFR 107.202(a)(3). Also, refer to PD–2(R) which found the manifest promulgated by the Illinois Environmental Protection Agency preempted because it was not "substantively the same as" the Uniform Manifest and the deviations were not "otherwise authorized" by federal law. 58 *FR* 11183 (February 23, 1993).

[53] Modal regulations for loading and unloading are located at 49 CFR parts 174–177. Specific requirements to assure the compatibility of mixed hazardous materials appear at 49 CFR 173.23(e).

[54] 49 CFR 177.834(h).

[55] The DEC "opportunity" to engage in loading, unloading, and storage activities incident to transporting waste hazardous materials if the transporter acquires waste management facility treatment/storage permits for transfer facility locations is a pretense. The resources necessary to obtain such permits run in the thousands of dollars and take years to finalize, if at all.

[56] 49 CFR 171.3(c). This section lists "certain areas of state * * * regulatory actions pertaining to hazardous waste which [DOT] believes would be disruptive of the national uniformity required in the identification of hazardous materials (including wastes) in transportation. Section 171.3(c) *does not list all the conditions under which it might view a State * * * law as "inconsistent"* * *." (Emphasis added.) 45 FR 34567 (May 22, 1980).

[57] 45 FR 34567 (May 22, 1980).

DOT-authorized packagings while in transportation.

Conclusion

The requirements of the DEC as outlined above, individually and as a whole, create an obstacle to the accomplishment and execution of the HMRs and the HMTA. The requirements for unauthorized entries on the Uniform Manifest fail to meet the requirements of the HMTA and the HMRs that non-federal shipping paper requirements be "substantively the same as" federal standards. Finally, the DEC requirements invite mischief and should be preempted to the extent that they single out waste hazardous materials from other hazardous materials for additional and different regulation.

The loading, unloading, and storage of hazardous materials under active shipping papers at locations other than the point of consignment is a basic function of transportation that is expressly authorized by Congress and regulated by the HMTA and HMRs. If the DEC believes that the federal requirements are deficient, opportunities exist to petition for rule changes.[5#] However, unilateral state action cannot be tolerated in a transportation setting. The extent to which the DEC and other states have challenged the HMRs in this area of regulation deserves to be addressed.

Certification

Pursuant to 49 CFR 107.205(a), we hereby certify that a copy of this application has been forwarded with an invitation to submit comments within 45 days to:

Thomas C. Jorling, Commissioner, Department of Environmental Conservation, 50 Wolf Rd., Albany, NY 12233

Respectfully submitted,

Stephen C. Hansen,

Chairman.

Enclosures

[FR Doc. 93–25296 Filed 10–14–93; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Office of the Secretary

List of Countries Requiring Cooperation With an International Boycott

In order to comply with the mandate of section 999(a)(3) of the Internal Revenue Code of 1986, the Department of the Treasury is publishing a current list of countries which may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

On the basis of the best information currently available to the Department of the Treasury, the following countries may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986):

Bahrain
Iraq
Jordan
Kuwait
Lebanon
Libya
Oman
Qatar
Saudi Arabia
Syria
United Arab Emirates
Yemen, Republic of

Dated: October 1, 1993.

Samuel Y. Sessions,

Deputy Assistant Secretary for Tax Policy.

[FR Doc. 93–25369 Filed 10–14–93; 8:45 am]

BILLING CODE 4810–25–M

[5#] 49 CFR 106.31.

UNITED STATES INFORMATION AGENCY

International Creative Arts Exchanges for Public and Private Non-Profit Organizations; Clarification

AGENCY: United States Information Agency.

ACTION: Clarification of allowable costs in requests for proposals.

SUMMARY: The Creative Arts Exchanges Division (E/DE), Office of Arts America, Bureau of Educational and Cultural Affairs hereby clarifies and defines items of allowable costs under announcements of its discretionary grants program for private, non-profit organizations.

Clarification

Language and/or interpretation of language not withstanding, allowable costs in applications for awards to the Creative Arts Exchanges Division (E/DE), Office of Arts America, Bureau of Educational and Cultural Affairs under announcements in the **Federal Register**, vol. 57, No. 238, December 10, 1992, page 58544, and, Vol. 58, No. 101, May 27, 1993, page 30852 shall include but not be limited to:

1. International and domestic air fares; visas; transit costs; ground transportation costs;

2. Per diem. For foreign participants, organizations have the option of using a flat $140/day for US domestic per diem or the published Federal per diem rates for individual American cities.

(**Note:** Accompanying staff must use the published Federal per diem rates, not the flat rate.)

3. Escort-Interpreters. Interpretation for delegations is provided by the State Department's Language Services Division. USIA grants do not pay for foreign interpreters to accompany delegations from their home country. Grant proposal budgets should contain a flat $140/day per diem for each State Department interpreter, as well as home-program-home air transportation of $400 per interpreter and any US travel expenses during the program itself. Salary expenses are covered centrally and are not part of a grantee's budget proposal.

4. Cultural allowances. Participants and the escort interpreters are entitled to a cultural allowance of $150 per person. Accompanying staff do not receive these benefits.

5. Consultants. Consultants may be used to provide specialized expertise or to make presentations. Daily honoraria generally may not exceed $250/day. Subcontracting organizations may also be used. The written agreement between the prospective grantee and subcontractor must be included in the proposal.

6. Materials development. Proposals may contain costs to purchase, develop and translate materials for participants.

7. Rental of space needed for program activities is generally not to exceed $250/day.

8. One working meal per project. Per capita costs may not exceed $5–8 for a lunch and $14–20 for a dinner. Number of invited guests may not exceed the number of participants by more than a factor of two.

9. A return travel allowance. $70.00 for each participant which is to be used for incidental expenditures incurred during international travel.

10. All participants will be covered under the terms of a USIA sponsored health insurance policy. The premium is paid by USIA, directly to the insurance company.

Dated: October 7, 1993.

Barry Fulton,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 93–25322 Filed 10–14–93; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review; Statement of Accredited Representative in Appealed Case, VA Form 646

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following

proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Patti Viers, Office of Information Resources Management (723), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–3172.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before November 15, 1993.

Dated: October 4, 1993.

By direction of the Secretary

B. Michael Berger,

Director, Records Management Service.

Extension

1. Statement of Accredited Representative in Appealed Case, VA Form 646
2. The form is used by accredited representatives of veteran's service organizations to present argument to the Board of Veterans Appeal on behalf of appellants whom the service organization represents
3. Non-profit institutions
4. 37,343 hours
5. 1 hour
6. On occasion
7. 37,343 respondents

[FR Doc. 93–25316 Filed 10–14–93; 8:45 am]

BILLING CODE 8320–01–M

Information Collection Under OMB Review; Request for Disinterment, VA Form 40–4970

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

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DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before November 15, 1993.

Dated: October 5, 1993.

By direction of the Secretary.

B. Michael Berger,

Director

Director, Records Management Service.

Extension

1. Request for Disinterment, VA Form 40–4970
2. The form is used in lieu of a court-order to request the removal of remains from a national cemetery. The information is used by VA to either approve or disapprove the disinterment request
3. Individuals or households
4. 13 hours
5. 10 minutes
6. On occasion
7. 77 respondents

[FR Doc. 93–25315 Filed 10–14–93; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 198
Friday, October 15, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m. Tuesday, October 19, 1993.

LOCATION: Room 440, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

1. Architectural Glazing Petition, CP 92–1

The Commission will consider petition CP 92–1 from O'Keeffee, Inc. requesting the Commission to extend the coverage of the Architectural Glazing Standard by removing the current exemption for wired glass used in "fire doors" and by revising the scope of the standard to include ceramic glass substitutes.

2. FY 1994 Year Operating Plan

The staff will brief the Commission on issues related to the Commission's Operating Plan for Fiscal Year 1994.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD 20207 (301) 504–0800.

Dated: October 12, 1993.

[FR Doc. 93–25515 Filed 10–13–93; 3:08 pm]

BILLING CODE 6355–01–M

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Wednesday, October 20, 1993.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

Crib Toys

The staff will brief the Commission on options for Commission action with regard to a rulemaking proceeding initiated in 1990 to consider strangulation hazards associated with crib toys.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD 20207 (301) 504–0800.

Dated: October 13, 1993.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 93–25516 Filed 10–13–93; 3:08 pm]

BILLING CODE 6355–01–M

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, October 21, 1993.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTERS TO BE CONSIDERED:

1. Compliance Status Report

The staff will brief the Commission on the status of various compliance matters.

2. Enforcement Matter OS#3485

The Commission will consider issues related to enforcement matter OS#3485.

3. Enforcement Matter OS#3073

The Commission will consider issues related to enforcement matter OS# 3073.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD 20207 (301) 504–0800.

Dated: October 13, 1993.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 93–25517 Filed 10–13–93; 3:08 pm]

BILLING CODE 6355–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, October 20, 1993.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: October 12, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–25518 Filed 10–13–93; 3:07 pm]

BILLING CODE 6210–01–P

Corrections

Federal Register

Vol. 58, No. 198

Friday, October 15, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

FEDERAL COMMUNICATIONS COMMISSION

[Report No.1974]

Petitions for Reconsideration and Clarification of Actions in Rulemaking Proceedings

Correction

In notice document 93-24566 appearing on page 52312 in the issue of Thursday, October 7, 1993, in the 1st column, in the 12th line, "October 31, 1993" should read "October 22, 1993".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees; Notice of Meetings

Correction

In notice document 93-23106 beginning on page 49312 in the issue of Wednesday, September 22, 1993, make the following correction:

On page 49313, in the first and second columns, remove the entry for Gastroenterology and Urology Devices Panel of the Medical Devices Advisory Committee and the five paragraphs following.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 187

[CGD 89-050]
RIN 2115-AD35

Vessel Identification System

Correction

In proposed rule document 93-24210 beginning on page 51920 in the issue of Tuesday, October 5, 1993, make the following correction:

On page 51920, in the first column, in **DATES:**, in the second line, "January 3, 1993." should read "January 3, 1994."

BILLING CODE 1505-01-D

federal register

Friday
October 15, 1993

Part II

Department of Transportation

Research and Special Programs Administration

49 CFR Part 107, et al.

Frequently Asked Questions Concerning Requirements Applicable to Cargo Tank Motor Vehicles; Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 107, 171, 173, 178 and 180

[Notice No. 93-20]

Frequently Asked Questions Concerning Requirements Applicable to Cargo Tank Motor Vehicles

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Responses to questions.

SUMMARY: This document responds to frequently asked questions pertaining to requirements applicable to cargo tank motor vehicles. The intent of this document is to facilitate better public understanding and awareness. It contains information that may be particularly useful to the regulated industry, and State and local governmental officials involved in or regulating hazardous materials transportation.

FOR FURTHER INFORMATION CONTACT: Jennifer Karim or Hattie Mitchell, (Telephone 202–366–4488), Office of Hazardous Materials Standards, Research and Special Programs Administration, 400 Seventh Street SW., Washington DC 20590–0001.

SUPPLEMENTARY INFORMATION: As part of its implementation of the Hazardous Materials Transportation Act (HMTA), 49 App. U.S.C. 1801 *et seq.*, RSPA promulgates regulations governing the safe transportation of hazardous materials in commerce. These regulations are contained in 49 CFR parts 106–180. Answers to questions concerning these regulations are issued by RSPA's Office of Hazardous Materials Safety (OHMS). The answers contained in this document are based on questions raised by industry. They pertain to requirements, applicable to cargo tank motor vehicles, contained in the Hazardous Materials Program Procedures (49 CFR part 107) and the Hazardous Materials Regulations (49 CFR parts 171–180).

Publication of these questions and answers is intended to promote a better understanding of, and improve compliance with, the HMR. This information also will be listed on RSPA's electronic bulletin board, the Hazardous Materials Information Exchange (HMIX). The HMIX may be accessed by calling the data telephone number, (708) 972–3275, or for personal assistance by calling the number, 1–800–PLANFOR (in Illinois, call 1–800–367–9592).

Issued in Washington, DC, on October 8, 1993 under authority delegated in 49 CFR part 106, appendix A.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

Frequently Asked Questions Concerning Requirements Applicable to Cargo Tank Motor Vehicles

Part 107

Section 107.501

Q1. Are there any special requirements that must be met by a repair facility, based in Mexico or Canada, to test or inspect cargo tanks operating in the United States? Can the facility receive a CT number?

A1. No special requirements are imposed on repair facilities based in Mexico or Canada registering under section 107.501 *et seq.* Designation of an agent for service of process, as required by section 107.503(a)(7), applies to non-U.S. residents. RSPA has registered several Canadian facilities.

Q2. How does a company providing "mobile" testing and inspecting of customer cargo tanks register? The work is not done at a "facility." Is "mobile" testing authorized?

A2. A "mobile" facility can be registered if all other requirements are met. RSPA has registered a few individuals who work out of their homes or small offices and "deliver" inspection and test services at their customers' sites.

Q3. Are manufacturers and repairers of nonspecification cargo tanks subject to the registration requirements in subpart F of part 107?

A3. The registration requirements in subpart F of part 107 apply to persons who manufacture, assemble, inspect, test or repair DOT specification cargo tanks and cargo tanks subject to the terms of an exemption (see section 107.501). These requirements do not apply to persons who perform these functions on nonspecification cargo tanks, provided they are not exemption cargo tanks that must conform, with certain exceptions, to a DOT cargo tank specification.

Section 107.502(f)

Q4. The opportunity to designate an employee as a Registered Inspector under the grandfather provisions expired December 31, 1991. Has any thought been given to extending this date to allow qualified mechanics whose companies may not have registered them to perform functions as Registered Inspectors?

A4. RSPA has received a petition for rulemaking requesting that the December 31, 1991 deadline for submitting a registration statement be removed or, alternatively, that the registration period be reopened. The petition is under consideration.

Part 171

Section 171.8

Q5. A DOT 51 portable tank that is used to transport carbon dioxide, refrigerated liquid is permanently mounted on a truck chassis. Is the tank considered a portable tank or a cargo tank, and how must it be retested?

A5. A portable tank that is permanently mounted on a vehicle chassis meets the definition of a cargo tank. A "cargo tank," as defined in § 171.8, is a bulk packaging which is permanently attached to or forms a part of a motor vehicle, or is not permanently attached to a motor vehicle but which, by reason of its size, construction or attachment to a motor vehicle, is loaded or unloaded without being removed from the motor vehicle.

For the transport of carbon dioxide, refrigerated liquid, the tank must conform to all applicable requirements for an MC 331 cargo tank. Therefore, it must meet the periodic retest and inspection requirements in § 180.407. The cargo tank must conform in all aspects to the applicable specification structural requirements contained in § 178.337, including requirements in § 178.337–10 for overturn protection, valves and fittings protection, and rear bumpers.

Part 173

Section 173.24b(d)(2)

Q6. Does the maximum design density of lading apply to a nón-hazardous material? For example, could a non-hazardous 14-pound per gallon product be transported in a 12-pound per gallon tank? Can a motor carrier cover the tank specification plate and transport these products?

A6. The HMR apply to transportation of hazardous materials in commerce; see § 171.1. These regulations specify authorized packagings and set minimum standards for authorized packagings, such as DOT specification cargo tank motor vehicles. Any usage outside the design parameters such as that described is not authorized. For example, § 178.340–10 certification plate requirements for MC 306, 307 and 312 include maximum product load (lbs). If a 5000 gallon tank is designed for a maximum product density of 12 pounds per gallon (ppg), the maximum product load is 60,000 lbs. This maximum product load cannot be exceeded regardless of whether the

lading is hazardous or non-hazardous. Thus, this 5000 gallon tank could carry only 4286 gallons of a lading which has a density of 14 ppg.

Sections 173.33, 178.320, 180.405(b), etc.

Q7. Does the term "DOT specification cargo tanks" include both the MC–300 series cargo tanks and the DOT–400 series cargo tanks?

A7. Yes, the term refers to both MC cargo tanks and DOT cargo tank motor vehicles.

Section 173.33(a)(2)

Q8. Section 173.33(a)(2) forbids loading hazardous materials on the same cargo tank motor vehicle if a mixture of the materials would result in an unsafe condition. Does this apply if a cargo tank has double bulkheads?

A8. Yes, § 173.33(a)(2) applies to cargo tanks with double bulkheads.

Q9. Is a cargo tank truck and a cargo tank trailer combination or a set of double cargo tank trailers considered to be "the same cargo tank motor vehicle?"

A9. Yes, they are considered to be the same "cargo tank motor vehicle." Section 171.8 defines a "motor vehicle" to mean a vehicle, machine, tractor, trailer, semitrailer, *or any combination thereof,* propelled or drawn by mechanical power and used on the highways in transportation of passengers or property. Paragraph 173.33(a)(2) is intended to prevent the transportation of two or more materials which, if mixed, would cause a vehicle fire, tank rupture or the release of toxic vapors. For example, if Product A and Product B are not compatible, transporting Product A in the cargo tank truck and Product B in an attached cargo tank trailer is prohibited. Examples of prohibited materials are nitric acid and fuel oil.

Section 173.33(a)(3)

Q10. A shipper is required to check a carrier's tank to ensure it is the proper specification for the hazardous material being loaded. Is the shipper required to check the tank for compliance with the requalification tests and inspections in part 180?

A10. If a cargo tank is supplied by a carrier, the offeror (shipper) is not required to check the tank for compliance with part 180. Hazardous materials often are loaded at bulk loading facilities, in cargo tank motor vehicles supplied by the motor carrier, without the offeror in attendance. In these instances, verification of a carrier's compliance with part 180 is not possible. The basic responsibilities of an offeror are found at § 173.22; paragraphs (a) (2) and (3) are pertinent to cargo tanks.

Q11. If a cargo tank has been filled and used for storage and has an inspection or test come due during the storage period, can the cargo tank be used to deliver the product to a customer, and then be returned to the owner for performance of the inspection or test?

A11. Yes, under §§ 173.33(a)(3) and 177.824, a specification cargo tank for which the prescribed periodic retest or reinspection is past due may be offered for transport and transported. However, such a cargo tank may not be *refilled and offered for transportation* until the retest or reinspection has been successfully completed. The intent of this provision is to facilitate movement of a cargo tank motor vehicle to a facility where the work can be done, without the need for an exemption.

Section 173.33(c)

Q12. If a 1 psi normal vent is not used, what is pressure relief setting?

A12. The set pressure is stipulated in individual DOT cargo tank specifications. Examples:

(a) MC 306, 307 and 312: In these specifications, the set pressure is stated either as an absolute value (for example, not less than 3.0 psig), or so as to limit pressure rise to 130–150 percent of design pressure or MAWP. (General requirements for maximum allowable working pressure (MAWP) are found at § 173.33(c). MAWP is defined at § 178.345–1(k).)

(b) DOT 406, 407 and 412: In these specifications, the general schedule for primary and secondary pressure relief systems is found at § 178.345–10 (d)(1) and (d)(2) respectively. Set pressure is stated in terms of percentages of the MAWP, with a tolerance of 10 percent. The vent capacity must be achieved at not more than the tank test pressure. In response to comments received during development of the HM–183 final rule, the pressure relief schedule for the DOT–406 was established at values differing from the general values. As a result, the pressure differential across the opening was unintentionally reduced to levels which made it very difficult to achieve adequate vent capacity, as pointed out by several commenters. In a notice of proposed rulemaking, RSPA proposed to revise this schedule in § 178.345–10. See HM–183C (58 FR 12316, March 3, 1993).

Sections 173.131, 173.242

Q13. Section 172.101 in the past referred to former § 173.131 for asphalt cargo tanks. Former § 173.131 allowed asphalt to be transported in nonspecification cargo tanks equivalent to an MC 306 or DOT 406 cargo tank with the exception of certification, manholes, venting, and emergency flow control. The specific bulk packaging requirements for asphalt have been moved to § 173.247. Section 173.247 requires asphalt to be transported in a specification cargo tank. What is required of cargo tanks transporting asphalt? Are existing cargo tanks "grandfathered"? Are asphalt tanks exempted from shell thickness testing?

A13. The exception in former § 173.131, which allowed transport of certain flammable asphalts in nonspecification cargo tanks, was inadvertently removed under HM–181. This error subsequently was corrected in a final rule published under HM–181 (57 FR 45446, October 1, 1992). In the § 172.101 Hazardous Materials Table, for the entry "Tars, liquid including road asphalt and oils, bitumen and cut backs," in column 7, Special Provision B13 was added. Also, § 173.247 was revised to permit continued use of cargo tanks manufactured prior to October 1, 1993, that do not conform to § 173.247. These cargo tanks must meet the closure requirements in paragraph (g) by March 30, 1995, as well as all applicable requirements in Part 173, subparts A and B. Asphalt cargo tanks not represented as DOT specification cargo tanks are not subject to any of the requirements in Part 180.

Section 173.131(a)(2)

Q14. This paragraph states that the design limits may not exceed 25 percent of the stress limit provided by the Aluminum Association. What are the design limits for stainless steel and mild steel?

A14. No limits are specified in Special Provision B13 for high temperature design stress of asphalt cargo tanks made of stainless steel and/or mild steel. However, § 173.24b, containing additional general requirements for bulk packaging, provides at paragraph (d)(1) that a bulk packaging may not be loaded with a hazardous material that is at a temperature outside of the packaging's design temperature range. For example, steel cargo tanks used to transport asphalt must be designed so that design stress limits are not exceeded as a result of the temperature of the asphalt.

Part 178—MC–300 Series Cargo Tanks

Section 178.320(b)

Q15. Is a manufacturer of MC 306, MC 307 and MC 312 cargo tanks required to have each cargo tank design type certified to the applicable specification

requirements by a Design Certifying Engineer?

A15. No, the DOT MC 306, 307 and 312 specifications do not require certification of each design type by a registered Design Certifying Engineer. However, any cargo tank design which is changed from the original design by stretching or rebarrelling must be recertified by a Design Certifying Engineer (see § 180.413(d)(3)).

Section 178.337–10(d)

Q16. Does the requirement that each cargo tank be provided with at least one rear bumper designed to protect the tank and piping apply to all cargo tanks or only to those tanks used to transport gasoline, fuel oil, and other petroleum distillates?

A16. The requirement that each cargo tank be provided with at least one rear bumper applies to all DOT specification cargo tank motor vehicles, regardless of the lading being transported.

Section 178.340–10(b)(2)

Q17. If a cargo tank is being operated as a multi-purpose tank, and the certification plate is stamped "MC307/MC312" to indicate the two specifications, should a multi-purpose plate be added so that it can be clearly distinguished as to what specification the cargo tank is operating under?

A17. Yes, a multi-purpose plate identifying the applicable specification under which the tank is operating must be displayed on the cargo tank.

Q18. Is there an exception that authorizes certification plates to be attached to the right side of the cargo tank?

A18. Yes, cargo tanks manufactured prior to July 1985 may have the certification plate attached to the right side of the cargo tank. See first sentence in § 178.340–10(b)(2).

DOT–400 Series Cargo Tanks

Section 178.345–3(g)(2)

Q19. What is meant by "skirting structure"?

A19. The term "skirting" is intended to describe any of a variety of lightweight elements used to dress up appearance, to divert road debris/water away from the tank, to provide fairings around wheel wells or cabinets, etc. Some hose carriers could be included.

Section § 178.345–9(b)

Q20. This paragraph contains requirements for hoses and couplings in regard to bursting pressures, but does not specify to what pressures the hose assembly must be tested, or how often an assembly must be tested. What requirements apply?

A20. Section 178.345–9(b) and (c) contain performance criteria for hoses, piping, stop valves, hose couplings, etc. Periodic leakage test requirements are contained in § 180.407(h) and maintenance and replacement requirements are found at § 180.413(c). The leakage test applies to "product piping with all valves and accessories in place and operative." This includes lading retention couplings and closures, but not hoses which are not authorized to contain lading during transit. Periodic testing of the bursting pressure of hoses is not required by the HMR.

Section 178.345–9(h)

Q21. Does this section prohibit the use of acrylic sight glasses?

A21. This section does not prohibit an acrylic sight glass provided "such attachment is located outboard of the lading retention system." Paragraph (f), covering requirements for gauging devices, also applies.

Section 178.345–10.

Q22. If all the pressure relief requirements are met, may additional pressure relief be provided at a higher pressure than specified for the required pressure relief?

A22. Yes.

Section 178.345–14(b)(2)

Q23. Is the test date in § 178.345–14(b)(2) the same as either the cargo tank certification date in § 178.345–14(c)(2) or the cargo tank date of manufacture in § 178.345–14(c)(4)?

A23. Under the various paragraphs in § 178.345–14, dates required on the name plate and specification plate are as follows:

(b)(2)—original test date.

(c)(2)—CTMV certification date, if different from the cargo tank certification date.

(c)(4)—cargo tank date of manufacture.

Each of these dates may be different.

Section 178.345–14(c)(8)

Q24. If a carrier has a lined cargo tank which will be used as a specification tank but not as a lined tank, should the carrier block or remove the lining information on the "spec" plate? Does this absolve the carrier from complying with § 180.407(f)?

A24. Yes, the specification plate should reflect the features of the cargo tank. If a cargo tank is not lined or is not used to transport ladings corrosive to the tank then a lining test (§ 180.407(f)) is not required.

Sections 178.346–13(c)(2) and 180.407(h)(2).

Q25. DOT allows a leakage test to be performed on gasoline cargo tanks in accordance with the Environmental Protection Agency's (EPA) "Method 27–Determination of Vapor Tightness of Gasoline Delivery Tank Using Pressure-Vacuum Test" in certain geographical areas. Why is this test acceptable in some geographical areas and not others? In which geographical areas is EPA's Method 27 acceptable?

A25. The EPA Method 27 test is applicable to gasoline delivery tanks that are operated in jurisdictions identified in subpart C of 40 CFR part 81, where the release of gasoline vapors poses an environmental hazard. Delivery tanks operated in these jurisdictions must be equipped with vapor collection equipment. RSPA has simply authorized the test as an acceptable alternative to Part 180 leakage testing in order to avoid the imposition of essentially duplicate requirements. RSPA has proposed in HM–183C (58 FR 12316, March 3, 1993) to allow the use of EPA method 27 as an alternative leakage test for DOT 406 specification cargo tanks that are fitted with vapor collection equipment, and are intended for use in gasoline or benzene delivery service only, without regard to geographical location.

Part 180

Section 180.1

Q26. Does part 180 apply to IM 101 and IM 102 portable tanks?

A26. Subpart A applies to all types of packagings. Part 180 is intended to include provisions for the continuing qualification and maintenance (Q&M) of all container types, but currently contains only subpart E for cargo tanks.

Section 180.3

Q27. If a motor carrier transports hazardous materials exclusively in intrastate carriage and does not transport hazardous substances, hazardous wastes or flammable cryogenics, is the carrier required to maintain, test, repair, etc. the DOT specification cargo tanks in conformance with the current edition of HMR even if the State has not adopted the most current edition of the HMR?

A27. Yes, when a motor carrier uses a cargo tank *represented* by the tank specification plate as meeting a DOT specification, the cargo tank must conform in all respects to the applicable specification in part 178 under which it was manufactured and the requalification requirements in part 180. As provided by § 171.2(c), "no person

may represent or offer a packaging as meeting the requirements of this subchapter governing its use in the transportation in commerce of a hazardous material, whether or not it is used or intended to be used for the transportation of a hazardous material, unless the packaging is manufactured, fabricated, marked, maintained, repaired, or retested as appropriate, in accordance with this subchapter" (also see §§ 171.2(d) and 180.3). The requirements in parts 178 and 180 apply to a DOT specification cargo tank motor vehicle used to transport hazardous materials exclusively in intrastate commerce as well as to those used in interstate commerce.

Q28. Would an intrastate motor carrier who does not transport *any* hazardous materials but uses cargo tanks marked with a DOT specification number be required to maintain the tank in compliance with current 49 CFR requirements?

A28. Yes, any cargo tank *represented* by the tank specification plate as a DOT specification packaging must conform to all applicable requirements (see §§ 171.2(c) and 180.3(a)). However, when a DOT specification cargo tank is used to transport non-hazardous materials or hazardous materials not requiring the use of a specification cargo tank, the tank specification plate may be removed, obliterated or securely covered, as provided by § 180.405(j). If the plate is covered, the covering must be capable of remaining in place during transit. Removing, obliterating or securely covering the specification plate eliminates representation of the tank as a DOT specification packaging. When a cargo tank is represented as not meeting the specification by covering the plate, before the cargo tank can be represented again as a DOT specification by uncovering the tank specification plate, it must meet all applicable requirements in part 180.

Q29. Does an MC 306 cargo tank that is used only to transport fuel oil and water have to be maintained in accordance with the HMR?

A29. Yes, whether an MC 306 cargo tank transports hazardous material has no bearing if the cargo tank is represented as a DOT specification cargo tank. See also answers to above questions.

Q30. Does this section apply to "equivalent" nonspecification cargo tanks used to haul products such as asphalt?

A30. Part 180, subpart E applies only to DOT specification cargo tanks and cargo tank motor vehicles. This includes all MC and DOT specification cargo tanks. Unless specifically required, part 180 does not apply to nonspecification cargo tanks.

Section 180.403

Q31. The terms "corrosive to the tank/valve" and "shown through experience to be corrosive to the tank or valve" continue to generate confusion. Under what conditions must the fifth wheel plate be removed?

A31. It is the responsibility of a cargo tank owner, in conjunction with a Registered Inspector, to determine whether operating conditions are "corrosive to the tank/valve". The corrosivity of ladings such as crude oil and liquefied petroleum gas varies greatly in different geographical areas. For example, exposure time and temperature are major variables; indeed, many factors must be considered and evaluated locally. If it is determined that the lading is corrosive to the tank, the fifth wheel must be removed and inspected as required by § 180.407(d)(2)(ix).

Section 180.405(b)

Q32. Does part 180 apply to DOT specification cargo tanks of 3,000 gallon capacity or less used to haul flammable liquids?

A32. Yes, part 180 applies to all specification cargo tank motor vehicles.

Q33. On an MC 306 cargo tank of 2500 gallons capacity or less, what is the minimum compartment size that requires a manhole?

A33. An MC 306 cargo tank having a compartment capacity of 2500 gallons or less is not required to have a manhole (see § 178.341–3).

Section 180.405(c)(2)

Q34. Section 180.405(c)(2) allows pressure relief devices conforming to the DOT–400 series requirements to be placed on MC–300 series cargo tanks. Can DOT–400 series pressure relief devices be installed in newly manufactured MC 306, MC 307 or MC 312 cargo tanks and be certified to the applicable specification?

A34. Yes, § 180.405(c)(2) authorizes the use of DOT–400 series reclosing pressure relief devices on certain MC–300 series cargo tanks. This provision, however, does not permit relaxation of other aspects of the applicable MC cargo tank specification. For example, DOT 406 pressure relief valves may be installed on MC 306 cargo tanks, provided the minimum emergency venting capacities are met (§ 178.341–4(d)). Section 178.341–4(b) states that a normal vent must be set to open at no more than 1 psig while § 178.346–10(b)(2) states that a normal vent must be set to open at not less than 1 psig. Section 178.341–4(d) states that the vent shall be set to close when the pressure drops to 3 psig or below; whereas § 178.346–10(c)(1) states that the valve must close at no less than the MAWP which could be 3.3 psig. Modification of the pressure relief devices does not require changing nameplates.

Section 178.346–10(b)(2) states that normal vents must be set open at not less than 1 psig in order to prevent the venting of ladings having vapor pressures greater than 1 psig when transported in DOT 406 cargo tank motor vehicles equipped with normal vents.

Section 178.346–10(c)(1) refers to pressure relief devices as described at § 178.345–10; the venting capacity of these devices is much greater than that of normal vents.

Unlike the MC 306, the pressure relief valve schedules for all DOT–400 series specifications are related to the MAWP of each tank. RSPA proposes to revise the DOT 406 set pressure schedule in response to comments submitted by industry concerning difficulties experienced in meeting vent flow rates at low MAWPs. See NPRM, HM–183C (58 FR 12316, March 3, 1993).

Section 180.405(g)

Q35. Is it legal for a cargo tank motor vehicle with five 400 gallon compartments to have only fill openings and no manholes?

A35. Information on fill openings and manholes for a 400 gallon compartment may be found in the applicable DOT cargo tank specification. For example, MC 306 cargo tanks do not require a manhole unless the compartment capacity exceeds 2,500 gallons (see § 178.341–3). MC 307 cargo tanks must have a manhole of at least 15-inch inside diameter in each compartment, regardless of tank capacity (see § 178.342–3).

Section 180.405(h)

Q36. Does the requirement, contained in § 180.405(h)(2), that after August 31, 1995, a reclosing pressure relief valve may not release any lading in a pressure surge apply to MC 312 cargo tanks?

A36. Yes, if the original pressure relief valves are replaced as authorized at § 180.405(c)(2). However, there is no requirement to replace original equipment which meets the requirements in § 180.407 (g) and (h).

Q37. Do new reclosing pressure relief valves installed on MC 312 cargo tanks have to meet the conditions specified in § 180.405(h)?

A37. Yes, if a pressure relief valve is replaced as authorized at § 180.405(c)(2), the replacement valve

must meet the conditions specified in § 180.405(h). However, if the pressure relief valve is removed from the tank and repaired (for example, replacement of the valve seats or springs), such repair is not considered to be replacement.

Section 180.407

Q38. Must nonspecification and specification cargo tanks meet the periodic test and inspection requirements specified in part 180 when they are used to transport hazardous materials not requiring use of a specification cargo tank?

A38. Nonspecification cargo tanks are not subject to the requirements in part 180. The retest and inspection requirements prescribed in § 180.407 apply to any cargo tank that is represented as a DOT specification cargo tank. This requirement is applicable regardless of whether the cargo tank is used to transport hazardous or non-hazardous materials. However, when a DOT specification cargo tank is used exclusively in hazardous material service for which a nonspecification cargo tank is authorized, the specification plate on the cargo tank may be removed, obliterated or securely covered, as provided by § 180.405(j). If the plate is covered, the covering must be capable of remaining in place during transit. When a cargo tank is represented as not meeting the specification by covering the plate, before the cargo tank can be represented again as a DOT specification by uncovering the tank specification plate, it must meet all applicable requirements in part 180.

Q39. How are test and inspection requirements in § 180.407 applied to an MC 330 or MC 331 insulated cargo tank that is not equipped with a manhole?

A39. An insulated MC 330 or MC 331 cargo tank with no manhole is subject to the pressure, leakage, and thickness tests, as specified in § 180.407(c). Internal and external visual inspections are not required on an insulated cargo tank with no manhole; therefore, the tank would not be marked with an "I" or "V" (see § 180.407(d)(1)). However, as part of the required pressure test, visual inspection of other applicable components prescribed in § 180.407(d)(2)(ii)–(ix) is required.

Q40. Can either a hazardous material or a non-hazardous material be used in performing a hydrostatic test or a leakage test on a cargo tank?

A40. Section 180.407(g)(1)(viii) allows a hydrostatic test to be performed using water, or other liquid having a similar viscosity, at a temperature not exceeding 100°F. Therefore, a hazardous material meeting the stated criteria may be used as the test medium. Section 180.407(h)(1) provides that a leakage test may be performed on an MC 330 or MC 331 cargo tank using the hazardous material contained in the tank at the time of the test. On other specification cargo tanks, the leakage test can be performed using either a hazardous or a non-hazardous material. In selecting the test medium, consideration should be given to the safety of personnel and avoiding any contamination that may result in an unsafe condition.

Q41. What is the periodic test and inspection schedule for an MC 312 cargo tank that is uninsulated and unlined?

A41. Assuming the cargo tank is not vacuum-loaded, the periodic test and inspection requirements are as follows: (1) External visual inspection—annually; (2) internal visual inspection—every 5 years; (3) lining inspection—not required; (4) leakage test—annually; (5) pressure test—every 5 years; and (6) thickness test—not required, except that if the cargo tank is used to transport material that is corrosive to the tank material, the tank must be thickness tested every 2 years.

Q42. If a carrier performed an external visual inspection on a cargo tank on November 1, 1990, is the next (annual) visual inspection required by September 1, 1991, or by November 1, 1991?

A42. The Table of Compliance at § 180.407(c) lists 2 important time values:

(a) The date by which the *first test* must be completed, and

(b) The *interval period* for retest after the first test.

If a test was done before the *first test* date, the next test must be done prior to the *interval* date.

In the example cited, an external visual inspection performed on November 1, 1990 must be repeated before November 1, 1991 (unless the cargo tank is loaded by vacuum and has a full opening rear head). In short, the *interval period* prevails. If the inspection was done on August 1, 1990, it must be repeated before September 1, 1991 as a *first test*, and annually thereafter.

Q43. If a required 5-year pressure retest was performed on an MC 331 cargo tank on November 1, 1989, is the next retest required before November 1, 1994, or September 1, 1991?

A43. The next pressure test is due no later than November 30, 1994.

Q44. If a cargo tank was marked "H" in the past for a hydrostatic test, can it be remarked "P" for pressure test with the same date?

A44. Marking requirements at § 180.415 apply from the time of the *first test* under § 180.407(c). RSPA sees no reason to change "H" to "P" under the conditions stated, but would not object if all requirements of part 180 have been met on a prior pressure test.

Q45. What inspection and retest requirements apply to nonspecification vacuum-loaded cargo tanks manufactured under DOT exemptions?

A45. As specified in the exemptions, vacuum-loaded cargo tanks must be designed and constructed in full conformance with the MC 307 and MC 312 cargo tank specification, with certain exceptions, and be tested and inspected as prescribed for the applicable specification. The test and inspection frequency for MC 307 and MC 312 cargo tanks has been increased from what was previously a two-year schedule. Section 177.824 requires all specification cargo tank motor vehicles to be tested and inspected as prescribed in 49 CFR part 180. The vacuum-loaded waste cargo tanks authorized under exemptions are subject to the test and inspection schedule contained in § 180.407(c), in place of the previous two-year schedule. Some exemptions have been updated to reference requirements in part 180. RSPA has taken action to inform all exemption holders of the applicable requirements. (See also requirements of § 180.405(f).)

Section 180.407 (c) and (f)

Q46. Is a lining inspection required for cargo tanks in crude oil or lube oil service that have a painted-on internal coating?

A46. Certain hazardous materials which are not classed as corrosives, including some crude oils and lube oils, may be corrosive to the tank; thus, subject to thickness testing under § 180.407 (c) and (i). The corrosivity of ladings such as crude oil and liquefied petroleum gas varies greatly in different geographical areas. For example, exposure time and temperature are major variables; indeed, many factors must be considered and evaluated locally. If a coating is applied to protect the cargo tank shell from the lading, then the cargo tank is subject to the lining test. However, if it is applied to protect product purity, then a lining test is not required. The determination of whether operating conditions are "corrosive to the tank/valve" is the responsibility of the cargo tank owner and a Registered Inspector.

Q47. Is a cargo tank required to be thickness tested if it is used to transport Class 8 (corrosive) material, even if that material is not corrosive to the tank? The table at § 180.407(c) states that all

unlined cargo tanks in corrosive service, except MC 338 cargo tanks, should be thickness tested. This is inconsistent with the language used in § 180.407(i) which states that the shell and head must be thickness tested if the tank transports materials corrosive to the tank.

A47. The intent of § 180.407(c) is to require thickness testing for cargo tanks used to transport materials "corrosive to the tank" (if authorized) as stated in § 180.407(i).

Section 180.407(d)(1)

Q48. This section provides that when insulation prevents external visual inspection, the cargo tank must be given an internal visual inspection in accordance with § 180.407(e). If an internal inspection is used to satisfy this requirement, do the other minimum external visual inspection requirements in § 180.407(d)(2) (ii) through (ix) have to be satisfied, and does the cargo tank have to be marked with a "V"?

A48. Yes, in both cases, except that an insulated MC 330, MC 331 or MC 338 is not subject to the internal visual inspection.

Q49. What inspection and retest requirements apply to an MC 331 insulated cargo tank used in chlorine service?

A49. For the cargo tank described, the table found at § 180.407(c) calls for the following:

Internal visual inspection—each year
Leakage test—each year
Pressure test—every 2 years
Thickness test—every 2 years

RSPA has proposed to increase the interval for the leakage test for cargo tanks in chlorine service to two years. See HM–183C (58 FR 12316, March 3, 1993).

Section 180.407(d)(2)(vii)

Q50. This section refers to parts 393 and 396 of the Federal Motor Carrier Safety Regulations (FMCSR) and part 571 of the Federal Motor Vehicle Safety Standard (FMVSS). Must all provisions of the referenced parts be met during the cargo tank external inspection? Many of these go far beyond the cargo tank, and are not functions performed by most commercial tank repair facilities.

A50. Parts 393 and 396 of the FMCSR and part 571 of the FMVSS are separate requirements of the DOT, administered by the Federal Highway Administration and the National Highway Traffic Safety Administration, respectively. The text of § 180.407(d)(2)(vii), referencing these parts, was removed under HM 181/189 (57 FR 45447, October 1, 1992).

Sections 180.407(d)(2)(ix) and 180.407(g)(1)(iii)

Q51. An upper coupler must be removed so that the areas covered by the upper coupler can be visually inspected. A majority, if not all, of the insulated cargo tanks have insulation and closeout plates installed in the framing above the upper coupler. Removing the upper coupler would not expose the tank shell or head for external inspection. Must the upper coupler be removed on insulated cargo tanks and, if it must be removed, what is to be inspected?

A51. If a cargo tank configuration makes it impossible to comply with the external visual inspection requirements (for example, because of "insulation and closeout plates"), the tank must be given an internal visual inspection; see §§ 180.407(c) Table, 180.407(d)(1) and 180.407(e). The internal visual inspection must include the shell of the tank and any structural members which are normally covered by the upper coupler. RSPA anticipates that new designs will facilitate removal of components which interfere with visual inspection.

Section 180.407(d)(2)(ix)

Q52. If an internal visual inspection is performed on a cargo tank used to transport materials corrosive to the tank, does the upper coupler have to be removed? Also, does the upper coupler have to be dropped every two years on lined cargo tanks used to transport "lading corrosive to the tank"?

A52. Yes, for cargo tanks transporting lading corrosive to the tank, the upper coupler must be removed and inspected at least once every two years as set forth in § 180.407(d)(2)(ix), which covers *external* visual inspection requirements.

Q53. If a tank infrequently transports product "corrosive to the tank", does this section apply?

A53. Yes.

Section 180.407(e)(2)(ii)

Q54. If a cargo tank is lined, does the lining test suffice for the internal test? If the tank is marked "K" for the lining test, can it also be marked "I" for the internal visual inspection?

A54. A lined cargo tank is subject to § 180.407 (e) and (f) and must be marked for each test. The markings verify that the required inspections and tests have been completed successfully.

Section 180.407(f)

Q55. Some linings, such as Herosite, are used to protect the product from the tank, rather than the tank from the product. Do tanks with such linings have to be inspected?

A55. No, only when the lining is used to protect a tank that is used to transport ladings corrosive to the tank.

Q56. Is an epoxy coating (approximately 12 mills thick dry) that is installed in some MC 306 and MC 307 aluminum and steel tanks considered a lining or cladding?

A56. The epoxy coating described would be considered a lining if it is used to protect the tank from materials corrosive to the tank/valve and must be inspected as prescribed by § 180.407 (e)(2)(ii) and (f). A cladding is a metal that has been bonded with another metal (for example, nickel clad steel); it is not considered a lining.

Q57. If a cargo tank owner is transporting a lading that is considered corrosive to the tank shell, but does not require a CORROSIVE placard, is the thickness test required every two years?

A57. Yes, if the material is corrosive to the tank/valve, the thickness test is required every 2 years. However, if the cargo tank measures less than the sum of the minimum prescribed thickness, plus one-fifth of the original corrosion allowance, the tank must be tested annually (see § 180.407(i)(1)).

Section 180.407(g)

Q58. Section 180.407(g)(1) requires that external and internal visual inspections must be performed as a part of the pressure test. Some companies wish to register with DOT and perform their own visual inspections, but not the pressure test. Is a company required to perform the pressure test and the visual inspection or may, for example, Company A accept the visual inspection results of Company B to satisfy the requirements of this section?

A58. Separately registered facilities may perform the external and internal visual inspections and pressure tests if done at the same time. RSPA has proposed to revise § 180.409(b) to clarify that the visual inspections, when performed as part of the pressure test, must be done by a Registered Inspector. See HM–183C (58 FR 12316, March 3, 1993).

Section 180.407 (g) and (h)

Q59. If a cargo tank is pressure tested, can the cargo tank be marked as successfully passing for the annual leakage test, or must a separate leakage test be done? If a separate leakage test must be done, why is it required?

A59. The pressure test (§ 180.407(g)) and the leakage test (§ 180.407(h)) may be done at the same time, but all requirements must be met for each test. The pressure test is intended to test structural integrity while the leakage test is intended to detect leaks. The

pressure levels prescribed and the acceptance criteria are different for each type of test.

Section 180.407(g)(1)(ii)

Q60. All reclosing pressure relief valves are required to be removed from a cargo tank for inspection and testing. Is the pressure actuated vent prescribed in § 178.341–4(d)(2) considered a reclosing pressure relief valve? Must it be tested for conformance to § 178.341–4(d)(2); that is, set to open at not less than 3 psig and close when the pressure drops to 3 psig or below?

A60. Yes, MC 306 cargo tank pressure actuated venting devices are considered reclosing pressure relief valves. These valves must be tested for conformance with § 178.341–4(d)(2) as stated in the question above (see § 180.407(g)(1)(ii)(A)).

Q61. Section 180.407(g)(1)(ii)(A) states "Each reclosing pressure relief valve must open at the required set pressure and reseat to a leak-tight condition at 90 percent of the set-to-discharge pressure or the pressure prescribed for the applicable cargo tank specification." Pressure relief valves (pressure actuated vents) installed on MC 306 cargo tanks do not have a required set pressure. The only requirement is that the pressure actuated vent open at not less than 3 psig (§ 178.341–4(d)(2)) and the closing pressure may be any pressure below 3 psig. Typically pressure relief valve settings may be anywhere from 3.0 to 3.5 psig. As applicable to MC 306 cargo tanks, does this mean only that the pressure actuated vents may not open at less than 3 psig?

A61. Yes, this is correct. MC 306 specification requirements apply.

Section 180.407(g)(1)(iii)

Q62. If an upper coupler was removed for inspection six months earlier, does it have to be removed for inspection when a pressure test is performed?

A62. Removal of the upper coupler for external inspection is part of the pressure test (§ 180.407(g)). On most cargo tanks that means every 5 years. Severe service conditions may make it prudent that an owner conduct more frequent inspections and tests of the type set forth by DOT, or perform additional types of inspections and tests, but the "minimum requirements" of the regulation must be met.

Q63. When welding is performed on a cargo tank wall and the tank is pressure tested, the upper coupler must be removed for inspection. However, if the cargo tank is in corrosive service, the upper coupler does not have to be removed for inspection. Does this make sense?

A63. If repair welding is done on a truck-mounted cargo tank, or on a cargo tank (compartment) which does not include an upper coupler, there is no need to remove the upper coupler. If a cargo tank is used to transport lading corrosive to the tank, the upper coupler must be removed and inspected once every two years (see § 180.407(d)(2)(ix)).

Section 180.407(g)(1)(v)

Q64. Does an owner with a fleet of twenty MC 307 cargo tanks have until September 1, 1995 to pressure test these units?

A64. No. An owner of five or more specification cargo tanks had to start pressure testing at least 20 percent of the tanks in his ownership each year beginning in 1991. An owner who has fewer than five specification cargo tanks has until August 31, 1995 to pressure test these units.

Section 180.407(h)(1)

Q65. The only description of the leakage test is that the test pressure must be held for 5 minutes. What is the criteria for pass or failure? If each weld seam and mechanical connection must be soaped for bubbles, this will be an all day test.

A65. Registered inspection facilities are capable of determining whether leakage occurs and locating it in various ways. The pressure and time requirements are performance related, not based on the technique used. In some cases, soap bubbles might be the best technique for the job.

Q66. Can cargo tanks (for example, MC 330 and MC 331) that have a design pressure of 265 psig with a maximum operating internal pressure of 175 psig, based on high ambient temperature, used in dedicated service for liquefied petroleum gas and anhydrous ammonia, or interchangeably in both services, be pressure tested at 150 psig?

A66. No. Section 180.407(h)(1)(i) provides that a cargo tank with a MAWP of 100 psig or greater may be leak tested at its maximum normal operating pressure provided it is in dedicated service(s). Because the maximum normal operating pressure of the cargo tank is sometimes as high as 175 psig, it must be leak tested at no less than 175 psig. Environmental factors and operating procedures greatly influence the maximum (annual) normal operating pressure.

Section 180.407(h)(2)

Q67. The use of EPA Method 27 as an alternative leak test "where applicable" has generated many questions. How does a carrier determine if he is in such an area? Is it where the cargo tank is based, the cargo tank is operated, or the test conducted? If a cargo tank tested by Method 27 in a "where applicable" area is transferred to another area, does it have to be retested in accordance with § 180.407(h)(1)? Can Method 27 be used on MC 306 cargo tanks that are not used to transport gasoline? Has any thought been given to making Method 27 an acceptable alternative everywhere?

A67. The EPA Method 27 test is applicable to gasoline delivery tanks that are operated in jurisdictions identified in subpart C of 40 CFR part 81, where the release of gasoline vapors poses an environmental hazard. Delivery tanks operated in these jurisdictions must be equipped with vapor collection equipment. RSPA has simply authorized the test as an acceptable alternative to part 180 leakage testing in order to avoid the imposition of essentially duplicate requirements. RSPA has proposed in HM–183C (58 FR 12316, March 3, 1993) to allow the use of EPA Method 27 as an alternative leakage test for DOT 406 specification cargo tanks that are fitted with vapor collection equipment, and are intended for use in gasoline or benzene delivery service only, without regard to geographical location.

Section 180.407(i)

Q68. How do these regulations, such as thickness testing, apply to fiberglass cargo tanks built under exemption?

A68. Fiberglass cargo tanks are manufactured under DOT exemption. The exemption requires cargo tanks to be retested and inspected as prescribed for DOT specification cargo tanks. Therefore, fiberglass cargo tanks are subject to applicable portions of part 180 and to any special provisions of the exemption. For example, periodic acoustic resonance testing may be required by the exemption.

Q69. Are cargo tanks used to transport anhydrous ammonia (NH3) required to be thickness tested?

A69. If experience has proven that a particular product is corrosive to the tank/valve, the cargo tank must be thickness tested.

Section 180.411

Q70. Is there anything in part 180 that requires inspection of a cargo tank for length of dents, cuts, digs, or gouges, or which requires any corrective action?

A70. Subpart E of part 180 does not deal with the length of dents, cuts, digs or gouges, but rather with the depth of the defect (see § 180.411(b)).

Q71. How does RSPA intend CGA Pamphlet C–6 to be used in cargo tank

inspection, maintenance, or repair? Is this entire publication incorporated by reference, or is the publication just to be used for informational purposes?

A71. RSPA intends that CGA Pamphlet C–6 be used as reference material for definitions and measurement techniques.

Section 180.413

Q72. Does the HMR prohibit the use of patches or overlays in repair of specification cargo tanks or ASME cargo tanks?

A72. RSPA neither endorses nor prohibits specific specification cargo tank repair procedures. However, use of "patches or overlays" is not recommended. The National Board of Boiler and Pressure Vessel Inspectors exercises control over repair of ASME vessels.

Q73. A cargo tank motor vehicle's nameplate indicates it has four compartments. The owner of the vehicle drills holes in the bulkheads between each compartment so the tank functions as if it were a single compartment cargo tank. What change, if any, should be made to the nameplate, and who is authorized to change the plate?

A73. Each "compartment" is a separate cargo tank. The action described converts these bulkheads into baffles and reduces the number of cargo tanks on the cargo tank motor vehicle, resulting in a design change. Nameplates and certification documents must be changed to describe the modified vehicle. The person performing the modification must adhere to § 180.413, including changing nameplates. RSPA has proposed that, if a modification results in a design change, a Design Certifying Engineer must approve the design of the modified cargo tank and a Registered Inspector must certify the modified cargo tank (proposed § 180.413(e)(5); 58 FR 12327).

Q74. Do the ASME qualified weld procedures apply to non-ASME cargo tanks, for example, MC 306?

A74. Yes, welding performed on a non-ASME cargo tank that meets a DOT specification must be performed by a manufacturer who holds an ASME Certificate of Authorization for use of the ASME "U" stamp or a repairer who holds a National Board Certificate of Authorization for the use of the "R" stamp (see § 107.503). To qualify for an ASME "U" stamp or an National Board "R" stamp, the manufacturer or repairer must be certified for each type of weld procedure that will be performed. As a part of the quality control program, all cargo tank welding procedures must be in accordance with the ASME Code.

Section 180.413(b)

Q75. If a cargo tank has been repaired, do external and internal inspections have to be performed before pressure testing the tank?

A75. By definition, "repair" involves welding on the cargo tank wall. Compliance with § 180.413 is required, particularly paragraphs (b)(3) and (4). External and internal inspections are not specifically required by the HMR; nonetheless, it is a good practice, at a minimum, to visually inspect the area both externally and internally, before and after the weld repair.

Q76. A pressure test, including an external and an internal inspection, was performed on a cargo tank in accordance with § 180.407(g). The next day the driver backed up the cargo tank and punctured a hole in the rear compartment. What is required to repair the puncture? Are the pressure relief vents on the repaired compartment required to be bench tested?

A76. The scenario described is addressed in § 180.407(b), which states that the tests and inspections prescribed in § 180.407 are required for a repaired cargo tank (compartment). Section 180.413 contains additional requirements for repair operations. See also other Q&A's to § 180.413(b).

There is no reason to bench test all pressure relief vents unless some mitigating circumstances are involved, such as accident damage to the reclosing pressure relief valves.

Q77. For a cargo tank that has been repaired, can a visual inspection be performed only in the area of the repair?

A77. Paragraphs (b)(1) and (b)(2) apply to inspections and tests under certain stated conditions *prior to repair.* Paragraphs (b)(3) and (b)(5) also apply prior to any repair, while (b)(4) may or may not relate to repair. See § 180.413 for additional information on repair, modification, stretching and rebarrelling.

Q78. Section 180.413(b)(4) states that the suitability of a repair must be determined by testing prescribed in the applicable specification, which would be a pressure and/or leakage test. For a DOT 406 cargo tank motor vehicle, would testing be required under § 178.346–13?

A78. Paragraph (b)(4) addresses repair and modification affecting the structural integrity of a cargo tank. A pressure test is intended to provide a test of structural integrity; therefore, pressure testing in accordance with § 178.346–13(b) is appropriate for a DOT 406 cargo tank motor vehicle. However, for a minor repair not affecting structural integrity, a leakage test in accordance with § 178.346–13(c) could be acceptable. This decision would be made by the cargo tank owner and the Registered Inspector.

Section 180.413 (d)(2)(v) and (d)(3)

Q79. What information must be marked on the supplemental specification plate and manufacturer's certificate which must be issued when a cargo tank is stretched or rebarrelled?

A79. When "stretching or rebarrelling" a cargo tank results in a change to the information marked on the original (or existing) specification plate, the plate must be altered to reflect the new information. Similarly, if this "stretching and rebarrelling" changes the original approved design, it must be recertified by a Design Certifying Engineer.

Section 180.415

Q80. This section states that cargo tanks must be marked with the test date (month and year) followed by the type of inspection (for example, 10–91 VK). Is this the only sequence that may be used? For example, is it acceptable to mark a cargo tank "VK 10–91"?

A80. The prescribed *sequence* of date and type of markings at § 180.415 has been removed under HM 181/189 corrections (57 FR 45447, October 1, 1992).

Q81. Section 180.415 does not exempt newly manufactured cargo tanks from the test and inspection markings. Because some tanks may be in inventory for a period of time before sale, may a manufacturer of a newly manufactured cargo tank apply the markings specified in § 180.415(b), using the date of delivery to the customer?

A81. Paragraph 180.415(a) states that the markings are to be applied to cargo tanks successfully completing the test and inspection requirements of § 180.407. Section 180.3, containing purpose and scope, states that Part 180 prescribes requirements pertaining to maintenance, reconditioning, repair, inspection and testing of packagings, and any other function having an effect on the *continuing qualification and use* of a packaging. Newly constructed cargo tanks may be marked in accordance with § 180.415 if tested in accordance with § 180.407, but such markings are not required. The cargo tank manufacturer is required to mark the original test date on a newly constructed specification cargo tank (see §§ 178.337–17, 178.340–10 and 178.345–14). After a cargo tank has been constructed, marked and certified, the cargo tank motor vehicle must be tested and inspected in accordance with the schedule shown in the table in § 180.407(c). The first such

requalification test or inspection must be performed, at the interval period shown in the table, after the original test date. The earliest date shown is 6 months after the certification date.

Q82. If a cargo tank manufacturer decides to mark a newly constructed cargo tank motor vehicle with § 180.415 markings, are the tests and inspections performed in accordance with § 180.407 or with part 178 specification requirements? Also, is a written report required to be completed in accordance with § 180.417(b)?

A82. Section 180.415(a) states that the specified markings are to be applied to cargo tanks successfully completing the test and inspection requirements of § 180.407. In addition, §§ 180.2 and 180.3 state that any person who performs a function prescribed in Part 180 or marks a packaging as meeting the requirements of Part 180 shall do so in accordance with that part. If a manufacturer elects to perform the tests or inspections and marks the cargo tank to show the tests or inspections were successfully completed, the written report specified in § 180.417(b) also must be completed.

Q83. Is there any provision for marking a tank to indicate that an upper coupler has been removed for inspection? Some carriers/manufacturers have marked their tanks UC or UP with the date the work was done. Would such markings constitute a violation of this section if presented with the other test dates?

A83. There is no provision for marking a cargo tank motor vehicle to indicate removal of the upper coupler for inspection. The *record of inspection* should cover this operation. The marking described is not required, but neither is it prohibited.

Section 180.417(a)(1)

Q84. Each owner of a specification cargo tank is required to retain the manufacturer's data report or certificate and related papers throughout the period of ownership of the specification cargo tank and for one year thereafter. If the owner is the motor carrier operating the cargo tank, would the manufacturer's data report be acceptable in place of a manufacturer's certificate and related papers? Would it make a difference if the cargo tank is an ASME tank?

A84. As stated in § 180.417(a)(1), a motor carrier who is the owner may use either the manufacturer's data report or the manufacturer's certificate and related papers *certifying that the specification cargo tank identified in the documents was manufactured and tested in accordance with the applicable specification.* The document certifying a cargo tank as meeting a DOT specification is identified as a manufacturer's certificate. When a cargo tank is constructed and stamped in conformance with the ASME Code, the document certifying it as an ASME tank is identified as a manufacturer's data report. If a DOT specification cargo tank also is an ASME tank, the motor carrier must have documentation to support both.

Sections 180.417(a)(2) and 178.337–18(b)

Q85. Section 180.417(a)(2) requires a motor carrier who is not the owner of a specification cargo tank to retain a copy of the manufacturer's certificate and related papers at its principal place of business. Can a motor carrier choose to retain only copies of the manufacturer's data reports? Former § 177.814 permitted a motor carrier to retain either document.

A85. Section 180.417(a)(2) requires a motor carrier who is not the owner to retain a copy of the vehicle certification report; that is, the applicable document certifying that a cargo tank was manufactured and tested in accordance with the applicable specification. The manufacturer's data report may not be substituted for the manufacturer's certificate. Refer also to the Q&A to § 180.417(a)(1).

Section 180.417(a)(3)(ii)

Q86. This section implies that owners of ASME Code stamped cargo tanks manufactured before April 22, 1994, must retain both the manufacturer's certificate and the manufacturer's data report. Is it a violation if the owner retains only one of these documents?

A86. Yes. For an ASME tank, an owner must have the manufacturer's data report. In addition, the owner must have the manufacturer's certificate, the alternative report authorized in § 180.417(a)(3)(ii), or the competent testing agency's certificate authorized in certain obsolete specifications, for example, § 178.330–18 for MC 310 cargo tanks. See Q&A to § 180.417(a)(1).

Q87. Can a manufacturer's certificate serve as the test and inspection report specified in § 180.417(b)?

A87. No. The manufacturer's certificate certifies that a cargo tank motor vehicle was manufactured and tested in accordance with the application part 178 specification. The test and inspection report certifies that a cargo tank successfully passed the continuing qualification inspections and tests prescribed in part 180.

Q88. Can one test and inspection report be completed when multiple tests and inspections are performed on a cargo tank under § 180.407?

A88. Yes. A single test and inspection report may be used when multiple tests and inspections are performed under § 180.407, provided the report meets the requirements specified in § 180.417(b).

Section 180.417(b)(1)(viii)

Q89. Do repair facilities need to keep a final copy of tests and inspection papers with the customer's signature and date of signature?

A89. This paragraph does not require repair facilities to retain copies of post-repair tests and inspections, but RSPA considers this to be a good business practice (see § 180.417(a)(1)).

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Vol. 58, No. 198

Friday, October 15, 1993

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Index, finding aids & general information	202–523–5227
Public inspection desk	523–5215
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Document drafting information	523–3187
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Code of Federal Regulations

Index, finding aids & general information	523–5227
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Additional information	523–5230

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51211–51664.....1
51665–51756.....4
51757–51972.....5
51973–52206.....6
52207–52396.....7
52397–52628.....8
52629–52874.....12
52675–53096.....13
52675–53392.....14
53393–53634.....15

CFR PARTS AFFECTED DURING OCTOBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6598.....51559
6599.....51561
6600.....51721
6601.....51723
6602.....52205
6603.....52387
6604.....52389
6605.....52627
6606.....52875
6607.....53097
6608.....53099
6609.....53101
6610.....53103

Executive Orders:
July 9, 1910 (Revoked in part by PLO 7004).....53429
3053 (Revoked in part by PLO 7004).....53429
3406 (Revoked in part by PLO 7001).....52683
5327 (Revoked in part by PLO 7002).....52684
11145 (Continued by EO 12869).....51751
11183 (Continued by EO 12869).....51751
11287 (Continued by EO 12869).....51751
11776 (Continued by EO 12869).....51751
12002 (See EO 12867).....51747
12131 (Continued by EO 12869).....51751
12197 (Continued by EO 12869).....51751
12214 (See EO 12867).....51747
12216 (Continued by EO 12869).....51751
12291 (Revoked by EO 12866).....51735
12345 (Continued by EO 12869).....51751
12367 (Continued by EO 12869).....51751
12382 (Continued by EO 12869).....51751
12498 (Revoked by EO 12866).....51735
12675 (Revoked in part EO 12869).....51751
12687 (Revoked by EO 12869).....51751
12696 (Revoked by EO 12869).....51751
12700 (See EO 12869).....51751
12720 (Revoked by EO 12869).....51751
12730 (See EOs 12867, 12868).....51747, 51749
12735 (Revoked by EO 12867; See EO 12868).....51747, 51749
12774 (Superseded by EO 12869).....51751
12775 (See notice of September 30).....51563
12779 (See notice of September 30).....51563
12792 (Revoked by EO 12869).....51751
12813 (Revoked by EO 12869).....51751
12853 (See notice of September 30).....51563
12866.....51735
12867.....51747
12868.....51749
12869.....51751
12870.....51753
12871.....52201

Administrative Orders:
Memorandums:
August 19, 1993.....52397
September 30, 1993.....52391
October 1, 1993.....52393
Notices:
September 30, 1993.....51563
Presidential Determinations:
No. 93–39 of September 17, 1993.....51973
No. 93–40 of September 28, 1993.....51975
No. 93–41 of September 29, 1993.....51977
No. 93–42 of September 30, 1993.....52629
No. 93–43 of September 30, 1993.....52207
No. 93–44 of September 30, 1993.....52209
No. 93–45 of September 30, 1993.....52211
No. 94–1 of October 1, 1993.....52213

5 CFR

Ch. XLI.....52637
294.....52877
532.....51211
591.....51565

831.....52877
838.....52877
842.....52877
890.....52877
2429.....53105
2471.....53105
2472.....53105

Proposed Rules:
2502.....51255
2504.....51256

7 CFR

2.....51211
301.....53105
246.....51566
300.....52399
301.....51979, 51982
400.....53109
401.....53393
906.....52400, 53111
907.....53112, 53114
908.....53112, 53114
910.....52401
928.....53117
931.....53119
967.....52402
1002.....51982
1004.....52404, 52405
1205.....52215
1211.....51568
1427.....51982
1477.....51757
1478.....51757
1744.....52639
1900.....52644
1910.....52644
1951.....52644
1955.....52644
1972.....52644
1975.....52644

Proposed Rules:
400.....53150
1007.....53436
1093.....53436
1094.....53436
1096.....53436
1099.....53436
1106.....53438
1108.....53436
1124.....53439
1135.....53439
1413.....51934, 52686, 52928
1703.....52688
3408.....53153

9 CFR

201.....52884
203.....52884
317.....52856
381.....52856

Proposed Rules:
82.....52240
317.....51581
318.....51581

10 CFR

19.....52406
30.....52406
40.....52406
50.....52406
60.....52406
61.....52406
70.....52406
72.....51762, 52406
150.....52406

Proposed Rules:
21.....53159
73.....52035

11 CFR

Proposed Rules:
100.....52040
107.....52700
113.....52040
114.....52700
9008.....52700

12 CFR

265.....53393
574.....52140
611.....52888
613.....52888
614.....52888
618.....51993
620.....52888
621.....52888
627.....52888
933.....52808

Proposed Rules:
3.....52808
208.....52808
325.....52808
615.....52701
650.....53161

13 CFR

101.....53120
121.....52415

Proposed Rules:
121.....52452, 52929

14 CFR

39.....53120
23.....51970
39.....51212, 51215, 51770, 51771, 52220, 52889
71.....51773, 52140, 52808, 53122, 53123, 53394, 53395
73.....52890
91.....51976, 52140
97.....51774, 51776

Proposed Rules:
23.....52702
39.....51583, 51585, 51587, 51589, 51793, 52041, 52240, 52243, 52714, 52717, 52929, 52931, 52932, 53457
71.....51256, 51257, 53164, 53166, 53167, 53459
91.....51938
121.....51938, 51944
125.....51938
129.....51944
135.....51938, 51944

15 CFR

773.....52166, 52168
778.....52166
799.....52166, 52169
806.....53124

17 CFR

140.....52656
200.....52416, 52891
203.....52416
240.....52416, 52891
250.....51488
259.....51488

Proposed Rules:
240.....52934
250.....51508

18 CFR

35.....51217, 51777
38.....51777
284.....52660
141.....52420
292.....51777
293.....51777
375.....51222
382.....51777

Proposed Rules:
35.....51259

19 CFR

Proposed Rules:
7.....52246
10.....52246
148.....52246

20 CFR

229.....53396
404.....52346
416.....52346, 52909
422.....52914

Proposed Rules:
416.....52458, 52464, 52943
655.....52152

21 CFR

172.....52221
176.....51994
522.....52222
821.....52440
864.....51570
1308.....53404

Proposed Rules:
5.....52719
25.....52719
101.....53254, 53296
103.....52042
136.....53305
137.....53305
139.....53305
170.....52719
171.....52719
172.....53312
174.....52719
352.....53460
700.....53460
740.....53460
812.....52142, 52144, 53245
813.....52142
814.....52729
1301.....52246
1311.....52246

23 CFR

650.....52663

Proposed Rules:
660.....51794

24 CFR

511.....52566
888.....51410
905.....51952
965.....51952

Proposed Rules:
92.....52560
135.....52534
215.....53461
219.....52560
221.....53461
236.....53461
570.....52560
572.....52560
574.....52560
576.....52560
583.....52560
700.....52560
880.....53461
881.....53461
882.....53461
883.....53461
884.....53461
885.....53461
886.....53461
889.....52560, 53461
890.....52560, 53461
905.....51261, 52560, 53461
960.....53461
961.....52560
963.....52560
990.....51261

25 CFR

Proposed Rules:
294.....53026

26 CFR

1.....51571, 53125
602.....51571

Proposed Rules:
1.....53168

27 CFR

Proposed Rules:
24.....52222

28 CFR

2.....51779
11.....51223
51.....51225

29 CFR

2610.....53406
2619.....53407
2622.....53406
2644.....53410
2676.....53407

Proposed Rules:
507.....52152
1609.....51266

30 CFR

917.....51225
946.....52666
950.....52232

Proposed Rules:
230.....53470
250.....52731
253.....52059
256.....52731
280.....52731
281.....52731
700.....52374
701.....52374
705.....52374
706.....52374
715.....52374
716.....52374
785.....52374
825.....52374
870.....52374

31 CFR

Proposed Rules:
103.....51269

32 CFR

40.....51780
80.....51996
86.....52010
185.....52667

199.....51227, 53411
706.....51241

33 CFR

2.....51726
3.....51726
100.....51242, 52440
117.....52441
165.....51243, 52442
175.....51576
181.....51576
334.....53426, 53427

Proposed Rules:

117.....52466
126.....51906
127.....51906
187.....51920, 53624

34 CFR

642.....51518
645.....51518
646.....51518
668.....52194
674.....52194
675.....52194
676.....52194
682.....52194
690.....52194

Proposed Rules:

370.....52414
386.....52606
668.....51712

38 CFR

3.....52017
4.....52017
21.....51780, 51781

Proposed Rules:

3.....51798
17.....51799

40 CFR

52.....52237
61.....51784
300.....52018
258.....51536, 53136
271.....51244
272.....52674, 52677, 52679
372.....51785
721.....51672, 51694

Proposed Rules:

122.....53168
123.....53168
131.....53168
132.....53168
52.....51591, 51593, 52467
63.....53478
89.....51595

41 CFR

101–17.....52917
302–6.....53137

42 CFR

435.....51408
436.....51408
440.....51408

Proposed Rules:

431.....53481
440.....51288, 53481
441.....51288, 53481
447.....53481

43 CFR

37.....51550

Proposed Rules:

4700.....51297

Public Land Orders:

4522 (Revoked in part by PLO 7002).....52684
6998.....52238
6999.....52239
7000.....52682
7001.....52683
7002.....52684
7003.....53428
7004.....53429

44 CFR

64.....51576, 52019

Proposed Rules:

67.....51598

45 CFR

1602.....52918

46 CFR

160.....51576

Proposed Rules:

10.....51408
12.....51408
30.....52598
31.....52598
32.....52598
67.....51298
585.....52248

47 CFR

1.....51246
15.....51247
73.....51250, 51578, 51579
76.....53429
90.....53245, 53431
97.....53138, 51787
74.....51250
87.....52021
90.....51251

Proposed Rules:

1.....53489
15.....51299
22.....53169
25.....53169
36.....52254
73.....51603, 51799, 52733, 52734, 52735
74.....52256
80.....53169
87.....53169
90.....51299, 53169
95.....53169
99.....53169

48 CFR

501.....52442
503.....52442
507.....52442
508.....52442
509.....52442
511.....52442
514.....52442
515.....52442
519.....52442
522.....52442
525.....52442
528.....52442
529.....52442
532.....52442
536.....52442
542.....52442
543.....52442
552.....52442
570.....52442
1816.....52446
1833.....53138
1852.....52446

49 CFR

107.....51524, 53626
171.....51524, 53626
172.....51524
173.....51524, 53626
174.....51524
175.....51524
176.....51524
177.....51524
178.....51524, 53626
179.....51524
180.....51524, 53626
571.....51788, 52021, 52922
604.....52684
1002.....52027
1017.....52027
1018.....52027
1039.....53433
1312.....52027
1313.....52027
1314.....52027

Proposed Rules:

23.....52050
37.....52735
172.....52574
173.....52574
179.....52574
390.....51800
1063.....51603
1105.....51800
1121.....51800
1152.....51800

50 CFR

17.....52027, 52031
227.....53138
229.....51788
285.....53434
301.....51253
625.....52685
661.....53143
642.....51579, 51789
663.....52031
669.....53145
672.....51791, 52032, 53138, 53148
675.....51253, 52033, 52451, 53138, 53148

Proposed Rules:

215.....53320
216.....53320
17.....51302, 51604, 52058, 52059, 52063, 52740
222.....53220
228.....53491
52.....51270, 51279
622.....53172
625.....53172
628.....53172
641.....52063, 52073, 52474
646.....53183
649.....53172
650.....53172
651.....52073, 53172
652.....53172
655.....53172
675.....53497

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470).

H.R. 2074/P.L. 103–101

To authorize appropriations for the American Folklife Center for fiscal years 1994 and 1995. (Oct. 8, 1993; 107 Stat. 1020; 1 page)

H.R. 3051/P.L. 103–102

To provide that certain property located in the State of Oklahoma owned by an Indian housing authority for the purpose of providing low-income housing shall be treated as Federal property under the Act of September 30, 1950 (Public Law 874, 81st Congress). (Oct. 8, 1993, 107 Stat. 1021; 1 page)

S. 1130/P.L. 103–103

Federal Employees Leave Sharing Amendments Act of 1993 (Oct. 8, 1993; 107 Stat. 1022; 3 pages)

H.R. 38/P.L. 103–104

To establish the Jemez National Recreation Area in the State of New Mexico, and for other purposes. (Oct. 12, 1993; 107 Stat. 1025; 5 pages)

H.R. 2608/P.L. 103–105

To provide for the reauthorization of the collection and publication of quarterly financial statistics by the Secretary of Commerce through fiscal year 1998, and for other purposes. (Oct. 12, 1993; 107 Stat. 1030; 1 page)

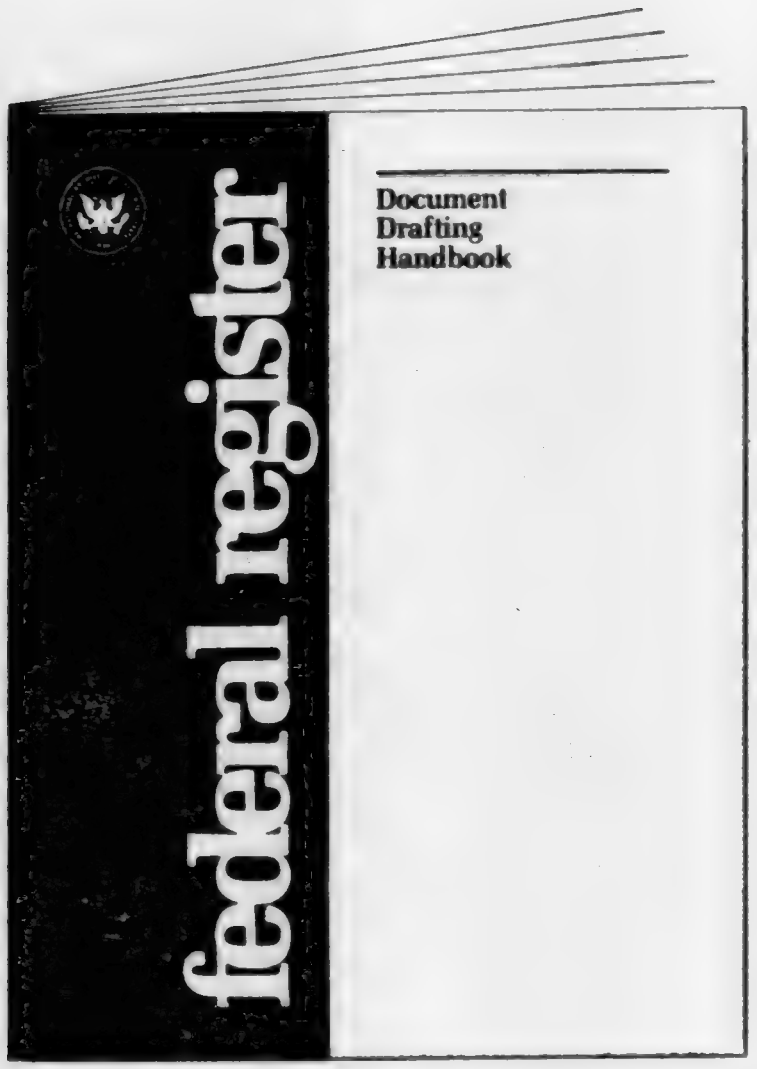
S. 1381/P.L. 103–106

National Forest Foundation Act Amendment Act of 1993 (Oct. 12, 1993; 107 Stat. 1031; 2 pages)

S.J. Res. 102/P.L. 103–107

To designate the months of October 1993 and October 1994 as "Country Music Month". (Oct. 12, 1993; 107 Stat. 1033; 1 page)

Last List October 12, 1993



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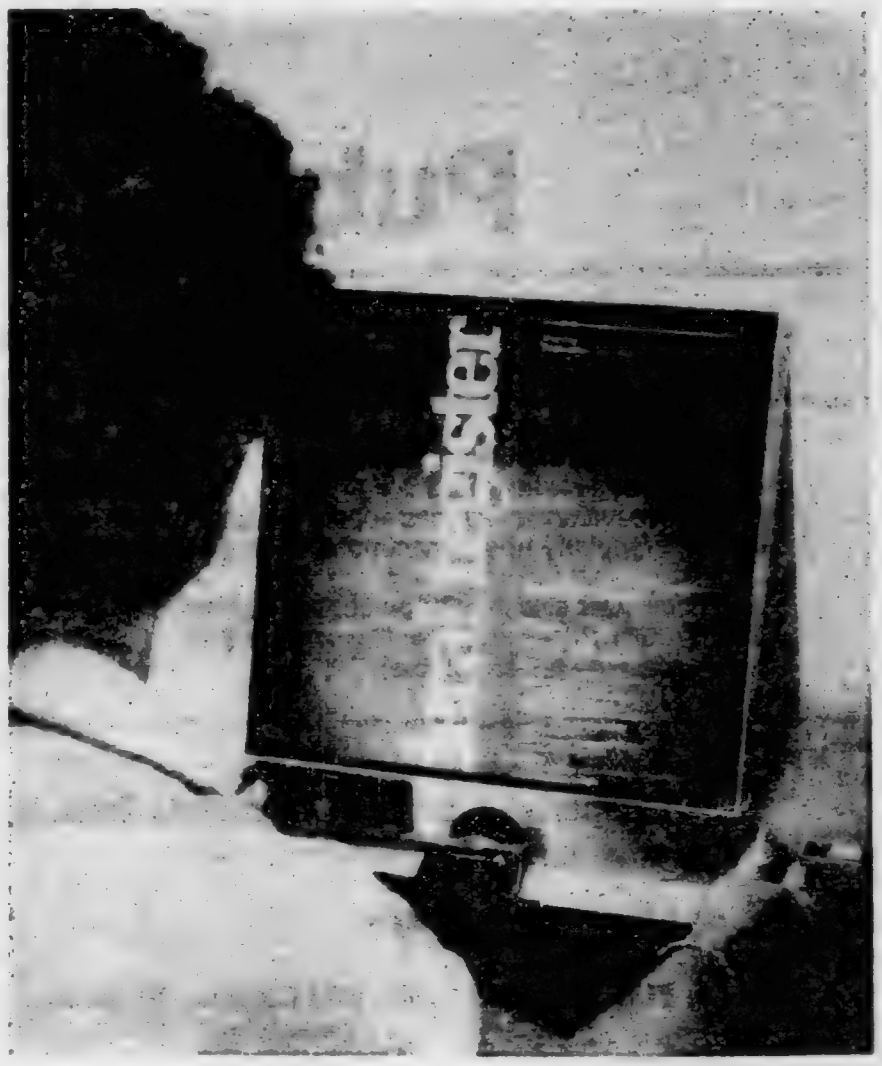

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8

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8

93

MI

10-
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10-18-93
Vol. 58 No. 199
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federal register

Monday
October 18, 1993

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Contents

Federal Register

Vol. 58, No. 199

Monday, October 18, 1993

ACTION
NOTICES
Senior Executive Service:
Performance Review Board; membership, 53705

Agency for Toxic Substances and Disease Registry
NOTICES
Superfund program:
Hazardous substances priority list (toxicological profiles), 53739

Agriculture Department
See Food Safety and Inspection Service

Alcohol, Tobacco and Firearms Bureau
PROPOSED RULES
Alcoholic beverages:
Distilled spirits, labeling and advertising—
Vodka, 53682

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Centers for Disease Control and Prevention
NOTICES
Anti-tuberculosis activity; new and experimental compounds screening, 53740

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration

Copyright Royalty Tribunal
RULES
Digital Audio Recording Technology Act; implementation, 53822

Defense Department
See Defense Logistics Agency
NOTICES
Medical and dental reimbursement rates; 1994 FY, 53713

Defense Logistics Agency
NOTICES
Privacy Act:
Computer matching programs, 53718

Defense Nuclear Facilities Safety Board
NOTICES
Meetings; Sunshine Act, 53758

Drug Enforcement Administration
PROPOSED RULES
Manufacturers, distributors, and dispensers of controlled substances; registrations, etc.:
Psychotropic substances reporting, 53680

Education Department
NOTICES
Meetings:
National Assessment Governing Board, 53719
Time and Learning National Education Commission, 53720

Energy Department
See Federal Energy Regulatory Commission
PROPOSED RULES
Assistance regulations:
Epidemiology and other health studies financial assistance program, 53671
NOTICES
Atomic energy agreements; subsequent arrangements, 53722
Meetings:
Voluntary reporting of greenhouse gas emissions and reductions and carbon sequestration; guidelines; workshop, 53720

Environmental Protection Agency
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Texas, 53693
Hazardous waste:
Solid waste and hazardous waste recycling definition; meeting, 53688
Superfund program:
National oil and hazardous substances contigency plan—
Cooperative agreements and State contracts for Superfund response actions, 53688
NOTICES
Atmospheric programs:
Halons; firefighting and explosion protection; essential uses, 53722
Meetings:
Environmental Financial Advisory Board, 53725
Gulf of Mexico Program Citizens Advisory Committee, 53725
State FIFRA Issues Research and Evaluation Group, 53725
Toxic and hazardous substances control:
Premanufacture exemption approvals, 53734
Premanufacture notices; monthly status reports, 53810
Premanufacture notices receipts, 53731

Executive Office of the President
*See*Presidential Documents

Federal Aviation Administration
RULES
Airworthiness directives:
Beech, 53636
McDonnell Douglas, 53635
PROPOSED RULES
Airworthiness directives:
Boeing, 53678

Federal Communications Commission
RULES
Common carrier services:
Telecommunications relay services; interstate cost recovery program implementation, 53663
Radio stations; table of assignments:
Idaho et al., 53665
Illinois, 52664
Kansas, 53665
Washington, 53665

PROPOSED RULES
Television broadcasting:
Cable television systems—
Major television markets; list, 53696

Federal Energy Regulatory Commission
RULES
Filing fees:
Elimination, 53654
NOTICES
Electric rate, small power production, and interlocking directorate filings, etc.:
Tenaska Washington Partners, L.P., 53721
Applications, hearings, determinations, etc.:
Algonquin Gas Transmission Co., 53721
Citizens Power & Light Corp., 53721
Florida Power & Light Co., 53721

Federal Mediation and Conciliation Service
NOTICES
Agency information collection activities under OMB review, 53735

Fish and Wildlife Service
RULES
Endangered and threatened species:
Oregon chub, 53800
Star cactus, 53800
PROPOSED RULES
Endangered and threatened species:
Cherokee darter, 53696
Southwestern willow flycatcher, 53702
Hunting and fishing:
Open areas list additions and refuge-specific regulations, 53703

Food Safety and Inspection Service
NOTICES
Meetings:
Meat and poultry regulatory program, 53705

General Services Administration
RULES
Federal property management:
Aviation, transportation, and motor vehicles—
Government aircraft documentation, approval, and use, 53660
NOTICES
Federal telecommunications standards:
Telecommunications—
Telecommunications: HF Radio Automatic Link Establishment, 53737
Telecommunications; HF Radio Automatic Networking, etc., 53737
Small business competitiveness demonstration program; solicitation procedures change, 53738

Health and Human Services Department
See Agency for Toxic Substances and Disease Registry
See Centers for Disease Control and Prevention
See National Institutes of Health
See Public Health Service

Health Resources and Services Administration
See Public Health Service

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service
See Surface Mining Reclamation and Enforcement Office

Internal Revenue Service
RULES
Income taxes:
Banks; tax accounting for bad debts, conclusive presumption, 53656
PROPOSED RULES
Income taxes:
LIFO benefits recapture
Hearing, 53682

International Trade Administration
NOTICES
Antidumping:
Gray portland cement and clinker from—
Japan, 53705
Industrial belts and components and parts, cured and uncured, from—
Japan, 53706
Singapore, 53707
Light-scattering instruments and parts from—
Japan, 53707
Antidumping and countervailing duties:
Administrative review requests, 53709
Export trade certificates of review, 53711
United States-Canada free-trade agreement; binational panel reviews:
Machine tufted carpeting from—
United States, 53711
Applications, hearings, determinations, etc.:
National Institute of Standards and Technology, 53712
St. Jude Children's Research Hospital, et al., 53712
University of—
Colorado at Boulder et al., 53712

International Trade Commission
NOTICES
Import investigations:
Helical spring lockwashers from—
China, 53747
Portable electric typewriters from—
Singapore, 53748

Interstate Commerce Commission
RULES
Contracts and exemptions:
Rail transportation of scrap paper, 53667
NOTICES
Railroad operation, acquisition, construction, etc.:
Decatur Junction Railway Co., 53748
Pioneer Railcorp., 53748

Justice Department
See Drug Enforcement Administration
RULES
Executive clemency; rules governing petitions, 53658
NOTICES
Pollution control; consent judgments:
General Foods Corp. et al., 53749

Land Management Bureau
NOTICES
Opening of public lands:
California, 53744
Realty actions; sales, leases, etc.:
Nevada, 53745

Withdrawal and reservation of lands:
Nevada, 53745

National Aeronautics and Space Administration
RULES
Grants and cooperative agreements; revision of award and administration requirements, 53638

National Credit Union Administration
NOTICES
Meetings; Sunshine Act, 53758

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
Humanities Panel, 53749

National Highway Traffic Safety Administration
RULES
Motor vehicle safety standards:
Convex cross view mirrors on school buses, 53666

National Institutes of Health
NOTICES
Meetings:
National Cancer Institute, 53742
National Heart, Lung, and Blood Institute, 53741
Recombinant DNA molecules research:
Actions under guidelines, 53814

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Gulf of Alaska groundfish, 53668
Tuna, Atlantic bluefin fisheries, 53668
PROPOSED RULES
Endangered and threatened species:
Sacramento River winter-run chinook salmon, 53703
NOTICES
Permits:
Marine mammals, 53713

National Park Service
NOTICES
Boundary establishment, description, etc.:
Buffalo National River wilderness plan, AR, 53746
Environmental statements; availability, etc.:
Denali National Park and Preserve, AK, 53746
Lava Beds National Monument, CA, 53746
Meetings:
Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Committee, 53747
National Capital Region; 1993 Christmas Pageant of Peace, 53747

Nuclear Regulatory Commission
PROPOSED RULES
Rulemaking petitions:
Mb-microtec (USA), 53670
NOTICES
Meetings:
Reactor Safeguards Advisory Committee, 53749

Presidential Documents
PROCLAMATIONS
Special observances:
Down Syndrome Awareness Month, National (Proc. 6611), 53831

Public Health Service
See Agency for Toxic Substances and Disease Registry
See Centers for Disease Control and Prevention
See National Institutes of Health
NOTICES
Meetings:
National Toxicology Program; Scientific Counselors Board, 53742

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
American Stock Exchange, Inc., 53750
National Association of Securities Dealers, 53752
Applications, hearings, determinations, etc.:
Comstock Partners Strategy Fund, Inc., et al., 53753
Shearson Lehman Brothers Multiple Opportunities Portfolio L.P., 53755

Small Business Administration
NOTICES
Disaster loan areas:
Illinois, 53756
Indiana, 53756
Oregon, 53756
Texas, 53756

State Justice Institute
NOTICES
Grants, cooperative agreements, and contracts; guidelines, 53762

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Permanent program and abandoned mine land reclamation plan submissions:
Missouri, 53683

Tennessee Valley Authority
RULES
Freedom of Information Act; implementation, 53656
NOTICES
Meetings; Sunshine Act, 53758

Toxic Substances and Disease Registry Agency
See Agency for Toxic Substances and Disease Registry

Transportation Department
See Federal Aviation Administration
See National Highway Traffic Safety Administration

Treasury Department
See Alcohol, Tobacco and Firearms Bureau
See Internal Revenue Service
NOTICES
Agency information collection activities under OMB review, 53757

Veterans Affairs Department
RULES
Adjudication:
Stabilization of disability evaluations; amendments, 53659

Separate Parts in This Issue

Part II
State Justice Institute, 53762

Part III
Department of the Interior, Fish and Wildlife Service, 53800

Part IV
Environmental Protection Agency, 53810

Part V
Department of Health and Human Services, National Institutes of Health, 53814

Part VI
Copyright Royalty Tribunal, 53822

Part VII
The President, 53829

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free Electronic Bulletin Board service for Public Law numbers and Federal Register finding aids is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamations:
6611.....53831

10 CFR
Proposed Rules:
32.....53670
602.....53671

14 CFR
39 (2 documents).....53635, 53536
1260.....53638
Proposed Rules:
39.....53678

18 CFR
346.....53654
381.....53654
1301.....53656

21 CFR
Proposed Rules:
1304.....53680

26 CFR
1.....53656
Proposed Rules:
1.....53682

27 CFR
Proposed Rules:
5.....53682

28 CFR
1.....53658

30 CFR
Proposed Rules:
925 (2 documents).....53683, 53686

37 CFR
301.....53822
311.....53822

38 CFR
3.....53659

40 CFR
Proposed Rules:
Ch. 1.....53688
35.....53688
52.....53693
300.....53688

41 CFR
101–37.....53660

47 CFR
64.....53663
73 (4 documents).....53664, 53665
Proposed Rules:
76.....53696

49 CFR
571.....53666
1145.....53667

50 CFR
17 (2 documents).....53800, 53804
285.....53668
672 (2 documents).....53668
Proposed Rules:
17 (2 documents).....53696, 53702
32.....53703
222.....53703
227.....53703

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Rules and Regulations

Federal Register
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Monday, October 18, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–NM–220–AD; Amendment 39–8709; AD 93–20–02]

Airworthiness Directives; McDonnell Douglas Model DC–8 Series Airplanes Equipped With a Cargo Conversion Modification Installed in Accordance With Supplemental Type Certificate (STC) SA1802SO or SA421NW

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–8 series airplanes, that currently requires a revision to the FAA-approved Airplane Flight Manual Supplement to include detailed procedures for use of the cargo door warning light system; and repetitive inspections of the cargo door warning system wiring to detect damage to the wiring or the door latching roller mechanism, and repair or replacement of damaged components. This amendment revises the existing AD by requiring that the cargo door indicating light circuit breaker not be disabled. This amendment is prompted by the FAA's review of data indicating that disabling of that circuit breaker may deprive the flight crew of necessary information. The actions specified by this AD are intended to prevent loss of the cargo door, damage to flight control surfaces, and reduced controllability of the airplane.

DATES: Effective November 17, 1993.

FOR FURTHER INFORMATION CONTACT: Ozzie Lopez, Aerospace Engineer, Airframe Branch, ACE–120A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, Suite 210C, 1669 Phoenix Parkway, Atlanta, Georgia 30349; telephone (404) 991–2910; fax (404) 991–3606.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 92–02–05, Amendment 39–8141 (57 FR 180, January 3, 1992), which is applicable to certain McDonnell Douglas Model DC–8 series airplanes, was published in the **Federal Register** on June 18, 1993 (58 FR 33574). The action proposed to require a new revision to the FAA-approved Airplane Flight Manual Supplement to include detailed procedures for use of the cargo door warning light system; and to continue to require repetitive inspections of the cargo door warning system wiring to detect damage to the wiring or the door latching roller mechanism, and repair or replacement of damaged components. The action also proposed to limit circuit breaker disabling to the door operating systems.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 58 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $3,190, or $55 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8141 (57 FR 180, January 3, 1992), and by adding a new airworthiness directive (AD), amendment 39–8709, to read as follows:

93–20–02 McDonnell Douglas: Amendment 39–8709. Docket 92–NM–220–AD. Supersedes AD 92–02–05, Amendment 39–8141.

Applicability: Model DC–8–61, –62, –63, and –73 series airplanes equipped with a cargo conversion modification installed in accordance with Supplemental Type Certificate (STC) SA1802SO; and Model DC–8–21, –32, –33, and –51 series airplanes equipped with a cargo conversion modification installed in accordance with STC SA421NW; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of the cargo door, damage to flight control surfaces, and reduced controllability of the airplane, accomplish the following:

(a) Within 7 days after the effective date of this AD, revise the Limitations Section of the appropriate FAA-approved Airplane Flight Manual Supplement (AFMS) by replacing item 5 in the AFMS for SA1802SO, and item

6 in the AFMS for SA421NW, with the following. (This may be accomplished by inserting a copy of this AD into the AFMS.) "Prior to initiating the cargo door closing sequence, a flight crew member must verify that the cargo door warning light is illuminated. After the door closing sequence is complete, and visual verification has been made that the latches are closed and the lockpins are properly engaged, a flight crew member must verify that the cargo door warning light is extinguished, and then conduct a PRESS-TO-TEST of the warning light to ensure that the light is operational. Pull the cargo door circuit breakers labeled "pump" and "valve" prior to takeoff. Methods for documentation of compliance with the preceding procedures must be approved by the FAA Principal Maintenance Inspector (PMI)."

(b) Within 7 days after January 21, 1992 (the effective date of AD 92-02-05, Amendment 39-8141), and thereafter at intervals not to exceed 100 hours time-in-service, perform the following inspections:

(1) Inspect the cargo door wire bundle between the exit point of the cargo liner and the attachment point on the cargo door to detect crimped, frayed, or chafed wires; and inspect for damaged, loose, or missing hardware mounting components. Prior to further flight, repair any damaged wiring or hardware mounting components in accordance with FAA-approved maintenance procedures.

(2) Inspect the cargo door latch rollers in the lower sill of the cargo door opening of the airplane to ensure that all twelve rollers can be freely rotated by hand. Prior to further flight, replace any discrepant roller components found, and repair any rollers that cannot be rotated freely by hand, in accordance with FAA-approved maintenance procedures.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), ACE-115A, FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) This amendment becomes effective on November 17, 1993.

Issued in Renton, Washington, on October 9, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-25420 Filed 10-15-93; 8:45 am]

BILLING CODE 4910-13-P

14 CFR Part 39

[Docket No. 93-NM-153-AD; Amendment 39-8708; AD 93-20-01]

Airworthiness Directives; Beech Aircraft Corporation Model 400A and 400T (Military T-1A) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Beech Model 400A and 400T (military T-1A) airplanes. This action requires inspection to verify that the wiring of the engine electronic fuel control (EFC) start circuit and the main circuit breaker panel has been installed properly; modification of wiring installed improperly; and installation of a non-conductive sheet. This amendment is prompted by a report of an electrical short circuit between the main bus terminal and the sidewall upholstery panel. The actions specified in this AD are intended to prevent smoke and/or fire in the cockpit.

DATES: Effective November 2, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 2, 1993.

Comments for inclusion in the Rules Docket must be received on or before December 17, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 93-NM-153-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

The service information referenced in this AD may be obtained from Beech Aircraft Corporation, Commercial Services Department, P.O. Box 85, Wichita, Kansas 67201-0085. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas 67209; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dale A. Vassalli, Aerospace Engineer, Systems and Equipment Branch, ACE-130W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946-4132; fax (316) 946-4407.

SUPPLEMENTARY INFORMATION: Recently, the FAA received a report that the upholstery panel on a Beech Model 400T (military T-1A) airplane burned and filled the cockpit with smoke, due to arcing between the sheet metal structure of the upholstery panel and an electrical terminal on the P147D6 bus wire. Investigation revealed that the P147D6 wire terminal was installed, during production, with insufficient clearance between the terminal and the upholstery panel. The upholstery panel may have been forced outward by the pilot placing objects between the pilot's seat and the upholstery panel. An electrical short between this bus terminal and the sidewall upholstery panel, if not corrected, could result in smoke and/or fire in the cockpit.

Further investigation of this incident indicated that the standby power feeder wire (16 gauge) was attached, during production, to the wrong terminal of the circuit breaker (CB279). Therefore, protection for the 22 gauge wire to the engine electronic fuel control (EFC) start circuit was lost. This 22 gauge wire is approximately 23 feet long and is part of a wire bundle.

In test demonstrations, Beech simulated this miswiring by connecting a 22 gauge wire to a circuit that was configured similarly as on the affected airplane. When this 22 gauge wire drew more than 21 amperes, the circuit breaker opened and stopped the flow of current. The heat generated by this 22 gauge wire was sufficient to melt the insulation on this wire. Had this wire been in a wire bundle, as it would have been on the affected airplane, the insulation on other wires in the wire bundle also would have been affected. The loss of insulation on these wires may result in the loss of other systems on the airplane.

Since the two subject circuits [the one in the engine EFC start circuit and the other in the main circuit breaker panel (P147D6 wire)] installed on Model 400T (military T-1A) airplanes are identical to those installed on Model 400A airplanes, the FAA has determined that Model 400A airplanes may be subject to the same unsafe condition.

This investigation also revealed that a certain moisture (insulator) shield was not installed during manufacture of the incident airplane. This moisture shield functions as a moisture barrier between the upholstery panel and the circuit breaker panel. Although this moisture shield is not an electrical insulator, if it

had been installed, it may have decreased the possibility for the bus terminal of the P147D6 wire to make contact with the upholstery panel.

The FAA has reviewed and approved Beechcraft Mandatory Service Bulletin 2520, dated August 1993, that describes procedures for inspection to verify that the wiring of the EFC start circuit has been properly installed, modification of improperly installed wiring, and installation of a non-conductive sheet on the sidewall upholstery panel.

Beech Aircraft Corporation has also issued Beechcraft Safety Communique 400–101, dated July 1993, that describes procedures for performing an inspection to verify proper positioning of the wire of the main circuit breaker panel and repositioning of the improperly positioned wire of the main circuit breaker panel. This safety communique also recommends that, during this inspection, operators verify that an appropriate moisture shield is in place.

Since an unsafe condition has been identified that is likely to exist or develop on other Beech Model 400A and 400T (military T–1A) airplanes of the same type design, this AD is being issued to prevent smoke and/or fire in the cockpit. This AD requires inspection to verify that the wiring in the engine EFC start circuit and the main circuit breaker panel has been installed properly; modification of wiring installed improperly; and installation of a non-conductive sheet. The actions are required to be accomplished in accordance with the documents described previously.

This AD also recommends that operators verify that the moisture shield is installed.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "ADDRESSES." All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–153–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93–20–01 Beech Aircraft Corporation: Amendment 39–8708. Docket 93–NM–153–AD.

Applicability: Model 400A airplanes having serial numbers RK–45, RK–49 through RK–77 inclusive, and RK–79; and Model 400T (military T–1A) airplanes having serial numbers TT–01 through TT–42 inclusive, and TT–44; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent smoke and/or fire in the cockpit, accomplish the following:

(a) Within 25 hours time-in-service after the effective date of this AD, accomplish paragraphs (a)(1), (a)(2), and (a)(3) of this AD.

(1) Perform a general visual inspection to verify that the wiring of the engine electronic fuel control (EFC) start circuit has been installed properly, in accordance with Beechcraft Mandatory Service Bulletin 2520, dated August 1993. If the wiring has been installed improperly, prior to further flight, modify the wiring in the engine EFC start circuit in accordance with the service bulletin.

(2) Install a non-conductive sheet, part number 132–530027–13, on the sidewall upholstery in accordance with Beechcraft Mandatory Service Bulletin 2520, dated August 1993.

(3) Perform a general visual inspection to verify the proper positioning of the end terminals on wire P147D6, in accordance with Beechcraft Safety Communique 400–101, dated July 1993. If the end terminals have been positioned improperly, prior to further flight, reposition the end terminals on wire P147D6 in accordance with the communique.

Note: While accessing the main circuit panel to comply with the inspections required by this paragraph, as a convenience, operators should verify that moisture (insulator) shields, part numbers 45A88859–11 and 45A88859–31, are installed, in accordance with BEECHCRAFT Beechjet 400/400A Maintenance Manual, Chapter 24–50–00. If any shield is missing, the FAA recommends that it be replaced with an appropriate shield at the next scheduled maintenance service.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita

Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The inspection and modification of wiring, and the installation of the non-conductive sheet, shall be done in accordance with Beechcraft Mandatory Service Bulletin 2520, dated August 1993. The inspection and repositioning of the end terminals on wire P147D6 shall be done in accordance with Beechcraft Safety Communique 400–101, dated July 1993. (The issue dates of these service documents are indicated only on page 1 of each document; no other pages of the documents are dated.) This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Beech Aircraft Corporation, Commercial Services Department, P.O. Box 85, Wichita, Kansas 67201–0085. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on [insert date 15 days after date of publication in the **Federal Register**].

Issued in Renton, Washington, on October 6, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–25471 Filed 10–15–93; 8:45 am]

BILLING CODE 4910–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1260

RIN: 2700–AB31

Grant Regulations

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This document revises NASA's regulations for grants, including cooperative agreements, in order to streamline the requirements for their award and administration. The revisions are intended to enable NASA grant officers to award grants within 30 days of receiving a request from the NASA technical office.

EFFECTIVE DATE: December 1, 1993.

FOR FURTHER INFORMATION CONTACT: David K. Beck, (202) 358–0482.

SUPPLEMENTARY INFORMATION:

Background

In response to the Notice of Proposed Rulemaking (57 FR 47944 to 47964, Oct. 20, 1992), NASA received 141 comments from 19 persons.

1. Changes Made in Response to Comments

The definitions of "non-technical property" and "technical property" in § 1260.201(r) (6) and (9) were revised to include synonymous terms ("general purpose equipment" and "special purpose equipment," respectively) from Office of Management and Budget (OMB) Circular No. A–21. However, the A–21 synonyms were not used throughout part 1260 because OMB has proposed revisions that would eliminate the terms from A–21 (57 FR 58394, 58397; Dec. 9, 1992).

Sections 402(d)(2) and 605(b) were revised to extend the date for submission of the summary of research to 90 days after the expiration date of the grant. Sections 408(h) and 604 were revised to extend the date for submission of the final inventory report to 60 days after the expiration date of the grant. The deadline for this latter report was not extended to 90 days because OMB Circular No. A–110 requires NASA to decide the disposition of certain property by 120 days after the expiration date of the grant.

Section 1260.406(a) was revised to identify three grant provisions that require prior approvals.

In the Notice of Proposed Rulemaking (§ 1260.420(a), 57 FR 47952), NASA had proposed that total expenditures for travel be limited to 125 percent (or an increase of $1,000, whichever is greater) of the amount allotted for travel in the approved budget. Travel which would cause this limit to be exceeded would have required the prior approval of the administrative grant officer. NASA received numerous comments about imposing this prior approval. Pending further study of changes that grantees are experiencing with budgeted travel, NASA is deferring the adoption of the prior approval.

2. Other Changes

Sections 1260.101 and 1260.103(b) were revised by removing "Assistant Administrator for Procurement" (Code H) so that grant regulations may be issued by the Director, Procurement Policy Division (Code HP) under authority redelegated by Code H to Code HP.

The list of grant officers in § 1260.104(e) was updated.

In § 1260.301(a), "or designee" was added in order to permit delegation of authority to approve other announcements. In the second sentence of § 1260.301(c), the reference was corrected to read "FAR 48 CFR 15.507(b)(4)."

Section 1260.302(h) was added, based on § 1260.203 of the existing grant regulation, in order to provide guidance on selecting the appropriate award instrument (grant, cooperative agreement, or contract).

The address for the Center for Aerospace Information was revised in §§ 1260.305 and 1260.402(f)(3).

Sections 1260.404(a) and 1260.504(a) were revised in order to conform NASA policy to OMB Circular No. A–110 by removing NASA's right to unilaterally revoke or terminate grants.

Section 1260.412 was corrected to restore the references to 14 CFR parts 1251 and 1252.

3. Other Comments

There were objections to NASA using terms like "procurement request" and "procurement package." Although grants are not procurements, NASA has not developed alternative terms. The existing terms for these internal documents adequately serve the purpose of forwarding funds and supporting documentation from the technical office to the procurement office.

There were several comments that the policies in part 1260 should apply consistently throughout NASA and that exceptions should require deviations. This is the intent of part 1260.

There were several requests for NASA to raise thresholds higher than ones stated in OMB Circulars No. A–21 and A–110. NASA will review the thresholds when the Circulars are revised.

Several persons asked that NASA not apply cost sharing to unsolicited proposals unless a statute requires it and stated that basing cost sharing on sales to non-Federal entities is inconsistent with the program income provision. Sections 1260.301(d)(1), 1260.303(d), and 1260.422(e) implement statutory cost sharing requirements contained in the annual NASA appropriation act. When a grant includes the cost sharing special condition, the grantee may need to use any program income to meet the grantee's cost sharing requirement.

Several comments suggested eliminating parts of § 1260.301(d)(2). The suggested changes were not made. The section emphasizes that it is the cognizant agency under OMB Circular No. A–88, and not NASA, that has authority to determine indirect cost rates. The section explains that NASA uses the rate established by the cognizant agency for research, irrespective of whether a grant or contract funds the research. NASA doesn't use a higher rate under grants.

There was a comment that unilateral awards under § 1260.303 will compound the problem of NASA grant officers erroneously including standard terms in grants to Federal Demonstration Project institutions. No change was made. If this occurs, it can be corrected by a supplement.

There was a comment that § 1260.404 be retitled as "Termination" and be revised to allow a university to terminate the grant if work becomes classified. "Revocation" is the term that NASA uses with respect to grants. If necessary, the grantee may ask NASA to revoke the grant.

It was pointed out that "significantly reduced" in § 1260.404(c) is ambiguous. NASA has asked OMB to establish an objective standard in A–110 and will await OMB guidance before changing the existing term. It was also suggested that NASA should not be able to revoke a grant because of significantly reduced Principal Investigator time. The alternative offered was that NASA should renegotiate accomplishment of the research. This NASA policy was established in 1972. Current wording has existed since 1981. A recent Inspector General report found reasons for continuing the policy: several instances were reviewed where, following award, grantees added graduate assistants and other personnel where NASA may have been expecting the principal investigator to expend effort (Audit Report A-MA–91–007, Sep. 18, 1992).

One person questioned the requirement in § 1260.407(d) for the grantee to identify in the renewal proposal the estimated amount of unexpended funds. No change was made. With an emphasis on multiple year grants, there will be fewer renewal proposals in which unexpended funds need to be reported. There is no restriction in carrying forward funds into the second and subsequent years covered by the multiple year grant and no requirement to report the anticipated amount of funds for those covered years.

The largest number of comments discussed various issues pertaining to equipment. Two persons suggested using equipment definitions from OMB Circular No. A–21. NASA uses three of the four terms suggested. NASA uses the term "expendable personal property" from OMB Circular No. A–110 instead of "supplies and materials." The definition of "equipment" is based on the current A–21 definition ($500 threshold) instead of the suggested $5,000 threshold. Grantees may use a one year standard for useful life instead of 2 years.

Most of the comments on equipment urged NASA not to require prior approval in § 1260.408(b) for non-technical property primarily used in and essential to the research. NASA had eliminated this prior approval on March 14, 1989, (54 FR 9426, Mar. 7, 1989) under OMB authorization of May 18, 1988. Audit Report LA–93–004, March 31, 1993, from the NASA Office of Inspector General recommends that general purpose equipment not be routinely charged direct to grants. Consequently, NASA is reinstating the prior approval for general purpose equipment as stated in OMB Circular No. A–21. In addition, NASA had proposed raising the threshold in § 1260.408(a) for approval of technical property from $5,000 to $25,000. NASA is deferring any change to that threshold pending further changes to OMB Circular No. A–21.

There was an objection to requiring the grantee to submit under § 1260.408(h) an inventory of grantee acquired equipment. For grantee acquired equipment, only a final inventory report is required. The report is the only way NASA is informed about all the grantee acquired equipment that exists at the end of the grant. Information for preparing the report should be readily available from the records the grantee must maintain under § 1260.507(a)(1), which is based on OMB Circular No. A–110, paragraph N.6.d.

Several comments described § 1260.409 as a patchwork regulation that is difficult to read. This method is used in order to show the few NASA changes to the Government-wide provision. The alternative would be to repeat lengthy Government-wide requirements. Doing so would place a burden on each grantee to determine how NASA requirements differ from the Government-wide requirements.

Another comment stated that the required reporting of patents in annual and final technical reports duplicates annual patent reports and involves different institutional officials. The comment asked NASA to eliminate reporting from technical reports and allow grantees to use only annual patent reports. The requested change was not made because the requirement helps to ensure the disclosure of inventions. It was also suggested that NASA should require reporting only to a central patent office instead of the installation patent counsel and administrative grant officer. This change was not made because at NASA this responsibility is decentralized.

Section 1260.410 was criticized as giving NASA data rights that are too broad, especially for grants. The data rights provision is substantively the same as the existing provision, which was established in January 1981.

Section 1260.411 was criticized as needing detailed procedures for handling classified information and for terminating grants where grantees don't want to do classified research. The provision is substantively the same as the existing provision from January 1981. The rare instances where research becomes classified are handled on a case-by-case basis.

One person asked that NASA delete the requirement under § 1260.413 for subcontract consent or raise the dollar threshold. The threshold is the current small purchases threshold for Federal contracts. NASA has used this as an appropriate threshold in place of the current threshold of $5,000 in OMB Circular No. A–110. Others suggested that NASA use "prior approval" instead of "consent." "Consent" is appropriate since it is intended to involve a less rigorous review than "approval" and does not create privity of contract between the Government and subcontractor. One person asked that subcontracts to other universities be exempt from sole source justifications. This change was not made because it would be inconsistent with A–110.

Several persons asked for changes to § 1260.416, which requires grantees to remit to NASA interest earned on advances. These changes were not made because they were inconsistent with A–110.

Objections were made to § 1260.418, on investigative procedures for foreign national employees requiring access to a NASA installation. This requirement is retained because it protects National assets from unauthorized foreign access.

One person asked that NASA eliminate the reference in § 1260.420 to regulations issued by the Department of Transportation. The reference is retained because it informs grantees about regulations that apply to hazardous materials.

Several persons objected to §§ 1260.422(h) and 1260.605(d) on withholding payment for delinquent reports. NASA may withhold an amount

specified in § 1260.605(d)(3). This provision is considered necessary for encouraging grantees to ensure submission of reports.

One person stated that delegating administration to the Office of Naval Research (ONR) will add an unnecessary layer of bureaucracy, delay responses and disrupt research. Section 1260.501 was not changed because delegation will enable NASA grant officers to concentrate on awards. After NASA and ONR have signed a Memorandum of Agreement, NASA will authorize grant officers to delegate full administration to ONR.

Two comments suggested using National Science Foundation or National Institutes of Health procedures for transferring grants instead of novation procedures under § 1260.505. This section was not changed because it does not require a grantee to enter into a novation agreement. If the grantee does not agree with a proposed novation, NASA may issue a new grant to the new institution.

One comment suggested eliminating cost sharing information from property records in § 1260.507(a)(1)(vi). Another comment objected to § 1260.510(c)(6), which requires cost or price analysis for every procurement. These comments were not accepted because the changes they propose would be inconsistent with A–110. Several persons asked that NASA postpone publishing this regulation until A–110 is revised. NASA will revise this regulation after A–110 is revised. However, the improvements that this regulation makes to NASA grants warrant its adoption at this time.

Impact

This rule has been reviewed by the Office of Management and Budget (OMB) under the provisions of Executive Order 12291. NASA certifies that these changes will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The Office of Management and Budget (OMB) approved information collection under the Paperwork Reduction Act through November 30, 1995, and assigned OMB control numbers 2700–0047, Property Management and Control, and 2700–0049, Financial Management and Control.

List of Subjects in 14 CFR Part 1260

Grants.

Tom Luedtke,

Acting Deputy Associate Administrator for Procurement.

Part 1260 is revised in its entirety as follows:

PART 1260—GRANTS AND COOPERATIVE AGREEMENTS

Subpart 1260.1—General

Sec.

1260.101 Authority.
1260.102 Applicability.
1260.103 Amendment.
1260.104 Publication and points of contact.
1260.105 Deviations.
1260.106 Foreign grants.

Subpart 1260.2—Definitions

1260.201 Definitions.

Subpart 1260.3—The Process

1260.301 Proposals.
1260.302 Evaluation and selection.
1260.303 Award procedures.
1260.304 Format and numbering.
1260.305 Distribution of grants.

Subpart 1260.4—Provisions and Special Conditions

1260.401 General.
1260.402 Publications and reports.
1260.403 Extensions.
1260.404 Suspension or revocation.
1260.405 Change in principal investigator or scope.
1260.406 Allowable costs.
1260.407 Financial management.
1260.408 Equipment and other property.
1260.409 Patent rights—retention by the grantee.
1260.410 Rights in data.
1260.411 Security.
1260.412 Civil rights.
1260.413 Subcontracts.
1260.414 Clean Air-Water Pollution Control Acts.
1260.415 Procurement standards.
1260.416 Interest bearing accounts.
1260.417 Debarment and suspension and drug-free workplace.
1260.418 Foreign national employee investigative requirements.
1260.419 Restrictions on lobbying.
1260.420 Travel and transportation.
1260.421 Program income.
1260.422 Special conditions.

Subpart 1260.5—Administration

1260.501 Delegation of administration.
1260.502 Grant supplements.
1260.503 Adherence to original budget estimates.
1260.504 Suspension or revocation.
1260.505 Transfers, novations, and change of name agreements.
1260.506 Use, disposition, and vesting of title to equipment.
1260.507 Property management standards.
1260.508 Screening of requests for Government furnished equipment.
1260.509 Financial management standards.
1260.510 Procurement standards.
1260.511 Closeout procedures.

Subpart 1260.6—Reports

1260.601 Individual procurement action report (NASA Form 507).
1260.602 Committee on Academic Science and Engineering (CASE) report (NASA Form 1356).
1260.603 Federal cash transactions report (SF 272).
1260.604 Inventory listings of equipment.
1260.605 Performance reports, summaries of research, and other final reports.
1260.606 Disclosure of lobbying activities (SF LLL).
1260.607 Debarment and suspension.

Appendix to Part 1260—Listing of Exhibits

Authority: Pub. L. 97–258, 96 Stat. 1003 (31 U.S.C. 6301 et seq.).

Subpart 1260.1—General

§ 1260.101 Authority.

(a) NASA awards grants and cooperative agreements under the authority of 31 U.S.C. 6301 to 6308. This part 1260 is issued under authority delegated by the Administrator in NASA Management Instruction (NMI) 5101.8, subject "Delegation of Authority to Take Actions in Procurement and Related Matters".

(b) The Office of Management and Budget (OMB) approved information collection under the Paperwork Reduction Act through November 30, 1995, and assigned OMB control numbers 2700–0047, Property Management and Control, and 2700–0049, Financial Management and Control.

§ 1260.102 Applicability.

This part 1260 establishes policies and procedures for all research grants and cooperative agreements awarded by the National Aeronautics and Space Administration (NASA) to educational institutions and other nonprofit organizations. It does not cover training grants, facilities grants, grants for the Centers for the Commercial Development of Space, or contracts.

§ 1260.103 Amendment.

(a) *NASA Research Grant Handbook Directive (GHD).* This part 1260 will be amended by publication of changes in the **Federal Register** and by issuance of printed loose-leaf directives containing revised or additional pages for the handbook version of this part 1260. Each revised or new page will contain the date, the GHD number, and an indication of changes made. GHD's will be numbered consecutively for each edition of the handbook.

(b) *Grant Notice (GN).* Non-regulatory changes to the handbook which require immediate dissemination may be issued

as Grant Notices. The mailing list for Grant Notices is maintained by the Office of Procurement, NASA Headquarters, Procurement Policy Division (Code HP), Washington, DC 20546.

(c) *Effective date.* The NASA Research Grant Handbook and any amendment may be implemented as soon as practicable following the date of issuance, but no later than 60 days thereafter, except as otherwise prescribed by the GHD or GN.

§ 1260.104 Publication and points of contact.

(a) The NASA Research Grant Handbook is published as part 1260 of title 14 of the Code of Federal Regulations (CFR). The handbook is numbered "NASA Handbook (NHB) 5800.1C."

(b) The handbook is also available in loose-leaf form. Subscriptions to the NASA Research Grant Handbook may be purchased by other Government agencies, private concerns, universities, and individuals from the Superintendent of Documents, United States Government Printing Office, Washington, DC 20402, telephone number (202) 783–3238. Requests should cite GPO Subscription Stock No. 933–001–00000–8. A subscription consists of the basic edition, plus all changes issued for an indefinite period.

(c) The NASA Research Grant Handbook, GHD's, and GN's will be distributed by Code HP directly to installation distribution points. These NASA elements must inform the Office of Procurement, NASA Headquarters, Procurement Policy Division (Code HP) of the numbers of copies required. Requests for additional copies should be sent directly to Code HP by Installation distribution points.

(d) Installation directives, handbooks or similar guidance documents shall not repeat, paraphrase, extract, condense, be inconsistent with or otherwise restate the material contained in this handbook. Upon issuance of any directive, handbook, or similar guidance document affecting grants, Installations shall provide one copy to the Office of Procurement, NASA Headquarters, Procurement Policy Division (Code HP).

(e) NASA grant officers, addresses, and telephone numbers are as follows:

(1) Barbara Cephas, NASA Headquarters, Code HWG, Washington, DC 20546, (202) 358–0504.

(2) Barbara Hastings, NASA Ames Research Center, M/S 241–1, Moffett Field, CA 94035, (415) 604–5802.

(3) Gloria Blanchard, NASA Goddard Space Flight Center, Code 286, Greenbelt, MD 20771, (301) 286–3318.

(4) Daryl W. Chilcutt, NASA Johnson Space Center, M/S BE311, Houston, TX 77058, (713) 483–5441.

(5) Earl Gilbert, NASA Kennedy Space Center, OP-SCO, Kennedy Space Center, FL 32899, (407) 867–7346.

(6) Richard Siebels, NASA Langley Research Center, M/S 126, Hampton, VA 23665, (804) 864–2418.

(7) Saundra Gage, NASA Lewis Research Center, M/S 500/315, Code 1520, Cleveland, OH 44135, (216) 433–2754.

(8) Lydia Van Wagner, NASA Marshall Space Flight Center, Code AP29, Huntsville, AL 35812, (205) 544–0304.

(9) Frank Oerting, NASA Stennis Space Center, Code DA–10, Stennis Space Center, MS 39529, (601) 688–1638.

§ 1260.105 Deviations.

(a) *Applicability.* A deviation is required for any of the following:

(1) When a prescribed grant provision is set forth verbatim in this handbook, and the Installation uses a provision covering the same subject matter, or omits such provision.

(2) When a grant provision is set forth in this handbook, but not for use verbatim, and the Installation uses a provision covering the same subject matter which is inconsistent with the intent, principle, and substance of the handbook provision.

(3) When a NASA form or other form is prescribed by this handbook, alteration of such form, or use of any other form for the same purpose.

(4) When limitations, imposed by this handbook upon the use of a grant provision, form, procedure, or any other grant action, are changed.

(5) Creation of a form for grantee use which constitutes a "Collection of Information" within the meaning of the Paperwork Reduction Act of 1980 (44 U.S.C. 35) and its implementation in 5 CFR 1320.

(b) *Request for deviations.* Requests for authority to deviate from this handbook shall be submitted to the Office of Procurement, NASA Headquarters, Procurement Policy Division (Code HP). Such requests, signed by the Procurement Officer, will be submitted as far in advance as the situation will permit. Each request for a deviation shall contain as a minimum:

(1) A full description of the deviation and the circumstances in which it will be used.

(2) Detailed rationale for the request, including any pertinent background information.

(3) The name of the grantee or party to a cooperative agreement and identification of the grant or cooperative agreement affected, including the dollar value.

(4) A statement as to whether the deviation has been requested previously, and, if so, circumstances of the previous request.

(5) Identification of the handbook requirement from which a deviation is sought.

(6) A description of the intended effect of the deviation.

§ 1260.106 Foreign grants.

Installations requiring grants with institutions located outside the United States, its possessions and its territories, shall forward the procurement package to the Office of Procurement, Headquarters Acquisition Division, Headquarters Grants and Closeout Branch (Code HWG) for negotiation, award, and administration. Code HWG will distribute copies of the grant to the Installation payment office, technical office, and grants office. See § 1260.422(f) for a special condition on inventions for use with foreign grants.

Subpart 1260.2—Definitions

§ 1260.201 Definitions.

Throughout this part 1260 the term "grant" includes "cooperative agreement" unless otherwise indicated.

Administrative grant officer. A grant officer assigned responsibility for grant administration, such as under a delegation from a NASA grant officer.

Administrator. The Administrator or Deputy Administrator of NASA.

Associate Administrator for Procurement. The head of the Office of Procurement, NASA Headquarters (Code H).

Cooperative agreement. An agreement that provides funds to an educational institution or other nonprofit organization to accomplish a public purpose of support or stimulation authorized by Federal statute. Substantial technical involvement between NASA and the recipient is expected and will be identified in the agreement.

Days. Calendar days, unless otherwise indicated.

Educational institution. Any institution which

(1) has a faculty,

(2) offers courses of instruction, and

(3) is authorized to award a degree upon completion of a specific course of study.

Equipment. As used in this handbook, "equipment" is another term for nonexpendable personal property.

(1) *Government furnished equipment.* Equipment in the possession of, or

acquired directly by, the Government and subsequently delivered, or otherwise made available, to a grantee.

(2) *Grantee acquired equipment.* Equipment purchased or fabricated with grant funds by a grantee, for the performance of research under its grant.

Grant. An agreement that provides funds to an educational institution or other nonprofit organization to accomplish a public purpose of support or stimulation authorized by Federal statute. No substantial technical involvement is expected between NASA and the grantee.

Grant officer. A Government employee who has been delegated the authority to negotiate, award, or administer grants.

Grant provision. A term or condition applicable to all grants awarded under this part 1260.

Grant specialist. A Government employee who is assigned the responsibility of negotiating or administering grants.

Historically Black Colleges and Universities. Institutions determined by the Secretary of Education to meet the requirements of 34 CFR 608.2 and listed therein.

Incremental funding. A method of funding a grant where the funds initially allotted to the grant are less than the award amount. Additional funding is added as described in § 1260.302(d).

Minority educational institution. An institution meeting the criteria established in 34 CFR 607.2.

Multiple year grant. A grant for which NASA obligates funds for an initial period and states an intention to obligate funds for one or more additional periods. The initial period together with the unfunded periods exceeds one year. Continuation of the grant is a unilateral decision by the Government based on availability of funds, continued relevance, and scientific progress.

Nonprofit organization. An organization that qualifies for the exemption from taxation under § 501 of the Internal Revenue Code of 1954, as amended, 26 U.S.C. 501.

Performance report. A concise statement of the research accomplished during the report period. This report will normally be limited to a maximum of three pages.

Property—(1) *Acquisition cost.* Acquisition cost of an item of nonexpendable personal property means the net invoice unit price of the property, including the cost of modifications, attachments, accessories, or auxiliary apparatus, necessary to make the property usable for the purpose for which it was acquired. Other charges, such as the cost of installation, transportation, taxes, duty, or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the grantee's regular accounting practices.

(2) *Nonexpendable personal property.* Nonexpendable personal property means tangible personal property having a useful life of more than 2 years, and an acquisition cost of $500 or more per unit. A grantee may use its own definition of nonexpendable personal property, provided the definition would at least include all tangible personal property included in this definition.

(3) *Excess personal property.* Excess personal property means any personal property under the control of any Federal agency which is not required for its needs and the discharge of its responsibilities, as determined by each agency's procedures.

(4) *Exempt property.* Exempt property means tangible personal property acquired in whole or in part with Federal funds, title to which is vested in the grantee without further obligation, except as provided in § 1260.506(a)(4), to the Federal Government.

(5) *Expendable personal property.* Expendable personal property refers to all tangible personal property not included in the definition of nonexpendable personal property.

(6) *Non-technical property.* Property which is usable for other than research, medical, scientific, or technical activities, whether or not special modifications are needed to make it suitable for a particular purpose. Examples include office equipment and furnishings, air conditioning equipment, reproduction and printing equipment, motor vehicles, and automatic data processing equipment. The term "non-technical property" is synonymous with the term "general purpose equipment" in paragraph J.16.a.(4) of OMB Circular No. A–21.

(7) *Personal property.* Personal property means property of any kind except real property. It may be tangible or intangible (such as patents, inventions, and copyrights).

(8) *Real property.* Real property means land, including land improvements, structures and appurtenances thereto, but excluding movable machinery and equipment.

(9) *Technical property.* Equipment which is usable only for research, medical, scientific, or technical activities. The term "technical property" is synonymous with the term "special purpose equipment" in paragraph J.16.a.(3) of OMB Circular No. A–21.

Research. Systematic, intensive study directed toward greater knowledge or understanding of the subject studied. The term includes conferences held for the purpose of communicating research results.

Small business concern. A concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding, and qualifies as a small business under the criteria and size standards in 13 CFR part 121.

Small disadvantaged business concern. A small business concern owned or controlled by individuals who are both socially and economically disadvantaged (within the meaning of § 8(a) (5) and (6) of the Small Business Act, as amended, 15 U.S.C. 637(a) (5) and (6).

Special condition. A term or condition appended to a grant if applicable.

Subcontract. A written agreement between a grantee and a third party for the furnishing of services or supplies.

Summary of research. Summary of results of the entire project. This summary will normally be limited to a maximum of 3 pages, not counting bibliographies, abstracts, and lists of other media in which the research was discussed.

Support. Funding of a NASA research project.

Technical officer. The official of the cognizant NASA office who is responsible for monitoring the technical aspects of the work under a grant.

Women-owned small business concern. A small business concern that is at least 51 percent owned by women who are United States citizens and who also control and operate the business.

Subpart 1260.3—The Process

§ 1260.301 Proposals.

(a) *General.* A grant can result from: (1) a proposal submitted in response to a NASA Research Announcement (NRA), an Announcement of Opportunity (AO), or after approval by the Associate Administrator for Procurement or designee, another type of broad agency announcement (BAA) or

(2) an unsolicited proposal.

(b) *Proposals under NRA's and AO's.* The NASA Research Announcement and NASA Announcement of Opportunity (broad agency announcements) are described in NASA Handbook 8030.6.

(c) *Unsolicited proposals.* Guidance on unsolicited proposals is contained in FAR 48 CFR subpart 15.5 and NASA FAR Supplement (NFS) 48 CFR subpart

1815.5. The synopsis requirement in FAR 48 CFR 15.507(b)(4), however, does not apply to the grant process. Contact with agency technical personnel prior to proposal submission is encouraged to determine if preparation of a proposal is warranted. These discussions should be limited to understanding NASA research needs and do not jeopardize the unsolicited status of any subsequently submitted proposal. The grant officer or university affairs officer may refer prospective grantees to technical personnel working in their area of research.

(d) *Cost and budget issues.* The allowability of costs chargeable to NASA research grants is governed by OMB Circulars No. A–21, No. A–88, No. A–110, No. A–122, No. A–128, and No. A–133.

(1) *Cost sharing.* A grant resulting from an unsolicited proposal will include cost sharing if the grantee will benefit from the research results through sales to non-Federal entities. In addition, NASA may accept cost sharing when voluntarily offered as part of any proposal. The amount of cost sharing is not a factor in determining whether to select a proposal for award.

(2) *Recovery of indirect costs.* Subject to applicable cost principles, NASA normally allows full recovery of indirect expenses, but in no case shall an overhead rate used for determining amounts chargeable to a grant exceed, in equivalence, the most recent overhead rate at the recipient institution for comparable research contracts of the Government. The indirect cost rates are negotiated between grantees and the cognizant agencies assigned under OMB Circular No. A–88. NASA is required to apply the negotiated rate for all grants awarded to a grantee. Added or lowered amounts of indirect cost must be determined by the cognizant agency.

(3) *Multiple year grants.* In accordance with NASA policy to foster continuity of research, multiple year grant proposals are encouraged where appropriate, for a period generally up to 3 years. For multiple year grants that exceed 3 years, the technical officer shall ensure compliance with paragraph 4.h. of NMI 8320.1D. Proposals for multiple year grants shall include a separate budget exhibit for each year of research.

(4) *Budget content.* Proposals shall include budgets as prescribed in this handbook (Budget Summary in Exhibit B of the appendix to this part 1260) and in NRA's and AO's. Narrative detail must support the budgets.

(5) *Incremental funding.* NASA reserves the right to either fully fund or incrementally fund research grants.

(e) *Certifications and assurances.* The following certifications or assurances are required:

(1) *Civil rights requirements—nondiscrimination in certain Federally-funded programs.* Grantees must furnish assurances of compliance with civil rights statutes specified in 14 CFR parts 1250 through 1252. Such assurances are not required for each grant, if they have previously been furnished and remain current and accurate. Certifications to NASA are normally made on NASA Form 1206, which may be obtained, if required, from the grant officer. If acceptable, the grant officer will forward this assurance to the NASA Office of Equal Opportunity Programs for recording and retention purposes.

(2) *Debarment and suspension, drug-free workplace, and lobbying.* Each proposal shall contain certifications concerning debarment and suspension, drug-free workplace, and lobbying. These certifications and other requirements are contained in 14 CFR parts 1265 and 1271. NASA does not require any particular form or format for the certifications under 14 CFR part 1265.

§ 1260.302 Evaluation and selection.

(a) *Technical evaluation.* Technical evaluation of proposals will be conducted by the cognizant NASA technical office and may be based on peer reviews.

(1) *Proposals under NRA's, AO's, and other BAA's (see § 1260.301(a)).* The technical officer will evaluate proposals in accordance with the criteria in the NRA, AO, or other BAA. Proposals selected for award will be supported by documentation as described in paragraph (b)(1) of this section. When evaluation results in a proposal not being selected, the proposer will be notified in accordance with the NRA, AO, or other BAA.

(2) *Unsolicited proposals.* Evaluation of unsolicited proposals must consider whether: the subject of the proposal is available to NASA from another source without restriction; the proposal closely resembles a pending competitive acquisition; and the research proposed demonstrates an innovative and unique method, approach, or concept. Recommendations to fund unsolicited proposals will be supported by documentation as described in paragraph (b)(2) of this section. Institutions submitting unaccepted proposals will be notified in writing.

(b) *Documentation requirements.* For proposals selected for award, the technical officer will prepare and furnish to the grant officer the following documentation:

(1) A proposal selected under an NRA, AO, or other BAA (see § 1260.301(a)) shall be supported by a signed selection statement and technical evaluation based on the evaluation criteria stated in the NRA, AO, or other BAA.

(2) An unsolicited proposal recommended for acceptance shall be supported by a justification for acceptance of an unsolicited proposal (JAUP) prepared by the cognizant technical office. The JAUP shall be submitted for the approval of the grant officer after review and concurrence at a level above the technical officer. The evaluator shall consider the following factors, in addition to any others appropriate for the particular proposal:

(i) Unique and innovative methods, approaches or concepts demonstrated by the proposal.

(ii) Overall scientific or technical merits of the proposal.

(iii) Potential contribution of the effort to the agency's specific mission.

(iv) The offeror's capabilities, related experience, facilities, techniques, or unique combinations of these which are integral factors for achieving the proposal objectives.

(v) The qualifications, capabilities, and experience of the proposed principal investigator, team leader, or key personnel who are critical in achieving the proposal objectives.

(vi) Current, open NRA's under which the unsolicited proposal could be evaluated.

(3) When most of the proposed budget is for equipment or travel and associated indirect cost, the technical officer shall sign, and submit for grant officer approval, an Equipment Justification or Travel Justification. The justification shall describe the extent to which the equipment or travel is necessary to support NASA-sponsored research.

(c) *Proposal budget evaluation.*

(1) The technical officer will review the budget for conformance to program requirements and fund availability, indicating the results of this review in Column B of the proposed budget.

(2) The grant officer will review the budget and the changes made by the technical officer, if any, to identify any budget item which may be unallowable under the cost principles, or which appears unreasonable or unnecessary after considering any budget explanations. The grant officer will complete Column C of the proposed budget after discussing significant changes with the grantee. The grant officer should only request the additional budget detail which is necessary to comply with the instructions for the Budget Summary in

Exhibit B of the appendix to this part 1260.

(d) *Incremental funding.* Grants with anticipated annual funding exceeding $1 million may be funded for less than the amount and period of performance stated in the proposal provided:

(1) Two increments per grant year are authorized. The second increment will be the balance of funding for the year.

(2) Procedures are established for adding all remaining funds to the grant without any action required of the grantee. The grant officer shall notify the grantee in writing when the remaining funds have been obligated on the grant.

(3) The incremental funding special condition contained in § 1260.422(d) is included in the grant.

(e) *Printing, binding, and duplicating.* Proposals which involve printing, binding, and duplicating in excess of 25,000 pages are subject to the regulations of the Congressional Joint Committee on Printing. The technical office will refer such proposals to the Installation Central Printing Management Officer (ICPMO) to ensure compliance with NMI 1490.1. The grant officer will be advised in writing of the results of the ICPMO review.

(f) *Rights in data.* Section 1260.410 is adequate only for grants for basic or applied research, where the principal purpose (or only expected NASA involvement) is the publication or dissemination of the results, such as in journals or NASA publications (see § 1260.402). Other expected purposes, especially where there may be substantial NASA involvement under a cooperative agreement or grantee development of software programs, may require a special condition providing customized or expanded data rights. The special condition shall be developed by, or in consultation with, intellectual property or patent counsel and may be used in the grant.

(g) *Clean Air and Federal Water Pollution Control Acts.*

(1) By accepting a grant containing § 1260.414, the grantee agrees (for grants exceeding $100,000) that the expenditure of grant funds is in compliance with the Clean Air Act and the Federal Water Pollution Control Act.

(2) The Administrator may exempt for a period not to exceed 1 year any individual or class of grant or any subcontract thereunder from the requirements of the Clean Air and Federal Water Pollution Control Acts. Requests for exemptions or renewals thereof shall be made to the Office of Procurement, NASA Headquarters, Procurement Policy Division (Code HP), Washington, DC 20546.

(h) *Choice of Award Instrument.* (1) This paragraph provides guidance on the appropriate choice of award instruments consistent with 31 U.S.C. 6301 to 6308. Throughout this paragraph (h) the term "grant" excludes cooperative agreement.

(2) Procurement Contracts. A procurement contract shall be used as the legal instrument to reflect a relationship between the Federal Government and a recipient whenever (i) the principal purpose of the instrument is the acquisition by purchase, lease, or barter of property or services for the direct benefit or use of the Federal Government; or (ii) whenever NASA determines in a specific instance that the use of a type of procurement contract is appropriate (see paragraph (h)(5)(iii) of this section).

(3) Grants. A grant shall be used as the legal instrument to reflect a relationship between the Federal Government and a recipient whenever the principal purpose of the relationship is the transfer of a thing of value to the recipient in order to accomplish a public purpose of support or stimulation authorized by Federal statute, rather than by acquisition, purchase, lease, or barter of property or services for the direct benefit or use of the Federal Government; and no substantial involvement is expected between NASA, acting for the Federal Government, and the grantee during performance of the contemplated activity. A proposed award which exhibits the general characteristics set forth in paragraph (h)(6)(i) of this section meets the above-described statutory criteria for use of the grant.

(4) Cooperative Agreements. A cooperative agreement shall be used as the legal instrument to reflect a relationship between the Federal Government and a recipient whenever the principal purpose of the relationship is the transfer of a thing of value to the recipient to accomplish a public purpose of support or stimulation authorized by Federal statute, rather than acquisition by purchase, lease, or barter of property or services for the direct benefit or use of the Federal Government; and substantial involvement is expected between NASA, acting for the Federal Government, and the recipient during performance of the contemplated activity. Situations requiring use of cooperative agreements are limited. The examples and discussions set forth in paragraph (h)(6)(ii) shall be used in determining the existence of "substantial involvement."

(5) Limitations. (i) As a matter of policy, NASA does not award grants for donative assistance purposes, but only to meet program objectives. Research in any academic discipline related to NASA interests normally will qualify; however, advice of counsel should be sought in unusual situations. Similarly, where unusual project activities or organizational attributes are evident, advice of local counsel should be obtained.

(ii) Under no circumstances are cooperative agreements to be used solely to obtain the stricter control requirements typical of a contract.

(iii) 31 U.S.C. 6303 allows the use of contracts "whenever an executive agency determines in a specific instance that the use of a type of procurement contract is appropriate." This provision accommodates situations in which an agency determines that specific public needs can be satisfied best using the procurement process. However, because the provision, if misused, could allow agencies to circumvent the criteria for use of procurement or assistance instruments, use of this authority is restricted to extraordinary circumstances, and only with prior approval of the Associate Administrator for Procurement.

(iv) It is NASA's policy that non-monetary (zero dollar) grants or cooperative agreements shall not be used (except for no-cost extensions). Loans of Government personal property not associated with a contract, grant, or cooperative agreement under 31 U.S.C. 6301 to 6308, and made under the Space Act of 1958, should be consummated as loan agreements under paragraph 1.211 and Part 3.400 of NHB 4200.1, "Equipment Management Manual."

(v) Grants and cooperative agreements shall not be used as legal instruments for consulting service arrangements (see FAR/NFS 37.2).

(vi) Other instruments authorized by statute shall be used only after it has been determined, with the advice of General Counsel, that the action cannot be accomplished under a grant, cooperative agreement, or contract, as described above.

(6) Characteristics and examples. Subject to the statutory requirements set forth in paragraphs (h)(2), (h)(3), and (h)(4) of this section, the characteristics generally inherent in grants, cooperative agreements, and contracts are as follows:

(i) Grant. (A) The principal purpose is to accomplish a NASA objective through stimulating or supporting the acquisition of knowledge or understanding of the subject or phenomena under study, or attempting to determine and exploit the potential of scientific discoveries or improvements

in technology, materials, processes, methods, devices, or techniques and advance the state of the art;

(B) The exact course of the work and its outcome cannot be defined precisely and specific points in time for achievement of significant results cannot be realistically specified;

(C) NASA desires, or the nature of the proposed investigation is such, that the grantee will bear prime responsibility for the conduct of the research, and exercises judgment and original thought toward attaining the scientific goals within broad parameters of the research areas proposed and the related resources provided;

(D) The research problem is such that long term support (i.e., in excess of 1 year) is required for the study to mature to maximum scientific effectiveness (however, this does not preclude shorter-term grants in special cases);

(E) Meaningful technical reports (as distinguished from the Performance Reports) can be prepared only as new findings are made, rather than on a predetermined time schedule; and

(F) Simplicity and economy in execution and administration are mutually desirable.

(ii) Cooperative agreement. Characteristics inherent in a cooperative agreement include the characteristics of a grant plus the following:

(A) Substantial NASA involvement in and contribution to the technical aspects of the effort are necessary for its accomplishment;

(B) The project, conducted as proposed, would not be possible without extensive NASA-university technical collaboration; and

(C) The nature of the collaboration can be clearly defined and specified in advance. Cooperative agreements would be appropriate, for instance, where a university investigator works for a substantial amount of time at a NASA center (or a NASA investigator works at the university), or when the NASA-university scientific collaboration is such that a jointly authored report is appropriate. The cooperative agreement special provision, required by paragraph 422, must be completed to state the nature of the NASA-recipient cooperative interaction without which the effort would not be possible.

(iii) Procurement contract. The following characteristics are associated with procurement contracts. However, not all characteristics need be present in order for a contract to be the appropriate funding instrument.

(A) The principal purpose is to acquire, for NASA's direct use or benefit, well-defined, specific effort clearly required for the accomplishment of a scheduled NASA mission or project;

(B) The work to be conducted is intended to solve a specific problem;

(C) A specific service, piece of hardware, or improved performance of a specific device is the ultimate end product;

(D) NASA considers it necessary to exercise control over the objectives, direction, specifications, costs or methods of the research, and schedule control is desirable and feasible;

(E) The work to be conducted is classified (however, access to security classified information may be given grantees where a demonstrated need exists);

(F) The end result is clearly defined or parameters and specifications are prepared in advance of the work; and

(G) A significant portion of the total effort will be performed by an organization other than the one submitting the proposal, and such portion will involve the development, fabrication or acquisition of instruments or hardware.

§ 1260.303 Award procedures.

(a) *General.* NASA policy is to use multiple year grants to support research. However, grants for lesser periods may be awarded.

(b) *Multiple year grant.*

(1) NASA fosters continuation of research and recognizes that research projects may span several years. Proposers are encouraged to submit research proposals that describe the entire research project, supported by annual work and budget plans.

(2) The entire research proposal will be evaluated by the cognizant technical office with the recommendation for award identifying the proposal as a multiple year grant. By use of the Multiple Year Grant special condition, the grant clearly indicates at time of award, the initial grant period and funded value as well as the planned values of the subsequent years of the multiple year grant.

(3) Thus, neither a new proposal nor an additional technical evaluation are required for subsequent funding in the approved period unless a special need for new reviews is indicated by monitoring of the project and of its reports, by the introduction of work outside the scope of the approved proposal, or by the need for substantial unanticipated funding. The technical office will notify the grantee if the grant is to be funded; if additional information is required; or if the Government has determined that additional funding will not be provided.

(4) Based upon availability of funds, continued research relevance and scientific progress made by the grantee (as determined by the technical officer by monitoring of the grant, including timely submission of performance reports) the Government may elect to fund the subsequent grant periods as identified in the multiple year grant. To insure continuation of a multiple year grant, the technical office must forward to the grant office a funded PR in the amount that the technical officer recommends for continuation. This continued funding for the grant should be processed 45 days before the expiration of the funded period.

(5) Section 1260.422(c) is the special condition for multiple year grants.

(6) Normally, each year of a multiple year grant will be funded at the approximate level indicated in the original award instrument, subject to satisfactory scientific progress, availability of funds and continued relevance to NASA programs. However, NASA program constraints and developments within the project may dictate adjustment in the originally anticipated level. When the actual funding differs from the planned funding, the technical officer shall mark up Column B of the budget summary and provide it to the grant officer with an explanation of any increases. The grantee may rebudget under the grant provisions to keep the project within the funding actually provided.

(7) A funded extension beyond the period listed in the multiple year grant special condition may be proposed, however, it will require the submission of a new proposal, subject to full review as discussed in § 1260.303(c).

(c) *Annual grant.* Grants may be awarded for a short term (e.g., on an annual basis), and may be extended if appropriate. The extension should be executed prior to the grant expiration date. Such extensions (other than no-cost extensions) must be supported by a new proposal from the grantee. A complete technical evaluation and support documentation are required and should be forwarded to the grant office at least 6 weeks prior to the expiration of the original grant term. If otherwise acceptable, NASA may fund the proposal extensions through a multiple year grant or by an extension of the existing grant.

(d) *Cost sharing.* NASA grantees usually gain no measurable benefit ("mutuality of interest") from grants, other than conducting the research. The statutory requirement for cost sharing based on mutuality of interest applies to NASA grants resulting from unsolicited proposals only in exceptional cases

where the grant officer has reason to believe that the grantee will benefit from the research results through sales to non-Federal entities. When cost sharing is required by statute or when the grant officer accepts voluntarily-offered cost sharing, the grant officer shall use a special condition substantially as shown in § 1260.422(e).

(e) *Partial support.* NASA may provide partial support for a research project or conference where additional Federal funding is being provided by other agencies. If the grant also involves cost sharing by the grantee, the grant officer will ensure that the cost sharing special condition applies only to the non-Federal funding.

(f) *Grant renewals.* If grants are to be renewed, this should be done prior to the grant expiration date. Although the grant officer has little control over the timely receipt of purchase requests, he/she is responsible for informing the technical officer of current lead-time requirements and for timely processing continuation agreements. Alternatively, if a grant is not to be renewed, the grantee should be given a minimum of 4 months advance notice of pending close-out (see § 1260.511(a)).

(g) *Instrument usage.* To eliminate the paperwork burdens associated with the closeout of a grant and negotiation of a new grant for continuing the same effort, ongoing efforts at the same institution will be continued by amending or supplementing the current instrument unless there is a significant change in the nature of the work. If a new grant must be issued, the period of performance should be continuous with the previous award.

(h) *Unilateral award.* Grants may be awarded, amended, or extended unilaterally at the discretion of the grant officer.

§ 1260.304 Format and numbering.

(a) *General.* The grant shall be brief in format, containing only those provisions and special conditions necessary to protect the interests of the Government.

(b) *Formats.* Grant officers are authorized to use the formats in Exhibit B of the appendix to this part 1260 for the award of all research grants and cooperative agreements. Computer-generated versions and omission of inapplicable items are allowed. Special conditions, if required, shall be placed on a separate page. In all instances, the heading, "SPECIAL CONDITION(S), GRANT (COOPERATIVE AGREEMENT) N_____", shall be used, followed by the applicable special condition(s). Use of preprinted checklists containing all special conditions or a separate page for each special condition is not authorized. An acceptance block may be added when the grant officer considers it necessary to require bilateral execution of the grant. When enclosing detailed budgets with the grant, the grant officer will strike out any information that would reveal salaries paid by the grantee.

(c) *Grant numbering.* The identification numbering system for all research grants shall conform to NFS 48 CFR 1804.7102–3, except that a NAG prefix will be used in lieu of the NAS prefix. The prefix designation will include the Center Identification Number; e.g., NAGW would be the Headquarters prefix designation, and NAG5 would be the Goddard prefix designation. Grants will be sequentially numbered beginning with "1."

(d) *Cooperative agreement numbering.* The numbering system for cooperative agreements will be the same as for grants, except that NCC (for Centers) and NCCW (for Headquarters) prefixes shall be used in lieu of the NAG and NAGW prefixes.

§ 1260.305 Distribution of grants.

Copies of grants and grant supplements will be provided to: payment office, technical officer, administrative grant officer when delegation has been made, NASA Center for Aerospace Information (CASI), Attn: Document Processing Section, 800 Elkridge Landing Road, Linthicum Heights, Maryland 21090–2934, and any other appropriate recipient. Copies of the statement of work, contained in the grantee's proposal and accepted by NASA, will be provided to the administrative grant officer and CASI. The grant file will contain a record of the addresses for distributing grants and grant supplements.

Subpart 1260.4—Provisions and Special Conditions

§ 1260.401 General.

The provisions set forth in this subpart 1260.4 shall be incorporated in and made a part of all NASA research grants (§§ 1260.402 through 1260.421) and cooperative agreements (§§ 1260.402 through 1260.421 and 1260.422(b)) subject to this part 1260. Whenever the words "grant" or "grantee" appear in these provisions and special conditions, they shall be deemed to include, as appropriate, the words "cooperative agreement" and "recipient of cooperative agreement," respectively. The provisions for use in grants will be incorporated by reference in an enclosure to each grant (See Exhibit B as listed in the appendix to this part 1260). Special conditions (§ 1260.422(b) through (h)) will be incorporated in full text. For inclusion of provisions in subcontracts, see § 1260.510 (d) and (e).

§ 1260.402 Publications and reports.

Publications and Reports (Jun. 1993)

(a) NASA encourages the widest practicable dissemination of research results at any time during the course of the investigation.

(b) All information disseminated as a result of the grant, shall contain a statement which acknowledges NASA's support and identifies the grant by number.

(c) Prior approval by the NASA grant officer is required only where the grantee requests that the results of the research be published in a NASA scientific or technical publication. Two copies of each draft publication shall accompany the approval request.

(d) Reports shall be informal in nature and contain full bibliographic references, abstracts of publications and lists of all other media in which the research was discussed. Reports ordinarily should not exceed 3 pages, not counting bibliographies, abstracts, and lists of other media. The grantee shall submit the following technical reports:

(1) A performance report for every year of the grant (except the final year). Each report is due 60 days before the anniversary date of the grant and shall describe research accomplished during the report period.

(2) A summary of research, which is due by 90 days after the expiration date of the grant, regardless of whether or not support is continued under another grant. This report is intended to summarize the entire research accomplished during the duration of the grant.

(e) Performance reports and summaries of research shall display the following on the first page:

(1) Title of the grant.
(2) Type of report.
(3) Name of the principal investigator.
(4) Period covered by the report.
(5) Name and address of the grantee's institution.
(6) Grant number.

(f) An original and two copies, one of which shall be of suitable quality to permit micro-reproduction, shall be sent as follows:

(1) Original—administrative grant officer.
(2) Copy—technical officer.
(3) Micro-reproducible copy—NASA Center for Aerospace Information (CASI), Attn: Accessioning Department, 800 Elkridge Landing Road, Linthicum Heights, Maryland 21090–2934.

§ 1260.403 Extensions.

Extensions (Jun. 1992)

(a) It is NASA policy to provide maximum possible continuity in funding grant-supported research, and grants may be extended for additional periods of time. Any extension requiring additional funding should be supported by a proposal submitted at least 3 months in advance of the expiration date of the grant.

(b) Grantees may extend the expiration date of a grant or a supplement thereto if

additional time beyond the established expiration date is required to assure adequate completion of the original scope of work within the funds already made available. For this purpose, the grantee may make a single no-cost extension not exceeding 12 months. The grantee must make the extension prior to the expiration date and must notify the administrative grant officer in writing within 10 days of making the extension. Requests for all other extensions (in excess of 30 days) must be submitted, in writing, to the administrative grant officer for prior approval.

§ 1260.404 Suspension or revocation.

Suspension or Revocation (Sep. 1993)

(a) If NASA determines that the grantee has failed to comply with the grant, NASA may suspend or revoke the grant in whole or in part after consultation with the grantee. Suspension or revocation of the grant prior to the planned expiration date will be reserved for exceptional situations which cannot be handled any other way.

(b) Suspension of the grant may occur when the grantee has failed to comply with the terms of the grant. Upon reasonable notice to the grantee, NASA may temporarily suspend the grant, withhold further payments, and prohibit the grantee from incurring additional costs, pending corrective action by the grantee or a decision by NASA to revoke the grant. NASA will allow all necessary and proper costs which the grantee could not reasonably avoid during the period of suspension.

(c) In the event of revocation, the grantee shall refund to NASA any unexpended funds that it has received under the grant, except such portion thereof as may be required by the grantee to meet commitments which had in the judgment of NASA become firm prior to the effective date of revocation and are otherwise appropriate. Significantly reduced availability of the services of the principal investigator(s) named in the grant instrument may be grounds for revocation, unless alternative arrangements are made and approved in writing by the administrative grant officer.

§ 1260.405 Change in principal investigator or scope.

Change in Principal Investigator or Scope (Feb. 1992)

The grantee shall obtain the approval of the NASA grant officer to change the principal investigator or to continue the research work during a continuous period in excess of 3 months without the participation of an approved principal investigator. Change in objective or scope, likewise, requires prior approval.

§ 1260.406 Allowable costs.

Allowable Costs (Jun. 1993)

(a) OMB Circular No. A–21, "Cost Principles for Educational Institutions," OMB Circular No. A–122, "Cost Principles for Nonprofit Organizations," and OMB Circular No. A–110, "Grants and Agreements with Institutions of Higher Education, Hospital and other Nonprofit Organizations," as applicable, govern the allowability of costs chargeable to research sponsored by NASA under grants, except that cost-related and administrative "prior approvals" required by A–21 and A–110 are waived unless specifically required elsewhere in the grant provisions or special conditions. Sections 1260.405, 1260.408, and 1260.413 require prior approvals.

(b) Payments to individuals for consultant services under a NASA grant shall not exceed the daily equivalent of the maximum rate paid to a GS–18 Federal employee. The limit applies to personal compensation exclusive of expenses and indirect cost.

(c) Grantees may approve preaward costs of up to 90 days prior to the effective date of a new award, provided the costs are necessary for the effective and economical conduct of the project and they are otherwise allowable under the terms of the grant. Any preaward expenditures are made at the grantee's risk. Approval by the grantee does not impose any obligations on NASA in the absence of appropriations, if an award is not subsequently made, or if an award is made for a lesser amount than the grantee anticipated.

(d) In addition, Comptroller General decisions govern allowability of costs for international air transportation (see § 1260.420(b)).

§ 1260.407 Financial management.

Financial Management (Jun. 1992)

(a) *Payment.* Advance payments by electronic funds transfer will be made by the Financial Management Office of the NASA Installation which issued the grant. The grantee shall submit Federal Cash Transaction Reports (SF 272) to the aforementioned office and, if NASA has delegated administration, to the administrative grant officer, within 15 working days following the end of each Federal fiscal quarter, containing current estimates of the cash requirements for each of the 4 months following the quarter being reported. The final SF 272 is due within 90 days after the expiration date of the grant.

(b) *Management and audit.* The grantee's financial management system shall meet the standards set forth in § 1260.509. The provisions of OMB Circular No. A–133, "Audit of Institutions of Higher Education and Other Nonprofit Organizations," or OMB Circular No. A–128, "Audits of State and Local Governments," as applicable, apply to this award. NASA Federal domestic assistance numbers do not apply to NASA grants.

(c) *Records.* Financial records, supporting documents, statistical records, and all other records (or microfilm copies) pertinent to this grant shall be retained for a period of 3 years, except that (1) if any litigation, claim, or audit is started before the expiration of the 3-year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved, and (2) records for nonexpendable property acquired with grant funds shall be retained for 3 years after its final disposition. The retention period starts from the date of the submission of the final Federal Cash Transactions Report (SF 272). The Administrator of NASA and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any pertinent books, documents, papers, and records of the grantee and of subcontractors to make audits, examinations, excerpts, and transcripts. All provisions of this paragraph (c) shall apply to any subcontractor performing substantive work under this grant.

(d) *Unexpended balances.* Any unexpended balance of funds which remains at the end of any funding period, except the final funding period of the grant, shall be carried over to the next funding period, and may be used to defray costs of any funding period of the grant. The estimated amount of unexpended funds shall be identified in the grant budget section of the grantee's renewal proposal.

§ 1260.408 Equipment and other property.

Equipment and Other Property (Jun. 1993)

(a) NASA grants permit acquisition of technical property required for the conduct of research. Acquisition of property costing in excess of $5,000 and not included in the approved proposal budget requires the prior approval of the administrative grant officer unless the item is merely a different model of an item shown in the approved proposal budget. Requests for prior approval of technical property may be made telephonically to the administrative grant officer.

(b) Grantees may not purchase, as a direct cost to the grant, items of non-technical property, examples of which include but are not limited to office equipment and furnishings, air conditioning equipment, reproduction and printing equipment, motor vehicles, and automatic data processing equipment. If the grantee requests an exception, the grantee shall submit a written request for administrative grant officer approval, prior to purchase by the grantee, stating why the grantee cannot charge the property to indirect costs.

(c) Under no circumstances shall grant funds be used to acquire land or any interest therein, to acquire or construct facilities, or to procure passenger carrying vehicles.

(d) Title to equipment purchased with grant funds shall vest in the grantee unless otherwise provided. The Government reserves the right to require transfer to itself of title to items costing more than $1,000 each or, when fabricated into a single coherent system, in aggregate cost. Such reservation is subject to § 1260.506.

(e) Title to Government furnished equipment (including equipment, title to which has been transferred to the Government pursuant to § 1260.408(d) prior to completion of the work) will remain with the Government.

(f) Title to expendable personal property shall vest in the grantee upon acquisition. If there is a residual inventory of such property exceeding $1,000 in total aggregate fair market value, upon termination or expiration of the grant, and the property is not needed for any other Federally sponsored project or program, the grantee shall retain the property for use on non-Federally sponsored activities, or sell it, but must in either case, compensate

the Federal Government for its share. The amount of compensation shall be computed in accordance with subparagraph 6c, Attachment N to OMB Circular No. A–110.

(g) The grantee shall establish and maintain property management standards for nonexpendable personal property and otherwise manage such property as set forth in § 1260.507.

(h) Annually by July 31, the grantee shall submit 2 copies of an inventory report which lists all Government furnished equipment in their custody as of June 30. The grantee shall submit 2 copies of a final inventory report by 60 days after the expiration date of the grant. The final inventory report shall contain a list of all grantee acquired equipment and a list of Government furnished equipment. Annual and final inventory reports shall reflect the elements required in § 1260.507(a)(1) and be submitted to the administrative grant officer. When Government furnished equipment is no longer needed, the grantee shall notify the administrative grant officer, who will provide disposition instructions.

§ 1260.409 Patent rights—retention by the grantee.

Patent Rights—Retention by the Grantee (Feb. 1992)

This award is subject to the provisions of 37 CFR 401.3(a) which requires use of the standard clause set out at 37 CFR 401.14 "Patent Rights (Small Business Firms and Nonprofit Organizations)" and the following:

(a) Where the term "contract" or "contractor" is used in the "Patent Rights" clause, the term shall be replaced by the term "grant" or "grantee," respectively.

(b) In each instance where the term "Federal Agency," "agency," or "funding Federal agency" is used in the "Patent Rights" clause, the term shall be replaced by the term "NASA."

(c) The NASA regulation applicable to paragraph (e) of the "Patent Rights" clause is at 14 CFR subpart 1245.2, Licensing of NASA Inventions, § 1245.210.

(d) The following item is added to the end of paragraph (f) of the "Patent Rights" clause:

(5) The grantee shall include a list of all Subject Inventions required to be disclosed during the preceding year in the performance report, technical report, or renewal proposal, and a complete list (or a negative statement) for the entire award period shall be included in the summary of research.

(e) The term "subcontract" in paragraph (g) of the "Patent Rights" clause shall include purchase orders.

(f) The NASA implementing regulation for paragraph (g)(2) of the "Patent Rights" clause is at 48 CFR 1827.373(b) (NASA FAR Supplement, 18–27.373(b)).

(g) The following requirement constitutes paragraph (l) of the "Patent Rights" clause:

(l) Communications.

A copy of all submissions or requests required by this clause, plus a copy of any reports, manuscripts, publications or similar material bearing on patent matters, shall be sent to the Installation Patent Counsel and the administrative grant officer in addition to any other submission requirements in the grant provisions. If any reports contain information describing a "subject invention" for which the grantee has elected or may elect title, NASA will use reasonable efforts to delay public release by NASA or publication by NASA in a NASA technical series, for 6 months from the date of receipt, in order for a patent application to be filed, provided that the grantee identify the information and the "subject invention" to which it relates at the time of submittal. If required by the administrative grant officer, the grantee shall provide the filing date, serial number and title, a copy of the patent application, and a patent number and issue date for any "subject invention" in any country in which the grantee has applied for patents.

§ 1260.410 Rights in data.

Rights in Data (Feb. 1992)

The grantee grants to the Government, for Governmental purposes, the right to publish, translate, reproduce, deliver, use and dispose of, and to authorize others to do so, all data, including reports, drawings, blueprints, and technical information resulting from the performance of work under this grant.

§ 1260.411 Security.

Security (Jun. 1992)

Normally, NASA grants do not involve classified defense information. However, if information is sought or developed by the grantee that should be classified in the interests of national security, the NASA grant officer who issued the grant shall be notified immediately.

§ 1260.412 Civil rights.

Civil Rights (Jun. 1993)

Work on NASA grants is subject to the provisions of Title VI of the Civil Rights Act of 1964 (Public Law 88–52; 42 U.S.C. 2000d-l), Title IX of the Education Amendments of 1972 (20 U.S.C. 1680 et seq.), Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), and the NASA implementing regulations (14 CFR parts 1250, 1251, and 1252).

§ 1260.413 Subcontracts.

Subcontracts (Jun. 1992)

(a) NASA grant officer consent is required for subcontracts over $25,000, if not accepted by NASA in the original proposal, and may be requested through the administrative grant officer by providing the name of the subcontractor and the purpose and dollar amount of the subcontract. For subcontracts over $100,000, the grantee shall provide the following additional information, as a minimum, to the administrative grant officer for forwarding to the NASA grant officer:

(1) A copy of the proposed subcontract.

(2) Basis for subcontractor selection.

(3) Justification for lack of competition when competitive bids or offers are not obtained.

(4) Basis for award cost or award price.

(b) The grantee shall utilize small business concerns, small disadvantaged business concerns, Historically Black Colleges and Universities, minority educational institutions, and women-owned small business concerns as subcontractors to the maximum extent practicable.

§ 1260.414 Clean Air-Water Pollution Control Acts.

Clean Air-Water Pollution Control Acts (Mar. 1992)

If this grant or supplement thereto is in excess of $100,000, the grantee agrees to notify the administrative grant officer promptly of the receipt, whether prior or subsequent to the grantee's acceptance of this grant, of any communication from the Director, Office of Federal Activities, Environmental Protection Agency (EPA), indicating that a facility to be utilized under or in the performance of this grant or any subcontract thereunder is under consideration to be listed on the EPA "List of Violating Facilities" published pursuant to 40 CFR 15.20. By acceptance of a grant in excess of $100,000, the grantee (a) stipulates that any facility to be utilized thereunder is not listed on the EPA "List of Violating Facilities" as of the date of acceptance; (b) agrees to comply with all requirements of Section 114 of the Clean Air Act, as amended (42 U.S.C. 1857 et seq. as amended by Public Law 91–604) and Section 308 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq. as amended by Public Law 92–500) relating to inspection, monitoring, entry, reports and information, and all other requirements specified in the aforementioned Sections, as well as all regulations and guidelines issued thereunder after award of and applicable to the grant; and (c) agrees to include the criteria and requirements of this clause in every subcontract hereunder in excess of $100,000, and to take such action as the administrative grant officer may direct to enforce such criteria and requirements.

§ 1260.415 Procurement standards.

Procurement Standards (Feb. 1992)

The grantee's procurement practices shall meet the standards set forth in § 1260.510.

§ 1260.416 Interest-bearing accounts.

Interest-Bearing Accounts (Jan. 1992)

Advances of federal funds shall be maintained in interest-bearing accounts. Interest earned on federal advances deposited in such accounts shall be remitted to NASA at least quarterly, as instructed by the Financial Management Office of the NASA installation which issued the grant. Interest amounts up to $100 per year may be retained by the grantee.

§ 1260.417 Debarment and suspension and drug-free workplace.

Debarment and Suspension and Drug-Free Workplace (Feb. 1992)

NASA grants are subject to the provisions of 14 CFR part 1265, Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide requirements for Drug-Free Workplace (Grants), unless excepted by §§ 1265.110 or 1265.610. The certifications required by that

regulation must accompany extension proposals.

§ 1260.418 Foreign national employee investigative requirements.

Foreign National Employee Investigative Requirements (May 1992)

(a) The grantee shall submit a properly executed Name Check Request (NASA Form 531) and a completed applicant fingerprint card (Federal Bureau of Investigation Card FD–258) for each foreign national employee requiring access to a NASA Installation. These documents shall be submitted to the Installation's Security Office at least 75 days prior to the estimated duty date. The NASA Installation Security Office will request a National Agency Check (NAC) for foreign national employees requiring access to NASA facilities. The NASA Form 531 and fingerprint card may be obtained from the NASA Installation Security Office.

(b) The Installation Security Office will request from NASA Headquarters, International Relations Division (Code IR), approval for each foreign national's access to the Installation prior to providing access to the Installation. If the access approval is obtained from NASA Headquarters prior to completion of the NAC and performance of the grant requires a foreign national to be given access immediately, the technical officer may submit an escort request to the Installation's Chief of Security.

§ 1260.419 Restrictions on lobbying

Restrictions on Lobbying (Apr. 1990)

This award is subject to the provisions of 14 CFR part 1271 "New Restrictions on Lobbying."

§ 1260.420 Travel and transportation.

Travel and Transportation (Jun. 1993)

(a) Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 App. U.S.C. 1517)(Fly America Act) requires the grantee to use U.S.-flag air carriers for international air transportation of personnel and property to the extent that service by those carriers is available.

(b) Department of Transportation regulations, 49 CFR part 173, govern grantee shipment of hazardous materials and other items.

§ 1260.421 Program income.

Program Income (Jun. 1992)

Program income shall be retained by the grantee and shall be added to funds already committed to the project and used to further project objectives.

§ 1260.422 Special conditions.

(a) In addition to the provisions set forth in this subpart, NASA grants are subject to various conditions which either are not applicable to all awards or are temporary in nature. Such conditions are not incorporated by reference or printed in NASA Form 1463A, "NASA Provisions for Research Grants and Cooperative Agreements," but are appended in full text to specific grants, as applicable.

(b) With respect to cooperative agreements under 31 U.S.C. 6305, it has been determined that the NASA guidelines and regulations applicable to grants will apply to cooperative agreements. The cooperative agreement, NASA Form 1562, shall contain a special condition stating the nature of the recipient/NASA interaction in accordance with 31 U.S.C. 6305. That special condition is as follows:

Cooperative Agreement Special Condition (Feb. 1992)

This award is a cooperative agreement as it is anticipated that there will be substantial NASA involvement during performance of the effort. That is, the recipient can expect NASA collaboration or participation in the management of the project. The terms "grant" and "grantee" mean "cooperative agreement" and "recipient of cooperative agreement," respectively, wherever the terms appear in provisions and special conditions included in this agreement. NASA and the recipient mutually agree to the following statement of anticipated cooperative interactions which may occur during the performance of this effort. (Insert here a concise statement of the exact nature of the cooperative interactions. In addition, note that the statement must deal with existing facts and not contingencies. Under no circumstances shall the statement be used as a work statement or an expanded grant title.)

(c) See § 1260.303(b)(5).

Multiple Year Grant (Nov. 1991)

This is a multiple year grant. Contingent on the availability of funds, scientific progress of the project and continued relevance to NASA programs, NASA anticipates continuing support at approximately the following levels:

Second year $... Anticipated funding date:

_____

Third year $... Anticipated funding date:

_____

(Additional periods may be included or omitted as applicable.)

(d) See § 1260.302(d).

Incremental Funding (Jun. 1992)

Only $_____of the amount indicated on the face of this award is available for payment and allotted to this award. NASA contemplates making an additional allotment in the amount of $_____by _____.

These funds will be obligated to the grant as appropriated funds become available without any action required by the grantee, and the grantee will be given written notification by the NASA grant officer. NASA is not obligated to reimburse the grantee for the expenditure of amounts in excess of the total funds allotted by NASA.

(e) See § 1260.303(d).

Cost Sharing (Jun. 1992)

The grantee agrees to share in the cost of the research by charging to the Government no more than _____percent of the costs incurred in performing the work contemplated by the grant as determined to be allowable in accordance with 14 CFR 1260.406. The remaining _____percent, or more, of the allowable costs of performance so determined will constitute the grantee's share and will not be charged to the Government under this grant or under any other grant or contract (including allocation to other grants or contracts as part of an independent research and development program). The grantee will maintain records of all grant costs claimed by the grantee as constituting part of its share and such records shall be subject to audit by the Government.

(f) See § 1260.106. "INVENTION REPORTING AND RIGHTS—FOREIGN" in NASA FAR Supplement 18–52.227–85 (48 CFR 1852.227–85) (suitably tailored to identify the parties and the instrument) may be used as a special condition unless in consultation with Installation Patent Counsel, a different provision would be more appropriate.

(g) See § 1260.605(a).

Reports Substitution (Feb. 1992)

Technical reports may be substituted for the required performance reports. The title page of such reports shall clearly indicate that the substitution has been made, showing the period covered by the originally required performance report.

(h) See § 1260.605(d).

Withholding (Jul. 1992)

Pending receipt of the satisfactorily completed summary of research and other final reports under this grant, the financial management office will withhold $ _____from the last payment.

Subpart 1260.5—Administration

§ 1260.501 Delegation of administration.

(a) Policy. Pursuant to the Government-wide "cross-servicing" policy, it is NASA's policy to delegate administration to the Office of Naval Research (ONR).

(b) Procedures. Delegations will be made using NASA Form 1430, "Letter of Contract Administration Delegation, General;" NASA Form 1430A, "Letter of Contract Administration Delegation, Special Instructions;" and NASA Form 1431, "Letter of Acceptance of Contract Administration Delegation." The grant officer will inform the grantee, in writing, that the delegation has been made, and provide specific instructions regarding actions requiring ONR involvement.

(c) Types of administration.

(1) Full administration. The grant officer will use NASA Form 1430, as provided in Exhibit A, Figure 1, of the appendix to this part 1260, to delegate to ONR full administration for each

grant, except when ONR is not the cognizant administration office or when ONR administration services are not reasonably available.

(2) Property administration. Property administration (review and approval of grantees' property control procedures, and on-site surveys of grantees' property control systems) and plant clearance (screening, redistribution and disposal of Government property from grantees' work sites) will be delegated to ONR. Installations will use standard, special instruction wording on the NASA Form 1430A, as provided in Exhibit A, Figure 2, of the appendix to this part 1260.

(3) Closeout. Grant closeout may be retained if the grant officer determines that delegation to ONR is not in the best interest of NASA. Closeout delegation must be preceded or accompanied by a Property Administration and Plant Clearance Delegation (if any grantee acquired or Government-furnished equipment (GFE) is involved). Installations will use standard special instruction wording on the NASA Form 1430A, as provided in Exhibit A, Figure 3, of the appendix to this part 1260. ONR shall obtain the approval of the NASA grant officer prior to initiating closeout. To expedite closeout, NASA grant officers shall respond to ONR inquiries within 30 days. NASA grant officers shall inform individuals named on NASA Form 1430A, Item 4(f), (i) that a delegation has been made and (ii) of the requirement for timely responses to any inquiries received directly from ONR.

§ 1260.502 Grant supplements.

The NASA grant officer may modify a grant by using a grant supplement. Uses include multiple year grants and grant renewals (§ 1260.303(b) and (f)), extensions (§ 1260.403), incremental funding (§ 1260.302(d)), and novations (§ 1260.505).

§ 1260.503 Adherence to original budget estimates.

Although NASA assumes no responsibility for budget overruns, the grantee may spend grant funds for the proposed research without strict adherence to individual allocations within total budgets, except as provided in § 1260.408(a) and (b) and § 1260.413(a).

§ 1260.504 Suspension or revocation.

(a) *Policy.* Suspension or revocation of a grant prior to the planned expiration date must be reserved for exceptional situations which cannot be handled any other way (see § 1260.404). Before suspending or revoking any grant with a university, the NASA grant officer and technical officer shall take into account the consequences to graduate students working under the grant.

(b) *Suspension of the grant.* When a grantee has failed to comply with the terms of a grant, NASA may, upon reasonable notice to the grantee, temporarily suspend the grant, withhold further payments, and prohibit the grantee from incurring additional costs, pending corrective action by the grantee or a decision by NASA to revoke the grant. NASA will allow all necessary and proper costs that the grantee could not reasonably avoid during the period of suspension.

§ 1260.505 Transfers, novations, and change of name agreements.

(a) *Transfer of grants.* Novation as provided in § 1260.505(b), is the only means by which a grant may be transferred from one institution to another. When the principal investigator changes organizational affiliation and desires support for the research at a new location and novation is not used, a new proposal must be submitted to NASA via the appropriate officials of the new institution. Although such a proposal will be reviewed in the normal manner, every effort will be made to expedite a decision. Regardless of the action taken on the new proposal, final reports on the original grant, describing the scientific progress and expenditure to date, will be required.

(b) *Novation and change of name.* All novation agreements and change of name agreements of the grantee, prior to execution, shall be reviewed by legal counsel for legal sufficiency. When a change in principal investigator from one institution to another occurs, novation of the grant is preferable to revocation.

§ 1260.506 Use, disposition, and vesting of title to equipment.

(a) *Policy.* The following policies will be reflected, as applicable, in NASA grants.

(1) Title to equipment purchased with grant funds vests in the grantee subject to § 1260.506(a)(4), and the equipment does not automatically follow the principal investigator when he or she leaves the institution.

(2) Title to Government furnished equipment remains with the Government. In accordance with Public Law 94–519, NASA policy is not to furnish excess property, acquired by NASA from other Government agencies, to grantees.

(3)When Government furnished equipment is reported excess by a grantee, the administrative grant officer will report the equipment to the Installation property disposal officer for further NASA use. If NASA has no further need for the property, it shall be declared excess by the Installation property disposal officer and reported to the General Services Administration. Disposition instructions will be issued to the grantee by the administrative grant officer after completion of the Federal-wide review by GSA.

(4) NASA may require transfer to it of title to individual items or coherent systems (§ 1260.506(a)(9)) of grantee acquired equipment purchased at a cost of more than $1,000 subject to the following conditions:

(i) NASA shall notify the grantee in writing.

(ii) NASA shall issue disposition instructions by 120 days after the end of the grant under which it was acquired. If NASA fails to issue disposition instructions within the 120-day period, the grantee shall apply the standards of subparagraphs 6b and 6c, Attachment N to OMB Circular No. A–110, as appropriate.

(iii) When NASA exercises its right to take title, the equipment shall be subject to the provisions for Government furnished equipment discussed in § 1260.507(a).

(iv) When title is transferred to the Federal Government, the provisions of subparagraph 6c(2)(b), Attachment N to OMB Circular No. A–110, shall be followed.

(5) Title to equipment costing $1,000 or less is not subject to transfer to the agency, except under the conditions of § 1260.506(a)(9).

(6) NASA procedure does not require a grantee to transfer title to grantee acquired equipment directly to another grantee or contractor. Such transfers are accomplished by the Government's taking title and issuing it as Government furnished equipment.

(7) NASA normally will not recover equipment that a grantee desires to retain unless it is required for NASA work at a different location.

(8) Cost sharing by NASA and a grantee in the acquisition of individual items or coherent systems of equipment, that could result in joint ownership, shall normally be avoided. When joint ownership cannot be avoided, and the NASA contribution will exceed $1,000, agreement regarding NASA retention of its option to take title and the conditions under which the option (if retained) will be exercised, shall be reached and documented prior to purchase.

(9) When two or more components are fabricated into a single coherent system in such a way that the components lose their separate identities, and their

separation would render the system useless for its original purpose, the components will be considered as integral parts of a single system. If such a system includes grantee-owned components (for cost sharing or other purposes), § 1260.506(a)(8) applies. The requirement for agreement regarding NASA's retention of its option to take title shall further apply where it is expected that one or more grantee-acquired components costing $1,000 or less will be fabricated into a single coherent system costing in excess of $1,000. However, an item that is used ancillary to a system, without loss of its separate identity and usefulness, will be considered as a separate item and not as an integral component of the system.

(b) *Procedures.*

(1) When a decision is made to revoke, not renew, or otherwise not continue support of a grant, the administrative grant officer shall notify the grantee in writing of the requirement under the grant for submission of a final inventory report of grantee acquired equipment and Government furnished equipment.

(2) When the technical officer desires that NASA take title to an item of grantee acquired equipment, the technical officer shall request the administrative grant officer to obtain information regarding the grantee's desire to retain the equipment, the use to which it would be put in the absence of further NASA support of the grant, and the effect of removal of the equipment.

(3) The administrative grant officer shall obtain the information described in § 1260.506(b)(2) and provide copies to the technical officer and the Headquarters Supply and Equipment Management Office (Code JIE) for their coordinated review and recommendation regarding acquisition of title. The technical officer shall inform the administrative grant officer of the recommendation by means of a memorandum concurred in by Code JIE.

(4) When NASA acquires title to items of grantee acquired equipment, the administrative grant officer shall notify both the cognizant NASA Installation financial management officer and supply and equipment management officer to ensure proper entries in financial and property accounting records.

§ 1260.507 Property management standards.

(a) *Nonexpendable personal property.* As prescribed by OMB Circular No. A–110, the grantee shall be subject to the following property management standards for Government furnished equipment and grantee acquired equipment:

(1) Property records shall be maintained accurately and shall include:

(i) A description of the property.

(ii) Manufacturer's serial number, model number, national stock number, or other identification number.

(iii) Source of the property, including grant or other agreement number.

(iv) Whether title vests in the grantee or the Federal Government.

(v) Acquisition date (or date received, if the property was furnished by the Federal Government) and cost.

(vi) Percentage (at the end of the budget year) of Federal participation in the cost of the project or program for which the property was acquired. (Not applicable to property furnished by the Federal Government.)

(vii) Location, use and condition of the property and the date the information was reported.

(viii) Unit acquisition cost.

(ix) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a recipient compensates the Federal sponsoring agency for its share.

(2) Property owned by the Federal Government must be marked to indicate Federal ownership.

(3) A physical inventory of property shall be taken and the results reconciled with the property records at least once every 2 years. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the difference. The grantee shall, in connection with the inventory, verify the existence, current utilization, and continued need for the property.

(4) A control system shall be in effect to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft of nonexpendable property shall be investigated and fully documented. If the property was owned by the Federal Government, the grantee shall promptly notify the administrative grant officer.

(5) Adequate maintenance procedures shall be implemented to keep the property in good condition.

(6) Where the grantee is authorized or required to sell the property, proper sales procedures shall be established which would provide for competition to the extent practicable and result in the highest possible return.

(b) *Exempt property.* Title to nonexpendable personal property acquired with grant funds shall be vested in the grantee upon acquisition, unless it is determined that to do so is not in furtherance of the objectives of NASA. When title is vested in the grantee, the grantee shall have no other obligation or accountability to the Federal Government for its use or disposition, except as provided in §§ 1260.408(h), 1260.506(a)(4), and 1260.507(a).

§ 1260.508 Screening of requests for Government furnished equipment.

(a) Pursuant to NMI 4000.2, "NASA Equipment Management," a NASA Equipment Management System (NEMS) has been established to identify and effect optimum use and reuse of Government-owned equipment items of high value and reuse potential. The NEMS and this paragraph apply only to grantee requests for Government furnished equipment. Requests for grantee acquired equipment are neither required nor encouraged to be screened through the NEMS.

(b) When a grantee requests Government furnished equipment of $1,000 or more, the grant officer shall screen the item through the Installation's NEMS coordinator. Screening requests shall list the manufacturer, model number, description, national stock number, estimated cost, and any other information deemed necessary by the NEMS coordinator to properly identify the item. Urgent requests may be screened by telephone and documented.

(c) When suitable equipment is located through the foregoing procedures, the holding Installation will place a "freeze" on the item for 10 working days, pending shipping instructions. Extension of the freeze period must be requested through the NEMS Coordinator if shipping instructions cannot be furnished within the required period. (See paragraph 5.307, NASA Equipment Management Manual, NHB 4200.1.)

§ 1260.509 Financial management standards.

As prescribed by OMB Circular No. A–110, the grantee shall be subject to the following financial management standards:

(a) Accurate, current, and complete disclosure of the financial results of the project.

(b) Records that identify adequately the source and application of funds for the grant. These records shall contain information pertaining to the award, authorizations, obligations, unobligated balances, assets, outlays, and income.

(c) Effective control over and accountability for all funds, property, and other assets. The grantee shall

adequately safeguard all such assets and shall assure that they are used solely for authorized purposes.

(d) Comparison of actual outlays with obligated amounts for the grant.

(e) Procedures to minimize the time elapsing between the transfer of funds from the U.S. Treasury and the disbursement by the grantee. When advances are made by a letter-of-credit method or electronic funds transfer, the grantee shall make drawdowns as close as possible to the time of making disbursements.

(f) Procedures for determining the reasonableness, allowability, and allocability of costs in accordance with the provisions of § 1260.406 and any other terms of the grant.

(g) Accounting records that are supported by source documentation.

(h) A systematic method to assure timely and appropriate resolution of audit findings and recommendations.

§ 1260.510 Procurement standards.

As prescribed by OMB Circular No. A–110, the grantee shall be subject to the following procurement standards:

(a) The grantee shall maintain a code of standards of conduct that shall govern the performance of its officers, employees or agents engaged in the awarding and administration of a subcontract using NASA funds. No employee, officer, or agent shall participate in the selection, award, or administration of subcontracts under grants using NASA funds, where, to his or her knowledge, there exists a financial interest on the part of that person, that person's immediate family or partners, or any organization in which that person or an immediate family member or partner has a financial interest or with whom he or she is negotiating or has any arrangement concerning prospective employment. The grantee's officers, employees, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from subcontractors or potential subcontractors. Such standards shall provide for disciplinary actions to be applied for violation of such standards by the grantee's officers, employees, or agents.

(b) All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The grantee should be alert to organizational conflicts of interest or noncompetitive practices among its subcontractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective subcontractor performance and eliminate unfair competitive advantage, subcontractors that develop or draft specifications, requirements, statements of work, invitations for bids, or requests for proposals should be excluded from competing for such procurements, except when NASA gives approval to a grantee's request to waive this requirement for a particular procurement. Awards shall be made to the bidder/offeror whose bid/offer is responsive to the solicitation and is most advantageous to the grantee—price and other factors considered. Solicitations shall clearly set forth all requirements that the bidder/offeror must fulfill in order for the bid/offer to be evaluated by the grantee. Any and all bids/offers may be rejected when it is in the grantee's interest to do so.

(c) The grantee shall establish procurement procedures that provide for, at a minimum, the following procedural requirements:

(1) Proposed procurement actions shall follow a procedure to assure the avoidance of purchasing unnecessary or duplicative items. Where appropriate, an analysis shall be made of lease and purchase alternatives to determine which would be the most economical, practical procurement.

(2) Solicitations for goods and services shall be based upon a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such a description shall not, in competitive procurements, contain features which unduly restrict competition. "Brand name or equal" descriptions may be used as a means to define the performance or other salient requirements of a procurement and, when so used, the specific features of the named brand which must be met by bidders/offerors shall be clearly specified.

(3) Positive efforts shall be made by the grantee to utilize small business concerns, small disadvantaged business concerns, Historically Black Colleges and Universities, minority educational institutions, and women-owned small business concerns as sources of supplies and services. Such efforts should allow these sources the maximum practicable opportunity to compete for subcontracts utilizing NASA funds.

(4) The types of procuring instruments used, e.g., fixed-price subcontracts, cost reimbursable subcontracts, purchase orders, and incentive subcontracts, shall be determined by the grantee but must be appropriate for the particular procurement and for promoting the best interest of the program involved. The "cost-plus-a-percentage-of-cost" method of contracting shall not be used.

(5) Subcontracts shall be made only with responsible subcontractors who possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as subcontractor integrity, record of past performance, financial and technical resources, and accessibility to other necessary resources.

(6) Some form of price or cost analysis should be made in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicators, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability, and allowability.

(7) Procurement records and files for purchases in excess of $10,000 shall include the following:

(i) Basis for subcontractor selection.

(ii) Justification for lack of competition when competitive bids or offers are not obtained.

(iii) Basis for award cost or award price.

(8) A system for subcontract administration shall be maintained to ensure subcontractor conformance with terms, conditions, and specifications of the subcontract, and to ensure adequate and timely follow up of all purchases.

(d) The following provisions are required in subcontracts in excess of $10,000 awarded by the grantee or a subcontractor, regardless of tier

(1) Provisions or conditions that will allow for administrative, contractual, or legal remedies in instances in which subcontractors violate or breach subcontract terms and provide for such remedial actions as may be appropriate.

(2) Provisions for termination by the grantee, including the manner by which termination will be effected, and the basis for settlement. In addition, such subcontracts shall describe conditions under which the subcontract may be terminated for default, as well as conditions where the subcontract may be terminated because of circumstances beyond the control of the subcontractor.

(3) A provision requiring compliance with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR part 60).

(4) For negotiated subcontracts, a provision to the effect that the grantee, NASA, the Comptroller General of the United States, or any of their duly

authorized representatives, shall have access to any books, documents, papers, and records of the subcontractor which are directly pertinent to the specific project, for the purpose of making audits, examinations, excerpts, and transcriptions.

(e)(1) All subcontracts, regardless of tier, which may involve international air transportation shall require subcontractor compliance with the statute cited in § 1260.420(a).

(2) All subcontracts, regardless of tier, which may involve shipment of hazardous materials or other regulated items shall require subcontractor compliance with the regulation cited in § 1260.420(b).

§ 1260.511 Closeout procedures.

The closeout of a grant is the process by which NASA determines that all applicable administrative actions and all required work under the instrument have been completed by the grantee and NASA. Closeout procedures consist of the following steps:

(a) Initiation. As a basis for closeout initiation, the NASA grant officer shall determine from the technical officer that work under a particular grant will not be continued or is completed. The NASA grant officer will promptly notify the administrative grant officer to begin closeout within 90 days of this determination. The administrative grant officer will inform the grantee of pending closeout and the final documentation required. To the extent practicable, such notification will be made prior to the grant's expiration date.

(b) Reports submission. The administrative grant officer will ensure that the summary of research and all other final reports have been received by the appropriate NASA offices. Specifically:

(1) Summary of research (see §§ 1260.402 (d) through (f) and 1260.605(b)).

(2) Final report of inventions and subcontracts (see §§ 1260.409 and 1260.605(b)).

(3) Final Federal cash transactions report (see §§ 1260.407(a), 1260.603 and 1260.605(c)).

(4) Final property inventory (see §§ 1260.408(h), 1260.506(b), and 1260.604).

(c) Reports certification. The administrative grant officer will obtain from the recipients of all NASA reports, written certification that the above-noted reports have been satisfactorily completed. In reviewing the certifications, ensure the following:

(1) The grantee is required to immediately refund any balance of unobligated (unencumbered) cash that NASA has advanced or paid. NASA shall make prompt payment for any remaining allowable, reimbursable costs under the grant being closed out.

(2) Final audit of NASA grants normally occurs as a part of scheduled overall audits performed by the cognizant audit agency. Therefore, requests for audit of specific grants in conjunction with closeout are generally unnecessary and should be reserved for unusual circumstances. Unless the cognizant audit agency has performed a final audit prior to closeout of the grant, the administrative grant officer shall state in the closeout letter to the grantee that:

"NASA retains the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from any subsequent audit."

(3) The property certification should indicate that disposal of any remaining Government property has been made as directed and that NASA has been compensated for any residual inventory (see § 1260.408 (f) through (h)).

(4) Upon administrative grant officer receipt of all four certifications from recipients of the summary of research and other final reports, a grant is considered to be administratively complete. A DD Form 1594 will be provided by ONR to the NASA grant officer for the file. Closeout may be cited as the date the administrative grant officer documents the file that all required actions have been satisfactorily completed, and that no further actions are necessary.

(d) Prohibitions. Forms, procedures, or requirements (regardless of modifications) applicable to contracts shall not be used during grant closeout unless otherwise authorized in this handbook. Grantees shall not be requested to complete forms or supply information other than discussed in § 1260.511(b), except in unusual situations.

(e) Retention of documents. The original or a signed copy of each grant, with supporting data, shall be retained by the installation, for audit purposes, for 3 years after the expiration date of the grant.

Subpart 1260.6—Reports

§ 1260.6011 Individual procurement action report (NASA Form 507).

The grant officer is responsible for submitting NASA Form 507 for all grant actions.

§ 1260.602 Committee on Academic Science and Engineering (CASE) report (NASA Form 1356).

For grants awarded to educational institutions, NASA Form 1356 is submitted with funded procurement requests. In the case of certain non-funded actions for educational institutions, the NASA Form 1356 is initiated by the grant officer.

§ 1260.603 Federal cash transactions report (SF 272).

The SF 272 shall be submitted by the grantee within 15 working days following the end of each Federal fiscal quarter, as a condition of receiving advance payments, in accordance with instructions to be provided by the financial management office of the Installation which issued the grant. Any questions regarding payment should be directed to the financial management officer of that Installation.

§ 1260.604 Inventory listings of equipment.

As provided in § 1260.408(h) of this part 1260, an annual inventory listing of Government furnished equipment will be submitted by July 31 of each year. The listing shall include the information specified in § 1260.507(a)(1) and beginning and ending dollar value totals for the reporting period. Upon receipt of each annual inventory listing, the administrative grant officer will provide 1 copy to the NASA installation financial management officer and 1 copy to the NASA installation industrial property officer. A final inventory report of Government furnished equipment and grantee acquired equipment is due 60 days after the end of the grant, in accordance with § 1260.408(h). Upon receipt of the final inventory report, the administrative grant officer will provide 1 copy to the technical officer and 1 copy to the NASA Installation industrial property officer.

§ 1260.605 Performance reports, summaries of research, and other final reports.

(a) Three copies of a performance report, including a concise statement of the research accomplished during the report period, shall be submitted for every year of the grant (except the final year) and is due 60 days before the anniversary date of the grant. At the specific request of the technical officer, this requirement may be modified by use of the special condition entitled "Reports Substitution" (see § 1260.422(g)).

(b) By 90 days after the expiration date of the grant, the grantee shall submit three copies of a summary of research which summarizes the results of the entire project. Citation of

publications resulting from the research, or abstracts thereof, may serve as all or part of this summary of research. In addition, the grantee will report to NASA whether or not any inventions, required to be reported under the grant, have been made in the performance of work thereunder.

(c) A properly certified final Federal cash transactions report, SF 272, is required from the grantee for each grant as provided in § 1260.511(b)(3).

(d)(1) Failure to provide a required grant report can result in: The agency and the public being denied information about grant activities; agency officials having less information for making decisions based on the grant; grant closeout being delayed; and confidence being undermined that the grantee will follow requirements under other grants. Consistent with OMB Circular No. A–110, NASA does not withhold payment under grants, for the purpose of ensuring receipt of reports, until a grantee's failure to provide a required report indicates a need for withholding payment.

(2) Because NASA grants provide for advance payments, the circumstances under which NASA grant officers can withhold payment are limited. The grantee has an opportunity to be paid all of the funds before final reports are due. At this point, it is usually too late to withhold payment under the grant for overdue final reports. When a report is more than 90 days overdue, the NASA grant officer can include the special condition for withholding payment in the grant with the overdue report only if the grant is being supplemented with additional funds, and can also include the special condition in other grants that are being awarded or supplemented.

(3) To ensure receipt of reports and summaries of research from any grantee that has failed to comply with Federal reporting requirements for a period longer than 90 days, the NASA grant officer will take, but not to be limited to, the following action: when awarding a new grant or supplementing an existing grant, include the special condition at § 1260.422(h). The special condition instructs the financial management office to withhold from the last payment a dollar amount pending receipt of the satisfactorily completed summary of research and other final reports identified in § 1260.511(b). The NASA grant officer shall insert in the special condition a dollar amount for withholding that is not more than five percent of the dollar value of the first year of the grant.

(4) The grant officer may waive the withholding requirement for any grant when the grantee has taken corrective action that makes withholding unnecessary. To release for payment the amount withheld, the NASA grant officer shall use a memorandum substantially as shown in Exhibit C as listed in the appendix to this part 1260.

§ 1260.606 Disclosure of lobbying activities (SF LLL).

(a) Grant officers shall provide one copy of each SF LLL furnished under 14 CFR 1271.110 to the Procurement Officer for transmittal to the Director, Procurement Systems Division (Code HM).

(b) Suspected violations of the statutory prohibitions implemented by 14 CFR part 1271 shall be reported to the Director, Procurement Policy Division (Code HP).

§ 1260.607 Debarment and suspension.

The Director, Procurement Policy Division (Code HP) shall provide to the General Services Administration information concerning all NASA debarments, suspensions, determinations of ineligibility, and voluntary exclusions of persons in accordance with 14 CFR 1265.505.

Appendix to Part 1260—Listing of Exhibits

Exhibit A—Delegation of Administration

Figure 1—General

Exhibit A—Delegation of Administration

Figure 2—Property Administration and Plant Clearance

Exhibit A—Delegation of Administration

Figure 3—Close-Out

Exhibit A—Delegation of Administration

Figure 4—Memorandum of Agreement

Exhibit B—Formats

Figure 1—Research Grant

Exhibit B—Formats

Figure 2—Cooperative Agreement

Exhibit C—Release of Withholding

The preceding exhibits are included in the NASA Research Grant Handbook which may be obtained as set forth in § 1260.104(b).

[FR Doc. 93–25254 Filed 10–15–93; 8:45 am]
BILLING CODE 7510–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 346 and 381

[Docket No. RM92–17–001]

Elimination of Certain Filing Fees

Issued October 12, 1993.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule; Order denying rehearing.

SUMMARY: On January 4, 1993, the Federal Energy Regulatory Commission adopted a final rule that amends the Commission's regulations by eliminating certain filing fees. ANR Pipeline Company and Colorado Interstate Gas Company filed a joint request for rehearing of the final rule. The Commission is denying the request for rehearing.

EFFECTIVE DATE: The order on rehearing is effective October 12, 1993.

FOR FURTHER INFORMATION CONTACT: Alan M. Briskin, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 208–0457.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission has made this document available so that all interested persons may inspect or copy its contents during normal business hours in room 3104, 941 North Capitol Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200, 2400 baud, full duplex, no parity, 8 data bits and 1 stop bit. The full text of this document will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3104, 941 North Capitol Street NE., Washington, DC 20426.

[Order No. 548–A]

Order Denying Rehearing

Issued October 12, 1993.

Before Commissioners: Elizabeth Anne Moler, Chair; Vicky A. Bailey, James J. Hoecker, William L. Massey, and Donald F. Santa, Jr.

I. Introduction and Background

On January 4, 1993, the Commission issued Order No. 548 eliminating certain filing fees from parts 346 and 381 of the Commission's regulations.[1] ANR Pipeline Company and Colorado Interstate Gas Company (ANR and CIG or requesters) filed a timely joint request for rehearing. The request for rehearing does not raise any new issues of fact, law, or policy that ANR and CIG did not previously raise in their comments filed in response to the Notice of Proposed Rulemaking.[2] The Commission fully considered and addressed these comments in Order No. 548. For the reasons stated there and discussed further below, the Commission denies rehearing.

II. Discussion

A. The Commission's Decision To Eliminate Certain Filing Fees Is Supported by Substantial Evidence

ANR and CIG argue that the Commission did not provide adequate justification for eliminating certain filing fees. The Commission disagrees. In its Notice of Proposed Rulemaking and in the Final Rule (Order No. 548), the Commission explained its reasons for eliminating most filing fees and recovering costs associated with these filings through annual charges. The Commission observed that this approach will simplify the filing process and expedite the consideration of filings and enhance certainty for jurisdictional companies because fees for specific types of regulatory action are, by their nature, subject to greater fluctuation than is a single annual charge based on a pro rata share of the Commission's costs for an entire regulatory program. It will also encourage jurisdictional companies to make filings purely on the basis of their assessment of market and competitive factors, since the presence of fees and the varying amounts of fees will no longer create artificial incentives to take or avoid certain actions or to make one type of filing rather than another. Further, it will lower some of the Commission's administrative costs. The Commission also emphasized that these benefits would not be counterbalanced by burdensome increases in annual charges. The elimination of the fees will not result in additional Commission revenues. The same level of expenses will be recouped so that any increase in annual charges will be offset by a corresponding decrease in the revenues otherwise collected through filing fees.

The claim of ANR and CIG that the Commission has failed to articulate a reasoned basis for its decision ignores most of these specific findings. Moreover, to the extent ANR and CIG challenge specific Commission findings, they rely on an evidentiary standard that is inapplicable to general policy rulemaking and for which they offer no legal support.

For example, the Commission, as noted, concluded that the elimination of filing fees would remove artificial incentives for companies to take or avoid certain actions based on the regulatory fees associated with those actions, and observed that the elimination of such artificial incentives was especially desirable as energy companies are expected to operate in an increasingly competitive environment. The Commission also cited specific complaints by certain public utilities that filing fees discouraged them from engaging in economically efficient sales to the public. ANR and CIG do not dispute the Commission's rationale but complain that it was not based on cost and revenue study data.

ANR and CIG have failed to identify what relevant information such a study would produce. The Commission is not aware of any basis in law or logic to require a cost and revenue study to support judgmental and predictive determinations of the kind involved here, and ANR and CIG have offered none. See *FCC* v. *National Citizens Committee for Broadcasting*, 436 U.S. 775, 814 (1978).

Next, requesters dispute the Commission's conclusions about the financial impact of the proposal on jurisdictional companies, but their arguments support rather than vitiate those conclusions. Specifically, the Commission found that, while in any given year a particular pipeline or public utility may face a higher or lower increase in annual charges than it saves through the elimination of fees, in the long run these increases and savings should balance out. Moreover, even in the short term, no company faces the kind of increases that could substantially affect its financial condition or ability to compete.

Requesters point to the Commission's recognition in the Final Rule that annual charges for individual gas companies would have risen by as much as $469,396 under the new rule in 1992. However, this in no way undermines the Commission's conclusions. First, the $469,396 increase was the highest in a range of increases starting at $17. Equally important, these figures ignore savings resulting from the elimination of filing fees. Requesters claim that the rule's net effect on ANR (considering both increased annual charges and eliminated fees) would have been to raise costs by $167,419 in 1992 or an average of $208,132 over the 1990–1992 period. Assuming these numbers are accurate, they are entirely consistent with the Commission's recognition that for any particular company annual charge increases may well exceed savings in filing fees in the short term. But for gas companies as a group, increased annual charges will be balanced by filing fee savings. (It is noteworthy, for example, that while ANR and CIG mention ANR's increased costs, they are silent about the impact on CIG, which would have saved $53,063 under the new rule in 1992.) Moreover, the annual increases claimed by ANR represent a small fraction of its revenues and could not substantially affect its financial condition or ability to compete, as the Commission found. Finally, annual charge payments to the Commission are properly included as a regulatory expense in the rates a pipeline charges its customers, just as have been the filing fees paid by pipelines.

In short, while requesters couch their argument in the form of a claim that the Commission has not provided an adequate explanation for its decision, the Commission has in fact provided an adequate justification for a policy determination with which requesters happen to disagree. The fact that they disagree with the Commission's judgment is not a sound basis for overturning it. The United States Court of Appeals for the District of Columbia Circuit has held that "the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence." *Consolidated Gas Transmission Corp.* v. *FERC*, 771 F.2d 1536 (1985) (quoting *Consolo* v. *FMC*, 383 U.S. 607, 620 (1966)).

B. The Requesters' Claim That the Commission Must Assess Regulatory Costs in Proportion to the Regulatory Activity of Jurisdictional Companies Is an Invalid Attack on Annual Charges, Per Se

ANR and CIG repeat the argument that regulated companies should be required to pay only the costs associated with their individual filings. This argument amounts to an attack on

[1] 58 FR 2968 (Jan. 7, 1993), III FERC Stats. & Regs. ¶ 30,960 (Jan. 4, 1993).

[2] 57 FR 48005 (Oct. 21, 1992), IV FERC Stats. & Regs. ¶ 32,488 (Oct. 15, 1992).

annual charges as such. Under the Omnibus Budget Reconciliation Act of 1986 (OBRA), the Commission is expressly authorized to collect annual charges to recover all of its costs, including costs not related to a particular jurisdictional company's regulatory filings. The Commission allocates the costs of a particular program to individual companies on the basis of the volumes of gas they sell or transport, their jurisdictional electricity transactions, oil pipeline revenues, or hydropower capacity and generation. This approach accords with the expectations of Congress reflected in the Conference Report accompanying the OBRA legislation [3] and has been affirmed by the courts.[4] Requesters' insistence that the Commission is limited by law to recovering from a jurisdictional company only the costs engendered by that company's own regulatory filings ignores both OBRA and the judicial decisions sustaining it. The Commission's policy reasons for removing most filing fees have already been discussed above and in the earlier Commission order and require no further comment.

C. The Annual Charges Mechanism

ANR and CIG further argue that the Commission did not consider their suggestions for alternative methods to implement Order No. 548, as provided in their comments.[5] These alternative methods involve changes in the annual charges regulation (18 CFR part 382), which are beyond the scope of this rulemaking. The Commission will address questions concerning annual charges in a future rulemaking. That rulemaking will take into account the comments that were filed by all commenters in this case and will seek additional comments from entities that are affected by the Commission's annual charges assessments.

For all these reasons, the request for rehearing of the Final Rule adopted in Order No. 548 is denied.

[3] Joint Explanatory Statement of the Committee of Conference to Accompany H.R. 5300. H.R. Rep. No. 1012, 99th Cong., 2d Sess. 238, reprinted in 1988 U.S.C.C.A.N. 3607, 3883, 3884.

[4] Skinner v. Mid-America Pipeline Co., 490 U.S. 212 (1989) (upheld user fees, similar to the Federal Energy Regulatory Commission's annual charges, that are assessed based upon the usage, in reasonable relationship to volume-miles, miles, revenues, or an appropriate combination thereof for industry self-regulation as a fair allocation of the cost for regulation); INGAA v FERC, No. 87-1570 (D.C. Cir. filed Oct. 9, 1987) (voluntarily dismissed June 5, 1989, based on the decision in Skinner v. Mid-America Pipeline Co., 490 U.S. 212 (1989)).

[5] III FERC Stats. & Regs. at pp. 30,751-30,752.

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93-25486 Filed 10-15-93; 8:45 am]

BILLING CODE 6717-01-M

TENNESSEE VALLEY AUTHORITY

18 CFR Part 1301

Freedom of Information Act

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Final rule.

SUMMARY: The Tennessee Valley Authority is amending its Freedom of Information Act (FOIA) regulations to more accurately reflect its direct reasonable operating costs in searching for and reviewing records requested under the Freedom of Information Act.

DATES: The regulations are effective October 18, 1993. The new rates apply to all requests received after October 18, 1993.

FOR FURTHER INFORMATION CONTACT: Mark R. Winter, Tennessee Valley Authority, 1101 Market Street (BR 6B), Chattanooga, TN 37402-2801, telephone number: (615) 751-2523.

SUPPLEMENTARY INFORMATION: On April 5, 1993 (58 FR 17553), TVA gave notice of its intention to amend its FOIA regulations. One comment was received from the public in response to this notice. The commenter expressed concern that imposition of the new rate structure would restrict citizens' access to public information.

TVA recognizes that the new rate structure may affect certain individuals who request information under the Freedom of Information Act. However, the rates are consistent with the fee schedule guidelines that define the "direct costs" permitted to be recovered under the FOIA.

TVA is therefore amending 18 CFR 1301.2(c)(1) to more accurately reflect its direct reasonable operating costs in searching for and reviewing records requested under the Freedom of Information Act. The rates reflect an average rate for the range of TVA pay grades typically involved in responding to Freedom of Information Act requests. For time spent by clerical employees, the charge is currently $8.35 per hour. For time spent by supervisory and professional employees, the charge is currently $19.75 per hour. TVA is amending the charges to $10.10 per hour and $32.20 per hour, respectively. In conformance with section (a)(4)(A)(iv) of the Freedom of Information Act, as amended, TVA is also amending 18 CFR 1301.2(d)(2) by reducing the amount of search time that will be provided without charge from 4 hours to 2 hours.

List of Subjects in 18 CFR Part 1301

Administrative practice and procedure, Freedom of Information, Privacy Act, Sunshine Act.

For the reasons set forth in the preamble, title 18, chapter XIII, part 1301 of the Code of Federal Regulations is amended as follows:

PART 1301—PROCEDURES

Subpart A—[Amended]

1. The authority citation for subpart A of part 1301 continues to read as follows:

Authority: 16 U.S.C. 831-831dd; 5 U.S.C 552.

2. Section 1301.2 is amended by revising paragraph (c)(1) and the first sentence of paragraph (d)(2) to read as follows:

§ 1301.2 Schedule of fees.

* * * * *

(c) * * *

(1) *Search time charges for other than computer searches.* For time spent by clerical employees in searching files, the charge is $10.10 per hour. For time spent by supervisory and professional employees, the charge is $32.20 per hour.

* * * * *

(d) * * *

(2) Except for documents provided in response to a commercial use request, the first 100 pages and the first 2 hours of search time will be provided without charge. * * *

* * * * *

William S. Moore,

Manager, Information Support Services.

[FR Doc. 93-25383 Filed 10-15-93; 8:45 am]

BILLING CODE 8120-08-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8492]

RIN 1545-AQ95

Bank Bad Debts, Conclusive Presumption

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final regulations that clarify the scope of the express determination that is required under § 1.166–2(d)(3) in order for a bank to elect to use a method of accounting that conforms tax accounting for bad debts to regulatory accounting (conformity election). Section 1.166–2(d)(3) provides a conclusive presumption that debts charged off for regulatory purposes are worthless for tax purposes. The final regulations affect banks that have made or intend to make an election under § 1.166–2(d)(3).

DATES: These regulations are effective October 18, 1993.

These regulations apply to taxable years ending on or after December 31, 1991.

FOR FURTHER INFORMATION CONTACT: Craig Wojay, 202–622–3920 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On October 2, 1992, the Internal Revenue Service published in the **Federal Register** (57 FR 45568) a notice of proposed rulemaking that, by cross reference to temporary regulations, proposed to amend § 1.166–2(d)(3) of the income tax regulations to clarify the scope of the express determination requirement in § 1.166–2(d)(3)(iii)(D). The language of the uniform express determination letter set forth in Rev. Proc. 92–18, 1992–1 C.B. 684, required similar clarification. Accordingly, Rev. Proc. 92–18 was modified and superseded by Rev. Proc. 92–84, 1992–2 C.B. 489. The revisions did not alter the intended scope of the express determination requirement.

In addition, an amendment to the transition rules in § 1.166–2(d)(3)(iii)(E) of the regulations was proposed because a bank may have been unable to obtain an express determination letter in connection with a Federal supervisory examination of its loan review process that occurred after December 31, 1991, and before October 2, 1992. Extension of the transitional period for which a bank may make the conformity election without an express determination would prevent the automatic revocation under § 1.166–2(d)(3)(iv) of an election made by a bank for its 1991 taxable year in reliance on the regulations.

No public hearing on these regulations was requested or held, but written comments were received. After consideration of the written comments, the temporary regulations are adopted as modified by this Treasury decision.

Explanation of Provisions

Section 1.166–2(d)(3) of the regulations permits supervised banks to elect a method of accounting under which their debts generally are conclusively presumed to be worthless for Federal income tax purposes when the debts are charged off for regulatory purposes. One of the requirements for this "conformity presumption" is that the bank obtain an express determination letter from its supervisory authority in connection with the most recent examination involving the bank's loan review process.

Prior to the temporary regulations, § 1.166–2(d)(3)(iii)(D) required an express determination by a bank's supervisory authority that the bank maintains and applies loan review and loss classification standards that are consistent with those of its supervisory authority. Transitional rules in §§ 1.166–2(d)(3)(iii)(E) and 1.166–2(d)(3)(iv)(C)(*2*) permitted a bank to make an election to use the conformity presumption without an express determination letter for taxable years ending on or after December 31, 1991, and before completion of the first examination involving the bank's loan review process that is after December 31, 1991, provided certain requirements are satisfied.

After the regulations were finalized, a notice of proposed rulemaking by cross reference to temporary regulations was published to alleviate concerns pertaining to the scope of the express determination requirement in § 1.166–2(d)(3). The final regulations contained in this document amend § 1.166–2(d)(3) to require that a bank's supervisory authority expressly determine that the bank maintains and applies "loan loss classification standards," rather than "loan review and loss classification standards" that are consistent with regulatory standards. See § 1.166–2(d)(3)(iii)(D). In addition, the transition rules in § 1.166–2(d)(3) are being amended to allow a bank to make the conformity election without an express determination letter until its first examination (involving the loan review process) that is after October 1, 1992, rather than December 31, 1991. See § 1.166–2(d)(3)(iii)(E) and (d)(3)(iv)(C)(*2*). Therefore, a bank that made the conformity election for its first taxable year ending on or after December 31, 1991, is not required to obtain an express determination letter until the completion of its first Federal examination that is after October 1, 1992, regardless of possible intervening examinations between December 31, 1991, and October 2, 1992.

Three comments were received on the regulations. The first comment requested relief for any bank that, because of the delay in resolving issues related to the express determination letters, did not make a conformity election for a taxable year ending on or after December 31, 1991.

In response to this comment, the Service is releasing concurrently with these regulations Notice 93–50, to be published in Internal Revenue Bulletin No. 1993–34, November 1, 1993, which allows certain banks, on an amended return for a taxable year ending on or after December 31, 1991, to elect to use the conformity method of accounting. The Notice prescribes a period of time in which the election may be made.

The second comment raised the concern that small State-chartered banks may not be able to rely on the conformity presumption for tax years in which they are examined by State banking agencies. Although a small State-chartered bank may not be examined by a Federal banking agency on an annual basis, this does not prejudice the bank's eligibility to use the conformity presumption. Section 1.166–2(d)(3)(iii)(D) requires an express determination letter only upon an examination of a bank's loan review process by a Federal banking agency. When the letter is issued, it covers all tax years until the next such Federal examination. Although a bank may be examined by its State banking authority in an intervening year, the bank is not required to obtain a new determination letter from that authority.

The final comment requested that the conformity presumption be extended to debts that are classified as substandard or doubtful, rather than limited to debts that are classified as loss. This issue was carefully considered during the drafting of the final regulations under § 1.166–2(d)(3), which were published in the **Federal Register** on February 24, 1992 (57 FR 6291), and was not adopted for the reasons expressed at that time. Moreover, this issue is beyond the scope of this regulation project.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of

proposed rulemaking for the regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Craig Wojay, Office of the Assistant Chief Counsel (Financial Institutions and Products), Internal Revenue Service. However, other personnel from the Service and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.166–2 is amended by revising paragraphs (d)(3)(iii)(D), (d)(3)(iii)(E), and (d)(3)(iv)(C)(*2*) to read as follows:

§ 1.166–2 Evidence of worthlessness.

* * * * *

(d) * * *
(3) * * *
(iii) * * *

(D) *Express determination requirement.* In connection with its most recent examination involving the bank's loan review process, the bank's supervisory authority must have made an express determination (in accordance with any applicable administrative procedure prescribed hereunder) that the bank maintains and applies loan loss classification standards that are consistent with the regulatory standards of that supervisory authority. For purposes of this paragraph (d)(3)(iii)(D), the supervisory authority of a bank is the *appropriate Federal banking agency* for the bank, as that term is defined in 12 U.S.C. 1813(q), or, in the case of an institution in the Farm Credit System, the Farm Credit Administration.

(E) *Transition period election.* For taxable years ending before completion of the first examination of the bank by its supervisory authority (as defined in paragraph (d)(3)(iii)(D) of this section) that is after October 1, 1992, and that involves the bank's loan review process, the statement or Form 3115 filed by the bank must include a declaration that the bank maintains and applies loan loss classification standards that are consistent with the regulatory standards of that supervisory authority. A bank that makes this declaration is deemed to satisfy the express determination requirement of paragraph (d)(3)(iii)(D) of this section for those years, even though an express determination has not yet been made.

(iv) * * *
(C) * * *

(*2*) *Year of revocation.* If a bank makes the conformity election under the transition rules of paragraph (d)(3)(iii)(E) of this section and does not obtain the express determination in connection with the first examination involving the bank's loan review process that is after October 1, 1992, the election is revoked as of the beginning of the taxable year of the election or, if later, the earliest taxable year for which tax may be assessed. In other cases in which a bank does not obtain an express determination in connection with an examination of its loan review process, the election is revoked as of the beginning of the taxable year that includes the date as of which the supervisory authority conducts the examination even if the examination is completed in the following taxable year.

* * * * *

Par. 3. Section 1.166–2T is removed.

Approved: August 19, 1993.

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved:

Samuel Y. Sessions,
Acting Assistant Secretary of the Treasury.

[FR Doc. 93–25393 Filed 10–15–93; 8:45 am]
BILLING CODE 4830–01–U

DEPARTMENT OF JUSTICE

Office of the Pardon Attorney

28 CFR Part 1

[AG Order No. 1798–93]

Rules Governing Petitions for Executive Clemency

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The regulations governing petitions for executive clemency describe the procedures involved in petitioning the President for executive clemency and the responsibility of the Attorney General in investigating each application for clemency and advising the President as to its disposition. This order republishes the present clemency regulations in their entirety, as initially published in the **Federal Register** on May 18, 1983, 48 FR 22290–22291, with amendments relating to the eligibility requirements for filing pardon and commutation petitions, and certain other amendments. Section 1.2 has been revised to require a single five-year minimum waiting period for all offenses, and also has been amended to exclude language making reference to the waiver of the waiting period in the cases of aliens seeking to avoid deportation. Further, individuals on supervised release have been added to the excluded class identified in the last sentence in the section. Similarly, individuals on probation and supervised release have been added to the last sentence in § 1.7. Editorial revisions have been made in § 1.3 to update and clarify the "exhaustion of other available remedies" requirement for the consideration of a clemency petition, and the phrase "unusual circumstances" (and specific examples thereof) has been eliminated as unnecessary. Certain language in §§ 1.1, 1.6, 1.7, and 1.9 has been edited to correct and clarify gender references. Existing § 1.8(b) has been amended to exclude capital cases from its coverage. Nonsubstantive editorial changes have been made in §§ 1.1. and 1.2.

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not considered to be a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have federalism implications warranting the preparation of a federalism assessment in accordance with section 6 of E.O. 12612.

EFFECTIVE DATE: October 18, 1993.

FOR FURTHER INFORMATION CONTACT: Margaret Colgate Love, United States Pardon Attorney, 500 First Street NW., 7th Floor, Washington, DC 20530. Telephone (202) 616–6070.

List of Subjects in 28 CFR Part 1

Clemency.

With the approval of the President, acting in conformity with his authority as Chief Executive and Article II, Section 2, United States Constitution, and by virtue of the authority vested in me by 28 U.S.C. 509, 510, and 5 U.S.C. 301, part 1 of chapter I of title 28 of the Code of Federal Regulations is revised to read as follows:

PART 1—EXECUTIVE CLEMENCY

Sec.
1.1 Submission of petition; form to be used; contents of petition.

Sec.
1.2 Eligibility for filing petition for pardon.
1.3 Eligibility for filing petition for commutation of sentence.
1.4 Offenses against the laws of possessions or territories of the United States.
1.5 Disclosure of files.
1.6 Consideration of petitions; recommendations to the President.
1.7 Notification of grant of clemency.
1.8 Notification of denial of clemency.
1.9 Delegation of authority.
1.10 Advisory nature of regulations.

Authority: U.S. Const., Art. II, sec. 2; authority of the President as Chief Executive; and 28 U.S.C. 509, 510.

§ 1.1 Submission of petition; form to be used; contents of petition.

A person seeking executive clemency by pardon, reprieve, commutation of sentence, or remission of fine shall execute a formal petition. The petition shall be addressed to the President of the United States and shall be submitted to the Pardon Attorney, Department of Justice, Washington, DC 20530, except for petitions relating to military offenses. Petitions and other required forms may be obtained from the Pardon Attorney. Petition forms for commutation of sentence also may be obtained from the wardens of federal penal institutions. A petitioner applying for executive clemency with respect to military offenses should submit his or her petition directly to the Secretary of the military department that had original jurisdiction over the court-martial trial and conviction of the petitioner. In such a case, a form furnished by the Pardon Attorney may be used but should be modified to meet the needs of the particular case. Each petition for executive clemency should include the information required in the form prescribed by the Attorney General.

§ 1.2 Eligibility for filing petition for pardon.

No petition for pardon should be filed until the expiration of a waiting period of at least five years after the date of the release of the petitioner from confinement or, in case no prison sentence was imposed, until the expiration of a period of at least five years after the date of the conviction of the petitioner. Generally, no petition should be submitted by a person who is on probation, parole, or supervised release.

§ 1.3 Eligibility for filing petition for commutation of sentence.

No petition for commutation of sentence, including remission of fine, should be filed if other forms of judicial or administrative relief are available, except upon a showing of exceptional circumstances.

§ 1.4 Offenses against the laws of possessions or territories of the United States.

Petitions for executive clemency shall relate only to violations of laws of the United States. Petitions relating to violations of laws of the possessions of the United States or territories subject to the jurisdiction of the United States should be submitted to the appropriate official or agency of the possession or territory concerned.

§ 1.5 Disclosure of files.

Petitions, reports, memoranda, and communications submitted or furnished in connection with the consideration of a petition for executive clemency generally shall be available only to the officials concerned with the consideration of the petition. However, they may be made available for inspection, in whole or in part, when in the judgment of the Attorney General their disclosure is required by law or the ends of justice.

§ 1.6 Consideration of petitions; recommendations to the President.

(a) Upon receipt of a petition for executive clemency, the Attorney General shall cause such investigation to be made of the matter as he/she may deem necessary and appropriate, using the services of, or obtaining reports from, appropriate officials and agencies of the Government, including the Federal Bureau of Investigation.

(b) The Attorney General shall review each petition and all pertinent information developed by the investigation and shall determine whether the request for clemency is of sufficient merit to warrant favorable action by the President. The Attorney General shall report in writing his or her recommendation to the President, stating whether in his or her judgment the President should grant or deny the petition.

§ 1.7 Notification of grant of clemency.

When a petition for pardon is granted, the petitioner or his or her attorney shall be notified of such action and the warrant of pardon shall be mailed to the petitioner. When commutation of sentence is granted, the petitioner shall be notified of such action and the warrant of a commutation shall be sent to the petitioner through the officer in charge of his or her place of confinement, or directly to the petitioner if he/she is on parole, probation, or supervised release.

§ 1.8 Notification of denial of clemency.

(a) Whenever the President notifies the Attorney General that he has denied a request for clemency, the Attorney General shall so advise the petitioner and close the case.

(b) Except in cases in which a sentence of death has been imposed, whenever the Attorney General recommends that the President deny a request for clemency and the President does not disapprove or take other action with respect to that adverse recommendation within 30 days after the date of its submission to him, it shall be presumed that the President concurs in that adverse recommendation of the Attorney General, and the Attorney General shall so advise the petitioner and close the case.

§ 1.9 Delegation of authority.

The Attorney General may delegate to any officer of the Department of Justice any of his or her duties or responsibilities under §§ 1.1 through 1.8.

§ 1.10 Advisory nature of regulations.

The regulations contained in this part are advisory only and for the internal guidance of Department of Justice personnel. They create no enforceable rights in persons applying for executive clemency, nor do they restrict the authority granted to the President under Article II, section 2 of the Constitution.

Dated: August 23, 1993.

Janet Reno,

Attorney General.

Dated: October 12, 1993.

Approved:

William J. Clinton,

President.

[FR Doc. 93–25462 Filed 10–15–93; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

Stabilization of Disability Evaluations

AGENCY: Department of Veterans Affairs.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the regulation of the Department of Veterans Affairs (VA) governing the stabilization of disability evaluations. The amendment will correct grammatical errors in the regulation and ensure that the regulation is clear and not subject to misinterpretation.

EFFECTIVE DATE: The effective date is February 24, 1961, the effective date of the original regulation.

FOR FURTHER INFORMATION CONTACT: Steven Thornberry, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 233–3005.

SUPPLEMENTARY INFORMATION: Section 3.344(a) of title 38 CFR provides procedures and guidelines for reviewing examination reports in order to produce the greatest possible degree of stability in disability evaluations, consistent with the pertinent laws and VA regulations. A recent review of the regulation uncovered two technical errors which could cause confusion and result in misapplication of the regulatory provisions. In one sentence an incorrectly placed comma has separated the words "bronchial asthma." In another sentence, the passive voice of the verb has been used where the active voice is required. This amendment corrects these deficiencies and restores the language of the regulation as it was originally published.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

For the reasons set forth in the preamble, 38 CFR part 3 is amended as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

§ 3.344 [Corrected]

2. In § 3.344(a), the fifth sentence, remove the "," between the words "bronchial" and "asthma"; in the seventh sentence, remove the words "be considered" and insert in their place the word "consider".

Approved: September 30, 1993.

B. Michael Berger,

Director, Records Management Service.

[FR Doc. 93–25519 Filed 10–15–93; 8:45 am]

BILLING CODE 8320-01-U

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–37

[FPMR Amendment G–101]

Government Aviation Administration and Coordination

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: This regulation contains changes concerning the documentation, approval, and use of Government aircraft. This action is necessary for compliance with the provisions of OMB Circular A–126, dated May 22, 1992, and OMB Bulletin Number 93–11, dated April 19, 1993. Implementation of this regulation will minimize the cost and improve the management and use of Government aviation resources.

EFFECTIVE DATE: October 18, 1993.

FOR FURTHER INFORMATION CONTACT: Larry Godwin, Aircraft Management Division (FBA), Federal Supply Service, General Services Administration, Washington, DC 20406 (703–305–6399).

SUPPLEMENTARY INFORMATION: The General Services Administration (GSA) has determined that this is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for and consequences of this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for notice and comment. Therefore, the Regulatory Flexibility Act does not apply.

List of Subjects in 41 CFR Part 101–37

Aircraft, Air transportation, Aviation, Government property management.

For the reasons set forth in the preamble, 41 CFR part 101–37 is amended as follows:

PART 101–37—GOVERNMENT AVIATION ADMINISTRATION AND COORDINATION

1. The authority citation for part 101–37 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)).

Subpart 101–37.4—Use of Government-Owned and Operated Aircraft

2. The subpart heading is revised as set forth above.

3. Section 101–37.400 is revised to read as follows:

§ 101–37.400 General.

The provisions of this subpart prescribe policies and procedures for the use of Government aircraft. This subpart incorporates certain provisions of OMB Circular A–126 and OMB Bulletin Number 93–11.

4. Section 101–37.401 is revised to read as follows:

§ 101–37.401 Definitions.

For purposes of this subpart, the following terms shall have the meanings set forth in this section.

Actual cost means all costs associated with the use and operation of an aircraft as specified in § 101–37.406(b).

Full coach fare means a coach fare available to the general public between the day that the travel was planned and the day the travel occurred.

Government aircraft means any aircraft owned, leased, chartered, or rented and operated by an executive agency.

Mission requirements mean activities that constitute the discharge of an agency's official responsibilities. Such activities include, but are not limited to, the transport of troops and/or equipment, training, evacuation (including medical evacuation), intelligence and counter-narcotics activities, search and rescue, transportation of prisoners, use of defense attaché-controlled aircraft, aeronautical research and space and science applications, and other such activities. Mission requirements do not include official travel to give speeches, to attend conferences or meetings, or to make routine site visits.

Official travel means travel for the purpose of mission requirements, required use travel, and other travel for the conduct of agency business.

Reasonably available means commercial airline or aircraft (including charter) is able to meet the traveler's departure and/or arrival requirements within a 24-hour period (unless the traveler demonstrates that extraordinary circumstances require a shorter period of time).

Required use means use of a Government aircraft for the travel of an executive agency officer or employee to meet bona fide communications or

security requirements of the agency or exceptional scheduling requirements. An example of a bona fide communications requirement is having to maintain continuous 24-hour secure communications with the traveler. Bona fide security requirements would include, but not be limited to, highly unusual circumstances which present a clear and present danger, such as threats which could endanger lives. Exceptional scheduling requirements could include emergencies and other operational considerations, which make commercial transportation unacceptable.

Senior executive branch official means civilian officials appointed by the President with the advice and consent of the Senate and civilian employees of the Executive Office of the President (EOP).

Senior Federal official means a person:

(1) Employed at a rate of pay specified in, or fixed according to, subchapter II of chapter 53 of title 5 of the United States Code;

(2) Employed in a position in an executive agency, including any independent agency, at a rate of pay payable for level I of the Executive Schedule or employed in the Executive Office of the President at a rate of pay payable for level II of the Executive Schedule;

(3) Employed in an executive agency position that is not referred to in paragraph (1) of this definition (other than a position that is subject to pay adjustment under 37 U.S.C. 1009) and for which the basic rate of pay, exclusive of any locality-based pay adjustment under 5 U.S.C. 5304 (or any comparable adjustment pursuant to interim authority of the President), is equal to or greater than the rate of the basic pay payable for the Senior Executive Service (5 U.S.C. 5382); or

(4) Appointed by the President to a position under 3 U.S.C. 105(a)(2) (A), (B), or (C) or by the Vice President to a position under 3 U.S.C. 106(a)(1) (A), (B), or (C). Generally, a senior Federal official is employed by the White House or an executive agency, including independent agencies, at a rate of pay equal to or greater than the minimum rate of basic pay for the Senior Executive Service. The term senior Federal official does not include an active duty military officer.

Space available means travel using aircraft capacity, that is already scheduled for use for an official purpose, that would otherwise be unutilized.

5. Section 101–37.402 is revised to read as follows:

§ 101–37.402 Policy.

Government aircraft shall be used for official purposes only in accordance with applicable laws and regulations, including this subpart.

(a) Use of Government aircraft. Agencies shall operate Government aircraft only for official purposes. Official purposes include the operation of Government aircraft for:

(1) Mission requirements, and

(2) Other official travel.

(b) Use of Government aircraft for official travel or on space available travel is subject to paragraphs (b)(1) and (2) of this section.

(1) Use of a Government aircraft for official travel other than required use travel or mission requirement travel; i.e., for the conduct of agency business, shall be authorized only when:

(i) No commercial airline or aircraft service (including charter) is reasonably available to fulfill effectively the agency's requirement; or

(ii) The actual cost of using a Government aircraft is not more than the cost of commercial airline or aircraft service (including charter). When a flight is made for mission requirements or required use travel (and is certified as such in writing by the agency which is conducting the mission), it is presumed that secondary use of the aircraft for other travel for the conduct of agency business will result in cost savings.

(2) Use of a Government aircraft on a space available basis is authorized only when:

(i) The aircraft is already scheduled for use for an official purpose;

(ii) Space available travel does not require a larger aircraft than needed for the already scheduled official purpose;

(iii) Space available use results in no, or only minor, additional cost to the Government; and

(iv) Reimbursement is provided as set forth in § 101–37.403 of this subpart.

(c) The Secretary of State, Secretary of Defense, Attorney General, Director of the Federal Bureau of Investigation, and the Director of Central Intelligence may use Government aircraft for travel other than:

(1) To meet mission requirements, or

(2) For the conduct of agency business, but only upon reimbursement at full coach fare and with authorization by the President or his designated representative on the grounds that a threat exists which could endanger lives or when continuous 24-hour secure communication is required.

6. Sections 101–37.403 through 101–37.408 are added as follows:

§ 101–37.403 Reimbursement for the use of Government aircraft.

A passenger transported by Government aircraft is required to reimburse the Government under the circumstances specified, and in the amount indicated, in paragraphs (a) through (d) of this section.

(a) For travel that is not required use travel:

(1) Any incidental private activities (personal or political) of an employee undertaken on an employee's own time while on official travel shall not result in any increase in the actual costs to the Government of operating the aircraft, and

(2) The Government shall be reimbursed the appropriate share of the full coach fare for any portion of the time on the trip spent on political activities (except as otherwise provided in paragraph (d) of this section).

(b) For required use travel (except as otherwise provided in paragraph (d) of this section).

(1) For a wholly personal or political trip, the Government shall be reimbursed the full coach fare for the trip,

(2) For an official trip during which the employee engages in political activities, the Government shall be reimbursed the appropriate share of the full coach fare for the entire trip, and

(3) For an official trip during which the employee flies to one or more locations for personal reasons, the Government shall be reimbursed the excess of the full coach fare of all flights taken by the employee on the trip over the full coach fare of the flights that would have been taken by the employee had there been no personal activities on the trip.

(c) For space available travel, whether on mission requirements or other flights, the Government shall be reimbursed at the full coach fare except:

(1) As authorized under 10 U.S.C. 4744 and regulations implementing that statute, and

(2) By civilian personnel and their dependents in remote locations not reasonably accessible to regularly scheduled commercial airline service.

(d) In any case of political travel, reimbursement shall be made in the amount required by law or regulation (e.g., 11 CFR 106.3) if greater than the amount otherwise required under paragraphs (a) through (c) of this section.

§ 101–37.404 Approving the use of Government aircraft for transportation of passengers.

(a) Use of agency aircraft for official travel may be approved only by the

agency head or official(s) designated by the agency head.

(b) Whenever a Government aircraft used to fulfill a mission requirement is used also to transport senior Federal officials, members of their families or other non-Federal travelers on a space available basis (except as authorized under 10 U.S.C. 4744 and regulations implementing that statute), the agency that is conducting the mission shall certify in writing prior to the flight that the aircraft is scheduled to perform a bona fide mission activity, and that the minimum mission requirements have not been exceeded in order to transport such space available travelers. In emergency situations, an after-the-fact written certification by the agency is permitted.

§ 101–37.405 Approving travel on Government aircraft.

Policy and practices under which travel on Government aircraft may be approved by the agency are specified in paragraphs (a) through (c) of this section.

(a) All travel on Government aircraft must have advance authorization by the sponsoring agency in accordance with its travel policies, OMB Circular A–126 and, when applicable, documented on an official travel authorization. Where possible, such travel authorization must be approved by at least one organizational level above that of the person(s) traveling. If review by a higher organizational level is not possible, another appropriate approval is required.

(b) All required use travel must have written approval on a trip-by-trip basis from the agency's senior legal official or the principal deputy, unless:

(1) The President has determined that all travel or travel in specified categories by an agency head is qualified as required use travel, or

(2) The agency head has determined that all travel or travel in specified categories by an officer or employee other than the agency head, is qualified as required use travel.

(i) Any determination by an agency head that travel by an officer or employee of that agency qualifies as required use travel must be in writing and set forth the basis for that determination. In emergency situations an after-the-fact written certification by an agency is permitted.

(ii) An agency head opting to determine that travel by an officer or employee may be required use travel shall establish written standards for determining when required use travel is permitted. Such travel shall not be permitted unless the travel is in conformance with the written standards.

(c) All travel by senior Federal officials, family members of senior Federal officials, and non-Federal travelers that is not to meet mission requirements or required use travel must be authorized in advance and in writing.

(1) Such authorization must be approved on a trip-by-trip basis and must be signed by the agency's senior legal official or the principal deputy, or be in conformance with an agency review and approval system that has been approved by the Office of Management and Budget (OMB). In emergency situations, an after-the-fact written certification by an agency is permitted.

(2) In addition to the provisions of this subpart, Federal employees on official travel shall be subject to all other applicable travel rules and regulations. Travel by such individuals that is not official travel, for purposes of this subpart, is subject to the reimbursement requirements in § 101–37.403(c) of this subpart for space available travel.

§ 101–37.406 Justification of the use of Government aircraft for transportation of passengers.

(a) The cost comparison justifying the use of a Government aircraft for a proposed trip as required by § 101–37.402(b)(1)(ii) of this subpart should be made prior to authorizing the use of the aircraft for that trip. Standard trip cost justification schedules developed by agencies may be used for this purpose. Agencies that are not able to use such schedules are required to conduct a cost justification on a case-by-case basis.

(b) When conducting a cost comparison, the agency must compare the actual cost of using a Government aircraft to the cost of using a commercial aircraft (including charter) or airline service. The actual cost of using a Government aircraft is either:

(1) The amount that the agency will be charged by the organization that provides the aircraft,

(2) The variable cost of using the aircraft, if the agency operates its own aircraft, or

(3) The variable cost of using the aircraft as reported by the owning agency, if the agency is not charged for the use of an aircraft owned by another agency.

(c) The cost of using commercial airline or aircraft services for the purpose of justifying the use of Government aircraft:

(1) Must be the current Government contract fare or price, or the lowest fare or price available for the trip(s) in question,

(2) Must include, as appropriate, any differences in the cost of ground travel, per diem and miscellaneous travel (e.g., taxis, parking, etc.), and lost employees' work time (computed at gross hourly costs to the Government, including benefits), between using Government aircraft and commercial aircraft services, and

(3) Must include only the costs associated with passengers on official business. Costs associated with passengers traveling on a space available basis may not be used in the cost comparison.

§ 101–37.407 Documentation.

All uses of Government aircraft must be documented, and this documentation must be retained for at least 2 years by the aircraft operations manager. The documentation of each use of Government aircraft must include the information specified in paragraphs (a) through (g) of this section:

(a) Aircraft registration number (the registration number assigned by the Federal Aviation Administration or military-designated tail number);

(b) Purpose of the flight (the mission the aircraft was dispatched to perform);

(c) Route(s) flown;

(d) Flight date(s) and times;

(e) Name of each traveler;

(f) Name(s) of the pilot(s) and aircrew;

(g) When Government aircraft are used to support official travel, the documentation must also include evidence that § 101–37.408 and other applicable provisions of this FPMR have been satisfied.

§ 101–37.408 Reporting travel by senior Federal officials.

Agencies shall submit semi-annual reports for the periods October 1 through March 31 (due May 31), and April 1 through September 30 (due November 30) to the General Services Administration, Aircraft Management Division (FBA), Washington, DC 20406. A copy of each report shall also be submitted to the Assistant Director for General Management, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503. Agencies shall submit report data using the Federal Aviation Management System (FAMIS) structure and management codes for automated reporting or GSA Form 3641, Senior Federal Travel. These reports shall be disclosed to the public upon request unless classified.

(a) Reports shall include data on all non-mission travel by senior Federal officials on Government aircraft

(including those senior Federal officials acting in an aircrew capacity when they are also aboard the flight for transportation), members of the families of such officials, any non-Federal travelers (except as authorized under 10 U.S.C. 4744 and regulations implementing that statute), and all mission and non-mission travel for senior executive branch officials. The reports shall include:

(1) The names of the travelers;

(2) The destinations;

(3) The corresponding commercial cost had the traveler used commercial airline or aircraft service (including charter);

(4) The appropriate allocated share of the full operating cost of each trip;

(5) The amount required to be reimbursed to the Government for the flight;

(6) The accounting data associated with the reimbursement; and

(7) The data required by § 101–37.407 (a), (b) and (d) of this subpart.

(b) Each agency is responsible for reporting travel by personnel transported on aircraft scheduled by that agency.

(c) The agency using the aircraft must also maintain the data required by this section for classified trips. This information shall not be reported to GSA or OMB but must be made available by the agency for review by properly cleared personnel.

Dated: June 18, 1993.

Julia Stasch,

Acting Administrator of General Services.

[FR Doc. 93–25387 Filed 10–15–93; 8:45 am]

BILLING CODE 6820–24–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 90–571; FCC 93–463]

Telecommunications Relay Services (TRS)

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Second Order on Reconsideration and Fourth Report and Order (Fourth R&O) approves the TRS Interim Fund Administrator's payment formula, fund size, and payment schedule for the interstate TRS Fund. This action is pursuant to requirements of the Americans with Disabilities Act of 1990 (ADA) which, among other things, amended Title II of the Communications Act of 1934 by adding section 225, and will have the effect of implementing an effective cost recovery program for interstate TRS costs.

EFFECTIVE DATE: October 18, 1993.

FOR FURTHER INFORMATION CONTACT: Linda Dubroof, Domestic Facilities Division, Common Carrier Bureau, (202) 634–1808, or James Lande, Industry Analysis Division, Common Carrier Bureau, (202) 632–1371.

SUPPLEMENTARY INFORMATION: This summarizes the Commission's Fourth R&O adopted September 28, 1993, and released September 29, 1993, in the matter of Telecommunications Relay Services, and the Americans with Disabilities Act of 1990, Second Order on Reconsideration and Fourth Report and Order (CC Docket 90–571, FCC 93–463). The Fourth R&O and supporting file are available for inspection and copying during the weekday hours of 9 a.m. to 4:30 p.m. in the FCC Reference Center, room 239, 1919 M St., NW., Washington, DC, or copies may be purchased from the Commission's duplicating contractor, ITS, Inc., 2100 M St., Suite 140, Washington DC 20037, phone (202) 857–3800. The Fourth R&O will be published in the FCC Record.

Analysis of Proceeding

In the Report and Order and Request for Further Comments, 6 FCC Rcd 4657 (1991), (56 FR 36729, August 1, 1991), the Commission revised Subpart F of part 64 of the rules to implement the ADA. The amended rules require each common carrier providing telephone voice transmission services to provide TRS not later than July 26, 1993, throughout the area in which it offers services. Carriers may provide services individually, through designees, through a competitively selected vendor, or in concert with other carriers. The Commission also fashioned a comprehensive set of rules which set forth terminology and definitions of TRS, prescribe operational, technical, and functional minimum standards of all TRS providers, and delineate the state certification process. Specifically, the Commission's rules require that TRS shall be capable of handling any type of call normally provided by common carriers. The burden of proving the infeasibility of handling any type of call is on the carriers. With regard to confidentiality, the Commission's rules require that, consistent with the obligations of common carrier operators, TRS communications assistants (CAs) are prohibited from disclosing the content of any relayed conversation regardless of content. Furthermore, the Commission, noting that the record was not adequate to determine a specific cost recovery mechanism, sought specific proposals on interstate cost recovery.

In an Order on Reconsideration, Second Report and Order, and Further Notice of Proposed Rulemaking, 8 FCC Rcd 1802 (1993), (58 FR 12175, Mar. 3, 1993; 58 FR 12204, Mar. 3, 1993) (TRS II), the Commission proposed rules tasking the National Exchange Carrier Association, Inc. (NECA) with the responsibility for administering the shared-funding plan, but the Commission invited other proposals. Under the proposed rules, the Administrator's performance would be reviewed after an initial two-year period.

In a Third Report and Order, 8 FCC Rcd 5300 (1993), (58 FR 39671, July 26, 1993) (Third R&O), the Commission adopted rules implementing the TRS Fund, a shared-funding mechanism to recover interstate TRS costs. The Commission, in that Third R&O, determined that the TRS Fund will be administered for two years, on an interim basis, by NECA. The Third R&O also clarified the Commission's proposed rule defining "interstate" service and set forth a method of calculating contributions to, and payments from, the TRS Fund. The Commission affirmed that contributions shall be based on each interstate service provider's relative share of gross interstate revenues, and that interstate carriers services contributions shall include, but are not limited to: resale, cellular, access (including federal subscriber line charges), personal communications services (PCS), packet-switched, WATS, video, telex, mobile radio, 800, 900, operator, message telephone (MTS), private dedicated, international, satellite, and intraLATA service providers. Initial contributions to the TRS Fund were due September 26, 1993. Appendix D of the Third R&O "TRS Fund Worksheet" outlined procedures for contributors to make their contributions to the TRS Fund Administrator. Payments from the TRS Fund to TRS providers are based on the average rate of interstate TRS minutes of use. The Commission found that imposition of Part 36 jurisdictional separations requirements on TRS providers who are not common carriers presents unnecessary administrative burdens. The Commission directed the administrator to fashion a form that would establish adequate account definitions and procedures reasonably tailored to meet the needs of TRS. Further, the Commission found that existing accounting and separations rules should be adequate to deal with

the provision of interstate TRS by subject service providers.

In the Fourth R&O, the Commission, pursuant to Section 64.604(c)(4)(iii) of the rules, approved the proposed rate of $1.705 as the rate of payment to TRS providers per interstate minute of use. This rate will remain in effect through December 31, 1994. For succeeding years, the fund administrator is required to file its TRS payment formulas and associated data with the Commission by October 1, to be effective for a one-year period beginning the following January 1, as prescribed in Section 64.604(c)(4)(iii)(h) of the rules. Eligible TRS providers shall begin receiving disbursements from the TRS Fund on or about November 1, 1993, and initial payments will cover the service period July 26, 1993, through August 31, 1993. With regard to the reporting and payment schedule, TRS providers shall report actual interstate minutes of use for each monthly service period by the fifteenth work day of the succeeding month. For the service period from July 26, 1993, through August 31, 1993, TRS providers report usage to NECA no later than October 1, 1993, if they wish to be reimbursed by November 1, 1993. However, TRS providers can report usage for this period until October 28, 1993, in order to be reimbursed by December 1, 1993.

Further, the Fourth R&O clarifies that for TRS fund contributors regulated under price cap regulation, contributions may be treated as exogenous costs for the purposes of calculating the price cap index, pursuant to Section 61.45(d) of the rules, which grants exogenous treatment to any cost the Commission shall permit or require, plus a list of specifically enumerated exogenous costs. The Fourth R&O also clarifies that the ADA clearly distinguishes between the obligation to provide TRS service, which applies only to "telephone voice transmission services," and the obligation to contribute to the cost recovery for those services, which applies to "all subscribers for every interstate service" without limitation. 47 U.S.C. Sections 225(c), 225(d)(3).

Additionally, the Fourth R&O reiterates the Commission's findings in *TRS III* that existing accounting and separations rules should be adequate to deal with the provision of interstate TRS by subject service providers and, therefore, a Joint Board proceeding at this time is unnecessary. With regard to NARUC's request for clarification of the composition of the advisory committee, the Commission reiterates that the committee is to include state regulatory officials. *See TRS III* at n. 30. Further, the Commission clarifies that the administrator of the TRS Fund may reimburse advisory committee members for the reasonable costs incurred in attending advisory committee meetings because doing so may permit some groups to participate who may not otherwise be able to do so. The administrator will limit reimbursement to two persons per representative group, be based upon requests by participations for reimbursement, and result in *de minimis* reimbursement costs. The administrator is required to report these costs annually to the Commission pursuant to section 64.604(c)(4)(iii)(h) of the rules.

Lastly, the Commission rejects IDB's assertion that video and audio program distribution services by satellite or otherwise should be excluded from the TRS revenue base, and dismisses the request for stay filed by IDB.

Ordering Clauses

Accordingly, IT IS ORDERED, pursuant to Section 225 of the Communications Act and section 64.604(c)(4)(iii) of the rules, that $1.705 is the rate of payment to TRS providers per interstate minute of use, that it will remain in effect through December 31, 1994, and that in succeeding years, the fund administrator is required to file its TRS payment formulas and associated data with the Commission by October 1, to be effective for a one-year period beginning each January 1, as prescribed in Section 64.604(c)(4)(iii)(h) of the rules. Eligible TRS providers shall begin receiving disbursements from the TRS Fund on or about November 1, 1993, and initial payments will cover the service period July 26, 1993, through August 31, 1993.

It is further ordered, that the petitions filed by Ameritech Operating Companies, NYNEX, National Association of Regulatory Utility Commissioners, Southwestern Bell Corporation, Competitive Telecommunications Association, Telocator, and IDB Communications Group, Inc. are granted in part as discussed in this Order and are otherwise denied.

It is further ordered, that the request for stay filed by IDB Communications Group, Inc. is dismissed.

It is further ordered, that this proceeding is terminated.

List of Subjects in 47 CFR Part 64

Communications common carriers, Hearing and speech disabilities, Telecommunications relay services, Americans with Disabilities Act.

Federal Communications Commission
William F. Caton,
Acting Secretary.
[FR Doc. 93-25451 Filed 10-15-93; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 93-168; RM-8241]

Radio Broadcasting Services; Lena, Illinois

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 271A to Lena, Illinois, as that community's first local aural transmission service, at the request of Jane Lucas. *See* 58 FR 34555, June 28, 1993. Channel 271A can be allotted to Lena in compliance with the minimum distance separation requirements of the Commission's Rules with a site restriction of 8.5 kilometers (5.3 miles) south. The coordinates for Channel 271A at Lena are North Latitude 42-18-27 and West Longitude 89-47-45. With this action, this proceeding is terminated.

DATES: Effective November 22, 1993

The window period for filing applications for Channel 271A at Lena, Illinois, will open on November 23, 1993, and close on December 23, 1993.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93-168, adopted September 29, 1993, and released October 8, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857-3800, 1919 M Street, NW., room 246, or 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

47 CFR PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Illinois, is amended by adding Lena, Channel 271A.

Federal Communications Commission.

Victoria M. McCauley,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–25446 Filed 10–15–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 93–171; RM–8257]

Radio Broadcasting Services; Lindsborg and Sterling, Kansas

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 238C3 for Channel 240A at Lindsborg, Kansas, and modifies the license for Station KQNS–FM to specify operation on Channel 238C3 in response to a petition filed by JD Communications. *See* 58 FR 35420, July 1, 1993. The coordinates for Channel 238C3 at Lindsborg are 38–40–00 and 97–41–30. To accommodate Channel 238C3 at Lindsborg we shall also substitute Channel 234A for vacant Channel 239A at Sterling, Kansas. The coordinates for Channel 234A at Sterling are 38–12–42 and 98–12–12. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 22, 1993.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 93–171, adopted September 23, 1993, and released October 8, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street NW., suite 140, Washington, DC 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

47 CFR PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Kansas, is amended by removing Channel 240A and adding Channel 238C3 at Lindsborg and by removing Channel 239A and adding Channel 234A at Sterling.

Federal Communications Commission.

Victoria M. McCauley,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–25447 Filed 10–15–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 93–202; RM–8229]

Radio Broadcasting Services; Lewiston, Idaho, and Clarkston, Washington

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 286A to Lewiston, Idaho, as that community's fourth local FM service, and Channel 275A to Clarkston, Washington, as that community's second local FM service, at the request of Lewiston/Clarkston Christian Broadcasters. *See* 58 FR 38547, July 19, 1993. Channel 286A can be allotted to Lewiston in compliance with the Commission's minimum distance separation requirements without a site restriction. Channel 275A can be allotted to Clarkston in compliance with the Commission's minimum distance separation requirements without a site restriction. The coordinates for Channel 286A at Lewiston are North Latitude 46–24–42 and West Longitude 117–01–12. The coordinates for Channel 275A at Clarkston are North Latitude 46–24–42 and West Longitude 117–03–06. With this action, this proceeding is terminated.

DATES: Effective November 22, 1993. The window period for filing applications for Channel 286A at Lewiston, Idaho, and Channel 275A at Clarkston, Washington, will open on November 23, 1993, and close on December 23, 1993.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–202, adopted September 29, 1993, and released October 8, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1919 M Street, NW., room 246, or 2100 M Street NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

47 CFR PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Idaho, is amended by adding Channel 286A at Lewiston.

3. Section 73.202(b), the Table of FM Allotments under Washington, is amended by adding Channel 275A at Clarkston.

Federal Communications Commission.

Victoria M. McCauley,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–25449 Filed 10–15–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 93–163; RM–8251]

Radio Broadcasting Services; Wilson Creek, Washington

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Wilson Creek Broadcasting Company, substitutes Channel 277C3 for Channel 277A at Wilson Creek, Washington, and modifies Station KVYF–FM's construction permit accordingly. *See* 58 FR 34026, June 23, 1993. Channel 277C3 can be allotted to Wilson Creek in compliance with the Commission's minimum distance separation requirements with a site restriction of 10.6 kilometers (16.6 miles) southeast at the petitioner's requested site. The coordinates for Channel 277C3 at Wilson Creek are North Latitude 47–22–00 and West Longitude 119–00–30. Since Wilson Creek is located within 320 kilometers (200 miles) of the U.S.-Canadian border, Canadian concurrence has been obtained. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 22, 1993.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–163, adopted September 29, 1993, and released October 8, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

47 CFR PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Washington, is amended by removing Channel 277A and adding Channel 277C3 at Wilson Creek.

Federal Communications Commission.

Victoria M. McCauley,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–25445 Filed 10–15–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 89–26; Notice 4]

RIN 2127–AD24

Federal Motor Vehicle Safety Standards; Convex Cross View Mirrors on School Buses

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule, date for early optional compliance.

SUMMARY: On December 2, 1992, NHTSA published a final rule amending Federal Motor Vehicle Safety Standard No. 111, *Rearview Mirrors*, by establishing new requirements with respect to the field-of-view around school buses. The new requirements will become effective on December 2, 1993.

NHTSA has recently been informed that some states are requiring school bus manufacturers to produce new buses complying with the new requirements before the December 2, 1993, effective date.

Manufacturers may have difficulty in both certifying compliance with the current requirements of Standard No. 111 and satisfying these requests. Since the new requirements no longer specify the permissible radii of curvature for outside cross view mirrors, manufacturers may be unable to certify compliance with the existing standard when a school bus is equipped with mirrors that do not comply with the existing radii of curvature requirements. NHTSA has decided that it is in the interest of safety to permit manufacturers, effective immediately, to comply with the new requirements instead of the existing ones since the new requirements provide a greater degree of visibility around school buses.

EFFECTIVE DATES: The amendments to Section 571.111 (49 CFR 571.111), published at 57 FR 57000, December 2, 1992 continue to be effective December 2, 1993.

Vehicles manufactured before December 2, 1993, may voluntarily comply with that rule's amendments, effective October 18, 1993 instead of the requirements currently in effect.

FOR FURTHER INFORMATION CONTACT: Charles R. Hott, NRM–15, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. Telephone: (202) 366–0247.

SUPPLEMENTARY INFORMATION: On December 2, 1992, NHTSA published a final rule amending Federal Motor Vehicle Safety Standard No. 111, *Rearview Mirrors*, with respect to the field-of-view around school buses. As amended, the Standard requires each school bus to be designed so that a bus driver is able to see, either directly or through mirrors, specified areas in front of and along both sides of the school bus; specifies certain criteria for convex cross view mirrors; and establishes test conditions to evaluate the clarity of an object's image. The new requirements adopted in that final rule will become effective on December 2, 1993.

NHTSA has recently been informed that some states are requiring that school bus manufacturers produce new school buses complying with the new requirements before the December 2, 1993, effective date. The agency notes that the field-of-view requirements, when paired with the existing radii of curvature requirements, may result in some manufacturers having difficulty in both certifying compliance with certain current requirements of Standard No. 111 while, at the same time, satisfying these requests. Specifically, the requirement causing potential problems is S9.2(a) of Standard No. 111 which currently states that the outside convex cross view mirror "* * * shall have a radius of curvature not less than 3.5 inches and not more than 25 inches."

Problems may arise since the new requirements no longer specify the range of permissible radii of curvature for outside cross view mirrors. Thus, manufacturers may not be able to certify compliance with the existing radii of curvature requirement when a school bus is equipped with a convex cross view mirror that does not comply with this current requirement. Under the new requirement, a school bus may be equipped with a convex cross view mirror with any radii of curvature provided that it complies with the field-of-view and the image quality requirements.

NHTSA has decided that manufacturers should have the option of complying with the existing requirements of Standard No. 111 or with those requirements as amended by the December 2, 1992 final rule. The agency is taking this action for several reasons. First, as mentioned above, it would be difficult for some manufacturers to certify compliance with certain current requirements of Standard No. 111 while, at the same time, satisfying requests for school buses that comply with the new requirements. Second, the new requirements increase the field-of-view around school buses and ensure the image quality of mirrors on school buses. Thus, school buses manufactured to comply with the new requirements will have a greater field-of-view than they would if they had been manufactured to meet the existing requirements. Third, allowing early compliance with the new requirements will allow states and school bus manufacturers to obtain school buses complying with those new requirements at an earlier date than is currently possible and without the loss of image quality.

NHTSA finds for good cause that notice and opportunity for comment are unnecessary. The agency has already sought comment on the desirability of the new field-of-view requirements. Further, early compliance with those requirements would be voluntary under Standard No. 111. NHTSA also finds for good cause that this final rule can be effective immediately. This final rule

imposes no duties or responsibilities on any party. Manufacturers may continue to comply with the current requirements until the previously established effective date (December 2, 1993) for the new requirements adopted in the December 2, 1992 final rule. As an alternative, this final rule gives manufacturers the option of complying instead with the new requirements before their December 2, 1993 effective date.

Accordingly, under the authority of 15 U.S.C. 1392, 1401, 1403, and 1407, and the delegation of authority at 49 CFR 1.50, the amendments to § 571.111 (49 CFR 571.111) published at 57 FR 57000, December 2, 1992, continue to be effective December 2, 1993. Vehicles manufactured before December 2, 1993 may comply with the requirements in that rule's amendments, instead of the requirements currently in effect.

Rulemaking Analyses and Notices

DOT Regulatory Policies and Procedures

NHTSA has examined the impact of this rulemaking action and determined that it is not "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. This final rule gives manufacturers the option of complying with either the current requirements of Standard No. 111, or the requirements of Standard No. 111, as amended by the December 2, 1992 final rule, which will be effective December 2, 1993. Accordingly, this final rule will not impose any costs on manufacturers.

Regulatory Flexibility Act

NHTSA has also considered the impacts of this final rule under the Regulatory Flexibility Act. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. As explained above, this final rule imposes no costs on manufacturers.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 Pub. L. 96–511), the agency notes that there are no requirements for information collection associated with this final rule.

National Environmental Policy Act

NHTSA has also analyzed this final rule under the National Environmental Policy Act and determined that it will not have a significant impact on the human environment.

Executive Order 12612 (Federalism)

Finally, NHTSA has analyzed this rule in accordance with the principles and criteria contained in E.O. 12612, and has determined that this rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Issued on October 12, 1993.

Howard M. Smolkin,

Executive Director.

[FR Doc. 93–25419 Filed 10–15–93; 8:45 am]

BILLING CODE 4910–59–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1145

[Ex Parte No. 394 (Sub-No. 12)]

Petition To Exempt From Regulation the Rail Transportation of Scrap Paper

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Commission exempts from regulation the rail transportation of scrap paper, Standard Transportation Commodity Code No. 40241, except that the commodity will remain subject to the statutory rate cap of 49 U.S.C. 10731(e). The specific changes appear below. The intended effect is to increase competition with other modes of transport and to avoid the regulatory costs of tariff and contract rate administration.

EFFECTIVE DATE: November 1, 1993.

FOR FURTHER INFORMATION CONTACT: Maynard H. Dixon, Jr., (202) 927–5293 or Joseph H. Dettmar, (202) 927–5660. [TDD for hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's printed decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD service (202) 927–5721.]

On April 7, 1993 at 58 FR 18072, we requested comments on a proposal by the Association of American Railroads to exempt from regulation the rail transportation of scrap paper. We also requested comment on whether an exemption would be lawful in view of 49 U.S.C. 10731(e) and whether a less comprehensive exemption would be more appropriate. The comments have been received and analyzed. Here, we are approving an exemption from all regulation except the provisions of section 10731(e).

Our original notice proposed to grant an exemption by adding STCC No. 40241 to the list of exempt commodities at 49 CFR 1039.11. Our final rule, however, affects the exemption through an amendment to 49 CFR 1145.9.

We reaffirm our initial finding that the exemption will not significantly affect either the quality of the human environment or the conservation of energy resources.

We also reaffirm our initial finding that the exemption will not have a significant effect on a substantial number of small entities.

List of Subjects in 49 CFR Part 1145

Administrative practice and procedure, Freight, Railroads.

Decided: September 17, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden. Vice Chairman Simmons dissented in the disposition of this proceeding. Commissioner Walden dissented in part with a separate expression.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set forth in the Preamble, title 49, chapter X, part 1145 of the Code of Federal Regulations is amended as follows:

PART 1145—RAILROAD RATES ON RECYCLABLE COMMODITIES

1. The authority citation of part 1145 continues to read as follows:

Authority: 49 U.S.C. 10321, 10505, 10731, and 10707a; 5 U.S.C. 553.

2. Section 1145.9 is amended by redesignating the text as paragraph (a), by adding a heading to newly redesignated paragraph (a), and adding a new paragraph (b) to read as follows:

§ 1145.9 Exemptions.

(a) *Formula-based exemptions.* * * *

(b) *Case-by-case exemptions.* The following commodity group(s) are exempt from regulation, except that it (they) will continue to be subject to the statutory provision prohibiting railroads from increasing individual rates that are already above the rate cap established by 49 U.S.C. 10731(e): Standard Transportation Commodity Code (STCC) No. 40241, Scrap Paper.

[FR Doc. 93–25537 Filed 10–15–93; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[Docket No. 920407–2519; ID #101293B]

Atlantic Tuna Fisheries; Atlantic Bluefin Tuna

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure of the large school and small medium Atlantic bluefin tuna component of the Angling category.

SUMMARY: NMFS closes the fishery for large school and small medium Atlantic bluefin tuna conducted by Angling category fishermen. Closure of this fishery is necessary because the annual adjusted quota of 175.3 metric tons (mt) of large school and small medium Atlantic bluefin tuna allocated for this subcategory will have been attained. The intent of this action is to prevent overharvest of the quota established for this fishery.

EFFECTIVE DATE: The closure is effective from 0001 hours local time October 18 through December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Kevin B. Foster, 508–281–9260, or Aaron E. King, 301–713–2347.

SUPPLEMENTARY INFORMATION: Regulations promulgated under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) regulating the harvest of Atlantic bluefin tuna by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 285.

Section 285.22(d) of the regulations provides for an annual quota of 119 mt of large school and small medium Atlantic bluefin tuna to be harvested by individuals in the Angling category. Prior actions under the authority of § 285.22(h) (see 58 FR 36154; 7/6/93) and § 285.22(i) (see 58 FR 350523; 9/22/93) have resulted in an adjusted annual quota for 1993 of 175.3 mt of large school and small medium Atlantic bluefin tuna. The Assistant Administrator for Fisheries, NOAA (AA), is authorized under § 285.20(b)(1) to monitor the catch and landing statistics and, on the basis of these statistics, to project a date when the catch of Atlantic bluefin tuna will equal any quota under § 285.22. The AA is further authorized under § 285.20(b)(1) to prohibit fishing for, or retention of, Atlantic bluefin tuna by those fishing in the category subject to the quota when the catch of tuna equals the quota established under § 285.22. The AA has determined, based on the estimated catch, that the adjusted annual quota of large school and small medium Atlantic bluefin tuna will have been attained by October 18, 1993. Fishing for, retaining, or possessing any large school or small medium Atlantic bluefin tuna in the regulatory area must cease at 0001 hours local time on October 18, 1993. In addition, landing any large school or small medium Atlantic bluefin tuna in or from the regulatory area is prohibited.

Classification

This action is required by 50 CFR 285.20(b)(1) and complies with E.O. 12291.

Authority: 16 U.S.C. 971 *et seq.*

List of Subjects in 50 CFR Part 285

Fisheries, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: October 13, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–25470 Filed 10–13–93; 2:19 pm]

BILLING CODE 3510–22–P

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50 CFR Part 672

[Docket No. 921107–3068; I.D. 101393A]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for pollock in Statistical Area 63 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the total allowable catch (TAC) for pollock in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), October 13, 1993, until 12 midnight, A.l.t., December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS, (907) 586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

In accordance with § 672.20(c)(1)(ii)(B), the 1993 pollock TAC for Statistical Area 63 is established by the final 1993 initial specifications (58 FR 16787, March 31, 1993) as 60,939 metric tons (mt). The fourth quarterly allowance of that TAC for Statistical Area 63 became available at noon, October 1, 1993, pursuant to § 672.20(a)(2)(iv).

The Director of the Alaska Region, NMFS (Regional Director), has determined, in accordance with § 672.20(c)(2)(ii), that the 1993 pollock TAC in Statistical Area 63 soon will be reached. The Regional Director established a directed fishing allowance of 60,439 mt, and has set aside the remaining 500 mt as bycatch to support other anticipated groundfish fisheries. The Regional Director has determined that the directed fishing allowance has been reached. Consequently, directed fishing for pollock in Statistical Area 63 is prohibited, effective from 12 noon, A.l.t., October 13, 1993, until 12 midnight, A.l.t., December 31, 1993.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

Classification

This action is taken under 50 CFR 672.20.

List of Subjects in 50 CFR Part 672

Fisheries, Recordkeeping and reporting requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 13, 1993.

David S. Crestin,

Acting Director, Office of Fisheries and Management Conservation National Marine Fisheries Service.

[FR Doc. 93–25473 Filed 10–13–93; 2:19 pm]

BILLING CODE 3510–22–M

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50 CFR Part 672

[Docket No. 921107–3068; I.D. 101293A]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for pollock in Statistical Area 62 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the total allowable catch (TAC) for pollock in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), October 10, 1993, until 12 midnight, A.l.t., December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS, (907) 586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

In accordance with § 672.20(c)(1)(ii)(B), the 1993 pollock TAC for Statistical Area 62 is established by the final 1993 initial specifications (58 FR 16787, March 31, 1993) as 25,974 metric tons (mt). The fourth quarterly allowance of that TAC for Statistical Area 62 became available at noon, October 1, 1993, pursuant to § 672.20(a)(2)(iv).

The Director of the Alaska Region, NMFS (Regional Director), has determined, in accordance with § 672.20(c)(2)(ii), that the 1993 pollock TAC in Statistical Area 62 soon will be reached. The Regional Director established a directed fishing allowance of 25,474 mt, and has set aside the remaining 500 mt as bycatch to support other anticipated groundfish fisheries. The Regional Director has determined that the directed fishing allowance has been reached. Consequently, directed fishing for pollock in Statistical Area 62 is prohibited, effective from 12 noon, A.l.t., October 10, 1993, until 12 midnight, A.l.t., December 31, 1993.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

Classification

This action is taken under 50 CFR 672.20.

List of Subjects in 50 CFR Part 672

Fisheries, Recordkeeping and reporting requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 12, 1993.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–25399 Filed 10–12–93; 8:45 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 58, No. 199
Monday, October 18, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 32

[Docket No. PRM–32–4]

mb-microtec (USA); Receipt of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; notice of receipt.

SUMMARY: The Nuclear Regulatory Commission (NRC) is publishing for public comment a notice of receipt of a petition for rulemaking, dated July 30, 1993, which was filed with the Commission by mb-microtec (USA). The petition was docketed by the NRC on August 9, 1993, and has been assigned Docket No. PRM–32–4. The petitioner requests that the NRC amend its regulations to place timepieces with gaseous tritium light sources (GTLSs) on the same regulatory basis as timepieces with luminous tritium paint. Specifically, the petitioner requests that the regulations be amended to include timepieces with GTLSs and subsequently allow their distribution under the same requirements applicable to the distribution of timepieces with luminous tritium paint.

DATES: Submit comments by January 3, 1994. Comments received after this date will be considered if it is practical to do so but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Submit written comments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. Federal workdays.

For a copy of the petition, write the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

The petition and copies of comments received may be inspected and copied for a fee at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rules Review Section, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301–492–7758 or Toll Free: 800–368–5642.

SUPPLEMENTARY INFORMATION:

Background

The NRC has established regulations governing the domestic licensing of byproduct material in 10 CFR part 30 and the domestic licenses to manufacture or transfer certain items containing byproduct material in 10 CFR part 32. The regulations in these parts govern the individuals or firms who apply byproduct material to or incorporate byproduct material into a product. These regulations also apply to firms or individuals who initially transfer a product containing small amounts of byproduct material for sale or distribution. These regulations govern the manufacture and transfer for sale or distribution of self-luminous products such as timepieces that contain small amounts of tritium.

Discussion

The petitioner believes that the regulations that govern the manufacture and distribution for sale of timepieces that contain small amounts of tritium are outdated. According to the petitioner, the NRC's regulations permit the exempt distribution of timepieces that use small amounts of tritium paint for luminescence but do not consider timepieces with GTLSs.

The Petition

The petitioner states that current regulations allow watches with GTLSs that have a level of activity up to 200 mCi T to be distributed only after each watch model is individually approved by the Commission for exempt distribution. The petitioner states that this requirement is in contrast to requirements applicable to timepieces that use tritium paint. The petitioner believes that the Commission exerts further control over GTLS timepieces by requiring a disclosure on the pertinent properties of GTLSs used in watches.

The petitioner believes that current regulations do not take into account the progress that GTLS technology has achieved over the past 15 years. According to the petitioner, an analog watch can be well illuminated with 14 GTLSs that have a total level activity of 25 mCi T, the same level of activity that is presently permitted in tritium paint timepieces.

The petitioner believes that watch manufacturers do not want to become involved with the present licensing procedures that apply to the manufacture and distribution of GTLS watches. Therefore, the petitioner believes that the present regulations are counterproductive because they withhold a better and safer means of watch illumination from the consumer.

The Suggested Amendments

In order to put timepieces that use GTLSs on the same regulatory basis as those that use tritium paint, the petitioner suggests that 10 CFR 32.14(d)(1) be amended by adding the words "and bezels" to the first sentence of the introductory text, and by adding a third paragraph to read: "Tritium is also considered to be properly bound if it is contained in gaseous form in a sealed vial of mineral glass if the vials do not get damaged or become dislodged and the loss of tritium does not exceed 5 nCi when prototype dials, hands, pointers, and bezels are subjected to the tests as specified in § 32.14(d)(1) (i), (ii), and (iii)." Section 32.14(d)(1)(iii) would be redesignated as § 32.14(d)(1)(iv) and a new § 32.14(d)(1)(iii) would be added to read: "Attachment of the hub ends of the hands and pointers to a clamp on a vibrating fixture and vibration at a rate of not less than 16 cycles per second and a vibration acceleration of not less than 2G for a period of not less than one hour."

As revised, § 32.14, paragraph d(1) would read as follows:

§ 32.14 Certain items containing byproduct material; requirements for license to apply or initially transfer.

* * * * *

(d) * * *

(1) The method of containment or binding of the byproduct material in the

product is such that the radioactive material will not be released or be removed from the product under the most severe conditions that are likely to be encountered in normal use and handling. Tritium in luminous paint will be considered to be properly bound to dials, hands, pointers, and bezels if there is no visible flaking or chipping and the total loss of tritium does not exceed 5 percent of the total tritium when prototype dials, hands, pointers, and bezels are subjected to the tests as specified in § 32.14(d)(1) (i), (ii), and (iii). Tritium is also considered to be properly bound if it is contained in gaseous form in a sealed vial of mineral glass if the vials do not get damaged or become dislodged and the loss of tritium does not exceed 5 nCi when prototype dials, hands, pointers, and bezels are subjected to the tests as specified in § 32.14(d)(1) (i), (ii), and (iii).

(i) Attachment of dials and bezels to a vibrating fixture at a rate of not less than 26 cycles per second and a vibration acceleration of not less than 2G for a period of not less than one hour.

(ii) Attachment of the hub ends of the hands or pointers to a clamp and bending of hands or pointers over a 1-inch diameter cylinder, or

(iii) Attachment of the hub ends of the hands and pointers to a clamp on a vibrating fixture and vibration at a rate of not less than 16 cycles per second and a vibration acceleration of not less than 2G for a period of not less than one hour.

(iv) Total immersion of the dials, hands, pointers, and bezels used in the tests described in § 32.14(d)(1) (i), (ii), or (iii) in 100 milliliters of water at room temperature for a period of 24 consecutive hours and analysis of the test water for its radioactive materials content by liquid scintillation counting or other equally sensitive method.

* * * * *

Dated at Rockville, Maryland, this 8th day of October 1993.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 93–25443 Filed 10–15–93; 8:45 am]

BILLING CODE 7590-01-P

DEPARTMENT OF ENERGY

Office of Environment, Safety and Health

10 CFR Part 602

Epidemiology and Other Health Studies Financial Assistance Program

AGENCY: Office of Environment, Safety, and Health, Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Energy (DOE) Office of Environment, Safety and Health (EH) is proposing a rule to implement an Epidemiology and Other Health Studies Financial Assistance Program. The proposed rule will support EH use of financial assistance awards when they are the appropriate instruments for programmatic activities. The proposed rule will also facilitate a fully open and competitive process for obtaining financial assistance awards. This action is taken to support EH's mission to protect the health of DOE workers as well as other individuals associated with energy production, transmission, and use.

DATES: Written comments on the proposed rule must be received by November 17. 1993.

ADDRESSES: Comments should be addressed to: Dr. Robert Goldsmith, Director, Office of Epidemiology and Health Surveillance, (EH–42), U.S. Department of Energy, Washington, DC 20585; facsimile: (301) 903–4677.

FOR FURTHER INFORMATION CONTACT: Dr. Robert Goldsmith, address above, (301) 903–5926.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Proposed Rule
III. Opportunity for Public Comment
IV. Regulatory Review
V. Review under the Regulatory Flexibility Act
VI. Review under the Paperwork Reduction Act
VII. Review under the National Environmental Policy Act
VIII. Intergovernmental Review
IX. Review under Executive Order 12612
X. Review under Executive Order 12778
XI. Catalog of Federal Domestic Assistance

I. Introduction

DOE proposes to amend Chapter II of Title 10 of the Code of Federal Regulations (CFR) by adding a new part 602 for use of financial assistance awards to support the EH program of epidemiology and other health-related research. Presently, EH health-related financial assistance awards are made under provisions of the generally applicable DOE Financial Assistance Rules (10 CFR part 600). Part 600 provides basic DOE procedures for the award and administration of financial instruments, but does not contain program-specific requirements for particular types of financial assistance awards. The proposed part 602 builds on and supplements part 600 by describing the special needs and requirements of the EH Epidemiological and Other Health Studies Financial Assistance Program. Because the rules work together, it is necessary to refer to both part 600 and this proposal to obtain a comprehensive picture of program procedures. The proposed rule, in conjunction with part 600, provides a framework for an ongoing, comprehensive program for the receipt, review, and evaluation of award applications, and provides specific guidance for pre- and post-award administration. A discussion of the major provisions of the proposed rule, organized by rule section, follows. DOE welcomes comments on all provisions of the proposed rule, including any that deviate significantly from part 600.

II. Proposed Rule

Proposed § 602.1 defines the purpose and scope of part 602 as setting policies and procedures for award and administration of EH health related research, education/training, conferences, and communication activities through financial assistance awards.

Proposed § 602.2 establishes applicability, stating that part 602 requirements apply to awards made on or after the effective date of the rule. It also states that part 602 supplements and does not replace 10 CFR part 600.

Proposed § 602.3 defines terms used in the proposed rule. As definitions in 10 CFR part 600 apply to terms in part 602, it was unnecessary to provide definitions except for a few terms with special meaning for the EH program of epidemiological and other health studies.

Proposed § 602.4 governs deviations from the proposed rule. It allows for single-case deviations from part 602 if authorized by the Assistant Secretary for EH, the Head of the Contracting Activity, or their designees. There is no provision for class deviation. If a proposed single-case deviation from part 602 is also a deviation from 10 CFR part 600, the provisions for deviations contained in both rules will apply. Proposed § 602.4 allows for program control over single-case deviations of a purely program nature, but assures that deviations relating to generic provisions

are also authorized pursuant to the procedures contained in the generic rules.

Proposed § 602.5 establishes that research, education/training, conferences, and communication activities in various EH program areas are eligible for awards under part 602. The program areas are listed in the section and may be expanded by **Federal Register** notice.

Proposed § 602.6 sets forth eligibility for awards. The only categorical restriction pertains to Federal agencies. DOE anticipates that most recipients will participate through institutions because of the substantial material and business management resources needed to conduct projects under the program.

Proposed § 602.7 establishes procedures relating to award solicitation, including mechanisms to publicize award availability and distribute application forms and other information. The section also states that DOE reserves the right to fund, in whole or in part, any, all, or none of the applications submitted under award solicitations.

Proposed § 602.8 sets forth provisions and procedures required to apply for an award, including prescribed forms and other information requirements. Nothing in this section or in 10 CFR part 600 will prohibit appropriate contacts between potential applicants and DOE staff prior to submission of applications. Such contacts may include discussions of broad advice on research areas of interest or administrative procedures. Requests for information that might provide an unfair competitive advantage are not permitted.

Proposed § 602.9 describes procedures for application evaluation and selection. While DOE employees will evaluate the applications and make award selections, every effort will be made to use reviewers apart from DOE employees and contractors. Use of outside reviewers will ensure that the best experts are available to conduct technical evaluations and will also ensure open and credible peer review of applications. This is also in keeping with the Federal Government's tradition of using a broad range of peer reviewers to evaluate the scientific and technical merit of research proposals.

Proposed § 602.9(d) sets forth the evaluation criteria. They are necessarily broad because of the wide variety of projects and approaches anticipated. The criteria are consistent with those used by other DOE offices and Government agencies in similar programs. Proposed § 602.9(d)(5) will permit DOE to establish, in a notice of availability or separate solicitation, evaluation criteria consistent with the purpose of part 602 other than those listed in the proposed rule.

Proposed § 602.9(g) states that selection of applications for award will be based upon findings of technical evaluations, including peer reviews. These evaluations will be conducted according to the procedures specified in the EH Merit Review System, which will be published as a Program Notice in the **Federal Register**.

Proposed § 602.10 sets forth certain additional requirements that are not specifically addressed in 10 CFR part 600. The section requires recipients performing research involving human subjects, recombinant DNA molecules (and/or organisms and viruses containing recombinant DNA molecules) or warm-blooded animals to comply with certain Federal requirements. While these concerns are not common under DOE-funded projects, they require special attention because of their importance. The treatment of these matters is similar to that required by other Federal agencies.

Proposed § 602.11 provides for a project period that is long and flexible enough to accommodate research. Measurable results often take years and cannot be accurately predicted. On the other hand, DOE must assure adequate programmatic review. Accordingly, initial project periods of up to three years will be the norm. Project periods may exceed five years only if DOE makes a renewal award or allows an extension. To assure adequate financial accountability and review, proposed 602.11(b) provides a general budget period of 12 months, which is the norm as provided under 10 CFR 600.106. To allow for those projects that are not suited to this limitation, DOE may allow for a budget period of 24 months.

Proposed § 602.12 establishes that cost sharing, while always welcome, is not a factor in evaluating or selecting applications under the program. DOE wishes to fund the best projects, not just those of institutions capable of cost sharing arrangements.

Proposed § 602.13 states that DOE is liable only for the funds noted in the Notice of Financial Assistance Award. No additional obligations are required to support or extend a specific award.

Proposed § 602.14 allows fee payment to small business concerns under appropriate circumstances to permit all qualified parties to participate in the program. In establishing the need for and the amount of any such fee, the intrinsic benefits of an award provided to the recipient, such as advance payments and title to property, will be taken into consideration.

Proposed § 602.15 establishes that DOE will not provide indirect costs for conferences and scientific/technical meetings. Conferences and meetings do not require the institutional infrastructure needed to support research projects.

Proposed § 602.16 sets forth requirements pertaining to national security classified information. DOE does not intend this program to use or develop classified information. If projects develop information that may be classified, the section provides requirements for its handling and review. Such projects may be terminated by mutual agreement.

Proposed § 602.17 describes requirements for project continuation funding and reporting. This section outlines the varieties of reports required for project accounting and budgeting. A table summarizing the types of reports, time for submission, and number of copies is set forth in appendix A to this part.

Proposed § 602.18 encourages participants to disseminate project results promptly and will allow DOE to waive technical reporting requirements if the information is published or accepted for publication in an appropriate journal.

Proposed § 602.19 establishes requirement for project records and data. Because DOE is committed to the preservation and sharing of information with potential value for research or other purposes, projects are required to implement proper data and records management procedures. These procedures shall include development and maintenance of documentation for electronic data. The section also requires award recipients to comply with designated DOE records and data management needs, including providing information to the Comprehensive Epidemiologic Data Resource or to another repository, as DOE directs.

III. Opportunity for Public Comment

Written comments from interested persons are invited in response to this NOPR by submitting three copies of data, views or arguments with respect to the proposals set forth in this notice to the address above. Please identify any comments as "EH Proposed Rule."

This notice of proposed rulemaking does not involve any significant issues of law or fact and the rule would be unlikely to have a substantial impact on the Nation's economy or large numbers of individuals or businesses. Accordingly, pursuant to 42 U.S.C. 7191(c) and 5 U.S.C. 553, DOE is not scheduling a public hearing.

IV. Regulatory Review

Pursuant to the January 22, 1993 memorandum on the subject of regulatory review from the Director of the Office of Management and Budget (58 FR 6074, January 25, 1993), DOE submitted this notice to the Director for appropriate review. The Director has completed his review. Separately, DOE has determined that there is no need for a regulatory impact analysis because the rule is not a major rule as that term is defined in section 1(b) of Executive Order 12291.

V. Review Under the Regulatory Flexibility Act

This proposed rule was reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 95 Stat. 1164), which requires preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities; i.e., small businesses, small organizations, and small governmental jurisdictions. DOE concluded that this proposed rule would only affect small entities as they apply for and receive awards and does not create additional economic impacts on such entities. Accordingly, DOE certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

VI. Review Under the Paperwork Reduction Act

OMB has approved information collection requirements under this rule under control numbers 1910–0400 and 1910–1400.

VII. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this proposed rule, which is strictly procedural, is categorically excluded under subpart D of the DOE National Environmental Policy Act (NEPA) regulations (10 CFR part 1021) from preparation of either an Environmental Assessment or an Environmental Impact Statement under the NEPA of 1969 (42 U.S.C. 4321, et. seq. [1976]).

VIII. Intergovernmental Review

This program is generally not subject to the intergovernmental review requirements of Executive Order 12372 as implemented by 10 CFR part 1005. However, certain applications for financial assistance awards may require this review. Such applications, including those from governmental or nongovernmental entities that involve research, development, or demonstration activities are subject to the provisions of the Executive Order and 10 CFR part 1005 when such activities: (1) have a unique geographic focus and are directly relevant to the governmental responsibilities of a State or local government within the geographic area; (2) necessitate preparation of an Environmental Impact Statement under NEPA; or (3) are to be initiated at a particular site or location and require unusual measures to limit the possibility of adverse exposure or hazard to the general public. Entities planning to submit such applications should contact the Health Communication and Coordination Division (EH–422), U.S. Department of Energy, Washington, DC 20585 for further information.

IX. Review Under Executive Order 12612

Executive Order 12612 requires review of regulations or rules for any substantial direct effects on States, on the relationship between National Government and the States, or on the distribution of power and responsibilities among various levels of Government. Today's proposal would amend, by addition of a new part, existing regulations for a financial assistance program to stimulate research and development. There will not be any substantial direct effects on States.

X. Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency, subject to Executive Order 12291, to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 2(a) and (b)(2), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected conduct and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation: specifies clearly any preemptive effect, effect on existing Federal law or regulation, and retroactive effect; describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. DOE certifies that today's proposal meets the requirements of sections 2 (a) and (b) of Executive Order 12778.

XI. Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for Epidemiology and Other Health Studies Financial Assistance Program is 81.049.

List of Subjects in 10 CFR Part 602

Colleges and universities, Energy, Grant programs—energy, Grant programs—health, Grant programs—science and technology, Health, Medical research, Occupational safety and health, Reporting and recordkeeping requirements, Research.

For the reasons set forth in the preamble, chapter II of title 10 CFR is proposed to be amended by adding a new part 602, as set forth below.

Issued in Washington, DC, on July 29, 1993.

Peter N. Brush,

Acting Assistant Secretary Environment, Safety and Health.

Chapter II of title 10 CFR is proposed to be amended by adding part 602 to read as follows:

PART 602—EPIDEMIOLOGY AND OTHER HEALTH STUDIES FINANCIAL ASSISTANCE PROGRAM

Sec.

602.1 Purpose and Scope.
602.2 Applicability.
602.3 Definitions.
602.4 Deviations.
602.5 Epidemiology and other health studies financial assistance program.
602.6 Eligibility.
602.7 Solicitation.
602.8 Application requirements.
602.9 Application evaluation and selection.
602.10 Additional requirements.
602.11 Funding.
602.12 Cost sharing.
602.13 Limitation of DOE liability.
602.14 Fee.
602.15 Indirect cost limitations.
602.16 National security.
602.17 Continuation funding and reporting requirements.
602.18 Dissemination of results.
602.19 Records and data.

Appendix A to Part 602—Schedule of Renewal Applications and Reports

Authority: 42 U.S.C. 2051; 42 U.S.C. 5817; 42 U.S.C. 5901–5920; 42 U.S.C. 7254 and 7256; 31 U.S.C. 6301–6308.

§ 602.1 Purpose and scope.

This part sets forth the policies and procedures applicable to the award and administration of grants and cooperative agreements by DOE (through the Office of Environment, Safety and Health or any office to which its functions are subsequently redelegated) for health related research, education/training, conferences, communication, and related activities.

§ 602.2 Applicability.

(a) This part applies to all grants and cooperative agreements awarded after the effective date of this rule.

(b) Except as otherwise provided by this part, the award and administration of grants and cooperative agreements shall be governed by 10 CFR part 600 (DOE Financial Assistance Rules).

§ 602.3 Definitions.

In addition to the definitions provided in 10 CFR part 600, the following definitions are provided for purposes of this part:

Conference and communication activities means scientific or technical conferences, symposia, workshops, seminars, public meetings, publications, video or slide shows, and other presentations for the purpose of communicating or exchanging information or views pertinent to DOE.

DOE means the United States Department of Energy.

Education/Training means support for education or related activities for an individual or organization that will enhance educational levels and skills, in particular scientific or technical areas of interest to DOE.

Epidemiology and Other Health Studies means research pertaining to potential health effects resulting from DOE or predecessor agency operations or from any aspect of energy production, transmission, or use (including electromagnetic fields) in the United States and abroad. Related systems or activities to enhance these areas, as well as other program areas that may be described by notice published in the **Federal Register**, are also included.

Principal investigator means the scientist or other individual designated by the recipient to direct the project.

Research means basic and applied research and that part of development not related to the development of specific systems or products. The primary aim of research is scientific study and experimentation directed toward advancing the state of the art or increasing knowledge or understanding rather than focusing on a specific system or product.

§ 602.4 Deviations.

(a) Single-case deviations from this part may be authorized in writing by the Assistant Secretary for Environment, Safety and Health, the Head of the Contracting Activity, or their designees upon the written request of DOE staff, an applicant for award, or a recipient. A request from an applicant or a recipient must be submitted to or through the cognizant contracting officer.

(b) Whenever a proposed deviation from this part would be a deviation from 10 CFR part 600, the deviation must also be authorized in accordance with the procedures prescribed in that part.

§ 602.5 Epidemiology and other health studies financial assistance program.

(a) DOE may issue under this part awards for research, education/training, conferences, communication, and related activities in the Office of Environment, Safety and Health program areas set forth in paragraph (b) of this section.

(b) The program areas are:

(1) Health experience of DOE and DOE contractor workers;

(2) Health experience of populations living near DOE facilities;

(3) Workers exposed to toxic substances, such as beryllium;

(4) Use of biomarkers to recognize exposure to toxic substances;

(5) Epidemiology and other health studies relating to energy production, transmission, and use (including electromagnetic fields) in the United States and abroad;

(6) Compilation, documentation, management, use, and analysis of data for the DOE Comprehensive Epidemiologic Data Resource; and

(7) Other systems or activities enhancing these areas, as well as other program areas as may be described by notice published in the **Federal Register**.

§ 602.6 Eligibility.

Any individual or entity other than a Federal agency is eligible for a grant or cooperative agreement. An unaffiliated individual is also eligible for a grant or cooperative agreement.

§ 602.7 Solicitation.

(a) The Catalog of Federal Domestic Assistance number for 10 CFR part 602 is 81.049, and its solicitation control number is EOHSFAP 10 CFR part 602.

(b) An application for a new or renewal award under this solicitation may be submitted at any time to DOE at the address specified in paragraph (c) of this section. New or renewal applications shall receive consideration for funding generally within 6 months but, in any event, no later than 12 months from the date of receipt by DOE.

(c) Except as otherwise provided in a notice of availability, applicants may obtain application forms, described in 602.8(b) of this part, and additional information from the Office of Epidemiology and Health Surveillance, Health Communication and Coordination Division (EH–422), U.S. Department of Energy, Washington, DC 20585, (301) 903–5328, and shall submit applications to the same address.

(d) DOE will publish program notices in the **Federal Register** regarding the availability of epidemiology and other health studies financial assistance. DOE may also use other means of communication, as appropriate, such as the publication of notices of availability in trade and professional journals and news media.

(1) Each notice of availability shall cite this part and shall include:

(i) The Catalog of Federal Domestic Assistance number and solicitation control number of the program;

(ii) The amount of money available or estimated to be available for award;

(iii) The name of the responsible DOE program official to contact for additional information and an address where application forms may be obtained;

(iv) The address for submission of applications; and

(v) Any evaluation criteria in addition to those set forth in § 602.9 of this part.

(2) The notice of availability may also include any other relevant information helpful to applicants such as:

(i) Program objectives;

(ii) A project agenda or potential area of project initiatives;

(iii) Problem areas requiring additional effort; and

(iv) Any other information that identifies areas in which grants or cooperative agreements may be made.

(e) DOE is under no obligation to pay for any costs associated with the preparation or submission of applications.

(f) DOE reserves the right to fund, in whole or in part, any, all, or none of the applications submitted.

(g) To be considered for a renewal award under this part, an incumbent recipient shall submit a continuation or renewal application, as provided in § 602.8 (c) and (h).

§ 602.8 Application requirements.

(a) An original and seven copies of the application for initial support must be submitted, except that State and local governments and Indian tribal governments shall not be required to submit more than the original and two copies of the application.

(b) Each new or renewal application in response to this part must include:

(1) An application face page, DOE Form 4650.2 (approved by OMB under OMB Control No. 1910–1400). However, the face page of an application submitted by a State or local government or an Indian tribal government shall be the face page of Standard Form 424 (approved by OMB under OMB Control Number 0348–0043).

(2) A detailed description of the proposed project, including its objectives, its relationship to DOE's program, its impact on the environment, if any, and the applicant's plan for carrying it out.

(3) Detailed information about the background and experience of the recipients of funds or, as appropriate, the principal investigator(s) (including references to publications), the facilities and experience of the applicant, and the cost-sharing arrangements, if any.

(4) A detailed budget for the entire proposed period of support with written justification sufficient to evaluate the itemized list of costs provided on the entire project. Applicants should note the following when preparing budgets:

(i) Numerical details on items of cost provided by State and local government and Indian tribal government applicants shall be on Standard Form 424A, "Budget Information for Non-Construction Programs" (approved under OMB Control No. 0348–0044). All other applicants shall use budget forms ERF 4620.1 (approved by OMB under Control No. 1910–1400).

(ii) DOE may, subsequent to receipt of an application, request additional budgetary information from an applicant when necessary for clarification or make informed pre-award determinations under 10 CFR part 600.

(5) Any pre-award assurances required pursuant to 10 CFR parts 600 and 602.

(c) Applications for a renewal award must be submitted with an original and seven copies, except that State and local governments and Indian tribal government applicants are required to submit only an original and two copies. (Approved by OMB under OMB Control Numbers 0348–0005–0348–0009.)

(d) The application must be signed by an official who is authorized to act for the applicant organization and to commit the applicant to comply with the terms and conditions of the award, if one is issued, or if unaffiliated, by the individual applicant. (See § 602.17(a)(1) for requirements on continuation awards.)

(e) DOE may return an application that does not include all information and documentation required by statute, this part, 10 CFR part 600 or the notice of availability, when the nature of the omission precludes review of the application.

(f) During the review of a complete application, DOE may request the submission of additional information only if the information is essential to evaluate the application.

(g) In addition to including the information described in paragraphs (b), (c), and (d) of this section, an application for a renewal award must be submitted no later than 6 months before the expiration of the project period and must be on the same forms as required for initial applications. The renewal application must outline and justify a program and budget for the proposed project period, showing in detail the estimated cost of the proposed project, together with an indication of the amount of cost sharing, if any. The application shall also describe and explain the reasons for any change in the scope or objectives of the proposed project and shall compare and explain any difference between the estimates in the proposed budget and actual costs experienced as of the date of the application.

(h) DOE is not required to return an application to the applicant.

(i) Renewal applications must include a separate section that describes the results of work accomplished through the date of the renewal application and how such results relate to the activities proposed to be undertaken in the renewal period.

§ 602.9 Application evaluation and selection.

(a) Applications shall be evaluated for funding generally within 6 months, but in any event no later than 12 months, from the date of receipt by DOE. After DOE has held an application for 6 months, the applicant may, in response to DOE's request, be required to revalidate the terms of the original application.

(b) DOE shall perform an initial evaluation of all applications to ensure that the information required by this part is provided, that the proposed effort is technically sound and feasible, and that the effort is consistent with program funding priorities. For applications that pass the initial evaluation, DOE shall review and evaluate each application received based on the criteria set forth below and in accordance with the Office of Environment, Safety and Health Merit Review System developed as required under DOE Financial Assistance Regulations, 10 CFR part 600.

(c) DOE shall select evaluators on the basis of their professional qualifications and expertise. To ensure credible and inclusive peer review of applications, every effort will be made to select evaluators apart from DOE employees and contractors. Evaluators shall be required to comply with all applicable DOE rules or directives concerning the use of outside evaluators.

(d) DOE shall evaluate new and renewal applications based on the following criteria that are listed in descending order of importance:

(1) The scientific and technical merit of the proposed research;

(2) The appropriateness of the proposed method or approach;

(3) Competency of research personnel and adequacy of proposed resources;

(4) Reasonableness and appropriateness of the proposed budget; and

(5) Other appropriate factors consistent with the purpose of this part established and set forth in a Notice of Availability or in a specific solicitation.

(e) DOE shall also consider as part of the evaluation other available advice or information, as well as program policy factors, such as ensuring an appropriate balance among the program areas listed in § 602.5 of this part.

(f) In addition to the evaluation criteria set forth in paragraphs (d) and (e) of this section, DOE shall consider the recipient's performance under the existing award during the evaluation of a renewal application.

(g) Selection of applications for award will be based upon the findings of the technical evaluations (that will include peer reviews, as specified in the Office of Environment, Safety and Health Merit Review System), the importance and relevance of the proposal to the Office of Environment, Safety and Health's mission, and the availability of funds. Cost reasonableness and realism will also be considered.

(h) After the selection of an application, DOE may, if necessary, enter into negotiations with an applicant. Such negotiations are not a commitment that DOE will make an award.

§ 602.10 Additional Requirements.

(a) A recipient performing research or related activities involving the use of human subjects must comply with DOE regulations in 10 CFR part 745, "Protection of Human Subjects," and any additional provisions that may be included in the special terms and conditions of an award.

(b) A recipient performing research involving recombinant DNA molecules and/or organisms and viruses containing recombinant DNA molecules shall comply with the National Institutes of Health "Guidelines for Research Involving Recombinant DNA Molecules" (51 FR 16958, May 7, 1986), or such later revision of those guidelines as may be published in the **Federal Register**. (The guidelines are available from the Office of Recombinant DNA Activities, National Institutes of Health,

Building 31, room 4B11, Bethesda, MD 20892, or from the Office of Epidemiology and Health Surveillance, Health Communication and Coordination Division (EH–422), U.S. Department of Energy, Washington, DC 20585).

(c) A recipient performing research on warm-blooded animals shall comply with the Federal Laboratory Animal Welfare Act of 1966, as amended (7 U.S.C. 2131 et seq.) and the regulations promulgated thereunder by the Secretary of Agriculture at 9 CFR chapter I, subchapter A, pertaining to the care, handling, and treatment of warm-blooded animals held or used for research, teaching, or other activities supported by Federal awards. The recipient shall comply with the guidelines described in the Department of Health and Human Services Publication No. (NIH) 86–23, "Guide for the Care and Use of Laboratory Animals," or succeeding revised editions. (This Guide is available from the Office for Protection from Research Risks, Office of the Director, National Institutes of Health, Building 31, room 4B09, Bethesda, MD 20892, or from the Office of Epidemiology and Health Surveillance, Health Communication and Coordination Division (EH–422), U.S. Department of Energy, Washington, DC 20585).

§ 602.11 Funding.

(a) The project period during which DOE expects to provide support for an approved project under this part shall generally not exceed 3 years and may exceed 5 years only if DOE makes a renewal award or otherwise extends the award. The project period shall be specified on the Notice of Financial Assistance Grant (DOE Form 4600.1).

(b) Each budget period of an award under this part shall generally be 12 months and may be as much as 24 months, as DOE deems appropriate.

§ 602.12 Cost sharing.

Cost sharing is not required, nor will it be considered, as a criterion in the evaluation and selection process unless otherwise provided under § 602.9(d)(5).

§ 602.13 Limitation of DOE liability.

Awards made under this part are subject to the requirement that the maximum DOE obligation to the recipient is the amount shown in the Notice of Financial Assistance Award as the amount of DOE funds obligated. DOE shall not be obligated to make any additional, supplemental, continuation, renewal, or other award for the same or any other purpose.

§ 602.14 Fee.

(a) Notwithstanding 10 CFR part 600, a fee may be paid, in appropriate circumstances, to a recipient that is a small business concern, as qualified under the criteria and size standards of 13 CFR part 121, in order to permit the concern to participate in the Epidemiology and Other Health Studies Financial Assistance Program. Whether or not it is appropriate to pay a fee shall be determined by the contracting officer, who shall, at a minimum, apply the following guidelines:

(1) Whether the acceptance of an award will displace other work that the small business is currently engaged in or committed to assume in the near future; or

(2) Whether the acceptance of an award will, in the absence of paying a fee, cause substantial financial distress to the business. In evaluating financial distress, the contracting officer shall balance current displacement against reasonably future benefit to the company. (If the award will result in the beneficial expansion of the existing business base of the company, then no fee would generally be appropriate.) Fees shall not be paid to other entities except as a deviation from 10 CFR part 600, nor shall fees be paid under awards in support of conferences.

(b) To request a fee, a small business concern shall submit with its application a written self certification that it is a small business concern qualified under the criteria and size standards in 13 CFR part 121. In addition, the application must state the amount of fee requested for the entire project period and the basis for requesting the amount and must also state why payment of a fee by DOE would be appropriate.

(c) If the contracting officer determines that payment of a fee is appropriate under paragraph (a) of this section, the amount of fee shall be that determined to be reasonable by the contracting officer. The contracting officer shall, at a minimum, apply the following guidelines in determining the fee amount:

(1) The fee base shall include the estimated allowable cost of direct salaries and wages and allocable fringe benefits. This fee base shall exclude all other direct and indirect costs.

(2) The fee amount expressed as a percentage of the appropriate fee base pursuant to paragraph (c)(1) of this section, shall not exceed the percentage rate of fee that would result if a Federal agency contracted for the same amount of salaries, wages, and allocable fringe benefits under a cost reimbursement contract.

(3) Fee amounts, determined pursuant to paragraphs (c)(1) and (c)(2) of this section, shall be appropriately reduced when:

(i) Advance payments are provided; and/or

(ii) Title to property acquired with DOE funds vests in the recipient (10 CFR part 600).

(d) Notwithstanding 10 CFR part 600, any fee awarded shall be a fixed fee and shall be payable on an annual basis in proportion to the work completed, as determined by the contracting officer, upon satisfactory submission and acceptance by DOE of the progress report. If the project period is shortened due to termination, or the project period is not fully funded, the fee shall be reduced by an appropriate amount.

§ 602.15 Indirect cost limitations.

Awards issued under this part for conferences and scientific/technical meetings will not include payment for indirect costs.

§ 602.16 National security.

Activities under the Epidemiology and Other Health Studies Financial Assistance Program are not expected to involve classified information (i.e., Restricted Data, Formerly Restricted Data, National Security Information). However, if in the opinion of the recipient or DOE such involvement becomes expected prior to the closeout of the award, the recipient or DOE shall notify the other in writing immediately. If the recipient believes any information developed or acquired may be classified, the recipient shall not provide the potentially classified information to anyone, including DOE officials with whom the recipient normally communicates, except the Director of Classification, and shall protect such information as if it were classified until notified by DOE that a determination has been made that it does not require such handling. Correspondence that includes the specific information in question shall be sent by registered mail to the U.S. Department of Energy, Attn: Director of Classification, IS–50, Washington, DC 20585. If the information is determined to be classified, the recipient may wish to discontinue the project, in which case the recipient and DOE shall terminate the award by mutual agreement. If the award is to be terminated, all material deemed by DOE to be classified shall be forwarded to DOE in a manner specified by DOE for proper disposition. If the recipient and DOE wish to continue the award, even though classified information is involved, the recipient shall be requested to obtain both

personnel and facility security clearances through the Office of Safeguards and Security for Headquarters awards or from the cognizant field office Division of Safeguards and Security for awards obtained through DOE field organizations. Costs associated with handling and protecting any such classified information shall be negotiated at the time that the determination to proceed is made.

§ 602.17 Continuation funding and reporting requirements.

(a) A recipient shall periodically report to DOE on the project's progress in meeting the project objectives of the award. The following types of reports shall be used:

(1) *Progress reports.* After issuance of an initial award, recipients must submit a satisfactory progress report to receive a continuation award for the remainder of the project period. The original and two copies of the required report must be submitted to the Office of Environment, Safety and Health program manager 90 days prior to the anticipated continuation funding date. The report should include results of work to date and emphasize findings and their significance to the field, and any real or anticipated problems. The report also should contain the following information: On the first page, provide the project title, principal investigator/project director name, period of time the report covers, name and address of recipient organization, DOE award number, the amount of unexpended funds, if any, that are anticipated to be left at the end of the current budget period. If the amount exceeds 10 percent of the funds available for the budget period, provide information as to why the excess funds are anticipated to be available and how they will be used in the next budget period. The report should state whether the aims have changed from the original application, and if they have, provide revised aims. A completed budget page must be submitted with the continuation progress report when a change to anticipated future costs will exceed 25 percent of the original recommended future budget.

(2) *Notice of Energy Research and Development (R&D) Project.* A Notice of Energy R&D Project, DOE Form 1430.22, which summarizes the purpose and scope of the project, must be submitted in accordance with the Distribution and Schedule of Documents set forth in Appendix A to this part, Schedule of Renewal Applications and Reports. Copies of the form may be obtained from a DOE contracting office.

(3) *Special reports.* The recipient shall report the following events to DOE as soon after they occur as possible:

(i) Problems, delays, or adverse conditions that will materially affect the ability to attain project objectives or prevent the meeting of time schedules and goals. The report must describe remedial action that the recipient has taken or plans to take and any action DOE should take to alleviate the problems.

(ii) Favorable developments or events that enable meeting time schedules and goals sooner, or a lower cost than anticipated, or producing more beneficial results than originally projected.

(4) *Final report.* A final report covering the entire project must be submitted by the recipient within 90 days after the project period ends or the award is terminated. Satisfactory completion of an award will be contingent upon the receipt of this report. The final report shall follow the same outline as progress reports. Recipients will provide, as part of the final report, a description of records and data compiled during the project, along with a plan for its preservation or disposition (see § 602.19 of this part). All manuscripts prepared for publication should be appended to the final report.

(5) *Financial status report (FSR) (OMB No. 0348–0039).* The FSR is required within 90 days after completion of each budget period. For budget periods exceeding 12 months, an FSR is also required within 90 days after this first 12 months unless waived by the contracting officer.

(b) DOE may extend the deadline date for any report if the recipient submits a written request before the deadline, which adequately justifies an extension.

(c) A table summarizing the various types of reports, time for submission, and number of copies is set forth in Appendix A to this part. The schedule of reports shall be as prescribed in this table, unless the award document specifies otherwise. These reports shall be submitted by the recipient to the awarding office.

(d) DOE, or its authorized representatives, may make site visits, at any reasonable time, to review the project. DOE may provide such technical assistance as may be requested.

(e) Recipients may place performance reporting requirements on a subrecipient consistent with the provisions of this section.

§ 602.18 Dissemination of results.

(a) Recipients are encouraged to disseminate research results promptly. DOE reserves the right to utilize, and have others utilize to the extent it deems appropriate, the reports resulting from research awards.

(b) DOE may waive the technical reporting requirement of progress reports set forth in § 602.17, if the recipient submits to DOE a copy of its own report that is published or accepted for publication in a recognized scientific or technical journal and that satisfies the information requirements of the program.

(c) Recipients are urged to publish results through normal publication channels in accordance with the applicable provisions of 10 CFR part 600.

(d) The article shall include an acknowledgement that the project was supported, in whole or in part, by a DOE award, and specify the award number, but state that such support does not constitute an endorsement by DOE of the views expressed in the article.

§ 602.19 Records and data.

(a) In some cases, DOE will require submission of certain project records or data to facilitate mission-related activities. Recipients, therefore, must take adequate steps to ensure proper management, control, and preservation of all project records and data.

(b) Awardees must ensure that all project data is adequately documented. Documentation shall:

(1) Reference software used to compile, manage, and analyze data;

(2) Define all technical characteristics necessary for reading or processing the records;

(3) Define file and record content and codes;

(4) Describe update cycles or conditions and rules for adding or deleting information; and

(5) Detail instrument calibration effects, sampling and analysis, space and time coverage, quality control measures, data algorithms and reduction methods, and other activities relevant to data collection and assembly.

(c) Recipients agree to comply with designated DOE records and data management requirements, including providing electronic data in prescribed formats and retention of specified records and data for eventual transfer to the Comprehensive Epidemiologic Data Resource or to another repository, as directed by DOE. Recipients will provide, as part of the final report, a description of records and data compiled during the project along with

a plan for its preservation or disposition.

(d) Recipients agree to make project records and data available as soon as possible when requested by DOE.

APPENDIX A TO PART 602—SCHEDULE OF RENEWAL APPLICATIONS AND REPORTS

Type	When due	Number of copies for awarding office
1. Summary: 200 words on scope and purpose (Notice of Energy R&D Project).	Immediately after a grant is awarded and with each application for renewal.	3
2. Renewal	6 months before the budget period ends.	8
3. Progress Report.	90 days prior to the next budget period (or as part of a renewal application).	3
4. Other progress reports, brief topical reports, etc. (Designated when significant results develop or when work has direct programmatic impact).	As deemed appropriate by DOE or the recipient.	3
5. Reprints, Conference papers.	Same as 4. above.	3
6. Final report ..	Within 90 days after completion or termination of the project.	3
7. Financial Status Report (FSR).	Within 90 days after completion of the project period; for budget periods exceeding 12 months an FSR is also required within 90 days after the first 12-month period.	3

NOTE: Report types 5 and 6 require with submission two copies of DOE Form 1332.16, University-Type Contractor and Grantee Recommendations for Disposition of Scientific and Technical Document.

[FR Doc. 93-25492 Filed 10-15-93; 8:45 am]
BILLING CODE 6450-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93-NM-80-AD]

Airworthiness Directives; Boeing Model 707/720 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 707/720 series airplanes. This proposal would require certain structural inspections of older airplanes. This proposal is prompted by reports of incidents involving fatigue cracking and corrosion in transport category airplanes that are approaching or have exceeded their economic design service goal. The actions specified by the proposed AD are intended to prevent degradation of the structural capabilities of the affected airplanes. This proposal relates to the recommendations of the Airworthiness Assurance Task Force assigned to review Model 707/720 series airplanes, which indicate that, to assure long-term, continued operational safety, various structural inspections should be accomplished.

DATES: Comments must be received by December 13, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 93-NM-80, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Phil Forde, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2771; fax (206) 227-1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93-NM-80-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 93-NM-80-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

In April 1988, a high-cycle Boeing Model 737 suffered major structural damage in flight. Investigation revealed that the airplane had numerous fatigue cracks and a great deal of corrosion.

This incident prompted the FAA to sponsor a conference on aging airplanes, which was attended by members of the aviation industry, other regulatory authorities, and the general public. The conferees agreed that, because of the huge increase in air travel, the relatively slow pace of new airplane production, and the apparent economic feasibility of operating older technology airplanes, operators will continue to fly older airplanes rather than retire them. Because of the problems revealed by the accident described above, the consensus

was that this aging fleet needed more attention and maintenance to ensure its continued operational safety.

The Air Transport Association (ATA) of America and the Aerospace Industries Association (AIA) of America committed to identifying and implementing procedures to ensure continuing structural airworthiness of aging transport category airplanes. An Airworthiness Assurance Task Force, with representatives from the aircraft operators, manufacturers, regulatory authorities, and other aviation representatives, was established in August 1988. The objective of the Task Force was to sponsor "Working Groups" to:

1. Select service bulletins, applicable to each airplane model in the transport fleet, to be recommended for mandatory modification of aging airplanes;
2. Develop corrosion-directed inspections and prevention programs;
3. Review the adequacy of each operator's structural maintenance program;
4. Review and update the Supplemental Structural Inspection Documents (SSID); and
5. Assess repair quality.

The Working Group assigned to review Boeing Model 707/720 series airplanes completed its work on Item 2. in July 1989 and developed a baseline program for controlling corrosion problems that may jeopardize the continued airworthiness of the Boeing Model 707/720 fleet. This program is contained in Boeing Document Number D6–54928, "Aging Airplane Corrosion Prevention and Control Program—Model 707/720," dated July 28, 1989. The FAA issued AD 90–25–07, Amendment 39–6788 (55 FR 49252, November 27, 1990), which requires implementation of a corrosion prevention and control program as outlined in that Boeing Document.

The Working Group completed a portion of its work on Item 1., above, in June 1989. The Working Group's proposal is contained in Boeing Document Number D6–54996, "Aging Airplane Service Bulletin Structural Modification Program—Models 707–100, –200, –300, –300B, –300C, –400 and 720/720B." The FAA issued AD 91–07–19, Amendment 39–6926 (55 FR 13073, March 29, 1991), which requires the installation of the structural modifications identified in that Boeing Document.

The action being proposed herein follows from the ongoing activities of the Working Group relative to Item 1. The Working Group has identified certain service difficulties that warrant mandatory inspections of the airplane. The Working Group considers that these service difficulties can be controlled safely in older airplanes by inspections and that because of the safety implications, the inspections should be mandatory to assure that all operators perform them. Typically, the addressed unsafe conditions have occurred infrequently on older airplanes, and the Working Group has a very high degree of confidence in the ability of an inspections program to detect the damage before it adversely affects safety.

The Working Group reviewed 300 service bulletins related to the long-term operation of the Model 707/720 series airplanes. Twenty-nine of these service bulletins were recommended to the FAA for mandatory inspection action to ensure the successful long-term operation of Model 707/720 series airplanes. The conditions addressed by these service bulletins, if not corrected, could result in degradation of the structural capabilities of the affected airplanes. The FAA has concurred with the Working Group's recommendations and has determined that AD action to mandate the inspections is warranted to assure the continued airworthiness of the Model 707/720 fleet.

The FAA has reviewed and approved Section 4 and Appendix A.4 of Boeing Document Number D6–54996, "Aging Airplane Service Bulletin Structural Modification and Inspection Program—Model 707/720," Revision D, dated January 23, 1992. These sections of the Document reference 9 service bulletins that describe inspections of the wings, 10 service bulletins that describe inspections of the fuselage, 2 service bulletins that describe inspections of the door, 6 service bulletins that describe inspections of the empennage, 1 service bulletin that describes inspections of the landing gear, and 1 service bulletin that describes inspections of the engine mount fittings.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require inspections of certain structural components for cracks, corrosion, and other discrepancies, and repair or correction, if necessary. The actions would be required to be accomplished in accordance with the Boeing Document described previously.

There are approximately 416 Model 707/720 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 82 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 723 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $3,260,730, or $39,765 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 93–NM–80–AD.

Applicability: Model 707/720 series airplanes, as listed in Section 4 and Appendix A.4 of Boeing Document D6–54996, "Aging Airplane Service Bulletin

Structural Modification and Inspection Program—Model 707/720," Revision D, dated January 23, 1992, certificated in any category.

Compliance: Required as indicated, unless accomplished previously. To prevent degradation of the structural capability of the airplane, accomplish the following:

(a) Accomplish the inspections specified in Section 4 and Appendix A.4 of Boeing Document Number D6–54996, "Aging Airplane Service Bulletin Structural Modification and Inspection Program—Model 707/720," Revision D, dated January 23, 1992, within the times specified in paragraph (b) of this AD, and thereafter at intervals not to exceed those specified in the Boeing Document for each inspection.

(b) The maximum initial inspection times for the inspections contained in Section 4 and Appendices A.4 of Boeing Document Number D6–54996, "Aging Airplane Service Bulletin Structural Modification and Inspection Program—Model 707/720," Revision D, dated January 23, 1992, shall be prior to the later of the times specified in either paragraph (b)(1) or (b)(2) of this AD:

(1) The threshold for inspection time for the inspection specified in the Boeing Document, measured as a total (flight cycles or time-in-service, as appropriate) accumulated on the airplane; or

(2) The phase-in period for the inspection specified in the Boeing Document, measured from a date 15 months after the effective date of this AD.

Note 1: For the purposes of this AD, the "phase-in period" is defined as the allowable period to accomplish the initial inspection when the required threshold specified in paragraph (b)(1) of this AD is imminent or has elapsed.

(c) If any discrepant condition identified in the service bulletins (that are specified in the Boeing Document) is found as a result of the inspections required by this AD, prior to further flight, accomplish the corresponding corrective action specified in the service bulletins.

(d) The terminating action for each inspection required by paragraph (a) of this AD consists of the accomplishment of the modification specified in the corresponding service bulletin.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on October 12, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–25430 Filed 10–15–93; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1304

Reporting on Psychotropic Substances

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The DEA proposes to amend its regulations to collect information from bulk and dosage from manufacturers of certain Schedule III, IV and V non-narcotic substances. This information is required to meet United States obligations under the Convention on Psychotropic Substances, 1971 and for law enforcement purposes. Bulk and dosage form manufacturers of Schedules I and II controlled substances, of narcotic controlled substances listed in Schedules III, IV and V, and of psychotropic controlled substances listed in Schedules III and IV who report to DEA through the Automation of Reports and Consolidated Orders System (ARCOS) will continue to report those substances under the ARCOS system.

DATES: Comments and objections must be submitted by December 17, 1993.

ADDRESSES: Comments and objections should be submitted in quintuplicate to the Director, Office of Division Control, Drug Enforcement Administration, Washington, DC 20537. Attention: Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: Mr. G. Thomas Gitchel, Chief, Liaison and Policy Section, Office of Diversion Control, Washington, DC 20537, Telephone (202) 307–7297.

SUPPLEMENTARY INFORMATION: The United States is a Party to the Single Convention on Narcotic Drugs, 1961 and the Convention on Psychotropic Substances, 1971. These conventions require that the U.S. provide information to the United Nations regarding the manufacture, consumption, importation, exportation, inventories and estimates of legitimate medical and scientific need for substances controlled under the conventions. Also, the Controlled Substances Act (CSA) (21 U.S.C. 827(e)) requires manufacturers of controlled substances to submit reports to DEA to meet U.S. obligations under the Single Convention on Narcotic Drugs and the Convention on Psychotropic Substances. DEA currently collects this type of information for all substances in Schedules I and II and for narcotics in Schedules III, IV and V primarily through the ARCOS Systems. Additionally, ARCOS reporting for certain Schedule III and IV psychotropic substances in required pursuant to 21 CFR 1304.35.

The Economic and Social Council (ECOSOC) of the United Nations, due to increased concern over the international diversion of psychotropic substances in Schedules III and IV, adopted a resolution (1991/44) entitled "Prevention of Diversion from International Trade into Illicit Channels of Psychotropic Substances Listed in Schedules III and IV of the Convention on Psychotropic Substances, 1971." This resolution requested the collection and reporting of data on all psychotropic substances in Schedules III and IV of the Psychotropic Convention. In particular, it was requested that parties extend the system of assessments of annual medical and scientific requirements to include Schedules III and IV psychotropic substances. These assessments are to be communicated to the International Narcotics Control Board (INCB) on an annual basis for the purpose of providing international guidance for the manufacture and exportation of the psychotropic substances to prevent diversion.

Current ARCOS reporting requirements provide for the submission of reports on a quarterly basis. The information to meet the expanded reporting is needed only in summary form annually, and the current provisions of 21 CFR 1304.35 apply only to a limited number of Schedule III and IV substances. Thus, ARCOS reporting is inappropriate to this time for the additional information needed to fulfill the U.N. resolution. In addition, some manufacturers who will be required to report this information currently do not report to ARCOS and are not familiar with the requirements of that system. The simplified reporting for U.N. purposes would be the most feasible since the ARCOS System would need extensive modification to handle the anticipated volume, and there is a learning process for the manufacturers who do not currently report which would not be a factor under the simplified system. Therefore, to establish the minimum additional reporting, DEA proposes separate

reporting requirements from those required under ARCOS.

The Schedule III and IV psychotropics currently reported to ARCOS will continue to be reported under that system. The list of Schedule III substances in Section 1304.35 is being altered; glutethimide is being removed from the list as it is now a Schedule II substance; however, as such, it will continue to be reported to ARCOS.

Bulk and dosage form manufacturers of certain nonnarcotic substances in Schedules III, IV and V will submit specified data to DEA on an annual basis for U.N. reports. Such data will be reported as anhydrous base or acid and must be received by DEA no later than January 31 of the year following the year for which the data is submitted. The data is to be submitted on company letterhead and signed by a responsible official. It should be noted that 47 Schedule III, IV and V non-narcotic controlled substances are identified in this proposed rule, but approximately 20 of these are currently marketed in the U.S.

In addition to the above changes, all references in 21 CFR 1304.31, 1304.32, 1304.33, and current 1304.38 (to be changed to 1304.39) to the Drug Control Section are being changed to the Drug and Chemical Evaluation Section.

Pursuant to section 3(c)(3) and 3(e)(2)(C) of E.O. 12291, this proposed action has been submitted for review to the Office of Management and Budget, and approval of that office has been requested pursuant to the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. et seq.

This rule is not a major rule for purposes of Executive Order (E.O.) 12291 of February 17, 1981. The majority of manufacturers are not considered to be small entities whose interests are to be considered under the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. Therefore, the Director of the Office of Diversion Control has concluded that there will be no significant impact on small entities.

This action has been analyzed in accordance with the principles and criteria contained in E.O. 12612, and it has been determined that the proposed rule has no implications which would warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Part 1304

Drug traffic control, Reporting requirements.

For reasons set out above, 21 CFR part 1304 is proposed to be amended as follows:

PART 1304—[AMENDED]

1. The authority citation for part 1304 remains as follows:

Authority: 21 U.S.C. 821, 827, 871(b), 958, 965, unless otherwise noted.

2. Section 1304.34 is proposed to be revised to read as follows:

§ 1304.34 Reports generally.

(a) All reports required by §§ 1304.35, 1304.37 and 1304.38 shall be filed with the ARCOS Unit, P.O. Box 28293, Central Station, Washington, DC 20005, on DEA Form 333, or on media which contains the data required by DEA Form 333 and which is acceptable to the Administration.

(b) All reports required by Section 1304.36 shall be filed with the Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, in the manner specified in § 1304.36(c).

(c) References to DEA Form 234 in §§ 1304.31 and 1304.32 shall be deemed to refer equally to DEA Form 333.

3. Section 1304.35 is proposed to be amended by revising paragraphs (a) and (c) to read as follows:

§ 1304.35 Reports from manufacturers of bulk materials or dosage units.

* * * * *

(a) Substances covered. Reports shall include data on each controlled substance listed in Schedules I and II, on each narcotic controlled substance listed in Schedules III, IV and V, and on each psychotropic controlled substance listed in Schedules III and IV as identified below:

Schedule III

(1) Benzphetamine;
(2) Cyclobarbital;
(3) Methyprylon; and
(4) Phendimetrazine.

Schedule IV

(1) Barbital;
(2) Diethylproprion (Amfepramone);
(3) Ethchlorvynol;
(4) Ethinamate;
(5) Lefetamine (SPA);
(6) Mazindol;
(7) Meprobamate;
(8) Methylphenobarbital;
(9) Phenobarbital;
(10) Phentermine; and
(11) Pipradrol.

Data shall be presented in such a manner as to identify the particular form, strength, and trade name, if any, of the product containing the controlled substance for which the report is being made. For this purpose, persons filing reports shall utilize the National Drug Code Number assigned to the product under the National Drug Code System of the Food and Drug Administration.

(b) * * *

(c) Inventories reported. Reports shall provide data on the stocks of each reported controlled substance on hand as of the close of business on December 31 of each year. These reports shall be filed no later than January 15 of the following year.

* * * * *

4. Sections 1304.36 through 1304.38 are proposed to be redesignated as §§ 1304.37 through 1304.39 respectively, and a new § 1304.36 is proposed to be added to read as follows:

§ 1304.36 Reports from manufacturers of non-narcotic bulk materials or dosage units listed in Schedules III, IV and V.

Reports required under this section are for the purpose of fulfilling certain United States obligations to the United Nations. Reports shall be filed no later than January 31 of the year following the calendar year for which the report is required. Data shall be reported in grams as anhydrous base or acid and not as salt. Manufacturers of both bulk material and dosage units must submit information required by paragraph (b).

Each person who is registered to manufacture controlled substances listed in Schedules III, IV or V in bulk or dosage form shall report as follows:

(a) Substances covered. Reports shall include data on each controlled substance listed in Schedules III, IV and V as identified below:

Schedule III

(1) Allobarbital;
(2) Butabarbital;
(3) Butalbital;
(4) Secbutabarbital; and
(5) Vinylbital

Schedule IV

(1) Alprazolam;
(2) Bromazepam;
(3) Camazepam;
(4) Cathine ((+)-norpseudoephedrine);
(5) Chlordiazepoxide;
(6) Clobazam;
(7) Clonazepam;
(8) Clorazepate;
(9) Clotiazepam;
(10) Cloxazolam;
(11) Delorazepam;
(12) Diazepam;
(13) Estazolam;
(14) Ethyl loflazepate;
(15) Fencamfamin;
(16) Fenproporex;
(17) Fludiazepam;
(18) Flunitrazepam;
(19) Flurazepam;
(20) Halazepam;
(21) Haloxazolam;
(22) Ketazolam;
(23) Loprazolam;
(24) Lorazepam;
(25) Lormetazepam;
(26) Medazepam;
(27) Mefenorex;

(28) Midazolam;
(29) Nimetrazepam;
(30) Nitrazepam;
(31) Nordiazepam;
(32) Oxazepam;
(33) Oxazolam;
(34) Pemoline;
(35) Pentazocine;
(36) Pinazepam;
(37) Prazepam;
(38) Temazepam;
(39) Tetrazepam; and
(40) Triazolam.

Schedule V

(1) Buprenorphine; and
(2) Pyrovalerone.

(b) Each person who is registered to manufacture controlled substances listed in paragraph (a) of this section in bulk or dosage form shall provide data on each substance for each calendar year to include the following information:

(1) Company
(2) Address
(3) Contact Person
(4) Telephone Number
(5) Type of Manufacturer (bulk or dosage form)
(6) Controlled Substance
(7) Schedule
(8) DEA Controlled Substance Number
(9) Beginning Inventory as of opening of business on January 1 (list separate figures on the following):
(i) In-process material (all forms)
(ii) Bulk controlled substance ready for transfer, conversion or sale
(iii) Finished dosage forms (in bulk and/or packaged)
(iv) Other materials (specify)
(10) Acquisitions during the calendar year (list separate figures on the following):
(i) Manufactured (bulk manufacturers only)
(ii) Domestic procurements (transfers/purchases)
(iii) Importations
(iv) Returns by customers for credit, salvage, rework, etc.
(v) Purchases from other bulk manufacturers
(vi) Other acquisitions (specify)
(11) Dispositions during the calendar year (list separate figures on the following):
(i) Domestic sales to:
(A) Dosage form and other manufacturers (specify type)
(B) Retail Level
(C) Researchers
(D) Distributors (wholesalers)
(E) Federal, state or county agencies
(ii) Transfers
(iii) Exportations
(iv) Used in chemical conversion to other drugs
(v) Losses
(vi) Authorized destructions
(vii) Returns to suppliers
(viii) Other dispositions (specify)
(12) Year-End Inventory as of close of business on December 31 (list separate figures on the following):
(i) In-process material (all forms)
(ii) Bulk controlled substance ready for transfer, conversion or sale
(iii) Finished dosage forms (in bulk and/or packaged)
(iv) Other materials (specify)
(13) Amount of material used during the calendar year for the production of dosage form products in Schedule III, IV, or V (list each item and amount separately).
(14) Amount of material used during the calendar year for the production of excluded, excepted or exempted preparations (list each item and amount separately).
(15) Amount of material used during the calendar year for the production of non-control substances (list each item and amount separately).
(c) Reports required under this section shall be submitted on company letterhead and signed by a responsbile, appropriate official.

§§ 1304.41–1304.33, 1304.39 [Amended]

5. In addition to the amendments set forth above, in 21 CFR 1304 remove the words "Drug Control Section" and add, in their place, the words "Drug and Chemical Evaluation Section" in the following places:
(a) Section 1304.31 (a);
(b) Section 1304.32 (a);
(c) Section 1304.33 (a); and
(d) Section 1304.39 (a).

Dated: September 22, 1993.

Gene R. Haislip,

Director, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 93–25469 Filed 10–15–93; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[PS–16–93]

RIN 1545–AR50

Recapture of LIFO Benefits; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations that describe the events that trigger the recapture of LIFO benefits under section 1363(d) of the Internal Revenue Code of 1986 (Code) when a C corporation elects to become an S corporation or merges into an S corporation in a tax-free reorganization.

DATES: The public hearing originally scheduled for Monday, October 25, 1993, beginning at 10 a.m. is cancelled.

FOR FURTHER INFORMATION CONTACT: Carol Savage of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622–8452 or (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 1363(d) of the Internal Revenue Code. A notice of public hearing appearing in the **Federal Register** for Wednesday, August 18, 1993 (58 FR 43828), announced that the public hearing on the proposed regulations would be held on Monday, October 25, 1993, beginning at 10 a.m., in the Commissioner's Conference Room, room 3313, Internal Revenue Service Building, 1111 Constitution Avenue NW., Washington, DC.

The public hearing scheduled for Monday, October 25, 1993, has been cancelled.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 93–25468 Filed 10–15–93; 8:45 am]

BILLING CODE 4830–01–U

Bureau of Alcohol, Tobacco, and Firearms

27 CFR Part 5

[Notice No. 782; Re: Notice No. 780; 91F009P]

RIN: 1512–AB22

Alteration of Class and Type: Vodka

AGENCY: Bureau of Alcohol, Tobacco, and Firearms (ATF), Department of the Treasury.

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: This document extends the comment period for Notice No. 780, a notice of proposed rulemaking (NPRM) published in the **Federal Register** on September 1, 1993. Notice No. 780 solicited comments on a proposal by the Bureau of Alcohol, Tobacco and Firearms (ATF) to amend the regulations authorizing the use of a trace amount (defined as up to 300 milligrams per liter or 300 ppm) of citric acid in the production of vodka, without changing

its designation as vodka. Because citric acid is not an essential component of vodka, ATF proposes amending regulations which regulate the additions of substances to distilled spirits, rather than the regulations on the standard of identity of vodka. Under this proposal, vodka made with a concentration of citric acid greater than 300 ppm would be designated "flavored vodka" or labeled with a fanciful name. Recently, ATF received a request from the Distilled Spirits Council of the United States, Inc. (DISCUS) for an extension of the comment period in order to provide sufficient time for all interested parties to respond to the issues addressed in the NPRM.

DATES: Comments must be received on or before January 3, 1994.

ADDRESSES: Send written comments to: Chief, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington DC, 20091–0221, ATTEN: Notice No. . Comments not exceeding three pages may be submitted by facsimile transmission to (202) 927–8602.

FOR FURTHER INFORMATION CONTACT: David W. Brokaw, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC. 20226, (202) 927–8230.

SUPPLEMENTARY INFORMATION:

Background

On September 1, 1993, ATF published Notice No. 780 in the **Federal Register** (58 FR 46141) soliciting comments on a proposal to amend 27 CFR 5.23(a)(3)(ii) authorizing the use of a trace amount (defined as up to 300 milligrams per liter or 300 ppm) of citric acid in the production of vodka, without changing its designation as vodka. Because citric acid is not an essential component of vodka, ATF is proposing to amend 27 CFR 5.23 which regulates additions of substances to distilled spirits, rather than 27 CFR 5.22(a)(1) which is the standard of identity of vodka. Under this proposal, vodka made with a concentration of citric acid greater than 300 ppm would be designated "flavored vodka" or labeled with a fanciful name under 27 CFR part 5.

In Notice No. 780, ATF requested comments from all interested parties. ATF is particularly interested in comments concerning the sensory threshold citric acid levels of vodka (the level at which vodka would be without distinctive character, aroma, taste, or color to a majority of people.) In that regard, ATF is interested in comments concerning citric acid levels higher or lower than the proposed maximum level of 300 ppm. Also, ATF is interested in comments concerning the methodology and results of the studies conducted by Heublein and OS&E, as well as ATF's interpretation of the same.

The comment period for Notice No. 780 was scheduled to close on October 18, 1993. Recently, ATF received a request from DISCUS, a national trade association representing producers and marketers of distilled spirits sold in the United States, for an extension of the comment period. DISCUS feels that this extension "is necessary to permit, *inter alia*, the industry to undertake a critical analysis of the methodology employed by the Bureau, to conduct testing concerning the appropriateness of sensory threshold for citric acid, and to analyze and assess the results of any such testing." DISCUS further believes that "[t]he issues implicated in Notice No. 780 have major import to the industry generally and extend beyond the scope of the specific matters raised in the rulemaking."

In consideration of this request, ATF has determined that in addition to the 45 days already provided for in Notice No. 780, an extension of 75 days is appropriate. Therefore, the comment period for Notice No. 780 will be extended to January 3, 1994.

Drafting Information

The principal author of this document is David W. Brokaw, Wine and Beer Branch, Bureau of Alcohol, Tobacco, and Firearms.

Authority: This notice is issued under the authority in 27 U.S.C. 205.

Signed: October 14, 1993.

Daniel R. Black,

Acting Director.

[FR Doc. 93–25603 Filed 10–15–93; 8:45 am]

BILLING CODE 4810–31–U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 925

Missouri Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing the receipt of a proposed amendment to the Missouri permanent regulatory program (hereinafter, the "Missouri program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of changes to provisions of the Missouri statutes pertaining to its alternative bonding system. The amendment is intended to revise the State program to be consistent with the corresponding Federal standards, clarify ambiguities, improve operational efficiency, and at the State's own initiative to improve its program.

This document sets forth the times and locations that the Missouri program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4 p.m., c.d.t., November 17, 1993. If requested, a public hearing on the proposed amendment will be held on November 12, 1993. Requests to present oral testimony at the hearing must be received by 4 p.m., c.d.t. on November 2, 1993.

ADDRESSES: Written comments should be mailed or hand delivered to Jerry R. Ennis at the address listed below.

Copies of the Missouri program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Kansas City Field Office.

Jerry R. Ennis, Director, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 934 Wyandotte, Room 500, Kansas City, MO 64105, Telephone: (816) 374–6405.

Missouri Department of Natural Resources, Land Reclamation Program, 205 Jefferson Street, P.O. Box 176, Jefferson City, MO 65102, Telephone: (314) 751–4041.

FOR FURTHER INFORMATION CONTACT: Jerry R. Ennis, telephone: (816) 374–6405.

SUPPLEMENTARY INFORMATION:

I. Background on the Missouri Program

On November 21, 1980, the Secretary of the Interior conditionally approved the Missouri program. General background information on the Missouri program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the

Missouri program can be found in the November 21, 1980, **Federal Register** (45 FR 77017). Subsequent actions concerning Missouri's program and program amendments can be found at 30 CFR 925.12, 925.15, and 925.16.

II. Proposed Amendment

By letter dated September 24, 1993, (Administrative Record No. MO–575) Missouri submitted a proposed amendment to its program pursuant to SMCRA. Missouri submitted the proposed amendment with the intent of satisfying the required program amendments at 30 CFR 925.16(g) and at its own initiative to improve its program.

The sections of the Revised Statutes of Missouri (RSMo) that are proposed for amendment are discussed briefly below:

(1) Section 444.805(8) Full Cost Bond

Missouri proposes to remove its definition of a full cost bond and the option of a permittee to not participate in the alternative bonding system.

(2) Section 444.805(16) Phase I Reclamation Bond

Missouri proposes to revise the definition of the Phase I reclamation bond to require that no less than 80-percent of the bond may be released upon successful completion of Phase I reclamation with the rest of the bond remaining in effect until Phase III liability is released.

(3) Section 444.830.1. Phase I Reclamation

Missouri proposes to revise this section to remove the option of a permittee to file a full cost bond and to require that the amount of the Phase I reclamation bond and the coal mine land reclamation fund be sufficient to assure the completion of the reclamation plan if the work had to be performed by the commission in event of forfeiture.

(4) Section 444.830.3. Alternative Bonding System

Missouri proposes to clarify that it may adopt an alternative bonding system that will achieve the objectives and purposes of the bonding program pursuant to this section and which is consistent with or pursuant to the purposes of P.L. 95–87, the Surface Mining Control and Reclamation Act.

(5) Section 444.875.1. Release of Performance Bond

Missouri proposes to add the requirement that at the time of final Phase III bond release submittal, the operator shall include evidence that an affidavit has been recorded with the recorder of deeds in the county where the mined land is located, generally describing the parcel or parcels of land where operations such as underground mining, auger mining, covering of slurry ponds, or other underground activities occurred which could impact or limit future use of that land. This requirement shall be applicable to mined land where Phase I reclamation was completed on or after September 1, 1992.

(6) Section 444.950.1. Bond Amounts

Missouri proposes to revise this section by removing the option for an operator to file a full cost bond and require that the Phase I bond be at a minimum $2,500 per permitted acre for every acre permitted and bonded on the effective date of this section, unless the Phase I reclamation bond has been released pursuant to section 444.875, except that it shall be a minimum of $10,000 per acre for the coal preparation area. The Phase I reclamation bond for areas other than coal preparation areas may be adjusted annually by the commission based upon calculations conducted by the director, but shall not be increased by more than $250 per year per acre or a maximum of $5,000 per acre. The Phase I bond for coal preparation areas may also be adjusted annually by the commission based upon calculation conducted by the director, but shall not be increased by more than $500 per year per acre or a maximum of $15,000 per acre. The changes shall be proposed by the commission through the normal rulemaking process. The calculations of the minimum Phase I reclamation amount required shall depend upon the reclamation requirements of the approve permits, and shall reflect the probable difficulty of reclamation giving consideration to such factors as site topography, geology, hydrology,and revegetation potential. In no case shall the Phase I reclamation bond be less than $10,000 per permit, except that for those operators with less than 1,000 bonded acres, the minimum bond shall be the equivalent of 20 acres of Phase I reclamation bond for each acre of open pit, as determined by the approved mining plan.

(7) Sections 444.950.2., 3., 4., 5., 6., 7., and 8. Review and Approval by the Missouri Joint Committee on Administrative Rules

Missouri proposes that no rule or portion of a rule promulgated under this chapter shall become effective until it has been approved by the joint committee on administrative rules in accordance with the procedures provided herein, and the delegation of the legislative authority to enact law by the adoption of such rules is dependent upon the power of the joint committee on administrative rules to review and suspend rules pending ratification by the Senate and the House of Representatives as provided herein.

Upon filing any proposed rule with the Secretary of State, the filing agency shall concurrently submit such proposed rule to the committee which may hold hearings upon any proposed rule or portion thereof at any time.

A final order of rulemaking shall not be filed with the Secretary of State until 30 days after such final order of rulemaking has been received by the committee. The committee may hold one or more hearings upon such final order of rulemaking during the 30 day period. If the committee does not disapprove such order of rulemaking within the 30 day period, the filing agency may file such order of rulemaking with the Secretary of State and the order of rulemaking shall be deemed approved.

The committee may, by majority vote of the members, suspend the order of rulemaking or portion thereof by action taken prior to the filing of the final order of rulemaking only for one or more of the following grounds: (1) An absence of statutory authority for the proposed rule; (2) an emergency relating to public health, safety, or welfare; (3) the proposed rule is in conflict with State law; or (4) a substantial change in circumstance since enactment of the law upon which the proposed rule is based.

If the committee disapproves any rule or portion thereof, the filing agency shall not file such disapproved portion of any rule with the Secretary of State and the Secretary of State shall not publish in the Missouri Register any final order of rulemaking containing the disapproved portion.

If the committee disapproves any rule or portion thereof, the committee shall report its findings to the Senate and the House of Representatives. No rule or portion thereof disapproved by the committee shall take effect so long as the Senate and the House of Representatives ratifies the act of the joint committee by resolution adopted in each house within 30 legislative days after such rule or portion thereof has been disapproved by the joint committee.

Upon adoption of a rule as provided herein, any such rule or portion thereof may be suspended or revoked by the general assembly either by bill or, pursuant to section 8, article IV, of the constitution, by concurrent resolution upon recommendation of the joint committee on administrative rules. The

committee shall be authorized to hold hearings and make recommendations pursuant to the provisions of section 536.037, RSMo. The Secretary of State shall publish in the Missouri Register, as soon as practicable, notice of the suspension or revocation.

(8) Section 444.950.10. Self Bond and Alternative Bond

Missouri proposes to clarify that it may accept a self bond for the phase I reclamation bond and adopt an alternative bonding system that will achieve the objectives and purposes of the bonding program pursuant to this section and which is consistent with or pursuant to the purposes of P.L. 95–87, the Surface Mining Control and Reclamation Act.

(9) Section 444.950.11. Release of Bond

Missouri proposes to require that at the completion of Phase I reclamation, the commission may release no less than 80 percent of the Phase I reclamation bond. The remaining Phase I reclamation bond shall remain in effect until Phase III liability is released. In the event of forfeiture, the total amount of the Phase I reclamation bond filed shall be available for the completion of all phases of reclamation.

(10) Section 444.960.1. Coal Mine Land Reclamation Fund

Missouri proposes to remove the option of an operator to not participate in the alternative bonding system by filing a full cost bond.

(11) Section 444.960.5. Assessments to the Fund

Missouri proposes to revise this section to require that assessments continue to be allocated to the 40-percent portion of the fund until enough moneys have accumulated to complete reclamation of those permits that have been revoked by the commission prior to September 1, 1988, rather than ending contributions arbitrarily on September 1, 1993. After that time all moneys will be assessed into the 60-percent fund. The moneys within the respective funds may be utilized by the commission on any aspect of reclamation rather than limiting the use of the 60-percent fund to Phase I reclamation.

(12) Section 444.965.1. and 3. Payment of Assessments

Missouri proposes to remove the option of an operator to not participate in the alternative bonding system by filing a full cost bond.

(13) Section 444.965.4. Rate of Assessment

Missouri proposes to clarify that if the assessment rate changes because the fund would exceed $7 million and then later the fund balance falls below $7 million, a lower rate of assessment cannot be utilized until enough money has accumulated in the 40-percent pool to complete reclamation on sites revoked prior to September 1, 1988, rather than the arbitrary date of September 1, 1993.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Missouri program.

Written Comments

Written comments should be specific, pertain only to the issue proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Kansas City Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., c.d.t., November 2, 1993. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the OSM office listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the administrative record.

IV. Procedural Determinations

Compliance With the National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Executive Order 12866

This proposed rule is not considered a significant regulatory action under the criteria of section 3(f) of Executive Order 12866. Therefore, review by the Office of Management and Budget under section 6 of the Executive Order is not required prior to publication in the Federal Register.

Compliance With the Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Compliance With Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the requirements of 30 CFR parts 730, 731, and 732 have been met.

Compliance With the Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

V. List of Subjects in 30 CFR Part 925

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 8, 1993.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

[FR Doc. 93–25410 Filed 10–15–93; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 925

Missouri Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing the receipt of a proposed amendment to the Missouri permanent regulatory program (hereinafter, the "Missouri program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of changes to provisions of the Missouri statutes pertaining to civil penalties. The amendment is intended to revise the State program to be consistent with the corresponding Federal standards, clarify ambiguities, improve operational efficiency, and at the State's own initiative to improve its program.

This notice sets forth the times and locations that the Missouri program and proposed amendment to the program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4 p.m., c.d.t. November 17, 1993. If requested, a public hearing on the proposed amendment will be held on November 12, 1993. Requests to present oral testimony at the hearing must be received by 4 p.m., c.d.t. on November 2, 1993.

ADDRESSES: Written comments should be mailed or hand delivered to Jerry R. Ennis at the address listed below.

Copies of the Missouri program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Kansas City Field Office.

Jerry R. Ennis, Director, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 934 Wyandotte, Room 500, Kansas City, MO 64105 Telephone: (816) 374–6405.

Missouri Department of Natural Resources, Land Reclamation Program, 205 Jefferson Street, P.O. Box 176, Jefferson City, MO 65102, Telephone: (314) 751–4041.

FOR FURTHER INFORMATION CONTACT: Jerry R. Ennis, telephone: (816) 374–6405.

SUPPLEMENTARY INFORMATION:

I. Background on the Missouri Program

On November 21, 1980, the Secretary of the Interior conditionally approved the Missouri program. General background information on the Missouri program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Missouri program can be found in the November 21, 1980, **Federal Register** (45 FR 77017). Subsequent actions concerning Missouri's program and program amendments can be found at 30 CFR 925.12, 925.15, and 925.16.

II. Proposed Amendment

By letter dated September 24, 1993, (Administrative Record No. MO–576) Missouri submitted a proposed amendment to its program pursuant to SMCRA. Missouri submitted the proposed amendment with the intent of satisfying the required program amendment at 30 CFR 925.16(i) and at the States own initiative to improve its program.

The sections of the Revised Statues of Missouri (RSMo) that are proposed for amendment are discussed briefly below:

(1) Section 444.870.3. Contesting a Penalty

Missouri proposes to revise procedures for the operator to contest either the amount of the penalty or the fact of the violation rather than the notice.

(2) Section 444.870.5., 6., 7., and 8. Administrative Penalties

Missouri proposes to delete the old language at these sections and replace it to require that any person who willfully and knowingly violates a condition of a permit or fails or refuses to comply with any order issued under § 444.885 or § 444.900, or any order incorporated in a final decision issued by the commission, except an order incorporated in a decision issued under subsection 2 of this section shall, upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than 1 year or both.

Whenever a corporate permittee violates a condition of a permit or fails or refuses to comply with any order issued under § 444.885, or any order incorporated in a final decision issued by the commission except an order incorporated in a decision issued under subsection 2 of this section, any director, officer, or agent of such corporation who willfully and knowingly authorized, ordered, or carried out such violation, failure, or refusal shall be subject to the same administrative penalties, fines, and imprisonment that may be imposed upon a person under subsection 1 and 5 of this section.

Whoever knowingly makes any false statement, representation, or certification or knowingly fails to make any statement, representation, or certification in any application, record, report, plan or other document filed or required to be maintained shall, upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than 1 year, or both.

Any operator who fails to correct a violation for which a citation has been issued under subsection 1 of § 444.885 within the period permitted for its correction (which period shall not end until the entry of a final order by the

commission, in the case of any review proceedings under § 444.895 initiated by the operator wherein the commission orders, after an expedited hearing, the suspension of the abatement requirements of the citation after determining that the operator will suffer irreparable loss or damage from the application of those requirements, or until the entry of an order of the court, in the case of any review proceedings under § 444.900 initiated by the operator wherein the court orders the suspension of the abatement requirements of the citation) shall be assessed an administrative penalty by the commission of not less than $750, nor more than $5,000 for each day during which such failure or violation continues.

(3) Section 444.873.1., 2., 3., and 4. Administrative Penalties

Missouri proposes to remove these sections and replace these provisions at § 444.870.5.–8.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Missouri program.

Written Comments

Written comments should be specific, pertain only to the issue proposed in the this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Kansas City Field Office will not necessarily be considered in the final rulemaking or included in the administrative records.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4 p.m., c.d.t. November 2, 1993. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the OSM office listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "**ADDRESSES.**" A written summary of each meeting will be made a part of the administrative record.

IV. Procedural Determinations

Executive Order 12866

This proposed rule is not considered a significant regulatory action under the criteria of section 3(f) of Executive Order 12866. Therefore, review by the Office of Management and Budget under section 6 of the Executive Order is not required prior to publication in the **Federal Register**.

Compliance With the National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Compliance With Executive Order No. 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 (Reduction of Regulatory Burden) for actions related to approval or conditional approval of State regulatory programs, actions, and program amendments. Therefore, preparation of a Regulatory Impact Analysis is not necessary and OMB regulatory review is not required.

Compliance With the Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Compliance With Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsection (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the requirements of 30 CFR Parts 730, 731, and 732 have been met.

Compliance With the Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

List of Subjects in 30 CFR Part 925

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 8, 1993.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

[FR Doc. 93–25409 Filed 10–15–93; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Chapter I

[FRL–4790–5]

Open Meeting on the Definition of Solid Waste and Hazardous Waste Recycling

AGENCY: Environmental Protection Agency.

ACTION: Notice of public meeting.

SUMMARY: The Environmental Protection Agency (EPA) is conducting a public meeting on revising the regulatory definition of solid waste under the Resource Conservation and Recovery Act (RCRA). The revisions are intended to simplify the regulations and to eliminate disincentives to recycling while maintaining full protection of human health and the environment. They are also intended to reduce any possible current underregulation of hazardous waste recycling.

DATES: The meeting will take place on October 27, 1993 from 9:30 a.m. to 6 p.m., and on October 28 1993 from 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting will take place at the U.S. Chamber of Commerce building, 1615 H St. NW., Washington, DC 20062 (202) 659–6000.

FOR FURTHER INFORMATION CONTACT: For additional information on the meeting, please contact Sharon Brent of EPA's Office of Solid Waste at (202) 260–8104.

SUPPLEMENTARY INFORMATION: The Agency has selected sixteen individuals to provide technical and policy expertise at the meeting. These individuals will provide their opinions about the issues of hazardous waste recycling and how the federal solid waste rules affect such recycling. The individuals are:

Dorothy Kelly (Ciba-Geigy Corp.)
John Fognani (Gibson, Dunn, and Crutcher)
Harvey Alter (Chamber of Commerce)
Jeff Reamy (Phillips Petroleum Co.)
Jon Jewett (Solite Corp.)
Robert Wescott (Wesco Parts Cleaners)
Richard Fortuna (Hazardous Waste Treatment Council)
John Wittenborn (Collier, Rill, Shannon, and Scott)
William Collinson (General Motors Corp.)
Gerald Dumas (RSR Corp.)
Kevin Igli (Waste Management Inc.)
Karen Florini (Consultant)
David Lennett (Consultant)
Melinda Taylor (Consultant)
Roy Brower (State of Oregon)
Pat Matuseski (State of Minnesota)

EPA participants in the discussions will be James Berlow, Director of the Definition of Solid Waste Task Force, and Rich Vaille EPA Region IX. In addition, any interested member of the public may attend the meeting.

Dated: October 8, 1993.

Deborah Dalton,

Deputy Director, Consensus and Dispute Resolution Program.

[FR Doc. 93–25514 Filed 10–15–93; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Parts 35 and 300

[FRL–4790–3]

National Oil and Hazardous Substances Pollution Contingency Plan; Cooperative Agreements and Superfund State Contracts for Superfund Response Actions

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing largely technical revisions to four sections of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). EPA is also proposing conforming revisions to two sections of the administrative requirements for CERCLA-funded Cooperative Agreements and Superfund State Contracts for Superfund Response Actions.

The first NCP revision clarifies that EPA may acquire an interest in real estate in order to conduct a Superfund (Fund)-financed remedial action only if the State in which the interest is located agrees to accept transfer of that interest upon completion of the remedial action. The second revision clarifies that Federal agencies have discretionary authority over the expenditure of their funds when acting as an expert agency providing assistance in a cleanup. The third revision explains that EPA may extend the operational and functional period of a remedial action as necessary, and fund such extensions as part of the remedial action. The fourth revision clarifies that an On-scene Coordinator (OSC) may be authorized to coordinate and direct appropriate response action, not merely a removal action.

Finally, EPA is clarifying in the preamble to this proposed rule earlier NCP preamble statements concerning the administrative record for judicial review of response actions and preemption of State environmental law and enforcement actions; no rule language is being proposed concerning either of the clarifications.

DATES: Comments on the proposed rule must be submitted on or before November 17, 1993.

ADDRESSES: Written comments on the proposed rule should be submitted, in triplicate, to the Superfund Docket, located at the U.S. Environmental Protection Agency, 401 M Street, SW., room 2615 Mall, Washington, DC 20460. The record supporting this rulemaking is contained in the Superfund Docket and is available for inspection, by appointment only, between the hours of 9 a.m. and 4 p.m., Monday through Friday, excluding legal holidays. As provided in 40 CFR part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Hugo Paul Fleischman, Office of Emergency and Remedial Response, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 (Mail Code—5203G), at (703) 603–8769, or the RCRA/Superfund Hotline at 1 800–424–9346 (in Arlington, Virginia at (703) 920–9810).

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Introduction
II. Discussion of Proposed Revisions
III. Summary of Supporting Analyses

I. Introduction

Pursuant to section 105(b) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA or Superfund), Public Law No. 96–510, as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Public Law No. 99–499, the Environmental Protection Agency (EPA or the Agency) revised the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), largely in order to implement regulatory changes necessitated by SARA. 55 FR 8666–8865 (March 8, 1990), codified at 40 CFR part 300. In carrying out the revised NCP, EPA has identified several provisions that are capable of interpretations other than those intended by the Agency.

In order to avoid any confusion, and to better inform the public, EPA is today proposing clarifications to four sections of the NCP. EPA is also proposing conforming changes to two sections of 40 CFR part 35, subpart O (hereafter subpart O), the administrative requirements for CERCLA-funded

Cooperative Agreements and Superfund State Contracts. The Agency is suggesting changes to the language of the provisions in order to eliminate any potential ambiguity, to reaffirm the Agency's original intent in promulgating these sections, and in some cases, to have rule language that more closely comports with the language of CERCLA.

EPA is also clarifying several statements in prior NCP preambles concerning the administrative record provisions of the NCP and preemption of State environmental law and enforcement actions.

II. Discussion of Proposed Revisions

A. Property Acquisitions During Remedial Actions

1. NCP Section 300.510(f)

The first proposed NCP revision relates to the acquisition of, and acceptance of transfer of interests in, real estate in a Fund-financed remedial action. NCP § 300.510(f) provides that EPA may determine that an interest in real property must be acquired in order to conduct a response action. As a general rule, the State in which the property is located must agree to acquire and hold the necessary property interest, including any interest in acquired property that is needed to ensure the reliability of institutional controls restricting the use of that property. If it is necessary for the United States government to acquire the interest in property to permit implementation of the response, the State must accept transfer of the acquired interest on or before the completion of the response action.

Some members of the public appear to interpret this provision as authorizing EPA to require a State to acquire interests in real estate; this was not EPA's intent. CERCLA section 104(j)(2) makes clear that the President may acquire an interest in real estate needed to conduct a remedial action "only if, before an interest in real estate is acquired under this subsection, the State in which the interest is to be acquired is located assures the President * * * that the State will accept transfer of the interest following completion of the remedial action." The intent of NCP § 300.510(f) was to implement that section, and to make clear that the State's assurance to accept transfer of the interest in real estate is a necessary condition of EPA's acquiring it (consistent with CERCLA section 104(j)(2)), not that EPA could compel the State to acquire it.

The proposed rule has been drafted to more closely track the statutory language, in order to minimize any ambiguities. It restates the concept in CERCLA section 104(j)(1) that EPA may acquire an interest in real property to conduct any response action. It clarifies that a State is not required to acquire an interest in real estate, but that EPA may only acquire an interest in real estate in a Fund-financed remedial action if a State assures that it will accept transfer of such interest upon completion of the action, as provided in CERCLA section 104(j)(2). Proposed NCP § 300.510(f) would also delete, for purposes of simplicity, the specific example of a property interest "needed to ensure the reliability of institutional controls restricting the use of that property." This issue is already covered in other sections of the NCP. For instance, NCP § 300.510(c)(1) provides that a State must, in appropriate instances, as part of the assurances it gives for operation and maintenance (O&M) of a remedial action, assure that "any institutional controls implemented as part of the remedial action at a site are in place, reliable, and will remain in place after the initiation of O&M." In some cases, the maintenance of an interest in real estate may be necessary in order to ensure the reliability of such institutional controls. This deletion of the O&M institutional controls example from the current version of NCP § 300.510(f) is not substantive, and is merely intended to have the regulatory language more precisely track the statutory language.

There was also some confusion as to when the State would be required to accept the transfer of interest in real estate acquired in accordance with CERCLA sections 104(j)(1) and (2). The proposal clarifies that such transfer must occur "upon completion of the remedial action." This language is consistent with CERCLA section 104(j)(2). For purposes of the proposed paragraph, "completion of the remedial action" means the point at which O&M measures would be initiated if started in a timely fashion. For sites other than ground or surface-water sites, O&M would generally begin when the remedy has been constructed, is operational and functional, and has attained ROD objectives (e.g., the landfill and leachate collection system are built as called for in the ROD, are operational, and need only be maintained). For ground- and surface-water restoration remedies, O&M begins after up to 10 years of restoration measures. NCP § 300.435(f). The proposal, like the present rule, allows for earlier transfers if agreed to in writing by EPA and the State. See 55 FR 8779 (March 8, 1990). ("Completion of the remedial action," for purposes of CERCLA section 104(j), should not be confused with "construction completion," which occurs at an earlier point in the process. See 58 FR 12142, (March 2, 1993).)

States have an important role in determining when a Fund-financed remedial action is complete. They have the opportunity to concur in the determination that the remedy has been constructed in accordance with the Record of Decision, and that the start-up period (i.e., the "operational and functional" period) should begin. At the end of the start-up period, the State and EPA will conduct a joint inspection of the site prior to EPA's decision to accept or reject the remedial action report.

Finally, to help the public identify all sections of the regulations relevant to this subject, the proposed rule also provides a cross-reference to 40 CFR part 35, subpart O, § 35.6110(b)(2), for information on Indian tribal assurances for property acquisitions. For the foregoing reasons, the Agency is proposing to revise NCP § 300.510(f) to provide that EPA may determine that an interest in real property must be acquired in order to conduct a response action. However, as provided in CERCLA section 104(j)(2), EPA may acquire an interest in real estate in order to conduct a remedial action only if the State in which the interest to be acquired is located provides assurances, through a contract, cooperative agreement or otherwise, that the State will accept transfer of the interest upon completion of the remedial action. For purposes of this paragraph, "completion of the remedial action" is the point at which operation and maintenance (O&M) measures would be initiated. The State may accept a transfer of interest at an earlier point in time if agreed upon in writing by the State and EPA. Indian tribe assurances are to be provided as set out at 40 CFR part 35, subpart O, § 35.6110(b)(2).

2. Proposed Changes to Subpart O

Background. Uniform Federal administrative requirements for grants and cooperative agreements to State and local governments are set out at 40 CFR part 31. However, as provided in 40 CFR 31.4, part 31 authorizes EPA, among other things, to impose additional requirements in codified regulations where necessary to implement statutory provisions. Consistent with this authority, at 40 CFR part 35, subpart O, EPA has published rules which establish the administrative requirements for Superfund cooperative agreements with State and local governments. EPA is proposing to revise several sections of subpart O.

a. Section 35.6105(b)(5). Section 35.6105 of subpart O explains the State assurances that must be obtained before EPA may commence a Fund-financed remedial action. One of those assurances is the State's agreement to accept transfer of an interest in real estate upon completion of the remedial action. Section 35.6105(b)(5), which describes the assurance, provides that before a Cooperative Agreement for remedial action can be awarded, the State must provide EPA with written assurances as specified below. If EPA determines in the remedy selection process that an interest in real property must be acquired in order to conduct a response action, such acquisition may be funded under a Cooperative Agreement. If the State, or a political subdivision thereof, is unable to acquire the real property interest, the State must assure EPA that it will accept transfer of such interest, including any interest in real property that is acquired to ensure the reliability of institutional controls restricting the use of that property. The State must provide this assurance even if it intends to transfer this interest to a third party. (See § 35.6400 of this subpart for additional information on real property acquisition requirements.)

EPA proposes to revise this rule to more closely track statutory language in CERCLA section 104(j) concerning property and interests in real estate and to clarify that EPA may only acquire an interest in real estate if a State provides assurances that it will accept transfer of that interest upon completion of a Fund-financed remedial action.

The assurance for acceptance of transfer of an interest in real estate may be for the purpose of ensuring the reliability of institutional controls or for any other purpose necessary to effectuate the remedial action. For the reasons discussed above with respect to NCP § 300.510(f), the specific example of a property interest needed to ensure the reliability of institutional controls, has been omitted from proposed § 35.6105(b)(5). Thus, EPA proposes to revise § 35.6105(b)(5) to provide that if EPA determines in the remedy selection process that an interest in real property must be acquired in order to conduct a response action, such acquisition may be funded under a Cooperative Agreement. EPA may acquire an interest in real estate for the purpose of conducting a remedial action only if the State provides assurance that it will accept transfer of such interest in accordance with 40 CFR 300.510(f). The State must provide this assurance even if it intends to transfer this interest to a third party. (See § 35.6400 of this subpart for additional information on real property acquisition requirements.)

b. Section 35.6400(a)(2). Section 35.6400(a) sets out provisions for the acquisition of real property by a State or Indian tribe under a cooperative agreement with EPA, as part of a Fund-financed response action. Section 35.6400(a) presently provides that for property acquisitions under a cooperative agreement, an interest in real property may be acquired only with prior approval of EPA. If the recipient acquires real property in order to conduct the response, the recipient with jurisdiction over the real property, to the extent of its legal authority, must agree to acquire and hold the necessary real property interest. If it is necessary for the Federal Government to acquire the interest in real property to permit conduct of the response, the State or Indian Tribe, to the extent of its legal authority, must agree to accept transfer of the acquired interest on or before completion of the response action. States and Indian Tribes must follow the requirements in § § 35.6105(b) and 35.6110(b)(2), respectively, of this subpart.

EPA is proposing to revise § 35.6400(a)(1) to provide that where a cooperative agreement recipient acquires real property in order to conduct the response, the recipient must merely agree to hold (not "acquire") the necessary real property interest. This is more consistent with CERCLA section 104(j)(2), and may afford States and Indian tribes greater flexibility in managing real property at which a response action is needed.

EPA also proposes to amend § 35.6400(a)(2) to more closely reflect the language of CERCLA section 104(j). Specifically, the proposed change would clarify that the prerequisite of obtaining a State's real estate interest transfer and assurance applies only to Fund-financed remedial actions, not any Fund-financed response action. The revisions would also clarify the timing of such acceptance by referring to the proposed revision of NCP § 300.510(f), which would require acceptance of the transfer "upon completion of the remedial action."

EPA also proposes to clarify that the words "to the extent of its legal authority" in § 35.6400(a)(2) do not refer to States, because in any case, under CERCLA section 104(j)(2), EPA may not proceed with an acquisition of real estate as part of a Fund-financed remedial action unless the State provides the necessary assurance. If the State has no legal authority to provide such assurance, the action may not proceed. This proposed clarification would apply only to States. EPA recognizes that in some circumstances obtaining the real estate interest transfer assurance from an Indian tribe may not be possible. See 40 CFR 35.6110. For that reason, the words "to the extent of its legal authority" qualify the requirement of this assurance whenever it applies to Indian tribes. EPA will address on an individual basis the proper application of the CERCLA section 104(j) assurance in the extreme case when an Indian tribe lacks such authority. Therefore the revised § 35.6400 (a) would provide that for property acquisitions under a cooperative agreement an interest in real property may be acquired only with prior approval of EPA. If the recipient acquires real property in order to conduct the response, the recipient with jurisdiction over the property must agree to hold the necessary property interest. If it is necessary for the Federal Government to acquire the interest in real estate to permit conduct of a remedial action, the acquisition may be made only if the State, or Indian Tribe to the extent of its legal authority, provides assurance that it will accept transfer of the acquired interest in accordance with 40 CFR 300.510(f). States and Indian Tribes must follow the requirements in § § 35.6105(b)(5) and 35.6110(b)(2) respectively, of this subpart.

B. Federal Agency Participation in Response Actions—NCP Section 300.160(c)

EPA is also proposing to clarify NCP § 300.160(c), which relates to the participation of other Federal agencies in response actions. That section now states that response actions undertaken by participating agencies shall be carried out under existing programs and authorities when available. Federal agencies are to make resources available, expend funds, or participate in response to discharges and releases under their existing authority. Interagency agreements may be signed when necessary to ensure that Federal resources will be available for a timely response to a discharge or release. The ultimate decision as to the appropriateness of expending funds rests with the agency that is held accountable for such expenditures.

Several parties have apparently misread the final sentence quoted above to allow Federal agencies to decline to clean up Federal facilities which the agency owns or operates; such an interpretation was not intended. This provision was intended to describe authority for other Federal agencies to render assistance as a support agency

(e.g., to provide expert assistance), not where that agency is taking actions to clean up its own facility. (See 55 FR 8681, March 8, 1990.) Indeed, in response to a comment, the preamble to the 1990 NCP states, at 55 FR 8861:

> The commenter appears to misinterpret this section as applicable to situations when the Federal agency is itself a PRP (potentially responsible party). It is not.

In order to resolve any potential ambiguity on this point, EPA is proposing to revise the fourth sentence in § 300.160(c) to read:

> * * * timely response to a discharge of release. In cases where a Federal agency is asked to provide expert assistance for a response action, the ultimate decision as to the appropriateness of expending funds with respect to such assistance rests with the agency that is held accountable for such expenditures. Further funding for provisions of discharge of oil are described in § 300.335.

C. Extensions to the Operational and Functional Period—NCP Section 300.510(c)(2)

Clarification is also necessary of the EPA's ability to provide funding for extensions of the period of remedial response activities when a constructed remedy is tested to determine if it is "operational and functional" (O&F) (often referred to as the "shake-down period"). There are two NCP provisions at issue.

NCP § 300.435(f)(2) clearly sets out the authority for EPA to grant extensions to the O&F period. A remedy becomes "operational and functional" either one year after construction is complete, or when the remedy is determined concurrently by EPA and the State to be functioning properly and is performing as designed, whichever is earlier. EPA may grant extensions to the one-year period, as appropriate.

However, NCP § 300.510(c)(2) could be read to limit the Agency's ability to fund such extended O&F periods. After a joint EPA/State inspection of the implemented Fund-financed remedial action under § 300.515(g), EPA may share, for a period of up to one year, in the cost of the operation of the remedy to ensure that the remedy is operational and functional. In the case of restoration of ground or surface water, EPA shall share in the cost of the State's operation of ground- or surface-water restoration remedial actions as specified in § 300.435(f)(3).

NCP § 300.510(c)(2) was not meant to impose a limitation on the Agency's ability to fund extended O&F periods (note that there is no limitation in the statute on the Agency's ability to fund an O&F period greater than one year). Rather, the reference to the period "up to one year" was meant to relate back to NCP § 300.435(f)(2); however, the possibility for extensions was not specifically repeated. In order to avoid any ambiguity, the Agency is proposing to amend § 300.510(c)(2) to provide that after a joint EPA/State inspection of the implemented Fund-financed remedial action under § 300.515(g), EPA may share, for the period established in § 300.435(f)(2), in the cost of the operation of the remedy to ensure that the remedy is operational and functional. In the case of restoration of ground or surface water, EPA shall share in the cost of the State's operation of ground- or surface-water restoration remedial actions as specified in § 300.435(f)(3).

D. Definition of On-scene Coordinator

EPA also proposes to revise the definition of "On-scene Coordinator" (OSC) in NCP § 300.5 to make clear that the OSC may be authorized, in appropriate cases, to implement any necessary response action, not merely a removal action. Present rule language specifically references only the OSC's role in the implementation and management of "removal" actions. If this definition were construed to bar OSC's from managing remedial action projects, it would result in the need to assign both an OSC and a Remedial Project Manager (RPM) to sites where multiple types of response action are necessary. This would result in an inefficient duplication of resources. The Agency also believes that it is important to have the flexibility to assign one "site manager" to a site—either an OSC or an RPM and for the OSC and RPM to have the ability to supervise both removal and remedial actions, as circumstances warrant. (Cross-training of OSCs and RPMs may be needed to implement this idea.) Thus, the change being proposed today would further the goals of increased efficiency and flexibility, and would clarify the authority of OSCs to engage in all appropriate response activities. The definition of OSC, at 40 CFR 300.5, provides that OSC means the Federal official predesignated by EPA or the USCG to coordinate and direct Federal responses under subpart D, or the official designated by the lead agency to coordinate and direct removal actions under subpart E of the NCP.

EPA proposes to change the rule to read that OSC means the Federal official predesignated by EPA or the USCG to coordinate and direct Federal responses under subpart D, or the official designated by the lead agency to coordinate and direct removal or other response actions under subpart E of the NCP.

This proposed change would ensure that the definition of an OSC is parallel to that of an RPM. RPMs "coordinate, monitor, or direct remedial or other response actions under subpart E of the NCP." 40 CFR 300.5. OSCs would continue to be primarily charged with overseeing removal actions; however, in appropriate cases (e.g., where multiple actions are necessary), the OSC could also be authorized to oversee the remedial action activities.

E. Administrative Record Provisions

Some clarification is also necessary as to the meaning of NCP preamble statements concerning administrative record provisions. Specifically, there has been some confusion as to:

(1) Whether certain statements in the preamble to the NCP concerning the scope of judicial review were intended to constitute "rules,"; and

(2) Whether the definition of the administrative record promulgated in the NCP means that EPA may exclude all documents from the record which the Agency considered but did not rely on in making a response selection decision. Accordingly, EPA is making the following clarifications. (No associated changes in NCP rule language are considered to be necessary or appropriate, and EPA is not requesting comment on these clarifications.)

The administrative record regulations in the NCP, 40 CFR part 300, subpart I, simply set forth requirements for Agency compilation of records which form the basis of CERCLA response selection decisions. The Agency's preamble statement that judicial review of *any* response decision, whether secured administratively or judicially under CERCLA, would be limited to the administrative record, see 55 FR 8803 (March 8, 1990), accurately reflects the Agency's interpretation of the statute. See CERCLA section 113(j)(1). The Agency continues to believe this interpretation to be correct.

However, this preamble statement was not intended to itself constitute a rule, but rather was intended simply to respond to commenters who argued that records should not be compiled for response actions secured judicially. Thus, EPA was clarifying its interpretation of the statute, not seeking to issue a binding rule concerning the scope or standard of review for judicial review of section 106 administrative orders or for section 106 injunctive proceedings.

With respect to the second issue, the NCP defines the administrative record as the file containing the documents that "form the basis for the selection of a response action." 40 CFR 300.800. By

using this formulation of the definition of the record, EPA did not intend to exclude from the record all documents containing information which the Agency considered in choosing the response action but did not rely on. Rather, EPA intends that the "form the basis for the selection" language embody general principles of administrative law concerning compilation of administrative records for agency decisions. See 55 FR 8800 (March 8, 1990).

As a result, the record would include certain documents and information (*e.g.*, data submitted during the public comment period) which the Agency considered but rejected, and which do not support the final decision made by the Agency. As to other documents, EPA recognizes that section 113(j)(1) of CERCLA provides that "[o]therwise applicable principles of administrative law shall govern whether any supplemental materials may be considered by the court." See 55 FR 8807 (March 8, 1990).

F. Preemption—Clarification

The preamble to the 1990 NCP (55 FR 8666, at 8783 (March 8, 1990)) recognized that a State may proceed with a response action without EPA concurrence if the State uses its own funds or enforcement authorities. However, the preamble noted that a State enforcement action at a particular site could, in the future, be subject to possible "preemption" under CERCLA section 122(e)(6) (entitled "Inconsistent Response Actions"), i.e., in a case where there was also a Federal response action at the same site. Also, the preamble stated that State environmental laws are subject to "implied repeal" or "pre-emption" by on-site CERCLA response actions. 55 FR at 8742. Similar statements were made in the preamble to the 1985 NCP. See 50 FR 5861, 5865 (February 12, 1985) and 50 FR 47912, 47917–18 (November 20, 1985).

There has been some confusion as to whether preamble statements regarding preemption were meant to constitute a binding rule or regulation. This is to clarify that the preamble statements were not intended to constitute a rule or regulation, but rather were intended simply to set out EPA's position on the issues in response to comments. EPA's statements do not create any rights of any third parties involved with CERCLA cleanups.

III. Summary of Supporting Analyses

A. Regulatory Impact Analysis

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This proposal to make largely technical or editorial revisions to four sections of the NCP and two sections of subpart O is not major, as its effect, if promulgated, would largely be to clarify EPA's original intent under the 1990 NCP and make conforming changes to subpart O. There is no additional impact on the regulated community due to today's rule, and no new obligations will be imposed on any party. Therefore, this proposal is not a major regulation, and no Regulatory Impact Analysis is required.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). EPA may certify, however, that the rule will not have a significant economic impact on a substantial number of entities.

These proposed revisions, if promulgated, will not have a significant economic impact on small entities since their effect would be largely to clarify EPA's original intent under the 1990 NCP. There is no additional impact on the regulated community due to today's proposed rule, and no new obligations would be imposed on any party. Accordingly, EPA hereby certifies that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This proposed regulation, therefore, does not require a Regulatory Flexibility Analysis.

C. Paperwork Reduction Act

There are no information collection requirements imposed by this proposed rule.

List of Subjects

40 CFR Part 35

Environmental protection, Accounting, Administrative practice and procedures, Financial administration, Grant programs (Cooperative Agreements and Superfund State Contracts), Government procurement requirements, Property requirements, Reporting and recordkeeping requirements, Superfund.

40 CFR Part 300

Air pollution control, Chemicals, Hazardous materials, Hazardous substances, Incorporation by reference, Intergovernmental relations, Natural resources, Occupational safety and health, Oil pollution, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Dated: October 7, 1993.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, it is proposed that 40 CFR parts 35 and 300 be amended as follows:

PART 35—STATE AND LOCAL ASSISTANCE

1. The authority citation for part 35 continues to read as follows:

Authority: 42 U.S.C. 9601 *et seq.*

2. Section 35.6105 of subpart O is amended by revising paragraph (b)(5) to read as follows:

§ 35.6105 State-lead remedial Cooperative Agreements.

* * * * *

(b) * * *

(5) *Real property acquisition.* If EPA determines in the remedy selection process that an interest in real property must be acquired in order to conduct a response action, such acquisition may be funded under a Cooperative Agreement. EPA may acquire an interest in real estate for the purpose of conducting a remedial action only if the State provides assurance that it will accept transfer of such interest in accordance with 40 CFR 300.510(f). The State must provide this assurance even if it intends to transfer this interest to a third party. (See § 35.6400 of this subpart for additional information on real property acquisition requirements.)

* * * * *

3. Section 35.6400 of subpart O is amended by revising paragraphs (a)(1) and (2) to read as follows:

§ 35.6400 Acquisition and transfer of interest.

(a) * * *

(1) If the recipient acquires real property in order to conduct the response, the recipient with jurisdiction over the property must agree to hold the necessary property interest.

(2) If it is necessary for the Federal Government to acquire the interest in real estate to permit conduct of a remedial action, the acquisition may be made only if the State, or Indian Tribe to the extent of its legal authority, provides assurance that it will accept

transfer of the acquired interest in accordance with 40 CFR 300.510(f). States and Indian Tribes must follow the requirements in §§ 35.6105(b)(5) and 35.6110(b)(2) respectively, of this subpart.

* * * * *

PART 300—NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTINGENCY PLAN02

1. The authority citation for part 300 continues to read as follows:

Authority: 42 U.S.C. 9601–9657, 33 U.S.C. 1321(c)(2); E.O. 11735, 38 FR 21243; E.O. 12580, 52 FR 2923.

2. Section 300.5 of subpart B is amended by revising the definition for "On-scene Coordinator (OSC)" to read as follows:

§ 300.5 Definitions.

* * * * *

On-scene Coordinator (OSC) means the Federal official predesignated by EPA or the U.S.C.G to coordinate and direct Federal responses under subpart D, or the official designated by the lead agency to coordinate and direct removal or other response actions under subpart E of the NCP.

* * * * *

3. Section 300.160 of subpart B is amended by revising paragraph (c) to read as follows:

§ 300.160 Documentation and cost recovery.

* * * * *

(c) Response actions undertaken by the participating agencies shall be carried out under existing programs and authorities when available. Federal agencies are to make resources available, expend funds, or participate in response to discharges and releases under their existing authority. Interagency agreements may be signed when necessary to ensure that the Federal resources will be available for a timely response to a discharge or release. In cases where a Federal agency is asked to provide expert assistance for a response action, the ultimate decision as to the appropriateness of expending funds with respect to such assistance rests with the agency that is held accountable for such expenditures. Further funding provisions for discharges of oil are described in § 300.335.

* * * * *

4. Section 300.510 of subpart F is amended by revising paragraphs (c)(2) and (f) to read as follows:

§ 300.510 State assurances.

* * * * *

(c)(1)* * *

(2) After a joint EPA/State inspection of the implemented Fund-financed remedial action under § 300.515(g), EPA may share, for the period established in § 300.435(f)(2), in the cost of the operation of the remedy to ensure that the remedy is operational and functional. In the case of restoration of ground or surface water, EPA shall share in the cost of the State's operation of ground- or surface-water restoration remedial actions as specified in § 300.435(f)(3).

* * * * *

(f) EPA may determine that an interest in real property must be acquired in order to conduct a response action. However, as provided in CERCLA section 104(j)(2), EPA may acquire an interest in real estate in order to conduct a remedial action only if the State in which the interest to be acquired is located provides assurances, through a contract, cooperative agreement or otherwise, that the State will accept transfer of the interest upon completion of the remedial action. For purposes of this paragraph, "completion of the remedial action" is the point at which operation and maintenance (O&M) measures would be initiated. The State may accept a transfer of interest at an earlier point in time if agreed upon in writing by the State and EPA. Indian tribe assurances are to be provided as set out at 40 CFR part 35, subpart O, § 35.6110(b)(2).

[FR Doc. 93–25484 Filed 10–15–93; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 52

[TX–21–1–5737; FRL–4787–9]

Clean Air Act Approval and Promulgation of Title I, Section 182(d)(1)(B), Employee Commute Options/Employer Trip Reduction Program for Texas

AGENCY: Environmental Protection Agency (EPA)

ACTION: Notice of proposed rulemaking.

SUMMARY: In this proposal, the EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Texas for the purpose of establishing an Employee Commute Options (ECO)/Employer Trip Reduction (ETR) Program. Pursuant to section 182(d)(1)(B) of the Clean Air Act (CAA), as amended in 1990, the SIP was submitted by Texas to satisfy the statutory mandate that an ECO/ETR Program be established for employers with 100 or more employees, such that compliance plans developed by such employers are designed to convincingly demonstrate an increase in the average passenger occupancy (APO) of their employees who commute to work during the peak period, by no less than 25% above the average vehicle occupancy (AVO) of the nonattainment area. The rationale for the approval is set forth in this document; additional information is available at the addresses indicated in the **ADDRESSES** section.

DATES: Comments on this proposed action must be received in writing on or before November 17, 1993.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Planning Section, at the EPA Region 6 Office listed below. Copies of the documents relevant to this proposed action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T-A), 1445 Ross Avenue, Dallas, Texas 75202–2733.

U.S. Environmental Protection Agency, Jerry Kurtzweg, ANR–443, 401 M Street, SW., Washington, DC 20460.

Texas Natural Resource Conservation Commission, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Ms. Leila Yim Surratt, Planning Section (6T-AP), Air Programs Branch, U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 655–7231.

SUPPLEMENTARY INFORMATION:

I. Background

Implementation of the provisions of the CAA will require employers with 100 or more employees in the Houston-Galveston ozone nonattainment area to participate in a trip reduction program. The concerns that lead to the inclusion of this ECO/ETR provision in the CAA are that more people are driving than ever before, and they are driving longer distances. The increase in the number of drivers, and the increase in the number of vehicle miles traveled, currently offset a large part of the emissions reductions achieved through the production and sale of vehicles that operate more cleanly. It is widely accepted that shortly after the year 2000, without limits on increased travel, the increased emissions caused by more vehicles being driven more miles under more congested conditions will outweigh the fact that each new vehicle

pollutes less, resulting in an overall increase in emissions from mobile sources. The ECO/ETR provision outlines the requirements for a program designed to minimize the use of single occupancy vehicles in order to gain emissions reductions beyond what can be and will be obtained via stricter tailpipe and fuel standards.

Section 182(d)(1)(B) requires that employers submit their compliance plans to the State two years after the SIP is submitted to the EPA, such that compliance plans developed by such employers are designed to convincingly demonstrate an increase in the APO of their employees who commute to work during the peak period by no less than 25% above the AVO of the nonattainment area. These compliance plans must "convincingly demonstrate" that the employers will meet the target not later than four years after the SIP is submitted. The target APO is no less than 25% above the AVO for the nonattainment area. Where there are important differences in terms of commute patterns, land use, or AVO, the States may establish different zones within the nonattainment area for purposes of calculation of the AVO.

Section 110(k) of the CAA contains provisions governing the EPA's review of SIP submittals. The EPA can take one of three actions on ECO/ETR Program SIP submittals. If the submittal satisfactorily addresses all of the required ECO/ETR Program elements, the EPA shall grant full approval. If the submittal contains approvable commitments to implement all required ECO/ETR program elements, but the State does not yet have all of the necessary regulatory authority to do so, the EPA may grant conditional approval. Finally, if the submittal fails to adequately address one or more of the mandatory ECO/ETR program elements, the EPA shall issue a disapproval.

The State of Texas has submitted a SIP revision to the EPA in order to satisfy the requirements of section 182(d)(1)(B). In order to gain approval, the State submittal must contain each of the following ECO/ETR program elements: (1) The AVO for each nonattainment area or for each zone if the area is divided into zones; (2) the target APO which is no less than 25% above the AVO(s); (3) an ECO program that includes a process for compliance demonstration; and (4) enforcement procedures to ensure submission and implementation of compliance plans by subject employers. The EPA issued guidance on December 17, 1992, interpreting various aspects of the statutory requirements (Employee Commute Options Guidance, December 1992).

II. Analysis

The following items are the basis for approval of the Texas SIP revision. Please refer to the EPA's Technical Support Document and the Texas SIP submittal for additional information.

A. The Average Vehicle Occupancy

Section 182(d)(1)(B) requires that the State determine the AVO at the time the SIP revision is submitted. The State has met this requirement by contracting with the Houston-Galveston Area Council (H-GAC), the metropolitan planning organization for the eight-county Houston-Galveston ozone nonattainment area, to determine the AVO. Based on a telephone survey of 5,000 households conducted during the spring of 1992, the H-GAC determined the regional AVO to be 1.17. The survey response rate was 78 percent. The EPA concludes that this survey accurately represents the Houston-Galveston ozone nonattainment area AVO.

B. The Target APO

Section 182(d)(1)(B) indicates that the target APO must be not less than 25% above the AVO for the nonattainment area. An approvable SIP revision for this program must include the target APO. The State has met this requirement by establishing one zone with a current AVO of 1.17. This zone has been divided into two areas with different target APOs which together average to an APO of 1.46 for the nonattainment area as a whole (weighted average based on the number of affected employees in each area). The target APO for employers in Harris County, plus adjacent urbanized areas such as The Woodlands, Sugarland, and South Shore Harbor, is 1.47. The target APO for the remaining portions of the nonattainment area is 1.41. A detailed delineation of the two areas is included in the State submittal and the EPA's Technical Support Document.

C. ECO Program

State or local law must establish ECO/ETR requirements for employers with 100 or more employees at a work site within severe and extreme ozone nonattainment areas and serious carbon monoxide areas. In the ECO Guidance issued December 1992, the EPA states that automatic coverage of employers of 100 or more should be included in the law. In addition, States should develop procedures for notifying subject employers regarding the ECO/ETR requirements.

States and/or local laws must require that initial compliance plans "convincingly demonstrate" prospective compliance. Approval of the SIP revision depends on the ability of the State/local regulations to ensure that the CAA requirement that initial compliance plans "convincingly demonstrate" compliance will be met. This demonstration can take on any of four forms or any combination of these.

One option is for the State to include in the SIP, evidence that agency resources are available for the effective plan-by-plan review of employer-selected measures to ensure the high quality of compliance plans, and that plans that are not convincing will be rejected.

A second option is for the regulations in the SIP to contain a convincing minimum set of measures that all employers must implement. These measures will be subject to review and approval by the EPA as adequate when the SIP is processed.

A third option is for the regulations in the SIP to provide that failure by the employer to meet the target APO will result in implementation of a regulation-specified, multi-measure contingency plan. This plan will be reviewed by the EPA for adequacy when the SIP is processed.

A fourth option is for the regulations in the SIP to include for employers who fail to meet the target APO financial penalties and/or compliance incentives that are large enough to result in a significant prospective incentive for the employer to design and implement an effective initial compliance plan of its own.

As explained more fully in the EPA's Technical Support Document, the State of Texas has met these requirements by requiring affected employers to submit a detailed initial compliance plan on a submission schedule, depending on the employer's size, between May 15, 1994, and November 15, 1994. In addition, the Texas ECO/ETR regulation includes significant potential financial penalties for employers who fail to meet the applicable target APO. The regulation states that failure to attain the applicable target APO may be considered a violation and may subject the violator to up to $10,000 in administrative penalties and up to $25,000 in civil penalties per violation. The EPA believes that these penalties are clearly large enough to result in a significant prospective incentive for employers to design and implement effective initial compliance plans of their own.

D. Enforcement Procedures

States and local jurisdictions need to include in their ECO/ETR regulations penalties and/or compliance incentives for an employer who fails to submit a compliance plan or an employer who fails to implement an approved compliance plan according to the compliance plan's implementation schedule. Penalties should be severe enough to provide an adequate incentive for employers to comply and be no less than the expected cost of compliance. The State has met this requirement by including significant potential financial penalties for employers who fail to submit a compliance plan, or implement the compliance plan or plan incentives. The regulation states that failure to submit a compliance plan by the appropriate deadline, implement the compliance plan or plan incentives, or failure to achieve the applicable target APO may be considered a violation and may subject the violator to up to $10,000 in administrative penalties and up to $25,000 in civil penalties per violation. In formulating an enforcement policy under this regulation, the State may consider any good faith effort made by the employer to achieve compliance.

E. Conformity to EPA Guidance

The State of Texas submitted to the EPA their ECO/ETR SIP in advance of the EPA's release of the final ECO guidance document in December 1992. As discussed above, the State's ECO/ETR SIP conforms with the EPA guidance in all significant areas. The State's program, however, does provide a minor exclusion which is inconsistent with the EPA guidance. The State's definition of "employee" excludes part-time employees who work Saturday and/or Sunday, which is inconsistent with the definition of employee outlined in the EPA guidance. The EPA believes that this difference does not warrant disapproval of the State's ECO/ETR program because the overall integrity of the program is maintained. The EPA believes that Texas should not be penalized for moving ahead to submit its ECO/ETR SIP by the CAA mandated deadline, in advance of the EPA's final ECO guidance.

F. Procedural Background

The CAA requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to the EPA. Section 110(a)(2) of the CAA provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing.[1] Section 110(l) of the CAA similarly provides that each revision to an implementation plan submitted by a State under the CAA must be adopted by such State after reasonable notice and public hearing. Public notice on the proposed ECO/ETR regulation was published in the Houston ozone nonattainment area in accordance with the State of Texas's public notice requirements. The State held a public hearing on the proposed regulations on June 30, 1992. Following the public hearing, the ECO/ETR regulation was adopted by the State on October 16, 1992. The ECO/ETR regulation was submitted through the Governor to the EPA on November 13, 1992, as a proposed revision to the SIP.

III. Proposed Rulemaking Action

In this action, the EPA is proposing to approve the SIP revision submitted by the State of Texas. The State of Texas has submitted a SIP revision implementing each of the ECO/ETR program elements required by section 182(d)(1)(B) of the CAA. Affected employers with 100 or more employees at a work site are required to submit compliance plans to the Texas Natural Resource Conservation Commission on a submission schedule, depending on the employer's size, between May 15, 1994, and November 15, 1994. Compliance with applicable target APO is required two years following the appropriate compliance plan submission deadline. The EPA is therefore proposing to approve this submittal.

Proposed Action

The EPA proposes to approve the SIP revision submitted by the State of Texas. All required SIP items have been adequately addressed as discussed in this **Federal Register** document.

The EPA has reviewed this request for revision of the federally approved SIP for conformance with the provisions of the CAA enacted on November 15, 1990. The EPA has determined that this action conforms with those requirements. Based on the above evaluation, the EPA proposes to approve the ECO/ETR SIP for the Houston-Galveston ozone nonattainment area.

Request for Public Comments

The EPA requests comments on all aspects of this proposal, including the EPA's proposal to approve the ECO/ETR SIP for the Houston-Galveston ozone nonattainment area, as meeting the requirements of section 182(d)(1)(B) of the CAA regarding ECO/ETR programs. As indicated at the outset of this notice, the EPA will consider any comments received by November 17, 1993.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D, of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids the EPA to base its actions concerning SIPs on such grounds (*Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410(a)(2)).

Executive Order 12291

This action has been classified as a Table Two action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Tables Two and Three SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. The EPA has submitted a request for a permanent waiver for Table Two and Three SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on the EPA's request.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Ozone.

Authority: 42 U.S.C. 7401–7671q.

[1] Also section 172(c)(7) of the CAA requires that plan provisions for nonattainment areas meet the applicable provisions of section 110(a)(2).

Dated: September 24, 1993.

A. Stanley Meiburg,

Acting Regional Administrator (6A).

[FR Doc. 93-25482 Filed 10-15-93; 8:45 am]

BILLING CODE 6560-60-F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MM Docket No. 93-260; DA 93-1156]

Cable Television Service; List of Major Television Markets

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission invites comments on its proposal, initiated by a request filed by Marion T.V., Inc. to amend the Commission's Rules to change the designation of the Indianapolis-Bloomington, Indiana television market to include the community of Marion, Indiana. This action is taken to test the proposal for market hyphenation through the record established based on comments filed by interested parties.

DATES: Comments are due on or before November 4, 1993, and reply comments are due on or before November 19, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Alan E. Aronowitz, Mass Media Bureau, Policy and Rules Division, (202) 632-7792.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93-260, adopted September 21, 1993, and released October 7, 1993. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC 20554, and may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Washington, DC 20037.

Synopsis of the Notice of Proposed Rule Making

1. The Commission, in response to a Petition for Rulemaking filed by Marion T.V., Inc., licensee of WMCC-TV, Channel 23, Marion, Indiana, proposed to amend § 76.51 of the Rules to change the designation of the Indianapolis-Bloomington, Indiana television market to include the community of Marion, Indiana.

2. In evaluating past requests for hyphenation of a market, the Commission has considered the following factors as relevant to its examination:

(1) The distance between the existing designated communities and the community proposed to be added to the designation;

(2) Whether cable carriage, if afforded to the subject station, would extend to areas beyond its Grade B signal coverage area;

(3) The presence of a clear showing of a particularized need by the station requesting the change of market designation; and

(4) An indication of benefit to the public from the proposed change.

Each of these factors helps the Commission to evaluate individual market conditions consistent "with the underlying competitive purpose of the market hyphenation rule to delineate areas where stations can and do, both actually and logically, compete."

3. Based on the facts presented, the Commission believes that a sufficient case for redesignation of the subject market has been set forth so that this proposal should be tested through the rulemaking process, including the comments of interested parties. It appears from the information before us that Station WMCC-TV and stations licensed to communities in the Indianapolis-Bloomington television market do compete for audiences and advertisers throughout much of the proposed combined market area, and that evidence has been presented tending to demonstrate commonality between the proposed community to be added to a market designation and the market as a whole. Moreover, Petitioner's proposal appears to be consistent with the Commission's policies regarding redesignation of a hyphenated television market.

Initial Regulatory Flexibility Analysis

4. The Commission certifies that the Regulatory Flexibility Act of 1980 does not apply to this rulemaking proceeding because if the proposed rule amendment is promulgated, there will not be a significant economic impact on a substantial number of small business entities, as defined by section 601(3) of the Regulatory Flexibility Act. A few television licensees will be affected by the proposed rule amendment. The Secretary shall send a copy of this Notice of Proposed Rule Making, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Public Law No. 96-354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

Ex Parte

5. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, provided they are disclosed as provided in the Commission's Rules. See generally 47 CFR 1.1202, 1.1203 and 1.1206(a).

Comment Dates

6. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before November 4, 1993, and reply comments on or before November 19, 1993. All relevant and timely comments will be considered before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comment, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (room 239) of the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

7. Accordingly, this action is taken by the Chief, Mass Media Bureau, pursuant to authority delegated by § 0.283 of the Commission's Rules.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

Roy J. Stewart,

Chief, Mass Media Bureau.

[FR Doc. 93-25408 Filed 10-15-93; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AC01

Endangered and Threatened Wildlife and Plants; Proposed Threatened Status for the Cherokee Darter and Proposed Endangered Status for the Etowah Darter

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to list two fish, the Cherokee Darter (*Etheostoma* (*Ulocentra*) sp.) and Etowah darter (*Etheostoma etowae*), as threatened and endangered, respectively, under the Endangered Species Act (Act) of 1973, as amended. The Cherokee and Etowah darters are recently discovered species of fish that are endemic to the Etowah River system in north Georgia. The Cherokee darter is now known from approximately 20 small tributary systems of the Etowah River, but healthy populations are known from only a few sites. The Etowah darter is known from the upper Etowah River mainstem and two tributary systems. Impoundments and deteriorating water and benthic habitat quality resulting from siltation, agricultural runoff, other pollutants, poor land use practices, increased urbanization, and waste discharges have resulted in the restriction and fragmentation of these species' current ranges. These factors continue to impact the species and their habitat. Comments and information are sought from the public on this proposal.

DATES: Comments from all interested parties must be received by December 17, 1993. Public hearing requests must be received by December 2, 1993.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Jacksonville Field Office, 3100 University Boulevard, South, Suite 120, Jacksonville, Florida 32216. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Robert S. Butler at the above address (904/232–2580).

SUPPLEMENTARY INFORMATION:

Background

The Etowah River is one of three major upper Coosa River system tributaries, the others being the Conasauga and Oostanaula rivers. The Etowah joins the Oostanaula River in Rome, Georgia, to form the Coosa River. The Coosa River itself is the major eastern tributary of the Mobile Basin that empties into the Gulf of Mexico in southwest Alabama. The Etowah River system drains portions of the Blue Ridge, Piedmont, and Valley and Ridge physiographic provinces. All streams in the drainage are upland in nature and characterized by high gradients and rocky substrates. Land use patterns of the Etowah system are largely of a rural agrarian economy, with scattered municipalities, including the encroaching Atlanta metropolitan area.

The diversity of the aquatic fauna is commensurate with the diversity of physiographic provinces comprising the basin. Many of the aquatic organisms reported from the Etowah system are rare. Records of federally protected species are known for an endangered fish (amber darter, *Percina antesella*), four endangered mussels (upland combshell, *Epioblasma metastriata*; southern clubshell, *Pleurobema decisum*; ovate clubshell, *P. perovatum;* and triangular kidneyshell, *Ptychobranchus greeni*), and a threatened mussel (Alabama moccasinshell, *Medionidus acutissimus*). In addition, several Category 2 candidate species from the Service's animal notice of review published in the **Federal Register** of November 21, 1991 (56 FR 58804) are also known from the Etowah River system. These include a mussel (Tennessee heelsplitter, *Lasmigona holstonia*), five fishes (rock darter, *Etheostoma rupestre;* freckled darter, *Percina lenticula*; bronze darter, *P. palmaris*; lined chub, *Hybopsis lineapunctata*; and frecklebelly madtom, *Noturus munitus*), and at least two aquatic snails (coldwater elimia, *Elimia gerhardti*; and rough hornsnail, *Pleurocera foremani*). It is estimated that 35 of the potentially 50 freshwater mussel species that once inhabited the Etowah River system have been extirpated (Burkhead *et al.* 1992). The Etowah River system at one time contained a significant portion of the aquatic biodiversity of the upper Mobile Basin.

A small percid fish, the Cherokee darter is subcylindrical in shape, and has a relatively blunt snout with a subterminal mouth. The body shade is white to pale yellow. The side of adults is pigmented with usually eight small dark olive-black blotches which develop into vertically elongate, slightly oblique bars in breeding adults, especially in males. The back usually has eight small dark saddles and intervening pale areas. The Cherokee darter has proven to be distinct from the Coosa darter, *E. coosae*, a species with which it was previously confused, by peak nuptial males never having five discrete color bands in the spinous dorsal fin.

Cherokee darters inhabit small-sized to medium-sized warm-water creeks with moderate gradient and predominately rocky bottoms. It is usually found in shallow water in sections of reduced current, typically in runs above and below riffles and at the ecotones of riffles and backwaters. The Cherokee darter is associated with large gravel, cobble, and small boulder substrates, and is uncommonly or rarely found over bedrock, fine gravel, or sand. It is most abundant in stream sections with relatively clear water and clean substrates (little silt deposition). The Cherokee darter is intolerant of heavy to moderate silt deposition. The Cherokee darter, like other members of the subgenus *Ulocentra*, is intolerant of impoundment.

The Cherokee darter is endemic to the Etowah River system in north Georgia, where it is primarily restricted to streams draining the Piedmont physiographic province, and to a lesser extent, the Blue Ridge physiographic province. The Cherokee darter occurs in about 20 small to moderately large tributary systems of the middle and upper Etowah River system. However, only a few sites contain healthy populations of this species. The largest populations occur in northern tributaries upstream of Allatoona Reservoir. Populations are smaller in tributaries draining the southern portion of the system. The southern tributary systems tend to drain areas exhibiting less relief and are generally much more degraded. Cherokee darter populations are found primarily above Allatoona Reservoir. Downstream of Allatoona Dam, populations are restricted to two tributary systems.

The Cherokee darter exhibits a disjunct and discontinuous distributional pattern, indicating fragmentation and isolation of populations. The placement of Allatoona Reservoir in the middle Etowah River system has caused much of the fragmentation of this species' populations. One major tributary system in the upper Etowah system, Amicalola Creek, apparently naturally lacks populations of Cherokee darters, but contains a relatively close relative and also a narrow endemic, the holiday darter, *E. brevirostrum*. The Cherokee darter is allopatric (i.e., the ranges of the species do not overlap) with the other two *Ulocentra* species in the watershed, the holiday darter and Coosa darter. A formal description of the Cherokee darter is being prepared by Bauer *et al.* (in prep.).

The Etowah darter is a small-sized percid fish that is moderately compressed laterally, and has a moderately pointed snout with a terminal, obliquely angled mouth. The body ground shade is brown or grayish-olive. The side is usually pigmented with 13 or 14 small dark blotches just below the lateral line. The breast in nuptial males is dark greenish-blue. The

Etowah darter has proven distinct from the greenbreast darter, *E. jordani*, a species with which it has previously been confused, by the absence of red marks on the sides and anal fins of male specimens.

The Etowah darter inhabits warm and cool, medium and large creeks or small rivers that have moderate or high gradient and rocky bottoms. It is found in relatively shallow riffles, with large gravel, cobble, and small boulder substrates. The Etowah darter is typically associated with the swiftest portions of shallow riffles, but occasionally adults are taken at the tails of riffles. Sites having the greatest abundance of Etowah darters have clearer water and relatively little silt in the riffles. The Etowah darter, like other members of the subgenus *Nothonotus*, shuns pool habitats and is intolerant of stream impoundment.

The Etowah darter is endemic to the upper Etowah River system in north Georgia, where it is restricted to the upper Etowah River mainstem, and two tributaries, Long Swamp and Amicalola Creeks. These streams drain both the Blue Ridge and Piedmont physiographic provinces. This distribution suggests habitat specialization; all streams inhabited by this species are geographically adjacent in the most upland portion of the river system. For a fish of moderate to large creeks or small rivers, the Etowah darter has one of the most restricted distributions in the southeast (Lee *et al.* 1980). The Etowah darter has been formally described by Wood and Mayden (1993).

The Cherokee darter appeared as a category 2 species in the Service's notice of review for animal candidates published in the **Federal Register** of January 6, 1989 (54 FR 554) and November 21, 1991 (56 FR 58804). Category 2 species are taxa under review for listing, but for which conclusive data on biological vulnerability and threat(s) are not currently available to support proposed rules.

The Service funded a status survey in fiscal year 1990 to better determine the status of the recently discovered Cherokee darter. After field work had commenced, another undescribed fish was discovered in the Etowah River system, the Etowah darter. The survey was modified to address the population status of both these undescribed darters. A final report was received on March 30, 1993 (Burkhead 1993), providing sufficient information on biological vulnerability and threats to support classification of these fishes as category 1 candidates and to support a proposed rule to classify the Cherokee darter as threatened and the Etowah darter as endangered.

On April 6, 1993, the Service notified potentially affected Federal and State agencies by mail that a status review was being conducted for the Cherokee darter and Etowah darter. Two comments were received concerning this notification. The U.S. Forest Service stated that it was unlikely Forest Service lands harbored suitable habitat for the two darter species. They also noted that future Forest Service activities in the Etowah River watershed were expected to decrease, and that it was unlikely these activities would produce any noticeable siltation effects on downstream populations of the Cherokee darter and Etowah darter. The Environmental Protection Agency commented on locating specific watersheds having high cumulative non-point source stream impacts for potential restoration work. This information would be useful in the recovery of the Cherokee darter and Etowah darter. Neither agency had objections to the potential listing of these species.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Cherokee darter (*Etheostoma* (*Ulocentra*) sp.) and the Etowah darter (*Etheostoma etowae*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The Cherokee darter and Etowah darter are both endemic to the Etowah River system in north Georgia (Burkhead 1993). These species have been rendered vulnerable to extinction by significant loss of habitat within their restricted range in the Etowah River system. The primary causes of habitat loss in the Etowah River system result from impoundments, siltation, point source and nonpoint source pollution which includes, but is not limited to, municipal and industrial waste discharges, agricultural runoff from crop monoculture and poultry farms, poultry processing plants, and silvicultural activities. Much non-agricultural and non-silvicultural habitat degradation in the watershed can be attributed to increased urbanization in the Atlanta metropolitan area. All such forms of habitat degradation and pollution disrupt the aquatic ecosystem, particularly impacting benthic (bottom) habitat. Certain pollutants may be particularly harmful in cumulative concentrations or if synergistic interactions with other pollutants or chemicals occur.

Impoundments have destroyed a significant portion of the free-flowing stream habitat in which the Cherokee darter and Etowah darter live. Preimpoundment records from areas now flooded by the 4,800 hectare (11,856 acre) Allatoona Reservoir exist in museum collections. Based on museum records, at least five populations of the Cherokee darter were extirpated by the inundation of Allatoona Reservoir, which was completed in 1955. Other undocumented Cherokee darter populations were likely destroyed by the filling of Allatoona Reservoir as well. It is possible that some mainstem Etowah River populations of the Etowah darter were also destroyed by Allatoona Reservoir. The lower portions of some of the tributary systems that harbor populations of the Cherokee darter are inundated by Allatoona Reservoir, isolating these populations from other populations in adjacent tributaries. These tributaries include Butler, Shoal, and Stamp Creeks.

Besides Allatoona Reservoir, numerous small impoundments and ponds are scattered throughout the range of the Cherokee darter and Etowah darter. Impoundments directly destroy stream habitat by converting free-flowing streams to artificial lakes and ponds and by causing population isolation. Furthermore, small impoundments are numerous enough in the Etowah system to have a negative effect on both these species by causing population fragmentation and isolation, thereby blocking genetic interchange. Impoundments also alter the thermal regimen of the stream sections immediately below the dam and can cause community shifts favoring centrarchid fishes (Brim 1991), potential predators on both Cherokee darters and Etowah darters. The Yellow Creek population of the Cherokee darter is directly threatened by a proposed water supply impoundment planned by the Cherokee County government.

Erosion from poor land use practices cause extensive topsoil erosion and subsequent siltation of stream bottoms. Siltation sources include timber clearcutting, clearing of riparian vegetation, and those construction, mining, and agricultural practices that allow exposed earth to enter streams.

Light to moderate levels of siltation are ubiquitous in many streams of the Etowah River system that have populations of the Cherokee darter and Etowah darter. Siltation problems are severe in many tributaries that have or probably had populations of the Cherokee darter, including Allatoona Creek, the Little River system, Settingdown Creek, Pumpkinvine Creek, and in portions of Shoal Creek (Cherokee County), Sharp Mountain Creek, Long Swamp Creek, and Raccoon Creek. Siltation and dust from marble quarries in Pickens County are also major problems in Long Swamp Creek, the only known site where the Cherokee darter and Etowah Darter are found together. A rock quarry has been proposed for Stamp Creek in Bartow County. If permitted, this quarry may have an adverse effect on the Stamp Creek Cherokee darter population.

The extreme isolation or absence of populations of the Cherokee darter in Settingdown, Allatoona, and Raccoon Creeks and the Little River also strongly suggests localized extirpation of populations. These intermediate streams probably once supported populations of the fish. Much of the Little River system is heavily affected by large silt and bed loads; the remaining fish fauna is depauperate and at many sites dominated by species tolerant of degraded habitats.

The Cherokee darter and Etowah darter are obligate benthic species living, foraging, and spawning on the stream bottom. Hence, their well-being is directly tied to benthic habitat quality. Negative effects of silt on benthic fishes were summarized by Burkhead and Jenkins (1991). Silt reduces or destroys habitat heterogeneity and primary productivity, increases fish egg and larval mortality, abrades organisms, and alters, degrades, and entombs macrobenthic communities. The geological strata drained by the Etowah River, particularly in the middle and upper portion of the system, contain micaceous schist. The erosion of this substrata adds an extremely abrasive mica component to the silt which renders this silt even more noxious to benthic organisms. Current state and Federal regulations preventing silt from entering streams are lacking, inadequate, or not rigorously enforced.

The current rate of development in the counties surrounding Atlanta is very high. The most rapid development appears to be in Cobb and Fulton counties, but it is also high in Cherokee County. These areas are in the heart of the Cherokee darter's current range. The effects of urbanization may be seen as far away as Dawson County, where the majority of Etowah darter populations, as well as some Cherokee darter populations, are known. One of the principal concerns to the continued existence of the Cherokee darter and Etowah darter is the trend of converting farmland into localized subdivisions in areas relatively remote from Atlanta. Associated with increased development and land clearing is increased siltation from erosion, accelerated runoff, and transport of pollutants into the Etowah River system.

The tributaries harboring the Cherokee darter and Etowah darter are crossed by numerous road and railroad bridges. These stream crossings are potential sites for accidents which could spill toxic material into streams. Spills of toxic chemicals at such crossings could cause catastrophic fish kills and local extirpation of these species. The high number of bridge crossings over Cherokee darter and Etowah darter streams increases the probability that such an accident will occur in the future.

Attending the urbanization associated with the growth of the Atlanta metropolitan area is a proposed bypass which would circumnavigate Atlanta to the northwest, connecting Interstate 75 with Georgia State Route 371. The bypass would cross several Cherokee darter streams in portions of Forsyth, Cherokee, and Bartow Counties. Bridge construction sites would be potential sources of sedimentation to Cherokee darter habitat.

It has been reported that 75 percent of Georgia's landfills will reach capacity in five years (*The Atlanta Journal/The Atlanta Constitution*, February 23, 1992). Several landfill sites have been proposed within the range of the Cherokee darter, and one proposed site occurs between two Cherokee darter streams: Riggins and Edward Creeks, Cherokee County. While modern landfills are designed to contain runoff, some landfills may not retain complete barrier integrity over time.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* In general, small species of fish, such as the Cherokee darter and Etowah darter, which are not utilized for either sport or bait purposes, are unknown to the general public. Therefore, take of these species by the general public has not been a problem. However, vandalism could pose a problem, especially if the specific inhabited reaches were to be revealed, such as through the designation of critical habitat. Most of the stream reaches inhabited by these fish are extremely short and could easily be lost through the act of vandals using readily available toxic chemicals. Although scientific collecting is not presently identified as a threat, take by private and institutional collectors could pose a threat, if left unregulated. Federal protection of these species would help to minimize illegal or inappropriate take.

C. *Disease or predation.* Predation upon the Cherokee darter and Etowah darter undoubtedly occurs. However, there is no evidence to suggest that predation threatens these species, except possibly in altered stream reaches immediately below dams.

D. *The inadequacy of existing regulatory mechanisms.* The Official Code of Georgia Annotated 27–2–12 prohibits the taking of these fish without a state collecting permit. Federal listing would provide protection under Section 9 of the Act by requiring Federal permits for taking the Cherokee darter and Etowah darter. Additional protection could be gained under Section 7 of the Act by requiring Federal agencies to consult with the Service when projects they fund, authorize, or conduct may affect these species.

E. *Other natural or manmade factors affecting its continued existence.* The range of the Cherokee darter has been fragmented, and a significant portion of the middle Etowah River system has been permanently altered by Allatoona Reservoir. Many of the streams inhabited by the Cherokee darter and Etowah darter exhibit moderate to heavy degradation from poor land use practices and small impoundments. These strong negative forces have caused local extirpation of both Cherokee darter and Etowah darter populations and have induced range fragmentation and subsequent isolation of the Cherokee darter into small populations. Genetic diversity has subsequently been lost due to these population losses. The genetic diversity of all populations may be needed to provide the species enough genetic variability to adapt to environmental change and thus assure long-term viability. The restricted distribution of both the Cherokee darter and Etowah darter also makes populations vulnerable to extirpation from catastrophic events, such as an accidental toxic chemical spill. Range fragmentation and loss of genetic diversity, independently and in concert, clearly threaten the continued existence of these species.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by both darters in determining to propose these

rules. Based on these evaluations, the preferred action is to propose the Cherokee darter and Etowah darter as threatened and endangered species, respectively. The Cherokee darter is now known from approximately 20 tributary systems of the Etowah River, but healthy populations are known from just a few sites. The Etowah darter is known from only the upper Etowah River mainstem and two tributary systems. Both species are restricted to the Etowah River system in north Georgia. These fish and their benthic habitat have been, and continue to be, impacted by range reduction, isolation by impoundment, and general habitat destruction. Despite its wider distribution and greater number of known populations, the Cherokee darter appears to have more of its habitat threatened by these factors, which have already resulted in a higher level of population fragmentation and isolation relative to the Etowah darter. The restricted distribution of these two species also makes localized populations susceptible to catastrophic events. Because of these factors, endangered appears the most appropriate status for the Etowah darter and threatened appears most appropriate for the Cherokee darter.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time a species is proposed to be endangered or threatened. The Service's regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other activity and the identification of critical habitat can be expected to increase the degree of threat to the species or (2) such designation of critical habitat would not be beneficial to the species. The Service finds that designation of critical habitat is not prudent for these species. Such a determination would result in no known benefit to these species, and designation of critical habitat could further threaten them.

Section 7(a)(2) and regulations codified at 50 CFR part 402 require Federal agencies to ensure, in consultation with and with the assistance of the Service, that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of listed species or destroy or adversely modify their critical habitat, if designated. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in the destruction or adverse modification of proposed critical habitat. (See "Available Conservation Measures" section for a further discussion of Section 7.) As part of the development of this proposed rule, Federal and State agencies were notified of the fishes' general distribution, and they were requested to provide data on proposed Federal actions that might adversely affect the two species.

Should any future projects be proposed in areas inhabited by these fish, the involved Federal agency will already have the general distributional data needed to determine if the species may be impacted by their action; and if needed more specific distributional information would be provided.

Regulations promulgated for implementing section 7, referenced above, provide for both a jeopardy standard, based on listing alone, and for a destruction or adverse modification standard, in cases where critical habitat has been designated. The Cherokee and Etowah darters occupy very restricted stream reaches. Any significant adverse modification or destruction of their habitat would likely jeopardize their continued existence. Under these conditions the two standards are essentially equivalent. Therefore, no additional protection for the species would accrue from critical habitat designation that would not also accrue from listing these species. Once listed, the Service believes that protection of their habitat can be accomplished through the section 7 jeopardy standard, and through section 9 prohibitions against take.

These two fish are very rare. Therefore, taking for scientific purposes and private collections could pose a threat to their continued existence if site-specific information were released to the general public. The publication of critical habitat maps in the **Federal Register** and local newspapers and other publicity accompanying critical habitat designation could increase the collection threat and also increase the potential for vandalism during the often controversial critical habitat designation process. The potential for future habitat disruption within one or both these species' ranges resulting from the rapidly expanding Atlanta metropolitan area makes designation of critical habitat potentially more contentious and controversial, increasing the possibility for vandalism to occur. The locations of these species' populations have consequently been described only in general terms in this proposed rule. Any existing precise locality data would be available to appropriate Federal, State, and local governmental agencies from the Service office described in the **ADDRESSES** section; from the Service's Brunswick Field Office, Federal Building, room 334, 801 Gloucester Street, Brunswick, Georgia 31520; and from the Georgia Department of Natural Resources, and Georgia Natural Heritage Program.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal involvement is expected to include the Environmental Protection Agency through the Clean Water Act's provisions for pesticide registration and waste management actions. The Corps of Engineers will consider these species in project planning and operation, and during the permit review process. The Federal Highway Administration will consider impacts of federally funded bridge and road construction projects when known habitat may be impacted.

Continuing urban development within the Etowah River system may involve the Farmers Home Administration and their loan programs. The Soil Conservation Service will consider the species during project planning and under their farmer's assistance programs. The Forest Service will consider downstream impacts to habitat of the Etowah darter when planning or implementing silvicultural, recreational, or other programs in the headwaters of Amicalola Creek and the extreme upper portion of the Etowah River mainstem occurring in the Chattahoochee National Forest.

The Act and implementing regulations found at 50 CFR 17.21 for endangered species, and 17.21 and 17.31 for threatened species set forth a series of general prohibitions and exceptions that apply to all endangered and threatened wildlife. These prohibitions, in part, make it illegal for any person subject to jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered or threatened wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23, and 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species, there are also permits for zoological exhibition, educational purposes, or special purposes consistent with the purpose of the Act. In some instances, permits may be issued for a specified time to relieve undue economic hardship that would be suffered if such relief were not available. Since these species are not in trade, such permit requests are not expected.

Public Comments Solicited

The Service intends that any final action resulting from these proposals will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning these proposed rules are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof)) to the species;

(2) The location of any additional populations of the species and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act.;

(3) Additional information concerning the range, distribution, and population size of the species; and

(4) Current or planned activities in the subject areas and their possible impacts on the species.

Final promulgation of the regulations on these species will take into consideration the comments and any additional information received by the Service, and such communication may lead to final regulations that differ from these proposals.

The Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of these proposals. Such requests must be made in writing and should be addressed to the Field Supervisor (see **ADDRESSES** section of this rule).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

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Author

The primary author of this proposed rule is Robert S. Butler, U.S. Fish and Wildlife Service, Jacksonville Field Office, 3100 University Boulevard, South, Suite 120, Jacksonville, Florida 32216 (904/232–2580).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulations Promulgation

Accordingly, the Service proposes to amend part 17, subchapter B, chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. § 17.11(h) is amended by adding the following, in alphabetical order under "FISHES", to the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
FISHES							
•	•	•	•	•	•	•	•
Darter, Cherokee	*Etheostoma (Ulocentra)* sp..	U.S.A. (GA)	Entire	T	.....	NA	.....
•	•	•	•	•	•	•	•
Darter, Etowah	*Etheostoma etowae* ...	U.S.A. (GA)	Entire	E	.....	NA	.....
•	•	•	•	•	•	•	•

Dated: September 24, 1993.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 93–25435 Filed 10–15–93; 8:45 am]

BILLING CODE 4310–55–P

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Public Hearings and Extension of Comment Period on Proposed Endangered Status and Critical Habitat Designation for the Southwestern Willow Flycatcher

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public hearings and extension of comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) gives notice that six public hearings will be held, and the comment period extended, regarding the proposed rule to list the southwestern willow flycatcher (*Empidonax traillii extimus*) as an endangered species, with critical habitat. These hearings and extension of the comment period will allow all interested parties to submit oral or written comments on the proposal.

DATES: Six public hearings have been scheduled, from 6 p.m. to 9 p.m. for the following dates and locations:

(1) Monday, November 1, 1993, in Albuquerque, New Mexico.

(2) Tuesday, November 2, 1993, in Las Cruces, New Mexico.

(3) Monday, November 8, 1993, in Tucson, Arizona.

(4) Tuesday, November 9, 1993, in Flagstaff, Arizona.

(5) Monday, November 15, 1993, in Lake Isabella, California.

(6) Tuesday, November 16, 1993, in San Diego, California.

The comment period for this proposal, which was scheduled to close on October 21, 1993, is extended and now closes on November 30, 1993.

ADDRESSES: The addresses for the public hearings are:

(1) November 1, 1993, at the Indian Pueblo Cultural Center, 2410 12th Street NW, Albuquerque, New Mexico.

(2) November 2, 1993, at the Corbett Auditorium on the New Mexico State University campus, Las Cruces, New Mexico.

(3) November 8, 1993, at the Social Sciences Auditorium on the University of Arizona campus, Tucson, Arizona.

(4) November 9, 1993, at the Flagstaff High School Auditorium, 400 West Elm, Flagstaff, Arizona.

(5) November 15, 1993, at the Kern River Valley Senior Citizen's Center, 6104 Lake Isabella Road, Lake Isabella, California.

(6) November 16, 1993, at the San Diego Concourse, Convention and Performing Arts Center, 202 C Street MS #57, San Diego, California.

Written comments and material should be sent to the State Supervisor, Arizona Ecological Services Field Office, U.S. Fish and Wildlife Service, 3616 West Thomas Road, suite 6, Phoenix, Arizona 85019. Comments and materials received will be available for public inspection by appointment, during normal business hours, at the above address.

FOR FURTHER INFORMATION CONTACT: Tom Gatz or Timothy Tibbitts, at the above address, telephone (602) 379–4720.

SUPPLEMENTARY INFORMATION:

Background

The southwestern willow flycatcher *(Empidonax traillii extimus)* is a small passerine bird which nests in riparian habitats along rivers, streams, or other wetlands, where dense growths of willow, cottonwood, arrowweed, buttonbush, tamarisk, or other shrubs and trees are present. Its breeding range includes southern California, Arizona, New Mexico, extreme southern portions of Nevada and Utah, and western Texas. It may also breed in southwestern Colorado and extreme northwestern Mexico. The southwestern willow flycatcher has experienced extensive loss and modification of its habitat, and is also endangered by other factors, including brood parasitism by cowbirds (*Molothrus* sp.). A proposed rule to list this species as endangered with critical habitat was published in the **Federal Register** on July 23, 1993 (58 FR 39495).

Pursuant to 50 CFR 424.16(c)(2), the Service may extend or reopen a comment period upon finding that there is good cause to do so. The Service has determined that good cause exists, in that allowing the full participation of the affected public in the species listing process will allow the Service to consider the best scientific and commercial data available in making a final determination on the proposed action.

Section 4(b)(5)(E) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that a public hearing be held if requested within 45 days of the publication of a proposed rule. Anticipating such requests, the Service announced in the proposed rule that three public hearings would be held, one each in the States of California, Arizona and New Mexico. In response to additional requests, the Service is holding three additional hearings. The six public hearings will be held on the dates and at the addresses described above.

Those parties wishing to make statements for the record should bring a copy of their statements to present to the Service at the start of the hearing. Oral statements may be limited in length, if the number of parties present at each hearing necessitates such a limitation. There are, however, no limits to the length of written comments or materials presented at the hearings or mailed to the Service. To facilitate the uninhibited exchange of information, cameras and videotape recorders will not be allowed within the public hearing rooms. The comment period on the proposed rule originally closed October 21, 1993. To accommodate the public hearings, and to provide

opportunity for comments following the hearings, the Service is extending the comment period until November 30, 1993. Written comments should be submitted to the Service office in the **ADDRESSES** section.

Author

The primary author of this notice is Timothy J. Tibbitts (see **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1361–1407; 16 U.S.C. 1531–1543; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

John G. Rogers,

Regional Director.

[FR Doc. 93–25570 Filed 10–15–93; 8:45 am]

BILLING CODE 4310–55–P

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50 CFR Part 32

RIN 1018–AB25

Addition of Eight National Wildlife Refuges to the List of Open Areas for Hunting, Three to the List for Sport Fishing and Pertinent Refuge-Specific Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of extension of comment period.

SUMMARY: With this notice, the Fish and Wildlife Service extends the comment period referred to in a proposed rulemaking for refuge hunting and fishing openings published at 58 FR 48732 on September 17, 1993. The comment period is hereby extended by an additional 20 days to end on October 25, 1993.

DATES: Comments must be received on or before October 25, 1993.

ADDRESSES: Address comments to: Assistant Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Duncan L. Brown, U.S. Fish and Wildlife Service, Division of Refuges, MS 670 ARLSQ, 1849 C Street, NW., Washington, DC 20240; Telephone: 703–358–1744.

SUPPLEMENTARY INFORMATION: All hunting/fishing opening documents are maintained and are available for review at the Arlington Square office of the U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, 670 ARLSQ, Arlington, VA 22203.

Dated: October 13, 1993.

Richard N. Smith,

Acting Director.

[FR Doc. 93–25460 Filed 10–15–93; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222 and 227

[Docket No. 930779–3179; I.D. 062993A]

Endangered and Threatened Species; Screening of Water Diversions To Protect Sacramento River Winter-run Chinook Salmon

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: NMFS is considering proposing regulations that would establish screening requirements for water diversions from the Sacramento River and Delta to protect threatened winter-run chinook salmon. There are over 2,000 unscreened diversions along the River and Delta, and NMFS is concerned that these unscreened diversions may cause substantial losses of juvenile winter-run chinook salmon.

DATES: Comments should be received by December 17, 1993.

ADDRESSES: Comments should be sent to Gary Matlock, Acting Regional Director, NMFS, Southwest Region, 501 West Ocean Blvd., suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: James H. Lecky, Protected Species Division, Southwest Region, NMFS, (310) 980–4015 or Margaret C. Lorenz, Office of Protected Resources, NMFS, (301) 713–2322.

SUPPLEMENTARY INFORMATION: The threatened winter-run chinook salmon is a unique population of chinook salmon in the Sacramento River that is distinguishable from other chinook runs based on the timing of its upstream migration and spawning season. Annual estimates of the spawning run size made by the California Department of Fish and Game (CDFG) at the Red Bluff Diversion Dam show a dramatic decline in the average run size from 84,000 fish in the years 1967–1969 to about 2,000 for the years 1982 to 1984. After a further decline in the run size to less than 1,000 fish, NMFS listed the species as threatened under the Endangered Species Act (ESA) on November 5, 1990 (55 FR 46515), and has proposed to reclassify the species as endangered (57 FR 27416, June 19, 1992).

According to a 1987 report to the California Advisory Committee on Salmon and Steelhead, there are more than 300 separate irrigation, industrial, and municipal water supply diversions along the Sacramento River between Redding and Sacramento, California, that divert nearly 1.2 million acre-feet of water annually from April through October. These unscreened diversions may be causing significant losses of juvenile winter-run chinook since juveniles rear in the Sacramento River during a significant portion of the normal (i.e., July through November) irrigation season. In addition, the possible flooding of rice fields during the winter months, or non-irrigation season, is presently under consideration. This diversion activity would serve to expose juvenile winter-run chinook salmon to unscreened diversions for an even period than currently exists. According to the Resources Agency of the State of California, an estimated 10 million juvenile salmonids are lost to unscreened diversions annually.

In an unpublished examination of the possible impacts of local agricultural diversions in the Delta on striped bass and chinook salmon for the California Department of Water Resources, Randall Brown (1983) found that there were about 1,800 small diversions in the Delta. The Department estimated that the average size of the intakes for these pumps and siphons was 10–12 inches with low average flows. These diversions, combined with local precipitation and levee seepage, result in a total Delta annual consumptive water use of about 1.65 million acre-feet. However, the magnitude of these diversions, and the extent to which these diversions cause significant losses of juvenile chinook salmon has not been adequately studied.

NMFS and other agencies have already undertaken a number of actions, including screen design and installation, to reduce the impact on winter-run chinook salmon from major diversions in the Sacramento River and Delta. The U.S. Bureau of Reclamation completed the Tehama-Colusa Canal fish-screen facilities in 1990 to eliminate fish entrainment into the Tehama-Colusa and Corning irrigation canals and to reduce predation at the Red Bluff Diversion Dam. In response to an enforcement action taken by NMFS pursuant to violations of the

Endangered Species Act (ESA), the Anderson-Cottonwood Irrigation District installed three water-intake screens on the previously unscreened Churn Creek Pump Station in 1992. In August 1991, the Dept. of Justice, at the request of NMFS, obtained a Federal court order to enjoin the Glenn-Colusa Irrigation District (GCID) from operating its Hamilton City diversion facility in violation of the ESA. This action eventually resulted in a court order that restricts the District's operations to minimize impacts on juvenile winter-run chinook salmon during their peak outmigration season. Because of the court order, GCID agreed to: (1) Pursue a long-term screening solution that implements the best available proven technology to protect juvenile winter-run chinook salmon from entrainment and predation at the diversion facility and (2) operate the facility on an interim basis to meet specific screen approach velocity (i.e., average approach velocity of 0.33 cubic feet per second along the screen face) and bypass flow criteria.

In February 1993, NMFS issued an ESA section 7 biological opinion to the U.S. Bureau of Reclamation and the California Department of Water Resources that addresses the effects of long-term Central Valley Project and State Water Project operations on the winter-run chinook salmon. The opinion and incidental take statement identifies protective measures that require the Bureau to limit the diversion of juvenile winter-run chinook salmon from the Sacramento River into the central and southern Delta which minimizes juvenile losses that occur at the Federal and State export pumping facilities in the southern Delta. In addition, the Bureau is implementing a pilot screening program that may advance the technology and acceptance of screening and other fish deterrent devices in the Sacramento River. Funds from the Drought Act of 1991 will be used for the installation of a number of fish screening devices for diversion facilities on the Sacramento River for the purpose of demonstrating their effectiveness. The Bureau has contacted 125 Sacramento River water diverters having water rights settlement contracts with the United States to inform them of the pilot screening program and encourage their participation in screening selected diversions. Also, the Bureau plans to conduct screening workshops for all interested Sacramento River diverters. Various screen designers, fabricators, and vendors will be invited to discuss fish screen technology and present their products and services.

NMFS is now beginning to consider whether it should propose regulations that would establish screening requirements for water diversions from the Sacramento River and Delta to protect threatened winter-run chinook salmon. Therefore, in addition to comments on whether it should propose regulations, NMFS is requesting specific information and comments from Federal and State agencies and private individuals or organizations on the following: (1) The numbers, types, and sizes of unscreened and screened diversions in the Sacramento River and Delta; (2) the magnitude of losses of winter-run chinook salmon and other fish species caused by unscreened diversions in the Sacramento River and Delta; (3) the feasibility of installing positive-barrier screens or other fish-deterrent devices to reduce these losses; (4) the estimated costs of screen design, installation, maintenance and evaluation; (5) the availability of funding mechanisms for screen design, installation, maintenance, and evaluation; and (6) the availability and feasibility of alternative management options that may reduce losses from unscreened diversions such as seasonal pumping restrictions, monitoring requirements, or alternative water supplies.

Dated: October 12, 1993.

Gary Matlock,

Acting Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 93–25429 Filed 10–15–93; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 58, No. 199
Monday, October 18, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

Members of Performance Review Board

AGENCY: ACTION.

ACTION: List of performance review board members.

SUMMARY: ACTION publishes the revised list of positions which comprise the Performance Review Board established by ACTION under the Civil Service Reform Act.

FOR FURTHER INFORMATION CONTACT: Phyllis D. Beaulieu, Director of Personnel, ACTION, 1100 Vermont Avenue, NW., room 5101, Washington, DC 20525, (202) 606–5263.

SUPPLEMENTARY INFORMATION: The Civil Service Reform Act of 1978 (CSRA) requires that each agency establish one or more Performance Review Boards to review and evaluate the initial appraisal of a senior executive's performance and to make recommendations to the appointing authority concerning the performance of the senior executive and to make recommendations for bonuses.

The incumbents of the following positions will serve as members of the ACTION Performance Review Board.

1. Associate Director for Management and Budget—Chairman
2. Deputy Assistant Secretary for Administration, Department of Transportation
3. Commissioner, Federal Property Asset Management Service, General Services Administration
4. Associate Director, Office of Policy, Research and Evaluation

Issued in Washington, DC, on October 7, 1993.

Gary Kowalczyk,

Acting Director.

[FR Doc. 93–25490 Filed 10–15–93; 8:45 am]

BILLING CODE 6050-28-M

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 93–023N]

Conference on the Meat and Poultry Regulatory Program of the Future

Notice is hereby given that a Conference on the Meat and Poultry Regulatory Program of the Future will be held on Tuesday, November 9, 1993, 8:30 a.m. to 5 p.m., and Wednesday, November 10, 1993, 8:30 a.m. to 4 p.m., at the Renaissance Hotel, located near Dulles International Airport, 13869 Park Center Road, Herndon, Virginia.

Participants at the Conference are representatives of Food Safety and Inspection Service constituents, such as the meat and poultry industry, academia, professional organizations, and consumer groups. The purpose of the Conference is to obtain additional information on issues of importance to the general public prior to developing the meat and poultry regulatory program of the future.

The Conference is open the public on a space-available basis. Interested persons may contact Jen Darling at (703) 218–2688, for additional information regarding the Conference.

Done at Washington, DC, on: October 13, 1993.

H. Russell Cross,

Administrator, Food Safety and Inspection Service.

[FR Doc. 93–25467 Filed 10–15–93; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–815]

Gray Portland Cement and Clinker From Japan; Amendment of Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration/ Department of Commerce.

ACTION: Notice of amendment of final results of antidumping duty administrative review.

SUMMARY: On September 20, 1993, the Department of Commerce published in the **Federal Register** (58 FR 48826) the final results of its administrative review of the antidumping duty order on gray portland cement and clinker from Japan (56 FR 21658; May 10, 1991). The review covered one manufacturer/ exporter of this merchandise, Onoda Cement Company, Ltd. (Onoda), and the period October 31, 1990 through April 30, 1992. Based on the correction of ministerial errors, we have changed the margin for Onoda from 13.60 percent to 18.30 percent.

EFFECTIVE DATE: October 18, 1993.

FOR FURTHER INFORMATION CONTACT: David Genovese or Pamela Woods, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 482–5253.

SUPPLEMENTARY INFORMATION:

Background

On September 20, 1993, the Department of Commerce (the Department) published in the **Federal Register** (58 FR 48826) the final results of our administrative review of the antidumping duty order on gray portland cement and clinker from Japan (56 FR 21658; May 10, 1991). After publication of the final results, the Department received comments from the Ad Hoc Committee of Southern California Producers of Gray Portland Cement (the petitioner) and Onoda regarding ministerial errors in the computer programs used to calculate the final margin.

Amended Final Results of Review

Based on comments submitted by petitioner we corrected three ministerial errors for these amended final results. First, in our final calculations the Department did not deduct the full amount of indirect selling expenses and freight for channels 2, 4, 6, and 9 sales when calculating exporter's sales price (ESP). Second, we erred when calculating the total value of U.S. sales which resulted in an overstated total value which in turn understated the final margin. Third, we inadvertently deducted the full amount of Onoda's service station operating costs as a direct expense from foreign market value (FMV) in all purchase price transactions. This expense should have been included in the pool of home market indirect expenses.

Based on comments submitted by respondent we corrected one additional error: The Department incorrectly defined the amount of the difference-in-merchandise for ESP sales of Type II cement.

As a result of our correction of the aforementioned ministerial errors, we have determined that a weighted-average margin of 18.30 percent exists for Onoda.

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. Individual differences between USP and FMV may vary from the percentage stated above. The Department will issue appraisement instructions directly to Customs.

Furthermore, the following deposit requirements will be effective upon publication of this notice of amended final results of administrative review for all shipments of gray portland cement and clinker from Japan entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Tariff Act of 1930, as amended, and will remain in effect until the final results of the next administrative review:

(1) The cash deposit rate for Onoda will be 18.30 percent;

(2) For previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period;

(3) If the exporter is not a firm covered in this review or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and

(4) The cash deposit rate for any future entries from all other manufacturers or exporters, who are not covered in this or prior administrative reviews and who are unrelated to the reviewed firms or any previously reviewed firm, will be 63.73 percent. This rate is the "all others" rate established by the Department in the original LTFV investigation (56 FR 12156).

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is published pursuant to 19 CFR 353.28.

Dated: October 7, 1993.

Barbara R. Stafford,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–25507 Filed 10–15–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–588–807]

Initiation of Anticircumvention Inquiry on Antidumping Duty Order on Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, From Japan

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of initiation of anticircumvention inquiry.

SUMMARY: On the basis of a petition filed with the Department of Commerce by Brecoflex Corporation, we are initiating an anticircumvention inquiry to determine whether a producer of polyurethane timing belts from Mexico is circumventing the antidumping duty order on industrial belts and components and parts thereof, whether cured or uncured, from Japan, issued June 14, 1989, (54 FR 25314), as corrected August 4, 1989, (54 FR 32104).

EFFECTIVE DATE: October 18, 1993.

FOR FURTHER INFORMATION CONTACT: Wendy Frankel at (202) 482–5253 or Kimberley Huffman at (202) 482–0780, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On June 9, 1992, the Department received a petition filed by Brecoflex Corporation (Brecoflex), requesting that the Department conduct an investigation to determine whether imports of certain industrial belts or components or parts by Mectrol Corporation (Mectrol), are circumventing the antidumping duty order on industrial belts from Japan, in accordance with section 781(b) of the Tariff Act of 1930, as amended (the Act). 19 U.S.C. 1677j(b). Brecoflex alleges that Mectrol is circumventing the antidumping duty order on industrial belts by importing subject belting into Mexico for assembly into finished belts before importation into the United States. On August 13, 1992, Mectrol filed a response to Brecoflex's circumvention allegations. On November 16, 1992, Brecoflex provided additional information in support of its petition in response to a request by the Department. On November 23, 1992, Mectrol filed comments in response to Brecoflex's November 16, 1992, submission.

Scope of Order

The products covered by the order subject to this anticircumvention inquiry are industrial belts or components or parts thereof, whether cured or uncured, from Japan as defined in the Department's antidumping duty order on industrial belts from Japan (54 FR 25314, June 14, 1989), as corrected August 4, 1989 (54 FR 32104).

Initiation of Anticircumvention Proceeding

Section 781(b)(1) of the Act authorizes the Department to include merchandise assembled or completed in a foreign country within the scope of an existing antidumping duty order if: (A) The merchandise imported into the United States is of the same class or kind as any merchandise produced in a foreign country that is the subject of an antidumping duty order; (B) before importation into the United States, such imported merchandise is completed or assembled in another foreign country from merchandise which (i) is subject to an order or finding, or (ii) is produced in the foreign country with respect to which such order or finding applies; (C) the difference between the value of such imported merchandise and the value of the merchandise as described (in section B above) is small; and (D) the Department of Commerce determines that action is appropriate to prevent evasion of the order. In reaching a determination on whether to include the product within the scope of an existing antidumping duty order, section 781(b)(2) of the Act directs the Department to consider such factors as:

(1) The pattern of trade, (2) whether the manufacturer or exporter of the product is related to the person who uses the merchandise to assemble or complete in the foreign country the product that is subsequently imported into the United States, and (3) whether imports into the foreign country of the merchandise have increased after issuance of the order or finding.

Based upon the allegations and evidence provided by Brecoflex and additional evidence contained in Mectrol's submissions, and in accordance with section 781(b) of the Act and 19 CFR 353.29(b) and (f), we are initiating an anticircumvention inquiry on the antidumping duty order on industrial belts from Japan (case number A–588–807). (See Analysis section of October 1, 1993 Memorandum).

We intend to notify the International Trade Commission (ITC) in the event of an affirmative preliminary determination of circumvention, in accordance with 19 CFR 353.29(d)(7).

The Department will not order the suspension of liquidation at this time. However, in accordance with 19 CFR 353.29(j)(2), the Department will instruct the U.S. Customs Service to suspend liquidation in the event of an affirmative preliminary determination of circumvention.

This notice is issued pursuant to section 781(b) of the Act (19 U.S.C. 1677j(b)).

Dated: October 1, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–25506 Filed 10–15–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–559–802]

Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, From Singapore; Termination of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of termination of antidumping duty administrative review.

SUMMARY: In response to a request from Mitsuboshi Belting (Singapore) Pte., Ltd., hereafter MBS, the Department of Commerce initiated, on July 22, 1992, an administrative review of the antidumping duty order on industrial belts from Singapore for the period June 1, 1991 through May 31, 1992. On October 20, 1992, the Department received a timely request from MBS to withdraw from this administrative review. The Department received no other requests for review from other interested parties, and, therefore, the Department is terminating this administrative review.

EFFECTIVE DATE: October 18, 1993.

FOR FURTHER INFORMATION CONTACT: Charles Vannatta in the Office of Antidumping Compliance; International Trade Administration; U.S. Department of Commerce; Washington, DC 20230; telephone number (202) 482–5253.

SUPPLEMENTARY INFORMATION:

Background

On June 14, 1989, the Department published in the **Federal Register** (54 FR 25315) the antidumping duty order on industrial belts from Singapore. The order was subsequently amended on August 4, 1989 (54 FR 32104). After receiving a timely request for review from MBS, the Department initiated, on July 22, 1992, an administrative review for the period June 1, 1991 through May 31, 1992 (57 FR 32521). Subsequently on October 20, 1992, the Department received a timely request from MBS for withdrawal from this administrative review. Because there were no other requests for review from other interested parties, the Department is terminating this administrative review in accordance with 19 CFR 353.22(a)(5).

This termination notice is in accordance with 19 CFR 353.22(a)(5).

Dated: October 4, 1993.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 93–25510 Filed 10–15–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–588–813]

Light-Scattering Instruments and Parts Thereof From Japan; Notice of Final Results

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative reviews: Light-scattering instruments and parts thereof from Japan.

SUMMARY: On August 9, 1993, the Department of Commerce published the preliminary results of the administrative reviews of the antidumping duty order on light-scattering instruments and parts thereof from Japan. The reviews cover one manufacturer/exporter of the merchandise to the United States, Otsuka Electronics, Ltd., and the periods November 15, 1990 through October 31, 1991, and November 1, 1991 through October 31, 1992. We gave interested parties an opportunity to comment on the preliminary results. We received no comments. Based on our analysis, the final results remain unchanged from those presented in the preliminary results.

EFFECTIVE DATE: October 18, 1993.

FOR FURTHER INFORMATION CONTACT: Rebecca Trainor or Maureen Flannery, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On August 9, 1993, the Department of Commerce (the Department) published in the **Federal Register** (58 FR 42293) the preliminary results of the first and second administrative reviews of the antidumping duty order on light-scattering instruments (LSIs) and parts thereof from Japan (55 FR 48144, November 19, 1990). The Department has now completed the reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Reviews

These reviews cover imports of LSIs and parts thereof from Japan. The Department defines such merchandise as LSIs and the parts thereof from Japan, specified below, that have classical measurement capabilities, whether or not also capable of dynamic measurements. Classical measurement (also known as static measurement) capability usually means the ability to measure absolutely (i.e., without reference to molecular standards) the weight and size of macromolecules and submicron particles in solution, as well as certain molecular interaction parameters, such as the so-called second viral coefficient. (An instrument that uses single-angle instead of multi-angle measurement can only measure molecular weight and the second viral coefficient.) Dynamic measurement (also known as quasi-elastic measurement) capability refers to the ability to measure the diffusion coefficient of molecules or particles in suspension and deduce therefrom features of their size and size distribution. LSIs subject to these reviews employ laser light and may use either the single-angle or multi-angle technique.

The following parts are included in the scope of these administrative reviews when they are manufactured according to specifications and operational requirements for use only in an LSI as defined in the preceding paragraph: Scanning photomultiplier assemblies, immersion baths (to provide temperature stability and/or refractive index matching), sample-containing structures, electronic signal-processing boards, molecular characterization software, preamplifier/discriminator circuitry, and optical benches. LSIs subject to these reviews may be sold inclusive or exclusive of accessories such as personal computers, cathode ray tube displays, software, or printers. LSIs are currently classifiable under Harmonized Tariff Schedule (HTS) subheading 9027.30.40. LSI parts are currently classifiable under HTS subheading 9027.90.40. HTS subheadings are provided for convenience and U.S. Customs Service purposes. The written product description remains dispositive. Different items with the same name as subject parts may enter under subheading 9027.90.40. To avoid the unintended suspension of liquidation of non-subject parts, those items entered under subheading 9027.90.40 and generally known as scanning photomultiplier assemblies, immersion baths, sample-containing structures, electronic signal-processing boards, molecular characterization software, preamplifier/discriminator circuitry, and optical benches must be accompanied by an importer's declaration to the Customs Service to the effect that they are not manufactured for use in a subject LSI.

These reviews cover entries of the subject merchandise exported by Otsuka Electronics, Ltd. (Otsuka) and entered during the periods November 15, 1990 through October 31, 1991, and November 1, 1991 through October 31, 1992.

Final Results of Reviews

We gave interested parties an opportunity to comment on the preliminary results of these reviews. We received no comments. We determine that Otsuka had no exports of the subject merchandise, entered into the United States and sold to unrelated parties during the first administrative review period, November 15, 1990 through October 31, 1991. Otsuka exported one subject LSI during this period to a related party in the United States. The related party has not sold the LSI. We will include this unit in a future review if it is ever sold. We further determine that two high speed correlation calculation boards, exported by Otsuka and entered during the period of review, are not covered by the scope of the order.

Because Otsuka failed to respond in a timely manner to our antidumping request for information in the second administrative review, we are using the best information available (BIA), in accordance with section 776(c) of the Act, for that period. In determining what to use as BIA, the Department follows a two-tiered methodology whereby the Department assigns lower margins to those respondents who cooperate in a review, and margins based on more adverse assumptions for those respondents who do not cooperate in the review, or who significantly impede these proceedings. In the case of non-cooperative respondents, we use as BIA the higher of (1) the highest of the rates found for any firm for the same class or kind of merchandise in the less than fair value (LTFV) investigation or prior administrative reviews; or (2) the highest calculated rate in this review for the class or kind of merchandise for any firm. There were no other firms involved in the LTFV investigation or in this review. We have therefore used as BIA Otsuka's rate from the final determination in the LTFV investigation.

We have determined that the following dumping margins exist for the periods November 15, 1990 through October 31, 1991, and November 1, 1991 through October 31, 1992:

Manufacturer/exporter	Period of review	Margin (percent)
Otsuka Electronics, Ltd.	11/15/90–10/31/91	[1] 129.71
Otsuka Electronics, Ltd.	11/01/91–10/31/92	[2] 129.71

[1] No entries during this period; margin used is from the investigation.
[2] BIA rate; margin used is from the investigation.

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice. The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act:

(1) The cash deposit rate for Otsuka will be 129.71 percent, the rate established in the final results of the administrative review for the 1991–1992 period;

(2) For previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period;

(3) If the exporter is not a firm covered in these reviews, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate shall be the rate established for the most recent period for the manufacturer of the merchandise; and

(4) If neither the exporter nor the manufacturer is a firm covered in this or any previous review, the cash deposit rate will be the "all others rate" from the LTFV investigation.

On May 25, 1993, the Court of International Trade in *Floral Trade Council* v. *United States*, Slip Op. 93–79, and *Federal-Mogul Corporation and the Torrington Company* v. *United States*, Slip Op. 93–83, decided that once an "all others" rate is established for a company, it can only be changed through an administrative review. The Department has determined that in order to implement these decisions, it is appropriate to reinstate the original "all others" rate from the LTFV investigation (or that rate as amended for correction for clerical errors or as a result of litigation) in proceedings governed by antidumping duty orders for the purposes of establishing cash deposits in all current and future administrative reviews. In proceedings governed by antidumping findings, unless we are able to ascertain the "all others" rate from the Treasury LTFV investigation, the Department has determined that it is appropriate to adopt the "new shipper" rate established in the first final results of administrative review published by the Department (or that rate as amended for correction of clerical error or as a result of litigation) as the "all others" rate for the purposes of establishing cash deposits in all current and future administrative reviews.

Because this proceeding is governed by an antidumping duty order, the "all others" rate for the purposes of this review will be 129.71 percent, the "all other" rate established in the final determination in the LTFV investigation (55 FR 34952, August 27, 1990).

These deposit requirements will be effective upon publication of this notice for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or

after the publication date. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and section 353.22 of the Department's regulations.

Dated: October 1, 1993.

Joseph A. Spetrini

Acting Assistant Secretary for Import Administration.

[FR Doc. 93-25505 Filed 10-15-93; 8:45 am]

BILLING CODE 3510-DS-P

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

BACKGROUND: Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with § 353.22 or § 355.22 of the Commerce Regulations, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

OPPORTUNITY TO REQUEST A REVIEW: Not later than October 31, 1993, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in October for the following periods:

Antidumping duty proceedings	Period
Italy:	
Pressure Sensitive Plastic Tape (A-475-059)	10/01/92-09/30/93
Japan:	
Steel Wire Rope (A-588-045)	10/01/92-09/30/93
Tapered Roller Bearings, 4 Inches or Less in Outside Diameter and Certain Components Thereof (A-588-054)	10/01/92-09/30/93
Tapered Roller Bearings, and Parts Thereof, Finished and Unfinished, Over 4 Inches (A-588-604)	10/01/92-09/30/93
Malaysia:	
Extruded Rubber Thread (A-557-805)	04/02/92-09/30/93
The People's Republic of China:	
Barium Chloride (A-570-007)	10/01/92-09/30/93
Shop Towels of Cotton (A-570-003)	10/01/92-09/30/93
Yugoslavia:	
Industrial Nitrocellulose (A-479-801)	10/01/92-09/30/93
Countervailing Duty Proceedings	
Argentina:	
Leather (C-357-803)	01/01/92-12/31/92
Brazil:	
Certain Agricultural Tillage Tools (C-351-406)	01/01/92-12/31/92
India:	
Certain Iron-Metal Castings (C-533-063)	01/01/92-12/31/92
Iran:	
Roasted In-Shell Pistachios (C-507-601)	01/01/92-12/31/92
New Zealand:	
Certain Steel Wire Nails (C-614-701)	01/01/92-12/31/92
Sweden:	
Certain Carbon Steel Products (C-401-401)	01/01/92-12/31/92
Thailand:	
Certain Steel Wire Nails (C-549-701)	01/01/92-12/31/92

In accordance with § 353.22(a) and 355.22(a) of the Commerce regulations, an interested party may request in writing that the Secretary conduct an administrative review. For antidumping reviews, the interested party must specify for which individual producers or resellers covered by an antidumping finding or order it is requesting a review, and the requesting party must state why the person desires the Secretary to review those particular producers or resellers. If the interested party intends for the Secretary to review sales of merchandise by a reseller (or a producer if that producer also resells merchandise from other suppliers) which was produced in more than one country of origin, and each country of origin is subject to a separate order, then the interested party must state specifically which reseller(s) and which countries of origin for each reseller the request is intended to cover.

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B-099, U.S. Department of Commerce, Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping Compliance, Attention: Pamela Woods,

in room 3069–A of the main Commerce Building. Further, in accordance with § 353.31(g) or § 355.31 of the Commerce Regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review", for requests received by October 31, 1993.

If the Department does not receive, by October 31, 1993, a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Dated: October 8, 1993.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 93–25511 Filed 10–15–93; 8:45 am]

BILLING CODE 3510–DS–M

Initiation of Antidumping and Countervailing Duty Administrative Reviews; Recision of Initiation

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders, findings and suspension agreements with September anniversary dates. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: October 18, 1993.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–2104.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce (the Department) has received timely requests, in accordance with §§ 353.22(a) and 355.22(a) of the Department's regulations, for administrative reviews of various antidumping and countervailing duty orders, findings, and suspension agreements with September anniversary dates.

Initiation of Reviews

In accordance with §§ 353.22(c) and 355.22(c) of the Department's regulations, we are initiating administrative reviews of the following antidumping and countervailing duty orders, findings, and suspension agreements. We intend to issue the final results of these reviews not later than September 30, 1994.

Antidumping duty proceedings and firms	Period to be reviewed
Argentina:	
Silicon Metal A–357–804	
Electrometalurgica Andina Silarsa, S.A	9/1/92–8/31/93
Canada:	
Replacement Parts for Self-Propelled Bituminous Paving Equipment A–122–057	
Road Machinery Division of Ingersoll-Rand, Inc	9/1/92–8/31/93
Pure Magnesium A–122–814	
Norsk Hydro Canada, Inc	[1] 2/20/92–7/31/93
Japan:	
Electroluminescent High Information Content Flat Panel Displays and Display Glass Therefor A–588–817	
Sharp Corporation, Sharp Electronics Corporation	9/1/92–8/31/93
The People's Republic of China:	
Chrome Plated Lug Nuts A–570–808	
China National Machinery & Equipment Import & Export Corp., Nantong Branch; China National Automotive Industry I/E; China National Machinery & Equipment Corporation, Jiangsu Co., Ltd. China National Automobile Import & Export Corp., Yangzhou Branch; Lu Dong Grease Gun Factory; Ningbo Knives & Scissors Factory; Shanghai Automobile Import & Export Corp.; Tianjin Automotive Import & Export Co	9/1/92–8/31/93
Taiwan:	
Chrome Plated Lug Nuts A–583–810	
Buxton International; Chu Fong Metallic Industrial Corporation; Everspring Plastic Corp.; Gourmet Equipment (Taiwan) Corp.; Kuang Hong Industries Co., Ltd.; San Chien Electric Industrial Works, Ltd.; Transcend International Co	9/1/92–8/31/93
United Kingdom:	
Certain Forged Steel Crankshafts A–412–602	
United Engineering & Forging	9/1/92–8/31/93
Countervailing Duty Proceedings	
New Zealand:	
Lamb Meat C–614–503	4/1/92–3/31/93

[1] This case was listed in the September 30, 1993, initiation notice showing the review period as 11/20/91–7/31/93. The correct review period is 2/20/92–7/31/93.

Recision of Initiation

The Department rescinds its initiation of the countervailing duty administrative review for the following case:

Thailand:	
Certain Apparel C–549–401	1/1/92–12/31/92

Interested parties must submit applications for administrative protective orders in accordance with §§ 353.34(b) and 355.34(b) of the Department's regulations.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)) and 19 CFR 353.22(c)(1) and 355.22(c)(1) (1993).

Dated: October 8, 1993.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 93–25512 Filed 10–15–93; 8:45 am]

BILLING CODE 3510–DS–M

Export Trade Certificate of Review

ACTION: Notice of issuance of an amended Export Trade Certificate of Review, Application No. 92–2A001.

SUMMARY: The Department of Commerce has issued an amendment to the Export Trade Certificate of Review granted to the Aerospace Industries Association of America, Inc. ("AIA") on April 10, 1992. Notice of issuance of the Certificate was published in the **Federal Register** on April 17, 1992 (57 FR 13707).

FOR FURTHER INFORMATION CONTACT: Jude Kearney, Deputy Assistant Secretary for Service Industries and Finance, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (1993). The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

Export Trade Certificate of Review No. 92–00001 was issued to the Aerospace Industries Association of America, Inc. ("AIA") on April 10, 1992 (57 FR 13707, April 17, 1992), and previously amended on September 8, 1992 (57 FR 41920, September 14, 1992).

AIA's Export Trade Certificate of Review has been amended to add the following additional companies as "Members" within the meaning of § 325.21 of the Regulations (15 CFR. 325.2(l)): CTA Incorporated, Rockville, MD; Digital Equipment Corporation, Marlboro, MA; Dupont Company, Wilmington, DE; Edwards Aerospace, Inc., Irving, TX (Controlling Entity: Edwards Technology, Inc., Irving, TX); Loral Vought Systems Corporation, Dallas, TX (Controlling Entity: Loral Corporation, New York, NY); Reflectone, Inc., Tampa, FL; and Vought Aircraft Company, Dallas, TX.

A copy of the amended certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Effective Date: August 11, 1993.

Dated: October 12, 1993.

Friedrich R. Crupe,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 93–25513 Filed 10–15–93; 8:45 am]

BILLING CODE 3510–DR–P

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Review; Notice of Decision of Panel

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of decision of Binational Panel under U.S.-Canada Free Trade Agreement.

SUMMARY: By a decision dated September 28, 1993, a Binational Panel affirmed the final determination on remand made by The Deputy Minister for National Revenue (Customs and Excise), regarding Certain Machine Tufted Carpeting Originating in or Exported from the United States of America (Secretariat File No. CDA–92–1904–01). A copy of the complete panel decision is available from the Binational Secretariat.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the United States and the Government of Canada established Rules of Procedure for Article 1904 Binational Panel Reviews ("Rules"). These Rules were published in the the **Federal Register** on December 30, 1988 (53 FR 53212). The Rules were amended by Amendments to the Rules of Procedure for Article 1904 Binational Panel Reviews, published in the **Federal Register** on December 27, 1989 (54 FR 53165). The Rules were further amended and a consolidated version of the amended Rules was published in the **Federal Register** on June 15, 1992 (57 FR 26698). The panel review in this matter was conducted in accordance with these Rules.

BACKGROUND: On April 29, 1992, a Request for Panel Review of the final determination of dumping made by the Deputy Minister for National Revenue (Customs and Excise) was filed by Wundweave Carpets Inc. with the Canadian Section of the Binational Secretariat pursuant to Article 1904 of the United States Canada Free Trade Agreement. The panel rendered a decision on May 19, 1993 (Canada Gazette, Part I, Vol. 127, No. 23), which affirmed in part and remanded in part the investigating authority's final determination.

On June 30, 1993, the investigating authority filed its Determination on Remand. The Carpet and Rug Institute and Shaw Industries Inc. requested review of the Determination on Remand, under Rule 75 of the Rules.

The panel rendered a decision on remand on September 28, 1993, which affirmed the investigating authority's determination on remand.

Dated: October 13, 1993.

James R. Holbein,

United States Secretary, FTA Binational Secretariat.

[FR Doc. 93-25508 Filed 10-15-93; 8:45 am]

BILLING CODE 3510-GT-M

National Institute of Standards and Technology, Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 AM and 5 pm in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 93-065. *Applicant:* National Institute of Standards and Technology, Gaithersburg, MD 20899. *Instrument:* Differential Vacuum System for Mass Spectrometer. *Manufacturer:* Finnigan MAT, Germany. *Intended Use:* See notice at 58 FR 36397, July 7, 1993.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* This is a compatible accessory for an instrument previously imported for the use of the applicant. The instrument and accessory were made by the same manufacturer. The National Institutes of Health advises in its memorandum dated September 10, 1993 that the accessory is pertinent to the intended uses and that it knows of no comparable domestic accessory.

We know of no domestic accessory which can be readily adapted to the previously imported instrument.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 93-25503 Filed 10-15-93; 8:45 am]

BILLING CODE 3510-DS-F

St. Jude Children's Research Hospital, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 93-067. *Applicant:* St. Jude Children's Research Hospital, Memphis, TN 38105. *Instrument:* Microscope micromanipulator. *Manufacturer:* Singer Instrument Company, United Kingdom. *Intended Use:* See notice at 58 FR 36397, July 7, 1993. *Reasons:* The foreign instrument provides a microprocessor controlled microscope/micromanipulator with 16 K byte memory and a search range of 4 to 999 µm.

Docket Number: 93-069. *Applicant:* Rutgers University, New Brunswick, NJ 08903. *Instrument:* 3D Ecoscope System. *Manufacturer:* Institut für Meereskunde, Germany. *Intended Use:* See notice at 58 FR 36397, July 7, 1993. *Reasons:* The foreign instrument provides: (1) Operation from a remotely controlled vehicle, (2) video helmet control, (3) deployment to 350 bar pressures and (4) a 20 x 28 mm imaging field.

Docket Number: 93-070. *Applicant:* Iowa State University, Ames, IA 50011. *Instrument:* Mass Spectrometer, Model OPTIMA. *Manufacturer:* Fisons Instruments, United Kingdom. *Intended Use:* See notice at 58 FR 39790, July 26, 1993. *Reasons:* The foreign instrument provides an absolute sensitivity of 1100 molecules CO_2 per mass 44 ion and an internal precision of 0.01 per mil for 5 bar µl samples of CO_2.

Docket Number: 93-072. *Applicant:* Horn Point Environmental Laboratory, Cambridge, MD 21613. *Instrument:* OM 780 Model 781 Oxygen Meter, MC 100 Microcell and SI 130 1302 Oxygen Electrode. *Manufacturer:* Strathkelvin Instruments, United Kingdom. *Intended Use:* See notice at 58 FR 39791, July 26, 1993. *Reasons:* The foreign instrument provides: (1) small (50 µl) sample volume capability, (2) sensitivity of 0.01 mg O_2 per liter and (3) no stirring requirement.

Docket Number: 93-075. *Applicant:* Department of Commerce, NOAA, Charleston, SC 29412. *Instrument:* Mass Spectrometer, Model API III. *Manufacturer:* PE Sciex, Canada. *Intended Use:* See notice at 58 FR 42940, August 12, 1993. *Reasons:* The foreign instrument provides: (1) a triple quadrupole mass spectrometer, (2) atmospheric pressure ionization and (3) liquid sample flow rates from 0:1 to 200 µl per minute.

The National Institutes of Health advises in its memoranda dated September 10, 1993, that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 93-25504 Filed 10-15-93; 8:45 am]

BILLING CODE 3510-DS-F

University of Colorado at Boulder, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 93-059. *Applicant:* University of Colorado at Boulder, Boulder, CO 80309-0334. *Instrument:* Portable Chlorophyll Fluorometer and Accessories, Model PAM-2000. *Manufacturer:* Heinz Walz GmbH, Germany. *Intended Use:* See notice at 58 FR 34030, June 23, 1993. *Reasons:* The foreign instrument provides: (1) High intensity light pulses (6000 µ mol photons), (2) light and detector modulated at 600 Hz or 20 kHz and (3) a 735 nm red light source.

Docket Number: 93–060. *Applicant:* Tulane University, New Orleans, LA 70118. *Instrument:* Coaxial Nanosecond Flashlamp, Model 5000F. *Manufacturer:* IBH Consultants Ltd., United Kingdom. *Intended Use:* See notice at 58 FR 34567, June 28, 1993. *Reasons:* The foreign instrument provides 1 to 10 ns light pulse duration and 10 to 50 kHz repetition rate.

Docket Number: 93–061. *Applicant:* University of Wisconsin-Madison, Madison, WI 53706–1490. *Instrument:* ICP Mass Spectrometer, Model PlasmaQuad PQ2+. *Manufacturer:* VG Elemental, United Kingdom. *Intended Use:* See notice at 58 FR 34567, June 28, 1993. *Reasons:* The foreign instrument provides: (1) A sensitivity rating of 1.0×10^{-6} at low mass and 5.0×10^{-7} for high mass and (2) MS/MS capability for selectivity.

Docket Number: 92–186R. *Applicant:* University of Arkansas, Fayetteville, AR 72701. *Instrument:* Rapid Kinetics Spectrometer Accessory, Model RX.1000. *Manufacturer:* Applied Photophysics Ltd., United Kingdom. *Intended Use:* See notice at 58 FR 7547, February 8, 1993. *Reasons:* The foreign instrument provides accurate sample temperature control to ±0.2°C.

The National Institutes of Health advises in its memoranda dated August 19, 1993, that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 93–25502 Filed 10–15–93; 8:45 am]

BILLING CODE 3510–DS–F

National Oceanic and Atmospheric Administration

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Issuance of Public Display Permit No. 874.

SUMMARY: On Thursday, August 12, 1993, notice was published in the **Federal Register** (58 FR 42947) that an application (P95A) had been filed by Chaffee Zoological Gardens, 894 West Belmont Ave., Fresno, California 93728. A public display permit was requested to obtain the permanent care and custody of two California sea lions (*Zalophus californianus*) and one harbor seal (*Phoca vitulina*) from captive stock.

Notice is hereby given that on October 8, 1993, as authorized by the provisions of the Marine Mammal Protection Act, the NMFS issued a permit for the above activities subject to the special conditions set forth therein.

The permit is available for review by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, SSMC3, Silver Spring, MD 20910, (301) 713–2289;

Director, Southwest Region, NMFS, NOAA, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802 (310) 980–4016; and

Director, Northwest Region, NMFS, NOAA, 7600 Sand Point Way, NE, BIN C15700, Seattle, WA 98115 (206) 526–6150.

Dated: October 8, 1993.

William W. Fox, Jr., Ph.D.

Director, Office of Protected Resources National Marine Fisheries Services.

[FR Doc. 93–25431 Filed 10–15–93; 8:45 am]

BILLING CODE 3570–22–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Medical and Dental Reimbursement Rates for Fiscal Year 1994

Notice is hereby given that the Acting Chief Financial Officer in a September 29, 1993, memorandum, established the following reimbursement rates for inpatient and outpatient medical and dental care to be provided during FY 1994.

INPATIENT, OUTPATIENT AND OTHER RATES AND CHARGES

Per inpatient day	International military education and training (IMET)	Interagency other Federal agency sponsored patients	Other
I. Inpatient, and Outpatient Rates:			
A. Burn Center	$1,724	$2,768	$2,946
B. Inpatient Other Than Burn Center: [1 2]			
Medical Care Services	325	727	772
Surgical Care Services	453	1,012	1,067
Obstetrical and Gynecological Care	426	952	1,006
Pediatric Care	327	730	775
Orthopedic Care	408	911	963
Psychiatric Care and Substance Abuse	196	438	472
Medical Intensive Care and Coronary Care	717	1,601	1,680
Surgical Intensive Care	781	1,745	1,830
Neonatal Intensive Care	455	1,016	1,072
Organ and Bone Marrow Transplant	645	1,440	1,513
Same Day Surgery	177	396	420
II. Per Outpatient Visit: [2]			
A. Medical Treatment Facilities	47	[2] 94	99
B. PRIMUS/NAVCARE	N/A	N/A	[3] 61
III. Other Rates and Charges:			
A. Hyperbaric Services:			
1–60 minutes	82	165	175
61–120 minutes	160	321	337
121–180 minutes	237	476	498
181–240 minutes	315	632	660
(NOTE: Charges may be prorated based on usage)			
B. Military Dependents	.....	9.30	.....

INPATIENT, OUTPATIENT AND OTHER RATES AND CHARGES—Continued

Per inpatient day	International military education and training (IMET)	Interagency other Federal agency sponsored patients	Other
C. Per FAA Air Traffic Controller Examination	N/A	94	N/A

Notes on reimbursable rates:

[1] Daily percentages are applied to both inpatient and outpatient services provided when billing third party payers (such as insurance companies). Pursuant to the provisions of 10 U.S.C. 1095, the inpatient daily percentages are 55 percent hospital, 5 percent physician, 40 percent ancillary. The outpatient daily percentages are 57 percent hospital, 10 percent physicians and 33 percent ancillary.

[2] DoD civilian employees located in overseas areas shall be rendered a bill when services are performed. Payment is due 60 days from the date of the bill.

[3] Charges for PRIMUS/NAVCARE and high cost medications/services requested by external providers (Physicians, Dentists, etc.) are only relevant to the Third Party Collection Program. Third party payers (such as insurance companies) shall be billed for high cost services in those instances in which dependents who have medical insurance, seen by providers external to a Military Medical Treatment Facility (MTF), obtain the prescribed service or medication from an MTF. Eligible beneficiaries (dependents with medical insurance) are not personally liable for this cost and shall not be billed by the MTF. The standard cost of high cost medications includes the cost of the drugs and dispensing services.

Generic (trade) name	Strength	Total dispensed quantity[2]	Standard cost
D. High Cost Medications Requested By External Providers:[1]			
Acyclovir (Zovirax)	800 mg	100	$286
Acyclovir oint	15 g	6 Tubes	161
Aminoglutethamide (Cytadren)	250 mg	360	376
Amiodarone (Cardarone)	200 mg	180	218
Amlodipine (Norvasc)	2.5 mg	270	248
Amlodipine (Norvasc)	.5 mg	270	252
Astemizole (Hismanal)	50 mg	90	109
2Auranofin (Ridaura)	3 mg	180	153
Betoxolol (Betoptic)	.25%	3 bottles	114
Bromocriptine	2.5 mg	270	454
Buspirone (Buspar)	5 mg	270	121
Buspirone (Buspar)	10 mg	270	208
Calcitonin (Calcimar)	200 IU	8 vials	179
Captopril (Capoten)	25 mg	270	134
Captopril (Capoten)	50 mg	270	221
Captopril (Capoten)	100 mg	270	333
Carbenicillin	382 mg	40	103
Caridopa/Levodopa CR (Sinemet CR)		270	291
Caridopa/Levodopa (Sinemet 25/100)	25/100	360	184
Caridopa/Levodopa (Sinemet 25/250)	25/250	360	235
Chemstrip BG II		360	271
Cholestyramine powder		6 cans	151
Cholestyramine powder light		6 cans	129
Cimetidine	400 mg	180	146
Cimetidine	300 mg	360	164
Cimetidine syrup		3 bottles	150
Clemastine (Tavist)	2.68 mg	270	183
Clomipramine (Anafranil)	50 mg	360	292
Clomipramine (Anafranil)	25 mg	360	210
Colestipol	5 mg packets	360 pkt	274
Cromolyn inhaler		4 bottles	183
Cromolyn soln (nebulizer)		360 amp	204
Cyclophosphamide	25 mg	360	360
Cyclophosphamide	50 mg	360	681
Cyclosporine	100 mg	60	257
Cyclosporine	100 mg/ml sol	3 bottles	639
Danazol (Danocrine)	200 mg	180	320
Demeclycycline	150 mg	60	145
Desmopressin nasal soln (DDAVP)		20 ml	367
Desmopressin nasal spray		20 ml	328
Diclofenac (Voltaren)	75 mg	180	150
Diclofenac (Voltaren)	50 mg	270	187
Didanosine	150 mg	180	357
Didanosine (Videx)	25 mg	360	124
Didanosine (Videx)	100 mg	360	475
Diflucan	100 mg	30	182
Diflucan	200 mg	30	298
Diflunisal (Dolobid)	500 mg	180	173
Diltiazem 60 mg (Cardizem)	60 mg	270	130
Diltiazem CD (Cardizem CD)	240 mg	90	135
Diltiazem CD (Cardizem CD)	300 mg	90	174

Generic (trade) name	Strength	Total dispensed quantity[2]	Standard cost
Diltiazem SR	120 mg	180	144
Diltiazem SR	60 mg	180	111
Diltiazem (Cardizem)	120 mg	360	315
Divalproax (Depakote)	250 mg	360	146
Elase ointment		6 tubes	157
Enalapril	5 mg	180	127
Enalapril	20 mg	180	190
Enalapril	10 mg	180	134
Epoetin Alfa 2000		24	478
Apoetin Alfa 3000		24	727
Epoetin Alfa 4000		24	979
Estramustine (Emcyt)	150 mg	150	361
Ethambutol	400 mg	180	177
Ethosuximide	250 mg	360	167
Etidronate Disodium	400 mg	90	164
Etidronate Disodium (Didronel)	200 mg	270	492
Etoposide (VePesid)	50 mg	25	619
Exactech		90 days	450
Famotidine (Pepcid)	20 mg	180	152
Fentanyl patch	100 mcg	10	245
Fentanyl patch	75 mcg	10	203
Fluconazole (Diflucan)	200 mg	30	298
Fluconazole (Diflucan)	100 mg	30	182
Fluconazole (Diflucan)	50 mg	30	116
Fluoxetine (Prozac)	20 mg	60	102
Flurbiprofen (Ansaid)	100 mg	90	150
Flutamide (Eulexin)	125 mg	540	597
Gemfibrozil (Lopid)	600 mg	180	160
Glipizide	10 mg	180	177
Hemofil M		30 days	6,816
Hydroxychloroquine	200 mg	180	178
Hydroxyurea (Hydrea)	500 mg	270	308
Interleron (Intron A)	3 mu	12	287
Isotretinoin (Accutane)	10 mg	60	133
Isotretinoin (Accutane)	20 mg	60	158
Isotretinoin (Accutane)	40 mg	60	182
Itraconazole (Sporonox)	10 mg	30	127
Leucovorin	5 mg	100	166
Leuprolide (Lupron)	7.5 mg	1	387
Leuprolide (Lupron)	3.75 mg	1	278
Lisinopril	10 mg	180	112
Lisinopril (Prinivil)	5 mg	180	112
Lomustine	40 mg	20	182
Lomustine	100 mg	20	400
Lovastatin (Mevacor)	20 mg	180	265
Lovastatin (Mevacor)	40 mg	180	492
Loxapine (Loxitane)	50 mg	180	138
Lypressin spray (Diapid)		4 bottles	116
Megestrol (Megace)	20 mg	360	120
Megestrol (Megace)	40 mg	360	228
Melphalan (Alkeran)	2 mg	350	410
Mesalamine enema (Rowasa)	500 mg	90	158
Metaproterenol neb soln	0.6%	100	105
Methazolamide	50 mg	270	166
Methotrexate	2.5 mg	180	170
Methysergide Maleate	2 mg	180	182
Mexiletine (Mexitil)	200 mg	270	156
Mexiletine (Mexitil)	250 mg	270	185
Mexiletine (Mexitil)	150 mg	270	131
Misoprostol	200 mcg	360	197
Naproxen	500 mg	180	176
Naproxen	375 mg	270	216
Naproxen	250 mg	270	168
Nicotine Transdermal System	21 mg	30	100
Nifedipine	60 mg XL	90	151
Nifedipine	90 mg XL	90	181
Nortriptyline HCL	25 mg	90	107
Otsalazine (Dipentim)	250 mg	360	149
Omperazole (Prilosec)	20 mg	90	268
One Touch Test Strips		360	171
Pancrelipase MT16		540	313
Pancrelipase (Pancrease)		540	119

Generic (trade) name	Strength	Total dispensed quantity[2]	Standard cost
Penicillamine	250 mg	360	260
Perphenazine	2 mg	360	111
Pravastin Sodium (Pravachol)	10 mg	90	125
Pravastin Sodium (Pravachol)	20 mg	90	132
Probucol (Lorelco)	250 mg	360	184
Procarbazine (Matulane)	50 mg	360	204
Procyclidine (Kemadrin)	5 mg	360	113
Pyrazinamide	500 mg	360	430
Ranitidine	150 mg	180	152
Rifampin with INH		180	493
Selegeline (Eldepryl)	5 mg	180	416
Somatrem (Protropin)	5 mg	4	770
Somatropin (Humatrope)		6	1,126
Sucalfate (Carafate)	1 GM	360	183
Sulindac	150 mg	360	112
Sulindac	200 mg	360	139
Tamoxifen (Nolvadex)	10 mg	180	207
Terfenadine (Seldane)		180	124
Ticlopidine (Ticlid)	250 mg	180	219
Tocainide (Tonocard)	400 mg	270	181
Tocainide (Tonocard)	600 mg	270	231
Tracer BG Strips		360	252
Ursidiol (Actigall)	300 mg	90	145
Verapamil SR 240 (Calan SR)		180	100
Zalcitabine (Hivid)	.75 mg	270	542
Zidovudine (Retrovir)	100 mg	450	598

Notes on reimbursable rates:

[1] Charges for PRIMUS/NAVCARE and high cost medications/services requested by external providers (Physicians, Dentists, etc.) are only relevant to the Third Party Collection Program. Third party payers (such as insurance companies) shall be billed for high cost services in those instances in which dependents who have medical insurance, seen by providers external to a Military Medical Treatment Facility (MTF), obtain the prescribed service or medication from a MTF. Eligible beneficiaries (dependents with medical insurance) are not personally liable for this cost and shall not be billed by the MTF. The standard cost of high cost medications includes the cost of the drugs and dispensing services.

[2] All quantities shown are tablets unless otherwise stated. The third party charge is only for the strengths and the dosage cited. Charges will vary if the strengths and the dosage are changed. The method of computing standard costs to be charged for high costs medications, over $100.00, and those medications costing less than $100.00 is the same, i.e., actual cost to the pharmacy, plus a 30 percent dispensing costs. The medications in this schedule shown are the most common high cost medications dispensed.

Service provided	Cost of service
E. High Cost Services Requested by External Provider:[1]	
X-Ray Ribs (all), per side	$113
X-Ray Hips, Bilateral	114
Upper Gastrointestinal (G.I.) study with contrast	143
Hysterosalpingogram	126
Mammogram, Bilateral or with localization	129
Ultrasound, per study	116
Ultrasound—complete abdomen or with biopsy	198
Computerized Axial Tomography (CAT) scan head/brain without contrast	193
Computerized Axial Tomography (CAT) scan head/brain with contrast	218
Computerized Axial Tomography (CAT) scan head/brain with and without contrast, or post fossa and IAM/IACS	307
Computerized Axial Tomography (CAT) scan chest	339
Computerized Axial Tomography (CAT) scan abdomen, per study	169
Computerized Axial Tomography (CAT) scan extremity without contrast	197
Computerized Axial Tomography (CAT) scan extremity with contrast	226
Computerized Axial Tomography (CAT) scan with and without contrast	393
Magnetic Resonance Imaging (MRI) without contrast	279
Magnetic Resonance Imaging (MRI) with contrast brain	481
Magnetic Resonance Imaging (MRI) spine (all) chest and abdomen without contrast	229
Magnetic Resonance Imaging (MRI) spine (all) with contrast	507
Magnetic Resonance Imaging (MRI) extremities without contrast	360
Magnetic Resonance Imaging (MRI) extremities with and without contrast	279

Note on reimbursable rates:

[1] Charges for PRIMUS/NAVCARE and high cost medications/services requested by external providers (Physicians, Dentists, etc.) are only relevant to the Third Party Collection Program. Third party payers (such as insurance companies) shall be billed for high cost services in those instances in which dependents who have medical insurance, seen by providers external to a Military Medical Treatment Facility (MTF), obtain the prescribed service or medication from an MTF. Eligible beneficiaries (dependents with medical insurance) are not personally liable for this cost and shall not be billed by the MTF. The standard cost of high cost medications includes the cost of the drugs and dispensing services.

Cosmetic surgery procedure [1]	International classification diseases (ICD–9)	Common procedure terminology (CPT) [2]	Fiscal year 1994 charge	Full reimbursement
F. Elective Cosmetic Surgery Procedures and Rates:				
Mammaplasty	85.50	19325	Surgical Care Services or	$1,067
	85.32	19324	Same Day Surgery	420
	85.31	19318		
Mastopexy	85.60	19316	Surgical Care Services or	1,067
			Same Day Surgery	420
Facial Rhytidectomy	86.82	15824	Surgical Care Services or	1,067
	86.22		Same Day Surgery	420
Blepharoplasty	08.70	15820	Surgical Care Services or	1,067
	08.44	15821	Same Day Surgery	420
		15822		
		15823		
Mentoplasty (Augumentation Reduction)	76.68	21208	Surgical Care Services or	1,067
	76.67	21209	Same Day Surgery	420
Abdominoplasty	86.83	15831	Surgical Care Services or	1,067
			Same Day Surgery	420
Lipectomy, suction per region [3]	86.83	15876	Surgical Care Services or	1,067
		15877	Same Day Surgery	420
		15878		
		15879		
Rhinoplasty	21.87	30400	Surgical Care Services or	1,067
	21.86	30410	Same Day Surgery	420
Scar revisions beyond CHAMPUS	86.84	1578	Surgical Care Services or	1,067
			Same Day Surgery	420
Mandibular or Maxillary Repositioning	76.41	21194	Surgical Care Services or	1,067
			Same Day Surgery	420
Minor Skin Lesions [4]	86.30	1578	Surgical Care Services or	1,067
			Same Day Surgery	420
Dermabrasion	86.25	15780	Surgical Care Services or	1,067
			Same Day Surgery	420
Hair Restoration	86.64	15775	Surgical Care Services or	1,067
			Same Day Surgery	420
Removing Tatoos	86.25	15780	Surgical Care Services or	1,067
			Same Day Surgery	420
Chemical Peel	86.24	15790	Surgical Care Services or	1,067
			Same Day Surgery	420
Arm/Thigh Dermolipectomy	86.83	1583	Surgical Care Services or	1,067
			Same Day Surgery	420
Brow Lift	86.3	15839	Surgical Care Services or	1,067
			Same Day Surgery	420

Notes of reimbursable rates:

[1] Cosmetic surgery rates will be charged dependents of active duty members, retirees, and their dependents and survivors. The patient shall be charged the rate as specified in the FY 1994 reimbursable rates for an episode of care. The charges for elective cosmetic surgery at the full reimbursement rate (designated as the Other rate). The patient will be responsible for both the cost of the implant(s) and prescribed rates.

NOTE: The implants and procedures used for the augmentation mammaplasty are in compliance with Federal Drug Administration guidelines.

[2] The attending physician is to complete the common procedure terminology code to indicate the appropriate procedure following during cosmetic surgery.

[3] Each regional lipectomy will carry a separate charge. Regions include head and neck, abdomen, flanks, and hips.

[4] These procedures are inclusive in the minor skin lesions. However, CHAMPUS separates them as noted here. All charges are for the entire treatment regardless of the number of visits required.

G. Immunizations: $18.

Inpatient rate	Items included
H. Clinical Services by Type of Service/Care Provided:	
Medical Care Services	Internal Medicine, Cardiology, Dermatology, Endocrinology, Gastroenterology, Hematology, Nephrology, Neurology, Oncology, Pulmonary and Upper Respiratory Disease, Rheumatology, Physical Medicine, Clinical Immunology, HIV–III Acquired Immune Deficiency Syndrome (AIDS), Infectious Disease, Allergy, and Medical Care not elsewhere classified. Includes Family Practice Medical Care.
Surgical Care Services	General Surgery, Cardiovascular and Thoracic Surgery, Neurosurgery, Ophthalmology, Oral Surgery, Otorhinolaryngology, Pediatric Surgery, Plastic Surgery, Proctology, Urology, Peripheral Vascular Surgery, Trauma Center, Head and Neck Surgery, and Surgical Care not elsewhere classified. Includes Family Practice Surgical Care.
Obstetrical and Gynecological Care.	Includes Family Practice Obstetrics and Gynecology.
Pediatric Care	Pediatrics, Nursery, Adolescent Pediatrics and Pediatric Care not elsewhere classified. Includes Family Practice Pediatric and Nursery Care.
Orthopedic Care	Orthopedics, Podiatry, and Hand Surgery. Includes Family Practice Orthopedic Care.

Inpatient rate	Items included
Psychiatric Care and Substance Abuse Rehabilitation.	Includes Family Practice Psychiatric Care.
Medical Intensive Care/Coronary Care.	Self-Explanatory.
Surgical Intensive Care	Self-Explanatory.
Neonatal Intensive	Self-Explanatory.
Organ and Bone Marrow Transplants.	Self-Explanatory.
Same Day Surgery	Self-Explanatory.

Dated: October 12, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–25405 Filed 10–15–93; 8:45 am]

BILLING CODE 5000–04–M

Defense Logistics Agency

Privacy Act of 1974; Computer Matching Program Between the National Science Foundation and the Defense Manpower Data Center of the Department of Defense.

AGENCY: Defense Manpower Data Center, Defense Logistics Agency, Department of Defense.

ACTION: Proposed computer matching program between the National Science Foundation and the Defense Manpower Data Center of the Department of Defense (DoD).

SUMMARY: DMDC, as the matching agency under the Privacy Act of 1974, as amended, (5 U.S.C. 552a), is hereby giving constructive notice in lieu of direct notice to the record subjects of a proposed computer matching program between the National Science Foundation (NSF) and DMDC that their records are being matched by computer. The record subjects are delinquent debtors of the National Science Foundation, who are current or former Federal employees or military members receiving Federal salary or benefit payments and indebted and delinquent in their payment of debts owed to the United States Government under certain programs administered by the National Science Foundation so as to permit the National Science Foundation to pursue and collect the debt by voluntary repayment or by administrative or salary offset procedures under the provisions of the Debt Collection Act of 1982.

DATES: This proposed action will become effective November 17, 1993, and the computer matching will proceed accordingly without further notice, unless comments are received which would result in a contrary determination or if the Office of Management and Budget or Congress objects thereto. Any public comment must be received before the effective date.

ADDRESSES: Any interested party may submit written comments to the Director, Defense Privacy Office, Crystal Mall 4, Room 920, 1941 Jefferson Davis Highway, Arlington, VA 22202–4502. Telephone (703) 607–2943.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (o) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), the National Science Foundation and DMDC have concluded an agreement to conduct a computer matching program between the agencies. The purpose of the match is to exchange personal data between the agencies for debt collection from defaulters of obligations held by the National Science Foundation under the Debt Collection Act of 1982. The match will yield the identity and location of the debtors within the Federal government so that the Foundation can pursue recoupment of the debt by voluntary payment or by administrative or salary offset procedures. Computer matching appeared to be the most efficient and effective manner to accomplish this task with the least amount of intrusion of personal privacy of the individuals concerned. It was therefore concluded and agreed upon that computer matching would be the best and least obtrusive manner and choice for accomplishing this requirement.

A copy of the computer matching agreement between the National Science Foundation and DMDC is available to the public upon request. Requests should be submitted to the address caption above or to the Debt Management Officer, National Science Foundation, 1800 G Street, NW, Washington, DC 20550.

Set forth below is a public notice of the establishment of the computer matching program required by paragraph (e)(12) of the Privacy Act.

The matching agreement, as required by 5 U.S.C. 552a(r) of the Privacy Act, and an advance copy of this notice was submitted on October 6, 1993, to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget pursuant to paragraph 4d of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records about Individuals,' dated June 25, 1993 (58 FR 36075, July 2, 1993). This matching program is subject to review by OMB and Congress and shall not become effective until that review period of 30 days has elapsed.

Dated: October 12, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Computer Matching Program Between the National Science Foundation, and the Defense Manpower Data Center of the Department of Defense for Debt Collection

A. *Participating agencies:* Participants in this computer matching program are the National Science Foundation (NSF) and the Defense Manpower Data Center (DMDC), Department of Defense (DoD). The National Science Foundation is the source agency, i.e., the agency disclosing the records for the purpose of the match. DMDC is the specific recipient or matching agency, i.e., the agency that actually performs the computer matching.

B. *Purpose of the match:* The purpose of the match is to identify and locate the Foundation's delinquent debtors who are current or former Federal employees or military members receiving any Federal salary or benefit payments and indebted and delinquent in their repayment of debts owed to the United States Government under certain programs administered by the National Science Foundation so as to permit the Foundation to pursue and collect the debt by voluntary repayments or by administrative or salary offset procedures under the provisions of the Debt Collection Act of 1982.

C. *Authority for conducting the match:* The legal authority for conducting the matching program is

contained in the Debt Collection Act of 1982 (Pub. L. 97–365), 31 U.S.C. Chapter 37, Subchapter I (General) and Subchapter II (Claims of the United States Government), 31 U.S.C. 3711 Collection and Compromise, 31 U.S.C. 3716 Administrative Offset, 5 U.S.C. 5514 Installment Deduction for Indebtedness (Salary Offset); 10 U.S.C. 136, Assistant Secretaries of Defense, Appointment Powers and Duties; section 206 of Executive Order 11222; 4 CFR Ch. II, Federal Claims Collection Standards (General Accounting Office - Department of Justice); 5 CFR 550.1101 - 550.1108, Collection by Offset from Indebted Government Employees (OPM); 45 CFR part 607 (NSF).

D. *Records to be matched:* The systems of records maintained by the respective agencies under the Privacy Act of 1974, as amended, 5 U.S.C. 552a, from which records will be disclosed for the purpose of this computer match are as follows:

1. The National Science Foundation will use the record systems identified as NSF-57, entitled 'Delinquent Debtors' File,' last published in the **Federal Register** June 18, 1993, at 58 FR 33673.

2. DMDC will use the record system identified as S322.11 DMDC, entitled 'Federal Creditor Agency Debt Collection Data Base,' last published in the **Federal Register** on February 22, 1993, at 58 FR 10875.

The categories of records in the NSF record system are delinquent debtors. The categories of records in the DoD system consists of employment records of active and retired military members, including the Reserve and Guard, and the OPM government-wide Federal active and retired civilian records. Both record systems contain an appropriate routine use disclosure provision required by the Privacy Act permitting the disclosure of the affected personal information between the National Science Foundation and DoD. The routine uses are compatible with the purpose for collecting the information and establishing and maintaining the record systems.

E. *Description of computer matching program:* A magnetic computer tape provided by the Foundation will contain data elements of the debtor's name, SSN, internal account number and total amount owed on approximately 50 delinquent debtors. The DMDC computer database file contains approximately 10 million records of active duty and retired military members, including the Reserve and the Guard, and the OPM government-wide Federal civilian records of current and retired Federal employees. DMDC will match the SSN on the Foundation's tape by computer against the DMDC database. Matching records, hits based on SSNs, will produce data elements of the individual's name, SSN, service or agency, and current work or home address.

F. *Individual notice and opportunity to contest:* Due process procedures will be provided by the Foundation to those individuals matched (hits) consisting of the Foundation's verification of debt; 30–day written notice to the debtor explaining the debtor's rights; provision for debtor to examine and copy the agency's documentation of the debt; provision for debtor to seek the Foundation's review of the debt (or in the case of the salary offset provision, opportunity for a hearing before an individual who is not under the supervision or control of the agency); and opportunity for the individual to enter into a written agreement satisfactory to the Foundation for repayment. Only when all of the steps have been taken will the Foundation disclose, pursuant to a routine use, to effect an administrative or salary offset. Unless the individual notifies the Foundation otherwise within 30 days from the date of the notice, the Foundation will conclude that the data provided to the individual is correct and will take the next necessary action to recoup the debt. Failure to respond to the notice will be construed as to the correctness of the notice and justification for taking the next step to collect the debt under the law.

G. *Inclusive dates of the matching program:* This computer matching program is subject to review by the Office of Management and Budget and Congress. If no objections are raised by either, and the mandatory 30 day public notice period for comment has expired for this **Federal Register** notice with no significant adverse public comments in receipt resulting in a contrary determination, then this computer matching program becomes effective and the respective agencies may begin the exchange of data 30 days after the date of this published notice at a mutually agreeable time and will be repeated on an annual basis, unless OMB or the National Science Foundation request a match twice a year. Under no circumstances shall the matching program be implemented before this 30 day public notice period for comment has elapsed as this time period cannot be waived. By agreement between the National Science Foundation and DoD, the matching program will be in effect and continue for 18 months with an option to extend for 12 additional months unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

H. *Address for receipt of public comments or inquiries:* Director, Defense Privacy Office, Crystal Mall 4, Room 920, 1941 Jefferson Davis Highway, Arlington, VA 22202–4502. Telephone (703) 607–2943.

[FR Doc. 93–25406 Filed 10–14–93; 8:45 am]
BILLING CODE 5000–04–F

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board, Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Executive Committee of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: October 22, 1993.

TIME: 11 a.m. (e.t.).

LOCATION: National Assessment Governing Board, suite 825, 800 North Capitol Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mary Ann Wilmer, Operations Officer, National Assessment Governing Board, suite 825, 800 North Capitol Street NW., Washington, DC 20002–4233, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 406(i) of the General Education Provisions Act (GEPA) as amended by section 3403 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), title III–C of the Augustus F. Hawkins—Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100–297), (20 U.S.C. 1221e–1).

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress. The Board is responsible for selecting subject areas to be assessed, developing assessment objectives, identifying appropriate achievement goals for each grade and subject tested, and establishing standards and procedures for interstate and national comparisons.

The Executive Committee of the National Assessment Governing Board will meet October 22, 1993 from 11 a.m. until 12:30 p.m. Because this is a teleconference meeting, facilities will be provided so the public will have access to the Committee's deliberations. The agenda includes review and approval of the November 18–20, 1993 meeting agenda; discussions on the NAEP reauthorization, orientation of new board members, and the 1994 NAEP budget.

Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, suite 825, 800 North Capitol Street, NW., Washington, DC, from 8:30 a.m. to 5 p.m.

Dated: October 13, 1993.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 93–25485 Filed 10–15–93; 8:45 am]

BILLING CODE 4000–01–M

National Education Commission on Time and Learning

Hearing

AGENCY: National Education Commission on Time and Learning, Education.

ACTION: Notice of Hearing.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming Hearing of the National Education Commission on Time and Learning. This notice also describes the functions of the Commission. Notice of this Hearing is required under Section 10(a)(2) of the Federal Advisory Committee Act.

DATES AND TIME: October 29, 1993—9 a.m.–3:30 p.m.

ADDRESSES:

Thomas Jefferson High School for Science and Technology—School Conference Room, 6560 Braddock Road, Alexandria, VA

and

Chapel Square Center, Technology Services—Fairfax County, 4414 Holborn Street, Annandale, VA.

FOR FURTHER INFORMATION CONTACT: Julia Anna Anderson, Deputy Executive Director, 1255 22nd Street, NW., Suite 502, Washington, DC 20202–7591. Telephone: (202) 653–5063.

SUPPLEMENTARY INFORMATION: The National Education Commission on Time and Learning is established under section 102 of the Education Council Act of 1991 (20 U.S.C. 1221–1). The Commission is established to examine the quality and adequacy of the study and learning time of elementary and secondary students in the United States, including issues regarding the length of the school day and year, how time is being used for academic subjects, the use of incentives, how time is used outside of school, the extent and role of homework, year-round professional opportunities for teachers, the use of school facilities for extended learning programs, if appropriate a model for adopting a longer day or year, suggested changes for state laws and regulations, and an analysis and estimate of the additional costs.

The Hearing of the Commission is open to the public. The proposed agenda includes: A site visit to Chapel Square Center, in Annandale, VA. The Coordinator of Technology Services at Chapel Square will discuss the instructional technology services that are offered to the schools of Fairfax County. The Commissioners will also tour Thomas Jefferson High School and hear testimony from the Principal, students, teachers and a parent.

Records are kept of all Commission proceedings, and are available for public inspection at the Office of the Commission at 1255 22nd Street, NW., Suite 502, Washington, DC 20202–7591 from the hours of 9 a.m. to 5:30 p.m.

Dated: October 12, 1993.

John Hodge Jones,

Chairman, National Education Commission on Time and Learning.

[FR Doc. 93–25407 Filed 10–15–93; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Guidelines for Voluntary Reporting of Greenhouse Gas Emissions and Reductions, and Carbon Sequestration; Meeting

AGENCY: Office of Policy, and Program Evaluation, DOE.

ACTION: Notice of public meeting.

SUMMARY: A public workshop and meeting on cross-cutting institutional issues in the development of a voluntary reporting program for greenhouse gas emissions, reductions and carbon sequestration will be held by the DOE Office of Policy, Planning and Program Evaluation. The workshop is intended to facilitate preparation of the guidelines for the reporting program.

DATES AND ADDRESSES: The workshop will be held November 2–3, 1993, at the DuPont Plaza Hotel, 1500 New Hampshire Avenue NW. (Dupont Circle), Washington, DC 20036. The workshop will begin 8:30 a.m. each day, adjourning at 5 p.m. on November 2nd, and at 12:30 p.m. on November 3rd.

FOR FURTHER INFORMATION CONTACT: To obtain more information on the workshop, call Ms. Debbie Stowell at (202) 586–7767. To request a copy of the Institutional Options Identification Document, call (202) 646–7896.

SUPPLEMENTARY INFORMATION: On July 27, 1993, DOE requested comment on the initial developmental stage of the guidelines for voluntary reporting, under section 1605(b) of the Energy Policy Act of 1992, of greenhouse gas emissions and their reductions, and carbon fixation (58 FR 40116). For a more detailed discussion of issues in the development of the guidelines, the reader is referred to the discussion in the July 27 notice.

As part of the guideline development process, DOE will host a series of public workshops and meetings. The workshop announced here will address the institutional issues relevant across all potential reporting sectors. The workshop, and the associated Options Identification Document prepared for the meeting, will be organized around four topics:

1. Who may report, including issues of de minimis levels of reportable emissions reductions, avoidance of duplicative reporting, and reductions achieved outside of the U.S.;

2. Methods of determining baselines and reference cases from which reductions would be measured;

3. Issues of data quality and the relationship of the 1605(b) reporting program to other relevant Federal, state, and local programs, including Federal recognition programs; and

4. Reporting reasons for emissions reductions; confidentiality of data; and certification of data by reporting entities.

For each of these topics, a panel of invited participants will address issues and options identified in the Institutional Options Identification Document, and discuss these with other workshop participants. There will be opportunity for brief oral statements from the public on the issues under consideration during each day's session.

The goal of the workshop is to develop the fullest information on alternative options, not to reach any consensus of opinion nor to make collective recommendations. Workshops on additional topics will be announced in the **Federal Register.**

Issued in Washington, DC on October 13, 1993.

Abraham E. Haspel,

Deputy Assistant Secretary for Economic and Environmental Policy, Office of Policy, Planning and Program Evaluation.

[FR Doc. 93–25491 Filed 10–15–93; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. QF92–91–003]

Tenaska Washington Partners, L.P.; Application for Commission Recertification of Qualifying Status of a Cogeneration Facility

October 12, 1993.

On October 1, 1993, Tenaska Washington Partners, L.P. of, 407 North 117th Street, Omaha Nebraska 68154, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207(b) of the Commission's Regulations. The instant request for recertification is due to changes in the ownership structure of the facility. No determination has been made that the submittal constitutes a complete filing.

According to the applicant the topping-cycle cogeneration facility to be located at the BP Oil Company Refinery in Ferndale, Washington was previously certified as a qualifying cogeneration facility, *Tenaska Washington Partners, L.P.*, 59 FERC ¶ 62,235 (1992).

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed within 30 days after the date of publication of this notice in the **Federal Register** and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–25424 Filed 10–15–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–11–000]

Algonquin Gas Transmission Co.; Notice of Request Under Blanket Authorization

October 12, 1993.

Take notice that on October 7, 1993, Algonquin Gas Transmission Company (Algonquin), 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed a prior notice request with the Commission in Docket No. CP93–11–000 pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to reallocate 10,000 MMBtu equivalent of natural gas from one delivery point to another delivery point for Boston Gas Company (Boston Gas) under Algonquin's blanket certificate issued in Docket No. CP87–317–000 pursuant to Section 7 of the NGA, all as more fully set forth in the request which is open to public inspection.

Algonquin proposes to reduce its maximum daily delivery obligation (MDDO) to Boston Gas by 10,000 MMBtu equivalent of natural gas at the Everett, Massachusetts, delivery point and increase the MDDO by 10,000 MMBtu equivalent at the Polaroid delivery point in Waltham, Massachusetts. Algonquin would continue to perform its delivery service to Boston Gas under its FERC Rate Schedule FTP. Algonquin states that its proposed reallocation of natural gas deliveries would not change its maximum daily transportation quantity and no additional facilities would be required to serve Boston Gas.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Lois D. Cashell,

Secretary.

[FR Doc. 93–25417 Filed 10–15–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER89–401–016]

Citizens Power & Light Corporation; Filing

October 12, 1993.

Take notice that on August 30, 1993, Citizens Power & Light Corporation (Citizens) filed certain information as required by ordering paragraph (M) of the Commission's August 8, 1989 order in this proceeding, 48 FERC ¶ 61,210 (1989). Copies of Citizens' informational filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–25421 Filed 10–15–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER93–507–000]

Florida Power & Light Co.; Filing

October 12, 1993.

Take notice that on September 30, 1993, Florida Power & Light Company (FPL) responded to the June 23, 1993, letter from the Director, Division of Applications, and tendered for filing Period I and Period II cost support data and prepared direct testimony of FPL witnesses.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before October 27, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–25422 Filed 10–15–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER93–725–000]

Florida Power & Light Co.; Filing

October 12, 1993.

Take notice that on September 30, 1993, Florida Power & Light Company (FP&L) tendered for filing an amendment in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before October 27, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–25423 Filed 10–15–93; 8:45 am]

BILLING CODE 6717–01–M

Office of Arms Control and Nonproliferation

Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Hungary concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer: RTD/HU(EU)–1, for the transfer of 0.8 milligrams of uranium enriched to 97.65 percent in the isotope uranium-235, 0.25 milligrams of plutonium-240, and 0.3 milligrams of plutonium-242 from Belgium to Hungary for use in mass spectrometry.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Issued in Washington, DC, on October 7, 1993.

Salvador N. Ceja,

Acting Director, Office of Nonproliferation Policy, Office of Arms Control and Nonproliferation.

[FR Doc. 93–25413 Filed 10–15–93; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4789–5]

1994 and 1995 Nominations for Essential Use Exemptions for Halons 1211, 1301, and 2402

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Through this notice, the U.S. Environmental Protection Agency is publishing the results of its February 12, 1993 request for nominations for 1994 halon "essential use" exemptions from the January 1, 1994 production and import phase-out under the Montreal Protocol on Substances That Deplete the Ozone Layer, published in a previous **Federal Register** notice (58 FR 6788; February 12, 1993). EPA notes that already produced halons may be recycled and used without the need for an essential use exemption under the Montreal Protocol or the Clean Air Act.

EPA is also requesting halon nominations for consideration at the Sixth Meeting of the Parties in 1994 for exemptions to the production and import phase-out for 1995. Nominations for essential use exemptions for other Class I substances were requested in a previous notice (58 FR 29410; May 20, 1993).

Finally, through the notice, EPA is notifying the public of the formation of two halon banking mechanisms. The Halon Recycling Corporation has incorporated and is officially open for business after receiving a Business Review Clearance from the Department of Justice. The Defense Logistics Agency is also forming a reserve of ozone-depleting substances for mission critical uses, and is accepting recycled Halon 1301 from the public.

DATES: Nominations for essential use exemptions for halon that are to be considered at the Sixth Meeting of the Parties (to be held as early as June and no later than November, 1994) must be submitted to EPA no later than December 17, 1993 in order for the U.S. government to complete its review in time to submit its nominations six months prior to a June 1994 meeting.

ADDRESSES: Nominations should be sent to: Karen Metchis, Program Manager, Essential Use Exemptions, Mail Stop 6205J, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Karen Metchis, Substitutes Analysis and Review Branch, Stratospheric Protection Division (6205J), Office of Atmospheric Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; Phone (202) 233–9193; FAX (202) 233–9579. General information may be obtained for the Stratospheric Ozone Hotline at 1–800–296–1996 or (202) 775–6677.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background—Fourth Meeting of the Parties to the Protocol
II. Essential Use Exemptions for Halons
III. Formation of Halon Banks
IV. Announcement Regarding 1994 Nominations
V. Request for Nominations for 1995

I. Background—Fourth Meeting of the Parties to the Protocol

At the Fourth Meeting of the Parties to the Montreal Protocol in Copenhagen on November 23–25, 1992, the Parties agreed to accelerate the phase-out schedules for certain controlled substances, including halons. With respect to halons, the Parties agreed to the phase out by January 1, 1994. The Parties also rendered decisions and resolutions on a variety of other matters, including the adoption of essential use criteria, recovery and recycling of controlled substances, and international halon bank management.

II. Essential Use Exemptions for Halons

The Parties to the Montreal Protocol agreed at the 1992 meeting in Copenhagen to allow for an exemption of essential uses of controlled substances, including halons, from the phase out of production and importation (referred to as "consumption" by the Parties). Language regarding essential uses was added to the Protocol provisions in Article 2 governing the control measures and the specific criteria and review process were detailed in Decision IV/25 of the Fourth Meeting of the Protocol. The Parties recognized the importance of including such an exemption because of the accelerated phaseout dates for these chemicals. Each year, Parties may make nominations for production of controlled substances for essential uses. These nominations can be for production in any year after the substance's phaseout date and can be for

more than one calendar year. For example, a nomination could be submitted in 1994 for a decision in 1995 to allow production of CFCs beginning in 1997 and continuing for three years. The Parties could choose to grant production for one or more years but each approved or pending application is annually reviewed by the Technology and Economic Assessment Panel and its Technical Options Committees and each prior decision by the Parties can be reconsidered and modified by the Parties at their annual meeting.

Because halons are the first compounds to be phased out, the Parties will first consider nominations at their Fifth Meeting, scheduled for November 17–19, 1993, for exemption in 1994 and later. The Parties will consider nominations for all Class I substances, including halons, at the Sixth Meeting of the Parties, which may be held as early as June 1994 for exemptions for production of halons in 1995 and later, and for production of all Class I substances in 1996 and later. All Class I substances will be considered at subsequent meetings for exemptions thereafter. Exemptions cover a specific time period, and do not provide for the indefinite continued use of Class I substances.

In cases where companies have essential uses still requiring halons, but where adequate supplies of halons are currently available, nominations need not be made at this time. Nominations for these uses may be made at a later date for consideration at subsequent meetings of the Parties.

The Parties set out criteria to apply in identifying essential uses and established a process for the Parties to decide which uses would qualify under this provision. Decision IV/25 states that a use of a controlled substance should qualify as "essential" only if "it is necessary for the health, safety or is critical for the functioning of society (encompassing cultural and intellectual aspects)" and "there are no available technically and economically feasible alternatives or substitutes that are acceptable from the standpoint of environment and health". In addition, the Parties agreed "that production and consumption, if any, of a controlled substance, for essential uses should be permitted only if: All economically feasible steps have been taken to minimize the essential use and any associated emission of the controlled substance; and the controlled substance is not available in sufficient quantity and quality from the existing stocks of banked or recycled controlled substances."

Any essential use exemptions would also have to comply with the provisions of the Clean Air Act (CAA). Section 604 authorizes the granting of specific exemptions from the phaseout schedules contained in the Clean Air Act, for certain halons used for aviation safety (section 604(d)), national security (section 604(f)), and fire suppression and explosion prevention (section 604(g)). To the extent that an accelerated phaseout schedule is adopted under the Montreal Protocol, EPA could provide exemptions for uses not specified in the CAA, so long as these exemptions do not exceed amounts allowed in the schedule contained in section 604(a). However, since section 604(b) specifies the phaseout date for Class I substances as 2000, that section effectively limits the authority of EPA to provide essential use exemptions for periods after the CAA's termination date of 2000 for halons, other than for the specific exemptions authorized by section 604 (d), (f), and (g).

In accordance with the essential use decision taken by the Parties to the Montreal Protocol in Copenhagen, governments that are Parties must submit nominations for essential uses to the United Nations Environment Programme's Secretariat for the Montreal Protocol. For halon essential uses, these nominations must be submitted at least six months before the meeting at which the Parties will make a decision on whether to approve the essential use, e.g., by December 1, 1993 if the Sixth Meeting of the Parties is held as early as June 1994. Thus, the first step in the process to qualify a use as essential under the Protocol is for the user to notify EPA of its candidate use and for EPA to evaluate that use for consistency with the criteria adopted by the Parties in Copenhagen. EPA will review the candidate for exemption and will work with other interested Federal agencies to determine whether or not it should be submitted to the Ozone Secretariat for further consideration. Nominations submitted to the Ozone Secretariat by Parties will then be directed to UNEP's Montreal Protocol Technology and Economic Assessment Panel and its Technical Options Committees which will review such submissions and prepare recommendations to the Parties for exemptions. The Panel will review these nominations to determine whether the eligibility criteria have been satisfied and examine the expected duration of the essential use, emission controls for the essential use application, sources of already produced controlled substances that could be made available to meet the essential use, and the steps necessary to ensure that alternatives and substitutes are available as soon as possible for the proposed essential use. The Parties also instructed the Technical Panel to consider the environmental acceptability, health effects, economic feasibility, availability and regulatory status of alternatives and substitutes.

The Technical Panel must submit its recommendation on the nominated uses to the Parties at least three months before the Parties meet to designate essential uses. The Panel is currently working under the assumption that it may be necessary to submit recommendations to the Parties for exemptions for halons production by March 1, 1994. If a halon user determines that other alternatives are not feasible and that sources of future supply do not exist, the user should prepare and submit to EPA an essential use application as described below.

III. Formation of Halon Banks

The need for essential use exemptions for halon will largely depend on the success of programs to reallocate those halons stored in existing systems where alternatives exist to applications where alternatives are not yet feasible. To help fulfill requirements for ongoing supplies of halon, the Halon Recycling Corporation (HRC) has been established as a non-profit organization that provides services to the general public. HRC applied for and received an expedited Business Review Clearance from the U.S. Department of Justice and is now in operation. In addition, the Department of Defense (DoD) has commissioned the Defense Logistics Agency (DLA) to manage a reserve of ozone-depleting substances (ODS) for mission critical uses. DoD has inventoried the supplies held by each of the military services and is recalling all nonessential controlled substances for storage in the reserve. Only applications recognized as mission critical may obtain and use substances from this DLA ODS reserve. DLA is attempting to supplement its reserve by buying additional supplies, and is attempting to purchase recycled ODSs where possible.

EPA urges all halon users to act quickly to assess their current use of halons and to determine if alternative approaches to fire protection are feasible. EPA encourages users to transfer any unneeded halon to a banking program such as HRC or DLA.

The Parties to the Protocol consider the recovery, reclamation and reuse of halon to be integral to the successful phase-out of halon production, and consequently adopted Decisions IV/24 regarding Recovery, Reclamation and

Recycling of Controlled Substances and IV/26 regarding International Halon Bank Management. In this context, the U.S. and other signatories to the Protocol must develop means of effectively controlling halon emissions and recovering halons for use in critical applications. The formation of both the HRC and the DLA reserve are the first efforts in the U.S. to respond to this national mandate.

HRC has been established by members of the Halon Alternatives Research Corporation (HARC). HARC commissioned a study on the concept of halon banking, and determined that large quantities of halon are stored in systems throughout the U.S. Historically, 45% of the world's halon 1301 and 35% of halon 1211 has been used in the U.S. Given the availability of suitable alternatives for most applications, the study anticipates that much of this reserve (or "bank") will be available for redeployment to critical applications.

HRC is not a physical bank but will act as an information network to assist both buyers and sellers of recycled halon, and will provide a "critical use" assessment service. HRC has created a tiered certification system involving two special "critical use review" services. To be a 'certified' critical user, a potential buyer of halon submits documentation for review by an independent review committee. To be established as a 'registered' user, a potential buyer completes a self-evaluation checklist. Organizations disposing of unwanted halon and wishing to ensure that their recycled halon is responsibly managed are likely to use HRC's services to identify 'critical users' as potential recipients. HRC will be funded by nominal listing fees from sellers, application fees from potential buyers, and a brokerage fee on successful transactions. The terms of all contracts are between the buyer and seller only, and HRC will not participate in negotiating price or other terms of the trade.

Interested parties may call EPA's Stratospheric Ozone Hotline (1–800–296–1996) or (202) 775–6677 for information about halon banking; HRC may be contacted directly at 1–800–258–1283 or (202) 223–6166; and DLA may be contacted at (804) 279–3865.

IV. Announcement Regarding Nominations for 1994

On February 12, 1993, EPA issued a **Federal Register** notice requesting nominations for essential use exemptions to be considered at the Fifth Meeting of the Parties. Initially, eighteen applications were received. These came from users in the following general categories: Power generation control rooms (fossil fuel and nuclear), petroleum production (offshore platforms and refineries), air transport, explosion protection, and telecommunications. After consultation with EPA, one application was denied based on insufficient information and all but four of the others withdrew after considering the need to prove that there are insufficient quantities of recycled halon available to meet their needs. Several applicants withdrew, understanding that they could reapply in future years if efforts to locate stocks of recycled halon fail.

To meet the tight deadline, the United States supported the four remaining applicants and issued a tentative nomination to the Protocol Secretariat, while continuing to work with these applicants to resolve issues concerning their nomination. EPA, together with the applicants, determined that halon supplies are adequate for 1994 and consequently these nominations were withdrawn. The text of the original U.S. nomination letter and the revision issued by the U.S. State Department are available in the Air Docket number A–93–39.

Acting upon the recommendation made by the Technology and Economics Assessment Panel and the unanimous recommendation of the Halon Technical Options Committee, the Open-Ended Working Group of the Parties to the Montreal Protocol, agreed at its August, 1993 meeting to forward to the 5th Meeting of the Parties a recommendation that no halon essential uses be granted for 1994. Specifically, they recommended that the Parties decide that:

> No level of production or consumption is necessary to satisfy essential uses of halon in developed countries for the year 1994 since there are technically and economically feasible alternatives and substitutes for most applications, and since halon is available in sufficient quantity and quality from existing stocks of banked and recycled halon.

Based on these findings and recommendations, EPA commends U.S. companies and government agencies for their foresight and leadership in taking action to avoid the need for nominations for essential uses at this time.

V. Request for Nominations for 1995

Through this Notice, EPA requests applications for essential use exemptions for halons for 1995. Eligible applications will be nominated to the Secretariat at the Sixth Meeting of the Parties. Applications for essential use exemptions for halon should be submitted to EPA no later than sixty days after date of publication of this notice, to allow time for a review of the information before the deadline for submitting nominations to the Secretariat.

This request is for applications that may be nominated for consideration at the Sixth Meeting of the Parties to be held as early as June and no later than November, 1994. As described earlier, national governments must submit nominations for halon essential uses to the Secretariat at least six months before the meeting of the Parties at which the decision will be taken on whether to approve the essential use, and the Technology and Economic Assessment Panel must submit its report to the Parties at least three months before that meeting. (Nominations for exemptions for other Class I substances are being considered on a different time schedule, in accordance with the criteria set forth by the Parties at the Fourth Meeting. As described in a previous **Federal Register** notice (58 FR 29410; May 20, 1993), nominations for other Class I substances must be made nine months before the meeting of the Parties.) In addition, essential use exemptions for halons will first be considered at the Fifth Meeting of the Parties to be held on November 17–19, 1993, while the other Class I substances will first be considered at the Sixth Meeting of the Parties. As requests for essential use nominations for halons have been previously considered, EPA expects that less review time will be needed to evaluate this round of requests.

The Technology and Economic Assessment Panel is currently working under the assumption that it may need to submit recommendations for halons by March, 1994. Therefore, the U.S. must submit its nomination by December, 1993.

As described previously, the Parties set out criteria to apply in identifying essential uses and established a process for the Parties to decide on what uses would qualify under this provision. Decision IV/25 states that a controlled substance should qualify as "essential" only if "it is necessary for the health, safety or is critical for the functioning of society (encompassing cultural and intellectual aspects)" and "there are no available technically and economically feasible alternatives or substitutes that are acceptable from the standpoint of environment and health". In addition, the Parties agreed "that production and consumption, if any, of a controlled substance, for essential uses should be permitted only if: All economically feasible steps have been taken to minimize the essential use and any associated emission of the controlled

substance; and the controlled substance is not available in sufficient quantity and quality from the existing stocks of banked or recycled controlled substances." When submitting a nomination to the Secretariat, the U.S. must be able to demonstrate that the proposed applicants meet these criteria. The burden of proof is on the nominating country, and applications failing to prove that these criteria have been met will be rejected by the Parties. Thus, it is incumbent upon applicants to ensure that all applications are supported by complete and detailed documentation to allow EPA to determine whether to submit the applications as nominations, and to allow EPA to present a strong and credible case before the Parties and the recommending Panel.

All requests for nominations submitted to EPA must present the following information. EPA will not forward incomplete or inadequate nominations to the Montreal Protocol Secretariat for consideration, and therefore recommends that applicants make every effort to provide the requested information.

(1) Description of the specific use of the controlled substance, as well as annual projected amount required;

(2) The expected time period for which this exemption is required;

(3) An itemization of the estimated quantity needed due to leakage, accidental discharge, and actual fires;

(4) Inventory of your halon supply and description of past and future efforts to redeploy halon from noncritical applications to critical uses;

(5) Demonstration that steps have been taken to secure existing stocks of the chemicals, either from a bank or from recovery sources, and that necessary quantities of appropriate quality are not available for this use;

(6) Steps taken to reduce leakage and accidental discharge of halon systems;

(7) Demonstration that continued use of halon in that application is necessary for health and safety reasons or is critical to the functioning of society;

(8) Demonstration that no alternatives are technically or economically available;

(9) Description of the steps taken to date to find alternatives;

(10) Description of future steps to be taken to find alternatives;

(11) Consistency with CAA provisions on essential uses.

All nominations should be sent to: Karen Metchis, Program Manager, Essential Use Exemptions, Mail Stop 6205J, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, FAX: (202) 233–9579, Phone: (202) 233–9193.

EPA will work with submitters, other interested federal agencies, and outside experts to review this information and forward nominations to the Protocol's Secretariat for consideration as appropriate and consistent with any CAA limitations.

Dated: October 4, 1993.

Michael Shapiro,

Acting Assistant Administrator, Office of Air and Radiation.

[FR Doc. 93–25480 Filed 10–15–93; 8:45 am]

BILLING CODE 6560–50–P

[FRL–4789–9]

Notice of Open Meeting of the International Committee of the Environmental Financial Advisory Board on November 19, 1993

The Environmental Protection Agency's (EPA) Environmental Financial Advisory Board (EFAB) will hold an open meeting of its International Committee on November 19, 1993 from 9 a.m. to 5 p.m. The meeting will be held at EPA headquarters in room 3 of the Washington Information Center. EPA headquarters is located at 401 M Street SW., Washington DC.

EFAB is chartered to provide authoritative analysis and advice to the EPA Administrator on environmental finance issues. This meeting is intended to gather background information on initiatives for financing environmental facilities in the U.S./Mexican border region. Invited speakers will make presentations from 10 a.m. to approximately 2 p.m.

In addition, the Agency has asked EFAB's International Committee to review financing approaches for the clean-up of hazardous waste sites along the U.S./Mexican border. Brief oral testimony will be taken from approximately 2:15 p.m. to 4:30 p.m. Anyone wishing to testify should call Eugene Pontillo at (202) 260–6044, prior to November 12, 1993. Written comments on hazardous waste financing options are encouraged. Please mail all comments to EPA, Office of the Comptroller, Resource Management Division (MAIL CODE 3304), Environmental Financial Advisory Board, 401 M Street SW., Washington, DC 20460.

The meeting will be open to the public, but seating is limited. For further information, please contact Eugene Pontillo at (202) 260–6044, or Joanne Lynch at (202) 260–1459.

Dated: October 12, 1993.

David E. Osterman,

Acting Director, Resource Management Division.

[FR Doc. 93–25481 Filed 10–15–93; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4790–4]

Gulf of Mexico Program Citizens Advisory Committee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting of the Citizens Advisory Committee of the Gulf of Mexico Program.

SUMMARY: The gulf of Mexico Program's Citizens Advisory Committee will hold a meeting on November 3–5, 1993 at the Radisson Airport Hotel in New Orleans, Louisiana.

FOR FURTHER INFORMATION CONTACT: Dr. Douglas Lipka, Acting Director, Gulf of Mexico Program Office, Building 1103, John C. Stennis Space Center, Stennis Space Center, MS 39529–6000, at (601) 688–3726.

SUPPLEMENTARY INFORMATION: A Meeting of the Citizens Advisory Committee of the Gulf of Mexico Program will be held on November 3–5, 1993, at the Radisson Airport Hotel in New Orleans, Louisiana. The Citizens Advisory Committee will meet in conjunction with Gulf of Mexico Program Issue committees from 8 a.m. to 5 p.m., November 3rd, 4th and 5th. The meeting is open to the public.

Martha G. Prothro,

Acting Assistant Administrator, Office of Water.

[FR Doc. 93–25483 Filed 10–15–93; 8:45 am]

BILLING CODE 6560–50–M

[OPP–00368; FRL–4740–3]

State FIFRA Issues Research and Evaluation Group (SFIREG); Working Committees on Enforcement & Certification and Registration & Classification; Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The State FIFRA Issues Research and Evaluation Group (SFIREG) Working Committees on Registration & Classification and Enforcement & Certification will hold a 3-day meeting, beginning on October 18, 1993, and ending on October 20, 1993. This notice announces the location and times for the meeting and sets forth tentative agenda topics.

DATES: The SFIREG Working Committee on Registration & Classification will meet on Monday, October 18, 1993 from 8:30 a.m. to 5 p.m. On Tuesday, October 19, 1993, the two SFIREG Working Committees will meet together in joint session for the entire day starting at 8:30 a.m. and adjourning at approximately 5 p.m. The SFIREG Working Committee on Certification & Enforcement will meet on Wednesday, October 20, 1993 from 8:30 a.m. to approximately 5 p.m.

ADDRESSES: The meetings will be held at: The Concourse Hotel, One West Dayton St., Madison, Wisconsin 53703 (608) 257–6000.

FOR FURTHER INFORMATION CONTACT: By Mail: Shirley M. Howard, Office of Pesticide Programs (7506C), Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. Office location and telephone number: Rm. 1109, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, Virginia, (703) 305–7371.

SUPPLEMENTARY INFORMATION: The tentative agenda of the SFIREG Working Committee on Registration & Classification includes the following:

1. Update on Special Local Needs.
2. Discussion of Criteria for Using Section 18 for Reduced Risk Pesticides.
3. Update on Label Coding.
4. Status of EPA's Food Safety Proposal.
5. Other topics as appropriate.

The Agenda for the joint session of the SFIREG Working Committees on Registration & Classification and Certification & Enforcement will include:

1. Update on Product Labeling for the Federal Worker Protection Standard.
2. Status Report on EPA's Exempting Products under Section 25(b).
3. Discussion of the Use of Home Remedies by Commercial Applicators.
4. Status of MSDS as Labeling; a continued discussion and report by OCM on dialogue with OSHA.
5. Other Topics as appropriate.

The agenda for the SFIREG Working Committee on Certification & Enforcement includes the following:

1. Update on Indoor Pesticide Exposure Issue Paper.
2. Update on Multiple Chemical Sensitivity Statutes or Regulations in other States.
3. Status of Cyanazine Risk Mitigation Proposal.
4. Status of Atrazine Compliance Strategy.
5. Update on OCM & OE Reorganization.
6. EPA Registration of the Termiticide Bifenthrin Issue Paper.
7. Other topics as appropriate.

List of Subjects

Enviornmental protection.

Dated: October 7, 1993.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 93–25466 Filed 10–15–93; 8:45 am]

BILLING CODE 6560–50–F

[OPPTS–51823; FRL–4647–7]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of 99 such PMNs and provides a summary of each.

P 93–1101, September 1, 1993.

P 93–1102, 93–1103, 93–1104, 93–1105, September 2, 1993.

P 93–1106, 93–1107, September 5, 1993.

P 93–1108, 93–1109, 93–1110, 93–1111, 93–1112, 93–1113, 93–1114, September 6, 1993.

P 93–1115, 93–1116, September 7, 1993.

P 93–1117, 93–1118, 93–1119, 93–1120, September 8, 1993.

P 93–1121, 93–1122, 93–1123, 93–1124, 93–1125, 93–1126, 93–1127, September 11, 1993.

P 93–1129, September 22, 1993.

P 93–1130, 93–1131, 93–1132, 93–1133, 93–1134, 93–1135, 93–1136, 93–1137, 93–1138, 93–1139, 93–1140, 93–1141, 93–1142, 93–1143, 93–1144, 93–1145, 93–1146, September 12, 1993.

P 93–1147, 93–1148, 93–1149, 93–1150, 93–1151, 93–1152, 93–1153, 93–1154, 93–1155, 93–1156, 93–1157, 93–1158, 93–1159, 93–1160, 93–1161, 93–1162, 93–1163, 93–1164, September 13, 1993.

P 93–1165, September 14, 1993.

P 93–1166, 93–1167, September 15, 1993.

P 93–1168, 93–1169, 93–1170, 93–1171, 93–1172, 93–1173, 93–1174, September 18, 1993.

P 93–1175, September 19, 1993.

P 93–1176, September 29, 1993.

P 93–1177, 93–1178, September 19, 1993.

P 93–1179, 93–1180, September 20, 1993.

P 93–1181, 93–1182, 93–1183, 93–1184, 93–1185, 93–1186, September 21, 1993.

P 93–1187, September 22, 1993.

P 93–1188, September 29, 1993.

P 93–1189, 93–1190, 93–1191, 93–1192, 93–1193, 93–1194, 93–1195, 93–1196, September 23, 1993.

P 93–1197, 93–1198, September 19, 1993.

P 93–1199, October 6, 1993.

P 93–1200, September 23, 1993.

Written comments by:

P 93–1101, August 1, 1993.

P 93–1102, 93–1103, 93–1104, 93–105, August 2, 1993.

P 93–1106, 93–1107, August 5, 1993.

P 93–1108, 93–1109, 93–1110, 93–1111, August 6, 1993.

P 93–1112, 93–1113, 93–1114, August 7, 1993.

P 93–1115, 93–1116, 93–1117, August 7, 1993.

P 93–1118, 93–1119, 93–1120, August 9, 1993.

P 93–1121, 93–1122, 93–1123, 93–1124, 93–1125, 93–1126, 93–1127, August 12, 1993.

P 93–1129, August 23, 1993.

P 93–1130, 93–1131, 93–1132, 93–1133, 93–1134, 93–1135, 93–1136, 93–1137, 93–1138, 93–1139, 93–1140, 93–1141, 93–1142, 93–1143, 93–1144, 93–1145, 93–1146, August 13, 1993.

P 93–1147, 93–1148, 93–1149, 93–1150, 93–1151, 93–1152, 93–1153, 93–1154, 93–1155, 93–1156, 93–1157, 93–1158, 93–1159, 93–1160, 93–1161, 93–1162, 93–1163, 93–1164, August 14, 1993.

P 93–1165, August 15, 1993.

P 93–1166, 93–1167, August 16, 1993.

P 93–1168, 93–1169, 93–1170, 93–1171, 93–1172, 93–1173, 93–1174, August 19, 1993.

P 93–1175, August 20, 1993.

P 93–1176, August 30, 1993.

P 93–1177, 93–1178, August 20, 1993.

P 93–1179, 93–1180, August 21, 1993.

P 93–1181, 93–1182, 93–1183, 93–1184, 93–1185, 93–1186. August 22, 1993.

P 93–1187, August 23, 1993.

P 93–1188, August 30, 1993.

P 93–1189, 93–1190, 93–1191, 93–1192, 93–1193, 93–1194, 93–1195, 93–1196, August 24, 1993.

P 93–1197, 93–1198, August 20, 1993.

P 93–1199, September 6, 1993.

P 93–1200, August 24, 1993.

ADDRESSES: Written comments, identified by the document control number "[OPPTS–51823]" and the specific PMN number should be sent to: Document Control Office, (7407), Office of Pollution Prevention and Toxics,

Environmental Protection Agency, 401 M St., SW., Rm. ETG–099, Washington, DC, 20460, (202) 260–3532.

FOR FURTHER INFORMATION CONTACT: Susan Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC, 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Nonconfidential Information Center (NCIC), ETG–102 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

P 93–1101

Importer. Gallard-Schesinger Industries, Inc.

Chemical. (S) Parial orthophospate esters of ethane diol and pentaerythritol (2,2 dimethyl 1,3 propane diol) alternatively; phosphoric acid partial esters with ethane diol and pentaerythritol.

Use/Import. (S) Paper industry, polymers wooden panels and cloth/metallic substrates. Import range: 400,000 kg/yr.

P 93–1102

Manufacturer. Confidential.

Chemical. (G) Polyurethane prepolymer.

Use/Production. (G) Destructive use polyurethane intermediate. Prod. range: Confidential.

P 93–1103

Manufacturer. Confidential.

Chemical. (G) Polyurethane prepolymer.

Use/Production. (G) Destructive use polyurethane intermediate. Prod. range: Confidential.

P 93–1104

Importer. Confidential.

Chemical. (G) Alkyl hydroxybenzoate.

Use/Import. (G) Plasticizer. Import range: Confidential.

P 93–1105

Manufacturer. Confidential.

Chemical. (G) Modified acrylic polymer.

Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 93–1106

Manufacturer. Confidential.

Chemical. (G) Polyester resin.

Use/Production. (S) Spray applied coatings. Prod. range: 120,000– 240,000 kg/yr.

P 93–1107

Manufacturer. Confidential.

Chemical. (G) Poltester resin.

Use/Production. (S) Spray applied coatings. Prod. range: Prod. 120,000–240,000 kg/yr.

P 93–1108

Importer. Confidential.

Chemical. (G) Polyester polyether modified polyurethane with basic groups.

Use/Import. (G) Additives, open, nondispersive use. Import range: Confidential.

P 93–1109

Manufacturer. Ashland Chemical, Inc.

Chemical. (G) Styrene-acrylic copolymer.

Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 93–1110

Manufacturer. Confidential.

Chemical. (G) Blocked isocyanate.

Use/Production. (G) Body sealer. Prod. range: Confidential.

P 93–1111

Manufacturer. Hoechst Celanese Corporation.

Chemical. (G) Bis(monosubstituted benzimidazolone).

Use/Production. (S) Colorant for plastic. Prod. range: Confidential.

P 93–1112

Manufacturer. Confidential.

Chemical. (G) Silicones and silicones,diMe,epoxyalkyl terminated.

Use/Production. (G) Industrial coating. Prod. range: Confidential.

P 93–1113

Manufacturer. Confidential.

Chemical. (G) Dimethylhydrogen stopped polysilicones resin.

Use/Production. (G) Silicone resin intermediate. Prod. range: Confidential.

P 93–1114

Manufacturer. Confidential.

Chemical. (G) Epoxy stopped polysiloxane resin.

Use/Production. (G) Industrial coating. Prod. range: Confidential.

P 93–1115

Importer. Hoechst Celanes Corporation.

Chemical. (G) Setaines, dimethyl (polyfluoro-hydro-alkyl).

Use/Import. (S) Aqueous film forming foams for fire fighting. Import range: Confidential.

P 93–1116

Importer. Hoechst Celanese Corporation.

Chemical. (G) Betaines, dimethyl (polyfluoro-hydro-alkyl).

Use/Import. (S) Aqueous film forming foams for fire fighting. Import range: Confidential.

P 93–1117

Importer. Confidential.

Chemical. (S) 1.3-bis(1-isocyanate-1-methyl) benzene; 2-oxapropanone polymer with 2,2′-oxybis(ethanol).

Use/Import. (G) Urethane prepolymer further reacted to create 3-dimensional decorative ornament articles. Prod range: Confidential.

P 93–1118

Manufacturer. Confidential.

Chemical. (G) Phenolic-modified alkyd resin.

Use/Production. (S) Clear and pigmented air-dry finishes and baking. Prod. range: Confidential.

P 93–1119

Manufacturer. Confidential.

Chemical. (G) Organotin lithium compound.

Use/Production. (G) Catalyst. Prod. range: Confidential.

P 93–1120

Manufacturer. Elf Atochem North America, Inc.

Chemical. (S) An esterification reaction product of reactants.

Use/Production. (S) Stabilizer for flexible PVC application. Prod. range: Confidential.

P 93–1121

Manufacturer. Confidential.

Chemical. (G) 2-propanoic acid, 2-methyl-2 hydroxyethyl ester, polymer with oxirane and disocyanate.

Use/Production. (G) Polymer component for specialty industrial coatings. Prod. range: Confidential.

P 93–1122

Manufacturer. Confidential.

Chemical. (G) Poly (acrylonitrile-co-styrene).

Use/Production. (S) Polyurethane foam. Prod. range: Confidential.

P 93–1123

Manufacturer. Confidential.

Chemical. (G) Reaction product of an aromatic tetracarylic acid and an aliphatic ester with an aromatic diamine.

Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

P 93–1124

Manufacturer. Confidential.

Chemical. (G) Reaction product of a mixture of aromatic dianhydrides and aliohatic esters with aromatic diamines.
Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

P 93–1125
Manufacturer. Confidential.
Chemical. (G) Reaction product of an aromatic tetracarboxylic acid and aliphatic ester with an aromatic diamine.
Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

P 93–1126
Manufacturer. Confidential.
Chemical. (G) Water reducible polyester.
Use/Production. (G) Thermoset coating binder. Prod. range: Confidential.

P 93–1127
Manufacturer. Confidential.
Chemical. (G) Isocyanate reaction products.
Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

P 93–1129
Manufacturer. H. B. Fuller Company.
Chemical. (G) Triethylamine salt of a polyether, polyurethane polymer.
Use/Production. (S) Coating. Prod. range: Confidential.

P 93–1130
Manufacturer. Confidential.
Chemical. (G) 2*H*-Pyran-4-ol, tetrahydro-alkyl-disubstituted.
Use/Production. (S) Site-limited intermediate. Prod. range: Confidential.

P 93–1131
Manufacturer. EMS-American Trilon, Inc.
Chemical. (S) Copolyamide (nylon copolymer), polycondensated from azelaic acid, adipic acid, isophthalic acid withhexametyhylene diamine.
Use/Production. (G) Laminated fiber for food packaging. Prod. range: Confidential.

P 93–1132
Importer. Confidential.
Chemical. (G) Substituted naphthalene sulfonic acid, alkali salt.
Use/Import. (S) Reactive dye for textile. Import range: Confidential.

P 93–1133
Manufacturer. Confidential.
Chemical. (G) Modified styrenated acrylate methacrylate polymer.
Use/Production. (G) Component of spray applied coating. Prod. range: 15,000–45,000 kg/yr.

P 93–1134
Manufacturer. Confidential.
Chemical. (G) Modified styrenated acrylate methacrylate polymer.
Use/Production. (G) Component of spray applied coating. Prod. range: 15,000–45,000 kg/yr.

P 93–1135
Manufacturer. Confidential.
Chemical. (G) Modified styrenated acrylate methacrylate polymer.
Use/Production. (G) Component of spray applied coating. Prod. range: 15,000–45,000 kg/yr.

P 93–1136
Manufacturer. Confidential.
Chemical. (G) Modified styrenated acrylate methacrylate polymer.
Use/Production. (G) Component of spray applied coating. Prod. range: 15,000–45,000 kg/yr.

P 93–1137
Manufacturer. Confidential.
Chemical. (G) Modified styrenated acrylate methylate polymer.
Use/Production. (G) Component of spray applied coating. Prod. range: 15,000–45,000 kg/yr.

P 93–1138
Manufacturer. E. I. du Pont de Nemours & Company,.Inc.
Chemical. (G) Copolyester.
Use/Production. (G) Extrudable packaging resin. Prod. range: Confidential.
Toxicity Data. Acute oral: LD50 > 15 g/kg (rat).

P 93–1139
Manufacturer. E. I. du Pont de Nemours & Company, Inc.
Chemical. (G) Coplyester.
Use/Production. (G) Extrudable packaging resin. Prod. range: Confidential.
Toxicity Data. Acute oral: LD50 > 15 g/kg (rat).

P 93–1140
Manufacturer. E. I. du Pont de Nemours & Company, Inc.
Chemical. (G) Copolyester.
Use/Production. (G) Extrudable packaging resin. Prod. range: Confidential.
Toxicity Data. Acute oral: LD50 > 15 g/kg (rat).

P 93–1141
Manufacturer. E. I. du Pont de Nemours & Company, Inc.
Chemical. (G) Copolyester.
Use/Production. (G) Extrudable packaging resin. Prod. range: Confidential.
Toxicity Data. Acute oral: LD50 > 15 g/kg (rat).

P 93–1142
Manufacturer. E. I. du Pont de Nemours & Company, Inc.
Chemical. (G) Copolyester.
Use/Production. (G) Extrudable packaging resin. Prod. range: Confidential.
Toxicity Data. Acute oral: LD50 > 15 g/kg (rat).

P 93–1143
Manufacturer. E. I. du Pont de Nemours & Company, Inc.
Chemical. (G) Copolyester.
Use/Production. (G) Extrudable packaging resin. Prod. range: Confidential.

P 93–1144
Manufacturer. E. I. du Pont de Nemours & Company, Inc.
Chemical. (G) Copolyester.
Use/Production. (G) Extrudable packaging resin. Prod. range: Confidential.

P 93–1145
Manufacturer. E. I. du Pont de Nemours & Company, Inc.
Chemical. (G) Copolyester.
Use/Production. (G) Extrudable packaging resin. Prod. range: Confidential.

P 93–1146
Manufacturer. E.I. du Pont de Nemours & Company.
Chemical. (G) Copolyester.
Use/Production. (G) Extrudable packaging resin. Prod. range: Confidential.

P 93–1147
Manufacturer. Confidential.
Chemical. (G) Fatty acids, C_{18}-unsaturated, dimers, polymers with ethylenediamine, a dibasic acid and a monobasic acid.
Use/Production. (G) Hot melt surface coating. Prod. range: Confidential.

P 93–1148
Manufacturer. Confidential.
Chemical. (G) Fatty acid, C_{18}-unsaturated, dimers with ethylenediamine.
Use/Production. (G) Hot melt surface coating. Prod. range: Confidential.

P 93–1149
Manufacturer. Confidential.
Chemical. (G) Fatty acids, C_{18}-unsaturated, dimers, polymers with.
Use/Production. (G) Hot melt surface coating. Prod. range: Confidential.

P 93–1150
Manufacturer. Confidential.
Chemical. (G) Fatty acids, C_{18}-unsaturated, dimers, polymers with

ethylenediamines, diamines, a dibasicacid and a momobasic acid.
Use/Production. (G) Hot melt surface coating. Prod. range: Confidential.

P 93–1151

Manufacturer. Confidential.
Chemical. (G) Fatty acids, C_{18}-unsaturated, dimers, polymers with diamines and a dibasic acid.
Use/Production. (S) Hot melt adhesives. Prod. range: Confidential.

P 93–1152

Manufacturer. Confidential.
Chemical. (G) Fatty acids, C_{18}-unsaturated, dimers, polymers with diamines and a dibasic acid.
Use/Production. (S) Hot melt adhesives. Prod. range: Confidential.

P 93–1153

Manufacturer. Confidential.
Chemical. (G) Fatty acids, C_{18}-unsaturated, dimers, polymers with diamines and a dibasic acid.
Use/Production. (S) Hot melt adhesives. Prod. range: Confidential.

P 93–1154

Manufacturer. Confidential.
Chemical. (G) Fatty acids, C_{18}-unsaturated, dimers, polymers with diamines and a dibasic acid.
Use/Production. (S) Hot melt adhesives. Prod. range: Confidential.

P 93–1155

Manufacturer. Confidential.
Chemical. (G) Fatty acids, C_{18}-unsaturated, dimers, polymers with diamines and a dibasic acid.
Use/Production. (S) Hot melt adhesives. Prod. range: Confidential.

P 93–1156

Manufacturer. Confidential.
Chemical. (G) Fatty acids, C_{18}-unsaturated, dimers, polymers with diamines and a dibasic acid.
Use/Production. (S) Hot melt adhesives. Prod. range: Confidential.diamines and a dibasic acid.

P 93–1157

Manufacturer. Confidential.
Chemical. (G) Fatty acids, C_{18}-unsaturated, dimers, polymers with diamines and a dibasic acid.
Use/Production. (S) Hot melt adhesives. Prod. range: Confidential.

P 93–1158

Manufacturer. Confidential.
Chemical. (G) Fatty acids, C_{18}-unsaturated, dimers, polymers with diamines and a dibasic acid.
Use/Production. (S) Hot melt adhesives. Prod. range: Confidential.

P 93–1159

Manufacturer. The Dow Chemical Company.
Chemical. (G) Polymeric isocyanate reaction product.
Use/Production. (G) Manufacture of molded polyurethane articles. Prod. range: Confidential.

P 93–1160

Manufacturer. The Dow Chemical Company.
Chemical. (G) Polymeric isocyanate reaction product.
Use/Production. (G) Manufacture of molded polyurethane articles. Prod. range: Confidential.

P 93–1161

Manufacturer. The Dow Chemical Company.
Chemical. (G) Polymeric isocyanate reaction product.
Use/Production. (G) Manufacture of molded polyurethane articles. Prod. range: Confidential.

P 93–1162

Manufacturer. The Dow Chemical Company.
Chemical. (G) Polymeric isocyanate reaction product.
Use/Production. (G) Manufacture of molded polyurethane articles. Prod. range: Confidential.

P 93–1163

Manufacturer. The Dow Chemical Company.
Chemical. (G) Polymeric isocyanate reaction product.
Use/Production. (G) Manufacture of molded polyurethane articles. Prod. range: Confidential.

P 93–1164

Manufacturer. Confidential.
Chemical. (G) Siloxane polymer.
Use/Production. (G) Chemical for LSI manufacture. Prod. range: Confidential.
Toxicity Data. Acute oral: LD50 > 5,000 mg/kg (rat). Eye irritation: Moderate (rabbit). Skin irritation: Negligible (rabbit).

P 93–1165

Manufacturer. Minnesota Mining and Manufacturing Company.
Chemical. (G) Crosslinked isoctyl acrylate polymer.
Toxicity Data. Acute oral: LD50 > 5,000 mg/kg (rat). Eye irritation: Moderate (rabbit). Skin irritation: Negligible (rabbit).

P 93–1166

Manufacturer. Confidential.
Chemical. (G) Alkylsulfonium salt.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.

P 93–1167

Importer. Confidential.
Chemical. (G) Math-acrylate functional phosphate resin.
Use/Import. (G) Industrial coating for open nondispersive use. Import range: Confidential.

P 93–1168

Manufacturer. Confidential.
Chemical. (G) Brominated aromatic compound.
Use/Production. (S) Flame retardant. Prod. range: Confidential.

P 93–1169

Manufacturer. Boulder Scientific Company.
Chemical. (G) Derivative of bis(cyclopentadienyl) zirconium dichloride.
Use/Production. (G) Catalyst. Prod. range: Confidential.

P 93–1170

Manufacturer. E. I. du Pont de Nemours and Company, Inc.
Chemical. (G) Substituted polyolefin.+
Use/Production. (G) Open- dispersive use. Prod. range: Confidential.

P 93–1171

Manufacturer. E. I. du Pont de Nemours and Company, Inc.
Chemical. (G) Substituted polyolefin.
Use/Production. (G) Open- dispersive use. Prod. range: Confidential.

P 93–1172

Manufacturer. E. I. du Pont de Nemours and Company, Inc.
Chemical. (G) Substituted polyolefin.
Use/Production. (G) Coatings open dispersive use adhesives. Prod. range: Confidential.

P 93–1173

Manufacturer. E. I. du Pont de Nomours and Company, Inc.
Chemical. (G) Substituted polyolefin.
Use/Production. (G) Coatings open-dispersive use adhesives. Prod. range: Confidential.

P 93–1174

Manufacturer. E. I. du Pont de Nemours and Company, Inc.
Chemical. (G) Substituted polyolefin.
Use/Production. (G) Coatings open-dispersive use adhesives. Prod. range: Confidential.

P 93–1175

Manufacturer. E. I. du Pont de Nemours and Company, Inc.
Chemical. (G) Isophthalate ester.
Use/Production. (G) Polyester intermediate. Prod. range: Confidential.

P 93–1176

Manufacturer. Confidential.

Chemical. (G) Polyalphaolefins.
Use/Production. (G) Functional fluid. Prod. range: Confidential.

P 93–1177
Manufacturer. Confidential.
Chemical. (G) Polyalphaolefins.
Use/Production. (G) Functional fluid. Prod. range: Confidential.

P 93–1178
Manufacturer. Confidential.
Chemical. (G) Polyalphaolefins.
Use/Production. (G) Functional fluid. Prod. range: Confidential.

P 93–1179
Manufacturer. DSM Engineering plastics Inc.
Chemical. (S) Imino-1,4 butanediylimino (1.6-diazo-1,6-hexanediyl)-1 iino-6 oxo hexanedily-copolymer.
Use/Production. (S) Raw material for PA46 monofilament and mulitfilament. Prod. range: Confidential.

P 93–1180
Manufacturer. BASF Corporation.
Chemical. (G) Polyacrylate, sodium salt.
Use/Production. (S) Thickening agent. Prod. range: Confidential.

P 93–1181
Manufacturer. Estron Chemical, Inc.
Chemical. (G) Acrylic copolymer.
Use/Production. (S) Additive for industrial coatings to improve surface appearances. Prod. range: Confidential.

P 93–1182
Manufacturer. Estron Chemicals, Inc.
Chemical. (G) Acrylic copolymer.
Use/Production. (S) Additive for industrial coatings to improve surface appearances. Prod. range: Confidential.

P 93–1183
Manufacturer. BASF Corporation.
Chemical. (G) Substituted quinoline.
Use/Production. (G) Pesticide intermediate for manufacture use. Prod. range: Confidential.

P 93–1184
Manufacturer. BASF Corporation.
Chemical. (G) Substituted quinoline.
Use/Production. (G) Pesticide intermediate for manufacture use. Prod range: Confidential.

P 93–1185
Manufacturer. Locite Corporation.
Chemical. (G) Substituted, aliphatic terminated poly(dimethylsiloxane).
Use/Production. (S) A main component in silicone adhesive and sealant formulations. Prod. range: 2,000–10,000 kg/yr.

P 93–1186
Manufacturer. BASF Corporation.

P 93–1187
Manufacturer. IBC Advanced Technologies, Inc.
Chemical. (S) 1-(2(2-Hydroxyethoxy)ethoxy)-3-(2-propenyloxy)-2-propanol.
Use/Production. (S) An intermediate for the production of substituted crown ethers. Prod. range: 2,000–4,000 kg/yr.

P 93–1188
Manufacturer. IBC Advanced Technologies, Inc.
Chemical. (S) 1-(2-proopenyloxy)methyl) 3,6,9-trioxaundecane-1,11-diol./Production. (S) An intermediate for the production of substituted crown ethers. Prod. range: 2,000–4,000 kg/yr.

P 93–1189
Manufacturer. IBC Advanced Technologies, Inc.
Chemical. (S) 2,2'-((1-((2-Propenyloxy)methyl)-1,2-methanediyl)bis(oxy)bis-ethanol.
Use/Production. (S) An intermediate for the production of substituted crown ethers. Prod. range: 2,000–4,000 kg/yr.

P 93–1190
Manufacturer. IBC Advanced Technologies, Inc.
Chemical. (S) 4-(2-Propenyloxy)methyl)-3,6,9-trioxaundecane-1,11-diol.
Use/Production. (S) An intermediate for the production of substituted crown ethers. Prod. range: 2,000–4,000 kg/yr.

P 93–1191
Manufacturer. IBC Advanced Technologies, Inc.
Chemical. (S) 7-(2-Propenyloxy)methyl)-3,6,9,12-tetraoxatetradecane.
Use/Production. (S) An intermediate for the production of substituted crown ethers. Prod. range: 2,000–4,000 kg/yr.

P 93–1192
Manufacturer. IBC Advanced Technologies, Inc.
Chemical. (S) 7-(2-Propenyloxy)methyl-3,6,9,12-tetradecane-1,14-diol.
Use/Production. (S) An intermediate for the production of substituted crown ethers. Prod. range: 2,000–4,000 kg/yr.

P 93–1193
Manufacturer. IBC Advanced Technologies, Inc.
Chemical. (S) 1,2-Ethanediol bis(4-methylbenzenesulfonate).
Use/Production. (S) An intermediate for the production of substituted crown ethers. Prod. range: 2,000–4,000 kg/yr.

P 93–1194
Manufacturer. IBC Advanced Technologies, Inc.
Chemical. (S) 2,2-Oxybis-ethaned bis(4-methyl(benzensulfonate.
Use/Production. (S) An intermediate for the production of substituted crown ethers. Prod. range: 2,000–4,000 kg/yr.

P 93–1195
Manufacturer. IBC Advanced Technologies Inc.
Chemical. (S) 3,6-Dioxaoctane-1,8-diol bis(4-methylbenzenesulfonate 2,2'(1,2-ethanediyl-bis(oxy)-bis-ethanol bis(4-methylbenzenesulfonate.
Use/Production. (S) An intermediate for the production of substituted crown ethers. Prod. range: 2,000–4,000 kg/yr.

P 93–1196
Manufacturer. IBC Advanced Technologies, Inc.
Chemical. (S) 3,6,9-Trioxaundecane-1,11-diol bis(4-methylbenzenesulfonate): or 2,2'-(oxybis-2,2-(ethanediyloxy)bis-ethanol bis-ethanol bis(4-methylbenzenesulfonate).
Use/Production. (S) An intermediate for the production of substituted crown ethers. Prod. range: 2,000–4,000 kg/yr.

P 93–1197
Manufacturer. Confidential.
Chemical. (G) Polyalphaolefins.
Use/Production. (S) An intermediate for the production of substituted crown ethers. Prod. range: 2,000–4,000 kg/yr.

P 93–1198
Manufacturer. Confidential.
Chemical. (S) 3-(2-propenyloxy)-1,2-propanediol bis(4-methybenzenesulfonate).
Use/Production. (S) An intermediate for the production of substituted crown ethers. Prod. range: 2,000–4,000 kg/yr.

P 93–1199
Manufacturer. IBC Advanced Technologies, Inc.
Chemical. (S) 1-(2-(((4-methylphenyl)sulfonyl)oxy)-3-(2-propenyloxy)-2-propanol 4-methylbenzenesulfonate.
Use/Production. (S) An intermediate for the production of substituted crown ethers. Prod. range: 2,000–4,000 kg/yr.

P 93–1200
Manufacturer. IBC Advanced Technologies, Inc..
Chemical. (S) 1-(2-Propenyloxy)methyl-3,6-dioxaoctane-1,8-diol bis(4-methylphenyl)sulfonyl)oxy)ethoxy) ethoxy)-3-(2-propenyloxy)-2-propanol 4-methylbenzenesulfonate.

Use/Production. (S) An intermediate for the production of substituted crown ethers. Prod. range: 2,000–4,000 kg/yr.

List of Subjects

Environmental protection, Premanufacture notification.

Dated: October 8, 1993.

Frank V. Caesar,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 93–25465 Filed 10–15–93; 8:45 am]

BILLING CODE 6560–50–F

[OPPTS–51825; FRL–4647–9]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of 62 such PMNs and provides a summary of each.

DATES: Close of review periods:

P 93–1268, 93–1269, 93–1270, 93–1271, 93–1272, 93–1273, 93–1274, 93–1275, 93–1276, 93–1277, 93–1278, 93–1279, 93–1280, 93–1281, 93–1282, 93–1283, 93–1284, 93–1285, 93–1286, 93–1287, 93–1288, 93–1289, 93–1290, 93–1291, 93–1292, 93–1293, 93–1294, 93–1295, 93–1296, 93–1297, 93–1298, 93–1299, 93–1300, 93–1301, 93–1302, 93–1303, 93–1304, 93–1305, 93–1306, October 13, 1993.

P 93–1307, October 16, 1993.

P 93–1308, October 13, 1993.

P 93–1309, October 14, 1993.

P 93–1310, 93–1311, 93–1313, 93–1314, 93–1315, October 17, 1993.

P 93–1316, October 18, 1993.

P 93–1317, October 17, 1993.

P 93–1318, 93–1319, 93–1320, 93–1321, 93–1322, 93–1323, 93–1324, 93–1325, October 18, 1993.

P 93–1326, 93–1327, 93–1328, 93–1329, 93–1330, October 19, 1993.

Written comments by:

P 93–1268, 93–1269, 93–1270, 93–1271, 93–1272, 93–1273, 93–1274, 93–1275, 93–1276, 93–1277, 93–1278, 93–1279, 93–1280, 93–1281, 93–1282, 93–1283, 93–1284, 93–1285, 93–1286, 93–1287, 93–1288, 93–1289, 93–1290, 93–1291, 93–1292, 93–1293, 93–1294, 93–1295, 93–1296, 93–1297, 93–1298, 93–1299, 93–1300, 93–1301, 93–1302, 93–1303, 93–1304, 93–1305, 93–1306, September 13, 1993.

P 93–1307, September 16, 1993.

P 93–1308, September 13, 1993.

P 93–1309, September 14, 1993.

P 93–1310, 93–1311, 93–1313, 93–1314, 93–1315, September 17, 1993.

P 93–1316, September 18, 1993.

P 93–1317, September 17, 1993.

P 93–1318, 93–1319, 93–1320, 93–1321, 93–1322, 93–1323, 93–1324, 93–1325, September 18, 1993.

P 93–1326, 93–1327, 93–1328, 93–1330, September 19, 1993.

ADDRESSES: Written comments, identified by the document control number "[OPPTS–51825]" and the specific PMN number should be sent to: Document Control Office Center (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. ETG–099, Washington, DC 20460 (202) 260–3532.

FOR FURTHER INFORMATION CONTACT: Susan Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC, 20460 (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Nonconfidential Information Center, (NCIC) ETG–102 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

P 93–1268

Manufacturer. Confidential.

Chemical. (G) Amine functional polyurethane polyol.

Use/Production. (G) Component of coating with open use. Prod. range: Confidential.

P 93–1269

Manufacturer. Confidential.

Chemical. (G) Amine functional polyurethane polyol.

Use/Production. (G) Component of coating with open use. Prod. range: Confidential.

P 93–1270

Manufacturer. Confidential.

Chemical. (G) Amine functional polyurethane polyol.

Use/Production. (G) Component of coating with open use. Prod. range: Confidential.

P 93–1271

Manufacturer. Confidential.

Chemical. (G) Amine functional polyurethane polyol.

Use/Production. (G) Component of coating with open use. Prod. range: Confidential.

P 93–1272

Manufacturer. Confidential.

Chemical. (G) Amine functional polyurethane polyol.

Use/Production. (G) Component of coating with open use. Prod. range: Confidential.

P 93–1273

Manufacturer. Confidential.

Chemical. (G) Amine functional polyurethane polyol.

Use/Production. (G) Component of coating with open use. Prod. range: Confidential.

P 93–1274

Manufacturer. Confidential.

Chemical. (G) Amine functional polyurethane polyols.

Use/Production. (G) Component of coating with open use. Prod. range: Confidential.

P 93–1275

Manufacturer. Confidential.

Chemical. (G) Amine functional polyurethane polyols.

Use/Production. (G) Component of coating with open use. Prod. range: Confidential.

P 93–1276

Manufacturer. Confidential.

Chemical. (G) Amine functional polyurethane poloyol.

Use/Production. (G) Component of coating with open use. Prod. range: Confidential.

P 93–1277

Manufacturer. Confidential.

Chemical. (G) Amine functional polyurethane polyols.

Use/Production. (G) Component of coating with open use. Prod. range: Confidential.

P 93–1278

Manufacturer. Confidential.

Chemical. (G) Amine functional polyurethane polyols.

Use/Production. (G) Component of coating with open use. Prod. range: Confidential.

P 93–1279

Manufacturer. Confidential.

Chemical. (G) Amine functional polyurethane polyols.
Use/Production. (G) Component of coating with open use. Prod. range: Confidential.

P 93–1280
Manufacturer. Confidential.
Chemical. (G) Amine functional polyurethane polyol.
Use/Production. (G) Component of coating with open use. Prod. range: Confidential.

P 93–1281
Manufacturer. Confidential.
Chemical. (G) Amine functional polyurethane polyol.
Use/Production. (G) Component of coating with open use. Prod. range: Confidential.

P 93–1282
Manufacturer. Confidential.
Chemical. (G) Amine functional polyurethane polyol.
Use/Production. (G) Component of coating with open use. Prod. range: Confidential.

P 93–1283
Manufacturer. Confidential.
Chemical. (G) Amine functional polyurethane polyol.
Use/Production. (G) Component of coating with open use. Prod. range: Confidential.

P 93–1284
Manufacturer. Confidential.
Chemical. (G) Amine functional polyurethane polyol.
Use/Production. (G) Component of coating with open use. Prod. range: Confidential.

P 93–1285
Manufacturer. Confidential.
Chemical. (G) Amine functional polyurethane polyol.
Use/Production. (G) Component of coating with open use. Prod. range: Confidential.

P 93–1286
Manufacturer. Confidential.
Chemical. (G) Amine functional polyurethane polyol.
Use/Production. (G) Component of coating with open use. Prod. range: Confidential.

P 93–1287
Manufacturer. Confidential.
Chemical. (G) Amine functional Polyurethane polyol.
Use/Production. (G) Component of coating with open use. Prod. range: Confidential.

P 93–1288
Manufacturer. Confidential.
Chemical. (G) Amine functional polyurethane polyol.
Use/Production. (G) Component of coating with open use. Prod. range: Confidential.

P 93–1289
Manufacturer. Confidential.
Chemical. (G) Amine functional polyurethane polyol.
Use/Production. (G) Component of coating with open use. Prod. range: Confidential.

P 93–1290
Manufacturer. Confidential.
Chemical. (G) Amine functiona polyurethane polyol.
Use/Production. (G) Component of coating with open use. Prod. range: Confidential.

P 93–1291
Manufacturer. Confidential.
Chemical. (G) Amine functional polyurethsne polyol.
Use/Production. (G) Component of coating with open use. Prod. range: Confidential.

P 93–1292
Manufacturer. Confidential.
Chemical. (G) Amine functional polyurethane polyol.
Use/Production. (G) Component of coating with open use. Prod. range: Confidential.

P 93–1293
Manufacturer. Confidential.
Chemical. (G) Amine functional polyurethane polyol.
Use/Production. (G) Component of coating with open use. Prod. range: Confidential.

P 93–1294
Manufacturer. Confidential.
Chemical. (G) Amine functional polyurethane polyol.
Use/Production. (G) Component of coating with open use. Prod. range: Confidential.

P 93–1295
Manufacturer. Confidential.
Chemical. (G) Amine functional polyurethane polyol.
Use/Production. (G) Component of coating with open use. Prod. range: Confidential.

P 93–1296
Manufacturer. Confidential.
Chemical. (G) Amine functional polyurethane polyol.
Use/Production. (G) Component of coating with open use. Prod. range: Confidential.

P 93–1297
Manufacturer. Confidential.
Chemical. (G) Amine functional polyurethane polyol.
Use/Production. (G) Component of coating with open use. Prod. range: Confidential.

P 93–1298
Manufacturer. Confidential.
Chemical. (G) Amine functional polyurethane polyol.
Use/Production. (G) Component of coating with open use. Prod. range: Confidential.

P 93–1299
Manufacturer. Confidential.
Chemical. (G) Amine functional polyurethane polyol.
Use/Production. (G) Component of coating with open use. Prod. range: Confidential.

P 93–1300
Manufacturer. Confidential.
Chemical. (G) Amine functional polyurethane polyol.
Use/Production. (G) Component of coating with open use. Prod. range: Confidential.

P 93–1301
Manufacturer. Confidential.
Chemical. (G) Amine functional polyurethane polyol.
Use/Production. (G) . Prod. range: Confidential.
Use/Production. (G) Component of coating with open use. Prod. range: Confidential.

P 93–1302
Manufacturer. Confidential.
Chemical. (G) Amine functional polyurethane polyol.
Use/Production. (G) Component of coating with open use. Prod. range: Confidential.

P 93–1303
Manufacturer. Confidential.
Chemical. (G) Amine fuctional polyurethane polyol.
Use/Production. (G) Component of coating with open use. Prod. range: Confidential.

P 93–1304
Manufacturer. Confidential.
Chemical. (G) Acrylic polymer.
Use/Production. (G) Open nondispersive use. Prod. range: Confidential.
Toxicity Data. Acute oral: LD50 > 5.0 g/kg (rat). Acute dermal: LD50 > 5.0 g/kg (rabbit). Eye irritation: Slight (rabbit). Skin irritation: Negligible (rabbit).

P 93–1305
Manufacturer. Confidential.
Chemical. (G) Acrylic polymer.

Use/Production. (G) Open nondispersive use. Prod. range: Confidential.

Toxicity Data. Acute oral: LD50 > 5.0 g/kg (rat). Acute dermal: LD50 > 5.0 g/kg (rabbit). Eye irritation: Slight (rabbit). Skin irritation: Negligible (rabbit).

P 93–1306

Manufacturer. Confidential.

Chemical. (S) The esterification product of tall oil fatty acids, oleic acid, 9,11) and 10,12 conjugated fatty acids, benzoic acids, phthalic anhydride, trimelliticanhydride, trimethypropane and neopentyl glycol.

Use/Production. (S) Fatty acid-modified polyester in used in a pigmented protective coating (paint) intended for metal. Prod. range: 110,000–227,000 kg/yr.

P 93–1307

Manufacturer. Olin Corporation.

Chemical. (S) Carbamic acid, butyl-2-propynyl ester.

Use/Production. (S) Isolated chemical intermediate. Prod. range: Confidential.

P 93–1308

Manufacturer. Amoco Chemical Company.

Chemical. (G) Dialkyl ether.

Use/Production. (G) Polymerization aid. Prod. range: Confidential.

P 93–1309

Importer. Ciba-Geigy Corporation.

Chemical. (G) Quaternary ammonium iodle.

Use/Import. (S) Catalyst for epoxides for can coating and coil coating formulations. Import range: Confidential.

Toxicity Data. Acute oral: LD50 > 1,000 mg/kg (rat).

P 93–1310

Manufacturer. Confidential.

Chemical. (G) Boronated, ethoxylated Alcohol.

Use/Production. (G) Gear oil additive. Prod. range: Confidential.

P 93–1311

Manufacturer. Boulder Scienific Company.

Chemical. (G) Derivative-of cyclopentadien.

Use/Production. (S) An isolated intermediate to be with metals to manufacture metallocenes. Prod. range: Confidential.

P 93–1313

Manufacturer. Confidential.

Chemical. (G) Alkoxylated tetracrylate.

Use/Production. (S) Wood coatings, inks, electronics and over print varnishes. Prod. range: Confidential.

P 93–1314

Manufacturer. Confidential.

Chemical. (G) Substituted phenyl azo alkyl phenol.

Use/Production. (G) Petroleum additive. Prod. range: Confidential.

Toxicity Data. Acute oral: LD50 2,030 mg/kg (rat). Eye irritation: None (rabbit). Skin irritation: Slight (rabbit). Mutagenicity: Negative.

P 93–1315

Manufacturer. PPG Industries, Inc.

Chemical. (S) Fatty acids, coco, 2-sulfoethyl ester, ammonium salt.

Use/Production. (G) Reducing surface tension in products for the construction industry. Prod. range: Confidential.

P 93–1316

Importer. Albright And Wilson America.

Chemical. (G) Carboxyalkylidene phosphonic acids, (sodium salts).

Use/Import. (G) Corrosion inhibitor. Import range: Confidential.

Toxicity Data. Acute oral: LD50 > 5,000 mg/kg (rat). Acute dermal: LD50 > 2,000 mg/kg (rat). Acute Static: LC50 48h 1.8 mng/l (daphnia magna). Eye irritation: Slight (rabbit). Skin irritation: Negligible (rabbit). Mutagenicity: Negative. Skin sensitization: Positive (guinea pig).

P 93–1317

Manufacturer. Color-Chem International Corporation.

Chemical. (S) Benzo(imn)diperimidino(2,1-bis 2T1',1)(3,8) phenanthroline-10,21-dione.

Use/Production. (S) Colorant for thermoplastic. Prod. range: Confidential.

P 93–1318

Manufacturer. Confidential.

Chemical. (G) Unsaturated polyester resin.

Use/Production. (G) Hybrid foam. Prod. range: Confidential.

P 93–1319

Manufacturer. Confidential.

Chemical. (G) Poly (carboxylic acid), monoethanolamine salt.

Use/Production. (G) Scale inhibitor for water based solutions. Prod. range: 500–1,500 kg/yr.

P 93–1320

Manufacturer. Confidential.

Chemical. (G) Poly (carboxylic acid), mixed sodium, monoethanolamine salt.

Use/Production. (G) Scale inhibitor for water based solutions. Prod. range: 500–1,500 kg/yr.

P 93–1321

Manufacturer. Confidential.

Chemical. (G) Poly (carboxylic acid), mixed potassium, monoethanolamine salt.

Use/Production. (G) Scale inhibitor for water based solutions. Prod. range: 500–1,500 kg/yr.

P 93–1322

Manufacturer. Confidential.

Chemical. (G) Poly (carboxylic acid), ammonium, monoethanolamine salt.

Use/Production. (G) Scale inhibitor for water based solutions. Prod. range: Confidential.

P 93–1323

Manufacturer. Confidential.

Chemical. (G) Poly (carboxylic acid), mixed sodium, momoethanolamine salt.

Use/Production. (G) Scale inhibitor for water based solutions. Prod. range: Confidential.

P 93–1324

Manufacturer. Confidential.

Chemical. (G) Poly (carboxylic acid), mixed potassium, ammonium, monoethanolamine salt.

Use/Production. (G) Scale inhibitor for water based solutions. Prod. range: Confidential.

P 93–1325

Manufacturer. Henkel Corporation.

Chemical. (G) Polyamide resin.

Use/Production. (S) Hot melt adhesive. Prod. range: 5,000–25,000 kg/yr.

P 93–1326

Manufacturer. Hoechst Celanese Corporation.

Chemical. (G) Polymer of polyimine, aminofunctional methacrylamide and diallylquarternary ammonium chloride.

Use/Production. (G) Dye fixative. Prod. range: Confidential.

Toxicity Data. Acute oral: LD50 2,000 mg/kg (rat). Eye irritation: None (rabbit). Skin irritation: Negligible (rabbit).

P 93–1327

Manufacturer. BASF Corporation.

Chemical. (G) Alkoxylated melamine.

Use/Production. (S) Fiber modifier. Prod. range: Confidential.

P 93–1328

Manufacturer. Henkel Corporation.

Chemical. (S) Fatty acids, C_{18}-unsaturated, hydrogenated, dimers, polymers with C18 unsaturated, amiss dimers and ethylenediamine.

Use/Production. (S) Hot melt adhesive. Prod. range: 15,000–50,000 kg/yr.

P 93–1329

Manufacturer. Confidential.

Chemical. (G) Acrylate copolymer, salt.

Use/Production. (G) Coatings and printing inks for paper, metals and plastics. Prod. range: Confidential.

P 93-1330

Manufacturer. Confidential.

Chemical. (G) Acrylate copolymer, salt.

Use/Production. (G) Coatings and printing inks for paper, metals and plastics. Prod. range: Confidential.

List of Subjects

Environmental protection, Premanufacture notification.

Dated: October 8, 1993.

Frank V. Caesar,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 93-25476 Filed 10-15-93; 8:45 am]

BILLING CODE 6560-50-F

[OPPTS-59325A; FRL-4738-7]

Certain Chemicals; Approval of a Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME-93-21. The test marketing conditions are described below.

EFFECTIVE DATES: October 7, 1993.

FOR FURTHER INFORMATION CONTACT: Shirley Howard, New Chemicals Branch, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-611, 401 M St., SW., Washington, DC, 20460, (202) 260-3780.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

EPA hereby approves TME-93-21. EPA had determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions specified below, will not present an unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME-93-21:

1. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME.

2. During manufacturing, processing, and use of the substance at any site controlled by the Company, any person under the control of the Company, including employees and contractors, who may be dermally exposed to the substance shall use:

a. Gloves determined by the Company to be impervious to the substance under the conditions of exposure, including the duration of exposure. The Company shall make this determination either by testing the gloves under the conditions of exposure or by evaluating the specifications provided by the manufacturer of the gloves. Testing or evaluation of specifications shall include consideration of permeability, penetration, and potential chemical and mechanical degradation by the PMN substance and associated chemical substances;

b. Clothing which covers any other exposed areas of the arms, legs, and torso; and

c. Chemical safety goggles or equivalent eye protection.

3. During manufacturing, processing, and use of the substance at any site controlled by the company, the TME substance will not be released to the surface waters of the U.S.

4. The applicant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

a. Records of the quantity of the TME substance produced and the date of manufacture.

b. Records of dates of the shipments to each customer and the quantities supplied in each shipment.

c. Copies of the labels affixed to containers of the substance or formulations containing the substance.

d. Copies of the bill of lading that accompanies each shipment of the substance.

e. Copies of any determination under paragraph 2.a. above that the protective gloves used by the Company are impervious to the substance.

T-93-21

Date of Receipt: July 29, 1993.

Notice of Receipt: September 17, 1993 (58 FR 48653).

Applicant: Unocal Corporation.

Chemical: (G) Sodium Tetrathiocarbonate.

Use: Oil well additive.

Production Volume: Confidential.

Number of Customers: Confidential.

Test Marketing Period: One year approval.

Risk Assessment: Human health concerns includes developmental, neurotoxicity, reproductive, mutagenicity and oncogenicity based on the potential of the hydrolysis product. EPA expects that, to mitigate human health exposure to workers who may be exposed to the substance during manufacturing, processing, and use, workers will wear adequate protective clothing which covers any exposed parts of the body, impervius gloves, and chemical safety goggles or equivalent eye protection. EPA identified concerns for aquatic organisms based on releases of the PMN substance and subseqent hydrolysis product to surface waters during manufacturing. However, based on the test market activities as described in the notice application and subsequent letters to the Agency describing the manufacturing process, EPA has determined that the PMN substance will not be released to surface waters and consequently will not present an unreasonable risk of injury to the aquatic environment.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present an unreasonable risk of injury to health or the environment.

List of Subjects

Environmental protection, Test marketing exemption.

Dated: October 7, 1993.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 93-25477 Filed 10-15-93; 8:45 am]

BILLING CODE 6560-50-F

[OPPTS–59973; FRL–4650–4]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of 4 such PMN(s) and provides a summary of each.

DATES: Close of review periods:

Y 93–200, September 7, 1993.

Y 93–201, September 13, 1993.

Y 93–202, 93–203, September 23, 1993.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC, 20460 (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Nonconfidential Information Center, (NCIC) ETG–102 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

Y 93–200

Manufacturer. Confidential.

Chemical. (G) Unsaturated polyester.

Use/Production. (S) Peroxide-cured polyester products for mild corrosion-resistant. Prod. range: Confidential.

Y 93–201

Manufacturer. Confidential.

Chemical. (G) Water-reducible alkyd resin.

Use/Production. (S) Air-dry or baking corrosion resistant coatings for under-the hood automotive parts. Prod. range: Confidential.

Y 93–202

Importer. Mitsui Petrochemicals(America), Ltd.

Chemical. (G) Alpha-olefin-diene terpolymer.

Use/Import. (G) Parts of automobile. Import range: Confidential.

Y 93–203

Importer. Mitsui Petrochemicals(America), Ltd.

Chemical. (G) Alpha-Olefin-diene terpolymer.

Use/Import. (G) Parts of automobile. Import range: Confidential.

List of Subjects

Environmental protection.

Dated: October 8, 1993.

Frank V. Caesar,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 93–25478 Filed 10–15–93; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL MEDIATION AND CONCILIATION SERVICE

Agency Form Under Review by the Office of Management and Budget

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Notice of Form F–7 submitted for extension and review to the Office of Management and Budget.

The Federal Mediation and Conciliation Service (FMCS) has submitted to the Office of Management and Budget (OMB) a request for review of FMCS Form F–7, Notice To Mediation Agencies. The request seeks OMB approval to extend the expiration date of Form F–7, from January 1, 1994 to January 31, 1996. The request was submitted pursuant to the Paperwork Reduction Act (44 U.S.C. chapter 35). FMCS has also requested and received a 3-month extension for its current F–7 form for the period of September 30, 1993 to December 31, 1993.

Information pertaining to the request is as follows:

Agency: Federal Mediation and Conciliation Service.

Title: Notice To Mediation Agencies.

Form Number: Agency—Form F–7; OMB No. 3076–0004.

Type of Request: Extension of Expiration date of a currently approved collection without any change in the substance or method of collection.

Affected Public: Private sector employers and labor unions.

Frequency: Once per collective bargaining dispute.

Respondents Obligation: Required pursuant to 29 U.S.C. 158(d)(3).

OMB Desk Officer: Angela Antonelli, (202) 395–6880. Copies of the request for review may be obtained from Eileen B. Hoffman, General Counsel, Federal Mediation and Conciliation Service, 2100 K Street, NW., room 712, Washington, DC 20427, (202) 653–5305.

Written comments pertaining to the request should be sent to Angela Antonelli, Assistant Branch Chief, room 3001, New Executive Office Building, Washington, DC 20503.

Dated: October 12, 1993.

Brian Flores,

Acting Director.

BILLING CODE 6373–01–M

FMCS Form F-7
Revised 6/93

NOTICE TO MEDIATION AGENCIES

Form Approved
OMB No. 3076-0004
Expires 1/31/96

MAIL TO: NOTICE PROCESSING UNIT
FEDERAL MEDIATION AND CONCILIATION SERVICE
2100 K STREET, N.W.
WASHINGTON, D.C. 20427

AND THE STATE OR TERRITORIAL MEDIATION AGENCY

You are hereby notified that written notice of proposed termination or modification of the existing collective bargaining contract was served upon the other party to this contract and that no agreement has been reached.

(1) IF THIS IS A HEALTH CARE INDUSTRY NOTICE, PLEASE INDICATE (MARK "X")
☐ INITIAL CONTRACT ☐ EXISTING CONTRACT

(2) (MARK "X") AND GIVE DATE(S): MO, DAY, YR.
☐ CONTRACT REOPENER: (GIVE TWO DATES) — REOPEN DATE / EXPIRATION DATE
☐ CONTRACT EXPIRATION: — EXPIRATION DATE

NAME OF EMPLOYER OR EMPLOYER ASSOCIATION/ORGANIZATION (IF MORE THAN ONE, SUBMIT NAMES AND ADDRESSES ON AN ATTACHED LIST)

(3)

ADDRESS OF EMPLOYER/ASSOCIATION — NO. STREET | CITY | STATE | ZIP

(4)

EMPLOYER OFFICIAL TO CONTACT (NAME AND TITLE)

(5)

(AREA CODE) PHONE NUMBER

(6)

(AREA CODE) FAX NUMBER

NAME OF INTERNATIONAL UNION OR PARENT BODY

(7)

NAME AND NO. OF LOCAL (IF NOT A LOCAL, GIVE NAME AND NUMBER, IF ANY, OF THE UNION ORGANIZATION INVOLVED IN THE NEGOTIATIONS)

(8)

ADDRESS OF LOCAL UNION — NO. STREET | CITY | STATE | ZIP

(9)

UNION OFFICIAL TO CONTACT (NAME AND TITLE)

(10)

(AREA CODE) PHONE NUMBER

(11)

(AREA CODE) FAX NUMBER

A. LOCATION OF AFFECTED ESTABLISHMENT (COMPLETE FOR ALL NOTICES SUBMITTED) — CITY | STATE | ZIP

B. LOCATION OF NEGOTIATIONS (COMPLETE ONLY IF DIFFERENT FROM 12A) — CITY | STATE | ZIP

(12)

TOTAL NUMBER EMPLOYED AT AFFECTED LOCATION(S)

(13)

NUMBER OF EMPLOYEES COVERED BY CONTRACT

(14)

INDUSTRY AND TYPE OF ESTABLISHMENT (e.g., STEEL INDUSTRY - FACTORY; FOOD INDUSTRY - RETAIL CHAIN STORE; EDUCATION - PRIVATE COLLEGE; ELECTRICAL INDUSTRY - PUBLIC UTILITY)

(15)

PRINCIPAL PRODUCT OR SERVICE

(16)

THIS NOTICE IS FILED ON BEHALF OF (MARK "X")

(17) ☐ UNION ☐ EMPLOYER

TYPE OF NEGOTIATIONS (MARK "X")

☐ SINGLE ESTABLISHMENT
☐ MULTI-PLANT
☐ AREA OR INDUSTRY WIDE
(18) ☐ OTHER (SPECIFY) _____

TYPE OF EMPLOYEES COVERED BY CONTRACT (MARK "X" ALL THAT APPLY)

☐ PROFESSIONAL/TECHNICAL
☐ PRODUCTION/MAINTENANCE
☐ CLERICAL
(19) ☐ OTHER (SPECIFY) _____

NAME AND TITLE OF OFFICIAL FILING NOTICE

(20)

SIGNATURE — DATE

(21)

PAPERWORK REDUCTION ACT NOTICE: The estimated burden associated with this collection of information is 30 minutes per respondent. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to Office of General Counsel, Federal Mediation and Conciliation Service, 2100 K Street, N.W., Washington, D.C. 20427 or the Paperwork Reduction Project 3076-0003, Office of Management and Budget, Washington, D.C. 20503.

[FR Doc. 93-25418 Filed 10-15-93; 8:45 am]
BILLING CODE 6372-01-C

GENERAL SERVICES ADMINISTRATION

Information Resources Management Service; Federal Telecommunications Standards

ACTION: Notice of adoption of standard.

SUMMARY: The purpose of this notice is to announce the adoption of a Federal Telecommunications Standard (FED–STD). FED–STD 1045A, "Telecommunications: HF Radio Automatic Link Establishment" is approved and will be published.

FOR FURTHER INFORMATION CONTACT: Mr. Robert T. Adair, Institute for Telecommunication Sciences, National Telecommunications and Information Administration, telephone (303) 497–3723.

SUPPLEMENTARY INFORMATION:

1. The General Services Administration (GSA) is responsible, under the provisions of the Federal Property and Administrative Services Act of 1949, as amended, for the Federal Standardization Program. On August 14, 1972, the Administrator of GSA designated the National Communications System (NCS) as the responsible agent for the development of telecommunications standards for NCS interoperability and the non-computer communication interface.

2. On December 26, 1991, a notice was published in the **Federal Register** (56 FR 248) that a proposed FED–STD 1045A entitled "Telecommunications: HF Radio Automatic Link Establishment" was being proposed for federal use and that comments were requested.

3. The justification package as approved by the Deputy Assistant Secretary of Defense (Defense-wide C3), Office of the Assistant Secretary of Defense was presented to GSA by NCS with a recommendation for adoption of the standard. These data are a part of the public record and are available for inspection and copying at the Office of Technology and Standards, National Communications System, Washington, DC 20305–2010.

4. A copy of the standard is provided as an attachment to this notice. Interested parties may purchase the standard from GSA, acting as agent for the Superintendent of Documents. Copies are for sale at the GSA Federal Supply Service Bureau (FSSB), Specifications Section, suite 8100, 490 East L'Enfant Plaza, SW. Washington, DC 20407; telephone (202) 755–0325.

Dated: September 8, 1993.

G. Martin Wagner,

Acting Commissioner.

FED–STD 1045A

Federal Standard Telecommunications: HF Radio Automatic Link Establishment

1. *Scope.* The terms and accompanying definitions contained in this standard are drawn from authoritative non-Government sources such as the International Telecommunication Union, the International Organization for Standardization, the Telecommunications Industry Association, and the American National Standards Institute, as well as from numerous authoritative U.S. Government publications. The Federal Telecommunications Standards Committee (FTSC) HF Radio Standards Development Working Group (SDWG) developed a family of High Frequency Automatic Link Establishment (ALE) specifications that defines the necessary technical parameters for automatic link establishment for HF radio connections. Federal Standard 1045A is one of the family of standards to be used in conjunction with the interoperability criteria for HF radio automatic operation.

1.1. *Applicability.* All Federal departments and agencies shall use Federal Standard 1045A as the authoritative source of definitions for terms used in the preparation of all telecommunications documentation. The use of this standard by all Federal departments and agencies is mandatory.

1.2. *Purpose.* The purpose of this standard is to improve the Federal Acquisition process by providing Federal departments and agencies with a comprehensive, authoritative source for automatic link establishment in HF radio.

2. *Requirements and Applicable Documents.* The HF radio terms and definitions constitute this standard, and are to be applied to the design and procurement of ALE automated radio equipment. There are a family of Federal Telecommunications Standards and proposed HF radio automatic link establishment standards that may be applicable to implementation of this standard and these are listed in the standard.

3. *Use.* All Federal departments and agencies shall use this standard in the design and procurement of ALE automated radio equipment. Only after determining that a requirement is not included in this document may other sources be used.

4. *Effective Date.* The use of this approved standard by U.S. Government departments and agencies is mandatory, effective 180 days following the publication date of this standard.

5. *Changes.* When a Federal department or agency considers that this standard does not provide for its essential needs, a statement citing inadequacies shall be sent in duplicate to the General Services Administration (KMR), Washington, DC 20405, in accordance with the provisions of the Federal Information Resources Management Regulation, Subpart 201–20.3. The General Services Administration will determine the appropriate action to be taken and will notify the agency.

Federal departments and agencies are encouraged to submit updates and corrections to this standard, which will be considered for the next revision of this standard. The General Services Administration has delegated the compilation of suggested changes to the National Communications System whose address is given below.

Office of the Manager, National Communications System, Office of Technology and Standards, Washington, DC 20305–2010.

[FR Doc. 93–25464 Filed 10–15–93; 8:45 am]

BILLING CODE 6820–25–M

Information Resources Management Service, Federal Telecommunications Standards

ACTION: Notice of adoption of standard.

SUMMARY: The purpose of this notice is to announce the adoption of a Federal Telecommunications Standard (FED–STD). FED–STD 1046, "Telecommunications: HF Radio Automatic Networking, Section 1: Basic Networking—Automatic Link Establishment Controller" is approved and will be published.

FOR FURTHER INFORMATION CONTACT: Mr. Robert T. Adair, Institute for Telecommunication Sciences, National Telecommunications and Information Administration, telephone (303) 497–3723.

SUPPLEMENTARY INFORMATION: 1. The General Services Administration (GSA) is responsible, under the provisions of the Federal Property and Administrative Services Act of 1949, as amended, for the Federal Standardization Program. On August 14, 1972, the Administrator of GSA designated the National Communications System (NCS) as the responsible agent for the development of telecommunications standards for NCS interoperability and the non-computer communication interface.

2. On December 26, 1991, a notice was published in the **Federal Register** (56 FR 248) that a proposed FED–STD 1046 entitled "Telecommunications: HF Radio Automatic Networking, Section 1: Basic Networking—Automatic Link Establishment Controller" was being proposed for Federal use and that comments were requested.

3. The justification package as approved by the Deputy Assistant Secretary of Defense (Defense-wide C3), Office of the Assistant Secretary of Defense was presented to GSA by NCS with a recommendation for adoption of the standard. These data are a part of the public record and are available for inspection and copying at the Office of Technology and Standards, National

Communications System, Washington, DC 20305–2010.

4. A copy of the standard is provided as an attachment to this notice. Interested parties may purchase the standard from GSA, acting as agent for the Superintendent of Documents. Copies are for sale at the GSA Federal Supply Service Bureau (PSSB), Specifications Section, suite 8100, 490 East L'Enfant Plaza, SW., Washington, DC 20407; telephone (202) 755–0325.

Dated: September 13, 1993.

G. Martin Wagner,

Acting Commissioner.

FED–STD 1046

Federal Standard Telecommunications: HF Radio Automatic Networking Section 1: Basic Networking—Automatic Link Establishment Controller

1. *Scope.* The terms and accompanying definitions contained in this standard are drawn from authoritative non-Government sources such as the International Telecommunication Union, the International Organization for Standardization, the Telecommunications Industry Association, and the American National Standards Institute, as well as from numerous authoritative U.S. Government publications. The Federal Telecommunications Standards Committee (FTSC) HF Radio Standards Development Working Group (SDWG) developed a family of High Frequency Automatic Link Establishment (ALE) specifications that defines the necessary technical parameters for automatic link establishment for HF radio connections. Federal Standard 1046/1 is one of the family of standards to be used in conjunction with the interoperability criteria for HF radio automatic operation.

1.1. *Applicability.* All Federal departments and agencies shall use Federal Standard 1046/1 as the authoritative source of definitions for terms used in the preparation of all telecommunications documentation. The use of this standard by all Federal departments and agencies is mandatory.

1.2. *Purpose.* The purpose of this standard is to improve the Federal acquisition process by providing Federal departments and agencies with a comprehensive, authoritative source for details of basic automatic networking operations in HF radio.

2. *Requirements and Applicable Documents.* The HF radio terms and definitions constitute this standard, and are to be applied to the design and procurement of ALE automated radio equipment for basic automated networking. There are a family of Federal Telecommunications Standards and proposed HF radio automatic link establishment standards that may be applicable to implementation of this standard and these are listed in the standard.

3. *Use.* All Federal departments and agencies shall use this standard in the design and procurement of ALE automated radio equipment. Only after determining that a requirement is not included in this document may other sources be used.

4. *Effective Date.* The use of this approved standard by U.S. Government departments and agencies is mandatory, effective 180 days following the publication date of this standard.

5. *Changes.* When a Federal department or agency considers that this standard does not provide for its essential needs, a statement citing inadequacies shall be sent in duplicate to the General Services Administration (KMR), Washington, DC 20405, in accordance with the provisions of the Federal Information Resources Management Regulation, Subpart 201–20.3. The General Resources Management Regulation, Subpart 201–20.3. The General Services Administration will determine the appropriate action to be taken and will notify the agency. Federal departments and agencies are encouraged to submit updates and corrections to this standard, which will be considered for the next revision of this standard. The General Services Administration has delegated the compilation of suggested changes to the National Communications System whose address is given below: Office of the Manager, National Communications System, Office of Technology and Standards, Washington, DC 20305–2010.

[FR Doc. 93–25463 Filed 10–15–93; 8:45 am]

BILLING CODE 6820–25–M

Change in Solicitation Procedures Under the Small Business Competitiveness Demonstration Program

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice.

SUMMARY: Title VII of the "Business Opportunity Development Act of 1988" (Public Law 100–656) established the Small Business Competitiveness Demonstration Program and designated nine (9) agencies, including GSA, to conduct the program over a four (4) year period from January 1, 1989 to December 31, 1992. The Small Business Opportunity Enhancement Act of 1992 (Public Law 102–366) extended the demonstration program until September 1996 and made certain changes in the procedures for operation of the demonstration program. The law designated four (4) industry groups for testing whether the competitive capabilities of the specified industry groups will enable them to successfully compete on an unrestricted basis. The four (4) industry groups are: construction (except dredging); architectural and engineering (A&E) services (including surveying and mapping); refuse systems and related services (limited to trash/garbage collection); and non-nuclear ship repair. Under the program, when a participating agency misses its small business participation goal, restricted competition is reinstituted only for those contracting activities that failed to attain the goal. The small business goal is 40 percent of the total contract dollars awarded for construction, trash/garbage collection services, and non-nuclear ship repair and 35 percent of the total contract dollars awarded for architect-engineer services. This notice announces modifications to GSA's solicitation practices under the demonstration program based on a review of the agency's performance during the period from July 1, 1992 to June 30, 1993. Modifications to solicitation practices are outlined in the Supplementary information section below and apply to solicitations issued on or after October 1, 1993.

EFFECTIVE DATE: October 1, 1993.

FOR FURTHER INFORMATION CONTACT: Ida Ustad, Office of GSA Acquisition Policy (202) 501–1224.

SUPPLEMENTARY INFORMATION:

Procurements of construction or trash/garbage collection with an estimated value of $25,000 or less will be reserved for emerging small business concerns in accordance with the procedures outlined in the interim policy directive issued by the Office of Federal Procurement Policy (58 FR 13513, March 11, 1993).

Procurements of construction or trash/garbage collection with an estimated value that exceeds $25,000 by GSA contracting activities will be made in accordance with the following procedures:

Construction Services in Groups 15, 16, and 17

Pocurements for all construction services (except solicitations issued by GSA contracting activities in Regions 2, 3, 5, 9, and the National Capital Region for services in SIC Group 15; contracting activities in Regions 2, 5, and 9 in SIC 1794; and contracting activities in Region 3, 5, and 6 in SIC 1796) will be conducted on an unrestricted basis.

Procurements for construction services in SIC Group 15 issued by GSA contracting activities in Regions 2, 3, 5, 9 and the National Capital Region; in SIC 1794 issued by contracting activities in Regions 2, 5, and 9; in SIC 1796 in contracting activities in Regions 3, 5, and 6 will be set aside for small business when there is a reasonable expectation of obtaining competition for two or more small businesses. If no expectation exists, the procurements will be conducted on an unrestricted basis.

Region 2 encompasses the states of Connecticut, Maine, Vermont, New

Hampshire, Massachusetts, Rhode Island, New Jersey, New York, Puerto Rico, and Virgin Islands.

Region 3 encompasses the states of Pennsylvania, Delaware, West Virginia, Maryland (except Montgomery and Prince Georges counties) and Virginia (except the city of Alexandria and the counties of Arlington, Fairfax, Loudoun and Prince William).

Region 5 encompasses the states of Illinois, Indiana, Ohio, Michigan, Minnesota, and Wisconsin.

Region 6 encompasses the states of Kansas, Missouri, Iowa, and Nebraska.

Region 9 encompasses the states of Arizona, California, Hawaii, and Nevada.

The National Capital Region encompasses the District of Columbia, Montgomery and Prince Georges counties in Maryland and the city of Alexandria and the counties of Arlington, Fairfax, Loudoun and Prince William in Virginia.

Trash/Garbage Collection Services in PSC S205

Procurements for trash/garbage collection services in PSC S205 will be conducted on an unrestricted basis.

Architect-Engineer Services (all PSC Codes Under the Demonstration Program)

Procurements for all architect-engineer services (except solicitations issued by contracting activities in GSA Central Office and Regions 2, 3, 4, 5, and 6) shall be conducted on an unrestricted basis.

Procurements for architect-engineer services issued by GSA contracting activities in GSA Central Office and Regions 2, 3, 4, 5, and 6 will be set aside for small business when there is a reasonable expectation of obtaining competition from two or more small businesses. If no expectation exists, the procurement will be conducted on an unrestricted basis.

Central Office is located in Washington, DC. Region 2 encompasses the states of Connecticut, Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, New Jersey, New York, Puerto Rico, and Virgin Islands. Region 3 encompasses the states of Pennsylvania, Delaware, West Virginia, Maryland (except Montgomery and Prince Georges counties) and Virginia (except the city of Alexandria and the counties of Arlington, Fairfax, Loudoun and Prince William). Region 4 encompasses the states of Alabama, Florida, Georgia, Kentucky, North Carolina, South Carolina, Mississippi, and Tennessee. Region 5 encompasses the states of Illinois, Indiana, Ohio, Michigan, Minnesota, and Wisconsin. Region 6 encompasses the states of Iowa, Kansas, Missouri, and Nebraska.

Non-Nuclear Ship Repair

GSA does not procure non-nuclear ship repairs.

Dated: September 27, 1993.

Richard H. Hopf, III,

Associate Administrator for Acquisition Policy.

[FR Doc. 93-25426 Filed 10-15-93; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency For Toxic Substances and Disease Registry

[ATSDR-75]

Availability of Draft Toxicological Profiles

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Public Health Service (PHS), Department of Health and Human Services (HHS).

ACTION: Notice of availability.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) [42 U.S.C. 9604(i)(3)] directs the Administrator of ATSDR to prepare toxicological profiles of priority hazardous substances and to revise and republish each toxicological profile as necessary. This notice announces the availability of 6 updated drafts and 5 new draft toxicological profiles prepared by ATSDR for review and comment. The original final versions of the profiles being updated were released on June 13, 1991.

DATES: To ensure consideration, comments on these draft toxicological profiles must be received on or before February 21, 1994. Comments received after the close of the public comment period will be considered at the discretion of ATSDR based upon what is deemed to be in the best interest of the general public.

ADDRESSES: Requests for copies of the draft toxicological profiles or comments regarding the draft toxicological profiles should be sent to the attention of Susie Tucker, Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E-29, 1600 Clifton Road, NE., Atlanta, Georgia 30333.

Requests for the draft toxicological profiles must be in writing. Please specify the profiled hazardous substance(s) you wish to receive. ATSDR reserves the right to provide only one copy of each profile requested, free of charge. In case of extended distribution delays, requestors will be notified.

Written comments and other data submitted in response to this notice and the draft toxicological profiles should bear the docket control number ATSDR-75. Send one copy of all comments and three copies of all supporting documents to the Division of Toxicology at the above address by the end of the comment period. All written comments and draft profiles will be available for public inspection at the ATSDR, Building 4, Executive Park Drive, Atlanta, Georgia (not a mailing address), from 8 a.m. until 4:30 p.m., Monday through Friday, except for legal holidays. Because all public comments regarding ATSDR toxicological profiles are available for public inspection, no confidential business information should be submitted in response to this notice.

FOR FURTHER INFORMATION CONTACT: Ms. Susie Tucker, Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E-29, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone (404) 639-6300.

SUPPLEMENTARY INFORMATION: The Superfund Amendments and Reauthorization Act (SARA) (Pub. L. 99-499) amends the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) (42 U.S.C. 9601 et seq.) by establishing certain responsibilities for the ATSDR and the Environmental Protection Agency (EPA) with regard to hazardous substances which are most commonly found at facilities on the CERCLA National Priorities List (NPL). Among these statutory provisions is that the Administrator of ATSDR prepare toxicological profiles for substances included on the priority lists of hazardous substances. These lists identified the 275 hazardous substances which both Agencies determined pose the most significant potential threat to human health. The lists were published in the Federal Register on April 17, 1987 (52 FR 12866); October 20, 1988, (53 FR 41280); October 26, 1989 (54 FR 43615); October 17, 1990 (55 FR 42067); October 17, 1991 (55 FR 52166); and October 28, 1992 (57 FR 48801). CERCLA also requires ATSDR to assure the initiation of a research program to fill data needs associated with the substances.

Section 104(i)(3) of CERCLA [42 U.S.C. 9604(i)(3)] outlines the content of these profiles. Each profile is required to include an examination, summary and interpretation of available toxicological information and epidemiologic evaluations. This information and data are to be used to ascertain the levels of significant human exposure for the substance and the associated health effects. The profiles must also include a determination of whether adequate information on the health effects of each substance is available or in the process of development. When adequate information is not available, ATSDR, in cooperation with the National Toxicology Program (NTP), is required to assure the initiation of a program of research designed to determine these health effects.

Although key studies for each of the substances were considered during the profile development process, this **Federal Register** notice seeks to solicit any additional studies, particularly unpublished data and ongoing studies, which will be evaluated for possible addition to the profiles now or in the future.

The following draft toxicological profiles are expected to be available to the public on or about October 17, 1993.

Document and hazardous substance	CAS No.
1. Asbestos (Update)	1332–21–4
Actinolite	13768–00–8
Amosite	12172–73–5
Anthophyllite	17968–78–9
Chrysotile	12001–29–5
Crocidolite	12001–28–4
Tremolite	14567–73–8
2. Benzidine (Update)	92–87–5
3. Dinitrocresols	12167–18–9
4,6-Dinitro-O-cresol	534–52–1
Dinitro-O-cresol	1335–85–9
	497–56–3
Dinitro-P-cresol	609–93–8
	63989–82–2
Dinitro-M-cresol	616–73–9
4. Dinitrophenols:	
2,4-Dinitrophenol	51–28–5
2,6-Dinitrophenol	573–56–8
2,5-Dinitrophenol	329–71–5
2,3-Dinitrophenol	66–56–8
3,5-Dinitrophenol	586–11–8
3,4-Dinitrophenol	577–71–5
5. Disulfoton	298–04–4
6. Mirex	2385–85–5
Chlordecone	143–50–0
7. Naphthalene (Update)	91–20–3
2-Methylnaphthalene	91–57–6
1-Methylnaphthalene	90–12–0
8. Polycyclic Aromatic Hydrocarbons (PAHs) (Update):	
Acenaphthene	83–32–9
Acenaphthylene	208–96–8
Anthracene	120–12–7
Benzo(a)anthracene	56–55–3
Benzo(a)pyrene	50–32–8
Benzo(e)pyrene	192–97–2
Benzo(b)fluoranthene	205–99–2
Benzo(j)fluoranthene	205–82–3
Benzo(k)fluoranthene	207–08–9
Benzo(g,h,i)perylene	191–24–2
Chrysene	218–01–9
Dibenzo(a,h)anthracene	53–70–3
Fluoranthene	206–44–0
Fluorene	86–73–7
Indeno(1,2,3-cd)pyrene	193–39–5
Phenanthrene	85–01–8
Pyrene	129–00–0
9. Polybrominated biphenyls (PBBs)	
Hexabromobiphenyls	67774–32–7
	59536–65–1
	36355–01–8
Octabromobiphenyls	612288–13–9
Decabromobiphenyls	13654–09–6
	39282–95–6
10. 1,1,1-Trichloroethane (Update)	71–55–6
11. Xylenes (Update)	1330–20–7

All profiles issued as "Drafts for Public Comment" represent the agency's best efforts to provide important toxicological information on priority hazardous substances in compliance with the substantive and procedural requirements of Section 104(i)(3) of CERCLA, as amended. As in the past, we are seeking public comments and additional information which may be used to supplement these profiles. ATSDR remains committed to providing a public comment period for these documents as a means to best serve public health and our clients.

Dated: October 12, 1993.

Walter R. Dowdle,

Deputy Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 93–25427 Filed 10–15–93; 8:45 am]

BILLING CODE 4160–70–P

Centers for Disease Control and Prevention

Screening of New and Experimental Compounds for Anti-Tuberculosis Activity

AGENCY: Centers for Disease Control and Prevention (CDC), Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC), National Center for Infectious Diseases (NCID), Division of Bacterial and Mycotic Diseases (DBMD), Emerging Bacterial and Mycotic Disease Branch (EBMDB), desires to screen new and experimental compounds for anti-tuberculosis activity using a rapid luciferase-based microdilution plate assay developed by CDC. Pharmaceutical and chemical manufacturers and others with anti-infectives that may be effective against *Mycobacterium spp.* are invited to provide their compounds to CDC for screening. Respondents will be notified of results of the screen when data are available.

This service will be provided without charge to all respondents with potential anti-tuberculosis compounds. Although every effort will be made to screen compounds from all respondents, CDC reserves the right to refuse to accept any compounds and cannot guarantee that all compounds accepted will be screened.

Compounds will be accepted under a Materials Transfer Agreement which will address the basic issues of liability, control of the compounds and related data, protection of respondent's intellectual property rights, etc. CDC does not intend to claim any intellectual property rights to compounds screened.

FOR FURTHER INFORMATION CONTACT: Technical: Robert C. Good, Ph.D., Division of Bacterial and Mycotic Diseases, Emerging Bacterial and Mycotic Disease Branch, National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop C–09, Atlanta, GA 30333, telephone (404) 639–3052.

Business: Greg Jones, Technology Transfer Representative, National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop C–19, Atlanta, GA 30333, telephone (404) 639–2434.

SUPPLEMENTARY INFORMATION: Tuberculosis, a disease thought to be in decline, has reversed a trend of many years and is now one of the major health problems of the United States as well as the world. A further complication is emergence of drug-resistant strains of Mycobacterium tuberculosis and the susceptibility of HIV infected persons to the disease. The limited number of drugs available for the treatment of tuberculosis is a major hindrance to design of effective therapeutic regimens containing three to five antimycobacterial drugs.

CDC's rapid luciferase-based microdilution plate assay can screen new and experimental compounds for anti-tuberculosis activity in significantly less time than conventional screening methods. Within the overall effort to combat drug-resistant tuberculosis, this screening offer is intended to expedite the identification of additional compounds which are effective against tuberculosis. Identification of additional

compounds can ultimately lead to the development of new therapeutic regimens.

Dated: October 12, 1993.

Robert L. Foster,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–25428 Filed 10–15–93; 8:45 am]

BILLING CODE 4160–18–P

National Institutes of Health

National Heart, Lung, and Blood Institute; Meeting of Blood Diseases and Resources Advisory Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Blood Diseases and Resources Advisory Committee, National Heart, Lung, and Blood Institute, November 3–4, 1993, Federal Building, room B1–19, 7550 Wisconsin Avenue, Bethesda, Maryland 20814.

The entire meeting will be open to the public on November 3, from 1 p.m. to 5 p.m. and on November 4, from 9 a.m. to adjournment, to discuss the status of the Blood Diseases and Resources program needs and opportunities. Attendance by the public will be limited to space available.

Ms. Terry Long, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and roster of the Committee members.

Individuals who plan to attend and need special assistance, such as sign language interpretations or other reasonable accommodations, should contact the Executive Secretary in advance of the meeting.

Dr. Fann Harding, Assistant to the Director, Division of Blood Diseases and Resources, National Heart, Lung, and Blood Institute, Federal Building, room 5A08, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–1817, will furnish substantive program information.

(Catalog of Federal Domestic Assistant Program No. 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: October 8, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–25496 Filed 10–15–93; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meeting of Pulmonary Diseases Advisory Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Pulmonary Diseases Advisory Committee, National Heart, Lung, and Blood Institute, November 2–3, 1993, at the National Institutes of Health, Building 31, C Wing, Conference Room 7, 9000 Rockville Pike, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 8:30 a.m. to 5 p.m. on Tuesday, November 2 and on Wednesday, November 3 from 9 a.m. to adjournment. The Committee will discuss scientific program needs and develop recommendations for future research directions. Attendance by the public will be limited to space available.

Ms. Terry Long, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, room 4A–21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of the Committee members.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary in advance of the meeting.

Dr. Suzanne S. Hurd, Executive Secretary of the Committee, Westwood Building, room 6A16, National Institutes of Health, Bethesda, Maryland 20892, (301) 594–7430, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 93.838, Lung Diseases Research, National Institutes of Health)

Dated: October 8, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–25495 Filed 10–15–93; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meeting of the Cardiology Advisory Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Cardiology Advisory Committee, National Heart, Lung, and Blood Institute, November 3–4, 1993, Building 31C, Conference room 6, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The entire meeting will be open to the public on November 3 from 11 a.m. to 5 p.m. and on November 4 from 8:30 a.m. to adjournment. Attendance by the public will be limited to space available. Topics for discussion will include a review of the research programs relevant to the Cardiology area and consideration of future needs and opportunities.

Terry Long, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, room 4A21, Building 31, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of the committee members.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary in advance of the meeting.

Michael J. Horan, M.D., Sc.M., Director, Division of Heart and Vascular Diseases; National Heart, Lung, and Blood Institute; Room 416, Federal Building, Bethesda, Maryland 20892, (301) 496–2553, will furnish substantive program information upon request.

(Catalog of Federal Domestic Assistance Program No. 93.837, Heart and Vascular Diseases Research, National Institutes of Health)

Dated: October 8, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–25494 Filed 10–15–93; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meeting of the Clinical Applications and Prevention Advisory Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Clinical Applications and Prevention Advisory Committee, National Heart, Lung, and Blood Institute, National Institutes of Health, on November 3–4, 1993. The meeting will be held in Conference Room 10, Building 31, 9000 Rockville Pike, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 11 a.m. to recess on November 3 and 8:30 a.m. to adjournment on November 4 to discuss new initiatives, program policies, and issues. Attendance by the public will be limited to space available.

Terry Long, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of committee members upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary in advance of the meeting.

Dr. Lawrence Friedman, Director, Division of Epidemiology and Clinical Applications, Federal Building, room 212, Bethesda, Maryland 20892, (301) 496–2533, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 93.837, Heart and Vascular Diseases Research, National Institutes of Health)

Dated: October 8, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–25493 Filed 10–15–93; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Meeting of the Cancer Education Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Cancer Education Review Committee, National Cancer Institute, National Institutes of Health, on November 3, 1993, at The Georgetown Inn in the Lafayette Room, 1310 Wisconsin Avenue, NW., Washington, DC 20007.

This meeting will be open to the public from 8:30 a.m. to 9 a.m, to review administrative details. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Public Law 92–463, the meeting will be closed to the public from approximately 9 a.m. to adjournment for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Carole Frank, Committee Management Officer, National Cancer Institute, 6130 Executive Boulevard, Room 630E, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. Neal B. West, Scientific Review Administrator, Cancer Education Review Committee, National Cancer Institute, Executive Plaza North Building, Room 611D, National Institutes of Health, Bethesda, Maryland 20892 (301/402–2785) will furnish substantive program information.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Neal B. West in advance of the meeting.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: October 9, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–25497 Filed 10–15–93; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

National Toxicology Program (NTP) Board of Scientific Counselors; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the next meeting of the NTP Board of Scientific Counselors' Technical Report Review Subcommittee on November 16 and 17, 1993, in the Conference Center, Building 101, South Campus, National Institute of Environmental Health Sciences (NIEHS), 111 Alexander Drive, Research Triangle Park, North Carolina. The meeting will begin at 8 a.m. on November 16 and 8:30 a.m. on November 17 and is open to the public. The primary agenda topic is the peer review of draft Technical Reports of long-term toxicology and carcinogenesis studies and one short-term toxicity study from the National Toxicology Program.

The entire first day, November 16, will be devoted to the presentation of a comprehensive mixture of research projects on ozone resulting from the collaboration between the NIEHS and the Health Effects Institute and will culminate with peer review of the NTP draft Technical Report of Toxicology and carcinogenesis studies on ozone (program attached). The ozone study is an expanded effort that includes a two-year study, a 30-month study, and a co-carcinogenicity study.

Tentatively scheduled to be peer reviewed on November 17 are draft Technical Reports of three long-term studies on four chemicals and the short-term toxicity report on isoprene. The reports to be reviewed on November 16 and 17 are listed alphabetically, along with supporting information, in the attached table. The order of review is given in the far right column of the table. Copies of the draft Reports may be obtained, as available, from: Central Data Management, MD A0–01, P.O. Box 12233, Research Triangle Park, NC 27709 (919/541–3419).

There will also be a report on the Workshop on Diet for F344 Rats in Long-Term Studies, with recommendations.

Persons wanting to make a formal presentation regarding a particular Technical Report must notify the Executive Secretary by telephone, by fax, or by mail, no later than November 9, 1993, and provide a written copy in advance of the meeting so copies can be made and distributed to all Panel members and staff and made available at the meeting for attendees. Oral presentations should supplement and not just repeat the written statement. Presentations should be limited to no more than five minutes.

The program would welcome receiving toxicology and carcinogenesis information from completed, ongoing, or planned studies by others, as well as current production data, human exposures information, and use patterns on any of the studies listed in this announcement. Please contact Central Data Management at the address given above, and they will relay the information to the appropriate staff scientist.

The Executive Secretary, Dr. Larry G. Hart, P.O. Box 12233, Research Triangle Park, North Carolina, 27709 (telephone 919/541–3971; fax 919/541–2260) will furnish final agenda, a roster of Subcommittee members, and other program information prior to the meeting. Summary minutes subsequent to the meeting will be available upon request.

If you plan to attend the November 16 (Ozone) meeting, we request that you let us know (name and affiliation) by November 8 by either fax or mail, since seating is limited to space available.

Dated: October 6, 1993.

Richard A. Griesemer,

Deputy Director, National Toxicology Program.

NIP/HEI Collaborative Ozone Studies

November 16, 1993 Final Program

Chairpersons:

Gary A. Boorman (National Institute of Environmental Health Sciences, NIP)

Debra A. Kaden (HEI)

8:00 a.m. Welcome Kenneth Olden (NIEHS), Joseph Brain (Harvard

School of Public Health, HEI Research Committee)
8:10 a.m. Overview Gary Boorman (NIEHS, NTP), Debra A. Kaden (HEI)
8:25 a.m. Exposure and Monitoring of Ozone Studies John Decker (Battelle Pacific Northwest Laboratories)

Pulmonary Function

8:40 a.m. Respiratory function alterations following chronic ozone inhalation* Jack Harkema (Lovelace Biomedical and Environmental Research Institute)
9:00 a.m. Mechanical and pharmacological properties of airways isolated from ozone-exposed rats* John Szarek (Marshall University School of Medicine)
9:20 a.m. Discussion of pulmonary function studies

Biochemical Markers

9:35 a.m. Lung collagen content and crosslinking in Fischer 344 rats chronically exposed to ozone* Jerold A. Last (California Primate Research Center)
9:55 a.m. Coffee break
10:20 a.m. Effects of chronic ozone inhalation on complex carbohydrates of lung connective tissue Bhandaru Radhakrishnamurthy (Tulane University School of Public Health and Tropical Medicine)*
10:40 a.m. Extracellular matrix expression in ozone-exposed lungs William C. Parks (Jewish Hospital at Washington University)*
11:00 a.m. Evaluation of 8-hydroxydeoxyguanosine in ozone-exposed rodents Gary Hatch (Health Effects Research Laboratory, U.S. EPA), Dan Marsman (NIEHS)
11:20 a.m. Discussion of pulmonary biochemistry studies
11:30 a.m. Lunch

Respiratory Structure and Morphometry

12:15 p.m. Ozone-induced nonneoplastic lesions at 20, 24, and 30 month exposure Paul W. Mellick (Battelle Pacific Northwest Laboratories)
12:30 p.m. Effects of chronic ozone exposure on the nasal mucocilliary apparatus in the rat* Jack Harkema (Lovelace Biomedical and Environmental Research Institute)
12:50 p.m. Health effects of chronic ozone inhalation: Changes in trachiobronchiolar epithelium and antioxidant enzyme studies* Charles Plopper (University of California, Davis)
1:05 p.m. Morphometric analysis of structural alterations in rat lungs chronically exposed to ozone* Ling-Yi Chang (Duke University Medical School)
1:25 p.m. Health effects of chronic ozone inhalation: Morphometric studies* Kent E. Pinkerton (University of California, Davis)
1:40 p.m. Discussion of structural alterations

Biostatistics

1:55 p.m. The NIP/HEI Collaborative Ozone Project: A combined analysis* Louise Ryan (Harvard School of Public Health, Dana-Farber Cancer Institute)

Other Ozone Studies

2:15 p.m. Proliferative lesions and cell proliferation in ozone-exposed mice Ronald Herbert (NIEHS), Rick Hailey (NIEHS)
2:35 p.m. Molecular analysis of neoplastic lesions following ozone exposure Robert Sills (NIEHS), Lily Hong (NIEHS), Arnold Greenwell (NIEHS), Teddy Devereaux (NIEHS)
2:55 p.m. Discussion
3:10 p.m. Break

NIP Ozone Technical Report

3:30 p.m. Presentation of the NIP ozone technical report Gary A. Boorman (NIEHS, NIP)
3:45 p.m. Discussion and Review of the NIP technical report by the Technical Reports Review Subcommittee Discussion
4:30 p.m. General discussion of all ozone-related projects
5:30 p.m. Adjourn

SUMMARY DATA FOR NTP LONG-TERM TOXICOLOGY & CARCINOGENESIS TECHNICAL REPORTS AND SHORT-TERM TOXICITY STUDY TECHNICAL REPORTS SCHEDULED FOR PEER REVIEW AT THE BOARD OF SCIENTIFIC COUNSELORS' MEETING OF THE TECHNICAL REPORTS REVIEW

[Subcommittee, November 16–17, 1993, Research Triangle, Park, NC]

Chemical CAS No.	Report No.	Primary uses	Exposure levels	Study laboratory	Review order
Long-Term Toxicology & Carcinogenesis Studies:					
1-Amino-2,4-Dibromoanthraquinone 81–49–2.	TR–383	In manufacture of dyes	Oral in Feed (Feed): Mason R: 0,.2,.5,1.0,2.0, M: 0,1.0,2.0 %/50 Per Group.	4	.....
O-Benzyl-P-Chlorophenol 120–32–1 ..	TR–444	Germicide in disinfectant solutions and soap.	Skin Paint (Mice) (Acetone): Acetone Control, DMBA/DMBA, DMBA/Acetone, DMBA/TPA, DMBA/BCP (1,10,30 mg/ml), TPA/TPA, BCP(100)/TPA, BCP/BCP, BCP (10)/BCP(1,10,30).	Battelle-Co	2
Diethyl Phthalate 84–66–2	TR–429	In manufacture of celluloid, cosmetics, varnishes, and dopes. Plasticizer for cellulose ester plastics. Insecticide sprays.	Skin Paint Acetone): R: 0, 100,300 M: 0,7.5,15,30 ul/100 ul Solution/50 Per Group.	Hazleton Labs, Rockville, Gov't Services, Inc.	3

* The HEI studies have recently been completed and are currently being evaluated by the Institute Health Review Committee.

SUMMARY DATA FOR NTP LONG-TERM TOXICOLOGY & CARCINOGENESIS TECHNICAL REPORTS AND SHORT-TERM TOXICITY STUDY TECHNICAL REPORTS SCHEDULED FOR PEER REVIEW AT THE BOARD OF SCIENTIFIC COUNSELORS' MEETING OF THE TECHNICAL REPORTS REVIEW—Continued

[Subcommittee, November 16–17, 1993, Research Triangle, Park, NC]

Chemical CAS No.	Report No.	Primary uses	Exposure levels	Study laboratory	Review order
Diethyl Phthalate/Dimethyl Phthalate .	TR–429	Diethyl: celluloid manufacture, cosmetics, varnishes, dopes, insecticidal soaps, plasticizer. DIMETHYL: insecticides, plasticizer, solvent, dye carrier, rocket fuel.	Skin Paint (Mice) (Neat): 100 ul (Promoter) Neat Chemical On Uninitiated and DMBA Initiated Skin.	Hazleton Labs, Rockville, Gov't Services, Inc..	3
Ozone 10028–15–6	TR–440	Pollution control, waste treatment, chemical synthesis, sterilization where residuals of other chemicals would be objectionable, odor control, bleaching waxes, clay, textiles, paper pulp, oils, control of algae, mold, and bacteria.	Inhalation (Air): R&M: 0, 0.12, 0.5, or 1.0 ppm/ 103 weeks (50/Sex/Species/Group).	Battelle-NW	1
Ozone 10028–15–6	TR–440	Pollution control, waste treatment, chemical synthesis, sterilization where residuals of other chemicals would be objectionable, odor control, bleaching waxes, clay, textiles, paper pulp, oils, control of algae, mold, and bacteria.	Inhalation (Air): R&M: 0, 0.5, or 1.0 ppm /130 weeks (50/Sex/Species/ Group).	Battelle-NW	1
Ozone/NNK Ozonnnkcomb	TR–440	Byproduct of tobacco smoke.	Inhalation (Air): Male Rats Only: 0, 0.5 ppm Ozone with 0, 0.1, 1.0 mg/kg NNK By S.C. Injection (20 Weeks Only).	Battelle-NW	1
Short-Term Toxicity Study: Isoprene 78–79–5	TOX–31	Monomer and comonomer for elastomers, prepared from turpentine, petroleum products (Merck 1989).	Inhalation: R&M: 0,70,220,700,2200,7000 ppm.	Battelle-NW	5

[FR Doc. 93–25344 Filed 10–15–93; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–940–4210–06; CACA 17429]

Opening of Lands in Proposed Withdrawal; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The temporary 2-year segregation of the proposed withdrawal of 3,682.72 acres of public lands in Imperial County to protect valuable sand and gravel resources, and mineral material sites, expired on May 22, 1993, by operation of law. The public lands became open to the operation of the public land laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. The public lands remain segregated from location and entry under the public mining laws pursuant to previous segregations of record. The public lands have been and remain open to the operation of the mineral leasing laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable laws.

EFFECTIVE DATE: May 24, 1993.

FOR FURTHER INFORMATION CONTACT: Duane Marti, BLM California State Office (CA–943.1), 2800 Cottage Way, Room E–2845, Sacramento, California 95825; telephone number 916–978–4820.

SUPPLEMENTARY INFORMATION: The Notice of Proposed Withdrawal was published in the **Federal Register** May 21, 1991 (56 FR 23300). The Bureau of Land Management (BLM) proposed to withdraw 3,682.72 acres of public land in Imperial County to protect valuable sand and gravel resources, and mineral material sites. The notice segregated the public lands from location under the public land laws and location and entry under the United States mining laws, subject to valid existing rights. The 2-year segregation expired on May 22, 1993, pursuant to 43 CFR 2310.2–1(d). The lands remained open to operation under the mineral leasing laws. The withdrawal application will continue to be processed unless it is canceled or denied.

At 10 a.m. on May 24, 1993, the public lands described in the aforementioned **Federal Register** notice were returned to being open to the operation of the public land laws generally, subject to valid existing

rights, the provision of existing withdrawals, other segregations of record, and the requirement of applicable law. All valid applications received at or prior to 10 a.m. on May 24, 1993 were considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

The public lands described in the aforementioned **Federal Register** notice remain segregated from location and entry under the United States mining laws pursuant to the following classifications made under the Classification and Multiple Use Act of September 19, 1964 (43 U.S.C. 1411–18): (a) CARI 702, published in the **Federal Register**, December 13, 1967 (32 FR 17863) and as amended on September 13, 1990 (55 FR 37777); and (b) CARI 1390, published in the **Federal Register**, August 13, 1970 (35 FR 12855) and as amended on January 7, 1985 (50 FR 895) and on September 13, 1990 (55 FR 37777). The public lands have been and remain open to the operation of the mineral leasing laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law.

Since the lands covered under this proposed withdrawal are still being considered for withdrawal by BLM, new withdrawal applications and further segregations may have encumbered these lands prior to the effective date of this notice. Therefore, all locators are responsible for ensuring that the lands opened under this notice are free of other withdrawal applications and that the requirements of applicable law are met.

Dated: October 8, 1993.

Nancy J. Alex,

Chief, Lands Section.

[FR Doc. 93–25425 Filed 10–15–93; 8:45 am]

BILLING CODE 4310–40–M

[NV–930–4210–05; N–51824, N–51400]

Realty Action: Lease/Purchase for Recreation and Public Purposes

AGENCY: Bureau of Land Management, Interior.

ACTION: Modifying R&PP NORA to change the lessee name and purpose.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada has been examined and found suitable for lease/purchase for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.) The City of Las Vegas proposes to lease/purchase these lands for expansion of their R&PP lease. They plan to construct a Metro Police Northwest Substation.

Mount Diablo Meridian, Nevada

T. 20 S., R. 60 E.
Sec. 22, W½W½NE¼NW¼SE¼,
Containing 2.500 acres, more or less.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Dr., Las Vegas, Nevada.

Publication of this NORA in the **Federal Register** will modify Recreation and Public Purposes classification, N–51400, to allow the City of Las Vegas to develop the above described lands. Final determination on lease/purchase will await completion of an environmental analysis.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director.

Dated: October 6, 1993.

Gary Ryan,

Acting District Manager, Las Vegas, NV.

[FR Doc. 93–25438 Filed 10–15–93; 8:45 am]

BILLING CODE 4310–HC–M

[NV–930–4210–06; N–57922]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of the Air Force proposes to withdraw 3,972.04 acres of public land in Lincoln County, Nevada. This notice closes the land for up to 2 years from settlement, sale, location and entry under the general land laws, including the United States mining laws. The land will remain open to leasing under the mineral leasing laws.

DATE: Comments and requests for a public meeting should be received on or before January 17, 1994.

ADDRESS: Comments and meeting requests should be sent to the Nevada State Director, BLM, P.O. Box 12000, Reno, Nevada 89520.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, BLM Nevada State Office, 702–785–6526.

SUPPLEMENTARY INFORMATION: The Department of Air Force has filed an application to withdraw the following described public land from settlement, sale, location and entry under the public land laws, including the mining laws, subject to valid existing rights:

Mount Diablo Meridian

T. 6 S., R. 56 E., unsurveyed,
Secs. 25 and 26.
T. 7 S., R. 56 E., unsurveyed,
Sec. 1;
Sec. 13, W½;
Sec. 24, NW¼.
T. 6 S., R. 57 E.,
Sec. 30, lots 1 through 4, E½W½;
Sec. 31, lots 1 through 4, E½W½, E½.
T. 7 S., R. 57 E.,
Sec. 6, lots 1 through 7, S½NE¼, SE¼NW¼, E½SW¼, SE¼.

The area aggregates 3,972.04 acres in Lincoln County.

The purpose of the withdrawal is to ensure the public safety and the safe and secure operation of activities in the Nellis Air Force Range Complex.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the undersigned officer within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period by the BLM authorized officer are any temporary uses which will not interfere with the purpose of the withdrawal.

The temporary segregation of the lands in connection with this withdrawal application shall not affect the administrative jurisdiction over the lands, and the segregation shall not have

the effect of authorizing any use of the lands.

Robert G. Steele,

Deputy State Director, Operations.

[FR Doc. 93–25670 Filed 10–15–93; 8:45 am]

BILLING CODE 4310–HC–M

National Park Service

Buffalo National River, AR

AGENCY: National Park Service, Interior.

ACTION: Designation of 24,464 Acres of Potential Wilderness, Buffalo National River, Arkansas.

Public Law Number 95–625, approved November 10, 1978, designated 10,529 acres of Buffalo National River as wilderness and further identified an additional 25,471 acres as potential wilderness additions. These wilderness designations apply to portions of Buffalo National River as depicted on a map entitled "Wilderness Plan, Buffalo National River, Arkansas," numbered 173–20, 036–B and dated March 1975.

Section 403 of Public Law Number 95–625 provided the process whereby potential wilderness additions within Buffalo National River would convert to designated wilderness upon publication in the **Federal Register** of a notice by the Secretary that all uses of the land prohibited by the Wilderness Act (Pub. L. Number 88–577) have ceased.

The National Park Service has determined that all non-Federal interests and uses prohibited by the Wilderness Act have been eliminated on all potential wilderness additions within the park with the exception of those portions of tracts 66–104, 24–101, 24–103, 25–106, 25–107, 30–114, 32–111, 38–117, and 80–100 (an area of approximately 1,007 acres) which are within the boundaries of the Buffalo National River wilderness area. Tract numbers refer to National Park Service map number 173–30, segments 24, 25, 28, 30, 32, 66, and 80 are available at the following locations:

National Park Service, P.O. Box 37127, Washington, DC 20013–7127

National Park Service, Southwest Regional Office, P.O. Box 728, Santa Fe, New Mexico 87504–0728

Superintendent, Buffalo National River, P.O. Box 1173, Harrison, Arkansas 72602.

While these excluded tracts pose no significant threat to designated wilderness or the ability of the National Park Service to preserve wilderness values with designated wilderness, they will remain as potential wilderness additions until all uses conflicting provisions of the Wilderness Act have ceased.

In that all of the potential wilderness additions identified in Public Law Number 95–625, with the exception of the tracts identified above, now fully comply with the instructions contained in section 403 of the law, this notice hereby changes the status of 24,464 acres of the potential wilderness additions to designated wilderness. This acreage will, accordingly, be added as a component of the National Wilderness Preservation System and bring the total designated wilderness acreage within Buffalo National River to 34,993 acres. An acreage of 1,007 will remain as potential wilderness.

Dated: September 28, 1993.

Roger G. Kennedy,

Director, National Park Service.

[FR Doc. 93–25458 Filed 10–15–93; 8:45 am]

BILLING CODE 4310–70–M

Denali South Slope Development Concept Plan and Draft Environmental Impact Statement, Denali National Park and Preserve, AK; Extension of Comment Period

AGENCY: National Park Service, Interior.

ACTION: Deadline for public comment period extended for Denali South Slope development concept plan and draft environmental impact statement, Denali National Park and Preserve.

SUMMARY: In response to public comment, the comment period for the Denali South Slope development concept plan and environmental impact statement has been extended to November 1, 1993. Additional public meetings have been scheduled at 7:30 p.m. on October 11th at the Alaska Public Lands Information Center, Fairbanks, Alaska; on October 12th at the Elementary School, Talkeetna, Alaska; on October 13th at the Elementary School, Trapper Creek, Alaska; and on October 14th at the Community Center, Cantwell, Alaska. Persons wishing to provide additional comments should address such comments to the Superintendent, Denali National Park and Preserve, Alaska 99755–0009.

FOR FURTHER INFORMATION CONTACT: Russ Berry, Superintendent, Denali National Park and Preserve, P.O. Box 9, Denali Park, Alaska 99755–0009. Phone (907) 683–2294.

Paul R. Anderson,

Acting Regional Director.

[FR Doc. 93–25488 Filed 10–15–93; 8:45 am]

BILLING CODE 4310–70–P

General Management Plan, Lava Beds National Monument, CA; Notice of Intent To Prepare an Environmental Impact Statement

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service will prepare a General Management Plan/Environmental Impact Statement (GMP/EIS) for Lava Beds National Monument, California and initiate the scoping process for this document. This notice is in accordance with 40 CFR 1501.7 and 40 CFR 1508.22, of the regulations of the President's Council on Environmental Quality for the National Environmental Policy Act of 1969, Public Law 91–190.

BACKGROUND: The purpose of the GMP/EIS will be to state the management philosophy for the monument and provide strategies for addressing major issues facing the monument consistent with management objectives. Two types of strategies will be presented in the GMP: (1) Those required to properly manage cultural and natural resources; and (2) those required to provide for safe, accessible and appropriate use of those resources. Based on these strategies, the GMP will identify the programs, actions and support facilities needed for their implementation.

Persons wishing to comment or express concerns on the management issues and future management direction of Lava Beds National Monument should address these to the Superintendent, Lava Beds National Monument, P.O. Box 867, Tule Lake, CA 96134. The public scoping sessions will be scheduled as needed and notice given in the press. Questions regarding the plan and times of scoping sessions should be addressed to the superintendent either by mail to the above address, or by telephone at (916) 667–2282. Comment on the scoping of the proposed GMP/EIS should be received no later than December 15, 1993.

Public scoping sessions will be scheduled as needed and notice given in the press.

The responsible official is Stanley T. Albright, Regional Director, Western Region, National Park Service. The draft GMP/EIS is expected to be available for public review in mid-summer 1994, and the final GMP/EIS and Record of Decision completed in the spring of 1995.

Dated: October 1, 1993.

Stanley T. Albright,

Regional Director, Western Region.

[FR Doc. 93–25489 Filed 10–15–93; 8:45 am]

BILLING CODE 4310–70–P

Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission; Notice of Meetings

Notice is hereby given in accordance with the Federal Advisory Committee Act that meetings of the Golden Gate National Recreation Area (GGNRA) Advisory Commission will be held between October 21 and December 11, 1993 on the National Park Service Draft General Management Plan Amendment for the Presidio of San Francisco. The Advisory Commission was established by Public Law 92–589 to provide for the free exchange of ideas between the National Park Service and the public and to facilitate the solicitation of advice or other counsel from members of the public on problems pertinent to the National Park Service systems in Marin, San Francisco and San Mateo Counties.

A public meeting will be held on Thursday, October 21, 1993 at 7:30 p.m. at Cowell Theater, Fort Mason Center, Pier 2, Marina and Buchanan Streets in San Francisco, at which the National Park Service will present the Draft General Management Plan Amendment and Environmental Impact Statement for the Presidio. The presentation will include a description of the main elements of the National Park Service proposal for the future of the Presidio, and a description of the main features of the draft Environmental Impact Statement. In addition, an implementation document focusing on the economic and management aspects of the Presidio conversion, and a transportation planning summary will be also be described.

Other agenda items for the October 21, 1993, meeting include a public discussion of Army reuse proposals for the Presidio, and a briefing on several other issues of public concern affecting the Golden Gate National Recreation Area.

In November and December, the Advisory Commission will hold public hearings at five locations in the Bay Area to hear comments on issues and concerns relating to the Draft General Management Plan for the Presidio, and the accompanying draft EIS. The public is invited to provide comment at one of the locations listed below. The comment period on the Draft Plan will end on December 21, 1993.

Presidio General Management Plan Amendment/EIS Public Comment Meetings

San Francisco: Saturday, November 20, 9:30 a.m., at Roosevelt Middle School, 460 Arguello, Arguello at Geary Blvd., San Francisco;

Marin County: Tuesday, November 23, 7:30 p.m. at Board of Supervisors Chambers, room 322, Marin Civic Center, San Rafael;

Peninsula and South Bay: Tuesday, November 30, 7:30 p.m. at Palo Alto City Council Chambers, Palo Alto City Hall, 250 Hamilton Avenue, 1st Floor, Palo Alto (near Palo Alto CalTrain station);

East Bay: Thursday, December 2, 7:30 p.m. at the BART Board Room, 800 Madison St., Lake Merritt BART Station, Oakland;

San Francisco: Saturday, December 11, 9:30 a.m. at Marina Middle School, 3500 Fillmore, Corner of Chestnut St. and Fillmore St., San Francisco.

For purposes of public record keeping, these meetings will collectively constitute a single meeting. At each location a brief presentation of the Draft General Management Plan for the Presidio will be provided, followed by public comments. Public comments will be limited to three minutes per speaker, but written comments of any length will be accepted.

These public meetings are opened to all environmental, neighborhood, and community groups and individuals wishing to be involved in the planning process for the Presidio of San Francisco as a national park.

A profile summary of the draft General Management Plan Amendment will be mailed to those who have previously expressed interest in the Presidio planning process. Copies of the summary and other Presidio planning document can be obtained by writing to Presidio Information Center, P.O. Box 29022, Presidio of San Francisco, California 94129.

These meetings will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after approval by the full Advisory Commission. A transcript will be available after December 31, 1993. For copies of the minutes, contact the Staff Assistant, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123.

Dated: October 1, 1993.

Lewis S. Albert,

Acting Regional Director, Western Region.

[FR Doc. 93–25487 Filed 10–15–93; 8:45 am]

BILLING CODE 4310–70–P

National Capital Region, Public Affairs; Notice of Public Meeting

The National Park Service is seeking public comments and suggestions on the planning of the 1993 Christmas Pageant of Peace, which opens December 9 on the Ellipse, south of the White House.

A public meeting will be held at the Park Service's National Capital Region Building in East Potomac Park at 1100 Ohio Drive, SW., Room 234, at 10 a.m., October 22, 1993.

Persons who would like to comment at the meeting should notify the National Park Service by October 15, by calling the Office of Public Affairs between 9 a.m. and 4 p.m., weekdays at (202) 619–7225. Persons who cannot attend the meeting may send written comments to Regional Director, National Capital Region, 1100 Ohio Drive, SW., Washington, DC 20242. Written comments will be accepted until November 5, 1993.

Dated: October 5, 1993.

Robert Stanton,

Regional Director, National Capital Region.

[FR Doc. 93–25459 Filed 10–15–93; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–624 (Final)]

Certain Helical Spring Lockwashers From the People's Republic of China

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is materially injured or threatened with material injury by reason of imports from the People's Republic of China of certain helical spring lockwashers, provided for in subheading 7318.21.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).[2]

Background

The Commission instituted this investigation effective April 27, 1993, following a preliminary determination by the Department of Commerce that imports of certain helical spring

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Chairman Newquist, Commissioner Rohr, and Commissioner Nuzum determine that an industry in the United States is threatened with material injury; Commissioner Brunsdale and Commissioner Crawford determine that an industry in the United States is materially injured; and Vice Chairman Watson dissents.

lockwashers from the People's Republic of China were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of May 3, 1993 (58 FR 26347). The hearing was held in Washington, DC, on May 13, 1993, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on October 8, 1993. The views of the Commission are contained in USITC Publication 2684 (October 1993), entitled "Certain Helical Spring Lockwashers From the People's Republic of China: Investigation No. 731–TA–624 (Final)."

Issued: October 12, 1993.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–25416 Filed 10–15–93; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 731–TA–615 (Final)]

Portable Electric Typewriters From Singapore

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from Singapore of portable electric typewriters, provided for in subheadings 8469.10.00 and 8469.21.00 of the Harmonized Tariff Schedule of the United States,[3] that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective February 8, 1993, following a preliminary determination by the Department of Commerce that imports of portable electric typewriters from Singapore were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of March 25, 1993 (58 F.R. 16205). The hearing was held in Washington, DC, on June 25, 1993, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on September 24, 1993. The views of the Commission are contained in USITC Publication 2681 (September 1993), entitled "Portable Electric Typewriters from Singapore: Investigation No. 731–TA–515 (Final)."

Issued: October 12, 1993.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–25452 Filed 10–15–93; 8:45 am]

BILLING CODE 7020–02–P

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[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Chairman Newquist and Vice-Chairman Watson dissenting.

[3] For purposes of this investigation, portable electric typewriters are defined as machines that produce letters and characters in sequence directly on a piece of paper or other media from a keyboard input and meeting the following criteria. They must (1) be easily portable, with a handle and/or carrying case, or similar mechanism to facilitate their portability; (2) be electric, regardless of source of power; (3) be comprised of a single, integrated unit (e.g., not in two or more pieces); (4) have a keyboard embedded in the chassis or frame of the machine; (5) have a built-in printer; (6) have a platen (roller) to accommodate paper; and (7) only accommodate their own dedicated or captive software, if any.

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32365]

Decatur Junction Railway Co.—Lease and Operation Exemption—Lines in Illinois

Decatur Junction Railway Co. (Decatur), a noncarrier, has filed a notice of exemption to lease and operate: (1) approximately 17 miles of rail line between milepost A 728.00 at Assumption, IL and milepost A 745.54 near Elwin, IL, owned by Central Illinois Shippers, Inc.; and (2) approximately 13 miles of rail line between milepost 14.22 at Cisco, IL and milepost 27.63 at Green's Switch, IL, owned by Cisco Cooperative Grain Company.[1] Decatur has acquired incidental trackage rights over lines of the Illinois Central Railroad between Decatur, IL and Elwin, IL, and between Decatur, IL and Green's Switch, IL, in order to connect the two lines. The parties expected to consummate the proposed transaction on or after October 3, 1993.

This transaction is related to a notice of exemption concurrently filed in Finance Docket No. 32367, Pioneer Railcorp.—Continuance in Control Exemption—Decatur Junction Railway Co., in which Pioneer Railcorp. (Pioneer) seeks to continue in control of Decatur and six other class III railroads upon Decatur becoming a class III rail carrier.[2]

Any comments must be filed with the Commission and served on: Robert J. Calhoun, Sullivan & Worcester, suite 1000, 1025 Connecticut Avenue, NW., Washington, DC 20036.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: October 6, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–25500 Filed 10–15–93; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 32367]

Pioneer Railcorp.—Continuance in Control Exemption—Decatur Junction Railway Co.

Pioneer Railcorp. (Pioneer), a noncarrier holding company, has filed a notice of exemption to continue in control of Decatur Junction Railway Co. (Decatur), upon Decatur becoming a class III shortline rail carrier.

Decatur, a noncarrier, has concurrently filed a notice of exemption in Finance Docket No. 32365, Decatur Junction Railway Co.—Lease and Operation Exemption—Lines in Illinois, to operate under lease approximately 17

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[1] These lines are presently being operated under contract by Indiana Hi-Rail Corporation (Indiana Hi-Rail). Decatur will commence operations in place of Indiana Hi-Rail without any break in service.

[2] Pioneer, a non-carrier holding company, owns 100 percent of the stock of Decatur. Pioneer also owns and controls the following nonconnecting shortline rail carriers: Wabash & Grand River Railway Co., Alabama Railroad Co., Fort Smith Railroad Co., Natchez Trace Railroad, West Jersey Railroad Co., and Alabama & Florida Railway Co. Control by Pioneer of these rail carriers was previously exempted in Finance Docket Nos. 31622, 31894, 31944, 32046, and 32178.

miles of rail line owned by Central Illinois Shippers, Inc. and approximately 13 miles of rail line owned by Cisco Cooperative Grain Company, in the State of Illinois. Decatur has acquired incidental trackage rights over rail lines owned by Illinois Central Railroad in order to connect the two lines being leased and operated. Decatur expects that transaction to be consummated on or after October 3, 1993.

Pioneer owns and controls six other nonconnecting class III rail carriers: West Jersey Railroad Co., operating in New Jersey; Wabash & Grand River Railway Co., operating in Missouri; Fort Smith Railroad Co., operating in Arkansas; Alabama Railroad Co., operating in Alabama; Natchez Trace Railroad, operating in Mississippi and Tennessee; and Alabama & Florida Railway Co., operating in Alabama.

Pioneer states that: (1) the properties operated by these seven carriers do not connect with each other; (2) the continuance in control is not a part of a series of anticipated transactions that would connect the seven railroads with each other or any railroad in their corporate family; and (3) the transaction does not involve a class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11343. See 49 CFR 1180.2(d)(2).

As a condition to use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in New York Dock Ry.—Control—Brooklyn Eastern Dist., 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on: Robert J. Calhoun, Sullivan & Worcester, suite 1000, 1025 Connecticut Avenue, NW., Washington, DC 20036.

Decided: October 6, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–25501 Filed 10–15–93; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree in United States v. General Foods Corp., et al.

In accordance with Department policy, notice is hereby given that on October 1, 1993, a proposed Consent Decree in *United States* v. *General Foods Corp., et al.*, was lodged in the United States District Court for the Western District of Michigan. Civil Action No. 1:90–CV–397.

The Complaint in this enforcement action was filed in May 1990 pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9607, for recovery of response costs incurred by the United States in responding to hazardous substances at the Verona Well Field site in Battle Creek, Michigan. Under the terms of the proposed Consent Decree, the settling defendants will pay the United States $5.2 million of the approximately $6.6 million in unreimbursed response costs.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, U.S. Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *General Foods Corp., et al.*, DOJ Ref. #90–11–3–626.

The proposed Consent Decree may be examined at the office of the United States Attorney, Western District of Michigan, 399 Federal Building, 110 Michigan, NW., Grand Rapids, Michigan, and at the offices of the U.S. Environmental Protection Agency, Region V, 77 West Jackson Blvd., Chicago, Illinois. Copies of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. In requesting a copy, please enclose a check in the amount of $6.25 (25 cents per page reproduction costs), payable to the "Consent Decree Library."

Lois J. Schiffer,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 93–25128 Filed 10–15–93; 8:45 am]

BILLING CODE 4410–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Change in Program Panel Meeting

AGENCY: National Endowment for the Humanities, NFAH.

The meeting of the Humanities Panel scheduled for October 28–29, 1993 and published in the **Federal Register** on September 28, 1993, at page 50572 has been changed to October 29, 1993. The meeting will review applications submitted to Humanities Projects in Media Program for the September 10, 1993 deadline.

David C. Fisher,

Advisory Committee, Management Officer.

[FR Doc. 93–25415 Filed 10–15–93; 8:45 am]

BILLING CODE 7536–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting of the Subcommittee on Thermal Hydraulic Phenomena

The ACRS Subcommittee on Thermal Hydraulic Phenomena will hold a meeting on October 28, 1993, in room P–110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance, with the exception of portions that may be closed to discuss information deemed proprietary to the Westinghouse Electric Corporation (5 U.S.C. 552b(c)(4)).

The agenda for the subject meeting shall be as follows:

Thursday, October 28, 1993–8:30 a.m. until the conclusion of business.

The Subcommittee will review selected aspects of the NRC–RES–sponsored ROSA–V confirmatory test program being developed in support of the Westinghouse AP600 passive plant design certification effort. Specific review topics will include: Facility design modifications and additions, the test matrix, and instrumentation and controls. Also, the Subcommittee will discuss the status of the RES contract with Purdue University to perform integral thermal-hydraulic testing in support of the GE SBWR passive plant design. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be

present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff and its contractors, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Mr. Paul Boehnert (telephone 301/492–8558) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual five days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: October 8, 1993.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 93–25444 Filed 10–15–93; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–33035; File No. SR–Amex–93–25]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc.; Relating to the Listing and Trading of Options on the North American Telecommunications Index

October 8, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 8, 1993, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I,.II, and III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to trade standardized index options on the North American Telecommunications Index ("Index"), a new index developed by the Amex based on telecommunications industry stocks or American Depositary Receipts ("ADRs") thereon, which are traded on the Amex, New York Stock Exchange, Inc. ("NYSE"), or through the National Market System of the National Association of Securities Dealers, Inc. ("NASD") Automated Quotation ("NASDAQ") system ("NASDAQ/NMS"). In addition, the Amex proposes to amend Commentary .01 to Exchange Rule 901C to reflect that 90% of the Index's numerical index value will be accounted for by stocks that meet the current criteria and guidelines set forth in Exchange Rule 915. The text of the proposed rule change is available at the Office of the Secretary, Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The Amex has developed a new industry-specific index called The North American Telecommunications Index, based entirely on shares of widely held telecommunications industry stocks or ADRs which are exchange or NASDAQ/NMS listed.[1] The Exchange intends to trade option contracts on this newly developed Index.

The Index contains the stocks of highly-capitalized companies in the North American telecommunications industry. Included in this group are companies in the U.S., Canada and Mexico which provide telephone, long distance, cellular phone, paging, or other telecommunications related services; which supply telecommunications equipment; or which otherwise are involved in the telecommunications industry.

Index Calculation

The Index is calculated using an "equal-dollar weighting" methodology designed to ensure that each of the component securities is represented in approximately an "equal" dollar amount in the Index. This method of calculation is important since even among the largest companies in the telecommunications industry there is a great disparity in market value. For example, although the stocks included in the Index represent many of the most highly capitalized companies in the telecommunications industry, AT&T currently represents over 24% of the aggregate market value of the Index. It has been the Exchange's experience that options on market value weighted indexes dominated by one component stock are less useful to investors, since the index will tend to represent the one component and not the industry as a whole.

The following is a description of how the equal-dollar weighted calculation method works. As of the market close on January 18, 1993, a portfolio of telecommunications stocks was established representing an investment of $66,667 in the stock (rounded to the nearest whole share) of each of the companies in the Index. The value of the Index equals the current market value (*i.e.*, based on U.S. primary market share) of the sum of the assigned number of shares of each of the stocks in the Index portfolio divided by the Index divisor. The Index divisor was initially determined to yield the benchmark value of 300.00 at the close of trading on January 18, 1993. each quarter thereafter, following the close of trading on the third Friday of January, April, July, and October, the Index portfolio will be adjusted by changing the number of whole shares of each component stock so that each company is again represented in "equal" dollar amounts. The Exchange has chosen to rebalance the Index following the close of trading on the quarterly expiration cycle because it allows an option contract to be held for up to three months without a change in the Index portfolio while at the same time, maintaining the equal-dollar weighting feature of the Index. If necessary, a divisor adjustment is made when the rebalancing occurs to ensure continuity of the Index's value. The newly adjusted portfolio then becomes the basis for the Index's value on the first trading day following the quarterly adjustment.

The Amex has had experience making regular quarterly adjustments to a

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[1] The current component securities of the Index are stocks or ADRs of Ameritech Corp. ALLTEL Corp., BCE Inc., Bell Atlantic Corp., BellSouth Corp., Sprint Corp., GTE Corp., MCI Communications Corp., Northern Telecom Ltd., NYNEX Corp., Pacific Telesis Group, Southwestern Bell Corp., American Telephone and Telegraph Corp., Telefonos De Mexico (ADR), and US West Inc.

number of its indexes (such as the Biotechnology and Retail Indexes) and has not encountered investor confusion regarding the adjustments, since they are done on a regular and timely basis, with adequate notice given. An information circular is distributed to all Exchange members notifying them of the quarterly changes. This circular is also sent by facsimile to the Exchange's contacts at the major options firms, mailed to recipients of the Exchange's options related information circulars, and made available to subscribers of the Options News Network. In addition, the Exchange will include in its promotional and marketing materials for the Index a description of the equal-dollar weighting methodology. This procedure has been used effectively for the Biotechnology Index, another equal-dollar weighted index on which options trade on the Exchange.

As noted above, the number of shares of each component stock in the Index portfolio remain fixed between quarterly reviews except in the event of certain types of corporate actions such as the payment of a dividend (other than an ordinary cash dividend), stock distribution, stock split, reverse stock split, rights offering, distribution, reorganization, recapitalization, or similar event with respect to the component stocks. In a merger or consolidation of an issuer of a component stock, if the stock remains in the Index, the number of shares of that security in the portfolio may be adjusted, to the nearest whole share, to maintain the component's relative weight in the Index at the level immediately prior to the merger or consolidation. In the event of a stock replacement, the average dollar value of the remaining portfolio components will be calculated and that amount invested in the stock of the new component, to the nearest whole share. In all cases, the divisor will be adjusted, if necessary, to ensure Index continuity.

The Amex will calculate and maintain the Index, and pursuant to Exchange Rule 901C(b) may at any time or from time to time substitute stocks, or adjust the number of stocks included in the Index, based on changing conditions in the North American telecommunications industry. However, in the event the Exchange determines to increase the number of Index component stocks to greater than twenty or reduce the number of component stocks to fewer than ten, the Exchange will give prior written notice to the Commission. In selecting securities to be included in the Index, the Exchange will be guided by a number of factors including market value of outstanding shares and trading activity. The eligibility standards for Index components are described below.

Similar to other stock index values published by the Exchange, the value of the Index will be calculated continuously and disseminated every 15 seconds over the Consolidated Tape Association's Network B.

Expiration and Settlement

The proposed options on the Index will be European-style [2] and cash-settled. The Exchange's standard option trading hours from 9:30 a.m. to 4:10 p.m. (New York time) will apply. The options on The North American Telecommunications Index will expire on the Saturday ("Expiration Saturday") following the third Friday of the expiration month. The last trading day in an expiring series will normally be the second to last business day preceding Expiration Saturday (normally a Thursday), with trading to cease at the close of business on such day.

The Exchange plans to list options series with expirations in the three near-term calendar months and in the two additional calendar months in the January cycle. In addition, the Exchange proposes to list longer term option series having up to thirty-six months to expiration. In lieu of such long-term options on a full-value Index level, the Exchange also proposes to have the option of listing long-term, reduced-value put and call options based on one-tenth (1/10th) the Index's full value. In either event, the interval between expiration months for either a full-value or reduced-value long-term option would not be less than six months. The trading of any long-term options would be subject to the same rules which govern the trading of all the Exchange's index options, including sales practice rules, margin requirements and floor trading procedures and all options will have European-style exercise. Position limits on reduced-value long-term North American Telecommunications Index options would be ten times the position limits for regular (full value) Index options and would be aggregated on a ten for one basis with such options (for example, if the position limit for full value options is 8,000 contracts on the same side of the market, then the position limit for the reduced-value options will be 80,000 contracts on the same side of the market).

The Index value for purposes of settling the North American Telecommunications Index option will be calculated based upon the opening prices of the component securities pursuant to the normal opening procedures of the primary exchange where the securities are traded on the Friday before Expiration Saturday. In the case of securities traded through the NASDAQ system, the first reported sale price on the Friday before Expiration Saturday will be used. As trading begins in each of the Index's component securities, its opening sale price is captured for use in the calculation. Once all of the component stocks have opened, the Index settlement value is then determined. If any of the component stocks do not open for trading on the last trading day before Expiration Saturday, then the prior day's last sale price is used in the calculation.

Eligibility Standards for Index Components

Amex Rule 901C specifies the criteria for inclusion of stocks in an index on which options will be traded on the Exchange. In choosing among North America telecommunications industry stocks that meet the minimum criteria set forth in Rule 901C, the Exchange will focus only on stocks that are traded on either the NYSE, Amex (subject to the limitations of Rule 901C) or NASDAQ/NMS. In addition, the Exchange intends to select stocks that:

(1) Have a minimum market value (in U.S. dollars) of at least $75 million,[3] and

(2) Have an average monthly trading volume in U.S. markets over the previous six month period of not less than one million shares (or ADRs).

The Index currently has fifteen component securities (all fifteen of which are eligible for standardized options trading with fourteen of the fifteen currently the subject of standardized options trading).[4] However, to address concerns about the possibility of manipulation of an index containing a large percentage of stocks that do not meet the eligibility standards applicable to stocks eligible for standardized options trading, at each quarterly rebalancing, stocks that meet the then current criteria for standardized option trading set forth in Exchange Rule 915 will be required to account for at least 90% of the North American Telecommunications Index's numerical index value, and this

[2] European-style options can only be exercised during a specified period before the options expire.

[3] In the case of ADRs, this represents market value as measured by total world-wide shares outstanding.

[4] See supra note 1.

requirement will be reflected in Commentary .01 to Exchange Rule 901C.

Amex Rules Applicable to Stock Index Options

Amex Rules 900C through 980C will apply to the trading of option contracts based on the Index. These Rules cover issues such as surveillance, exercise prices, and position limits. Surveillance procedures currently used to monitor trading in each of the Exchange's other index options will also be used to monitor trading in options on the Index. The Exchange believes that the Index is deemed to be a Stock Index Option under Amex Rule 901C(a) and a Stock Index Industry Group under Amex Rule 900C(b)(1). With respect to Exchange Rule 903C(b), the Exchange proposed to list near-the-money (*i.e.*, within ten points above or below the current index value) options series on the Index at 2½ point strike (exercise) price intervals when the value of the Index is below 200 points. In addition, the Exchange expects that the review required by Exchange Rule 904C(c) will result in a position limit of 8,000 contracts with respect to options on this Index.

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and section 6(b)(5), in particular, in that it is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Amex believes that the proposed rule change will not impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File Number SR–AMEX–93–25 and should be submitted by November 8, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–25454 Filed 10–15–93; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–33037; International Series Release No. 590; File No. SR–NASD–93–50]

Self-Regulatory Organizations; National Association of Securities Dealers; Order Granting Accelerated Approval to Proposed Rule Change and Amendment No. 1 Thereto Relating to an Extension of the Nasdaq International Service Pilot Program

October 8, 1993.

I. Introduction

On September 1, 1993 the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1).[1] The proposed rule change would extend the Nasdaq International Service Pilot Program for two additional years, terminating October 11, 1995.

Notice of the filing of this proposal appeared in the **Federal Register** on September 17, 1993.[2] No comment letters were received. For the reasons discussed below, the Commission has determined to grant accelerated approval of the proposal.

II. Background

The existing pilot operation was authorized by the Commission's approval of File No. SR–NASD–90–33 on October 11, 1991;[3] the Service itself was launched on January 20, 1992. The Service supports an early trading session running from 3:30 a.m. to 9 a.m. E.T. on each U.S. business day ("European Session") that overlaps the business hours of the London financial markets. Participation in the Service is voluntary and is open to any authorized NASD member firm or its approved broker-dealer affiliate in the U.K. A member participates as a Service market maker either by staffing its trading facilities in the U.S. or the facilities of its approved affiliate during the European Session. At present, the universe of Service market makers consists of three approved affiliates of NASD members that quote continuous markets in various Nasdaq National Market securities during the European Session.

III. Description

The NASD is proposing to extend the pilot term, which expires on October 11, 1993, for two more years. During this period, the NASD plans to reevaluate the Service's operation and consider possible enhancements to broaden market maker participation. For example, the NASD will provide the variable opening feature—which enables a Service market maker to participate during specified segments rather than the entire European Session—in conjunction with implementing the new technology being developed for the Nasdaq Stock Market.[4] It is anticipated that this will occur during the second half of 1995.

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[5] 17 CFR 200.30(a)(12) (1992).

[1] On September 2, 1993, the NASD submitted Amendment No. 1 to the proposed rule change explaining the deferred implementation of the variable opening feature of the Service. *See infra* note 5 and accompanying text.

[2] Securities Exchange Act Release No. 32860 (September 10, 1993), 58 FR 48685.

[3] Securities Exchange Act Release No. 29812 (October 11, 1991), 56 FR 52082 ("initial approval order").

[4] The variable opening feature was approved in Securities Exchange Act Release No. 32471 (June 16, 1993), 58 FR 32471.

However, the NASD has not implemented this feature to date. The changes has been incorporated in the development of the technology migration for the Nasdaq Stock Market which encompasses a new communications network and hardware platform as well as the next generation of the Nasdaq workstation PC.[5]

IV. Discussion

The Commission believes that the proposed rule change is consistent with sections 11A(a)(1) (B) and (C) and 15A(b)(6) of the Act. Subsections (B) and (C) of section 11A(a)(1) set forth the Congressional goals of achieving more efficient and effective market operations, broader availability of information with respect to quotations for securities, and the execution of investor orders in the best market through the use of advanced data processing and communications techniques. Section 15A(b)(6) requires, among other things, that the NASD rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, and to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities.

The Commission continues to view the Service as a significant experiment in expanding potential opportunities for international trading via systems operated by the Nasdaq Stock Market, Inc. Accordingly, the Commission believes that this pilot operation warrants an extension to permit possible enhancements that will increase the Service's utility to the investment community.[6]

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof. The Commission believes that accelerated approval is appropriate to ensure the continuous operation of the Service, which is set to expire on October 11, 1993.

V. Conclusion

In view of the above, the Commission has concluded that the proposed rule change is consistent with sections 11A(a)(1) (B) and (C) and 15A(b)(6) of the Act and that it is appropriate to approve on an accelerated basis the two year extension of the Nasdaq International Service, terminating October 11, 1995.

It is therefore *Ordered*, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–25456 Filed 10–15–93; 8:45 am]

BILLING CODE 8010–01–M

[5] *See supra* note 1.

[6] The NASD continues to be responsible for supplying the Commission with the statistical reports prescribed in the initial approval order at six month intervals. The supporting documentation, however, is no longer required, unless otherwise requested by the Commission.

[Release No. IC–19778; 812–8512]

Comstock Partners Strategy Fund, Inc., et al.; Notice of Application

October 12, 1993.

AGENCY: Securities and Exchange Commission (the "SEC" or "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Comstock Partners Strategy Fund, Inc., Comstock Partners, Inc., and Dreyfus Service Corporation.

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) of the Act from sections 18(f), 18(g), 18(i) of the Act.

SUMMARY OF APPLICATION: Applicants seek an order that would amend a prior order permitting the Fund to issue two classes of shares by modifying a condition.

FILING DATE: The application was filed on June 29, 1993 and amended on September 24, 1993. Applicants have agreed to file an additional amendment, the substance of which is incorporated herein, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders of hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 8, 1993, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request and the issues contested. Persons may request notification of hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, 45 Broadway, New York, New York 10006.

FOR FURTHER INFORMATION CONTACT: Fran M. Pollack-Matz, Senior Attorney, at (202) 504–2801 or Robert A. Robertson, Branch Chief, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Comstock Partners Strategy Fund, Inc. (the "Fund") originally commenced operations in May of 1988 as a non-diversified closed-end management investment company. At a special meeting of shareholders held on June 14, 1991, a majority of the Fund's outstanding shares voted to approve the conversion of the Fund to an open-end investment company. The Fund was converted to an open-end investment company on August 1, 1991.

2. Comstock Partners, Inc. (the "Investment Adviser") is the investment adviser for the Fund, and The Dreyfus Corporation is the sub-investment adviser for the Fund. Princeton Administrators is the administrator for the Fund, and Dreyfus Service Corporation (the "Distributor") serves as distributor of the Fund.

3. Pursuant to a previous SEC order (Investment Company Act Release No. 18828 (July 1, 1992)) (the "Order"), applicants created two classes of shares, Class A and Class O.[1] The Class A and Class O Shares are identical in all material respects, except that Class A shares are subject to the Fund's account maintenance plan established under rule 12b–1 ("Account Maintenance Plan"), and only the Class A Shares have voting rights with respect to matters pertaining to the Plan. Class O Shares are no longer issued by the Fund except in connection with the reinvestment of dividends and distributions on outstanding Class O Shares.

4. One of the Order's conditions provided that the information provided by the Fund for publication in any newspaper or similar listing of the Fund's net asset value of public offering price would present only information for the Class A shares and not the Class

[1] In the Order, the new class was referred to as Class B Shares and the original class was referred to as Class A Shares. Subsequent to the Order, the names of the classes were changed to Class A and Class O Shares, respectively. Any references herein to the specific classes will be to their current names.

O shares. Applicants believe that newspaper and similar listings of mutual fund information serve, among other things, to provide existing shareholders with valuable price and other information in order to make redemption and dividend reinvestment decisions. The condition has made it difficult for shareholders of the Class O shares to readily monitor their investments. In addition, because newspapers obtain information relating to quoted prices of securities and funds for publication from a central National Association of Securities Dealers Automated Quotation ("NASDAQ") database, the only practical way to satisfy the condition in the Order was for the Fund to stop furnishing information on Class O to the NASDAQ database. This prevented brokers from having ready access to this information because they obtain mutual fund information from the same database. Consequently, Class O shareholders were unable to obtain information on their shares from their brokers.

Applicants' Legal Analysis

Applicants request an exemptive order under section 6(c) of the Act that will amend the Order to eliminate the portion of condition 10 thereof that provides that the information provided by applicants for publication in any newspaper or similar listing of the Fund's net asset value or public offering price will present only information for the Class A shares. Applicants state that if the existing condition is modified, there should be no more potential shareholder confusion than is the case with any fund that publishes information with respect to multiple classes.

Applicants' Conditions

Applicants agree that the order of the SEC granting the requested relief shall be subject to the following conditions: [2]

1. Class O Shares and Class A Shares will represent interests in the same portfolio of investments in the Fund and be identical in all respects except as described below. The only differences between the Class O and Class A Shares will be as follows: (a) The Class O Shares and Class A Shares would have different class designations; (b) the Class A Shares would pay all Account Maintenance Fees payable under the Account Maintenance Plan; and (c) only the beneficial holders of Class A Shares would be entitled to vote on matters pertaining to the Account Maintenance Plan.

2. The directors of the Fund, including a majority of the independent directors, will approve the proposed arrangement. The minutes of the meetings of the directors of the Fund regarding the deliberations of the directors with respect to the approvals necessary to implement the proposed arrangement will reflect in detail the reasons for the directors' determination that the proposed arrangement is in the best interest of both the Fund and its shareholders.

3. On an ongoing basis, the directors of the Fund, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor the Fund for the existence of any material conflicts between the interests of the two classes of shares. The directors, including a majority of the independent directors, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. The Investment Adviser and the Distributor will be responsible for reporting any potential or existing conflicts to the directors. If a conflict arises, the Investment Adviser and the Distributor at their own cost will remedy such conflict up to and including establishing a new registered management investment company.

4. The directors of the Fund will receive quarterly and annual statements concerning expenditures pursuant to the Account Maintenance Plan, complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale or servicing of Class A Shares will be used to justify any Account Maintenance Fees charged to the Class A Shares. Expenditures not related to the sale or servicing of Class A Shares will not be presented to the directors to justify any Account Maintenance Fees attributable to the Class A Shares. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent directors in the exercise of their fiduciary duties.

5. Dividends paid by the Fund with respect to each class of its shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day, and will be in the same amount, except that the Account Maintenance Fees relating to the Class A Shares will be borne exclusively by that class.

6. The methodology and procedures for calculating the net asset value and dividends and distributions of the two classes and the proper allocation of expenses between the two classes have been reviewed by an expert (the "Expert") who has rendered a report to the Fund, which has been provided to the staff of the Commission, that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Fund that the calculations and allocations are being made properly. The reports of the Expert shall be filed as part of the periodic reports filed with the SEC pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Expert with respect to such reports, following request by the Fund (which the Fund agrees to provide), will be available for inspection by the SEC staff upon written request to the Fund for such work papers by a senior member of the Division of Investment Management, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Expert is a "Special Purpose" report on the "Design of a System" [3] and the ongoing reports will be "reports on policies and procedures placed in operation and tests of operating effectiveness" as defined and described in SAS No. 70 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

7. The applicants have adequate facilities in place in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and distributions of the two classes of shares and the proper allocation of expenses between the two classes of shares and this representation will be concurred with by the Expert in the initial report referred to in condition 6 above and will be concurred with by the Expert, or an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in condition 6 above. The applicants will take immediate corrective measures if this representation is not concurred in by

[2] These conditions are restated and amended from the original application. Certain actions agreed to be taken in the original application were taken prior to implementation of the two classes of shares.

[3] Because SAS No. 70 of the AICPA was not in effect at the time of the preparation of the initial report of the Expert, such initial report was prepared in accordance with SAS No. 44 of the AICPA.

the Expert or appropriate substitute Expert.

8. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the directors of the Fund with respect to the proposed arrangement will be set forth in guidelines which will be furnished to the directors.

9. The Fund will disclose the respective expenses, performance data, fees, and sales loads applicable to all classes of shares in its prospectus. The Fund will disclose the respective expenses and performance data applicable to all classes of shares in every shareholder report. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to the Fund as a whole generally and not on a per class basis. The Fund's per share data, however, will be prepared on a per class basis with respect to all classes of shares of the Fund. Because Class O Shares will no longer be sold (except for the reinvestment of dividends and other distributions on Class O Shares) after the effectiveness of the N–1A Amendment if the exemptive order requested hereby is granted, any advertisement or sales literature used by the applicants relating in whole or in part to the period commencing with the sale of Class A Shares (other than the Fund's prospectus) will for such period be based upon only the expenses and/or performance data applicable to the Class A Shares. The information provided by applicants for publication in any newspaper or similar listing of the Fund's net asset value and public offering price will present each class of shares separately.

10. The applicants acknowledge that the grant of the requested exemptive order does not imply Commission approval, authorization, or acquiescence in any particular level of payments that the Fund may make pursuant to the Account Maintenance Plan in reliance on this exemptive order.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–25453 Filed 10–15–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19777; 811–4903]

Shearson Lehman Brothers Multiple Opportunities Portfolio L.P.; Notice of Application for Deregistration

October 12, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Shearson Lehman Brothers Multiple Opportunities Portfolio L.P.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on July 7, 1993 and an amendment thereto was filed on September 15, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 8, 1993, and should be accompanied by proof of service on applicant, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, Two World Trade Center, New York, New York 10048.

FOR FURTHER INFORMATION CONTACT: Joseph G. Mari, Senior Special Counsel, (202) 272–3030, or Barry D. Miller, Senior Special Counsel, (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end, non-diversified, management investment company formed as a limited partnership under Delaware law. On November 17, 1986, applicant registered as an investment company under the Act and filed a registration statement pursuant to section 8(b) of the Act. On that same date, applicant filed a registration statement pursuant to the Securities Act of 1933 registering an indefinite number of shares of partnership interest. Applicant's registration statement became effective on January 30, 1987 and applicant's initial public offering of its shares commenced shortly thereafter.

2. On January 7, 1992, the individual general partners of applicant, including the individual general partners who are not interested persons, unanimously approved an Agreement and Plan of Reorganization (the "Plan") providing for the transfer, on May 1, 1992, of all or substantially all the assets of applicant to Strategic Investors Portfolio ("Portfolio"), a portfolio of Shearson Lehman Brothers Equity Portfolio, in exchange for shares of the Portfolio. Portfolio is an affiliated management investment company organized as a Massachusetts business trust. The Plan also provided for the assumption by the Portfolio of certain stated liabilities of applicant. Applicant's reorganization with the Portfolio was effected pursuant to rule 17a–8 under the Act.

3. The individual general partners also approved the elimination of the contingent deferred sales charge and approved an exchange privilege with the following funds: Shearson Lehman Brothers Aggressive Growth Fund, Shearson Lehman Brothers Appreciation Fund, Shearson Lehman Brothers Fundamental Value Fund, Shearson Lehman Brothers Global Opportunities Fund, Shearson Lehman Brothers Small Capitalization Fund, Shearson Lehman Brothers 1990s Fund, and the Advisors Fund L.P. Additionally, the boards of each of the foregoing funds agreed to waive any applicable sales charges. In accordance with rule 22d–1, each of the foregoing funds printed a supplement to its prospectus which described the terms of the exchange privilege.

4. On or about March 25, 1992, proxy materials relating to the Plan were mailed to applicant's shareholders. On April 30, 1992, a majority of the shareholders of applicant approved the Plan.

5. On May 1, 1992, pursuant to the Plan, applicant transferred all, or substantially all, of its assets and certain of its identified liabilities to the Portfolio, in exchange for shares of the Portfolio and the assumption by the Portfolio of certain stated liabilities of applicant. Immediately thereafter, applicant liquidated and distributed *pro rata* to its shareholders of record on May 1, 1992, the shares it received from the Portfolio under the Plan. Each shareholder of applicant became a

shareholder of the Portfolio receiving shares of Portfolio having an aggregate net asset value equal to the aggregate net asset value of the shareholder's investment in applicant.

6. As of April 30, 1992, there were 457,773.237 shares of partnership interest of applicant outstanding, having a net asset value of $27,244,608 and a per share net asset value of $59.52. There are no other classes of securities of applicant outstanding. As of May 1, 1992, there were no shares of partnership interest outstanding.

7. Expenses related to the reorganization, consisting of accounting, printing, administrative and certain legal expenses, amounted to approximately $15,400. Applicant and Portfolio each bore $7,700 of those expenses.

8. To effect the dissolution of applicant as a Delaware limited partnership, a Certificate of Cancellation of Certificate of Limited Partnership will be filed on behalf of applicant with the Delaware Secretary of State.

9. At the time of filing the application, applicant had no assets or liabilities. Applicant has no shareholders and is not a party to any litigation or administrative proceeding. Applicant is not engaged in, and does not propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–25455 Filed 10–15–93; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2662, Amendment #8]

Illinois; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended to give notice that, effective October 1, 1993, the incident period has been reopened for Alexander, Calhoun, Greene, Jackson, Jersey, Madison, Monroe, Morgan, Randolph, Scott, St. Clair, and Union Counties in the State of Illinois. The incident period for these counties is April 13, 1993 and continuing.

All other information remains the same, i.e., the termination date for filing applications for physical damage is November 15, 1993 and for economic injury the deadline is April 11, 1994.

The economic injury number for Illinois is 793200.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 5, 1993.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 93–25442 Filed 10–15–93; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2679]

Indiana; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended, effective September 24, 1993, to include Morgan County in the State of Indiana as a disaster area as a result of damages caused by severe storms and flooding August 16–17, 1993.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Brown, Johnson, Marion, and Monroe in Indiana may be filed until the specified date at the previously designated location.

Any counties contiguous to the above-named primary county and not listed herein have been previously declared.

All other information remains the same, i.e., the termination date for filing applications for physical damage is November 9, 1993 and for economic injury the deadline is June 10, 1994.

The economic injury number for Indiana is 804600.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 5, 1993.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 93–25441 Filed 10–15–93; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2685]

Oregon; Declaration of Disaster Loan Area

Klamath County and the contiguous counties of Deschutes, Douglas, Jackson, Lake, and Lane in the State of Oregon constitute a disaster area as a result of damages caused by an earthquake which occurred on September 20, 1993. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on December 6, 1993 and for economic injury until the close of business on July 6, 1993 at the address listed below: U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853–4795, or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.625
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 268502 and for economic injury the number is 806900.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 6, 1993.

Erskine B. Bowles,

Administrator.

[FR Doc. 93–25439 Filed 10–15–93; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area # 2686]

Texas; Declaration of Disaster Loan Area

Johnson County and the contiguous counties of Bosque, Ellis, Hill, Hood, Parker, Somervell, and Tarrant in the State of Texas constitute a disaster area as a result of damages caused by a tornado which occurred on September 13, 1993 in the City of Cleburne. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on December 6, 1993 and for economic injury until the close of business on July 6, 1994 at the address listed below: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Ft. Worth, TX 76155, or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.625

	Percent
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 268612 and for economic injury the number is 807000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 6, 1993.

Erskine B. Bowles,

Administrator.

[FR Doc. 93–25440 Filed 10–15–93; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

October 8, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Office of Thrift Supervision

OMB Number: 1550–0005.

Form Number: OTS Forms 138, 138E, 138F, and 1393.

Type of Review: Extension.

Title: Application for Permission to Organize a Federal Association.

Description: The information provided by OTS Form No. 138, 138E and 138F is evaluated by the OTS to determine whether requests by organizing groups for permission to establish a new Federal association comply with applicable Federal laws and OTS regulations and policies.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 10.

Estimated Burden Hours Per Respondent: 145 hours, 6 minutes.

Frequency of Response: Other (One-time basis only).

Estimated Total Reporting Burden: 1,451 hours.

Clearance Officer: Colleen Devine (202) 906–6025, Office of Thrift Supervision, 2nd Floor, 1700 G. Street, NW., Washington, DC 20552.

OMB Reviewer: Gary Waxman (202) 395–7340, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 93–25457 Filed 10–15–93; 8:45 am]

BILLING CODE 4810–25–P

Sunshine Act Meetings

Federal Register
Vol. 58, No. 199
Monday, October 18, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given of the Board's meeting described below. The Board will also conduct a public hearing pursuant to 42 U.S.C. 2286b and invites any interested persons or groups to present any comments, technical information, or data concerning current health or safety questions at the Los Alamos National Laboratory.

TIME AND DATE: 5:00 p.m., November 10, 1993—Department of Energy presentations; 7:00 p.m.—Opportunity for interested persons to present oral comments concerning the matters to be considered.

PLACE: The Los Alamos Civic Auditorium, 1400 Diamond Drive, Los Alamos, New Mexico 87544.

STATUS: Open. While the Government in the Sunshine Act does not require that the scheduled briefing be conducted in a meeting, the Board has determined that an open meeting in this specific case furthers the public interests underlying both the Sunshine Act and the Board's enabling legislation.

MATTERS TO BE CONSIDERED: The open public meeting and hearing are being held so as to provide the Board with the latest and best information on topics related to the adequate protection of public health and safety at the Los Alamos National Laboratory (LANL), and to receive from members of the public any pertinent comments they wish to make on health and safety issues at LANL. The Department of Energy (DOE) will take appropriate measures to safeguard any classified or controlled nuclear information it presents at this meeting. The public hearing portion is independently authorized by 42 U.S.C. 2286b.

FOR MORE INFORMATION CONTACT: Kenneth M. Pusateri, General Manager, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004, (202) 208–6400. This is not a toll free number.

SUPPLEMENTARY INFORMATION: Requests to speak at the hearing may be submitted in writing or by telephone. We ask that commentators describe the nature and scope of the oral presentation. Those who contact the Board prior to close of business on November 8, 1993, will be scheduled for time slots, beginning at approximately 7:00 p.m. The Board will post a schedule for those speakers who have contacted the Board before the hearing. The posting will be made at the entrance to the auditorium at the start of the 5:00 p.m. meeting.

Anyone who wishes to comment, provide technical information or data may do so in writing, either in lieu of, or in addition to making an oral presentation. The Board members may question presenters to the extent deemed appropriate. The Board will hold the record open until November 29, 1993, for the receipt of materials. A transcript of the meeting will be made available by the Board for inspection by the public at the Defense Nuclear Facilities Safety Board's Washington office and at the DOE's public reading room at LANL Community Reading Room, 1450 Central Avenue, Suite 101, Los Alamos, New Mexico 87544.

The Board specifically reserves its right to further schedule and otherwise regulate the course of the meeting and hearing, to recess, reconvene, postpone or adjourn the meeting, conduct further reviews, and otherwise exercise its power under the Atomic Energy Act of 1954, as amended.

Dated: October 13, 1993.

Kenneth M. Pusateri,

General Manager.

[FR Doc. 93–25660 Filed 10–14–93; 3:22 pm]

BILLING CODE 6820–KD–M

NATIONAL CREDIT UNION ADMINISTRATION

NOTICE OF PREVIOUSLY HELD EMERGENCY MEETING

TIME AND DATE: 5:54 p.m., Tuesday, October 12, 1993.

PLACE: Chairman's Office, 7th Floor, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTER CONSIDERED:

1. Administrative Action under Sections 206 and 208 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).

The Board voted unanimously that agency business required that a meeting be held with less than the usual seven days advance notice. Earlier announcement of this was not possible.

The Board voted unanimously to close the meeting under the exemptions listed above. Deputy General Counsel James Engel certified that the meeting could be closed under those exemptions.

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6300.

Becky Baker,

Secretary of the Board.

[FR Doc. 93–25668 Filed 10–14–93; 8:59 am]

BILLING CODE 7535–01–M

TENNESSEE VALLEY AUTHORITY

[Meeting No. 1461]

TIME AND DATE: 10 a.m., October 20, 1993.

PLACE: Chattanooga Office Complex Auditorium, Chattanooga, TN.

STATUS: Open.

AGENDA: Approval of minutes of meeting held on September 30, 1993.

ACTION ITEMS:

New Business

A—Budget and Financing

A1. Adoption of the Tennessee Valley Authority Financial Statements, September 30, 1993.

A2. Retention of Net Power Proceeds and Nonpower Proceeds and Payments to the U.S. Treasury in March 1994, Pursuant to Section 26 of the TVA Act.

B—Purchase Awards

B1. Contract Extension and Release of Remaining Funds for I-Net Incorporated—Contract 93BYH–93383E.

E—Real Property Transactions

E1. Sale of Permanent Easement to the City of Cleveland, Tennessee, Affecting 0.12 Acre of East Cleveland 161-kV Substation property, Bradley County, Tennessee.

E2. Public Auction of Cross Mountain Coal Lease, Koppers Coal Reserves, Campbell County, Tennessee.

E3. Public Auction of Red Bird Coal Reserves Lease, Leslie County, Kentucky.

F—Unclassified

F1. Filing of Condemnation Cases.

INFORMATION ITEMS:

1. Base Compensation Awards for Employees on the Manager and Specialist and ET Salary Schedules and Revision to the Salary Structures for Manager and Specialist and Excluded Positions.

2. Amendments to the Terms and Conditions of the Voluntary Retirement Savings and Investment Plan.

CONTACT PERSON FOR MORE INFORMATION: Alan Carmichael, Vice President, Governmental Relations, or a member of his staff can respond to requests for information about this meeting. Call (615) 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 479–4412.

Dated: October 13, 1993.

Edward S. Christenbury,

General Counsel and Secretary.

[FR Doc. 93–25583 Filed 10–14–93; 10:32 am]

BILLING CODE 8120–08–M

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federal register

Monday
October 18, 1993

Part II

State Justice Institute

Final Grant Guideline; Notice

STATE JUSTICE INSTITUTE

Grant Guideline

AGENCY: State Justice Institute.

ACTION: Final grant guideline.

SUMMARY: This Guideline sets forth the administrative, programmatic, and financial requirements attendant to Fiscal Year 1994 State Justice Institute grants, cooperative agreements, and contracts.

EFFECTIVE DATE: October 18, 1993.

FOR FURTHER INFORMATION CONTACT: David I. Tevelin, Executive Director, or Richard Van Duizend, Deputy Director, State Justice Institute, 1650 King St. (Suite 600), Alexandria, VA 22314, (703) 684–6100.

SUPPLEMENTARY INFORMATION: Pursuant to the State Justice Institute Act of 1984, 42 U.S.C. 10701, et seq., as amended, the Institute is authorized to award grants, cooperative agreements, and contracts to State and local courts, nonprofit organizations, and others for the purpose of improving the administration of justice in the State courts of the United States. Approximately $11½ million is available for award in FY 1994.

Changes in the Final Guideline

On August 31, 1993, the Institute published its proposed FY 1994 Grant Guideline in the **Federal Register** for public comment. 58 FR 45976. Comment was specifically requested on two issues: (1) whether the Institute should raise the ceiling for accelerated grants from $40,000 to $50,000; and (2) whether SJI should clarify and revise its audit objectives.

Only two comments were received on the first issue, both suggesting that the ceiling be raised to $50,000. Absent a strong demonstration that the current limit is unduly restrictive, the Institute believes that the $40,000 limit still strikes the correct balance between applicants' interest in accelerated treatment for uncomplicated proposals and the Institute's need to adequately review the programmatic and budgetary aspects of funding requests. The limit is accordingly unchanged in the Final Guideline.

Only one comment was received on the audit issue. The American Institute of Certified Public Accountants (AICPA) recommended that the Guideline (1) eliminate certain audit objectives and (2) specify that grantee audits be conducted in accordance with Government Auditing Standards, rather than the AICPA standards referenced in the proposed Guideline. The final Guideline adopts these recommendations, which should result in greater clarity of SJI's audit standards and greater grantee compliance with applicable laws and regulations, without imposing significant new burdens on grantees. See section XI.J.

The Institute also received a comment from a State Court Administrator encouraging SJI to institute a "rapid response" technical assistance program for small grants up to $3,000. In light of the expedited treatment available under the Institute's technical assistance grant program, the variety of technical assistance services available from several SJI grantees, and the internal administrative burdens that would be occasioned by the proposed program, the Institute has declined to accept that recommendation.

A few technical changes and corrections of typographical and grammatical errors have also been made. The most substantive of the technical changes is to add to the list of "other factors" the Institute will consider in making grant awards, the level of appropriations available to the Institute in the current year and the amount expected to be available in succeeding fiscal years. See sections II.B.2.b.i. and v., II.C.2., VI.C., and VIII.B.3.

Types of Grants Available and Funding Schedules

Since 1987, SJI has sought to develop a grant program that is responsive to the most pressing needs of the State courts. As a result, the Institute has initiated several different types of grant programs. The types of grants available in FY 1994 and the funding cycles for each program are provided below:

Project Grants. These grants are awarded to support education, research, demonstration and technical assistance projects to improve the administration of justice in the State courts. As provided in section V. of the Guideline, project grants, with limited exceptions, may not exceed $200,000 a year. Applicants must ordinarily submit a concept paper (see section VI.) and an application (see section VII.) in order to obtain a project grant.

As indicated in Section VI.C., the Board may make an "accelerated" project grant of less than $40,000 on the basis of the concept paper alone when the need for the project is clear and little additional information would be provided in an application.

The FY 1994 mailing deadline for project grant concept papers is December 1, 1993. Papers must be postmarked or bear other evidence of submission by that date. With two exceptions noted immediately below, the FY 1994 funding cycle will be substantially similar to the FY 1993 cycle: the Board will meet in early March, 1994 to invite formal applications based on the most promising concept papers; applications will be due in May; and awards will be approved by the Board in July.

The first exception to this schedule pertains to proposals to follow up on the National Conference on Family Violence and the Courts that was held in March, 1993. As announced in the Institute's FY 1993 Grant Guideline and the proposed FY 1994 Guideline, applicants interested in participating in this special round of funding were to submit concept papers proposing to implement State plans arising from the conference by October 8, 1993. The papers will be considered by the Board at its meeting in November, 1993. Invited applications will be reviewed at the Board's March, 1994 meeting. Followup proposals may also be submitted during the normal project grant funding cycle described above.

The second exception is for projects to follow up on the National Symposium on Court-Connected Dispute Resolution Research held October 15–16, 1993. Concept papers for these projects must be mailed by March 15, 1994. They will be reviewed at the Board's meeting in May, 1994. Applications based on the papers will be reviewed at the September, 1994 Board meeting.

Package Grants. This grant program, begun in FY 1993, permits applicants to submit one concept paper (or application) for a "package" of related grants rather than separate proposals for each related component of the package. Package grants of up to $750,000 per year may be awarded to support projects that address interrelated topics or the core elements of a multifaceted program, or that require the services of all or some of the same key staff persons. Package grants must enhance (not merely maintain) an applicant's services and must otherwise meet the Institute's grant criteria. The Board retains the discretion to support all, none, or selected portions of the proposed package. Package grant concept papers and applications will be considered on the same schedule as project grants.

In FY 1993, the Institute limited package grants to a one-year project period. The Board has eliminated that restriction in FY 1994. Package grants are, however, subject to the same limitations as project grants: Two years for new and continuation projects; three years for on-going support grants. See sections III.J., V.C. and D., VI.A. 2.b. and

3.b., VII.A.3., VII.C. and VII.D. for more information about package grants.

Technical Assistance Grants. Under this program, also begun in FY 1993, a State or local court may receive a grant of up to $30,000 to engage outside experts to provide technical assistance to diagnose, develop, and implement a response to a jurisdiction's problems. The Guideline allocates up to $600,000 in FY 1994 funds to support technical assistance grants, a $100,000 increase over the amount allocated in FY 1993.

In addition, technical assistance grants will be available in FY 1994 to enable court officials from one jurisdiction to observe and assess an innovative practice, program, or facility in another jurisdiction. In lieu of concept papers and formal applications, applicants for these grants may submit letters containing the information specified in section II.2.C. of the Guideline at any time during the fiscal year.

Curriculum Adaptation Grants. A grant of up to $20,000 may be awarded to a State or local court to replicate or modify a model training program developed with SJI funds. The Guideline allocates up to $350,000 for these grants in FY 1994, the same amount allocated in FY 1993. See section II.B.2.b.i.(b).

Like Technical Assistance grant applications, letters requesting Curriculum Adaptation grants may be submitted at any time during the fiscal year. However, in order to permit the Institute sufficient time to evaluate these proposals, letters must be submitted no later than 60 days before the projected date of the training program. See section II.B.2.b.i.(b).

Scholarships. The Guideline allocates up to $250,000 of FY 1994 funds for scholarships to enable judges and court managers to attend out-of-State education and training programs. See section II.B.2.b.v.

The Guideline establishes four deadlines for scholarship requests: November 1, 1993 for training programs beginning between February 1, 1994 and April 30, 1994; February 1, 1994 for programs beginning between May 1, 1994 and July 31, 1994; May 1, 1994 for programs beginning between August 1, 1994 and October 31, 1994; and September 1, 1994 for programs beginning between November 1, 1994 and January 31, 1995. This schedule has been adjusted from FY 1993 in order to distribute applications more evenly throughout the year.

In addition, the chief justice's concurrence form must be received by SJI no later than one week after the application deadline or the application will not be considered. See section II.B.2.b.v.

Renewal Grants. There are two types of renewal grants available from SJI: Continuation grants (see sections III.H., V.C. and D., and IX.A.) and on-going support grants (see sections III.I., V.C. and D., and IX.B.). Continuation grants are intended to support limited duration projects that involve the same type of activities as the original project. On-going support grants may be awarded for up to a three-year period to support national-scope projects that provide the State courts with critically needed services, programs, or products.

The Guideline establishes a target for renewal grants of no more than $3 million, a little more than 25% of the total amount available for grants in FY 1994. See section IX. Grantees should accordingly be aware that the award of a grant to support a project does not constitute a commitment to provide either continuation funding or on-going support.

An applicant for a continuation or on-going support grant must submit a letter notifying the Institute of its intent to seek such funding, no later than 120 days before the end of the current grant period. The Institute will then notify the applicant of the deadline for its renewal grant application. See section IX.

Special Interest Categories

The Guideline contains 13 Special Interest categories, i.e., those project areas that the Board has identified as being of particular importance to the State courts. Three new categories have been added this year: "Evaluation of Court-Connected Alternative Dispute Resolution" (section II.B.2.e.); "Facilitating the Appropriate Use of Intermediate Sanctions" (section II.B.2.i.); and "The Impact of Health Care-Related Issues on the State Courts" (section II.B.2.j.). Two categories in last year's Guideline have been eliminated ("Improving Communication and Coordination Among Courts" and "The Court-Related Needs of Elderly Persons and Persons With Disabilities"). The FY 1993 category "Application of Performance-Based Standards and Measures to the Courts" has been combined with the "Planning for the Future of the Courts" category. See section II.B.2.d.

Of particular note among other Special Interest categories is the "Family Violence in the Courts" category (section II.B.2.l.) which continues to invite proposals to implement the Battered Women's Testimony Act and the Judicial Training and Research for Child Custody Litigation Act enacted by Congress in 1992, and tentatively solicits proposals to implement the judicial education provisions of the pending Violence Against Women Act.

In addition, the Guideline announces two new national conferences: a National Symposium on the Implementation and Operation of Drug Courts and a National Symposium on Reducing Litigation Delay. See section II.B.2.b.iv. The Institute also reduces the aggregate amount to be allocated to projects addressing a critical need of a single State or local jurisdiction from $1,000,000 to $600,000. See section II.C.

Interagency Agreements

Persons interested in the SJI program should also be aware that the Institute has entered into a number of Interagency Agreements (IAA's) that will provide important benefits to the State courts in FY 1994. Current IAA's support the following projects this fiscal year:

Facilitating the Appropriate Use of Intermediate Sanctions. This agreement continues a joint program that SJI has conducted with the National Institute of Corrections (NIC) since FY 1989. The program helps State and local jurisdictions analyze their current sanctioning practices and encourages collaboration among judges and criminal justice system officials to develop a meaningful array of intermediate sanctions. Under the IAA in FY 1994, SJI will seek to expand the educational aspects of the program by supporting a national video conference, video tapes, and in-State and regional training programs. See section II.B.2.i. Subject to the availability of appropriations, the Board of Directors has allocated up to $200,000 to support the program in FY 1994. An additional amount up to $200,000 will be allocated in FY 1995, subject to the availability of appropriations.

NIC, in partnership with the Edna McConnell Clark Foundation, will seek to develop enhanced intermediate sanctions in several jurisdictions within selected States. For further information about this aspect of the program, readers should contact Phyllis Modley of the Community Corrections Division of NIC, at 320 First St., NW., Washington, DC 20534 ((202) 307–3995).

State-Federal Judicial Education Interchange. SJI, the Federal Judicial Center (FJC), and the SJI-funded Judicial Education Reference, Information and Technical Transfer (JERITT) project at Michigan State University have entered into a memorandum of understanding under which JERITT and the FJC will exchange selected State and Federal judicial education materials and

disseminate them to State and Federal judges and judicial educators. Materials will be transferred in hard copy versions (subject to their availability) and electronically.

Substance Abuse Case Management Education and Technical Assistance. Under this agreement, SJI and the Bureau of Justice Assistance (BJA) of the Department of Justice are providing $150,000 each to The American University to identify and assess case management methods through which courts may process substance abuse cases fairly and effectively, develop and test a curriculum for judges and court managers based on these methods, and provide technical assistance that would help those attending the training improve their ability to handle these cases.

Substance Abuse Treatment Training. The Center for Substance Abuse Treatment (CSAT) of the Department of Health and Human Services and SJI are supporting six regional training programs for State judges and legislators on alcohol and drug treatment. CSAT is providing approximately $1.1 million to support this program over a three-year period. Subject to the availability of appropriations, SJI is providing an additional $300,000 over the same period to enhance and expand the program.

Substance Abuse Conference State Plan Implementation. SJI and BJA are providing $208,000 ($108,000 from SJI; $100,000 from BJA) to the National Center for State Courts to provide technical assistance to the State teams that attended the November 1991 National Conference on Substance Abuse and the Courts.

Pro Se Modifications of Child Support Awards. SJI and the HHS Office of Child Support Enforcement of the Administration on Children and Families are supporting a pilot project to develop, demonstrate, and evaluate effective techniques that courts can use in proceedings to review and modify child support orders involving litigants not represented by counsel. This $70,000 project is being conducted by the American Bar Association Center for Children and the Law in two counties in South Carolina. The Institute is contributing $35,000 to support this project; OCSE/ACF is providing $25,000 plus $10,000 in in-kind services.

Examination of the Impact of Court, Prosecutor, and Defender Resources on Felony Cases. SJI and the National Institute of Justice are jointly supporting a study conducted by the National Center for State Courts that will examine the impact of court, prosecutor, and defender resources, case management procedures, and methods of interorganizational coordination on the pace and outcomes of felony adjudications in ten large urban jurisdictions. SJI and NIJ are equally sharing the $238,000 cost of the project.

Recommendations to Grant Writers

Over the past six years, Institute staff have reviewed approximately 2,400 concept papers and 1,200 applications. On the basis of those reviews, inquiries from applicants, and the views of the Board, the Institute offers the following recommendations to help potential applicants present workable, understandable proposals that can meet the funding criteria set forth in this Guideline.

The Institute suggests that applicants make certain that they address the questions and issues set forth below when preparing a concept paper or application. Concept papers and applications should, however, be presented in the formats specified in sections VI. and VII. of the Guideline, respectively.

1. *What is the subject or problem you wish to address?* Describe the subject or problem and how it affects the courts and the public. Discuss how your approach will improve the situation or advance the state of the art or knowledge, and explain why it is the most appropriate approach to take. When statistics or research findings are cited to support a statement or position, the source of the citation should be referenced in a footnote or a reference list.

2. *What do you want to do?* Explain the goal(s) of the project in simple, straightforward terms. The goals should describe the intended consequences or expected overall effect of the proposed project (e.g., to enable judges to sentence drug-abusing offenders more effectively, or to dispose of civil cases within 24 months), rather than the tasks or activities to be conducted (e.g., hold three training sessions, or install a new computer system).

To the greatest extent possible, an applicant should avoid a specialized vocabulary that is not readily understood by the general public. Technical jargon does not enhance a paper.

3. *How will you do it?* Describe the methodology carefully so that what you propose to do and how you would do it is clear. All proposed tasks should be set forth so that a reviewer can see a logical progression of tasks and relate those tasks directly to the accomplishment of the project's goal(s). When in doubt about whether to provide a more detailed explanation or to assume a particular level of knowledge or expertise on the part of the reviewers, err on the side of caution and provide the additional information. A description of project tasks also will help identify necessary budget items. All staff positions and project costs should relate directly to the tasks described. The Institute encourages applicants to attach letters of cooperation and support from the courts and related agencies that will be involved in or directly affected by the proposed project.

4. *How will you know it works?* Include an evaluation component that will determine whether the proposed training, procedure, service, or technology accomplished the objectives it was designed to meet. Concept papers and applications should describe the criteria that will be used to evaluate the project's effectiveness and identify program elements which will require further modification. The description in the application should include how the evaluation will be conducted, when it will occur during the project period, who will conduct it, and what specific measures will be used. In most instances, the evaluation should be conducted by persons not connected with the implementation of the procedure, training, service, or technique, or the administration of the project.

The Institute has also prepared a more thorough list of recommendations to grant writers regarding the development of project evaluation plans. Those recommendations are available from the Institute upon request.

5. *How will others find out about it?* Include a plan to disseminate the results of the training, research, or demonstration beyond the jurisdictions and individuals directly affected by the project. The plan should identify the specific methods which will be used to inform the field about the project, such as the publication of law review or journal articles, or the distribution of key materials. A statement that a report or research findings "will be made available to" the field is not sufficient. The specific means of distribution or dissemination as well as the types of recipients should be identified. Reproduction and dissemination costs are allowable budget items.

6. *What are the specific costs involved?* The budget in both concept papers and applications should be presented clearly. Major budget categories such as personnel, benefits, travel, supplies, equipment, and indirect costs should be identified separately. The components of "Other" or "Miscellaneous" items should be

specified in the application budget narrative, and should not include set-asides for undefined contingencies.

7. What, if any, match is being offered? Courts and other units of State and local government (not including publicly-supported institutions of higher education) are required by the State Justice Institute Act to contribute a match (cash, non-cash, or both) of not less than 50 percent of the grant funds requested from the Institute. All other applicants also are encouraged to provide a matching contribution to assist in meeting the costs of a project.

The match requirement works as follows: If, for example, the total cost of a project is anticipated to be $150,000, a State or local court or executive branch agency may request up to $100,000 from the Institute to implement the project. The remaining $50,000 (50% of the $100,000 requested from SJI) must be provided as match.

Cash match includes funds directly contributed to the project by the applicant, or by other public or private sources. It does not include income generated from tuition fees or the sale of project products. Non-cash match refers to in-kind contributions by the applicant, or other public or private sources. This includes, for example, the monetary value of time contributed by existing personnel or members of an advisory committee (but not the time spent by participants in an educational program attending program sessions). When match is offered, the nature of the match (cash or in-kind) should be explained and, at the application stage, the tasks and line items for which costs will be covered wholly or in part by match should be specified.

8. Which of the two budget forms should be used? Section VII.A.3. of the SJI Grant Guideline encourages use of the spreadsheet format of Form C1 if the funding request exceeds $100,000. Form C1 also works well for projects with discrete tasks, regardless of the dollar value of the project. Form C, the tabular format, is preferred for projects lacking a number of discrete tasks, or for projects requiring less than $100,000 of Institute funding. Generally, use the form that best lends itself to representing most accurately the budget estimates for the project.

9. How much detail should be included in the budget narrative? The budget narrative of an application should provide the basis for computing all project-related costs, as indicated in section VII.D. of the SJI Grant Guideline. To avoid common shortcomings of application budget narratives, include the following information:

- Personnel estimates that accurately provide the amount of time to be spent by personnel involved with the project and the total associated costs, including current salaries for the designated personnel (e.g., Project Director, 50% for one year, annual salary of $50,000 = $25,000). If salary costs are computed using an hourly or daily rate, the annual salary and number of hours or days in a work-year should be shown.
- Estimates for supplies and expenses supported by a complete description of the supplies to be used, nature and extent of printing to be done, anticipated telephone charges, and other common expenditures, with the basis for computing the estimates included (e.g., 100 reports × 75 pages each × .05/page = $375.00). Supply and expense estimates offered simply as "based on experience" are not sufficient.

In order to expedite Institute review of the budget, make a final comparison of the amounts listed in the budget narrative with those listed on the budget form. In the rush to complete all parts of the application on time, there may be many last-minute changes; unfortunately, when there are discrepancies between the budget narrative and the budget form or the amount listed on the application cover sheet, it is not possible for the Institute to verify the amount of the request. A final check of the numbers on the form against those in the narrative will preclude such confusion.

10. What travel regulations apply to the budget estimates? Transportation costs and per diem rates must comply with the policies of the applicant organization, and a copy of the applicant's travel policy should be submitted as an appendix to the application. If the applicant does not have a travel policy established in writing, then travel rates must be consistent with those established by the Institute or the Federal Government (a copy of the Institute's travel policy is available upon request). The budget narrative should state which regulations are in force for the project and should include the estimated fare, the number of persons traveling, the number of trips to be taken, and the length of stay. The estimated costs of travel, lodging, ground transportation, and other subsistence should be listed separately. When combined, the subtotals for these categories should equal the estimate listed on the budget form.

11. May grant funds be used to purchase equipment? Grant funds may be used to purchase or lease only that equipment which is essential to accomplishing the objectives of the project. The budget narrative must list such equipment and explain why the equipment is necessary. Written prior approval of the Institute is required when the amount of automated data processing equipment to be purchased or leased exceeds $10,000, or the software to be purchased exceeds $3,000.

12. To what extent may indirect costs be included in the budget estimates? It is the policy of the Institute that all costs should be budgeted directly; however, if an applicant has an indirect cost rate that has been approved by a Federal agency within the last two years, an indirect cost recovery estimate may be included in the budget. A copy of the approved rate agreement should be submitted as an appendix to the application.

If an applicant does not have an approved rate agreement, an indirect cost rate proposal should be prepared in accordance with section XI.H.4. of the Grant Guideline, based on the applicant's audited financial statements for the prior fiscal year. (Applicants lacking an audit must budget all project costs directly.) If an indirect cost rate proposal is to be submitted, the budget should reflect estimates based on that proposal. Obviously, this requires that the proposal be completed at the time of application so that the appropriate estimates may be included; however, grantees have until three months after the project start date to submit the indirect cost proposal to the Institute for approval. An indirect cost rate worksheet on computer diskette is available from the Institute upon request.

13. Does the budget truly reflect all costs required to complete the project? After preparing the program narrative portion of the application, applicants may find it helpful to list all the major tasks or activities required by the proposed project, including the preparation of products, and note the individual expenses, including personnel time, related to each. This will help to ensure that, for all tasks described in the application (e.g., development of a videotape, research site visits, distribution of a final report), the related costs appear in the budget and are explained correctly in the budget narrative.

Recommendations to Grantees

The Institute's staff works with grantees to help assure the smooth operation of the project and compliance with the SJI Guidelines. On the basis of monitoring more than 700 grants, the Institute staff offers the following suggestions to aid grantees in meeting

the administrative and substantive requirements of their grants.

1. *After the grant has been awarded, when are the first quarterly reports due?* Progress and financial status reports must be submitted within 30 days after the end of every calendar quarter—i.e. no later than January 30, April 30, July 30, and October 30—regardless of the project's start date. The reporting periods covered by each quarterly report end 30 days before the respective deadline for the report. When an award period begins December 1, for example, the first quarterly report describing project activities between December 1 and December 31 will be due on January 30. A financial status report should be submitted even if funds have not been obligated or expended.

Progress reports are intended as a way of documenting what has happened over the past three months, providing an opportunity to resolve any questions before they become problems, and making any necessary changes in the project time schedule, budget allocations, etc. Thus, the project report should describe project activities, their relationship to the approved timeline, any problems encountered and how they were resolved, and outline the tasks scheduled for the coming quarter. It is helpful to attach copies of relevant memos, draft products, or other requested information. Two copies of the progress report and attachments should be submitted to the Institute.

Additional quarterly program or financial reporting forms may be obtained from the grantee's Program Manager at SJI, or photocopies may be made from the supply received with the award.

2. *Do reporting requirements differ for renewal grants or package grants?* Recipients of a continuation, on-going support, or package grant are required to submit quarterly progress and financial status reports on the same schedule and with the same information as recipients of a grant for a single new project.

A continuation or an on-going support grant should be considered as a supplement to and extension of the original award, and the reports numbered accordingly. For example, if the last quarterly report filed under the original award is report number six, the first report including a portion of the renewal grant should be report number seven.

Recipients of a package grant should file a summary financial status report covering the entire package as well as separate financial reports for each of the projects in the package, identified by letter of the alphabet (e.g., SJI–93–15R–J–001–A; SJI–93–15R–J–001–B; SJI–93–15R–J–001–C).

3. *Why is it important to address the special conditions that are attached to the award document?* In some instances, a list of special conditions is attached to the award document. The special conditions are imposed to establish a schedule for reporting certain key information, to assure that the Institute has an opportunity to offer suggestions at critical stages of the project, and to provide reminders of some, but not all of the requirements contained in the Grant Guideline. Accordingly, it is important for grantees to check the special conditions carefully and discuss with their Program Manager any questions or problems with the conditions they may have. Most concerns about timing, response time, and the level of detail required can be resolved in advance through a telephone conversation. The Institute's primary concern is to work with grantees to assure that their projects accomplish their objectives, not to enforce rigid bureaucratic requirements. However, if a grantee fails to comply with a special condition or with other grant requirements, the Institute may, after proper notice, suspend payment of grant funds or terminate the grant.

Sections X., XI., and XII. of the Grant Guideline contain the Institute's administrative and financial requirements. Institute staff are always available to answer questions and provide assistance regarding these provisions.

4. *What is a Grant Adjustment?* A Grant Adjustment is the Institute's form for acknowledging the satisfaction of special conditions, or approving changes in grant activities, schedule, staffing, sites, or budget allocations requested by the project director. It also may be used to correct errors in grant documents, add small amounts to a grant award, or deobligate funds from the grant.

5. *What schedule should be followed in submitting requests for reimbursements or advance payments?* Requests for reimbursements or advance payments may be made at any time after the project start date and before the end of the 90-day close-out period. However, the Institute follows the U.S. Treasury's policy limiting advances to the minimum amount required to meet immediate cash needs. Given normal processing time, grantees should not seek to draw down funds for periods greater than 30 days from the date of the request.

6. *Do procedures for submitting requests for reimbursement or advance payment differ for renewal grants or package grants?* The basic procedures are the same for any grant. A continuation or an on-going support grant should be considered as a supplement to and extension of the original award, and the payment requests numbered accordingly. For example, if the last payment request under the original award is number nine, then the first request for funds from the continuation award should be number ten.

Recipients of a package grant should file separate requests for each project in the package. For example, if there are three projects within a package grant, a grantee should prepare three separate payment requests, each identified by the letter of the alphabet designated in the award document (e.g., SJI–93–15R–J–001–A; SJI–93–15R–J–001–B; SJI–93–15R–J–001–C). Subsequent payment requests should be numbered consecutively for each project within the package (e.g., project SJI–93–15R–J–001–A payment number 2; SJI–93–15R–J–001–B payment number 4; etc.).

7. *If things change during the grant period, can funds be reallocated from one budget category to another?* The Institute recognizes that some flexibility is required in implementing a project design and budget. Thus, grantees may shift funds among direct cost budget categories. When any one reallocation or the cumulative total of reallocations are expected to exceed five percent of the approved budget, a grantee must specify the proposed changes, explain the reasons for the changes, and request Institute approval.

The same standard applies to renewal grants and package grants. However, prior written Institute approval is required to shift leftover funds from the original award to cover activities to be conducted under the renewal award, or to use renewal grant monies to cover costs incurred during the original grant period. Prior written Institute approval also is needed to shift funds between projects included in a package grant.

8. *What information about project activities should be communicated to SJI?* In general, grantees should provide prior notice of critical project events such as advisory board meetings or training sessions so that the Institute Program Manager can attend if possible. If methodological, schedule, staff, budget allocations or other significant changes become necessary, the grantee should contact the Institute's program monitor prior to implementing any of these changes, so that possible questions may be addressed in advance. Questions concerning the financial requirements section of the Guideline, quarterly financial reporting or payment requests,

should be addressed to the Chief or Deputy Chief of the Institute's Finance and Management Division.

It is helpful to include the grant number assigned to the award on all correspondence to the Institute.

9. *What is the 90-day close-out period?* Following the last day of the grant, a 90-day period is provided to allow for all grant-related bills to be received and posted, and grant funds drawn down to cover these expenses. No obligations of grant funds may be incurred during this period. The last day on which an expenditure of grant funds can be obligated is the end date of the grant period. Similarly, the 90-day period is not intended as an opportunity to finish and disseminate grant products. This should occur before the end of the grant period.

Starting the day after the end of the award period, and during the following 90 days, all monies that have been obligated should be expended. All payment requests must be received by the end of the 90-day "close-out-period." Any unexpended monies held by the grantee that remain after the 90-day follow-up period must be returned to the Institute. Any funds remaining in the grant that have not been drawn down by the grantee will be deobligated.

The following Grant Guideline is adopted by the State Justice Institute for FY 1994:

State Justice Institute Grant Guideline—Table of Contents

Summary
I. Background
II. Scope of the Program
III. Definitions
IV. Eligibility for Award
V. Types of Projects and Grants; Size of Awards
VI. Concept Paper Submission Requirements for New Projects
VII. Application Requirements for New Projects
VIII. Application Review Procedures
IX. Renewal Funding Procedures and Requirements
X. Compliance Requirements
XI. Financial Requirements
XII. Grant Adjustments
Appendix I List of State Contacts Regarding Administration of Institute Grants to State and Local Courts
Appendix II SJI Libraries: Designated Sites and Contacts
Appendix III Judicial Education Scholarship Application Forms
Appendix IV Preliminary Budget Form
Appendix V Certificate of State Approval Form

Summary

This Guideline sets forth the proposed programmatic, financial, and administrative requirements of grants, cooperative agreements, and contracts awarded by the State Justice Institute. The Institute, a private, nonprofit corporation established by an Act of Congress, is authorized to award grants, cooperative agreements and contracts to improve the administration and quality of justice in the State courts.

Grants may be awarded to State and local courts and their agencies; national nonprofit organizations controlled by, operating in conjunction with, and serving the judicial branch of State governments; and national nonprofit organizations for the education and training of judges and support personnel of the judicial branch of State governments. The Institute may also award grants to other nonprofit organizations with expertise in judicial administration; institutions of higher education; individuals, partnerships, firms, or corporations; and private agencies with expertise in judicial administration if the objectives of the funded program can be better served by such an entity. Funds may be awarded, as well, to Federal, State or local agencies and institutions other than courts for services that cannot be provided for adequately through nongovernmental arrangements. In addition, the Institute may provide financial assistance in the form of interagency agreements with other grantors.

The Institute will consider applications for funding support that address any of the areas specified in its enabling legislation. However, the Board of Directors of the Institute has designated certain program categories as being of special interest.

The Institute has established one round of competition for FY 1994 funds. The concept paper submission deadline for all but two funding categories is December 1, 1993. Concept papers to implement the plans developed at the March, 1993 National Conference on Family Violence and the Courts must be mailed by October 8, 1993. Concept papers on projects that follow up on October 1993 National Symposium on Court-Connected Dispute Resolution Research must be mailed by March 15, 1994.

It is anticipated that between $11 million and $11.5 million will be available for award. This Guideline applies to all concept papers and formal applications submitted for FY 1994 funding.

The awards made by the State Justice Institute are governed by the requirements of this Guideline and the authority conferred by Public Law 98–620, title II, 42 U.S.C. 10701, *et seq.*, as amended.

I. Background

The State Justice Institute ("Institute") was established by Public Law 98–620 to improve the administration of justice in the State courts in the United States. Incorporated in the State of Virginia as a private, nonprofit corporation, the Institute is charged, by statute, with the responsibility to:

A. Direct a national program of financial assistance designed to assure that each citizen of the United States is provided ready access to a fair and effective system of justice;

B. Foster coordination and cooperation with the Federal judiciary;

C. Promote recognition of the importance of the separation of powers doctrine to an independent judiciary; and

D. Encourage education for judges and support personnel of State court systems through national and State organizations, including universities.

To accomplish these broad objectives, the Institute is authorized to provide funds to State courts, national organizations which support and are supported by State courts, national judicial education organizations, and other organizations that can assist in improving the quality of justice in the State courts.

The Institute is supervised by an eleven-member Board of Directors appointed by the President, by and with the consent of the Senate. The Board is statutorily composed of six judges, a State court administrator, and four members of the public, no more than two of whom can be of the same political party.

Through the award of grants, contracts, and cooperative agreements, the Institute is authorized to perform the following activities:

A. Support research, demonstrations, special projects, technical assistance, and training to improve the administration of justice in the State courts;

B. Provide for the preparation, publication, and dissemination of information regarding State judicial systems;

C. Participate in joint projects with Federal agencies and other private grantors;

D. Evaluate or provide for the evaluation of programs and projects funded by the Institute to determine their impact upon the quality of criminal, civil, and juvenile justice and the extent to which they have contributed to improving the quality of justice in the State courts;

E. Encourage and assist in furthering judicial education;

F. Encourage, assist, and serve in a consulting capacity to State and local justice system agencies in the development, maintenance, and coordination of criminal, civil, and juvenile justice programs and services; and

G. Be responsible for the certification of national programs that are intended to aid and improve State judicial systems.

II. Scope of the Program

During FY 1994, the Institute will consider applications for funding support that address any of the areas specified in its enabling legislation. The Board, however, has designated certain program categories as being of "special interest." See section II.B.

A. Authorized Program Areas

The State Justice Institute Act authorizes the Institute to fund projects addressing one or more of the following program areas:

1. Assistance to State and local court systems in establishing appropriate procedures for the selection and removal of judges and other court personnel and in determining appropriate levels of compensation;

2. Education and training programs for judges and other court personnel for the performance of their general duties and for specialized functions, and national and regional conferences and seminars for the dissemination of information on new developments and innovative techniques;

3. Research on alternative means for using judicial and nonjudicial personnel in court decisionmaking activities, implementation of demonstration programs to test such innovative approaches, and evaluations of their effectiveness;

4. Studies of the appropriateness and efficacy of court organizations and financing structures in particular States, and support to States to implement plans for improved court organization and financing;

5. Support for State court planning and budgeting staffs and the provision of technical assistance in resource allocation and service forecasting techniques;

6. Studies of the adequacy of court management systems in State and local courts, and implementation and evaluation of innovative responses to records management, data processing, court personnel management, reporting and transcription of court proceedings, and juror utilization and management;

7. Collection and compilation of statistical data and other information on the work of the courts and on the work of other agencies which relate to and affect the work of courts;

8. Studies of the causes of trial and appellate court delay in resolving cases, and establishing and evaluating experimental programs for reducing case processing time;

9. Development and testing of methods for measuring the performance of judges and courts and experiments in the use of such measures to improve the functioning of judges and the courts;

10. Studies of court rules and procedures, discovery devices, and evidentiary standards to identify problems with the operation of such rules, procedures, devices, and standards; and the development of alternative approaches to better reconcile the requirements of due process with the need for swift and certain justice, and testing of the utility of those alternative approaches;

11. Studies of the outcomes of cases in selected areas to identify instances in which the substance of justice meted out by the courts diverges from public expectations of fairness, consistency, or equity; and the development, testing and evaluation of alternative approaches to resolving cases in such problem areas;

12. Support for programs to increase court responsiveness to the needs of citizens through citizen education, improvement of court treatment of witnesses, victims, and jurors, and development of procedures for obtaining and using measures of public satisfaction with court processes to improve court performance;

13. Testing and evaluating experimental approaches to provide increased citizen access to justice, including processes which reduce the cost of litigating common grievances and alternative techniques and mechanisms for resolving disputes between citizens; and

14. Other programs, consistent with the purposes of the Act, as may be deemed appropriate by the Institute, including projects dealing with the relationship between Federal and State court systems in areas where there is concurrent State-Federal jurisdiction and where Federal courts, directly or indirectly, review State court proceedings.

In addition, the Battered Women's Testimony Act of 1992 and the Judicial Training and Research for Child Custody Litigation Act of 1992 authorize the Institute to:

1. Collect and analyze information regarding the admissibility and quality of expert testimony on the experiences of battered women offered as part of the defense in criminal cases under State law, as well as sources of and methods to obtain funds to pay costs incurred to provide such testimony, particularly in cases involving indigent women defendants;

2. Develop training materials to assist battered women, operators of domestic violence shelters, battered women's advocates, and attorneys to use expert testimony on the experiences of battered women in appropriate cases, and individuals with expertise in the experiences of battered women to develop skills appropriate to providing such testimony;

3. Support research regarding State judicial decisions relating to child custody litigation involving domestic violence;

4. Develop training curricula to assist State courts to develop an understanding of, and appropriate responses to child custody litigation involving domestic violence; and

5. Disseminate information and training materials regarding these issues and provide related technical assistance.

Funds will not be made available for the ordinary, routine operation of court systems or programs in any of these areas.

B. Special Interest Program Categories

1. General Description

The Institute is interested in funding both innovative programs and programs of proven merit that can be replicated in other jurisdictions. Although applications in any of the statutory program areas are eligible for funding in FY 1994, the Institute is especially interested in funding those projects that:

a. Formulate new procedures and techniques, or creatively enhance existing arrangements to improve the courts;

b. Address aspects of the State judicial systems that are in special need of serious attention;

c. Have national significance in terms of their impact or replicability in that they develop products, services and techniques that may be used in other States; and

d. Create and disseminate products that effectively transfer the information and ideas developed to relevant audiences in State and local judicial systems or provide technical assistance to facilitate the adaptation of effective programs and procedures in other State and local jurisdictions.

A project will be identified as a "Special Interest" project if it meets the four criteria set forth above and (1) it falls within the scope of the "special interest" program areas designated below, or (2) information coming to the

attention of the Institute from the State courts, their affiliated organizations, the research literature, or other sources demonstrates that the project responds to another special need or interest of the State courts.

Concept papers and applications which address a "Special Interest" category will be accorded a preference in the rating process. (See the selection criteria listed in sections VI.B., "Concept Paper Submission Requirements for New Projects," and VIII.B., "Application Review Procedures.")

2. Specific Categories

The Board has designated the areas set forth below as "Special Interest" program categories. The order of listing does not imply any ordering of priorities among the categories.

a. *Enhancing Court-Community Relations.* This category includes research, demonstration, evaluation and education projects designed to foster or enhance effective cooperative relationships between courts and local communities, and to test innovative methods for eliminating economic, racial, ethnic, cultural or gender-based barriers to justice.

Specifically, the Board is interested in supporting innovative projects that assist in implementing the recommendations of State Task Forces on Gender Bias in the courts and the Second National Conference on Gender Bias in the Courts, including a national clearinghouse or resource center and projects that address the inequities and stereotypes faced by women and men in domestic relations, criminal, civil, probate and juvenile cases. However, operational support will not be provided for new or existing State Task Forces.

Examples of other possible projects include but are not limited to the examination, development, and testing of innovative methods that trial or appellate courts may use to: address court-community problems resulting from the influx of legal and illegal immigrants, including projects to lessen the financial impact of that immigration on the courts; design and assess procedures for use in custody, visitation, and other domestic relations cases when family members or property are outside the United States; or facilitate communication with Federal authorities when illegal aliens are involved in State court proceedings; handle cases involving pro se litigants fairly and effectively; use volunteers effectively; and respond to the needs of the culturally, demographically, economically and physically diverse public the courts serve. However, Institute funds may not be used to support legal representation of individuals in specific cases.

Previous SJI-supported projects that address these issues include: The planning of a National Town Meeting on Improving Public Confidence in the Judicial System and a National Conference on Racial and Ethnic Bias in the Courts; presentation of the Second National Conference on Gender Bias and the Courts; faculty workshops on race fairness, cultural awareness, and Native American legal issues; evaluation of an experimental community court in New York City; development of a manual for management of court interpretation services and materials for training and assisting court interpreters; development of touchscreen computer systems, videotapes and written materials to assist pro se litigants; a demonstration of the use of volunteers to monitor guardianships; studies of effective and efficient methods of providing legal representation to indigent parties in criminal and family cases and the applicability of various dispute resolution procedures to different cultural groups; guidelines for court-annexed day care systems; preparation of public education materials for adults and students and a curriculum for media representatives and judges on reporting on the courts and the law; and the testing of a computerized intake and referral system for court users and telephone-based systems for obtaining general court information and case-specific information.

b. *Education and Training for Judges and Other Key Court Personnel.* The Institute continues to be interested in supporting an array of projects to strengthen and broaden the availability of court education programs at the State, regional and national levels. Accordingly, this category is divided into five subsections: (i) State Initiatives; (ii) National and Regional Education Programs; (iii) Judicial Education Technical Assistance; (iv) Conferences; and (v) Scholarships. All Institute-supported conferences and education and training seminars should be accessible to persons with disabilities in accordance with the Americans with Disabilities Act.

i. *State Initiatives.* This category includes support for training projects developed or endorsed by a State's courts for the benefit of judges and other court personnel in that State. Funding of these initiatives does not include support for training programs conducted by national providers of judicial education unless such a program is designed specifically for a particular State and has the express support of the State Chief Justice, State Court Administrator, or State Judicial Educator. The types of programs to be supported within this category should be defined by individual State need but may include:

(a) *Development of State Court Education Programs.* Projects to assist development of State court education programs include. but are not limited to:

- Seed money for the creation of an ongoing State-based entity for planning, developing, and administering judicial education programs;
- The development of a pre-bench orientation program and other training for new judges;
- Seed money for innovative continuing education and career development programs including seminars addressing the evolving roles of courts and judges in society, organizational and leadership development, and coping with the gap between resources and the demand for services; and educational programs based on Institute-supported research; and
- The preparation of State plans for judicial education, including model plans for career-long education of the judiciary (e.g., new judge training and orientation followed by continuing education and career development).

(b) *Curriculum Adaptation Projects.* The Board is reserving up to $350,000 to provide support for adaptation and implementation of model curricula and/or model training programs previously developed with SJI support. The exact amount to be awarded for curriculum adaptation grants will depend on the number and quality of the applications submitted in this category and other categories of the Guideline.

Only State or local courts may apply for Curriculum Adaptation funding. Grants to support adaptation of educational programs previously developed with SJI funds are limited to no more than $20,000 each. As with other awards to State or local courts, cash or in-kind match must be provided equal to at least 50% of the grant amount requested.

Curriculum Adaptation projects may include a replication or State-specific modification of a model educational program, model curriculum, or course module developed with SJI funds by any other State or any national organization; an adaptation of a curriculum or a portion of a curriculum developed for a national or regional conference; or an adaptation of a curriculum for use as part of a State judicial conference or State training

program for judges and other court personnel.

Curriculum Adaptation grants will be awarded on the basis of criteria including: the need for the educational program and for outside funding; the certainty of effective implementation; and expressions of interest by the judges and/or court personnel who would be directly involved in or affected by the project. In making implementation awards, the Institute will also consider factors such as the reasonableness of the amount requested, compliance with the statutory match requirements, diversity of subject matter, geographic diversity, and the level of appropriations available in the current year and the amount expected to be available in succeeding fiscal years.

In lieu of concept papers and formal applications, applicants for grants may submit, at any time, a detailed letter, with three photocopies. Although there is no prescribed form for the letter nor a minimum or maximum page limit, letters of application should include the following information to assure that each of the criteria for evaluating applications is addressed:

- *Project Description.* What is the model curriculum or training program to be tested? Who developed it? How will it complement existing education and training programs? Who will the participants be, how will they be recruited, and from where will they come (e.g., from across the State, from a single local jurisdiction)? How many participants are anticipated and what limits, if any, will be placed on the number of participants? What are the proposed dates for the beginning and ending of the grant period?
- *Need for funding.* Why is this education program needed at the present time? Why cannot State or local resources fully support the modification and presentation of the model curriculum? What is the potential for replicating the program in the future using State or local funds, once it has been successfully adapted and tested?
- *Certainty of effective implementation.* What date has been set for presenting the program? What types of modifications in the length, format and content of the model curriculum are anticipated? Who will be responsible for adapting the model curriculum? How will the presentation of the program be evaluated and by whom? (Ordinarily, an outside evaluation is not necessary.) What measures will be taken to facilitate subsequent presentations of the adapted program?
- *Expressions of interest by judges and/or court personnel.* A demonstration (e.g., by attaching letters of support) that the proposed program has the support of the court system leadership, and the judges, court managers, and judicial education personnel who are expected to attend.
- *Budget and matching State contribution.* A copy of Form E (see Appendix IV) and a narrative that briefly describes the basis for the proposed costs and the source of the match offered.
- For local courts, a concurrence signed by the Chief Justice. (See Form B, Appendix V.)

Letters of application may be submitted at any time. However, there should be at least 60 days between the date of submission and the date of the proposed program. It is anticipated that they will be acted upon within 45 days of receipt. The Board of Directors has delegated its authority to approve these grants to its Judicial Education Committee.

Curriculum Adaptation grants require only two copies of project manuals, handbooks, or packets to be submitted to SJI at the conclusion of the grant, along with the final project report. Applicants preparing instructional material as part of a Curriculum Adaptation grant must provide for including a prominent acknowledgment that support was received from the Institute, along with the "SJI" logo, and a disclaimer paragraph based on the example provided in section X.Q. of the Guideline.

Applicants seeking other types of funding for developing and testing educational programs must comply with the requirements for concept papers and applications set forth in sections VI and VII or the requirements for renewal applications set forth in section IX.

ii. *National and Regional Education Programs.* This category includes support for national or regional training programs developed by any provider, e.g., national organizations, State courts, universities, or public interest groups. Within this category, priority will be given to training projects which address issues of major concern to the State judiciary and other court personnel. Programs to be supported may include:

- Training programs or seminars on topics of interest and concern that transcend State lines including the factors that should be considered in deciding child custody and termination of parental rights;
- Multi-State or regional training programs sponsored by national organizations, nonprofit groups, State courts or universities;
- Specialized training programs for State trial and appellate court judges, State and local court managers, or other court personnel, including seminars based on Institute-supported research, and training that addresses issues related to leadership in a court setting, adapting to change, and developing strategies for improving the quality and administration of justice; and
- Curricula designed for use at the workplace or at home using video, computer-based, or other media.

iii. *Judicial Education Technical Assistance.* Unlike the preceding categories which support direct training, "Technical Assistance" refers to services necessary for the development of effective educational projects for judges and other court personnel. Projects in this category should focus on the needs of the States, and applicants should demonstrate their ability to work effectively with State judicial educators.

The Institute is currently funding the following judicial education technical assistance projects: The Judicial Education Reference Information and Technology Transfer Project (JERITT), which collects and disseminates information (as well as providing technical assistance) on continuing education programs for judges and court personnel; the Judicial Education/Adult Education Project (JEAEP), which provides expert assistance on the application of adult and continuing education theory and practices to court education programs; the Leadership Institute in Judicial Education, which offers an annual training program and followup assistance to State judicial education leadership teams to help them develop improved approaches to court education; and NASJE NEWS, a newsletter of the National Association of State Judicial Educators.

iv. *Conferences.* This category includes support for regional or national conferences on topics of major concern to the State judiciary and court personnel. Applicants are encouraged to consider the use of videoconference and other technologies to increase participation and limit travel expenses in planning and presenting conferences. Applicants also are reminded that conference sites should be accessible to persons with disabilities in accordance with the Americans With Disabilities Act. In planning a conference, applicants should provide for a written, video, or other product that would widely disseminate the information, findings, and any recommendations resulting from the conference.

The Institute is particularly interested in supporting national symposia that synthesize the information available from Institute-supported projects and other sources on the Implementation

and Operation of Drug Courts; and on Reducing Litigation Delay.

(a) *National Symposium on the Implementation and Operation of Drug Courts.* Many jurisdictions around the country have established a specialized "drug court." In at least 12 of these "drug courts," defendants who have been charged with or pleaded guilty to a drug-related offense are ordered to participate in a substance abuse treatment program and are subject to close monitoring. Upon successful completion of the program, the charges are dismissed or the conviction is expunged. Because of the widespread judicial interest in these programs, the Institute seeks to support a symposium which would bring together representatives of the jurisdictions with drug courts, researchers who have studied or evaluated the impact of these courts, representatives of jurisdictions that are interested in establishing a drug court, and other judicial and criminal justice officials, attorneys and scholars to exchange information and recommendations about their effectiveness, implementation, and operation.

Among the topics that should be addressed are variations in the objectives and approaches of the various drug courts; the effectiveness of the programs in curtailing offenders' substance abuse and criminal conduct; the impact of the programs on the courts, the criminal justice system and the substance abuse treatment system; the benefits and drawbacks of operating the program as a diversion rather than a sentencing alternative; the methods used to establish and institutionalize drug courts including how the differing objectives and procedures of the criminal justice and substance abuse treatment systems were reconciled; and methods for evaluating and monitoring the programs.

(b) *National Symposium on Reducing Litigation Delay.* The Institute has supported approximately 20 projects examining methods for improving caseflow in various types and levels of courts, or training judges and court managers on pretrial and trial management. The Institute is interested in supporting a symposium that would bring together litigation delay researchers, technical assistance providers, trial and appellate court judges and managers, State court administrators, attorneys, scholars, and others to synthesize and share the information resulting from the projects funded by the Institute and others; determine the approaches to pretrial, trial, and individual docket management that appear to be most effective and the best methods for implementing them; identify the programs that may be needed to assist courts in further reducing litigation delay; and define and prioritize the topics for further research on improving caseflow management.

v. *Scholarships for Judges and Court Personnel.* The Institute is reserving up to $250,000 (in addition to any scholarship funds remaining from Fiscal Year 1993) to support a scholarship program for State court judges and court managers.

(a) *Program Description/Scholarship Amounts.* The purposes of the Institute scholarship program are to: enhance the knowledge, skills, and abilities of judges and court managers; enable State court judges and court managers to attend out-of-State educational programs sponsored by national and State providers that they could not otherwise attend because of limited State, local and personal budgets; and provide States, judicial educators, and the Institute with evaluative information on a range of judicial and court-related education programs.

Scholarships will be granted to individuals only for the purpose of attending out-of-State programs within the United States. A scholarship may cover the cost of tuition and transportation to the site of the educational program up to a maximum total of $1,500 per scholarship. (Transportation expenses include roundtrip coach airfare or train fare, or up to $.25/mile if the recipient drives to the site of the program.) Ordinarily, funds to pay tuition and transportation expenses in excess of $1,500, and other costs of attending the program such as lodging, meals, materials, and local transportation (including rental cars) at the site of the education program, must be obtained from other sources or be borne by the scholarship recipient.

(b) *Eligibility Requirements.* Because of the limited amount of funds available, scholarships are limited to full-time judges of State or local trial and appellate courts, and to full-time professional, State or local court personnel with management responsibilities. Senior judges, part-time judges, quasi-judicial hearing officers, State administrative law judges, staff attorneys, law clerks, line staff, law enforcement officers and other executive branch personnel will not be eligible to receive a scholarship.

(c) *Application Procedures.* Judges and court managers interested in receiving a scholarship must submit the Institute's Judicial Education Scholarship Application Form (Form S1, see Appendix III). Applications must be submitted by:

November 1, 1993, for programs beginning between February 1, 1994 and April 30, 1994;

February 1, 1994, for programs beginning between May 1 and July 31, 1994;

May 2, 1994, for programs beginning between August 1, and October 31, 1994; and

August 1, 1994, for programs beginning between November 1, 1994 and January 31, 1995.

No exceptions or extensions will be granted.

All scholarship applicants must obtain the written concurrence of the Chief Justice of his or her State (or the Chief Justice's designee) on the Institute's Judicial Education Scholarship Concurrence (Form S2, see Appendix III). Court managers, other than elected clerks of court, also should submit a letter of support from their supervisor. The Concurrence (Form S2) may accompany the application or be sent separately. However, the original signed Concurrence form must be received by the Institute within one week after the appropriate application mailing deadline (i.e. by November 8, 1993, or February 8, May 9, or August 8, 1994). No application will be reviewed if a signed Concurrence has not been received by the required date.

(d) *Review Procedures/Selection Criteria.* The Board of Directors has delegated the authority to approve or deny scholarships to its Judicial Education Committee. The Institute intends to notify each applicant whose scholarship has been approved within 45 days after the relevant application deadline. In order to assure the availability of scholarship funds throughout the year, the Committee will limit the amount of the scholarship support awarded in any quarter to no more than $62,500 (in addition to scholarship funds that may not have been awarded in previous quarters).

The factors that the Institute will consider in selecting scholarship recipients are:

- The applicant's need for training in the particular course subject and how the applicant would apply the information/skills gained;
- The State's need for the applicant to attend the specific educational program, as demonstrated by a description of current legal, procedural, administrative or other problems affecting the State's courts, enactment of new legislation, or other indications of need, in addition to submission of a signed Form S2;

- The absence of educational programs in the applicant's State addressing the particular topic;
- How the applicant intends to disseminate the knowledge gained (e.g., by developing/teaching a course or providing in-service training for judges or court personnel at the State or local level);
- The length of time that the applicant intends to serve as a judge or court manager, assuming reelection or reappointment, where applicable;
- The length of time since the applicant attended a non-mandatory judicial or court management education program;
- The unavailability of State or local funds to cover the costs of attending the program;
- The quality of the educational program to be attended as demonstrated by the sponsoring organization's experience in judicial education, evaluations by participants or other professionals in the field, or prior SJI support for this or other programs sponsored by the organization;
- Geographic balance;
- The balance of scholarships among types of applicants and courts;
- The balance of scholarships among educational programs; and
- The level of appropriations available to the Institute in the current year and the amount expected to be available in succeeding fiscal years.

(e) *Responsibilities of Scholarship Recipients.* In order to receive the funds authorized by a scholarship award, recipients must submit Scholarship Payment Voucher (Form S3) together with a tuition statement from the program sponsor, and a transportation fare receipt (or statement of the driving mileage to and from the recipient's home to the site of the educational program). Recipients also must submit to the Institute a certificate of attendance at the program and an evaluation of the educational program they attended. A copy of the evaluation also must be sent to the Chief Justice of their State.

A State or a local jurisdiction may impose additional requirements on scholarship recipients that are consistent with SJI's criteria and requirements, e.g., a requirement to serve as faculty on the subject at a State- or locally-sponsored judicial education program.

c. *Court Financing and Use of Resources.* This category includes demonstration, evaluation, education, and research projects designed to contribute to the National Conference on the Funding Crisis in the State Courts scheduled for the Fall of 1994. Among the possible topics that could be addressed under this category are:

- The testing of innovative methods for enhancing interbranch communications;
- Documentation and evaluation of the effects of "privatizing" judicial branch services or responsibilities including the effect on the quality of service and the public's perception of fairness, the financial impact of privatization on the courts, and the management changes required in order to properly oversee contractors;
- Documentation and evaluation of effective techniques for managing court resources, services, and personnel and managing reductions of services and personnel levels in a court environment;
- Examinations of the results, benefits and drawbacks of various methods of enhancing the stability and equity of court funding; and
- Dissemination of information regarding these issues to the court community nationally.

In previous funding cycles, the Institute has supported a National Conference on the Funding Crisis in the Courts and projects that examined judgeship, staffing, and indigent defense services needs; assessed approaches for managing budget cutbacks; and evaluated techniques for improving collection and administration of monetary penalties and restitution in criminal cases.

d. *Planning and Managing the Future of the Courts.* The Institute is interested in supporting activities that would enable courts to implement and evaluate long-range strategic planning processes and complementary innovative management approaches in their own jurisdictions.

The types of projects that fall within this category are:

- Development, implementation, institutionalization, and evaluation of long-range planning approaches in individual States and local jurisdictions, e.g., the development or inclusion of strategic planning techniques, environmental scanning, trends analysis and other comprehensive long-range, strategic planning methods as components of courts' current planning processes or as part of the initiation of such a process;
- Adaptation, implementation and evaluation of innovative management approaches, such as total quality management, designed to complement, enhance or support use of a long-range strategic planning process. This includes the development and testing of performance standards and other techniques to enable trial and appellate court officials to conduct user evaluations of the quality of court services and to measure public, internal and supplier satisfaction as a means to improve court performance.
- Development, presentation and evaluation of training necessary to enable judges and court staff to participate productively in the implementation or institutionalization of the planning process and/or related innovative management approaches.

The Institute has supported futures commissions in seven States. Because the Board of Directors believes that a sufficient variety of commission models now exists, the Institute will not support the development or implementation of any State futures commissions in FY 1994. The Institute also has supported planning, futures, and innovative management projects including: national and Statewide "future and the courts" conferences and training; development of curricula, guidebooks and a video on visioning, and a long-range trial planning guide for trial courts; the provision of technical assistance to courts conducting futures and long-range planning activities; a test of the feasibility of implementing the Trial Court Performance Standards in four States; the development of Appellate Court Performance Standards; and the application of total quality management principles to court operations.

e. *Dispute Resolution and the Courts.* This category includes research, evaluation, demonstration, technical assistance, and education projects addressing the findings and recommendations developed at the National Symposium on Court-Connected Dispute Resolution Research, to be conducted in Orlando in October, 1993. A summary of the recommendations and findings from the conference will be made available by January, 1994. Concept papers proposing addressing these issues must be mailed by March 15, 1994. They will be considered by the Institute's Board of Directors at its meeting on May 12–14, 1994.

f. *Application of Technology.* This category includes the testing of innovative applications of technology to improve the operation of court management systems and judicial practices at both the trial and appellate court levels.

The Board seeks to support local experiments with promising but untested applications of technology in the courts that include a structured evaluation of the impact of the technology in terms of costs, benefits, and staff workload. In this context, "untested" refers to novel applications

of technology developed for the private sector and other fields that have not previously been applied to the courts.

The Board is particularly interested in the evaluation of optical imaging as a tool for transferring information; the effective use of management information systems to monitor, assess, and predict evolving court needs; and training programs to prepare staff for technological change. (See paragraph XI.H.2.h. regarding the limits on the use of grant funds to purchase equipment and software.)

In previous funding cycles, grants have been awarded to support:

Demonstration and evaluation of communications technology, e.g.: Interactive computerized information systems to assist pro se litigants; the use of FAX technology by courts; a multi-user "system for judicial interchange" designed to link disparate automated information systems and share court information among judicial system offices throughout a State without replacement of the various hardware and software environments which support individual courts; a computerized voice information system permitting parties to access by telephone information pertaining to their cases; an automated public information directory of courthouse facilities and services; an automated appellate court bulletin board; and a computer-integrated courtroom that provides full access to the judicial system for hearing-impaired jurors, witnesses, crime victims, litigants, attorneys, and judges;

Demonstration and evaluation of records technology, including: The integration of bar-coding technology with an existing automated case management system; an on-bench automated system for generating and processing court orders; an automated judicial education management system; testing of a document management system for small courts that uses imaging technology, and of automated telephone docketing for circuit-riding judges; evaluation of the use of automated teller machines for paying jurors; and assessment of a combined use of court recording technologies; and

Court technology assistance services, e.g.: Circulation of a court technology bulletin designed to inform judges and court managers about the latest developments in court-related technologies; creation of a court technology laboratory to provide judges and court managers with the opportunity to test automated court-related systems; enhancement of a data base documenting automated systems currently in use in courts across the country; establishment of a technical information service to respond to specific inquiries concerning court-related technologies; development of court automation performance standards; and an assessment of programs that allow public access to electronically stored court information.

Grants also provided support for national court technology conferences; preparation of guidelines on privacy and public access to electronic court information; the testing of a computerized citizen intake and referral service; implementation and evaluation of a Statewide automated integrated case docketing and recordkeeping system; a prototype computerized benchbook using hypertext technology; and computer simulation models to assist State courts in evaluating potential strategies for improving civil caseflow.

g. *Reduction of Litigation Expense and Delay.* This category includes projects to adapt, implement, and evaluate methods developed through research and demonstration projects supported by the Institute and other funders for fairly and effectively managing dockets and reducing the time from the filing of a case to its final disposition (including the pretrial, adjudicatory, post-trial, and appellate stages of the litigation process) and the reduction of the cost and complexity of litigation. The Board is particularly interested in projects that test techniques for improving the coordination between the courts and social service and treatment agencies in order to accelerate and improve dispositions in juvenile, mental health, drug possession, and other cases. This category does not include operational support for mediation, arbitration or other dispute resolution programs. (See also section II.B.2.b.iv.(b) regarding the National Symposium on Reducing Litigation Delay.)

In previous funding cycles, grants have been awarded to support the examination of the causes of delay and the methods for improving case processing in trial courts in rural jurisdictions, limited jurisdiction urban trial courts, and in intermediate appellate courts. In addition, grant support has been awarded to projects demonstrating the use of differentiated case management in trial and appellate courts, and examining the impact of innovative procedures for screening civil cases, handling medical malpractice cases, and expediting appellate decisions.

The Institute has also supported development of a case management review process; studies of case processing in civil and domestic relations cases; the extent of case processing problems caused by discovery; methods for effectively managing motions practice in civil cases; examination of the feasibility of collecting billing information from attorneys in order to better assess the impact of new procedures on litigant costs; and assistance to trial courts in major urban areas and to appellate courts to improve case processing, adopt and implement time standards, and otherwise reduce litigation delay.

h. *Substance Abuse.* This category includes the development and evaluation of innovative techniques for courts to handle the increasing volume of substance abuse-related criminal, civil, juvenile and domestic relations cases fairly and expeditiously; the planning and presentation of seminars or other educational forums for judges, probation officers, caseworkers, and other court personnel to examine court-related issues concerning alcohol and other drug abuse and develop specific plans for how individual courts can respond to the impact of the increasing volume of substance abuse-related criminal, civil, juvenile, and domestic relations cases on their ability to manage their overall caseloads fairly and efficiently.

The Board of Directors is particularly interested in funding innovative projects which establish coordinated efforts between local courts and treatment providers; enhance inter-branch communication regarding the effective disposition of cases involving substance abuse; and evaluate the effectiveness of various methods for treating substance abuse. Proposals should demonstrate a direct impact on the ability of State courts to handle cases involving substance abuse fairly and effectively. The Institute will not fund projects focused on developing additional assessment tools for substance abusers, or providing support for basic court or treatment services. (See also section II.B.2.b.iv.a. regarding the National Symposium on The Implementation and Operation of Drug Courts.)

In previous funding cycles, the Institute has sponsored a National Conference on Substance Abuse and the Courts, and State efforts to implement the plans developed at that Conference. It has also supported projects to evaluate the drug court procedures initiated by the Dade County, Florida, Pulaski County, Arkansas, and New York City courts, and the effectiveness of other court-based alcohol and drug assessment programs; replicate the Dade County program in non-urban sites;

assess the impact of legislation and court decisions dealing with drug-affected infants, and strategies for coping with increasing caseload pressures; develop a benchbook to assist judges in child abuse and neglect cases involving parental substance abuse; test the use of a dual diagnostic treatment model for domestic violence cases in which substance abuse was a factor; and present local and regional educational programs for judges and other court personnel on substance abuse and its treatment.

The Institute and the Bureau of Justice Assistance (BJA) also are supporting two technical assistance projects: one by the National Center for State Courts to assist courts in implementing the plans developed at the National Conference; and the other by the American University Court Technical Assistance Project to identify successful drug case management strategies, conduct seminars on drug case management, and develop a guidebook for implementing drug case processing initiatives. In addition, the Institute and the Department of Health and Human Services' Center for Substance Abuse Treatment (CSAT) have entered into inter-agency agreement to conduct regional training programs for State judges and legislators on substance abuse treatment.

i. *Facilitating the Appropriate Use of Intermediate Sanctions.* Since FY 1989, the Institute has supported a joint program with the National Institute of Corrections (NIC) to facilitate the purposeful and effective use of intermediate sanctions by (1) helping State and local jurisdictions analyze their current sanctioning purposes and practices and (2) encouraging the leadership and active participation of the judiciary in guiding the development and use of a meaningful array of sanctions. "Intermediate sanctions" refers to a range of penalties and programs between unsupervised probation and total confinement for felony offenders who do not pose a significant risk to public safety (e.g., fines, restitution, community service, house arrest, day-reporting centers, and intensive-supervised probation).

As part of the continuation of the joint program, the Board is interested in supporting a comprehensive project that consists of:

- presentation of a national videoconference for teams of judges and criminal justice officials on how to effectively develop and implement intermediate sanctions;
- production of videotapes for use in local or State judicial training programs modeled after the video conference to generate the support and participation of key decision-makers and practitioners;
- presentation of a two-day regional or single-State training program for teams of judges and criminal justice officials; and
- development of a specialized training program for judges for inclusion in annual judicial conferences or other State continuing judicial education programs.

These educational programs and materials should be designed to offer practical information to participants to enhance their understanding of the principles underlying the effective use of a range of sanctions, and create the environment for a collaborative working relationship among the judicial and executive branch officials responsible for their effective implementation. The teams attending these programs should include, at a minimum, the presiding judge of the general jurisdiction court or the criminal division of that court, the community corrections director or chief probation officer, and the prosecutor. Teams should also include other key decisionmakers such as the public defender, State or local legislators, the chief law enforcement officer, and members of the community.

Collaborative concept papers from two or more organizations may be submitted. Applicants may wish to refer to "The Intermediate Sanctions Handbook: Experiences and Tools for Policy-Makers," available through the NIC Information Center, 1860 Industrial Circle, Suite A, Longmont, Colorado 80501.

j. *Assessing the Impact of Health Care-Related Issues on the State Courts.* This category includes research, demonstration, education, and evaluation projects on issues related to the growing impact of health care related issues on the State courts. Among the issues that may be addressed are:

- the use and effectiveness of innovative remedies in long-term environmental and toxic substance exposure cases such as medical surveillance orders;
- the impact on the State courts of proposed or enacted changes in the nation's health care system;
- the potential impact on the State Courts of the U.S. Supreme Court's decision in *Daubert* v. *Merrill Dow Pharmaceuticals*, governing the use of scientific evidence under the Federal Rules of Evidence;
- the implications for the courts of advances in the application of biotechnology to health care.
- the impact on State courts of the judicial review of administrative decisions made under Medicaid and similar State-authorized health care programs, and decisions made by State medical review boards; and
- the basis for determining what constitutes clear and convincing evidence of a person's wish not to initiate or continue life-sustaining treatment, including the implications of the Federal Patient Self-Determination Act; what constitutes extraordinary rather than routine medical services in disputes over the extent of health insurance coverage; and the legal and ethical implications involved in litigation over organ transplants.

In previous funding cycles, the Institute has supported projects to: Develop guidelines for judges in cases regarding the withdrawal of life-sustaining treatment; prepare benchbooks, handbooks, videotapes and training materials on guardianship, the Americans with Disabilities Act and AIDS; and conduct a series of health science-law workshops for judges and judicial educators.

k. *Improving the Use of Juries.* This category includes innovative research, demonstration, evaluation, and education projects to assist courts to improve juror comprehension, the structure of jury decisionmaking, public understanding of jury decisions, and attitudes toward jury service. Among the topics that could be addressed are:

i. Demonstrations and evaluations of innovative approaches for assuring juror safety both during and following jury service, and for reducing the emotional effects on jurors of sensational trials or cases involving particularly traumatic events.

ii. Assessments of the effect on outcome, deliberation time, and juror satisfaction of innovative procedures including:

- the use of "plain English" preliminary and final instructions;
- permitting juries, during their deliberations, to use or have on-line access to videotaped testimony, computerized transcripts, copies or videotapes of the instructions, any computer simulations used in the trial, and other similar materials;
- permitting jurors to discuss the case during trial;
- permitting attorneys to present brief, periodic "mini-summaries" or explanations of their case; and
- using structured verdict forms or special verdicts.

iii. Studies exploring whether juries limited to individuals with certain educational or professional backgrounds are better able to understand and

dispense justice in litigation involving complex subject matter than randomly selected juries, or judges.

Proposals for research submitted under this category should demonstrate the direct applicability of the results to court practices and procedures.

In previous funding cycles, the Institute has supported a manual for implementing innovations in jury selection, use, and management; technical assistance and training to facilitate implementation of the Standards on Jury Management; an investigation of the impact of juror notetaking and question asking; an examination of the relationship of juror fees, terms of service, and excuses from juror service; and development of a guide for making juries accessible to persons with disabilities.

l. *Family Violence and the Courts.* This category includes:

i. State and local court projects to implement the action plans and strategies developed by the teams that participated in the Institute-supported National Conference on Family Violence and the Courts to be held in San Francisco in March, 1993, and projects designed to assist teams in implementing their plans. A special accelerated cycle has been established for considering such projects. In order to be considered during this special cycle, concept papers proposing implementation projects must be mailed by October 8, 1993. They will be considered by the Institute's Board of Directors at its meeting in November, 1993. Applications based on those concept papers will be considered by the Board at its meeting in March, 1994. The Institute also will accept and consider concept papers proposing implementation projects during its regular funding cycle. (See section VI.D.)

ii. Projects to collect information on the admissibility, quality, availability, and cost of expert testimony offered on behalf of battered women on trial for killing or assaulting their alleged abusers, and the development and testing of training materials to assist:

- Battered women, operators of domestic violence shelters, battered women's advocates, and attorneys to use and assess such expert testimony in appropriate cases, particularly cases involving indigent women; and
- Judges, court staff, and criminal justice officials in understanding such testimony and assuring the fair adjudication of such cases.

iii. Projects to identify appropriate and effective approaches for courts to adjudicate child custody litigation involving domestic violence, including:

- Research describing and analyzing the extent and nature of State court decisions relating to child custody litigation involving domestic violence;
- The development, testing, and delivery of training to assist judges and court staff in understanding and fairly adjudicating child custody cases involving domestic violence; and
- Development and testing of approaches to assist judges in determining and addressing the service needs of children exposed to domestic violence, and the design and presentation of training on the short- and long-term effects on children of exposure to domestic violence and the methods for mitigating those effects when issuing protection, custody, visitation or other orders.

iv. Projects examining the effects and appropriate use, if any, of mediation in dissolution, custody, visitation and other cases involving family violence.

v. Projects addressing the issues specified in Sec. 512 of the pending Violence Against Women Act such as training on the nature, incidence and impact of sexual assault and domestic violence; the application of rape shield laws; the use of expert witnesses in sexual assault cases; and the need for and appropriate use of orders of protection in domestic violence cases.

In previous funding cycles, the Institute supported a national conference on family violence and the courts; a national and a State symposium on courts, children and the family; a national symposium on enhancing coordination of cases involving the same family that are being heard in different courts; and the development and testing of curricula to enhance judges' understanding of the dynamics of family violence and guide them in adjudicating family violence cases and custody cases in which spousal abuse is involved. In addition, the Institute has supported an evaluation of the effectiveness of court-ordered treatment for family violence offenders; a demonstration of ways to improve court processing of injunctions for protection and a study of ways to improve the effectiveness of civil protection orders for family violence victims; studies of the appropriate use of mediation in child abuse cases and in divorce, custody, and visitation cases involving family violence; development of a video and other materials for parties and children awaiting a court hearing in domestic relations cases involving family violence; an examination of state-of-the-art court practices for handling family violence cases and of ways to improve access to rural courts for victims of family violence; a benchbook for judges on child abuse and neglect cases stemming from parental substance abuse; curricula to fairly adjudicate child abuse and neglect cases; an examination of the effectiveness of probation as a sanction for child sexual abuse offenders; and the development of guidelines for courts in handling elder abuse cases.

m. *The Relationship Between State and Federal Courts.* This category includes education, research, demonstration, and evaluation projects designed to build upon the insights and information gained at the Institute-supported National Conference on State-Federal Judicial Relationships held in Orlando in April, 1992.

i. Among the topics that could be addressed in education projects are the development and testing of curricula and other educational materials to:

- enhance operation of State-Federal Judicial Councils;
- assist judges and court staff in drawing the attention of the public and the media to the needs of the courts within the bounds of the applicable codes of conduct;
- illustrate effective methods being used at the trial court, State and Circuit levels to coordinate cases and administrative activities; and
- conduct regional conferences replicating the National Conference.

ii. Among the topics that could be addressed in other types of projects are examination of the impact of varying Federal prosecution policies on the State courts, and the development and testing of new approaches to:

- coordinate related State and Federal criminal cases;
- coordinate cases that may be brought under the pending Violence Against Women Act;
- coordinate bankruptcy cases with State litigation involving the individual or entity in bankruptcy including improved notice, certification and communication procedures and practices;
- exchange information and coordinating calendars among State and Federal courts;
- handle capital habeas corpus cases fairly and efficiently;
- share jury pools, alternative dispute resolution programs and court services; and
- facilitate certification of cases from Federal to State courts and explore the implications of certification of cases from State to Federal courts.

In previous funding cycles, the Institute has supported national and regional conferences on State-Federal judicial relationships and the Chief Justices' Special Committee of State

Judges on Asbestos Litigation. In addition, the Institute has supported projects developing judicial impact statement procedures for national legislation affecting State courts, and projects examining methods of State and Federal court cooperation; procedures for facilitating certification of questions of law; the management of mass tort litigation in State and Federal courts; the impact on the State courts of diversity cases and cases brought under section 1983; the procedures used in Federal habeas corpus review of State court criminal cases; the factors that motivate litigants to select Federal or State courts; and the mechanisms for transferring cases between Federal and State courts, as well as the methods for effectively consolidating, deciding, and managing complex litigation. The Institute has also supported a clearinghouse of information on State constitutional law decisions, and a seminar examining the implications of the "Federalization" of crime.

C. Single Jurisdiction Projects

The Board will consider supporting a limited number of projects submitted by State or local courts that address the needs of only the applicant State or local jurisdiction. It has established two categories of Single Jurisdiction Projects:

1. Programs Addressing a Critical Need of a Single State or Local Jurisdiction

a. *Description of the Program.* The Board will set aside up to $600,000 to support projects submitted by State or local courts that address the needs of only the applicant State or local jurisdiction. A project under this section may address any of the topics included in the Special Interest Categories or Statutory Program Areas, and may, but need not, seek to implement the findings and recommendations of Institute supported research, evaluation, or demonstration programs. Concept papers for single jurisdiction projects may be submitted by a State court system, an appellate court, or a limited or general jurisdiction trial court. All awards under this category are subject to the matching requirements set forth in section X.B.1.

b. *Application Procedures.* Concept papers and applications requesting funds for projects under this section must meet the requirements of sections VI. ("Concept Paper Submission Requirements for New Projects") and VII. ("Application Requirements"), respectively, and must demonstrate that:

i. The proposed project is essential to meeting a critical need of the jurisdiction; and

ii. The need cannot be met solely with State and local resources within the foreseeable future.

2. Technical Assistance Grants

a. *Description of the Program.* The Board will set aside up to $600,000 of Fiscal Year 1994 funds (in addition to any technical assistance funds remaining from Fiscal Year 1993) to support the provision of technical assistance to State and local courts. The exact amount to be awarded for these grants will depend on the number and quality of the applications submitted in this category and other categories of the Guideline. It is anticipated, however, that at least $150,000 will be available each quarter to support Technical Assistance grants. The program is designed to provide State and local courts with sufficient support to obtain technical assistance to diagnose a problem, develop a response to that problem, and initiate implementation of any needed changes.

Technical Assistance grants are limited to no more than $30,000 each, and may cover the cost of obtaining the services of expert consultants, travel by a team of officials from one court to examine a practice, program or facility in another jurisdiction that the applicant court is interested in replicating, or both.

The technical assistance must be completed within 12 months after the start-date of the grant. Only State or local courts may apply for Technical Assistance grants. As with other awards to State or local courts, cash or in-kind match must be provided equal to at least 50% of the grant amount. Technical Assistance grant recipients also are subject to the same quarterly reporting requirements as other Institute grantees.

At the conclusion of the grant period, a Technical Assistance grant recipient must complete a Technical Assistance Evaluation Form. The grantee also must submit to the Institute three copies of a final report that explains how it intends to act on the consultant's recommendations as well as three copies of the consultant's written report.

b. *Review Criteria.* Technical Assistance grants will be awarded on the basis of criteria including: Whether the assistance would address a critical need of the court; the soundness of the technical assistance approach to the problem; the qualifications of the consultant(s) to be hired, or the specific criteria that will be used to select the consultant(s); commitment on the part of the court to act on the consultant's recommendations; and the reasonableness of the proposed budget. The Institute will also consider factors such as the level and nature of the match that would be provided, diversity of subject matter, geographic diversity, and the level of appropriations available to the Institute in the current year and the amount expected to be available in succeeding fiscal years.

c. *Application Procedures.* In lieu of concept papers and formal applications, applicants for Technical Assistance grants may submit, at any time, an original and three copies of a detailed letter describing the proposed project and addressing the criteria listed above. Although there is no prescribed form for the letter nor a minimum or maximum page limit, letters of application should include the following information to assure that each of the criteria is addressed:

i. *Need for Funding.* What is the critical need facing the court? How will the proposed technical assistance help the court to meet this critical need? Why cannot State or local resources fully support the costs of the required consultant services?

ii. *Project Description.* What tasks would the consultant be expected to perform? Who (organization or individual) would be hired to provide the assistance and how was this consultant selected? If a consultant has not yet been identified, what procedures and criteria would be used to select the consultant? (Applicants are expected to follow their jurisdiction's normal procedures for procuring consultant services.) What is the time frame for completion of the technical assistance? How would the court oversee the project and provide guidance to the consultant?

If the consultant has been identified, a letter from that individual or organization documenting interest in and availability for the project, as well as the consultant's ability to complete the assignment within the proposed time period and for the proposed cost, should accompany the applicant's letter. The consultant must agree to submit a detailed written report to the court and the Institute upon completion of the technical assistance.

If the support or cooperation of agencies, funding bodies, organizations, or courts other than the applicant, would be needed in order for the consultant to perform the required tasks, written assurances of such support or cooperation must accompany the application letter. Support letters also may be submitted under separate cover; however, to ensure that there is sufficient time to bring them to the attention of the Board's Technical Assistance Committee, letters sent under separate cover must be received not less than two weeks prior to the

Board meeting at which the technical assistance requests will be considered (i.e., by November 4, 1993; February 17, 1994; April 28, 1994; and July 14, 1994).

iii. *Likelihood of implementation.* What steps have been/will be taken to facilitate implementation of the consultant's recommendations upon completion of the technical assistance? For example, if the support or cooperation of other agencies, funding bodies, organizations, or a court other than the applicant will be needed to adopt the changes recommended by the consultant and approved by the court, how will they be involved in the review of the recommendations and development of the implementation plan?

iv. *Budget and matching State contribution.* A completed Form E, "Preliminary Budget" (see Appendix IV to the Grant Guideline), must be included with the applicant's letter requesting technical assistance. Please note that the estimated cost of the technical assistance services should be broken down into the categories listed on the budget form rather than aggregated under the Consultant/ Contractual category. In addition, the budget should provide for submission of three copies of the consultant's final report to the Institute.

v. *Support for the project from the State supreme court or its designated agency or council.* Written concurrence on the need for the technical assistance must be submitted. This concurrence may be a copy of SJI Form B (see Appendix V.) signed by the Chief Justice of the State Supreme Court or the Chief Justice's designee, or a letter from the State Chief Justice or designee. The concurrence may be submitted with the applicant's letter or under separate cover prior to consideration of the application. The concurrence also must specify whether the State Supreme Court would receive, administer, and account for the grant funds, if awarded, or would designate the local court or a specified agency or council to receive the funds directly.

Letters of application may be submitted at any time; however, all of the letters received during a calendar quarter will be considered at one time. Applicants submitting letters between October 1, 1993, and January 15, 1994, will be notified of the Board's decision by March 31, 1994; those submitting letters between January 16, and March 15, 1994, will be notified by May 31, 1994. Notification of the Board's decisions concerning letters received between March 16 and June 15, 1994, will be made by August 31, 1994; and applicants submitting letters between June 16 and September 30, 1994, will be notified by November 30, 1994. The Board has delegated its authority to approve these grants to its Technical Assistance Committee.

The Technical Assistance grant program described in this section should not be confused with the Judicial Education Technical Assistance projects described in section II.B.2.b.iii.

III. Definitions

The following definitions apply for the purposes of this guideline:

A. Institute

The State Justice Institute.

B. State Supreme Court

The highest appellate court in a State, unless, for the purposes of the Institute program, a constitutionally or legislatively established judicial council that acts in place of that court. In States having more than one court with final appellate authority, State Supreme Court shall mean that court which also has administrative responsibility for the State's judicial system. State Supreme Court also includes the office of the court or council, if any, it designates to perform the functions described in this guideline.

C. Designated Agency or Council

The office or judicial body which is authorized under State law or by delegation from the State Supreme Court to approve applications for funds and to receive, administer, and be accountable for those funds.

D. Grantor Agency

The State Justice Institute.

E. Grantee

The organization, entity, or individual to which an award of Institute funds is made. For a grant based on an application from a State or local court, grantee refers to the State Supreme Court or its designee.

F. Subgrantee

A State or local court which receives Institute funds through the State Supreme Court.

G. Match

The portion of project costs not borne by the Institute. Match includes both in-kind and cash contributions. Cash match is the direct outlay of funds by the grantee to support the project. In-kind match consists of contributions of time, services, space, supplies, etc., made to the project by the grantee or others (e.g., advisory board members) working directly on the project. Under normal circumstances, allowable match may be incurred only during the project period. When appropriate, and with the prior written permission of the Institute, match may be incurred from the date of the Institute Board of Directors' approval of an award. Match does not include project-related income such as tuition or revenue from the sale of grant products, nor time of participants attending an education program.

H. Continuation Grant

A grant of no more than 24 months to permit completion of activities initiated under an existing Institute grant or enhancement of the programs or services produced or established during the prior grant period.

I. On-going Support Grant

A grant of up to 36 months to support a project that is national in scope and that provides the State courts with services, programs or products for which there is a continuing important need.

J. Package Grant

A single grant that supports two or more closely-related projects which logically should be viewed as a whole or would require substantial duplication of effort if administered separately. Closely-related projects may include those addressing interrelated topics, or those requiring the services of all or some of the same key staff persons, or the core elements of a multifaceted program. Each of the components of a package grant must operate within the same project period.

K. Human Subjects

Individuals who are participants in an experimental procedure or who are asked to provide information about themselves, their attitudes, feelings, opinions and/or experiences through an interview, questionnaire, or other data collection technique(s).

L. Curriculum

The materials needed to replicate an education or training program developed with grant funds including, but not limited to: the learning objectives; the presentation methods; a sample agenda or schedule; an outline of presen tations and other instructors' notes; copies of overhead transparencies or other visual aids; exercises, case studies, hypotheticals, quizzes and other materials for involving the participants; background materials for participants; evaluation forms; and suggestions for replicating the program including possible faculty or the

preferred qualifications or experience of those selected as faculty.

M. Products

Tangible materials resulting from funded projects including, but not limited to: curricula; monographs; reports; books; articles; manuals; handbooks; benchbooks; guidelines; videotapes; audiotapes; and computer software.

IV. Eligibility for Award

In awarding funds to accomplish these objectives and purposes, the Institute has been authorized by Congress to award grants, cooperative agreements, and contracts to State and local courts and their agencies (42 U.S.C. 10705(b)(1)(A)); national nonprofit organizations controlled by, operating in conjunction with, and serving the judicial branches of State governments (42 U.S.C. 10705(b)(1)(B)); and national nonprofit organizations for the education and training of judges and support personnel of the judicial branch of State governments (42 U.S.C. 10705(b)(1)(C)).

An applicant will be considered a national education and training applicant under section 10705(b)(1)(C) if: (1) the principal purpose or activity of the applicant is to provide education and training to State and local judges and court personnel; and (2) the applicant demonstrates a record of substantial experience in the field of judicial education and training.

The Institute also is authorized to make awards to other nonprofit organizations with expertise in judicial administration, institutions of higher education, individuals, partnerships, firms, corporations, and private agencies with expertise in judicial administration, provided that the objectives of the relevant program area(s) can be served better. In making this judgment, the Institute will consider the likely replicability of the projects' methodology and results in other jurisdictions. For-profit organizations are also eligible for grants and cooperative agreements; however, they must waive their fees.

The Institute may also make awards to Federal, State or local agencies and institutions other than courts for services that cannot be adequately provided through nongovernmental arrangements.

Finally, the Institute may enter into inter-agency agreements with other public or private funders to support projects consistent with the purpose of the State Justice Institute Act.

Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court or its designated agency or council. The latter shall receive all Institute funds awarded to such courts and be responsible for assuring proper administration of Institute funds, in accordance with section XI.B.2. of this Guideline. A list of persons to contact in each State regarding approval of applications from State and local courts and administration of Institute grants to those courts is contained in Appendix I.

V. Types of Projects and Grants; Size of Awards

A. Types of Projects

Except as expressly provided in sections II.B.2.b. and II.C. above, the Institute has placed no limitation on the overall number of awards or the number of awards in each special interest category. The general types of projects are:

1. Education and training;
2. Research and evaluation;
3. Demonstration; and
4. Technical assistance.

B. Types of Grants

The Institute has established the following types of grants:

1. New grants (See sections VI. and VII.).
2. Continuation grants (See sections III.H. and IX.A.).
3. On-going Support grants (See sections III.I. and IX.B.).
4. Package grants (See sections III.J., VI.A.2.b., VI.A.3.b., and VII.).
5. Technical assistance grants (See section II.C.2.).
6. Curriculum Adaptation grants (See section II.B.2.b.i.(b)).
7. Scholarships (See section II.B.2.b.v.).

C. Maximum Size of Awards

1. Except as specified below, concept papers and applications for new projects other than national conferences, and applications for continuation grants may request funding in amounts up to $300,000, although new and continuation awards in excess of $200,000 are likely to be rare and to be made, if at all, only for highly promising proposals that will have a significant impact nationally.

2. Applications for ongoing support grants may request funding in amounts up to $600,000, except as provided in paragraph V.C.3. At the discretion of the Board, the funds to support ongoing support grants may be awarded either entirely from the Institute's appropriations for the fiscal year of the award or from the Institute's appropriations for successive fiscal years beginning with the fiscal year of the award. When funds to support the full amount of an ongoing support grant are not awarded from the appropriations for the fiscal year of award, funds to support any subsequent years of the grant will be made available upon (1) the satisfactory performance of the project as reflected in the quarterly Progress Reports required to be filed and grant monitoring, and (2) the availability of appropriations for that fiscal year.

3. An application for a package grant may request funding in an amount up to a total of $750,000 per year.

4. Applications for technical assistance grants may request funding in amounts up to $30,000.

5. Applications for Curriculum Adaptation grants may request funding in amounts up to $20,000.

6. Applications for scholarships may request funding in amounts up to $1,500.

D. Length of Grant Periods

1. Grant periods for all new and continuation projects ordinarily will not exceed 24 months.

2. Grant periods for ongoing support grants ordinarily will not exceed 36 months.

3. Grant periods for technical assistance grants and Curriculum Adaptation grants ordinarily will not exceed 12 months.

VI. Concept Paper Submission Requirements for new Projects

Concept papers are an extremely important part of the application process because they enable the Institute to learn the program areas of primary interest to the courts and to explore innovative ideas, without imposing heavy burdens on prospective applicants. The use of concept papers also permits the Institute to better project the nature and amount of grant awards. This requirement and the submission deadlines for concept papers and applications may be waived for good cause (e.g., the proposed project would provide a significant benefit to the State courts or the opportunity to conduct the project did not arise until after the deadline).

A. Format and Content

All concept papers must include a cover sheet, a program narrative, and a preliminary budget, regardless of whether the applicant is proposing a single project or a "package of projects," or whether the applicant is requesting accelerated award of a grant of less than $40,000.

1. The Cover Sheet

The cover sheet for all concept papers must contain:

a. A title describing the proposed project;

b. The name and address of the court, organization or individual submitting the paper;

c. The name, title, address (if different from that in b.), and telephone number of a contact person(s) who can provide further information about the paper;

d. The letter of the Special Interest Category (see section II.B.2.) or the number of the statutory Program Area (see section II.B.1.) that the proposed project addresses most directly; and

e. The estimated length of the proposed project.

Applicants requesting the Board to waive the application requirement and approve a grant of less than $40,000 based on the concept paper, should add APPLICATION WAIVER REQUESTED to the information on the cover page.

2. The Program Narrative

a. *Concept Papers Proposing a Single Project.* The program narrative of a concept paper describing a single project should be no longer than necessary, but in no case should exceed eight (8) double-spaced pages on 8½ by 11 inch paper. Margins must not be less than 1 inch and type no smaller than 12 point and 12 cpi must be used. The narrative should describe:

i. *Why this project is needed and how it will benefit State courts?* If the project is to be conducted in a specific location(s), applicants should discuss the particular needs of the project site(s) to be addressed by the project, why those needs are not being met through the use of existing materials, programs, procedures, services or other resources, and the benefits that would be realized by the proposed sites(s).

If the project is not site specific, applicants should discuss the problems that the proposed project will address, why existing materials, programs, procedures, services or other resources do not adequately resolve those problems, and the benefits that would be realized from the project by State courts generally.

ii. *What will be done if a grant is awarded?* A summary description of the project to be conducted and the approach to be taken, including the anticipated length of the grant period. Applicants requesting a waiver of the application requirement for a grant of less than $40,000 should explain the proposed methods for conducting the project as fully as space allows.

iii. *How the effects and quality of the project will be determined?* A summary description of how the project will be evaluated, including the evaluation criteria.

iv. *How others will find out about the project and be able to use the results?* A description of the products that will result, the degree to which they will be applicable to courts across the nation, and the manner in which the products and results of the project will be disseminated.

b. *Concept Papers Requesting a Package Grant Covering More Than One Project.* The program narrative of a concept paper requesting a package grant (see definition in section III.J.) should be no longer than necessary, but in no case should exceed 15 double-spaced pages on 8½ by 11 inch paper. Margins must not be less than 1 inch, and type no smaller than 12-point and 12 cpi must be used.

In addition to addressing the issues listed in paragraph VI.A.2.a., the program narrative of a package grant concept paper must describe briefly each component project, as well as how its inclusion enhances the entire package; and explain:

i. How are the proposed projects related?

ii. How would their operation and administration be enhanced if they were funded as a package rather than as individual projects; and

iii. What disadvantages, if any, would accrue by considering or funding them separately.

3. The Budget

a. *Concept Papers Proposing a Single Project.* A preliminary budget must be attached to the narrative that includes the estimates and information specified on Form E included in Appendix IV of this Guideline.

b. *Concept Papers Requesting a Package Grant Covering More Than One Project.* A separate preliminary budget for each component project of the package, as well as a combined budget that reflects the costs of the entire package, must be attached to the narrative. Each project budget must be identified by the title that corresponds to the narrative description of the project in the program narrative and a letter of the alphabet (i.e. A, B, C). Each of these budgets must include the estimates and information specified on Form E included in Appendix IV of this Guideline.

c. *Concept Papers Requesting Accelerated Award of a Grant of Less than $40,000.* Applicants requesting a waiver of the application requirement and approval of a grant based on a concept paper under section VI.C., must attach to Form E (see Appendix IV) a budget narrative explaining the basis for each of the items listed, and whether the costs would be paid from grant funds or through a matching contribution or other sources. The budget narrative is not counted against the eight-page limit for the program narrative.

4. The Institute encourages concept paper applicants to attach letters of cooperation and support from the courts and related agencies that will be involved in or directly affected by the proposed project. Letters of support also may be sent under separate cover. However, in order to ensure that there is sufficient time to bring them to the Board's attention, support letters sent under separate cover must be received no later than February 1.

5. The Institute will not accept concept papers with program narratives exceeding the limits set in sections VI.A.2. a. and b. The page limit does not include the cover page, budget form, the budget narrative if required under section VI.A.3.c., and any letters of cooperation or endorsements. Additional material should not be attached unless it is essential to impart a clear understanding of the project.

6. Applicants submitting more than one concept paper may include material that would be identical in each concept paper in a cover letter, and incorporate that material by reference in each paper. The incorporated material will be counted against the eight-page limit for each paper. A copy of the cover letter should be attached to each copy of each concept paper.

7. Sample concept papers from previous funding cycles are available from the Institute upon request.

B. Selection Criteria

1. All concept papers will be evaluated by the staff on the basis of the following criteria:

a. The demonstration of need for the project;

b. The soundness and innovativeness of the approach described;

c. The benefits to be derived from the project;

d. The reasonableness of the proposed budget;

e. The proposed project's relationship to one of the "Special Interest" categories set forth in section II.B; and

f. The degree to which the findings, procedures, training, technology, or other results of the project can be transferred to other jurisdictions.

2. "Single jurisdiction" concept papers submitted pursuant to section II.C. will be rated on the proposed project's relation to one of the "Special Interest" categories set forth in section

II.B., and on the special requirements listed in section II.C.1.

3. In determining which concept papers will be selected for development into full applications, the Institute will also consider the availability of financial assistance from other sources for the project; the amount and nature (cash or in-kind) of the applicant's anticipated match; whether the applicant is a State court, a national court support or education organization, a non-court unit of government, or another type of entity eligible to receive grants under the Institute's enabling legislation (see 42 U.S.C. 10705(b) (as amended) and section IV above); the extent to which the proposed project would also benefit the Federal courts or help the State courts enforce Federal constitutional and legislative requirements, and the level of appropriations available to the Institute in the current year and the amount expected to be available in succeeding fiscal years.

C. Review Process

Concept papers will be reviewed competitively by the Board of Directors. Institute staff will prepare a narrative summary and a rating sheet assigning points for each relevant selection criterion for those concept papers which fall within the scope of the Institute's funding program and merit serious consideration by the Board. Staff will also prepare a list of those papers that, in the judgment of the Executive Director, propose projects that lie outside the scope of the Institute's funding program or are not likely to merit serious consideration by the Board. The narrative summaries, rating sheets, and list of nonreviewed papers will be presented to the Board for their review. Committees of the Board will review concept paper summaries within assigned program areas and prepare recommendations for the full Board. The full Board of Directors will then decide which concept paper applicants should be invited to submit formal applications for funding.

The decision to invite an application is solely that of the Board of Directors. With regard to concept papers requesting a package grant, the Board retains discretion to invite an application including all, none, or selected portions of the package for possible funding.

The Board may waive the application requirement and approve a grant based on a concept paper for a project requiring less than $40,000, when the need for and benefits of the project are clear, and the methodology and budget require little additional explanation.

D. Submission Requirements

An original and three copies of all concept papers submitted for consideration in Fiscal Year 1994 must be sent by first class or overnight mail or by courier no later than December 1, 1993, except for concept papers proposing to implement an action plan developed during the National Conference on Family Violence and the Courts which must be sent by October 8, 1993 (see Special Interest category (1), and concept papers proposing projects that follow-up on the National Symposium on Court Connected Dispute Resolution Research which must be sent by March 15, 1994 (see Special Interest category e). A postmark or courier receipt will constitute evidence of the submission date. All envelopes containing concept papers should be marked CONCEPT PAPER and should be sent to: State Justice Institute, 1650 King Street, suite 600, Alexandria, Virginia 22314.

It is preferable for letters of cooperation and support to be appended to the concept paper when it is submitted. If support letters are sent under separate cover, they must be received no later than February 1, 1994 in order to ensure that there is sufficient time to bring them to the Board's attention.

The Board will meet on November 18–21, 1993 to review the concept papers and invite applications to implement an action plan developed during the National Conference on Family Violence and the Courts. It will meet on March 10–12, 1994, to review concept papers and invite applications on other topics, and will meet on May 12–14, 1994, to consider concept papers to follow-up on the National Symposium on Court Connected Dispute Resolution Research.

The Institute will send written notice to all persons submitting concept papers of the Board's decisions regarding their papers and of the key issues and questions that arose during the review process. A decision by the Board not to invite an application may not be appealed, but does not prohibit resubmission of the concept paper or a revision thereof in a subsequent round of funding. The Institute will also notify the designated State contact listed in the Appendix when the Board invites applications that are based on concept papers which are submitted by courts within their State or which specify a participating site within their State.

Receipt of each concept paper will be acknowledged in writing. Extensions of the deadline for submission of concept papers will not be granted.

VII. Application Requirements for New Projects

Except as specified in section VI., a formal application for a new project is to be submitted only upon invitation of the Board following review of a concept paper. An application for Institute funding support must include an application form; budget forms (with appropriate documentation); a project abstract and program narrative; a disclosure of lobbying form, when applicable; and certain certifications and assurances. These documents are described below.

A. Forms

1. Application Form (FORM A)

The application form requests basic information regarding the proposed project, the applicant, and the total amount of funding support requested from the Institute. It also requires the signature of an individual authorized to certify on behalf of the applicant that the information contained in the application is true and complete, that submission of the application has been authorized by the applicant, and that if funding for the proposed project is approved, the applicant will comply with the requirements and conditions of the award, including the assurances set forth in Form D.

2. Certificate of State Approval (FORM B)

An application from a State or local court must include a copy of FORM B signed by the State's Chief Justice or Chief Judge, the director of the designated agency, or the head of the designated council. The signature denotes that the proposed project has been approved by the State's highest court or the agency or council it has designated. It denotes further that if funding for the project is approved by the Institute, the court or the specified designee will receive, administer, and be accountable for the awarded funds.

3. Budget Forms (FORM C or C1)

Applicants may submit the proposed project budget either in the tabular format of FORM C or in the spreadsheet format of FORM C1. Applicants requesting more than $100,000 are encouraged to use the spreadsheet format. If the proposed project period is for more than a year, a separate form should be submitted for each year or portion of a year for which grant support is requested.

In addition to FORM C or C1, applicants must provide a detailed budget narrative providing an explanation of the basis for the

estimates in each budget category. (See section VII.D.)

Applications for a package grant must include a separate budget and budget narrative for each project included in the proposed package, as well as a combined budget that reflects the total costs of the entire package.

If funds from other sources are required to conduct the project, either as match or to support other aspects of the project, the source, current status of the request, and anticipated decision date must be provided.

4. Assurances (FORM D)

This form lists the statutory, regulatory, and policy requirements and conditions with which recipients of Institute funds must comply.

5. Disclosure of Lobbying Activities

This form requires applicants other than units of State or local government to disclose whether they, or another entity that is part of the same organization as the applicant, have advocated a position before Congress on any issue, and to identify the specific subjects of their lobbying efforts. (See section X.D.)

B. Project Abstract

The abstract should highlight the purposes, goals, methods and anticipated benefits of the proposed project. It should not exceed one single-spaced page on 8½ by 11 inch paper.

C. Program Narrative

The program narrative for an application proposing a single project should not exceed 25 double-spaced pages on 8½ by 11 inch paper. The program narrative for an application requesting a package grant for more than one project should not exceed 40 double-spaced pages on 8½ by 11 inch paper. Margins must not be less than 1 inch, and type no smaller than 12-point and 12 cpi must be used. The page limit does not include the forms, the abstract, the budget narrative, and any appendices containing resumes and letters of cooperation or endorsement. Additional background material should be attached only if it is essential to obtaining a clear understanding of the proposed project. Numerous and lengthy appendices are strongly discouraged.

The program narrative should address the following topics:

1. Project Objectives

A clear, concise statement of what the proposed project is intended to accomplish. In stating the objectives of the project, applicants should focus on the overall programmatic objective (e.g., to enhance understanding and skills regarding a specific subject, or to determine how a certain procedure affects the court and litigants) rather than on operational objectives (e.g., provide training for 32 judges and court managers, or review data from 300 cases).

2. Program Areas to be Covered

A statement which lists the program areas set forth in the State Justice Institute Act, and, if appropriate, the Institute's Special Interest program categories that are addressed by the proposed projects.

3. Need for the Project

If the project is to be conducted in a specific location(s), a discussion of the particular needs of the project site(s) to be addressed by the project and why those needs are not being met through the use of existing materials, programs, procedures, services or other resources.

If the project is not site specific, a discussion of the problems that the proposed project will address, and why existing materials, programs, procedures, services or other resources do not adequately resolve those problems. The discussion should include specific references to the relevant literature and to the experience in the field.

An application requesting a package grant to support more than one project also must describe how the proposed projects in the package are related; how their operation and administration would be enhanced if they were funded as a package rather than as individual projects; and what disadvantages, if any, would accrue by considering or funding them separately.

4. Tasks, Methods and Evaluation

a. *Tasks and Methods.* A delineation of the tasks to be performed in achieving the project objectives and the methods to be used for accomplishing each task. For example:

i. *For research and evaluation projects,* the data sources, data collection strategies, variables to be examined, and analytic procedures to be used for conducting the research or evaluation and ensuring the validity and general applicability of the results. For projects involving human subjects, the discussion of methods should address the procedures for obtaining respondents' informed consent, ensuring the respondents' privacy and freedom from risk or harm, and the protection of others who are not the subjects of research but would be affected by the research. If the potential exists for risk or harm to the human subjects, a discussion should be included of the value of the proposed research and the methods to be used to minimize or eliminate such risk.

ii. *For education and training projects,* the adult education techniques to be used in designing and presenting the program, including the teaching/learning objectives of the educational design, the teaching methods to be used, and the opportunities for structured interaction among the participants; how faculty will be recruited, selected, and trained; the proposed number and length of the conferences, courses, seminars or workshops to be conducted; the materials to be provided and how they will be developed; and the cost to participants.

iii. *For demonstration projects,* the demonstration sites and the reasons they were selected, or if the sites have not been chosen, how they will be identified and their cooperation obtained; how the program or procedures will be implemented and monitored.

iv. *For technical assistance projects,* the types of assistance that will be provided; the particular issues and problems for which assistance will be provided; how requests will be obtained and the type of assistance determined; how suitable providers will be selected and briefed; how reports will be reviewed; and the cost to recipients.

An application requesting a package grant for more than one project must describe separately the tasks associated with each project in the proposed package. Each project must be identified by a separate letter of the alphabet (i.e., A, B, C) and a descriptive title.

b. *Evaluation.* Every project design must include an evaluation plan to determine whether the project met its objectives. The evaluation should be designed to provide an objective and independent assessment of the effectiveness or usefulness of the training or services provided; the impact of the procedures, technology or services tested; or the validity and applicability of the research conducted. In addition, where appropriate, the evaluation process should be designed to provide ongoing or periodic feedback on the effectiveness or utility of particular programs, educational offerings, or achievements which can then be further refined as a result of the evaluation process. The plan should present the qualifications of the evaluator(s); describe the criteria, related to the project's programmatic objectives, that will be used to evaluate the project's effectiveness; explain how the evaluation will be conducted,

including the specific data collection and analysis techniques to be used; discuss why this approach is appropriate; and present a schedule for completion of the evaluation within the proposed project period.

The evaluation plan should be appropriate to the type of project proposed. For example:

i. An evaluation approach suited to many *research* projects is a review by an advisory panel of the research methodology, data collection instruments, preliminary analyses, and products as they are drafted. The panel should be comprised of independent researchers and practitioners representing the perspectives affected by the proposed project.

ii. The most valuable approaches to evaluating *educational or training* programs will serve to reinforce the participants' learning experience while providing useful feedback on the impact of the program and possible areas for improvement. One appropriate evaluation approach is to assess the acquisition of new knowledge, skills, attitudes or understanding through participant feedback on the seminar or training event. Such feedback might include a self-assessment on what was learned along with the participant's response to the quality and effectiveness of faculty presentations, the format of sessions, the value or usefulness of the material presented and other relevant factors. Another appropriate approach would be to use an independent observer who might request verbal as well as written responses from participants in the program. When an education project involves the development of curricular materials an advisory panel of relevant experts can be coupled with a test of the curriculum to obtain the reactions of participants and faculty as indicated above.

iii. The evaluation plan for a *demonstration* project should encompass an assessment of program effectiveness (e.g., how well did it work?); user satisfaction, if appropriate; the cost-effectiveness of the program; a process analysis of the program (e.g., was the program implemented as designed? did it provide the services intended to the targeted population?); the impact of the program (e.g., what effect did the program have on the court? what benefits resulted from the program?); and the replicability of the program or components of the program.

iv. *For technical assistance* projects, applicants should explain how the quality, timeliness, and impact of the assistance provided will be determined, and should develop a mechanism for feedback from both the users and providers of the technical assistance.

v. Evaluation plans involving *human subjects* should include a discussion of the procedures for obtaining respondents' informed consent, ensuring the respondents' privacy and freedom from risk or harm, and the protection of others who are not the subjects of evaluation but would be affected by it. Other than the provision of confidentiality to respondents, human subjects protection issues ordinarily are not applicable to participants evaluating an education program.

vi. The evaluation plan in a package grant application should address the issues listed above for the particular types of projects included in the package, assessing the strengths and weaknesses of the individual components as well as the benefits and limitations of the projects as a package.

5. Project Management

A detailed management plan including the starting and completion date for each task; the time commitments to the project of key staff and their responsibilities regarding each project task; and the procedures that will be used to ensure that all tasks are performed on time, within budget, and at the highest level of quality. In preparing the project time line, Gantt Chart, or schedule, applicants should make certain that all project activities, including publication or reproduction of project products and their initial dissemination will occur within the proposed project period. The management plan must also provide for the submission of Quarterly Progress and Financial Reports within 30 days after the close of each calendar quarter (i.e., no later than January 30, April 30, July 30, and October 30).

Package grant applications must include a management plan for each project included in the package with the same project title and alphabetic identifier describing the project in the program narrative, as well as a plan embracing the package as a whole.

6. Products

A description of the products to be developed by the project (e.g., training curricula and materials, videotapes, articles, manuals, or handbooks), including when they will be submitted to the Institute. The application must explain how and to whom the products will be disseminated; describe how they will benefit the State courts including how they can be used by judges and court personnel; identify development, production, and dissemination costs covered by the project budget; and present the basis on which products and services developed or provided under the grant will be offered to the courts community and the public at large (i.e. whether products will be distributed at no cost to recipients, or if costs are involved, the reason for charging recipients and the estimated price of the product). Ordinarily, applicant should schedule all product preparation and distribution activities within the project period. Applicants also should provide for the preparation of a one-page abstract summarizing products resulting from a project for inclusion on the Institute's electronic bulletin board.

Package grant applications must discuss these issues with regard to the products that would result from each of the projects included in the package.

The type of products to be prepared depend on the nature of the project. For example, in most instances, the products of a research, evaluation, or demonstration project should include an article summarizing the project findings that is publishable in a journal serving the courts community nationally, an executive summary that will be disseminated to the project's primary audience, or both. Applicants proposing to conduct empirical research or evaluation projects with national import should describe how they will make their data available for secondary analysis after the grant period. (See section X.W.)

The curricula and other products developed by education and training projects should be designed for use outside the classroom so that they may be used again by original participants and others in the course of their duties.

Applicants must provide for submitting a final draft of the final grant product(s) to the Institute for review and approval at least 30 days before the product(s) are submitted for publication or reproduction. No grant funds may be obligated for publication or reproduction of a final grant product without the written approval of the Institute.

Applicants must also provide for including in all project products a prominent acknowledgment that support was received from the Institute and a disclaimer paragraph based on the example provided in section X.Q. of the Guideline. The "SJI" logo must appear on the front cover of a written product, or in the opening frames of a video product, unless the Institute approves another placement.

Twenty copies of all project products, including videotapes, must be submitted to the Institute. In addition, a copy of each product must be sent to the

library established in each State to collect the materials developed with Institute support. (A list of these libraries is contained in Appendix II). To facilitate their use, all videotaped products should be distributed in VHS format. For all wordprocessed products, grantees must submit a diskette of the text in ASCII. For non-text products, a copy of the summary or a brief abstract in ASCII must be submitted.

7. Applicant Status

An applicant that is not a State or local court and has not received a grant from the Institute within the past two years should include a statement indicating whether it is either a national non-profit organization controlled by, operating in conjunction with, and serving the judicial branches of State governments; or a national non-profit organization for the education and training of State court judges and support personnel. See section IV. If the applicant is a non-judicial unit of Federal, State, or local government, it must explain whether the proposed services could be adequately provided by non-governmental entities.

8. Staff Capability

A summary of the training and experience of the key staff members and consultants that qualify them for conducting and managing the proposed project. Resumes of identified staff should be attached to the application. If one or more key staff members and consultants are not known at the time of the application, a description of the criteria that will be used to select persons for these positions should be included.

9. Organizational Capacity

Applicants that have not received a grant from the Institute within the past two years should include a statement describing the capacity of the applicant to administer grant funds including the financial systems used to monitor project expenditures (and income, if any), and a summary of the applicant's past experience in administering grants, as well as any resources or capabilities that the applicant has that will particularly assist in the successful completion of the project.

If the applicant is a nonprofit organization (other than a university), it must also provide documentation of its 501(c) tax exempt status as determined by the Internal Revenue Service and a copy of a current certified audit report. For purposes of this requirement, "current" means no earlier than two years prior to the current calendar year. If a current audit report is not available, the Institute will require the organization to complete a financial capability questionnaire which must be signed by a Certified Public Accountant. Other applicants may be required to provide a current audit report, a financial capability questionnaire, or both, if specifically requested to do so by the Institute.

Unless requested otherwise, an applicant that has received a grant from the Institute within the past two years should describe only the changes in its organizational capacity, tax status, or financial capability that may affect its capacity to administer a grant.

10. Statement of Lobbying Activities

Non-governmental applicants must submit the Institute's Disclosure of Lobbying Activities Form that requires them to state whether they, or another entity that is a part of the same organization as the applicant, have advocated a position before Congress on any issue, and identifies the specific subjects of their lobbying efforts.

11. Letters of Support for the Project

If the cooperation of courts, organizations, agencies, or individuals other than the applicant is required to conduct the project, written assurances of cooperation and availability should be attached as an appendix to the application, or they may be sent under separate cover. In order to ensure that there is sufficient time to bring them to the Board's attention, letters of support sent under separate cover must be received at least four weeks before the meeting of the Board of Directors at which the application will be considered (i.e., no later than October 21, 1993, February 1, 1994, April 14, 1994, June 30, 1994, or August 25, 1994, respectively).

D. Budget Narrative

The budget narrative should provide the basis for the computation of all project-related costs. An application for a package grant for more than one project must include a separate budget narrative for each project component, with the same alphabetic identifier and project title used to describe each component project in the program narrative. Additional background or schedules may be attached if they are essential to obtaining a clear understanding of the proposed budget. Numerous and lengthy appendices are strongly discouraged.

The budget narrative should address the items listed below. The costs attributable to the project evaluation should be clearly identified.

1. Justification of Personnel Compensation

The applicant should set forth the percentages of time to be devoted by the individuals who will serve as the staff of the proposed project, the annual salary of each of those persons, and the number of work days per year used for calculating the percentages of time or daily rate of those individuals. The applicant should explain any deviations from current rates or established written organization policies. If grant funds are requested to pay the salary and related costs for a current employee of a court or other unit of government, the applicant should explain why this would not constitute a supplantation of State or local funds in violation of 42 U.S.C. 10706(d)(1). An acceptable explanation may be that the position to be filled is a new one established in conjunction with the project or that the grant funds will be supporting only the portion of the employee's time that will be dedicated to new or additional duties related to the project.

2. Fringe Benefit Computation

The applicant should provide a description of the fringe benefits provided to employees. If percentages are used, the authority for such use should be presented as well as a description of the elements included in the determination of the percentage rate.

3. Consultant/Contractual Services

The applicant should describe each type of service to be provided. The basis for compensation rates and the method for selection should also be included. Rates for consultant services must be set in accordance with section XI.H.2.c.

4. Travel

Transportation costs and per diem rates must comply with the policies of the applicant organization. If the applicant does not have an established travel policy, then travel rates shall be consistent with those established by the Institute or the Federal Government. (A copy of the Institute's travel policy is available upon request.) The budget narrative should include an explanation of the rate used, including the components of the per diem rate and the basis for the estimated transportation expenses. The purpose for travel should also be included in the narrative.

5. Equipment

Grant funds may be used to purchase or lease only that equipment which is essential to accomplishing the objectives of the project. The applicant should describe the equipment to be purchased or leased and explain why

the acquisition of that equipment is essential to accomplish the project's goals and objectives. The narrative should clearly identify which equipment is to be leased and which is to be purchased. The method of procurement should also be described. Purchases for automatic data processing equipment must comply with section XI.H.2.b.

6. Supplies

The applicant should provide a general description of the supplies necessary to accomplish the goals and objectives of the grant. In addition, the applicant should provide the basis for the amount requested for this expenditure category.

7. Construction

Construction expenses are prohibited except for the limited purposes set forth in section X.H.2. Any allowable construction or renovation expense should be described in detail in the budget narrative.

8. Telephone

Applicants should include anticipated telephone charges, distinguishing between monthly charges and long distance charges in the budget narrative. Also, applicants should provide the basis used in developing the monthly and long distance estimates.

9. Postage

Anticipated postage costs for project-related mailings should be described in the budget narrative. The cost of special mailings, such as for a survey or for announcing a workshop, should be distinguished from routine operational mailing costs. The bases for all postage estimates should be included in the justification material.

10. Printing/Photocopying

Anticipated costs for printing or photocopying should be included in the budget narrative. Applicants should provide the details underlying these estimates in support of the request.

11. Indirect Costs

Applicants should describe the indirect cost rates applicable to the grant in detail. If costs often included within an indirect cost rate are charged directly (e.g., a percentage of the time of senior managers to supervise product activities), the applicant should specify that these costs are not included within their approved indirect cost rate. These rates must be established in accordance with section XI.H.4. If the applicant has an indirect cost rate or allocation plan approved by any Federal granting agency, a copy of the approved rate agreement should be attached to the application.

12. Match

The applicant should describe the source of any matching contribution and the nature of the match provided. Any additional contributions to the project should be described in this section of the budget narrative as well. If in-kind match is to be provided, the applicant should describe how the amount and value of the time, services or materials actually contributed will be documented sufficiently clearly to permit them to be included in an audit of the grant. Applicants should be aware that the time spent by participants in education courses does not qualify as in-kind match. (Samples of forms used by current grantees to track in-kind match are available from the Institute upon request.)

Applicants that do not contemplate making matching contributions continuously throughout the course of the project or on a task-by-task basis must provide a schedule within 30 days after the beginning of the project period indicating at what points during the project period the matching contributions will be made. (See sections III.C., VIII.B., X.B. and XI.D.1.)

E. Submission Requirements

1. An application package containing the application, an original signature on FORM A (and on FORM B, if the application is from a State or local court, or on the Disclosure of Lobbying Form if the applicant is not a unit of State or local government), and four photocopies of the application package must be sent by first class or overnight mail, or by courier no later than May 18, 1994. A postmark or courier receipt will constitute evidence of the submission date. Please mark APPLICATION on all application package envelopes and send to: State Justice Institute, 1650 King Street, Suite 600, Alexandria, Virginia 22314.

Receipt of each proposal will be acknowledged in writing. Extensions of the deadline for receipt of applications will not be granted.

2. Applicants invited to submit more than one application may include material that would be identical in each application in a cover letter, and incorporate that material by reference in each application. The incorporated material will be counted against the 25-page (or in the case of package grant applications, the 40-page) limit for the program narrative. A copy of the cover letter should be attached to each copy of each application.

3. It is preferable for letters of cooperation or support to be appended to the application when it is submitted. If support letters are sent under separate cover, they must be received no later than four weeks before the meeting of the Board of Directors at which the application will be considered (i.e. no later than October 21, 1993, February 1, 1994, April 14, 1994, June 30, 1994, or August 25, 1994, respectively) in order to ensure that there is sufficient time to bring them to the Board's attention.

VIII. Application Review Procedures

A. Preliminary Inquiries

The Institute staff will answer inquiries concerning application procedures. The staff contact will be named in the Institute's letter inviting submission of a formal application.

B. Selection Criteria

1. All applications will be rated on the basis of the criteria set forth below. The Institute will accord the greatest weight to the following criteria:

a. The soundness of the methodology;

b. The appropriateness of the proposed evaluation design;

c. The qualifications of the project's staff;

d. The applicant's management plan and organizational capabilities;

e. The reasonableness of the proposed budget;

f. The demonstration of need for the project;

g. The products and benefits resulting from the project;

h. The demonstration of cooperation and support of other agencies that may be affected by the project;

i. The proposed project's relationship to one of the "Special Interest" categories set forth in section II.B.; and

j. The degree to which the findings, procedures, training, technology, or other results of the project can be transferred to other jurisdictions.

2. "Single jurisdiction" applications submitted pursuant to section II.C.1. will also be rated on the proposed project's relation to one of the "Special Interest" categories set forth in section II.B. and on the special requirements listed in section II.C.1.b.

3. In determining which applicants to fund, the Institute will also consider whether the applicant is a State court, a national court support or education organization, a non-court unit of government, or other type of entity eligible to receive grants under the Institute's enabling legislation (see 42 U.S.C. 10705(6) (as amended) and Section IV above); the availability of financial assistance from other sources

for the project; the amount and nature (cash or in-kind) of the applicant's match; the extent to which the proposed project would also benefit the Federal courts or help the State courts enforce Federal constitutional and legislative requirements; and the level of appropriations available to the Institute in the current year and the amount expected to be available in succeeding fiscal years.

C. Review and Approval Process

Applications will be reviewed competitively by the Board of Directors. The Institute staff will prepare a narrative summary of each application, and a rating sheet assigning points for each relevant selection criterion. When necessary, applications may also be reviewed by outside experts. Committees of the Board will review applications within assigned program categories and prepare recommendations to the full Board. The full Board of Directors will then decide which applications to approve for a grant. The decision to award a grant is solely that of the Board of Directors.

Awards approved by the Board will be signed by the Chairman of the Board on behalf of the Institute.

D. Return Policy

Unless a specific request is made, unsuccessful applications will not be returned. Applicants are advised that Institute records are subject to the provisions of the Federal Freedom of Information Act, 5 U.S.C. 552.

E. Notification of Board Decision

The Institute will send written notice to applicants concerning all Board decisions to approve or deny their respective applications and the key issues and questions that arose during the review process. A decision by the Board to deny an application may not be appealed, but does not prohibit resubmission of a concept paper based on that application in a subsequent round of funding. The Institute will also notify the designated State contact listed in Appendix I when grants are approved by the Board to support projects that will be conducted by or involve courts in their State.

F. Response to Notification of Approval

Applicants have 30 days from the date of the letter notifying them that the Board has approved their application to respond to any revisions requested by the Board. If the requested revisions (or a reasonable schedule for submitting such revisions) has not been submitted to the Institute within 30 days after notification, the approval will be automatically rescinded and the application presented to the Board for reconsideration.

IX. Renewal Funding Procedures and Requirements

The Institute recognizes two types of renewal funding as described below—"continuation grants" and "on-going support grants." The award of an initial grant to support a project does not constitute a commitment by the Institute to renew funding. The Board of Directors anticipates allocating no more than $3 million of available FY 1994 grant funds for renewal grants.

A. Continuation Grants

1. Purpose and Scope

Continuation grants are intended to support projects with a limited duration that involve the same type of activities as the previous project. They are intended to enhance the specific program or service produced or established during the prior grant period. They may be used, for example, when a project is divided into two or more sequential phases, for secondary analysis of data obtained in an Institute-supported research project, or for more extensive testing of an innovative technology, procedure, or program developed with SJI grant support.

In order for a project to be considered for continuation funding, the grantee must have completed the project tasks and met all grant requirements and conditions in a timely manner, absent extenuating circumstances or prior Institute approval of changes to the project design. Continuation grants are not intended to provide support for a project for which the grantee has underestimated the amount of time or funds needed to accomplish the project tasks.

A continuation grant may be awarded for either a single project or for more than one project as a package grant (see sections III.J., V.C.1 and 3, and V.D.1 and 3).

2. Application Procedures—Letters of Intent

In lieu of a concept paper, a grantee seeking a continuation grant must inform the Institute, by letter, of its intent to submit an application for such funding as soon as the need for renewal funding becomes apparent but no less than 120 days before the end of the current grant period.

a. A letter of intent must be no more than 3 single-spaced pages on 8½ by 11 inch paper and must contain a concise but thorough explanation of the need for continuation; an estimate of the funds to be requested; and a brief description of anticipated changes in scope, focus or audience of the project.

b. Letters of intent will not be reviewed competitively. Institute staff will review the proposed activities for the next project period and, within 30 days of receiving a letter of intent, inform the grantee of specific issues to be addressed in the continuation application and the date by which the application for a continuation grant must be submitted.

3. Application Format

An application for a continuation grant must include an application form, budget forms (with appropriate documentation), a project abstract conforming to the format set forth in section VII.B., a program narrative, a budget narrative, a disclosure of lobbying form from (applicants other than units of State or local government), and certain certifications and assurances.

The program narrative should conform to the length and format requirements set forth in section VII.C. However, rather than the topics listed in section VII.C., the program narrative of an application for a continuation grant should include:

a. *Project Objectives.* A clear, concise statement of what the continuation project is intended to accomplish.

b. *Need for Continuation.* An explanation of why continuation of the project is necessary to achieve the goals of the project, and how the continuation will benefit the participating courts or the courts community generally. That is, to what extent will the original goals and objectives of the project be unfulfilled if the project is not continued, and conversely, how will the findings or results of the project be enhanced by continuing the project?

A continuation application requesting a package grant to support more than one project should explain, in addition, how the proposed projects are related; how their operation and administration would be enhanced by the grant; the advantages of funding the projects as a package rather than individually; and the disadvantages, if any, that would accrue by considering or funding them separately.

c. *Report of Current Project Activities.* A discussion of the status of all activities conducted during the previous project period. Applicants should identify any activities that were not completed, and explain why. A continuation application requesting a package grant must describe separately the activities undertaken in each of the

projects included within the proposed package.

d. *Evaluation Findings.* The key findings, impact, or recommendations resulting from the evaluation of the project, if they are available, and how they will be addressed during the proposed continuation. If the findings are not yet available, applicants should provide the date by which they will be submitted to the Institute.

e. *Tasks, Methods, Staff and Grantee Capability.* A full description of any changes in the tasks to be performed, the methods to be used, the products of the project, how and to whom those products will be disseminated, the assigned staff, or the grantee's organizational capacity. Applicants should include, in addition, the criteria and methods by which the proposed continuation project would be evaluated.

A continuation application for a package grant must address these issues separately for each project included in the proposed package, using the same alphabetic identifiers and project titles as in the original application.

f. *Task Schedule.* A detailed task schedule and time line for the next project period. A continuation application for a package grant should include a separate task schedule and timeline for each project included in the proposed package, as well as a schedule and time line that covers the package of projects as a whole. The same alphabetic identifiers and project titles used in the original application should be used to identify the component projects in the renewal application.

g. *Other Sources of Support.* An indication of why other sources of support are inadequate, inappropriate or unavailable.

4. Budget and Budget Narrative

Provide a complete budget and budget narrative conforming to the requirements set forth in paragraph VII.D. Changes in the funding level requested should be discussed in terms of corresponding increases or decreases in the scope of activities or services to be rendered.

A continuation application for a package grant must include a separate budget narrative identified alphabetically (i.e. A, B, C) and by project title for each project component.

5. References to Previously Submitted Material

An application for a continuation grant should not repeat information contained in a previously approved application or other previously submitted materials, but should provide specific references to such materials where appropriate.

6. Submission Requirements, Review and Approval Process, and Notification of Decision

The submission requirements set forth in section VII.E., other than the deadline for mailing, apply to applications for a continuation grant. Such applications will be rated on the selection criteria set forth in section VIII.B. The key findings and recommendations resulting from an evaluation of the project and the proposed response to those findings and recommendations will also be considered. The review and approval process, return policy, and notification procedures are the same as those for new projects set forth in sections VIII.C.—VIII.E.

B. On-going Support Grants

1. Purpose and Scope

On-going support grants are intended to support projects that are national in scope and that provide the State courts with services, programs or products for which there is a continuing important need. An on-going support grant may also be used to fund longitudinal research that directly benefits the State courts. On-going support grants are subject to the limits on size and duration set forth in V.C.2 and V.D.2. A project is eligible for consideration for an on-going support grant if:

a. The project is supported by and has been evaluated under a grant from the Institute;

b. The project is national in scope and provides a significant benefit to the State courts;

c. There is a continuing important need for the services, programs or products provided by the project as indicated by the level of use and support by members of the court community;

d. The project is accomplishing its objectives in an effective and efficient manner; and

e. It is likely that the service or program provided by the project would be curtailed or significantly reduced without Institute support.

Each project supported by an on-going support grant must include an evaluation component assessing its effectiveness and operation throughout the grant period. The evaluation should be independent, but may be designed collaboratively by the evaluator and the grantee. The design should call for regular feedback from the evaluator to the grantee throughout the project period concerning recommendations for mid-course corrections or improvement of the project, as well as periodic reports to the Institute at relevant points in the project.

An interim evaluation report must be submitted 18 months into the grant period. The decision to obligate Institute funds to support the third year of the project will be based on the interim evaluation findings and the applicant's response to any deficiencies noted in the report.

A final evaluation assessing the effectiveness, operation of, and continuing need for the project must be submitted 90 days before the end of the three-year project period.

In addition, a detailed annual task schedule must be submitted not later than 45 days before the end of the first and second years of the grant period, along with an explanation of any necessary revisions in the projected costs for the remainder of the project period. (See also section IX.B.3.h.)

2. Application Procedures—Letters of Intent

The Board will consider awarding an on-going support grant for a period of up to 36 months. The total amount of the grant will be fixed at the time of the initial award. Funds ordinarily will be made available in annual increments as specified in section V.C.2.

In lieu of a concept paper, a grantee seeking an on-going support grant must inform the Institute, by letter, of its intent to submit an application for such funding as soon as the need for renewal funding becomes apparent but no less than 120 days before the end of the current grant period. The letter of intent should be in the same format as that prescribed for continuation grants in section IX.A.2.a.

3. Application Procedures and Format

An application for an on-going support grant must include an application form, budget forms (with appropriate documentation), a project abstract conforming to the format set forth in section VII.B., a program narrative, a budget narrative, and certain certifications and assurances.

The program narrative should conform to the length and format requirements set forth in section VII.C. However, rather than the topics listed in section VII.C., the program narrative of applications for on-going support grants should address:

a. *Description of Need for and Benefits of the Project.* Provide a detailed discussion of the benefits provided by the project to the State courts around the country, including the degree to which State courts, State court judges, or State court managers and

personnel are using the services or programs provided by the project.

An application for ongoing support of a package grant should explain, in addition, how the proposed projects are related; how their operation and administration would be enhanced by the grant; the advantages of funding the projects as a package rather than individually; and the disadvantages, if any, that would accrue by considering or funding them separately.

b. *Demonstration of Court Support.* Demonstrate support for the continuation of the project from the courts community.

c. *Report on Current Project Activities.* Discuss the extent to which the project has met its goals and objectives, identify any activities that have not been completed, and explain why. An application for ongoing support of a package grant must describe separately the activities undertaken in each of the projects included within the proposed package.

d. *Evaluation Findings.* Attach a copy of the final evaluation report regarding the effectiveness, impact, and operation of the project, specify the key findings or recommendations resulting from the evaluation, and explain how they will be addressed during the proposed renewal period.

e. *Objectives, Tasks, Methods, Staff and Grantee Capability.* Describe fully any changes in the objectives; tasks to be performed; the methods to be used; the products of the project; how and to whom those products will be disseminated; the assigned staff; and the grantee's organizational capacity.

An application for ongoing support of a package grant must address these issues separately for each project included in the proposed package, using the same alphabetic identifiers and project titles as in the original application.

f. *Task Schedule.* Present a general schedule for the full proposed project period and a detailed task schedule for the first year of the proposed new project period. An application for ongoing support of a package grant should include a separate task schedule and timeline for each project included in the proposed package, as well as a schedule and time line that covers the package of projects as a whole. The same alphabetic identifiers and project titles used in the original application should be used to identify the component projects in the renewal application.

g. *Other Sources of Support.* Indicate why other sources of support are inadequate, inappropriate or unavailable.

4. Budget and Budget Narrative

Provide a complete three-year budget and budget narrative conforming to the requirements set forth in paragraph VII.D. Changes in the funding level requested should be discussed in terms of corresponding increases or decreases in the scope of activities or services to be rendered. A complete budget narrative should be provided for each year, or portion of a year, for which grant support is requested. Changes in the funding level requested should be discussed in terms of corresponding increases or decreases in the scope of activities or services to be rendered. The budget should provide for realistic cost-of-living and staff salary increases over the course of the requested project period. Applicants should be aware that the Institute is unlikely to approve a supplemental budget increase for an ongoing support grant in the absence of well documented, unanticipated factors that clearly justify the requested increase.

A continuation application for a package grant must include a separate budget narrative identified alphabetically (i.e. A, B, C) and by project title for each project component.

5. References to Previously Submitted Material

An application for an ongoing support grant should not repeat information contained in a previously approved application or other previously submitted materials, but should provide specific references to such materials where appropriate.

6. Submission Requirements, Review and Approval Process, and Notification of Decision

The submission requirements set forth in section VII.E., other than the deadline for mailing, apply to applications for an ongoing support grant. Such applications will be rated on the selection criteria set forth in section VIII.B. The key findings and recommendations resulting from an evaluation of the project and the proposed response to those findings and recommendations will also be considered. The review and approval process, return policy, and notification procedures are the same as those for new projects set forth in sections VIII.C.–VIII.E.

X. Compliance Requirements

The State Justice Institute Act (Pub. L. 98–620, as amended) contains limitations and conditions on grants, contracts and cooperative agreements of which applicants and recipients should be aware. In addition to eligibility requirements which must be met to be considered for an award from the Institute, all applicants should be aware of and all recipients will be responsible for ensuring compliance with the following:

A. State and Local Court Systems

Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council. The latter shall receive, administer, and be accountable for all funds awarded to such courts. 42 U.S.C. 10705(b)(4). Appendix I to this guideline lists the agencies, councils and contact persons designated to administer Institute awards to the State and local courts.

B. Matching Requirements

1. All awards to courts or other units of State or local government (not including publicly supported institutions of higher education) require a match from private or public sources of not less than 50% of the total amount of the Institute's award. For example, if the total cost of a project is anticipated to be $150,000, a State court or executive branch agency may request up to $100,000 from the Institute to implement the project. The remaining $50,000 (50% of the $100,000 requested from SJI) must be provided as a match. A cash match, non-cash match, or both, may be provided, but the Institute will give preference to those applicants who provide a cash match to the Institute's award. (For a further definition of match, see section III.G.)

The requirement to provide match may be waived in exceptionally rare circumstances upon approval of the Chief Justice of the highest court in the State and a majority of the Board of Directors. 42 U.S.C. 10705(d) (as amended).

2. Other eligible recipients of Institute funds are not required to provide a match, but are encouraged to contribute to meeting the costs of the project. In instances where a cash match is proposed, the grantee is responsible for ensuring that the total amount proposed is actually contributed. If a proposed cash match contribution is not fully met, the Institute may reduce the award amount accordingly, in order to maintain the ratio originally provided for in the award agreement (see sections VIII.B. above and XI.D.).

C. Conflict of Interest

Personnel and other officials connected with Institute-funded programs shall adhere to the following requirements:

1. No official or employee of a recipient court or organization shall participate personally through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise in any proceeding, application, request for a ruling or other determination, contract, grant, cooperative agreement, claim, controversy, or other particular matter in which Institute funds are used, where to his/her knowledge he/she or his/her immediate family, partners, organization other than a public agency in which he/she is serving as officer, director, trustee, partner, or employee or any person or organization with whom he/she is negotiating or has any arrangement concerning prospective employment, has a financial interest.

2. In the use of Institute project funds, an official or employee of a recipient court or organization shall avoid any action which might result in or create the appearance of:

a. Using an official position for private gain; or

b. Affecting adversely the confidence of the public in the integrity of the Institute program.

3. Requests for proposals or invitations for bids issued by a recipient of Institute funds or a subgrantee or subcontractor will provide notice to prospective bidders that the contractors who develop or draft specifications, requirements, statements of work and/or requests for proposals for a proposed procurement will be excluded from bidding on or submitting a proposal to compete for the award of such procurement.

D. Lobbying

Funds awarded to recipients by the Institute shall not be used, indirectly or directly, to influence Executive orders or similar promulgations by Federal, State or local agencies, or to influence the passage or defeat of any legislation by Federal, State or local legislative bodies. 42 U.S.C. 10706(a).

It is the policy of the Board of Directors to award funds only to support applications submitted by organizations that would carry out the objectives of their applications in an unbiased manner. Consistent with this policy and the provisions of 42 U.S.C. 10706, the Institute will not knowingly award a grant to an applicant that has, directly or through an entity that is part of the same organization as the applicant, advocated a position before Congress on the specific subject matter of the application.

E. Political Activities

No recipient shall contribute or make available Institute funds, program personnel or equipment to any political party or association, or the campaign of any candidate for public or party office. Recipients are also prohibited from using funds in advocating or opposing any ballot measure, initiative, or referendum. Finally, officers and employees of recipients shall not intentionally identify the Institute or recipients with any partisan or nonpartisan political activity associated with a political party or association, or the campaign of any candidate for public or party office. 42 U.S.C. 10706(a).

F. Advocacy

No funds made available by the Institute may be used to support or conduct training programs for the purpose of advocating particular nonjudicial public policies or encouraging nonjudicial political activities. 42 U.S.C. 10706(b).

G. Prohibition Against Litigation Support

No funds made available by the Institute may be used directly or indirectly to support legal assistance to parties in litigation, including cases involving capital punishment.

H. Supplantation and Construction

To ensure that funds are used to supplement and improve the operation of State courts, rather than to support basic court services, funds shall not be used for the following purposes:

1. To supplant State or local funds supporting a program or activity;

2. To construct court facilities or structures, except to remodel existing facilities or to demonstrate new architectural or technological techniques, or to provide temporary facilities for new personnel or for personnel involved in a demonstration or experimental program; or

3. Solely to purchase equipment.

I. Confidentiality of Information

Except as provided by Federal law other than the State Justice Institute Act, no recipient of financial assistance from SJI may use or reveal any research or statistical information furnished under the Act by any person and identifiable to any specific private person for any purpose other than the purpose for which the information was obtained. Such information and copies thereof shall be immune from legal process, and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial, legislative, or administrative proceedings.

J. Human Research Protection

All research involving human subjects shall be conducted with the informed consent of those subjects and in a manner that will ensure their privacy and freedom from risk or harm and the protection of persons who are not subjects of the research but would be affected by it, unless such procedures and safeguards would make the research impractical. In such instances, the Institute must approve procedures designed by the grantee to provide human subjects with relevant information about the research after their involvement and to minimize or eliminate risk or harm to those subjects due to their participation.

K. Nondiscrimination

No person may, on the basis of race, sex, national origin, disability, color, or creed be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any program or activity supported by Institute funds. Recipients of Institute funds must immediately take any measures necessary to effectuate this provision.

L. Reporting Requirements

Recipients of Institute funds, other than scholarships awarded under section II.B.2.b.v., shall submit Quarterly Progress and Financial Reports within 30 days of the close of each calendar quarter (that is, no later than January 30, April 30, July 30, and October 30). Two copies of each report must be sent. The Quarterly Progress Reports shall include a narrative description of project activities during the calendar quarter, the relationship between those activities and the task schedule and objectives set forth in the approved application or an approved adjustment thereto, any significant problem areas that have developed and how they will be resolved, and the activities scheduled during the next reporting period.

The quarterly financial status report shall be submitted in accordance with section XI.G.2. of this guideline. A final project progress report and financial status report shall be submitted within 90 days after the end of the grant period in accordance with section XI.K.2. of this Guideline.

M. Audit

Each recipient must provide for an annual fiscal audit. (See section XI.J. of

this guideline for the requirements of such audits.)

Accounting principles employed in recording transactions and preparing financial statements must be based upon generally accepted accounting principles (GAAP).

N. Suspension of Funding

After providing a recipient reasonable notice and opportunity to submit written documentation demonstrating why fund termination or suspension should not occur, the Institute may terminate or suspend funding of a project that fails to comply substantially with the Act, Institute guidelines, or the terms and conditions of the award. 42 U.S.C. 10708(a).

O. Title to Property

At the conclusion of the project, title to all expendable and nonexpendable personal property purchased with Institute funds shall vest in the recipient court, organization, or individual that purchased the property if certification is made to the Institute that the property will continue to be used for the authorized purposes of the Institute-funded project or other purposes consistent with the State Justice Institute Act, as approved by the Institute. If such certification is not made or the Institute disapproves such certification, title to all such property with an aggregate or individual value of $1,000 or more shall vest in the Institute, which will direct the disposition of the property.

P. Original Material

All products prepared as the result of Institute-supported projects must be originally-developed material unless otherwise specified in the award documents. Material not originally developed that is included in such products must be properly identified, whether the material is in a verbatim or extensive paraphrase format.

Q. Acknowledgment and Disclaimer

Recipients of Institute funds shall acknowledge prominently on all products developed with grant funds that support was received from the Institute. The "SJI" logo must appear on the front cover of a written product, or in the opening frames of a video product, unless another placement is approved in writing by the Institute.

Recipients also shall display the following disclaimer on all grant products:

"This [document, film, videotape, etc.] was developed under a [grant, cooperative agreement, contract] from the State Justice Institute. The points of view expressed are those of the [author(s), filmmaker(s), etc.] and do not necessarily represent the official position or policies of the State Justice Institute."

R. Institute Approval of Grant Products

No grant funds may be obligated for publication or reproduction of a final product developed with grant funds without the written approval of the Institute. Grantees shall submit a final draft of each such product to the Institute for review and approval. These drafts shall be submitted sufficiently before the product is scheduled to be sent for publication or reproduction to permit Institute review and incorporation of any appropriate changes agreed upon by the grantee and the Institute.

S. Distribution of Grant Products to State Libraries

Grantees shall send one copy of each final product developed with grant funds to the library established in each State to collect materials prepared with Institute support. (A list of these libraries is contained in Appendix II).

T. Copyrights

Except as otherwise provided in the terms and conditions of an Institute award, a recipient is free to copyright any books, publications, or other copyrightable materials developed in the course of an Institute-supported project, but the Institute shall reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the materials for purposes consistent with the State Justice Institute Act.

U. Inventions and Patents

If any patentable items, patent rights, processes, or inventions are produced in the course of Institute-sponsored work, such fact shall be promptly and fully reported to the Institute. Unless there is a prior agreement between the grantee and the Institute on disposition of such items, the Institute shall determine whether protection of the invention or discovery shall be sought. The Institute will also determine how the rights in the invention or discovery, including rights under any patent issued thereon, shall be allocated and administered in order to protect the public interest consistent with "Government Patent Policy" (President's Memorandum for Heads of Executive Departments and Agencies, February 18, 1983, and statement of Government Patent Policy).

V. Charges for Grant-Related Products/ Recovery of Costs

When Institute funds fully cover the cost of developing, producing, and disseminating a product, (e.g., a report, curriculum, videotape or software), the product should be distributed to the field without charge. When Institute funds only partially cover the development, production, or dissemination costs, the grantee may recover its costs for reproducing and disseminating the material to those requesting it.

Applicants should disclose the intent to sell grant-related products in both the concept paper and the application. Grantees must obtain the written, prior approval of the Institute of their plans to recover project costs through the sale of grant products. Written requests to recover costs ordinarily should be received during the grant period and should specify the nature and extent of the costs to be recouped, the reason that such costs were not budgeted (if the rationale was not disclosed in the approved application), the number of copies to be sold, the intended audience for the products to be sold, and the proposed sale price. See section III.G. and XI.F. for requirements regarding project-related income.

W. Availability of Research Data for Secondary Analysis

Upon request, grantees must make available for secondary analysis a diskette(s) or data tape(s) containing research and evaluation data collected under an Institute grant and the accompanying code manual. Grantees may recover the actual cost of duplicating and mailing or otherwise transmitting the data set and manual from the person or organization requesting the data. Grantees may provide the requested data set in the format in which it was created and analyzed.

X. Approval of Key Staff

If the qualifications of an employee or consultant assigned to a key project staff position are not described in the application or if there is a change of a person assigned to such a position, a recipient shall submit a description of the qualifications of the newly assigned person to the Institute. Prior written approval of the qualifications of the new person assigned to a key staff position must be received from the Institute before the salary or consulting fee of that person and associated costs may be paid or reimbursed from grant funds.

XI. Financial Requirements

A. Accounting Systems and Financial Records

All grantees, subgrantees, contractors and other organizations directly or indirectly receiving Institute funds are required to establish and maintain accounting systems and financial records to accurately account for funds they receive. These records shall include total program costs, including Institute funds, State and local matching shares, and any other fund sources included in the approved project budget.

1. Purpose

The purpose of this section is to establish accounting system requirements and to offer guidance on procedures which will assist all grantees/subgrantees in:

a. Complying with the statutory requirements for the awarding, disbursement, and accounting of funds;

b. Complying with regulatory requirements of the Institute for the financial management and disposition of funds;

c. Generating financial data which can be used in the planning, management and control of programs; and

d. Facilitating an effective audit of funded programs and projects.

2. References

Except where inconsistent with specific provisions of this Guideline, the following regulations, directives and reports are applicable to Institute grants and cooperative agreements. These materials supplement the requirements of this section for accounting systems and financial recordkeeping and provide additional guidance on how these requirements may be satisfied.

a. *Office of Management and Budget (OMB) Circular A–21*, Cost Principles for Educational Institutions.

b. *Office of Management and Budget (OMB) Circular A–87*, Cost Principles for State and Local Governments.

c. *Office of Management and Budget (OMB) Circular A–88 (revised)*, Indirect Cost Rates, Audit and Audit Follow-up at Educational Institutions.

d. *Office of Management and Budget (OMB) Circular A–102*, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

e. *Office of Management and Budget (OMB) Circular A–110*, Grants and Agreements with Institutions of Higher Education, Hospitals and other Non-Profit Organizations.

f. *Office of Management and Budget (OMB) Circular A–128*, Audits of State and Local Governments.

g. *Office of Management and Budget (OMB) Circular A–122*, Cost Principles for Non-profit Organizations.

B. Supervision and Monitoring Responsibilities

1. Grantee Responsibilities

All grantees receiving direct awards from the Institute are responsible for the management and fiscal control of all funds. Responsibilities include accounting for receipts and expenditures, maintaining adequate financial records and refunding expenditures disallowed by audits.

2. Responsibilities of State Supreme Court

Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council.

The State Supreme Court shall receive all Institute funds awarded to such courts and shall be responsible for assuring proper administration of Institute funds. The State Supreme Court is responsible for all aspects of the project, including proper accounting and financial recordkeeping by the subgrantee. The responsibilities include:

a. *Reviewing Financial Operations.* The State Supreme Court should be familiar with, and periodically monitor, its subgrantees' financial operations, records system and procedures. Particular attention should be directed to the maintenance of current financial data.

b. *Recording Financial Activities.* The subgrantee's grant award or contract obligation, as well as cash advances and other financial activities, should be recorded in the financial records of the State Supreme Court in summary form. Subgrantee expenditures should be recorded on the books of the State Supreme Court *OR* evidenced by report forms duly filed by the subgrantee. Non-Institute contributions applied to projects by subgrantees should likewise be recorded, as should any project income resulting from program operations.

c. *Budgeting and Budget Review.* The State Supreme Court should ensure that each subgrantee prepares an adequate budget as the basis for its award commitment. The detail of each project budget should be maintained on file by the State Supreme Court.

d. *Accounting for Non-Institute Contributions.* The State Supreme Court will ensure, in those instances where subgrantees are required to furnish non-Institute matching funds, that the requirements and limitations of this guideline are applied to such funds.

e. *Audit Requirement.* The State Supreme Court is required to ensure that subgrantees have met the necessary audit requirements as set forth by the Institute (see sections X.M. and XI.J).

f. *Reporting Irregularities.* The State Supreme Court and its subgrantees are responsible for promptly reporting to the Institute the nature and circumstances surrounding any financial irregularities discovered.

C. Accounting System

The grantee is responsible for establishing and maintaining an adequate system of accounting and internal controls for itself and for ensuring that an adequate system exists for each of its subgrantees and contractors. An acceptable and adequate accounting system is considered to be one which:

1. Properly accounts for receipt of funds under each grant awarded and the expenditure of funds for each grant by category of expenditure (including matching contributions and project income);

2. Assures that expended funds are applied to the appropriate budget category included within the approved grant;

3. Presents and classifies historical costs of the grant as required for budgetary and evaluation purposes;

4. Provides cost and property controls to assure optimal use of grant funds;

5. Is integrated with a system of internal controls adequate to safeguard the funds and assets covered, check the accuracy and reliability of the accounting data, promote operational efficiency, and assure conformance with any general or special conditions of the grant;

6. Meets the prescribed requirements for periodic financial reporting of operations; and

7. Provides financial data for planning, control, measurement, and evaluation of direct and indirect costs.

D. Total Cost Budgeting and Accounting

Accounting for all funds awarded by the Institute shall be structured and executed on a "total project cost" basis. That is, total project costs, including Institute funds, State and local matching shares, and any other fund sources included in the approved project budget shall be the foundation for fiscal administration and accounting. Grant applications and financial reports require budget and cost estimates on the basis of total costs.

1. Timing of Matching Contributions

Matching contributions need not be applied at the exact time of the

obligation of Institute funds. However, the full matching share must be obligated during the award period, except that with the prior written permission of the Institute, contributions made following approval of the grant by the Institute's Board but before the beginning of the grant may be counted as match. Grantees that do not contemplate making matching contributions continuously throughout the course of a project or on a task-by-task basis, are required to submit a schedule within 30 days after the beginning of the project period indicating at what points during the project period the matching contributions will be made. In instances where a proposed cash match is not fully met, the Institute may reduce the award amount accordingly, in order to maintain the ratio originally provided for in the award agreement.

2. Records for Match

All grantees must maintain records which clearly show the source, amount, and timing of all matching contributions. In addition, if a project has included, within its approved budget, contributions which exceed the required matching portion, the grantee must maintain records of those contributions in the same manner as it does the Institute funds and required matching shares. For all grants made to State and local courts, the State Supreme Court has primary responsibility for grantee/subgrantee compliance with the requirements of this section. (See section XI.B.2.)

E. Maintenance and Retention of Records

All financial records, supporting documents, statistical records and all other records pertinent to grants, subgrants, cooperative agreements or contracts under grants shall be retained by each organization participating in a project for at least three years for purposes of examination and audit. State Supreme Courts may impose record retention and maintenance requirements in addition to those prescribed in this chapter.

1. Coverage

The retention requirement extends to books of original entry, source documents supporting accounting transactions, the general ledger, subsidiary ledgers, personnel and payroll records, cancelled checks, and related documents and records. Source documents include copies of all grant and subgrant awards, applications, and required grantee/subgrantee financial and narrative reports. Personnel and payroll records shall include the time and attendance reports for all individuals reimbursed under a grant, subgrant or contract, whether they are employed full-time or part-time. Time and effort reports will be required for consultants.

2. Retention Period

The three-year retention period starts from the date of the submission of the final expenditure report or, for grants which are renewed annually, from the date of submission of the annual expenditure report.

3. Maintenance

Grantees and subgrantees are expected to see that records of different fiscal years are separately identified and maintained so that requested information can be readily located. Grantees and subgrantees are also obligated to protect records adequately against fire or other damage. When records are stored away from the grantee's/subgrantee's principal office, a written index of the location of stored records should be on hand, and ready access should be assured.

4. Access

Grantees and subgrantees must give any authorized representative of the Institute access to and the right to examine all records, books, papers, and documents related to an Institute grant.

F. Project-Related Income

Records of the receipt and disposition of project-related income must be maintained by the grantee in the same manner as required for the project funds that gave rise to the income. The policies governing the disposition of the various types of project-related income are listed below.

1. Interest

A State and any agency or instrumentality of a State including State institutions of higher education and State hospitals, shall not be held accountable for interest earned on advances of project funds. When funds are awarded to subgrantees through a State, the subgrantees are not held accountable for interest earned on advances of project funds. Local units of government and nonprofit organizations that are direct grantees must refund any interest earned. Grantees shall so order their affairs to ensure minimum balances in their respective grant cash accounts.

2. Royalties

The grantee/subgrantee may retain all royalties received from copyrights or other works developed under projects or from patents and inventions, unless the terms and conditions of the project provide otherwise.

3. Registration and Tuition Fees

Registration and tuition fees shall be used to pay project-related costs not covered by the grant, or to reduce the amount of grant funds needed to support the project. Registration and tuition fees may be used for other purposes only with the prior written approval of the Institute.

4. Income From the Sale of Grant Products

When grant funds fully cover the costs of producing and disseminating a limited number of copies of a product, the grantee may, with the written approval of the Institute, sell additional copies reproduced at its expense only at a price that recovers actual reproduction and distribution costs. These costs must be reported on the quarterly financial status reports and documented in an auditable manner. Whenever possible, the intent to sell a product should be disclosed in the concept paper and application or reported to the Institute in writing once a decision to sell products has been made. The grantee must request approval to recover its product reproduction and dissemination costs as specified in section X.V.

5. Other

Other project income shall be treated in accordance with disposition instructions set forth in the project's terms and conditions.

G. Payments and Financial Reporting Requirements

1. Payment of Grant Funds

The procedures and regulations set forth below are applicable to all Institute grant funds and grantees.

a. *Request for Advance or Reimbursement of Funds.* Grantees will receive funds on a "Check-Issued" basis. Upon receipt, review, and approval of a Request for Advance or Reimbursement by the Institute, a check will be issued directly to the grantee or its designated fiscal agent. A request must be limited to the grantee's immediate cash needs. The Request for Advance or Reimbursement, along with the instructions for its preparation, will be included in the official Institute award package.

For purposes of submitting Requests for Advance or Reimbursement, recipients of continuation and on-going support grants should consider these grants as supplements to and extensions of the original award and number their

requests on a project rather than a grant basis. (See Recommendations to Grantees in the Introduction for further guidance.)

Payment requests for projects within a package grant may be submitted at the same time, but must be calculated separately by component project. The alphabetic project identifier (A, B, C, etc.) should be appended to the grant number in Block 5 of the Request for Advance or Reimbursement. (See Recommendations to Grantees in the Introduction for further guidance.)

b. *Termination of Advance and Reimbursement Funding.* When a grantee organization receiving cash advances from the Institute:

i. Demonstrates an unwillingness or inability to attain program or project goals, or to establish procedures that will minimize the time elapsing between cash advances and disbursements, or cannot adhere to guideline requirements or special conditions;

ii. Engages in the improper award and administration of subgrants or contracts; or

iii. Is unable to submit reliable and/or timely reports, the Institute may terminate advance financing and require the grantee organization to finance its operations with its own working capital. Payments to the grantee shall then be made by the use of the Institute check method to reimburse the grantee for actual cash disbursements. In the event the grantee continues to be deficient, the Institute reserves the right to suspend reimbursement payments until the deficiencies are corrected.

c. *Principle of Minimum Cash on Hand.* Recipient organizations should request funds based upon immediate disbursement requirements. Grantees should time their requests to ensure that cash on hand is the minimum needed for disbursements to be made immediately or within a few days. Idle funds in the hands of subgrantees will impair the goals of good cash management.

2. Financial Reporting

In order to obtain financial information concerning the use of funds, the Institute requires that grantees/subgrantees of these funds submit timely reports for review.

Two copies of the Financial Status Report are required from all grantees, other than recipients of scholarships under section II.B.2.b.v., for each active quarter on a calendar-quarter basis. This report is due within 30 days after the close of the calendar quarter. It is designed to provide financial information relating to Institute funds, State and local matching shares, and any other fund sources included in the approved project budget. The report contains information on obligations as well as outlays. A copy of the Financial Status Report, along with instructions for its preparation, will be included in the official Institute Award package. In circumstances where an organization requests substantial payments for a project prior to the completion of a given quarter, the Institute may request a brief summary of the amount requested, by object class, in support of the Request for Advance or Reimbursement.

Grantees receiving a continuation or on-going support grant should provide financial information and number their quarterly Financial Status Reports on a project rather than a grant basis.

Grantees receiving a package grant must submit a quarterly financial report summarizing the financial activity for the entire package and separate reports for each project within the package. On the separate reports for the component projects, the alphabetic project identifier (A, B, C, etc.) must be appended to the grant number in Block 5 of the Financial Status Report.

3. Consequences of Non-Compliance With Submission Requirements

Failure of the grantee organization to submit required financial and program reports may result in a suspension of grant payments or revocation of the grant award.

H. Allowability of Costs

1. General

Except as may be otherwise provided in the conditions of a particular grant, cost allowability shall be determined in accordance with the principles set forth in *OMB Circulars A–87*, Cost Principles for State and Local Governments; *A–21*, Cost Principles Applicable to Grants and Contracts With Educational Institutions; and *A–122*, Cost Principles for Non-Profit Organizations. No costs may be recovered to liquidate obligations which are incurred after the approved grant period.

2. Costs Requiring Prior Approval

a. *Preagreement Costs.* The written prior approval of the Institute is required for costs which are considered necessary to the project but occur prior to the award date of the grant.

b. *Equipment.* Grant funds may be used to purchase or lease only that equipment which is essential to accomplishing the goals and objectives of the project. The written prior approval of the Institute is required when the amount of automated data processing (ADP) equipment to be purchased or leased exceeds $10,000 or the software to be purchased exceeds $3,000.

c. *Consultants.* The written prior approval of the Institute is required when the rate of compensation to be paid a consultant exceeds $300 a day.

3. Travel Costs

Transportation and per diem rates must comply with the policies of the applicant organization. If the applicant does not have an established written travel policy, then travel rates shall be consistent with those established by the Institute or the Federal Government. Institute funds shall not be used to cover the transportation or per diem costs of a member of a national organization to attend an annual or other regular meeting of that organization.

4. Indirect Costs

These are costs of an organization that are not readily assignable to a particular project, but are necessary to the operation of the organization and the performance of the project. The cost of operating and maintaining facilities, depreciation, and administrative salaries are examples of the types of costs that are usually treated as indirect costs. It is the policy of the Institute that all costs should be budgeted directly; however, if a recipient has an indirect cost rate approved by a Federal agency as set forth below, the Institute will accept that rate.

a. *Approved Plan Available.*

i. The Institute will accept an indirect cost rate or allocation plan approved for a grantee during the preceding two years by any Federal granting agency on the basis of allocation methods substantially in accord with those set forth in the applicable cost circulars. A copy of the approved rate agreement must be submitted to the Institute.

ii. Where flat rates are accepted in lieu of actual indirect costs, grantees may not also charge expenses normally included in overhead pools, e.g., accounting services, legal services, building occupancy and maintenance, etc., as direct costs.

iii. Organizations with an approved indirect cost rate, utilizing total direct costs as the base, usually exclude contracts under grants from any overhead recovery. The negotiation agreement will stipulate that contracts are excluded from the base for overhead recovery.

b. *Establishment of Indirect Cost Rates.* In order to be reimbursed for indirect costs, a grantee or organization

must first establish an appropriate indirect cost rate. To do this, the grantee must prepare an indirect cost rate proposal and submit it to the Institute. The proposal must be submitted in a timely manner (within three months after the start of the grant period) to assure recovery of the full amount of allowable indirect costs, and it must be developed in accordance with principles and procedures appropriate to the type of grantee institution involved.

c. *No Approved Plan.* If an indirect cost proposal for recovery of actual indirect costs is not submitted to the Institute within three months after the start of the grant period, indirect costs will be irrevocably disallowed for all months prior to the month that the indirect cost proposal is received. This policy is effective for all grant awards.

I. Procurement and Property Management Standards

1. Procurement Standards

For State and local governments, the Institute is adopting the standards set forth in Attachment O of *OMB Circular A–102.* Institutions of higher education, hospitals, and other non-profit organizations will be governed by the standards set forth in Attachment O of *OMB Circular A–110.*

2. Property Management Standards

The property management standards as prescribed in Attachment N of *OMB Circulars A–102* and *A–110* shall be applicable to all grantees and subgrantees of Institute funds except as provided in section X.O.

All grantees/subgrantees are required to be prudent in the acquisition and management of property with grant funds. If suitable property required for the successful execution of projects is already available within the grantee or subgrantee organization, expenditures of grant funds for the acquisition of new property will be considered unnecessary.

J. Audit Requirements

1. Implementation

Each grantee (including a State or local court receiving a subgrant from the State Supreme Court) shall provide for an annual fiscal audit. The audit may be of the entire grantee organization (e.g., a university) or of the specific project funded by the Institute. Audits conducted in accordance with the Single Audit Act of 1984 and OMB Circular A–128, or OMB Circular A–133 will satisfy the requirement for an annual fiscal audit. The audit shall be conducted by an independent Certified Public Accountant, or a State or local agency authorized to audit government agencies. The audit shall be conducted in accordance with the Government Accounting Standards issued by the Comptroller General of the United States and shall include:

a. An opinion on whether the financial statements of the grantee present fairly its financial position and the results of its financial operations in accordance with generally accepted accounting principles;

b. A report on the grantee's internal control structure over financial reporting; and,

c. A report on the tests of compliance with applicable laws and regulations that have a direct and material effect on the financial statement amounts.

A written report shall be prepared upon completion of the audit. Grantees are responsible for submitting copies of the reports to the Institute within 30 days after the acceptance of the report by the grantee, for each year that there is financial activity involving Institute funds.

Grantees who receive funds from a Federal agency and who satisfy audit requirements of the cognizant Federal agency, should submit a copy of the audit report prepared for that Federal agency to the Institute in order to satisfy the provisions of this section. Cognizant Federal agencies do not send reports to the Institute. Therefore, each grantee must send this report directly to the Institute.

2. Resolution and Clearance of Audit Reports

Timely action on recommendations by responsible management officials is an integral part of the effectiveness of an audit. Each grant recipient shall have policies and procedures for acting on audit recommendations by designating officials responsible for: follow-up, maintaining a record of the actions taken on recommendations and time schedules, responding to and acting on audit recommendations, and submitting periodic reports to the Institute on recommendations and actions taken.

3. Consequences of Non-Resolution of Audit Issues

It is the general policy of the State Justice Institute not to make new grant awards to an applicant having an unresolved audit report involving Institute awards. Failure of the grantee organization to resolve audit questions may also result in the suspension of payments for active Institute grants to that organization.

K. Close-Out of Grants

1. Definition

Close-out is a process by which the Institute determines that all applicable administrative and financial actions and all required work of the grant have been completed by both the grantee and the Institute.

2. Grantee Close-Out Requirements

Within 90 days after the end date of the grant or any approved extension thereof (revised end date), the following documents must be submitted to the Institute by a grantee other than a recipient of a scholarship under section II.B.2.b.v.

a. *Financial Status Report.* The final report of expenditures must have no unliquidated obligations and must indicate the exact balance of unobligated funds. Any unobligated/unexpended funds will be deobligated from the award by the Institute. Final payment requests for obligations incurred during the award period must be submitted to the Institute prior to the end of the 90-day close-out period. Grantees on a check-issued basis, who have drawn down funds in excess of their obligations/expenditures, must return any unused funds as soon as it is determined that the funds are not required. In no case should any unused funds remain with the grantee beyond the submission date of the final financial status report.

b. *Final Progress Report.* This report should describe the project activities during the final calendar quarter of the project and the closeout period, including to whom project products have been disseminated; provide a summary of activities during the entire project; specify whether all the objectives set forth in the approved application or an approved adjustment thereto have been met and, if any of the objectives have not been met, explain the reasons therefor; and discuss what, if anything, could have been done differently that might have enhanced the impact of the project or improved its operation.

3. Extension of Close-Out Period

Upon the written request of the grantee, the Institute may extend the close-out period to assure completion of the Grantee's close-out requirements. Requests for an extension must be submitted at least 14 days before the end of the close-out period and must explain why the extension is necessary and what steps will be taken to assure that all the grantee's responsibilities will be met by the end of the extension period.

XII. Grant Adjustments

All requests for program or budget adjustments requiring Institute approval must be submitted in a timely manner by the project director. All requests for changes from the approved application will be carefully reviewed for both consistency with this guideline and the enhancement of grant goals and objectives.

A. Grant Adjustments Requiring Prior Written Approval

There are several types of grant adjustments which require the prior written approval of the Institute. Examples of these adjustments include:

1. Budget revisions among direct cost categories which, individually or in the aggregate, exceed or are expected to exceed five percent of the approved original budget or the most recently approved revised budget. For the purposes of this section, the Institute will view budget revisions cumulatively.

a. For package grants, reallocations among budget categories of an individual project within the package that total less than five percent of the approved budget for that project do not require a grant adjustment. However, transfers of funds between projects included in the package require prior, written approval by the Institute.

b. For continuation and on-going support grants, funds from the original award may be used during the renewal grant period and funds awarded by a continuation or on-going support grant may be used to cover project-related expenditures incurred during the original award period, with the prior, written approval of the Institute.

2. A change in the scope of work to be performed or the objectives of the project (see section XII.D.).

3. A change in the project site.

4. A change in the project period, such as an extension of the grant period and/or extension of the final financial or progress report deadline (see section XII.E.).

5. Satisfaction of special conditions, if required.

6. A change in or temporary absence of the project director (see sections XII. F. and G.).

7. The assignment of an employee or consultant to a key staff position whose qualifications were not described in the application, or a change of a person assigned to a key project staff position (see section X.X.).

8. A successor in interest or name change agreements.

9. A transfer or contracting out of grant-supported activities (see section XII.H.).

10. A transfer of the grant to another recipient.

11. Preagreement costs, the purchase of automated data processing equipment and software, and consultant rates, as specified in section XI.H.2.

12. A change in the nature or number of the products to be prepared or the manner in which a product would be distributed.

B. Request for Grant Adjustments

All grantees and subgrantees must promptly notify the SJI program managers, in writing, of events or proposed changes which may require an adjustment to the approved application. In requesting an adjustment, the grantee must set forth the reasons and basis for the proposed adjustment and any other information the SJI program managers determine would help the Institute's review.

C. Notification of Approval/Disapproval

If the request is approved, the grantee will be sent a Grant Adjustment signed by the Executive Director or his/her designee. If the request is denied, the grantee will be sent a written explanation of the reasons for the denial.

D. Changes in the Scope of the Grant

A grantee/subgrantee may make minor changes in methodology, approach, or other aspects of the grant to expedite achievement of the grant's objectives with subsequent notification of the SJI program manager. Major changes in scope, duration, training methodology, or other significant areas must be approved in advance by the Institute.

E. Date Changes

A request to change or extend the grant period must be made at least 30 days in advance of the end date of the grant. A revised task plan should accompany requests for a no-cost extension of the grant period, along with a revised budget if shifts among budget categories will be needed. A request to change or extend the deadline for the final financial report or final progress report must be made at least 14 days in advance of the report deadline (see section XI.K.3.).

F. Temporary Absence of the Project Director

Whenever absence of the project director is expected to exceed a continuous period of one month, the plans for the conduct of the project director's duties during such absence must be approved in advance by the Institute. This information must be provided in a letter signed by an authorized representative of the grantee/subgrantee at least 30 days before the departure of the project director, or as soon as it is known that the project director will be absent. The grant may be terminated if arrangements are not approved in advance by the Institute.

G. Withdrawal of/Change in Project Director

If the project director relinquishes or expects to relinquish active direction of the project, the Institute must be notified immediately. In such cases, if the grantee/subgrantee wishes to terminate the project, the Institute will forward procedural instructions upon notification of such intent. If the grantee wishes to continue the project under the direction of another individual, a statement of the candidate's qualifications should be sent to the Institute for review and approval. The grant may be terminated if the qualifications of the proposed individual are not approved in advance by the Institute.

H. Transferring or Contracting Out of Grant-Supported Activities

A principal activity of the grant-supported project shall not be transferred or contracted out to another organization without specific prior approval by the Institute. All such arrangements should be formalized in a contract or other written agreement between the parties involved. Copies of the proposed contract or agreement must be submitted for prior approval at the earliest possible time. The contract or agreement must state, at a minimum, the activities to be performed, the time schedule, the policies and procedures to be followed, the dollar limitation of the agreement, and the cost principles to be followed in determining what costs, both direct and indirect, are to be allowed. The contract or other written agreement must not affect the grantee's overall responsibility for the direction of the project and accountability to the Institute.

State Justice Institute Board of Directors

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David L Tevelin,

Executive Director.

Appendix I—List of State Contacts Regarding Administration of Institute Grants to State and Local Courts

Mr. Oliver Gilmore, Administrative Director, Administrative Office of the Courts, 817 South Court Street, Montgomery, Alabama 36130, (205) 834–7990
Mr. Arthur H. Snowden II, Administrative Director, Alaska Court System, 303 K Street, Anchorage, Alaska 99501, (907) 264–0547
Mr. David K. Byers, Administrative Director, Supreme Court of Arizona, 1501 West Washington Street, Suite 411, Phoenix, Arizona 85007–3330, (602) 542–9301
Mr. James D. Gingerich, Director, Administrative Office of the Courts, 625 Marshall, Little Rock, Arkansas 72201–1078, (501) 376–6655
Mr. William C. Vickrey, State Court Administrator, Administrative Office of the Courts, 303 Second Street, South Tower, San Francisco, California 94107, (415) 396–9100
Mr. Steven V. Berson, State Court Administrator, Colorado Judicial Department, 1301 Pennsylvania Street, Suite 300, Denver, Colorado 80203–2416, (303) 861–1111, ext. 585
Ms. Faith P. Arkin Director, External Affairs, Office of the Chief Court Administrator, Drawer N, Station A, Hartford, Connecticut 06106, (203) 566–8210
Mr. Lowell Groundland, Director, Administrative Office of the Courts, Carvel State Office Building, 820 N. French Street, Wilmington, Delaware 19801, (302) 571–2480
Mr. Ulysses Hammond, Executive Officer, Courts of the District of Columbia, 500 Indiana Avenue, NW., Washington, DC 20001, (202) 879–1700
Mr. Kenneth Palmer, State Courts Administrator, Florida State Courts System, Supreme Court Building, Tallahassee, Florida 32399–1900, (904) 922–5081
Mr. Robert L. Doss, Jr., Director, Administrative Office of the Georgia Courts, The Judicial Council of Georgia, 244 Washington Street, SW., Suite 500, Atlanta, Georgia 30334–5900, (404) 656–5171
Mr. Perry C. Taitano, Administrative Director, Superior Court of Guam, Judiciary Building, 110 West O'Brien Drive, Agana, Guam 96920, 011 (671) 472–8961 through 8968
Honorable Daniel G. Heely, Administrative Director of the Courts, Office of the Administrative Director, Post Office Box 2560, Honolulu, Hawaii 96813, (808) 539–4900
Honorable Charles F. McDevitt, Chief Justice, Idaho Supreme Court, 451 West State Street, Boise, Idaho 83720, (208) 334–3464
Mr. Robert E. Davison, Director, Administrative Office of the Courts, 840 S. Spring Street, Springfield, Illinois 62704, (312) 793–3250
Mr. Bruce A. Kotzan, Executive Director, Supreme Court of Indiana, State House, Room 323, Indianapolis, Indiana 46204, (317) 232–2542
Mr. William J. O'Brien, State Court Administrator, Supreme Court of Iowa, State House, Des Moines, Iowa 50319, (515) 281–5241
Dr. Howard P. Schwartz, Judicial Administrator, Kansas Judicial Center, 301 West 10th Street, Topeka, Kansas 66612, (923) 296–4873
Ms. Laura Stammel, Assistant Director, Administrative Office of the Courts, 100 Mill Creek Park, Frankfort, Kentucky 40601, (502) 564–2350
Dr. Hugh M. Collins, Judicial Administrator, Supreme Court of Louisiana, 301 Loyola Avenue, Room 109, New Orleans, Louisiana 70112–1887, (504) 568–5747
Mr. James T. Glessner, State Court Administrator, Administrative Office of the Courts, P.O. Box 4820, Downtown Station, Portland, Maine 04112, (207) 822–0792
Ms. Deborah A. Unitus, Assistant State Court Administrator, Administrative Office of the Courts, Rowe Boulevard and Taylor Avenue, Annapolis, Maryland 21401, (301) 974–2141
Honorable John E. Fenton, Jr., Chief Justice for Administration and Management, The Trial Court, Administrative Office of the Trial Court, Two Center Plaza, Suite 540, Boston, Massachusetts 02108, (617) 742–8575
Ms. Marilyn K. Hall, State Court Administrator, Michigan Supreme Court, P.O. Box 30048, 611 West Ottawa Street, Lansing, Michigan 48909, (517) 373–0136
Ms. Sue K. Dosal, State Court Administrator, Supreme Court of Minnesota, 230 State Capitol, St. Paul, Minnesota 55155, (617) 296–2474
Honorable Leslie Johnson, Director, Center for Court Education and Continuing Studies, Box 879, Oxford, Mississippi 38677, (601) 232–5955
Mr. Ron Larkin, Director of Operations, Office of the State Court Administrator, 1105 R Southwest Blvd., Jefferson City, Missouri 65109, (314) 751–3585
Mr. Patrick A. Chenovick, State Court Administrator, Montana Supreme Court, Justice Building, Room 315, 215 North Sanders, Helena, Montana 59620–3001, (406) 444–2621
Mr. Joseph C. Steele, State Court Administrator, Supreme Court of Nebraska, State Capitol Building, Room 1220, Lincoln, Nebraska 68509, (404) 471–2643
Mr. Donald J. Mello, Court Administrator, Administrative Office of the Courts, Capitol Complex, Carson City, Nevada 89710, (702) 885–5076
Mr. James F. Lynch, State Court Administrator, Supreme Court of New Hampshire, Frank Rowe Kenison Building, Concord, New Hampshire 03301, (603) 271–2419
Mr. Robert Lipscher, Administrative Director, Administrative Office of the Courts, CN–037, RJH Justice Complex, Trenton, New Jersey 08625, (609) 984–0275
Honorable E. Leo Milonas, Chief Administrative Judge, Office of Court Administration, 270 Broadway, New York, New York 10007, (212) 587–2004
Mr. Robert L. Lovato, State Court Administrator, Administrative Office of the Courts, Supreme Court of New Mexico, Supreme Court Building, Room 25, Sante Fe, New Mexico 87503, (505) 827–4800
Mr. James C. Drennan, Administrative Director, Administrative Office of the Courts, Post Office Box 2448, Raleigh, North Carolina 27602, (919) 733–7106/7107
Mr. Keithe E. Nelson, State Court Administrator, Supreme Court of North Dakota, State Capitol Building, Bismarck, North Dakota 58505, (701) 224–4216
Mr. Stephan W. Stover, Administrative Director of the Courts, Supreme Court of Ohio, State Office Tower, 30 East Broad Street, Columbus, Ohio 43266–0419, (614) 466–2653
Mr. Howard W. Conyers, Administrative Director, Administrative Office of the Courts, 1925 N. Stiles, Suite 305, Oklahoma City, Oklahoma 73105, (405) 521–2450
Mr. R. William Linden, Jr., State Court Administrator, Supreme Court of Oregon, Supreme Court Building, Salem, Oregon 97310, (503) 378–6046
Mr. Thomas B. Darr, Director for Legislative Affairs, Communications and Administration, 5035 Ritter Road, Mechanicsburg, Pennsylvania 17055, (717) 795–2000
Dr. Robert C. Harrell, State Court Administrator, Supreme Court of Rhode Island, 250 Benefit Street, Providence, Rhode Island 02903, (401) 277–3266
Mr. Louis L. Rosen, Director, South Carolina Court Administration, Post Office Box 50447, Columbia, South Carolina 29250, (803) 734–1800
Honorable Robert A. Miller, Chief Justice, Supreme Court of South Dakota, 500 East Capitol Avenue, Pierre, South Dakota 57501, (605) 773–4885
Mr. Charles E. Ferrell, Executive Secretary, Supreme Court of Tennessee, Supreme Court Building, Room 422, Nashville, Tennessee 37219, (615) 741–2687
Mr. C. Raymond Judice, Administrative Director, Office of Court Administration of the Texas Judicial System, Post Office Box 12066, Austin, Texas 78711, (512) 463–1625
Mr. Ronald W. Gibson, State Court Administrator, Administrative Office of the Courts, 230 South 500 East, Salt Lake City, Utah 84102, (801) 533–6371
Mr. Thomas J. Lehner, Court Administrator, Supreme Court of Vermont, 111 State Street, Montpelier, Vermont 05602, (802) 828–3281
Ms. Viola E. Smith, Clerk of the Court/Administrator, Territorial Court of the

Virgin Islands, Post Office Box 70, Charlotte Amalie, St. Thomas, Virgin Islands 00801, (809) 774–6680, ext. 248
Mr. Robert N. Baldwin, Executive Secretary, Supreme Court of Virginia, Administrative Offices, 100 North Ninth Street, 3rd Floor, Richmond, Virginia 23219, (804) 786–6455
Ms. Mary C. McQueen, Administrator for the Courts, Supreme Court of Washington, Highways-Licensing Building, 6th Floor, 12th & Washington, Olympia, Washington 98504, (206) 753–5780
Mr. Ted J. Philyaw, Administrative Director of the Courts, Administrative Office, 402–E State Capitol, Charleston, West Virginia 25305, (304) 348–0145
Mr. J. Denis Moran, Director of State Courts, Post Office Box 1688, Madison, Wisconsin 53701–1688, (608) 266–6828
Mr. Robert L. Duncan, Court Coordinator, Supreme Court Building, Cheyenne, Wyoming 82002, (307) 777–7581

Appendix II—SJI Libraries, Designated Sites and Contacts (August 1993)

State: Alabama
Location: Supreme Court Library
Contact: Mr. William C. Younger, State Law Librarian, Alabama Supreme Court Bldg., 445 Dexter Avenue, Montgomery, Alabama 36130, (205) 242–4347
State: Alaska
Location: Anchorage Law Library
Contact: Ms. Cynthia S. Petumenos, State Law Librarian, Alaska Court Libraries, 303 K Street, Anchorage, Alaska 99501, (907) 264–0583
State: Arizona
Location: State Law Library
Contact: Ms. Sharon Womack, Director, Department of Library & Archives, State Capitol, 1700 West Washington, Phoenix, Arizona 85007, (602) 542–4035
State: Arkansas
Location: Administrative Office of the Courts
Contact: Mr. James D. Gingerich, Director, Supreme Court of Arkansas, Administrative Office of the Courts, Justice Building, 625 Marshall, Little Rock, Arkansas 72201–1078, (501) 376–6655
State: California,
Location: Administrative Office of the Courts
Contact: Mr. William C. Vickrey, State Court Administrator, Administrative Office of the Courts, 303 Second Street, South Tower, San Francisco, California 94107, (415) 396–9100
State: Colorado
Location: Supreme Court Library
Contact: Ms. Frances Campbell, Supreme Court Law Librarian, Colorado State Judicial Building, 2 East 14th Avenue, Denver, Colorado 80203, (303) 837–3720
State: Connecticut
Location: State Library
Contact: Mr. Richard Akeroyd, State Librarian, 231 Capital Avenue, Hartford, Connecticut 06106, (203) 566–4301
State: Delaware
Location: Administrative Office of the Courts
Contact: Mr. Michael E. McLaughlin, Deputy Director, Administrative Office of the Courts, Carvel State Office Building, 820 North French Street, 11th Floor, P.O. Box 8911, Wilmington, Delaware 19801, (302) 571–2480
State: District of Columbia
Location: Executive Office, District of Columbia Courts
Contact: Mr. Ulysses Hammond, Executive Officer, Courts of the District of Columbia, 500 Indiana Avenue, NW., Washington, DC 20001, (202) 879–1700
State: Florida
Location: Administrative Office of the Courts
Contact: Mr. Kenneth Palmer, State Court Administrator, Florida State Courts System, Supreme Court Building, Tallahassee, Florida 32399–1900, (904) 488–8621
State: Georgia
Location: Administrative Office of the Courts
Contact: Mr. Robert L. Doss, Jr., Director, Administrative Office of the Courts, The Judicial Council of Georgia, 244 Washington Street, SW., Suite 550, Atlanta, Georgia 30334, (404) 656–5171
State: Hawaii
Location: Supreme Court Library
Contact: Ms. Ann Koto, Acting Law Librarian, Supreme Court Law Library, P.O. Box 2560, Honolulu, Hawaii 96804, (808) 548–4605
State: Idaho,
Location: AOC Judicial Education Library/ State Law Library in Boise
Contact: Ms. Laura Pershing, State Law Librarian, Idaho State Law Library, Supreme Court Building, 451 West State Street, Boise, Idaho 83720, (208) 334–3316
State: Illinois
Location: Supreme Court Library
Contact: Ms. Brenda I. Larison, Supreme Court Library, Supreme Court Building, Springfield, Illinois 62701–1791, (217) 782–2424
State: Indiana
Location: Supreme Court Library
Contact: Ms. Constance Matts, Supreme Court Librarian, Supreme Court Library, State House, Indianapolis, Indiana 46204, (317) 232–2557
State: Iowa
Location: Administrative Office of the Court
Contact: Mr. Jerry K. Beatty, Executive Director, Judicial Education & Planning, Administrative Office of the Courts, State Capital Building, Des Moines, Iowa 50319, (515) 281–8279
State: Kansas
Location: Supreme Court Library
Contact: Mr. Fred Knecht, Law Librarian, Kansas Supreme Court Library, 301 West 10th Street, Topeka, Kansas 66614, (913) 296–3257
State: Kentucky
Location: State Law Library
Contact: Ms. Sallie Howard, State Law Librarian, State Law Library, State Capital, Room 200–A, Frankfort, Kentucky 40601, (502) 564–4848
State: Louisiana
Location: State Law Library
Contact: Ms. Carol Billings, Director, Louisiana Law Library, 301 Loyola Avenue, New Orleans, Louisiana 70112, (504) 568–5705
State: Maine
Location: State Law and Legislative Reference Library
Contact: Ms. Lynn E. Randall, State Law Librarian, State House Station 43, Augusta, Maine 04333, (207) 289–1600
State: Maryland
Location: State Law Library
Contact: Mr. Michael S. Miller, Director, Maryland State Law Library, Court of Appeal Building, 361 Rowe Boulevard, Annapolis, Maryland 21401, (301) 974–3395
State: Massachusetts
Location: Middlesex Law Library
Contact: Ms. Sandra Lindheimer, Librarian, Middlesex Law Library, Superior Court House, 40 Thorndike Street, Cambridge, Massachusetts 02141, (617) 494–4148
State: Michigan
Location: Michigan Judicial Institute
Contact: Mr. Dennis W. Catlin, Executive Director, Michigan Judicial Institute, 222 Washington Square North, P.O. Box 30205, Lansing, Michigan 48909, (517) 334–7804
State: Minnesota
Location: State Law Library (Minnesota Judicial Center)
Contact: Mr. Marvin R. Anderson, State Law Librarian, Supreme Court of Minnesota, 25 Constitution Avenue, St. Paul, Minnesota 55155, (612) 297–2084
State: Mississippi
Location: Mississippi Judicial College
Contact: Mr. Rick D. Patt, Staff Attorney, Mississippi Judicial College, 6th Floor, 3825 Ridgewood, Jackson, Mississippi 39211, (601) 982–6590
State: Montana
Location: State Law Library
Contact: Ms. Judith Meadows, State Law Librarian, State Law Library of Montana, Justice Building, 215 North Sanders, Helena, Montana 59620, (406) 444–3660
State: National
Location: JERITT Project/Michigan State University
Contact: Dr. John K. Hudzik, Project Director, Judicial Education, Reference, Information and, Technical Transfer Project (JERITT), Michigan State University, 560 Baker Hall, East Lansing, Michigan 48824
State: Nebraska
Location: Administrative Office of the Courts
Contact: Mr. Joseph C. Steele, State Court Administrator, Supreme Court of Nebraska, Administrative Office of the Courts, P.O. Box 98910, Lincoln, Nebraska 68509–8910, (402) 471–3730
State: Nevada
Location: National Judicial College
Contact: Dean V. Robert Payant, National Judicial College, Judicial College Building, University of Nevada, Reno, Nevada 89550, (702) 784–6747
State: New Jersey
Location: New Jersey State Library
Contact: Mr. Robert L. Bland, Law Coordinator, State of New Jersey, Department of Education, State Library, 185 West State Street, CN520, Trenton, New Jersey 08625, (609) 292–6230
State: New Mexico
Location: Supreme Court Library
Contact: Mr. Thaddeus Bejnar, Librarian, Supreme Court Library, Post Office Drawer L, Santa Fe, New Mexico 87504, (505) 827–4850
State: New York
Location: Supreme Court Library
Contact: Ms. Susan M. Wood, Esq., Principal Law Librarian, New York State Supreme

Court Law Library, Onondaga County Court House, Syracuse, New York 13202, (315) 435–2063

State: North Carolina
Location: Supreme Court Library
Contact: Ms. Louise Stafford, Librarian, North Carolina Supreme Court Library, P.O. Box 28006, (by courier) 500 Justice Building, 2 East Morgan Street, Raleigh, North Carolina 27601, (919) 733–3425

State: North Dakota
Location: Supreme Court Library
Contact: Ms. Marcella Kramer, Assistant Law Librarian, Supreme Court Law Library, 600 East Boulevard Avenue, 2nd Floor, Judicial Wing, Bismarck, North Dakota 58505–0530, (701) 224–2229

State: Northern Mariana Islands
Location: Supreme Court of the Northern Mariana Islands
Contact: Honorable Jose S. Dela Cruz, Chief Justice, Supreme Court of the Northern Mariana Islands, P.O. Box 2165, Saipan, MP 96950, (670) 234–5275

State: Ohio
Location: Supreme Court Library
Contact: Mr. Paul S. Fu, Law Librarian, Supreme Court Law Library, Supreme Court of Ohio, 30 East Broad Street, Columbus, Ohio 43266–0419, (614) 466–2044

State: Oklahoma
Location: Administrative Office of the Courts
Contact: Mr. Howard W. Conyers, Director, Administrative Office of the Courts, 1915 North Stiles, Suite 305, Oklahoma City, Oklahoma 73105, (405) 521–2450

State: Oregon
Location: Administrative Office of the Courts
Contact: Mr. R. William Linden, Jr., State Court Administrator, Supreme Court of Oregon, Supreme Court Building, Salem, Oregon 97310, (503) 378–6046

State: Pennsylvania
Location: State Library of Pennsylvania
Contact: Ms. Betty Lutz, Head, Acquisitions Section, State Library of Pennsylvania, Technical Services, G46 Forum Building, Harrisburg, Pennsylvania 17105 (717) 787–4440

State: Puerto Rico
Location: Office of Court Administration
Contact: Mr. Alfredo Rivera-Mendoza, Esq., Director, Area of Planning and Management, Office of Court, Administration, P.O. Box 917, Hato Rey, Puerto Rico 00919

State: Rhode Island
Location: State Law Library
Contact: Mr. Kendall F. Svengalis, Law Librarian, Licht Judicial Complex, 250 Benefit Street, Providence, Rhode Island 02903, (401) 277–3275

State: South Carolina
Location: Coleman Karesh Law Library (University of South Carolina School of Law)
Contact: Mr. Bruce S. Johnson, Law Librarian, Associate, Professor of Law, Coleman Karesh Law Library, U.S.C. Law Center, University of South Carolina, Columbia, South Carolina 29208, (803) 777–5944

State: Tennessee
Location: Tennessee State Law Library
Contact: Ms. Donna C. Wair, Librarian, Tennessee State Law, Library,Supreme Court Building, 401 Seventh Avenue N, Nashville, Tennessee 37243–0609, (615) 741–2016

State: Texas
Location: State Law Library
Contact: Ms. Kay Schleuter, Director, State Law Library, P.O. Box 12367, Austin, Texas 78711, (512) 463–1722

State: U.S. Virgin Islands
Location: Library of the Territorial Court of the Virgin Islands (St. Thomas)
Contact: Librarian, The Library, Territorial Court of the Virgin Islands, Post Office Box 70, Charlotte Amalie, St. Thomas, U.S. Virgin Islands 00804

State: Utah
Location: Utah State Judicial Administration Library
Contact: Ms. Jennifer Bullock, Librarian, Utah State Judicial, Administration Library, 230 South 500 East, Suite 300, Salt Lake City, Utah 84102, (801) 533–6371

State: Vermont
Location: Supreme Court of Vermont
Contact: Mr. Thomas J. Lehner, Court Administrator, Supreme Court of Vermont, 111 State Street, c/o Pavilion Office Building, Montpelier, Vermont 05602, (802) 828–3278

State: Virginia
Location: Administrative Office of the Courts
Contact: Mr. Robert N. Baldwin, Executive Secretary, Supreme Court of Virginia, Administrative Offices, 100 North Ninth Street, Third Floor, Richmond, Virginia 23219, (804) 786–6455

State: Washington
Location: Washington State Law Library
Contact: Ms. Deborah Norwood, State Law Librarian, Washington State Law Library, Temple of Justice, Mail Stop AV–02, Olympia, Washington 98504–0502, (206) 357–2146

State: West Virginia
Location: Administrative Office of the Courts
Contact: Mr. Richard H. Rosswurm, Deputy Administrative Director for Judicial Education, West Virginia Supreme Court of Appeals, State Capitol, Capitol E–400, Charleston, West Virginia 25305, (304) 348–0145

State: Wisconsin
Location: State Law Library
Contact: Ms. Marcia Koslov, State Law Librarian, State Law Library, 310E State Capitol, P.O. Box 7881, Madison, Wisconsin 53707, (608) 266–1424

State: Wyoming
Location: Wyoming State Law Library
Contact: Ms. Kathy Carlson, Law Librarian, Wyoming State Law Library, Supreme Court Building, Cheyenne, Wyoming 82002, (307) 777–7509

National: American Judicature Society
Contact: Ms. Clara Wells, Assistant for Information and Library Services, 25 East Washington Street, Suite 1600, Chicago, Illinois 60602, (312) 558–6900

National: National Center for State Courts
Contact: Ms. Peggy Rogers, Acquisitions/ Serials Librarian, 300 Newport Avenue, Williamsburg, Virginia 23187–8798, (804) 253–2000

APPENDIX III

[Form S1]

State Justice Institute—Scholarship Application

APPLICANT INFORMATION:

1. Applicant Name:
(Last) _____
(First) _____
(M) _____
2. Position: _____
3. Name of Court: _____
4. Address:
Street/P.O. Box _____
City _____
State _____
Zip Code _____
5. Telephone No. _____
6. Congressional District: _____

PROGRAM INFORMATION:

7. Course Name: _____
8. Course Dates: _____
9. Course Provider: _____
10. Location Offered: _____

ESTIMATED EXPENSES: (Please note, scholarships are limited to tuition and transportation expenses to and from the site of the course up to a maximum of $1,500.)

Tuition: $_____
Transportation: $_____
(airfare, trainfare or if you plan to drive, the approximate distance and mileage rate)
Amount Requested: $_____
(This application does not serve as a registration for the course. Please contact the education provider.)

ADDITIONAL INFORMATION: Please attach a current resume or professional summary, and answer the following questions. (You may attach additional pages if necessary.)

1. How will your taking this course benefit either your court or the State's courts generally?
2. Is there any education or training currently available through your State on this topic?
3. How will you apply what you have learned? Please include any plans you may have to develop/teach a course on this topic in your jurisdiction/State, provide in-service training, or otherwise disseminate what you have learned to colleagues.
4. Are State or local funds available to support your attendance at the proposed course? If so, what amount(s) will be provided?
5. How long have you served as a judge or court manager? How long do you anticipate serving as a judge or court manager, assuming reelection or reappointment?
6. How long has it been since you attended a non-mandatory continuing professional education program?

STATEMENT OF APPLICANT'S COMMITMENT

If a scholarship is awarded, I will submit an evaluation of the educational program to the State Justice Institute and to the Chief Justice of my State.
Signatures _____
Dates _____

Please return this form and Form S–2 to: State Justice Institute, 1650 King Street, Suite 600, Alexandria Virginia 22314.

[Form S2]

State Justice Institute

Scholarship Application—Concurrence

I, _____.
Name of Chief Justice (or Chief Justice's Designee)
have reviewed the application for a scholarship to attend the program entitled _____.
prepared by _____.
Name of Applicant
and concur in its submission to the State Justice Institute. The applicant's participation in the program would benefit the State; the applicant's absence to attend the program would not present an undue hardship to the court; and receipt of a scholarship would not diminish the amount of funds made available by the State for judicial education.

Signature _____
Name _____
Title _____
Date _____

APPENDIX IV

[Form E]

State Justice Institute, Preliminary Budget

Category	SJI Funds	Match*
Personnel	$_____	$_____
Fringe benefits	$_____	$_____
Consultant/contractual.	$_____	$_____
Travel	$_____	$_____
Equipment	$_____	$_____
Supplies	$_____	$_____
Telephone	$_____	$_____
Postage	$_____	$_____
Printing/photocopying.	$_____	$_____
Audit	$_____	$_____
Other	$_____	$_____
Indirect costs (%)	$_____	$_____
Total	$_____	$_____
Cash match		
In-kind match		

*Cash match should be identified with an *.

Project Total $_____

Financial assistance has been or will be sought for this project from the following other sources:

_____

_____

Appendix V

[Form B]

(Instructions on Reverse Side)

State Justice Institute—Certificate of State Approval

The _____
Name of State Supreme Court or Designated Agency or Council
has reviewed the application entitled _____
prepared by _____.
Name of Applicant
approves its submission to the State Justice Institute, and

[•] agrees to receive and administer and be accountable for all funds awarded by the Institute pursuant to the application.
[•] designates _____.
Name of Designated Trial or Appellate Court or Agency

Signature _____
Name _____
Title _____
Date _____

Instructions—Form B

The State Justice Institute Act requires that:

Each application for funding by a State or local court shall be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council, which shall receive, administer, and be accountable for all funds awarded by the Institute to such courts. 42 U.S.C. 10705(b)(4).

Form B should be signed by the Chief Judge or Chief Justice of the State Supreme Court, or by the Director of the designated agency or chair of the designated council. If the designated agency or council differs from the designee listed in Appendix I to the State Justice Institute Grant Guideline, evidence of the new or additional designation should be attached.

The term "State Supreme Court" refers to the court of last resort of a State. "Designated agency or council" refers to the office or judicial body which is authorized under State law or by delegation from the State Supreme Court to approve applications for funds and to receive, administer and be accountable for those funds.

[FR Doc. 93–25201 Filed 10–15–93; 8:45 am]
BILLING CODE 6820–SC–P

federal register

Monday
October 18, 1993

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Final Rules

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB73

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Oregon Chub

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines endangered status for the Oregon chub (*Oregonichthys crameri*) throughout its range, pursuant to the Endangered Species Act of 1973, as amended (Act). The Oregon chub is a small cyprinid fish that formerly inhabited sloughs and overflow ponds throughout the Willamette River drainage in Oregon. The only remaining established populations are restricted to an 18.6 mile (30 kilometer) stretch of the Middle Fork Willamette River drainage, just 2 percent of its historic range. Most remaining populations occur near rail, highway, and power transmission corridors and within public park and campground facilities. These populations are threatened by (1) direct mortality from chemical spills from overturned truck or rail tankers, runoff or accidental spill of brush control and agricultural chemicals, and overflow from chemical toilets in campgrounds; (2) competition for resources or predation resulting from intentional or accidental introductions of nonindigenous fishes; and (3) loss of habitat from siltation of shallow habitats from logging and construction activities, unauthorized fill activities, and changes in water level or flow conditions from construction, diversions, or natural desiccation. This rule implements the protection and recovery provisions afforded by the Act for this fish.

EFFECTIVE DATE: November 17, 1993.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Portland Field Office, 2600 S.E. 98th Avenue, Suite 100, Portland, Oregon 97266.

FOR FURTHER INFORMATION CONTACT: Russell D. Peterson, Field Supervisor, at the above address (telephone number 503/231–6179).

SUPPLEMENTARY INFORMATION:

Background

The Oregon chub was first described by Synder in 1908 as *Hybopsis crameri* (Long 1978), and considered to be the sole western member of the genus *Hybopsis* (Markle *et al.* 1991). Subsequent taxonomic revisions included placing the chub in the monotypic genus Oregonichthys in 1929, and again within *Hybopsis* in 1951 (Markle *et al.* 1991). Further revisions of *Hybopsis* recognized several subgenera including *Oregonichthys* (Markle *et al.* 1991) and the current treatment of *Oregonichthys* as a monotypic genus by Maden (Pearsons 1989). The genus *Oregonichthys* is endemic to the Umpqua and Willamette Rivers of western Oregon. In the past, the common name "Oregon chub" as been used to refer to all *Oregonichthys* from both of these drainages. However, the Umpqua River form of *Oregonichthys* (*O. kalawatseti*) has been formally described (Markle *et al.* 1991) as taxonomically distinct from the *Oregonichthys* in the Willamette River drainage, which retains the earlier name of *O. crameri*. Use of the term "Oregon chub," therefore, refers only to *O. crameri*.

The Oregon chub was formerly distributed throughout the lower elevation backwaters of the Willamette River drainage (Pearsons 1989). Known established populations of the Oregon chub are now restricted to an 18.6 mile (30 kilometer (km)) stretch of the Middle Fork Willamette River in the vicinity of Dexter and Lookout Point Reservoirs in Lane County, Oregon. Small numbers of chubs (one to four fish) have also been observed in recent years on the lower North Santiam River, which forms the boundary between Linn and Marion Counties and in Gray Creek within the Finley National Wildlife Refuge in Benton County. Surveys in 1992 discovered an additional population in a tributary to Lake Creek in Linn County (Douglas F. Markle, Oregon State University (OSU), pers. comm., 1992). The long-term viability of the Gray Creek, North Santiam River, and Lake Creek populations remain unknown.

Decline of the Oregon chub is attributed to changes in and elimination of its backwater habitats. The mainstem of the Willamette River was formerly a braided channel with numerous secondary channels, meanders, oxbows, and overflow ponds that may have provided habitat for the chub. However, the construction of flood control projects and revetments have altered historical flooding patterns and eliminated much of the river's braided channel pattern (Corps of Engineers (COE) 1970, Li *et al.* 1987). The period of construction of flood control structures coincides with the period of decline of this species. In addition, the introduction of nonindigenous species (e.g., bass, crappie, mosquito fish) may have exacerbated the species' decline and may limit the potential for the Oregon chub to expand beyond its present restricted range.

Habitat at the remaining population sites of the Oregon chub is typified by low- or zero-velocity water flow conditions, depositional substrates, and abundant aquatic, or overhanging riparian, vegetation. Life history information on the Oregon chub was derived primarily from observations made at the Shady Dell Pond (Pearsons 1989). Spawning occurred from the end of April through early August when water temperatures ranged from 16° to 28 °C. Males greater than 25 mm in standard length (SL) were involved in spawning. Males over 35 mm SL defended territories in or near aquatic vegetation (mostly *Fontinalis antipyretica*). The number of eggs produced per female ranged from 147 to 671. During the May sampling period, adult Oregon chub (27 to 58 mm SL) fed most heavily on copepods, cladocerans, and chironomid larvae (Markle *et al.* 1991).

Previous Federal Action

Service action began when it included the Oregon chub on the December 30, 1982, Notice of Review for vertebrate wildlife as a category 2 candidate species (47 FR 58454). A category 2 candidate species is one for which information contained in Service files indicates that proposing to list is possibly appropriate but additional data are needed to support a listing proposal. The Oregon chub was included in the September 18, 1985 (50 FR 37958), and January 6, 1989 (54 FR 554), Animal Notices of Review as a category 2 candidate. All inclusions on the Notice of Review have been under the earlier name *Hybopsis crameri*.

On April 10, 1990, the Service received a petition to list the Oregon chub (*Oregonichthys crameri*) as an endangered species and to designate critical habitat. The petition and supporting documentation were submitted by Dr. Douglas F. Markle and Mr. Todd N. Pearsons, both of OSU. The petitioners submitted taxonomic, biological, distributional, and historic information and cited numerous scientific articles in support of the petition. The petition and accompanying data described the

Oregon chub as endangered because of a 98 percent reduction in the range of the species and potential threats at existing known population sites. The Service made a 90-day finding that substantial information had been presented which indicated that the requested action may be warranted and published this finding in the **Federal Register** on November 1, 1990 (55 FR 46080).

Important new data on the ecology, distribution, and taxonomic status of *Oregonichthys crameri* (Pearsons 1989, Markle *et al.* 1991) provided the Service with sufficient information to elevate it to category 1 status and support a proposed listing. On November 19, 1991, the Service published a proposal to list the species as endangered (56 FR 58348). The proposal also constituted the 1-year finding that the petitioned action was warranted, in accordance with section 4(b)(3)(B) of the Act. Information evaluated in this listing determination includes pertinent data available from both published and unpublished sources. Unpublished sources include solicited draft reports, letters, and personal contacts with agencies, organizations, and individuals.

Summary of Comments and Recommendations

In the November 19, 1991, proposed rule (56 FR 58348) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final decision. The comment period closed on January 21, 1992. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. No requests for public hearings were received. One comment was received and is discussed below.

The single comment expressed the position that enacting conservation measures specified in the Conservation Agreement for the Oregon chub would preclude the need for Federal listing. The Service responds by stating the following: A Conservation Agreement for the Oregon chub in the Willamette Valley of Oregon was prepared by the Oregon Department of Fish and Wildlife (ODFW), in conjunction with Oregon State University, to help coordinate management efforts among State and Federal agencies for the species and its habitat. This Conservation Agreement was finalized in January 1992 and became effective on May 8, 1992. The signatory agencies consist of ODFW, Oregon Parks and Recreation Department, COE, Bureau of Land Management, the Service, and Forest Service (Willamette National Forest). The goal of the Conservation Agreement is to "* * * reverse the declining trend of Oregon chub populations, and to increase the abundance of this species in healthy, wild populations through protection of habitat, re-introductions to suitable habitat within its historic range, and public education and involvement." The objectives of the Conservation Agreement are to (1) establish a task force to oversee and coordinate Oregon chub conservation and management actions, (2) protect existing populations, (3) establish new populations, and (4) foster greater public understanding of the Oregon chub and its status.

Although the goal of the Conservation Agreement is to provide for the conservation and recovery of the species, the document does not outline specific tasks or a timetable for implementing them, nor does it address the estimated costs of implementing these actions. The Conservation Agreement may serve as a useful basis for a recovery plan in the future. At present, however, accomplishment of tasks adequate to substantially reduce existing threats has not occurred, and the species remains in danger of extinction from the threats discussed in this rule.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Oregon chub should be classified as an endangered species throughout its range. Procedures found in section 4 of the Act (16 U.S.C. 1533) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five criteria described in section 4(a)(1). These factors and their application to the Oregon chub (*Oregonichthys crameri*) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Based on a 1987 survey (Markle *et al.* 1989) and compilation of all known historical records, presently viable populations of the Oregon chub occur in the following locations: Dexter Reservoir, Shady Dell Pond, Buckhead Creek near Lookout Point Reservoir, and possibly Elijah Bristow State Park, and Finley National Wildlife Refuge. These represent a small fraction—estimated as 2 percent based on stream miles—of the species' formerly extensive distribution within the Willamette River drainage. This 98 percent decline in the range of the species prompted the petitioners to request endangered status for the Oregon chub.

The decline of the Oregon chub has been correlated with the construction of dams. Based on the date of last capture at a site, Pearsons (1989) estimated that the most severe decline occurred during the 1950's and 1960's. Eight of 11 flood control projects in the Willamette River drainage were completed between 1953 and 1968 (COE 1970). Other structural changes along the Willamette River corridor, such as revetment and channelization, diking and drainage, and the removal of floodplain vegetation, have removed or altered the slack water habitats of the Oregon chub (Willamette Basin Task Force 1969, Hjort *et al.* 1984, Sedell and Froggatt 1984, Li *et al.* 1987, Scheerer *et al.* 1992). Channel confinement, isolation of the Willamette River from the majority of its floodplain, and elimination or degradation of both seasonal and permanent wetland habitats within the floodplain began as early as 1872 and, for example, has reduced the 15-mile (25-km) reach between Harrisburg and the McKenzie River confluence from over 155 miles (250 km) of shoreline in 1854 to less than 40 miles (64 km) presently (Sedell and Froggatt 1984, Sedell *et al.* 1990).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Not known to be applicable.

C. Disease or Predation

The establishment and expansion of nonindigenous species in Oregon has likely contributed to the decline of the Oregon chub and limits the species' ability to expand beyond its current restricted range. Nonindigenous fishes and amphibians (bass, crappie, mosquito fish, bullfrogs and others) are now a significant element of the pond and slough habitats of the Willamette River drainage (Willamette Basin Task Force 1969, Hjort *et al.* 1984, Li *et al.* 1984, Scheerer *et al.* 1992). Many sites formerly inhabited by the Oregon chub are now inhabited by nonindigenous species (Markle *et al.* 1989). Of the remaining population sites, Shady Dell Pond and Buckhead Creek are not known to have nonindigenous fish populations and Elijah Bristow State Park had only a single juvenile largemouth bass (ODFW 1992). Though a number of otherwise similar habitats were sampled on Finley National Wildlife Refuge, the site where Oregon

chub were collected was apparently the only site within the refuge where nonindigenous fishes were infrequent; a single brown bullhead (*Ictalurus nebulosus*) was collected during the survey (Scheerer *et al.* 1992). Nonindigenous fish populations are present in Dexter and Lookout Point Reservoirs. However, the Oregon chub population in Dexter is relatively isolated and the population in Lookout Point "has diminished greatly since the 1950's" (ODFW 1992). Although the recently identified Lake Creek population occurs in an area occupied by numerous exotic fishes (Drs. Douglas Markle and Stanley Gregory, OSU, pers. comm., 1992), the viability of this population has not been established.

Adult centrarchids (bass and crappie) and ictalurids (bullhead and catfish) are documented piscivores (Li *et al.* 1987, see also Carlander 1969, Moyle 1976, Carlander 1977, Wydoski and Whitney 1979). These fishes are frequently the dominant inhabitants of ponds and sloughs within the Willamette River drainage and may constitute a major detriment to recolonization efforts. Adult bullfrogs (*Rana catesbeiana*), an introduced amphibian, prefer habitat similar in characteristics (little to no water velocity, abundant aquatic and emergent vegetation) to preferred habitat for Oregon chub, and are omnivorous and consume small fish as part of their diet (Cohen and Howard 1958, Bury and Whelan 1984). Nonindigenous fishes may also serve as sources of parasites and diseases. However, disease and parasite problems are not well studied in the Oregon chub.

D. The Inadequacy of Existing Regulatory Mechanisms

Although the Oregon chub "clearly meets the criteria for listing" (William Haight, ODFW, pers. comm., 1991), it is not currently listed under Oregon's Act. The Oregon chub is listed as a "sensitive" species by ODFW (ODFW Adm. Rule 635–100–040). This designation is similar to the Service's category 2 designation in that it highlights the possibly precarious status of a species but requires no protective measures. The Oregon chub is listed as a sensitive species by Region 6 of the Forest Service, and as a threatened species by the American Fisheries Society (Williams *et al.* 1990). All of these designations were made when the Oregon chub was believed to include populations from the Umpqua River drainage as well as those of the Willamette River drainage.

As discussed in the Summary of Contents section of this rule, an interagency Conservation Agreement was established for the Oregon chub in the spring of 1992. The Conservation Agreement was developed in an effort to coordinate management activities among the State and Federal agencies responsible for managing the species and/or its habitat. The goal of the Conservation Agreement is to conserve and recover the Oregon chub through protection of the species' habitat, introductions into suitable habitat within its historic range, and public education and involvement. Despite the goals and objectives of this Conservation Agreement to protect and enhance Oregon chub populations, it is a relatively new agreement, and significant tasks have not yet been accomplished. Threats from chemical spills, siltation from logging or road construction, predation and/or competition from nonnative fishes, loss of habitat, and changes in water level and flow conditions continue to threaten this species. In addition, the implementation of this agreement does not provide for any consultation with the Service pursuant to section 7 of the Act, as would listing the chub as an endangered species.

E. Other Natural or Manmade Factors Affecting its Continued Existence

All known extant populations of the Oregon chub occur near rail, highway, and power transmission corridors and within public park and campground facilities. These populations are threatened by chemical spills from overturned truck or rail tankers, runoff or accidental spills of brush control chemicals, overflow from chemical toilets in campgrounds, siltation of shallow habitats from logging and construction activities, loss of habitat from illegal fill activities, and changes in water level or flow conditions from construction, diversions, or natural desiccation. There is public pressure to develop additional sport fisheries in Lookout Point and Dexter Reservoirs. Because all remaining population sites are easily accessible, there also continues to be a potential for illegal introductions of nonindigenous species, particularly mosquito fish and game fishes such as bass and walleye.

Observed feeding strategies and diet of introduced fishes, particularly juvenile centrarchids and adult mosquito fish (Li *et al.* 1987), and bullfrogs (Cohen and Howard 1958, Kane *et al.* 1992) in many cases overlap with diet and feeding strategies described for Oregon chub (Pearsons 1989). This suggests that direct competition for food between Oregon chub and introduced species may further impede species survival, as well as recovery efforts. The failure to find Oregon chub in waters also inhabited by mosquito fish (Dr. Douglas Markle, OSU, pers. comm., 1990) may reflect food-based competitive exclusion.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list the Oregon chub as endangered. The distribution of the Oregon chub has declined to 2 percent of its historic range and remaining populations are threatened by direct mortality from chemical spills, competition or predation from nonindigenous fishes and amphibians, and loss of habitat from siltation, unauthorized fill activities, and changes in water level or flow conditions. Critical habitat is not being designated at this time as discussed below.

Critical Habitat

Section 4(a)(3) of the Act requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not presently determinable for this species.

When prompt listing of a species is essential to its conservation but sufficient information to perform analyses of the impacts of critical habitat designation is lacking, the Service may go forward with a final listing decision without designating critical habitat. A critical habitat determination, to the maximum extent prudent, must then be completed not later than 2 years from the proposed listing of a species.

The petitioners recommended that "all waters and tributaries of the Middle Fork of the Willamette River from the base of Dexter Dam upstream to its confluence with the North Fork of the Middle Fork be designated as critical habitat." Since the petition was received, two additional populations of the Oregon chub have been located: One downstream of the Dexter Dam within Elijah Bristow State Park and another in a tributary of Lake Creek, Linn County. However, the suitability of Elijah Bristow State Park, Lake Creek and its tributaries, the sites of possible remnant populations on Finley National Wildlife Refuge and in the North Santiam River as habitats that might support the long-term survival of the species are not yet known. Surveys were conducted during the summer of 1992 by the ODFW and OSU, specifically for obtaining information on Oregon chub

distributions, or for general or research fisheries information on the Willamette River and its tributaries. The Service is currently evaluating the results of these studies. After a thorough analysis and review of this information, the Service will, to the maximum extent prudent, designate critical habitat for the Oregon chub.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) of the Act requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Road construction activity, timber sales, and alterations of current campgrounds on the Willamette National Forest and water management practices of the COE at Dexter and Lookout Point Reservoirs may require section 7 consultations with the Service.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (including harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt any such conduct), import or export, transport in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. Information on permits to take federally listed species may be obtained by writing to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 432, Arlington, Virginia 22203–3507 (703/358–2104, FAX 703/358–2281).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

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Author

The primary author of this rule is Ronald Rhew, U.S. Fish and Wildlife Service, Portland Field Office (see **ADDRESSES** section) (telephone number 503/231–6179).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under FISHES, to the List of Endangered and Threatened Wildlife as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	*
FISHES							
*	*	*	*	*	*	*	*
Chub, Oregon	*Oregonichthys crameri*	U.S.A. (OR)	Entire	E	520	NA	NA
*	*	*	*	*	*	*	*

Dated: September 24, 1993.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 93–25434 Filed 10–15–93; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB83

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Plant Astrophytum Asterias (Star Cactus)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) determines *Astrophytum asterias* (star cactus) to be an endangered species under the authority of the Endangered Species Act of 1973 (Act), as amended. This cactus is known from only two sites, one in Starr County, Texas, and the other in Tamaulipas, Mexico. Only about 2,100 plants are known in the wild. The species is threatened by collecting, conversion of its habitat to agriculture or improved pasture, and habitat alteration from severe overgrazing. This action will implement Federal protection provided by the Act for star cactus. Critical habitat is not being designated.

EFFECTIVE DATE: November 17, 1993.

ADDRESSES: The complete file for this rule is available for inspection by appointment, during normal business hours at the Corpus Christi Ecological Services Field Office, U.S. Fish and Wildlife Service, c/o Corpus Christi State University, Campus Box 338, 6300 Ocean Drive, Corpus Christi, Texas 78412.

FOR FURTHER INFORMATION CONTACT: Angela Brooks, at the above address (Telephone 512/994–9005).

SUPPLEMENTARY INFORMATION:

Background

Star cactus was first collected in Tamaulipas, Mexico, by Baron von Karwinsky in 1843, and was named *Echinocactus asterias* by Joseph Zuccarini in 1845. In 1868, C.A. Lemaire described *Astrophytum prismaticum* and included *Echinocactus asterias* and several other Mexican species in the new genus *Astrophytum*. Thus, *Echinocactus asterias* Zuccarini became *Astrophytum asterias* (Zuccarini) Lemaire. Since these initial treatments, various taxonomic experts have placed star cactus in one genus or the other. The Service takes no position on the correct generic placement of star cactus, but will use the name *Astrophytum asterias* because of its prevalence in most current horticultural cactus literature.

Astrophytum asterias is a small spineless cactus. It is disk- or dome-shaped, 2–15 cm (1–6 in.) across, up to 7 cm (3 in.) tall, brownish or dull green, and often speckled with a covering of tiny white scales. Vertical grooves divide the main body into eight vaguely triangular sections, each section marked with a central line of circular indentations filled with straw-colored to whitish wooly hairs. Flowers are yellow with orange centers, and up to about 5 cm (2 in.) in diameter. Fruits are green to grayish-red, about 1.25 cm (0.5 in.) long, oval, and fleshy (Damude and Poole 1990).

Star cactus is a strikingly attractive plant that has been a favorite in the cactus and succulent trade for many years. Plants are easily grown from seed and propagation techniques have been studied in detail (Martin *et al.* 1971, Backeberg 1977, Pilbean 1987, Minnich and Hutflesz 1991). In a greenhouse environment, plants grown from seed are consistently hardier and more disease resistant than plants taken from the wild, which tend to be highly sensitive to cold and excess moisture. Cultivated plants of star cactus probably outnumber those in the wild many times. Despite relatively easy propagation and the superior quality of cultivated plants for horticultural purposes, field collected plants of star cactus still enter the commercial market. In a recent survey of the cactus trade in Texas, approximately 400 field collected star cactus plants were found at one nursery (Damude and Poole 1990).

The star cactus grows at low elevations in the grasslands and shrublands of the Rio Grande Plains or the Tamaulipan thorn shrub. Originally the vegetation in this area was likely a subtropical grassland, perhaps with scattered trees. Now, because of fire suppression and severe overgrazing, much of the area has been invaded with thorny shrub and tree species. The habitat of star cactus in the original grassland is unclear. Today the species is found in sparse, fairly open brushland. It is most often found in the partial shade of other plants or of rocks growing on gravelly saline clays or loams overlaying the Tertiary Catahoula

and Frio formations. The Texas site is in a creek drainage (Damude and Poole 1990).

Much of the probable native habitat of star cactus has been converted to agriculture or improved pasture. In the area where plants presently occur, pasture improvement is done by clearing the shrubs and then planting buffelgrass (*Cenchrus ciliaris*). The landscape is, therefore, a mosaic of buffelgrass pasture and shrub stands of various ages. It is unlikely that star cactus could survive this land management regime. Much of the suitable habitat in Mexico has been converted to corn fields or orange groves (Sanchez-Mejorada, *et al.* 1986).

Historically, star cactus occurred in Cameron, Hidalgo, and Starr counties in South Texas, and the adjacent states of Nuevo Leon and Tamaulipas in Mexico. Presently, star cactus is known from only one locality in Texas and one in Tamaulipas, both privately owned, with only about 2,100 plants known in the wild (Damude and Poole 1990). The Nuevo Leon site is believed to have been extirpated by collectors, and the Tamaulipas site has been reduced to very few individuals (Sanchez-Mejorada, *et al.* 1986).

Star cactus was included (under the name *Echinocactus asterias*) in category 2 in the September 27, 1985, and February 21, 1990, **Federal Register** notices (50 FR 39526 and 55 FR 6184) of plants under review for threatened or endangered classification. Category 2 includes those taxa for which there is some evidence of vulnerability, but for which there are not enough data to support listing proposals at the time. A status report on star cactus was completed December 1, 1990 (Damude and Poole 1990). This report provided sufficient information on the biological vulnerability and threats to star cactus to support a category 1 status and proposal to list the species as endangered. The proposal was published in the **Federal Register** on October 9, 1992 (57 FR 46528). A notice to reopen the comment period on the proposal was published in the **Federal Register** on February 12, 1993 (58 FR 8249).

Summary of Comments and Recommendations

In the October 9, 1992, proposed rule (57 FR 46528) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. A notice reopening the comment period was published on February 12, 1993 (58 FR 8249). Appropriate state agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices were published in the Monitor (McAllen, Texas) and the Starr County Town Crier (Rio Grande City, Texas) on February 20, 1993, and February 24, 1993, respectively, which invited general public comment.

A total of 9 comments were received. Seven commenters supported the listing. Two commenters provided information or questioned statements in the proposal without either supporting or opposing the listing. Issues raised by commenters are discussed below.

Issue: One commenter expressed the opinion that the statement, "In Mexico today the plant is restricted to rockier sites less threatened by cultivation, and these sites are usually heavily grazed," implies that heavy grazing may be beneficial to star cactus habitat.

Response: The Service finds no evidence that heavy grazing benefits star cactus and intended the statement to illustrate that habitat not already destroyed in Mexico is still threatened by current land use practices. The statement has been modified in the final rule to make its meaning clearer.

Issue: The same commenter expressed the opinion that alteration of a site by mechanical brush control may enhance habitat for star cactus because the proposed rule stated that brush had been mechanically cleared on the site of the Texas population.

Response: Even though the general area of the Texas population was cleared in the past, it is uncertain if the small area presently occupied by star cactus was cleared. The Service continues to believe mechanical brush clearing, especially followed by introduction of nonnative pasture grasses, is detrimental to star cactus.

Issue: One commenter suggested additional surveys for star cactus be done in southern Texas and Mexico.

Response: The Service agrees additional surveys would be beneficial and these will be considered in the recovery program for the species.

Issue: One commenter noted concerns that commercial cactus growers will cease growing star cactus if listed because of permit requirements. This would mean growers will no longer contribute to conservation of the species through its greenhouse propagation.

Response: Commercial trade prohibitions under the Act apply only to interstate commerce. The Service believes few states other than Texas, where the species is native, will add star cactus to their endangered plant lists and therefore no restrictions on trade of greenhouse propagated plants will occur within most states. Permits for interstate commerce of greenhouse propagated plants will be available from the Service. Many growers already have the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) permit necessary for international commerce and they will be able to acquire the permit required by the Act with little additional effort. The Service believes enough growers will acquire permits that legal trade will be able to fill the commercial demand for this species.

Issue: The same commenter requested the final rule contain language to acknowledge that conserving star cactus means protecting and reviving its habitat as well as encouraging greenhouse propagation and distribution.

Response: The Service believes habitat protection and management is the most important element in conserving this species. Threats to star cactus habitat are discussed in Factor A of the "Summary of Factors Affecting the Species" section of this final rule. Details of habitat management needs will be discussed in the recovery plan for this species. The Service anticipates some land of the Lower Rio Grande Valley National Wildlife Refuge will be suitable for star cactus habitat conservation and restoration.

Issue: Several commenters offered information about star cactus or offered to provide assistance with various aspects of the species' recovery.

Response: These statements are gratefully acknowledged. The Service anticipates the participation of Federal, state, and local agencies, private organizations, and individual citizens will all be required to recover this species. All groups and individuals will be given the opportunity to comment on the adequacy of recovery tasks before the Star Cactus Recovery Plan is finalized.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that star cactus should be classified as an endangered species. Procedures found at section 4(a)(1) of the Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one of more of the five factors described in section 4(a)(1). These factors and their application to *Astrophytum asterias*

(Zuccarini) Lemaire (star cactus) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Several common range management practices threaten the present habitat of star cactus. Root-plowing or other mechanical or chemical brush clearing activities, introduction of aggressive exotic grass species such as buffelgrass, suppression of the natural fire cycle, and excessive livestock numbers may all destroy or significantly alter the natural habitat (Damude and Poole 1990). Brush has been mechanically cleared in the past on the site of the Texas population, altering the habitat and possibly destroying many plants. Part of the Texas population is bisected by a paved road, and many plants may have been destroyed during construction. Any potential road widening would present a threat to the population, as would the management practice of roadside pesticide or herbicide use (Damude and Poole 1990). Most of the historic range of star cactus in Mexico no longer contains suitable habitat because the natural vegetation has been destroyed and the land is under cultivation for oranges or corn. In Mexico today, the plant is restricted to rockier sites less suitable for cultivation and these sites are threatened by overgrazing. Observers have noted that grazing practices are slowly altering the natural vegetation (Sanchez-Mejorada, *et al.* 1986).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Star cactus is highly prized by cactus enthusiasts for its rarity and unusual appearance. Though the plant has been in cultivation since the 1930's, and propagated material is available for sale, wild collected plants remain on the market. A recent survey of the cactus trade in Texas revealed 400 field-dug specimens of star cactus at a Texas nursery, these presumably from Mexico. In addition to its desirability for horticultural collections, the plant has been reported to be used as a hallucinogen and to be actively sought in the wild for this purpose (E. Haner, Soil Conservation Service, Hebbronville, Texas, *in litt.* 1992). The one known population in Nuevo Leon, Mexico, is believed to be extirpated due to collecting. The known population in Tamaulipas, Mexico, had many large individuals up to 15 cm (6 in.) in diameter in 1978, but when visited in 1985 no plants remained over 7 cm (3 in.) in diameter, and fewer than 100 individuals could be found in an extensive search (Sanchez-Mejorada, *et al.* 1986). Fewer than 2,100 individuals are known in the wild (Damude and Poole 1990).

C. Disease or Predation

Occasionally plants in deteriorated condition have been observed, but disease has not been confirmed in the known populations. No evidence of predation has been noted (Damude and Poole 1990).

D. The Inadequacy of Existing Regulatory Mechanisms

Commercial trade in field collected material of star cactus is not presently prohibited in the United States by Federal or Texas State law. Star cactus is listed in Appendix I of CITES (50 CFR 23.23), but protection under this treaty is limited to international trade. Mexico also has laws prohibiting the export of its native cacti. However, enforcement of Mexican export laws and CITES protections in this near-border area can be difficult. Listing under the Act would provide protection by prohibiting interstate commerce in this species without a permit, and would make it a Federal violation to collect this plant in knowing violation of any state law or regulation, including state criminal trespass law.

E. Other Natural or Manmade Factors Affecting its Continued Existence

With fewer than 2,100 individuals known in two populations, the species may be vulnerable to extinction because of lowered viability and genetic variability in the wild.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list star cactus as endangered. The status of endangered is appropriate because of the species' limited distribution, low population numbers, and imminent threats of collecting and habitat destruction.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires to the maximum extent prudent and determinable, that the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for this species. As discussed under Factor B in the "Summary of Factors Affecting the Species", star cactus is threatened by taking, an activity difficult to prevent and only regulated by the Act with respect to plants in cases of (1) removal and reduction to possession of listed plants from lands under Federal jurisdiction, or their malicious damage or destruction on such lands; and (2) removal, cutting, digging up, or damaging or destroying in knowing violation of any state law or regulation, including state criminal trespass law. Such provisions are difficult to enforce, and publication of critical habitat descriptions and maps would make star cactus more vulnerable and increase enforcement problems. All involved parties and principal landowners have been notified of the location and importance of protecting this species' habitat. Protection of this species' habitat will be addressed through the recovery process and through the section 7 jeopardy standard. Therefore, it would not now be prudent to determine critical habitat for star cactus.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, state, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the states and authorizes recovery plans for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Some Federal actions that may affect this species include soil conservation and range improvement recommendations by the Soil Conservation Service to private landowners, the funding of these activities by the Agricultural

Stabilization and Conservation Service, and the registration of herbicides and pesticides for rangeland use by the Environmental Protection Agency.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general prohibitions and exceptions that apply to all endangered plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. In addition, for listed plants, the 1988 amendments (Pub. L. 100–478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of listed plants in knowing violation of any state law or regulation, including state criminal trespass law. Certain exceptions apply to agents of the Service and state conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances.

Star cactus is a popular species with cactus and succulent enthusiasts and considerable commercial trade exists. The vast majority of trade involves plants artificially propagated from seed. However, some field collected plants are also being offered for sale (Damude and Poole 1990). Requests for copies of the regulations on listed plants and inquiries regarding prohibitions and permits may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, room 432, Arlington, VA 22203 (703/358–2104, FAX 703/358–2281).

Astrophytum asterias was included in Appendix II of CITES (50 CFR 23.23) on July 1, 1975; it was transfered to Appendix I effective October 22, 1987 (52 FR 35743; September 23, 1987). The effect of including *Astrophytum asterias* in Appendix I is that both export and import permits are generally required before international shipment may occur. Such shipment is strictly regulated by CITES party nations to prevent effects that may be detrimental to the species' survival. Generally, the import or export cannot be allowed if it is for primarily commercial purposes. If plants are certified as artificially propagated, however, international shipment requires only export documents under CITES, and commercial shipments may be allowed.

National Environmental Policy Act

The Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Backeberg, C. 1977. Cactus Lexicon. Blandford Press, Poole, Dorset, United Kingdom.

Damude, N. and J. Poole. 1990. Status Report on *Echinocactus asterias* (=*Astrophytum asterias*). U.S. Fish and Wildlife Service, Albuquerque, New Mexico.

Lemaire, C.A. 1888. Les cactees. Librairie Agricole de la Maison Rustique, Paris.

Martin, M.J., P.R. Chapman, and H.A. Auger. 1971. Cacti and their cultivation. Winchester Press, New York.

Minnich, W.S. and F. Hutflesz. 1991. Cacti and succulents for the amateur. Cactus and Succulent Journal (U.S.) 63:122–123.

Pilbean, J. 1987. Cacti for the connoisseur: A guide for growers and collectors. Timber Press, Portland, Oregon.

Sanchez-Mejorada, H.E. Anderson, N. Taylor, and R. Taylor. 1986. Succulent plant conservation studies and training in Mexico. World Wildlife Fund, Washington, D.C.

Zuccarini, J.G. 1845. Act. acad. monagr. *Echinocactus asterias*. Abb. Bayer. Akad. Wiss. Munchen 4(2):13.

Authors

The primary authors of this final rule are Angela Brooks and Tim Cooper (see **ADDRESSES** section), and Kathryn Kennedy, U.S. Fish and Wildlife Service, Austin Ecological Services Field Office, 611 East 6th Street, Austin, Texas 78701.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record-keeping requirements, and Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.12(h) by adding the following entry, in alphabetical order under the family Cactaceae, to the List of Endangered and Threatened Plants.

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
*	*	*	*	*	*	*
Cactaceae—Cactus family:						
*	*	*	*	*	*	*
Astrophytum asterias (= *Echinocactus asterias*)	Star cactus	U.S.A. (TX); Mexico	E	521	NA	NA
*	*	*	*	*	*	*

Dated: September 29, 1993.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 93–25433 Filed 10–15–93; 8:45 am]

BILLING CODE 4310–55–P

federal register

Monday
October 18, 1993

Part IV

Environmental Protection Agency

Premanufacture Notices; Monthly Status Report for July 1993

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS-53169; FRL-4650-3]

Premanufacture Notices; Monthly Status Report for July 1993

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(d)(3) of the Toxic Substance Control Act (TSCA) requires EPA to issue a list in the **Federal Register** each month reporting the premanufacture notices (PMNs) and exemption requests pending before the Agency and the PMNs and exemption requests for which the review period has expired since publication of the last monthly summary. This is the report for July 1993.

Nonconfidential portions of the PMNs and exemption request may be seen in the TSCA Nonconfidential Information Center, (NCIC) ETG-102 at the address below between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

ADDRESSES: Written comments, identified with the document control number "[OPPTS-53169]" and the specific PMN and exemption request number should be sent to: Document Control Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. ETG-099, Washington, DC 20460, (202) 260-1532.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-545, 401 M St., SW., Washington, DC 20460, (202) 260-3725.

SUPPLEMENTARY INFORMATION: The monthly status report published in the **Federal Register** as required under section 5(d)(3) of TSCA (90 Stat. 2012 (15 U.S.C. 2504), will identify: (a) PMNs received during July ; (b) PMNs received previously and still under review at the end of July; (c) PMNs for which the notice review period has ended during July; (d) chemical substances for which EPA has received a notice of commencement to manufacture during July; and (e) PMNs for which the review period has been suspended. Therefore, the July 1993 PMN Status Report is being published.

List of Subjects

Environmental protection.

Dated: October 8, 1993.

Frank V. Caesar,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

Premanufacture Notice Monthly Status Report for July 1993.

I. 200 Premanufacture notices and exemption requests received during the month:

PMN No.

P 93-1176 P 93-1188 P 93-1221 P 93-1222
P 93-1223 P 93-1224 P 93-1225 P 93-1226
P 93-1227 P 93-1228 P 93-1229 P 93-1230
P 93-1231 P 93-1232 P 93-1233 P 93-1234
P 93-1235 P 93-1236 P 93-1237 P 93-1238
P 93-1239 P 93-1240 P 93-1241 P 93-1242
P 93-1243 P 93-1244 P 93-1245 P 93-1246
P 93-1247 P 93-1248 P 93-1249 P 93-1250
P 93-1251 P 93-1252 P 93-1253 P 93-1254
P 93-1255 P 93-1256 P 93-1257 P 93-1258
P 93-1259 P 93-1260 P 93-1261 P 93-1262
P 93-1263 P 93-1264 P 93-1265 P 93-1266
P 93-1267 P 93-1268 P 93-1269 P 93-1270
P 93-1271 P 93-1272 P 93-1273 P 93-1274
P 93-1275 P 93-1276 P 93-1277 P 93-1278
P 93-1279 P 93-1280 P 93-1281 P 93-1282
P 93-1283 P 93-1284 P 93-1285 P 93-1286
P 93-1287 P 93-1288 P 93-1289 P 93-1290
P 93-1291 P 93-1292 P 93-1293 P 93-1294
P 93-1295 P 93-1296 P 93-1297 P 93-1298
P 93-1299 P 93-1300 P 93-1301 P 93-1302
P 93-1303 P 93-1304 P 93-1305 P 93-1306
P 93-1307 P 93-1308 P 93-1309 P 93-1310
P 93-1311 P 93-1312 P 93-1313 P 93-1314
P 93-1315 P 93-1316 P 93-1317 P 93-1318
P 93-1319 P 93-1320 P 93-1321 P 93-1322
P 93-1323 P 93-1324 P 93-1325 P 93-1326
P 93-1327 P 93-1328 P 93-1329 P 93-1330
P 93-1331 P 93-1332 P 93-1334 P 93-1335
P 93-1336 P 93-1337 P 93-1338 P 93-1339
P 93-1340 P 93-1341 P 93-1342 P 93-1343
P 93-1344 P 93-1345 P 93-1346 P 93-1347
P 93-1348 P 93-1349 P 93-1350 P 93-1351
P 93-1352 P 93-1353 P 93-1354 P 93-1355
P 93-1356 P 93-1357 P 93-1358 P 93-1359
P 93-1360 P 93-1361 P 93-1362 P 93-1363
P 93-1364 P 93-1365 P 93-1366 P 93-1367
P 93-1368 P 93-1369 P 93-1370 P 93-1371
P 93-1372 P 93-1373 P 93-1374 P 93-1375
P 93-1376 P 93-1377 P 93-1378 P 93-1379
P 93-1380 P 93-1381 P 93-1382 P 93-1383
P 93-1384 P 93-1386 P 93-1387 P 93-1388
P 93-1389 P 93-1390 P 93-1391 P 93-1392
P 93-1393 P 93-1394 P 93-1396 P 93-1397
Y 93-0171 Y 93-0172 Y 93-0173 Y 93-0174
Y 93-0175 Y 93-0176 Y 93-0177 Y 93-0178
Y 93-0179 Y 93-0180 Y 93-0181 Y 93-0182
Y 93-0183 Y 93-0184 Y 93-0185 Y 93-0186
Y 93-0187 Y 93-0188 Y 93-0189 Y 93-0190
Y 93-0191 Y 93-0192 Y 93-0193 Y 93-0194

II. 201 Premanufacture notices received previously and still under review at the end of the month:

PMN No.

P 84-0660 P 84-0704 P 85-0619 P 85-0941
P 86-0066 P 86-1315 P 87-0323 P 88-0996
P 88-0999 P 88-1937 P 88-1938 P 88-1980
P 88-1982 P 88-1984 P 88-1985 P 88-2484
P 88-2518 P 89-0721 P 89-0775 P 89-0867
P 89-0963 P 89-1038 P 90-0158 P 90-0283
P 90-0550 P 90-0558 P 90-0564 P 90-0581
P 90-0606 P 90-1358 P 90-1422 P 90-1527
P 90-1592 P 90-1840 P 91-0043 P 91-0572
P 91-0619 P 91-0689 P 91-0809 P 91-0818
P 91-0914 P 91-0915 P 91-0939 P 91-0940
P 91-0941 P 91-1009 P 91-1010 P 91-1014
P 91-1015 P 91-1131 P 91-1206 P 91-1210
P 91-1324 P 91-1386 P 91-1394 P 91-1409
P 92-0003 P 92-0031 P 92-0032 P 92-0033
P 92-0048 P 92-0314 P 92-0343 P 92-0344
P 92-0477 P 92-0478 P 92-0606 P 92-0649
P 92-0692 P 92-0714 P 92-0787 P 92-0804
P 92-0919 P 92-1003 P 92-1125 P 92-1222
P 92-1255 P 92-1294 P 92-1295 P 92-1296
P 92-1298 P 92-1307 P 92-1308 P 92-1324
P 92-1337 P 92-1345 P 92-1352 P 92-1364
P 92-1369 P 92-1489 P 92-1503 P 92-1504
P 93-0014 P 93-0017 P 93-0040 P 93-0066
P 93-0094 P 93-0126 P 93-0168 P 93-0177
P 93-0204 P 93-0212 P 93-0213 P 93-0215
P 93-0227 P 93-0250 P 93-0251 P 93-0252
P 93-0253 P 93-0254 P 93-0255 P 93-0256
P 93-0257 P 93-0277 P 93-0282 P 93-0307
P 93-0313 P 93-0314 P 93-0315 P 93-0316
P 93-0339 P 93-0343 P 93-0352 P 93-0353
P 93-0362 P 93-0364 P 93-0374 P 93-0375
P 93-0438 P 93-0458 P 93-0480 P 93-0483
P 93-0498 P 93-0505 P 93-0507 P 93-0512
P 93-0532 P 93-0533 P 93-0553 P 93-0555
P 93-0568 P 93-0572 P 93-0578 P 93-0603
P 93-0627 P 93-0633 P 93-0652 P 93-0658
P 93-0698 P 93-0699 P 93-0701 P 93-0718
P 93-0720 P 93-0721 P 93-0722 P 93-0723
P 93-0724 P 93-0725 P 93-0726 P 93-0731
P 93-0732 P 93-0733 P 93-0734 P 93-0735
P 93-0761 P 93-0832 P 93-0853 P 93-0854
P 93-0855 P 93-0856 P 93-0857 P 93-0858
P 93-0880 P 93-0881 P 93-0896 P 93-0936
P 93-0937 P 93-0953 P 93-0955 P 93-0959
P 93-0964 P 93-0987 P 93-1024 P 93-1025
P 93-1026 P 93-1027 P 93-1028 P 93-1039
P 93-1043 P 93-1047 P 93-1069 P 93-1071
P 93-1074 P 93-1082 P 93-1096 P 93-1108
P 93-1111 P 93-1119 P 93-1166 P 93-1180
P 93-1183

III. 193 Premanufacture notices and exemption request for which the notice review period has ended during the month. (Expiration of the notice review period does not signify that the chemical has been added to the Inventory).

PMN No.

P 90-0372 P 91-0659 P 93-0184 P 93-0185
P 93-0186 P 93-0187 P 93-0188 P 93-0189
P 93-0190 P 93-0333 P 93-0360 P 93-0418
P 93-0552 P 93-0747 P 93-0748 P 93-0749
P 93-0750 P 93-0751 P 93-0752 P 93-0753
P 93-0754 P 93-0755 P 93-0756 P 93-0757
P 93-0758 P 93-0759 P 93-0760 P 93-0788
P 93-0789 P 93-0790 P 93-0791 P 93-0792
P 93-0793 P 93-0794 P 93-0795 P 93-0796
P 93-0797 P 93-0798 P 93-0799 P 93-0800
P 93-0801 P 93-0802 P 93-0803 P 93-0804
P 93-0805 P 93-0806 P 93-0807 P 93-0808
P 93-0809 P 93-0810 P 93-0811 P 93-0812
P 93-0813 P 93-0814 P 93-0815 P 93-0816
P 93-0817 P 93-0818 P 93-0819 P 93-0820
P 93-0821 P 93-0822 P 93-0823 P 93-0824
P 93-0825 P 93-0826 P 93-0827 P 93-0828
P 93-0829 P 93-0830 P 93-0831 P 93-0832
P 93-0833 P 93-0834 P 93-0835 P 93-0836
P 93-0837 P 93-0838 P 93-0839 P 93-0840
P 93-0841 P 93-0842 P 93-0843 P 93-0844

P 93-0845 P 93-0846 P 93-0847 P 93-0848
P 93-0849 P 93-0850 P 93-0851 P 93-0852
P 93-0853 P 93-0854 P 93-0855 P 93-0856
P 93-0857 P 93-0858 P 93-0859 P 93-0860
P 93-0861 P 93-0862 P 93-0863 P 93-0864
P 93-0865 P 93-0866 P 93-0867 P 93-0868
P 93-0869 P 93-0870 P 93-0871 P 93-0872
P 93-0873 P 93-0874 P 93-0875 P 93-0876
P 93-0877 P 93-0878 P 93-0879 P 93-0882
P 93-0883 P 93-0884 P 93-0885 P 93-0886
P 93-0887 P 93-0888 P 93-0889 P 93-0890
P 93-0891 P 93-0892 P 93-0893 P 93-0894
P 93-0895 P 93-0897 P 93-0898 P 93-0899
P 93-0900 P 93-0901 P 93-0902 P 93-0903
P 93-0904 P 93-0905 P 93-0906 P 93-0907
P 93-0908 P 93-0909 P 93-0910 P 93-0911
P 93-0912 P 93-0913 P 93-0914 P 93-0915
P 93-0916 P 93-0917 P 93-0918 P 93-0919
P 93-0920 P 93-0921 P 93-0922 P 93-0923
P 93-0924 P 93-0925 P 93-0926 P 93-0927
P 93-0928 P 93-0929 P 93-0930 P 93-0931
P 93-0932 P 93-0933 P 93-0934 P 93-0935
P 93-0938 P 93-0939 P 93-0940 P 93-0941
P 93-0942 P 93-0943 P 93-0944 P 93-0945
P 93-0946 P 93-0947 P 93-0948 P 93-0949
P 93-0951 P 93-1003 Y 93-0165 Y 93-0166
Y 93-0167 Y 93-0168 Y 93-0169 Y 93-0170
Y 93-0171

IV. 9 Chemical Substances for Which EPA Has Received Notices of Commencement To Manufacture.

PMN No.	Identity/generic name	Date of commencement
P 88-0219	1,3-Dimethyl-1,1,3,3-tetramethyldisiloxane; alcohol	April 12, 1988.
P 89-0963	G Polyalkylene polyamine	July 8, 1992.
P 90-0667	Reaction products of epoxy phenolic novolac resin, tetrabromobisphenol A, methacrylic acid	January 5, 1991.
P 90-0668	Reaction products of epoxy phenolic novolac resin, tetrabromobisphenol A, carboxyl-terminated butadiene/acrylonitrile copolymer, methacrylic acid	May 22, 1991.
P 91-0129	G Amylopectin, 2-(heteromonocyclic) ethyl ether	March 18, 1991.
P 91-0660	G Substituted heterocycle benzoic acid	June 18, 1991.
P 92-0343	G 1,3,5-Triazin-2-amine, 4-dimethylamino-6-substituted-	July 28, 1992.
P 92-0344	G 1,3,5-Triazin-2-amine, 4-dimethylamino-6-substituted-	September 22, 1992.
Y 92-0171	G Saturated copolymer resin	October 8, 1992.

V. 9 Premanufacture notices for which the period has been suspended.

PMN No.

P 91-0572 P 91-0689 P 93-0277 P 93-0307
P 93-0561 P 93-0572 P 93-0936 P 93-0937
P 93-0955

[FR Doc. 93-25472 Filed 10-15-93; 8:45 am]

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federal register

Monday
October 18, 1993

Part V

Department of Health and Human Services

National Institutes of Health

Recombinant DNA Research: Actions Under the Guidelines; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Recombinant DNA Research: Actions Under the Guidelines

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice of Actions Under the NIH Guidelines for Research Involving Recombinant DNA Molecules.

SUMMARY: This notice sets forth eight actions to be taken by the Director, National Institutes of Health (NIH), under the May 7, 1986, NIH Guidelines for Research Involving Recombinant DNA Molecules (51 FR 16958).

FOR FURTHER INFORMATION CONTACT: Additional information can be obtained from Dr. Nelson A. Wivel, Director, Office of Recombinant DNA Activities (ORDA), Office of Science Policy and Technology Transfer, National Institutes of Health, Building 31, room 4B11, Bethesda, Maryland 20892, (301) 496–9838.

SUPPLEMENTARY INFORMATION: Today eight actions are being promulgated under the NIH Guidelines for Research Involving Recombinant DNA Molecules. These eight proposed actions were published for comment in the **Federal Register** of February 12, 1993 (58 FR 8500) and August 18, 1993 (58 FR 44098), and reviewed and recommended for approval by the NIH Recombinant DNA Advisory Committee (RAC) at its meetings on March 1–2, 1993, and September 9–10, 1993.

I. Background Information and Decisions on Actions Under the NIH Guidelines

A. Major Amendment to Appendix D–XXVII to the NIH Guidelines

On July 9, 1993, Drs. Philip Greenberg and Stanley R. Riddell of the Fred Hutchinson Cancer Research Center, Seattle, Washington, indicated their intention to submit a major amendment to their human gene transfer protocol to the Recombinant DNA Advisory Committee for formal review and approval. The request was to treat an additional 15 patients who do not have acquired immunodeficiency syndrome-related lymphoma and who are not undergoing autologous bone marrow transplantation.

The current protocol is entitled: A Phase I Study of Cellular Adoptive Immunotherapy Using Genetically Modified CD8+ HIV-Specific T Cells for HIV-Seropositive Patients Undergoing Allogeneic Bone Marrow Transplant. The initial protocal was approved by the NIH Director on April 17, 1992, and published in the **Federal Register** on April 22, 1992 (57 FR 14775).

Appendix D–XXVII currently reads:

"Dr. Philip D. Greenberg of the University of Washington, Seattle, Washington, can conduct gene transfer experiments on up to 15 HIV seropositive patients undergoing allogeneic bone marrow transplantation for non-Hodgkin's lymphoma to evaluate the safety and efficacy of HIV-specific cytotoxic T lymphocyte (CTL) therapy. CTL will be transduced with a retroviral vector (HyTK) encoding a gene that is a fusion product of the hygromycin phosphotransferase gene (HPH) and the herpes simplex virus thymidine kinase (HSV–TK) gene. This vector will deliver both a marker gene and a suicide gene in these T cell clones in the event that patients develop side effects as a consequence of CTL therapy. Data will be correlated over time, looking at multiple parameters of HIV disease activity. The objectives of these studies include evaluating the safety and toxicity of CTL therapy, determining the duration of in vivo survival of HIV-specific CTL clones, and determining if ganciclovir therapy can eradicate genetically modified, adoptively transferred CTL cells."

The amended protocol is entitled: Phase I Study to Evaluate the Safety of Cellular Adoptive Immunotherapy using Genetically Modified CD8+ HIV-Specific T Cells in HIV Seropositive Individuals. This request was published for comment in the **Federal Register** of August 18, 1993 (58 FR 44098).

The protocol was reviewed and recommended approval during the RAC meeting of September 9–10, 1993, by a vote of 16 in favor, 0 opposed, and 2 abstentions.

The following section may be amended as follows:

"Appendix D–XXVII.

"Drs. Philip Greenberg and Stanley R. Riddell of the Fred Hutchinson Cancer Research Center, Seattle, Washington, may conduct gene transfer experiments on 15 human immunodeficiency virus (HIV) seropositive patients (18–45 years old) undergoing allogeneic bone marrow transplantation for non-Hodgkin's lymphoma and 15 HIV-seropositive patients (18–50 years old) who do not have acquired immunodeficiency syndrome (AIDS)-related lymphoma and who are not undergoing bone marrow transplantation to evaluate the safety and efficacy of HIV-specific cytotoxic T lymphocyte (CTL) therapy. CTL will be transduced with a retroviral vector (HyTK) encoding a gene that is a fusion product of the hygromycin phosphotransferase gene (HPH) and the herpes simplex virus thymidine kinase (HSV–TK) gene. This vector will deliver both a marker gene and an ablatable gene in these T cell clones in the event that patients develop side effects as a consequence of CTL therapy. Data will be correlated over time, looking at multiple parameters of HIV disease activity. The objectives of these studies include evaluating the safety and toxicity of CTL therapy, determining the duration of in vivo survival of HIV-specific CTL clones, and determining if ganciclovir therapy can eradicate genetically modified, adoptively transferred CTL cells."

I accept this recommendation, and Appendix D–XXVII of the NIH Guidelines will be amended accordingly.

B. Addition of Appendix D–LVII to the NIH Guidelines

In a letter dated December 17, 1992, Drs. Richard C. Boucher and Michael R. Knowles of the University of North Carolina, Chapel Hill, North Carolina, indicated their intention to submit a human gene therapy protocol to the Recombinant DNA Advisory Committee for formal review and approval. The title of this protocol is: Gene Therapy for Cystic Fibrosis Using E1 Deleted Adenovirus: A Phase I Trial in the Nasal Cavity. This request was published for comment in the **Federal Register** of February 12, 1993 (58 FR 8500).

The protocol was reviewed and recommended for approval during the RAC meeting of March 1–2, 1993, by a vote of 16 in favor, 0 opposed, and 1 abstention. Approval of this protocol was contingent on the following stipulation: the investigators must submit a letter of resolution regarding the correct sequence of the cystic fibrosis transmembrane conductance regulator (CFTR) gene.

On June 25, 1993, Dr. James Wilson of the University of Pennsylvania Medical Center, Philadelphia, Pennsylvania, provided information to fulfill the stipulation requirement. On September 10, 1993, Dr. Boucher provided additional materials as requested by the primary reviewers. These materials were reviewed by primary reviewers of the protocol, and it was determined that the stipulations of the RAC were met. The following section may be added to Appendix D:

"Appendix D–LVII.

"Drs. Richard C. Boucher and Michael R. Knowles of the University of North Carolina, Chapel Hill, North Carolina, may conduct experiments on 9 patients (18 years old or greater) with cystic fibrosis to test for the safety and efficacy of an El-deleted recombinant adenovirus

containing the cystic fibrosis transmembrane conductance regulator (CFTR) cDNA, Ad.CB–CFTR. A single dose of 10^8, 3×10^9 or 10^{11} pfu/ml will be administered to the nasal cavity of 3 patients in each dose group. Patients will be monitored by nasal lavage and biopsy to assess safety and restoration of normal epithelial function."

I accept this recommendation, and Appendix D–LVII of the NIH Guidelines will be added accordingly.

C. Addition of Appendix D–LVIII to the NIH Guidelines

In a letter dated September 9, 1992, Dr. Joyce A. O'Shaughnessy of the National Institutes of Health, Bethesda, Maryland, indicated her attention to submit a human gene therapy protocol to the Recombinant DNA Advisory Committee for formal review and approval. The title of this protocol is: Retroviral Mediated Transfer of the Human Multi-Drug Resistance Gene (MDR–1) into Hematopoietic Stem Cells During Autologous Transplantation after Intensive Chemotherapy for Breast Cancer.

During the December 3–4, 1992, Recombinant DNA Advisory Committee meeting, the protocol was deferred until the investigators submitted the following for full RAC review: (1) Data demonstrating that human CD34(+) cells can be transduced *in vitro* with the actual vector that will be used for the human clinical protocol, (2) a description of the methods that will be used to monitor gene expression in bone marrow and tumor cells, and (3) a description of the endpoint for determining bone marrow recovery, i.e., comparison of gene amplification and the rate of polymorphonuclear leukocyte recovery following taxol administration.

On July 14, 1993, Dr. O'Shaughnessy resubmitted a human gene therapy protocol for RAC review and approval. This request was published for comment in the **Federal Register** of August 18, 1993 (58 FR 44098).

The protocol was reviewed and recommended for approval during the RAC meeting of September 9–10, 1993 by a vote of 17 in favor, 0 opposed, and no abstentions. The following section may be added to Appendix D.

"Appendix D–LVIII.

"Dr. Joyce A. O'Shaughnessy of the National Institutes of Health, Bethesda, Maryland, may conduct experiments on 18 patients (18–60 years old) with Stage IV breast cancer who have achieved a partial or complete response to induction chemotherapy. This study will determine the feasibility of obtaining engraftment of CD34(+) hematopoietic stem cells transduced by a retroviral vector, G1MD, and expressing a cDNA for human multi-drug resistance–1 (MDR–1) gene following high dose chemotherapy, and whether the transduced MDR–1 gene confers drug resistance to hematopoietic cells and functions as an in vivo dominant selectable marker. Patients will be monitored for evidence of myeloprotection and presence of the transduced MDR–1 gene."

I accept this recommendation, and Appendix D–LVIII of the NIH Guidelines will be added accordingly.

D. Addition of Appendix D–LIX to the NIH Guidelines

On July 12, 1993, Drs. Larry E. Kun, R.A. Sanford, Malcolm Brenner, and Richard L. Heideman of St. Jude Children's Research Hospital, Memphis, Tennessee, and Dr. Edward H. Oldfield of the National Institutes of Health, Bethesda, Maryland, submitted a human gene therapy protocol to the Recombinant DNA Advisory Committee for formal review and approval. The title of this protocol is: Gene Therapy for Recurrent Pediatric Brain Tumors. This request was published for comment in the **Federal Register** of August 18, 1993 (58 FR 44098).

The protocol was reviewed and recommended for approval during the RAC meeting of September 9–10, 1993 by a vote of 17 in favor, 0 opposed, and no abstentions. The RAC requested that the Office of Recombinant DNA Activities send a letter to the Institutional Review Board strongly recommending that the Informed Consent document should be separated into two separate documents: (1) A patient assent form, and (2) a guardian consent form. On September 21, 1993, the Office of Recombinant DNA Activities sent a letter to the Institutional Review Board at the St. Jude Children's Research Hospital and the LeBonheur Children's Medical Center regarding the Committee's recommendations. The following section may be added to Appendix D:

"Appendix D–LIX.

"Drs. Larry E. Kun, R.A. Sanford, Malcolm Brenner, and Richard L. Heideman of St. Jude Children's Research Hospital, Memphis, Tennessee, and Dr. Edward H. Oldfield of the National Institutes of Health, Bethesda, Maryland, may conduct experiments on 6 patients (3–21 years old) with progressive or recurrent malignant supratentorial tumors resistant to standard therapies. Mouse cells producing the retroviral vector containing the herpes simplex thymidine kinase gene (G1TKSVNa) will be instilled into the tumor areas via multiple stereotactically placed cannulas. Patients will be treated with ganciclovir to eliminate cells expressing the transduced gene. Patients will be monitored for central nervous system, hematologic, renal or other toxicities, and for anti-tumor responses by magnetic resonance imaging studies.

I accept this recommendation, and Appendix D–LIX of the NIH Guidelines will be added accordingly.

E. Addition of Appendix D–LX to the NIH Guidelines Regarding Semliki Forest Virus

Dr. Gary F. Temple of Life Technologies, Inc., Gaithersburg, Maryland, submitted a request for a reduction in physical containment from Biosafety Level 3 to Biosafety Level 2 for a Semliki Forest Virus (SFV) vector expression system.

During the September 14–15, 1992, Recombinant DNA Advisory Committee meeting, the request was deferred so that the investigators could acquire data regarding the following: (1) The frequency of recombination that produces replication-competent virus, using cell numbers analogous to the laboratory setting (e.g., 1×10^9 cells), and (2) acquire data regarding the frequency of seropositivity among personnel previously exposed to SFV.

During the June 7–8, 1993, Recombinant DNA Advisory Committee meeting, the request was deferred until the investigators returned to the Committee with the following: (1) A product information sheet informing customers of the potential health risks associated with the expression system, standard methods to be used for virus inactivation, a helper virus assay to detect SFV, and a description of symptoms and procedures to be followed in the event that SFV infection occurs in a laboratory worker (including methods to prevent transfer to insect vectors and environmental spread); and (2) SFV inactivation data.

In a letter dated February 8, 1993, Dr. Temple resubmitted a request for a reduction in physical containment from Biosafety Level 3 to Biosafety Level 2 for a SFV vector expression system. This request was published for comment in the **Federal Register** on August 18, 1993 (58 FR 44098).

During the September 9–10, 1993, Recombinant DNA Advisory Committee meeting, this request was reviewed and recommended for approval by a vote of 13 in favor, 2 opposed, and 1 abstention. The physical containment for Life Technologies, Inc., SFV vector expression system may be reduced from Biosafety Level 3 to Biosafety Level 2.

Approval of the request is contingent on the following stipulation: (1) Principal investigators using this expression system must obtain signatures from all laboratory personnel certifying that they have been informed of the possible risks associated with this vector expression system and that they read the Product Information booklet. The following section may be added to Appendix D:

"Appendix D–LX.

"The physical containment level may be reduced from Biosafety Level 3 to Biosafety Level 2 for a Semliki Forest Virus (SFV) vector expression system of Life Technologies, Inc., Gaithersburg, Maryland."

I accept this recommendation, and Appendix D–LX of the NIH Guidelines will be added accordingly.

F. Amendment to Section III and Appendix D of the NIH Guidelines Regarding Actions Taken Under the Guidelines

Dr. Nelson A. Wivel, Director, Office of Recombinant DNA Activities, National Institutes of Health, Bethesda, Maryland, requested an amendment to Section III and Appendix D to eliminate the requirement for publication of Appendix D (Actions Taken Under the Guidelines) in the Federal Register and to allow distribution of these actions by the Office of Recombinant DNA Activities. This request was published for comment in the Federal Register of August 16, 1993 (58 FR 44098). Section III–A and Appendix D is proposed to read:

"Section III–A—Experiments that Require RAC Review and IBC Approval Before Initiation.

* * * Specific experiments already approved in this section may be obtained from the Office of Recombinant DNA Activities, National Institutes of Health, Building 31, Room 4B11, Bethesda, Maryland 20892."

"Appendix D—Actions Taken Under the Guidelines.

"As noted in the subsection of Section IV–C–1–b–(1), the Director, NIH, may take certain actions with regard to the Guidelines after the issues have been considered by the RAC. An updated list of these actions are available from the Office of Recombinant DNA Activities, National Institutes of Health, Building 31, Room 4B11, Bethesda, Maryland 20892."

This request was reviewed and recommended for approval as proposed during the RAC meeting of September 9–10, 1993, by a vote of 16 in favor, 0 opposed, and no abstentions.

I accept this recommendation, and Appendix D of the NIH Guidelines will be amended accordingly.

G. Amendment to the Guidelines for the Submission of Human Gene Transfer/ Therapy Protocols for Review by the RAC of the Points to Consider/NIH Guidelines

Dr. Nelson A. Wivel, Director, Office of Recombinant DNA Activities, National Institutes of Health, Bethesda, Maryland, requested an amendment to the Guidelines for the Submission of Human Gene Transfer/Therapy Protocols for Review by the RAC Federal Register, February 18, 1993, page 9104). These amendments will establish consistency in the submission of human gene transfer protocols for RAC review and require that principal investigators focus their oral responses to the RAC's questions and comments. This request was published for comment in the Federal Register of August 18, 1993 (58 FR 44098). The Title and Section I was proposed to read:

"Guidelines for the Submission of Human Gene Transfer Protocols for Review by the Recombinant DNA Advisory Committee

"I. Investigator Submitted Material:

"Written proposals must be submitted in the following order: (1) Scientific abstract—1 page; (2) non-technical abstract—1 page; (3) Institutional Biosafety Committee and Institutional Review Board approvals; (4) Points to Consider—5 pages; (6) protocol—20 pages excluding appendices; (7) Informed Consent Document—approved by the Institutional Review Board; (8) appendices including tables, figures, and manuscripts; and (9) Curricula vitae—2 pages in Biographical sketch format. When a proposal has been submitted previously, there should be a short section (≤200 words) immediately following the abstracts that summarizes the major revisions since the last review. Data provided * * *.

"* * * written responses (including critical data in response to the primary reviewers' comments) must be submitted by the Principal Investigators to the Office of Recombinant DNA Activities ≥2 weeks before the RAC meeting.

"Oral Responses to the RAC. Principal Investigators must limit their oral responses to the RAC only to those questions that are raised during the meeting. Oral presentations of previously submitted material and/or critical data that was not submitted ≥2 weeks prior to the RAC meeting is prohibited."

This request was reviewed and recommended for approval as proposed during the RAC meeting of September 9–10, 1993, by a vote of 16 in favor, 1 opposed, and no abstentions.

I accept this recommendation, and the title and section I to the Guidelines for the Submission of Human Gene Transfer/Therapy Protocols for Review by the RAC (Federal Register, February 18, 1993, page 9104) of the NIH Guidelines will be amended accordingly.

H. Amendments to Sections III, IV, V and Appendix C and F of the NIH Guidelines Regarding the Cloning of Toxin Molecules

In a letter dated July 28, 1993, Dr. Nelson A. Wivel, Director, Office of Recombinant DNA Activities, National Institutes of Health, Bethesda, Maryland, requested amendments to Sections III, IV, and V, and Appendices C and F regarding the review process for experiments involving the cloning of toxin molecules. These amendments will establish a new category of review entitled: Experiments that Require NIH (Office of Recombinant DNA Activities/ ORDA) and Institutional Biosafety Committee (IBC) Approval Before Initiation. Under this new category of review, experiments involving the cloning of toxin molecules that are lethal for vertebrates at an LD_{50} of <100 nanograms per kilogram of body weight will be reviewed by NIH (ORDA) in consultation with ad hoc toxin experts. This request was published for comment in the Federal Register of August 18, 1993 (58 FR 44098). Sections III, IV, V and Appendix C and F is proposed to read:

"Section III. Guidelines for Covered Experiments.

"Part III discusses experiments involving recombinant DNA. These experiments have been divided into five classes:

"'III–A. Experiments which require specific RAC review and NIH and IBC approval before initiation of the experiment;

"III–B. Experiments which require NIH (Office of Recombinant DNA Activities/ORDA) and Institutional Biosafety Committee (IBC) approval before initiation of the experiment;

"III–C. Experiments which require IBC approval before initiation of the experiment;

"III–D. Experiments which require IBC notification at the time of the experiment;

"III–E. Experiments which are exempt from the procedures of the Guidelines.

"IF AN EXPERIMENT FALLS INTO BOTH CLASS III–A AND ONE OF THE OTHER CLASSES, THE RULES PERTAINING TO CLASS III–A MUST BE FOLLOWED. If an experiment falls

into Class III–E and into either Class III–C or III–D as well, it can be considered exempt from the requirements of the Guidelines. Changes * * *"

Section III–A–I will be moved to a new Section III–B–1. New Section III–B is proposed to read:

"Section III–B–Experiments That Require NIH (ORDA) and IBC Approval Before Initiation.

"Section III–B–1. Deliberate formation of recombinant DNA containing genes for the biosynthesis of toxin molecules lethal for vertebrates at an LD_{50} of less than 100 nanograms per kilogram body weight * * *

"Section III–B–1–(a). Experiments in this category cannot be initiated without submission of relevant information on the proposed experiment to NIH through ORDA. The containment conditions for such experiments will be determined by ORDA in consultation with ad hoc experts. Such experiments also require the approval of the IBC before initiation (see Section IV–C–1–b–(3)–(f)."

Sections III–A–2, III–A–3, III–A–4 will be renumbered to III–A–1, III–A–2, III–A–3 respectively. Sections III–B, III–C, and III–D will be renumbered to III–C, III–D, and III–E respectively.

The new Section III–C–2 is proposed to read:

"Section III–C–2. Experiments in Which DNA From Human or Animal Pathogens (Class 2, Class 3, Class 4, or Class 5 Agents [1]) is Cloned in Nonpathogenic Prokaryotic or Lower Eukaryotic Host-Vector Systems.

"Section III–C–2–a. * * * Many experiments in this category are exempt from the Guidelines (see Section III–E–4) and III–E–5). Experiments involving the formation of recombinant DNA for certain genes coding for molecules toxic for vertebrates require NIH (ORDA) approval (see Section III–B–1) or must be carried out under NIH specified conditions as described in Appendix F."

Section IV–B–5–b–(3) is proposed to read:

"Section IV–B–5–b–(3). Petition NIH (ORDA), with concurrence of the IBC for approval to conduct experiments specified in Sections III–A and III–B of the Guidelines;"

Section IV–C–1–b–(3)–(f) will be deleted which reads: "Approving the cloning of toxin genes in host-vector systems other than E. coli K–12 (see Appendix F); and]"

Section IV–C–1–b–(3)–(g) will become the new Section IV–C–1–b–(3)–(f).

The new Section IV–C–3–a is proposed to read:

"Reviewing and approving experiments involving the cloning of genes encoding for toxin molecules that are lethal for vertebrates at an LD_{50} ≤100 nanograms per kilogram body weight in organisms other than E. coli K–12 (see Section III–B–1 and Appendices F–I and F–II)."

Sections IV–C–3–a and IV–C–3–b will be renumbered to become Sections IV–C–3–b and IV–C–3–c respectively.

Section V–2 is proposed to read:

"* * * In the cases falling under Sections III–A through III–D, this judgment is to be reviewed and approved by the IBC * * *"

Appendix C is proposed to read:

"Appendix C. Exemptions Under Section III–D–5.

"* * * Appendix C–I. Recombinant DNA in Tissue Culture * * *

"* * * Exceptions. The following categories are not exempt from the NIH Guidelines: (i) Experiments described in Section III–A which require specific RAC review and NIH and IBC approval before initiation, (ii) experiments described in Section III–B which require NIH (ORDA) and IBC approval before initiation, (iii) experiments involving DNA from Class 3, 4, or 5 organisms [1] or cells known to be infected with these agents, and (iv) experiments involving the cloning of toxin molecule genes in E. coli K–12 (see Appendix F).

"* * * Appendix C–II. Experiments Involving E. coli K–12 Host-Vector Systems * * *

"* * * Exceptions. The following categories are not exempt from the NIH Guidelines: (i) Experiments described in Section III–A which require specific RAC review and NIH and IBC approval before initiation, (ii) experiments described in Section III–B which require NIH (ORDA) and IBC approval before initiation, (iii) experiments involving DNA from Class 3, 4, or 5 organisms [1] or cells known to be infected with these agents may be conducted under containment conditions specified in Section III–C–2 with prior IBC review and approval, (iv) large-scale experiments (e.g., more than 10 liters of culture), and (v) experiments involving the cloning of toxin molecule genes in E. coli K–12 (see Appendix F).

"* * * Appendix C–III. Experiments Involving Saccharomyces Host-Vector Systems * * *

"* * * Exceptions. The following categories are not exempt from the NIH Guidelines: (i) Experiments described in Section III–A which require specific RAC review and NIH and IBC approval before initiation, (ii) experiments described in Section III–B which require NIH (ORDA) and IBC approval before initiation, (iii) experiments involving DNA from Class 3, 4, or 5 organisms [1] or cells known to be infected with these agents may be conducted under containment conditions specified in Section III–C–2 with prior IBC review and approval, large-scale experiments (e.g., more than 10 liters of culture), and experiments involving the cloning of toxin molecule genes in E. coli K–12 (see Appendix F).

"* * * Appendix C–IV. Experiments Involving Bacillus subtilis Host-Vector Systems * * *

"* * * Exceptions. The following categories are not exempt from the NIH Guidelines: (i) Experiments described in Section III–A which require specific RAC review and NIH and IBC approval before initiation, (ii) experiments described in Section III–B which require NIH (ORDA) and IBC approval before initiation, (iii) experiments involving DNA from Class 3, 4, or 5 organisms [1] or cells known to be infected with these agents may be conducted under containment conditions specified in Section III–C–2 with prior IBC review and approval, large-scale experiments (e.g., more than 10 liters of culture), and experiments involving the cloning of toxin molecule genes in E. coli K–12 (see Appendix F).

"* * * Appendix C–V. Extrachromosomal Elements of Gram Positive Organisms * * *

"* * * Exceptions. The following categories are not exempt from the NIH Guidelines: (i) Experiments described in Section III–A which require specific RAC review and NIH and IBC approval before initiation, (ii) experiments described in Section III–B which require NIH (ORDA) and IBC approval before initiation, (iii) large-scale experiments (e.g., more than 10 liters of culture), and (iv) experiments involving the cloning of toxin molecule genes in E. coli K–12 (see Appendix F.)"

Appendix F is proposed to read:

"Appendix F. Containment Conditions for Cloning of Genes Coding for the Biosynthesis of Molecules Toxic for Vertebrates.

"Appendix F–I. General Information.

"Appendix F specifies the containment to be used for the deliberate cloning of genes coding for the biosynthesis of molecules toxic for vertebrates. The cloning of genes coding for molecules toxic for vertebrates that have an LD_{50} of <100 nanograms per kilogram body weight (e.g., microbial toxins such as the botulinum toxins, tetanus toxin, diphtheria toxin, Shigella dysenteriae neurotoxin) are covered under Section III–B–1 of the Guidelines and require NIH (ORDA) and IBC approval before initiation. No specific restrictions shall apply to the cloning of genes if the protein specified by the gene has an LD_{50} of 100 micrograms or more per kilogram of body weight.

Experiments involving genes coding for toxin molecules with an LD_{50} of <100 micrograms and >100 nanograms per kilogram body weight require registration with ORDA and IBC approval prior to initiating the experiments. A list of toxin molecules classified as to LD_{50} is available from ORDA. Testing procedures for determining toxicity of toxin molecules not on the list are available from ORDA. The results of such tests shall be forwarded to ORDA, which will consult with ad hoc experts, prior to inclusion of the molecules on the list (see Section IV–C–1–b–(2)–(e)) * * *.

"Appendix F–III. Containment Conditions for Cloning Toxin Molecule Genes in Organisms Other Than E. coli K–12.

"Requests involving the cloning of genes coding for molecules toxic for vertebrates at an LD_{50} of less than 100 nanograms per kilogram body weight in host-vector systems other than E. coli K–12 will be evaluated by NIH (ORDA) in consultation with ad hoc toxin experts (see Sections III–B and IV–C–1–b–(3)–(f).

"Appendix F–IV. Specific Approvals.

"An updated list of experiments involving the deliberate formation of recombinant DNA containing genes coding for toxins lethal for vertebrates at an LD_{50} of less than 100 nanograms per kilogram body weight is available from the Office of Recombinant DNA Activities, National Institutes of Health, Building 31, Room 4B11, Bethesda, Maryland 20892."

Appendix F–IV–A through Appendix F–IV–K would be deleted. [A list of these specific approvals will be maintained in ORDA.]

This request was reviewed and recommended for approval as proposed during the RAC meeting of September 9–10, 1993, by a vote of 16 in favor, 0 opposed, and no abstentions.

I accept this recommendation, and Sections III, IV, V and Appendix C and F of the NIH Guidelines will be amended accordingly.

II. Summary of Actions

A. Major Amendment to Appendix D–XXVII to the NIH Guidelines

Appendix D–XXVII will read as follows:

"Appendix D–XXVII.

"Drs. Philip Greenberg and Stanley R. Riddell of the Fred Hutchinson Cancer Research Center, Seattle, Washington, may conduct gene transfer experiments on 15 human immunodeficiency virus (HIV) seropositive patients (18–45 years old) undergoing allogeneic bone marrow transplantation for non-Hodgkin's lymphoma and 15 HIV-seropositive patients (18–50 years old) who do not have acquired immunodeficiency syndrome (AIDS)-related lymphoma and who are not undergoing bone marrow transplantation to evaluate the safety and efficacy of HIV-specific cytotoxic T lymphocyte (CTL) therapy. CTL will be transduced with a retroviral vector (HyTK) encoding a gene that is a fusion product of the hygromycin phosphotransferase gene (HPH) and the herpes simplex virus thymidine kinase (HSV–TK) gene. This vector will deliver both a marker gene and an ablatable gene in these T cell clones in the event that patients develop side effects as a consequence of CTL therapy. Data will be correlated over time, looking at multiple parameters of HIV disease activity. The objectives of these studies include evaluating the safety and toxicity of CTL therapy, determining the duration of in vivo survival of HIV-specific CTL clones, and determining if ganciclovir therapy can eradicate genetically modified, adoptively transferred CTL cells."

B. Addition of Appendix D–LVII to the NIH Guidelines

The following section is added to Appendix D:

"Appendix D–LVII.

"Drs. Richard C. Boucher and Michael R. Knowles of the University of North Carolina, Chapel Hill, North Carolina, may conduct experiments on 9 patients (18 years old or greater) with cystic fibrosis to test for the safety and efficacy of and E1-deleted recombinant adenovirus containing the cystic fibrosis transmembrane conductance regulator (CFTR) cDNA, Ad.CB–CFTR. A single dose of 10^8, 3×10^8 or 10^{11} pfu/ml will be administered to the nasal cavity of 3 patients in each dose group. Patients will be monitored by nasal lavage and biopsy to assess safety and restoration of normal epithelial function."

C. Addition of Appendix D–LVIII to the NIH Guidelines

The following section is added to Appendix D:

"Appendix D–LVIII.

" Dr. Joyce A. O'Shaughnessy of the National Institutes of Health, Bethesda, Maryland, may conduct experiments on 18 patients (18–60 years old) with Stage IV breast cancer who have achieved a partial or complete response to induction chemotherapy. This study will determine the feasibility of obtaining engraftment of CD34(+) hematopoietic stem cells transduced by a retroviral vector, G1MD, and expressing a cDNA for the human multi-drug resistance-1 (MDR–1) gene following high dose chemotherapy, and whether the transduced MDR–1 gene confers drug resistance to hematopoietic cells and functions as in *in vivo* dominant selectable marker. Patients will be monitored for evidence of myeloprotection and presence of the transduced MDR–1 gene."

D. Addition of Appendix D–LIX to the NIH Guidelines

The following section is added to Appendix D:

"Appendix D–LIX.

"Drs. Larry E. Kun, R. A. Sanford, Malcolm Brenner, and Richard L. Heideman of St. Jude Children's Research Hospital, Memphis, Tennessee, and Dr. Edward H. Oldfield of the National Institutes of Health, Bethesda, Maryland, may conduct experiments on 6 patents (3–21 years old) with progressive or recurrent malignant supratentorial tumors resistant to standard therapies. Mouse cells producing the retroviral vector containing the herpes simplex thymidine kinase gene (G1TKSVNa) will be instilled into the tumor areas via multiple stereotactically placed cannulas. Patients will be treated with ganciclovir to eliminate cells expressing the transduced gene. Patients will be monitored for central nervous system, hematologic, renal or other toxicities, and for anti-tumor responses by magnetic resonance imaging studies."

E. Addition of Appendix D–LX to the NIH Guidelines Regarding Semliki Forest Virus

The following section is added to Appendix D:

"Appendix D–LX.

"The physical containment level may be reduced from Biosafety Level 3 to Biosafety Level 2 for a Semliki Forest Virus (SFV) vector expression system of Life Technologies, Inc., Gaithersburg, Maryland."

F. Amendment to Section III and Appendix D of the NIH Guidelines Regarding Actions Taken Under the Guidelines

Section III–A and Appendix D will read as follows:

"Section III–A—Experiments that Require RAC Review and IBC Approval Before Initiation.

"* * * Specific experiments already approved in this section may be obtained from the Office of Recombinant DNA Activities, National Institutes of Health, Building 31, Room 4B11, Bethesda, Maryland 20892."

"Appendix D—Actions Taken Under the Guidelines.

"As noted in the subsection of Section IV–C–1–b–(1), the Director, NIH, may take certain actions with regard to the Guidelines after the issues have been considered by the RAC. An updated list of these actions are available from the Office of Recombinant DNA Activities, National Institutes of Health, Building 31, Room 4B11, Bethesda, Maryland 20892."

G. Amendment to the Guidelines for the Submission of Human Gene Transfer/ Therapy Protocols for Review by the RAC of the Points to Consider/NIH Guidelines

The Title and Section I of the Guidelines for the Submission of Human Gene Transfer/Therapy Protocols for Review by the RAC (**Federal Register**, February 18, 1993, page 9104) will read as follows:

"Guidelines for the Submission of Human Gene Transfer Protocols for Review by the Recombinant DNA Advisory Committee

"I. Investigator Submitted Material:

"Written proposals must be submitted in the following order: (1) Scientific abstract—1 page; (2) non-technical abstract—1 page; (3) Institutional Biosafety Committee and Institutional Review Board approvals; (4) Points to Consider—5 pages; (6) protocol—20 pages excluding appendices; (7) Informed Consent Document—approved by the Institutional Review Board; (8) appendices including tables, figures, and manuscripts; and (9) Curricula vitae—2 pages in Biographical sketch format. When a proposal has been submitted previously, there should be a short section (≤200 words) immediately following the abstracts that summarizes the major revisions since the last review. Data provided * * *.

"* * * written responses (including critical data in response to the primary reviewers' comments) must be submitted by the Principal Investigators to the Office of Recombinant DNA Activities ≥2 weeks before the RAC meeting.

"Oral Responses to the RAC. Principal Investigators must limit their oral responses to the RAC only to those questions that are raised during the meeting.

Oral presentations of previously submitted material and/or critical data that was not submitted ≥2 weeks prior to the RAC meeting is prohibited."

H. Amendments to Sections III, IV, V and Appendix C and F of the NIH Guidelines Regarding the Cloning of Toxin Molecules

Sections III, IV, and V, and Appendices C and F will be amended as follows:

"Section III. Guidelines for Covered Experiments.

"Part III discusses experiments involving recombinant DNA. These experiments have been divided into five classes:

"III–A. Experiments which require specific RAC review and NIH and IBC approval before initiation of the experiment;

"III–B. Experiments which require NIH (Office of Recombinant DNA Activities/ORDA) and Institutional Biosafety Committee (IBC) approval before initiation of the experiment;

"III–C. Experiments which require IBC approval before initiation of the experiment;

"III–D. Experiments which require IBC notification at the time of the experiment;

"III–E. Experiments which are exempt from the procedures of the Guidelines.

"IF AN EXPERIMENT FALLS INTO BOTH CLASS III–A AND ONE OF THE OTHER CLASSES, THE RULES PERTAINING TO CLASS III–A MUST BE FOLLOWED. If an experiment falls into Class III–E and into either Class III–C or III–D as well, it can be considered exempt from the requirements of the Guidelines. Changes * * * "

Section III–A–I will be moved to a new Section III–B–1. New Section III–B will read:

"Section III–B–Experiments That Require NIH (ORDA) and IBC Approval Before Initiation.

"Section III–B–1. Deliberate formation of recombinant DNA containing genes for the biosynthesis of toxin molecules lethal for vertebrates at an LD_{50} of less than 100 nanograms per kilogram body weight * * *

"Section III–B–1–(a). Experiments in this category cannot be initiated without submission of relevant information on the proposed experiment to NIH through ORDA. The containment conditions for such experiments will be determined by ORDA in consultation with ad hoc experts. Such experiments also require the approval of the IBC before initiation (see Section IV–C–1–b–(3)–(f)."

Sections III–A–2, III–A–3, III–A–4 will be renumbered to III–A–1, III–A–2, III–A–3 respectively. Sections III–B, III–C, III–D will be renumbered to III–C, III–D, and III–E respectively.

The new Section III–C–2 will read:

"Section III–C–2. Experiments in Which DNA From Human or Animal Pathogens (Class 2, Class 3, Class 4, or Class 5 Agents [1]) is Cloned in Nonpathogenic Prokaryotic or Lower Eukaryotic Host-Vector Systems.

"Section III–C–2–a. * * * Many experiments in this category are exempt from the Guidelines (see Section III–E–4) and III–E–5). Experiments involving the formation of recombinant DNA for certain genes coding for molecules toxic for vertebrates require NIH (ORDA) approval (see Section III–B–1) or must be carried out under NIH specified conditions as described in Appendix F."

Section IV–B–5–b–(3) will read:

"Section IV–B–5–b–(3). Petition NIH (ORDA), with concurrence of the IBC for approval to conduct experiments specified in Sections III–A and III–B of the Guidelines;"

Section IV–C–1–b–(3)–(f) will be deleted which reads: "Approving the cloning of toxin genes in host-vector systems other than E. coli K–12 (see Appendix F); and"

Section IV–C–1–b–(3)–(g) will become the new Section IV–C–1–b–(3)–(f).

The new Section IV–C–3–a will read:

"Reviewing and approving experiments involving the cloning of genes encoding for toxin molecules that are lethal for vertebrates at an LD_{50} ≤100 nanograms per kilogram body weight in organisms other then E. coli K–12 (see Section III–B–1 and Appendices F–I and F–II)."

Sections IV–C–3–a and IV–C–3–b will be renumbered to become Sections IV–C–3–b and IV–C–3–c respectively.

Section V–2 will read:

"* * * In the cases falling under Sections III–A through III–D, this judgment is to be reviewed and approved by the IBC * * *"

Appendix C will read:

"Appendix C. Exemptions Under Section III–D–5.

"* * * Appendix C–I. Recombinant DNA in Tissue Culture * * *

"* * * Exceptions. The following categories are not exempt from the NIH Guidelines: (i) experiments described in Section III–A which require specific RAC review and NIH and IBC approval before initiation, (ii) experiments described in Section III–B which require NIH (ORDA) and IBC approval before initiation, (iii) experiments involving DNA from Class 3, 4, or 5 organisms [1] or cells known to be infected with these agents, and (iv) experiments involving the cloning of toxin molecule genes in E. coli K–12 (see Appendix F).

"* * * Appendix C–II. Experiments Involving E. coli K–12 Host-Vector Systems * * *

"* * * Exceptions. The following categories are not exempt from the NIH

Guidelines: (i) experiments described in Section III–A which require specific RAC review and NIH and IBC approval before initiation, (ii) experiments described in Section III–B which require NIH (ORDA) and IBC approval before initiation, (iii) experiments involving DNA from Class 3, 4, or 5 organisms [1] or cells known to be infected with these agents may be conducted under containment conditions specified in Section III–C–2 with prior IBC review and approval, (iv) large-scale experiments (e.g., more than 10 liters of culture), and (v) experiments involving the cloning of toxin molecule genes in E. coli K–12 (see Appendix F).

"* * * Appendix C–III. Experiments Involving Saccharomyces Host-Vector Systems * * *

"* * * Exceptions. The following categories are not exempt from the NIH Guidelines: (i) experiments described in Section III–A which require specific RAC review and NIH and IBC approval before initiation, (ii) experiments described in Section III–B which require NIH (ORDA) and IBC approval before initiation, (iii) experiments involving DNA from Class 3, 4, or 5 organisms [1] or cells known to be infected with these agents may be conducted under containment conditions specified in Section III–C–2 with prior IBC review and approval, large-scale experiments (e.g., more than 10 liters of culture), and experiments involving the cloning of toxin molecule genes in E. coli K–12 (see Appendix F).

* * * Appendix C–IV. Experiments Involving Bacillus subtilis Host-Vector Systems * * *

* * * Exceptions. The following categories are not exempt from the NIH Guidelines: (1) Experiments described in Section III–A which require specific RAC review and NIH and IBC approval before initiation, (ii) experiments described in Section III–B which require NIH (ORDA) and IBC approval before initiation, (iii) experiments involving DNA from Class 3, 4, or 5 organisms [1] or cells known to be infected with these agents may be conducted under containment conditions specified in Section III–C–2 with prior IBC review and approval, large-scale experiments (e.g., more than 10 liters of culture), and experiments involving the cloning of toxin molecule genes in E. coli K–12 (see Appendix F).

"* * * Appendix C–V. Extrachromosomal Elements of Gram Positive Organisms * * *

* * * Exceptions. The following categories are not exempt from the NIH Guidelines: (i) Experiments described in Section III–A which require specific RAC review and NIH and IBC approval before initiation, (ii) experiments described in Section III–B which require NIH (ORDA) and IBC approval before initiation, (iii) large-scale experiments (e.g., more than 10 liters of culture), and (iv) experiments involving the cloning of toxin molecule genes in E. coli K–12 (see Appendix F.)"

Appendix F will read:

"Appendix F. Containment Conditions for Cloning of Genes Coding for the Biosynthesis of Molecules Toxic for Vertebrates.

"Appendix F–I. General Information.

"Appendix F specifies the containment to be used for the deliberate cloning of genes coding for the biosynthesis of molecules toxic for vertebrates. The cloning of genes coding for molecules toxic for vertebrates that have an LD_{50} of <100 nanograms per kilogram body weight (e.g., microbial toxins such as the botulinum toxins, tetanus toxin, diphtheria toxin, Shigella dysenteriae neurotoxin) are covered under Section III–B–1 of the Guidelines and require NIH (ORDA) and IBC approval before initiation. No specific restrictions shall apply to the cloning of genes if the protein specified by the gene has an LD_{50} of 100 micrograms or more per kilogram of body weight. Experiments involving genes coding for toxin molecules with an LD_{50} of <100 micrograms and >100 nanograms per kilogram body weight require registration with ORDA and IBC approval prior to initiating the experiments. A list of toxin molecules classified as to LD_{50} is available from ORDA. Testing procedures for determining toxicity of toxin molecules not on the list are available from ORDA. The results of such tests shall be forwarded to ORDA, which will consult with ad hoc experts, prior to inclusion of the molecules on the list (see Section IV–C–1–b–(2)–(e)) * * *

"Appendix F–III. Containment Conditions for Cloning Toxin Molecule Genes in Organisms Other Than *E. coli* K–12.

"Requests involving the cloning of genes coding for molecules toxic for vertebrates at an LD_{50} of less than 100 nanograms per kilogram body weight in host-vector systems other than *E. coli* K–12 will be evaluated by NIH (ORDA) in consultation with *ad hoc* toxin experts (see Sections III–B and IV–C–1–b(3)–(f).

"Appendix F–IV. Specific Approvals.

"An updated list of experiments involving the deliberate formation of recombinant DNA containing genes coding for toxins lethal for vertebrates at an LD_{50} of less than 100 nanograms per kilogram body weight is available from the Office of Recombinant DNA Activities, National Institutes of Health, Building 31, Room 4B11, Bethesda, Maryland 20892."

Appendix F–IV–A through Appendix F–IV–K would be deleted. [A list of these specific approvals will be maintained in ORDA.]

III. Correction to the Notice of Actions Published in the Federal Register on September 13, 1993 (58 FR 47906)

Appendix D–XLIX should read:

"Appendix D–XLIX.

"Dr. Gary J. Nabel of the University of Michigan Medical Center, Ann Arbor, Michigan, may conduct experiments on 12 patients with AIDS to be divided into 4 experimental groups. CD4(+) lymphocytes will be isolated from peripheral blood and transduced with Rev M10, a transdominant inhibitory mutant of the *rev* gene of the human immunodeficiency virus (HIV). Transduction of the *rev* mutant will be mediated either by the retrovirus vector, PLJ-cREV M10, or by particle-mediated gene transfer of plasmid DNA. Patients will be monitored for survival of the transduced CD4(+) cells by polymerase chain reaction and whether Rev M10 can confer protection against HIV infection to CD4(+) cells."

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title and affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined to be not cost-effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

Effective Date: October 7, 1993.

Ruth L. Kirschstein,

Acting Director, National Institutes of Health

[FR Doc. 93–25498 Filed 10–15–93, 8:45 am]

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October 18, 1993

Part VI

Copyright Royalty Tribunal

37 CFR Parts 301 and 311
Digital Audio Recording Technology Act; Implementation; Final Rule

COPYRIGHT ROYALTY TRIBUNAL

37 CFR Parts 301 and 311

[Docket No. 92-3-DART]

Digital Audio Recording Technology Act; Implementation

AGENCY: Copyright Royalty Tribunal.

ACTION: Final regulations.

SUMMARY: This notice is issued to advise the public that the Copyright Royalty Tribunal is adopting final regulations, to implement the Audio Home Recording Act of 1992 (AHRA). These final regulations prescribe the manner for filing claims with the Tribunal to royalties based on the sale of digital recording devices and media. The final regulations prescribe the content and time restrictions for filing such claims. The Tribunal is also adopting regulations establishing the procedure for distribution of the royalties.

The regulations are issued on a final basis after providing the public with opportunities to comment on Interim Regulations issued January 29, 1993, and on an Advance Notice of Rule Making issued November 19, 1992.

DATES: These final regulations are effective on October 18, 1993.

FOR FURTHER INFORMATION CONTACT: Linda R. Bocchi, General Counsel, Copyright Royalty Tribunal, 1825 Connecticut Avenue, NW., suite 918, Washington, DC 20009.

SUPPLEMENTARY INFORMATION: On October 28, 1992, the Audio Home Recording Act of 1992 (AHRA), 17 U.S.C. 1001–1010 (Supp. IV 1992), became effective. AHRA provides that the manufacture, importation, and distribution of digital audio recording devices and media do not constitute copyright infringement. 17 U.S.C. 1008 (Supp. IV 1992). It requires that the first person to manufacture and distribute or import and distribute such devices or media, (i) File an initial notice of distribution; (ii) file quarterly and annual statements of account; and (iii) pay royalties upon distribution of such devices and media in the United States. 17 U.S.C. 1003 (Supp. IV 1992).

AHRA further specifies that any interested copyright owner whose musical work or sound recording has been: (i) Lawfully reproduced in a digital or analog musical recording, and (ii) distributed in the form of digital musical recordings or analog musical recordings; or disseminated to the public in transmissions, during the period when the royalty fees were paid, is entitled to a portion of these fees. 17 U.S.C. 1006(a)(1) (Supp. IV 1992). However, qualifying copyright owners must file a claim for the fees, with the Copyright Royalty Tribunal, during January and February of each calendar year. 17 U.S.C. 1007(a)(1) (Supp. IV 1992).

AHRA authorizes the Tribunal to prescribe the "form and manner" for filing claims. Id. The Tribunal, in an Advance Notice of Rule Making, invited comments concerning the filing of claims to royalties. 57 FR 54542 (1992). Thereafter, on January 29, 1993, the Tribunal, issued Interim Regulations, with a request for public comment. 58 FR 6441 (1993). The Interim Regulations also directed the parties to file a report, on or before June 1, 1993, commenting on the issue of whether performing rights societies need separate, specific, and written authorization to represent members and affiliates. 58 FR 6441, 6444 (1992).

The Parties

Comments were filed by: American Society of Composers, Authors and Publisher (ASCAP), Broadcast Music, Inc. (BMI), SESAC, Inc. (SESAC), American Federation of Musicians of the United States and Canada (AFM), American Federation of Television and Radio Artists (AFTRA), Electronic Industries Association (EIA), National Music Publishers Association (NMPA), Recording Industry Association of America (RIAA), Gospel Music Coalition (Coalition), Gear Publishing Company (Gear), and Bopp Du Wopp (Bopp). Informal comments were filed by National Academy of Songwriters (NAS). Reply comments were filed by ASCAP, BMI, SESAC, Copyright Management, Inc. (CMI), Harry Fox Agency (HFA), Songwriters Guild of America (SGA), and the Alliance of Artists and Recording Companies (AARC). Comments regarding the written authorization issue were filed by ASCAP, BMI, SESAC, HFA, SGA, the Coalition, CMI, RIAA, and James Cannings (Cannings).

The Comments

ASCAP, BMI and SESAC generally supported the new regulations. However, they proposed a new subsection to § 311.3, which would require each joint claimant to make available to other claimants within the relevant Subfund and to the Tribunal, upon request, a list of the individual claimants whose claims are encompassed within the joint claim.

They maintained that this information is vital to the Tribunal and the parties in establishing the relative value of each joint claim. They also emphasized that each party must know which claimants have granted authorization, and to whom the authorization was granted.

ASCAP, BMI and SESAC believe that their proposal is superior to a requirement that each joint claim be accompanied by a list of every individual claimant or identification of a musical work or sound recording for every individual claimant. They concluded that such filings would be voluminous, and burdensome to the Tribunal's record.

ASCAP, BMI and SESAC acknowledged that the cable and satellite regulations do not require that this information be made available. However, they argued that the diversity of represented parties in AHRA proceedings necessitates a different rule. In the cable and satellite proceedings, the performing rights societies are generally the only claimants to appear within the music category, leaving no doubt about representation. Contrastingly, under AHRA, there are several joint claimants within each Subfund, making identification of claimants within the given group essential.

The Coalition reiterated its support for a written authorization requirement before a performing rights society could represent a claimant. It incorporated, by reference, its comments on the proposed rules.

The Coalition concurred with the Tribunal's determination that AHRA does not give performing rights societies special entitlement. It further supported the Tribunal's determination that the cable, jukebox and satellite distribution proceedings are different because no issue regarding written authorization was raised during those rule making proceedings.

The Coalition agreed that the interim rule granting the performing rights societies the assumption of representation based on membership in those societies should apply to the 1992 distribution, so as to avoid disenfranchisement of royalty claimants. However, it further maintained that regulations affecting all future AHRA distribution proceedings should require written authorization because the performing rights societies will have ample time to get the authorization from their members and affiliates.

The Coalition reiterated its belief that claimants should identify the category or categories of music for each claim they file. It believes that identification of the music category would assist in settlement discussions and distribution proceedings. The Coalition urged the Tribunal to reconsider the requirement, if, after a distribution proceeding or

upon agreement of the parties, it appears that early identification is helpful in resolving competing royalty claims.

AFM, AFTRA, and RIAA requested clarification concerning the distribution of funds to nonfeatured musicians and nonfeatured vocalists. The filing parties agreed that the Tribunal need not adopt rules for the appointment of independent administrators or regulation of their activities. The parties, however, believe that the Tribunal has the duty, as part of its responsibilities in distributing the royalties, to disburse the nonfeatured performers share of the royalties to the appointed independent administrators. According to the parties, the distribution to the independent administrators is a purely ministerial task, which should be performed by the Tribunal, the agency authorized by AHRA to distribute the funds deposited in the Treasury. 17 U.S.C. 1007 (Supp. IV 1992).

EIA corrected the Tribunal's language in the supplementary information section of the interim rules discussion. The language in this section stated that there is immunity "so long as" the manufacturers satisfy four criteria. EIA maintained that the immunity from infringement given in AHRA, specified in 17 U.S.C. 1008 (Supp. IV 1993), is unconditional. Moreover, AHRA has remedies, other than infringement-based remedies, to address violations of AHRA.

EIA requested that the final rules and explanatory language clarify that AHRA provides unconditional immunity against infringement.

Gear expressed concern regarding the role of the performing rights societies. It supported the performing rights societies in their lobbying activities. However, Gear opposed any requirement that publishers and writers obtain the royalties from the performing rights societies, asserting that publishers and writers be given the opportunity to receive the royalties directly from the Tribunal. With regard to foreign performing rights societies, Gear argued that the domestic performing rights societies should be allowed to collect for their foreign counterparts, only if those foreign societies allow Americans to participate in the royalties they collect.

Bopp alleged that none of the parties who filed comments and reply comments in this proceeding fit within the definition of an entitled "interested copyright party." Bopp objected to the commenting parties' alleged distribution formula, which it maintains is based on sales and broadcast transmission statistics. Bopp proposed that each claimant receive an equal share of the royalty fund.

NAS filed informal comments "for the purpose of reserving its rights" under AHRA. NAS expressed concern with the distribution formula, which it believes should be determined by the Tribunal, interested representatives and claimants; with the assistance of an advisory panel. NAS believes that such an approach will expedite distribution of royalty payments to eligible claimants.

The Reply Comments

ASCAP, BMI and SESAC, in reply to the comments of Gear and Bopp, noted that neither of these two parties served them with their comments. Specifically, ASCAP, AMI, and SESAC stated that, contrary to Gear's representations, members or affiliates of performing rights societies are not prohibited from representing themselves in Tribunal royalty distribution proceedings.

Furthermore, ASCAP, BMI, and SESAC opposed Gear's proposal that performing rights societies be able to collect on behalf of foreign societies only if the foreign societies permit American writers and publishers to participate in the royalties these foreign societies collect. The performing rights societies noted that "[s]uch reciprocity is not part of the copyright law, and there is no legal basis for barring claims by foreign claimants."

Regarding Bopp's comments, ASCAP, BMI, and SESAC maintained that they do not accurately reflect the law on two points: (i) none of the joint claimants, including the performing rights societies are "proper claimants;" and (ii) all claimants should share equally in distributions as measured by the statutory distribution criteria; notwithstanding the relative merits of their claims. See 17 U.S.C. 1001(7), 1006(c) (Supp. IV 1992).

ASCAP, BMI, SESAC, CMI, HFA, and SGA filed joint reply comments. In the joint reply comments, ASCAP, BMI and SESAC withdrew their request for a requirement that joint claimants make available to other claimants and the Tribunal, upon request, a list of individuals whose claims are encompassed within the joint claim.

Regarding the comments of the Coalition, the joint parties opposed any provision requiring that the "categories" of music for which claims are made be identified. The joint parties refrained from responding to the Coalition's arguments concerning the issue of separate, specific and written authorization since the Tribunal had established a separate deadline for addressing that issue.

As to NAS' recommendation that a panel of experts be convened to assist the Tribunal in reaching its distribution determination, the joint parties concluded that such an issue is not yet ripe for consideration.

AARC, in anticipation of the withdrawal by ASCAP, BMI, and SESAC of their joint claimant list proposal, requested that, to the extent the Tribunal is still inclined to consider the proposal, the lists be filed with the Tribunal. AARC believes that merely requiring that the lists be available could cause undue expense and time delays because the claimants reside in various cities throughout the country. Under those circumstances, AARC maintains, the right may prove to be an empty one.

Moreover, AARC opposed NAS' recommendation for an expert panel to assist the Tribunal. AARC maintained that AHRA sets forth the procedures for distributing royalty payments. According the AARC these procedures include a litigated proceeding during which all the claimants will be given an opportunity to present written and oral evidence, including expert testimony, to assist the Tribunal in making its determination. AARC argued, in the alternative, if the Tribunal finds NAS' recommendation appealing, it should only apply the panel method in the case of the Musical Works Fund, since all royalties in the Sound Recordings Fund are based on record sales.

AARC also opposed the Coalition's suggestion that music categories be identified in the claims. Finally, AARC disagreed with Bopp's assertion that each eligible claimant be entitled to an equal share of the royalties. According to AARC, Bopp's arguments conflict with AHRA, which establishes the bases upon which shares are to be calculated.

Reports on Written Authorization Issue

ASCAP, BMI, SESAC, SGA, and HFA filed a joint statement informing the Tribunal that they had reached an agreement among themselves regarding the written authorization issue. Specifically, they agreed that the rebuttable inference adopted by the Tribunal in the Interim Regulations, 58 FR 6441, 6445 (1993), "should be made part of the final regulations applicable to claims made for royalties in the Musical Works Fund beyond 1992." They further proposed that "the regulations require each joint claimant to a Subfund within the Musical Works Fund to make available for inspection by any other joint claimant to the same

Subfund a list of individual claimants covered by the joint claim."

The Coalition and CMI filed joint comments advising the Tribunal that all parties had not reached an agreement concerning the interpretation of the contracts between the performing rights societies and their members and affiliates. The Coalition and CMI concurred with the Tribunal's determination that AHRA does not grant the performing rights societies special entitlement to make claims on behalf of their members and affiliates.

The Coalition and CMI further expressed their belief "that performing rights societies, like all other interested copyright parties filing joint claims on behalf of individual claimants, are required by the AHRA to obtain separate, specific, written authorizations to file claims for their members and their affiliates under the AHRA, and that neither the societies nor any other private party may be legally granted the preferential treatment sought here by the societies." Therefore, they urged the Tribunal to refrain from extending the 1992 performing rights societies temporary inference to [cover] any subsequent years.

The Coalition and CMI also concurred with the Tribunal's stated reluctance to engage in any review of the private contracts of any claimants for group representation. The Coalition and CMI, therefore, urged the Tribunal to reconsider whether, and the extent to which, oral or written testimony is necessary to resolve the written authorization issue.

RIAA urged the Tribunal "to require that all interested copyright parties filing joint claims on behalf of individual claimants obtain separate, specific, written authorizations to represent such individual claimants." Consequently, RIAA requested that the Tribunal not extend the temporary 1992 inference to cover any subsequent years.

Cannings

Cannings supported a regulation which requires performing rights societies to obtain separate, specific, and written authorization to represent individual claimants. Cannings maintained that the standard agreements between performing rights societies and their members or affiliates does not grant the societies an automatic right to represent its members or affiliates before the Tribunal.

Discussion

The Tribunal has reviewed all of the comments filed by the parties. EIA's comments regarding the unconditional nature of AHRA's grant of immunity from infringement are accurate. In fact, the language in the supplementary information section of the interim rules discussion, which EIA requested be corrected, resulted from an error. The Tribunal unsuccessfully attempted to correct this error both pre- and post-Federal Register publication.

With regard to Gear's opposition to any requirement that writers and publishers obtain their royalties from performing rights societies, the Tribunal notes that there is no such requirement. On the contrary, AHRA establishes rights for the individual interested copyright owner. 17 U.S.C. 1007(a)(1) (Supp. IV 1992). AHRA, however, also gives individual interested copyright owners the option of filing jointly. 17 U.S.C. 1007(a)(2) (Supp. IV 1992).

Gear's comments relating to foreign performing rights societies also lack legal basis. As ASCAP, BMI and SESAC noted in their reply, such reciprocity is not afforded in AHRA or any where else in copyright law. Consequently, reciprocity requirements fall outside of the scope of the Tribunal's authority.

Bopp raised questions regarding whether the majority of the commenting parties have standing as "entitled interested copyright part[ies]." Again, the Tribunal notes that individual interested copyright owners have a statutory right to negotiate joint representation in lieu of individual representation. Organizations which provide joint representation, such as those that have filed comments in this proceeding, are entitled to file comments, since the final ruling will establish the very procedures they will have to follow in filing claims.

Bopp also proposed distribution formulas. This proposal, however, is premature. As the Tribunal stated in its Interim Regulations, in response to the Coalition's comments analyzing different methods for valuing music types, "arguments [addressing distribution formulas] are more properly advocated in a distribution proceeding, rather than in this rulemaking proceeding. Therefore, at this time, the Tribunal expresses no opinion as to the value of any specific method for resolving disputes concerning the distribution of digital royalties." 58 FR 6441, 6444 (1992).

With regard to NAS' recommendation for an expert panel, the Tribunal agrees with AARC's position that the creation of such a panel is unnecessary. Specifically, AHRA sets forth the procedures for distributing royalty payments, including a litigated proceeding during which all parties will be afforded the opportunity to present written and oral evidence. 17 U.S.C. 1007(c) (Supp. IV 1992) (specifying that the Tribunal shall adopt the distribution proceedings listed under Chapter 8). During these litigated proceedings, the parties will be able to introduce expert testimony to assist the Tribunal in making its determination. Accordingly, an expert panel is not warranted in these proceedings.

In the case of categorization of music in claims, the Tribunal continues to believe that such a requirement would only result in confusion, without providing any significant assistance to the parties or the Tribunal. Thus, such a requirement will not be included in the final regulations.

Regarding the 4% of the Sound Recordings Fund required by AHRA to be placed into an escrow account, managed by an independent administrator, 17 U.S.C. 1006(b)(1) (Supp. IV 1992), the Tribunal agrees with AFM, AFTRA, and RIAA that the distribution to the independent administrators is a purely ministerial task. In the Interim Regulations, the Tribunal refused to adopt a regulation which appeared to parallel the regulation for filing claims for AHRA royalties.

The 4% of the Sound Recordings Fund is required by AHRA to be distributed to nonfeatured musicians and vocalists (nonfeatured performers), who have performed on sound recordings distributed in the United States. *Id.* These nonfeatured performers, however, are not included in AHRA's definition of "interested copyright owners". 17 U.S.C. 1001(7) (Supp. IV 1992). Pursuant to AHRA, the Tribunal's authority over the distribution of royalties extends only to interested copyright owners. 17 U.S.C. 1007 (Supp. IV 1992). Thus the Tribunal was correct in determining that it did not have the authority to regulate the distribution of such royalties to the individual nonfeatured performers, and in not promulgating any rules to that effect.

However, the parties have clarified that their request is for a rule that specifies the manner in which to identify the independent administrator to the Tribunal, not their appointment or activities. The Tribunal finds that such a notification requirement is necessary in order to facilitate the initial distribution of royalties to the independent administration. Further, the Tribunal concurs that such initial distribution falls within the purview of its authority. The Tribunal is, in fact, the only agency authorized by AHRA to distribute the funds deposited in the Treasury. 17 U.S.C. 1007 (Supp. IV 1992). Accordingly, the 4% share of the

Sound Recordings Fund shall be distributed, by the Tribunal, to the independent administrators, who shall manage the final distribution to the eligible nonfeatured performers.

Several of the parties proposed some form of a requirement that joint claimants file lists identifying each individual claimant in their respective group. ASCAP, BMI, and SESAC proposed that the lists be available to the parties and the Tribunal upon request. AARC, on the other hand, proposed that the joint claimants be required to file the lists with their claims. The Tribunal believes that such lists would be useful in light of the newness of this proceeding, and the fact that there are numerous joint claimants within each Subfund. However, the Tribunal agrees with ASCAP, BMI, and SESAC, that the lists should be available upon request, rather than filed with the Tribunal. Accordingly, the new subsection proposed by ASCAP, BMI, and SESAC will be adopted.

Similarly, it is useful for the Tribunal to have expeditious notification whenever an individual claimant, subsequent to filing an individual claim, negotiates a joint claims. Therefore, the Tribunal will require that the particular individual claimant or joint claimant notify the Tribunal within fourteen (14) days from the making of such an agreement. An appropriate provision will be added to the content of claims regulation.

The final issue pertains to the controversial matter of requiring performing rights societies to obtain separate, specific and written authorization to file AHRA royalty claims for their members and affiliates. In the Interim Regulations, the Tribunal concluded that this issue involves a private contractual dispute.

In its interim determination, the Tribunal rejected the performing rights societies' assertion that AHRA grants them special entitlement to make claims on behalf of their members and affiliates. Moreover, the Tribunal was unpersuaded by the performing rights societies' assertion that, since the requested language exempted them from obtaining separate, specific and written authorization is in the rules governing the filing of jukebox, cable, and satellite claims, it should be included in the rules regulating the filing of claims under AHRA.

The Tribunal expressed its reluctance to engage in the interpretation of private contracts, and recommended that the parties resolve the issue among themselves. Although the parties were given a five month period to resolve the issue, they were unsuccessful in reaching a universal settlement. Therefore, the Tribunal is now faced with the task of resolving the controversy in a manner that strikes a balance between its obligation to operate within the scope of its authority, and its responsibility to satisfy statutory obligations.

It has been well-established that the Tribunal is not the proper forum for resolving private contract disputes. *National Broadcasting Company* v. *Copyright Royalty Tribunal*, 848 F.2d 1289, 1291 (D.C. Cir. 1988); 1984 Cable Royalty Distribution Proceedings; Notice of Final Determination, 52 FR 8404, 8411. In National, the Court of Appeals underscored this fact by stating, "the CRT has no authority to provide a legally significant interpretation of contracts * * *." National 848 F.2d at 1291.

Notably, not only does that Tribunal lack statutory authority to interpret contracts, but any attempt by the Tribunal to engage in such activity would most probably raise constitutional problems as well, because "Congress may not vest in a non-Article III court the power to adjudicate, render final judgment and issue binding orders in a traditional contract action arising under state law, without consent of the litigants, and subject only to ordinary appellate review." *Thomas* v. *Union Carbide Agric. Prods. Co.*, 473 U.S. 568, 584 (1985).

Thus, any interpretation of a private contract by the Tribunal, in this instance, would constitute an abuse of delegated authority, as well as an unconstitutional infringement of judicial power. The authorization issue, however, cannot be ignored as the Tribunal is mandated, by AHRA, to prescribe regulations setting forth procedure for filing claims and distributing royalties. 17 U.S.C. 1007 (Supp. IV 1992).

Therefore, to preserve control over its distribution proceedings, while operating within prescribed constitutional and legislative boundaries, the Tribunal has promulgated a general procedural rule. This rule requires separate, specific, and written authorization, signed by members affiliated or their representatives, before a performing rights society can represent individual copyright owners. However, there are two situations where such written authorization will not be required:

1. The agreement between the performing rights societies and their members or affiliates specifically authorizes such societies to represent their members or affiliates before the Tribunal in royalty filing and fee distribution proceedings; or

2. The agreement between the performing rights societies and their members or affiliates, as specified in a court order, authorizes such societies to represent their members or affiliates before the Tribunal in royalty filing and fee distribution proceedings.

The Tribunal believes that such a rule is a reasonable solution to the written authorization issue, and is consistent with Congressional intent. AHRA, first and foremost, establishes rights for individual interested copyright owners. The joint claim alternative is merely a permitted option. Consequently, any general rule addressing written authorization should favor the individual claimant. The Tribunal believes that the aforementioned procedural rule accomplishes this goal.

The Tribunal underscores that its rule is purely procedural in nature and mandated by the need to manage its proceedings. The rule does not, in any way, foreclose the contracting parties full recourse to normal legal remedies. Cf. National, 848, F.2d at 1291.

List of Subjects in 37 CFR Parts 301 and 311

Copyright, Digital Audio Home Recording Act.

Final Regulations

In lieu of the foregoing, the Tribunal is amending 37 CFR chapter III in the manner set forth below:

Authority: 17 U.S.C. 803.(a).

1. Section 301.1 is amended by revising paragraph (g) and (h) to read as follows:

§ 301.1 Purpose.

* * * * *

(g) To distribute digital audio recording devices and media royalty payments under 17 U.S.C. Chapter 10 deposited with the Register of Copyrights.

(h) To consider petitions to adjust the royalty maximum for digital audio recording devices pursuant to 17 U.S.C. 1004(a)(3).

2. Section 301.70 is revised to read as follows:

§ 301.70 Scope.

This subpart governs only those proceedings dealing with the distribution of compulsory cable television, coin-operated phono-record player (jukebox) [and], satellite carrier and digital audio recording devices and media royalty payments [royalties] deposited with the Register of Copyrights, according to the terms of 17 U.S.C. 111 (d)(4), 116(c) [and], 119(b),

and 1005, respectively. It does not govern unrelated rule making proceedings. Those provisions of Subpart E generally regulating the conduct of proceedings shall apply to royalty fee distribution proceedings, unless they are inconsistent with the specific provisions of this subpart.

3. Section 301.71 is amended by revising paragraph (d) to read as follows:

§ 301.71 Commencement proceedings.

* * * * *

(d) *Digital audio recording devices and media.* In the case of royalty payments for the importation and distribution in the United States, or the manufacture and distribution in the United States, of any digital recording device or medium, any person claiming to be entitled to such payments must file a claim with the Tribunal during the month of January or February of each year in accordance with Tribunal regulations.

4. Section 301.72 is amended by revising paragraph (d) to read as follows:

§ 301.72 Determination of controversy.

* * * * *

(d) *Digital audio recording devices and media.* Within 30 days after the last day of February each year, the Tribunal shall determine whether a controversy exists among the claimants of digital audio recording devices and media royalty payments as to any Subfund of the Sound Recording Fund or the Musical Works Fund as set forth in 17 U.S.C. § 1006(b) (1) and (2). In order to determine whether a controversy exists, the Tribunal may conduct whatever proceedings it feels necessary, subject to the procedures and regulations of subpart E. The results of this determination shall be announced in the **Federal Register**. If the Tribunal decides that a controversy exists, the **Federal Register** notice shall also announce the commencement of the royalty distribution proceeding, and shall, to the extent feasible, describe the general structure and schedule of the proceeding.

5. Part 311 is added to read as follows:

PART 311—FILING OF CLAIMS TO DIGITAL AUDIO RECORDING DEVICES AND MEDIA ROYALTY PAYMENTS

Sec.

311.1 General.
311.2 Time of filing.
311.3 Content of claim.
311.4 Content of notices regarding independent administrators.
311.5 Compliance with statutory dates.
311.6 Forms.

Authority: 17 U.S.C. 803(a), 1007(a)(1) (1992 & Supp. IV 1992).

§ 311.1 General.

This part prescribes procedures pursuant to 17 U.S.C. 1007(a)(1) (Supp. IV 1992), whereby interested copyright parties, as defined in 17 U.S.C. 1001(7) (Supp. IV 1992), claiming to be entitled to royalty payments made for the importation and distribution in the United States, or the manufacture and distribution in the United States, of digital audio recording devices and media pursuant to 17 U.S.C. 1006 (Supp. IV 1992), shall file claims with the Copyright Royalty Tribunal.

§ 311.2 Time of filing.

Commencing with January and February, 1993 and during January and February of each succeeding year, every interested copyright party claiming to be entitled to digital audio recording devices and media royalty payments made for quarterly periods ending during the previous calendar year shall file a claim with the Copyright Royalty Tribunal. No royalty payments shall be distributed to any interested copyright party for the specified period unless such interested copyright party has filed a claim to such royalty payments during January or February of the following calendar year. Claimants may file claims jointly or as a single claim. A performing rights society shall be required to obtain from its members or affiliates separate, specific, and written authorization, signed by members, affiliates, or their representatives, to file claims to the Musical Works Fund, apart from their standard arrangements, for purposes of royalties filing and fee distribution. However, such written authorization will not be required in cases where either, (a) The agreement between the performing rights society and its members or affiliates specifically authorizes such societies to represent their members or affiliates before the Copyright Royalty Tribunal in royalty filing and fee distribution proceedings; or (b) the agreement between the performing rights societies and their members or affiliates, as specified in a court order, authorizes such societies to represent their members or affiliates before the Copyright Royalty Tribunal in royalty filing and fee distribution proceedings.

§ 311.3 Content of claims.

(a) Claims filed by interested copyright parties for digital audio recording devices and media royalty payments shall include the following information:

(1) The full legal name of the person or entity claiming royalty payments.

(2) The telephone number, facsimile number, if any, and full address, including a specific number and street name or rural route, of the place of business of the person or entity.

(3) A statement as to how the claimant fits within the definition of interested copyright party specified in 17 U.S.C. 1001(7) (Supp. IV 1992).

(4) A statement as to whether the claim is being made against the Sound Recordings Fund or the Musical Works Fund, as set forth in 17 U.S.C. 1006(b) and as to which Subfund of the Sound Recordings Fund (i.e., the copyright owners or featured recording artists Subfund) or the Musical Works Fund (i.e., the music publishers or writers Subfund) the claim is being made against as set forth in 17 U.S.C. 1006(b)(1)–(2) (Supp. IV 1992).

(5) Identification, establishing a basis for the claim, of at least one musical work or sound recording embodied in a digital musical recording or an analog musical recording lawfully made under Title 17 of the United States Code that has been distributed (as that term is defined in 17 U.S.C. 1001(6) (Supp. IV 1992)), and that, during the period to which the royalty payments claimed pertain, has been (i) Distributed (as that term is defined in 17 U.S.C. 1001(6) (Supp. IV 1992)) in the form of digital musical recordings or analog musical recordings, or (ii) Disseminated to the public in transmissions.

(b) Claims shall bear the original signature of the claimant or of a duly authorized representative of the claimant.

(c) In the event that the legal name and/or full address of the claimant changes after the filing of the claim, the claimant shall notify the Copyright Royalty Tribunal of such change within thirty days of the change, or the claim may be subject to dismissal.

(d) In the event that, after filing an individual claim, an interested copyright party chooses to negotiate a joint claim, either the particular joint claimant or individual claimant shall notify the Copyright Royalty Tribunal of such change within fourteen days from the making of the agreement.

(e) If an interested copyright party intends to file claims against more than one Subfund, each such claim must be filed separately with the Copyright Royalty Tribunal. Any claim that purports to file against more than one subfund will be rejected.

(f) All claimants filing a joint claim shall make available to the Copyright Royalty Tribunal and other claimants filing claims within the relevant

Subfund, on reasonable notice and under reasonable conditions, a list of all individual claimants covered by the joint claim.

§ 311.4 Content of notices regarding independent administrators.

(a) The independent administrator jointly appointed by the interested copyright parties, as defined in 17 U.S.C. 1001 (7)(A) (Supp. IV 1992), and the American Federation of Musicians (or any successor entity) for the purpose of managing, and ultimately distributing the royalty payments to nonfeatured musicians as defined in 17 U.S.C. 1006(b)(1) (Supp. IV 1992), shall file a notice informing the Copyright Royalty Tribunal of his/her name and address.

(b) The independent administrator jointly appointed by the interested copyright parties, as defined in 17 U.S.C. 1001(7)(A) (Supp. IV 1992), and the American Federation of Television and Radio Artists (or any successor entity) for the purpose of managing, and ultimately distributing the royalty payments to nonfeatured vocalists as defined in 17 U.S.C. 1006(b)(1) (Supp. IV 1992), shall file a notice informing the Copyright Royalty Tribunal of his/her full name and address.

(c) A notice filed under paragraph (a) or (b) of this section shall include the following information:

(1) The full name of the independent administrator;

(2) The telephone number and facsimile number, if any, full address, including a specific number and street name or rural route, of the place of business of the independent administrator.

(d) Notice shall bear the original signature of the independent administrator or a duly authorized representative of the independent administrator, and shall be filed with the Copyright Royalty Tribunal no later than March 31 of each year, commencing with March 31, 1994.

§ 311.5 Compliance with statutory dates.

Claims filed with the Copyright Royalty Copyright Royalty Tribunal shall be considered timely filed only if:

(a) They are received in the offices of the Copyright Royalty Tribunal during normal business hours during the months of January or February, or

(b) They are properly addressed to the Copyright Royalty Tribunal, 1825 Connecticut Avenue, NW., suite 918, Washington, DC 20009 and they are deposited with sufficient postage with the United States Postal Service and bear a January or February U.S. postmark. Claims dated only with a business meter that are received after the last day of February will be rejected. No claim may be filed by facsimile transmission.

§ 311.6 Forms.

The Copyright Royalty Copyright Royalty Tribunal does not provide printed forms for the filing of claims.

Dated: October 13, 1993.

Cindy Daub,

Chairman.

[FR Doc. 93–25499 Filed 10–15–93; 8:45 am]

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federal register

Monday
October 18, 1993

Part VII

The President

Proclamation 6611—National Down Syndrome Awareness Month, 1993

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Federal Register
Vol. 58, No. 199
Monday, October 18, 1993

Presidential Documents

Title 3—

The President

Proclamation 6611 of October 14, 1993

National Down Syndrome Awareness Month, 1993

By the President of the United States of America

A Proclamation

Down syndrome, the most common genetic birth defect associated with mental retardation, affects 4,000 babies a year from all ethnic and societal backgrounds. As little as twenty years ago, people with Down syndrome were stigmatized or, all too frequently, institutionalized. Now, happily, they are benefitting from important advances in research, education, and health care.

Over the past two decades, scientists have applied the technology of molecular genetics and other sciences to the study of Down syndrome. Researchers are looking for the genes, or combination of genes, on chromosome 21 that have a relationship to the development of intelligence and the physical disorders associated with Down syndrome. They are also looking for a possible relationship between Down syndrome and Alzheimer's disease.

There is a wide variation in mental abilities, behavior, and physical development in individuals with Down syndrome. However, individuals with Down syndrome benefit from loving homes, early intervention, special education, mainstreaming, appropriate medical care, and positive public attitudes—all made possible through the efforts of researchers, service providers, physicians, teachers, and parent support groups. In addition, such government agencies as the National Institute of Child Health and Human Development and the National Institute on Aging, components of the National Institutes of Health; the Maternal and Child Health Bureau; and the President's Committee on Mental Retardation have worked in concert with private organizations like the National Down Syndrome Congress and the National Down Syndrome Society to help those affected by this congenital disorder.

To help promote greater understanding of Down syndrome, the Congress, by Senate Joint Resolution 92, has designated the month of October 1993 as "National Down Syndrome Awareness Month" and has authorized and requested the President to issue a proclamation in observance of this month.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim the month of October 1993 as National Down Syndrome Awareness Month. I invite all Americans to observe this month with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of October, in the year of our Lord nineteen hundred and ninety-three, and of the Independence of the United States of America the two hundred and eighteenth.

William J. Clinton

[FR Doc. 93–25723
Filed 10–15–93; 10:41 am]
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Fr
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FE

512
516
517
519
522
523
526
526
526
533
536

Reader Aids

Federal Register

Vol. 58, No. 199

Monday, October 18, 1993

INFORMATION AND ASSISTANCE

Federal Register	
Index, finding aids & general information	202–523–5227
Public inspection desk	523–5215
Corrections to published documents	523–5237
Document drafting information	523–3187
Machine readable documents	523–3447
Code of Federal Regulations	
Index, finding aids & general information	523–5227
Printing schedules	523–3419
Laws	
Public Laws Update Service (numbers, dates, etc.)	523–6641
Additional information	523–5230
Presidential Documents	
Executive orders and proclamations	523–5230
Public Papers of the Presidents	523–5230
Weekly Compilation of Presidential Documents	523–5230
The United States Government Manual	
General information	523–5230
Other Services	
Data base and machine readable specifications	523–3447
Guide to Record Retention Requirements	523–3187
Legal staff	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (PLUS)	523–6641
TDD for the hearing impaired	523–5229

ELECTRONIC BULLETIN BOARD

Free **Electronic Bulletin Board** service for Public Law numbers, and Federal Register finding aids. 202–275–1538, or 275–0920

FEDERAL REGISTER PAGES AND DATES, OCTOBER

51211–51664.....1
51665–51756.....4
51757–51972.....5
51973–52206.....6
52207–52396.....7
52397–52628.....8
52629–52874.....12
52675–53096.....13
52675–53392.....14
53393–53634.....15
53635–53832.....18

CFR PARTS AFFECTED DURING OCTOBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6598.....51559
6599.....51561
6600.....51721
6601.....51723
6602.....52205
6603.....52387
6604.....52389
6605.....52627
6606.....52875
6607.....53097
6608.....53099
6609.....53101
6610.....53103
6611.....53831

Executive Orders:
July 9, 1910 (Revoked in part by PLO 7004).....53429
3053 (Revoked in part by PLO 7004).....53429
3406 (Revoked in part by PLO 7001).....52683
5327 (Revoked in part by PLO 7002).....52684
11145 (Continued by EO 12869).....51751
11183 (Continued by EO 12869).....51751
11287 (Continued by EO 12869).....51751
11776 (Continued by EO 12869).....51751
12002 (See EO 12867).....51747
12131 (Continued by EO 12869).....51751
12197 (Continued by EO 12869).....51751
12214 (See EO 12867).....51747
12216 (Continued by EO 12869).....51751
12291 (Revoked by EO 12866).....51735
12345 (Continued by EO 12869).....51751
12367 (Continued by EO 12869).....51751
12382 (Continued by EO 12869).....51751
12498 (Revoked by EO 12866).....51735
12675 (Revoked in part EO 12869).....51751
12687 (Revoked by EO 12869).....51751
12696 (Revoked by EO 12869).....51751
12700 (See EO 12869).....51751
12720 (Revoked by EO 12869).....51751
12730 (See EOs 12867, 12868).....51747, 51749
12735 (Revoked by EO 12867; See EO 12868).....51747, 51749
12774 (Superseded by EO 12869).....51751
12775 (See notice of September 30).....51563
12779 (See notice of September 30).....51563
12792 (Revoked by EO 12869).....51751
12813 (Revoked by EO 12869).....51751
12853 (See notice of September 30).....51563
12866.....51735
12867.....51747
12868.....51749
12869.....51751
12870.....51753
12871.....52201

Administrative Orders:
Memorandums:
August 19, 1993.....52397
September 30, 1993.....52391
October 1, 1993.....52393
Notices:
September 30, 1993.....51563
Presidential Determinations:
No. 93–39 of September 17, 1993.....51973
No. 93–40 of September 28, 1993.....51975
No. 93–41 of September 29, 1993.....51977
No. 93–42 of September 30, 1993.....52629
No. 93–43 of September 30, 1993.....52207
No. 93–44 of September 30, 1993.....52209
No. 93–45 of September 30, 1993.....52211
No. 94–1 of October 1, 1993.....52213

5 CFR

Ch. XLI.....52637
294.....52877
532.....51211

591.....51565
831.....52877
838.....52877
842.....52877
890.....52877
2429.....53105
2471.....53105
2472.....53105

Proposed Rules:
2502.....51255
2504.....51256

7 CFR

2.....51211
301.....53105
246.....51566
300.....52399
301.....51979, 51982
400.....53109
401.....53393
906.....52400, 53111
907.....53112, 53114
908.....53112, 53114
910.....52401
928.....53117
931.....53119
967.....52402
1002.....51982
1004.....52404, 52405
1205.....52215
1211.....51568
1427.....51982
1477.....51757
1478.....51757
1744.....52639
1900.....52644
1910.....52644
1951.....52644
1955.....52644
1972.....52644
1975.....52644

Proposed Rules:
400.....53150
1007.....53436
1093.....53436
1094.....53436
1096.....53436
1099.....53436
1106.....53436
1108.....53436
1124.....53439
1135.....53439
1413.....51934, 52686, 52928
1703.....52688
3408.....53153

9 CFR

201.....52884
203.....52884
317.....52856
381.....52856

Proposed Rules:
82.....52240
317.....51581
318.....51581

10 CFR

19.....52406
30.....52406
40.....52406
50.....52406
60.....52406
61.....52406
70.....52406
72.....51762, 52406
150.....52406

Proposed Rules:
21.....53159
32.....53670
73.....52035
602.....53671

11 CFR

Proposed Rules:
100.....52040
107.....52700
113.....52040
114.....52700
9008.....52700

12 CFR

265.....53393
574.....52140
611.....52888
613.....52888
614.....52888
618.....51993
620.....52888
621.....52888
627.....52888
933.....52808

Proposed Rules:
3.....52808
208.....52808
325.....52808
615.....52701
650.....53161

13 CFR

101.....53120
121.....52415

Proposed Rules:
121.....52452, 52929

14 CFR

23.....51970
39.....51212, 51215, 51770, 51771, 52220, 52889, 53120, 53635, 53636
71.....51773, 52140, 52808, 53122, 53123, 53394, 53395
73.....52890
91.....51976, 52140
97.....51774, 51776
1260.....53638

Proposed Rules:
23.....52702
39.....51583, 51585, 51587, 51589, 51793, 52041, 52240, 52243, 52714, 52717, 52929, 52931, 52932, 53457, 53678
71.....51256, 51257, 53164, 53166, 53167, 53459
91.....51938
121.....51938, 51944
125.....51938
129.....51944
135.....51938, 51944

15 CFR

773.....52166, 52168
778.....52166
799.....52166, 52169
806.....53124

17 CFR

140.....52656
200.....52416, 52891
203.....52416
240.....52416, 52891
250.....51488
259.....51488

Proposed Rules:
240.....52934
250.....51508

18 CFR

35.....51217, 51777
38.....51777
284.....52660
141.....52420
292.....51777
293.....51777
346.....53654
375.....51222
381.....53654
382.....51777
1301.....53656

Proposed Rules:
35.....51259

19 CFR

Proposed Rules:
7.....52246
10.....52246
148.....52246

20 CFR

229.....53396
404.....52346
416.....52346, 52909
422.....52914

Proposed Rules:
416.....52458, 52464, 52943
655.....52152

21 CFR

172.....52221
176.....51994
522.....52222
821.....52440
864.....51570
1308.....53404

Proposed Rules:
5.....52719
25.....52719
101.....53254, 53296
103.....52042
136.....53305
137.....53305
139.....53305
170.....52719
171.....52719
172.....53312
174.....52719
352.....53460
700.....53460
740.....53460
812.....52142, 52144, 53245
813.....52142
814.....52729
1301.....52246
1304.....53680
1311.....52246

23 CFR

650.....52663

Proposed Rules:
660.....51794

24 CFR

511.....52566
888.....51410
905.....51952
965.....51952

Proposed Rules:
92.....52560
135.....52534
215.....53461
219.....52560
221.....53461
236.....53461
570.....52560
572.....52560
574.....52560
576.....52560
583.....52560
700.....52560
880.....53461
881.....53461
882.....53461
883.....53461
884.....53461
885.....53461
886.....53461
889.....52560, 53461
890.....52560, 53461
905.....51261, 52560, 53461
960.....53461
961.....52560
963.....52560
990.....51261

25 CFR

Proposed Rules:
294.....53026

26 CFR

1.....51571, 53125, 53656
602.....51571

Proposed Rules:
1.....53168
1.....53682

27 CFR

Proposed Rules:
5.....53682
24.....52222

28 CFR

1.....53658
2.....51779
11.....51223
51.....51225

29 CFR

2610.....53406
2619.....53407
2622.....53406
2644.....53410
2676.....53407

Proposed Rules:
507.....52152
1609.....51266

30 CFR

917.....51225
946.....52666
950.....52232

Proposed Rules:
230.....53470
250.....52731
253.....52059
256.....52731
280.....52731
281.....52731
700.....52374
701.....52374
705.....52374
706.....52374
715.....52374
716.....52374

785.....52374
825.....52374
870.....52374
925.....53683, 53686

31 CFR

Proposed Rules:
103.....51269

32 CFR

40.....51780
80.....51996
86.....52010
185.....52667
199.....51227, 53411
706.....51241

33 CFR

2.....51726
3.....51726
100.....51242, 52440
117.....52441
165.....51243, 52442
175.....51576
181.....51576
334.....53426, 53427

Proposed Rules:
117.....52466
126.....51906
127.....51906
187.....51920, 53624

34 CFR

642.....51518
645.....51518
646.....51518
668.....52194
674.....52194
675.....52194
676.....52194
682.....52194
690.....52194

Proposed Rules:
370.....52414
386.....52606
668.....51712

37 CFR

301.....53822
311.....53822

38 CFR

3.....52017, 53659
4.....52017
21.....51780, 51781

Proposed Rules:
3.....51798
17.....51799

40 CFR

52.....52237
61.....51784
300.....52018
258.....51536, 53136
271.....51244
272.....52674, 52677, 52679
372.....51785
721.....51672, 51694

Proposed Rules:
Ch. 1.....53688
35.....53688
52.....53693
122.....53168
123.....53168
131.....53168
132.....53168
52.....51591, 51593, 52467
63.....53478
89.....51585
300.....53688

41 CFR

101–37.....53660
101–17.....52917
302–6.....53137

42 CFR

435.....51408
436.....51408
440.....51408

Proposed Rules:
431.....53481
440.....51288, 53481
441.....51288, 53481
447.....53481

43 CFR

37.....51550

Proposed Rules:
4700.....51297

Public Land Orders:
4522 (Revoked in part by PLO 7002).....52684
6998.....52238
6999.....52238
7000.....52682
7001.....52683
7002.....52684
7003.....53428
7004.....53429

44 CFR

64.....51576, 52019

Proposed Rules:
67.....51598

45 CFR

1602.....52918

46 CFR

160.....51576

Proposed Rules:
10.....51408
12.....51408
30.....52598
31.....52598
32.....52598
67.....51298
585.....52248

47 CFR

1.....51246
15.....51247
64.....53663
73.....51250, 51578, 51579, 53664, 53665
76.....53429
90.....53245, 53431
97.....53138, 51787
74.....51250
87.....52021
90.....51251

Proposed Rules:
1.....53489
15.....51299
22.....53169
25.....53169
36.....52254
73.....51603, 51790, 52733, 52734, 52735
74.....52256
76.....53696
80.....53169
87.....53169
90.....51299, 53169
95.....53169
99.....53169

48 CFR

501.....52442
503.....52442
507.....52442
508.....52442
509.....52442
511.....52442
514.....52442
515.....52442
519.....52442
522.....52442
525.....52442
528.....52442
529.....52442
532.....52442
536.....52442
542.....52442
543.....52442
552.....52442
570.....52442
1816.....52446
1833.....53138
1852.....52446

49 CFR

107.....51524, 53626
171.....51524, 53626
172.....51524
173.....51524, 53626
174.....51524
175.....51524
176.....51524
177.....51524
178.....51524, 53626
179.....51524
180.....51524, 53626
571.....51788, 52021, 52922, 53666
604.....52684
1002.....52027
1017.....52027
1018.....52027
1039.....53433
1145.....53667
1312.....52027
1313.....52027
1314.....52027

Proposed Rules:
23.....52050
37.....52735
172.....52574
173.....52574
179.....52574
390.....51800
1063.....51603
1105.....51800
1121.....51800
1152.....51800

50 CFR

17.....52027, 52031, 53800, 53804
227.....53138
229.....51788
285.....53434, 53668
301.....51253
625.....52685
661.....53143
642.....51579, 51789
663.....52031
669.....53145
672.....51791, 52032, 53138, 53148, 53668
675.....51253, 52033, 52451, 53136, 53148

Proposed Rules:
17.....53696, 53702
32.....53703
215.....53320
216.....53320
17.....51302, 51604, 52058, 52059, 52063, 52740
222.....53220, 53703
227.....53703
228.....53491
52.....51270, 51279
622.....53172
625.....53172
628.....53172
641.....52063, 52073, 52474
646.....53183
649.....53172
650.....53172
651.....52073, 53172
652.....53172
655.....53172
675.....53497

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. The text of laws is not published in the Federal Register but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470).

H.R. 2074/P.L. 103–101
To authorize appropriations for the American Folklife Center for fiscal years 1994 and 1995. (Oct. 8, 1993; 107 Stat. 1020; 1 page)

H.R. 3051/P.L. 103–102
To provide that certain property located in the State of Oklahoma owned by an Indian housing authority for the purpose of providing low-income housing shall be treated as Federal property under the Act of September 30, 1950 (Public Law 874, 81st Congress). (Oct. 8, 1993; 107 Stat. 1021; 1 page)

S. 1130/P.L. 103–103
Federal Employees Leave Sharing Amendments Act of 1993 (Oct. 8, 1993; 107 Stat. 1022; 3 pages)

H.R. 38/P.L. 103–104
To establish the Jemez National Recreation Area in

the State of New Mexico, and for other purposes. (Oct. 12, 1993; 107 Stat. 1025; 5 pages)

H.R. 2608/P.L. 103–105

To provide for the reauthorization of the collection and publication of quarterly financial statistics by the Secretary of Commerce through fiscal year 1998, and for other purposes. (Oct. 12, 1993; 107 Stat. 1030; 1 page)

S. 1381/P.L. 103–106

National Forest Foundation Act Amendment Act of 1993 (Oct. 12, 1993; 107 Stat. 1031; 2 pages)

S.J. Res. 102/P.L. 103–107

To designate the months of October 1993 and October 1994 as "Country Music Month". (Oct. 12, 1993; 107 Stat. 1033; 1 page)

Last List October 12, 1993

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–019–00001–1)	$15.00	Jan. 1, 1993
3 (1992 Compilation and Parts 100 and 101)	(869–019–00002–0)	17.00	¹ Jan. 1, 1993
4	(869–019–00003–8)	5.50	Jan. 1, 1993
5 Parts:			
1–699	(869–019–00004–6)	21.00	Jan. 1, 1993
700–1199	(869–019–00005–4)	17.00	Jan. 1, 1993
1200–End, 6 (6 Reserved)	(869–019–00006–2)	21.00	Jan. 1, 1993
7 Parts:			
0–26	(869–019–00007–1)	20.00	Jan. 1, 1993
27–45	(869–019–00008–9)	13.00	Jan. 1, 1993
46–51	(869–019–00009–7)	20.00	Jan. 1, 1993
52	(869–019–00010–1)	28.00	Jan. 1, 1993
53–209	(869–019–00011–9)	21.00	Jan. 1, 1993
210–299	(869–019–00012–7)	30.00	Jan. 1, 1993
300–399	(869–019–00013–5)	15.00	Jan. 1, 1993
400–699	(869–019–00014–3)	17.00	Jan. 1, 1993
700–899	(869–019–00015–1)	21.00	Jan. 1, 1993
900–999	(869–019–00016–0)	33.00	Jan. 1, 1993
1000–1059	(869–019–00017–8)	20.00	Jan. 1, 1993
1060–1119	(869–019–00018–6)	13.00	Jan. 1, 1993
1120–1199	(869–019–00019–4)	11.00	Jan. 1, 1993
1200–1499	(869–019–00020–8)	27.00	Jan. 1, 1993
1500–1899	(869–019–00021–6)	17.00	Jan. 1, 1993
1900–1939	(869–019–00022–4)	13.00	Jan. 1, 1993
1940–1949	(869–019–00023–2)	27.00	Jan. 1, 1993
1950–1999	(869–019–00024–1)	32.00	Jan. 1, 1993
2000–End	(869–019–00025–9)	12.00	Jan. 1, 1993
8	(869–019–00026–7)	20.00	Jan. 1, 1993
9 Parts:			
1–199	(869–019–00027–5)	27.00	Jan. 1, 1993
200–End	(869–019–00028–3)	21.00	Jan. 1, 1993
10 Parts:			
0–50	(869–019–00029–1)	29.00	Jan. 1, 1993
51–199	(869–019–00030–5)	21.00	Jan. 1, 1993
200–399	(869–019–00031–3)	15.00	Jan. 1, 1993
400–499	(869–019–00032–1)	20.00	Jan. 1, 1993
500–End	(869–019–00033–0)	33.00	Jan. 1, 1993
11	(869–019–00034–8)	13.00	Jan. 1, 1993
12 Parts:			
1–199	(869–019–00035–6)	11.00	Jan. 1, 1993
200–219	(869–019–00036–4)	15.00	Jan. 1, 1993
220–299	(869–019–00037–2)	26.00	Jan. 1, 1993
300–499	(869–019–00038–1)	21.00	Jan. 1, 1993
500–599	(869–019–00039–9)	19.00	Jan. 1, 1993
600–End	(869–019–00040–2)	28.00	Jan. 1, 1993
13	(869–019–00041–1)	28.00	Jan. 1, 1993

Title	Stock Number	Price	Revision Date
14 Parts:			
1–59	(869–019–00042–9)	29.00	Jan. 1, 1993
60–139	(869–019–00043–7)	26.00	Jan. 1, 1993
140–199	(869–019–00044–5)	12.00	Jan. 1, 1993
200–1199	(869–019–00045–3)	22.00	Jan. 1, 1993
1200–End	(869–019–00046–1)	16.00	Jan. 1, 1993
15 Parts:			
0–299	(869–019–00047–0)	14.00	Jan. 1, 1993
300–799	(869–019–00048–8)	25.00	Jan. 1, 1993
800–End	(869–019–00049–6)	19.00	Jan. 1, 1993
16 Parts:			
0–149	(869–019–00050–0)	7.00	Jan. 1, 1993
150–999	(869–019–00051–8)	17.00	Jan. 1, 1993
1000–End	(869–019–00052–6)	24.00	Jan. 1, 1993
17 Parts:			
1–199	(869–019–00054–2)	18.00	Apr. 1, 1993
200–239	(869–019–00055–1)	23.00	June 1, 1993
240–End	(869–019–00056–9)	30.00	June 1, 1993
18 Parts:			
1–149	(869–019–00057–7)	16.00	Apr. 1, 1993
150–279	(869–019–00058–5)	19.00	Apr. 1, 1993
280–399	(869–019–00059–3)	15.00	Apr. 1, 1993
400–End	(869–019–00060–7)	10.00	Apr. 1, 1993
19 Parts:			
1–199	(869–019–00061–5)	35.00	Apr. 1, 1993
200–End	(869–019–00062–3)	11.00	Apr. 1, 1993
20 Parts:			
1–399	(869–019–00063–1)	19.00	Apr. 1, 1993
400–499	(869–019–00064–0)	31.00	Apr. 1, 1993
500–End	(869–019–00065–8)	30.00	Apr. 1, 1993
21 Parts:			
1–99	(869–019–00066–6)	15.00	Apr. 1, 1993
100–169	(869–019–00067–4)	21.00	Apr. 1, 1993
170–199	(869–019–00068–2)	20.00	Apr. 1, 1993
200–299	(869–019–00069–1)	6.00	Apr. 1, 1993
300–499	(869–019–00070–4)	34.00	Apr. 1, 1993
500–599	(869–019–00071–2)	21.00	Apr. 1, 1993
600–799	(869–019–00072–1)	8.00	Apr. 1, 1993
800–1299	(869–019–00073–9)	22.00	Apr. 1, 1993
1300–End	(869–019–00074–7)	12.00	Apr. 1, 1993
22 Parts:			
1–299	(869–019–00075–5)	30.00	Apr. 1, 1993
300–End	(869–019–00076–3)	22.00	Apr. 1, 1993
23	(869–019–00077–1)	21.00	Apr. 1, 1993
24 Parts:			
0–199	(869–019–00078–0)	38.00	Apr. 1, 1993
200–499	(869–019–00079–8)	36.00	Apr. 1, 1993
500–699	(869–019–00080–1)	17.00	Apr. 1, 1993
700–1699	(869–019–00081–0)	39.00	Apr. 1, 1993
1700–End	(869–019–00082–8)	15.00	Apr. 1, 1993
25	(869–019–00083–6)	31.00	Apr. 1, 1993
26 Parts:			
§§ 1.0–1–1.60	(869–019–00084–4)	21.00	Apr. 1, 1993
§§ 1.61–1.169	(869–019–00085–2)	37.00	Apr. 1, 1993
§§ 1.170–1.300	(869–019–00086–1)	23.00	Apr. 1, 1993
§§ 1.301–1.400	(869–019–00087–9)	21.00	Apr. 1, 1993
§§ 1.401–1.440	(869–019–00088–7)	31.00	Apr. 1, 1993
§§ 1.441–1.500	(869–019–00089–5)	23.00	Apr. 1, 1993
§§ 1.501–1.640	(869–019–00090–9)	20.00	Apr. 1, 1993
§§ 1.641–1.850	(869–019–00091–7)	24.00	Apr. 1, 1993
§§ 1.851–1.907	(869–019–00092–5)	27.00	Apr. 1, 1993
§§ 1.908–1.1000	(869–019–00093–3)	26.00	Apr. 1, 1993
§§ 1.1001–1.1400	(869–019–00094–1)	22.00	Apr. 1, 1993
§§ 1.1401–End	(869–019–00095–0)	31.00	Apr. 1, 1993
2–29	(869–019–00096–8)	23.00	Apr. 1, 1993
30–39	(869–019–00097–6)	18.00	Apr. 1, 1993
40–49	(869–019–00098–4)	13.00	Apr. 1, 1993
50–299	(869–019–00099–2)	13.00	Apr. 1, 1993
300–499	(869–017–00100–0)	23.00	Apr. 1, 1993
500–599	(869–019–00101–8)	6.00	⁴ Apr. 1, 1990

Title	Stock Number	Price	Revision Date
600-End	(869-019-00102-6)	8.00	Apr. 1, 1993
27 Parts:			
1-199	(869-019-00103-4)	37.00	Apr. 1, 1993
200-End	(869-019-00104-2)	11.00	[5] Apr. 1, 1991
28 Parts:			
1-42	(869-019-00105-1)	27.00	July 1, 1993
43-end	(869-019-00106-9)	21.00	July 1, 1993
29 Parts:			
0-99	(869-019-00107-7)	21.00	July 1, 1993
100-499	(869-019-00108-5)	9.50	July 1, 1993
*500-899	(869-019-00109-3)	36.00	July 1, 1993
900-1899	(869-019-00110-7)	17.00	July 1, 1993
1900-1910 (§§ 1901.1 to 1910.999)	(869-017-00109-1)	29.00	July 1, 1992
1910 (§§ 1910.1000 to end)	(869-017-00110-4)	16.00	July 1, 1992
1911-1925	(869-017-00111-2)	9.00	[6] July 1, 1989
1926	(869-017-00112-1)	14.00	July 1, 1992
1927-End	(869-017-00113-9)	30.00	July 1, 1992
30 Parts:			
*1-199	(869-019-00116-6)	27.00	July 1, 1993
200-699	(869-019-00117-4)	20.00	July 1, 1993
*700-End	(869-019-00118-2)	27.00	July 1, 1993
31 Parts:			
0-199	(869-019-00119-1)	18.00	July 1, 1993
200-End	(869-019-00120-4)	29.00	July 1, 1993
32 Parts:			
1-39, Vol. I		15.00	[2] July 1, 1984
1-39, Vol. II		19.00	[2] July 1, 1984
1-39, Vol. III		18.00	[2] July 1, 1984
1-190	(869-019-00121-2)	30.00	July 1, 1993
*191-399	(869-019-00122-1)	36.00	July 1, 1993
400-629	(869-019-00123-9)	26.00	July 1, 1993
630-699	(869-019-00124-7)	14.00	[7] July 1, 1991
700-799	(869-019-00125-5)	21.00	July 1, 1993
800-End	(869-019-00126-3)	22.00	July 1, 1993
33 Parts:			
1-124	(869-019-00127-1)	20.00	July 1, 1993
125-199	(869-019-00128-0)	25.00	July 1, 1993
200-End	(869-019-00129-8)	24.00	July 1, 1993
34 Parts:			
1-299	(869-017-00128-7)	27.00	July 1, 1992
300-399	(869-019-00131-0)	20.00	July 1, 1993
400-End	(869-019-00132-8)	37.00	July 1, 1993
35	(869-019-00133-6)	12.00	July 1, 1993
36 Parts:			
1-199	(869-019-00134-4)	16.00	July 1, 1993
200-End	(869-019-00135-2)	35.00	July 1, 1993
37	(869-019-00136-1)	20.00	July 1, 1993
38 Parts:			
0-17	(869-019-00137-9)	31.00	July 1, 1993
18-End	(869-019-00138-7)	30.00	July 1, 1993
39	(869-019-00139-5)	17.00	July 1, 1993
40 Parts:			
1-51	(869-017-00138-4)	31.00	July 1, 1992
52	(869-017-00139-2)	33.00	July 1, 1992
53-60	(869-017-00140-6)	36.00	July 1, 1992
61-80	(869-017-00141-4)	16.00	July 1, 1992
81-85	(869-017-00142-2)	17.00	July 1, 1992
86-99	(869-017-00143-1)	33.00	July 1, 1992
100-149	(869-017-00144-9)	34.00	July 1, 1992
150-189	(869-017-00145-7)	21.00	July 1, 1992
190-259	(869-017-00146-5)	16.00	July 1, 1992
260-299	(869-017-00147-3)	36.00	July 1, 1992
300-399	(869-017-00148-1)	15.00	July 1, 1992
400-424	(869-017-00149-0)	26.00	July 1, 1992
425-699	(869-017-00150-3)	26.00	July 1, 1992
700-789	(869-017-00151-1)	23.00	July 1, 1992
790-End	(869-017-00152-0)	25.00	July 1, 1992

Title	Stock Number	Price	Revision Date
41 Chapters:			
1, 1-1 to 1-10		13.00	[3] July 1, 1984
1, 1-11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3-6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10-17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1-5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6-19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20-52		13.00	[3] July 1, 1984
19-100		13.00	[3] July 1, 1984
*1-100	(869-019-00156-5)	10.00	July 1, 1993
101	(869-019-00157-3)	30.00	July 1, 1993
102-200	(869-019-00158-1)	11.00	[7] July 1, 1991
201-End	(869-019-00159-0)	12.00	July 1, 1993
42 Parts:			
1-399	(869-017-00157-1)	23.00	Oct. 1, 1992
400-429	(869-017-00158-9)	23.00	Oct. 1, 1992
430-End	(869-017-00159-7)	31.00	Oct. 1, 1992
43 Parts:			
1-999	(869-017-00160-1)	22.00	Oct. 1, 1992
1000-3999	(869-017-00161-9)	30.00	Oct. 1, 1992
4000-End	(869-017-00162-7)	13.00	Oct. 1, 1992
44	(869-017-00163-5)	26.00	Oct. 1, 1992
45 Parts:			
1-199	(869-017-00164-3)	20.00	Oct. 1, 1992
200-499	(869-017-00165-1)	14.00	Oct. 1, 1992
500-1199	(869-017-00166-0)	30.00	Oct. 1, 1992
1200-End	(869-017-00167-8)	20.00	Oct. 1, 1992
46 Parts:			
1-40	(869-017-00168-6)	17.00	Oct. 1, 1992
41-69	(869-017-00169-4)	16.00	Oct. 1, 1992
70-89	(869-017-00170-8)	8.00	Oct. 1, 1992
90-139	(869-017-00171-6)	14.00	Oct. 1, 1992
140-155	(869-017-00172-4)	12.00	Oct. 1, 1992
156-165	(869-017-00173-2)	14.00	[8] Oct. 1, 1991
166-199	(869-017-00174-1)	17.00	Oct. 1, 1992
200-499	(869-017-00175-9)	22.00	Oct. 1, 1992
500-End	(869-017-00176-7)	14.00	Oct. 1, 1992
47 Parts:			
0-19	(869-017-00177-5)	22.00	Oct. 1, 1992
20-39	(869-017-00178-3)	22.00	Oct. 1, 1992
40-69	(869-017-00179-1)	12.00	Oct. 1, 1992
70-79	(869-017-00180-5)	21.00	Oct. 1, 1992
80-End	(869-017-00181-3)	24.00	Oct. 1, 1992
48 Chapters:			
1 (Parts 1-51)	(869-017-00182-1)	34.00	Oct. 1, 1992
1 (Parts 52-99)	(869-017-00183-0)	22.00	Oct. 1, 1992
2 (Parts 201-251)	(869-017-00184-8)	15.00	Oct. 1, 1992
2 (Parts 252-299)	(869-017-00185-6)	12.00	Oct. 1, 1992
3-6	(869-017-00186-4)	22.00	Oct. 1, 1992
7-14	(869-017-00187-2)	30.00	Oct. 1, 1992
15-28	(869-017-00188-1)	26.00	Oct. 1, 1992
29-End	(869-017-00189-9)	16.00	Oct. 1, 1992
49 Parts:			
1-99	(869-017-00190-2)	22.00	Oct. 1, 1992
100-177	(869-017-00191-1)	27.00	Oct. 1, 1992
178-199	(869-017-00192-9)	19.00	Oct. 1, 1992
200-399	(869-017-00193-7)	27.00	Oct. 1, 1992
400-999	(869-017-00194-5)	31.00	Oct. 1, 1992
1000-1199	(869-017-00195-3)	19.00	Oct. 1, 1992
1200-End	(869-017-00196-1)	21.00	Oct. 1, 1992
50 Parts:			
1-199	(869-017-00197-0)	23.00	Oct. 1, 1992
200-599	(869-017-00198-8)	20.00	Oct. 1, 1992
600-End	(869-017-00199-6)	20.00	Oct. 1, 1992
CFR Index and Findings Aids	(869-019-00053-4)	36.00	Jan. 1, 1993
Complete 1993 CFR set		775.00	1993

Title	Stock Number	Price	Revision Date
Microfiche CFR Edition:			
Complete set (one-time mailing)		188.00	1990
Complete set (one-time mailing)		188.00	1991
Complete set (one-time mailing)		188.00	1992
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1993. The CFR volume issued April 1, 1990, should be retained.

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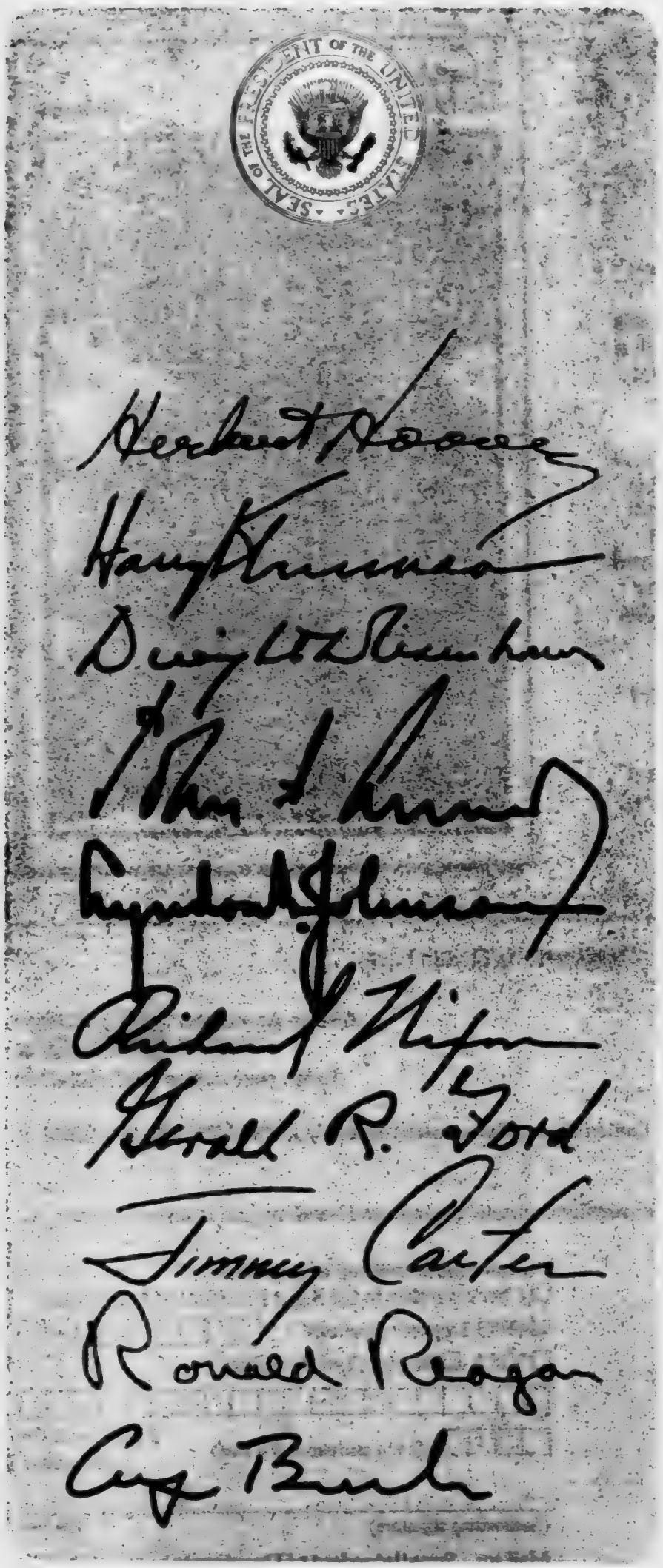

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Contents

Federal Register

Vol. 58, No. 200

Tuesday, October 19, 1993

Agriculture Department
See Farmers Home Administration
See FoodSafety and Inspection Service
See Foreign Agricultural Service
See Forest Service
See Rural Electrification Administration
NOTICES
Senior Executive Service:
Performance Review Boards; membership, 53910

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Centers for Disease Control and Prevention
NOTICES
Meetings:
Vital and Health Statistics National Committee, 53936

Coast Guard
RULES
Ports and waterways safety:
East River, NY; safety zone, 53884
PROPOSED RULES
Drawbridge operations:
California, 53896
NOTICES
Meetings:
Navigation Safety Advisory Council, 53987
National preparedness for response exercise program; guidelines availability, 53990

Commerce Department
See Economic Development Administration
See International Trade Administration
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration
See Patent and Trademark Office

Defense Department
See Navy Department
NOTICES
Agency information collection activities under OMB review, 53918, 53926

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Takos, Robert, M.D., 53940

Economic Development Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Economic development assistance programs, 54008

Education Department
NOTICES
Grants and cooperative agreements; availability, etc.:
National Institute on Disability and Rehabilitation Research—
Rehabilitation research and training centers, 54004
Talent search and educational opportunity centers programs; technical assistance workshops, 53926

Employment and Training Administration
NOTICES
Adjustment assistance:
G&L Machine, 53942
Leviton Manufacturing, 53942
Sonny Styles, Inc., 53942
Winters Industries, 53943
Labor surplus areas classifications:
Annual list, 53943

Energy Department
See Federal Energy Regulatory Commission
See Hearings and Appeals Office, Energy Department
NOTICES
Meetings:
Basic Energy Sciences Advisory Committee, 53931

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Pennsylvania, 53885
Air quality planning purposes; designation of areas:
Montana, 53886
Montana et al., 53888
PROPOSED RULES
Air pollutants, hazardous; national emission standards:
Perchlorethylene emissions from dry cleaning facilities Meeting, 53900
NOTICES
Drinking water:
Public water supply supervision program—
Minnesota, 53932
Meetings:
Ozone Transport Commission, 53933
Waste minimization and combustion strategy, 53933
National preparedness for response exercise program; guidelines availability, 53990
Pesticide registration, cancellation, etc.:
Health Care Products, Inc., 53934
Pseudomonas cepacia; genetic manipulation; research assistance request, 53934
Superfund; response and remedial actions, proposed settlements, etc.:
Walled Lake Mercury Site, MI, 53935
Toxic and hazardous substances control:
Premanufacture notices; monthly status reports, 54000

Executive Office of the President
See Presidential Documents
See Trade Representative, Office of United States

Farmers Home Administration
PROPOSED RULES
Program regulation:
Property management—
Indian trust lands; security interests transfer and inventory sales, 53891

Federal Aviation Administration
RULES
Airworthiness directives:
Aerospatiale, 53853

Boeing, 53855
Fokker, 53852
McDonnell Douglas, 53857
Class E airspace, 53859
IFR altitudes; miscellaneous amendments, 53860
Standard instrument approach procedures:
Miscellaneous amendments, 53863
PROPOSED RULES
Airworthiness directives:
General Electric Co., 53893
NOTICES
Advisory circulars; availability, etc.:
Transport category airplanes—
Damage-tolerance and fatigue evaluation of structure, 53987
Meetings:
RTCA, Inc., 53988
Passenger facility charges; applications, etc.:
Long Beach Municipal Airport, CA, 53989
Palm Beach International Airport/North County General Aviation Airport, FL, 53989

Federal Communications Commission
PROPOSED RULES
Television broadcasting:
Commercial programming practices, 53902
NOTICES
Meetings; Sunshine Act, 53996

Federal Deposit Insurance Corporation
NOTICES
Meetings; Sunshine Act, 53996

Federal Energy Regulatory Commission
PROPOSED RULES
Practice and procedure:
Electronic bulletin boards standards required by agency regulations, 53895
NOTICES
Electric rate, small power production, and interlocking directorate filings, etc.:
Montana Power Co. et al., 53927
Environmental statements; availability, etc.:
Michiana Hydro-electric Power Corp, 53929
Natural Gas Policy Act:
State jurisdictional agencies tight formation recommendations; preliminary findings—
Land Management Bureau, 53929
Oklahoma Corporation Commission, 53929, 53930
Railroad Commission of Texas, 53930
Applications, hearings, determinations, etc.:
CNG Transmission Corp., 53930
Electric Energy, Inc., 53930
Williston Basin Interstate Pipeline Co., 53931

Federal Maritime Commission
NOTICES
Investigations, hearings, petitions, etc.:
Tropical Shipping & Construction Co., Ltd., et al., 53935

Federal Mine Safety and Health Review Commission
NOTICES
Meetings; Sunshine Act, 53996

Federal Reserve System
NOTICES
Meetings; Sunshine Act, 53996
Applications, hearings, determinations, etc.:
Lee County Bancshares, Inc., et al., 53935
MBNA Corp., 53935
Resource Bancshares Corp., 53936

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Small whorled pogonia, 53904
NOTICES
Agency information collection activities under OMB review, 53938

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
Monensin, 53882

Food Safety and Inspection Service
PROPOSED RULES
Meat and poultry inspection:
Export certification process centralization and automation, 54012

Foreign Agricultural Service
NOTICES
Meetings:
Emerging Democracies Advisory Committee, 53911

Foreign Assets Control Office
RULES
Haitian transaction regulations, 54024

Forest Service
NOTICES
Appeal exemptions; timber sales:
Colville National Forest, WA, 53912
Boundary establishment, descriptions, etc.:
Coeur D'Alene Purchase Unit, ID, 53912
Environmental statements; availability, etc.:
Idaho Panhandle National Forests, ID, 53913
Wallowa-Whitman National Forest, OR, 53913

General Services Administration
RULES
Federal property management:
Aviation, transportation, and motor vehicles—
Household goods transportation, 53889

Government Ethics Office
NOTICES
International Conference on Government Ethics; request for support, 53994

Health and Human Services Department
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Resources and Services Administration

Health Resources and Services Administration
NOTICES
Meetings; advisory committees:
November, 53937

Hearings and Appeals Office, Energy Department
NOTICES
Decisions and orders, 53931

Housing and Urban Development Department
NOTICES
Committees; establishment, renewal, termination, etc.:
Occupancy Standards in Public and Assisted Housing Task Force, 53937

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See Minerals Management Service
See National Park Service

Internal Revenue Service
NOTICES
Privacy Act:
Computer matching programs, 53991

International Trade Administration
NOTICES
Antidumping:
Antifriction bearings (other than tapered roller bearings) and parts from—
Italy, 53914
Helical spring lock washers from—
China, 53914
United States-Canada free-trade agreement; binational panel reviews:
Pure magnesium from—
Canada, 53915

Justice Department
See Drug Enforcement Administration

Labor Department
See Employment and Training Administration
See Pension and Welfare Benefits Administration
NOTICES
Agency information collection activities under OMB review, 53941
Senior Executive Service:
Performance Review Board; membership, 53942

Land Management Bureau
NOTICES
Goshute Indian Reservation, UT; public lands and interest; correction, 53937
Oil and gas leases:
Wyoming, 53937
Realty actions; sales, leases, etc.:
Nevada, 53938

Minerals Management Service
NOTICES
Meetings:
Seismic Reassessment of Offshore Platforms, 53938
National preparedness for response exercise program; guidelines availability, 53990

Mine Safety and Health Federal Review Commission
See Federal Mine Safety and Health Review Commission

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
Music Advisory Panel, 53956

National Institute of Standards and Technology
NOTICES
Meetings:
Malcolm Baldrige National Quality Awards—Board of Overseers, 53916

National Oceanic and Atmospheric Administration
RULES
Marine sanctuaries:
Stellwagen Bank National Marine Sanctuary, MA, 53865
NOTICES
Meetings:
Gulf of Mexico Fishery Management Council, 53916
Pacific Fishery Management Council, 53916

National Park Service
NOTICES
Meetings:
Gates of the Arctic National Park Subsistence Resource Commission, 53939
National Register of Historic Places:
Pending nominations, 53939

National Science Foundation
NOTICES
Antarctic Conservation Act of 1978; permit applications, etc., 53957

National Transportation Safety Board
NOTICES
Meetings; Sunshine Act, 53997
Railroad accidents; hearings, etc.:
Mobile, AL; AMTRAK Sunset Limited derailment, 53959

Navy Department
RULES
Release of official information for litigation, 53883

Nuclear Regulatory Commission
NOTICES
Meetings:
Medical Uses of Isotopes Advisory Committee, 53957
Nuclear Waste Advisory Committee, 53958
Meetings; Sunshine Act, 53997
Petitions; Director's decisions:
Vermont Yankee Nuclear Power Station, 53958
Applications, hearings, determinations, etc.:
Power Authority of State of New York, 53959

Occupational Safety and Health Review Commission
NOTICES
Meetings; Sunshine Act, 53997

Office of United States Trade Representative
See Trade Representative, Office of United States

Panama Canal Commission
PROPOSED RULES
Privacy Act; implementation, 53897
NOTICES
Privacy Act:
Systems of records, 53966

Patent and Trademark Office
NOTICES
National information infrastructure initiative; intellectual property issues; hearing and comment request, 53917

Pension and Welfare Benefits Administration
NOTICES
Meetings:
Employee Welfare and Pension Benefit Plans Advisory Council, 53955, 53956

Presidential Documents
PROCLAMATIONS
Special observances:
White Cane Safety Day (Proc. 6612), 53833

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Resources and Services Administration

Research and Special Programs Administration
NOTICES
National preparedness for response exercise program; guidelines availability, 53990

Rural Electrification Administration
RULES
Electric loans:
Lien accommodations and subordinations, 53835

Securities and Exchange Commission
NOTICES
Agency information collection activities under OMB review, 53969, 53970
Self-regulatory organizations; unlisted trading privileges:
Boston Stock Exchange, Inc., 53970
Chicago Stock Exchange, Inc., 53970
Cincinnati Stock Exchange, Inc., 53971
Pacific Stock Exchange, Inc., 53971
Philadelphia Stock Exchange, Inc., 53971
Applications, hearings, determinations, etc.:
American Skandia Life Assurance Corp. et al., 53972, 53973
Hanover Funds, Inc., et al., 53977
One Group et al., 53981
State Street Bank & Trust Co., 53983

Small Business Administration
NOTICES
Agency information collection activities under OMB review, 53984, 53985
Meetings; district and regional advisory councils:
Georgia, 53985
West Virginia, 53985

Thrift Depositor Protection Oversight Board
NOTICES
Meetings; regional advisory boards:
Regions I through VI, 53985

Thrift Supervision Office
NOTICES
Receiver appointments:
First American Federal Savings Bank, 53992
Palm Beach Federal Savings Association, 53992
Surety Federal Savings & Loan Association, 53992
Applications, hearings, determinations, etc.:
Astoria Federal Savings & Loan Association, 53993
Chase Federal Bank, a Federal Savings Bank, 53993
Crossland Federal Savings Bank, 53993
Equitable Federal Savings Bank, 53993
Financial Federal Savings & Loan Association, 53993
Greater Boston Bank, A Co-operative Bank, 53993

Trade Representative, Office of United States
NOTICES
Generalized System of Preferences:
Annual review (1993); petitions accepted, 53959

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Research and Special Programs Administration
NOTICES
Aviation proceedings:
Agreements filed; weekly receipts, 53986
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 53986

Treasury Department
See Foreign Assets Control Office
See Internal Revenue Service
See Thrift Supervision Office

United States Information Agency
NOTICES
International Conference on Government Ethics; request for support, 53994

Veterans Affairs Department
NOTICES
Meetings:
Former Prisoners of War Advisory Committee, 53995

Separate Parts In This Issue

Part II
Environmental Protection Agency, 54000

Part III
Department of Education, 54004

Part IV
Department of Commerce, Economic Development Administration, 54008

Part V
Department of Agriculture, Food Safety and Inspection Service, 54012

Part VI
Department of the Treasury, Office of Foreign Assets Control, 54024

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamations:
6612.....53833

7 CFR
1717.....53835
Proposed Rules:
1955.....53891
1965.....53891

9 CFR
Proposed Rules:
301.....54012
312.....54012
322.....54012
350.....54012
362.....54012
381.....54012
391.....54012

14 CFR
39 (4 documents).....53852, 53853, 53855, 53857
71.....53859
95.....53860
97.....53863
Proposed Rules:
39.....53893

15 CFR
940.....53865

18 CFR
Proposed Rules:
284.....53895

21 CFR
558.....53882

31 CFR
580.....54024

32 CFR
725.....53883

33 CFR
165.....53884
Proposed Rules:
117.....53896

35 CFR
Proposed Rules:
10.....53897

40 CFR
52.....53885
81 (2 documents).....53886, 53888
Proposed Rules:
63.....53900

41 CFR
101–40.....53889

47 CFR
Proposed Rules:
73.....53902

50 CFR
Proposed Rules:
17.....53904

Federal Register
Vol. 58, No. 200
Tuesday, October 19, 1993

Presidential Documents

Title 3—

The President

Proclamation 6612 of October 15, 1993

White Cane Safety Day, 1993

By the President of the United States of America

A Proclamation

To thousands of visually impaired Americans the white cane means freedom—freedom to move safely and independently through their daily lives, participating fully in the activities of their homes, places of employment, and communities. White Cane Safety Day not only celebrates the accomplishments of the visually impaired, but also recognizes our Nation's commitment to remove any physical or attitudinal barriers that Americans with disabilities may still face.

This commitment underscores our continuing efforts to implement fully the provisions of the Americans with Disabilities Act of 1990, which prohibits discrimination against persons with disabilities in such areas as employment, public accommodations, telecommunications, and transportation.

In tribute to the white cane and all that it symbolizes for our society, the Congress, by Joint Resolution approved in 1964, has designated October 15 of each year as "White Cane Safety Day."

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim October 15, 1993, as White Cane Safety Day. I call upon all Americans to observe this day with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of October, in the year of our Lord nineteen hundred and ninety-three, and of the Independence of the United States of America the two hundred and eighteenth.

William J. Clinton

[FR Doc. 93–25804
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Rules and Regulations

Federal Register
Vol. 58, No. 200
Tuesday, October 19, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Part 1717

Lien Accommodations and Subordinations

AGENCY: Rural Electrification Administration, USDA.

ACTION: Final rule.

SUMMARY: The Rural Electrification Administration (REA) hereby sets forth its policies, requirements and procedures governing the accommodation and subordination of the Government's lien on electric borrowers' systems in order to facilitate non-REA financing of borrower investments.

EFFECTIVE DATE: This rule is effective on November 18, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. John Arnesen, Assistant Administrator—Electric, U.S. Department of Agriculture, Rural Electrification Administration, room 4037-S, 14th Street & Independence Avenue, SW., Washington, DC 20250–1500. Telephone: 202–720–9545.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This final rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512–1. This action has been classified as "nonmajor" because it does not meet the criteria for a major regulation as established by the Executive Order.

Regulatory Flexibility Act Certification

The Administrator of REA has determined that the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) does not apply to this final rule.

National Environmental Policy Act Certification

The Administrator of REA has determined that this rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this rule is listed in the Catalog of Federal Domestic Assistance Programs under number 10.850 Rural Electrification Loan and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402–9325.

Executive Order 12372

This final rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. A Notice of Final Rule titled Department Programs and Activities Excluded from Executive Order 12372 (50 FR 47034) exempts REA electric loans and loan guarantees from coverage under this Order.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This final rule:

(1) Will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule;

(2) Will not have any retroactive effect; and

(3) Will not require administrative proceedings before any parties may file suit challenging the provisions of this rule.

Information Collection and Recordkeeping Requirements

The existing recordkeeping and reporting burdens contained in this rule have been approved by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), under control numbers 0572–0017, 0572–0032, and 0572–0100.

Send questions or comments regarding these burdens or any other aspect of these collections of information, including suggestions for reducing the burden, to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for USDA, room 3201, New Executive Office Building, Washington, DC 20503.

Background

For the past several months, REA has been working on revising its mortgage and loan agreement, and its policies and procedures governing the granting of an accommodation or subordination of the Government's lien on electric borrowers' systems. The objectives of these proposed revisions are to facilitate and support borrowers' efforts to obtain private sector financing of their capital needs, to allow borrowers greater flexibility in the management of their business affairs without compromising REA loan security, and to reduce the cost to borrowers, in terms of time, expense and paper work, of obtaining lien accommodations and subordinations. The objectives will be accomplished by updating REA's policies, requirements, and documents to bring them more in line with private commercial practice, and to clarify and streamline REA's procedures relating to loan security documents and the granting of lien accommodations and subordinations.

Because of the magnitude and complexity of the task, the effort has been divided into several phases. The first phase has concentrated on updating and streamlining REA's policies and procedures for granting a lien accommodation or subordination under the current mortgage for electric borrowers. Later phases will focus on developing one or more new standard forms of the mortgage and loan agreement.

On December 2, 1991, REA published an advance notice of proposed rulemaking in the **Federal Register** (56 FR 61201) inviting comments on possible changes to REA's loan security documents and its policies and procedures governing lien accommodations and subordinations. Comments were received from 42 organizations. Most of these organizations offered comments on lien accommodations and subordinations, the subject of this rule.

On June 30, 1992, REA held a public meeting on REA policies and

procedures for granting lien accommodations and subordinations under the electric mortgage. Eighteen organizations, including distribution and power supply borrowers and their representatives, the National Rural Electric Cooperative Association, the National Rural Utilities Cooperative Finance Corporation, CoBank, and First Boston Corporation, attended the meeting, gave testimony and responded to questions from a panel consisting of representatives from REA and the Department of Agriculture's Office of General Counsel. Written comments were also received following the public meeting from several participants and 14 other organizations, mostly borrowers.

On March 5, 1993, REA published a proposed rule on lien accommodations and subordinations in the **Federal Register**, at 58 FR 12552. Comments were received from 32 commenters, which included individual distribution and power supply borrowers, groups of borrowers and their legal representatives, the National Rural Electric Cooperative Association, the National G&T Managers Association, the National Rural Utilities Cooperative Finance Corporation, CoBank, and several members of Congress from Indiana.

In general, commenters were supportive of the objectives of the proposed rule and the overall approach taken. A large number of comments were received, however, regarding individual provisions, requirements, procedures, and criteria. All comments received have been considered by REA. The more significant and more frequently received comments are discussed below.

This final rule, as was the proposed rule, is divided into two subparts: subpart R dealing with lien accommodations and subordinations for 100 percent private financing of electric facilities and other purposes, and subpart S dealing with lien accommodations for concurrent supplemental loans required in connection with REA insured loans.

Subpart R

The large majority of comments received pertained to subpart R. These comments are addressed below section by section. Throughout the following discussion of comments, the term, lien accommodation, is used in its generic sense and may refer to both the sharing of the Government's lien and the subordination of the Government's lien.

Section 1717.850 General.

One commenter suggested that the scope of the rule be clarified in § 1717.850(a) by including other approvals related to lien accommodations and subordinations. REA agrees, to the extent such approvals relate to supporting documents and associated loan security documents, and has so revised the paragraph.

One commenter suggested that REA should formally state that "(i) the accommodation or subordination of the Government's lien which results in private financing for REA borrowers; and (ii) in certain circumstances, the reduction of interest expense to an REA borrower are in themselves 'compensating benefits'." REA believes the proposed set of conditions are too broad and would not under all circumstances establish a prima facie case of adequate compensating benefits. The proposed conditions seem to embrace any and all loan purposes, whereas a compensating benefit is required if the lien accommodation is not made under Section 306 of the RE Act for purposes which REA is authorized to finance. Also, a reduction in interest expense may not be an adequate compensating benefit if a refinancing loan significantly increases the borrower's outstanding debt or has a longer weighted average life than the loan being refinanced, or if the refinancing loan has a variable interest rate and the loan to be refinanced has a fixed rate, or if the borrower is required to keep compensating balances with the private lender. While REA disagrees with the proposed conditions, this rule, as in the proposed rule, establishes objective criteria in § 1717.857(a) for advance approval of lien accommodations for refinancing loans, which establish the conditions under which adequate compensating benefits would be provided to the Government.

Several commenters recommended that most or all requirements that are subject to the judgment and discretion of REA should be eliminated, mainly because they could result in delay by REA in approving requests for lien accommodations or subordinations. Those specifically mentioned are contained in § 1717.850(c)(5), § 1717.854(d), § 1717.855(d), § 1717.855(n), § 1717.857(c)(9), and § 1717.858(c)(11). While REA appreciates there may be some concerns on this question, it has no intention of administering these requirements in a way that will cause delays, and it does not believe that such delays will in fact occur. This rule establishes timeframes for REA action on lien accommodation requests, in the case of both advance approval and normal review, and REA is committed to meeting those response times, which were broadly supported by commenters. The number of requirements that are subject to the judgment and discretion of REA have been kept to a minimum, and involve only those cases where REA believes objective criteria alone cannot be fashioned to deal with all possible circumstances.

Several questions were asked as to what was expected of the private lender to ensure that the loan funds are used for the purposes for which the lien accommodation was granted (§ 1717.850(g)). REA expects the private lender to follow prudent business practice in this area. The intent is not to guarantee that every nut and bolt included in the loan request is in fact purchased and put in place, but to ensure that the funds are used effectively to procure or construct productive assets as contemplated in the loan request and the lien accommodation. Some substitution of productive assets may be justified, but the assets obtained and other purposes achieved should fall within reasonable and prudent bounds of the original proposal. All construction of distribution and transmission facilities must be covered by an REA-approved Construction Work Plan (CWP) or CWP amendment.

In fulfilling its responsibilities under § 1717.850(g), the private lender may normally rely mainly on certifications by registered professional engineers and Certified Public Accountants. This is similar to the practice currently followed by some private lenders. If the particular circumstances of an individual case indicate that additional action is reasonably required, the lender would be expected to act accordingly. Section 1717.850(g) has been amended to provide further guidance in this area by listing the certifications and other measures the lender is encouraged to adopt. It has also been clarified that if the lender does not fulfill its responsibility under § 1717.850(g), REA may disqualify the lender from participating in the advance approval options, and may condition the lender's receipt of a lien accommodation or subordination upon the lender providing satisfactory evidence that it will fulfill its responsibility.

Another commenter stated that a lien accommodation should not be challengeable because of the failure of the borrower to meet its obligations under this rule. REA agrees. It should be pointed out that, under § 1717.850(j), failure of the borrower to meet its

obligations under this rule would place the borrower in default under its loan contract. Should this happen, the borrower would not be eligible for advance approval of future lien accommodations under §§ 1717.854 and 1717.857, unless REA concludes that the circumstances that gave rise to the default have been corrected. Also, depending on the seriousness of the noncompliance, REA may require the borrower to take appropriate remedial actions, including, for example, using general funds for system construction or to repay outstanding REA loans. REA may withhold approval of loans, loan advances, lien accommodations, or other borrower requests until the remedial actions have been completed. Some remedial action normally will be required if, in the judgment of REA, the borrower's noncompliance has or will likely have a material, adverse effect on the financial condition of the borrower, the ability of the borrower to provide reliable service at reasonable rates, and/or the repayment or security of REA loans.

A commenter asked whether the statement in § 1717.850(k), that the subpart does not apply to loans guaranteed by REA, means that the subpart does not apply to mortgages securing loans guaranteed by REA. The correct interpretation is that the subpart applies to all REA electric mortgages, but it does not apply to lien accommodations or subordinations sought for loans guaranteed by REA. The latter are covered by REA regulations on guaranteed loans. The paragraph has been revised to make this clear.

One commenter suggested that the provisions in § 1717.850(f), (h), and (i) of regarding safety and performance standards, the waiving of certain REA requirements regarding contracting and procurement procedures, and acceptance of an architect's certification regarding handicapped access to buildings, ought to be extended to the use of general funds in order to avoid unintended incentives to use private financing rather than general funds. REA believes that any unintended incentives would be slight since the availability and cost of internal funds versus private financing are generally more important considerations than the matters addressed in these three paragraphs. Moreover, extension of the application of these paragraphs to the use of general funds is beyond the scope of this rule, and should more appropriately be addressed in other REA regulations.

A commenter recommended that REA allow borrowers to use materials that are equivalent to REA accepted materials, based on manufacturers' specifications. REA disagrees with this recommendation. If a given material is in fact equivalent to an REA accepted material, such material would be eligible for listing. If the determination of equivalence is delegated to others, it would be very difficult for REA to police the system and maintain the materials standards needed to ensure sound construction practices.

One commenter suggested that the separate waivers contained in the rule, which pertain to individual provisions, imply that other provisions not specifically mentioned cannot be waived by REA. That is not a correct interpretation, since the general waiver authority contained in 7 CFR § 1710.4 applies to all REA electric program regulations. To make this clear, however, that general waiver authority has been reiterated in § 1717.850(m).

It was recommended by one commenter that the rule should not apply to lien accommodation requests pending at REA on the effective date of the rule. REA disagrees with this recommendation. The recommendation would deny consideration of advance approval procedures for such pending applications. Also, any hardship imposed on borrowers or private lenders for any application materials not previously required by REA would appear to be slight in comparison to the benefits offered borrowers and private lenders by the requirement that REA act on the applications within the timeframes specified in the rule.

A commenter asked whether the statement in § 1717.850(e) that other co-mortgagees may have the right to approve a lien accommodation meant that REA would not begin processing a lien accommodation request until the other co-mortgagee had approved the request. The answer is, no.

Finally, § 1717.850 has been further amended to make it clear that it is intended that any failure on the part of REA to comply with any of the rule's provisions, such as the timeframes for REA action, shall not give rise to liability of any kind on the part of the Government or any employees of the Government including, without limitation, liability for damages, fees, expenses or costs incurred by or on behalf of any party. This clarification is set forth in § 1717.850(n), and a similar provision has been included in subpart S at § 1717.903.

Section 1717.851 Definitions.

One commenter suggested that "and other permitted investments" be added at the end of the definition of front-end costs. Apparently, the intent of the suggestion is to make it clear that eligible front-end costs are not limited to those associated solely with the construction of eligible facilities, but could also include front-end costs associated with the acquisition, construction, improvement, modification, and replacement of eligible systems, equipment, and facilities. The definition has been modified to clarify this point.

Another suggestion was that eligible front-end costs should include interest during construction. REA agrees that interest accrued during the construction of major projects, such as generation and transmission facilities, should be eligible for a lien accommodation under certain circumstances, but does not agree that such costs would be properly classified as front-end costs. Accordingly, § 1717.852(a) has been amended to include interest during construction of generation and transmission facilities if approved by REA, case by case, depending on the financial condition of the borrower, the terms of the financing, the nature of the construction, the treatment of these costs by regulatory authorities having jurisdiction, and other factors.

Several comments were received asking for clarification of whether transaction costs include certain financing costs, specifically, call premiums and prepayment penalties, bond insurance, and letter of credit fees. They do, and the definition has been amended to make this clear.

Section 1717.852 Financing purposes.

Several comments were received that the purposes defined as being eligible for a lien accommodation were too restrictive. Some commenters said that the proposed rule was more restrictive than past REA practice, e.g., in purportedly excluding headquarters facilities. Some argued that no restrictions should be placed on the purposes eligible for a lien accommodation.

For reasons set out in the proposed rule, REA believes that lien accommodations and subordinations for private loans made directly to a borrower at market rates should basically be limited to investments in the borrower's electric utility business. To allow unrestrained lien accommodations and subordinations for direct debt issued for any and all purposes would present unreasonable financial risks for REA and rural rate payers, and the possibility of undisclosed cross subsidization of non-utility businesses. Recent experience with savings and loan institutions,

health insurance companies, and investor-owned utilities indicates that investments made outside the investor's core business can involve substantial risks, and that the risks tend to increase the further one strays outside the core business into unfamiliar activities.

As to the proposed rule being more restrictive than past REA practice, it was not REA's intention, in general, to exclude specific facilities, equipment, systems, or real estate used in supplying electric power, such as headquarters facilities, which in fact were not excluded, coal handling facilities, transportation systems used to supply fuels used in generation, or other such assets. To make this clear, § 1717.852(a)(1) has been augmented and revised.

Regarding other purposes, such as front-end costs being eligible for a lien accommodation only if the borrower has a binding commitment from the lender to finance the completion of the project, REA believes that the rule is consistent with the policies and practices normally followed by REA in the past.

It was suggested by one commenter that electric facilities located on a customer's premises and included as part of a cogeneration project should be eligible for a lien accommodation. REA is willing to consider granting a lien accommodation or subordination for such electric facilities on a case by case basis. Section 1717.852(b)(ii) has been so revised.

Several commenters recommended that bridge or interim loans should be eligible for a lien accommodation. We disagree. Often the reason for using a bridge loan is that the borrower is unable to meet the requirements for permanent financing. REA believes that loan security and the attendant controls and remedies provided by the mortgage should be reserved for permanent financing provided by lenders that are willing to make a long-term commitment to meeting the credit needs of borrowers. In the case of bridge or interim loans, the lender bears less risk and uncertainty because of the short-term nature of its commitment, and should not expect the mortgage protection provided to lenders willing to make a long-term commitment.

Several parties commented that enhancement of repayment and/or security of REA loans was too high a standard to set for granting an exception to purposes ineligible for a lien accommodation, and recommended adoption of "no impairment" of loan repayment or security. With the changes made in response to public comments, REA believes that § 1717.852 accurately sets forth those purposes that should and should not be eligible for a lien accommodation for loans made directly to borrowers, consistent with the objectives of the RE Act, protection of rural rate payers from undue financial risks, and assurance of adequate security and repayment of REA loans. In many cases, there is a fine line between "no impairment" and "enhancement", and REA believes it is better to exercise caution in this area. However, there was no intention to exclude waivers in cases that may be in the financial interest of the Government, but may not strictly fall under the rubric of enhancement of repayment and/or security of REA loans. Paragraph (b)(2) of § 1717.852 has been modified to address this latter point.

One commenter asked whether the restrictions on eligible purposes apply both to advance approval and normal review. They apply to both.

One commenter recommended that repayment of private sector financing be added at the end of paragraph (b)(1)(i) of § 1717.852. This has been done.

A commenter recommended that "other assets" be added to electric utility assets in § 1717.852(c). REA disagrees, since that would appear to expand lien subordinations to purposes having nothing to do with the borrower's electric utility business, which is prohibited by paragraph (b)(iv) of § 1717.852.

It was recommended by one commenter that bond and debt service reserve funds established for the protection of a private lender and funded as part of the financing arrangements should receive an automatic lien subordination. REA disagrees that it should automatically subordinate its lien on such funds, regardless of how such funds are financed. Automatic subordination by REA would be inconsistent with the principle of a pro rata sharing of the lien of the mortgage. REA will consider such subordinations on a case by case basis, taking into consideration the financial interest of the Government.

Several commenters stated that the 2 percent limit on transaction costs eligible for a lien accommodation was too restrictive. Recommendations ranged from allowing all "reasonable" transaction costs, to raising the limit to 5 or 6 percent, to applying the proposed 2 percent limit only to advance approvals. The 2 percent limit was proposed to prevent borrower's debt from being leveraged up imprudently because of unfettered transaction costs, and to discourage churning of debt, which unfettered transaction costs can induce. These activities have the effect of increasing the borrower's debt burden and diluting REA's security. The proposed limit was based on the 2 percent limit established by law in section 147(g) of the Internal Revenue Code with respect to private-activity tax-exempt financing. That section provides an exception for certain single-family housing bond issues, for which the limit is set at 3.5 percent. Based on the comments received and the guidance provided by Congress on appropriate levels of transaction costs for inclusion in tax-exempt debt issues, the proposed rule has been revised to raise the limit to 3.5 percent.

Section 1717.853 Loan terms and conditions.

Several commenters recommended that there should be no minimum limit on loan maturity, or that it should be one year rather than the 5 years proposed in the proposed rule. One commenter asked whether the limit would prevent the refinancing of debt having a remaining life of less than five years without extending the life of the refinancing loan to 5 years or more. In the latter case, that was not the intention, and § 1717.853(a)(2) has been revised to make that clear. As to the general point, a 5 year minimum maturity should accommodate any conceivable secured financing of long-term assets. In the case of reimbursement agreements, for example, the historical standard in the private letter of credit market is a term-out of 7 to 10 years, with some as low as 5 years in recent years. To allow even shorter maturities in this or other financing would suggest that the party secured is not willing to make a long-term credit commitment and may expect to be taken out ahead of secured long-term lenders in the event of payment default.

Several commenters suggested that weighted average life of the loan be defined. This has been done in § 1717.851.

Several comments were received regarding the proposed limitation of variable rate debt to 15 percent of all outstanding debt. Several commenters suggested that the limit be applied to advance approvals only, while others suggested that the limit be raised, e.g., to 30 percent. Several commenters agreed that the amount of variable rate debt used by borrowers to finance long-term assets is a legitimate concern because short-term rates could increase and jeopardize a borrower's ability to repay its long-term loans, but they opposed placing an absolute limit on such debt.

The 15 percent limit was proposed in an attempt to limit uncertainties about borrowers' future interest costs and the

volatility of those costs. It was based on standards used by the major credit rating firms in judging the credit quality of electric utilities. Based on the comments received, REA agrees that it is difficult to establish an absolute limit that would be appropriate for long periods of time and for all yield curve conditions. Therefore, the rule has been revised to delete the 15 percent limit as an absolute requirement applicable to all lien accommodations and apply it only to advance approvals in §§ 1717.854(c) and 1717.857(a).

One commenter suggested that the condition "usually" be deleted from § 1717.853(b) regarding REA waiver of its right to approve the other lender's loan contract, and that the rule specify the exact conditions under which approval would be waived. REA does not believe that it is possible to be more specific than the conditions set forth in § 1717.853(b), without unduly narrowing the circumstances under which a waiver would be exercised.

A commenter stated that, in the case of advance approvals, it should be presumed that REA will not review the loan contract unless it has withdrawn the borrower's exemption. REA disagrees with this approach since it would require REA to review all 900 or so borrowers at the outset and inform each one of them whether they qualify for a waiver. The small number of lien accommodation requests received each year that are subject to this subpart would not justify this procedure. Moreover, there appears to be little difference between the suggested approach and what was proposed in the proposed rule.

Another commenter recommended that it be made clear that approval timeframes set forth in § 1717.859 include the review and approval of loan contracts and documents required to support the application, such as a CWP. REA agrees and has so amended § 1717.859(a)(5).

Another commenter stated that REA should not waive its right to approve loan terms and conditions based on its familiarity with the lender and the lender's lending practices, since they may change. REA would agree if lender familiarity were the only criterion, but believes this factor is appropriate to consider in conjunction with the other factors set forth in § 1717.853(b).

A commenter suggested that "facilities" be changed to the more inclusive term, "assets" in § 1717.853(a)(1). This has been done.

Section 1717.854 Advance approval—100 percent private financing of distribution, subtransmission, and headquarters facilities.

A number of commenters stated that the rule should include financial and other criteria whereby power supply borrowers could qualify for advance approval of lien accommodations and subordinations. Most recommended specific financial criteria, all of which were substantially less rigorous than those proposed in the proposed rule for distribution borrowers. Most expressed the view that substantially lower financial standards ought to apply to power supply borrowers. One group representing power supply borrowers stated that there were differences of opinion among its members as to what standards were appropriate. As a whole, the comments received raise a number of issues, which could inordinately delay implementation of this rule if addressed herein. REA believes that these issues should be addressed in ongoing efforts to develop one or more standard forms of mortgage for distribution and power supply borrowers.

The financial standards proposed for advance approval of lien accommodations for distribution borrowers received fairly broad support, although several recommendations were made for changes in specific items. The most frequent criticism was that achievement of the Times Interest Earned Ratio (TIER) and Debt Service Coverage (DSC), and the alternative Operating TIER and Operating DSC, should not be required for each of the 3 most recent calendar years. The reason given was that a borrower would have to wait for up to 3 years to be eligible for advance approval if it failed to meet these ratios in a given year. This was seen as unreasonable and unfair since storms or other events beyond the control of the borrower could prevent achievement of the ratios from time to time. Most recommended that the standard ought to be achievement of the ratios for at least 2 out of the past 3 years, or, on the average, for any 2 out of the past 3 years.

While REA appreciates the concerns about possibly having to wait 3 years to be eligible, it has problems with the alternatives proposed. In the first case, a borrower could have met the ratios in the first 2 years of the period but not in the most recent year. If the borrower's financial condition is on a downward trend, this test would give little comfort to the mortgagee. The second alternative proposed is even worse in this respect, since a borrower could have exceeded the required ratios 3 years ago, and not achieved them in either of the two most recent years.

To address the concerns raised, the rule has been amended by adopting a standard used by the National Rural Utilities Cooperative Finance Corporation, namely that the ratios must be met in each of the two most recent calendar years, or in any two consecutive 12 month periods ending within 180 days preceding the issuance of the debt.

The test period of 3 years was proposed in the proposed rule mainly because of some concerns about the robustness of the TIER and DSC tests in the REA mortgage. These coverage ratios allow non-cash margins, i.e., generation and transmission capital credits and other capital credits and patronage dividends, to be included in margins when calculating the ratios.

Such non-cash capital credits cannot be used by a borrower to meet current expenses, and it is uncertain that they will be paid in cash to the borrower in the future and thus be available to meet future expenses. Partly for this reason, the more rigorous tests of Operating TIER and Operating DSC, which are based on only those margins received from electric utility operations, were included as an alternative test in the proposed rule.

In conjunction with reducing the test period from 3 years to 2 years, REA considered substituting Modified TIER and Modified DSC for TIER and DSC, which would exclude capital credits and patronage dividends from margins in calculating the ratios. But since this formulation had not been explicitly set forth in the proposed rule, it was decided to defer further consideration of this alternative to the ongoing work of revising the REA mortgage.

Several criticisms were received regarding the 1.1 net utility plant to long-term debt requirement. Some said that a bondable property test might be considered as an alternative, but that it would likely be more complicated and expensive to implement than the proposed net plant to debt ratio. Several said that the proposed ratio was duplicative of the equity/assets criterion, especially since it applied to existing and new plant rather than just new plant. One commenter criticized the test because it excludes non-utility investments.

REA recognizes that the test is somewhat duplicative of the equity/assets criterion, but it is not an exact substitute. Of the 414 distribution borrowers that had equity of 40 percent of more in 1991, 7 had a ratio of net

utility plant to long-term debt of less than 1.1.

This ratio is intended to winnow out from advance approval those borrowers that are depreciating plant at a rate substantially higher than the rate at which they are amortizing long-term debt. These borrowers raise concerns as to whether they will be able to generate sufficient cash flow in future years from plant depreciation and other sources to meet their debt service requirements. The ratio of 1.1 is a minimal requirement, in part because it is based on long-term debt only, rather than total debt.

As to the ratio being applied to both existing and new utility plant, if the ratio were applied only to new plant, it would be more demanding for every borrower that has a ratio greater than 1.1 for existing plant. Regarding the exclusion of non-utility investments, REA believes that this is appropriate since utility plant represents the primary assets of the borrower and the primary reason for long-term debt. For these reasons, the 1.1 net utility plant/long-term debt ratio has been retained as one of the criteria for advance approval under § 1717.854.

One commenter suggested that deferred debits, which are deducted from equity in calculating the equity/assets ratio in § 1717.854(c)(1), should also be deducted from assets. REA agrees, since the booking of deferred debits has the effect of increasing both equity and total assets. It was also suggested that total assets be defined. Both of these changes have been made. In addition, deferred debits have been redefined as certain deferred current period expenses, since the intent of the adjustment is to avoid rewarding accounting practices that defer current period expenses and, as a result, inflate equity.

Two commenters recommended that the definitions of TIER, DSC, and equity as a percent of assets be adjusted for principal deferments for energy conservation and rural development under Section 12 of the RE Act, and for rural development loans under Section 313 of the RE Act. They argued that these loans involve a note receivable to the borrower and a loan payable to REA in an equal amount. But since accounting principles do not permit the note receivable to offset the loan payable to REA, they felt that borrowers who accepted such loans or principal deferrals would be penalized for participating in these socially desirable programs unless adjustments were made in the calculation of TIER, DSC, and equity percentage.

REA agrees that these energy conservation and rural development programs are socially desirable, but does not believe that additional incentives for participation in these programs need to be provided by adjusting the financial criteria for advance approval of lien accommodations. In the case of rural development, no interest is charged by REA on the loans made under either Section 12 or Section 313, and therefore there is no effect on TIER. In the case of Section 12 deferrals for energy conservation, the interest charged on the deferred principal is the same as that charged on the rest of the loan, so therefore no penalty is imposed.

Principal deferred under Section 12 must be amortized in the case of both rural development and energy conservation loans, but so must the outstanding principal on the rest of the loan. No penalty is evident in this case either. Granted, during the period the deferred principal is being amortized, the borrower's debt service charges will increase by the amount of this amortization, but the effect is so minor that is should not cause a borrower to fail to meet its DSC requirement. Borrowers should not plan their margins so close to the minimum required that minor increases in principal amortization will cause them to default on DSC.

The comments received also argued that the debt service on the REA loan is self-liquidating from the proceeds of the borrower's note receivable. This seems to suggest that such proceeds are more certain than proceeds from electric facilities, and that a note receivable represents better collateral for REA loans than electric facilities. REA disagrees with these views, as well as the suggestion that the note receivable in effect cancels the liability and thus justifies raising equity as a percent of assets by reducing assets by the amount of the note receivable.

Finally, two additional factors need to be considered. First, the borrower and its customers benefit from these energy conservation and rural development programs: in the first case by reducing energy costs and capacity needs, and in the second case by strengthening the borrower's market. Second, the interest subsidy provided under both of the rural development programs is already much greater than that provided for loans to finance electric service, although the latter is essential to rural development and has a proven track record. In view of the benefits received by borrowers from the Section 12 and 313 programs and the substantial subsidies already provided, REA does not believe that further incentives are justified in the form of adjustments to the advance approval criteria.

Several comments were received regarding the requirements in proposed § 1717.854(c)(6), now § 1717.854(c)(5), on accounting, record keeping, financial reports, audits, and irregularities. Some commenters suggested that these requirements were unnecessary, except for the unqualified audit opinion and the resolution of any irregularities. REA disagrees, and believes these provisions are needed to reiterate long-standing REA requirements. Some concerns were expressed that a borrower may be disqualified from advance approval for failure to resolve minor, immaterial infractions. Since this was not the intent, the paragraph has been amended to exclude immaterial infractions.

Several commenters from the state of Indiana objected to the provision which would disqualify a distribution borrower from advance approval if its power supplier were in default to REA. There seems to be some confusion as to the reach of this provision. It applies only to advance approval, and does not disqualify a borrower from receiving a lien accommodation under normal review procedures.

REA believes this provision is appropriate for advance approval. If a borrower's power supplier is in default to REA, it reasonably raises concerns about the reliability of future power supplies and the ability of the borrower to meet unforeseen financial obligations that may result from final resolution of the default by its power supplier. Lien accommodation requests under these circumstances should be reviewed on a case by case basis under the normal review procedures. These requests will be reviewed based on the decision factors set forth in § 1717.850(c), just like other applications reviewed under normal review procedures. The fact that the borrower's power supplier is in default to REA will be considered within the context of those decision factors.

A commenter argued that it is unnecessary to require a resolution from the board that it has agreed to put any required increases in rates into effect as a result of the loan (proposed § 1717.854(c)(3)), since that purpose is accomplished by the required certification in proposed § 1717.854(c)(5) that the borrower is not in default under the mortgage. REA agrees that the mortgage requires borrowers to design rates to meet TIER and DSC, and that any borrower that certifies that it is in compliance with the mortgage is also certifying its compliance with the design of rates provision of the mortgage. Therefore,

the requirement in proposed § 1717.854(c)(3) has been deleted, which in no way reduces a borrower's obligation under the mortgage to design rates to meet its expenses and the required TIER and DSC levels.

One commenter suggested several changes to the meaning of default in § 1717.854(c), which would have a restrictive effect. REA disagrees with the proposed interpretation of default, and has now defined default in § 1717.851 to clarify its meaning.

One commenter suggested that the language in § 1717.854(b) could be interpreted as excluding from advance approval the improvement of facilities already owned by the borrower. That was not intended; the paragraph has been revised to make this clear.

A commenter stated that REA should make it clear that it will not penalize a borrower when considering a lien accommodation request because the borrower has guaranteed debt issued by its power supplier to REA. REA notes that there is nothing in the rule that would impose such a penalty. However, REA does not believe that it would be appropriate to rule out any and all consideration of a borrower's guarantee obligations in deciding whether to approve a lien accommodation.

Section 1717.855—Application contents: advance approval—100 percent private financing of distribution, subtransmission, and headquarters facilities.

Several commenters argued that if a borrower meets the advance approval criteria, REA approval should be considered automatic and would not constitute either a major Federal action or a Federal transaction. Therefore there is no need for environmental reports, debarment and suspension certifications, handicapped access certifications, or other Federal requirements peripheral to a lien accommodation. REA disagrees with this interpretation of the applicable laws and their current implementing regulations. Regarding environmental reports, any changes in the applicability of environmental requirements to lien accommodations would require a thorough reevaluation and revision of REA's environmental regulation, 7 CFR part 1794. This is beyond the scope of this rule.

Since publication of the proposed rule, REA has published final rule 7 CFR 1792 Subpart C, Seismic Safety of New Building Construction. The requirements of that rule are applicable to lien accommodations and subordinations, and these requirements have now been incorporated in this rule.

One commenter noted that REA has not followed a consistent practice of requiring a board resolution adopting a required Borrower Environmental Report or other environmental documents. REA agrees with the comment and has decided to drop the requirement for a board resolution in § 1717.855(f).

A commenter questioned the need for a CWP if the borrower must follow REA construction standards. REA believes that a CWP is needed to ensure sound planning of system design and construction, which is not addressed by individual construction standards. The CWP must meet the requirements of 7 CFR 1710, Subpart F, which requires the borrower to obtain REA approval of the CWP and any amendments. This latter fact is now explicitly reiterated in § 1717.855(h). Also, the written agreement the borrower is required to provide to REA under § 1717.850(f) has been amended to include agreement by the borrower to follow the REA-approved CWP and to obtain prior REA approval in writing of any amendments to the CWP.

Regarding § 1717.855(e), one commenter stated that a lender will not provide a copy of the actual financing instrument prior to the approval of the lien accommodation, and suggested that a draft copy should be adequate. REA disagrees, since its experience is that draft copies go through numerous revisions which delay the approval process. An executed copy of the instrument is not required, but it is necessary that the copy be in final form and the same in substance as the instrument to be executed.

Section 1717.856—Application contents: normal review—100 percent private financing of distribution, transmission and/or generation facilities.

It was suggested by one commenter that the rule include guidance on the preparation of Equity Development Plans (EDP), and also specify the timeframe for approval of the plans. Guidance on the preparation of EDPs is given in 7 CFR 1710.116, which REA plans to amend and augment. As to timeframes for approval, the timeframes set forth in § 1717.859 include the approval of EDPs.

One commenter suggested that the loan size threshold in § 1717.856(c)(4) should be raised from 3 percent of net utility plant to 30 percent when considering a waiver of the requirement for a 10 year financial forecast. REA disagrees with the magnitude of the suggested change. Section 1717.856(c)(4) applies to all facilities, including generation, and also to any distribution or power supply borrower no matter what its financial condition. In most cases such investments ought to be supported by an adequate financial forecast. Upon further consideration, REA has concluded that the proposed limit was more restrictive than it needed to be, and has changed it to the lesser of $10 million or 10 percent of net utility plant.

Another commenter suggested that § 1717.856(c)(2) ought to be dropped, and that a waiver should be presumptive for any borrower meeting the conditions in § 1717 .856(c)(1), (3) and (4). REA disagrees with these comments. Elimination of subparagraph (2) would prevent REA from using the knowledge it has about the borrower and the proposed loan in determining whether to waive the requirement for a financial forecast. Simply because the borrower is current on its financial obligations and has met the mortgage TIER and DSC requirements, and the loan is relatively small, does mean not that the proposed loan will be feasible in all cases.

In § 1717.856(e), clarification was requested as to exactly what is meant by a power cost study. Such study is defined in 7 CFR 1710.303, and that has now been noted in § 1717.851.

Several recommendations were made for changes in the opinion of borrower's counsel required by § 1717.856(a)(2). The comments requested clarification and modification of REA's proposed language that there is no pending litigation and no threatened actions by third parties that would materially adversely affect the borrower's operations and/or financial condition. The language has been clarified to reflect REA's desire to have an opinion of counsel regarding actions or proceedings against the borrower, pending or overtly threatened in writing before any court, governmental agency, or arbitrator. Related changes have also been made to § 1717.854(c)(3). One comment suggested the use of the phrase "overtly threatened or pending litigation." This phrase is too narrow for REA's purpose. As suggested, the opinion will be required to address the merits of the claims asserted in the actions or proceedings, and include, if appropriate, an estimate of the amount or range of any potential loss.

One comment recommended that levels of insurance coverage be a matter to be certified to by the borrower rather than addressed in the opinion of counsel. This change has also been made.

Section 1717.857 Refinancing of existing secured debt—distribution and power supply borrowers.

Several commenters asked for clarification of the meaning of "current refunding" referenced in § 1717.857(a)(1), and recommended that it should include refundings where the proceeds are applied against the old debt within one year of the issuance of the new debt. REA believes that one year goes beyond the usual standard of a current refunding. In the case of tax exempt financing, Section 149(d) of the Internal Revenue Code defines a current refunding as one in which the proceeds of the refunding bond are applied within 90 days of issuance to refund the old bond. This standard has been incorporated into the definition of current refunding in § 1717.851.

Two commenters stated that interest rate derivatives are widely available and should not be unreasonably restricted because they offer borrowers the opportunity to control costs and interest rate risks. REA believes that restricting interest rate derivatives to the normal review process is not an undue restriction. These transactions generally are more complicated and will normally require more time for REA to review than would be possible under advance approval.

Several commenters recommended that the rule specify the discount rate to be used in the present value analysis of costs. They recommended use of the rate on Treasury securities having a maturity equal to the weighted average life of the refunding loan. REA believes that the discount rate used to calculate the present value of costs of the old loan and the refunding loan should reflect the marginal long-term borrowing costs of the borrower. This will normally be higher than the interest rate on Treasury issues of comparable maturity. So long as REA guaranteed Federal Financing Bank (FFB) loans continue to be available, one measure of a borrower's marginal long-term borrowing cost is the rate charged on FFB loans, which is the Treasury rate plus one-eighth percent. Other rates could be justified depending on individual circumstances. Therefore, § 1717.857(a)(4) has been amended to establish a standard discount rate equal to the current rate on Treasury securities having a maturity equal to the weighted average life of the refunding loan, plus one-eighth percent, while allowing an alternative rate to be used if approved by REA based on documentation provided by the borrower as to its marginal long-term borrowing cost.

Two commenters asked for guidance as to how the present value of costs should be calculated as interest rates change pursuant to interest rate options in refinancing transactions. REA does not believe that a single methodology can be prescribed that will be valid for all of the possible situations and variations. If the old loan or the refinancing loan involve variable or floating interest rates, assumptions made about the future course of these rates will have to be judged on a case by case basis.

Section 1717.858 Lien subordination for rural development investments.

One power supply borrower applauded REA's policy of encouraging subsidiaries for rural development investments in order to separate the financial risks and discourage undisclosed subsidies of such investments by rural rate payers. It was also suggested that REA should drop its requirement for consolidated financial reports so as not to require rural rate payers to subsidize such investments. While this suggestion is outside the scope of this rule, it should be noted that generally accepted accounting principles require the consolidation of the financial statements of all majority-held subsidiaries (at least 50 percent ownership) with the financial statement of the parent.

Section 1717.859 Application process and timeframes.

One commenter recommended that a timeframe be established for the general field representative (GFR) to forward an application to headquarters or return it to the borrower with deficiencies noted. REA considered establishing a timeframe for these activities but concluded that it would be impractical to do so in this rule because a GFR has no backup and must have greater flexibility to juggle his or her work load. REA will address this issue in its internal staff instructions.

A commenter recommended that the various notifications provided the borrower regarding its lien accommodation application also be provided to the private lender. REA agrees and has so amended § 1717.859(a).

One commenter asked whether the timeframes include legal advice or other input needed from the Office of General Counsel. They do.

In order for all parties to know when the time period begins, one commenter recommended that REA inform the applicant within 15 days of receipt of the initial application of whether the application is complete and, if not, the information needed. This rule, as was originally proposed, provides for the notification recommended by the commenter, although in some cases more than 15 days is allowed. Section 1717.859(a) requires REA to notify borrowers in writing when their applications are complete and in form and substance satisfactory to REA. Elsewhere in § 1717.859, REA commits to notifying the borrower in writing within 15, 20, or 30 days of receipt of the application, depending on the type of application, of any information needed for completion.

Subpart S

In § 1717.901(a)(2), it was recommended that the type of evidence be specified that is needed to demonstrate the availability of alternative financing to complete a project if the REA concurrent financing is not forthcoming. REA agrees, and has so amended the paragraph.

A commenter stated that REA should be willing to lien accommodate for the entire amount of the concurrent supplemental loan under the early approval process, since the private lender may be required to commit financing for the entire project in the event the REA concurrent loan is not forthcoming. REA agrees that the lender's commitment to provide the additional funds should not be binding if REA is not willing to provide a lien accommodation for those funds. Section 1717.901(a)(2) has been revised to make it clear that such financing commitment given by a private lender would be conditioned upon the availability of a lien accommodation from REA.

One commenter asked whether the 90 days allowed for early approval of a lien accommodation for supplemental financing also included the approval of the CWP. It does.

List of Subjects in 7 CFR Part 1717

Administrative practice and procedure, Electric power, Electric utilities, Intergovernmental relations, Investments, Lien accommodation, Lien subordination, Loan programs-energy, Reporting and recordkeeping requirements, Rural development.

For reasons explained in the preamble, REA amends 7 CFR chapter XVII by amending part 1717 as follows:

PART 1717—POST-LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED ELECTRIC LOANS

1. The authority citation for part 1717 continues to read as follows:

Authority: 7 U.S.C. 901–950b; Delegation of Authority by the Secretary of Agriculture, 7 CFR 2.23; Delegation of Authority by the

Under Secretary for Small Community and Rural Development, 7 CFR 2.72, unless otherwise noted.

2. Subparts O through Q are added and reserved and subparts R and S are added to read as follows:

Subpart O—[Reserved]

Sec.
1717.700–1717.749 [Reserved]

Subpart P—[Reserved]

1717.750–1717.799 [Reserved]

Subpart Q—[Reserved]

1717.800–1717.849 [Reserved]

Subpart R—Lien Accommodations and Subordinations for 100 Percent Private Financing

1717.850 General.
1717.851 Definitions.
1717.852 Financing purposes.
1717.853 Loan terms and conditions.
1717.854 Advance approval—100 percent private financing of distribution, subtransmission, and headquarters facilities.
1717.855 Application contents: Advance approval—100 percent private financing of distribution, subtransmission, and headquarters facilities.
1717.856 Application contents: Normal review—100 percent private financing of distribution, transmission and/or generation facilities.
1717.857 Refinancing of existing secured debt—distribution and power supply borrowers.
1717.858 Lien subordination for rural development investments.
1717.859 Application process and timeframes.
1717.860–1717.899 [Reserved]

Subpart S—Lien Accommodations for Supplemental Financing Required by 7 CFR 1710.110

1717.900 Qualification requirements.
1717.901 Early approval.
1717.902 Other REA requirements.
1717.903 Liability.
1717.904–1717.949 [Reserved]

Subpart O—[Reserved]

§§ 1717.700–1717.749 [Reserved]

Subpart P—[Reserved]

§§ 1717.750–1717.799 [Reserved]

Subpart Q—[Reserved]

§§ 1717.800–1717.849 [Reserved]

Subpart R—Lien Accommodations and Subordinations for 100 Percent Private Financing

§ 1717.850 General.

(a) *Scope.* This subpart R establishes policies and procedures for the accommodation, subordination or release of the Government's lien on borrower assets, including approvals of supporting documents and related loan security documents, in connection with 100 percent private sector financing of facilities and other purposes. Policies and procedures regarding lien accommodations for concurrent supplemental financing required in connection with an REA insured loan are set forth in subpart S of this part.

(b) *Overall policy.* Consistent with prudent lending practices, the maintenance of adequate security for REA's loans, and the objectives of the Rural Electrification Act (RE Act), it is the policy of REA to provide effective and timely assistance to borrowers in obtaining financing from other lenders for electric facilities, equipment and systems by sharing REA's lien on a borrower's assets, and in certain circumstances by subordinating REA's lien on specific assets financed by other lenders. It is also the policy of REA to provide effective and timely assistance to borrowers in promoting rural development by subordinating REA's lien for financially sound rural development investments under the conditions set forth in § 1717.858.

(c) *Decision factors.* In determining whether to accommodate, subordinate, or release its lien on property pledged by the borrower under the REA mortgage, REA will consider the effects of such action on the achievement of the purposes of the RE Act, the repayment and security of REA loans secured by the mortgage, and other factors set forth in this subpart. The following factors will be considered in assessing the effects on the repayment and security of REA loans:

(1) The value of the added assets compared with the amount of new debt to be secured;

(2) The value of the assets already pledged under the mortgage, and any effects of the proposed transaction on the value of those assets;

(3) The ratio of the total outstanding debt secured under the mortgage to the value of all assets pledged as security under the mortgage;

(4) The borrower's ability to repay debt owed to the Government, as indicated by the following factors:

(i) Revenues, costs (including interest, lease payments and other debt service costs), margins, Times Interest Earned Ratio (TIER), Debt Service Coverage (DSC), and other case-specific economic and financial factors;

(ii) The variability and uncertainty of future revenues, costs, margins, TIER, DSC, and other case-specific economic and financial factors;

(iii) Future capital needs and the ability of the borrower to meet those needs at reasonable cost;

(iv) The ability of the borrower's management to manage and control its system effectively and plan for future needs; and

(5) Other factors that may be relevant in individual cases, as determined by REA.

(d) *Environmental considerations.* Under certain circumstances, such as when the project does not qualify for a categorical exclusion, the environmental requirements of 7 CFR part 1794 may apply to applications for lien accommodations, subordinations, and releases.

(e) *Co-mortgagees.* Other mortgagees under existing mortgages shared with REA may have the right to approve requests for lien accommodations, subordinations and releases. In those cases, borrowers would have to obtain the approval of such mortgagees in order for the lien of the mortgage to be accommodated, subordinated or released. Any reference in this subpart to waiving by REA of any of its rights under the mortgage shall apply only to the rights of REA and shall not apply to the rights of any other co-mortgagee.

(f) *Safety and performance standards.* (1) In the case of distribution and transmission facilities financed by a loan that is lien accommodated or subordinated under this subpart, the borrower, through an authorized official, must provide REA with a written agreement that it will:

(i) Comply with the National Electrical Safety Code, in accordance with 7 CFR 1724.41;

(ii) Use only materials for distribution and transmission facilities that have been determined by REA to be acceptable, as required by 7 CFR 1728.70(a) and (b), or if such materials are not available, use materials approved by a registered professional engineer;

(iii) Comply with standards for construction established by REA, such as those in 7 CFR 1728.97, except as otherwise provided in 7 CFR 1724.45;

(iv) Follow the REA-approved Construction Work Plan (CWP) applicable to the loan and obtain prior written approval from REA for any amendments to the CWP; and

(v) Within 90 days of completion of construction, provide to REA a certification from a registered professional engineer that the facilities have been constructed pursuant to an REA-approved CWP or REA-approved CWP amendment and in conformance with REA construction and materials standards, as required by paragraphs (f)(1)(i), (ii) and (iii) of this section. If all of the construction financed by the loan is covered by certifications provided to

the private lender under paragraph (g)(1)(ii) of this section, a borrower may meet the requirements of this paragraph (f)(1)(v) by providing to REA a copy of all such certifications.

(2) REA "Buy American" requirements shall not apply.

(g) *Advance of funds.* (1) The advance of funds from 100 percent private loans lien accommodated or subordinated by REA will not be subject to REA approval. It is the private lender's responsibility to adopt reasonable measures to ensure that such loan funds are used for the purposes for which the loan was made and the lien accommodation or subordination granted. REA encourages lenders to adopt the following measures:

(i) Remit loan advances to a separate subaccount of the Cash-Construction Fund-Trustee Account;

(ii) Obtain a certification from a registered professional engineer, for each year during which funds from the separate subaccount are utilized by the borrower, that all materials and equipment purchased and facilities constructed during the year from said funds comply with REA safety and performance standards, as required by paragraph (f) of this section, and are included in an REA-approved CWP or REA-approved CWP amendment;

(iii) Obtain an auditor's certification from a Certified Public Accountant, for each year during which funds are advanced to or remitted from the separate subaccount, certifying:

(A) The amount of loan funds advanced to and remitted from the separate subaccount during the period of review;

(B) That based on the auditor's review of construction work orders and other records, all moneys disbursed from the separate subaccount during the period of review were used for purposes contemplated in the loan agreement and the lien accommodation; and

(iv) Immediately notify REA in writing if the lender is unable to obtain the certifications cited in paragraphs (g)(1)(ii) and (g)(1)(iii) of this section.

(2) The measures listed in paragraph (g)(1) of this section will normally be sufficient to meet the lender's responsibility provided that additional measures are not reasonably required based on the particular circumstances of an individual case. Should a lender fail to carry out its responsibility in the manner described in this paragraph (g) or in another manner acceptable to REA, REA may disqualify such lender from participation in advance approval under §§ 1717.854 and 1717.857 and condition the lender's receipt of a lien accommodation or subordination upon the lender providing satisfactory evidence that it will fulfill its responsibility under this paragraph (g).

(h) *Contracting and procurement procedures.* (1) Facilities financed with debt obtained entirely from non-REA sources, without an REA loan guarantee, are not subject to REA post-loan requirements regarding contracting, procurement and bidding procedures; contract close-out procedures pertaining to project completion, final payment of contractor, and related matters; and standard forms of construction and procurement contracts listed in 7 CFR 1726.300.

(2) To the extent that provisions in a borrower's loan contract or mortgage in favor of REA may be inconsistent with paragraphs (g)(1) and (h)(1) of this section, paragraphs (g)(1) and (h)(1) of this section are intended to constitute an approval or waiver under the terms of such instruments, and in any regulations implementing such instruments, with respect to facilities financed with debt obtained entirely from non-REA sources without an REA guarantee. Specifically, the following requirements customarily found in typical REA loan instruments and in implementing regulations are deemed satisfied or not applicable:

(i) All provisions in Loan Contract Article II, entitled "Advances and Disposition of Funds";

(ii) Those provisions in Loan Contract Article III, entitled "Construction," found in sections 1, 2 or 3 and respectively concerning limitations on the use of force account construction, requirements to use REA approved construction contracts, or requirements to use competitive bidding;

(iii) Those provisions in Loan Contract Article IV, entitled "Particular Covenants," found in sections 1, 2, 3, 9, 10, 14 or 16 and concerning the following matters: approval of depositories and engineers, plans and specifications, construction contracts, materials, and equipment and supplies contracts; delivery of contractor's and subcontractor's bonds; procedures for energizing the system; clauses for inclusion in contracts for federally assisted construction; or requirements for approval of evidence of the Borrower's right, title or interest in real property being acquired or improved by the Borrower; and

(iv) Those provisions in Mortgage Article II, entitled "Particular Covenants of the Mortgagor," found in Section 10 thereof and concerning approval of extensions and improvements to the system, other than extensions or improvements related to serving any consumer having an anticipated demand in excess of 1,000 kilowatts, and provisions concerning approval of expenses for legal, engineering, supervisory, accounting or other similar expenses.

(i) *Access of handicapped to buildings and seismic safety.* A borrower must meet the following requirements to be eligible for a lien accommodation or subordination for 100 percent private financing of the construction of buildings:

(1) The borrower must provide REA with a certification by the project architect that the buildings will be designed and constructed in compliance with Section 504 of the Rehabilitation Act of 1973 as amended (29 U.S.C. 794), as applicable under that Act, and that the facilities will be readily accessible to and usable by persons with handicaps in accordance with the Uniform Federal Accessibility Standards (UFAS), (Appendix A to 41 CFR part 101.19, subpart 101–19.6). The certification must be included in the borrower's application for a lien accommodation or subordination. In addition to these requirements, building construction may also be subject to requirements of The Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*); and

(2) The borrower must comply with REA's seismic safety requirements set forth in 7 CFR part 1792, subpart C.

(j) *Breach of warranty.* Any breach of any warranty or agreement or any material inaccuracy in any representation, warranty, certificate, document, or opinion submitted pursuant to this subpart, including, without limitation, any agreement or representation regarding the use of funds from loans lien accommodated or subordinated pursuant to this subpart, shall constitute a default by the borrower under the terms of its loan agreement with REA.

(k) *Guaranteed loans.* The provisions of this subpart do not apply to lien accommodations or subordinations sought for loans guaranteed by REA. Such lien accommodations and subordinations are governed by REA regulations on guaranteed loans.

(l) *Release of lien.* To avoid repetition, release of lien is not mentioned in every instance where it may be an acceptable alternative to subordination of REA's lien. Generally, lien subordination is favored over release of lien, and any decision to release REA's lien is at the sole discretion of REA.

(m) *Waiver authority.* Consistent with the RE Act and other applicable laws, any requirement or restriction imposed by this subpart, or subpart S of this part, on a borrower or private lender may be waived or reduced by the

Administrator, if the Administrator determines that said action is in the Government's financial interest.

(n) *Liability.* It is the intent of this subpart that any failure on the part of REA to comply with any provisions hereof, including without limitation, those provisions setting forth specified timeframes for action by REA on applications for lien accommodations or lien subordinations, shall not give rise to liability of any kind on the part of the Government or any employees of the Government including, without limitation, liability for damages, fees, expenses or costs incurred by or on behalf of a borrower, private lender or any other party.

§ 1717.851 Definitions.

Terms used in this subpart have the meanings set forth in 7 CFR 1710.2. References to specific REA forms and other REA documents, and to specific sections or lines of such forms and documents, shall include the corresponding forms, documents, sections and lines in any subsequent revisions of these forms and documents. In addition to the terms defined in 7 CFR 1710.2, the following terms have the following meanings for the purposes of this subpart:

Borrower's financial and statistical report means REA Form 7, Parts A through D, for distribution borrowers, and REA Form 12a for power supply borrowers.

Calendar day means any day of the year, except a Federal holiday that falls on a work day.

Current refunding means any refunding of debt where the proceeds of the new debt are applied to refund the old debt within 90 days of the issuance of the new debt.

Default under the REA mortgage, loan contract, restructuring agreement, or any other agreement between the borrower and REA means any event of default or any event which, with the giving of notice or lapse of time or both, would become an event of default.

Equity, less deferred expenses, means Line 33 of Part C of REA Form 7 less assets properly recordable in Account 182.2, Unrecovered Plant and Regulatory Study Costs, and Account 182.3, Other Regulatory Assets.

Front-end costs means the reasonable cost of engineering, architectural, environmental and other studies and plans needed to support the construction of facilities and other investments eligible for a lien accommodation or subordination under this subpart.

Lien accommodation means the sharing of the Government's (REA's) lien on property, usually all property, covered by the lien of the REA mortgage.

Lien subordination means allowing another lender to take a first mortgage lien on certain property covered by the lien of the REA mortgage, and the Government (REA) taking a second lien on such property.

Net utility plant means Part C, Line 5 of REA Form 7 (distribution borrowers) or Section B, Line 5 of REA Form 12a (power supply borrowers).

ODSC means Operating Debt Service Coverage calculated as:

$$ODSC = \frac{A + B + C}{D}$$

where:

A = Depreciation and Amortization Expense, which equals Part A, Line 12 of REA Form 7;

B = Interest on Long-term Debt, which equals Part A, Line 15 of REA Form 7, except that Interest on Long-term debt shall be increased by 1/3 of the amount, if any, by which the rentals of Restricted Property (Part M, Line 3 of REA Form 7) exceeds 2 percent of Total Margins and Equities (Part C, Line 33 of REA Form 7);

C = Patronage Capital & Operating Margins, which equals Part A, Line 20 of REA Form 7; and

D = Debt Service Billed (REA + other) which equals all interest and principal billed during the calendar year plus 1/3 of the amount, if any, by which the rentals of Restricted Property (Part M, Line 3 of REA Form 7) exceeds 2 percent of Total Margins and Equities (Part C, Line 33 of REA Form 7).

OTIER means Operating Times Interest Earned Ratio calculated as:

$$OTIER = \frac{A + B}{A}$$

where:

A = Interest on Long-term Debt, which equals Part A, Line 15 of REA Form 7, except that Interest on Long-term debt shall be increased by 1/3 of the amount, if any, by which the rentals of Restricted Property (Part M, Line 3 of REA Form 7) exceeds 2 percent of Total Margins and Equities (Part C, Line 33 of REA Form 7); and

B = Patronage Capital and Operating Margins, which equals Part A, Line 20 of REA Form 7.

Power cost study means the study defined in 7 CFR 1710.303.

Total assets, less deferred expenses means Line 26 of Part C of REA Form 7 less assets properly recordable in Account 182.2, Unrecovered Plant and Regulatory Study Costs, and Account 182.3, Other Regulatory Assets.

Total outstanding long-term debt means Part C, Line 38 of REA Form 7.

Transaction costs means the reasonable cost of legal advice, accounting fees, filing fees, recording fees, call premiums and prepayment penalties, financing costs (including, for example, underwriting commissions, letter of credit fees and bond insurance), and printing associated with borrower financing.

Weighted average life of the loan means the average life of the loan based on the proportion of original loan principal paid during each year of the loan. It shall be determined by calculating the sum of all loan principal payments, expressed as a fraction of the original loan principal amount, times the number of years and fractions of years elapsed at the time of each payment since issuance of the loan. For example, given a $5 million loan, with a maturity of 5 years and equal principal payments of $1 million due on the anniversary date of the loan, the weighted average life would be: (.2)(1 year) + (.2)(2 years) + (.2)(3 years) + (.2)(4 years) + (.2)(5 years) = .2 years + .4 years + .6 years + .8 years + 1.0 years = 3.0 years. If instead the loan had a balloon payment of $5 million at the end of 5 years, the weighted average life would be: ($5 million/$5 million)(5 years) = 5 years.

§ 1717.852 Financing purposes.

(a) *Purposes eligible.* The following financing purposes, except as excluded in paragraph (b) of this section, are eligible for a lien accommodation from REA, or in certain circumstances a subordination of REA's lien on specific assets, provided that all applicable provisions of this subpart are met:

(1) The acquisition, construction, improvement, modification, and replacement (less salvage value) of systems, equipment, and facilities, including real property, used to supply electric power to:

(i) RE Act beneficiaries; and/or

(ii) End-user customers of the borrower who are not beneficiaries of the RE Act. Such systems, equipment, and facilities include those listed in 7 CFR 1710.251(c) and 1710.252(c), as well as others that are determined by REA to be an integral component of the borrower's system of supplying electric power to consumers, such as, for example, coal mines, coal handling facilities, and railroads and other transportation systems that supply fuel for generation;

(2) The purchase, rehabilitation and integration of existing distribution

facilities, equipment and systems, and associated service territory;

(3) Front-end costs, when and as the borrower has obtained a binding commitment from the non-REA lender for the financing required to complete the procurement or construction of the facilities;

(4) Transaction costs included as part of the cost of financing assets or refinancing existing debt, provided, however, that the amount of transaction costs eligible for lien accommodation or subordination normally shall not exceed 3.5 percent of the principal amount of financing or refinancing provided, net of all transaction costs;

(5) The refinancing of existing debt secured under the mortgage;

(6) Interest during construction of generation and transmission facilities if approved by REA, case by case, depending on the financial condition of the borrower, the terms of the financing, the nature of the construction, the treatment of these costs by regulatory authorities having jurisdiction, and such other factors deemed appropriate by REA; and

(7) Lien subordinations for certain rural development investments, as provided in § 1717.858.

(b) *Purposes ineligible.* (1) Except as provided in paragraph (b)(2) of this section, the following financing purposes are not eligible for a lien accommodation or subordination from REA:

(i) Working capital, including operating funds, unless in REA's judgment the working capital is required to ensure the repayment of REA loans and/or other loans secured under the mortgage;

(ii) Electric facilities, equipment, appliances, or wiring located inside the premises of the consumer, except:

(A) Certain load-management equipment (see 7 CFR 1710.251(c)(11)); and

(B) As determined by REA on a case by case basis, electric facilities included as part of certain cogeneration projects to furnish electric power to end-user customers of the borrower;

(iii) Investments in a lender required of the borrower as a condition for obtaining financing; and

(iv) Debt incurred by a distribution or power supply borrower for investment in projects other than the borrower's primary business of supplying electric power to its members and consumers, except for certain rural development investments eligible for a lien subordination under § 1717.858.

(2) REA may, at its sole discretion, grant an exception to any of the restrictions on accommodating or subordinating its lien on a borrower's property set forth in paragraphs (a) and (b)(1) of this section, if REA determines that the accommodation or subordination will enhance the repayment and/or security of loans made by REA to the borrower, or is otherwise in the financial interest of the Government.

(c) *Lien subordination for electric utility investments.* REA will consider subordinating its lien on specific electric utility assets financed by the lender, when the assets can be split off without materially reducing the stability, safety, reliability, operational efficiency, or liquidation value of the rest of the system.

§ 1717.853 Loan terms and conditions.

(a) *Terms and conditions.* A loan, bond or other financing instrument, for which a lien accommodation or subordination is requested from REA, must comply with the following terms and conditions:

(1) The maturity of the loan or bond used to finance facilities or other capital assets must not exceed the weighted average of the expected remaining useful lives of the assets being financed;

(2) The loan or bond must have a maturity of not less than 5 years, except for loans or bonds used to refinance debt that has a remaining maturity of less than 5 years;

(3) The principal of the loan or bond must be amortized at a rate that will yield a weighted average life not greater than the weighted average life that would result from level payments of principal and interest; and

(4) The loan, or any portion of the loan, may bear either a variable (set annually or more frequently) or a fixed interest rate.

(b) *REA approval.* Loan terms and conditions and the loan agreement between the borrower and the lender are subject to REA approval. However, REA will usually waive its right of approval for distribution borrowers that meet the conditions for advance approval of a lien accommodation or subordination set forth in § 1717.854. REA may also waive its right of approval in other cases. REA's decision to waive its right of approval will depend on the adequacy of security for REA's loans, the current and projected financial strength of the borrower and its ability to meet its financial obligations, REA's familiarity with the lender and its lending practices, whether the transaction is ordinary or unusual, and the uncertainty and credit risks involved in the transaction.

§ 1717.854 Advance approval—100 percent private financing of distribution, subtransmission, and headquarters facilities.

(a) *Policy.* All requests for a lien accommodation or subordination from distribution borrowers for 100 percent private financing of distribution, subtransmission, and headquarters facilities that meet the conditions of this section and all other applicable provisions of this subpart, qualify for advance approval by REA. Advance approval means REA will approve these requests once REA is satisfied that the conditions of this section and all other applicable provisions of this subpart have been met.

(b) *Eligible purposes.* Lien accommodations or subordinations for the financing of distribution, subtransmission, and headquarters facilities, except the purchase of existing facilities and associated service territory, are eligible for advance approval.

(c) *Qualification criteria.* To qualify for advance approval, the following requirements, as well as all other applicable requirements of this subpart, must be met:

(1) The borrower meets at least one of the following two criteria:

(i) The ratio of the borrower's equity, less deferred expenses, to total assets, less deferred expenses, is at least 40 percent at the time of the lien accommodation request, and is not less than 37 percent after taking into account the effect of the proposed loan, and the borrower has achieved a TIER of at least 1.5 and a DSC of at least 1.25 for each of the 2 calendar years immediately preceding, or any 2 consecutive 12 month periods ending within 180 days immediately preceding, the issuance of the debt; or

(ii) The ratio of the borrower's equity, less deferred expenses, to total assets, less deferred expenses, is at least 35 percent at the time of the lien accommodation request, and is not less than 32 percent after taking into account the effect of the proposed loan, and the borrower has achieved an operating TIER (OTIER) of at least 1.5 and an operating DSC (ODSC) of at least 1.25 for each of the 2 calendar years immediately preceding, or any 2 consecutive 12 month periods ending within 180 days immediately preceding, the issuance of the debt;

(2) The borrower's net utility plant as a ratio to total outstanding long-term debt, after taking into consideration the effect of the proposed loan and associated plant additions, is not less than 1.1;

(3) There are no actions or proceedings against the borrower, pending or overtly threatened in writing before any court, governmental agency, or arbitrator that would materially adversely affect the borrower's operations and/or financial condition;

(4) The borrower is current on all debt payments and all other financial obligations, and is not in default under the REA mortgage, the REA loan contract, the borrower's wholesale power contract, any debt restructuring agreement, or any other agreement with REA;

(5) The borrower has:

(i) Submitted the annual auditor's report, report on compliance, report on internal controls, and management letter in accordance with 7 CFR part 1773;

(ii) Received an unqualified opinion in the most recent auditor's report;

(iii) Resolved all material findings and recommendations made in the most recent Loan Fund and Accounting Review;

(iv) Resolved all material findings and recommendations made in the most recent financial statement audit, including those material findings and recommendations made in the report on internal control, report on compliance, and management letter;

(v) Resolved all outstanding material accounting issues with REA; and

(vi) Resolved any significant irregularities to REA's satisfaction;

(6) If the borrower has a power supply contract with a power supply borrower, the power supply borrower is current on all debt payments and all other financial obligations, and is not in default under the REA mortgage, the loan contract, any debt restructuring agreement, or any other agreement with REA; and

(7) The amount of outstanding debt having an effective variable interest rate (set annually or more frequently), taking into consideration the debt covered by the application for a lien accommodation or subordination, does not exceed 15 percent of all outstanding debt of the borrower.

(d) *Right of normal review reserved.* REA reserves the right to review any request for lien accommodation or subordination under its normal review process rather than under advance approval procedures if REA, in its sole discretion, determines there is reasonable doubt as to whether the requirements of paragraphs (b) and (c) of this section have been or will be met, or whether the borrower will be able to meet all of its present and future financial obligations.

§ 1717.855 Application contents: Advance approval—100 percent private financing of distribution, subtransmission, and headquarters facilities.

Applications for a lien accommodation or subordination that meet the requirements of § 1717.854 must include the following information and documents:

(a) The agreement regarding safety and performance standards and adherence to an REA-approved CWP required by § 1717.850(f), combined with a certification by an authorized official of the borrower that the borrower and, as applicable, the loan are in compliance with all conditions set forth in § 1717.854(c) and all applicable provisions of §§ 1717.852 and 1717.853;

(b) A resolution of the borrower's board of directors requesting the lien accommodation or subordination and including the amount and maturity of the proposed loan, a general description of the facilities or other purposes to be financed, the name and address of the lender, and an attached term sheet summarizing the terms and conditions of the proposed loan;

(c) The borrower's financial and statistical report, the data in which shall not be more than 60 days old when the complete application is received by REA;

(d) Draft copy of any new mortgage or mortgage amendment (supplement) required by REA or the lender, unless REA has notified the borrower that it wishes to prepare these documents itself;

(e) A copy of the loan agreement, loan note, bond or other financing instrument, unless REA has notified the borrower that these documents need not be submitted;

(f) Borrower's environmental report and/or other environmental documentation, if required by 7 CFR part 1794;

(g) REA Form 740c, Cost Estimates and Loan Budget for Electric Borrowers, and REA Form 740g, Application for Headquarters Buildings;

(h) A CWP or CWP amendment covering the proposed project, in accordance with 7 CFR part 1710, subpart F, and subject to REA approval, and a resolution of the borrower's board of directors adopting the CWP;

(i) The certification by the project architect for any buildings to be constructed, as required by § 1717.850(i);

(j) A certification by an authorized official of the borrower that flood hazard insurance will be obtained for the full value of any buildings, or other facilities susceptible to damage if flooded, that will be located in a flood hazard area;

(k) Form AD-1047, Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions, as required by 7 CFR part 3017;

(l) A report by the borrower stating whether or not it is delinquent on any Federal debt, and if delinquent, the amount and age of the delinquency and the reasons therefor; and a certification, if not previously provided, that the borrower has been informed of the Government's collection options;

(m) The written acknowledgement from a registered engineer or architect regarding compliance with seismic provisions of applicable model codes for any buildings to be constructed, as required by 7 CFR 1792.104; and

(n) Other information that REA may require to determine whether all of the applicable provisions of this subpart have been met.

§ 1717.856 Application contents: Normal review—100 percent private financing of distribution, transmission and/or generation facilities.

Applications for a lien accommodation or subordination for 100 percent financing of distribution, transmission, and/or generation facilities (including other eligible electric utility purposes) that do not meet the requirements of § 1717.854, must include the following information and documents:

(a) The certification regarding safety and performance standards required by § 1717.850(f) (if the financing is for distribution or transmission facilities), combined with a certification by an authorized official of the borrower that:

(1) The borrower and, as applicable, the loan are in compliance with all applicable provisions of §§ 1717.852 and 1717.853; and

(2) There are no actions or proceedings against the borrower, pending or overtly threatened in writing before any court, governmental agency, or arbitrator that would materially adversely affect the borrower's operations and/or financial condition. If this certification cannot be made, the application must include:

(i) An opinion of borrower's counsel regarding any actions or proceedings against the borrower, pending or overtly threatened in writing before any court, governmental agency, or arbitrator that would materially adversely affect the borrower's operations and/or financial condition. The opinion shall address the merits of the claims asserted in the actions or proceedings, and include, if appropriate, an estimate of the amount or range of any potential loss; and

(ii) A certification by an authorized official of the borrower as to the amount

of any insurance coverage applicable to any loss that may result from the actions and proceedings addressed in the opinion of borrower's counsel;

(b) The information and documents set forth in § 1717.855 (b) through (n);

(c) A long-range financial forecast providing financial projections for at least 10 years, which demonstrates that the borrower's system is economically viable and that the proposed loan is financially feasible, and a resolution of the borrower's board of directors adopting the long-range financial forecast. The financial forecast must comply with the requirements of 7 CFR part 1710 subpart G. REA may, in its sole discretion, waive the requirement of this paragraph that a long range financial forecast be provided, if:

(1) The borrower is current on all of its financial obligations and is in compliance with all requirements of its mortgage and loan agreement with REA;

(2) In REA's judgment, granting a lien accommodation or subordination for the proposed loan will not adversely affect the repayment and security of outstanding debt of the borrower owed to or guaranteed by REA;

(3) The borrower has achieved the TIER and DSC levels required by its mortgage in each of the two most recent calendar years; and

(4) The amount of the proposed loan does not exceed the lesser of $10 million or 10 percent of the borrower's current net utility plant;

(d) Equity development plan. A borrower must submit a new or revised equity development plan, and a resolution of its board of directors adopting the plan, if the borrower's equity, as defined in 7 CFR 1710.2, as a percentage of total assets is less than 40 percent (distribution borrowers) or less than 20 percent or some higher percentage based on the borrower's particular financial circumstances and needs (power supply borrowers), after taking into consideration the effects of the proposed loan on the borrower's balance sheet. Such borrowers are subject to the requirements of 7 CFR 1710.116;

(e) As applicable to the type of facilities being financed, a CWP, related engineering and cost studies, a power cost study, and a resolution of the borrower's board of directors adopting these documents. These documents must meet the requirements of 7 CFR part 1710, subpart F and, as applicable, subpart G;

(f) Unless the requirement has been waived in writing by REA, a current, REA-approved power requirements study, which must meet the requirements of 7 CFR part 1710, subpart E, to the same extent as if the loan were being made by REA, and a resolution of the borrower's board of directors adopting the study; and

(g) A discussion of the borrower's compliance with REA requirements on accounting, financial reporting, record keeping, and irregularities (see § 1717.854(c)(5)). REA will review the case and determine the effect of any noncompliance on the feasibility and security of REA's loans, and whether the requested lien accommodation or subordination can be approved.

§ 1717.857 Refinancing of existing secured debt—distribution and power supply borrowers.

(a) *Advance approval.* All applications for a lien accommodation or subordination for the refinancing of existing secured debt that meet the qualification criteria of this paragraph, except applications from borrowers in default under their mortgage or loan contract with REA, are eligible for advance approval. Such lien accommodations and subordinations are deemed to be in the Government's interest, and REA will approve them once REA is satisfied that the requirements of this paragraph and paragraph (c) of this section have been met. The qualification criteria are as follows:

(1) The refinancing is a current refunding and does not involve interest rate swaps, forward delivery contracts, or similar features;

(2) The principal amount of the refinancing loan does not exceed the sum of the outstanding principal amount of the debt being refinanced plus the amount of transactions costs included in the refinancing loan that are eligible for lien accommodation or subordination under § 1717.852(a)(4);

(3) The weighted average life of the refinancing loan is not greater than the weighted average remaining life of the loan being refinanced;

(4) The present value of the cost of the refinancing loan, including all transaction costs and any required investments in the lender, is less than the present value of the cost of the loan being refinanced, as determined by a method acceptable to REA. The discount rate used in the present value analysis shall be equal to either:

(i) The current rate on Treasury securities having a maturity equal to the weighted average life of the refunding loan, plus one-eighth percent, or

(ii) A rate approved by REA based on documentation provided by the borrower as to its marginal long-term borrowing cost; and

(5) The amount of outstanding debt having an effective variable interest rate (set annually or more frequently), taking into consideration the debt covered by the application for a lien accommodation or subordination, does not exceed 15 percent of all outstanding debt of the borrower.

(b) *Other applications.* Applications for a lien accommodation or subordination for refinancing that do not meet the requirements of paragraph (a) of this section will be reviewed by REA under normal review procedures for these applications. In the case of either advance approval or normal review, a lien subordination would be authorized only if the lien of the mortgage was subordinated with respect to the assets securing the loan being refinanced.

(c) *Application contents—advance approval of refinancing.* Applications for a lien accommodation or subordination for refinancing of existing secured debt that meet the qualification criteria for advance approval set forth in paragraph (a) of this section, must include the following information and documents:

(1) A certification by an authorized official of the borrower that the application meets the requirements of paragraph (a) of this section and all applicable provisions of §§ 1717.852 and 1717.853;

(2) Documentation and analysis demonstrating that the application meets the qualification criteria set forth in paragraph (a) of this section;

(3) A resolution of the borrower's board of directors requesting the lien accommodation or subordination and including the amount and maturity of the proposed loan, a general description of the debt to be refinanced, the name and address of the lender, and an attached term sheet summarizing the terms and conditions of the proposed loan;

(4) The borrower's financial and statistical report, the data in which shall not be more than 60 days old when the complete application is received by REA;

(5) Draft copy of any new mortgage or mortgage amendment (supplement) required by REA or the lender, unless REA has notified the borrower that it wishes to prepare these documents itself;

(6) A copy of the loan agreement, loan note, bond or other financing instrument, unless REA has notified the borrower that these documents need not be submitted;

(7) Form AD-1047, Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary

Covered Transactions, as required by 7 CFR part 3017;

(8) A report by the borrower stating whether or not it is delinquent on any Federal debt, and if delinquent, the amount and age of the delinquency and the reasons therefor; and a certification, if not previously provided, that the borrower has been informed of the Government's collection options; and

(9) Other information, documents and opinions that REA may require to determine whether all of the applicable provisions of this subpart have been met.

(d) *Application contents—normal review of refinancing.* Applications for a lien accommodation or subordination for refinancing of existing secured debt that do not meet the requirements for advance approval set forth in paragraph (a) of this section, must include the following information and documents:

(1) The information and documents set forth in paragraphs (c)(3) through (9) of this section;

(2) A complete description of the refinancing loan and the outstanding debt to be refinanced;

(3) An analysis comparing the refinancing loan with the loan being refinanced as to the weighted average life and the net present value of the costs of the two loans; and

(4) If the present value of the cost of the refinancing loan is greater than the present value of the cost of the debt being refinanced, financial forecasts for at least 5 years comparing the borrower's debt service and other costs, revenues, margins, cash flows, TIER, and DSC, with and without the proposed refinancing.

(e) *Application process and timeframes.* The application process and timeframes for REA review and action for refinancings are set forth in § 1717.859(d).

(f) *Prepayments of concurrent REA insured loans.* If the loan being refinanced was made concurrently as supplemental financing required by REA in connection with an REA insured loan, the refinancing will not be considered a prepayment under the REA mortgage, and no proportional prepayment of the concurrent REA insured loan will be required, provided that the principal amount of the refinancing loan is not less than the amount of loan principal being refinanced, and the weighted average life of the refinancing loan is materially equal to the weighted average remaining life of the loan being refinanced. The refinancing loan shall be considered a concurrent loan.

§ 1717.858 Lien subordination for rural development investments.

(a) *Policy.* REA encourages borrowers to consider investing in financially sound projects that are likely to have a positive effect on economic development and employment in rural areas. In addition to the guidance set forth in § 1717.651, REA recommends that such investments be made through a subsidiary of the borrower in order to clearly separate the financial risks and the revenues and costs of the rural development enterprise from those of the borrower's electric utility business. This should reduce credit risks to the borrower's primary business, and minimize the possibility of undisclosed cross subsidization of the rural development enterprise by electric rate payers.

(b) *Lien subordination.* REA will consider subordinating or releasing its lien on the stock held by a borrower in a subsidiary whose primary business directly contributes to or supports economic development and employment in rural areas, as defined in section 13 of the RE Act, when requested by a lender to the subsidiary, other than the borrower. To be eligible for said lien subordination or release:

(1) The borrower must be current on all of its financial obligations and be in compliance with all provisions of its mortgage and loan agreement with REA; and

(2) In the judgment of REA, the borrower must be able to repay all of its outstanding debt, and the security forall outstanding loans made to the borrower by REA, including loans guaranteed by REA, must be adequate, after taking into account the proposed subordination or release of lien.

(c) *Application contents.* Applications for a lien subordination or release of lien for rural development investments must include the following information and documents:

(1) A resolution of the borrower's board of directors requesting the lien subordination or release of lien;

(2) A certification by an authorized official of the borrower that the borrower is current on all of its financial obligations and is in compliance with all provisions of its mortgage and loan agreement with REA;

(3) A description of the facilities or other purposes to be financed and the projected effects on economic development and employment in rural areas;

(4) The borrower's financial and statistical report, the data in which shall not be more than 60 days old when the complete application is received by REA;

(5) If requested by REA, a long-range financial forecast providing financial projections for at least 10 years, in form and substance satisfactory to REA, which demonstrates that the borrower's system is economically viable and that the borrower will be able to repay all of its outstanding debt and meet all other financial obligations;

(6) A discussion of the borrower's compliance with REA requirements on accounting, financial reporting, record keeping, and irregularities (see § 1717.854(c)(5)). REA will review the case and determine the effect of any noncompliance on the feasibility and security of REA's loans, and whether the requested lien subordination or release of lien can be approved;

(7) If any buildings are to be constructed with the proceeds of the loan to be made to the subsidiary:

(i) A certification by the project architect that the buildings will be designed and constructed in compliance with Section 504 of the Rehabilitation Act of 1973 as amended (29 U.S.C. 794), as applicable under that Act, and that the facilities will be readily accessible to and usable by persons with handicaps in accordance with the Uniform Federal Accessibility Standards; and

(ii) A written acknowledgement from a registered engineer or architect regarding compliance with seismic provisions of applicable model codes, as required by 7 CFR 1792.104;

(8) A certification by an authorized official of the borrower that flood hazard insurance will be obtained for the full value of any buildings, or other facilities susceptible to damage if flooded, that will be located in a flood hazard area;

(9) Form AD-1047, Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions, as required by 7 CFR part 3017;

(10) A report by the borrower stating whether or not it is delinquent on any Federal debt, and if delinquent, the amount and age of the delinquency and the reasons therefor; and a certification, if not previously provided, that the borrower has been informed of the Government's collection options; and

(11) Other information that REA may require to determine whether all of the applicable provisions of this subpart have been met.

§ 1717.859 Application process and timeframes.

(a) *General.* (1) Borrowers are responsible for ensuring that their applications for a lien accommodation or subordination are complete and sound as to substance and form before they are submitted to REA. REA will not

accept any application that, on its face, is incomplete or inadequate as to the substantive information required by this subpart. REA will notify borrowers in writing when their applications are complete and in form and substance satisfactory to REA. A copy of all notifications of borrowers cited in this section will also be sent to the private lender.

(2) It is recommended that borrowers consult with REA staff before submitting their applications to determine whether they will likely qualify for advance approval or normal review, and to obtain answers to any questions about the information and documents required for the application.

(3) A borrower shall, after submitting an application, promptly notify REA of any changes that materially affect the information contained in its application.

(4) After submitting an application and having been notified by REA of additional information and documents and other changes needed to complete the application, if the required information and documents are not supplied to REA within 30 calendar days of the borrower's receipt of the notice, REA may return the application to the borrower. The borrower may resubmit the application when the required additional information and documents are available.

(5) Timeframes. The timeframes for review of applications set forth in this section are based on the following conditions:

(i) The types of lien accommodations or subordinations requested are of the "standard" types that REA has approved previously, i.e., the so-called Type I, II and III lien accommodations. Future revisions of the REA mortgage may result in other "standard" types of lien accommodations and lien subordinations acceptable to REA. Requests for lien accommodations or subordinations that are substantially different than the "standard" types previously approved by REA may require additional time for review and action;

(ii) The requested lien accommodation or subordination does not require the preparation of an environmental assessment or an Environmental Impact Statement. Preparation of these documents often will require additional time beyond the timeframes cited in this section; and

(iii) The timeframes set forth in this section, except for paragraph (b)(4) of this section, which deals only with approval of a new mortgage or mortgage amendment, include REA review and/or approval of a loan contract, if required as part of the application, and required supporting documents, such as a CWP.

(b) *Advance approval—100 percent private financing of distribution, subtransmission, and headquarters facilities.* (1) Applications that qualify under § 1717.854 for advance approval of a lien accommodation or subordination for 100 percent private financing of distribution, subtransmission, and headquarters facilities are submitted to the general field representative (GFR). The GFR will work with the borrower to ensure that all components of the application are assembled. Once the application is satisfactory to the GFR, it will be sent promptly to the Washington office for further review and action. If a new mortgage or mortgage amendment is required, a draft of these documents must be included in the application, unless the borrower has been notified that REA wishes to prepare the documents itself.

(2) If no additional or amended information is needed for REA to complete its review of the application once it is received in the Washington Office, REA will, within 45 calendar days of receiving the application in the Washington Office, either:

(i) Approve the lien accommodation or subordination if the borrower has demonstrated satisfactorily to REA that all requirements of this subpart applicable to advance approval have been met, and send written notice to the borrower. REA's approval, in this case and all other cases, will be conditioned upon execution and delivery by the borrower of a satisfactory security instrument, if required, and such additional information, documents, and opinions of counsel as REA may require;

(ii) If all requirements have not been met, so notify the borrower in writing. The application will be returned to the borrower unless the borrower requests that it be reconsidered under the requirements and procedures for normal review set forth in paragraph (c) of this section and in § 1717.856; or

(iii) Send written notice to the borrower explaining why a decision cannot be made at that time and giving the estimated date when a decision is expected.

(3) If additional or amended information is needed after the application is received in the Washington Office, REA will so notify the borrower in writing within 15 calendar days of receiving the application in the Washington Office. If REA subsequently becomes aware of other deficiencies in the application, additional written notice will be sent to the borrower. Within 30 calendar days of receiving all of the information required by REA to complete its review, REA will act on the application as described in paragraphs (b)(2)(i) through (b)(2)(iii) of this section.

(4) If a new mortgage or mortgage amendment is required, within 30 days of receiving such documents satisfactory to REA, including required execution counterparts, REA will execute the documents and send them to the borrower, along with instructions pertaining to recording of the mortgage, an opinion of borrower's counsel, and other matters. REA will promptly notify the borrower upon receiving satisfactory evidence that the borrower has complied with said instructions.

(c) *Normal review—100 percent private financing of distribution, transmission, and/or generation facilities*—(1) *Distribution borrowers.* (i) Applications from distribution borrowers for a lien accommodation or subordination for 100 percent private financing of distribution, transmission, and/or generation facilities (including other eligible electric utility purposes) that do not meet the criteria for advance approval, are also submitted to the GFR. Procedures at this stage are the same as in paragraph (b)(1) of this section.

(ii) If no additional or amended information is needed for REA to complete its review of the application once it is received in the Washington office, REA will, within 90 calendar days of receiving the application in the Washington office, send written notice to the borrower either approving the request, disapproving the request, or explaining why a decision cannot be made at that time and giving the estimated date when a decision is expected.

(iii) If additional or amended information is needed after the application is received in the Washington Office, REA will so notify the borrower in writing within 15 calendar days of receiving the application in the Washington Office. If REA subsequently becomes aware of other deficiencies in the application, additional written notice will be sent to the borrower. Within 90 calendar days of receiving all of the information required by REA to complete its review, REA will act on the application as described in paragraph (c)(1)(ii) of this section.

(iv) If a new mortgage or mortgage amendment is required, the procedures and timeframes of paragraph (b)(4) of this section will apply.

(2) *Power supply borrowers.* (i) Applications from power supply borrowers for a lien accommodation or subordination for 100 percent private

financing of distribution, transmission, and/or generation facilities, and other eligible electric utility purposes, are submitted to the REA Power Supply Division, or its successor, in Washington, DC.

(ii) Within 30 calendar days of receiving the borrower's application containing the information and documents required by § 1717.856, REA will send written notice to the borrower of any deficiencies in its application as to completeness and acceptable form and substance. Additional written notices may be sent to the borrower if REA subsequently becomes aware of other deficiencies in the borrower's application.

(iii) Within 90 calendar days of receiving all of the information required by REA to complete its review, REA will act on the application as described in paragraph (c)(1)(ii) of this section.

(iv) If a new mortgage or mortgage amendment is required, these documents will be reviewed and executed pursuant to the procedures and timeframes of paragraph (b)(4) of this section.

(d) *Refinancing of existing debt.* All requests for a lien accommodation or subordination for refinancing are sent directly to the Washington office.

(1) *Advance approval.* (i) Within 15 calendar days of receiving the borrower's application containing the information and documents required by § 1717.857(c), REA will send written notice to the borrower of any deficiencies in its application as to completeness and acceptable form and substance. Additional written notices may be sent to the borrower if REA subsequently becomes aware of other deficiencies in the borrower's application.

(ii) Within 15 calendar days of receiving all of the required information and documents, in form and substance satisfactory to REA, REA will either:

(A) Approve the lien accommodation or subordination if the borrower has demonstrated satisfactorily to REA that all requirements of § 1717.857(a) and (c) have been met, and send written notice to the borrower;

(B) If all requirements have not been met, so notify the borrower in writing. The application will be returned to the borrower unless the borrower requests that it be reconsidered under the requirements and procedures for normal review set forth in paragraph (d)(2) of this section and in § 1717.857; or

(C) Send written notice to the borrower explaining why a decision cannot be made at that time and giving the estimated date when a decision is expected.

(iii) If a new mortgage or mortgage amendment is required, these documents will be reviewed and executed pursuant to the procedures and timeframes of paragraph (b)(4) of this section.

(2) *Normal review.* (i) Within 20 calendar days of receiving the borrower's application containing the information and documents required by § 1717.857(d), REA will send written notice to the borrower of any deficiencies in its application as to completeness and acceptable form and substance. Additional written notices may be sent to the borrower if REA subsequently becomes aware of other deficiencies in the borrower's application.

(ii) Within 30 calendar days of receiving all of the required information and documents, in form and substance satisfactory to REA, REA will notify the borrower in writing either approving the request, disapproving the request, or explaining why a decision cannot be made at that time and giving the estimated date when a decision is expected. If the proposed refinancing involves complicated transactions such as interest rate swaps or forward delivery contracts, additional time may be required for REA review and final action.

(iii) If a new mortgage or mortgage amendment is required, these documents will be reviewed and executed pursuant to the procedures and timeframes of paragraph (b)(4) of this section.

(e) *Rural development investments.* (1) Applications for a lien subordination for rural development investments are submitted by distribution borrowers to the GFR and by power supply borrowers to the REA Power Supply Division, or its successor, in Washington, DC.

(2) The GFR will work with the borrower to ensure that all components of the application are assembled. Once the application is satisfactory to the GFR, it will be sent promptly to the Washington Office for further review and action. After the application is received in the Washington Office, if additional or amended information is needed for REA to complete its review, REA will so notify the borrower in writing within 15 calendar days of receiving the application.

(3) Applications from power supply borrowers containing the information and documents required by § 1717.858(c) will be reviewed in the Washington office and the borrower given written notice within 30 calendar days of receiving the application of any deficiencies as to completeness and acceptable form and substance. Additional written notices may be sent to the borrower if REA subsequently becomes aware of other deficiencies in the borrower's application.

(4) Within 60 calendar days of receiving in the Washington office all of the required information and documents, in form and substance satisfactory to REA, REA will give written notice to the borrower either approving the request, disapproving the request, or explaining why a decision cannot be made at that time and giving the estimated date when a decision is expected.

(5) If a new mortgage or mortgage amendment is required, these documents will be reviewed and executed pursuant to the procedures and timeframes of paragraph (b)(4) of this section.

§§ 1717.860–1717.899 [Reserved]

Subpart S—Lien Accommodations for Supplemental Financing Required by 7 CFR 1710.110

§ 1717.900 Qualification requirements.

Applications for a lien accommodation for supplemental financing required by 7 CFR 1710.110 must meet the same requirements as an REA insured loan. The justification and documentation materials submitted as part of the borrower's application for an insured loan also serve as the justification and documentation of the request for a lien accommodation for the required supplemental loan. Unless early approval under § 1717.901 is requested by a borrower, these applications will be processed during the same time as REA's review of the borrower's application for the concurrent insured loan.

§ 1717.901 Early approval.

(a) *Conditions.* If requested by a borrower in writing, REA will review the application for a lien accommodation for required supplemental financing early in the process, before funding is available for the concurrent REA insured loan, and approve the lien accommodation if the following conditions are met:

(1) The required supplemental loan meets the requirements for an insured loan, as set forth in 7 CFR part 1710, subparts A through G, and other REA regulations pertaining to required supplemental loans;

(2) The borrower has demonstrated the ability to obtain the funds that would be needed to complete other portions of the project, if the portion to be constructed with private loan funds could not be used productively without completion of such other portions, in

the event concurrent REA insured loan funds are not forthcoming. Such evidence may include financial records demonstrating the availability of general funds, and/or a written commitment from the private lender to provide a loan for the remaining amount of financing required, with such commitment being conditioned upon the availability of a lien accommodation from REA; and

(3) An authorized official of the borrower has requested early approval of the lien accommodation and explained the reasons therefor, and has certified that the funds are needed and will be drawn down before funds from the concurrent insured loan are expected to be available, assuming that the insured loan is approved.

(b) *Timeframe for REA action.* (1) REA will either approve or disapprove the lien accommodation within 90 days of receiving the borrower's request for early approval and the complete application for the concurrent REA loan and required supplemental financing, in form and substance satisfactory to REA, or notify the borrower in writing of the estimated date when a decision is expected. If an environmental assessment or an Environmental Impact Statement is required, additional time beyond the 90 days may be required to prepare these documents. REA's approval of the lien accommodation will be conditioned upon execution and delivery by the borrower of a satisfactory security instrument, if required, and such additional information, documents, and opinions of counsel as REA may require.

(2) If a mortgage or mortgage amendment is required, REA will consult with the other mortgagees as to who will prepare the documents. Within 30 days of obtaining the documents satisfactory to REA, including required execution counterparts, REA will execute the documents and send them to the borrower, along with instructions pertaining to recording of the mortgage, an opinion of borrower's counsel, and other matters. REA will promptly notify the borrower upon receiving satisfactory evidence that the borrower has complied with said instructions.

(c) *Approval of concurrent insured loan.* Early approval of a lien accommodation for a required supplemental loan does not ensure that the concurrent REA insured loan will be approved. The request for the concurrent insured loan will be reviewed when funds are available to make the loan. The borrower may be requested to update certain supporting information in the loan application if substantial time has elapsed since the lien accommodation or subordination was approved.

§ 1717.902 Other REA requirements.

Supplemental loans required by 7 CFR 1710.110 are subject to the same post-loan requirements as insured REA loans regarding accepted materials, construction standards, contracting and procurement procedures, standard forms of contracts, REA approval of the advance of loan funds, and other matters.

§ 1717.903 Liability.

It is the intent of this subpart that any failure on the part of REA to comply with any provisions of this subpart, including without limitation, those provisions setting forth specified timeframes for action by REA on applications for lien accommodations or lien subordinations, shall not give rise to liability of any kind on the part of the Government or any employees of the Government including, without limitation, liability for damages, fees, expenses or costs incurred by or on behalf of a borrower, private lender or any other party.

§§ 1717.904–1717.949 [Reserved]

Dated: October 7, 1993.

Bob J. Nash,

Under Secretary, Small Community and Rural Development.

[FR Doc 93–25174 Filed 10–18–93; 8:45 am]

BILLING CODE 3410–15–F

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–NM–113–AD; Amendment 39–8691; AD 93–18–06]

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F28 Mark 0100 series airplanes, that requires modification of the high pressure (HP) bleed air shut-off valve circuit breakers. This amendment is prompted by a report that the selection of the "ESS+EMERG PWR ONLY" switch during an emergency situation disconnects the temperature modulating and shut-off valves and the overpressure shut-off valves of the bleed air systems from electrical power. The actions specified by this AD are intended to prevent the inability to evacuate smoke from the cabin.

DATES: Effective November 18, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 18, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0100 series airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the Federal Register on May 14, 1993 (58 FR 28527). That action proposed to require modification of the high pressure (HP) bleed air shut-off valve circuit breakers.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposed rule.

One commenter requests that the proposed rule be revised to include a provision for wires to be coiled and stowed in lieu of being removed and discarded as an alternative method of compliance. This commenter states that removal of the wires in accordance with procedures described in the service bulletin was not possible and would have required more work hours than the number specified in the service bulletin. The commenter adds that coiling and stowing the wires, instead of removing and discarding them, would have no impact on safety. The FAA concurs and has revised paragraph (a) of the final rule accordingly.

One commenter requests that the proposed compliance time be extended to allow modification within 18 months after the effective date of the rule. The

commenter indicates that the electrical system for the thrust reverser stow circuit must be modified in accordance with Fokker Service Bulletin SBF100–78–004 prior to the accomplishment of this proposed modification as stated in paragraph 1.C.(2) of Fokker Service Bulletin SBF100–24–024, Revision 1, dated December 29, 1992. The commenter states that additional time is needed to accomplish both modifications, since the work can only be performed efficiently during a regularly scheduled "C" check. The commenter considers that the adoption of the proposed compliance time of 6 months would require operators to schedule special times for the accomplishment of the proposed modification, at additional expense.

The FAA does not concur. Fokker Service Bulletin SBF100–24–024, Revision 1, dated December 29, 1992, specifies that it is only necessary to accomplish Fokker Service Bulletin SBF100–78–004 prior to accomplishing the modification specified in Fokker Service Bulletin SBF100–24–024 on aircraft serial numbers 11244 and 11250 through 11256 inclusive [reference the "NOTE" to paragraph 1.C.(2)]. The FAA has confirmed the accuracy of this information with Fokker. None of these airplanes are currently on the U.S. register; therefore, the prerequisite modification in accordance with Fokker Service Bulletin SBF100–78–004 is not applicable to any airplane affected by this AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 48 airplanes of U.S. registry will be affected by this AD, that it will take approximately 5 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $350 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $30,000, or $625 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93–18–06 Fokker: Amendment 39–8691. Docket 92–NM–113–AD.

Applicability: Model F28 Mark 0100 series airplanes, serial numbers 11244 to 11371 inclusive, certificated in any category.

Compliance: Required as indicated, unless accomplished previously. To prevent the inability to evacuate smoke from the cabin, accomplish the following:

(a) Within 6 months after the effective date of this AD, modify the high pressure (HP) bleed air shut-off valve circuit breakers, in accordance with Fokker Service Bulletin SBF100–24–024, Revision 1, dated December 29, 1992. Wires may be coiled and capped at both ends in accordance with procedures described in the Fokker F28 Maintenance Manual in lieu of being removed and discarded, as specified in the service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The modification shall be done in accordance with Fokker Service Bulletin SBF100–24–024, Revision 1, dated December 29, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on November 18, 1993.

Issued in Renton, Washington, on September 13, 1993.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–25663 Filed 10–18–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 93–NM–47–AD; Amendment 39–8689; AD 93–18–04]

Airworthiness Directives; Aerospatiale Model ATR42–300 and ATR42–320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Aerospatiale Model ATR42–300 and ATR42–320 series airplanes, that requires an inspection to determine the proper installation of rivets in the key holes of certain fuselage frames; an inspection to detect cracks in the area of the key holes where rivets are missing; and correction of discrepancies. This amendment is prompted by the discovery of cracks around key holes on fuselage frames 25 and 27 where rivets were missing. The actions specified by this AD are

intended to prevent the loss of strength of the fuselage frames.

DATES: Effective November 18, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 18, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Gary Lium, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1112; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Aerospatiale Model ATR42–300 and ATR42–320 series airplanes was published in the **Federal Register** on May 12, 1993 (58 FR 27954). That action proposed to require an inspection to determine the proper installation of rivets in the key holes of certain fuselage frames; an inspection to detect cracks in the area of the key holes where rivets are missing; and correction of discrepancies.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposal.

Two commenters request that the proposed rule be revised to permit operators to perform the requirements in accordance with all current versions of the referenced service bulletin. These commenters note that the inspection criteria and modification procedures described in the original release, Revision 1, and Revision 2 of Aerospatiale Service Bulletin ATR42–53–0070 are virtually identical; however, the notice only referenced Revision 1 as the appropriate service information source. Many of the airplanes belonging to these commenters already have been inspected or modified in accordance with versions of the service bulletin other than Revision 1. The FAA concurs. Aerospatiale recently issued Revision 2 of Service Bulletin ATR42–53–0070, dated March 22, 1993. This revision is essentially identical in technical content to Revision 1, which was cited in the notice, except for certain administrative changes. Likewise, the original issue of this service bulletin, dated June 10, 1991, contains little difference in its technical content. The FAA has determined that airplanes inspected in accordance with any of these versions of the service bulletin would be in compliance with this AD. The final rule has been revised accordingly.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 58 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $9,570, or $165 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93–18–04 Aerospatiale: Amendment 39–8689. Docket 93–NM–47–AD.

Applicability: Model ATR42–300 and ATR42–320 series airplanes, certificated in any category, and having the following serial numbers:

005 through 016, inclusive;
018 through 030, inclusive;
032 through 036, inclusive;
038;
040;
042;
043;
048 through 062, inclusive;
064 through 090, inclusive;
092 through 094, inclusive; and
096 through 228, inclusive.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of strength of the fuselage frames, accomplish the following:

(a) Prior to the accumulation of 18,000 total landings, or within 100 landings after the effective date of this AD, whichever occurs later, conduct a general visual inspection of fuselage frames 25 and 27 to verify the proper installation of a rivet in each of the key holes, in accordance with Aerospatiale Service Bulletin ATR42–53–0070, dated June 10, 1991; Revision 1, dated June 12, 1992; or Revision 2, dated March 22, 1993.

(b) If a rivet is installed in each of the key holes, no further action is required by this AD.

(c) If a rivet is not installed in a key hole, prior to further flight, perform an eddy current inspection of the open key hole to detect cracks, in accordance with the service bulletin.

(1) If no cracks are found as a result of the eddy current inspection, prior to further flight, install a rivet in the open key hole in accordance with the service bulletin. After such installation, no further action is required by this AD.

(2) If cracks are found as a result of the eddy current inspection, prior to further

flight, repair the cracks in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The inspections and installation shall be done in accordance with the following Aerospatiale service bulletins, which contain the specified effective pages:

Service bulletin referenced and date	Page No.	Revision level shown on page	Date shown on page
ATR42–53–0070 (Original), June 10, 1991..	1–13	Original .	June 10, 1991.
ATR42–53–0070.	1–7, 9–12	1	June 12, 1992.
Revision 1, June 12, 1992.	8	Original .	June 10, 1991.
ATR42–53–0070.	1–2, 9–10	2	March 22, 1993.
Revision 2, March 22, 1993.	3–7, 11–12	1	June 12, 1992.
	8	Original .	June 10, 1991.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on November 18, 1993.

Issued in Renton, Washington, on September 10, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–25661 Filed 10–18–93; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 93–NM–129–AD; Amendment 39–8692; AD 93–18–07]

Airworthiness Directives; Boeing Model 747 Series Airplanes Equipped with General Electric CF6–80C2 or Pratt & Whitney PW4000 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes. This action requires inspections to detect damage, chafing, or scoring of the fire extinguishing discharge tubes and support clamps installed in the outboard engines, and repair or replacement, if necessary. This amendment is prompted by reports of wear of the engine fire extinguishing discharge tubes in both of the outboard strut-to-wing intersection areas. The actions specified in this AD are intended to detect wear of the engine fire extinguishing discharge tubes and support clamps, which could prevent the engine fire extinguishing system from extinguishing an engine fire.

DATES: Effective November 3, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 3, 1993.

Comments for inclusion in the Rules Docket must be received on or before December 17, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–129–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tamra J. Elkins, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2669; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: Several operators of Boeing Model 747 series airplanes have reported wear (chafing or scoring) of the fire extinguishing discharge tubes in both of the outboard engine (numbers 1 and 4) strut-to-wing intersection areas. Several of these operators reported that a hole had worn through the fire extinguishing discharge tube on the number 1 engine. Investigation revealed that the fire extinguishing tubes can move axially through the rubber cushion in a clamp due to deflection in the wing. Such movement can cause chafing or scoring of the rubber cushion and can allow the fire extinguishing discharge tube to rub on the support clamp. Consequently, such rubbing can cause a hole in the fire extinguishing tube. Since there is only one fire extinguishing line to the outboard engines, a hole in a fire extinguishing discharge tube will reduce the concentration of extinguishing agent that is discharged from the bottles to the number 1 and number 4 engines. This condition, if not detected and corrected, could prevent the engine fire extinguishing system from extinguishing an engine fire.

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–26A2214, dated May 6, 1993; Revision 1, dated August 12, 1993; and Revision 2, dated August 19, 1993. The original issue and Revision 1 describe procedures for replacement of discrepant tubes with tubes constructed of steel, and replacement of the support clamps with clamps constructed of teflon. The steel engine fire extinguishing discharge tubes are more resistant to wear, and the teflon support clamps allow the engine fire extinguishing discharge tubes to move more easily through the clamp. Revision 1 of the service bulletin also adds additional airplanes to the effectivity listing. Revision 2 includes procedures for visual inspections to detect damage, chafing, or scoring of the engine fire extinguishing discharge tubes and support clamps in the outboard strut-to-wing intersection areas, repair of discrepant tubes, and replacement of discrepant tubes with new tubes having the same tube dash number.

Since an unsafe condition has been identified that is likely to exist or develop on other Boeing Model 747 series airplanes of the same type design, this AD is being issued to detect wear of the engine fire extinguishing discharge tubes and support clamps, which could prevent the engine fire extinguishing system from extinguishing an engine fire. This AD requires repetitive inspections to detect damage, chafing, or scoring of the

engine fire extinguishing discharge tubes and support clamps in the outboard strut-to-wing intersection areas; repair or replacement of any discrepant engine fire extinguishing discharge tube; and replacement of support clamps. Replacement of the fire extinguishing discharge tubes with a fire extinguishing discharge tubes constructed of steel, and replacement of the support clamps with clamps constructed of teflon, if accomplished, constitutes terminating action for the inspection requirements of this AD. The actions are required to be accomplished in accordance with the service bulletin described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "ADDRESSES." All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93-NM-129-AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93-18-07 Boeing: Amendment 39-8692. Docket 93-NM-129-AD.

Applicability: Model 747 series airplanes equipped with General Electric CF6-80C2 or Pratt & Whitney PW4000 series engines, as listed in Boeing Alert Service Bulletin 747-26A2214, Revision 2, dated August 19, 1993; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To detect wear of the fire extinguishing discharge tubes and support clamps, which could prevent the engine fire extinguishing system from extinguishing an engine fire, accomplish the following:

(a) Within 60 days after the effective date of this AD, conduct a detailed visual inspection to detect damage, chafing, or scoring of the engine number 1 and engine number 4 fire extinguishing discharge tubes and support clamps in the strut-to-wing intersection areas, in accordance with Boeing Alert Service Bulletin 747-26A2214, Revision 2, dated August 19, 1993.

(1) If no damage, chafing, or scoring is detected, prior to further flight, replace the support clamps with clamps constructed of teflon, in accordance with Boeing Alert Service Bulletin 747-26A2214, dated May 6, 1993; Revision 1, dated August 12, 1993; or Revision 2, dated August 19, 1993. Subsequent to replacement, repeat the detailed visual inspection thereafter at intervals not to exceed 5,000 flight hours. Replacement of the support clamps is required only after the initial inspection.

(2) If damage, chafing, or scoring is detected on any fire extinguishing discharge tube as a result of any inspection required by this AD, prior to further flight, accomplish either paragraph (a)(2)(i), (a)(2)(ii), or (a)(2)(iii) of this AD.

(i) Repair the fire extinguishing discharge tube, in accordance with Boeing Alert Service Bulletin 747-26A2214, Revision 2, dated August 19, 1993; and replace the support clamps with clamps constructed of teflon, in accordance with Boeing Alert Service Bulletin 747-26A2214, dated May 6, 1993; Revision 1, dated August 12, 1993; or Revision 2, dated August 19, 1993. Subsequent to repair of the tube and replacement of the clamps, repeat the inspection thereafter at intervals not to exceed 1,800 flight hours. Or

(ii) Replace the fire extinguishing discharge tube with a new tube having the same tube dash number, in accordance with Boeing Alert Service Bulletin 747-26A2214, Revision 2, dated August 19, 1993; and replace the support clamps with clamps constructed of teflon, in accordance with Boeing Alert Service Bulletin 747-26A2214, dated May 6, 1993; Revision 1, dated August 12, 1993; or Revision 2, dated August 19, 1993. Subsequent to replacement, repeat the inspection thereafter at intervals not to exceed 1,800 flight hours. Or

(iii) Replace the fire extinguishing discharge tube with a fire extinguishing discharge tube constructed of steel, and replace the support clamps with clamps constructed of teflon, in accordance with Boeing Alert Service Bulletin 747-26A2214, dated May 6, 1993; Revision 1, dated August 12, 1993; or Revision 2, dated August 19, 1993. Accomplishment of these replacements constitutes terminating action for the inspection requirements of this AD.

(3) If damage, chafing, or scoring is detected on the support clamps as a result of any inspection required by this AD, prior to

further flight, replace the clamps with a serviceable clamps constructed of teflon, in accordance with Boeing Alert Service Bulletin 747–26A2214, dated May 6, 1993; Revision 1, dated August 12, 1993; or Revision 2, dated August 19, 1993. Subsequent to replacement, repeat the inspection thereafter at intervals not to exceed 1,600 hours flight hours.

(b) Replacement of the fire extinguishing discharge tubes with tubes constructed of steel, and replacement of the support clamps with clamps constructed of teflon, in accordance with Boeing Alert Service Bulletin 747–26A2214, dated May 6, 1993; Revision 1, dated August 12, 1993; or Revision 2, dated August 19, 1993, constitutes terminating action for the inspection requirements of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The inspection, repair, and replacement shall be done in accordance with Boeing Alert Service Bulletin 747–26A2214, dated May 6, 1993; or Boeing Alert Service Bulletin 747–26A2214, Revision 1, dated August 12, 1993; or Boeing Alert Service Bulletin 747–26A2214, Revision 2, dated August 19, 1993; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on November 3, 1993.

Issued in Renton, Washington, on September 14, 1993.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–25659 Filed 10–18–93; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 93–NM–48–AD; Amendment 39–8690; AD 93–05–16 R1]

Airworthiness Directives; McDonnell Douglas Model DC–9 and DC–9–80 Series Airplanes, Model MD–88 Airplanes, and C–9 (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to McDonnell Douglas Model DC–9 and DC–9–80 series airplanes, Model MD–88 airplanes, and C–9 (military) airplanes, that currently requires a one-time inspection of the rudder power control valve to determine if a lockwire is installed and, if not installed, adjustment of the retention nut and installation of a lockwire. That action was prompted by reports of loss of rudder control on final approach and landing. This amendment adds four airplanes to the applicability of the rule. The actions specified by this AD are intended to prevent loss of rudder control.

DATES: Effective November 18, 1993.

The incorporation by reference of McDonnell Douglas DC–9 Alert Service Bulletin A27–327, Revision 2, dated July 14, 1992, as listed in the regulations is approved by the Director of the Federal Register as of November 18, 1993.

The incorporation by reference of certain other publications listed in the regulations was approved previously by the Director of the Federal Register as of April 23, 1993 (58 FR 15760, March 24, 1993).

ADDRESSES: The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846–1771, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1–L5B. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Walter Eierman, Aerospace Engineer, Los Angeles Aircraft Certification Office, Systems & Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5336; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by revising AD 93–05–16, Amendment 39–8520 (58 FR 15760, March 24, 1993), which is applicable to certain McDonnell Douglas Model DC–9 and DC–9–80 series airplanes, Model MD–88 airplanes, and C–9 (military) airplanes series airplanes, was published in the **Federal Register** on June 10, 1993 (58 FR 32471). The action proposed to add four airplanes to the applicability of the rule.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposal.

One commenter states that the wording of paragraph (c) has led some operators to believe that accomplishment of the modification of the rudder power control valve in accordance with McDonnell Douglas Service Bulletin 27–321, dated May 18, 1992, is mandatory. This commenter recommends that the proposed rule be revised to state that airplanes on which the valves have been modified in accordance with that service bulletin or its production equivalent are not affected by the requirements of the rule. The FAA concurs that some clarification is warranted. Operators should note that paragraph (c) of the rule makes no mention of a requirement to modify the valves; it merely states that if or when valves are modified in accordance with the referenced service bulletin, the required inspection is not required. For example, if an operator were to modify the valves on its airplane prior to the 90-day compliance time of paragraph (a) or (b), that operator would not have to accomplish the inspection of the retention nut on the rudder power control valve slide assembly (as required by paragraphs (a) and (b)). The FAA has revised the applicability statement of the final rule to specify that airplanes on which the valves have been modified in accordance with the service bulletin or a production equivalent are not subject to the requirements of the AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither

increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 1,954 McDonnell Douglas Model DC–9, DC–9–80, MD–88, and C–9 series airplanes of the affected design in the worldwide fleet; of this number, 1,151 are of U.S. registry.

The actions specified in this revised AD apply to 4 additional airplanes in the worldwide fleet; of this number, only 1 is of U.S. registry. The FAA estimates that it will take approximately 1 work hour per airplane to accomplish the proposed inspection requirement, at an average labor rate is $55 per work hour. Based on these figures, the total additional cost impact of this revised AD on U.S. operators is estimated to be $55. This total cost figure assumes that no operator has yet accomplished the requirements of this AD action.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8520 (58 FR 15760, March 24, 1993), and by adding a new airworthiness directive (AD), amendment 39–8698, to read as follows:

93–05–16 R1 McDonnell Douglas: Amendment 39–8698. Docket 93–NM–48–AD. Revises AD 93–05–16, Amendment 39–8520.

Applicability: Model DC–9 and C–9 (Military) airplanes as listed in McDonnell Douglas DC–9 Alert Service Bulletin A27–327, Revision 2, dated July 14, 1992; and Model DC–9–80 series airplanes and Model MD–88 airplanes as listed in McDonnell Douglas MD–80 Alert Service Bulletin A27–317, Revision 2, dated May 22, 1992; on which the rudder power control valve has not been modified in accordance with McDonnell Douglas Service Bulletin 27–321, dated May 18, 1992, or a production equivalent; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

Note: This AD requires the same actions as required by AD 93–05–16, amendment 39–8520, but is applicable to additional airplanes. Operators affected by this AD who have accomplished these actions previously in accordance with AD 93–05–16 are considered to be in compliance with this revised AD.

To prevent loss of rudder control, accomplish the following:

(a) For airplanes listed in McDonnell Douglas DC–9 Alert Service Bulletin A27–327, Revision 1, dated March 9, 1992, and in McDonnell Douglas MD–80 Alert Service Bulletin A27–317, Revision 2, dated May 22, 1992; on which the retention nut on the slide assembly of the rudder power control valve has not been inspected in accordance with McDonnell Douglas DC–9 Alert Service Bulletin A27–327, dated December 2, 1991, or Revision 1, dated March 9, 1992, or Revision 2, dated July 14, 1992; or McDonnell Douglas MD–80 Alert Service Bulletin A27–317, dated June 17, 1991, or Revision 1, dated January 14, 1992, or Revision 2, dated May 22, 1992: Within 90 days after April 23, 1993 (the effective date of AD 93–05–16, amendment 39–8520), inspect the retention nut on the rudder power control valve slide assembly to determine if a lockwire is installed, in accordance with McDonnell Douglas DC–9 Alert Service Bulletin A27–327, Revision 1, dated March 9, 1992; or McDonnell Douglas MD–80 Alert Service Bulletin A27–317, Revision 2, dated May 22, 1992; as applicable.

(1) If a lockwire is installed, no further action is required by this AD.

(2) If a lockwire is not installed, prior to further flight, adjust the retention nut, install a lockwire, and functionally check the rudder power control valve in accordance with the applicable service bulletin. No further action is required by this AD.

(b) For airplanes listed in McDonnell Douglas DC–9 Alert Service Bulletin A27–327, Revision 2, dated July 14, 1992, and not affected by paragraph (a) of this AD: Within 90 days after the effective date of this AD, inspect the retention nut on the rudder power control valve slide assembly to determine if a lockwire is installed, in accordance with McDonnell Douglas DC–9 Alert Service Bulletin A27–327, Revision 1, dated March 9, 1992, or Revision 2, dated July 14, 1992.

(1) If a lockwire is installed, no further action is required by this AD.

(2) If a lockwire is not installed, prior to further flight, adjust the retention nut, install a lockwire, and functionally check the rudder power control valve in accordance with the applicable service bulletin. No further action is required by this AD.

(c) Modification of the rudder power control valve by replacing the lockwire with a locking tab washer, in accordance with McDonnell Douglas Service Bulletin 27–321, dated May 18, 1992, or a production equivalent, constitutes terminating action for the requirements of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The inspection, adjustment, installation, and functional check shall be done in accordance with McDonnell Douglas DC–9 Alert Service Bulletin A27–327, Revision 1, dated March 9, 1992; McDonnell Douglas DC–9 Alert Service Bulletin A27–327, Revision 2, dated July 14, 1992; or McDonnell Douglas MD–80 Alert Service Bulletin A27–317, Revision 2, dated May 22, 1992; as applicable. The modification shall be done in accordance with McDonnell Douglas Service Bulletin 27–321, dated May 18, 1992. The incorporation by reference of McDonnell Douglas DC–9 Alert Service Bulletin A27–327, Revision 2, dated July 14, 1992, was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The incorporation by reference of McDonnell Douglas DC–9 Alert Service Bulletin A27–327, Revision 1, dated March 9, 1992; McDonnell Douglas MD–80 Alert Service Bulletin A27–317, Revision 2, dated May 22, 1992; and McDonnell Douglas Service Bulletin 27–321, dated May 18, 1992; was approved previously by the Director of the Federal Register as of April 23, 1993 (58 FR 15760, March 24, 1993). Copies may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846–

1771, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1–L5B. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on November 16, 1993.

Issued in Renton, Washington, on September 23, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–25662 Filed 10–18–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 71

[Airspace Docket No. 93–AGL–7]

Modification of Class E Airspace; Dickinson Municipal Airport, Dickinson, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies existing Class E airspace areas; specifically, Class E2 (Class E airspace areas designated as a surface area for an airport) and Class E5 (Class E airspace areas extending upward from 700 feet or more above the surface of the earth) at Dickinson Municipal Airport, Dickinson, ND, to accommodate establishment of ILS runway 32, and Nondirectional Beacon (NDB) runway 32 Standard Instrument Approach Procedure (SIAP). The area will be depicted on aeronautical charts to provide a reference for pilots operating in this area.

EFFECTIVE DATE: 0901 u.t.c., January 6, 1994.

FOR FURTHER INFORMATION CONTACT: Robert Frink, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Monday, July 26, 1993, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the control zone and transition area at Dickinson Municipal Airport, Dickinson, ND (58 FR 39693). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Airspace Reclassification, in effect as of September 16, 1993, has discontinued the use of the term "control zone and transition area" and has replaced it with the designation "Class E airspace". Class E2 airspace areas will be designated as a surface area for an airport. Class E5 airspace areas will be airspace extending upward from 700 feet or more above the surface of the earth. Other than that change in terminology, this amendment is the same as that proposed in the notice. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations are published in Paragraph 6002 and 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations modifies Class E airspace at Dickinson, ND, to accommodate establishment of ILS runway 32, and NDB runway 32 SIAP at Dickinson Municipal Airport, Dickinson, ND.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a significant regulatory action under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

Section 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6002 Class E airspace areas designated as a surface area for an airport.

* * * * *

AGL ND E2 Dickinson, ND [Revised]
Dickinson Municipal Airport, ND (lat. 46°47'48" N, long. 102°48'00" W)

Within a 4.4-mile radius of Dickinson Municipal Airport; and within 1.4 miles each side of the 150 bearing from the airport extending from the 4.4.-mile radius to 7 miles southeast of the airport. This Class E airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and terms will thereafter be continuously published in the Airport Facility Directory.

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL ND E5 Dickinson, ND [Revised]
Dickinson Municipal Airport, ND (lat. 46°47'48" N, long. 102°48'00" W)
Dickinson VORTAC (lat. 46°51'36" N, long. 102°46'25" W)

That airspace upward from 700 feet above the surface within an 8.3-mile radius of the Dickinson Municipal Airport and within 4 miles each side of the 150° bearing from the airport extending from 8.3-mile radius to 14 miles southeast of the airport, and that airspace extending upward from 1,200 feet above the surface within a 25.2-mile radius of the Dickinson VORTAC extending clockwise from the Dickinson VORTAC 214 radial to the Dickinson VORTAC 093° radial, excluding that airspace within the Dickinson Municipal Airport, ND, Class E airspace.

* * * * *

Issued in Des Plaines, Illinois on September 29, 1993.

John P. Cuprisin,

Manager, Air Traffic Division.

[FR Doc. 93–25634 Filed 10–18–93; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 95

[Docket No. 27478; Amdt. No. 379]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: November 11, 1993.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in Part 95. The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are unnecessary, impracticable, and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current.

It, therefore—(1) is not a "major rule" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Aircraft, Airspace.

Issued in Washington, DC on October 7, 1993.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC, April 1, 1993:

1. The authority citation for Part 95 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354, and 1510; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 95 is amended to read as follows:

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES AND CHANGEOVER POINTS

[Amendment 379 Effective Date, November 11, 1993]

From	To	MEA
§ 95.1001 Direct Routes—U.S. Is Amended To Read In Part		
Chisum, NM VORTAC *11000–MCA Tracc FIX, N BND	*Tracc, NM FIX	10000
§ 95.1001 Direct Routes-U.S. Puerto Rico Routes		
Route 5 Is Amended To Read In Part		
Borinquen, PR VORTAC, *5000–MRA, **1800–MOCA	*Inham, PR FIX	**3000
Inham, PR FIX, *1300–MOCA	Pling, PR FIX	*6000
Route 6 Is Amended To Read In Part		
*Inham, PR FIX, *5000–MRA, **1300–MOCA	Idaho, PR FIX	**15000
Route 7 Is Amended To Read In Part		
Gesso, PR FIX, *3300–MOCA	Tuuna, PR FIX	*6000
Tuuna, PR FIX	Sanlo, PR FIX	3300
Sanlo, PR FIX	San Juan, PR VORTAC	3500
San Juan, PR VORTAC, *1500–MOCA	Saair, PR FIX	*3000
Saair, PR FIX, *1300–MOCA	Pling, PR FIX	*8000
§ 95.6004 VOR Federal Airway 4 Is Amended To Read In Part		
Lexington, KY VORTAC, *5000–MRA, **3000–MOCA	Codel, KY FIX	**5000
Codel, KY FIX, *5000–MRA, **2500–MOCA	*Masse, KY FIX	**5000
Masse, KY FIX, *2900–MOCA	Cicka, KY FIX	*5000
§ 95.6008 VOR Federal Airway 8 Is Amended To Read In Part		
Grand Junction, CO VORTAC	Domer, CO FIX	9000
Domer, CO FIX	Squat, CO FIX	9800
*Squat, CO FIX, *10500–MCA Squat FIX, NE BND	Rifle, CO VOR/DME	13100

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES AND CHANGEOVER POINTS—Continued

[Amendment 379 Effective Date, November 11, 1993]

From	To	MEA
*Rifle, CO VOR/DME, *13100–MCA Rifle VOR/DME, SW BND .	Kremmling, CO VORTAC	13200
§ 95.6009 VOR Federal Airway 9 is Amended To Read in Part		
Farmington, MO, VORTAC, *2500–MOCA	Glass, MO FIX	*3000
§ 95.6018 VOR Federal Airway 18 is Amended To Read in Part		
Atlanta, GA VORTAC, *2500–MOCA	Conni, GA FIX	*3000
§ 95.6026 VOR Federal Airway 26 is Amended To Read in Part		
Blue Mesa, CO VOR/DME	Montrose, CO VOR/DME	12500
Montrose, CO VOR/DME	Grand Junction CO, VORTAC	10800
§ 95.6035 VOR Federal Airway 35 is Amended To Read in Part		
Saler, GA FIX	Pecan, GA VORTAC	2000
§ 95.6056 VOR Federal Airway 56 is Amended To Read in Part		
Macon, GA VORTAC, *3000–MRA, **2100–MOCA	*Misty, GA FIX	**6000
Misty, GA FIX	Colliers, SC VORTAC	2300
§ 95.6063 VOR Federal Airway 63 is Amended To Read in Part		
Razorback, AR VORTAC	Gamps, AR FIX	3100
§ 95.6069 VOR Federal Airway 69 is Amended To Read in Part		
Farmington, MO VORTAC, *2500–MOCA	Troy, IL VORTAC	*3000
§ 95.6074 VOR Federal Airway 74 is Amended To Read in Part		
Fort Smith, AR VORTAC, *1900–MOCA	Charr, AR FIX	*2500
§ 95.6116 VOR Federal Airway 116 is Amended To Read in Part		
U.S. Canadian Border	Suuue, OH FIX	3000 MAA–16000
Suuue, OH FIX	Erie, PA VORTAC	3000
§ 95.6123 VOR Federal Airway 123 is Amended To Read in Part		
Carmel, NY VORTAC	Albany, NY VORTAC	3000
§ 95.6124 VOR Federal Airway 124 is Amended To Read in Part		
Little Rock, AR VORTAC, *1600–MOCA	Hille, AR FIX	*4000
Hille, AR FIX, *1700–MOCA	Gilmore, AR VOR/DME	*4000
§ 95.6134 VOR Federal Airway 134 is Amended To Read in Part		
Paces, CO FIX	Sloim, CO FIX	13000
Sloim, CO FIX	Red Table, CO VOR/DME	14000
§ 95.6141 VOR Federal Airway 141 is Amended To Read in Part		
Concord, NH VORTAC, *4400–MOCA	Kelli, NH FIX	*5000
Kelli, NH FIX, *3600–MOCA	Lebanon, NH VOR/DME	*4000
§ 95.6151 VOR Federal Airway 151 is Amended To Read in Part		
Unker, NH FIX	Mcadm, NH FIX	4500
Mcadm, NH FIX, *3500–MOCA	Lebanon, NH VOR/DME	*4000
Lebanon, NH VOR/DME, *3600–MOCA	Hhana, VT FIX	*4000
Hhana, VT FIX, *3900–MOCA	Montpelier, VT VOR/DME	*4400
§ 95.6154 VOR Federal Airway 154 is Amended To Read in Part		
Ocone, GA FIX, *1700–MOCA	Lotts, GA FIX	*3000
§ 95.6159 VOR Federal Airway 159 is Amended To Read in Part		
Saler, GA FIX	Pecan, GA VORTAC	2000
Holly Springs, MS, VORTAC, *1800–MOCA	Gilmore, AR VOR/DME	*2500
§ 95.6162 VOR Federal Airway 162 is Amended by Adding		
Martinsburg, WV VORTAC, *3900–MOCA	Hyper, MD FIX	*5000
§ 95.6220 VOR Federal Airway 220 is Amended To Read in Part		
Paces, CO FIX	Sloim, CO FIX	13000
Sloim, CO FIX	Rifle, CO VOR/DME	12600
Rifle, CO VOR/DME	Meeker, CO VORTAC	11900
§ 95.6222 VOR Federal Airway 222 is Amended To Read in Part		
Henby, VA FIX	Lynchburg, VA VORTAC	4000
§ 95.6244 VOR Federal Airway 244 is Amended To Read in Part		
Hanksville, UT VORTAC, *12300–MCA Anium FIX, E BND, **8500–MOCA.	Anium, UT FIX	**10500
Anium UT FIX, *13300–MCA Parox FIX, W BND, **14800–MOCA.	*Parox, CO FIX	**15500
Parox, CO FIX, *12000–MCA Nadin FIX, W BND, **12000–MOCA.	Nadin, CO FIX	**13000
Montrose, CO VOR/DME	Blue Mesa, CO VOR/DME	12500

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES AND CHANGEOVER POINTS—Continued

[Amendment 379 Effective Date, November 11, 1993]

From	To	MEA
§ 95.6310 VOR Federal Airway 310 is Amended To Read in Part		
Greensboro, NC VORTAC	Chapl, NC FIX	3000
Chapl, NC FIX	Raleigh/Durham, NC VORTAC	2000
§ 95.6311 VOR Federal Airway 311 is Amended To Read in Part		
Dubbs, TN FIX, *5600–MOCA	Nello, GA FIX	*7000
§ 95.6312 VOR Federal Airway 312 is Amended To Read in Part		
Drift, NJ FIX	Prepl, NJ FIX	2000
is Amended To Delete		
Prepl, NJ FIX	Shall, NJ FIX	2000
§ 95.6320 VOR Federal Airway 320 is Amended To Read in Part		
Hoper, AK FIX, *5000–MCA Anchorage VOR/DME, E BND, **6000–MOCA.	*Anchorage, AK VOR/DME	**7000
§ 95.6325 VOR Federal Airway 325 is Amended To Read in Part		
Athens, GA VORTAC	Womac, GA FIX	3600
§ 95.6333 VOR Federal Airway 333 is Amended To Read in Part		
Rome, GA VORTAC	Choo Choo, TN VORTAC	4000
§ 95.6361 VOR Federal Airway 361 is Amended To Read in Part		
Farmington, NM VORTAC	Marke, CO FIX	
	NE BND	16300
	SW BND	9500
Marke, CO FIX	Unlap, CO FIX	
	NE BND	*16300
	SW BND	*11000
*10400–MOCA		
Unlap, CO FIX	Scrub, CO FIX	16300
Scrub, CO FIX	Lyzza, CO FIX	
	SW BND	16300
	NE BND	12400
Lyzza, CO FIX	Montrose, CO VOR/DME	
	SW BND	16300
	NE BND	9600
Montrose, CO VOR/DME	Icles, CO FIX	
	SW BND	10000
	NE BND	15000
Icles, CO FIX	Red Table, CO VOR/DME	15000
§ 95.6413 VOR Federal Airway 413 is Amended by Adding		
Ironwood, MI VORTAC, *2900–MOCA	Eau Claire, WI VORTAC	*5000
§ 95.6440 VOR Federal Airway 440 is Amended To Read in Part		
Hoper, AK FIX, *5000–MCA Anchorage VOR/DME, E BND, **6000–MOCA.	*Anchorage, AK VOR/DME	**7000
§ 95.6491 VOR Federal Airway 491 is Amended To Read in Part		
Rapid City, SD VORTAC, *5500–MOCA	Dickinson, ND VORTAC	*7000
§ 95.6516 VOR Federal Airway 516 is Amended To Read in Part		
Pioneer, OK VORTAC, *2600–MOCA	Tyroe, KS FIX	*3100
§ 95.6527 VOR Federal Airway 527 is Amended To Read in Part		
Razorback, AR VORTAC	Gamps, AR FIX	3100
§ 95.6591 VOR Federal Airway 591 is Amended To Read in Part		
Paces, CO FIX	Slolm, CO FIX	13000
Slolm, CO FIX, *13000–MOCA	Lindz, CO FIX	*14000
Lindz, CO FIX, *13400–MOCA	Snow, CO VOR/DME	*14000
§ 95.6405 Hawaii VOR Federal Airway 5 is Amended To Read in Part		
Mynah, HI FIX, *1200–MOCA	Hefti, HI FIX	*2000
Hefti, HI FIX, *7000–MOCA	Maken, HI FIX	
	NW BND	*8000
	SE BND	*7000

From	To	MEA	MAA
§ 95.7055 Jet Route No. 55 is Amended To Read in Part			
Craig, FL VORTAC	Savannah, GA VORTAC	18000	45000
§ 95.7184 Jet Route No. 184 is Added To Read			
Buckeye, AZ VORTAC	Deming, NM VORTAC	22000	45000

From	To	MEA	MAA
Deming, NM VORTAC	Newman, TX VORTAC	18000	45000
§ 95.7569 Jet Route No. 569 is Added To Read			
Great Falls, MT VORTAC	Dorse, MT FIX	18000	45000

§ 95.8003 VOR Federal Airways Changeover Points

Airway segment		Changeover points	
From	To	Distance	From
V–134 is Amended by Adding			
Grand Junction, CO VORTAC # The COP is at the Slolm INT.	Red Table, CO VOR/DME	#56	Grand Junction.
V–220 is Amended by Adding			
Grand Junction, CO VORTAC # The COP is at the Slolm INT.	Rifle, CO COR/DME	#56	Grand Junction.
V–222 is Amended by Adding			
Barretts Mountain, NC VOR/DME	Lynchburg, VA VORTAC	62	Barretts Mountain.
V–361 is Amended by Adding			
Farmington, NM VORTAC	Montrose, CO VOR/DME	61	Farmington.
V–413 is Amended by Adding			
Ironwood, MI VORTAC	Eau Claire, WI VORTAC	45	Ironwood.
V–591 is Amended by Adding			
Grand Junction, CO VORTAC # The COP is at the Slolm INT.	Snow, CO VOR/DME	#56	Grand Junction.

[FR Doc. 93–25637 Filed 10–18–93; 8:45 am]
BILLING CODE 4910–13–M

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14 CFR Part 97

[Docket No. 27479; Amdt. No. 1567]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the

affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (air), Standard instrument approaches, Weather.

Issued in Washington, DC.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective January 6, 1994*

Sioux Falls, SD, Joe Foss Field, VOR or TACAN RWY 15, Amdt. 19
Sioux Falls, SD, Joe Foss Field, VOR/DME or TACAN RWY 33, Amdt. 10
Sioux Falls, SD, Joe Foss Field, NDB RWY 3, Amdt. 23
Sioux Falls, SD, Joe Foss Field, ILS RWY 3, Amdt. 26
Sioux Falls, SD, Joe Foss Field, RADAR–1, Amdt. 9
Eastland, TX, Eastland Muni, NDB RWY 35, Amdt. 1
Olney, TX, Olney Muni, NDB RWY 17, Amdt. 3
Clintonville, WI, Clintonville Muni, NDB RWY 32, Amdt. 6

** * * Effective December 9, 1993*

Lebanon, NH, Lebanon Muni, VOR/DME RWY 7, Orig.
Lebanon, NH, Lebanon Muni, VOR–A, Amdt. 13, Cancelled
Lebanon, NH, Lebanon Muni, VOR RWY 25, Orig.
Lebanon, NH, Lebanon Muni, NDB–B, Amdt. 3
Lebanon, NH, Lebanon Muni, ILS RWY 18, Amdt. 3
Cambridge, OH, Cambridge Muni, VOR–A, Amdt. 3
Cambridge, OH, Cambridge Muni, NDB RWY 4, Amdt. 7

** * * Effective November 11, 1993*

Flagstaff, AZ, Flagstaff Pulliam, ILS/DME RWY 21, Orig.
Colorado Springs, CO, City of Colorado Springs Muni, ILS RWY 17R, Amdt. 5
Denver, CO, Denver International, ILS/DME RWY 34, Orig.
Denver, CO, Denver International, ILS/DME RWY 35R, Orig.
Denver, CO, Denver International, ILS RWY 35L, Orig.
Denver, CO, Denver International, ILS RWY 7, Orig.
Denver, CO, Denver International, ILS RWY 8, Orig.
Denver, CO, Denver International, ILS RWY 16, Orig.
Denver, CO, Denver International, ILS RWY 17L, Orig.
Denver, CO, Denver International, ILS RWY 17R, Orig.
Denver, CO, Denver International, ILS RWY 25, Orig.
Denver, CO, Denver International, ILS RWY 26, Orig.
Denver, CO, Denver International, ILS RWY 29R, Amdt. 12
Denver, CO, Denver International, VOR/DME RWY 29R, Orig.
Erie, CO, Tri-County, VOR/DME–A, Orig.
Montrose, CO, Montrose Regional, ILS/DME RWY 17, Orig.
Rifle, CO, Garfield County Regional, VOR/DME–C, Orig.
Rifle, CO, Garfield County Regional, LOC/DME–A, Amdt. 5
Meriden, CT, Meriden Markham Muni, NDB RWY 36, Amdt. 7
Meriden, CT, Meriden Markham Muni, VOR RWY 36, Amdt. 3
Miami, FL, Miami Intl, VOR RWY 12, Amdt. 29
Miami, FL, Miami Intl, VOR RWY 30, Amdt. 8
Miami, FL, Miami Intl, ILS RWY 9R, Amdt. 7
Miami, FL, Miami Intl, ILS RWY 27R, Amdt. 12
Miami, FL, Miami Intl, ILS RWY 27L, Amdt. 22
Chicago, IL, Chicago Midway, VOR/DME RNAV RWY 22L, Amdt. 2
Chicago, IL, Chicago Midway, VOR RWY 22L, Orig., Cancelled
Chanute, KS, Chanute Martin Johnson, VOR/DME RNAV RWY 36, Amdt. 2
Chanute, KS, Chanute Martin Johnson, VOR–A, Amdt. 8
Frankfort, KY, Capital City, NDB RWY 24, Amdt. 9, Cancelled
Northampton, MA, Northampton, VOR/DME–B, Amdt. 2
Northampton, MA, Northampton, VOR–A, Amdt. 2
Provincetown, MA, Provincetown Muni, ILS RWY 7, Amdt. 7
Detroit, MI, Detroit Metropolitan Wayne County, NDB RWY 27R, Amdt. 10
Detroit, MI, Detroit Metropolitan Wayne County, ILS RWY 27R, Amdt. 9
Kansas City, MO, Kansas City Intl, VOR RWY 27, Amdt. 14
Kansas City, MO, Kansas City Intl, ILS RWY 19R, Amdt. 8
Lincoln, NE, Lincoln Muni, RNAV RWY 14, Amdt. 4, Cancelled
North Platte, NE, Lee Bird Field, RNAV RWY 12L, Amdt. 3, Cancelled
Seward, NE, Seward Municipal, NDB RWY 16, Amdt. 1, Cancelled

Seward, NE, Seward Municipal, NDB RWY 34, Amdt. 1, Cancelled
Willoughby, OH, Willoughby Lost Nation Muni, NDB RWY 9, Amdt. 8
Memphis, TN, Memphis Intl, ILS RWY 36R, Amdt. 9
Dallas-Fort Worth, TX, Dallas-Fort Worth International, NDB RWY 35R, Amdt. 8
Dallas-Fort Worth, TX, Dallas-Fort Worth International, converging ILS RWY 35R, Amdt. 3
Dallas-Fort Worth, TX, Dallas-Fort Worth International, ILS RWY 35R, Amdt. 5
McKinney, TX, McKinney Muni, VOR/DME-A, Amdt. 3
McKinney, TX, McKinney Muni, ILS RWY 17, Orig.
Lyndonville, VT, Caledonia County, NDB RWY 2, Amdt. 2
Lynchburg, VA, Lynchburg Regional/Preston Glenn Field, ILS RWY 3, Amdt. 13
Appleton, WI, Outagamie County, LOC BC RWY 21, Amdt. 8, Cancelled
Appleton, WI, Outagamie County, VOR/DME RWY 21, Orig.

[FR Doc. 93-25636 Filed 10-18-93; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 940

RIN 0648-AC94

Stellwagen Bank National Marine Sanctuary Regulations

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Commerce (DOC).

ACTION: Final rule and summary of final management plan.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA), consistent with the Designation Document contained in this document, issues final regulations to implement the Stellwagen Bank National Marine Sanctuary, as designated by the U.S. Congress on November 4, 1992, and which encompasses an area of ocean waters over and surrounding Stellwagen Bank, and the submerged lands thereunder including the Bank, in the southwestern Gulf of Maine. NOAA by this document issues final regulations to implement the designation by regulating activities affecting the Sanctuary consistent with the provisions of the Designation Document. The intended effect of these regulations is to protect the conservation, recreational, ecological, historical, research, educational, and esthetic resources and qualities of the Stellwagen Bank National Marine Sanctuary.

Further, this document summarizes the final management plan for the Sanctuary, detailing the goals and objectives, management responsibilities, research activities, interpretive and educational programs, and enforcement, including surveillance activities.

EFFECTIVE DATE: Pursuant to section 304(b) of the Marine Protection, Research, and Sanctuaries Act (MPRSA) (16 U.S.C. 1434(b)), Congress has forty-five days of continuous session of Congress beginning on the day on which this document is published to review the designation and regulations before they take effect. At the completion of forty-five days, the designation (and any of its terms not disapproved by Congress through enactment of a joint resolution) and regulations will automatically become final and take effect. Announcement of the effective date of the final regulations will be published in the Federal Register.

ADDRESSES: Copies of the Final Environmental Impact Statement/Management Plan (FEIS/MP) prepared for the designation are available upon request to the Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1305 East-West Highway, 12th Floor, Silver Spring, MD 20910, (301) 713-3125.

FOR FURTHER INFORMATION CONTACT: Ms. Sherrard C. Foster, (301) 713-3132.

SUPPLEMENTARY INFORMATION:

I. Background

On November 4, 1992, legislation was enacted reauthorizing and amending Title III of the Marine Protection, Research, and Sanctuaries Act of 1972 ("MPRSA" or "Title III"), 16 U.S.C. 1431 *et seq.* (Pub. L. 102-587). The National Marine Sanctuaries Program Amendments of 1992 (Title II of Pub. L. 102-587, at section 2202) designates the Stellwagen Bank National Marine Sanctuary. Section 2202 additionally establishes a Sanctuary boundary; directs the Secretary of Commerce to issue a Sanctuary management plan in accordance with section 304 of the Act; prohibits the exploration for and mining of sand and gravel and other minerals in the Sanctuary; requires consultation with the Secretary of Commerce by Federal agencies proposing agency actions in the vicinity of the Sanctuary that may affect Sanctuary resources; authorizes funding levels for fiscal years 1993 and 1994; and directs the Secretary of Commerce to consider establishment of a satellite Sanctuary office in Provincetown, Gloucester, or Hull, Massachusetts.

Stellwagen Bank is a submerged, glacially-deposited primarily sandy feature extending for approximately 20 miles in a southeast-to-northwest direction in the extreme southwestern Gulf of Maine, between Cape Ann, Massachusetts and the northern end of Cape Cod, Massachusetts, at the eastern edge of Massachusetts Bay. The combination of physical and oceanographic characteristics over and around the Bank feature result in two distinct peak productivity periods annually. This productivity supports a large variety of benthic, invertebrate and pelagic fishery resources, which have in turn supported generations of commercial fishermen. The Bank's productivity also provides important feeding and nursery grounds for an extraordinary number of large and small cetacean species. The accessibility of the Bank from land points has additionally resulted in an extensive commercial whalewatch industry, attracting more than 1.25 million visitors to the Bank annually. The combination of its productivity and accessibility also provides the base for a high level of scientific interest in the Stellwagen Bank area.

Pursuant to section 205(b)(1) of Public Law No. 100-627, NOAA published a draft environmental impact statement/management plan (DEIS/MP), including a proposed Designation Document and proposed regulations (56 FR 5282) for the proposed designation of Stellwagen Bank as a national marine sanctuary, on February 8, 1991. Public hearings to receive comments on the proposed designation, proposed regulations, and DEIS/MP were conducted in Portsmouth, NH; Gloucester, MA; Duxbury, MA; Provincetown, MA; and Washington, DC during March 11-18, 1991. All comments received by NOAA in response to the Federal Register notice, and at the public hearings were considered and, where appropriate, were incorporated. A summary of significant comments on the proposed regulations and the regulatory elements of the DEIS/MP and NOAA's responses to them follow. The comments are both presented and responded to in Appendix G of the FEIS/MP.

(1) *Comment:* A few commenters opposed any national marine sanctuary designation of Stellwagen Bank by NOAA. Generally, these commenters believe Sanctuary designation would create an additional layer of Federal authority and regulation over existing authorities affecting a variety of activities, involving both living and non-living resources of the Stellwagen

Bank system. The commenters do not believe NOAA has provided an adequate justification for the need for additional management and/or regulation of the Stellwagen Bank area.

One commenter, the East Coast Tuna Association, recommended that Federal funds available for a Stellwagen Bank National Marine Sanctuary should be used instead to supplement planning and enforcement capabilities of existing authorities (presumably such as those of the National Marine Fisheries Service (NMFS) and the New England Fishery Management Council). The same commenter stated that Sanctuary designation would provide some organizations with a "menacing regulatory vehicle."

Response: Title III of the MPRSA, as amended by Congress on November 4, 1992 (Pub. L. 102–587, sec. 2202), designates the Stellwagen Bank National Marine Sanctuary. Designation of the Stellwagen Bank National Marine Sanctuary will create a supplementary authority to existing authorities in the Stellwagen Bank area. Sanctuary designation does not duplicate existing authority over fishing, dumping or otherwise. Designation of an ocean area as a national marine sanctuary recognizes the national significance of special marine systems, and provides for comprehensive and coordinated conservation and management of that system, to ensure the long-term viability of Sanctuary resources for compatible multiple uses. A necessary component of such management is the regulatory authority to address comprehensive resource protection from an ecosystem perspective.

In its consideration of the Stellwagen Bank proposal, NOAA has identified threats to the Bank environment against which there currently is either insufficient protection or no protection. For example, while NMFS and the New England Fishery Management Council attempt to address concerns of overfishing, the Sanctuary program can play an important supplementary role of protecting habitat and systems upon which fish species rely, without interfering with other regulatory regimes. A primary intent of a national marine sanctuary designation is to fill such existing regulatory gaps, and to enhance the existing regulatory authorities of other agencies.

(2) *Comment*: A large number of commenters supported designation of boundary alternative 3 (encompassing approximately 702 square nautical miles), over boundary alternative 2, identified as the preferred alternative in the DEIS/MP. Primary among the reasons stated for this position were the desire to (a) provide the largest area possible for the protection of whales; and (b) encompass and control the activities of the Massachusetts Bay Disposal Site (MBDS).

Many commenters also supported boundary alternative 3 because it would include Tillies Bank (northeast of Stellwagen Bank), and southern portions of Jeffreys Ledge (north of Stellwagen Bank). These areas are also utilized by fishermen and cetaceans.

Response: Title III of the MPRSA, as amended by Public Law 102–587 (section 2202), establishes a boundary for the Stellwagen Bank National Marine Sanctuary. Prior to this Congressional action, NOAA gave careful consideration to the potential advantages and disadvantages of adopting boundary alternative 3 for Sanctuary designation. The several facets of this consideration were guided by the overall purpose of national marine sanctuary designation: to provide a comprehensive and integrated long-term management program for the Stellwagen Bank area, in order to ensure the continued vitality of the site's conservation, recreational, ecological, historical, research, educational, and esthetic values. The Sanctuary will provide a management plan designed to protect the habitats and ecosystems which collectively make this area nationally significant. Sanctuary boundaries, therefore, have not been determined on the basis of single or limited benefits.

Boundary alternative 3 includes additional important habitat areas for cetaceans, fish and invertebrates. These habitat areas are also important to commercial and recreational fishermen and whalewatchers. An additional feature of the boundary alternative 3 configuration is the increased potential for close coordination between NOAA and the Commonwealth of Massachusetts' Ocean Sanctuaries Program toward the common objective of comprehensive coastal ocean management and planning.

During its consideration of boundary alternatives, NOAA also determined that the disposal of dredged materials within a national marine sanctuary is essentially incompatible with the purposes of Sanctuary designation and MPRSA policy. (See additional discussion following NOAA response to comment #6 regarding disposal activities at the MBDS.) The MBDS will be regulated by the Environmental Protection Agency (EPA) and the Army Corps of Engineers (COE).

Under EPA regulations, the presence of a designated national marine sanctuary in close proximity to an existing disposal site requires a higher level of research and monitoring to prevent harm to Sanctuary resources. NOAA will cooperate with EPA and COE to prevent harm to Sanctuary resources and qualities through existing permit processes. In addition, Title III of the MPRSA, as amended (Pub. L. 102–587) requires consultation with the Secretary of Commerce by EPA and COE regarding proposed disposal activities prior to the issuance of disposal permits. Thus, NOAA has authority under Title III to protect Sanctuary resources and qualities. Therefore, it is not necessary to include the MBDS within Sanctuary boundaries in order to protect Sanctuary resources and qualities from possible negative effects of disposal activities.

The preferred boundary alternative, depicted in the FEIS/MP as boundary alternative 5 and described at the following 15 CFR 940.2 is consistent with the Sanctuary boundary mandated in Public Law 102–587, at section 2202(b). The boundary includes the natural resources found in boundary alternative 3, but excludes the MBDS, as currently proposed for permanent designation by EPA. The adoption of boundary alternative 5 will both encompass identified habitat areas important to the living and non-living resources of the Stellwagen Bank area, and exclude incompatible disposal activities at the MBDS site.

(3) *Comment:* A few commenters, including the New England Fishery Management Council, Gloucester Fishermen's Program, Gloucester Fishermen's Wives Association, and two fishing vessel captains, supported boundary alternative 4, encompassing 330 square nautical miles, and marked by LORAN–C lines. Commenters stated that LORAN–C is the prevailing means utilized by most vessel captains to locate and navigate; and that latitude/longitude coordinates are not useful to vessel operators.

Response: Boundary alternative 4 would establish a Sanctuary area sufficient to provide protection and management of the Bank feature itself. However, boundary alternative 4, like alternative 1, would not fully encompass important habitat areas for invertebrate, fish and cetacean species; thus, system protection and management would not be fully possible with the adoption of boundary alternative 1 or 4.

NOAA agrees with commenters that identification of the Sanctuary boundary should be provided in a way that is useful to both on- and off-site Sanctuary users, as well as to Sanctuary management. To facilitate identification

of the Sanctuary boundary, NOAA has therefore provided both LORAN–C lines and latitude/longitude coordinates for the Sanctuary.

(4) *Comment:* Several commenters, including the New England Fishery Management Council, Massachusetts Executive Office of Environmental Affairs, and the U.S. Coast Guard, commented that the Sanctuary regulation proposed in the DEIS/MP prohibiting discharge from vessel bilge pumps would preclude smaller vessels (recreational or charterboat) from routine pumping activities necessary to maintain vessel buoyancy. Additionally, some commenters stated that discharge from commercial ship bilge pumps is already prohibited by MARPOL's "50-mile rule", which prohibits any such discharge within 50 nautical miles of shore.

Response: The regulatory language regarding discharge from vessel bilge pumps has been clarified to indicate NOAA's intended consistency with existing Coast Guard requirements. With regard to regulation of water discharges associated with vessel operation, the Sanctuary will permit discharge of cooling water, deck wash down and "graywater" (as defined by section 312 of the Federal Water Pollution Control Act, as amended). Discharge of oily wastes from vessel bilges will be prohibited in the Sanctuary, consistent with existing Coast Guard requirements. The prohibitions do not apply to emergency situations where life, property or the environment are threatened (see following language at 15 CFR 940.5(c)).

(5) *Comment:* A large number of commenters were generically opposed to the construction, placement and operation of the Massachusetts Water Resources Authority (MWRA) municipal outfall, and stated their concerns about possible adverse effects of the outfall on the Sanctuary's water quality and living resources.

Several commenter stated that if the MWRA outfall is constructed, the Sanctuary should have oversight responsibility for its operations. A similar comment was that joint monitoring of the outfall's effect on Sanctuary resources should be established.

Response: The new wastewater treatment facility is currently being constructed on Deer Island, which when completed will include an ocean outfall pipe discharging secondarily treated wastewater at a point approximately 12 nautical miles from the proposed Sanctuary.

Sanctuary regulations protect resources and qualities from such activities by prohibiting discharges either directly into the Sanctuary, or discharges outside the Sanctuary which subsequently enter the Sanctuary and cause harm to its resources or qualities. Moreover, in coordination with the Massachusetts Bays Program (MBP), the Sanctuary will provide a larger contextual framework for far-field monitoring to determine possible effects from the MWRA outfall. In this manner, NOAA intends to be involved in continuing investigations necessary to ensuring the protection of Sanctuary resources and qualities. In the event that outfall effluent enters the Sanctuary and harms its resources, then the NWRA outfall would be in violation of Sanctuary regulations, and subject to Title III actions.

NOAA agrees with commenters that joint monitoring should be considered to determine any possible effects resulting from the MWRA outfall. The MWRA has stated its commitment to ongoing study and monitoring of the outfall's impacts on Massachusetts Bay, and to its active participation in the Massachusetts Bays Program. Additionally, EPA and NMFS will study potential effects of MWRA outfall activities. The Sanctuary plans to be involved in these efforts by coordinating with EPA and NMFS to ensure protection of Sanctuary resources and qualities.

(6) *Comment:* A large number of commenters stated their belief that the Massachusetts Bay Disposal Site (MBDS) should be included in the Sanctuary, so that NOAA would have greater control over disposal activities and the future of the disposal site itself. Included in this group are the NMFS, Nantucket Land Council, Environment Department of City of Boston, Barnstable County Assembly of Delegates, Center for Coastal Studies, International Wildlife Coalition, New England Aquarium, Cetacean Research Unit, Atlantic Cetacean Research Center, Conservation Law Foundation, Center for Marine Conservation, Stellwagen Bank Coalition, and Urban Harbors Institute/University of Massachusetts at Boston.

An additional comment was that the MBDS should be included within the Sanctuary so that NOAA, through the Sanctuary, could shut down the disposal site if environmental harm resulting from disposal activities is demonstrated.

Response: Ocean disposal activities within a sanctuary are generally not compatible with the purposes of sanctuary designation and the policies of the MPRSA. Sanctuary boundaries should primarily be based upon the existence of nationally significant resources. Protection of Sanctuary resources does not require the inclusion of ocean disposal sites. EPA/COE regulations are designed to avoid the designation and use of areas which are rich in resources. EPA/COE regulations are also designed to prevent harm to Sanctuary resources. Sanctuary regulation prohibit disposal activities outside the Sanctuary which result in the entry of disposed materials into the Sanctuary and injury to Sanctuary resources or qualities. NOAA and EPA agree that dredged material disposal permits should not be authorized if there is a potential for those materials to cause harm to Sanctuary resources or qualities. The COE may issue permits for disposal of dredged materials under § 103 of the MPRSA only with EPA concurrence. In addition, the MPRSA mandates consultation with the Secretary of Commerce prior to COE issuance of MBDS permits. NOAA/NOS intends to participate in the existing consultation process utilized between NOAA/NMFS and the COE so that concerns with regard to Sanctuary resources and compatible uses of the Sanctuary are raised in a timely fashion. This process is articulated in the 1992 Memorandum of Agreement between the Department of the Army and the Department of Commerce, pursuant to Clean Water Act section 404(g). This will also facilitate a coordinated NMFS/NOS NOAA position being presented on disposal site permits. There is therefore no need to include the MBDS site within the Sanctuary boundary.

Following designation of the Sanctuary, future proposed uses of the MBDS will be reviewed by NOAA to ensure that disposal activities are consistent with the purposes of the Sanctuary. If NOAA finds that harm to Sanctuary resources or qualities has occurred or in likely to occur as a result of disposal activities, then the Sanctuary will take additional management measures, as are appropriate.

(7) *Comment:* A few commenters, including the Massachusetts Association of Conservation Commissions, stated that use of the MBDS should be phased out, or that the site should be closed.

Response: Sanctuary designated will preclude ocean disposal in the Sanctuary. Certification of ocean disposal outside the Sanctuary is not necessary because studies indicate disposed materials do not enter the Sanctuary and injure Sanctuary resources or qualities. NOAA will cooperate with EPA and COE to ensure no injury to Sanctuary resources or

qualities will result from such dredging activities.

(8) *Comment:* A few commenters suggested that the MBDS should be moved to a location further away from the Sanctuary, to avoid possible conflicts.

Response: NOAA agrees that there should be appropriate distance between ocean dumping sites and sanctuaries to avoid possible conflicts and to ensure resource protection. The MBDS, like other ocean disposal sites, is designated by EPA under title I of the MPRSA. Subsequent permitting of dredged material disposal activities at such sites is the responsibility of the COE, in conformance with EPA guidelines. As part of its current designation process under NEPA, EPA has considered alternative locations for a permanent dredged materials disposal site in its Final Environmental Impact Statement published in July 1992. As indicated in response to comments (7) and (9), studies demonstrate that dredged materials disposed at the MBDS do not enter the Sanctuary and cause injury to Sanctuary resources. Further, NOAA plans to work with EPA and COE to ensure that ocean disposal does not harm Sanctuary resources or qualities.

(9) *Comment:* Two commenters, the Environmental Protection Agency (Region I) and the U.S. Army Corps of Engineers (New England Division), stated that current management of the MBDS is adequate to protect Sanctuary resources and qualities, and that NOAA has not demonstrated the need for certification of disposal permits under Title III.

Response: Title I and its regulations establish a comprehensive framework for the management and regulation of dredged material disposal activities, and are designed to avoid harm to Sanctuary resources. However, NOAA's stewardship and comprehensive management responsibilities under title III provide an appropriate supplementary role for protecting Sanctuary resources and qualities, as well as addressing problems between conflicting uses of the Sanctuary. Current studies indicate the dredged materials disposed at MBDS do not enter the Sanctuary or harm Sanctuary resources. Therefore, NOAA certification of COE disposal permits does not appear necessary at this time. NOAA will cooperate with EPA and COE to ensure that these disposal activities do not harm the Sanctuary. NOAA will also scrutinize the current COE proposal to dispose contaminated sediments at MBDS, as part of a capping demonstration project for Boston Harbor. NOAA and EPA agree that permits for disposal of dredged materials at the MBDS should not be issued if there is a potential for those materials to cause harm to Sanctuary resources or qualities. Additionally, the COE must consult with the Secretary of Commerce if proposed Federal agency actions at the MBDS are likely to harm Sanctuary resources.

(10) *Comment:* Many commenters stated that offshore oil and gas, or hydrocarbon, activities should be prohibited in the Sanctuary. The sentiment was also voiced that hydrocarbon activities are inappropriate inside *any* national marine sanctuary. Some commenters believed that reliance on the current Presidential moratorium (extending to the year 2000) for protection of resources at Stellwagen Bank is inadequate, because such moratorium could be altered or negated immediately, leaving the area available for exploration, development and production activities. Commenters voiced support for a permanent prohibition on such activities, rather than listing the activity as "subject to regulation" in the proposed Sanctuary's regulations.

Response: NOAA agrees that oil and gas development is usually an incompatible use of a national marine sanctuary. NOAA has considered the effects of and the need for imposing a prohibition on hydrocarbon activities within the Sanctuary. Among the factors considered by NOAA were the historically low industry interest in the Stellwagen Bank area, based upon low estimates of recoverable oil and gas resources; the current Presidential moratorium on such activities; and the ability of NOAA to protect the Sanctuary's living and non-living resources by listing the activity as "subject to regulation" at the time of Sanctuary designation. Moreover, the general regulatory prohibitions against alteration of, or construction on, the seabed and discharges into the Sanctuary would prohibit most of the activities involved in exploration, development and production of hydrocarbon resources.

Based upon these considerations, there appears to be little or no reason to specifically prohibit oil and gas activities in the Sanctuary at this time. Should proposals be forwarded in the future for hydrocarbon activities involving the Stellwagen Bank area, NOAA will be able to analyze the need specifically to prohibit or otherwise restrict such activities at that time, by initiating a rulemaking process, which is open to public review and comment. Listing this activity as "subject to regulation" provides NOAA with the ability to take such actions should the necessity arise in the future. In order to prevent the necessity of repeating the entire Title III designation process to institute a new Sanctuary regulation in the future, NOAA must identify this type of activity as "subject to regulation" at the time of Sanctuary designation, which it has done.

(11) *Comment:* Many commenters expressed concern that lightering activities (transfer of petroleum products from one vessel to another) to allow smaller vessels to transport such products into Boston Harbor could cause harm to Sanctuary resources or qualities.

Response: Prior to development of the FEIS/MP document, NOAA was unaware that lightering ever occurred in proximity to the proposed Sanctuary. Investigation into the occurrence of this activity has indicated that lightering may occasionally occur outside the entrance to Boston Harbor area. Because there is apparently at least some incidence of lightering occurring infrequently in the general area of the proposed Sanctuary, and because of the threat of harm to sanctuary resources from spillage, NOAA agrees with commenters that lightering should not be permitted within the Sanctuary boundary. NOAA has thus prohibited lightering in the Sanctuary.

(12) *Comment:* Many commenters supported a prohibition on any mariculture-related activities within the Sanctuary. Several reasons were stated for this position, including: Potential conflict with vessel traffic; possible adverse impacts on marine mammals and seabirds resulting from entanglement in nets; and possible negative effects on water quality generally. Commenters supporting a prohibition on mariculture activities in the Sanctuary included: Urban Harbors Institute/University of Massachusetts at Boston; Town of Dennis; Center for Marine Conservation; Stellwagen Bank Coalition; Cape Ann Vessel Association; Atlantic Cetacean Research Center; Massachusetts Marine Educators; Save the Harbor/Save the Bay; Gloucester Fishermen's Program; Gloucester Fishermen's Wives Association; Cetacean Research Unit; New England Aquarium; American Cetacean Society; and two fishing vessel captains. Additionally, many individual citizens commented in support of prohibiting this activity in the Sanctuary.

Some commenters also raised objections to mariculture activities because they constitute a "private use" of public waters within the Exclusive Economic Zone, thereby preventing other uses, such as fishing.

Response: NOAA has listed this activity as subject to Sanctuary regulation. Both the existing permit requirements for construction and operation of an offshore mariculture facility, and the current status of the American Norwegian Fish Farm, Inc. proposal for establishment of two mariculture facilities have resulted in NOAA's determination that the granting of permits for conducting this activity in a national marine sanctuary is extremely unlikely. This determination is based upon COE guidance related to permits for fish pen mariculture operations, which prohibits fish farms in Congressionally, Presidentially or Federally established natural resource areas, such as national seashores, wilderness areas, wildlife refuges, parks or other areas designated for similar purposes (e.g., national marine sanctuaries).

By listing this potential activity as subject to Sanctuary regulation, NOAA reserves the ability to determine the need for regulation, including prohibition, should the establishment of a mariculture operation within the Sanctuary boundary be proposed in the future. General prohibitions against discharge or deposit of matter into the Sanctuary may be sufficient to prevent this activity from harming Sanctuary resources.

(13) *Comment:* Several commenters, including the New England Fishery Management Council, NMFS, Massachusetts Audubon Society, Gloucester Fishermen's Program, two fishing vessel captains, Gloucester Fishermen's Wives Association, Cetacean Research Unit, the New England Aquarium, and many private individuals, supported a Sanctuary prohibition on ocean incineration activities.

Response: NOAA agrees and this activity is prohibited within the Sanctuary or outside the Sanctuary if there is a discharge or deposit which enters the Sanctuary and harms Sanctuary resources. Under current existing authorities, ocean incineration activities may only occur pursuant to "interim" or "research" permits, issued by EPA under Title I of the MPRSA. To date, no ocean incineration sites have been designated by EPA. In designating such sites, EPA is required by Title I regulations to avoid sensitive areas, such as national marine sanctuaries. It is therefore unlikely that an ocean incineration site would be designated within a designated national marine sanctuary.

NOAA agrees that incineration activities should not occur in national marine sanctuaries. Although the environmental effects of such activities may not be well understood currently, at a minimum, the esthetic impacts are negative to Sanctuary qualities. In its consideration of alternatives, NOAA determined that the Sanctuary regulation prohibiting discharge or deposit of matter within the Sanctuary boundary will preclude any future designation of incineration sites within the Sanctuary, and leave no question regarding the possible occurrence of future incineration activities. Thus, although ocean incineration is generally prohibited by existing law, identifying ocean incineration as discharge and deposit activities prohibited by Sanctuary regulation will provide supplemental enforcement authority and penalties for violators.

(14) *Comment:* Several commenters voiced opposition to the construction, placement and operation of the fixed artificial platforms, or "islands", of the type previously proposed for Stellwagen Bank (known as "Gugel's Arabian Nights"), within the Sanctuary boundary. Among the concerns raised are conflict with vessel traffic lanes, interference with fishing areas, increased hazards to marine mammals from resulting additional vessel traffic and noise, potential entanglement for marine mammals and seabirds, degradation of water quality, and privatization of Federal waters.

Response: The current status of the proposed artificial platform remains very uncertain, pending the satisfactory response by the applicant to numerous additional questions raised by COE, including the identification of financial support for this project. However, regardless of the applicant's successful completion of necessary applications, NOAA shares the concerns of commenters regarding this project. In general, the presence of an artificial fixed platform over or around Stellwagen Bank is not an activity which reasonably could be described as "compatible with the primary objective of resource protection." Construction and placement of man-made structures within the Sanctuary may alter natural ecosystem functions, as well as the esthetics of the Sanctuary. Notwithstanding conditions which might be placed on the design, construction and operation of a fixed artificial platform, the potential impacts on both living and non-living resources within the Sanctuary are significant.

NOAA's prohibition on alteration of, construction on, placement on, or abandonment of any structure, material or other matter on the seabed effectively precludes the possibility of any fixed artificial platform being established within the Sanctuary.

(15) *Comment:* A few commenters raised concerns regarding the proposed prohibition on any alteration of, or construction on, the seabed. In particular, commenters were concerned about the effects of this proposed prohibition on "traditional fishing activities" in the Sanctuary, e.g., those current fisheries involving dredge gear.

Two commenters objected to this proposed prohibition, as well as the proposed prohibition on installation or placement of cables and pipelines in the Sanctuary, because they would be precluded from the possibility of placing electrical transmission cables through the Sanctuary. Commenters stated this activity is environmentally safe, and that an outright prohibition is inappropriate, because there is no demonstration of possible adverse effects.

Response: The regulation prohibiting alteration of, or construction on, the seabed specifically exempts vessel anchoring, traditional fishing operations, and installation of navigation aids. These activities do not appear to harm Sanctuary resources; and fishing operations are regulated by NMFS.

NOAA does not agree with commenters that the installation of electrical transmission cables poses no potential for environmental damage. Significant concerns with the installation of cables or pipelines include possible leaks, disruption of spawning areas, conflicts with fishing gear or the movement of bottom-dwelling species, and disturbance or damage to archaeological sites. A NOAA objective is the maintenance of a natural habitat, and therefore the avoidance of facilitating man-made permanent structures in the Sanctuary.

(16) *Comment:* A number of commenters stated that speed limits should be established for charterboats and recreational vessels operating in the Sanctuary. Limiting vessel speed inside the Sanctuary to between 15 and 18 knots was suggested by the Cape Ann Vessel Association, Atlantic Cetacean Research Center, Gloucester Fishermen's Program, Gloucester Fishermen's Wives Association, two vessel captains, and the Cetacean Research Unit. Additionally, a large number of individual commenters, as well as other organizations, supported generally Sanctuary regulation of recreational and other small vessel speeds. All comments reflected the concern for potential vessel collisions with marine mammals, particularly cetaceans. One commenter supported a

prohibition on all private boating activities in the Sanctuary, with an exception being provided for commercial fishing vessels.

Response: Existing NMFS whalewatch guidelines applicable to all vessels operating in proximity to cetaceans address vessel speeds generally when vessels are intentionally engaged in whalewatching activity. While whalewatch vessel operators appear to adhere generally to these guidelines, other recreational vessels often are unaware of the guidelines.

Pending national whalewatch regulations will address vessel speeds in proximity to cetaceans, and will be enforceable, as opposed to the NMFS guidelines. While NOAA/NOS agrees with commenters that vessel collisions with cetaceans may be a problem, it does not believe the imposition of regulatory speed limits on charterboats or recreational vessels is presently necessary. Among the Sanctuary's research and educational objectives will be the quantifiable identification, via coordination with NMFS and other involved organizations, of vessel/cetacean interactions and the further education of the recreational boating public. If these investigations demonstrate the need for vessel speed restrictions to reduce marine mammal/vessel interactions, then NOAA will propose a Sanctuary regulation restricting vessel speeds. The activity of vessel operation is therefore listed as "subject to Sanctuary regulation."

(17) *Comment:* A few commenters stated that NOAA should limit the speed of commercial ships in the Sanctuary, either on a year-round basis, or during the seasons when cetaceans are present. Concern was also raised, however, by the U.S. Coast Guard (USCG), that any future Sanctuary regulation limiting commercial vessel speed or changing vessel traffic patterns affecting "safe navigation of vessels on the high seas" must be first approved by both the USCG and, with respect to foreign vessels, the International Maritime Organization (IMO).

Response: NOAA is listing the operation of all vessels in the Sanctuary as an activity "subject to regulation." This action will allow NOAA to propose specific regulation of commercial ship operation in the future, if the need to do so is demonstrated.

The reduction of commercial vessel collision-related cetacean mortalities is identified as a priority objective in the Draft Right Whale Recovery Plan (NMFS, 1990). Two recommendations are made to address this objective: (a) Collection and analysis of additional data on the areas and seasons of potential vessel/cetacean conflict; and (b) investigation into strategies for reduction of ship/cetacean collisions. Among specific actions being considered to obtain this objective is the restriction of vessel speed in "high risk" areas during "high risk" seasons. In addition, the possibility of on-board lookouts; shifts in traffic lanes; on-board acoustical warning devices; detection technologies (such as side-scan sonar); alternative vessel designs; and satellite-tracking of transmitter-tagged cetaceans are also discussed in the Right Whale Recovery Plan. Although this plan focuses only on the Northern Right Whale, the objective of reducing vessel collisions with *any* marine mammal is clearly an objective to be pursued by both NMFS and the Sanctuary.

The Sanctuary intends to work with NMFS in the implementation of measures identified in the Northern Right Whale Recovery Plan, the Humpback Whale Recovery Plan, and other measures identified to reduce vessel collision-related injury and mortality of cetaceans. NOAA will also work with the Coast Guard and the IMO in addressing the problem to cetaceans as well as to vessel traffic.

(18) *Comment:* A few commenters, including DOI, stated that the proposed Sanctuary prohibition on the taking of seabirds potentially conflicts with certain provisions of the Migratory Bird Treaty Act, which allow for licensed hunting of migratory birds, including sea ducks.

Additionally, some commercial fishermen voiced concern at public hearings on the proposed Sanctuary that seabirds caught incidentally in fishing nets would constitute a violation of the proposed Sanctuary prohibition on taking.

Response: NOAA is unaware of the Sanctuary area being used for hunting of sea ducks; however, NOAA has changed the wording of its prohibition on taking of seabirds to exclude any such taking which has been authorized pursuant to the provisions of the Migratory Bird Treaty Act. Additionally, the Migratory Bird Treaty Act has been included in NOAA's discussion of existing Federal authorities. Consultation with DOI's Regional Fish and Wildlife Service office has provided indication that the Migratory Bird Treaty Act makes no provision for incidental take of migratory birds, and thus any such unpermitted incidental take in fishing nets is a violation of the MBTA. However, the number of such incidentally caught birds appears to be extremely low, and no endangered species appear to be involved.

Seabirds are Sanctuary resources which should be protected from harm or destruction. NOAA would not pursue a natural resource damage civil suit for incidental take which results in only negligible harm to the Sanctuary or species. NOAA will coordinate with the Fish and Wildlife Service (FWS), of the U.S. Department of the Interior (DOI) in any enforcement activities involving endangered or threatened seabird species, or related to MBTA violations.

(19) *Comment:* The DOI commented that NOAA's proposed prohibition on sand and gravel extraction activities within the Sanctuary is inappropriate and not necessary at this time. The DOI states that NOAA's proposed prohibition on development of industrial materials (e.g., sand and gravel) is not based on "an analysis of how or whether such activities would harm the specific resources that influenced the selection of this area [Stellwagen Bank] as a proposed NMS." The DOI suggests that potential sand and gravel extraction activities be examined on a "case-by-case" basis by NOAA to determine any necessary controls or prohibitions in instances where mitigation of harmful effects would "prove difficult."

Response: Title III of the MPRSA, as amended by on November 4, 1992 (Pub. L. 102–587, at section 2202(d)), prohibits the exploration for and mining of sand and gravel and other minerals in the Sanctuary. Moreover, NOAA does not agree that the extraction of sand and gravel resources from within the Sanctuary should be permitted on a case-by-case basis. Notwithstanding the fact that no specific proposals to conduct sand and gravel extraction activities are presently being considered by DOI (through the Minerals Management Service), and that "extensive geological, geomorphic, physical, oceanographic, and environmental factors" would have to be analyzed before actual mining activities could commence, sufficient documentation has been presented regarding the negative environmental impacts of such operations on Stellwagen Bank and its surrounding ecosystems as to warrant a prohibition on this activity. Moreover, sand mining would remove the Sanctuary resource which is at the core of the designation of this sanctuary: Protecting the Bank feature and its ecosystem.

Negative impacts of sand and gravel extraction activities include alteration of the Stellwagen Bank feature, which may affect continuation of seasonal upwelling cycles caused by the Bank's presence, which in turn supports the biological productivity of the

Stellwagen Bank ecosystem. Potential associated impacts include alterations and disruptions in population and migratory patterns (involving fish, invertebrate, and cetacean species) resulting from introduction of pollutants or undesirable nutrients; degradation of water quality; vessel noise; disruption or destruction of spawning areas (especially those of *Ammodytes americanus*, or sand lance, primary prey for humpback and fin whales); and loss of food sources and habitat for planktonic, invertebrate and fish species (including the copepod, *Calanus finmarchicus*, primary prey for northern right whales). Ultimately, the commercial, recreational and scientific importance of the Bank system would be adversely and permanently affected by sand and gravel mining activities.

Statements that "mitigating measures" could be undertaken to minimize the environmental effects of sand and gravel extraction do not address the significance of the Bank feature, and thus the intent of this national marine sanctuary designation. National marine sanctuaries are designated to recognize and provide long-term protection for nationally significant, discrete marine systems which in this case is the Stellwagen Bank feature and its ecosystem. While one of Title III's goals is to facilitate multiple uses of sanctuary areas, the nature and effects of such uses must be in conformance with the primary statutory objective of resource protection. Sand and gravel are basic elements of the Stellwagen Bank feature and are thus of primary importance to the continued biological productivity made possible by the Bank's presence. Alteration or removal of this core Sanctuary resource undermines and conflicts with the purposes of designation. "Mitigating measures" to lessen the adverse impacts of sand and gravel extraction would still result in an ecosystem permanently altered by human activities manipulating natural habitats and ecosystem processes.

Finally, NOAA's analysis of this issue presents information that the projected need for these materials does not indicate that extraction of sand and gravel from Stellwagen Bank is even necessary. None of the large public works projects currently underway in the Boston metropolitan area (Massachusetts Water Resources Authority wastewater treatment facility in Boston Harbor, Massachusetts Department of Public Works (MDPW) Central Artery project, and MDPW Third Harbor Tunnel project) has identified a need for sand and gravel resources from Stellwagen Bank. Moreover, completion of these projects will not, according to a recent report to the New England Governors Conference, create a shortage of sand and gravel resources. To the extent sand and gravel are subsequently needed for construction projects, there are alternate sources on land and sea, including the use of dredged material. Use of dredged material for construction aggregate would further the missions of DOI and COE without threatening a disturbance of the natural balance at Stellwagen Bank. On balance, therefore, the prohibition on sand and gravel extraction activities is a warranted and supportable means of ensuring the long-term protection mandated by Title III.

(20) *Comment:* The New England Fishery Management Council (NEFMC), as well as several individual commercial fishermen's organizations, commented that regulation of fisheries in the Sanctuary should remain entirely the responsibility of NMFS and the NEFMC. In particular, the NEFMC stated that NOAA should permanently exempt fishing activities from any Sanctuary regulation. Additionally, the NEFMC stated its belief that the Magnuson Fishery Conservation and Management Act (MFCMA) provides exclusive authority for fisheries management within the Exclusive Economic Zone to NMFS and Regional Fishery Management Councils.

Additionally, the NEFMC commented that the regulatory language in the proposed Sanctuary Designation Document (Article V of App. A to the DEIS/MP) contradicts the intent of the MFCMA, by providing that "if any valid regulation issued by any Federal, State, or local authority * * * conflicts with a Sanctuary regulation, the regulation deemed by the Director [of OCRM] to be more protective of Sanctuary resources and qualities shall govern."

Response: NOAA agrees that the MFCMA provides comprehensive authority for management, including regulation, over fisheries to Regional Fishery Management Councils and NMFS. Moreover, NOAA/NOS agrees with the Council's determination, made in response to NOAA's consultation early in the Sanctuary designation process, that adequate legal mechanisms exist to provide appropriate management of fisheries in general, and thus no supplementary fishing regulations currently appear necessary to address Sanctuary resource protection concerns.

During the process of its consideration of Stellwagen Bank for Sanctuary designation, NOAA/NOS has identified fisheries as a resource of national significance, and is therefore obligated under Title III of the MPRSA to ensure adequate mechanisms exist to properly manage and protect the long-term viability of this resource within the Sanctuary. In meeting this obligation, NOAA/NOS has further defined and discussed the current status of fishery stocks and the present fisheries management structure in the Sanctuary area.

NOAA/NOS has determined that while the regulatory structure for management of fisheries is adequate, current implementation of that structure is not fully attaining the objectives mandated under MFCMA. The NEFMC and NMFS are currently responding to a Court order to revise the FMP's for groundfish species, so as to design a rebuilding program for those stocks. NOAA/NOS believes this is an appropriate mechanism to address the current problems related to groundfish stocks. In addition, Congress is developing legislation to address this problem. Therefore, NOAA/NOS is neither regulating fishing nor listing fishing as an activity subject to Sanctuary regulation. NOAA/NOS intends to work closely with the NEFMC and NMFS to establish, via the Sanctuary, a broad forum representing multiple sources of possible assistance to the NEFMC and NMFS in the attainment of mutual objectives; and will also work with those entities on the impacts of fishing upon other Sanctuary resources and other Sanctuary users.

NOAA does not agree that the regulatory language in the Sanctuary Designation Document (Article V) contradicts the intent of the MFCMA, or that the MFCMA precludes the regulation of fishing within sanctuaries under Title III of the MPRSA. The intent of the Designation Document language is that the Sanctuary shall be governed by valid regulations which are the most protective of Sanctuary resources and qualities. This is wholly consistent with Title III and does not conflict with the MFCMA.

(21) *Comment:* Comments from some individual fishermen and the Stellwagen Bank Commercial Fisheries Cooperative stated that the proposed Sanctuary Advisory Committee should be "heavily-seated" with representatives of historic user groups.

Response: A Sanctuary Advisory Committee will be established in accordance with section 315 of Title III, which provides authority to the Secretary of Commerce to appoint up to fifteen individuals as Committee members. Recommendations for Committee membership will be developed by the Office of Ocean and Coastal Resource Management and

forwarded to the Secretary of Commerce. NOAA intends that appropriate user groups be fully represented on a Sanctuary Advisory Committee. Following designation of the Sanctuary, NOAA will solicit recommendations from the public for membership on the Advisory Committee.

(22) *Comment:* A few commenters stated that the Sanctuary Advisory Committee should be directly involved in management of the Sanctuary.

Response: The primary function of a Sanctuary Advisory Committee is to provide the on-site Sanctuary Manager with assistance on a variety of issues or programs, in order to ensure better management overall of the Sanctuary. To accomplish this objective, it is appropriate to bring together interested individuals with particular interests and expertise, to assist the Sanctuery Manager and the rest of NOAA in making necessary determinations for sound management. NOAA anticipates that the Sanctuary Advisory Committee would form subcommittees, to focus on particular issues. While the work of the Advisory Committee is vitally important to the attainment and maintenance of Sanctuary objectives, it is only advisory in nature, as final Sanctuary policies are determined by NOAA. As trustee for the Sanctuary's resources and qualities, NOAA must retain full management authority over the Sanctuary and its operation.

II. Designation Document

Section 304(a)(4) of the Act requires that the terms of designation set forth the geographic area included within the Sanctuary; the characteristics of the area that give it conservation, recreational, ecological, historical, research, educational, or esthetic value; and the types of activities that will be subject to regulation by the Secretary to protect those characteristics. This section also specifies that the terms of the designation may be modified only the same procedures by which the original designation was made. Thus the terms of designation serve as a charter for the Sanctuary.

The Designation Document for the Stellwagen Bank National Marine Sanctuary follows:

Designation Document for The Stellwagen Bank National Marine Sanctuary

Under the authority of Title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended (the "Act" or "MPRSA"), 16 U.S.C. 1431 *et seq.*, and as mandated by Public Law 102–587 (section 2202), the waters over and surrounding Stellwagen Bank and the submerged lands thereunder including the Bank, as described in Article II, are hereby designated as the Stellwagen Bank National Marine Sanctuary for the purposes of protecting and managing the conservation, ecological, recreational, research, educational, historical and esthetic resources and qualities of the area.

Article I. Effect of Designation

The Act authorizes the issuance of such final regulations as are necessary and reasonable to implement the designation, including managing and protecting the conservation, recreational, ecological, historical, research, educational, and esthetic resources and qualities of the Stellwagen Bank National Marine Sanctuary. Section 1 of Article IV of this Designation Document lists activities of the type that either are to be regulated, or may have to be regulated subsequently in order to protect Sanctuary resources and qualities. Listing does not necessarily mean that a type of activity will be regulated; however, if a type of activity is not listed it may not be regulated, except on an emergency basis, unless Section 1 of Article IV is amended to include the type of activity by the procedures outlined in section 304(a) of the MPRSA.

Article II. Description of the Area

The Stellwagen Bank National Marine Sanctuary (the "Sanctuary") boundary encompasses a total of approximately 638 square nautical miles (approximately 2181 square kilometers) of ocean waters, and the submerged lands thereunder, over and surrounding the submerged Stellwagen Bank and additional submerged features, offshore the Commonwealth of Massachusetts. The boundary encompasses the entirety of Stellwagen Bank; Tillies Bank to the northeast of Stellwagen Bank; and southern portions of Jeffreys Ledge, to the north of Stellwagen Bank. Portions of the Sanctuary are adjacent to three coastal ocean areas designated by the Commonwealth of Massachusetts as Ocean Sanctuaries. The northwestern border coincides with the North Shore Ocean Sanctuary. The southern border coincides with the seaward limit of Commonwealth jurisdictional waters adjacent to the Cape Cod Bay Ocean Sanctuary; and is also tangential to the Cape Cod Ocean Sanctuary. The western border of the Stellwagen Bank Sanctuary occurs approximately 25 miles east of Boston, Massachusetts. Appendix I to this Designation Document sets forth the precise Sanctuary boundary.

Article III. Characteristics of the Area That Give It Particular Value

Stellwagen Bank is a glacially-deposited, primarily sandy feature measuring nearly twenty miles in length, occurring in a roughly southeast-to-northwest direction between Cape Cod and Cape Ann, Massachusetts. It is located at the extreme southwestern corner of the Gulf of Maine, and forms a partial "gateway" to Cape Cod Bay, situated shoreward and southwest of the Bank.

The presence of the Bank feature contributes to a particular combination of physical and oceanographic characteristics which results in two distinct peak productivity periods annually, when overturn and mixing of coastal waters with nutrient-rich waters from deeper strata produce a complex system of overlapping mid-water and benthic habitats. From the time of Colonial settlement, this area has supported an abundant and varied array of fisheries, which continue to provide livelihoods for an active commercial fleet. Important fisheries include bluefin tuna, herring, cod, haddock, winter and summer flounder, silver hake, pollack, ocean pout, lobster, shrimp, surf clam and sea scallop. The commercial value of fish caught (exclusive of bluefin tuna) within Sanctuary waters exceeded $15 million in 1990.

The biological productivity of the Bank also attracts a seasonal variety of large and small cetaceans, several of which are classified as endangered species. The Stellwagen Bank environment provides feeding and nursery areas of humpback, fin, and northern right whales, the latter being the most critically-endangered of all large cetacean species. The photo-identification at Stellwagen Bank of 100 or more individual right whales from a total North Atlantic population estimated in 1990 at approximately 300 to 350 indicates the importance of the Bank to this species. The predictable seasonal presence of these and other cetacean species has generated a growing commercial whale-watch industry involving more than 40 vessels (over 1.5 million passengers), and producing revenues in excess of $17 million in 1988.

A vessel traffic separation scheme (VTSS) crosses directly over Stellwagen Bank, and accommodates approximately 2,700 commercial vessels annually in and out of Boston, Massachusetts. Existing or potential additional human activities involving the Stellwagen Bank environment include dredged material

disposal; sand and gravel extraction; offshore mariculture development; and offshore fixed artificial platform construction.

The uniqueness of the Stellwagen Bank environment as well as its accessibility draws the continuing interest of area scientific institutions, including the Center for Coastal Studies, Cetacean Research Unit, University of Massachusetts, Woods Hole Oceanographic Institution, Marine Biological Laboratory, Manomet Bird Observatory, New England Aquarium, University of Rhode Island and the National Marine Fisheries Service (NOAA). In light of the increasing levels of human activities, several issues such as: interactions between marine mammals and commercial/recreational vessels; immediate, long-term and cumulative impacts on marine mammals from whale-watching vessel activity; and the immediate, long-term and cumulative effects of discharge/disposal operations on the Bank's resources and qualities require coordinated and comprehensive monitoring and research.

Article IV. Scope of Regulations

Section 1. Activities Subject to Regulation

The following activities are subject to regulation under the Act, including prohibition, to the extent necessary and reasonable to ensure the protection and management of the conservation, recreational, ecological, historical, research, educational and esthetic resources and qualities of the area:

a. Discharging or depositing, from within the boundary of the Sanctuary, any material or other matter;

b. Discharging or depositing, from beyond the boundary of the Sanctuary, any material or other matter;

c. Exploring for, developing or producing oil, gas or minerals (*e.g.*, clay, stone, sand, gravel, metalliferous ores, nonmetalliferous ores or any other solid material or other matter of commercial value ["industrial materials"] within the Sanctuary;

d. Drilling into, dredging or otherwise altering the seabed of the Sanctuary; or constructing, placing or abandoning any structure, material or other matter on the seabed of the Sanctuary;

e. Development or conduct in the Sanctuary of mariculture activities;

f. Taking, removing, moving, catching, collecting, harvesting, feeding, injuring, destroying or causing the loss of, or attempting to take, remove, move, catch, collect, harvest, feed, injure, destroy or cause the loss of, a marine mammal, marine reptile, seabird, historical resource or other Sanctuary resource;

g. Transferring of petroleum-based products or materials from vessel-to-vessel, or "lightering", in the Sanctuary;

h. Operation of a vessel (*i.e.*, water craft of any description capable of being used as a means of transportation) in the Sanctuary;

i. Possessing within the Sanctuary a Sanctuary resource or any other resource, regardless of where taken, removed, moved, caught, collected or harvested, that, if it had been found within the Sanctuary, would be a Sanctuary resource;

j. Interfering with, obstructing, delaying or preventing an investigation, search, seizure or disposition of seized property in connection with enforcement of the Act or any regulation or permit issued under the Act.

Section 2. Emergencies

Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality; or minimize the imminent risk of such destruction, loss or injury, any activity, including those not listed in section 1 of this Article, is subject to immediate temporary regulation, including prohibition.

Article V. Effect on Leases, Permits, Licenses and Rights

If any valid regulation issued by any Federal, State or local authority of competent jurisdiction, regardless of when issued, conflicts with a Sanctuary regulation, the regulation deemed by the Director, Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration, or his or her designee to be more protective of Sanctuary resources and qualities shall govern.

Pursuant to section 304(c)(1) of the Act, 16 U.S.C. 1434(c)(1), no valid lease, permit, license, approval or other authorization issued by any Federal, State or local authority of competent jurisdiction, or any right of subsistence use or access, may be terminated by the Secretary of Commerce, or his or her designee, as a result of this designation, or as a result of any Sanctuary regulation, if such authorization or right was in existence on the effective date of this designation. However, the Secretary of Commerce, or designee, may regulate the exercise (including, but not limited to, the imposition of terms and conditions) of such authorization or right consistent with the purpose for which the Sanctuary is designated.

In no event may the Secretary or designee issue a permit authorizing, or otherwise approving: (1) The exploration for, development of, or production of industrial materials within the Sanctuary; or (2) the disposal of dredged material within the Sanctuary (except by a certification, pursuant to section 940.10, of valid authorizations in existence on the effective date of Sanctuary designation). Any purported authorizations issued by other authorities after the effective date of Sanctuary designation for any of these activities within the Sanctuary shall be invalid.

Article VI. Alteration of this Designation

The terms of designation, as defined under section 304(a) of the Act, may be modified only by the procedures outlined in section 304(a) of the MPRSA, including public hearings, consultation with interested Federal, State and local agencies, review by the appropriate Congressional committees, and Governor of the Commonwealth of Massachusetts, and approval by the Secretary of Commerce or designee.

End of Designation Document

III. Summary of the Final Management Plan

The FEIS/MP for the Stellwagen Bank National Marine Sanctuary recognizes the need for a balanced approach to management which reflects the multiple-use character of the area as well as the paramount need to protect its resources and qualities. The MP guides management of the Sanctuary during the first five years of operation. In describing the Sanctuary's location, resources and uses, the MP discusses programs for resource protection, research, and education/interpretation and details agency administrative roles and responsibilities.

Resource Protection

The highest priority management goal is to protect the marine environment, resources and qualities of the Sanctuary. The specific objectives of this goal are to:

(1) Coordinate policies and procedures among the agencies sharing responsibilities for resource protection and management;

(2) Encourage participation by interested agencies and organizations in the development of procedures to address specific management concerns (*e.g.*, monitoring and emergency-response programs);

(3) Develop an effective and coordinated program for the enforcement of Sanctuary regulations;

(4) Enforce Sanctuary regulations in addition to other regulations already in place;

(5) Promote public awareness of, and voluntary compliance with, Sanctuary regulations and objectives, through

educational/interpretive programs stressing resource sensitivity and wise use;

(6) Ensure that Sanctuary water quality is maintained at a level consonant with Sanctuary designation;

(7) Establish mechanisms for coordination among all agencies participating in Sanctuary management;

(8) Ensure the incorporation of research results and scientific data into effective resource protection strategies; and

(9) Reduce threats to Sanctuary resources and qualities.

Research Program

Effective management of the Sanctuary requires the initiation of a Sanctuary research program that addresses management issues. The Sanctuary research program will be directed at improving knowledge of the Stellwagen Bank area environment, resources and qualities, and to resolving specific management problems, some of which may involve resources common to both the Bank and to surrounding areas. Research results will be used in interpretive programs for visitors and others interested in the Sanctuary, as well as for protection and management of resources and qualities. To avoid duplication of effort and achieve maximum benefits from the research, NOAA will coordinate its research efforts with those of other agencies and organizations.

Specific objectives of the research program are to:

(1) Establish a framework and procedures for administering research to ensure that research projects are responsive to management of the Sanctuary;

(2) Incorporate research results into the interpretive/education program in formats useful to the general public;

(3) Focus and coordinate data collection efforts on the physical, chemical, geological and biological oceanography of the Sanctuary;

(4) Encourage studies that integrate research from the variety of coastal habitats with nearshore and open ocean processes;

(5) Initiate a monitoring program to assess environmental changes as they occur due to natural and human processes;

(6) Identify the range of effects on the environment that would result from predicted changes in human activity or natural phenomena; and

(7) Encourage information exchange among all organizations and agencies conducting management-related research in the Sanctuary to promote more informed management.

Education Program

The goal of the Sanctuary's education programs is to improve public awareness, understanding and appreciation of the value of the Sanctuary and the need to protect its resources and qualities.

Management objectives designed to meet this goal are to:

(1) Provide the public with information on the Sanctuary and its goals and objectives, with an emphasis on the need to use Sanctuary resources and qualities wisely to ensure their long-term viability;

(2) Broaden support for Sanctuary management by offering public programs suited to visitors with a diverse range of interests;

(3) Provide for public involvement by encouraging feedback on the effectiveness of education programs, collaboration with Sanctuary management staff in extensions and outreach programs, and participation in other volunteer programs; and

(4) Collaborate with other organizations to provide educational services complementary to the Sanctuary program.

Visitor Use

The Sanctuary Program's goal for visitor management is to facilitate, to the extent compatible with the primary objective of resource protection, public and private uses of Sanctuary resources which are not prohibited pursuant to other authorities.

Specific management objectives are to:

(1) Provide relevant information about Sanctuary regulations, use policies and standards;

(2) Collaborate with public and private organizations in promoting compatible uses of the Sanctuary;

(3) Encourage the public using the Sanctuary to respect sensitive Sanctuary resources and qualities; and

(4) Monitor and assess the levels of use to identify and control potential degradation of resources and qualities, and to minimize potential user conflicts.

The Sanctuary will be managed initially by NOAA Sanctuaries and Reserves Division staff located in Plymouth, Massachusetts. Pursuant to Public Law 102–587, NOAA will also consider establishment of a Sanctuary satellite office in Provincetown, Gloucester, or Hull, Massachusetts.

IV. Summary of Regulations

The regulations set forth the boundary of the Sanctuary; prohibit a relatively narrow range of activities; establish procedures for applying for National Marine Sanctuary permits to conduct prohibited activities; establish certification procedures for existing leases, licenses, permits, approvals, other authorizations or rights authorizing the conduct of a prohibited activity; establish notification and review procedures for applications for leases, licenses, permits, approvals or other authorizations to conduct a prohibited activity; set forth the maximum per-day penalties for violating Sanctuary regulations; and establish procedures for administrative appeals.

Specifically, the regulations add a new part 940 to title 15, Code of Federal Regulations.

Section 940.1 sets forth as the purpose of the regulations to implement the designation of the Stellwagen Bank National Marine Sanctuary by regulating activities affecting the Sanctuary, consistent with the terms of that designation in order to protect and manage the conservation, ecological, recreational, research, educational, historical and esthetic resources and qualities of the area.

Section 940.2 and appendix I following § 940.12 set forth the boundary of the Sanctuary.

Section 940.3 defines various terms uses in the regulations. Others terms appearing in the regulations are defined at 15 CFR 922.2 and/or in the MPRSA.

Section 940.4 allows all activities except those prohibited by § 940.5 to be undertaken subject to the requirements of any emergency regulation promulgated pursuant to § 940.6, subject to all prohibitions, restrictions and conditions validly imposed by any other authority of competent jurisdiction, and subject to the liability established by section 312 of the Act.

Section 940.5 prohibits a variety of activities and thus makes it unlawful for any person to conduct them or cause them to be conducted. However, any of the prohibited activities except for the exploration for, development of, or production of industrial materials within the Sanctuary; and the disposal of dredged material within the Sanctuary (except by a certification, pursuant to § 940.10, of valid authorizations in existence on the effective date of Sanctuary designation), could be conducted lawfully if one of the following four situations applies.

(1) The activity is necessary to respond to an emergency threatening life, property or the environment; authorized by a National Marine Sanctuary permit issued under § 940.9; or authorized by a Special Use permit issued under section 310 of the Act.

(2) With regard to the Department of Defense activities: The activity is exempted after consultation between the Director of the Office of Ocean and Coastal Resource Management or designee and the Department of Defense. The regulations require that the Department of Defense carry out its activities in a manner that avoids to the maximum extend practicable any adverse impact on Sanctuary resources and qualities and that the Department of Defense, in the event of threatened or actual destruction of, loss of, or injury to a Sanctuary resource or quality resulting from an untoward incident, including but not limited to spills and groundings, caused by it, promptly coordinate with the Director or designee for the purpose of taking appropriate actions to respond to and mitigate the harm and, if possible, restore or replace the Sanctuary resource or quality. The final regulation regarding Department of Defense activities differs from the proposed regulation principally by:

(i) Adding the requirement to avoid to the maximum extent practicable any adverse impacts; and

(ii) Adding the requirement of prompt coordination, in the event of an untoward incident, for the purpose of taking appropriate actions.

(3) The activity is authorized by a certification by the Director or designee under § 940.10 of a valid lease, permit, license or other authorization issued by any Federal, State or local authority of competent jurisdiction and in existence on (or conducted pursuant to any valid right of subsistence use or access in existence on) the effective date of this designation, subject to complying with any terms and conditions imposed by the Director or designee as he or she deems necessary to achieve the purposes for the Sanctuary was designated.

(4) The activity is authorized by a valid lease, permit, license, approval or other authorization issued by any Federal, State or local authority of competent jurisdiction after the effective date of Sanctuary designation, provided that the Director or designee was notified of the application in accordance with the requirements of § 940.11, the applicant complies with the requirements of § 940.11, the Director or designee notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization, and the applicant complies with any terms and conditions the Director or designee deems necessary to protect Sanctuary resources and qualities.

The first activity prohibited is discharging or depositing, from within the Sanctuary, any material or other mater except

(1) Fish, fish parts, chumming materials or bait used in or resulting from traditional fishing operations in the Sanctuary;

(2) Biodegradable effluent incidental to vessel use and generated by marine sanitation devices approved in accordance with section 312 of the Federal Water Pollution Control Act, as amended, (FWPCA), 33 U.S.C. 1322 *et seq.*;

(3) Water generated by routine vessel operations (*e.g.*, cooling water, deck wash down and graywater as defined by section 312 of the FWPCA) excluding oily wastes from bilge pumping; and

(4) Engine exhaust.

The prohibition is necessary in order to protect the Sanctuary resources and qualities from the effects of pollutants discharged or deposited into the Sanctuary, including, but not limited to, the effects of incineration activities occurring from onboard vessels.

The second activity prohibited is discharging or depositing from beyond the boundary of the Sanctuary, any material or other matter, except for the exclusions discussed above for the first prohibited activity, that subsequently enter the Sanctuary and injure a Sanctuary resources or quality. The intent of this prohibition is to protect the Sanctuary resources and qualities from the harmful effects of discharged or deposited pollutants.

The third activity prohibited in exploring for, developing or producing industrial materials in the Sanctuary. This prohibition is necessary to preserve the physical structure of the Bank feature, which is causal is providing seasonal upwelling events supporting the Bank system's biological productivity. The prohibition additionally will prevent the negative effects of physical and possible chemical disturbances associated with extraction activities, e.g., destruction of benthic biota; resuspension of fine sediments; interference with filtering, feeding and respiratory functions of marine organisms; loss of food sources and habitats; and lowered photosynthesis and oxygen levels.

The fourth activity prohibited is drilling into, dredging or otherwise altering the seabed of the Sanctuary; or constructing, placing or abandoning any structure, material or other matter on the seabed of the Sanctuary, except as incidentally resulting from:

(1) Anchoring vessels;

(2) Traditional fishing operations; or

(3) Installation of navigation aids.

The intent of this prohibition is to protect the resources and qualities of the Sanctuary from the harmful effects of activities such as, but not limited to, archaeological excavations, drilling into the seabed, strip mining, laying or placing of pipelines or cables, and offshore commercial development, which may disrupt and/or destroy sensitive marine benthic habitats, invertebrate populations, fish habitats, and marine mammal feeding areas.

The fifth activity prohibited is moving, removing or injuring, or attempting to move, remove or injure, a Sanctuary historical resource. Historical resources in the marine environment are fragile, finite and non-renewable. This prohibition is designed to protect these resources so that they may be researched and information about their contents and type made available for the benefit of the public. This prohibition does not apply to moving, removing or injury resulting incidentally from traditional fishing operations.

The sixth activity prohibited is taking any marine reptile, marine mammal or seabird in or above the Sanctuary, except as permitted by the Marine Mammal Protection Act, as amended, (MMPA), 16 U.S.C. 1361 *et seq.*, the Endangered Species Act, as amended (ESA), 16 U.S.C. 1531 *et seq.*, and the Migratory Bird Treaty Act, as amended, (MBTA), 16 U.S.C. 703 *et seq.* The term "taking" includes all forms of harassment. The MMPA, ESA and MBTA prohibit the taking of species protected under those Acts. The prohibition overlaps with the MMPA, ESA and MBTA but also extends protection for Sanctuary resources on an environmentally holistic basis and provides a greater deterrent with civil penalties of up to $100,000 per taking. The prohibition covers all marine mammals, marine reptiles and seabirds in or above the Sanctuary.

The seventh activity prohibited is lightering, or the at-sea transfer of petroleum products from one vessel to another, in the Sanctuary. The intent of this prohibition is to protect Sanctuary resources and qualities from the adverse effects of spillage which may occur, particularly in the absence of any direct monitoring of lightering activities.

Both the eighth and ninth prohibitions are intended to facilitate enforcement actions for violations of Sanctuary regulations. The eighth prohibition is the possession within the Sanctuary of any historical resource, marine mammal, marine reptile or seabird, regardless of where the resource was taken, except when taken in compliance with the ESA, MMPA and MBTA. The ninth prohibition is interfering with, obstructing, delaying or preventing investigations, searches,

seizures or disposition of seized property in connection with enforcement of the Act or any regulation or permit issued under the Act.

Section 940.6 authorizes the regulation, including prohibition, on a temporary basis of any activity where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality, or minimize the imminent risk of such destruction, loss or injury.

Section 940.7 sets forth the maximum statutory civil penalty for violating a regulation—$100,000. Each day of a continuing violation constitutes a separate violation.

Section 940.8 repeats the provision in section 312 of the Act that any person who destroys, causes the loss of, or injures any Sanctuary resource is liable to the United States for response costs and damages resulting from such destruction, loss or injury, and any vessel used to destroy, cause the loss of, or injure any Sanctuary resource is liable in rem to the United States for response costs and damages resulting from such destruction, loss or injury. The purpose of §§ 940.7 and 940.8 is to notify the public of the liability for violating a Sanctuary regulation or the Act.

Regulations setting forth the procedures governing administrative proceedings for assessment of civil penalties, permit sanctions and denials for enforcement reasons, issuance and use of written warnings, and release or forfeiture of seized property appear at 15 CFR part 904.

Section 940.9 sets forth the procedures for applying for a National Marine Sanctuary permit to conduct a prohibited activity and the criteria governing the issuance, denial, amendment, suspension and revocation of such permits. A permit may be granted by the Director of the Office for Ocean and Coastal Resource Management or designee if he or she finds that the activity will have only negligible short-term adverse effects on Sanctuary resources and qualities and will: Further research related to Sanctuary resources; further the educational, natural or historical resource value of the Sanctuary further salvage or recovery operations in or near the Sanctuary in connection with a recent air or marine casualty; or assist in the management of the Sanctuary. In deciding whether to issue a permit, the Director or designee is required to consider such factors as the professional qualifications and financial ability of the applicant as related to the proposed activity, the duration of the activity and the duration of its effects, the appropriateness of the methods and procedures proposed by the applicant for the conduct of the activity, the extent to which the conduct of the activity may diminish or enhance Sanctuary resources and qualities, the cumulative effects of the activity, and the end value of the activity. In addition, the Director or designee is authorized to consider any other factors he or she deems appropriate.

Section 940.10 sets forth procedures for requesting certification of leases, licenses, permits, approvals, other authorizations or rights in existence on the date of Sanctuary designation authorizing the conduct of an activity prohibited under paragraphs (a)(1)–(2) and (4)–(8) of § 940.5. Pursuant to paragraph (f) of § 940.5, the prohibitions in paragraphs (a)(1)–(2) and (4)–(8) of § 940.5 do not apply to any activity authorized by a valid lease, permit, license, approval or other authorization in existence on the effective date of Sanctuary designation and issued by any Federal, State or local authority of competent jurisdiction, or by any valid right of subsistence use or access in existence on the effective date of Sanctuary designation, provided that the holder of such authorization or right complies with the requirements of § 940.10 (*e.g.*, notifies the Director or designee of the existence of, requests certification of, and provides requested information regarding such authorization or right) and complies with any terms and conditions on the exercise of such authorization or right imposed as a condition of certification by the Director or designee as he or she deems necessary to achieve the purposes for which the Sanctuary was designated.

Section 940.10 allows the holder 90 days from the effective date of Sanctuary regulations to request certification. The holder is allowed to conduct the activity without being in violation of paragraphs (a)(1)–(2) and (4)–(8) of § 940.5 pending final agency action on his or her certification request, provided the holder has complied with all requirements of § 940.10.

Section 940.10 also allows the Director or designee to request additional information from the holder and to seek the views of other persons.

As a condition of certification, the Director or designee will impose such terms and conditions on the exercise of such lease, permit, license, approval, other authorization or right as he or she deems necessary to achieve the purposes for which the Sanctuary was designated. This is consistent with the Secretary's authority under section 304(c)(2) of the Act.

The holder may appeal any action conditioning, amending, suspending or revoking any certification in accordance with the procedures set forth in § 940.12.

Any amendment, renewal or extension not in existence as of the date of Sanctuary regulations of a lease, permit, license, approval, other authorization or right is subject to the provisions of § 940.11.

Section 940.11 states that consistent with paragraph (g) of § 940.5, the prohibitions of paragraphs (a)(1)–(2) and (4)–(8) of § 940.5 do not apply to any activity authorized by any valid lease, permit, license, approval or other authorization issued after the effective date of Sanctuary designation by any Federal, State or local authority of competent jurisdiction, provided that the applicant notifies the Director or designee of the application for such authorization within 15 days of the date of filing of the application or of the effective date of Sanctuary regulations, whichever is later, that the applicant is in compliance with the other provisions of § 940.11, that the Director or designee notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization, and that the applicant complies with any terms and conditions the Director or designee deems necessary to protect Sanctuary resources and qualities.

Section 940.11 allows the Director or designee to request additional information from the applicant and to seek the views of other persons.

The applicant may appeal any objection by, or terms or conditions imposed by, the Director or designee to the Assistant Administrator or designee in accordance with the procedures set forth in § 940.12.

An application for an amendment to, an extension of, or a renewal of an authorization is also subject to the provisions of § 940.12.

Section 940.12 sets forth procedures for appealing to the Assistant Administrator or designee actions of the Director or designee with respect to:

(1) The granting, conditioning, amendment, denial, suspension or revocation of a National Marine Sanctuary permit under section 940.9 or a Special Use permit under Section 310 of the Act;

(2) The granting, denial, conditioning, amendment, suspension of revocation of a certification under section 940.10; or

(3) The objection to issuance or the imposition of terms and conditions under section 940.11.

Prior to conditioning the exercise of existing leases, permits, licenses, approvals, other authorizations or

rights, or conditioning or objecting to proposed authorizations, NOAA intends to consult with relevant issuing agencies as well as owners, holders or applications. NOAA's policy is to encourage best available management practices for the Sanctuary.

V. Miscellaneous Rulemaking Requirements

Regulatory Flexibility Act

The regulations in this notice allow all activities to be conducted in the Sanctuary other than a relatively narrow range of prohibited activities. The procedures in these regulations for applying for National Marine Sanctuary permits to conduct prohibited activities, for requesting certifications for pre-existing leases, licenses, permits, approvals, other authorizations or rights authorizing the conduct of a prohibited activity, and for notifying NOAA of applications for leases, licenses, permits, approvals or other authorizations to conduct a prohibited activity will all act to lessen any adverse economic effect on small entities. The regulations, in total, will not have a significant economic impact on a substantial number of small entities, and when they were proposed the General Counsel of the Department of Commerce so certified to the Chief Counsel for Advocacy of the Small Business Administration. As a result, neither an initial nor final Regulatory Flexibility Analysis was prepared.

Paperwork Reduction Act

This rule contains collection of information requirements subject to the requirements of the Paperwork Reduction Act (Pub. L. 96–511). The collection of information requirements contained in the rule have been reviewed by the Office of Management and Budget (OMB) under section 3504(h) of the Paperwork Reduction Act and have been approved under OMB Control No. 0648–0141. Comments from the public on the collection of information requirements contained in this rule are invited and should be addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attn: Desk Officer for NOAA) and to Richard Roberts, room 305, 6010 Executive Boulevard, Rockville, MD 20852.

Executive Order 12612

A Federalism Assessment (FA) was prepared for the proposed designation, draft management plan and proposed implementing regulations. The FA concluded that all were fully consistent with the principles, criteria and requirements set forth in sections 2 through 5 of Executive Order 12612, Federalism Considerations in Policy Formulation and Implementation (52 FR 41685, Oct. 26, 1987). Copies of the FA are available upon request to the Office of Ocean and Coastal Resource Management at the address listed above.

National Environmental Policy Act

In accordance with section 304(a)(2) of the Act (16 U.S.C. 1434(a)(2)) and the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370(a)), a DEIS/MP was prepared for the designation and the proposed regulations. As required by section 304(a)(2) of the Act, the DEIS/MP included the resource assessment report required by section 303(b)(3) of the Act (16 U.S.C. 1433(b)(3)), maps depicting the boundary alternatives of the area proposed to be designated, and the existing and potential uses and resources of the area. Copies of the DEIS/MP were made available for public review on February 8, 1991, with comments due on April 9, 1991. Public hearings were held in Portsmouth, New Hampshire, Gloucester, Massachusetts, Duxbury, Massachusetts, Provincetown, Massachusetts, and Washington, DC between March 11 and 18, 1992. All comments were reviewed and, where appropriate, incorporated into the FEIS/MP and these regulations. Copies of the FEIS/MP are available upon request (see address section).

Executive Order 12630

This rule does not have takings implications within the meaning of Executive Order 12630 sufficient to require preparation of a Takings Implications Assessment under that order. This rule would not appear to have an effect on private property sufficiently severe as effectively to deny economically viable use of any distinct legally potential property interest to its owner or to have the effect of, or result in, a permanent or temporary physical occupation, invasion, or deprivation. While the prohibition on the exploration, development and production of industrial materials from the Sanctuary might have a takings implication if it abrogated an existing lease for extraction of such material within the Sanctuary or an approval of an exploration or development and production plan, no leases related to industrial materials exploration, development or production have been sold for tracts within the Sanctuary and no exploration or production and development plans have been filed or approved.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

List of Subjects in 15 CFR Part 940

Administrative practice and procedure, Coastal zone, Education, environmental protection, Marine resources, Natural resources, Penalties, Recreation and recreation areas, Reporting and recordkeeping requirements, Research.

Dated: October 8, 1993.

W. Stanley Wilson,

Assistant Administrator for Ocean Services and Coastal Zone Management.

Accordingly, for the reasons set forth above, 15 CFR chapter IX is amended as set forth below.

A new part 940 is added to subchapter B to read as follows:

PART 940—STELLWAGEN BANK NATIONAL MARINE SANCTUARY

Sec.

940.1 Purpose.
940.2 Boundary.
940.3 Definitions.
940.4 Allowed activities.
940.5 Prohibited activities.
940.6 Emergency regulations.
940.7 Penalties for violations of regulations.
940.8 Response costs and damages.
940.9 National Marine Sanctuary permits—application procedures and issuance criteria.
940.10 Certification of pre-existing leases, licenses, permits, approvals, other authorizations or rights to conduct a prohibited activity.
940.11 Notification and review of applications for leases, licenses, permits, approvals or other authorizations to conduct a prohibited activity.
940.12 Appeals of administrative action.

Appendix I to Part 940—Stellwagen Bank National Marine Sanctuary Boundary Coordinates

Authority: 16 U.S.C. 1431 *et seq.*

§ 940.1 Purpose.

The purpose of the regulations in this Part is to implement the designation of the Stellwagen Bank National Marine Sanctuary by regulating activities affecting the Sanctuary consistent with the terms of that designation in order to protect and manage the conservation, ecological, recreational, research, educational, historical and esthetic resources and qualities of the area.

§ 940.2 Boundary.

The Stellwagen Bank National Marine Sanctuary consists of an area of approximately 638 square nautical miles of Federal marine waters and the submerged lands thereunder, over and around Stellwagen Bank and other submerged features off the coast of Massachusetts. The boundary

encompasses the entirety of Stellwagen Bank; Tillies Bank, to the northeast of Stellwagen Bank; and portions of Jeffreys Ledge, to the north of Stellwagen Bank. The Sanctuary boundary is identified by the following coordinates, indicating the most northeast, southeast, southwest, west-northwest, and north-northwest points: 42°45'59.83" N x 70°13'01.77" W (NE); 42°05'35.51" N x 70°02'08.14" W (SE); 42°07'44.89" N x 70°28'15.44" W; (SW); 42°32'53.52" N x 70°35'52.38" W (WNW); and 42°39'04.08" N x 70°30'11.29" W (NNW). The western border is formed by a straight line connecting the most southwest and the west-northwest points of the Sanctuary. At the most west-northwest point, the Sanctuary border follows a line contiguous with the three-mile jurisdictional boundary of Massachusetts to the most north-northwest point. From this point, the northern border is formed by a straight line connecting the most north-northwest point and the most northeast point. The eastern border is formed by a straight line connecting the most northeast and the most southeast points of the Sanctuary. The southern border follows a straight line between the most southwest point and a point located at 42°06'54.57" N x 70°16'42.7" W. From that point, the southern border then continues in a west-to-east direction along a line contiguous with the three-mile jurisdictional boundary of Massachusetts until reaching the most southeast point of the Sanctuary. The boundary coordinates of the Sanctuary, provided in latitude/longitude and LORAN, appear in appendix I of this part.

§ 940.3 Definitions.

(a)(1) *Act* means Title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 16 U.S.C. 1431 *et seq.*

(2) *Administrator* or *Under Secretary* means the Administrator of the National Oceanic and Atmospheric Administration/Under Secretary of Commerce for Oceans and Atmosphere.

(3) *Assistant Administrator* means the Assistant Administrator for Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.

(4) *Director* means the Director of the Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration.

(5) *Effective date of Sanctuary designation* means the enactment date of Public Law 102–587, 106 Stat. 5039, 5048 (November 4, 1992).

(6) *Fish wastes* means waste materials resulting from commercial fish processing operations.

(7) *Historical resource* means a resource possessing historical, cultural, archaeological or paleontological significance, including sites, structures, districts and objects significantly associated with or representative of earlier people, cultures and human activities and events. Historical resources also include "historical properties", as defined in the National Historic Preservation Act, as amended (16 U.S.C. 470 *et seg.*), and implementing regulations, as amended.

(8) *Industrial material* means clay, stone, sand, gravel, metalliferous ore, nonmetalliferous ore or any other solid material or other matter of commercial value.

(9) *Injure* means to change adversely, either in the long or short term, a chemical, biological or physical attribute of, or the viability of. To "injure" therefore includes, but is not limited to, to cause the loss of and to destroy.

(10) *Lightering* means the at-sea transfer of petroleum-based products, materials or other matter from vessel to vessel.

(11) *Person* means any private individual, partnership, corporation or other entity; or any officer, employee, agent, department, agency or instrumentality of the Federal Government, of any State or local unit of government, or of any foreign government.

(12) *Sanctuary* means the Stellwagen Bank National Marine Sanctuary.

(13) *Sanctuary quality* means a particular and essential characteristic of the Sanctuary, including, but not limited to, water quality, sediment quality and air quality.

(14) *Sanctuary resource* means any living or non-living resource of the Sanctuary that contributes to its conservation, recreational, ecological, historical, research, educational or esthetic value, including, but not limited to, the substratum of the Stellwagen Bank, other submerged features and the surrounding seabed, phytoplankton, zooplankton, invertebrates, fish, marine reptiles, marine mammals, seabirds, and historical resources.

(15)(i) *Take* or *taking* means the following:

(A) For any marine reptile, marine mammal or seabird listed as either endangered or threatened pursuant to the Endangered Species Act, the term means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect or injure, or to attempt to engage in any such conduct;

(B) For any other marine reptile, marine mammal or seabird, the term means to harass, hunt, capture, kill, collect or injure, or to attempt to engage in any such conduct.

(ii) For the purpose of both paragraphs (a)(15)(i) (A) and (B) of this section, the term includes, but is not limited to, any of the following activities: collecting any dead or injured marine reptile, marine mammal or seabird, or any part thereof; restraining or detaining any marine reptile, marine mammal or seabird, or any part thereof, no matter how temporarily; tagging any marine reptile, marine mammal or seabird; operating a vessel or aircraft or doing any other act that results in the disturbing or molesting of any marine reptile, marine mammal or seabird.

(16) *Traditional fishing* means those commercial or recreational fishing methods which have been conducted in the past within the Sanctuary.

(17) *Vessel* means a watercraft of any description capable of being used as a means of transportation in/on the waters of the Sanctuary.

(b) Other terms appearing in the regulations in this Part are defined at 15 CFR 922.2, and/or in the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 *et seq.* and 16 U.S.C. 1431 *et seq.*

§ 940.4 Allowed activities.

All activities except those prohibited by § 940.5 may be undertaken subject to any emergency regulations promulgated pursuant to § 940.6, subject to all prohibitions, restrictions and conditions validly imposed by any other authority of competent jurisdiction, and subject to the liability established by section 312 of the Act (see § 940.8).

§ 940.5 Prohibited activities.

(a) Except as specified in paragraphs (c) through (g) of this section, the following activities are prohibited and thus unlawful for any person to conduct or cause to be conducted:

(1) Discharging or depositing, from within the boundary of the Sanctuary, any material or other matter except:

(i) Fish, fish parts, chumming materials or bait used in or resulting from traditional fishing operations in the Sanctuary;

(ii) Biodegradable effluent incidental to vessel use and generated by marine sanitation devices approved in accordance with Section 312 of the Federal Water Pollution Control Act, as amended, (FWPCA), 33 U.S.C. 1322 *et seq.*;

(iii) Water generated by routine vessel operations (*e.g.*, cooling water, deck

wash down and graywater as defined by Section 312 of the FWPCA) excluding oily wastes from bilge pumping; or

(iv) Engine exhaust;

(2) Discharging or depositing, from beyond the boundary of the Sanctuary, any material or other matter, except those listed in paragraphs (a)(1) (i) through (iv) of this section, that subsequently enters the Sanctuary and injures a Sanctuary resource or quality.

(3) Exploring for, developing or producing industrial materials within the Sanctuary.

(4) Drilling into, dredging or otherwise altering the seabed of the Sanctuary; or constructing, placing or abandoning any structure, material or other matter on the seabed of the Sanctuary, except as an incidental result of:

(i) Anchoring vessels;

(ii) Traditional fishing operations; or

(iii) Installation of navigation aids.

(5) Moving, removing or injuring, or attempting to move, remove or injure, a Sanctuary historical resource. This prohibition does not apply to moving, removing or injury resulting incidentally from traditional fishing operations.

(6) Taking any marine reptile, marine mammal or seabird in or above the Sanctuary, except as permitted by the Marine Mammal Protection Act, as amended, (MMPA), 16 U.S.C. 1361 *et seq.*, the Endangered Species Act, as amended, (ESA), 16 U.S.C. 1531 *et seq.*, and the Migratory Bird Treaty Act, as amended, (MBTA), 16 U.S.C. 703 *et seq.*

(7) Lightering in the Sanctuary.

(8) Possessing within the Sanctuary (regardless of where taken, moved or removed from), except as necessary for valid law enforcement purposes, any historical resource, or any marine mammal, marine reptile or seabird taken in violation of the MMPA, ESA or MBTA.

(9) Interfering with, obstructing, delaying or preventing an investigation, search, seizure or disposition of seized property in connection with enforcement of the Act or any regulation or permit issued under the Act.

(b) The regulations in this Part shall be applied to foreign persons and foreign vessels in accordance with generally recognized principles of international law, and in accordance with treaties, conventions and other international agreements to which the United States is a party.

(c) The prohibitions in paragraphs (a)(1), (2), and (4) through (9) of this section do not apply to any activity necessary to respond to an emergency threatening life, property or the environment.

(d)(1) All Department of Defense military activities shall be carried out in a manner that avoids to the maximum extent practicable any adverse impacts on Sanctuary resources and qualities. Department of Defense military activities may be exempted from the prohibitions in paragraphs (a)(1), (2), and (4) through (8) of this section by the Director or designee after consultation between the Director or designee and the Department of Defense. If it is determined that an activity may be carried out, such activity shall be carried out in a manner that avoids to the maximum extent practicable any adverse impact on Sanctuary resources and qualities. Civil engineering and other civil works projects conducted by the U.S. Army Corps of Engineers are excluded from the scope of this paragraph (d)(1).

(2) In the event of threatened or actual destruction of, loss of, or injury to a Sanctuary resource or quality resulting from an untoward incident, including but not limited to spills and groundings caused by the Department of Defense, the Department of Defense shall promptly coordinate with the Director or designee for the purpose of taking appropriate actions to respond to and mitigate the harm and, if possible, restore or replace the Sanctuary resource or quality.

(e) The prohibitions in paragraphs (a)(1), (2), and (4) through (8) of this section do not apply to any activity executed in accordance with the scope, purpose, terms and conditions of a National Marine Sanctuary permit issued pursuant to § 940.9 or a Special Use permit issued pursuant to Section 310 of the Act.

(f) The prohibitions in paragraphs (a)(1), (2), and (4) through (8) of this section do not apply to any activity authorized by a valid lease, permit, license, approval or other authorization in existence on the effective date of Sanctuary designation and issued by any Federal, State or local authority of competent jurisdiction, or by any valid right of subsistence use or access in existence on the effective date of Sanctuary designation, provided that the holder of such authorization or right complies with § 940.10 and with any terms and conditions on the exercise of such authorization or right imposed by the Director or designee as a condition of certification as he or she deems necessary to achieve the purposes for which the Sanctuary was designated.

(g) The prohibitions in paragraphs (a)(1), (2), and (4) through (8) of this section do not apply to any activity authorized by any lease, permit, license, approval or other authorization issued after the effective date of Sanctuary designation and issued by any Federal, State or local authority of competent jurisdiction, provided that the applicant complies with § 940.11, the Director or designee notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization, and the applicant complies with any terms and conditions the Director or designee deems necessary to protect Sanctuary resources and qualities. Amendments, renewals and extensions of authorizations in existence on the effective date of designation constitute authorizations issued after the effective date.

(h) Notwithstanding paragraphs (e) and (g) of this section 940.5, in no event may the Director or designee issue a permit under § 940.9, or under Section 310 of the Act, authorizing, or otherwise approving, the exploration for, development or production of industrial materials within the Sanctuary, or the disposal of dredged material within the Sanctuary (except by a certification, pursuant to § 940.10, of valid authorizations in existence on the effective date of Sanctuary designation) and any leases, licenses, permits, approvals or other authorizations authorizing the exploration for, development or production of industrial materials in the Sanctuary issued by other authorities after the effective date of Sanctuary designation shall be invalid.

§ 940.6 Emergency regulations.

Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality, or to minimize the imminent risk of such destruction, loss or injury, any and all activities are subject to immediate temporary regulation, including prohibition.

§ 940.7 Penalties for violations of regulations.

(a) Each violation of the Act, any regulation in this Part, or any permit issued pursuant thereto, is subject to a civil penalty of not more than $100,000. Each day of a continuing violation constitutes a separate violation.

(b) Regulations setting forth the procedures governing the administrative proceedings for assessment of civil penalties, permit sanctions and denials for enforcement reasons, issuance and use of written warnings, and release or forfeiture of seized property appear at 15 CFR part 904.

§ 940.8 Response costs and damages.

Under section 312 of the Act, any person who destroys, causes the loss of,

or injures any sanctuary resource is liable to the United States for response costs and damages resulting from such destruction, loss or injury, and any vessel used to destroy, cause the loss of, or injure any sanctuary resource is liable in rem to the United States for response costs and damages resulting from such destruction, loss, or injury.

§ 940.9 National Marine Sanctuary permits—application procedures and issuance criteria.

(a) A person may conduct an activity prohibited by § 940.5(a)(1), (2), and (4) through (8) if conducted in accordance with the scope, purpose, manner, terms and conditions of a permit issued under this § 940.9.

(b) Applications for such permits should be addressed to the Director of the Office of Ocean and Coastal Resource Management; ATTN: Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1305 East-West Highway, Silver Spring, Maryland 20910. An application must include a detailed description of the proposed activity including a timetable for completion of the activity and the equipment, personnel and methodology to be employed. The qualifications and experience of all personnel must be set forth in the application. The application must set forth the potential effects of the activity, if any, on Sanctuary resources and Sanctuary qualities. Copies of all other required licenses, permits, approvals, or other authorizations must be attached.

(c) Upon receipt of an application, the Director or designee may request such additional information from the applicant as he or she deems necessary to act on the application and may seek the views of any persons.

(d) The Director or designee, at his or her discretion, may issue a permit, subject to such terms and conditions as he or she deems appropriate, to conduct an activity prohibited by § 940.5(a)(1), (2), and (4) through (8), if the Director or designee finds that the activity will have only negligible short-term adverse effects on Sanctuary resources and qualities and will: further research related to Sanctuary resources and qualities; further the educational, natural or historical resource value of the Sanctuary; further salvage or recovery operations in or near the Sanctuary in connection with a recent air or marine casualty; or assist in managing the Sanctuary. In deciding whether to issue a permit, the Director or designee may consider such factors as: the professional qualifications and financial ability of the applicant as related to the proposed activity; the duration of the activity and the duration of its effects; the appropriateness of the methods and procedures proposed by the applicant for the conduct of the activity; the extent to which the conduct of the activity may diminish or enhance Sanctuary resources and qualities; the cumulative effects of the activity; and the end value of the activity. In addition, the Director or designee may consider such other factors as he or she deems appropriate.

(e) A permit issued pursuant to this § 940.9 is nontransferable.

(f) The Director or designee may amend, suspend or revoke a permit issued pursuant to this § 940.9 for good cause. The Director or designee may deny a permit application pursuant to this § 940.9, in whole or in part, if it is determined that the permittee or applicant has acted in violation of the terms or conditions of a permit or of these regulations or for other good cause. Any such action shall be communicated in writing to the permittee or applicant by certified mail and shall set forth the reason(s) for the action taken. Procedures governing permit sanctions and denials for enforcement reasons are set forth in 15 CFR part 904, subpart D.

(g) It shall be a condition of any permit issued that the permit or a copy thereof be displayed on board all vessels or aircraft used in the conduct of the activity.

(h) The Director or designee may, *inter alia*, make it a condition of any permit issued that any data or information obtained under the permit be made available to the public.

(i) The Director or designee may, *inter alia*, make it a condition of any permit issued that a NOAA official be allowed to observe any activity conducted under the permit and/or that the permit holder submit one or more reports on the status, progress or results of any activity authorized by the permit.

(j) The applicant for or holder of a National Marine Sanctuary permit may appeal the denial, conditioning, amendment, suspension or revocation of the permit in accordance with the procedures set forth in § 940.12.

§ 940.10 Certification of pre-existing leases, licenses, permits, approvals, other authorizations or rights to conduct a prohibited activity.

(a) The prohibitions in § 940.5 (a)(1), (2), and (4) through (8) do not apply to any activity authorized by a valid lease, permit, license, approval or other authorization in existence on the effective date of Sanctuary designation and issued by any Federal, State or local authority of competent jurisdiction, or by any valid right of subsistence use or access in existence on the effective date of Sanctuary designation, provided that:

(1) The holder of such authorization or right notifies the Director or designee, in writing, within 90 days of the effective date of Sanctuary regulations, of the existence of such authorization or right and requests certification of such authorization or right;

(2) The holder complies with the other provisions of this § 940.10; and

(3) The holder complies with any terms and conditions on the exercise of such authorization or right imposed as a condition of certification, by the Director or designee, to achieve the purposes for which the Sanctuary was designated.

(b) The owner or holder of a valid lease, permit, license, approval or other authorization in existence on the effective date of Sanctuary designation and issued by any Federal, State or local authority of competent jurisdiction, or of any valid right of subsistence use or access in existence on the effective date of Sanctuary designation, authorizing an activity prohibited by § 940.5, (a) (1), (2), and (4) through (8) may conduct the activity without being in violation of § 940.5, pending final agency action on his or her certification request, provided the holder is in compliance with this § 940.10.

(c) Any holder of a valid lease, permit, license, approval or other authorization in existence on the effective date of Sanctuary designation and issued by any Federal, State or local authority of competent jurisdiction, or any holder of a valid right of subsistence use or access in existence on the effective date of Sanctuary designation may request the Director or designee to issue a finding as to whether the activity for which the authorization has been issued, or the right given, is prohibited under (a) (1), (2), and (4) through (8).

(d) Requests for findings or certifications should be addressed to the Director, Office of Ocean and Coastal Resource Management; Attn: Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1305 East-West Highway, Silver Spring, Maryland 20910. A copy of the lease, permit, license, approval or other authorization must accompany the request.

(e) The Director or designee may request additional information from the certification requester as he or she deems necessary to condition

appropriately the exercise of the certified authorization or right to achieve the purposes for which the Sanctuary was designated. The information requested must be received by the Director or designee within 45 days of the postmark date of the request. The Director or designee may seek the views of any persons on the certification request.

(f) The Director or designee may amend any certification made under this § 940.10 whenever additional information becomes available justifying such an amendment.

(g) The Director or designee shall communicate any decision on a certification request or any action taken with respect to any certification made under this § 940.10, in writing, to both the holder of the certified lease, permit, license, approval, other authorization or right, and issuing agency, and shall set forth the reason(s) for the decision or action taken.

(h) Any time limit prescribed in or established under this § 940.10 may be extended by the Director or designee for good cause.

(i) The holder may appeal any action conditioning, amending, suspending or revoking any certification in accordance with the procedures set forth in § 940.12.

(j) Any amendment, renewal or extension not in existence on the effective date of Sanctuary designation of a lease, permit, license, approval, other authorization or right is subject to the provisions of § 940.11.

§ 940.11 Notification and review of applications for leases, licenses, permits, approvals or other authorizations to conduct a prohibited activity.

(a) The prohibitions set forth in § 940.5(a) (1), (2), and (4) through (8) do not apply to any activity authorized by any valid lease, permit license, approval or other authorization issued after the effective date of Sanctuary designation by any Federal, State or local authority of competent jurisdiction, provided that:

(1) The applicant notifies the Director or designee, in writing, of the application for such authorization (and of any application for an amendment, renewal or extension of such authorization) within fifteen (15) days of the date of application or of the effective date of Sanctuary regulations, whichever is later;

(2) The applicant complies with the other provisions of this § 940.11;

(3) The Director or designee notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization (or amendment, renewal or extension); and

(4) The applicant complies with any terms and conditions the Director or designee deems necessary to protect Sanctuary resources and qualities.

(b) Any potential applicant for a lease, permit, license, approval or other authorization from any Federal, State or local authority (or for an amendment, renewal or extension of such authorization) may request the Director or designee to issue a finding as to whether the activity for which an application is intended to be made is prohibited by § 940.5(a) (1), (2), and (4) through (8).

(c) Notification of filings of applications and requests for findings should be addressed to the Director, Office of Ocean and Coastal Resource Management; ATTN: Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1305 East-West Highway, Silver Spring, Maryland 20910. A copy of the application must accompany the notification.

(d) The Director or designee may request additional information from the applicant as he or she deems necessary to determine whether to object to issuance of such lease, license, permit, approval or other authorization (or to issuance of an amendment, extension or renewal of such authorization), or what terms and conditions are necessary to protect Sanctuary resources and qualities. The information requested must be received by the Director or designee within 45 days of the postmark date of the request. The Director or designee may seek the views of any persons on the application.

(e) The Director or designee shall notify, in writing, the agency to which application has been made of his or her review of the application and possible objection to issuance. After review of the application and information received with respect thereto, the Director or designee shall notify both the agency and applicant, in writing, whether he or she has an objection to issuance and what terms and conditions he or she deems necessary to protect Sanctuary resources and qualities. The Director or designee shall state the reason(s) for any objection or the reason(s) that any terms and conditions are deemed necessary to protect Sanctuary resources and qualities.

(f) The Director or designee may amend the terms and conditions deemed necessary to protect Sanctuary resources and qualities whenever additional information becomes available justifying such an amendment.

(g) Any time limit prescribed in or established under this § 940.11 may be extended by the Director or designee for good cause.

(h) The applicant may appeal any objection by, or terms or conditions imposed by, the Director or designee to the Assistant Administrator or designee in accordance with the provisions set forth in § 940.12.

§ 940.12 Appeals of administrative action.

(a) Except for permit actions taken for enforcement reasons (see 15 CFR part 904, subpart D, for applicable procedures), an applicant for, or a holder of, a § 940.9 National Marine Sanctuary permit, an applicant for, or a holder of, a Section 310 of the Act Special Use permit, a § 940.10 certification requester or a § 940.11 applicant (hereinafter appellant) may appeal to the Assistant Administrator or designee:

(1) The grant, denial, conditioning, amendment, suspension or revocation by the Director or designee of a National Marine Sanctuary or Special Use permit;

(2) The conditioning, amendment, suspension or revocation of a certification under § 940.10; or

(3) The objection to issuance or the imposition of terms and conditions under § 940.11.

(b) An appeal under paragraph (a) of this section must be in writing, state the action(s) by the Director or designee appealed and the reason(s) for the appeal, and be received within 30 days of receipt of notice of the action by the Director or designee. Appeals should be addressed to the Assistant Administrator, Office of Ocean and Coastal Resource Management, ATTN: Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1305 East-West Highway, Silver Spring, Maryland 20910.

(c) While the appeal is pending, appellants requesting certification pursuant to § 940.10 who are in compliance with such section may continue to conduct their activities without being in violation of the prohibitions in § 940.5(a) (1), (2), and (4) through (8). All other appellants may not conduct their activities without being subject to the prohibitions in § 940.5(a) (1), (2), and (4) through (8).

(d) The Assistant Administrator or designee may request the appellant to submit such information as the Assistant Administrator or designee deems necessary in order for him or her to decide the appeal. The information requested must be received by the Assistant Administrator or designee within 45 days of the postmark date of

the request. The Assistant Administrator may seek the views of any other persons. The Assistant Administrator or designee may hold an informal hearing on the appeal. If the Assistant Administrator or designee determines that an informal hearing should be held, the Assistant Administrator or designee may designate an officer before whom the hearing shall be held. The hearing officer shall give notice in the **Federal Register** of the time, place and subject matter of the hearing. The appellant and the Director or designee may appear personally or by counsel at the hearing and submit such material and present such arguments as deemed appropriate by the hearing officer. Within 60 days after the record for the hearing closes, the hearing officer shall recommend a decision in writing to the Assistant Administrator or designee.

(e) The Assistant Administrator or designee shall decide the appeal using the same regulatory criteria as for the initial decision and shall base the appeal decision on the record before the Director or designee and any information submitted regarding the appeal, and, if a hearing has been held, on the record before the hearing officer and the hearing officer's recommended decision. The Assistant Administrator or designee shall notify the appellant of the final decision and the reason(s) therefor in writing. The Assistant Administrator or designee's decision shall constitute final agency action for the purposes of the Administrative Procedure Act.

(f) Any time limit prescribed in or established under this § 940.12 other than the 30 day limit for filing an appeal may be extended by the Assistant Administrator, designee or hearing officer for good cause.

APPENDIX I TO PART 940—STELLWAGEN BANK NATIONAL MARINE SANCTUARY BOUNDARY COORDINATES

[Appendix Based on North American Datum of 1927]
638 Square Nautical Miles

Pt.	Latitude	Longitude	Loran	
			9960W	9960X
E1	42 45 59.83	70 13 01.77	13,607.19	25,728.57
E2	42 05 35.51	70 02 08.14	13,753.39	25,401.78
E3	42 06 18.25	70 03 17.55	13,756.72	25,412.46
E4	42 06 29.53	70 04 03.36	13,760.30	25,417.53
E5	42 07 02.70	70 05 13.61	13,764.52	25,427.27
E6	42 07 13.80	70 06 23.75	13,770.54	25,434.45
E7	42 07 35.95	70 07 27.89	13,775.08	25,442.51
E8	42 07 42.33	70 08 26.07	13,780.35	25,448.27
E9	42 07 59.94	70 09 19.78	13,784.24	25,455.02
E10	42 08 04.95	70 10 24.40	13,790.27	25,461.28
E11	42 07 55.19	70 11 47.67	13,799.38	25,467.56
E12	42 07 59.84	70 13 03.35	13,806.58	25,474.95
E13	42 07 46.55	70 14 21.91	13,815.52	25,480.62
E14	42 07 27.29	70 15 22.95	13,823.21	25,484.05
E15	42 06 54.57	70 16 42.71	13,833.88	25,487.79
E16	42 07 44.89	70 28 15.44	13,900.14	25,563.22
E17	42 32 53.52	70 35 52.38	13,821.60	25,773.51
E18	42 33 30.24	70 35 14.96	13,814.43	25,773.54
E19	42 33 48.14	70 35 03.81	13,811.68	25,774.28
E20	42 34 30.45	70 34 22.98	13,803.64	25,774.59
E21	42 34 50.37	70 33 21.93	13,795.43	25,770.55
E22	42 35 16.08	70 32 32.29	13,787.92	25,768.31
E23	42 35 41.80	70 31 44.20	13,780.57	25,766.25
E24	42 36 23.08	70 30 58.98	13,772.14	25,766.14
E25	42 37 15.51	70 30 23.01	13,763.69	25,768.12
E26	42 37 58.88	70 30 06.60	13,758.09	25,771.07
E27	42 38 32.46	70 30 06.54	13,755.07	25,774.58
E28	42 39 04.08	70 30 11.29	13,752.75	25,778.35

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BILLING CODE 3510–08–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Monensin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Moorman Manufacturing Co. The supplemental NADA provides for the use of an additional concentration of monensin Type A medicated article (80 grams of monensin per pound of product) to be used as currently approved to make Type C medicated blocks for free choice administration to pasture cattle.

EFFECTIVE DATE: October 19, 1993.

FOR FURTHER INFORMATION CONTACT: Warner J. Caldwell, Center for Veterinary Medicine (HFV–126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1638.

SUPPLEMENTARY INFORMATION: Moorman Manufacturing Co., Quincy, IL 62301, has filed a supplement to NADA 115–581, providing for the use of an 80-gram-per-pound monensin Type A medicated article in addition to the currently approved 60-gram-per-pound article. The Type A medicated article is to be used as currently approved in

§ 558.355(f)(3)(v) (21 CFR 558.355(f)(3)(v)) to make Type C medicated, free choice, protein-mineral blocks. The blocks are administered to cattle (slaughter, stocker, feeder, and dairy and beef replacement heifers weighing more than 400 pounds) on pasture at 50 to 200 milligrams of monensin per head per day for increased rate of weight gain.

The supplemental NADA is approved as of September 20, 1993, and the regulations are amended in paragraph (b)(13) of § 558.355 to reflect the approval.

Under 21 CFR 514.106(b)(1), this is a Category I supplement that did not require reevaluation of the underlying safety and effectiveness data in the parent application. The approved uses of the product and labeling have not been changed. Because the sponsor was not required to submit new safety and effectiveness data, a freedom of information summary was not required.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this approval for food producing animals does not qualify for marketing exclusivity because the supplemental application does not contain reports of new clinical or field investigations (other than bioequivalence or residue studies) and human food safety studies (other than bioequivalence or residue studies) essential to the approval and conducted or sponsored by the applicant.

The agency has determined under 21 CFR 25.24(d)(1)(iii) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

2. Section 558.355 is amended by revising paragraph (b)(13) to read as follows:

§ 558.355 Monensin.

* * * * *

(b) * * *

(13) To 021930: 60 and 80 grams per pound, paragraph (f)(3)(v) of this section.

* * * * *

Dated: October 8, 1993.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 93-25604 Filed 10-18-93; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 725

Release of Official Information for Litigation

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: This regulation assigns responsibilities to Department of the Navy (DON) personnel in responding to requests from members of the public for official DON information (testimonial, documentary, or otherwise) in connection with litigation. It does not apply to requests unrelated to litigation or pursuant to the Freedom of Information Act or the Privacy Act. The publication of this DON instruction will assist members of the public in submitting such requests. It implements Department of Defense Directive 5405.2 of July 23, 1985, codified in 32 CFR part 97, regarding the release of official information in connection with litigation. It restates the requirements contained in Secretary of the Navy Instruction 5820.8A of August 27, 1991, and is intended to conform to that instruction in all respects.

EFFECTIVE DATES: October 19, 1993.

FOR FURTHER INFORMATION CONTACT: Captain Peter C. Wylie, JAGC, U.S. Navy, Office of the Judge Advocate General, General Litigation Division, 200 Stovall Street, Alexandria, VA 22332-2400. Telephone: (703) 325-9870.

SUPPLEMENTARY INFORMATION:

(a) Purpose of the Regulation

This regulation establishes policy, assigns responsibilities, and prescribes procedures for responding to requests for the release of official DON information, including testimony by DON personnel as witnesses, in connection with actual or contemplated litigation. In addition to providing an orderly means for obtaining information needed in litigation to members of the public, its provisions also protect the interests of the United States, including the safeguarding of classified and privileged information. This regulation ensures that responses to litigation requests are provided in a manner that does not prevent the accomplishment of the mission of the command or activity affected. It sets forth the proper content of a request received from a member of the public for release of official DON information in connection with litigation and indicates the factors to be considered in deciding whether to authorize the release of official DON information or the testimony of DON concerning official information. The regulation also prescribes the conduct of DON personnel in response to a litigation request or demand.

(b) Impact of the Regulation

The regulation is not a "major rule" as defined by Executive order 12291. Therefore, no regulatory impact analysis has been prepared. The DON certifies that this regulation will not have an impact on a significant number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Therefore, no regulatory flexibility analysis has been prepared. The regulation has no collection of information requirements and does not require the approval of OMB under 44 U.S.C. 3501 *et seq.* This regulation is not subject to the relevant provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4347), and does not contain reporting or record-keeping requirements under the criteria of the Paperwork Reduction Act of 1980 (Pub. L. 96-511).

(c) Request for Comments

Because it merely imposed technical requirements in which the public is not particularly interested or involved, this regulation appeared in the **Federal Register** on January 22, 1992 (57 FR 2462), as an interim rule, effective on publication. No public comments were received about this regulation in the 30 day period designated for that purpose in the interim rule ending February 21, 1992. No changes have been made to this regulation.

List of Subjects in 32 CFR Part 725

Courts, Government employees, Litigation requests, Subpoenas.

PART 725—RELEASE OF OFFICIAL INFORMATION FOR LITIGATION

Accordingly, the interim rule amending 32 CFR part 725 which was published at 57 FR 2462 on January 22,

1992, is adopted as a final rule without change.

Dated: October 7, 1993.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 93–25574 Filed 10–18–93; 8:45 am]

BILLING CODE 3810–AE–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–93–134]

Safety Zone; Deepavali Fireworks Festival, East River, New York

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Deepavali fireworks program located in the East River. This event is sponsored by the Association of Indians in America, Inc. and will take place on Sunday, October 24, 1993, from 6:30 p.m. until 7:30 p.m. This safety zone is needed to protect the boating public from the hazards associated with fireworks exploding in the area.

EFFECTIVE DATES: This rule is effective from 6;30 p.m. until 7:30 p.m. on October 24, 1993.

FOR FURTHER INFORMATION CONTACT: LT R. Trabocchi, Project Manager, Captain of the Port, New York (212) 668–7933.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are LT R. Trabocchi, Project Manager, Captain of the Port, New York and LCDR J. Stieb, Project Attorney, First Coast Guard District, Legal Office.

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Due to the date this application was received, there was not sufficient time to publish a proposed rule in advance of the event. Publishing a NPRM and delaying the event could be contrary to public interest since the fireworks display is for public viewing.

Background and Purpose

On September 14, 1993, the Association of Indians in America, Inc. submitted an application to hold a fireworks program in the East River off of the South Street Seaport, between Pier 16, Manhattan and Pier 1, Brooklyn, New York. This regulation establishes a temporary safety zone in the East River south of the Brooklyn Bridge and north of a line drawn from Pier 6, Brooklyn to the Coast Guard ferry slip in Manhattan. This safety zone is being established to protect boaters from the hazards associated with the explosion of fireworks in the area. No vessel will be permitted to enter or move within this area unless authorized to do so by the Coast Guard Captain of the Port, New York.

Regulatory Evaluation

This is not a significant regulatory action under Executive Order 12866 and is not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). No vessel traffic will be permitted to transit the East River south of the Brooklyn Bridge. Though there is regular traffic through this area, due to the limited duration of the event, the extensive advisories that will be made to the affected maritime community, and that pleasure craft can take an alternate route via the Hudson and Harlem Rivers, the Coast Guard expects the economic impact of this regulation to be so minimal that a Regulatory Evaluation is unnecessary.

Small Entities

Under the Regulatory Flexiblity Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this regulation will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

For the reasons given in the Regulatory Evaluation, the Coast Guard expects the impact of this regulation to be minimal. The Coast Guard certifies under 5 U.S.C. 605(b) that this regulation will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This regulation contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this regulation does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this regulation and concluded that under section 2.B.2.c. of Commandant Instruction M16475.1B, it is an action under the Coast Guard's statutory authority to protect public safety and is categorically excluded from further environmental documentation. A Categorical Exclusion Determination will be included in the docket.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulations

For reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5, 49 CFR 1.46.

2. A temporary § 165.T01–134 is added to read as follows:

§ 165.T01–134 Deepavali Fireworks Festival, East River, New York.

(a) *Location.* This temporary safety zone includes all waters of the East River south of the Brooklyn Bridge and north of a line drawn from Pier 6, Brooklyn to the Coast Guard ferry slip in Manhattan.

(b) *Effective period.* This section is effective from 6:30 p.m. until 7:30 p.m. on October 24, 1993.

(c) *Regulations.* (1) No person or vessel may enter, transit, or remain in the regulated area during the effective period of this section unless participating in the event as authorized by the Coast Guard Captain of the Port, New York.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed. Coast Guard Auxiliary members may be present to inform vessel operators of this section and other applicable laws.

Dated: October 1, 1993.

T.H. Gilmour,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 93–25652 Filed 10–18–93; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA 27–1–6058; FRL–4783–5]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Reasonably Available Control Technology Requirements for Knoll Group, a Wood Furniture Surface Coater

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision establishes and requires the Knoll Group (Knoll), a wood furniture surface coater located in Montgomery County, Pennsylvania, which is part of the Philadelphia severe ozone nonattainment area, to implement reasonably available control technology (RACT). The intended effect of this action is to approve source specific RACT requirements for Knoll, which is a major emitting source of volatile organic compounds (VOCs). This action is being taken under section 110 of the Clean Air Act.

EFFECTIVE DATE: This rule will become effective on November 18, 1993.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; U.S. Environmental Protection Agency, Jerry Kurtzweg ANR–443, 401 M Street, SW., Washington, DC 20460; and Pennsylvania Department of Environmental Resources Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105

FOR FURTHER INFORMATION CONTACT: Cynthia H. Stahl, (215) 597–9337, at the EPA Region III address.

SUPPLEMENTARY INFORMATION: On August 12, 1993 (58 FR 42914), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Pennsylvania. The NPR proposed approval of reasonably available control technology (RACT) requirements for Knoll Group, a wood furniture surfacer coater located in the Philadelphia severe ozone nonattainment area. The formal SIP revision was submitted by Pennsylvania on March 29, 1993 and consisted of a plan approval (no. 46–326–001A) and an operating permit (no. 46–326–001A) for Knoll.

This source specific SIP revision would allow Knoll to meet certain coating emission standards by averaging its emissions across twenty-six wood furniture coating lines on a production-weighted basis. Knoll is required to calculate its allowable emissions on a daily basis. Recordkeeping and reporting requirements are also contained in the plan approval and operating permit.

Other specific elements of the RACT determination for Knoll and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

Under part D of the Clean Air Act, Pennsylvania is required to submit RACT regulations for all major sources of VOC in the Pennsylvania portion of the Philadelphia ozone nonattainment area, which consists of Philadelphia, Delaware, Montgomery, Chester and Bucks Counties in Pennsylvania. A major VOC sources is defined as a source which emits or has the potential to emit 100 tons or more of VOC per year. Wood furniture surface coating was a category identified by Pennsylvania as one containing major sources for which RACT requirements were needed. Pennsylvania determined that Knoll Group was the only major source for wood furniture surface coating in the Philadelphia nonattainment area. Therefore, by Pennsylvania's submittal of the plan approval and operating permit for Knoll and EPA's approval of the requirements contained in those documents as RACT for Knoll, Pennsylvania has met its obligations under part D to implement RACT for this source category.

Final Action

EPA is approving Pennsylvania's plan approval no. 46–326–001A and operating permit no. 46–326–001A as RACT for Knoll as a revision to the Pennsylvania SIP.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and Table 3 SIP revisions from the requirements of section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 17, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action, pertaining to the approval of RACT requirements for the wood furniture surface coater, Knoll Group, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: September 21, 1993.

Stanley L. Laskowski,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(87) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(87) Revisions to the Pennsylvania State Implementation Plan submitted on March 29, 1993 by the Pennsylvania

Department of Environmental Resources:

(i) Incorporation by reference.

(A) Letter of March 22, 1993 from the Pennsylvania Department of Environmental Resources transmitting plan approval no. 46–326–001A and operating permit no. 46–326–001A for Knoll Group, P.O. Box 157, East Greenville, PA.

(B) Plan approval no. 46–326–001A and operating permit no. 46–326–001A which consist of emission standards, operating conditions and recordkeeping requirements applicable to Knoll Group, a wood furniture surface coater located in Montgomery County, PA, which is in the Philadelphia severe ozone nonattainment area. These requirements together are being approved as reasonably available control technology (RACT) for this wood furniture surface coater. The effective date of the plan approval and the operating permit is March 24, 1993.

(ii) Additional material.

(A) Remainder of March 29, 1993 Pennsylvania submittal consisting of a Background Information document prepared by Pennsylvania in support of the RACT proposal for Knoll, an evaluation of control options performed for Knoll by a contractor, public comments and responses, and a chart and computer diskette (LOTUS 1–2–3) showing how RACT calculations will be performed.

[FR Doc. 93–25664 Filed 10–18–93; 8:45 am]

BILLING CODE 6560-50-F

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40 CFR Part 81

[MT16–1–5699; FRL–4799–2]

Designation of Area for Air Quality Planning Purposes; Montana; Designation of Whitefish PM10 Nonattainment Area

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to section 107(d)(3) of the Clean Air Act (Act), EPA is taking final action to redesignate a portion of Flathead County, Montana as nonattainment for the PM10 (particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers) national ambient air quality standards (NAAQS).

EFFECTIVE DATE: November 18, 1993.

ADDRESSES: Information supporting this action can be found at the following location: EPA Region VIII, Air Programs Branch, 999 18th Street, 6th Floor, South Tower, Denver, Colorado 80202–2466.

The information may be inspected between 8 a.m. and 4 p.m., on weekdays, except for legal holidays. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Callie Videtich, Air Programs Branch, EPA Region VIII, 999 18th Street, suite 500, Denver, Colorado, 80202–2405, (303) 293–1754.

SUPPLEMENTARY INFORMATION:

I. General

The EPA is authorized to redesignate areas (or portions thereof) as nonattainment for PM10 pursuant to section 107(d)(3) of the Act, on the basis of air quality data, planning and control considerations, or any other air quality-related considerations the Administrator deems appropriate.

Following the process outlined in section 107(d)(3), on July 16, 1992, the Administrator of EPA Region VIII notified the Governor of Montana that EPA believed that the area around Whitefish should be redesignated as nonattainment for PM10. Under section 107(d)(3)(B), the Governor of Montana was required to submit to EPA the designation he considered appropriate for the area around Whitefish within 120 days after EPA's notification. The EPA received the State's response for Whitefish, Montana on November 13, 1992. The EPA proceeded to propose redesignation to nonattainment for Whitefish (see 58 FR 36908–36910, July 9, 1993). The EPA is taking final action as proposed.

Section 107(d)(1)(A) sets out definitions of nonattainment, attainment, and unclassifiable. The EPA is finalizing the redesignation of Whitefish, Montana to nonattainment. A nonattainment area is defined as any area that does not meet (or that significantly contributes to ambient air quality in a nearby area that does not meet) the national primary or secondary ambient air quality standard for PM10 [1] (see section 107(d)(1)(A)(i)). Thus, in determining the appropriate boundaries for the nonattainment area addressed in this final rule, EPA has considered not only the area where the violations of the PM10 NAAQS have been monitored, but nearby areas which significantly contribute to such violations.

II. Background for PM10

On July 1, 1987, the EPA revised the NAAQS for particulate matter (52 FR 24634), replacing total suspended particulates as the indicator for particulate matter with a new indicator called PM10, that includes only those particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers. At the same time, EPA set forth the regulations for implementing the revised particulate matter standards and announced EPA's State implementation plan (SIP) development policy, elaborating PM10 control strategies necessary to assure attainment and maintenance of the PM10 NAAQS (see generally 52 FR 24672). The EPA adopted a PM10 SIP development policy dividing all areas of the country into three categories based upon their probability of violating the new NAAQS: (1) Areas with a strong likelihood of violating the new PM10 NAAQS and requiring substantial SIP adjustment were placed in Group I; (2) areas which may have been attaining the PM10 NAAQS and whose existing SIPs most likely needed less adjustment were placed in Group II; and (3) areas with a strong likelihood of attaining the PM10 NAAQS and, therefore, needing adjustments only to their preconstruction review program and monitoring network were placed in Group III (52 FR 24672, 24679–24682). At that time, Whitefish was categorized as a Group III area.

Pursuant to section 107(d)(4)(B) and 188(a) of the Act, areas previously identified as Group I (55 FR 45799, October 31, 1990) and other areas which had monitored violations of the PM10 NAAQS prior to January 1, 1989, were, by operation of law upon enactment of the 1990 Amendments, designated nonattainment and classified as moderate for PM10. All other areas of the country, such as the Whitefish area, were similarly designated unclassifiable for PM10. (See section 107(d)(4)(B)(iii) of the Act; 40 CFR 81.327 (1992) as amended by 57 FR 56762, 56772 (Nov. 30, 1992) (PM10 designations for Montana).) In this action, EPA is redesignating as nonattainment, Whitefish, Montana which was previously designated as unclassifiable.

III. Response to Comments

In the July 9, 1993 proposal for today's action, EPA provided a 30-day comment period ending on August 9, 1993, in order to solicit public comments on all aspects of the proposal. EPA received no comments on the proposal.

IV. Significance of This Action for Whitefish, Montana

Whitefish, Montana, is designated as nonattainment in this action, is subject

[1] The EPA has construed the definition of nonattainment area to require some material or significant contribution to a violation in a nearby area. The Agency believes it is reasonable to conclude that something greater than a molecular impact is required.

to the applicable requirements of part D, title I of the Act and will be classified as moderate by operation of law (see section 188(a) of the Act). Within 18 months of the designation, Montana is required to submit to EPA an implementation plan for Whitefish containing, among other things, the following requirements: (1) Provisions to assure that reasonably available control measures (including reasonably available control technology) are implemented within 4 years of the redesignation; (2) a permit program meeting the requirements of section 173 governing the construction and operation of new and modified major stationary sources of PM10; (3) quantitative milestones which are to be achieved every three years until the area is redesignated attainment and which demonstrate reasonable further progress, as defined in section 171(l), toward timely attainment; and (4) either a demonstration (including air quality modeling) that the plan will provide for attainment of the PM10 NAAQS as expeditiously as practicable, but no later than the end of the sixth calendar year after the area's designation as nonattainment, or a demonstration that attainment by such date is impracticable (see. e.g. sections 188(c), 189(a), 189(c) and 172(c) of the Act). The EPA has issued detailed guidance on the statutory requirements applicable to moderate PM10 nonattainment areas (see 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)).

The State is also required to submit contingency measures, pursuant to section 172(c)(9) of the Act, which are to take effect without further action by the State or EPA, upon a determination by EPA that an area has failed to make reasonable further progress or attain the PM10 NAAQS by the applicable attainment date (see 57 FR 13510–13512 and 13543–13544). The EPA is establishing the schedule for submission of contingency measures as called for in section 172(b) of the Act. Montana is to submit contingency measures for Whitefish within 18 months of designation.

VI. Miscellaneous

A. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities (5 U.S.C. 605(b)). Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Redesignation of an area to nonattainment under section 107(d)(3) of the Act does not impose any new requirements on small entities. Redesignation is an action that affects the planning status of a geographical area and does not in itself, impose any regulatory requirements on sources. To the extent that the area must adopt new regulations, based on its nonattainment status, EPA will review the effect of those actions on small entities at the time Montana submits those regulations. I certify that approval of the redesignation request will not affect a substantial number of small entities.

B. Executive Order 12291

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has continued the temporary waiver until such time as it rules on EPA's request.

C. Section 307(b)(1)

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 17, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7407, 7501–7515, 7601.

Dated: October 1, 1993.

Jack W. McGraw,

Acting Regional Administrator.

PART 81—[AMENDED]

40 CFR part 81 is amended as follows:

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Section 81.327 is amended by amending the attainment status designation table for PM10 to add an entry to "Flathead County" to read as follows:

§ 81.327 Montana.

* * * * *

MONTANA—PM 10 NONATTAINMENT AREAS

Designated area	Designation date	Designation type	Classification date	Classification type
* * *	*	*	*	*
Flathead County— * * *				
The City of Whitefish and surrounding vicinity bounded by lines from Universal Transmercator (UTM) coordinates 695000 mE, 5370000 mN, east to 699000 mE, 5370000 mN, south to 699000 mE, 5361000 mN, west to 695000 mN, 5361000 mN, and north to 695000 mE, 5370000 mN.	Nov. 18, 1993	Nonattainment	Nov. 18, 1993	Moderate.
* * *	*	*	*	*

* * * * *

[FR Doc. 93-25611 Filed 10-18-93; 8:45 am]
BILLING CODE 6560-50-P

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40 CFR Part 81

[FRL-4786-9]

State Implementation Plans for Nonattainment Areas for Lead

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice announcing findings of failure to submit required State implementation plans (SIP's) for lead.

SUMMARY: The EPA gives notice that it has made a finding, under the Clean Air Act (Act), triggering the 18-month clock for imposition of sanctions and the 24-month Federal implementation plan (FIP) clock for each State listed in Table A. The EPA has determined that each State has failed to submit an implementation plan for lead as required under the provisions of the Act. This notice addresses the requirement under the Act that any State containing an area designated nonattainment with respect to the primary national ambient air quality standard (NAAQS) for lead shall submit to EPA, within 18 months of the date of the designation, an applicable implementation plan meeting the requirements of part D, title I, of the Act.

FOR FURTHER INFORMATION CONTACT: General questions concerning this notice should be addressed to Laura D. McKelvey, Air Quality Management Division (MD-15), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, (919) 541-5497. For questions related to a specific area, please contact the appropriate Regional Office listed below.

ADDRESSES:

Regional offices	States
Gale Wright, Chief, Air Programs Branch, EPA Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551-7681.	Missouri, Nebraska.
Douglas M. Skie, Chief, Air Programs Branch, EPA Region VIII, 999 18th Street—Suite 500, Denver, Colorado 80202-2405, (303) 293-1750.	Montana.
Douglas Neeley, Chief, Air Programs Branch, EPA Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365, (404) 347-2864.	Tennessee.

SUPPLEMENTARY INFORMATION:

I. Background

In a Federal Register notice published on November 6, 1991, 12 areas were designated as nonattainment for lead under section 107(d)(5) of the Act [1] (56 FR 56694, November 6, 1991). These initial nonattainment areas were codified in 40 CFR part 81 and became effective January 6, 1992. The States were required to submit implementation plans for these areas meeting the requirements of part D, title I, of the Act (section 191(b)). These implementation plans were required to meet the requirements of subparts 1 (nonattainment areas in general) and 5 (requirements specific to lead) of part D, title I; were required to be submitted within 18 months of the nonattainment designation (i.e., by July 6, 1993); and must provide for attainment of the lead NAAQS as expeditiously as practicable, but no later than 5 years from the nonattaiment designation (see sections 191(a) and 192(a) of the Act).

The Act establishes specific consequences if a State fails to meet certain requirements. Of particular relevance here is section 179 of the Act. Section 179 contains the provisions for mandatory application of sanctions. Section 179(a) sets forth the various findings upon which application of a sanction is based. The finding that a State has failed, for an area designated nonattainment, to submit a plan required under the Act is the finding relevant to this announcement.

Today EPA is announcing its previous determination that four States have failed to submit a required plan for a lead nonattainment area within the State. Under section 179(a), one of the sanctions specified in section 179(b), as selected by the Administrator, will be imposed 18 months after the finding unless EPA determines within that 18-month period that a complete submittal has been made. If the State still has failed to make a complete submittal after 6 months later, then the second sanction specified in section 179(b) will be imposed. In addition, a finding of failure to submit triggers the FIP requirement of section 110(c)(1).

II. States for Which EPA Is Making a Finding

A. Montana

On June 18, 1993, a letter was sent from Region VIII's Air Division Director to the Administrator of Montana's Environmental Sciences Division explaining the procedure the EPA intended to use to address any State failure to submit lead SIP's by the statutory deadline for lead nonattainment areas. On August 2, 1993, EPA carried out one step of this procedure and made a finding pursuant to section 179(a) of the amended Act that Montana had failed to submit a lead SIP by July 6, 1993 for the East Helena lead nonattainment area (see 40 CFR 81.327 (specifying lead nonattainment designation and boundaries for the city of East Helena and the vicinity)).

B. Missouri and Nebraska

On August 3, 1992, a letter was sent from Region VII's Air Division Director to Missouri's Director of Environmental Quality referencing the procedures EPA would use to address any State failure to submit lead SIP's by the statutory deadline for lead nonattainment areas. A letter outlining this policy was also sent from Region VII's Air Branch Chief to the Assistant Director of the Air and Waste Management Division of Nebraska's Department of Environmental Quality on February 10, 1993. On August 2, 1993, EPA made a finding, pursuant to section 179(a) of the Act, that the States of Missouri and Nebraska had failed to submit a lead SIP for their respective lead nonattainment areas by July 6, 1993. These nonattainment areas are a portion of Iron County, Missouri (Liberty and Arcadia Townships), as specified at 40 CFR 81.328, and a portion of Douglas County, Nebraska, as specified at 40 CFR 81.328.

C. Tennessee

In July 1993, Region IV had conversations with both the Director of the Tennessee Division of Air Pollution Control and the Manager of the Memphis-Shelby County Air Pollution Control Section explaining the procedure EPA would use to address any State failure to submit lead SIP's by the statutory deadline for lead nonattainment areas. On August 2, 1993, EPA carried out one step of this procedure and made a finding pursuant to section 179(a) of the Act that Tennessee had failed to submit a lead SIP by July 6, 1993 for the Shelby County lead nonattainment area (see 40 CFR 81.343 (specifying lead nonattainment designations and boundaries for that portion of Shelby County designated nonattainment)).

III. Conclusion

The EPA has made findings under section 179(a)(1) of the Act that the States listed in Table A failed to submit

[1] References herein are to the amended Clean Air Act ("the Act" or "CAA"). The Clean Air Act is codified, as amended, in the U.S. Code at 42 U.S.C. 7401, et seq.

a plan as required under section 191(a) of the Act.

The EPA is not required to go through notice-and-comment rulemaking under the Administrative Procedure Act (APA), 5 U.S.C. 551, *et seq.*, when making findings of failure to submit under section 179(a)(1). Under section 110(k)(1), the Act provides EPA with a 60-day period in which to determine whether a submittal is complete. The EPA makes this completeness determination by letter sent to the State. However, prior to determining whether something is complete, EPA must determine whether the State made a submittal or whether the State failed to submit the required SIP element or elements. Therefore, EPA must make such a determination prior to the time that the Agency would be required to determine whether a submittal is complete. Since EPA has less than 60 days to determine whether a State failed to make a required submittal, and it is impossible to provide notice-and-comment in 60 days, EPA believes that Congress clearly intended that EPA should not go through notice-and-comment rulemaking prior to making the finding.

In addition, even if EPA's findings of failure to submit were subject to rulemaking procedures under the APA, EPA believes that the good cause exception to the rulemaking requirement applies (APA section 553(b)(B)). Section 553(b)(B) of the APA provides that the Agency need not provide notice and an opportunity for comment if the Agency, for good cause, determines that notice and comment are "impracticable, unnecessary, or contrary to the public interest." In the present circumstance, notice and comment are unnecessary. The finding of failure to submit does not require any judgment on the part of the Agency. The issue is clear in that the Agency must state whether or not it has received any submittal from the State in response to a specific statutory requirement. No substantive review is required for such a determination. If the Agency has received a submittal, it will perform a completeness determination. If the Agency has not received anything, then the State has failed to submit the required rules under section 179(a)(1). The Agency is the only judge of whether or not it has received the submittal. The public does not have access to this information and, therefore, cannot provide relevant comment on whether EPA has received a document from the State. Because there is nothing on which to comment, notice-and-comment rulemaking are unnecessary.

Authority: 42 U.S.C. 7502, 7509(a) and (b), 7514, 7514a, and 7601.

Dated: October 4, 1993.

Michael Shapiro,

Acting Assistant Administrator for Air and Radiation.

TABLE A.—STATES FOUND TO HAVE FAILED TO SUBMIT SIP'S FOR THE FOLLOWING LEAD NONATTAINMENT AREAS [1]

State	Area of concern
Montana	City of East Helena, Lewis and Clark County.
Missouri	Liberty and Arcadia Township, Iron County.
Nebraska	Omaha, Douglas County.
Tennessee	Memphis, Shelby County.

[1] For efficiency, the full legal boundaries for the areas addressed in today's notice have not been listed. The references to areas in this notice are general and intended to operate as substitutes for the full legal boundaries. The full legal boundaries are set forth in 40 CFR part 81.

[FR Doc. 93-25610 Filed 10-18-93; 8:45 am]

BILLING CODE 6560-50-P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-40

[FPMR Amendment G-104]

Transportation of Household Goods

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: This regulation retitles the section on the procedures for moving household goods and also revises the section on quality control. The regulation is necessary to reflect changes in GSA's centralized household goods traffic management program which place greater emphasis on the quality of a carrier's performance.

EFFECTIVE DATE: October 19, 1993.

FOR FURTHER INFORMATION CONTACT: Jim Warford, Travel and Transportation Management Branch (913-236-2510).

SUPPLEMENTARY INFORMATION: The General Services Administration (GSA) has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for and consequences of this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for notice and comment. Therefore, the Regulatory Flexibility Act does not apply.

List of Subject in 41 CFR Part 101-40

Freight, Government property management, Moving of household goods, Office relocation, Transportation.

For the reasons set out in the preamble, 41 CFR part 101-40 is amended as follows:

PART 101-40—TRANSPORTATION AND TRAFFIC MANAGEMENT

1. The authority citation for part 101-40 is amended as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

Subpart 101-40.2—Centralized Household Goods Traffic Management Program

2. The heading for § 101-40.203 is revised to read as follows:

§ 101-40.203 Household goods movement procedures.

3. Section 101-40.205 is revised to read as follows:

§ 101-40.205 Quality control.

GSA Form 3080, Household Goods Carrier Evaluation Report (see § 101-40.4902), is a form used by GSA and other agencies for monitoring the performance and quality of household goods carriers' service. When household goods shipments are made under the GBL method, the employee (following delivery of the shipment) should promptly complete his/her portion of GSA form 3080 and send it to the agency GBL issuing officer responsible for the shipment to complete and forward to the Manager, GSA Centralized Household Goods Traffic Management Program, General Services Administration (6FBX), 1500 East Bannister Road, Kansas City, MO 64131. Information compiled from completed GSA Forms 3080 is used by GSA and other agencies to evaluate and rate the quality of carrier service and to determine if actions under § 101-40.208 should be considered. Agencies may submit other documentation of instances of inadequate carrier service or performance to the Manager, GSA

Centralized Household Goods Traffic Management Program, General Services Administration (6FBX), 1500 East Bannister Road, Kansas City, MO 64131. Sufficient details must be furnished to identify specific shipments.

Dated: September 23, 1993.

Julia M. Stasch,

Acting Administrator of General Services.

[FR Doc. 93–25669 Filed 10–18–93; 8:45 am]

BILLING CODE 6820–24–M

Proposed Rules

Federal Register
Vol. 58, No. 200
Tuesday, October 19, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1955 and 1965

RIN 0575–AB17

Transfer of Security Interests and Sales of Inventory on Indian Trust Lands

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend its regulations to provide direction for transfers of its security interests and sales of its inventory on Indian Trust Lands. This action is taken to comply with the Cranston-Gonzalez National Affordable Housing Act enacted on November 29, 1990. The intended effect of this action is to incorporate the requirements of this law into existing FmHA regulations.

DATES: Comments must be received on or before December 17, 1993.

ADDRESSES: Submit written comments, in duplicate to the office of the Chief, Regulations Analysis and Control Branch, Farmers Home Administration, U. S. Department of Agriculture, room 6348, South Agriculture Building, 14th Street and Independence Avenue SW., Washington, DC 20250. All written comments made pursuant to this publication will be available for public inspection during regular work hours at the above address.

FOR FURTHER INFORMATION CONTACT: Betty Throne, Realty Specialist, Property Management Branch, Single Family Housing Servicing and Property Management Division, Farmers Home Administration, USDA, room 5307, South Agriculture Building, Washington, DC 20250, Telephone (202) 720–1452.

SUPPLEMENTARY INFORMATION:

Classification

This rulemaking action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291 and has been determined to be "nonmajor" since the annual effect on the economy is less than $100 million and there will be no significant increase in cost or prices for consumers, individual industries, Federal, State or local Government agencies, or geographic regions. Furthermore, there will be no adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States enterprise to compete with foreign based enterprises in domestic or import markets. This action is not expected to substantially affect budget outlay or affect more than one Agency or to be controversial. The net result is to provide better service to an underserved area.

Civil Justice Reform

This regulation has been reviewed in light of E.O. 12778 and meets the applicable standards provided in section 2(a) and 2(b) of that Order. Provisions within this part which are inconsistent with State Law are controlling. All administrative remedies pursuant to 7 CFR part 1900 subpart B must be exhausted prior to filing suit.

Background/Discussion

Public Law 101–625, Cranston-Gonzalez National Affordable Housing Act, dated November 29, 1990, requires that in the case of a defaulted loan involving a security interest in tribal allotted or trust land, liquidations shall only be pursued after offering to transfer the account to an eligible tribal member, the tribe, or the Indian Housing Authority. We interpret eligible tribal member in the statue to mean "member of the particular tribe." This does not mean that the tribal member must be "eligible" under FmHA regulations for a Section 502 rural housing loan, only that the tribal member is a member of the tribe which has jurisdiction over the property involved. In addition, inventory properties must not be sold, transferred or otherwise disposed of except to one of the entities described in the preceding sentences. FmHA is amending its regulations to comply with the provisions of this law. However, the revision will not be effective until FmHA amends its Privacy Act System Notice allowing for this disclosure.

Programs Affected

These programs/activities are listed in the Catalog of Federal Domestic Assistance under Nos.:

10.405 Farm Labor Housing Loans and Grants
10.411 Rural Housing Site Loans (Section 523 and 524 Site Loans)
10.415 Rural Rental Housing Loans

Intergovernmental Consultation

For the reasons set forth in the Final Rule related Notice(s) to 7 CFR part 2015, subpart V, the following programs are excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials: 10.404–Emergency Loans; 10.406–Farm Operating Loans; 10.407–Farm Ownership Loans; 10.416–Soil and Water Loans. However, this activity impacts the following programs which are subject to intergovernmental consultation with State and local officials: 10.405–Farm Labor Housing Loans and Grants; 10.411–Rural Housing Site Loans (Section 523 and 524 Site Loans); 10.415–Rural Rental Housing Loans.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities since this rulemaking action does not involve a new or expanded program.

List of Subjects

7 CFR Part 1955

Government acquired property, Sale of Government acquired property, Surplus Government property, Disposal of acquired property.

7 CFR Part 1965

Administrative practice and procedure, Low and moderate income housing-Rental, Mortgages, Rural areas, Loan programs—Housing and Community development.

Therefore, chapter XVIII, title 7, Code of Federal Regulations is proposed to be amended as follows:

PART 1955—PROPERTY MANAGEMENT

1. The authority citation for part 1955 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart C—Disposal of Inventory Property

2. In § 1955.144, paragraph (c) is added to read as follows:

§ 1955.144 Disposal of NP or surplus property to, through, or acquisition from other agencies.

* * * * *

(c) *Indian trust land.* Inventory property, which is located on Indian tribal allotted or trust land, will be sold, or otherwise disposed of only to a member of the particular tribe having jurisdiction over the allotted or tribal land, the tribe, or to an Indian housing authority serving the tribe on a first come, first served basis. The listing price will be determined in accordance with § 1955.113 of this subpart, except additional 10 percent administrative price reductions are authorized at successive 75-day intervals until the property is sold.

PART 1965—REAL PROPERTY

3. The authority citation for part 1965 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart B—Security Servicing for Multiple Housing Loans

4. In § 1965.85, paragraph (d) is revised to read as follows:

§ 1965.85 Default and liquidation.

* * * * *

(d) *Nonmonetary defaults.* Attempts to resolve monetary defaults should be handled whenever possible at the District Office level with appropriate guidance and assistance from the State Office. The State Director should confer with OGC to determine the appropriate servicing actions in those cases where nonmonetary defaults cannot be resolved at the District level. These actions may include liquidation of the account. If the property is Indian tribal allotted or trust land, the District Director will alert the State Director, and liquidation shall only be pursued after offering to transfer the account to eligible tribal members, the tribe and the Indian housing authority serving the tribe.

* * * * *

5. Section 1965.85(e)(7) is amended by changing the reference "Form FmHA 465–7" to "Form FmHA 1955–2."

Subpart C—Security Servicing for Single Family Rural Housing Loans

6. In § 1965.125, paragraph (b) is revised to read as follows:

§ 1965.125 Liquidation.

* * * * *

(b) *Forced liquidation.* If the borrower will not agree to voluntary liquidation or fails to accomplish it within the time agreed to by FmHA, the County Supervisor will recommend foreclosure in accordance with subpart A of part 1955 of this chapter. Forced liquidation of FmHA security interests in Indian trust lands or on tribal allotted land will be recommended by the County Supervisor after handling the security servicing as outlined in § 1965.130 of this subpart and the State Director has determined that forced liquidation is in the best interest of the Government.

7. In § 1965.128, paragraph (e) is added to read as follows:

§ 1965.128 Assignment of promissory notes and security instruments.

* * * * *

(e) If the property is located within an Indian Reservation, an assignment may be made, with or without the request of the borrower, to the tribe, the Indian Housing Authority, or a member of the tribe upon payment of an amount which is the lesser of the market value or the remaining debt. Account acceleration is not required.

8. Section 1965.130 is added to read as follows:

§ 1965.130 Security interest in Indian trust land.

Security servicing for SFH loans secured by Indian tribal allotted or trust land will be handled in accordance with this section and borrower supervision, servicing and collection will be handled in accordance with subpart G of part 1951 of this chapter, except:

(a) If the account becomes three payments delinquent, the County Supervisor will send FmHA Guide Letter 1965–C–1, and Form FmHA 1965–21, "Inquiry for Assignment of Promissory Note and Security Instruments on Indian Trust Lands," by certified mail to the tribe, and the Indian housing authority serving the tribe. This guide letter will contain:

(1) The name and address of the borrower, and a brief legal description of the security property.

(2) The right of the FmHA borrower to sell the security property to whomever they wish, including the tribe, a member of the tribe, or the Indian housing authority serving the tribe and the possibility that the transferee may be able to assume the FmHA loan on program or nonprogram rates and terms in accordance with § 1965.126 of this subpart.

(3) The right of the tribe, Indian housing authority or a member of the tribe to be assigned the promissory notes and security instruments on a first come, first served basis in accordance with § 1965.128 of this subpart.

(i) The price for the assignment of FmHA's interest in the loan will be the present market value of the security property or the outstanding balance of the debt, exclusive of recapture, whichever is less, unless FmHA determines that some other amount is more appropriate.

(ii) The borrower need not request assignment and the account need not be accelerated for the account to be assigned to a tribe member, the tribe or Indian housing authority.

(4) A request for the tribe and/or Indian housing authority to assist in accomplishing one of the above.

(b) If a tribal member, the tribe, or Indian housing authority serving the tribe, does not indicate an interest in a transfer or assignment of the loan within a reasonable time agreed upon by FmHA, the County Supervisor may recommend foreclosure in accordance with § 1965.125 of this subpart.

Dated: August 10, 1993.

Bob Nash,

Under Secretary for Small Community and Rural Development.

[FR Doc. 93–25618 Filed 10–18–93; 8:45 am]

BILLING CODE 3410–07–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–ANE–41]

Airworthiness Directives; General Electric Co. CF6 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to General Electric Company (GE) CF6–6/–45/–50 series turbofan engines. This proposal would require an inspection for cracks in the stage 1 high pressure turbine (HPT) disk rim bolt holes, and stage 2 HPT disk rim and inner bolt holes; and replacement, if necessary, with serviceable parts. This proposal is prompted by a report of an uncontained stage 1 HPT disk failure which resulted in an aborted takeoff. The actions specified by the proposed AD are intended to prevent an uncontained stage 1 or stage 2 HPT disk failure, which could result in an inflight engine shutdown, rejected takeoff, or damage to the aircraft.

DATES: Comments must be received by November 18, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–ANE–41, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from General Electric Aircraft Engines, CF6 Distribution Clerk, room 132, 111 Merchant Street, Cincinnati, OH 45246. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington MA.

FOR FURTHER INFORMATION CONTACT: Robert J. Ganley, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7138; fax (617) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–ANE–41." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–ANE–41, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

This proposed AD is applicable to General Electric Company (GE) CF6–6/–45/–50 series turbofan engines. The Federal Aviation Administration (FAA) has received a report that a GE Model CF6–80A engine experienced a separation of the stage 1 high pressure turbine (HPT) disk rim. This separation has been attributed to cracks in the rim bolt holes which initiated from damage caused by the drill and ream procedures used during manufacture of the rim bolt holes. The FAA published a notice of proposed rulemaking (NPRM) in the **Federal Register** on January 9, 1992, (57 FR 857), that proposed to require a one-time inspection for cracks in the rim bolt holes in GE CF6–80A engines.

Though this cracking occurred on a GE Model CF6–80A engine, some GE CF6–6/–45/–50 stage 1 HPT disks were manufactured using the same drill and ream procedures, and therefore are susceptible to similar damage and cracking. The FAA has also received reports that during routine inspections, three additional HPT disks on other GE CF6 series engines were found cracked in either the rim or inner bolt holes. All three of these disks were removed from service, and the cracks have been attributed to the same manufacturing process which resulted in the reported GE Model CF6–80A rim separation. This condition, if not corrected, may result in an uncontained stage 1 HPT disk failure, which could result in an inflight engine shutdown, rejected takeoff, or damage to the aircraft.

The FAA has reviewed and approved the technical contents of GE CF6–6 Service Bulletin (SB) No. 72–1002, dated February 12, 1993; CF6–6 SB No. 72–1003, Revision 1, dated June 17, 1993; CF6–50 SB No. 72–1057, Revision 1, dated June 17, 1993; and CF6–50 SB No. 72–1059, dated February 12, 1993. These SB's describe procedures for an eddy current inspection for cracks in the stage 1 HPT disk rim bolt holes, and stage 2 HPT disk rim and inner bolt holes.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require an eddy current inspection for cracks in the stage 1 HPT disk rim bolt holes, and stage 2 HPT disk rim and inner bolt holes; and replacement, if necessary, with serviceable parts. The actions would be required to be accomplished in accordance with the service bulletins described previously.

A compliance end date of February 28, 1994, is proposed for stage 2 HPT disks that have not previously accomplished the inner bolt hole inspection, if applicable. A compliance end date of May 31, 1994, is proposed for stage 1 and stage 2 HPT disks that have previously accomplished the inner bolt hole inspections, if applicable. The option "whichever occurs earlier" is required to ensure timely compliance, since disks in this cyclic interval have been identified as having the highest probability of a crack. The option "whichever occurs latest" is intended to allow high cycle accumulating operators additional time to accomplish the inspection without impacting safety.

There are approximately 650 GE CF6–6/–45/–50 series engines of the affected design in the worldwide fleet. The FAA estimates that 500 engines installed on aircraft of U.S. registry would be

affected by this proposed AD, that it would take approximately 108 work hours per engine to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $77,314 per engine. Based on these figures, and assuming all inspected disks require replacement, the total cost impact of the proposed AD on U.S. operators is estimated to be $41,627,000.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

General Electric Company: Docket No. 93–ANE–41.

Applicability: General Electric Company (GE) CF6–6/–45/–50 series turbofan engines installed on but not limited to Airbus A300 series, Boeing 747 series, and McDonnell Douglas DC–10 series aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent an uncontained stage 1 or stage 2 high pressure turbine (HPT) disk failure, which could result in an inflight engine shutdown, rejected takeoff, or damage to the aircraft, accomplish the following:

(a) Eddy current inspect (ECI) stage 1 and stage 2 HPT disks for cracks in accordance with the Accomplishment Instructions of GE CF6–6 Service Bulletin (SB) No. 72–1002, dated February 12, 1993, and CF6–6 SB No. 72–1003, Revision 1, dated June 17, 1993, as follows:

(1) For GE CF6–6 series stage 1 HPT disks, Part Numbers (P/N) 9137M40P01 and 9687M39P07, with serial numbers (S/N) listed in Appendix I or II of GE CF6–6 SB No. 72–1002, dated February 12, 1993, which have accumulated less than 2,500 cycles since new (CSN) on the effective date of this AD, ECI the rim bolt holes at the next engine shop visit after accumulating 2,500 CSN, but not to exceed 4,500 CSN or prior to May 31, 1994, whichever occurs later.

(2) For GE CF6–6 series stage 1 HPT disks, P/N 9137M40P01 and 9687M39P07, with S/N listed in Appendix I or II or GE CF6–6 SB No. 72–1002, dated February 12, 1993, which have accumulated 2,500 CSN or more, but less than 4,000 CSN on the effective date of this AD, ECI the rim bolt holes at the next engine shop visit, prior to accumulating 4,500 CSN, or prior to May 31, 1994, whichever occurs latest.

(3) For GE CF6–6 series stage 1 HPT disks, P/N 9137M40P01 and 9687M39P07, with S/N listed in Appendix I or II of GE CF6–6 SB No. 72–1002, dated February 12, 1993, which have accumulated 4,000 CSN or more on the effective date of this AD, ECI the rim bolt holes at the next engine shop visit, or prior to May 31, 1994, whichever occurs earlier.

(4) For GE CF6–6 series stage 2 HPT disks, P/N 9084M52P02 and 9084M52P05, with S/N listed in Appendix I or II of GE CF6–6 SB No. 72–1003, Revision 1, dated June 17, 1993, which have *not* accomplished the inner bolt hole ECI prior to the effective date of this AD in accordance with GE CF6–6 Shop Manual, GEK 9266, Chapter 72–53–04, accomplish the following:

(i) For disks which have accumulated less than 2,000 CSN on the effective date of this AD, ECI the rim and inner bolt holes at the next engine shop visit after accumulating 2,000 CSN, but not to exceed 3,500 CSN or prior to February 28, 1994, whichever occurs later.

(ii) For disks which have accumulated 2,000 CSN or more, but less than 3,000 CSN on the effective date of this AD, ECI the rim and inner bolt holes at the next engine shop visit, prior to accumulating 3,500 CSN, or prior to February 28, 1994, whichever occurs latest.

(iii) For disks which have accumulated 3,000 CSN or more on the effective date of this AD, ECI the rim and inner bolt holes at the next engine shop visit, or prior to February 28, 1994, whichever occurs earlier.

(5) For GE CF6–6 series stage 2 HPT disks, P/N 9084M52P02 and 9084M52P05, with S/N listed in Appendix I or II of GE CF6–6 SB No. 72–1003, Revision 1, dated June 17, 1993, which have accomplished the inner bolt hole ECI prior to the effective date of this AD in accordance with GE CF6–6 Shop Manual, GEK 9266, Chapter 72–53–04, and not found cracked, accomplish the following:

(i) For disks which have accumulated less than 2,000 CSN on the effective date of this AD, ECI the rim and inner bolt holes at the next engine shop visit after accumulating 2,000 CSN, but not to exceed 4,500 CSN or prior to May 31, 1994, whichever occurs later.

(ii) For disks which have accumulated 2,000 CSN or more, but less than 4,000 CSN on the effective date of this AD, ECI the rim and inner bolt holes at the next engine shop visit, prior to accumulating 4,500 CSN, or prior to May 31, 1994, whichever occurs latest.

(iii) For disks which have accumulated 4,000 CSN or more on the effective date of this AD, ECI the rim and inner bolt holes at the next engine shop visit, or prior to May 31, 1994, whichever occurs earlier.

(6) GE CF6–6 series stage 1 HPT disks referenced in paragraphs (a)(1), (a)(2), and (a)(3) of this AD, that have been inspected by ECI in accordance with the procedures outlined in GE CF6–6 All Operators Wire (AOW) 92–6–09, dated September 24, 1992, or GE CF6–6 Engine Shop Manual, GEK 9266, Chapter 72–53–03, prior to the effective date of this AD, and whose CSN at the time of inspection was 2,500 or more, already meet the inspection requirements of paragraphs (a)(1), (a)(2), and (a)(3) of this AD.

(7) GE CF6–6 series stage 2 HPT disks referenced in paragraphs (a)(4) and (a)(5) of this AD, that have been inspected by ECI in accordance with the procedures outlined in GE CF6–6 AOW 92–6–09, dated September 24, 1992; GE CF6–6 SB No. 72–1003, dated February 12, 1993; or GE CF6–6 Engine Shop Manual, GEK 9266, Chapter 72–53–04, prior to the effective date of this AD, and whose CSN at the time of inspection was 2,000 or more, already meet the inspection requirements of paragraphs (a)(4) and (a)(5) of this AD.

(b) ECI stage 1 and stage 2 HPT disks for cracks in accordance with the Accomplishment Instructions of GE CF6–50 SB No. 72–1057, Revision 1, dated June 17, 1993, and CF6–50 SB No. 72–1059, February 12, 1993, as follows:

(1) For GE CF6–45/–50 series stage 1 HPT disks, P/N 9283M31P02, 9283M55P04, and 9283M55P05, with S/N listed in Appendix I, II, or III of GE CF6–50 SB No. 72–1059, dated February 12, 1993, which have accumulated less than 2,500 CSN on the effective date of this AD, ECI the rim bolt holes at the next engine shop visit after accumulating 2,500 CSN, but not to exceed 4,500 CSN or prior to May 31, 1994, whichever occurs later.

(2) For GE CF6–45/–50 series stage 1 HPT disks, P/N 9283M31P02, 9283M55P04, and 9283M55P05, with S/N listed in Appendix I, II, or III of GE CF6–50 SB No. 72–1059, dated February 12, 1993, which have accumulated 2,500 CSN or more, but less than 4,000 CSN on the effective date of this AD, ECI the rim bolt holes at the next engine shop visit, prior to accumulating 4,500 CSN, or prior to May 31, 1994, whichever occurs latest.

(3) For GE CF6–45/–50 series stage 1 HPT disks P/N 9283M31P02, 9283M55P04, and 9283M55P05, with S/N listed in Appendix I, II, or III of GE CF6–50 SB No. 72–1059, dated February 12, 1993, which have accumulated 4,000 CSN or more on the effective date of this AD, ECI the rim bolt holes at the next engine shop visit, or prior to May 31, 1994, whichever occurs earlier.

(4) For GE CF6–45/–50 series stage 2 HPT disks, P/N 9045M35P18 and 1474M49P06, with S/N listed in the Appendix of GE CF6–50 SB No. 72–1057, Revision 1, dated June 17, 1993, which have accumulated less than 2,000 CSN on the effective date of this AD, ECI the rim and inner bolt holes at the next engine shop visit after accumulating 2,000 CSN, but not to exceed 3,500 CSN or prior to February 28, 1994, whichever occurs later.

(5) For GE CF6–45/–50 series stage 2 HPT disks, P/N 9045M35P18 and 1474M49P06, with S/N listed in the Appendix of GE CF6–50 SB No. 72–1057, Revision 1, dated June 17, 1993, which have accumulated 2,000 CSN or more, but less than 3,000 CSN on the effective date of this AD, ECI the rim bolt holes at the next engine shop visit, prior to accumulating 3,500 CSN, or prior to February 28, 1994, whichever occurs latest.

(6) For GE CF6–45/–50 series stage 2 HPT disks, P/N 9045M35P18 and 1474M49P06, with S/N listed in the Appendix of GE CF6–50 SB No. 72–1057, Revision 1, dated June 17, 1993, which have accumulated 3,000 CSN or more on the effective date of this AD, ECI the rim and inner bolt holes at the next engine shop visit, or prior to February 28, 1994, whichever occurs earlier.

(7) GE CF6–45/–50 series stage 1 HPT disks referenced in paragraphs (b)(1), (b)(2), and (b)(3) of this AD, that have been inspected by ECI in accordance with the procedures outlined in GE CF6–50 AOW 92–50–15, dated September 24, 1992, or GE CF6–50 Engine Task Numbered Shop Manual, GEK 50481, Chapter 72–53–03, prior to the effective date of this AD, and whose CSN at the time of inspection was 2,500 or more, already meet the inspection requirements of paragraphs (b)(1), (b)(2), and (b)(3) of this AD.

(8) GE CF6–45/–50 series stage 2 HPT disks referenced in paragraphs (b)(4), (b)(5), and (b)(6) of this AD, that have been inspected by ECI in accordance with the procedures outlined in GE CF6–50 AOW 92–50–15, dated September 24, 1992; GE CF6–50 SB No. 72–1057, dated February 12, 1993; or GE CF6–50 Engine Task Numbered Shop Manual, GEK 50481, Chapter 72–53–04, prior to the effective date of this AD, and whose CSN at the time of inspection was 2,000 or more, already meet the inspection requirements of paragraphs (b)(4), (b)(5), and (b)(6) of this AD.

(c) Remove from service disks found cracked, and replace with serviceable parts. Inspect replacement disks in accordance with paragraphs (a) or (b) of this AD, if applicable.

(d) For the purpose of this AD, an engine shop visit is defined as the induction of an engine into a shop for maintenance involving the separation of any major flange.

(e) An alternative method of compliance or adjustment of the initial compliance time, that provides an acceptable level of safety, may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternate methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the aircraft to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on October 8, 1993.

Jay J. Pardee,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 93–25572 Filed 10–18–93; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM93–4–000]

Standards for Electronic Bulletin Boards

October 13, 1993.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of filing and opportunity to file comments.

SUMMARY: The Federal Energy Regulatory Commission (Commission) received a filing on October 12, 1993, from an industry working group containing recommendations for assigning common transaction point codes and is permitting interested persons an opportunity to file comments on this filing.

DATES: Comments are due by October 21, 1993.

ADDRESSES: An original and 14 copies of the comments should be filed in Docket No. RM93–4–000. All filings should refer to Docket No. RM93–4–000 and should be filed at: Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Michael Goldenberg, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–2294

Marvin Rosenberg, Office of Economic Policy, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–1283

Brooks Carter, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–0666

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3104, 941 North Capitol Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200, or 2400 bps, full duplex, no parity, 8 data bits, and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208–1781. The full text of this notice will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3104, 941 North Capitol Street, NE., Washington DC 20426.

Standards for Electronic Bulletin Boards Required Under Part 284 of the Commission's Regulations; Filing

Take notice that Industry Working Group 5 made a filing on October 12, 1993, containing recommendations for assigning common transaction point codes.

Any person desiring to submit comments on this filing should file such comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 on or before October 21, 1993.

Lois D. Cashell,

Secretary.

[FR Doc. 93–25602 Filed 10–18–93; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD 11-93-002]

Drawbridge Operation Regulations; Snodgrass Slough, CA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rule making.

SUMMARY: At the request of Sacramento County, the Coast Guard is considering a change to the regulation for the Twin Cities Road Bridge crossing over Snodgrass Slough, mile 4.4 near Walnut Grove, California. The change would require that the draw open on 72 hours advance notice. The bridge is presently required to open on 24 hours advance notice. The bridge has been opened only 38 times since 1979, including tests. This proposal is being made because of the extremely limited waterway traffic need for the opening of the draw and in order to accommodate the needs of vehicular traffic over the bridge. The action should still provide for the reasonable needs of navigation.

DATES: Comments must be received on or before December 3, 1993.

ADDRESSES: Comments may be mailed to Commander (oan-br), Eleventh Coast Guard District, Building 10, room 214, Coast Guard Island, Alameda, CA 94501-5100, or may be delivered to room 214 at the same address between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (510) 437-3514. Commander (oan-br) maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at Bldg. 10, room 214, Coast Guard Island, Alameda.

FOR FURTHER INFORMATION CONTACT: Jerry P. Olmes, Bridge Administrator, Eleventh Coast Guard District at (510) 437-3514.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 11-93-002) and the specific section of this proposal to which each comment applies, and give the reason for each comment. Persons wanting acknowledgement of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Commander, Eleventh Coast Guard District will also evaluate all communications received during this comment period and determine a course of final action on this proposal. The proposed regulations may be changed in light of the comments received.

The Coast Guard plans no pubic hearing. Persons may request a public hearing by writing to Commander (oan-br) at the address under ADDRESSES. The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the Federal Register.

Drafting Information

The principal persons involved in drafting this document are Jerry P. Olmes, Project Officer, and Lieutenant Commander Craig M. Juckniess, Project Attorney, Eleventh Coast Guard District Legal Office.

Background and Purpose

The Twin Cities Road Bridge was built in 1931. It was built as a movable bridge to allow for the infrequent passage of dredges and marine construction equipment. No operating machinery was ever installed, and the bridge is opened by hand or by a gear attached to a truck. Including semiannual tests, the bridge opened, on average, fewer than three times each year. The majority of openings have been for recreational vessels. The county advises that openings require a maintenance crew, trucks and flagmen, and each opening costs $2,560. Openings also take Twin Cities Road out of service to vehicular traffic for extended periods. The County will be able to reduce both the number of personnel on call and the number of trips for servicing personnel by requiring greater advance notice. The small number of documented bridge openings indicates that there is minimal or no need for draw openings on an advance notice basis of less than 72 hours.

Discussion of Proposed Amendment

The Twin Cities Road bridge crosses Snodgrass Slough approximately 4.4 miles upstream of the slough's confluence with the Mokelumne River, near Walnut Grove, CA. Snodgrass Slough is a secondary recreational waterway in the Sacramento-San Joaquin River Delta. There are a few recreational boat docks and beaches downstream of the Twin Cities Road Bridge, but no such facilities upstream. The area downstream, the Meadows, has been proposed as a water-oriented recreation area. Many recreational boats use the area downstream of the bridge, and a few anchor upstream of the bridge. Most vessels using the waterway can pass under the closed bridge which provides 18 feet vertical clearance over Mean High Water and 21 feet vertical clearance over Mean Lower Low Water. The proposed rulemaking would require dredges, marine construction equipment and most sailboats and large powerboats to give more advance notice.

Economic Assessment and Certification

This proposed rulemaking is not a significant regulatory action under Executive Order 12866 and is not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040, February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. Vehicular traffic flow will be enhanced and no vessels desiring to use the waterway would be prevented from doing so. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant impact on a substantial number of small entities.

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This proposal contains no collection of information or recordkeeping requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under section 2.B.2 of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. A Categorical Exclusion Determination statement is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REQUIREMENTS

Subpart B—Specific Requirements

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; and 33 CFR 1.05–1(g).

2. Section 117.195 is revised to read as follows:

§ 117.195 Snodgrass Slough.

The draw of the Sacramento County bridge, mile 4.4 at Walnut Grove, shall open on signal if at least 72 hours notice is given to the Sacramento County Highway Office at Sacramento.

Dated: October 1, 1993.

R.D. Herr,

Rear Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 93–25649 Filed 10–18–93; 8:45 am]

BILLING CODE 4910-14-M

PANAMA CANAL COMMISSION

35 CFR Part 10

RIN 3207–AA33

Implementation of the Privacy Act of 1974

AGENCY: Panama Canal Commission.

ACTION: Proposed rule.

SUMMARY: This proposed rule amends 35 CFR part 10, the agency's existing Privacy Act regulations, (1) to update §§ 10.21 "General Exemptions" and 10.22 "Specific Exemptions" by amending alphanumerical designations and titles, deleting obsolete systems and more precisely stating the exemptions pursuant to the Privacy Act of 1974 and OMB Circular A–130, and (2) to exempt two new systems of records maintained by the Office of Inspector General (OIG) and one existing system which was relocated to OIG. A notice establishing these two new systems of records and the amendment of the existing system appears elsewhere in today's **Federal Register**.

DATES: Comments must be submitted on or before November 18, 1993.

ADDRESSES: Comments should be addressed to Mrs. Carolyn H. Twohy, Agency Records Officer, Chief, Administrative Services Division, Panama Canal Commission, Unit 2300, APO AA 34011–2300.

FOR FURTHER INFORMATION CONTACT: Mrs. Barbara Fuller, Assistant to the Secretary for Commission Affairs, Panama Canal Commission, International Square, 1825 I Street NW., Suite 1050, Washington, DC 20006–5402. Telephone (202) 634–6441.

SUPPLEMENTARY INFORMATION: The Panama Canal Commission is proposing to revise 35 CFR part 10, §§ 10.21 and 10.22 by updating the number and category of exempt systems of records currently maintained by the agency. The Customs Division, Police Division and the Probation and Parole Unit of the former Canal Zone Government were disestablished in 1983 pursuant to the provisions of the Panama Canal Treaty of 1977. Exempt systems of records maintained by those units were transferred to the Commission's Agency Records Center located in the Republic of Panama and to Federal Records Centers in the United States and are no longer actively in use or have been destroyed. Pursuant to subsection (l) of the Privacy Act, inactive records transferred to records centers continue to be subject to the same rules and procedures as active records maintained by the agency. Of the active exempt files, several alphanumerical designations and system names have been changed due to reorganization or the transfer of duties to other departments. These revisions were published in 52 FR 49541, Dec. 31, 1987, however, due to administrative oversight were not revised in 35 CFR §§ 10.21 and 10.22. The following alphanumerical designations have been amended:

The Office of Financial Management PCC/FMAK–1, "Claims Files," was reorganized and portions relocated to the Office of General Counsel PCC/GCCL–1, "Marine Accident/Miscellaneous General Claims," the investigatory portion of which is exempt, and other portions remained in the Office of Financial Management, but redesignated as PCC/FMCL–1 which is not exempt; The Marine Bureau redesignated PCC/MRPA–1 as PCC/MRNA–1; The General Services Bureau PCC/GSIS, "Personnel Security Files," were relocated to the Office of Personnel Administration and designated as PCC/PR–7, "Personnel Reference Unit Files."

The title of the General Services Bureau PCC/GSCP–2, "Canal Protection Division Activity Report Files," was amended to "Canal Protection Division Incident Report Files."

The Office of Personnel Administration system designated as PCC/PR–11, "Minority Group Designator Records" has been deleted because the Government-wide OPM/GOVT–7, "Applicant Race, Sex, National Origin, and Disability Status Records" is applicable to this system. Likewise, the Personnel Board system designated as PCC/PB–1, "Merit System Recruiting, Examining and Placement Records" has been deleted because the Government-wide OPM/GOVT–5, "Recruiting, Examination and Placement Records is applicable to this system.

The following active and inactive systems have been destroyed and are hereby removed:

PCC/AMSE–2, Cardex File Contraband Violations;
PCC/CALS, Driver's License Investigatory File;
PCC/GSPL–5, Prisoner Record Cards;
PCC/GSPL–8, Pending Detective Investigation Records;
PCC/GSPL–9, Informant Name File;
PCC/GSPL–12, Youth Unit Name Index File;
PCC/OM–1, Ombudsman Investigation Files.

The Inspector General has determined that the existing "Cash Audit Files" system of records is in need of updating due to its relocation to the Office of Inspector General. The alphanumerical designation has changed from PCC/GA–1 to PCC/OIG–3. In addition, all references to the Office of General Audit have been changed to Office of Inspector General and references to General Auditor have been changed to Inspector General.

The Inspector General has also undertaken an internal review of its compliance with the Privacy Act and has determined that two new systems of records are necessary in order to account for information maintained about individuals. These new systems are exempt from certain provisions of the Privacy Act under Subsections (j) or (k).

The Commission has determined that this is not a major rule within the meaning of Executive Order 12291, nor will it have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act.

The Administrator has certified to the Office of Management and Budget that these proposed changes in regulations meet the applicable standards provided in section 2 of Executive Order 12778.

Finally, the proposed rule does not impose any new information collection requirements within the Paperwork Reduction Act.

List of Subjects in 35 CFR Part 10

Privacy.

Accordingly, it is proposed that 35 CFR part 10 be amended as follows:

PART 10—ACCESS TO INFORMATION ABOUT INDIVIDUALS

1. The authority citation for part 10 continues to read as follows:

Authority: 5 U.S.C. 552a.

2. Section 10.21 is revised to read as follows:

§ 10.21 General exemptions.

(a) The following systems of records are eligible for exemption under 5 U.S.C. 552a(j)(2) because each system is maintained by a component of the agency, or subcomponent, which performs as its principal function the enforcement of criminal laws, and which contains investigatory material compiled for criminal law enforcement purposes. Accordingly, these systems are exempt from the following sections of 552a of 5 U.S.C.: (c)(3) and (4); (d); (e)(1), (2) and (3); (e)(4) (G) and (H); (e)(5); (e)(8); (f); (g); (h); and (i).

(1) PCC/GSCP–2, Canal Protection Division Incident Report Files;

(2) PCC/OIG–1, Investigative Files of the Office of Inspector General;

(3) PCC/OIG–2, Allegation/Complaint Files of the Office of Inspector General;

(4) PCC/OIG–3, Cash Audit Files.

(b) The systems of records listed below, although no longer actively in use, continue to be subject to general exemption pursuant to 5 U.S.C. 552a(j)(2) because they were compiled by a component, or subcomponent, of the agency which performed as its principal function the enforcement of criminal laws, and which contain investigatory material compiled for criminal law enforcement purposes. Accordingly, the following systems of records are exempt from subsections (c)(3) and (4); (d); (e)(1), (2) and (3); (e)(4) (G) and (H); (e)(5); (e)(8); (f); (g); (h); and (i) of 5 U.S.C. 552a:

(1) PCC/AEPR–1, Probation and Parole Unit Child Custody Reports;

(2) PCC/AEPR–2, Presentence and Preparole Investigation Reports;

(3) PCC/AEPR–3, Probation and Parole Unit Statistical File;

(4) PCC/GSPL–1, Law Enforcement Case Report Files;

(5) PCC/GSPL–2, Police Headquarters Confidential File;

(6) PCC/GSPL–3, Detective Confidential Files;

(7) PCC/GSPL–4, Convict Files;

(8) PCC/GSPL–6, Police Photo Files;

(9) PCC/GSPL–7, Fingerprint File;

(10) PCC/GSPL–10, Master Name File;

(c) Exemptions from the particular subsections are justified for the following reasons:

(1) From (c)(3) because release of an accounting of disclosures to an individual who is the subject of an investigation could reveal the nature and scope of the investigation and could result in the altering or destruction of evidence, improper influencing of witnesses and other evasive action that could impede or compromise the investigation.

(2) From (c)(4) because this subsection is inapplicable to the extent that an exemption is being claimed for subsection (d).

(3) From subsection (d) because access to the records contained in these systems would inform the subject of a criminal or civil investigation, matter or case of the existence of such, and provide the subject with information that might enable him or her to avoid detection, apprehension or legal obligations, and present a serious impediment to law enforcement and other civil remedies. Amendment of the records would impose an impossible administrative burden by requiring investigations to be continuously reinvestigated.

(4) From subsection (e)(1) because it is often impossible to determine relevance or necessity of information in the early stages of an investigation. The value of such information is a question of judgment and timing; what appears relevant and necessary when collected may ultimately be evaluated and viewed as irrelevant and unnecessary to an investigation. In addition, information may be obtained concerning the violation of laws other than those within the scope of its jurisdiction. In the interest of effective law enforcement, information should be retained because it may aid in establishing patterns of unlawful activity and provide leads for other law enforcement agencies. Further, in obtaining evidence during an investigation, information may be provided which relates to matters incidental to the main purpose of the investigation but which may be pertinent to the investigative jurisdiction of another agency. Such information cannot readily be identified.

(5) From subsection (e)(2) because in a law enforcement investigation it is usually counterproductive to collect information to the greatest extent practicable directly from the subject thereof. It is not always feasible to rely upon the subject of an investigation as a source for information which may implicate him or her in illegal activities. In addition, collecting information directly from the subject could seriously compromise an investigation by prematurely revealing its nature and scope, or could provide the subject with an opportunity to conceal criminal activities, or intimidate potential sources, in order to avoid apprehension.

(6) From subsection (e)(3) because providing such notice to the subject of an investigation, or to other individual sources, could seriously compromise the investigation by prematurely revealing its nature and scope, or could inhibit cooperation, or permit the subject to evade apprehension.

(7) From (e)(4) (G) and (H); (f); (g); (h); and (i) because these provisions concern an individual's access to records which concern him and such access to records in this system would compromise investigations, reveal investigatory techniques and confidential informants, and invade the privacy of private citizens who provide information in connection with a particular investigation.

(8) From subsection (e)(5) because in the collection of information for law enforcement purposes it is impossible to determine what information is accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light and the accuracy of such information can only be determined in a court of law. The restrictions of subsection (e)(5) would restrict the ability of trained investigators to exercise their judgment in reporting on investigations and impede the development of information necessary for effective law enforcement.

(9) From subsection (e)(8) because the application of this provision could prematurely reveal an ongoing criminal investigation to the subject of the investigation and could reveal investigative techniques, procedures or evidence.

3. Section 10.22 is revised to read as follows:

§ 10.22 Specific exemptions.

(a) The following systems of records are eligible for exemption under 5 U.S.C. 552a(k)(2) because they contain

investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2) of 5 U.S.C. 552a. Provided, however, that if any individual is denied any right, privilege or benefit that he would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to January 1, 1975, under an implied promise that the identity of the source would be held in confidence. Accordingly, the following systems of records are exempt from (c)(3); (d); (e)(1); (e)(4) (G) and (H); (f); (g); (h); and (i) of 5 U.S.C. 552a.

(1) PCC/GSCP–2, Canal Protection Division Incident Report Files;

(2) PCC/OIG–1, Investigative Files of the Office of Inspector General;

(3) PCC/OIG–2, Allegation/Complaint Files of the Office of Inspector General;

(4) PCC/OIG–3, Cash Audit Files;

(5) PCC/FMAC–1, Embezzlements, Burglaries, and Cash Shortages;

(6) PCC/EO–2, Equal Employment Opportunity Complaint File;

(7) PCC/GCCL–1, Marine Accident/ Miscellaneous General Claims Files;

(8) PCC/GSCS–2, Housing Complaints Files;

(9) PCC/GSCX–1, Administrative Reports, Transfer of Custody and Official Complaint Files;

(10) PCC/AEPR–1, Probation and Parole Unit Child Custody Reports;

(11) PCC/AEPR–2, Presentence and Preparole Investigation Reports;

(12) PCC/AEPR–3, Probation and Parole Unit Statistical File;

(13) PCC/CAPS–2, Case Investigations;

(14) PCC/GSPL–1, Law Enforcement Case Report Files;

(15) PCC/GSPL–2, Police Headquarters Confidential File;

(16) PCC/GSPL–3, Detective Confidential Files;

(17) PCC/GSPL–4, Convict Files;

(18) PCC/GSPL–6, Police Photo Files;

(19) PCC/GSPL–7, Fingerprint File;

(20) PCC/GSPL–10, Master Name File;

(21) PCC/CZG/HL–2, Medical Administration System.

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because the release of the accounting of disclosures would permit the subject of a criminal investigation and/or civil case or matter under investigation, in litigation, or under regulatory or administrative review or action to obtain valuable information concerning the nature of that investigation, case or matter and present a serious impediment to law enforcement or civil legal activities.

(2) From (d); (e)(4) (G) and (H); (f); (g); (h); and (i) because these provisions concern an individual's access to records which concern him and such access to records in this system would compromise investigations, reveal investigatory techniques and confidential informants, and invade the privacy of private citizens who provide information in connection with a particular investigation.

(3) From subsection (e)(1) because it is often impossible to determine relevance or necessity of information in the early stages of an investigation. The value of such information is a question of judgment and timing; what appears relevant and necessary when collected may ultimately be evaluated and viewed as irrelevant and unnecessary to an investigation. In addition, information may be obtained concerning the violation of laws other than those within the scope of its jurisdiction. In the interest of effective law enforcement, this information should be retained because it may aid in establishing patterns of unlawful activity and provide leads for other law enforcement agencies. Further, in obtaining evidence during an investigation, information may be provided which relates to matters incidental to the main purpose of the investigation but which may be pertinent to the investigative jurisdiction of another agency. Such information cannot readily be identified.

(c) The following systems of records are eligible for exemption under 5 U.S.C. 552a(k)(5) because they contain investigatory material compiled solely for the purpose of determining suitability, eligibility or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to January 1, 1975, under an implied promise that the identity of the source would be held in confidence. Accordingly, these systems of records are exempt from 5 U.S.C. 552a (c)(3) and (d).

(1) PCC/FMAC–1, Embezzlements, Burglaries, and Cash Shortages;

(2) PCC/PB–2, Appeals, Grievances, Complaints and Assistance Records;

(3) PCC/PB–3, Personnel Investigation Records;

(4) PCC/PR–5, Recruiting and Placement Records;

(5) PCC/PR–7, Personnel Reference Unit Files;

(6) PCC/OIG–1, Investigative Files of the Office of Inspector General;

(7) PCC/OIG–2, Allegation/Complaint Files of the Office of Inspector General;

(8) PCC/OIG–3, Cash Audit Files.

(d) Exemptions from the particular subsections are justified for the following reasons:

(1) From (c)(3) because release of an accounting of disclosure to an individual who is the subject of an investigation could compromise the investigation.

(2) From (d) because access to or amendment of records in these systems would reveal the identity(ies) of the source(s) of information collected in the course of a background investigation. Such knowledge might violate the explicit or implicit promise of confidentiality made to the source during the investigation or constitute an unwarranted invasion of the personal privacy of third parties, or reveal sensitive investigative techniques and procedures. Such breaches could restrict the free flow of information vital to a determination of a candidate's qualifications and suitability.

(e) The following systems of records are eligible for exemption under 5 U.S.C. 552a(k)(6) because they contain testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service, the disclosure of which would compromise the objectivity or fairness of the testing or examination process. Accordingly, these systems of records are exempt from 5 U.S.C. 552a(d).

(1) PCC–CZG/BRAE–1, Canal Zone Board of Registration for Architects and Professional Engineers Reference Files;

(2) PCC/MRBL–1, Marine License Files;

(3) PCC/MRNA–1, Admeasurer Examination File.

(f) Exemptions from the particular subsections are justified for the following reasons:

(1) The exemption from (d) is justified because portions of records in these systems relate to testing or examining materials and are used solely to determine individual qualifications for appointment or promotion in the Federal service. Access to or amendment of this information would compromise the objectivity and fairness of the testing or examining process.

Dated: September 29, 1993.
Gilberto Guardia F.,
Administrator.
[FR Doc. 93–25523 Filed 10–18–93; 8:45 am]
BILLING CODE 3560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–4791–4]

National Emission Standards for Hazardous Air Pollutants for Source Categories: Perchloroethylene Dry Cleaning Facilities

AGENCY: Environmental Protection Agency (EPA).
ACTION: Notice of public meeting.

SUMMARY: National emission standards for hazardous air pollutants (NESHAP) for perchloroethylene (PCE) dry cleaning facilities were promulgated in the **Federal Register** on September 22, 1993 (58 FR 49354). In order to gain additional understanding of indoor air pollution, ground water contamination and solid waste generation resulting from dry cleaning facilities, EPA will convene a public meeting in New York, New York. Information also will be sought on the environmental impacts associated with the operation of wastewater evaporators. The objective of this public meeting will be to gather information on the magnitude of these problems, as well as potential solutions to these problems.

DATES: *Comments.* Individuals wishing to submit written comments in lieu of attending this public meeting should forward their comments on or before November 21, 1993.

Public Meeting. The public meeting will be held on November 3–4, 1993 in New York, New York. The meeting will start on both days at 9 a.m. There will be an evening session on the first day starting at 7 p.m.

Request to Speak at Meeting. Individuals wishing to speak at this public meeting should contact Mrs. Julia Latta at (919) 541–5578 by October 27, 1993. Each speaker is asked to limit his or her remarks to 10 minutes or less, unless otherwise arranged. Those wishing to speak longer than 10 minutes should contact Mr. George Smith at (919) 541–1549 after contacting Mrs. Latta.

ADDRESSES: *Comments.* Comments should be submitted to Mr. Bruce Jordan, Director; Emission Standards Division (MD–13), Environmental Protection Agency, Research Triangle Park, NC 27711.

Public Meeting. The public meeting will be held in New York, New York in the Gold Ballroom of the Ramada Hotel Pennsylvania on 401 7th Avenue (West 33rd Street and 7th Avenue in Manhattan, across from Pennsylvania Station). A limited number of hotel rooms will be made available at a reduced rate from the Ramada Inn to those that make reservations by October 19, 1993. In order to receive the reduced rate, those making reservations must say they will be attending the EPA public meeting. Telephone numbers for the Ramada Inn are (800) 223–8585 and (212) 502–8161.

Docket. Docket No. A–88–11, containing information considered by the EPA in development of the promulgated standards, is available for public inspection between 8:30 a.m. and 3:30 p.m., Monday through Friday, excluding Federal holidays, at the EPA's Air Docket (LE–131), Waterside Mall, room M1500, 1st Floor, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For information concerning the standards, contact Mr. George Smith at (919) 541–1549 or Mr. Fred Porter at (919) 541–5251, Standards Development Branch, Emission Standards Division (MD–13), U. S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: The promulgated NESHAP will achieve significant reductions in PCE emissions from new and existing dry cleaning facilities. There remain, however, several major issues associated with dry cleaning facilities that merit further attention. These include: (1) Indoor air pollution in residences located above dry cleaning facilities and (2) groundwater pollution resulting from dry cleaning facilities. These issues were brought to light following proposal of the NESHAP by the New York Study (indoor air pollution) and the California Study (ground water pollution).

New York Study

The New York Study is an assessment of indoor air pollution in residences above dry cleaners performed by the State of New York. Many States and environmental groups referred to this study in their public comments on the NESHAP, and several commenters submitted copies of the study attached to their comments. They believed that the study shows the risk to public health from dry cleaners is significant and should be targeted for regulation. They mentioned that although the Act does not specifically address indoor air pollution, indoor air emissions eventually become ambient air emissions.

The New York Study focuses on dry cleaners located in Albany, New York. All 102 dry cleaners listed in the Albany telephone directory were contacted. Of these 102 dry cleaners, 67 cleaned or pressed clothes on the premises. Of these 67, 6 had occupied residences above them.

The levels of PCE in the indoor and outdoor air at residences located above the 6 dry cleaners were measured over a 24-hour period. Identical measurements were taken at the same time at 6 control residences located at least 100 meters (330 feet) away from each dry cleaner. The control residences were selected based on their similarity to the study residences in terms of building type, age, and neighborhood.

The study found indoor air concentrations of PCE ranging from 100 to 55,000 micrograms per cubic meter (mcg/m^3) [15 to 8,000 parts per billion (ppb)] in the 6 residences located above dry cleaners. The cancer risk estimate associated with these levels, based on the EPA's unit cancer risk estimate for PCE, is 1 in 100,000 to 1 in 100 (10^{-5} to 10^{-2}). Control residences had indoor air PCE concentrations ranging from 6 to 100 mcg/m^3 (1 to 15 ppb). The associated cancer risk associated with these levels is 1 in 1,000,000 to 1 in 100,000 (10^{-6} to 10^{-5}).

The New York study indicates that PCE emissions can accumulate in residences located above dry cleaning facilities, leading to increased public exposure to PCE. While not definitive, in the EPA's opinion, based on various observations included in the New York study, it appears the major contributor to the elevated PCE levels measured in the residences located above these dry cleaners is fugitive emissions.

California Well Investigation Program

The California Well Investigation Program is an assessment of ground water contamination undertaken by the State of California. The study contends that PCE contaminated discharges into sewer lines by dry cleaning facilities has contaminated ground water in several areas.

The California Study focuses on wells in the Central Valley Region, which supply drinking water to municipal water systems. Water drawn from 215 out of some 2,000 wells tested contained detectable levels of PCE. Of these 215 wells, water drawn from 47 wells contained levels of PCE above the maximum contaminant level (MCL) of 5

parts per billion (ppb) in the National Revised Primary Drinking Water Regulations.

Soil gas surveys and ground water movement around 21 of the 47 wells with levels of PCE above the MCL indicate the source of PCE contamination in these wells to have originated from sewer lines. In 20 out of these 21 wells, dry cleaning facilities were identified as the sole users of PCE connected to the sewer lines. Soil gas surveys along the main sewer lines downstream from sewer laterals connecting the dry cleaners to the main sewer lines also showed relatively high concentrations of PCE. As a result, the study concludes that dry cleaning facilities are the source of the observed PCE contamination.

Recovery of PCE for reuse within the dry cleaning process generates wastewater contaminated with PCE. Most of the PCE contained in this wastewater is recovered in a water separator. Water from the water separator, however, is routinely discharged to the sewer at many dry cleaning facilities. Separator water generally contains about 150 ppm of PCE; but it may contain as much as 30 percent PCE if the water separator is poorly operated.

Dry cleaning machines that use a refrigerated condenser for process vent control generate about 190 liters (50 gallons) per year of separator water; those with no process vent control generate even less. Dry cleaning machines that use a carbon adsorber for process vent control, on the other hand, generate about 7,600 liters (2,000 gallons) per year of separator water—40 times that generated by a refrigerated condenser.

The California study concludes that PCE discharged to sewers from dry cleaning facilities can contaminate ground water. Whether the primary source of PCE discharged to sewers by dry cleaning facilities is the result of leaking equipment, accidental spills, or PCE contaminated wastewater generated by dry cleaning or that generated by emission control equipment installed to control process vent emissions, however, is unclear.

The use of carbon adsorbers for process vent control significantly adds to the amount of PCE contaminated wastewater generated by dry cleaning facilities. While not conclusive, this suggests the use of carbon adsorbers for process vent control may be a primary contributor to ground water pollution resulting from dry cleaning facilities.

Public Meeting

The EPA believes, based on information received to date, that PCE contamination of indoor air and ground water are significant problems that may warrant additional Federal actions. The EPA considered seeking an extension of the court deadline for the final rule to deal fully with these issues. This course of action, however, would have postponed the health and environmental benefits of the rule for an extended period of time. The EPA determined that the best environmental protection would be achieved by issuing the final rule as expeditiously as possible, and deciding subsequently how to address remaining indoor air pollution and ground water contamination associated with PCE dry cleaners.

The final rule, while targeted primarily at reducing PCE contamination of outdoor air, may reduce indoor air contamination in some locations through requirements reducing fugitive and process vent emissions from dry cleaners. In addition, the rule requires uncontrolled machines to be controlled with refrigerated condensers, which will minimize generation of wastewater and solid waste.

In order to gain additional insight and understanding into the issues of indoor air pollution and ground water pollution associated with dry cleaning facilities, the EPA will convene a public meeting (see *Public Meeting* under **ADDRESSES** at the beginning of this preamble). The objective of this public meeting will be to gather additional information and solicit public comment on the magnitude and severity of the problems highlighted by the New York and the California studies, and potential solutions or approaches for dealing with these problems. Copies of the New York and California studies are included in Docket No. A–88–11 (see *Docket* under **ADDRESSES**). (The New York Study is Docket No. A–88–11, Item No. IV–D–5 with additional information in Item No. IV–J–40; the California Study is also part of Item No. IV–J–40.) The EPA also would like to be informed of other studies conducted by States (or others) that address the relative efficiency of carbon adsorbers and refrigerated condensers, and their impact on air emissions. Anyone wishing to speak and make presentations at the public meeting and/or wishing to submit written comments, please see the sections *Requests to Speak at Meeting* and *Comments* at the beginning of this notice.

The EPA will use the information received from the public meeting, as well as written comments, in deciding what additional actions should be taken to reduce health and environmental risks from dry cleaners. The EPA will, at a minimum, publish and distribute the information presented at the public meeting. The EPA may then use this information to develop guidance for States and local agencies, and/or develop additional regulations. At the meeting, the EPA will explore the desirability and feasibility of using a regulatory negotiation or other consensus-building approach to address these issues.

With respect to indoor air pollution, the EPA specifically requests States and the public to provide their views and any available information on:

a. The number of dry cleaners collocated in buildings with residences or businesses.

b. The extent and severity of indoor air contamination with PCE from dry cleaners, and the adequacy of existing data on this problem.

c. The extent and severity of PCE contamination of fatty foods in residences, restaurants, and food stores that are collocated with or located near dry cleaners.

d. The extent to which PCE indoor air contamination results from fugitive emissions or process vent emissions.

e. The amount of fugitive emissions from different types of dry cleaning machines, and from the various pieces of ancillary equipment associated with the dry cleaning process.

f. Methods for reducing PCE contamination of indoor air, including but not limited to:

(1) Improved maintenance involving the use of instruments to inspect dry cleaning equipment for leaks of PCE.

(2) Increased room ventilation and/or ducting of emissions outdoors.

(3) Collection of steam press emissions.

(4) The use of vapor barriers.

(5) Improved training of dry cleaning workers, or other information-dissemination activities.

(6) A phaseout of existing transfer machine systems (the final rule effectively bans new transfer machine systems but does not limit the period of time that existing transfer machine systems can remain in service).

(7) Other strategies, control technologies, and pollution prevention methods that can reduce fugitive emissions, especially at small dry cleaners.

g. The extent to which evaporators are in use, and their impact on air quality as well as wastewater contamination.

h. The relative performance of vented versus ventless machines in reducing perc emissions.

i. The relative effectiveness, cost, and affordability of the available options, as well as key advantages and drawbacks, including information on:

(1) The economic impact of a requirement to replace existing carbon adsorbers with refrigerated condensers.

(2) The economic impact of a requirement to replace existing transfer machines with dry-to-dry equipment.

j. The appropriate Federal role in encouraging or requiring steps to reduce PCE contamination of indoor air.

k. The proposition that the EPA should voluntarily conduct a residual risk analysis for area source dry cleaners, as well as a statutorily mandated risk analysis for major sources, to assess remaining health and environmental risks after installation of MACT and GACT technology. (Based on the results of this analysis, the EPA could assess whether more stringent, health-based standards are warranted); and

l. Examination of coin-operated dry cleaners exempt from the dry cleaning NESHAP to evaluate their potential contribution to indoor air pollution.

With respect to ground water contamination and solid waste generation by dry cleaners, the EPA specifically requests that States and the public provide their views and any available information on:

(1) The extent and severity of contamination of ground water with PCE from dry cleaners, and the degree of health threat posed by this contamination;

(2) The relative contribution of wastewater discharges, accidental spills, equipment leaks, and improper hazardous waste disposal to this ground water contamination;

(3) Costs of treating well water contaminated with PCE to make it safe for drinking, and the costs and feasibility of cleaning up ground water contaminated with PCE;

(4) The degree of solid or hazardous waste generation associated with the prevention/control technologies, information on how these wastes are managed and their environmental impact.

(5) Potential measures to prevent or minimize further contamination of ground water with PCE, including but not limited to:

(a) Use of wastewater evaporators by dry cleaners.

(b) Required replacement of existing carbon adsorbers used for process-vent control with refrigerated condensers, perhaps through a gradual phaseout. (The EPA particularly solicits comment on how the EPA could use its legal authorities to require a gradual phaseout, the environmental benefits of a phaseout, and the economic feasibility of potential phase-out schedules.);

(c) Improved maintenance of dry cleaning equipment through improved training of dry cleaning workers or other information-dissemination activities;

(d) Encouragement of emerging PCE emission control technologies that use adsorption but do not generate wastewater because regeneration is performed through heat desorption rather than steam stripping;

(e) Spill prevention and control measures; (f) A ban or limit on the discharge of PCE-contaminated wastewater to sewers;

(g) Disposal of dry cleaner wastewater at hazardous waste facilities;

(h) The practical use of dry cleaner wastewater in boilers; and

(i) The relative effectiveness, costs, and affordability of the available options, as well as key advantages and drawbacks.

(6) The appropriate Federal role in encouraging or requiring steps to reduce the threat of ground water contamination from dry cleaners.

Dated: October 8, 1993.

Michael H. Shapiro,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 93–25616 Filed 10–18–93; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–254, FCC 93–459]

Radio Broadcast Services; Television Commercial Programming

AGENCY: Federal Communications Commission.

ACTION: Notice of inquiry.

SUMMARY: This Notice of Inquiry seeks comment on issues relating to the commercial programming practices of television broadcast stations. Specifically, the Notice seeks comment on whether the public interest would be served by establishing limits on the amount of commercial matter broadcast by television stations. Commenters are also invited to address the form that any such regulation would take. The Commission issued the Notice on its own motion.

DATES: Comments are due by November 29, 1993, and reply comments are due by December 14, 1993.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Paul R. Gordon, Mass Media Bureau, Video Services Division, (202) 632–6357.

SUPPLEMENTARY INFORMATION: This is the Commission's Notice of Inquiry in MM Docket No. 93–254, adopted on September 23, 1993, and released on October 7, 1993.

The complete text of this Notice of Inquiry is available for inspection and copying during normal business hours in the FCC Reference Center (room 239) at the Federal Communications Commission, 1919 M Street NW., Washington, DC 20554, and may also be purchased from the Commission's copy contractor, International Transcription Service, at (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037.

Notice of Inquiry

1. The Commission, on its own motion, is initiating this proceeding to evaluate the commercial programming practices of television broadcast stations. Specifically, we seek comment on whether the public interest would be served by establishing limits on the amount of commercial matter broadcast by television stations.

Background

2. Prior to 1984, the Commission had a longstanding policy precluding or discouraging television stations from devoting excessive time to commercial matter.[1] The Commission based this policy on the perception that excessive commercialization "subordinate[d] programming in the interest of the public to programming in the interest of its salability."[2] During this period, licensees were required to maintain detailed logs of their programming, partially to substantiate claims that they were in compliance with this policy. Moreover, the Commission frequently had to determine whether a particular program was a commercial, in order to determine whether it had been properly logged by the licensee.[3] Then, in 1984,

[1] See, e.g., En Banc Programming Inquiry, 44 FCC 2203 (1960).

[2] *Id.* at 149.

[3] See, e.g., Jimmy Lee Swaggart, 29 RR 2d 400 (1974) (promotions of religious tours, books, records, and tapes must be classified and logged as commercial programming); KISD, Inc., 22 FCC 2d 833 (1970) (when a record is played in conjunction with an advertisement for its sale, the duration of the play of the record must be computed as part of the commercial message); and KCOP–TV, Inc., 24 FCC 2d 149 (1970) (when the commercial and noncommercial portions of a program are sufficiently intermixed, the entire program must be logged as commercial).

after having deregulated commercial time for radio stations, the Commission similarly altered the manner by which it regulated commercial time for television stations.[4] Analyzing the effects of its commercial guidelines, the Commission determined that market forces, rather than Commission rules, were the decisive factor in determining the levels of commercialization for radio and television stations. The Commission therefore abolished the guidelines, concluding that competition would continue to regulate commercial excesses. Notably, the Commission retained its concern that programming in the public interest not become subordinated to programming in the interest of advertisers.[5] Indeed, the Commission stated that if the market were to fail to regulate commercial excesses, then it would be obligated to reconsider that aspect of deregulation.[6]

3. Upon the deregulation of commercial time in 1984, no television station had a programming format that consisted predominantly of sales presentations of program length commercials ("home shopping").[7] A small number of such stations had developed by 1987, when the Commission, stating that it had not contemplated this development, nevertheless found that the format was not contrary to the public interest.[8] However, the Commission at the same time noted that future developments could require it to reexamine that conclusion.[9]

4. In 1992, Congress enacted the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act").[10] Section 4(g) of the 1992 Cable Act added a new section 614(g) to the Communications Act of 1934, as amended, 47 U.S.C. 534(g), which required the Commission to determine, regardless of prior proceedings, whether stations that are predominantly utilized for the transmission of sales presentations or program length commercials are serving the public interest, convenience, and necessity.

5. Congress incorporated section 4(g) with the general rules concerning the mandatory cable carriage ("must-carry") of commercial television stations.[11] That section of the 1992 Cable Act directed the Commission to consider three specific factors in making its public interest determination: (1) The viewing of home shopping stations; (2) the level of competing demands for the spectrum allocated to such stations; and (3) the role of such stations in providing competition to nonbroadcast services offering similar programming. Based on our review of the record in that proceeding, we found that home shopping stations have been serving the public interest and are therefore qualified for must-carry status.[12]

Discussion

6. The public interest requires that were periodically reassess our notion of that term in light of changing circumstances. A policy that serves the needs of the public at one time may become anachronistic or burdensome at a later time.[13] Section 4(g) of the 1992 Cable Act directed the Commission to evaluate the public interest status of home shopping stations based on three specified criteria and in relation to the must-carry rules. However, congressional debates on the 1992 Cable Act also reflected a more generalized concern with the issue of commercialism in broadcasting. Thus, we are initiating this inquiry to determine whether the public interest would be served by reestablishing limits on the amount of commercial matter that a television station can broadcast.

7. In analyzing this matter, we invite commenters to address whether and in what specific manner an excess of commercial programming disserves the public. Should the Commission reexamine the basic assumptions of the 1984 Deregulation Order? Specifically, should some measure besides public acceptance be used to define an "excess" of commercial programming, and, if so, what should it be? What is the effect of our 1984 conclusions of changes in the number of viewing options? Is there a distinction between "commercialism" as it was defined in the 1984 Order, and the various formats used for commercial programming as it exists today?

8. Commenters are also invited to address the form that any such regulation would take. If we find that the adoption of limits is warranted, should we enact a strict rule setting specific limits?[14] Should any commercial limits be based on the amount of commercial programming per hour, thereby precluding the broadcasting of program length commercials, or should they be based on some longer period of time that would allow for informercials and extended sales presentations? Would licensees have greater flexibility in fulfilling their public interest obligations if we were instead to adopt informal processing guidelines (i.e., we would not grant under-delegated authority applications for new stations or for the sale or renewal of existing stations, if the applicants aired or proposed more than a certain level of commercialization)?[15] We also ask commenters to address how we would ensure compliance with any limit on commercialization. For example, should we again require television station licensees to maintain logs of their commercial programming, or would certification of compliance be sufficient? Finally, we request that commenters address the First Amendment implications of any proposed limitations on commercial programming.[16]

Procedural Matters

9. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before November 29, 1993, and reply comments on or before

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[4] Report and Order in MM Docket No. 83–670 (Television Deregulation), 49 FR 33588 (Aug. 23, 1984) *recon. denied*, 51 FR 20292 (June 4, 1986), *aff'd in part and remanded in part sub. nom Action for Children's Television* v. *F.C.C.*, 821 F.2d 741 (D.C. Cir. 1987). The Commission had already deregulated radio in the same manner. Report and Order in BC Docket No. 79–219 (Radio Deregulation), 84 FCC 2d 968 at 1007–08 (1981), *recon. denied*, 87 FCC 2d 797 (1981), *aff'd in part, reversed in part sub nom. Office of Communication of the United Church of Christ* v. *F.C.C.*, 707 F.2d 1413 (D.C. Cir. 1983).

[5] Television Deregulation.

[6] Radio Deregulation.

[7] Our use of the term "home shopping" encompasses both sales presentations and program length commercials.

[8] Family Media, Inc., 2 FCC Rcd 2540 (1987).

[9] *Id.* at 2542. As of December 22, 1992, Home Shopping Network, Inc., the major distributor of broadcast home shopping programming, had affiliation agreements with 105 television stations. These stations comprise less than 10% of the total number of commercial television stations currently licensed by the Commission.

[10] Public Law 102–385, 106 Stat. 1460 (1992).

[11] The must-carry rules are codified in section 4 of the 1992 Cable Act, 47 U.S.C. 534. Section 4(g) required the Commission to qualify home shopping stations as local commercial television stations for the purposes of must-carry if it found that they were serving the public interest. If the Commission found that one or more such stations were not serving the public interest, however, then the Act required that the Commission provide them with reasonable time to provide different programming.

[12] Report and Order in MM Docket No. 93–8 (Home Shopping Stations), 58 FR 39156 (July 22, 1993), petition for reconsideration pending.

[13] Compare Mayflower Broadcasting Corp., 8 FCC 333 (1941) (broadcast editorials held to violate the public interest) with Opinion on Editorializing by Broadcasters, 13 FCC 1246 (1949) (broadcast editorials held not to violate the public interest).

[14] Only with regard to children's programming do we now impose such limits. 47 CFR 73.670.

[15] Such guidelines existed prior to our 1984 television deregulation decision. Amendments to Delegations of Authority, 43 FCC 2d 636 (1973).

[16] In that regard, we note the Supreme Court's recent admonition that government regulations not "place too much importance on the distinction between commercial and noncommercial speech." *City of Cincinnati* v. *Discovery Network, Inc.*, No. 91–1200, slip op. at 14 (U.S. March 24, 1993).

December 14, 1993. To file formally in this proceeding, you must file an original and four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (room 239) at the Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

10. For further information concerning this Notice of Inquiry, please contact Paul R. Gordon, (202) 632–6357, Mass Media Bureau, Video Services Division, Federal Communications Commission, Washington, DC 20554.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–25531 Filed 10–18–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC11

Endangered and Threatened Wildlife and Plants; Proposed Rule To Reclassify the Plant Isotria Medeoloides (Small Whorled Pogonia) From Endangered to Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to reclassify *Isotria medeoloides* (small whorled pogonia) from endangered to threatened pursuant to the Endangered Species Act of 1973 (Act), as amended. This action is proposed due to substantial improvement in the status of this orchid species and the fulfillment of reclassification criteria stated in the Small Whorled Pogonia (*Isotria medeoloides*) Recovery Plan: First Revision (U.S. Fish and Wildlife Service 1992). Reclassification from endangered to threatened may be proposed when a minimum of 25 percent of the known viable sites (as of 1992) are permanently protected. Currently, 61 percent of the viable sites are permanently protected.

The proposed change in classification will not significantly alter the protection of this species under the Act. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by December 17, 1993. Public hearing requests must be received by December 3, 1993.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, New England Field Office, U.S. Fish and Wildlife Service, 22 Bridge Street, Concord, New Hampshire 03301. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Susanna von Oettingen at the above address (telephone: 603/225–1411).

SUPPLEMENTARY INFORMATION:

Background

Isotria medeoloides (small whorled pogonia), a member of the orchid family (Orchidaceae), was first described by Frederick Pursh in 1814 as *Arethusa medeoloides*. Pursh based his description on a specimen found in a mountainous region along the borders of New York, New Jersey and Pennsylvania (Correll 1950). In 1838, this orchid was placed in its own genus and recognized as *Isotria medeoloides*; however, it also became known as *Pogonia affinis* and *Isotria affinis*. M. L. Fernald clarified the nomenclature in 1947, making the latter names synonyms of *Isotria medeoloides*

Isotria medeoloides is an herbaceous perennial with slender, hairy, fibrous roots that radiate from a crown or rootstock. The five or six milky-green or grayish-green, elliptic and somewhat pointed leaves (four leaves in some vegetative plants) are displayed in a whorl at the apex of a smooth, green stem. *Isotria medeoloides* flowers from mid-May in the south to mid-June in the northern part of its range. A single yellowish-green flower, or occasionally flower pair, stands in the center of the whorl of leaves.

An individual plant is usually single-stemmed, although two or more stems may occur; however, closely grouped double stems may in fact be two single plants. Because of the difficulty in differentiating double stemmed plants from closely neighboring plants, population estimates are often based on the number of stems, as opposed to the number of plants.

Isotria medeoloides can be confused with *Isotria verticillata* (Willd.) Raf. (large whorled pogonia), the only other species in the genus *Isotria*. Characteristics that distinguish *I. medeoloides* from *I. verticillata* include the stem and flower color, the relative lengths of the sepals and petals, and the length of the stem of the fruit capsule in relation to the length of the capsule itself (Rawinski 1989a). Colonies of *Isotria verticillata* are often found near colonies of *Isotria medeoloides* in the extensive region in which they occur together (Ware 1988; A. Belden, Virginia Division of Natural Heritage, *in litt.* 1991). They have also been reported to occur in mixed groups (Dixon and Cook 1988).

Isotria medeoloides occurs both in fairly young forests and in maturing stands of mixed-deciduous or mixed-deciduous/coniferous forests. The majority of small whorled pogonia sites share several common characteristics. These include: Sparse to moderate ground cover in the microhabitat of the orchids (except when among ferns); a relatively open understory canopy; and proximity to old logging roads, streams, or other features that create long-persisting breaks in the forest canopy (Mehrhoff 1989a). The soil in which the shallow-rooted small whorled pogonia grows is usually covered with leaf litter and decaying material (Mehrhoff 1980). The spectrum of habitats includes dry, rocky, wooded slopes to moist slopes or slope bases crisscrossed by vernal streams.

Isotria medeoloides is widely distributed with a primary range extending from southern Maine and New Hampshire through the Atlantic seaboard States to northern Georgia and southeastern Tennessee. Outlying colonies have been found in the western half of Pennsylvania, Ohio, Michigan, Illinois, and Ontario, Canada.

There are three main population centers of *Isotria medeoloides* today. The northernmost concentration, comprising 55 sites in 1992, is centered in the foothills of the Appalachian Mountains in New England and northern coastal Massachusetts, with one outlying site in Rhode Island. A second grouping of 18 sites is located at the southern extreme of the Appalachian chain in the Blue Ridge Mountains where North Carolina, South Carolina, Georgia, and Tennessee join. The third center, with 13 sites, is concentrated in the coastal plain and piedmont provinces of Virginia, with outliers in Delaware and New Jersey. Seven sites scattered in the outlying States and Ontario are considered disjunct populations.

Isotria medeoloides was listed as endangered on September 10, 1982 (47 FR 39827–39831). At that time, records for the species were known from 48 counties in 16 States and Canada, though there were only 17 known extant sites, in 10 States and Ontario, Canada. These sites had less than 500 stems. Subsequent searches led to the discovery of many new sites. The 1991 census totaled approximately 2,600 stems at 86 sites in 15 States and Canada (U.S. Fish and Wildlife Service 1992); in 1992, 7 additional sites were discovered. A number of States currently have only historic sites, these include Vermont, New York, Maryland, Missouri, and the District of Columbia (Table 1.).

TABLE 1.—ISOTRIA MEDEOLOIDES SITE DISTRIBUTION

State	# Sites 1985	# Sites (# Viable) 1992	# Sites Protected[1] 1992 (# Viable)
Maine	2	16(7)	4(4)
New Hampshire	16	32(15)	9(6)
Massachusetts	1	5(2)	2(2)
Rhode Island	1	1(0)	0(0)
Connecticut	1	1(0)	1(0)
Pennsylvania	1	3(0)	3(0)
New Jersey	2	3(1)	1(0)
Delaware	0	1(0)	0(0)
Virginia	3	9(6)	7(4)
North Carolina	2	5(2)	2(2)
South Carolina	1	4(2)	4(2)
Georgia	1	8(4)	7(4)
Tennessee	0	1(0)	0(0)
Ohio	0	1(0)	1(0)
Michigan	1	1(0)	1(0)
Illinois	1	1(0)	1(0)
Ontario, Canada	1	1(0)	1(0)
Total	34	93(39)	44(24)

[1] Protection as defined in the criteria for reclassification in the Small Whorled Pogonia Recovery Plan: First Revision (U.S. Fish and Wildlife Service 1992), and also discussed below.

The first Small Whorled Pogonia Recovery Plan was completed in 1985. The original objective, outlined in the 1985 recovery plan and based on the best available information at that time, was to locate and protect 30 populations (sites) of at least 20 individuals each, with at least 15 of the sites to be located in New England. Implementation of several recovery tasks generated additional life history and population information, the identification of new sites and protection of those sites deemed important to the survival and recovery of this species. Upon review of new life history and site information, this recovery objective was no longer considered appropriate. Viability, based on the reproductive status and persistence of a population, as opposed to merely a stem count, is now considered to be an important factor in determining the recoverability of this species.

The Small Whorled Pogonia Recovery Plan: First Revision, was completed and approved in 1992. New recovery goals for the reclassification and delisting of *Isotria medeoloides* and tasks for the recovery of this species were developed using the most recent information regarding population trends and dynamics, life history, and previous recovery efforts. The current recovery strategy is based on a multi-faceted approach of habitat protection and management (on a site specific basis), threat reduction, and environmental education.

The 1992 recovery plan determined that reclassification of *Isotria medeoloides* from endangered to threatened would be proposed when a minimum of 25 percent of the known, viable sites (as of 1992) are permanently protected. A site is considered viable if it has a geometric mean (over three years) of 20 emergent stems, of which at least 25 percent are flowering stems. Though not discussed in the recovery plan, an alternative viability definition has since been developed for sites located in the southern part of the range. This definition was based upon information provided by botanists familiar with these small, yet persistent populations (B. Sanders, U.S. Forest Service, pers. comm. 1993). Viability for smaller populations may be considered for those sites where less than 20 stems have persistently emerged for over 15 years. A determination of viability based on a stem count of less than 20 stems would require a long-term commitment to monitoring a site.

In addition to site viability and protection, reclassification would necessitate that the protected, viable sites be distributed proportionally throughout the species' current range. Site protection should include a sufficient buffer zone around the populations to allow the potential for natural colonization of adjacent, unoccupied habitat.

As defined in the 1992 recovery plan, protection can be accomplished through: (1) Ownership by a government agency or a private organization that considers maintenance of the *I. medeoloides* population to be a management objective for the site, or (2) a deeded easement or covenant that effectively commits present and future landowners to protecting the population and allowing the implementation of management activities when appropriate. This high level of landowner commitment to site protection may be critical if it is determined that the species needs management to counteract the loss of nearby unoccupied habitat. The need for habitat management would be reviewed on a site-by-site basis, and be dependent upon strategies developed as a result of the completion of the suggested status surveys of the 1992 recovery plan.

Adequate protection for the purposes of reclassification has been achieved for approximately 50 percent of the viable New England center sites; 57 percent of viable sites in the Virginia center; and 100 percent of the viable sites in the Blue Ridge center. No populations in the outlying States are considered to be viable, through 4 of the 6 extant populations are protected.

The ultimate goal of the 1992 recovery plan is to ensure long-term viability of *Isotria medeoloides*, facilitating the removal of the species from the Federal list. This objective would be reached when a minimum of 61 sites (75 percent of the number of viable sites known in 1992) are permanently protected.

As in the reclassification criteria, the distribution of these sites must be proportionate among the three geographic centers and the outliers. Viable sites for delisting the species are those sites with self-sustaining populations having an average of 20 emergent stems (over a 10-year period), of which an average of 25 percent are flowering stems. The extended period of monitoring time is required to ensure long-term viability, and should factor in the potential for naturally induced dormancy of individual plants. An alternative definition for viability of smaller populations in the southern portion of the small whorled pogonia's range may be considered and substantiated through the recovery process for sites where fewer than 20 stems, of which an average of 25 percent are flowering, have persistently emerged for over 15 years.

Ideally, unoccupied habitat adjacent to existing colonies must also be protected to allow for natural colonization and maintenance of a self-sustaining population. In some cases, only the immediate area encompassing *Isotria medeoloides* populations has been protected, while surrounding habitat has been destroyed. For these sites, management strategies to maintain self-sustaining populations may need to replace the historical availability of additional habitat.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and

regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for reclassifying species on the Federal lists. A species may be listed or reclassified as threatened or endangered due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Isotria medeoloides* (Pursh) Raf., (small whorled pogonia) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Following the listing of *Isotria medeoloides* as endangered, recovery activities carried out by Federal and State agencies, private organizations, and the academic community resulted in the discovery of many new sites. The number of extant sites tripled in the 10 years since the orchid was listed, with approximately 47 percent of the *I. medeoloides* sites afforded some level of protection.

Isotria medeoloides and its habitat continue to be vulnerable to development pressures throughout its range. With the exception of a few States, the upland habitat in which it is found receives limited protection through State or Federal regulatory means when occurring on private land. Residential and commercial development, both directly and indirectly, are primarily responsible for the destruction of *Isotria medeoloides* habitat. Of the 93 extant *I. medeoloides* sites, two States, Maine and New Hampshire, account for 52 percent (48 sites) of all of the known sites. Only 13 of the 48 sites in these two States are protected.

Historical records exist for localities throughout the small whorled pogonia's range. The habitat of many of these known historical sites has been destroyed; for example, sites in Vermont, Maryland, New Jersey, and the District of Columbia were lost to habitat destruction, primarily from development. Recent intensive efforts to relocate historical sites in eastern Pennsylvania, New York, Vermont, and Missouri have been unsuccessful (U.S. Fish and Wildlife Service 1992).

Since the listing of *Isotria medeoloides*, New Hampshire has seen the destruction of a large, viable population by the construction of summer housing and the potential destruction of a second, newly discovered (1992) population. This second population of over 30 stems will most likely be severely impacted, if not destroyed, within the next few years as the habitat is developed for a subdivision. In Virginia, one of the larger sites will most likely be destroyed within the next few years as its habitat, and adjoining suitable habitat, is developed for housing. Without voluntary landowner protection, many more *I. medeoloides* populations could be destroyed as development pressures increase.

Development in areas surrounding *Isotria medeoloides* habitat could be indirectly responsible for habitat destruction as roads, power lines and sewer mains are designed to connect settled areas. In addition, housing developments, though not necessarily directly destroying habitat, may cause the alteration of habitat parameters by creating large, permanent openings in the canopy that in turn encourage denser understory growth or alter soil conditions. Disturbance to populations through increased visitation (however unintentional) from people and pets might also cause direct damage to plants, and eventually a decline in affected populations.

This plant primarily appears to reproduce sexually, though little is known at this time regarding seed dispersal and seed banking. The formation of barriers to seed dispersal, either through development of adjacent habitat or from logging or land clearing, may prevent the recolonization of suitable habitat by naturally declining populations. Careful and selective logging may not necessarily be harmful to a population; however, heavy timbering and clear-cutting may have long-term impacts on *Isotria medeoloides* populations and their habitat. The creation of logging roads and use of heavy machinery that severely alters soil composition could significantly alter the habitat and cause the direct loss of plants.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The 1982 final listing identified the collecting for scientific purposes as contributing to the loss of *Isotria medeoloides* in the past. It was noted that there were as many preserved herbarium specimens as there were known plants in the wild. Since the listing and the release of both recovery plans, collecting for these purposes is no longer considered to be a threat to the species. However, the potential collecting by wildflower garden enthusiasts for transplanting is still great due to the rarity of this orchid. Furthermore, vandalism of populations (either out of capriciousness or for private collections) whose locations were publicized continue to be documented (Rawinski 1986b).

Significant commercial trade in the species is not known or expected in the future, nor is any significant import or export of this species expected. Therefore, taking of *I. medeoloides* for these purposes is not considered to be a factor in its decline.

C. Disease or Predation

Herbivory by white-tailed deer and invertebrates, including slugs and camel crickets, is a known threat of currently unknown extent. Increasing development pressure near *Isotria medeoloides* populations results in the concentration of deer onto smaller parcels of woodland and may affect local hunting pressure (in particular, a lack thereof) on suburban deer populations. As the local deer herd increases and is forced onto less land, with a concurrent increase in competition for food, there is a greater likelihood of herbivory on *Isotria medeoloides*. The precipitous decline of a large Virginia *I. medeoloides* population located near a housing development appears to be primarily due to grazing (Ware 1991).

Additional threats include wild pigs trampling or uprooting *I. medeoloides* plants in the southern portion of the small whorled pogonia's range (B. Sanders, pers. comm. 1993) and trampling and herbivory by moose in the northern portion.

D. The Inadequacy of Existing Regulatory Mechanism

Isotria medeoloides is currently afforded limited protection by the Endangered Species Act. The Act prohibits the removal and possessing of endangered plants from lands under Federal jurisdiction or in knowing violation of any State law or regulation, and prohibits the violation of any regulation pertaining to any endangered or threatened species of plant. Under the Act, Federal agencies are required to ensure that their actions do not jeopardize the continued existence of listed species and must consult (under Section 7 of the Act) when an activity may affect a listed species or critical habitat.

Section 7(a)(1) requires Federal agencies to carry out programs for the conservation of threatened and endangered species. In this respect, several Federal agencies have intensified their search and protection efforts on behalf of *Isotria medeoloides*. In Virginia, the National Park Service has provided funding for research and monitoring, and is seeking ways to prevent disturbance to sites under its jurisdiction. The Department of Defense has also facilitated searches and

monitoring of populations at two bases in Virginia. In Georgia, the U.S. Forest Service has been particularly successful in finding new sites. The Forest Service in this State conducts plant surveys in areas potentially impacted by management activities and regularly monitors known sites (B. Sanders, *in litt.*, 1993).

Consultations under section 7 of the Act provide protection for this species; a road and sewer main near an *Isotria medeoloides* population in Virginia were re-routed to avoid direct destruction of the plants and their habitat. Coordination with State and local agencies, as well as private developers, has resulted in the avoidance of adverse impacts to *Isotria medeoloides* and its habitat. In Connecticut, a trail was re-routed to avoid a population in a State forest.

Some protection through Federal and State legislation has been provided since *Isotria medeoloides* was listed. All States with current and historical populations have cooperative plant agreements with the Fish and Wildlife Service as specified under section 6(c)(2) of the Act. The 1988 amendments to the Act increased protection for plant species not on Federal lands, where State endangered species laws provide specific protection to endangered plant species.

Twenty-five sites have been discovered on lands under State and Federal jurisdiction and are afforded some level of protection. For those populations on private lands, conservation easements or agreements with the landowners have been actively pursued. Eight sites are on lands owned by private conservation organizations, while two other sites have deeded conservation easements ensuring the protection of the plants and their habitat. Some State agencies pursue voluntary registration of *I. medeoloides* sites. While such registration does not guarantee habitat protection, it does seek to recognize the importance of the site in the hopes of voluntary protection on the part of the landowners.

The number of States protecting *I. medeoloides* has increased from six in 1985 to include all States in its present range. With the exceptions of New Jersey, Rhode Island and South Carolina, all States have enacted laws that prohibit the take of State listed plants, including *I. medeoloides*, without the landowner's permission. However, plants growing on privately owned lands are subject to take by the landowner. Massachusetts, Michigan and Vermont provide additional protection to listed plants in that permits are required for take on both private and public lands.

In Georgia, *Isotria medeoloides* is protected under a regional Forest Service Manual regulation, 2670.44 R–8 supp 37. Since this species is Federally listed, it qualifies as a Forest Service Potential Endangered, Threatened or Sensitive (PET) species, and as such should receive a level of protection that will lead to identification of possible recovery opportunities and ensure that no adverse effects occur to plants on lands under the Forest Service's jurisdiction.

If the proposed reclassification to threatened becomes final, there will be no substantive change in the protection afforded this species under these regulatory mechanisms. Existing regulatory mechanisms determined necessary to protect this species and its habitat will remain in effect.

E. Other Natural or Manmade Factors Affecting its Continued Existence

Recovery efforts have been directed toward research and environmental education. Educational materials in the form of posters, brochures and fact sheets were designed and made available to the general public. Ongoing research includes the investigation of mycorrhizal relationships, habitat manipulation to encourage or stabilize *I. medeoloides* populations, and the use of Geographical Information System (GIS) as a tool for developing a predictive habitat model.

Mycorrhizal associations are important factors in the germination and seedling establishment of most orchids. Though a mycorrhizal fungus was isolated from the closely related *Isotria verticillata*, host specific mycorrhizae have not been identified for *I. medeoloides*. Alterations to *I. medeoloides* habitat that adversely affect mycorrhizae would also result in adverse impacts to the orchid. However, until the specific mycorrhizal associate is determined, it will be difficult to understand the effects of subtle habitat alteration on the orchid or the fungal community.

Recent monitoring results indicate a decline in viability of many of the populations that have been followed over a number of years. It appears that no obvious changes have occurred to the habitat of most of these populations and no causes for this decline have been determined. Though life history and demographic studies have provided some clues to the habitat requirements of this species, there is still a large gap in the understanding of what is required to maintain viable populations.

Dormancy of *Isotria medeoloides* plants continues to be a matter of speculation and debate. The 1985 recovery plan provided preliminary information that a small whorled pogonia could remain dormant for 10 to 20 years. To date, this length of dormancy has not been verified. The dormancy period might also vary throughout the range of the orchid. Mehrhoff (1989b) conducted a six-year study and observed that no plants emerged after three or more consecutive years of nonemergence; other studies indicate that plants may be dormant up to four years and that dormancy may vary by year and by site (Brumback and Fyler 1988; Vitt 1991). Without better clarification of specific dormancy periods, it will continue to be difficult to determine if a plant is dead or dormant.

As adjacent, suitable habitat is developed, precluding the natural colonization of suitable habitat, management may be the only alternative for maintaining viable populations. It may be vital to develop habitat management strategies for existing sites in order to maintain self-sustaining populations. Without the knowledge of key habitat characteristics, management and the identification of potential habitat will be impossible. Soil type (including texture and moisture), nutrient availability, overstory cover, understory density, slope position and aspect are some of the habitat characteristics that might be important factors in population viability. Other unknown parameters include the variation of climatological factors and relative humidity throughout the species' range, and how these differences impact population stability, plant reproduction, recolonization and viability.

The dearth in knowledge of habitat characteristics and life history information may result in the further decline of many populations through benign neglect. The 1992 recovery plan identified a number of tasks required to advance the understanding of *Isotria medeoloides* in furtherance of its recovery.

Summary of Status

The dramatic increase in known, extant populations, the protection of 61 percent of the viable sites, and an improved understanding of habitat and life history support the Service's proposal to reclassify *Isotria medeoloides* as threatened, since it is unlikely that the species is in imminent danger of extinction at this time. However, it may still be likely to become an endangered species within

the foreseeable future without additional site protection and further investigation of its life history and habitat parameters.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to reclassify *Isotria medeoloides* from endangered to threatened. New life history and site information gathered by State biologists and academicians, as well as the protection of 47 percent of the known sites and 61 percent of the known viable sites, support this decision.

Available Conservation Measures

If made final, this rule would change the status of *Isotria medeoloides* from endangered to threatened. The final rule would formally recognize that this species is no longer in imminent danger of extinction throughout a significant portion of its range. The proposed reclassification to threatened does not significantly alter the protection for this species under the Act. Protection given to threatened species under sections 7 and 9 of the Act is essentially the same as that given to endangered species, with the exception that seeds from cultivated specimens of threatened plants are exempt from the trade prohibitions of section 9(a)(2) of the Act, provided that a statement of "cultivated origin" appears on their containers. Recovery provisions are the same for threatened species as for endangered species.

Conservation measures prescribed for *Isotria medeoloides* would proceed. The recovery program approved in 1992 prescribes continued efforts to: (1) Protect known *Isotria medeoloides* populations and essential habitat; (2) develop habitat management strategies; (3) manage protected sites; (4) monitor sites and determine viability; (5) survey for new sites; (6) investigate population dynamics and species biology; and (7) provide public information and education.

Many State and Federal agencies continue to monitor extant sites and search for new ones. The application of a predictive model (currently being developed) should further assist in the location of new sites. Investigations into the genetic structure of this species, the mycorrhizal relationships, and the development of habitat management measures have been targeted in the 1992 recovery plan as important tasks. These activities are either ongoing or proposed for the near future. Recovery activities are not expected to diminish as a result of this reclassification since the primary objective of the recovery strategy is delisting of the species.

This action will not be an irreversible commitment on the part of the Service. The action is reversible and reclassifying *Isotria medeoloides* to endangered would be possible should changes occur in management, habitat, or other factors that alter the present threats to the species' survival and recovery.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Isotria medeoloides;*

(2) The location of any additional populations of *Isotria medeoloides;*

(3) Additional information concerning the range distribution, and population size of *Isotria medeoloides;* and

(4) Current or planned activities in the subject area and their possible impacts on *Isotria medeoloides.*

Final promulgation of the regulations on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Field Supervisor (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

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Ware, D.M.E. 1988. Rediscovery of the "most celebrated colony" of the small whorled pogonia, *Isotria medeoloides* (Orchidaceae). Virginia Journal of Science. 39(2): 123 (abstract).

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Author

The primary author of this proposed rule is Susanna von Oettingen (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. § 17.12(h) is amended by revising the entry for *Isotria medeoloides* under the family Orchidaceae to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Orchidaceae—Orchid family:						
*	*	*	*	*	*	*
Isotria medeoloides	Small whorled pogonia	Canada (Ontario) and U.S.A. (CT, DE, GA, IL, ME, MD, MA, MI, MO, NC, NH, NJ, NY, PA, RI, SC, VA, VT).	T	121	NA	NA
*	*	*	*	*	*	*

Dated: September 29, 1993.

Richard N. Smith,

Deputy Director, U.S. Fish and Wildlife Service.

[FR Doc. 93–25578 Filed 10–18–93; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register

Vol. 58, No. 200

Tuesday, October 19, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Members of Performance Review Boards

AGENCY: U.S. Department of Agriculture.

ACTION: Notice.

SUMMARY: This notice announces the appointment of members of the Performance Review Boards (PRBs) for the U.S. Department of Agriculture (USDA). The USDA Performance Review Boards provide fair and impartial review of Senior Executive Service (SES) performance appraisals and make recommendations to the Secretary of Agriculture, regarding final performance ratings, performance awards, pay adjustments, and Presidential Rank Awards for SES members.

EFFECTIVE DATE: October 19, 1993.

FOR FURTHER INFORMATION CONTACT: Barbara Holland, Executive Resources and Services Division, Office of Personnel, U.S. Department of Agriculture, 14th Street and Independence Avenue, SW., Washington, DC 20250, (202) 720–6047.

SUPPLEMENTARY INFORMATION: The publication of PRB membership is required by section 4314(c)(4) of title 5, U.S.C. The following membership list represents a standing register, from which specific PRBs will be constituted.

Acord, Bobby R.
Ahalt, J. Dawson
Alexander, Michael
Allen, Richard Dean
Allen, Richard F.
Alspach, David B.
Andreuccetti, Eugene E.
Army, Thomas J.
Arnesen, John H.
Arnold, Richard W.
Arnoldi, Joan M.
Babcock, Stephen L.
Backus, Richard R.
Begley, Edward B.
Bange, Gerald
Barkate, John A.
Barnes, Donald K.
Barrett Jr, Fred S.
Barton, Michael A.
Bauer III, Henry A.
Bay, Donald M.
Beasley, Jospeh L.
Beauchamp, Craig L.
Bembry, Lawrence
Bennett, Louis G.
Berg, Joel
Betschart, Antoinette A.
Blackburn, Wilbert H.
Blackley, Ronald H.
Blanchard, Willard H.
Booth, Jerry J.
Bosecker, Raymond Ronald
Bottum, John S.
Bracht, Angelena V.
Brader, Charles R.
Braley, George A.
Branstool, Eugene C.
Breeze, Roger
Bridge, Galen S.
Bristow, William
Brooks, Howard J.
Buisch, William W.
Burke, Thomas G.
Burns, Denver P.
Burns, Dennie G.
Burse, Luther
Burt, John P.
Callstrom, Raymond C.
Carey, Ann E.
Carlson, William D.
Carnevale, Richard A.
Carter, Mary E.
Cherry, John P.
Cipolla, Ronald D.
Clark, Cynthia
Clayton, Kenneth C.
Cohen, Kenneth E.
Collins, Keith J.
Comanor, Joan M.
Connelly, Kathleen
Conrad, Virgil L.
Conway, Roger
Conway, Thomas V.
Cross, Robert
David, Irwin T.
Deavers, Kenneth L.
Dewhurst, Stephen B.
Donald, James R.
Dornbusch, August J.
Dorrell, Frederick A.
Dubbert, William H.
Duesterhaus, Richard L.
Duffus, James E.
Duncan, Charles N.
Dunkle, Richard L.
Ebbitt, James R.
Elder, Alfred S.
Engel, Ronald E.
Erickson, John R.
Estill, Elizabeth
Evans, Reba Pittman
Evans, Gary R.
Fenton, Robert
Finney, Jr., Essex E.
Fishman, Michael
Fitzgerald, Oleta G.
Fitzpatrick, Jr., Martin F.
Foxworthy, Darold D.
Franco, Robert
Galliart, David R.
Gardener, Jr., William Earl
Geasler, Mitchell Ray
Gelburd, Diane E.
Gerloff, Eldean D.
Gifford, Claude W.
Giles, Jane L.
Gilliland, James S.
Gillum, Charles R.
Galvin, Margaret Agnes
Glosser, James W.
Goggans, Miles M.
Golden, John
Gonter, Robert W.
Greene, Frank
Greenshields, Bruce L.
Haas, Ellen A.
Hadlock, Earl C.
Hall, John W.
Hall, David C.
Hamilton, Thomas E.
Harbottle, James E.
Harcharik, David A.
Harrington, Jr., Rube
Harris, Sharron L.
Harris, Clare I.
Hartgraves, Charles R.
Havlik, William J.
Hayes, Paula F.
Heard, Louie P.
Henneberry, Thomas J.
Henson, Larry D.
Hessel, David L.
Hill, Ronald W.
Hilton, James L.
Holbrook, David M.
Holmes, Beverly Carol
Hopkins, Larry J.
Horn, Floyd P.
Horne, Wilson S.
Hornsby, Jr., Andrew
Houser, Norman D.
Howard, Joseph H.
Hudnall, Jr., William J.
Huff, James B.
Husnik, Donald F.
Iacono, James M.
Jackson, Ruthie F.
Jacobs, Robert
Jakub, Lawrence M.
Jennings, Vivan M.
Johnson, Phyllis E.
Johnson, Billy G.
Johnson, Allan S.
Johnsrud, Myron D.
Jolly, David F.
Jordan, John P.
Jurd, Leonard
Kaiser, Jr., Harold F.
Keith, Roderick
Kelly, James Michael
Kelly, Michael W.
Ketcham, David E.
King, Lonnie J.

Kinsella, Steven R.
Knipling, Edward B.
Konyha, Lloyd D.
Kratzke, John P.
Kronenberger, Jr., Donald R.
Krugman, Stanley L.
Larson, Paul F.
Laster, Danny B.
Laverty, Robert L.
Lee, Benjamin Glen
Leo, Warren M.
Leo, Joseph J.
Leonard, George M.
Leonhardt, Barbara A.
Levinson, Sharon
Lewis, Robert
Lewis, David N.
Lewis, Sherman L.
Lilja, Janice Grassmuck
Lindmark, Ronald D.
Long, Richard D.
Longino, Sharron
Lowe, John E.
Luchsinger, Donald W.
Lyons, James R.
Mackie, Philip L.
Majkowski, Hollace
Malone, Leslie E.
Margheim, Gary A.
Marita, Floyd J.
Marten, Gordon C.
Martin, Christopher J.
Martinez, Wilda H.
Massaro, Linda P.
McLean, Harold T.
McCleese, William L.
McCutcheon, John W.
McDougall, Kenneth O.
Medley, Terry L.
Mengeling, William L.
Miller, Charles R.
Mills, Thomas J.
Mina, Mark T.
Miranda, John
Miranowski, John A.
Mircetich, Srecko M.
Montrey III, Henry M.
Moon, Harley W.
Moore, Jesse F.
Moos, Eugene
Moreland, Donald E.
Mosley, Everett L.
Murrell, Kenneth D.
Mussman, Harry C.
Nash, Bobby J.
Nelson, Robert D.
Nelson, Allen D.
Nelson, Edgar H.
Nervig, Robert M.
Newman, James B.
Newsom, Conrad M.
Nies, Arthur H.
Norcross, Marvin A.
Novotny, Donald J.
O Brien, Patrick Michael
Oberlander, Herbert
Ohler, Barry A.
Okay, John L.
Oltjen, Robert R.
Oneil, Barbara T.
Oneth, Harry W.
Onstad, Charles
Overbay, James C.
Papendick, Robert I.
Payton, Floy E.
Peer, Wilbur
Perry, James P.
Peters, Robert
Peterson, Kenneth R.
Peterson, John W.
Philpot, Charles W.
Plowman, Ronald D.
Poley, Janet K.
Power, James F.
Powers, Joseph A.
Prucha, John C.
Purcell, Robert L.
Putnam, Paul A.
Radzikowski, John S.
Rains, Michael T.
Rankin, Richard R.
Rawls, Charles R.
Rector, David C.
Reed, Pearlie S.
Reed, Craig A.
Reginato, Robert J.
Reimers, Mark A.
Reynolds, Gray F.
Reynolds, James R.
Rhoades, James D.
Rice, William L.
Richardson, Sharon V.
Riekert, Edward G.
Riley, Jr., William J.
Robertson, F. Dale
Robinson, Bobby H.
Rominger, Richard E.
Ross, Eldon W.
Rothbart, Herbert L.
Roussopoulos, Peter J.
Rush, Jr., Jeffrey
Rust, David A.
Rutger, J. Neil
Salwasser, Harold James
Satterfield, Steven E.
Schacht, Allen J.
Schipper, Jr., Arthur L.
Schnoor, Kim E.
Schroeter, Richard B.
Schwalbe, Charles P.
Schwindaman, Dale F.
Segal, Judith A.
Seinwill, Gerald D.
Sesco, Jerry A.
Seymour, Carol M.
Shands, Henry L.
Shaw, Robert R.
Shipman, David R.
Simmons, Robert M.
Sirmon, Jeff M.
Skeen, David
Slagle, Larry B.
Small, Gordon H.
Smith, Dallas R.
Smythe, Richard V.
Sommers, William T.
Space, James C.
Spence, Joseph
Sprague, G. Lynn
Springfield, James E.
Squellati, Clarence P.
Steele, W. Scott
Stewart, James L.
Stewart, Ronald E.
Stewart, Bobby A.
Still, Gerald G.
Stockton, Jr., Blaine D.
Stolfa, Patricia F.
Strating, Alfred
Stuber, Charles W.
Tallent, William H.
Tankersley, Howard C.
Tharrington, Ronnie O.
Thiermann, Alejandro B.
Thomas, Irving W.
Tidd, Peter M.
Torgerson, Randall E.
Townsend, Jr., Wardell C.
Unger, David G.
Vail, Kenneth H.
Valsing, D. Charles
Van Schilfgaarde, Jan
Vance, John A.
Vogel, Frederic A.
Vogel, Ronald J.
Jensen, Patricia
Elias, Thomas
Williams, Anthony
Brewster-Walker, Sandra
Von Garlem, Thomas A.
Wachs, Lawrence
Walker, Larry A.
Wallace, William S.
Wallace, Joan S.
Walsh, Thomas M.
Watkins, Calvin W.
Webb, Aileen
Weber, Barbara C.
Weber, Bruce R.
Weisman, Sandra L.
White, Evelyn M.
White, Donald L.
Whiteman, Glenn
Wilcox, Sterling J.
Wilder, Manly S.
Williams, John W.
Williamson, Robert L.
Williamson, Robert M.
Willis, James D.
Wilson, Edward M.
Wilson, Jr., Larry
Witt, Timothy B.
Woods, Monroe
Wright, Lloyd E.
Zellers, Phillip

Mike Espy,

Secretary.

[FR Doc. 93–25530 Filed 10–18–93; 8:45 am]

BILLING CODE 3410–06–M

Foreign Agricultural Service

Meeting of Advisory Committee on Emerging Democracies

AGENCY: Foreign Agricultural Service, Agriculture.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the second meeting of the Advisory Committee on Emerging Democracies will be held October 28–29, 1993. The purpose of the committee is to provide information and advice, based upon knowledge and expertise of the members, useful to the U.S. Department of Agriculture (USDA) in implementing the program on sharing agricultural expertise with emerging democracies. The committee will also advise USDA on ways to increase the involvement of the U.S. private sector in cooperative work with emerging democracies in food and rural business systems.

DATES: The meeting will be held Thursday, October 28, 1993 from 9 a.m. to 5 p.m., and Friday, October 29 from 9 a.m. to 1 p.m. Both meetings will be held at the U.S. Department of Agriculture in Washington, DC.

SUPPLEMENTARY INFORMATION: The minutes of the meeting announced in this Notice shall be available for review. Any members of the public may provide comments in writing to the Emerging Democracies Office at the address above, but should not make any oral comments at the meeting unless invited to do so by the Co-chairpersons.

Signed at Washington, DC, October 13, 1993.

Philip L. Mackie,

Acting Administrator, Foreign Agricultural Service.

[FR Doc. 93-25532 Filed 10-18-93; 8:45 am]

BILLING CODE 3410-10-M

Forest Service

Exempt Decision for Aladdin Blow-down Salvage Sale From Appeal, Colville National Forest, WA

AGENCY: Forest Service, USDA.

ACTION: Notice to exempt decision from administrative appeal.

SUMMARY: This is a notification that the decision to implement Aladdin blow-down Salvage Sale on the Colville Ranger District of the Colville National Forest is exempt from appeal. This is in conformance with provisions of 36 CFR 217.4(a)(11) as published in the **Federal Register** on January 23, 1989 (54 FR 3342).

EFFECTIVE DATE: October 19, 1993.

FOR FURTHER INFORMATION CONTACT: Edward L. Schultz, Forest Supervisor, Colville National Forest, 765 South Main, Colville, Washington 99114, or Meredith Webster, Colville District Ranger, 755 South Main, Colville, Washington, 99114, phone (509) 684-4557.

SUPPLEMENTARY INFORMATION: During Memorial Day weekend of 1993 there was a severe wind storm that damaged approximately 10 acres of timber in one timber sale area on the Colville Ranger District. The affected area is located within a suitable stand for timber management.

In the summer of 1993, the stand, where the proposed Aladdin Blow-down Salvage is located, was identified as a potential salvage sale area. This area is authorized for timber harvesting under the Colville National Forest Land and Resource Management Plan. The management direction for this area is Management Area 7, Timber/Forage, which provides optimum production of timber products while protecting basic resources.

In July of 1993, the Colville District Ranger proposed the salvage of these wind-thrown trees. Analysis was started in August of 1993, with letters being sent to individuals, State and Federal agencies and other interested parties discussing the proposed salvage sale. Issues identified were: Size of salvage; fuel hazard; the location of individual Pacific yew trees; and protection of sensitive plant species site.

The Aladdin Blow-down Salvage analysis proposes to harvest approximately 10 acres of wind-thrown trees scattered over an area of approximately 700 acres. Net volume estimates based on field reconnaissances from the summer of 1993 indicate that the harvest would produce about 117,000 board feet of timber. There would be no road construction associated with this salvage project.

An interdisciplinary team determined the need to salvage the wind-damaged and disease-infested timber in as short a time as possible so the logs would remain merchantable. Merchantable timber in the area averages 16 inches in diameter. Rapid drying of dead trees, which results in cracking or "checking", especially in the white woods and smaller diameter trees, will quickly reduce the merchantability of these trees.

In some areas, only individual trees within a fully stocked stand were blown down, which precludes the need to reforest these areas. In some areas, the scarification of the soils by logging operations and the site preparation will facilitate the natural regeneration of existing stands, which will help establish new stands more quickly. Using natural regeneration will result in a more diverse stand in the future. There are adequate seed sources in the adjacent stands and within the wind-created openings.

The area has been surveyed for cultural resources, with no new sites located. A biological evaluation of the area determined that the proposed project would have "no effect" on threatened, endangered, or sensitive species of wildlife or plants.

The sale and accompanying work is designed to accomplish the objectives as quickly as possible, protect area resources, minimize the amount of merchantable salvage volume lost, and the amount of potential volume growth lost. Based upon this environmental analysis for this salvage, I have determined that good cause exist to exempt the Aladdin Blow-down Salvage from administrative appeal (36 CFR part 217). Under this Regulation the following is exempt from appeal:

> Decisions related to rehabilitation of National Forest System lands and recovery of forest resources resulting from natural disasters or other natural phenomena, such as * * * severe wind * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good cause exists to exempt such decisions from review under this part.

After publication of this notice in the **Federal Register**, the Decision Memo for Aladdin Blow-down Salvage Sale may be signed by the Colville District Ranger. Therefore, this project will not be subject to review under 36 CFR part 217.

Dated: October 13, 1993.

Jerry L. Monesmith,

Acting Deputy Regional Forester,

[FR Doc. 93-25580 Filed 10-18-93; 8:45 am]

BILLING CODE 3410-11-M

Establishment of Coeur D'Alene Purchase Unit

AGENCY: Forest Service, USDA.

ACTION: Notice of establishment of Coeur D'Alene Purchase Unit.

SUMMARY: On September 20, 1993, the Assistant Secretary, Natural Resources and Environment, created the Coeur D'Alene Purchase Unit. This purchase unit comprises 160 acres, more or less, within Kootenai County, Idaho. A copy of the establishment document which includes the legal description of the lands within the purchase unit appears at the end of this notice.

EFFECTIVE DATE: The effective date of this purchase unit was September 20, 1993.

ADDRESSES: A copy of the map showing the purchase unit is on file and available for public inspection in the Office of the Chief of the Forest Service, Auditor's Building, 201 14th Street SW., Washington, DC 20090-6090.

FOR FURTHER INFORMATION CONTACT: Ralph Bauman, Lands Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090 (202) 205-1248.

Dated: October 1, 1993.

James C. Overbay,

Deputy Chief.

Establishment of Coeur D'Alene Purchase Unit, Kootenai County, Idaho

Pursuant to the Secretary of Agriculture's authority under Section 17, P.L. 94-588 (90 Stat. 2949), the Coeur d'Alene Purchase Unit is being

created in Kootenai County, Idaho. The lands within the purchase unit are described as follows:

Kootenai County, Idaho, Guide Meridian

T. 48 N., R. 2 W.
Sec. 16: W1/2W1/2.

The area described contains 160 acres, more or less, and is adjacent to the Coeur d'Alene National Forest.

These lands are well suited for watershed protection and meet the requirements of the Act of March 1, 1911, as amended.

Dated: September 20, 1993.

James R. Lyons,

Assistant Secretary for Natural Resources and Environment.

[FR Doc. 93–25643 Filed 10–18–93; 8:45 am]

BILLING CODE 3410–11–M

Prichard Creek Analysis Area, Idaho Panhandle National Forests, Shoshone County, ID; Draft Environmental Impact Statement

ACTION: Notice of availability of the draft environmental impact statement for proposed activities in the Prichard Creek Analysis Area.

DATES: The comment period on this draft environmental impact statement ends December 3, 1993.

ADDRESSES: Send written comments to District Ranger, Wallace Ranger District, P.O. Box 14, Silverton, ID 83867.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and environmental impact statement should be directed to Don Garringer, Planning Staff Officer, Wallace Ranger District, Idaho Panhandle National Forests, P.O. Box 14, Silverton, ID 83867. Phone: (208) 752–1221.

SUMMARY: The notice is hereby given that the Forest Service has prepared a Draft Environmental Impact Statement (DEIS) documenting a landscape-level approach to ecosystem management in the Prichard Creek Project Area. The area is located approximately 12 air miles northeast of Wallace, Idaho, and is approximately 29,700 acres in size.

Public participation is important. People may visit with Forest Service officials at any time prior to the decision, however, it is very important that public comment be made available to the Forest Service during review of this Draft EIS. After a 45-day public comment period, the comments received will be analyzed and considered by the Forest Service in preparing the Final Environmental Impact Statement (FEIS). The FEIS is scheduled to be completed by January, 1994. The Forest Service will respond to the comments received from the DEIS in the FEIS.

The District Ranger is the responsible official for this EIS, and will make a decision regarding this proposal considering the comments and responses, environmental consequences discussed in the FEIS, and applicable laws, regulations, and policies. The decision and reasons for the decision will be documented in a Record of Decision.

SUPPLEMENTARY INFORMATION: A very specific proposed action was developed for the area, and included timber harvest, reforestation activities and watershed rehabilitation, through implementation of timber sales. The scope of the proposed action is limited to timber harvesting, reforestation, Precommercial thinning, related road construction, road obliteration, reconstruction activities and stream channel restoration. During development of the proposed action and alternatives to the proposed action, emphasis has been placed on the water resource needs and visual concerns of local residents.

Five alternatives were developed, including a No-Action Alternative. Alternative 6 is the alternative preferred by the Forest Service. Under Alternative 6, the harvest of green, dead and dying timber would be implemented in three separate but related projects. The projects would produce an estimated 10.5 million board feet of timber and treat 22 timber harvest units. Harvest methods include commercial thin, overstory removal, group selection and group shelterwood using helicopter, cable yarding and tractor. In this proposal 5.69 miles of road will be constructed, 1.36 miles will be reconstructed and 13.08 will be reconditioned. Approximately 80 acres will be precommercially thinned. After all activities are done in the area the new roads and some existing non-system roads will be obliterated while a few miles of stream course will undergo restoration.

Management activities would be administered by the Wallace Ranger District of the Idaho Panhandle National Forests in Kootenai County, Idaho. This DEIS will tier to the Forest Plan (September 1987) which provides the overall guidance (Goals, Objectives, Standards and Guidelines, and Management Area direction) in achieving the desired future condition for this area.

The agency invites written comments and suggestions on the issues and management opportunities in the area being analyzed. Written comments concerning the scope of the analysis must be received within 45 days from the date of publication in the **Federal Register**.

Dated: October 4, 1993.

Steve Williams,

District Ranger, Wallace Ranger District, Idaho Panhandle National Forests.

[FR Doc. 93–25391 Filed 10–18–93; 8:45 am]

BILLING CODE 3410–11–M

Upper Wahoo Timber Sale, Wallowa-Whitman National Forest, Baker County, OR

AGENCY: USDA, Forest Service.

ACTION: Cancellation of an environmental impact statement.

SUMMARY: On May 9, 1991, a notice of intent to prepare an environmental impact statement (EIS) for the Upper Wahoo Timber Sale on the Wallowa-Whitman National Forest was published in the **Federal Register** (56 FR 21469). A notice of availability for the draft EIS was published in the **Federal Register** on May 21, 1993 (58 FR 29578), with a comment period on the draft EIS ending July 6, 1993. Due to additional analysis and interim management requirements from the Regional Forester's 8/18/93 letter on "Interim Approach for Sale Preparation, Eastside Forests," I have decided to terminate this environmental analysis process. When data are available and management direction is developed in response to Assistant Secretary Lyons' direction for the Agency to perform an Eastside assessment on ecosystem management, I will evaluate whether to initiate the process again. Therefore, there will be no final EIS for Upper Wahoo Timber Sale.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this cancellation to Joanne Britton, Environmental Coordinator, 3165 10th Street, Baker City, Oregon 97814 or telephone (503) 523–4476.

Dated: October 7, 1993.

Charles L. Ernst,

District Ranger.

[FR Doc. 93–25579 Filed 10–18–93; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–601]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Italy; Amendment to Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of amendment to final results of antidumping duty administrative review.

On July 26, 1993, the Department of Commerce published the final results of its 1991–92 administrative review of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof, from Italy. The classes or kinds of merchandise covered by these reviews were ball bearings and parts thereof, and cylindrical roller bearings and parts thereof. These reviews were for the period May 1, 1991 through April 30, 1992. Based on the correction of a clerical error, we have changed the margin for ball bearings for one of the reviewed firms, FAG-Italia S.p.A..

EFFECTIVE DATE: October 19, 1993.

FOR FURTHER INFORMATION CONTACT: Michael F. Panfeld or Richard Rimlinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On July 26, 1993, the Department of Commerce (the Department) published in the **Federal Register** (58 FR 39729) the final results of its administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof, from Italy. The classes or kinds of merchandise covered by these reviews were ball bearings and parts thereof (BBs) and cylindrical roller bearings and parts thereof (CRBs) from Italy. These reviews covered the period May 1, 1991 through April 30, 1992.

After publication of our final results, we received a timely allegation of clerical error from one of the respondents, FAG-Italia S.p.A.. We agree with the allegation of clerical error. Although the final results are currently the subject of litigation before the Court of International Trade (CIT), by order dated September 17, 1993, the CIT directed the Department to correct this error.

Amended Final Results of Review

In its calculations of dumping margins, the Department corrected the following ministerial error:

For FAG, with respect to BBs and CRBs, we corrected a database merge error by replacing abbreviated product codes with extended product codes. The extended product codes enabled us to make matches with home market sales models where there were previously no matches and to eliminate the use of best available information for these particular transactions.

As a result of our correction of clerical error, we have determined the following weighted-average margins to exist for the period May 1, 1991 through April 30, 1992:

Country	Company	Class or kind	Rate
Italy	FAG	BBs	05.19%
		CRBs	25.88% (unchanged)

Based upon these rates, the Department will instruct the Customs Service to collect cash deposits of estimated antidumping duties and to assess antidumping duties on all appropriate entries in accordance with the procedures discussed in the final results of these reviews (58 FR 39732).

These deposit requirements are effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice is published in accordance with section 751(f) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(f)) and 19 CFR 353.28(c).

Dated: October 15, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–25782 Filed 10–18–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–570–822]

Antidumping Duty Order: Certain Helical Spring Lock Washers From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: October 19, 1993.

FOR FURTHER INFORMATION CONTACT: William Crow, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC, 20230; (202) 482–0116.

Case History

On September 27, 1993, Hangzhou Spring Washer Plant and the American Association of Fastener Imports (respondents) alleged that the Department made several clerical errors in its final determination regarding the margin calculations. If we determine that there were clerical errors in the final determination, there may be an amended final determination and antidumping duty order.

Scope of Order

For purposes of this investigation, certain helical spring lock washers (HSLWs) are circular washers of carbon steel, of carbon alloy steel, or of stainless steel, heat-treated or non heat-treated, plated or non-plated, with ends that are off-line. HSLWs are designed to: (1) Function as a spring to compensate for developed looseness between the component parts of a fastened assembly; (2) distribute the load over a larger area for screws or bolts; and (3) provide a hardened bearing surface. The scope does not include internal or external tooth washers, nor does it include spring lock washers made of other

metals, such as copper. The lock washers subject to this investigation are currently classifiable under subheading 7318.21.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Antidumping Duty Order

In accordance with section 735(a) of the Tariff Act of 1930, as amended (the Act), on September 13, 1993, the Department of Commerce (Department) made its final determination that certain HSLWs from the People's Republic of China (PRC) are being sold at less than fair value (58 FR 48833 September 20, 1993). On October 8, 1993, in accordance with section 735(d) of the Act, the U.S. International Trade Commission (ITC) notified the Department that an industry in the United States is threatened with material injury by reason of such imports. The ITC did not determine, pursuant to section 735(b)(4)(B) of the Act, that but for the suspension of liquidation of entries of certain HSLWs from the PRC, the domestic industry would have been materially injured.

When the ITC finds threat of material injury, and makes a negative "but for" finding, the "Special Rule" provision of section 736(b)(2) applies. Therefore, all unliquidated entries, or warehouse withdrawals, for consumption of certain helical spring lock washers from the PRC made on or after October 15, 1993, the date on which the ITC proposes to publish its notice of final determination of threat of material injury, will be liable for the assessment of antidumping duties. The Department will direct U.S. Customs officers to terminate the suspension of liquidation for entries entered, or withdrawn from warehouse, for consumption before October 15, 1993, and to release any bond or other security, and refund any cash deposit, posted to secure the payment of estimated antidumping duties with respect to these entries.

The Department will direct U.S. Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act, antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of certain helical spring lock washers from the PRC. These antidumping duties will be assessed on all unliquidated entries of certain helical spring lock washers from the PRC entered, or withdrawn from warehouse, for consumption on or after October 15, 1993. U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties, the following cash deposits for the subject merchandise.

Manufacturers/producers/exporters	Margin percentage
Hangzhou Spring Washer Plant	77.47
Hangzhou via IFI Morgan Limited	77.47
Hangzhou via Carway Development Limited	77.47
Hangzhou via Midway Fasteners Ltd	77.47
Hangzhou via Linkwell Industry Co., Ltd	77.47
Hangzhou via Fastwell Industry Co., Ltd	77.47
Hangzhou via Sunfast International Corp	77.47
Hangzhou via Winner Standard Parts Co., Ltd	77.47
All others	128.63

This notice constitutes the antidumping duty order with respect to certain helical spring lock washers from the PRC, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 353.21.

Dated: October 14, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–25712 Filed 10–18–93; 8:45 am]

BILLING CODE 3510–DS–P

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Decision of Panel

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of decision of panel.

SUMMARY: On October 6, 1993, a Binational Panel issued its decision in the review of the Final Affirmative Antidumping Duty Determination made by the Department of Commerce, International Trade Administration, Import Administration, respecting Pure Magnesium from Canada, Secretariat File No. USA–92–1904–04. The panel affirmed the Department of Commerce Redetermination pursuant to remand in all respects. A copy of the complete panel decision is available from the Binational Secretariat.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 377–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the United States and the Government of Canada established Rules of Procedure for Article 1904 Binational Panel Reviews ("Rules"). These Rules were published in the **Federal Register** on December 30, 1988 (53 FR 53212). The Rules were amended by Amendments to the Rules of Procedure for Article 1904 Binational Panel Reviews, published in the **Federal Register** on December 27, 1989 (54 FR 53165). The Rules were further amended and a consolidated version of the amended Rules was published in the **Federal Register** on June 15, 1992 (57 FR 26698). The panel review in this matter was conducted in accordance with these Rules.

Background

On August 16, 1993, at the request of the Department and with the consent of the other participants, the Binational Panel remanded the final determination to the Department of Commerce, for further action.

On May 27, 1993 the Department of Commerce filed its redetermination pursuant to remand which allowed adjustments for certain elements of the constructed value as contended by Norsk Hydro Canada, Inc. such that the dumping margin and the antidumping duty was reduced from 31.33% to 21% ad valorem.

Following further comments on the redetermination and an oral hearing on July 8, 1993, the panel issued its decision on October 6, 1993.

Panel Decision

The panel affirmed the Department of Commerce redetermination pursuant to remand in all respects.

Dated: October 13, 1993.

James R. Holbein,

U.S. Secretary, FTA Binational Secretariat.

[FR Doc. 93–25509 Filed 10–18–93; 8:45 am]

BILLING CODE 3510–GT–M

National Institute of Standards and Technology

Malcolm Baldrige National Quality Award's Board of Overseers

AGENCY: National Institute of Standards and Technology, DOC.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2, notice is hereby given that there will be a meeting of the Board of Overseers of the Malcolm Baldrige National Quality Award on Tuesday, November 9, 1993, from 8:30 a.m. to 4 p.m. The Board of Overseers consists of six members prominent in the field of quality management and appointed by the Secretary of Commerce, assembled to advise the Secretary of Commerce on the conduct of the Baldrige Award. The purpose of the meeting on November 9, 1993, will be for the Board of Overseers to receive and then discuss reports from the National Institute of Standards and Technology with the Panel of Judges of the Malcolm Baldrige National Quality Award. These reports will cover the following topics: overview of the 1993 award program; report by the contractor, American Society for Quality Control; report by the chairman of the Judges Panel; discussions of plans for the 1994 award (outline key issues and plans and then outline recommendations), develop recommendations and report same to the Director of the National Institute of Standards and Technology.

DATES: The meeting will convene November 9, 1993 at 8:30 a.m., and adjourn at 4 p.m. on November 9, 1993.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Building 221, room A366, Gaithersburg, Maryland 20899.

FOR FURTHER INFORMATION CONTACT:

Dr. Curt W. Reimann, Director for Quality Programs, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2036.

Dated: October 12, 1993.

Samuel Kramer,

Associate Director.

[FR Doc. 93–25520 Filed 10–18–93; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

[I.D. 101393A]

Gulf of Mexico Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council's (Council) Ad Hoc Advisory Panel (Panel), consisting of fishermen who use various types of traps and of law enforcement personnel, will meet on October 26, 1993, at the Council Office Conference Room, 5401 West Kennedy Boulevard, Tampa, FL; telephone: (813) 228–2815. The meeting will be held from 8 a.m. until 4 p.m.

The Panel will meet to assist the Council in constructing a legal definition of fish traps.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Beverly Badillo at the above address by October 19.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, suite 331, Tampa, FL; telephone: 813–228–2815.

Dated: October 13, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–25656 Filed 10–18–93; 8:45 am]

BILLING CODE 3510–22–P

[I.D. 101393B]

Gulf of Mexico Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council's (Council) Mackerel Advisory Panel (Panel) will meet on October 26, 1993, at the Ramada Airport Hotel and Conference Center, 5303 West Kennedy Boulevard, Tampa, FL; telephone: (813) 877–0534. The meeting will begin at 9 a.m. and adjourn at 3 p.m.

The Panel will review Draft Amendment #7 to the Fishery Management Plan for Coastal Migratory Pelagics (which involves commercial king mackerel allocations off South Florida) to provide recommendations to the Council at its November 17–18, 1993, meeting in Biloxi, Mississippi.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Beverly Badillo at the above address by October 19.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 331, Tampa, FL; telephone: 813–228–2815.

Dated: October 13, 1993.

David S. Crestin

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–25657 Filed 10–18–93; 8:45 am]

BILLING CODE 3510–22–P

[I.D. 101393C]

Pacific Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Halibut Advisory Subpanel (Subpanel) will hold a public meeting on October 27, 1993, in the Clackamass Room of the Red Lion—Jantzen Beach, 909 North Hayden Island Drive, Portland, OR. The meeting will begin at 8 a.m.

The Subpanel's agenda is as follows:

(1) Discuss the Pacific halibut catch sharing plan for the 1994 season; and

(2) Discuss the ramifications of a pending court order concerning treaty Indian halibut fisheries for 1994 and future years.

Representatives of management agencies will meet with the Subpanel.

The Council will meet November 15–19, 1993, near San Francisco to adopt its allocation recommendations for 1994. The Subpanel may also discuss a process for addressing halibut proposals for the 1995 season.

FOR FURTHER INFORMATION CONTACT: Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, suite 420, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 326–6352.

Dated: October 13, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–25658 Filed 10–18–93; 8:45 am]

BILLING CODE 3510–22–P

Patent and Trademark Office

Request for Comments on Intellectual Property Issues Involved in the National Information Infrastructure Initiative

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of hearing and request for public comments.

SUMMARY: The Working Group on Intellectual Property of the Information Policy Committee of the National Information infrastructure (NII) Task Force is developing proposals for protecting works disseminated via the National Information Infrastructure from unauthorized use. To ensure that the Working Group's proposals are based on the views of all interested parties, the Working Group will hold a hearing on the intellectual property issues involved in the National Information Infrastructure initiative. Written comments may also be submitted.

DATES: The public hearing will be held on November 18, 1993, from 9 a.m. to 5 p.m. Requests to attend the hearing or to present oral testimony at the hearing should be received on or before November 8, 1993. Written comments of those persons offering testimony at the hearing that are related to the testimony should be submitted on or before November 8, 1993. All other written comments are due on or before December 10, 1993.

ADDRESSES: The hearing will be held in Marriott's Crystal Forum, a part of the Crystal City Marriott Hotel located in The Underground, 1999 Jefferson Davis Highway, Arlington, Virginia. Written comments and requests to present oral testimony should be submitted to the Commissioner of Patents and Trademarks, U.S. Patent and Trademark Office, Box 4, Washington, DC 20231, marked to the attention of Terri A. Southwick, Attorney-Advisor, Office of Legislation and International Affairs. Written comments and a transcript of the hearing will be made available for public inspection in room 902 of Crystal Park Two, 2121 Crystal Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Terri A. Southwick by telephone at (703) 305–9300 or by telefax at (703) 305–8885 or by mail marked to her attention and addressed to the Commissioner of Patents and Trademarks, U.S. Patent and Trademark Office, Box 4, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: The National Information Infrastructure is a system of high-speed telecommunications networks, databases, and advanced computer systems that will make electronic information and entertainment products more widely available and accessible to the public than ever before. This increased availability and accessibility will dramatically affect the way information and entertainment products are created, marketed and delivered throughout the world. Consequently, the commercial viability of the NII hinges not only upon effectively promoting and encouraging use of the NII by all types of users, but also on implementing standards and policies for the NII in a manner that assures that the owners of products disseminated through the NII retain sufficient control over these products to prevent unauthorized use. In this regard, it is essential that the public and private sectors collaborate to ensure that the interests of owners and users of intellectual property are adequately considered in any standards and policies that are established.

On February 22, 1993, the President announced his plan to create a White House Information Infrastructure Task Force (IITF) to work with Congress and the private sector to develop comprehensive telecommunications and information policies aimed at articulating and implementing the Administration's vision for the NII. The IITF is chaired by the Secretary of Commerce and consists of three committees—the Telecommunications Policy Committee, the Information Policy Committee, and the Applications Committee. Within the Information Policy Committee there are three working groups—the Working Group on Intellectual Property Rights, the Working Group on Privacy, and the Working Group on Federal Information.

The Working Group on Intellectual Property Rights, which is chaired by the Assistant Secretary of Commerce and Commissioner of Patents and Trademarks, was established to resolve issues of concern to copyright and other intellectual property owners regarding the distribution of their works via the NII. The Working Group's mission is to help develop the NII in a manner that will ensure the integrity of intellectual property rights, make the wealth of information and entertainment products more widely available and accessible than ever before, and provide economic incentives to intellectual property rights owners so that they will make their products available through the NII.

The Working Group solicits testimony and written comments addressing one or more of the following issues:

- Is the existing copyright law adequate to protect the rights of those who will make their works available via the NII? What statutory or regulatory changes, if any, should be made?
- Do the existing fair use provisions of the copyright law adequately accommodate the interests of users of the works available via the NII? What statutory or regulatory changes, if any, should be made?
- Should standards or other requirements be adopted for the labeling or encoding of works available via the NII so that copyright owners and users can identify copyrighted works and the conditions for their use?
- Should standards be established to encourage or require the intercommunication or exchange of information and the interoperability of the different types of computer software and systems supporting or utilizing the NII?
- Should a licensing system be developed for certain uses of any or all works available via the NII? If so, should there be a single type of licensing or should the NII support a multiplicity of licensing systems?
- Are there technical means for preventing unauthorized reproduction or other unauthorized uses of copyrighted works that should be mandated or required to comply with certain standards (similar to the serial copying controls required in digital audio recording devices and digital audio interface devices under the Audio Home Recording Act of 1992)?
- What types of educational programs might be developed to increase public awareness of intellectual property laws, their importance to the economy, and their application to works available via the NII?

The public is invited to submit written comments, and any appropriate supporting material, on the issues set forth above or any related issues. Those submitting comments must include their name and/or professional affiliation.

Dated: October 13, 1993.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Patents and Tademarks.

[FR Doc. 93–25592 Filed 10–18–93; 8:45 am]

BILLING CODE 3510–16–M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C., chapter 35).

Title, Applicable forms, and OMB control number: Defense Outplacement Referral System (DORS) and Public and Community Service (PACS) Registry Programs; DD Forms 2580, 2581, and 2581–1; OMB Control Number 0704–0324.

Type of request: Expedited Processing; Approval date requested: 30 days following publication in the **Federal Register.**

Number of respondents: 26,000.

Responses per respondent: 1.5.

Annual responses: 38,000.

Average burden per response: 12 minutes.

Annual burden hours: 7,767.

Needs and uses: The information collected hereby is used to enroll spouses of separating DoD personnel in the Defense Outplacement Referral System (DORS). In accordance with 10 U.S.C. 1143 and 1144, the information is provided to private and public employers, including local, state, and Federal employment and outplacement agencies, as notice of available individuals with interest in potential employment. In accordance with 10 U.S.C. 1143a(c), the Public and Community Service (PACS) Registry provides PACS organizations with information regarding the availability of individuals with interest in working in a PACS organization.

Affected public: Individuals or households; State or local governments, Businesses of other for-profit, Federal agencies or employees; Non-profit institutions, and Small businesses or organizations.

Frequency: On occasion.

Respondent's obligation: Required to obtain or retain a benefit.

OMB desk officer: Mr. Edward C. Springer. Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD clearance officer: Mr. William P. Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce at WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, VA 22202–4302.

Dated: October 13, 1993.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000-04-M

OPERATION TRANSITION
DEPARTMENT OF DEFENSE OUTPLACEMENT AND REFERRAL SYSTEM/ PUBLIC AND COMMUNITY SERVICE INDIVIDUAL APPLICATION

Form Approved
OMB No. 0704-0324
Expires May 31, 1994

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Defense, Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, and to the Office of Management and Budget, Paperwork Reduction Project (0704-0324), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO EITHER OF THESE ADDRESSES.
RETURN COMPLETED FORM TO YOUR LOCAL MILITARY TRANSITION OFFICE.

PRIVACY ACT STATEMENT

AUTHORITY: 10 U.S.C. 1143, 1144; EO 9397

PRINCIPAL PURPOSE(S): To assist separating DoD personnel and their spouses in securing employment. Individuals participating in the Defense Outplacement Referral System (DORS) and Public and Community Service Registry will have their employment skills included in a data base designed to link prospective employers with DORS and Public and Community Service applicants.

ROUTINE USE(S): To public and private employers (including Federal, State, and local employment agencies and outplacement agencies, public and community service agencies).

DISCLOSURE: Voluntary; however, failure to provide all requested information will result in applicant data not being included in the system.

If you are an active duty Servicemember, the following information will be added to your job referral form from your official military personnel records, if available: Rank, Years of Service, Most Recent Primary Occupation, and Branch of Service and Security Clearance. Information on race, ethnic background, sex, age, marital status, and religious preference will not be released to employers. Operation Transition is an equal opportunity program.

SECTION I - TO BE FILLED OUT BY ALL APPLICANTS *(Print or Type)*

1. REGISTRATION REQUEST *(Check all that apply)*

☐ DORS ONLY ☐ PUBLIC AND COMMUNITY SERVICE ONLY ☐ BOTH

2a. NAME *(Last, First, Middle Initial)*

2b. SOCIAL SECURITY NUMBER

3. DATE AVAILABLE FOR WORK *(YYMMDD)*

4. FILING STATUS *(X all that apply)*

a. MILITARY *(Branch of Service)*
☐ (1) Army ☐ (3) Marine Corps
☐ (2) Navy ☐ (4) Air Force

☐ **b. SPOUSE OF ACTIVE DUTY MILITARY OR CIVIL SERVICE EMPLOYEE**

☐ **c. CIVIL SERVICE EMPLOYEE**

5. U.S. CITIZEN *(X one)*
☐ YES ☐ NO

6. ADDRESS *(For next 6 months)* *(Street, City, State, Country, and Zip Code)* **AND TELEPHONE NUMBER** *(Include Area Code)*

a. ADDRESS LINE 1

b. ADDRESS LINE 2

c. CITY

d. STATE

e. U.S. ZIPCODE

f. COUNTRY CODE

g. FOREIGN ZIP CODE

h. U.S. TELEPHONE NUMBER

i. FOREIGN TELEPHONE NUMBER

7a. JOB TYPE PREFERENCES *(See Instructions for job codes)* *(Enter one digit per block)*

b. INCLUDE MAJOR DUTIES ON RESUME? *(X one)*
☐ Yes
☐ No

8. REGIONAL WORK PREFERENCE *(See Instructions)* *(Enter one digit per block)*

9. SPECIFIC WORK PREFERENCES *(Nearest large town or city within commuting distance - does not have to be in region)*

	a. STATE	b. CITY
(1)		
(2)		

10. HIGHEST EDUCATION LEVEL ACHIEVED *(X one)*

☐ a. Non-High School Graduate
☐ b. High School Graduate or GED
☐ c. Less than 2 years of college
☐ d. Associate Degree or equivalent
☐ e. Less than 4 years of college
☐ f. Bachelor's Degree
☐ g. Post Bachelor's Degree
☐ h. Master's Degree
☐ i. Post Master's Degree
☐ j. Doctorate Degree

11. YEAR ACHIEVED

12. SUBJECT OF DEGREE *(If applicable)*

13. COLLEGE / UNIVERSITY FROM WHICH DEGREE ACHIEVED *(If applicable)*

14. PERSONAL INFORMATION (See Instructions). (Please provide no more than 10 lines (76 spaces per line; maximum of 760 spaces). Database limitations do not permit entering additional personal information.)

D

R

A

SECTION II — SPOUSE
(Military Member - Go to Section III)

15. SPONSOR DATA

a. NAME (Last, First, Middle Initial)

b. SOCIAL SECURITY NUMBER

16. YOUR JOB HISTORY (See instructions for job codes) (Enter one digit per block)

	a. JOB CODE	b. LENGTH OF TIME JOB HELD	
(1) CURRENT JOB		YEARS	MONTHS
(2) PRIOR JOB		YEARS	MONTHS
(3) PRIOR JOB		YEARS	MONTHS

F

17. HAVE YOU EVER HELD A SUPERVISORY POSITION? (X one)
☐ YES ☐ NO

18. HAVE YOU EVER HELD A SECURITY CLEARANCE? (X one)
☐ YES ☐ NO

SECTION III - ALL APPLICANTS MUST READ AND SIGN

19. AUTHORIZATION

I hereby authorize release of the data on this form to civilian agencies and / or private organizations for employment purposes. If I am a civil service employee or an active duty service member, I also authorize the release of data from extracts of my computerized personnel records.

a. SIGNATURE

b. DATE SIGNED (YYMMDD)

DD Form 2580, 931008 Draft

OPERATION TRANSITION DEPARTMENT OF DEFENSE OUTPLACEMENT AND REFERRAL SYSTEM/PUBLIC AND COMMUNITY SERVICE INDIVIDUAL APPLICATION

DETAILED INSTRUCTIONS

SECTION I - TO BE FILLED OUT BY ALL APPLICANTS

If you are a service member, complete items 1 through 14 and item 19 in their entirety. You do not need to fill out items 15 through 18. They will be extracted from your personnel records. It is important that you verify the accuracy of these records prior to entering this program to ensure that the information that is put on your resume is accurate. If you are a spouse, you must complete all items on the form.

Item 1. Place an X next to the program(s) you wish to register for. If you selected the early retirement option, you must X Public and Community Service or both.

Item 2a. Name. Print / type your name; last name first.

Item 2b. SSN. Enter your Social Security Number.

Item 3. Date Available for Work. Enter the date you will be available for work as year, month, day (YYMMDD). Availability should not be beyond 6 months from the current date.

Item 4. Filing Status. Place an X in the box that applies.

Item 5. Citizenship. If you are a U.S. citizen, X the YES box. If not, X the NO box.

Item 6. Address and Telephone Number. Print/type the address and telephone number where you can be contacted during the next three months.

Item 7. a. Job Type Preferences. Enter up to three codes from the Guideline of Standard Occupation Classification (SOC) Codes, FIPS Pub 92, that most closely match(es) the type of job(s) you are seeking/qualified to perform.

b. If you select yes, your primary occupational description will be included in your resume. Select no if you do not want your primary occupational description included.

Item 8. Regional Work Preference. Refer to the regional preference list below, and enter the two-digit code for the geographical area in which you are seeking employment.

REGION 0
Only the specific cities selected

REGION 1
Connecticut
Maine
Massachusetts
New Hampshire
Rhode Island
Vermont

REGION 2
Delaware
New Jersey
New York
Pennsylvania

REGION 3
District of Columbia
Maryland
North Carolina
South Carolina
Virginia
West Virginia

REGION 4
Alabama
Florida
Georgia
Mississippi
Puerto Rico
Tennessee
Virgin Islands

REGION 5
Indiana
Kentucky
Michigan
Ohio

REGION 6
Iowa
Minnesota
Montana
North Dakota
South Dakota
Wisconsin

REGION 7
Illinois
Kansas
Missouri
Nebraska

REGION 8
Arkansas
Louisiana
Oklahoma
Texas

REGION 9
Arizona
Colorado
Idaho
Nevada
New Mexico
Utah
Wyoming

REGION 10
California
Oregon
Washington

REGION 11
Alaska

REGION 12
American Samoa
Hawaii
Guam

REGION 13
Anywhere in the U.S.A.

REGION 14
Outside the U.S.A.

REGION 15
Anywhere

Item 9. Specific Work Preferences. Enter your first and second work location preferences. Refer to the list below and enter the two-letter abbreviation for the state and print / type the name of the largest city within commuting distance of where you want to work for your first and second work preferences. These cities do not have to be in the region chosen in Item 8.

STATE	CODE	STATE	CODE	STATE	CODE
Alabama	AL	Kentucky	KY	North Dakota	ND
Alaska	AK	Louisiana	LA	Ohio	OH
Arizona	AZ	Maine	ME	Oklahoma	OK
Arkansas	AR	Maryland	MD	Oregon	OR
California	CA	Massachusetts	MA	Pennsylvania	PA
Colorado	CO	Michigan	MI	Rhode Island	RI
Connecticut	CT	Minnesota	MN	South Carolina	SC
Delaware	DE	Mississippi	MS	South Dakota	SD
District of Columbia	DC	Missouri	MO	Tennessee	TN
Florida	FL	Montana	MT	Texas	TX
Georgia	GA	Nebraska	NE	Utah	UT
Hawaii	HI	Nevada	NV	Vermont	VT
Idaho	ID	New Hampshire	NH	Virginia	VA
Illinois	IL	New Jersey	NJ	Washington	WA
Indiana	IN	New Mexico	NM	West Virginia	WV
Iowa	IA	New York	NY	Wisconsin	WI
Kansas	KS	North Carolina	NC	Wyoming	WY

Item 10. Highest Education Level Achieved. X the box which most closely matches your highest education level achieved.

Item 11. Year Achieved. Enter the year you achieved Item 10.

Item 12. Subject of Degree. Print/type the degree achieved (if applicable) in Item 10 (e.g. BS, Mechanical Engineering; BA, Western Civilization; MS, Physics; etc.).

Item 13. College/University. Print/type the name of the college/university where Item 10 was obtained if applicable.

Item 14. Personal Information. Print/type in this space any information about yourself you feel would help you obtain a job in the field you are searching. All information in this space will be printed verbatim on your DORS resume. If you are seeking a job in a field other than your primary military duty this information is the most important since it will comprise a majority of your resume. Carefully choose your words and grammar.

Examples:
- Fluent in Chinese, Russian and Spanish
- Virginia State licensed electrician
- 14 years experience in personnel management
- Owned personal computer training business, Jones Computer Training
- American Society of Mechanical Engineers member

SECTION II - SPOUSE

This section is to be completed only by spouses of military and DoD civilians whose personnel files are not kept by the government.

Item 15. Sponsor Data.

a. Name. Print/type your sponsor's name, last name first.

b. SSN. Enter your sponsor's Social Security Number.

Item 16. Your Job History.

a. Job Codes. Consult the Guideline for Standard Occupational Classification (SOC) Codes, FIPS Pub 92, and enter the job codes that most closely match the previous three jobs you held.

b. Length of Time Job Held. Enter the number of years and months the job was held (03 years, 09 months).

Item 17. Supervisory Experience. If you have supervisory experience, X the YES box. If not, X the NO box.

Item 18. Security Clearance. If you had a security clearance, X the YES box. If not, X the NO box.

SECTION III

All applicants must sign and date. Turn in the completed form to the transition assistance office.

OPERATION TRANSITION EMPLOYER REGISTRATION

Form Approved
OMB No. XXXX-XXXX
Expires

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Defense, Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, and to the Office of Management and Budget, Paperwork Reduction Project (xxxx-xxxx), Washington, DC 20503

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO EITHER OF THESE ADDRESSES ABOVE.
RETURN COMPLETED FORM TO: OPERATION TRANSITION, 99 PACIFIC ST., SUITE 155A, MONTEREY, CA 93940-2453

1. ORGANIZATION NAME AND ADDRESS *(Include 9-digit ZIP Code)*	2. EMPLOYMENT CONTACT ADDRESS *(If different from Item 1)* *(Include 9-digit ZIP Code)*
3. ORGANIZATION CONTACT	4. EMPLOYMENT CONTACT *(If different from Item 3)*
5. ORGANIZATION TELEPHONE NUMBER	6. EMPLOYMENT CONTACT TELEPHONE NUMBER *(If different from Item 5)*
7. FAX TELEPHONE NUMBER	8. FAX ROUTING ADDRESS
9. HOW DID YOU HEAR ABOUT OPERATION TRANSITION?	10. IS YOUR ORGANIZATION A (Check one) ☐ a. Private Sector Employer ☐ b. Public or Community Service Employer

11. TYPES AND LOCATIONS OF POSITIONS IN ORGANIZATION LIKELY TO BE AVAILABLE *(Briefly describe)*

12. PROCEDURES FOR APPLYING FOR AVAILABLE POSITIONS *(Please indicate if you do not wish to receive unsolicited resumes)*

13a. SIZE OF ORGANIZATION	13b. MAJOR FUNCTION/BUSINESS ACTIVITY OF ORGANIZATION

14a. IS YOUR ORGANIZATION INVOLVED IN *(Check applicable block(s))*		14b. ARE YOUR POSITION(S)	14c. IS AN INVESTMENT OR FEE NECESSARY
☐ (1) Placement Services	☐ (4) Franchise Operations	☐ (1) Commission only	☐ (1) YES ☐ (2) NO
☐ (2) Direct Marketing	☐ (5) None of the above	☐ (2) Salary only	(3) IF YES, SPECIFY AMOUNT
☐ (3) Multi-level Marketing		☐ (3) Combination of commission and salary	$

15. AGREEMENT

I understand this agreement covers the Operation Transition automated systems including the Defense Outplacement Referral System (DORS), the Public and Community Service (PACS) Personnel Registry, and the Transition Bulletin Board (TBB). I hereby agree to use the DORS and PACS Personnel Registry only for employment purposes at no charge to the individual. I also agree not to use the DORS and PACS Personnel Registry to develop mailing lists or to promote business opportunities such as franchise or direct or multi-level marketing operations.

I certify that the information provided is true, accurate, and complete. I acknowledge that any false statement may be punishable pursuant to Title 18 U.S.C. Section 1001.

16. SIGNATURE	17. DATE (YYMMDD)

GOVERNMENT USE ONLY

18. REGISTRATION NUMBER	19. CLERK	20. DATE (YYMMDD)

DD Form 2581, 930819 Draft *Previous edition may be used.*

DD FORM 2581 COMPLETION INSTRUCTIONS

Retain a copy for your records. Do not fill out the section at the bottom of the form titled "GOVERNMENT USE ONLY".

1. ORGANIZATION NAME AND ADDRESS. Enter your organization name and address exactly as you would like it to appear on information FAXed or mailed to you. P.O. Boxes not preferred. Include your Employer ID number.

2. EMPLOYMENT CONTACT ADDRESS. Enter the address of your Human Resources or Personnel Department *(if different from item 1)*.

3. ORGANIZATION CONTACT. Enter the name of the individual who will serve as organizational contact to Operation Transition.

4. EMPLOYMENT CONTACT. Enter the name of an individual in your Human Resources or Personnel Department who can answer specific questions on employment and positions available *(if different from item 3)*.

5. ORGANIZATION TELEPHONE NUMBER. Enter the area code and telephone number for your organization contact. If this contact has a direct line or voice mail, enter that number.

6. EMPLOYMENT CONTACT TELEPHONE NUMBER. Enter the area code and telephone number for your employment contact *(if different from item 5)*. If this contact has a direct line or voice mail, enter that number.

7. FAX TELEPHONE NUMBER. Enter the telephone number of the FAX machine where resumes may be sent within your organization.

8. FAX ROUTING ADDRESS. Enter any additional information that may be required on the FAX cover sheet to ensure that the FAXes reach your point of contact.

9. HOW DID YOU HEAR ABOUT OPERATION TRANSITION? List the source(s) where you first heard about Operation Transition.

10. IS YOUR ORGANIZATION A PRIVATE SECTOR EMPLOYER OR A PUBLIC OR COMMUNITY SERVICE EMPLOYER? Indicate whether your organization is a private sector employer or a public or community service employer.

11. TYPES AND LOCATIONS OF POSITIONS IN ORGANIZATION LIKELY TO BE AVAILABLE. Briefly describe the positions and the location of the positions which will be made available to the job seekers.

12. PROCEDURES FOR APPLYING FOR AVAILABLE POSITIONS. Briefly describe how the applicant should apply for available positions.

13a. SIZE OF ORGANIZATION. Briefly describe size (number of personnel, branch offices, etc.) of your organization.

13b. MAJOR FUNCTION/BUSINESS ACTIVITY OF ORGANIZATION. Provide your organization's primary functions/business activity.

14a. IS YOUR ORGANIZATION INVOLVED IN: Indicate if positions you are offering are in Placement Services, Direct Marketing, Multi-level Marketing, or a Business Opportunity as in a Franchise. If none of the above applies, check none of the above.

14b. ARE YOUR POSITION(S): Indicate if the salary paid on these positions is commission only, salary only, or commission and salary combined.

14c. IS AN INVESTMENT OR FEE NECESSARY: Indicate if the position will require a monetary outlay by the applicant. If yes, how much would it be?

15. AGREEMENT. By signing the DD Form 2581, you are agreeing to use DORS and the Public Service Personnel Registry for employment referral purposes only, and will neither release this data to anyone for any other purpose nor charge the individual for employment referral. You further agree that you will not use individual data to promote business opportunities, such as franchise or direct or multi-level marketing operations; but, instead will promote business opportunities on the applicable section of the TBB.

Please make certain that all items above have been completed in their entirety. Sign and date the form in items 16 and 17.

MAIL OR FAX THE COMPLETED FORM TO:

Operation Transition, DMDC
99 Pacific Street, Suite 155A
Monterey, CA 93940-2453
FAX: (408) 656-2131
Telephone: 800-727-3677

DD Form 2581, 930819 Draft (BACK)

PUBLIC AND COMMUNITY SERVICE ORGANIZATION VALIDATION

Form Approved
OMB No. 0704-0324
Expires

Public reporting burden for this collection of information is estimated to average 3 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Defense, Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, and to the Office of Management and Budget, Paperwork Reduction Project (0704-0324), Washington, DC 20503

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO EITHER OF THESE ADDRESSES ABOVE.
RETURN COMPLETED FORM TO: DMDC, ATTN: OPERATION TRANSITION, BOX 100, FORT ORD, CA, 93941-0100

1. NAME OF ORGANIZATION	3. POINT OF CONTACT FOR ORGANIZATION
2. ADDRESS OF ORGANIZATION *(Include Apartment Number and 9-digit ZIP Code)*	4. TELEPHONE NUMBER FOR POINT OF CONTACT *(Include Area Code)* a. HOME NUMBER b. WORK NUMBER

5. PRIMARY SERVICE CATEGORY (IES)

	a. ELEMENTARY, SECONDARY, OR POSTSECONDARY SCHOOL TEACHING OR SCHOOL ADMINISTRATION				
	b. SUPPORT OF ELEMENTARY, SECONDARY, OR POSTSECONDARY SCHOOL TEACHING OR SCHOOL ADMINISTRATION				
	c. SOCIAL SERVICES		d. PUBLIC HEALTH CARE		e. LAW ENFORCEMENT
	f. PUBLIC HOUSING		g. PUBLIC SAFETY		h. CONSERVATION
	i. EMERGENCY MANAGEMENT		j. ENVIRONMENT		k. JOB TRAINING

6. AS A PRIMARY FUNCTION, DOES YOUR ORGANIZATION PROVIDE SERVICES IN CATEGORIES OTHER THAN THESE LISTED ABOVE? IF YES, BRIEFLY DESCRIBE THESE MAJOR FUNCTIONS. YES [ ] NO [ ]

7. TYPE OF SERVICE

	a. PUBLIC *(Federal, State, or Local Government - go to Item 8)*
	b. COMMUNITY *(Non-profit Organization or Association - go to Item 9)*

8. PUBLIC SERVICE HEADQUARTERS AGENCY

a. ORGANIZATION NAME AND ADDRESS *(Include 9-digit ZIP Code)*	b. HEADQUARTERS POINT OF CONTACT AND POSITION c. TELEPHONE NUMBER FOR POINT OF CONTACT *(Include Area Code)*

9. COMMUNITY / NON-PROFIT ORGANIZATION

IMPORTANT: Please attach a copy of the IRS Letter if Determination indicating your organization has received IRS 501 (C) (3) tax-exempt status. Also include a copy of your organization's annual report, mission statement, or other documentation of your organization's function. Indicate below if your organization is affiliated with the United Way, Contained Federal Campaign or some other non-profit association.

a. AFFILIATE NAME AND ADDRESS *(Include 9-digit ZIP Code)*	b. AFFILIATE POINT OF CONTACT AND POSITION c. TELEPHONE NUMBER FOR POINT OF CONTACT *(Include Area Code)*

10. AGREEMENT

I understand this form provides information to help the Department of Defense establish a Public and Community Service organizational registry which will be accessible to departing Service members. I also understand certain individuals may receive additional entitlements based on the information as specified in Public Law 102-484. I certify the information provided is true, accurate, and complete. I acknowledge that any false statement may be punishable pursuant to Title 18 U.S.C. Section 1001.

a. NAME AND TITLE OF EMPLOYEE *(Please print or type)*	b. SIGNATURE OF EMPLOYEE	c. DATE OF SIGNATURE *(YYMMDD)*

DD Form 2581-1, 930927 Draft

INSTRUCTIONS FOR COMPLETING DD FORM 2581-1

This form collects information to be used to certify an organization on the Public and Community Service Organization Registry under the provisions of Section 4462 of Public Law 102-484.

Public service organizations are defined as federal, state, or local governmental entities.

Community service organizations are non-profit organizations or associations which provide or coordinate the delivery of services in the public interest. Organizations affiliated with the United Way of Combined Federal Campaign presumptively qualify as community service organization.

Organizations involved in the following activities will not be considered public or community organizations:

(1) Business organized for profit;

(2) Labor union;

(3) Partisan political organization; and

(4) Organization engaged in religious activities, unless such activities are unrelated to religious instruction, worship services, or any form of proselytization.

Public Law 102-484 also provides that certain member of the military services retiring early from active duty receive additional military retirement credits by working in public or community service organizations. To receive this credit, the retiree's employing organization must be on the Public and Community Service Organization Registry and have as its primary function(s) one or more of the following categories of public or community service:

a. Elementary, secondary, or postsecondary school teaching or school administration (Teacher).

b. Support of elementary, secondary, postsecondary school teaching or school administration (Librarian).

c. Social services

d. Public health care

e. Law enforcement

f. Public housing

g. Public safety

h. Conservation

i. Emergency management

j. Environment

k. Job training

ALL ITEMS MUST BE COMPLETED

1. NAME OF ORGANIZATION. Print or type the name of your organization. Please be specific. For example, if the police department of the city of Oakdale is registering, use Oakdale Police Department as the organization instead of the City of Oakdale.

2. ADDRESS OF ORGANIZATION. Enter the address of your organization exactly as you would like it to appear on information mailed to you. Please avoid P.O. Box when possible.

3. POINT OF CONTACT FOR ORGANIZATION. Provide the name and job title of a person who can answer specific questions about the organization.

4. TELEPHONE NUMBER FOR POINT OF CONTACT . Enter the area code and telephone number for the point of contact. Please enter a direct line or voice mail extension if available.

5. PRIMARY SERVICE CATEGORY (IES). Select the category that represents the core mission of your organization or department. If you provide primary services in two or more of the categories, select all applicable categories. As discussed above, the organization's primary functions must be in one or more of the listed categories (5a - 5k) for a military retiree to be eligible for additional retirement credit.

6. ORGANIZATION FUNCTIONS. If your organization provides primary services in categories other than 5a-5k function(s).

7. TYPE OF SERVICE. Indicate whether your organization provides public or community service by checking the appropriate block. Public service refers to federal, state, local government organizations or agencies. Community service refers to certified nonprofit organizations or associations.

8. PUBLIC SERVICE HEADQUARTERS AGENCY. If public service, provide the name and address of the organization, if any, to which your organization reports. Include the name, job title, and telephone number of a person who can answer specific questions about headquarters organization.

9. COMMUNITY / NON-PROFIT ORGANIZATION. If a community service organization, attach copy of the IRS Letter of Determination indicating that your organization has received IRS 501 (C) (3) tax-exempt status. A community service organization will NOT be validated without the Letter of Determination. Also include a copy of your organization's annual report or mission statement or attach other documentation about your organization's functions.

Provide the name and address of the organization, if any, to which your organization reports or with which it is affiliated. Provide the name, job title, and telephone number of a person who can answer specific questions about the headquarters affiliate.

10. AGREEMENT. Completion of this action of the form attests to the information's accuracy and completeness. Mail or fax the completed form to:

DMDC
ATTN: OPERATION TRANSITION
Box 100
Ft. Ord, CA 93941-0100

FAX: (408) 656-2132

Please call the Department of Defense's Operation Transition Help Desk at 1-800-727-3677 between the hours of 6 AM and 6 PM Pacific time if you have questions or need assistance with this form.

Community service organizations - - Remember to attach a copy of your IRS Letter of Determination and an annual report or mission statement.

DD Form 2581-1, 930927 Draft (BACK)

[FR Doc. 93–25534 Filed 10–18–93; 8:45 am]
BILLING CODE 5000-04-C

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C., chapter 35).

Title: DoD FAR Supplement, Part 209, Contractor Qualifications, and Related Clause at 252.209.

Type of request: New collection.

Number of respondents: 21.

Responses per respondent: 1.

Annual responses: 21.

Average burden per response: 40 hours.

Annual burden hours: 840.

Needs and uses: The Defense FAR Supplement, Part 209, prescribes policies and procedures for, among other things, avoiding organizational conflicts of interest. The information collected by this requirement will be used by the Government to determine if an actual or potential conflict of interest exists, and to determine the best course of action to avoid or mitigate such a conflict.

Affected public: Businesses of other for-profit, Non-profit institutions, and Small businesses or organizations.

Frequency: On occasion.

Respondent's obligation: Required to obtain or retain a benefit.

OMB desk officer: Mr. Peter N. Weiss.

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD clearance officer: Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, VA 22202–4302.

Dated: October 13, 1993.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–25535 Filed 10–18–93; 8:45 am]

BILLING CODE 5000–04–M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C., chapter 35).

Title, applicable forms, and OMB control number: DoD FAR Supplement, Part 242, Contract Administration, and Related Clauses at 252.242; DD Forms 375, 375C, and 1659; OMB Control Number 0704–0250.

Type of request: Revision.

Number of respondents: 154,550.

Responses per respondent: 1.3.

Annual responses: 199,500.

Average burden per response: 3.3 hours.

Annual burden hours (Including recordkeeping): 676,500.

Needs and uses: The information collected hereby is used by contract administration offices to determine contractor progress, identify factors delaying performance, the reasonableness of insurance/pension costs in Government contracts, and whether contractors' disclosed Material Management and Accounting Systems conform to DoD standards; and by contract administration offices and transportation officers in providing Government bills of lading to contractors.

Affected public: Businesses of other for-profit, Non-profit institutions, and Small businesses or organizations.

Frequency: On occasion.

Respondent's obligation: Required to obtain or retain a benefit.

OMB desk officer: Mr. Peter N. Weiss.

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DoD clearance officer: Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, VA 22202–4302.

Dated: October 13, 1993.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–25536 Filed 10–18–93; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF EDUCATION

[CFDA Nos. 84.044 and 84.066]

Talent Search and Educational Opportunity Centers Programs; Notice of Technical Assistance Workshops

SUMMARY: The Department of Education will conduct 10 technical assistance workshops for the Talent Search and Educational Opportunity Center Programs. At these workshops, Department of Education staff will assist prospective applicants in developing proposals and will provide budget information regarding these programs. The technical assistance workshops will be held as follows:

October 25, 1993, 8:30 a.m.–4 p.m.

Morris Brown College, Atlanta University Center, Robert W. Woodruff, Library, Exhibition Hall—Upper Level, 111 James P. Brawley Dr., SW., Atlanta, Georgia 30314, Contact: Marvin King, (404) 220–0384.

October 25, 1993, 8:30 a.m.–4 p.m.

University of Chicago, Ida Noyes Hall, East Lounge—2nd Floor, 1212 East 59th Street, Chicago, IL 60637, Contact: Devota McKee, (312) 702–8288.

October 25, 1993, 8:30 a.m.–4 p.m.

California State University, 5151 State University Drive, Oak Room, Los Angeles, CA 90036, Contact: Maria Godoy, (213) 343–3238.

October 27, 1993, 8:30 a.m.–4 p.m.

University of Massachusetts, 100 Morrissey Blvd., Faculty Club, 11th Floor Library, Boston, MA 02125, Contact: Judith Owens, (617) 287–5840.

October 27, 1993, 8:30 a.m.–4 p.m.

Penn Valley Community College, 3201 Southwest Traffic Way, Campus Center, Rm. 503, Kansas City, MO 64111, Contact: Melanie Bailey, (816) 759–4400.

October 27, 1993, 8:30 a.m.–4 p.m.

Portland State University, Smith Center, Rm. 294 & 296, Portland, OR 97207, Contact: Peggy Adams, (503) 725–4010.

October 29, 1993, 8:30 a.m.–4 p.m.

John Jay College of Criminal Justice, 899 10th Avenue, Rm. 630T, New York, NY 10019, Contact: Marie Conti, (212) 237–8275.

October 29, 1993, 8:30 a.m.–4 p.m.

University of New Orleans, Lakefront, 2000 Lakeshore Drive, University

Center, Rm. 211A & 211B, New Orleans, LA 70148, Contact: Dave Shroyer, (504) 286–6289.

October 29, 1993, 8:30 a.m.–4 p.m.

Metropolitan State College of Denver, 1006 11th Street, Student Center, Rm. 330A & 330B, Denver, CO 80204, Contact: Chuck Maldonado, (303) 556–2812.

November 3, 1993, 9 a.m.–4:30 p.m.

Wilbur J. Cohen Federal Building, Auditorium, 330 Independence Avenue SW., Washington, DC 20202, Contact: EOB Staff, (202) 708–4804.

FOR FURTHER INFORMATION CONTACT: Prince O. Teal, U.S. Department of Education, 400 Maryland Avenue SW., room 5065, Washington, DC 20202–5249. Telephone: (202) 708–4804. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Dated: October 14, 1993.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 93–25645 Filed 10–18–93; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER93–883–000, et al.]

The Montana Power Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

October 7, 1993.

Take notice that the following filings have been made with the Commission:

1. The Montana Power Company

[Docket No. ER93–972–000]

Take notice that on September 30, 1993, the Montana Power Company (Montana) tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.3 a Supplement to the Transmission Agreement (Colstrip Project) dated April 17, 1981 and executed by the United States of America, Department of Energy acting by and through the Bonneville Power Administration and the Montana Intertie Users. Certificates of Concurrence from Puget Sound Power & Light Company and The Washington Water Power Company are included within the filing. Montana requests that the Commission grant a waiver of the 60-day prior notice requirement pursuant to 18 CFR 35.11.

Montana states that the Agreement relates to the exchange of transmission services by Bonneville and the Montana Intertie Users and the supplement relates to revisions proposed by Bonneville to Exhibits D and G to the Agreement. Copies of the filing were served upon the Bonneville Power Administration, PacifiCorp, Portland General Electric Company, Puget Sound Power & Light Company and The Washington Water Power Company.

Comment date: October 20, 1993, in accordance with Standard Paragraph E end of this notice.

2. Metropolitan Edison Company

[Docket No. ER93–718–000]

Take notice that on September 17, 1993, Metropolitan Edison Company (Met-Ed) tendered for filing an amendment in the above-referenced docket.

Comment date: October 20, 1993, in accordance with Standard Paragraph E at the end of this notice.

3. Central Power and Light Company

[Docket No. ER93–828–000]

Take notice that on September 30, 1993, Central Power and Light Company (CPL) filed additional information in response to a Commission Staff inquiry regarding the Capacity Sales Agreement between CPL and Southwestern Electric Service Company (SESCO) filed in this docket on July 29, 1993.

A copy of the filing was served on SESCO, the Public Utilities Commission of Texas and all parties in Docket No. ER93–828–000.

Comment date: October 20, 1993, in accordance with Standard Paragraph E at the end of this notice.

4. Portland General Electric Company

[Docket No. ER93–988–000]

Take notice that on September 30, 1993, Portland General Electric Company (PGE) tendered for filing a Certificate of Concurrence with Montana Power Company's Filing of Revisions to Exhibits D and G to Bonneville Power Administration Contract Nos. DEOM579–8BP90210 (Montana Intertie). Copies of this agreement have been served on the parties included in the distribution list defined in the filing letter.

Comment date: October 20, 1993, in accordance with Standard Paragraph E at the end of this notice.

5. Public Service Electric and Gas Company

[Docket No. ER93–845–000]

Take notice that Public Service Electric and Gas Company (PSE&G) of Newark, New Jersey, on behalf of itself and Baltimore Gas and Electric Company (BG&E) of Baltimore, Maryland, on September 30, 1993, tendered for filing a First Supplement to an agreement for the sale, purchase, and/or exchange of Pennsylvania-New Jersey-Maryland Interconnection (PJM) Installed Capacity Credits. In response to discussions with Commission Staff, PSE&G submits the First Supplement to the Agreement which quantifies the price caps for the sale, purchase, and/or exchange of PJM Installed Capacity Credits. The initial filing made reference to the price caps as those set forth in Schedule 4.01, or successor schedules, of the PJM Agreement.

Copies of the filing have been served upon BG&E and interested state commissions.

Comment date: October 20, 1993, in accordance with Standard Paragraph E at the end of this notice.

6. Southwestern Public Service Company

[Docket No. ER93–981–000]

Take notice that Southwestern Public Service Company (Southwestern) on September 30, 1993, tendered for filing a proposed supplement to its rate schedule for service to Cap Rock Electric Cooperative, Inc. (Cap Rock).

The proposed supplement contains an agreement between Southwestern and Cap Rock in connection with Southwestern's guarantee of certain financing obtained by Cap Rock and provides an arrangement for Cap Rock to repay the financing. The financing will be used by Cap Rock to construct additional transmission facilities on its system to increase its reliability and to facilitate purchases of full-requirements wholesale power and energy from Southwestern.

Comment date: October 20, 1993, in accordance with Standard Paragraph E at the end of this notice.

7. Pennsylvania Electric Company

[Docket No. ER93–984–000]

Take notice that on September 30, 1993, Pennsylvania Electric Company (Penelec) tendered for filing pursuant to Rule 205 of the Commission's Rules of Practice and Procedure (18 CFR 385.205) a proposed Wheeling and Supplemental Power Agreement with the Borough of Seaside Heights, New Jersey. Under such Agreement, Penelec proposes to provide supplemental

power service to Seaside Heights through a delivery point in New Jersey which is now being provided with supplemental power service by Penelec's affiliate, Jersey Central Power & Light Company (JCP&L).

The rates proposed to be charged by Penelec for such supplemental power service to such delivery point for Seaside Heights will be essentially similar to the rates charged by Penelec to Allegheny Electric Cooperative, Inc. (Allegheny) for supplemental power service to the approximately 158 delivery points of Allegheny's member cooperatives now served by Penelec, after excluding from such Penelec rates the transmission component thereof. These rates are also essentially similar to those employed by Penelec, beginning July 29, 1993, for service to Allegheny's member cooperatives through 16 additional delivery points in Pennsylvania and one additional delivery point in New Jersey in accordance with a rate schedule that became effective July 29, 1993 (FERC Letter Order, dated July 23, 1993, Docket No. ER93–669–000).

The transmission service to deliver such Penelec supplemental power to Seaside Heights will be provided by JCP&L. After the adjustment necessary to reflect the difference between delivery at primary distribution voltage as opposed to delivery at transmission voltage, the rate charged by JCP&L to deliver such supplemental power to Seaside Heights will be comparable to the rate now charged by JCP&L to deliver Penelec supplemental power service to Allegheny's New Jersey member, Sussex Rural Electric Cooperative, Inc.

Copies of the filing have been served on Seaside Heights.

Comment date: October 20, 1993, in accordance with Standard Paragraph E at the end of this notice.

8. Pacific Gas and Electric Company

[Docket No. ER93–987–000]

Take notice that on September 30, 1993, Pacific Gas and Electric Company (PG&E) tendered for filing two agreements between PG&E and Northern California Power Agency (NCPA): (1) An Operations and Maintenance Agreement For NCPA Special Facilities At PG&E's Bellota Substation (O&M Agreement); and (2) a Construction Agreement For Facilities At Bellota Substation For Interconnection Of Collierville-Bellota Circuit #2 (Construction Agreement).

The O&M Agreement sets forth the rate, terms and conditions under which PG&E will operate and maintain the site improvements and customer-specific facilities installed to provide the interconnection at PG&E's Bellota Substation of NCPA's new transmission line. Under the O&M Agreement, PG&E proposes to charge NCPA an annual rate equal to the cost of ownership rate for transmission-level, customer-financed facilities filed with the California Public Utilities Commission (CPUC). The cost of ownership rate is expressed as an annual percentage of the installed costs of the site improvements and special facilities.

The Construction Agreement sets forth the terms and conditions under which PG&E will engineer, procure, construct and install the special facilities to interconnect the second Collierville-Bellota 230 kV transmission circuit at PG&E's Bellota Substation.

PG&E has requested permission to use automatic rate adjustments whenever the CPUC authorizes a new Electric Rule No. 2 Cost of Ownership Rate, limited by a cap of 6.2% annually.

Copies of this filing have been served upon NCPA and the CPUC.

Comment date: October 20, 1993, in accordance with Standard Paragraph E at the end of this notice.

9. Arizona Public Service Company

[Docket No. ER93–986–000]

Take notice that on September 30, 1993, Arizona Public Service Company (APS or Company) tendered for filing Amendment No. 1 (Amendment) to the Transmission Service Agreement between APS and Department of the Air Force (Air Force) (APS–FERC Rate Schedule No. 162). This Amendment provides for the firm transmission and ancillary services to be furnished for the purpose of transmitting the Air Force's allocation of capacity and energy from the Salt Lake City Area Integrated Projects to Luke Air Force Base.

APS requests waiver of the Commission's Notice Requirements to allow the Amendment to become effective October 1, 1993.

Copies of this filing have been served on the Air Force and the Arizona Corporation Commission.

Comment date: October 20, 1993, in accordance with Standard Paragraph E at the end of this notice.

10. New England Power Pool

[Docket No. ER93–985–000]

Take notice that on September 30, 1993, twenty-nine New England Power Pool (NEPOOL) Participant systems filed an amendment to the NEPOOL Agreement, dated as of June 1, 1993, (AMENDMENT) which changes provisions of the NEPOOL Agreement (NEPOOL FPC No. 2), dated as of September 1, 1971, (as previously amended by twenty-nine amendments, the most recent dated May 1, 1993).

The NEPOOL Participants that executed the AMENDMENT state that the AMENDMENT has been adopted to modify the planning provisions in the NEPOOL Agreement, to provide new categories of Pool-Planned Facilities and Pool-Planned Purchases, and to change the definition of Pool-Planned Unit to refer only to existing generating units. The NEPOOL Participants further state that the AMENDMENT is expected to have the effect of facilitating use of revenue bond financing by Participants which are Massachusetts municipal utilities and avoid future controversies regarding criteria for the designation of Pool-Planned units.

The NEPOOL Participants that executed the AMENDMENT request that the Commission waive the customary notice period and permit the AMENDMENT to become effective as of September 30, 1993.

Comment date: October 20, 1993, in accordance with Standard Paragraph E of this notice.

11. Commonwealth Edison Company

[Docket No. ER93–777–000]

Take notice that on October 1, 1993, Commonwealth Edison Company (Edison) tendered for filing supplemental information relating to Edison's Transmission Service Tariff TS–1.

Copies of the filing were served on the Illinois Commerce Commission, interested persons and the Commission's staff.

Comment date: October 21, 1993, in accordance with Standard Paragraph E at the end of this notice.

12. Monongahela Power Company

[Docket No. ER93–978–000]

Take notice that Monongahela Power Company, on September 27, 1993, tendered for filing proposed changes in its FERC Electric Tariff, First Revised Volume No. 1. The proposed changes would increase revenues from jurisdictional sales and service by $626,831 based on the twelve-month period ending December 31, 1994. The proposed effective date for the increased rates is December 1, 1993.

The changes proposed are for the purpose of recovering increased cost incurred by the company and to modify, update and clarify language in the existing Tariffs.

Copies of the filing were served upon the jurisdictional customers, Maryland Public Service Commission, Pennsylvania Public Utility Commission, Public Utilities

Commission of Ohio, West Virginia Public Service Commission, and Virginia State Corporation Commission.

Comment date: October 21, 1993, in accordance with Standard Paragraph E at the end of this notice.

13. Central Illinois Public Service Company

[Docket No. ER93–664–000]

Take notice that on September 28, 1993, Central Illinois Public Service Company (CIPS) tendered for filing a letter agreement, dated September 22, 1993, modifying certain aspects of the Supplemental Agreement for the purchase of power by Norris Electric Cooperative (Norris) submitted for filing on May 24, 1993 in this docket and the underlying Power Supply Agreement between CIPS and Norris.

Copies of the filing were served on Norris and the Illinois Commerce Commission.

Comment date: October 21, 1993, in accordance with Standard Paragraph E at the end of this notice.

14. Boston Edison Company

[Docket No. ER93–509–000]

Take notice that on September 17, 1993, Boston Edison Company tendered for filing supplemental information to its original filing submitted on March 30, 1993 in the above-mentioned docket.

Comment date: October 21, 1993, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–25529 Filed 10–18–93; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 10895 Indiana]

Michiana Hydro-electric Power Corp.; Availability of Environmental Assessment

October 13, 1993.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for minor license for the proposed Mishawaka Project located in St. Joseph County, Mishawaka, Indiana, and has prepared a Draft Environmental Assessment (DEA) for the proposed project. In the DEA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the project, with appropriate mitigation or enhancement measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Branch, room 3104 the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Please submit any comments within 30 days from the date of this notice and should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Please affix the project number to all comments. For further information, please contact Allan E. Creamer, Environmental Coordinator, at (202)–219–0365.

Lois D. Cashell,

Secretary.

[FR Doc. 93–25566 Filed 10–18–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD94–00026T New Mexico–56]

Department of the Interior, Bureau of Land Management; NGPA Notice of Determination by Jurisdictional Agency Denying Designation of Tight Formation

October 13, 1993.

Take notice that on October 5, 1993, the United States Department of the Interior, Bureau of Land Management (BLM) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Mesaverde Group Formation underlying certain lands in the Jicarilla Area of the Blanco Mesaverde Pool in Rio Arriba County, New Mexico, does not qualify as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The area of application covers approximately 6,488 acres, 89.5% of which are administered by the Bureau of Land Management and 10.5% by the State of New Mexico. The recommended area is described as follows:

Township 24 North, Range 5 West, NMPM

Sections 5–6: All

Township 24 North, Range 6 West, NMPM

Sections 1–2: All

Township 25 North, Range 5 West, NMPM

Sections 21–22: S/2
Sections 27–28: All
Sections 31–32: All
Sections 33–34: N/2

The notice of determination contains BLM's findings that the referenced portion of the Mesaverde Group Formation does not meet the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93–25563 Filed 10–18–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD94–00029T Oklahoma–55]

State of Oklahoma; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

October 13, 1993.

Take notice that on October 4, 1993, the Corporation Commission of the State of Oklahoma (Oklahoma) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Hartshorn Formation, underlying a portion of Pittsburgh County, Oklahoma, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The recommended area is described as Sections 2 and 11, Township 6 North, Range 16 East, and Section 35, Township 7 North, Range 16 East, Pittsburgh County, Oklahoma, and contains both federal and state leases.

The notice of determination also contains Oklahoma's findings that the referenced formation meets the

requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93–25564 Filed 10–18–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD94–00030T Oklahoma–56]

State of Oklahoma; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

October 13, 1993.

Take notice that on October 4, 1993, the Corporation Commission of the State of Oklahoma (Oklahoma) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Hartshorne Formation, underlying a portion of Latimer County, Oklahoma, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The recommended area is described as Sections 8 and 17, Township 6 North, Range 18 East, Latimer County, Oklahoma, and contains both federal and state lands.

The notice of determination also contains Oklahoma's findings that the referenced formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93–25565 Filed 10–18–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD94–00025T Texas–151]

State of Texas; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

October 13, 1993.

Take notice that on October 4, 1993, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Travis Peak Formation, Teague, W. (Travis Peak) Field, underlying certain portions of Freestone County, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The designated area is in Railroad Commission District No. 5 and consists of portions of the following surveys:

I. Hollman Survey, Abstract 13
W. Elliott Survey, Abstract 213
J. Evans Survey, Abstract 214
J. Lawrence Survey, Abstract 365

The notice of determination also contains Texas' findings that the referenced portion of the Travis Peak meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93–25562 Filed 10–18–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP87–428–006]

CNG Transmission Corp.; Report of Refunds

October 13, 1993.

Take notice that on June 14, 1993, CNG Transmission Corporation (CNG) tendered for filing with the Federal Energy Regulatory Commission (Commission) a refund report detailing a $287,032.11 refund made to Tennessee Gas Pipeline Company on May 14, 1993.

CNG states the refund relates to service under its Rate Schedule X–81 (Norex Project) for the period November 1, 1990 through October 31, 1992, in accordance with the December 9, 1992 order in CP87–428–005.

CNG doesn't state if respective state regulatory commissions received copies of this report.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before November 3, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–25560 Filed 10–18–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ES94–2–000]

Electric Energy, Inc.; Application

October 13, 1993.

Take notice that on October 8, 1993, Electric Energy, Inc. (EEI) filed an application under section 204 of the Federal Power Act seeking authorization to issue not more than $70 million of Senior notes from time to time over the 24 month period, with a final maturity date no later than December 31, 2005. Also, EEI requests exemption from the Commission's competitive bidding and negotiation placement regulations.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before November 4, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–25561 Filed 10–18–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP90–137–011]

Williston Basin Interstate Pipeline Co.; Report of Refunds

October 13, 1993.

Take notice that on August 30, 1993, Williston Basin Interstate Pipeline Company (Williston Basin) tendered for filing with the Federal Energy Regulatory Commission (Commission) a refund report detailing a $1,297,492.23 refund including interest made to its customers on August 12, 1993.

Williston Basin states that the refund complies with Ordering Paragraph (E) of the Commission's July 16, 1993 order issued in Docket No. RP90–137–008, et al. Williston Basin states that the refund is based on amounts collected under its volumetric take-or-pay surcharge for the period July 1, 1990 through October 31, 1990, with interest calculated under the Commission's regulations through August 12, 1993.

Williston Basin states the respective state regulatory commissions and customers have received copies of this report.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before October 21, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–25567 Filed 10–18–93; 8:45 am]

BILLING CODE 6717–01–M

Office of Energy Research

Basic Energy Sciences Advisory Committee; Open Meeting

Pursuant to the provision of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Basic Energy Sciences Advisory Committee (BESAC).

Date and time: November 4, 1993—8 a.m.–5 p.m.; November 5, 1993—8 a.m.–3 p.m.

Place: Gaithersburg Hilton Hotel, 620 Perry Parkway, Gaithersburg, Maryland 20877.

Contact: Iran L. Thomas, Department of Energy, Office of Basic Energy Sciences (ER–10), Office of Energy Research, Washington, D.C. 20585, Telephone: 301–903–3081.

Purpose of the Committee: To provide advice on a continuing basis to the Department of Energy (DOE) on the many complex scientific and technical issues that arise in the planning, management, and implementation of the research program for the Office of Basic Energy Sciences (BES).

Tentative Agenda: Briefings and discussions of:

November 4, 1993

- Discussion of Charge
- BESAC Report
- Status of BES Program and Budget
- Committee Schedule for the Year
- Status Reports by BES Subprograms
- Public Comment (10 Minute Rule)

November 5, 1993

- Assignments for BESAC Tasks
- Update on Facilities by Selected Contractors
- Update on Research by Selected Contractors
- Public Comment (10 Minute Rule)

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact: Iran L. Thomas at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: The transcript of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on October 13, 1993.

Marcia L. Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 93–25667 Filed 10–18–93; 8:45 am]

BILLING CODE 6450–01–M

Office of Hearings and Appeals

Issuance of Decisions and Orders During the Week of August 9 Through August 13, 1993

During the week of August 9 through August 13, 1993 the decisions and orders summarized below were issued with respect to applications for the relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Refund Applications

Great Salt Lake Minerals & Chemicals Corporation, 08/16/93, RF272–16370, RD272–16370

The DOE issued a Decision and Order concerning an Application for Refund filed on behalf of Great Salt Lake Minerals & Chemicals Corporation in the crude oil special refund proceeding being disbursed by the DOE under 10 C.F.R. Part 205, Subpart V. The DOE determined that the refund claim was meritorious and granted a refund of $9,428. In granting the Application, the DOE determined that "Pale Oil" was a covered product eligible for a refund because it was purchased from a refinery. The DOE also denied a Motion for Discovery filed by a consortium of 29 States and two Territories (the "States") and rejected their objections to the claim. The DOE found that the industry-wide econometric data submitted by the States did not rebut the presumption that the Applicant was injured by the crude oil overcharges.

Gulf Oil Corporation/John E. Jones Oil Co., Inc., 08/12/93, RF300–434

The DOE considered an Application for Refund filed on behalf of John E. Jones Oil Company, Inc. (Jones) by Energy Refunds, Inc. (ERI) in the Gulf Oil Corporation refund proceeding. Jones, a reseller of propane, requested a full volumetric refund of $18,262. To receive a refund at that level, Jones was required to demonstrate injury. In order to make this showing, ERI, on Jones' behalf, supplied data regarding Jones' bank and other evidence purporting to demonstrate that Jones was unable to pass through Gulf overcharges. After reviewing the data, the DOE found that it was insufficient. In particular, the DOE pointed out that ERI filed numerous submissions purporting to correct earlier erroneous filings. The DOE found these numerous corrections indicated that ERI had not compiled the refund application carefully and concluded that it could not rely on the injury showing as submitted. The DOE also pointed out that even ERI's latest submissions had obvious mathematical and computer errors. Because of the overall unpersuasive record, the DOE found that Jones had not demonstrated that it had actually incurred an injury at the full volumetric level. However, the DOE concluded that since the evidence submitted did not show that Jones was not injured by the alleged Gulf overcharges, Jones should receive a refund at the presumptive level. Accordingly, Jones received a refund of 40 percent of its volumetric refund, $7,305, plus interest of $5,479.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Aberdeen School Dist et al	RF272-81859	08/12/93
Atlantic Richfield Company/Rod Hall's Arco	RF304-14337	08/11/93
City of East Lansing	RF272-87028	08/12/93
City of Somerville et al	RF272-93746	08/11/93
Corrugated Container Corp. et al	RF272-90008	08/12/93
Gilbert A. Castillo et al	RF272-90934	08/11/93
Glasscock Trucking Co	RF272-94546	08/10/93
Glasscock Trucking Co	RF272-94598	
Gulf Oil Corporation/Auchter Co. et al	RF300-21000	08/11/93
Gulf Oil Corporation/City of Ithaca et al	RF300-20803	08/10/93
Gulf Oil Corporation/Lamarque Ind. School District et al	RF300-20600	08/10/93
Gulf Oil Corporation/Melton & Son et al	RF300-16724	08/11/93
Gulf Oil Corporation/Peach County et al	RF300-20701	08/10/93
Gulf Oil Corporation/U-Totem #8 et al	RF300-16043	08/11/93
Gulf Oil Corporation/William Milson Co	RF300-18736	08/10/93
Gulf/Ed Rowe's Gulf et al	RF300-20355	08/12/93
Jefferson County, Nebraska et al	RF272-85267	08/11/93
Lauderdale County et al	RF272-87028	08/12/93
Texaco Inc./Archie's Texaco et al	RF321-14284	08/12/93
Texaco Inc./Arthur Kelley's Texaco #2	RF321-19834	08/12/93
Texaco Inc./Dameron's Texaco	RF321-19835	08/12/93
Texaco Inc./Haleyville Texaco et al	RF321-10893	08/13/93
Texaco Inc./Rovira's Texaco et al	RF321-10952	08/12/93
Y.E. Hall, Inc	RF272-65744	08/13/93

Dismissals

The following submissions were dismissed:

Name	Case No.
Bud Fox Texaco #1	RF321-12072
Burleson Independent School District.	RF272-83522
C.A. Fleurent Fuel Co	RF321-12070
City of Buckley	RF272-83588
City of Desoto	RF272-83345
City of Franklinton	RF272-83369
City of Ft. Bragg	RF272-83489
Dunes Center Service, Inc	RF321-16916
Etowah County	RF272-87039
Family Rec Center	RF300-14617
Gim Metal Products, Inc	RF272-66449
Greenfield-Central Community School.	RF272-87380
Jenkins County School District.	RF272-87387
John Cupp's Service Station	RF321-18950
Oxford City School District	RF272-81043
Red Bluff Union High	RF272-87486
Slidell Independent School District.	RF272-87444
Southeastern Fiberboard, Inc	RF272-65748
Tallahatchie County School District.	RF272-83322
Town of Stoneham	RF272-83482
Wanamingo School District	RF272-87924
Whiteside County	RF272-87450

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m. except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: October 13, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 93-25666 Filed 10-18-93; 8:45 am]

BILLING CODE 6450-01-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4791-1]

Public Water System Supervision Program Revision for the State of Minnesota

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Public notice is hereby given in accordance with the provisions of section 1413 of the Safe Drinking Water Act, as amended, 42 U.S.C. 300f *et seq.*, and 40 CFR part 142, subpart B, the National Primary Drinking Water Regulations (NPDWR), that the State of Minnesota is revising its Public Water System Supervision (PWSS) primacy program. The Minnesota Department of Health (MDH), has adopted: (1) Drinking water regulations for total coliform that correspond to the NPDWR for total coliform promulgated by the U.S. Environmental Protection Agency (U.S. EPA) on June 29, 1989, (54 FR 27544-27568); and (2) drinking water regulations for the treatment of surface water that correspond to the NPDWR for Surface Water Treatment promulgated by the U.S. EPA on June 29, 1989, (54 FR 27486-27541). The U.S. EPA has completed its review of Minnesota's PWSS primacy program revision.

The U.S. EPA has determined that the current Minnesota Surface Water Treatment and Total Coliform rule revisions substantially meet the requirements of the Federal rules. However, there are several changes that need to be made before the U.S. EPA can grant approval. The necessary changes have been documented in a Memorandum of Agreement (MOA) between the U.S. EPA and the MDH (available at the State and the U.S. EPA offices listed at the end of this notice). Minnesota has agreed to incorporate these changes into its Surface Water Treatment and Total Coliform rules. Minnesota's revised Surface Water Treatment and Total Coliform rules are scheduled to become effective no later than April 1, 1994. Upon notification that Minnesota's revised regulations, containing the agreed upon changes, have become effective, the U.S. EPA will grant approval of the Minnesota Surface Water Treatment and Total Coliform rules without further solicitation of public input.

All interested parties are invited to submit written comments on these proposed determinations, and may request a public hearing on or before November 18, 1993. If a public hearing is requested and granted, the corresponding determination shall not become effective until such time,

following the hearing, at which the Regional Administrator issues an order affirming or rescinding this action. All comments and requests for a public hearing should be addressed to: William Spaulding (WD–17J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. If no timely and appropriate request for a hearing is received, and the Regional Administrator does not elect to hold a hearing on his own motion, these determinations shall become effective November 18, 1993.

Any request for a public hearing shall include the following:

(1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing.

(2) A brief statement of the requesting person's interest in the Regional Administrator's determinations and of information that the requesting person intends to submit at such hearing.

(3) The signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

Notice of any hearing shall be given not less than fifteen (15) days prior to the time scheduled for the hearing. Such notice will be made by the Regional Administrator in the **Federal Register** and in newspapers of general circulation in the State of Minnesota. A notice will also be sent to the person(s) requesting the hearing as well as to the State of Minnesota. The hearing notice will include a statement of purpose, information regarding the time and location, and the address and telephone number where interested persons may obtain further information. The Regional Administrator will issue an order affirming or rescinding his determination upon review of the hearing record. Should the determination be affirmed, it will become effective as of the date of the order.

Please bring this notice to the attention of any persons known by you to have an interest in these determinations.

All documents relating to these determinations are available for inspection between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

Minnesota Department of Health, Water Supply and Well Management Section, 925 SE., Delaware Street, P.O. Box 59040, Minneapolis, MN 55459–0040, State Docket Officer: Mr. Gary Englund, (612) 627–5133.

Safe Drinking Water Branch, Drinking Water Section, U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: William Spaulding, Region 5, Drinking Water Section at the Chicago address given above, telephone 312/886–9262.

Authority: Sec. 1413 of the Safe Drinking Water Act, as amended (1986), and 40 CFR 142.10 of the National Primary Drinking Water Regulations.

Dated: October 6, 1993.

Valdas V. Adamkus,

Regional Administrator, U.S. EPA, Region 5.

[FR Doc. 93–25641 Filed 10–18–93; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4791–3]

Ozone Transport Commission for the Northeast United States; Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: The United States Environmental Protection Agency is announcing a meeting of the Ozone Transport Commission to be held on October 19, 1993.

This meeting is for the Transport Commission to deal with appropriate matters within the transport region, as provided for under the Clean Air Act Amendments of 1990. This meeting is not subject to the provisions of the Federal Advisory Committee Act, Public Law 92–463, as amended.

DATES: The meeting will be held on October 19, 1993.

ADDRESSES: The meeting will be held at: The Mystic Hilton, 20 Coogan Boulevard, Mystic, CT 06355.

FOR FURTHER INFORMATION CONTACT: Doug Gutro, State Relations Coordinator, Region I, U.S. Environmental Protection Agency, John F. Kennedy Federal Building, Boston, MA 02203, (617) 665–3383.

For Press Inquiries Contact: Margot Callahan, Connecticut Department of Environmental Protection, 79 Elm Street, Hartford, CT 06106, (203) 566–3489.

For Documents Contact: Stephanie A. Cooper, Ozone Transport Commission, 444 North Capitol Street, NW., suite 604, Washington, DC 20001, (202) 508–3840.

SUPPLEMENTARY INFORMATION: The Clean Air Act Amendments of 1990 contain at section 184 provisions for the "Control of Interstate Ozone Air Pollution." Section 184(a) establishes an ozone transport region comprised of the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, parts of Virginia and the District of Columbia.

The Assistant Administrator for Air and Radiation of the Environmental Protection Agency convened the first meeting of the commission in New York City on May 7, 1991. The purpose of the Transport Commission is to deal with appropriate matters within the transport region.

The purpose of this notice is to announce that this Commission will meet on October 19, 1993. The meeting will be held at the address noted earlier in this notice.

Section 176A(b)(2) of the Clean Air Act Amendments of 1990 specifies that the meetings of Transport Commissions are not subject to the provisions of the Federal Advisory Committee Act. This meeting will be open to the public as space permits, beginning at 9 a.m.

Type of Meeting: Open.

Agenda: The meeting begins at 9 a.m. and is expected to last until 4 p.m. The purpose of the meeting is to receive reports from its committees, particularly on the Low Emission Vehicle program and control measures being studied for the November 15, 1994 State Implementation Plan revisions.

Patricia L. Meaney,

Acting Regional Administrator, EPA Region I.

[FR Doc. 93–25609 Filed 10–18–93; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4790–6]

Public Meeting on the Waste Minimization and Combustion Strategy

AGENCY: Environmental Protection Agency [EPA].

ACTION: Announcement of meeting.

SUMMARY: EPA is conducting a public National Roundtable on Hazardous Waste Minimization and Combustion on November 15–18, 1993. Waste minimization issues will be discussed on Nov. 15–16, and EPA's technical regulatory program for hazardous waste incinerators and boilers and industrial furnaces will be discussed on Nov. 17–18. The purpose of the Roundtable is to give a broad range of interested parties and stakeholders (e.g., local citizen groups, environmental organizations, regulated companies, and State, local, and regional regulatory officials) an opportunity to share concerns and information regarding waste

minimization and combustion. In particular, EPA would like to hear about what is working or not working with respect to the Agency's waste minimization and combustion programs.

The Roundtable will not be formal negotiation sessions but rather will feature informal discussions among invited participants in a small group format as well as in open plenary sessions. EPA will invite representative organizations to designate a total of 75–90 persons to participate in each session (i.e., waste minimization and combustion). These representative organizations will include industry trade associations, local citizen and environmental organizations, and State and local regulatory officials.

The public is welcome to observe discussions among the invited participants, and to participate at designated open public comment sessions during these proceedings. One or more Discussion Documents framing the issues and the agenda for both sessions will be available to the public prior to the start of the Roundtable. Written summaries of the proceedings will be prepared and made publicly available subsequent to the Roundtable.

DATES: The Roundtable will be held on November 15–18 from 8:30 a.m. to 5 p.m. No prior registration is required for attendees. However, EPA would appreciate attendees notifying the EPA RCRA/Superfund/OUST Hotline at 1–800–424–9346, in advance, of their intentions to attend.

ADDRESSES: The Roundtable will be held at the Renaissance Hotel, Dulles International Airport, 13869 Park Center Road, Herndon, VA 22071. (Telephone number: 703–478–2900) Please contact the hotel directly concerning accommodations and travel directions. To obtain the special room rates for Roundtable attendees, mention that you will be attending the EPA National Roundtable.

FOR FURTHER INFORMATION CONTACT:

EPA's RCRA/Superfund/OUST Hotline at 1–800–424–9346 (in the Washington, DC, area, 703–412–9810); TDD 1–800–553–7672 (Washington area TDD 703–412–3323).

Dated: October 4, 1993.

Jeffrey D. Denit,

Acting Director, Office of Solid Waste.

[FR Doc. 93–25614 Filed 10–18–93; 8:45 am]

BILLING CODE 6560-50-M

[FIFRA Docket No. 656; FRL–4790–7]

Pesticide Product WipeOut Cold Sterilizing Disinfecting Solution

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of objections and request for hearing.

Pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.*, EPA has promulgated the Rules of Practice Governing Hearings on Pesticide Registrations under FIFRA (Rules), 40 CFR part 164.

Notice is hereby given, pursuant to Section 164.8 of the Rules, that Health Care Products, Inc., the registrant of the pesticide product WipeOut Cold Sterilizing Disinfecting Solution (WipeOut), has filed objections to and has requested a hearing under § 164.20 of the Rules, concerning the EPA Administrator's notice of intent to cancel the registration of the pesticide product WipeOut. The Administrator's notice of intent to cancel was published in the **Federal Register** on May 21, 1993, 58 Fed. Reg. 29579.

For information concerning the issues involved and other details of this proceeding, interested persons are referred to the docket of this proceeding on file with the Hearing Clerk, United States Environmental Protection Agency, Room 3708 (Mail Code A–110), 401 M Street, SW., Washington, DC 20460 (Telephone 202–260–4865).

Pursuant to Section 164.31(b) of the Rules, any person wishing to file a motion for leave to intervene in this proceeding should file such motion prior to the commencement of the first Prehearing Conference, which is scheduled for November 16, 1993, at EPA Headquarters.

Dated: October 7, 1993.

Daniel M. Head,

Administrative Law Judge.

[FR Doc. 93–25615 Filed 10–18–93; 8:45 am]

BILLING CODE 6560-50-M

[FRL–4790–9]

Notification of Request for Research Assistance, Genetic Manipulation of Pseudomonas Cepacia

AGENCY: Environmental Protection Agency, Environmental Research Laboratory, Gulf Breeze, Florida.

ACTION: Notification of request for research assistance.

SUMMARY: The Environmental Research Laboratory, Gulf Breeze (ERL-Gulf Breeze) requests assistance to develop strategies and techniques to enhance the bioremediation potential of *Pseudomonas cepacia*. Innovative and creative approaches in genetic engineering are sought to improve the efficiency, control, and robustness of biotechnological processes in an environmentally safe manner. Specific topics to be addressed include: (a) Organization of the *P. cepacia* genome and mechanisms of genetic exchange; (b) evolution and regulation of degradative pathways; (c) recruitment of genetic information for the expansion of catabolic capabilities; (d) factors that affect biodegradation by specialized strains under conditions of physiological stress; (e) novel methods to monitor microbial processes. Respondents and their associated research group should be able to demonstrate expertise and experience in the following areas: (a) Bacterial genetics, principles and practical manipulations in particular of microbes commonly used in bioremediation; (b) roles of insertion sequences in the evolution of catabolic pathways; (c) improved growth of microorganisms under unique conditions as required by biotechnological applications; (d) molecular characterization of organisms with potential application in bioremediation.

SUPPLEMENTARY INFORMATION: Cooperative agreements are intended to promote collaborative interaction with EPA researchers. Selectees will be expected to collaborate with personnel engaged in biodegradation and bioremediation research at ERL-Gulf Breeze. This research program encompasses genetic and enzymatic characterization of biodegradative pathways, optimization of biodegradative activities and field studies of populations with specialized biodegradative abilities. Both aerobic and anaerobic processes are investigated. Ongoing research is focused on degradation of PAHs, PCBs, TCE, petroleum, and inorganic contaminants, such as heavy metals.

FOR FURTHER INFORMATION CONTACT: Dr. P.H. Pritchard (904–934–9260) for technical information and Ms. Jan Kurtz (904–934–9286) for budgetary and administrative questions. Eight copies of the application (1 original and 7 copies) should be mailed by November 15, 1993 to Ms. Kurtz, U.S. EPA, Environmental Research Laboratory, 1 Sabine Island Drive, Gulf Breeze, Florida 32561–5299. Applicants should summarize research objectives, significance of proposed research and qualifications of the investigator(s). A time frame and budgets (annual and total) should be

specified. Proposals should be limited to 15 pages, including all attachments.

Dated: October 12, 1993.

Gary J. Foley,

Acting Assistant Administrator for Research and Development.

[FR Doc. 93-25612 Filed 10-18-93; 8:45 am]

BILLING CODE 6560-50-P

[FRL-4790-7]

Notice of Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act; Walled Lake Mercury Site

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended by the Superfund Amendments and Reauthorization Act ("CERCLA"), notice is hereby given of a proposed administrative cost recovery settlement concerning the Walled Lake Mercury Site in Walled Lake, Michigan. The settlement resolves a claim by the U.S. Environmental Protection Agency ("EPA") under Section 107 of CERCLA against Mr. Al Nichols of Union Lake, Michigan. The settlement requires the settling party to pay $10,000 to the Hazardous Substance Superfund. In exchange, the Settling Party will receive a complete release from further civil or administrative liability for the costs incurred at the Site.

DATES: For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the settlement.

ADDRESSES: Comments should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region V, 77 West Jackson Boulevard, Chicago, Illinois, 60604-3590, and should refer to: Walled Lake Mercury Site, Walled Lake, Michigan.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed administrative settlement agreement or additional background information relating to the settlement is available for review and may be obtained in person or by mail from John J. Breslin, U.S. Environmental Protection Agency, Office of Regional Counsel, CS-3T, 77 West Jackson Boulevard, Chicago, Illinois, 60604, (312) 886-7165.

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601-9675.

Dated: October 7, 1993.

Gail C. Ginsberg,

Regional Counsel.

[FR Doc. 93-25613 Filed 10-18-93; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

[Petition Nos. P76-93, P77-93, and P78-93]

Petitions for Temporary Exemption From Electronic Tariff Filing Requirements; Petition of Tropical Shipping & Construction Co., Ltd.; Petition of Effective Tariff Management on Behalf of Various Carriers; Petition of Effective Tariff Management for Tecmarine Lines, Inc. and U.S.A. Tecmarine, Inc.; Notice of Filing of Petitions

Notice is hereby given of the filing of petitions by the above named petitioners, pursuant to 46 CFR 514.8(a), for temporary exemption from the electronic tariff filing requirements of the Commission's ATFI System. Petitioners request exemption from the October 8, 1993, electronic filing deadline.

To facilitate thorough consideration of the petitions, interested persons are requested to reply to the petitions no later than October 22, 1993. Replies shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573-0001, shall consist of an original and 15 copies, and shall be served on the following:

P76-93—Paul D. Coleman, Esq., Hoppel, Mayer & Coleman, 1000 Connecticut Avenue, N.W., Washington, D.C. 20036

P77-93 & P78-93—Tanga S. FitzGibbon, Executive Vice President, Effective Tariff Management Corporation, 4000 Mitchellville Road, Suite 326-B, Bowie, Maryland 20716

Copies of the petitions are available for examination at the Washington, D.C. office of the Secretary of the Commission, 800 N. Capitol Street, NW., room 1046.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 93-25521 Filed 10-18-93; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Lee County Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than November 10, 1993.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166.

1. Lee County Bancshares, Inc., Marianna, Arkansas; to become a bank holding company by acquiring at least 81 percent of the voting shares of The First National Bank at Marianna, Marianna, Arkansas.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Flint Hills Bancshares, Inc., Gridley, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of The Citizens State Bank, Gridley, Kansas.

Board of Governors of the Federal Reserve System, October 12, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-25575 Filed 10-18-93; 8:45 am]

BILLING CODE 6210-01-F

MBNA Corporation; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to

engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 8, 1993.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. MBNA Corporation, Newark, Delaware; to engage *de novo* through its subsidiary, MBNA Consumer Services, Inc., Newark, Delaware, in making consumer loans that will be secured by first mortgages pursuant to § 225.25(b)(1)(iii); and to offer credit insurance (life, disability and involuntary unemployment) for such loans pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 12, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-25576 Filed 10-18-93; 8:45 am]

BILLING CODE 6210-01-F

Resource Bancshares Corporation; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 8, 1993.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Resource Bancshares Corporation, Columbia, South Carolina; to acquire 1st Performance Interim, FSB, Jacksonville, Florida, and thereby establish an interim Federally-chartered thrift institution pursuant to § 225.25(b)(9) of the Board's Regulation Y.

In connection with this application, 1st Performance Interim, FSB, will purchase the assets of and assume the liabilities of 1st Performance National Bank, Jacksonville, Florida, pursuant to section 3(a)(4) of the Bank Holding Company Act.

Board of Governors of the Federal Reserve System, October 12, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-25577 Filed 10-18-93; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Committee on Vital and Health Statistics; Meeting

Pursuant to Public Law 92–463, the National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC), announces the following committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS).

Times and dates: 1 p.m.–5 p.m., November 3, 1993; 9 a.m.–5 p.m., November 4, 1993; and 9 a.m.–1 p.m., November 5, 1993.

Place: Room 703A–729A, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

Status: Open.

Purpose: The purpose of this meeting is for the committee to consider reports from each NCVHS subcommittee; to receive reports from offices of the Department of Health and Human Services; to explore information needs for health reform; and to address new business as appropriate.

Contact person for more information: Substantive program information as well as summaries of the meeting and a roster of committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, NCVHS, NCHS, room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone 301/436–7050.

Dated: October 13, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–25571 Filed 10–18–93; 8:45 am]

BILLING CODE 4160–18–M

Health Resources and Services Administration

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of November 1993:

Name: Maternal and Child Health Research Grants Review Committee.

Date and Time: November 17–19, 1993, 9 a.m.

Place: Conference Room C, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Open on November 17, 1993, 9 a.m.–10 a.m.

Closed for Remainder of Meeting

Purpose: To review research grant applications in the program area of maternal and child health administered by the Maternal and Child Health Bureau.

Agenda: The open portion of the meeting will cover opening remarks by the Director, Division of Systems, Education and Science, Maternal and Child Health Bureau, who will report on program issues, congressional activities and other topics of interest to the field of maternal and child health. The meeting will be closed to the public on November 17 at 10 a.m. for the remainder of the meeting for the review of grant applications. The closing is in accordance with the provisions set forth in section 552b(c)(6), title 5 U.S.C., and the Determination by the Administrator, Health Resources and Services Administration, pursuant to Public Law 92–463.

Anyone requiring information regarding the subject Council should contact Gontran Lamberty, Dr.P.H., Executive Secretary, Maternal and Child Health Research Grants Review Committee, room 18A–55, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301)443–2190.

Agenda items are subject to change as priorities dictate.

Dated: October 13, 1993.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 93–25547 Filed 10–18–93; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. N–93–3661; FR 3566–N–04]

Task Force on Occupancy Standards in Public and Assisted Housing

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of extension of comment period.

SUMMARY: The Task Force on Occupancy Standards in Public and Assisted Housing was established on December 31, 1992 in accordance with the provisions of section 643 of the Housing and Community Development Act of 1992 (Pub. L. 102–550) and the Federal Advisory Committee Act (FACA) (5 U.S.C App 2). The Task Force's charter was published in the **Federal Register** on January 7, 1993 at 58 FR 3039. The Task Force was created to review all rules, policy statements, handbook and technical assistance memoranda issued by the Department on the standards and obligations governing residency in public and assisted housing; and make recommendations in its final report to HUD and Congress for the establishment of reasonable criteria for occupancy, so that HUD could revise its standards, regulations, and guidelines to provide accurate and complete guidance to owners and managers of federally assisted housing. The **Federal Register** on August 31, 1993 at 58 FR 45905 announced the publication of the Task Force's preliminary report for public comment. This notice is to announce the extension of the comment period from November 1, 1993 to December 1, 1993.

COMMENT DUE DATE: Written comments must be received on or before December 1, 1993.

ADDRESSES: Interested persons are invited to submit comments regarding the preliminary report to the Office of General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours at the above address. Copies of the Task Force's preliminary report will be made available by calling the Fair Housing Information Clearinghouse at 1–800–343–3442. Copies of the preliminary report will also be made available on tape or large print for those with impaired vision who request them, and on computer disk. They may be obtained from HUD's Office of FHEO in room 5226.

FOR FURTHER INFORMATION CONTACT: Laurence D. Pearl, Office of Fair Housing and Equal Opportunity, room 5226, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone: (202) 708–0288 (voice) or (TDD) (202) 708–0113 (These are not toll-free numbers.)

Bonnie Milstein,

Chair, Task Force on Occupancy Standards in Public and Assisted Housing.

Roberta Achtenberg,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 93–25628 Filed 10–18–93; 8:45 am]

BILLING CODE 4210–23–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–942–4210–05; UTU–65091]

Correction of Previous FR Notice; Goshute Indian Reservation; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction.

SUMMARY: The notice published in 58 FR 48074, dated September 14, 1993, is corrected by changing the following legal description of lands under the heading.

2. The surface only of the following described land is held in trust:

T. 10 S., R. 19 W.,
Sec. 9, N½NE¼, NE¼NW¼, S½NW¼, N½SW¼;

Robert Lopez,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 93–25541 Filed 10–18–93; 8:45 am]

BILLING CODE 4310–DQ–M

[WY–920–41–5700; WYW126347]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

Pursuant to the provisions of 30 U.S.C. 188(d), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW126347 for lands in Hot Springs County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate

lease WYW126347 effective March 1, 1993, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Supervisory Land Law Examiner.

[FR Doc. 93–25668 Filed 10–18–93; 8:45 am]

BILLING CODE 4310–22–M

[NV–930–4210–04; N–57859]

Amended Notice of Realty Action; Exchange of Public Lands in Clark Co., NV

AGENCY: BLM, Interior.

ACTION: Exchange of public lands.

SUMMARY: The Notice of Realty Action published in the **Federal Register** on June 4, 1993 (58 FR 31751; FR Doc 93–13194), is hereby amended with respect to the case file number and to include an additional paragraph, as follows:

(1) Serial number is changed to N–57859.

(2) Litigation (*Lancaster* v. *Roy, et al., CV–S–93–263–HDM*) is pending which affects some of the Federal lands being considered in this exchange. Proceeding with the exchange as proposed will depend on the outcome of said litigation.

Dated: October 6, 1993.

Gary Ryan,

Acting District Manager, Las Vegas, NV.

[FR Doc. 93–25542 Filed 10–18–93; 8:45 am]

BILLING CODE 4310–HC–M

Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for reinstatement approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Service's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Service Clearance Officer and the Office of Management and Budget, Paperwork Reduction Project (1018–0007) Washington, DC 20503, telephone 202–395–7340.

Title: Certification of Fishing and Hunting License Holders.

OMB Approval Number: 1018–0007.

Abstract: The Federal Aid in Fish and Wildlife Restoration Acts provide that funds are apportioned to the states, in accordance with a prescribed formula, for projects that restore, conserve, and enhance wild birds and mammals and sport fish. Part I, is used to collect numbers of paid hunting and fishing license holders from state fish and wildlife agencies, and is used by the Service to compute the apportionment of grant funds available to each state.

Part II, is used to collect information on hunting and fishing license sales. This information is made available to the public and is used by the Service and the public as indicators of trends in sport hunting and fishing.

Service Form Number(s): Part I, Form 3–154a; Part II, Form 3–154b

Frequency: Annually

Description of Respondents: State fish and wildlife agencies

Estimated Completion Time: 1 hour

Annual Burden Hours: 50

Service Clearance Officer: Phyllis H. Cook, 703–358–1943, Mail Stop—224 Arlington Square, U.S. Fish and Wildlife Service, Washington, DC 20240

Dated: September 20, 1993.

Michael J. Spear,

Assistant Director, Ecological Services.

[FR Doc. 93–25573 Filed 10–18–93; 8:45 am]

BILLING CODE 4310–55–M

Minerals Management Service

Seismic Reassessment of Offshore Platforms; Workshop

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of public workshop.

SUMMARY: The Minerals Management Service (MMS) and California State Lands Commission (SLC) are reassessing the ability of older offshore oil and gas platforms to structurally withstand earthquakes. This notice announces a public workshop to solicit discussion and feedback from the public on policy issues to be considered in the development of any future regulations on seismic requalification of offshore platforms.

DATES: November 10, 1993, Wednesday, from 8 a.m. until 5 p.m.

ADDRESSES: The workshop will be held in the first floor training facility at the Minerals Management Service's Pacific OCS Region office, 770 Paseo Camarillo, Camarillo, CA 93010.

FOR FURTHER INFORMATION CONTACT: Ms. Leslie Monahan, Minerals Management Service, at the above address, telephone (805) 389–7568, or Mr. Martin Eskijian, State Lands Commission, ARCO Towers, 200 Oceangate, 12th Floor, Long Beach, CA 90802–4471, telephone (310) 590–5198.

SUPPLEMENTARY INFORMATION: Some older platforms offshore California were designed and built according to earlier codes used at that time for onshore structures. Later, more elaborate methods of analysis and design criteria were developed specifically for offshore platforms. The majority of the platforms located in State waters and some of those located in Federal waters were designed according to the earlier codes.

Following the San Francisco-area earthquake in October 1989, both the Minerals Management Service (MMS) and California State Lands Commission (SLC) reviewed those earlier requirements and determined that further analyses were needed to evaluate how these older platforms would perform using current techniques for new platforms. As with many other structures both onshore and offshore, codes have not been developed to evaluate their structural performance once they have been built. There are no regulations specifically governing the requalification of older platforms, but, in the interest of safety, each agency has developed its own case-by-case evaluation for the regulation of the platforms. From this information, it was determined that a more comprehensive set of regulations need to be developed for platform requalification, so that there will be definitive guidelines for offshore platforms, with an appropriate level of consistency between State and Federal regulations.

The American Petroleum Institute is developing codes for the requalification of offshore platforms. These codes will cover the technical aspects of general platform requalification. It is up to the regulatory agencies to develop regulations that address both technical and policy issues. Policy issues need to be resolved outside of the technical forum. These policies should involve public input.

The MMS and SLC are jointly sponsoring a one-day workshop on policy issues related to seismic requalification of offshore platforms. The workshop will be structured to first inform the public on the status of the seismic requalification efforts, and then to elicit thoughts and concerns from the group on what policies the MMS and SLC as regulatory bodies should consider adopting. The workshop will be designed to encourage opportunities for public comment and discussion. The goal is to form a consensus on

appropriate policies that might affect the seismic requalification of offshore structures in the future.

Registration

There is no registration fee for this workshop. However, to assess the probable number of participants, MMS and SLC request that participants contact the agency personnel listed above to obtain a registration form.

Proceedings

A workshop summary report and attendance list will be prepared by the MMS and SLC and provided to the workshop participants. Requests for copies of the report can also be made to the MMS and SLC at the addresses listed above.

Dated: October 8, 1993.

J. Lisle Reed,

Regional Director, Pacific OCS Region.

[FR Doc. 93–25540 Filed 10–18–93; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Subsistence Resource Commission; Meeting

AGENCY: National Park Service, Interior.

ACTION: Subsistence Resource Commission meeting.

SUMMARY: The Superintendent of Gates of the Arctic National Park and the Chairperson of the Subsistence Resource Commission for Gates of the Arctic National Park announce a forthcoming meeting of the Gates of the Arctic National Park Subsistence Resource Commission.

The following agenda items will be discussed:

(1) Call to order.
(2) Roll call.
(3) Approval of summary of minutes.
(4) Review agenda.
(5) Superintendent's welcome:
  (a) Introduction of guests.
  (b) Review of SRC function and purpose.
  (c) Park Subsistence Program Update.
(6) Old business:
  (a) State Oil and Gas Lease Sale 57 update.
  (b) Resolution 85–05: hunting plan outline.
  (c) Review public comments and finalize draft Hunting Plan Recommendations #7 and #8:
  #7—Implement ANILCA Section 809 Cooperative Agreements to prepare the Hunting Plan.
  #8—Oppose the construction of a permanent road between Bettles and the Dalton Highway.
  (d) Federal Subsistence Program Update.
(7) Public and other agency comments.
(8) Determine time and place of next SRC meeting.
(9) Adjournment.

DATES: The meeting will be held Tuesday and Wednesday, October 19–20, 1993. The meeting will begin at 8:30 a.m. each day and conclude around 5 p.m.

LOCATION: The meeting will be held at the Regency Fairbanks Hotel in Fairbanks, Alaska.

FOR FURTHER INFORMATION CONTACT: Stephen P. Martin, Superintendent, PO Box 74680, Fairbanks, Alaska 99707. Phone (907) 456–0281.

SUPPLEMENTARY INFORMATION: The Subsistence Resource Commissions are authorized under title VIII, section 808, of the Alaska National Interest Lands Conservation Act, Public Law 96–487, and operate in accordance with the provisions of the Federal Advisory Committees Act.

Paul R. Anderson,

Acting Regional Director.

[FR Doc. 93–25655 Filed 10–18–93; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before October 9, 1993. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by November 3, 1993.

Carol D. Shull,

Chief of Registration, National Register.

COLORADO

Weld County

Greeley Union Pacific Railroad Depot, Jct. of 7th Ave. and 9th St., Greeley, 93001180

GEORGIA

Dougherty County

Tift Park, Bounded by N. Jefferson St., 5th Ave., 7th Ave. and Palmyra Rd., Dougherty, 93001179

Walton County

Jones, Walter, Rock House, 4435 GA 186 NE, Good Hope vicinity, 93001190

IOWA

Polk County

Keeler, Rev. R.W. and Fannie E., House, 1430 10th St., Des Moines, 93001184

NORTH CAROLINA

Alamance County

Braxton, Hiram, House, (Log Buildings in Alamance County MPS), 3440 Newlin Rd., Snow Camp vicinity, 93001193

Cook, William, House, (Log Buildings in Alamance County MPS), NC 2131 W side at jct. with NC 2132, Mebane vicinity, 93001194

Fogleman,Polly, House, (Log Buildings in Alamance County MPS), 4331 Brick Church Rd., Burlington, 93001197

Guy, Thomas, House, (Log Buildings in Alamance County MPS), NC 2135 N side, 0.3 mi. W of jct. with NC 2142, Mebane vicinity, 93001195

McBane, Camilus, House, (Log Buildings in Alamance County MPS), Off NC 2345 N side, 0.3 mi. W of jct. with NC 2340, 0.2 mi. down unnamed rd., Snow Camp vicinity, 93001196

Spoon, A.L., House, (Log Buildings in Alamance County MPS), NC 1107 N side, 0.7 mi. SW of jct. with NC 1005, Snow Camp vicinity, 93001192

Thompson, James Monroe, House, (Log Buildings in Alamance County MPS), NC 2158 E side, 0.1 mi. S of jct. with NC 2150, Saxapahaw vicinity, 93001198

Guilford County

College Hill Historic District, (Greensboro MPS), Roughly bounded by W. Market St., S. Cedar St., Oakland Ave. and McIver St., Greensboro, 93001191

RHODE ISLAND

Kent County

Wilson—Winslow House, 2414 Harkney Hill Rd., Coventry, 93001182

Providence County

Smith Hill Historic District, 57–65 Brownell St., 73–114 Holden St., 23–80 Jewett St., 189–240 Smith St. and 10–18 W. Park St., Providence, 93001183

Veterans Memorial Auditorium—Masonic Temple, Jct. of Brownell and Park Sts., Providence, 93001181

TENNESSEE

Robertson County

Thomas Drugs, 7802 TN 25 E., Cross Plains, 93001189

Warren County

Magness, William H. and Edgar, Community House and Library, 118 W. Main St., McMinnville, 93001177

Washington County

Aquone, 110 Barberry Rd., Johnson City, 93001199

White County

Oldham Theater, W. Liberty Sq., Sparta, 93001188

VERMONT

Chittenden County

Johnson, Dan, Farmstead, (Agricultural Resources of Vermont MPS), Jct. of US 2 and Johnson Ln., Williston, 93001178

Franklin County

Ballard Farm, (Agricultural Resources of Vermont MPS), Jct. of Ballard Rd. and Town Hwy. 6, Georgia, 93001176

West Berkshire School, (Educational Resources of Vermont MPS), Jct. of Town Hwy. 26 and Town Hwy. 3, Berkshire, 93001174

Windsor County

Spaulding, Zachariah, Farm, (Agricultural Resources of Vermont MPS), Town Hwy. 38 S. of Ludlow town center, Ludlow, 93001175

WISCONSIN

Columbia County

Bellmont Hotel, 120 N. Main St., Pardeeville, 93001170

Iowa County

Linden High School, 344 E. Main St., Linden, 93001168

Juneau County

Lemonweir Glyphs, (Wisconsin Indian Rock Art Sites MPS), Address Restricted, Kildare, 93001173

Kewaunee County

Marquette Historic District, Roughly bounded by Lake Michigan and Center, Juneau and Lincoln Sts., Kewaunee, 93001167

Portage County

Pipe School, Jct. of Pipe Rd. and Co. Hwy. T, Lanark, 93001171

Vilas County

Sunset Point, 1024 Everett Rd., Eagle River, 93001169

Wood County

Daly, Elizabeth, House, 641 Baker St., Wisconsin Rapids, 93001172

Marshfield Central Avenue Historic District, Roughly, Central Ave. from Depot St. to Third St., Marshfield, 93001166

WYOMING

Johnson County

Holland House, 312 N. Main St., Buffalo, 93001185

Natrona County

Casper Fire Department Station No. 1, 302 S. David St., Casper, 93001187

Consolidated Royalty Building, 137–141 S. Center St., Casper, 93001186

[FR Doc. 93–25648 Filed 10–18–93; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 93–1]

Robert Takos, M.D.; Grant of Restricted Registration

On May 1, 1992, The Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Robert Takos, M.D., (Respondent), at the University Medical Center, 2500 North State Street, Jackson, Mississippi. The Order to Show Cause proposed to deny his application for registration filed with the DEA pursuant to 21 U.S.C. 823(f). The statutory predicate for the proposed action was Respondent's conviction of unlawful possession of heroin, in violation of the Mississippi Uniform Controlled Substances Act, Section 41–29–139(a)(1), a felony offense relating to controlled substances.

Respondent requested a hearing on the issue raised by the Order to Show Cause and the matter was docketed before Administrative Law Judge Paul A. Tenney. Following prehearing procedures, a hearing was held in New Orleans, Louisiana on April 13, 1993. On June 7, 1993, Judge Tenney issued his findings of fact, conclusions of law, and recommended ruling. Neither party filed exceptions to the administrative law judge's opinion and recommended decision and, on July 19, 1993, the administrative law judge transmitted the record to the Administrator. The Administrator has considered the record in its entirety and, pursuant to 21 CFR 1316.67, hereby enters his final order in this matter.

The administrative law judge found that in 1984, the Respondent underwent treatment for drug addiction at the Mississippi State Hospital in Whitfield, Mississippi. After thirty days of treatment, the Respondent left the treatment program. Sometime later in February, the Respondent travelled to Pakistan, where he purchased heroin. The Respondent subsequently swallowed 65 balloons filled with heroin and returned to the United States. Respondent again entered a treatment program for substance abuse. On or about February 28, 1984, Respondent left the program against medical advice. Hospital security contacted the local police department and requested their assistance in locating the Respondent. The police officers located, and subsequently arrested the Respondent following a search which revealed 65 heroin balloons, a handgun, a box of Ex-lax, and other miscellaneous items.

On February 28, 1984, the Respondent was indicted by the Grand Jury of the State of Mississippi for the felony possession of heroin, with intent to deliver. On August 3, 1984, Respondent pled guilty to the State's charges, and was sentenced to three years incarceration, sentence suspended upon an order of probation. The Respondent was also ordered to pay a fine in the amount of $2,500.00, along with court costs, and to waive any right to contest the civil proceedings for the forfeiture of his 1982 motor vehicle. On July 30, 1987, the State of Mississippi terminated the Respondent's probation.

The administrative law judge further found that on March 19, 1984, Respondent voluntarily surrendered his DEA Certificate of Registration, and on August 15, 1984, the Respondent surrendered his Mississippi medical license.

On January 21, 1988, the Mississippi State Board of Medical Licensure (Board) held a hearing on the reinstatement of the Respondent's medical license. By Determination and Order dated January 25, 1988, the Board ordered the reinstatement of the Respondent's medical license, subject to several terms and conditions. On of the conditions provided that the Respondent was not permitted to apply for a DEA registration or to handle controlled substances without the prior written order of the Board.

In two subsequent Board orders, dated November 17, 1988 and January 18, 1990, the Respondent was authorized to obtain a DEA registration in Schedule V if such registration were needed to obtain medical malpractice coverage. On September 24, 1990, the Board granted Respondent authorization to apply for Schedule IV and V controlled substance privileges, excluding the medication Buprenex. The Board further ordered that the Respondent could pursue the practice of medicine in Mississippi, at a State supported institution, such as the medical unit at the Mississippi State Penitentiary, or residency training at the University of Mississippi School of Medicine. At the time the Respondent selected a place of employment, he was to submit a plan of practice to the Board for its approval. The Board did not authorize the Respondent to engage in the solo practice of medicine. At the time of the September 24, 1990, Order the Respondent was not employed as a physician, and had not submitted a plan to the Board for approval.

At the DEA hearing and in the Government's proposed findings of fact,

conclusions of law and decision, an issue was raised concerning the current status of Respondent's state authority to handle controlled substances. The administrative law judge carefully reviewed the state medical board orders and determined that the Respondent is currently authorized to handle controlled substances in Schedules IV and V, excluding Buprenex. The Administrator concurs in this determination.

The administrative law judge further found that before August 1984, the Respondent had a serious substance abuse problem. At the DEA administrative hearing, the Respondent testified that he primarily abused alcohol, morphine and marijuana. He began abusing alcohol during his anesthesia residency in 1982 or 1983. The Respondent also stated that he smoked marijuana daily; that he took morphine from the hospital stock for his own personal use; and that he used drugs and alcohol while he was on duty at the medical center.

Since the Respondent's conviction in 1984, he has been involved in various drug treatment programs. In October 1984, he entered a three-month program in Whitfield, Mississippi, for chemical dependency. After treatment, he remained at the hospital as a volunteer counselor until approximately May 1988.

In 1987, the Respondent received the 1987 Distinguished Service Award from Governor Allain of Mississippi for his full-time volunteer work in the chemical dependency unit. The Respondent logged 6,586 hours of volunteer work, and served more than 1,000 patients during this time.

For three to four years following his conviction, the Respondent attended Alcoholics Anonymous meetings once or twice daily. Until 1992, the Respondent attended the Alcoholics Anonymous meetings five days per week. Respondent presently attends approximately one meeting a week. The Respondent also attends the Caduceus Club meetings one time per week. The Caduceus Club is comprised of physicians recovering from chemical dependency, who assist other physicians in the recovery process.

At the administrative hearing, a medical board investigator testified that he collected random urine specimens from the Respondent, once or twice monthly, over a three-year period. Each drug screen was negative over this period of time. The investigator further testified there had been no abuse or report of abuse of controlled substances by the Respondent since the mid-1980's.

The administrative law judge further noted that the Respondent has authored several articles regarding chemical dependency. Five of those articles have been published, and were submitted with the Respondent's brief for consideration.

Pursuant to 21 U.S.C. 823(f), the Administrator may deny an application for registration if he determines that such registration would be inconsistent with the public interest. Section 823(f) provides for consideration of the following factors in determining where the public interest lies:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority;

(2) The applicant's experience in dispensing or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution or dispensing of controlled substances.

(4) Compliance with applicable State, Federal or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health or safety.

These factors are to be considered in the disjunctive. That is, the Administrator may properly rely on any one or a combination of those factors, giving each the weight he deems appropriate in determining the public interest. See Henry J. Schwarz, Jr., M.D., Docket No. 88–42, 54 FR 16422 (1989).

The administrative law judge found that Respondent had been convicted of a felony offense relating to controlled substances. He further found that the Respondent had an extensive history of substance abuse. However, Respondent's drug abuse problem and felony conviction occurred almost ten years ago. Respondent has made great strides in his personal rehabilitation from substance abuse. The administrative law judge found that Respondent's testimony reflected sincere remorse for his prior unlawful activities and concluded that Respondent's remorse and rehabilitation permit a conclusion that Respondent's registration is consistent with the public interest. See Frank Chin, M.D., 57 FR 47673 (1992); Chin-Lin Cheng, M.D., 57 FR 18907 (1991).

The Administrator finds that there is sufficient evidence in the record to conclude that Respondent, given the opportunity, will utilize a DEA registration in a responsible and professional manner. The Administrator adopts the findings of fact, conclusions of law and recommended ruling of the administrative law judge in its entirety.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that the application for DEA registration submitted by Robert Takos, M.D., on November 26, 1990, be granted in Schedules IV and V, excluding Buprenex. This order is effective October 19, 1993.

Dated: October 13, 1993.

Robert C. Bonner,

Administrator Drug Enforcement.

[FR Doc. 93–25607 Filed 10–18–93; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

BACKGROUND: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting/recordkeeping requirements that will affect the public.

RECORDKEEPING/REPORTING REQUIREMENTS UNDER REVIEW: As necessary, the Department of Labor will publish Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last publication. These entries may include new collections, revisions, extensions, or reinstatements, if applicable. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and/or Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

COMMENTS AND QUESTIONS: Copies of the recordkeeping/reporting requirements included in each notice may be obtained by calling the Departmental Clearance Officer, Kenneth A. Mills ((202) 219–5095). Comments and questions about the items included in each notice should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue NW., room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ ETA/OLMS/MSHA/ OSHA/PWBA/VETS), Office of Management and Budget, room 3001, Washington, DC 20503 ((202) 395–6880).

Any member of the public who wants to comment on recordkeeping/reporting requirements which have been submitted to OMB should advise Mr. Mills of this intent at the earliest possible date.

Revision

Employment and Training Administration

Governor's Request for Advances from the Federal Unemployment Account or Requests for Voluntary Repayment of Such Advances 1205–0199.

State or local governments.

201 respondents; 1 hour per response; 201 total hours; no forms.

When State employment funds become insolvent, funds needed to continue unemployment benefits without interruption can be borrowed from the Federal Unemployment Account. To trigger a request for advances or a voluntary repayment the Governor or the person so delegated by the Governor must forward a formal letter to the Secretary of Labor.

Signed at Washington, DC, this 14th day of October, 1993.

Kenneth A. Mills,

Departmental Clearance Officer.

[FR Doc. 93–25621 Filed 10–18–93; 8:45 am]

BILLING CODE 4510–30–P

Senior Executive Service; Appointment of Members to the Performance Review Board

Title 5 U.S.C. 4314(c)(4) provides that Notice of the appointment of an individual to serve as a member of the Performance Review Board of the Senior Executive Service shall be published in the **Federal Register**.

The following individuals are hereby appointed to three-year terms on the Department's Performance Review Board:

Carol A. Gaudin
Thomas P. Glynn
James D. Henry
Meredith Miller
Peter E. Rell

FOR FURTHER INFORMATION CONTACT: Mr. Larry K. Goodwin, Director of Personnel Management, room C5526, U.S. Department of Labor, Frances Perkins Building, 200 Constitution Avenue NW., Washington, DC 20210, telephone: (202) 219–6551.

Signed at Washington, DC, this 12th day of October 1993.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 93–25622 Filed 10–18–93; 8:45 am]

BILLING CODE 4510–23–M

Employment and Training Administration

[TA–W–28,571]

G & L Machine, South Paris, ME; Revised Determination on Reconsideration

On October 1, 1993, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the former workers of the subject firm. The notice will soon be published in the **Federal Register**.

Investigation findings show that the workers produced screw machine parts. All production and employment ceased on March 17, 1993 when the plant was closed.

The Department's denial was based on the fact that the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act was not met.

New findings on reconsideration show that a major customer increased its imports of screw machine parts from Mexico while ceasing purchases from the subject firm during the relevant period.

Conclusion

After careful consideration of the new facts obtained on reconsideration, it is concluded that workers at G & L Machine in South Paris, Maine were adversely affected by increased imports of articles that are like or directly competitive with the screw machine parts previously produced at the subject firm.

In accordance with the provisions of the Act, I make the following revised determination for workers of G & L Machine in South Paris, Maine.

"All workers of G & L Machine in South Paris, Maine who became totally or partially separated from employment on or after March 31, 1992 and before October 1, 1993 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974."

Signed at Washington, DC, this 7th of October 1993.

Stephen A. Wandner,

Deputy Director, Officer of Legislation & Actuarial Service, Unemployment Insurance Service.

[FR Doc. 93–25626 Filed 10–18–93; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–28,785]

Leviton Manufacturing, Warwick, RI; Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance; Correction

This notice corrects the notice for petition TA–W–28,785 which was published in the **Federal Register** on July 7, 1993 (58 FR 36422) in FR Document 93–15996.

A printing error concerning the name and location of Cable Electric Prod., Leviton Manufacturing, Providence, Rhode Island appears in the 2nd line of the first and second columns in the appendix table on page 36422. The name should read "Leviton Manufacturing" and the location should read "Warwick, Rhode Island" instead of Cable Electric Prod., Leviton Manufacturing, Providence, Rhode Island.

Signed in Washington, DC, this October 7, 1993.

Marvin. M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93–25625 Filed 10–18–93; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–28,969]

Sonny Styles, Inc., Scranton, PA; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on August 16, 1993 in response to a worker petition which was filed on August 5, 1993 on behalf of workers at Sonny Styles, Incorporated, operating out of Scranton, Pennsylvania.

The Department of Labor has been unable to contact the petitioners and/or the officials of the subject firm, to obtain the necessary data regarding the subject facility in order to make a determination. State agency officials state they have no records of Sonny Styles. Since the essential information is not available for the Department to make a determination as to whether the workers at the subject firm are eligible for adjustment assistance benefits,

therefore, the investigation has been terminated.

Signed at Washington, DC this 7th day of October 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93–25624 Filed 10–18–93; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–28,830; TA–W–28,831]

Winters Industries, Canton, OH and Alliance, OH; Affirmative Determination Regarding Application for Reconsideration

On September 25, 1993, the company requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers at the subject firm. The Department's Negative Determination was issued on August 27, 1993 and published in the **Federal Register** on September 17, 1993 (58 FR 48678).

The company is submitting additional lost bid information and data showing that worker separations and sales declines occurred in 1993.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this day of October 7, 1993.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 93–25623 Filed 10–18–93; 8:45 am]

BILLING CODE 4510–30–M

Labor Surplus Area Classifications Under Executive Orders 12073 and 10582; Notice of the Annual List of Labor Surplus Areas

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The purpose of this notice is to announce the annual list of labor surplus areas.

DATES: The annual list of labor surplus areas is effective October 1, 1993, through September 30, 1994.

FOR FURTHER INFORMATION CONTACT: Richard C. Hardin, Chief, Division of Planning, Employment and Training Administration, 200 Constitution Avenue, NW., room N–4470, Attention: TEESS, Washington, DC 20210. Telephone: 202–219–5185.

SUPPLEMENTARY INFORMATION: Executive Order 12073 requires executive agencies to emphasize procurement set-asides in labor surplus areas. The Secretary of Labor is responsible under that Order for classifying and designating areas as labor surplus areas. Executive agencies should refer to Federal Acquisition Regulation part 20 (48 CFR part 20) in order to assess the impact of the labor surplus area program on particular procurements.

Under Executive Order 10582 executive agencies may reject bids or offers of foreign materials in favor of the lowest offer by a domestic supplier, provided that the domestic supplier undertakes to produce substantially all of the materials in areas of substantial unemployment as defined by the Secretary of Labor. The preference given to domestic suppliers under Executive Order 10582 has been modified by Executive Order 12260. Federal Acquisition Regulation part 25 (48 CFR part 25) implements Executive Order 12260. Executive agencies should refer to Federal Acquisition Regulation part 25 in procurements involving foreign businesses or products in order to assess its impact on the particular procurements.

The Department of Labor regulations implementing Executive Orders 12073 and 10582 are set forth at 20 CFR part 654, subparts A and B. Subpart A requires the Assistant Secretary of Labor to classify jurisdictions as labor surplus areas pursuant to the criteria specified in the regulations and to publish annually a list of labor surplus areas. Pursuant to those regulations the Assistant Secretary of Labor is publishing the annual list of labor surplus areas.

Subpart B of part 654 states that an area of substantial unemployment for purposes of Executive Order 10582 is any area classified as a labor surplus area under subpart A. Thus, labor surplus areas under Executive Order 12073 are also areas of substantial unemployment under Executive Order 10582.

The areas described below have been classified by the Assistant Secretary of Labor as labor surplus areas pursuant to 20 CFR 654.5(b) (48 FR 15615 April 12, 1983) and are effective October 1, 1993, through September 30, 1994.

The list of labor surplus areas is published for the use of all Federal agencies in directing procurement activities and locating new plants or facilities.

Signed at Washington, DC, on October 4, 1993.

Doug Ross,

Assistant Secretary.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE OCTOBER 1, 1993 THROUGH SEPTEMBER 30, 1994

Eligible labor surplus areas	Civil jurisdictions included
Alabama:	
Anniston City	Anniston City in Calhoun County.
Barbour County	Barbour County.
Bessemer City	Bessemer City in Jefferson County.
Bibb County	Bibb County.
Bullock County	Bullock County.
Butler County	Butler County.
Chambers County	Chambers County.
Cherokee County	Cherokee County.
Chilton County	Chilton County.
Choctaw County	Choctaw County.
Clarke County	Clarke County.
Colbert County	Colbert County.
Conecuh County	Conecuh County.
Covington County	Covington County.
Escambia County	Escambia County.
Fayette County	Fayette County.
Florence City	Florence City in Lauderdale County.
Gadsden City	Gadsden City in Etowah County.
Greene County	Greene County.
Hale County	Hale County.
Jackson County	Jackson County.
Lamar County	Lamar County.
Lawrence County	Lawrence County.
Lowndes County	Lowndes County.
Marion County	Marion County.
Monroe County	Monroe County.
Perry County	Perry County.
Pickens County	Pickens County.
Prichard City	Prichard City in Mobile County.
Randolph County	Randolph County.
Selma City	Selma City in Dallas County.
Sumter County	Sumter County.
Talladega County	Talladega County.
Walker County	Walker County.
Washington County	Washington County.
Wilcox County	Wilcox County.
Winston County	Winston County.
Alaska:	
Bethel Census Area	Bethel Census Area.
Fairbanks City	Fairbanks City in Fairbanks North Star Borough.
Balance of Fairbanks North Star Borough.	Fairbanks North Star Borough less Fairbanks City.
Haines Borough	Haines Borough.
Kenai Peninsula Borough.	Kenai Peninsula Borough.
Ketchikan Gateway Borough.	Ketchikan Gateway Borough.
Kodiak Island Borough.	Kodiak Island Borough.
Matanuska-Susitna Borough.	Matanuska-Susitna Borough.
Nome Census Area	Nome Census Area.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE OCTOBER 1, 1993 THROUGH SEPTEMBER 30, 1994—Continued

Eligible labor surplus areas	Civil jurisdictions included
Northwest Arctic Borough.	Northwest Arctic Borough.
Prince of Wales Outer Ketchikan.	Prince of Wales Outer Ketchikan.
Skagway Yakutat Angoon Cens Area.	Skagway Yakutat Angoon Cens Area.
Southeast Fairbanks Census Area.	Southeast Fairbanks Census Area.
Valdez Cordova Census Area.	Valdez Cordova Census Area.
Wade Hampton Census Area.	Wade Hampton Census Area.
Wrangell-Petersburg Census Area.	Wrangell-Petersburg Census Area.
Yukon-Koyukuk Census Area.	Yukon-Koyukuk Census Area.
Arizona:	
Apache County	Apache County.
Balance of Cochise County.	Cochise County less Sierra Vista City.
Balance of Coconino County.	Coconino County less Flagstaff City.
Gila County	Gila County.
La Paz County	La Paz County.
Navajo County	Navajo County.
Pinal County	Pinal County.
Santa Cruz County	Santa Cruz County.
Yuma City	Yuma City in Yuma County.
Balance of Yuma County.	Yuma County less Yuma City.
Arkansas:	
Bradley County	Bradley County.
Chicot County	Chicot County.
Cleburne County	Cleburne County.
Conway County	Conway County.
Crawford County	Crawford County.
Balance of Crittenden County.	Crittenden County less West Memphis City.
Cross County	Cross County.
Desha County	Desha County.
Drew County	Drew County.
Hot Spring County	Hot Spring County.
Jackson County	Jackson County.
Jacksonville City	Jacksonville City in Pulaski County.
Lafayette County	Lafayette County.
Lawrence County	Lawrence County.
Lee County	Lee County.
Lincoln County	Lincoln County.
Little River County	Little River County.
Mississippi County	Mississippi County.
Monroe County	Monroe County.
Nevada County	Nevada County.
Ouachita County	Ouachita County.
Phillips County	Phillips County.
Pike County	Pike County.
Pine Bluff City	Pine Bluff City in Jefferson County.
Poinsett County	Poinsett County.
Prairie County	Prairie County.
Randolph County	Randolph County.
St. Francis County	St. Francis County.
Van Buren County	Van Buren County.
White County	White County.
Woodruff County	Woodruff County.
California:	
Alpine County	Alpine County.
Amador County	Amador County.
Antioch City	Antioch City in Contra Costa County.
Apple Valley City	Apple Valley City in San Bernardino County.
Azusa City	Azusa City in Los Angeles County.
Bakersfield City	Bakersfield City in Kern County.
Baldwin Park City	Baldwin Park City in Los Angeles County.
Bell City	Bell City in Los Angeles County.
Bell Gardens City	Bell Gardens City in Los Angeles County.
Balance of Butte County.	Butte County less Chico City, Paradise City.
Calaveras County	Calaveras County.
Carson City	Carson City in Los Angeles County.
Cathedral City	Cathedral City in Riverside County.
Chico City	Chico City in Butte County.
Clovis City	Clovis City in Fresno County.
Colton City	Colton City in San Bernardino County.
Colusa County	Colusa County.
Compton City	Compton City in Los Angeles County.
Corona City	Corona City in Riverside County.
Del Norte County	Del Norte County.
El Cajon City	El Cajon City in San Diego County.
El Centro City	El Centro City in Imperial County.
El Monte City	El Monte City in Los Angeles County.
Fairfield City	Fairfield City in Solano County.
Fontana City	Fontana City in San Bernardino County.
Fresno City	Fresno City in Fresno County.
Balance of Fresno County.	Fresno County less Clovis City.
Gilroy City	Gilroy City in Santa Clara County.
Glendale City	Glendale City in Los Angeles County.
Glenn County	Glenn County.
Hanford City	Hanford City in Kings County.
Hawthorne City	Hawthorne City in Los Angeles County.
Hemet City	Hemet City in Riverside County.
Hesperia City	Hesperia City in San Bernardino County.
Highland City	Highland City in San Bernardino County.
Humboldt County	Humboldt County.
Huntington Park City.	Huntington Park City in Los Angeles County.
Imperial Beach City	Imperial Beach City in San Diego County.
Balance of Imperial County.	Imperial County less El Centro City.
Indio City	Indio City in Riverside County.
Inglewood City	Inglewood City in Los Angeles County.
Inyo County	Inyo County.
Balance of Kern County.	Kern County less Bakersfield City.
Balance of Kings County.	Kings County less Hanford City.
La Puente City	La Puente City in Los Angeles County.
Lake County	Lake County.
Lancaster City	Lancaster City in Los Angeles County.
Lassen County	Lassen County.
Lawndale City	Lawndale City in Los Angeles County.
Lodi City	Lodi City in San Joaquin County.
Lompoc City	Lompoc City in Santa Barbara County.
Long Beach City	Long Beach City in Los Angeles County.
Los Angeles City	Los Angeles City in Los Angeles County.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE OCTOBER 1, 1993 THROUGH SEPTEMBER 30, 1994—Continued

Eligible labor surplus areas	Civil jurisdictions included
Balance of Los Angeles County.	Los Angeles County less Alhambra City, Arcadia City, Azusa City, Baldwin Park City, Bell City, Bell Gardens City, Bellflower City, Beverly Hills City, Burbank City, Carson City, Cerritos City, Claremont City, Compton City, Covina City, Culver City, Downey City, El Monte City, Gardena City, Glendale City, Glendora City, Hawthorne City, Huntington Park City, Inglewood City, La Mirada City, La Puente City, La Verne City, Lakewood City.
Lancaster City,	Lawndale City, Long Beach City, Los Angeles City, Lynwood City, Manhattan Beach City, Maywood City, Monrovia, City, Montebello, City, Monterey Park City, Norwalk City, Palmdale City, Paramount City, Pasadena City, Pico Rivera City, Pomona City, Rancho Palos Verdes City, Redondo Beach City, Rosemead City, San Dimas City, San Gabriel City, Santa Monica City, South Gate City, Temple City, Torrance City, Walnut City, West Covina City, West Hollywood City, Whittier City.
Lynwood City	Lynwood City in Los Angeles County.
Madera City	Madera City in Madera County.
Balance of Madera County.	Madera County less Madera City.
Manteca City	Manteca City in San Joaquin County.
Maywood City	Maywood City in Los Angeles County.
Mendocino County, Merced City.	Mendocino County, Merced City in Merced County.
Balance of Merced County.	Merced County less Merced City.
Modesto City	Modesto City in Stanislaus County.
Modoc County	Modoc County.
Mono County	Mono County.
Montclair City	Montclair City in San Bernardino County.
Montebello City	Montebello City in Los Angeles County.
Balance of Monterey County.	Monterey County less Marina City, Monterey City, Salinas City, Seaside City.
Napa City	Napa City in Napa County.
National City	National City in San Diego County.
Nevada County	Nevada County.
Norco City	Norco City in Riverside County.
Norwalk City	Norwalk City in Los Angeles County.
Oakland City	Oakland City in Alameda County.
Oceanside City	Oceanside City in San Diego County.
Ontario City	Ontario City in San Bernardino County.
Oxnard City	Oxnard City in Ventura County.
Palm Springs City	Palm Springs City in Riverside County.
Palmdale City	Palmdale City in Los Angeles County.
Paradise City	Paradise City in Butte County.
Paramount City	Paramount City in Los Angeles County.
Pico Rivera City	Pico Rivera City in Los Angeles County.
Pittsburg City	Pittsburg City in Contra Costa County.
Plumas County	Plumas County.
Pomona City	Pomona City in Los Angeles County.
Porterville City	Porterville City in Tulare County.
Redding City	Redding City in Shasta County.
Rialto City	Rialto City in San Bernardino County.
Richmond City	Richmond City in Contra Costa County.
Riverside City	Riverside City in Riverside County.
Balance of Riverside County.	Riverside County less Cathedral City, Corona City, Hemet City, Indio City, Norco City, Palm Springs City, Riverside City.
Rosemead City	Rosemead City in Los Angeles County.
Roseville City	Roseville City in Placer County.
Sacramento City	Sacramento City in Sacramento County.
Salinas City	Salinas City in Monterey County.
San Benito County	San Benito County.
San Bernardino City	San Bernardino City in San Bernardino County.
Balance of San Bernardino County.	San Bernardino County less Apple Valley City, Chino City, Colton City, Fontana City, Hesperia City, Highland City, Montclair City, Ontario City, Rancho Cucamonga City, Redlands City, Rialto City, San Bernardino City.
	Upland City, Victorville City.
Balance of San Joaquin County.	San Joaquin County less Lodi City, Manteca City, Stockton City, Tracey City.
Santa Ana City	Santa Ana City in Orange County.
Santa Maria City	Santa Maria City in Santa Barbara County.
Seaside City	Seaside City in Monterey County.
Balance of Shasta County.	Shasta County less Redding City.
Sierra County	Sierra County.
Siskiyou County	Siskiyou County.
South Gate City	South Gate City in Los Angeles County.
Balance of Stanislaus County.	Stanilaus County less Modesto City, Turlock City.
Stanton City	Stanton City in Orange County.
Stockton City	Stockton City in San Joaquin County.
Sutter County	Sutter County.
Tehama County	Tehama County.
Tracey City	Tracey City in San Joaquin County.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE OCTOBER 1, 1993 THROUGH SEPTEMBER 30, 1994—Continued

Eligible labor surplus areas	Civil jurisdictions included
Trinity County	Trinty County.
Tulare City	Tulare City in Tulare County.
Balance of Tulare County.	Tulare County less Porterville City, Tulare City, Visalia City.
Tuolumne County	Tuolumne County.
Turlock City	Turlock City in Stanislaus County.
Vallejo City	Vallejo City in Solano County.
Victorville City	Victorville City in San Bernardino County.
Visalia City	Visalia City in Tulare County.
Watsonville City	Watsonville City in Santa Cruz County.
West Hollywood City.	West Hollywood City in Los Angeles County.
West Sacramento City.	West Sacramento City in Yolo County.
Woodland City	Woodland City in Yolo County.
Balance of Yolo County.	Yolo County less Davis City, West Sacramento City, Woodland City.
Yuba County	Yuba County.
Colorado:	
Archuleta County	Archuleta County.
Conejos County	Conejos County.
Costilla County	Costilla County.
Delta County	Delta County.
Dolores County	Dolores County.
Grand Junction City	Grand Junction City in Mesa County.
Lake County	Lake County.
Las Animas County	Las Animas County.
Rio Grande County	Rio Grande County.
Saguache County	Saguache County.
San Juan County	San Juan County.
Connecticut:	
Ansonia Town	Ansonia Town.
Bridgeport City	Bridgeport City.
Bristol City	Bristol City.
Canterbury Town	Canterbury Town.
Derby Town	Derby Town.
East Haven Town	East Haven Town.
Hartford City	Hartford City.
Killingly Town	Killingly Town.
Meriden City	Meriden City.
Naugatuck Town	Naugatuck Town.
New Britain City	New Britain City.
Plainfield Town	Plainfield Town.
Plainville Town	Plainville Town.
Plymouth Town	Plymouth Town.
Prospect Town	Prospect Town.
Putnam Town	Putnam Town.
Sprague Town	Sprague Town.
Sterling Town	Sterling Town.
Thomaston Town	Thomaston Town.
Thompson Town	Thompson Town.
Torrington City	Torrington City.
Waterbury City	Waterbury City.
Watertown Town	Watertown Town.
Winchester Town	Winchester Town.
Wolcott Town	Wolcott Town.
Florida:	
Baker County	Baker County.
Boynton Beach City	Boynton Beach City in Palm Beach County.
Calhoun County	Calhoun County.
Citrus County	Citrus County.
Collier County	Collier County.
Columbia County	Columbia County.
Daytona Beach City	Daytona Beach City in Volusia County.
De Soto County	De Soto County.
Delray Beach City	Delray Beach City in Palm Beach County.
Dixie County	Dixie County.
Flagler County	Flagler County.
Fort Myers City	Fort Myers City in Lee County.
Port Pierce City	Fort Pierce City in St. Lucie County.
Ft Lauderdale City	Ft Lauderdale City in Broward County.
Glades County	Glades County.
Greenacres City	Greenacres City in Palm Beach County.
Gulf County	Gulf County.
Hallandale City	Hallandale City in Broward County.
Hamilton County	Hamilton County.
Hardee County	Hardee County.
Hendry County	Hendry County.
Hernando County	Hernando County.
Hialeah City	Hialeah City in Dade County.
Highlands County	Highlands County.
Hollywood City	Hollywood City in Broward County.
Indian River County	Indian River County.
Lake County	Lake County.
Lake Worth City	Lake Worth City in Palm Beach County.
Lakeland City	Lakeland City in Polk County.
Lauderdale Lakes City.	Lauderdale Lakes City in Broward County.
Balance of Marion County.	Marion County Less Ocala City.
Martin County	Martin County.
Melbourne City	Melbourne City in Brevard County.
Miami Beach City	Miami Beach City in Dade County.
Miami City	Miami City in Dade County.
North Miami City	North Miami City in Dade County.
Ocala City	Ocala City in Marion County.
Okeechobee County.	Okeechobee County.
Balance of Palm Beach County.	Palm Beach County Less Boca Raton City, Boynton Beach City, Delray Beach City, Greenacres City, Jupiter City, Lake Worth City, Riviera Beach City, West Palm Beach City.
Panama City	Panama City in Bay County.
Balance of Polk County.	Polk County Less Lakeland City.
Pompano Beach City.	Pompano Beach City in Broward County.
Port St. Lucie City	Port St. Lucie City in St. Lucie County.
Putnam County	Putnam County.
Riviera Beach City	Riviera Beach City in Palm Beach County.
Balance of St. Lucie County.	St. Lucie County Less Fort Pierce City, Port St. Lucie City.
Sumter County	Sumter County.
Suwannee County	Suwannee County.
Taylor County	Taylor County.
West Palm Beach City.	West Palm Beach City in Palm Beach County.
Georgia:	
Appling County	Appling County.
Atlanta City	Atlanta City in De Kalb County, Fulton County.
Augusta City	Augusta City in Richmond County.
Baker County	Baker County.
Bartow County	Bartow County.
Brantley County	Brantley County.
Burke County	Burke County.
Calhoun County	Calhoun County.
Chattooga County	Chattooga County.
Crawford County	Crawford County.
Dawson County	Dawson County.
Early County	Early County.
Elbert County	Elbert County.
Emanuel County	Emanuel County.
Hancock County	Hancock County.
Haralson County	Haralson County.
Heard County	Heard County.
Jasper County	Jasper County.
La Grange City	La Grange City in Troup County.
Macon County	Macon County.
Meriwether County	Meriwether County.
Miller County	Miller County.
Mitchell County	Mitchell County.
Pickens County	Pickens County.
Polk County	Polk County.
Quitman County	Quitman County.
Schley County	Schley County.
Screven County	Screven County.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE OCTOBER 1, 1993 THROUGH SEPTEMBER 30, 1994—Continued

Eligible labor surplus areas	Civil jurisdictions included
Seminole County	Seminole County.
Stewart County	Stewart County.
Turner County	Turner County.
Warren County	Warren County.
Webster County	Webster County.
Idaho:	
Adams County	Adams County.
Benewah County	Benewah County.
Bonner County	Bonner County.
Boundary County	Boundary County.
Clearwater County	Clearwater County.
Gem County	Gem County.
Idaho County	Idaho County.
Lemhi County	Lemhi County.
Balance of Nez Perce County.	Nez Perce County Less Lewiston City.
Power County	Power County.
Shoshone County	Shoshone County.
Valley County	Valley County.
Illinois:	
Alexander County	Alexander County.
Alton City	Alton City in Madison County.
Aurora City	Aurora City in Du Page County, Kane County.
Belleville City	Belleville City in St. Clair County.
Bond County	Bond County.
Boone County	Boone County.
Calhoun County	Calhoun County.
Carpentersville City	Carpentersville City in Kane County.
Cass County	Cass County.
Chicago City	Chicago City in Cook County.
Christian County	Christian County.
Cicero City	Cicero City in Cook County.
Clark County	Clark County.
Clay County	Clay County.
Crawford County	Crawford County.
Cumberland County	Cumberland County.
Danville City	Danville City in Vermilion County.
Decatur City	Decatur City in Macon County.
East St. Louis City	East St. Louis City in St. Clair County.
Edgar County	Edgar County.
Edwards County	Edwards County.
Effingham County	Effingham County.
Elgin City	Elgin City in Cook County, Kane County.
Fayette County	Fayette County.
Franklin County	Franklin County.
Freeport City	Freeport City in Stephenson County.
Fulton County	Fulton County.
Gallatin County	Gallatin County.
Granite City	Granite City in Madison County.
Greene County	Greene County.
Grundy County	Grundy County.
Hamilton County	Hamilton County.
Harvey City	Harvey City in Cook County.
Balance of Jackson County.	Jackson County less Carbondale City.
Jefferson County	Jefferson County.
Johnson County	Johnson County.
Joliet City	Joliet City in Will County.
Kankakee City	Kankakee City in Kankakee County.
La Salle County	La Salle County.
Lawrence County	Lawrence County.
Macoupin County	Macoupin County.
Marion County	Marion County.
Mason County	Mason County.
Massac County	Massac County.
Maywood Village	Maywood Village in Cook County.
Mercer County	Mercer County.
Montgomery County.	Montgomery County.
North Chicago City	North Chicago City in Lake County.
Pekin City	Pekin City in Tazewell County.
Perry County	Perry County.
Pike County	Pike County.
Pope County	Pope County.
Pulaski County	Pulaski County.
Putnam County	Putnam County.
Quincy City	Quincy City in Adams County.
Randolph County	Randolph County.
Balance of Rock Island County.	Rock Island County less Moline City, Rock Island City.
Rockford City	Rockford City in Winnebago County.
Saline County	Saline County.
Scott County	Scott County.
Shelby County	Shelby County.
Stark County	Stark County.
Union County	Union County.
Balance of Vermilion County.	Vermilion County less Danville City.
Wabash County	Wabash County.
Wayne County	Wayne County.
White County	White County.
Williamson County	Williamson County.
Indiana:	
Anderson City	Anderson City in Madison County.
Blackford County	Blackford County.
Crawford County	Crawford County.
East Chicago City	East Chicago City in Lake County.
Fayette County	Fayette County.
Fountain County	Fountain County.
Gary City	Gary City in Lake County.
Henry County	Henry County.
Jay County	Jay County.
Kokomo City	Kokomo City in Howard County.
Lawrence County	Lawrence County.
Marion City	Marion City in Grant County.
Michigan City	Michigan City in La Porte County.
Orange County	Orange County.
Perry County	Perry County.
Randolph County	Randolph County.
Richmond City	Richmond City in Wayne County.
Starke County	Starke County.
Sullivan County	Sullivan County.
Switzerland County	Switzerland County.
Union County	Union County.
Balance of Wayne County.	Wayne County less Richmond City.
Iowa:	
Ottumwa City	Ottumwa City in Wapello County.
Kansas:	
Linn County	Linn County.
Kentucky:	
Ashland City	Ashland City in Boyd County.
Ballard County	Ballard County.
Bath County	Bath County.
Bell County	Bell County.
Bracken County	Bracken County.
Breathitt County	Breathitt County.
Breckinridge County.	Breckinridge County.
Caldwell County	Caldwell County.
Carlisle County	Carlisle County.
Carter County	Carter County.
Casey County	Casey County.
Clay County	Clay County.
Clinton County	Clinton County.
Crittenden County	Crittenden County.
Cumberland County	Cumberland County.
Edmonson County	Edmonson County.
Elliott County	Elliott County.
Estill County	Estill County.
Fleming County	Fleming County.
Floyd County	Floyd County.
Fulton County	Fulton County.
Gallatin County	Gallatin County.
Garrard County	Garrard County.
Graves County	Graves County.
Grayson County	Grayson County.
Greenup County	Greenup County.
Hancock County	Hancock County.
Harlan County	Harlan County.
Hart County	Hart County.
Henderson City	Henderson City in Henderson County.
Hopkins County	Hopkins County.
Jackson County	Jackson County.
Johnson County	Johnson County.
Knott County	Knott County.
Knox County	Knox County.
Lawrence County	Lawrence County.
Lee County	Lee County.
Leslie County	Leslie County.
Letcher County	Letcher County.
Lewis County	Lewis County.
Lincoln County	Lincoln County.
Livingston County	Livingston County.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE OCTOBER 1, 1993 THROUGH SEPTEMBER 30, 1994—Continued

Eligible labor surplus areas	Civil jurisdictions included
Magoffin County	Magoffin County.
Marion County	Marion County.
Martin County	Martin County.
McCreary County	McCreary County.
McLean County	McLean County.
Meade County	Meade County.
Menifee County	Menifee County.
Montgomery County.	Montgomery County.
Morgan County	Morgan County.
Muhlenberg County	Muhlenberg County.
Ohio County	Ohio County.
Pendleton County	Pendleton County.
Perry County	Perry County.
Pike County	Pike County.
Powell County	Powell County.
Pulaski County	Pulaski County.
Robertson County	Robertson County.
Russel County	Russell County.
Balance of Warren County.	Warren County less Bowling Green City.
Wayne County	Wayne County.
Webster County	Webster County.
Whitley County	Whitley County.
Wolfe County	Wolfe County.
Louisiana:	
Acadia Parish	Acadia Parish.
Alexandria City	Alexandria City in Rapides Parish.
Allen Parish	Allen Parish.
Assumption Parish	Assumption Parish.
Avoyelles Parish	Avoyelles Parish.
Bienville Parish	Bienville Parish.
Caldwell Parish	Caldwell Parish.
Catahoula Parish	Catahoula Parish.
Concordia Parish	Concordia Parish.
De Soto Parish	De Soto Parish.
East Carroll Parish	East Carroll Parish.
Franklin Parish	Franklin Parish.
Grant Parish	Grant Parish.
Houma City	Houma City in Terrebonne Parish.
Batance of Iberia Parish.	Iberia Parish less New Iberia City.
Iberville Parish	Iberville Parish.
Jefferson Davis Parish.	Jefferson Davis Parish.
La Salle Parish	La Salle Parish.
Lake Charles City	Lake Charles City in Calcasieu Parish.
Livingston Parish	Livingston Parish.
Madison Parish	Madison Parish.
Monroe City	Monroe City in Ouachita Parish.
Morehouse Parish	Morehouse Parish.
New Iberia City	New Iberia City in Iberia Parish.
Pointe Coupee Parish.	Pointe Coupee Parish.
Red River Parish	Red River Parish.
Richland Parish	Richland Parish.
St. Helena Parish	St. Helena Parish.
St. James Parish	St. James Parish.
St. John Baptist Parish.	St. John Baptist Parish.
St. Landry Parish	St. Landry Parish.
St. Mary Parish	St. Mary Parish.
Tangipahoa Parish	Tangipahoa Parish.
Tensas Parish	Tensas Parish.
Balance of Terrebonne Parish.	Terrebonne Parish less Houma City.
Vermilion Parish	Vermilion Parish.
Washington Parish	Washington Parish.
Webster Parish	Webster Parish.
West Carroll Parish	West Carroll Parish.
Maine:	
Balance of Androscoggin County.	Androscoggin County less Lewiston City.
Aroostook County	Aroostook County.
Lewiston City	Lewiston City in Androscoggin County.
Oxford County	Oxford County.
Piscataquis County	Piscataquis County.
Somerset County	Somerset County.
Waldo County	Waldo County.
Washington County	Washington County.
Maryland:	
Allegany County	Allegany County.
Annapolis City	Annapolis City in Anne Arundel County.
Baltimore City	Baltimore City.
Cecil County	Cecil County.
Dorchester County	Dorchester County.
Garrett County	Garrett County.
Hagerstown City	Hagerstown City in Washington County.
Somerset County	Somerset County.
Wicomico County	Wicomico County.
Worcester County	Worcester County.
Massachusetts:	
Abington Town	Abington Town in Plymouth County.
Acushnet Town	Acushnet Town in Bristol County.
Adams Town	Adams Town in Berkshire County.
Amesbury Town	Amesbury Town in Essex County.
Ashburnham Town	Ashburnham Town in Worcester County.
Ashby Town	Ashby Town in Middlesex County.
Athol Town	Athol Town in Worcester County.
Attleboro City	Attleboro City in Bristol County.
Avon Town	Avon Town in Norfolk County.
Ayer Town	Ayer Town in Middlesex County.
Barnstable Town	Barnstable Town in Barnstable County.
Barre Town	Barre Town in Worcester County.
Becket Town	Becket Town in Berkshire County.
Bellingham Town	Bellingham Town in Norfolk County.
Berkley Town	Berkley Town in Bristol County.
Billerica Town	Billerica Town in Middlesex County.
Blackstone Town	Blackstone Town in Worcester County.
Blandford Town	Blandford Town in Hampden County.
Bourne Town	Bourne Town in Barnstable County.
Boylston Town	Boylston Town in Worcester County.
Bridgewater Town	Bridgewater Town in Plymouth County.
Brimfield Town	Brimfield Town in Hampden County.
Brockton City	Brockton City in Plymouth County.
Brookfield Town	Brookfield Town in Worcester County.
Carver Town	Carver Town in Plymouth County.
Charlemont Town	Charlemont Town in Franklin County.
Charlton Town	Charlton Town in Worcester County.
Chelsea City	Chelsea City in Suffolk County.
Cheshire Town	Cheshire Town in Berkshire County.
Chester Town	Chester Town in Hampden County.
Chesterfield Town	Chesterfield Town in Hampshire County.
Chicopee City	Chicopee City in Hampden County.
Clarksburg Town	Clarksburg Town in Berkshire County.
Clinton Town	Clinton Town in Worcester County.
Cummington Town	Cummington Town in Hampshire County.
Dartmouth Town	Dartmouth Town in Bristol County.
Dennis Town	Dennis Town In Barnstable County.
Dighton Town	Dighton Town in Bristol County.
Douglas Town	Douglas Town in Worcester County.
Dracut Town	Dracut Town in Middlesex County.
Dudley Town	Dudley Town in Worcester County.
East Bridgewater Town.	East Bridgewater Town in Plymouth County.
East Brookfield Town.	East Brookfield Town in Worcester County.
Eastham Town	Eastham Town in Barnstable County.
Easthampton Town	Easthampton Town in Hampshire County.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE OCTOBER 1, 1993 THROUGH SEPTEMBER 30, 1994—Continued

Eligible labor surplus areas	Civil jurisdictions included
Easton Town	Easton Town in Bristol County.
Edgartown Town	Edgartown Town in Dukes County.
Erving Town	Erving Town in Franklin County.
Everett City	Everett City in Middlesex County.
Fairhaven Town	Fairhaven Town in Bristol County.
Fall River City	Fall River City in Bristol County.
Falmouth Town	Falmouth Town in Barnstable County.
Fitchburg City	Fitchburg City in Worcester County.
Freetown Town	Freetown Town in Bristol County.
Gardner Town	Gardner Town in Worcester County.
Gay Head Town	Gay Head Town in Dukes County.
Gloucester City	Gloucester City in Essex County.
Grafton Town	Grafton Town in Worcester County.
Granby Town	Granby Town in Hampshire County.
Halifax Town	Halifax Town in Plymouth County.
Hanson Town	Hanson Town in Plymouth County.
Hardwick Town	Hardwick Town in Worcester County.
Harwich Town	Harwich Town in Barnstable County.
Haverhill City	Haverhill City in Essex County.
Hinsdale Town	Hinsdale Town in Berkshire County.
Holbrook Town	Holbrook Town in Norfolk County.
Holland Town	Holland Town in Hampden County.
Holyoke City	Holyoke City in Hampden County.
Hubbardston Town	Hubbardston Town in Worcester County.
Hudson Town	Hudson Town in Middlesex County.
Hull Town	Hull Town in Plymouth County.
Huntington Town	Huntington Town in Hampshire County.
Kingston Town	Kingston Town in Plymouth County.
Lakeville Town	Lakeville Town in Plymouth County.
Lanesbough Town	Lanesbough Town in Berkshire County.
Lawrence City	Lawrence City in Essex County.
Lee Town	Lee Town in Berkshire County.
Leicester Town	Leicester Town in Worcester County.
Lenox Town	Lenox Town in Berkshire County.
Leominster City	Leominster City in Worcester County.
Leyden Town	Leyden Town in Franklin County.
Lowell City	Lowell City in Middlesex County.
Ludlow Town	Ludlow Town in Hampden County.
Lunenberg Town	Lunenberg Town in Worcester County.
Lynn City	Lynn City in Essex County.
Malden City	Malden City in Middlesex County.
Marshfield Town	Marshfield Town in Plymouth County.
Mashpee Town	Mashpee Town in Barnstable County.
Medway Town	Medway Town in Norfolk County.
Mendon Town	Mendon Town in Worcester County.
Merrimac Town	Merrimac Town in Essex County.
Methuen Town	Methuen Town in Essex County.
Middleborough Town.	Middleborough Town in Plymouth County.
Middlefield Town	Middlefield Town in Hampshire County.
Milford Town	Milford Town in Worcester County.
Millbury Town	Millbury Town in Worcester County.
Millville Town	Millville Town in Worcester County.
Monroe Town	Monroe Town in Franklin County.
Monson Town	Monson Town in Hampden County.
Montague Town	Montague Town in Franklin County.
New Bedford City	New Bedford City in Bristol County.
New Braintree Town.	New Braintree Town in Worcester County.
New Salem Town	New Salem Town in Franklin County.
North Adams Town	North Adams Town in Berkshire County.
North Brookfield Town.	North Brookfield Town in Worcester County.
Northbridge Town	Northbridge Town in Worcester County.
Norton Town	Norton Town in Bristol County.
Oakham Town	Oakham Town in Worcester County.
Orange Town	Orange Town in Franklin County.
Orleans Town	Orleans Town in Barnstable County.
Otis Town	Otis Town in Berkshire County.
Oxford Town	Oxford Town in Worcester County.
Palmer Town	Palmer Town in Hampden County.
Pembroke Town	Pembroke Town in Plymouth County.
Peru Town	Peru Town in Berkshire County.
Petersham Town	Petersham Town in Worcester County.
Phillipston Town	Phillipston Town in Worcester County.
Pittsfield City	Pittsfield City in Berkshire County.
Plainfield Town	Plainfield Town in Hampshire County.
Plainville Town	Plainville Town in Norfolk County.
Plymouth Town	Plymouth Town in Plymouth County.
Plympton Town	Plympton Town in Plymouth County.
Provincetown Town	Provincetown Town in Barnstable County.
Quincy City	Quincy City in Norfolk County.
Randolph Town	Randolph Town in Norfolk County.
Raynham Town	Raynham Town in Bristol County.
Rehoboth Town	Rehoboth Town in Bristol County.
Revere City	Revere City in Suffolk County.
Rochester Town	Rochester Town in Plymouth County.
Rockland Town	Rockland Town in Plymouth County.
Rockport Town	Rockport Town in Essex County.
Rowe Town	Rowe Town in Franklin County.
Royalston Town	Royalston Town in Worcester County.
Rutland Town	Rutland Town in Worcester County.
Salem City	Salem City in Essex County.
Salisbury Town	Salisbury Town in Essex County.
Sandisfield Town	Sandisfield Town in Berkshire County.
Sandwich Town	Sandwich Town in Barnstable County.
Saugus Town	Saugus Town in Essex County.
Savoy Town	Savoy Town in Berkshire County.
Seekonk Town	Seekonk Town in Bristol County.
Shelburne Town	Shelburne Town in Franklin County.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE OCTOBER 1, 1993 THROUGH SEPTEMBER 30, 1994—Continued

Eligible labor surplus areas	Civil jurisdictions included
Somerset Town	Somerset Town in Bristol County.
Southbridge Town	Southbridge Town in Worcester County.
Southwick Town	Southwick Town in Hampden County.
Spencer Town	Spencer Town in Worcester County.
Springfield City	Springfield City in Hampden County.
Sterling Town	Sterling Town in Worcester County.
Stoughton Town	Stoughton Town in Norfolk County.
Sturbridge Town	Sturbridge Town in Worcester County.
Swansea Town	Swansea Town in Bristol County.
Taunton City	Taunton City in Bristol County.
Templeton Town	Templeton Town in Worcester County.
Tewksbury Town	Tewksbury Town in Middlesex County.
Tisbury Town	Tisbury Town in Dukes County.
Truro Town	Truro Town in Barnstable County.
Tyngsborough Town.	Tyngsborough Town in Middlesex County.
Upton Town	Upton Town in Worcester County.
Uxbridge Town	Uxbridge Town in Worcester County.
Wales Town	Wales Town in Hampden County.
Ware Town	Ware Town in Hampshire County.
Wareham Town	Wareham Town in Plymouth County.
Warren Town	Warren Town in Worcester County.
Warwick Town	Warwick Town in Franklin County.
Washington Town	Washington Town in Berkshire County.
Webster Town	Webster Town in Worcester County.
Wellfleet Town	Wellfleet Town in Barnstable County.
Wendell Town	Wendell Town in Franklin County.
West Bridgewater Town.	West Bridgewater Town in Plymouth County.
West Brookfield Town.	West Brookfield Town in Worcester County.
Westfield Town	Westfield Town in Hampden County.
Westminster Town	Westminster Town in Worcester County.
Westport Town	Westport Town in Bristol County.
Weymouth Town	Weymouth Town in Norfolk County.
Whitman Town	Whitman Town in Plymouth County.
Williamsburg Town	Williamsburg Town in Hampshire County.
Wilmington Town	Wilmington Town in Middlesex County.
Winchendon Town	Winchendon Town in Worcester County.
Woburn City	Woburn City in Middlesex County.
Worcester City	Worcester City in Worcester County.
Yarmouth Town	Yarmouth Town in Barnstable County.
Michigan:	
Alcona County	Alcona County.
Alger County	Alger County.
Alpena County	Alpena County.
Antrim County	Antrim County.
Arenac County	Arenac County.
Baraga County	Baraga County.
Battle Creek City	Battle Creek City in Calhoun County.
Bay City	Bay City in Bay County.
Benzie County	Benzie County.
Berrien County	Berrien County.
Branch County	Branch County.
Burton County	Burton City in Genesee County.
Cass County	Cass County.
Charlevoix County	Charlevoix County.
Cheboygan County	Cheboygan County.
Chippewa County	Chippewa County.
Clare County	Clare County.
Clinton Township	Clinton Township in Macomb County.
Delta County	Delta County.
Detroit City	Detroit City in Wayne County.
Dickinson County	Dickinson County.
Emmet County	Emmet County.
Flint County	Flint City in Genesee County.
Gladwin County	Gladwin County.
Gogebic County	Gogebic County.
Grand Rapids City	Grand Rapids City in Kent County.
Gratiot County	Gratiot County.
Highland Park City	Highland Park City in Wayne County.
Hillsdale County	Hillsdale County.
Houghton County	Houghton County.
Huron County	Huron County.
Inkster City	Inkster City in Wayne County.
Ionia County	Ionia County.
Iosco County	Iosco County.
Iron County	Iron County.
Jackson City	Jackson City in Jackson County.
Balance of Jackson County.	Jackson County less Jackson City.
Kalamazoo City	Kalamazoo City in Kalamazoo County.
Kalkaska County	Kalkaska County.
Keweenaw County	Keweenaw County.
Lake County	Lake County.
Lapeer County	Lapeer County.
Lenawee County	Lenawee County.
Luce County	Luce County.
Mackinac County	Mackinac County.
Balance of Macomb County.	Macomb County less Clinton Township, East Detroit City, Roseville City, Shelby Township, St. Clair Shores City, Sterling Heights City, Warren City.
Madison Heights City.	Madison Heights City in Oakland County.
Manistee County	Manistee County.
Marquette County	Marquette County.
Mason County	Mason County.
Mecosta County	Mecosta County.
Menominee County	Menominee County.
Balance of Midland County.	Midland County less Midland City.
Missaukee County	Missaukee County.
Monroe County	Monroe County.
Montcalm County	Montcalm County.
Montmorency County.	Montmorency County.
Mount Morris Township.	Mount Morris Township in Genesee County.
Muskegon City	Muskegon City in Muskegon County.
Balance of Muskegon County.	Muskegon County less Muskegon City.
Newaygo County	Newaygo County.
Oceana County	Oceana County.
Ogemaw County	Ogemaw County.
Ontonagon County	Ontonagon County.
Osceola County	Osceola County.
Otsego County	Otsego County.
Pontiac City	Pontiac City in Oakland County.
Port Huron City	Port Huron City in St. Clair County.
Presque Isle County.	Presque Isle County.
Roscommon County.	Roscommon County.
Roseville City	Roseville City in Macomb County.
Saginaw City	Saginaw City in Saginaw County.
Sanilac County	Sanilac County.
Schoolcraft County	Schoolcraft County.
Shiawassee County	Shiawassee County.
Balance of St. Clair County.	St. Clair County less Port Huron City.
St. Joseph County	St. Joseph County.
Tuscola County	Tuscola County.
Van Buren County	Van Buren County.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE OCTOBER 1, 1993 THROUGH SEPTEMBER 30, 1994—Continued

Eligible labor surplus areas	Civil jurisdictions included
Warren City	Warren City in Macomb County.
Wexford County	Wexford County.
Minnesota:	
Aitkin County	Aitkin County.
Cass County	Cass County.
Clearwater County	Clearwater County.
Itasca County	Itasca County.
Kanabec County	Kanabec County.
Lake County	Lake County.
Marshall County	Marshall County.
Meeker County	Meeker County.
Morrison County	Morrison County.
Pennington County	Pennington County.
Pine County	Pine County.
Red Lake County	Red Lake County.
Mississippi:	
Adams County	Adams County.
Alcorn County	Alcorn County.
Attala County	Attala County.
Benton County	Benton County.
Bolivar County	Bolivar County.
Carroll County	Carroll County.
Chickasaw County	Chickasaw County.
Choctaw County	Choctaw County.
Claiborne County	Claiborne County.
Clarke County	Clarke County.
Clay County	Clay County.
Coahoma County	Coahoma County.
Columbus City	Columbus City in Lowndes County.
Copiah County	Copiah County.
Covington County	Covington County.
Franklin County	Franklin County.
George County	George County.
Greene County	Greene County.
Greenville City	Greenville City in Washington County.
Grenada County	Grenada County.
Gulfport City	Gulfport City in Harrison County.
Holmes County	Holmes County.
Humphreys County	Humphreys County.
Issaquena County	Issaquena County.
Jasper County	Jasper County.
Jefferson County	Jefferson County
Jefferson Davis County.	Jefferson Davis County.
Kemper County	Kemper County.
Lawrence County	Lawrence County.
Leake County	Leake County.
Balance of Lee County.	Lee County Less Tupelo City
Leflore County	Leflore County.
Lincoln County	Lincoln County.
Marion County	Marion County.
Marshall County	Marshall County.
Monroe County	Monroe County.
Montgomery County.	Montgomery County.
Noxubee County	Noxubee County.
Panola County	Panola County.
Pascagoula City	Pascagoula City in Jackson County
Pearl River County	Pearl River County
Perry County	Perry County.
Pike County	Pike County.
Quitman County	Quitman County.
Sharkey County	Sharkey County.
Stone County	Stone County.
Sunflower County	Sunflower County.
Tallahatchie County	Tallahatchie County.
Tate County	Tate County.
Tippah County	Tippah County.
Tishomingo County	Tishomingo County.
Tunica County	Tunica County.
Vicksburg City	Vicksburg City in Warren County.
Walthall County	Walthall County.
Balance of Washington County.	Washington County Less Greenville City.
Wayne County	Wayne County.
Webster County	Webster County.
Wilkinson County	Wilkinson County.
Winston County	Winston County.
Yalobusha County	Yalobusha County.
Yazoo County	Yazoo County.
Missouri:	
Benton County	Benton County.
Bollinger County	Bollinger County.
Carroll County	Carroll County.
Carter County	Carter County.
Crawford County	Crawford County.
Dallas County	Dallas County.
Dunklin County	Dunklin County.
Franklin County	Franklin County.
Iron County	Iron County.
La Clede County	La Clede County.
Madison County	Madison County.
Maries County	Maries County.
Miller County	Miller County.
Mississippi County	Mississippi County.
New Madrid County	New Madrid County.
Perniscot County	Perniscot County.
Reynolds County	Reynolds County.
Ripley County	Ripley County.
Shannon County	Shannon County.
St Louis City	St Louis City.
St. Francois County	St. Francois County.
Stoddard County	Stoddard County.
Stone County	Stone County.
Texas County	Texas County.
Washington County	Washington County.
Wayne County	Wayne County.
Wright County	Wright County.
Montana:	
Big Horn County	Big Horn County.
Deer Lodge County	Deer Lodge County.
Flathead County	Flathead County.
Glacier County	Glacier County.
Golden Valley County.	Golden Valley County.
Lake County	Lake County.
Lincoln County	Lincoln County.
Mineral County	Mineral County.
Musselshell County	Musselshell County.
Park County	Park County.
Petroleum County	Petroleum County.
Ravalli County	Ravalli County.
Roosevelt County	Roosevelt County.
Sanders County	Sanders County.
Silver Bow County	Silver Bow County.
Wibaux County	Wibaux County.
Nevada:	
North Las Vegas City.	North Las Vegas City in Clark County.
New Hamshire:	
Belknap County	Belknap County.
Rochester City	Rochester City in Strafford County.
Balance of Rockingham County.	Rockingham County less Portsmouth City.
New Jersey:	
Atlantic City	Atlantic City in Atlantic County.
Camden City	Camden City in Camden County.
Cape May County	Cape May County.
Balance of Cumberland County.	Cumberland County less Millville City, Vineland City.
East Orange City	East Orange City in Essex County.
Elizabeth City	Elizabeth City in Union County.
Garfield City	Garfield City in Bergen County.
Jersey City	Jersey City in Hudson County.
Lakewood Township.	Lakewood Township in Ocean County.
Linden City	Linden City in Union County.
Long Branch City	Long Branch City in Monmouth County.
Manchester Township.	Manchester Township in Ocean County.
Millville City	Millville City in Cumberland County.
New Brunswick City	New Brunswick City in Middlesex County.
Newark City	Newark City in Essex County.
North Bergen Township.	North Bergen Township in Hudson County.
Passaic City	Passaic City in Passaic County.
Paterson City	Paterson City in Passaic County.
Perth Amboy City	Perth Amboy City in Middlesex County.
Plainfield City	Plainfield City in Union County.
Trenton City	Trenton City in Mercer County.
Union City	Union City in Hudson County.
Vineland City	Vineland City in Cumberland County.
West New York Town.	West New York Town in Hudson County.
New Mexico:	
Catron County	Catron County.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE OCTOBER 1, 1993 THROUGH SEPTEMBER 30, 1994—Continued

Eligible labor surplus areas	Civil jurisdictions included
Balance of Chaves County.	Chaves County less Roswell City.
Cibola County	Cibola County.
Grant County	Grant County.
Guadalupe County	Guadalupe County.
Luna County	Luna County.
McKinley County	McKinley County.
Mora County	Mora County.
Balance of Otero County.	Otero County less Alamogordo City.
Rio Arriba County	Rio Arriba County.
Roswell City	Roswell City in Chaves County.
Balance of San Juan County.	San Juan County less Farmington City.
San Miguel County	San Miguel County.
Taos County	Taos County.
Torrance County	Torrance County.
New York:	
Allegany County	Allegany County.
Auburn City	Auburn City in Cayuga County.
Binghamton City	Binghamton City in Broome County.
Bronx County	Bronx County.
Buffalo City	Buffalo City in Erie County.
Cattaraugus County	Cattaraugus County.
Chenango County	Chenango County.
Clinton County	Clinton County.
Balance of Dutchess County.	Dutchess County less Poughkeepsie City, Poughkeepsie Town, Wappinger Town.
Elmira City	Elmira City in Chemung County.
Essex County	Essex County.
Franklin County	Franklin County.
Fulton County	Fulton County.
Genesee County	Genesee County.
Greene County	Greene County.
Hamilton County	Hamilton County.
Herkimer County	Herkimer County.
Jamestown City	Jamestown City in Chautauqua County.
Balance of Jefferson County.	Jefferson County less Watertown City.
Kings County	Kings County.
Lewis County	Lewis County.
Lockport City	Lockport City in Niagara County.
Montgomery County.	Montgomery County.
Mount Vernon City	Mount Vernon City in Westchester County.
Niagara Falls City	Niagara Falls City in Niagara County.
Oswego County	Oswego County.
Poughkeepsie City	Poughkeepsie City in Dutchess County.
Queens County	Queens County.
Richmond County	Richmond County.
Schenectady City	Schenectady City in Schenectady County.
Schoharie County	Schoharie County.
Schuyler County	Schuyler County.
St. Lawrence County.	St. Lawrence County.
Sullivan County	Sullivan County.
Syracuse City	Syracuse City in Onondaga County.
Troy City	Troy City in Rensselaer County.
Ulster County	Ulster County.
Utica City	Utica City in Oneida County.
Warren County	Warren County.
Watertown City	Watertown City in Jefferson County.
Wyoming County	Wyoming County.
Yates County	Yates County.
North Carolina:	
Anson County	Anson County.
Bladen County	Bladen County.
Brunswick County	Brunswick County.
Cherokee County	Cherokee County.
Columbus County	Columbus County.
Goldsboro City	Goldsboro City in Wayne County.
Graham County	Graham County.
Halifax County	Halifax County.
Hertford County	Hertford County.
Hyde County	Hyde County.
Kannapolis City	Kannapolis City in Cabarrus County, N.C., Rowan County N.C.
Kinston City	Kinston City in Lenoir County.
Mitchell County	Mitchell County.
Person County	Person County.
Robeson County	Robeson County.
Scotland County	Scotland County.
Swain County	Swain County.
Tyrrell County	Tyrrell County.
Vance County	Vance County.
Warren County	Warren County.
Wilson City	Wilson City in Wilson County.
North Dakota:	
Benson County	Benson County.
Eddy County	Eddy County.
McHenry County	McHenry County.
Rolette County	Rolette County.
Sioux County	Sioux County.
Ohio:	
Adams County	Adams County.
Akron City	Akron City in Summit County.
Ashtabula County	Ashtabula County.
Barberton City	Barberton City in Summit County.
Brown County	Brown County.
Canton City	Canton City in Stark County.
Carroll County	Carroll County.
Cleveland City	Cleveland City in Cuyahoga County.
Crawford County	Crawford County.
Dayton City	Dayton City in Montgomery County.
East Cleveland City	East Cleveland City in Cuyahoga County.
Elyria City	Elyria City in Lorain County.
Fulton County	Fulton County.
Gallia County	Gallia County
Guernsey County	Guernsey County.
Hamilton City	Hamilton City in Butler County.
Hardin County	Hardin County.
Harrison County	Harrison County.
Highland County	Highland County.
Hocking County	Hocking County.
Huron County	Huron County.
Lima City	Lima City in Allen County.
Lorain City	Lorain City in Lorain County.
Mansfield City	Mansfield City in Richland County.
Marion City	Marion City in Marion County.
Massillon City	Massillon City in Stark County.
Meigs County	Meigs County.
Middletown City	Middletown City in Butler County.
Monroe County	Monroe County.
Morgan County	Morgan County.
Noble County	Noble County.
Ottawa County	Ottawa County.
Perry County	Perry County.
Pike County	Pike County.
Ross County	Ross County.
Sandusky City	Sandusky City in Erie County.
Scioto County	Scioto County.
Seneca County	Seneca County.
Springfield City	Springfield City in Clark County.
Toledo City	Toledo City in Lucas County.
Vinton County	Vinton County.
Warren City	Warren City in Trumbull County.
Wyandot County	Wyandot County.
Youngstown City	Youngstown City in Mahoning County.
Zanesville City	Zanesville City in Muskingum County.
Oklahoma:	
Choctaw County	Choctaw County.
Coal County	Coal County.
Haskell County	Haskell County.
Hughes County	Hughes County.
Latimer County	Latimer County.
Mayes County	Mayes County.
McCurtain County	McCurtain County.
Murray County	Murray County.

Labor Surplus Areas Eligible for Federal Procurement Preference October 1, 1993 Through September 30, 1994—Continued

Eligible labor surplus areas	Civil jurisdictions included
Balance of Muskogee County.	Muskogee County less Muskogee City.
Okmulgee County ..	Okmulgee County.
Ottawa County	Ottawa County.
Pittsburg County	Pittsburg County.
Seminole County ...	Seminole County.
Oregon:	
Baker County	Baker County.
Columbia County ...	Columbia County.
Coos County	Coos County.
Douglas County	Douglas County.
Grant County	Grant County.
Harney County	Harney County.
Hood River County	Hood River County.
Josephine County ..	Josephine County.
Klamath County	Klamath County.
Balance of Linn County.	Linn County less Albany City.
Morrow County	Morrow County.
Umatilla County	Umatilla County.
Wasco County	Wasco County.
Wheeler County	Wheeler County.
Pennsylvania:	
Allentown City	Allentown City in Lehigh County.
Altoona City	Altoona City in Blair County.
Armstrong County ..	Armstrong County.
Beaver County	Beaver County.
Bedford County	Bedford County.
Bristol Township	Bristol Township in Bucks County.
Balance of Cambria County.	Cambria County less Johnstown City.
Cameron County ...	Cameron County.
Carbon County	Carbon County.
Chester City	Chester City in Delaware County.
Clarion County	Clarion County.
Clearfield County ...	Clearfield County.
Clinton County	Clinton County.
Columbia County ...	Columbia County.
Crawford County	Crawford County.
Erie City	Erie City in Erie County.
Fayette County	Fayette County.
Forest County	Forest County.
Fulton County	Fulton County.
Greene County	Greene County.
Hazleton City	Hazleton City in Luzerne County.
Huntingdon County	Huntingdon County.
Indiana County	Indiana County.
Jefferson County ...	Jefferson County.
Johnstown City	Johnstown City in Cambria County.
Juniata County	Juniata County.
Lancaster City	Lancaster City in Lancaster County.
Balance of Lawrence County.	Lawrence County less New Castle City.
Balance of Luzerne County.	Luzerne County less Hazleton City, Wilkes-Barre City.
McKeesport City	McKeesport City in Allegheny County.
Mercer County	Mercer County.
Mifflin County	Mifflin County.
Monroe County	Monroe County.
New Castle City	New Castle City in Lawrence County.
Northumberland County.	Northumberland County.
Reading City	Reading City in Burks County.
Schuylkill County ...	Schuylkill County.
Somerset County ...	Somerset County.
Sullivan County	Sullivan County.
Susquehanna County.	Susquehanna County.
Wayne County	Wayne County
Wilkes-Barre City ...	Wilkes-Bare City in Luzerne County.
Williamsport City	Williamsport City in Lycoming County.
Wyoming County ...	Wyoming County.
York City	York City in York County.
Puerto Rico:	
Adjuntas Municipio	Adjuntas Municipio.
Aguada Municipio ..	Aguada Municipio.
Aguadilla Municipio	Aguadilla Municipio.
Aguas Buenas Municipio.	Aguas Buenas Municipio.
Aibonito Municipio .	Aibonito Municipio.
Anasco Municipio ..	Anasco Municipio.
Arecibo Municipio ..	Arecibo Municipio.
Arroyo Municipio	Arroyo Municipio.
Barceloneta Municipio.	Barceloneta Municipio.
Barranquitas Municipio.	Barranquitas Municipio.
Bayamon Municipio	Bayamon Municipio.
Cabo Rojo Municipio.	Cabo Rojo Municipio.
Caguas Municipio ..	Caguas Municipio.
Camuy Municipio ...	Camuy Municipio.
Canovanas Municipio.	Canovanas Municipio.
Carolina Municipio .	Carolina Municipio.
Catano Municipio ...	Catano Municipio.
Cayey Municipio	Cayey Municipio.
Ceiba Municipio	Ceiba Municipio.
Ciales Municipio	Ciales Municipio.
Cidra Municipio	Cidra Municipio.
Coamo Municipio ...	Coamo Municipio.
Comerio Municipio .	Comerio Municipio.
Corozal Municipio ..	Corozal Municipio.
Dorado Municipio ...	Dorado Municipio
Fajardo Municipio ..	Fajardo Municipio.
Florida Municipio ...	Florida Municipio.
Guanica Municipio .	Guanica Municipio.
Guayama Municipio	Guayama Municipio.
Guayanilla Municipio.	Guayanilla Municipio.
Gurabo Municipio ..	Gurabo Municipio.
Hartillo Municipio ...	Hatillo Municipio.
Hormigueros Municipio.	Hormigueros Municipio.
Humacao Municipio	Humacao Municipio
Isabela Municipio ...	Isabela Municipio
Jayuya Municipio ...	Jayuya Municipio.
Juana Diaz Municipio.	Juana Diaz Municipio.
Juncos Municipio ...	Juncos Municipio.
Lajas Municipio	Lajas Municipio.
Lares Municipio	Lares Municipio.
Las Marias Municipio.	Las Marias Municipio.
Las Piedras Municipio.	Las Piedras Municipio.
Loiza Municipio	Loiza Municipio.
Luquillo Municipio ..	Luquillo Municipio.
Manati Municipio	Manati Municipio.
Maricao Municipio ..	Maricao Municipio.
Maunabo Municipio	Maunabo Municipio.
Mayaguez Municipio.	Mayaguez Municipio.
Moca Municipio	Moca Municipio.
Morovis Municipio ..	Morovis Municipio.
Naguabo Municipio	Naguabo Municipio.
Naranjito Municipio	Naranjito Municipio.
Orocovis Municipio	Orocovis Municipio.
Patillas Municipio ...	Patillias Municipio.
Penuelas Municipio	Penuelas Municipio.
Ponce Municipio	Ponce Municipio.
Quebradillas Municipio.	Quebradillas Municipio.
Rincon Municipio ...	Rincon Municipio.
Rio Grande Municipio.	Rio Grande Municipio.
Sabana Grande Municipio.	Sabana Grande Municipio.
Salinas Municipio ...	Salinas Municipio.
San German Municipio.	San German Municipio.
San Juan Municipio	San Juan Municipio.
San Lorenzo Municipio.	San Lorenzo Municipio.
San Sebastian Municipio.	San Sebastian Municipio.
Santa Isabel Municipio.	Santa Isabel Municipio.
Toa Alta Municipio .	Toa Alta Municipio.
Toa Baja Municipio	Toa Baja Municipio.
Trujillo Alto Municipio.	Trujillo Alto Municipio.
Utuado Municipio ...	Utuado Municipio.
Vega Alta Municipio	Vega Alta Municipio.
Vega Baja Municipio.	Vega Baja Municipio.
Vuieques Municipio	Vieques Municipio.
Villalba Municipio ...	Villalba Municipio.
Yabucoa Municipio	Yabucoa Municipio.
Yauco Municipio	Yauco Municipio.
Rhode Island:	
Bristol Town	Bristol Town.
Burrillville Town	Burrillville Town.
Central Falls City ...	Central Falls City.
Charlestown. Town .	Charlestown Town.
Coventry Town	Coventry Town.
Cranston City	Cranston City.
Cumberland Town .	Cumberland Town.
East Providence City.	East Providence City.
Foster Town	Foster Town.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE OCTOBER 1, 1993 THROUGH SEPTEMBER 30, 1994—Continued

Eligible labor surplus areas	Civil jurisdictions included
Johnston Town	Johnston Town.
Lincoln Town	Lincoln Town.
New Shoreham Town.	New Shoreham Town.
North Providence Town.	North Providence Town.
Pawtucket City	Pawtucket City.
Providence City	Providence City.
Scituate Town	Scituate Town.
Tiverton Town	Tiverton Town.
Warren Town	Warren Town.
Warwick City	Warwick City.
West Greenwich Town.	West Greenwich Town.
West Warwick Town.	West Warwick Town.
Woonsocket City	Woonsocket City.
South Carolina:	
Allendale County	Allendale County.
Anderson City	Anderson City in Anderson County.
Bamberg County	Bamberg County.
Barnwell County	Barnwell County.
Calhoun County	Calhoun County.
Chester County	Chester County.
Clarendon County	Clarendon County.
Dillon County	Dillon County.
Fairfield County	Fairfield County.
Georgetown County	Georgetown County.
Hampton County	Hampton County.
Kershaw County	Kershaw County.
Lancaster County	Lancaster County.
Marion County	Marion County.
Marlboro County	Marlboro County.
McCormick County	McCormick County.
Sumter City	Sumter City in Sumter County.
Balance of Sumter County.	Sumter County less Sumter City.
Union County	Union County.
Williamsburg County.	Williamsburg County.
South Dakota:	
Corson County	Corson County.
Dewey County	Dewey County.
Shannon County	Shannon County.
Tennessee:	
Bedford County	Bedford County.
Campbell County	Campbell County.
Clarksville City	Clarksville City in Montgomery County.
Cocke County	Cocke County.
Columbia City	Columbia City in Maury County.
Cumberland County	Cumberland County.
Decatur County	Decatur County.
Fentress County	Fentress County.
Greene County	Greene County.
Grundy County	Grundy County.
Hardin County	Hardin County.
Haywood County	Haywood County.
Henderson County	Henderson County.
Hickman County	Hickman County.
Houston County	Houston County.
Humphreys County	Humphreys County.
Jackson County	Jackson County.
Johnson County	Johnson County.
Lake County	Lake County.
Lauderdale County	Lauderdale County.
Lawrence County	Lawrence County.
Marion County	Marion County.
McMinn County	McMinn County.
Meigs County	Meigs County.
Monroe County	Monroe County.
Morgan County	Morgan County.
Obion County	Obion County.
Overton County	Overton County.
Perry County	Perry County.
Polk County	Polk County.
Rhea County	Rhea County.
Scott County	Scott County.
Sevier County	Sevier County.
Unicoi County	Unicoi County.
Van Buren County	Van Buren County.
Warren County	Warren County.
White County	White County.
Texas:	
Brooks County	Brooks County.
Brownsville City	Brownsville City in Cameron County.
Balance of Cameron County.	Cameron County less Brownsville City, Harlingen City.
Balance of Maverick County.	Maverick County less Eagle Pass City.
McAllen City	McAllen City in Hidalgo County.
Mission City	Mission City in Hidalgo County.
Morris County	Morris County.
Newton County	Newton County.
Balance of Nueces County.	Nueces County less Corpus Christi City.
Orange City	Orange City in Orange County.
Balance of Orange County.	Orange County less Orange City.
Paris City	Paris City in Lamar County.
Pecos County	Pecos County.
Pharr City	Pharr City in Hidalgo County.
Polk County	Polk County.
Port Arthur City	Port Arthur City in Jefferson County.
Presidio County	Presidio County.
Reeves County	Reeves County.
Sabine County	Sabine County.
San Patricio County	San Patricio County.
Starr County	Starr County.
Texarkana City Tex	Texarkana City Tex in Bowie County.
Texas City	Texas City in Galveston County.
Uvalde County	Uvalde County.
Balance of Val Verde County.	Val Verde County less Del Rio City.
Waco City	Waco City in McLennan County.
Balance of Webb County.	Webb County less Laredo City.
Weslaco City	Weslaco City in Hidalgo County.
Willacy County	Willacy County.
Zapata County	Zapata County.
Zavala County	Zavala County.
Utah:	
Emery County	Emery County.
Garfield County	Garfield County.
Piute County	Piute County.
San Juan County	San Juan County.
Sanpete County	Sanpete County.
Vermont:	
Grand Isle County	Grand Isle County.
Orleans County	Orleans County.
Virginia:	
Alleghany County	Alleghany County.
Bath County	Bath County.
Blacksburg Town	Blacksburg Town in Montgomery County.
Brunswick County	Brunswick County.
Buchanan County	Buchanan County.
Buena Vista City	Buena Vista City.
Caroline County	Caroline County.
Charles City County	Charles City County.
Charlotte County	Charlotte County.
Clifton Forge City	Clifton Forge City.
Covington City	Covington City.
Culpeper County	Culpeper County.
Danville City	Danville City.
Dickenson County	Dickenson County.
Floyd County	Floyd County.
Fredericksburg City	Fredericksburg City.
Giles County	Giles County.
Hopewell City	Hopewell City.
Lancaster County	Lancaster County.
Lee County	Lee County.
Lunenburg County	Lunenburg County.
Martinsville City	Martinsville City.
Mecklenburg County.	Mecklenburg County.
Northampton County.	Northampton County.
Northumberland County.	Northumberland County.
Orange County	Orange County.
Page County	Page County.
Petersburg City	Petersburg City.
Portsmouth City	Portsmouth City.
Prince Edward County.	Prince Edward County.
Pulaski County	Pulaski County.
Radford City	Radford City.
Rappahannock County.	Rappahannock County.
Russell County	Russell County.
Smyth County	Smyth County.
South Boston City	South Boston City.
Surry County	Surry County.
Tazewell County	Tazewell County.
Warren County	Warren County.
Westmoreland County.	Westmoreland County.
Williamsburg City	Williamsburg City.
Winchester City	Winchester City.
Wise County	Wise County.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE OCTOBER 1, 1993 THROUGH SEPTEMBER 30, 1994—Continued

Eligible labor surplus areas	Civil jurisdictions included
Wythe County	Wythe County.
Washington:	
Adams County	Adams County.
Bremerton City	Bremerton City in Kitsap County.
Chelan County	Chelan County.
Clallam County	Clallam County.
Columbia County	Columbia County.
Balance of Cowlitz County.	Cowlitz County less Longview City.
Everett City	Everett City in Snohomish County.
Ferry County	Ferry County.
Franklin County	Franklin County.
Grant County	Grant County.
Grays Harbor County.	Grays Harbor County.
Kittitas County	Kittitas County.
Klickitat County	Klickitat County.
Lewis County	Lewis County.
Longview City	Longview City in Cowlitz County.
Mason County	Mason County.
Okanogan County	Okanogan County.
Pacific County	Pacific County.
Pend Oreille County.	Pend Oreille County.
Skagit County	Skagit County.
Skamania County	Skamania County.
Stevens County	Stevens County.
Vancouver City	Vancouver City in Clark County.
Wahkiakum County	Wahkiakum County.
Walla Walla City	Walla Walla City in Walla Walla County.
Yakima City	Yakima City in Yakima County.
Balance of Yakima County.	Yakima County less Yakima City.
West Virginia:	
Barbour County	Barbour County.
Berkeley County	Berkeley County.
Boone County	Boone County.
Braxton County	Braxton County.
Brooke County	Brooke County.
Calhoun County	Calhoun County.
Charleston City	Charleston City in Kanawha County.
Clay County	Clay County.
Doddridge County	Doddridge County.
Fayette County	Fayette County.
Gilmer County	Gilmer County.
Grant County	Grant County.
Greenbrier County	Greenbrier County.
Hampshire County	Hampshire County.
Hancock County	Hancock County.
Hardy County	Hardy County.
Harrison County	Harrison County.
Huntington City	Huntington City in Cabell County, Wayne County.
Jackson County	Jackson County.
Jefferson County	Jefferson County.
Lewis County	Lewis County.
Lincoln County	Lincoln County.
Logan County	Logan County.
Marion County	Marion County.
Balance of Marshall County.	Marshall County less Wheeling City.
Mason County	Mason County.
McDowell County	McDowell County.
Mercer County	Mercer County.
Mingo County	Mingo County.
Monroe County	Monroe County.
Morgan County	Morgan County.
Nicholas County	Nicholas County.
Parkersburg City	Parkersburg City in Wood County.
Pleasants County	Pleasants County.
Pocahontas County	Pocahontas County.
Preston County	Preston County.
Putnam County	Putnam County.
Raleigh County	Raleigh County.
Randolph County	Randolph County.
Ritchie County	Ritchie County.
Roane County	Roane County.
Summers County	Summers County.
Taylor County	Taylor County.
Tucker County	Tucker County.
Tyler County	Tyler County.
Upshur County	Upshur County.
Balance of Wayne County.	Wayne County less Huntington City.
Webster County	Webster County.
Wetzel County	Wetzel County.
Wirt County	Wirt County.
Wyoming County	Wyoming County.
Wisconsin:	
Beloit County	Beloit City in Rock County.
Janesville City	Janesville City in Rock County.
Menominee County	Menominee County.
Racine City	Racine City in Racine County.
Rusk County	Rusk County.

[FR Doc. 93–25627 Filed 10–18–93; 8:45 am]
BILLING CODE 4510–30–M

Pension and Welfare Benefits Administration

Advisory Council on Employee Welfare and Pension Benefits Plans; Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Working Group on Economically Targeted Investments (ETI) of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 2 p.m./4 p.m., Monday, November 8, 1993, in suite N–3437 AB, U.S. Department of Labor Building, Third and Constitution Avenue, NW. Washington, DC 20210.

This Working Group was formed by the Advisory Council to study issues relating to ETI for employee benefit plans covered by ERISA.

The purpose of the November 8 meeting is to discuss and finalize the Groups report of findings and recommendations to the Council concerning the establishment of an Economically Targeted Clearinghouse. The Working Group will also take testimony and or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals, or representatives of organizations wishing to address the Working Group should submit a written request on or before November 3, 1993 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, suite N–5677, 200 Constitution Avenue, NW. Washington, DC 20210. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before November 3, 1993.

Signed at Washington, DC, this 13th day of October, 1993.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 93–25543 Filed 10–18–93; 8:45 am]
BILLING CODE 4510–29–M

Advisory Council on Employee Welfare and Pension Benefits Plans, Prohibited Transactions Work Group; Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Working Group on Prohibited Transactions of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 9 a.m./10:30 a.m., Tuesday, November 9, 1993, in suite N–3437 AB, U.S. Department of Labor Building, Third and Constitution Avenue, NW. Washington, DC 20210.

This Working Group was formed by the Advisory Council to study issues relating to Prohibited Transactions for employee benefit plans covered by ERISA.

The purpose of the November 9 meeting is to discuss and finalize the

Group's report to the Council, of findings and recommendations concerning prohibited transactions. The Working Group will also take testimony and or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals, or representatives of organizations wishing to address the Working Group should submit a written request on or before November 3, 1933 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, suite N–5677, 200 Constitution Avenue, NW. Washington, DC 20210. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before November 3, 1993.

Signed at Washington, DC. this 13th day of October, 1993.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 93–25544 Filed 10–18–93; 8:45 am]

BILLING CODE 4510–29–M

Advisory Council on Employee Welfare and Pension Benefits Plans; Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held on Tuesday, November 9, 1993, in suite N–3437 AB, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

The purpose of the Eighty-Second meeting of the Secretary's ERISA Advisory Council which will begin at 2:30 p.m./4 p.m., is to receive and discuss a detailed analysis and recommendations of reports from each of its Work Groups i.e., Economically Targeted Investments; Prohibited Transactions; Defined Contributions Plan Growth Implications, and to conduct any other business that may come before the Council. The Council will also take testimony and or submissions from employee representatives, employer representatives and other interested individuals and groups regarding any aspect of the administration of ERISA.

Members of the public are encouraged to file a written statement pertaining to any topic concerning ERISA by submitting 20 copies on or before November 3, 1993 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, suite N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Individuals, or representatives of organizations wishing to address the Advisory Council should forward their request to the Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before November 3, 1993.

Signed at Washington, DC this 13th day of October 1993.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 93–25546 Filed 10–18–93; 8:45 am]

BILLING CODE 4510–29–M

Advisory Council on Employee Welfare and Pension Benefits Plans; Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Working Group on Defined Contribution Plans (401 (k) of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 11 a.m./1:30 p.m., Tuesday, November 9, 1993, in suite N–3437 AB, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

This Working Group was formed by the Advisory Council to study issues relating to Defined Contribution Plans—401 (k) for employee benefit plans covered by ERISA.

The purpose of the November 9 meeting is to discuss and finalize the group's report of findings and recommendations to the Council concerning the implications of the growth in Defined Contribution Plans, especially with respect to coverage, eligibility and participation issues. The Working Group will also take testimony and or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals, or representatives of organizations wishing to address the Working Group should submit a written request on or before November 3, 1993 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, suite N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before November 3, 1993.

Signed at Washington, DC This 13th day of October 1993.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 93–25545 Filed 10–18–93; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Chorus Section) to the National Council on the Arts will be held on November 1–3, 1993; from 9 a.m. to 5:30 p.m. on November 1–2, 1993, and from 9 a.m. to 5 p.m. on November 3, 1993. This meeting will be held in room 730, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 3 p.m. to 5 p.m. on November 3, 1993 for policy discussion and review of guidelines

The remaining portions of this meeting from 9 a.m. to 5:30 p.m. on November 1–2, 1993, and from 9 a.m. to 3 p.m. on November 3, 1993, are for the purpose of panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to

subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with references to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5439.

Dated: October 13, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93–25539 Filed 10–18–93; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Permit Application Received Under the Antarctic Conservation Act of 1978

October 13, 1993.

AGENCY: National Science Foundation.

ACTION: Notice of permit application received under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at title 45 part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by November 14, 1993. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, room 627, Office of Polar Programs, National Science Foundation, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Thomas F. Forhan at the above address or (202) 357–7817.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Public Law 95–541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific interest.

The application received is as follows:

1. Applicant

Gerald L. Kooyman, Center for Marine Biotechnology and Biomedicine, Scripps Institution of Oceanography, University of California, San Diego, La Jolla, CA 92093

Activity for Which Permit Requested

Taking, Import into USA. Enter specially protected area. These studies are directed at a specific comparison of foraging effort and breeding success among three colonies of emperor penguins. These baseline studies will be the basis for using emperor penguins as environmental monitors in the Ross Sea. About 40 adults will be held briefly to glue either a depth recorder or velocity meter and radio transmitter or satellite transmitter to the back feather between the wings. Stomach lavage will be performed on up to 20 birds, the birds are released afterwards. Similarly 100 chicks will be weighed, and 40 chicks will be captured for collection of blood samples for genetic analysis. Carcasses of 5 adults, 5 chicks and 15 eggs may be salvaged for morphometric measurements.

Location

Cape Washington, Coulman Is., Cape Roget, Cape Crozier

Date

10/15/93–12/31/94

Thomas F. Forhan,

Permit Office, Office of Polar Programs.

[FR Doc. 93–25538 Filed 10–18–93; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Medical Uses of Isotopes; Meeting

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The U.S. Nuclear Regulatory Commission will convene its next regular meeting of the Advisory Committee on Medical Uses of Isotopes (ACMUI) on November 1 and 2, 1993. Topics of discussion will include 10 CFR 20.1301, "Dose limits for individual members of the public"; pulsed-dose-rate after loading brachytherapy; the impact of fees on medical programs; medical implications associated with calibration of Strontium-90 eye applicators and their use in brachytherapy; an overview of the Management Plan for the medical use regulatory program; the term "referring physician" as used 10 CFR Part 35, "Medical Use of Byproduct Material", and the recently signed Memorandum of Understanding, between NRC and the Food and Drug Administration (FDA), that clarifies their respective roles in regulating medical use. In addition, the NRC staff will provide status reports on: high-dose-rate afterloading brachytherapy programs; the implementation of the Quality Management Program and Misadministration rule, the NUREG entitled "Management of Radioactive Material Safety Programs at Medical Facilities"; the National Academy of Sciences Study to perform an external review of the medical use regulatory process; and proposed rulemaking, including: "Proposed Amendments to 10 CFR 35.75, Release of Patients Containing Radiopharmaceuticals or Permanent Implants"; "Proposed Amendments on Preparation, Transfer, and Use of Byproduct Material for Medical Use"; and "Administration of Byproduct Material or Radiation from Byproduct Material to Patients Who May Be Pregnant or Nursing." A portion of this meeting will be closed to protect the privacy of physicians whose submitted training and experience will be reviewed by the ACMUI for the purpose of determining adequacy before they can be listed as an authorized user on an NRC medical use license.

DATES: The meeting will begin at 9:00 a.m., on November 1, 1993, and at 8:30 a.m., on November 2, 1993.

ADDRESSES: Sheraton Reston Hotel, 11810 Sunrise Valley Drive, Reston, Virginia.

FOR FURTHER INFORMATION CONTACT: Larry W. Camper, Office of Nuclear Material Safety and Safeguards, MS 6–H–3, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone 301–504–3417.

Conduct of the Meeting

Barry Siegel, M.D.. will chair the meeting. Dr. Siegel will conduct the meeting in a manner that will facilitate the orderly conduct of business. The following procedures apply to public participation in the meeting:

1. Persons who wish to provide a written statement should submit a reproducible copy to Larry W. Camper (address listed above). Comments must be received by October 22, 1993, to ensure consideration at the meeting. The transcript of the meeting will be kept open until November 13, 1993, for inclusion of written comments.

2. Persons who wish to make oral statements should inform Mr. Camper, in writing, by October 22, 1993. Statements must pertain to the topics on the agenda for the meeting. The Chairman will rule on requests to make oral statements. Members of the public will be permitted to make oral statements if time permits. Permission to make oral statements will be based on the order in which requests are received. In general, oral statements will be limited to approximately 5 minutes. Oral statements must be supplemented by detailed written statements, for the record. Rulings on who may speak, the order of presentation, and time allotments may be obtained by calling Mr. Camper, 301–504–3417, between 9 a.m. and 5 p.m. E.S.T., on October 28 or 29, 1993.

3. At the meeting, questions from attendees other than committee members, NRC consultants, and NRC staff will be permitted at the discretion of the Chairman.

4. The transcript, minutes of the meeting, and written comments will be available for inspection, and copying, for a fee, at the NRC Public Document Room, 2120 L Street NW., Lower Level, Washington 20555, on or about November 26, 1993.

5. Seating for the public will be on a first-come, first-served basis.

In accordance with section 10(d) of the Federal Advisory Committee Act (5 U.S.C. App.), it is necessary to close the portion of this meeting devoted to the review of physicians' credentials because it will involve a discussion of information the release which would represent a clearly unwarranted invasion of personal privacy under 5 U.S.C. 552b(c)(6).

This meeting will be held in accordance with the Atomic Energy Act of 1954, as amended (primarily section 161a); the Federal Advisory Act (5 U.S.C. App); and the Commission's regulations in Title 10 Code of Federal Regulations, part 7.

Dated: October 13, 1993.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 93–25584 Filed 10–18–93; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Nuclear Waste; Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 58th meeting on Wednesday and Thursday, October 27–28, 1993, in the Connecticut Room, Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD, 8:30 a.m. until 6 p.m. each day. Notice of this meeting was published in the **Federal Register** on September 23, 1993 (58 FR 49531).

The entire meeting will be open to public attendance, with the exception of a portion that may be closed to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. 552b(c)(6).

During this meeting, the Committee plans to consider the following:

1. The Committee will continue its discussions of matters related to implementation plans for future ACNW activities. These will include the preparation of reports on ACNW protocols, topics for review, and resource requirements.

2. The Committee will continue its discussions of matters related to the appointment of new members, and organizational and personnel matters related to the ACNW members and ACNW staff. Portions of this session may be closed to public attendance to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. 552b(c)(6).

3. The Committee will hear reports from ACNW members and staff on recent technical meetings that they have attended. Topics will include: Radionuclide migration and related near-field phenomena, hydrological research, the Exploratory Studies Facility, and surface-based testing associated with the Yucca Mountain Project.

4. The Committee will elect ACNW officers for CY 1994.

5. The Committee will be briefed on the NRC staff unsaturated groundwater flow phenomenon.

6. The Committee will discuss topics proposed for consideration during future ACNW meetings.

7. The Committee will be briefed by the NRC's Office for Analysis & Evaluation of Operational Data on technical training programs.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on June 6, 1988 (53 FR 20699). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Committee, its consultants, and staff. The office of the ACRS is providing staff support for the ACNW. Persons desiring to make oral statements should notify the Executive Director of the office of the ACRS as far in advance as practical so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Executive Director of the Office of the ACRS, Dr. John T. Larkins (telephone 301/492–4516), prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACNW Executive Director or call the recording (301/492–4600) for the current schedule if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Public Law 92–463 that it is necessary to close portions of this meeting noted above to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. 552b(c)(6).

Dated: October 13, 1993.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 93–25585 Filed 10–18–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–271]

Vermont Yankee Nuclear Power Station; Receipt of Petition

Notice is hereby given that on September 1, 1993, Messrs. Richard

Daley and Jonathan M. Block submitted a Petition on behalf of the New England Coalition on Nuclear Pollution, to the Executive Director for Operations, U.S. Nuclear Regulatory Commission (NRC) regarding the Vermont Yankee Nuclear Power Station (VY). The Petition has been referred to the Office of Enforcement for preparation of a response pursuant to 10 CFR § 2.206.

The Petitioners request that the NRC reconsider the civil penalty assessed against VY for operating outside Technical Specifications (TS) from October 15, 1993 to April 6, 1993, because the Petitioners believe that NRC enforcement action was inadequate.

The Petitioners recite the basic facts that formed the basis for EA 93–112 and assert that the NRC staff did not deal with the Licensee in a manner commensurate with the severity of the violations. Specifically, the Petition states that in October of 1992, routine surveillance of control rod scram insertion revealed that VY was operating outside TS 3.3.C.1.1 and 3.3.C.1.2. It goes on to state that limiting conditions for operating the plant require an immediate shutdown under such circumstances and VY did not shut down or report this situation to the NRC. The Petition then states that VY continued to operate until the situation was again observed in April of 1993 and then an on-site safety inspection of VY was conducted by NRC Region I from April 14 to 16, 1993. The report of that inspection, which was issued on May 24, 1993, with a cover letter from the Director, Division of Reactor Safety, NRC Region I, contained six questions for VY. The Petitioners allege that Questions 2 through 5 of the letter were not adequately answered.

Specifically, the disputed questions are as follows: "* * * (2) the specific reasons for not shutting down the plant when required by the Technical Specifications and the approved test procedure, (3) the reasons for not pursuing a root cause determination and corrective actions for approximately six months, (4) the results of your historical reviews of control rod testing to determine if there were previous Technical Specifications violations, (5) your design control processes, including one-for-one equivalency evaluations, as they apply to material changes in safety-related equipment * * *".

The Petitioners' claim that VY did not adequately answer these questions is based upon Petitioners' examination of the available materials VY submitted to the NRC and their belief that this alleged failure to answer such questions is part of what the Regional Administrator referred to as "programmatic weaknesses" at VY. The Petition states that these allegedly unanswered questions provide a sufficient basis to warrant review of the penalty assessed to VY and Petitioners ask that such a review be undertaken immediately.

As provided by § 2.206, appropriate action with regard to the specific issues raised in the Petition will be taken within a reasonable time.

A copy of the Petition is available for inspection at the Commission's Public Document Room at 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room for the Vermont Yankee Nuclear Power Plant located at Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301.

Dated at Rockville, Maryland this 12th day of October 1993.

For the Nuclear Regulatory Commission.

Joseph R. Gray,

Deputy Director, Office of Enforcement.

[FR Doc. 93–25586 Filed 10–18–93; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–333]

Power Authority of the State of New York; Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of the Power Authority of the State of New York (the licensee) to withdraw its August 26, 1993, application for proposed amendment to Facility Operating License No. DPR–59 for the James A. FitzPatrick Nuclear Power Plant, located in Oswego County, New York.

The proposed amendment would have provided a one-time extension of the current surveillance interval for calibration of the pressure switches that sense main turbine control valve closure at the FitzPatrick plant.

The Commission has previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on August 31, 1993, (58 FR 48388). However, by letter dated October 5, 1993, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated August 26, 1993, and the licensee's letter dated October 5, 1993, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room 2120 L Street, NW., Washington, DC., and the State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York.

Dated at Rockville, Maryland, this 12th day of October 1993.

For the Nuclear Regulatory Commission.

John E. Menning,

Project Manager, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93–25587 Filed 10–18–93; 8:45 am]

BILLING CODE 7590-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

Public Hearing in Mobile, AL; Railroad Accident

In connection with the investigation of the derailment of Amtrak's Train No. 2, The Sunset Limited, on the Bayou Canot Bridge, near Mobile, Alabama, on September 22, 1993, the National Transportation Safety Board will convene a public hearing at 9 a.m. (local time), on Monday, December 13, 1993, in Meeting Rooms 201 B–D of the Mobile Convention Center, 1 South Water Street, Mobile, Alabama 36602. For more information, contact Ted Lopatkiewicz, Office of Public Affairs, National Transportation Safety Board, 490 L'Enfant Plaza, SW., Washington, DC 20594, telephone (202) 382–0660.

Dated: October 14, 1993.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 93–25620 Filed 10–18–93; 8:45 am]

BILLING CODE 7533-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee (TPSC); Generalized System of Preferences (GSP); Notice of Review of Product and Country Practices Petitions, Public Hearings, and List of Articles To Be Sent to the United States International Trade Commission (USITC) For Review; Notice Regarding 1994 Annual GSP Review

AGENCY: Office of the United States Trade Representative.

ACTION: Announcement of product and country practices petitions accepted for consideration in the 1993 Annual GSP Review; announcement of timetable for public hearings to consider petitions accepted for review; announcement of list of articles to be sent to the USITC for review; announcement regarding 1994 Annual GSP Review.

SUMMARY: The purpose of this notice on the 1993 Annual GSP Review is: (1) To

announce the acceptance for review of petitions to modify the list of articles eligible for duty-free treatment under the GSP and to modify the status of countries as GSP beneficiary countries in regard to their practices as specified in 15 CFR 2007.0 (a) and (b); (2) to announce the timetable for public hearings to consider petitions accepted for review; and (3) to announce that the list of articles herein will be sent by the United States Trade Representative to the USITC to seek advice with respect to modification of the list of eligible articles for GSP.

FOR FURTHER INFORMATION CONTACT: GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street, N.W., Room 517, Washington, DC 20506. The telephone number is (202) 395–6971. Public versions of all documents relating to this review will be available for review by appointment with the USTR public reading room shortly following filing deadlines. Appointments may be made from 10 a.m. to noon and 1 p.m. to 4 p.m. by calling (202) 395–6186.

SUPPLEMENTARY INFORMATION:

I. Acceptance of Petitions for Review

Notice is hereby given of acceptance for review of petitions requesting modification of the list of articles eligible to receive duty-free treatment under the GSP, as provided for in title V of the Trade Act of 1974 (the 1974 Act) (19 U.S.C. 2461–2465), as amended. These petitions were submitted, and will be reviewed, pursuant to regulations codified at 15 CFR part 2007.

A. Requests to Modify Product and Country Eligibility

Petitons have been submitted by interested parties or foreign governments: (1) To designate articles as eligible for the GSP; or (2) to withdraw, suspend or limit GSP duty-free treatment accorded either to eligible articles under the GSP or to individual beneficiary countries with respect to specific GSP eligible articles; or (3) to waive competitive need limits; or (4) to otherwise modify GSP coverage. In addition, petitions have been received requesting that the GSP status of certain beneficiary developing countries be reviewed with respect to the relevant criteria listed in subsection 502(b) or 502(c) of the 1974 Act.

As in previous reviews, petitions to add or remove products from the list of articles eligible for GSP duty-free treatment will be evaluated in accordance with the "graduation" policy. In considering GSP eligibility for products, limitations on GSP benefits will be considered for the more economically advanced beneficiary developing countries in specific products where it is determined that they have demonstrated sufficient competitiveness. Four criteria will be taken into account when any such graduation action is considered: the development level of individual beneficiary countries; their competitive position in the product concerned; the countries' practices relating to trade, investment, and worker rights; and the overall economic interests of the United States.

Product designations announced at the conclusion of the review process, therefore, may be made on a differential basis. This means that certain beneficiary developing countries may not be designated for GSP benefits on certain products even though those countries are not excluded under the competitive need provisions set forth in section 504(c)(1) of the 1974 Act. It is also possible to withdraw GSP treatment of a product from certain beneficiary developing countries, or to reduce the competitive need limit applicable to the countries and product in question, rather than remove the product entirely from GSP coverage.

As required under section 504(a) of the 1974 Act, the eligibility factors set forth in sections 501 and 502(c) will be considered with respect to decisions to withdraw, suspend or limit duty-free treatment with respect to any article or with respect to any country.

B. Information Subject to Public Inspection

All submissions should be submitted in fourteen (14) copies, in English, to the Chairman of the GSP Subcommittee of the Trade Policy Staff Committee, 600 17th Street, N.W., Room 517, Washington, DC 20506. Information submitted in connection with the hearings will be subject to public inspection by appointment with the staff of the USTR public reading room, except for information granted "business confidential" status pursuant to 15 CFR 2203.6 and other qualifying information submitted in confidence pursuant to 15 CFR 2007.7. If the document contains business confidential information, an original and fourteen (14) copies of a nonconfidential version of the submission along with an original and fourteen (14) copies of the confidential version must be submitted. In addition, the document containing confidential information should be clearly marked "confidential" at the top and bottom of each page of the document. The version that does not contain business confidential information (the public version) should also be clearly marked at the top and bottom of every page (either "public version" or "non-confidential").

C. Communications

All communications with regard to these hearings should be addressed to: GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street, NW., room 517, Washington, DC 20506. The telephone number is (202) 395–6971. Questions may be directed to any member of the staff of the GSP Information Center.

Acceptance for review of the petitions listed herein does not indicate any opinion with respect to disposition on the merits of the petitions. Acceptance indicates only that the listed petitions have been found to be eligible for review by the GSP Subcommittee and the TPSC, and that such review will take place.

II. Deadline for Receipt of Requests to Participate in the Public Hearings

The GSP Subcommittee of the TPSC invites submissions in support of or in opposition to any petition contained in this notice. All such submissions should conform to 15 CFR part 2007, particularly §§ 2007.0, 2007.1(a)(1), 2007.1(a)(2), and 2007.1(a)(3). All submissions should identify the subject article(s) in terms of the current Harmonized Tariff Schedule of the United States (HTS) nomenclature.

Hearings will be held on November 17, 1993 beginning at 10:00 a.m. at a location in Washington, DC to be announced. The hearings will be open to the public and a transcript of the hearings will be made available for public inspection or can be purchased from the reporting company. No electronic media coverage will be allowed.

All interested parties wishing to make an oral presentation at the hearings must submit the name, address, and telephone number of the witness(es) representing their organization to the Chairman of the GSP Subcommittee by 5 p.m. November 3, 1993. Requests to present oral testimony in connection with the public hearings should be accompanied by fourteen (14) copies, in English, of all written briefs or statements, and should also be received by 5 p.m. on November 3. Oral testimony before the GSP Subcommittee will be limited to five minute presentations that summarize or supplement information contained in briefs or statements submitted for the record. Post-hearing briefs or statements

will be accepted if they conform with the regulations cited above and are submitted in fourteen (14) copies, in English, no later than 5 p.m. December 8, 1993. Parties not wishing to appear at the public hearings may submit post-hearing written briefs or statements also by December 8. Rebuttal briefs should be submitted in fourteen (14) copies, in English, by 5 p.m. December 17, 1993.

During January and/or February 1994, an opportunity will be provided for the public to comment on nonconfidential USITC analysis. Notice of the availability of this analysis and the timetable for comment will be published in the **Federal Register**.

III. List of Articles Which May Be Considered for Designation as Eligible Articles for Purposes of the GSP or for Waiver of the Competitive Need Limit and On Which the USITC Will Be Asked to Provide Advice

In conformity with sections 503(a) and 131(a) of the 1974 Act (19 U.S.C. 2463(a) and 2151(a)), notice is hereby given that the articles listed herein may be considered for designation as eligible articles for purposes of the GSP, or for modification of their current GSP status.

An article which is determined to be import sensitive in the context of the GSP cannot be designated as an eligible article. Recommendations with respect to the eligibility of any listed article will be made after public hearings have been held and advice has been received from the USITC on the probable effects of the requested modification in the GSP on industries producing like or directly competitive articles and on consumers.

On behalf of the President and in accordance with sections 503(a) and 131(a) of the 1974 Act, the USITC is being furnished with the list of articles published herein for the purpose of securing from the USITC its advice on the probable economic effect on U.S. industries producing like or directly competitive articles, and on consumers, of the modification of the list of articles eligible for GSP. Also, on behalf of the President and in accordance with section 504(c)(3)(A)(i) of the 1974 Act, the USITC is being asked to furnish economic advice on the probable economic effect on U.S. industries producing like or directly competitive articles, and on consumers, of the granting of a waiver of the competitive need limits for the products identified in section C of the lists which follow.

Any modifications to the list of articles eligible for duty-free treatment under the GSP resulting from the 1993 GSP Annual Review will be announced on or about April 1, 1994 and will take effect on July 1, 1994.

IV. Cases Accepted for Review Regarding Country Practices, Pursuant to 15 CFR 2007.0(b)

Pursuant to 15 CFR 2007.0(b), the TPSC will review petitions to review the status of Costa Rica, Dominican Republic, Maldives, Pakistan, Paraguay, and Peru as GSP beneficiary countries in relation to their practices regarding worker rights. Interested parties can participate in the review process as described in section II. The worker rights petition on Haiti has been accepted for review, but will not be the subject of the review schedule set forth in section II.

The decision whether to accept or reject a petition to review the GSP status of Malaysia in relation to its worker rights practices has been deferred until January 1994.

Because review of the 1992 worker rights cases of Bahrain and Fiji has been extended until the end of the 1993 Annual Review, comments on the worker rights practices of these two countries will also be welcomed during the public hearing and comment process described in section II.

Pursuant to 15 CFR 2007.0(b), the TPSC has accepted for review requests to review the GSP status of Egypt, El Salvador, Poland and Turkey concerning the alleged failure of each to provide adequate and effective protection for intellectual property rights. The TPSC has already announced the acceptance, on an expedited basis, of a petition alleging the failure of Cyprus to provide adequate and effective protection for intellectual property rights (58 FR 50981).

Because review of the 1992 intellectual property rights cases of Dominican Republic and Guatemala has been extended until the end of the 1993 Annual Review, comments on the intellectual property rights practices of these two countries will also be welcomed during the public hearing and comment process described in section II.

Any modifications to the list of beneficiary developing countries for purposes of the GSP resulting from the 1993 GSP Annual Review will take effect fifteen days after notification of the modification appears in the **Federal Register**.

V. Notice Regarding 1994 Annual Review of GSP

Ordinarily, the TPSC would invite the submission of petitions for the 1994 Annual Review on June 1, 1994. However, under section 506(a) of the Trade Act of 1974, as amended (the 1974 Act), duty free treatment provided under the GSP shall not remain in effect after September 30, 1994. The TPSC will not announce whether it will solicit petitions for the 1994 GSP Annual Review until after legislation renewing the GSP program is enacted.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

BILLING CODE 3901-01-M

Annex

Case No.	HTS Subheading	Article	Petitioner
		[The bracketed language in this Annex has been included only to clarify the scope of the numbered subheadings which are being considered, and such language is not itself intended to describe articles which are under consideration.]	
A.		Petitions to add products to the list of eligible articles for the Generalized System of Preferences.	
		Citrus fruit, fresh or dried:	
		Lemons (Citrus limon, Citrus limonum) and limes (Citrus aurantifolia):	
93-1	0805.30.40	Limes	Agropecuaria Klube C.A., Venezuela
		Grapes, fresh or dried:	
		Dried:	
		Raisins:	
93-2	0806.20.10	Made from seedless grapes	Chilean Food and Agroindustrial Processors Federation, Chile
		Preparations of a kind used in animal feeding:	
		[Dog or cat food, put up for retail sale]	
		Other:	
		[Mixed feeds or mixed feed ingredients]	
		Other:	
		[Animal feeds containing milk or milk derivatives]	
		Other:	
		[Animal feeds containing egg]	
		Other:	
93-3	2309.90.90(pt.)	Preparations, with a basis of vitamin B_{12}, for supplementing animal feed	Chemical Works of Gedeon Richter Ltd., Hungary
		Cyclic hydrocarbons:	
		Cyclanes, cyclenes and cycloterpenes:	
93-4	2902.11.00	Cyclohexane	Government of Venezuela
		Carboxylic acids with additional oxygen function and their anhydrides, halides, peroxides and peroxyacids; their halogenated, sulfonated, nitrated or nitrosated derivatives:	
		Carboxylic acids with aldehyde or ketone function but without other oxygen function, their anhydrides, halides, peroxides, peroxyacids and their derivatives:	
		Aromatic:	
		Other:	
93-5	2918.30.20(pt.)	Ketoprofen	Pliva D.D. Zagreb, Croatia
		Amine-function compounds:	
		Aromatic monoamines and their derivatives; salts thereof:	
		Other:	
		Other:	
		Drugs:	
		Other:	
93-6	2921.49.40(pt.)	Deprenyl hydrochloride	Chinoin Pharmaceutical and Chemical Works Co., Ltd., Hungary
		Heterocyclic compounds with nitrogen hetero-atom(s) only; nucleic acids and their salts:	
		Compounds containing an unfused pyridine ring (whether or not hydrogenated) in the structure:	
		Other:	
		Other:	
		Drugs:	
		Other:	
93-7	2933.39.37(pt.)	Ethionamide	Chemical Works of Gedeon Richter, Ltd., Hungary

Annex
2 of 5

Case No.	HTS Subheading	Article	Petitioner
A.	Petitions to add products to the list of eligible articles for the Generalized System of Preferences. (con.)		
		Hormones, natural or reproduced by synthesis; derivatives thereof, used primarily as hormones; other steroids used primarily as hormones:	
		Other hormones and their derivatives; other steroids used primarily as hormones:	
		Estrogens and progestins:	
		[Obtained directly or indirectly from animal or vegetable materials]	
		Other:	
93-8	2937.92.20(pt.)	Estradiol benzoate	Chemical Works of Gedeon Richter, Ltd., Hungary
93-9	2937.92.80(pt.)	Estradiol	do.
		Other:	
93-10	2937.99.80(pt.)	Trenbolone acetate	do.
		Parts suitable for use solely or principally with the apparatus of headings 8525 to 8528:	
		[Antennas and antenna reflectors of all kinds; parts suitable for use therewith]	
		Other:	
		Of television apparatus:	
93-11	8529.90.10 1/	Tuners	North American Phillips Corporation, New York, NY
		Time of day recording apparatus and apparatus for measuring, recording or otherwise indicating intervals of time, with clock or watch movement or with synchronous motor (for example, time registers, time-recorders):	
		[Time registers; time-recorders; parking meters	
		Other:	
		[Time locks valued over $10 each]	
		Other:	
93-12	9106.90.80(pt.)	Apparatus for measuring, recording or otherwise indicating intervals of time, with clock or watch movements, battery powered	Seigil Enterprises, Inc., Sausalito, CA
B.	Petitions to remove products from the list of eligible articles for the Generalized System of Preferences.		
93-13	4007.00.00	Vulcanized rubber thread and cord	North American Rubber Thread, Falls River, MA
C.	Petitions to remove duty-free status from beneficiary developing country/countries for a product on the list of eligible articles for Generalized System of Preferences. 2/		
		Structures (excluding prefabricated buildings of heading 9406) and parts of structures (for example, bridges and bridge sections, lock gates, towers, lattice masts, roofs, roofing frameworks, doors and windows and their frames and thresholds for doors, shutters, balustrades, pillars and columns) of iron or steel; plates, rods, angles, shapes, sections, tubes and the like, prepared for use in structures, of iron or steel:	
		[Articles provided for in subheadings 7308.10.00 through 7308.40.00, inclusive]	
		Other:	
		[Columns, pillars, posts, beams, girders and similar structural units]	
		Other:	
93-14	7308.90.90(pt.) (Venezuela)	Steel grating	IKG Industries, Clark, NJ

1/ The petitioner also requests a waiver of competitive need limits for Indonesia on the articles provided for in HTS subheading 8529.90.10.
2/ The country named is the beneficiary developing country specified by the petitioner. While the Trade Policy Staff Committee (TPSC) review will focus on that country, the TPSC reserves the right to address removal of GSP status for countries other than those specified by the petitioner as well the GSP status of the entire article.

Annex
3 of 5

Case No.	HTS Subheading	Article	Petitioner
D.	Petitions for waiver of competitive need limit for a product on the list of eligible products for the Generalized System of Preferences.		
		Articles of apparel and clothing accessories, of leather or of composition leather: Gloves, mittens and mitts: Specially designed for use in sports: Baseball and softball gloves and mitts (including batting gloves): [Batting gloves]	
93-15	4203.21.40 (Philippines)	Other	Government of the Philippines
		Articles of jewelry and parts thereof, of precious metal or of metal clad with precious metal: Of precious metal whether or not plated or clad with precious metal: [Of silver, whether or not plated or clad with other precious metal]	
		Of other precious metal, whether or not plated or clad with precious metal: [Articles provided for in subheading 7113.19.10] Other: Necklaces and neck chains, of gold:	
93-16	7113.19.21 (Israel)	Rope	Israel Jewelry Manufacturers Association, Israel
		Steam or other vapor generating boilers (other than central heating hot water boilers capable also of producing low pressure steam); super-heated water boilers; parts thereof: Super-heated water boilers	
93-17	8402.20.00 (Philippines)		Government of the Philippines
		Spark-ignition reciprocating or rotary internal combustion piston engines: Reciprocating piston engines of a kind used for the propulsion of vehicles of chapter 87: Of a cylinder capacity exceeding 1,000 cc: To be installed in vehicles of subheading 8701.20, or heading 8702, 8703 or 8704: [Used or rebuilt]	
93-18	8407.34.2080 (Brazil)	Other	General Motors Corporation, Detroit, MI
		Parts suitable for use solely or principally with the engines of heading 8407 or 8408: Other: Suitable for use solely or principally with spark-ignition internal combustion piston engines (including rotary engines): Other: For vehicles of subheading 8701.20, or heading 8702, 8703 or 8704:	
93-19	8409.91.91(pt.) (Brazil)	Aluminum cylinder heads	FNB Produtos Metalurgicos, Ltda., Brazil
		Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included: [Analog or hybrid automatic data processing machines]	
93-20	8471.20.00 (Indonesia)	Digital automatic data processing machines, containing in the same housing at least a central processing unit and an input and output unit, whether or not combined	Apple Computer, Inc., Cupertino, CA
93-21	8471.20.00 (Malaysia)	Digital automatic data processing machines, containing in the same housing at least a central processing unit and an input and output unit, whether or not combined	do.

Annex
4 of 5

Case No.	HTS Subheading	Article	Petitioner
D.		Petitions for waiver of competitive need limit for a product on the list of eligible products for the Generalized System of Preferences. (con.)	
		Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included (con.):	
		Other:	
93-22	8471.91.00 (Indonesia)	Digital processing units, whether or not entered with the rest of a system, which may contain in the same housing one or two of the following types of units: storage units, input units, output units	do.
93-23	8471.91.00 (Malaysia)	Digital processing units, whether or not entered with the rest of a system, which may contain in the same housing one or two of the following types of units: storage units, input units, output units	Apple Computer, Inc., Cupertino, CA
		Video recording or reproducing apparatus, whether or not incorporating a video tuner:	
		Magnetic tape-type:	
		Color, cartridge or cassette type:	
		[Not capable of recording]	
93-24	8521.10.60 (Indonesia)	Other	North American Phillips Corporation, New York, NY; P.T. Kotobuki Electronics, Indonesia; P.T. Sanyo Jaya Components Indonesia, Indonesia; Sanyo Fisher (USA) Corporation, Chatsworth, CA
		Transmission apparatus for radiotelephony, radiotelegraphy, radiobroadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras:	
		Transmission apparatus incorporating reception apparatus:	
		Transceivers:	
93-25	8525.20.20 (Philippines)	Low-power radiotelephonic transceivers operating on frequencies from 49.82 to 49.90 MHz	Government of the Philippines
		Other:	
93-26	8525.20.50 (Malaysia)	Cordless handset telephones	Thomson Consumer Electronics, Indianapolis, IN
93-27	8525.20.50 (Philippines)	Cordless handset telephones	Government of the Philippines
		Reception apparatus for radiotelephony, radiotelegraphy or radiobroadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock:	
		[Articles provided for in subheading 8527.11.11 through 8527.29.40, inclusive]	
		Other radiobroadcast receivers, including apparatus capable of receiving also radiotelephony or radiotelegraphy:	
		Combined with sound recording or reproducing apparatus:	
		[Articles designed for connection to telegraphic or telephonic apparatus or instruments or to telegraphic or telephonic networks]	
		Other:	
93-28	8527.31.40 (Malaysia)	Combinations incorporating tape players which are incapable of recording	North American Phillips Corporation, New York, NY; Santronics (M) SDN, BHD, Malaysia; Sanyo Fisher (USA) Corporation, Chatsworth, CA; Thomson Consumer Electronics, Indianapolis, IN

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Annex
5 of 5

Case No.	HTS Subheading	Article	Petitioner
D.	Petitions for waiver of competitive need limit for a product on the list of eligible products for the Generalized System of Preferences. (con.)		
		Reception apparatus for radiotelephony, radiotelegraphy or radiobroadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock (con.): Other radiobroadcast receivers, including apparatus capable of receiving also radiotelephony or radiotelegraphy (con.):	
93-29	8527.32.00 (Malaysia)	Not combined with sound recording or reproducing apparatus but combined with a clock	Thomson Consumer Electronics, Indianapolis, IN
		Television receivers (including video monitors and video projectors), whether or not incorporating radiobroadcast receivers or sound or video recording or reproducing apparatus: Color:	
93-30	8528.10.30 (Malaysia)	Incorporating video recording or reproducing apparatus	North American Phillips Corporation, New York, NY

[FR Doc. 93-25742 Filed 10-18-93; 8:45 am]
BILLING CODE 3901-01-M

PANAMA CANAL COMMISSION

Office of the Inspector General

Privacy Act of 1974; Proposed Amendment to a System of Records and Two New Systems of Records

AGENCY: Office of Inspector General, PCC.

ACTION: Notification of a proposed amendment to an existing system of records and notice of two new systems of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Office of Inspector General proposes to (1) amend an existing system of records entitled "Cash Audit Files" which was last published on December 31, 1987 (52 FR 49541); and (2) establish two new systems of records entitled "Investigative Files of the Office of Inspector General," and "Allegation/Complaint Files of the Office of Inspector General." A notice of proposed rulemaking exempting these systems of records appears elsewhere in today's **Federal Register**.

DATES: This proposal will be effective on November 18, 1993, unless comments are received that would result in a contrary determination.

ADDRESSES: Comments should be addressed to Mrs. Carolyn H. Twohy, Agency Records Officer, Chief, Administrative Services Division, Panama Canal Commission, Unit 2300, APO AA 34011-2300.

FOR FURTHER INFORMATION CONTACT: Mrs. Barbara A. Fuller, Assistant to the Secretary for Commission Affairs, Panama Canal Commission, International Square, 1825 I Street NW., Suite 1050, Washington, DC 20006-5402. Telephone (202) 634-6441.

SUPPLEMENTARY INFORMATION: The Inspector General has determined that the existing "Cash Audit Files" system of records is in need of updating due to the disestablishment of the Office of General Audit and the establishment of the Office of Inspector General. The alphanumerical designation has changed from PCC/GA-1 to PCC/OIG-3. In addition, all references to the Office of General Audit have been changed to Office of Inspector General and references to General Auditor have been changed to Inspector General. The authority for maintenance of the system has been revised to bring the system under the Inspector General Act of 1978. The address for the Panama Canal Commission has been updated to reflect the current APO mailing address. The system of records notice contains the routine uses currently used by the OIG, as published in 35 CFR, part 10, appendix A. The notification procedure, record access procedures and contesting procedures have been revised to include the statement that these records are generally exempt from Privacy Act access, amendment or correction and to conform with procedures in the other OIG records systems, as well as 35 CFR part 10. Finally, the exemption portion of the system of records notice has been revised to more precisely state the scope of the applicable exemptions. The revisions to this system do not affect the character of information contained in the system nor do they expand the population of individuals to whom the system applies.

The Inspector General has also undertaken an internal review of its compliance with the Privacy Act and has determined that two new systems of records, "Investigative Files of the Office of Inspector General," and "Allegation/Complaint Files of the Office of Inspector General," are necessary in order to account for information maintained about individuals.

The changes to the existing system and the two new systems are printed below.

Dated: September 29, 1993.

Gilberto Guardia F.,

Administrotor.

PCC/OIG-1

SYSTEM NAME:

Investigative Files of the Office of Inspector General, PCC/OIG-1.

SYSTEM LOCATION:

Office of Inspector General, Building 6530, Corozal, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Panama Canal Commission employees who are subjects of OIG inquiries or investigations; individuals or organizations conducting or seeking to conduct Commission business; and complainants and key witnesses where necessary for future retrieval.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of investigatory material compiled for law enforcement purposes, and include initial complaints filed against subjects and other information relating to potential violations of law such as correspondence, subpoenas, notes, witness statements, confidential sources of information, crime record checks, working papers, and crime intelligence data, reports of investigation, findings of PCC officials, and recommendations and dispositions to be made.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Inspector General Act of 1978 (Pub. L. 95–452), as amended by the Inspector General Act Amendments of 1988 (Pub. L. 100–504), authorizes the Inspector General to conduct, supervise and coordinate investigations relating to the programs and operations of the Panama Canal Commission. Article XIX of the Agreements in Implementation of Article III of the Panama Canal Treaty authorizes the authorities of the United States and the Republic of Panama to assist each other in carrying out all necessary investigations of offenses.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The General Routine Uses set forth in 35 CFR, part 10, appendix A, apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored manually in file jackets and electronically in office automation equipment.

RETRIEVABILITY:

Records may be retrieved by manual or computer search of indices containing the name of the individual under investigation.

SAFEGUARDS:

Records are maintained in locked file cabinets or in metal file cabinets in secured rooms or premises with access limited to those persons whose official duties require access. Computer terminals are secured in controlled areas which are locked when unoccupied. Access to automated records is by user identification number combined with an individual password for each terminal and is limited to authorized personnel. Computer data is not stored on computer terminals, but on removable media which is safeguarded in the same manner as other records. Building is equipped with an alarm system and locked when not in use.

RETENTION AND DISPOSAL:

Records including employee and hotline complaints, investigative reports and related documents, such as correspondence, notes, attachments and working papers, are retained in inactive files after the case is closed. Inactive files are cut off at the end of the fiscal year. Files are stored in locked cabinets in a secure room within the IG office and are destroyed 10 years after the cutoff date.

SYSTEM MANAGER(S) AND ADDRESS:

Inspector General, Office of Inspector General, Panama Canal Commission, Building 6530, Corozal, Republic of Panama.

NOTIFICATION PROCEDURE:

Records are generally exempt from Privacy Act access. However, the System Manager will give consideration to a request from an individual for notification of whether the system contains records pertaining to that individual. Information may also be obtained from the Agency Records Officer, Panama Canal Commission, Unit 2300, APO AA 34011–2300 or Room 254 Administration Bldg., Balboa Hts., Republic of Panama. Individuals seeking information in person must identify themselves showing at least one identification document containing their picture or at least two identification documents containing their signature, or other identification acceptable to the official concerned. If the request is made in writing, the individual must supply sufficient information to verify their identity (for example, signature, employee identification number, date and place of birth) or may be required to provide the certificate of a notary public or other official authorized to administer oaths. These procedures are also found in 35 CFR part 10.

RECORD ACCESS PROCEDURES:

Records are generally exempt from Privacy Act access. However, the System Manager or the Agency Records Officer will give consideration to a request from an individual for access to records pertaining to that individual. The procedures for requesting access to records appear in Notification Procedure, preceding, and in 35 CFR part 10.

CONTESTING RECORD PROCEDURES:

Records are generally exempt from Privacy Act amendment or correction. However, the Agency Records Officer will give consideration to a request from an individual for amendment or correction of records pertaining to that individual. The procedures for requesting amendment or correction of records appear in 35 CFR part 10.

RECORD SOURCE CATEGORIES:

Information is obtained from a wide variety of sources, including from PCC, U.S. and foreign sources, subjects and witnesses and all levels of U.S. and foreign governments, private businesses and nonprofit organizations.

EXEMPTIONS FROM CERTAIN PROVISIONS OF THE ACT:

This system of records, to the extent that it consists of investigatory material compiled for the purpose of criminal law enforcement purposes, has been exempted from the requirements of subsections (c)(3) and (4); (d); (e)(1), (2) and (3); (e)(4)(G) and (H); (e)(5); (e)(8); (f); (g); (h); and (i) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). In addition, this system of records, to the extent that it consists of other investigatory material compiled for law enforcement purposes, has been exempted from the requirements of subsections (c)(3); (d); (e)(1); (e)(4)(G) and (H); (f); (g); (h); and (i) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2). Finally, this system of records, to the extent that it consists of investigatory material compiled for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or Federal contracts, the release of which would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, has been exempted from the requirements of subsections (c)(3) and (d) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(5). The exemptions for this system will become effective upon the publication of the final rule in the **Federal Register**.

PCC/OIG–2

SYSTEM NAME:

Allegation/Compliant Files of the Office of Inspector General, PCC/OIG–2.

SYSTEM LOCATION:

Office of Inspector General, Building 6530, Corozal, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered consist of: (1) PCC employees and contractors who are subjects of allegations or complaints alleging possible violations of law, rules or regulations, mismanagement, gross waste of funds, or abuse of authority or government property; and (2) PCC employees and members of the general public who are complainants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of a form and any backup documentation generated by the allegation/complaint. The form contains the names, allegation/complaint, summary or comments and includes recommended and final disposition of the matter.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Inspector General Act of 1978 (Pub. L. 95–452), as amended by the Inspector General Act Amendments of 1988 (Pub. L. 100–504). Article XIX of the Agreements in Implementation of Article III of the Panama Canal Treaty authorizes the authorities of the United States and the Republic of Panama to assist each other in carrying out all necessary investigations of offenses.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The General Routine Uses set forth in 35 CFR, part 10, appendix A, apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored manually in file jackets and electronically in office automation equipment.

RETRIEVABILITY:

Records may be retrieved by manual or computer search of indices containing the name of the individual under investigation.

SAFEGUARDS:

Records are maintained in locked file cabinets or in metal file cabinets in secured rooms or premises with access limited to those persons whose official duties require access. Computer terminals are secured in controlled areas which are locked when unoccupied. Access to automated records is by user identification number and individual password for each terminal and is limited to authorized personnel. Computer data is not stored on computer terminals, but on removable media which is safeguarded in the same manner as other records. Building is equipped with an alarm system and locked when not in use.

RETENTION AND DISPOSAL:

Records including employee and hotline complaints, investigative reports and related documents, such as correspondence, notes, attachments and working papers, are retained in inactive files after the case is closed. Inactive files are cut off at the end of the fiscal year. Files are stored in locked cabinets in a secure room within the IG office and are destroyed 10 years after the cutoff date.

SYSTEM MANAGER(S) AND ADDRESS:

Inspector General, Office of Inspector General, Panama Canal Commission, Building 6530, Corozal, Republic of Panama.

NOTIFICATION PROCEDURE:

Records are generally exempt from Privacy Act access. However, the System Manager will give consideration to a request from an individual for notification of whether the system contains records pertaining to that individual. Information may also be obtained from the Agency Records Officer, Panama Canal Commission, Unit 2300, APO AA 34011–2300 or Room 254 Administration Bldg., Balboa Hts., Republic of Panama. Individuals seeking information in person must identify themselves showing at least one identification document containing their picture or at least two identification documents containing their signature, or other identification acceptable to the official concerned. If the request is made in writing, the individual must supply sufficient information to verify their identity (for example, signature, employee identification number, date and place of birth) or may be required to provide the certificate of a notary public or other official authorized to administer oaths. These procedures are also found in 35 CFR part 10.

RECORD ACCESS PROCEDURES:

Records are generally exempt from Privacy Act access. However, the System Manager or the Agency Records Officer will give consideration to a request from an individual for access to records pertaining to that individual. The procedures for requesting access to records appear in Notification Procedure, preceding, and in 35 CFR part 10.

CONTESTING RECORD PROCEDURES:

Records are generally exempt from Privacy Act amendment or correction. However, the Agency Records Officer will give consideration to a request from an individual for amendment or correction of records pertaining to that individual. The procedures for requesting amendment or correction of records appear in 35 CFR part 10.

RECORD SOURCE CATEGORIES:

Information is obtained from a wide variety of sources, including from PCC, U.S. and foreign sources, subjects and witnesses and all levels of U.S. and foreign governments, private businesses and nonprofit organizations.

EXEMPTIONS FROM CERTAIN PROVISIONS OF THE ACT:

This system of records, to the extent that it consists of information compiled for the purpose of criminal investigations, has been exempted from the requirements of subsections (c)(3) and (4); (d); (e)(1), (2) and (3); (e)(4) (G) and (H); (e)(5); (e)(8); (f); (g); (h); and (i) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). In addition, this system of records, to the extent that it consists of other investigatory material compiled for law enforcement purposes, has been exempted from the requirements of subsections (c)(3); (d); (e)(1); (e)(4) (G) and (H); (f); (g); (h); and (i) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2). Finally, this system of records, to the extent that it consists of investigatory material compiled for the purpose of determining a suitability, eligibility, or qualifications for Federal civilian employment or Federal contracts, the release of which would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, has been exempted from the requirements of subsection (c)(3) and (d) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(5). The exemptions for this system will become effective upon the publication of the final rule in the Federal Register.

PCC/OIG–3

SYSTEM NAME:

Cash Audit Files, PCC/OIG–3.

SYSTEM LOCATION:

Office of Inspector General, Bldg. 6530, Corozal, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Panama Canal Commission collecting agents whose accounts are audited by the Office of Inspector General.

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Inspector General Act of 1978 (Pub. L. 95–452), as amended by the Inspector General Act Amendments of 1988 (Pub. L. 100–504). Article XIX of the Agreements in Implementation of Article III of the Panama Canal Treaty authorizes the authorities of the United States and the Republic of Panama to assist each other in carrying out all necessary investigations of offenses.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The General Routine Uses set forth in 35 CFR, part 10, appendix A, apply to this system of records.

* * * * *

SYSTEM MANAGER(S) AND LOCATION:

Inspector General, Office of the Inspector General, Bldg. 6530 Corozal, Republic of Panama.

NOTIFICATION PROCEDURE:

Records are generally exempt from Privacy Act access. However, the System Manager will give consideration to a request from an individual for notification of whether the system contains records pertaining to that individual. Information may also be obtained from the Agency Records Officer, Panama Canal Commission, Unit 2300, APO AA 34011–2300 or Room 254 Administration Bldg., Balboa Hts., Republic of Panama. Individuals seeking information in person must identify themselves showing at least one identification document containing their picture or at least two identification documents containing their signature, or other identification acceptable to the official concerned. If the request is made in writing, the individual must supply sufficient information to verify their identify (for example, signature, employee identification number, date and place of birth) or may be required to provide the certificate of a notary public or other official authorized to administer oaths. These procedures are also found in 35 CFR part 10.

RECORD ACCESS PROCEDURES:

Records are generally exempt from Privacy Act access. However, the System Manager or the Agency Records Officer will give consideration to a request from an individual for access to records pertaining to that individual. The procedures for requesting access to records appear Notification Procedure, preceding, and in 35 CFR part 10.

CONTESTING RECORD PROCEDURES:

Records are generally exempt from Privacy Act amendment or correction. However, the Agency Records Officer will give consideration to a request from an individual for amendment or correction of records pertaining to that individual. The procedures for requesting amendment or correction of records appear in 35 CFR part 10.

* * * * *

EXEMPTIONS FROM CERTAIN PROVISIONS OF THE ACT:

This system of records, to the extent that it consists of information compiled for the purpose of criminal investigations has been exempted from the requirements of subsections (c)(3) and (4); (d); (e)(1), (2) and (3); (e)(4)(G) and (H); (e)(5); (e)(8); (f); (g); (h); and (i) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). In addition, this system of records, to the extent that it consists of other investigatory material compiled for law enforcement purposes, has been exempted from the requirements of subsections (c)(3); (d); (e)(1); (e)(4)(G) and (H); (f); (g); (h); and (i) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2). Finally, this system of records, to the extent that it consists of investigatory material compiled for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or Federal contracts, the release of which would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, has been exempted from the requirements of subsection (c)(3) and (d) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(5). The exemptions for this system will become effective upon the publication of the final rule in the **Federal Register**.

[FR Doc. 93–25522 Filed 10–18–93; 8:45 am]

BILLING CODE 3640-04-M

SECURITIES AND EXCHANGE COMMISSION

Requests Under Review by Office of Management and Budget

Agency Clearance Officer—John J. Lane, (202) 272–3900.

Upon written request copy available from: Securities and Exchange Commission, Office of Filings, Information and Consumer Services, 450 Fifth Street NW., Washington, DC 20549

Extension

Rule 15Ba2–4(b)—File No. 270–92
Rule 15c1–7—File No. 270–146
Rule 15c2–11—File No. 270–196
Rule 24b–1—File No. 270–205
Rule 12f–1—File No. 270–139
Rule 12f–2 and Form 27—File No. 270–140
Rule 12f–3 and Form 28—File No. 270–141

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et. seq.*), the Securities and Exchange Commission has submitted to the Office of Management and Budget request for approval of extensions of currently approved rules and forms under the Securities Exchange Act of 1934 (15 U.S.C. 78 *et. seq.*).

Rule 15Ba2–4(b) permits an application for registration as a municipal securities dealer to be filed on behalf of such entity by a predecessor, and permits the successor to adopt the application as its own, thereby facilitating registration and reducing the paperwork associated with registration of certain municipal securities dealer. An average of one respondent incurs a total of one annual burden hour to comply with the rule.

Rule 15c1–7 requires a broker or dealer that effects a transaction in a customer account over which the broker or dealer has discretion, to make a contemporaneous record of the transaction. A total of 400 respondents incur a cumulative total of 16,700 annual burden hours to comply with the rule.

Rule 15c2–11 regulates the initiation or resumption of quotations in a quotation medium by a broker or dealer for over-the-counter securities. An estimated total of 550 respondents incur a cumulative total of 7,700 annual burden hours (or 14 hours annually per respondent) to comply with the rule.

Rule 24b–1 permits members of the public to obtain access to the registration statements and amendments to the registration statements of the securities exchanges. A total of approximately 10 respondents incur a cumulative total of five annual burden hours to comply with the rule.

Rule 12f–1 delineates the information which an exchange must provide to the Commission when applying for unlisted trading privileges in a particular security. A total of 5 respondents incur a cumulative total of 670 annual burden hours to comply with the rule.

Rule 12f–2 and Form 27 require national securities exchanges to report to the Commission certain changes in securities admitted to unlisted trading privileges. Approximately one respondent incurs a one annual burden hour to comply with the rule.

Rule 12f–3 and Form 28 prescribe the information which must be included in an application for and notice of

suspension or termination of unlisted trading privileges. Approximately five respondents incur an aggregate total of 100 annual burden hours to comply with the rule.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with the Securities and Exchange Commission rules and forms to John J. Lane, Associate Executive Director, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549 and Gary Waxman, Clearance Officer, Office of Management and Budget (Paperwork Reduction Project numbers 3235–0086, 3235–0134, 3235–0202, 3235–0194, 3235–0128, 3235–0248, and 3235–0249), room 3208, New Executive Office Building, Washington, DC 20503.

Dated: October 6, 1993.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–25601 Filed 10–18–93; 8:45 am]

BILLING CODE 8010–01–M

Requests Under Review by Office of Management and Budget

Agency Clearance Office—John J. Lane (202) 272–3900.

Upon written request copy available from: Securities and Exchange Commission, Office of Filings, Information and Consumer Services, Washington, DC 20549.

New

Rule 11Ac1–3—File No. 270–382

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 34501 *et. seq.*), the Securities and Exchange Commission ("Commission") has submitted for Office of Management and Budget approval proposed Rule 11Ac1–3 under the Securities Exchange Act of 1934 (15 U.S.C. 78 *et seq.*).

Proposed Rule 11Ac1–3 will require disclosure by a broker or dealer to the customer of payment for order flow practices. It is anticipated that approximately 2,206 persons will spend an aggregate total of 24,492 hours complying with the reporting and recordkeeping requirements of proposed Rule 11Ac1–3.

The estimated average burden hours are made solely for purposes of the Paperwork Reduction Act and not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

General comments regarding the estimated burden hours should be directed to Gary Waxman at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to John J. Lane, Associate Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Gary Waxman, Clearance Officer, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: October 12, 1993.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–25600 Filed 10–18–93; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Boston Stock Exchange, Inc.

October 13, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

American Medical Resources
Common Stock, $.01 Par Value (File No. 7–11355)
Barnes & Noble, Inc.
Common Stock, $.001 Par Value (File No. 7–11356)
Blackrock Insured Muni Term Trust
Common Stock, $.01 Par Value (File No. 7–11357)
China Tire Holdings, Ltd.
Common Stock, No Par Value (File No. 7–11358)
Coca-Cola FEMSA S.A. de C.V.
American Depositary Shares, 1 Peso (File No. 7–11359)
Harvard International Tech., Ltd.
Common Stock, $.01 Par Value (File No. 7–11360)
Mascotech, Inc.
Common Stock, $1.00 Par Value (File No. 7–11361)
North Forks Bancorp
Common Stock, $2.50 Par Value (File No. 7–11362)
PanAmerican Beverages
Class A Common Stock, $.01 Par Value (File No. 7–11363)
Roadmaster, Inc.
Common Stock, $.01 Par Value (File No. 7–11364)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before November 3, 1993, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–25596 Filed 10–18–93; 8:45 am]

BILLING CODE 8010–11–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Chicago Stock Exchange, Inc.

October 13, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Phoenix Network, Inc.
Common Stock, $.001 Par Value (File No. 7–11381)
Global High Income Dollar Fund, Inc.
Common Stock, $.001 Par Value (File No. 7–11382)
Tucker Properties Corporation
Common Stock, $.001 Par Value (File No. 7–11383)
Protective Life Corporation
Common Stock, $.50 Par Value (File No. 7–11384)
First Citizens Bancstock, Inc.
Common Stock, $1.00 Par Value (File No. 7–11385)
SPI Holdings Incorporated
Rights, No Par Value (File No. 7–11386)
SPI Holdings Incorporated
Class B Common Stock, $.001 Par Value (File No. 7–11387)
Conseco, Inc.
Cumulative Convertible Preferred D, No Par Value (File No. 7–11388)
Beverly Enterprises
$2.75 Convertible Preferred, $1.00 Par Value (File No. 7–11389)
Van Kampen Merritt Florida Municipal Opportunity Trust
(Common Shares of Beneficial Interest)
$.001 Par Value (File No. 7–11390)
Blair Corporation

Common Stock, No Par Value (File No. 7–11391)
Painewebber Premier Intermediate Tax-Free Income Fund, Inc.
Common Stock, $.001 Par Value (File No. 7–11392)
Sphere Drake Holding Limited
Common Stock, $.01 Par Value (File No. 7–11393)
Barnes & Noble, Inc.
Common Stock, $.001 Par Value (File No. 7–11394)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before November 3, 1993, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–25594 Filed 10–18–93; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

October 13, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

British Telecommunications Plc
1st Installment American Depositary Shares (rep. 10 Interm. Ord. Shrs.) (File No. 7–11378)
National Westminster Bank Plc
American Depositary Shares Ser. B (rep. 1 non-cum. dollar Pref. Sh. Ser. B) (File No. 7–11379)
PanAmerican Beverages
Class A Common Stock, $.01 Par Value (File No. 7–11380)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before November 3, 1993, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–25595 Filed 10–18–93; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

October 13, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Corrpro Companies, Inc.
Common Stock, No Par Value (File No. 7–11367)
Global High Income Dollar Fund, Inc.
Common Stock, $.001 Par Value (File No. 7–11368)
Sociedad Qumica Y Minera de Chile S.A.
Chemical and Mining Co. of Chile, Inc.
American Depositary Shares (File No. 7–11369)
Protective Life Corporation
Common Stock, $.50 Par Value (File No. 7–11370)
Belden, Inc.
Common Stock, $.01 Par Value (File No. 7–11371)
Barnes & Noble, Inc.
Common Stock, $.001 Par Value (File No. 7–11372)
Capital Guaranty Corporation
Common Stock, $.10 Par Value (File No. 7–11373)
Colonial Properties Trust
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–11374)
Global Small Cap Fund, Inc.
Common Stock, $.001 Par Value (File No. 7–11375)
Citcorp
Dep. Shares each representing 1/10th of a share of 7¼ pc Non Cum Pfd Stock, No Par Value (File No. 7–11376)
Fortune Petroleum Corporation
Common Stock, $.01 Par Value (File No. 7–11377)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before November 3, 1993, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–25593 Filed 10–18–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–19787 ; File No. 812–8234]

American Skandia Life Assurance Corp., et al.; Application for Exemption

October 13, 1993.

AGENCY: Securities and Exchange Commission (the "Commission" or the "SEC").

ACTION: Notice of application for exemptions under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: American Skandia Life Assurance Corporation ("ASLAC"), American Skandia Life Assurance Corporation Variable Account B Class 2 Sub-accounts (the "Subaccounts"), and Skandia Life Equity Sales Corporation ("SLESCO").

RELEVANT 1940 ACT SECTIONS: Order requested under section 6(c) for exemptions from sections 26(a)(2) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order permitting the deduction of a mortality and expense risk charge from the assets of the Subaccounts, which fund individual and group deferred variable annuity contracts.

FILING DATES: The application was filed on December 31, 1992 and amended on July 20, 1993 and September 29, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 8, 1993, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Applicants, One Corporate Drive, Shelton, Connecticut 06484.

FOR FURTHER INFORMATION CONTACT: C. Christopher Sprague, Senior Counsel, at (202) 504–2802, or Michael V. Wible, Special Counsel, at (202) 272–2060, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. ASLAC is a stock insurance company chartered in Connecticut, and is licensed to do business in all states of the United States. ASLAC is a wholly-owned subsidiary of American Skandia Holding Corporation (formerly Skandia U.S. Investment Holding Corporation), whose indirect parent is Skandia Insurance Company Ltd. (formerly Skandia Group Insurance Company Ltd.).

2. American Skandia Life Assurance Corporation Variable Account B ("Variable Account B") was established as a separate account under Connecticut law, and is registered with the SEC as a unit investment trust. In addition to the Subaccounts, Variable Account B has twenty-four other sub-accounts that are subject to different charges than those applicable to the Subaccounts. The assets held in the Subaccounts are the property of ASLAC, although the portion of such assets that supports the variable annuities will not be chargeable with liabilities arising out of any other business that ASLAC may conduct. Moreover, the income, capital gains, and capital losses incurred on the assets of each Subaccount are credited to, or charged against, the assets of such Subaccount without regard to the income, capital gains, or capital losses arising out of any other business that ASLAC may conduct.

3. Each Subaccount invests exclusively in shares of an underlying fund ("Fund") or Fund portfolio pursuant to an agreement between ASLAC and the Fund or Fund portfolio. Such Funds or Fund portfolios are made available exclusively to separate accounts of life insurance companies supporting variable annuity or variable life insurance products, or, where permitted by the SEC, to certain qualified retirement plans. Certain Subaccounts will invest in the same Funds that sell their shares to Variable Account B's other subaccounts.

4. SLESCO, a wholly-owned subsidiary of American Skandia Investment Holding Corporation, is registered as a broker-dealer with the SEC, and is a member of the National Association of Securities Dealers, Inc. SLESCO will act as the principal underwriter of the individual and group deferred variable annuity contracts issued by the Subaccounts (the "Annuities").

5. The Annuities have an accumulation phase and a payout phase. The death benefit, as well as all charges discussed below, apply only during the accumulation phase. During the accumulation phase, net payments are used to purchase units in the Subaccounts specified by the Annuity holder. Net purchase payments mean purchase payments, less any applicable maintenance fee, sales charge, or charge for premium taxes. The value of an Annuity during the accumulation phase ("Account Value") fluctuates with the value of the Subaccount units held. Additional purchase payments may be made, but are not required. Additional purchase payments need not be allocated to the same Subaccounts as the initial purchase payments, or in the same ratios among Subaccounts as under prior purchase payments. Account Values may be transferred among Subaccounts. During the payout phase, ASLAC will make fixed periodic payments to the named payee in accordance with one of the annuity options made available under the Annuity.

6. ASLAC may deduct an annual maintenance fee for certain services provided to Annuity holders. The fee is the smaller of $35 or 2% of: (a) The initial purchase payment; and (b) after the first annuity year (i.e., each 12 month period as measured from the date an Annuity is issued), the account value at the beginning of each such annuity year. The fee applies to the initial purchase payment only if it is less than $50,000, and applies after the first annuity year only if the account value of the Annuity is less than $50,000.

7. Other charges that are assessed directly against the Annuity holder rather than computed as a percentage of assets include: (a) A charge of $10 per

transfer for each transfer in excess of twelve in any annuity year; (b) a sales charge of up to 1.5% of each purchase payment, which may be waived in certain circumstances, and may differ among various group contracts; and (c) an amount equal to any premium taxes due in relation to an Annuity. There are no deferred or contingent deferred sales charges.

8. ASLAC assesses on a daily basis an administration charge equal to .25% per year of the average daily total value of each Subaccount. Applicants state that a relationship does not necessarily exist between the portion of the administration charge attributable to a particular Annuity and the expenses attributable to that particular Annuity. The administration charge is assessed at amounts ASLAC believes necessary to recover the actual costs of administering the account values allocated to the Subaccounts and Variable Account B itself. ASLAC will allocate costs pro rata between classes in its Variable Account B in proportion to the assets in the various classes. The administration charge and the maintenance fee are guaranteed and cannot be increased by ASLAC.

9. Applicants have another application pending with the Commission (File No. 812–8236), which would allow them to deduct a charge equal to 1% per year of the average daily total value of the Subaccounts for the provision of investment allocation services to Annuity holders. In general, ASLAC would deduct the investment allocation services fee from the assets of the Subaccounts, and then pay the fee to an unaffiliated investment advisor chosen by the Annuity holder.

10. ASLAC proposes to assess on a daily basis a mortality and expense risk charge equal to .65% per year of the average daily total value of each Subaccount. The mortality risk component of that charge is .30% and the expense risk component of that charge is .35%. The level of the mortality and expense risk charge is guaranteed and will not change.

11. ASLAC assumes the following mortality risks: (a) (Assuming the selection of one of the forms of life annuities) that ASLAC will continue to make annuity payments to Annuity holders regardless of the mortality experience of persons receiving such payments or of the general population; (b) that the death benefit for deaths occurring prior to age 85 will be paid at a time that the account values of the applicable Annuities are less than the applicable minimum death benefit of such Annuities; and (c) that the Subaccounts do not grow in value at the rate anticipated, thereby reducing the amount of such charges received by ASLAC. The expense risk undertaken by ASLAC is that the administration charge for administering the Subaccounts and the maintenance fee for maintaining the Annuities may be insufficient to cover the actual cost of providing such services.

12. If the .65% charge proves more than sufficient to cover such mortality and expense risks, the excess will result in a profit to ASLAC. Any such profit, as well as any other profit realized by ASLAC and held in its general account (which supports insurance and annuity obligations), would be available for any proper corporate purpose, including, but not limited to, payment of sales and distribution expenses.

Applicants' Legal Analysis

1. Applicants request exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent relief is necessary to permit the deduction of the mortality and expense risk charge from the assets of the Subaccounts. Section 27(c)(2) of the 1940 Act prohibits any registered investment company issuing periodic payment plan certificates, and any depositor of or underwriter for such company, from selling any such certificate unless, among other things, the proceeds of all payments on such certificates (excluding sales loads) are held by a qualified trustee or custodian under an indenture or agreement containing, in substance, the provisions required by sections 26(a)(2) and 26(a)(3) for trust indentures of unit investment trusts. Among the provisions required to be included in such an indenture or agreement is the proviso in section 26(a)(2)(C) that permits the trustee or custodian to deduct from the assets of the trust as an expense only bookkeeping and other administrative services charges not exceeding such reasonable amount as the Commission may prescribe.

2. Applicants submit that ASLAC is entitled to reasonable compensation for its assumption of mortality and expense risks. Applicants represent that the charge of .65% under the Annuities made for mortality and expense risks is consistent with the protection of investors because such a charge is reasonable and proper. ASLAC represents that the charge for mortality and expense risks is within the range of industry practice with respect to comparable annuity products. This representation is based on ASLAC's analysis of publicly available information about similar industry products, taking into consideration such factors as current charge levels, the existence of charge level guarantees, and guaranteed annuity rates. ASLAC will maintain at its administrative offices, and make available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey.

3. Applicants acknowledge that if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be viewed as being offset by distribution expenses not reimbursed by any applicable sales charge. ASLAC has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Subaccounts and the Annuity holders. The basis for such conclusion is set forth in a memorandum which will be maintained by ASLAC at its administrative offices, and will be available to the Commission.

4. The Subaccounts will invest only in open-end management investment companies that have undertaken to have a board of trustees (or directors), a majority of whom are not interested persons of such open-end management company, approve any plan to finance distribution expenses pursuant to Rule 12b–1 under the 1940 Act.

Conclusion

Applicants assert that for the reasons and upon the facts set forth above, the requested exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–25598 Filed 10–18–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–19788; 812–8236]

American Skandia Life Assurance Corp., et al.; Application for Exemption

October 13, 1993.

AGENCY: Securities and Exchange Commission (the "SEC" or "Commission").

ACTION: Notice of application for exemptions under the Investment Company Act of 1940 (the "Act").

APPLICANTS: American Skandia Life Assurance Corporation ("ASLAC"), American Skandia Life Assurance

Corporation Variable Account B Class 2 Sub-accounts (the "Sub-accounts"), and Skandia Life Equity Sales Corporation ("SLESCO").

RELEVANT ACT SECTIONS: Applicants request an order (a) pursuant to section 6(c) of the Act granting exemptions from sections 26(a)(2) and 27(c)(2) of the Act and (b) pursuant to section 17(d) of the Act and Rule 17d–1 thereunder granting exemptions from section 17(d) of the Act.

SUMMARY OF APPLICATION: Applicants seek to impose an investment allocation services charge equal to one percent per year of the average daily total value of the Sub-accounts. Generally, the charge would be paid to unaffiliated investment advisors that provide asset allocation advice to annuity holders. If an annuity holder has not retained an investment advisor, however, the charge would be paid to ASLAC for providing informational services to such annuity holder, and then would be re-allocated to the Sub-accounts.

FILING DATES: The application was filed on December 31, 1992 and amended on September 29, 1993 and October 4, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 8, 1993, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. American Skandia Life Assurance Corporation, One Corporate Drive, Shelton, Connecticut 06484.

FOR FURTHER INFORMATION CONTACT: C. Christopher Sprague, Senior Staff Attorney, at (202) 504–2802, or Michael V. Wible, Special Counsel, at (202) 272–2026, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representation:

1. ASLAC is a stock insurance company chartered in Connecticut, and is licensed to do business in all states of the United States. ASLAC is a wholly owned subsidiary of American Skandia Investment Holding Corporation (formerly Skandia U.S. Investment Holding Corporation), whose indirect parent is Skandia Insurance Company Ltd. (formerly Skandia Group Insurance Company Ltd.). Skandia Insurance Company Ltd. is part of a group of companies whose predecessor commenced operations in 1855.

2. The Sub-accounts are all Class 2 sub-accounts of American Skandia Life Assurance Corporation Variable Account B ("Variable Account B"). Variable Account B was established as a separate account under Connecticut law, and is registered with the SEC as a unit investment trust. Initially, the Sub-accounts will be used only to fund the individual and group variable annuity contracts (the "Annuities") that will have the investment allocation services feature that is the subject of this application. ASLAC created the Sub-accounts as a separate class because the Sub-accounts will bear greater charges than those imposed against the twenty-four other sub-accounts of Variable Account B. The assets of the Sub-accounts are the property of ASLAC. The Annuities will provide that the assets in the Sub-accounts equal to the reserves and other liabilities with respect to the Annuities will not be chargeable with liabilities arising out of any other business ASLAC may conduct.

3. Each Sub-account invests exclusively in shares of an underlying fund ("Fund") or Fund portfolio. Such Funds or Fund portfolios are made available exclusively to separate accounts of life insurance companies supporting variable annuity or variable life insurance products, or, where permitted by the Commission, to certain qualified retirement plans. Applicants expect that certain Sub-accounts will invest in some of the same Fund portfolios as are invested in by some Variable Account B's other subaccounts. ASLAC maintains an agreement with each of the Funds in relation to the purchase of shares. Applicants state that the investment manager of each Fund is disclosed in its prospectus, thereby informing annuity purchasers if any investment advisor that they may engage to provide asset allocation services also advises a Fund to which their annuity payments could be allocated within the Sub-accounts.

4. SLESCO, a wholly owned subsidiary of American Skandia Investment Holding Corporation, is registered as a broker-dealer with the Commission, and is a member of the National Association of Securities Dealers, Inc. SLESCO will act as the principal underwriter of the Annuities.

5. The Annuities have an accumulation phase and a payout phase. The Annuities are subject to an annual maintenance fee, which for accounts below a specified value is equal to the smaller of $35 or 2% of (a) the initial purchase payment; and (b) after the first Annuity year, the account value at the beginning of such year. ASLAC deducts an amount equal to any premium taxes due in relation to an Annuity. A charge of $10 per transfer is assessable for each transfer after the twelfth in any Annuity year. A maximum sales charge of 1.5% may be assessed against each purchase payment. There are no deferred or contingent deferred sales charges.

6. The Sub-accounts are assessed, on a daily basis, an administration charge equal to 0.25% per year of the average daily total value of each Sub-account. ASLAC represents that (a) The administration charge and maintenance fee are assessed at amounts it believes necessary to recover the actual costs of maintaining and administering the account values allocated to the Sub-accounts and (b) it will allocate costs pro-rata between classes in its Variable Account B in proportion to the assets in the various classes. Administration charges for the Class 2 Sub-accounts are greater than those charged to the sub-accounts used in relation to certain other annuities offered by ASLAC because of the additional expenses expected in relation to the Class 2 Sub-accounts. Additional expenses are expected in connection with matters such as the payment of an investment allocation services charge, the preparation of financial reports, and the dissemination of proxies to the Class 2 Annuity holders. In a separate application (File No. 812–8234), Applicants are seeking an exemptive order to allow them to assess a mortality and expense risk charge equal to 0.65% per year of the average daily total value of each Sub-account.

7. Applicants propose to assess each Sub-account, on a daily basis, a charge for investment allocation services (the "IASC") at the rate of 1.00% per year of the average daily total value of each Sub-account. Except as discussed below, ASLAC would pay the applicable portion of the IASC to an investment adviser chosen by the holder of the Annuity to provide asset allocation advice (the "Advisor"). Such

payment would be made in accordance with an agreement (the "Payment Agreement") among ASLAC, the Advisor and the Annuity holder. An Advisor will provide investment allocation services ("Services") to an Annuity holder pursuant to an agreement with the Annuity holder. Such agreements are separate and distinct from the Payment Agreements. No Applicant or any affiliate of an Applicant (as defined in the Act) will be a party to the agreement between the Annuity holder and Advisor.

8. The Advisors would be either (a) registered as investment advisors under the Investment Advisers Act of 1940 (the "Advisers Act") and any equivalent state law or regulation or (b) persons or entities, such as banks, that may provide investment advisory services, but are exempt from registration under both the Advisers Act and any equivalent state law or regulation. Applicants represent that they are not affiliated (as defined in the Act) with any Advisor. ASLAC will not sign a Payment Agreement with an affiliate, and no affiliated Advisor will be paid any proceeds of the IASC without the granting of prior exemptive relief by the Commission. The Advisors may or may not be affiliates of any of the investment managers and sub-advisers of the Funds. The Advisors may or may not be affiliates of broker-dealers (or entities that are exempt from registering as broker-dealers) that sell the Annuities. The representatives of such broker-dealers or exempt entities, as well as such broker-dealers or exempt entities themselves, have been or will be appointed by ASLAC as its insurance agents where required by law. Broker-dealers that have signed selling agreements with SLESCO or ASLAC may or may not be used to transact trades of portfolio securities of the Funds.

9. Each proposed Advisor will be subject to ASLAC's requirements. ASLAC currently intends to sign Payment Agreements only with Advisors organized as corporations or partnerships. ASLAC will not use as a criterion for selecting an Advisor: (a) The amount of any sales (or lack thereof) by such Advisor of annuities issued by ASLAC; (b) any sales (or lack thereof) of such annuities by an affiliate of an Advisor; or (c) the absence of the provision of any services by an Advisor or its affiliate to the Applicants or any affiliate thereof.

10. Applicants expect that the Services to be provided by Advisors will be designed either to: (a) Address Annuity holders' need to make informed investment and allocation decisions on an on-going basis, or (b) Annuity holders' need to entrust such decision making to an Advisor. The Applicants will not distinguish between the kinds of Services to be provided to Annuity holders by Advisors.

11. Advisors may or may not be given discretionary authority by Annuity holders to allocate and/or transfer Account Values between Sub-accounts. Annuity holders may or may not receive periodic analyses from Advisors regarding the Fund portfolios, and/or recommendations from Advisors regarding allocations and transfers among Sub-accounts. Advisors may or may not be offering such Services in the context of broader programs providing investor services or banking or trust services. Advisors may or may not provide market timing services to Annuity holders, although ASLAC reserves the right to limit the number of transfers effected by an Annuity holder in a given year.

12. An Annuity holder that has contracted with an Advisor will receive investment allocation services from the Advisor. However, if an Annuity holder does not contract with an Advisor, or permits its contract with an Advisor to lapse, he or she will receive certain informational services (the "Informational Services") from ASLAC. The Informational Services will be detailed statistical analyses of the Fund portfolios. Neither Applicants nor affiliates (as defined in the Act) of the Applicants will provide any recommendations regarding allocation of account values or any other form of investment advice as part of such Informational Services. Applicants believe that ASLAC is not required to register as an investment adviser pursuant to the Advisers Act on account of its provision of Informational Services. Applicants understand, however, that the requested order will not address ASLAC's status under the Advisers Act.

13. Should a Payment Agreement be terminated, ASLAC will send a notice to the applicable Annuity holder within five business days of its receipt of notice of termination. Such notice will remind the Annuity holder that the proceeds of the IASC attributable to his or her Annuity are being reallocated to the Sub-accounts during the period that there is no Payment Agreement in effect, and will encourage such Annuity holder to retain another Advisor.

14. ASLAC will assess the IASC and pay the proceeds thereof to Advisors. The percentage charge payable by ASLAC to each Advisor will be the same for all Advisors. However, the fee that an Annuity holder pays to his or her Advisor may vary. Applicants expect that, if an Advisor charges an Annuity holder less than 1.00% for Services, the agreement between the Annuity holder and the Advisor will address how the Annuity holder will be compensated for the difference.

15. ASLAC's sole responsibility pursuant to each Payment Agreement will be to pay each Advisor the applicable portion of the IASC. No amount of the IASC to be paid to Advisors will be paid or shared with any Applicant or affiliate of the Applicants. ASLAC will disclose to Annuity holders in the Payment Agreement, and ASLAC and SLESCO will disclose in the prospectus for the Annuities that: (a) ASLAC's only responsibility pursuant to a Payment Agreement is to pay the applicable portion of the IASC; (b) ASLAC bears no liability for the Services provided or promised to be provided by the Advisor; and (c) ASLAC's consent to be a party to a Payment Agreement does not in any way imply an endorsement of a particular Advisor, any evaluation of the Services or any additional services provided by an Advisor, or any evaluation of any Advisor's fees for Services or for any additional services. The Payment Agreement may be terminated by the Annuity holder or the Advisor at any time. ASLAC will not be able to terminate a Payment Agreement unless, in its belief, the Payment Agreement has terminated pursuant to law.

16. The IASC will be deducted daily from the assets of the Subaccounts. Pending payment, the IASC will be maintained by ASLAC as an identifiable portion of its general account. The IASC then will be paid to Advisors (for Annuity holders having Payment Agreements in effect), or will be re-allocated to the Sub-accounts (for Annuity holders who do not have Payment Agreements in effect). ASLAC intends to determine the amount of assets upon which amounts are paid to Advisors as of valuation date midway (approximately February 15, May 15, August 15, and November 15) through each calendar quarter, and pay the amounts due pursuant to the Payment Agreements or reallocate to the Subaccounts those amounts in relation to which no Payment Agreement then exists as of the end of each calendar quarter (approximately March 31, June 30, September 30, and December 31). These procedures were selected in order to simplify recordkeeping, limit the likelihood of errors, and reduce administrative costs. Applicants believe that determining the then current amount due each Advisor every day the IASC is assessed would entail greater

systems and administrative costs, and would likely result in greater administrative errors. The administrative procedure to be used by ASLAC may create a gain or loss to ASLAC when compared with a procedure that calculates the amounts payable to Advisors every day the IASC is assessed. This is because of changes in the market value of the assets between the date the Sub-account assets are valued to determine the amounts payable and the date such amounts are paid. Applicants believe that such fluctuations in market values will result in a gain in some quarters, and a loss in others. Applicants believe that it is reasonable to expect that such gains or losses will cancel each other out over time. ASLAC will allocate to the Sub-accounts pro rata any "float" that it earns while it holds the IASC (i.e., the net amount it may earn on the IASC proceeds that have been deducted, but have not yet been paid to Advisors or re-allocated to the Sub-accounts).

17. Advisors registered under the Advisers Act must provide disclosure to their clients regarding their affiliations with broker-dealers and investment companies. Such Advisors also must disclose any amounts they pay to any other person or entity as a "finder's fee" or similar compensation for directing clients to such Advisors. As detailed in the application, ASLAC will not be a party to a Payment Agreement with an Advisor that is not registered under the Advisers Act unless such Advisor agrees to provide disclosure to Annuity holders comparable to that referred to in the preceding sentence.

18. The prospectus pursuant to which the Annuities are offered will inform prospective purchasers that the IASC will be paid to Advisors only while a Payment Agreement is in effect, and will be reallocated to the Sub-accounts during any period in which there is no Payment Agreement in effect. It will inform each purchaser that by signing a Payment Agreement, ASLAC does not endorse any Advisor, evaluate the Services or any additional services provided by an advisor, or evaluate any Advisor's fees for Services or additional services. The prospectus will inform each prospective purchaser and Annuity holder that he or she should carefully consider the nature, quality, and cost of the Services proposed to be rendered by an Advisor or prospective Advisor, as well as the business relationships of such Advisor or the affiliates of such Advisor with any entity that may be authorized to offer Annuities or other contracts or services on behalf of ASLAC or its affiliates. It will also disclose that any Annuity holder should resolve with the applicable Advisor how any portion of the IASC paid to such Advisor that exceeds the amount due such Advisor is to be paid to the Annuity holder, or credited by the Advisor for other services rendered by such Advisor or any affiliate thereof. In addition, such prospectus will inform prospective purchasers that they are not encouraged to purchase or maintain an Annuity should their Payment Agreement terminate. Such prospectus will set out the IASC in the required fee table. The deduction for the IASC will be included in the determination of standard total return in any performance advertising in relation to the Annuities.

Applicant's Legal Analysis

1. Applicants seek an order under section 6(c) of the Act granting exemptions from sections 26(c)(2) and 27(c)(2) of the Act so that ASLAC may deduct the IASC from the assets of the Sub-accounts and pay the proceeds as discussed above. Applicants also seek an order under section 17(d) and Rule 17d–1 under the Act to allow the IASC to be paid to ASLAC, which is an affiliate of Variable Account B and its Sub-accounts. Applicants believe that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by policy and provisions of the Act. In addition, although Applicants do not believe that there is any "joint enterprise" under section 17(d) of the Act, Applicants state that the Sub-accounts' participation in any such joint enterprise would be consistent with the provisions, policies and purposes of the Act, and would be on a basis not materially different or less advantageous to the Sub-accounts than that of other participants in such joint enterprise.

2. Section 26(a)(2) under the Act provides that no payment to the depositor of, or principal underwriter for, a registered unit investment trust shall be allowed the trustee or custodian as an expense except compensation, not exceeding such reasonable amount as the Commission may prescribe, for performing bookkeeping and other administrative duties normally performed by the trustee or custodian itself. Section 27(c)(2) under the Act prohibits a registered investment company or a depositor or underwriter for such company from selling periodic payment plan certificates, unless the proceeds from all payments on such certificates, other than sales load, are deposited with a trustee or custodian having the qualifications prescribed in section 26(a)(1), and are held by such trustee or custodian under an indenture or agreement containing in substance, the provisions required by section 26(a)(2) and 26(a)(3) of the Act. Because the IASC is not the type of expense contemplated by sections 27(c)(2) and 26(a)(2), Applicants seek an order of exemption.

3. Section 17(d) of the Act states that it shall be unlawful for any affiliated person of or principal underwriter for a registered investment company (other than a company of the character described in section 12(d)(3) (A) and (B) of the Act), or any affiliated person of such a person or principal underwriter, acting as principal to effect any transaction in which such registered investment company, or a company controlled by such registered company, is a joint or a joint and several participant with such person, principal underwriter, or affiliated person, in contravention of such rules and regulations as the Commission may prescribe for the purpose of limiting or preventing participation by such registered or controlled company on a basis different from, or less advantageous than, that of such other participant. Rule 17d–1 permits an investment company to file an application for an exemption from section 17(d), and provides that the Commission, in passing upon such an application, will consider whether the participation of such registered or controlled company in such joint enterprise, joint arrangement, or profit-sharing plan on the basis proposed is consistent with provisions, policies and purposes of the Act, and will consider the extent to which such participation is on a basis different from or less advantageous than that of other participants. Applicants do not concede the applicability of section 17(d) to the proposed method of payment for Services or Informational Services. However, in order to avoid any possibility that questions may be raised as to the potential applicability of that provision, Applicants request an exemption.

4. Applicants assert that the requested exemptions from sections 26(a)(2) and 27(c)(2) should be granted because the proposed deduction of the IASC and payment for Services or the reallocation of a portion of the IASC to the Sub-accounts and the provision of Informational Services (the "Payment Method") is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. In support of that assertion, Applicants note, among other things, that: (a) The Advisors are not affiliated with the Applicants; (b) the selection of an Advisor is at the

discretion of each Annuity holder, subject only to such Advisor meeting ASLAC's criteria for acceptable Advisors; (c) ASLAC may not refuse to recognize that a Payment Agreement is in effect, except where ASLAC believes such Agreement has terminated by law; (d) ASLAC has no incentive to terminate a Payment Agreement because the applicable IASC charges in that case are re-allocated to the Sub-accounts, and are not paid to ASLAC; (e) ASLAC must notify an affected Annuity holder of the termination of a Payment Agreement, and remind such holder that the IASC proceeds attributable to his or her Annuity will be reallocated to the Sub-accounts during any period a Payment Agreement is not in effect; and (f) when there is no Payment Agreement in effect, Annuity holders will receive a benefit in relation to the IASC, specifically, the quarterly Informational Services to be provided by ASLAC that may be used to evaluate current allocations of Account Value.

5. In further support of the requested exemption from sections 26(a)(2) and 27(c)(2), Applicants also note that: (a) Annuity holders will be provided with disclosure regarding any affiliation between the Advisor and either the investment managers of the Fund portfolios or any broker dealer, as well as disclosure regarding any amounts paid to any person or entity for recommending the Advisor to such Annuity holder; (b) there will be notice in the Payment Agreement that will encourage Annuity holders to investigate and consider any affiliation between their Advisors and any of the portfolio management firms engaged by the Funds; (c) there will be the prospectus disclosure concerning the IASC discussed above; (d) Annuity holders may surrender the Annuity at any time without assessment of any contingent deferred sales charge or any other charge or fee; (e) neither ASLAC nor any affiliate of any Applicant will retain any portion of the IASC when no Payment Agreement is in effect; (f) no Applicant or any affiliate will receive any portion of the IASC paid out to Advisors; (g) Applicants do not believe that there is any redundancy between the Services provided by Advisors and the portfolio management services provided to the Fund portfolios; and (h) ASLAC does not reap any "hidden profits" in connection with the Payment Method, because ASLAC will allocate to the Sub-accounts any net earnings on the IASC not yet paid to Advisors or reallocated to the Sub-accounts.

6. Applicants state that the Payment Method will be especially convenient for Annuity holders who use their Annuity in connection with a tax-sheltered annuity program under section 403(b) of the Internal Revenue Code. Moreover, the Payment Method will facilitate use of these Annuities in connection with certain defined contribution plans, especially participant-directed plans where Services would be made available to plan participants. Applicants also state that the Payment Method is appropriate when a Payment Agreement is in effect because investment allocation services are a form of investment advisory services, which are generally paid for as a percentage of assets.

7. Applicants believe it is in the best interest of investors to have a meaningful, valuable tool to enable them to evaluate the current status of the Fund portfolios during what the Applicants expect to be infrequent and temporary periods when a Payment Agreement is not in effect. Applicants state that the Information Services are such a tool.

8. Applicants believe that the amount of the IASC—1.00% per year of the average daily total value of each Sub-account—is reasonable when a Payment Agreement is in effect. Applicants believe the criterion for determining the reasonability of the IASC for Services is the range of fees charge by Advisors for similar types of services in relation to other investments. The Applicants believe that the 1.00% fee is within the range of industry practice for the kinds of investment allocation services expected to be provided by Advisors. Applicants' belief is based on a review of amounts charged by investment advisory firms for Services, both for programs that invest in a broad range of investment vehicles and programs that invest solely in investment companies. Applicants believe that the criterion for determining the reasonability of the IASC for Informational Services provided when no Payment Agreement is in effect is the range of fees that would be charged an individual investor by a firm or individual that sells specialized financial research. The Applicants believe that the 1.00% fee is within the range of industry practice for the provision of Informational Services. Applicants state that this is especially true, given that the information conveyed is specialized, and is being prepared for a small audience rather than a broader class of investors.

9. In support of their request for an exemption from section 17(d) of the Act, Applicants note, among other things, that (a) ASLAC encourages Annuity holders to maintain a Payment Agreement; (b) ASLAC reallocates to the Sub-accounts the portion of the IASC attributable to Informational Services as well as the net earnings on such amounts; (c) ASLAC receives no "financial interest" within the meaning of Rule 17d–1(d)(5) under the Act, or if any financial interest is received, it is *de minimis*; and (d) the participation in any deemed joint enterprise by the Sub-accounts is on an equal basis with the participation of ASLAC, because quarterly ASLAC is paying the applicable portion of the IASC proceeds to Advisors pursuant to Payment Agreements or is reallocating the applicable portion of the IASC proceeds to the Sub-accounts in relation to Annuities that do not have Payment Agreements in effect.

Applicants' Conclusion

Applicants assert that, for the reasons discussed above, the requested order under section 6(c) of the Act granting exemptions from sections 26(a)(2) and 27(c)(2) of the Act is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Similarly, with regard to the requested exemption from section 17(d) of the Act, Applicants assert that the participation of Variable Account B and its Sub-accounts in any "joint enterprise" with ASLAC would be consistent with the provisions, policies, and purposes of the Act, and would be on a basis not materially different from, or less advantageous than, that of other participants in such joint enterprise.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–25599 Filed 10–18–93; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC–19785; 812–8466]

The Hanover Funds, Inc., et al.; Application for Exemption

October 13, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: The Hanover Funds, Inc. (the "Money Market Fund") and The Hanover Investment Funds, Inc. (the "Non-Money Market Fund") (together, the "Funds"); The Portfolio Group, Inc. ("TPG"), Texas Commerce Investment Management Company ("TCIMCo"), and Princeton Bank and Trust Company

("PBT") (together, the "Advisers"); and Hanover Funds Distributor, Inc. (the "Distributor").

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from sections 2(a)(32), 2(a)(35), 18(f)(1), 18(g), 18(i), 22(c), and 22(d) of the Act and rule 22c–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order that would permit the Funds (a) to issue and sell separate classes of shares representing interests in the same investment portfolio, and (b) to assess and, under certain circumstances, waive a contingent deferred sales charge ("CDSC") on redemptions of certain shares.

FILING DATE: The application was filed on June 21, 1993 and amended on August 25, 1993. By letter dated October 5, 1993, applicants' counsel stated that an additional amendment, the substance of which is incorporated herein, will be filed during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 8, 1993, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 237 Park Avenue, New York, NY 10017.

FOR FURTHER INFORMATION CONTACT: Mary Kay Frech, Staff Attorney, at (202) 272–7648 or Elizabeth G. Osterman, Branch Chief, at (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Each of the Funds is an open-end management investment company registered under the Act. Each Fund consists of multiple series, each of which has separate investment objectives and policies and segregated assets. The term "Portfolio" refers to an existing or future series of a Fund.

2. Each of the Advisers is controlled by Chemical Banking Corporation ("Chemical"). Each of TPG and TCIMCo acts as investment adviser to various Portfolios of each Fund, and PBT acts as investment adviser to one Portfolio of the Non-Money Market Fund. The Distributor, a registered broker-dealer, acts as the distributor for each Fund's shares.

3. The Money Market Fund offers shares of each of its Portfolios at net asset value without any sales charge. The Non-Money Market Fund offers shares of its Portfolios at net asset value subject, in certain cases, to a front-end charge. Pursuant to an existing order, each Portfolio is authorized to offer two classes of shares.[1]

4. Under existing non-rule 12b–1 shareholder service plans ("Shareholder Services Plans"), each Fund, on behalf of each of its Portfolios, has entered into agreements with certain financial institutions, securities dealers, and other industry professionals (collectively, "Service Agents") providing for the performance of services such as answering client inquiries and servicing client accounts. Under existing distribution plans pursuant to rule 12b–1 under the Act ("12b–1 Plans"), each Portfolio is authorizes to reimburse the Distributor for activities primarily intended to result in the sale of Portfolio shares. The 12b–1 Plans and Shareholder Services Plans are collectively referred to as the "Plans."

5. Applicants propose to establish a multiple distribution system ("Multi-Class System") to enable each of the Portfolios to offer investors the option of purchasing shares that are offered in conjunction with a 12b–1 Plan, with a Shareholder Services Plan, with neither type of Plan, or with combinations of these arrangements.

6. After implementation of the proposed Multi-Class System, a Fund, on behalf of a particular class of a Portfolio, or the Distributor may enter into agreements with Service Agents for advertising, marketing, and distribution services pursuant to a 12b–1 Plan or for the provision of personal services relating to shareholder accounts pursuant to a Shareholder Services Plan. In the event that a Portfolio adopts both a 12b–1 Plan and a Shareholder Services Plan, the services provided under one plan will augment, rather than duplicate, services provided under the other plan. Applicants will, in all cases, comply with Article III, Section 26 of the NASD Rules of Fair Practice as it relates to the maximum amount of asset-based sales charges and service fees that may be imposed by an investment company.

7. A Portfolio's gross income will be allocated *pro rata* to each class on the basis of the net assets of each class. Expenses incurred by a Fund not attributable to a particular Portfolio of the Fund or to a particular class of a Portfolio ("Fund Expenses"), and expenses incurred by a particular Portfolio of a Fund not attributable to any particular class of the Portfolio ("Series Expenses") will be allocated to each class on the basis of net assets. Certain expenses specifically attributable to a particular class of a Portfolio's shares ("Class Expenses") will be allocated directly to such class. Class Expenses will consist only of those expenses specified in condition 1 below.

8. Class Expenses may be waived or reimbursed on a voluntary, temporary basis on certain classes. The amount of Class Expenses waived or reimbursed may vary from class to class. Class Expenses are by their nature specific to a given class and are obviously expected to vary from one class to another. Applicants thus believe that it is acceptable and consistent with shareholder expectations to reimburse or waive Class Expenses at different levels for different classes of the same Portfolio.

9. In addition, Fund Expenses and/or Series Expenses may be waived or reimbursed (with or without a waiver or reimbursement of Class Expenses) but only if the same proportionate amount of Fund Expenses and/or Series Expenses are waived or reimbursed for each class. Thus, any Fund Expenses that are waived or reimbursed would be credited to each Portfolio of that Fund according to the relative net assets of the Portfolios, and in turn credited to each class of the Portfolio based on the relative net assets of the classes. Similarly, any Series Expenses that are waived or reimbursed would be credited to each class of that Portfolio according to the relative net assets of the classes. Fund Expenses apply equally to all Portfolios of a given Fund, and Series Expenses apply equally to all classes of a given Portfolio. Accordingly, it may not be appropriate to waive or reimburse Fund Expenses at different levels for different Portfolios of the same Fund, or Series Expenses at different levels for different classes of the same Portfolio.

[1] Investment Company Act Release Nos. 18334 (Sept. 26, 1991) (notice) and 18402 (Nov. 8, 1991) (order). If granted, the relief requested by the application will supersede the prior order as it relates to the Funds.

10. Dividends paid to all shareholders of a class of a Portfolio will be declared and paid at the same times and, except with respect to payments under a 12b–1 Plan or a Shareholder Services Plan ("Plan Payment") and Class Expenses, will be determined in the same manner and paid in the same amounts. However, because of the Plan Payments and Class Expenses that will be borne by a class of shares, the net income of (and dividends payable to) such class will be somewhat lower than the net income of a different class of shares in the same Portfolio that is not making such Plan Payments or bearing such Class Expenses. As a result, for a Portfolio that does not declare dividends daily (such as a non-money market fund), the net asset value per share attributable to different classes will differ between dividend declaration dates.

11. Each Portfolio seeks the ability to offer investors the option of purchasing shares that either are subject to a conventional front-end sales load ("Front-End Option") or subject to a CDSC ("Deferred Option"), or not subject to any such sales charge. Shares offered pursuant to these options could be offered in conjunction with a 12b–1 Plan or Shareholder Services Plan, and thus be subject to Plan Payments. In a Portfolio offering classes with both Front-End and Deferred Options, Plan Payments will be higher for shares issued under the Deferred Option.[2]

12. Investors choosing the Deferred Option will purchase shares at net asset value, without the imposition of a sales load at the time of purchase, but subject to a CDSC upon redemption within a specified period of purchase (the "CDSC Period"). The amount of any applicable CDSC will be calculated by multiplying the lesser of the cost of the shares being redeemed or the net asset value of the shares at the time of redemption by the applicable percentage charge.

13. No CDSC will be imposed on any shares issued by any Portfolio prior to the date of any order granting the exemptive relief. No CDSC will be imposed on (a) redemptions of Deferred Option shares purchased prior to the CDSC Period, (b) shares derived from reinvestment of dividends and distributions, or (c) amounts representing an increase in the value of the shareholder's account resulting from capital appreciation. In determining the applicability and rate of any CDSC, it will be assumed that a redemption is made first of shares representing reinvestment of dividends and capital gain distributions, then of shares representing capital appreciation, then of amounts representing the cost of Deferred Option shares purchased prior to the CDSC Period, and finally, of other shares held by the shareholder for the longest period of time. This will result in the CDSC being imposed at the lowest possible rate.

14. At the end of the CDSC Period, Deferred Option shares of a Portfolio will automatically convert (subject to condition 15 below) to Front-End Option shares of such Portfolio at the relative net asset values of the two classes, and will thereafter be subject to the Plan Payments, if any, applicable to the Front-End Option shares. For purposes of conversion to Front-End Option shares, all shares in a shareholder's Portfolio account that were purchased through the reinvestment of dividends and other distributions paid in respect of Deferred Option shares will be considered to be held in a separate sub-account. Each time any Deferred Option shares in the shareholder's Portfolio account (other than those in the sub-account referred to in the preceding sentence) convert to Front-End Option shares, a *pro rata* portion of the Deferred Option shares then in the sub-account also will convert to Front-End Option shares. The portion will be determined by the ratio that the shareholder's Deferred Option shares converting to Front-End Option shares bears to the shareholder's total Deferred Option shares not acquired through dividends and distributions.

15. Applicants seek the ability to waive the CDSC (a) on redemptions made within one year following a shareholder's death or disability, as defined in section 72(m)(7) of the Internal Revenue Code; (b) otherwise payable by employees participating in qualified or non-qualified employee benefit plans or other programs where the employers or affiliated employers maintaining such programs have a minimum of 250 employees eligible for participation in such programs, or such program's aggregate initial investment in the Funds or other products made available through the Distributor exceeds one million dollars; (c) in connection with redemptions as a result of a combination of any investment company with a Fund by merger, acquisition of assets, or otherwise; and (d) in connection with a distribution following retirement under a tax-deferred retirement plan or attaining age 70½ in the case of an IRA or Keogh plan or custodial account pursuant to section 403(b) of the Internal Revenue Code.

16. If the Directors of a Fund determine to discontinue the waiver of a CDSC, the disclosure in each related Portfolio's prospectus will be revised appropriately. Any Portfolio shares subject to a CDSC that were purchased prior to the termination of such waiver will have the CDSC waived as provided in such Portfolio's prospectus at the time of purchase of such shares.

17. Each class of shares may be exchanged only for shares of the same class in another Portfolio. Portfolios that have not issued multiple classes and have not adopted a CDSC are deemed to be the same class as any Portfolio or class that is not sold with a CDSC. In all events, the exchange privileges will operate in accordance with rule 11a–3 under the Act.

Applicant's Legal Analysis

1. Applicants are requesting an order pursuant to section 6(c) of the Act to the extent the proposed issuance and sale of multiple classes of shares by a Portfolio might be deemed (a) to result in a "senior security" within the meaning of section 18(g) and thus be prohibited by section 18 (f) (1); or (b) to violate the equal voting provisions of section 18(i).

2. Applicants believe that the Multi-Class System does not involve the types of abuses that section 18 was designed to redress. Applicants state that the Multi-Class System does not involve borrowing and does not affect the Portfolios' assets or reserve. Applicants further state that it will not increase the speculative character of the Portfolios' shares. No class of shares will have a distribution or liquidation preference with respect to particular assets of a Portfolio and no class will be protected by any reserve or other account. The concerns that complex capital structures may facilitate control without equity or other investment and may make it difficult for investors to value their shares are not present under the proposed Multi-Class System. The Portfolios' capital structures will not enable insiders to manipulate the expenses and profits among the different classes of shares.

3. Applicants believe that the Multi-Class System will better enable them to meet the competitive demands of today's financial services industry. By creating multiple classes of shares, the Portfolios will save the organizational and other continuing costs that would be incurred if they were required to establish a separate investment portfolio for each class of shares. To the extent a Portfolio is able, through the Multi-Class System, to expand its shareholder base, all investors, irrespective of class, will benefit to the extent the Portfolios' *pro*

[2] Although the CDSC is discussed as part of the Multi-Class System, applicants request that Portfolios with only a single class of shares also be permitted to sell their shares with a CDSC.

rata operating expenses per share are lower than they would be otherwise.

4. Applicants assert that the proposed allocation of expenses and voting rights in the manner proposed herein is equitable and will not discriminate against any group of shareholders. Investors purchasing shares offered in connection with 12b–1 Plans and Shareholder Services Plans and receiving services provided under those Plans will bear the costs associated with such services, but also will posses accompanying voting rights (if any) with respect to matters affecting their respective Plans. Investors purchasing shares that are not covered by such Plans will not be burdened with such expenses or possess such voting rights.

Applicants' Conditions

Applicants agree that any order granting the requested exemptions will be subject to the following conditions:

1. The classes will each represent interests in the same portfolio of investments of a Portfolio, and be identical in all respects, except for certain differences related to: (a) The method of financing certain Class Expenses, which are limited to (i) transfer agent fees identified by the transfer agent as being attributable to a specific class; (ii) printing and postage expenses related to preparing and distributing materials such as shareholder reports, prospectuses, and proxies to current shareholders of a specific class; (iii) blue sky registration fees incurred by a class of shares; (iv) SEC registration fees incurred by a class of shares; (v) the expense of administrative personnel and services as required to support the shareholders of a specific class; (vi) litigation or other legal expenses relating solely to one class of shares; and (vii) directors' fees incurred as a result of issues relating to one class of shares; (b) expenses assessed to a class pursuant to a 12b–1 Plan or Shareholder Services Plan; (c) voting rights as to matters exclusively affecting one class of shares, except as provided in condition 15 below; (d) the requirement that only certain Deferred Option shares will have a conversion feature providing for automatic conversion to Front-End Option shares a stated number of years after issuance; (e) exchange privileges; and (f) class designation. Any additional incremental expenses not specifically identified above which are subsequently identified and determined to be properly allocable to one class of shares shall not be so allocated until approved by the SEC pursuant to an amended order.

2. A Fund's Directors, including a majority of the non-interested Directors, will approve the offering of different classes of shares of a Portfolio prior to the implementation of the Multi-Class System. The minutes of the Directors' meetings regarding their deliberations with respect to the approvals necessary to implement the Multi-Class System will reflect in detail the reasons for the Directors' determination that the proposed Multi-Class System is in the best interests of both a Fund and its shareholders.

3. The initial determination of the Class Expenses that will be allocated to a particular class and any subsequent changes thereto will be reviewed and approved by a vote of the relevant Fund's Directors, including a majority of the non-interested Directors. Any person authorized to direct the allocation and disposition of monies paid or payable by a Portfolio to meet Class Expenses shall provide to the Directors, and the Directors shall review, at least quarterly, a written report of the amounts so expended and the purposes for which such expenditures were made.

4. On an ongoing basis, a Fund's Directors, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor the Fund for the existence of any material conflicts among the interests of the classes of shares. The Directors, including a majority of the non-interested Directors, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. The investment adviser, sub-investment adviser (if any), administrator (if separate), and distributor of the Fund will be responsible for reporting any potential or existing conflicts to the Directors. If a conflict arises, such entities at their own cost will remedy such conflict up to and including establishing a new registered management investment company.

5. Each Portfolio's investment adviser or distributor will adopt compliance standards as to when each class of shares may be sold to particular investors. Applicants will require all persons selling Portfolio shares to agree to conform to such standards.

6. Any Shareholder Services Plan will be adopted and operated in accordance with the procedures set forth in rule 12b–1 (b) through (f) as if the expenditures made thereunder were subject to rule 12b–1, except that shareholders need not enjoy the voting rights specified in rule 12b–1.

7. Each Fund's Directors will receive quarterly and annual statements concerning 12b–1 Plan and Shareholder Services Plan expenditures complying with rule 12b–1(b)(3)(ii), as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale or servicing of a particular class will be used to justify any distribution or servicing fee charged to that class. Expenditures not related to the sale or servicing of a particular class will not be presented to the Directors to justify any fee charged to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the non-interested Directors in the exercise of their fiduciary duties.

8. Dividends paid by a Portfolio with respect to each class of its shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day, and will be in the same amount, except that Class Expenses and payments made pursuant to a 12b–1 Plan or Shareholder Services Plan will be borne exclusively by the affected class.

9. The methodology and procedures for calculating the net asset value and dividend distributions of the various classes and the proper allocation of expenses among the classes have been reviewed by an expert (the "Expert") who has rendered a report to the applicants, which has been provided to the staff of the SEC, that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to each Fund that the calculations and allocations are being made properly. The Expert's reports shall be filed as part of the periodic reports filed with the SEC pursuant to sections 30(a) and 30(b)(1) of the Act. The Expert's work papers with respect to such reports, following request by any Fund (which each such Fund agrees to provide), will be available for inspection by the SEC staff upon the written request to a Fund for such work papers by a senior member of the Division of Investment Management, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Expert is a "report on policies and procedures placed in operation" and the ongoing reports will be "reports on policies and procedures placed in operation and tests of operating effectiveness" as defined and described in SAS No. 70 of the

American Institute of Certified Public Accountants ("AICPA"), as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

10. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividend/distributions of the various classes and the proper allocation of expenses among the classes and this representation has been concurred with by the Expert in the initial report referred to in condition 9 above and will be concurred with by the Expert or an appropriate substitute Expert on an ongoing basis at least annually in the ongoing reports referred to in that condition. Applicants will take immediate corrective action if the Expert, or appropriate substitute Expert, does not so concur in the ongoing reports.

11. Each prospectus will contain a statement to the effect that any person entitled to receive any compensation for selling or servicing Portfolio shares may receive different levels of compensation with respect to one particular class of shares over another in the Portfolio.

12. The conditions pursuant to which the exemptive order requested by the application is granted and the duties and responsibilities of the Directors of each Fund with respect to the Multi-Class System described in the application will be set forth in guidelines which will be furnished to each Fund's Directors.

14. Each Portfolio will disclose in each of its prospectuses the respective expenses, performance data, distribution arrangements, services, fees, initial sales loads, CDSCs, conversion features, and exchange privileges applicable to each class of shares, regardless of whether all such classes of shares are offered through such prospectus. Each Portfolio will disclose the respective expenses and performance data applicable to all classes of shares in every shareholder report pertaining to such Portfolio. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to the Portfolio as a whole generally and not on a per class basis. Each Portfolio's per share data, however, will be prepared on a per class basis with respect to all classes of shares of such Portfolio. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of shares of a Portfolio, it will also disclose the respective expenses and/or performance data applicable to all classes of shares of such Portfolio. The information provided by applicants for publication in any newspaper or similar listing of a Portfolio's net asset value and public offering price will present each class of shares separately.

14. Deferred Option shares will convert to Front-End Option shares on the basis of the relative net asset values of the two classes without the imposition of any sales load, fee or other charge. After conversion, the converted shares will be subject to an asset-based sales charge and/or service fee (as those terms are defined in Article III, Section 26 of the NASD's Rules of Fair Practice), if any, that in the aggregate are lower than the asset-based sales charge and service fee to which they were subject prior to the conversion.

15. If a Portfolio implements any amendment to its 12b–1 Plan (or, if presented to shareholders, adopts or implements any amendment of a Shareholder Services Plan) that would increase materially the amount that may be borne by the Front-End Option shares under the plan, existing Deferred Option shares will stop converting into Front-End Option shares unless the Deferred Option shareholders, voting separately as a class, approve the proposal. The Directors shall take such action as is necessary to ensure that existing Deferred Option shares are exchanged or converted into a new class of shares ("New Front-End Option"), identical in all material respects to the Frond-End Option class as it existed prior to implementation of the proposal, no later than the date such shares previously were scheduled to convert into Front-End Option shares. If deemed advisable by the Directors to implement the foregoing, such action may include the exchange of all existing Deferred Option shares for a new class of shares ("New Deferred Option"), identical to existing Deferred Option shares in all material respects except that New Deferred Option shares will convert into New Front-End Option shares. A New Front-End Option class or New Deferred Option class may be formed without further exemptive relief. Exchanges or conversions described in this condition shall be effected in a manner that the Directors reasonably believe will not be subject to Federal taxation. In accordance with condition 4, any additional cost associated with the creation, exchange or conversion of New Front-End Option shares or New Deferred Option shares shall be borne solely by the relevant Portfolio's investment adviser and distributor. Deferred Option shares sold after the implementation of the proposal may convert into Front-End Option shares subject to the higher maximum payment, provided that the material features of the Front-End Option plan and the relationship of such plan to the Deferred Option shares are disclosed in an effective registration statement.

16. Applicants acknowledge that the grant of the exemptive order requested by the application will not not imply SEC approval, authorization or acquiescence in any particular level of payments that a Portfolio may make pursuant to 12b–1 Plans or Shareholder Services Plans in reliance on the exemptive order.

17. Applicants will comply with the provisions of proposed rule 6c–10 under the Act, as such rule is currently proposed and as it may be reproposed, adopted or amended.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–25526 Filed 10–18–93; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC–19783; 812–83701]

The One® Group℠, et al.; Application for Exemption

October 13, 1993.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: The One® Group℠, Banc One Investment Advisors Corporation ("BOIAC").

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) of the Act that would grant an exemption from section 12(d)(1)(A)(ii), under sections 6(c) and 17(b) that would grant an exemption from section 17(a), and under rule 17d–1 to permit certain transactions in accordance with section 17(d) of the Act and rule 17d–1.

SUMMARY OF APPLICATION: Applicants seek an order that would permit certain money market funds to sell their shares to affiliated investment companies.

FILING DATE: The application was filed on April 23, 1993, and amended on August 16, 1993. Applicants have agreed to file an additional amendment, the substance of which is incorporated herein, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a

hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 8, 1993, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, 1900 East Dublin-Granville Road, Columbus, Ohio 43229.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 272–3026, or Robert A. Robertson, Branch Chief, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. The One∞ Group℠ is an open-end management investment company that currently offers 29 series (each a "Fund"). Nine of the Funds are money market funds (the "Money Market Funds") and are subject to the requirements of rule 2a–7 under the Act. The other twenty Funds are non-money market funds (the "Non-Money Market Funds").

2. BOIAC is the investment adviser for each of the Funds. Boston International Advisors, Inc., Goldman Sachs Asset Management, and Van Kampen Merritt Management Inc. serve as subadviser for some of the Funds. (Collectively, BOIAC and the subadvisers are the "Investment Advisers.") SEI Financial Services Company (the "Distributor") serves as the distributor for the Funds, and SEI Financial Management Corporation is the manager and administrator for the Funds. State Street Bank and Trust Company serves as transfer agent and custodian to the Funds.

3. The Money Market Funds seek current income, liquidity, and capital preservation by investing exclusively in short-term money market instruments, such as U.S. Government securities, bank obligations, commercial paper, municipal obligations, or repurchase agreements secured by government securities. These short-term debt securities are valued at their amortized cost pursuant to the requirements of rule 2a–7. The Non-Money Market Funds invest in a variety of debt and/or equity securities in accordance with their respective investment objectives and policies. Each of the Funds has, or may be expected to have, uninvested cash in an account with the custodian. This cash either may be invested directly in individual short-term money market instruments or may not be otherwise invested in any portfolio securities.

4. Applicants seek an order that would permit (a) the Funds to utilize their cash reserves that have not been invested in portfolio securities to purchase shares of the Money Market Funds (each Fund, including Money Market Funds, purchasing shares of the Money Market Funds is an "Investing Fund") and (b) the Money Market Funds to sell or redeem their shares to or from each Investing Fund. By investing cash balances in the Money Market Funds as proposed, applicants believe that the Investing Funds will be able to combine their cash balances and thereby reduce their transaction costs, create more liquidity, enjoy greater returns, and further diversify their holdings. The policies of the Funds either permit or will be amended, pursuant to a shareholder vote, to permit the Funds to purchase money market instruments, including shares of a Money Market fund.

5. The shareholders of the Investing Funds will not be subject to the imposition of double management fees. Applicants would cause each Investment Adviser and its respective affiliates to remit to the respective Investing Funds or waive investment advisory fees these service providers earn as a result of the Investing Funds' investments in the Money Market Funds to the extent the fees are based upon the Investing Funds' assets invested in shares of the Money Market Funds. Further, no sales charge, contingent deferred sales charge, 12b–1 fee, or other underwriting or distribution fee would be charged by the Money Market Funds with respect to the purchase or redemption of their shares. If a Money Market Fund offers more than one class of shares, each Investing Fund will invest only in the class with the lowest expense ratio at the time of the investment.

6. Several of the Funds have voluntary expense cap arrangements with BOIAC for the purpose of keeping each Fund's total expenses below a certain predetermined percentage amount ("Expense Waiver"). To the extent actual expenses of the Funds exceed these caps, BOIAC reimburses a Fund in the amount of the excess. Any applicable Expense Waiver will not limit the advisory and administrative fee waiver or remittance discussed above.

7. Applicants also request relief that would permit the Funds to invest uninvested cash in a Money Market Fund in excess of the percentage limitations set out in section 12(d)(A)(ii) of the Act. Section 12(d)(A)(ii) prohibits a registered investment company from acquiring the securities of another investment company if, immediately thereafter, the acquiring company would have more than 5% of its total assets invested in the securities of the selling company. Applicants propose that each Fund be permitted to invest in shares of a single Money Market Fund so long as each Fund's aggregate investment in such Money Market Fund does not exceed the greater of 5% of such Fund's total net assets or $2.5 million. Applicants will comply with all other provisions of section 12(d)(1).

Applicants' Legal Analysis

1. Sections 17(a) (1) and (2) of the Act make it unlawful for any affiliated person of a registered investment company, or any affiliated person of such affiliated person, acting as principal, to sell or purchase any security to or from such investment company. Because each Fund may be deemed to be under common control with the other Funds, it may be an "affiliated person," as defined in section 2(a)(3) of the Act, of the other Funds. Accordingly, the sale of shares of the Money Market Funds to the Investing Funds, and the redemption of such shares from the Investing Funds, would be prohibited under section 17(a).

2. Section 17(b) of the Act authorizes the Commission to exempt a transaction from section 17(a) if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, the proposed transaction is consistent with the policy of each registered investment company concerned, and the proposed transaction is consistent with the general policy of the Act. Section 17(b) could be interpreted to exempt only a single transaction. However, the Commission, under section 6(c) of the Act, may exempt a series of transactions that otherwise could be prohibited by section 17(a).

3. The Investing Funds will retain their ability to invest their cash balances directly into money market instruments if they believe they can obtain a higher return. Each of the Money Market Funds

has the right to discontinue selling shares to any of the Investing Funds if its board of trustees determines that such sales would adversely affect the portfolio management and operations of such Money Market Fund. Therefore, applicants believe that the proposal satisfies the standards for relief.

4. Section 17(d) of the Act and rule 17d–1 thereunder prohibit an affiliated person of an investment company, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates. Each Investing Fund, by purchasing shares of the Money Market Funds; each Investment Adviser of an Investing Fund, by managing the assets of the Investing Funds invested in the Money Market Funds; and each of the Money Market Funds, by selling shares to the Investing Funds, could be participants in a joint enterprise or other joint arrangement within the meaning of section 17(d)(1) and rule 17d–1.

5. Rule 17d–1 permits the Commission to approve a proposed joint transaction covered by the terms of section 17(d). In determining whether to approve a transaction, the Commission is to consider whether the proposed transaction is consistent with the provisions, policies, and purposes of the Act, and the extent to which the participation of the investment companies is on a basis different from or less advantageous than that of the other participants. Applicants believe that the proposal satisfies these standards.

6. Section 12(d)(1), as noted above, sets certain limits on an investment company's ability to invest in the shares of another investment company. The perceived abuses section 12(d)(1) sought to address include undue influence by an acquiring fund over the management of an acquired fund, layering of fees, and complex structures. Applicants believe that none of these concerns are presented by the proposed transactions and that the proposed transactions meet the section 6(c) standards for relief.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Shares of the Money Market Funds sold to and redeemed from the Investing Funds will not be subject to a sales load, redemption fee, or distribution fee under a plan adopted in accordance with rule 12b–1.

2. Applicants will cause the Investment Advisers and their respective affiliates, in their capacities as service providers for the Money Market Funds, to remit to the respective Investing Fund or waive all investment advisory fees payable to them under their respective investment advisory agreements with the Money Market Funds to the extent such fees are based upon the Investing Fund's assets invested in shares of the Money Market Funds. Any of these fees remitted or waived will not be subject to recoupment by the Fund's Investment Advisers at a later date.

3. For the purpose of determining any amount to be waived and/or expenses to be borne to comply with any Expense Waiver, the adjusted fees for an Investing Fund (gross fees minus Expense Waiver) will be calculated without reference to the amounts waived or remitted pursuant to condition 2. Adjusted fees then will be reduced by the amount waived pursuant to condition 2. If the amount waived pursuant to condition 2 exceeds adjusted fees, the Investing Fund's Investment Adviser also will reimburse the Investing Fund in an amount equal to such excess.

4. Each of the Investing Funds will be permitted to invest uninvested cash in, and hold shares of, a Money Market Fund only to the extent that the Investing Fund's aggregate investment in such Money Market Fund does not exceed the greater of 5% of the Investing Fund's total net assets or $2.5 million.

5. The Investing Funds will vote their shares of each of the Money Market Funds in the same proportion as the votes of all other shareholders in such Money Market Funds.

6. The Investing Funds will receive dividends and bear their proportionate shares of expenses on the same basis as other shareholders of such Money Market Funds. A separate account will be established in the shareholder records of each of the Money Market Funds for each of the acquiring Investing Funds.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–25527 Filed 10–18–93; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 19784; 812–8310]

State Street Bank and Trust Company; Notice of Application

October 13, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("Act").

APPLICANT: State Street Bank and Trust Company.

RELEVANT ACT SECTIONS: Order requested under sections 6(c) and 17(b) for an exemption from section 17(a).

SUMMARY OF APPLICATION: Applicant seeks an order that would permit it to engage in principal transactions with (1) any series of an investment company of which applicant is an affiliated person of an affiliated person solely because of an investment advisory relationship with another series of that investment company, and (2) any investment company of which applicant is an affiliated person of an affiliated person solely because of an investment advisory relationship with another investment company under common control with that investment company.

FILING DATE: The application was filed on March 12, 1993, and amended on September 24, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 8, 1993, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, 225 Franklin Street, Boston, Massachusetts 02110.

FOR FURTHER INFORMATION CONTACT: Courtney S. Thornton, Senior Attorney, at (202) 272–5287, or C. David Messman, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, a Massachusetts trust company, serves as investment adviser to certain registered investment companies and certain portfolios of

other registered investment companies (collectively, the "Advised Funds"). As a "bank" within the definition of section 202(a)(2) of the Investment Advisers Act of 1940, applicant is exempt from registration as an investment adviser.

2. Applicant also currently serves as the custodian, transfer agent, and/or administrator to certain Advised Funds, as well as to certain investment companies and series that are affiliated persons of the Advised Funds but for which applicant does not serve as investment adviser (the "Non-Advised Funds").

3. The Non-Advised Funds have and will retain various investment advisers and subadvisers that are not affiliated persons of applicant to render advisory services to the Non-Advised Funds.

4. Applicant is a substantial participant in the cash equivalency markets. In the case of the Non-Advised Funds for which applicant serves as custodian, it may be particularly cost-effective for the funds to engage in certain principal transactions with applicant, such as investing short-term cash in investment products managed by applicant, placing such cash on deposit with applicant, or entering into repurchase agreements with applicant.[1]

Applicant's Legal Conclusions

1. Section 17(a) of the Act, in relevant part, makes it unlawful for an affiliated person of a registered investment company, or any affiliated person of such a person, acting as principal, to sell securities to, or purchase securities from, such investment company. Section 2(a)(3) defines "affiliated person" of another person to include, among other things, any person directly or indirectly controlling, controlled by, or under common control with such other person, and, if such other person is an investment company, any investment adviser thereof.

2. Because each Non-Advised Fund shares the same sponsor, directors, officers, and/or investment adviser (other than applicant) with one or more Advised Funds, each Non-Advised Fund might be deemed to be under common control with the relevant Advised Funds, and, as a result, each Non-Advised Fund might be deemed to be an affiliated person of the relevant Advised Funds. While applicant does not concede that all Advised Funds and Non-Advised Funds having the same sponsor, directors, officers, and/or investment adivser (other than applicant) are under common control, the existences of such control relationship is assumed solely for purposes of this application, so that each Non-Advised Fund may be deemed to be an affiliated person of the relevant Advised Funds.

3. In light of the above, applicant may be deemed to be an affiliated person of an affiliated person ("second-tier affiliate") of the Non-Advised Funds. Accordingly, applicant would be prohibited by section 17(a) from engaging in principal transactions with the Non-Advised Funds.

4. Section 17(b) permits the SEC to exempt a proposed transaction from the provisions of section 17(a) if the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, the transaction is consistent with the policy of the registered investment company concerned, and the transaction is consistent with the general purposes of the Act. Section 6(c) authorizes the SEC to exempt any class of transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

5. Applicant requests an order pursuant to sections 6(c) and 17(b) to exempt principal transactions entered into in the ordinary course of business between any Non-Advised Fund and applicant from the provisions of section 17(a). Specifically, the requested order would permit applicant to engage in principal transactions with (a) any series of an investment company of which applicant is an affiliated person of an affiliated person solely because of an investment advisory relationship with another series of that investment company, and (b) any investment company of which applicant is an affiliated person of an affiliated person solely because of an investment advisory relationship with another investment company under common control with that investment company.

6. Applicant believes that the proposed transactions permitted by the requested order, if granted, will meet the standards of sections 6(c) and 17(b). In each transaction permitted by the requested relief, applicant would be dealing with an investment adviser that, in economic reality, is a competitor of applicant. Each such transaction, therefore, would be the product of arms-length bargaining between competitors. Because there will be no conflict of interest inherent in another investment adviser's decision to execute on behalf of a Non-Advised Fund a portfolio transaction with applicant, there is no danger of overreaching on the part of any person concerned with the transaction.

7. Applicant also argues that, because the pecuniary interests of the other advisers are solely and directly aligned with those of the relevant Non-Advised Funds, it is reasonable to conclude that the consideration to be paid or received by such Non-Advised Funds will be reasonable and fair. Moreover, because the transactions will be approved by the other investment advisers charged with effecting transactions for the Non-Advised Funds in accordance with the relevant registration statement and policies determined by the relevant Trustees, it is reasonable to conclude that the transactions will be consistent with the policy of each registered investment company concerned, as recited in its registration statement.

8. Finally, applicant believes that permitting the transactions for which relief is requested will be consistent with the general purposes of the Act, because the ability to engage in such transactions increases the likelihood of the Non-Advised Funds achieving best price and execution in their principal transactions. Accordingly, applicants believe that it is appropriate to issue an order pursuant to sections 6(c) and 17(b) granting an exemption from section 17(a).

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–25528 Filed 10–18–93; 8:45 am]

BILLING CODE 8010–01–M

[1] Applicant previously has engaged in transactions of the type for which relief is sought in the application, but has discontinued engaging in such transactions during the pendency of this application. Applicant acknowledges that the application does not, and any exemptive order issued by the SEC will not, cover transactions occurring prior to the date on which any order is issued.

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATE: Comments should be submitted on or before November 18, 1993. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:
Agency Clearance Officer: Cleo Verbillis, Small Business Administration, 409 3RD Street SW., 5th Floor, Washington, DC 20416, Telephone: (202) 205–6629
OMB Reviewer: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: Business Loan Reconsideration Request
Form No.: N/A
Frequency: On Occasion
Description of Respondents: Individuals seeking a reconsideration of a declined business loan
Annual Responses: 1,800
Annual Burden: 3,600.

Dated: October 13, 1993.

Cleo Verbillis,

Chief, Administrative Information Branch.

[FR Doc. 93–25590 Filed 10–18–93; 8:45 am]

BILLING CODE 8025–01–M

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATE: Comments should be submitted on or before November 18, 1993. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:
Agency Clearance Officer: Cleo Verbillis, Small Business Administration, 409 3RD Street SW., 5th Floor, Washington, DC 20416, Telephone: (202) 205–6629
OMB Reviewer: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: Secondary Participation Guaranty Agreement
Form No.: SBA Form 1086
Frequency: On Occasion
Description of Respondents: SBA Participating Lenders
Responses: 8,300
Annual Burden: 31,125.

Dated: October 13, 1993.

Cleo Verbillis,

Chief, Administrative Information Branch.

[FR Doc. 93–25591 Filed 10–18–93; 8:45 am]

BILLING CODE 8025–01–M

Atlanta District Advisory Council; Public Meeting

The U.S. Small Business Administration Atlanta District Advisory Council will hold a public meeting from 8 a.m. on Thursday, November 4, 1993, to 12 Noon on Friday, November 5, 1993, at the Lake Lanier Islands Hilton Resort, Lake Lanier Islands, Georgia, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Wilfred A. Stone, District Director, U.S. Small Business Administration, 1720 Peachtree Road NW., 6th Floor, Atlanta, Georgia 30309, (404) 347–4749.

Dated: October 13, 1993.

Dorothy A. Overal,

Acting Assistant Administrator, Office of Advisory Councils.

[FR Doc. 93–25589 Filed 10–18–93; 8:45 am]

BILLING CODE 8025–01–M

Clarksburg District Advisory Council; Public Meeting

The U.S. Small Business Administration Clarksburg District Advisory Council will hold a public meeting at 1 p.m. on Monday, November 15, 1993, at The Bavarian Inn, Shepherdstown, West Virginia, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Marvin Shelton, District Director, U.S. Small Business Administration, P.O. Box 1608, 168 W. Main Street, Clarksburg, WV 26302–1608, (304) 623–5631.

Dated: October 13, 1993.

Dorothy A. Overal,

Acting Assistant Administrator, Office of Advisory Councils.

[FR Doc. 93–25588 Filed 10–18–93; 8:45 am]

BILLING CODE 8025–01–M

THRIFT DEPOSITOR PROTECTION OVERSIGHT BOARD

Regional Advisory Board Meetings for Regions 1–6

AGENCY: Thrift Depositor Protection Oversight Board.

ACTION: Meetings notice.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is hereby published for the Series 14 Regional Advisory Board meetings for Regions 1 through 6. The meetings are open to the public.

DATES: The 1993 meetings are scheduled as follows:

1. November 2, 9 a.m. to 12:30 p.m., Houston, Texas, Region 4 Advisory Board.
2. November 9, 9 a.m. to 12:30 p.m., New York, N.Y., Region 1 Advisory Board.
3. November 16, 9 a.m. to 12:30 p.m., Tucson, Ariz., Region 5 Advisory Board.
4. November 30, 9 a.m. to 12:30 p.m., Los Angeles, Calif., Region 6 Advisory Board.
5. December 2, 9 a.m. to 12:30 p.m., Seattle, Wash., Region 3 Advisory Board.
6. December 9, 9 a.m. to 12:30 p.m., Miami, Fla., Region 2 Advisory Board.

ADDRESSES: The meetings will be held at the following locations:

1. Houston, Texas—The Westin Galleria & Westin Oaks, 5060 West Alabama.
2. New York, N.Y.—Marriott East Side, 525 Lexington Avenue.
3. Tucson, Ariz.—Tucson East Hilton, 7600 East Broadway.
4. Los Angeles, Calif.—Hyatt Regency Los Angeles, 711 S. Hope Street.
5. Seattle, Wash.—Seattle Hilton, Sixth and University.
6. Miami, Fla.—Hyatt Regency Miami, City Center at Riverwalk, 400 SE Second Avenue.

FOR FURTHER INFORMATION CONTACT: Jill Nevius, Committee Management Officer, Thrift Depositor Protection Oversight Board 1777 F Street, NW., Washington, DC 20232, 202/786–9675.

SUPPLEMENTARY INFORMATION: Section 501(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Public Law 101–73, 103 Stat. 183, 382–383, directed the Oversight Board to establish one national advisory board and six regional advisory boards.

Purpose: The Regional Advisory Boards provide the Resolution Trust Corporation (RTC) with recommendations on the policies and programs for the sale of RTC owned real property assets.

Agenda: Topics to be addressed at the six meetings will include: The impact of RTC property sales on local real estate markets; an update on RTC's Small Investor Program; the status of Treasury Secretary Bentsen's RTC Management Reforms, RTC's affordable housing disposition programs and the RTC's environmentally significant property disposition programs. In addition, the Boards will review the effectiveness of RTC's outreach efforts for its real estate asset management and sales program and examine the effectiveness of its auction programs. The Boards will hear from the vice presidents of each of RTC's regional offices as well as from witnesses testifying on specific agenda topics.

Statements: Interested persons may submit to an Advisory Board written statements, data, information, or views on the issues pending before the board prior to or at the meeting. The meetings will include a public forum for oral comments. Oral comments will be limited to approximately five minutes. Interested persons may sign up for the public forum at the meeting. All meetings are open to the public. Seating is available on a first come first served basis.

Dated: October 14, 1993.

Jill Nevius,

Committee Management Officer, Office of Advisory Board Affairs.

[FR Doc. 93–25605 Filed 10–18–93; 8:45 am]

BILLING CODE 2222–01–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended October 8, 1993

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 49162
Date filed: October 4, 1993
Parties: Members of the International Air Transport Association
Subject: Comp Telex 024f—Portugal Local Currency Fare Changes
Proposed Effective Date: November 1, 1993

Docket Number: 49169
Date filed: October 5, 1993
Parties: Members of the International Air Transport Association
Subject: TC2 Reso/P 1470 dated September 24, 1993
Expedited Within Europe—R–1 to R–9
TC2 Reso/P 1474 dated September 24, 1993
Expedited Within Europe—R–10
TC2 Reso/P 1475 dated September 24, 1993
Expedited Within Europe—R–11 to R–13
TC2 Reso/P 1476 dated September 24, 1993
Expedited Within Europe—R–14
TC2 Reso/P 1477 dated September 24, 1993
Expedited Within Europe—R–15 to R–20
Proposed Effective Date: Expedited November 1, 1993

Docket Number: 49170
Date filed: October 5, 1993
Parties: Members of the International Air Transport Association
Subject: TC2 Reso/P 1480 dated September 24, 1993
Expedited Within Mideast—R–1 to R–4
Proposed Effective Date: November 1, 1993

Docket Number: 49171
Date filed: October 5, 1993
Parties: Members of the International Air Transport Association
Subject: TC2 Reso/P 1482 dated September 24, 1993
Expedited Europe-Mideast—R–13 to R–15
Proposed Effective Date: Oct. 31/Nov. 1, 1993

Docket Number: 49172
Date filed: October 5, 1993
Parties: Members of the International Air Transport Association
Subject: TC2 Reso/P 1524 dated September 21, 1993
Expedited South Atlantic-Europe/Mideast
R–1—076w R–2—080c R–1—087uu
Proposed Effective Date: October 15, 1993

Docket Number: 49177
Date filed: October 6, 1993
Parties: Members of the International Air Transport Association
Subject: TC12 Reso/P 1525 dated September 21, 1993
South Atlantic-Europe/Mideast Expedited Resos
r–1—002k r–2—073e
TC12 Reso/P 1526 dated September 21, 1993
South Atlantic-Africa Expedited Reso
r–3—002i
Proposed Effective Date: January 1, 1994

Docket Number: 49178
Date filed: October 6, 1993
Parties: Members of the International Air Transport Association
Subject: TC2 Reso/P 1471 dated September 24, 1993
Within Europe Expedited Resos—r–1 to r–5 intended effect: December 1, 1993
TC2 Reso/P 1472 dated September 24, 1993
Within Europe Expedited Resos—r–6 to r–10 intended effect: January 1, 1994
TC2 Reso/P 1473 dated September 24, 1993
Within Europe Expedited Resos—r–11 to r–15 intended effect: March 25, 1994

Docket Number: 49179
Date filed: October 6, 1993
Parties: Members of the International Air Transport Association
Subject: TC12 Reso/P 1520 dated September 14, 1993
Canada/Mexico-Europe Expedited Reso
r–1—015v
TC12 Reso/P 1521 dated September 14, 1993
Mexico-Europe Expedited Resos
r–2—002g r–4—074j r–6—085ff
r–3—0r r–5—074u
Proposed Effective Date: November 1, 1993

Docket Number: 49180
Date filed: October 6, 1993
Parties: Members of the International Air Transport Association
Subject: PAC/Reso/380 dated September 13, 1993 Mail Vote A086—Reso 810 Russian Federation
Proposed Effective Date: November 1, 1993.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 93–25581 Filed 10–18–93; 8:45 am]

BILLING CODE 4910–62–P

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q during the Week Ended October 8, 1993

The following applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's

Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 49163
Date filed: October 4, 1993
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 1, 1993
Description: Application of Cargo Tres, S.A., pursuant to section 402 of the Act and subpart Q of the Regulations, applies for a Foreign Air Carrier Permit to engage in nonscheduled, including charter, foreign air transportation of property and mail between points in Panama and (a) Miami, Florida; and (b) San Juan, Puerto Rico, via certain optional intermediate points. All such flights will originate or terminate in Panama.

Docket Number: 49166
Date filed: October 4, 1993
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 1, 1993
Description: Application of Express One International, Inc. pursuant to section 401(d)(1) of the Act and subpart Q of the Regulations, to engage in interstate and overseas scheduled air transportation of persons, property and mail.

Docket Number: 49167
Date filed: October 4, 1993
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 1, 1993
Description: Application of Express One International, Inc., pursuant to section 401(d)(1) of the Act and subpart Q of the Regulations, requests authority to engage in foreign scheduled air transportation of persons, property and mail: Between any point in any State in the United States and the District of Columbia, or any territory or possession of the United States, and any other point in any State of the United States or the District of Columbia, or any territory or possession of the United States, or any point in Canada, Mexico, Gulf of Mexico or the Caribbean Sea, Central or South America, Australia, Indonesia, Asia as far west as longitude 70 degrees east via a transpacific routing, Greenland, Iceland, the Azores, Europe, Africa and Asia as far east as and including India.

Docket Number: 49175
Date filed: October 6, 1993
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 3, 1993
Description: Application of Horizon Air Industries, Inc. d/b/a Horizon Air, pursuant to section 401 of the Act and subpart Q of the Regulations, applies for a certificate of public convenience and necessity authorizing service between Spokane, Washington and Calgary/Edmonton, Alberta, Canada.

Docket Number: 49181
Date filed: October 7, 1993
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 4, 1993
Description: Application of Sportsflight Airways, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations, requests a certificate of public convenience and necessity authorizing it to engage in interstate and overseas charter air transportation of persons, property and mail.

Docket Number: 49183
Date filed: October 8, 1993
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 5, 1993
Description: Application of American Airlines, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations, applies for renewal of its certificate for Route 325, authorizing scheduled foreign air transportation of persons, property, and mail between the terminal points Houston and Dallas/Ft. Worth, Texas, and the terminal points Toronto, Ontario, and Montreal, Quebec, Canada.

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 93–25582 Filed 10–18–93; 8:45 am]
BILLING CODE 4910–62–P

Coast Guard

[CGD 93–067]

Navigation Safety Advisory Council

AGENCY: Coast Guard, DOT.
ACTION: Notice of meeting.

SUMMARY: The Navigation Safety Advisory Council will meet at the Old Colony Inn, 625 First Street, Alexandria, VA on Sunday through Tuesday, November 14–16, 1993.
FOR FURTHER INFORMATION CONTACT: Margie G. Hegy, Executive Director, Navigation Safety Advisory Council, U.S. Coast Guard (G–NSR–3), 2100 Second Street, SW. Washington, DC 20593–0001, Telephone (202) 267–0415.
SUPPLEMENTARY INFORMATION: Committees will meet on Sunday, November 14 from 9 a.m. to noon and 2 p.m. to 5 p.m. Committee meetings may be held on Sunday evening if additional time is needed. The discussions will include the following topics:

a. *Navigation Rules:*
   1. Legislative and regulatory initiatives.
   2. Casualty Review.
b. *Navigation Equipment:* Update on status of Electronic Chart Display (ECDIS).
c. *Human Factors in Navigation Safety:* Bridge Resource Management.
d. *Vessel Routing and VTS:* Mandatory ship reporting and traffic separation schemes.

The Council will convene in plenary session on Monday, November 15 at 8 a.m. to 5 p.m. and reconvene on Tuesday, November 16 at 8 a.m. to 12 noon to hear Committee status reports and any matters properly brought before the Council.

The meeting is open to the public. Persons wishing to make oral statements should notify the Executive Director no later than Thursday, November 11, 1993. Any person may present a written statement to the Council at any time without advance notice.

W.J. Ecker,
Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.
[FR Doc. 93–25653 Filed 10–18–93; 8:45 am]
BILLING CODE 4910–14–M

Federal Aviation Administration

Proposed Advisory Circular—Damage-Tolerance and Fatigue Evaluation of Structure

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Notice of proposed advisory circular and request for comments.

SUMMARY: This notice requests comments on a proposed revision to Advisory Circular (AC) 25.571–1A, Damage-Tolerance and Fatigue Evaluation of Structure. The proposed revision consists of additional guidance for demonstrating compliance with the requirements being proposed in a separate notice pertaining to fatigue requirements for damage tolerant structure on transport category airplanes. This notice provides interested persons an opportunity to present their views on the proposed revision to the AC.
DATES: Comments must be received on or before January 14, 1994.
ADDRESSES: Send all comments on the proposed AC to: Federal Aviation

Administration, Attn: Patricia Siegrist, FAA, Transport Airplane Directorate, Aircraft Certification Service, Regulations Branch, ANM–114, 1601 Lind Avenue SW., Renton, WA 98055–4056. Comments may be inspected at the above address between 7:30 a.m. and 4 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Patricia Siegrist, Regulations Branch, ANM–114, at the above address, telephone (206) 227–2126.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the proposed AC may be obtained by contacting the person named above under **FOR FURTHER INFORMATION CONTACT**. Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments as they may desire. Commenters must identify the AC by title and submit comments in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Transport Airplane Directorate before issuing the final AC.

Discussion

Multiple site damage (MSD) continues to be a problem in conventional metal structure. For this reason, the FAA is proposing, by separate notice (Notice 93–9, 58 FR 38642, July 19, 1993), to amend the fatigue requirements for damage-tolerant structure on transport category airplanes to require full-scale fatigue testing and inspection thresholds based on crack growth from likely initial manufacturing defects in the structure. To provide guidance for demonstrating compliance with the requirements being proposed in that notice, the FAA also proposes to revise AC 25.571–1A. The proposed revision consists of additional guidance for (1) demonstrating compliance with the full-scale fatigue test requirement, and (2) establishing inspection thresholds for initial inspections for fatigue damage.

Other minor changes are also proposed, including definitions of terms used in the AC. The design service goal, for instance, has been defined as "The period of time (in flight cycles/hours), established at design and/or certification, during which the principal structure will be reasonably free from significant cracking."

Issuance of the revision to AC 25.571–1A is contingent on final adoption of the proposed changes to part 25.

Issued in Renton, Washington, on October 7, 1993.

Ronald Wojnar,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–25635 Filed 10–18–93; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc., Seventh Meeting, Special Committee 176; Airborne Loran-C Area Navigation Equipment Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix I), notice is hereby given for Special Committee 176 meeting to be held November 8–9, 1993, starting at 9 a.m. at the RTCA Conference Room, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036.

The agenda for this meeting is as follows: (1) Chairman's remarks; (2) Approval of the summary of the sixth meeting; (3) Review Draft Change No. 1 to RTCA/DO–194; (4) Assignment of tasks; (5) Other business; (6) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC on October 12, 1993.

Joyce J. Gillen,

Designated Officer.

[FR Doc. 93–25633 Filed 10–18–93; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc.; Special Committee 177, Test Criteria and Guidance Relative to Portable Electronic Devices Carried On Board Aircraft; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., appendix I), notice is hereby given for Special Committee 177 meeting to be held November 30–December 1, 1993, starting at 9 a.m. at the Electronic Industries Association, 20001 Pennsylvania Avenue NW., Washington, DC 20006.

The agenda for this meeting is as follows: (1) Chairman's remarks; (2) Approval of the summary of the sixth meeting; (3) Presentations of subcommittees: (a) Testing methods and criteria (b) PED testing (c) In-aircraft testing (d) Reporting Procedures; (4) New business; (5) Discussion of test plans; (6) Task assignments; (7) Other business; (8) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on October 12, 1993.

Joyce J. Gillen,

Designated Officer.

[FR Doc. 93–25631 Filed 10–18–93; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc.; Special Committee 171, Airborne MLS Navigation Equipment; Meeting

Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., appendix I), notice is hereby given for Special Committee 171 meeting to be held October 13–15, 1993, starting at 9:30 a.m., in the RTCA Conference Room at 1140 Connecticut Avenue, SW., suite 1020, Washington, DC 20036.

The agenda for this meeting is as follows: (1) Chairman's remarks; (2) Approval of the summary of the seventh meeting; (3) Working Group Reports: Technical Working Group (WG–2); (4) Review EUROCAE WG–43/Industry Activities; (5) Review the third draft; (6) Other business; (7) Date and place of next meeting.

Note: The committee intends this meeting to be the final meeting and requests a complete review of the draft document.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on October 5, 1993.

Joyce J. Gillen,

Designated Officer.

[FR Doc. 93–25632 Filed 10–18–93; 8:45 am]

BILLING CODE 4910–13–M

Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at the Long Beach Municipal Airport, Long Beach, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use as well as impose only the revenue from a PFC at the Long Beach Airport, under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before November 18, 1993.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, Standards Section, AWP–621, P.O. Box 92007, WWPC, Los Angeles, CA 90009, or 15000 Aviation Blvd., Hawthorne, CA 90261.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Chris Kunze, Manager, Airport Bureau, City of Long Beach, at the following address: Long Beach Airport, City of Long Beach, 4100 Donald Douglas Dr., Long Beach, CA 90808

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Long Beach under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. John P. Milligan, Supervisor, Standards Section, AWP–621, Federal Aviation Admin., P.O. Box 92007, WWPC, Los Angeles, CA 90009, or 15000 Aviation Blvd., Hawthorne, CA 90261, (310) 297–1029.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use as well as to impose only the revenue from a PFC at the Long Beach Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On September 29, 1993, the FAA determined that the application to impose and use and impose only the revenue from a PFC submitted by the City of Long Beach was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than December 29, 1993.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00

Proposed charge effective date: March 1, 1994

Proposed charge expiration date: April 30, 1998

Total estimated PFC revenue: $3,800,000.00

Brief description of proposed project(s):

Impose and Use: Improve airfield lighting for RW 7R/25L and TW F; Construct perimeter service road around RW 25L safety area; Compile airport pavement management system; Reconstruct TW F: Rehabilitate RW 7R/25L: Rehabilitate and construct porous friction course, RW 7L/25R; Improve lighting and signage, RW 7L/25R; Install guidance signs per FAR part 139; Rehabilitate TW's J1,J2,L5; Improve safety areas RW's 30/12, 7R/25L and TW's C,L,G and K; Construct earth berm erosion control; Reconstruct TW A: Slurry seal TW's C,D,G,K and L: Improve shoulders TW's D and K; Install back-up engine generator; Rehabilitate airfield pavements including TW's A,B,D,G, and service road to Parcel J: Construct GA tie-down facility, Parcel "O"; Widen portions of perimeter service road; Construct two mid-field run-up pads; Procure ARFF vehicle; Improve security fences and gates; Install security access control; Rehabilitate portions of terminal building; Improve airport access roads; Install noise monitoring system.

Impose Only: Reconstruct terminal apron, TW J and widen portions of perimeter service road; Construct ARFF training facility; Improve handicapped facilities.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators and On-Demand Charter Operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports Division office located at:

Federal Aviation Administration, Western-Pacific Region, Airports Division, room 3024, 15000 Aviation Blvd., Hawthorne, California 90261.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of Long Beach.

Issued in Hawthorne, California on September 29, 1993.

Ellsworth L. Chan,

Acting Manager, Airports Division, Western Pacific Region.

[FR Doc. 93–25630 Filed 10–18–93; 8:45 am]

BILLING CODE 4910–13–M

Intent To Rule on Application To Impose a Passenger Facility Charge at the Palm Beach International Airport, et al.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose a passenger facility charge (PFC) at the Palm Beach International Airport, West Palm Beach, Florida, and to use the revenue from a PFC at the Palm Beach International Airport, West Palm Beach, Florida and at the North County General Aviation Airport, Jupiter, Florida, under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before November 18, 1993.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Orlando Airports District Office, 9677 Tradeport Drive, suite 130, Orlando, Florida 32827–5397.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Jerry L. Allen, Director of Airports Planning and Development of the Palm Beach Country Department of Airports, at the following address: Palm Beach International Airport, Building 846, West Palm Beach, Florida 33406–1491.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Palm Beach County Department of Airports under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mrs. Ilia A. Quinones, Airports Plans and Programs Manager, FAA, Orlando Airports District Office, 9677 Tradeport Drive, suite 130, Orlando, Florida 32827–5397, telephone (407) 648–6583. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose a PFC at Palm Beach International Airport and use the revenue from a PFC at Palm Beach International Airport and at North County General Aviation Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Onmibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On October 6, 1993, the FAA determined that the application to impose a PFC at Palm Beach International Airport and use revenue from a PFC at Palm Beach International Airport and at North County General Aviation Airport, submitted by the Palm Beach County Department of Airports was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than January 26, 1994.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: April 1, 1994.

Proposed charge expiration date: March 31, 1999.

Total estimated net PFC revenue: $38,804,838.

Brief description of proposed projects:

At Palm Beach International Airport:

Impose and Use Projects:

- Construct North Federal Inspection Station Facilities.
- Acquire 24.5 Acres of Land—Runway 13/31 Runway Protection Zone.
- Construct Miscellaneous Taxiways and Holdpads.
- Install Security Access System to Meet Part 107.14.
- Construct Inner Perimeter Road—West Extension.

Impose Only Projects:

- Acquire Land Approved in Part 150 Noise Compatibility Plan.
- Extend and overlay Runway 13/31.
- Construct West Enplane Roadway with Canopy.
- Replace ARFF Vehicles.
- Extend Inner Perimeter Road—West Phase 3.
- Construct I–95 Connector to Palm Beach International Airport.
- Construct East Enplane Roadway and Deplane Extension.
- Update Part 150 Noise Compatibility Study.

At North County General Aviation Airport:

Impose and Use Project:

- North County Construction Package A (Entrance Road, Primary and Secondary Runways and Taxiways, and Environmental Mitigation).

Impose Only Project:

- Install Instrument Landing System (ILS) and Very High Frequency Omnidirectional Radio Range Station (VOR) at North County General Aviation Airport.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi and Commercial Operators filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under "**FOR FURTHER INFORMATION CONTACT**".

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Palm Beach County Department of Airports, Palm Beach International Airport, West Palm Beach, Florida.

Issued in Atlanta, Georgia on October 7, 1993.

Troy R. Butler,

PFC Program Manager, Southern Region.

[FR Doc. 93–25368 Filed 10–18–93; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

Research and Special Programs Administration

DEPARTMENT OF THE INTERIOR

Minerals Management Service

ENVIRONMENTAL PROTECTION AGENCY

[CGD 93–062]

National Preparedness for Response Exercise Program (PREP)

AGENCIES: Coast Guard, DOT; Research and Special Programs Administration, DOT; Minerals Management Service, DOI; Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: The Coast Guard, the Environmental Protection Agency, the Research and Special Programs Administration and the Minerals Management Service jointly developed the National Preparedness for Response Exercise Program (PREP) to provide guidelines for compliance with the Oil Pollution Act of 1990 pollution response exercise requirements. The PREP guidelines outline the applicability, type, frequency, and objectives of the required exercises and will aid industry in meeting the requirements of the Federal regulations regarding pollution response exercises. This notice announces the availability of the draft PREP guidelines and solicits comments on them.

DATES: Comments should be submitted by November 30, 1993.

ADDRESSES: Written comments should be submitted to COMMANDANT (G-MEP-4), room 2100, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001, ATTN: LCDR Rhae Giacoma.

Copies of the PREP guidelines are available for inspection at the above address or may be obtained by contacting Petty Officer Daniel Caras at (202) 267–6570 or faxing a request at (202) 267–4085/4065.

FOR FURTHER INFORMATION CONTACT: LCDR Rhae Giacoma, Office of Marine Safety, Security and Environmental Protection (G-MEP-4), (202) 267–2616; Ms. Stacey Gerard, Research and Special Programs Administration, (202) 366–6855; Ms. Bobbie Lively-Diebold, Environmental Protection Agency, (703) 356–8774; Mr. Larry Ake, Minerals Management Service, (703) 787–1567.

SUPPLEMENTARY INFORMATION:

Request for Comments

Copies of the PREP guidance document are available as described under "ADDRESSES." The four Federal agencies encourage interested persons to comment on the document. The agencies may revise the document in view of the comments. If revisions are warranted, availability of the revised document will be announced by a later notice in the **Federal Register**.

Background Information

In accordance with the requirements of section 311 of the Clean Water Act (33 U.S.C. 1321) (the Act), as amended by the Oil Pollution Act of 1990 (Pub. L. 101–380), Area Committees comprised of Federal, State and local government representatives have been established throughout the country and are in the process of developing Area Contingency Plans for response to oil and hazardous substance spills within their area of responsibility. Section 311(j)(5)(c)(iv) requires responsible parties to submit spill response plans

that include provisions for periodic unannounced drills and equipment testing. Section 311(j)(7), as implemented by Executive Order 12777, provides further for the Coast Guard (in the case of the coastal zone) and the Environmental Protection Agency (in the inland zone) to conduct periodic drills of removal activity, which may include participation by the owners of vessels and facilities in the area, to assess the effectiveness of the plans.

Also, in accordance with section 311(j) of the Act, the Coast Guard issued regulations on February 5, 1993 (58 FR 7330, 7376), requiring owners or operators of certain vessels and marine transportation-related facilities to submit response plans to the Coast Guard for approval. The purpose of the response plans is to enhance private sector planning and response capabilities to minimize the environmental impacts of spilled oil. The response plans must identify a planned exercise program. The program must include announced and unannounced exercises conducted by the owner or operator of certain facilities and vessels as necessary to ensure that a response plan will function in the event of an oil discharge emergency. (33 CFR 154.1055, 155.1060; 58 FR 7363, 7438).

The Environmental Protection Agency issued a notice of proposed rulemaking on February 17, 1993, for revisions to 40 CFR part 112 (58 FR 34164) Oil Pollution Prevention Regulation, which would include requirements for response exercises to test the effectiveness of non-transportation-related onshore facility response plans for response to oil spills. The Research and Special Programs Administration Office of Pipeline Safety published an interim final rule for response plans for onshore transportation-related oil pipelines on January 5, 1993, which specified requirements for exercises to ensure response plans were adequate for oil discharges from pipelines (49 CFR part 194; 58 FR 244). The Minerals Management Service issued an interim final rule on February 8, 1993 (30 CFR part 254; 58 FR 7489), requiring that owners or operators of offshore platforms and other offshore facilities submit spill response plans including, among other things, provisions for response drills and for inspecting, testing and maintaining response equipment.

In addition to the Federal mandates, there are also State requirements for exercises. To facilitate the coordination of required exercises, the Coast Guard, the Environmental Protection Agency, the Research and Special Programs Administration, the Minerals Management Service and a number of the States jointly conducted a series of four workshops, announced through earlier notices in the **Federal Register**, to solicit comments from the public and to discuss the exercise requirements and a method to develop an efficient, cost effective approach for compliance. The workshops addressed such issues as exercise frequency, objectives, certification, cost, credit, and scheduling. Through discussions held, consensus was achieved on the issues and the PREP guidelines were developed. Although the PREP guidelines are not regulations and compliance with the guidelines is not mandatory, following the guidelines will aid industry in meeting the Federal requirements for pollution response exercises.

Dated: October 8, 1993.

A.E. Henn,

Rear Admiral, U.S. Coast Guard; Chief, Office of Marine Safety, Security and Environmental Protection.

Thomas Gernhofer,

Associate Director for Offshore Minerals Management.

George Tenley,

Associate Administrator for Pipeline Safety.

Richard J. Guimond,

Acting Assistant Administrator for Solid Waste and Emergency Response.

[FR Doc. 93–25665 Filed 10–18–93; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Privacy Act of 1974; Computer Matching Programs

AGENCY: Internal Revenue Service, Treasury Department.

ACTION Proposed notice.

SUMMARY: Pursuant to 5 USC 552a, the Privacy Act of 1974, as amended, and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs, notice is hereby given of the conduct of an Internal Revenue Service (IRS) program of computer matches.

EFFECTIVE DATE: This notice will be effective on November 18, 1993, unless comments dictate otherwise.

ADDRESS: Comments or inquiries may be mailed to Chief Inspector, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: A. Michael Stevens, Internal Auditor, Strategic Issues Section, Office of Planning and Management, Office of Assistant Chief Inspector (Internal Audit), Internal Revenue Service, (202) 622–6002.

SUPPLEMENTARY INFORMATION: IRS management is responsible for discouraging the perpetration of irregular or illegal acts and limiting any exposure if an integrity breach occurs. To accomplish its mission, the Inspection Service assists management in achieving this objective by enhancing its conventional audit and investigative activities with a program designed to deter and detect such acts and to search for indicators of fraud sufficient to warrant investigation.

The Inspection Service's Integrity Program includes Integrity Projects, Integrity Tests, and national or other projects, including joint Internal Audit/Internal Security activities, designed to detect indicators of fraud and which focus specifically on the deterrence and detection of integrity breaches.

Integrity Projects are reviews or probes of specific high risk areas or transactions by the Inspection Service to detect material fraud and to assess the extent of integrity breaches that may have occurred.

Integrity Tests are in-depth reviews of the high risk features of auditable areas conducted as a part of National, Regional, or Single Office Audits. Integrity tests are designed to be of sufficient scope to detect the presence of material fraud.

One of the five IRS organizational strategies is to ensure public confidence in the integrity of the IRS by a dedication to the highest ethical standards. One of the ways that the Inspection Service supports this objective is to provide IRS management an assessment of the organization's ethical environment through the Inspection Service Integrity Program.

Computer matching is the most feasible method of performing comprehensive analysis of employee, taxpayer, and tax administration data because of the large number of employees (seasonally varying to over 110,000), the geographic dispersion (nationwide) of IRS offices and employees, and the tremendous volume of computerized data that is available for analysis.

This program of computer matches may be conducted in part or in its entirety by any or all of the Inspection Service's offices.

Name of Source Agency

Internal Revenue Service.

Name of Recipient Agency

Internal Revenue Service.

Beginning and Completion Dates

This program of computer matches will commence not earlier than the fortieth day after notices are provided to the Congress and OMB unless comments dictate otherwise. The program of computer matches will conclude at the end of the eighteenth month after the beginning date.

Purpose

The purpose of this program of computer matches is to detect and deter fraud, waste, and abuse in IRS programs and operations by identifying employees who are violating laws, rules, or regulations related to the performance of their duties.

Authority

The Office of Chief Inspector was established and provided the authority to perform character and conduct investigations of IRS employees pursuant to 31 USC 321(b); sections 7801(a), 7802, and 7803 of the Internal Revenue Code of 1986; 26 USC 7804 and Reorganization Plan Numbered 1 of 1952.

Commissioner's reorganization Order #Hdq–1 (July 29, 1952), IR–Mimeograph Number 236 (December 7, 1953), and the current provisions of the Internal Revenue Manual (IRM) give authority to conduct personnel investigations to the Chief Inspector.

Internal Revenue Manual 1161 charges the Chief Inspector with carrying out a program for assisting management to maintain the highest standards of honesty and integrity among its employees.

The United States General Accounting Office field work standards for both performance and financial audits require auditors to design an audit to provide reasonable assurance of detecting abuse of illegal acts that could significantly affect the financial statements, audit objectives, or audit results.

Categories of Individuals Covered

Current and former employees of the IRS.

Categories of Records Covered

Included in this program of computer matches is information on IRS employees.

1. Personnel and payroll actions and determinations on current and former employees of the IRS. (General Personnel and Payroll Records (Treasury/IRS 36.003).)

2. Information on travel and moving expenses incurred by IRS employees in conjunction with official business. (Travel Expense Records (Treasury/IRS 32.001)).

Information other than that specifically on IRS employees will be used to determine the actions or the effect of actions of employees or to corroborate declarations or statements by employees.

1. Specific computer inquiries and entries to IRS information systems made by employees. (Integrated Data Retrieval System (IDRS) Security Files (Treasury/IRS 34.018).)

2. Information on the individuals who owe and the amounts owed to Federal or state agencies. (Debtor Master File (Treasury/IRS 24.070).)

3. Information regarding taxpayers, tax returns, and tax return information.

a. Individual Returns Files, Adjustments and Miscellaneous Documents Files (Treasury/IRS 22.034).

b. Wage and Information Returns Processing (IRP) File (Treasury/IRS 22.061).

c. Combined Account Number Number File (Treasury/IRS 24.013).

d. Individual Account Number File (Treasury/IRS 24.029).

e. Individual Master File (IMF) (Treasury/IRS 24.030).

f. Business Master File (BMF) (Treasury/IRS 24.046).

g. Taxpayer Delinquent Account (TDA) Files and subsystems (Treasury/IRS 26.019).

h. Taxpayer Delinquency Investigation (TDI) Files (Treasury/IRS 26.020).

i. Examination Administrative File (Treasury/IRS 42.001).

j. Audit Information Management System (AIMS) (Treasury/IRS 42.008).

k. Compliance Programs and Projects Files (Treasury/IRS 42.021).

l. Case Management and Time Reporting System (Treasury/IRS 46.002).

m. Controlled Accounts (Open and Closed) (Treasury/IRS 46.004).

Dated: October 7, 1993.

Deborah M. Witchey,

Deputy Assistant Secretary (Administration).

[FR Doc. 93–25524 Filed 10–18–93; 8:45 am]

BILLING CODE 4830–01–M

Office of Thrift Supervision

First American Federal Savings Bank, Greensboro, NC; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of Section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for First American Federal Savings Bank, Greensboro, North Carolina ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on October 8, 1993.

Dated: October 13, 1993.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 93–25553 Filed 10–18–93; 8:45 am]

BILLING CODE 6720–01–M

Palm Beach Federal Savings Association, Palm Beach Gardens, FL; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of Section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Palm Beach Federal Savings Association, Palm Beach Gardens, Florida ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on October 8, 1993.

Dated: October 13, 1993.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 93–25550 Filed 10–18–93; 8:45 am]

BILLING CODE 6720–01–M

Surety Federal Savings and Loan Association, F.A., Morganton, NC; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Surety Federal Savings and Loan Association, F.A, Morganton, North Carolina ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on August 27, 1993.

Dated: October 13, 1993.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 93–25552 Filed 10–18–93; 8:45 am]

BILLING CODE 6720–01–M

[AC–46; OTS No. 4115]

Astoria Federal Savings and Loan Association, Lake Success, NY; Approval of Conversion Application

Notice is hereby given that on September 20, 1993, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Astoria Federal Savings and Loan Association, Lake Success, New York, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Northeast Regional Office, Office of Thrift Supervision, 10 Exchange Place, 18th Floor, Jersey City, New Jersey 07302.

Dated: October 13, 1993.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 93–25556 Filed 10–18–93; 8:45 am]

BILLING CODE 6720–01–M

[AC–44; OTS No. 9623]

Crossland Federal Savings Bank, Brooklyn, NY; Final Action; Approval of Voluntary Supervisory Conversion Application

Notice is hereby given that, on August 18, 1993, the Acting Assistant Director for Supervisory Operations approved the application of Crossland Federal Savings Bank, Brooklyn, New York, for permission to convert to the stock form of organization, in a voluntary supervisory conversion in connection with a public offering. Copies of the applications are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Northeast Regional Office, Office of Thrift Supervision, 10 Exchange Plaza, 18th floor, Jersey City, New Jersey 07302.

Dated: October 13, 1993.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 93–25558 Filed 10–18–93; 8:45 am]

BILLING CODE 6720–01–M

[AC–47; OTS No. 2501]

Financial Federal Savings and Loan Association of Dade County, Miami Lakes, FL; Final Action; Approval of Voluntary Supervisory Conversion Application

Notice is hereby given that, on August 27, 1993, the Acting Assistant Director for Supervisory Operations approved the application of Financial Federal Savings and Loan Association of Dade County, Miami Lakes, Florida, for permission to convert to the stock form of organization in a voluntary supervisory conversion. A copy of the application is available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Southeast Regional Office, Office of Thrift Supervision, 1475 Peachtree Street, NE., Atlanta, GA 30309.

Dated: October 13, 1993.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 93–25555 Filed 10–18–93; 8:45 am]

BILLING CODE 6720–01–M

[AC–48; OTS No. 2746]

Chase Federal Bank, a Federal Savings Bank, Miami, FL; Final Action; Approval of Voluntary Supervisory Conversion Application

Notice is hereby given that, on August 27, 1993, the Acting Assistant Director for Supervisory Operations approved the application of Chase Federal Bank, a Federal Savings Bank, Miami, Florida, for permission to convert to the stock form of organization in a voluntary supervisory conversion. A copy of the application is available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Southeast Regional Office, Office of Thrift Supervision, 1475 Peachtree Street, NE., Atlanta, GA 30309.

Dated: October 13, 1993.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 93–25554 Filed 10–18–93; 8:45 am]

BILLING CODE 6720–01–M

[AC–45; OTS No. 7245]

Equitable Federal Savings Bank, Wheaton, MD; Final Action; Approval of Voluntary Supervisory Conversion Application

Notice is hereby given that, on August 30, 1993, the Deputy Director for Washington Operations approved the application of Equitable Federal Savings Bank, Wheaton, Maryland, for permission to convert to the stock form of organization in a voluntary supervisory conversion. A copy of the application is available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Boston Area Office, Office of Thrift Supervision, 1475 Peachtree Street, NE., Atlanta, GA 30309.

Dated: October 13, 1993.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 93–25557 Filed 10–18–93; 8:45 am]

BILLING CODE 6720–01–M

[AC–43; OTS No. 2501]

Greater Boston Bank, A Co-Operative Bank, Brighton, MA; Final Action; Approval of Voluntary Supervisory Conversion Application

Notice is hereby given that, on August 27, 1993, the Deputy Director for Regional Operations approved the application of Greater Boston Bank, A Co-Operative Bank, Brighton, Massachusetts, for permission to convert to the stock form of organization in a voluntary supervisory conversion. A copy of the application is available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Northeast Regional Office, Office of Thrift Supervision, 10 Exchange Place, 18th Floor, Jersey City, New Jersey 07302.

Dated: October 13, 1993.

By the Office of Thrift Supervision.

Kimberly White,

Corporate Technician.

[FR Doc. 93–25559 Filed 10–18–93; 8:45 am]

BILLING CODE 6720–01–M

UNITED STATES INFORMATION AGENCY

International Conference on Government Ethics: Public Service and Public Trust in Democracies

AGENCIES: United States Information Agency, Office of Government Ethics.

ACTION: Notice—Request for Support.

SUMMARY: The United States Information Agency (USIA) and the Office of Government Ethics (OGE) are planning to cosponsor an international conference titled: "The International Conference on Government Ethics: Public Service, Public Trust in Democracies."

This announcement seeks support for this endeavor from United States and foreign institutions including international business corporations, nonprofit exchange organizations, foundations, professional associations, universities, and other institutions and individuals concerned with government ethics and integrity. It further seeks support from foreign governments and leaders concerned with the development of organizational structures necessary to insure integrity in government administration.

Tentatively scheduled for May 1994, this international conference will compare, across cultures, organizational structures, laws and regulations, that support ethical behavior in government and between government and other sectors of society. It also addresses the impact of corruption on international commerce and the need for effective government to create a positive environment for international investment.

The proposed conference is designed as a multilateral program in which U.S. leaders share their expertise and insights through case studies with representatives from other developed (United Kingdom, France, Germany, Australia, Sweden, etc.) and developing democracies. Follow-on regional workshops and consultancies overseas, study tours and internships in the United States are proposed.

Program Rationale and Thematic Focus: Public service is a public trust. Standards of ethical conduct are necessary for all public servants. For emerging democratic nations to succeed, citizens must have confidence in their new government's integrity. This principle is fundamental for global democratic development.

Political corruption undermines the ability of all nations to develop mutually beneficial economic relations and joint venture programs. Consequently, regulatory systems and codes of behavior are needed which hold nations to similarly high standards of accountability.

Many global regions are going through democratic revolutions whether in Africa, Asia, Latin America or most prominently in Central and Eastern Europe and the former Soviet Union. These transitions are critical to world peace. Having moved away from or rejected authoritarian and dictatorial systems and practices, how will each of these nations' leaders meet this challenge without replacing one corrupt and abusive system with another?

Program discussions and presentations will examine such abuses as conflict of interest by employees; manipulation of rules for political or personal gain; nepotism; bribery and payoffs; disclosure of insider information; waste, fraud and abuse; and other corrupt practices or even the appearance of improper conduct. It will also compare protective systems for employees which provide opportunities for redress, grievance and appeal.

While focusing on the executive branch of government, ethical issues concerning judicial and legislative behavior may arise as this conference compares and examines parliamentary as well as presidential systems.

Program sessions will address many interrelated issues, for example:

What institutions, rules, laws and regulations have already been developed in these nations to address fundamental ethical issues and public corruption?

Which codes or regulations are needed to raise the standards of ethical conduct, and which regulations obstruct progress or may even stimulate abuse within newly democratic nations?

Which codes of ethics are only applicable within certain cultural and social contexts? When is a gift a bribe?

What systems of accountability have been put into place and what kinds of punishment have been legislated or enacted. Are these systems enforced, why or why not?

What kind of ethics training do government officials receive?

What type of civics education is there in support of ethical codes of conduct? When is it provided and for whom?

What role are the United Nations or other international organizations such as CSCE or NATO (NACC) playing in addressing ethics issues?

Can new ethical standards work in nations suffering from significant economic problems? Will the people and their leaders support new systems of ethics and accountability?

Structure and Development: OGE and USIA will manage this program. Key American and foreign nonprofit institutions (professional and exchange associations, universities), foundations, corporations and individuals will share in its analytical development; and USIA posts overseas (USIS) will facilitate and approve foreign leader participation. Given this conference's broad multilateral mandate, no initial U.S. Government funding is envisioned in its support. Rather, U.S. and foreign foundations, corporations and individuals will be carefully solicited.

This conference is dedicated to addressing real world problems with concrete, practical solutions. It is not envisioned as a passive exercise. Rather, all participants will be actively involved before, during and after the seminal event. It is expected to attract well over 100 prominent leaders and ethics practitioners. Furthermore, this conference is envisioned as only a first step which could stimulate a coordinated program of follow-on regional workshops, overseas consultations, materials development, and internships in the United States and in other participating nations.

Related issues for this international conference program on government and ethics are government-business ethics and corruption, government accountability and systems for enforcement, and the creation of a "rule of law" concept among the people.

Action Requested: This announcement is not a request for proposals. Rather, it is a request for interest in and support for the planning and development of the proposed international conference on government and ethics. U.S. Government coordinators of this program are seeking assistance in the process of nominating prominent leaders as chairpersons for this program; developing the program's content; developing follow-on programs; and working together with the private sector (corporations, foundations, individuals) in the United States and overseas to include foreign governments to raise the initial funds necessary to hold this international conference under USIA's gift authority. The conference will also focus participant attention on practical follow-on programs and potential public as well as private funding sources for these programs.

Response Address: All communications concerning this announcement should refer to the *International Conference on Government Ethics.* Interrested individuals and institutions may indicate their willingness to assist in this effort by contacting the program

staff at the following address: Mr. Richard Werksman, Office of the General Counsel, United States Information Agency, Washington, DC 20547. Tel: 202–619–6827 FAX: 202–619–4573.

Dates: Deadline for expressions of interest and potential cosponsorship for this May 1994 event, in any or all facets of this program, is November 26, 1993. An Executive Committee will review all communication and intentions of support and respond promptly to these inquiries. Based on the level of interest and support for this program, the United States Information Agency and the Office of Government Ethics will make a formal determination on or about December 31, 1993 whether or not to proceed with this program as designed.

Expressions of interest will be reviewed according to several criteria including the quality of proposed support, a potential cosponsoring institution's reputation and capabilities, relative commitment of project personnel to this endeavor, program planning contributions and follow-on program ideas, thematic expertise, cross-cultural and area affairs expertise, international outreach and cosponsorship, and willingness and ability to generate support directly or indirectly for this program's development.

United States Information Service (USIS) posts overseas will have final authority in approving the participation of international participants.

Issuance of this announcement does not constitute a commitment to allocate resources or conduct this program on the part of the United States Information Agency or the Office of Government Ethics.

Dated: October 14, 1993.

Michael Schneider,

Acting Associate Director, Bureau of Policy and Programs, Untied States Information Agency.

Dated: October 14, 1993.

Donald Campbell,

Deputy Director, Office of Government Ethics.

[FR Doc. 93–25569 Filed 10–18–93; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Former Prisoners of War; Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 that a meeting of the Advisory Committee on Former Prisoners of War will be held at the Department of Veterans Affairs Medical Center, 1660 S. Columbian Way, Seattle, WA 98108, from November 10 through November 12, 1993. The meeting will convene at 9 a.m. each day and will be open to the public. Seating is limited and will be available on a first-come, first-served basis.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the administration of benefits under title 38, United States Code, for Veterans who are former prisoners of war, and to make recommendations on the need of such veterans for compensation, health care and rehabilitation.

The Committee will receive briefings and hold discussions on various issues affecting health care and benefits delivery, including, but not limited to, the following: Education and training of VA personnel involved with former prisoners of war; the status of privately and publicly funded research affecting former prisoners of war; past and current legislative issues affecting former prisoners of war; the various disabilities and sequelae of long-term captivity; and the procedures involved in processing claims for service-connected disabilities submitted by former prisoners of war.

Members of the public may direct questions or submit prepared statements for review by the Committee in advance of the meeting, in writing only, to Mr. J. Gary Hickman, Director, Compensation and Pension Service (21), room 276, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Submitted material must be received at least five business days prior to the meeting. Members of the public may be asked to clarify submitted material prior to consideration by the Committee.

A report of the meeting and a roster of Committee members may be obtained from Mr. Hickman.

Dated: October 7, 1993.

By Direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 93–25533 Filed 10–18–93; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 200
Tuesday, October 19, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL COMMUNICATIONS COMMISSION

FCC To Hold Open Commission Meeting,[1] Thursday, October 21, 1993

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, October 21, 1993, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, NW., Washington, DC.

Item No., Bureau, and Subject

1—Office of Engineering and Technology—Title: Review of the Pioneer's Preference Rules. Summary: The Commission will consider adoption of a *Notice of Proposed Rulemaking* to review the pioneer's preference rules.

2—Common Carrier—Title: Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a Non-Voice, Non-Geostationary Mobile-Satellite Service (CC Docket No. 92–76). Summary: The Commission will consider adoption of a *Report and Order* concerning the establishment of rules and policies for Non-Voice, Non-Geostationary Mobile-Satellite Service in bands below 1 GHz.

3—Private Radio—Title: Amendment of the Commission's Rules to Channel Exclusivity to Qualified Private Paging Systems at 929–930 MHz (PR Docket No. 93–35, RM–7986). Summary: The Commission will consider adoption of a *Report and Order* concerning channel exclusivity on private paging frequencies in the 929–930 MHz band.

4—Private Radio—Title: Amendment of the Amateur Service Rules to Extend Temporary Operating Authority to New Amateur Operators (RM–8288). Summary: The Commission will consider adoption of a *Notice of Proposed Rulemaking* concerning whether to authorize immediate temporary operating authority to new amateur operators who pass the required examinations and file an application with the commission.

5—Mass Media—Title: Compliance with Commercial Limits During Children's Programming. Summary: The Commission will consider adoption of three *Letters* to impose forfeitures for exceeding the limits on commercial matter which may be aired during children's programming against the following Television Stations: KPLR–TV, St. Louis, MO; KTTM–TV, Huron, SD; KTTW–TV, Sioux Falls, SD; and KXRM–TV, Colorado Springs, CO.

6—Mass Media—Title: Survey of Cable Television Service Rates. Summary: The Commission will receive a preliminary report on the results of its survey of cable television service rates and on associated matters.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Steve Svab, Office of Public Affairs, telephone number (202) 632–5050.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–25770 Filed 10–15–93;12:44pm]

BILLING CODE 6712–01–M

[1] The summaries listed in this notice are intended for the use of the public attending open Commission meetings. Information not summarized may also be considered at such meetings. Consequently these summaries should not be interpreted to limit the Commission's authority to consider any relevant information.

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:04 p.m. on Thursday, October 14, 1993, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider a matter relating to the Corporation's corporate activities.

In calling the meeting, the Board determined, on motion of Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), seconded by Acting Chairman Andrew C. Hove, Jr., concurred in by Director Eugene A. Ludwig (Comptroller of the Currency), that Corporation business required its consideration of the matter on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Dated: October 14, 1993.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 93–25772 Filed 10–15–93;12:44pm]

BILLING CODE 6714–01–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, October 14, 1993.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Closed [Pursuant to 5 U.S.C. § 552b(c)(10)]

MATTERS TO BE CONSIDERED: In addition to the previously announced items, the Commission will consider and act upon the following in closed session:

2. *C & B Mining Company,* Docket No. PENN 92–531. (Issues include consideration of request to reopen and file out of time a petition for discretionary review.)
3. *W–P Coal Company,* Docket No. WEVA 92–746. (Issues include consideration of a motion for amicus participation.)

It was determined by the Commission that these items be included on the agenda, in closed session, and that no earlier announcement of the additions was possible.

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR § 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, (202) 653–5629/(202) 708–9300 for TDD Relay/800–877–8339 Toll Free.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 93–25823 Filed 10–15–93; 3:44 pm]

BILLING CODE 6735–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, October 25, 1993.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed 1994 Federal Reserve Bank officer salary structure adjustment.
2. Personnel actions (appointments, promotions, assignments, reassignments, and

salary actions) involving individual Federal Reserve System employees.

3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: October 15, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–25824 Filed 10–15–93; 3:44 pm]

BILLING CODE 6210–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Wednesday, October 27, 1993.

PLACE: The Board Room, 5th Floor, 490 L'Enfant Plaza, SW., Washington, DC 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

6180 Aviation Accident Report: Inadvertent In-Flight Slat Deployment, China Eastern Airlines Flight 583, McDonnell Douglas MD–11, Shemya, Alaska, April 6, 1993.

NEWS MEDIA CONTACT: Telephone (202) 382–0660.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382–6525.

Dated: October 27, 1993.

Ray Smith,

Alternate Federal Register Liaison Officer.

[FR Doc. 93–25768 Filed 10–15–93; 12:44 pm]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of October 18, 25, November 1, and 8, 1993.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of October 18

Thursday, October 21

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Motion by Five Star Products and Construction Products Research to Quash a Subpoena Issued by the Office of Investigations (Tentative)
(Contact: Charles Mullins, 301–504–1606)

Week of October 25—Tentative

Monday, October 25

10:00 a.m.
Briefing on Final Report of Regulatory Review Task Force (Public Meeting)
(Contact: Frank Gillespie, 301–504–1275)

Tuesday, October 26

10:00 a.m.
Briefing on Severe Accident Research Program (Public Meeting)
(Contact: Brian Sheron, 301–492–3500)
2:00 p.m.
Briefing on Proposed Standards for Gaseous Diffusion Facilities (Public Meeting)
(Contact: Charles Nilsen, 301–492–3834)

Wednesday, October 27

10:00 a.m.
Briefing on NRC Research Programs on Waste (Public Meeting)
(Contact: Nick Costanzi, 301–492–3760)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Friday, October 29

10:00 a.m.
Briefing on Status of Thermo-Lag (Public Meeting) (Contact: Ashok Thadani, 301–504–2884)

Week of November 1—Tentative

Wednesday, November 3

11:00 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of November 8—Tentative

Monday, November 8

9:30 a.m.
Briefing on Site Decommissioning Management Plan (Public Meeting)
(Contact: David Fauver, 301–504–2554)
11:00 a.m.
Briefing on Investigative Matters (Closed—Ex. 5 & 7)

Wednesday, November 10

2:00 p.m.
Briefing on NRC Research Programs on Human Factors (Public Meeting)
(Contact: Tom King, 301–492–3510)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 504–1661.

Dated: October 14, 1994.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 93–25769 Filed 10–15–93; 12:44pm]

BILLING CODE 7590–01–M

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 58 FR 52531 October 8, 1993.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m. on October 21, 1993.

CHANGE IN THE MEETING: The oral argument is tentatively rescheduled at 10:00 a.m., on December 2, 1993.

CONTACT PERSON FOR MORE INFORMATION: Patrick Moran, (202) 606–5410.

Dated: October 15, 1993.

Earl R. Ohman, Jr.,

General Counsel.

[FR Doc. 93–25787 Filed 10–15–93; 2:38 pm]

BILLING CODE 7600–01–M

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federal register

Tuesday
October 19, 1993

Part II

Environmental Protection Agency

Premanufacture Notices; Monthly Status Report for August 1993

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–53170; FRL–4650–5]

Premanufacture Notices; Monthly Status Report for AUGUST 1993

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(d)(3) of the Toxic Substance Control Act (TSCA) requires EPA to issue a list in the **Federal Register** each month reporting the premanufacture notices (PMNs) and exemption requests pending before the Agency and the PMNs and exemption requests for which the review period has expired since publication of the last monthly summary. This is the report for August 1993.

Nonconfidential portions of the PMNs and exemption request may be seen in the TSCA Nonconfidential Information Center, (NCIC) ETG–102 at the address below between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

ADDRESSES: Written comments, identified with the document control number "[OPPTS–53170]" and the specific PMN and exemption request number should be sent to: Document Control Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. ETG–099, Washington, DC, 20460, (202) 260–1532.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC, 20460, (202) 260–3725.

SUPPLEMENTARY INFORMATION: The monthly status report published in the **Federal Register** as required under section 5(d)(3) of TSCA (90 Stat. 2012 (15 U.S.C. 2504)), will identify: (a) PMNs received during August; (b) PMNs received previously and still under review at the end of August; (c) PMNs for which the notice review period has ended during August; (d) chemical substances for which EPA has received a notice of commencement to manufacture during August; and (e) PMNs for which the review period has been suspended. Therefore, the August 1993 PMN Status Report is being published.

List of Subjects

Environmental protection.

Dated: October 8, 1993.

Frank V. Caesar,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

Premanufacture Notice Monthly Status Report for AUGUST 1993.

I. 207 Premanufacture notices and exemption requests received during the month:

PMN No.

P 93–1385 P 93–1395 P 93–1398 P 93–1399
P 93–1400 P 93–1401 P 93–1402 P 93–1403
P 93–1404 P 93–1405 P 93–1406 P 93–1407
P 93–1408 P 93–1409 P 93–1410 P 93–1411
P 93–1412 P 93–1413 P 93–1414 P 93–1415
P 93–1416 P 93–1417 P 93–1418 P 93–1419
P 93–1420 P 93–1421 P 93–1422 P 93–1423
P 93–1424 P 93–1425 P 93–1426 P 93–1427
P 93–1428 P 93–1429 P 93–1430 P 93–1431
P 93–1432 P 93–1433 P 93–1434 P 93–1435
P 93–1436 P 93–1437 P 93–1438 P 93–1439
P 93–1440 P 93–1441 P 93–1442 P 93–1443
P 93–1444 P 93–1445 P 93–1446 P 93–1447
P 93–1448 P 93–1449 P 93–1450 P 93–1451
P 93–1452 P 93–1453 P 93–1454 P 93–1455
P 93–1456 P 93–1457 P 93–1458 P 93–1459
P 93–1460 P 93–1461 P 93–1462 P 93–1463
P 93–1464 P 93–1465 P 93–1466 P 93–1467
P 93–1468 P 93–1469 P 93–1470 P 93–1471
P 93–1472 P 93–1473 P 93–1474 P 93–1475
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P 93–1588 P 93–1589 P 93–1590 P 93–1592
P 93–1593 P 93–1594 P 93–1595 P 93–1596
P 93–1597 P 93–1598 P 93–1599 P 93–1613
Y 93–0195 Y 93–0196 Y 93–0197 Y 93–0198
Y 93–0199 Y 93–0200 Y 93–0201

II. 228 Premanufacture notices received previously and still under review at the end of the month:

PMN No.

P 84–0660 P 84–0704 P 85–0619 P 85–0941
P 86–0066 P 86–1315 P 87–0323 P 88–0998
P 88–0999 P 88–1937 P 88–1938 P 88–1980
P 88–1982 P 88–1984 P 88–1985 P 88–2484
P 88–2518 P 89–0721 P 89–0775 P 89–0867
P 89–0963 P 89–1038 P 90–0158 P 90–0263
P 90–0550 P 90–0558 P 90–0564 P 90–0581
P 90–0608 P 90–1358 P 90–1422 P 90–1527
P 90–1592 P 90–1840 P 91–0043 P 91–0572
P 91–0619 P 91–0689 P 91–0809 P 91–0818
P 91–0914 P 91–0915 P 91–0939 P 91–0940
P 91–0941 P 91–1009 P 91–1010 P 91–1014
P 91–1015 P 91–1131 P 91–1206 P 91–1210
P 91–1324 P 91–1386 P 91–1394 P 91–1409
P 92–0003 P 92–0031 P 92–0032 P 92–0033
P 92–0048 P 92–0314 P 92–0343 P 92–0344
P 92–0477 P 92–0478 P 92–0606 P 92–0649
P 92–0692 P 92–0714 P 92–0787 P 92–0804
P 92–0919 P 92–1003 P 92–1125 P 92–1222
P 92–1255 P 92–1294 P 92–1295 P 92–1296
P 92–1298 P 92–1307 P 92–1308 P 92–1324
P 92–1337 P 92–1345 P 92–1352 P 92–1364
P 92–1369 P 92–1489 P 92–1503 P 92–1504
P 93–0014 P 93–0017 P 93–0040 P 93–0066
P 93–0094 P 93–0126 P 93–0168 P 93–0177
P 93–0204 P 93–0212 P 93–0213 P 93–0215
P 93–0227 P 93–0250 P 93–0251 P 93–0252
P 93–0253 P 93–0254 P 93–0255 P 93–0256
P 93–0257 P 93–0277 P 93–0282 P 93–0307
P 93–0313 P 93–0314 P 93–0315 P 93–0316
P 93–0339 P 93–0343 P 93–0352 P 93–0353
P 93–0362 P 93–0364 P 93–0374 P 93–0375
P 93–0438 P 93–0458 P 93–0480 P 93–0483
P 93–0498 P 93–0505 P 93–0507 P 93–0512
P 93–0532 P 93–0533 P 93–0553 P 93–0555
P 93–0568 P 93–0572 P 93–0578 P 93–0603
P 93–0627 P 93–0633 P 93–0652 P 93–0658
P 93–0698 P 93–0699 P 93–0701 P 93–0718
P 93–0720 P 93–0721 P 93–0722 P 93–0723
P 93–0724 P 93–0725 P 93–0726 P 93–0731
P 93–0732 P 93–0733 P 93–0734 P 93–0735
P 93–0761 P 93–0832 P 93–0853 P 93–0854
P 93–0855 P 93–0856 P 93–0857 P 93–0858
P 93–0880 P 93–0881 P 93–0896 P 93–0936
P 93–0937 P 93–0953 P 93–0955 P 93–0959
P 93–0964 P 93–0987 P 93–1024 P 93–1025
P 93–1026 P 93–1027 P 93–1028 P 93–1039
P 93–1043 P 93–1047 P 93–1069 P 93–1071
P 93–1074 P 93–1082 P 93–1096 P 93–1108
P 93–1111 P 93–1119 P 93–1166 P 93–1180
P 93–1183 P 93–1222 P 93–1224 P 93–1231
P 93–1235 P 93–1236 P 93–1238 P 93–1244
P 93–1254 P 93–1261 P 93–1262 P 93–1263
P 93–1264 P 93–1265 P 93–1266 P 93–1267
P 93–1307 P 93–1308 P 93–1313 P 93–1315
P 93–1316 P 93–1347 P 93–1369 P 93–1376
P 93–1381 P 93–1382 P 93–1393 P 93–1394

III. 176 Premanufacture notices and exemption request for which the notice review period has ended during the month. (Expiration of the notice review period does not signify that the chemical has been added to the Inventory).

PMN No.

P 89–0957 P 89–0958 P 89–0959 P 89–1058
P 90–1564 P 91–0826 P 92–0129 P 92–1357
P 93–0066 P 93–0067 P 93–0068 P 93–0122
P 93–0123 P 93–0124 P 93–0214 P 93–0282
P 93–0307 P 93–0555 P 93–0561 P 93–0637
P 93–0950 P 93–0952 P 93–0954 P 93–0956
P 93–0957 P 93–0958 P 93–0960 P 93–0961
P 93–0962 P 93–0963 P 93–0965 P 93–0966
P 93–0967 P 93–0968 P 93–0969 P 93–0970
P 93–0971 P 93–0972 P 93–0973 P 93–0974
P 93–0975 P 93–0976 P 93–0977 P 93–0978
P 93–0979 P 93–0980 P 93–0981 P 93–0982
P 93–0983 P 93–0984 P 93–0985 P 93–0986

P 93–0988 P 93–0989 P 93–0990 P 93–0991 P 93–1039 P 93–1040 P 93–1041 P 93–1042 P 93–1088 P 93–1089 P 93–1090 P 93–1091
P 93–0992 P 93–0993 P 93–0994 P 93–0995 P 93–1044 P 93–1045 P 93–1046 P 93–1048 P 93–1092 P 93–1093 P 93–1094 P 93–1097
P 93–0996 P 93–0997 P 93–0998 P 93–0999 P 93–1049 P 93–1050 P 93–1051 P 93–1052 P 93–1098 P 93–1100 P 93–1101 Y 93–0172
P 93–1000 P 93–1001 P 93–1002 P 93–1004 P 93–1053 P 93–1054 P 93–1055 P 93–1056 Y 93–0173 Y 93–0174 Y 93–0175 Y 93–0176
P 93–1005 P 93–1006 P 93–1007 P 93–1008 P 93–1057 P 93–1058 P 93–1059 P 93–1060 Y 93–0177 Y 93–0178 Y 93–0179 Y 93–0180
P 93–1009 P 93–1010 P 93–1011 P 93–1012 P 93–1061 P 93–1062 P 93–1063 P 93–1064 Y 93–0181 Y 93–0182 Y 93–0183 Y 93–0184
P 93–1013 P 93–1014 P 93–1015 P 93–1016 P 93–1065 P 93–1066 P 93–1067 P 93–1068 Y 93–0185 Y 93–0186 Y 93–0187 Y 93–0188
P 93–1017 P 93–1018 P 93–1019 P 93–1020 P 93–1070 P 93–1072 P 93–1073 P 93–1075 Y 93–0189 Y 93–0190 Y 93–0191 Y 93–0192
P 93–1021 P 93–1022 P 93–1023 P 93–1029 P 93–1076 P 93–1077 P 93–1078 P 93–1079 Y 93–0193 Y 93–0194 Y 93–0195 Y 93–0198
P 93–1030 P 93–1031 P 93–1032 P 93–1033 P 93–1080 P 93–1081 P 93–1082 P 93–1083
P 93–1034 P 93–1035 P 93–1036 P 93–1037 P 93–1084 P 93–1085 P 93–1086 P 93–1087

IV. 28 Chemical Substances for Which EPA Has Received Notices of Commencement To Manufacture

PMN No.	Identity/Generic Name	Date of Commencement
P 86–1153	G polyamide precursor	January 23, 1987.
P 86–1648	1-Oxo 4-azaspiro(4,5 decane, 4-(dichloroacetyl)-	October 29, 1990.
P 88–0436	G Poly(triazinyl piperazine)	September 25, 1989.
P 88–0998	G Fluorene-containing diaromatic amine	March 3, 1992.
P 89–0632	4-Piperidinamine,*N*-butyl-2,2,6,6-tetramethyl; 1,3-propanediamine,a *N,N,N*-1,2-ethandiyl bis-; 1,3,5-triazine,2,4,6-trichloro-	June 23, 1991.
P 91–0431	G Isophthalic alkyd resin	April 20, 1993.
P 91–0713	G Olefinic alcohol	April 28, 1993.
P 91–0809	G Recovered metal hydride	February 18, 1992.
P 91–0921	G Urethane modified alkyd resin	April 20, 1993.
P 91–0922	G Maleic imide modified rosin phenolic resin	April 20, 1993.
P 91–0987	Fatty acids, C_5—C_{12}-esters with pentaerythritrol and dipentaerythritol	April 17, 1993.
P 91–0994	G Diisocyanate trimer, reaction product with polyether polyol	March 30, 1993.
P 91–1012	G Substituted alkyl alcohol	March 24, 1993.
P 91–1087	G Polyurethane resin	April 20, 1993.
P 92–0719	G Rosin-modified hydrocarbon resin	March 30, 1993.
P 92–0835	Fatty acids, C_{18}-unstd., dimer polymer with a dibasic acid, ethylenediamine and diamines	April 18, 1993.
P 92–1160	G Hydroxyl-terminated saturated polyester resin	April 12, 1993.
P 93–0060	G Anthraquinone derivative	April 8, 1993.
P 93–0125	A phthalic anhydride, maleic anhydride, tall oil fatty acids, neopentyl glycol, ethylene glycol, andpentaerythritol polyester reacted with styrene andmethacrylate acid	April 1, 1993.
P 93–0182	G Formaldehyde, polymer with(chloromethyl)oxirane and methylphenol, reaction products with acrylic acid and an anhydride	April 20, 1993.
P 93–0247	G Polysulfide polymer modified with phenolic resins	April 15, 1993.
P 93–0369	G Polyether ketone	May 5, 1993.
P 93–0396	G Acid modified polyether prepolymer	April 13, 1993.
P 93–0398	G Polyurethane	April 16, 1993.
Y 91–0163	G Polyurethsane resin	April 20, 1993.
Y 91–0164	G Phthalic alkyd resin	April 12, 1993.
Y 93–0017	G Styrene-acrylic copolymer	March 30, 1993.
Y 93–0071	G Styrenated acrylic graft copolymer with fumaric resin, amine salt	April 19, 1993.

V. 28 Premanufacture notices for which the period has been suspended.

PMN No.

P 91–1210 P 92–0048 P 92–0714 P 92–1503
P 92–1504 P 93–0532 P 93–0718 P 93–0880
P 93–0881 P 93–0953 P 93–0959 P 93–0964
P 93–0987 P 93–1024 P 93–1025 P 93–1026
P 93–1027 P 93–1028 P 93–1039 P 93–1043
P 93–1047 P 93–1069 P 93–1071 P 93–1074
P 93–1096 P 93–1180 Y 93–0196 Y 93–0197

[FR Doc. 93–25474 Filed 10–18–93; 8:45 am]
BILLING CODE 6560–50–F

federal register

Tuesday
October 19, 1993

Part III

Department of Education

National Institute on Disability and Rehabilitation Research; Inviting Applications for a New Award; Notices

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research

AGENCY: Department of Education.

ACTION: Notice of a final funding priority for fiscal years 1994–1995 for a Rehabilitation Research and Training Center on Rehabilitation in the Pacific Basin.

SUMMARY: The Secretary announces a funding priority for a Rehabilitation Research and Training Center (RRTC) under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years 1994–1995. The Secretary takes this action to focus research attention on an area of national need consistent with NIDRR's long-range planning process. This priority is intended to improve rehabilitation services and outcomes for individuals with disabilities.

EFFECTIVE DATE: This priority takes effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of this priority, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: David Esquith, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3424, Switzer Building, Washington, D.C. 20202–2601. Telephone: (202) 205–8801. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–5516.

SUPPLEMENTARY INFORMATION: This notices contains a final priority under the RRTC program for research on rehabilitation in the Pacific Basin.

Authority for the RRTC program of NIDRR is contained in section 204(b)(2) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 760–762). Under this program the Secretary makes awards to public and private organizations, including institutions of higher education and Indian tribes or tribal organizations for coordinated research and training activities. These entities must be of sufficient size, scope, and quality to effectively carry out the activities of the Center in an efficient manner consistent with appropriate State and Federal laws. They must demonstrate the ability to carry out the training activities either directly or through another entity that can provide such training.

The Secretary may make awards for up to 60 months through grants or cooperative agreements. The purpose of the awards is for planning and conducting research, training, demonstrations, and related activities leading to the development of methods, procedures, and devices that will benefit individuals with disabilities, especially those with the most severe disabilities.

This final priority supports the National Education Goals. National Education Goal 5 calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Under the regulations for this program (see 34 CFR 352.32) the Secretary may establish research priorities by reserving funds to support particular research activities.

NIDRR is in the process of developing a revised long-range plan. The priority in this notice is consistent with the long-range planning process.

On August 5, 1993 the Secretary published a notice of proposed priorities in the **Federal Register** at (58 FR 41910). The Secretary intends to publish additional final priorities in this program at a later date.

Note: This notice of final priority does not solicit applications. A notice inviting applications under this competition is published in a separate notice in this issue of the **Federal Register**.

Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed priorities, one party submitted a comment on the proposed priority on rehabilitation in the Pacific Basin.

Comment: The commenter stated that the RRTC on Rehabilitation in the Pacific Basin "seems rather political" and was not based on "scientific merit and the needs of persons with disabilities."

Discussion: The RRTC on Rehabilitation in the Pacific Basin is required under the Rehabilitation Act of 1973, as amended.

Changes: None.

Description of the Rehabilitation Research and Training Center Program

RRTCs are operated in collaboration with institutions of higher education or providers of rehabilitation services or other appropriate services. RRTCs serve as centers of national excellence and national or regional resources for providers and individuals with disabilities and the parents, family members, guardians, advocates or authorized representatives of these individuals.

RRTCs conduct coordinated and advanced programs of research in rehabilitation targeted toward the production of new knowledge to improve rehabilitation methodology and service delivery systems, alleviate or stabilize disabling conditions, and promote maximum social and economic independence of individuals with disabilities.

RRTCs provide training, including graduate, pre-service, and in-service training, to assist individuals to more effectively provide rehabilitation services. They also provide training, including graduate, pre-service, and in-service training, for rehabilitation research personnel and other rehabilitation personnel.

RRTCs serve as informational and technical assistance resources to providers, individuals with disabilities, and the parents, family members, guardians, advocates, or authorized representatives of these individuals through conferences, workshops, public education programs, in-service training programs and similar activities.

The statute requires that each applicant for a grant, including an RRTC, demonstrate how its proposed activities address the needs of individuals from minority backgrounds who have disabilities. NIDRR encourages all Centers to involve individuals with disabilities and minorities in research training as well as clinical training.

Applicants have considerable latitude in proposing the specific research and related projects they will undertake to achieve the designated outcomes; however, the regulatory selection criteria for the program (34 CFR 352.31) states that the Secretary reviews the extent to which applicants justify the choice of research projects in terms of the relevance to the priority and to the needs of individuals with disabilities. The Secretary also reviews the extent to which applicants present a scientific methodology that includes reasonable hypotheses, appropriate methods of data collection and analysis, and a means to evaluate the extent to which project objectives have been achieved.

The Department is particularly interested in ensuring that the expenditure of public funds is justified by the execution of intended activities and the advancement of knowledge and, thus, has built this accountability into the selection criteria. Not later than three years after the establishment of any RRTC, NIDRR will conduct one or more reviews of the activities and achievements of the Center. In accordance with the provisions of 34 CFR 75.253(a), continued funding depends at all times on the grantee's substantial progress toward meeting the objectives in its approved application.

General

Each RRTC must conduct a multifaceted program of research to develop solutions to problems confronted by individuals with disabilities.

Each RRTC must conduct an interdisciplinary program of training in rehabilitation research, including training in research methodology and applied research experience, that will contribute to the number of qualified researchers working in the area of rehabilitation research.

Each Center must disseminate and encourage the use of new rehabilitation knowledge. It must publish all materials for dissemination or training in alternate formats to make them accessible to individuals with a range of disabling conditions.

Each RRTC must involve individuals with disabilities and, if appropriate, their family members, as well as rehabilitation service providers, including vocational rehabilitation service providers, in planning and implementing the research and training programs, in interpreting and disseminating the research findings, and in evaluating the Center.

Priority

Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to applications that meet the following priority. The Secretary will fund under this competition only applications that meet this absolute priority:

Priority—Rehabilitation in the Pacific Basin

Background: In the Rehabilitation Act Amendments of 1984, the Congress mandated that NIDRR establish an RRTC to address rehabilitation needs of the Pacific Basin, and further described a scope of work for the Center in the 1986 Amendments. In response to the Congressional mandates of 1984 and 1986, NIDRR provided support, on a competitive basis, to the University of Hawaii to conduct a program of research and training to address needs for rehabilitation knowledge concerning the Pacific Basin. In the Rehabilitation Act Amendments of 1992, the Congress again mandated that NIDRR support such a Center.

For the purpose of this priority, the Pacific Basin is defined to include Hawaii, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, the Republic of the Marshall Islands, and Guam. With the exception of Hawaii, the entities in the Pacific Basin are small, geographically-isolated island governments with limited resources for addressing the needs of persons with disabilities.

Disability should be studied and understood in terms of culturally acceptable norms and behaviors. Prior research suggests differences among various cultural groups, such as Asian-American and Pacific Islanders, related to perceptions of impairment and disability, participation in the rehabilitation process, and outcomes of the rehabilitation process. The concepts of independence, independent living, integration, and economic self-sufficiency must be defined in the context of island cultures that value interdependence and the sharing of community and family resources.

At the time the first RRTC was established in the Pacific Basin, little was known about disability in the region. Epidemiologic and rehabilitation service system data regarding individuals with disabilities in the various entities were either incomplete, inaccurate, or non-existent. There was little definitive knowledge about the influence of cultural values or local lifestyles on the experiences of disability and the outcomes of rehabilitation. The capacity to produce, analyze, report and use data was limited. Mechanisms to translate such information into the development of effective programs, practices, and service systems also were limited.

The RRTC focused on the design and development of demographic databases; the design of training for personnel who provide vocational and independent living rehabilitation services and special education; investigations of the primary and secondary long-term disabilities of islanders, such as diabetes, stroke, and spinal cord injuries; and the development of rehabilitation data systems in Hawaii, American Samoa, and the Commonwealth of the Northern Marianas.

There is an ongoing need for research directed to epidemiologic and rehabilitation service system databases to enhance the capacity of the Pacific Basin entities to (1) identify rehabilitation needs, patterns, and priorities; (2) engage in coordinated planning for disability and prevention of disability; (3) provide services to persons with disabilities and their families; and (4) evaluate programs.

In addition, while Hawaii is improving its assistive technology service-delivery systems, the use of assistive technology in the other entities continues to present problems. For example, many assistive devices manufactured for use on the mainland do not always have the capacity to withstand the climate and terrain of the Pacific Basin. Furthermore, the need for assistive technology devices may overwhelm the rehabilitation service delivery systems in some entities.

Prior research has led to the identification and development of some assistive technology devices that are cost-effective, able to endure the physical conditions of the islands, and constructed of materials that are available on the islands. Further efforts are needed to refine and disseminate information about assistive technology that is developed in collaboration with persons with disabilities, that supports the infrastructure and economy of each island, and that is acceptable within the culture and social system of each island. Persons with disabilities and their family members, service providers, and local agencies require further training to enable them to maintain assistive devices.

Technical assistance is needed to establish rehabilitation systems, interagency communication and collaboration, and strategies to provide responsive services at low cost. These strategies include on-island services, use of indigenous personnel, networking among islands, and use of modern telecommunications.

There is a continuing need for training of more rehabilitation service providers, including independent living and vocational rehabilitation service providers, from the variety of cultural, linguistic, and ethnic backgrounds represented in the region, and for updated training to address the demands of new and emerging technologies.

Priority: An RRTC on rehabilitation in the Pacific Basin shall—

- Design new or expand and improve existing rehabilitation service system databases and demographic databases that describe Pacific Basin populations in need of rehabilitation services and promote the implementation and effective use of databases to assess and improve rehabilitation programs;
- Identify or develop, assess, and promote the use of assistive technology devices and services appropriate for use on the islands in the Pacific Basin other than Hawaii;
- Develop strategies to facilitate interagency communication and collaboration among rehabilitation-related service providers in the Pacific Basin to expand the capacity to provide effective rehabilitation services;
- Conduct collaborative and participatory research to identify pertinent disability-related differences among cultural and ethnic groups in the

Pacific Basin and develop culturally relevant interventions to improve vocational rehabilitation and independent living outcomes;

• Develop and provide pre-service and in-service training that is culturally relevant, including training on advances in assistive technology devices, for rehabilitation services personnel;

• Develop and disseminate educational materials on rehabilitation interventions that are culturally relevant and in accessible formats to persons with disabilities, their family members, and to vocational rehabilitation, education, and health care personnel;

• Involve individuals with disabilities, including those from minority backgrounds, in all phases of planning, conducting, and disseminating the research and in evaluating the research and training activities;

• Develop all materials for training and dissemination in formats and media that will make them usable by individuals from the relevant cultural backgrounds and accessible to individuals with various types of disabilities; and

• Cooperate with the Hawaii Technology Assistance Project, with vocational rehabilitation agencies, and with other RRTCs and Rehabilitation Engineering Research Centers addressing related problems.

Applicable Program Regulations: 34 CFR parts 350 and 352.

Program Authority: 29 U.S.C. 760–762.

(Catalog of Federal Domestic Assistance Number 84.133B, Rehabilitation Research and Training Centers)

Dated: October 13, 1993.

Andrew Pepin,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 93–25549 Filed 10–18–93; 8:45 am]

BILLING CODE 4000–01–P

[CFDA No.: 84.133B]

Notice Inviting Applications for a New Award Under the Rehabilitation Research and Training Centers (RRTC) for Fiscal Year (FY) 1994

Purpose of Program: Rehabilitation Research and Training Centers conduct coordinated and advanced programs of rehabilitation research, provide training—including undergraduate, graduate, and in-service training—to research and other rehabilitation personnel, and assist individuals to more effectively provide rehabilitation services. The final priority for this award is published in this issue of the **Federal Register**. Potential applicants should consult the statement of the final priority published in this issue to ascertain the substantive requirements for their applications.

This final priority supports the National Education Goals. National Education Goal 5 calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship. This notice would address Goal 5 by helping individuals with disabilities to develop the skills necessary to live and work successfully in the world as it is today.

Eligible Applicants: Institutions of higher education and public or private agencies and organizations collaborating with institutions of higher education, including Indian tribes and tribal organizations, are eligible to apply for awards under this program.

Deadline for Transmittal of Applications: November 19, 1993.

Applications Available: October 27, 1993.

Available Funds: $650,000.

Estimated Number of Awards: 1.

Note: The estimates of funding levels and awards in this notice do not bind the Department of Education to a specific level of funding or number of grants, unless the amount is otherwise specified by statute or regulation.

Project Period: Up to 60 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR), 34 CFR parts 74, 75, 77, 78, 80, 81, 82, 85, 86; (b) the regulations for this program in 34 CFR parts 350 and 352; and (c) the notice of final priority published elsewhere in this issue of the **Federal Register**.

For Further Information Contact: Dianne Villines, U.S. Department of Education, room 3417 Switzer Building, 400 Maryland Avenue, SW., Washington, DC. 20202–2704. Telephone: (202) 205–9141. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8887.

Program Authority: 29 U.S.C. 760–762.

Dated: October 13, 1993.

Andrew Pepin,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 93–25551 Filed 10–18–93; 8:45 am]

BILLING CODE 4000–01–P

federal register

Tuesday
October 19, 1993

Part IV

Department of Commerce

Economic Development Administration

Assistance Program for Disaster Relief Activities; Availability of Funds; Notice

DEPARTMENT OF COMMERCE

Economic Development Administration

[Docket No. 930942-3242]

Economic Development Assistance Program for Disaster Relief Activities as Described in Public Law 103-75, Chapter I; Availability of Funds

AGENCY: Economic Development Administration (EDA), DOC.

ACTION: Supplementary notice.

SUMMARY: Effective immediately, the Economic Development Administration (EDA) announces the policies and the application procedures for funds available to support disaster relief programs designed to assist affected states and local communities to recover from the consequences of the Midwest Floods of 1993, and for other disasters.

EDA offers a variety of program tools to assist affected communities. The primary emphasis of EDA's program will be to assist flood-impacted areas with the development and implementation of strategies that are needed for long-term economic relief, including planning and technical assistance; the capitalization and recapitalization of Revolving Loan Funds; the construction of new and expanded infrastructure and development facilities required for economic development of the area; and other economic development programs designed to alleviate the economic distress of the areas.

SUPPLEMENTARY INFORMATION:

Funding Availability

Funds in the amount of $200 million are available for this disaster relief program and shall remain available until September 30, 1995. The funds are available for awarding disaster assistance grants pursuant to the Public Works and Economic Development Act of 1965, as amended. However, $100 million shall only be available to the extent an official budget request for a specific dollar amount, that includes designation of the entire amount of the request as an emergency requirement as defined in the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, is transmitted by the President to Congress.

Grant Rates

Grant rates, as established by the Public Works and Economic Development Act of 1965, as amended (PWEDA) and its implementing regulations at 13 CFR chapter III may vary, if permitted by PWEDA and its implementing regulations, and depending on the relative needs and financial capacity of applicants. In most cases, a nonfederal local share will be required. In rare and extenuating circumstances, EDA may waive the local share requirement where permitted by the PWEDA and its implementing regulations at 13 CFR chapter III. Local share requirements are discussed in the **Federal Register** of January 11, 1993, (58 FR 3800) announcing the policies and application procedures for EDA's Fiscal Year 1993 programs.

Eligible Applicants

Eligible applicants include any of the states or political subdivisions thereof, including municipalities and quasi-public corporations and authorities, Indian tribes, and nonprofit corporations representing an EDA designated redevelopment area or part thereof located in areas affected by the Midwest Flood of 1993, and other disasters. Eligible applicants are further identified in the **Federal Register** of January 11, 1993 (58 FR 3800).

Proposal Submission Procedures

Proposals for assistance authorized under chapter I, of Public Law 103-75 shall be submitted to EDA with a completed Form SF-424. Applicants must clearly demonstrate how the EDA assistance will help the area recover from the economic hardship and other problems caused by the floods, or other disasters, and that such assistance has been preceded by sound planning. Interested parties should contact the appropriate Economic Development Representative for the area or the appropriate EDA Regional Office for a proposal package.

Application Procedures

A determination of whether to invite a grant application for EDA assistance will be issued based upon the outcome of the Agency's review of the applicant's preliminary application/proposal.

Funding Instrument

Funds will be awarded as grants in accordance with the requirements of title I, title III, title IV, and title IX of the Public Works and Economic Development Act of 1965, as amended (Public Law 89-136; 42 U.S.C. 3121 *et. seq.*) (PWEDA). The appropriate title for grant application and award will be determined by EDA based on the nature of the project and the eligibility of the area.

Other Information

Application procedures, competitive selection criteria and post approval project implementation information for the applicable assistance are described in the **Federal Register** of January 11, 1993, (58 FR 3800) announcing EDA's Notice of Availability of Funds for FY 1993.

FOR FURTHER INFORMATION CONTACT: Contact the appropriate Economic Development Representative or EDA Regional Office listed below:

Denver Regional Office (ND, SD, IA, MO, KS):

Economic Development Administration, Denver Regional Office, room 670, 1244 Speer Boulevard, Denver, CO 80204, Telephone: (303) 844-4714

Denver Region Economic Development Representatives:

North Dakota

Economic Development Representative: Cornelius Grant, Address: EDA Disaster Field Office, P.O. Box 1911, Bismarck, ND 58501, Telephone Number: (701) 250-4321

South Dakota and Nebraska

Economic Development Representative: Warren A. Albertson, Address: Federal Building, room 219, Pierre, SD 57501, Telephone Number: (605) 224-8280

Iowa

Economic Development Representative: Robert Cecil, Address: Federal Building, room 593A, 210 Walnut Street, Des Moines, IA 50309, Telephone Number: (515) 284-4746

Missouri

Economic Development Representative: Forrest E. Koch, Address: Robert A. Young Building, room 8.308H, 1222 Spruce Street, St. Louis, MO 63103, Telephone Number: (314) 539-2321

Kansas

Economic Development Representative: John Zender, Address: Room 632, 1244 Speer Blvd., Denver, CO 80204, Telephone: (303) 844-4902

Chicago Regional Office (WI, MN, IL):

Economic Development Administration, Chicago Regional Office, suite 855, 111 North Canal Street, Chicago, IL 60606-7204, Telephone: (312) 353-7706

Chicago Region Economic Development Representatives:

Wisconsin

Economic Development Representative: Jack D. Price, Address: Suite 114, 1320 West Clairemont Avenue, Eau Claire, WI

54701, Telephone: (715) 834–4079

Minnesota

Economic Development

Representative: John B. Arnold, III, Address: 104 Federal Building, 515 West First Street, Duluth, MN 55802, Telephone: (218) 720–5326

Illinois

Economic Development

Representative: Alfred L. Casals, Address: 509 West Capitol, suite 204, Springfield, IL 62704, Telephone: (217) 492–4224

Dated: October 12, 1993.

Wilbur F. Hawkins,

Acting Assistant Secretary for Economic Development.

[FR Doc. 93–25644 Filed 10–18–93; 8:45 am]

BILLING CODE 3510-24-M

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federal register

Tuesday
October 19, 1993

Part V

Department of Agriculture

Food Safety and Inspection Service

9 CFR Part 301, et al.
Centralization and Automation of Export Certification Process; Proposed Rule

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 301, 312, 322, 350, 362, 381, and 391

[Docket No. 89-010P]

RIN 0583-AB04

Centralization and Automation of the Export Certification Process

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to amend the Federal meat and poultry products inspection regulations governing the certification of domestic meat and poultry products intended for export to foreign countries. FSIS is proposing to centralize and automate the export certification process, to replace the official export stamp with an unofficial stamp under the control of each official establishment intending to export product, and to rescind the requirement that each individual container of product be stamped with the number of the export certificate that covers the product. FSIS is also proposing to establish a performance-based compliance review program for those establishments exporting product, to establish penalties for failure to comply with these proposed regulations, and to establish a standard fee for preparation of export certificates which reflect the performance of inspection procedures beyond routine United States inspection procedures. The proposed rule would also make the exporter responsible for knowing the requirements of the country to which product is being exported and for ensuring that any additional requirements above and beyond United States requirements have been met. FSIS is proposing to revise the definition of "inspector" is both the Federal meat inspection and poultry products inspection regulations to include an inspector of the Program or any individual designated by the Administrator, FSIS. FSIS is also proposing to amend the Federal meat and poultry products inspection regulations to add a definition of "responsibly connected person." FSIS would continue to conduct all inspection activities necessary to assure the production of sound, wholesome, unadulterated and properly labeled products that meet the requirements of the United States. The proposed changes are designed to improve compliance with foreign country facility, equipment, animal health and procedural requirements, improve the accuracy and security of export certificates, provide ready access and uniform interpretation of foreign country requirements, expedite transmission of documents and focus compliance resources on areas most in need of attention.

DATES: Comments must be received on or before: December 17, 1993.

ADDRESSES: Written comments to: Policy Office, ATTN: Linda Carey, FSIS Hearing Clerk, room 3171, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington DC 20250. Oral comments, as provided by the Poultry Products Inspection Act, should be directed to Dr. Robert Fetzner, (202) 720-9051. (See "Comments" under SUPPLEMENTARY INFORMATION.)

FOR FURTHER INFORMATION CONTACT: Dr. Robert Fetzner, Director, Export Coordination Division, International Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 720-9051.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Administrator has made an initial determination that the proposed rule is not a major rule under Executive Order 12291. It would not result in an annual effect on the economy of $100 million or more, a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions, or significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in foreign or domestic markets.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this rule is adopted, all State and local laws, regulations or policies, except those that are consistent with the proposed rule, are preempted. This proposed rule is not intended to have retroactive effect. Prior to any judicial challenge to the provisions of this rule, no administrative procedures must be exhausted. However, administrative procedures must be exhausted prior to any judicial challenge to application of the provisions of the rule. Under the Federal Meat Inspection Act and the Poultry Products Inspection Act, the administrative procedures are set forth in 9 CFR parts 306 and 335 and part 381, Subparts F and W, respectively.

Effect on Small Entities

The proposed rule would centralize and automate the export certification system and require exporters [1] to assure that any special facilities, equipment or procedural requirements imposed by the foreign country have been met before an export certificate would be issued. The goal of the proposed changes to current requirements is to improve the accuracy, efficiency and security of the export certification system for meat and poultry products.

Costs incurred by exporters to participate in the proposed system would be for the purchase of basic computer hardware and communications software. Most exporters already possess such electronic capabilities. However, those exporters who do not wish to invest in computer equipment and software would have the option of transmitting information needed to complete a certificate by telephone or by U.S. mail. Agency personnel would input information into the computer system. Completed certificates would be mailed or faxed to the exporter.

Approximately one-fourth of the foreign countries to which product is currently exported impose no special or additional requirements on imported products other than normal, routine USDA inspection requirements. The remaining countries do require, in varying degrees, special facilities and equipment, or special inspection or processing procedures for product intended for export to those countries. In these instances, the exporter would be responsible for generating and maintaining documentation to substantiate that all such requirements have been met.

The proposal would also establish a per certificate fee for statements or certifications required by a foreign country that concern procedures above and beyond normal USDA inspection procedures. The fee would permit FSIS to capture the costs of the new export certification system. FSIS issued 179,163 export certificates during fiscal year 1990. It is estimated that approximately 185,000 certificates will be issued every year. Based on this estimate, it is expected that the fee would be around $7.00 per certificate. (The exact figure will be published in the final regulation.)

[1] The term "exporter" refers to agents, brokers, official establishments or any other entity intending to export meat or poultry products to a foreign country.

The proposal would also require that establishments purchase their own export marking device. The cost of a marking device and ink is estimated to be $15 per year.

The increased accuracy and efficiency of the new system would decrease delays and the number of shipments refused entry at foreign ports thus benefiting all exporters. Therefore, FSIS has determined that the proposed rule would not have a significant economic effect on a substantial number of small entities.

Paperwork Requirements

Current Requirement

This proposed rule would require that exporters transmit information to FSIS regarding the nature of the product they wish to export. Although this requirement would alter the manner in which information is provided to the Agency, there is no change from the type, frequency or quantity of information currently collected.

New Requirement

Under the proposed rule, there would be a one-time paperwork requirement for exporters before their first export certificate would be issued. Exporters would be required to complete a form provided by the Agency. Exporters would provide the company name, contact person, address, the typed name of the person signing the application, the applicant's original signature, the company's nine digit identification number assigned by USDA's National Finance Center, telephone number and, if applicable, facsimile number. On this form, exporters would also be required to identify all persons responsibly connected with the exporter. A person responsibly connected with the exporter would be one who is an officer, director, partner or managerial employee, or one who owns 10 percent or more of the company's voting stock. Next, the applicant would list the name of each person responsibly connected with the applicant who has been convicted, in any Federal or State court, of any felony and/or more than one violation of any law, other than a felony, based upon the acquiring, handling or distribution of unwholesome, mislabeled or deceptively packaged food, or upon fraud in connection with transactions in food. The nature and date of the crime, and the court in which the conviction was handed down would be listed. The applicant would also list each conviction against the applicant, in any Federal or State court, of any felony and/or more than one violation of any law, other than a felony, based upon the acquiring, handling or distribution of unwholesome, mislabeled or deceptively packaged food, or upon fraud in connection with transactions in food. The nature and date of the crime, and the court in which the conviction was handed down would be listed. The form would include a warning statement which states that persons will-fully making false, fictitious or fraudulent statements or entries on the application may be subject to a fine, or imprisonment or both. The warning applies to all responses the exporter makes on the form. In addition, a certification statement would be included on the form which reads: "I CERTIFY that all statements made herein are true to the best of my knowledge and belief. By signing this application, I agree to abide by all USDA requirements in connection with the export of meat and poultry and products thereof, and I will make true and accurate representations on all requests for export certifications, and I recognize that any misrepresentation may result in revocation of eligibility to participate in the export certification system." The information on the form would be used when subsequent certificates are requested by the exporter.

New Requirement

The proposed rule would require that an exporter who intends to export product to countries which require that additional inspection procedure requirements be conducted, in some cases, continue to generate and maintain certain information relating to the eligibility of product exported to the foreign countries and, in other cases, to begin to generate and maintain certain information. (Some exporters routinely maintain these records for their own information and to protect their business interests.) FSIS would require that these records be generated and maintained by the exporter and be retained by the exporter in accordance with the requirements of 9 CFR part 320.3. Such records would only have to be generated during those times that the exporter is preparing product for export to the particular country. During routine plant reviews, FSIS review officers would examine the records to substantiate that exporting country requirements were met. These paperwork requirements are necessary because an FSIS inspector would no longer be directly involved in assuring that foreign country requirements are met. Currently, the inspector observes that requirements are met and attests to this by signing the certificate. Under this proposal, the exporter would be responsible for confirming and certifying that requirements were met. Therefore, written documentation would be needed to satisfy both the foreign country and FSIS that statements made by exporters on certificates are correct.

In addition, the exporter should have a system that can reconcile product certificate numbers and the records pertaining to the product. FSIS would not prescribe the form or manner of the records but would provide exporters with guidelines for preparing and maintaining the required records. FSIS would require that the records reflect the following information:

1. The eligibility of slaughter and processing establishments and cold storage facilities. Certain countries only accept exports originating from approved establishments and cold storage facilities. This would involve documenting that an exporter is approved to export to a certain country. The Export Coordination Division, International Programs, FSIS, maintains a listing of approved establishments and storage facilities and provides the list upon request. In the case of cold storage facilities, documentation would be maintained which shows that products stored in the facility and intended for export originated from approved establishments and were kept segregated from nonapproved product.

2. The origin of cattle and sheep, i.e., from approved premises (feedlots). Currently, the feedlot owner/operator provides an affidavit to the exporter certifying that his/her feedlot or similar holding facility is an approved facility. The exporter then provides this affidavit to the inspector in charge. Under the proposed rule, the exporter would not give the affidavit to the inspector in charge but would maintain the affidavit on file.

3. The disease status of livestock and poultry sources (States, countries). This would involve periodically contacting the Animal and Plant Health Inspection Service or the State Veterinarian about the disease status of a State or county and maintaining a written statement of the findings on file.

4. Cooking, ambient and cold treatment temperatures used during processing of meat and/or poultry. For each lot of product produced, product temperatures would be taken and recorded.

5. Various specific processing/production requirements. Several countries have very stringent and extensive processing requirements. Some countries require the use of cold treatment of pork for destruction of trichinae, or that port products be

analyzed for the presence or absence of trichinae, or that the establishment cease usual operations and institute other specific operations when producing product for export to the country. These actions would be documented and maintained on file.

6. Current and appropriate export licenses. Some foreign countries require that an export license be obtained from that country before exports are accepted. The license would be on file with the exporter.

7. How and when transportation vehicles are sanitized. This would involve documenting how and when transportation vehicles are sanitized.

8. The absence of certain species in plants during production runs for export to particular countries, i.e., no swine or swine products may be in plants while producing beef products for export to Australia. This would involve a written statement attesting to the above.

9. Water volume and temperature of chill tanks. For each lot of product produced, the amount of water used in chill tanks and the temperature of the chill tanks would be recorded.

10. Slaughter and freezing dates. This would involve a written record of when livestock and/or poultry were slaughtered and when the meat and poultry products were frozen.

11. Ritualistic slaughter certification. This would involve obtaining a certification from an Islamic Center and maintaining the certification on file.

12. Results of product microbiological analyses. For each lot of product produced, various microbiological analyses, as specified by the foreign country, would be conducted and the results maintained on file.

13. How and when product cans are sanitized. This would involve documenting how and when product cans are sanitized.

These recordkeeping requirements have been submitted to the Office of Management and Budget under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501).

Comments

Interested persons are invited to submit written comments concerning the proposal. Written comments should be sent to the Policy Office. Please refer to Docket Number 89–010P. Any person desiring an opportunity for an oral presentation of views should make such request to Dr. Fetzner so that arrangements can be made for such views to be presented. A record will be made of all views orally presented. All comments submitted in response to the proposal will be available for public inspection in the Policy Office between 9 a.m. and 12:30 p.m. and 1:30 and 4 p.m., Monday through Friday.

Background

Under the Federal Meat Inspection Act (FMIA), the Secretary is responsible for assuring that any product intended for export is inspected for soundness and wholesomeness (21 U.S.C. 615). The FMIA also authorizes the appointment of inspectors to issue inspection certificates stating the condition of meat products intended for export (21 U.S.C. 616). Further, the FMIA prohibits the clearance of any vessel having on board any meat products intended for export to a foreign country unless a certificate of soundness and wholesomeness is prepared for and accompanies such products (21 U.S.C. 617 and 618).

Section 322.1 of the Federal meat inspection regulations (9 CFR 322.1) requires that the outside containers of any inspected and passed product intended for export be marked with an official export stamp bearing the number of the export certificate. Section 322.2 (9 CFR 322.2) provides instructions to FSIS inspectors for issuing export certificates for shipments of inspected and passed meat products to any foreign country upon application for such certification from exporters.

The Poultry Products Inspection Act (PPIA) does not require that the Secretary appoint inspectors to certify poultry products for export and to issue export certificates. However, section 14 of the PPIA (21 U.S.C. 463) authorizes the Secretary to prescribe, by regulation, conditions under which poultry products capable for use as human food shall be stored or otherwise handled by any person engaged in the business of buying, selling, freezing, storing or transporting in or for commerce, or importing, whenever the Secretary deems such action necessary to assure that such articles will not be adulterated or misbranded when delivered to the consumer.

Section 381.105 of the poultry products inspection regulations (9 CFR 381.105) authorizes Federal inspectors to certify poultry products for export and to issue export certificates for inspected and passed poultry products intended for export to foreign countries. Section 381.105 further requires that the outside containers of products covered by an export certificate be marked with a stamp bearing the number of the export certificate.

Export certification is the procedure through which the Government of the United States communicates its assurances to the government of the receiving country that the U.S. meat or poultry products identified on the certificate are sound, wholesome, unadulterated and properly labeled, and meet the animal health requirements of the receiving country. Traditionally, these assurances have been communicated by means of a paper certificate signed by an FSIS inspector. After completion, the certificate moves through several commercial channels until it is presented by the importer or agent to the government officials of the receiving country. FSIS is proposing to expand the definition of inspector to encompass any individual designated by the Administrator, FSIS. This will allow the Export Coordination Division Director, once designated, to sign the export certificates.

FSIS Export Certification Process Study

In 1988, FSIS's Policy and Planning Staff (PPS) conducted a comprehensive study[2] to identify any problems or issues associated with the FSIS export certification process which might be impeding the exportation of meat and poultry products to foreign countries. Among the problems identified by the study were: (1) Lack of timely and accurate information available to inspectors and exporters concerning foreign country requirements, resulting in improperly prepared certificates with an attendant potential for shipment delays and product refusal at the port of entry; (2) lack of centralized certificate preparation resulting in loss of document control and security by the Agency, as well as inconsistent interpretation of foreign country requirements by inspectors; and (3) lack of uniformly rapid responses to certification requests from facilities, such as warehouses, which are not under continuous inspection.

The study made several recommendations for correcting these problems. PPS recommended: (1) Electronic compilation and transmission of foreign country requirements, (2) centralized preparation of standardized certificates, (3) implementation of a performance-based export reinspection system and (4) electronic transfer of certificates.

Export Coordination Division Functions

The Export Coordination Division (ECD), International Programs (IP), FSIS, implements Agency policy on certification for export of meat and poultry products. ECD provides assistance to the U.S. meat and poultry

[2] A copy of the study titled "Export Inspection and Certification Issue Identification and Analysis" is available from the FSIS Hearing Clerk, USDA, 14th & Independence Avenue, SW, Room 3175, South Agriculture Building, Washington, DC 20250.

industry in meeting the requirements of foreign countries by identifying and analyzing foreign inspection requirements in terms of their comparability with U.S. standards and procedures. Foreign requirements are interpreted and disseminated to inspection personnel, potential exporters and industry organizations to facilitate the export of U.S. meat and poultry products. ECD coordinates and evaluates the export certification program through periodic reviews of field export procedures. ECD is also responsible for planning, scheduling and coordinating reviews of U.S. establishments by foreign officials with respect to certifying the establishments as eligible to export.

Current Export Certification Procedures

Currently, exporters request inspection of product for export by submitting an FSIS Form 9060–6, Application for Export Certificate, to an FSIS inspector. Upon receiving this notice of intention to export, the FSIS inspector visually inspects the product to confirm that product described on the certificate bears the USDA mark of inspection, indicating that the product is sound, wholesome, not adulterated, and properly marked, labeled and packaged.

If the foreign country has special requirements, the inspector verifies that all appropriate requirements have been met. This verification is a reimbursable service paid for by the exporter. In performing this function, the inspector may rely on a variety of evidence, depending on the particular certification required. Some countries, for instance, require a confirmation of the absence of specific diseases from the country, State or locality from which the product originated. With few exceptions, these additional requirements do not entail the visual inspection of product or any task performance on the part of the inspector over and above that which has already been provided during the normal inspection operation.

Upon completion of the physical product review and preparation of required paperwork, the FSIS inspector provides the USDA Export Certificate, FSIS Form 9060–5, to the exporter. At the present time, FSIS inspectors issue additional certificates for many countries, i.e., additional forms containing special statements required by the particular country. This multiplicity of forms provides a greater opportunity for error, increases paperwork and reduces the security of the certificate by increasing the opportunity for falsification of the numerous forms.

To determine which requirements apply to specific countries, FSIS inspectors rely on FSIS directives, the Meat and Poultry Inspection Manual and various issuances which update these requirements. When questions concerning foreign country requirements arise, inspectors normally contact their supervisor and/or area office staff for guidance. As field and area offices do not always have up-to-date information, there is a danger that shipments will not be in compliance with current foreign country requirements. Furthermore, because export certification may not be a routine function in some locations, it is possible that inspectors will have insufficient opportunity to become thoroughly familiar with either foreign country requirements or certification procedures. For that reason, requirements have, from time to time, been inconsistently or incorrectly applied, resulting in delays and even rejection of shipments by foreign countries. An additional problem has occurred when foreign countries require a veterinarian to sign a certificate and a veterinarian is not readily available. This situation is not uncommon in certain facilities such as warehouses (storage facilities).

Export Certification Pilot Study

During the month of August 1988, IP conducted a pilot study to test some of the recommendations of the 1988 PPS study to determine the feasibility of centralization and automation of the system. The pilot involved 2,200 establishments in the Northeastern region. Custody of the export stamps used by inspectors to imprint the export certification number on product containers was turned over to each of the participating establishments. A centralized export office was set up in Washington, DC, with telephones, facsimile machines, a copier and other necessary equipment to handle requests for certificates. Clerical and technical personnel were trained to respond to requests for information and to prepare certificates. During the pilot, all export certificates for shipments from the Northeastern region were prepared in the Washington, DC, office. A database of export requirements was also developed for all foreign countries receiving meat and poultry products from the United States. Exporters could request information on foreign country requirements from ECD, which furnished this information by telephone, fax or mail, according to the exporter's wishes.

The certificate issuance process developed for the pilot involved several steps. Firms wishing to export product would fax or mail the Notice of Intent (NOI) to ECD (or relay the information by telephone) to request an Export Authorization Number (EAN—the official alphanumeric authorization number to be applied to the proposed shipment). The NOI included the exporter's name, address, telephone and facsimile number, establishment number, type of product and receiving country. After being assigned an EAN, the exporter would stamp the EAN on the product containers, complete the NOI form, certifying by signature that the product was in compliance with receiving country requirements and bore the "U.S. inspected and passed" marks, and forward the completed NOI to the ECD. Upon receipt of the NOI, the ECD operator copied the information from the NOI onto an export certificate and either faxed or mailed the certificate to the exporter. By the end of the pilot test, 883 export certificates were issued to 112 companies exporting product to 50 countries.

Program officials and participating exporters overwhelmingly indicated that the pilot study had been a success. Exporters, particularly those at cold storage facilities, who do not have continuous in-plant inspection or who export product to countries requiring health certificates signed by a veterinarian, were particularly pleased with the new certification process because of the rapid response time. An additional benefit was the enhanced security generated by a centralized, automated system which guards against unauthorized alteration and loss of documents.

Security and Authenticity of Export Certificates

In the past, allegations have been made that export certificates have been the subject of fraudulent practices while they circulated outside government control. Questions about the authenticity of signatures have also arisen, even though forgery of an official certificate is a criminal offense. Section 11 of the FMIA and Section 9 of the PPIA prohibit such acts; Section 406 of the FMIA and Section 12 of the PPIA set forth the criminal penalties for such offenses. Prohibitions and penalties for anyone who knowingly makes false statements or representations in matters under the jurisdiction of the United States Government are set forth in 18 U.S.C. 1001, which establishes fines of up to $10,000 and imprisonment for up to 5 years. Investigations have indicated that fraudulent practices may have occurred, but the evidence was not conclusive. Authenticity of certificates

has depended on the presence of an original signature of an FSIS employee, but reconciliation of the certificates has never been a feasible alternative because of the high cost and logistical difficulties of implementing such a procedure. The primary procedure for verifying the authenticity of certificates has been to rely on official stamps, correct certification statements and the appearance of the certificate itself.

Use of the proposed export certification procedures would provide improved security of export certificates. Under these procedures, the original export certificate would be sent directly to the inspection officials in the receiving country. The authenticating signature would be applied to the certificate using anti-forging signature machines similar to those applied to bank drafts. Certificates would also be serially numbered with a unique number series assigned to each receiving country. These procedures would permit a receiving country to implement reconciliation and identification procedures to ensure that imported meat or poultry products are identified by a valid certificate. During development of this proposed rule, FSIS consulted with its trading partners that import U.S. meat and poultry products and seeks comments on this proposal from all such countries.

As discussed earlier, the FMIA provides that inspectors may issue an official certificate stating the condition of livestock and poultry and their products at the time of inspection. However, it is not essential that an in-plant inspector issue the export certificate covering the product intended for export. The FMIA does not limit this function to in-plant inspectors. Once livestock and poultry and inspected and passed on ante-mortem inspection and the resulting products are inspected and passed on post-mortem inspection, the in-plant inspector has made an official determination that the product is unadulterated and properly labeled. This is true for all inspected and passed product; the inspection system assures production of a wholesome, unadulterated product. An inspection program official who can attest to the product having been inspected may sign the export certificate and attest to its wholesomeness based on that fact, regardless of whether he or she was the individual that physically conducted the inspection.

However, if there are questions as to the wholesomeness of a particular lot of product at the time the product is ready for export, FSIS would arrange for an inspector on site to reinspect the product.

Through § 2.55(a)(2) of the USDA Administrative Regulations (7 CFR 2.55), the Assistant Secretary for Marketing and Inspection Services has delegated to the Administrator, FSIS, the responsibility for exercising the functions of the Secretary of Agriculture, as these functions are set forth in the PPIA and the FMIA. The FSIS Administrator would in turn delegate the responsibility for issuing export certificates to the Director, ECD, who would be considered the inspector for purposes of issuing export certificates.

The Export Certification Information System and Issuance of Export Certificates

The Export Certification Information System (ECIS) is an Agency database that currently consists of the Foreign Country Requirements Library.[3] The Library contains up-to-date information on each foreign country's export requirements. When the ECIS is fully operational, it will contain programs that will generate export certificates, maintain historical information on such export certificates and on performance histories of exporters, and set forth the frequency of compliance reviews of exporters. Foreign country requirements would be communicated via the ECIS directly to exporters. For those exporters who are unable to access the ECIS, the exporter would call or write to ECD. A staff member would then access the ECIS on behalf of the exporter. Exporters would be responsible for assuring that the product meets the foreign country requirements and that proper documentation is obtained where some action to meet these requirements is necessary, (e.g., obtaining veterinary ante-mortem inspection). Once the applicable foreign country requirements are met, the exporter would ask FSIS Headquarters in Washington, DC, to initiate the export certificate issuance process via the ECIS.

Certificate issuance would be conducted by means of the ECIS. The most efficient use of the ECIS would be made by the exporter who has even a minimal amount of computer equipment, i.e., a terminal and modem, or a personal computer and communications software. If the exporter does not have access to computer equipment, all the document transactions described above could be accomplished by telephone or U.S. mail.

Before the first certificate could be issued, each exporter would be required to provide FSIS, on a form provided by FSIS, the company name, contact person, address, telephone number, establishment number and facsimile number, if any. To confirm the identity of the exporter making the certificate requests, each exporter would be assigned a nine-digit alphanumeric personal identification number by the ECIS. The exporter would utilize this identifier when transacting any business with the ECIS.

When an exporter requests his or her first certificate, the exporter would communicate with the ECIS by computer and would provide the exporter's ID number, the foreign country, USDA establishment number, and the species and name of the product to be exported. The ECIS would verify that the product is eligible for export to the foreign country, that the establishment is approved by officials of the foreign country, when necessary, and that the performance histories of the exporter and establishment are satisfactory. If performance histories indicate prior product problems, ECD would contact he exporter and provide assistance as necessary to facilitate the export of meat and poultry products. A discussion of performance histories is contained later in this document.

When all the above information is satisfactory, the exporter would request that the ECIS issue an EAN. As previously discussed, the EAN is the number used to identify the particular product for which a certificate is to be issued. The EAN becomes the certificate identification number. The exporter would then affix the EAN to the shipment to be exported. Instead of requiring that each carton of product be stamped with the EAN, FSIS would permit exporters to stamp other than each individual container. This aspect of the proposal is discussed further in this document.

After the above procedures have been completed and all the details are finalized, such as number of cartons and net weight of the shipment, the exporter would again contact the ECIS, refer to the EAN and request the issuance of an export certificate. At that time, the exporter would make any necessary additions or corrections regarding the number of cartons, product weight, shipping marks or identity of consignee. The exporter would be required to confirm that: (1) The product bears the USDA mark of inspection, (2) all

[3] The Foreign Country Requirements Library is an electronic bulletin board that may be accessed 24 hours a day. The Library contains information regarding foreign country export requirements. The Library may be accessed, via computer, by calling (202) 690–0056, or by fax, (202) 690–3856 or by writing to the Export Coordination Division, IP, FSIS, USDA, Washington, DC 20250.

additional receiving country requirements have been met, (3) the EAN appears on and identifies the consignment intended for export, and (4) all information required for issuance of the export certificate is correct. After receiving this confirmation from the exporter, the ECIS would generate an original certificate which would be signed with the official Agency signature and provided to the destination country. A copy of the certificate would be provided to the exporter, either by facsimile machine, U.S. mail or electronically.

Those exporters without computer equipment would telephone ECD and provide a data entry clerk with the information discussed above. At that point, the clerk would access ECIS on behalf of the exporter and the ECIS would generate an export certificate. ECD would mail or fax the completed certificate to the exporter.

The ECIS would generate a single certificate, standardized for each country, thereby replacing all additional forms currently required by foreign countries, as well as special forms for specific products, such as horsemeat and casings. Any special procedures that were performed or certification statements required by individual countries would appear at the end of the standard certificate. The original, signed export certificate would be sent directly to the inspection officials in the receiving country. Unless FSIS receives instructions to the contrary, the copy of the export certificate would be directed electronically to either the computer or fax number of the exporter. If necessary, FSIS could also mail or fax a copy of the certificate to a financial institution. The exporter could make as many copies of the certificate as needed. However, one of the copies must accompany the shipment (9 CFR 322.2(e)).

The ECIS and Performance Histories/ Compliance Reviews

The ECIS would contain performance histories of every establishment and exporter engaged in the export of meat and/or poultry products. Performance histories would indicate when the establishment was last reviewed and whether its operations were satisfactory. It would also include information concerning problems with certificate errors, specifically incorrect weights, counts, slaughter dates or establishment number, failure of establishments to comply with additional foreign requirements, fraudulent representations that additional foreign requirements had been met or other export-related problems. The information would come from compliance reviews conducted by Agency review officials and from foreign countries which have refused entry of an exporter's product. The histories would be maintained in the ECIS for 2 years. Information that is greater than 2 years old would be removed from the ECIS but retained for reference purposes.

The compliance review program would be a function of ECD. ECD would design the program and provide oversight, but actual reviews of exporting establishments would be conducted by the Agency's review staff located in Lawrence, KS. Compliance reviews of slaughter, cutting, processing and cold storage establishments involved in exporting product would be contingent upon different factors (e.g., country of destination, species, product exported, volume exported and establishment history). The review process is intended to focus on export operations that, based on performance histories, require the most intensive oversight to assure meat and poultry products entering international commerce meet the requirements of the destination country. The compliance review would involve the examination of an establishment's facilities, equipment and procedures, and the examination of establishment records generated during the process of preparing product for shipment. Such records include those that are described under "Paperwork Requirements" earlier in this document, as well as records currently required to be maintained that concern how product is prepared, processed, handled and stored.

As previously described, the responsibility for conducting compliance reviews of exporting establishments would be assumed by ECD in conjunction with Agency review officials. The domestic inspector would continue to be responsible for assuring that meat and poultry products, whether intended for domestic or export markets, are sound, wholesome and not adulterated, and properly marked, labeled and packaged.

Charge for Export Certificates

Authority to collect fees to cover the cost of services rendered is derived from the Agricultural Marketing Act of 1946 (7 U.S.C. 1622(h)). Preparation and issuance of export certificates is a reimbursable service. Section 1622(h) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1622(h)) establishes the authority for the "assessment and collection of such fees [by Federal agencies] as will be reasonable and as nearly as may be to cover the cost of the service rendered * * *." Sections 350.7 and 362.5 of the meat and poultry products inspection regulations (9 CFR 350.7 and 362.5) establish the fee structure for certification of livestock and poultry products for export which meet conditions or standards that are not imposed or are in addition to those imposed by Federal regulation and statute (9 CFR 350.3 and 362.2).

It is Agency policy to recover the cost of only those certification activities over and above those required by Federal regulation. Currently, exporters must reimburse the Agency for all inspection time required for additional certifications. FSIS would continue to be reimbursed by the exporter for actual additional inspection time. However, FSIS needs to recover the costs of the ECIS when it is fully operational. FSIS has determined that exporters who need additional certifications on any export certificate would be charged a standard fee for such certificate.

In fiscal year 1990, FSIS inspectors issued 179,163 export certificates to approximately 3,500 exporters shipping over 3.6 billion pounds of meat and poultry products. It is expected that 185,000 certificates will be issued annually under ECIS.

Annual operating costs for the export certification program are estimated to be $1,142,685, including hardware and software, salaries, benefits, travel, miscellaneous expenses, and program and Agency support costs. To recover these program costs, it would be necessary to charge around $7.00 for each certificate. (The exact figure will be published in the final regulations.) However, exporters would be charged only for those certificates requiring additional foreign country certification.

Proposed Changes to the Regulations

The purposed changes to the regulations involve changing how export certificates would be requested and issued, replacing the official export stamp with an unofficial export stamp, rescinding the requirement that each individual container of product must be stamped with the EAN, providing for a performance-based compliance program, establishing penalties for failure to comply with these regulations, establishing a standard fee to be charged to exporters for certificates which reflect the performance of inspection procedures beyond those required routinely under the United States inspection program and broadening the definition of the word inspector to include the Director, ECD. The proposed changes described below will affect parts 301, 312, 322, 350, 362, 381 and 391 of the Federal meat and poultry

products inspection regulations. Specific proposed changes to the regulations are discussed below.

Sections 301.2 and 381.1 would be amended by revising the definition of "inspector" to include any individual designated by the Secretary and adding the definition of "responsibly connected person." A responsibly connected person would be one who is an officer, director, partner or managerial employee, or one who owns 10 percent or more of the company's voting stock.

Sections 312.8 and 381.106 would be amended by providing for an electronic form of export certificate bearing the embossed signature of the Director, ECD.

Sections 322.2 and 381.105 would be amended by (1) providing the Director, ECD, with the responsibility for issuing all export certificates, (2) requiring that the exporter be aware of foreign country requirements, and that the exporter ensure that such requirements are met, and (3) providing that ECD send the original of the export certificate directly to a foreign country with a copy to the exporter. These sections would be further amended by requiring that the exporter notify ECD if a particular shipment is not sent and by providing the form of the export stamp that must be used by exporters to mark containers of product intended for export.

New §§ 322.6 and 381.113 would be added providing for performance-based compliance reviews of exporters. These new sections would also set forth the types of records that must be maintained by the exporter. These records would be reviewed by FSIS personnel during compliance reviews to ascertain whether an exporter's certification that all of a foreign country's requirements were met can be supported.

FSIS is also proposing to amend §§ 312.8 and 381.104 of the regulations by removing the requirement that the mark used to stamp product containers with the number of the export certificate be an official device under the control and supervision of FSIS employees. Currently, the mark that is used to stamp containers of product intended for export is an official stamp as prescribed in §§ 312.8 and 381.104. FSIS would continue to prescribe the form of the mark, but is proposing to change the status of the mark from an official mark to an unofficial mark. The mark would be under the control and supervision of the exporter. In addition, inspectors would no longer be required to supervise the stamping of containers intended for export. Exporters would be responsible for assuring that the containers covered by a particular export certificate are marked with the number of the export certificate.

FSIS proposes to rescind the provision in §§ 322.1 and 381.105 which requires that each individual outside container of product be stamped with the number of the export certificate. Instead, FSIS would permit exporters to identify the shipment intended for export without marking each individual product container. It would be the exporter's responsibility to assure that the foreign country to which the product is being exported will accept a form of marking other than each individual outside container. For example, an exporter may want to shrink wrap several product containers and then stamp the shrink wrap with the number of the export certificate. Sections 322.1 and 381.105 would be amended to prescribe the form of the export stamp that must be used to identify product covered by a particular export certificate.

New §§ 322.7 and 381.219 would be added providing for penalties applicable to exporters who violate these proposed regulations for export certificates. The Administrator would be authorized to suspend, for a given period of time, or revoke an exporter's privileges to use ECIS when the Administrator determines, after an opportunity for a hearing on the record before a hearing officer is accorded the exporter, that the exporter, or anyone responsibly connected with the exporter, has not complied with the export certificate requirements set forth in these regulations. The Administrator would also be authorized to suspend or revoke an exporter's privileges to use ECIS when he/she determines, after an opportunity for a hearing before a hearing officer is accorded the exporter, that the exporter or anyone responsibly connected with the exporter, is convicted of any felony in Federal or State court, or convicted of more than one violation of law, other than a felony, in Federal or State court, based upon the acquiring, handling or distribution of unwholesome, mislabeled or deceptively packaged food, or upon fraud in connection with transactions in food. Exporting privileges would also be summarily suspended, pending an opportunity for an expedited hearing on the record before a hearing officer, if an exporter, or anyone responsibly connected with the exporter, is convicted of any felony in Federal or State court, or convicted of more than one violation of law, other than a felony, in Federal or State court, based upon the acquiring, handling or distribution of unwholesome, mislabeled or deceptively packaged food, or upon fraud in connection with transactions in food.

FSIS is also proposing to amend §§ 350.7 and 362.5 and to add a new § 381.40 that would provide for a fee to be charged for each export certificate which contains certifications that meat or poultry products meet conditions or standards that are not imposed, or are imposed in addition to those imposed by current regulations. Section 391.6 would be amended to set forth the current export certificate fee.

For the reasons set forth in the preamble, FSIS is proposing amendments to the Federal meat inspection regulations (9 CFR parts 301, 312, 322 and 350), the voluntary poultry inspection regulations (9 CFR part 362), the poultry products inspection regulations (9 CFR part 381), and the Food Safety and Inspection Service Administrative Provisions (9 CFR 391) as set forth below.

List of Subjects

9 CFR Part 301

Meat inspection.

9 CFR Part 312

Meat inspection, Official inspection marks, Devices.

9 CFR Part 322

Exports, Meat Inspection.

9 CFR Part 350

Certification service, Meat inspection.

9 CFR Part 362

Poultry products inspection.

9 CFR Part 381

Certificates, Exports, Official inspection marks, Devices, Poultry products inspection.

9 CFR Part 391

Certification fees, Exports, Meat inspection, Poultry products inspection.

PART 301—DEFINITIONS

1. The authority citation for part 301 would continue to read as follows:

Authority: 7 U.S.C. 450, 1901–1906; 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

2. Section 301.2 would be amended by revising paragraph (mm) and by adding paragraph (zzz) to read as follows:

§ 301.2 Definitions.

* * * * *

(mm) *Inspector.* An inspector of the Program or any individual designated by the Administrator.

* * * * *

(zzz) *Responsibly connected person.* A person who is an officer, director,

partner or managerial employee, or one who owns 10 percent or more of the company's voting stock.

PART 312—OFFICIAL MARKS, DEVICES AND CERTIFICATES

3. The authority citation for part 312 would continue to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

4. Section 312.8 would be revised to read as follows:

§ 312.8 Official export inspection certificates.

The official export certificate required by part 322 of this subchapter shall be an electronically generated paper form bearing the embossed signature of the Director, Export Coordination Division. The official export certificate shall contain a certification that meat or meat products described on the form are from animals that were sound and healthy at the time of inspection and their meat or meat products were inspected and found to be sound and wholesome as provided by law and the regulations of the Department of Agriculture. The certificate shall also bear a serial number such as "US–93–123456."

PART 322—EXPORTS

5. The authority citation for part 322 would continue to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

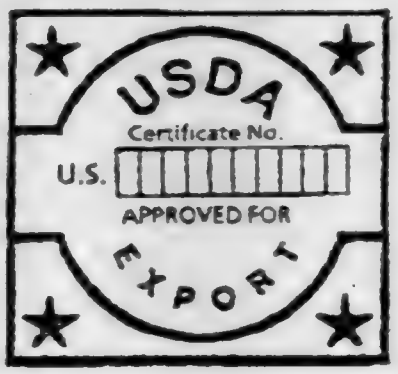
6. Section 322.1 would be revised to read as follows:

§ 322.1 Manner of affixing stamps and marking products for export.

(a) The outside container (including cloth wrappings) of any inspected and passed product for export, except ship stores, small quantities exclusively for the personal use of the consignee and not for sale or distribution, and shipments by and for the U.S. Armed Forces, shall be marked with a stamp, as prescribed in paragraph (c) of this section, bearing the number of the export certificate. Individual outside containers (including cloth wrappings) of any inspected and passed product for export do not need to be marked with a stamp bearing the number of the export certificate, provided the importing country will accept the product without such marking.

(b) Each tank car of inspected and passed lard or similar edible product, and each door of each railroad car or other closed means of conveyance, containing inspected and passed loose product shipped directly to a foreign country, shall be marked with a stamp, as prescribed in paragraph (c) of this section, bearing the number of the export certificate.

(c) The export meat inspection stamp for marking shipping containers as required by paragraphs (a) and (b) of this section shall be of the following form:



7. Section 322.2 would be revised to read as follows:

§ 322.2 Export certificates; instructions concerning issuance.

(a) Any person intending to export any meat product [2] shall make the initial application for an export certificate on an official form furnished by the Food Safety and Inspection Service and shall complete it by including all information requested. The requested information shall be used when any person intending to export any meat product requests subsequent export certificates. In cases of change of ownership or location, a new export certificate application shall be made.

(b) Upon request or application by any person intending to export any meat product, the Director, Export Coordination Division, may issue official export certificates for shipments of inspected and passed product to any foreign country upon assurance, and the Director's satisfaction, that the product is eligible for export: *Provided,* it is the responsibility of the requester of the certificate to know the requirements of the destination country for the importation of any meat or meat product and to certify that the destination country's requirements have been met.

(c) Official export certificates shall be issued electronically with a unique serial number and a date assigned to each certificate. Each certificate will show, at a minimum, the name of the exporter, the official establishment number of the producer, the consignee, the destination country, the number and kind of packages, the shipping marks, the species and description of products, and the weight of the products in accordance with § 317.2 of this subchapter. Additional information will be provided by the exporter if required by the importing country.

(d) Exporters shall notify the Director, Export Coordination Division, in the event that a shipment for which a certificate has been issued is not sent, so the certificate may be canceled.

(e) The original of the certificate will be forwarded by the Export Coordination Division directly to the importing country. A copy of each official export certificate to be used to accompany the shipment will be delivered to the exporter or agent who requested the certificate. The exporter or agent may duplicate as many copies as needed in connection with the exportation of the products.

(f) The duplicate of the certificate shall be delivered to the shipper and shall be delivered by the shipper to the agent of the railroad or other carrier which transports the consignment from the United States otherwise than by water, or to the chief officer of the vessel on which the export shipment is made, or to the vessel's agent and shall be used only by such carrier and only for the purpose of effecting the transportation of the consignment certified. The chief officer of the vessel or the vessel's agent, shipper or shipper's agent shall file such duplicate with the Customs officer within four (4) business days of the clearance of the vessel at the time of filing the complete manifest. In the interim period, the vessel will be cleared by Customs on the basis of a statement, under the shipper's or agent's letterhead, containing the number of boxes, the number of pounds, the product name and the USDA export certificate number that covers the shipment of the product. No clearance shall be given to a vessel carrying meat products unless either the duplicate of the certificate or the prescribed statement has been presented to Customs.

8. A new § 322.6 would be added to read as follows:

§ 322.6 Compliance.

(a) To assure that certificate statements regarding foreign country requirements are accurate, the Agency will conduct a performance-based program of compliance reviews. The Export Certification Information System will store performance histories of the

[2] Information regarding requirements to export to a foreign country is available through the Foreign Country Requirements Library, which is an electronic bulletin board that may be accessed via computer 24 hours per day by calling (202) 690–0056, or by fax, (202) 690–3856, or by writing the Export Coordination Division, IP, FSIS, USDA, Washington, DC 20250.

exporters and producing establishments concerning acceptability of previous shipments or other relevant information for 2 years. Reviews will involve both an assessment of the establishment and the examination of records maintained by the establishment which were generated during the process of preparing product for shipment.

(b) The following types of records shall be maintained by the exporter and may be reviewed by FSIS program review officers to authenticate the exporter certification that the receiving country requirements have been met. Records shall reflect: the eligibility of slaughter and processing establishments and cold storage facilities; the origin of cattle and sheep, i.e., from approved feedlots; the disease status of livestock sources (States, counties); cooking, ambient and cold treatment temperatures used during processing of meat products; various specific processing/production requirements as required by the importing country; current and appropriate export licenses; how and when transportation vehicles are sanitized; the absence of certain species in establishments during production runs; slaughter and freezing dates; ritualistic slaughter certification, e.g., Islamic or Kosher; results of microbiological analyses; and how and when product cans are sanitized. Records will be maintained in accordance with requirements prescribed in § 320.2 of this subchapter and retained in accordance with § 320.3 of this subchapter.

9. A new § 322.7 would be added to read as follows:

§ 322.7 Penalties applicable to exporters.

(a) The Administrator is authorized to: (1) Suspend or revoke an exporter's privilege to use the Export Certification Information System (ECIS) when he/she determines, after an opportunity for a hearing before a hearing officer is accorded to the exporter, that the exporter, or anyone responsibly connected with the exporter, is convicted of any felony in Federal or State court, (2) suspend or revoke an exporter's privileges to use ECIS when he determines, after an opportunity for a hearing before a hearing officer is accorded to the exporter, that the exporter, or anyone responsibly connected with the exporter is convicted of more than one violation of law, other than a felony, in Federal or State court, based upon the acquiring, handling or distribution of unwholesome, mislabeled or deceptively packaged food, or upon fraud in connection with transactions in food, (3) suspend, for a given period of time, or revoke an exporter's privileges to use ECIS when he determines, after an opportunity for a hearing before a hearing officer is accorded to the exporter, or anyone responsibly connected with the exporter, that the exporter or anyone responsibly connected with the exporter has not complied with the export certificate requirements set forth in § 312.8 of this subchapter, and §§ 322.1, 322.2 and 322.6 of this part.

(b) An exporter's privilege to use ECIS shall be summarily suspended, pending an opportunity for an expedited hearing on the record before a hearing officer, when an exporter, or anyone responsibly connected with the exporter, is convicted, in Federal or State court, of: (1) Any felony, or (2) more than one violation of law, other than a felony, based upon the acquiring, handling or distribution of unwholesome, mislabeled or deceptively packaged food, or upon fraud in connection with transactions in food.

PART 350—SPECIAL SERVICES RELATING TO MEAT AND OTHER PRODUCTS

10. The authority citation for part 350 would continue to read as follows:

Authority: 7 U.S.C. 1622, 1624; 7 CFR 2.17, 2.55.

11. Section 350.3 would be amended by revising paragraph (b) to read as follows:

§ 350.3 Types and availability of service.

* * * * *

(b) *Export Certification Service.* At the request of a purchaser, supplier, exporter, or other interested party, the Director, Export Coordination Division, may make certification regarding livestock products to be exported for human food purposes (including casings) as meeting conditions or standards that are not imposed or are in addition to those imposed by the regulations in parts 301 through 331 of this chapter and the laws under which such regulations are issued: *Provided,* it is the responsibility of the requester of the certification to know the requirements of the destination country for the importation of any meat or meat product and to certify that the requirements have been met.

* * * * *

12. Section 350.7 would be amended by adding a new paragraph (e) to read as follows:

§ 350.7 Fees and charges.

* * * * *

(e) Certification of product for export to countries that do not require additional procedures or certifications will be provided free of charge. A fee will be assessed for preparation of each export certificate for product destined for a foreign country which requires procedures or certifications beyond those imposed by the United States as set forth in parts 301 through 331 of this chapter and the laws under which such regulations were issued. The fee to be charged and collected for this service shall be at the rate specified in § 391.6 of subchapter D.

PART 362—VOLUNTARY POULTRY INSPECTION REGULATIONS

13. The authority citation for part 362 would continue to read as follows:

Authority: 7 U.S.C. 1622, 1624; 7 CFR 2.17 (g) and (i), 2.55.

14. Section 362.2 would be amended by revising paragraph (b) to read as follows:

§ 362.2 Types and availability of service.

* * * * *

(b)(1) *Export certification service.* At the request of any person intending to export any slaughtered poultry or poultry product, the Director, Export Coordination Division, may make certification regarding products to be exported for human food purposes as meeting procedures or certifications that are not imposed or are in addition to those imposed by the regulations in part 381 of this chapter and the laws under which such regulations were issued: *Provided,* it is the responsibility of the requestor of the certification to know the requirements of the destination country for the importation of any poultry or poultry product and to certify that all requirements imposed by the destination country have been met.

(2) Certification of product for export to countries that do not require additional procedures or certifications will be provided free of charge. A fee will be assessed for preparation of each export certificate for product destined for a foreign country which requires procedures or certifications beyond those imposed by the United States as set forth in parts 350 through 362 of this chapter and the laws under which such regulations were issued. The fee to be charged and collected for this service shall be at the rate specified in § 391.6 of subchapter D.

* * * * *

15. Section 362.5 would be amended by adding a new paragraph (e) as follows:

§ 362.5 Fees and charges.

* * * * *

(e) A charge will be assessed for each export certificate prepared under this part. The fee to be charged and collected for this service shall be at the rate specified in § 391.6 of subchapter D.

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

16. The authority citation for part 381 would continue to read as follows:

Authority: 7 U.S.C. 450; 21 U.S.C. 451–470; 7 CFR 2.17, 2.55.

17. Section 381.1 would be amended by revising paragraph (b)(28) (i) and adding a new paragraph (b)(63) to read as follows:

§ 381.1 Definitions.

* * * * *

(b) * * *

(28)(i) *Inspector.* "Inspector" means (A) An employee or official of the U.S. Government authorized by the Administrator to inspect poultry and poultry products under the authority of this Act, (B) any employee or official of the government of any State or Territory or the District of Columbia authorized by the Administrator to inspect poultry and poultry products under the authority of this Act, under an agreement entered into between the Administrator and the appropriate State or other agency, or (C) any individual designated by the Administrator.

* * * * *

(63) *Responsibly connected person.* "Responsibly connected person" means a person who is an officer, director, partner or managerial employee, or one who owns 10 percent or more of the company's voting stock.

* * * * *

18. A new § 381.40 would be added to subpart G to read as follows:

§ 381.40 Export certification fee.

Certification of product for export to countries that do not require additional conditions or standards will be provided free of charge. A charge will be assessed for preparation of each export certificate for product destined for a foreign country which requires conditions and standards beyond those imposed by the United States as set forth in this subchapter and the laws under which such regulations were issued. The fee to be charged and collected for this service shall be at the rate specified in § 391.6 of subchapter D.

19. Section 381.104 would be revised to read as follows:

§ 381.104 Official export certificates.

Any person intending to export any poultry product [1] shall make the initial application for an export certificate on an official form furnished by the Food Safety and Inspection Service, and shall complete it by including all information requested. The requested information shall be used when any person intending to export any poultry product requests subsequent export certificates. In cases of change of ownership or location, a new export certificate application shall be made.

20. Section 381.105 would be revised to read as follows:

§ 381.105 Export certification; marking of containers.

(a) Upon request or application by any person intending to export any poultry product, the Director, Export Coordination Division, is authorized to issue an official export certificate as prescribed in § 381.107 of this part with respect to the shipment to any foreign country of an inspected and passed poultry product upon assurance that the product has been inspected and passed and is eligible for export. Each shipping container covered by the export certificate, except ship stores, small quantities exclusively for the personal use of the consignee and not for sale or distribution, and shipment by and for the U.S. Armed Forces, shall be marked with a stamp, as prescribed in paragraph (d) of this section, and shall bear the number of the export certificate. Individual outside containers of any inspected and passed product for export do not need to be marked with a stamp bearing the number of the export certificate, provided the importing country will accept the product without such marking.

(b) The original of the certificate shall be forwarded by the Export Coordination Division directly to the importing country. A copy of each official export certificate shall be delivered to the exporter who requested the certificate or the designated agent. The exporter or agent may duplicate as many copies of the certificate as required in connection with the exportation of the products.

(c) Exporters shall notify the Director, Export Coordination Division in the event that a shipment for which a certificate has been issued is not sent so the certificate may be canceled.

[1] Information regarding requirements to export to a foreign country is available through the Foreign Country Requirements Library, which is an electronic bulletin board that may be accessed via computer 24 hours per day by calling (202) 690–0056, or by fax, (202) 690–3856, or by writing the Export Coordination Division, IP, FSIS, USDA, Washington, DC 20250.

(d) The export poultry inspection stamp for marking shipping containers as required by paragraph (a) of this section shall be of the following form:

21. Section 381.106 would be revised to read as follows:

§ 381.106 Form of official export certificate.

The official export certificate for purposes of this subchapter shall be an electronically generated paper form bearing the embossed signature of the Director, Export Coordination Division. The official export certificate shall contain a certification that poultry products described on the form are from birds that were sound and healthy at the time of inspection and the poultry products were inspected and found sound and wholesome as provided by law and the regulations of the Department of Agriculture. The certificate shall also bear a serial number such as "US–93–123456."

22. Section 381.107 would be revised to read as follows:

§ 381.107 Special procedures as to certification of poultry products for export to certain countries.

When export certificates are required by any foreign country for poultry products exported to such country which are different from the form of certificate prescribed under § 381.106 of this subchapter, the Administrator shall, in specific cases, prescribe or approve the form of export certificate to be used and the methods and procedures deemed appropriate with respect to the processing of such products to comply with the requirements of the subject country regarding the products for export. The Director, Export Coordination Division, shall be satisfied that all such requirements are met before issuing such an export certificate. It shall be the responsibility of the exporter to obtain any additional documentation needed to ensure that the foreign country requirements have been met before an export certificate

will be issued. Such certificates may also cover articles exempted from the definition as a poultry product under § 381.15 of this part if they have been inspected and are certified under the regulations in part 362 of this chapter.

23. A new § 381.113 would be added to subpart M to read as follows:

§ 381.113 Compliance.

(a) To assure that certificate statements regarding foreign country requirements are accurate, the Agency will conduct a performance-based program of compliance reviews. The Export Certification Information System will store performance histories of the exporters and producing establishments concerning acceptability of previous shipments or other relevant information for 2 years. Reviews will involve both an assessment of the establishment and the examination of records maintained by the establishment that were generated during the process of preparing product for export.

(b) The following records shall be maintained by the exporter and may be reviewed by FSIS program review officers to authenticate the exporter certification that the receiving country requirements have been met. Records shall reflect: The eligibility of slaughter and processing establishments and cold storage facilities; the disease status of poultry sources (States, counties); cooking, ambient and cold treatment temperatures used during processing of poultry; various specific processing/production requirements as required by the importing country; current and appropriate export licenses; how and when transportation vehicles are sanitized; water volume and temperature of chill tanks; slaughter and freezing dates; ritualistic slaughter certification, e.g., Islamic or Kosher; results of product microbiological analyses; and how and when product cans are sanitized. Records will be maintained in accordance with requirements prescribed in § 381.176 of this subchapter and retained in accordance with § 381.177 of this subchapter.

24. A new § 381.219 would be added to subpart U to read as follows:

§ 381.219 Penalties applicable to exporters.

(a) The Administrator is authorized to: (1) Suspend or revoke an exporter's privileges to use the Export Certification Information System (ECIS) when he/she determines, after an opportunity for a hearing before a hearing officer is accorded to the exporter, that the exporter, or anyone responsibly connected with the exporter, is convicted of any felony in Federal or State court, (2) suspend or revoke an exporter's privileges to use ECIS when he determines, after an opportunity for a hearing before a hearing officer is accorded to the exporter, that the exporter, or anyone responsibly connected with the exporter, is convicted of more than one violation of law, other than a felony, in Federal or State court, based upon the acquiring, handling or distribution of unwholesome, mislabeled or deceptively packaged food; or upon fraud in connection with transactions in food, (3) suspend, for a given period of time, or revoke an exporter's privileges to use ECIS when he determines, after an opportunity for a hearing before a hearing officer is accorded to the exporter, that the exporter, or anyone responsibly connected with the exporter, has not complied with the export certificate requirements set forth in §§ 381.40, 381.105, 381.106 and 381.107 of this part.

(b) An exporter's privilege to use ECIS shall be summarily suspended, pending an opportunity for an expedited hearing on the record before a hearing officer, when an exporter, or anyone responsibly connected with the exporter, is convicted, in any Federal or State court, of: (1) Any felony in Federal or State court, or (2) more than one violation of law, other than a felony, based upon the acquiring, handling or distribution of unwholesome, mislabeled or deceptively packaged food, or upon fraud in connection with transactions in food.

PART 391—FEES AND CHARGES FOR INSPECTION SERVICES

25. The authority citation for part 391 would continue to read as follows:

Authority: 21 U.S.C. 460 *et seq.*, 601 *et seq.*, 7 U.S.C. 394, 1622 and 1624; 7 CFR 2.17 (g) and (i), 2.55.

26. A new § 391.6 would be added to read as follows:

§ 391.6 Export Certification rate.

The rate for export certification services provided pursuant to §§ 350.7(e) and 362.5(e) of subchapter B, and § 381.40 of subchapter C shall be [$] per certificate.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93-25271 Filed 10-18-93; 8:45 am]
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federal register

Tuesday
October 19, 1993

Part VI

Department of the Treasury

Office of Foreign Assets Control

31 CFR Part 580
Haitian Transactions Regulations; Final Rule

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 580

Haitian Transactions Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule; amendment.

SUMMARY: The Treasury Department is amending the Haitian Transactions Regulations to reimpose certain U.S. sanctions against Haiti, consistent with actions of United Nations Security Council. This rule reimposes trade restrictions against Haiti and prohibits financial and other transactions with the Government of Haiti, including the *de facto* regime in Haiti. Property of the Government of Haiti that is located in the United States or within the possession or control of U.S. persons is blocked. Further, property of the Government of Haiti that was blocked prior to August 31, 1993 remains blocked, and enforcement actions involving violations of the Regulations occurring before that date are unaffected.

EFFECTIVE DATE: October 18, 1993, 11:59 p.m. eastern daylight time ("e.d.t.").

FOR FURTHER INFORMATION CONTACT: John T. Roth, Chief of Policy Programming (tel.: 202/622–2500), Steven I. Pinter, Chief of Licensing (tel.: 202/622–2480), or William B. Hoffman, Chief Counsel (tel.: 202/622–2410), Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION: The Haitian Transactions Regulations, 31 CFR part 580 (the "Regulations"), were issued by the Treasury Department to implement Executive Order No. 12775 (56 FR 50641, October 7, 1991), which declared a national emergency with respect to Haiti and ordered specific measures against the *de facto* regime in Haiti, and Executive Orders No. 12779 (56 FR 55975, October 30, 1991), and 12853 (58 FR 35843, July 2, 1993), which expanded those measures.

After the signing of the Governors Island Agreement of July 3, 1993, the United Nations Security Council in Resolution 861 of August 27, 1993, and the Organization of American States in an August 27, 1993 announcement of the Secretary General, called upon member states to suspend trade and financial sanctions against Haiti. In response, the Office of Foreign Assets Control ("FAC") amended the Regulations to add § 580.518. 58 FR 46540 (September 2, 1993). That section authorized trade transactions with Haiti and transactions involving property in which the Government of Haiti had an interest, where those transactions arose after 9:35 a.m. e.d.t., August 31, 1993. Section 580.518 also authorized transactions involving property interests of the Government of Haiti that came within the United States or into the possession or control of United States persons after 9:35 a.m. e.d.t., August 31, 1993, or in which an interest of the Government of Haiti arose thereafter. Property of the Government of Haiti blocked as of 9:35 a.m. e.d.t., August 31, 1993, remained blocked, while the previously blocked property of certain individuals and an entity listed in appendix A was unblocked.

In its Resolution 873 of October 13, 1993, the Security Council determined that the failure of the military authorities of Haiti, including the police, to fulfill obligations under the Governors Island Agreement constitutes a threat to peace and security in the region. It therefore decided in the same resolution to terminate the suspension of UN sanctions against Haiti at 11:59 p.m. on October 18, 1993, unless the UN Secretary General reports to the Security Council prior to that time, *inter alia*, that the Governors Island Agreement is being implemented in full. Therefore, effective at 11:59 p.m. e.d.t., October 18, 1993, FAC is revoking § 580.518. The prohibitions of the Regulations that were suspended by § 580.518 are reinstated. Accordingly, trade transactions with Haiti, transfers to the Government of Haiti, and transactions in property in which the Government of Haiti has an interest are prohibited to the extent they were prohibited prior to the suspension of sanctions on August 27, 1993.

Because the Regulations involve a foreign affairs function, Executive Order 12866 and the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, does not apply.

List of Subjects in 31 CFR Part 580

Blocking of assets, Exports, Haiti, Imports, Transfers of assets.

For the reasons set forth in the preamble, 31 CFR part 580 is amended as set forth below:

PART 580—HAITIAN TRANSACTIONS REGULATIONS

1. The authority citation for part 580 continues to read as follows:

Authority: 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 287c; E.O. 12775, 56 FR 50641, 3 CFR, 1991 Comp., p. 349; E.O. 12779, 56 FR 55975, 3 CFR, 1991 Comp., p. 367; E.O. 12853, 58 FR 35843, July 2, 1993.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

§ 580.518 [Removed]

2. Section 580.518 is removed.

Dated: October 15, 1993.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: October 15, 1993.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff, and Trade Enforcement).

[FR Doc. 93–25859 Filed 10–18–93; 10:54 am]

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Federal Register

Vol. 58, No. 200

Tuesday, October 19, 1993

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202–523–5227
Public inspection desk	523–5215
Corrections to published documents	523–5237
Document drafting information	523–3187
Machine readable documents	523–3447

Code of Federal Regulations

Index, finding aids & general information	523–5227
Printing schedules	523–3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523–6641
Additional information	523–5230

Presidential Documents

Executive orders and proclamations	523–5230
Public Papers of the Presidents	523–5230
Weekly Compilation of Presidential Documents	523–5230

The United States Government Manual

General information	523–5230

Other Services

Data base and machine readable specifications	523–3447
Guide to Record Retention Requirements	523–3187
Legal staff	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (PLUS)	523–6641
TDD for the hearing impaired	523–5229

ELECTRONIC BULLETIN BOARD

Free **Electronic Bulletin Board** service for Public Law numbers, and Federal Register finding aids.	202–275–1538, or 275–0920

FEDERAL REGISTER PAGES AND DATES, OCTOBER

51211–51664.....1
51665–51756.....4
51757–51972.....5
51973–52206.....6
52207–52396.....7
52397–52628.....8
52629–52874.....12
52675–53096.....13
53097–53392.....14
53393–53634.....15
53635–53832.....16
53833–54024.....19

CFR PARTS AFFECTED DURING OCTOBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6598.....51559
6599.....51561
6600.....51721
6601.....51723
6602.....52205
6603.....52387
6604.....52389
6605.....52627
6606.....52875
6607.....53097
6608.....53099
6609.....53101
6610.....53103
6611.....53831
6612.....53833

Executive Orders:
July 9, 1910 (Revoked in part by PLO 7004).....53429
3053 (Revoked in part by PLO 7004).....53429
3406 (Revoked in part by PLO 7001).....52683
5327 (Revoked in part by PLO 7002).....52684
11145 (Continued by EO 12869).....51751
11183 (Continued by EO 12869).....51751
11287 (Continued by EO 12869).....51751
11776 (Continued by EO 12869).....51751
12002 (See EO 12867).....51747
12131 (Continued by EO 12869).....51751
12197 (Continued by EO 12869).....51751
12214 (See EO 12867).....51747
12216 (Continued by EO 12869).....51751
12291 (Revoked by EO 12866).....51735
12345 (Continued by EO 12869).....51751
12367 (Continued by EO 12869).....51751
12382 (Continued by EO 12869).....51751
12498 (Revoked by EO 12866).....51735
12675 (Revoked in part EO 12869).....51751
12687 (Revoked by EO 12869).....51751
12696 (Revoked by EO 12869).....51751
12700 (See EO 12869).....51751
12720 (Revoked by EO 12869).....51751
12730 (See EOs 12867, 12868).....51747, 51749
12735 (Revoked by EO 12867; See EO 12868).....51747, 51749
12774 (Superseded by EO 12869).....51751
12775 (See notice of September 30).....51563
12779 (See notice of September 30).....51563
12792 (Revoked by EO 12869).....51751
12813 (Revoked by EO 12869).....51751
12853 (See notice of September 30).....51563
12866.....51735
12867.....51747
12868.....51749
12869.....51751
12870.....51753
12871.....52201

Administrative Orders:
Memorandums:
August 19, 1993.....52397
September 30, 1993.....52391
October 1, 1993.....52393
Notices:
September 30, 1993.....51563
Presidential Determinations:
No. 93–39 of September 17, 1993.....51973
No. 93–40 of September 28, 1993.....51975
No. 93–41 of September 29, 1993.....51977
No. 93–42 of September 30, 1993.....52629
No. 93–43 of September 30, 1993.....52207
No. 93–44 of September 30, 1993.....52209
No. 93–45 of September 30, 1993.....52211
No. 94–1 of October 1, 1993.....52213

5 CFR

Ch. XLI.....52637
294.....52877

532.....51211
591.....51565
831.....52877
838.....52877
842.....52877
890.....52877
2429.....53105
2471.....53105
2472.....53105

Proposed Rules:
2502.....51255
2504.....51256

7 CFR

2.....51211
246.....51566
300.....52399
301.....51979, 51982, 53105
400.....53109
401.....53393
906.....52400, 53111
907.....53112, 53114
908.....53112, 53114
910.....52401
928.....53117
931.....53119
967.....52402
1002.....51982
1004.....52404, 52405
1205.....52215
1211.....51568
1427.....51982
1477.....51757
1478.....51757
1717.....53835
1744.....52639
1900.....52644
1910.....52644
1951.....52644
1955.....52644
1972.....52644
1975.....52644

Proposed Rules:
400.....53150
1007.....53436
1093.....53436
1094.....53436
1096.....53436
1099.....53436
1106.....53438
1108.....53436
1124.....53439
1135.....53439
1413.....51934, 52686, 52928
1703.....52688
1955.....53891
1965.....53891
3408.....53153

9 CFR

201.....52884
203.....52884
317.....52856
381.....52856

Proposed Rules:
82.....52240
301.....54012
312.....54012
317.....51581
318.....51581
322.....54012
350.....54012
362.....54012
381.....54012
391.....54012

10 CFR

19.....52406
30.....52406
40.....52406
50.....52406
60.....52406
61.....52406
70.....52406
72.....51762, 52406
150.....52406

Proposed Rules:
21.....53159
32.....53670
73.....52035
602.....53671

11 CFR

Proposed Rules:
100.....52040
107.....52700
113.....52040
114.....52700
9008.....52700

12 CFR

265.....53393
574.....52140
611.....52888
613.....52888
614.....52888
618.....51993
620.....52888
621.....52888
627.....52888
933.....52808

Proposed Rules:
3.....52808
208.....52808
325.....52808
615.....52701
650.....53161

13 CFR

101.....53120
121.....52415

Proposed Rules:
121.....52452, 52929

14 CFR

23.....51970
39.....51212, 51215, 51770, 51771, 52220, 52889, 53120, 53635, 53636, 53852, 53853, 53855, 53857
71.....51773, 52140, 52808, 53122, 53123, 53394, 53395, 53859
73.....52890
91.....51976, 52140
95.....53860
97.....51774, 51776, 53863
1260.....53638

Proposed Rules:
23.....52702
39.....51583, 51585, 51587, 51589, 51793, 52041, 52240, 52243, 52714, 52717, 52929, 52931, 52932, 53457, 53678, 53893
71.....51256, 51257, 53164, 53166, 53167, 53459
91.....51938
121.....51938, 51944
125.....51938
129.....51944
135.....51938, 51944

15 CFR

773.....52166, 52168
778.....52166
799.....52166, 52169
806.....53124
940.....53865

17 CFR

140.....52656
200.....52416, 52891
203.....52416
240.....52416, 52891
250.....51488
259.....51488

Proposed Rules:
240.....52934
250.....51508

18 CFR

35.....51217, 51777
38.....51777
141.....52420
284.....52660
292.....51777
293.....51777
346.....53654
375.....51222
381.....53654
382.....51777
1301.....53656

Proposed Rules:
35.....51259
284.....53895

19 CFR

Proposed Rules:
7.....52246
10.....52246
148.....52246

20 CFR

229.....53396
404.....52346
416.....52346, 52909
422.....52914

Proposed Rules:
416.....52458, 52464, 52943
655.....52152

21 CFR

172.....52221
176.....51994
522.....52222
558.....53882
821.....52440
864.....51570
1308.....53404

Proposed Rules:
5.....52719
25.....52719
101.....53254, 53296
103.....52042
136.....53305
137.....53305
139.....53305
170.....52719
171.....52719
172.....53312
174.....52719
352.....53460
700.....53460
740.....53460
812.....52142, 52144, 53245
813.....52142
814.....52729
1301.....52246
1304.....53680
1311.....52246

23 CFR

650.....52663

Proposed Rules:
660.....51794

24 CFR

511.....52566
888.....51410
905.....51952
965.....51952

Proposed Rules:
92.....52560
135.....52534
215.....53461
219.....52560
221.....53461
236.....53461
570.....52560
572.....52560
574.....52560
576.....52560
583.....52560
700.....52560
880.....53461
881.....53461
882.....53461
883.....53461
884.....53461
885.....53461
886.....53461
889.....52560, 53461
890.....52560, 53461
905.....51261, 52560, 53461
960.....53461
961.....52560
963.....52560
990.....51261

25 CFR

Proposed Rules:
294.....53026

26 CFR

1.....51571, 53125, 53656
602.....51571

Proposed Rules:
1.....53168, 53682

27 CFR

Proposed Rules:
5.....53682
24.....52222

28 CFR

1.....53658
2.....51779
11.....51223
51.....51225

29 CFR

2610.....53406
2619.....53407
2622.....53406
2644.....53410
2676.....53407

Proposed Rules:
507.....52152
1609.....51266

30 CFR

917.....51225

946.....52666
950.....52232
Proposed Rules:
230.....53470
250.....52731
253.....52059
256.....52731
280.....52731
281.....52731
700.....52374
701.....52374
705.....52374
706.....52374
715.....52374
716.....52374
785.....52374
825.....52374
870.....52374
925.....53683, 53686

31 CFR

580.....54024
Proposed Rules:
103.....51269

32 CFR

40.....51780
80.....51996
88.....52010
185.....52667
199.....51227, 53411
706.....51241
725.....53883

33 CFR

2.....51726
3.....51726
100.....51242, 52440
117.....52441
165.....51243, 52442, 53884
175.....51576
181.....51576
334.....53426, 53427
Proposed Rules:
117.....52466, 53896
126.....51906
127.....51906
187.....51920, 53624

34 CFR

642.....51518
645.....51518
646.....51518
668.....52194
674.....52194
675.....52194
676.....52194
682.....52194
690.....52194
Proposed Rules:
370.....52414
386.....52606
668.....51712

35 CFR

Proposed Rules:
10.....53897

37 CFR

301.....53822
311.....53822

38 CFR

3.....52017, 53659
4.....52017
21.....51780, 51781
Proposed Rules:
3.....51798
17.....51799

40 CFR

52.....52237, 53885
61.....51784
81.....53886, 53888
258.....51536, 53136
271.....51244
272.....52674, 52677, 52679
300.....52018
372.....51785
721.....51672, 51694
Proposed Rules:
Ch. 1.....53688
35.....53688
52.....51591, 51593, 52467, 53693
63.....53478, 53900
89.....51595
122.....53168
123.....53168
131.....53168
132.....53168
300.....53688

41 CFR

101–17.....52917
101–37.....53660
101–40.....53889
302–6.....53137

42 CFR

435.....51408
436.....51408
440.....51408
Proposed Rules:
431.....53481
440.....51288, 53481
441.....51288, 53481
447.....53481

43 CFR

37.....51550
Proposed Rules:
4700.....51297
Public Land Orders:
4522 (Revoked in part by PLO 7002).....52684
6998.....52238
6999.....52238
7000.....52682
7001.....52683
7002.....52684
7003.....53428
7004.....53429

44 CFR

64.....51576, 52019
Proposed Rules:
67.....51598

45 CFR

1602.....52918

46 CFR

160.....51576
Proposed Rules:
10.....51408
12.....51408
30.....52598
31.....52598
32.....52598
67.....51298
585.....52248

47 CFR

1.....51246
15.....51247
64.....53663
73.....51250, 51578, 51579, 53664, 53665
74.....51250
76.....53429
87.....52021
90.....51251, 53245, 53431
97.....51787, 53138
Proposed Rules:
1.....53489
15.....51299
22.....53169
25.....53169
36.....52254
73.....51603, 51799, 52733, 52734, 52735, 53902
74.....52256
76.....53696
80.....53169
87.....53169
90.....51299, 53169
95.....53169
99.....53169

48 CFR

501.....52442
503.....52442
507.....52442
508.....52442
509.....52442
511.....52442
514.....52442
515.....52442
519.....52442
522.....52442
525.....52442
528.....52442
529.....52442
532.....52442
536.....52442
542.....52442
543.....52442
552.....52442
570.....52442
1816.....52446
1833.....53138
1852.....52446

49 CFR

107.....51524, 53626
171.....51524, 53626
172.....51524
173.....51524, 53626
174.....51524
175.....51524
176.....51524
177.....51524
178.....51524, 53626
179.....51524
180.....51524, 53626
571.....51788, 52021, 52922, 53666
604.....52684
1002.....52027
1017.....52027
1018.....52027
1039.....53433
1145.....53667
1312.....52027
1313.....52027
1314.....52027
Proposed Rules:
23.....52050
37.....52735
172.....52574
173.....52574
179.....52574
390.....51800
1063.....51603
1105.....51800
1121.....51800
1152.....51800

50 CFR

17.....52027, 52031, 53800, 53804
227.....53138
229.....51788
285.....53434, 53668
301.....51253
625.....52685
642.....51579, 51789
661.....53143
663.....52031
669.....53145
672.....51791, 52032, 53138, 53148, 53668
675.....51253, 52033, 52451, 53138, 53148
Proposed Rules:
17.....51302, 51604, 52058, 52059, 52063, 52740, 53696, 53702, 53904
32.....53703
52.....51270, 51279
215.....53320
216.....53320
222.....53220, 53703
227.....53703
228.....53491
622.....53172
625.....53172
628.....53172
641.....52063, 52073, 52474
646.....53183
649.....53172
650.....53172
651.....52073, 53172
652.....53172
655.....53172
675.....53497

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last List October 18, 1993

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103d Congress, 1st Session, 1993

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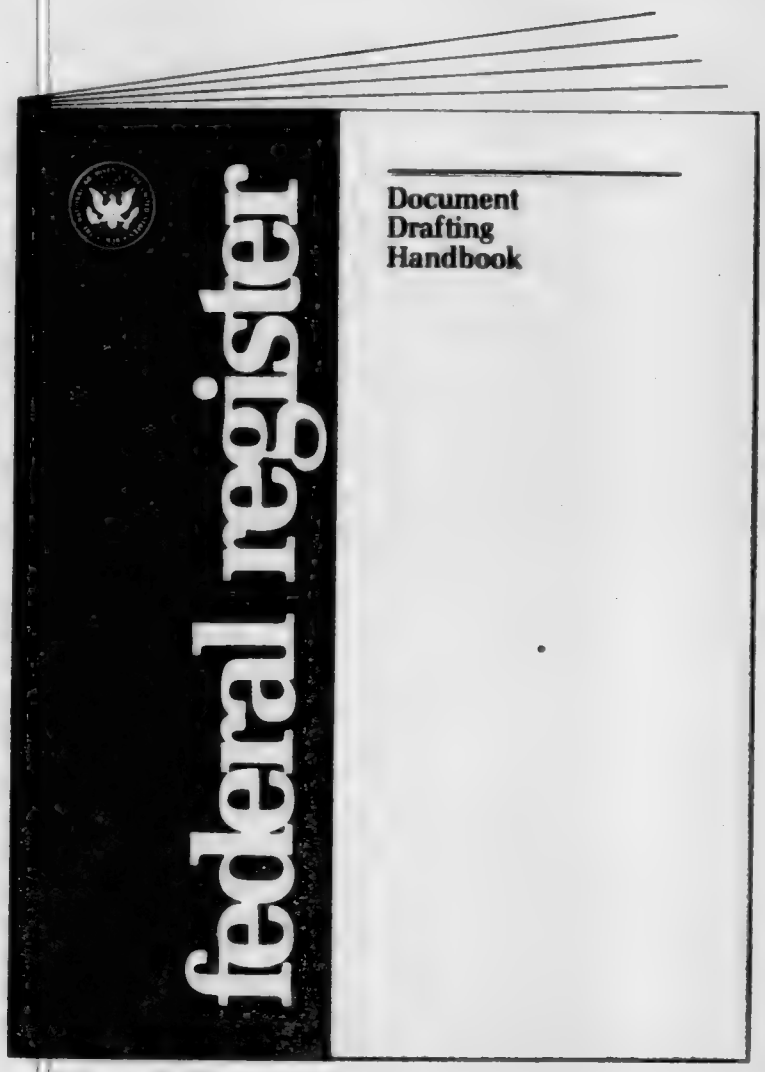

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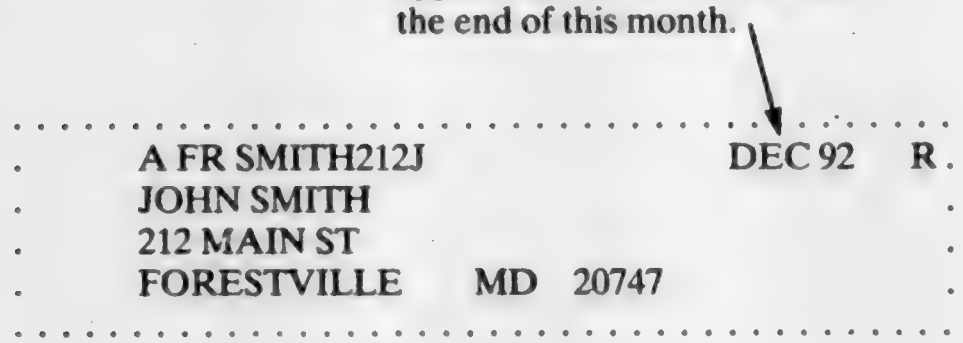

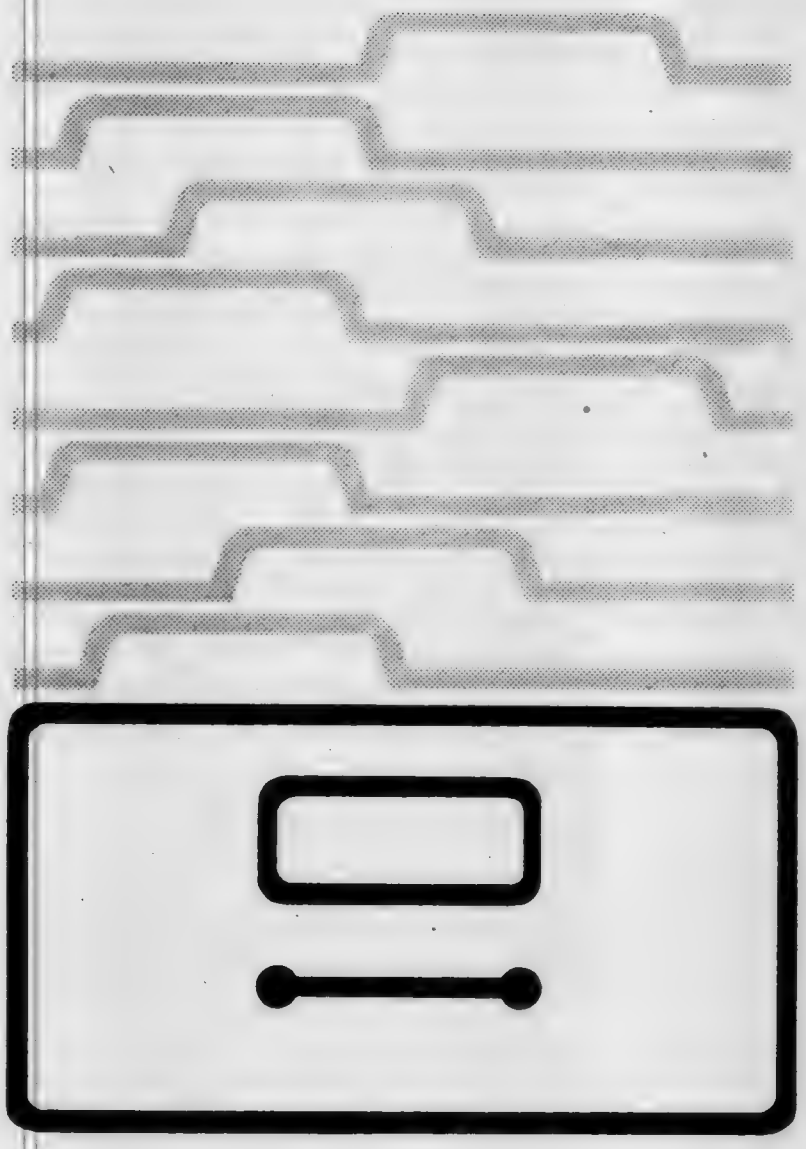

Guide to Record Retention Requirements

in the Code of Federal Regulations (CFR)

GUIDE: Revised January 1, 1992

SUPPLEMENT: Revised January 1, 1993

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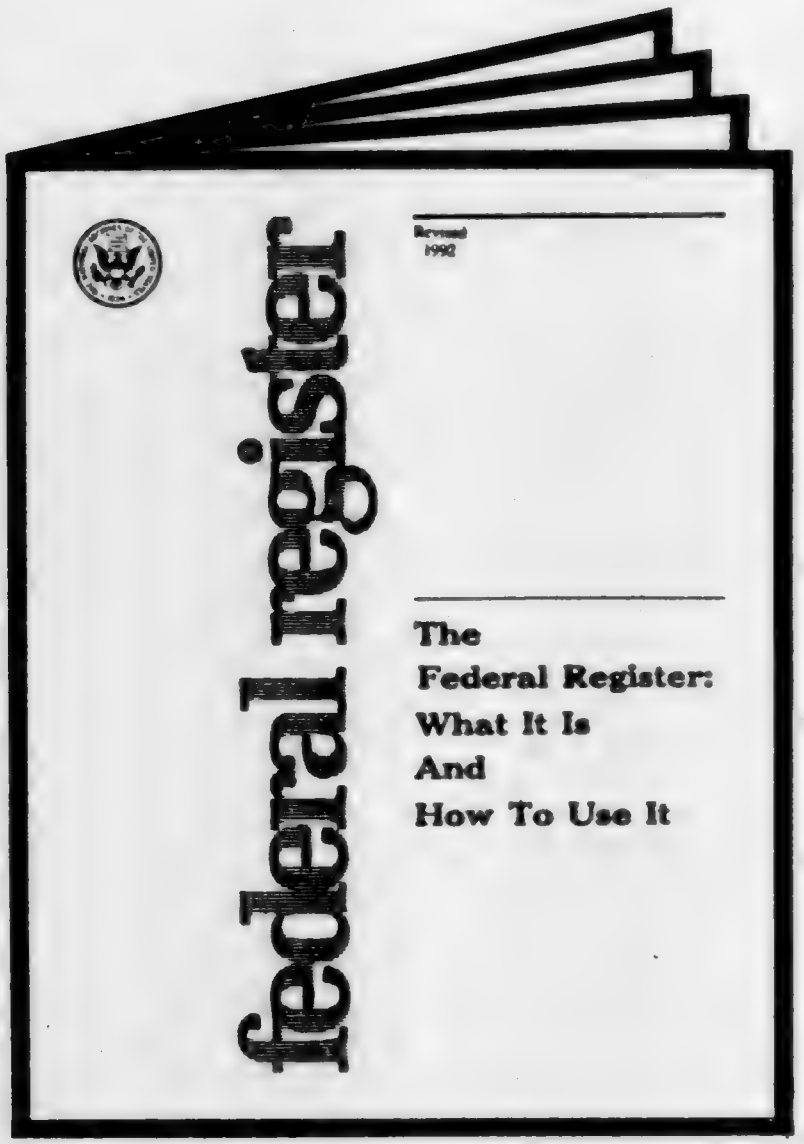

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Contents

Federal Register
Vol. 58, No. 201
Wednesday, October 20, 1993

Agriculture Department
See Forest Service

Army Department
NOTICES
Meetings:
Rifle Practice Promotion National Board, 54123
Military traffic management:
Trip leasing program, 54123

Children and Families Administration
NOTICES
Agency information collection activities under OMB review, 54154, 54155
Meetings:
Head Start Quality and Expansion Advisory Committee, 54156

Commerce Department
See Export Administration Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration

Commodity Futures Trading Commission
NOTICES
Contract market proposals:
Chicago Mercantile Exchange—
Live cattle, 54122

Defense Department
See Army Department
See Navy Department
NOTICES
Meetings:
Armament Retooling and Manufacturing Support Public/Private Task Force, 54122
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Joint conveyor, etc., 54122

Education Department
NOTICES
Meetings:
Educational Research and Improvement National Advisory Council, 54125
Federal Interagency Coordinating Council, 54125

Employment and Training Administration
NOTICES
Meetings:
Job Training Partnership Act Native American Employment and Training Council, 54173

Energy Department
See Energy Information Administration
See Federal Energy Regulatory Commission
See Hearings and Appeals Office, Energy Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Electric power or heat generated from geothermal energy in hot dry rock; prototype production and marketing facility development project, 54125
Inventions available for license, 54126
Meetings:
International Energy Agency Industry Advisory Board, 54126
National Electric and Magnetic Fields Advisory Committee, 54126
Natural gas exportation and importation:
Consumers Gas Co. Ltd., 54131
Northern California Power Agency, 54131
Pacific Gas Transmission Co., 54131
Wisconsin Natural Gas Co., 54132

Energy Information Administration
NOTICES
Agency information collection activities under OMB review, 54127

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
North Dakota, 54041
Hazardous waste program authorizations:
Mississippi, 54044
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Cyromazine, 54043
PROPOSED RULES
Air programs:
Chemical accidental release prevention; risk management programs, 54190
Air quality implementation plans; approval and promulgation; various States:
Montana, 54081
Oregon, 54086
Texas, 54089
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Cypermethrin, 54092
Permethrin, etc., 54094
NOTICES
Air pollutants, hazardous; national emission standards:
Asbestos; authority delegation to Virginia, 54135
Air programs:
Clean Air Act—
Reasonably available control technology; guidelines, 54136
Confidential business information and data transfer to contractors, 54145
Hazardous waste:
Land disposal restrictions; exemptions—
Oxy Petrochemicals, Inc., 54148
State program adequacy determinations—
Illinois, 54145
Meetings:
Clean Air Act Advisory Committee, 54148
Pesticide registration, cancellation, etc.:
Destruxol tender leaf plant spray, etc., 54148
Superfund program:
Groundwater monitoring; technical guidance availability, 54151

Executive Office of the President
See Management and Budget Office
See Presidential Documents

Export Administration Bureau
PROPOSED RULES
Export licensing:
Foreign policy-based export controls effects, 54074

Federal Aviation Administration
RULES
Airworthiness directives:
Ayres Corp., 54031
Pratt & Whitney, 54034
PROPOSED RULES
Airworthiness directives:
Teledyne Continental Motors, 54072
Class B airspace, 54073

Federal Bureau of Investigation
NOTICES
Meetings:
National Stolen Auto Part Information System Federal Advisory Committee, 54173

Federal Energy Regulatory Commission
RULES
Electric utilities (Federal Power Act):
Annual charges for Government lands use; fee schedule update, 54035
NOTICES
Electric rate, small power production, and interlocking directorate filings, etc.:
Wisconsin Electric Power Co., 54128
Applications, hearings, determinations, etc.:
Calciner Industries, Inc., 54129
Cambridge Electric Light Co., 54129
East Tennessee Natural Gas Co., 54130
Florida Gas Transmission Co., 54130
Mississippi River Transmission Corp., 54130
Portland General Electric Co., 54131
UC Operating Services, 54131

Federal Financial Institutions Examination Council
NOTICES
Agency information collection activities under OMB review, 54153

Federal Maritime Commission
NOTICES
Agreements filed, etc., 54153

Federal Mine Safety and Health Review Commission
NOTICES
Meetings; Sunshine Act, 54187

Federal Procurement Policy Office
NOTICES
Small business competitiveness demonstration program:
Subcontract reporting system test plan and reporting form, 54176

Federal Trade Commission
NOTICES
Premerger notification waiting periods; early terminations, 54153

Federal Transit Administration
NOTICES
Transit bus and van materials selection; fire safety practices, 54250

Fish and Wildlife Service
RULES
Endangered and threatened species:
Giant garter snake, 54053

Food and Drug Administration
RULES
Human drugs:
Cold, cough, allergy, bronchodilator, and antiasthmatic drug products (OTC)—
Antitussive drug products; final monograph, 54232
Bronchodilator drug products; final monograph, 54238
PROPOSED RULES
Human drugs:
Drug products (OTC) containing aspirin, buffered aspirin or aspirin in combination with antacid; labeling, 54224
Oral and rectal drug products (OTC) containing aspirin and nonaspirin salicylates, 54228
NOTICES
Debarment orders:
Matkari, Raj, 54156
Human drugs:
Export applications—
Alpha Therapeutic Corp., 54158
Meetings:
Advisory committees, panels, etc., 54158

Forest Service
NOTICES
Environmental statements; availability, etc.:
Inyo National Forest, CA, 54109

Health and Human Services Department
See Children and Families Administration
See Food and Drug Administration
See Health Care Financing Administration
See Inspector General Office, Health and Human Services Department
See National Institutes of Health

Health Care Financing Administration
See Inspector General Office, Health and Human Services Department
RULES
Medicare:
Hospitals; uniform cost reporting system demonstration project, 54045
NOTICES
Agency information collection activities under OMB review, 54159

Hearings and Appeals Office, Energy Department
NOTICES
Cases filed, 54132
Decisions and orders, 54133

Housing and Urban Development Department
RULES
Mortgage and loan insurance programs:
Single family property disposition program, 54244
NOTICES
Agency information collection activities under OMB review, 54163, 54165

Indian Affairs Bureau
NOTICES
Tribal-State Compacts approval; Class III (casino) gambling:
Chippewa Cree Tribe, MT, 54222

Inspector General Office, Health and Human Services Department
PROPOSED RULES
Medicare and medicaid programs:
Civil money penalties for prohibited referrals to entities providing clinical laboratory services and prohibited arrangements and schemes, 54096

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See Land Management Bureau
See Mines Bureau
See Surface Mining Reclamation and Enforcement Office

Internal Revenue Service
RULES
Income taxes:
Hedging transactions, 54037
PROPOSED RULES
Income taxes:
Hedging transactions
Hearing, 54075
Hedging transactions; income reflection, 54077

International Trade Administration
NOTICES
Antidumping:
Stainless steel wire rods from—
India, 54110
Countervailing duties:
Live swine from—
Canada, 54112

International Trade Commission
NOTICES
Import investigations:
Circuit board testers, 54167
Grain-oriented silicon electrical steel from—
Italy et al., 51168
Honey from—
China, 54169
Paper clips from—
China, 54169
Sparklers from—
China, 54170
Synthetic organic chemical report, 54171

Interstate Commerce Commission
NOTICES
Railroad services abandonment:
Consolidated Rail Corp., 54171

Justice Department
See Federal Bureau of Investigation
NOTICES
Pollution control; consent judgments:
Butte Water Co., 54172
Petro Power Insulation, Inc., et al., 54172

Labor Department
See Employment and Training Administration
NOTICES
Meetings:
Future of Worker-Management Relations Commission, 54173

Land Management Bureau
RULES
Public land orders:
Nevada, 54049
NOTICES
Motor vehicle use restrictions:
Colorado, 54166
Realty actions; sales, leases, etc.:
Arizona, 54166

Management and Budget Office
See Federal Procurement Policy Office
NOTICES
Budget rescissions and deferrals, 54256

Marine Mammal Commission
NOTICES
Meetings; Sunshine Act, 54187

Mine Safety and Health Federal Review Commission
See Federal Mine Safety and Health Review Commission

Mines Bureau
NOTICES
Agency information collection activities under OMB review, 54167

National Aeronautics and Space Administration
RULES
Acquisition regulations:
Liability clauses cross-waiver in NASA contracts, 54050
NOTICES
Agency information collection activities under OMB review, 54176

National Highway Traffic Safety Administration
PROPOSED RULES
Motor vehicle safety standards:
Occupant protection in interior impact—
Head impact protection, 54099

National Institute for Literacy
NOTICES
Meetings:
Advisory board, 54174

National Institutes of Health
NOTICES
Inventions, Government-owned; availability, etc., 54160
Meetings:
National Cancer Institute, 54161, 54162
National Heart, Lung, and Blood Institute, 54162
National Institute on Drug Abuse, 54162

National Oceanic and Atmospheric Administration
RULES
Endangered and threatened species:
Sea turtle conservation; approved turtle excluder devices, 54066
PROPOSED RULES
Fishery conservation and management:
Gulf of Mexico and South Atlantic coastal migratory pelagic resources, 54108

NOTICES
Permits:
Endangered and threatened species, 54121

National Transportation Safety Board
PROPOSED RULES
Air safety proceedings; practice rules, 54102

Navy Department
NOTICES
Environmental statements; availability, etc.:
Base realignment and closures—
Naval Air Station, Pensacola, FL, 54123
Naval Air Station Whidbey Island, WA; air operations management, 54124

Nuclear Regulatory Commission
PROPOSED RULES
Rulemaking petitions:
Northeast Ohio Regional Sewer District, 54071
NOTICES
Agency information collection activities under OMB review, 54174, 54175
Applications, hearings, determinations, etc.:
Gulf States Utilities Co. et al., 54175
University of—
Texas at Austin, 54176

Office of Management and Budget
See Management and Budget Office

Personnel Management Office
NOTICES
Agency information collection activities under OMB review, 54178

Postal Rate Commission
NOTICES
Post office closings; petitions for appeal:
Waka, TX, 54179

Presidential Documents
PROCLAMATIONS
Special observances:
Forest Products Week, National (Proc. 6614), 54027
Mammography Day, National (Proc. 6615), 54269
World Food Day, 1993 and 1994 (Proc. 6613), 54025
EXECUTIVE ORDERS
Haiti; blockage of property in U.S. of persons obstructing democracy in Haiti (EO 12872), 54029

Public Health Service
See Food and Drug Administration
See National Institutes of Health

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
New York Stock Exchange, Inc., 54179
Stock Clearing Corp. of Philadelphia, 54181
Self-regulatory organizations; unlisted trading privileges:
Boston Stock Exchange, Inc., 54182
Chicago Stock Exchange, Inc., 54182
Cincinnati Stock Exchange, Inc., 54182
Pacific Stock Exchange, Inc., 54183
Philadelphia Stock Exchange, Inc., 54183
Applications, hearings, determinations, etc.:
Colonial New York Tax-Exempt Trust, 54183
Colonial Ohio Tax-Exempt Trust, 54184

State Department
NOTICES
Meetings:
International Telegraph and Telephone Consultative Committee, 54185
Overseas Security Advisory Council, 54185

Surface Mining Reclamation and Enforcement Office
NOTICES
Agency information collection activities under OMB review, 54167

Transportation Department
See Federal Aviation Administration
See Federal Transit Administration
See National Highway Traffic Safety Administration

Treasury Department
See Internal Revenue Service

Separate Parts In This Issue

Part II
Environmental Protection Agency, 54190

Part III
Department of the Interior, Bureau of Indian Affairs, 54222

Part IV
Department of Health and Human Services, Food and Drug Administration, 54224

Part V
Department of Health and Human Services, Food and Drug Administration, 54228

Part VI
Department of Health and Human Services, Food and Drug Administration, 54232

Part VII
Department of Health and Human Services, Food and Drug Administration, 54238

Part VIII
Department of Housing and Urban Development, 54244

Part IX
Department of Transportation, Federal Transit Administration, 54250

Part X
Office of Management and Budget, 54256

Part XI
Presidential Documents, 54267

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamations:
6613.....54025
6614.....54027
6615.....54269
Executive Orders:
8578 (See PLO 7005).....54049
12775 (See EO 12872).....54029
12779 (See EO 12872).....54029
12853 (See EO 12872).....54029
12872.....54029

10 CFR
Proposed Rules:
20.....54071

14 CFR
39 (3 documents).....54031, 54032, 54034
Proposed Rules:
39.....54072
71.....54073

15 CFR
Proposed Rules:
Ch. VII.....54074

18 CFR
11.....54035

21 CFR
341 (2 documents).....54232, 54238
Proposed Rules:
201 (2 documents).....54224, 54228

24 CFR
203.....54244
291.....54244

26 CFR
1.....54037
602.....54037
Proposed Rules:
1 (2 documents).....54075, 54077
602.....54077

40 CFR
52.....54041
180.....54043
271.....54044
Proposed Rules:
52 (3 documents).....54081, 54086, 54089
68.....54190
180 (2 documents).....54092, 54094
185.....54094
186.....54094

42 CFR
403.....54045
Proposed Rules:
1003.....54096

43 CFR
Public Land Orders:
7005.....54049

48 CFR
1828.....54050
1852.....54050

49 CFR
Proposed Rules:
571.....54099
572.....54099
821.....54102

50 CFR
17.....54053
217.....54066
227.....54066
Proposed Rules:
642.....54108

Federal Register
Vol. 58, No. 201
Wednesday, October 20, 1993

Presidential Documents

Title 3—

The President

Proclamation 6613 of October 16, 1993

World Food Day, 1993 and 1994

By the President of the United States of America

A Proclamation

Arising from poverty, homelessness, civil strife or famine, hunger burdens the lives of nearly 800 million people throughout the world. Women and children suffer the most. Studies suggest that in developing countries, some 36 percent of children under 6 years of age are moderately or severely undernourished.

On this World Food Day, let us commit ourselves to bringing change to the lives of those who suffer from hunger and to preserving the resources we will need in the years ahead.

Failure to protect our environment now and in the future will clearly affect the ability of countries to produce food and fiber for growing populations. The United Nations has indicated that the world may not be able to feed itself by sometime early in the next century if we continue to abuse productive soil. If world food production is to be maintained and enhanced, we must learn to safeguard the biological diversity that underpins our agricultural system. Today, the biological foundation is imperiled. Traditional crop varieties and animal breeds are becoming endangered. Many are already extinct. When we lose a traditional wheat or rice variety, we lose its unique characteristics and its potential pest and disease resistance, drought tolerance, or nutritional benefits. Nature's diversity is a precious inheritance. We cannot live on this earth without it. Through sound agricultural practices and intelligent shepherding of our natural resources, we can nourish and protect our land, forests, rivers, and streams.

The almost constant threat of famine in Africa and the continuing food problems in Asia should remind us all of our global vulnerability, especially as the population continues to grow. Raising the global community's awareness of the hunger that afflicts the young, the infirm, the poor, and the elderly—and considering the needs of others each day—can bring change and help ensure our food supply for the future.

The Congress, by House Joint Resolution 218, has designated October 16, 1993, and October 16, 1994, as "World Food Day" and has authorized and requested the President to issue a proclamation in observance of these days.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim October 16, 1993, and October 16, 1994, as World Food Day. I call on all Americans to observe these days with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of October, in the year of our Lord nineteen hundred and ninety-three, and of the Independence of the United States of America the two hundred and eighteenth.

William J. Clinton

[FR Doc. 93-25952
Filed 10-18-93; 2:59 pm]
Billing code 3195-01-P

Presidential Documents

Proclamation 6614 of October 16, 1993

National Forest Products Week, 1993

By the President of the United States of America

A Proclamation

Our National Forests are a priceless heritage, a gift that we hold in trust for future generations. As stewards of this inheritance, we have the obligation of preserving the capacity of these lands to sustain, not only themselves, but also the species that depend on them. Even as we strive to fulfill this obligation, the American people are asking fundamental questions about how our National Forests are managed and about how best to ensure a healthy and productive land.

Much has already been done to protect our forests. Of the 191 million acres of National Forest, 34 million have been set aside as part of the wilderness preservation system, a system that safeguards wilderness for future use and enjoyment. National Forests include more than 4,300 miles of designated segments of the National Wild and Scenic Rivers Systems. These rivers are maintained in a free-flowing condition for the enjoyment of this and future generations.

Much more remains to be done, and we are only beginning to fathom, however incompletely, the complexities of the ecosystems of which our National Forests are composed. We know that over 250 threatened and endangered species of fish, animals, and plants inhabit National Forests and are dependent on them for survival. We also know that the key to protecting these and other species is to maintain healthy ecosystems through effective management of National Forests. In addition, we now understand that our forests are only one part of a global mosaic of forest ecosystems and that, if we are to be a world leader in environmental conservation, our stewardship must set standards for the world to emulate.

Our National Forests are also vital to our physical and spiritual well-being. National Forests are the single largest provider of outdoor recreation in the United States, providing 288 million visitor days at Forest Service campgrounds, picnic areas, and other recreation attractions in the past year. Products generated from National Forests support jobs for hundreds of thousands of workers, most located in rural America. People whose livelihoods are dependent on forest products industries must be considered as we reexamine the role of National Forests in promoting the welfare of all Americans.

Clearly, we are moving toward a new era in the stewardship of public lands. This new era is one in which we must blend environmental values with the needs of people in such a way that the National Forests represent diverse, healthy, productive, and sustainable ecosystems. Ecosystem management must be grounded on sound science and on compliance with existing law.

In recognition of the central role our forests play in enhancing the welfare of our Nation, the Congress, by Public Law 86–753 (36 U.S.C. 163), has designated the week beginning on the third Sunday in October of each year as "National Forest Products Week" and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim the week beginning October 17, 1993, as National Forest Products Week and call upon all Americans to observe that week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of October, in the year of our Lord nineteen hundred and ninety-three, and of the Independence of the United States of America the two hundred and eighteenth.

William J. Clinton

[FR Doc. 93-25951
Filed 10-18-93; 2:58 pm]
Billing code 3195-01-P

Presidential Documents

Executive Order 12872 of October 18, 1993

Blocking Property of Persons Obstructing Democratization in Haiti

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), and section 301 of title 3, United States Code, and in order to take additional steps with respect to the grave events that have occurred in the Republic of Haiti to disrupt the legitimate exercise of power by the democratically elected government of that country and with respect to the national emergency described and declared in Executive Order No. 12775,

I, WILLIAM J. CLINTON, President of the United States of America, hereby order:

Section 1. Except to the extent provided in regulations, orders, directives, or licenses, which may hereafter be issued pursuant to this order, and notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any license or permit granted before the effective date of this order, all property and interests in property of persons:

(a) Who have contributed to the obstruction of the implementation of the United Nations Security Council Resolutions 841 and 873, the Governors Island Agreement of July 3, 1993, or the activities of the United Nations Mission in Haiti;

(b) Who have perpetuated or contributed to the violence in Haiti; or

(c) Who have materially or financially supported any of the foregoing,

that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of United States persons, including their overseas branches, are blocked.

Sec. 2. Any transaction subject to U.S. jurisdiction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in this order, or in Executive Orders Nos. 12775, 12779, or 12853, is prohibited, notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any license or permit granted before the effective date of this order, except to the extent provided in regulations, orders, directives, or licenses issued pursuant to the relevant Executive order and in effect on the effective date of this order.

Sec. 3. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to me by the International Emergency Economic Powers Act, as may be necessary to carry out the purpose of this order. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government, all agencies of which are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order, including suspension or termination of licenses or other authorizations in effect as of the date of this order.

Sec. 4. Nothing contained in this order shall create any right or benefit, substantive or procedural, enforceable by any party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

Sec. 5. (a) This order shall take effect at 11:59 p.m., eastern daylight time on October 18, 1993.

(b) This order shall be transmitted to the Congress and published in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
October 18, 1993.

[FR Doc. 93–25983
Filed 10–18–93; 4:26 pm]
Billing code 3195–01–P

Editorial note: For the President's message to Congress and a statement by the Press Secretary on these further sanctions against Haiti, see issue 42 of the *Weekly Compilation of Presidential Documents.*

Rules and Regulations

Federal Register
Vol. 58, No. 201
Wednesday, October 20, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93-CE-31-AD; Amendment 39-8714; AD 93-20-06]

Airworthiness Directives: Ayres Corporation S2D and S2R Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Ayres Corporation (Ayres) S2D and S2R series airplanes. This action requires inspecting the existing aluminum outboard wing huckbolts for damage (cracks, fatigue, or shearing), replacing the aluminum outboard wing huckbolts with steel huckbolts immediately if damaged huckbolts are found or, if no damaged huckbolts are found, replacing the huckbolts within a certain amount of airplane usage. Investigation of a recent in-flight incident where an Ayres Model S2R airplane lost stiffness in the outboard wing section revealed shearing of aluminum outboard wing huckbolts that hold the top main spar cap to the spar web. The actions specified by this AD are intended to prevent structural damage to the wing caused by damaged huckbolts, which could result in loss of control of the airplane.

DATES: Effective December 3, 1993. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 3, 1993.

ADDRESSES: Service information that applies to this AD may be obtained from the Ayres Corporation, P.O. Box 3090, Albany, Georgia 31708; Telephone (912) 883-1440. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Cindy Lorenzen, Aerospace Engineer, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349; Telephone (404) 991-2910; Facsimile (316) 991-3606.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that would apply to certain Ayres S2D and S2R series airplanes was published in the Federal Register on June 22, 1993 (58 FR 33920). The action proposed to require inspecting the existing aluminum outboard wing huckbolts for damage (cracks, fatigue, or shearing), replacing the aluminum outboard wing huckbolts with steel huckbolts immediately if any damaged huckbolts are found or, if no damaged huckbolts are found, replacing the aluminum huckbolts with steel huckbolts within a certain amount of airplane usage. The proposed actions would be accomplished in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Ayres Service Bulletin No. SB-AG-33, dated February 24, 1993.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

After careful review of all available information, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

The FAA estimates that 1,700 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 11 workhours per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $40 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,096,500. These figures take into account that none of the affected airplane operators have accomplished the required actions.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

93-20-06 Ayres Corporation: Amendment 39-8714; Docket No. 93-CE-31-AD.

Applicability: The following model and serial number airplanes, certificated in any category:

Models	Serial Nos.
S2D	All serial numbers.
S2R	5000 through 5099, 1380R, and 1416R through 2582R.
S2R–R1340	R1340–001 through R1340–028 (with or without DC suffix).
S2R–R3S	R3S–001 through R3S–011 (with or without DC suffix).
S2R–R1820	R1820–001 through R1820–035 (with or without DC suffix).
S2R–T11	T11–001 through T11–005 (with or without DC suffix).
S2R–T15	T15–001 through T15–029 (with or without DC suffix); and T27–001 through T27–029 (with or without DC suffix).
S2R–T34	6000 through 6049, T34–001 through T34–143, T34–145, T34–147 through T34–167, T34–170, T34–171, and T34–180 (with or without DC suffix); and T41–001 through T41–143, T41–145, T41–147 through T41–167, T41–170, T41–171, and T41–180 (with or without DC suffix).
S2R–T45	T45–001 (with or without DC suffix).

Compliance: Required as indicated, unless already accomplished.

Note 1: The compliance times specified in this AD take precedence over those referenced in Ayres Service Bulletin (SB) No. SB–AG–33, dated February 24, 1993.

To prevent structural damage to the wing caused by damaged aluminum outboard wing huckbolts, which could result in loss of control of the airplane, accomplish the following:

(a) Within the next 50 hours time-in-service after the effective date of this AD, inspect the existing aluminum outboard wing huckbolts for cracks, shearing, or fatigue in accordance with the ACCOMPLISHMENT INSTRUCTIONS: I. Inspection, section of Ayres SB No. SB–AG–33, dated February 24, 1993.

(1) If sheared, cracked, or fatigued aluminum outboard wing huckbolts are found, prior to further flight, replace the last 13 vertical rows of aluminum huckbolts with NAS 1103 steel bolts or with steel huckbolts in accordance with the ACCOMPLISHMENT INSTRUCTIONS: II. Repair, section of Ayres SB No. SB–AG–33, dated February 24, 1993.

(2) If no cracked, sheared, or fatigued huckbolts are found, reinspect at intervals not to exceed 100 hours TIS. Accomplish no more than five 100-hour inspection repetitions before replacing the huckbolts as required by paragraph (b) of this AD.

Note 2: The FAA established the compliance times of the initial inspection and the repetitive inspections to coincide with the replacement compliance time specified in paragraph (b) of this AD.

(b) Within the next 650 hours TIS after the effective date of this AD, unless already accomplished in accordance with paragraph (a)(1) of this AD, replace the last 13 vertical rows of aluminum huckbolts with NAS 1103 steel bolts or with steel huckbolts in accordance with the ACCOMPLISHMENT INSTRUCTIONS: II. Repair, section of Ayres SB No. SB–AG–33, dated February 24, 1993.

Note 3: The FAA established the replacement compliance time by estimating airplane operation rates in order to allow the operator the opportunity to accomplish the action during the next annual maintenance inspection.

(c) Replacing the huckbolts as specified in paragraph (b) of this AD eliminates the inspection requirement of this AD and may be accomplished prior to 650 hours TIS.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta Aircraft Certification Office.

(f) The inspection and replacement required by this AD shall be done in accordance with Ayres Service Bulletin No. SB–AG–33, dated February 24, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from the Ayres Corporation, P.O. Box 3090, Albany, Georgia 31708. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment (39–8714) becomes effective on December 3, 1993.

Issued in Kansas City, Missouri, on October 14, 1993.

Michael K. Dahl,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–25729 Filed 10–19–93; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 93–CE–30–AD; Amendment 39–8713; AD 93–20–05]

Airworthiness Directives: Ayres Corporation S2R Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Ayres Corporation (Ayres) S2R series airplanes. This action requires inspecting the bracket that attaches the vertical tail front spar to the horizontal stabilizer (vertical tail attachment bracket) for damage (cracks, broken lugs or bolts, or elongated holes) and immediately replacing any damaged vertical tail attachment bracket with a new bracket of improved design, or, if the bracket is not damaged, replacing it within a certain amount of airplane usage. Reports of broken lugs or bolts on the vertical tail attachment bracket on four of the affected airplanes prompted this action. The actions specified by this AD are intended to prevent structural damage to the vertical tail caused by a damaged vertical tail attachment bracket, which could result in loss of control of the airplane.

DATES: Effective December 3, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 3, 1993.

ADDRESSES: Service information that applies to this AD may be obtained from the Ayres Corporation, P.O. Box 3090, Albany, Georgia 31708; Telephone (912) 883–1440. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Cindy Lorenzen, Aerospace Engineer, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349; Telephone (404) 991–2910; Facsimile (316) 991–3606.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that would apply to certain Ayres S2R series airplanes was published in the **Federal Register** on June 25, 1993 (58 FR 34383). The action proposed to require inspecting the bracket that attaches the vertical tail front spar to the horizontal stabilizer (vertical tail attachment bracket) for damage (cracks, broken lugs or bolts, or elongated holes) and immediately replacing any damaged vertical tail attachment bracket with a new bracket of improved design, or, if the bracket is not damaged, replacing it within a certain amount of airplane usage. The proposed actions would be accomplished in accordance with the ACCOMPLISHMENT INSTRUCTIONS

section of Ayres Service Bulletin No. SB–AG–32, dated February 12, 1993.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

After careful review of all available information, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

The FAA estimates that 1,733 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 18 workhours per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $140 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,958,290. These figures take into account that none of the affected airplane operators have accomplished the required actions.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

93–20–05 Ayres Corporation: Amendment 39–8713; Docket No. 93–CE–30–AD.

Applicability: The following model and serial number airplanes, certificated in any category:

Models	Serial Nos.
S2R	5000 through 5099, 1380R, and 1416R through 2583R.
S2R–R1340 .	R1340–001 through R1340–030 (with or without DC suffix).
S2R–R3S	R3S–001 through R3S–011 (with or without DC suffix).
S2R–R1820 .	R1820–001 through R1820–035 (with or without DC suffix).
S2R–T11	T11–001 through T11–005 (with or without DC suffix).
S2R–T15	T15–001 through T15–029 (with or without DC suffix); and T27–001 through T27–029 and T–27–031 (with or without DC suffix).
S2R–T34	6000 through 6049, T34–001 through T34–180, T34–190, T34–191 and T34–192 (with or without DC suffix); T36–001 through T36–180 (with or without DC suffix); and T41–001 through T41–180 (with or without DC suffix).
S2R–T45	T45–001 through T45–003 (with or without DC suffix).
S2R–T65	T65–001 (with or without DC suffix).
S2R–HG–T65	T65–002 through T65–010 (with or without DC suffix).
S2RG6	G6–101 through G6–112.
S2R–G10	G10–101.

Compliance: Required as indicated, unless already accomplished.

Note 1: The compliance times specified in this AD take precedence over those referenced in Ayres Service Bulletin (SB) No. SB–AG–32, dated February 12, 1993.

To prevent structural damage to the vertical tail caused by a damaged vertical tail attachment bracket, which could result in loss of control of the airplane, accomplish the following:

(a) Within the next 50 hours time-in-service after the effective date of this AD, inspect the bracket that attaches the vertical tail front spar to the horizontal stabilizer for damage (cracks, broken lugs or bolts, or elongated holes) in accordance with the ACCOMPLISHMENT INSTRUCTIONS: I. Inspection, section of Ayres SB No. SB–AG–32, dated February 12, 1993.

(b) If any damage is found to the bracket during the inspection specified in paragraph (a) of this AD, prior to further flight, replace the bracket with an aluminum bracket, part number (P/N) 40301T007, and install a new close out plate, P/N 40309T003, in accordance with the ACCOMPLISHMENT INSTRUCTIONS: II. Repair, section of Ayres SB No. SB–AG–32, dated February 12, 1993.

(c) Within the next 100 hours TIS after the effective date of this AD, unless already accomplished in accordance with paragraph (b) of this AD, replace the bracket with an aluminum bracket, part number (P/N) 40301T007, and install a new close out plate, P/N 40309T003, in accordance with the ACCOMPLISHMENT INSTRUCTIONS: II. Repair, section of Ayres SB No. SB–AG–32, dated February 12, 1993.

(d) The replacement required by paragraph (c) of this AD may be accomplished instead of the inspection specified in paragraph (a) of this AD provided it is accomplished at or prior to the 50-hour TIS compliance time.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta Aircraft Certification Office.

(g) The inspection and replacement required by this AD shall be done in accordance with Ayres Service Bulletin No. SB–AG–32, dated February 12, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from the Ayres Corporation, P.O. Box 3090, Albany, Georgia 31708. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment (39–8713) becomes effective on December 3, 1993.

Issued in Kansas City, Missouri, on October 14, 1993.

Michael K. Dahl,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-25728 Filed 10-19-93; 8:45 am]

BILLING CODE 4910-13-U

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14 CFR Part 39

[Docket No. 90-ANE-20; Amendment 39-8650; AD 93-15-04]

Airworthiness Directives; Pratt and Whitney JT9D Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Pratt and Whitney (PW) JT9D series turbofan engines, that requires modification of certain fuel nozzles, from a two piece knife-edge seal design to a one piece welded configuration. This amendment is prompted by fuel nozzle failures that resulted in uncontained engine failures. The actions specified by this AD are intended to prevent fuel nozzle distress, which could result in an uncontained lenticular seal failure, and inflight engine shutdown.

DATES: Effective November 19, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 19, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from Pratt and Whitney, Publication Department, P.O. Box 611, Middletown, Connecticut 06457. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, Attn: Rules Docket No. 90-ANE-20, 12 New England Executive Park, Burlington, Massachusetts 01803-5299; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Daniel Kerman, Aerospace Engineer, Engine Certification Branch, ANE-141, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803-5299, telephone (617) 238-7130; fax (617) 238-7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to Pratt and Whitney (PW) JT9D series turbofan engines was published in the **Federal Register** on December 7, 1990 (55 FR 50565). That action proposed to require modification of certain fuel nozzles, in accordance with the PW Service Bulletin (SB) 5566, Revision 4, dated June 23, 1988.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the rule as proposed.

One commenter requests the compliance end date be extended to December 31, 1994, from December 31, 1991. This change would allow operators to accomplish the requirements of the AD during regularly scheduled maintenance, without disrupting service, and avoid special scheduling for the modifications. The FAA agrees with extending the compliance end date to June 30, 1994.

The economic impact analysis paragraph, as specified in the notice, has been changed to show the increase in the average labor rate from $40 to $55 dollars per work hour. Therefore, the estimated total cost impact has been changed to reflect this increase.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously.

There are approximately 586 engines of the affected design in the worldwide fleet. The FAA estimates that 120 engines of U.S. registry will be affected by this AD, that it will take approximately 91.5 work hours per engine to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $603,900.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93-15-04 Pratt and Whitney: Amendment 39-8650. Docket No. 90-ANE-20.

Applicability: Pratt and Whitney (PW) JT9D-59A, -70A, -7Q, and -7Q3 turbofan engines installed on, but not limited to, Boeing 747, Airbus A300, and McDonnell Douglas DC10 aircraft.

Compliance: Required prior to June 30, 1994, unless accomplished previously.

To prevent fuel nozzle distress which can result in an uncontained lenticular seal failure, and an inflight engine shutdown, accomplish the following:

(a) Modify the fuel nozzle and support assembly, Part Numbers 795094, 5004189-01, 795090, and 5003981-01, in accordance with Part 1 and Part 2 of the Accomplishment Instructions, contained in PW Service Bulletin (SB) No. 5566, Revision 4, dated June 23, 1988.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(c) Special flight permits may be issued, in accordance with FAR 21.197 and 21.199, to

operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The modifications for the fuel nozzle and support assembly shall be done in accordance with the following Pratt & Whitney service bulletin:

PRATT & WHITNEY—SERVICE BULLETIN NO. 5566

Page No.	Revision No.	Date
1	4	June 23, 1988.
2	2	December 10, 1986.
3	3	December 10, 1987.
4	4	June 23, 1988.
5	2	December 10, 1986.
6 and 7	3	December 10, 1987.
8 through 12	2	December 10, 1986.
13 through 15	3	December 10, 1987.
16 through 21	2	December 10, 1986.
22	4	June 23, 1988.

This incorporation by reference was approved by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pratt and Whitney, Publication Department, P.O. Box 611, Middletown, Connecticut 06457. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts 01803–5299; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on November 19, 1993.

Issued in Burlington, Massachusetts, on September 8, 1993.

Jack A. Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 93–25682 Filed 10–19–93; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 11

[Docket No. RM86–2–000]

Update of the Federal Energy Regulatory Commission's Fees Schedule for Annual Charges for the Use of Government Lands

Issued October 14, 1993.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; update of Federal land use fees.

SUMMARY: On May 8, 1987, the Commission issued its final rule (Order No. 469, 52 FR 18201, May 14, 1987) revising the billing procedures for annual charges for administering part I of the Federal Power Act, the billing procedures for charges for Federal dam and land use, and the methodology for assessing Federal land use charges.

In accordance with the Commission's regulations, the Commission by its designee, the Executive Director, is updating its schedule of fees for the use of government lands. The yearly update is determined by adapting the most recent schedule of fees for the use of linear rights-of-way prepared by the United States Forest Service. Since the next fiscal year will cover the period from October 1, 1993, through September 30, 1994, the fees in this notice will become effective October 1, 1993. The fees will apply to fiscal year 1994 annual charges for the use of government lands.

EFFECTIVE DATE: October 1, 1993.

FOR FURTHER INFORMATION CONTACT: Diane E. Bernier, Financial Services Division, Office of the Executive Director and Chief Financial Officer, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 219–2886.

SUPPLEMENTARY INFORMATION: In accordance with § 11.2, 18 CFR, the land values included in this document will be published in the **Federal Register.** In addition, the Commission provides all interested persons an opportunity to inspect or copy contents of this document during normal business hours in room 3104 at the Commission's Headquarters, 941 North Capitol Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200, or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this order will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3104, 941 North Capitol Street NE., Washington, DC 20426.

List of Subjects in 18 CFR Part 11

Electric power, Reporting and recordkeeping requirements.

Christie McGue,

Executive Director and Chief Financial Officer.

Accordingly, the Commission, effective October 1, 1993, amends part 11 of chapter I, title 18 of the Code of Federal Regulations as set forth below.

1. The authority citation for part 11 continues to read as follows:

Authority: 16 U.S.C. 791A–825r; 42 U.S.C. 7101–7352.

2. In part 11, appendix A is revised to read as follows:

APPENDIX A TO PART II

[Fee Schedule for Fiscal Year 1994]

State	County	Rate per acre
Alabama	All counties	$22.63
Arkansas	All counties	16.97
Arizona	Apache, Cochise, Gila, Graham, La Paz, Mohave, Navajo, Pima, Yavapai, Yuma, Coconino North of Colorado River.	5.65
	Coconino South of Colorado River, Greenlee, Maricopa, Pinal Santa Cruz	22.63
California	Imperial, Inyo, Lassen, Modoc, Riverside, San Bernardino	11.31
	Siskiyou	16.97
	Ameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Kern, Kings, Lake, Madera, Mariposa, Mendocino, Merced, Mono, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Joaquin, Santa Clara, Shasta, Sierra, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, Yolo, Yuba.	28.28

APPENDIX A TO PART II—Continued

[Fee Schedule for Fiscal Year 1994]

State	County	Rate per acre
	Los Angeles, Marin, Monterey, Orange, San Diego, San Francisco, San Luis Obispo, San Mateo, Santa Barbara, Santa Cruz, Ventura.	33.95
Colorado	Adams, Arapahoe, Bent, Cheyenne, Crowley, Elbert, El Paso, Huerfano, Kiowa, Kit Carson, Lincoln, Logan, Moffat, Montezuma, Morgan, Pueblo, Sedgwick, Washington, Weld, Yuma.	5.65
	Baca, Dolores, Garfield, Las Animas, Mesa, Montrose, Otero, Prowers, Rio Blanco, Routt, San Miguel	11.31
	Alamosa, Archuleta, Boulder, Chaffee, Clear Creek, Conejos, Costilla, Custer, Denver, Delta, Douglas, Eagle, Fremont, Gilpin, Grand, Gunnison, Hinsdale, Jackson, Jefferson, Lake, La Plata, Larimer, Mineral, Ouray, Park, Pitkin, Rio Grande, Saguache, San Juan, Summit, Teller.	22.63
Connectic	All counties	5.65
Florida	Baker, Bay, Bradford, Calhoun, Clay, Columbia, Dixie, Duval, Escambia, Franklin, Gadsden, Gilchrist, Gulf, Hamilton, Holmes, Jackson, Jefferson, Lafayette, Leon, Liberty, Madison, Nassau, Okaloosa, Santa Rosa, Suwannee, Taylor, Union, Wakulla, Walton, Washington.	33.95
	All other counties	56.58
Georgia	All counties	33.95
Idaho	Cassia, Gooding, Jerome, Lincoln, Minidoka, Oneida, Owyhee, Power, Twin Falls	5.65
	Ada, Adams, Bannock, Bear Lake, Benewah, Bingham, Blaine, Boise, Bonner, Bonneville, Boundary, Butte, Camas, Canyon Caribou, Clark, Clearwater, Custer, Elmore, Franklin, Fremont, Gem, Idaho, Jefferson, Kootenai, Latah, Lemhi, Lewis, Madison, Nez Perce, Payette, Shoshone, Teton, Valley, Washington.	16.97
Kansas	All other counties	5.65
	Morton	11.31
Illinois	All counties	16.97
Indiana	All counties	28.28
Kentucky	All counties	16.97
Louisiana	All counties	33.95
Maine	All counties	16.97
Michigan	Alger, Baraga, Chippewa, Dickinson, Delta, Gogebic, Houghton, Iron, Keweenaw, Luce, Mackinac, Marquette, Menominee, Ontonagon, Schoolcraft.	16.97
	All other counties	22.63
Minnesota	All counties	16.97
Mississippi	All counties	22.63
Missouri	All counties	16.97
Montana	Big Horn, Blaine, Carter, Cascade, Chouteau, Custer, Daniels, McCone, Meagher, Dawson, Fallon, Fergus, Garfield, Glacier, Golden Valley, Hill, Judith Basin, Liberty, Musselshell, Petroleum, Phillips, Pondera, Powder River, Prairie, Richland, Roosevelt, Rosebud, Sheridan, Teton, Toole, Treasure, Valley, Wheatland, Wibaux, Yellowstone.	5.65
	Beaverhead, Broadwater, Carbon, Deer Lodge, Flathead, Gallatin, Granite, Jefferson, Lake, Lewis & Clark, Lincoln, Madison, Mineral, Missoula, Park, Powell, Ravalli, Sanders, Silver Bow, Stillwater, Sweet Grass.	16.97
Nebraska	All counties	5.65
Nevada	Churchill, Clark, Elko, Esmeralda, Eureka, Humboldt, Lander, Lincoln, Lyon, Mineral, Nye, Pershing, Washoe, White Pine.	2.83
	Carson City, Douglas, Storey	28.28
New Hampshire	All counties	16.97
New Mexico	Chaves, Curry, De Baca, Dona Ana, Eddy, Grant, Guedelupe, Harding, Hidalgo, Lea, Luna, McKinley, Otero, Quay, Roosevelt, San Juan, Socorro, Torrance.	5.65
	Rio Arriba, Sandoual, Union	11.31
	Bernalillo, Catron, Cibola, Colfax, Lincoln, Los Alamos, Mora, San Miguel, Santa Fe, Sierra, Taos, Valencia.	22.63
New York	All counties	22.63
North Carolina	All counties	33.95
North Dakota	All counties	5.65
Ohio	All counties	22.63
Oklahoma	All other counties	5.65
	Beaver, Cimarron, Roger Mills, Texas	11.31
	Le Flore, McCurtain	16.97
Oregon	Harney, Lake, Malheur	5.65
	Baker, Crook, Deschutes, Gilliam, Grant, Jefferson, Klamath, Morrow, Sherman, Umatilla, Union, Wallowa, Wasco, Wheeler.	11.31
	Coos, Curry, Douglas, Jackson, Josephine	16.97
	Benton, Clackamas, Clatsop, Columbia, Hood River, Lane, Lincoln, Linn, Marion, Multnomah, Polk, Tillamock, Washington, Yamhill.	22.63
Pennsylvania	All counties	22.63
Puerto Rico	All	33.95
South Dakota	Butte, Custer, Fall River, Lawrence, Mead, Pennington	16.97
	All other counties	5.65
South Carolina	All counties	33.95
Tennessee	All counties	22.63
Texas	Culberson, El Paso, Hudspeth	5.65
	All other counties	33.95

APPENDIX A TO PART II—Continued
[Fee Schedule for Fiscal Year 1994]

State	County	Rate per acre
Utah	Beaver, Box Elder, Carbon, Duchesne, Emery, Garfield, Grand, Iron, Juab, Kane, Millard, San Juan, Tooele, Uintah, Wayne.	5.65
	Washington	11.31
	Cache, Daggett, Davis, Morgan, Piute, Rich, Salt Lake, Sanpete, Sevier, Summit, Utah, Wasatch, Weber	16.97
Vermont	All counties	22.63
Virginia	All counties	22.63
Washington	Adams, Asotin, Benton, Chelan, Columbia, Douglas, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanagan, Spokane, Walla Walla, Whitman, Yakima.	11.31
	Ferry, Pend Oreille, Stevens	16.97
	Callam, Clark, Cowlitz, Grays Harbor, Island, Jefferson, King, Kitsap, Lewis, Mason, Pacific, Pierce, San Juan, Skagit, Skamania, Snohomish, Thurston, Wahkiakum, Whatcom.	22.63
West Virginia	All counties	22.63
Wisconsin	All counties	16.97
Wyoming	Albany, Campbell, Cargon, Converse, Goshen, Hot Springs, Johnson, Laramie, Lincoln, Natrona, Niobrara, Platte, Sheridan, Sweetwater, Fremont, Sublete, Uinta, Washakie.	5.65
	Big Horn, Crook, Park, Teton, Weston	16.97
All other zones		5.31

[FR Doc. 93-25703 Filed 10-19-93; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8493]

RIN 1545-AR71

Hedging Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations clarifying the character of gain or loss from business hedges. The temporary regulations address questions that have arisen as a result of the decision of the United States Supreme Court in *Arkansas Best*. The temporary regulations provide guidance to taxpayers entering into hedging transactions and serve as a basis for resolving pending cases involving gains and losses from hedging. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules section of this issue of the Federal Register.

DATES: These temporary regulations are effective October 20, 1993.

For dates of applicability of these temporary regulations, see the discussion in the "Dates of Applicability" paragraph in the "SUPPLEMENTARY INFORMATION" portion of the preamble.

FOR FURTHER INFORMATION CONTACT: Jo Lynn Ricks of the Office of the Assistant Chief Counsel (Financial Institutions and Products), Internal Revenue Service, 1111 Constitution Avenue, NW., Washington DC 20224 (Attn: CC:DOM:FI&P). Telephone 202-622-3920 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

This regulation is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these regulations has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545-1403. The estimated annual burden per recordkeeper varies from .10 to 10.00 hours, depending on individual circumstances, with an estimated average of .50 hour.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual recordkeepers may require greater or less time, depending on their particular circumstances.

For further information concerning this collection of information, and where to submit comments on this collection of information, the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the Federal Register.

Background

This document contains temporary regulations amending the Income Tax Regulations (26 CFR part 1) under section 1221 of the Internal Revenue Code (Code) (relating to the definition of capital asset). The provisions affected relate to the determination of the character of gain or loss from hedging transactions. The tax treatment of the gain or loss generally depends upon whether property used as a hedge is characterized as a capital asset.

In *Arkansas Best Corp.* v. *Commissioner*, 485 U.S. 212 (1988) (*Arkansas Best*), the Supreme Court held that the taxpayer realized a capital loss on a sale of stock even though the stock was purchased with a business motive rather than an investment motive. In so holding, the Court rejected the business motive test (the *Corn Products* doctrine) that had developed following the Court's decision in *Corn Products Refining Co.* v. *Commissioner*, 350 U.S. 46 (1955) *(Corn Products)*. The Court reaffirmed its holding in *Corn Products* on the grounds that the futures contracts at issue in that case came within the inventory exception of section 1221(1) of the Code.

Arkansas Best has caused uncertainty with respect to the tax treatment of business hedging generally. Prior to *Corn Products*, it had been widely recognized that gain or loss realized on a hedge of a non-capital asset was treated as ordinary income or loss. After *Corn Products*, however, virtually all hedging transactions were thought to be within the business motive test of the

Corn Products doctrine. Thus, there was little new authority on the subject of hedging during the 30 years preceding the *Arkansas Best* decision.

Arkansas Best itself did not involve a business hedging transaction, and the Court did not directly address the tax treatment of hedging. Nonetheless, based on the Court's narrow interpretation of its earlier decision in *Corn Products*, the Service, in individual cases, has treated various types of business hedging transactions as giving rise to capital gain or loss. Issues with respect to business hedging are present in many cases at an administrative level, and several cases involving these issues are pending in the courts.

In *Federal National Mortgage Association* v. *Commissioner*, 100 T.C. No. 36 (June 17, 1993) (*FNMA*), the Tax Court rejected the Service's position and held that the taxpayer's business hedges gave rise to ordinary gain or loss. In that case, the taxpayer used short positions in futures contracts, put options, and short sales of Treasury securities to hedge the spread between the rate of interest on mortgages that it held or had committed to buy and the rate of interest on indebtedness to be incurred to carry the mortgages. The court found that the mortgages were not capital assets and that the hedges were so integrally related to the mortgages that they also were entitled to ordinary treatment. The court cited with favor the pre-*Corn Products* cases involving business hedges and expressed a willingness to extend ordinary treatment to "short" hedges as well as "long" hedges and to liability hedges as well as asset hedges.

Although the Service may disagree with some aspects of the FNMA opinion, the court clearly found *Arkansas Best* not to be an impediment to treating gains and losses on business hedging transactions as ordinary rather than capital.

The result reached by the court avoids the character mismatches that result from treating business hedges as capital. Moreover, it comports with substantial evidence that Congress has long assumed that business hedges give rise to ordinary gain or loss. The legislative history of the 1954 Code, for example, expressly notes that hedges were ordinary under then-current law and that Congress intended to continue that treatment. H.R. Rep. No. 1337, 83d Cong., 2d Sess. A278 (1954). In addition, a number of statutory provisions that provide special treatment to taxpayers that engage in hedging transactions are premised on Congress' understanding that business hedges receive ordinary treatment. See, e.g., sections 1256(e), 1092(e), 263(g)(3), and 1233(g) of the Code.

In light of the above, the Service has decided to abandon the position it has taken with respect to the character of many common business hedges and to resolve that issue with these regulations. Cases pending at the administrative level and in the courts will be disposed of in a manner consistent with the regulations. On a prospective basis, the regulations provide an identification and record-keeping requirement that is necessary for the Service to locate and evaluate transactions that taxpayers believe should qualify for hedge treatment.

Need for Temporary Regulations

Immediate guidance is needed with respect to gains and losses on business hedging transactions. This Treasury decision will enable Service personnel to resolve in a fair and consistent manner the many cases pending either at the administrative level or in the courts. Moreover, the clarification is needed because the uncertainty caused by *Arkansas Best* regarding the tax treatment of business hedges may be influencing business decisions as to whether and how to hedge business risks. Therefore, good cause is found to dispense with the public notice requirement of 5 U.S.C. 553(b) and the delayed effective date requirement of 5 U.S.C. 553(d).

Explanation of Provisions

Paragraph (a)(1) of § 1.1221–2T provides that property that is part of a hedging transaction, as defined in the regulations, is not a capital asset. This rule is effective for all open years.

Paragraph (a)(2) of § 1.1221–2T provides a similar rule for short sales and options. Where a short sale or option is part of a hedging transaction, as defined, any gain or loss on the short sale or option is ordinary. Although the character of gain or loss on a short sale or option generally is determined under sections 1233 and 1234 rather than section 1221, the rule for short sales and options has been included here to provide a unified set of rules for determining the character of gain or loss on hedging transactions. New temporary regulations under sections 1233 and 1234 provide that § 1.1221–2T governs the character of gain or loss on short sales and options that are part of hedging transactions.

Under paragraph (a)(3) of § 1.1221–2T, the fact that property, a short sale, or an option serves a hedging function makes gain or loss on the property, short sale, or option ordinary only if the property, short sale, or option is part of a hedging transaction as defined in the regulations. For example, if a transaction falls outside the regulations, gain or loss from the transaction is not made ordinary by the fact that property is a "surrogate" for a non-capital asset or that the transaction serves as "insurance" against a business risk.

Paragraph (a)(4) of § 1.1221–2T describes the relationship between § 1.1221–2T and certain other sections. Section 988 transactions are excluded from these regulations because gain or loss on those transactions is ordinary under section 988(a)(1). The regulations do apply, however, to transactions that predate the effective date of section 988. Paragraph (a)(4) of § 1.1221–2T also makes clear that the definition of a hedging transaction under § 1.1221–2T(b) does not apply for purposes of certain hedging exceptions to the subpart F rules of section 954 and certain hedge identification rules in the interest allocation regulations under section 864(e).

In defining the term hedging transaction, paragraph (b)(1) of § 1.1221–2T adopts the concept of hedging in section 1256(e)(2)(A) of the Code. A hedging transaction generally is a transaction that a taxpayer enters into in the normal course of the taxpayer's business primarily to reduce the risk of interest rate or price changes or currency fluctuations. Thus, the regulations do not provide ordinary treatment for gain or loss from the disposition of stock where, for example, the stock was acquired to protect the goodwill or business reputation of the acquirer or to ensure the availability of goods.

The definition of a hedging transaction covers most, but not all, common business hedges. For example, the regulations do not apply where a taxpayer hedges a dividend stream, the overall profitability of a business unit, or other business risks that do not relate directly to interest rate or price changes or currency fluctuations. Moreover, because a hedging transaction must reduce the taxpayer's risk, the regulation does not apply where a taxpayer hedges the risk of a related party. The Service welcomes comments on the scope of the definition and on the treatment of transactions between related parties.

A second element of the definition of a hedging transaction is that the risk being reduced must relate to ordinary property or obligations or to the taxpayer's borrowings. Paragraph (b)(2) of § 1.1221–2T defines the terms ordinary property and ordinary obligations. Property is ordinary

property if a sale or exchange of the property could never produce capital gain or loss. An obligation is an ordinary obligation if performing or terminating the obligation could never produce capital gain or loss. For example, a taxpayer's obligation with respect to a short sale of a capital asset is not an ordinary obligation.

Hedges of property within the exceptions to section 1221 and property that produces ordinary gain or loss under, for example, section 582(c) generally come within the definition of the term "hedging transaction." The Service believes that it is inappropriate, however, to have a loss on a hedge treated as ordinary when gain on the item or items being hedged could be treated as capital gain. Thus, a hedge of a section 1231 asset or a hedge of the ordinary income produced by a capital asset is excluded from the definition. Hedges of non-inventory supplies are also excluded because they are capital assets, notwithstanding the fact that they give rise to ordinary deductions when they are consumed in the taxpayer's business.

Paragraph (b)(3) of § 1.1221–2T clarifies that a transaction that hedges an aggregate risk qualifies for ordinary treatment under the regulations only if all of the risk, or all but a de minimis amount of the risk, being hedged is related to ordinary property and liabilities. Thus, a bank could hedge the aggregate interest rate exposure on a large pool of its assets and treat any gain or loss from the hedge as ordinary gain or loss, even if a de minimis amount of the aggregate interest rate risk is related to capital assets. All of the risk being hedged, however, must be interest rate, price, or currency risk. Thus, the regulations do not permit ordinary treatment where a taxpayer hedges the overall profitability of one or more business units.

Paragraphs (c)(1) and (c)(3) of § 1.1221–2T impose a same-day identification and record-keeping requirement with respect to hedging transactions entered into on or after January 1, 1994. In the case of transactions that were entered into before January 1, 1994, and that remain in existence on March 31, 1994, the same requirement applies except that the identification may be made until March 31, 1994. These requirements, authorized by sections 6001 and 7805, are designed to aid the Internal Revenue Service in administering the law and to prevent manipulation, such as recharacterization of transactions in view of later developments. In all cases, a taxpayer must identify a hedging transaction unambiguously. The identification is to be made on, and retained as part of, the taxpayer's books and records and must specify both the hedging position and the item, items, or aggregate risk that is being hedged.

The Service is considering what requirements should be met in order for an identification to satisfy § 1.1221–2T(c). The proposed regulations that cross reference the text of this Treasury decision also contain proposed special identification requirements for specific types of hedging transactions. An additional matter to be decided is what transaction-by-transaction records are required. For example, some taxpayers today make identifications for purposes of section 1256(e) by checking a workpaper box that refers explicitly to that statutory provision. The Service solicits comments on this point and on how a taxpayer should identify a global or other aggregate hedge. Pending more specific guidance, the Service will accept any reasonable method of identifying the item, items, or aggregate risk being hedged.

The taxpayer's identification of a transaction as a hedging transaction is binding on the taxpayer. Thus, a taxpayer who identifies a transaction as a hedging transaction must treat any gain from the transaction as ordinary gain, even if the transaction does not meet the definition of a hedging transaction. Misidentifying a nonhedging transaction as a hedge, however, does not transform a capital loss from the transaction into an ordinary loss. A taxpayer may not use the identification procedure to obtain a benefit to which the taxpayer is not entitled under the substantive rule. This rule is similar to the rule in section 1256(f)(1) of the Code.

Similarly, the absence of identification generally is binding on a taxpayer and establishes that a transaction is not a hedging transaction. A taxpayer who does not identify a transaction may not claim the benefit of the regulations and must treat a loss from the transaction as a capital loss unless ordinary loss treatment is available without reference to whether the transaction serves a hedging function. An exception to this rule is provided where the taxpayer can show that the transaction in question was a hedging transaction and that the failure to identify the transaction was due to inadvertent error. Finally, if a hedging transaction was not identified and the taxpayer had no reasonable basis for treating the transaction as other than a hedging transaction, gain from the transaction is ordinary.

Dates of Applicability

These temporary regulations generally apply to all open taxable years. The identification requirements of paragraphs (c)(1) and (c)(3) of § 1.1221–2T apply to transactions entered into on or after January 1, 1994, and to transactions that were entered into before January 1, 1994, and that remain in existence on March 31, 1994.

Special Analyses

It has been determined that these regulations are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Jo Lynn Ricks, Office of Assistant Chief Counsel (Financial Institutions and Products), Internal Revenue Service. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of amendments to the regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

Paragraph 1. The authority citation for part 1 is amended by adding a citation in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.1221–2T also issued under 26 U.S.C. 6001. * * *.

Par. 2. Section 1.1221–2T is added to read as follows:

§ 1.1221–2T Hedging transactions (temporary).

(a) *Treatment of hedging transactions*—(1) *In general.* This section governs the treatment of hedging transactions under section 1221. Except as provided in paragraph (d)(2) of this

section (and notwithstanding the provisions of § 1.1221–1(a)), the term capital asset does not include property that is part of a hedging transaction defined in paragraph (b) of this section.

(2) *Short sales and options.* This section also governs the character of gain or loss from a short sale or option that is part of a hedging transaction. See §§ 1.1233–2T and 1.1234–4T. Except as provided in paragraph (d)(2) of this section, gain or loss on a short sale or option that is part of a hedging transaction defined in paragraph (b) of this section is ordinary income or loss.

(3) *Exclusivity.* Gain or loss on property, a short sale, or an option is ordinary on the grounds that the property, short sale, or option serves a hedging function only if the property, short sale, or option is part of a hedging transaction as defined in paragraph (b) of this section.

(4) *Coordination with other sections*—(i) *Section 988.* This section does not apply to gain or loss realized on a section 988 transaction as defined in section 988(c)(1) or to any qualified fund as defined in section 988(c)(1)(E)(iii). This section does apply, however, to transactions or payments that would be subject to section 988 but for the date that the transactions were entered into or the date that the payments were made.

(ii) *Sections 954(c) and 864(e).* The definition of a hedging transaction in paragraph (b) of this section does not apply for purposes of section 954(c)(1)(C), section 954(c)(1)(D), and § 1.861–9T(b)(6)(iv)(C).

(b) *Hedging transaction*—(1) *In general.* A hedging transaction is a transaction that a taxpayer enters into in the normal course of the taxpayer's trade or business primarily—

(i) To reduce risk of price changes or currency fluctuations with respect to ordinary property (as defined in paragraph (b)(2) of this section) that is held or to be held by the taxpayer; or

(ii) To reduce risk of interest rate or price changes or currency fluctuations with respect to borrowings made or to be made, or ordinary obligations incurred or to be incurred, by the taxpayer.

(2) *Ordinary property and obligations.* Property is ordinary property if a sale or exchange of the property by the taxpayer could not produce capital gain or loss regardless of the taxpayer's holding period when the sale or exchange occurs. Thus, for example, property used in the trade or business within the meaning of section 1231(b) (determined without regard to the holding period specified in that section) is not ordinary property. An obligation is an ordinary obligation if performance or termination of the obligation by the taxpayer could not produce capital gain or loss.

(3) *Hedging an aggregate risk.* The term hedging transaction includes a transaction that reduces an aggregate risk of interest rate changes, price changes, and/or currency fluctuations only if all of the risk, or all but a de minimis amount of the risk, is with respect to ordinary property, ordinary obligations, and borrowings.

(c) *Identification and record-keeping requirements*—(1) *In general.* A taxpayer that enters into a hedging transaction must identify the transaction as a hedging transaction before the close of the day on which the taxpayer enters into the transaction. The identification must be made on, and retained as part of, the taxpayer's books and records and must specify both the hedging transaction and the item, items, or aggregate risk that is being hedged.

(2) *Additional identification requirements for certain hedging transactions.* [Reserved]

(3) *Presence or absence of identification must be unambiguous.* The presence or absence of an identification for purposes of this paragraph (c) must be unambiguous. The identification of a hedging transaction for financial accounting or regulatory purposes does not satisfy this requirement unless the taxpayer's books and records indicate that the identification is also being made for tax purposes. The taxpayer may indicate that individual hedging transactions, or a class or classes of hedging transactions, that are identified for financial accounting or regulatory purposes are also being identified as hedging transactions for purposes of this section.

(4) *Consistency with section 1256(e)(2)(C).* [Reserved]

(5) *Effective date*—(i) *In general.* Paragraphs (c)(1) and (c)(3) of this section apply to transactions that—

(A) Are entered into on or after January 1, 1994, or

(B) Are entered into before that date and remain in existence on March 31, 1994.

(ii) *Special rule for paragraphs (c)(2) and (c)(4).* [Reserved]

(6) *Transition rule.* In the case of hedging transactions described in paragraph (c)(5)(i)(B) of this section, an identification is timely if it is made before the close of business on March 31, 1994.

(d) *Effect of identification and non-identification*—(1) *Transactions identified.* If the taxpayer identifies a transaction as a hedging transaction for purposes of paragraph (c) of this section, the identification is binding with respect to gain, whether or not all of the requirements of that paragraph are satisfied. Thus, gain from that transaction is ordinary income. If the transaction is not in fact a hedging transaction described in paragraph (b) of this section, however, paragraphs (a)(1) and (a)(2) of this section do not apply and the character of loss is determined without reference to whether the transaction serves a hedging function. Thus, the taxpayer's identification of the transaction as a hedging transaction does not itself make loss from the transaction ordinary.

(2) *Transactions not identified*—(i) *In general.* Except as provided in paragraphs (d)(2)(ii) and (d)(2)(iii) of this section, the absence of an identification that satisfies the requirements of paragraph (c) of this section is binding and establishes that a transaction is not a hedging transaction. Thus, subject to the exceptions, the rules of paragraphs (a)(1) and (a)(2) of this section do not apply and the character of gain or loss is determined without reference to whether the transaction serves a hedging function.

(ii) *Inadvertent error.* If a taxpayer does not make an identification that satisfies the requirements of paragraph (c) of this section, the taxpayer may treat gain or loss from the transaction as ordinary income or loss under paragraph (a)(1) or (a)(2) of this section only if—

(A) The transaction is a hedging transaction (as defined in paragraph (b) of this section);

(B) The failure to identify the transaction was due to inadvertent error; and

(C) All of the taxpayer's hedging transactions in all open years are being treated on either original or, if necessary, amended returns as provided in paragraphs (a)(1) and (a)(2) of this section.

(iii) *Anti-abuse rule.* If a taxpayer does not make an identification that satisfies the requirements of paragraph (c) of this section, but the taxpayer has no reasonable basis for treating the transaction as other than a hedging transaction, gain from the transaction is ordinary. Thus, a taxpayer may not elect to treat gain or loss from a hedging transaction as capital gain or loss. The reasonableness of the taxpayer's failure to identify a transaction is determined by taking into consideration not only the requirements of paragraph (b) of this section, but also the taxpayer's treatment of the transaction for financial accounting or other purposes and the

taxpayer's identification of similar transactions as hedging transactions.

Par. 3. Section 1.1233–2T is added to read as follows:

§ 1.1233–2T Hedging transactions (temporary).

The character of gain or loss on a short sale that is part of a hedging transaction is determined under the rules of § 1.1221–2T.

Par. 4. Section 1.1234–4T is added to read as follows:

§ 1.1234–4T Hedging transactions (temporary).

The character of gain or loss on an acquired or a written option that is part of a hedging transaction is determined under the rules of § 1.1221–2T.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 5. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 6. Section 602.101(c) is amended by adding an entry in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control number
. . . . .	
1.1221–2T(c)	1545–1403
. . . . .	

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved: October 6, 1993.

Samuel Y. Sessions,
Acting Assistant Secretary of the Treasury.

[FR Doc. 93–25779 Filed 10–18–93; 10:00 am]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[ND–5–1–5869; FRL–4784–4]

Approval and Promulgation of Air Quality Implementation Plans; North Dakota; Revision to the State Implementation Plan Correcting Sulfur Dioxide Enforceability Deficiencies

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action approves a revision to the North Dakota State Implementation Plan (SIP) to include revisions to North Dakota Air Pollution Control Rules, Chapter 33–15–06 of the North Dakota Administrative Code, entitled *Emissions of Sulfur Compounds Restricted.* These revisions correct enforceability deficiencies and strengthen the provisions of Chapter 33–15–06. The revisions were submitted by the Governor to the EPA by cover letter dated June 24, 1992.

EFFECTIVE DATES: This action will become effective on December 20, 1993, unless notice is received by November 19, 1993, that someone wishes to submit adverse or critical comments.

ADDRESSES: Written comments on this action should be addressed to Meredith A. Bond, 8ART-AP, Environmental Protection Agency,Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2405. Copies of the documents relevant to this action are available for public inspection between 8 a.m. and 4 p.m., Monday through Friday at the following offices: Air Programs Branch, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado; and Division of Environmental Engineering, North Dakota Department of Health and Consolidated Laboratories, 1200 Missouri Avenue, Bismarck, North Dakota 58502–5520.

FOR FURTHER INFORMATION CONTACT: Meredith Bond at (303) 293–1764.

SUPPLEMENTARY INFORMATION: A nationwide effort is being undertaken to have sulfur dioxide (SO_2) enforceability deficiencies identified and corrected in SIPs before operating permit programs become effective. Because the operating permit programs will initially incorporate underlying SIP requirements, it is important that the underlying SIP is enforceable so that permits themselves will be enforceable. EPA, Region VIII, provided a list of deficiencies in Chapter 33–15–06 to the State of North Dakota by cover letter dated March 8, 1991. The Region used the "SO_2 SIP Enforceability Checklist" when reviewing Chapter 33–15–06 for enforceability deficiencies. This checklist, developed by the EPA, was included as an attachment to the November 28, 1990, memorandum from Robert Bauman and Rich Biondi to the Air Branch Chiefs. The November 28, 1990, memorandum, as well as the March 8, 1991, letter from EPA, Region VIII to Dana Mount, Director of Division of Environmental Engineering, North Dakota State Department of Health and Consolidated Laboratories, are included as attachments to the Technical Support Document. The checklist focused on the following topics:

1. Clarity;
2. Averaging times consistent with protection of the SO_2 National Ambient Air Quality Standards (NAAQS);
3. Clear compliance determinations;
4. Continuous emissions monitoring;
5. Adequate reporting and recordkeeping requirements;
6. Director's discretion issues; and
7. Stack height issues.

The State of North Dakota subsequently adopted revisions to Chapter 33–15–06 in order to correct enforceability deficiencies and submitted the revised regulations to EPA for SIP approval on June 24, 1992. This submittal also contained revisions to the State's Prevention of Significant Deterioration (PSD), New Source Performance Standards (NSPS), and National Emission Standards for Hazardous Air Pollutants (NESHAPS) rules. In this action, EPA is approving only the revisions to Chapter 33–15–06, Emissions of Sulfur Compounds Restricted. The NSPS and NESHAPS portions, with the exception of the State's asbestos regulations in section 33–15–13–02, were approved in a previous action (58 FR 5294, January 21, 1993). EPA will act on the PSD and asbestos rules in a separate notice.

The revisions to Chapter 33–15–06, discussed in detail in the Technical Support Document, are briefly outlined below.

Analysis of State Submission

1. Procedural Background

The Clean Air Act (Act) requires States to observe certain procedural requirements in developing implementation plans for submission to the EPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing. Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing. The EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action (see section 100(k)(1) and 57 FR 13565). The EPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V (1991), as amended by 56 FR 42216 (August 26, 1991). The EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is

deemed complete by operation of law if a completeness determination is not made by the EPA six months after receipt of the submission.

The State of North Dakota held a public hearing on October 16, 1991, to entertain public comment on proposed revisions to Chapter 33–15–06 addressing enforceability corrections. Public comments were received and adequately addressed by the State. Following the public hearing and consideration of public comments, the SIP revision was subsequently adopted by the State and became effective on June 1, 1992. The SIP revision was submitted by the Governor to the EPA by cover letter dated June 24, 1992.

The SIP revision was reviewed by the EPA to determine completeness shortly after its submittal, in accordance with the completeness criteria set out at 40 CFR part 51, appendix V (1991). A letter dated August 27, 1992, was forwarded to the Governor indicating the completeness of the submittal and the next steps to be taken in the review process. As noted in today's action, the EPA is approving this North Dakota SIP submittal to correct SO_2 enforceability deficiencies.

2. Review of Revisions to Chapter 33–15–06

The State of North Dakota revised Chapter 33–15–06 in order to correct SO_2 enforceability deficiencies. For a detailed explanation of each change to Chapter 33–15–06 being approved today, please refer to the Technical Support Document. A brief summary of the revisions is presented in the following paragraph.

Revisions to Chapter 33–15–06 include:

1. Clarification as to which sources the chapter applies;
2. Adding language stating that the State shall establish more restrictive emission requirements on sources not complying with or causing exceedance of either ambient air quality standards or prevention of significant deterioration standards;
3. Clarification of averaging periods to ensure protection of 3-hr SO_2 NAAQS;
4. Including appropriate measuring and testing measures;
5. Adding a section providing for continuous emission monitoring requirements; and
6. Adding a section detailing reporting and recordkeeping requirements.

Director's discretion issues were not addressed since EPA guidance is not yet available.

Final Action

The EPA today is approving a revision to the North Dakota SIP to include revisions to the North Dakota Administrative Code, Chapter 33–15–06, entitled *Emissions of Sulfur Compounds Restricted*. These revisions correct enforceability deficiencies and strengthen the provisions of Chapter 33–15–06. The revisions were submitted by the Governor to the EPA by letter dated June 24, 1992.

The EPA has reviewed these revisions to the North Dakota SIP and is approving them as submitted. The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective December 20, 1993, unless, by November 19, 1993, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective December 20, 1993.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economical, and environmental factors, and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D, of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids the EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410(a)(2).

Executive Order 12291

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989, (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive order 12291 for a period of two years. The EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on the EPA's request.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 20, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may by filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Reporting and recordkeeping requirements, Sulfur dioxide.

Note: Incorporation by reference of the SIP for the State of North Dakota was approved by the Director of the Federal Register on July 1, 1982.

Dated: September 24, 1993.

Jack W. McGraw,

Acting Regional Administrator.

40 CFR part 52, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart JJ—North Dakota

2. Section 52.1820 is amended by adding paragraph (c)(24) to read as follows:

§ 52.1820 Identification of plan.

* * * * *

(c) * * *

(24) On June 24, 1992, the governor of North Dakota submitted revisions to the plan. The revisions correct enforceability deficiencies in the SO_2 regulations.

(i) Incorporation by reference.

(A) Revisions to the North Dakota Administrative Codes, Chapter 33–15–06, Emissions of Sulfur Compounds Restricted, which became effective June 1, 1992.

[FR Doc. 93–25766 Filed 10–19–93; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 180

[PP 6F3342/R2018; FRL–4646–8]

RIN 2070–AB78

Pesticide Tolerance for Cyromazine

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for the insect growth regulator cyromazine and its metabolite melamine, calculated as cyromazine, in or on peppers at 4.0 parts per million (ppm). This regulation to establish a maximum permissible level for residues of the insecticide was requested pursuant to a petition submitted by Ciba-Geigy Corp.

EFFECTIVE DATE: This regulation becomes effective October 20, 1993.

ADDRESSES: Written objections, identified by the document control number, [PP 6F3342/R2018], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Phillip O. Hutton, Product Manager (PM) 18, Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 202, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-2386.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 19, 1986 (51 FR 9511), EPA issued a notice which announced that the Ciba Geigy Corp., P.O. Box 18300, Greensboro, NC 27419, had submitted a pesticide petition (PP 6F3342) to EPA proposing to amend 40 CFR 180.414 by establishing a tolerance under section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a, for residues of the insecticide cyromazine (*N*-cyclopropyl-1,3,5-triazine-2,4,6-triamine) plus its major metabolite melamine (1,3,5-triazine-2,4,6-triamine) in or on the raw agricultural commodity peppers at 2.0 ppm. Further, in the **Federal Register** of March 10, 1993 (58 FR 1326), EPA issued a notice which announced that Ciba-Geigy Corp. had submitted amendments to the petition to raise the proposed tolerance for residues in or on peppers from 2.0 ppm to 4.0 ppm.

There were no comments or requests for referral to an advisory committee received in response to these notices of filing. The scientific data submitted in the petition and other relevant material have been evaluated. A discussion of the toxicological data considered in support of the tolerance as well as a discussion of the risk of cyromazine and its metabolite melamine can be found in a rule (FAP 2H5355/P344) published in the **Federal Register** of April 27, 1984 (49 FR 18120); in the Notice of Conditional Registration for Larvadex 0.3% Premix, published in the **Federal Register** of May 15, 1985 (50 FR 20373); and in the proposed rule regarding the establishment of a tolerance for residues of cyromazine and its metabolite melamine, calculated as cyromazine, in or on mushrooms at 10.0 ppm in the **Federal Register** of June 30, 1993 (58 FR 34972).

A chronic dietary exposure/risk assessment for the proposed use on peppers based on tolerance residue levels of 4.0 ppm was performed. This chronic analysis compared daily exposure estimates to a Reference Dose (RfD) of 0.0075 mg/kg body weight/day based on a no-observable-effects level (NOEL) of 0.75 mg/kg/ body weight/day and an uncertainty factor of 100. The NOEL is based on a 6-month dog feeding study which demonstrated decreased hematocrit and hemoglobin levels. Estimates (in mg/kg body weight/day, and percents of RfD occupied) for the overall (average) U.S. population for currently published tolerances of cyromazine are 0.002075 and 28%. With the inclusion of peppers, these figures become 0.002203 and 30%. Therefore, the contribution of the pepper tolerance takes up an additional 2 percent of the RfD. Since the exposure estimates are based on Theoretical Maximum Residue Contribution, typically an overestimate of actual exposure, and do not exceed the reference dose, the chronic health risk of cyromazine does not appear to be significant.

Based on the data and information cited above, the Agency has determined that the establishment of the tolerance by amending 40 CFR 180.414 will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above (40 CFR 178.20). The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 29, 1993.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.414(e) is amended in the table therein by adding and alphabetically inserting the following raw agricultural commodity, to read as follows:

§ 180.414 Cyromazine; tolerances for residues.

* * * * *

(e) * * *

Commodity	Parts per million
* * * * *	
Peppers	4.0

[FR Doc. 93–25639 Filed 10–19–93; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 271

[FRL–4791–7]

Mississippi; Final Authorization of Revisions to State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: Mississippi has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). Mississippi's revisions consist of the provisions contained in HSWA Cluster II. These requirements are listed in section B of this document. The Environmental Protection Agency (EPA) has reviewed Mississippi's application and has made a decision, subject to public review and comment, that Mississippi's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Mississippi's hazardous waste program revisions. Mississippi's application for program revisions is available for public review and comment.

DATES: Final authorization for Mississippi's program revisions shall be effective December 20, 1993 unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on Mississippi's program revision application must be received by the close of business, November 19, 1993.

ADDRESSES: Copies of Mississippi's program revision application are available during 8 a.m. to 4:30 p.m. at the following addresses for inspection and copying: Mississippi Department of Environmental Quality, 2380 Highway 80 West, P.O. Box 10385, Jackson, Mississippi 39209, (601) 961–5062; U.S. EPA, Region IV, Library, 345 Courtland Street, NE., Atlanta, Georgia 30365; (404) 347–4216. Written comments should be sent to Leonard W. Nowak at the address listed below.

FOR FURTHER INFORMATION CONTACT: Leonard W. Nowak, Acting Chief, State Programs Section, Waste Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365; (404) 347–2234.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act ("RCRA" or "the Act"), 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Public Law 98–616, November 8, 1984, hereinafter "HSWA") allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements. Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 124, 260 through 268 and 270.

B. Mississippi

Mississippi initially received final authorization for its base RCRA program effective on June 27, 1984. Mississippi received authorization for revisions to its program on October 17, 1988, October 9, 1990, May 28, 1991, August 27, 1991, July 10, 1992, and July 7, 1993.

On December 7, 1992, Mississippi submitted a program revision application for additional program approvals. Today, Mississippi is seeking approval of its program revisions in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed Mississippi's application and has made an immediate final decision that Mississippi's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to Mississippi. The public may submit written comments on EPA's immediate final decision up until November 19, 1993.

Copies of Mississippi's application for these program revisions is available for inspection and copying at the locations indicated in the "**ADDRESSES**" section of this notice. Approval of Mississippi's program revisions shall become effective December 20, 1993, unless an adverse comment pertaining to the State's revisions discussed in this notice is received by the end of the comment period.

If an adverse comment is received EPA will publish either: (1) A withdrawal of the immediate final decision or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

EPA shall administer any RCRA hazardous waste permits, or portions of permits that contain conditions based upon the Federal program provisions for which the State is applying for authorization and which were issued by EPA prior to the effective date of this authorization. EPA will suspend issuance of any further permits under the provisions for which the State is being authorized on the effective date of this authorization.

Mississippi is today seeking authority to administer the following Federal requirements promulgated on July 1, 1987–June 30, 1990, for HSWA II.

Federal requirement	FR reference	FR promulgation date
California List Waste Restrictions	52 FR 25760 ..	7/8/87
Exception Reporting for Small Quantity Generators of Hazardous Waste	52 FR 41295 ..	10/27/87
HSWA Codification Rule Permit Application Requirements Regarding Corrective Action, Permit Modification, Permit as Shield Provision, Permit Conditions to Protect Human Health and the Environment, Post Closure Permits.	52 FR 35894 ..	9/23/87
Identification & Listing of Hazardous Waste; Technical Correction	52 FR 45788 ..	12/1/87
Land Disposal Restrictions for First Third Scheduled Wastes	53 FR 27162 ..	7/19/88
Land Disposal Restrictions Amendments to First Third Scheduled Wastes	53 FR 31138 ..	8/17/88
Land Disposal Restrictions for Second Third Scheduled Wastes	54 FR 8264	2/27/89
Land Disposal Restrictions; Correction to the First Third Scheduled Wastes	54 FR 18836 ..	5/2/89
Reportable Quantity Adjustment Methyl Bromide Production Wastes	54 FR 26594 ..	6/23/89
Reportable Quantity Adjustment	54 FR 36967 ..	9/6/89
Listing of 1,1-Dimethylhydrazine Production Wastes	55 FR 23935 ..	6/13/90
HSWA Codification Rule, Double Liners; Correction	54 FR 41402 ..	10/6/89
Organic Air Emission Standards for Process Vents & Equipment Leaks	54 FR 50968 ..	12/11/89
	55 FR 18496 ..	5/2/90
	55 FR 19262 ..	5/9/90
	55 FR 25454 ..	6/21/90

Mississippi's application for these program revisions meet all of the statutory and regulatory requirements established by RCRA. Accordingly, Mississippi is granted final authorization to operate its hazardous waste program as revised.

Mississippi now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program, subject to the limitations of its program revision application and previously approved authorities. Mississippi also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013, and 7003 of RCRA.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Mississippi's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended (42 U.S.C. 6912(a), 6926, 6974(b)).

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 93–25761 Filed 10–19–93; 8:45 am]

BILLING CODE 6560-50-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 403

[BPD–483–F]

RIN 0938–AE32

Medicare Program; Demonstration Project To Develop a Uniform Cost Reporting System for Hospitals

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This final rule responds to public comments on the August 25, 1989, interim final rule with comment period that established a demonstration project to develop a uniform cost reporting system for hospitals under the Medicare program. Under that rule, all hospitals in the States of California and Colorado were required to participate in the demonstration project. In addition, since the demonstration project ended on June 29, 1992, this final rule removes the relevant provisions from the Code of Federal Regulations.

EFFECTIVE DATE: This final rule is effective November 19, 1993.

FOR FURTHER INFORMATION CONTACT: David Goldberg (410) 966–4512.

SUPPLEMENTARY INFORMATION:

I. Background

Under Medicare, hospitals are paid for hospital inpatient services they furnish to beneficiaries under Part A (Hospital Insurance). Currently, most hospitals are paid for the operating costs of their hospital inpatient services under the prospective payment system in accordance with section 1886(d) of the Social Security Act (the Act) and 42 CFR part 412. Under this system, Medicare payment is made at a predetermined, specific rate for each hospital discharge based on the information contained on actual bills submitted. Those hospitals and hospital units that are excluded from the prospective payment system generally are paid based on the reasonable cost of services furnished to beneficiaries. The inpatient operating costs of these hospitals and hospital units are subject to the rate-of-increase limits, in accordance with section 1886(b) of the Act and 42 CFR 413.40.

Sections 1815(a) and 1833(e) of the Act provide that no payments will be made to a hospital unless it has furnished the information requested by the Secretary needed to determine the amount of payments due the hospital under the Medicare program. In general, hospitals submit this information through cost reports that cover a 12-month period. Even though most prospective payment hospitals are paid on the basis of actual bills submitted, these hospitals continue to receive payment for certain costs, such as

outpatient costs, on a reasonable cost basis and are required to submit cost reports. Section 1886(f)(1)(A) of the Act provides that the Secretary will maintain a system for reporting costs of hospitals paid under the prospective payment system.

Regulations at § 413.20(a) require that hospitals "maintain sufficient financial records and statistical data for proper determination of costs * * *". In addition, hospitals must use standardized definitions and follow accounting, statistical, and reporting practices that are widely accepted in the hospital and related fields. Under the provisions of §§ 413.20(b) and 413.24(f), hospitals are required to submit cost reports annually, with the reporting period based on the hospital's accounting year (generally a consecutive 12-month period). Section 413.20(d) requires that hospitals furnish to their fiscal intermediary the information necessary to ensure proper payment by Medicare. The hospital must allow the fiscal intermediary to examine the records and documents maintained by the hospital in order to ascertain the validity of the data submitted by the hospital.

II. Legislation Concerning Reporting of Hospital Information

On December 22, 1987, the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203) was enacted. Section 4007 of Public Law 100–203, which was subsequently amended by section 411(b)(6) of Public Law 100–360, sets forth several provisions concerning the reporting of hospital information under the Medicare program. Section 4007(a) of Public Law 100–203 requires the Secretary to develop and put into effect by June 1, 1989, a data base of the operating costs of inpatient hospital services for all hospitals receiving payment under Medicare. Section 4007(b) of Public Law 100–203 provides that, for cost reporting periods beginning on or after October 1, 1989, the Secretary will place into effect a standardized electronic cost reporting format for hospitals under Medicare. This provision now appears as sections 1886(f)(1) (A) and (B) of the Act.

Section 4007(c)(1) of Public Law 100–203 requires the Secretary to provide for a demonstration project (encompassing at least two States) to develop and determine the costs and benefits of establishing a uniform system of cost reporting for hospitals participating in the Medicare program. Section 4007(c)(2) of Public Law 100–203, as amended by section 411(b)(6)(C) of Public Law 100–360, specifies that these hospitals must report the following information to the Secretary:

- Hospital discharges (classified by class of primary payer).
- Patient days (classified by class of primary payer).
- Licensed beds, staffed beds, and occupancy.
- Inpatient charges and revenues (classified by class of primary payer).
- Outpatient charges and revenues (classified by class of primary payer).
- Inpatient and outpatient hospital expenses (by cost center classified for operating and capital).
- Reasonable costs.
- Other income.
- Bad debt and charity care.
- Capital acquisitions.
- Capital assets.

Section 4007(c)(3) of Public Law 100–203 requires the Secretary to develop the system to facilitate the submittal of the information in the report in an electronic form and to be compatible with the needs of the Medicare prospective payment system. Section 4007(c)(5)(A) of Public Law 100–203, as amended by section 411(b)(6)(C)(viii) of Public Law 100–360, authorizes the Secretary to establish a definition of the term "bad debt and charity care" for the purpose of the demonstration project. Section 4007(c)(5)(B) of Public Law 100–203, as amended by section 411(b)(6)(C)(ix) of Public Law 100–360, provides that the term "class", with respect to payers, means at least the Medicare program, State Medicaid programs, other third party payers, and other persons (including self-paying individuals). As amended by section 411(b)(6)(C)(vi) of Public Law 100–360, section 4007(c)(2) of Public Law 100–203 also specifies that the Secretary will develop a definition of "outpatient visit" for purposes of reporting hospital information.

III. Provisions of the August 25, 1989 Interim Final Rule

On August 25, 1989, we published an interim final rule with comment period (54 FR 35329) to implement section 4007(c) of Public Law 100–203.

A. Selection of the States to Participate in the Demonstration

Section 4007(c)(1) of Public Law 100–203 provides that the Secretary must select at least two States in which all of the hospitals must participate in the demonstration. As required by the law, one of the States selected must currently maintain a uniform system of hospital reporting. Because of the relatively short time period we had to implement the demonstration, we decided to limit the demonstration to two States. We selected California and Colorado as the participating States. California was representative of States that maintain a uniform reporting system; Colorado was representative of those that do not. (See the August 25, 1989, interim final rule for a detailed discussion of our rationale for choosing these states (54 FR 35330).)

B. Implementation of the Demonstration

This demonstration was intended to accomplish the following objectives:

- More timely collection of cost report data.
- Collection of more uniform data.
- The reporting and collecting of additional data

The demonstration began with cost reporting periods beginning on or after July 1, 1989. It encompassed two full consecutive cost reporting period cycles. (Cost reporting periods beginning on or after July 1, 1989 and before July 1, 1991). The demonstration project ended on June 29, 1992, and HCFA is continuing to receive and analyze data from the participating hospitals.

Hospitals in the two States participating in this demonstration were required to file annually the current form, Hospital and Hospital Health Care Complex Cost Report (HCFA 2552–89), and additional worksheets developed specifically for the demonstration project. We required one interim report under the demonstration for the first 6-month period during which a hospital participated in the project. The interim reports were used to evaluate the accuracy of the data source hospitals use to collect the additional data and testing the electronic submission process.

The cost report developed for purposes of the demonstration is an expanded version of the current form HCFA 2552–89. Additional worksheets were developed to allow for the collection of additional data elements. For example, the statistics have been expanded to collect patient days and discharges by primary payer such as Maternal and Child Health (title V of the Act), Medicare (title XVIII of the Act), Medicaid (title XIX of the Act), other third party payers, and other persons (including self-paying individuals). Demonstration project cost reports were to be submitted in a standardized electronic format. The hospitals' electronic programs were to be able to produce a standardized output file that can be used in any intermediary's automated system.

In order to develop the specifications for this system, we convened a workgroup comprised of representatives of the health care industry, Medicare

fiscal intermediaries, the States of California, Colorado and California State hospital associations, the Prospective Payment Assessment Commission, and HCFA. The workgroup finalized the specific methodology that was used in the design of the demonstration cost report.

The HCFA intermediaries worked with hospitals to develop the capability to submit the additional data required and to submit the cost reports electronically. If a hospital were to refuse to submit the data or refused to submit the cost reports electronically, Medicare payments to that hospital could be suspended under the provisions of sections 1815(a) and 1833(e) of the Act, under which no Medicare payments will be made to a hospital unless it has furnished the information requested by the Secretary needed to determine the amount of payments due the hospital under the Medicare program. Section 405.371(d) provides for suspension of Medicare payments to a hospital by the intermediary if the hospital has failed to submit information requested by the intermediary that is needed to determine the amount due the hospital under Medicare (that is, when a hospital fails to furnish a cost report or furnishes an incomplete cost report or fails to furnish other needed information). HCFA or the fiscal intermediary suspended payments only after exhausting all reasonable attempts to obtain the requested information.

Since the demonstration project ended on June 29, 1992, we are removing the provisions of the regulations that related to the demonstrations, that is, 42 CFR part 403, subpart D, Demonstration Project to Develop a Uniform Hospital Cost Reporting System (§§ 403.400 through 403.410). We are publishing this final rule to complete the notice and comment rule making process and to provide public documentation of the factors that we considered in the development and implementation of the demonstration project.

IV. Discussion of Public Comments

In response to the interim final rule with comment period, we received seven timely items of correspondence. We have summarized the comments and are presenting them below along with our responses.

A. General

Comment: Two commenters recommended that we use the Glossary of Health Care Terms published by the American Medical Record Association (AMRA) to assist in the development of cost report terminology. Two other commenters requested that we clarify the definitions and instructions that accompany the demonstration project cost report forms and provide specific examples where possible.

Response: We have revised the cost report instructions to provide clearer definitions and have attempted to follow the definitions provided by AMRA where appropriate.

Comment: One commenter suggested that we provide the intermediaries with training to ensure uniformity and to avoid unnecessary sanctions or penalties upon providers.

Response: We provided training classes for intermediary staff and included hospital association staff as well. The training focused on the analysis of hospital cost reports and the preparation of validation reports used to verify cost report calculations.

B. Payment of Costs Related to the Demonstration Project

Comment: Several commenters requested that the regulations clarify the payment process for incremental costs associated with the demonstration and inquired about the use of the term "pass through" in reference to these same costs. The commenters assumed that "pass through" implied that hospitals would be paid only for the Medicare share of incremental costs and that the incremental costs did not include indirect costs. In particular, they were concerned about the statement in the impact analysis of the interim final rule (54 FR 35332) that HCFA does not guarantee all of the incremental costs incurred would be paid for the collection, reporting, and electronic submission of the additional data.

Response: We used the term "pass through" to indicate that these costs would not be required to be included in the administrative and general cost center on the provider's annual cost report. Medicare paid the provider for the substantiated costs of collecting, reporting, and electronically submitting the additional data required under the demonstration project. The provider had to show an increase in operational costs as a direct result of participation in the demonstration by compering the normal cost of submitting a cost report to the cost of submitting a cost report under the demonstration project. For example, a hospital had to show an increase in the amount of fees paid to an accounting firm for processing the additional data required by the demonstration. Due to the various types of recordkeeping systems hospitals use, we cannot provide an all-inclusive list of costs for which hospitals could receive payment. The following are general categories of incremental costs that could qualify for additional payment:

- *Software Costs*—Medicare paid for a specific charge by a vendor to process electronically the additional worksheets required for the demonstration cost report.
- *Staffing Costs*—These costs qualify for payment if additional wage costs incurred for training and recordkeeping were incurred beyond the normal wages paid the employee. For example, payment would be made if an employee was required to work additional hours over and above his/her work schedule.
- *Outside Consultation*—Medicare paid for the costs of consultative services related to the reporting, collecting and/or electronic submission of demonstration project data.
- *Overhead Costs*—Overhead costs generally are not allocated to incremental costs. Overhead costs will be paid as an incremental cost only if these costs can be specifically identified.

We did not guarantee that all incremental costs incurred will be reimbursed in full. In cases where the provider does not have the accounting ability to specifically identify overhead costs such as utilities, housekeeping, plant and maintenance, the provider must allocate these costs to other cost centers through the cost report process.

The cost of electronically submitting the annual Medicare cost report is not considered an incremental cost for purposes of this demonstration. Thus, we did not pay hospitals for the cost of electronically submitting their annual Medicare cost report. Under section 4007(b) of Public Law 100–203, almost all hospitals are required to submit cost reports electronically effective with cost reporting periods beginning on or after October 1, 1989. We believe it would have been inappropriate to make specific payments for these costs to hospitals in the demonstration when all other hospitals will not be similarly compensated, and when all hospitals participating in the Medicare program are required to submit their cost reports electronically regardless of whether they took part in this demonstration.

C. Electronic Submission and Data Collection

Comment: Two commenters expressed concern that the data collection specified in the demonstration regulations and instructions exceed the requirements in the statute. Specifically, the commenters stated that the reporting of self-pay revenue and cost by cost center is not

required and that aggregate revenue and cost by payer class is all that is required.

Response: We do not believe that we were limited to collecting only the data specified in section 4007(c)(2) of Public Law 100–203. However, we tried to minimize the collection of additional data in an effort to reduce the burden to hospitals. In order to determine some of the data elements specified in the legislation, it became necessary to expand the data collection elements. For example, worksheet S–3–D requests the total number of beds. This information was not requested in the statute; however, as indicated in the demonstration cost report instructions, this number should agree with the Medicare cost report. Bed days available, also not requested in the statute but required for the demonstration, is simply the multiplication of the number of beds times 365 days.

Worksheet C–1–D requires charge data by payer class for each revenue center. The Title V (Maternal and Child Health) payer class was not requested in the statute; however, for cost reporting purposes it was necessary to retain Title V as a separate payer class. The requirement of reporting the charges by cost or revenue center, including self-pay revenue, was not specifically stated in the statute, however, section 4007(c)(2)(G) of Public Law 100–203 specifically requests inpatient and outpatient cost by cost center. The costs by cost center could not be determined without the charges by cost center. Worksheet G–2–D reports net revenues as well as adjustments to revenue. The statute does not require that all adjustments be reported; however, in order to determine the actual revenue received by the hospitals, it was necessary to have available all adjustments made by the hospitals.

Comment: One commenter indicated that the statute does not require interim reporting. The commenter believes the interim report will not serve any useful purpose.

Response: We believe the interim report to be a vital part of this demonstration project. The purpose of the demonstration is to determine the costs and benefits of collecting specified data. The interim report served as a valuable tool in reviewing the hospitals' ability to collect the data and to identify the changes made by the hospitals and the associated cost to provide the data. It also assisted the intermediary in working with the provider to identify and rectify the reporting problems. Since annual data must be reported to Congress, the interim data provided early insight to HCFA and a means to validate the annual data.

Comment: Two commenters indicated that the statute required the demonstration project to "facilitate" electronic submission and not to require "implementation" of electronic reporting. In addition, the requirement for submission of the hard copy of the cost report as well as the electronic submission places an unnecessary burden on the providers participating in the demonstration.

Response: Section 1886(f)(1)(B) of the Act authorizes the Secretary to require electronic data submission. This section requires electronic submission of cost reports for all hospitals participating in the Medicare program for cost reporting periods beginning on or after October 1, 1989. In addition, section 4007(c)(3) of Public Law 100–203 authorizes the Secretary to facilitate the development of electronic reporting for purposes of the demonstration.

While the Secretary was not specifically mandated to implement electronic submission for the demonstration, the approach least disruptive to hospitals participating in the demonstration was to require electronic submission for both the Form HCFA–2552–89 and the Form HCFA 2552–DEMO. It would not have been efficient for hospitals in the demonstration States to operate for two years under both electronic as well as manual cost report submission. Additionally, the Conference Report that accompanied Public Law 100–203 (H.R. Rep. No. 495, 100th Cong., 1st sess. 539 (1987)) indicates that the conferees expected the Secretary to proceed expeditiously to analyze the data processing systems under his control in order to expedite the flow of data from hospitals to intermediaries to the Department and Congress. Requiring electronic submission for the demonstration provided the best mechanism for timely analysis and the preferred source for reporting to Congress.

The submission of a hard copy cost report with the electronic cost report was intended to assist in the resolution of any problems that may occur in the electronic cost report calculations and submissions. HCFA plans to eliminate the accompanying hard copy submissions in the future when such problems have been resolved.

V. Information Collection Requirements

This final rule does not impose information collection requirements; consequently it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

VI. Regulatory Impact Analysis

A. Executive Order 12291

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any final rule that meets one of the E.O. criteria for a "major rule"; that is, that will be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumer, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This final rule is not a major rule under E.O. 12291 criteria, and a regulatory impact analysis is not required.

B. Regulatory Flexibility Act

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a final rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all hospitals are treated as small entities.

Section 1102(b) of the Social Security Act requires the Secretary to prepare a regulatory impact analysis if a notice may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 100 beds located outside of a Metropolitan Statistical Area (MSA).

As discussed in detail above, section 4007(c)(1) of Public Law 100–203, as amended by section 411(b)(6)(C) of Public Law 100–360, requires that we undertake a demonstration project to develop and assess the costs and benefits of establishing a uniform system of cost reporting for hospitals participating in the Medicare program. All hospitals in the States of California and Colorado were required to participate in this demonstration project. These hospitals were required to submit their cost reports for cost reporting periods beginning on or after July 1, 1989, and before July 1, 1991, in a uniform, electronic format. We

estimate that the demonstration project affected approximately 634 hospitals: 542 in California and 92 in Colorado (Hospital Statistics, 1987 Edition).

As discussed in the impact analysis of the interim final rule, we planned to make specific payments to hospitals for the incremental costs that were reasonable in amount and could be directly identified as having been incurred solely because of the demonstration project, that is, costs incurred for the collection, reporting, and electronic submission of the additional data. These payments were to represent the cost of collecting the additional data, and the electronic submission of the additional data only. At that time, we were unable to estimate the costs that would be incurred by each hospital participating in this demonstration. As we stated, we plan to ascertain, to the extent possible, the incremental costs that hospitals incurred during the course of this project.

As of September 1, 1992, we have received cost reports from approximately 60 percent of the hospitals that participated in this project. Very few of these hospitals reported any incremental costs associated with the demonstration project, and those costs that were reported were minimal. Also, we note that no commenters on the August 25, 1989, interim final rule indicated that the demonstration project costs would have a significant economic impact. Therefore, we believe that the demonstration project did not have a significant economic impact on a substantial number of hospitals. Moreover, this final rule, in itself, has no impact for purposes of the RFA or section 1102 of the Act because it merely responds to public comments and removes the relevant provisions from the Code of Federal Regulations.

List of Subjects in 42 CFR Part 403

Health insurance, Hospitals, Intergovernmental regulations, Medicare, Reporting and recordkeeping requirements.

42 CFR part 403 is amended under authority of section 1102 of the Social Security Act (42 U.S.C. 1302) to remove and reserve subpart D, consisting of §§ 403.400 through 403.410.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: June 2, 1993.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: July 8, 1993.

Donna E. Shalala,

Secretary.

[FR Doc. 93-25068 Filed 10-19-93; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7005

[NV-930-4210-06; N-57782]

Emergency Withdrawal of Public Mineral Estate Within the Desert National Wildlife Refuge; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 769,543 acres of public mineral estate from location and entry under the mining laws to protect the Desert National Wildlife Refuge for 1 year until the Environmental Impact Statement for the Fish and Wildlife Service's pending withdrawal application N-54955 can be completed.

EFFECTIVE DATE: October 13, 1993.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, BLM Nevada State Office, P.O. Box 12000, Reno, Nevada 89520, 702-785-6526.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), and in accordance with subsection 204(e) of the Act, it is hereby ordered as follows:

1. Subject to valid existing rights, the public mineral estate in the following described lands, under the jurisdiction of the Secretary of the Interior, is hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. ch. 2 (1988)), for the protection of the Desert National Wildlife Refuge:

Mount Diablo Meridian

T. 15 S., R. 54 E., unsurveyed,
  Secs. 1 to 3, inclusive, excluding area covered by Executive Order No. 8578;
  Secs. 4, E½, excluding area covered by Executive Order 8578;
  Sec. 9, E½;
  Secs. 10 to 15, inclusive;
  Sec. 16, E½;
  Sec. 21, E½;
  Secs. 22 to 27, inclusive;
  Sec. 28, E½;
  Sec. 33, E½;
  Secs. 34 to 36, inclusive.
T. 15 S., R. 55 E., unsurveyed.
T. 16 S., R. 57 E., partially surveyed.
  Sec. 7, NW¼ and S½.
T. 16 S., R. 58 E., unsurveyed,
  Secs. 11 to 14, inclusive;
  Secs. 23 to 26, inclusive;
  Secs. 35 and 36.
T. 15 S., R. 59 E., unsurveyed,
  Secs. 2 to 11, inclusive;
  Secs. 14 to 23, inclusive;
  Secs. 26 to 35, inclusive.
T. 16 S., R. 59 E., unsurveyed,
  Secs. 2 to 11, inclusive;
  Secs. 14 to 23, inclusive;
  Secs. 26 to 35, inclusive;
T. 17 S., R. 59 E.,
  Secs. 1 to 5, inclusive;
  Sec. 7, lots 3 and 4, NE¼, and S½;
  Secs. 8 to 18, inclusive;
  Secs. 21 to 28, inclusive;
  Sec. 27, N½;
  Secs. 28 and 33;
  Sec. 34, S½S½ and NE¼SE¼;
  Secs. 35 and 36.
Tps. 9, 10, 11, 12, 12½, 13, 14, 15, and 16 S., R. 60 E., unsurveyed.
T. 17 S., R. 60 E.
T. 18 S., R. 60 E.,
  Secs. 1 to 18, inclusive;
  Secs. 22 to 24, inclusive;
  Sec. 25, N½;
  Sec. 26, N½;
  Sec. 27, N½.
Tps. 9, 10, 11, 12, 12½, 13, 14, 15, and 16 S., R. 61 E., unsurveyed.
Tps. 17 and 18 S., R. 61 E.
T. 9 S., R. 62 E.,
  Sec. 4, S½S½;
  Sec. 5, NW¼SW¼ and S½S½;
  Sec. 6, lots 2 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
  Secs. 7, 8 and 9;
  Sec. 10, W½E½ and W½;
  Sec. 15, W½E½ and W½;
  Secs. 16 to 21, inclusive;
  Sec. 22, W½E½ and W½;
  Sec. 27, W½E½ and W½;
  Secs. 28 to 33, inclusive;
  Sec. 34, lots 1 to 3, inclusive, W½NE¼, NW¼, N½SW¼, and NW¼SE¼.
T. 10 S., R. 62 E.,
  Secs. 3 to 10, inclusive;
  Sec. 14, SE¼NW¼, W½W½, and E½SW¼;
  Secs. 15 to 22, inclusive;
  Sec. 23, W½ and W½SE¼;
  Secs. 26 to 35, inclusive;
  Sec. 36, W½W½.
T. 11 S., R. 62 E., partially surveyed,
  Sec. 1, W½W½;
  Secs. 2 to 12, inclusive;
  Sec. 13, E½, NE¼NW¼, W½W½, and E½SW¼;
  Secs. 14 to 36, inclusive.
T. 12 S., R. 62 E., partially surveyed.
Tps. 12½, 13, 14, 15, and 16 S., R. 62 E., unsurveyed.
Tps. 17 and 18 S., R. 62 E.

The lands described aggregate 769,543 acres in Clark and Lincoln Counties, Nevada.

2. This emergency withdrawal shall remain in effect for a period of 1 year from the effective date listed above unless extended under the provisions of

subsections (c)(1) or (d), whichever is applicable, and (b)(1) of Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(e) (1988).

Dated: October 13, 1993.

Bruce Babbitt,

Secretary of the Interior.

[FR Doc. 93-25701 Filed 10-19-93; 8:45 am]

BILLING CODE 4310-MC-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1828 and 1852

RIN 2700-AB12

Interim Changes to NASA FAR Supplement Cross-Waiver of Liability Clauses in NASA Contracts

AGENCY: Office of Procurement, Procurement Policy Division, National Aeronautics and Space Administration (NASA).

ACTION: Interim rule.

SUMMARY: NASA has revised the NASA FAR Supplement to provide for revised cross-waivers of liability for Space Shuttle services and space station activities and to provide for a new cross-waiver of liability for Expendable Launch Vehicle (ELV) launches. These clause changes are made to be consistent with the final rule which NASA published in September 1991. That final rule established cross-waivers of liability as the regulatory basis for cross-waiver provisions to be included in NASA Space Shuttle launch services agreements and agreements for NASA ELV program launches planned to occur after July 1, 1994. NASA has been including these cross-waivers in its launch services agreements with U.S. and foreign parties. To be made fully effective for launches planned to occur subsequent to this date, the cross-waivers need to be incorporated into contracts for flow down from the contractors to their subcontractors. In addition, the final rule also republished the cross-waiver provision for space station activities. The new cross-waiver provisions for Space Shuttle and ELV program launches were consistent with the cross-waiver that has been in effect for space station activities. Currently, there are two NASA FAR Supplement cross-waiver clauses: "Interparty Waiver of Liability During STS Operations"; and "Cross-Waiver of Liability for Space Station Activities." With the publication of the final rule, the former clause required revision to correspond with the new provisions in the final rule, and a new NASA FAR Supplement clause is necessary to flow down the cross-waiver to NASA contractors involved in ELV program launches. Only minor changes need to be made to the latter clause, since it already contains language corresponding with the provision in the final rule.

DATES: This interim rule is effective October 20, 1993. Comments are due no later than November 19, 1993.

ADDRESSES: Comments should be addressed to Ms. Deborah O'Neill, NASA Headquarters, Office of Procurement, Procurement Policy Division (Code HP), Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah O'Neill, Telephone: (202) 358-0428.

SUPPLEMENTARY INFORMATION:

Background

By incorporating similar cross-waivers of liability in its agreements for Space Shuttle launch services, ELV program launches, and Space Station activities, NASA and the other parties agree not to bring claims against each other for any damage to property or for injury or death of employees that occurs during the time a cross-waiver is in effect. The agreements also require the parties to flow down these cross-waivers to their related entities ensuring that a party, its contractors, and subcontractors, waive their right to sue the other party, its contractors, and subcontractors, for damages sustained in connection with activities conducted under the agreements.

Availability of NASA FAR Supplement

The NASA FAR Supplement, of which this proposed coverage will become a part, is codified in 48 CFR, chapter 18, and is available in its entirety on a subscription basis from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. Cite GPO Subscription Stock Number 933-003-00000-1. It is not distributed to the public, whether in whole or in part, directly by NASA.

Regulatory Flexibility Act

NASA certifies that this interim rule will not have significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601, et seq.).

Paperwork Reduction Act

This interim rule does not impose any reporting or recordkeeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 48 CFR Parts 1828 and 1852

Government procurement.

Tom S. Luedtke,

Acting Deputy Associate Administrator for Procurement.

1. The authority citation for 48 CFR parts 1828 and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1828—BONDS AND INSURANCE

2. Part 1828 is amended as set forth below:

a. Section 1828.371 is revised to read as follows:

1828.371 Clauses for cross-waivers of liability for Space Shuttle services, Expendable Launch Vehicle (ELV) launches, and Space Station activities.

(a) In agreements covering Space Shuttle services, certain ELV launches, Space Station activities, NASA and other signatories (the Parties) agree not to bring claims against each other for any damage to property or for injury or death of employees that occurs during the time such a cross-waiver is in effect. These agreements involving NASA and other Parties include, but are not limited to, Memoranda of Understanding with foreign governments, Launch Services Agreements, and other agreements for the use of NASA facilities. These agreements require the Parties to flow down the cross-waiver provisions to their related entities so that contractors, subcontractors, customers, and other users of each Party also waive their right to bring claims against other Parties and their similarly related entities for damages arising out of activities conducted under the agreements. The purpose of the clauses prescribed in this section is to flow down the cross-waivers to NASA contractors and subcontractors.

(b) The contracting officer shall insert the clause 1852.228-72, Cross-Waiver of Liability for Space Shuttle Services, in solicitations and contracts of $100,000 or more when the work to be performed involves "Protected Space Operations" (applicable to the Space Shuttle) as that term is defined in the clause. If Space Shuttle services under the contract are being conducted in support of the Space Station program, the contracting officer shall insert the clause prescribed by paragraph (d) of this section and designate application of that clause to those particular activities.

(c) The contracting officer shall insert the clause at 1852.228-78, Cross-Waiver of Liability for NASA Expendable

Launch Vehicle (ELV) Launches, in solicitations and contracts of $100,000 or more for the acquisition of ELV launch services when the service is being acquired by NASA pursuant to an agreement described in paragraph (a) of this section. If, under a contract that covers multiple launches, only some of the launches are for payloads provided pursuant to agreements, an additional clause shall be inserted in the contract to designate the particular launches to which this clause applies. If a payload is being launched by use of an ELV in support of the Space Station program, the contracting officer shall insert the clause prescribed by paragraph (d) of this section and designate application of that particular launch.

(d) The contracting officer shall insert the clause at 1852.228–76, Cross-Waiver of Liability for Space Station Activities, in solicitations and contracts of $100,000 or more when the work to be performed involves "Protected Space Operations" (relating to the Space Station) as that term is defined in the clause.

(e) At the contracting officer's discretion, the clauses prescribed by paragraphs (b), (c), and (d) of this section may be used in solicitations, contracts, new work modifications, or extension, to existing contracts under $100,000 involving Space Shuttle activities, ELV launch services, or Space Station activities, respectively, in appropriate circumstances. Examples of such circumstances are when the value of contractor property on a Government installation used in performance of the contract is significant, or when it is likely that the contractor or subcontractor will have its valuable property exposed to risk or damage caused by other participants in the Space Shuttle services, ELV launches, or Space Station activities.

1828.373 [Removed]

b. Section 1828.373 is removed.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Part 1852 is amended as set forth below:

a. Section 1852.228–72 is revised to read as follows:

1852.228–72 Cross-Waiver of Liability for Space Shuttle Services.

As prescribed in 1828.371 (b) and (e), insert the following clause:

Cross-Waiver of Liability for Space Shuttle Services (Sep 1993)

(a) As prescribed by regulation (14 CFR part 1266), NASA agreements involving Space Shuttle flights are required to contain broad cross-waivers of liability among the parties and the parties related entities to encourage participation in space exploration, use, and investment. The purpose of this clause is to extend this cross-waiver requirement to contractors and related entities under their contracts. This cross-waiver of liability shall be broadly construed to achieve the objective of encouraging participation in space activities.

(b) As used in this clause the terms: (1) "Contractors" and "Subcontractors" include suppliers of any kind.

(2) "Damage" means: (i) Bodily injury to, or other impairment of health of, or death of, any person;

(ii) Damage to, loss of, or loss of use of any property;

(iii) Loss of revenue or profits; or

(iv) Other direct, indirect, or consequential damage;

(3) "Party" means a person or entity that signs an agreement involving a Space Shuttle service;

(4) "Payload" means all property to be flown or used on or in the Space Shuttle; and

(5) "Protected Space Operations" means all Space Shuttle and payload activities on Earth, in outer space, or in transit between Earth and outer space performed in furtherance of an agreement involving Space Shuttle services or performed under this contract. "Protected Space Operations" excludes activities on Earth which are conducted on return from space to develop further a payload's product or process except when such development is for Space Shuttle-related activities necessary to implement an agreement involving Space Shuttle services or to perform this contract. It includes, but is not limited to:

(i) Research, design, development, test, manufacture, assembly, integration, operation, or use of the Space Shuttle, transfer vehicles, payloads, related support equipment, and facilities and services;

(ii) All activities related to ground support, test, training, simulation, or guidance and control equipment and related facilities or services.

(6) "Related entity" means: (i) A party's contractors or subcontractors at any tier;

(ii) A party's users or customers at any tier; or

(iii) A contractor or subcontractor of a party's user or customer at any tier.

(c)(1) The Contractor agrees to a waiver of liability pursuant to which the Contractor waives all claims against any of the entities or persons listed in paragraphs (c)(1)(i) through (c)(1)(iii) of this clause based on damage arising out of Protected Space Operations. This waiver shall apply only if the person, entity, or property causing the damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations. This waiver shall apply to any claims for damage, whatever the legal basis for such claims, including but not limited to delict (a term used in civil law countries to denote a class of cases similar to tort) and tort (including negligence of every degree and kind) and contract, against:

(i) Any party other than the Government;

(ii) A related entity of any party other than the Government; and

(iii) The employees of any of the entities identified in paragraphs (c)(1)(i) and (c)(1)(ii) of this clause.

(2) The Contractor agrees to extend the waiver of liability as set forth in paragraph (c)(1) of this clause to subcontractors at any tier by requiring them, by contract or otherwise, to agree to waive all claims against the entities or persons identified in paragraphs (c)(1)(i) through (c)(1)(iii) of this clause.

(3) For avoidance of doubt, this cross-waiver includes a cross-waiver of liability arising from the Convention on International Liability for Damage Caused by Space Objects, (March 29, 1972, 24 United States Treaties and other International Agreements (U.S.T.) 2389, Treaties and Other International Acts Series (T.I.A.S.) No. 7762 in which the person, entity, or property causing the damage is involved in Protected Space Operations, and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations.

(4) Notwithstanding the other provisions of this clause, this waiver of liability shall not be applicable to:

(i) Claims between any party and its related entities or claims between the Government's related entities (e.g., claims between the Government and the Contractor are included within this exception);

(ii) Claims made by a natural person, his/her estate, survivors, or subrogees for injury or death of such natural person;

(iii) Claims for damage caused by willful misconduct; and

(iv) Intellectual property claims.

(5) Nothing in this clause shall be construed to create the basis for a claim or suit where none would otherwise exist.

(End of clause)

b. Section 1852.228–78 is added to read as follows:

1852.228–78 Cross-Waiver of Liability for NASA Expendable Launch Vehicle Launches.

As prescribed in 1828.371 (c) and (e), insert the following clause:

Cross-Waiver of Liability for NASA Expendable Launch Vehicle (ELV) Launches (Sep 1993)

(a) As prescribed by regulation (14 CFR part 1266), NASA agreements involving ELV launches are required to contain broad cross-waivers of liability among the parties and the parties related entities to encourage participation in space exploration, use, and investment. The purpose of this clause is to extend this cross-waiver requirement to contractors and subcontractors as related entities of NASA. This cross-waiver of liability shall be broadly construed to achieve the objective of encouraging participation in space activities.

(b) As used in this clause, the term: (1) "Contractors" and "Subcontractors" include suppliers of any kind;

(2) "Damage" means: (i) Bodily injury to, or other impairment of health of, or death of, any person;

(ii) Damage to, loss of, or loss of use of any property;

(iii) Loss of revenue or profits; or

(iv) Other direct, indirect, or consequential damage;

(3) "Party" means a person or entity that signs an agreement involving an ELV launch;

(4) "Payload" means all property to be flown or used on or in the ELV; and

(5) "Protected Space Operations" means all ELV and payload activities on Earth, in outer space, or in transit between Earth and outer space performed in furtherance of an agreement involving an ELV launch or performed under the contract. "Protected Space Operations" excludes activities on Earth which are conducted on return from space to develop further a payload's product or process except when such development is for ELV-related activities necessary to implement an agreement involving an ELV launch or to perform this contract. It includes, but is not limited to:

(i) Research, design, development, test, manufacture, assembly, integration, operation, or use of ELVs, transfer vehicles, payloads, related support equipment, and facilities and services;

(ii) All activities related to ground support, test, training, simulation, or guidance and control equipment and related facilities or services.

(6) "Related entity" means: (i) A party's contractors or subcontractors at any tier;

(ii) A party's users or customers at any tier; or

(iii) A contractor or subcontractor of a party's user or customer at any tier.

(c)(1) The Contractor agrees to a waiver of liability pursuant to which the Contractor waives all claims against any of the entities or persons listed in paragraphs (c)(1)(i) through (c)(1)(iii) of this clause based on damage arising out of Protected Space Operations. This waiver shall apply only if the person, entity, or property causing the damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations. The waiver shall apply to any claims for damage, whatever the legal basis for such claims, including but not limited to delict (a term used in civil law countries to denote a class of cases similar to tort) and tort (including negligence of every degree and kind) and contract, against:

(i) Any party other than the Government;

(ii) A related entity of any party other than the Government; and

(iii) The employees of any of the entities identified in paragraphs (c)(1) (i) and (ii) of this clause.

(2) The Contractor agrees to extend the waiver of liability as set forth in paragraph (c)(1) of this clause to subcontractors at any tier by requiring them, by contract or otherwise, to agree to waive all claims against the entities or persons identified in paragraphs (c)(1)(i) through (c)(1)(iii) of this clause.

(3) For avoidance of doubt, this cross-waiver includes a cross-waiver of liability arising from the Convention on International Liability for Damage Caused by Space Objects, (March 29, 1972, 24 United States Treaties and other International Agreements (U.S.T) 2389, Treaties and other International Acts Series (T.I.A.S.) No. 7762) in which the person, entity, or property causing the damage is involved in Protected Space Operations.

(4) Notwithstanding the other provisions of this clause, this cross-waiver of liability shall not be applicable to:

(i) Claims between any party and its related entities or claims between any party's related entities (e.g., claims between the Government and the Contractor are included within this exception);

(ii) Claims made by a natural person, his/her estate, survivors, or subrogees for injury or death of such natural person;

(iii) Claims for damage caused by willful misconduct; and

(iv) Intellectual property claims.

(5) Nothing in this clause shall be construed to create the basis for a claim or suit where none would otherwise exist.

(6) This cross-waiver shall not be applicable when the Commerical Space Launch Act cross-waiver (49 U.S.C. App. 2615) is applicable.

(End of clause)

c. Section 1852.228–76 is revised to read as follows:

1852.228–76 Cross-Waiver of Liability for Space Station Activities.

As prescribed in 1828.371 (d) and (e), insert the following clause:

Cross-Waiver of Liability for Space Station Activities (Sep 1993)

(a) The Intergovernmental Agreement for the Space Station contains a broad cross-waiver provision to encourage participation in the exploration and use of outer space through the Space Station. The purpose of this clause is to extend this cross-waiver requirement to contractors and subcontractors as related entities of NASA. This cross-waiver of liability shall be broadly construed to achieve this objective of encouraging participation in space activities.

(b) As used in this clause, the term: (1) "Damage" means:

(i) Bodily injury to, or other impairment of health of, or death of, any person;

(ii) Damage to, loss of, or loss of use of any property;

(iii) Loss of revenue or profits; or

(iv) Other direct, indirect, or consequential damage.

(2) "Launch Vehicle" means an object (or any part thereof) intended for launch, launched from Earth, or returning to Earth which carries payloads or persons, or both.

(3) "Partner State" means each contracting party for which the "Agreement among the Government of the United States of America, Governments of Member States of the European Space Agency, Government of Japan, and the Government of Canada on Cooperation in the Detailed Design, Development, Operation, and Utilization of the Permanently Manned Civil Space Station" (the "Intergovernmental Agreement") has entered into force, in accordance with Article 25 of the Intergovernmental Agreement. It includes the Cooperating Agency of a Partner State. The National Aeronautics and Space Administration (NASA) for the United States, the Canadian Space Agency (CSA) for the Government of Canada, the European Space Agency and the Science and Technology Agency of Japan (STA) are the Cooperating Agencies responsible for implementing Space Station cooperation. A Partner State also includes any entity specified in the Memorandum of Understanding (MOU) between NASA and the Government of Japan to assist the Government of Japan Cooperating Agency in the implementation of that MOU.

(4) "Payload" means all property to be flown or used on or in a launch vehicle or the Space Station.

(5) "Protected Space Operations" means all launch vehicle activities, space station activities, and payload activities on Earth, in outer space, or in transit between Earth and outer space performed in furtherance of the Intergovernmental Agreement or performed under this contract. "Protected Space Operations" also includes all activities related to evolution of the Space Station as provided for in Article 14 of the Intergovernmental Agreement. "Protected Space Operations" excludes activities on Earth which are conducted on return from the Space Station to develop further a payload's product or process except when such development is for Space Station-related activities in implementation of the Intergovernmental Agreement or in performance of this contract. It includes, but is not limited to:

(i) Research, design, development, test, manufacture, assembly, integration, operation, or use of launch or transfer vehicles, payloads, related support equipment, and facilities and services;

(ii) All activities related to ground support, test, training, simulation, or guidance and control equipment and related facilities or services.

(6) "Related entity" means: (i) A Partner State's contractors or subcontractors at any tier;

(ii) A Partner State's users or customers at any tier; or

(iii) A contractor or subcontractor of a Partner State's user or customer at any tier.

(7) "Contractors" and "Subcontractors" include suppliers of any kind.

(c)(1) The Contractor agrees to a cross-waiver of liability pursuant to which the Contractor waives all claims against any of the entities or persons listed in paragraphs (c)(1)(i) through (c)(1)(iii) of this clause based on damage arising out of Protected Space Operations. This waiver shall apply only if the person, entity, or property causing the damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations. The cross-waiver shall apply to any claims for damage, whatever the legal basis for such claims, including but not limited to delict (a term used in civil law countries to denote a class of cases similar to tort) and tort (including negligence of every degree and kind) and contract against:

(i) Any Partner State other than the United States;

(ii) A related entity of any Partner State other than the United States; and

(iii) The employees of any of the entities identified in paragraphs (c)(1) (i) and (ii) of this clause.

(2) The Contractor agrees to extend the waiver of liability as set forth in paragraph (c)(1) of this clause to subcontractors at any tier by requiring them, by contract or otherwise, to agree to waive all claims against the entities or persons identified in paragraphs (c)(1)(i) through (c)(1)(iii) of this clause.

(3) For avoidance of doubt, this cross-waiver includes a cross-waiver of liability arising from the Convention on International Liability for Damage Caused by Space Objects. (March 29, 1972, 24 United States Treaties and other International Agreements (U.S.T.) 2389, Treaties and other International Acts Series (T.I.A.S.) No. 7762) in which the person, entity, or property causing the damage is involved in Protected Space Operations.

(4) Notwithstanding the other provisions of this clause, this cross-waiver of liability shall not be applicable to:

(i) Claims between the United States and its related entities or claims between the related entities of any Partner State (e.g., claims between the Government and the Contractor are included within this exception);

(ii) Claims made by a natural person, his/her estate, survivors, or subrogees for injury or death of such natural person;

(iii) Claims for damage caused by willful misconduct; and

(iv) Intellectual property claims.

(5) Nothing in this clause shall be construed to create the basis for a claim or suit where none would otherwise exist.

(End of clause)

[FR Doc. 93–25646 Filed 10–19–93; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB73

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for the Giant Garter Snake

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines the giant garter snake (*Thamnophis gigas*) to be a threatened species pursuant to the Endangered Species Act of 1973, as amended (Act). This snake inhabits localized wetland habitats in portions of the Central Valley of California. The species is threatened by habitat loss and threats from urbanization, flooding, contaminants, agricultural and maintenance activities, and introduced predators. This rule extends the Act's protective provisions to the giant garter snake throughout its range.

EFFECTIVE DATE: November 19, 1993.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at U.S. Fish and Wildlife Service, Sacramento Field Office, 2800 Cottage Way, room E–1803, Sacramento, California 95825–1846 (telephone 916/978–4866).

FOR FURTHER INFORMATION CONTACT: Peter C. Sorensen (see **ADDRESSES** section) at 916/978–4866.

SUPPLEMENTARY INFORMATION:

Background

The giant garter snake (*Thamnophis gigas*) is one of the largest garter snakes, reaching a total length of at least 162 centimeters (cm) (64 inches (in)) (George H. Hanley, pers. comm. to Mark Jennings, USFWS, pers. comm., 1993). Females are slightly longer and proportionately heavier (typically 500–700 grams (g)) (1.0–1.4 pounds (lb)) than males (George E. Hansen, biological consultant, pers. comm., 1991). Dorsal background coloration varies from brownish to olive with a checkered pattern of black spots, separated by a yellow dorsal stripe and two light colored lateral stripes. Background coloration and prominence of black checkered pattern and the three yellow stripes are geographically and individually variable (Hansen 1980). Individuals in the northern Sacramento Valley tend to be darker with more pronounced mid-dorsal and lateral stripes (California Department of Fish and Game (CDFG) 1992). The ventral surface is cream to olive or brown and sometimes infused with orange, especially in northern populations (CDFG 1992). First described by Fitch (1940) as a subspecies of the northwestern garter snake (*Thamnophis ordinoides*), the taxonomic status of the giant garter snake, along with that of other western garter snakes, has undergone several revisions, including its placement as a subspecies of the western terrestrial garter snake (*Thamnophis elegans*) (Johnson 1947, Fox 1951), and then the western aquatic garter snake (*Thamnophis couchii*) (Fox and Dessauer 1965, Lawson and Dessauer 1979). In 1987, it was accorded the status of a full species, *Thamnophis gigas* (Rossman and Stewart 1987).

Endemic to valley floor wetlands in the Sacramento and San Joaquin Valleys of California, the giant garter snake inhabits marshes, sloughs, ponds, small lakes, low gradient streams, and other waterways and agricultural wetlands, such as irrigation and drainage canals and rice fields. Giant garter snakes feed on small fishes, tadpoles, and frogs (Fitch 1941, Hansen 1980, Hansen 1988). Habitat requisites consist of (1) adequate water during the snake's active season (early-spring through mid-fall) to provide food and cover, (2) emergent, herbaceous wetland vegetation, such as cattails and bulrushes, for escape cover and foraging habitat during the active season, (3) grassy banks and openings in waterside vegetation for basking, and (4) higher elevation uplands for cover and refuge from flood waters during the snake's dormant season in the winter (Hansen 1988). Giant garter snakes are absent from larger rivers and other water bodies that support introduced populations of large, predatory fish, and from wetlands with sand, gravel, or rock substrates (Hansen 1980, Rossman and Stewart 1987, Brode 1988, Hansen 1988). Riparian woodlands do not provide suitable habitat because of excessive shade, lack of basking sites, and absence of prey populations (Hansen 1980).

The giant garter snake inhabits small mammal burrows and other soil crevices above prevailing flood elevations throughout its winter dormancy period (November to mid-March) (G. Hansen, pers. comm., 1991). Giant garter snakes typically select burrows with sunny aspects along south and west facing slopes (G. Hansen, pers. comm.). Upon emergence, males immediately begin wandering in search of mates (G. Hansen, pers. comm.). The breeding season extends through March and April, and females give birth to live young from late July through early September (Hansen and Hansen 1990). Brood size is variable, ranging from 10 to 46 young, with a mean of 23.1 (n=19) (Hansen and Hansen 1990). At birth, young average about 20.6 cm (8.1 in) snout-vent length and 3–5 g (0.1–0.18 ounces (oz)) (Hansen and Hansen 1990, G. Hansen, pers. comm. 1991). Young immediately scatter into dense cover and absorb their yolk sacs, after which they begin feeding on their own. Although growth rates are variable, young typically more than double in size by one year of age (G. Hansen, pers. comm. 1991). Sexual maturity averages 3 years of age in males and 5 years for females (G. Hansen, pers. comm. 1991).

Fitch (1940) described the historical range of the species as extending from the vicinity of Sacramento and Contra Costa Counties southward to Buena Vista Lake, near Bakersfield in Kern County. Prior to 1970, the giant garter snake was recorded historically from 17

localities (Hansen and Brode 1980). With five of these localities clustered in and around Los Banos, Merced County, the paucity of early records makes it difficult to determine precisely the species' former range. Nonetheless, these records coincide with the historical distribution of large flood basins, fresh water marshes, and tributary streams. Reclamation of wetlands for agriculture and other purposes apparently extirpated the species from the southern one-third of its range by the 1940's–1950's, including the former Buena Vista Lake and Kern Lake in Kern County, and the historic Tulare Lake and other wetlands in Kings and Tulare Counties (Hansen and Brode 1980, Hansen 1980).

As recently as the 1970's, the range of the giant garter snake extended from near Burrell, Fresno County (Hansen and Brode 1980), northward to the vicinity of Chico, Butte County (Rossman and Stewart 1987). As discussed in more detail below, there are no post-1980 giant garter snake sightings from Burrell, Fresno County, northward to Stockton, San Joaquin County (California Natural Diversity Data Base records). Giant garter snake populations currently are distributed in portions of the rice production zones of Sacramento, Sutter, Butte, Colusa, and Glenn Counties; along the western border of the Yolo Bypass in Yolo County; and along the eastern fringes of the Sacramento-San Joaquin River delta from the Laguna Creek-Elk Grove region of central Sacramento County southward to the Stockton area of San Joaquin County (Hansen 1988).

Prior to State listing in 1971, 17 giant garter snake localities, representing about 9 distinct populations, were known from the literature and museum records. Subsequent surveys by the California Department of Fish and Game (CDFG) in the mid-1970's indicated that eight of these localities, representing about four populations, had since become extinct (Hansen and Brode 1980). These same surveys documented a total of 36 giant garter snake localities, 28 of them newly discovered, representing about 7 new populations not previously known. Thus, the result of these surveys indicated a net increase of 3, for a total of 12 distinct giant garter snake populations known to be extant around 1980.

In the mid-1980's, CDFG conducted another status survey of the giant garter snake throughout its range (Hansen 1988), surveying more than 460 sites. Giant garter snakes were found at 46 of these localities, representing 7 distinct populations, 3 previously unknown. However, this study failed to observe snakes at seven previously documented populations. The uniform census methods used in the 1970's and 1980's studies were designed to detect any changes in relative abundance. Hence, although the negative data did not prove conclusively that the species had been extirpated from the seven populations, they reflect, at a minimum, severe declines in population density to undetectably low levels. For example, former strongholds, such as Mendota Waterfowl Management Area, which yielded 20 captures on a single day in April 21, 1976, has not produced any sightings throughout the 1980's and 1990's, despite repeated sampling.

In 1992, a third round of giant garter snake studies were conducted, in part precipitated by the Service's proposal to list the species. These studies further clarified the current rangewide status of the giant garter snake (Beak 1992, Pacific Environmental Consultants 1992).

A cluster of locality records in a contiguous habitat area represents a population. Thirteen populations have been identified using locality records collected since the mid-1970's (G. Hansen, pers. comm., 1993; J. Brode, pers. comm., 1993). The 13 populational clusters largely coincide with historical riverine flood basins and tributary streams throughout the Central Valley (Hinds 1952, Hansen 1980, Brode and Hansen 1992): (1) Butte Basin, (2) Colusa Basin, (3) Sutter Basin, (4) American Basin, (5) Yolo Basin—Willow Slough, (6) Yolo Basin—Liberty Farms, (7) Sacramento Basin, (8) Badger Creek—Willow Creek, (9) Caldoni Marsh, (10) East Stockton—Diverting Canal and Duck Creek, (11) North and South Grasslands, (12) Mendota, and (13) Burrell—Lanare. Within the rice production zones associated with population clusters 1 to 4 above, giant garter snakes occupy the maze of interconnected agricultural water delivery and drainage facilities. The giant garter snake populations 5 to 13 above occur discontinuously in typically small, isolated patches of valley floor habitat. This latter group of giant garter snake populations supports few individuals because of limited extent and quality of suitable habitat (Hansen 1988). The species is absent from the northern portion of the San Joaquin Valley, where the floodplain of the San Joaquin River is restricted to a relatively narrow trough by alluvium from tributary rivers and streams. This 100 kilometer (km) (62 mile (mi)) gap in its distribution separates historically known populations in Merced County from those along the eastern fringes in the Sacramento-San Joaquin River Delta (known as the Delta) in San Joaquin County (Hansen and Brode 1980). Suitable habitat that may have existed formerly throughout remaining portions of the Delta has been eliminated (Hansen 1988). Below is a summary of the status and threats associated with each of these 13 populations (J. Brode, pers. comm., 1993; G. Hansen, pers. comm., 1993):

(1) *Butte Basin:* Approximately six locality records are known from the basin and tributary streams/canals. Existing records indicate that the species is widely distributed in low population numbers/densities, primarily in water delivery/drainage facilities and perhaps associated rice fields. Giant garter snakes appear restricted to unnatural (agricultural) habitats. Individuals are susceptible to flooding. Mortality from predatory fish and birds, vehicular traffic, agricultural practices, and maintenance of water channels represent the primary threats. These chronic threats imperil giant garter snakes in individual localities but do not seem great enough to place at imminent risk the continued survival of the entire population.

(2) *Colusa Basin:* Approximately 10 discrete locality records are known from the basin and tributary streams/canals. Available information indicates a tenuous connection between localities clustered at the north and south end of the basin. Status and threats are similar to the Butte Basin population.

(3) *Sutter Basin:* Approximately five discrete locality records are known from the basin and tributary streams/canals. The overall situation is similar to the previous two populations.

(4) *American Basin:* The numerous records distributed throughout most of the basin indicate that a large giant garter snake population inhabits this rice production district. Scattered natural habitats comprise a small component of this larger, agricultural habitat complex. Flooding threatens this population; however, it is under less threat of flooding than some of the other populations. The American Basin population also is threatened by incremental, large scale urbanization. Review of development proposals by the Service and CDFG indicate that mitigation measures proposed for impacts to the giant garter snake would not offset adverse effects and therefore would not eliminate the threat to the existence of this population.

(5) *Yolo Basin—Willow Slough:* Approximately two records are known from along Willow Slough, Willow Slough Bypass, and a limited amount of rice fields. Available habitat is limited and degraded. Based on habitat scarcity

and an associated small population size, threats are imminent. Because of its small size, this population is vulnerable to extirpation from stochastic (random) environmental, demographic, and genetic processes. Primary threats include proposed urban development on the Conway Ranch, flood control and agricultural practices, flooding, road mortality, and predatory fish. The Putah Creek population within this basin apparently has been extirpated (G. Hansen, *in litt.*, 1992) because of stream desiccation caused by upstream water diversions and impoundments (USFWS 1992).

(6) *Yolo Basin—Liberty Farms:* Two records from an irrigation canal network, combined with an absence of suitable, natural habitat in the area, suggest that this population is restricted entirely to degraded, artificial habitat. Given the known effect of livestock grazing on garter snakes and their associated wetland habitats (Szaro *et al.* 1989), grazing likely threatens the giant garter snake in this area. Threats are similar to those at Willow Slough, absent the threat of urban development.

(7) *Sacramento Basin:* Except for one record from 1982, the other six records from this population date from the 1970's. During the intervening period, numerous development projects have been constructed in or near giant garter snake habitat in this rapidly urbanizing area. Any remaining populations are vulnerable to secondary effects of urbanization, such as increased predation by house cats and vehicular mortality. Most documented localities have been adversely impacted by development, including freeway construction, flood control projects, and commercial development. Several former localities are known to have been lost and/or depleted to the extent that continued viability is in question (Hansen, *in litt.*, 1992, G. Hansen, pers. comm., 1992). The scarcity of remaining suitable habitat, flooding, stochastic processes, and continued threats of habitat loss pose continued threats to this population.

(8) *Badger Creek—Willow Creek:* Restricted to less than about 200 acres of natural, emergent marsh, this population faces imminent threats from flooding, livestock grazing, and predation by fish and birds. Planning for commercial development of the property is in progress. Habitat scarcity and limited population size render the giant garter snake vulnerable to extirpation in this area from stochastic environmental, demographic, and genetic processes.

(9) *Caldoni Marsh:* Also known as White Slough Wildlife Area, about 50 acres of suitable habitat remains, the most valuable portion situated on private land. Approximately 280 acres of habitat was eliminated during the construction of Interstate 5 around 1978 to 1979. Restricted to such a small patch size of remaining habitat, this population is vulnerable to extirpation from stochastic processes. A locality record along Eight Mile Road possibly connected with this population apparently has been extirpated due to habitat loss (J. Brode, CDFG, pers. comm. 1992; G. Hansen, *in litt.*, 1992).

(10) *East Stockton—Diverting Canal and Duck Creek:* Known from a few locality records along the Diverting Canal and Duck Creek, the status of this population is unknown. Remaining habitat consists of degraded habitat in flood control bypass channels, and is dependent upon vegetation maintenance practices. Impacts associated with channel maintenance and vehicular mortality represent the most severe threat. The age of giant garter snake records raise questions regarding the long-term viability of this population. Stochastic threats to this population, if still extant, are similar to those described above for the other smaller populations.

(11) *North and South Grasslands:* Twenty-four records in the California Natural Diversity Data Base, all prior to 1976, delimited a formerly extensive complex of occupied suitable habitat, probably the largest regional population in the San Joaquin Valley since the demise of the Tulare and Buena Vista lakebeds. However, Hansen (1988) searched 38 localities in 1986 to 1987, and Beak (1992) searched 7 localities in 1992. Neither survey found any giant garter snakes. As discussed in more detail under Factor E in the "Summary of Factors Affecting the Species," the prevalence of selenium and salinity contamination throughout this area and absence of any giant garter snake sightings since the 1970's indicates that this population, if still extant, is at risk. In many areas, the restriction of suitable habitat to water canals bordered by roadways and levee tops renders giant garter snakes vulnerable to vehicular traffic and vegetation maintenance practices. In addition, livestock grazing has adversely impacted certain areas in proximity to known locality records (J. Brode, pers. comm., 1992). Overall, threats to this population are imminent and severe.

(12) *Mendota:* As recently as the late 1970's and perhaps early 1980's, a relatively small acreage of habitat in and around the northern portions of the Mendota Waterfowl Management Area and to a lesser extent, Mendota Pool, supported a robust population of giant garter snakes. However, flooding during the winter of 1985 to 1986, presence of predatory fish, vehicular mortality, and disturbance and persecution by fishermen and recreationists apparently has depleted population levels at this former stronghold (J. Brode, pers. comm., 1992; G. Hansen, pers. comm., 1992; R. Hansen, biological consultant, pers. comm., 1992). Recent survey efforts by Hansen (1988) and Beak (1992) failed to observe any giant garter snakes. If still extant, the future persistence of this population is under threat.

(13) *Burrell-Lanare:* The remnant population in this area never was secure or prevalent, based on the limited amount of fragmented habitat available along a few irrigation/drainage canal networks. Recent observations (J. Brode, pers. comm., 1992; G. Hansen, pers. comm., 1992) found deteriorating habitat conditions caused by canal maintenance practices, public use, and presence of predatory fish. Accordingly, Hansen (*in litt.*, 1992) concluded that this population apparently has been extirpated. If still extant, threats are imminent and severe, including threats associated with small population size, such as stochastic events.

Previous Federal Action

On September 18, 1985, the Service published the Vertebrate Wildlife Notice of Review (50 FR 37958), which included the giant garter snake as a category 2 candidate species for possible future listing as threatened or endangered. Category 2 candidates are species for which information contained in Service files indicates that proposing to list is possibly appropriate but additional data are needed to support a listing proposal. In the January 6, 1989, Animal Notice of Review (54 FR 554), the Service again included the giant garter snake as a category 2 candidate and solicited information on the status of this species. On September 12, 1990, the California-Nevada Chapter of the American Fisheries Society petitioned the Service to list the giant garter snake as an endangered species. The Service published a 90-day petition finding on March 22, 1991 (56 FR 12146), which concluded that the petition presented substantial information indicating that listing may be warranted. On November 21, 1991, the Service changed the status of the giant garter snake to a category 1 candidate in the most recent Animal Notice of Review (56 FR 58804). Category 1 candidates are species for which the Service has on file enough substantial information on biological vulnerability and threats to support

proposals to list them as endangered or threatened species. This change in category status was based in part on rangewide distributional and abundance studies conducted by CDFG (Hansen 1988), threats to San Joaquin Valley populations from contaminants in irrigation drain water, and escalating urbanization. On December 27, 1991 (56 FR 67046), the Service published a proposal to list the giant garter snake as an endangered species. The proposed rule constituted the final 1-year finding for the petitioned action pursuant to section 4(b)(3)(B) of the Act. The Service now determines the giant garter snake to be a threatened species with the publication of this rule.

(The Service reevaluated the status of the giant garter snake before adopting this final rule. The giant garter snake remains in 13 populations, 3 of which are not imminently threatened. Threatened status, therefore, seems more appropriate for this species.

Summary of Comments and Recommendations

In the December 27, 1991, proposed rule (56 FR 67046) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule or withdrawal of the proposed rule. Appropriate State agencies, county and city governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Notices of the proposal were published in 11 newspapers throughout the range of the giant garter snake inviting general public comment: *Chico Enterprise-Record, Corning Daily Observer, Davis Enterprise, Fresno Bee, Marysville-Yuba City Appeal Democrat, Merced Sun Star, Modesto Bee, Oroville Mercury Register, Sacramento Bee, Stockton Record, and Woodland Daily Democrat.* In response to the proposed rule, the Service received 18 written requests for a public hearing(s) within the first 45 days of the comment period. Consequently, the Service published a notice of public hearing on May 15, 1992 (57 FR 20806), and a separate notice on May 26, 1992 (57 FR 21933), reopening the public comment period until July 15, 1992. The Service conducted the public hearing on June 1, 1992, at the Radisson Hotel in Sacramento, California. Testimony was taken from 6 p.m. to 8 p.m. Notice of the public hearing was published in the *Sacramento Bee.* Numerous additional notices soliciting public comment were sent for the proposal and public hearing to interested/affected parties.

During and after the public hearing, the Service learned that certain interests were conducting additional field work on the status and distribution of the giant garter snake throughout its range and that this information would be provided to the Service upon completion. To consider this information when it became available, the Service again reopened the public comment period from December 18 through 28, 1992. The Service received two reports that reached conclusions that differed from those stated in the proposed rule (Beak 1992, Pacific Environmental Consultants 1992). To help resolve these issues, the Service convened a panel of experts that evaluated the merits of work performed on the giant garter snake. The panel reached the same conclusions as reached in the Service's proposed rule.

During the comment periods, the Service received 58 comments (letters and oral testimony) from 45 interested parties. CDFG was among 14 commenters expressing support for the listing proposal; 24 commenters opposed the proposal. Seven commenters expressed a neutral position. Written comments and oral statements obtained during the public hearing and comment periods are combined in the following discussion. Some commenters provided additional information that has been incorporated into this final rule. Comments opposing or questioning the rule and the Service's response to each are organized under four issues, as follows.

Issue 1. Inadequate Scientific Data

Scientific Standards of Proof

Comment: Several respondents indicated that the listing proposal was not based on scientific standards of proof, contained unsubstantiated speculation, and presented unbalanced hypotheses without acknowledgement of other possible conclusions.

Service Response: The Act requires the Service to use the best available biological information as the sole basis for its listing decisions. The Service considers professional judgment and expert opinion by knowledgeable biologists, among other sources of information. Thus, listing proposals are based on the preponderance of evidence rather than standards obtained through application of the scientific method (e.g., statistically valid test).

Comment: Many commenters believed that the listing proposal was not valid because much of the information supporting the need to list the giant garter snake was obtained by one or a few individuals, and the data and reports prepared by those individuals had not been published in peer reviewed journals.

Service Response: Though published information in peer reviewed journal articles is generally considered a credible source of information among the scientific community, such information is not often available for threatened and endangered species at the time of a listing determination. In most cases, one or a few biologists have provided the bulk of the status data used by the Service to support a listing action. Agency reports commonly provide information needed to support a listing decision. Time delays between the completion of research and publication in a scientific journal are often on the order of several to many years. Such delays would allow the status of a species to continue to decline prior to listing under the Act and would not be in keeping with its purposes. As specified at 50 CFR 424.13, the Service must consider a broad range of informational sources, including comments from interested parties, in its listing decisions. Hence, the Act does not limit, nor would it be appropriate for the Service to constrain, the scope of information suitable for consideration in the preparation of listing proposals.

Comment: Several commenters contended that estimates of baseline and current population levels are requisite to substantiating the need to list the giant garter snake.

Service Response: Baseline and current population levels often are not known for species at the time they are listed by the Service. Trend information on population levels and habitat loss/availability or population/habitat indices often represent the best available information upon which to base listing actions. These types of information provide accurate indicators of population viability. Furthermore, for most species, it is difficult to obtain population estimates, and such methods are typically associated with wide confidence intervals, especially for species that are difficult to observe or capture.

Distribution and Abundance

Comment: Numerous commenters claimed that the available information on the distribution.and abundance of the giant garter snake provides an inadequate basis for listing. These commenters also asserted that the 127 locality records currently known for the giant garter snake indicate that the species is growing in numbers and expanding its range, further suggesting that the species does not warrant listing.

Service Response: Several studies were conducted in 1992 to clarify the current rangewide status of the giant garter snake. As a part of its Merced County Streams project, the U.S. Army Corps of Engineers (Corps) sponsored field work to ascertain the presence or absence of giant garter snakes in suitable habitat within the affected project area. No garter snakes were observed (G. Hansen, pers. comm., 1992). In an unrelated study, CDFG conducted intensive surveys of all suitable habitat on lands owned by the State from Stockton, San Joaquin County, northward throughout the remaining range of the giant garter snake in the Sacramento Valley. Giant garter snakes were found at two sites; one at a new locality within the Butte Basin population complex, the other at a known historic site (T. King, CDFG, pers. comm., 1992). In addition, Beak (1992) indicated that within the 95 areas studied, 3 previously unrecorded localities within the Butte Basin and Sutter Basin population clusters were found. Thus, no new populations were discovered to reveal a range expansion, and none of the information presented suggested that these populations are under lesser threat than previously thought. However, the Service has reevaluated the status of the garter snake and determined that listing as threatened is more appropriate than listing it as endangered.

Of the 127 locality records (Pacific Environmental Consultants 1992), many represent repetitive sightings (observed at different points in time from the same or adjacent locality(ies), or areas in close or identical geographic proximity). For example, 11 records listed for Caldoni Marsh, Thornton Road, White Slough, or Highway 12, as variously reported by different investigators, refer to sightings from the same 50-acre marsh adjacent to less than 1.0 mile of linear canal habitat. A single occurrence in the American Basin is represented by 35 records. One of the 127 records is questionable because it is located outside of the historic range of the species.

The 127 locality records represent 68 reasonably separable records, distributed among 13 populations. During 1992 survey efforts, no new populations were discovered. Many of these 68 separable records are no longer extant.

Comment: Several commenters claimed that the proposed rule, by not comprehensively analyzing all the available information on the former and current extent of wetlands in the Central Valley, exaggerated the historical loss of giant garter snake habitat. These and other commenters also contended that suitable habitat exceeds the estimate of currently available habitat discussed in the proposed rule.

Service Response: It was not the intention, nor was it appropriate to conduct an exhaustive analysis of information pertaining to the history of wetland habitat losses affecting the giant garter snake. The purpose of addressing historic wetland losses in the proposed rule was to provide a context to the Central Valley ecosystem inhabited by the giant garter snake.

The primary issue is whether or not current activities including on-going habitat loss threaten the continued existence of the giant garter snake. Discussions of historic habitat availability are of academic interest, and sometimes contribute to an overall understanding of a species' decline. As discussed under the "Summary of Factors Affecting the Species," much of the present wetlands that occur within the current range of the giant garter snake are not stable, or are managed in a manner that is inconsistent with the needs of the snake, or are under threat of urban development.

Comment: Several respondents concluded that because available information suggests the giant garter snake has adapted to agricultural practices in certain areas, all of the 365,730 acres of rice fields currently in production provide suitable or potentially suitable habitat. These commenters also contended that the giant garter snake is widespread and abundant throughout these regions and with the proliferation of rice production, the species recently has spread into new areas beyond its historical range.

Service Response: Although giant garter snakes occupy some rice production areas of the American Basin (G. Hansen, pers. comm., 1992), they do not occur in many rice growing regions. A number of factors may account for giant garter snake absence from rice fields: (1) As discussed under Factor E in the "Summary of Factors Affecting the Species," frequent, severe winter flooding precludes occupation over thousands of acres, (2) burning rice fields and canals after harvest for vegetation management leaves giant garter snakes exposed upon emergence in the spring, and (3) disced roadsides and manicured vegetation often are prevalent. Furthermore, the amount of acreage in rice production varies from year to year, and, hence, rice fields do not represent habitats that are available on a long-term basis. Intensive studies conducted by Hansen (1988) and Beak (1992) in the rice production zones of the Sacramento Valley found giant garter snakes at approximately 9 of 84 study sites and 4 of 68 sites, respectively. The majority of these records were from water supply/drainage canals, not rice fields.

Comment: Another commenter conducted a literature survey and found that wetlands providing suitable habitat for the giant garter snake may have increased over the last decade as a result of effective State and Federal wetlands protection and restoration programs. The commenter concluded that this expanded habitat base demonstrated that the species does not warrant listing.

Service Response: This particular commenter compared wetland acreages in various studies that focused on different geographic study areas, and erroneously concluded that wetland habitats are expanding. For example, the two Service studies referenced by the commenter cannot be used together to draw conclusions on changes in wetland acreages because of incompatible data for the Central Valley and the entire State. Overall wetland habitat has declined within the historic range of the giant garter snake (Frayer *et al.* 1989).

Comment: One commenter stated that because the Service failed to present data relating habitat abundance and quality to giant garter snake population levels, there is no reason to believe that the species is endangered simply due to habitat loss.

Service Response: Although quantitative data do not exist on the relationships between giant garter snake abundance and habitat quality, available information provides sufficient basis for the Service to conclude that giant garter snake population levels in present-day habitats are depleted. Recent surveys throughout the range of the species have failed to find previously unknown populations, and have failed to find snakes at previously occupied sites.

Inadequate Documentation of Threats

Comment: A few commenters noted that the lack of extirpations reflected in the record suggests that the giant garter is not declining or facing severe threats to its existence. Another commenter argued that the giant garter snake serves as a bio-indicator, providing an early warning of ecosystem disturbances.

Service Response: Confirmed and likely extirpations within the recent past known to the Service include (1) generalized habitat degradation at the Burrell/Lanare population in Fresno County (G. Hansen, *in litt.*, 1992), (2) flood control dredging and commercial development along Elk Grove and Laguna Creeks in Sacramento County (USFWS file information), (3) water

diversion/desiccation at the Franklin Road and Hood-Franklin Road area in Sacramento County (G. Hansen, pers. comm., 1992), (4) habitat loss and degradation along Eight Mile Road in San Joaquin County (J. Brode, pers. comm., 1992), (5) Morrison Creek/Beach Lake quarry excavation along Interstate 5 in Sacramento County (G. Hansen, pers. comm., 1992), (6) desiccation of Putah Creek in Yolo County (USFWS 1992), (7) high levels of selenium and salinity (sodium sulphate) contamination in portions of the north and south Grasslands (various papers cited below), and (8) disappearance of the species in the Natomas East Main Drainage Canal during the 1980's, coincident with urbanization of the North Natomas area in the American Basin. Other populations and localities also face imminent threats that render them vulnerable to extirpation in the foreseeable future.

Comment: One commenter observed that the Sacramento metropolitan area was the only region experiencing significant amounts of urbanization and that these impacts were satisfactorily addressed under State law.

Service Response: Since at least the mid-1980's, human populations have been growing rapidly throughout the Central Valley of California. The expansion of urban areas in the vicinity of giant garter snake populations is more fully discussed under Factor A in the "Summary of Factors Affecting the Species."

Comment: Several commenters indicated that the paucity of historic records for the giant garter snake suggests a patchy distribution under pristine conditions; hence, the Service's assumption that large scale loss of wetlands since 1850 does not necessarily equate to a dramatic loss of giant garter snake populations.

Service Response: The Act requires the Service to base its listing actions upon present threats facing the species, not upon historic abundance. The high correlation of historic giant garter snake records with the distribution of the historic floodbasins in the Central Valley suggest that the species occurred primarily in the vast bulrush and cattail marshes that characterized these floodbasins and tributary streams (Hinds 1952, Hansen 1980, Brode and Hansen 1992). Thus, abundant suitable habitat was available historically. Documented losses of populations known from the mid-1970's are more meaningful to the Service's decision than are speculations about historical distribution.

Comment: Several commenters contended that the proposed rule did not adequately document the Service's conclusion that predation (either in general or from introduced fish), contaminants, flooding, or agricultural impacts were severe enough factors to contribute to the endangerment of the giant garter snake.

Service Response: Additional references and discussion have been provided under the section entitled "Summary of Factors Affecting the Species" that substantiate the severity of threat to the giant garter snake by these and other factors. Predators, such as largemouth bass, catfish, and bullfrogs, contribute to the declining status of the giant garter snake. Agricultural areas (primarily rice fields) do not contain stable habitat for the garter snake. Where escape cover is lacking, garter snake populations may be reduced or eliminated through flooding. Contaminants such as selenium and heightened salinity contribute to the declining status of the giant garter snake.

Issue 2. Alternate Listing Status or Management Approach

Comment: One respondent commented that because captive breeding programs have proven successful for other reptiles, such a program provides an acceptable alternative to listing the giant garter snake.

Service Response: The ultimate goal of captive breeding programs is to return the species to its wild habitats. The Service views captive propagation programs as a last recourse for conserving species. The Act directs the Service to focus on conserving the ecosystems upon which threatened and endangered species depend. Thus, captive breeding does not represent a suitable alternative to listing the species.

Comment: Several commenters concluded that the Service has not substantiated that the severity of threats facing the giant garter snake are sufficient to endanger the species with extinction. In supporting this claim, one commenter pointed out the apparent inconsistency on the part of the Service for listing the Puerto Rican crested toad as a threatened species, known from a few localities, while proposing the giant garter snake as endangered, which is known from many more localities than the toad.

Service Response: The Service believes that threatened status is warranted for the giant garter snake. The natural ecosystem historically occupied by the giant garter snake has been lost in its entirety, through water diversions and land reclamation practices to the extent that natural flooding and vegetational patterns have been eliminated from California's landscape. The species no longer occurs throughout the southern third of its former range, and appears vulnerable to extinction throughout the entire San Joaquin Valley and southern Sacramento Valley, encompassing about three-fourths of its historic distribution. However, three populations do not seem to be imminently threatened. Based on the known and likely extirpation of the species throughout a significant portion of its range, the Service concludes that the giant garter snake is likely to become endangered throughout all or a significant portion of its range within the foreseeable future, and therefore fits the Act's definition of threatened.

Decisions to list species as endangered or threatened are based upon many factors relating to the degree of threat facing a species. The total distribution of a species is only one of these factors. Each species presents a different combination of these factors and must be judged on an individual basis.

Comment: Several commenters noted that the proposed giant garter snake listing would exacerbate flooding threats to the species by delaying authorization/construction of the Corps' American River Watershed Investigation flood control project.

Service Response: The recent decision by the U.S. Congress not to authorize this flood control project was based on numerous considerations above and beyond those involving the proposed listing of the giant garter snake.

Comment: Several commenters stated that improved management of State and Federal waterfowl refuges and protective efforts through the Service's Central Valley Habitat Joint Venture were not considered in the proposed rule and would alleviate the need for listing. Other State and Federal land holdings, associated easement programs, private duck hunting clubs and refuges, military facilities, and pending or proposed land acquisitions provide potential habitat for giant garter snakes, and if managed appropriately would foreclose the need for listing.

Service Response: Although historical giant garter snake records are known from six State or Federal refuges, suitable habitat and associated garter snake populations are sufficiently limited that even dramatic changes in management practices would not preclude the need to list the species. These refuges encompass a very small portion of 4 of the 13 populations.

Historic management of many areas was not conducive to maintenance of healthy giant garter snake populations

because funding levels typically were not available or adequate to implement appropriate management practices, and a lack of available water precluded the potential to create or restore suitable habitat. The species apparently has been extirpated from some of the State and Federal refuges where they once were present. As discussed under Factor D in the "Summary of Factors Affecting the Species," the water regime of many waterfowl ponds is not consistent with the needs of the giant garter snake. Virtually no populations of the giant garter snake can be considered secure.

Comment: Several respondents proposed that Federal listing is not needed because 16 existing provisions of State law afford adequate protection for the species. Two commenters responded that State listing does not afford adequate protection, as evidenced by the destruction and continuing loss of over 90 percent of the wetlands throughout its range.

Service Response: Please refer to Factor D in the "Summary of Factors Affecting the Species" for a detailed discussion of this issue. One commenter listed numerous case histories that purportedly demonstrated successful resolution of impacts to the giant garter snake under State law. However, scrutiny of this list revealed that (1) many of the projects or proposals did not affect the species (J. Brode, pers. comm., 1992), (2) processing of permit applications has not yet progressed to the point that final conclusions can be made, and (3) many of the projects or proposals resulted in unmitigated adverse impacts to the species. Thus, State laws do not adequately protect the giant garter snake from threats facing this species.

Issue 3. Inadequate Public Participation

Comment: Several commenters asserted that the Service relied on information not available to the public and then attempted to prevent public participation in the rulemaking process by delaying the release of that information to preclude public comment within the prescribed comment periods.

Service Response: Service policy requires that all information relied upon by the Service in listing proposals be made available to the public upon request. The Freedom of Information Act (FOIA) provides additional requirements for releasing requested information to the public. The Service has provided all available information in response to such requests. Moreover, the Service provided appropriate public comment periods (see discussion at the beginning of this section) and a public hearing to ensure that all affected interests were provided sufficient opportunity to participate effectively in the public comment process. Consequently, the public was given adequate opportunities to comment on the proposal to list the giant garter snake.

Comment: One respondent, in reliance upon *Conservation Law Foundation v. Watt*, 560 F. Supp. 561 (D. Mass. 1983), and *Village of False Pass v. Watt*, 565 F. Supp. 1123 (D. Alaska 1983), claimed that the Service (1) was acting improperly by not awaiting the results of a particular field study on the distribution and abundance of the giant garter snake that was being prepared, and (2) in light of informational deficiencies on giant garter snake distribution and abundance, was obligated to conduct a "first class effort * * * to conduct requisite tests and studies." In the referenced cases, the courts held that Federal agencies must use the best scientific and commercial data available, including the final results of ongoing studies, prior to making any agency decision that may affect listed species. Other commenters claimed that the Service scheduled public comment periods to preclude consideration of results of the ongoing field study referenced above. Another respondent asserted that in the absence of an affirmative public pronouncement, the Service was erecting a *de facto* barrier to the initiation or completion of additional distribution and abundance studies because his clients had no confidence that the Service would reopen the public comment period if they began or attempted to complete such work.

Service Response: As discussed above, the Service reopened the comment period to ensure that the best available scientific and commercial information was considered in this final rulemaking. The Service also (1) contacted sponsors of the ongoing field study referenced above, after completion of their contractor's final report in October 1992, (2) solicited any relevant information, and (3) assured the sponsors that the Service was interested in reviewing the results of their study should they elect to submit additional information. The Service has incorporated information provided in that study into this final rule. In addition, the Service contacted the sponsors of other ongoing studies prior to release of final reports to ensure that the most recent information was considered in this listing action. The Service disagrees that *Conservation Law Foundation v. Watt* and *Village of False Pass v. Watt* obligate the Service to conduct requisite tests and studies after publication of a proposed rule. These cases involved consultation under section 7 of the Act, which allows time limitations to be extended by the action agency and Service upon mutual agreement, and to gather requisite information to complete the consultation. See 16 U.S.C. § 1536(b)(1)(B). In cases with substantial scientific disagreement regarding the sufficiency or accuracy of available data relevant to listing determinations (see 16 U.S.C. § 1533(b)(6)(B)(i) and 50 CFR 424.17(a)(1)(iv)), the Service may extend the 1-year review period between proposed and final rulemakings for the purposes of obtaining and reviewing additional information as may be necessary for making a final decision. As noted elsewhere in this rule, the Service has not received additional information indicating that the species is more widespread or under lesser threat than was previously believed. Thus, no scientific disagreement exists to support an extension.

Issue 4. Economic Effects

Comment: One commenter reminded the Service of its obligations under Executive Order 12630, which requires Federal agencies to prepare takings implication statements on actions with potential to violate the Fifth Amendment of the Constitution.

Service Response: Regarding Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, the Attorney General has issued guidelines to the Department of the Interior (Department) on implementation of the Executive Order. Under these guidelines, a special rule applies when an agency within the Department is required by law to act without exercising its usual discretion—that is, to act solely upon specified criteria that leave the agency no discretion.

In this context, an agency's action might be subject to legal challenge if it did not consider or act upon economic data. Therefore, in these cases, the Attorney General's guidelines state that Takings Implications Assessments (TIAs) shall be prepared after, rather than before, the agency makes the decision upon which its discretion is restricted. The purpose of TIAs in these special circumstances is to inform policymakers of areas where unavoidable taking exposures exist. Such TIAs shall not be considered in the making of administrative decisions that must, by law, be made without regard to their economic impact. In

enacting the Act, Congress required the Department to list species based solely upon scientific and commercial data indicating whether or not they are in danger of extinction. The Act does not allow the Service to withhold a listing based on concerns regarding economic impact. The provisions of the guidelines relating to nondiscretionary actions clearly are applicable to the determination of threatened status for the giant garter snake.

Comment: Numerous comments asserted that listing the giant garter snake would threaten the ability of flood control and other districts to perform necessary maintenance of levees, thereby jeopardizing public health and safety.

Service Response: Although the Service is limited in its ability to predict with certainty the measures needed to conserve the species in all situations involving levee and canal maintenance activities, past experience with other listed species impacted by such practices indicates that the commenters' fears have seldom, if ever, materialized. Flood control projects generally involve Federal permits or sponsors, and are reviewed by the Service under section 7 of the Act (see "Available Conservation Measures" below). In practice, the Service usually completes biological opinions within 90 days of receipt of a request for formal consultation. In addition, if the Service determines that an action would jeopardize the continued existence of a federally listed species, in most cases it recommends reasonable and prudent alternatives that allow the intended purpose of the project to proceed, with modifications. The Service has a well established record of working cooperatively with flood control and related districts in designing maintenance procedures that accommodate the habitat requirements of the species yet do not impinge on the ability of other agencies to fulfill their charges. The Service is confident that Federal listing will contribute to the survival and scientific understanding of the species and its environment without jeopardizing public health and safety.

Comment: Several commenters suggested that the proposed listing may impact the ability to accomplish water exchanges and transfers and restrict operations of the State Water Project. Due to that, there may be a significant negative impact on agricultural lands that rely on water for irrigation. In a related argument, one commenter alleged measures needed to conserve the giant garter snake would conflict directly with the instream water requirements of the Sacramento River population of the winter run chinook salmon (*Oncorhynchus tshawytscha*), listed as a threatened species by the Federal Government and as an endangered species by the State of California. Due to controversies and economic effects associated with this issue, the commenter contended that the Service was obligated to prepare an environmental impact statement for the proposed listing, pursuant to the National Environmental Policy Act (NEPA).

Service Response: Though the Service disagrees that listing necessarily would lead to the impacts and conflicts raised by these commenters, the Service is precluded from considering such impacts or conflicts while assessing any of the five factors listed at section 4(a)(1)(b) of the Act. The Service believes that the reasons provided in the **Federal Register** notice published on October 25, 1983 (48 FR 49244) determining that an environmental impact statement need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act are valid.

Comment: Several commenters responded that Federal listing would (1) place pressure on the agricultural industry to grow alternative crops to rice in an effort to avoid Federal restrictions associated with the Act, (2) reduce land values, and (3) lead to future economic losses, which cumulatively would adversely affect the future viability of the species.

Service Response: The Act directs the Service to base listing decisions solely on the best scientific and commercial information available; thus, the Act prohibits such economic considerations.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the giant garter snake (*Thamnophis gigas*) should be classified as a threatened species. Procedures found in section 4 of the Endangered Species Act (16 U.S.C. § 1533) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the giant garter snake (*Thamnophis gigas* Fitch) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Regardless of the extent of wetlands currently remaining, field studies (Hansen 1986, Hansen 1988, Beak 1992) indicate that the species is absent from most areas with seemingly suitable habitat (see discussions under Factors B, C, and E).

A number of land use practices and other human activities currently threaten the survival of the giant garter snake throughout its remaining range. Although some giant garter snake populations have persisted at low population levels in artificial wetland associated with agricultural and flood control activities, many of these altered wetlands are now threatened with urban development. Examples of these activities include: a new city proposed in San Joaquin County would threaten known or potential habitat for the Badger/Willow Creek population; the Sacramento Metropolitan Area Investigation, a 400-year flood protection project proposed by the Corps and local governments for over 3,240 hectares (8,000 acres) of agricultural lands and open space (USFWS, unpubl. information) would threaten an estimated 45 km (28 mi) of small waterway habitat potentially inhabited by portions of the Yolo Basin/Willow Slough population of the giant garter snake; in the Laguna Creek-Elk Grove region of Sacramento County, 11 proposed residential developments and associated stream channelization projects would threaten portions of the Sacramento Basin population.

In addition, several cities within the current range of the giant garter snake are expanding. Rapidly expanding urban areas within or near the historic range of the giant garter snake include, but are not limited to, Chico (Butte Basin population), Yuba City (Sutter Basin population), Sacramento (American and Sacramento Basin populations), Galt (Badger/Willow Creek population), Stockton (East Stockton population), and Gustine and Los Banos (North and South Grasslands population). Numerous city and county governments recently have updated or amended their General Plans to facilitate urban growth. The North Delta Water Management project proposed by the California Department of Water Resources would facilitate urban development and adversely affect the Sacramento Basin population; Corps American River Watershed Investigation or local equivalent would facilitate urban growth that may adversely affect the American Basin population; Sacramento River Flood Control Project, Phase II—Marysville/Yuba City Area, and Yuba River Basin project would facilitate urban growth in the vicinity of the Sutter Basin population; and Department of Water Resources' North Delta Water Management Project would

facilitate urban growth in the vicinity of the Sacramento Basin population.

The largest extant population of the giant garter snake inhabits extensive agricultural lands in the American Basin, a large flood basin at the confluence of the Sacramento and American Rivers, in Sacramento and Sutter Counties. Throughout this area, reconnaissance level surveys (USFWS 1991) indicate that about 570 hectares (1,400 acres) of giant garter snake habitat exist in the form of man-made irrigation channels and drainage ditches, as well as an undetermined acreage of suitable habitat within approximately 5,260 hectares (13,000 acres) of adjoining rice fields. The giant garter snake also uses an undetermined amount of habitat at higher elevations to escape from winter flooding during the inactive winter phase of the snake's life cycle. However, as discussed under Factor E, the amount of land in rice production varies from year to year; consequently, this area does not contain stable habitat.

Habitat supporting the giant garter snake in the American Basin is threatened by a number of activities, primarily expanding urbanization. The Corps and/or local project sponsors are proposing flood protection for this 22,260-hectare (55,000-acre) agricultural area. The Service (USFWS 1991) anticipates that the provision of flood control would result in the conversion of most or all of this area to urban land uses within the next 50 years. Other projects in the American Basin include the North Natomas Community Drainage System and associated urban development, proposed by the City of Sacramento, which affect about 42 km (26 mi) of giant garter snake habitat along existing canals and ditches, and additional rice field habitat (Brode and Hansen 1992); the proposed Sutter Bay project, at the north end of the American Basin, could eliminate or degrade about 68 km (42 mi) of suitable canals (Brode and Hansen 1992) and thousands of hectares of associated rice fields and giant garter snake habitat; the proposed South Sutter Industrial Center, located near the Sutter Bay project, could eliminate another 14.5 km (9.0 mi) of aquatic habitat and associated rice fields; a new city proposed in Sutter County also would adversely affect the American Basin population; and the Sacramento Metropolitan Airport is proposing about 765 hectares (1,890 acres) of development on agricultural and vacant lands that could result in major adverse impacts to the species, including the loss of about 14.5 km (9.0 mi) of canal habitat and 607 hectares (1,500 acres) of rice fields, as well as the disruption of movement corridors (Brode and Hansen 1992). Roadway improvements or construction projects, or the planned extension of the Sacramento Regional Transit system in this area, would likely result in elevated mortality from increased traffic on local roads and highways (Brode and Hansen 1992).

Certain agricultural practices can destroy habitat that supports the giant garter snake. For example, intensive vegetation control activities along canal banks can fragment and isolate available habitat (See Factor E below). In addition, Hansen (1982, 1986), G. Hansen (pers. comm. 1992), and J. Brode (pers. comm. 1992) have observed livestock grazing threats to four populations of the species. Studies on other garter snake species have established a negative cause and effect relationship between livestock grazing and snake population demographics (Szaro *et al.* 1989). The giant garter snake requires dense vegetative cover in proximity to waterside foraging and basking habitats in which to seek refuge from predators and other forms of disturbance. Livestock grazing along the edges of water sources degrades habitat quality by reducing vegetative cover. Overall, grazing has contributed to the elimination and reduction of the quality of available habitat at four known locations.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Although giant garter snakes do not seem to be of great interest to reptile collectors, the species has been found for sale in pet shops (J. Brode, pers. comm., 1991). However, collection for commercial purposes does not appear to threaten the giant garter snake.

Collection and harassment associated with recreational activities apparently cause a substantial impact in certain areas. Recreationists can disturb basking snakes and, thus, interfere with thermoregulatory behavior. Angling pressure at the Mendota population during the 1970's and 1980's resulted in numerous observed instances of road kills and other possible killing and injuring of giant garter snakes (J. Brode, pers. comm., 1992; G. Hansen, pers. comm., 1992; R. Hansen, biological consultant, pers. comm., 1992). In the American Basin, collection of crayfish for human consumption also results in harassment of giant garter snakes (G. Hansen, pers. comm., 1992). Disturbance and harassment associated with fishing pressure also is implicated in the demise of the giant garter snake population at Burrell (G. Hansen, pers. comm., 1992).

C. *Disease or predation.* Little information on diseases that affect the giant garter snake is available. CDFG ceased mark and recapture studies on the giant garter snake in the American Basin after observing that marked snakes were slow to heal and often became infected (J. Brode, pers. comm., 1992; G. Hansen, pers. comm., 1992).

Unidentified parasitic worms have been found in giant garter snakes from the American Basin population (Hansen, *in litt.*, 1992). Infected snakes exhibited reduced appetites and growth rates compared to uninfected snakes, and all infected snakes eventually died after lingering malaise, although some reached 12 to 14 months of age. Upon death, uniformly sized 5- to 8-cm (2- to 3-inch) worms, the thickness of a replacement pencil lead and colored with alternating narrow rings of red and beige, emerged from noticeable lumps at any location along the ventral or dorsal skin surfaces. The degree of threat posed by these worms to the American Basin population or the species throughout its range is not known.

Predation levels on the giant garter snakes have increased due to a number of factors. A number of native mammals and birds are known or likely predators of giant garter snakes, including raccoons, skunks, opossums, foxes, hawks, egrets, and herons. The abundance and diversity of predators and a paucity of escape cover in remaining giant garter snake habitat suggest that predation pressure on this species probably is severe (Hansen 1980). The high fecundity (Hansen and Hansen 1990) and extremely wary behavior (Hansen 1980 and references cited therein) of the species provide additional evidence that the species has developed physiological and behavioral adaptations to help withstand predatory pressure. Hansen (1986) observed that nearly all giant garter snakes captured and examined possessed scars or recent injuries presumably acquired during attacks by predators.

Domestic cats prey upon the giant garter snake. G. Hansen (pers. comm., 1992), has observed numerous snake kills by domestic cats in one of his longtime study areas about 3.2 km (2 miles) from the closest urban development in the City of Davis, Yolo County.

Few, if any, native fish species posed a predatory threat to the giant garter snake. However, introduced largemouth bass and catfish are voracious, opportunistic predators of many species of invertebrates, fish, reptiles, amphibians, birds, and small mammals, and have become established in virtually all permanent and semi-

permanent waters throughout the Central Valley (Dennis Lee, CDFG, pers. comm., 1992). These introduced predatory fishes have been responsible for eliminating many species of native fishes and aquatic vertebrates in the western United States (Minkley 1973, Moyle 1976).

Bass in the 0.4- to 1.4-kilogram (1- to 3-lb) size class can take 30- to 38-cm (12- to 15-in) snakes and would prey upon giant garter snakes (Dennis Lee, pers. comm., 1992). The instinctive response of giant garter snakes to dive under water upon disturbance (Fitch 1941) would be maladaptive where non-native predatory fish have become established. Parmley and Mulford (1985) reported an instance of a largemouth bass eating a water snake. Introduced predatory fish may explain the absence of garter snakes from large bodies of water (Brode 1988). Brode (1988) believed that the giant garter snake was absent from large bodies of water due to the presence of introduced predatory fishes.

Introduction of the bullfrog (*Rana catesbeianna*) to virtually all areas inhabited by the giant garter snake further increases the threat of predation facing the species. The spread of bullfrogs has contributed to the demise of numerous species of native amphibians and reptiles (S. Sweet, Univ. Calif. at Santa Barbara, *in litt.*, 1992; Schwalbe and Rosen 1989, Holland 1992). Bury and Whelan (1984) cited 14 cases of bullfrogs eating snakes. These studies documented (1) bullfrog ingestion of garter snakes up to 80 cm (31.5 in) in length, (2) depletion of garter snake age class structure less than 80 cm length (snout-vent), and (3) disappearance and resurgence of garter snake populations coincident with the introduction and decline of bullfrog populations. Schwalbe and Rosen (1989) concluded that bullfrogs have a high potential for eliminating garter snake populations. Treanor (1983) found that unidentified garter snakes (*Thamnophis spp.*) comprised 6.0 and 6.4 percent volume of bullfrog stomach contents in the months of July and August at Gray Lodge Waterfowl Management Area, a known giant garter snake location.

D. *The inadequacy of existing regulatory mechanisms.* The National Environmental Policy Act and section 404 of the Clean Water Act represent the primary Federal laws that could afford some protection for the giant garter snake. These laws, however, do not protect candidate species *per se*. Under section 404 of the Clean Water Act, the Corps regulates the discharge of fill material into waters of the United States, which include navigable and isolated waters, headwaters, and adjacent wetlands.

Pursuant to 33 CFR part 323.4, the Corps also has promulgated regulations that exempt various farming, forestry, and maintenance activities from the regulatory requirements of section 404. Many of the irrigation and drain water canals and other agricultural wetlands, such as rice fields that provide giant garter snake habitat, are not subject to section 404 regulation. For example, in the recent jurisdictional determination for the American River Watershed Investigation, the Corps found that of the 373 km (232 mi), totalling 515 hectares (1,272 acres) of canal and waterway habitat in the American Basin, 153 hectares (379 acres) constituted jurisdictional wetlands.

The section 404 regulations require that applicants obtain an individual permit to place fill for projects affecting greater than 10 acres of waters. Nationwide Permit Number 26 (NWP 26) (33 CFR part 330) was established by the Corps to facilitate issuance of permits for discharges of fill material into isolated waters that cause the loss of less than 10 acres of waters, and that cause only minimal individual and cumulative environmental impacts. Projects that qualify for authorization under NWP 26 and that affect less than 1 acre of isolated waters or headwaters may proceed without notifying the Corps. Corps District and Division Engineers may require that an individual section 404 permit be obtained if projects otherwise qualifying under NWP 26 would have greater than minimal individual or cumulative environmental impacts. However, the Corps has been reluctant to withhold authorization under NWP 26 unless the existence of a listed species would be jeopardized, regardless of the significance of the affected wetland resources. The Corps cannot issue a nationwide or individual permit where a federally listed species would be affected without first consulting with the Service under section 7 of the Endangered Species Act.

The giant garter snake was listed as a threatened species by the State of California in 1971. The California Environmental Quality Act and California Endangered Species Act are the primary environmental legislation at the State level that potentially benefit the giant garter snake. Certain city and county governments have adopted protective measures and ordinances that under certain circumstances could afford additional levels of protection for the giant garter snake. However, numerous cities and counties have not adopted protective mechanisms, and many of the threats to the species are not amenable to remediation at the State or local level because they are related to natural processes or catastrophes, contaminants, introduction of and predation from alien species, and ongoing economic uses of private lands. These threats fall beyond the application of State planning laws that address proposed changes in land uses.

Although State laws and local ordinances can provide a measure of protection to the species and have resulted in the formulation of mitigation measures to reduce or offset impacts for projects proposed in certain areas, these laws have not adequately protected the species. Numerous activities do not fall under the purview of State and local governments, such as certain projects proposed by the Federal government and projects falling under State statutory exemptions. For example, pursuant to section 2081 of the State Fish and Game Code, CDFG has not required permits for numerous activities that result in take of giant garter snakes (see the examples below). Where overriding social and economic considerations can be demonstrated, these laws allow project proposals to go forward, even in cases where the continued existence of the species may be jeopardized, or where adverse impacts are not mitigated to a point of insignificance.

Project-specific examples of the limitations associated with State law include: (1) Strawberry Creek Realignment—existing wetland habitat was destroyed prior to creation of new replacement habitat, contrary to agreed upon mitigation measures; (2) Caltrans State Route 99/70 widening project—mitigation measures agreed upon under the State Endangered Species Act still have not successfully replaced habitat losses along 32 miles of canal habitat 3 years after construction and completion of the project; (3) over 0.5 miles of known giant garter snake habitat at Fishermen's Lake was graded and eliminated by Reclamation District 1000 through channel maintenance practices and in response to a cleanup order from the Sacramento County Health Department (based on information provided by Reclamation District 1000, continued annual grading to maintain water conveyance and abate the apparent health menace is anticipated to prevent reestablishment of giant garter snake habitat in the future); (4) according to CDFG information, the City of Sacramento permitted development to proceed under the North Natomas Community Plan, even though habitat replacement to mitigate giant garter

snake habitat losses was deferred to approval and construction of another project—North Natomas Community Drainage System—which has not yet occurred (over 5 years after the fact) and reportedly did not require the mitigation measures deferred from the previous project; (5) numerous Negative Declarations were filed by the City of Sacramento for projects affecting giant garter snake habitat within the North Natomas Community Plan, which relied on later implementation of mitigation measures that have not yet been enacted; (6) the Negative Declaration for the now constructed Coral Business Center did not require measures to offset the permanent loss of about 5 acres of giant garter snake habitat; (7) total elimination in 1992 of documented giant garter snake habitat from channel maintenance practices along over 2 miles of canal habitat bordering Block Road in Butte County; (8) dredging and filling of Elk Grove Creek and Laguna Creek resulted in substantial habitat losses for a known giant garter snake population for which no mitigation measures were required by any level of government; (9) from 1978 to 1979, approximately 280 acres of known giant garter snake habitat were eliminated without replacement by Caltrans during construction of Interstate 5 at the State Route 12 intersection; (10) approved mitigation measures for the South Sutter County General Plan do not offset adverse impacts to the giant garter snake (mitigation was deferred to completion of a regional habitat conservation plan sponsored by the Sacramento Area Flood Control Agency, planning for which has been at least temporarily abandoned); (11) the adopted Sutter Bay Village Specific Plan, the Negative Declaration for Sutter Bay Boulevard Interchange on Route 99, and the Negative Declaration for the Sutter Bay Country Club, deferred mitigation to the now abandoned regional planning effort referenced above; (12) Laguna Creek flood control project—known or likely giant garter snake habitat was eliminated prior to replacement of suitable habitat (recreated habitat has not yet been shown to be suitable for or occupied by the species); (13) in the 1970's, approximately 24 hectares (60 acres) of known giant garter snake habitat was eliminated by excavation and freeway construction for Interstate 5 at Beach Lake in Sacramento County; (14) within the last few years, 0.8 km (0.5 mi) of documented giant garter snake habitat was scraped along the East Drainage Canal near the intersection of Interstates 5 and 80; (15) in 1990, about 4 km (2.5 mi) of documented giant garter snake habitat was eliminated by construction of a new channel bordering the south side of the Cross Canal at the Highway 70/99 crossing in Sutter County; and (16) construction of Del Paso Boulevard interchange with Interstate 5 in the American Basin eliminated giant garter snake habitat without successful replacement.

Portions of four giant garter snake populations currently occur or formerly occurred on six State and Federal refuges managed for wildlife purposes; Gray Lodge Waterfowl Management Area, Kesterson National Wildlife Refuge (NWR), Delevan NWR, San Luis NWR, Los Banos Wildlife Area, and Mendota Waterfowl Management Area. For a variety of reasons, little if any giant garter snake habitat on these refuges can be considered secure. The presence of giant garter snakes on these refuges typically is known from one or two older records, and the current status of the giant garter snake is uncertain. Recent surveys (Beak 1992) of four of these refuges in addition to Sacramento NWR failed to detect the species. Only Gray Lodge Waterfowl Management Area has a record within the last 15 to 20 years (T. King and J. Brode, pers. comm., 1992).

Giant garter snakes require water during the active phase of their life cycle in the summer, not during the winter while they remain inactive underground. Many waterfowl areas are managed to provide water during the winter and spring months, and are drained during the summer months. Permanent water on these refuges that provides suitable giant garter snake habitat generally supports populations of largemouth bass or other non-native predatory fish, as well. However, it is likely that some refuges could be managed to support waterfowl and garter snakes.

Potential benefits to the garter snake exist through the establishment of additional waterfowl refuges through the Central Valley Joint Venture, provided that management efforts consider the needs of giant garter snakes.

E. *Other natural or manmade factors affecting its continued existence.* In rice production areas of the American Basin, the largest remaining population of giant garter snakes inhabits water management facilities adjoining rice fields (in rare instances the snake occurs along other agricultural waterways). The seasonal flooding and draining of rice ponds may provide an adequate forage base and may prevent establishment of populations of large predatory fish (Brode and Hansen 1992).

However, Pacific Environmental Consultants (1992) cites sources that document 250,000-acre swings in rice production over a 3-year time span, which suggests that these situations do not represent stable conditions for associated giant garter snake populations. Rice production varies depending upon market conditions (e.g., Department of Agriculture price support programs), and water availability for agriculture (e.g., State Water Resources Control Board Draft Interim Water Rights Decision (D–1630) protects estuarine fisheries values by reducing winter and spring exports from the Delta, which could result in reduced acreage of rice production).

Furthermore, intensive control of vegetation along water delivery and drainage facilities eliminates remaining habitat and prevents reestablishment of former habitat (Hansen 1988; Brode and Hansen 1992; G. Hansen, pers. comm., 1992; J. Brode, pers. comm., 1992). For example, more intensive maintenance practices have eliminated habitat along water canals in the American Basin along State Route 70/99 (CDFG, unpublished information; J. Brode, pers. comm., 1992). Such activities can kill or injure snakes, remove critical escape cover, eliminate prey populations, and destroy small mammal burrows and other soil fissures needed as winter retreat habitat. Beak (1992) documented two giant garter snakes killed apparently by levee maintenance or farming equipment. G. Hansen (pers. comm., 1992) has observed the complete elimination of suitable habitat from maintenance practices along both sides of canals where giant garter snakes were found the previous season.

The giant garter snake is vulnerable to changes in water management, because it depends on the availability of wetlands. In response to Statewide water shortages associated with drought, water management agencies, including the California Department of Water Resources and U.S. Bureau of Reclamation, announce reductions in delivery of water to certain agricultural regions (Grubb 1991). In addition, the Department of Water Resources has begun acting as a broker to facilitate transfer of water from users with discretionary supplies to those with critical needs (Schnitt 1991). Water districts from around the State are offering to purchase water from water districts in rice production regions of the Sacramento Valley (Schnitt 1991).

Contaminants, such as fertilizers and pesticides, could adversely affect giant garter snake populations by degrading water quality and reducing prey populations. Selenium contamination of

agricultural drainwater appears to pose a severe threat to any giant garter snake population that still may inhabit the Grasslands region of western Merced County in the San Joaquin Valley. High levels of selenium contamination have been documented in biota from at least six major canals and water courses in the Grasslands (Saiki *et al.* 1991, 1992) that have historic giant garter snake records. The bioaccumulative food chain threat of selenium contamination on fish, frogs, and fish-eating birds in this region has been well documented (Ohlendorf *et al.* 1986, 1988; Saiki and Lowe 1987; Saiki and May 1988; Hothem and Ohlendorf 1989; Saiki *et al.* 1991, 1992, 1993). Contaminant studies on aquatic organisms and their habitats in the Grasslands and neighboring areas documented elevated levels of waterborne selenium in many representative water bodies in this region that exceeded known toxicity thresholds for giant garter snake prey species (San Joaquin Valley Drainage Program 1990, Central Valley Regional Water Quality Control Board 1992, Hermanutz 1992, Hermanutz *et al.* 1992, Hermanutz *in litt.* 1992, Nakamoto and Hassler 1992). Elevated salinities of waters in the Grasslands due to a sodium sulfate based salt also have been documented at deleterious levels in resident fishes and amphibians (Ohlendorf *et al.* 1986, 1988; Saiki *et al.* 1992), the major food source of giant garter snakes.

Most or all giant garter snake populations also are vulnerable to adverse effects from flooding. A 100-year flood event represents a threat that could extirpate all remaining populations. Many areas, such as in the rice production districts of the Sacramento Valley, flood more frequently, even during winters with normal levels of rainfall. In Glenn and Colusa Counties, Willow Creek, Walker Creek, French Creek, Wilson Creek, Logan Creek, Hunter Creek, Lurline Creek, and the 2047 Drain all flood to depths exceeding the levee tops (L. Rauen, pers. comm., 1993). In eastern Sutter County, many creeks convey water to depths 1 to 2 feet above levee tops (Larry Rauen, pers. comm., 1993.). These flooding events may account, at least in part, for the apparent absence of the giant garter snake in many rice production districts.

Giant garter snakes seek refuge in habitat at higher elevations where they retreat during the winter dormancy period. Commercial development, agricultural conversion, and levee/channel construction and maintenance along the edges of wetlands have eliminated much of the retreat habitat, forcing giant garter snakes to overwinter in flood-prone (streamside) levee slopes.

Habitat loss throughout the range of the giant garter snake has resulted in fragmented and isolated habitat remnants. Such small populations confined to limited habitat areas are likely vulnerable to extirpation from stochastic (random) environmental, genetic, and demographic events (Schonewald-Cox *et al.* 1983). When an existing population becomes extinct, there is virtually no chance of recolonization from any remaining populations. In addition, the breeding of closely related individuals can cause genetic problems in small populations, particularly the expression of deleterious genes (known as inbreeding depression).

In overview, 3 of the 13 populations discussed in the Background section are not imminently threatened with extirpation. The three populations are located in the Butte, Sutter, and Colusa Basins. Although long-term potential threats to these populations have been identified (e.g., changing land use practices, and/or uncertain water supplies), giant garter snakes in these areas are at risk of becoming endangered, but not extirpated, in the foreseeable future.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the giant garter snake in determining to make this final determination. Based on this evaluation, the Service concludes that the giant garter snake is threatened with extinction throughout the San Joaquin Valley, portions of the eastern fringes of the Delta, and the southern Sacramento Valley, an area encompassing about 75 percent of the species' geographic range. The Service finds that the species warrants listing as threatened based on known or potential threats throughout a significant portion of its range. Critical habitat is not being designated for this species for reasons discussed below in the "Critical Habitat" section of this rule.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat concurrently with determining a species to be endangered or threatened. The Service finds that designation of critical habitat presently is not prudent and would not benefit the giant garter snake. The giant garter snake occurs or formerly occurred on about six wildlife refuges managed by the Service or California Department of Fish and Game. These agencies are aware of the presence of the species and, upon listing, the Service will expand coordination efforts to protect the giant garter snake in these areas. However, most populations on private lands typically contain low numbers of individuals and occur in small patches of variable quality habitat. This situation renders the species vulnerable to acts of vandalism or collection, which could deplete population levels and cause irreparable harm. Many locality records occur in water delivery/drainage canals in which water levels readily can be managed to eliminate giant garter snake habitat. In response to publication of the proposed rule, several commenters informed the Service that landowners were likely to take rice lands out of production in an effort to rid their land of giant garter snakes and thereby avoid reduced land values and increased future economic losses. Accordingly, publication of maps and precise descriptions delineating critical habitat areas would increase the likelihood of land use changes, increased collection, or habitat vandalism in violation of section 9 of the Act.

As discussed above under Factor D, many of the artificially created habitats inhabited by giant garter snakes, such as irrigation and drainage canals, do not fall under Federal jurisdiction. Absent jurisdiction by Federal agencies, designation of critical habitat on private land does not afford additional protection to listed species beyond that provided under section 9 of the Act. Where Federal jurisdiction does extend to populations on private lands, habitat protection will be addressed through the recovery process and formal consultation requirements under sections 4 and 7 of the Act, respectively. Therefore, the Service finds that designation of critical habitat is not prudent at this time because such designation would increase the likelihood of habitat vandalism and take and because it is unlikely to benefit (aid the conservation of) the giant garter snake.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the State and

requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) of the Act requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Giant garter snake populations inhabiting some wetlands on private and public lands would fall under the regulatory jurisdiction of the Corps, pursuant to section 404 of the Clean Water Act and section 10 of the Rivers and Harbors Act. As described under Factor A above, numerous commercial developments currently are proposed in known and likely giant garter snake habitat. Pursuant to 33 CFR part 330.5(b)(3), project proposals in giant garter snake habitat otherwise allowed under nationwide permit authority would be subject to scrutiny under section 7 of the Endangered Species Act and imposition of special permit conditions needed to avoid and/or offset impacts incurred by the projects. Pursuant to 33 CFR part 325, individual permits, letters of permission, and regional permits issued by the Corps also would be subject to consultation requirements under section 7 of Act. In addition, water development projects proposed by Federal agencies, such as the Department of the Army and U.S. Bureau of Reclamation, would fall under the purview of section 7 of the Act. The American River Watershed Investigation, Sacramento Metropolitan Area Investigation, and the Merced County Streams project, among other Federal project proposals, will be reviewed pursuant to section 7 of the Act. Habitat manipulation and recreational activities on State or federally owned waterfowl management areas may be affected by the regulatory requirements of sections 7, 9, and 10 of the Endangered Species Act.

The Act and its implementing regulations found at 50 CFR 17.31 set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (including harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt any such conduct), import or export, transport in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued for a specified time to relieve undue economic hardship that would be suffered if such relief were not available. Requests for information on permits may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 432, Arlington, Virginia 22203–3507 (703/358- 2093).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of the references cited herein is available upon request from the Sacramento Field Office (see **ADDRESSES** section).

Author

The primary author of this rule is Peter C. Sorensen, Sacramento Field Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Final Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under REPTILES, to the list of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	*
REPTILES							
*	*	*	*	*	*	*	*
Snake, giant garter	*Thamnophis gigas*	U.S.A. (CA)	Entire	T	522	NA	NA
*	*	*	*	*	*	*	*

Dated: September 27, 1993.
Richard N. Smith,
Acting Director, U.S. Fish and Wildlife Service.
[FR Doc. 93-25741 Filed 10-19-93; 8:45 am]
BILLING CODE 4310-55-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 217 and 227

[Docket No. 910779-2317; I.D. 092493D]

Sea Turtle Conservation; Approved Turtle Excluder Devices

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.
ACTION: Final rule, technical amendment.

SUMMARY: NMFS issues this final rule, technical amendment to amend the regulations listing turtle excluder devises (TEDs) approved for use in trawl fisheries to reduce the incidental capture of endangered and threatened sea turtles. This final rule, technical amendment creates a new category of hard TEDs called "special hard TEDs", which do not conform to the generic design criteria for hard TEDs, but nevertheless meet the approval criteria of the NMFS TED testing protocols. This amendment also lists two TEDs, the Flounder TED and the Jones TED, as special hard TEDs.

DATES: Effective October 15, 1993.

FOR FURTHER INFORMATION CONTACT: Phil Williams, National Sea Turtle Coordinator (301-713-2319) or Charles A. Oravetz, Chief, Protected Species Program, NMFS, Southeast Region (813-893-3366).

SUPPLEMENTARY INFORMATION:

Background

Regulations at 50 CFR 227.72 (57 FR 57348, December 4, 1992) require, with certain exceptions, that shrimp trawlers in the southern Atlantic and Gulf of Mexico have NMFS-approved TEDs installed in nets rigged for fishing; TEDs are devices designed to allow sea turtles caught in trawl nets to escape. These regulations also provide for restrictions, including the required use of TEDs, on vessels in other fisheries, under certain circumstances. Specifically, for example, NMFS promulgated an interim rule requiring vessels in the mid-Atlantic Summer Flounder Fishery to use TEDs (58 FR 48797, September 20, 1993).

The regulations currently allow the use of hard TEDs, which have rigid deflector grids and meet specified generic design criteria, and soft TEDs, which have deflector panels made from polypropylene or polyethylene webbing and meet specified standards of construction and installation.

Although TEDs designed according to the generic standards (50 CFR 227.72(e)(4)(i)) may be applicable for use in other fisheries where TEDs are required, the hard TEDs which satisfy these standards have been largely developed for use in shrimp trawl nets. TED use is now required in the Atlantic summer flounder bottom trawl fishery pursuant to the interim rule. The Atlantic summer founder bottom trawl fishery uses larger nets constructed from much heavier webbing than the shrimp trawl fishery, trawls at faster speeds and encounters bycatch, such as conch and small sharks, which can cause standard hard TEDs to work inefficiently or clog, or even collapse under some conditions.

The existing TED regulations provide for revisions of the hard TED generic design criteria, allowable modifications to hard TEDs, and the addition of new soft TED designs, if, according to a NMFS-approved scientific protocol, the TEDs demonstrate a sea turtle exclusion rate of 97 percent or greater (or an equivalent exclusion rate) (50 CFR 227.72(e)(5)). Two protocols have been published by NMFS and are currently being used for TED testing (52 FR 24262, June 29, 1987 and 55 FR 41092, October 9, 1990). However, the regulations make no provision for new hard TED designs that comply with a NMFS-approved protocol and meet the test criteria.

This technical amendment modifies the existing regulations to allow for the approval of new hard TED designs that are tested pursuant to a NMFS-approved protocol and meet the test criteria; the amendment creates a new category of hard TEDs called "special hard TEDs." These TEDs are designed for specific applications and may not strictly adhere to the generic design criteria, although they meet the approval criteria.

This technical amendment also recognizes that two TEDs, the Flounder TED and the Jones TED, have been approved as special hard TEDs, based on tests conducted pursuant to the NMFS-approved scientific protocol described at 55 FR 41092 (October 9, 1990). The Flounder TED has been designed, tested and is approved for use in the Atlantic summer flounder bottom trawl fishery. The Jones TED may be used in any fishery where TEDs are required.

The Flounder TED is an upward deflecting device, designed strictly for use only in the Atlantic summer flounder bottom trawl fishery. It differs from the generic hard TED specifications in that it incorporates two openings, each no larger than 10 inches by 14½ inches (25.4 cm × 36.8 cm), at the bottom of the TED. This greatly exceeds the bar spacing allowed (4 inch, 10.2 cm) in other single-grid TEDs. It also has a minimum length (51 inches, 129.5 cm) which is much larger than the minimum required for a generic hard TED (28 inches (71.1 cm) in the Gulf of Mexico and 30 inches (76.2 cm) in the Atlantic).

The Jones TED is designed as an upward or downward deflecting device for use in the shrimp and other fisheries where TEDs are required. It differs from the generic hard TED specifications in that the deflector bars do not run from top to bottom of the TED, but extend, at a 45° angle, from each side of the TED. It also differs in that the deflector bars are only connected at one end to the TED frame and the maximum bar spacing on the upper bars is 3½ inches (8.9 cm), and on the lower three bars is 2½ inches (6.4 cm). The Jones TED is anticipated to be especially useful in a bottom opening configuration where algae, grass, and debris clog other types of TEDs.

Although the hard TED generic design criteria allow for the use of steel, aluminum, or fiberglass rod and steel or aluminum tubing, both of these TEDs must be constructed of aluminum or steel pipe with a minimum outside diameter of 1¼ inch (3.2 cm) and a minimum wall thickness of ⅛ inch (0.3 cm). Both the Jones and Flounder TEDs must be installed, according to the generic hard TED requirements, with certain specific exceptions, and must have escape openings which meet the requirements for generic single-grid hard TEDs.

TED Testing

The Flounder TED is a large, rectangular, single-grid hard TED which is installed in the trawl angled upwards to an exit opening at the top of the net ahead of the extension. It has two openings at the bottom to allow small sharks, large shelled mollusks, such as conch, and rocks to pass into the cod end of the trawl. The Jones TED is a single-grid TED, oval in shape with a flattened bottom, which is installed in the trawl ahead of the extension. The Jones TED has diagonal bars attached only at one end to the frame to allow vegetation to slide off the bars into the cod end of the net.

Both TEDs were tested by NMFS at Panama City, Florida, in May and June 1993. The TED testing protocol consisted of two parts:

(1) Qualification tests, videotaped by NMFS scuba divers, of head-started loggerhead turtle releases [25.7 cm to 34.9 cm (31.6 cm mean) straight line carapace length] from TED-equipped nets; and

(2) An evaluation of all test results by a panel of industry and Sea Grant representatives and sea turtle experts.

The NMFS TED previously approved and found to be 97-percent effective in releasing sea turtles was used as the control; i.e., both the Flounder TED and the Jones TED had to meet or surpass the exclusion rate achieved by the NMFS TED.

Due to the small number of turtles available, the NMFS TED was tested in 1993 with only 10 turtles. During these tests the NMFS TED released 10 out 10 turtles. To increase the sample size, the 1993 data were combined with turtle release data from the NMFS TED for 1991 and 1989. During testing in these three years, the NMFS TED released 54 turtles out of 60 introduced, setting the performance standard. Based upon the protocol for the 1993 tests, it was statistically determined that a TED could be approved if it excluded at least 21 out of 25 turtles.

The Flounder TED released 21 out of 25 turtles which met the approval criteria. It was tested with one horizontal bar and a 4-inch opening at the top of the TED. No accelerator funnel was used. No turtles passed through the large (10" x 14½", 25.4 cm x 36.8 cm) openings in the bottom of the TED. The review panel, however, recommended that the TED be approved with the top horizontal bar removed, as it appeared to hinder the release of some turtles. The panel also recommended that the Flounder TED be approved only for installation as a top excluding TED, only for use without an accelerator funnel, and only for use in the Atlantic summer flounder bottom trawl fishery. The recommendations for an installation limitation and a prohibition on use of an accelerator funnel were made to enhance turtle exclusion. The recommendation for allowing use only in the Atlantic summer flounder fishery was based on the original purpose and design of the TED for use in this fishery, and the concern that small-sized Kemp's Ridley turtles may be encountered by the shrimp fishery and that such turtles may pass through the 10-inch (25.4 cm) bottom space of the grid. The review panel's recommendations were adopted.

The Jones TED released 21 of 23 turtles introduced into the net. The two turtles that were not released passed directly through the space between the lower bars of the TED and into the cod end of the trawl. The panel recommended approving this TED under the condition that the space between all bars be reduced to a size that would prevent small turtles from passing through. Based upon the recommendations of the panel, the maximum bar spacing between the bar ends and the opposing bars was reduced to 3½ inches (8.9 cm).

Classification

This final rule, technical amendment is consistent with the Endangered Species Act and other applicable law.

Because this rule makes only minor, technical changes, the Assistant Administrator finds for good cause, pursuant to sections 553(b)(B) and 553(d) of the Administrative Procedure Act, that it is unnecessary to provide for prior public notice and comment, and to delay for 30 days the effective date of this rule, respectively.

Because this rule is being issued without prior public comment, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act and none has been prepared.

Because this rule does not alter the conclusions of previous environmental impact analyses and environmental assessments, it is categorically excluded by NOAA Administrative Order 216–6 from the requirement to prepare an environmental assessment.

This rule does not contain a collection-of-information requirement subject to the Paperwork Reduction Act.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects

50 CFR Part 217

Endangered and threatened species, Exports, Fish, Imports, Marine mammals, Transportation.

50 CFR Part 227

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

Dated: October 14, 1993.

Gary Matlock,

Acting Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR parts 217 and 227 are amended as follows:

PART 217—GENERAL PROVISIONS

1. The authority citation for part 217 continues to read as follows:

Authority: 16 U.S.C. 1531–1544; and 16 U.S.C. 742 *et seq.* unless otherwise noted.

2. In § 217.12, the definition for "Approved TED" is revised to read as follows:

§ 217.12 Definitions.

* * * * *

Approved TED means:

(1) A hard TED that complies with the generic design criteria set forth in 50 CFR 227.72(e)(4)(i). (A hard TED may be modified as specifically authorized by 50 CFR 227.72(e)(4)(iv)); or

(2) A soft TED that complies with the provisions of 50 CFR 227.72(e)(4)(iii); or

(3) A special hard TED which complies with the provisions of 50 CFR 227.72(e)(4)(ii).

PART 227—THREATENED FISH AND WILDLIFE

3. The authority citation for part 227 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

4. In § 227.72, existing paragraphs (e)(4)(ii) and (iii) are redesignated as paragraphs (e)(4)(iii) and (iv) respectively; newly designated (e)(4)(iv) introductory text is revised; and a new paragraph (e)(4)(ii) is added to read as follows:

§ 227.72 Exceptions to prohibitions.

* * * * *

(e) * * *

(4) * * *

(i) * * *

(ii) *Special Hard TEDs.* Special hard TEDs are hard TEDs which do not meet all of the design and construction criteria of the generic standards. The following special hard TEDs are approved TEDs:

(A) *Flounder TED* (Figure 10). The Flounder TED must be constructed of at least 1¼ inch (3.2 cm) outside diameter aluminum or steel pipe with a wall thickness of at least ⅛ inch (0.3 cm). It must have a rectangular frame with outside dimensions which can be no less than 51 inches (129.5 cm) in length and 32 inches (81.3 cm) in width. It must have at least five vertical deflector bars, with bar spacings of no more than 4 inches (10.2 cm). The vertical bars must be connected to the top of the frame and to a single horizontal bar near the bottom. The horizontal bar must be connected at both ends to the sides of the frame and parallel to the bottom bar of the frame. There must be a space no larger than 10 inches (25.4 cm) between the horizontal bar and the bottom bar of the frame. An additional vertical bar runs from the middle of the bottom bar to the middle of the horizontal bar dividing the opening at the bottom into two rectangles with an opening height of no more than 10 inches (25.4 cm) and

an opening width of no more than 14½ inches (36.8 cm). If, because of the width of the TED, the opening width of the bottom rectangles exceeds the maximum allowed, additional vertical bars must be added. This TED must be sewn into the trawl around the entire circumference of the TED with heavy twine. The angle of the deflector bars must be between 30° and 50° from the normal flow through the interior of the trawl. The deflector bars must be positioned in the net to deflect turtles to the escape opening in the top of the trawl. The escape opening must be cut horizontally along the same plane as the TED and must measure at least 35-inches (88.9 cm) in horizontal taut length, and simultaneously, 12 inches (30.5 cm) in vertical taut height, measured at the mid-point of the horizontal measurement. The entire width of the escape opening from the trawl must be centered on and immediately forward of the frame at the top of the net when the net is in its deployed position. Installation of an accelerator funnel is not permitted with this TED. Use of this TED is restricted to the Atlantic summer flounder bottom trawl fishery.

(B) *Jones TED* (Figure 11). The Jones TED must be constructed of at least 1¼ inch (3.2 cm) outside diameter aluminum or steel pipe, and the pipe must have a wall thickness of at least ⅛ inch (0.3 cm). It must be generally oval in shape with a flattened bottom. The frame must have an inside horizontal and vertical measurement of at least 28 inches (71.1 cm) in the Gulf area and 30 inches (76.2 cm) in the Atlantic area. The required inside measurements must be at the mid-point of the deflector grid. The deflector bars must be attached to the frame at a 45° angle from the horizontal positioning downward and each bar must be attached at only one end to the frame. The deflector bars must be attached and lay in the same plane as the frame. The space between the ends of the bottom deflector bars and the bottom frame bar must be no more than 3 inches (7.6 cm). The spacing between the bottom three deflector bars on each side must be no greater than 2½ inches (6.4 cm). The spacing between all other deflector bars must not exceed 3½ inches (8.9 cm) and spacing between ends of opposing deflector bars also must not exceed 3½ inches (8.9 cm). This TED must be sewn into the trawl around the entire circumference of the TED with heavy twine. The angle of the deflector bars must be between 30° and 50° from the normal flow through the interior of the trawl. The escape opening must be at the top of the net when the slope of the bars from forward to aft is upward, and must be at the bottom when such slope is downward. The escape opening must be cut horizontally along the same plane as the TED and must measure at least 35 inches (88.9 cm) in horizontal taut length, and simultaneously, 12 inches (30.5 cm) in vertical taut height in the Atlantic Area. The escape opening must measure at least 32-inches (81.3 cm) in horizontal taut length, and simultaneously, 10-inches (25.4 cm) in vertical taut height in the Gulf Area. The required vertical height must be measured at the mid-point of the horizontal measurement. The entire width of the escape opening from the trawl must be centered on and immediately forward of the frame when the net is in its deployed position.

(iii) * * *

(iv) *Allowable modifications.* No modifications may be made to an approved soft TED. Unless otherwise prohibited in paragraph (e)(4)(ii) of this section, the following modifications may be made to an approved hard TED and an approved special hard TED:

* * * * *

5. In § 227.72, paragraphs (e)(5) heading and (e)(5)(i) are revised to read as follows:

§ 227.72 Exceptions to prohibitions.

* * * * *

(e) * * *

(5) *Revision of generic design criteria, allowable modification of hard TEDs, additional soft TEDs and special hard TEDs.* (i) The Assistant Administrator may revise the generic design criteria for hard TEDs set forth in paragraph (e)(4)(i) of this section, may approve special hard TEDs in addition to those listed in paragraph (e)(4)(ii) of this section, may approve soft TEDs in addition to those listed in paragraph (e)(4)(iii) of this section, or may approve allowable modifications to hard TEDs in addition to those authorized in paragraph (e)(4)(iv) of this section, by a regulatory amendment, if, according to a NMFS-approved scientific protocol, the TEDs demonstrate a sea turtle exclusion rate of 97 percent or greater (or an equivalent exclusion rate). Two such protocols have been published by NMFS (52 FR 24262, June 29, 1987; and 55 FR 41092, October 9, 1990). Testing under the protocol must be conducted under the supervision of the Assistant Administrator, and shall be subject to all such conditions and restrictions as the Assistant Administrator deems appropriate. Any person wishing to participate in such testing should contact the Director, Southeast Fisheries Science Center, NMFS, 75 Virginia Beach Drive, Miami, FL 33149.

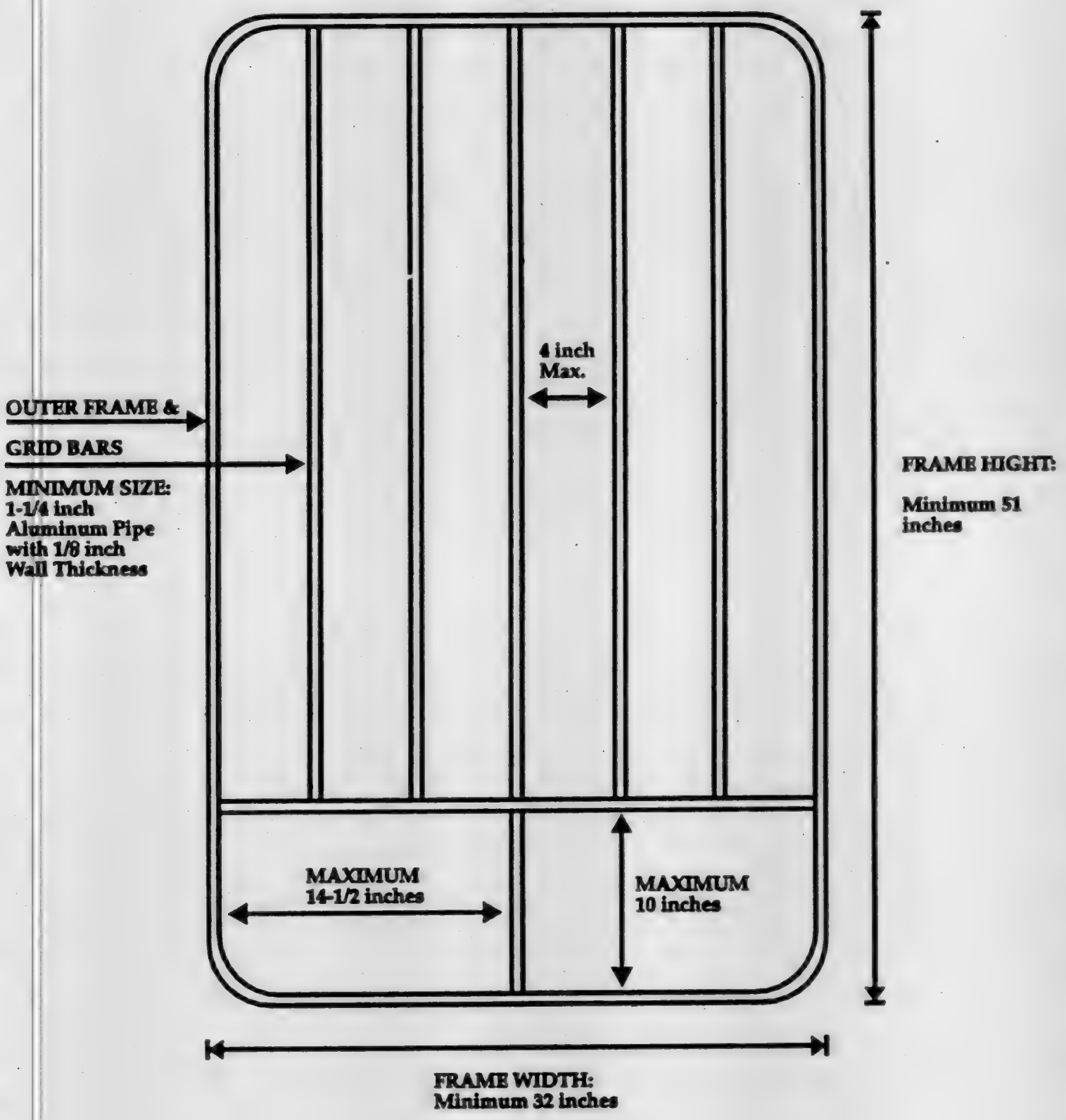
* * * * *

6. Figures 10 and 11 are added to part 227 to read as follows:

BILLING CODE 3510-22-M

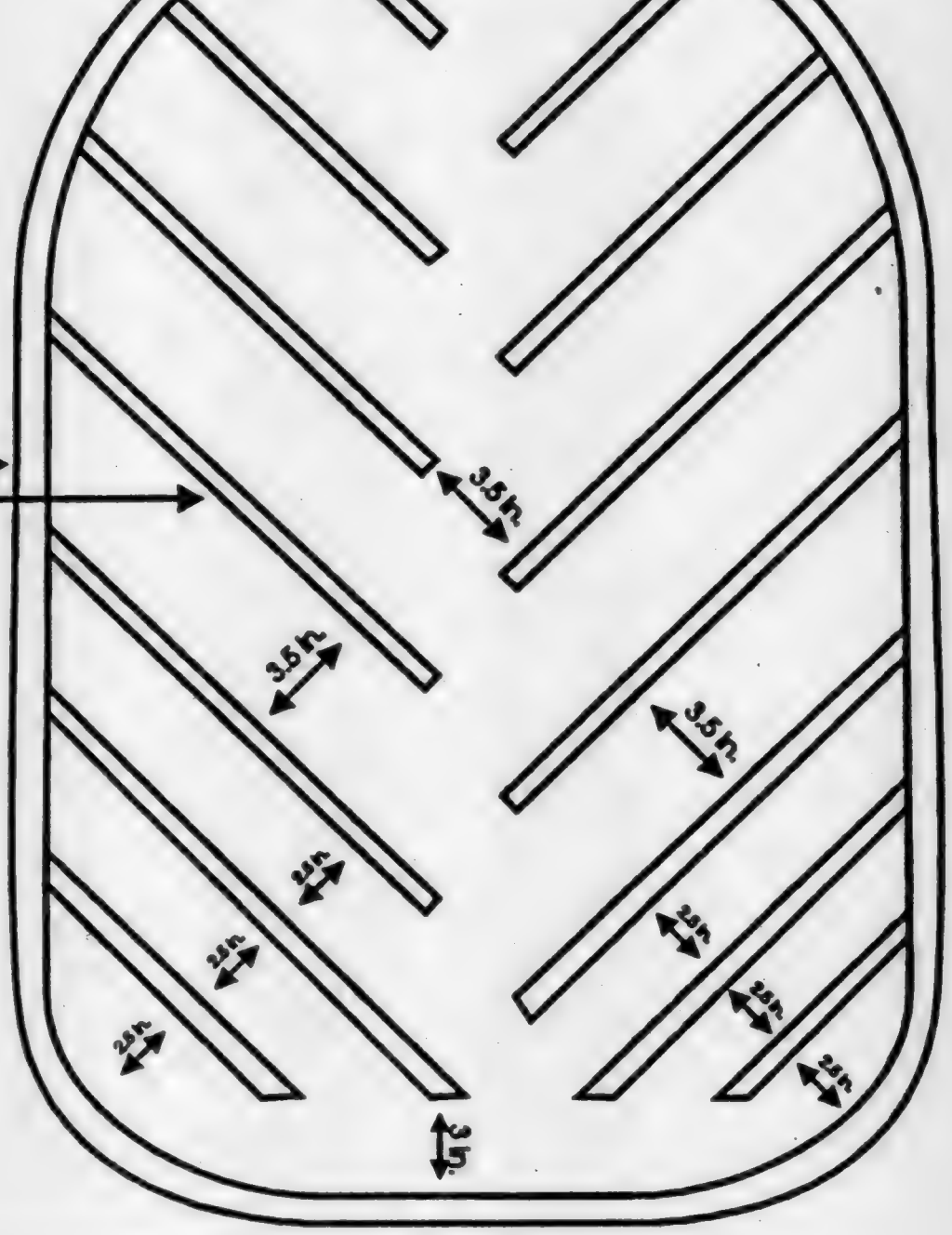
FLOUNDER TED

FIGURE 10



JONES TED

FIGURE 11



[FR Doc. 93-25715 Filed 10-15-93; 8:45 am]
BILLING CODE 3510-22-C

Proposed Rules

Federal Register
Vol. 58, No. 201
Wednesday, October 20, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 20

[Docket No. PRM–20–22]

Northeast Ohio Regional Sewer District; Receipt of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; Notice of receipt.

SUMMARY: The Nuclear Regulatory Commission (NRC) is publishing for public comment a notice of receipt of a petition for rulemaking, dated August 2, 1993, which was filed with the Commission by Northeast Ohio Regional Sewer District. The petition was docketed by the NRC on August 10, 1993, and has been assigned Docket No. PRM–20–22. The petitioner requests that the NRC amend its regulations to require that all licensees provide at least 24 hours advance notice to the appropriate sewage treatment plant before releasing radioactive material to the sanitary sewer system. The petitioner also requests that the NRC exempt materials that enter the sanitary waste stream from the requirements regarding Commission approval for incineration under the NRC's current regulations.

DATES: Submit comments by January 3, 1994. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Submit written comments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. Federal workdays.

For a copy of the petition, write the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

The petition and copies of comments received may be inspected and copied for a fee at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rules Review Section, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301–492–7758 or Toll Free: 800–368–5642.

SUPPLEMENTARY INFORMATION:

Background

The NRC has established standards for protection against ionizing radiation resulting from activities conducted under licensees and has issued these standards in the regulations codified in 10 CFR part 20. These regulations are intended to control the receipt, possession, use, transfer, and disposal of licensed material by its licensees. Licensed material is any source, byproduct, or special nuclear material received, possessed, used, transferred, or disposed of under a general or specific license issued by the NRC.

In particular, the regulations contained in 10 CFR 20.303 and 20.2003 govern the disposal of licensed material or waste containing licensed material by release into sanitary sewerage. The regulations contained in 10 CFR 20.305 and 20.2004 govern the treatment or disposal of licensed material by incineration. In a petition for rulemaking received by the NRC on August 10, 1993, the Northeast Ohio Regional Sewer District (District) requested that the NRC amend these regulations.

The Petition

The petitioner states that the District's Southerly Wastewater Treatment Center has been contaminated by disposal of wastes contaminated with Cobalt-60 into the sanitary sewer system from other sources. The petitioner states that the characterization and remediation of this contamination is ongoing and will cost the District, at a minimum, in excess of one million dollars. The petitioner also believes that the remediation costs could rise into the billions of dollars if off-site disposal of the contaminated ash is required.

The petitioner states that the District is not the first sewage treatment authority to experience radioactive contamination at a treatment plant. The petitioner states that the NRC has previously documented problems at Tonawanda and Grand Island, NY; Lansing, MI; Oak Ridge, TN; Royersford, PA; and Washington, DC. The petitioner also stated that the NRC has recently investigated an occurrence in Youngstown, OH.

The petitioner states that it is possible that contamination currently exists undetected at other sewage treatment plants. The contamination existed at the District for nearly 10 years before it was detected.

It is the petitioner's understanding that the NRC is reviewing the occurrence of unwanted radioactive material in sewage treatment plants. Regardless of any other changes the NRC may make to its regulations, the petitioner requests the following amendments.

The Suggested Amendments

The petitioner requests that the NRC amend 10 CFR 20.303 and 10 CFR 20.2003 to require that all licensees provide not less than 24 hours advance notice to the appropriate sewage treatment plant before releasing radioactive material to the sanitary sewer system. The petitioner also requests that the NRC amend 10 CFR 20.305 and 10 CFR 20.2004, which prohibit the incineration of radioactive waste without NRC approval, to explicitly exempt materials that enter the sanitary waste stream under 10 CFR 20.303 and 10 CFR 20.2003. The petitioner believes that this amendment would clarify that the NRC does not intend to inhibit the operation of more than 200 sewage sludge incinerators nationwide because of the discharges of its licensees.

Dated at Rockville, Maryland, this 14th day of October 1993.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 93–25721 Filed 10–19–93; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-ANE-50]

Airworthiness Directives; Teledyne Continental Motors IO-346, IO-520, and IO-550 Series Piston Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Teledyne Continental Motors (TCM) IO-346, IO-520, and IO-550 series piston engines. This proposal would require initial and repetitive inspections of the engine mount brackets for cracks, and if found cracked, replacement with improved design engine mount brackets. All engine mount brackets would require replacement with improved design engine mount brackets at the next engine removal after the effective date of this AD. This proposal is prompted by reports of cracks in engine mount brackets on engines that have completed at least one overhaul cycle. The actions specified by the proposed AD are intended to prevent engine separation from the aircraft due to cracks in the engine mount brackets.

DATES: Comments must be received by December 20, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92-ANE-50, 12 New England Executive Park, Burlington, MA 01803-5299. Comments may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Teledyne Continental Motors, P.O. Box 90, Mobile, AL 36601. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Jerry Robinette, Aerospace Engineer, Atlanta Aircraft Certification Office, FAA, Small Airplane Directorate, 1669 Phoenix Parkway, suite 210C, Atlanta, GA 30349; telephone (404) 991-3810, fax (404) 991-3606.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-ANE-50." The postcard will be date-stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92-ANE-50, 12 New England Executive Park, Burlington, MA 01803-5299.

Discussion

The Federal Aviation Administration (FAA) has received 27 Service Difficulty Reports (SDR) concerning cracks in engine mount brackets, Part Numbers (P/N) 630694 and 630695, on Teledyne Continental Motors (TCM) IO-346, IO-520, and IO-550 series piston engines. These cracks in engine mount brackets have been reported on engines that have completed at least one engine overhaul cycle. The manufacturer has determined that the engine mount brackets failed due to low cycle fatigue. In these incidents, the lower left engine mount bracket, P/N 630695, failed first, and if undetected, resulted in the failure of the lower right engine mount bracket, P/N 630694. This condition, if not corrected, could result in engine separation from the aircraft due to cracks in the engine mount brackets.

The FAA has reviewed and approved the technical contents of TCM Service Bulletin (SB) No. M92-13, dated September 4, 1992, that describes procedures for initial and repetitive dye penetrant inspections for cracks of certain engine mount brackets.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require initial and repetitive dye penetrant inspections for cracks in certain lower left engine mount brackets, P/N 630695. If the lower left engine mount bracket is found cracked, this proposed rule would require replacing both the lower left and lower right engine mount brackets with improved design engine mount brackets, P/N 653306 and 653305, respectively. If a crack is not detected, the lower left engine mount bracket would require repetitive inspections at intervals not to exceed 500 hours time in service (TIS) until the next engine removal, at which time engine mount brackets, P/N 630694 and 630695, would be replaced with improved design engine mount brackets, P/N 653306 and 653305. Installation of these improved design engine mount brackets would constitute terminating action to the inspection requirements of this AD. The actions would be required to be accomplished in accordance with the service bulletin described previously.

There are approximately 9,750 engines of the affected design in the worldwide fleet. The FAA estimates that 8,300 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per inspection, and if the engine mount brackets must be replaced, an additional 4 work hours would be required. If the engine mount brackets are replaced at engine removal, only the parts cost would apply. The average labor rate is $55 per work hour. Required parts would cost approximately $320 per engine. Based on these figures, the maximum total cost impact of the proposed AD on U.S. operators is estimated to be $5,395,000.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient

federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Teledyne Continental Motors: Docket No. 92–ANE–60.

Applicability: Teledyne Continental Motors (TCM) engine models IO–346A, IO–346B, IO–520C, IO–520CB, and IO–550C; rebuilt engine model IO–520C with serial numbers (S/N) 287051–R and lower; rebuilt engine model IO–520CB with S/N 282226–R and lower; rebuilt engine model IO–550C with S/N 271742–R and lower; and all factory overhauled IO–520C, IO–520CB, and IO–550C engines with a build date prior to August 6, 1992. These engines are installed on but not limited to Beech model A23, A23A, 95–C55, 95–C55A, D55, D55A, E55, E55A, 58, and 58A airplanes.

Compliance: Required as indicated, unless accomplished previously.

To prevent engine separation from the aircraft due to cracks in the engine mount brackets, accomplish the following:

(a) For engines with engine mount brackets that have completed at least one engine overhaul cycle, or have accumulated 2,500 or more hours time in service (TIS) on the effective date of this AD, inspect the lower left engine mount bracket, Part Number (P/N) 630695, for cracks using the dye penetrant techniques specified in this paragraph and in accordance with TCM Service Bulletin (SB) No. M92–13, dated September 4, 1992, within the next 50 hours TIS after the effective date of this AD.

(1) Perform the dye penetrant inspection as follows:

Note: Military Specification MIL–I–6866 and American Society of Testing Materials specifications ASTM E1417–93 and E165–9 contain additional information on dye penetrant inspection processes.

(i) *Preparation:* Clean and dry all parts in such a manner as to leave the surfaces free from grease, oil, soaps, alkalies, and other substances which would interfere with inspection. Vapor degreasing is generally suitable for this purpose.

(ii) *Penetrant Application Procedure:* After preparation, spray or brush the parts with the penetrant, and allow to stand for not less than 5 minutes. The effectiveness of the penetrant increases if left standing for a longer time, as the penetrant will reach finer discontinuities.

(iii) *Penetrant Cleaning:* Clean the parts thoroughly using a medium which will remove penetrant from the surfaces of parts; wash with water when the penetrant is water soluble. When other than water soluble penetrants are used, the penetrant shall be removed with a suitable cleaner. Avoid excessive cleaning which would remove the penetrant from discontinuities.

(iv) *Drying:* Dry the parts as thoroughly as possible. Drying of parts may be accomplished by evaporation at room temperature or by placing the parts in a circulating warm air oven or in the air stream of a hot air dryer. Avoid excessive drying time or drying temperatures above 75 °C (165 °F) to prevent excessive evaporation of the penetrant. If heat is used for drying parts, cool parts to approximately 50 °C (120 °F) before proceeding to the developing procedure.

(v) *Developing:* Apply the developer to the dry parts as lightly and as evenly as possible, using as thin a coating of developer as is possible. A translucent film is adequate. Mix wet developer by agitation immediately prior to applying it. After applying the developer, take care that no penetrant indication is disturbed or obliterated in subsequent handling.

(vi) *Examination:* Examine the developed penetrant indications in accordance with the dye penetrant manufacturer's instructions. Examine parts for indications of discontinuities open to the surface.

(vii) *Final cleaning:* Clean the parts following the inspection to remove penetrant and developer.

Note 1: *Caution:* Because of differences among penetrants, take care to ensure that the final cleaner, the penetrant, the penetrant remover, and the developer are suitable for use with each other.

Note 2: *Caution:* All penetrant materials should be kept as free from moisture as possible.

Note 3: *Caution:* Most penetrants, cleaning agents, and developer suspensions are low flash point material; use caution to prevent fires.

(2) If no crack is detected, inspect in accordance with paragraph (a) of this AD at intervals not to exceed 500 hours TIS since the last inspection.

(3) If a crack is detected, prior to further flight replace both the lower left engine mount bracket, P/N 630695, and lower right engine mount bracket, P/N 630694, with improved design engine mount brackets, P/N 653306 and 653305, respectively.

(b) For all engines, replace both the lower left engine mount bracket, P/N 630695, and lower right engine mount bracket, P/N 630694, with improved design engine mount brackets, P/N 653306 and 653305, respectively, at the next engine removal after the effective date of this AD.

(c) Installation of the improved design engine mount brackets, P/N 653306 and 653305, constitutes terminating action to the inspection requirements of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Atlanta Aircraft Certification Office.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the inspection requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on October 1, 1993.

Jack A. Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 93–25713 Filed 10–19–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 71

Proposed Modification of the Dallas-Fort Worth, TX, Class B Airspace Area; Public Meetings

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meetings.

SUMMARY: This notice is announcing fact-finding informal airspace meetings to solicit information from airspace users and others concerning a proposal to modify the Class B airspace area at Dallas-Fort Worth, TX. The Class B airspace area modification is being considered due to the increased volume of traffic arriving and departing the Dallas-Fort Worth area. These airspace meetings are held to provide interested parties an opportunity to present input on the proposed modification. All comments received during these

meetings will be considered prior to the issuance of a Notice of Proposed Rulemaking.

DATES: The informal airspace meetings will be held on Wednesday, December 8, 1993, and Monday, December 13, 1993. Comments must be received on or before February 18, 1994.

Date: Wednesday, December 8, 1993
Time: 9 p.m.
Place: North Mesquite High School, Mesquite, TX
Date: Monday, December 13, 1993
Time: 9 p.m.
Place: Tarrant County Junior College, Northeast Campus, North Richland Hills, TX

ADDRESSES: Send or deliver comments on the proposal in triplicate to: Manager, Air Traffic Division, ASW–500, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX 76193–0500.

FOR FURTHER INFORMATION CONTACT: Alvin DeVane, Southwest Regional Office, ASW–530, telephone: (817) 624–5535.

SUPPLEMENTARY INFORMATION:

Meeting Procedures

(a) The meetings will be informal in nature and will be conducted by a representative of the FAA Southwest Region. Representatives from the FAA will present a formal briefing on the proposed Class B airspace area modification. Each participant will be given an opportunity to deliver comments or make a presentation.

(b) The meetings will be open to all persons on a space-available basis. There will be no admission fee or other charge to attend and participate.

(c) Any person wishing to make a presentation to the FAA panel will be asked to sign in and estimate the amount of time needed for such presentation. This will permit the panel to allocate an appropriate amount of time for each presenter. The panel may allocate the time available for each presentation in order to accommodate all speakers. The meetings will not be adjourned until everyone on the list has had an opportunity to address the panel. The meetings may be adjourned at any time if all persons present have had the opportunity to speak.

(d) Position papers or other handout material relating to the substance of the meetings will be accepted. Participants wishing to submit handout material should present three copies to the presiding officer. There should be additional copies of each handout available for other attendees.

(e) The meetings will not be formally recorded. However, a summary of the comments made at the meetings will be filed in the docket.

Agenda for each Meeting

Opening Remarks and Discussion of Meeting Procedures
Briefing on Background for Proposal
Public Presentations
Closing Comments

Issued in Washington, DC, on October 13, 1993.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 93–25717 Filed 10–6–93; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Ch. VII

[Docket No. 931060–3260]

Request for Comments on Effects of Foreign Policy-Based Export Controls

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Request for comments on foreign policy-based export controls.

SUMMARY: The Bureau of Export Administration (BXA) is reviewing the foreign policy-based export controls in the Export Administration Regulations to determine whether they should be modified, rescinded or extended. To help make this determination, BXA is seeking comments on how existing foreign policy-based export controls have affected exporters and the general public.

DATES: Comments must be received by November 30, 1993 to assure full consideration in the formulation of export control policies as they relate to foreign policy-based controls.

ADDRESSES: Written comments (three copies) should be sent to Patricia Muldonian, Regulations Branch (Room 4054), Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: John Bolsteins, Foreign Policy Branch, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202) 482–4252. Copies of the current 1993 Annual Foreign Policy Report to the Congress can also be requested.

SUPPLEMENTARY INFORMATION: The current foreign policy controls maintained by the Bureau of Export Administration (BXA) are set forth in the Export Administration Regulations (EAR), parts 776 (Special Commodity Policies and Provisions), 778 (Proliferation Controls), and 785 (Special Country Policies and Provisions). These controls apply to: supercomputers (§ 776.11); crime control and detection commodities (§ 776.14); regional stability commodities and equipment (§ 776.16); equipment and related technical data used in the design, development, production, or use of missiles capable of delivering nuclear weapons (§ 778.7); chemical precursors and biological agents and associated equipment and technical data related to the production of chemical and biological agents (§ 778.8); activities of U.S. persons in transactions related to missile technology or chemical or biological weapons proliferation in named countries (§ 778.9); embargoed countries (§ 785.1); South Africa (§ 785.4(a)); countries designated as supporters of acts of international terrorism (§ 785.4(d)); and, Libya (§ 785.7).

Effective January 21, 1993, the Secretary of Commerce, on the recommendation of the Secretary of State, extended for one year all foreign policy controls then in effect.

To assure maximum public participation in the review process, comments are solicited on the extension or revision of the existing foreign policy controls for another year. Among the criteria the Departments of Commerce and State consider in determining whether to continue or revise U.S. foreign policy controls are the following:

1. The likelihood that such controls will achieve the intended foreign policy purpose, in light of other factors, including the availability from other countries of the goods or technology proposed for such controls;

2. Whether the foreign policy purpose of such controls can be achieved through negotiations or other alternative means;

3. The compatibility of the controls with the foreign policy objectives of the United States and with overall United States policy toward the country subject to the controls;

4. The reaction of other countries to the extension of such controls by the United States is not likely to render the controls ineffective in achieving the intended foreign policy purpose or be counterproductive to United States foreign policy interests;

5. The effect of the controls on the export performance of the United States, the competitive position of the United States in the international economy, the

international reputation of the United States as a supplier of goods and technology, or the economic well-being of individual United States companies and their employees and communities does not exceed the benefit to United States foreign policy objectives; and

6. The ability of the United States to enforce the controls effectively.

BXA is particularly interested in the experience of individual exporters in complying with the proliferation controls, with emphasis on economic impact and specific instances of business lost to foreign competitors. BXA is also interested in comments relating to the effects of foreign policy controls on exports of replacement and other parts.

Parties submitting comments are asked to be as specific as possible. All comments received before the close of the comment period will be considered by BXA in reviewing the controls and developing the report to Congress.

BXA will consider requests for confidential treatment. The information for which confidential treatment is requested should be submitted to BXA separate from any non-confidential information submitted. The top of each page should be marked with the term "Confidential Information." BXA will either accept the submission in confidence, or if the submission fails to meet the standards for confidential treatment, will return it. A non-confidential summary must accompany such submissions of confidential information. The summary will be made available for public inspection.

Information accepted by BXA as confidential will be protected from public disclosure to the extent permitted by law. Communications between agencies of the United States Government or with foreign governments will not be made available for public inspection.

All other information relating to the notice will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, BXA requires written comments. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying.

The public record concerning these comments will be maintained in the Freedom of Information Records Inspection Facility, room 4525, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in part 4 of title 15 of the Code of Federal Regulations. Information about inspection and copying of records at this facility may be obtained from Margaret Cornejo, BXA Freedom of Information Officer, at the above address or by calling (202) 482–5653.

Authority: Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.*); Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended (extended by Pub. L. 103–10, 107 Stat. 40); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990); as continued by Notice of November 11, 1992 (57 FR 53979, November 13, 1992); E.O. 12867 of September 30, 1993 (58 FR 51743, October 4, 1993); E.O. 12868 of September 30, 1993 (58 FR 51749, October 4, 1993).

Dated: October 13, 1993.

Iain S. Baird,

Acting Assistant Secretary for Export Administration.

[FR Doc. 93–25777 Filed 10–19–93; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[FI–46–93]

RIN 1545–AR73

Hedging Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: In the Rules and Regulations portion of this issue of the Federal Register, the IRS is issuing temporary regulations to clarify the character of gain or loss from the sale or exchange of property that is part of a business hedge. The temporary regulations address questions that have arisen as a result of the decision of the United States Supreme Court in *Arkansas Best*. The temporary regulations provide guidance to taxpayers entering into hedging transactions and serve as a basis for resolving pending cases involving gains and losses from hedging. The text of the temporary regulations also serves as a partial text of these proposed regulations. This document also contains proposed special identification requirements for specific types of hedging transactions.

DATES: Written comments must be received by December 20, 1993. Requests to speak (with outlines of oral comments) at a public hearing scheduled for Wednesday, January 19, 1994, at 10 a.m. must be received by December 23, 1993.

ADDRESSES: Send all submissions to: Internal Revenue Service, P. O. Box 7604, Ben Franklin Station, Washington, DC 20044 (Attn: CC:DOM:CORP:T:R (FI–46–93), room 5228). In the alternative, comments and requests may be hand delivered to: CC:DOM:CORP:T:R (FI–46–93), Internal Revenue Service, room 5228, 1111 Constitution Avenue, NW., Washington, DC 20224. The public hearing will be held in the IRS Auditorium, Seventh Floor, 7400 Corridor, 1111 Constitution Avenue, NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Jo Lynn Ricks of the Office of the Assistant Chief Counsel (Financial Institutions and Products), Internal Revenue Service, 1111 Constitution Avenue, NW., Washington DC 20224 (Attn: CC:DOM:FI&P). Telephone 202–622–3920 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer PC:FP, Washington, DC 20224.

The collection of information in this regulation is in § 1.1221–2(c). This information is required by the Internal Revenue Service to aid it in administering the law and to prevent manipulation, such as recharacterization of transactions in view of later developments. This information will be used to verify that a taxpayer is properly reporting its business hedging transactions. The likely recordkeepers are businesses or other for-profit institutions.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual recordkeepers may require greater or

less time, depending on their particular circumstances.

Estimated total annual recordkeeping burden: 50,000 hours.

The estimated annual burden per recordkeeper varies from .10 to 10.00 hours depending on individual circumstances, with an estimated average of .50 hour.

Estimated number of recordkeepers: 100,000.

Explanation of Provisions

This notice of proposed rulemaking cross references the text of temporary regulations, published in the Rules and Regulations portion of this issue of the **Federal Register**, which add new §§ 1.1221–2T, 1.1233–2T, and 1.1234–4T to the Income Tax Regulations (26 CFR part 1). For the text, see the temporary regulations published in the Rules and Regulations portion of this issue of the **Federal Register**. The preamble to the temporary regulations explains the regulations.

This notice of proposed rulemaking also contains rules under §§ 1.1221–2(c) and 1.1256–1 that are not in the temporary regulations. Proposed § 1.1221–2(c)(2) contains special identification requirements for specific types of hedging transactions. Special rules are proposed for inventory hedges, hedges of debt instruments that cover less than the instruments' terms, anticipatory debt hedges, and hedges of aggregate risks. The Service believes that each of the special rules is needed to enable its examiners to verify that identified transactions are being properly treated for tax purposes. The Service invites comments about the scope of the proposed special rules and about other types of hedges (including hedges entered into with related parties) that may require similar provisions.

Proposed §§ 1.1221–2(c)(4) and 1.1256(e)–1 contain provisions to coordinate the identification of hedges for purposes of sections 1221 and 1256(e). Proposed § 1.1221–2(c)(4) provides that an identification for purposes of section 1256(e)(2)(C) is also an identification for purposes of § 1.1221–2(c). Proposed § 1.1256(e)–1 provides that the identification of a hedging transaction for purposes of section 1256(e)(2)(C) must satisfy the requirements of § 1.1221–2(c), and that any identification for purposes of § 1.1221–2(c) is also an identification for purposes of section 1256(e)(2)(C).

Special Analyses

It has been determined that these regulations are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments that are submitted timely (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying.

A public hearing will be held on Wednesday, January 19, 1994, at 10 a.m. in the IRS Auditorium, 7400 corridor, Internal Revenue Building, 1111 Constitution Ave., NW., Washington, DC. The rules of § 601.601(a)(3) of the "Statement of Procedural rules" (26 CFR part 601) shall apply to the public hearing.

Persons who have submitted written comments by December 20, 1993, and who also desire to present oral comments at the hearing on the proposed regulations, should submit, not later than December 23, 1993, a request to speak and an outline of the oral comments to be presented at the hearing stating the amount of time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation, exclusive of the time consumed by the questions from the panel for the government and answers thereto.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building before 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Jo Lynn Ricks, Office of the Assistant Chief Counsel (Financial Institutions and Products), Internal Revenue Service. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding the following citation in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1. 1221–2 also issued under 26 U.S.C. 6001 * * *

Par. 2. Section 1.1221–2 is added. The text of this section, as proposed, is the same as the text of the temporary regulation § 1.1221–2T published elsewhere in this issue of the **Federal Register**, except for paragraphs (c)(2), (c)(4), and(c)(5)(ii), which are added to read as follows:

§ 1.1221–2 Hedging transactions.

* * * * *

(c) * * *

(2) *Additional identification requirements for certain hedging transactions.* In addition to satisfying the requirements of paragraph (c)(1) of this section, the identification of certain hedging transactions must include the information specified in this paragraph (c)(2).

(i) *Inventory hedges.* If the hedging transaction relates to inventory held or to be held by the taxpayer, the identification must specify the type or class of inventory to which the transaction relates.

(ii) *Debt hedges for a limited period.* If the hedging transaction relates to a debt instrument held or issued (or to be held or issued) by the taxpayer and hedges the instrument form less than its expected term, the identification must specify the period to which the transaction relates.

(iii) *Anticipatory debt hedges.* If the hedging transaction relates to a debt instrument to be held or issued by the taxpayer, the identification must specify the instrument's expected amount, date of acquisition or issuance, and term, and the manner in which interest is expected to be computed and paid.

(iv) *Anticipatory asset hedge.* If the hedging transaction relates to assets to be acquired by the taxpayer, the identification must specify the expected

date of acquisition and quantity to be acquired.

(v) *Hedges of aggregate risks.* If the hedging transaction relates to an aggregate risk, the identification must show what interest rate, currency, and/or price risks are being aggregated and the method of determining the aggregate risk to be hedged.

* * * * *

(4) *Consistency with section 1256(e)(2)(C).* Any identification for purposes of section 1256(e)(2)(C) is also an identification for purposes of this section.

(5) * * *

(ii) *Special rule for paragraphs (c)(2) and (c)(4).* Paragraphs (c)(2) and (c)(4) of this section apply to transactions entered into on or after 60 days after the publication of final regulations.

* * * * *

Par. 3. Section 1.1233–2 is added to read as follows:

§ 1.1233–2 Hedging transactions.

[The text of this section, as proposed, is the same as the text of the temporary regulations published elsewhere in this issue of the **Federal Register**].

Par. 4. Section 1.1234–4 is added to read as follows:

§ 1.1234–4 Hedging transactions.

[The text of this section, as proposed, is the same as the text of the temporary regulations published elsewhere in this issue of the **Federal Register**].

Par. 5. Section 1.1256(e)–1 is added to read as follows:

§ 1.1256(e)–1 Identification of hedging transactions.

(a) *Identification and record-keeping requirements.* Under section 1256(e)(2)(C), a taxpayer who enters into a hedging transaction must identify the transaction as a hedging transaction before the close of the day on which the taxpayer enters into the transaction.

(b) *Requirements for identification.* The identification of a hedging transaction for purposes of section 1256(e)(2)(C) must satisfy the requirements of § 1.1221–2(c). Solely for purposes of section 1256(f)(1), however, an identification that does not satisfy all of the requirements of § 1.1221–2(c) is nevertheless treated as an identification under section 1256(e)(2)(C).

(c) *Consistency with § 1.1221–2.* Any identification for purposes of § 1.1221–2(c) is also an identification for purposes of this section.

(d) *Effective date.* This section applies to transactions entered into on or after 60 days after the publication of final regulations.

Margaret Milner Richardson,
Commissioner of Internal Revenue.

[FR Doc. 93–25780 Filed 10–18–93; 10:00 am]
BILLING CODE 4830–01–U

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26 CFR Parts 1 and 602

[FI–54–93]

RIN 1545–AR96

Clear Reflection of Income in the Case of Hedging Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to accounting for business hedging transactions. In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary regulations to clarify the character of gain or loss recognized from the sale or exchange of property that is part of a business hedge. The text of the temporary regulations serves as a partial text of proposed regulations, published elsewhere in this issue of the **Federal Register**, on the same subject. The proposed regulations in this document will provide guidance to taxpayers regarding when gain or loss from common business hedging transactions is taken into account for tax purposes.

DATES: Written comments must be received by December 20, 1993. Requests to speak (with outlines of oral comments) at a public hearing scheduled for January 19, 1994, must be received by December 23, 1993.

ADDRESSES: Send all submissions to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044 (Attn: CC:DOM:CORP:T:R (FI–54–93), room 5228). The public hearing will be held in the IRS Auditorium, Seventh Floor, 7400 Corridor, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Jo Lynn Ricks of the Office of the Assistant Chief Counsel (Financial Institutions and Products), Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attn: CC:DOM:FI&P). Telephone (202) 622–3920 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, PC:FP, Washington, DC 20224.

The collection of information in this regulation is in § 1.446–4(d). This information is required by the Internal Revenue Service to verify compliance with section 446 of the Internal Revenue Code. This information will be used to determine whether the amount of tax has been computed correctly. The likely recordkeepers are businesses and other organizations.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual recordkeepers may require more or less time, depending on their particular circumstances.

Estimated total annual recordkeeping burden: 20,000 hours.

The estimated annual burden per recordkeeper varies from .10 to 10 hours depending on individual circumstances, with an estimated average of .20 hour.

Estimated number of recordkeepers: 100,000.

Background

Under proposed § 1.1221–2, published elsewhere in this issue of the **Federal Register**, property that is part of a hedging transaction, as defined, is not a capital asset. Thus, property that otherwise would be a capital asset is not a capital asset if it is part of a hedging transaction with respect to ordinary property, borrowings, or obligations. Similarly, gain or loss on a short sale or option that is part of a hedging transaction is ordinary rather than capital. Implicit in these rules is the notion that a hedging transaction bears such a direct relationship to the asset or liability being hedged that the character of gain or loss from the hedging transaction is determined by reference to that asset or liability.

Just as the nature of the hedged item affects the character of gain or loss from the hedging transaction, the timing of

the income, deduction, gain, or loss from the hedged item should affect the timing of the income, deduction, gain, or loss from the hedging transaction. Taking gain or loss on the hedging transaction into account when it is realized often does not reflect the economics of the hedging transaction. For example, if property is part of an anticipatory liability hedge, taking gain or loss into account at the time the property is sold does not reflect the fact that the hedge was designed to fix the taxpayer's cost of borrowing over the life of the liability. The economics of a hedging transaction are reflected only when the timing of income, deduction, gain, or loss from the hedge corresponds to the timing of income, deduction, gain, or loss from the asset or liability being hedged.

When property is part of a hedging transaction, taking income, deduction, gain, or loss on the property into account when it is realized often provides significant opportunities for abuse. Taxpayers may selectively dispose of property or terminate a position that is part of a hedging transaction in order to recognize gain or loss in a period other than that in which they recognize income, deduction, gain, or loss from the hedged item. Although the flexibility to control the timing of gain or loss generally is accepted in the tax law, that flexibility is inappropriate when the transaction that gives rise to the gain or loss is so closely related to the asset or liability being hedged.

The potential abuse inherent in taking income, deduction, gain, or loss from hedging transactions into account when realized has increased dramatically with the exponential growth of hedging products and markets over the last decade. Historically, most hedging products were of relatively short duration. This limited the timing mismatches that could be achieved. With the development of sophisticated markets in derivative financial products (*e.g.*, swaps and other notional principal contracts), however, hedges of long duration are readily available and highly liquid. This has created the potential for substantial timing mismatches.

Accordingly, the proposed regulations invoke the Commissioner's authority under sections 446(b), 451, and 461 to require that a taxpayer's method of accounting for hedging transactions clearly reflect income. In general, the proposed regulations require a taxpayer that enters into a hedging transaction as defined in § 1.1221–2(b) to reasonably match the timing of income, deduction, gain, or loss from the hedging transaction with the timing of income, deduction, gain, or loss from the item being hedged.

Explanation of Provisions

Paragraph (a) of § 1.446–4 provides that a hedging transaction, as defined in § 1.1221–2(b), must be accounted for under the rules of § 1.446–4 whether or not the rules of § 1.1221–2(a) govern the character of gain or loss on the transaction. Thus, for example, the rules of this section do not apply to hedges of capital assets, but do apply to foreign currency hedges for which section 988 and the regulations thereunder provide character but not timing rules.

Taxpayers are not required to use the rules of this section for a trade or business in which the cash receipts and disbursements method of accounting is used or in which § 1.471–6 is used for inventory valuations if, for all prior taxable years ending on or after the publication of final regulations, the taxpayer met the $5,000,000 gross receipts test of section 448(c) (or would have met the test if it were a corporation or partnership). The Service does not believe that it is necessary for small taxpayers that are not familiar with accrual accounting concepts to use the rules prescribed in this section. The Service invites comments with respect to the proper scope of the exclusion.

The types of transactions excluded from the application of this section include transactions to which section 475 applies and any section 988 hedging transaction if the transaction is integrated under § 1.988–5 or if other regulations issued under section 988(d) (or an advance ruling described in § 1.988–5(e)) govern the timing of the recognition of gain or loss from the transaction. The Service invites comments with respect to whether these exceptions are appropriate and whether other exceptions should be added.

Under paragraph (b) of § 1.446–4, the method of accounting used for a hedging transaction must clearly reflect the taxpayer's income. To do so, the method must reasonably match the income, deduction, gain, or loss from the hedge with the income, deduction, gain, or loss from the item being hedged.

Paragraph (c) of § 1.446–4 recognizes that more than one method of accounting for a particular type of hedging transaction may satisfy the clear reflection requirement of paragraph (b). Thus, a taxpayer may choose any method that clearly reflects income and may use different methods for different types of hedging transactions and for transactions that hedge different types of items. A method, however, must be used consistently and may be changed only with the consent of the Commissioner.

The effect of paragraph (c) is to give the taxpayer substantial latitude in the selection of a method of accounting. The Service believes that it would be inappropriate to require a particular method if the method being used by the taxpayer satisfies the clear reflection requirement of paragraph (b). It is anticipated that the hedge accounting methods employed by most taxpayers for financial accounting purposes will satisfy the clear reflection standard of paragraph (b) because financial accounting attempts to match related items of income and expense. At present, however, financial accounting standards for hedges are in a state of development. Thus, the proposed regulations do not make the taxpayer's treatment of its hedges for financial accounting purposes determinative for tax purposes.

Paragraph (d) of § 1.446–4 requires that the books and records maintained by the taxpayer disclose the method or methods used to account for different types of hedging transactions. In addition, paragraph (d) supplements the identification requirements for hedging transactions under § 1.1221–2(c) and requires that the books and records maintained by a taxpayer contain whatever more specific identification is necessary to verify the application of the method of accounting used by the taxpayer for a transaction. This rule recognizes that certain methods of accounting will necessitate more detailed identification than others. The purpose of the rules in paragraph (d) is to ensure that the taxpayer has such records as are necessary to allow a Service examiner to determine whether the method of accounting used by the taxpayer for a transaction clearly reflects income.

Paragraph (e) of § 1.446–4 provides guidance for determining whether the clear reflection requirement has been satisfied. The rules of this paragraph are minimum requirements and general guidelines and are not determinative of whether the taxpayer's method clearly reflects income. Providing this type of general guidance gives taxpayers maximum flexibility in accounting for hedging transactions but does not provide certainty with respect to whether particular methods of accounting are acceptable. The Service invites comments with respect to whether additional guidance is needed.

One issue not addressed in paragraph (e) is how to account for an anticipatory hedge where the asset that the taxpayer anticipated purchasing is not purchased or the liability that the taxpayer

anticipated incurring is not incurred. The Service invites comments with respect to whether the gain or loss realized on the hedge should be taken into account over the term that the asset would have been held or the term that the liability would have been outstanding, or whether some other treatment is appropriate.

Another issue not addressed in paragraph (e) is how to account for "global" hedges and other hedges of aggregate risk. Comments are invited with respect to what guidance should be provided regarding how a taxpayer can clearly reflect income from these transactions. The Service also welcomes comments about whether special rules are needed for hedges entered into with a related party.

Paragraph (f) of § 1.446–4 provides that the rules of this section do not change the type or character of income realized on a hedge. Neither these proposed regulations nor proposed § 1.1221–2 provides for integration of the hedging transaction with the asset or liability being hedged. Rather, they respect the separate existence of the hedging transaction while tying the character and the timing of gain or loss from the transaction to the character and timing of gain or loss from the item being hedged. The Service invites comments on whether present law provides the authority to either require or permit integration and, if so, on whether integration should be either required or permitted.

The regulations are proposed to be effective for hedging transactions entered into 60 days after the final regulations are issued. The proposed regulations do not address the way in which taxpayers will be permitted to change their methods of accounting for hedging transactions to conform to the requirements of the regulations. It is anticipated that this guidance will be provided when final regulations are issued, either in the regulations or in a ravenue procedure that is published simultaneously with the regulations. Comments are invited with respect to how the change in accounting method should be effected.

Amendments to two other regulations sections are also proposed to conform those sections with § 1.446–4. First, a cross reference is added to § 1.446–3(h) to clarify that a termination payment with respect to a notional principal contract that is part of a hedging transaction is subject to the rules of § 1.446–4. Second, the language of § 1.461–1(a)(2)(iii)(B) is revised to clarify that a loss under section 165 generally is subject to the rules of sections 446 and 461.

Special Analyses

It has been determined that these regulations are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed rules are adopted as final regulations, consideration will be given to any written comments that are submitted timely (preferably an original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying.

A public hearing will be held on Wednesday, January 19, 1994 at 10:00 a.m. in the IRS Auditorium, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The rules of § 601.601(a)(3) of the Statement of Procedural Rules (26 CFR part 601) shall apply to the hearing.

Persons who have submitted written comments by December 20, 1993, and who also desire to present oral comments at the hearing on the proposed regulations, should submit, not later than December 23, 1993, a request to speak and an outline of the oral comments to be presented at the hearing stating the amount of time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation, exclusive of the time consumed by the questions from the panel for the government and answers thereto.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building before 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Jo Lynn Ricks, Office of the Assistant Chief Counsel (Financial Institutions and Products). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.446–3 is amended as follows:

1. The first sentence of paragraph (h)(2) is revised.
2. The second sentence of the introductory language of paragraph (h)(5) is revised.
3. The revisions read as follows:

§ 1.446–3 Notional principal contracts.

* * * * *

(h) * * *

(2) *Taxable year of inclusion and deduction by original parties.* Except as otherwise provided (e.g., in section 453, section 1092, or § 1.446–4), a party to a notional principal contract recognizes a termination payment in the year the contract is extinguished, assigned, or exchanged. * * *

* * * * *

(5) * * * The contracts in the examples are not hedging transactions as defined in § 1.1221–2(b), and all of the examples assume that no loss deferral rules apply.

* * * * *

Par. 3. Section 1.446–4 is added to read as follows:

§ 1.446–4 Hedging Transactions.

(a) *In general.* Except as provided in this paragraph (a), a hedging transaction as defined in § 1.1221–2(b) (whether or not the character of gain or loss from the transaction is determined under § 1.1221–2(a)(1) or (2)) must be accounted for under the rules of this section. To the extent that provisions of any other regulations governing the timing of income, deductions, gain or loss are inconsistent with the rules of this section, the rules of this section control.

(1) *Trades or businesses excepted.* A taxpayer is not required to account for hedging transactions under the rules of this section for any trade or business in which the cash receipts and disbursements method of accounting is used or in which § 1.471–6 is used for inventory valuations if, for all prior taxable years ending on or after the date of publication of final regulations under this section, the taxpayer met the $5,000,000 gross receipts test of section 448(c) (or would have met that test if the taxpayer were a corporation or partnership). A taxpayer not required to use the rules of this section may nonetheless use a method of accounting that is consistent with these rules.

(2) Coordination with other sections. This section does not apply to—

(i) Any transaction to which section 475(a) applies;

(ii) Any section 988 hedging transaction if the transaction is integrated under § 1.988–5 or if other regulations issued under section 988(d) (or an advance ruling described in § 1.988–5(e)) govern when gain or loss from the transaction is taken into account;

(iii) The determination of the issuer's yield on an issue of tax-exempt bonds for purposes of the arbitrage restrictions under § 1.148–4(h).

(b) *Clear reflection of income.* The method of accounting used for a hedging transaction must clearly reflect the taxpayer's income. To clearly reflect income, the method used must reasonably match the timing of income, deduction, gain, or loss from the hedging transaction with the timing of income, deduction, gain, or loss from the item or items being hedged. Taking gains and losses into account in the period in which they are realized may clearly reflect income in the case of certain hedging transactions. For example, where the hedge and the item being hedged are disposed of in the same taxable year, taking realized gain or loss into account on both items in that taxable year generally will clearly reflect income. In the case of many hedges, however, taking gains and losses into account as they are realized does not result in the matching required by this section.

(c) *Choice of method and consistency.* For any given type of hedging transaction, there may be more than one method of accounting that satisfies the clear reflection requirement of paragraph (b) of this section. A taxpayer is generally permitted to choose a method of accounting for a particular type of hedging transaction that clearly reflects the taxpayer's income from that type of transaction. *See* paragraph (e) of this section for requirements and limitations on the taxpayer's choice of method. Different methods of accounting may be used for different types of hedging transactions and for transactions that hedge different types of items. Once a taxpayer adopts a method of accounting, however, that method must be applied consistently and can only be changed with the consent of the Commissioner, as provided by section 446(e) and the regulations and procedures thereunder.

(d) *Recordkeeping requirements*—(1) *In general.* The books and records maintained by the taxpayer must contain a description of the accounting method used for each type of hedging transaction. The description of the method or methods used must be sufficient to show how the clear reflection requirement of paragraph (b) of this section is satisfied.

(2) *Additional identification.* In addition to the identification required by § 1.1221–2(c), the books and records maintained by the taxpayer must contain whatever more specific identification with respect to a transaction that is necessary to verify the application the method of accounting used by the taxpayer for the transaction. This additional identification may relate to the hedging transaction or to the item, items, or aggregate risk being hedged. The identification must be made on or before the close of the day on which the taxpayer enters into the transaction and must be made on, and retained as part of, the taxpayer's books and records.

(3) *Transactions not subject to § 1.1221–2.* In the case of a section 988 transaction as defined in section 988(c)(1) or a qualified fund as defined in section 988(c)(1)(E)(iii), the taxpayer also must satisfy the identification and recordkeeping requirements of § 1.1221–2(c).

(e) *Requirements and limitations with respect to hedges of certain assets and liabilities.* In the case of certain hedging transactions, this paragraph (e) provides guidance in determining whether a taxpayer's method of accounting satisfies the clear reflection requirement of paragraph (b) of this section. Even if these rules are satisfied, however, the taxpayer's method, as actually applied to the taxpayer's hedging transactions, must result in the matching of income, deductions, gains, and losses that is essential to the clear reflection of income.

(1) *Hedges of items marked to market.* In the case of a transaction that hedges an item that is marked to market under the taxpayer's method of accounting, marking the hedge to market clearly reflects income.

(2) *Hedges of inventory*—(i) *In general.* A transaction that hedges inventory may be accounted for by treating realized gain or loss on the hedging transaction as if it were an adjustment to the cost or sales price of the corresponding inventory. Under this method, gain or loss from a hedge of anticipated purchases of inventory is taken into account in the same period in which it would have been taken into account if it had been an adjustment to the cost of the inventory, and gain or loss from a hedge of anticipated sales of inventory is taken into account in the same period in which it would have been taken into account if it had been an adjustment to the sales price of the inventory.

(ii) *Alternative methods for certain inventory hedges.* In lieu of the method described in paragraph (e)(2)(i) of this section, other simpler, less precise methods may be used in appropriate cases where the clear reflection requirement of paragraph (b) of this section is satisfied. For example:

(A) Taking into account hedging gains and losses when they are realized clearly reflects income for a taxpayer that identifies its hedging transactions with particular units or groups of units included in inventory at cost and closes its hedges when the corresponding inventory is sold.

(B) Taking into account gains and losses on both hedges of inventory purchases and hedges of inventory sales as if the gains and losses were adjustments to inventory cost clearly reflects income for many taxpayers, but would not clearly reflect income for a taxpayer that uses the last-in, first-out method of accounting for the inventory.

(C) Marking hedges to market may clearly reflect income even though the inventory that is being hedged is not marked to market if the inventory is not accounted for under either the last-in, first-out method or the lower of cost or market method, and if items are held in inventory for short periods of time.

(3) *Hedges of debt instruments.* Gain or loss from a transaction that hedges a debt instrument issued or to be issued by a taxpayer, or a debt instrument held or to be held by a taxpayer, must be accounted for by reference to the terms of the debt instrument and the period or periods to which the hedge relates. A hedge of an instrument that provides for interest to be paid at a fixed rate or a qualified floating rate, for example, generally is accounted for using constant yield principles. Thus, assuming that the instrument remains outstanding, hedging gain or loss is

taken into account in the same periods in which it would be taken into account if it adjusted the yield of the instrument over the term to which the hedge relates. For example, gain or loss realized on a transaction that hedged an anticipated borrowing for its entire term is accounted for, solely for purposes of this section, as if it decreased or increased the issue price of the debt instrument. A hedge of a contingent debt instrument is accounted for in a manner that matches the gain or loss on the hedge with the accrual of the amounts to which the hedge relates.

(4) *National principal contracts.* The rules of § 1.446–3 govern the timing of income and deductions with respect to a notional principal contract unless, because the notional principal contract is used as a hedge, the application of those rules would not result in the matching that is needed to satisfy the clear reflection requirement of paragraph (b) of this section. For example, if a notional principal contract hedges a debt instrument, the method of accounting for periodic payments described in § 1.446–3(e) and the methods of accounting for nonperiodic payments described in § 1.446–3(f)(2)(iii) and (v) generally will clearly reflect the taxpayer's income. The methods described in § 1.446–3(f)(2) (ii) and (iv), however, generally will not clearly reflect the taxpayer's income in that situation.

(5) *Disposition of hedged asset or liability.* If a taxpayer hedges an item and disposes of, or terminates its interest in, the item but does not dispose of or terminate the hedge within a reasonable period, the taxpayer must appropriately match the built-in gain or loss on the hedging transaction to the gain or loss on the disposed item. For example, the taxpayer may mark the hedge to market at the end of the period and take the gain or loss into account under its method of accounting for that type of hedging transaction. Under this approach, the amount of any gain or loss subsequently realized with respect to the former hedging transaction would be adjusted for gain or loss taken into account when the hedge was marked to market

(f) *Type or character of income.* The rules of this section govern the timing of income on hedging transactions but do not affect the type or character of gain, loss, income, or expense produced by the transaction. Thus, for example, the rules of paragraph (e)(2) of this section do not affect the computation of cost of goods sold or sales proceeds for a taxpayer that hedges inventory purchases or sales. Similarly, the rules of paragraph (e)(3) of this section do not increase or decrease the interest income or expense of a taxpayer that hedges a debt instrument or a liability.

(g) *Effective date.* This section applies to hedging transactions entered into on or after the date 60 days after publication of final regulations.

Par. 4. In § 1.461–1, paragraph (a)(2)(iii)(B) is revised to read as follows:

§ 1.461–1 General rules for taxable year of deduction.

* * * * *

(a) * * *

(2) * * *

(iii) * * *

(B) If the liability of a taxpayer is subject to section 170 (charitable contributions), section 192 (black lung benefit trusts), section 194A (employer liability trusts), section 468 (mining and solid waste disposal reclamation and closing costs), or section 468A (certain nuclear decommissioning costs), the liability is taken into account as determined under that section and not under section 461 or the regulations thereunder. For special rules relating to certain loss deductions, see sections 165(e), 165(i), and 165(l), relating to theft losses, disaster losses, and losses from certain deposits in qualified financial institutions.

* * * * *

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 93–25781 Filed 10–18–93; 10:00 am]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[UT6–1–5684; MT15–1–5691; A–1–FRL–4789–4]

Approval and Promulgation of Air Quality Implementation Plans; State of Montana and the State of Utah; Oxygenated Gasoline Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve State Implementation Plan (SIP) revisions submitted by the States of Montana and Utah. The Montana and Utah revisions implement oxygenated gasoline programs in Missoula, Montana, and in the Provo-Orem and Salt Lake City-Ogden, Utah, Metropolitan Statistical Areas. These SIP revisions were submitted to satisfy the requirement of section 211(m) of the Clean Air Act as amended by the Clean Air Act Amendments of 1990 (the Act) which requires all carbon monoxide nonattainment areas with a design value of 9.5 parts per million (ppm) or greater based generally on 1988 and 1989 air quality monitoring data to implement an oxygenated gasoline program. This action is being taken under section 110 of the Clean Air Act.

DATES: Comments must be received on or before November 19, 1993.

ADDRESSES: Comments may be mailed to: Doug Skie, Chief, Air Programs Branch, Air, Radiation and Toxics Division (8ART-AP), United States Environmental Protection Agency, Region 8, 999 18th Street, Suite 500, Denver, Colorado 80202–2466.

Copies of the documents relevant to this action are available for public inspection during normal business hours at United States Environmental Protection Agency, Region 8, 999 18th Street, Suite 500, Denver, Colorado 80202–2466.

FOR FURTHER INFORMATION CONTACT: Scott P. Lee, Air Programs Branch, State Implementation Plan Section (8ART-AP), US Environmental Protection Agency, Region 8, Denver, Colorado 80202, (303) 293–1887.

SUPPLEMENTARY INFORMATION:

I. Introduction

Motor vehicles are significant contributors of carbon monoxide emissions. An important measure toward reducing these emissions is the use of cleaner-burning oxygenated gasoline. Extra oxygen enhances fuel combustion and helps to offset fuel-rich operating conditions, particularly during vehicle starting, which are more prevalent in the winter.

Section 211(m) of the Act requires that various states submit revisions to their SIPs, and implement oxygenated gasoline programs by no later than November 1, 1992. This requirement applies to all states with carbon monoxide nonattainment areas with design values of 9.5 parts per million or more based generally on 1988 and 1989 data. Each state's oxygenated gasoline program must require gasoline for the specified control area(s) to contain not less than 2.7 percent oxygen by weight during that portion of the year in which the areas are prone to high ambient concentrations of carbon monoxide. Under section 211(m)(2), the oxygenated gasoline requirements are to generally cover all gasoline sold or dispensed in the larger of the Consolidated Metropolitan Statistical Area (CMSA) or the Metropolitan Statistical Area (MSA) in which the nonattainment area is located. Under section 211(m)(2), the

length of the control period, to be established by the EPA Administrator, shall not be less than four months unless a state can demonstrate that, because of meteorological conditions, a reduced control period will assure that there will be no carbon monoxide exceedances outside of such reduced period. EPA announced guidance on the establishment of control periods by area in the **Federal Register** on October 20, 1992.[1]

In addition to the guidance on establishment of control period by area, EPA has issued additional guidance related to the oxygenated gasoline program. On October 20, 1992, EPA announced the availability of oxygenated gasoline credit program guidelines in the **Federal Register**.[2] Under a credit program, marketable oxygen credits may be generated from the sale of gasoline with a higher oxygen content than is required (i.e., an oxygen content greater than 2.7 percent by weight). These oxygen credits may be used to offset the sale of gasoline with a lower oxygen content than is required. Where a credit program has been adopted, EPA's guidelines provide that no gallon of gasoline should contain less than 2.0% oxygen by weight.

EPA issued labeling regulations under section 211(m)(4) of the Act. These labeling regulations were published in the **Federal Register** on October 20, 1992.[3]

II. Background for this SIP Action

A. Montana Program

Missoula County in the State of Montana is designated nonattainment for carbon monoxide and classified as moderate with a design value of 9.6 parts per million based on 1988 and 1989 data.[4] Under section 211(m) of the Act, Montana was required to submit a revised SIP, meeting the criteria specified in section 110 and part D of title I of the Act, which includes an oxygenated gasoline program for Missoula County by November 15, 1992.[5] On November 16, 1992, Stan Stephens, Governor of Montana, submitted to EPA a revised SIP including the oxygenated gasoline program that was adopted by the State on September 25, 1992. EPA summarizes its analysis of the state submittal below. A more detailed analysis of the state submittal is contained in a Technical Support Document (TSD) dated July 20, 1993, which is available from the Region 8 office, listed in the **Addresses** section.

1. Type of Program and Oxygen Content Requirement

As discussed above, section 211(m)(2) of the Act requires that gasoline sold or dispensed for use in the specified control areas contain not less than 2.7 percent oxygen by weight. Under section 211(m)(5), the EPA Administrator issued guidelines for credit programs allowing the use of marketable oxygen credits. Missoula City-County Air Pollution Control Board (MCCAPCB), with the approval of the State, has elected to adopt a regulation requiring 2.7% oxygen content for each gallon of gasoline sold in a control area. The following sections of this notice address some specific elements of the State's submittal. Parties desiring more specific information should consult the TSD.

2. Applicability and Program Scope

Section 211(m)(2) requires oxygenated gasoline to be sold during a control period based on air quality monitoring data and established by the EPA Administrator. Montana has established control periods consistent with the EPA guidance. The control period for the Missoula County program begins on the first day of November each year and ends following the last day of February. Missoula City-County oxygenated gasoline regulations require oxygenated gasoline to be sold in Missoula County, excluding the Salish/Kootenai Indian Reservation, consistent with the requirements of section 211(m)(2) of the Act.

3. Registration, Reporting, and Documentation Requirements

EPA has also specified that records should be retained by all parties in the gasoline distribution system. EPA's guidelines impose responsibilities on various parties in the gasoline industry. Persons who produce or import gasoline (refiners and importers) are responsible for assuring that the gasoline is tested and that the accompanying documentation accurately reflects oxygen content. Persons who transport, store, or sell gasoline (refiners, importers, blenders, distributors, resellers, retailers, wholesale purchaser-consumers) have various responsibilities associated with assuring that only oxygenated gasoline is sold or dispensed for use in control areas. Terminal owners and operators are responsible for assuring that the oxygen content of the gasoline they receive, handle, or dispense is accurate. Retailers and wholesale purchaser-consumers are responsible for assuring that gasoline intended for sale during the control period contains at least 2.0 percent oxygen by weight.

All parties in the gasoline distribution network who are either located or who do business within and whose product is eventually sold into the Missoula County control area for ultimate use are required to keep records concerning certain day-to-day activities from the first day of September through the last day of February of each year. Required documentation must be maintained by all parties in the gasoline distribution network for a period of at least two years. For specific requirements consult the TSD.

4. Prohibited Activities

Refiners, control area terminals, and blending facilities may not transfer gasoline for use in a control area that contains less than 2.7 percent of oxygen by weight to parties who are not themselves refiners, control area terminals, and blending facilities.

5. Enforcement and Penalty Schedules

State oxygenated gasoline regulations must be enforceable by the state oversight agency. EPA recommends that states visit at least 20% of regulated parties during a given control period. Inspections should consist of product sampling and record review. In addition, each state should devise a comprehensive penalty schedule. Penalties should reflect the severity of a party's violation, the compliance history of the party, as well as the potential environmental harm associated with the violation.

The Missoula air pollution control ordinances are legally enforceable by the Missoula City-County Health Department (MCCHD). Violation of any regulation or rule enforced under the program results in a criminal offense punishable by a fine not to exceed $1,000 per day or a civil penalty not to exceed $10,000 per day. These regulations are contained in the

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[1] See "Guidelines for Oxygenated Gasoline Credit Programs and Guidelines on Establishment of Control Periods under section 211(m) of the Clean Air Act as Amended--Notice of Availability," 57 FR 47849 (October 20, 1992).

[2] See footnote 1, above. EPA was issued guidelines for credit programs under section 211(m)(5) of the Act.

[3] See "Notice of Final Oxygenated Fuels Labeling Regulations under section 211(m) of the Clean Air Act as Amended--Notice of Final Rulemaking," 57 FR 47769. The labeling regulations may be found at 40 CFR part 80, § 80.35.

[4] See "Designation of Areas for Air Quality Planning Purposes," 56 FR 56694 (November 6, 1991).

[5] See credit program guidelines at footnote 3, wherein the November 15, 1992 SIP revision due date was specified.

Administrative Rules of Montana (ARM) 16.8.101 through 16.8.1602.

The Missoula City-County Air Pollution Control Program and the associated local regulations are also enforceable by the Missoula Department of Health and Environmental Sciences (MDHES), if the MCCHD fails to administer the program. Since the program has been approved by the Missoula Board of Health and Environmental Sciences (MBHES) in accordance with Section 75–2–301 of the Montana Clean Air Act and effectuated by a MBHES order, and since the MDHES can enforce MBHES orders, the MDHES has backup enforcement powers.

6. Test Methods and Laboratory Review

EPA's sampling procedures are detailed in appendix D of 40 CFR part 80. EPA has recommended, in its credit program guidelines, that states adopt these sampling procedures. Missoula City-County and subsequently the State, have adopted EPA sampling procedures.

Each state regulation must include a test method. EPA's guidelines recommend the use of the OFID test, although parties may elect to use ASTM-D4815–89 or another method, approved by EPA. Missoula has elected to require use of the ASTM-D4815–89 method.

EPA has established an interim testing tolerance, which states appropriate ranges for credit and per-gallon programs.[6] As EPA states in the memorandum, for a per-gallon program, such as adopted by Missoula, the purpose of the testing is to determine whether the gasoline contains less than 2.7 percent oxygen by weight. Montana is using testing tolerances consistent with the tolerances in the EPA memo.

7. Labeling

EPA was required to issue Federal labeling regulations under section 211(m)(4) of the Act. These regulations, published in the **Federal Register** on October 20, 1992[7], required the following statement be posted for a per-gallon program or credit program with minimum oxygen content requirement:

"The gasoline dispensed from this pump is oxygenated and will reduce carbon monoxide pollution from motor vehicles."

The Federal regulation also specifies the appearance and placement requirements for the labels.

EPA has strongly recommended that states adopt their own labeling regulations, consistent with the Federal regulation. Missoula has adopted labeling regulations which do not conform to Federal regulation. In addition to the required Federal language, Missoula requires that the type of oxygenate blended be indicated on the pump label as follows:

"The gasoline dispensed from this pump is oxygenated with (fill in the blank with MTBE, ethanol or other approved oxygenate) and will reduce carbon monoxide pollution from motor vehicles."

In order for Missoula's labelling regulation to conform with Federal labelling regulations, the additional language specifying oxygenate must be deleted from the federally required text. Additional language may be included on the label, but the statement required by Federal labelling regulation must appear unaltered.

Under the Missoula program as submitted, resellers and wholesale-consumers are required to affix two labels on pumpstands, one label conforming to the language contained in Federal regulation and a second label complying with the Missoula City-County regulation. Parties not complying with both labeling requirements are subject to penalties under State and/or Federal Law. EPA recommends that the Missoula City-County Air Pollution Control Program be amended reflect Federal labelling requirements in order to reduce confusion and cost to regulated parties.

B. Utah Program

The Provo-Orem and Salt Lake City-Ogden MSAs in the State of Utah are designated nonattainment for carbon monoxide and classified as moderate with design values of 15.8 and 9.9 parts per million, respectively.[8] The Provo-Orem value is based on 1988 and 1989 data and Salt Lake-Ogden is based on 1989 and 1990 data.[9] Under section 211(m) of the Act, Utah was required to submit a revised SIP under section 110 and part D of title I of the Act which includes the above mentioned oxygenated gasoline programs for the Provo-Orem MSA (Utah County) and the Salt Lake-Ogden MSA (Weber, Davis, and Salt Lake Counties) by November 15, 1992.[10] On November 9, 1992, Norman H. Bangerter, Governor of Utah, submitted to EPA a revised SIP including the oxygenated gasoline program that was adopted by the State on September 30, 1992.

The State plan requires initial implementation of the program consistent with the requirements Clean Air Act for each of the affected control areas.

The plan revision as submitted by the Governor, was processed as an emergency rulemaking to meet the November 15, 1992 submission deadline. The action being supported by this document, however, is not based on the emergency rulemaking, but on proposed regulations which are an amended form of the emergency rule, which require an attestation engagement and allow compliance calculations as an additional method to demonstrate compliance with minimum oxygen content requirements. The proposed regulatory changes provide for a more effective, and enforceable oxygenated gasoline program.

The Utah Air Quality Board adopted these changes on July 28, 1993 and the rule will be effective on August 31, 1993. EPA is proposing this action using parallel-processing procedures. Both these procedures and the State's record of adoption are discussed in detail in the TSD.

1. Type of Program and Oxygen Content Requirement

As discussed above, section 211(m)(2) of the Act requires that gasoline sold or dispensed for use in the specified control areas contain not less than 2.7 percent oxygen by weight. Under section 211(m)(5), the EPA Administrator issued guidelines for a "credit program" which allows the use of marketable oxygen credits. Utah has elected to adopt a regulation allowing the use of marketable oxygen credits and establishing a 2.0% minimum oxygen content. Under EPA's credit program guidelines, all gasoline sold or dispensed during the control period by each control area responsible party (CAR or Blender CAR)[11] must contain an average oxygen content of not less than 2.7% by weight. Utah has adopted this type of oxygen content provision, limiting the minimum oxygen content to

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[6] See Memorandum dated October 5, 1992 from Mary T. Smith, Director, Field Operations and Support Division to State/Local Oxygenated Fuels Contacts.

[7] See footnote 3.

[8] See "Designation of Areas for Air Quality Planning Purposes," 56 FR 56694 (November 6, 1991).

[9] See "Designation of Areas for Air Quality Planning Purposes," 56 FR 56694 (November 6, 1991).

[10] See credit program guidelines at footnote 3, wherein the November 15, 1992 SIP revision due date was specified.

[11] EPA's October 20, 1992 guidelines define a "Control Area Responsible party," or CAR, as a person who owns oxygenated gasoline which is sold or dispensed from a control area terminal. EPA also has a separate definition for a "Blended CAR" as a person who owns oxygenated gasoline which is sold or dispensed from a control area oxygenate blending facility. A Blender CAR is, in general, a party downstream from a terminal who blends oxygenates into gasoline or who otherwise changes the oxygen content of gasoline intended for use in a control area. Unless otherwise noted, the use of the term "CAR" in this notice refers to both CARs and Blender CARs.

2.0% oxygen by weight and requiring an average oxygen content of not less than 2.7% by weight.

2. Applicability and Program Scope

Section 211(m)(2) requires oxygenated gasoline to be sold during a control period based on air quality monitoring data and established by the EPA Administrator. Utah has established control periods consistent with the EPA guidance. Each year the control period for both control areas begins on the first day of November and ends following the last day of February. Utah oxygenated gasoline regulations require oxygenated gasoline to be sold in the Provo-Orem MSA beginning November 1, 1992, and in the Salt Lake-Ogden MSA beginning November 1, 1993, consistent with the requirements of section 211(m)(2) of the Act.

All gasoline sold or dispensed for use within a given control area and during a given control period must comply with the average 2.7 percent oxygen content requirement and must contain not less than 2.0 percent oxygen by weight. Marketable oxygen credits may only be used, sold, or traded within the boundaries of the control area in which they were created (i.e., credits generated in the Provo-Orem control area cannot be sold or traded in the Salt Lake-Ogden control area nor vise versa), and can be used, sold, or traded only during the applicable control period (i.e., no banking of credits is allowed from one control season to the next).

The Utah oxygenated gasoline regulations require oxygenated gasoline to be sold in the MSA in which each nonattainment area is located, consistent with the requirements of section 211(m)(2) of the Act.

3. Registration and Reporting Requirements

EPA's credit program guidelines specify that all parties intending to trade marketable oxygen credits should register with the state at least 30 days in advance of each control season. The 30-day time period is intended to allow the state flexibility, and is a suggested provision. Upon acceptance, Control Area Responsible Party (CAR) identification numbers should be issued by the state. EPA guidelines specify that no party should be allowed to generate, trade, buy or sell credits without a CAR identification number.

Utah's regulation requires all persons who sell or dispense gasoline directly or indirectly to persons who sell or dispense to ultimate consumers in a control area to petition the Executive Secretary of the State Air Quality Board for registration no less than one month prior to the sale or transfer of gasoline into the control areas. Parties required to register include CARs, Blender CARs, carriers, resellers, and distributors as defined in the Utah regulation.

Registering parties must petition for registration using forms prescribed by the Executive Secretary. These forms contain specific business information pertaining to a registrant's gasoline operations. The State requires that registered parties update registration information within 30 working days of any change of information required by the Executive Secretary.

No person shall participate in the Utah oxygenated gasoline program as a CAR, Blender CAR, carrier, reseller, or distributor until the Executive Secretary has confirmed registration of such participant.

EPA has also specified that records should be retained by all parties in the gasoline distribution system. EPA's guidelines impose responsibilities on various parties in the gasoline industry. Persons who produce or import gasoline (refiners and importers) are responsible for assuring that the gasoline is tested and that the accompanying documentation accurately reflects oxygen content. Persons who transport, store, or sell gasoline (refiners, importers, blenders, distributors, resellers, retailers, wholesale purchaser-consumers) have various responsibilities associated with assuring that only oxygenated gasoline is sold or dispensed for use in control areas. Terminal owners and operators are responsible for assuring that the oxygen content of the gasoline they receive, handle, or dispense is accurate. Retailers and wholesale purchaser-consumers are responsible for assuring that gasoline intended for sale during the control period contains at least 2.0 percent oxygen by weight.

All parties in the gasoline distribution network who are located or do business within a control area, and whose product is eventually sold into the control area for ultimate use, should be required to keep records concerning certain day-to-day activities. Under these guidelines, refiners and importers should be required to keep a copy of all the tests that are performed on batches of gasoline prior to shipment, as well as copies of the bills of lading or transfer documents for each batch. Carriers and distributors should be required to keep copies of the documents which accompany every batch of gasoline their employees handle. Terminal owners and operators and CARs and Blender CARs (in an averaging program) should be required to keep records of both the gasoline they receive from upstream parties, as well as copies of all the tests performed and records created before the gasoline was transferred to a downstream party.

The Utah oxygenated gasoline regulations require registration and recordkeeping procedures consistent with the intent of EPA oxygenated gasoline program guidelines.

EPA guidelines also require that CARs commission an annual attestation engagement [12], performed by either an internal auditor or independent Certified Public Account (CPA). The guidelines also specify that the standardized forms, specifying agreed-upon procedures for the conduct of the attest engagement, for use by the internal auditor or CPA be provided by the state.

The Utah oxygenated gasoline regulations require an attestation engagement following each control period, conducted by a qualified internal auditor or a qualified independent CPA, consistent with the EPA oxygenated gasoline program guidelines.

4. Prohibited Activities

EPA's credit program guidelines contain provisions designed to ensure that gasoline that fails to meet the 2.0% by weight minimum oxygen content requirement is not available for use within a control area. Generally, CARs or blender CARs may not transfer gasoline for use in a control area that contains less than the minimum percent of oxygen by weight to parties who are not themselves registered as CARs or blender CARs. Under EPA's credit program guidelines, regulated parties, including refiners, importers, oxygenate blenders, carriers, distributors, or resellers may not fail to comply with recordkeeping requirements. [13]

Prohibited activities under the Utah oxygenated gasoline regulations are consistent with the intent of EPA oxygenated gasoline program guidelines.

5. Transfer Documents

EPA's credit program guidelines specify that transfer documents should include the following information: date

[12] When an averaging program is implemented, each CAR and Blender CAR should be required to submit reports to the states detailing certain activities during the control period. Information should be included specifying the following: the volumes of gasoline bought, sold and transferred; volumes and types of oxygenates bought, sold, and transferred; number of credits bought, sold or transferred; and a detailed demonstration of how credits were calculated.

[13] EPA's recommended provisions for prohibited activities are found at pages 59-61 of the credit program guidelines.

of the transfer, name and address of the transferor, name and address of the transferee, the volume of gasoline which is being transferred, the proper identification of the gasoline as oxygenated or nonoxygenated, the location of the gasoline at the time of the transfer, the type of oxygenate, and the oxygen content of the gasoline (for transfers upstream of the control area terminal and for transfers between CARs, include the oxygenate volume of the gasoline). Records are to be kept in a location where they are available for state review.

Transfer document requirements under the Utah oxygenated gasoline regulations are consistent with EPA oxygenated gasoline program guidelines.

6. Enforcement and Penalty Schedules

State oxygenated gasoline regulations must be enforceable by the state oversight agency. EPA recommends that states visit at least 20% of regulated parties during a given control period. Inspections should consist of product sampling and record review. In addition, each state should devise a comprehensive penalty schedule. Penalties should reflect the severity of a party's violation, the compliance history of the party, as well as the potential environmental harm associated with the violation.

The Utah oxygenated gasoline regulation is enforceable by the Division of Air Quality. Violation of any regulation or rule enforced under the Utah Air Conservation Act may result in a civil penalty not to exceed $10,000 per day. Any person knowingly in violation of this regulation for more than 30 days after been notified in writing by the Executive Secretary is guilty of an offense and subject to a fine not to exceed $25,000 for each day of violation in the case of a first offense and not more than $50,000 for each day of violation in the case of subsequent offenses. The legal authority concerning penalties is contained in the Utah Code, Utah Air Conservation Act, Sections 19–2–115 thru 19–2–120.

Utah's oxygenated gasoline regulation provides for inspection of all registered parties, control area retailers, and control area wholesale purchaser-consumers. Inspection may include sampling, testing and calculation of oxygen content consistent with methods approved by EPA. Additionally, the State may review documentation relating to the oxygenated gasoline program and ensure labels are affixed to pumps in accordance with the State oxygenated gasoline regulations.

Utah does not commit to a specified percentage of the stations to be sampled and tested for compliance with minimum oxygenate requirements, but EPA feels the requirement of an attestation engagement following each control period mitigates this deficiency by providing for compliance calculations showing that the oxygen content requirements have been met. In addition, the State employs a full-time inspector to oversee the oxygenated gasoline program.

7. Test Methods and Laboratory Review

EPA's sampling procedures are detailed in appendix D of 40 CFR part 80. EPA has recommended, in its credit program guidelines, that states adopt these sampling procedures. Utah has adopted EPA sampling procedures.

Each state regulation must include a test method. EPA's guidelines recommend the use of the OFID test, although parties may elect to use ASTM-D4815–89 or another method, if approved by EPA. Utah's regulation requires the use of the OFID test as specified in appendix C of EPA oxygenated gasoline credit program guidelines, the ASTM-D4815–89 method and alternative test methods as approved by the Executive Secretary. In his letter submitting this regulation to EPA, Governor Bangerter committed to not allow the use of any alternative methods until these methods had been concurred upon by EPA.

EPA has established an interim testing tolerance, which states appropriate ranges for credit and per-gallon programs.[14] As EPA states in the memorandum, for a credit program, such as adopted by Utah, the purpose of the testing is to determine whether the gasoline contains less than 2.0 percent oxygen by weight. Utah has not formally adopted testing tolerances, but is using tolerances consistent with those in the EPA memo.

8. Labeling

EPA was required to issue Federal labeling regulations under section 211(m)(4) of the Act. These regulations, published in the **Federal Register** on October 20, 1992[15], required the following statement be posted for a per-gallon program or credit program with minimum oxygen content requirement:

"The gasoline dispensed from this pump is oxygenated and will reduce carbon monoxide pollution from motor vehicles."

The Federal regulation also specifies the appearance and placement requirements for the labels. EPA labeling regulations require that the posting be in block letters of no less than 20-point bold type. The color of the letters should contrast with the background upon which they are placed. The label is to be placed on the upper third of the vertical surface of the pump on each side with gallonage and dollar amount meters.

EPA has strongly recommended that states adopt their own labeling regulations, consistent with the Federal regulation. Utah has adopted labeling regulations which EPA considers approvable. In addition to the required Federal language, Utah requires the type of oxygenate blended, and offers resellers the option to include the dates in which oxygenated gasoline is dispensed from the pump, to be indicated on the pump label as follows:

Option 1 "The gasoline dispensed from this pump is oxygenated and will reduce carbon monoxide pollution from motor vehicles. This gasoline contains up to (specify maximum percent by volume) (fill in the blank with specific oxygenate or specific combination of oxygenates in concentration of at least one percent)."

Option 2 "The gasoline dispensed from this pump is oxygenated and will reduce carbon monoxide pollution from motor vehicles. This gasoline contains up to (specify maximum percent by volume) (fill in the blank with specific oxygenate or specific combination of oxygenates in concentration of at least one percent) from November 1 through February 29."

III. Request for Public Comments

The EPA is soliciting public comments on this notice and on issues relevant to EPA's proposed action. Comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the address above. Comments must be received on or before November 19, 1993.

The revisions are being proposed under a procedure called "parallel processing" (47 FR 27073). If the proposed revisions are substantially changed in areas other than those identified in this notice, EPA will evaluate those changes and may publish a revised NPR. If no substantial changes are made other than those cited in this notice, EPA will publish a final rulemaking notice on the revision. The final rulemaking action by EPA will occur only after SIP revisions have been adopted by Utah and submitted to EPA for incorporation into the SIP. Parallel processing will reduce the time

[14] See Memorandum dated October 5, 1992 from Mary T. Smith, Director, Field Operations and Support Division to State/Local Oxygenated Fuels Contacts.

[15] See footnote 3.

necessary for final approval of these SIP revisions by 3 to 4 months.

IV. Proposed Action

EPA is proposing to approve the revisions to the Montana SIP and the revisions to the Utah SIP, both for oxygenated gasoline programs meeting the requirements of section 211(m) of the Act.

V. Executive Order 12291

The OMB has exempted this rule from the requirement of section 3 of Executive Order 12291.

VI. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et. seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over population of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.* 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 24, 1993.

Jack McGraw,

Acting Regional Administrator.

[FR Doc. 93–25759 Filed 10–19–93; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 52

[OR–29–1–5829; FRL–4790–8]

Approval and Promulgation of State Implementation Plans; Oregon

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Oregon. This revision implements an oxygenated gasoline program in the Clackamas, Jackson, Multnomah, Washington and Yamhill counties, and an eleven by twelve mile area surrounding Klamath Falls and a nine mile by nine mile area surrounding Grants Pass. This SIP revision was submitted to satisfy the requirement of section 211(m) of the Clean Air Act as amended by the Clean Air Act Amendments of 1990 (the Act) which requires all carbon monoxide nonattainment areas with a design value of 9.5 parts per million (ppm) or greater based generally on 1988 and 1989 air quality monitoring data to implement an oxygenated gasoline program. The intended effect of this action is to propose approval of the oxygenated gasoline program. This action is being taken under section 110 of the Clean Air Act.

DATES: Comments must be received on or before November 19, 1993.

ADDRESSES: Written comments should be addressed to: Montel Livingston, SIP Manager, Air and Radiation Branch (AT–082), United States Environmental Agency, 1200 6th Avenue, Seattle, Washington 98101.

Copies of the documents relevant to this action are available for public inspection during normal business hours at: Air and Radiation Branch (Docket # AK2–1–5480), United States Environmental Protection Agency, 1200 Sixth Avenue (AT–082), Seattle, Washington 98101, and Department of Environmental Quality, Vehicle Inspection Program, 1301 SE., Morrison Street, Portland, Oregon 97214

FOR FURTHER INFORMATION CONTACT: Christi Lee, Air and Radiation Branch (AT–082), United States Environmental Agency, 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553–1814.

SUPPLEMENTARY INFORMATION:

I. Introduction

Motor vehicles are significant contributors of carbon monoxide emissions. An important measure toward reducing these emissions is the use of cleaner-burning oxygenated gasoline. Extra oxygen enhances fuel combustion and helps to offset fuel-rich operating conditions, particularly during vehicle starting, which are more prevalent in the winter.

Section 211(m) of the Act requires that various states submit revisions to their SIPs and implement oxygenated gasoline programs by no later than November 1, 1992. This requirement applies to all states with carbon monoxide nonattainment areas with design values of 9.5 parts per million or more based generally on 1988 and 1989 data. Each state's oxygenated gasoline program must require gasoline for the specified control area(s) to contain not less than 2.7 percent oxygen by weight during that portion of the year in which the areas are prone to high ambient concentrations of carbon monoxide. Under section 211(m)(2), the oxygenated gasoline requirements are to generally cover all gasoline sold or dispensed in the larger of the Consolidated Metropolitan Statistical Area (CMSA) or the Metropolitan Statistical Area (MSA) in which the nonattainment area is located. Under section 211(m)(2), the length of the control period, to be established by the EPA Administrator, shall not be less than four months in length unless a state can demonstrate that, because of meteorological conditions, a reduced control period will assure that there will be no carbon monoxide exceedances outside of such reduced period. EPA announced guidance on the establishment of control periods by area in the **Federal Register** on October 20, 1992.

In addition to the guidance on establishment of control period by area, EPA has issued additional guidance related to the oxygenated gasoline program. On October 20, 1992 EPA announced the availability of oxygenated gasoline credit program guidelines in the **Federal Register**. Under a credit program, marketable oxygen credits may be generated from the sale of gasoline with a higher oxygen content than is required (i.e. an oxygen content greater than 2.7 percent by weight). These oxygen credits may be used to offset the sale of gasoline with a lower oxygen content than is required. Where a credit program has been adopted, EPA's guidelines provide that no gallon of gasoline should contain less than 2.0 percent oxygen by weight.

EPA issued labeling regulations under section 211(m)(4) of the Act. These labeling regulations were published in the **Federal Register** on October 20, 1992.

II. Background for this Action

Portland, Grants Pass, Klamath Falls and Medford are designated nonattainment for carbon monoxide and classified as moderate with design values based on 1988 and 1989 data. Under section 211(m) of the Act, Oregon was required to submit a revised SIP under section 110 and part D of title I of the Act which includes an oxygenated gasoline program for Grants Pass, Klamath Falls, Medford and Portland by November 15, 1992. On November 16, 1992 the Director of the Oregon Department of Environmental Quality (ODEQ) submitted to EPA a revised SIP including the oxygenated gasoline program that was adopted by the Environmental Quality commission on October 16, 1992 and went into effect on November 1, 1992. EPA summarizes its analysis of the state submittal below. A more detailed analysis of any inconsistencies between the state submittal and EPA's regulation is contained in a Technical Support Document (TSD), which is available from the Region 10 office, listed in the **Addresses** section.

Type of Program and Oxygen Content Requirement

As discussed above, section 211(m)(2) of the Act requires that gasoline sold or dispensed for use in the specified control areas contain not less than 2.7 percent oxygen by weight. Under section 211(m)(5), the EPA Administrator issued guidelines for credit programs allowing the use of marketable oxygen credits. Oregon has elected to adopt a regulation requiring control area responsible parties (CARs) to supply an average of at least 2.7 percent oxygen for each control area serviced. A CAR is defined as a person who owns oxygenated gasoline which is sold or dispensed from a control area terminal. A blender CAR is, in general, a party downstream from a terminal who blends oxygenates into gasoline or who otherwise changes the oxygen content of the gasoline intended for use in a control area.

To achieve an average of 2.7 percent oxygen, a blender will be allowed to supply a minimum of 2.0 percent oxygenate gasoline and a maximum of 3.7 percent. Each gallon of fuel pumped by the retailer must have a minimum of 2.0 percent oxygen. Trading of oxygen credits is allowed. The following sections of this notice address some specific elements of the state's submittal. Parties desiring more specific information should consult the TSD.

Applicability and Program Scope

Section 211(m)(2) requires oxygenated gasoline to be sold during a control period based on air quality monitoring data and established by the EPA Administrator. Oregon has established a control period of November through February which is consistent with the EPA guidance.

All gasoline sold or dispensed for use within a given control area and during a given control period must comply with the average 2.7 percent oxygen content requirement and must contain not less than 2.0 percent oxygen by weight. Marketable oxygen credits may only be used or traded within the boundaries of the control area in which they were created, and only during the applicable control period.

Oregon's oxygenated gasoline program has an "averaging period" scheme. Under an averaging period scheme, all gasoline sold or dispensed within the control areas during a given averaging period must comply with the 2.7 percent average oxygen content standard. The averaging period in Oregon's program is four months.

The Federal CAA requires oxygenated gasoline sold in the entire county of nonattainment areas that are Metropolitan Statistical Areas (MSAs). Medford and Portland Oregon are MSAs and therefore, the Oregon oxygenated gasoline regulations require oxygenated gasoline to be sold in Clackamas, Jackson, Multnomah, Washington and Yamhill counties. Klamath Falls and Grants Pass are nonattaiment areas but are not MSAs. In this case, EPA guidance requires the nonattainment areas be control areas, as a minimum. Oregon regulation requires oxygenated gasoline in an eleven by twelve mile area surrounding Klamath Falls and a nine mile by nine mile area surrounding Grants Pass. Both areas incorporate the entire nonattainment area thus meeting EPA guidance. ODEQ believes use of county boundaries in Grants Pass and Klamath Falls would impose an unnecessary burden of record keeping and liability on small service stations quite distant from the CO nonattainment areas. Sale of nonoxygenated fuel from these outlying stations outside of Grants Pass and Klamath Falls is not expected to significantly impact ambient CO concentrations within the nonattainment areas. On the other hand, other planning boundaries such as the urban growth boundaries are of irregular shape and are difficult for the public to identify. They also exclude some close-in service stations that are inside the square and rectangular areas. This could produce undesirable competition between oxygenated fuels and nonoxygenated fuels stations and lead to an erosion of CO benefits if oxygenated fuels purchase is not considered desirable by the consumer.

Registration and Reporting Requirements

EPA's credit program guidelines specify that all parties intending to trade marketable oxygen credits should register with the state at least 30 days in advance of each control season. The 30 day time period is intended to allow the state flexibility and is a suggested provision. Upon acceptance, CAR identification numbers should be issued by the state. EPA guidelines specify that no party should be allowed to generate, trade, buy or sell credits without a CAR identification number.

Within at least 30 days before the control period in which a person meets the definition of CAR or blender CAR, that person shall petition for registration as a CAR or blender CAR. A person may petition for registration as a CAR or Blender CAR after the beginning of the control period but should also do so at least 30 days before conducting activities as a CAR or blender CAR. ODEQ will issue a unique identification number within 30 days after submission of a registration application. All terminals, distributors and service stations which service control areas during the control period will be required to register with ODEQ and receive a permit. A fee will be assessed of the registrants to support the ODEQ's efforts. Terminals will be assessed an annual fee of $5,700, distributors an annual fee of $500 and service stations an annual fee of $100. These funds will support the ODEQ's annual budget of $220,000. This assures that there is no conflict with the Oregon constitution's restriction on the use of fuel taxes.

EPA has also specified that records should be retained by all parties in the gasoline distribution system. EPA's guidelines impose responsibilities on various parties in the gasoline industry. Persons who produce or import gasoline (refiners and importers) are responsible for assuring that the gasoline is tested and that the accompanying documentation accurately reflects oxygen content. Persons who transport, store, or sell gasoline (refiners, importers, blenders, distributors, resellers, retailers, wholesale purchaser-consumers) have various responsibilities associated with assuring that only oxygenated gasoline is sold or dispensed for use in control areas. Terminal owners and operators are responsible for assuring that the oxygen content of the gasoline they receive,

handle, or dispense is accurate. Retailers and wholesale purchaser-consumers are responsible for assuring that gasoline intended for sale during the control period contains at least 2.0 percent oxygen by weight.

All parties in the gasoline distribution network who are located or do business within a control area, and whose product is eventually sold into the control area for ultimate use, should be required to keep records concerning certain day-to-day activities. Under these guidelines, refiners and importers should be required to keep a copy of all the tests that are performed on batches of gasoline prior to shipment, as well as copies of the bills of lading or transfer documents for each batch. Carriers and distributors should be required to keep copies of the documents which accompany every batch of gasoline their employees handle. Terminal owners and operators and CARs and blender CARs (in an averaging program) should be required to keep records of both the gasoline they receive from upstream parties, as well as copies of all the tests performed and records created before the gasoline was transferred to a downstream party. Oregon meets these requirements.

EPA guidelines also require that CARs commission an annual attest engagement, performed by either an internal auditor or independent Certified Public Account (CPA). The guidelines also specify that the standardized forms, specifying agreed-upon procedures for the conduct of the attest engagement, for use by the internal auditor or CPA be provided by the state.

ODEQ, in an attempt to reduce excessive paperwork, is not requiring an annual "attest engagement" as included in the EPA guidelines. Instead, attest engagements will be used only for defense, at the option of the blender CAR. If performed, the attest engagement shall consist of performing the agreed upon procedures set forth in the guidelines in accordance with the Association of Independent Certified Public Accountants' statements on standards for Attestation Engagements and using statistical sample design parameters provided by EPA.

Oregon believes the combination of blender records review conducted by the state enforcement personnel and the Oregon tax credit program should combine to ensure adequate compliance documentation. Oregon currently has an oxygenated gasoline tax credit of five cents per gallon for ethanol blends. This credit should provide incentive for the use of oxygenated fuels even in areas and during periods when oxygenated fuel is not required. Parties taking advantage of the Oregon tax credit must file monthly reports with the State Motor Vehicles Division to support payment of a reduced state fuel tax. Submission of these records should reinforce compliance with averaging reports. ODEQ would be able to cross reference with these records.

ODEQ plans on doing extensive annual review of gasoline blender records to insure compliance. Also, the Oregon Department of Transportation's five cent per gallon tax credit for ethanol oxygenated gasoline supplies incentive for industry to use oxygenated gasoline to the 3.5 volume percent level even without regulatory requirement. Given these circumstances, EPA approves of this approach for the state of Oregon.

Prohibited Activities

EPA's credit program guidelines contain provisions designed to ensure that gasoline that fails to meet the 2.0 percent by weight minimum oxygen content requirement is not available for use within a control area. Generally, CARs or blender CARs may not transfer gasoline for use in a control area that contains less than the minimum percent of oxygen by weight to parties who are not themselves registered as CARs or blender CARs. Under EPA's credit program guidelines, regulated parties, including refiners, importers, oxygenate blenders, carriers, distributors, or resellers may not fail to comply with recordkeeping requirements.

Oregon's rule specifies that at the end of the control period, the CAR must report to the state the blending activities and will be liable for a penalty from ODEQ if the average (with credits) is less than 2.7 percent. If a fuel dispenser, for example, is found dispensing fuel of less than 2.0 percent oxygen in a control area during a control period, all parties that owned the fuel from the CAR to the station will be considered responsible parties, including the CAR itself. Oregon's rule meets all of the above guidelines.

Transfer Documents

EPA's credit program guidelines specify that transfer documents should include the following information: date of the transfer, name and address of the transferor, name and address of the transferee, the volume of gasoline which is being transferred, the proper identification of the gasoline as oxygenated or nonoxygenated, the location of the gasoline at the time of the transfer, the type of oxygenate, and the oxygen content of the gasoline (for transfers upstream of the control area terminal and for transfers between CARs, include the oxygenate volume of the gasoline). Records are to be kept in a location where they are available for state review. Oregon meets EPA's recommendation.

Oregon has included requirements related to transfer documentation in its regulation. These transfer document requirements will enhance the enforcement of the oxygenated gasoline regulation, by providing a paper trail for each gasoline sample taken by state enforcement personnel.

Enforcement and Penalty Schedules

State oxygenated gasoline regulations must be enforceable by the state oversight agency. Each state should devise a comprehensive penalty schedule. Penalties should reflect the severity of a party's violation, the compliance history of the party, as well as the potential environmental harm associated with the violation.

At the end of the control period, the CAR must report to the state the blending activities and will be liable for a penalty from ODEQ if the average (with credits) is less than 2.7 percent. If a fuel dispenser (i.e. service station), for example, is found dispensing fuel of less than 2.0 percent oxygen in a control area during a control period, all parties that owned the fuel from the CAR to the station will be considered responsible parties, including the CAR itself. Violations of oxygenated fuels' rules will be Class II as defined in OAR 340 Division 12. Penalties will range from a minimum of $400 per day per violation to maximum of $10,000 per day per violation depending on the severity of the violation and violator's past record of compliance.

Test Methods and Laboratory Review

EPA's sampling procedures are detailed in appendix D of 40 CFR part 80. EPA has recommended, in its credit program guidelines, that states adopt these sampling procedures. Oregon has adopted EPA sampling procedures.

Each state regulation must include a test method. EPA's guidelines recommend the use of the OFID test, although parties may elect to use ASTM-D4815–89 or another method, if approved by EPA. Oregon has elected to use the ASTM 4815–89 or other test methods determined by ODEQ and EPA as being an equivalent.

EPA has established an interim testing tolerance, which states appropriate ranges for credit and per-gallon programs (See Memorandum dated October 5, 1992 from Mary T. Smith). As EPA states in that memorandum, the purpose of the testing in a credit

program is to determine if a sample meets the 2.0 percent minimum oxygen content requirement and to determine whether the documentation that accompanied that gasoline is correct. For a per-gallon program, the purpose of the testing is to determine whether the gasoline contains less than 2.7 percent oxygen by weight. Oregon has established that during the control period and in each control area, oxygenated gasoline blenders must supply an average of at least 2.7 percent oxygen for each control area serviced. To achieve an average of 2.7 percent oxygen a blender will be allowed to supply a minimum of 2.0 percent oxygenate gasoline and a maximum of 3.7 percent. Each gallon of fuel pumped by the retailer must have a minimum of 2.0 percent oxygen.

Labeling

EPA was required to issue Federal labeling regulations under section 211(m)(4) of the Act. These regulations, published in the Federal Register on October 20, 1992, required the following statement be posted for a per-gallon program or credit program with minimum oxygen content requirement:

"The gasoline dispensed from this pump is oxygenated and will reduce carbon monoxide pollution from motor vehicles." The Federal regulation also specifies the appearance and placement requirements for the labels.

EPA has strongly recommended that states adopt their own labeling regulations, consistent with the Federal regulation. Oregon has adopted labeling regulations that differ from the Federal regulation in the following way(s). The lettering on the label is in block style of at least 20 point bold type and the label is being placed on each side of the dispenser from which the gasoline can be dispensed and on the upper one half of the dispenser, in a position that will be clear and conspicuous to the consumer.

Also, Oregon's regulation requires a second label which shows the type of oxygenate(s) and the exact (plus or minus 0.5%) or maximum use concentration by volume of oxygenates in the gasoline. EPA approves Oregon's labeling requirement.

EPA's review of the material indicates that the state has adopted an oxygenated gasoline regulation in accordance with the requirements of the Act. EPA is proposing to approve the Oregon SIP revision for an oxygenated gasoline program, which was submitted on November 16, 1992. EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the Addresses section of this document.

III. Proposed Action

EPA is proposing to approve this revision to the Oregon SIP for an oxygenated gasoline program.

IV. Administrative Review

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 revisions from the requirements of section 3 of Executive Order 12291 for a period of two years (54 FR 2222). EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (See 46 FR 8709).

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP will be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

Under Executive Order 1229, today's action is not "major." It has been submitted to the Office of Management and Budget for review.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Ozone, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: October 1, 1993.

Gerald A. Emison,

Acting Regional Administrator.

[FR Doc. 93–25765 Filed 10–19–93; 8:45 am]

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40 CFR Part 52

[TX–28–1–5946; FRL–4791–2]

Conditional Approval and Promulgation of Implementation Plan State of Texas Transportation Control Measures (TCM) Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: This action proposes to conditionally approve a revision to the Texas State Implementation Plan (SIP) for the attainment of National Ambient Air Quality Standards (NAAQS) for ozone in the Houston-Galveston-Brazoria (hereinafter called Houston) nonattainment area. This revision provides for the adoption and implementation of TCMs for meeting requirements of the Clean Air Act (CAA) as amended in 1990. This SIP revision is a commitment for purposes of offsetting any growth in emissions from the growth in vehicle miles travelled (VMT) or number of trips and to attain reduction in motor vehicle emissions, in combination with other emission reduction requirements, as necessary to comply with reasonable further progress (RFP) milestones and attainment requirements of the CAA. The State of Texas submitted this SIP revision to satisfy the statutory mandate, found in section 182 of the CAA, that requires the State to submit a SIP revision which identifies and adopts specific enforceable TCMs to offset any growth in emissions from growth in VMT or number of vehicular trips in severe ozone nonattainment areas. The EPA is proposing to conditionally approve this SIP revision under section 110(k)(4) of the CAA. The proposed conditional approval is based on a commitment by the Governor to the timely adoption and implementation of a TCM program for meeting all requirements of the CAA and submission of a schedule for timely implementation of TCMs for offsetting VMT emissions. The rationale for the conditional approval and other information are provided in this document.

DATES: Comments on this proposed action must be received in writing on or before November 19, 1993.

ADDRESSES: Comments should be submitted to the EPA Region 6 address indicated. Copies of the State's submittal and other relevant information are available for inspection during normal business hours at the following locations. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours

before the visiting day by contacting Thomas Diggs, Chief, Planning Section (6T-AP), Air Programs Branch, Air, Pesticides, and Toxics Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, telephone (214) 655–7214; or Texas Natural Resource Conservation Commission, Air Quality Planning, 12124 Park 35 Circle, Austin, Texas 78753, telephone (512) 908–1000.

FOR FURTHER INFORMATION CONTACT: Mr. J. Behnam, P. E.; Air Programs Branch, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, telephone (214) 655–7247.

SUPPLEMENTARY INFORMATION:

Requirements for SIP Approval

Section 182(d)(1)(A) of the CAA requires States containing ozone nonattainment areas classified as "severe" pursuant to section 181(a) of the CAA to adopt TCMs and transportation control strategies to offset any growth in emissions from growth in VMT or number of vehicle trips and to attain reductions in motor vehicle emissions (in combination with other emission reduction requirements) as necessary to comply with the CAA's RFP milestones and attainment requirements. The requirements for establishing a VMT Offset program are discussed in the General Preamble to Title I of the CAA (57 FR 13498) April 16, 1992, in addition to section 182(d)(1)(A).

Section 110(k) of the CAA contains provisions governing the EPA's review of SIP submittals. Once found to be complete or deemed complete by the passage of time, the EPA can take one of three actions on VMT Offset SIP submittals. If the submittal satisfactorily addresses all of the required VMT Offset elements, the EPA shall grant full approval. If the submittal contains: (1) A commitment from the Governor or the Governor's designee to take the required actions; (2) a schedule establishing a date certain for taking the required actions, with the date not being later than one year from the time the EPA will issue a final conditional approval; and (3) evidence that a public hearing was held on the commitments, the EPA may grant conditional approval. See July 22, 1992, memorandum from Michael M. Shapiro, Deputy Assistant Administrator for Air and Radiation, entitled " Guidelines for State Implementation Plan (SIP) Submittals Due November 15, 1992." Finally, if the submittal fails to adequately address or commit to address one or more of the mandatory VMT Offset elements, the EPA shall issue a disapproval.

Requirements for VMT Emission Offset

Section 182(d)(1)(A) of the CAA requires that, in order to gain full approval, a VMT Offset SIP submittal must:

(1) Identify and adopt specific enforceable TCMs and transportation control strategies to offset any growth in emissions from growth in VMT or number of vehicle trips;

(2) Identify and adopt specific enforceable TCMs and transportation control strategies that obtain reductions in motor vehicle emissions in combination with other emission reduction requirements as necessary to comply with RFP milestones;

(3) Consider, choose from among, and implement the measures specified in section 108(f) of the CAA as necessary to demonstrate attainment of the NAAQS; and

(4) Ensure adequate access to downtown, other commercial, and residential areas, and that emissions and congestion are reduced rather than relocated.

Section 182(d)(a)(A) requires that States submit this SIP revision by November 15, 1992, in order to ensure that projected motor vehicle volatile organic compounds (VOC) emissions will never be greater during the ozone season in any given year than during the preceding year's ozone season. When growth in VMT or number of vehicle trips would otherwise cause a motor vehicle emissions upturn, that upturn must be prevented. The emissions level at the point of potential upturn becomes a ceiling on motor vehicle emissions. While this requirement is simple in concept, its application could encourage areas to delay VMT or emissions reduction measures suitable for use as offsets until the trend in motor vehicle emissions reaches its minimum point and is about to turn upwards. To implement the VMT offset provision while avoiding this counterproductive incentive for delay, the EPA looks for State compliance with the following approach: if projected motor vehicle emissions during the ozone season in one year are not higher than during the ozone season the year before, given the control measures in the SIP, the VMT Offset requirement is satisfied.

However, if the State plans to implement control measures over and above those specifically required by the CAA and those required to demonstrate RFP and attainment earlier than would be necessary and sufficient to prevent an emissions upturn, a projected subsequent growth-related increase to the level of emissions that would occur if these measures were scheduled later will not be considered to violate the requirement to offset emissions due to growth in VMT or number of vehicle trips. The latter situation will be viewed as a temporary reduction in emissions to a level below that which is required by the provision, rather than an increase above the required level, with no effect on emissions at or after the point at which offsetting measures become essential to compliance.

The EPA will approve a SIP revision as meeting this provision despite a forecasted upturn in vehicle emissions, as long as motor vehicle VOC emissions in the ozone season of a given year do not exceed a ceiling level which reflects a hypothetical strategy of implementing otherwise specifically required measures on schedule and saving offset measures until the point at which VMT growth would otherwise cause an emissions upturn. The ceiling level is therefore defined (up to the point of upturn) as motor vehicle emissions that would occur in the ozone season of that year, with VMT growth, if all measures for that area in that year were implemented as required by the CAA. When this curve begins to turn up due to growth in VMT or vehicle trips, the ceiling becomes a fixed value.

The ceiling line would include the effects of Federal measures such as new motor vehicle standards, Phase II Reid Vapor Pressure controls, and reformulated gasoline, as well as CAA-mandated SIP requirements such as enhanced inspection and maintenance, the fleet clean-fuel vehicle program, and the employer trip reduction program. The ceiling line would also include the effects of forecasted growth in VMT and vehicle trips in the absence of new discretionary measures to reduce them. The ceiling line must, in combination with projected emissions from nonvehicle sources, satisfy the RFP requirements for the area. Any VMT reduction measures or other actions to reduce motor vehicle emissions adopted since November 15, 1990, and not specifically required for the area by another provision of the CAA, would not be included in the calculation of the ceiling line.

Forecasted motor vehicle emissions must be held at or below the minimum level of the ceiling line after the ceiling line reaches its minimum level. If an area implements offset measures early, the forecasted emissions will be less than the ceiling line, and forecasted motor vehicle emissions could increase from one year to the next, as long as forecasted emissions never exceed the ceiling line.

Basis for Conditional Approval

Section 182(d)(1)(A) requires that specific, enforceable measures selected by the State be submitted by November 15, 1992, along with a demonstration that they are adequate to offset any growth in emissions from growth in VMT or number of trips, which the EPA interprets to mean adequate to hold vehicle emissions within the ceiling described above. It also states that these measures, beyond offsetting growth in emissions, shall be sufficient to allow total area emissions to comply with the RFP and attainment requirements. These requirements create a timing problem. Ozone nonattainment areas affected by this provision are not otherwise required to submit a SIP demonstration which predicts attainment of the 1996 RFP milestone until November 15, 1993, and likewise are not required to demonstrate post–1996 RFP and attainment until November 15, 1994. The EPA does not believe that Congress intended the offset growth provision to advance the dates for these broader submissions. Even without the requirement that the offset growth measures be sufficient to allow overall RFP and attainment in conjunction with other measures, the EPA believes that the November 15, 1992, date would not allow sufficient time to develop a set of measures that would comply with the offset growth provision over the long term.

To address this timing problem so as to allow a more coordinated and comprehensive planning process, the EPA will accept committal SIP revisions for the offset growth requirement under the conditional approval authority of section 110(k)(4) of the CAA as discussed in this document under "Requirements for SIP Approval". This will allow States one year from EPA conditional approval of the committal revision, but not beyond November 15, 1994, to submit the full revision containing sufficient measures in specific and enforceable form.

State Submittal

The EPA designated the Houston area as a "severe" nonattainment area for the ozone NAAQS. Section 182(d)(1)(A) of the CAA requires the State of Texas to implement specific enforceable TCMs and transportation control strategies for offsetting growth in emissions from the VMT growth in this nonattainment area. The State of Texas has not submitted a full TCM SIP revision for fulfilling the requirements of section 182(d)(1)(A) of the CAA as discussed earlier in this document; however, the Governor has submitted a committal SIP in order to address the statutory requirements as specified in the General Preamble for Implementation of Title I of the CAA (57 FR 13498) April 16, 1992. The submittal, dated November 13, 1992, includes a commitment for adoption and submission of a full TCM SIP for the Houston nonattainment area, and a schedule which contains the milestones for submission of a final SIP revision no later than November 15, 1994. A public hearing on the submittal was held by the State on September 2, 1992, in Houston, in accordance with 40 CFR part 51, § 51.102. The State's action is consistent with the three criteria for conditional approval that has been cited earlier in this document.

The schedule commits the State to submit an interim SIP revision by November 15, 1993, which will include certain selected TCMs, regulatory development, and RFP in addressing partially the requirements of the CAA specified in section 182(d)(1)(A). In addition, the State is committed to submit its final specific enforceable TCMs, transportation control strategies, and other requirements for offsetting any growth in emissions from the growth in VMT or number of trips for attaining reduction in motor vehicle emissions in combination with other emission reduction requirements no later than November 15, 1994. It should be noted that the final TCM SIP must be submitted to the EPA one year from the final approval date of the conditional approval, but no later than November 15, 1994, whichever comes first.

Proposed Action

The EPA is proposing to conditionally approve the Texas TCM committal SIP under section 110(k)(4) for the Houston ozone nonattainment area. This proposed conditional approval is based on review and evaluation of the Governor's submission of November 13, 1992, as commitments that the State of Texas will submit an interim TCM SIP revision including the legal authority to the EPA no later than November 15, 1993, and a full TCM/VMT Offset demonstration SIP by November 15, 1994. The EPA's review and evaluation of the committal SIP shows that the State's submittal is appropriate for conditional approval under section 110(k) of the CAA and meets the three criteria which have been outlined in this document. As indicated at the outset of this document, the EPA will consider any comments from all parties received by November 19, 1993.

This proposal is also intended to clarify provisions of the CAA under sections 179(a), (b), and 110(m). The EPA is required to take certain actions concerning the deficient SIPs, nonsubmittals, and failure to comply with the schedule provided in the committal SIPs. If the State fails to meet the applicable interim milestones in its commitment prior to the EPA's final action on the commitment, the EPA proposes, in the alternative, to disapprove the committal SIP as failing to comply with section 110(k)(4), because the EPA believes Texas could not meet the November 15, 1993, and/or November 15, 1994, submission dates should the interim milestones not be met. If the EPA takes final conditional approval on the commitment, the State must meet its commitment to adopt specific and enforceable TCMs, and submit these requirements to the EPA within the time specified in its schedule once the EPA has conditionally approved this commitment. If the State fails to adopt or submit the required rules to the EPA by November 15, 1993, this approval will become a disapproval upon EPA notification of the State by a letter. Upon notification by the EPA to Texas that this committal SIP is disapproved, this committal will no longer be a part of the approved Texas SIP. The EPA will subsequently publish a notice indicating that the commitment has been disapproved and withdrawn from the SIP. In addition, if the EPA issues a final disapproval or the conditional approval is converted to a disapproval, the sanctions clock under section 179(a) will begin. This clock will begin at the time the EPA issues a final disapproval and notifies the State by letter that a conditional approval has been converted to a disapproval. If the State does not submit a SIP, and the EPA does not approve the SIP on which the disapproval was based within 18 months of the disapproval, the EPA must impose one of the sanctions under section 179(b)—highway funding restrictions or the offset sanction. Pursuant to section 110(m), the EPA has discretionary authority to impose sanctions at any time after a final disapproval. In addition, the final disapproval triggers the Federal Implementation Plan requirement under section 110(c).

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et. seq.*, the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-

profit enterprises, and government entities with jurisdiction over populations of less than 50,000. Conditional approvals of SIP submittals under section 110 and subpart I, part D, of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids the EPA to base its actions concerning SIPs on such grounds (*Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410(a)(2)).

If conditional approval is converted to a disapproval under section 110(k), based on the State's failure to meet the commitment, it will not affect any existing State requirements applicable to small entities. Federal disapproval of the State submittal does not affect its State-enforceability. Moreover, the EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, the EPA certifies that such a disapproval will not have a significant impact on a substantial number of small entities because it does not remove existing State requirements, nor does it substitute a new Federal requirement.

This action has been classified as a Table Two action by the Regional Administrator under the procedures published in the **Federal Register** (FR) on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table Two and Table Three SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. The EPA has submitted a request for a permanent waiver for Table Two and Three SIP revisions. The OMB has agreed to continue the temporary waiver until such time as it rules on the EPA's request.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Nitrogen dioxide, Ozone, Sulfur oxides.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 24, 1993.

A. Stanely Meiburg,

Acting Regional Administrator.

[FR Doc. 93–25763 Filed 10–19–93; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 180

[PP 4F3011 and PP 7F3498/P567; FRL–4638–8]

RIN 2070–AC18

Pesticide Tolerances for Cypermethrin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes the establishment of tolerances for residues of the pesticide chemical cypermethrin [(±) alpha-cyano(3-phenoxyphenyl)methyl (±)-*cis, trans*-3(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate] in or on the raw agricultural commodities (RACs) cabbage at 2.0 parts per million (ppm) and onions at 0.1 ppm. This regulation proposes to establish maximum permissible levels for residues of the pesticide chemical requested pursuant to petitions submitted by FMC Corp.

DATES: Written comments, identified by the document control number [PP 4F3011 and PP 7F3498/P567], must be received on or before November 19, 1993.

ADDRESSES: Written comments, identified by the document control number, may be submitted to: Public Response Section, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1128 at the Virginia address given above, from 9 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: George T. LaRocca, Product Manager (PM) 13, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 202, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, 703-305-6100.

SUPPLEMENTARY INFORMATION: EPA issued notices in the **Federal Register** of February 8, 1984 (49 FR 4840) and May 13, 1987 (52 FR 18019), which announced that FMC Corp., 1735 Market St., Philadelphia, PA 19103, had submitted pesticide petitions (PP) 4F3011 and 7F3498 proposing to amend 40 CFR part 180 by establishing tolerances for residues of cypermethrin [(±) alpha-cyano-(3-phenoxyphenyl)methyl (±)-*cis, trans*-3(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate] and its metabolites dichlorovinyl acid (DCVA) and m-phenoxybenzoic acid (MPB-Acid) and cyperamide under section 408(b) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 346a(b)) in or on the raw agricultural commodities cabbage at 1.5 parts per million (ppm) and bulb onions at 0.1 ppm, respectively.

The petition for cabbage (PP 4F3011) was subsequently amended as announced in the **Federal Register** of August 7, 1985 (50 FR 31917) to increase the tolerance level to 2.0 ppm.

Since the available field residue studies indicate that there will be low levels of metabolic residues in the terminal residues (this is the total amount of pesticidal residue on the crop at the time of harvest), the Agency concluded that the tolerance expression regulate only the parent compound (cypermethrin) and not the metabolites as initially requested.

The Agency issued a conditional registration for cypermethrin for use on cotton with an expiration date of December 1, 1988 (see the **Federal Register** of June 15, 1984 (49 FR 24864), January 9, 1985 (50 FR 1112), and September 27, 1985 (50 FR 39100)). This conditional registration was subsequently amended to include pecans and lettuce and extended to November 15, 1993. One of the conditions of registration was the submission of an aquatic field study to determine the effect of cypermethrin on aquatic life. Due to the conditional status of the registration, tolerances have been established for cypermethrin on a temporary basis on cottonseed, pecans, lettuce, meat, fat, and meat byproducts of hogs, horses, cattle, goats,

sheep, and milk to cover residues expected to be present from use during the period of conditional registration. The Agency is proposing to extend the tolerances for cypermethrin and other synthetic pyrethroid insecticides conditionally registered for use on cotton and other affected commodities until November 15, 1994, and notice of this action appears elsewhere in this issue of the **Federal Register**. To be consistent with the conditional registration status for cypermethrin on cotton, pecans, and lettuce the Agency proposes to establish these tolerances with an expiration date of November 15, 1994, to cover residues expected to be present during the period of conditional registration.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data considered in support of the tolerances include the following:

1. A 13-week rat feeding study with a no-observed-effect level (NOEL) of 75 parts per million (ppm, estimated 3.8 mg/kg/day) for pharmacological effects (increased microsomal enzyme activity) and a NOEL of 150 ppm (estimated 7.6 mg/kg/day) for decrease in body weight.

2. A 13-week dog feeding study with a NOEL of 500 ppm (estimated 13 mg/kg/day). Diarrhea, behavioral signs of nervous system effects and deaths resulted in males and females receiving the next highest dose of 1,500 ppm (estimated 38 mg/kg/day).

3. A rabbit teratology study; no developmental toxicity at 30 mg/kg/day (highest dose tested).

4. A rat teratology study; no developmental toxicity at 70 mg/kg/day (highest dose tested).

5. A 1-year dog oral dosing study (by capsule) with a NOEL of 1.0 mg/kg/day and gastrointestinal tract disturbances at 5.0 mg/kg/day. Definite nervous system effects at 15 mg/kg/day (HDT).

6. A 2-year rat chronic feeding/carcinogenicity study with a NOEL of 150 ppm (estimated 7.6 mg/kg/day) and a lowest effect level (LEL) of 1,500 ppm (estimated 76 mg/kg/day). Weight loss and general changes in blood elements and cholesterol levels were noted at the LEL. Not carcinogenic up to and including 1,500 ppm (HDT).

7. A lifetime (97 weeks in males and 101 weeks in females) mouse carcinogenicity study with positive neoplastic response in lung tissue, based on the occurrence of increased incidence of lung benign adenomas tumors in mice at 1,600 ppm (estimated 230 mg/kg/day) (see discussion below).

8. Two multigeneration rat reproduction studies. The first demonstrated a NOEL of 50 ppm (estimated 2.5 mg/kg/day) and a LEL of 150 ppm (estimated 7.5 mg/kg/day) for decreased body weight gain in maturing pups. There were no effects on reproductive performance. The second study also indicated decreased pup weight gain at 100 ppm (estimated 5 mg/kg/day) and 500 ppm (estimated 25 mg/kg/day), but there were no adverse effects in reproductive performance.

9. An acute hen neurotoxicity study with no evidence of delayed type neurotoxicity at 10 mg/kg (HDT).

10. The mutagenicity/genetic toxicity data base consists of an Ames mutagenicity assay, not mutagenic in TA-98, TA-100, TA-1537, TA-1538, TA-1535 with and without metabolic activation; a host-mediated assay, not mutagenic at 50 mg/kg; a dominant-lethal study, not mutagenic at 25 mg/kg (single dose) or 10.0 mg/kg (5 consecutive doses); and a bone marrow cytogenic study, not mutagenic at 40 mg/kg.

The Agency has concluded that the data available for cypermethrin provide limited evidence for carcinogenicity in female mice and has classified the pesticide as a Category C carcinogen (possible human carcinogen with limited evidence of carcinogenicity in animals) in accordance with Agency guidelines, published in the **Federal Register** of September 24, 1986 (51 FR 33992). Based on a review by the Health Effects Division Peer Review Committee for Carcinogenicity of the Office of Pesticide Programs, the Agency has determined that a quantitative carcinogenic estimation of human risk based on Q* calculations is not appropriate for the following reasons:

Cypermethrin produced benign lung adenomas at the highest dose level tested in only one sex and species of animal (female mice). Although the observed increase in lung adenomas exceeded historical control values for similar tumors by a small margin, the committee did not consider the finding to be of major importance for the following reasons: (1) Lung adenomas are tumors of relatively common occurrence in mice; (2) the tumors did not show progression to carcinomas; (3) the tumors did not occur with a reduced latency; (4) the tumors did not appear in a compound-related increase in male mice or in rats of either sex with adequate dose level; and (5) the compound itself was not mutagenic.

Instead of a quantitative cancer risk assessment using a Q*, EPA will characterize the additional risk represented for new uses of cypermethrin based on the Reference Dose (RfD) for the chemical. Using a 100-fold safety factor and the NOEL of 1 mg/kg/day determined by the most sensitive species from the 1-year oral dosing study in dogs, the RfD is 0.01 mg/kg/day. A dietary risk chronic exposure analysis was performed using tolerance level residues and 100-percent crop treated to estimate the Theoretical Maximum Residue Contribution (TMRC) for the general population. The TMRC for the general population from all published tolerances is 2.8 X 10^{-3} mg/kg bwt/day, representing 28% of the RfD. The tolerances for cabbage and bulb onions contribute an additional 2.1 X 10^{-4} mg/kg/day. This represents only 2% of the RfD.

The metabolism of cypermethrin in plants is adequately understood for these areas. An analytical method (gas liquid chromatography with an electron capture detector) is available for enforcement. Prior to its publication in the Pesticide Analytical Manual, Vol. II, the enforcement methodology is being made available in the interim to anyone who is interested in pesticide enforcement when requested from: By mail: Calvin Furlow (H7506C), Public Response and Program Resources Branch, Field Operation Division, U. S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Room 1130A, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305-5937.

The pesticide is considered useful for the purposes for which it is sought. Based on the information and data considered, the Agency concludes that the proposed section 408 tolerances will protect the public health.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 4F3011 and PP 7F3498/P567]. All written comments filed in response to this document will be available in the Public Response Section, at the address given above from 9 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the

requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or food/feed additive regulations or raising tolerance or food/feed additive regulation levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Parts 180

Environmental Protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 1, 1993.

Stephanie R. Irene

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. By amending § 180.418 in the table therein, by adding and alphabetically inserting the following raw agricultural commodities, to read as follows:

§ 180.418 Cypermethrin; tolerances for residues.

* * * * *

Commodity	Parts per million
* * * * *	
Cabbage	2.0
* * * * *	
Onions, bulb	0.10
* * * * *	

[FR Doc. 93-25617 Filed 10-19-93; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Parts 180, 185, and 186

[PP 8F2034, 7F2013, 4F2993, 2F2623, 4F3046, 6F3453, and 6F3318/P569; FRL-4638-7]

RIN 2070-AC18

Pesticide Tolerances for Permethrin, Cypermethrin, Fenvalerate/Esfenvalerate, Tralomethrin, Bifenthrin, Cyfluthrin and Lambda-Cyhalothrin; Extension of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to extend tolerances for the residues of seven synthetic pyrethroids—permethrin, cypermethrin, fenvalerate/esfenvalerate, tralomethrin, bifenthrin, cyfluthrin, and lambda-cyhalothrin (collectively referred to as the synthetic pyrethroids)—in or on certain raw agricultural commodities. This proposal to extend the effective date for tolerances for maximum permissible levels of residues of these synthetic pyrethroids in or on these commodities was requested by FMC Corp. (FMC), Zeneca Ag Products, E. I. DuPont de Nemours and Co., Inc., Hoechst-Roussel Agri-Vet Co., and Miles, Inc. (collectively called the industry's Pyrethroid Working Group (PWG)).

DATES: Written comments, identified by the document control number [PP 8F2034, 7F2013, 4F2993, 2F2623, 4F3046, 6F3453, and 6F3318/P569], must be received on or before November 19, 1993.

ADDRESSES: Written comments, identified by the document control number, may be submitted to: Public Response Section, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1128 at the Virginia address given above, from 9 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: George T. LaRocca, Product Manager (PM) 13, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 202, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, 703-305-6100.

SUPPLEMENTARY INFORMATION: Beginning in 1985 the Agency issued Data Call-In Notices (DCI) for chemical-specific aquatic field (mesocosm) data and other aquatic toxicological data to maintain existing registrations and support new registration of synthetic pyrethroid insecticides on cotton. Because laboratory data indicate synthetic pyrethroids are extremely toxic to fish and other aquatic organisms the field data was required to allow the Agency to better understand the potential risk and exposure to the aquatic environment and enable it to complete an ecological risk assessment. In addition, since laboratory tests indicated similar aquatic toxicity among the pyrethroids, for regulatory purposes the Agency decided to treat all synthetic pyrethroids registered for use on cotton as a class. Thus the registrations were made conditional because of the common lack of specific aquatic toxicological hazard data, and the tolerances on cotton and other affected commodities were made temporary until the conditions of registration were fulfilled.

In November 1990, the Agency and the PWG in collaboration with the National Cotton Council agreed to interim risk reduction measures designed to reduce the potential for exposure of aquatic habitats of concern to synthetic pyrethroids applied to cotton. The interim risk reduction measures included user surveys to assess current pyrethroid use practices on cotton, label changes aimed at reducing the aquatic environmental exposure to pyrethroids, and a program of data generation to evaluate the effectiveness of the risk reduction measures. The data and other information required by this joint agreement have been submitted to the Agency and are under review.

As part of this agreement the Agency extended the conditional registration for the seven synthetic pyrethroids on cotton and related commodities to November 15, 1992. This expiration date was subsequently extended to November 15, 1993, to allow the Agency sufficient time to review the data. By

November 15, 1993, the Agency intends to complete review of all data submitted under the data generation program and other information and to make FIFRA section 3 (c)(5) or other appropriate regulatory decisions for the cotton use of the synthetic pyrethroids.

To be consistent with the extensions issued for the conditional registrations the Agency is proposing to amend/extend the tolerances for the seven synthetic pyrethroids on cotton. The Agency has determined that amending/extending the tolerances will protect the human health. Therefore, extensions for the tolerances on cotton and other affected crops are proposed as set forth below.

The data submitted in support of these tolerances and other relevant material have been reviewed. The toxicological and metabolism data and analytical methods for enforcement purposes considered in support of these tolerances are discussed in detail in related documents published in the **Federal Registers** of April 25, 1979 (44 FR 24287—permethrin), January 31, 1979 (44 FR 6098—fenvalerate), September 18, 1985 (50 FR 37581—tralomethrin), February 21, 1985 (50 FR 7172—cypermethrin), January 25, 1988 (53 FR 1923—cyfluthrin), August 15, 1988 (53 FR 30676—befentrhin), and May 24, 1988 (53 FR 18558—lambda cyhalothrin).

Residues remaining in or on the above raw agricultural commodity after expiration of these tolerances will not be considered actionable if the pesticide is legally applied during the term of and in accordance with the provisions of the conditional registrations.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 8F2034, 7F2013, 4F2993, 2F2623, 4F3046, 6F3453, and 6F3318/P569]. All written comments filed in response to this petition will be available in the Public Response Section, at the address given above from 9 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or food/feed additive regulations or raising tolerance or food/feed additive regulation levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Parts 180, 185, and 186

Environmental protection, Administrative practice and procedure, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 27, 1993.

Stephanie R. Irene,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that chapter I of title 40 of the Code of Federal Regulations be amdned as follows:

PART 180—[AMENDED]

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346 and 371.

b. In § 180.378, by revising the introductory text of paragraph (a), to read as follows:

§ 180.378 Permethrin; tolerances for residues.

(a) Tolerances, to expire on November 15, 1994, are established for residues of the insecticide permethrin [(3-pheoxyphenyl)methyl 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropane carboxylate] in or on the following raw agricultural commodities:

* * * * *

c. In § 180.379 by amending the table in paragraph (a) by adding a footnote to the entry for cottonseed as follows:

§ 180.379 Cyano(3-phenoxyphenyl)methyl-4-chloro-α-(1-methylethyl) benzeneacetate; tolerances for residues.

(a)* * *

Commodity	Parts per million
* * * *	*
Cottonseed	0.2[1]
* * * *	*

[1]The tolerance for cottonseed expires on November 15, 1994.

* * * * *

§ 180.418 [Amended]

d. By amending § 180.418 *Cypermethrin; tolerances for residues* in the introductory text by changing "July 1, 1993," to read "November 15, 1994."

e. In § 180.422, by revising the introductory text to read as follows:

§ 180.422 Tralomethrin; tolerances for residues.

Tolerances, to expire on November 15, 1994, are established for the combined residues of the insecticide tralomethrin ((*S*)-alpha-cyano-3-phenoxybenzyl (1*R*,3*S*)-2,2-dimethyl-3-[(*RS*)-1,2,2,2-tetrabromoethyl]-cyclopropanecarboxylate; CAS Reg. No. 66841-25-6) and its metabolites (*S*)-alpha-cyano-3-phenoxybenzyl (1*R*,3*R*)-3(2,2,-dibromovinyl)2,2-dimethylcyclopropanecarboxylate and (*S*)-alpha-cyano-3-phenoxybenzyl (1*S*, 3*R*)-3-(2,2-dibromovinyl)-2,2-dimethylcyclopropanecarboxylate calculated as the parent in or on the following raw agricultural commodities:

* * * * *

f. In § 180.436, by amending the table therein by adding a footnote to the entry for cottonseed as follows:

§ 180.436 Cyfluthrin; tolerances for residues.

* * * * *

Commodity	Parts per million
* * * *	*
Cottonseed	1.0[1]
* * * *	*

[1]The tolerance for cottonseed expires on November 15, 1994.

g. In § 180.438, the section designation "(a)" is removed, the introductory text is revised, and the table is amended by adding a footnote to the entry for cottonseed as follows:

§ 180.438 [1 α-(S*),3 α (Z)]-(±)-cyano(3-phenoxyphenyl)methyl 3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate; tolerances for residues.

Tolerances are established for the combined residues of the insecticide [1 α-(S*),3 α (Z)]-(±)-cyano(3-

phenoxyphenyl)methyl 3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethycyclopropanecarboxylate, in or on the following raw agricultural commodities:

Commodity	Parts per million
* * * * *	
Cottonseed	0.05[1]
* * * * *	

[1]The tolerance for cottonseed expires on November 15, 1994.

* * * * *

b. In § 180.442 by revising the introductory text, to read as follows:

§ 180.442 Bifenthrin; tolerances for residues.

Tolerances, to expire on November 15, 1994, are established for residues of the pyrethroid bifenthrin (2-methyl[1,1'-biphenyl]-3-yl)methyl-3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate) in or on the following commodities:

* * * * *

Part 185—[AMENDED]

2. In part 185:

a. The authority citation for part 185 continues to read as follows:

AUTHORITY: 21 U.S.C. 348.

b. In § 185.1250, by revising paragraph (a) to read as folllows:

§ 185.1250 Cyfluthrin.

(a) A tolerance, to expire on November 15, 1994, of 2.0 parts per million is established for residues of the insecticide cyfluthrin (cyano(4-fluoro-3-phenoxyphenyl)methyl-3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate; CAS Reg. No. 69359-37-5) in cottonseed oil resulting from appliction of the insecticide to cottonseed.

* * * * *

c. In § 185.5450, by revising the introductory text to read as follows:

§ 185.5450 Tralomethrin.

Tolerances, to expire on November 15, 1994, are established for the combined residues of the insecticide tralomethrin [(*S*)-alpha-cyano-3-phenoxybenzyl-(1*R*,3*S*)-2,2-dimethyl-3-[(*RS*)-1,2,2,2-tetrabromoethyl] cyclopropanecarboxylate; CAS Reg. No. 66841-25-6]) and its metabolites (*S*)-alpha-cyano-3-phenoxybenzyl (1*R*,3*R*)-3-(2,2-dibromovinyl)-2,2-dimethylcyclopropanecarboxylate and (*S*)-alpha-cyano-3-phenoxybenzyl (1*S*,3*R*)-3-(2,2-dibromovinyl)-2,2-dimethylcyclopropanecarboxylate calculated as the parent in or on the following food commodities when present as a result of application of the insecticide to the growing crops:

* * * * *

PART 186—[AMENDED]

3. In part 186:

a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 348

b. In § 186.1250, by revising paragraph (a), to read as follows:

§ 186.1250 Cyfluthrin.

(a) A tolerance, to expire on November 15, 1994, of 2.0 parts per million is established for residues of the insecticide cyfluthrin (cyano(4-fluoro-3-phenoxyphenyl)methyl-3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate; CAS Reg. No. 68359-37-5) in cottonseed hulls resulting from application of the insecticide to cottonseed.

* * * * *

[FR Doc. 93-25638 Filed 10-19-93; 8:45 am]

BILLING CODE 6560-50-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

42 CFR Part 1003

RIN 0991-AA65

Civil Money Penalties for Prohibited Referrals to Entities Providing Clinical Laboratory Services and for Prohibited Arrangements and Schemes

AGENCY: Office of Inspector General, HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement sections 1877(g)(3) and 1877(g)(4) of the Social Security Act. Section 1877(g)(3) authorizes the imposition of civil money penalties and an exclusion against any person who presents, or causes to be represented, a bill or claim for a service unlawfully referred under section 1877(a)(1)(A), or has not refunded amounts inappropriately collected for a prohibited referral. In addition, in accordance with section 1877(g)(4) of the Act, the OIG is authorized to impose civil money penalties and an exclusion in cases where a physician or entity enters into an arrangement or scheme, a principal purpose of which the physician or entity knows, or should have known, is to assure referrals which, if they were made directly to the entity, would violate the prohibition on referrals described in section 1877(a) of the Act.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on December 20, 1993.

ADDRESSES: Address comments to: Office of Inspector General, Department of Health and Human Services, Attention: LRR–30–P, room 5246, 330 Independence Avenue, SW., Washington, DC 20201.

If you prefer, you may deliver your comments to room 5551, 330 Independence Avenue, SW., Washington, DC. In commenting, Please refer to file code LRR–30–P. Comments received timely will be available for public inspection, beginning approximately two weeks after publication, in room 5551, 330 Independence Avenue, SW., Washington, DC on Monday through Friday of each week from 9 a.m. to 5 p.m., (202) 619–3270.

FOR FURTHER INFORMATION CONTACT: Stuart E. Wright, Legislation and Regulations Staff (202) 619–3270.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, Congress has provided the Department of Health and Human Services with increasing civil money penalty (CMP) authorities to ensure compliance with statutory provisions. The original CMP authorities were specifically designed to provide penalties for fraudulent and abusive practices, such as submission of false claims, involving the Medicare and Medicaid programs. The authority for levying CMPs was further expanded in recent years to address issues involving quality of care, other reimbursement issues, and other State health care programs.

Several statutory provisions have been recently enacted by the Congress governing relationships between health care providers and those health care professionals who are (1) owners of the providers or (2) compensated in some way by the providers. In particular, criminal penalties are provided for individuals or entities that knowingly and willfully offer, pay, solicit, or receive remuneration intended to induce the furnishing of items or services covered by Medicare or State health care programs (including Medicaid, and any State program receiving funds under titles V or XX of the Act). Offenses are classified as felonies and are punishable by fines of

up to $25,000 or imprisonment for up to 5 years, or both. (See section 1128B(b) of the Act, 42 U.S.C. 1320a–7b(b), as amended by section 4 of the Medicare and Medicaid Patient Program Protection Act of 1987 (Pub. L. 100–93, enacted August 18, 1987).)

For purposes of section 1128B(b) of the Act, remuneration includes kickbacks, bribes, rebates, and any other exchanges of value made directly or indirectly, overtly or covertly, in cash or in kind. Prohibited conduct includes not only remuneration intended to induce referrals of patients, but also remuneration intended to induce the purchasing, leasing, ordering, or arranging for or recommending any good, facility, service, or item paid by the Medicare or State health care provider.

II. Prohibition on Physician Referrals for Laboratory Service

In a May 1989 report to the Congress entitled "Financial Relationships Between Physicians and Health Care Businesses," the OIG found that Medicare patients of referring physicians who own or invest in independent clinical laboratories received 45 percent more clinical laboratory services than all Medicare patients in general. Section 6204 of Public Law 101–239, the Omnibus Budget Reconciliation Act (OBRA) of 1989, added a new section 1877, "Limitations on Certain Physician Referrals," to the Act. In addition, section 4207(e) of Public Law 101–508, the Omnibus Budget Reconciliation Act of 1990, amended certain provisions of section 6204 of Public Law 101–239 (by clarifying certain definitions and reporting requirements relating to physician ownership and referral). To provide readers of this proposed rule with complete information, we are broadly describing the requirements of section 1877 of the Act. For specific details on prohibited referral arrangements under section 1877, we refer the reader to the HCFA proposed rule (57 FR 8588) published in the Federal Register on March 11, 1992.

1. General Prohibition

With certain exceptions, section 1877(a)(1)(A) prohibits a physician from making a referral to an entity for the furnishing of clinical laboratory services, for which Medicare would otherwise pay, if the physician (or a member of the physician's immediate family) has a financial relationship with that entity (as described in section 1877(a)(2)). Further, section 1877(a)(1)(B) prohibits an entity from presenting, or accusing to be presented, a Medicare claim or a bill to any individual, third party payor, or other entity, for clinical laboratory services unlawfully referred under section 1877(a)(1)(A).

For purposes of this general prohibition, section 1877(h)(7) defines "referral" as follows:

- The request by a physician for an item or service which payment may be made under Medicare Part B, including a request by a physician for a consultation with another physician (and any test or procedure ordered by, or to be performed by (or under the supervision of) that other physician), or
- The request or establishment of a plan of care by a physician when the plan includes furnishing clinical laboratory service. However, section 1877(h)(7)(C) provides an exception to this definition for a request by a pathologist for clinical diagnostic laboratory tests and pathological examination services if the services are furnished by (or under the supervision of) the pathologist pursuant to a consultation requested by another physician. These provisions of the law are effective for referrals made after December 31, 1991. Congress provided for general exceptions to the referral prohibitions for specified circumstances and other exceptions limited to specific types of ownership and compensation arrangements.

2. Financial Relationships

Section 1877(a)(2) describes a financial relationship between a physician (or an immediate family member of a physician) and an entity as being an ownership or investment interest in the entity, or a compensation arrangement (as defined in section 1877(h)(1)(A)) between the physician (or immediate family member) and an entity. An ownership or investment interest may be established "through equity, debt, or other means." A person with a financial relationship with an entity is an "investor." Section 1877(h)(5) defines an "interested investor" as an investor who is a physician in a position to make or influence referrals or business to the entity (or who is an immediate family member of such an investor). A "disinterested investor" is defined as an investor other than an "interested investor."

For purposes of this provision, section 1877(h)(1)(A) defines a "compensation arrangement" as an arrangement involving any remuneration between a physician (or an immediate family member) an entity. Section 1877(h)(1)(B) defines "remuneration" to include any remuneration directly or indirectly, overtly or covertly, in cash or in kind.

In addition to setting forth this prohibition against physician referrals to entities providing clinical laboratory services in which they have a financial interest, the statute also provides for the imposition of CMPs and exclusions against any person who (1) presents, or causes to be presented, a bill or claim for a clinical laboratory service that the person knows, or should have known, was unlawfully referred by a physician [1], or (2) has not refunded amounts inappropriately collected for a prohibited referral. In addition, in accordance with section 1877(g)(4) of the Act, the OIG is authorized to impose CMPs and exclusions in cases where a physician or entity enters into an arrangement or scheme, a principal purpose of which the physician or entity knows, or should have known, is to assure referrals which, if they were made directly, would violate the prohibition on referrals described in section 1877(a) of the Act.

III. Summary of the Proposed Rule

With enactment of section 6204 of Public Law 101–239, Congress has broadened the Department's existing authorities by specifically providing new CMPs for billing for prohibited clinical laboratory services and for certain prohibited arrangements and schemes. Authority for imposing these new CMPs will be delegated to the Office of Inspector General.

Sanctions for Improper Claims

Section 1877(g)(3) of the Social Security Act authorizes the imposition of CMPs and exclusions for any person who presents, or causes to be presented, a bill or claim for a service that the person knows, or should have known (1) was provided in accordance with a prohibited referral, or (2) was not properly refunded in accordance with section 1877(g)(2).

Section 1877(g)(3) provides that the CMP be no more than $15,000 for each such service. The Secretary is authorized to make a determination during the same proceeding to exclude the person from Medicare participation and to direct the appropriate State health care program. (In addition, in accordance with section 1128A of the Act, any person subject to a CMP determination in accordance with

[1] Physicians should be aware that under sections 1877(g)(3) and (g)(4), they, as well as the clinical laboratories to which they have made prohibited referrals, may be subject to civil money penalties, assessments, and exclusions from government health care programs, for causing the submission of claims for services resulting from those referrals.

section 1877(g)(3) may also be subject to an assessment of not more than twice the amount claimed for each item or service which was the basis for the penalty. The assessment is in lieu of damages sustained by the Department or a State agency because of that claim.)

In determining the amount of the penalty or assessment for each violation, we would apply the following 5 existing criteria set forth in § 1003.106(a) of the regulations: (1) The nature of the claim or request for payment and the circumstances under which it was presented; (2) the degree of culpability of the person submitting the claim or request for payment; (3) the history of prior offenses of the person submitting the claims or request for payment; (4) the financial condition of the person presenting the claim or request for payment; and (5) such other matters as justice may require. In addition, with respect to the failure to make a timely refund, we are proposing a sixth criterion to be applied that would consider the timeliness and completeness of the refund made.

Sanctions for Circumvention Schemes

In addition, section 1877(g)(4) of the Act authorizes the imposition of CMPs and exclusions in cases where a physician or entity enters into an arrangement or scheme, a principle purpose of which the physician or entity knows, or should have known, is to assure referrals which, if they were made directly, would violate the prohibition on referrals described in section 1877(a) of the Act. An example of such a circumvention scheme is a cross referral arrangement whereby the physician owners of "Y" refer to "X." We request comments regarding other arrangements that should be specifically described in this regulation that have a principal purpose of circumventing section 1877.

The statute limits the CMP to not more than $100,000 for each such arrangement or scheme. In accordance with section 1128A of the Act, an assessment equal to twice the amount billed for the service may also be imposed. The Secretary is authorized to make a determination in the same proceeding to exclude the person from Medicare participation and to direct the appropriate State agency to exclude the person from participation in any State health care program.

In determining the amount of the penalty or assessment for each violation of § 1003.102(b)(9), we are proposing to apply six criteria—the 5 existing criteria set forth in § 1003.106(a) and a new criterion (§ 1003.106(a)(1)(vi)) that would look at the amount of ownership interests involved. The OIG specifically welcomes public comments on these criteria and on recommendations for applying other mitigating and aggravating factors in assessing CMPs under this statutory provision.

Violators of these provisions would be subject to the same notification, effectuation, and appeals procedures as CMP violations under section 1128A(a) of the Social Security Act which are set forth at 42 CFR part 1003.

IV. Regulatory Impact Statement

Executive Order 12291

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for regulations that meet one of the Executive Order criteria for a "major rule," that is, that would be likely to result in (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individuals, industries, Federal, State, or local government agencies or geographic regions; or (3) significant adverse effects on completion, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

As indicated above, the provisions contained in this rulemaking provide new authorities to the OIG to levy civil money penalties against persons or entities that file claims for services furnished on the basis of prohibited referrals or who engage in prohibited circumvention schemes as proscribed by statute. These provisions are a result of statutory changes and serve to clarify departmental policy with respect to the imposition of CMPs upon persons and entities who violate the statute. We believe that the great majority of providers and practitioners do not engage in such prohibited activities and practices discussed in these regulations, and that the aggregate economic impact of these provisions should, in effect, be minimal, affecting only those who have engaged in prohibited behavior in violation of statutory intent. As such, this rule should have no direct effect on the economy or on Federal or State expenditures.

Regulatory Flexibility Analysis

Consistent with the Regulatory Flexibility Act of 1980, Public Law 96–354 (5 U.S.C. 601 through 612), we are to prepare and publish a regulatory flexibility analysis unless the Secretary certifies that a regulation would not have a significant economic impact on a substantial number of small business entities. The analysis is intended to explain what effect that regulatory action will have on small business and other small entities, and to develop lower cost or burden alternatives.

We have determined that no regulatory impact analysis is required for these proposed regulations. In addition, while some penalties the Department could impose as a result of these regulations might have an impact on small entities, we do not anticipate that a substantial number of these small entities will be significantly affected by this rulemaking. Therefore, we have concluded that a regulatory flexibility analysis is not required for this rulemaking.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1980, Pub. L. 96–511, all Departments are required to submit to the Office of Management and Budget for review and approval any reporting or recordkeeping requirements contained in both proposed and final rules. We have determined that the penalty provisions contained in this rulemaking do not contain such information collection requirements and will not increase the Federal paperwork burden on the public and private sectors.

V. Response to Comments

Because of the number of comments we receive on proposed regulations, we cannot acknowledge or respond to these comments individually. However, in preparing the final rule, we will consider all comments received in response to these penalty provisions and respond to them in the preamble to the document.

List of Subjects in 42 CFR Part 1003

Administrative practice and procedure, Fraud, Grant programs—health, Health facilities, Health professions, Maternal and child health, Medicaid, Medicare, Penalties.

TITLE 42—PUBLIC HEALTH

CHAPTER V—OFFICE OF INSPECTOR GENERAL—HEALTH CARE, DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR part 1003 would be amended as set forth below:

PART 1003—CIVIL MONEY PENALTIES, ASSESSMENTS AND EXCLUSIONS

1. The authority citation for part 1003 would be revised to read as follows:

Authority: 42 U.S.C. 1302, 1302a–7, 1320a–7a, 1320b–10, 1395u(j), 1395u(k), 1395nn(g), 1131(c) and 11137(b)(2).

2. Section 1003.100 would be amended by revising paragraph (a) and

paragraph (b)(1) (iv) and (v); and by adding a new paragraph (b)(1) (vi)–(ix) to read as follows:

§ 1003.100 Basis and purpose.

(a) *Basis.* This part implements sections 1128(c), 1128A, 1140, 1842(j), 1842(k), and 1877(g) of the Social Security Act, and sections 421(c) and 427(b)(2) of Public Law 99–660 (42 1320a–7(c), 1320a–7a, 1320, 11131(c) and 11137(b)(2)).

(b) * * *

(1) * * *

(iv) Fail to report information concerning medical malpractice payments or who improperly disclose, use or permit access to information reported under part B of title IV of Public Law 99–660, and regulations specified in 45 CFR part 60;

(v) Misuse certain Medicare and Social Security program words, letters, symbols and emblems;

(vi) Have submitted certain prohibited claims under the Medicare or State health care programs;

(vii) Present or cause to be presented, a bill or claim for a clinical laboratory service that they know, or should know, was furnished in accordance with a referral prohibited under § 411.353 of this chapter;

(viii) Have collected amounts that they know or should know were billed in violations of § 411.353 of this chapter and have not refunded the amounts collected on a timely basis; or

(ix) Is a physician or entity that enters into an arrangement or scheme that the physician or entity knows, or should know, has as a principal purpose the assuring of referrals by a physician to a particular entity which, if made directly, would violate the provisions of § 411.353 of this chapter;

* * * * *

3. Section 1003.102 would be amended by revising paragraphs (a)(3), (a)(4) introductory text, and (a)(4)(iii); and by adding new paragraphs (a)(5), (b)(8) and (b)(9) to read as follows:

§ 1003.102 Basis for civil money penalties and assessments.

(a) * * *

(3) An item or service furnished during a period in which the person was excluded from participation in the program to which the claim was made in accordance with a determination made under sections 1128 (42 U.S.C. 1320a–7), 1128A (42 U.S.C. 1320a–7a), 1156 (42 U.S.C. 1320c–5), 1160(b) as in effect on September 2, 1982 (42 U.S.C. 1320c–9(b)), 1842(j)(2) (42 U.S.C. 1395u(j)), 1862(d) as in effect on August 18, 1987 (42 U.S.C. 1395y(d)), or 1866(b) (42 U.S.C. 1395cc(b));

(4) A physician's service (or an item or service) for which the person knew, or should have known, that the individual who furnished (or supervised the furnishing of) the service—

* * * * *

(iii) Represented to the patient at the time the service was furnished that the physician was certified in a medical specialty board when he or she was not so certified; or

(5) Payment which such person knows, or should know, may not be made under § 411.353 of this chapter.

(b) * * *

(8) Has not refunded on a timely basis amounts collected as the result of billing an individual, third party payer or other entity for a clinical laboratory service that was provided in accordance with a prohibited referral as described in § 411.353 of this chapter;

(9) Is a physician or entity that enters into—

(i) A cross referral arrangement, for example, whereby the physician owners of entity "X" refer to entity "Y," and the physician owners of entity "Y" refer to entity "X" in violation of § 411.353 of this chapter,

(ii) Any other arrangement or scheme that the physician or entity know, or should know, has a principal purpose of circumventing the prohibitions of § 411.353 of this chapter.

* * * * *

4. Section 1003.103 would be amended by revising paragraphs (a) and (b) to read as follows:

§ 1003.103 Amount of penalty.

(a) Except as provided in paragraphs (b), (c) and (d) of this section, the OIG may impose a penalty of not more than $2,000 for each item or service that is subject to a determination under § 1003.102.

(b) The OIG may impose a penalty of not more than $15,000 for each person with respect to whom a determination was made that false or misleading information was given under § 1003.102(b)(4), or for each item or service that is subject to a determination under § 1003.102(a)(4) or § 1003.102(b)(8). The OIG may impose a penalty of not more than $100,000 for an arrangement or scheme that is subject to a determination under § 1003.102(b)(9).

* * * * *

5. Section 1003.106 would be amended by revising paragraph (a)(1) introductory text and paragraph (a)(1)(v); and by adding new paragraphs (a)(1) (vi) and (vii) to read as follows:

§ 1003.106 Determination regarding the amount of the penalty and assessment.

(a)(1) In determining the amount of any penalty or assessment in accordance with § 1003.102(a), (b)(1) to (b)(4), (b)(8) and (b)(9), the Department will take into account—

* * * * *

(v) The completeness and timeliness of the refund with respect to § 1003.102(b)(8);

(vi) The amount of financial interest involved with respect to § 1003.102(b)(9); and

(vii) Such other matters as justice may require.

* * * * *

Dated: July 12, 1993.

Bryan B. Mitchell,

Principal Deputy Inspector General.

Approved: August 26, 1993.

Donna E. Shalala,

Secretary.

[FR Doc. 93–25681 Filed 10–19–93; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 571 and 572

[Docket No. 92–28; Notice 3]

RIN No. 2127–AB85

Federal Motor Vehicle Safety Standards; Head Impact Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Reopening of comment period; notice of public meeting.

SUMMARY: This notice reopens the comment period for a notice of proposed rulemaking, published February 8, 1993, regarding measures to prevent or reduce injury when a vehicle occupant's head strikes upper interior components during a crash. These components include pillars, side rails, headers, and the roof. The initial comment period closed April 9, 1993. NHTSA is reopening the comment period because the agency's examination of the initial public comments and subsequent submissions by commenters reveals that there is need for further public examination of the issues raised by the comments. To that end, NHTSA is reopening the comment period until December 1, 1993. In addition, the agency is conducting a public meeting to further facilitate the comment process.

DATES: *Public meeting:* A public meeting to receive oral comments concerning the

head impact protection will be held on November 15, 1993, beginning at 9 a.m., at the public meeting address listed below. Persons wishing to make oral presentations at the public meeting should contact Dr. Joseph Kanianthra at the address or telephone number listed below for an information contact, by November 8, 1993. Persons making oral presentations are requested, but not required, to submit 25 written copies of the full text of their presentation no later than November 15, 1993.

Written Comments: Written comments must be received on or before December 1, 1993.

ADDRESSES: *Public meeting:* The November 15, 1993 public meeting will be held in room 2230, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

Written comments: All written comments must refer to the docket and notice number set forth above and be submitted (preferably in 10 copies) to the Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. Submissions containing information for which confidential treatment is requested should be submitted (three copies) to Chief Counsel, National Highway Traffic Safety Administration, room 5219, 400 Seventh Street, SW., Washington, DC 20590, and seven additional copies from which the purportedly confidential information has been deleted should be sent to the Docket Section.

FOR FURTHER INFORMATION CONTACT: Dr. Joseph Kanianthra, Chief, Side and Rollover Crash Protection Division, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. (202) 366–4924.

SUPPLEMENTARY INFORMATION: On February 8, 1993, NHTSA published a notice of proposed rulemaking (NPRM) proposing to amend Standard No. 201, *Occupant Protection in Interior Impact*, to require passenger cars and light trucks, buses and multipurpose passenger vehicles (LTVs) to incorporate measures to prevent or reduce injury when a vehicle occupant's head strikes upper interior components, including pillars, side rails, headers, and the roof, during a crash. The proposed amendments would add procedures and performance requirements for a new in-vehicle component test (58 FR 7506). The initial comment period for that proposal closed April 9, 1993.

To date, NHTSA has received numerous lengthy comments on the NPRM. In addition, at the request of the American Automobile Manufacturers Association (AAMA), Chrysler, Ford, General Motors, and Toyota, NHTSA has met with those parties to discuss their respective comments and testing. On September 30, 1993, AAMA requested an additional meeting with the agency concerning this rulemaking, or, in the alternative, a public meeting, a re-opening of the comment period, the issuance of a Supplemental Notice of Proposed Rulemaking, or a combination of the above.

To enable interested parties, including consumer safety groups and other non-industry parties, to further clarify or supplement their initial comments, NHTSA believes that it would be desirable to reopen the comment period until December 1, 1993, to provide a further opportunity to comment and to obtain responses from interested parties on several particular issues.

Questions

Leadtime

1. The NPRM proposed an effective date of the first September 1 that occurs following either a two or three year period beginning after the publication of the final rule, i.e., either the 3rd or 4th September 1 after publication. Commenters made a wide range of leadtime recommendations, ranging from full implementation on September 1, 1997, to a 5-year phase-in beginning September 1, 1999. NHTSA requests additional comments addressing the various leadtime recommendations. In particular, NHTSA requests specific information addressing assertions that earlier effective dates for full implementation are not practicable.

2. Some commenters suggested the need for longer leadtime for LTVs than for passenger cars. NHTSA requests comments on whether additional leadtime is necessary for LTVs, including the amount of additional leadtime needed and specific supporting information.

NHTSA also requests comments on whether, if the requirements were phased in, separate phase-in schedules for LTVs and passenger cars would provide manufacturers with more or less flexibility than a single phase-in for both types of vehicles. For example, if selecting a single phase-in schedule resulted in requiring compliance to begin later than would be the case if a schedule were set for cars alone, a manufacturer whose production consisted primarily of cars would gain compliance flexibility. Conversely, if selecting a single phase-in resulted in requiring compliance to begin earlier than would be the case if a schedule were set for LTVs alone, a manufacturer of primarily LTVs would lose compliance flexibility.

Test Procedure

3. Some commenters have suggested that, based on the proposed test procedure, an infinite number of tests would be needed for a manufacturer to certify compliance. This suggestion is based on a claim that the manufacturers would be unable to determine which impact locations and which impact angles would be most likely to produce noncompliances. NHTSA requests comments on whether these tests can be determined prior to testing, and if not, why not. If a commenter believes that they cannot be predicted with reasonable accuracy, NHTSA requests that the commenter address the effects on safety benefits and manufacturer costs from reducing either the range of possible impact locations and/or angles.

4. A number of commenters have indicated that they are conducting tests in accordance with the proposed procedures. NHTSA desires all test results, but emphasizes that, given the statutory deadline for this rulemaking, commenters *must* submit any test data by the new comment closing date in order to ensure that the agency will have time to consider them.

Proposed Exclusions

5. Some commenters have suggested excluding convertible vehicles, or sun visors and interior mirrors in all vehicles. Other commenters have suggested excluding convertible top frame/linkage mechanisms since adding padding to them would allegedly interfere with their operation. NHTSA requests additional comments on the need for such exclusions, including information on why it is impracticable to certify compliance of those components or vehicles.

6. Some commenters have requested exclusion of A-pillars (the pillars on either side of the windshield) based on the argument that increased safety belt usage and the introduction of air bags would essentially eliminate A-pillar impacts. However, highway crash data available to NHTSA indicate that some vehicle occupants are still impacting the A-pillar even when belts were used and/or air bags have deployed. NHTSA requests accident and test data addressing whether injuries from A-pillar impacts occur in air bag equipped vehicles or when belts are worn. In addition, NHTSA notes that it could not adopt any exclusion that would be inconsistent with the language in the Intermodal Surface Transportation

Efficiency Act that mandates rulemaking to "increase head impact protection from interior components" and expressly mentions "pillars" as being among the portions of the vehicle included in the term "interior components."

7. Some commenters have requested exclusion of the upper roof zone. NHTSA requests comments on how commenters would objectively define the upper roof zone.

8. NHTSA requests additional comments on the impacts of this proposal on final stage manufacturers and alterers. In particular, NHTSA requests comments on any changes that these parties would need to make in their practices in order to stay within the limits of the guidance given by the incomplete vehicle manufacturers for maintaining or achieving compliance with the proposed revisions to Standard No. 201.

9. NHTSA requests additional comments on the differences between passenger cars and LTVs, in terms of feasibility of particular countermeasures.

Neck Injury

10. In a recent meeting with the agency (noted in the docket at 92–28–NO2–049), Ford asserted that, in 1971, the agency had terminated rulemaking that would have required padding of the A-pillars because of the potential for neck injury from padded interior components. The possibility of neck injury from padded components was also raised in various written comments on the February 1993 NPRM. NHTSA requests commenters to submit accident or test data that documents the possibility of neck injury from padded components. The agency also seeks information on the extent to which the safety benefits calculated in the NPRM would be offset *if* neck injuries were to increase. Some commenters have also stated that the addition of an acceleration requirement along with the HIC requirement would reduce the potential for neck injury. The agency requests commenters to submit biomechanical information substantiating or negating these claims.

Test Device

11. Some commenters have asserted that the free motion headform (FMH) does not produce results that are as repeatable as the spherical headform preferred by others or is otherwise inferior to the spherical headform. The agency has comparative test data to show that the FMH is a repeatable test device for the purpose of this rule. NHTSA requests that commenters who believe the spherical headform is superior submit data justifying their beliefs.

Comments

The agency invites written comments from all interested parties. The agency notes that participation in the public meeting is not a prerequisite for the submission of written comments.

The agency emphasizes that it is not seeking a repetition of previous comments. All previous comments will be fully considered by NHTSA in its deliberations. Through this notice, the agency is seeking comments on the above issues or expressions of agreement or disagreement with comments previously submitted by other commenters.

It is requested but not required that 10 copies of each written comment be submitted. NHTSA provided a 60 day comment period for the February 1993 NPRM. In view of the statutory deadline in this rulemaking, the agency is limiting this additional comment period to 40 days.

No comment may exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to a comment without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit specified information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies form which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation, 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date.

Given the statutory deadline, it may not be possible for the agency to consider, and it is unlikely that the agency will consider, any comments filed after the closing date. Comments received too late for consideration in regard to the final rule may be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their written comments in the Docket Section should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receipt, the docket supervisor will return the postcard by mail.

Persons making oral presentations at the public meeting are requested, but not required, to submit 25 written copies of the full text of their presentation to Dr. Joseph Kanianthra no later than the day before the meeting. Presentations should be limited to 15–20 minutes. If time permits, persons who have not requested time, but would like to make a statement, will be afforded an opportunity to do so at the end of the day's schedule. Copies of all written statements will be placed in the docket for this notice. A verbatim transcript of the public meeting will be prepared and also placed in the NHTSA docket as soon as possible after the meeting. A schedule of the persons making oral presentation at the meeting will be available at the designated meeting area at the beginning of the public meeting.

No opportunity will be afforded the public to directly question participants in the meeting. However, the public may submit written questions to the presiding panel of Federal official for the panel to consider asking of particular participants. The presiding officials reserve the right to ask questions of all persons making oral presentations.

To facilitate communication, NHTSA will provide auxiliary aids to participants as necessary, during the meeting. Thus, any person desiring assistance of "auxiliary aids" (e.g., sign-language interpreter, telecommunications, devices for deaf persons (TDDs), readers, tape texts, braille materials, or large print materials and/or magnifying device), should contact Dr. Joseph Kanianthra at (202) 368–4724 by November 1, 1993.

Authority: 15 U.S.C. 1392, 1401, 1403, 1407, delegation of authority at 49 CFR 1.50.

Issued on October 14, 1993.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 93–25771 Filed 10–15–93; 1:29 pm]

BILLING CODE 4910–59–M

NATIONAL TRANSPORTATION SAFETY BOARD

49 CFR Part 821

Aviation Rules of Practice—General Revisions

AGENCY: National Transportation Safety Board.

ACTION: Notice of proposed rulemaking and request for comment.

SUMMARY: The NTSB is proposing numerous revisions to its rules of practice governing air safety enforcement and related cases. The overall purpose of the proposed changes is to improve the efficiency and fairness of these rules. Comments and replies to those comments are invited and will be considered in the formulation of final rules. Although a specified rule change may not be proposed in this notice, the Board here gives notice that this entire range of procedural rules is undergoing review and, as a result of comments and replies received, the Board may adopt final rules in addition to those proposed here.

DATES: Comments are due December 6, 1993. Any replies are due January 18, 1994.

ADDRESSES: An original and two copies of any comments and replies must be submitted to: Office of General Counsel, National Transportation Safety Board, 490 L'Enfant Plaza East, S.W., Washington, DC 20594. ATTENTION: Aviation Rules of Practice—General Revisions

Comments and replies may be inspected at the above address, Room 6333, from 8 a.m. to 5 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Jane F. Mackall, (202) 382–6540.

SUPPLEMENTARY INFORMATION: The NTSB currently has rules, at 49 CFR Part 821, that govern practice and procedure in aviation safety enforcement and related cases. It is our intention in this proceeding to undertake a broad review of these rules, and make any changes that would improve their efficiency and fairness.[1]

We have identified a number of rules that we already believe should be revised. Our proposed changes and additions are reproduced at the end of this document, and the text that follows discusses our reasons for proposing each substantive change. We are well aware, however, that those using our rules likely have suggestions for other rule changes. In addition to responding to the changes we propose, commentors are, therefore, urged to recommend other rule changes they consider necessary or desirable. We do not, however, solicit at this time any comment on changes that may relate to the encouragement of settlement or the use of alternative dispute resolution. The Board considers this topic to be sufficiently important and complex to warrant separate consideration.

What follows is a rule-by-rule discussion of the changes we propose.[2]

1. Inquiries to the Board warrant adding a new § 821.3 in which the letter prefixes of our docket-numbering system are explained. The proposed rule is, we think, self-explanatory.

2. We propose to revise § 821.6(d) to require notices of appearance from parties' representatives as well as their attorneys. The need for such a rule should be self-evident, and most if not all representatives already provide this notice.

3. As a general rule, an original and at least 3 copies of pleadings are now required. In subsection § 821.7(b), we propose to reduce that number to an original and 1 copy and, otherwise, to minimize the number of copies required of the parties. The proposed revision to § 821.7(b) would indicate the exceptions to the 1-copy rule: (1) The initial "notice of appeal," be it an appeal to the Board of an order of the Administrator (§ 821.30 or .55) or a petition for review of the Administrator's denial of an application (§ 821.24), would now require an original and 4 copies; (2) the Administrator's complaint (§ 821.31 or .55) would require an original and 3 copies; and (3) briefs and petitions for reconsideration (§ 821.48 and .50) would require an original and 2 copies. We seek comment especially on whether all copy requirements should be in one location in the rules and, if so, whether they should be contained in § 821.7 or elsewhere. Finally, we would revise § 821.7(a) to include our 9-digit zip code, and to permit filing and service of pleadings via facsimile transmission.[3] We also seek comment on the alternative of a uniform rule requiring an original and 4 copies. Our concern with such a rule, however, is that it would require copies that the Board does not need to process its caseload.

4. Current rule § 821.8, governing various aspects of service, has caused some confusion. The proposed revision attempts to simplify and clarify the rule and remove repetitive directions. In addition, in (a), we add a sample certificate of service to eliminate confusion on the part of non-attorney representatives, and propose to discontinue serving the Administrator via certified mail, using first-class mail instead.

We here give notice that, concurrent with adoption of any rule changes here, we will only serve respondent's attorney or representative by certified mail; respondent, who we also serve, will be served by regular, first-class mail, unless acting *pro se*. No rule change is needed to accomplish this change as to respondents.

5. We propose, in § 821.9, to offer a new provision for use in considering requests to file *amicus curiae* briefs that will liberalize the rule announced in *Administrator* v. *Essery*, 5 NTSB 609, 612 (1985), to bring our practice more into accord with the Federal rules used in appellate practice.

6. Subsection § 821.12(b), which requires agency approval for withdrawal of any pleading, can promote delay and unnecessary expense to the Board and the parties. We can see little reason, for example to continue to require an agency order authorizing the Administrator to withdraw his complaint or authorizing a respondent or petitioner to withdraw a challenge to an action by the Administrator. Dismissal of proceedings can be more efficiently handled simply with a notice to the decisionmaker, and a subsequent implementing order discontinuing the proceeding. In changes to (a), we also propose to codify certain basic due process and statutory principles regarding objections to complaint amendments. For one, we intend to clarify that, even if pleadings are amended more than 15 days before the hearing, the law judge can entertain objection to such amendment.

7. Our proposed changes to § 821.19(b) and .35(a) address two concerns. First, we propose to eliminate the requirement that a case be assigned to a law judge before discovery (of any sort) may be undertaken. Especially in emergency cases, this delay is counterproductive. Second, the revision reflects a new procedure for handling issues arising in cases prior to assignment of a law judge. Subsection(a) of § 821.35 deals, in part, with the chief judge's role in case processing prior to assignment to a particular law judge. We

[1] We have also proposed in a separate, pending proceeding, *Rules of Practice in Civil Penalty Proceedings*, 58 FR 11379 (February 25, 1993), other changes to Part 821. Readers are urged to review that document as well.

[2] We discuss all substantive changes. There are also numerous minor changes in wording, with no meaning change intended, not all of which are specifically discussed. The current and proposed rules should, therefore, be closely compared.

[3] We do not propose to include Board FAX numbers, as they may, and do, change.

proposed to authorize the chief judge to delegate his responsibility. We do not propose to direct a particular approach to doing so, but propose to allow the chief judge to adopt a method of his choosing (for example, "duty days," on which a named judge is on call to resolve matters arising that day).

8. We propose a further change to section 821.19 by the addition of a new subsection (d) to make explicit that the failure to comply with order discovery or a failure timely to cooperate in a request to preserve evidence may result in an adverse inference or finding, evidence preclusion or dismissal. By including the failure to preserve timely requested evidence we intend to reflect the fact that the Administrator typically has control over much of the evidence that will be required for a full record in cases that have air traffic control involvement. When such evidence has been requested in a timely fashion, we believe it is incumbent on the Administrator to insure its safekeeping. See *Administrator* v. *Ryan*, NTSB Order EA–3238 (1990).[4]

9. In Section § 821.20(b), we propose to codify our decision in *Administrator* v. *Flowers*, NTSB Order EA–3594 (1992), in which we considered declining to process respondent's appeal from the initial decision in light of his failure to compensate a witness.

10. In § 821.20(c), we seek to bring our enforcement rules for testimony by Board employees more in line with those that apply to the testimony of our employees in accident-related civil proceedings. It has been a foundation of our cooperation with the Administrator in accident investigation work that the Administrator will pursue enforcement-related functions separately. To encourage a free flow of information to our investigators, it is important that we separate to the degree possible the work of safety-related investigation from that of enforcement. It is similarly important that we safeguard our resources from unnecessary involvement in enforcement litigation. The rule proposed attempts to do this in enforcement cases where Board employees are sought as witnesses. Our proposal, however, does not prevent the discovery of the results of NTSB work, such as destructive testing that could not be replicated, nor does it preclude discovery of other factual observations exclusively within the Board's control, other than those that are drawn from statements that may have been offered by the respondent. Opinion testimony would be specifically prohibited.

11. Section 821.24(d), dealing with medical proceedings, is proposed to be revised to reflect the superseding of the petition for exemption procedure by the request for special issuance process. We also propose to remove language that appears to have no relevance to Board procedures. That is, we see no need for our rule to include provisions dealing with FAA requirements. Paragraph (e) is proposed to revised to address situations where new medical evidence is late filed.

12. Section 821.31(a), dealing with filing of the complaint, has produced some confusion in the past, as we have had to address in case law whether "filed upon the Administrator" meant the date of transmission (as our service rules provided) or the date of receipt. *See Administrator* v. *Simonton*, NTSB Order EA–3734 (1992). We propose to clarify this matter in the rule itself by changing "filed upon the Administrator" to "received by the Administrator." (Conforming amendments reflecting the number of needed copies are also proposed.)

13. The proposed change to subsection (a) of § 821.37, dealing with the selection of the place for hearing, reflects the Board's need to conserve resources. The Board believes that hearings outside the United States should be the ultra-extraordinary event, and rarely if ever would be justified. It is this sentiment that is proposed to be included in the rule. Other changes to this rule reflect only editorial amendments shorten it with no change in meaning intended.

14. We proposed to change the evidence rule found in § 821.38 to clarify the handling of hearsay in Board proceedings. It is our proposal to approach hearsay from the standpoint of those circumstances that might offer some intrinsic guarantee of its trustworthiness. It is beyond contention that hearsay is widely admitted in administrative proceedings with its trustworthiness going to the weight and credibility accorded it. This approach is equally appropriate where the evidence proffered contains hearsay within hearsay. We note that the Federal Rules of Evidence also permit hearsay within hearsay where there are suitable exceptions pertaining to each level of hearsay. We believe a liberal approach to be particularly well justified in the context of administrative hearings. Much of the concern over hearsay relates to the potential impact on juries untrained in analysis of evidence and testimony. NTSB enforcement proceedings are, of course, tried before hearing officers with the experience and judgment to accord hearsay only such weight as is warranted in the circumstances. Our proposal here overrules statements to contrary in *Administrator* v. *Niolet*, 2 NTSB 2846 (1980), and a few similar cases where the Board excluded double hearsay as a matter of course, without considering any extrinsic or intrinsic indicia of trustworthiness. We also intend our proposed amendment to this section to make certain that evidence that is not accepted at hearing can be preserved (via an offer of proof) for consideration by the full Board in the event of appeal.

In § 821.38(c), we propose to add language providing that, if documents are exchanged prior to a hearing and an objection regarding authenticity is not entered within a reasonable time before the hearing, any such objection made later may be deemed to have been waived.

15. It has been suggested that the second sentence of § 821.42(c), dealing with extensions of time for appeals, be moved to .42(a) to clarify its applicability to oral as well as written decisions. We propose, instead, to transfer this sentence to § 821.47. We also propose to delete the remainder of .42(c), as service of written initial decisions is already covered in § 821.8.

16. We propose to amend § 821.43 to eliminate the references to Board review on its own motion. We have not used this inherent authority in recent years, relying instead on the parties to bring to our attention cases meriting review. The initial decision's lack of precedential value eliminates concerns that unreviewed decisions might otherwise raise. Moreover, the different time periods in § 821.47 for notices of appeal (10 days), as opposed to the time limit for the Board's taking review on its own motion under § 821.43 (20 days), occasionally have produced confusion regarding due dates.

17. The proposed revisions to § 821.48(e) would adopt provisions of Federal Rule of Appellate Procedure 28(j), allowing post-briefing filing of citations to newly-decided, relevant cases.

18. We propose to revise §§ 821.49 and 821.57(c) to indicate that, if the Board raises a new issue it finds necessary to resolve the proceeding, it will afford the parties the opportunity to submit argument *if* it believes that such an opportunity is necessary or appropriate. Such an opportunity will not be available as a matter of right, for example, if the new issue is one of established law for which no further argument is necessary We see this change as simply reflecting common

[4] We are speaking here to the issue of air traffic control tapes, and the FAA's standard preservation time, absent a specific request, of 15 days.

sense, current practice, and the public interest in avoiding unnecessary delay. It should not be interpreted as any intention by the Board to reduce due process rights of the parties.

19. We propose to amend § 821.54 to apply not only to emergency proceedings under Section 609(a) of the Federal Aviation Act of 1958, as amended, 49 U.S.C. App. 1429(a), but to proceedings under Section 609(c)(3), where the Administrator issues "immediately effective" orders. See *Administrator* v. *Zacher*, NTSB Order EA–3972 (1993).

20. We propose to add a new section (f) to § 821.55 to establish clearly the use of discovery in emergency proceedings. Despite our consistent statements on this point, rule changes are necessary to leave no doubt that discovery is available in emergency cases and to ensure that this discovery is effective in light of the short time frame for deciding these cases. Other substantive changes in this rule are intended to eliminate confusion in our procedure.

21. Changes proposed to §§ 821.56 and .57 would define and revise the time within which an emergency hearing date shall be set, the time within which the hearing must be held, the time replies are due, and the method of service. These changes are intended to provide greater time for record development and, on the whole, to use better the 60-day period allowed for emergency proceedings.

22. We propose to amend § 821.63 to provide for sanctions against counsel or other representatives in the event of violation of the Board's ex parte rules. At present, sanction for ex parte violations is seemingly limited to imposition upon the party, as opposed to the party's representative, without regard to whether the party was involved in the violation. Since there may be occasions where the interests of justice will not be furthered by holding a party responsible for actions of counsel, we wish to make available a broader range of remedial options. See 49 CFR 821.6(a).

23. Finally, we propose to amend § 821.64 to require that petitions for stay pending judicial review be filed before the effective date of the order. Now, there is no due date, and petitions are routinely filed after the 30 day effective date of our order.

As required by the Regulatory Flexibility Act, we certify that the amended rules will not have a substantial impact on a significant number of small entities. The rules are not major rules for the purposes of Executive Order 12291. We also conclude that this action will not significantly affect either the quality of the human environment or the conservation of energy resources, nor will this action impose any information collection requirements requiring approval under the Paperwork Reduction Act.

List of Subjects in 49 CFR Part 821

Administrative practice and procedure, Airmen, Aviation safety.

Accordingly, 49 CFR Part 821 is proposed to be amended as set forth below.

PART 821—RULES OF PRACTICE IN AIR SAFETY PROCEEDINGS

1. The authority citation for Part 821 continues to read as follows:

Authority: Title VI, Federal Aviation Act of 1958, as amended (49 U.S.C. App. 1421 *et seq.*); Independent Safety Board Act of 1974, Pub. L. 93–633, 88 Stat. 2166 (49 U.S.C. App. 1901 *et seq.*), and FAA Civil Penalty Administrative Assessment Act of 1992, Pub. L. 102–345 (49 U.S.C. App. 1471), unless otherwise noted.

2. A new § 821.3 is proposed to be added to read as follows:

§ 821.3 Description of docket numbering system.

In addition to sequential numbering of cases as received, each case formally handled by the Board receives a letter prefix. These letter prefixes reflect the case type: "SE" for the safety enforcement (suspension/revocation) docket; "SM" (safety medical) for an enforcement case involving a medical application; "SR" for a case involving safety registration issues under 49 U.S.C. 1401, *et seq.*; "CD" for certificates of denial (*see* 49 U.S.C. 1422); a new "CP" for cases in which the Administrator seeks a civil penalty; and "EAJA" for applications seeking Equal Access to Justice Act awards.

3. Section 821.6 is proposed to be amended by revising paragraph (d) to read as follows:

§ 821.6 Appearances and rights of witnesses.

* * * * *

(d) Any party to a proceeding who is represented by an attorney or party representative shall notify the Board of the name and address of that attorney or representative. In the event of a change in attorney or representative of record, a party shall notify the Board, in the manner provided in § 821.7(a), and the other parties to the proceeding, prior to the attorney or representative participating in any way, including the filing of documents, in any proceeding.

4. Section 821.7 is proposed to be amended by revising paragraphs (a) and (b) to read as follows:

§ 821.7 Filing of documents with the Board.

(a) *Filing address, date and method of filing.* Generally, documents are to be filed with the Office of Administrative Law Judges. However, subsequent to the filing of a notice of appeal from a law judge's final decision or order (written or oral), all documents should be directed to the proper office at the National Transportation Safety Board, Washington, DC 20594–2000. Filing of any document shall be by personal delivery, by first class mail, or by facsimile (confirmed by personal or mail delivery). Unless otherwise shown to be inaccurate, such documents shall be deemed filed on the date of personal delivery, on the send date shown on the facsimile (provided service has been confirmed through first class mail or personal delivery) and, for service by mail, on the mailing date shown on the certificate of service, on the date shown on the postmark if there is no certificate of service, or on the mailing date shown by other evidence if there is no certificate of service and no postmark.

(b) *Number of copies.* Unless otherwise specified (*see* 49 CFR 821.24, 821.30, 821.31, 821.48, 821.50, and 821.55), an executed original and 1 copy of each document shall be filed with the Board. Copies need not be signed, but the name of the person signing the original shall be shown.

* * * * *

5. Section 821.8 is proposed to be revised to read as follows:

§ 821.8 Service of documents.

(a) *Who must be served.* (1) Copies of all documents filed with the Board must be served on all parties to the proceeding by the person filing them. A certificate of service shall accompany all documents when they are tendered for filing and shall certify concurrent service on the Board and the parties. Certificates of service shall be in substantially the following form:

"I hereby certify that I have this day served the foregoing document(s) on the following parties' counsel or designated representatives [or on the party, if without counsel or representative] at the address indicated by [specify the method of service: first class mail, personal service, etc.]"

[indicate names and addresses here]

Dated at _____, this ____day of _____, 19 ____.

(Signature) _____ _____

For _____ _____

Capacity _____"

(2) Service shall be made on the person designated in accordance with § 821.7(f) to receive service. If no such person has been designated, service shall be made on the party.

(b) *Method of service.* Except as set forth in this section and as required by § 821.57(b), the method of service is the same as that set forth in § 821.7(a) for filing of documents. The Board will serve orders, notices of hearing, and written initial decisions on attorneys or representatives designated under § 821.7(f) or, if no attorney or representative, on the party itself, and will do so by certified mail, except that service on the Administrator will be by first-class mail.

(c) *Where service shall be made.* Except for personal service, addresses for service of documents shall be those in the official record or, if none in the case of the Federal Aviation Administration, the Office of the Chief Counsel, Washington, DC 20591. In the case of an agent designated by an air carrier under section 1005(b) of the Act, service of any sort may be accomplished only at the agent's office or usual place of residence.

(d) *Presumption of service.* There shall be a presumption of lawful service:

(1) When acknowledgement of receipt is by a person who customarily or in the ordinary course of business receives mail at the residence or principal place of business of the party or of the person designated under § 821.7(f); or

(2) When a properly addressed envelope, sent to the most current address in the official record by regular, registered, or certified mail, has been returned as undeliverable, unclaimed, or refused.

(e) *Date of service.* The date of service shall be determined in the same manner as the filing date is determined under § 821.7(a).

6. Section 821.9 is proposed to be revised to read as follows:

§ 821.9 Intervention and amicus appearance.

(a) *Intervention.* Any person may move for leave to intervene in a proceeding and may become a party thereto, if it is found that such person may be bound by any order to be entered in the proceeding, or that such person has a property, financial, or other legitimate interest that will not be adequately represented by existing parties, and that such intervention will not unduly broaden the issues or delay the proceedings. Except for good cause shown, no motion for leave to intervene will be entertained if filed less than 10 days prior to hearing. The extent to which an intervenor may participate in the proceedings is within the law judge's discretion, and depends on the above criteria.

(b) *Amicus curiae briefs.* A brief of *amicus curiae* in matters on appeal from initial decisions may be filed if accompanied by written consent of all the parties, or if, in the opinion of the Board's General Counsel, the brief will not unduly broaden the matters at issue or unduly prejudice any party to the litigation. A brief may be conditionally filed with motion for leave. The motion shall identify the interest of the movant and shall state the reasons why a brief of *amicus curiae* is desirable. Such brief and motion shall be filed within the time allowed the party whose position as to affirmance or reversal the brief would support, unless cause for late filing is shown, in which event the General Counsel may provide an opportunity for response as a condition of acceptance.

7. Section 821.12 is proposed to be revised to read as follows:

§ 821.12 Amendment and withdrawal of pleadings.

(a) *Amendment.* At any time more than 15 days prior to the hearing, a party may amend his pleadings by filing the amended pleading with the Board and serving copies on the other parties. After that time, amendment shall be allowed only at the discretion of the law judge. In the case of amendment to an answerable pleading, the law judge shall allow the adverse party a reasonable time to object or answer. Amendments to complaints shall be consistent with the informal conference requirements of 49 U.S.C. App. 1429(a).

(b) *Withdrawal.* Except in the case of withdrawal of an appeal to the Board, withdrawal of a petition for review, withdrawal of a complaint, or withdrawal of an appeal from an initial decision, a party may withdraw pleadings only on approval of a law judge or the Board.

8. Section 821.19 is proposed to be amended by revising paragraph (b) and adding a new paragraph (d) to read as follows:

§ 821.19 Depositions and other discovery.

* * * * *

(b) *Exchange of information by parties.* At any time before hearing, at the instance of either party, the parties or their representatives may exchange information, such as witness lists, exhibit lists, curricula vitae and bibliographies of expert witnesses, and other data. In the event of a dispute, either the assigned law judge or another law judge delegated this responsibility (if a law judge has not yet been assigned) may issue an order directing compliance with any ruling made with respect to discovery. Any party may also use written interrogatories, requests to admit, or other discovery tools. Copies of discovery requests and responses shall be served on the law judge assigned to the proceeding.

* * * * *

(d) *Failure to provide or preserve evidence.* The failure of any party to comply with an order of an administrative law judge compelling discovery or to cooperate in a timely request for the preservation of evidence may result in a negative inference against that party with respect to the matter sought and not provided or preserved, a preclusion order, or dismissal.

9. Section 821.20 is proposed to be amended by revising paragraphs (b) and (c) to read as follows:

§ 821.20 Subpoenas, witness fees, and appearances of Board Members, officers, or employees.

* * * * *

(b) *Witness Fees.* Witnesses shall be entitled to the same fees and mileage as are paid to witnesses in the courts of the United States. The fees shall be paid by the party at whose instance the witness is subpoenaed or appears. The Board may decline to process a proceeding further should a party fail to compensate a witness pursuant to this paragraph.

(c) *Board Members, officers, or employees.* In order to encourage a free flow of information to the Board's accident investigators, the Board disfavors the use of its personnel in enforcement proceedings. Therefore, the provisions of paragraph (a) of this section are not applicable to Board Members, officers, or employees, or the production of documents in their custody. Applications for the attendance of such persons or the production of such documents at hearing shall be addressed to the chief law judge or the assigned law judge, as the case may be, in writing, and shall set forth the need of the moving party for such testimony, and a showing that such testimony is not now, or was not otherwise, reasonably available from other sources. The law judge shall not permit such testimony or documentary evidence to include any opinion testimony, or any account of statements of a respondent, made during the Board's investigation of any accident.

10. Section 821.24 is proposed to be amended by revising paragraphs (a), (d) and (e) to read as follows:

§ 821.24 Initiation of proceedings.

(a) *Petition for review.* Where the Administrator has denied an application for the issuance or renewal of an airman certificate, the applicant may file with the Board a petition for review of the Administrator's action. An original and 4 copies of such petition shall be filed within 60 days from the time the Administrator's action was served on petitioner and shall contain a short statement of the facts on which petitioner's case depends and a statement of the requested action. The petition may be in letter form.

* * * * *

(d) *Stay of proceeding pending request for special issuance (restricted certificate).* Where a request for special issuance (restricted certificate) has been filed with the Administrator pursuant to the Federal Aviation Regulations, the Board will hold a petition for review in abeyance pending final action by the Administrator or for 180 days from the date of the Administrator's initial certificate denial, whichever occurs first.

(e) *New evidence.* If petitioner has undergone medical testing or evaluation in addition to that already submitted or known to the Administrator, and wishes to introduce the results into the record, the new medical evidence must be served on the Administrator at least 30 days before the hearing. Absent good cause, failure timely to serve any new evidence will result in its exclusion from the record. The Administrator may amend his answer within 10 days to respond to any new evidence.

11. Section 821.30 is proposed to be amended by revising paragraph (a) to read as follows:

§ 821.30 Initiation of proceedings.

(a) *Appeal.* A certificate holder may file with the Board an appeal from an order of the Administrator amending, modifying, suspending, or revoking a certificate. An original and 4 copies of such an appeal shall be filed with the Board within 20 days from the time of service of the order and be accompanied with proof of service on the Administrator.

* * * * *

12. Section 821.31 is proposed to be amended by revising paragraph (a) to read as follows:

§ 821.31 Complaint procedure.

(a) *Filing, time of filing, and service on respondent.* The order of the Administrator from which an appeal has been taken shall serve as the complaint. An original and 3 copies of the complaint shall be filed by the Administrator with the Board within 5 days after the notice of appeal has been received by the Administrator.

* * * * *

13. Section 821.35 is proposed to be amended by revising paragraph (a) to read as follows:

§ 821.35 Assignment, duties, and powers.

(a) *Assignment of law judge and duration of assignment.* The chief law judge shall assign a law judge to preside over the proceeding. Until such assignment, motions, requests, and documents shall be addressed to the Docket Section, Office of Administrative Law Judges, for handling by the chief law judge, who may handle these matters personally or may delegate all or any of them to other law judges for decision. After assignment, all motions, requests, and documents shall be addressed to that law judge. The authority of the assigned law judge shall terminate upon certification of the record to the Board, or upon expiration of the period within which appeals from initial decisions may be filed, or upon the law judge's withdrawal from the proceeding.

* * * * *

14. Section 821.37 is proposed to be amended by revising paragraph (a) to read as follows:

§ 821.37 Notice of hearing.

(a) *Notice.* The chief law judge (or his law judge delegate) or the law judge to whom the case is assigned shall set a reasonable date, time and place for the hearing. The notice of the hearing shall be served at least 30 days in advance thereof, and shall include notice of the nature of the hearing. The law judge may set the hearing fewer than 30 days after the notice of hearing is served if the parties agree to an earlier hearing date. In setting the hearing date, due regard shall be given to any need for discovery. In setting the place of the hearing, due regard shall be given to the convenience of the parties and to conservation of Board Funds. The location of the witnesses and the suitability of a site served by a schedule air carrier are added factors to be considered in setting the hearing location, as is Board policy that foreign-held hearings are appropriate only in the most extraordinary circumstances.

* * * * *

15. Section 821.38 is proposed to be revised to read as follows:

§ 821.38 Evidence.

(a) Every party shall have the right to present a case-in-chief or defense by oral or documentary evidence, to submit evidence in rebuttal, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. Hearsay evidence (including hearsay within hearsay where there are acceptable circumstantial indicia of trustworthiness) is admissible.

(b) All material and relevant evidence should be admitted, but a law judge may exclude unduly repetitious evidence. Any evidence that is offered and excluded should be described (via an "offer of proof"), and that description should be made a part of the record.

(c) A party that does not object to the authenticity of an intended exhibit within a reasonable time before the hearing may be deemed to have waived that objection.

16. Section 821.42 is proposed to be amended by removing paragraph (c) and redesignating paragraph (d) as (c).

17. Section 821.43 is proposed to be revised to read as follows:

§ 821.43 Effect of law judge's initial decision and filing of an appeal therefrom.

If an appeal from the initial decision is not timely filed with the Board by a party, the initial decision shall become final but shall not be precedent binding on the Board. The filing of a timely appeal shall stay the initial decision.

18. Section 821.47 is proposed to be revised to read as follows:

§ 821.47 Notice of appeal.

A party may appeal from a law judge's order or from the initial decision by filing with the Board and serving on the other parties (pursuant to § 821.8) a notice of appeal within 10 days after an oral initial decision has been rendered or a written decision or an order has been served. At any time before the date for filing an appeal from an initial decision or order has passed, the law judge or the Board may, for good cause shown, extend the time within which to file an appeal, and the law judge may also reopen the case for good cause on notice to the parties.

19. Section 821.48 is proposed to be amended by revising paragraphs (e) and (f) to read as follows:

§ 821.48 Briefs and oral argument.

* * * * *

(e) *Other briefs.* Subsequent to brief filing, parties may file citations to supplemental authorities. This procedure may be used only for identifying new, relevant decisions, not to correct omissions in briefing or to respond to a reply. No argument may be included in such filings. Parties shall submit, with any decision, a reference to the page of the brief to which the decision pertains. Any response shall be filed within 10 days and shall be similarly limited.

(f) *Number of copies.* An original and 2 copies of briefs shall be filed with the Board.

* * * * *

20. Section 821.49 is proposed to be revised to read as follows:

§ 821.49 Issues on appeal.

(a) On appeal, the Board will consider only the following issues:

(1) Are the findings of fact each supported by a preponderance of reliable, probative, and substantial evidence?

(2) Are conclusions made in accordance with law, precedent, and policy?

(3) Are the questions on appeal substantial?

(4) Have any prejudicial errors occurred?

(b) If the Board determines that the law judge erred in any respect or that his order in his initial decision should be changed, the Board may make any necessary findings and may issue an order in lieu of the law judge's order or may remand the case for such purposes as the Board may deem necessary. The Board on its own initiative may raise any issue, the resolution of which it deems important to a proper disposition of the proceedings. If necessary or appropriate, a reasonable opportunity shall be afforded the parties to submit argument.

21. Section 821.50 is proposed to be amended by revising paragraphs (a) and (b) to read as follows:

§ 821.50 Petitions for rehearing, reargument, reconsideration, or modification of an order of the Board.

(a) *General.* Any party to a proceeding may petition for rehearing, reargument, reconsideration, or modification of a Board order on appeal from an initial decision. Any such petitions shall be served on all other parties to the proceeding within 30 days after service of the Board's order on appeal from the initial decision. Initial decisions that have become final because they were not appealed may not be the subject of petitions under this section.

(b) *Number of copies.* An original and 2 copies of petitions shall be filed with the Board.

* * * * *

22. Section 821.54 is proposed to be amended by revising paragraph (a) to read as follows:

§ 821.54 General.

(a) *Applicability.* These rules shall apply to any order issued by the Administrator under section 609 of the Act: as an emergency order; as an order not designated as an emergency order, but is later amended to be an emergency order; and any order designated as immediately effective or effective immediately.

* * * * *

23. Section 821.55 is proposed to be amended by revising paragraphs (a), (b), and (c) and adding a new paragraph (f) to read as follows:

§ 821.55 Appeal, complaint, answer to the complaint, and motions.

(a) *Time within which to appeal.* The certificate holder may appeal within 10 days after the service of the Administrator's emergency order. The certificate holder shall serve a copy of his appeal on the Administrator.

(b) *Form and content of appeal.* The appeal may be in letter form. It shall identify the Administrator's order and the certificate affected, shall recite the Administrator's action, and shall identify the issues of fact or law on which the appeal is based, and the relief sought. An original and 4 copies of the appeal shall be served on the Board.

(c) *Complaint.* Within 3 days after receipt of the appeal, the Administrator shall file with the Board an original and 3 copies of his emergency order as his complaint, and serve a copy on the respondent.

* * * * *

(f) *Discovery.* Discovery is authorized in emergency proceedings and, given the short time available, parties are directed to cooperate to ensure timely completion prior to the hearing. Discovery requests shall be served as soon as possible after initiation of the proceeding. Motions to compel production shall be expeditiously filed, and will be promptly decided. Time limits for compliance with discovery requests shall accommodate and not conflict with the schedule set forth in §§ 821.56 and 821.57. The provisions at § 821.19 shall apply, modified as necessary to reflect applicable deadlines.

24. Section 821.56 is proposed to be amended by revising paragraph (a) to read as follows:

§ 821.56 Hearing and initial decision.

(a) *Notice of hearing.* Immediately upon notification by the Administrator to the Board that an emergency exists, and in no case later than 5 days after such notification, the date and place for hearing shall be set and the parties notified. The hearing shall be set for a date no later than 25 days after service of the complaint. To the extent not inconsistent with this paragraph, the provisions of § 821.37(a) also apply.

* * * * *

25. Section 821.57 is proposed to be amended by revising paragraphs (b) and (c) to read as follows:

§ 821.57 Procedure on appeal.

* * * * *

(b) *Briefs and oral argument.* All briefs in emergency cases shall be served via overnight delivery or facsimile confirmed by first class mail. Within 5 days after the filing of the notice of appeal, the appellant shall file a brief with the Board and serve a copy on the other parties. Within 5 days after service of the appeal brief, a reply brief may be filed, with copies served (as provided above) on other parties. The briefs shall comply with the requirements of § 821.48(b) through (g). Appeals may be dismissed by the Board on its own initiative or on motion of a party, notably in cases where a party fails to perfect the notice of appeal by filing a timely brief. When a request for oral argument is granted, the Board will give 3 days' notice of such argument.

(c) *Issues on appeal.* The provisions of § 821.49 shall apply to issues on appeal. However, the Board may upon its own initiative raise any issue, the resolution of which it deems important to a proper disposition of the proceeding. In such a case, and if found necessary or appropriate, the parties shall be afforded not more than 2 days to submit argument.

* * * * *

26. Section 821.63 is proposed to be amended by revising paragraph (b) to read as follows:

§ 821.63 Requirements to show cause and imposition of sanction.

* * * * *

(b) The Board may, to the extent consistent with the interests of justice and the policy of the underlying statutes it administers, consider a violation of this subpart sufficient grounds for a decision adverse to a party who has knowingly committed or knowingly caused a violation to occur. Alternatively, the Board may impose sanction, including suspension of the privilege of practice before the Board, on the party's attorney or representative, where an infraction has been committed by that attorney or representative and penalizing the party represented is not in the interest of justice.

27. Section 821.64 is proposed to be revised to read as follows:

§ 821.64 Judicial review.

(a) *General.* Judicial review of a final order of the Board may be sought as provided in section 1006 of the Act (49 U.S.C. App. 1486) and section 304(d) of the Independent Safety Board Act of

1974 (49 U.S.C. App. 1903(d)) by filing a petition for review with the appropriate United States court of appeals within 60 days of the date of entry (service date) of the Board's order.

(b) *Stay pending judicial review.* No petition for stay pending judicial review will be entertained if it is received by the Board after the effective date of the Board's order. If a stay action is to be timely, any petition must be filed sufficiently in advance of the effective date of the Board's order to allow for the possibility of a reply and to allow for Board review.

Issued in Washington, DC on this 13th day of October, 1993.

Carl W. Vogt,

Chairman.

[FR Doc. 93–25619 Filed 10–19–93; 8:45 am]

BILLING CODE 7533–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Public Hearing

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public hearing.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene a public hearing on draft Amendment 7 to the Fishery Management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic. Amendment 7 deals with the allocation of commercial Gulf group king mackerel off Florida. Environmental conditions may affect the seasonal distribution of these migratory fish, giving more fishing access in different geographic areas. The Council is proposing to divide the quota equally for the areas north and southwest of the Dade-Monroe County line, just south of Miami. In the southwestern area the quota would be further divided equally between net and hook-and-line fishermen.

DATES: Written comments on the proposed action must be received by November 12, 1993. The hearing is scheduled for Tuesday, November 9, 1993, from 7 p.m., to 10 p.m..

ADDRESSES: Comments should be addressed to Terrance R. Leary, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, suite 331, Tampa, FL 33609. The hearing will be held at the Reach Hotel, 1435 Simonton Street, Key West, Florida (305–296–5000).

FOR FURTHER INFORMATION CONTACT: Terrance R. Leary, 813–228–2815.

SUPPLEMENTARY INFORMATION: The hearing is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aides should be directed to Beverly Badillo at the above Council address by November 2, 1993.

Dated: October 15, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–25773 Filed 10–6–93; 8:45 am]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 58, No. 201
Wednesday, October 20, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Evaluation of the Master Development Plan for the Proposed "Snowcreek Ski Area"

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare a supplemental environmental impact statement.

SUMMARY: The Forest Service, Department of Agriculture, will prepare a supplemental environmental impact statement (SEIS) for the proposed Master Development Plan for development of a destination, alpine ski resort on National Forest System lands. The proposed project is located at the Sherwin Bowl designated winter sports site on the Mammoth Ranger District, Inyo National Forest, Mono County, California. The document being supplemented is the Sherwin Ski Area Final Environmental Impact Statement. The SEIS will evaluate at least three alternatives, the MDP as proposed, the MDP as modified in response to issues developed during scoping, and denial of the MDP (the No Action alternative). In addition, the agency gives notice of the environmental analysis and decision making process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATES: Comments concerning the scope of the analysis must be received by January 4, 1994.

ADDRESSES: Submit written comments and suggestions concerning the Master Development Plan to Dennis Martin, Forest Supervisor, Inyo National Forest, 873 North Main Street, Bishop, CA 93514, ATTN: Sherwin Ski Area.

FOR FURTHER INFORMATION CONTACT: Direct questions about this supplemental environmental impact statement to Bob Hawkins, Winter Sports Specialist, Inyo National Forest, 873 North Main Street, Bishop, CA 93514 or telephone (619) 873–2400.

SUPPLEMENTARY INFORMATION: The Chief of the Forest Service designated Sherwin Bowl as a "winter sports site" in 1967. Detailed studies began in the early 1980's, in response to a proposal from the private sector to develop the "Sherwin Ski Area". The studies and analysis culminated in the Sherwin Ski Area Final Environmental Impact Statement (FEIS), released in October of 1990. The FEIS evaluated the need for additional alpine skiing capacity, considered alternative sites that would meet the purpose and need of the proposed ski area development, and analyzed the consequences of different development scenarios at the Sherwin Bowl site. The Record of Decision released with the FEIS selected Alternative 5, the agency preferred alternative. Alternative 5 provided a conceptual design of a ski area that would develop terrain for 8,000 skiers in the Sherwin Bowl and Solitude Canyon areas of the Mammoth Ranger District. By selecting a development alternative, the decision addressed several issues critical to this step in the approval process. These issues were alternative sites, demand for skiing, and design capacity. The decision found that demand for alpine skiing on the Inyo National Forest does exist, that the Sherwin Bowl site is the appropriate choice for development, and that the target design capacity of the area is 8,000 skiers. Several of these issues were raised during the administrative review (appeals) process, with the original decision upheld by higher level Forest Service line officers. As a result, the issues of alternatives sites, demand for skiing, and total design capacity will not be revisited in the SEIS.

Although the decision did not approve construction of the ski area, it did allow for the issuance of a special use permit to the proponent to prepare a Master Development Plan (MDP). The MDP is intended to provide the specific design details of the selected alternative.

The proponent of the project, Dempsey Construction, submitted a MDP for the development of the Sherwin Bowl site on October 13, 1993. The name for the development selected by the proponent is the "Snowcreek Ski Area". The plan calls for development of year-round recreation facilities constructed in three phases. At build-out, the development would support 8,000 skiers with 12 lifts serving 1,500 acres of developed skiing terrain. Other proposed support facilities on National Forest Systems lands include three restaurant/lodge buildings, maintenance and administrative structures, and snowmaking equipment. Phase one of development will focus on the Sherwin Bowl area, including the construction of 6 lifts, the base lodge, Sherwin Station, maintenance and administration facilities, and the snowmaking system. Phase two will develop 3 lifts in Solitude Canyon, construct Solitude Lodge and Red Peak House, and add one lift to serve Sherwin Bowl. Phase three will add one lift near the base area and another lift near Judges Branch. Construction of the area would occur over a 10-year period, with approximately four years between construction phases. As required by the Record of Decision, the final design of phase two, in Solitude Canyon, will be based on the results of monitoring deer migration through the facilities associated with phase one. Snowmaking equipment will be installed to cover approximately 200 acres of ski runs. The area will employ approximately 88 full time staff, with an additional 380 seasonal staff. Summer operations will be limited to scenic rides and/or operation of the Red Peak House and Sherwin Station. The MDP also includes details for many aspects of the operation, including avalanche control, food service, snowmaking, ski patrol operations, and ski school.

The Forest Service will evaluate the consequences of implementing the MDP, and supplement the Sherwin Ski Area FEIS with this new information. To help the decision making process, the SEIS will evaluate the MDP as proposed, the MDP as modified in response to issues developed during scoping, and the no action alternative.

Public participation will be especially important at several points during the analysis. The first point is the scoping process (40 CFR 1501.7). The Forest Service has and is seeking information, comments, assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the draft SEIS. The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.

Mailings to individuals and agencies that participated in the previous planning efforts will provide them with information about the proposed MDP. Workshops and open houses, if held, will be announced locally. Federal, State, and local agencies, user groups, and other organizations who would be interested in the study will be invited to participate in scoping the issues that should be considered.

The draft SEIS is scheduled to be completed by September 1994. The comment period on this draft environmental impact statement will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register**. It is very important that those interested in the MDP participate at that time.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 533 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft SEIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft SEIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

After the comment period ends on the draft SEIS, the comments will be analyzed and considered by the Forest Service in preparing the final supplemental environmental impact statement. The Final SEIS is expected to be completed by January 1995. The Forest Service is required to respond in the Final SEIS to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, and environmental consequences discussed in the Final SEIS and applicable laws, regulations, and policies in making his decision on the MDP. The decision will either be approval of the MDP as submitted, approval of the MDP as modified, or denial of the MDP (No Action). If the MDP is approved, a special use permit would be issued for the construction and operation of a winter sports site. The responsible official will document the decision and rationale in the Record of Decision. The decision will be subject to appeal under 36 CFR part 217 or regulations applicable at the time of the decision. Dennis Martin, Forest Supervisor, Inyo National Forest, 873 N. Main, Bishop, California 93514 is the responsible official for review of the MDP.

Dated: October 13, 1993.

Dan Totheroh,

Acting Forest Supervisor.

[FR Doc. 93-25767 Filed 10-19-93; 8:45 am]
BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-533-808]

Final Determination of Sales at Less Than Fair Value: Certain Stainless Steel Wire Rods from India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: October 20, 1993.

FOR FURTHER INFORMATION CONTACT: Bill Crow, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-0116.

Final Determination

We determine that certain stainless steel wire rods are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margin is shown in the "Suspension of Liquidation" section of this notice.

Case History

Since our affirmative preliminary determination of this investigation on July 28, 1993 (58 FR 41729, August 5, 1993), the following events have occurred:

On August 12, 1993, Mukand and Sunstar (respondents) requested a hearing. On August 30, 1993, respondents withdrew their request for a hearing. On August 30, 1993, petitioners and respondents submitted case briefs. On September 7, 1993, petitioners submitted their rebuttal brief.

Scope of the Investigation

For purposes of this investigation, certain stainless steel wire rods (SSWR) are products which are hot-rolled or hot-rolled annealed and/or pickled rounds, squares, octagons, hexagons or other shapes, in coils. SSWR are made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are only manufactured by hot-rolling and are normally sold in coiled form, and are of solid cross-section. The majority of SSWR sold in the United States are round in cross-section shape, annealed and pickled. The most common size is 5.5 millimeters in diameter.

The SSWR subject to this investigation are currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0020, 7221.00.0030, 7221.00.0040, 7221.00.0045, 7221.00.0060, 7221.00.0075, and 7221.00.0080 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation is July 1, 1992, through December 31, 1992.

Best Information Available

Mukand and Sunstar

As detailed in the preliminary determination, the Department of Commerce (the Department) determined that Mukand and Sunstar had impeded the investigation. Section 776(c) of the Act provides that whenever a party significantly impedes an investigation, the Department shall use the best information available (BIA). We have done so in this investigation.

As BIA for Mukand and Sunstar, we are assigning the highest margin contained in the petition, in accordance with the two-tiered BIA methodology under which the Department imposes the most adverse rate upon those respondents who refuse to cooperate or otherwise significantly impede the proceeding. The Department's two-tier methodology for assigning BIA based on the degree of respondents' cooperation has been upheld by the U.S. Court of Appeals for the Federal Circuit. (See *Allied-Signal Aerospace Co.* v. *the United States*, Appeal No. 93–1049 (Fed. Cir. June 22, 1993); see also *Krupp Stahl AG et al.* v. *the United States*, Slip Op. 93–84 (CIT May 26, 1993)). The highest margin contained in the petition is 48.80 percent.

Grand Foundry

As detailed in the preliminary determination, we determined that the use of BIA is appropriate for Grand Foundry Ltd. (Grand Foundry) because it failed to provide the information requested in the form required. In deciding whether to use BIA, section 776(c) provides that the Department may take into account whether the respondent was able to produce information requested in a timely manner and in the form required.

Consequently, we determined that it is appropriate to assign Grand Foundry the highest margin contained in the petition, 48.80 percent, in accordance with the two-tiered BIA methodology under which the Department imposes the most adverse rate upon those respondents who refuse to cooperate or otherwise significantly impede the proceeding.

Critical Circumstances

Petitioners allege that "critical circumstances" exist with respect to imports of the subject merchandise from India. Section 735(a)(3) of the Act provides that critical circumstances exist if:

(A)(i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) There have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

In determining knowledge of dumping, we normally consider margins of 15 percent or more sufficient to impute knowledge of dumping for exporter's sales price sales, and margins of 25 percent or more for purchase price sales. (See, e.g., Final Determination of Sales at Less Than Fair Value; Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from Italy, 52 FR 24198 (June 29, 1987)). Since the final margins for SSWR from India are above 25 percent, we determine, in accordance with section 735(a)(3)(A)(ii) of the Act, that knowledge of dumping existed for SSWR from India.

Under 19 CFR 353.16(f), we normally consider the following factors in determining whether imports have been massive over a short period of time: (1) The volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports.

As BIA for Mukand, Sunstar, and Grand Foundry, we are making the adverse assumption that imports were massive over a relatively short period of time in accordance with section 735(a)(3)(B) of the Act. Based on this analysis, we determine that critical circumstances exist for imports of SSWR from India for Mukand, Sunstar, and Grand Foundry. With respect to firms covered by the "All Other" rate, because the dumping margin is sufficient to impute knowledge of dumping, and because we have determined, as BIA, that imports of SSWR have been massive over a relatively short period of time for the companies we attempted to investigate, we determine that critical circumstances also exist for "all other" firms.

Interested Party Comments

Comment 1: Mukand and Sunstar (respondents) argue that they did not intentionally impede the investigation. Respondents maintain that the basis of the Department's action in this case is Mukand's initial characterization of Sunstar. Respondents state that they acknowledge that there were difficulties in the early stages of the investigation which resulted in the submission of erroneous information, and which caused the Department significant difficulty in its preliminary investigation. Respondents assert, however, that the Department now possesses accurate data and should proceed with its investigation. Respondents contend that they cooperated with the Department after Mukand's management became aware of the problems caused by an employee's misrepresentations.

Respondents further argue that the Department's use of the most adverse BIA rate under its two-tiered BIA methodology is inappropriate and unnecessarily punitive. Respondents state that the antidumping law is intended to be remedial, not punitive. Respondents maintain that actual data from Mukand's records is more accurate than the unsubstantiated allegations in the petition and that ample time remains to permit fair consideration and verification of Mukand's actual data. Moreover, respondents state that the Department's decision to use, as BIA, the highest margin contained in the petition ignores the numerous timely submissions made by Mukand and Mukand's remedial steps after the difficulties were identified.

Respondents assert that once it became evident to Mukand's management that the company's responses contained inconsistencies, its Executive Director undertook an investigation and traveled to Washington to attempt to explain the inconsistencies to the Department. Respondents argue that this is not a refusal to cooperate and, therefore, does not warrant punitive action. Respondents state that the Department should recognize that Mukand has attempted to submit information in a complete and accurate form. Respondents assert that the Department has the time and the resources to continue with this investigation and to calculate an accurate margin. Furthermore, respondents maintain that at the very least, in the event the Department determines that BIA is justified, the Department should apply the less adverse BIA rate applied to respondents who have cooperated in the proceeding.

Petitioners maintain that the Department properly used BIA for sales of SSWR from India in its preliminary determination of sales at less than fair value and that the Department properly decided not to conduct verification of Mukand and Sunstar. Petitioners maintain that this decision is consistent with the Department's practice and is

warranted by respondents' actions in this proceeding.

Petitioners assert that Mukand did impede the investigation. Petitioners argue that the individual who certified the accuracy of Mukand's submissions was given that responsibility by Mukand, and that Mukand cannot now disclaim this employee's action as an agent of Mukand. Petitioners also assert that Mukand did not promptly take action to correct its inconsistent statements. Petitioners state that Mukand did not meet with the Department until three weeks after petitioners informed the Department of contradictions in Mukand and Sunstar's responses.

Petitioners also argue that Mukand is not being punished by the Department's refusal to consider Mukand's data. Petitioners assert that the Department's use of its two-tiered methodology has been affirmed by the Court of Appeals for the Federal Circuit, as a means of inducing the submission of timely, accurate, and complete information by respondents. Petitioners maintain that the Department's application of that methodology in this proceeding is consistent with law and regulation, and was necessary because Mukand's information was unreliable and could not be used as the basis of a determination.

DOC Position: We disagree with respondents. In our preliminary determination, we found that Mukand and Sunstar impeded the investigation because there were significant inconsistencies in the respondents' certified responses (See, June 22, 1993, memorandum for Barbara R. Stafford, outlining these inconsistencies). These certified submissions formed a record of misleading and contradictory responses such that the Department was not able to proceed normally with its antidumping investigation. Respondents attempted to explain and rationalize the significant inconsistencies in their responses only after the Department informed respondents' counsel that the Department would not issue any further requests for information. However, these attempts do not transform Mukand and Sunstar into cooperative respondents. Respondents' latest assertion that the Department now possesses accurate data is ineffectual in light of the fact that earlier submissions which were also certified by respondents as accurate, contained erroneous information. Accordingly, for our final determination we have not changed our determination that Mukand and Sunstar impeded the investigation.

Based on Mukand's and Sunstar's history of misleading and contradictory submissions we determined that the reported information was highly unreliable. Thus, we determined not to solicit further information from either respondent. As a result, we did not consider petitioners' allegation of sales below the cost of production nor did we conduct verification. As the Department did not have a reliable source of information upon which to base its final determination, we are assigning, in accordance with section 776(c) of the Act, Mukand and Sunstar a BIA rate. In accordance with our two-tiered BIA methodology, we are using, as BIA, the highest margin contained in the petition because respondents significantly impeded this investigation.

Comment 2: Petitioners argue that the Department should expedite the final determination in this proceeding. Petitioners maintain that there is no apparent reason why the standard 75-day period between the preliminary and final determinations is needed in this case, given that the Department's determination will be based on the use of BIA and that no verification is being conducted in this investigation. Petitioners also assert that expediting the final determination is consistent with Department practice (as illustrated in Certain Welded Stainless Steel Butt-Weld Pipe Fittings From the Republic of Korea, 57 FR 48018 (December 29, 1992) and Sodium Thiosulfate From the People's Republic of China, 55 FR 51140 (December 12, 1990), and is appropriate, given that the Department has found that Mukand and Sunstar have seriously impeded the investigation.

DOC Position: We disagree with petitioners. Given that we found no compelling reason to expedite the final determination and, given the impracticability of reassigning staff, we did not expedite.

Comment 3: Petitioners state that the Department properly determined not to grant respondents' request for postponement of the final determination.

DOC Position: We agree with petitioners. As stated in our preliminary determination and the August 25, 1993, letter to respondents' counsel, the Department has determined that, because respondents have seriously impeded this proceeding, there is a compelling reason not to grant the request for a postponement of the final determination.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(4) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of certain stainless steel wire rods from India, that are entered, or withdrawn from warehouse, for consumption on or after May 7, 1993, which is the date 90 days prior to the publication of our preliminary determination. The Customs Service shall require a cash deposit or posting of a bond equal to the margins below on all entries of SSWR from India. This suspension of liquidation will remain in effect until further notice. The estimated dumping margins are as follows:

Manufacturer/producer/exporter	Margin percentage
Mukand Ltd.	48.80
Sunstar Metals Ltd.	48.80
Grand Foundry Ltd.	48.80
All Others	48.80

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. As our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry within 45 days.

This determination is published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Dated: October 12, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–25710 Filed 10–19–93; 8:45 am]
BILLING CODE 3510–DS–P

International Trade Administration

[C–122–404]

Live Swine From Canada; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review

SUMMARY: The Department of Commerce is conducting an administrative review of the countervailing duty order on live swine from Canada for the period April 1, 1990 through March 31, 1991. We preliminarily determine the net subsidy to be Can$0.0289 per kilogram for all live swine. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: October 20, 1993.

FOR FURTHER INFORMATION CONTACT: Dana Mermelstein or Stephanie Moore,

Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On August 21, 1991, the Department of Commerce (the Department) published in the **Federal Register** a notice of "Opportunity to Request Administrative Review" (56 FR 41506) of the countervailing duty order on live swine from Canada (50 FR 32880; August 15, 1985). On August 12, 1991, the Government of Canada requested an administrative review of the order. On August 27, 1991, Pryme Pork Ltd., a Canadian exporter of live swine, requested an individual administrative review, and the National Pork Producers Council requested an administrative review of the order. We initiated the review, covering the period April 1, 1990 through March 31, 1991, on September 18, 1991 (56 FR 47185). The Department is conducting this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Scope of Review

Imports covered by this review are shipments of all live swine, except breeding sows and boars, from Canada. Such merchandise is classifiable under the Harmonized Tariff Schedule (HTS) item numbers 0103.91.00 and 0103.92.00. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive. The review covers the period April 1, 1990 through March 31, 1991 and 43 programs.

Request for Exclusion of or Separate Rate for Weanling Pigs, or a Separate Company Rate

On August 27, 1991, Pryme Pork Ltd. (Pryme) requested that the Department exclude weanling pigs (swine weighing under 40 kg.) from the scope of the order, or calculate a separate countervailing duty rate for weanlings, or calculate a separate countervailing duty rate for Pryme. The Department examined Pryme's arguments and preliminarily determines as follows:

With regard to the request for the exclusion of weanlings from the order, Pryme has provided no new information which would warrant reconsideration of the scope determination reached in Live Swine from Canada; Final Results of Countervailing Duty Administrative Review (56 FR 28531; June 21, 1991) (Swine Fourth Review Final Results). In that review we determined, and the FTA Binational Panel reviewing that determination has affirmed, that weanlings are within the scope of the order. See Live Swine From Canada, USA–91–1904–03 (May 19, 1992) (Swine Fourth Review Panel).

We have also considered and now preliminarily deny Pryme's request that the Department calculate a separate rate of countervailing duty for weanlings. The Department's general practice, as prescribed by the Act, is to calculate one countervailing duty rate for the entire class or kind of merchandise subject to an order. See 19 U.S.C. 1677e(a). The separate rate calculated for slaughter sows and boars in the first administrative review of this order represents the only instance in which the Department has calculated a product-specific rate within a class or kind of merchandise. See Live Swine From Canada; Preliminary Results of Countervailing Duty Administrative Review (53 FR 22189; June 14, 1988) (Swine First Review Preliminary Results); Live Swine From Canada; Final Results of Countervailing Duty Administrative Review (54 FR 651; January 9, 1989) (Swine First Review Final Results).

The test used to establish the slaughter sows and boars exception consisted of two parts. First, we applied the criteria adopted in *Diversified Products Corp. v. U.S.*, 572 F. Supp. 883 (CIT 1983) (*Diversified Products*). These criteria are: (1) The general physical characteristics of the product; (2) the expectations of the ultimate purchaser; (3) the ultimate use of the product in question; and (4) the channels of trade in which the product moves. Second, we compared the amount of subsidies received on the product (slaughter sows and boars) with the amount received on the other products within the class or kind of merchandise.

Subsequently, we have determined that the *Diversified Products* criteria were designed to differentiate between classes or kinds of merchandise, not among products within a class or kind. We believe that it is only in the context of distinguishing between classes or kinds that the criteria can be effectively applied.

If a product is within a class or kind of merchandise covered by a countervailing duty order by means of the clear intent of the original investigation, as expressed by the relevant descriptions of the merchandise, we have determined that the intent of the statute is that the class or kind of merchandise not be divided into subclasses on the basis of perceived differences in products based upon the *Diversified Products* criteria. Since the Department has expressly made the determination that both sows and boars and weanlings are within the scope of the order based on the descriptions of the merchandise in the original petition, the countervailing duty order (50 FR 32880 (1985)), and the final affirmative determination of the International Trade Commission, we conclude that it was inappropriate for the Department to grant the slaughter sows and boars "subclass" exception on the basis of a *Diversified Products* criteria analysis.

Further, there is no statutory or regulatory authority requiring the Department to draw a distinction on the basis of product differences within a class or kind of merchandise covered by a countervailing duty order. In fact, the statute contains a presumption in favor of country-wide countervailing duty rates, and the statute and the regulations are silent on whether the class or kind of merchandise subject to a countervailing duty order may be separated into sub-categories. However, while the Department may further analyze the issue of granting separate product-specific rates in future cases, the Department has definitely determined that the *Diversified Products* criteria are only appropriate for distinguishing between classes or kinds of merchandise. They are not appropriate for distinguishing among products within a class or kind of merchandise.

For these reasons, we preliminarily deny Pryme's request to establish a subclass for weanlings and to calculate a separate subsidy rate for weanlings. For similar reasons, we preliminarily determine that it is no longer appropriate to grant slaughter sows and boars a separate rate based upon the previous determination that the product constituted a "subclass." See Decision Memorandum on Product-Specific Rates in Countervailing Duty Administrative Reviews, dated July 19, 1993.

Finally, we have considered Pryme's request for a company-specific rate. Pryme certified, pursuant to 19 CFR 355.22(a)(2)(i), that it had not received any subsidies on its production or sales of "subject merchandise (i.e. weanlings, or swine under 40 kg.)" during the review period. At verification, we found that, during the review period, Pryme sold only weanlings, but received benefits under the National Tripartite Stabilization Scheme for Hogs on market hogs sold in the previous year. Since the class or kind of merchandise subject to the order includes all live swine, except breeding sows and boars, we determine that Pryme's certification that it "did not receive any benefits" was incorrect. *See* Memorandum to the

File regarding request of Pryme Pork, Ltd. for Individual Review of Countervailing Duty Order, dated April 7, 1993. The Department therefore preliminarily determines the applicable rate for Pryme to be the country-wide rate applicable to all live swine, in accordance with 19 CFR 355.22(f)(5)(i).

Request for Scope Exclusion of Slaughter Sows and Boars

P. Quintaine & Son, Ltd. requested that the Department conduct a scope analysis for the purpose of excluding slaughter sows and boars from the scope of this countervailing duty order. As explained above, the Department has determined and the panels have affirmed that "sows and boars are clearly within the scope of the order. The order covers all live swine except breeding swine." See Swine First Review Preliminary Results (53 FR 22189; June 14, 1988); Swine First Review Final Results (54 FR 651; January 9, 1989). P. Quintaine & Son did not submit any new information that would lead the Department to reconsider its earlier determination. Therefore, the Department finds no reason to reexamine the scope determination made in the first administrative review.

Request for Exclusion by ManitobaPork, est.

ManitobaPork, est., the provincial hog marketing board, has requested that the Department exclude from the countervailing duty order weanling pigs weighing less than 40 kg. produced and grown in Manitoba and exported to the United States.

ManitobaPork cites as authority the exemption of the Maritime provinces from the Memorandum of Understanding (MOU) between the United States and Canada on softwood lumber products from Canada; the countervailing duty investigation on that same product; and subsequent U.S. Trade Representative actions involving the United States' reaction to Canada's unilateral termination of that MOU. See Final Affirmative Countervailing Duty Determination: Certain Softwood Lumber Products from Canada (57 FR 22570; May 28, 1992) (*Lumber*). We are unable to grant ManitobaPork's request for several reasons.

First, the Department's regulations, at 19 CFR 355.14, provide for exclusions of producers or exporters only when the request for exclusion is submitted within 30 days of the publication date of the Department's initiation notice in the investigation. There are no provisions for exclusions after a countervailing duty order has been issued. In addition, ManitobaPork is neither a producer nor an exporter within the meaning of 355.2(o). There are no provisions for exclusions of other parties. For these reasons, the Department cannot consider ManitobaPork's request for exclusion.

Also, ManitobaPork's reliance on *Lumber* is misplaced. The Department excluded the Maritime Provinces from the *Lumber* investigation and the resulting countervailing duty order based upon the fact that those provinces were expressly exempted from the MOU by agreement between the governments of the United States and Canada. Therefore, as the Department found, the "special circumstances" necessary for self-initiation of a countervailing duty investigation under the General Agreement on Tariffs and Trade (GATT) did not exist for the Maritime Provinces, "and the Department was precluded from self-initiating against these provinces." (*Lumber*, 57 FR at 22622). The binational panel reviewing the Department's final determination in *Lumber* has upheld this finding. In the Matter of Certain Softwood Lumber Products From Canada, USA–92–1904–02 (May 6, 1992), at 136.

Request for Rescission of Initiation of Administrative Review With Respect to Quebec Programs

The Government of Quebec (GOQ) requested that the Department rescind its initiation of review of the Quebec Regional Development Assistance Program and Quebec's Farm Income Stabilization Insurance Program (FISI). The GOQ contends that rescission would be consistent with established Department practice as well as with the terms of the U.S.-Canada Free Trade Agreement.

The GOQ cites the Department's determination in a prior administrative review of this order that the Regional Development Assistance Program did not provide countervailable benefits to live swine exported to the United States. The Department agrees; the Department found that this program was not countervailable in the Fourth Review. See Swine Fourth Review Final Results, 56 FR 28531 (1991). For this reason, absent new facts or evidence of changed circumstances, the Department will not examine this program further.

As support for its request for rescission of the initiation of review of the FISI program, the GOQ cites Fresh, Chilled, and Frozen Pork from Canada, USA–89–1904–06 (March 8, 1991) at 19, in which, it claims, the Department determined FISI to be non-countervailable. The GOQ further contends that its request for rescission is supported by the panel's statement that "[i]f Commerce nevertheless examines FISI in an ongoing or future administrative review, Quebec may have an argument available to it relating to deviation from administrative practice." In the Matter of Fresh, Chilled and Frozen Pork from Canada (*Pork*), USA–89–1904–06 (June 3, 1991).

The GOQ's reliance on *Pork* is misplaced. First, Binational Panel Decisions do not bind subsequent proceedings. Therefore, the panel's instructions and findings in the *Pork* proceeding are not binding beyond that proceeding. Second, the Department did not find FISI non-countervailable in *Pork*. Rather, the Department removed FISI from the subsidy calculations in response to the panel's determination that there was insufficient evidence in that record to support the Department's determination that FISI was countervailable. More importantly, the administrative record in this review contains substantial evidence not present in *Pork*, demonstrating that FISI is provided de facto to a specific industry or group thereof. This analysis is presented below.

Analysis of Programs

I. Federal Program

Feed Freight Assistance Program

The Feed Freight Assistance Program (FFA) is administered by the Livestock Feed Board of Canada (the Board) under the Livestock Feed Assistance Act of 1966 (LFA). The Board acts to ensure: (1) The availability of feed grain to meet the needs of livestock feeders; (2) the availability of adequate storage space in Eastern Canada to meet the needs of livestock feeders; (3) reasonable stability in the price of feed grain in Eastern Canada to meet the needs of livestock feeders; and (4) equalization of feed grain prices to livestock feeders in Eastern Canada, British Columbia, the Yukon Territory and the Northwest Territories. Although this program is clearly designed to benefit livestock feeders, FFA payments are also made to grain mills that transform the feed grain into livestock feed whenever these mills are the first purchasers of this grain. The Board makes payments related to the cost of feed grain storage in Eastern Canada, and payments related to the cost of feed grain transportation to, or for the benefit of, livestock feeders in Eastern Canada, British Columbia, the Yukon Territory and the Northwest Territories, in accordance with the regulations of the LFA.

In Live Swine from Canada; Final Results of Countervailing Duty Administrative Review (56 FR 10410;

March 12, 1991) (Swine Second and Third Reviews Final Results), the Department found this program *de jure* specific and thus countervailable because, based on the written language of the LFA, benefits are only available to a specific group of enterprises or industries (livestock feeders and feed mills). The GOC provided no new information during this review to cause the Department to reconsider this finding. The questionnaire response indicates that the Board calculated that 3.25 percent of the total transportation expenditures for feed grain users receiving assistance under this program in FY 1990/91 benefitted live swine producers in the designated areas of Canada. Therefore, we divided the amount of feed transportation expenditures attributable to live swine producers by the total weight of live swine produced in the FFA-eligible areas of Canada during the review period. We then weight-averaged the benefit by these areas' share of total Canadian exports of live swine to the United States. On this basis, we preliminarily determine the benefits from this program during the review period to be Can$0.0007 per kilogram for all live swine.

II. Federal/Provincial Program

National Tripartite Stabilization Scheme for Hogs

The National Tripartite Stabilization Program (Tripartite) was created in 1985 by an amendment to the Agricultural Stabilization Act (ASA). This amendment, codified at section 10.1, provides for the introduction of cost-sharing tripartite or bipartite stabilization schemes involving the producer, the federal government and the provinces. Pursuant to this amendment, federal and provincial ministers have signed Tripartite agreements covering: (1) Apples; (2) beans (including kidney/cranberry, white pea, and other colored beans); (3) beef (including cow-calf, feeder cattle, and slaughter cattle); (4) hogs; (5) sugar beets; (6) lambs; (7) onions; and (8) honey. No new agreements have been signed in the last four years.

The following provinces are signatories to the National Tripartite Stabilization Scheme for Hogs: Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario, Prince Edward Island, Quebec, and Saskatchewan. As of the date of the questionnaire response, January 21, 1992, Newfoundland was in the process of negotiating an agreement.

The general terms of the Tripartite Scheme for Hogs are as follows: All participating hog producers receive the same level of support per market-hog unit; the cost of the scheme is shared equally between the federal government, the provincial government, and the producers, with each government contribution capped at three percent of aggregate market value; producer participation in the scheme is voluntary; the provinces may not offer separate stabilization plans or other *ad hoc* assistance for hogs (with the exception of Quebec's FISI program); the federal government may not offer compensation to swine producers in a province not party to an agreement; and the scheme must operate at a level that limits losses but does not stimulate over-production.

The Tripartite Scheme for Hogs provides for a five-year phase-in period to adjust for differences between the scheme and any provincial programs still in effect. All existing provincial stabilization programs except FISI were completely phased out by March 31, 1991. During the review period, two provincial stabilization programs remained in effect in provinces that exported live swine to the United States (see Section III).

Stabilization payments are made when the market price falls below the calculated support price. The difference between the support price and the average market price is the amount of the stabilization payment. Hogs eligible for stabilization payments under the Tripartite Scheme must index above 80. Weanlings are not indexed. However, section 2.7 of the Tripartite Scheme for Hogs allows for provinces to divide payments between weanling producers and finishers (farmers who buy weanlings and raise them to market weight). Two provinces, Ontario and Quebec, utilize this provision, known as the "weaner split."

The GOC has claimed that Tripartite is integrally linked to the ASA, the Western Grain Stabilization Act (Western Grain Act), and Canada's supply management programs, within the meaning of the Department's Proposed Regulations at § 355.43(b)(6). See Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments, 54 FR 23366, 23380 (section 355.43(b)(6)) (1989) (Proposed Rules). The Department conducted its analysis of this claim based on the information which the GOC provided in its submission of March 16, 1992.

For purposes of determining the specificity of a program pursuant to section 771(5) of the Act, the Department currently considers a claim of integral linkage by examining, among other factors, the following: (1) Administration of the programs; (2) evidence of a government policy to treat industries equally; (3) the purposes of the programs as stated in their enabling legislation; and (4) the manner of funding of the programs.

In determining whether there is a government policy to treat industries equally, we look first for a documentary statement demonstrating the existence of "an overall government policy or national development plan," which would clearly indicate a government policy to treat industries equally. See Carbon Steel Wire Rod From Saudi Arabia; Final Results of Countervailing Duty Administrative Review, 57 FR 8303, 8304 (1992). As detailed more thoroughly in an analysis memorandum, we determined that the GOC did not provide any evidence to this effect regarding any of the three programs that the GOC alleged were integrally linked with Tripartite. Further, in examining Tripartite and the named and designated provisions of the ASA, we find that there are unexplained differences in the provision of benefits which can result in unequal treatment of different commodities. Regarding the Tripartite and Western Grain programs, they are neither funded by the same entities nor available everywhere in Canada. In addition, Tripartite payments are triggered differently than Western Grain payments. With its integral linkage claim, the GOC provided no information with regard to the Supply Management program which would show a government policy to treat industries covered under this program in the same manner as those covered by Tripartite. Indeed, record evidence demonstrates that the Supply Management program operates on a completely different basis than Tripartite.

Based upon our application of the proposed integral linkage criteria to the information submitted by the GOC in support of its claim, we find that the evidence does not support a determination that any of these three programs were designed to function as complementary programs in conjunction with Tripartite. Therefore, the Department preliminarily determines that the programs are not integrally linked. See Decision Memorandum on Integral Linkage, October 12, 1993.

Having preliminarily determined that Tripartite is not integrally linked with any other program, our analysis focuses on determining whether Tripartite, viewed separately, provides a domestic subsidy in law or in fact to a specific industry or enterprise, or group thereof. To reach a determination, the Department must interpret the phrases

"domestic subsidy" and "specific enterprise or industry, or group of enterprises or industries." See 19 U.S.C. 1677(5)(A)(ii) and (B). The Act does not attempt to define these key phrases precisely. Instead, Congress delegated "wide latitude" to the Department to establish the parameters of these phrases and to determine whether a countervailable subsidy is being provided in the context of a particular case. See *United States* v. *Zenith Radio Corp.*, 562 F.2d 1209, 1216 (CCPA 1977), *aff'd*, 437 U.S. 443 (1977).

To implement this statutory directive, the Department set forth in its Proposed Regulations four factors at section 355.43(b)(2) that it will consider, among other things, in determining whether a domestic program is specific. See Proposed Rules at 23379–80. As the Department stated at the time they were published, the Proposed Regulations codified the Department's existing practice for determining the existence of countervailable subsidies.

As the Department explained in the *Lumber* determination and elsewhere, in codifying its practice in the Proposed Regulations, the Department relied in part upon the Final Results of Countervailing Duty Administrative Review; Carbon Black From Mexico, 51 FR 30385 (1986) *(Carbon Black)*. In *Carbon Black*, the Department determined, and based its affirmative finding solely upon the fact that, there were too few users of the domestic benefit program at issue to justify a finding of nonspecificity. *Id.*; see also *Cabot Corp.* v. *United States*, 620 F. Supp. 722 (1985), *appeal dis.*, 788 F.2d 1539 (Fed. Cir. 1986), *vacated as moot*, Order dated Nov. 20, 1986 (predating the 1988 amendment to the Act and implicitly accepting specificity determinations based solely upon a single factor).

The legislative history underlying the 1988 amendment to section 771(5)(b) of the Act makes clear that Congress understood what the Court had instructed the Department to find in *Carbon Black*, and that Congress regarded that determination to be a reasonable approach to specificity. S. Rep. No. 71, 100th Cong., 1st Sess. 122–23 (1987). We note that a recent binational panel in Pure and Alloy Magnesium from Canada, USA–92–1904–03 (August 16, 1993), at 35, stated that "Commerce need not continue to consider other factors once it determines that under one factor the subsidy is specific."

In accordance with section 771(5) of the Act, the Department conducts a dual analysis in order to evaluate specificity. First, we seek to determine whether a program is *de jure* specific. In this regard, the Department has consistently interpreted subsection 355.43(b)(2)(i) of the Proposed Regulations, the first enumerated factor, as providing for the *de jure* analysis. See, *e.g.*, Fresh, Chilled, and Frozen Pork from Canada, 54 FR 30744, 30777 (1989). Thus, if after considering this first factor we reach an affirmative finding that the program at issue is limited on the face of the law to a specific enterprise, industry, or group thereof, we consider this sufficient to warrant a determination of specificity. In prior reviews, we have determined that the Tripartite program is *de jure* not specific based upon the fact that on the face of the law, the benefits are available to all industries which comprise the agricultural sector in Canada. See, *e.g.*, Swine Fourth Review Final Results, 56 FR 28531 (1991). Petitioners have presented no reason for us to reexamine this determination during the present review.

Therefore, we turn to whether the benefits under the Tripartite agreement are *de facto* specific. As with our analysis of *de jure* specificity under the first proposed factor, we have consistently interpreted the statute as permitting a finding of *de facto* specificity based entirely upon any one of the other enumerated factors, or upon a different, unenumerated factor.

In the 1989–1990 (fifth) review of the order on live swine from Canada, the binational panel upheld the Department's determination in its final results that hog producers were dominant beneficiaries of Tripartite during that period of review as supported by substantial evidence. In the Matter of Live Swine From Canada, USA–91–1904–04 (August 26, 1992) at 28. In its subsequent redetermination pursuant to remand, the Department explained that under its interpretation of section 771(5) of the Act, the fact that hog producers were dominant users of Tripartite, standing alone, justified determining that the program provided a *de facto* specific subsidy. Final Results of Redetermination Pursuant to Panel Remand, USA–91–1904–04 (October 30, 1992) at 12. In our remand, we also determined that because only 11 out of over 100 agricultural commodities received benefits under Tripartite, the program was *de facto* specific on that basis as well. Although, due to lack of record evidence, the panel could not accept our finding that the universe of agriculture was comprised of 100 commodities, the panel affirmed the Department's redetermination pursuant to remand, agreeing that, as a factual matter, "the number of users of Tripartite was small relative to the universe of eligible users." In the Matter of Live Swine From Canada, USA–91–1904–04 (June 11, 1993) at 11.

Although our practice is not to reexamine a specificity determination (affirmative or negative) made in the investigation or in a review absent new facts or evidence of changed circumstances, the record in the prior reviews did not contain all of the information we consider necessary to define the agricultural universe in Canada. Therefore, we collected documentation on the agricultural universe as well as additional information. The analysis which follows is based on the Department's full consideration of that information.

The same number of agricultural commodities (which the GOC now disaggregates into 13, rather than 11 items) received benefits under Tripartite during this review period as in previous review periods. In our questionnaire, the Department asked the GOC to define the universe of agricultural commodities produced in Canada; the GOC responded that "[i]t is not possible to provide a definitive total number of commodities, and a definitive value, for every * * * commodity * * * grown in Canada during the review period." We have examined the record of this proceeding, including information from Statistics Canada, in an effort to approximate the extent of the Canadian agricultural universe. Our analysis shows that over 80 agricultural commodities are produced in Canada, and are eligible to enter into Tripartite agreements. *See* Agricultural Universe Memorandum to the File, dated October 12, 1993. On the basis of this evidence, we therefore preliminarily determine that the number of users of the Tripartite program is too few, in relation to the large number of potential users, and that benefits are provided under Tripartite to a specific enterprise or industry or group thereof.

In this case, a finding that Tripartite has too few users compared to the universe of eligible users supports a preliminary determination that the program is *de facto* specific and thus countervailable. Moreover, evidence on the record regarding other relevant factors supports, rather than detracts from, a finding of specificity on the basis of too few users.

With respect to disproportionate and dominant use, the Department considers the history of payments under a particular income stabilization program to be probative of disproportionate or dominant use. See Pork, USA–89–1904–06 (March 8, 1991). In the case of Tripartite, benefits are received as

insurance payments against income losses incurred by hog producers as a result of fluctuations in the market price of the commodity. The amount of the payment is strictly determined by the difference between the market price and the support price for hogs, which is calculated on the basis of the Tripartite cost of production model.

Under these circumstances, the distribution of benefit payments among Tripartite participants during any single review period is more indicative of the price level maintained by the various commodities on the market during that period than of the tendency of a program to benefit some commodities more than others. For this reason, based on the assumption that over time market fluctuations may even out among covered commodities, the Department takes into account the history of payments under the Tripartite program. Hog producers have received 70 percent of all benefits paid out since the inception of Tripartite. This fact indicates not only that they have received significantly more benefits than any other producers, but also that they have received more benefits than all other producers combined. In addition, we note that 40 percent of Tripartite participants are producers of live swine. They are clearly dominant users of the program. These facts support the finding that Tripartite is *de facto* specific.

Regarding discretion, the Department historically has not placed great emphasis on this factor for determining *de facto* specificity. In determining whether a government has retained discretion in its administration of a subsidy program, the Department first examines the enabling legislation of a program. If it appears the government may have retained discretion, the Department examines the manner in which the program has been administered. If it appears that the government may have retained the ability to arbitrarily deny benefits, we review the procedures for approving or rejecting applications for benefits. In so doing, we seek to determine whether certain applications either have been or may be rejected or discouraged, and if so, on what basis and why. Certain Fresh Cut Flowers From the Netherlands, 52 FR 3301, 3304 (1987).

The ASA states that the Minister of Agriculture "may" enter into a Tripartite agreement when a plan meets two guidelines: one concerned with not giving enrolled producers a financial advantage over other producers in Canada, the other concerned with not providing an incentive for enrolled producers to overproduce. There are no definitions of "financial advantage" and no criteria for determining under what circumstances an agreement might stimulate overproduction. Moreover, even when the Minister of Agriculture determines, at her or his discretion, that these stipulations are met in a proposed agreement, based on the language of the legislation, the Minister of Agriculture may still choose not to enter into an agreement.

The legislative history of the Tripartite program indicates that legislators were aware of the great amount of discretion afforded to the Minister of Agriculture under this arrangement. Therefore, we specifically asked the GOC about the negotiating process which leads to a Tripartite agreement. Producer groups must approach the Minister of Agriculture requesting a Tripartite agreement. Participation in Tripartite is not automatic. The GOC has not demonstrated that there are explicit or standard criteria for evaluating Tripartite agreement requests. The GOC did not reach agreement with at least four producer groups which expressed an initial interest in the program. Even once an Agreement is in place, as a Tripartite Agreement for Hogs has been since 1986, it may still take months or years of negotiations before a party may sign the agreement. For instance, at the time of the GOC questionnaire response (January 1992), Newfoundland had been negotiating to sign the Hog agreement since February 1991.

Given the above evidence, we find that the government of Canada may exercise discretion in the administration of Tripartite. While these findings by themselves are not dispositive of the *de facto* specificity of the Tripartite program, they do not detract from the finding of specificity based either upon the small number of Tripartite users or upon the fact that hog producers are dominant users of the program.

Finally, our review of the record indicates that respondents have not provided or indicated any other evidence which might detract from a finding of specificity. Therefore, during this review period, based on the above analysis, we preliminarily determine that the National Tripartite Stabilization Scheme for Hogs provides benefits which are *de facto* specific.

During the review period, payouts for hogs were made under the Tripartite Scheme for Hogs in each of the nine signatory provinces, Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario, P.E.I., Quebec, and Saskatchewan. Alberta, Manitoba, Ontario, Quebec, and Saskatchewan exported live swine to the United States during the review period. To calculate the benefit, we first divided two-thirds (representing the federal and provincial portions) of the payments made in during the review period to producers in each province by the total weight of live swine produced in that province during the review period, and calculated a benefit per kilogram on a province-by-province basis. We then weight-averaged each exporting province's per-kilo benefit by that province's share of total Canadian exports of live swine to the United States to calculate the average benefit per kilogram. On this basis, we preliminarily determine the benefit during the review period to be Can$0.0191 per kilogram.

III. Provincial Price/Income Stabilization Programs

1. Quebec Farm Income Stabilization Insurance Program (FISI)

The FISI program was established in 1976 under the "Loi sur l'assurance-stabilisation des revenus agricoles." The program is administered by the Régie des Assurances Agricoles du Québec (Régie). The purpose of the program is to guarantee a positive net annual income to participants whose income is lower than the stabilized net annual income. Since Quebec joined the federal government's Tripartite Price Stabilization Scheme for Hogs in February 1989, the FISI scheme for hogs has operated by covering only the difference between payments made under the Tripartite Scheme for Hogs and what FISI payments would have been in the absence of the Tripartite scheme. FISI is the only provincial stabilization scheme that continues to operate in conjunction with the Tripartite Scheme for Hogs. The FISI scheme for piglets insures sows as well, by applying a technical coefficient to estimate piglet production.

Two-thirds of the funding for the FISI program is provided by the provincial government and one-third by producer assessments. Participation in FISI is voluntary. However, once enrolled in the program, a producer must make a five-year commitment. Each farmer may insure a maximum of 5,000 feeder hogs and 400 sows. Whenever the balance in the FISI account is insufficient to make payments to participants, the provincial government lends the needed funds to the program at market rates. The principal and interest on these loans are repaid by the Régie using the producer and provincial contributions.

Although our practice is not to reexamine a specificity determination (affirmative or negative) made in the

investigation or in a review absent new fact or evidence of changed circumstances, the record in the prior reviews did not contain all of the information we consider necessary to define the agricultural universe in Québec. Therefore, we collected documentation on the agricultural universe as well as additional information. The analysis which follows is based on the Department's full consideration of that information.

In Swine First Review Final Results (54 FR 22651; January 9, 1989), the Department found FISI to be *de jure* not specific. Therefore the Department must examine whether FISI benefits are provided *de facto* to a specific group of enterprises or industries. As outlined above in our discussion of Tripartite (see Section II), a program can be found specific, as the CIT stated in *Carbon Black*, on the grounds that it has "too few users" to be considered non-specific. FISI benefits are provided through 11 insurance schemes covering the following fifteen products: (1) Feeder calves; (2) feeder cattle and slaughter cattle; (3) grain-fed calves; (4) milk-fed calves; (5) piglets; (6) feeder hogs; (7) lambs; (8) potatoes; (9) grain corn; (10) silage wheat; (11) barley; (12) oats and mixed grains; (13) sugar beets; (14) wheat for human consumption; and (15) soybeans. Although the number of commodities covered under FISI appears to have increased from 11 to 15 from 1988 to 1991, in fact this difference results primarily from a different method of counting the same commodities. Soybeans are the only new commodity to be enrolled in FISI since 1981. Otherwise, the same commodities have benefitted from FISI over the majority of the program's life. We have determined that there are over 80 agricultural commodities produced in Québec and potentially eligible for FISI. *See* Agricultural Universe Memorandum to the File dated October 12, 1993. We therefore preliminarily determine that the number of FISI users is too few, in relation to the large number of potential users, and that benefits are provided under FISI *de facto* to a specific enterprise or industry or group thereof.

In addition, we are aware of no evidence in the record which would detract from a finding of specificity on this basis. For instance, an examination of coverage across all insured commodities reveals that producers of live swine are dominant users of the FISI program. Hogs and piglets account for 51 percent of the total value of the 15 commodities insured under the FISI program. Not only are they insured to a greater extent than any other commodity, the insured value of live swine exceeds that of all other FISI-insured commodities combined. These facts alone also support a finding that FISI is *de facto* specific.

In addition, we note that the Act Respecting Farm Income Stabilization Insurance (FISI Act) appears to allow the GOQ considerable discretion in determining which products receive schemes. Schemes are established for any product or group of products which the GOQ "indicates." Neither the FISI Act nor any other record evidence provides any indication of what criteria the government considers in making this determination. The GOQ may also stipulate which region or regions of Quebec will be covered by a scheme. Also, the hog scheme is the only one for which a maximum level of insurance has not been set by the GOQ. Finally, according to the FISI Act, the method of computing net annual income and stabilized net annual income, in addition to eligibility and participation requirements, may be determined separately for each scheme. In fact, the stabilized net annual income, which is the level below which income must drop before FISI benefits will be paid, does vary across schemes. Based on the statutory provisions, we find that the government may exercise discretion in granting and designing FISI schemes. As with Tripartite, while these findings by themselves are not dispositive of the *de facto* specificity of the FISI program, they do not detract from a finding of specificity based upon either the small number of FISI users or the fact that hog producers were dominant users of the program.

Therefore, since benefits under this program are provided, *de facto*, to a specific group of enterprises or industries, we determine that FISI benefits are countervailable.

To calculate the benefit, we multiplied the total payments made under both the piglet and feeder hog schemes during the review period by two-thirds (representing the provincial portion). We divided this amount by the total weight of live swine produced in Quebec to get the average benefit per kilogram. We then weight-averaged the benefit by Quebec's share of total Canadian exports of live swine to the United States. On this basis, we preliminarily determine the benefit to be Can$0.0042 per kilogram during the review period.

2. Saskatchewan Hog Assured Returns Program (SHARP)

SHARP was established in 1976 pursuant to the Saskatchewan Agricultural Returns Stabilization Act, to establish stabilization plans for any agricultural commodity. SHARP provided stabilization payments to hog producers in Saskatchewan at times when market prices fell below a designated "floor price." The program was administered by the Saskatchewan Pork Producers' Marketing Board (the Board) on behalf of the provincial Department of Agriculture. In accordance with the Tripartite Scheme for Hogs, SHARP was terminated on March 31, 1991. At the time of its termination, only hogs and cattle had stabilization plans.

The program was funded by levies on the sale of hogs covered by the program. Levies from participating producers ranged from 1.5 to 4.5 percent of market returns on the sale of hogs and were matched by the province. After the Tripartite Scheme for Hogs was implemented on July 1, 1986, SHARP payments were reduced by the amount of Tripartite Scheme for Hogs payments. The floor price for this program was calculated quarterly, and stabilization payments were made when the market price fell below the floor price. Payments were made to hog producers in each quarter of the review period.

Whenever the balance in the SHARP account was insufficient to make payments to participants, the provincial government lent the needed funds to the program at terms consistent with commercial considerations. The principal and interest on these loans were to be repaid by the Board using the producer and provincial contributions.

In Swine First Review Final Results (54 FR 651; January 9, 1989), the Department found the SHARP hog plan to be *de jure* specific and thus countervailable because the legislation expressly makes the program available only to a single industry (hog producers). The GOC has provided no new information to warrant reconsideration of this finding.

To calculate the benefit, we added the provincial government's annual contribution to the amount the provincial government loaned to the hog plan account to cover the total amount paid out during the review period. We divided this amount by the total weight of live swine produced in Saskatchewan. We then weight-averaged the benefit by Saskatchewan's share of total Canadian exports of live swine to the United States. On this basis, we preliminarily determine the benefit to be Can$0.0007 per kilogram for all live swine during the review period.

As of the program's termination date, the provincial SHARP fund had a sizeable deficit. Since no arrangements

have been made for the disposition of this deficit, there may be residual benefits to swine producers in future review periods. Although termination of a program would normally require a change in the cash deposit rate, given these circumstances, we have not adjusted the cash deposit rate for this program.

IV. Other Provincial Programs

1. Alberta Crow Benefit Offset Program (ACBOP)

This program, administered by the Alberta Department of Agriculture, is designed to compensate for market distortions in feed grain prices created by the federal government's policy on grain transportation. Assistance is provided on feed grain produced in Alberta, feed grain produced outside Alberta but sold in Alberta, and feed grain produced in Alberta to be fed to livestock on the same farm. The government provides "A" certificates to registered feed grain users and "B" certificates to registered feed grain merchants, which can be used as partial payments for grains purchased from grain producers. Feed grain producers who feed their grain to their own livestock submit a Farm Fed Claim directly to the government for payment.

Hog producers receive benefits in one of three ways. Hog producers who do not grow any of their own feed grain receive "A" Certificates which are used to cover part of the cost of purchasing grain. Second, hog producers who grow all of their own grain submit a Farm Fed Claim to the government of Alberta for direct payment. Finally, hog producers who grow part of their own grain but also purchase grain receive both "A" certificates and direct payments.

In Swine Second and Third Review Final Results (56 FR 10410; March 12, 1991), the Department found this program to be *de jure* specific and thus countervailable because the legislation expressly makes it available only to a specific group of enterprises or industries (producers and users of feed grain). The GOC has provided no new information to warrant reconsideration of this finding.

To determine the benefit to swine producers from this program, we used the methodology which we used in calculating ACBOP benefits in our redetermination on remand during the Binational Panel proceedings in the 1989–1990 (fifth) review period. The Panel affirmed this methodology. In the Matter of Live Swine From Canada, USA–91–1904–04 (June 11, 1993) at 33–36. We first calculated a hog grain consumption-to-weight-gain ratio, using information from *Diets for Swine*, a University of Guelph, Ontario, publication submitted in the supplemental questionnaire response. The Department believes this document provides the most accurate description of the swine diet, which consists of grain (usually barley in Alberta) and protein/vitamin supplements. This document allows us to estimate the total consumption of feed grain per hog.

Using the Alberta Supply and Disposition Tables, we estimated the quantity of grain consumed by livestock in Alberta during the review period. We multiplied the number of swine produced in Alberta by the average total grain consumption per hog as estimated above, and divided the result by total grain used to feed livestock. We thus calculated the percentage of total livestock consumption of grain in Alberta attributable to live swine to be 12.92 percent. We then multiplied this percentage by the total value of certificates and payments received during the review period to calculate the amount of benefit attributable to swine producers from this program. We weight-averaged the benefit by Alberta's share of total Canadian exports of live swine to the United States. On this basis, we preliminarily determine the benefit during the review period to be Can$0.0030 per kilogram.

2. Alberta Livestock and Beeyard Compensation Program (Livestock Predator Compensation Sub-Program)

This program compensates Alberta livestock producers for loss of food-producing livestock, including cattle, sheep, hogs, goats, rabbits and poultry, to predators. The Alberta Department of Agriculture administers this program, and provides assistance in the form of grants. As of June 1, 1990, a farmer may be compensated for up to 100 percent of the value of the killed livestock. Compensation for missing animals (previously 30 percent of commercial value) has been discontinued.

In Live Swine from Canada; Final Results of Countervailing Duty Administrative Review (56 FR 50560; October 7, 1991) (Swine Fifth Review Final Results), the Department found this program to be *de jure* specific and thus countervailable because the legislation expressly makes it available only to a specific group of enterprises or industries (livestock farmers). The GOC has provided no new information to warrant reconsideration of this finding.

To calculate the benefit, we divided the total payment to hog producers under this program by the total weight of live swine produced in Alberta during the review period. We then weight-averaged the result by Alberta's share of Canadian exports of live swine to the United States during the review period. On this basis, we preliminarily determine the benefits from this program during the review period to be significantly less than Can$0.0001 per kilogram.

3. Ontario Farm Tax Rebate Program

This program replaced the Ontario Farm Tax Reduction Program. Eligible farmers receive a rebate of up to 75 percent of property taxes levied on farm properties for municipal and school purposes, levied for local improvements under the Local Improvement Act, levied under the Provincial Land Tax Act or the Local Roads Boards Act, and imposed under the Local Services Boards Act, with rebate reductions for off-farm income above set levels. Farm property includes farm lands and outbuildings, whether owned or rented. Eligible properties include farms that produce food, fish, breeding horses and donkeys, pregnant mare's urine, fur-bearing animals, tobacco, flowers, nursery stock (sod or ornamental).

Any resident of Ontario may receive a rebate if he or she owns or rents and pays taxes on eligible properties. Beginning on April 1, 1991, the minimum gross production value was set at Can$7,000 for all of Ontario. Before April 1, 1991, and therefore during the review period, residents of Southern and Western Ontario must have produced farm products with a gross value of at least Can$8,000 and residents of Northern and Eastern Ontario must have produced products with a gross value of at least Can$5,000.

In Swine First Review Preliminary Results (53 FR 22189; June 14, 1988), the Department found this program to be *de jure* specific, and thus countervailable, because the benefits provided varied depending on the region of Ontario in which the farm was located. This finding was unchanged in the final results of that review. The GOC has provided no new information to warrant reconsideration of this finding for this review period.

To calculate the benefit, we divided total rebates to swine producers in Eastern and Northern Ontario with sales within the Can$5,000 to Can$8,000 range by the total weight of live swine produced in Ontario during the review period. We then weight-averaged the result by Ontario's share of Canadian exports of live swine to the United States during the review period. On this basis, we preliminarily determine the benefits from this program during the review period to be significantly less than Can$0.0001 per kilogram.

4. Livestock Improvement Program for Northern Ontario

To improve the quality of livestock in Northern Ontario, this program reimburses farmers for up to 20 percent of the purchase cost of breeding stock, including dairy cows, heifers, beef bulls, rams, ewes, boars, and gilts. The maximum grant payable to an applicant is Can.$1,700. This program was terminated on April 1, 1991.

In Swine First Review Preliminary Results (53 FR 22189; June 14, 1988), the Department found this program to be *de jure* specific and thus countervailable, because only livestock farmers in Northern Ontario are eligible. This finding was unchanged in the final results of that review. The GOC has provided no new information to warrant reconsideration of this finding.

To calculate the benefit, we divided the total payment to hog producers under this program by the total weight of live swine produced in Ontario during the review period. We then weight-averaged the result by Ontario's share of Canadian exports of live swine to the United States during the review period. On this basis, we preliminarily determine the benefit to be significantly less than Can$0.0001 per kilogram.

5. Ontario Pork Industry Improvement Plan (OPIIP)

This five-year plan commenced on April 1, 1986, and was terminated on March 31, 1991. The plan provided grants to Ontario swine producers to enable them to improve their productivity, profitability, and competitive position by increasing their efficiency. To be eligible for the plan, producers must be residents of Ontario, own or lease facilities in Ontario for swine production and have at least 20 sow equivalents. One sow equivalent is equal to one sow or 15 market-weight hogs marketed annually. Ten types of grants are available to swine producers under this plan. During the review period, Ontario swine producers received grants under the following programs: swine production analysis, enterprise analysis, swine ventilation, productivity and quality improvement, artificial insemination, rodent control, private veterinary herd health program, education, and restocking.

In Live Swine from Canada; Preliminary Results of Countervailing Duty Administrative Review (55 FR 20812; May 21, 1990) (Swine Second and Third Review Preliminary Results), the Department found this program to be *de jure* specific and thus countervailable, because the program's legislation expressly makes it available only to swine producers. This finding was unchanged in the final results of that review. The GOC has provided no new information to warrant reconsideration of this finding.

To calculate the benefit, we divided the total value of all grants provided to swine producers during the review period by the total weight of live swine produced in Ontario during this period. We then weight-averaged the result by Ontario's share of total Canadian exports of live swine to the United States during the review period. On this basis, we preliminarily determine the benefits from this program to be Can$0.0004 per kilogram during the review period.

6. Ontario Rabiec Indemnification Program

This program, administered by the Farm Assistance Branch of the Ontario Ministry of Agriculture and Food, compensates livestock producers, including producers of cattle, horses, sheep, swine, and goats, for damage caused by rabies. Producers apply for compensation through a federal inspector, who determines that the animal is suffering from rabies and orders the animal to be destroyed. A maximum of Can$100 may be paid by the province of Ontario per hog under this program, with the Ontario Ministry of Agriculture (OMAF) reimbursing the province for 40 percent of the total amount paid.

In Live Swine from Canada; Preliminary Results of Countervailing Duty Administrative Review (56 FR 29224; June 26, 1991) (Swine Fifth Review Preliminary Results), the Department found this program to be *de jure* specific and thus countervailable, because the program's legislation expressly makes it available only to livestock producers. This finding was unchanged in the final results of that review. The GOC has provided no new information to warrant reconsideration of this finding. To calculate the benefit, we divided the total payments to swine producers under this program by the total weight of live swine produced in Ontario during the review period. We then weight-averaged the result by Ontario's share of total Canadian exports of live swine to the United States during the review period. On this basis, we preliminarily determine the benefits from this program during the review period to be significantly less than Can$0.0001 per kilogram.

7. Saskatchewan Livestock Investment Tax Credit

Saskatchewan's 1984 Livestock Tax Credit Act provides tax credits to individuals, partnerships, cooperatives and corporations who owned and fed livestock marketed or slaughtered by December 31, 1989. This program was terminated on December 31, 1989. Claimants must be residents of Saskatchewan and pay Saskatchewan income taxes. Eligible claimants can receive credits of Can$25 for each bull, steer or heifer, Can$2 for each lamb and Can$3 for each hog. The tax credits may be carried forward for up to seven years.

In Swine First Review Preliminary Results (53 FR 22189; June 14, 1988), the Department found this program to be *de jure* specific and thus countervailable, because the program's legislation expressly makes it available only to livestock producers. This finding was unchanged in the final results of that review. The GOC has provided no new information to warrant reconsideration of this finding.

In the questionnaire response, the GOC estimated the amount of tax credits used by hog producers in Saskatchewan during the review period, since the actual amount was unavailable. To calculate the benefit, we divided this amount by the total weight of live swine produced in Saskatchewan. We then weight-averaged the result by Saskatchewan's share of total exports of live swine to the United States. On this basis, we preliminarily determine the benefit from this program to be Can$0.0005 per kilogram during the review period.

8. Saskatchewan Livestock Facilities Tax Credit Program

This program was implemented on January 1, 1986 and provides tax credits to livestock producers applying before December 31, 1989, for investment in livestock production facilities. The credit may only be used to offset provincial taxes. Applications for tax credits must be received by the Saskatchewan Ministry of Agriculture no later than six months after the project is completed. This program was terminated on December 31, 1989.

Livestock covered by this program can be raised for either breeding or slaughter. Eligible livestock include cattle, horses, sheep, swine, goats, poultry, bees, fur-bearing animals raised in captivity, or any other designated animals. Investments covered under the program include new buildings, improvements to existing livestock facilities, and any stationary equipment related to livestock facilities.

The program pays 15 percent of 95 percent of project costs, or 14.25 percent of total costs, so that it will not overlap with the Business Investment Tax Credit Program, a federal program. Participants

may carry forward any unused credit for up to seven years. In Swine Second and Third Review Preliminary Results (55 FR 20812; May 21, 1990), the Department found this program to be *de jure* specific and thus countervailable, because the program's legislation expressly makes it available only to livestock producers. This finding was unchanged in the final results of that review. The GOC has provided no new information to warrant reconsideration of this finding.

In the questionnaire response, the GOC estimated the amount of tax credits used by hog producers in Saskatchewan during the review period, since the actual amount was unavailable. To calculate the benefit, we divided this amount by the total weight of live swine produced in Saskatchewan during the review period. We then weight-averaged the result by Saskatchewan's share of total exports of live swine to the United States during the review period. On this basis, we preliminarily determine the benefits from this program during the review period to be Can$0.0003 per kilogram.

Other Programs

We have examined the following programs and preliminarily determine that Canadian exporters of live swine to the United States did not use them during the review period: (1) Canada/British Columbia Agri-Food Regional Development Subsidiary Agreement; (2) Canada/Quebec Subsidiary Agreement of Agri-food Development; (3) Canada/Manitoba Agri-Food Development Agreement; (4) Western Diversification Program; (5) Agricultural Products Board Program; (6) Canada/Alberta Swine Improvement Programs Study; (7) Canada/Ontario Canadian Western Agribition Livestock Transportation Assistance Program; (8) British Columbia Swine Herd Improvement Program; (9) Ontario Export Sales Aid; (10) Ontario Bear Damage to Livestock Program; (11) Ontario Dog Licensing and Livestock and Poultry Compensation Program; (12) New Brunswick Agriculture Development Act—Swine Assistance Program; (13) New Brunswick Swine Industry Financial Restructuring Program; (14) British Columbia Farm Income Insurance Program; (15) New Brunswick Livestock Incentives Program; (16) New Brunswick Hog Marketing Program; (17) New Brunswick Hog Price Stabilization Program; (18) New Brunswick Swine Assistance Policy on Boars; (19) Prince Edward Island Hog Price Stabilization Program; (20) Prince Edward Island Swine Development Program; (21) Prince Edward Island Interest Payment on Assembly Yard Program; (22) Nova Scotia Swine Herd Health Policy; (23) Nova Scotia Improved Sire Policy (24) Newfoundland Farm Products Corporation Hog Price Support Program; and (25) Newfoundland Weanling Bonus Incentive Policy.

We have examined the following programs and preliminarily determine that they have been terminated or that swine producers are no longer eligible: (26) Canada-Saskatchewan Agri-Food Development Agreement; (27) British Columbia Feed Grain Market Development Program; (28) Ontario Soil Conservation and Environmental Assistance Program; (29) Ontario Weaner Pig Stabilization Plan; (30) Nova Scotia Natural Products Act—Pork Price Stabilization Program; (31) Quebec Productivity and Consolidation of Livestock Production Program.

Preliminary Results of Review

Based on a request by the U.S. Customs Service, we are calculating the benefits for this and all future reviews on the basis of kilograms rather than pounds. As a result of our review, we preliminarily determine the net subsidy for the period April 1, 1990 through March 31, 1991 to be Can$0.0289 per kilogram.

Upon completion of this review, the Department intends to instruct the Customs Service to assess countervailing duties of Can$0.0289 per kilogram on shipments of all live swine exported on or after April 1, 1990 and on or before March 31, 1991. For assessment purposes, we also intend to instruct the Customs Service to use the exchange rate of Can$1.1603/US$1.00, which is the simple average annual exchange rate calculated for the review period using the rates reported monthly by the Federal Reserve Board in the Federal Reserve Bulletin.

The Department also intends to instruct the Customs Service to collect a cash deposit of estimated countervailing duties of Can$0.0289 per kilogram on shipments of all live swine entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. For cash deposit purposes, the Customs Service is to use the exchange rate in effect on the date the shipment is entered.

Parties to the proceeding may request disclosure of the calculation methodology and interested parties may request a hearing not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 355.38(e) of the Department's regulations.

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs are due under 19 CFR 355.38(c).

The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case or rebuttal briefs.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: October 13, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–25711 Filed 10–19–93; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Issuance of a Scientific Research Permit; U.S. Army Corps of Engineers (P504C).

On August 5, 1993, notice was published (58 FR 41737) that an application had been filed by the U.S. Army Corps of Engineers, to take listed species as authorized by the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217–222).

Notice is hereby given that on October 8, 1993 as authorized by the provisions of the ESA, NMFS issued Permit Number 880 for the above taking subject to certain conditions set forth therein.

Issuance of this Permit, as required by the ESA, as based on a finding that such Permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the listed species which is the subject of this Permit; (3) is consistent with the purposes and

policies set forth in section 2 of the ESA. This Permit was also issued in accordance with and is subject to parts 217–222 of title 50 CFR, the NMFS regulations governing listed species permits.

The application, permit, and supporting documentation are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, room 13229, Silver Spring, MD 20910 (301–713–2322); and

Environmental and Technical Services Division, National Marine Fisheries Service, 911 North East 11th Ave., room 620, Portland, OR 97232 (503–230–5400).

Dated: October 8, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources.

[FR Doc. 93–25686 Filed 10–19–93; 8:45 am]

BILLING CODE 3510–22–M

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange: Proposed Amendments Relating to the Delivery Procedures, Quality Standards and Delivery Point Specifications for the Live Cattle Futures Contract; Extension of Comment Period

AGENCY: Commodity Futures Trading Commission.

ACTION: Extension of comment period.

SUMMARY: On October 1, 1993, the Commodity Futures Trading Commission ("Commission") published in the **Federal Register** a Notice of Proposed Rulemaking relating to certain proposed amendments to the Chicago Mercantile Exchange's (CME's) live cattle futures contract. 58 FR 51320. The applicable comment period will expire on November 1, 1993. The Commission has received a request for an extension of the comment period. In light of the apparently widespread interest in the proposed amendments as well as their complexity and significance, and because of the Commission's concern that all interested parties have an adequate opportunity to submit informed comments, the Acting Director of the Division of Economic Analysis has determined on behalf of the Commission to extend the period for public comment.

DATES: The comment period will remain open through December 16, 1993.

ADDRESSES: Comments should be sent to the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 and should make reference to the proposed changes in delivery procedures, quality standards, and delivery point specifications for the CME live cattle futures contract.

FOR FURTHER INFORMATION CONTACT: Frederick V. Linse, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, (202) 254–7303.

Issued in Washington, DC, on October 15, 1993.

Blake Imel,

Acting Director.

[FR Doc. 93–25743 Filed 10–19–93; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Armament Retooling and Manufacturing Public/Private Task Force; Meeting

AGENCY: Armament Retooling and Manufacturing Support (ARMS) Public/Private Task Force (PPTF), DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public law 92–463, notice is hereby given of the next meeting of the Armament Retooling and Manufacturing Support (ARMS) Public/Private Task Force (PPTF). The PPTF is chartered to develop new and innovative methods to maintain the government-owned, contractor-operated ammunition industrial base and retain critical skills for a national industrial emergency. Purpose of this meeting is to evaluate and offer recommendations regarding the ARMS Initiative Implementation Plan (AIIP); additional ARMS Initiative incentives; regulatory waivers, deviations, or changes; and ARMS Initiative legislative supplements or changes. This session is open to the public.

DATES: November 16–18, 1993.

ADDRESSES: Holiday Inn, Oakland Park, 4505 Woodson Way, St. Louis, Missouri.

FOR FURTHER INFORMATION CONTACT: Mr. R.B. Auger, ARMS Task Force, HQ Army Materiel Command, 5001 Eisenhower Avenue, Alexandria Virginia 22333; Phone (703) 274–9838.

SUPPLEMENTARY INFORMATION: Reservations should be made directly with the Holiday Inn; telephone 1–800–426–4700. Please be sure to mention that you will be attending the ARMS meeting to get in the block of rooms set aside for this meeting. Request you contact Donna Ponce in the ARMS Team Office at Rock Island Arsenal; telephone (309) 782–3058/4040, if you will be attending the meeting, so that our roster of attendees is accurate. This number may also be used if other assistance regarding the ARMS meeting is required.

Dated: October 15, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–25726 Filed 10–19–93; 8:45 am]

BILLING CODE 3810–04–M

Department of the Army

Availability of U.S. Patents for Non-exclusive, Exclusive or Partially Exclusive Licensing

AGENCY: U.S. Army Armament Research Development and Engineering Center, DOD.

ACTION: Notice.

In accordance with 37 CFR 404.6 announcement is made of the availability of the following U.S. patents for non-exclusive, exclusive or partially exclusive licensing. All of the listed patents have been assigned to the United States of America as represented by the Secretary of the Army, Washington, DC.

These patents cover a wide variety of technical arts including transportation simulator, adhesive bonding, improvements to small arms, insensitive explosive composition, as well as many other different technical arts.

Title: Jointed Conveyor
Inventor: Earl D. Richey
Patent No: 4,542,819—9/24/85

Title: Pneumatic Key Lock
Inventor: Roy A. Zangrando
Patent No: 4,601,183—7/22/86

Title: Breadbreaker Apparatus and Method of Using
Inventor: Robert O. Richardson
Patent No: 4,646,806—3/3/87

Title: Adhesive Bonding
Inventor: Robert Rosty, W. Levi
Patent No: 4,835,016—5/30/89

Title: Methods for Producing Composite Materials of Metal Matrix Containing Tungsten Gain
Inventor: Deepak Kapoor
Patent No: 4,835,016—5/30/89

Title: Collision Centrifugal Atomization Unit
Inventor: Monde A. Otooni
Patent No: 5,149,063—9/22/92

Title: Weapon Cartridge Feeder Apparatus and Method
Inventor: Giulio V. Savioli
Patent No: 4,587,879—5/13/85

Title: Dead Bolt Lock Operable by Pressurized Fluid
Inventor: Roy A. Zangrando
Patent No: 4,647,089—3/3/87

Title: Shipboard Transportation Simulator
Inventor: Gayle T. Zajicek
Patent No: 4,822,281—4/18/89

Title: Insensitive High Energy Explosive Compositions
Inventors: Mark Mezger, Bernard Strauss, Sam M. Moy, Joseph L. Prezelski
Patent No: 4,842,659—6/27/89

Title: Slide Safety Stop for Pistols and Other Small Arms
Inventor: Edward J. Brennan
Patent No: 5,129,172—7/14/92

Under the authority of section 11(a) of the Federal Technology Transfer Act of 1986 (Pub. L. 99–502) and section 207 of title 35, United States Code, the Department of the Army as represented by the Army Research Development and Engineering Center wishes to license the U.S. patents listed in a non-exclusive, exclusive or partially exclusive manner to any party interested in manufacturing, using, and/or selling de - vices of processes covered by these patents.

FOR FURTHER INFORMATION CONTACT: For further information or copies of the patents listed contact Mr. Edward Goldberg, Chief Patent Counsel, (201) 724–6590.

ADDRESSES: Commander, U.S. Army Research and Engineering Center, ATTN: SMCAR–GCL, Picatinny Arsenal, New Jersey 07806–5000.

Kenneth L. Denton,
Army Federal Register Liaison Officer.
[FR Doc. 93–25700 Filed 10–19–93; 8:45 am]
BILLING CODE 3810–08–M

Annual Meeting—National Board for the Promotion of Rifle Practice

AGENCY: Department of the Army, DoD.

ACTION: Notice.

In compliance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given for the Annual Meeting of the National Board for the Promotion of Rifle Practice (NBPRP).

Date: December 8, 1993.
Place: Embassy Suites Hotel, 1900 Diagonal Road, Alexandria, VA 22314.
Agenda:
—Opening Prayer and Pledge of Allegiance to the Flag
—Federal Register Notice of the Meeting
—Roll Call
—Approval of previous Board minutes
—Report on the budget review/presentation
—Report on the 1993 National matches
—Report on Army Audit Agency report
—Old business
—New business

This meeting is open to the general public but space is limited. Point of Contact is Mr. Dennis Galoci, Office of the Director of Civilian Marksmanship, Washington, DC 20314–0100, telephone: (202) 272–0810.

Kenneth L. Denton,
Army Federal Register Liaison Officer.
[FR Doc. 93–25792 Filed 10–19–93; 8:45 am]
BILLING CODE 3810–08–M

Proposal To Revise Trip Leasing Program

AGENCY: Military Traffic Management Command, DOD.

ACTION: Notice.

SUMMARY: The purpose of this proposal is to simplify trip leasing procedures for DOD freight established in November 1988. MTMC proposes to revise its trip lease approval program allowing DOD approved carriers to trip lease amongst themselves.

DATES: Comments must be received on or before November 19, 1993.

ADDRESSES: Commander, Military Traffic Management Command, ATTN: (MTOP–QE) Mrs. Shirley Stachkunas), room 629, 5611 Columbia Pike, Falls Church, VA 22041–5050.

FOR FURTHER INFORMATION CONTACT: Mrs. Shirley Stachkunas, (703) 756–1292.

SUPPLEMENTARY INFORMATION:

Background

On May 26, 1988, MTMC formally established a program to approve carriers trip leasing DOD freight. The program rules were published in the **Federal Register** and became effective November 1988. The requirement is published in the MTMC Freight Traffic Rules Publication No. 1A (MFTRP No. 1A), item 2 30. It currently states:

Effective October 1, 1988, only carriers approved by MTMC will be able to trip lease equipment to transport DOD freight.

All carriers desiring to trip lease equipment to transport DOD freight must be approved by MTMC and have a signed agreement on file with MTMC authorizing the carrier to trip lease. Request for approval to trip lease should be sent to Commander, Military Traffic Management Command, 5611 Columbia Pike, Falls Church, Virginia 22041–5050, ATTN: MTIN–FF.

Carriers failing to have trip lease approval from MTMC and/or failing to execute proper leases in accordance with 49 CFR 1057 will be considered as providing improper or inadequate equipment and may be nonused or disqualified by MTMC or the shipping activity.

The most current MFTRP no. 1A is dated May 1, 1989. The program rules prohibit carriers from trip leasing (leases of less than 30 days) DOD freight with or without drivers except upon prior approval include the operating authority certificate, certificates of public liability and cargo insurance, a copy of the standard lease agreement, and the executed "Agreement between the Military Traffic Management Command and Motor Common Carriers for Approval to Trip Lease Equipment to Transport Department of Defense Freight." The rationale for the program was to maintain control over shipments, as well as to ensure carriers provide DOD with satisfactory service.

MTMC wants to simplify the trip leasing process for moving DOD freight. MTMC proposes to only allow trip leasing amongst carriers approved to handle DOD freight. Further, MTMC proposes eliminating the program requirement for carriers to get approval to trip lease. This should reduce the administrative burden on carriers as they will only be required to be approved under the Carrier Qualification Program. The carrier will bear the burden of regulatory compliance. Performance action will still be taken against carriers who fail to comply with 49 CFR 1057.11. Item 230 of MFRTP No. 1A will be changed as follows:

Carriers desiring to trip lease will only do so with other Department of Defense (DOD) approved carriers. The requirements of 49 CFR will be adhered to. Failure to comply with the regulatory requirements can result in nonuse or disqualification by MTMC.

Kenneth L. Denton,
Army Federal Register Liaison Officer.
[FR Doc. 93–25699 Filed 10–19–93; 8:45 am]
BILLING CODE 3810–03–M

Department of the Navy

Intent To Prepare an Environmental Impact Statement for Proposed Realignment of the Naval Air Station, Pensacola, Florida

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500–1508), the Department of the Navy announces its intent to prepare an Environmental Impact Statement (EIS) to evaluate the environmental effects of the relocation of the Naval Aviation Technical Training Center, other tenants of Naval Air Station (NAS) Memphis, Tennessee, and a small school from the Naval Training Center (NTC) San Diego,

California, to NAS Pensacola, Florida. This realignment is being conducted in compliance with the Defense Base Closure and Realignment Act of 1990.

The proposed action involves the relocation of personnel and activities from NAS Memphis and NTC San Diego to NAS Pensacola. Under the current base closure scenario, all service and apprentice schools, the Naval Aviation Maintenance Training Group, the Chief of Naval Technical Training, and the Naval Education and Training Program Management Systems Activity Detachment will relocate from NAS Memphis, and the MS "A" school (messman specialist school) from NTC San Diego will be consolidated at NAS Pensacola. The consolidation of service schools at NAS Pensacola will increase the current average number of students by approximately 4,500 students. Also, approximately 2,200 additional personnel, with their dependents, will relocate to support the various schools. Several military construction projects are required to upgrade existing facilities and construct new facilities to support the increased operations. This will include new administrative, training, and instructional facilities, bachelor quarters, and approximately 116 new family housing units.

Alternatives addressed in the EIS will focus on means of meeting realignment requirements at NAS Pensacola, including alternative construction site locations. Major environmental issues that will be addressed in the EIS include, but are not limited to, socioeconomic impacts, water quality, wetlands, endangered species, cultural resources and local infrastructure impacts.

The Navy will initiate a coping process for the purpose of determining the scope of issues to be addressed and for identifying the significant issues related to this action. The Navy will hold a public scoping meeting on November 3, 1993, beginning at 7 p.m., at the Pensacola Junior College, Warrington Campus, room 3000, 5555 West Highway Street 98, Pensacola, Florida. This meeting will be advertised in Pensacola and selected local newspapers.

A brief presentation will precede request for public comment. Navy representatives will be available at this meeting to receive comments from the public regarding issues of concern to the public. It is important that federal, state, and local agencies and interested individuals take this opportunity to identify environmental concerns that should be addressed during the preparation of the EIS. In the interest of available time, each speaker will be asked to limit their oral comments to five minutes.

Agencies and the public are also invited and encouraged to provide written comment in addition to, or in lieu of, oral comments at the public meeting. To be most helpful, scoping comments should clearly describe specific issues or topics which the commenter believes the EIS should address. Written statements and or questions regarding the scoping process should be mailed no later than December 3, 1993, to Commanding Officer, Southern Division, Naval Facilities Engineering Command, 2155 Eagle Drive, P.O. Box 190010, North Charleston, South Carolina 29419–9010 (Attn: Mr. Ronnie Latimore, Code 203RL), telephone (803) 743–0888.

Dated: October 15, 1993.

Saundra K. Melancon,

Alternate Federal Register Liaison Officer.

[FR Doc. 93–25747 Filed 10–19–93; 8:45 am]

BILLING CODE 3810–AE–M

Second Public Hearing for the Draft Environmental Impact Statement for the Management of Air Operations at Naval Air Station Whidbey Island, Oak Harbor, Washington

Pursuant to Council on Environmental Quality regulations (40 CFR parts 1500–1508) implementing procedural provisions of the National Environmental Policy Act, the Department of the Navy has prepared and filed with the U.S. Environmental Protection Agency the Draft Environmental Impact Statement (DEIS) for the Management of Air Operations at Naval Air Station Whidbey Island, Oak Harbor, Washington.

A public hearing to inform the public of the DEIS findings and to solicit comments was held on September 29, 1993, in Oak Harbor, Washington. Several oral and written comments have requested extension of the DEIS review period and a second public hearing. The Navy has agreed to both requests and will extend the comment period for 45 days. All written comments must now be postmarked by November 26, 1993, to become part of the official record. The Navy will also conduct a second public hearing to present information about the DEIS and to provide additional opportunity for the public to make oral comment. This second hearing will be held on November 10, 1993 at 5 p.m. in the Oak Harbor High School Commons Area, Oak Harbor, Washington.

The public hearing will be conducted by the Navy. Federal, state, and local agencies and interested parties are invited and urged to be present or represented at the hearing. Oral statements will be heard and transcribed by a stenographer; however, to assure accuracy of the record, all statements should be submitted in writing. All statement, both oral and written, will become part of the public record on this study. Equal weight will be given to both oral and written statements.

In the interest of available time, each speaker will be asked to limit their oral comments to five minutes. Because of the large number of speakers expected, we will not be able to permit a speaker to defer speaking time to another speaker. If longer statements are to be presented, they should be summarized at the public hearing and submitted in writing either at the hearing or mailed to the address listed at the end of this announcement. All written statements must be postmarked by November 26, 1993, to become part of the official record.

The DEIS addresses the Navy's proposal to modify previous air operations management programs to incorporate specific flight pattern redistribution, aircraft operations guidelines, and an annual Field Carrier Landing Practice (FCLP) operations distribution goal between the existing field assets of Ault Field and Outlying Landing Field (OLF) Coupeville. This proposal meets the Navy's need to provide effective environmental compliance while planning for and meeting assigned military mission requirements necessary to ensure fleet readiness and aircrew proficiency. The DEIS addresses air operations management changes which can mitigate adverse environmental effects of air operations. Discussed are the issues of air traffic, noise, public health and safety of air operations, land use, population and housing, aesthetics, socioeconomics, historic resources, slope stability, air quality, water quality, and biological resources. Alternatives assessed in the DEIS focus on various distributions of FCLP training between Ault Field and OLF Coupeville, with all other air operations conducted at Ault Field.

Additional information concerning this notice may be obtained by contacting: Mr. Peter Havens (Code 203PH), Engineering Field Activity-Northwest, Naval Facilities Engineering Command, 3505 NW. Anderson Hill Road, Silverdale, WA 98383, telephone (206) 396–5976.

Dated: October 15, 1993.

Saundra K. Melancon,

Alternate Federal Register Liaison Officer.

[FR Doc. 93–25748 Filed 10–19–93; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF EDUCATION

National Advisory Council on Educational Research and Improvement; Meeting

AGENCY: National Advisory Council on Educational Research and Improvement, Education.

ACTION: Full council meeting of the National Advisory Council.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory Council on Educational Research and Improvement. This notice also describes the functions of the Council. Notice of this meeting is required section 10(a)(2) of the Federal Advisory Committee Act.

DATES AND TIMES: November 4 and 5, 1993, 9 a.m. to 4 p.m.

ADDRESSES: President's Conference Room, Commons Building, University of Richmond, Richmond, VA 23173.

FOR FURTHER INFORMATION CONTACT: Mary Grace Lucier, Executive Director, National Advisory Council on Educational Research and Improvement, 330 C Street, SW., Washington, DC 20202–7579, (202) 205–9004.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Educational Research and Improvement is established under section 405 of the 1972 Education Amendments, Public Law 92–318, as amended by the Higher Education Amendments of 1986, Public Law 99–498, (20 U.S.C. 1221e). The Council is established to advise the President, the Secretary of Education and the Congress on policies and activities carried out by the Office of Educational Research and Improvement (OERI). The meeting of the Council is open to the public. The proposed agenda for November 4 includes presentations on the Jepson School of Leadership Studies and the Women's Resource Center, both based at the University. On November 5, the meeting will focus on the theme of promoting Lifelong Learning. The final agenda will be available from the Council office on October 29.

Records are kept of all Council Proceedings and are available for public inspection at the Office of the National Advisory Council on Educational Research and Improvement, 330 C Street, SW., suite 4076, Washington, DC 20202–7579, from 9 a.m. to 5 p.m. Monday through Friday.

Dated: October 14, 1993.

Mary Grace Lucier,

Executive Director.

[FR Doc. 93–25688 Filed 10–19–93; 8:45 am]

BILLING CODE 4000–01–M

Federal Interagency Coordinating Council; Meeting

AGENCY: Federal Interagency Coordinating Council, Education.

ACTION: Notice of a public meeting.

SUMMARY: This notice describes the schedule and agenda of a forthcoming meeting of the Federal Interagency Coordinating Council. Notice of this meeting is required under section 685(c) of the Individuals with Disabilities Education Act, as amended, and is intended to notify the general public of their opportunity to attend the meeting. The meeting will be accessible to individuals with disabilities.

DATE AND TIME: November 4, 1993, from 1:30 p.m. to 4:30 p.m.

ADDRESSES: Hubert H. Humphrey Building, room 800, 200 Independence Avenue, SW., Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Connie Garner, U.S. Department of Education, 400 Maryland Avenue, SW., room 4613, Switzer Building, Washington, DC 20202–2644. Telephone: (202) 205–8124. Individuals who use a telecommunications device for the deaf (TDD) may call (202) 205–8170.

SUPPLEMENTARY INFORMATION: The Federal Interagency Coordinating Council (FICC) is established under section 685 of the Individuals with Disabilities Education Act, as amended (20 U.S.C. 1484a). The Council is established to: (1) Minimize duplication across Federal, State and local agencies of programs and activities relating to early intervention services for infants and toddlers with disabilities and their families and preschool services for children with disabilities; (2) ensure effective coordination of Federal early intervention and preschool programs, including Federal technical assistance and support activities; and (3) identify gaps in Federal agency programs and services and barriers to Federal interagency cooperation. To meet these purposes, the FICC seeks to: (1) Identify areas of conflict, overlap, and omissions in interagency policies related to the provision of services to infants, toddlers, and preschoolers with disabilities; (2) develop and implement joint policy interpretations on issues related to infants, toddlers, and preschoolers that cut across Federal agencies, including modifications of regulations to eliminate barriers to interagency programs and activities; and (3) coordinate the provision of technical assistance and dissemination of best practice information. The FICC is chaired by the Assistant Secretary for Special Education and Rehabilitative Services.

At this meeting the FICC plans to: (1) Discuss State correspondence concerning funding issues around the implementation of Part H; and (2) discuss the implications of health care reform for infants, toddlers and preschoolers with disabilities.

The meeting of the FICC is open to the public. Written public comment will be accepted at the conclusion of the meeting. These comments will be included in the summary minutes of the meeting. The meeting will be physically accessible with meeting materials provided in both braille and large print. Interpreters for persons who are hearing impaired will be available. Individuals with disabilities who plan to attend and need other reasonable accommodations should contact the contact person named above in advance of the meeting.

Summary minutes of the FICC meetings will be maintained and available for public inspection at the U.S. Department of Education, 400 Maryland Avenue, SW., room 4613, Switzer Building, Washington, DC 20202–2644, from the hours of 9 a.m. to 5 p.m., weekdays, except Federal holidays.

Dated: October 14, 1993.

Andrew Pepin,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 93–25691 Filed 10–19–93; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Hot Dry Rock Geothermal Energy Systems; Development of a Facility To Produce and Market Electric Power or Thermal Energy

AGENCY: Department of Energy, Albuquerque Operations Office (DOE/AL).

ACTION: Amendment of prior notice.

SUMMARY: DOE/AL is soliciting comments and expressions of interest in developing a cost-shared, industry-led project to develop a prototype facility to produce and market electric power or heat generated from geothermal energy in hot dry rock.

DATES: Statement of interest should be received at DOE/AL on or before December 17, 1993.

FOR FURTHER INFORMATION CONTACT:

Mr. Nyles Lackey, U.S. Department of Energy, Albuquerque Operations Office, P.O. Box 5400, Albuquerque, New Mexico 87185–5400, Telephone: (505) 845–4257.

This notice amends the prior notice published on September 14, 1993. The due date for receipt of statements of interest is extended from October 29, 1993 to December 17, 1993. All statements of interest are to be sent to the attention of Mr. Nyles Lackey at the address listed above. Questions concerning this matter should be directed to Mr. Lackey.

Issued in Albuquerque, New Mexico on October 5, 1993.

Richard A. Marquez,

Assistant Manager for Management and Administration.

[FR Doc. 93–25796 Filed 10–6–93; 8:45 am]

BILLING CODE 6450–01–M

Inventions Available for License

AGENCY: Department of Energy, Office of General Counsel.

ACTION: Notice of invention available for license.

SUMMARY: The U.S. Department of Energy hereby announces that U.S. Patent No. 5,022,996, entitled "Method of Separating Organic Contaminants From Fluid Feedstreams With Polyphosphazene Membranes," is available for license, in accordance with 35 U.S.C. 207–209. A copy of the patent may be obtained, for a modest fee, from the U.S. Patent and Trademark Office, Washington, DC 20231.

FOR FURTHER INFORMATION CONTACT:

Robert J. Marchick, Office of the Assistant General Counsel for Intellectual Property, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; Telephone (202) 586–2802.

SUPPLEMENTARY INFORMATION: 35 U.S.C. 207 authorizes licensing of Government-owned inventions. Implementing regulations are contained in 37 CFR part 404. 37 CFR 404.7(a)(1) authorizes exclusive licensing of Government-owned inventions under certain circumstances, provided that notice of the invention's availability for license has been announced in the **Federal Register**.

Issued in Washington, DC, on October 14, 1993.

Robert R. Nordhaus,

General Counsel.

[FR Doc. 93–25798 Filed 10–19–93; 8:45 am]

BILLING CODE 6450–01–M

International Energy Agency Meeting

AGENCY: Department of Energy.

ACTION: Notice of meeting.

FOR FURTHER INFORMATION CONTACT: Samuel M. Bradley, Acting Assistant General Counsel for International Affairs, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, 202–586–2900.

SUPPLEMENTARY INFORMATION: In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)), the following meeting notice is provided:

A meeting of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held on October 27, 1993, at the headquarters of the Organization for Economic Cooperation and Development (OECD), 2, rue Andre-Pascal, Paris, France, beginning at 9:15 a.m. The purpose of this meeting is to permit attendance by representatives of U.S. company members of the IAB at a meeting of the IEA's Standing Group on Emergency Questions (SEQ) which is scheduled to be held at the OECD offices on that date, including a preparatory meeting among company representatives.

The Agenda for the meeting is under the control of the SEQ. It is expected that the following draft Agenda will be follows:

1. Adoption of the Agenda
2. Summary Record of the 79th Meeting
3. Workshop on Emergency Reserve Management and Stockdraw
4. Emergency Management Manual and Related Documents
   —Emergency Management Manual
   —Emergency Operations Reference Guide
   —Industry/Secretariat Operations Manual
5. The Emergency Response Potential of IEA Countries
   —Follow-up to Emergency Response Review Recommendations
6. Emergency Reserve Situation and Developments
   —Emergency Reserve and Net Import Situation of IEA Countries on July 1, 1993
   —SEQ Report to the Governing Board on the Emergency Reserve Situation of IEA Countries
7. Emergency Data System and Related Questions
   —The Quality of Questionnaire C Data
   —Monthly Oil Statistics (MOS) to June 1993
   —MOS to July 1993
   —Base Period Final Consumption Q392–Q293
   —Quarterly Oil Forecast
8. Main lines of SEQ Program of Work for 1994
9. Any other business

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act, this meeting is open only to representatives of members of the IAB and their counsel, representatives of the Departments of Energy, Justice, and State, the Federal Trade Commission, the General Accounting Office, Committees of the Congress, the IEA, the Commission of the European Communities, and invitees of the IAB, the SEQ or the IEA.

Issued in Washington, DC, October 14, 1993.

Robert R. Nordhaus,

General Counsel.

[FR Doc. 93–25716 Filed 10–19–93; 8:45 am]

BILLING CODE 6450–01–M

Advisory Committee for National Electric and Magnetic Fields Research and Public Information Dissemination Program; Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), notice is hereby given of a meeting of the National Electric and Magnetic Fields Advisory Committee.

DATES: Thursday, November 4, 1993: 1:30 p.m.–5:30 p.m. Friday, November 5, 1993: 8:45 a.m.–4:30 p.m.

ADDRESSES: Savannah DeSoto Hilton, 15 E Liberty Street, Savannah, GA, 31401.

FOR FURTHER INFORMATION CONTACT: Robert Brewer, Director, Utility Systems Division, EE–141, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–2828.

SUPPLEMENTARY INFORMATION: The National Electric and Magnetic Fields Advisory Committee advises the Department of Energy and the National Institute of Environmental Health Sciences on the design and implementation of a five-year, National Electric and Magnetic Fields Research and Public Information Dissemination Program. The Secretary of Energy, pursuant to section 2118 of the Energy Policy Act of 1992, Pub. L. 102–486, has overall responsibility for establishing the national program which includes health effects research, development of technologies to assess and manage

exposures, and dissemination of information.

Tentative Agenda

Thursday, November 4, 1993

1:30 p.m. Welcome and opening remarks
1:45 p.m. Status report on implementation of Section 2118 of the Energy Policy Act
2:15 p.m. Electric Power Research Institute presentation on electric and magnetic fields research and communication
2:45 p.m. Presentations on electric and magnetic fields research and communication by the National Institute of Occupational Safety and Health, the Food and Drug Administration, the National Cancer Institute, and the National Institute of Environmental Health Sciences (existing grants program and the National Toxicology Program).
3:30 p.m. Break
3:50 p.m. Presentations on electric and magnetic fields research and communication by the Environmental Protection Agency, the Department of Transportation, and the Department of Defense
4:35 p.m. Committee questions and discussion
5:30 p.m. Adjourn

Friday, November 5, 1993

9:00 a.m. Presentation on revised draft research and communication plan by the National Institute of Environmental Health Sciences.
9:30 a.m. Minutes and Committee organization
10:30 a.m. Break
10:45 a.m. Advisory Committee discussion of current and future program budgets
12:00 a.m. Lunch
1:30 p.m. Advisory Committee discussion of program plans and priorities
3:00 p.m. Break
3:15 p.m. Open time for public comments
4:30 p.m. Adjourn

A final agenda will be available at the meeting.

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Robert Brewer at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. Depending on the number of requests, comments may be limited to five minutes. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcript and Minutes

A transcript and minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Copies of the minutes will also be available by request.

Issued at Washington, DC, on October 15, 1993.

Rachel M. Samuel,

Acting Advisory Committee Management Officer.

[FR Doc. 93–25799 Filed 10–19–93; 8:45 am]

BILLING CODE 6450–01–M

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, Energy.

ACTION: Notice of request submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. No. 96–511, 44 U.S.C. 3501 *et seq.*). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection; (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses per respondent annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed on or before November 19, 1993. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so, as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION CONTACT:

Jay Casselberry, Office of Statistical Standards, (E–73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 254–5348.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Energy Information Administration.

2. EIA–176, EIA–191, EIA–191S, EIA–627, EIA–857, and EIA–857S.

3. 1905–0175.

4. Natural Gas Program Package.

5. Revision—**Federal Register** notice was published on April 5, 1993 (58 FR 17579) requesting comments on these forms. Since that time, additional revisions have been made to improve the quality of the data collections. Two schedules have been added to the Form EIA–176 to collect data on natural gas transportation rates and on alternative fueled fleet vehicles.

6. Standby (EIA–191S and EIA–857S); Monthly (EIA–191 and EIA–857); and Annually (EIA–176 and EIA–627).

7. Mandatory.

8. Business or other for-profit; State or local governments.

9. 2,325 respondents.

10. 3.5 responses.

11. 16.72 hours per response.

12. 135,711 hours.

13. The Natural Gas Program Package forms collect production, processing, transmission, storage, consumption, and price data. The data are used to address significant energy industry issues. Data from these forms are published in various EIA publications. Respondents are pipeline companies, distributors, storage operators, plant operators, and state agencies.

Statutory Authority: Section 2(a) of the Paperwork Reduction Act of 1980, (Pub. L. 96–511), which amended chapter 35 of title 44 United States Code (See 44 U.S.C. 3506(a) and (c)(1)).

Issued in Washington, DC, October 14, 1993.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 93-25797 Filed 10-19-93; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER94-4-000, et al.]

Wisconsin Electric Power Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

October 13, 1993.

Take notice that the following filings have been made with the Commission:

1. Wisconsin Electric Power Co.

[Docket No. ER94-4-000]

Take notice that Wisconsin Electric Power Company (Wisconsin Electric) on October 4, 1993, tendered for filing a Construction, Operating and Maintenance Agreement between itself and the City of Hartford, Wisconsin (Hartford). Wisconsin Electric respectfully requests an effective date of October 1, 1993, coincident with the expected in-service date of the substation. Wisconsin Electric is authorized to state that Hartford joins in the requested effective date.

Copies of the filing have been served on Hartford and the Public Service Commission of Wisconsin.

Comment date: October 28, 1993, in accordance with Standard Paragraph E at the end of this notice.

2. Mid-Continent Area Power Pool

[Docket No. ER93-982-000]

Take notice that on September 20, 1993, the Mid-Continent Area Power Pool (MAPP) filed on behalf of the investor-owned public utility members of MAPP revisions to the MAPP Agreement to create a new standing committee called the Operating Review Committee.

The revisions have been approved by the members of the pool and MAPP requests an effective date of October 1, 1993.

Comment date: October 28, 1993, in accordance with Standard Paragraph E at the end of this notice.

3. PSI Energy, Inc.

[Docket No. ER93-806-000]

Take notice that PSI Energy, Inc. (PSI) and The City of Piqua, Ohio on September 24, 1993, tendered for filing corrected Service Schedules to the amended Service Schedules in the FERC filing in Docket No. ER93-806-000.

Copies of the filing were served on The City of Piqua, Ohio, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: October 28, 1993, in accordance with Standard Paragraph E at the end of this notice.

4. Public Service Electric and Gas Co.

[Docket No. ER93-971-000]

Take notice that on September 24, 1993, Public Service Electric and Gas Company (PSE&G) tendered for filing, pursuant to Rule 205(c) of the Federal Power Act, an agreement between PSE&G and Wheelabrator Falls Inc. (WPI) providing for the construction of a direct interconnection between WPI's qualifying facility and PSE&G's transmission system to facilitate the delivery of electricity from WFI's facility to PSE&G pursuant to a power purchase agreement.

Comment date: October 28, 1993, in accordance with Standard Paragraph E at the end of this notice.

5. Commonwealth Electric Co.

[Docket No. ER94-1-000]

Take notice that on October 1, 1993, Commonwealth Electric Company (Commonwealth) filed, pursuant to section 205 of the Federal Power Act and the implementing provisions of § 35.13 of the Commission's Regulations, a proposed change in rate under its currently effective Rate Schedule FERC No. 6.

Commonwealth states that said change in rate under Commonwealth's Rate Schedule FERC No. 6 has been computed according to the provisions of Section 6(b) of its Rate Schedule FERC No. 6. Such change is proposed to become effective January 1, 1993, thereby superseding the 23 Kv Wheeling Rate in effect during the calendar year 1992. Commonwealth has requested that the Commission's notice requirements be waived pursuant to Section 35.11 of the Commission's Regulations in order to allow the tendered rate change to become effective as of January 1, 1993.

Copies of this filing have been served upon Boston Edison Company and the Massachusetts Department of Public Utilities.

Comment date: October 28, 1993, in accordance with Standard Paragraph E at the end of this notice.

6. Philadelphia Electric Co. and The Susquehanna Electric Co.

[Docket No. ER94-6-000]

Take notice that on October 6, 1993, Philadelphia Electric Company (PE) and The Susquehanna Electric Company (SE) tendered for filing a supplement to the Tri-partite Agreement dated May 1, 1972 between PE, SE and Conowingo Power Company (COPCO) which is on file as PE's Rate Schedule FPC No. 36 and SE's Rate Schedule FPC No. 2.

PE and SE state that a copy of this filing has been served by mail upon COPCO, the Maryland Public Service Commission, the Maryland Office of People's Counsel, and the Pennsylvania Public Utility Commission.

Comment date: October 28, 1993, in accordance with Standard Paragraph E at the end of this notice.

7. Niagara Mohawk Power Corp.

[Docket No. ER93-916-000]

Take notice that Niagara Mohawk Power Corporation (Niagara Mohawk), on October 6, 1993, tendered for filing an amendment to its original filing in Docket No. ER93-916-000. The subject of this docket is an agreement between Niagara Mohawk and the New York Power Authority (NYPA) which provides for certain interruptible transmission services.

The effective date of November 1, 1993, is requested by Niagara Mohawk.

Copies of this filing were served upon NYPA and the New York State Public Service Commission.

Comment date: October 28, 1993, in accordance with Standard Paragraph E at the end of this notice.

8. Entergy Services, Inc.

[Docket No. ER93-739-000]

Take notice that Entergy Services, Inc. (Entergy Services), as agent for Louisiana Power & Light Company (LP&L), on October 5, 1993, tendered for filing Amendment No. 1 to Service Schedule ES—Emergency Services (Amendment), between LP&L and Southwestern Electric Power Company (SWEPCO). Service Schedule ES is a service schedule to the Agreement between LP&L and SWEPCO, which was filed on June 29, 1993, and was subsequently amended on August 11, 1993. The purpose of the Amendment is to revise Service Schedule ES to specify a 4.4 mill/kWh adder, plus incremental increases or decreases in transmission losses, to apply where LP&L purchases energy to be supplied under that schedule.

Comment date: October 28, 1993, in accordance with Standard Paragraph E at the end of this notice.

9. Puget Sound Power & Light Co.

[Docket No. ER94-3-000]

Take notice that on October 4, 1993, Puget Sound Power & Light Company (Puget) tendered for filing an initial rate schedule between the British Columbia

Hydro and Power Authority (B.C. Hydro) and Puget, dated as of July 1, 1976 (the Agreement). A copy of the filing was served upon B.C. Hydro.

Puget states that the Agreement relates to an interconnection between Puget and B.C. Hydro located on the Canada-U.S.A. border, over which B.C. Hydro's sale of electric energy to Puget is delivered for distribution to Puget's retail customers in Point Roberts, Washington. Puget requests the Commission to disclaim jurisdiction over the Agreement.

Comment date: October 28, 1993, in accordance with Standard Paragraph E at the end of this notice.

10. Puget Sound Power & Light Co.

[Docket No. ER94-7-000]

Take notice that on October 5, 1993, Puget Sound Power & Light Company (Puget) tendered for filing an initial rate schedule between Elmhurst Mutual Power & Light Company (Elmhurst) and Puget, dated as of August 1, 1991 (the Agreement). A copy of the filing was served upon Elmhurst.

Puget states that the Agreement relates to Elmhurst's attachment of some of its electric distribution lines and related equipment to certain Puget utility poles. Puget requested the Commission to disclaim jurisdiction over the Agreement.

Comment date: October 28, 1993, in accordance with Standard Paragraph E at the end of this notice.

11. InterCoast Power Marketing Co.

[Docket No. EL94-1-000]

Take notice that InterCoast Power Marketing Company (InterCoast) on October 5, 1993, tendered for filing pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207 (1988), a petition for a disclaimer of jurisdiction under section 201 of the Federal Power Act, for waivers and blanket approvals under various regulations of the Commission, and an order accepting its Rate Schedule 1, to be effective as of December 3, 1993. InterCoast is an indirect wholly-owned subsidiary of Iowa-Illinois Gas and Electric Company, a public utility.

InterCoast contends to engage in electric power and energy transactions as a broker and a marketer. InterCoast will function as a broker in transactions where it does not take title to power or energy. InterCoast will act as a marketer in transactions where it purchases power, capacity and related services from producers and resells such power to other purchasers.

Rate Schedule 1 provides for the sale of energy at agreed prices subject to a ceiling equal to the purchaser's alternative cost of electric power. Rate Schedule 1 also provides that (1) no sales may be made to affiliates, (2) no sales of power purchased from an affiliate may be made, (3) no sales may be made to a party directly connected to the transmission facilities of an affiliate, and (4) no sales may be made which require the use of an affiliate's transmission facilities.

Comment date: October 28, 1993, in accordance with Standard Paragraph E at the end of this notice.

12. Citizens Utilities Co.

[Docket No. ER94-5-000]

Take notice that Citizens Utilities Company (Citizens) on October 4, 1993, tendered for filing a Transmission Tariff for back-up transmission service for the Village of Swanton, Vermont (Swanton).

As more fully set forth therein, the Transmission Tariff provides that Swanton may receive back-up transmission service from Citizens.

Citizens requests waiver of the notice requirements of section 205 of the Federal Power Act and § 35.3 of the Commission's Regulations so that the proposed rate schedule can be made effective as of October 1, 1993.

Citizens states that a copy of its filing was served on Swanton and the Vermont Public Service Board.

Comment date: October 28, 1993, in accordance with Standard Paragraph E end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-25702 Filed 10-19-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF83-161-002]

Calciner Industries, Inc.; Amendment to Filing

October 14, 1993.

On October 7, 1993, Calciner Industries, Inc. tendered for filing a supplement to its filing in this docket.

The supplement pertains to the ownership structure and technical aspects of its cogeneration facility. No determination has been made that the submittal constitutes a complete filing.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed by November 4, 1993, and must be served on the Applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-25707 Filed 10-19-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER93-773-000]

Cambridge Electric Light Co.; Filing

October 14, 1993.

Take notice that on October 7, 1993, Cambridge Electric Light Company (Cambridge) tendered for filing an amendment in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before October 26, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–25745 Filed 10–15–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–17–000]

East Tennessee Natural Gas Co.; Request Under Blanket Authorization

October 14, 1993.

Take notice that on October 12, 1993, East Tennessee Natural Gas Company (East Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP94–17–000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate a new delivery point under East Tennessee's blanket certificate issued in Docket No. CP82–412–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

East Tennessee proposes to establish a new delivery point at M.P. 3215 – 1+10.55 on its Lobelville-Topside Line in Bradley County, Tennessee, for the delivery of up to 8,500 dekatherms per day of natural gas (the maximum capacity of the meter) for the account of Chattanooga Gas Company (Chattanooga). East Tennessee states that a 6-inch hot tap, approximately 100 feet of interconnecting 6-inch pipe, and measurement facilities would be installed on a site provided by Chattanooga adjacent to East Tennessee's existing right-of-way. East Tennessee explains that the related firm transportation service would be performed under its Rate Schedule FT, and that the gas would be used by additional customers in the Bradley County Area. East Tennessee estimates that the facilities would cost $75,913 which would be reimbursed by Chattanooga.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–25704 Filed 10–19–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–15–000]

Florida Gas Transmission Co.; Request Under Blanket Authorization

October 14, 1993.

Take notice that on October 12, 1993, Florida Gas Transmission Company (FGT), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP93–15–000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate a delivery point in Marion County, Florida, for West Florida Natural Gas Company (WFNG) under FGT's blanket certificate issued in Docket No. CP82–553–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

FGT proposes to construct and operate a tap, about 80 feet of 4-inch pipe, a meter station and appurtenant facilities at a cost of $260,000 which would be reimbursed by WFNG. FGT states that it would deliver up to 9,000 MMBtu per day and up to 2,004,180 MMBtu per year. FGT also states that the proposal would not impact FGT's peak day or annual deliveries.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–25705 Filed 10–19–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–19–000]

Mississippi River Transmission Corp.; Limited Waiver

October 14, 1993.

Take notice that on October 4, 1993, Mississippi River Transmission Corporation (MRT) filed a request with the Commission for authority necessary to permit it to continue to perform under a certificated Agreement and Exchange and Sale of Natural Gas between MRT and Natural Gas Pipeline Company of America (Natural).

MRT requests that the Commission grant it a limited waiver of a provision of its tariff and any of the Commission's regulations which are necessary to permit MRT to continue this exchange and sale arrangement.

MRT requests that the Commission grant it a limited waiver of Section 2.3 of Rate Schedule USAS in MRT's tariff to permit it to continue transporting the Mills Ranch Field production over MRT's gathering facilities to the point of interconnect with Natural's transmission facilities so that the parties can continue their certificated exchange and sale arrangement for the remaining term of the agreement, or until MRT can successfully negotiate buyout agreements with the Mills Ranch producers.

MRT states that copies of the filing have been served upon all persons designated on the official service list compiled by the secretary.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 21, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are

available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93-25708 Filed 10-19-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EF93-133-000]

Portland General Electric Co.; Filing

October 14, 1993.

Take notice that PacifiCorp, on September 16, 1993, tendered for filing in accordance with 18 CFR part 35 of the Commission's Rules and Regulations, a Certificate of Concurrence in the Assignment and Agreement Relating to Canadian Entitlement Exchange Agreement (CSPE Agreement), Contract No. 14-03-60376 and the CSPE Agreement, contract No. 14-03-47308, as filed by Portland General Electric Company (PGE) in the above referenced docket. PacifiCorp also tendered its Exhibit C to the CSPE Agreement for filing.

PacifiCorp requests a waiver of prior notice requirements in accordance with 18 CFR 35.11 of the Commission's rules and regulations be granted and that an effective date of April 1, 1968 be assigned. The waiver will have no effect on PacifiCorp's purchasers under other rate schedules.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before October 26, 1993. Protest will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-25744 Filed 10-19-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EG94-1-000]

UC Operating Services; Application for Commission Determination of Exempt Wholesale Generator Status

October 14, 1993.

On October 12, 1993, UC Operating Services ("UCOS"), a California general partnership with its principal place of business at 9881 Broken Land Parkway, Columbia, Maryland 21046, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

UCOS intends to provide operating services for a pulverized coal-fired cogeneration facility with a maximum net power production capacity of between approximately 165 MW (summer) and 167 MW (winter). All of the facility's electric power net of the facility's operating electric power will be purchased at wholesale by one or more public utilities.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before October 29, 1993, and must be served on UCOS. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-25706 Filed 10-19-93; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 93-95-NG]

The Consumers Gas Co. Ltd.; Order Granting Blanket Authorization To Export Natural Gas to Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting The Consumers Gas Company Ltd. authorization to export up to 100 Bcf of natural gas to Canada over a two-year term, beginning on the date of first delivery after December 15, 1993.

This order is available for inspection and copying in the Office of Fuels Programs docket room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, October 12, 1993.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93-25802 Filed 10-19-93; 8:45 am]

BILLING CODE 6450-01-P

[FE Docket No. 93-86-NG]

Northern California Power Agency; Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Northern California Power Agency authorization to import up to 16 Bcf of natural gas from Canada for a two-year term beginning on the date of the first delivery.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on October 6, 1993.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93-25801 Filed 10-19-93; 8:45 am]

BILLING CODE 6450-01-P

[FE Docket No. 93-107-NG]

Pacific Gas Transmission Co.; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Pacific Gas Transmission Company authorization to import up to 1 Bcf of natural gas from Canada over a two-year

term, beginning on the date of first delivery.

This order is available for inspection and copying in the Office of Fuels Programs docket room 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, October 13, 1993.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–25803 Filed 10–19–93; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 93–82–NG]

Wisconsin Natural Gas Co.; Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has granted Wisconsin Natural Gas Company (WGN) authorization to import up to 37,260 Mcf per day of Canadian natural gas for ten years beginning November 1, 1993. This gas would be imported from ProGas Limited and Western Gas Marketing Limited as a result of ANR Pipeline Company's unbundling of its gas supply arrangements under the restructuring requirements of Order 636 issued by the Federal Energy Regulatory Commission.

WGN's order is avilable for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, October 13, 1993.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–25800 Filed 10–19–93; 8:45 am]

BILLING CODE 6450–01–P

Office of Hearings and Appeals

Cases Filed During the Week of July 23 Through July 30, 1993

During the Week of July 23 through July 30, the applications for relief listed in the Appendix to this notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: October 14, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

Date received	Name of refund proceeding/name of refund application	Case No.
7/26/93	Charter International Oil Co	RF351–5
7/26/93	Austin Hydro Gas Co., Inc	RF340–189
7/27/93	Sysco Frosted Foods, Inc	RC272–211
7/27/93	Rhode Island College	RR336–74
7/23/93	Iren S. Light, Inc	RF300–21750
7/23/93 thru 7/30/93	Atlantic Richfield, Applications received	RF304–14253 thru RF304–14281
7/23/93 thru 7/30/93	Texaco Refund, Applications received	RF321–19813 thru RF321–19822
7/23/93 thru 7/30/93	Crude Oil Refund, Applications received	RF272–94795 thru RF272–94807
7/23/93 thru 7/30/93	Citronelle refund, Applications received	RF336–38 thru RR336–74

[FR Doc. 93–25795 Filed 10–19–93; 8:45 am]

BILLING CODE 6450–01–P

Office of Hearings and Appeals

Cases Filed During the Week of August 13 Through August 20, 1993

During the Week of August 13 through August 20, 1993, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: October 14, 1993.

George B. Breznay

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of August 17 through August 20, 1993]

Date	Name and Location of Applicant	Case No.	Type of Submission
Aug. 17, 1993	L & M Technologies, Albuquerque New Mexico.	LWZ–0022	Interlocutory. If granted: The request for a hearing by an alleged whistleblower (Case No. LWA–0001) Ronald Sorri would be dismissed.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of August 17 through August 20, 1993]

Date	Name and Location of Applicant	Case No.	Type of Submission
Aug. 19, 1993 .	Cicero School District 99, Paris, Tennessee	RR272–112	Request for Modification/Rescission in the Crude Oil Refund Proceeding. If granted: The May 19, 1993 Dismissal Letter (Case No. RF272–87226) issued to Cicero School District 99 would be modified regarding the firm's application for refund submitted in the crude oil refund proceeding.
Aug. 19, 1993 .	Fletcher & Associates, Ltd., Enosburg Falls, Utah.	LEE–0051	Exception to the Reporting Requirements. If granted: Fletcher & Associates, Ltd. would not be required to file Form EIA–782B; "Resellers'/Retailers' Monthly Petroleum Product Sales Report."
Aug. 19, 1993 .	Joseph A. Camardo, Jr., Auburn, New York	LFA–0314	Appeal of an Information Request Denial. If granted: The July 19, 1993 Freedom of Information Request Denial issued by the Pittsburgh Naval Reactors Office would be rescinded, and Joseph A. Camardo, Jr. would receive access to a copy of various documents relating to the Bettis Atomic Power Laboratory, Westinghouse Electric Corporation.
Aug. 8, 1993 ...	Government Accountability Project, Washington, DC..	LFA–0312	Appeal of an Information Request Denial. If granted: The July 7, 1993 Freedom of Information Request Denial issued by the Oak Ridge Operations Office would be rescinded, and Government Accountability Project would receive access to information about certain activities of Martin Marietta Energy Systems and Oak Ridge Associated Universities at Oak Ridge National Laboratory.

Date received	Name of refund proceeding/name of refund application	Case No.
8/10/93	Market Street Texaco	RF321–19836
8/12/93	Denbe Corp.	RF349–5
8/16/93	Magnon South State Canal	RF346–66
8/16/93	Lydia Canal	RF346–67
8/16/93	St. Martinville Canal	RF346–68
8/16/93	Comeaux Seafood & Grocery	RF346–69
8/16/93	Delcambre Canal Station	RF346–70
8/16/93	Lydia Canal	RF346–71
8/16/93	Pelican Oil Co.	RF346–72
8/16/93	Al's Canal Station	RF346–73
8/17/93	Brister's Texaco Service Ctr	RF321–19837
8/17/93	Lumpkin Freeway Texas	RF321–19838
8/17/93	Erthall & Son Texaco	RF321–19839
8/13/93 thru 8/20/93	Atlantic Richfield Applications Received	RF304–14381 thru RF304–14406
8/13/93 thru 8/20/93	Crude Oil Refund Applications Received	RF272–84841 thru RF272–84869

[FR Doc. 93–25794 Filed 10–19–93; 8:45 am]

BILLING CODE 6450–01–P

Issuance of Decisions and Orders During the Week of June 7 Through June 11, 1993

During the week of June 7 through June 11, 1993 the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

National Security Archive, 6/11/93, KFA–0280

The National Security Archive appealed a denial by the Director of the Office of Classification of a request for information that it filed pursuant to the Freedom of Information Act. The Director had determined that a document pertaining to Saudi Arabian defense should be withheld pursuant to Exemption 1 because it was classified. After reviewing the document on appeal, the DOE determined that some of it could now be declassified and released, while other portions must continue to be withheld as secret national security information. Accordingly, the Appeal was granted in part.

Refund Applications

J.D. Streett & Co., Inc., 6/9/93, RF272–67564

The DOE issued a Decision and Order denying the Application for Refund filed by J.D. Streett & Co. in the Subpart V crude oil refund proceeding. The Applicant had entered into a consent order under which it released all claims to a Subpart V refund. The DOE found that the terms of the Consent Order precluded the Applicant from receiving a refund in the crude oil refund proceeding.

Murphy Oil Corporation/ Stormy Oil Company, 6/9/93, RF309–1429

The DOE issued a Decision and Order rescinding a refund granted in the Murphy Oil Corporation special refund proceeding to Ronald Vukelich for Murphy product purchases made by Stormy Oil Company. It was determined that in May of 1981, Mr. Vukelich purchased only the assets of Stormy Oil Company from David and Rita Storms.

We concluded therefore that Mr. and Mrs. Storms, who continued to own all stock in the corporation when it was dissolved in 1981, were the rightful recipients of the Stormy Oil Company refund. Accordingly, the refund granted to Mr. Vukelich was rescinded and he was ordered to remit funds totalling $23 (comprised of $19 principal and $4 interest). In a separate decision, the Stormy Oil Company refund was granted to Mr. and Mrs. Storms.

Texaco Inc./Douglas E. Howie Marshall Hayes Distributorship, 6/9/93, RF321-5473, RF321-19538

The DOE issued a Decision and Order in the Texaco Inc. refund proceeding concerning two Applications for Refund. One was filed by Mary Hayes on behalf of a distributorship that she owned with her late husband. The other was filed by Douglas E. Howie who purchased the distributorship on July 1, 1980. Howie claimed a refund for the entire 1973 to 1981 refund period and supporting his claim. After being contacted by DOE, Mrs. Hayes stated that she had no idea that she might have a right to a substantial refund. She subsequently filed her own application. The DOE found that the affidavit should be given little weight because Mrs. Hayes signed it out of a desire to be helpful and without a full understanding of her rights. The DOE also found that the affidavit was contradicted by the terms of the sales contract which indicated that the sale should be narrowly construed. Accordingly, Mrs. Hayes was granted a refund for the period prior to July 1, 1980, and Howie was granted a refund for the period after that date.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

A.D. Schramm et al	RF272-92517	06/09/93
Athens Independent School Dist et al	RF272-81285	06/08/93
Atlantic Richfield Company/Albert F. Schroeder	RF304-13281	06/10/93
Atlantic Richfield Company/Art's ARCO	RR304-58	06/07/93
Atlantic Richfield Company/Daniel W. Currier et al	RF304-13859	06/09/93
Atlantic Richfield Company/Rudy & Son's, Inc	RF304-12071	06/07/93
Rudy's Car Wash & ARCO	RF304-12072	
Rudy's ARCO #1	RF304-12073	
Rudy's ARCO #2	RF304-12074	
Clark Oil & Refining Corp./Clark Super 100 of Winona	RF342-298	06/11/93
Ike's Super 100	RF342-307	
Abdul's Clark Service	RF342-318	
Clark Oil & Refining Corp./Hilemans Clark	RF342-174	06/11/93
Joseph Dunlap Super 100	RF342-213	
Edward Schelfo	RF342-222	
E. Vanderhoof & Sons	RC272-195	06/07/93
East Bridgewater School Dist	RF272-83359	06/07/93
City of Hialeah Gardens	RF272-83446	
City of Grand Rapids	RF272-83527	
Farmers Union Elevator	RF272-81889	06/08/93
Faylor-Middlecreek, Inc	RF272-29838	06/10/93
Faylor-Middlecreek, Inc	RD272-29838	
Gulf Oil Corporation/Center Point Gulf, Inc	RF300-16059	06/10/93
Gulf Oil Corporation/Craig's Gulf et al	RF300-18189	06/10/93
Gulf Oil Corporation/Homer's Gulf et al	RF300-15210	06/09/93
Gulf Oil Corporation/Max's Gulf Service	RF300-14673	06/07/93
Gulf Certified Car Care	RF300-15461	
Langley Gulf	RF300-15462	
OST Gulf	RF300-15463	
Gulf Oil Corporation/McPhail Gulf	RF300-21741	06/10/93
Gulf Oil Corporation/Reish Gulf	RF300-18214	06/10/93
Gulf Oil Corporation/Riverside Linen Supply	RF300-21743	06/10/93
Gulf Oil Corporation/Roy Krimper Gulf et al	RF300-13050	06/07/93
Holsum Bakery, Inc	RC272-200	06/11/93
J.C. Baldridge Lumber Co. et al	RF272-65872	06/11/93
Marquette Transportation Co., Inc	RF272-15755	06/07/93
Marquette Transportation Co., Inc	RD272-15755	
Metropolitan Petroleum & Fuel/Waldo Garcia	RF349-1	06/10/93
Mount Carmel Cemetery Assoc. et al	RF272-92404	06/10/93
Perry Oil Company et al	RF272-90166	06/11/93
Shaver Transportation Co	RC272-199	06/09/93
Shell Oil Company/Conover Shell & Pantry	RF315-4835	06/09/93
Heffner's Shell Service	RF315-7442	
Bird & Son, Inc.	RF315-10200	
Shell Oil Company/Onslow Oil Company	RF315-724	06/10/93
Martin Oil Company	RF315-725	
Texaco Inc./Lacey-Hollis, Inc	RF321-14321	06/11/93
B.T. Hollis	RF321-14322	
Lacey & Lacey	RF321-14323	
Texaco Inc./Link's Texaco	RF321-19758	06/07/93
Texaco Inc./Nolte's Interstate Texaco et al	RF321-2708	06/10/93
Texaco Inc./Strickland Transportation Co., Inc. et al	RF321-14534	06/11/93
Texaco Inc./The Valley Line Co	RF321-3021	06/10/93
Boise Cascade Corp	RF321-3103	
Western Trucking	RC272-201	06/10/93

Dismissals

The following submissions were dismissed:

Name	Case No.
Ackley-Geneva Community School	RF272–87406
Beattiesford Road Gulf	RF300–21587
Cal Brekke	LFA–0301
Dickison Fuel & Distributing Company	RF304–3350
Eaton City School District	RF272–81210
Gerald Alexander	RF321–4417
Hamburg Quarry, Inc	RF300–19325
Hamilton Elementary #3	RF272–87078
Herman's Gulf Service	RF300–20935
John P. Lohrenz	LFA–0298
Lago Vista ISD	RF272–81478
Leroy Community Unit School District	RF272–81349
Lexington C.U. School District 7	RF272–81332
Marcellus Central School	RF272–83599
Oregon State Board of Higher Education	RF272–79083
Page Unified School District #8	RF272–81211
Romarco Corp.	RF300–19343
Salt Creek School District 48	RF272–87433
Spartand Community Unit School District 3	RF272–81496
Tom's Gulf Service	RF300–13525
Tonasket School District	RF272–87362
Top-Notch Texaco	RF321–11094
Trade Services, Inc	RF300–14525
Western Wayne Schools	RF272–87304
Wethersfield C.U.S.D. 230	RF272–87308
Williamsfield C.U.S.D. 210	RF272–87314

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forestall Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines,* a commercially published loose leaf reporter system.

Dated: October 14, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 93–25793 Filed 10–19–93; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4791–9]

Standards of Performance for Asbestos National Emission Standards for Hazardous Air Pollutants; Delegation of Authority to the Commonwealth of Virginia

AGENCY: Environmental Protection Agency.

ACTION: Informational notice re: delegation of authority.

SUMMARY: By letter of July 15, 1993, EPA Region III delegated to the Commonwealth of Virginia, Department of Labor and Industry (DLI) the authority to implement and enforce provisions of the National Emission Standard for Hazardous Air Pollutants (NESHAP) for Asbestos, including revisions to the Asbestos NESHAP regulations promulgated on November 20, 1990. This approval was granted after EPA review of a request from the Virginia DLI for such authority.

EFFECTIVE DATE: July 15, 1993.

ADDRESSES: Comments may be submitted to Thomas J. Maslany, Director, Air, Radiation and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this section are available for public inspection during normal business hours at the above address; or, at the Virginia Department of Labor and Industry, Powers-Taylor Building, 13 South Thirteenth Street, Richmond, Virginia 23219.

SUPPLEMENTARY INFORMATION: By previous **Federal Register** Notice (FRN) dated August 27, 1981, EPA Region III announced the delegation of enforcement authority for all NSPS and NESHAP categories to the Commonwealth of Virginia State Air Pollution Control Board (SAPCB). In addition, that FRN also announced that all future revisions to NSPS and NESHAP regulations would be automatically delegated to the SAPCB, subject to certain conditions. By letter dated October 28, 1992 to the Virginia Department of Air Pollution Control (DAPC), EPA confirmed the continuing authority of the SAPCB and DAPC to implement and enforce the November 20, 1990 revisions to the asbestos NESHAP regulations.

On September 1, 1992, the Virginia Department of Labor and Industry (DLI) submitted documentation to EPA Region III and requested delegation of authority to implement and enforce the asbestos NESHAP regulations for major source categories within Virginia, in conjunction with the DAPC (since reorganized as part of the newly created Virginia Department of Environmental Quality (DEQ)). Included with that request were copies of the Virginia Asbestos NESHAP Act which became effective July 1, 1992, the Virginia "Regulation for Asbestos Emissions Standards for Demolition and Renovation Construction Activities and the Disposal of Asbestos Containing Construction Wastes; Final Rule" which was adopted on August 25, 1992 by the Virginia Occupational Safety and Health Codes Board, and is identical to the EPA asbestos NESHAP for renovation and demolition operations; and a Virginia DLI Program Directive outlining DLI policies and procedures for scheduling of inspections and taking enforcement actions.

After a thorough review of the documentation submitted, including a

review of the administrative and legal capabilities of the DLI, EPA Region III approved DLI's request for delegation in a letter dated July 15, 1993, subject to the terms and conditions stated therein. EPA retains concurrent Asbestos NESHAP enforcement authority in Virginia, which it may exercise whenever the Agency deems federal enforcement necessary to achieve the objectives of the Clean Air Act.

Effective immediately, copies of notifications required pursuant to 40 CFR 61.145(b) for asbestos demolition and renovation projects to be conducted within the Commonwealth of Virginia shall be submitted to the Virginia Department of Labor and Industry, Powers-Taylor Building, 13 South Thirteenth Street, Richmond, Virginia 23219. Separate copies of such notifications need not be submitted to the EPA Regional Office.

Authority: This notice is issued under the authority of sections 111 and 112 of the Clean Air Act.

Dated: September 13, 1993.

Stanley L. Laskowski,

Acting Regional Administrator.

[FR Doc. 93-25760 Filed 10-19-93; 8:45 am]

BILLING CODE 6560-50-P

[FRL-4785-6]

HON/RACT Interface Draft Guidance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Draft guidance for public comment.

SUMMARY: This draft guidance describes an option that States can consider in implementing Reasonably Available Control Technology (RACT) under the Clean Air Act. Specifically, the guidance describes what the EPA is calling "presumptive alternative RACT" (PAR) for emission points that are both affected by the Hazardous Organic NESHAP (HON) and subject to the implementation of RACT.

The control strategies used by source owners and operators to comply with the HON can vary. In the absence of PAR, the implementation of RACT could create a disincentive to some of the strategies allowed for HON compliance. This draft guidance is intended to minimize constraints to flexibility with complying with the HON that may be created by the implementation of RACT, while at the same time attempting not to jeopardize the emission reductions that would be achieved by RACT implementation.

FOR FURTHER INFORMATION CONTACT: Mark Morris (telephone: 919-541-5416), Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711.

SUPPLEMENTARY INFORMATION: Title I of the Clean Air Act, as amended in 1990 (Act), contains provisions for the attainment of the National Ambient Air Quality Standards (NAAQS) for ozone and other criteria pollutants. Section 182(b)(2) of the Act requires that State implementation plans (SIP's) for certain ozone nonattainment areas be revised to require the implementation of RACT for control of volatile organic compound (VOC) emissions from sources for which the EPA published pre-enactment control techniques guidelines (CTG's), or for which the EPA will publish a CTG between the date of enactment of the 1990 Clean Air Act Amendments (1990 Amendments) and the date an area achieves attainment status. Section 182(b)(2) of the Act also requires the implementation of RACT for control of VOC emissions from major stationary sources not covered by a CTG.

The EPA has defined RACT generally as: the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility (44 FR 53761). RACT for a particular source is determined by the State on a case-by-case basis, considering the technological and economic circumstances of the individual source. Further information on CTG's and the definition of RACT can be found in the **Federal Register** notice cited above.

Prior to amendment of the Act, the EPA had published 27 CTG's. Each CTG describes techniques available for reducing emissions of VOC from one or more categories of sources. The primary purpose of each CTG is to inform the State and local air pollution control agencies of the control techniques available for the class of sources covered by the CTG. In addition to information on control techniques, each CTG contains recommendations to the States of what the EPA calls the "presumptive norm" for RACT, based on the EPA's evaluation of the capabilities and problems general to the industry. This means that if the State requires the control recommended in the CTG, then the EPA will approve such a requirement as meeting RACT for a source. On the other hand, if the State makes a RACT determination that is less stringent than the EPA presumptive norm, then a technological and economic feasibility analysis must be performed to justify deviation from the presumptive norm. Section 183(a) of the Act requires that CTG's be issued for thirteen additional categories of stationary sources of VOC emissions within three years of enactment of the 1990 Amendments.

Section 112 of the Act requires that emission standards be promulgated for categories and subcategories of major sources of hazardous air pollutants (HAP's) and such area sources as the Administrator finds warrant regulation. One hundred eighty-nine pollutants are listed as HAP's, many of which are also VOC's. Consequently, standards promulgated under section 112 will affect some of the same emission sources that will be regulated under section 182(b)(2). The HON is one such regulation to be promulgated under Section 112.

The proposed HON rule was published in the **Federal Register** on December 31, 1992 (57 FR 62608). Since the HON has not been promulgated, it may be revised in response to comments received from the public. These revisions could include changes in the emissions averaging provisions, which would likely necessitate revision of today's draft guidance.

The proposed HON includes provisions for process vents, transfer operations, storage vessels, wastewater operations, and equipment leaks associated with the manufacture of synthetic organic chemicals. The following CTG's have already been issued and address some of the same emission points as the proposed HON: (1) The Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Processes CTG (December 1984); and (2) the SOCMI Fugitive Emissions CTG (March 1984). The EPA anticipates issuing other CTG's under section 183(a) which will address other HON emission points, including: (1) The SOCMI Reactor Processes and Distillation Operations Processes CTG, which was published in draft form for public comment in December, 1991 (56 FR 64785); (2) the Volatile Organic Liquid (VOL) Storage CTG; and (3) the Industrial Wastewater CTG. Drafts of the latter two are under development and expected to be published for public comment soon.

As discussed earlier, the implementation of RACT is required not only for those sources for which a CTG has been, or will be, issued but is also required for all other major stationary sources of VOC emissions. Today's notice contains draft guidance to States on the interface between the HON and both CTG RACT rules and non-CTG RACT rules for major sources. However, since CTG's have been issued, or will be issued, for the sources affected by the

HON (except for transfer operations), the emphasis in this notice will be on the interface between the HON and the RACT rules developed in accordance with the applicable CTG's.

The regulatory framework contained in the proposed HON and the RACT requirement, as interpreted in the CTG's, has two main components. First, it contains applicability criteria, which are criteria used to determine which emission points will be required to reduce their emissions. Second, the HON and the CTG's contain descriptions of the control technologies and/or control technology performance required (or recommended, in the case of CTG's) at the emission points that meet the applicability criteria. For example, the storage vessel provisions for fixed roof tanks in the HON may have applicability criteria of 40,000 gallons and 0.1 psia. This means that all tanks that have capacities greater than or equal to 40,000 gallons and that store liquids with HAP partial pressures greater than or equal to 0.1 psia would be required to be controlled. The control requirements of the HON could be met by the installation of reference control technologies.

Reference control technologies are defined simply as those air pollution control devices which may be used to satisfy the control technology requirements of the HON. In subpart G of the proposed HON rule (57 FR 62608), reference control technologies are specified for each kind of emission point and control efficiencies are established that each device should achieve when being used to comply with the HON. The HON reference control technologies are identical to the control technologies and/or control technology performance recommended in the CTG's for the same emission points.

In the proposed HON, emission points that meet the applicability criteria are called Group 1 points. Emission points that emit HAP's but are not Group 1 points are called Group 2 points. For example, using the applicability criteria above, a 50,000 gallon tank which stores a liquid with a HAP partial pressure of 1 psia would be a Group 1 emission point. A 50,000 gallon tank which stores a liquid with a vapor pressure of 0.05 psia would be a Group 2 emission point. The terms Group 1 and Group 2 are not used in the CTG's when referring to emission points. For the purpose of discussion within this notice, however, emission points that meet the applicability criteria in the CTG will be referred to as Group 1 CTG points. Emission points that are not Group 1 CTG points will be referred to as Group 2 CTG points.

Owners and operators of sources affected by the HON are required to reduce their HAP emissions to a specified "allowable" level. This allowable level of HAP emissions is calculated by adding all Group 2 HON point emissions to the emissions from all Group 1 HON points that would continue to be emitted after the application of the reference control technologies. Compliance with the HON (i.e., achieving the allowable level of HAP emissions) can be achieved either by applying the reference control technologies to all Group 1 HON points, by employing emissions averaging, or by a combination of the two.

Emissions averaging would allow some Group 1 HON points to remain uncontrolled (or undercontrolled) if the requisite emissions reductions are "made up" at other points. Emissions averaging in the HON consists of generating HAP emissions "credits" at some points to offset HAP emissions "debits" at other points. Credits can be generated by reducing HAP emissions at Group 2 HON points (since these points are not required to reduce their HAP emissions) or by reducing HAP emissions at Group 1 HON points beyond the reference control level. Debits are created when Group 1 HON points are left uncontrolled, or are controlled to a level below the reference control level.

The emission points included in a HON emissions average are chosen by the plant owner or operator. Group 1 points to which the reference control technologies are applied are neither credit nor debit generators; Group 2 HON points that are left uncontrolled are not debit generators, since they are not required to be controlled. Since the emission points described above are neither credit nor debit generators, they would not be included in HON emissions averaging; these points contribute to achieving the allowable HAP emission level by the application of reference control technologies where applicable (i.e., "point-by-point" application of controls). The emission points included in a HON emissions average contribute to achieving the allowable HAP emission level by generating enough HAP emissions credits to offset HAP emissions debits. More detail on credits and debits can be found in the proposed HON rule (57 FR 62744).

As previously mentioned, CTG's address some of the same emission points as the HON. Because sources may be subject to both the HON and the RACT rules developed by States, in some instances there may be control requirements from both rules for the same emission points. In these instances, the owner or operator of the source would traditionally be required to meet the more stringent of the two control requirements.

As explained above, an owner or operator can avoid the control requirements for some Group 1 HON points if emissions averaging is used to make up the requisite emissions reductions. However, the specific emission point that an owner or operator might wish to leave uncontrolled as part of a HON emissions average could still be subject to a RACT control requirement because of its VOC emissions. As a result, RACT rules could constrain the flexibility provided by HON emissions averaging. Because of this, the EPA began examining options to minimize constraints to flexibility with meeting the HON, while at the same time attempting not to jeopardize the VOC emission reductions that would be achieved by installing controls at Group 1 CTG points.

The first option considered by the EPA was to exempt from the CTG's all emission points that are affected by the HON. Emission points that are affected by the HON do not necessarily have to be controlled, but may have to meet other requirements in the regulation, such as reporting and recordkeeping. In other words, HON-affected emission points include those points that are either Group 1 or Group 2 for the HON, but not those that have no HAP emissions. This option of exemption would be acceptable if there were some way to ensure that all Group 1 CTG emission points achieved VOC reductions by the installation of controls at all Group 1 HON points. However, the possibility exists where a Group 2 HON emission point could be Group 1 for the CTG, and compliance with the HON for this point would not require the installation of controls. Therefore, this emission point would achieve no VOC reductions by complying with the HON. Even if the emission point were Group 1 for both the HON and the CTG, if the point emitted only a small amount of HAP's, it could be easily "averaged out" using emissions averaging in the HON. Again, this emission point would remain uncontrolled and no VOC reductions would be achieved. Finally, compliance with the HON may be achieved by the replacement of a HAP/VOC with a non-HAP VOC. Since no HAP's would be emitted after the replacement, compliance with the HON is achieved. However, no VOC reductions occur. For the reasons given above, the option of exempting the HON

points from the CTG's was considered unacceptable.

Another option considered was to allow VOC emissions trading. Under this option, some Group 1 CTG points could remain uncontrolled if VOC reductions are achieved elsewhere at the facility. For example, if HON emissions averaging is used to "average out" an emission point that is Group 1 for the CTG, this point may still remain uncontrolled if sufficient VOC reductions are achieved at other points. Such VOC emissions trading is currently allowed under certain conditions in the proposed Economic Incentive Program (EIP) rules (58 FR 11110).

EIP's are programs that States may choose to adopt in order to increase the flexibility and lower the cost of attaining and maintaining the NAAQS. Programs could include strategies such as emission fees, marketable permits, emissions trading, etc. VOC emissions trading under EIP's is an acceptable option for minimizing the constraints to HON compliance strategies that were discussed earlier.

The proposed EIP rules are general in nature due to the variety of EIP designs which may be submitted to the EPA for approval as part of a SIP. Today's guidance is intended to provide the States with a specific alternative to traditional point-by-point RACT compliance, namely VOC emissions averaging. Provisions for VOC emissions averaging among HON-affected points, which is the final option to be discussed, can be included in a State's RACT rule. If such provisions of a State's RACT rule comply with today's guidance, then they will be approvable as meeting RACT by the EPA. Such provisions could also be included in a State's EIP.

The final option considered was to recommend a presumptive alternative RACT (PAR) for emission points affected by both the HON and RACT rules. Similar to the HON requirement, PAR is met if the VOC emissions from the HON-affected points are reduced to a specified allowable level. This allowable level of VOC emissions is determined using the same methodology used in the proposed HON to calculate the allowable HAP emission level, except that VOC emissions from the CTG points are used in the calculation. In other words, the allowable VOC emission level for the HON-affected points is calculated by adding all Group 2 CTG point VOC emissions to the VOC emissions from all Group 1 CTG points that would continue to be emitted after the application of the CTG-recommended control technologies.

PAR is an alternative RACT in that it allows for VOC emission reduction strategies other than the point-by-point application of the controls recommended in the CTG's. PAR is presumptive in that if a State requires the alternative RACT as described in this guidance, then the EPA will approve such a requirement as meeting RACT for the HON-affected emission points at a plant without the State providing an economic or technological feasibility analysis.

As discussed earlier, the control strategy used to achieve the allowable HAP emission level is chosen by the plant owner or operator. These strategies may consist of a combination of point-by-point application of controls at some points and emissions averaging at other points. Regardless of the control strategy chosen for HON compliance, PAR is met if the VOC emissions from the HON-affected points are reduced to the allowable level.

If HON reference control technologies are applied at an emission point that is affected by a CTG, then this point is automatically meeting PAR, since the HON reference control technologies and the CTG-recommended technologies are identical. No demonstration of sufficient VOC emission reduction needs to be made, since the actual VOC emissions from this controlled point will always be equal to the allowable VOC emissions. However, if the emission point were Group 2 for the CTG, then the owner or operator may wish to use the VOC reductions achieved by the controls as credits to offset VOC emission debits at other HON-affected Group 1 CTG points. In this case, the VOC reductions from this point would be included in a calculation to ensure that the VOC credits outweigh the VOC debits. The calculation procedures used to estimate the emissions from HON points and the procedures used to average such emissions are contained in the proposed HON rule (57 FR 62744). These same procedures are to be used to calculate and average VOC emissions under PAR.

If a HON control strategy does not reduce the VOC emissions from the HON-affected points to the allowable level, then additional reductions would be necessary to achieve this level. These additional reductions could be obtained by reducing VOC emissions further at one or more of the HON-affected points. The reductions also could be obtained by reducing VOC emissions from Group 2 CTG points that are not affected by the HON. Reductions achieved at Group 1 CTG points that are not affected by the HON could not be used, unless the VOC emissions from these points are reduced beyond the level recommended by the CTG (e.g., by installing controls that are more effective than the recommended control technologies).

As explained earlier, the VOC reductions necessary to meet PAR are determined by theoretically applying the CTG-recommended control technologies to the Group 1 CTG points. However, a CTG has not been (and is not expected to be) issued for transfer operations. Therefore EPA would consider that PAR is met with no emission reductions from transfer operations. It should be noted that emissions from transfer operations are usually small compared to those from the other emission points.

It is important to note that equipment leak emissions are not included in emissions averaging in the proposed HON. The reasons for their exclusion are given in the preamble to the proposed HON rule. One of the reasons is that there is no fixed performance level in the equipment leaks standard in the HON; therefore, there would be no way to determine what level of emissions is "allowable". For the same reasons that equipment leak emissions are not included in HON emissions averaging, the EPA is proposing that these emissions not be included in the averaging under PAR.

Whether compliance with the HON is achieved by installing the reference control technologies at Group 1 HON points or by employing emissions averaging, all monitoring, reporting, and recordkeeping (MRR) requirements for emission points that meet PAR will be met if the HON MRR requirements are met for the same points. In this way, there will be no duplicative MRR requirements.

To this point, there has been no mention of the period of time within which a source must maintain its VOC emissions at or below the allowable level in order to meet PAR. When averaging emissions under the HON, a source must demonstrate that its actual HAP emissions are at or below the allowable HAP emission level on a annual basis. In addition to this demonstration, the source must demonstrate that it has not exceeded specified emission levels on a quarterly basis. Since the VOC "averaging" allowed under PAR is intended to be identical to the HAP averaging under the HON, the same demonstrations would have to be made for the VOC emissions. However, the purpose of VOC RACT rules is to reduce VOC emissions from sources located within ozone nonattainment areas so that these areas can achieve attainment status. Since the ozone NAAQS is a short-term

standard, a 24-hour averaging time is typically used to construct attainment demonstrations. To resolve the difference between averaging times, the EPA is proposing that the annual averaging time be used as long as sources can make a statistical showing that the longer averaging time will not interfere with demonstrations of reasonable further progress (RFP) and the attainment of short-term NAAQS. Since the HON affects mostly continuous processes, there should be little difficulty in demonstrating that emissions averaged on a annual basis are equivalent to those averaged on a daily basis. Guidance on making the equivalency demonstration between 24-hour averaging and longer-term averaging is currently being developed.

With the incorporation of PAR, the EPA is proposing that the Agency will approve a State's RACT determination if it meets one or more of the following emission reduction programs:

(1) The traditional presumptive RACT. The State requires that each Group 1 CTG point apply the control technology recommended in the CTG;

(2) PAR. The State requires that HON-affected points, after complying with the HON, also achieve, in the aggregate, VOC reductions sufficient to achieve the allowable VOC level. PAR can be applied whether compliance with the HON is achieved by applying reference control technologies at each HON Group 1 emission point, or by employing emissions averaging. If VOC reductions resulting from HON compliance are insufficient to achieve the allowable level, then additional reductions would be necessary to meet the requirement; or

(3) A case-by-case alternative RACT determination. The State requires emission reduction technology less stringent than that recommended in the CTG. In such instances of case-by-case RACT determinations, the State must complete a technological and economic feasibility analysis.

The State could also allow VOC averaging, such as described under PAR, and use their alternative technologies and applicability criteria as the basis for determining the necessary VOC reductions. If a State allows an emissions averaging program that does not comply with this guidance, then the State must submit the provision as an economic incentive program and meet the requirements outlined in the EIP rules.

A State could use any combination of the above options within one plant. For example, one part of a plant that emits no HAP's could apply option one or three at each emission point; another part of the plant that must comply with the HON could use the second option to comply with the RACT requirement.

Examples of the PAR are given below for several hypothetical chemical plants. As discussed above, there are several options available for an approvable RACT determination. Although each of these options could be used in the examples that follow, the examples are intended primarily to explain PAR.

It is important to note that the explanation given above of HON emissions averaging, though accurate, has been somewhat simplified. Omitted from the explanation was a description of discount factors. Reductions of HAP's made at certain emission points to avoid the control requirements at other points may be "discounted" by some factor to ensure that the environment does not suffer from the allowance of emissions averaging. As an example, if the discount factor were 0%, then a plant could avoid the control requirements on a one ton emission point by reducing emissions at other points by one ton. If the discount factor were 20%, then 1.2 tons of reductions would be necessary to avoid the control requirements at the one ton point. The proposed HON does not specify an exact figure for the discount factor but seeks comment on a factor in the range of 0% to 20%. Since no exact figure has been specified, and to keep the examples that follow as simple as possible, the discount factor is assumed to be zero.

The plant for the first example is shown in Figure 1. This plant consists of a Group 1 HON tank, Group 2 HON tank, Group 1 HON vent, Group 2 HON vent, and some Group 1 and Group 2 CTG emission points that are not affected by the HON. The Group 1 and Group 2 HON points are also Group 1 and Group 2 for the CTG, respectively. The HON-affected emission points in this example emit HAP/VOC, that is, HAP's which are also VOC's; the emission points that are not affected by the HON are those that emit only VOC's. In this example, the plant decides to comply with the HON by applying reference control technologies to all Group 1 HON points. Since these points apply the controls required by the HON, they are also meeting PAR.

In Example 1, the Group 2 HON points are also Group 2 for the CTG, and are not required to be controlled. The emission points at this plant that are not affected by the HON are required to meet whatever regulatory requirements apply to them.

The plant in the first example also will be used for the second example (Figure 2). In this example, the plant decides to comply with the HON by using a combination of point-by-point application of controls and emissions averaging. The chosen control strategy is to apply HON reference control technologies to the vents and leave the tanks uncontrolled. The allowable HAP emission level is 8.25 tons per year. The Group 2 HON tank and the Group 1 HON vent contribute to achieving the allowable HAP emission level by the point-by-point application of controls and are not included in HON emissions averaging because they are neither credit nor debit generators. The Group 1 HON tank is a debit generator, since it is left uncontrolled; the amount of the debit is 2.85 tons per year. The Group 2 HON vent is a credit generator; the amount of the credit is 2.94 tons per year. Since the HAP emission credit is greater than the HAP emission debit, this plant is in compliance with the HON.

Since the Group 1 HON points and Group 2 HON points are Group 1 and Group 2 for the CTG, respectively, and since all emissions from these points are HAP/VOC, the allowable level of VOC emissions is the same as the allowable HAP level, or 8.25 tons per year. Consequently, the HON-affected points are also meeting PAR with the chosen control strategy. As in Example 1, the emission points outside the HON-affected "source" are required to meet any applicable regulatory requirements.

The plant for the third example is shown in Figure 3. This plant is identical to those in the first two examples, except that the Group 2 HON tank is now Group 1 for the CTG. Where before this tank emitted five tons of a HAP that was also a VOC, in this example the tank emits only half a ton of HAP and 4.5 tons of non-HAP VOC. The plant decides to comply with the HON by applying reference control technologies to the Group 1 HON points. Since these points apply the controls required by the HON, they are also considered to be meeting PAR. The Group 2 vent can remain uncontrolled, since it is Group 2 for both the HON and the CTG. The Group 2 HON tank, however, must apply RACT controls since it is Group 1 for the CTG. Again, the effect of regulations on the emission points outside the HON-affected source is the same as in the previous examples.

In the fourth example (Figure 4) the plant used is identical to the one in Example 3. The plant decides to comply with the HON using a combination of point-by-point application of controls and emissions averaging. The chosen control strategy is to apply reference control technologies to the vents and leave the tanks uncontrolled. The plant is allowed to emit five percent of its Group 1 tank emissions, two percent of

its Group 1 vent emissions, and all of its Group 2 point emissions. So, the allowed HAP emissions are 3.75 tons per year. Although the allowable HAP emissions from this plant are not the same as the allowable HAP emissions from the plant in Example 2, the explanation of how this plant achieves the allowable HAP emission level is identical to the explanation given in that example.

The allowable VOC emission level is 3.5 tons per year. The Group 1 CTG vent contributes to achieving the allowable VOC emission level by the point-by-point application of controls and is not included in the VOC emissions averaging because it is neither a credit nor a debit generator. In this example, both tanks are debit generators since they are Group 1 for the CTG and are left uncontrolled; the VOC emission debits are 7.6 tons per year. The Group 2 CTG vent is a credit generator; the amount of the credit is 2.94 tons per year. Since there are not enough VOC emission credits to offset the debits, the chosen control strategy does not reduce VOC emissions to the allowable level, and 4.66 tons per year of VOC reductions must be achieved from other points. These VOC reductions could be obtained by controlling the HON-affected Group 1 CTG tank, or by controlling a Group 2 CTG point that is outside the HON-affected source. The reductions also could be obtained by controlling a Group 1 CTG point outside the HON-affected source to a level beyond that required by the CTG.

The purpose of this notice is to seek comment on guidance for emission points that are affected by both the HON and RACT rules. The rationale for recommending the PAR in this guidance is that, although applicability criteria may differ between the HON and CTG's, the control technologies recommended in the CTG's and required by the HON are the same. Therefore, if HON compliance is achieved by applying controls at all Group 1 HON points, these points would achieve VOC reductions equal to those that would be achieved by the application of the CTG-recommended controls. In the cases where emissions averaging is used to comply with the HON, the requirement of reductions in VOC emissions to a specified level prevents sacrificing any VOC reductions that normally would be achieved. In the event that a State's RACT rule contains control requirements that are more stringent than those in the CTG, PAR may not be an acceptable option. Nothing prevents States from requiring technology that is more stringent than the CTG-recommended controls. However, the EPA encourages States to allow PAR as an option to remove the disincentive to HON compliance.

As mentioned previously, today's notice contains guidance only for the interface between the HON and RACT rules. EPA is considering developing similar guidance for future CTG's where the source category is also being addressed by Section 112 rules. Comment is welcomed regarding similar guidance for the interface between future CTG's and Section 112 rules for categories such as Batch Processes, Aerospace, Shipbuilding and Repair, and Wood Furniture. There will be other opportunities for interested parties to comment as these CTG's and Section 112 rules are being developed.

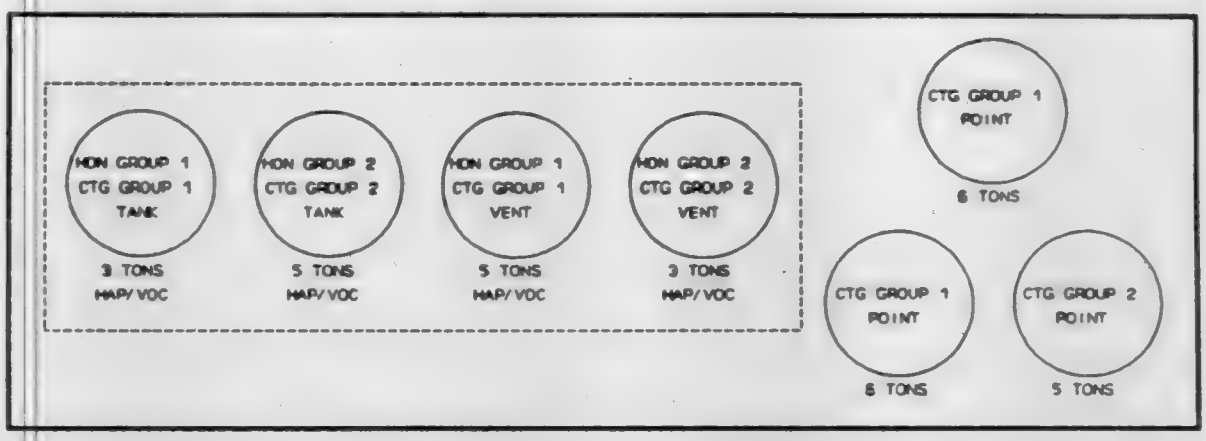
Dated: October 11, 1993.

Michael Shapiro,

Assistant Administrator for Air and Radiation.

BILLING CODE 6560-60-P

Figure 1: PAR Example 1.



THIS PLANT DECIDES TO COMPLY WITH THE HON BY INSTALLING THE REFERENCE CONTROL TECHNOLOGIES AT ALL GROUP 1 HON POINTS.

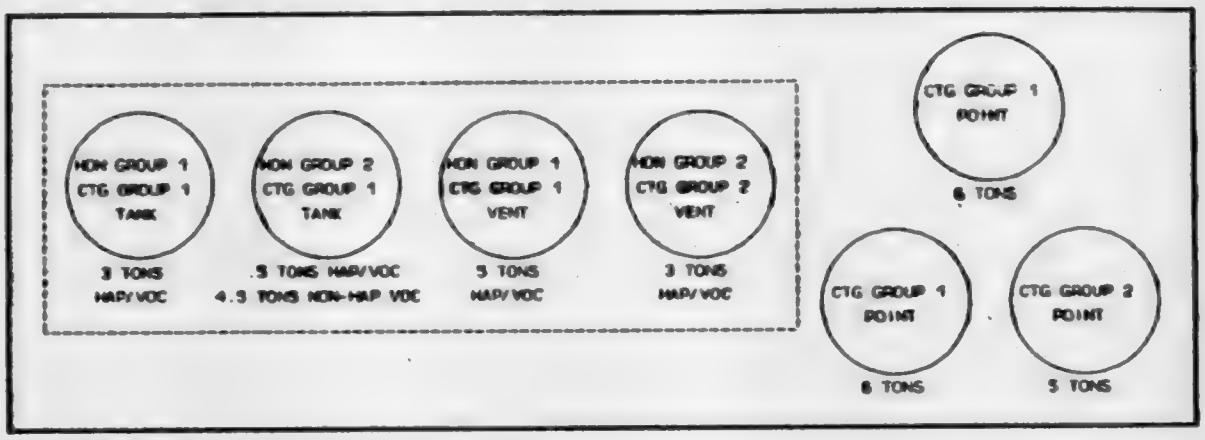
SINCE THE GROUP 1 HON POINTS INSTALL THE REQUIRED CONTROLS, THESE POINTS ARE ALSO CONSIDERED TO BE MEETING PAR.

SINCE THE GROUP 2 HON TANK AND VENT ARE GROUP 2 FOR THE CTG, THESE POINTS ARE NOT REQUIRED TO REDUCE THEIR EMISSIONS.

THE EMISSION POINTS THAT ARE NOT AFFECTED BY THE HON ARE REQUIRED TO MEET ANY APPLICABLE REGULATORY REQUIREMENTS.

COINCIDENTALLY, THE HON CONTROLS ARE IDENTICAL TO THE CTG CONTROLS FOR TANKS AND VENTS; THEREFORE, THIS PLANT IS ACTUALLY MEETING THE CTG "PRESUMPTIVE NORM" FOR RACT.

Figure 2: PAR Example 2.



THIS PLANT DECIDES TO COMPLY WITH THE HON USING A COMBINATION OF POINT-BY-POINT APPLICATION OF CONTROLS AND EMISSIONS AVERAGING. ACCORDING TO THE HON, THE PLANT IS ALLOWED TO EMIT:

$E_{ALLOWED\ HAP}$ = (.02)(GROUP 1 VENT HAP EMISSIONS) + GROUP 2 VENT HAP EMISSIONS + (.05)(GROUP 1 TANK HAP EMISSIONS) + GROUP 2 TANK HAP EMISSIONS

= (.02)(5 TPY) + 3 TPY + (.05)(3 TPY) + 5 TPY = 8.25 TPY.

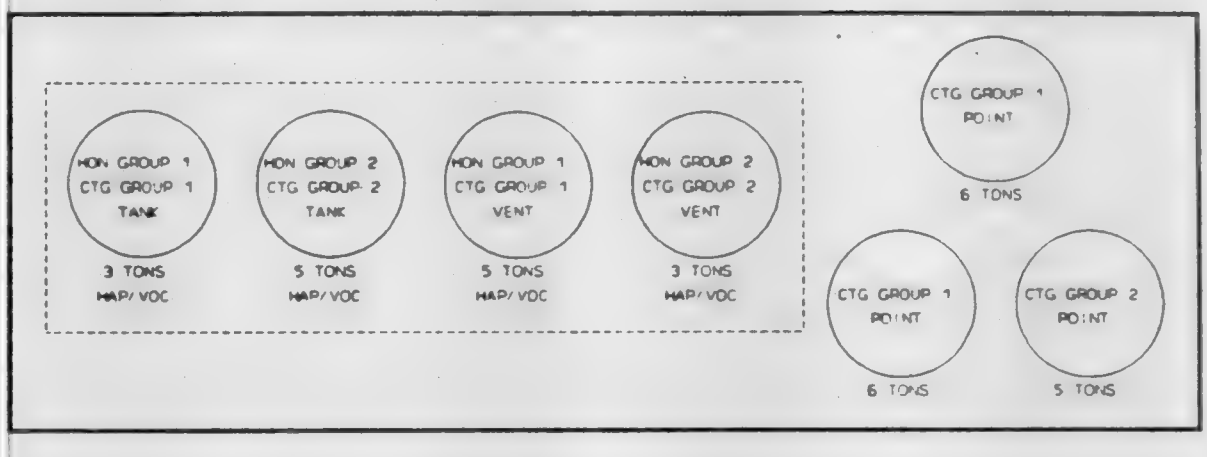
CONTROL STRATEGY: CONTROL BOTH VENTS TO 98% AND LEAVE THE TANKS UNCONTROLLED.

GROUP 2 HON TANK AND GROUP 1 HON VENT COMPLY POINT-BY-POINT.

GROUP 1 HON TANK AND GROUP 2 HON VENT ARE EMISSIONS AVERAGED:
DEBITS = (.95)(GROUP 1 HON TANK HAP EMISSIONS) = (.95)(3 TPY) = 2.85 TPY
CREDITS = (.98)(GROUP 2 HON VENT HAP EMISSIONS) = (.98)(3 TPY) = 2.94 TPY

SINCE HAP EMISSION CREDITS > HAP EMISSION DEBITS, THE PLANT IS IN COMPLIANCE WITH THE HON. SINCE ALL EMISSIONS FROM THE HON-AFFECTED POINTS ARE HAP/VOC, THESE POINTS ALSO MEET PAR (THE VOC EMISSION CALCULATIONS ARE THE SAME AS THE HAP CALCULATIONS ABOVE). AS IN THE PREVIOUS EXAMPLE, THE VOC POINTS THAT ARE NOT AFFECTED BY THE HON HAVE TO MEET ANY APPLICABLE REGULATORY REQUIREMENTS.

Figure 3: PAR Example 3.



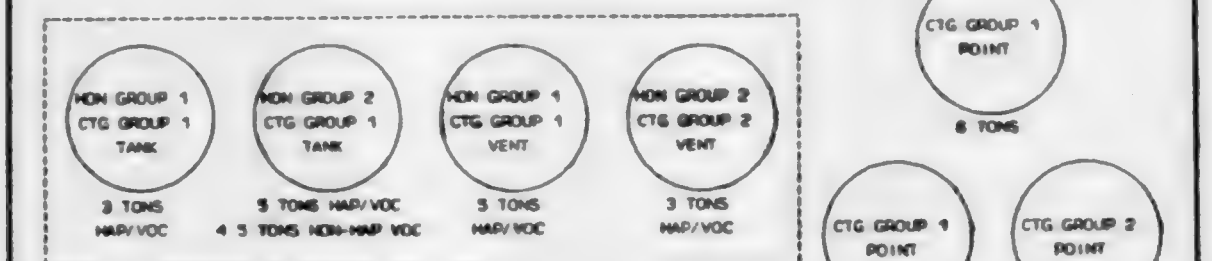
THIS PLANT DECIDES TO COMPLY WITH THE HON BY INSTALLING THE REFERENCE CONTROL TECHNOLOGIES AT ALL GROUP 1 HON POINTS.

SINCE THE GROUP 1 HON POINTS INSTALL THE REQUIRED CONTROLS, THESE POINTS ARE ALSO CONSIDERED TO BE MEETING PAR.

THE GROUP 2 HON TANK IS NOT REQUIRED TO REDUCE ITS EMISSIONS BECAUSE OF THE HON, BUT IT MUST INSTALL RACT CONTROLS SINCE IT IS GROUP 1 FOR THE CTG. THE GROUP 2 HON VENT IS ALSO GROUP 2 FOR THE CTG AND, THEREFORE, REQUIRES NO CONTROL.

THE EFFECT OF REGULATIONS ON THE EMISSION POINTS OUTSIDE THE HON-AFFECTED SOURCE IS THE SAME AS IN THE PREVIOUS EXAMPLES.

Figure 4: PAR Example 4.



THIS PLANT DECIDES TO COMPLY WITH THE HON USING A COMBINATION OF POINT-BY-POINT APPLICATION OF CONTROLS AND EMISSIONS AVERAGING. ACCORDING TO THE HON, THE PLANT IS ALLOWED TO EMIT:

$E_{ALLOWED\ HAP}$ = (.02)(GROUP 1 HON VENT HAP EMISSIONS) + GROUP 2 HON VENT HAP EMISSIONS + (.05)(GROUP 1 HON TANK HAP EMISSIONS) + GROUP 2 HON TANK HAP EMISSIONS

= (.02)(5 TPY) + 3 TPY + (.05)(3 TPY) + .5 TPY = 3.75 TPY.

THE PLANT WILL CONTROL BOTH VENTS TO 98%. THIS PLANT ACHIEVES THE ALLOWABLE HAP EMISSION LEVEL AS IN EXAMPLE 2.

THE VOC EMISSIONS ALLOWED TO BE EMITTED FROM THE HON-AFFECTED POINTS ARE:

$E_{ALLOWED\ VOC}$ = (.02)(GROUP 1 CTG VENT VOC EMISSIONS) + GROUP 2 CTG VENT VOC EMISSIONS + (.05)(GROUP 1 CTG TANK VOC EMISSIONS)

= (.02)(5 TPY) + 3 TPY + (.05)(3 TPY + 5 TPY) = 3.5 TPY.

THE GROUP 1 CTG VENT COMPLIES POINT-BY-POINT, SINCE THE HON REFERENCE CONTROL TECHNOLOGIES ARE APPLIED.

THE VOC EMISSIONS FROM THE TANKS AND THE GROUP 2 CTG VENT ARE TO BE AVERAGED:

DEBITS = (.95)(GROUP 1 CTG TANK VOC EMISSIONS) = (.95)(8 TPY) = 7.6 TPY
CREDITS = (.98)(GROUP 2 CTG VENT VOC EMISSIONS) = (.98)(3 TPY) = 2.94 TPY

THE VOC CREDITS DO NOT OUTWEIGH THE VOC DEBITS, AND 4.66 TPY OF VOC REDUCTIONS ARE NEEDED TO ACHIEVE THE ALLOWABLE VOC EMISSION LEVEL. THESE REDUCTIONS CAN BE OBTAINED BY CONTROLLING THE 5 TPY GROUP 1 CTG TANK WITHIN THE HON-AFFECTED SOURCE, OR BY CONTROLLING A GROUP 2 CTG POINT OUTSIDE THE HON-AFFECTED SOURCE.

[FR Doc. 93–25778 Filed 10–19–93; 8:45 am]
BILLING CODE 6560-50-C

[OPP-100132; FRL-4647-2]

Mitchell Systems Corporation; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Mitchell Systems Corporation has been awarded a contract to perform work for the EPA Office of Pesticide Programs (OPP), and will be provided access to certain information submitted to EPA under FIFRA and the FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to Mitchell Systems Corporation consistent with the requirements of 40 CFR 2.307(h)(3) and 40 CFR 2.308(i)(2), and will enable Mitchell Systems to fulfill the obligations of the contract.

DATES: Mitchell Systems Corporation will be given access to this information no sooner than October 25, 1993.

FOR FURTHER INFORMATION CONTACT: By mail: BeWanda B. Alexander, Program Management and Support Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 234, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305-5259.

SUPPLEMENTARY INFORMATION: Under Contract Number 68-D1-0124, Work Assignment Number 93-4, Mitchell Systems Corporation will provide administrative support assistance by tracking information submitted to EPA by pesticide manufacturers and exporters related to the sale of specific pesticides outside the United States. This contract involves no subcontractor.

OPP has determined that the contract herein described involves work that is being conducted in connection with FIFRA and that access by Mitchell Systems Corporation to information on all pesticide products is necessary for the performance of this contract. Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, 7, and 17 of FIFRA and under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(3), the contract with Mitchell Systems Corporation, prohibits use of the information for any purpose not specified in the contract; prohibits disclosure of the information in any form to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, Mitchell Systems Corporation is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to this contractor until the above requirements have been fully satisfied. Records of information provided to this contractor will be maintained by the Work Assignment Manager for this contract in OPP. All information supplied to Mitchell Systems Corporation by EPA for use in connection with this contract will be returned to EPA when Mitchell Systems Corporation has completed its work.

List of subjects

Environmental protection, Transfer of data.

Dated: September 27, 1993.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 93-25479 Filed 10-19-93; 8:45 am]

BILLING CODE 6560-50-F

[FRL-4792-3]

Illinois Adequacy Determination of State Municipal Solid Waste Permit Program

AGENCY: Environmental Protection Agency (Region 5).

ACTION: Notice of tentative determination on application of Illinois for full program adequacy determination, public hearing and public comment period.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste will comply with the revised Federal Criteria (40 CFR part 258). RCRA section 4005(c)(1)(C) requires the United States Environmental Protection Agency (U.S. EPA) to determine whether States have adequate permit programs for MSWLFs, but does not mandate issuance of a rule for such determinations. The U.S. EPA has drafted and is in the process of proposing the State/Tribal Implementation Rule (STIR) that will provide procedures by which the U.S. EPA will approve, or partially approve, State/Tribal MSWLF permit programs as applications are submitted. Thus, the approvals are not dependent on final promulgation of the STIR. Prior to promulgation of the STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State/Tribal MSWLF permit programs provide interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in States/Tribes with approved MSWLF permit programs can use the site-specific flexibility provided by the revised Federal Criteria to the extent the State/Tribe MSWLF permit program allows such flexibility. The U.S. EPA notes that regardless of the approval status of a State/Tribe and the permit status of any facility, the revised Federal Criteria will apply to all permitted and unpermitted MSWLF facilities.

Illinois applied for a determination of adequacy under section 4005 of RCRA. At the same time, Illinois developed legislation to facilitate full approval of its solid waste program. The legislation, Public Act 88-496, adds definitions and requirements that are no less stringent than portions of the revised Federal Criteria. In addition, the legislation allows the Illinois Environmental Protection Agency (IEPA) to incorporate and enforce, for an interim period, portions of the revised Federal Criteria as part of the Illinois solid waste permit program. The specific revised Federal Criteria that Illinois will incorporate are identified in the Illinois Solid Waste Management Permit Program Application for Determination of Adequacy, June 1993. The IEPA's interim period of enforcement expires when the U.S. EPA approves the Illinois solid waste program and reviews regulations adopted by the Illinois Pollution Control Board (IPCB).

The U.S. EPA reviewed Illinois' application and has made a tentative determination that the combination of Illinois' existing MSWLF permit program, the incorporation of certain portions of the revised Federal Criteria, and the interim period of IEPA

enforcement created by Public Act 88–496, are adequate to assure compliance with the revised Federal Criteria. The Illinois application for program adequacy determination is available for public review and comment.

The U.S. EPA has also received proposed IPCB regulations for review. See, *In the Matter of: RCRA Subtitle D Amendments*, Illinois Pollution Control Board, R93–10 (Identical in Substance Rule), dated September 15, 1993. Review of the IPCB regulations may occur prior to or after the U.S. EPA's final determination of program adequacy. If the U.S. EPA's review is completed prior to the final determination of program adequacy, and the IPCB regulations are equivalent to portions of the revised Federal Criteria, U.S. EPA may approve the Illinois solid waste program with the IPCB regulations. If the U.S. EPA's review is completed after the final determination of adequacy, U.S. EPA will approve the Illinois solid waste program with the interim period of IEPA enforcement as set forth in the Illinois application.

Although RCRA does not require the U.S. EPA to hold a hearing on any determination to approve a State/Tribal MSWLF permit program, Region 5 has scheduled an opportunity for a public hearing on this tentative determination. Details appear in the "DATES" section.

DATES: All comments on Illinois' application for a determination of adequacy must be received by U.S. EPA Region 5 by the close of business on November 29, 1993. A public hearing will be held at the Region 5 U.S. EPA office on November 29, 1993, starting at 1 p.m. IEPA will be present at the public hearing held by the U.S. EPA on this subject.

ADDRESSES: All written comments should be sent to the U.S. EPA address Attn: Mr. Andrew Tschampa, Mailcode HRP–8J. The location of the public hearing is U.S. EPA, Room 331, 77 West Jackson Boulevard, Chicago, Illinois.

Copies of Illinois' application for adequacy determination are available between 9 a.m. and 4 p.m. during normal working days at the following addresses for inspection and copying: IEPA, 2200 Churchill Road, Springfield, Illinois, and U.S. EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Mr. Andrew Tschampa at the above address or at (312) 886–0976.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, the U.S. EPA promulgated revised Federal Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that MSWLFs comply with the revised Federal Criteria. Subtitle D also requires in section 4005 that the U.S. EPA determine the adequacy of State MSWLF permit programs to ensure compliance with the revised Federal Criteria. To fulfill these requirements, the Agency has drafted and is in the process of proposing the State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

The U.S. EPA intends to approve State/Tribal MSWLF permit programs prior to the promulgation of the STIR. The U.S. EPA interprets the requirements for States or Tribes to develop adequate programs for permits or other forms of prior approval to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to the revised Federal Criteria. Next, the State/Tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, the U.S. EPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator who fails to comply with an approved MSWLF program.

The U.S. EPA will determine whether a State/Tribe has submitted an adequate program based on the interpretation outlined above. The U.S. EPA plans to provide more specific criteria for this evaluation when it proposes the State/Tribal Implementation Rule. The U.S. EPA expects States/Tribes to meet all of these requirements for all elements of a MSWLF permit program before it gives full approval to a MSWLF permit program.

B. State of Illinois

On March 31, 1993, Illinois submitted an application for program adequacy determination. The U.S. EPA has reviewed Illinois' application and has tentatively determined that the combination of the State's existing permit program, incorporation of certain portions of the revised Federal Criteria, and the interim period of IEPA enforcement created by Public Act 88–496, will ensure full compliance with all of the revised Federal Criteria.

The Illinois legislation, Public Act 88–496, contains the following elements that are considered equivalent to the revised Federal Criteria:

1. Permit exemption for on-site disposal facilities that dispose of household waste (as defined in 40 CFR 258.2) would end.
2. Required closure of facilities that stop receiving waste prior to October 9, 1993, within 6 months of the last receipt of wastes, or subject the facilities to all of the requirements of 40 CFR 258.1(d).
3. Creation of a new category of landfills based on the 40 CFR 258.2 "municipal solid waste landfill unit" definition.
4. Adoption of a definition of "existing MSWLF unit" that, in combination with other Illinois permit program requirements, is substantially similar to the definition contained in 40 CFR 258.2.
5. Adoption of definitions for "household waste," "lateral expansion," and "new MSWLF unit" that are equivalent to the 40 CFR 258.2 definitions.
6. Establishment of a post-closure care period for MSWLFs that is equivalent to the 40 CFR 258.61 requirements.
7. Removal of financial assurance exemption for local units of government (40 CFR 258.70).
8. Calculation of post-closure care financial assurance in current dollars (40 CFR 258.72).
9. Requirement that all operators of new and existing MSWLF units provide full financial assurance for corrective action (40 CFR 258.73).

The IEPA will use the interim enforcement authority granted by section 22.41 of Public Act 88–496 to incorporate the following elements of revised Federal Criteria into the Illinois permit program:

1. "Consideration of environmental laws" requirement (40 CFR 258.3).
2. "Airport safety" requirements (40 CFR 258.10) into portions of the Illinois permit program that currently do not include equivalent requirements.
3. "Floodplains" requirements (40 CFR 258.11) into portions of the Illinois permit program that currently do not include equivalent requirements.
4. "Unstable areas" requirements (40 CFR 258.15) into portions of the Illinois permit program that currently do not include equivalent requirements.
5. "Closure of existing MSWLFs" requirements (40 CFR 258.16) into portions of the Illinois permit program that currently do not include equivalent requirements.

6. "Procedures for excluding the receipt of hazardous waste" requirements (40 CFR 258.20) into portions of the Illinois permit program that currently do not include equivalent requirements.

7. "Explosive gas control" requirements (40 CFR 258.23) into portions of the Illinois permit program that currently do not include equivalent requirements.

8. "Run-on run-off control systems" requirements (40 CFR 258.26) into portions of the Illinois permit program that currently do not include equivalent requirements.

9. "Surface water" requirements (40 CFR 258.27) into portions of the Illinois permit program that currently do not include equivalent requirements.

10. "Liquids restrictions" requirements (40 CFR 258.28).

11. "Recordkeeping" requirements (40 CFR 258.29) into portions of the Illinois permit program that currently do not include equivalent requirements.

12. Elements of "design criteria" requirements (40 CFR 258.40).

13. Elements of "applicability" requirements (40 CFR 258.50).

14. Elements of "groundwater sampling and analysis" requirements (40 CFR 258.53).

15. Elements of "detection monitoring program" requirements (40 CFR 258.54).

16. Elements of "assessment monitoring program" requirements (40 CFR 258.55).

17. "Assessment of corrective measures" requirements (40 CFR 258.56).

18. "Selection of remedy" requirements (40 CFR 258.57).

19. "Implementation of the corrective action program" requirements (40 CFR 258.58).

20. Elements of "closure criteria" requirements (40 CFR 258.60).

21. Elements of "post-closure care" requirements (40 CFR 258.61).

22. Elements of "applicability and effective date" requirements (40 CFR 258.70).

23. Elements of "financial assurance for closure" requirements (40 CFR 258.71).

24. Elements of "financial assurance for post-closure care" requirements (40 CFR 258.72).

25. "Financial assurance for corrective action" requirements (40 CFR 258.73).

26. Elements of "allowable mechanisms" requirements (40 CFR 258.74).

The revised Federal Criteria that will be incorporated into the Illinois permit program (1–26 above) will eventually be replaced by equivalent regulations developed by the IPCB. As previously discussed, the U.S. EPA has received proposed IPCB regulations. If the U.S. EPA's review is completed prior to the final determination of program adequacy, and the IPCB regulations adequately incorporate the revised Federal Criteria listed above, U.S. EPA may approve the Illinois solid waste program with the IPCB regulations. If the U.S. EPA's review is completed after the final determination of adequacy, U.S. EPA will approve the Illinois solid waste program with the interim period of IEPA enforcement as set forth in the Illinois application.

The Illinois landfill design requirements consist of compacted earth or a composite liner (combination of compacted earth and a geomembrane liner). The Illinois permit program requires that operators use an acceptable groundwater contaminant transport model to demonstrate that Illinois groundwater standards are not being exceeded at the point of compliance. The point of compliance in Illinois is the property boundary or 100 feet from the edge of a unit, whichever is less. Meeting the Illinois groundwater standards (including the incorporation of Table I standards as allowed through the legislation) would ensure that the 40 CFR 258.40 Table I values will not be exceeded at the point of compliance in the uppermost aquifer. The Illinois design requirements are considered equivalent to the revised performance standards of 40 CFR 258.40 (a).

In its assessment monitoring program, Illinois will require the facility to test groundwater monitoring wells that exhibit concentrations of Appendix I constituents exceeding background levels for all of the Appendix II constituents. For subsequent sampling, the operator will be allowed to propose a subset of the Appendix II parameters for more frequent sampling of that well based on the results of the Appendix II sampling and leachate data. The surrounding monitoring wells in assessment monitoring would be tested for the Appendix II constituents detected in the triggered well and the leachate, and any remaining Appendix II constituents that have not yet been tested in the leachate. In addition, the leachate will be tested at least annually for all Appendix II parameters while the facility is in assessment monitoring, and any detected Appendix II parameters that are not already included in the groundwater monitoring program will then be added to the parameter list for all the groundwater monitoring wells at the facility. The Illinois legislation allows IEPA to incorporate these elements into its groundwater monitoring program. With the incorporation of these elements, the Illinois groundwater monitoring program is considered to be equivalent to 40 CFR 258.55.

The Illinois program requires all new and existing facilities to have a final cover system consisting of a low permeability layer. The final cover system must achieve a permeability of 1 x 10^{-7} centimeters per second or less, the same permeability required for the compacted earth liner. The Illinois legislation allows IEPA to require operators to demonstrate reductions in infiltration rates equivalent to the design criteria in 40 CFR 258.60(a) through use of the U.S. EPA HELP model. This approach is considered to be equivalent to 40 CFR 258.60.

The U.S. EPA will hold a public hearing on its tentative decision, and comments can be submitted as transcribed from the discussion at the hearing or in writing at the time of the hearing. Written public comment concerning the U.S. EPA's tentative determination will be accepted until November 29, 1993. Copies of Illinois' application are available for inspection and copying at the location indicated in the "ADDRESSES" section of this notice.

The U.S. EPA will consider all public comments on its tentative determination during the public comment period and public hearing. Issues raised by those comments may be the basis for a determination of inadequacy for the Illinois' program. The U.S. EPA will make a final decision on whether or not to approve Illinois' program by January 15, 1994, and will give notice of it in the **Federal Register**. The notice will include a summary of the reasons for the final determination and responses to all major comments.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce the revised Federal Criteria in 40 CFR part 258 independent of any State/Tribal enforcement program. As the U.S. EPA explained in the preamble to the final revised Federal Criteria, the U.S. EPA expects that any owner or operator complying with the provisions in a State/Tribal program approved by the U.S. EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this tentative approval will not have a significant impact on a substantial number of small entities. It does not impose any new burdens on small entities. This proposed notice, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of section 4005 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6946.

Dated: October 8, 1993.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 93–25757 Filed 10–19–93; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4791–6]

Underground Injection Control Program Hazardous Waste Disposal Injection Restrictions; Petition for Exemption—Class I Hazardous Waste Injection; Oxy Petrochemicals, Incorporated

AGENCY: Environmental Protection Agency.

ACTION: Notice of final decision on petition reissuance.

SUMMARY: Notice is hereby given that reissuance of an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act has been granted to Oxy Petrochemicals, Inc., for the Class I injection wells located at Corpus Christi, Texas. As required by 40 CFR part 148, the company has adequately demonstrated to the satisfaction of the Environmental Protection Agency by petition and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final decision allows the underground injection by Oxy Petrochemicals, Inc., of the specific restricted hazardous waste identified in the petition for reissuance, into the Class I hazardous waste injection wells at the Corpus Christi, Texas facility specifically identified in the reissued petition, for as long as the basis for granting an approval of this petition remains valid, under provisions of 40 CFR 148.24. As required by 40 CFR 124.10, a public notice was issued August 13, 1993. The public comment period ended on September 27, 1993. No comments were recieved during the public comment period. This decision constitutes final Agency action and there is no Administrative appeal.

DATES: This action is effective as of October 8, 1993.

ADDRESSES: Copies of the reissued petition and all pertinent information relating thereto are on file at the following location: Environmental Protection Agency, Region 6, Water Management Division, Water Supply Branch (6W-SU), 1445 Ross Avenue, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Mac Weaver, Chief UIC Programs Section, EPA—Region 6, telephone (214) 655–7160.

Jack V. Ferguson,

Acting Director, Water Management Division (6W).

[FR Doc. 93–25762 Filed 10–19–93; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4792–1]

New Source Review Reform Subcommittee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: On July 7, 1993, the EPA gave notice of the establishment of the New Source Review (NSR) Reform Subcommittee (Subcommittee) (58 FR 36407) under the auspices of the Clean Air Act Advisory Committee (55 FR 46993) which was established pursuant to the Federal Advisory Committee Act (5 U.S.C. app I). The Subcommittee's purpose is to provide independent advice and counsel to the EPA on policy and technical issues associated with reforming the NSR rules.

OPEN MEETING DATES: Notice is hereby given that the Subcommittee's open meeting, originally scheduled for September 27–28, 1993 (58 FR 46190), has been rescheduled for November 8–9, 1993, from 8 a.m. to 5 p.m., at the Sheraton University Center, 2800 Middleton Avenue, Durham, North Carolina 27705 (telephone (919) 383–8575; telefax (919) 383–8495). The September 1993 meeting was canceled (58 FR 50360) at the Subcommittee's request for additional time. Due to the size of the meeting room, seating is limited to approximately 100 individuals and will be made available on a first come, first serve basis.

The Subcommittee will review draft options and recommendations developed by subgroups on specific areas regarding Class I area impacts and best available control technology. In addition, the Subcommittee will address NSR applicability-related issues.

INSPECTION OF COMMITTEE DOCUMENTS: Documents relating to the above-noted topics will be publicly available at the meeting. Thereafter, these documents, together with transcript of the Subcommittee's meeting, will be available for public inspection in EPA Air Docket No. A–90–37. The docket is available for public inspection and copying between 8:30 a.m. to 12 noon and 1:30 to 3:30 p.m., weekdays, at EPA's Air Docket (LE–131), room M–1500, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

The transcript will also be available to the public through EPA's Office of Air Quality Planning and Standards (OAQPS) Technology Transfer Network (TTN) electronic bulletin board. For assistance in accessing the OAQPS TTN, contact the systems operator at (919) 541–5384 in Research Triangle Park, North Carolina during normal business hours.

FOR FURTHER INFORMATION: For questions concerning the Subcommittee or its activities, please contact Mr. David Solomon, Designated Federal Official to the Subcommittee at (919) 541–5375, telefax (919) 541–5509, or by mail at U.S. EPA, OAQPS, Air Quality Management Division (MD–15), Research Triangle Park, North Carolina 27711.

Dated: October 7, 1993.

John S. Seitz,

Director, Office of Air Quality Planning and Standards.

[FR Doc. 93–25786 Filed 10–19–93; 8:45 am]

BILLING CODE 6560–50–P

[OPP–66184; FRL 4647–1]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by January 18, 1994, orders will be issued cancelling all of these registrations.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (H7502C),

Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 216, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, 703–305–5761.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time, request that any of its pesticide registrations be cancelled. The Act further provides that EPA must publish a notice of receipt of any such request in the **Federal Register** before acting on the request.

II. Intent to Cancel

This Notice announces receipt by the Agency of requests to cancel some 67 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1.

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR VOLUNTARILY CANCELLATION

Registration No.	Product Name	Chemical Name
000192–00045	Destruxol Tender Leaf Plant Spray	Nicotine
000352–00523	Du pont Avatar Herbicide	2-Chloro-*N*-(((4-methoxy-6-methyl-1,3,5-triazin-2-yl)amino)carbonyl) Methyl 2-((((4-methoxy-6-methyl-1,3,5-triazin-2-yl)methylamino)
000352 AZ–79–0004	Du Pont Benlate Fungicide Wettable Powder	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352 DE–81–0002	Du Pont Benlate Fungicide Wettable Powder	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352 FL–78–0051	Du Pont Benlate Fungicide Wettable Powder	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352 FL–80–0026	Du Pont Benlate Fungicide Wettable Powder	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352 FL–84–0029	Du Pont Benlate Fungicide Wettable Powder	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352 GA–77–0004	Du Pont Benlate Fungicide Wettable Powder	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352 GA–80–0025	Du Pont Benlate Fungicide Wettable Powder	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352 GA–80–0026	Du Pont Benlate Fungicide Wettable Powder	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352 ID–79–0019	Du Pont Benlate Fungicide Wettable Powder	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352 ID–81–0039	Du Pont Benlate Fungicide Wettable Powder	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352 ID–85–0003	Du Pont Benlate Fungicide Wettable Powder	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352 IL–81–0010	Du Pont Benlate Fungicide Wettable Powder	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352 IL–82–0016	Du Pont Benlate Fungicide Wettable Powder	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352 KY–80–0021	Dupont Benlate Fungicide	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352 LA–82–0017	Du Pont Benlate Fungicide Wettable Powder	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352 MD–81–0012	Du Pont Benlate Fungicide Wettable Powder	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352 MI–78–0001	Du Pont Benlate Fungicide Wettable Powder	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352 MI–82–0005	Du Pont Benlate Fungicide Wettable Powder	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352 MO–81–0017	Du Pont Benlate Fungicide	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352 MO–82–0022	Du Pont Benlate Fungicide Wettable Powder	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352 MS–77–0004	Du Pont Benlate Fungicide Wettable Powder	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352 MS–85–0003	Du Pont Benlate Fungicide Wettable Powder	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352 NC–81–0031	Du Pont Benlate Fungicide Wettable Powder	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352 NM–81–0019	Du Pont Benlate Fungicide Wettable Powder	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352 NY–77–0004	Du Pont Lannate Methomyl Insecticide	*S*-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
000352 NY–81–0005	Du Pont Benlate Fungicide Wettable Powder	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352 OH–78–0005	Du Pont Benlate Fungicide Wettable Powder	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352 OR–78–0021	Du Pont Benlate Fungicide Wettable Powder	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352 OR–79–0030	Du Pont Benlate Fungicide Wettable Powder	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352 OR–80–0080	Du Pont Benlate Fungicide Wettable Powder	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352 PA–77–0005	Du Pont Lannate L Methomyl Insecticide	*S*-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
000352 PA–77–0006	Du Pont Lannate Methomyl Insecticide	*S*-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
000352 PA–78–0008	Du Pont Benlate Fungicide	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352 PA–81–0012	Du Pont Benlate Fungicide Wettable Powder	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352 SC–77–0002	Du Pont Benlate Fungicide Wettable Powder	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352 VT–80–0004	Du Pont Lannate Methomyl Insecticide	*S*-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
000352 WA–79–0016	Du Pont Benlate Fungicide Wettable Powder	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR VOLUNTARILY CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
000352 WA–79–0083	Du Pont Benlate Fungicide Wettable Powder	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352 WA–81–0035	Du Pont Benlate Fungicide Wettable Powder	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352 WA–82–0002	Du Pont Benlate Fungicide Wettable Powder	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352 WA–82–0037	Du Pont Benlate Fungicide Wettable Powder	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352 WA–85–0010	Du Pont Benlate Fungicide Wettable Powder	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352 WA–91–0020	Du pont Glean Herbicide	2-Chloro-*N*-(((4-methoxy-6-methyl-1,3,5-triazin-2-yl)amino)carbonyl)
000475–00069	Liquid Sani-Flush	Oxalic acid
		Hydrogen chloride
000475–00199	Sani-Flush Liquid Disinfectant Toilet Bowl Cleaner	Oxalic acid
		Hydrogen chloride
		Alkyl* dimethyl benzyl ammonium chloride *(60%C_{14}, 30%C_{16}, 5%C_{18}, 5%C_{12})
		Alkyl* dimethyl ethylbenzyl ammonium chloride *(68%C_{12}, 32%C_{14})
000475–00225	Germicidal Sani-Flush Toilet Bowl Cleaner Extra Strength	Sodium bisulfate
000550–00178	Liquid Bleach Industrial Grade	Sodium hypochlorite
000602–00182	Purina Chlorine Sanitizer-0-40	Sodium dichloro-s-triazinetrione
000602–00185	Purina Chlorinating Sanitizer 0-10	Sodium dichloro-s-triazinetrione
000618 WA–81–0062	Agri-Strep (Streptomycin Sulfate Agricultural Merck) T	Streptomycin sulfate
		Streptomycin sulfate
001007 WA–82–0038	Mycoshield Brand of Agricultural Terramycin	Calcium oxytetracycline
002548–00051	Max Kill 3% Malathion with Synergized Pyrethrins	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
		(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%
		Pyrethrins
003125–00058	Di-Syston 5% Granular Insecticide	*O,O*-Diethyl *S*-(2-(ethylthio)ethyl) phosphorodithioate
003125–00061	Di-Syston 10% Granular Systemic Insecticide	*O,O*-Diethyl *S*-(2-(ethylthio)ethyl) phosphorodithioate
003125–00119	Di-Syston Liquid Concentrate Systemic Insecticide	*O,O*-Diethyl *S*-(2-(ethylthio)ethyl) phosphorodithioate
003125–00130	Di Syston 5% Granular Septemic Insecticide for Repackage	*O,O*-Diethyl *S*-(2-(ethylthio)ethyl) phosphorodithioate
003125–00142	Morestan 2% Dust	6-Methyl-2,3-quinoxalinedithiol cyclic *S,S*-dithiocarbonate
004816–00067	Rotenone Solution FK-11	(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%
		Rotenone
		Cube Resins other than rotenone
005185–00313	Algidize Swimming Pool Algicide	2-Chloro-4,6-bis(ethylamino)-s-triazine
005905–00095	Helena Brand 2,4-D Ester 4	Butyl 2,4-dichlorophenoxyacetate
		Isopropyl 2,4-dichlorophenoxyacetate
005905–00096	Helena Brand 2,4-D Ester 6	Butyl 2,4-dichlorophenoxyacetate
		Isopropyl 2,4-dichlorophenoxyacetate
008590–00508	Agway Garden Weeder II	2-Chloro-4,6-bis(ethylamino)-s-triazine
010370–00250	Pool Algae 80	2-Chloro-4,6-bis(ethylamino)-s-triazine
055947 SD–91–0003	Banvel Herbicide	Dimethylamine 3,6-dichloro-o-anisate
065655–00001	Alpha MCPA-40	Diethanolamine 2-methyl-4-chlorophenoxyacetate

Unless a request is withdrawn by the registrant within 90 days of publication of this notice, orders will be issued cancelling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 90-day period. The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA Company Number.

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000192	Dexol Industries, 1450 W. 228th St, Torrance, CA 90501.
000352	E. I. Du Pont De Nemours & Co, Inc., Barley Mill Plaza, Walker's Mill, Wilmington, DE 19880.
000475	Reckitt & Coleman Household Products, 1655 Valley Rd, Wayne, NJ 07474.
000550	Van Waters & Rogers, Inc., Subsidiary of Univar, Box 34325, Seattle, WA 98104.
000602	Purina Mills, Inc., Box 66812, St Louis, MO 63166.
000618	Merck & Co Inc., Box 450, Three Bridges, NJ 08887.
001007	Pfizer Inc. - Specialty Chemicals, 235 E. 42nd St, New York, NY 10017.
002548	Research Products Co., Division of Mcshares, Inc., Box 1460, Salina, KS 67402.
003125	Miles Inc., Agriculture Division, 8400 Hawthorn Rd., Box 4913, Kansas City, MO 64120.
004816	Roussel UCLAF Corp., 95 Chestnut Ridge Rd, Montvale, NJ 97645.
005185	Bio-Labs Inc., Box 1489, Decatur, GA 30031.
005905	Helena Chemical Co, 6075 Popular Ave - Suite 500, Memphis, TN 38119.
008590	Agway Inc., c/o Universal Cooperatives Inc., Box 460, Minneapolis, MN 55440.
010370	Roussel UCLAF Corp., 95 Chestnut Ridge Rd, Montvale, NJ 07645.
065655	Gilmore Associates, 5501 Murray Rd, Memphis, TN 38119.

III. Loss of Active Ingredients

Unless these requests for cancellation are withdrawn, one pesticide active ingredient will no longer appear in any registered products. Those who are concerned about the potential loss of this active ingredient for pesticidal use are encouraged to work directly with the registrants to explore the possibility of their withdrawing the request for cancellation. This active ingredient is listed in the following Table 3 with the EPA Company Number of their registrant.

TABLE 3. — ACTIVE INGREDIENTS WHICH WOULD DISAPPEAR AS A RESULT OF REGISTRANTS' REQUESTS TO CANCEL

CAS No.	Chemical Name	EPA Company No.
20405–19–0	Diethanolamine 2-methyl-4-chlorophenoxy-acetate	065655

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before January 18, 1994. This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

V. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1–year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in **Federal Register** No. 123, Vol. 56, dated June 26, 1991. Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s). Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests, product registrations.

Dated: September 27, 1993.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 93–25640 Filed 10–19–93; 8:45 am]
BILLING CODE 6560–50–F

[SW–FRL–4789–8]

RCRA Ground-Water Monitoring: Draft Technical Guidance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of guidance manual.

SUMMARY: The Environmental Protection Agency ("EPA" or "Agency") announces the availability of a guidance manual entitled "RCRA Ground-Water Monitoring: Draft Technical Guidance." This manual was designed to assist owners and operators of permitted hazardous waste land disposal facilities in implementing the ground-water monitoring regulations for regulated units contained in 40 CFR part 264

subpart F and the permitting standards of 40 CFR part 270. The manual is intended to update and supplement information contained in other sources of EPA guidance such as the Technical Enforcement Guidance Document (TEGD) and Chapter Eleven of the Agency's manual titled Test Methods for Evaluating Solid Waste, commonly known as "SW–846".

"RCRA Ground-Water Monitoring: Draft Technical Guidance" contains seven chapters. The first chapter is an introduction to the background and scope of the manual. Chapter Two describes the basic approach that an owner/operator should take in designing a detection monitoring program. The third chapter discusses the importance of defining requirements and technical objectives prior to initiating a ground-water monitoring program. Chapter Four identifies techniques and procedures for characterizing site hydrogeology prior to installing a ground-water monitoring well system. The fifth chapter discusses the design of detection monitoring systems in aquifers dominated by flow through porous media and in aquifers dominated by conduit flow. Chapter Six provides guidance regarding monitoring well design and construction. The seventh chapter of the guidance manual discusses ground-water sampling and analysis.

DATES: Comments on this guidance manual must be submitted on or before February 17, 1994.

ADDRESSES: Commenters must send an original and two copies of their comments to: Docket Clerk, Office of Solid Waste (OS–305), Docket No. [F–93–GWMA–FFFFF], U.S. Environmental Protection Agency Headquarters, 401 M Street, SW., Washington, DC 20460. Comments should include the docket number [F–93–GWMA–FFFFF]. The public docket is located in room M2427 at EPA Headquarters and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Appointments may be made by calling (202) 260–9327. Copies cost $0.15 per page. Charges under $25.00 are waived. In addition, this document is available for purchase through the National Technical Information Service (NTIS), U.S. Department of Commerce, Springfield, Virginia 22161, telephone (703) 487–4600: "RCRA Ground-Water Monitoring: Draft Technical Guidance" (NTIS #PB93–139–350).

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/Superfund Hotline, Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, telephone (800) 424–9346, TDD (800) 553–7672 (hearing impaired); in the Washington, DC metropolitan area the number is (703) 412–9810, TDD (703) 486–3323.

For technical information contact Jim Brown, Office of Solid Waste (5303W), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, telephone (703) 308–8656. Please note that copies of this document are available to government employees through the RCRA docket (EPA/530–R–93–001). Non-government employees should contact NTIS to acquire a copy (NTIS #PB93–139–350).

SUPPLEMENTARY INFORMATION: The hazardous waste management regulations for permitted facilities (40 CFR part 264) were promulgated in July 1982 under Subtitle C of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), and the Hazardous and Solid Waste Amendments of 1984 (HSWA). Subpart F of these regulations, Releases From Solid Waste Management Units, sets forth performance standards for ground-water monitoring systems at permitted hazardous waste land disposal facilities. These standards require owners and operators of land-based hazardous waste disposal facilities to sample and analyze ground water at specific time intervals to determine whether or not hazardous wastes or constituents released from these facilities are contaminating ground water.

The guidance manual entitled "RCRA Ground-Water Monitoring: Draft Technical Guidance" was prepared by the Office of Solid Waste of the United States Environmental Protection Agency ("EPA" or "Agency") to provide guidance for implementing the ground-water monitoring regulations for regulated units contained in 40 CFR part 264 subpart F and the permitting standards of 40 CFR part 270. The manual also provides guidance to owners and operators of treatment, storage, and disposal facilities (TSDFs) that are required to comply with the requirements of 40 CFR part 264 subparts J (Tank Systems), K (Surface Impoundments), L (Waste Piles), N (Landfills), and X (Miscellaneous Units). While sections of the manual can be used as guidance for implementation of the ground-water monitoring regulations for interim status facilities contained in 40 CFR part 265, the methods and procedures presented in this guidance manual are designed for permitted facilities that are subject to the part 264 regulations.

The guidance manual is intended to update and supplement information contained in other sources of EPA guidance such as the Technical Enforcement Guidance Document (TEGD, GPO:055–000–00–260–6) and Chapter Eleven of the Agency's manual titled Test Methods for Evaluating Solid Waste (GPO:955–001–00000–1), commonly known as "SW–846". The TEGD provides guidance for interim status facilities that have not received an operating permit and are thus subject to the requirements specified under 40 CFR part 265. Whereas the TEGD was written primarily for the use of enforcement officials when implementing the interim status provisions, "RCRA Ground-Water Monitoring: Draft Technical Guidance" was written to assist owners and operators of permitted facilities in the design and implementation of ground-water monitoring programs. Although Chapter Eleven of SW–846 was written for use by owners and operators of permitted facilities, Chapter Eleven of SW–846 was not intended to function as a comprehensive guide for ground-water monitoring; rather, it is a brief listing of ground-water monitoring protocols.

The guidance manual contains seven chapters. The first chapter is an introduction to the background and scope of the document. Chapter Two describes the basic approach that an owner/operator should take in designing a detection monitoring program. Chapter Three discusses the importance of defining requirements and technical objectives prior to initiating a ground-water monitoring program.

Chapter Four of the guidance manual identifies techniques and procedures for characterizing site hydrogeology prior to installing a ground-water monitoring well system. Chapter Four presents various methods for characterizing the geology of a site, such as the implementation of a subsurface boring program and geophysical techniques. This chapter also discusses methods for characterizing ground-water flow beneath a site, including ground-water flow direction and ground-water flow rate. In addition, Chapter Four explains how hydrogeologic data should be presented.

Chapter Five discusses the design of detection monitoring systems in aquifers dominated by flow through porous media and in aquifers dominated by conduit flow. Chapter Five discusses the vertical and lateral placement of monitoring wells, well screen lengths, and the use of springs as monitoring points.

Chapter Six provides guidance on monitoring well design and construction. It provides an overview of monitoring well drilling methods and a

discussion of factors to consider in the selection of well casing and screen materials. Chapter Six also discusses how to design well intakes, install annular sealants, complete wells at the surface, and develop monitoring wells.

Chapter Seven of the guidance manual discusses ground-water sampling and analysis. This chapter focuses on the elements of the Quality Assurance Project Plan (QAPjP) that should be prepared by the owner/operator to describe ground-water sample collection and analysis activities. Chapter Seven discusses pre-sampling activities, such as determining sampling frequency, measuring static water elevation, detecting and sampling immiscible layers, and well purging. Chapter Seven also discusses the selection and use of ground-water sampling equipment, containerizing and preserving samples, chain-of-custody procedures, and Quality Assurance/Quality Control considerations.

Dated: August 30, 1993.

Walter W. Kovalick, Jr.,

Assistant Surgeon General, USPHS, Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 93–25758 Filed 10–19–93; 8:45 am]

BILLING CODE 6560-60-P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Appraisal Subcommittee; Agency Form Submitted for OMB Review

AGENCY: Appraisal Subcommittee, Federal Financial Institutions Examination Council.

ACTION: Notice.

SUMMARY: The Appraisal Subcommittee of the Federal Financial Institutions Examination Council ("ASC") has sent to the Office of Management and Budget the following proposal for the collection of information under the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be received on or before November 19, 1993.

ADDRESSES: Send comments to Paul N. Romani, Associate Director for Administration, Appraisal Subcommittee, 2100 Pennsylvania Avenue, NW., suite 200, Washington, DC 20037, and Gary Waxman, Clearance Officer, Office of Management and Budget, New Executive Office Building, room 3228, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Marc L. Weinberg, General Counsel, Appraisal Subcommittee, 2100 Pennsylvania Avenue, NW., suite 200, Washington, DC 20037, or at (202) 634–6520, from whom copies of the information collection and supporting documents are available.

Summary of Proposal(s)

(1) *Collection title:* 12 CFR part 1102, subpart D, §§ 1102.305, *Availability of interpretive, no-action and other written communications;* 1102.305, *Confidential Treatment Procedures;* and 1102.307, *Right to petition for issuance, amendment and repeal of rules of general application.*

(2) *Form(s) submitted:* Not applicable.

(3) *Frequency of collection:* On occasion.

(4) *Use:* The information will be used by the ASC and its staff in determining whether to grant a person's request for confidential treatment of information subject to a FOIA request and to grant a person's petition for the ASC to engage in the rulemaking. The ASC is required to adopt these rules to implement 5 U.S.C. 552 and 553(e) and EO 12600.

(5) *Estimated number of respondents:* 103.

(6) *Frequency of response:* Once.

(7) *Estimated hours for respondents to provide information:* 30 minutes per respondent.

(8) *Estimated total annual reporting and recordkeeping burden:* 51.5 hours.

Dated: October 15, 1993.

By the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

Edwin W. Baker,

Executive Director.

[FR Doc. 93–25756 Filed 10–19–93; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Lykes/Matson Cooperative Working Agreement

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203–011311–001

Title: Lykes/Matson Cooperative Working Agreement

Parties:

Lykes Bros. Steamship Co., Inc.
Matson Navigation Company

Synopsis: The proposed amendment provides that the parties shall submit annual reports concerning the number of containers, amount of breakbulk cargo moved by each carrier inbound and outbound, the amount of each carrier's container and breakbulk capacity available to shippers both inbound and outbound, and any reports or studies prepared by or for either party or the Agreement itself.

Dated: October 15, 1993.

By Order of the Federal Maritime Commission.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 93–25724 Filed 10–19–93; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 092093 AND 100193

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Jones Apparel Group, Inc., Crystal Brands, Inc., T–M Ventures, Inc	93–1625	09/20/93
Ford Motor Company, Great Western Financial Corporation, Great Western Bank, a Federal Savings Bank	93–1701	09/20/93
Noble Affiliates, Inc., RM Properties Inc., FM Properties Operating Co	93–1720	09/20/93
Robert F. X. Sillerman, R. Steven Hicks, Capstar Communications, Inc	93–1725	09/20/93
Deluxe Corporation, PaperDirect, Inc., PaperDirect, Inc	93–1653	09/22/93
Snap-on Tools Corporation, Merrill Lynch & Co., Inc., J.H. Williams Industrial Products, Inc	93–1671	09/23/93
Global Stone Corporation, Penn Virginia Corporation, Tenn Luttrel Company	93–1705	09/23/93
Robert Shaye, R.E. Turner, Turner Broadcasting System, Inc	93–1722	09/23/93
Homer I. Altice, Reebok International Ltd., Ellesse U.S.A., Inc	93–1728	09/23/93
Tele-Communications, Inc., Tele-Communications, Inc., American Mobile Systems Incorporated	93–1729	09/23/93
Golder, Thoma, Cressey Fund III Limited Partnership, Mr. Jeffrey M. Gamble, Bell Funeral Home, Inc., et al	93–1730	09/20/93
Pacific Electric Wire & Cable Col, Ltd., John E. Harris, Newmark Home Corporation	93–1743	09/23/93
Harmon International Industries, Inc., GiroCredit Bank Aktiengesellschaft der Sparkassen, AKG Akustische u. Kino-Gerate Gesellschaft M.B.H.	93–1749	09/23/93
Gerald W. Schwartz, MEI Diversified Inc., MEI Salon Corp	93–1587	09/24/93
WMX Technologies, Inc., Durward W. Jackson, Waste Away Group, Inc	93–1632	09/24/93
Sonat Inc., Mobil Corporation, Mobil Producing Texas & New Mexico, Inc.	93–1669	09/24/93
Tecumseh Products Company, General Electric Company, General Electric Company	93–1713	09/24/93
Harleysville Mutual Insurance Company, American Community Mutual Insurance Company, Lake States Insurance Company, Lake States Insurance Company	93–1746	09/24/93
Finanziaria De Agostini s.r.l., Maxwell Communication Corporation plc, P.F. Collier, Inc	93–1747	09/24/93
Planeta Holding s.a., Maxwell Communication Corporation plc, P.F. Collier, Inc	93–1748	09/24/93
Sonat Inc., Sonat Inc., Sonat/P Anadarko Limited partnership	93–1754	09/24/93
Fund America Ventures Corporation, Keith H. Gornick, Ward Lake Drilling, Inc	93–1755	09/24/93
The Clayton & Dubilier Private Equity Fund IV, L.P., General Motors Corporation, Allison Gas Turbine Division	93–1762	09/24/93
DynCorp, Technology Applications Inc., Technology Applications Inc	93–1774	09/24/93
IBL, S.A., FMM Partners, Ltd., Facet McKinley Motel Limited Partnership	93–1776	09/24/93
Roberts Pharmaceutial Corporation, Bristol-Myers Squibb Company, Bristol-Myers Squibb Company	93–1661	09/27/93
Kansas City Southern Industries, Inc., The Continuum Company, Inc., The Continuum Company, Inc	93–1679	09/27/93
The Continuum Company, Inc., Kansas City Southern Industries, Inc., Vantage Computer Systems, Inc	93–1680	09/27/93
Mellon Bank Corporation, Westinghouse Electric Corporation, Westinghouse Electric Corporation	93–1719	09/27/93
Robert Castello, George Terry, Holsin Drug Co., Inc	93–1736	09/27/93
Robert Castello, Michael Simon, Holsin Drug Co., Inc	93–1737	09/27/93
Sonoco Products Company, Engraph, Inc., Engraph, Inc	93–1738	09/27/93
Pohlad Companies, Allied Group, Inc., Dougherty Dawkins, Inc	93–1750	09/27/93
Peter G. Angelos, Eli S. Jacobs, The Orioles, Inc	93–1784	09/27/93
Heitman Real Estate Fund V, Carena Holdings, Inc., H–B Associates Albuquerque	93–1787	09/27/93
California Microwave, Inc., TeleSciences, Inc., TeleSciences Transmission Systems, Inc	93–1580	09/28/93
McKesson Corporation, Koninklijke BolsWessanen NV, Tree of Life, Inc	93–1709	09/28/93
The Ogden Newspapers, Inc., SD Investments, Inc., Minot Daily News Co	93–1690	09/30/93
The Ogden Newspapers, Inc., Philip F. Buckner, Buckner News Alliance, Inc., Lewistown Sentinel, Inc	93–1692	09/30/93
Odyssey Partners, L.P., Seneca Insurance Holdings, Inc., Seneca Insurance Holdings, Inc	93–1710	09/30/93
Mellon Bank Corporation, The Continental Corporation, AFCO Credit Corporation	93–1721	09/30/93
Dixons Group plc, Oliver L. Fretter, Fretter, Inc	93–1761	09/30/93
Fleet Financial Group, Inc., Witco Corporation, Chemprene, Inc.	93–1769	09/30/93
GranCare, Inc., CompuPharm, Inc., CompuPharm, Inc	93–1791	09/30/93
Broad Street Investment Fund I, L.P., The Continental Corporation, Underwriters Re Holdings Corp.	93–1631	10/01/93
McGraw-Hill, Inc., Maxwell Communication Corporation plc, Macmillan/Mcgraw-Hill School publishing Company	93–1687	10/01/93
McGraw-Hill, Inc., McGraw-Hill, Inc., Macmillan/McGraw-Hill School Publishing Company	93–1691	10/01/93

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, room 303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 93–25783 Filed 10–19–93: 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration For Children And Families

Agency Information Collection Under OMB Review

Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), we have submitted to the Office of Management and Budget (OMB) a request for approval of new information collection requirements found at section 107(c) of the Child Abuse Prevention and Treatment Act as amended (42 U.S.C. 5101 *et seq.*).

Sections 107 (a) and (g) of title I authorize the award of funds to States that meet specified eligibility requirements for the purpose of assisting States to develop, strengthen and carry out child abuse and neglect prevention and treatment programs. Section 107(c) requires States to submit a Child Abuse Prevention and Treatment Act (CAPTA) State Plan every four years to the Secretary of the Department of Health and Human Services, acting through the National Center on Child Abuse and Neglect (NCCAN).

ADDRESSES: Copies of the proposed information collection may be obtained

from Steven R. Smith of the Office of Information Systems Management, ACF, by calling (202) 401–6964. Written comments and questions regarding this information collection should be sent directly to: Laura Oliven, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street NW., Washington, DC 20503, (202) 395–7316.

Information on Document

Title: Child Abuse Prevention and Treatment Act (CAPTA) State Program Plan.

OMB No.: 0980-New Request.

Description: Section 107(c) of the Child Abuse Prevention and Treatment Act requires States to submit to the Secretary of the Department of Health and Human Services, acting through the National Center of Child Abuse and Neglect of the Administration for Children and Families (ACF), a Child Abuse Prevention and Treatment Act (CAPTA) State Plan in order to be eligible for a grant under this section. Under the provisions of subsection (c) of section 107, a State shall submit every four years a plan that specifies the area or areas of the State child protective services' system to be improved, providing data on current system capability, and indicating how funds will be used to make improvements. A State must submit a CAPTA State Plan as a prerequisite for a fiscal year 1994 Child Abuse and Neglect State Grant Award.

Section 107(a) of the Act authorizes the Secretary, acting through NCCAN, to award grants to the States for the purpose of assisting the States in improving their child protective services system in one or more of the following areas: intake and screening of reports; investigating reports; case management; general system enhancement; and research and demonstration activities.

Annual Number of Respondents: 52.

Annual Frequency: 1.

Average Burden Hours Per Response: 32.

Total Burden Hours: 1,664.

Dated: October 7, 1993.

Larry Guerrero,

Deputy Director, Office of Information Systems Management.

[FR Doc. 93–25687 Filed 10–19–93; 8:45 am]

BILLING CODE 4184–01–M

Agency Information Collection Under OMB Review

Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), we have submitted to the Office of Management and Budget (OMB) a request for an extension of the Uniform Reporting Requirements for Four State Grant Programs authorized by the Child Abuse Prevention and Treatment Act. These grant programs are: the Basic State Grant Program; the Medical Neglect/Disabled Infants Grant Program; the Children Justice Act Grant Program; and the Community-Based Child Abuse and Neglect Prevention Grant Program. This information collection sponsored by the National Center on Child Abuse and Neglect was previously approved under OMB Control Number 0980–0181 for use through 10/31/93.

ADDRESSES: Copies of this information collection request may be obtained from Steve R. Smith of the Office of Information Systems Management, ACF, by calling (202) 401–6964.

Written comments and questions regarding the requested approval should be sent directly to: Laura Oliven, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street NW., Washington, DC 20503, (202) 395–7316.

Information on Document

Title: Uniform Reporting Requirements for Four State Grant Programs authorized by the Child Abuse Prevention and Treatment Act, i.e., Basic State Grant, Medical Neglect/ Disabled Infants Grant, Children's Justice Act Grant, and Community-Based Child Abuse and Neglect Prevention Grant.

OMB No.: 0890–0181.

Description: The National Center on Child Abuse and Neglect (NCCAN) is a component of the Administration for Children and Families (ACF). The NCCAN has overall responsibility for the administration of four State formula grant programs authorized by the Child Abuse Prevention and Treatment Act, as amended (Pub. L. 100–294, Pub. L. 101–126, Pub. L. 101–226 and Pub. L. 102–295). These grant programs are: the Basic State Grant Program, the Medical Neglect/Disabled Infants Grant Program, the Children's Justice Act Grant Program, and the Community-Based Child Abuse and Neglect Prevention Grant Program. Each of the State grant programs is designed to assist States in addressing specific issues related to child abuse and neglect.

As each new State grant program was established, separate instructions with respect to fiscal and program performance reports were developed to address the unique purposes of the specific grant program. As a result, there was a substantial lack of uniformity in program performance reports across the four grant programs. This lack of uniformity seriously hampered NCCAN's capability to carry out their responsibilities for monitoring the expenditure of Federal funds, evaluating and measuring State achievements in addressing the problems of child abuse and neglect, and compiling comprehensive information for use in reaching program and policy decisions. The uniform reporting approach has enhanced both Federal and State abilities to monitor and assess child abuse and neglect prevention and treatment efforts. NCCAN Headquarters and the Regional Administrators who share responsibilities for administering the four programs must annually prepare a report which describes the activities, accomplishments, and expenditures under each of the programs to the Secretary of the Department of Health and Human Services and to the Congress as required by Section 102 of the Act. This information will also provide ACF and the States an overview of program trends and information needed to ascertain whether a State is in compliance with requirements of the Act.

Annual Number of Respondents: 52.

Annual Frequency: 8.

Average Burden Hours Per Response: 32.

Total Burden Hours: 13,312.

Dated: October 7, 1993.

Larry Guerrero,

Deputy Director, Office of Information Systems Management.

[FR Doc. 93–25692 Filed 10–19–93; 8:45 am]

BILLING CODE 4184–01–M

Administration For Children And Families

Agency Information Collection Under OMB Review

Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), we have submitted to the Office of Management and Budget (OMB) a request for a three-year reinstatement of Form ACF–700 as proposed in this package. This request entitled: "Child Care and Development Block Grant Second Annual Report to the Congress: An Interim Report on Program Services and Expenditures" was previously approved under OMB Control Number 0980–0241. This request is sponsored by the Division of Child Care of the Administration for Children and Families (ACF).

ADDRESSES: Copies of this information collection may be obtained from Steven R. Smith of the Office of Information Systems Management, ACF, by calling 202–401–6946.

Written comments and questions regarding this information collection should be sent directly to: Laura Oliven, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street NW., Washington, DC 20503, (202) 395–7316.

Information on Document

Title: Child Care and Development Block Grant Second Annual Report to the Congress: An Interim Report on Program Services and Expenditures (Form ACF–700).

OMB No.: 0980–0241.

Description: The Child Care and Development Block Grant Act authorizes the Secretary of the Department of Health and Human Services to award grants to States, Territories, Indian Tribes, and Tribal Organizations to increase the availability, affordability and quality of child care. Section 658K of the Child Care and Development Block Grant Act (section 5082 of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508) and 45 CFR 98.70 and 98.71 require grantees to prepare and submit an annual report on the program. The statute and regulations require the first annual report to be an interim report, covering expenditures through September 30, 1992, and with a due date not later than December 31, 1992.

As with the first interim report, the second interim report will consist of information on the uses for which the grantees expended funds, the extent to which the affordability and availability of child care services have increased, and any additional information required by the Secretary. The requirements for subsequent annual reports will identify the additional information which grantees must submit as it is available, including: the number of children being assisted by CCDBG and other Federal child care and pre-school programs; the type and number of child care programs, child care providers, caregivers, and support personnel in the grantee's service area; salaries and other compensation paid to full- and part-time child care service providers; and activities to encourage public-private partnerships that promote business involvement in meeting child care needs.

The data collected in this second interim report are necessary for the submission of the required annual report to Congress, as specified in section 658L of the Act. This information will also assist in program evaluation, management, and monitoring. In addition, grantees must submit information on their review of licensing and regulatory requirements, as well as describe the standards and health and safety requirements applicable to child care providers in their area, if such information was not submitted with the first interim report that was due December 31, 1992.

Annual Number of Respondents: 260.

Annual Frequency: 1.

Average Burden Hours Per Response: 50.

Total Burden Hours: 13,000.

Dated: October 7, 1993.

Larry Guerrero,

Deputy Director, Office of Information Systems Management.

[FR Doc. 93–25693 Filed 10–19–93; 8:45 am]

BILLING CODE 4184–01–M

Third Meeting of the Advisory Committee on Head Start Quality and Expansion

AGENCY: Administration for Children and Families, DHHS.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given, pursuant to Public Law 92–463, the Federal Advisory Committee Act, that the Advisory Committee on Head Start Quality and Expansion will hold its third meeting on Tuesday, November 2, 1993 at the Grand Hyatt Hotel, 1000 H Street, NW., Washington, DC.

The meeting shall be open to the public. The proposed final agenda will include a discussion of the draft report of the Advisory Committee.

Records shall be kept of all Committee proceedings and shall be available for public inspection at 370 L'Enfant promenade, SW., Aerospace Building, suite 600, Washington, DC 20447.

If a sign language interpreter is needed, contact David Siegel at the address and telephone below.

FOR FURTHER INFORMATION CONTACT: David Siegel, 7th floor, Aerospace Building, 370 L'Enfant Promenade, SW., Washington, DC 20047 (202) 401–9215.

Dated: October 15, 1993.

Lawrence J. Love,

Deputy Assistant Secretary for Program Operations.

[FR Doc. 93–25838 Filed 10–18–93; 11:22 am]

BILLING CODE 4184–01–M

Food and Drug Administration

[Docket No. 92N–0412]

Raj Matkari; Denial of Hearing; Final Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Deputy Commissioner for Operations of the Food and Drug Administration (FDA) denies a hearing for and issues a final order permanently debarring Mr. Raj Matkari, 1304 Riverglen Way, Berthoud, CO 80513, under section 306(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 335a(a)). The Deputy Commissioner bases this order on her finding that Mr. Matkari was convicted of a Federal felony for conduct relating to the development or approval, including the process for development or approval of a drug product; and relating to the regulation of a drug product under the act.

EFFECTIVE DATE: October 20, 1993.

ADDRESSES: Application for termination of debarment to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Megan L. Foster, Center for Drug Evaluation and Research (HFD–366), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–2041.

SUPPLEMENTARY INFORMATION:

I. Background

Mr. Raj Matkari, the former Vice President for Regulatory Affairs and Product Development of Pharmaceutical Basics, Inc. (PBI), pled guilty and was sentenced on July 28, 1989, for giving an unlawful gratuity, a felony offense under 18 U.S.C. 201(c)(1)(A). The basis for this conviction was Mr. Matkari's payment of approximately $2,000 to an FDA chemistry review branch chief who was involved in the regulation of PBI's drug products and who was specifically responsible for supervising the chemists who reviewed PBI's applications to determine whether these applications met certain statutory standards for approval.

In a certified letter received by Mr. Matkari on November 25, 1992, the Deputy Commissioner for Operations offered Mr. Matkari an opportunity for a hearing on a proposal to issue an order under section 306(a) of the act debarring Mr. Matkari from providing services in any capacity to a person that has an

approved or pending drug product application. FDA based the proposal to debar Mr. Matkari on its finding that he was convicted of a felony under Federal law for conduct relating to the development, approval, and regulation of PBI's drug products.

The certified letter also informed Mr. Matkari that his request for a hearing could not rest upon mere allegations or denials but must present specific facts showing that there was a genuine and substantial issue of fact requiring a hearing. The letter also noted that if it conclusively appeared from the face of the information and factual analyses in his request for a hearing that there was no genuine and substantial issue of fact which precluded the order of debarment, FDA would enter summary judgment against him, making findings and conclusions, and denying his request for a hearing.

Mr. Matkari responded to the proposal to debar in a letter filed by FDA on January 2, 1993, in which he requested a hearing. Mr. Matkari also submitted a brief argument in support of his hearing request in a letter filed by FDA on February 4, 1993.

The Deputy Commissioner has considered Mr. Matkari's arguments and concludes that they are unpersuasive and fail to raise a genuine and substantial issue of fact requiring a hearing. Mr. Matkari's arguments and the agency's responses follow.

II. Mr. Matkari's Arguments in Support of a Hearing

Mr. Matkari first argues that his conduct does not fall within the provisions for mandatory debarment but instead falls within those for permissive debarment. Mr. Matkari fails to support this statement with an explanation or further argument.

Paragraphs (a)(2)(A) and (a)(2)(B) of section 306 of the act require FDA to debar an individual if the Secretary finds that the individual has been convicted of a felony under Federal law for conduct: (1) Relating to the development or approval, including the process for development or approval, of any drug product; or (2) otherwise relating to the regulation of any drug product under the act.

These mandatory debarment provisions apply to Mr. Matkari's conviction for payment of an illegal gratuity. While this crime is listed in the permissive debarment provisions, section 306(b)(2)(B)(ii), an individual convicted of this crime will be considered to be a candidate for permissive debarment only if FDA finds that the conduct giving rise to the conviction did not relate to the development or approval or the regulation of any drug product. Because FDA finds that Mr. Matkari's conduct leading to his conviction did relate to the development and approval and the regulation of his corporation's drug products, the mandatory provisions, rather than the permissive provisions, are applicable in this case. Mr. Matkari has not disputed FDA's finding that his conduct leading to his conviction relates to the development and approval and the regulation of his corporation's drug products. Therefore, Mr. Matkari's claim fails to raise a genuine and substantial issue of fact.

In his second and final argument, Mr. Matkari claims that the debarment provisions do not apply retroactively to convictions that predate the enactment of the statute. He does not support this claim with further argument.

The provision of the act which applies to Mr. Matkari, section 306(a)(2), is clearly retroactive. This is evidenced in section 306(a) of the act, which treats mandatory debarment of corporations differently with respect to retroactivity from mandatory debarment of individuals. Mandatory debarment of corporations under 306(a)(1) of the act is not retroactive because it only applies to convictions "after the date of enactment of this section." However, section 306(a)(2) of the act, which pertains to mandatory debarment of individuals, does not contain this limiting language. Therefore, if Congress had intended for section 306(a)(2) of the act not to be retroactive, it would have included the language "after the date of enactment of this section."

Section 306(l)(2) of the act, which sets out the effective dates for each provision of the act, also indicates that section 306(a)(2) is retroactive. The only limitation section 306(l)(2) sets on section 306(a) of the act is that section 306(a) shall not apply to a conviction which occurred more than 5 years before the initiation of an agency action. This language indicates that any applicable conviction may be used as the basis for debarment, so long as it occurred no more than 5 years prior to the initiation of debarment proceedings. Certain other provisions covered in section 306(l) of the act are further limited by the statement that the section shall not apply to an action which occurred before June 1, 1992. Thus, when Congress intended that a certain section not be retroactive, it set a specific effective date or used specific limiting language as in section 306(a)(1) of the act. Congress' intentional omission of an effective date for section 306(a)(2) of the act indicates its intent that this section be retroactive.

Mr. Matkari acknowledges that he was convicted of a felony as alleged by the agency in its proposal to debar him but has failed to demonstrate that his conviction does not relate to the development, approval, or regulation of any drug product. In addition, Mr. Matkari's legal arguments do not create a basis for a hearing and, in any event, are unpersuasive. Therefore, Mr. Matkari has failed to raise a genuine and substantial issue of fact regarding this conviction. Accordingly, the Deputy Commissioner for Operations denies Mr. Matkari's request for a hearing.

III. Findings and Order

Therefore, the Deputy Commissioner for Operations, under section 306(a) of the act, finds that Mr. Raj Matkari has been convicted of a felony under Federal law for conduct (1) Relating to the development or approval, including the process for development or approval, of a drug product (21 U.S.C. 335a(a)(2)(A)); and (2) relating to the regulation of a drug product (21 U.S.C. 335a(a)(2)(B)).

As a result of the foregoing findings, Mr. Raj Matkari is permanently debarred from providing services in any capacity to a person with an approved or pending drug product application under section 505, 507, 512, or 802 of the act (21 U.S.C. 355, 357, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262), effective October 20, 1993 (21 U.S.C. 335a(c)(1)(B) and (c)(2)(A)(ii) and 21 U.S.C. 321(ee)). Any person with an approved or pending drug product application who knowingly uses the services of Mr. Matkari in any capacity, during his period of debarment, will be subject to civil money penalties (21 U.S.C. 335b(a)(6)). If Mr. Matkari, during his period of debarment, provides services in any capacity to a person with an approved or pending drug product application, he will be subject to civil money penalties (21 U.S.C. 335b(a)(7)). In addition, FDA will not accept or review any abbreviated new drug application or abbreviated antibiotic drug application submitted by or with the assistance of Mr. Matkari during his period of debarment.

Mr. Matkari may file an application to attempt to terminate his debarment pursuant to section 306(d)(4)(A) of the act. Any such application would be reviewed under the criteria and processes set forth in section 306(d)(4)(C) and (d)(4)(D) of the act. Such an application should be identified with Docket No. 92N–0412 and sent to the Dockets Management Branch (address above). All such submissions are to be filed in four

copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j). Publicly available submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 27, 1993.

Jane E. Henney,

Deputy Commissioner for Operations.

[FR Doc. 93-25672 Filed 10-19-93; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 93N-0368]

Drug Export; Antihemophilic Factor (Human), Affinity Chromatography Purified, Solvent Detergent/Heat Treated, Method C

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Alpha Therapeutic Corp. has filed an application requesting approval for the export of the biological product Antihemophilic Factor (Human), Affinity Chromatography Purified, Solvent Detergent/Heat Treated, Method C to the United Kingdom.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human biological products under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Frederick W. Blumenschein, Center for Biologics Evaluation and Research (HFM-660), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852-1448, 301-594-1070.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of biological products that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Alpha Therapeutic Corp., 5555 Valley Blvd., Los Angeles, CA 90032, has filed an application requesting approval for the export of the biological product Antihemophilic Factor (Human), Affinity Chromatography Purified, Solvent Detergent/Heat Treated, Method C to the United Kingdom. The Antihemophilic Factor (Human), Affinity Chromatography Purified, Solvent Detergent/Heat Treated, Method C is indicated solely for the prevention and control of bleeding in patients with moderate or severe Factor VIII deficiency due to hemophilia A or acquired Factor VIII deficiency. The application was received and filed in the Center for Biologics Evaluation and Research on August 30, 1993, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by November 1, 1993, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Biologics Evaluation and Research (21 CFR 5.44).

Dated: October 1, 1993.

P. Michael Dubinsky,

Deputy Director, Office of Compliance, Center for Biologics Evaluation and Research.

[FR Doc. 93-25677 Filed 10-19-93; 8:45 am]

BILLING CODE 4160-01-F

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETING: The following advisory committee meeting is announced:

Veterinary Medicine Advisory Committee

Date, time, and place. November 9, 1993, 8:30 a.m., and November 10, 1993, 8 a.m., Goshen Room, Holiday Inn-Gaithersburg, Two Montgomery Village Ave., Gaithersburg, MD.

Type of meeting and contact person. Open committee discussion, November 9, 1993, 8:30 a.m. to 10 a.m.; open public hearing, 10 a.m. to 11 a.m., unless public participation does not last that long; open committee discussion, 11 a.m. to 2:15 p.m.; open public hearing, 2:15 p.m. to 3:30 p.m., unless public participation does not last that long; open committee discussion, 3:30 p.m. to 4:30 p.m.; closed committee deliberations, November 10, 1993, 8 a.m. to 5 p.m.; Gary E. Stefan, Center for Veterinary Medicine (HFV-244), 7500 Standish Pl., Rockville, MD 20855, 301-594-1769.

General function of the committee. The committee reviews and evaluates available data concerning safety and effectiveness of marketed and investigational new animal drugs, feeds, and devices for use in the treatment and prevention of animal disease and increased animal production.

Agenda—Open public hearing. Any interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the contact person.

Open committee discussion. The committee will discuss flexible labeling for approved new animal drugs, and FDA's Compliance Policy Guide on Proper Drug Use and Residue Avoidance by Non-Veterinarians.

Closed committee deliberations. The committee will review and discuss trade secret and/or confidential commercial information relevant to a new animal drug application. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b (c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee

deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. app. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative session to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10 (a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: October 14, 1993.

Jane E. Henney,

Deputy Commissioner for Operations.

[FR Doc. 93–25740 Filed 10–19–93; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB) for Clearance

AGENCY: Health Care Financing Administration, HHS.

ACTION: Notice.

The Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to OMB the following proposals for the collection of information in compliance with the Paperwork Reduction Act (Public Law 96–511).

1. *Type of Request:* Extension; *Title of Information Collection:* Certification Recommendation—Clinical Laboratory Improvement Amendments (CLIA) Laboratory; *Form No.:* HCFA–197; *Use:* This form is completed by State survey agencies. The information from this form will be used by HCFA regional office personnel to make decisions concerning CLIA certification, recertification, and limitations of laboratory services; *Frequency:* Biennially; *Respondents:* Businesses or other for profit, State or local government, small businesses or organizations; *Estimated Number of Responses:* 31,200; *Average Hours Per Response:* 0.25; *Total Estimated Burden Hours:* 7,800.

2. *Type of Request:* Extension; *Title of Information Collection:* Laboratory Personnel Report—CLIA; *Form No.:* HCFA–209; *Use:* This form is used to determine laboratory compliance with the personnel requirements under CLIA. This information is needed for laboratory certification and recertification; *Frequency:* Biennially;

Respondents: State or local governments, small businesses or other for profit; *Estimated Number of Responses:* 31,200; *Average Hours Per Response:* 0.5; *Total Estimated Burden Hours:* 15,600.

3. *Type of Request:* New; *Title of Information Collection:* Medigap Complaint Data Base; *Form No.:* HCFA–R–156; *Use:* HCFA is responsible with monitoring the Medigap policies to include a review of State handling of beneficiary Medigap related complaints. To monitor this program it is necessary to develop a data base to house Medigap specific complaint data. These data from the State insurance department are to ensure insurance companies that sell Medicare supplemental insurance policies and, if appropriate, their agents continue to comply with Federal requirements; *Frequency:* Quarterly; *Respondents:* State or local governments; *Estimated Number of Responses:* 930; *Average Hours Per Response:* 0.20; *Total Estimated Burden Hours:* 186.

4. *Type of Request:* Reinstatement; *Title of Information Collection:* Request for Certification as a Rural Health Clinic (RHC) and RHC Survey Report Form; *Form No.:* HCFA–29 and HCFA–30; *Use:* HCFA–29, Request for Certification as a Supplier of RHC Services Under the Medicare/Medicaid Programs, is used as an application to be completed by suppliers of RHC services requesting participation in the Medicare/Medicaid programs. HCFA–30 is an instrument used by State survey agencies to record data collected in order to determine compliance with the Federal requirements; *Frequency:* Annually; *Respondents:* State and local governments, small businesses or organizations; *Estimated Number of Responses:* 148; *Average Hours Per Response:* 1.75; *Total Estimated Burden Hours:* 259.

5. *Type of Request:* Reinstatement; *Title of Information Collection:* Screening Mammography Services Data Report; *Form No.:* HCFA–292; *Use:* This form is used to initiate the certification and recertification process for suppliers of mammography screening services. The form is used to determine if a facility has the appropriate personnel to participate in the Medicare program; *Frequency:* Annually; *Respondents:* State or local governments, small businesses or organizations; *Estimated Number of Responses:* 10,000; *Average Hours Per Response:* .25; *Total Estimated Burden Hours:* 2,500.

6. *Type of Request:* Reinstatement; Title of Information Collection: Ambulatory Surgical Center Request for Certification and Survey Report Form; *Form Nos.:* HCFA–377 and –378; *Use:* The Ambulatory Surgical Request for Certification, HCFA–377, is used as an application for facilities wishing to participate in the Medicare program. The form initiates the process of obtaining a decision as to whether conditions required for coverage are met. The Ambulatory Surgical Center Survey Report, HCFA–378, is an instrument used by the State survey agencies to record data collected in order to determine supplier compliance with individual conditions of coverage and to report that information to the Federal government. The form includes basic information about the facility, a met/not met checklist, and explanatory statements. The request for certification and the survey form are used by HCFA to make a decision as to whether a supplier has the basic capabilities to participate in the Medicare program, and whether a survey is appropriate. The data are entered into HCFA systems to serve as an information base for creation of a record for Federal certification and monitoring; *Frequency:* Annually; *Respondents:* Ambulatory Surgical Centers; *Estimated Number of Responses:* 2,400 (1,200 for each form); *Average Hours Per Response:* .25 (form 377) and 0.50 (form 378); *Total Estimated Burden Hours:* 900.

7. *Type of Request:* Extension; *Title of Information Collection:* Blood Bank Inspection Checklist and Report; *Form No.:* HCFA–282; *Use:* This form is used to establish compliance by clinical laboratories with the provisions of the CLIA of 1988. The form is used by State survey agencies to report to HCFA its findings on facility compliance with certain regulatory conditions that is required to participate in the Medicare program; *Frequency:* Biennially; *Respondents:* Businesses or other for profit, State or local government, nonprofit institutions, Federal agencies or employees; *Estimated Number of Responses:* 2,500; *Average Hours Per Response:* 0.5; *Total Estimated Burden Hours:* 1,250.

8. *Type of Request:* Reinstatement; *Title of Information Collection:* Medicaid Program Budget Report; *Form No.:* HCFA–37; *Use:* This report is prepared by the State Medicaid agencies and is used by HCFA for developing national Medicaid budget estimates, quantification of budget assumptions, the issuance of quarterly Medicaid grant awards, and the collection of projected State receipts of donations and taxes; *Frequency:* Quarterly; *Respondents:* State or local government; *Estimated Number of Responses:* 228; *Average Hours Per Response:* 35; *Total Estimated Burden Hours:* 7,980.

9. *Type of Request:* Reinstatement; *Title of Information Collection:* Supplier of ESRD Services in the Medicare Program; *Form No.:* HCFA–3402; *Use:* This form is a facility identification and screening measurement used to initiate the certification or recertification process for ESRD facilities; *Frequency:* Annually; *Respondents:* State or local government; *Estimated Number of Responses:* 1,101; *Average Hours Per Response:* .167; *Total Estimated Burden Hours:* 183.87.

10. *Type of Request:* New Collection; *Title of Information Collection:* Grantee Data Collection Instrument; *Form No.:* HCFA–645; *Use:* Section 4360(f) of Public Law 101–508 requires the Secretary of the Department of Health and Human Services to provide a series of reports to the U.S. Congress; *Frequency:* Unknown; *Respondents:* State or local government; *Estimated Number of Responses:* 52; *Average Hours Per Response:* 10; *Total Estimated Burden Hours:* 520. .

Additional Information or Comments: Call the Reports Clearance Office on (410) 966–5536 for copies of the clearance request packages. Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch Attention: Allison Eydt, New Executive Office Building, room 3001, Washington, DC 20503.

Dated: October 7, 1993.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 93–25680 Filed 10–19–93; 8:45 am]

BILLING CODE 4120–03–P

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications

listed below may be obtained by writing to Mark D. Hankins, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, Box OTT, Bethesda, Maryland 20892 (telephone 301/496–7735; fax 301/402–0220). A signed Confidentiality Agreement will be required to receive copies of the patent applications. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

05/610,457 Nuclease-Resistant Hydrophilic Complex of Polyribocytidylic Acid (U.S. Patent No. 4,024,241)
05/886,343 Neisseria Gonorrhoeae Vaccine (U.S. Patent No. 4,203,971) (see also 06/079,556)
06/079,556 Neisseria Gonorrhoeae Vaccine (U.S. Patent No. 4,239,749) (see also 05/886,343)
06/170,570 Water Soluble Forms of Retinoids (U.S. Patent No. 4,371,673)
06/181,954 Monoclonal Antibodies to Herpes Simplex Virus Type 1 Polypeptides (U.S. Patent No. 4,430,437) (see also 06/443,682)
06/208,029 Nuclease-Resistant Hydrophilic Complex of Polyriboinosinic-Polyribocytidtylic Acid (U.S. Patent No. 4,349,538)
06/375,553 Lysis of Trypanosoma Cruzi (U.S. Patent No. 4,474,772)
06/443,682 Monoclonal Antibodies to Herpes Simplex Virus Type 1 Polypeptides (U.S. Patent No. 4,572,896) (see also 06/181,954)
06/670,202 Pyrazine Diazohydroxide Compounds and Methods for Their Production and Use (U.S. Patent No. 4,709,033)
06/916,796 Process for Manufacture of L-Asparaginase from Erwinia Chrysanthemi (U.S. Patent No. 4,729,957)
07/068,921 Method of Enhancing Lipophile Transport Using Cyclodextrin Derivatives
07/590,443 Recombinant Clones of Chlamydia Trachomatis Lipopolysaccharide (U.S. Patent No. 5,075,228)
07/633,402 Regioselective Substitutions in Cyclodextrins (U.S. Patent No. 5,096,893)
07/679,302 Nucleotide Deduced Amino Acid Sequence, Isolation and Purification of Heat-Shock Chylamdial Proteins
07/734,777 Novel Peptide Antigens and Immunoassays, Test Kits and Vaccines using the Same
07/737,854 RFAD Gene and Product
07/761,224 Growth-Restricted Dengue Type 4 Viruses and Vaccines Against the Same
07/762,137 Isolation and Characterization of cDNA of Plasmodium Falciparum Glucose-6-Phosphate Dehydrogenase
07/791,377 Pneumococcal Fimbrial Protein A (see also 07/816,286)
07/816,286 Pneumococcal Fimbrial Protein A Vaccines (see also 07/791,377)
07/821,453 Detoxified LPS-Cholera Toxin Conjugate Vaccine for Prevention of Cholera
07/866,033 Nucleotide Sequences for the Glycoprotein-Encoding Genes of U.S. Wildtype Measles Viruses
07/873,017 Measles Virus-Specific Antibody Detection Using Recombinant Measles Proteins
07/894,063 Peptide for Stimulation of Cytotoxic T Lymphocytes Specific for Hepatitis C Virus in a Mammal
07/906,841 Peptide Which Produces Protective Immunity Against Tetanus
07/912,294 Target Antigens of Transmission Blocking Antibodies for Malaria Parasites
07/912,443 Inhibition of Chitinase as a Means for Controlling Infectious Diseases by Blocking Transmission
07/923,034 Compositions and Methods for Detecting Human Herpesvirus 7
07/923,743 Compositions and Methods for Detecting Human Herpesvirus 6 Strain Z29
07/932,960 Pertussis Toxin Used as a Carrier Protein with Non-charged Saccharrides in Conjugate Vaccines
07/957,075 Vaccine for Dengue Virus
08/026,178 Reagents for Identifying Mycoplasma Pneumoniae

Dated October 8, 1993.

Reid G. Adler,

Director, Office of Technology Transfer.

[FR Doc. 93–25746 Filed 10–19–93; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Amended Notice of Meetings of the Board of Scientific Counselors, Division of Cancer Prevention and Control and its Subcommittees

Notice is hereby given of a change in the times of meeting of the Board of Scientific Counselors, Division of Cancer Prevention and Control (DCPC), National Cancer Institute, and its Subcommittees on October 21–22, 1993 which was published in the **Federal Register** (58 FR 43365) on August 16, 1993. The full Board will meet in Conference Room 6, 6th Floor, Building 31C, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. Meetings of the Subcommittees will be held at the Executive Plaza Complex at the times and places listed below. The meetings of the Board and its Subcommittees will be open to the public to discuss issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available.

The Committee Management Office, National Cancer Institute, National Institutes of Health, Executive Plaza North, room 630, 9000 Rockville Pike, Bethesda, Maryland 20892 (301/496–5708) will provide a summary of the meetings and rosters of committee members, upon request.

Other information pertaining to these meetings can be obtained from the Executive Secretary, Linda M. Bremerman, National Cancer Institute, National Institutes of Health, Executive Plaza North, room 318, 9000 Rockville Pike, Bethesda, Maryland 20892 (301–496–8526), upon request.

Name of Committee: Board of Scientific Counselors, Division of Cancer Prevention and Control
Executive Secretary: Linda M. Bremerman, EP N, room 318 Bethesda, MD 20892; (301) 496–852ℓ
Date of Meeting: October 21–22, 1993
Place of Meeting: Building 31, Conference Room 6
Open: October 21—8 am to 5 pm
Agenda: Review progress of programs within the Division and review of concepts being considered for funding.
Open: October 22—8:30 am to 4 pm
Agenda: Review progress of programs within the Division and review of concepts being considered for funding.
Name of Committee: Surveillance Subcommittee
Executive Secretary: Linda M. Bremerman, EP N, room 318 Bethesda, MD 20892; (301) 496–8526
Date of Meeting: October 21, 1993
Place of Meeting: Building 31, Conference Room 11A10
Open: 5:30 pm to 6 pm
Agenda: Discuss current and future programs of Surveillance Subcommittee and review of concepts being considered for funding.
Name of Committee: Early Detection and Community Oncology Subcommittee
Executive Secretary: Linda M. Bremerman, EP N, room 318 Bethesda, MD 20892; (301) 496–8526
Date of Meeting: October 21, 1993
Place of Meeting: Building 31, Conference Room 6
Open: 5:30 pm to 8 pm
Agenda: Discuss current and future programs of Early Detection and Community Oncology Subcommittee

and review of concepts being considered for funding.
Name of Committee: Cancer Control Science Subcommittee
Executive Secretary: Linda M. Bremerman, EP N, room 318 Bethesda, MD 20892; (301) 496–8526
Date of Meeting: October 21, 1993
Place of Meeting: Building 31, Conference Room 9
Open: 5:30 pm to 8 pm
Agenda: Discuss current and future programs of Cancer Control Science Subcommittee and review of concepts being considered for funding.
Name of Committee: Cancer Prevention Research Subcommittee
Executive Secretary: Linda M. Bremerman, EP N, room 318 Bethesda, MD 20892; (301) 496–8526
Date of Meeting: October 21, 1993
Place of Meeting: Building 31, Conference Room 8
Open: 5:30 pm to 8 pm
Agenda: Discuss current and future programs of Cancer Prevention Research Subcommittee and review of concepts being considered for funding.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Linda M. Bremerman, (301) 496–8526 in advance of the meeting.

(Catalog Of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated: October 14, 1993.

Wendy Baldwin,

Acting Deputy Director for Extramural Research, NIH.

[FR Doc. 93–25861 Filed 10–19–93; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Notice of Meeting of the Subcommittee To Evaluate the National Cancer Program, National Cancer Advisory Board

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Subcommittee to Evaluate the National Cancer Program, National Cancer Advisory Board, October 22, 1993 in the Cardinal Room at the O'Hare Airport, Skybird Meeting Center, Chicago, Illinois.

The meeting will be open to the public from 9:30 a.m. to 5:30 p.m. Attendance by the public will be limited to space available. Discussions will address the evaluation and achievements of the National Cancer Program.

Ms. Carole Frank, Committee Management Specialist, National Cancer Institute, National Institutes of Health, Executive Plaza North, room 630M, 9000 Rockville Pike, Bethesda, Maryland 20892 (301/496–5708), will provide a summary of the meeting and a roster of the Subcommittee members upon request.

Ms. Cherie Nichols, Executive Secretary, Subcommittee to Evaluate the National Cancer Program, National Cancer Advisory Board, National Cancer Institute, National Institutes of Health, Building 31, room 11A23, Bethesda, Maryland 20892 (301/496–5515), will furnish substantive program information.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Cherie Nichols on (301/496–5515) in advance of the meeting.

This notice is being published less than 15 days prior to the meeting due to the difficulty of coordinating the attendance of members because of conflicting schedules.

Dated: October 14, 1993.

Wendy Baldwin,

Acting Deputy Director for Extramural Research, NIH.

[FR Doc. 93–25862 Filed 10–19–93; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Notice of Meeting of the Clinical Trials Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Clinical Trials Review Committee, National Heart, Lung, and Blood Institute, October 31–November 3, 1993, Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.

The meeting will be open to the public on October 31 from 7 p.m. to approximately 7:30 p.m. to discuss administrative details and to hear a report concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public is limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C., and section 10(d) of Public Law 92–463, the meeting will be closed to the public on October 31 from approximately 7:30 p.m. to adjournment on November 3, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Terry Long, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A–21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of the Committee members.

Individuals who plan to attend and need special assistance, such as sign language interpretations or other reasonable accommodations, should contact the Scientific Review Administrator in advance of the meeting.

Dr. David M. Monsees, Jr., Scientific Review Administrator, Clinical Trials Review Committee, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, Westwood Building, room 550B, Bethesda, Maryland 20892, (301) 594–7450, will furnish substantive program information.

This notice is being published later than the 15 days prior to the meeting due to difficulty of coordinating schedules.

(Catalog of Federal Domestic Assistance program Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institute of Health.)

Dated: October 14, 1993.

Wendy Baldwin,

Acting Deputy Director for Extramural Research

[FR Doc. 93–25860 Filed 10–19–93; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Drug Abuse; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute on Drug Abuse on October 26–27, 1993, at the Addiction Research Center, 2nd Floor Conference Room, 4940 Eastern Avenue, Baltimore, Maryland 21224.

The meeting will be open to the public on October 26 from 8 a.m. to 8:15 a.m. for announcements and reports of administrative, legislative, and program developments in the drug abuse field.

In accordance with provisions set forth in Section 552b(c)(6), title 5, U.S.C. and Section 10(d) of Public Law

92–463, the meeting will be closed to the public on October 26 from 8:15 a.m. to adjournment on October 27 to review, discuss, and evaluate intramural research programs and projects and productivity and performance of individual staff scientists, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

A summary of the meeting and a roster of committee members may be obtained from Ms. Camilla L. Holland, NIDA Committee Management Officer, National Institutes of Health, Parklawn Building, room 10–42, 5600 Fishers lane, Rockville, Maryland 20857 (301/443–2755).

Substantive program information may be obtained from Mr. Brian Butters, Addiction Research Center, P.O. Box 5180, Baltimore, Maryland 21224 (410/550–1538).

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the contact person named above in advance of the meeting.

This notice is being published less than 15 days prior to the meeting due to the difficulty of coordinating the attendance of members because of conflicting schedules.

(Catalog of Federal Domestic Assistance Program Numbers: 93.277, Drug Abuse Research Scientist Development and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs)

Dated: October 15, 1993.

Wendy Baldwin,

Acting Deputy Director for Extramural Research, NIH.

[FR Doc. 93–25863 Filed 10–19–93; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–93–3674]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESSES: Interested persons are invited to submit comment regarding these proposals. Comments should refer to the proposal by name and should be sent to: Angela Antonelli, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information:

(1) The title of the information collection proposal;

(2) The office of the agency to collect the information;

(3) The description of the need for the information and its proposed use;

(4) The agency form number, if applicable;

(5) What members of the public will be affected by the proposal;

(6) How frequently information submissions will be required;

(7) An estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response;

(8) Whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and

(9) The names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: September 27, 1993.

Kay Weaver,

Acting Director, IRM Policy and Management Division.

Proposal: Schedule of Pooled Mortgages—Single Family Loans, Graduated Payment Loans, and Growing Equity Loans.

Office: Government National Mortgage Association (GNMA).

Description of the Need for the Information and its Proposed Use: The form provides a means of identifying specific single family mortgages in the pool and assures that all required mortgage and related documents have been delivered to a document custodian. This information is necessary to assure GNMA's interest in the pooled mortgages in the event of a default.

Form Number: HUD–11706.

Respondents: Businesses or Other For-Profit.

Frequency of Submission: On Occasion.

Reporting Burden:

	No. of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
HUD–11706	1,250		18		.25		5,938

Total Estimated Burden Hours: 5,938.

Status: Reinstatement.

Contact: Charles Clark, HUD, (202) 708–2234; Angela Antonelli, OMB, (202) 305–6880.

Dated: September 27, 1993.

Proposal: Rental Rehabilitation Program.

Office: Community Planning and Development.

Description of the Need for the Information and its Proposed Use: Public Law 98–181, Section 17 requires grantees and state recipients participating in the Rental Rehabilitation Program to report and maintain for monitoring, data relating to tenants assisted both before and after rehabilitation. Regulations also imposes recordkeeping burdens consistent with the requirements of section 17 and related laws and authorities.

Form Number: HUD–40014, 40014–B, 40021, and 40070.

Respondents: State or local Governments.

Frequency of Submission: Annually.

Reporting Burden:

	No. of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Annual Reporting	725		11.6		.8		6,738
Recordkeeping	725		1.0		7.2		5,200

Total Estimated Burden Hours: 11,938.

Status: Reinstatement.

Contact: Franklin Price, HUD, (202) 708–2094; Angela Antonelli, OMB, (202) 395–6880.

Dated: September 27, 1993.

Proposal: Notice to Proceed.

Office: Public and Indian Housing.

Description of the Need for the Information and its Proposed Use: The Notice to Proceed is the official PHA order directing the contractor to commence construction on a public housing project. It establishes the date the construction starts, the number of days for construction completion, the date of completion, and the name of the project contracting officer.

Form Number: None.

Respondents: State or Local Governments and Non-Profit Institutions.

Frequency of Submission: On Occasion and Recordkeeping.

Reporting Burden:

	No. of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Annual Reporting	173		1		.25		43
Recordkeeping	173		1		.25		43

Total Estimated Burden Hours: 86.

Status: Reinstatement.

Contact: Raymond Hamilton, HUD, (202) 708–1938; Angela Antonelli, OMB, (202) 395–6880.

Dated: September 27, 1993.

Proposal: Comprehensive Grant Program (CGP).

Office: Public and Indian Housing.

Description of the Need for the Information and its Proposed Use: The CGP will allocate modernization funds to large PHAS/IHAS on the basis of a formula. The requested information will provide data necessary to approve the required Comprehensive Plan, reserve CGP funds, and monitor performance.

Form Number: HUD–52831, 52832, 52833, 52834, 52835, 52836, 52837 and 52839.

Respondents: Individuals or Households, State or Local Governments, and Non-Profit Institutions.

Frequency of Submission: Annually.

Reporting Burden:

	No. of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collections	854		1		176		139,622

Total Estimated Burden Hours: 139,622.

Status: Extension.

Contact: Janice D. Rattey, HUD, (202) 708–1800; Angela Antonelli, OMB, (202) 395–6880.

Dated: September 23, 1993.

Proposal: Assessment of American Indian Housing Needs and Programs Survey.

Office: Policy Development and Research.

Description of the Need for the Information and its Proposed Use: This information collection will aid in the assessment of housing conditions and needs of the American Indians and Alaska natives.

Form Number: None.

Respondents: State or Local Governments; Businesses or Other for-Profit; Federal Agencies or Employees; and Small Businesses or Organizations.

Frequency of Submission: One Time.

Reporting Burden:

	No. of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	1,333		1		.66		879

Total Estimated Burden Hours: 879.

Status: New.

Contact: John M. Goering, HUD, (202) 708–3700; Angela Antonelli, OMB, (202) 395–6880.

Dated: September 16, 1993.

Proposal: Supplement to Subscription Agreement for Cooperative Housing Applicants Under Sections 213 and 221(d)(3).

Office: Housing.

Description of the Need for the Information and its Proposed Use: The form HUD–93232A is a critical element and source document by which the Department determines the cooperative member and group capacity to meet the financial requirement of the project.

Form Number: HUD–93232A.

Respondents: Individuals or Households.

Frequency of Submission: On Occasion.

Reporting Burden:

	No. of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–93232A	5,000		1		.7		3,500

Total Estimated Burden Hours: 3,500.

Status: Extension.

Contact: Georgia M. Yeck, HUD, (202) 708–2556; Angela Antonelli, OMB, (202) 395–6880.

Dated: September 16, 1993.

Proposal: Manufactured Home Construction and Safety Standards Act.

Office: Housing.

Description of the Need for the Information and its Proposed Use: The National Manufactured Housing Construction and Safety Standards Act authorized HUD to establish construction and safety standards for manufactured (mobile) homes and to enforce these standards. The standards require pertinent information in the form of labels and notices to be placed in each manufactured home. HUD needs this information to make sure manufacturers are complying with the standards.

Form Number: None.

Respondents: Individuals or Households, State or Local Governments, and Businesses or Other For-Profit.

Frequency of Submission: Monthly and Recordkeeping.

Reporting Burden:

	No. of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
SAA Reports	432		1		.64		277
IPIA Reports	252		1		1.00		252
Manufacturer Records	225,000		1		.16		36,000
Consumer Information Cards	225,000		1		.48		108,000
State Plans	324		1		1.00		324
Consumer Manuals	225,000		1		.08		18,000
Labels and Notices	225,000		1		.22		49,500
Recordkeeping	295		1		305		89,975

Total Estimated Burden Hours: 302,328.

Status: Revision.

Contact: B. Jeannie Magee, HUD, (202) 708–7430; Angela Antonelli, OMB, (202) 395–6880.

Dated: September 16, 1993.

Proposal: Program Utilization for use in the Section 8 Rental Certificate and Rental Voucher Programs.

Office: Public and Indian Housing.

Description of the Need for the Information and its Proposed Use: Form HUD–52683 provides data to HUD to monitor the use of Certificates of Family participation, the number of families under a HAP contract and rental voucher contract, and the degree of success experienced by program participants in locating and leasing suitable rental housing.

Form Number: HUD–52683.

Respondents: State or Local Governments.

Frequency of Submission: Semi-Annually.

Reporting Burden:

	No. of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Form HUD–52683	2,500		2		1		5,000

Total Estimated Burden Hours: 5,000.

Status: Reinstatement.

Contact: Gerald J. Benoit, HUD, (202) 708–0477; Angela Antonelli, OMB, (202) 395–6880.

Dated: September 17, 1993.

[FR Doc. 93–25679 Filed 10–19–93; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. N–93–3673]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESSES: Interested persons are invited to submit comment regarding these proposals. Comments should refer to the proposal by name and should be sent to: Angela Antonelli, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notices list the following information:

(1) The title of the information collection proposal;

(2) The office of the agency to collect the information;

(3) The description of the need for the information and its proposed use;

(4) The agency form number, if applicable;

(5) What members of the public will be affected by the proposal;

(6) How frequently information submissions will be required;

(7) An estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response;

(8) Whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and

(9) The names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: September 28, 1993.

John T. Murphy,

Director, IRM Policy and Management Division.

Proposal: The Supportive Housing Program Application.

Office: Community Planning and Development.

Description of the Need for the Information and its Proposed Use: The information provided in the application package will be reviewed by HUD and evaluated against rating criteria for possible grant funding.

Form Number: HUD–40076 and SF–424.

Respondents: State or Local Governments and Non-Profit Institutions.

Frequency of Submission: On Occasion.

Reporting Burden:

	No. of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Application preparation	900		1		42		37,800

Total Estimated Burden Hours: 37,800.

Status: Extension.

Contact: Helen Guzzo, HUD, (202) 708–4300, Angela Antonelli, OMB, (202) 395–6880.

Dated: September 28, 1993.

Proposal: Shelter Plus Care Application.

Office: Community Planning and Development.

Description of the Need for the Information and its Proposed Use: The information provided in the application package will be reviewed by HUD and evaluated against rating criteria for possible grant funding.

Form Number: HUD–40085 and SF–424.

Respondents: State or Local Governments.

Frequency of Submission: On Occasion.

Reporting Burden:

	No. of respondents	X	Frequency of response	X	Hours per response	=	Burden hours
Application preparation	300		1		40		12,000
Environmental review	100		1		14		1,400

Total Estimated Burden Hours: 13,400.

Status: Extension.

Contact: Jean Whaley, HUD, (202) 708–1234, Angela Antonelli, OMB, (202) 395–6880.

Dated: September 28, 1993.

[FR Doc. 93–25678 Filed 10–19–93; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–010–94–4333–04]

Road Closure and Restrictions To Entry and Use; Deep Channel Truck Trail; Co

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of road closure and restrictions to entry and use.

SUMMARY: Pursuant to agreements made in settling pending court action regarding the use of certain roads, and 43 CFR 83641.1, notice is hereby given that those segments of the Deep Channel Truck Trail under BLM jurisdiction, are closed to use by the public, from the intersection of the Deep Channel Truck Trail with the Indian Valley Truck Trail, east, to Moffat County Road 57. In addition, that segment of the separate road crossing the W½ of section 5, T. 3 N., R. 96 W., 6th PM, in a northwesterly/southeasterly direction, is closed to all forms of motorized travel from the point where it crosses Pinto Gulch, to its junction with the Deep Channel Truck Trail. The only exceptions to this closure include the owners of the Keystone Ranch, their express permitees, and BLM employees engaged in official duties.

Access to public lands lying south of the Deep Channel Truck Trail, and east of the Indian Valley Truck Trail from that segment of the Indian Valley Truck Trail lying between the present south gate of the Keystone Ranch, in section 35, T. # N., R. 97 W., 6th PM, and the intersection of the Indian Valley Truck Trail with the Deep Channel Truck Trail, is limited to the single "dismount point" located in the NW¼NW¼ of section 19, T. 3 N., R. 96 W., 6th PM. Access to public lands from this "dismount point" is hereby restricted to travel by foot or on horseback. The only exceptions to this latter restriction are BLM employees engaged in official duties, and those holding valid permits/rights-of-way for development of federal minerals.

EFFECTIVE DATE: These closures and restrictions shall be effective October 26, 1993, and will remain in effect until rescinded or modified by the authorized officer.

FOR FURTHER INFORMATION CONTACT: Vern Pholl, Supervisory Realty Specialist, or B. Curtis Smith, Area manager, BLM, White River Resource Area, P.O. Box 928, Meeker, Colorado 81641, (303) 878–3601.

Dated: October 14, 1993.

B. Curtis Smith,

Area Manager.

[FR Doc. 93–25784 Filed 10–6–93; 8:45 am]

BILLING CODE 4310–JB–M

[AZ–040–5700–10–AZA 28178]

Realty Action; Noncompetitive Sale of Public Lands; Arizona

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice.

SUMMARY: The following lands in Greenlee County, Arizona have been found suitable for direct sale under section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713), at not less than the appraised fair market value. The land will not be offered for sale until at least 60 days after the date of this notice.

Gila and Salt River Meridian, Arizona

T. 3 S., R. 29 E.
Sec. 35, MS 4482.
Containing 85.417 acres, more or less.

The land described is hereby segregated from appropriation under the public land laws, including the mining

laws, pending disposition of this action or 270 days from the date of publication of this notice, whichever occurs first.

This land is being offered by direct sale to Phelps Dodge Morenci, Inc. If a determination is reached that the subject parcel contains no known mineral values, the mineral interests may be conveyed simultaneously. Acceptance of the direct sale offer will qualify the purchaser to make application for conveyance of those mineral interests.

The patent, when issued, will contain certain reservations to the United States. Detailed information concerning these reservations as well as specific conditions of the sale are available for review at the Safford District Office, Bureau of Land Management, 711 14th Avenue, Safford, Arizona 85546.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Safford District, at the above address. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

Dated: October 7, 1993.

Frank L. Rowley,

Acting District Manager.

[FR Doc. 93–25696 Filed 10–19–93; 8:45 am]

BILLING CODE 4310–32–M

Bureau of Mines

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

A request extending the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1032–0113), Washington, DC 20503, telephone 202–395–3470.

Title: Helium Distribution Contracts.

OMB approval number: 1032–0113.

Abstract: Respondents supply information which will be used by the Bureau of Mines Division of Helium Field Operations to (a) determine legitimacy of applicants for distribution contracts, (b) establish accountability of helium transfer between distributors, and (c) report annual sales, transfers, and purchases of Bureau helium as certification of compliance with 30 CFR part 602. The Bureau will use the information supplied on the three forms as described to implement and manage an effective helium distribution system in accordance with 30 CFR 602.

Bureau form number: 6–1575–A, 6–1580–A, and 6–1581–A.

Frequency: Annually.

Description of respondents: Industrial gas suppliers who elect to distribute Bureau of Mines helium.

Estimated completion time: ½ hour.

Annual responses: 76.

Annual burden hours: 38.

Bureau clearance officer: Alice J. Wissman (202) 501–9569.

Dated: September 30, 1993.

Hermann Enzer,

Acting Director, Bureau of Mines.

[FR Doc. 93–25685 Filed 10–19–93; 8:45 am]

BILLING CODE 4310–53–M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. 35). Copies of the proposed collection of information and related form may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503, telephone 202–395–7340.

Title: RecTec Survey (Evaluation Questionnaire).

OMB Approval Number: Not yet assigned.

Abstract: This information collection request is being submitted for approval to collect information from a one-time survey. The survey is being disseminated to assist OSM in the preparation of RecTec by ascertaining the needs of our customers so that OSM can provide the readers of RecTec with information most useful to them.

Bureau Form Number: None.

Frequency: Once.

Description of Respondents: State regulatory authorities and Industry representatives.

Estimated Completion Time: 7 minutes.

Annual Responses: 1000.

Annual Burden Hours: 167.

Bureau Clearance Officer: John A. Trelease, 202–343–1475.

Dated: October 6, 1993.

Gene E. Krueger,

Acting Chief, Division of Technical Services.

[FR Doc. 93–25697 Filed 10–19–93; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–342]

Certain Circuit Board Testers; Commission Determination To Modify an Initial Determination Terminating the Investigation on the Basis of a Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to modify the initial determination (ID) issued in the above-captioned investigation by the presiding administrative law judge (ALJ) on May 12, 1993, to delete language suggesting that the settlement agreement may not be in the public interest. In view of submissions by the parties demonstrating that the non-party suppliers of designated confidential business information (CBI) whose information will be retained by the parties either no longer consider their information to be confidential or consent to use of their CBI, as provided in the settlement agreement between the parties, with the understanding that the Commission will not enforce the protective order after the investigation is terminated, the Commission will not retain jurisdiction over the administrative protective order after termination of the investigation.

ADDRESSES: Copies of the nonconfidential version of the ID and all other non-confidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade

Commission, telephone 202–205–3104. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: On September 25, 1992, Integri-Test Corp. (Integri-Test) filed a complaint and a motion for temporary relief with the Commission alleging violations of section 337 in the importation and sale of certain circuit board testers allegedly covered by certain claims of Integri-Test's U.S. Letters Patent 4,565,966. The notice of investigation instituting an investigation based on Integri-Test's complaint was published in the **Federal Register** on November 2, 1992. 57 FR 49490. Bath Scientific Ltd. of the United Kingdom and BSL North America of Massachusetts were named as respondents. Pursuant to Commission interim rule 210.24(e)(8)(19 CFR 210.24(e)(8)), the Commission also provisionally accepted Integri-Test's motion for temporary relief.

On January 11, 1993, the presiding ALJ issued an ID denying complainant's motion for temporary relief. The Commission determined to review the ID and to designate the temporary relief phase of the investigation "more complicated." 58 FR 7246 (Feb. 5, 1993). On March 17, 1993, the Commission denied complainant's motion for temporary relief. 58 FR 16202 (March 25, 1993).

On April 29, 1993, the private parties filed a joint motion to terminate the investigation based on a settlement agreement. The Commission investigative attorney (IA) conditionally supported the joint motion. On May 12, 1993, the ALJ granted the motion to terminate on the condition that the Commission would retain jurisdiction over the administrative protective order after termination of the investigation. On May 24, 1993, complainant filed a petition for review of ID. The IA responded to the petition on June 1, 1993; respondents did not file a response to the petition. On June 4, 1993, complainant filed a supplement to its petition for review. No agency or public comments were received.

On June 24, 1993, the Commission determined to review the ID because of concerns about the document retention provisions. The Commission requested the private parties to submit letters from all non-party suppliers of CBI stating either that the suppliers no longer consider their information to be confidential or that they consented to use of their CBI, as provided in the settlement agreement between the parties, with the understanding that the Commission will not enforce the protective order after the investigation is terminated. These submissions were received by July 14, 1993.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission interim rules 210.53 and 210.56 (19 CFR 210.53 and 210.56).

By order of the Commission.

Issued: October 13, 1993.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–25754 Filed 10–19–93; 8:45 am]

BILLING CODE 7020-02-P

[Investigation No. 701–TA–355 (Preliminary); Investigations Nos. 731–TA–659 and 660 (Preliminary)]

Grain-Oriented Silicon Electrical Steel From Italy and Japan

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines, [2] pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Italy of grain-oriented silicon electrical steel [3] that are alleged to be subsidized by the Government of Italy. The Commission also determines, [4] pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Italy and Japan of grain-oriented silicon electrical steel that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On August 26, 1993, petitions were filed with the Commission and the Department of Commerce by counsel on behalf of Allegheny Ludlum Corp., Pittsburgh, PA; Armco, Inc., Butler, PA; the Butler Armco Independent Union, Butler, PA; the United Steelworkers of America, Pittsburgh, PA; and the Zanesville Armco Independent Union, Zanesville, OH. The petitions allege that an industry in the United States is being materially injured and is threatened with further material injury by reason of allegedly subsidized imports from Italy and allegedly LTFV imports from Italy and Japan [5] of grain-oriented silicon electrical steel. Accordingly, effective August 26, 1993, the Commission instituted countervailing duty investigation No. 701–TA–355 (Preliminary) and antidumping investigations Nos. 731–TA–659 and 660 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of September 2, 1993 (58 FR 46650). The conference was held in Washington, DC, on September 16, 1993, and all persons who requested the opportunity were premitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on October 12, 1993. The views of the Commission are contained in USITC Publication 2686 (October 1993), entitled "Grain-Oriented Silicon Electrical Steel from Italy and Japan: Investigation No. 701–TA–355 (Preliminary) and Investigations Nos. 731–TA–659 and 660 (Preliminary)."

Issued: October 13, 1993.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–25753 Filed 10–19–93; 8:45 am]

BILLING CODE 7020-02-P-M

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[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Vice Chairman Watson did not participate in the investigation concerning Italy.

[3] The products covered by Commerce's investigations are grain-oriented silicon electrical steel, which are flat-rolled alloy steel products containing by weight at least 0.6 percent of silicon, not more than 0.08 percent of carbon, not more than 1.0 percent of aluminum, and no other element in an amount that would give the steel the characteristics of another alloy steel, of a thickness of no more than 0.560 millimeters, in coils of any width, or in straight lengths which are of a width measuring at least 10 times the thickness. The subject products are provided for in subheadings 7225.10.00, 7225.30.70, 7225.40.70, 7225.50.80, 7225.90.00, 7226.10.10, 7226.10.50, 7226.91.70, 7226.91.80, 7226.92.50, 7226.92.70, 7226.92.80, 7226.99.00, 7229.30.80, 7229.60.80, and 7229.90.10 of the Harmonized Tariff Schedule of the United States (HTS).

[4] Vice Chairman Watson did not participate in the investigation concerning Italy.

[5] Armco, the Butler Armco Independent Union, and the Zanesville Armco Independent Union are not petitioners in the antidumping investigation concerning Japan.

[Investigation No. TA–406–13]

Honey From China; Import Investigation

AGENCY: United States International Trade Commission.

ACTION: Institution of an investigation under section 406(a) of the Trade Act of 1974 (19 U.S.C. 2436(a)) and scheduling of a public hearing in connection therewith.

SUMMARY: Following receipt on October 6, 1993, of a request from the United States Trade Representative for an investigation under section 406(a) of the Trade Act of 1974, the Commission instituted investigation No. TA–406–13 to determine, in the case of imports of honey [1] from China, whether market disruption exists with respect to an article produced by a domestic industry. Section 406(e)(2)(A) of the act states that market disruption exists within a domestic industry whenever "imports of an article, like or directly competitive with an article produced by such domestic industry, are increasing rapidly, either absolutely or relatively, so as to be a significant cause of material injury, or threat thereof, to such domestic industry." The Commission will make its injury and, if necessary, its remedy determinations in this investigation by January 7, 1994.

EFFECTIVE DATE: October 6, 1993.

FOR FURTHER INFORMATION CONTACT: Diane J. Mazur (202–205–3184), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION:

Participation in the Investigation

Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after publication of this notice in the **Federal Register**. The Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on December 2, 1993, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before November 23, 1993. All persons desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on November 29, 1993, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the hearing are governed by §§ 201.6(b)(2) and 201.13(f) of the Commission's rules.

Written Submissions

Each party is encouraged to submit a prehearing brief to the Commission. The deadline for filing prehearing briefs is November 30, 1993. Parties may also file posthearing briefs. The deadline for filing posthearing briefs is December 7, 1993. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before December 7, 1993. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain confidential business information must also conform with the requirements of § 201.6 of the rules.

In accordance with § 201.16(c) of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Remedy

Parties are reminded that no separate hearing on the issue of remedy will be held. Those parties wishing to present arguments on the issue of remedy may do so orally at the hearing or in their prehearing or posthearing briefs or other written submissions.

Authority: This investigation is being conducted under authority of § 406 of the Trade Act of 1974. This notice is published pursuant to § 206.3 of the Commission's rules.

By order of the Commission.

Issued: October 15, 1993.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–25776 Filed 10–19–93; 8:45 am]

BILLING CODE 7020–02–P–M

[1] The honey products included in this investigation are imports of natural honey, artificial honey mixed with natural honey, and preparations of natural honey, provided for in heading 0409 and subheadings 1702.90 and 2106.90 of the Harmonized Tariff Schedule of the United States (HTS).

[Investigation No. 731–TA–663 (Preliminary)]

Certain Paper Clips From the People's Republic of China

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a preliminary antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731–TA–663 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the People's Republic of China (China) of certain paper clips, provided for in subheading 8305.90.30 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value.[1] The Commission must complete preliminary antidumping investigations in 45 days, or in this case by November 29, 1993.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: October 13, 1993.

FOR FURTHER INFORMATION CONTACT: Jonathan Seiger (202–205–3183), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the

[1] For purposes of this investigation, "certain paper clips" are defined as paper clips made wholly of wire of base metal, whether or not galvanized, whether or not plated with nickel or other base metal, with a wire diameter between 0.64 and 1.91 millimeters, the foregoing including, without limitation, all paper clips commercially referred to as "No. 1 clips," "No. 3 clips," "jumbo clips," and "giant clips," and further including, without limitation, all such paper clips reported under HTS statistical reporting number 8305.90.3010.

Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on October 13, 1993, by ACCO USA, Inc., Wheeling, IL, and Noesting Incorporated, Bronx, NY.

Participation in the Investigation and Public Service List

Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this preliminary investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on November 3, 1993, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Jonathan Seiger (202–205–3183) not later than November 1, 1993, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions

As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before November 8, 1993, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules.

By order of the Commission.

Issued: October 15, 1993.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–25812 Filed 10–19–93; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 731–TA–464 (Final)]

Sparklers From the People's Republic of China

AGENCY: United States International Trade Commission.

ACTION: Final negative determination of critical circumstances.

SUMMARY: The Commission hereby gives notice of its final negative critical circumstances determination in investigation No. 731–TA–464 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) regarding imports from China of sparklers, provided for in subheading 3604.10.00 of the Harmonized Tariff Schedule of the United States.

EFFECTIVE DATE: October 12, 1993.

FOR FURTHER INFORMATION CONTACT: Stephen McLaughlin (202–205–3095), Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION:

Background

On July 26, 1993, the Department of Commerce notified the Commission of an amendment to its final determination of sales at less than fair value and outstanding antidumping order, in accordance with a remand from the Court of International Trade in the above-referenced case. 58 FR 40624 (July 29, 1993). The amended final determination includes an affirmative critical circumstances determination as to Jiangtxi Native Products Import & Export Corp. and all other exporters of sparklers, excluding Guangxi Native Products Import & Export Corp. and Hunan Native Products Import & Export Corp. In their original final determination, Commerce had made a negative determination on critical circumstances.

The original petition was filed on July 2, 1990, by Elkton Sparkler Co., North East, MD and Diamond Sparkler Co., Youngstown, OH. Commerce made its original final determination regarding sales of imports at LTFV and no critical circumstances effective April 26, 1991. The Commission made its original final determination on June 11, 1991. On May 7, 1993, the Court (CIT) affirmed the results of remand in this case.

The Commission has been informed by the U.S. Customs Service that there are no unliquidated entries of sparklers dating from the People's Republic of China for the period September 17, 1990–December 17, 1990 (the period 90 days prior to suspension of liquidation) and further that there were no imports of sparklers from Jiangtxi for that period. The Commission published a notice of institution of its final critical circumstances investigation on September 10, 1993. The notice indicated that there were no imports upon which retroactive duties could be assessed, but provided an opportunity for interested parties to file written submissions on the issue of critical circumstances. No written submissions were filed. Accordingly, based upon the information of record, the Commission determines that retroactive imposition of the antidumping duties does not appear necessary in order to prevent material injury from recurring. 19 U.S.C. 1673d(b)(4)(A).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.28 of the Commission's rules.

Issued: October 12, 1993.

By order of the Commission.

Donna Koehnke,

Secretary.

[FR Doc. 93–25752 Filed 10–19–93; 8:45 am]

BILLING CODE 7020-02-P

[Investigation No. 332–135]

Synthetic Organic Chemicals (SOC) Reports

AGENCY: United States International Trade Commission.

ACTION: Notice of format and availability changes.

EFFECTIVE DATE: October 15, 1993.

FOR FURTHER INFORMATION CONTACT: James A. Emanuel or John J. Gersic, Energy, Chemicals, and Textiles Division, Office of Industries (telephone 202–205–3367 and 202–205–3342, respectively).

BACKGROUND: Notices were published in the **Federal Register** of July 17, 1991 (56 FR 32590), and October 17, 1991 (56 FR 52059), soliciting public comment on certain changes to the format and reporting requirements for the Commission's annual Synthetic Organic Chemicals, United States Production and Sales report. In addition, meetings were held with interested trade associations to discuss proposed changes and a set of three sample reports detailing the changes proposed were prepared and distributed to trade associations and certain interested organizations. Comments on the proposed changes were received from individuals and industry associations and have been incorporated to the extent feasible.

The principal change to the annual report will be from a format of 15 largely end-use sections, each with a separate table for statistics and a listing of individual products reported along with the reporting companies for each, to a single consolidated table in the format of the Harmonized Tariff Schedule of the United States. The single table will list products individually, showing statistics on production and/or sales where publication will not reveal the operations of individual companies and the name of each reporting company. Because each product will be addressed individually, there should be little difference in the number of chemicals published that show separate statistics using either the old report format or the new format. However, aggregations of data by chemical groupings used in the old format that do not have an equivalent grouping in the HTS format will not be shown.

Comments on the new version of the annual report are welcome at anytime. After the Commission has published three editions of the annual report in the new format, comments on possible additional technical changes to the format will again be solicited and considered.

In the future, the Government Printing Office (GPO) will sell both the annual and quarterly SOC reports. The annual report for 1992 and the remainder of the quarterly reports for 1993 will continue to be mailed free. However, the GPO will sell the quarterly reports beginning with the report covering data for the first quarter of 1994 and the annual report for 1993, which is scheduled for publication in the fall of 1994. Recipients who are currently sent these publications free by the Commission will be notified of this change in the next edition of each of these reports. The cost of each annual SOC report will be determined each year by GPO. However, the quarterly SOC report will be sold on a subscription basis. The Master Stock No. for the SOC Quarterly Report is 749–001–000003 and the List ID is PSOC. The subscription cost for a calendar year (four quarterly issues plus a full-year recap) is $8.50 ($10.65 foreign). The single-copy price for quarterly issues is $2.25 domestic ($2.81 foreign), and the single-copy price for the issue covering data for the full year on products in the quarterly report is $1.00 domestic ($1.25 foreign). The address for mail orders is Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Credit card orders may be placed by phone at 202–783–3238.

Because of public requests to make the annual SOC report available electronically, beginning with the annual report for 1992 after its release in late 1993 a version of the report in at least ASCII format will be made available for downloading from a Commission-operated computer bulletin board. Quarterly SOC report data has been available electronically from the bulletin board since 1987. The bulletin board may be accessed without charge at phone number 202–205–1948 at 1200 or 2400 baud, 8 bits, 1 stop bit, no parity.

Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810.

By order of the Commission.

Issued: October 15, 1993.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–25755 Filed 10–19–93; 8:45 am]

BILLING CODE 7020-02-P

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–167; Sub-No. 1123X]

Consolidated Rail Corp. Abandonment Exemption; in Clinton and Carroll Counties, IN

Consolidated Rail Corporation (Conrail) has filed a notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments* to abandon 13.8± miles of rail line from approximately milepost 37.2± at Frankfort to approximately milepost 51.0± at Bringhurst, in Clinton and Carroll Counties, IN.

Conrail has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). The address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on November 19, 1993, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to

[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Energy and Environment in its independent investigation) cannot be made before the effective date of the notice of exemption. See

Continued

file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by November 1, 1993. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by November 9, 1993, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: John J. Paylor, Esq., Associate General Counsel, Consolidated Rail Corporation, Two Commerce Square, 2001 Market Street, P.O. Box 41416, Philadelphia, PA 19101–1416.

If the notice of exemption contains false or misleading information, the exemption is void ab initio.

Conrail has filed an environmental report which addresses the abandonment's effects, if any, on the environmental and historic resources. The Section of Energy and Environment (SEE) will issue an environmental assessment (EA) by October 25, 1993. Interested persons may obtain a copy of the EA by writing to SEE (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: October 8, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–25775 Filed 10–19–93; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Lodging of Final Judgment by Consent Pursuant to the Safe Drinking Water Act; United States and State of Montana v. Butte Water Co.

In accordance with Department of Justice policy, 28 CFR 50.7, notice is hereby given that on September 10, 1993 a Consent Decree in *United States and State of Montana* v. *Butte Water Company*, No. CV 91–100–BU–PGH, was lodged with the United States District Court for the District of Montana.

The United States filed its Complaint in this action on December 31, 1991, and its First Amended Complaint on January 21, 1992, against Butte Water Company seeking injuctive relief and civil penalties of up to $25,000 per day of violation under sections 1414(b) and 1431 of the Safe Drinking Water Act ("SDWA"), 42 U.S.C. 300g–3(b) and 300i. The State of Montana also filed a complaint in this action against Butte Water Company seeking civil penalties of up to $10,000 per day of violation, cost, and attorneys fees under the Montana Public Water Supply Act ("MPWSA"), Mont. Code Ann. tit. 75, ch. 6, pt. 1. The United States and the State allege that Butte Water Company has violated the SDWA, and MPWSA, and the national primary drinking water regulations, and that the violations resulted in an imminent and substantial endangerment to the health of persons who consume drinking water from the Butte water system. The United States' and the State's claims for injunctive relief have been resolved in a previous settlement with the new owner and operator of the Butte water system, Silver Bow Water, Inc. and the City-County of Butte-Silver Bow. *United States and State of Montana* v. *Silver Bow Water, Inc. and City-County of Butte-Silver Bow*, No. CV 92–26–BU–PGH (D. Mont. consent decree entered May 15, 1992.) See 57 FR 17930 (Apr. 28, 1992). Pursuant to that settlement, two drinking water filtration plants are under construction on an expedited schedule, and other measures are being implemented to mitigate turbidity in the Butte water system until the filtration plants are completed.

Under the proposed Consent Decree, Butte Water Company will pay a civil penalty of $900,000.00 in settlement of the United States' and the State's claims. The penalty will be divided between the United States and the State, with $720,000.00 to be paid to the United States and $180,000.00 to be paid to the State. A fourteen (14) day comment period on the proposed consent decree was provided from September 13, 1993 to September 27, 1993.

The Department of Justice will also receive comments relating to the proposed Consent Decree for an additional period of fourteen (14) days from the date of publication of this notice. Comments should refer to *United States* v. *Butte Water Company*, No. CV 91–100–BU–PGH (D. Mont.), DOJ Ref. No. 90–5–1–1–3751 and should be addressed to the Acting Assistant Attorney General for the Environment and Natural Resources Division. Comments sent by U.S. Mail should be sent to the U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044. Comments sent by overnight mail should be sent to the U.S. Department of Justice, room 12015, 1425 New York Avenue, Washington, DC 20005. Comments sent by Telefax should be sent to Telefax No. (202) 616–6583 using Voice Confirmation No. (202) 514–1111.

The proposed Consent Decree may be examined at any of the following offices: (1) The Office of the United States Attorney for the District of Montana, Butte Division, 167 Federal Building, Butte, Montana 59701; (2) the U.S. Environmental Protection Agency, Montana Operations Office, Federal Building, 301 South Park Street, Helena, Montana 59626; (3) the U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Denver, Colorado 80202; and (4) the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. Copies of the proposed Consent Decree may be obtained by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. Please enclose a check for $2.50 ($0.25 per page reproduction charge) payable to "Consent Decree Library."

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93–25791 Filed 10–19–93; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Clean Air Act; United States v. Petro Power Insulation, Inc. et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on September 20, 1993 a proposed partial consent decree in *United States* v. *Petro Power Insulation, Inc. et al.*, Civil Action No. C–91 1490 MHP, was lodged with the Untied States District Court for the Northern District of California. This is an action brought pursuant to the Clean Air Act, 42 U.S.C. 7401–7632, and the National Emissions Standards for Hazardous Air Pollutants ("NESHAP") for asbestos, promulgated under Section 112 of the Act, 42 U.S.C. 7412. Under the terms of the proposed partial consent decree, the settling defendant Gaylord Container Corp.

Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] See *Exempt or Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept late-filed trail use statements as long as its retains jurisdiction to do so.

("Gaylord") agrees to pay a civil penalty of $15,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments relating to the proposed partial consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20530. Comments should refer to *United States* v. *Petro Power Insulation, Inc. et al.*, D.O.J. Ref. 90–5–2–1–1562.

The proposed partial consent decree may be examined at the Office of the Assistant United States Attorney, Northern District of California, 450 Golden Gate Avenue, San Francisco, California 94102, and at the Consent Decree Library, 1120 G Street, NW., Washington, DC 20005 (202–624–0892). A copy of the proposed partial consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., Washington, DC 20005. In requesting a copy by mail, please enclose a check in the amount of $6.00 (25 cents per page reproduction cost) payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93–25790 Filed 10–19–93; 8:45 am]

BILLING CODE 4410–01–M

Federal Bureau of Investigation

National Stolen Auto Part Information System Federal Advisory Committee; Meeting

The National Stolen Auto Part Information System (NSAPIS) Federal Advisory Committee will meet on November 18–19, 1993, from 9 a.m. until 5 p.m., at the Dulles Airport Marriott, 333 West Service Road, Chantilly, Virginia, telephone 703/471–9500, to formulate recommendations to the Attorney General, on the design and implementation of the National Stolen Auto Part Information System mandated by Public Law 102–519.

In addition to discussion of these matters, the Committee will discuss the relationship of the NSAPIS to the National Crime Information Center (NCIC) System, and the NCIC Vehicle database, and will discuss the design and implementation of a system to identify whether junk or salvage vehicles are stolen.

The meeting will be open to the public on a first-come, first-seated basis. Any member of the public may file a written statement concerning the National Stolen Auto Part Information System or related matters with the Committee, before or after the meeting, by sending same to the Chairman/Designated Federal Employee. Anyone wishing to address this session of the meeting should notify the Designated Federal Employee, at least 24 hours prior to the start of the session. The notification may be by mail, telegram, cable, or a hand-delivered note. It should contain the requestor's name; corporate designation, consumer affiliation, or Government designation; along with a short statement describing the topic to be addressed; and the time needed for presentation. A nonmember requestor will ordinarily be allowed not more than 15 minutes to present a topic, unless specially approved by the Chairman.

Inquires may be addressed to the Chairman/Designated Federal Employee, Mr. David F. Nemecek, Inspector-Deputy Assistant Director, CJIS Division, FBI, 10th and Pennsylvania Avenue, Northwest, Washington, DC 20535, telephone (202) 324–8920.

Dated: October 13, 1993.

David F. Nemecek,

Inspector-Deputy Assistant Director, Designated Federal Employee.

[FR Doc. 93–25671 Filed 10–19–93; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF LABOR

Office of the Secretary

Commission on the Future of Worker-Management Relations; Meeting

AGENCY: Office of the Secretary, Labor.

ACTION: Notice of public meeting.

SUMMARY: The Commission on the Future of Worker-Management Relations was established in accordance with Federal Advisory Committee Act (FACA) Public Law 92–463. Pursuant to section 10(a) of FACA, this is to announce that the Commission will meet at the time and place shown below:

Time and Place: The meeting will be held on Monday, November 8, 1993 from 10 a.m. to 4:30 p.m. in the Department of Labor Auditorium, 200 Constitution Avenue, NW., Washington, DC.

Agenda: The agenda for the meeting is as follows:

The day will be devoted to presentations on the questions posed in the mission statement of the Commission which are:

1. What (if any) new methods or institutions should be encouraged, or required, to enhance workplace productivity through labor-management cooperation and employee participation?

2. What (if any) changes should be made in the present legal framework and practices of collective bargaining to enhance cooperative behavior, improve productivity, and reduce conflict and delay?

3. What (if anything) should be done to increase the extent to which workplace problems are directly resolved by the parties themselves, rather than through recourse to state and federal courts and government regulatory bodies?

Presentations will be made on these questions in the morning from 10 a.m. to 12:30 p.m. by spokespersons for organized labor.

Presentations will be made on these questions in the afternoon from 1:30 p.m. to 4 p.m. by spokespersons for major business organizations and companies.

The sessions will include questions and exchanges of views with the Commission Members, with additional discussion by the Commission Members from 4 p.m. to 4:30 p.m. when the hearing is adjourned.

This discussion will be continued at the December 15, 1993 meeting of the Commission with other spokespersons for labor, small business and other interested parties.

Public Participation: The Commission will be in session from 10 a.m. to 12:30 noon when it will recess for lunch and will return at 1:30 p.m. Seating will be available to the public on a first-come, first-served basis. Handicapped individuals wishing to attend should contact the Commission to obtain appropriate accommodations. Individuals or organizations wishing to submit written statements should send 11 copies to Mrs. June M. Robinson, Designated Federal Official, Commission on the Future of Worker-Management Relations, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 219–9148.

Signed at Washington, DC this 14th day of October, 1993.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 93–25749 Filed 10–19–93; 8:45 am]

BILLING CODE 4510–23–M

Employment and Training Administration

Job Training Partnership Act: Native American Employment and Training Council; Meeting

Puruant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, and section 401(h)(1) of the Job Training Partnership Act (JTPA), as amended (29 U.S.C. 1671(h)(1)), notice is hereby given of a meeting of the Native American Employment and Training Council.

Time and date: The meeting will begin at 9 a.m. on November 4, 1993, and continue until close of business that day; and will reconvene at 9 a.m. on November 5, 1993 and

adjourn at 3 p.m. that day. From 3 to 5 p.m. on November 4 will be reserved for participation and presentations by members of the public.

Place: Rooms N–3437 A, B and C, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Status: The meeting will be open to the public.

Matters to be considered: The agenda will focus on the following topics: (1) Selection of Council chair and vice chair; (2) incorporation of statutory requirements in the current section 401 regulations; (3) ETA communications network; (4) implementation of the Indian Employment Training and Related Services Demonstration Act of 1992 (Pub. L. 102–477); (5) technical assistance; and (6) report of the technical work group on the section 401 standardized participant record.

Contact person for more information: Charles Atkinson, Acting Chief, Division of Indian and Native American Programs, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., room C–4524, Washington, DC 20210. Telephone: 202–219–5904 (this is not a toll-free number). Mr. Atkinson is the Designated Federal Official for the Council.

Signed at Washington, DC, this 14th day of October, 1993.

Doug Ross,

Assistant Secretary of Labor.

[FR Doc. 93–2570 Filed 10–19–93; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 93–081]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of agency report forms under OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's), supporting statements, instructions, transmittal letters and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Acting Agency Clearance Officer and the OMB Paperwork Reduction Project.

DATES: Comments are requested by November 19, 1993. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Paperwork Reduction Project and the Acting Agency Clearance Officer of your intent as early as possible.

ADDRESSES: Ms. Eva L. Layner, Acting NASA Agency Clearance Officer, Code JTD, NASA Headquarters, Washington, DC 20546; Office of Management and Budget, Paperwork Reduction Project (2700–0063), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Shirley C. Peigare, NASA Reports Officer, (202) 358–1374.

Reports

Title: NASA Safety Reporting System (NSRS).

OMB Number: 2700–0063.

Type of Request: Extension.

Frequency of Report: As Required.

Type of Respondent: Individuals or households, businesses or other for-profit, federal agencies or employees.

Number of Respondents: 75.

Responses per Respondent: 1.

Annual Responses: 19.

Hours per Response: .25.

Annual Burden Hours: 19.

Abstract-Need/Uses: Form will be used by NASA employees and NASA contractor employees to voluntarily and confidentially report to an independent agent any safety concerns or hazards pertaining to any NASA program or project.

Dated: October 12, 1993.

Eva L. Layne,

Acting Chief, IRM Policy and Acquisition Management Office.

[FR Doc. 93–25727 Filed 10–19–93; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL INSTITUTE FOR LITERACY

National Institute for Literacy Advisory Board; Meeting

AGENCY: National Institute for Literacy Advisory Board, National Institute for Literacy.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Institute for Literacy Advisory Board (Board). This notice also describes the function of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the meeting.

DATE AND TIME: November 9, 1993, 10 a.m. to 3 p.m.

ADDRESSES: National Institute for Literacy, 800 Connecticut Avenue, NW., suite 200, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Sharyn M. Abbott, Acting Executive Officer, National Institute for Literacy, 800 Connecticut Avenue, NW., suite 200, Washington, DC 20006. Telephone (202) 632–1500.

SUPPLEMENTARY INFORMATION: The Board is established under Section 384 of the Adult Education Act, as amended by title I of Pub. L. 102–73, the National Literacy Act of 1991. The Board consists of ten individuals appointed by the President with the advice and consent of the Senate. The Board is established to advise and make recommendations to the Interagency Group, composed of the Secretaries of Education, Labor, and Health and Human Services, which administers the National Institute for Literacy (Institute). The Interagency Group considers the Board's recommendations in planning the goals of the Institute and in the implementation of any programs to achieve the goals of the Institute. Specifically, the Board performs the following functions: (a) Makes recommendations concerning the appointment of the Director and the staff of the Institute; (b) provides independent advice on operation of the Institute; and (c) receives reports from the Interagency Group and the Director of the Institute. In addition, the Institute consults with the Board on the award of fellowships.

The Board will meet in Washington, DC on November 9, 1993 from 10 a.m. to 3 p.m. The meeting of the Board is open to the public. The agenda includes an update of current activities and a review of the Institute's progress.

Records are kept of all Board proceedings and are available for public inspection at the National Institute for Literacy, 800 Connecticut Avenue, NW., suite 200, Washington, DC 20006 from 8:30 a.m. to 5 p.m.

Lilian S. Derka,

Acting Interim Director, National Institute for Literacy.

[FR Doc. 93–25807 Filed 10–19–93; 8:45 am]

BILLING CODE 6055–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget (OMB) Review

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection.

SUMMARY: The NRC has recently submitted to the OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* Certification of Medical Examination by Facility Licensee.

3. *The form number if applicable:* NRC Form 396.

4. *How often the collection is required:* Upon application for an initial operator license, and every six years for the renewal of operator or senior operator licenses.

5. *Who will be required or asked to report:* Facility employers of applicants for operators licenses.

6. *An estimate of the number of responses:* 1700 annually.

7. *An estimate of the total number of hours needed to complete the requirement or request:* Reporting: 425 hours (.25 hours per response), Recordkeeping: 500 hours (.10 hours per response).

8. *An indication of whether section 3504(h), Public Law 96–511 applies:* Not applicable.

9. *Abstract:* NRC Form 396 establishes the procedure for transmitting information to the NRC regarding the medical condition of applicants for initial or renewal operator licenses and for the maintenance of medical records for all licensed operators. The information is used to determine whether the physical condition and general health of applicants for operators licenses is such that the applicant would not be expected to cause operational errors endangering public health and safety.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555.

Comments and questions should be directed by mail to the OMB reviewer: Tim Hunt, Office of Information and Regulatory Affairs (3150–0024), NEOB–3019, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone (202) 395–3084.

The NRC Clearance Officer is Brenda J. Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 13th day of October, 1993.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 93–2570 Filed 10–19–93; 8:45 am]

BILLING CODE 7590–01–M

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget (OMB) Review

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of the OMB review of information collection.

SUMMARY: The NRC has recently submitted to the OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35)

1. *Type of submission, new revision, or extension:* Revision.

2. *The title of the information collection:* 10 CFR part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions".

3. *The form number if applicable:* Not applicable.

4. *How often the collection is required:* On occasion. Upon submittal of an application for construction permit, operating license, operating license renewal, early site review, design certification review, decommissioning review, manufacturing license, materials license, or upon submittal of a petition for rulemaking.

5. *Who will be required or asked to report:* Licensees and applicants requesting approvals for actions proposed in accordance with the provisions of 10 CFR parts 30, 32, 33, 34, 35, 36, 39, 40, 50, 52, 54, 60, 61, 70 and 72.

6. *An estimate of the number of responses:* 27 annually.

7. *An estimate of the total number of hours needed annually to complete the requirement or request:* 29,099 (approximately 1,090 hours per response).

8. *An indication of whether section 3504(h), Public Law 96–511 applies:* Not applicable

9. *Abstract:* 10 CFR part 51 of the NRC'S regulations specifies information and data to be provided by applicants and licensees so that the NRC can make determinations necessary to adhere to the policies, regulations, and public laws of the United States, which are to be interpreted and administered in accordance with the policies set forth in the National Environmental Policy Act of 1969, as amended.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20037.

Comments and questions should be directed to the OMB reviewer: Tim Hunt, Office of Information and Regulatory Affairs (3150–0021), NEOB–3019, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492–8232.

Dated at Bethesda, Maryland, this 13th day of October, 1993.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 93–24720 Filed 10–19–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–458]

Gulf States Utilities Co., Cajun Electric Power Cooperative, Inc. River Bend Station, Unit 1; Notice of No Significant Antitrust Changes and Time for Filing Request for Reevaluation

The Director of the Office of Nuclear Reactor Regulation has made a finding in accordance with section 105c(2) of the Atomic Energy Act of 1954, as amended, that no significant (antitrust) changes in the licensee's activities or proposed activities have occurred subsequent to the antitrust operating license review of the River Bend Station by the Attorney General and the Commission. The finding is as follows:

Under section 105 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2135 (Act), 10 CFR 50.80 and 50.90, the Nuclear Regulatory Commission (NRC or Commission) requires an antitrust review of changes in ownership or operator of a power production facility after initial licensing. In situations where requests for a change in ownership or operator have been received after issuance of an operating license for such a facility, the staff has conducted, with the Commission's approval, a significant change review to determine whether the licensee's activities create or tend to create a situation inconsistent with the antitrust laws. The Commission delegated the authority to make the significant change determination to the Director, Office of Nuclear Reactor Regulation (NRR).

Based upon an analysis of the extensive comments received, the record and findings in other regulatory proceeding involving the proposed merger of Gulf States Utilities Company (GSU) and Entergy Corporation (Entergy), and after consultation with the Department of Justice, the staffs of the Inspection and Licensing Policy Branch of NRR and the Office of the General Counsel (hereafter, "staff"), have concluded that the changes in GSU's activities which have been identified by the staff do not constitute significant changes as envisioned by the Commission in its *Summer*[1] decision. The conclusion of the staff analysis is as follows:

After review of the filings in this proceeding, the record and testimony developed in the related proceedings at the Federal Energy Regulatory Commission and other public information, the staff determined that the changes in GSU's activities since the previous antitrust review, which may have competitive implications in the bulk power services market in the south central portion of the country, should be addressed in the context of a petition pursuant to 10 CFR 2.206 requesting initiation of an antitrust compliance proceeding, not in the instant significant change proceeding. Consequently, the staff recommends that the Director of the Office of Nuclear Reactor Regulation issue a post OL no significant antitrust change finding pursuant to GSU's request to transfer control of ownership in River Bend from GSU to Entergy. The staff further has determined that as a result of the inclusion of a license condition prohibiting EOI's marketing or brokering of power or energy from the River Bend facility that the proposed transfer of operating responsibility of River Bend from ESU to EOI presents no relevant antitrust issues to the instant licensing review process.

Based upon the staff analysis, it is my finding that there have been no "significant changes" in the licensee's activities or proposed activities since the completion of the antitrust operating license review of the River Bend Station.

Signed on October 15, 1993, by Thomas E. Murley, Director of the Office of Nuclear Reactor Regulation.

Any person whose interest may be affected by this finding, may file, with full particulars, a request for reevaluation with the Director of the Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555 within 30 days of the initial publication of this notice in the **Federal Register**. Request for reevaluation of the no significant change determination shall be accepted after the date when the Director's finding becomes final, but before the issuance of the proposed license amendment, only if they contain new information, such as information about facts or events of antitrust significance that have occurred since that date, or information that could not reasonably have been submitted prior to that date.

Dated at Rockville, Maryland, the 15th day of October 1993.

For the Nuclear Regulatory Commission.

Anthony T. Gody,

Chief, Inspection and Licensing Policy Branch, Program Management, Policy Development and Analysis Staff, Office of Nuclear Reactor Regulation.

[FR Doc. 93-25887 Filed 10-19-93; 8:45 am]

BILLING CODE 7590-01-F

[1] *South Carolina Electric and Gas Company and South Carolina Public Service Authority,* (Virgil C. Summer Nuclear Station, Unit 1), CLI-80-28, 11 NRC 817, 824 (1980)

[Docket No. 50-192]

The University of Texas at Austin (The University of Texas at Austin TRIGA Mark I Research Reactor); Order Terminating Facility License

By application dated May 3, 1985, as supplemented on December 2, 1985, the University of Texas at Austin (UT or the licensee) requested from the U.S. Nuclear Regulatory Commission (the Commission) authorization to dismantle, decommission, and dispose of the component parts of the UT TRIGA Mark I research reactor located in Austin, Texas. A "Notice of Proposed Issuance of Orders Authorizing Disposition of Component Parts and Terminating Facility License" was published in the **Federal Register** on May 31, 1985 (50 FR 23207). By Order dated March 9, 1987, the Commission authorized dismantling of the facility and disposition of component parts as proposed in the decommissioning plan of the licensee. By letter dated December 17, 1992, as supplemented on March 22 and May 3, 1993, the licensee submitted its report for the final disposition of the facility.

The reactor fuel has been removed from the core and shipped to a Department of Energy (DOE) facility. The reactor facility has been completely dismantled and all requirements pertaining to residual radioactivity, personnel and external radiation exposure, and fuel disposition have been met. Confirmatory radiological surveys verified that the facility met the recommended regulatory guidance for release of the facility for unrestricted use. Accordingly, the Commission has found that the facility has been dismantled and decontaminated pursuant to the Commission's Order dated March 9, 1987. Satisfactory disposition has been made of the component parts and fuel in accordance with the Commission's regulations in title 10 of the Code of Federal Regulations, (10 CFR) chapter I, and in a manner not inimical to the common defense and security, or to the health and safety of the public. Therefore, on the basis of the application filed by UT and pursuant to sections 104, 161b, and 161i, of the Atomic Energy Act of 1954, as amended, and in 10 CFR 50.82(f), *it is hereby ordered*, That Facility License No. R-92 is terminated as of the date of this Order. In accordance with 10 CFR part 51, the Commission has determined that the issuance of this termination Order will have no significant impact on the quality of the human environment. The environmental assessment and finding of no significant impact was published in the **Federal Register** on October 13, 1993 (58 FR 53001).

For further details with respect to this action see (1) the application for termination of Facility License No. R-92, dated May 3, 1985, as supplemented on December 17, 1992, March 22 and May 3, 1993, (2) the Commission's safety evaluation related to the termination of the license, (3) the environmental assessment and finding of no significant impact, and (4) the "Notice of Proposed Issuance of Orders Authorizing Disposition of Component Parts and Terminating Facility License," published in the **Federal Register** on May 31, 1985 (50 FR 23207). Each of these items is available for public inspection at the Commission Public Document Room, 2120 L Street, NW., Washington, DC 20555.

Copies of items (2), (3), and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Operating Reactor Support.

Dated at Rockville, Maryland, this 13th day of October 1993.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 93-25718 Filed 10-19-93; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Final Subcontract Reporting System Test Plan and Reporting Form

AGENCY: Executive Office of the President, Office of Management and

Budget (OMB), Office of Federal Procurement Policy.

ACTION: Final Subcontract Reporting System Test Plan and Reporting Form.

SUMMARY: The Subcontract Reporting System Test Plan and Reporting Form are being issued to implement section 202(d) of the Small Business Credit and Business Opportunity Enhancement Act of 1992, (Pub. L. 102–366). Section 202(d) requires that the Administrator for Federal Procurement Policy conduct a limited test of a simplified system to collect data on the participation of small business concerns (including small business concerns owned and controlled by socially and economically disadvantaged individuals) as other than prime contractors. The system is limited to collecting subcontract data on prime contracts for architectural and engineering (A&E) services (including surveying and mapping) that are procured under 40 U.S.C. 541 *et seq.* (the Brooks A–E Act). The system is applicable only to the Environmental Protection Agency, the National Aeronautics and Space and Administration, the United States Army Corps of Engineers (Civil Works), and the Department of Energy.

The primary purpose of this limited test is to demonstrate whether the actual rate of small business participation on A&E prime contracts is substantially higher than is now being reflected in data captured by the Government's existing procurement data system. Also, this new system is intended to collect subcontracting data under a broader range of A&E contract awards than are covered by the existing reporting requirements of Public Law 95–507.

FOR FURTHER INFORMATION CONTACT: Linda G. Williams, Deputy Associate Administrator, (202) 395–3302.

SUPPLEMENTARY INFORMATION:

A. Background

Pursuant to the Small Business Act, prime contractors and subcontractors (except small business firms) that receive one or more contracts over $500,000 ($1 million for construction) are required to submit a subcontracting plan with goals for using small business and small disadvantaged business concerns as subcontractors under Federal prime contracts, and to report accomplishments against the goals. Concerns have been expressed that small business firms actually receive more subcontracting opportunities than are being reported under the existing reporting system. As part of the Small Business Competitiveness Demonstration Program, OFPP is required to conduct a limited test of a simplified system that collects data on the rate of small business and small disadvantaged business participation at the subcontract level under Federal prime contracts for A&E services (including surveying and mapping).

A proposed Subcontracting Reporting System Text Plan and Reporting Form were published in the **Federal Register** for public review and comment on April 16, 1993 (58 FR 19856). Comments were received from two Government and four private organizations. All comments were reviewed, and where warranted, changes have been made. The main issues and concerns raised in the comments are summarized below:

1. *Relationship to Current Reporting Requirements Under Public Law 95–507.* Comments from both Government organizations suggested that we add language to clarify that the Subcontracting Reporting System Test Plan and Reporting Form do not affect, and are independent of, current reporting requirements in Public Law 95–507 and FAR Section 52.219–9 (which require that prime contractors and subcontractors, except small businesses, that receive one or more contracts over $500,000 ($1 million in construction) submit a subcontracting plan with goals for using small business and small disadvantaged business concerns as subcontractors under Federal prime contracts and to report accomplishments against the goals). These comments were accepted.

2. *Definition of United States Army Corps of Engineers (Civil Works).* One Government organization commented that although section 202(d) of Public Law 102–366 specifies that data shall be collected from the United States Army Corps of Engineers (Civil Works), there in fact is no such entity. The commenter recommended that we add language to indicate that United States Army Corps of Engineers (Civil Works) means purchases of A&E services by the Army Corps of Engineers in support of its civil works function. This comment was accepted.

3. *Coverage of Joint Ventures.* One private organization suggested that we include joint ventures as prime contractors that are covered by the reporting requirements of the system. This commenter pointed out that the legislative history of Public Law 102–366 indicates that the system should cover joint venture arrangements at the prime contract level. This comment was accepted. For purposes of this Reporting System, joint ventures will be considered large business Federal prime contractors.

4. *Expanded Coverage.* One private organization suggested that system coverage be expanded to include two additional agencies and one additional industry. This commenter pointed out that Public Law 102–366 gives OFPP the authority to add industries and agencies to those specifically covered by the statute. This comment was not accepted. The system is established as a limited test and specifically was narrowed from a broader requirement contained in Public Law 100–656 that subsequently was repealed due to its unmanageability. Accordingly, we do not think inclusion of additional agencies or industries is appropriate at this time. If experience shows that the current coverage could be expanded without being unduly burdensome, we will consider adding additional industries and/or agencies at a later date.

5. *Exclusion of Small and Small Disadvantaged Businesses.* One private organization commented that there is no authority to exclude small and small disadvantaged businesses from the reporting requirements established by the system. This commenter believes that such businesses should be covered in order to capture the full range of subcontract awards to small businesses. This comment was not accepted. Public Law 102–366 gives OFPP broad authority to "develop and implement a simplified" data collection system. Excluding small and small disadvantaged businesses from the system reporting requirements avoids saddling small and small disadvantaged businesses with administratively burdensome and costly reporting requirements; most such businesses do not have systems in place to collect the necessary data since they are excluded from the reporting requirements of Public Law 95–507.

6. *Implementation Should Be Delayed Until Cost Impact Can Be Determined.* One private organization commented that the system will require reporting and oversight of subcontracts by prime contractors substantially beyond current requirements and will necessitate increased costs for additional manpower and systems implementation. The commenter suggested that the plan not be implemented until the cost impact can be determined. This comment was not accepted. The system is mandated by Public Law 102–366, and as previously discussed, is a more restricted version of a broader requirement contained in Public Law 100–656 that was subsequently repealed because it was deemed to be unduly burdensome. Further, there is no practical way to determine in advance

the cost of implementing the system. We do note, however, that another private organization commented that it does not anticipate that the system will place any undue burdens on A&E prime contractors (the only prime contractors covered by the system). This organization based its conclusion on the fact that coverage is limited to solicitations covered by the Brooks A–E Act, issued by only four Government agencies, and the fact that many contractors are already required to report subcontracting activity under Public Law 95–507. This commenter states that a survey of its members determined that collection of subcontract data as required by the system would not pose hardships on A&E prime contractors.

7. *Exclusion of Subcontracts with Non-Profits and Educational Institutions.* One Government organization questioned the exclusion of subcontracts with non-profits and educational institutions from the system reporting requirements. This commenter stated that exclusion of these groups is not consistent with existing requirements under Public Law 95–507 for subcontracting plans. However, we note that the SF 294 Form, "Subcontracting Report For Individual Contracts" (FAR 53.301–294), which is used to collect subcontract data under a subcontracting plan established pursuant to Public Law 95–507, only requires reporting of subcontract awards to business "concerns." The definition of concern at FAR 19.001 is "any business organized for profit * * *." Further, exclusion of non-profits and educational institutions is consistent with the coverage of the Small Business Competitiveness Demonstration Program, which does not count prime contract awards to non-profits and educational institutions toward attainment of the small business goals established by the Program. Since subcontracting awards reported under the system will count toward attainment of goals under the Demonstration Program, coverage between the two should be consistent.

8. *Criteria for Determining "Substantially Higher" Rate of Small Business Participation.* The stated purpose of the system is to determine whether the actual rate of small business participation on A&E prime contracts is "substantially higher" than is now reflected in data captured by the Government's existing data collection system. One Government organization suggested that we should establish criteria for determining "substantially higher." This comment was not accepted. We do not think it is practical to establish such criteria in advance. Rather, we believe we should compare and analyze data collected before and after the test, and then make a determination as to whether the change in performance is significant. This may require subjective judgements, and consideration of possible alternative interpretations of the data.

9. *Coverage Should Be Limited To Standard Industrial Codes Covered by the Small Business Competitiveness Demonstration Program.* One Government and one private organization commented that system coverage should be limited to subcontracts awarded in one of the standard industrial codes covered by the Small Business Competitiveness Demonstration Program. These comments were not accepted. We do not believe coverage should be limited because most subcontractors are not familiar with, and do not have access to, the codes. Therefore, we determined that any subcontract needed for prime contract performance, irrespective of the product or service provided, should be reported.

10. *General.* Other comments accommodated in the final test plan include:

—The addition of the words "if needed" in the first sentence of test plan paragraph IV.C. to indicate that a procedure for the collection by the OSDBU of the hardcopy Forms XXX from the contracting office need be established only if agency procedures do not otherwise provide for the OSDBU to receive copies of the forms.

—The exclusion of non-profits, educational institutions, and state and local governments from the definition of "Federal prime contractor" in Attachment B. These entities are excluded from the Small Business Competitiveness Demonstration Program, and therefore, are also being excluded from the prime contractors covered by the system.

—The addition of language in the last two sentences of test plan paragraph IV.C. to indicate that the backup data to be provided to OFPP should be the compiled data from the Forms XXX, and not the forms themselves.

—The addition of "direct" before the word "support" in paragraph 2 of Attachment B. This is to clarify that only subcontracts in direct support of the prime contract are covered.

B. Regulatory Flexibility Act

This reporting system will not have a significant impact on small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, and, therefore, no Regulatory Impact analysis has been prepared.

The system seeks to measure the amount of small business participation in subcontracts. The reporting requirements of the system will be imposed on large businesses and, as such, there is no cost to small businesses.

C. Executive Order No. 12866

This reporting system has been reviewed in accordance with the objectives and criteria of Executive Order No. 12866. The system will not result in any of the economic or regulatory impacts associated with a significant regulatory action. The system will not have an annual effect on the economy of $100 million or more and will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities. It also will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations or recipients thereof; or raise novel legal or policy issues arising out of legal mandates, or the President's priorities, or the principles set forth in this Executive order.

D. Paperwork Reduction Act

The information collection requirements for this reporting system have been approved by the Office of Management and Budget through February 28, 1996 and assigned OMB Control No. 9000–0100.

List of Subjects

Government procurement, Small business procurement.

Allan V. Burman,

Administrator.

[FR Doc. 93–25727 Filed 10–6–93; 8 45 am]

BILLING CODE 3110–01–M

OFFICE OF PERSONNEL MANAGEMENT

Notice of Request for a Revised Information Collection Submitted to OMB for Clearance

AGENCY: U.S. Office of Personnel Management.

ACTION: Notice.

SUMMARY: Under the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), this notice announces a

request for a revised information collection used to collect information from the public. The Establishment Information Form, the Wage Data Collection Form, and the Continuation Form are wage survey forms developed by the Office of Personnel Management and used by three lead agencies, the Department of Defense, the Department of Veterans Affairs, and the National Aeronautics and Space Administration, to survey private sector business establishments. Data collectors survey 17,000 businesses annually to determine the level of wages paid by private enterprise establishments for representative jobs common to both private industry and Government. Each survey collection requires 4 hours of respondent burden resulting in a total yearly burden of 68,000 hours. The lead agencies use this information to establish rates of pay for Federal Wage System employees. For copies of this proposal, call C. Ronald Trueworthy, Agency Clearance Officer, on (703) 908–8550.

DATES: Comments on this proposal should be received within 30 days after the date of this notice.

ADDRESSES: Send or deliver written comments to: Joseph Lackey, OPM Desk Officer, Office of Management and Budget, Office of Information and Regulatory Affairs, room 3002, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Paul A. Shields, (202) 606–2848.

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 93–25608 Filed 10–19–93; 8:45 am]

BILLING CODE 6325–01–M

POSTAL RATE COMMISSION

[Order No. 992; Docket No. A94–1]

Waka, Texas 79093 (Mr. and Mrs. Carl Carter, Petitioners); Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)

Issued October 14, 1993.

Docket number: A94–1

Name of affected post office: Waka, Texas 79093

Name(s) of petitioner(s): Mr. and Mrs. Carl Carter

Type of determination: Consolidation

Date of filing of appeal papers: October 8, 1993

Categories of issues apparently raised:

1. Effect on postal services (39 U.S.C. 404(b)(2)(C)).
2. Effect on the community (39 U.S.C. 404(b)(2)(A)).
3. Economic savings (39 U.S.C. 404(b)(2)(D)).

Other legal issues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition, in light of the 120-day decision schedule (39 U.S.C. 404(b)(5)), the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the petitioners. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memoranda previously filed.

The Commission orders:

(A) The record in this appeal shall be filed on or before October 25, 1993.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register**.

By the Commission.

Charles L. Clapp,

Secretary.

APPENDIX

October 8, 1993	Filing of Petition.
October 14, 1993	Notice and Order of Filing of Appeal.
November 2, 1993	Last day of filing of petitions to intervene (see 39 CFR 3001.111(b)).
November 12, 1993	Petitioners' Participant Statement or Initial Brief (see 39 CFR 3001.115(a) and (b)).
December 2, 1993	Postal Service Answering Brief (see 39 CFR 3001.115(c)).
December 17, 1993	Petitioners' Reply Brief should Petitioners choose to file one (see 39 CFR 3001.115(d)).
December 27, 1993	Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings (see 39 CFR 3001.116).
February 4, 1994	Expiration of 120-day decisional schedule (see 39 U.S.C. 404(b)(5)).

[FR Doc. 93–25684 Filed 10–19–93; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–33045; File No. SR–NYSE–93–28]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Amendments to Rule 35 (Floor Employees to be Registered) and Rule 301 (Proposed Transfer or Lease of Membership)

October 14, 1993.

I. Introduction

On June 15, 1993, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NYSE Rules 35 and 301 to adopt provisions requiring all floor employees to submit a Uniform Application for Securities Industry Registration or Transfer ("Form U–4") in order to become registered with the Exchange. The proposed rule change also would require all floor employees of members and member organizations, all employees of members and member organizations, who have submitted registration applications for admission to the floor, and all Exchange members and every applicant for membership to

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991.

submit fingerprints to the Exchange.[3] On August 4, 1993, the NYSE submitted to the Commission Amendment No. 1 to the proposed rule change.[4]

The proposed rule change, together with Amendment No. 1, was noticed in Securities Exchange Act Release No. 32788 (August 23, 1993), 58 FR 45366 (August 27, 1993). No comments were received on the proposal. This order approves the proposed rule change, including Amendment No. 1.

II. Description of the Proposal

The NYSE's proposal consists of amendments to Rules 35 ("Floor Employees to be Registered") and 301 ("Proposed Transfer or Lease of Membership"). NYSE Rule 35 currently provides, among other matters, that an employee of a member or member organization may not be admitted to the trading floor unless such employee is registered with, and approved by, the Exchange for admittance and until the employer and employee have complied with the requirements set forth by the Exchange.[5] The NYSE proposes to amend the Supplementary Material to Rule 35 to require that registration applications for all employees of members and member organizations for admission to the floor be submitted to the Exchange on the Form U–4.[6] The Exchange states that having the background information submitted on Form U–4 will enable the Exchange to better fulfill its responsibilities by identifying those individuals who are statutorily disqualified under section 3(a)(39) of the Act.[7] The NYSE also notes that detailed reporting regarding statutory disqualification to the Commission is required by Rule 19h–1 under the Act for admission or continuance of membership or participation or association with a member or member organization, notwithstanding a statutory disqualification.

The NYSE also proposes to amend the Supplementary Material to Rule 35 to require that all floor employees of members and member organizations and all employees of members and member organizations who have submitted registration applications for admission to the Floor be fingerprinted and submit, or cause to be submitted, their fingerprints to the Exchange for identification and appropriate processing.[8] Similarly, the NYSE proposes to amend the Supplementary Material to Rule 301[9] to require that every member and every applicant for membership be fingerprinted and submit, or cause to be submitted, their fingerprints to the Exchange for identification and appropriate processing.[10]

The Exchange states that requiring all Exchange members and floor employees of members and member organizations to be fingerprinted will help identify persons who are subject to a statutory disqualification as well as enhance the overall security on the Exchange floor. The NYSE believes that the proposed fingerprint requirement is consistent with section 17(f)(2) of the Act, which requires, with certain exceptions, fingerprinting of each partner, director, officer or employee of a broker-dealer. The Exchange states that all members should be fingerprinted because they represent customers in the auction market and are an integral part of the trading process.

Finally, the Exchange argues that the proposed rule change is consistent with section 6(b)(5) of the Act, which provides, in pertinent part, that the rules of an exchange be designed to prevent fraudulent and manipulative acts, to promote just and equitable principles of trade and to protect the investing public.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with the requirements of sections 6(b) (1) and (5) of the Act.[11] The Commission believes that the NYSE's proposal is consistent with the requirements under section 6(b)(1) of the Act that an exchange be organized and have the capacity to carry out the purposes of the Act and to comply and enforce compliance by its members and persons associated with its members with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange. The Commission also believes that the proposal is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in accordance with section 6(b)(5) of the Act.

The Commission believes that the proposed rule change should assist the exchange in determining whether a floor employee or Exchange member is subject to a statutory disqualification under section 3(a)(39) of the Act. Section 3(a)(39) provides, among other things, that a person is subject to a statutory disqualification with respect to membership or participation in or association with a member of an SRO if that person has been and is expelled or suspended from membership or participation in or barred or suspended from being associated with a member of an SRO. The Commission believes that by requiring floor employees to provide detailed background information in a Form U–4 and requiring that floor employees and Exchange members submit their fingerprints to the Exchange, the proposed rule change should facilitate the accurate verification of the identity and background of floor employees and members. As a result, the proposal should facilitate compliance with NYSE Rule 346(f) which provides that, except as otherwise permitted by the Exchange, no member, member organization, allied member, approved person, employee or any person directly or indirectly controlling, controlled by or under common control with a member or member organization shall have associated with him or if any person who is known, or in the exercise of reasonable care should be known, to be

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[3] The requirements of amended Rules 35 and 301 to submit Form U–4 and fingerprints to the Exchange would apply to all current and prospective floor employees and members.

[4] See letter from Daniel Parker Odell, Assistant Secretary, NYSE, to Diana Luka-Hopson, Branch Chief, Commission, dated July 30, 1993. Amendment No. 1 renumbered the Supplementary Material to NYSE Rule 301.

[5] The Commission recently approved an amendment to the NYSE's Floor Conduct and Safety Guidelines that imposes a $1,000 fine on members or member organizations that fail to comply with the NYSE's floor clerical personnel clearance procedures in NYSE Rule 35. See Securities Exchange Act Release No. 32422 (June 7, 1993), 58 FR 29019 (June 16, 1993) (order granting accelerated approval to File No. SR–NYSE–93–14).

[6] Form U–4 requires detailed information regarding employment and disciplinary history, and is the standard industry form submitted to self-regulatory organizations ("SRO") for individuals required to be registered applying for Exchange membership. Currently, only floor employees that accept orders from the public are required to submit a completed Form U–4.

[7] 15 U.S.C. 78c(a)(39) (1988). Section 3(a) (39) of the Act defines those persons subject to a statutory disqualification with respect to membership or participation in, or association with a member of, an SRO.

[8] The Exchange stated that, pursuant to the General Instructions to Form U–4, floor employees would be under a continuing obligation to update information required by Form U–4 as changes occur. Telephone conversation between Pat Dorilio, Rule & Interpretive Standards, NYSE, and Louis A. Randazzo, Attorney, Commission, on July 23, 1993.

[9] NYSE Rule 301 currently provides, among other matters, that an offer or agreement by a member to transfer membership or for the lease of membership may be made only in such form as may from time to time be prescribed by the Constitution of the Exchange or the Rules of its Board of Directors.

[10] Currently, the Exchange requires only members conducting business with the public to submit fingerprints.

[11] 15 U.S.C. 78f (1988).

subject to any statutory disqualification defined in section 3(a)(39) of the Act.[12]

The Commission believes that the proposal to require the submission of fingerprints to the Exchange by floor employees and Exchange members is consistent with section 17(f)(2) of the Act[13] and Exchange Act Rule 17f–2.[14] Section 17(f)(2) provides that every member of a national securities exchange, broker, dealer, registered transfer agent and registered clearing agency require that each of its partners, directors, officers and employees be fingerprinted and submit, or cause to be submitted, the fingerprints of such person to the Attorney General of the United States or its designee for identification and processing. Rule 17f–2 provides certain exemptions from this fingerprint requirement, including an exemption for employees of exchange members who satisfy the requirements of the Rule. The Commission believes, however, that it is appropriate for the NYSE to determine to impose a fingerprint requirement upon its floor employees and Exchange members. Indeed, in the release announcing the adoption of Rule 17f–2, the Commission stated that the Rule's exemptions were permissive, not mandatory.[15] The Commission also stated that an organization may require the fingerprinting of any persons granted exemptions by the Rule.[16] The Commission believes that because floor employees and Exchange members are an integral part of the auction market, it is reasonable for the NYSE to determine to impose a fingerprint requirement on such persons.

The Commission also believes that the NYSE's proposal to fingerprint Exchange members and floor employees is a reasonable measure which should help to ensure the security of NYSE staff, members, and the Exchange facility and, also should contribute to the efficient, undisrupted conduct of business on the Exchange. As a result, the proposal should enhance the members' ability to engage in transactions in securities and, thereby, protect investors and the public interest.

Finally, the Commission believes that the proposed rule change should help the NYSE to identify persons who are subject to a statutory disqualification and contribute to the NYSE's efforts to enhance security on the NYSE floor without being unduly burdensome on floor employees and members. Specifically, the proposed procedures are reasonable because of the NYSE's interest in ensuring the safety of its trading floor and the floor personnel thereon. In addition, the Exchange stated that current floor employees and members would be given 60 days from Commission approval of the proposed rule change to comply with the Form U–4 and fingerprint requirements.[17] The Commission believes that this 60 day period should provide current floor employees and members with an adequate amount of time to comply with the revised requirements of Rules 35 and 301.[18]

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[19] that the proposed rule change (SR–NYSE–93–28) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–25730 Filed 10–19–93; 8:45 am]

BILLING CODE 8010–01–M

[12] Rule 346(f) provides that any member organization seeking permission to have such a person continue to be or become associated with it shall pay a fee in an amount to be determined by the Exchange. Section 6(c)(2) of the Act specifies that an exchange may, and in cases in which the Commission directs shall, deny membership to any registered broker or dealer or natural person associated with a registered broker or dealer and bar from becoming associated with a member any person who is subject to a statutory disqualification. Section 6(c)(2) requires that an exchange file notice with the Commission not less than thirty days prior to admitting any person to membership or permitting any person to become associated with a member if the exchange knows, or in the exercise of reasonable care should know, that such person is subject to a statutory disqualification. Rule 19h–1 specifies the notice requirements for admission or continuance of membership for a person subject to a statutory disqualification.

[13] 15 U.S.C. 78q(f)(2) (1988).

[14] 17 CFR 240.17f–2 (1991).

[15] See Securities Exchange Act Release No. 12214 (March 16, 1976), 41 FR 13594 (March 31, 1976) (Notice of Adoption of Rule 17f–2, effective July 1, 1976, Providing Exemptions from the Fingerprinting Requirements of Section 17(f)(2) of the Securities Exchange Act of 1934, as amended, and Extension of Temporary Rule 17f–2(T), Exempting all persons from the Requirements of Section 17(f)(2), Until July 1, 1976).

[16] See Securities Exchange Act Release No. 12214, *supra* note 15.

[17] Telephone conversation between Donald van Weezel, Managing Director, Regulatory Affairs, NYSE, and Louis A. Randazzo, Attorney, Commission, on September 17, 1993.

[18] The Exchange stated that notice of the adoption of the proposed amendments would be provided to members and floor employees by a special circular explaining the procedures for admittance to the Floor. Telephone conversation between Donald van Weezel, Managing Director, Regulatory Affairs, NYSE, and Louis A. Randazzo, Attorney, Commission, on July 12, 1993.

[19] 15 U.S.C. 78s(b)(2) (1988).

[20] 17 CFR 200.30–3(a)(12) (1991).

[Release No. 34–33046; File No. SR–SCCP–93–04]

Self-Regulatory Organizations; Stock Clearing Corp. of Philadelphia; Filing and Immediate Effectiveness of a Proposed Rule Change Reducing the Maximum Trade Value Charge

October 14, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on September 29, 1993, the Stock Clearing Corporation of Philadelphia ("SCCP") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–SCCP–93–04) as described in Items I, II, and III below, which Items have been prepared primarily by SCCP. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will reduce SCCP's maximum trade value charge.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, SCCP included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. SCCP has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

SCCP seeks to reduce its maximum trade value fee from the current charge of $50.00 to $25.00. The proposed fee change is effective as of September 27, 1993, which is the start of a new billing cycle, and is in conjunction with the Philadelphia Stock Exchange's fee reduction.[2] The fee cap reduction should encourage the clearing of block and other large dollar value trades through SCCP.

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 32924 (September 20, 1993), 58 FR 50360 (File No. SR–PHLX–93–33) (notice of filing and immediate effectiveness of amendment to fee schedule).

The proposed rule change is consistent with section 17A of the Act[3] in that it provides for the equitable allocation of a reasonable fee among SCCP's clearing members as required by section 17A(b)(3)(D) of the Act.[4]

B. Self-Regulatory Organization's Statement on Burden on Competition

SCCP does not believe that the proposed change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments have been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective on filing pursuant to section 19(b)(3)(A)(ii)[5] of the Act and pursuant to Rule 19b–4(e)(2)[6] promulgated thereunder because the proposed rule change establishes or changes a due, fee, or other charge imposed by SCCP. At any time within sixty days of the filing of this proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of SCCP. All submissions should refer to File No. SR–SCCP–93–04 and should be submitted by November 10, 1993.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–25731 Filed 10–19–93; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Opportunity for Hearing; Boston Stock Exchange, Inc.

October 14, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Exploration Company of LA
Common Stock, $.01 Par Value (File No. 7–11404)

Daimler Benz Corp AG
American Depositary Shares, No Par Value (File No. 7–11405)

Grupo Tribasa S.A. de C.V.
American Depositary Shares, No Par Value (File No. 7–11406)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before November 4, 1993, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–25735 Filed 10–19–93; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Opportunity for Hearing; Chicago Stock Exchange, Inc.

October 14, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following security:

Daimler Benz Corp Aktiengesellschaft
American Depositary Shares (each representing 1.10th of an ordinary bearer shares of DM 50 each) (File No. 7–11402)

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before November 4, 1993, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–25732 Filed 10–19–93; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

October 14, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section

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[3] 15 U.S.C. 78q–1 (1988).
[4] 15 U.S.C. 78q–1(b)(3)(D) (1988).
[5] 15 U.S.C. 78s(b)(3)(A)(ii) (1988).
[6] 17 CFR 240.19b–4(e)(2) (1992).
[7] 17 CFR 200.30–3(a)(12) (1992).

12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following security:

Daimler Benz Corp Aktiengesellschaft
American Depositary Shares (rep. 1/10th Ord. Bearer Sh. of DM 50) (File No. 7–11403)

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before November 4, 1993, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–25734 Filed 10–19–93; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Opportunity for Hearing; Pacific Stock Exchange, Inc.

October 14, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following security:

Daimler-Benz Corp Aktiengesllschaft
American Depositary Shares (Representing 1/10 Ordinary Bearer share of DM 50) (File No. 7–11395)

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before November 4, 1993, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–25733 Filed 10–19–93; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

October 14, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Hills Stores Company
Series A Conv. Pfd Stock (File No. 7–11396)
NVR, Inc.
Warrants "When Issued" (File No. 7–11397)
Daimler Benz Corp Aktiengesellschaft
American Depositary Shares 1.10th of an ordinary Bearer Share of DM 50 (File No. 7–11398)
Nation Government Income Term Trust 2003, Inc.
Common Stock, $.001 Par Value (File No. 7–11399)
Grupo Tribasa S.A. de C.V.
American Depositary Shares each representing 2 shares of Common Stock, No Par Value (File No. 7–11400)
ALC Communications
Common Stock, $0.01 Par Value (File No. 7–11401)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before November 4, 1993, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–25736 Filed 10–19–93; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 19789; 811–4792]

Colonial New York Tax-Exempt Trust; Application for Deregistration

October 14, 1993.

AGENCY: Securities and Exchange Commission ("SEC")

ACTION: Notice if application for deregistration under the Investment Company Act of 1940 ("Act").

APPLICANT: Colonial New York Tax-Exempt Trust.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application on Form N–8F was filed on October 1, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 8, 1993, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, One Financial Center, Boston, Massachusetts 02111.

FOR FURTHER INFORMATION CONTACT: Courtney S. Thornton, Senior Attorney, at (202) 272–5287, or C. David Messman, Branch Chief, at (202) 272–

3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, a Massachusetts business trust, is registered under the Act as an open-end non-diversified management investment company. On August 11, 1986, applicant filed a registration statement under the Securities Act of 1933 and section 8(b) of the Act. The registration statement was declared effective on September 26, 1986, and the initial public offering of applicant's shares commenced on that date.

2. On April 12, 1991 and December 13, 1991, applicant's Board of Trustees unanimously approved the terms of the an agreement and plan of reorganization (the "Plan"), which provided for the reorganization of applicant into Colonial New York Tax-Exempt Fund (the "Fund"), a newly organized series on Colonial Trust V (File No. 811–5030), a registered open-end management investment company. At the same time, the Board of Trustees authorized the preparation and filing of proxy material relating to the proposed reorganization, and authorized the calling of a special meeting of shareholders of applicant to vote on the proposed reorganization. On December 13, 1991, the Board of Trustees also determined pursuant to rule 17a–8 under the Act that participation in the proposed transaction was in applicant's best interest and that the interests of applicant's existing shareholders would not be diluted as a result of such transaction.[1]

3. Applicant filed preliminary proxy materials with the SEC on May 21, 1992. Definitive copies of these materials were sent to applicant's shareholders and filed with the SEC on June 19, 1992. At a special meeting held on August 3, 1992, applicant's shareholders approved the reorganization.

4. Prior to the merger, the Fund had no assets or shareholders. The merger was in economic terms a change in organizational structure, rather than a merger of two operating investment companies.

5. As of July 31, 1992, applicant had 6,314,511 shares outstanding with a net asset value of $7.15 per share. On August 3, 1992, applicant transferred all of its assets to the Fund and the Fund assumed all of applicant's obligations and liabilities. In exchange for these assets, the Fund issued to applicant a number of shares of the Fund equal to the number of applicant's shares then outstanding. Applicant then distributed all such shares of the Fund *pro rata* to its shareholders in complete liquidation of their interests in applicant.

6. Applicant paid all expenses incurred in connection with the Plan. These expenses totaled approximately $17,096, and consisted of legal, auditing, printing and postage expenses, as well as certain expenses related to the proxy solicitation. No brokerage fees were incurred in connection with the transaction.

7. At the time of the application, applicant had no shareholders, assets, or liabilities. Applicant is not engaged in, nor does it propose to engage in, any business activities other than those required for the winding-up of its affairs.

8. After receipt of the requested order, applicant intends to file certificates of dissolution or similar documents in accordance with Massachusetts law.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–25738 Filed 10–19–93; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 19790; 811–4795]

Colonial Ohio Tax-Exempt Trust; Application for Deregistration

October 14, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application of deregistration under the Investment Company Act of 1940 ("Act").

APPLICANT: Colonial Ohio Tax-Exempt Trust.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application on Form N–8F was filed on October 1, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 8, 1993, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, One Financial Center, Boston, Massachusetts 02111.

FOR FURTHER INFORMATION CONTACT: Courtney S. Thornton, Senior Attorney, at (202) 272–5287, or C. David Messman, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, a Massachusetts business trust, is registered under the Act as a open-end non-diversified management investment company. On August 11, 1986, applicant filed a registration statement under the Securities Act of 1933 and section 8(b) of the Act. The registration statement was declared effective on September 26, 1986, and the initial public offering of the applicant's shares commenced on that date.

2. On April 12, 1991 and December 13, 1991, applicant's Board of Trustees unanimously approved the terms of an agreement and plan of reorganization (the "Plan"), which provided for the reorganization of applicant into Colonial Ohio Tax-Exempt Fund (the "Fund"), a newly organized series of Colonial Trust V (File No. 811–5030), a registered open-end management investment company. At the same time, the Board of Trustees authorized the preparation and filing of proxy material relating to the proposed reorganization, and authorized the calling of a special meeting of shareholders of applicant to vote on the proposed reorganization. On December 13, 1991, the Board of Trustees also determined pursuant to rule 17a–8 under the Act that participation in the proposed transaction was in applicant's best interest and that the interests of applicant's existing shareholders would

[1] Rule 17a–8 provides relief from the affiliated transaction prohibition of section 17(a) of the Act for a merger of investment companies that may be affiliated persons of each other solely by reason of having a common investment adviser, common directors, and/or common officers.

not be diluted as a result of such transaction.[1]

3. Applicant filed preliminary proxy materials with the SEC on May 21, 1992. Definitive copies of these materials were sent to applicant's shareholders and filed with the SEC on June 19, 1992. At a special meeting held on August 3, 1992, applicant's shareholders approved the reorganization.

4. Prior to the merger, the Fund had no assets or shareholders. The merger was in economic terms a change in organizational structure, rather than a merger of two operating investment companies.

5. As of July 31, 1992, applicant had 7,538,319 shares outstanding with a net asset value of $7.35 per share. On August 3, 1992, applicant transferred all of its assets to the Fund and the Fund assumed all of applicant's obligations and liabilities. In exchange for these assets, the Fund issued to applicant a number of shares of the Fund equal to the number of applicant's shares then outstanding. Applicant then distributed all such shares of the Fund *pro rata* to its shareholders in complete liquidation of their interests in applicant.

6. Applicant paid all expenses incurred in connection with the Plan. These expenses totaled approximately $19,690, and consisted of legal, auditing, printing and postage expenses, as well as certain expenses related to the proxy solicitation. No brokerage fees were incurred in connection with the transaction.

7. At the time of the application, applicant had no shareholders, assets, or liabilities. Applicant is not engaged in, nor does it propose to engage in, any business activities other than those required for the winding-up of its affairs.

8. After receipt of the requested order, applicant intends to file certificates of dissolution or similar documents in accordance with Massachusetts law.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–25737 Filed 10–19–93; 8:45 am]

BILLING CODE 8010–01–M

[1] Rule 17a–8 provides relief from the affiliated transaction prohibition of section 17(a) of the Act for a merger of investment companies that may be affiliated persons of such other solely by reason of having a common investment adviser, common directors, and/or common officers.

DEPARTMENT OF STATE

[Public Notice 1881]

United States Organization for the International Telegraph and Telephone Consultative Committee; Study Group D Meeting

The Department of State announces that the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) Study Group D Meeting will meet on November 2, 1993 from 9 a.m. to 2 p.m. in room 1205, at the Department of State, 2201 C Street, NW., Washington, DC 20520.

The proposed agenda for this meeting will include the review of U.S. contributions for the meetings of Study Group 8, in November 1993, the results of the Geneva meeting of Study Group 14, and to consider any other business within the scope of Study Group D.

Members of the general public may attend these meetings and join in the discussion, subject to the instructions of the Chair. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meetings. Persons who plan to attend should advise the Office of Gary Fereno, Department of State, (202) 647–0201, FAX (202) 647–7407. The above includes government and non-government attendees. Public visitors will be asked to provide their date of birth and Social Security number at the time they register their intention to attend and must carry a valid photo ID with them to the meeting in order to be admitted. All attendees must use the C Street entrance.

Please bring 50 copies of documents to be considered at these meetings. If the document has been mailed to the membership, bring only 10 copies.

Dated: October 5, 1993.

Earl S. Barbely,

Director, Telecommunications and Information Standards, Chairman, U.S. CCITT National Committee.

[FR Doc. 93–25698 Filed 10–19–93; 8:45 am]

BILLING CODE 4710–45–M

[Public Notice 1886]

United States Organization for the International Telegraph and Telephone Consultative Committee Study Group B Meeting

The Department of State announces that the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) Study Group B Meeting will meet on November 9, 1993 from 9:30 a.m. in room 1912, at the Department of State, 2201 C Street, NW., Washington, DC 20520.

The proposed agenda for this meeting will include call to order/introductions, approval of the agenda, approval of June 16, 1993, summary of meeting minutes, review results and activities of ITU–T Study Group 13 meeting (July 5–16, 1993), consideration of contributions for ITU–T Study Group 11 Meeting, which will be held November 29 through December 17, 1993, and others that are appropriate for Study Group B, announce the names of members of the U.S. Delegation, and other business.

* * * If you wish to be a part of the U.S. Delegation to the SG 11 Meeting, please inform Gary Fereno at the Department of State (202) 647–2592 and complete required documentation 30 days prior to the start of the meeting.

Members of the general public may attend these meetings and join in the discussion, subject to the instructions of the Chair. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meetings. Persons who plan to attend should advise the Office of Gary Fereno, Department of State, (202) 647–0201, FAX (202) 647–7407. The above includes government and non-government attendees. Public visitors will be asked to provide their date of birth and Social Security number at the time they register their intention to attend and must carry a valid photo ID with them to the meeting in order to be admitted. All attendees must use the C Street entrance.

Please bring 50 copies of documents to be considered at these meetings. If the document has been mailed to the membership, bring only 10 copies.

Dated: October 8, 1993.

Earl S. Barbely,

Director, Telecommunications and Information Standards, Chairman, U.S. CCITT National Committee.

[FR Doc. 93–25694 Filed 10–19–93; 8:45 am]

BILLING CODE 4710–45–M

[Public Notice 1883]

Overseas Security Advisory Council; Meeting

The Department of State announces a meeting of the U.S. State Department—Overseas Security Advisory Council on Monday and Tuesday, November 15–16,

1993 at 8:30 a.m. at the Department of State, Washington, DC. Pursuant to section 10 (d) of the Federal Advisory Committee Act and 5 U.S.C. 552b (c) (1) and (4), it has been determined the meeting will be closed to the public. Matters relative to classified national security information as well as privileged commercial information will be discussed. The agenda calls for the discussion of classified and corporate proprietary/security information as well as private sector physical and procedural security policies and protective programs at sensitive U.S. Government and private sector locations overseas.

For more information contact Marsha Thurman, Overseas Security Advisory Council, Department of State, Washington, DC 20522–1003, phone: 703/204–6185.

Dated: October 7, 1993.

Mark Mulvey,

Director of the Diplomatic Security Service.

[FR Doc. 93–25695 Filed 10–19–93; 8:45 am]

BILLING CODE 4710–24–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 201
Wednesday, October 20, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10 a.m., Wednesday, October 27, 1993.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument on the following:

1. *Wyoming Fuel Co.*, Docket No. WEST 91-598-R, etc. (Issues include whether the judge erred in finding that Wyoming Fuel Co. violated its ventilation plan because of the presence of water in the bleeder system and in finding that the violation was of a significant and substantial nature.

Any person attending this oral argument who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(e).

TIME AND DATE: Immediately following oral argument.

STATUS: Closed [Pursuant to 5 U.S.C. 552b(c)(10)].

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Wyoming Fuel Co.*, Docket No. WEST 91-598-R, etc. (See Oral Argument Listing)

It was determined by unanimous vote of Commissioners that this meeting be held in closed session.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653-5629/(202) 708-9300 for TDD Relay/1-800-877-8339 for toll free.

Jean Ellen,

Agenda Clerk.

[FR Doc. 93-25953 Filed 10-18-93; 3:22 pm]

BILLING CODE 6735-01-M

MARINE MAMMAL COMMISSION

TIME AND DATE: The Marine Mammal Commission and its Committee of Scientific Advisors on Marine Mammals will meet in executive session on Wednesday, November 17, 1993, from 8:30 a.m. to 10:00 a.m. The public sessions of the Commission and the Committee meeting will be held on Wednesday, November 17, from 10:00 a.m. to 6:30 p.m., Thursday, November 18, from 9:00 a.m. to 6:30 p.m., and on Friday, November 19, from 9:00 a.m. to 1:00 p.m.

PLACE: The Hotel Galvez, 2024 Seawall Boulevard, Galveston Island, Texas, 77550.

STATUS: The executive session will be closed to the public. At it, matters relating to personnel, the internal practices of the Commission, and international negotiations in process will be discussed. All other portions of the meeting will be open to public observation. Public participation will be allowed if time permits and it is determined to be desirable by the Chairman.

MATTERS TO BE CONSIDERED: The Commission and Committee will meet in public session to discuss a broad range of marine mammal matters. Among the issues that the Commission plans to consider at the meeting are: proposed amendments to the Marine Mammal Protection Act; and the 1993 International Whaling Commission meeting and preparations for 1994; marine mammal die-offs and stranding programs; Fish and Wildlife Service and National Marine Fisheries Service activities bearing on marine mammals in Alaska; conservation plans and programs; recovery plans and programs; and marine mammal/fishery interactions.

SUPPLEMENTARY INFORMATION: This is a second notice of the Commission's 1993 meeting and does not constitute any significant change in the scheduling, location, or agenda of the meeting as originally published in the May 21, 1993 (58 FR 29694) notice.

CONTACT PERSON FOR MORE INFORMATION: John R. Twiss, Jr., Executive Director, Marine Mammal Commission, 1825 Connecticut Avenue, NW., Room 512, Washington, DC 20009, 202/606-5504.

Dated: October 15, 1993.

John R. Twiss, Jr.,

Executive Director.

[FR Doc. 93-25840 Filed 10-18-93; 8:55 am]

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federal register

Wednesday
October 20, 1993

Part II

Environmental Protection Agency

40 CFR Part 68

Risk Management Programs for Chemical Accidental Release Prevention; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 68

[A–91–73; FRL–4790–1]

Risk Management Programs for Chemical Accidental Release Prevention

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: Under the Clean Air Act, as amended, the U.S. Environmental Protection Agency (EPA) is proposing regulations that would require development and implementation of risk management programs at facilities that manufacture, process, use, store, or otherwise handle regulated substances in quantities that exceed specified thresholds. EPA has proposed a list of regulated substances and thresholds separately. Risk management programs provide facilities with an integrated approach to identifying and managing the hazards posed by these regulated substances. The risk management plans developed under such programs would be registered with EPA, provided to the Chemical Safety and Hazard Investigation Board, state governments, and local planning authorities, and made available to the public. The proposed rule would assist facilities and communities in efforts to lessen the number and severity of serious chemical accidents.

DATES: Comments must be submitted on or before February 16, 1994. A public hearing will be held in Washington, DC, on November 30, 1993, from 9 a.m. to 5 p.m. Persons interested in appearing at a public hearing should register with EPA at (703) 218–2570 by November 23, 1993; a copy of the testimony should be submitted by November 23, 1993, to Dr. Lyse Helsing (see the **FOR FURTHER INFORMATION** section).

Docket: Supporting documentation used in developing this proposed rule is contained in Docket No. A–91–73. This docket is available for public inspection and copying between 8:30 a.m. and 12 noon, and between 1:30 and 3:30 p.m., Monday through Friday, at the address listed below. A reasonable fee may be charged for copying.

ADDRESSES: Comments may be mailed or submitted to: Environmental Protection Agency, Air Docket (LE–131), Attn: Docket No. A–91–73, Waterside Mall, 401 M St. SW., Washington, DC 20460. Comments must be submitted in duplicate. The public hearing will be held at Temple Micah, 600 M Street, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dr. Lyse Helsing, Chemical Emergency Preparedness and Prevention Office, Environmental Protection Agency, OS–120, 401 M St. SW., Washington, DC 20460, (202) 260–6128; or the Emergency Planning and Community Right-to-Know Hotline, (800) 535–0202; in northern Virginia and Alaska, (703) 920–9877.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
  A. Statutory Authority
  B. Background
  C. Clean Air Act Amendments of 1990
II. Risk Management Programs
  A. Clean Air Act Requirements
  B. Other CAA Provisions for Regulations
  C. Relationship to OSHA's Process Safety Management Standard
III. Discussion of the Proposed Rule
  A. Introduction
  B. Applicability
  C. Definitions
  D. Risk Management Program Elements
  E. RMP and Documentation
  F. Registration
  G. Prohibitions
  H. Timing
IV. Comparison of EPA's Proposed Rule to OSHA's Standard
  A. Differences between EPA's Proposed Rule and OSHA's Standard
  B. Section by Section Comparison of the EPA Prevention Program and the OSHA Standard
V. Relationship to Other Federal and State Requirements
VI. Other Approaches Considered
VII. Guidance
VIII. Information Gathering Efforts
IX. Section by Section Discussion of the Proposed Rule
X. Regulatory Costs and Benefits
XI. Required Analyses
  A. Executive Order 12291
  B. Regulatory Flexibility Act
  C. Paperwork Reduction Act

I. Introduction

A. Statutory Authority

This notice of proposed rulemaking (NPRM) is being issued under sections 112(r)(7) and 301(a)(1) of the Clean Air Act (CAA) as amended (42 U.S.C. 7412(r)(7) and 7601(a)(1)).

B. Background

Public awareness of the potential danger from accidental releases of hazardous chemicals has increased over the years as serious chemical accidents have occurred around the world (e.g., the 1974 explosion in Flixborough, England, and the 1976 release of dioxin in Seveso, Italy). Public concern intensified following the 1984 release of methyl isocyanate in Bhopal, India, that killed more than 2,000 people living near the facility. A subsequent release from a chemical facility in Institute, West Virginia, sent more than 100 people to the hospital and made Americans aware that such incidents can and do happen in the U.S.

In response to this public concern and the hazards that exist, the United States Environmental Protection Agency (EPA) began its Chemical Emergency Preparedness Program (CEPP) in 1985, as part of the Agency's Air Toxics Strategy. CEPP was a voluntary program to encourage state and local authorities to identify hazards in their areas and to plan for chemical emergency response actions. In 1986, Congress enacted many of the elements of CEPP in the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), also known as Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA). SARA Title III requires states to establish state and local emergency planning groups to develop chemical emergency response plans for each community. SARA Title III also requires facilities to provide information on the hazardous chemicals they have on site to the states, local planners, and fire departments, and, through them, the public. This information forms the foundation of both the community emergency response plans and the public-industry dialogue on risks and risk reduction.

SARA Title III did not mandate that facilities establish accident prevention programs. However, Congress acknowledged the importance of accident prevention by requiring EPA, under SARA section 305(b), to conduct a review of emergency systems to monitor, detect, and prevent chemical accidents. The final report to Congress, Review of Emergency Systems (EPA, 1988), stated that

> * * * prevention does not depend on a single piece of equipment or a single technique. Prevention must be part of a comprehensive, integrated system that considers the hazards of the chemicals involved, the hazards of the process, the hazards to the community, and the capabilities of facility personnel. None of the elements should be considered in isolation nor should any single technical solution be considered a complete solution to a particular problem. Each change in a facility, process, or procedure will have multiple effects that must be assessed in the context of the entire operation.

The report concluded that the key to a successful process safety management system is the commitment of management (facility and corporate) to safety.

Although SARA Title III did not directly address accident prevention except through section 305(b), EPA

recognized that prevention, preparedness, and response form a continuum. In 1986, therefore, EPA established a chemical accident prevention program to collect information on chemical accidents and to work with other groups to increase knowledge of prevention practices, encourage industry to improve safety at facilities, and foster increased awareness of prevention, preparedness, and response at the local level. Under this program, EPA developed its Accidental Release Information Program (ARIP) to collect data on the causes of chemical accidents and the steps facilities take to prevent recurrences. EPA also developed a program for conducting chemical safety audits at facilities to learn more about how facilities develop systems to prevent accidents. Through the audit program, EPA has trained its regional staff as well as state officials on how to conduct audits. EPA has worked with trade associations, professional organizations, labor, environmental groups, and other Federal agencies to determine how best to reach smaller operations, which the SARA section 305(b) study indicated are less aware of risks than larger facilities. EPA has also been an active participant in international efforts related to chemical accident prevention, particularly through the Organisation for Economic Cooperation and Development, which has held five international workshops from 1989 through 1991 to discuss issues related to accident prevention, preparedness, and response, and has developed guidelines for member countries.

In addition to EPA's work in this area, other agencies, states, industries, trade associations, and professional organizations have developed programs related to chemical accident prevention. On February 24, 1992, the U.S. Occupational Safety and Health Administration (OSHA) promulgated a standard on chemical process safety management (57 FR 6356). Four states—New Jersey, California, Delaware, and Nevada—have regulations requiring facilities to prepare and implement risk management plans. The American Institute of Chemical Engineers (AIChE), through its Center for Chemical Process Safety, has published guidance on the management of chemical process safety as well as guidelines on topics related to hazard evaluation, vapor cloud dispersion modeling, handling and storage practices, and vapor cloud mitigation. The Chemical Manufacturers' Association (CMA) has adopted its Responsible Care™ program, with which all CMA members must comply to maintain membership. The American Petroleum Institute has developed a similar program (RP 750) for its members. In 1982, the European Community adopted the Seveso Directive (82/501/EEC, as amended), which requires facilities handling certain chemicals to develop a safety report that is similar to a risk management plan. Congress also recognized the need for a chemical accident prevention program at the Federal level and included prevention provisions in the Clean Air Act Amendments of 1990.

C. Clean Air Act Amendments of 1990

The Clean Air Act Amendments of 1990, signed into law on November 15, 1990, amend Clean Air Act (CAA) section 112 by adding a new subsection (r), which includes requirements related to chemical accident prevention. The goal of CAA section 112(r) is to prevent accidental releases of regulated substances and other extremely hazardous substances to the air and to minimize the consequences of releases by focusing preventive measures on those chemicals that pose the greatest risk.

Section 112(r) has a number of provisions. It establishes a general duty for facilities (i.e., stationary sources) to identify hazards that may result from releases, to design and maintain a safe facility, and to minimize the consequences of releases when they occur. Section 112(r)(3) requires EPA to promulgate a list of at least 100 substances that are known to cause, or may be reasonably anticipated to cause, death, injury, or serious adverse effects to human health or the environment when released to air. EPA is required to set thresholds for each listed substance. The proposed rule for the list and thresholds was published on January 19, 1993 (58 FR 5102). The proposed list includes 100 substances listed based on acute toxicity, 62 flammable gases and highly flammable liquids, and high explosives as a class.

CAA section 112(r)(7) requires EPA to promulgate, by November 15, 1993, "reasonable regulations and appropriate guidance" to provide for the prevention and detection of accidental releases and for responses to such releases. These regulations shall include, as appropriate, provisions concerning the use, operation, repair, and maintenance of equipment to monitor, detect, inspect, and control releases, including training of personnel in the use and maintenance of equipment or in the conduct of periodic inspections. The regulations shall require facilities to prepare and implement risk management plans that shall provide for compliance with regulations for managing risk (the "risk management program") and shall include a hazard assessment, a prevention program, and an emergency response program. The list and thresholds promulgated under CAA section 112(r)(3) will determine which facilities must comply with the accident prevention regulations.

The CAA, as amended, establishes a Chemical Safety and Hazard Investigation Board to investigate or cause to be investigated the causes of chemical accidents and to report its findings to Congress, Federal, state, and local authorities, and the public. Under the CAA, EPA is also required to conduct studies related to accidental releases, including research on hazard assessments, hydrogen fluoride, and air dispersion modeling.

In addition, section 304 of the Clean Air Act Amendments of 1990 requires OSHA to promulgate, under the Occupational Safety and Health Act (29 U.S.C. 655), a chemical process safety standard in order to protect employees from hazards associated with accidental releases of highly hazardous chemicals in the work place. OSHA promulgated its standard for process safety management for highly hazardous chemicals on February 24, 1992 (57 FR 6356). Sections IIC and IV of this preamble discuss the relationship between EPA's proposed risk management program and the OSHA standard on chemical process safety management.

Finally, CAA section 112(l) requires EPA to develop guidance for states, especially for the registration of sources (facilities). This CAA section also contains the statutory authority for EPA to approve and delegate Federal authority to the states. For further information on EPA's proposed rule on CAA section 112(l), see 58 FR 29296, May 19, 1993.

II. Risk Management Programs

A. Clean Air Act Requirements

Today's proposed requirements to develop and implement a risk management program are in response to CAA section 112(r)(7)(B). Specifically, CAA section 112(r)(7)(B)(i) requires EPA to adopt "reasonable regulations and appropriate guidance" to provide for the prevention and detection of accidental releases and for response to such releases. As appropriate, the requirements shall address the use, operation, repair, replacement, and maintenance of equipment to monitor, detect, inspect, and control accidental releases, including the training of

persons in the use and maintenance of equipment and in the conduct of periodic inspections. The regulations shall include procedures and measures for emergency response after an accidental release. The Act requires that the regulations be promulgated by November 15, 1993.

CAA section 112(r)(7)(B)(ii) states:

> The regulations under this subparagraph shall require the owner or operator of stationary sources at which a regulated substance is present in more than a threshold quantity to prepare and implement a risk management plan to detect and prevent or minimize accidental releases of such substances from the stationary source, and to provide a prompt emergency response to any such releases in order to protect human health and the environment.

The risk management plans must include a hazard assessment that evaluates potential effects of an accidental release of any regulated substance. The hazard assessment must include an estimate of potential release quantities and downwind effects, including potential exposure to populations. The assessment also must include a five-year release history, including the size, concentration, and duration of releases, and must consider worst-case release scenarios. The risk management plan must also document a prevention program including safety precautions, maintenance, monitoring, and employee training measures. The final specified element that must be documented in the risk management plan is an emergency response program that provides specific actions to be taken in response to a release to protect human health and the environment, including informing the public and local agencies, emergency health care, and employee training.

CAA section 112(r)(7)(B)(iii) requires that the risk management plans be registered with EPA. The plans must be submitted to the implementing agency, the Chemical Safety and Hazard Investigation Board, the state emergency response commission (SERC), and the local emergency planning committee (LEPC). These plans shall be available to the public under CAA section 114(c). EPA must establish a system for auditing the risk management programs. EPA must also ensure that plans are updated periodically.

The proposed rule would require facilities to do three things:

(1) Register with EPA three years after publication of the final rule in the **Federal Register**. The registration would consist of a written form to be sent to EPA headquarters indicating that the facility is covered by the rule, identifying the regulated substances triggering the registration and the quantity of those substances (in ranges) in a process. If the information on the registration changes (e.g., because new chemicals are added, chemicals are dropped, or the quantity changes), facilities would be required to submit an amended registration form;

(2) Develop and implement a risk management program that includes a hazard assessment, prevention program, and emergency response program, and maintain onsite documentation of the implementation. The hazard assessment would include offsite consequence analyses and a five-year accident history. The prevention program would consist of a process hazard analysis, process safety information, standard operating procedures (SOPs), training, maintenance, pre-startup reviews, management of change, safety audits, accident investigations, and a management system. The emergency response program would require emergency response plans, drills or exercises, and coordination with public emergency response plans; and

(3) Develop and submit to the Chemical Safety and Hazard Investigation Board, the implementing agency, SERC, and LEPC, a risk management plan (RMP) that would document the results of the risk management program including a summary of the offsite consequence analysis, a list of major hazards, steps being taken to address those hazards (i.e., a summary of the facility's prevention program), a five-year accident history, a description of the emergency response program, and a description of the management system that ensures the safety of the facility and the implementation of the required elements. This plan will be available to the public.

The risk management program addresses the general requirements of CAA section 112(r)(7)(B)(i) for regulations to provide for accidental release detection and prevention. The risk management plan, referred to as the RMP in this preamble, addresses the specific requirements of CAA section 112(r)(7)(B)(ii) for a plan that provides governmental entities and the public with information on the hazards found at facilities and the facilities' plans for addressing the hazards. These hazards would be identified and addressed through implementation of the risk management program elements. Therefore, the RMP would summarize the results of hazard assessments and analyses and the implementation of the risk management program requirements. The submission requirements (registration and the RMP) address the requirements of CAA section 112(r)(7)(B)(iii), as does the requirement for a system to audit RMPs.

B. Other CAA Provisions for Regulations

In addition to CAA section 112(r)(7)(B), CAA section 112(r)(7)(A) authorizes EPA to promulgate "release prevention, detection, and correction requirements which may include monitoring, record-keeping, reporting, training, vapor recovery, secondary containment, and other design, equipment, work practice, and operational requirements." EPA is investigating whether regulations, other than today's proposed rule on risk management programs, are necessary to prevent and detect accidental releases.

C. Relationship to OSHA's Process Safety Management Standard

The Clean Air Act Amendments of 1990 (CAAA) section 304 requires OSHA to promulgate a chemical process safety standard and a list of highly hazardous chemicals. To meet this mandate, OSHA promulgated its process safety management standard. The OSHA standard is intended to protect workers from chemical accidents at facilities using highly toxic, reactive, flammable, or explosive substances. EPA's mandate under section 112(r) of the CAA is to protect public health and the environment.

EPA and OSHA have met regularly to coordinate their rules to minimize conflicting requirements. To minimize confusion for facilities covered by both rules, the elements and language of EPA's proposed prevention program are, to the maximum extent possible, identical to the parallel elements in OSHA's process safety management standard. The main differences between the EPA's proposed rule and OSHA's standard are those mandated by the CAA, such as the hazard assessment (offsite consequence analysis, the five-year accident history), the emergency response requirements, registration, and the RMP submission to the Board, implementing agency, SERC, and LEPC. In addition, for some elements of the two programs, OSHA's focus is on workplace impacts while EPA's focus is on offsite consequences, reflecting the differing statutory mandates of the two programs. The OSHA standard includes elements specific to worker issues that EPA has not included in its proposed rule. EPA anticipates that facilities in compliance with the requirements in the OSHA rule also will be in compliance with EPA's proposed prevention program elements. That is, for most prevention program elements, facilities that are in compliance with

OSHA's process safety management standard will not need to do anything different or create different onsite documentation to comply with EPA's proposed prevention program requirements. Section IV of this preamble describes the differences that exist between the OSHA standard and EPA's proposed rule and outlines the correspondence between EPA's proposed rule elements and the OSHA standard.

Because EPA's proposed list of chemicals and thresholds and OSHA's list and thresholds are not identical (EPA covers more substances with acute toxic effects, fewer flammables and explosives, and no reactives) and because OSHA does not cover state and local government employees, the universes of facilities covered by the two rules are not identical, although they substantially overlap. See Section X of this preamble for a discussion of the universe of facilities covered by today's proposed rule.

III. Discussion of the Proposed Rule

A. Introduction

AIChE, in its *Technical Management of Chemical Process Safety*, says:

> Management systems for chemical process safety are comprehensive sets of policies, procedures, and practices designed to ensure that barriers to major incidents are in place, in use, and effective. The management systems serve to integrate process safety concepts into the ongoing activities of everyone involved in operations—from the chemical process operators to the chief executive officer. * * * Effective process safety management systems can, and do, vary a great deal in how they are implemented. However, they always address the need for managing the process safety-related aspects of technology, facilities, personnel, hazardous materials, and emergency responses.

The purpose of today's proposed rule is to require industry to develop such an integrated, holistic approach to managing the risks posed by the presence and use of regulated substances. EPA's proposed rule builds on process safety management elements included in OSHA's standard: process information, process hazard analysis, standard operating procedures, training, pre-startup reviews, mechanical integrity, management of change, accident investigation, safety audits, and emergency response. The implementation of these elements and the development of the RMP that will be submitted to governmental authorities will assist the owners and operators of facilities to identify hazards and construct a management system that addresses the hazards in a manner that is most effective for the specific circumstances and complexity of the facility.

EPA's proposed rule, particularly the prevention program, emphasizes the importance of management and management commitment for two reasons. First, without management commitment and an integrated system for managing process safety, it is unlikely that safety will be consistently recognized as a priority. Second, although for some facilities better or different technologies may be the most effective methods of addressing hazards, the technologies, by themselves, cannot ensure safety. Equipment must be maintained and workers trained in its proper uses. Changes in the process or procedures may affect the safe operation of technologies. Only with an integrated management system that continually evaluates the safety of a facility can the hazards posed by regulated substances be managed to minimize the likelihood of accidental releases.

Besides lessening the likelihood and severity of accidents, the implementation of process safety management can help facilities run more efficiently. Companies that have instituted risk management programs report reductions in injuries, lost-time accidents, mechanical breakdowns, maintenance costs, and material losses. Safety improvements will result in lower insurance costs. By preventing accidental releases, companies may minimize environmental damage and necessary cleanup costs. See Section X of this preamble for a discussion of the benefits of this rule.

B. Applicability

The CAA states that facilities covered by the risk management program regulations are those that have more than a threshold quantity of a regulated substance based on the final list and thresholds EPA will promulgate. In its list and threshold rule, EPA is proposing to exempt ammonia when used as an agricultural nutrient and held by a farmer. EPA requests comments on the proposed exemption and requests information on whether EPA should develop an accident prevention rule directed strictly to farmers using ammonia as a fertilizer. EPA notes that farm contractors who sell and apply ammonia as a fertilizer would be covered by today's proposed rule.

EPA estimates that approximately 140,425 facilities would be affected by today's proposed rule. Approximately 87,800 of those facilities would also be covered by OSHA's process safety management standard. The largest sectors covered by the rules would be cold storage facilities (which use ammonia as a refrigerant), public drinking water systems and publicly owned treatment works, manufacturers, and propane retailers. Some wholesalers and service industries would also be covered. See Section X of this preamble for a discussion of the estimated coverage and costs of this proposed rule.

The risk management program rules would affect only those areas at facilities where regulated substances are manufactured, processed, used, stored, or otherwise handled. If a facility uses a regulated substance in quantities above a threshold in only one process (e.g., wastewater treatment or refrigeration), only that process (as well as any unloading, transferring, and storing of the substance) would be covered by the rule. If a single process at a facility includes more than one regulated substance, a single process hazard analysis may cover all regulated substances for that process. EPA realizes that some facilities, such as batch processors (e.g., specialty chemical manufacturers), may have regulated substances on site for limited periods during the year; for example, a batch processor may use a regulated substance for only one month during the year. In some cases, these facilities may not be able to predict accurately which substances they will be handling. However, the Agency believes it is important for any facility that handles a regulated substance to have in place a program to manage risks and ensure safe operations. Because regulated substances would not be covered if they represent less than one percent by weight of a solution, EPA does not expect that the risk management program of publicly owned treatment works would need to cover the substances they receive from facilities for treatment.

C. Definitions

A "significant accidental release" means any accidental release of a regulated substance that has caused or has the potential to cause offsite consequences such as death, injury, or adverse effects to human health or the environment or to cause the public to shelter in place or be evacuated to avoid such consequences.

"Worst-case release" would mean the loss of all of the regulated substance from the process in an accidental release that leads to the worst offsite consequences.

D. Risk Management Program Elements

The Clean Air Act mandates that the risk management plan document three

elements: a hazard assessment, a prevention program, and an emergency response program. This section discusses the elements EPA is proposing for the risk management program to develop each of the plan requirements.

Hazard Assessment

As discussed above, the Clean Air Act requires a hazard assessment that includes evaluation of a range of releases including worst-case accidental releases; analyses of potential offsite consequences; and a five-year accident history. The language in the Conference Report suggests a more extensive assessment that would require a formal process hazard analysis (e.g., basic data on the source, identification of potential points of release, review of the efficacy of release and control measures). To allow EPA's prevention program requirements to parallel OSHA's process safety management standard, EPA is proposing to separate the offsite consequence analysis and five-year accident history from the formal process hazard analysis requirement. The proposed rule would require a hazard assessment that examines a range of accidental release scenarios, selects a worst-case accidental release scenario, analyzes offsite consequences for selected release scenarios including worst case, and documents a five-year history of significant accidental releases and accidental releases with the potential for offsite consequences. The other elements suggested in the Conference Report would be included under the prevention program in the process hazard analysis requirement.

EPA is proposing that facilities complete a hazard assessment for each regulated substance present above the threshold quantity. Facilities that use the regulated substance above its threshold in several locations or processes would need to evaluate a range of accidental releases and determine a worst-case release scenario for each location. The range of releases should include only those events that could lead to significant releases (i.e., accidental releases that have the potential to cause offsite death, injury, or serious adverse effects to human health or the environment). EPA requests comments on this issue.

EPA is proposing to define the worst-case release as the instantaneous loss of all of the regulated substance in a process, with failure of all mitigation systems (active and passive). EPA recognizes that this definition may require facilities to consider release scenarios that are highly unlikely. Such a definition will, however, define for the public the extreme worst-case. The proposed definition will also reduce the burden on regulated facilities; a requirement for analysis of a "credible worst-case" would lead to more analyses and documentation to defend the selected scenario. In addition, if each facility defined its own worst-case, local authorities could find it difficult to compare the results. EPA requests comments on the worst-case definition.

The Agency recognizes that this approach differs from the approach EPA used in its *Technical Guidance for Hazards Analysis* for local planners to assess credible worst-case releases for purposes of screening out situations with little or no impact. The credible worst case in the guidance assumed that the entire quantity of a substance was released from the largest vessel or group of interconnected vessels. Gases were assumed to be released in 10 minutes while liquids were assumed to be spilled on the ground or in a diked area and allowed to volatilize. Downwind impacts were assessed using conservative meteorological conditions. The Agency still supports this approach for screening, however, the methodology does not fully account for site-specific conditions that affect the rate of release. For example, gases may be stored in a liquefied state or a liquid may be handled in large quantities at higher than ambient temperatures giving much different release rates. The Agency believes that the worst-case analysis should account for site-specific conditions and physical chemical properties.

The Agency considered defining worst case as the instantaneous loss of the regulated substance from the largest containment vessel or pipeline on site. This approach is similar to the Technical Guidance approach. However, because the threshold quantity applies to the quantity in a process and the definition of a process defines the vessels and piping to be considered, the worst case should reflect the accidental release that could occur from catastrophic vessel and piping failures. The Agency requests comments on this approach.

In addition to the worst-case release scenarios, EPA would require facilities to analyze other more likely significant accidental release scenarios for each process in which the regulated substance is used above the threshold quantity. The proposed rule specifies several possible accident causes that facilities should consider when defining these more likely release scenarios. The list, however, should not be viewed as all inclusive. Each facility should examine its processes to determine the event or sequence of events that may lead to significant accidental releases. When examining these potential release scenarios, facilities would be allowed to assume that passive mitigation systems, such as containment dikes, functioned properly. Active mitigation systems, such as excess flow valves, fail-safe systems, scrubbers, flares, deluge systems, and water curtains, would be assumed to fail. EPA requests comments on this approach. The Agency plans to issue guidance on the evaluation of a range of accidental releases and determination of the worst-case scenario.

The proposed rule does not specify the number of other more likely significant accidental release scenarios facilities would be required to analyze. Although this approach provides flexibility, it may create uncertainty about what EPA will consider an adequate number of scenarios. EPA requests comments on whether it should specify a minimum number of scenarios to be analyzed, whether the minimum should vary with the complexity of the facility, and what the minimum(s) should be.

Once the worst-case and more likely significant accidental release scenarios are identified, the facility would be required to analyze the potential offsite consequences associated with these scenarios. The offsite analyses would estimate, using models or other approaches specific to each substance, the possible rate of release, quantity released, and duration of the release, and the distances in any direction that the substance could travel before it dispersed enough to no longer pose a hazard to the public health or environment. Facilities would be required to analyze the releases under average weather conditions for the facility and worst-case weather conditions, which would be defined as a wind speed of 1.5 meters per second and F stability (moderately stable weather conditions). For flammables and explosives, the analyses should consider the distances in all directions that might be affected by pressure waves, fire, or debris. The analyses would also identify all populations that could be affected by such a release, including sensitive populations (e.g., schools, hospitals), and would detail potential environmental damage. EPA requests comments on the level of detail needed to define the population potentially exposed.

The fate and transport of the regulated substances can be evaluated using air dispersion models. EPA has published guidance on conducting similar analyses in its *Technical Guidance for Hazards Analysis,* much of which could

be useful in developing the offsite consequence analyses. Computer models to estimate the impacts of vapor cloud explosions also are available. EPA, the Department of Transportation (DOT), and the Federal Emergency Management Agency have developed a model—the Automated Resources for Chemical Hazard Incident Evaluation (ARCHIE)—for vapor cloud explosion evaluation. The World Bank's WHAZAN model also evaluates this type of incident, as do other commercially available models. Simple equations can be used to calculate the impacts of explosions at various distances. EPA plans to develop additional guidance to assist facilities in analyzing offsite impacts.

Although the worst-case scenario is specifically defined, facilities are likely to use different models and approaches to estimate offsite impacts. In addition, facilities may need to use different models and analytical techniques to account for site-specific conditions in assessing offsite impacts associated with other scenarios. The Agency recognizes that facilities will need to have inhouse expertise or hire consultants with such expertise to complete these offsite impact analyses. This may pose a significant resource burden on some facilities, and the different approaches and models can make the offsite consequence results more difficult for local emergency planners to use. The Agency is working on ways to minimize this burden and make the results useful for local emergency planners. For example, the statute requires the Administrator to issue RMP guidance and model RMPs. The Agency is considering the development of a set of simple, generic tools that would be included in the guidance and that could be used for the assessment of offsite impacts. EPA could develop, for example, a generic methodology for assessing the offsite impacts similar to the methodology included in the *Technical Guidance for Hazards Analysis* cited above. Using a generic methodology for assessing the offsite impacts would allow a more direct comperison among facilities of potential offsite consequences. At the same time, this approach could reduce the resource burden imposed by the rule on many facilities, particularly smaller businesses by reducing the need for consultants to perform the offsite consequence analysis.

The Agency recognizes the limitations associated with simple, generic tools that will need to cover a potentially wide variety of scenarios. It would be difficult to construct a generic methodology which includes assumptions about the characteristics of chemicals, the range of chemical processes (e.g., conditions involving high temperatures and pressures), and other site-specific parameters. As a result, a generic methodology will generally be less sensitive to these conditions (or attributes) and may yield overly conservative or less realistic estimates of offsite impacts. The Agency requests comments on this approach and requests input on possible innovative ways to assist facilities in offsite impact analysis that might reduce the burden and provide meaningful, useful results.

Specific information on the worst-case scenario will help public emergency planners and responders recognize the maximum hazard potential surrounding the facility. The Agency recognizes, however, that the worst-case scenario may often be highly unlikely in comparison to other release scenarios with lesser potential consequences. Focusing on the worst-case scenario alone, therefore, could lead public agencies and the public to overestimate the threat posed by a facility. For this reason, EPA believes that facilities must examine a range of events in addition to the worst-case scenario and communicate information on these events to public agencies and the public to provide additional information on the hazards posed by the facility. In addition, EPA does not want facilities to focus solely on the worst-case release because other release scenarios are of concern, are generally far more likely than a worst-case release scenario, and must be addressed in the prevention program. Therefore, EPA is requiring facilities to analyze hazards associated not only with the worst-case scenario, but also with more likely significant releases.

EPA would require that facilities update the offsite consequence analyses every five years, with the RMP update, or sooner if changes at the facility or its surroundings might reasonably be expected to make the results inaccurate to a significant degree. For example, a substantial increase or decrease in the quantity of a regulated substance could significantly change the distance a substance could travel before dispersing and posing no hazard. Major changes in housing or land-use patterns, such as the construction of new, large-scale housing developments or commercial areas, could change substantially the population potentially affected.

A final element of the hazard assessment specified in the Act is a five-year history of releases of regulated substances. EPA interprets the accident history requirement to cover significant accidental releases and incidents that had the potential for offsite consequences because CAA section 112(r) is directed at preventing such releases. EPA is proposing to require the history to document releases that caused or had the potential to cause offsite consequences. As mandated by statute, the history must include the substance and quantity released, the concentration of the substance when released, and the duration of the release. EPA is also proposing that the date of the release, time of the release, and any offsite consequences (e.g., evacuations, injuries, environmental effects) be included. EPA believes that for releases of toxic substances, most of the releases that meet the criteria are already reported to the Federal or state governments under CERCLA and SARA Title III. Therefore, development of the five-year history of significant accidental releases would create little additional burden on facilities beyond maintaining records.

Prevention Program

The Act requires that the risk management plan include a prevention program that covers safety precautions and maintenance, monitoring, and employee training measures. Although the Act's requirements for the prevention program are general, a consensus exists among industry, professional organizations, labor, public interest groups, and government on what constitutes a good risk management program. In its *Review of Emergency Systems*, EPA listed elements of good management programs. The American Institute of Chemical Engineers (AIChE) has published *Guidelines for Technical Management of Chemical Process Safety*, which includes basically the same elements. Delaware, New Jersey, California, and Nevada have each adopted state risk management program regulations that again cover a similar set of elements. The OSHA chemical process safety management standard covers this same set of elements. Labor and environmental groups recommended similar requirements to Congress and the agencies. Therefore, the prevention program EPA is proposing today consists of elements that the Federal government and several state agencies, as well as trade associations, professional organizations, labor, and public interest groups believe are necessary in order to have an integrated approach to understanding and managing risks associated with regulated substances at a facility. The elements of this integrated approach are

consistent with and fulfill the requirements of the statute.

EPA is proposing a prevention program that adopts and builds on OSHA's process safety management standard and covers nine procedural areas: Process hazard analysis, process safety information, standard operating procedures (SOPs), training, maintenance, pre-startup review, management of change, safety audits, and accident investigation. The degree of complexity required for compliance for each element will depend on the complexity of the facility. For example, development of process safety information would take far more time and would require greater expertise at a large petrochemical facility than it would at a small drinking water system. As they develop plans for implementing the elements, facility owners or operators would have to consider the complexity of their chemical use, the hazards potentially posed by the chemicals, and potential consequences of an accidental release.

The prevention program elements must be integrated with each other on an ongoing basis. For example, each time a new substance is introduced to a process or new equipment is installed, the process hazard analysis must be reviewed, SOPs updated, training and maintenance programs revised, with new training if needed. An investigation of a near miss or a safety audit may reveal the need for revised operating and maintenance procedures, which will lead to revisions to SOPs, training, and maintenance. The investigation or audit may also indicate a need to review the process hazard analysis. The management system should ensure that a change in any single element leads to a review of other elements to identify any impacts caused by the change.

Management System

Because it is essential that all of the prevention program elements be integrated into a management system that is implemented on an ongoing basis, EPA is proposing that the owner or operator of the facility designate a single person or position to be responsible for the development and implementation of the overall program. At facilities where individual elements of the program are handled by different people or divisions, the names or positions of the people responsible for each element would also be specified and an organization chart or similar document required to define the lines of authority. At a small facility, a single person may be responsible for all elements. At a large company, separate divisions may handle emergency response, training, and maintenance; SOPs may be developed separately for each process area; safety audits may be conducted by corporate officials. In such a situation, it is essential that the involved divisions communicate with each other regularly so that the people in charge of training know when SOPs have been revised and that the emergency response personnel know when changes to processes may affect the hazards in a location. The purpose of the proposed management requirement is to have facility management define a system that integrates the implementation of the elements and assigns responsibility for that implementation.

Process Hazard Analysis

The AIChE's *Guidelines for Hazard Evaluation Procedures* (AIChE, 1985) defines a hazard evaluation (also known as a process hazard analysis) as a procedure intended "to identify the hazards that exist, the consequences that may occur as a result of the hazards, the likelihood that events may take place that would cause an accident with such a consequence, and the likelihood that safety systems, mitigating systems, and emergency alarms and evacuation plans would function properly and eliminate or reduce the consequences."

A process hazard analysis involves the application of a formal technique, such as a "What If" or a hazards and operability study (HAZOP). (AIChE's *Guidelines for Hazard Evaluation Procedures* provides descriptions of these techniques.) Formal techniques provide a method for a rigorous, step-by-step examination of processes, process equipment and controls, and procedures to identify each point at which a mishap may occur (e.g., a valve failing, a gauge malfunctioning, human error) and examine the possible consequences of that mishap, by itself and in combination with other possible mishaps. The result of a properly conducted process hazard analysis is a list of possible hazards of the process at the facility that could lead to a loss of containment and release of a regulated substance. Process hazard analyses must be conducted by people trained in the techniques and knowledgeable about the process and facility being examined. Such evaluations usually require at least two people, with other experts contributing to the process when necessary; a HAZOP may require a core team of five to seven people. For a simple process, the process hazard analysis may take a day or two; for complex processes, the evaluation may take six weeks to three months.

Although each prevention program requirement is important, EPA considers the process hazard analysis the critical element in developing a risk management program. When EPA analyzed the data collected for the *Review of Emergency Systems*, it was clear that a substantial number of respondents did not recognize the hazards associated with either the chemicals involved or the processes used. For the most commonly used, high-volume chemicals, such as ammonia and chlorine, a large number of facilities were relatively unaware of the hazards involved. A process hazard analysis would help facilities identify hazards and ways to address them. For example, a 1989 explosion and fire at a facility in Baton Rouge, Louisiana, led to a partial loss of pressure, power, and fire water because the power, steam, and water lines were co-located with the lines carrying flammable gases. The losses complicated and prolonged the process of responding to the release, thereby increasing the damage caused by the release. Similar problems occurred at a facility in Norco, Louisiana, where an explosion led to the loss of all utilities. A thorough and properly done process hazard analysis should identify these types of potential hazards and allow facilities to determine how to mitigate the problems. Process hazard analyses also identify situations where major accidents due to control failure (e.g., pressure gauges, overfill alarms) could be prevented by redundant or backup controls or by frequent maintenance and inspection practices.

Many other elements of a risk management program should flow from, or at least be revised based on, the results of the process hazard analysis. Existing standard operating procedures, training and maintenance programs, and pre-startup reviews may need to be revised to reflect changes in either practices or equipment that derive from the process hazard analysis. The process hazard analysis may help define critical equipment that requires preventive maintenance, inspection, and testing programs. It may also help a facility focus its emergency response programs on the most likely and most serious release scenarios. For many facilities, the process hazard analysis may be necessary to help define the worst-case release scenario that generates the worst offsite consequences. A secondary benefit of the process hazard analysis is that it also can be used to identify pollution prevention opportunities. The same changes in procedures, equipment, controls, or chemicals that may lessen

the likelihood of an accidental release often increase the efficiency of operations and result in waste minimization. These changes may reduce costs for facilities by improving the consistency and quality of products and by decreasing the amount of waste that needs to be treated.

The proposed rule would require facilities to conduct process hazard analyses after determining a priority order for the analyses based on the degree of hazard posed by the processes covered by the rule; that is, the facility would have to conduct its analyses on the most hazardous processes first, where the degree of hazard is related to potential offsite consequences, operating history of the process, and the age of the process. Facilities would be required to use one or more of six techniques: What If, Checklist, What If/Checklist, HAZOP, failure mode and effects analysis, or fault tree analysis. Facilities could also use an equivalent methodology provided the facility could demonstrate that the methodology is equivalent to the listed methods.

The complexity of the process hazard analysis procedure will depend on the complexity of the processes to which it is applied. Any of the listed techniques can be used for simple and complex processes although, for simple processes, the simpler procedures, such as the What If, may be more appropriate. Facilities such as wholesalers who load, unload, store, and sometimes repackage regulated substances would be able to use a simple technique such as a checklist to ensure that the substances are stored and handled properly and that fire suppression systems are appropriate for the substances at the facility. Application of the more complex procedures, such as the HAZOP or fault tree, requires considerable technical expertise and may be more appropriate for complex processes, such as those at petrochemical facilities. In some cases, facilities will want to use several techniques; for example, a facility might start with a What If analysis to identify high hazard areas, then use a HAZOP or fault tree method to examine those areas in greater detail. EPA is planning to develop guidance to help facilities select and use process hazard analysis techniques.

The process hazard analysis would require facilities to conduct a systematic examination of the process and procedures to identify ways in which equipment malfunction, human error, or external events could lead to an accidental release. The evaluation would also review the efficacy of prevention and control measures to prevent accidental releases. The team conducting the process hazard analysis would include at least one person knowledgeable in the technique and one knowledgeable in the process. EPA requests comments on whether the requirement for a person knowledgeable in the technique should be waived for facilities using checklists and what if questions from a model RMP. The team would be required to submit findings and recommendations to the owner or operator, who then would have to document all actions taken in response to the findings and recommendations, including schedules for implementing changes. In response to the CAA's requirement that the prevention program include monitoring, EPA is proposing that the owner or operator investigate and document a plan for (or a rationale for not) installing systems to detect, contain, or mitigate accidental releases if such systems are not already in place. Because accidental releases can be limited or mitigated by the use of detection, secondary containment, and mitigation systems, facilities should consider whether the hazards they have identified could be addressed through such systems. The decision on whether such systems are the best way to address the hazard must, however, rest, in the first instance, with the facility's management. In some cases, monitors and detectors do not exist; mitigation systems may not be technically feasible for certain types of releases. In other cases, steps such as improved procedures and maintenance may provide a more cost-effective approach to controlling the hazards. The purpose of the requirement is to ensure that facilities consider the available options and find the best method for the facility to address accidental releases.

As required by the CAA, the process hazard analysis must be reviewed and updated periodically. EPA is proposing that the process hazard analysis be reviewed and updated at least every five years, which is the same interval specified in the OSHA process safety management standard.

Process Safety Information

The process hazard analysis must be based on up-to-date chemical and process information, including information on physical and chemical hazards, process technology (e.g., process chemistry, process parameters), and equipment (e.g., equipment specifications and design, piping and instrumentation drawings). As per OSHA, after the effective date of the rule, facilities would also have to document material and energy balances for new equipment in a process that involve a regulated substance above the threshold quantity to ensure that the equipment is appropriately designed for the process. The material balance is intended only for ensuring the proper design basis for the equipment and is not useful for process inventory accounting or measurement of chemical loss. For example, it is necessary to know the flow rate in mass per unit-time to properly design a heat exchanger; however, this flow rate does not give the mass of the substance consumed or lost in a reaction system. All required process safety information would apply only to affected equipment, not the facility as a whole. Chemical information is available from Material Safety Data Sheets (MSDSs) mandated under OSHA's hazard communication standard (29 CFR 1910.1200). The level of process technology and equipment information would vary with the type of facility. For warehouses, wholesalers, and service industries, little equipment information would be needed unless special equipment is used with the regulated substances. For manufacturers, more extensive information would be required, including flow charts, piping and instrumentation diagrams of the facility as it currently exists, and electrical, relief, ventilation, and safety system specifications.

Standard Operating Procedures (SOPs)

The results of the process hazard analysis, information developed during the design of a process, and industry and facility experience combine to define the proper way to conduct operations and maintain equipment. SOPs describe the tasks to be performed by the operator, the operating parameters (e.g., temperature, pressure) that must be maintained, and safety precautions needed for both operations and maintenance activities. SOPs must specify the consequences of deviations from safe operating limits (e.g., if the safe operating temperatures are between 100 and 150°C, the SOPs should indicate what happens if the temperature is above or below those limits). Written SOPs provide a guide to safe operations in a form that can be used by employees. Lack of SOPs and inadequate SOPs have been implicated in a number of catastrophic accidents. For example, improper maintenance procedures have been blamed for a release and explosion at a facility in New Castle, Delaware, in 1980, which killed six people, injured 27 others, and caused more than $63 million in property damage to the facility.

SOPs, which define the proper steps to take in these emergency situations,

provide a quick source of information that can prevent or mitigate the effects of accidents. SOPs also provide workers and management a standard against which to assess performance; the procedures clarify for both operators and supervisors how operations should be carried out at the facility. Application of SOPs can result in more cost-effective operations by ensuring that operators adhere to procedures that maximize both the safety and efficiency of a process.

EPA is proposing that each facility develop written SOPs for each process and operation involving the regulated substance above the threshold. The SOPs would include instructions on steps for each operating phase (e.g., initial startup, normal operation, emergency shutdowns, normal shutdowns, emergency operations), operating limits, safety and health considerations, and safety systems. The facility would also be required to provide for control of hazards during operations involving lockout/tagout, confined space entry, and opening process equipment or lines. The facility would also need SOPs to control entrance to the facility by support personnel.

The level of detail included in the SOP should be appropriate for the operation covered. For example, instructions for proper storage of chemicals may be relatively brief, while procedures for routine startup of a complex process may require considerable detail to ensure that each action required is detailed and explained. EPA emphasizes that the SOPs should be usable by the operators in running the process; that is, the SOPs should be written in a language and at a level appropriate for the operators.

Training

Training provides employees with the information needed to understand what they must do to operate safely and why safe operations are necessary. The required training program is the key to ensuring the effectiveness of other program elements such as SOPs, maintenance programs, pre-startup reviews, and emergency response. Refresher training ensures that employees are reminded of appropriate procedures periodically. Training programs often provide immediate benefits to facilities because trained employees have fewer accidents, damage less equipment through mishandling, and conduct more efficient operations. Inadequately trained maintenance workers have been implicated in the 1989 disaster in Pasadena, Texas, which killed 23 people, injured 130 others, and destroyed $750 million of property at the facility. In 1988, at a plating facility in Auburn, Indiana, untrained workers used hydrochloric acid to clean a tank that had held zinc cyanide. The resulting hydrogen cyanide killed five workers and sent more than ten others to the hospital.

The proposed rule would require each owner or operator to train employees in applicable and appropriate SOPs and provide refresher training at least once every three years. Employers would also be required to ensure that each employee is competent to operate the process safely. EPA is not proposing specific standards for the training requirements because the Agency believes that each facility should have the flexibility to develop a training program that reflects its individual situation. Facilities that handle but do not process regulated substances (e.g., many facilities in the non-manufacturing sector) may provide relatively brief training because the procedures to be taught involve a few simple steps. For a complex manufacturing facility, training may take much longer for some operations. For some facilities, formal group training programs may be feasible; for small facilities, one-on-one training may be more appropriate. The form of the training program is less important than that relevant training is delivered in a manner most likely to be understood. Facilities would be required to document their training programs to indicate when employees were trained. EPA is also not proposing specific means of ensuring that the training is understood, such as testing, but would simply require that the owner or operator develop a system for ensuring competence and document that system. The proposed rule would require facilities to evaluate the effectiveness of the training and develop a schedule for reviewing and revising the training. EPA requests comments on this approach to training requirements.

Maintenance (Mechanical Integrity)

The Act specifies that the prevention program must include requirements for equipment maintenance. Preventive maintenance, inspection, and testing of equipment are critical to safe operations at a facility. Waiting for equipment to fail often means waiting until an accidental release occurs before addressing a problem. This approach is not acceptable, especially considering the extremely hazardous characteristics of the regulated substances. Preventive maintenance, inspection, and testing are needed because many of the potential failures are not obvious from visual inspections. For example, failed alarm systems or detectors may need to be tested to determine if they are functioning properly; detectors and monitors, which can provide early warnings of releases, must be calibrated periodically; corrosion of vessels and piping, a hazard with many chemicals, can be detected through testing well before the vessels or pipes fail; scheduled cleaning, oiling, or replacement of parts can prevent equipment failure. A large number of the accidents reported in the Marsh and McLennan review of the 100 largest losses in the petrochemical industry (Large Property Damage Losses in the Hydrocarbon-Chemical Industries, a Thirty-Year Review, 1990) were the result of equipment failure that might have been avoided through preventive maintenance. A 1978 fire and explosion at a Texas City, Texas, facility that led to almost $100 million in property damage was attributed to instrument failure and a faulty relief valve. A 1989 accident in Richmond, California, that injured workers and responders was caused by a failed weld.

Besides preventing accidental releases, maintenance programs also provide direct benefits to facilities by decreasing the amount of costly down-time that can result from failed equipment. Even in incidents where there is serious property damage, the lost business costs can be significantly greater than the property damage resulting directly from an accident.

EPA is proposing that facilities develop and implement a maintenance program, with written maintenance procedures and training for maintenance workers, for equipment and controls whose failure could lead to a significant accidental release. This equipment may include pressure vessels, storage tanks, piping systems, relief and venting systems, emergency shutdown systems, and controls such as monitors, alarms, sensors, and interlocks. Covered equipment should be inspected, tested, and subject to preventive maintenance. The intervals for such maintenance would depend on the equipment and how it is used. Manufacturers' recommendations may be used to set such schedules and determine testing procedures, but the applicability of those recommendations should be reviewed in light of industry and facility experience and the results of the process hazard analysis. In some cases, facilities will need to schedule more frequent inspections based on their specific uses or experience with equipment failure rates, or because the process hazard analysis indicated that

failure of a particular piece of equipment could result in a catastrophic loss of containment. Facilities would be required to replace or repair in a timely manner any equipment that is found to be outside acceptable limits. Facilities would also be required to develop procedures to ensure that replacement equipment and parts meet design specifications. Owners and operators would be required to document their maintenance program, including the written procedures, the schedules used, and the results of each inspection and test performed. The level of complexity and detail in the maintenance program would be directly related to the complexity of the operations and equipment.

Pre-Startup Review

Startup of a new or modified system can be a particularly hazardous time for facilities, especially for complex processes and those that require high temperatures, high pressures, or potentially exothermic reactions. However, even simple facilities need to conduct such reviews. For example, before a chemical distributor accepts a new regulated substance, the distributor should check that the fire suppression system is appropriate for the substance, that workers know how to handle and store the substance, and that emergency response procedures are in place to handle an accidental release.

To help ensure safety during startup, EPA is proposing that all critical systems be checked prior to startup of a new or substantially modified process. A new system would require a process hazard analysis prior to startup. A substantially modified process would include any process where the changes to the process are significant enough to require a reevaluation of the hazards involved because new hazards may have been created as a result of the changes. This review would include a list of items that operators would need to check or test before beginning an operation. Each pre-startup review should ensure that SOPs are in place and training has been conducted.

Management of Change

Chemical processes are integrated systems; changes in one part of the process can have unintended effects in other parts of the system. For example, installation of better seals may increase the pressure in vessels. It is, therefore, important that all changes in processes, chemicals, and procedures be reviewed prior to their implementation to identify any potential hazards that may be created by the modification. Although most changes at facilities are intended to improve safety and efficiency, any modification can have unintended effects and requires a specific review of the safety implications of the change. Other process modifications are instituted in response to a specific problem that arises unexpectedly. It was such an unexamined change in the installation of a temporary bypass at Flixborough, England, that led to the 1974 release and explosion that killed 28 employees, injured 89 people, and damaged almost 2,000 properties off site.

Therefore, EPA is proposing to require management of change procedures. These procedures are important for two reasons: (1) They help facilities evaluate changes and prevent accidents caused by unintended effects from alterations of equipment, procedures, and chemicals; and (2) they ensure that the process safety information and process hazard analyses are kept up-to-date. Under the proposed rule, the owner or operator of a facility would be required to evaluate every change in equipment (except changes that satisfy the design specifications of the device replaced), processes, chemicals, or procedures to ensure that the technical basis of the change is documented and that the change does not create new hazards; if new hazards are created or if the change results in different procedures being needed, these hazards and changes would need to be addressed prior to implementation. Training, SOPs, and maintenance programs may need to be revised as a result of changes; the process hazard analysis and hazard assessment may need to be revised as well.

Safety Audits

An important tool in ensuring that the process safety management elements are being implemented is the periodic safety audit. The safety audit provides management with a mechanism for oversight of the implementation of the safety elements and of the overall safety of the facility. Safety audits may take many different forms; some facilities use audits to check on compliance with specific regulations, some do spot-checks of safety practices, while others review all key aspects of safety management.

The proposed regulations would require facilities to conduct a complete safety audit once every three years to ensure that the process safety management elements are in place, updated, and being implemented properly. Although compliance with the proposed elements will provide an indication of safe operations, other considerations are important as well. For example, it is not enough to develop and train employees on standard operating procedures; the facility must check to see that procedures are being followed. Therefore, a safety audit is more than a review of regulatory compliance; it is a check, by management, that the facility is being operated safely. Facilities would be required to document their audits in a report that includes findings and recommendations. Management's response to the findings would also be documented. EPA chose the three-year interval to be consistent with the OSHA requirement for safety audits. EPA notes that for large facilities and those with a number of covered processes, the audit would not need to be performed at one time. The facility may choose to audit different processes on different schedules. The proposed rule would require only that over each three-year period, all covered processes are audited.

Accident Investigation

Accidents can provide valuable information about hazards and the steps needed to prevent accidental releases. Many times, the immediate cause of an accident is the result of a series of other problems that need to be addressed to prevent recurrences. For example, an operator's mistake may be the result of poor training, inappropriate SOPs, or poor design of control systems; equipment failure may result from improper maintenance, misuse of equipment (operating at too high a temperature), or use of incompatible materials. Without a thorough investigation, facilities may miss the opportunity to identify and solve the root problems.

Therefore, EPA is proposing that facilities investigate each significant accidental release. As discussed above, a significant accidental release is one that caused or had the potential to cause offsite death, injury, or serious adverse effects on human health and the environment. EPA notes that significant accidental release does not include near misses. EPA agrees with AIChE that "while it is important to investigate all incidents, as the lessons learned in preventing future incidents are not at all related to the magnitude of the occurrence, it is unquestionable that, at the very least, 'major incidents' should be investigated" (Guidelines for Technical Management of Chemical Process Safety). EPA encourages facilities to investigate all accidental releases, but would require only that significant accidental releases be investigated. EPA defines significant accidental release as "any accidental

release of a regulated substance that has caused or has the potential to cause offsite consequences such as death, injury, or adverse effects to human health or the environment or to cause the public to shelter-in-place or be evacuated to avoid such consequences." EPA requests comments on this approach to define the range of incidents requiring accident investigation. In particular, the Agency is interested in whether this definition covers too broad or too narrow a set of incidents, and requests comments on any alternative definition that provides greater regulatory certainty.

The accident investigation would determine, to the extent possible, the initiating event that led to the release, and the root cause(s); EPA emphasizes that identification of the root causes (e.g., misdesigned piping run) may be more important than identification of the initiating event (e.g., failed flange). The investigation would be summarized in a report to management; the report would include recommendations for steps that need to be taken to prevent recurrences (e.g., piping design review) and improve emergency response and mitigation measures. Management would be required to document its decisions on the recommendations. As with the management of change procedures, the degree of the accident investigation and documentation will vary with the potential seriousness of the accident. For example, a minor release that was prevented from becoming a major release only by prompt action of operators may require more investigation than a large release that can be quickly attributed to single failure (e.g., a faulty high-level alarm).

EPA is also concerned about near misses. Investigation of such incidents may provide facilities with important information on problems that should be addressed before a significant accidental release occurs. Information on near misses could help the Agency and facilities understand how accidents occur and how they can be prevented. EPA does not consider a release that occurred, but did not affect the public or the environment because of favorable weather conditions at the time of the release, a near miss. EPA considers this incident a significant accidental release and, therefore, it needs to be investigated. A near miss would refer to mishaps that did not result in a release for some reason other than explicit system design. For example, a release from a pressure relief valve that is vented to a scrubber would not be a near miss because the system is designed to ensure that relief valve releases are contained and treated. A near miss is a mishap that did not result in a release because of employee actions or luck. For example, a runaway reaction that is brought under control by operators is a near miss and should be investigated to determine why the problem occurred. EPA requests comments on whether facilities should be required to investigate near misses and on how near miss should be defined.

Emergency Response

CAA specifies that the emergency response program include actions to be taken to protect human health and the environment in response to a release, including informing the public and local agencies, emergency health care, and employee training. Emergency response procedures are a necessary part of a risk management program because accidents do happen even with the best safety systems in place. Emergency response procedures can reduce the severity of a release and protect employees, emergency responders, and the public from harmful exposure to the regulated substances. As discussed above, the damage from accidents and risks to responders can be increased if releases have the potential to damage or destroy utilities and equipment needed to respond to the incident. The emergency response plan helps define these worst cases and develop an approach to prevent potential problems.

EPA is proposing that each facility develop an emergency response plan that defines the steps the facility and each employee should take during an accidental release of a regulated substance. The plan would include both evacuation or protective action procedures for employees not directly involved in the response to the release, and the actions taken by employees responsible for responding to and mitigating the release. All employees would be trained in applicable emergency response procedures. The emergency response plan would include descriptions of all response and mitigation systems.

The emergency response plan would also include procedures for notifying the public of releases and of appropriate protective actions and procedures for notifying public agencies. The facility would be required to develop information on proper first-aid and emergency medical care necessary to treat accidental human exposure. EPA is also proposing that the facility emergency response plan be coordinated with the local emergency planning committee (LEPC) plans required under EPCRA for chemical releases. Upon request of the LEPC, the facility would be required to provide the LEPC with information necessary to develop and implement the LEPC plan. This requirement is a restatement of the mandate of EPCRA section 303(d)(3) and would be included in this rule to ensure that the facility and community planning efforts are coordinated, which will improve both plans, thereby facilitating effective response actions when releases occur. Facilities would be required to develop written procedures for the use of emergency response equipment and for its maintenance, inspection, and testing. Facilities would be required to conduct drills or exercises to test facility plans and revise the plans based on the results; facilities would be responsible for determining the number and type of drills or exercises they need to conduct and the frequency of these tests.

Most facilities are already required to have at least part of the emergency response plan in place. OSHA requires emergency action plans (29 CFR 1910.38(a)). Facilities that are subject to OSHA's and EPA's Hazardous Waste Operations and Emergency Response (HAZWOPER) rules (29 CFR 1910.120 and 40 CFR Part 311) also must conduct training for their facility response personnel. Facilities covered by EPA's RCRA regulations (40 CFR Parts 264 and 265) or by Spill Prevention Control and Countermeasure rules (40 CFR Part 112) also are required to have many of the emergency response elements in place. EPA requests comments on how the proposed requirements can be best integrated with these existing programs to minimize duplication.

E. RMP and Documentation

EPA is proposing that a risk management plan (RMP) be submitted to the implementing agency, Chemical Safety and Hazard Investigation Board, the SERC, and to the LEPC, and be made available to the public. EPA is proposing to make a distinction between the RMP that is submitted to these agencies (and through them to the public) and the documentation supporting the implementation of the risk management program elements that a facility would be required to maintain on site for inspection by EPA and other agencies.

The purpose of the RMP is two-fold: First, to provide government agencies and the public with sufficient information to understand the hazards at the facility and the approach the facility is using to manage the risks and, second, to have the facility develop an ongoing system for managing implementation of safety practices and procedures. The information provided

in the RMP will assist government agencies in assessing the quality and thoroughness of a facility's risk management program. Because of the large number of potentially affected facilities, it is unlikely that EPA or the state implementing agency will audit a substantial percentage of the facilities in any one year. Consequently, it is important that government agencies have enough information in the RMP to identify those facilities that pose the greatest potential hazards, either because of the quantity and kind of substances in use or because of prevention practices. The RMP information also will assist local emergency planners. Under SARA Title III, local planners have received information on substances and quantities at facilities. The RMP will add to these data by providing information on hazards and practices. For example, a large facility with a well-implemented risk management system may pose less of a hazard than smaller facilities, with smaller quantities of chemicals, that have weak programs. With this information, local planners will be better able to focus on facilities that pose the greatest risk and target their work with facilities to improve prevention practices. The public will be able to identify hazards and risk management procedures from the RMP without having important information obscured by detailed submissions.

The second purpose of the RMP is to assist facilities in integrating the risk management program elements. Each facility will approach the management of its hazards in a way that is appropriate for its specific situation. For small facilities, one person may be responsible for implementing and integrating the elements. In large corporations, many of the elements may be handled by different operating divisions. The RMP would include information on the management system the facility uses to integrate the elements and ensure responsibility for the program. EPA thinks that this is an essential step in successful implementation of the program because unless management is accountable for safety and makes it a priority, other employees may not consider safety important. Equally important, by reporting on how it is addressing each of its major hazards, the facility would have to explain how it has applied the various risk management program elements to prevent accidental releases.

The proposed rule would require facilities to submit an RMP that includes the following information:

- A copy of the registration form;
- A summary of the offsite consequence analyses including worst-case and other more likely release scenarios;
- The five-year history of significant accidental releases for each regulated substance;
- A list of the major hazards defined through the process hazard analysis, the consequences of failure to control each major hazard, the steps management is taking or planning to take to address the hazards, and an implementation schedule for each step listed;
- A summary of any risk management program elements not covered under the steps taken to address specific hazards (e.g., if training has not been revised to respond to any listed hazard, a summary of the training program would be needed);
- A summary of the facility's emergency response program, including dates and schedules for drills completed and planned, information on coordination with the public, procedures for notifying and alerting the public of a release, and the name of person responsible for coordinating with public agencies;
- A description of the management system used to implement and integrate the elements of the hazard assessment, prevention program, and emergency response program; and
- A certification of the accuracy and completeness of the information.

EPA envisions the RMP to be comprehensive and succinct. The offsite consequence analysis information should be a summary of the documentation already developed during the hazard assessment. To keep the size of the RMP manageable, EPA requests comments on whether it should specify a maximum number of release scenarios a facility may submit as part of its offsite consequence analyses. Complex facilities may conduct a substantial number of such scenarios; submission of every scenario analyzed could overwhelm the user and make the information less useful.

The accident histories can be presented as tables or lists. EPA is not proposing that facilities include every hazard identified through a process hazard analysis, but rather that the RMP include only those hazards that have the potential to lead to significant accidental releases with offsite consequences. For each item included in the RMP, the documentation required by the rule would serve as supporting information.

The information provided should be brief. For example, if corrosion in piping is a hazard, the facility would list corrosion in piping followed by any steps taken to control corrosion and to ensure that corroded pipes are replaced before a release occurs. These steps might include periodic ultrasonic testing, replacement of pipes, or something similar. For facilities where the steps taken to address hazards apply to several hazards, the hazards can be grouped under the steps. For example, if revised operating procedures and training were used to control and prevent a number of hazards, the facility could list operating procedures and training followed by the hazards to which they apply. In this way, duplicative entries can be minimized. The length of the list of hazards would vary with the complexity of the facility and with the current state of prevention practices.

EPA is proposing an RMP that summarizes the program because the Agency believes that the information of most use to the public and local agencies will be related to the hazard assessment and consequence analysis, as well as general descriptions of hazards at the facility. Other detailed information is likely to be of little interest and, if submitted, could overwhelm the ability of local agencies to manage and use the information. EPA also believes that the RMPs should not include information that facilities can legitimately claim as confidential business information under CAA section 114(c). The RMP should provide local and state agencies and the public with sufficient information to determine if additional information is needed. The information will be available, if needed, to EPA or state officials conducting audits or compliance inspections. EPA requests comments on the RMP and particularly on the information communities, local authorities, and public interest groups will find useful in assessing the hazards posed by facilities. EPA also requests comments on the kinds of information facilities consider confidential (and how facilities can report on hazards without revealing confidential data).

EPA is proposing that the RMP shall be submitted to the Chemical Safety and Hazard Investigation Board, to the implementing agency, the state, and to local emergency planning committees. EPA asks for comments on other local agencies that may want a copy of the RMP. EPA is concerned about the burden such submissions may place on the entities receiving the RMPs. If each RMP is submitted, the Board could receive more than 140,000 plans; some states could receive several thousand documents. At the local level, the number could very from a few to more than 50 plans.

EPA is considering three options that might lessen the burden. First, EPA could develop computer software that would provide facilities with standard formats for completing the information required in the RMP. The RMP could then be submitted on disk in a format that would allow the government agency to locate information quickly. EPA recognizes that while this approach might ease storage problems and related burdens for the Board and the states, many local entities are not equipped to receive documents on disk. In addition, many of the smaller facilities covered by the rule may not yet be computerized. Therefore, this approach would work for only part of the facilities and recipients. The second option would be to allow local authorities to designate the state as the receiving entity, thereby lessening the burden on the local authorities. The third approach would be to require that the RMP be submitted only on request from the Board, state, or local entity. Facilities would be required to develop the RMP and keep a copy available on site, but would submit it only if requested. EPA solicits comments on these approaches and specifically asks for suggestions on other ways EPA might be able to facilitate the management and use of the RMP information by state and local agencies.

Section 112(r)(7)(B)(iii) requires EPA to establish, by rule, a system for auditing RMPs and requiring revisions where necessary. EPA is proposing that facilities be selected for audits based on a number of criteria. Specific accidents at a facility or the facility's five-year history of accidents would be one criterion used to select a facility for an audit; similarly, if other facilities in the same industry show a pattern of accidents with regulated substances, a facility might be selected for an audit to ensure that it is addressing the kinds of hazards causing releases at similar facilities. The quantities of regulated substances or the presence of specific regulated substances would also be criteria. For example, facilities with high volumes of one or more regulated substance might be selected, or the audits might focus on particular substances. The location of the facility would be a criterion for selection; facilities close to populated areas, or sensitive populations or ecosystems might be audited because of the potential hazard they pose. The hazards identified in the RMP would be a criterion for selection. Finally, facilities might be randomly selected to provide neutral oversight. EPA requests comments on the proposed criteria. EPA also requests comments on whether major facilities should be audited on a regular schedule (e.g., every three to five years).

The audit is designed to cover the adequacy of the RMP. If, based on the audit, the implementing agency decides that revisions to the RMP are needed, the agency would issue a preliminary determination explaining the basis for the revision and a timetable. This preliminary determination shall include an explanation for the basis for the revisions, reflecting industry standards and guidelines (such as AIChE/CCPS guidelines and ASME and API standards) to the extent that such standards and guidelines are applicable, and shall include a timetable for their implementation. The owner or operator would have 90 days to respond to the preliminary determination in writing, either agreeing to implement the changes or rejecting the revisions, in whole or in part, with an explanation for any rejection. In its response, the owner or operator may develop substitute revisions addressing the same issues addressed in the preliminary determination. After providing the owner or operator an opportunity to respond, the agency would issue a final determination, which may adopt or modify proposed revisions, or may adopt substitute revisions proposed by the facility. A final determination that rejects a substitute revision would explain the reason for the rejection. Thirty days after the final determination, the facility would be considered to be in violation of the rule unless the RMP is revised. The public would be assured access to preliminary determinations, responses, and final determinations.

In addition to the RMP, the facility would be required to maintain onsite documentation of its process hazard analysis, offsite consequence analysis, process information (e.g., P&IDs, MSDSs), training and maintenance programs, SOPs, pre-startup review list, management of change procedures and records, compliance audits, accident investigation procedures and reports, and emergency response plans. This documentation would include schedules for starting and completing actions based on the recommendations of the process hazard analysis, safety audit, and accident investigation. These documentation requirements are similar to those imposed under OSHA's standard.

F. Registration

Information Required

The Act requires that RMPs be registered with EPA prior to the effective date of the regulation. EPA is proposing that, within three years of the date of publication of the final rule, all facilities register with EPA if they have a regulated substance in a quantity that exceeds the threshold quantity. EPA is proposing a simple registration that would require most facilities to complete a one-page form; facilities with large numbers of regulated substances may need an additional page to list the substances. The registration would ask for the name and address of the facility, the facility's Dun and Bradstreet number, the regulated substances on site, quantities of the substances (in ranges), and the facility's Standard Industrial Classification (SIC) code(s) that apply to the use of each substance. If, at any time after the registration is submitted, the information becomes inaccurate, the facility would be required to file an amended registration within 60 days with the Administrator and the implementing agency.

The association of SIC codes with specific substances would allow EPA to identify the types of processes in which a facility may use the substance without requiring the facility to provide detailed information during registration. The Dun and Bradstreet number is a common identifier for facilities and would allow EPA to cross-reference the data with other EPA databases. Most of the information requested is already reported under SARA Title III. The reporting ranges proposed are the same ranges used for SARA Title III reporting.

EPA is proposing a registration requirement for several reasons. First, the statute requires that RMPs be registered with EPA. Second, EPA is required to establish a system for auditing RMPs. To implement an auditing system, EPA and state agencies that implement the program need to know which facilities are covered by the rule as well as the chemicals they have on site. Facilities may be selected for auditing based on location, quantities of chemicals on site, specific chemicals, or other criteria. A central source of information on which facilities are covered, for which chemicals, and in which industries is essential to apply criteria for selecting facilities for audits in an equitable manner. Finally, although many of the facilities file similar information with EPA, no current source of data includes all facilities likely to be affected by the proposed rule. EPCRA section 313, for which a national database exists, covers only manufacturers and does not include many of the chemicals proposed for listing. Some of the facilities will be permitted under RCRA, but most will

not be. Except for facilities not covered by OSHA's Hazard Communications Standard, most other facilities potentially affected by this proposed rule are also covered by EPCRA section 312. However, EPA does not receive section 312 data. Because these data are primarily used at the local level, only a few states have created section 312 databases. In addition, in many states facilities are not required to file chemical-specific information under section 312. Even if every state had a section 312 database, it would not be possible to identify facilities potentially covered by this proposed rule with the section 312 data. Consequently, a separate registration is needed.

EPA considered requiring an earlier registration to help identify potentially affected facilities and disseminate guidance to them. An earlier registration (either 12 months or 24 months after the date of promulgation) would also help states determine the scope of their implementation programs. EPA requests comments on whether an earlier registration would be beneficial.

Implementation

EPA has two main concerns about the implementation of the registration requirement: that multiple or duplicative filings be avoided to the maximum extent possible and that the burden for processing the information be minimized. EPA requests suggestions on how the registration information might be combined with other forms facilities are required to file to limit the repetitive reporting required of facilities. For example, EPA is considering using the EPCRA section 312 Tier II form as a substitute because the Agency believes this would facilitate integration of CAA activities with SARA Title III activities and would lessen the burden on facilities.

EPA's second concern involves the burden on the government to process the information filed. Each registration will include information that would need to be screened for accuracy. For example, the Chemical Abstract Service (CAS) number and chemical name would need to be checked to make sure that they match and are covered by the rule. SIC codes, Dun and Bradstreet numbers, and quantity range codes would need to be reviewed to ensure that the format (number of digits) and codes were acceptable (i.e., that valid codes were used). Such review could place a substantial burden on EPA and states. EPA is, therefore, considering developing software that would allow electronic filing of the information. The software would perform the quality control function automatically. CAS numbers would be checked to see if they were on the list; the chemical name could then be entered automatically. A list of known synonyms for the listed substances could be included. SIC codes could be checked to ensure that the codes entered actually exist; the format for Dun & Bradstreet numbers could also be reviewed. Messages alerting the facility that the information entered was not acceptable would be provided. Such a computerized form would lessen the time needed to process the information; it would also provide facilities with a quick check on the accuracy of their information and assure them that the data would be accurately represented in EPA's database. If facilities used such a computerized filing, however, they would still need to submit a signed certification. EPA recognizes that some facilities may not be computerized or may prefer to file a printed form. Although EPA would prefer a computerized filing, printed forms would be acceptable.

EPA requests comments on its plan to encourage computerized filings and specifically solicits suggestions on how such filings could be coordinated with other information filed on disk. For example, are there other software packages for computerized EPA filings that the RMP registration should be compatible with to facilitate data sharing and limit the amount of rekeying facilities would have to do?

G. Prohibitions

CAA section 112(r)(7)(E) states that after the effective date of the risk management program regulations it shall be unlawful for any person to operate any stationary source subject to the regulations in violation of the requirements of the regulation. Violations of the risk management program and other regulations promulgated under CAA section 112(r)(7) are subject to the same penalties as violations of National Emissions Standards for Hazardous Air Pollutants (NESHAPs) promulgated under CAA section 112(d). Persons in violation of the requirements may be subject to civil penalties of not more than $25,000 per day per violation as well as criminal penalties. Civil penalties may be assessed through court actions or through administrative orders under section 113 of CAA.

H. Timing

The proposed rule must be promulgated by November 15, 1993, and will be effective three years after the date of promulgation. EPA is setting a 120-day comment period and will hold a public hearing in Washington, DC, to solicit comments.

IV. Comparison of EPA's Proposed Rule to OSHA's Standard

A. Differences Between EPA's Proposed Rule and OSHA's Standard

The primary differences between today's proposed rule and OSHA's process safety management standard are the result of the different statutory requirements for the two rules. The CAA requires EPA to include several elements in its regulation that are not mandated for OSHA. Specifically, EPA's rule must include a hazard assessment, an emergency response program with certain elements, registration, and the submittal and auditing of the RMP. The only other element EPA is proposing that is not included in the OSHA standard is the requirement for the owner or operator of a facility to define its management system and name the person or position responsible for the program. EPA considers the management requirement critical to ensuring that the risk management program elements are integrated with each other on an ongoing basis. EPA expects that this requirement will create no additional burden for facilities because the proposed section would only require facilities to provide the name or names of people or positions responsible for implementing the program.

EPA's proposed hazard assessment includes an offsite consequence analysis and a five-year accident history, as required by the CAA. Under the OSHA standard, facilities are required to develop an onsite consequence analysis. Most of the information needed to define accidental release scenarios will be derived from the process hazard analysis, which would be the same under the two rules. The main differences under the EPA rule would be the need to use air dispersion models to analyze the distances releases might migrate and the need to document the areas potentially affected by the releases. EPA's hazard assessment also is required to include a five-year release history, which would overlap to some degree with a requirement in the OSHA's process hazard analysis.

EPA's proposed emergency response provisions respond to the language in the CAA and are somewhat different from the OSHA requirement. Under the OSHA standard, facilities must comply with one of two existing OSHA standards. Facilities that are currently in compliance with OSHA's Hazardous Waste Operations and Emergency Response standard (29 CFR 1910.120)

are likely to be in substantial compliance with EPA's proposed rule. OSHA's emergency action plan regulation (29 CFR 1910.38(a)) basically requires an evacuation plan. The CAA requires EPA's emergency response program to include "specific actions to be taken in response to an accidental release of a regulated substance so as to protect human health and the environment" (CAA section 112(r)(7)(B)(ii)). Therefore, facilities that currently have only an emergency action plan required under 29 CFR 1910.138(a) would, under EPA's proposed rule, need to develop a more extensive emergency response plan that details how the facility would respond to a release to limit offsite consequences. EPA is also proposing that facilities conduct drills and exercises to test their plans. Without such exercises, a facility will not be certain that a plan can be implemented properly during an emergency. All facilities covered by the EPA rule would need to coordinate their plans with the LEPC, which is not required by the OSHA standard. EPA considers this coordination essential to protect the public. Many facilities are already coordinating their plans with the LEPC plans and with local emergency responders. Therefore, EPA does not anticipate that this requirement will add substantially to the burden for most facilities.

The final differences between the two rules are the proposed requirements for registration, submission, and auditing of the RMP. CAA section 112(r)(7)(B)(iii) mandates these requirements. The information in the RMP would be derived from the documentation required elsewhere under the EPA proposed rule or OSHA's standard. Consequently, EPA expects that the RMP will not add substantially to the burden of complying with the rules.

See Section X of this Preamble for a discussion of the incremental burden imposed by the EPA rule over the OSHA rule.

B. Section by Section Comparison of the EPA Prevention Program and the OSHA Standard

Except for the management system requirement discussed above, the proposed EPA prevention program covers the same elements as OSHA's process safety management standard and generally uses identical language except where the statutory mandates of the two agencies dictate differences. EPA has added introductory paragraphs to most sections to provide further information to the regulated community; these paragraphs impose no additional requirements and are intended to clarify the purpose of the section's requirements and the level of detail expected of different types of facilities. In addition, EPA has made editorial changes in the OSHA language to make the rule consistent with the CAA's statutory language. Specifically, where OSHA uses the word "employer," EPA would use "owner or operator," which is defined in the CAA. Where OSHA uses "highly hazardous chemicals," EPA would use "regulated substance." Where OSHA uses "facility," EPA would use "stationary source." Where OSHA uses "standard," EPA would use "rule." Finally, where OSHA references workplace impacts, EPA would reference offsite consequences, reflecting the different statutory mandates of the two agencies.

The specific parallel elements of the two rules are as follows:

- EPA's process hazard analysis requirement (§ 68.24) is the same as OSHA's process hazard analysis requirements (29 CFR 1910.119(e)), with the following changes: (1) An introductory paragraph; (2) the priority order for conducting the analysis would consider offsite consequences rather than the number of potentially affected employees; (3) OSHA's schedule for implementation would not be included because the CAA requires that facilities comply with EPA's rule within three years of the date of promulgation and, therefore, OSHA's five-year schedule could not be used; (4) the identification of previous incidents would be limited to those with offsite consequences rather than those with catastrophic consequences in the workplace; and (5) the qualitative evaluation of safety and health impacts would focus on impacts on public health and the environment rather than on employees. EPA expects that, in most cases, fewer incidents will need to be considered under EPA's proposed rule because releases are generally more likely to affect workers rather than the public. However, some types of releases, such as the release at Bhopal, have their primary impact off site. EPA's rule would ensure that these potential releases are evaluated. Finally, in response to the statutory requirement that the prevention program include monitoring, EPA would add a paragraph (j) requiring facilities to evaluate monitors, detectors, containment or control devices, and mitigation systems.
- EPA's proposed process safety information (§ 68.26) is identical to OSHA's process safety information system (29 CFR 1910.119(d)) except for editorial changes and the requirement, in paragraph (c)(5), that the evaluation of the consequences of process deviations include those affecting public health and the environment rather than workers.
- EPA's standard operating procedures requirement (§ 68.28) is identical to OSHA's operating procedures (29 CFR 1910.119(f)) except for the introductory paragraph and editorial changes.
- EPA's training section (§ 68.30) is identical to OSHA's training section (29 CFR 1910.119(g)), except for the introductory paragraph, editorial changes, and a requirement that facilities evaluate the effectiveness of their training programs and revise the programs, if necessary, based on the evaluation.
- EPA's maintenance requirements (§ 68.32) uses the same language as OSHA's mechanical integrity paragraph (29 CFR 1910.119(j)) with certain exceptions. EPA would use the term "maintenance" rather than "mechanical integrity" to parallel its statutory language. EPA would add an introductory paragraph and make editorial changes. In paragraph 68.32(b), EPA would require the facility to develop a list of equipment that requires maintenance; the OSHA standard provides a list of equipment. EPA's paragraph (b) includes the OSHA list, but EPA is concerned that for some facilities the list may be too extensive and for others it may not be comprehensive. For example, for warehouses, the only equipment that may need maintenance may be the sprinkler system and the forklifts, neither of which are on the list. EPA believes the responsibility should be on the facility to develop a list, based on specific facility concerns. EPA would also add an opening paragraph to the OSHA paragraph on inspections and testing and include the word "maintenance" before inspection and testing throughout the paragraph. The inclusion of the word "maintenance" would clarify that equipment should be maintained on a regular basis; for some equipment simple routine maintenance, such as cleaning and oiling, may be all that is necessary; other equipment, such as seals, may be replaced on a regular schedule. EPA's revision would clarify that such maintenance is included in the inspection and testing requirement. EPA would also add language to clarify that training of maintenance workers would be documented in the same manner as other training.
- EPA's pre-startup review requirement (§ 68.34) is identical to OSHA's pre-startup review paragraph (29 CFR 1910.199(i)) except for editorial changes, the introductory paragraph, and the requirement in paragraph

68.34(c)(4) that maintenance as well as operating employees are trained prior to startup and that all employees are trained on any new emergency response procedures. EPA believes these additions are necessary to ensure the safety of the facility.

• EPA's management of change requirements (§ 68.36) are identical to OSHA's paragraph (29 CFR 1910.119(l)), except for the introductory paragraph, editorial changes, and a new paragraph (b) in which EPA defines alterations that do not constitute a change. Paragraph 68.36(b) is intended to clarify what constitutes a replacement in kind. EPA would also change paragraph (d)(2) to replace OSHA's "impact of change on health and safety" to "impact of change on likelihood of a significant accidental release."

• EPA's safety audit requirement (§ 68.38) is identical to OSHA's compliance audit paragraph (29 CFR 1910.119(o)), except for the introductory paragraph and editorial changes.

• EPA's accident investigation requirements (§ 68.40) are identical to OSHA's incident investigation paragraph (29 CFR 1910.119(m)), except for: (1) The introductory paragraph and editorial changes to substitute the phrase "significant accidental release" for the word "incident"; (2) the addition, in paragraph (b), of a requirement that the procedures be written; (3) the requirement in paragraph (c) that incidents that require investigation are those that caused or could have caused offsite consequences rather than catastrophic releases in the work place; and (4) the addition, in paragraph (f)(4), that the facility identify root causes as well as initiating events.

The OSHA standard includes several requirements that are not covered by EPA's proposed rule—worker consultation, hot work permits, contractor rules, and trade secrets. EPA believes that worker consultation and hot work permits are worker protection issues and are, therefore, properly in OSHA's area of concern. EPA's trade secret rules for the CAA already are covered in 40 CFR part 2.

Finally, although EPA recognizes the importance of contractor competence on safety, EPA believes this issue is primarily one that OSHA should address, as it has in its section on contractors. In addition, EPA believes that contractors are mainly an issue at larger companies, most of which are covered by the OSHA standard. EPA requests comments on whether EPA should adopt OSHA's contractor paragraph as part of the risk management program requirements.

As specified in CAA section 112(r)(7)(B)(i), EPA's rule would become effective three years after the date of promulgation. OSHA's rule will allow facilities up to five years to conduct process hazard analyses. Because the OSHA standard was promulgated prior to EPA's rule, however, EPA does not anticipate that the actual compliance dates for the two rules will differ significantly.

V. Relationship to Other Federal and State Requirements

Federal Regulations

A number of the facilities potentially affected by today's proposed rule are also covered by other Federal requirements that may relate to practices that will be included in the risk management program. As discussed in the section on emergency response, several EPA programs require facilities to develop emergency response plans. These programs include the Resource Conservation and Recovery Act requirements and the Spill Prevention, Control, and Countermeasure requirements under the Clean Water Act. In addition, loading and unloading of hazardous materials for transportation are covered by DOT regulations, as are storage incident to transportation and repackaging for resale and transportation. The DOT regulations are particularly likely to affect distributors and warehouses. EPA requests comments on how these requirements can be harmonized to eliminate conflicts and minimize duplication. Specifically, EPA requests comments on whether compliance with other Federal regulations will meet some or all of the requirements of the proposed rule and, if so, how the rule should acknowledge this fact to ensure that facilities understand what, if any, additional steps they must take to come into compliance with the risk management program requirements.

State Laws

Four states—California, New Jersey, Delaware, and Nevada—have implemented state laws that require certain facilities to develop risk management programs. Although the existing state programs differ in some respects, they address the same basic elements that EPA is proposing in this rulemaking, except that the California program does not specify a management of change procedure. The New Jersey Toxic Catastrophe Prevention Act (TCPA) program is the most detailed program, specifying to a considerable degree the information required to be developed and submitted; New Jersey also requires that workers pass competency tests after training. The Delaware program provides facilities with more flexibility by specifying less detailed requirements. The California program is the most general of the programs; the California risk management plan program developed by each affected facility is driven by the results of the process hazard analysis, rather than responding to a set of specific mandated requirements.

The primary differences in the state programs relate to their implementation and the chemicals covered. New Jersey, Delaware, and Nevada have implemented their programs at the state level. California has delegated implementation authority to more than 100 administering agencies, which are usually the fire or health departments. New Jersey, California, and Nevada require facilities to submit their plans to the administering agencies for review and approval. Delaware requires facilities to maintain the plan and documentation on site for state inspectors. California also allows the administering agencies to exempt facilities that meet the thresholds if the agency determines that the facility does not pose a significant risk to the community.

Each of the states has a different list of chemicals and thresholds. New Jersey's list covers 109 acutely toxic substances; Delaware covers 90 toxic substances, as well as flammables and explosives; California covers all 360 of the EPCRA section 302 list of extremely hazardous substances; Nevada adopted OSHA's list of highly hazardous chemicals. California uses EPA's threshold planning quantities (TPQs) as thresholds for notification and allows local agencies to decide whether a facility must comply; New Jersey and Delaware developed separate and different methodologies for calculating thresholds; Nevada adopted OSHA's thresholds. None of the state lists is entirely consistent with EPA's proposed list.

EPA anticipates that facilities currently in compliance with the New Jersey, Delaware, and Nevada regulations will be in compliance with most elements of today's proposed rule. Because the California rules are more general and because different administering agencies have interpreted the requirements differently, it is not possible to determine, except on a case-by-case basis, to what extent a California facility will be in compliance with EPA's rule.

The Clean Air Act section 112(l) allows EPA to delegate the implementation of the risk management

program to states that have an approved program. The criteria for state programs are listed in CAA section 112(l)(5). The Act allows states to adopt the Federal program or implement a program that is more stringent. Consequently, the existing state programs will require some revisions to meet EPA's requirements or set more stringent requirements than those established by the EPA rule. EPA expects that most of the needed changes will involve the listing of chemicals and adjusting of thresholds. Other states that are developing state programs to implement these regulations should determine whether they have sufficient statutory authority under their air or emergency planning/community right-to-know SARA Title III programs to adopt the requirements of these regulations. EPA will provide additional guidance for states before the final rule is promulgated.

VI. Other Approaches Considered

The CAA requires facilities that have a regulated substance in quantities greater than the threshold to develop and submit RMPs. EPA recognizes that, for small facilities, even the less complex risk management program that would be needed for simple processes could create a substantial burden. EPA considered three approaches, therefore, that might reduce this burden. Each of these approaches would create two tiers of risk management programs, a minimal program and an expanded risk management program. The approaches differ on how facilities would be divided between the two tiers.

The first approach considered would be to develop criteria for determining when facilities needed an expanded risk management program. The criteria could be as simple as a multiple of threshold quantity (e.g., an expanded risk management program would be required at 10 times the threshold quantity), or would combine the quantity on site with other factors such as distance to the fenceline, proximity of sensitive populations (e.g., hospitals, schools, residences), similar to the approach used in Delaware. EPA decided not to propose this approach for several reasons. Facility operators in Delaware and state officials report that this approach is difficult to implement because considerable technical expertise is needed and many smaller facilities and non-manufacturers do not have the expertise in house. In addition, developing a set of criteria that would be appropriate in all situations may not be possible because too many factors influence the hazard posed by a particular process and substance. Using the simple multiple of the threshold quantity would ignore the dangers posed by relatively small quantities of regulated substances in specific circumstances.

The second approach considered would be to have facilities determine whether they needed an expanded risk management program based on the offsite consequence analysis: If the worst-case release could not expose the public or the environment to significant risks, the facility would not need an expanded risk management program. Although this approach is a better way to determine whether the potential risks of a facility merit an expanded risk management program, it is fraught with problems. This approach would create considerable potential for debate and legal disputes over the assumptions facilities use to determine offsite consequences. Assumptions appropriate for one facility or area may not be appropriate for others. EPA believes that this approach would leave facilities uncertain of the legal status of their decisions and create difficulties for enforcement by governments and citizens. In addition, given the experience of Delaware facilities, it is likely that many smaller facilities and those outside the manufacturing sector would have substantial difficulty understanding and implementing this approach. EPA notes that most of the facilities potentially affected by the proposed rule are non-manufacturers; less than five percent of the potentially affected facilities are chemical manufacturers or petroleum refineries.

The final approach considered would be to follow the California model and let local or state agencies decide which facilities pose the greatest threat and, therefore, require an expanded risk management program. EPA believes that local agencies are in the best position to identify and evaluate local hazards. However, the viability of this approach rests on the ability and willingness of state or local groups to make these decisions. This approach would impose a considerable burden on state and local authorities. It could also lead to the uneven imposition of requirements on facilities if states or localities chose to cover facilities differently. Some facilities already covered by risk management program rules believe that they have been placed at a substantial competitive disadvantage because they are complying with the state law, while similar facilities in other states are not. An uneven implementation also leaves the protection of the public uneven.

EPA requests comments on these approaches and methods that could be used to create tiers in risk management program requirements. EPA also requests comments on what a "minimal-program" would be, given the Congressional mandate that requires the risk management program to include a hazard assessment, a prevention program that includes safety procedures, maintenance, monitoring, and training, and an emergency response plan.

VII. Guidance

The CAA requires EPA to publish, when the final rule is promulgated, guidelines to assist facilities in the preparation of risk management programs. The guidelines shall, to the extent possible, include model RMPs. EPA is aware that for many facilities, especially those outside the chemical and petroleum refining industry and many smaller facilities, the risk management program approach and some of the elements will be unfamiliar. EPA intends, therefore, to provide as much guidance as possible and to encourage trade associations, professional organizations, labor, and others to develop and disseminate appropriate guidance as well. EPA requests comments on areas where guidance is needed (e.g., process hazard analyses, maintenance programs), the levels at which guidance should be directed, and appropriate formats for the guidance.

EPA has identified industry sectors that may be candidates for model risk management programs. Generally, most of the covered facilities in these sectors are using the same chemical in the same way, with similar types of equipment. The similarity will allow EPA to develop guidance on the chemical and process hazards, identify typical hazards that need to be considered in the process hazard analysis, suggest areas that should be covered in SOPs and training, identify critical equipment for maintenance programs, and describe model emergency response procedures. The purpose of the guidance will not be to provide facilities with an "off-the-shelf" plan, but rather to provide a framework that the facility can use to analyze its own operations and develop a program to manage risks.

Industry sectors that may be appropriate for model risk management programs include chlorine and ammonia users such as public drinking water systems and wastewater treatment works, cold storage facilities, wholesalers, and propane retailers. EPA requests suggestions for other industry groups for which model risk management programs may be possible.

VIII. Information Gathering Efforts

Before EPA began writing its proposed rule on risk management programs, the Agency decided to seek information from those already implementing risk management program regulations. EPA staff met extensively with officials in the three states and held interviews with seven facilities that have developed risk management programs under state laws. To gather more information, EPA held eight focus groups, five with facilities (two each in New Jersey and California, one in Delaware), and three with administering agency officials in California, to elicit their opinions of the risk management program regulations in their respective states and their ideas about what EPA should consider as it develops its program. After analyzing the results of these meetings, EPA and the National Governors' Association sponsored a two-day seminar on issues that have arisen at the state level. Officials from California, Delaware, and New Jersey, as well as New York, Minnesota, and Wisconsin attended the meetings. On the second day, other groups including trade associations, professional organizations, labor, and environmentalists joined the discussion.

Several industry participants believed that the risk management program process is improving safety, although the initial costs are high. Many considered the most costly element, the process hazard analysis, the most important because it identifies hazards and allows facilities to set priorities. Larger facilities, especially those in the chemical and petroleum industries, currently have more risk management program elements in place than do smaller facilities. Larger facilities are also more able to implement the program with their own staff; smaller facilities often lack the in-house expertise to develop and implement all risk management program elements. Various industry participants recommended that the risk management program regulations give facilities the flexibility to tailor a program to their own situations. According to these participants, the regulations should tell a facility what to do, not how to do it. Many participants with various perspectives recommended that regulations be specific enough to limit inconsistent interpretation either across states or among inspectors. Inconsistently applied regulations create competitive disadvantages and undermine the willingness of facilities to comply. Many participants from various sectors expressed the view that guidance and technical assistance will be needed at the state, local, and facility levels, and that education and outreach efforts will be necessary. Several industrial and governmental participants said that to the extent possible, the OSHA, EPA, and state regulations and chemical lists should be consistent. The same participants believed that facilities would like to ensure that if they are in compliance with one rule, they would automatically be in compliance with all rules, at least for a specific chemical. There was a general concern that the expertise to implement the program may not be uniformly available in the short-term. This lack of expertise will affect both facilities and government agencies.

A report on this information gathering effort entitled *Clean Air Act of 1990, Chemical Accident Release Provisions, Report on Focus Groups and Round Table Discussions* is available in the docket as are transcripts of the eight focus groups.

IX. Section by Section Discussion of the Proposed Rule

EPA is proposing to add a new part 68 to 40 CFR, which would include the risk management program requirements, as well as the list of regulated substances and related regulations, and any additional chemical accident prevention regulations that EPA may promulgate in the future. This section reviews the regulations that would be added in this rulemaking.

Proposed § 68.1 would define the scope of the part.

Proposed § 68.3 would provide definitions applicable to the Part.

Proposed § 68.10 would define the applicability of the risk management plan requirements to all stationary sources where a regulated substance is present in a process at any one time in more than the threshold quantity. The section also includes the effective dates for the risk management program elements. Facilities would be required to develop and implement all risk management program elements within three years of the date of promulgation of the rule or within three years of becoming subject to the rule (i.e., three years after the facility introduces a new regulated substance to its operations or a new substance is listed).

Proposed § 68.12 would define the requirements for registration. Facilities would be required to register three years after the date of promulgation of the rule or within three years of date on which the facility becomes subject to the rule (either because the facility introduces a new regulated substance to its operations or a new substance is listed). If the information submitted on a registration form is no longer accurate, facilities would be required to update the information within 60 days of the change.

Proposed § 68.15 would provide the requirements for the hazard assessment. Facilities would be required to complete a hazard assessment for each regulated substance present in greater than a threshold quantity. For each such substance, a worst-case release scenario would have to be defined. The offsite consequences of a range of release scenarios, including the worst-case and other more likely significant accidental release scenarios, would have to be analyzed. The proposed section specifies a number of scenarios that should be considered and the information that must be included in the offsite consequence analyses. The section also would require the facility to develop and maintain a five-year history of significant accidental releases and releases with the potential for offsite consequences for each regulated substance. The hazard assessment would have to be reviewed and updated every five years, unless changes necessitated an update sooner. The section would detail the documentation that would be required to be maintained on site.

Proposed § 68.20 would explain the purpose of the prevention program and specify that the ten elements of the program must be tailored to suit the degree of hazard present at a facility and the degree of complexity of the operations.

Proposed § 68.22 would require facilities to designate a person or position responsible for overseeing the development and implementation of the prevention program elements. Where other individuals are responsible for separate elements, an organization chart showing lines of authority would be required.

Proposed § 68.24 would detail the requirements for the process hazard analysis. A process hazard analysis would be required for each location where regulated substances are present above the threshold quantity. Formal process hazard analysis techniques would have to be applied, with the complexity of the process and potential consequences of a release to be considered in selecting an appropriate technique. The section would require facilities to conduct evaluations on the most hazardous locations first.

The process hazard analysis team would be required to report findings and recommendations to management. The facility management would be required to document its response to each finding and recommendation, and

maintain a schedule for implementing actions to address findings. If the facility management decides not to implement certain recommendations, a rationale for the decision would have to be documented.

Based on the process hazard analysis results, the facility would be required to evaluate and develop a plan for (or a rationale for not) installing detection and alarm systems, secondary containment and control systems, and mitigation systems. The process hazard analysis would have to be reviewed and updated every five years unless changes of chemical use, process technology, or equipment require an earlier review and revision.

Proposed § 68.26 would require the facility to develop and maintain up-to-date chemical, technology, and equipment information. Technology information would include process flow diagrams and process chemistry information, maximum intended inventories for vessels, process parameters, and consequences of deviations from parameters. Equipment information would include materials of construction, electrical classifications, material and energy balances, design bases and codes, safety equipment designs, and diagrams of piping, equipment, and controls. The owner or operator would have to document that equipment complies with good engineering practices.

Proposed § 68.28 would require facilities to develop and maintain written procedures for operations.

Proposed § 68.30 would require facilities to develop and implement training programs to ensure that all employees are trained in SOPs that apply to them. Refresher training would be required at least every three years. The facility would have to develop a method of ensuring that each employee is competent. In addition, facilities would be required to evaluate the effectiveness of their training. Based on this evaluation, the facility would be required to develop and maintain a schedule for revising the training program. All training conducted at the facility would be documented. In lieu of initial training, the facility could certify that current employees have the knowledge and skills to carry out the SOPs.

Proposed § 68.32 would require facilities to develop a list of equipment and controls whose failure could lead to a significant accidental release of a regulated substance. For items on the list, a maintenance program that included a schedule for inspections, testing, and maintenance would be required. Inspection and testing procedures and schedules would be based on manufacturers' recommendations unless industry or facility experience indicated that more frequent inspections and tests, or different procedures were needed. Written maintenance procedures and training of maintenance workers would also be required. Equipment found to be outside acceptable limits would have to be replaced or repaired prior to being used again or in a timely manner that ensures safety. Procedures to ensure that replacement equipment is installed properly and consistent with design specifications would be required. Records of each inspection, test, repair, and replacement would be required.

Proposed § 68.34 would require facilities to develop procedures to ensure that a pre-startup review is conducted before a new or modified process is brought online. This section would not apply to routine startups after shutdowns for maintenance provided standard procedures are developed for such startups. The pre-startup review would confirm that all installations and changes meet design specifications, that SOPs and maintenance programs are in place for the new processes, and that employees have been trained. Records of each startup, including actions taken to address any problems uncovered during the review, would be maintained at the facility under § 68.55.

Proposed § 68.36 would require facilities to develop management of change procedures to ensure that any alteration of chemicals, processes, and procedures are reviewed prior to implementation. Replacement of equipment or controls with a device that meets the design specifications of the replaced device would not be considered a change. The procedures would ensure that the technical basis of the change is documented and that the consequences of the change are evaluated. Process safety information and the process hazard analysis would be updated as needed, as would SOPs, training, and maintenance programs. The results of each such review would be maintained at the facility under § 68.55.

Proposed § 68.38 would require facilities to conduct safety audits every three years. Each audit would be documented in a report with findings and recommendations. Management's response to each finding and recommendation would be documented, with a schedule for implementation or a rationale for not implementing.

Proposed § 68.40 would require facilities to develop and implement procedures to investigate each significant accidental release. Investigations would have to start within 48 hours of the accident. The investigation would document, in a report to management, the initiating event, root causes, and recommendations for preventing recurrences. Management would be required to document its response to each recommendation, with either a schedule for implementation or a rationale for not implementing the recommendation. The results of the investigation would have to be reviewed with all potentially affected employees.

Proposed § 68.45 would require facilities to develop a written emergency response plan that would specify procedures for employees not involved in a response action, procedures for responders, a list of all response and mitigation technologies. The plan would also include procedures for notifying and alerting the public and public response agencies. The facility would be required to have procedures for the use, inspection, testing, and maintenance of response equipment. The facility would also develop information on first aid and emergency health care related to potential exposures. Employees would be trained in applicable response procedures. Facilities would be required to conduct drills or exercises to test the plan. Any drill or exercise would be documented, with findings relevant to plan revisions; management would be required to document responses to the findings, with schedules for implementation. The emergency response plan would be coordinated with the local emergency planning committee's community plan prepared under SARA Title III.

Proposed § 68.50 would require submission of the RMP containing a copy of the facility's registration form, hazard assessments for each regulated substance (i.e., worst-case scenario, offsite consequences for a range of more likely significant accidental release scenarios, and five-year history of significant accidental releases), a list of major hazards identified through the process hazard analysis, the consequences of failure to control each major hazard, steps being taken to address the hazards, implementation schedules, a summary of other prevention elements, a description of the emergency response plan, a description of the management system for implementing and integrating the risk management program, and a certification of accuracy and completeness. The RMP would be revised and resubmitted every five years unless changes dictate a more frequent revision.

Proposed § 68.55 would specify which records would need to be maintained and that records would be maintained for five years. Facilities would also be required to maintain implementation schedules for recommendations from the process hazard analysis, safety audit, and accident investigation.

Proposed § 68.60 would specify the audit system for reviewing RMPs.

X. Regulatory Costs and Benefits

Agencies proposing and promulgating regulations must consider both the costs and benefits of those rules on the affected community. This section summarizes the analyses conducted in support of this proposed rule and the list and threshold rule. The full regulatory impact analysis (RIA), entitled "Regulatory Impact Analysis in Support of Listing Regulated Substances and Thresholds and Mandating Risk Management Programs for Chemical Accident Release Prevention, as Required by Section 112(r) of the Clean Air Act," is available in the docket.

As mentioned above, the cost information in this section is based on an analysis of this proposed rule and the list and threshold rule. Since the RIA was completed, the Agency has collected new cost information from comments to the proposed list and threshold rule and has conducted additional analyses. The revised cost information is contained in an addendum to the RIA, which is available in the docket. The Agency recognizes that the costs/benefits and the universe of affected facilities are difficult to estimate accurately and requests comments and input on the RIA and the addendum. Specifically, EPA requests comments on the unit-cost estimates for the prevention program elements and rate of current compliance with these elements.

Options Considered

To evaluate alternatives, EPA analyzed five list and threshold options and two risk management program options. The five list options were: List 1—101 acute toxics at the proposed thresholds; List 2—EPA's proposed list (100 toxics, 62 flammables, and high explosives) at the proposed thresholds; List 3—EPA's proposed list at the EPCRA section 302 threshold planning quantities (TPQs) where applicable; List 4—the full EPCRA section 302 list at the TPQs; and List 5—the full EPCRA section 302 list of extremely hazardous substances at the threshold planning quantities, plus 62 flammables and high explosives. The options were selected to bound the different combinations of chemicals and threshold quantities that were under consideration by EPA during development of the proposed list regulation. The OSHA list was not included as a listing option because it includes some substances that EPA is statutorily prohibited from listing, it does not include many acutely toxic chemicals that meet EPA's criteria for listing, nor does it include all statutorily mandated regulated substances. In addition, many of the substances listed by OSHA are reactives, which EPA has not determined pose a significant hazard to the public in the event of an accidental release.

The RIA also considered two options for risk management program requirements: EPA's proposed rule; and a more stringent version of the proposed rule, modeled on the New Jersey state regulations, which are more detailed and impose more specific requirements for many of the risk management program elements. The OSHA standard was not considered because it does not fully meet the statutory mandate for EPA's risk management regulation.

Methodology

To estimate the universe of potentially affected facilities under each list and threshold option, EPA used 1988 data from the New Jersey Right-to-Know database. Under the New Jersey Right-to-Know statute (New Jersey Pub. L. 1983, Chapter 315), facilities are required to complete surveys of chemical inventories if they have any amount of the listed substances on site. Facilities are required to report the maximum quantity on site for each covered substance and the CAS number for the substance; all of the toxic substances EPA considered for listing are on the New Jersey list. Facilities also are required to report applicable four-digit SIC codes and the number of facility employees. Although there are limitations and cautions that must be exercised when extrapolating state data to estimate national impacts, EPA believes that the New Jersey data provide comprehensive coverage of SIC codes, including the majority of four-digit SIC codes across both the manufacturing and non-manufacturing sectors, and are reasonably representative of chemical use patterns throughout the nation. In addition, New Jersey facilities are required to report on inventories of all acutely toxic chemicals covered by EPA's listing options. Further, the information in the New Jersey database on number of employees allows disaggregation of the data by facility size. There are, however, limitations to the New Jersey data; to the extent possible, EPA augmented the New Jersey data to adjust for these limitations. For example, because facilities in New Jersey are not required to report on flammables, data from Louisiana's EPCRA section 312 database were used to develop estimates of the number of additional facilities that would be covered because of the listed flammables. Similarly, certain industrial sectors were clearly underrepresented in the New Jersey data; adjustments were made wherever possible to correct for these limitations.

The New Jersey database was searched by four-digit SIC code to identify for each such code the number of facilities that reported a listed toxic chemical above the threshold. The number of reports of regulated substances per four-digit SIC code was also obtained from the New Jersey data. The information obtained from these searches was compared with the number of facilities in each four-digit SIC code in New Jersey (based on 1988 County Business Pattern data). The ratio of the number of facilities reporting the presence of the chemicals above the proposed thresholds to the number of facilities in the SIC code in the state was extrapolated to the nation to estimate the number of facilities in each SIC code potentially affected by the proposed rule. The ratio of the number of regulated substances reported per facility in New Jersey in each four-digit SIC code was used to estimate the number of hazard assessments that would likely be required under each listing option. The Louisiana data were used to identify those four-digit SIC codes where the addition of flammables would result in additional facilities and additional chemicals per facility covered by EPA's regulatory options.

Three industry sectors were substantially underrepresented in the state databases: public facilities, cold storage facilities, and propane retailers. To adjust for this underrepresentation of public facilities, the analysis used EPA data on public drinking water systems and publicly owned treatment works to estimate the number of public facilities potentially affected by the proposed rule. Industry information was used to estimate the number of cold storage facilities (i.e., food processors, food distributors, and refrigerated warehouses) and the number of propane retailers.

In Delaware and New Jersey, 30 percent and 52 percent of the facilities (respectively) that initially registered under the state laws lowered inventories or switched chemicals to avoid having to comply with the risk management program requirements. Based on this experience, EPA assumed that 30

percent of the facilities in most manufacturing, utility, and service industries would take similar steps to avoid being affected by EPA's proposed rule. The final estimates of the number of affected facilities in these sectors were adjusted to account for this expected change in chemical use. The number of chemical manufacturers, wholesalers, and propane distributors was not adjusted downward; facilities in these sectors were assumed to be unable to reduce inventories sufficiently to avoid coverage because of the nature of their businesses.

To develop cost estimates, affected manufacturing facilities (SIC codes 20–39) were classified as small, medium, and large, based on the number of employees. For each SIC code, manufacturing facilities were also categorized as likely to have simple, moderately complex, and complex processes, based on categories developed by OSHA for its process safety management standard. Facilities outside the manufacturing sector were divided into six categories: public drinking water and treatment works; private utilities (SIC code 49—electric and gas utilities); cold storage facilities that use ammonia as a refrigerant (SIC codes 20, 4222, 514); wholesalers (SIC codes 50–51); retailers, which are primarily propane distributors; and others (primarily service industries (SIC codes 70–89)). Non-manufacturers were assumed to handle the regulated substances in simple ways and to have available EPA model risk management programs or guidance, described in Section VII of this preamble, that would lessen the burden of compliance. Wholesalers and cold storage facilities were divided into small and large facilities based on the quantity of chemicals on site because the complexity of implementing the rule is assumed more likely to be related to the quantity of the chemicals on site rather than the number of employees at a facility. For example, some chemical distributors have more than 100 million pounds of a substance on site, but employ fewer than 20 people, only some of whom handle the substance. Public and private utilities were assumed to be small because a limited number of employees are assumed to handle regulated substances.

Using industry experience and engineering expertise, cost estimates were developed for each risk management program element for each class and category of facility. Costs were developed on a per chemical, per process, per release, or per facility basis for each element of the program, as appropriate. Because many facilities already implement some of the risk management program requirements (e.g., training, emergency response plans), costs were adjusted to account for current compliance, based on compliance estimates for each risk management program element developed by EPA, OSHA, an American Paper Institute study of the actual level of current compliance among its members, and experts in the cold storage industry.

For final cost calculations, facilities were divided into two further groups: those covered only by the EPA rule, who would be subject to the full cost of complying with all elements of the proposed rule, and those covered by EPA and OSHA, who would incur costs only to implement the additional elements covered in EPA's proposed regulation (i.e., registration, hazard assessments, and the RMP). Different cost estimates were developed for publicly owned drinking water systems and wastewater treatment systems, depending on the states where the systems are located. For systems in states with delegated OSHA health and safety programs (i.e., state-plan states), only incremental costs associated with performing the hazard assessment and developing the RMP were attributed to the EPA proposed rule; these systems must already comply with state standards at least as stringent as the Federal OSHA standards. For systems not in state-plan states, the full cost of the proposed rule was assumed to be incurred. Table 1 presents the estimated number of facilities covered by each list option.

TABLE 1.—ESTIMATED NUMBER OF FACILITIES AFFECTED BY EPA'S LIST AND THRESHOLD OPTIONS

Options	Manufacturers not otherwise regulated	Manufacturers previously regulated [1]	Non-manufacturers not otherwise regulated	Non-manufacturers previously regulated	Total
List 1	3,975	18,960	28,650	64,060	115,645
List 2	3,975	18,960	48,650	68,840	140,425
List 3	13,640	19,940	54,560	68,840	156,980
List 4	19,530	20,470	37,830	64,060	141,890
List 5	19,530	20,470	57,830	68,840	166,670

[1] "Previously regulated" refers to facilities subject to the OSHA standard or to a state standard at least as stringent as the Federal OSHA standard.

EPA estimates that approximately 140,425 facilities would be affected by EPA's proposed rule. Of this universe, 87,800 would also be covered by the OSHA rule or an equivalent state standard; the costs estimated for these facilities reflect only the costs for registering and developing the hazard assessment and RMP. The remaining 52,625 facilities will only be covered by EPA's proposed rule; the estimated costs reflect the costs of implementing all risk management program requirements. The total universe of covered facilities includes 22,935 manufacturers (covering all manufacturing sectors except tobacco); 3,360 private utilities (electric and gas utilities, drinking water systems, and treatment works); 33,250 public drinking water and treatment works; 50,000 cold storage facilities; 9,460 wholesalers; 20,000 propane retailers, and 1,240 service industry facilities.

EPA estimates that the costs per facility will vary, for facilities covered solely by the EPA rule, from approximately $1,700 for a facility in the service industry sector, to approximately $153,000 for a large complex manufacturing facility. EPA did not estimate the cost of compliance for a highly complex facility such as a petroleum refinery because all of these facilities are covered by the OSHA standard. The most costly items in the prevention program for manufacturers include the process hazard analysis, which varies from $6,600 per process for a simple facility to $35,000 per evaluation for a complex facility; training costs, which vary from $2,400 for a small simple facility to $61,000 for a large (150-employee) complex facility; process and equipment information, which may cost a large facility $36,000

per process; and SOPs, which vary from $2,500 for a simple process to $14,000 for a complex process. Costs for non-manufacturers are estimated to be considerably lower both because their operations frequently do not involve special equipment and because model RMPs and guidance are assumed to be available to them, thus lessening the burden. The cost of conducting the hazard assessment is estimated to vary from $70 per assessment for non-manufacturers to $280 per assessment for large complex manufacturers; the number of assessments likely to be required is estimated to vary from one (for a cold storage facility with only ammonia on site) to 10 for a petrochemical facility. The cost of developing the RMP is estimated to range from $156 to more than $1,000 for a highly complex facility. Registration costs are estimated to vary between $43 and $105, depending on the number of substances on site. Table 2 presents the average cost per facility for manufacturers and non-manufacturers. EPA estimates that the initial cost of the proposed rule would be $503 million.

EPA estimated subsequent year total costs for a period of ten years. Costs vary from year to year because certain risk management program elements are not required to be updated yearly. For example, safety audits would be conducted every three years; hazard assessments and process hazard analyses would be updated every five years. Table 3 presents the estimated costs for years one through five for the five listing options.

Benefits

The proposed risk management rule is expected to generate benefits to the regulated community and to society at large. EPA has estimated a dollar value for many of these benefits; the methodology used to generate these estimates is presented in chapter 7 of the RIA.

The benefits of the proposed risk management rule were estimated using several quantitative techniques to investigate each of the different types of benefits expected to occur. First, the proposed risk management rule is expected to reduce the number of significant hazardous chemical releases occurring each year at facilities affected by the five list options. This reduction in the number of releases was estimated using Accidental Release Information Program (ARIP) data for the four-year period 1987–1990. The trend in the number of hazardous chemical releases in New Jersey, where many of the riskmanagement program elements are required to be in place already, was compared with the trend in the number of releases in the rest of the nation. The difference between the two trends, approximately 27 percent at the end of the four-year period, provided an estimate of the magnitude of the reduction in the number of hazardous chemical releases that could be expected to occur as a result of EPA's proposed risk management rule.

The proposed rule is also expected to reduce the number of incidents of environmental damage (e.g., soil contamination, vegetation damage, and property damage), human impacts (e.g., injuries, hospitalizations, and deaths), and response actions (e.g., evacuations and sheltering in place) occurring each year as a result of releases of hazardous chemicals. These reductions were estimated by using a regression analysis with ARIP data to predict the probability that each type of environmental damage, human impact, or response action would occur as a result of a hazardous chemical release, both with and without the proposed risk management program in effect. The estimated probability that each type of incident would occur was then multiplied by the estimated number of releases under each scenario (i.e., with and without the risk management program in effect) to derive an estimate of the number of incidents causing environmental damage, human impact, or response actions that would be avoided each year at facilities affected by the proposed risk management rule. The analysis indicated that the number of incidents would decline by 35 percent or more, depending on the type of incident and the List Option selected, following implementation of the proposed risk management program. For human impacts and response actions, the estimated number of incidents was multiplied by the average number of people injured, hospitalized, evacuated, or sheltered in place to derive an estimate of the number of people affected per year by incidents of each type.

TABLE 2.—ESTIMATED AVERAGE COST PER FACILITY MANUFACTURERS

	Small-sized facilities		Medium-sized facilities		Large-sized facilities			
	Simple	Moderate	Simple	Moderate	Simple	Moderate	Complex	Highly complex
Not Otherwise Regulated	$15,430	$27,760	$33,430	$61,920	$53,760	$93,750	$153,470	
Previously Regulated	760	1,070	910	1,680	1,500	1,960	3,280	$5,720

NON-MANUFACTURERS

	Public facilities	Private utilities	Cold storage facilities		Wholesalers	Service industries	Retailers
			Small	Large			
Not Otherwise Regulated	$8,200	$8,250	$9,400	.....	$2,220	$1,860	$1,670
Previously Regulated	530	580	.....	$510	650	560	.....

TABLE 3.—SUBSEQUENT-YEAR COSTS BY LIST OPTION FOR PROGRAM OPTION 1

[$ millions]

Year	List option 1	List option 2	List option 3	List option 4	List option 5
0	$460	$503	$858	$1,004	$1,046
1	79	92	144	159	171
2	84	98	152	167	181

TABLE 3.—SUBSEQUENT-YEAR COSTS BY LIST OPTION FOR PROGRAM OPTION 1—Continued

[$ millions]

Year	List option 1	List option 2	List option 3	List option 4	List option 5
3	109	126	213	241	258
4	84	98	152	167	181
5	195	217	336	383	404

Finally, the dollar value of the benefits of the proposed risk management program were estimated by developing an estimate of the cost of each type of incident, and then by multiplying the estimated cost of each type of incident by the number of incidents avoided that may be attributed to the presence of a risk management program. The benefits of the proposed rule are estimated to be approximately $890 million per year. Table 4 presents the estimated costs and benefits for each of the list options considered by EPA during the rule development.

TABLE 4.—ESTIMATED FIRST YEAR COSTS AND BENEFITS

[$ Millions]

	Estimated costs	Estimated benefits
List option 1	$460	$836
List option 2	503	890
List option 3	858	1,539
List option 4	1,004	1,615
List option 5	1,046	1,670

XI. Required Analyses

A. Executive Order 12291

Under Executive Order 12291, the Agency must judge whether a regulation is "major" and thus subject to the requirement for a Regulatory Impact Analysis. Under E.O. 12291, a major rule is one that is likely to result in: (1) An adverse (cost) impact in the economy of $100 million or more, (2) a major increase in cost or prices to consumers, individual industries, Federal, state, or local government, or geographic region, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises in domestic or export markets. EPA has determined that today's proposed rule is a major rule for the purposes of E.O. 12291 because the first year cost of the rule is estimated to be $503 million. An RIA entitled, "Regulatory Impact Analysis in Support of Listing Regulated Substances and Thresholds and Mandating Risk Management Programs for Chemical Accident Release Prevention, as Required by Section 112(r) of the Clean Air Act," has been prepared and is available in the docket.

B. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act of 1980, Federal agencies must evaluate the effects of the rule on small entities and examine alternatives that may reduce these effects. EPA has prepared an analysis of the effects on small entities. The analysis employed three measures for assessing the effects of the proposed rule, and the alternatives, on small business: the before-tax cost of compliance as a percentage of firm sales; the after-tax cost of compliance as a percentage of net income; and the percent change in the debt-to-asset ratio. The results indicated that for 90 percent of the small businesses affected, the economic burden for initial costs would be mild. For the remaining 10 percent, the program would impose a significant adverse effect in the first year, as measured by the ratio of after-tax compliance costs to net income. This burden is an upper-bound estimate because, in actuality, many firms are likely to finance compliance in a variety of ways, such as debt, current earnings, and increased prices, rather than finance compliance in one way. Consequently, the impact of compliance costs is likely to be less severe than estimated in the analysis. For subsequent years, the economic impact as measured by the after-tax ratio is estimated to be small for businesses. The impact on small governments also is estimated to be small based on the ratio of compliance costs to revenues. The full regulatory flexibility analysis is included, as Chapter 8, in the RIA, available in the docket.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request document has been prepared by EPA (ICR No. 1656.1) and a copy may be obtained from Sandy Farmer, Information Policy Branch, EPA, 401 M St. SW., (PM–223Y), Washington, DC 20460, or by calling (202) 260–2740.

Public reporting burden for this collection of information, which will take place three years after the rule is final, will vary depending on the size and complexity of the facility and the number of substances affected: between 1.25 and 3 hours for the registration form, another .2 to 341.2 hours for the burden to maintain onsite documentation, and a range of between 4.25 and 31.5 hours to prepare and submit a risk management plan. These hours reflect time for reviewing instructions, searching existing data sources, gathering and maintaining data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Chief, Information Policy Branch, PM–223, U.S. EPA, 401 M St. SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for EPA. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects in 40 CFR Part 68

Environmental protection, Accidental release prevention, Chemicals, Chemical accident prevention, Emergency response, Extremely hazardous substances, Hazardous substances, Intergovernmental relations, Process safety management, Risk management.

Dated: October 7, 1993.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, subchapter C, part 68 of the Code of Federal Regulations is proposed to be added to read as follows:

PART 68—ACCIDENTAL RELEASE PREVENTION PROVISIONS

Subpart A—General Provisions

Sec.

68.1 Scope.

Sec.
68.3 Definitions.
68.5 Threshold Determination [Reserved].

Subpart B—Risk Management Plan Requirements

68.10 Applicability.
68.12 Registration.
68.15 Hazard assessment.
68.20 Prevention program purpose.
68.22 Prevention program—management system.
68.24 Prevention program—process hazard analysis.
68.26 Prevention program—process safety information.
68.28 Prevention program—standard operating procedures.
68.30 Prevention program—training.
68.32 Prevention program—maintenance (mechanical integrity).
68.34 Prevention program—pre-startup review.
68.36 Prevention program—management of change.
68.38 Prevention program—safety audits.
68.40 Prevention program—accident investigation.
68.45 Emergency response program.
68.50 Risk management plan.
68.55 Recordkeeping requirements.
68.60 Audits.

Subpart C—List of Regulated Substances and Thresholds for Accidental Release Prevention [Reserved]

Authority: 42 U.S.C. 7412(r) and 7601(a)(1).

Subpart A—General Provisions

§ 68.1 Scope.

This part sets forth requirements for chemical accident prevention steps that must be taken by the owner or operator of stationary sources.

§ 68.3 Definitions.

As used in this part, all terms not defined shall have the meaning given to them by the Clean Air Act (42 U.S.C. 7401 *et seq.*).

Act means the Clean Air Act as amended (42 U.S.C. 7401 *et seq.*).

Administrator means the administrator of the U.S. Environmental Protection Agency.

Analysis of offsite consequences means a qualitative or quantitative analysis of a range of accidental releases, including worst-case releases, to determine offsite effects including potential exposures of affected populations.

Mitigation system means specific equipment, substances or personnel designed or deployed to mitigate an accidental release; examples of mitigation systems include water curtain sprays, foam suppression systems, and emergency response teams.

Offsite means areas beyond the property boundary of the stationary source or areas within the property boundary to which the public has routine and unrestricted access.

Owner or operator means any person who owns, leases, operates, or controls a stationary source.

RMP means the risk management plan required under § 68.50.

SIC means Standard Industrial Classification.

Significant accidental release means any accidental release of a regulated substance that has caused or has the potential to cause offsite consequences such as death, injury, or adverse effects to human health or the environment or to cause the public to shelter-in-place or be evacuated to avoid such consequences.

Worst-case release means the loss of all of the regulated substance from the process in an accidental release that leads to the worst offsite consequences.

§ 68.5 Threshold determination. [Reserved]

Subpart B—Risk Management Program Requirements

§ 68.10 Applicability.

(a) The requirements in this subpart apply to all stationary sources that, after [three years from the date of final rule publication] have a regulated substance present in a process in more than a threshold quantity as determined under § 68.5.

(b) Stationary sources covered by this subpart shall comply with §§ 68.12 through 68.60 no later than [three years after the date of final rule publication] or within three years after the date on which a regulated substance first becomes present in a process in more than a threshold quantity.

§ 68.12 Registration.

(a) By [three years after the publication date of the final rule], or within three years of the date on which a stationary source becomes subject to this subpart, the owner or operator of each stationary source covered by this part shall register with the Administrator.

(b) The registration shall include the following:

(1) The name of the stationary source, its street address, its mailing address, and telephone number;

(2) The names and CAS numbers of all regulated substances that are present at the stationary source in greater than the threshold quantities, and the maximum amount present in a process at any one time (in ranges);

(3) For each regulated substance, the four-digit SIC code(s) that apply to the use of the substance at the stationary source;

(4) The Dun and Bradstreet number of the stationary source;

(5) The name of a contact person; and

(6) The following certification signed by the owner or operator: "The undersigned certifies that, to the best of my knowledge, information, and belief formed after reasonable inquiry, the information submitted is true, accurate, and complete. I certify that I prepared or caused to be prepared a risk management plan that complies with 40 CFR 68.50 [and, when applicable: "and the provisions of 40 CFR 68.60"] and that I submitted or caused to be submitted copies of the risk management plan to each of the entities listed in 40 CFR 68.50(a). [Signature]."

(c) If at any time after the submission of the registration, information in the registration is no longer accurate, the owner or operator shall submit an amended notice within 60 days to the Administrator and implementing agency. After a final determination of necessary revisions under § 68.60(f), the owner or operator shall register the revised risk management plan by the date required in § 68.60(g).

§ 68.15 Hazard assessment.

(a) The purpose of the hazard assessment is to evaluate the impact of significant accidental releases on the public health and environment and to develop a history of such releases.

(b) Hazard assessments shall be conducted for each regulated substance present at the stationary source above the threshold quantity. For each regulated substance, the hazard assessment shall include the following steps:

(1) Determine a worst-case release scenario for the regulated substance at the stationary source;

(2) Identify other more likely significant accidental releases for each process where the regulated substance is present above the threshold quantity, including processes where the substance is manufactured, processed, or used, and where the regulated substance is stored, loaded, or unloaded;

(3) Analyze the offsite consequences of the worst-case release scenario and the other more likely significant accidental release scenarios identified in § 68.15(b)(2); and

(4) Develop a history of accidental releases of the regulated substance.

(c) To determine a worst-case release scenario, the owner or operator shall examine each process handling each regulated substance and assume that all of the regulated substance in the process

is instantaneously released and all mitigation systems fail to minimize the consequences of the release.

(d) The owner or operator shall determine other more likely significant accidental releases such as but not limited to:

(1) Transfer hose failure, excess flow valve or emergency shutoff failure and subsequent loss of piping and shipping container contents (truck or rail);

(2) Process piping failure and loss of contents from both directions from the break; and

(3) Reactor or other process vessel failure where the contents are at temperatures and pressures above ambient conditions. In these situations, passive mitigation systems are assumed to work to minimize the consequences of the release.

(e) For each regulated substance, the offsite consequences of the worst case or more likely significant accidental release scenarios shall be analyzed as follows:

(1) The rate and quantity of substance lost to the air and the duration of the event;

(2) The distance, in all directions, at which exposure to the substance or damage to offsite property or the environment from the release could occur using both worst-case meteorological conditions (i.e., F stability and 1.5 m/sec wind speed) and meteorological conditions most often occurring at the stationary source;

(3) Populations within these distances that could be exposed to the vapor cloud, pressure wave, or debris, depending on wind direction and meteorological conditions; and

(4) Environmental damage that could be expected within these distances, including consideration of sensitive ecosystems, migration routes, vulnerable natural areas, and critical habitats for threatened or endangered species.

(f) The owner or operator shall prepare a five-year history of significant accidental releases and releases with potential for offsite consequences for each regulated substance handled at the stationary source. The history shall list the release date, time, substance and quantity released, the duration of the release, the concentration of the substance released, and any offsite consequences such as deaths, injuries, hospitalizations, medical treatments, evacuations, sheltering in-place, and major off-site environmental impacts such as soil, groundwater, or drinking water contamination, fish kills, and vegetation damage.

(g) The hazard assessment shall be reviewed and updated at least once every five years. If changes in process, management, or any other relevant aspect of the stationary source or its surroundings (e.g. new housing developments or improved emergency response services) might reasonably be expected to make the results of the hazard assessment inaccurate (i.e., if either the worst-case release scenario or the estimate of offsite effects might reasonably be expected to change), the owner or operator shall complete a new or revised hazard assessment within 60 days of such change.

(h) The owner or operator shall maintain the following records documenting the hazard assessment and analysis of offsite consequences:

(1) A description of the worst-case scenario;

(2) A description of the other more likely significant accidental release scenarios identified in § 68.15(b)(2), assumptions used, analyses or worksheets used to derive the accident scenarios, and the rationale for selection of specific scenarios; and

(3) Documentation for how the offsite consequences for each scenario were determined including:

(i) Estimated quantity of substance released, rate of release, and duration of the release;

(ii) Meteorological data used for typical conditions at the stationary source;

(iii) For toxic substances, the concentration used to determine the level of exposure and the data used for that concentration;

(iv) Calculations for determination of the distances downwind to the acute toxicity concentration; and

(v) Data used for estimation of the populations exposed or area damaged.

(i) A summary of the information required under paragraph (h) of this section and a table showing the data for the five-year accident history under paragraph (f) of this section shall be included in the RMP required under § 68.50.

§ 68.20 Prevention program purpose.

The owner or operator of a stationary source having one or more regulated substance above the threshold quantity shall develop and implement an integrated management system to evaluate the hazards present at the stationary source and to find the best ways to control these hazards. The prevention program includes ten required elements that must be tailored to suit the degree of hazards present at the stationary source and the degree of complexity of the stationary source's operations and that should work together under management control to ensure safe operations.

§ 68.22 Prevention program—management system.

(a) The owner or operator of the stationary source shall develop a management system to oversee the implementation of the risk management program elements. The purpose of the management system is to ensure that the elements of the risk management program are integrated and implemented on an ongoing basis and that the responsibility for the overall program and for each element is clear.

(b) As part of the management system, the owner or operator shall identify a single person or position that has the overall responsibility for the development, implementation, and integration of the risk management program requirements.

(c) When responsibility for implementing individual requirements of the risk management program is assigned to persons other than the person designated under paragraph (b) of this section, the names or positions of these people shall be documented and the lines of authority defined through an organization chart or similar document.

§ 68.24 Prevention program—process hazard analysis.

(a) The purpose of the process hazard analysis (hazard evaluation) is to examine, in a systematic, step-by-step way, the equipment, systems, and procedures for handling regulated substances and to identify the mishaps that could occur, analyze the likelihood that mishaps will occur, evaluate the consequences of these mishaps, and analyze the likelihood that safety systems, mitigation systems, and emergency alarms will function properly to eliminate or reduce the consequences of a mishap. A thorough process hazard analysis is the foundation for the remaining elements of the prevention program.

(b) The owner or operator shall perform an initial process hazard analysis on processes covered by this part. The process hazard analysis shall be appropriate to the complexity of the process and shall identify, evaluate, and control the hazards involved in the process. The owner or operator shall determine and document the priority order for conducting process hazard analyses based on a rationale which includes such considerations as the extent of process hazards, offsite consequences, age of the process, and operating history of the process. The process hazard analysis shall be

completed no later than [three years after the date of final rule publication].

(c) Process hazard analyses completed after (Insert date 5 years before the effective date of the final rule) which meet the requirements of this section are acceptable as initial process hazard analyses. These process hazard analyses shall be updated and revalidated, based on their completion date, in accordance with paragraph (h) of this section.

(d) The owner or operator shall use one or more of the following methodologies that are appropriate to determine and evaluate the hazards of the process being analyzed:

(1) What-If;

(2) Checklist;

(3) What-If/Checklist;

(4) Hazard and Operability Study (HAZOP);

(5) Failure Mode and Effects Analysis (FMEA);

(6) Fault Tree Analysis; or

(7) An appropriate equivalent methodology.

(e) The process hazard analysis shall address:

(1) The hazards of the process;

(2) The identification of any previous incident which had a likely potential for significant offsite consequences;

(3) Engineering and administrative controls applicable to the hazards and their interrelationships such as appropriate application of detection methodologies to provide early warning of releases. Acceptable detection methods might include process monitoring and control instrumentation with alarms, and detection hardware such as hydrocarbon sensors;

(4) Consequences of failure of engineering and administrative controls;

(5) Stationary source siting;

(6) Human factors; and

(7) A qualitative evaluation of a range of possible safety and health effects of failure of the controls on public health and the environment.

(f) The process hazard analysis shall be performed by a team with expertise in engineering and process operations, and the team shall include at least one employee who has experience and knowledge specific to the process being evaluated. Also, one member of the team must be knowledgeable in the specific process hazard analysis methodology being used.

(g) The owner or operator shall establish a system to promptly address the team's findings and recommendations; assure that the recommendations are resolved in a timely manner and that the resolution is documented; document what actions are to be taken; complete actions as soon as possible; develop a written schedule of when these actions are to be completed; and communicate the action to operating, maintenance, and other employees whose work assignments are in the process and who are affected by the recommendations or actions.

(h) At least every five (5) years after the completion of the initial process hazard analysis, the process hazard analysis shall be updated and revalidated by a team meeting the requirements in paragraph (f) of this section, to assure that the process hazard analysis is consistent with the current process.

(i) The owner or operator shall retain process hazard analyses and updates or revalidations for each process covered by this section, as well as the documented resolution of recommendations described in paragraph (g) of this section for the life of the process.

(j) Based on the findings and recommendations of the process hazard analysis, the owner or operator shall also investigate, evaluate, and document a plan for, or rationale for not, installing (if not already in place):

(1) Monitors, detectors, sensors, or alarms for early detection of accidental releases;

(2) Secondary containment or control devices such as, but not limited to, flares, scrubbers, quench, surge, or dump tanks, to capture releases; and

(3) Mitigation systems to reduce the downwind consequences of the release.

§ 68.26 Prevention program—process safety information.

(a) The owner or operator shall complete a compilation of written process safety information before conducting any process hazard analysis required in § 68.24. The compilation of written process safety information is to enable the owner or operator and the employees involved in operating the process to identify and understand the hazards posed by those processes involving regulated substances. This process safety information shall include information pertaining to the hazards of the regulated substances used or produced by the process, information pertaining to the technology of the process, and information pertaining to the equipment in the process.

(b) Information pertaining to hazards of the regulated substance in the process. This information shall consist of at least the following:

(1) Toxicity information;

(2) Permissible exposure limits;

(3) Physical data;

(4) Reactivity data;

(5) Corrosivity data;

(6) Thermal and chemical stability data; and

(7) Hazardous effects of inadvertent mixing of different materials that could foreseeably occur.

Note: MSDSs meeting the requirements of 29 CFR 1910.1200(g) may be used to comply with this requirement to the extent they contain the information required by this paragraph.

(c) Information pertaining to the technology of the process. Information concerning the technology of the process shall include at least the following:

(1) A block flow diagram or simplified process flow diagram;

(2) Process chemistry;

(3) Maximum intended inventory;

(4) Safe upper and lower limits for such items as temperatures, pressures, flows, or compositions; and,

(5) An evaluation of the consequences of deviations, including those affecting public health and the environment.

(d) Where the original technological information required by paragraph (c) of this section no longer exists, such information may be developed in conjunction with the process hazard analysis in sufficient detail to support the analysis.

(e) Information pertaining to the equipment in the process. Information pertaining to the equipment in the process shall include:

(1) Materials of construction;

(2) Piping and instrument diagrams (P&ID's);

(3) Electrical classification;

(4) Relief system design and design basis;

(5) Ventilation system design;

(6) Design codes and standards employed;

(7) Material and energy balances for processes built after the effective date of rule; and

(8) Safety systems (e.g., interlocks, detection, or suppression systems).

(f) The owner or operator shall document that equipment complies with recognized and generally accepted good engineering practices.

(g) For existing equipment designed and constructed in accordance with codes, standards, or practices that are no longer in general use, the owner or operator shall determine and document that the equipment is designed, maintained, inspected, tested, and operating in a safe manner.

§ 68.28 Prevention program—standard operating procedures.

(a) The purpose of written standard operating procedures is to document the safe and proper way to operate and maintain processes and equipment, and to handle and store regulated substances at a stationary source. Procedures may

be based on the process hazard analysis (hazard evaluation) information, successful past operating experience, manufacturers' recommendations, and applicable and appropriate codes and standards. The owner or operator shall consider the complexity of the process or stationary source to develop standard procedures.

(b) The owner or operator shall develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with the process safety information and shall address at least the following elements:

(1) Steps for each operating phase:

(i) Initial startup;

(ii) Normal operations;

(iii) Temporary operations;

(iv) Emergency shutdown including the conditions under which emergency shutdown is required, and the assignment of shutdown responsibility to qualified operators to assure that emergency shutdown is executed in a safe and timely manner;

(v) Emergency operations;

(vi) Normal shutdown; and

(vii) Startup following a turnaround, or after an emergency shutdown.

(2) Operating limits:

(i) Consequences of deviation; and

(ii) Steps required to correct or avoid deviation.

(3) Safety and health considerations:

(i) Properties of, and hazards presented by, the substances used in the process;

(ii) Precautions necessary to prevent exposure, including engineering controls, administrative controls, and personal protective equipment;

(iii) Control measures to be taken if physical contact or airborne exposure occurs;

(iv) Quality control for raw materials and control of regulated substance inventory levels; and,

(v) Any special or unique hazards.

(4) Safety systems and their functions.

(c) Operating procedures shall be readily accessible to employees who work in or maintain a process.

(d) The operating procedures shall be reviewed as often as necessary to assure that they reflect current operating practice, including changes that result from changes in process chemicals, technology, and equipment, and changes to stationary sources. The owner or operator shall certify annually that these operating procedures are current and accurate.

(e) The owner or operator shall develop and implement safe work practices to provide for the control of hazards during operations involving lockout/tagout; confined space entry; opening process equipment or piping; and control over entrance into a stationary source by maintenance, contractor, laboratory, or other support personnel. These safe work practices shall apply to employees and contractor employees working on a facility.

§ 68.30 Prevention program—training.

(a) The purpose of the training program is to ensure that each employee involved with regulated substances has learned and understands the procedures developed under § 68.28. The owner or operator shall consider the complexity of the procedures, and the complexity of the process or stationary sources when developing training programs.

(b) *Initial training.* (1) Each employee presently operating a process, and each employee before operating a newly assigned process shall be trained in an overview of the process and in the operating procedures as specified in § 68.28. The training shall include emphasis on the specific safety and health standards, emergency operations including shutdown, and safe work practices applicable to the employee's job tasks.

(2) In lieu of initial training for those employees already involved in operating a process on the effective date of this rule, an owner or operator may certify in writing that the employee has the required knowledge, skills, and abilities to safely carry out the duties and responsibilities as specified in the operating procedures.

(c) *Refresher training.* Refresher training shall be provided at least every three years and more often if necessary to each employee involved in operating a covered process to assure that the employee understands and adheres to the current operating procedures in the process. The owner or operator, in consultation with the employees involved in operating the process, shall determine the appropriate frequency of refresher training.

(d) *Training documentation.* The owner or operator shall ascertain that each employee involved in operating a process has received and understood the training required by this section. The owner or operator shall prepare a record which contains the identity of the employee, the date of training, and the means used to verify that the employee understood the training.

(e) The owner or operator shall evaluate the effectiveness of the training program. A schedule for reviewing and revising the program shall be maintained at the stationary source.

§ 68.32 Prevention program—maintenance (mechanical integrity).

(a) The purpose of the maintenance program is to determine and target the specific equipment that is identified through the process hazard analysis (hazard evaluation) or through operating experience as needing regular maintenance because failure of the equipment would lead to a significant accidental release. The owner or operator shall consider the complexity of the process or stationary source in developing the maintenance program.

(b) The owner or operator shall develop a list of equipment and controls the failure of which could result in a significant accidental release. As applicable, the equipment list shall include:

(1) Pressure vessels and storage tanks;

(2) Piping systems (including piping components such as valves);

(3) Relief and vent systems and devices;

(4) Emergency shutdown systems;

(5) Controls (including monitoring devices and sensors, alarms, and interlocks); and,

(6) Pumps.

(c) *Written procedures.* The owner or operator shall establish and implement written procedures to maintain the on-going integrity of process equipment.

(d) *Training for process maintenance activities.* The owner or operator shall train each employee involved in maintaining the on-going integrity of process equipment in an overview of that process and its hazards and in the procedures applicable to the employee's job tasks to assure that the employee can perform the job tasks in a safe manner and shall document the training as required in § 68.30(d).

(e) *Maintenance, inspections, and testing.* For every item of equipment required to be listed under paragraph (b) of this section, the owner or operator shall develop a maintenance program to inspect, test, and maintain the equipment on an appropriate schedule to ensure that the equipment and controls continue to function according to specifications.

(1) Maintenance, inspections, and tests shall be performed on process equipment.

(2) Maintenance, inspection, and testing procedures shall follow recognized and generally accepted good engineering practices.

(3) The frequency of maintenance, inspections, and tests of process equipment shall be consistent with applicable manufacturers' recommendations and good engineering practices, and more frequently if

determined to be necessary by prior operating experience.

(4) The owner or operator shall document each maintenance procedure, inspection, and test that has been performed on process equipment. The documentation shall identify the date of the maintenance/inspection/test; the name of the person who performed the maintenance/inspection/test; the serial number or other identifier of the equipment on which the maintenance, inspection, or test was performed; a description of the maintenance, inspection, and test that is performed; and the results of the inspection or test.

(f) *Equipment deficiencies.* The owner or operator shall correct deficiencies in equipment that are outside acceptable limits (defined in the process safety information in § 68.26(c)(4) and (e)) before further use or in a safe and timely manner when necessary means are taken to assure safe operations.

(g) *Quality assurance.*

(1) In the construction of new plants and equipment, the owner or operator shall assure that equipment as it is fabricated is suitable for the process application for which they will be used.

(2) Appropriate checks and inspections shall be performed to assure that equipment is installed properly and consistent with design specifications and manufacturer's instructions.

(3) The owner or operator shall assure that maintenance materials, spare parts, and equipment are suitable for the process application for which they will be used.

§ 68.34 Prevention program—pre-startup review.

(a) The purpose of the pre-startup review is to ensure that new or modified equipment is ready to properly and safely contain any new or previously handled regulated substance before that substance is introduced into the system. The owner or operator shall consider the complexity of the process or stationary source in developing the pre-startup review.

(b) The owner or operator shall perform a pre-startup safety review for new stationary sources and for modified stationary sources when the modification is significant enough to require a change in the process safety information.

(c) The pre-startup safety review shall confirm that prior to the introduction of regulated substances to a process:

(1) Construction and equipment is in accordance with design specifications;

(2) Safety, operating, maintenance, and emergency procedures are in place and are adequate;

(3) For new stationary sources, a process hazard analysis has been performed and recommendations have been resolved or implemented before startup; and modified stationary sources meet the requirements contained in management of change, § 68.36; and

(4) Training of each employee involved in operating or maintaining a process has been completed and that employees are trained in any new emergency response procedures.

§ 68.36 Prevention program—management of change.

(a) The purpose of a management of change program is to ensure that any alteration of equipment, procedures, substances, or processes are thoroughly analyzed to identify hazards, the consequences of failures, and impacts of the change on existing equipment, procedures, substances, and processes prior to implementation of the change.

(b) For process equipment, devices, or controls, replacement is not a change if the design, materials of construction, and parameters for flow, pressure, and temperature satisfy the design specifications of the device replaced.

(c) The owner or operator shall establish and implement written procedures to manage changes to process chemicals, technology, equipment, and procedures; and changes to stationary sources that affect a covered process.

(d) The procedures shall assure that the following considerations are addressed prior to any change:

(1) The technical basis for the proposed change;

(2) Impact of change on likelihood of a significant accidental release;

(3) Modifications to operating procedures;

(4) Necessary time period for the change; and,

(5) Authorization requirements for the proposed change.

(e) Employees involved in operating a process and maintenance and contract employees whose job tasks will be directly affected by a change in the process shall be informed of and trained in the change prior to the startup of the process or affected part of the process.

(f) If a change covered by this section results in a change in the process safety information required by § 68.26, such information shall be updated accordingly.

(g) If a change covered by this section results in a change in the operating procedures or practices required by § 68.28, such procedures or practices shall be updated accordingly.

§ 68.38 Prevention program—safety audits.

(a) The safety audit consists of a periodic examination of the management systems and programs at the stationary source. The examination shall include a review of the documentation and implementation of the requirements of this subpart. The owner or operator shall consider the complexity of the process and of the process safety management program to develop the safety audit procedures, plans, and timing.

(b) The owners or operators shall certify that they have evaluated compliance with the provisions of this section at least every three years, to verify that the procedures and practices developed under this part are adequate and are being followed.

(c) The safety audit shall be conducted by at least one person knowledgeable in the process.

(d) A report of the findings of the audit shall be developed.

(e) The owner or operator shall promptly determine and document an appropriate response to each of the findings of the audit, and document that deficiencies have been corrected.

(f) The owner or operator shall retain the two most recent safety audit reports, as well as the documented actions in paragraph (e) of this section.

§ 68.40 Prevention program—accident investigation.

(a) The purpose of the accident investigation is to learn the underlying causes of accidents to take steps to prevent them or similar accidental releases from recurring.

(b) The owner or operator shall establish and implement written procedures to investigate each significant accidental release.

(c) The owner or operator shall investigate each significant accidental release.

(d) An accident investigation shall be initiated as promptly as possible, but not later than 48 hours following the significant accidental release.

(e) An accident investigation team shall be established and consist of at least one person knowledgeable in the process involved, including a contract employee if the incident involved work of the contractor, and other persons with appropriate knowledge and experience to thoroughly investigate and analyze the significant accidental release.

(f) A report shall be prepared at the conclusion of the investigation which includes at a minimum:

(1) Date of significant accidental release;

(2) Date investigation began;

(3) A description of the significant accidental release;

(4) The factors that contributed to the significant accidental release, including

its initiating event, and root cause or causes that may have increased the likelihood of the initiating event; and,

(5) Any recommendations resulting from the investigation.

(g) The owner or operator shall establish a system to promptly address and resolve the accident report findings and recommendations. Resolutions and corrective actions shall be documented.

(h) The report shall be reviewed with all affected personnel whose job tasks are relevant to the significant accidental release findings including contract employees where applicable.

(i) Significant accidental release investigation reports shall be retained for five years.

§ 68.45 Emergency response program.

(a) The purpose of the emergency response program is to prepare for response to and mitigation of accidental releases to limit the severity of such releases and their impact on the public health and environment.

(b) The owner or operator of a stationary source shall establish and implement an emergency response plan for responding to and mitigating accidental releases of regulated substances. The plan shall detail the steps all employees shall take in response to accidental releases and shall include:

(1) Evacuation routes or protective actions for employees not directly involved in responding to the release;

(2) Procedures for employees responding to the release, including protective equipment use;

(3) Descriptions of all response and mitigation technologies available at the stationary source; and

(4) Procedures for informing the public and emergency response agencies about releases.

(c) The owner or operator shall develop written procedures for the use of emergency response equipment and for its inspection, testing, and maintenance. The maintenance program for emergency response equipment shall be documented as required in § 68.32(e)(4).

(d) For each regulated substance, the owner or operator shall document the proper first-aid and emergency medical treatment necessary to treat accidental human exposure.

(e) The owner or operator shall train all employees in relevant emergency response procedures and document the training as required under § 68.30(d).

(f) The owner or operator shall conduct drills or exercises to test the plan and evaluate its effectiveness. Each drill or exercise shall be documented in writing and shall include findings of the drill or exercise that indicate aspects of the plan and procedures which need to be revised. Plans shall be revised based on the findings of the drills or exercises. The owner or operator shall document the response to each finding from a drill or exercise. For each finding requiring a change that is implemented, the schedule for implementing the change shall be documented.

(g) Each emergency response plan shall be coordinated with local emergency response plans developed under part 355 of this chapter by the local emergency planning committees and local emergency response agencies. Upon request of the local emergency planning committee, the owner or operator shall promptly provide information to the local emergency planning committee necessary for developing and implementing the community emergency response plan.

(h) The owner and operator shall maintain a copy of the emergency response plan, including descriptions of all mitigation systems in place, at the stationary source.

§ 68.50 Risk management plan.

(a) The owner or operator of a stationary source covered by this part shall submit a risk management plan (report) summarizing the key elements of its risk management program to the implementing agency and shall submit copies to the State Emergency Response Commission, the Local Emergency Planning Committee with jurisdiction for the area where the source is located, and the Chemical Safety and Hazard Investigation Board. Each report submitted by the stationary source shall address all regulated substances present at the stationary source in quantities above the threshold quantity.

(b) The report shall include a copy of the registration form, with updated information to ensure that the registration information is accurate.

(c) The report shall include, for each regulated substance, a summary of the hazard assessment and analysis of offsite consequences and accident history data required by § 68.15(i).

(d) The report shall include, for the stationary source, a description of the major hazards (e.g., equipment failure, human error, natural phenomena, or other factors or a combination of such factors which could lead to a significant accidental release) identified through the process hazard analyses, a description of the consequences of a failure to control for each identified major hazard, a summary of all actions taken or planned to address these hazards, and how significant accidental releases are prevented or mitigated, or the consequences reduced by these actions. The purpose of the summary is to identify major hazards and provide an overview of the prevention program being implemented by the stationary source to prevent significant accidental releases. For each action taken to address a hazard, the report shall include the date on which the action was started (or is scheduled to start) and the actual or scheduled completion date. Where the same actions (e.g., training, certain controls, preventive maintenance programs, improved emergency response plan) address a number of hazards, the description may be organized by actions rather than hazards. If any requirement for the risk management program specified in this subpart is not covered in the summary of actions taken to address hazards, the report shall include a brief description of the stationary source's implementation of the requirement.

(e) The report shall include a summary of the stationary source's emergency response plan. The summary shall include:

(1) The procedures adopted to inform emergency response authorities and the public;

(2) The name or position of the point of contact between the stationary source and the public authorities;

(3) The dates of drills and exercises completed and planned and the results of completed drills; and

(4) A description of coordination with the local emergency planning committee.

(f) The report shall include a description of the management system developed to implement and coordinate the elements of the hazard assessment, prevention program, and emergency response program at the stationary source. The description shall define the person or position at the stationary source that is responsible for the overall implementation and coordination of the risk management program requirements. Where regulated substances are present above their threshold quantities at several locations at the stationary source or where responsibility for implementing individual requirements is delegated to separate groups at the stationary source, an organization chart shall be included to describe the lines of responsibility.

(g) The report shall include a certification by the owner or operator that, to the best of the signer's knowledge, information, and belief formed after reasonable inquiry, the information submitted is true, accurate, and complete.

(h) The report shall be reviewed and updated at least every five years and

resubmitted to the implementing agency and copies shall be submitted to the State Emergency Response Commission, the Local Emergency Planning Committee, and the Chemical Safety and Hazard Investigation Board. If a change such as the introduction of a new regulated substance or process occurs that requires a revised or updated hazard assessment or process hazard analysis, then the report shall be updated and resubmitted within six months of the introduction of the new process or substance.

(i) The report shall be available to the public under section 114(c) of the Clean Air Act.

§ 68.55 Recordkeeping requirements.

(a) The owner or operator of a stationary source covered by this part shall develop and maintain at the stationary source, for five years, records supporting the implementation of the risk management program and the development of the risk management plan.

(b) For the process hazard analysis, safety audit, and accident investigation, the records required to be maintained under paragraph (a) of this section shall include management's response to each recommendation that is required to be made, addressed, and documented under §§ 68.24(g), 68.38(e), 68.40(f), and 68.40(g). For implemented recommendations and recommendations to be implemented, the documentation shall include the date (or scheduled date) for starting implementation and the date (or scheduled date) for completion of the implementation. For each recommendation not implemented, the documentation shall include an explanation of the decision.

(c) For pre-startup reviews and management of change, the documentation shall include the findings of the review and any additional steps (including a description of the steps and the reasons they were implemented) that were taken prior to implementation of the startup or change.

(d) The owner or operator shall maintain copies of all standard operating, maintenance, management of change, emergency response, and accident investigation procedures required under this part.

§ 68.60 Audits.

(a) In addition to inspections for the purpose of regulatory development and enforcement of the Act, the implementing agency shall periodically audit RMPs registered under § 68.12 in order to review the adequacy of such RMPs and require revisions of RMPs when necessary to assure compliance with § 68.50.

(b) Stationary sources shall be selected for audits based on any of the following criteria:

(1) Accident history of the stationary source;

(2) Accident history of other stationary sources in the same industry;

(3) Quantity of regulated substances present at the stationary source;

(4) Location of the stationary source and its proximity to the public and sensitive environments;

(5) The presence of specific regulated substances;

(6) The hazards identified in the RMP; or

(7) A plan providing for neutral, random oversight.

(c) The implementing agency shall have access to the stationary source, supporting documentation, and any area where an accidental release could occur.

(d) Based on the audit, the implementing agency may issue an owner or operator of a stationary source a written preliminary determination of necessary revisions to the source's RMP in order to assure that the RMP meets the criteria of § 68.50 and reflects the purposes of subpart B of this part. This preliminary determination shall include an explanation for the basis for the revisions, reflecting industry standards and guidelines (such as AIChE/CCPS guidelines and ASME and API standards) to the extent that such standards and guidelines are applicable, and shall include a timetable for their implementation.

(e) Written response to a preliminary determination:

(1) The owner or operator shall respond in writing to a preliminary determination made in accordance with paragraph (d) of this section. The response shall state that the owner or operator will implement the revisions contained in the preliminary determination in accordance with the timetable included in the preliminary determination or shall state that the owner rejects the revisions in whole or in part. For each rejected revision, the owner or operator shall explain the basis for rejecting such revision. Such explanation may include substitute revisions.

(2) The written response under paragraph (e)(1) of this section shall be received by the implementing agency within 90 days of the issuance of the preliminary determination or a shorter period of time as the implementing agency specifies in the preliminary determination as necessary to protect human health and the environment. Prior to the written response being due and upon written request from the owner or operator, the implementing agency may provide in writing additional time for the response to be received.

(f) After providing the owner or operator an opportunity to respond under paragraph (e) of this section, the implementing agency may issue the owner or operator a written final determination of necessary revisions to the source's RMP. The final determination may adopt or modify the revisions contained in the preliminary determination under paragraph (d) of this section or may adopt the substitute revisions provided in the response under paragraph (e) of this section. A final determination that adopts a revision rejected by the owner or operator shall include an explanation of the basis for the revision. A final determination that fails to adopt a substitute revision provided under paragraph (e) of this section shall include an explanation of the basis for finding such substitute revision unreasonable.

(g) Thirty (30) days after the issuance of a final determination under paragraph (f) of this section, the owner or operator shall be in violation of §§ 68.12, 68.50(a), and 68.60 unless the owner or operator revises the RMP prepared under § 68.50 as required by the final determination, submits copies of the revised RMP to the entities identified in § 68.50(a), and registers the revised plan as provided in § 68.12 (b) and (c).

(h) The public shall have access to the preliminary determinations, responses, and final determinations under this section.

(i) Nothing in this section shall preclude, limit, or interfere in any way with the authority of EPA or the state to exercise its enforcement, investigatory, and information gathering authorities concerning this part under the Clean Air Act.

Subpart C—List of Regulated Substances and Thresholds for Accidental Release Prevention [Reserved]

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federal register

Wednesday
October 20, 1993

Part III

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Notice of Approved Tribal-State Compact

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs; Interior.

ACTION: Notice of approved Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary - Indian Affairs, Department of the Interior, through her delegated authority, has approved the Interim Compact Between the Chippewa Cree Tribe of the Rocky Boy's Reservation and the State of Montana Regarding Class III Gaming on the Rocky Boy's Reservation, enacted on April 19, 1993.

DATES: This action is effective on October 20, 1993.

FOR FURTHER INFORMATION CONTACT: Hilda Manuel, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: October 1, 1993.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 93–25683 Filed 10–19–93; 8:45 am]

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October 20, 1993

Part IV

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 201

Labeling for Over-the-Counter Oral Drug Products Containing Aspirin, Buffered Aspirin, or Aspirin in Combination With an Antacid; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 201

[Docket No. 77N–0094]

RIN 0905–AA06

Labeling for Over-the-Counter Oral Drug Products Containing Aspirin, Buffered Aspirin, or Aspirin in Combination With an Antacid

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its regulations to require that the labeling for over-the-counter (OTC) oral drug products that contain aspirin, buffered aspirin, and aspirin in combination with an antacid prominently bear a statement advising persons using these products to consult a doctor before taking them for their heart or for other new uses of aspirin. This labeling does not apply to aspirin in combination with acetaminophen, a diuretic, or any cough-cold ingredients FDA is taking this action to inform the public about the risks associated with long-term, unsupervised use of these products and of the importance of medical evaluation and supervision for safe long-term use of these products.

DATES: Written comments by December 20, 1993. Written comments on the agency's economic impact determination by December 20, 1993. FDA is proposing that the final rule based on this proposal be effective 6 months after the date of publication of the final rule in the **Federal Register**.

ADDRESSES: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD–810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5000.

SUPPLEMENTARY INFORMATION:

I. Introduction

In the **Federal Register** of November 16, 1988 (53 FR 46204), FDA published, under § 330.10(a)(7) (21 CFR 330.10(a)(7)), a notice of proposed rulemaking, in the form of a tentative final monograph, that would establish conditions in part 343 (21 CFR part 343) under which OTC internal analgesic, antipyretic, and antirheumatic drug products are generally recognized as safe and effective and not misbranded. In the professional labeling in § 343.80, the agency proposed a number of indications for products containing aspirin, buffered aspirin, or aspirin in combination with an antacid. The agency acknowledged that information about these uses of aspirin products (e.g., reducing the risk of myocardial infarction in patients with a previous infarction or unstable angina pectoris) has appeared in newspapers and magazines and on television and radio. In addition, the agency recognized that some manufacturers have included statements in the labeling of their OTC aspirin drug products that advise people to see their doctor for other (or new) uses of aspirin. The agency stated that because such information may be of benefit, it had no objection to a general statement of this type being included in the product's labeling. The agency expressed concern, however, that people may read or hear this information and self-medicate with an OTC aspirin drug product for one of these conditions without consulting their doctor.

Accordingly, the agency emphasizes that people should use aspirin for professional indications only under a doctor's supervision. Aspirin, particularly if used for a long period of time, may cause serious side effects, including bleeding and stroke (Ref. 1). In addition, people should not self-medicate for professional indications because they lack the necessary training to determine whether they are likely to benefit from this treatment. Because of these concerns, the agency stated that any information provided in aspirin product labeling about other (professional) uses must be accompanied by a counterbalancing statement that the product should not be used for more than 10 days without consulting a doctor. This period of use is consistent with the OTC labeling proposed for aspirin in the tentative final monograph. In § 343.50(f) of the tentative final monograph the agency proposed the following optional statement for aspirin products: "See your doctor for other uses of" [insert name of ingredient or trade name of product]", but do not use for more than 10 days without consulting your doctor because serious side effects may occur." The agency invited specific comment on this statement or other alternative labeling, the appropriate placement for the statement in labeling, whether the 10-day limitation on use should be an integral part of any such statement, and whether this information should be part of the required labeling for aspirin products (53 FR 46204 at 46252).

II. Summary of the Comments Received

Two comments requested that the optional statement proposed in § 343.50(f) be shortened to include only the part that reads: "See your doctor for other uses of" [insert name of ingredient or trade name of product]. The comments requested the agency not to require the part of the statement that reads: "but do not use for more than 10 days without consulting your doctor because serious side effects may occur."

One comment stated that the full statement was confusing and "counter productive" because it "sends mixed messages" and achieves the opposite effect of what FDA intended. The comment contended that the statement alerts people to confer with their doctor about nonlabeled uses, while cautioning them against long-term use without consulting a physician. The comment added that the language is likely to unnecessarily frighten individuals for whom long-term aspirin therapy has been prescribed. The comment stated that highlighting the risk of serious side effects is inappropriate for patients prescribed aspirin by their physician, when a risk-benefit judgment has been made. The comment added that the warning could discourage patients from taking aspirin that had been prescribed by their doctor. According to the comment, the result could be dangerous if the aspirin is being used to treat a serious condition. The comment also argued that information against long-term use without a physician's direction and a list of adverse effects already appear in the warnings and directions. The comment added that inclusion of side effects in the proposed statement is redundant. Finally, the comment stated that there is controversy over whether long-term aspirin use leads to increased incidence of side effects. The comment referred to the absence of a significant difference in gastrointestinal side effects between the placebo and aspirin study groups in the Physicians' Health Study (Ref. 2).

The second comment contended that the part of the statement about side effects and not using the product for more than 10 days causes several problems. It suggests that people can experiment with nonlabeled uses for less than 10 days without consulting a doctor. It is redundant because it repeats the restriction on use for more than 10 days already set forth in the standard warnings. It is ambiguous with respect to its reference to serious side effects because it refers to nonlabeled uses. The

comment stated that any nonlabeled use without consulting a physician should be discouraged, but argued that the proposed language would not achieve that purpose.

III. The Agency's Conclusions on the Comments

The agency disagrees with the comment asserting that the optional labeling statement was contrary to the agency's objective for this labeling. The objective of the statement is to inform individuals, who may be informed (by the media or advertisements) about other new uses of aspirin products, that such uses are not risk-free, that adverse effects are associated with these uses, and that the safe and effective use of the drug product for new uses requires the advice and supervision of a physician. The agency is concerned that people may not understand the risks associated with new uses of familiar products, long available without prescription, especially uses that involve lower doses for a long period of time.

The agency disagrees with one comment's contention that reference to serious side effects is redundant and would unnecessarily frighten patients taking the drug on the advice of their doctor. The general reference to serious side effects in the statement does not repeat other cautionary information found in the OTC product labeling. The reason for advising people of potential, serious side effects with new uses is to encourage them to discuss such uses with their doctor and to inquire about potential risks. The agency does not believe that the proposed statement would frighten into noncompliance those people for whom chronic aspirin therapy has already been prescribed by their doctor. On the contrary, the statement should reassure patients that they have taken appropriate precautions by checking with their doctor prior to taking the product. Patients under a doctor's care, for whom reference to serious side effects raises additional questions, are likely to discuss their concerns with their doctor if they have not already done so. People considering self-medication for a new use are more likely, after having been alerted to the potential for side effects, to discuss risks with their doctor.

With respect to the comment that controversy exists over increased risk of side effects with long-term use, the agency notes that the comment confined its consideration of risk to gastrointestinal side effects alone, as reported in the Physician's Health Study (Ref. 2). The incidence of gastrointestinal bleeding in this large trial was not different between the aspirin group and the placebo group. However, the Steering Committee of the Physicians' Health Study Research Group, in its preliminary report, specifically noted that this finding was partly attributable to the prerandomization run-in phase, which excluded those unable to tolerate aspirin, and partly related to the particular dose and regimen employed in the study. In addition to gastrointestinal bleeding, however, the study recorded a nonsignificant increase of total strokes in this selected population and a significantly increased number of moderate-to-severe or fatal hemorrhagic strokes. Similar observations have been reported in other studies. A study in healthy British doctors reported a nonsignificant increase in fatal or disabling strokes in the aspirin group (Ref. 3). In the "Swedish Aspirin Low-dose Trial" (SALT) (Ref. 4), while there were only slightly more frequent gastrointestinal events (excluding bleeding) in patients taking 75 milligrams of aspirin, a significant excess of total bleeding episodes occurred in the 676 subjects in the aspirin group compared with the 684 subjects taking placebo (7.2 versus 3.2 percent; p=0.001). Significantly more bleeding events in patients on aspirin were considered severe or resulted in discontinuation of the study drug (p=0.04); five patients on aspirin suffered fatal hemorrhagic strokes compared to none on placebo (p=0.03). In conclusion, a narrow focus on the incidence of only gastrointestinal bleeding in the Physician's Health Study (Ref. 2) cannot be extrapolated to exclude all risks that may be associated with professional uses of aspirin in an unselected population.

The agency agrees, however, that including the restriction against use for more than 10 days without consulting a doctor in the optional warning repeats the language set forth in the standard warning and is, therefore, redundant. The agency also agrees that such a statement, made in regard to new uses, may be incorrectly interpreted to imply that people can safely take the product for such uses for less than 10 days without consulting a doctor. Therefore, the agency is deleting that portion of the statement.

IV. The Agency's Proposal

Since publication of the tentative final monograph on November 16, 1988, information on the use of aspirin for preventing heart attack and stroke has continued to appear in the news media. Thus, public awareness of new uses of aspirin has continued to increase without commensurate awareness of risks associated with such uses. Given this publicity, the long-established availability and widespread use of OTC aspirin products, and the public perception of the safety of aspirin based on its long history for short-term uses, the agency believes that increasing numbers of individuals might initiate chronic self-medication for new uses without the advice of a doctor. The agency is aware that some manufacturers have voluntarily included the optional statement proposed in § 343.50(f) of the tentative final monograph, or a similar statement, in the labeling of their OTC aspirin products. However, there are many aspirin products in the marketplace without a labeling statement of this type. The agency considers it very important to have a required labeling statement on all OTC oral aspirin drug products to inform people of the need to see a doctor prior to using the product for any professional indications. The agency considers this need important enough to take this labeling statement out of the proposed rulemaking for OTC internal analgesic, antipyretic, and antirheumatic drug products before completion of the entire monograph. The agency proposes that the statement appear in § 201.314 (21 CFR 201.314) until the final monograph for OTC internal analgesic, antipyretic, and antirheumatic drug products is completed. Then, it will be incorporated into the final monograph.

While professional labeling proposed in the tentative final monograph also includes indications for rheumatoid arthritis, juvenile rheumatoid arthritis, systemic lupus erythematosus, osteoarthritis (degenerative joint disease), ankylosing spondylitis, psoriatic arthritis, Reiter's syndrome, and fibrositis, the agency is concerned primarily with the use of aspirin products to reduce the risk of cardiovascular and cerebrovascular events. Such use is more likely to be initiated by otherwise healthy people who are not under a doctor's care. Therefore, the agency is proposing that this new labeling statement be required for use on products containing aspirin ingredients identified in proposed § 343.10(b)(1) and (b)(2), and § 343.20(b)(3). The labeling of these products would be required to state, in a prominent place, the following: "IMPORTANT: See your doctor before taking this product for your heart or for other new uses of aspirin, because serious side effects could occur with self treatment." This labeling statement does not apply to aspirin used in

combination products described in § 343.20(a), (b)(2), and (b)(4).

Because the statement has been changed since it was originally proposed in the tentative final monograph, the agency is proposing the new statement for public comment in this document. The agency invites specific comment whether the introductory word "WARNING" would be preferable to the word "IMPORTANT" and whether other words (e.g., "unlabeled") would be preferable to the word "new" in this labeling statement.

The agency believes that this important information should be conveyed in product labeling at the earliest possible date. Accordingly, the agency is proposing that this new labeling statement become effective 6 months after the date of publication of the final rule in the **Federal Register**. Further, the agency encourages manufacturers of OTC oral drug products containing aspirin, buffered aspirin, and aspirin in combination with an antacid to implement this labeling voluntarily as of the date of publication of this proposal, subject to the possibility that FDA may change the wording of the labeling statement as a result of comments filed in response to this proposal. Because FDA is encouraging the proposed new labeling statement to be used on a voluntary basis at this time, the agency advises that manufacturers will be given ample time after publication of a final rule to use up any labeling implemented in conformance with this proposal.

References

(1) Feldmann, E. G., editor, "Handbook of Nonprescription Drugs," 9th ed., American Pharmaceutical Association, Washington, p. 68, 1990.

(2) The Steering Committee of the Physicians; Health Study Research Group, "Preliminary Report: Findings from the Aspirin Component of the Ongoing Physicians' Health Study," *New England Journal of Medicine*, 318:262–264, 1988.

(3) Peto, R., et al., "Randomized Trial of Prophylactic Daily Aspirin in British Male Doctors," *British Medical Journal*, 296:313–316, 1988.

(4) The SALT Collaborative Group, "Swedish Aspirin Low-dose Trial (SALT) of 75 mg Aspirin as Secondary Prophylaxis after Cerebrovascular Ischaemic Events," *Lancet*, 338:1345–1349, 1991.

V. Economic Impact

FDA has examined the regulatory impact and regulatory flexibility implications of this proposed rule in accordance with Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96–354). This proposed regulation imposes direct one time costs associated with changing product labels to include the required labeling statement. FDA estimates those costs to total less than $5 million. Therefore, the agency has determined that the proposed rule is not a major rule as defined in Executive Order 12291. Further, the agency certifies that this proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act.

The agency invites public comment regarding any substantial or significant economic impact that this rulemaking would have on OTC oral drug products containing aspirin, buffered aspirin, and aspirin in combination with an antacid. Types of impact may include, but are not limited to, costs associated with relabeling or repackaging.

Comments regarding the impact of this rulemaking on OTC drug products containing aspirin, buffered aspirin, and aspirin in combination with an antacid should be accompanied by appropriate documentation. A period of 60 days from the date of publication of this proposed rulemaking in the **Federal Register** will be provided for comments on this subject to be developed and submitted. The agency will evaluate any comments and supporting data that are received and will reassess the economic impact of this rulemaking in the preamble to the final rule.

VI. Environmental Impact

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Interested persons may, on or before December 20, 1993, submit to the Dockets Management Branch (address above) written comments on the proposed regulation. Written comments on the agency's economic impact determination may be submitted on or before December 20, 1993. Three copies of all comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 201

Drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR Part 201 be amended as follows:

PART 201—LABELING

1. The authority citation for 21 CFR part 201 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 508, 510, 512, 530–542, 701, 704, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 358, 360, 360b, 360gg-360ss, 371, 374, 376); secs. 215, 301, 351, 361 of the Public Health Service Act (42 U.S.C. 216, 241, 262, 264).

2. Section 201.314 is amended by adding new paragraph (i) to read as follows:

§ 201.314 Labeling of drug preparations containing salicylates.

* * * * *

(i)(1) The labeling of orally administered over-the-counter drug products containing aspirin, buffered aspirin, and aspirin in combination with an antacid subject to this paragraph is required to prominently bear the following statement: "IMPORTANT: See your doctor before taking this product for your heart or for other new uses of aspirin, because serious side effects could occur with self treatment." This labeling statement does not apply to aspirin used in combination with acetaminophen, any cough-cold ingredient, and any diuretic ingredient.

(2) Any product subject to this paragraph that is not labeled as required by this paragraph and that is initially introduced or initially delivered for introduction into interstate commerce after [insert date 6 months after date of publication of the final rule in the **Federal Register**], is misbranded under sections 201(n) and 502(a) and (f) of the Federal Food, Drug, and Cosmetic Act.

Dated: June 11, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–25673 Filed 10–19–93; 8:45 am]

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federal register

Wednesday
October 20, 1993

Part V

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 201

Labeling of Oral and Rectal Over-the-Counter Drug Products Containing Aspirin and Nonaspirin Salicylates; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 201

[Docket No. 93N-0182]

RIN 0905-AA06

Labeling of Oral and Rectal Over-The-Counter Drug Products Containing Aspirin and Nonaspirin Salicylates; Notice of Proposed Rulemaking

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is proposing to revise the Reye syndrome warning required for oral and rectal over-the-counter (OTC) human drug products containing aspirin. FDA is also proposing to require the warning on OTC drug products containing nonaspirin salicylates. The revised warning will inform consumers of the initial symptoms of Reye syndrome and advise that aspirin or nonaspirin salicylate products should not be given to children or teenagers who are recovering from chicken pox or the flu. FDA is issuing this proposal after considering comments submitted to the rulemaking for OTC internal analgesic, antipyretic, and antirheumatic drug products and other available information.

DATES: Written comments by December 20, 1993. Written comments on the agency's economic impact determination by December 20, 1993. FDA is proposing that the final rule based on this proposal be effective 6 months after the date of publication of the final rule in the **Federal Register**.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-594-5000.

SUPPLEMENTARY INFORMATION:

I. Introduction

Reye syndrome is a rare but serious illness that affects young people. The agency has received reports associating Reye syndrome with the use of aspirin and nonaspirin salicylate drug products. In the **Federal Register** of March 7, 1986 (51 FR 8180), FDA published a final regulation requiring that the labeling of oral and rectal OTC aspirin and aspirin-containing drug products include a warning that these drug products should not be used to treat chicken pox or flu symptoms in children and teenagers before consulting a doctor about Reye syndrome. The warning appears in § 201.314(h) (21 CFR 201.314(h)). The regulation provided that the Reye syndrome warning requirement would expire June 6, 1988, unless the agency acted to extend it. In the **Federal Register** of January 22, 1988 (53 FR 1796), FDA proposed to make permanent the requirement for a Reye syndrome warning, and in the **Federal Register** of June 9, 1988 (53 FR 21633), FDA made the warning permanent for oral and rectal OTC drug products containing aspirin.

In the **Federal Register** of November 16, 1988 (53 FR 46204), FDA published a notice of proposed rulemaking for OTC internal analgesic, antipyretic, and antirheumatic drug products. The agency indicated (53 FR 46204 at 46205) that the Reye syndrome warning finalized in the **Federal Register** of June 9, 1988, would be incorporated into the final monograph for OTC internal analgesic, antipyretic, and antirheumatic drug products. Interested persons were invited to file by May 16, 1989, written comments, objections, or requests for oral hearing before the Commissioner of Food and Drugs regarding the proposal. New data could have been submitted until November 16, 1989, and comments on the new data could have been submitted until January 16, 1990.

The National Reye's Syndrome Foundation (NRSF) commented that the Reye syndrome warning currently required for OTC aspirin and aspirin-containing drug products should be extended to all salicylate-containing drug products (Ref. 1). NRSF did not include any data to support its request, but stated that too many cases of Reye syndrome have been linked to one product, not intended for use as an analgesic, that contains bismuth subsalicylate, for this to be a coincidental occurrence.

Subsequently, the agency became aware that a manufacturer of a widely marketed OTC drug product containing bismuth subsalicylate (used for the relief of symptoms associated with overindulgence in food and drink) had voluntarily included a Reye syndrome warning in the product's labeling (Ref. 2). The warning is similar to the warning required by § 201.314(h)(1). In a proposed amendment to the tentative final monograph for OTC orally administered drug products for relief of symptoms associated with overindulgence in food and drink, published in the **Federal Register** of May 5, 1993 (58 FR 26886), the agency proposed a Reye syndrome warning for OTC overindulgence drug products that contain bismuth subsalicylate. That warning states: "WARNING: Children and teenagers who have or are recovering from chicken pox, flu symptoms, or flu should NOT use this product. If nausea, vomiting, or fever occur, consult a doctor because these symptoms could be an early sign of Reye syndrome, a rare but serious illness."

The agency also stated that it was considering the appropriateness of revising the current Reye syndrome warning for oral and rectal OTC drug products containing aspirin in § 201.314(h)(1) to be similar to the language in the May 5, 1993, proposal. The agency stated that based on the comments received, in a future issue of the **Federal Register**, the agency may propose to revise the current Reye syndrome warning in § 201.314(h)(1). The comment period for that proposal closed on July 6, 1993. The agency received four comments in response to the proposal. The agency is currently evaluating the comments that were received. Before a final decision is made, the agency finds it appropriate, at this time, to propose revising the current Reye syndrome warning and also extending it to nonaspirin salicylates. The agency will evaluate all comments on both proposals before making a final decision.

At the time that FDA promulgated the existing Reye syndrome warning for OTC drug products containing aspirin, scientific research was focused primarily on the association of Reye syndrome and aspirin rather than the broader category of drug products containing nonaspirin salicylates. Thus, the warning was limited to aspirin.

In the final rule for the labeling of oral and rectal OTC aspirin and aspirin-containing drug products (53 FR 21633 at 21635), the agency noted that a Public Health Service study (Ref. 3) reported that there were too few subjects whose reported exposures were to nonaspirin salicylates for a meaningful analysis. Almost all of the case subjects and the majority of the controls who took salicylates took aspirin; only a small percentage of subjects took nonaspirin salicylates. Only 1 case subject and 11 controls were exposed to bismuth subsalicylate, and only 2 controls were exposed to magnesium salicylate. In assessing the independent risk of aspirin and nonaspirin salicylates, a significant association was found with

aspirin. However, the authors reported that the risk associated with nonaspirin salicylates independent of aspirin could not be assessed because only two case subjects did not have a confounding exposure to aspirin. In the final rule, the agency stated its belief that, at the time, priority must be given to continuing the warning on OTC aspirin and aspirin-containing drug products. Further, the agency indicated that it would consider extending the scope of the warning to nonaspirin salicylates if warranted by further research or other appropriate information (53 FR 21633 at 21635).

II. The Agency's Proposal

While cases of Reye syndrome are rare, the agency is aware of two fatalities from Reye syndrome—one reported to be associated with the use of bismuth subsalicylate and the other associated with the use of a calcium salicylate containing drug product (Ref. 4). One death, which occurred in January 1989, involved a 6-year-old child who reportedly developed Reye syndrome following the administration of the label-recommended dosage of an OTC bismuth subsalicylate product for the treatment of flu-like symptoms, diarrhea, and nausea. The other death, which occurred in 1985, involved a 3-month-old infant whose upper respiratory tract infection was treated with a theophylline drug product that included calcium salicylate as a solubilizing agent. Sarrll and Duxbury (Ref. 5) reported one case of Reye syndrome associated with the use of teething gel containing choline salicylate. No outcome was mentioned. In addition, animal and in vitro biochemical data suggest that salicylic acid/salicylate may contribute to the metabolic derangement of liver cell mitochondria that leads to the mitochondrial injury characteristic of Reye syndrome (Refs. 6 through 9).

Aspirin is deacetylated in the gut, blood, and liver to salicylic acid, and the major plasma component after ingestion of aspirin is salicylate, the ionized form of salicylic acid (Ref. 10). Because the exact role of aspirin and its metabolic products in Reye syndrome is unknown, the agency believes the aspirin association with Reye syndrome may be applicable to nonaspirin salicylate products as well. Some manufacturers of OTC and prescription drug products containing nonaspirin salicylates currently voluntarily include a warning against the use of these drug products in children and teenagers for flu or chicken pox symptoms (Refs. 11 and 12). Accordingly, the agency is proposing that OTC internal analgesic/antipyretic drug products containing any nonaspirin salicylates bear a Reye syndrome warning. The tentative final monograph identified the following ingredients as nonaspirin salicylates: Calcium salicylate, magnesium salicylate, potassium salicylate, and sodium salicylate (53 FR 46204 at 46249).

In the amendment to the tentative final monograph for OTC orally administered drug products for relief of symptoms associated with overindulgence in food and drink (58 FR 26886 at 26888), the agency proposed the following Reye syndrome warning for products that contain bismuth subsalicylate: "Children and teenagers who have or are recovering from chicken pox, flu symptoms, or flu should NOT use this product. If nausea, vomiting, or fever occur, consult a doctor because these symptoms could be an early sign of Reye syndrome, a rare but serious illness." This proposed warning differs from the existing warning in § 201.314(h)(1), which states: "WARNING: Children and teenagers should not use this medicine for chicken pox or flu symptoms before a doctor is consulted about Reye syndrome, a rare but serious illness reported to be associated with aspirin." However, as discussed in the proposal for bismuth subsalicylate products, the agency believes that the new warning provides important additional information (i.e., not to use such products during the period when the child appears to be recovering from the flu or chicken pox, plus a description of the earliest recognizable symptoms of Reye syndrome) that should be included in the labeling of these OTC drug products. The agency considers the more specific information provided by the proposed warning particularly important now that public education programs on Reye Syndrome have significantly diminished. Further, the agency believes that all salicylate containing OTC drug products should bear uniform labeling with respect to Reye syndrome. While the existing warning has served its purpose well, the agency considers the newer warning being proposed to be more informative to future users of these products. Therefore, the agency is proposing that all OTC drug products containing aspirin or nonaspirin salicylates (including bismuth subsalicylate) bear the newer proposed warning.

FDA is proposing to amend § 201.314(h) now, instead of proposing to include the warning in the final monograph for OTC internal analgesic, antipyretic, and antirheumatic drug products when that monograph is issued at a future date. This approach will bring uniformity and consistency to the labeling of OTC drug products containing aspirin or nonaspirin salicylates, at the earliest possible date. When the final monograph is issued, it will contain a cross-reference to the Reye syndrome warning in § 201.314(h). That warning will apply to all OTC aspirin and nonaspirin salicylates whether or not marketed pursuant to an OTC drug monograph. The agency invites comment on the newly proposed Reye syndrome warning.

References

(1) Comment No. C144, Docket No. 77N–0094, Dockets Management Branch.

(2) Copy of Labeling for Pepto-Bismol, in OTC Vol. 03RSNPR, Docket No. 93N–0182, Dockets Management Branch.

(3) Hurwitz, E. S. et al., "Public Health Service Study of Reye's Syndrome and Medications," *Journal of the American Medical Association*, 257(14):1905–1911, 1987.

(4) Adverse Drug Reaction Reports, in OTC Vol. 03RSNPR, Docket No. 93N–0182, Dockets Management Branch.

(5) Sarrll, D. W. and A. J. Duxbury, "Choline Salicylates and Reye Syndrome," *British Dental Journal*, 9:317–318, 1986.

(6) Pranzatelli, M. R. and D. C. De Vivo, "Review Pharmacology of Reye Syndrome," *Clinical Neuropharmacology*, 10:96–125, 1987.

(7) Trauner, D. A., E. Horvath, and L. E. Davis, "Inhibition of Fatty Acid Beta Oxidation by Influenza B Virus and Salicylic Acid in Mice: Implications for Reye's Syndrome," *Neurology*, 38:239–241, 1988.

(8) Martens, M. E. and C. Lee, "Reye Syndrome: Salicylates and Mitochondrial Functions," *Biochemical Pharmacology*, 33:2869–2876, 1984.

(9) Yoshida, Y. et al., "Effect of Salicylic Acid on Mitochondrial Peroxisomal Fatty Acid Catabolism," *Pediatric Research*, 23:338–341, 1988.

(10) Shearn, M. A., "Nonsteroidal Anti-inflammatory Agents; Nonopiate Analgesics; Drugs Used in Gout," in "Basic and Clinical Pharmacology," 2d ed., edited by B. G. Katzung, Lange Medical Publications, Los Altos, CA, pp. 400–403, 1984.

(11) Schumacher, M. M., editor, "Physicians Desk Reference for Nonprescription Drugs," 13th ed., Medical Economics Co., Inc., Montvale, NJ, pp. 549–550, 1992.

(12) Schumacher, M. M., editor, "Physicians Desk Reference for Prescription Drugs," 47th ed., Medical Economics Co., Inc., Montvale, NJ, pp. 1891–1892, 1993.

III. Economic Impact

FDA has examined the regulatory impact and regulatory flexibility implications of this proposed rule in accordance with Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96–354). This proposed regulation imposes direct one time costs associated with changing product labels to include the required labeling statement. FDA

estimates those costs to total less than $5 million. Therefore, the agency has determined that the proposed rule is not a major rule as defined in Executive Order 12291. Further, the agency certifies that this proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act.

The agency invites public comment regarding any substantial or significant economic impact that this rulemaking would have on OTC oral and rectal drug products containing aspirin or nonaspirin salicylates. Types of impact may include but are not limited to costs associated with relabeling or repackaging.

Comments regarding the impact of this rulemaking on OTC drug products containing aspirin or nonaspirin salicylates should be accompanied by appropriate documentation. A period of 60 days from the date of publication of this proposed rulemaking in the Federal Register will be provided for comments on this subject to be developed and submitted. The agency will evaluate any comments and supporting data that are received and will reassess the economic impact of this rulemaking in the preamble to the final rule.

IV. Environmental Impact

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Interested persons may, on or before December 20, 1993, submit written comments on the proposed regulation to the Dockets Management Branch (address above). Written comments on the agency's economic impact determination may be submitted on or before December 20, 1993. Three copies of all comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 201

Drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 201 be amended as follows:

PART 201—LABELING

1. The authority citation for 21 CFR part 201 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 508, 510, 512, 530–542, 701, 704, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 358, 360, 360b, 360gg–360ss, 371, 374, 376); secs. 215, 301, 351, 361 of the Public Health Service Act (42 U.S.C. 216, 241, 262, 264).

2. Section 201.314 is amended by revising paragraphs (h)(1) and (h)(4) to read as follows:

§ 201.314 Labeling of drug preparations containing salicylates.

* * * * *

(h)(1) The labeling of orally or rectally administered over-the-counter drug products containing aspirin or nonaspirin salicylates subject to this paragraph is required to prominently bear the following warning: "WARNING: Children and teenagers who have or are recovering from chicken pox, flu symptoms, or flu should NOT use this product. If nausea, vomiting, or fever occur, consult a doctor because these symptoms could be an early sign of Reye syndrome, a rare but serious illness."

* * * * *

(4) Any product subject to this paragraph that is not labeled as required by this paragraph and that is initially introduced or initially delivered for introduction into interstate commerce after [insert date 6 months after date of publication of the final rule in the Federal Register], is misbranded under sections 201(n) and 502 (a) and (f) of the Federal Food, Drug, and Cosmetic Act.

Dated: August 17, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

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federal register

Wednesday
October 20, 1993

Part VI

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 341

Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; Amendment of Final Monograph for OTC Antitussive Drug Products

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 341

[Docket No. 90N-0420]

RIN 0905-AA06

Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; Amendment of Final Monograph for OTC Antitussive Drug Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule amending the final monograph for over-the-counter (OTC) antitussive drug products to require a drug interaction precaution statement in the labeling of OTC antitussive (relieves cough) drug products containing dextromethorphan or dextromethorphan hydrobromide. These drug products should not be used by persons who are taking a prescription drug containing a monoamine oxidase inhibitor (MAOI), without first consulting a health professional. This final rule is part of the ongoing review of OTC drug products conducted by FDA.

EFFECTIVE DATE: October 20, 1994.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of September 9, 1976 (41 FR 38312), FDA published an advance notice of proposed rulemaking for OTC cold, cough, allergy, bronchodilator, and antiasthmatic drug products. The Advisory Review Panel on OTC Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products (the Panel) placed the ingredients dextromethorphan and dextromethorphan hydrobromide (hereafter referred to generally as dextromethorphan) in Category I (generally recognized as safe and effective for OTC use) as an antitussive. The Panel recommended several warnings for OTC antitussives, but made no recommendation concerning an interaction with MAOI drugs. These drugs, which inhibit monoamine oxidase (MAO), are available by prescription only. At the time of the Panel's review, MAOI drugs were used primarily to treat depression or high blood pressure. Since then, the use of MAOI drugs for depression and other psychiatric illnesses has increased, while use to treat high blood pressure has essentially ceased. New MAOI drugs, which are relatively selective monoamine oxidase type B (MAO B) inhibitors, are coming into use to treat Parkinson's disease.

At the time of the Panel's review, the only known interaction with MAOI drugs that was pertinent to cough-cold drug products involved the sympathomimetic amines, which are used as bronchodilators (41 FR 38312 at 38370 to 38371) and nasal decongestants (41 FR 38312 at 38396 to 38397). The Panel proposed the following labeling for bronchodilator drug products containing sympathomimetic amines: "*Drug interaction precaution.* Do not take this product if you are presently taking a prescription antihypertensive or antidepressant drug containing a monoamine oxidase inhibitor." The Panel proposed the same labeling for oral nasal decongestant drug products containing sympathomimetic amines, but the Panel added the following words at the end of the statement: "except under the advice and supervision of a physician."

In the tentative final monograph for OTC bronchodilator drug products, published in the **Federal Register** of October 26, 1982 (47 FR 47520 at 47526), the agency proposed to simplify the precautionary statement to read: "*Drug interaction precaution.* Do not take this product if you are presently taking a prescription drug for high blood pressure or depression, without first consulting your doctor." (See proposed § 341.76(c)(3) at 47 FR 47527.) In the final monograph for OTC bronchodilator drug products, published in the **Federal Register** of October 2, 1986 (51 FR 35326 at 35338), the agency substituted the word "use" for the word "take," because "use" can apply to both inhalation and oral dosage forms. This statement appears in § 341.76(c)(4) of the final monograph.

In the tentative final monograph for OTC nasal decongestant drug products, published in the **Federal Register** of January 15, 1985 (50 FR 2220 at 2231), the agency proposed the same precautionary statement as proposed in the tentative final monograph for OTC bronchodilator drug products. (See proposed § 341.80(c)(1)(i)(*d*) at 50 FR 2239.) A final monograph for OTC nasal decongestant drug products has not yet been published.

In the **Federal Register** of June 19, 1992 (57 FR 27666), FDA published a notice of proposed rulemaking to amend the final monograph for OTC antitussive drug products to require an MAOI drug interaction precaution in the labeling of OTC drug products containing dextromethorphan or dextromethorphan hydrobromide. The agency described new information and reports of drug-drug interactions that suggested a need for the precaution. New § 341.74(c)(4)(v) was proposed, as follows:

For products containing dextromethorphan or dextromethorphan hydrobromide as identified in § 341.14(a)(3) and (a)(4) when labeled for adults or for adults and children under 12 years of age. Drug Interaction Precaution. Do not use this product if you are taking a prescription drug containing a monoamine oxidase inhibitor (MAOI) (certain drugs for depression or psychiatric or emotional conditions), without first consulting your doctor. If you are uncertain whether your prescription drug contains an MAOI, consult a health professional before taking this product.

The agency also proposed to require the MAOI drug interaction precaution in the labeling of OTC drug products containing dextromethorphan when labeled only for children under 12 years of age. New § 341.74(c)(4)(vi) was proposed, as follows:

For products containing dextromethorphan or dextromethorphan hydrobromide as identified in § 341.14(a)(3) and (a)(4) when labeled only for children under 12 years of age. Drug Interaction Precaution. Do not give this product to a child who is taking a prescription drug containing a monoamine oxidase inhibitor (MAOI) (certain drugs for depression or psychiatric or emotional conditions), without first consulting the child's doctor. If you are uncertain whether your child's prescription drug contains an MAOI, consult a health professional before giving this product.

The agency invited written comments by August 18, 1992, on the specific wording of these warnings and the best way to convey this information to persons who are taking MAOI drugs.

In the **Federal Register** of August 6, 1992 (57 FR 34735), the agency extended the comment period to October 5, 1992, to obtain additional comments on whether the drug interaction precaution statement should be expanded to include MAO B drugs, such as selegiline. The agency asked whether the proposed drug interaction statement should be expanded to read: "*Drug interaction precaution.* Do not use this product if you are taking a prescription drug containing a monoamine oxidase inhibitor (MAOI) (certain drugs for depression, psychiatric or emotional conditions, or Parkinson's disease), without first

consulting your doctor. If you are uncertain whether your prescription drug contains an MAOI, consult a health professional before taking this product." The agency invited comments and information on interactions between selegiline and dextromethorphan and asked whether, from a public health perspective, it would be appropriate to expand the dextromethorphan drug interaction precaution, as indicated.

Elsewhere in this issue of the **Federal Register**, the agency is amending the final monograph for OTC bronchodilator drug products so that the MAOI drug interaction precautions are consistent for OTC antitussive and bronchodilator drug products. In a future issue of the **Federal Register**, the agency intends to include the same drug interaction precautions in the final rule for OTC nasal decongestant drug products. These statements will apply to oral nasal decongestants containing sympathomimetic amine drugs.

In response to the proposed rule, the agency received comments from one physician, two drug manufacturers, and one drug manufacturers' association. Copies of the comments are on public display in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. None of the comments objected to having a new drug interaction precaution in the labeling of OTC antitussive drug products containing dextromethorphan. However, several comments offered suggestions for alternative wording.

II. The Agency's Conclusions on the Comments

1. One comment stated that the proposed additional statement regarding drug interactions between dextromethorphan and MAO inhibitors appears adequate. The comment noted that the agency's proposal was thorough, contained an excellent review of the existing medical knowledge, and shows that there is a significant body of information to support the drug interaction precaution. The comment added that the labeling for bronchodilator and nasal decongestant drug products should be amended as well, because the three groups are quite similar.

The agency agrees that the warning for OTC bronchodilator, oral nasal decongestant, and antitussive drug products should be consistent. Precautions for antitussive and bronchodilator drug products are addressed in this issue of the **Federal Register**. The same drug interaction precautions will be included in the final monograph for OTC nasal decongestant drug products in a future issue of the **Federal Register**.

2. Based on experience with labeling used on its own products, one comment suggested the following wording: "*Drug Interaction Precaution:* Do not take this product if you are presently taking a prescription monoamine oxidase inhibitor without first consulting your physician." For products labeled only for children under 12 years of age, the comment suggested: "*Drug Interaction Precaution:* Do not give this product to a child who is presently taking a prescription monoamine oxidase inhibitor without first consulting your child's physician." The comment stated that professional labeling for its dextromethorphan-containing drug products has included a MAOI interaction statement since 1977. The comment added that consumer labeling for its OTC drug product containing dextromethorphan and guaifenesin once used the statement: "*Drug Interaction Precaution:* Do not take this product if you are presently taking a prescription drug for high blood pressure or depression without first consulting your doctor." The same statement was proposed in the tentative final monograph for OTC bronchodilator drug products (47 FR 47520 at 47527) and the tentative final monograph for OTC nasal decongestant drug products (50 FR 2220 at 2239, January 15, 1985). The comment complained that this language appeared to cause confusion among health professionals and consumers, so it was subsequently modified to read: "*Drug Interaction Precaution:* Do not take this product if you are presently taking a prescription monoamine oxidase inhibitor without first consulting your physician." The comment stated that this newer language has provided a clear, succinct message to consumers, physicians, and other health professionals. The comment added that when MAOI drugs are prescribed, patients are fully informed about all necessary precautions and are provided with informational brochures on the many foods and drugs with known MAOI interactions.

The agency disagrees that the comment's suggested wording adequately conveys all information necessary for consumers to make an appropriate decision regarding use of the OTC drug product. Specifically, the suggested wording does not include an abbreviated name for monoamine oxidase inhibitor, likely medical uses for the MAOI, or provide for consultation with health professionals other than doctors. The agency acknowledges that this additional information lengthens the precaution. However, the serious nature of the adverse reactions requires that people taking MAOI drugs be given as much information as possible, so that they can make the correct decision about the use of the OTC drug product. The term "monoamine oxidase inhibitor" alone is technical and may not be as easily remembered as the shorter term "MAOI." Accordingly, the agency believes that both terms should be used. Some consumers may remember one term, while other consumers may remember the other term. Having both terms in the precaution helps ensure greater recognition among more consumers.

Also, those consumers who do not recognize either term may at least recognize that their prescription drug is for one of the indications listed. Hopefully, such persons will consult their doctor or other health professional before taking the OTC drug product. The agency acknowledges that when MAOI drugs are prescribed, patients should be fully informed of the precautions and interactions associated with the drug. However, the agency is concerned that some patients may not be fully informed about the MAOI drug, may not fully understand or remember all the information given them or, with the passage of time, may forget or lose information that has been provided. The agency believes the OTC drug product labeling should be as informative as possible and should reinforce the MAOI prescribing information. Accordingly, the comment's suggested language is not adopted.

3. One comment suggested deleting the statement "If you are uncertain whether your prescription drug contains an MAOI, consult a health professional." The comment stated that a general informational statement urging consumers to use common sense should not be a part of the drug interaction precaution. The comment argued that the statement adds lengthy wording to already crowded labeling, is inappropriately placed as part of a specific warning, is redundant in the contexts of available patient education and of the common sense consumers apply to self-medication practice, and is not supported by adequate documentation or recommendations of the Panel.

The agency disagrees with the comment. The agency included this statement out of concern for consumers who may not understand the technical terms used in the precaution, may not remember whether their prescription drug is a MAOI, or may not retain the

informational brochures received when the MAOI drug was prescribed. The agency is also concerned that some consumers who wish to use an OTC drug product may not want to bother their doctor with questions their medication. Because of the possible severity of the adverse reactions, the agency believes it is important to tell consumers that if there is any uncertainty or doubt about using the OTC drug product, a health professional should be consulted. It is also important to remind consumers who may be reluctant to ask their doctor that other health professionals, such as pharmacists or nurses, can be alternative sources of information. The agency does not believe that label space should limit essential safety information. There are means available to extend label space, such as carton flaps or package inserts. Finally, the wording in this statement is similar to other labeling that the Panel proposed for oral nasal decongestant drug products ("except under the advice and supervision of a physician," 41 FR 38312 at 38423), and to language in the final monograph for OTC bronchodilator drug products ("without first consulting your doctor," § 341.76(c)(4)).

4. One comment urged the agency to include only those aspects of prescription labeling that are formally approved indications. The comment stated that the approved indication for MAOI drugs is depression, and the precaution statement should explicitly reference "depression" and not include overly broad references to unapproved uses, e.g., "emotional disturbances." The comment stated that it is commonplace for prescription drugs, approved for one or more conditions, to be used experimentally in private practice or in formal clinical trials to treat conditions that do not appear in the approved prescription labeling. The comment asserted, however, that the establishment of OTC drug labeling that would accommodate ever changing unapproved uses of the prescription drug would abuse the OTC drug product labeling. The comment suggested other approaches, such as notification of physicians and pharmacists by direct mail or through medical publications, press releases, prescription labeling, and professional organizations.

The parenthetical information, "certain drugs for depression or psychiatric or emotional conditions," was intended to alert consumers who may be taking a MAOI drug for a condition other than depression or a condition not readily identified with the term depression, such as anxiety or phobia. The agency noted in the proposal (57 FR 27666) that these uses are described in the scientific literature. In addition, the prescribing information for one MAOI, phenelzine sulfate, states the following: "[Phenelzine sulfate] has been found to be effective in depressed patients clinically characterized as 'atypical,' 'nonendogenous,' or 'neurotic.' These patients often have mixed anxiety and depression and phobic or hypochondriacal features." (Ref. 1). Because people are currently being prescribed MAOI drugs for conditions other than depression, the agency believes that these uses cannot be ignored. Consumers who take the drug for one of these other conditions need to be informed. Further, the language adopted will accommodate a certain amount of increased use of MAOI drugs, as described in the scientific literature, without the need to revise the OTC drug product labeling to cover such uses. The agency does not consider the other approaches suggested by the comment to be adequate because they target the health care professional rather than the consumer. While all of those approaches can and should be used, the consumer must be informed. Therefore, the agency is not adopting the comment's suggestions.

Reference

(1) Approved labeling for phenelzine sulfate (Parke-Davis), in OTC Vol. 04TFMA3, Docket No. 90N–0420, Dockets Management Branch.

5. One comment suggested that the precaution statement include a 2-week washout period to help ensure that patients will not discontinue the use of the MAOI in order to use the OTC drug. The comment proposed the following wording: "Do not use this product if you are presently taking a prescription monoamine oxidase inhibitor (MAOI) for depression or for 2 weeks after stopping use of a MAOI without first consulting your doctor."

The comment stated that the suggested 2-week washout period was based on scientific data, and provided references and studies in support.

One reference provided by the comment stated that the MAOI drugs used clinically in the United States are irreversible enzyme inhibitors, that return of monoamine oxidase activity following administration of an irreversible MAOI is presumably dependent upon enzyme synthesis, and that recovery of monoamine oxidase activity after irreversible inhibition may require up to 2 weeks following withdrawal of the MAOI drug (Ref. 1). Two studies submitted by the comment suggest that the rate of recovery of monoamine oxidase activity may be organ-specific and also possibly influenced by body weight and age (Refs. 2 and 3). In a study with normal volunteers, the apparent half-lives of plasma MAO and platelet MAO were determined to be 2 to 3 days and 9 days, respectively (Ref. 4). In a study of the interaction between sympathomimetic amines (phenylephrine, ephedrine, and noradrenaline) and MAOI's in normal volunteers, results showed a rise in blood pressure from phenylephrine and ephedrine during MAOI administration and for up to 14 days after discontinuation of the MAOI (Ref. 5).

The agency has reviewed the studies and information submitted by the comment and agrees that it is important to include a 2-week washout period in the precaution statement. The prescribing information for MAOI drugs states that 10 to 14 days should elapse between discontinuation of an MAOI and initiation of treatment with certain other drugs, e.g., another antidepressant, another MAOI, or general anesthesia (Refs. 6, 7, and 8). The prescribing information for tranylcypromine sulfate, a partially reversible MAOI, states that monoamine oxidase activity is recovered in 3 to 5 days, and also recommends a 10-day withdrawal period between treatments (Ref. 8).

The agency concludes that information about a withdrawal period is important for several reasons: (1) It should discourage patients from stopping their MAOI medication to take an OTC cough-cold drug product, and (2) it will help ensure that if the MAOI medication is discontinued for any reason, the OTC drug product will not be used before all or most of the MAOI is no longer in the body. Therefore, the agency is adopting the comment's suggestion to include a 2-week washout period, but is modifying the wording slightly. The comment proposed, "* * * if you are presently taking * * *," which the agency is shortening to "* * * if you are now taking * * *."

References

(1) Baldessarini, R.J., "Drugs and the Treatment of Psychiatric Disorders," in "Goodman and Gilman's The Pharmacological Basis of Therapeutics," 8th ed., edited by A.G. Gilman et al., Macmillan Publishing Co., New York, pp. 414–419, 1990.

(2) Della Corte, L., and B.A. Callingham, "The Influence of Age and Adrenalectomy on Rat Heart Monoamine Oxidase," *Biochemical Pharmacology*, 26:407–415, 1977.

(3) Planz, G., K. Quiring, and D. Palm, "Rates of Recovery of Irreversibly Inhibited Monoamine Oxidases: A Measure of Enzyme Protein Turnover," *Naunyn-Schmiedeberg's Archives of Pharmacology*, 273:27–42, 1972.

(4) Palm, D. et al., "Quantitation of Irreversible Inhibition of Monoamine

Oxidase in Man," *European Journal of Clinical Pharmacology*, 3:82–92, 1971.

(5) Elis, J. et al., "Modification by Monoamine Oxidase Inhibitors of the Effect of Some Sympathomimetics on Blood Pressure," *British Medical Journal*, 2:75–78, 1967.

(6) Approved labeling for phenelzine sulfate (Parke-Davis), in OTC Vol. 04TFMA3, Docket No. 90N–0420, Dockets Management Branch.

(7) Approved labeling for isocarboxazid (Roche), in OTC Vol. 04TFMA3, Docket No. 90N–0420, Dockets Management Branch.

(8) Approved labeling for tranylcypromine sulfate (SmithKline Beecham), in OTC Vol. 04TFMA3, Docket No. 90N–0420, Dockets Management Branch.

6. Two comments discussed possible interactions between MAO B inhibitors, such as selegiline, and OTC drug products containing dextromethorphan or sympathomimetic amines. One comment stated that it had reviewed all spontaneous reports of adverse drug experiences with its MAO B inhibitor drug product containing selegiline, as monitored in accordance with 21 CFR 314.80. The comment found no mention of a suspected drug interaction with, or concomitant use of, an OTC drug product containing dextromethorphan or sympathomimetic amines. The other comment urged the agency to limit drug interaction precautions to those that have been shown to be of significant, practical, and likely importance. Specifically, the comment stated that in the case of the selective MAOI selegiline, the approved indication is Parkinson's disease, but that disease should not be included in the OTC drug product precaution statement because the prescription package insert for selegiline explicitly states that drug-drug interactions are not likely to occur between selegiline and OTC drugs.

The agency disagrees with the comment's interpretation of the package insert for selegiline. The insert (Ref. 1) states the following:

> In theory, therefore, because MAO A of the gut is not inhibited, patients treated with selegiline at a dose of 10 milligrams (mg) a day can take medications containing pharmacologically active amines and consume tyramine-containing foods without risk of uncontrolled hypertension. To date, clinical experience appears to confirm this prediction; cheese reactions have not been reported in selegiline treated patients. The pathophysiology of the "cheese reaction" is complicated and, in addition to its ability to inhibit MAO B selectively, selegiline's apparent freedom from this reaction has been attributed to an ability to prevent tyramine and other indirect acting sympathomimetics from displacing norepinephrine from adrenergic neurons. However, until the pathophysiology of the cheese reaction is more completely understood, it seems prudent to assume that selegiline can only be used safely without dietary restrictions at doses where it presumably selectively inhibits MAO B (e.g., 10 mg/day). In short, attention to the dose dependent nature of selegiline's selectivity is critical if it is to be used without elaborate restrictions being placed on diet and concomitant drug use.

The insert for selegiline further states:

> Since the selective inhibition of MAO B by selegiline hydrochloride is achieved only at doses in the range recommended for the treatment of Parkinson's disease (e.g., 10 mg/day), overdoses are likely to cause significant inhibition of both MAO A and MAO B. Consequently, the signs and symptoms of overdose may resemble those observed with marketed nonselective MAO inhibitors (e.g., tranylcypromine, isocarboxazid, and phenelzine) (Ref. 1).

The agency is aware that Blackwell has reported that, while selegiline at low dosage inhibits only MAO B, at antidepressant dosages (over 20 mg daily) the drug loses its specificity and hypertensive reactions begin to occur (Ref. 2).

The insert also describes interactions between selegiline and meperidine, which is typical of the interaction of meperidine with other MAOI drugs. The drug interaction section of the insert states: "No interactions attributed to the combined use of selegiline and other drugs have been reported. However, because the data base of documented clinical experience is limited, the level of reassurance provided by this lack of adverse reporting is uncertain."

The loss of selectivity at doses higher than 10 mg per day raises concerns that drug interactions may occur. Further, the agency does not find the lack of adverse reaction reports for selegiline to be reassuring. Selegiline is a recently approved new drug with limited marketing experience. In view of the potentially fatal outcome of an interaction between MAOI drugs and dextromethorphan and the limited data base for selegiline, the agency believes that the potential for interaction should be assumed and that prudence is the wisest course until more information is available. Therefore, the agency is including the words "Parkinson's disease" in the precaution statement for products containing dextromethorphan or dextromethorphan hydrobromide when labeled for adults or for adults and children under 12 years of age. However, Parkinson's disease is not being included in the precaution statement on dextromethorphan-containing products labeled only for children under 12 years of age because it is not relevant to a pediatric population.

References

(1) Approved labeling for selegiline hydrochloride (Somerset), in OTC Vol. 04TFMA3, Docket No. 90N–0420, Dockets Management Branch.

(2) Blackwell, B., "Monoamine Oxidase Inhibitor Interactions with Other Drugs," *Journal of Clinical Psychopharmacology*, 11:55–59, 1991.

III. The Agency's Final Conclusions on the Drug Interaction Precaution Statement

The agency concludes that a drug interaction precaution statement for OTC dextromethorphan-containing drug products is needed to inform consumers of the potential interaction with various MAOI drugs. To be fully informative to consumers, this statement should contain both the technical and abbreviated terms for monoamine oxidase inhibitor (MAOI), should include likely medical uses for the MAOI drugs, should mention a 2-week washout period, and should include the statement to consult a health professional if uncertainty about the MAOI drug exists. Accordingly, the agency is amending § 341.74 by adding new § 341.74(c)(4)(v) to read: "*For products containing dextromethorphan or dextromethorphan hydrobromide as identified in § 341.14(a)(3) and (a)(4) when labeled for adults or for adults and children under 12 years of age. Drug Interaction Precaution.* Do not use this product if you are now taking a prescription monoamine oxidase inhibitor (MAOI) (certain drugs for depression, psychiatric or emotional conditions, or Parkinson's disease), or for 2 weeks after stopping the MAOI drug. If you are uncertain whether your prescription drug contains an MAOI, consult a health professional before taking this product." The agency is also adding new § 341.74(c)(4)(vi) to read: "*For products containing dextromethorphan or dextromethorphan hydrobromide as identified in § 341.14(a)(3) and (a)(4) when labeled only for children under 12 years of age. Drug Interaction Precaution.* Do not give this product to a child who is now taking a prescription monoamine oxidase inhibitor (MAOI) (certain drugs for depression, psychiatric or emotional conditions), or for 2 weeks after stopping the MAOI drug. If you are uncertain whether your child's prescription drug contains an MAOI, consult a health professional before giving this product."

IV. Economic Impact

No comments were received in response to the agency's request for specific comment on the economic impact of this rulemaking. The agency has examined the economic

consequences of this final rule in conjunction with other rules resulting from the OTC drug review. In a notice published in the **Federal Register** of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that no one of these rules, including this final rule for OTC antitussive drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (Pub. L. 96–354). That assessment included a discretionary regulatory flexibility analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking for OTC antitussive drug products is not expected to pose such an impact on small businesses. This final rule imposes one-time costs associated with changing product labeling to include the MAOI-dextromethorphan drug interaction precaution statement. In the proposed rule (57 FR 27666 at 27669), the agency encouraged manufacturers of OTC antitussive drug products to voluntarily implement this labeling as of the date of publication of the proposal, subject to the possibility that FDA may change the wording of the drug interaction precaution as a result of comments filed in response to the proposal. Because the agency encouraged voluntary implementation of the proposed drug interaction precaution statement, manufacturers were advised that they would be given ample time after publication of the final rule to use up any labeling implemented in conformance with the proposal. Any manufacturer that voluntarily implemented labeling in conformance with the proposal and that now needs more than 12 months to use up that labeling should contact the Division of Drug Labeling Compliance (HFD–310), Office of Compliance, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Therefore, the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

V. Environmental Impact

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 341

Labeling, Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 341 is amended as follows:

PART 341—COLD, COUGH, ALLERGY, BRONCHODILATOR, AND ANTIASTHMATIC DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

1. The authority citation for 21 CFR part 341 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371).

2. Section 341.74 is amended by adding new paragraphs (c)(4)(v) and (c)(4)(vi) to read as follows:

§ 341.74 Labeling of antitussive drug products.

* * * * *

(c) * * *

(4) * * *

(v) *For products containing dextromethorphan or dextromethorphan hydrobromide as identified in § 341.14(a)(3) and (a)(4) when labeled for adults or for adults and children under 12 years of age. "Drug interaction precaution.* Do not use this product if you are now taking a prescription monoamine oxidase inhibitor (MAOI) (certain drugs for depression, psychiatric or emotional conditions, or Parkinson's disease), or for 2 weeks after stopping the MAOI drug. If you are uncertain whether your prescription drug contains an MAOI, consult a health professional before taking this product."

(vi) *For products containing dextromethorphan or dextromethorphan hydrobromide as identified in § 341.14(a)(3) and (a)(4) when labeled only for children under 12 years of age. "Drug interaction precaution.* Do not give this product to a child who is taking a prescription monoamine oxidase inhibitor (MAOI) (certain drugs for depression, psychiatric or emotional conditions), or for 2 weeks after stopping the MAOI drug. If you are uncertain whether your child's prescription drug contains an MAOI, consult a health professional before giving this product."

* * * * *

Dated: August 17, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–25674 Filed 10–19–93; 8:45 am]

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federal register

Wednesday
October 20, 1993

Part VII

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 341

Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; Amendment of Final Monograph for OTC Bronchodilator Drug Products

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 341

[Docket No. 91N–0323]

RIN 0905–AA06

Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; Amendment of Final Monograph for OTC Bronchodilator Drug Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule amending the final monograph for over-the-counter (OTC) bronchodilator drug products to modify the drug interaction precaution statement required in the labeling of OTC bronchodilator drug products containing sympathomimetic amine drugs. These drug products should not be used by persons who are taking a prescription drug containing a monoamine oxidase inhibitor (MAOI), without first consulting a health professional. This final rule is part of the ongoing review of OTC drug products conducted by FDA.

EFFECTIVE DATE: October 20, 1994.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD–810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8000.

SUPPLEMENTARY INFORMATION

I. Background

In the **Federal Register** of September 9, 1976 (41 FR 38312), FDA published an advance notice of proposed rulemaking for OTC cold, cough, allergy, bronchodilator, and antiasthmatic drug products. The Advisory Review Panel on OTC Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products (the Panel) recommended the following warning statement for the labeling of OTC bronchodilator drug products: "*Drug Interaction Precaution.* Do not take this product if you are presently taking a prescription antihypertensive or antidepressant drug containing a monoamine oxidase inhibitor." The warning was based on data showing marked and potentially dangerous increases in blood pressure in patients taking MAOI drugs and sympathomimetic amine bronchodilator drugs (41 FR 38312 at 38370 through 38373).

The agency discussed this statement in the tentative final monograph for OTC bronchodilator drug products (47 FR 47520 at 47523, October 26, 1982). In response to the Panel's recommendation, one comment contended that terms such as "antihypertensive," "antidepressant," and "monoamine oxidase inhibitor" are highly technical; that only a small percentage of the population is likely to understand this warning; and that including such a warning in the labeling of an OTC drug is contrary to the well-established principle that unnecessary or confusing precautions tend to dilute the significance of all instructions in the labeling and, hence, should be avoided (47 FR 47520 at 47523).

The agency acknowledged that the Panel's proposed drug interaction precaution might not be readily understood by all consumers. However, the agency considered a statement of this type to be necessary to alert consumers because antihypertensive and antidepressant drugs are widely prescribed. The agency proposed to simplify the precaution by substituting the term "high blood pressure" for "antihypertensive," and the term "depression" for "antidepressant." The agency also believed that the words "monoamine oxidase inhibitor" would be confusing to consumers and were not needed in the precautionary statement to convey the intended message. Accordingly, the agency proposed the following: "*Drug interaction precaution.* Do not take this product if you are presently taking a prescription drug for high blood pressure or depression, without first consulting your doctor." (See proposed § 341.76(c)(3) at 47 FR 47527.) In the final monograph for OTC bronchodilator drug products, published in the **Federal Register** of October 2, 1986 (51 FR 35326 at 35338), the agency substituted the word "use" for the word "take," because "use" can apply to both inhalation and oral dosage forms. This statement appears in § 341.76(c)(4) of the final monograph.

In the **Federal Register** of June 19, 1992 (57 FR 27662), FDA published a notice of proposed rulemaking to amend the final monograph for OTC bronchodilator drug products to revise the drug interaction precaution to read: "*Drug interaction precaution.* Do not use this product if you are taking a prescription drug containing a monoamine oxidase inhibitor (MAOI) (certain drugs for depression or psychiatric or emotional conditions), without first consulting your doctor. If you are uncertain whether your prescription drug contains an MAOI, consult a health professional before taking this product." The agency invited written comments by August 18, 1992, on the specific wording of the warning, and the best way to convey this information to persons who are taking MAOI drugs.

In the **Federal Register** of August 6, 1992 (57 FR 34733), the agency extended the comment period to October 5, 1992, to obtain additional comments on whether the drug interaction precaution statement should be expanded to include MAO B drugs, such as selegiline. The agency asked whether the proposed drug interaction statement should be expanded to read: "*Drug interaction precaution.* Do not use this product if you are taking a prescription drug containing a monoamine oxidase inhibitor (MAOI) (certain drugs for depression, psychiatric or emotional conditions, or Parkinson's disease), without first consulting your doctor. If you are uncertain whether your prescription drug contains an MAOI, consult a health professional before taking this product." The agency invited comments and information on interactions between selegiline and sympathomimetic amines and asked whether, from a public health perspective, it would be appropriate to expand the bronchodilator drug interaction precaution, as indicated.

Elsewhere in this issue of the **Federal Register**, the agency is amending the final monograph for OTC antitussive drug products so that the MAOI drug interaction precautions are consistent for OTC bronchodilator and antitussive products. In a future issue of the **Federal Register**, the agency intends to include the same drug interaction precautions in the final rule for OTC nasal decongestant drug products. These statements will apply to oral nasal decongestants containing sympathomimetic amine drugs.

In response to the proposed rule, the agency received comments from one physician, one drug manufacturer, and one drug manufacturers' association. Copies of the comments are on public display in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. The primary focus of the comments is alternative wording for the new drug interaction precaution statement.

II. The Agency's Conclusions on the Comments

1. One comment stated that the agency's proposal was thorough, contained an excellent review of the existing medical knowledge, and shows

that there is a significant body of information to support the drug interaction precaution. The comment suggested that the drug interaction precautions for OTC antitussive, bronchodilator, and nasal decongestant drug products be consistent because the three groups are quite similar.

The agency agrees that the warning for OTC antitussive, bronchodilator, and oral nasal decongestant drug products should be consistent. Precautions for antitussive and bronchodilator drug products are addressed in this issue of the **Federal Register**. The same drug interaction precautions will be included in the final monograph for OTC nasal decongestant drug products in a future issue of the **Federal Register**.

2. One comment was submitted only to the proposed rule for OTC antitussive drug products (Docket No. 90N–0420), but is being discussed here because it pertains to the wording of the drug interaction precaution statement. Based on experience with labeling used on its own dextromethorphan-containing products, the comment suggested the following wording: "*Drug Interaction Precaution:* Do not take this product if you are presently taking a prescription monoamine oxidase inhibitor without first consulting your physician." For products labeled only for children under 12 years of age, the comment suggested: "*Drug Interaction Precaution:* Do not give this product to a child who is presently taking a prescription monoamine oxidase inhibitor without first consulting your child's physician." The comment stated that professional labeling for its dextromethorphan-containing drug products has included an MAOI interaction statement since 1977. The comment added that consumer labeling for its OTC drug product containing dextromethorphan and guaifenesin once used the statement: "*Drug Interaction Precaution:* Do not take this product if you are presently taking a prescription drug for high blood pressure or depression without first consulting your doctor." The same statement was proposed in the tentative final monograph for OTC bronchodilator drug products (47 FR 47520 at 47527) and the tentative final monograph for OTC nasal decongestant drug products (50 FR 2220 at 2239, January 15, 1985). The comment complained that this language appeared to cause confusion among health professionals and consumers, so it was subsequently modified to read: "*Drug Interaction Precaution:* Do not take this product if you are presently taking a prescription monoamine oxidase inhibitor without first consulting your physician." The comment stated that this newer language has provided a clear, succinct message to consumers, physicians, and other health professionals. The comment added that when MAOI drugs are prescribed, patients are fully informed about all necessary precautions and are provided with informational brochures on the many foods and drugs with known MAOI interactions.

The agency disagrees that the comment's suggested wording adequately conveys all information necessary for consumers to make an appropriate decision regarding use of the OTC drug product. Specifically, the suggested wording does not include an abbreviated name for monoamine oxidase inhibitor, the likely medical uses for the MAOI, or provide for consultation with health professionals other than doctors. The agency acknowledges that this additional information lengthens the precaution. However, the serious nature of the adverse reactions requires that people taking MAOI drugs should be given as much information as possible, so that they can make the correct decision about the use of the OTC drug product. The term "monoamine oxidase inhibitor" alone is technical and may not be as easily remembered as the shorter term "MAOI." Accordingly, the agency believes that both terms should be used. Some consumers may remember one term, while other consumers may remember the other term. Having both terms in the precaution helps ensure greater recognition among more consumers. Also, those consumers who do not recognize either term may at least recognize that their prescription drug is for one of the indications listed. Hopefully, such persons will consult their doctor or other health professional before taking the OTC drug product. The agency acknowledges that when MAOI drugs are prescribed, patients should be fully informed of the precautions and interactions associated with the drug. However, the agency is concerned that some patients may not be fully informed about the MAOI drug, may not fully understand or remember all the information given them or, with the passage of time, may forget or lose information that has been provided. The agency believes the OTC drug product labeling should be as informative as possible and should reinforce the MAOI prescribing information. Accordingly, the comment's suggested language is not adopted.

3. One comment suggested deleting the statement "If you are uncertain whether your prescription drug contains an MAOI, consult a health professional." The comment stated that a general informational statement urging consumers to use common sense should not be a part of the drug interaction precaution. The comment argued that the statement adds lengthy wording to already crowded labeling, is inappropriately placed as part of a specific warning, is redundant in the contexts of available patient education and of the common sense consumers apply to self-medication practice, and is not supported by adequate documentation or recommendations of the Panel.

The agency disagrees with the comment. The agency included this statement out of concern for consumers who may not understand the technical terms used in the precaution, may not remember whether their prescription drug is an MAOI, or may not retain the informational brochures received when the MAOI drug was prescribed. The agency is also concerned that some consumers who wish to use an OTC drug product may not want to bother their doctor with questions about their medication. Because of the possible severity of the adverse reactions, the agency believes it is important to tell consumers that if there is any uncertainty or doubt about using the OTC drug product, a health professional should be consulted. It is also important to remind consumers who may be reluctant to ask their doctor that other health professionals, such as pharmacists or nurses, can be alternative sources of information. The agency does not believe that label space should limit essential safety information. There are means available to extend label space, such as carton flaps or package inserts. Finally, the wording in this statement is similar to other labeling that the Panel proposed for oral nasal decongestant drug products ("except under the advice and supervision of a physician," 41 FR 38312 at 38423), and to language in the final monograph for OTC bronchodilator drug products ("without first consulting your doctor," § 341.76(c)(4)).

4. One comment urged the agency to include only those aspects of prescription labeling that are formally approved indications. The comment stated that the approved indication for MAOI drugs is depression, and the precaution statement should explicitly reference "depression" and not include overly broad references to unapproved uses, e.g., "emotional disturbances." The comment stated that it is commonplace for prescription drugs, approved for one or more conditions, to be used experimentally in private practice or in formal clinical trials to

treat conditions that do not appear in the approved prescription labeling. The comment asserted, however, that the establishment of OTC drug labeling that would accommodate ever-changing unapproved uses of the prescription drug would abuse the OTC drug product labeling. The comment suggested other approaches, such as notification of physicians and pharmacists by direct mail or through medical publications, press releases, prescription labeling, and professional organizations.

The parenthetical information, "certain drugs for depression or psychiatric or emotional conditions," was intended to alert consumers who may be taking a MAOI drug for a condition other than depression or a condition not readily identified with the term depression, such as anxiety or phobia. The agency noted in the proposal (57 FR 27662) that these uses are described in the scientific literature. In addition, the prescribing information for one MAOI, phenelzine sulfate, states the following: "[Phenelzine sulfate] has been found to be effective in depressed patients clinically characterized as 'atypical,' 'nonendogenous,' or 'neurotic.' These patients often have mixed anxiety and depression and phobic or hypochondriacal features." (Ref. 1). Because people are currently being prescribed MAOI drugs for conditions other than depression, the agency believes that these uses cannot be ignored. Consumers who take the drug for one of these other conditions need to be informed. Further, the language adopted will accommodate a certain amount of increased use of MAOI drugs, as described in the scientific literature, without the need to revise the OTC drug product labeling to cover such uses. The agency does not consider the other approaches suggested by the comment to be adequate because they target the health care professional rather than the consumer. While all of those approaches can and should be used, the consumer must be informed. Therefore, the agency is not adopting the comment's suggestions.

References

(1) Approved labeling for phenelzine sulfate (Parke-Davis), in OTC Vol. 04BFMA2, Docket No. 91N–0323, Dockets Management Branch.

5. One comment suggested that the precaution statement include a 2-week washout period to help ensure that patients will not discontinue the use of the MAOI in order to use the OTC drug. The comment proposed the following wording: "Do not use this product if you are presently taking a prescription monoamine oxidase inhibitor (MAOI) for depression or for 2 weeks after stopping use of a MAOI without first consulting your doctor." The comment stated that the suggested 2-week washout period was based on scientific data, and provided references and studies in support.

One reference provided by the comment stated that the MAOI drugs used clinically in the United States are irreversible enzyme inhibitors, that return of monoamine oxidase activity following administration of an irreversible MAOI is presumably dependant upon enzyme synthesis, and that recovery of monoamine oxidase activity after irreversible inhibition may require up to 2 weeks following withdrawal of the MAOI drug (Ref. 1). Two studies submitted by the comment suggest that the rate of recovery of monoamine oxidase activity may be organ-specific and also possibly influenced by body weight and age (Refs. 2 and 3). In a study with normal volunteers, the apparent half-lives of plasma MAO and platelet MAO were determined to be 2 to 3 days and 9 days, respectively (Ref. 4). In a study of the interaction between sympathomimetic amines (phenylephrine, ephedrine, and noradrenaline) and MAOI's in normal volunteers, results showed a rise in blood pressure from phenylephrine and ephedrine during MAOI administration and for up to 14 days after discontinuation of the MAOI (Ref. 5).

The agency has reviewed the studies and information submitted by the comment and agrees that it is important to include a 2-week washout period in the precaution statement. The prescribing information for MAOI drugs states that 10 to 14 days should elapse between discontinuation of an MAOI and initiation of treatment with certain other drugs, e.g., another antidepressant, another MAOI, or general anesthesia (Refs. 6, 7, and 8). The prescribing information for tranylcypromine sulfate, a partially reversible MAOI, states that monoamine oxidase activity is recovered in 3 to 5 days, and also recommends a 10-day withdrawal period between treatments (Ref. 8).

The agency concludes that information about a withdrawal period is important, for several reasons: (1) It should discourage patients from stopping their MAOI medication to take an OTC cough-cold drug product, and (2) it will help ensure that if the MAOI medication is discontinued for any reason, the OTC drug product will not be used before all or most of the MAOI is no longer in the body. Therefore, the agency is adopting the comment's suggestion to include a 2-week washout period, but is modifying the wording slightly. The comment proposed, "* * * if you are presently taking * * *," which the agency is shortening to "* * * if you are now taking * * *."

References

(1) Baldessarini, R.J., "Drugs and the Treatment of Psychiatric Disorders," in "Goodman and Gilman's The Pharmacological Basis of Therapeutics," 8th ed., edited by A.G. Gilman et al., Macmillan Publishing Co., New York, pp. 414–419, 1990.

(2) Della Corte, L., and B.A. Callingham, "The Influence of Age and Adrenalectomy on Rat Heart Monoamine Oxidase," *Biochemical Pharmacology*, 26:407–415, 1977.

(3) Planz, G., K. Quiring, and D. Palm, "Rates of Recovery of Irreversibly Inhibited Monoamine Oxidases: A Measure of Enzyme Protein Turnover," *Naunyn-Schmiedeberg's Archives of Pharmacology*, 273:27–42, 1972.

(4) Palm, D. et al., "Quantitation of Irreversible Inhibition of Monoamine Oxidase in Man," *European Journal of Clinical Pharmacology*, 3:82–92, 1971.

(5) Elis, J. et al., "Modification by Monoamine Oxidase Inhibitors of the Effect of Some Sympathomimetics on Blood Pressure," *British Medical Journal*, 2:75–78, 1967.

(6) Approved labeling for phenelzine sulfate (Parke-Davis), in OTC Vol. 04BFMA2, Docket No. 91N–0323, Dockets Management Branch.

(7) Approved labeling for isocarboxazid (Roche), in OTC Vol. 04BFMA2, Docket No. 91N–0323, Dockets Management Branch.

(8) Approved labeling for tranylcypromine sulfate (SmithKline Beecham), in OTC Vol. 04BFMA2, Docket No. 91N–0323, Dockets Management Branch.

6. Two comments discussed possible interactions between MAO B inhibitors, such as selegiline, and OTC drug products containing dextromethorphan or sympathomimetic amines. One comment stated that it had reviewed all spontaneous reports of adverse drug experiences with its MAO B inhibitor drug product containing selegiline, as monitored in accordance with 21 CFR 314.80. The comment found no mention of a suspected drug interaction with, or concomitant use of, an OTC drug product containing dextromethorphan or sympathomimetic amines. The other comment urged the agency to limit drug interaction precautions to those that have been shown to be of significant, practical, and likely importance. Specifically, the comment stated that in the case of the selective MAOI selegiline, the approved indication is Parkinson's disease, but that disease should not be included in the OTC drug product precaution statement because the prescription package insert for selegiline explicitly states that drug-drug interactions are not likely to occur between selegiline and OTC drugs.

The agency disagrees with the comment's interpretation of the package insert for selegiline. The insert (Ref. 1) states the following:

In theory, therefore, because MAO A of the gut is not inhibited, patients treated with selegiline at a dose of 10 milligrams (mg) a day can take medications containing pharmacologically active amines and consume tyramine-containing foods without risk of uncontrolled hypertension. To date, clinical experience appears to confirm this prediction; cheese reactions have not been reported in selegiline treated patients. The pathophysiology of the "cheese reaction" is complicated and, in addition to its ability to inhibit MAO B selectively, selegiline's apparent freedom from this reaction has been attributed to an ability to prevent tyramine and other indirect acting sympathomimetics from displacing norepinephrine from adrenergic neurons. However, until the pathophysiology of the cheese reaction is more completely understood, it seems prudent to assume that selegiline can only be used safely without dietary restrictions at doses where it presumably selectively inhibits MAO B (e.g., 10 mg/day). In short, attention to the dose dependent nature of selegiline's selectivity is critical if it is to be used without elaborate restrictions being placed on diet and concomitant drug use.

The insert for selegiline further states:

Since the selective inhibition of MAO B by selegiline hydrochloride is achieved only at doses in the range recommended for the treatment of Parkinson's disease (e.g., 10 mg/day), overdoses are likely to cause significant inhibition of both MAO A and MAO B. Consequently, the signs and symptoms of overdose may resemble those observed with marketed nonselective MAO inhibitors (e.g., tranylcypromine, isocarboxazid, and phenelzine).

The agency is aware that Blackwell has reported that, while selegiline at low dosage inhibits only MAO B, at antidepressant dosages (over 20 mg daily) the drug loses its specificity and hypertensive reactions begin to occur (Ref. 2).

The insert also describes interactions between selegiline and meperidine, which is typical of the interaction of meperidine with other MAOI drugs. The drug interaction section of the insert states: "No interactions attributed to the combined use of selegiline and other drugs have been reported. However, because the data base of documented clinical experience is limited, the level of reassurance provided by this lack of adverse reporting is uncertain."

The loss of selectivity at doses higher than 10 mg per day raises concerns that drug interactions may occur. Further, the agency does not find the lack of adverse reaction reports for selegiline to be reassuring. Selegiline is a recently approved new drug with limited marketing experience. In view of the potentially fatal outcome of an interaction between MAOI drugs and sympathomimetic amines and the limited data base for selegiline, the agency believes that the potential for interaction should be assumed and that prudence is the wisest course until more information is available. Therefore, the agency is including the words "Parkinson's disease" in the precaution statement.

References

(1) Approved labeling for selegiline hydrochloride (Somerset), in OTC Vol. 04BFMA2, Docket No. 91N–0323, Dockets Management Branch.

(2) Blackwell, B., "Monoamine Oxidase Inhibitor Interactions with Other Drugs," Journal of Clinical Psychopharmacology, 11:5–59, 1991.

III. The Agency's Final Conclusions on the Drug Interaction Precaution Statement

The agency concludes that a revised drug interaction precaution statement for OTC bronchodilator drug products is needed to better inform consumers of the potential interaction with various MAOI drugs. To be fully informative to consumers, this statement should contain both the technical and abbreviated terms for monoamine oxidase inhibitor (MAOI), should include likely medical uses for the MAOI drugs, should mention a 2-week washout period, and should include the statement to consult a health professional if uncertainty about the MAOI drug exists. Accordingly, the agency is amending § 341.76(c)(4) to read: "*Drug Interaction Precaution.* Do not use this product if you are now taking a prescription monoamine oxidase inhibitor (MAOI) (certain drugs for depression, psychiatric or emotional conditions, or Parkinson's disease), or for 2 weeks after stopping the MAOI drug. If you are uncertain whether your prescription drug contains an MAOI, consult a health professional before taking this product."

IV. Economic Impact

No comments were received in response to the agency's request for specific comment on the economic impact of this rulemaking. The agency has examined the economic consequences of this final rule in conjunction with other rules resulting from the OTC drug review. In a notice published in the **Federal Register** of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that no one of these rules, including this final rule for OTC bronchodilator drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (Pub. L. 96–354). That assessment included a discretionary regulatory flexibility analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking for OTC bronchodilator drug products is not expected to pose such an impact on small businesses. This final rule imposes one-time costs associated with changing product labels to include the MAOI-bronchodilator interaction precaution statement. In the proposed rule (57 FR 27662 at 27663), the agency encouraged manufacturers of OTC bronchodilator drug products to voluntarily implement this labeling as of the date of publication of the proposal, subject to the possibility that FDA may change the wording of the drug interaction precaution as a result of comments filed in response to the proposal. Because the agency encouraged voluntary implementation of the revised drug interaction precaution statement, manufacturers were advised that they would be given ample time after publication of the final rule to use up any labeling implemented in conformance with the proposal. Any manufacturer that voluntarily implemented labeling in conformance with the proposal and that now needs more than 12 months to use up that labeling should contact the Division of Drug Labeling Compliance (HFD–310), Office of Compliance, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Therefore, the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

V. Environmental Impact

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 341

Labeling, Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 341 is amended as follows:

PART 341—COLD, COUGH, ALLERGY, BRONCHODILATOR, AND ANTIASTHMATIC DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

1. The authority citation for 21 CFR part 341 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371).

2. Section 341.76 is amended by revising paragraph (c)(4) to read as follows:

§ 341.76 Labeling of bronchodilator drug products.

* * * * *

(c) * * *

(4) "*Drug interaction precaution.* Do not use this product if you are now taking a prescription monoamine oxidase inhibitor (MAOI) (certain drugs for depression, psychiatric or emotional conditions, or Parkinson's disease), or for 2 weeks after stopping the MAOI drug. If you are uncertain whether your prescription drug contains an MAOI, consult a health professional before taking this product."

* * * * *

Dated: August 17, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–25675 Filed 10–19–93; 8:45 am]

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Wednesday
October 20, 1993

Part VIII

Department of Housing and Urban Development

Office of the Secretary

24 CFR Parts 203 and 291
Single Family Property Disposition Program; Interim Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 203 and 291

[Docket No. R–93–1670; FR–3253–I–01]

RIN 2502–AF75

Single Family Property Disposition Program

AGENCY: Office of the Secretary, HUD.

ACTION: Interim rule.

SUMMARY: This rule amends the regulations at 24 CFR part 291 governing the Single Family Property Disposition program to change the existing policy on the maximum closing costs HUD will pay, discounts off list price in direct sales to governmental entities and non-profit organizations, extensions to the contract closing time, return of earnest money deposits, and priority to owner-occupant purchasers. The rule announces the availability of purchase money mortgages for nonprofit organizations and governmental entities purchasing properties for use in programs that promote affordable homeownership. The rule also includes changes to the occupied conveyance regulations in 24 CFR part 203 to allow conveyance of occupied property where the high cost of eviction or relocation expenses makes eviction impractical.

DATES: Effective date: November 19, 1993.

Comment due date: December 20, 1993.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Office of the General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m. Eastern Time) at the above address.

FOR FURTHER INFORMATION CONTACT: Robert Falkenstein, Jr., Acting Director, Single Family Property Disposition, room 9172, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410–0500; telephone (202) 708–0740; TDD for hearing- and speech-impaired (202) 708–4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The changes in this rule do not affect the information collection requirements for the Single Family Property Disposition program, which were previously approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act and assigned OMB control numbers 2502–0306.

I. Background

Title II of the National Housing Act (the Act) authorizes HUD to insure mortgages for single family residences through the Federal Housing Administration (FHA) single family mortgage insurance program. The disposition program for single family properties, acquired by HUD in exchange for payment of insurance claims, is authorized by section 204(g) of the Act. On September 16, 1991 (56 FR 46964), the Department published a final rule describing the standards and procedures under which HUD operates the disposition program. The rule is codified at 24 CFR part 291.

Today's rule amends certain provisions of part 291 to allow for greater flexibility in fluctuating market situations and to provide greater opportunities for affordable housing to families and to State and local governments or nonprofit organizations serving low- and moderate-income families. The Department believes these amendments are necessary to implement its policy of revitalizing neighborhoods and communities. In a statement on April 28, 1993, before the Senate Committee on Banking, Housing and Urban Affairs on the anniversary of the Los Angeles riots, HUD Secretary Cisneros emphasized the need to find ways to bring economic lift to poor urban areas and to build a spirit of community within cities across racial and ethnic lines. The Secretary stated that many urban areas are "communities in peril," and that it is time to "pay attention now or pay for problems later in our country's life." The Single Family Property Disposition program is being amended to help make affordable housing a reality for more families everywhere and to help revitalize "communities in peril."

In accordance with its own regulations on rulemaking in 24 CFR part 10, the Department generally publishes a rule for public comment before issuing a rule for effect, unless to do so would be impracticable, unnecessary, or contrary to the public interest. This rule is being published for effect, with the public invited to submit comments that will be taken into consideration in developing a final rule, because the Department believes that delaying implementation of these policies in the urban areas targeted would be contrary to the public interest.

II. Amendments

Single Family Property Disposition (24 CFR Part 291)

The purpose of the property disposition program, which is set out at 24 CFR 291.1(a), is being changed to place greater emphasis on homeownership and improvement of neighborhoods. The amendment provides that the primary objective of the program is to reduce the inventory of acquired properties in a manner that expands homeownership opportunities, strengthens neighborhoods and communities, and ensures a maximum return to the mortgage insurance fund.

This rule contains several amendments that pertain to "revitalization areas," which the rule defines in § 291.5 as urban neighborhoods that are targeted by a city for coordinating affordable housing programs and enhanced supportive services, and where a significant number of HUD-owned properties have been in inventory at least six months. Alternatively, HUD may also target areas as revitalization areas where it has a significant concentration of properties that have been in its inventory for at least six months, whether or not the area has been targeted by a city.

Section 291.100(d) of the rule provides that, in a revitalization area, purchase money mortgages (PMMs) will be available for 85 percent of the purchase price, at current market interest rates, for a period not to exceed five years. The Department will take back PMMs from direct sale purchasers (*i.e.*, governmental entities and private nonprofit organizations) that meet FHA mortgage credit standards and that purchase properties for ultimate resale to owner-occupant purchasers at or below 115 percent of median income.

The Department recognizes that in promulgating the final rule for the Single Family Disposition Program, public commenters urged the use of PMMs as a financing tool for sales to individuals. The Department, while sympathetic to the difficulty of low-income purchasers in obtaining financing, noted in the preamble to the final rule (56 FR 46964, September 16, 1991) that it had determined that "the staff and monetary costs associated with originating and servicing PMMs, combined with the projected losses to the mortgage insurance funds resulting from anticipated high PMM default and foreclosure rates, make the issuance of PMMs prohibitive." This determination is not applicable to this interim rule in

which PMMs will be permitted for purchases by governmental and nonprofit entities. The governmental and nonprofit entities must meet FHA credit standards, and the term of the mortgage will be, as discussed above, for no more than five years, rather than the usual thirty-year term. The Department anticipates that the PMMs will be paid in full in less than five years when the governmental or nonprofit entity sells the property to a qualified individual purchaser. With these safeguards in place, the Department will not encounter the costs of continued servicing, defaults, and foreclosures that it did when it used PMMs to sell acquired properties to individuals. Thus, the Department has determined that the risks to the insurance funds, and the ancillary costs, will be negligible.

Section 291.105(a) is being amended to provide that owner-occupant purchasers will be given a priority in the competitive bid sales method. (The definition of owner-occupant purchaser is being amended to limit it to purchasers who intend to occupy the property as their primary residence. Governmental entities and private nonprofit organizations that purchase properties for use in affordable housing programs are included in a new category of purchaser—direct sale purchaser—added in this rule.) In revitalization areas, the priority for owner-occupant purchasers will be available for up to 30 days and only for properties offered with FHA mortgage insurance. In all other areas, the priority will be available for all properties for a period of time to be set by the Field Office, depending on local circumstances.

The existing rule at 24 CFR 291.105(b) provides that HUD will pay the financing and closing costs in an amount requested by the purchaser up to 6 percent of the purchase price. This rule removes the 6 percent limitation, and provides that the Secretary will determine the maximum limit appropriate for the area. HUD's experience with the program has shown that the amount of closing costs a seller pays fluctuates with market conditions and by geographic area. The removal of the limitation will allow for more flexibility to adjust the amount according to local circumstances. No change is being made with regard to brokers' fees.

The rule also amends § 291.110(a) to allow the discount on direct sale purchases to be determined by the Secretary as appropriate, but not less than 10 percent. The amount of the discount may vary, depending on the location of the property or the number of properties purchased in a single transaction. This change will help organizations who purchase properties for use in homeownership programs, as well as for affordable rental housing and housing for the homeless. A similar change is being made to § 291.110(b) with regard to direct sales to displaced persons who will occupy the property.

Section 291.110(a) is also being amended to set out the procedure by which potential purchasers under the direct sales programs are notified of eligible properties.

The rule also amends § 291.110 to allow for a direct sale to an individual or other entity not otherwise specified in § 291.110. From time to time, situations have arisen in which the Department has deemed it desirable to sell a property directly to an individual (*e.g.*, when a sale failed due to the fault of HUD) but, because the individual did not meet the criteria set out in § 291.110 for direct sales, was unable to do so. Therefore, the rule will provide that authority if a finding is made, in writing, that such a sale would further the goals of the National Housing Act and would be in the best interests of the Secretary.

Section 291.130, Closing, is being amended with regard to extensions of scheduled closings of sales. Under § 291.130(b), 15-day extensions are granted where a scheduled closing cannot be met for reasons beyond the control of the purchaser and HUD has reason to believe that the sale will close within a reasonable time. The rule currently provides that a request for an extension must be accompanied by a non-refundable fee in an amount from $10 to $25 a day. Experience has shown that extensions are often necessary through no fault of the purchaser, and that the policy in many instances works an unnecessary hardship on owner-occupant buyers. Therefore, to provide a measure of relief to its purchasers, while at the same time not unduly penalizing HUD for the delay (since it is the buyer's responsibility to select the funding lender), § 291.130(b) is being amended to permit the initial 15-day extension at no cost to owner-occupant purchasers where documentation indicates that (1) proper and timely loan application was made, (2) the delay is not the fault of the buyer, and (3) mortgage approval is imminent. In addition, this section is being amended to allow extensions at no cost, at any time and to any purchaser, where the delay is the fault of HUD or a direct endorsement lender. Delays of this nature are most commonly associated with the closing of sales involving Section 203(k) financing.

Finally, § 291.135, Forfeiture of earnest money deposits, is being amended with regard to return of earnest money deposits to owner-occupants and direct sale purchasers. The current rule provides that, in the case of insured sales, 100 percent of the earnest money deposit will be returned to an owner-occupant purchaser where HUD (or a Direct Endorsement lender using HUD guidelines) determines that the purchaser is not an acceptable borrower. The amendment provides that, in the case of an uninsured sale, 100 percent of the earnest money deposit made by an owner-occupant purchaser will be returned where the purchaser is pre-approved for mortgage financing in an appropriate amount by a recognized mortgage lender and, despite good faith efforts, is unable to obtain mortgage financing. Such situations may arise where, even though the purchaser has been approved for a loan, the lender will not accept a mortgage on the particular property being purchased. For uninsured sales, where an owner-occupant purchaser has not been preapproved and despite good faith efforts cannot obtain mortgage financing, 50 percent of the earnest money deposit would be returned. For purposes of this rule, "pre-approved" means a commitment has been obtained from a recognized mortgage lender for mortgage financing in a specified dollar amount sufficient to purchase the property. (This definition is being added to § 291.5.)

Occupied Conveyance (24 CFR Part 203)

One of the situations described in 24 CFR 203.670 when HUD will accept conveyance of occupied property for the Single Family Property Disposition program is when it is in the Secretary's interest, the property is habitable, and the remaining occupants meet certain eligibility criteria (§ 203.670(b)(3)). The criteria for determining the Secretary's interest are described in 24 CFR 203.671 as:

(1) Occupancy of the property is essential to protect it from vandalism from time of acquisition to preparation for sale;

(2) The average time in inventory for HUD's unsold inventory in the residential area in which the property is located exceeds six months; and

(3) With respect to multi-unit properties, the marketability of the property would be improved by retaining occupancy of one or more units.

Under the current rule, the Department has no authority to accept a property occupied to avoid the payment of excessive eviction or relocation

expenses required by a local government. These are not frequent occurrences, but these costs have to be paid by the mortgagee and reimbursed by the Department in the claim for insurance benefits. The Department believes that, in the interest of cost-effectiveness, the rule should allow for the acceptance of an occupied property, without requiring that all other eligibility criteria be met by the remaining occupants, where a state or local law requires the payment of high eviction costs or excessive relocation expenses as part of the eviction process. This amendment gives the Department the flexibility necessary to determine whether it is more advantageous to accept conveyance of the property occupied rather than incur the excessive costs that would be generated by an eviction. The occupied conveyance rule at 24 CFR 203.670 and 203.671 is being amended to implement this policy.

A technical correction is also being made to the occupied conveyance regulations at §§ 203.675(b)(4) and 203.676 to conform with an earlier amendment to the rule published on September 16, 1991 (56 FR 46964). That amendment added long-term or permanent illness or injury of an occupant, in addition to temporary illness or injury, as a criterion for accepting conveyance of an occupied property. Sections 203.675(b)(4) and 203.676 are being amended by this rule to conform those sections to the September 16, 1991 amendment.

II. Other Matters

Paperwork Reduction Act

The changes in this rule do not affect the information collection requirements for the Single Family Property Disposition program previously approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act and assigned OMB control numbers 2502–0306.

Executive Order 12291, Federal Regulation

This rule does not constitute a "major rule" as that term is defined in section 1(d) of the Executive Order on Federal Regulation issued by President Ronald Reagan on February 17, 1981. An analysis of the rule indicates that it will not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs of prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

National Environmental Policy Act

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(c) of the National Environmental Policy Act of 1969. The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street SW., Washington, DC 20410.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. The rule involves procedures for the sale of HUD-acquired single family homes, and will not affect the relationship between the Federal Government and State and local governments. Therefore, it is not subject to review under the Order.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule will not have a significant impact on the family formation, maintenance, and general well-being, and thus is not subject to review under the Order. The rule governs the procedures under which the Department sells acquired single family property. Any effect on the family would be indirect and insignificant.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that the rule will not have a significant economic impact on a substantial number of small entities. The rule governs the procedures under which the Department sells acquired single family property.

Semiannual Agenda of Regulations

This rule was listed as item number 1460 in the Department's Semiannual Agenda of Regulations published at 58 FR 24382, 24413 on April 26, 1993, under Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects

23 CFR Part 203

Hawaiian Natives, Home improvement, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 291

Community facilities, Homeless, Surplus government property, Low and moderate income housing, Mortgages, Lead poisoning, Conflict of interests, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, title 24 of the Code of Federal Regulations is amended to read as follows:

PART 203—SINGLE FAMILY MORTGAGE INSURANCE

1. The authority citation for part 203 continues to read as follows:

Authority: 12 U.S.C. 1709, 1710, 1715b, and 1715u; 42 U.S.C. 3535(d).

2. Section 203.670 is amended by revising paragraph (b)(3) to read as follows:

§ 203.670 Conveyance of occupied property.

* * * * *

(b) * * *

(3) It is in the Secretary's interest to accept conveyance of the property occupied under § 203.671, the property is habitable as defined in § 203.673, and, except for conveyances under § 203.671(d), each occupant who intends to remain in the property after the conveyance meets the eligibility criteria in § 203.674(b).

* * * * *

3. Section 203.671 is amended by adding paragraph (d) as follows:

§ 203.671 Criteria for determining the Secretary's interest.

* * * * *

(d) The high cost of eviction or relocation expenses makes eviction impractical.

§ 203.675 [Amended]

4. Section 203.675(b)(4) is amended by removing the word "temporary" from the first sentence.

5. Section 203.676 is amended by removing the word "temporary" from the second sentence.

PART 291—DISPOSITION OF HUD-ACQUIRED SINGLE FAMILY PROPERTY

6. The authority citation for part 291 is revised to read as follows:

Authority: 12 U.S.C. 1709 and 1715(b); 42 U.S.C. 1441, 1551a, and 3535(d).

7. Section 291.1 is amended by revising paragraph (a) to read as follows:

§ 291.1 Purpose and scope.

(a) *Purpose.* (1) This part governs the disposition of one-to-four family properties that are acquired by HUD or are otherwise in HUD's custody. Detailed policies and procedures that must be followed in specific areas are issued by each HUD field office.

(2) The purpose of the property disposition program is to reduce the inventory of acquired properties in a manner that expands homeownership opportunities, strengthens neighborhoods and communities, and ensures a maximum return to the mortgage insurance fund.

* * * * *

8. Section 291.5 is amended by revising the definition of "Owner-occupant purchaser" and by adding definitions for "Direct sale purchaser", "Pre-approved", "Purchase money mortgage", and "Revitalization area", to read as follows:

§ 291.5 Definitions.

* * * * *

Direct sale purchaser means a State, governmental entity, tribe, or agency thereof; a private nonprofit organization as defined in § 291.405 of this part; tenants in occupancy who are offered the right of first refusal to purchase property under § 291.100(a)(4) of this part; displaced persons as described in § 291.110(b) of this part; and other individuals or entities as described in § 291.110(g) of this part. For purposes of this part, a State means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States. Governmental entities include those with general governmental powers (*e.g.*, a city or county), as well as those with limited or special powers (*e.g.*, public housing agencies).

* * * * *

Owner-occupant purchaser means a purchaser who intends to use the property as his or her principal residence.

Pre-approved means a commitment has been obtained from a recognized mortgage lender for mortgage financing in a specified dollar amount sufficient to purchase the property.

Purchase money mortgage, or *PMM* means a note secured by a mortgage or trust deed given by a buyer, as mortgagor, to the seller, as mortgagee, as part of the purchase price of the real estate.

Revitalization area means an urban neighborhood that is targeted by a city for coordinating affordable housing programs and enhanced supportive services, and where a significant number of HUD-owned properties have been in inventory at least six months. Alternatively, HUD may target urban areas as revitalization areas where it has a significant concentration of properties that have been in inventory at least six months, whether or not targeted by a city.

* * * * *

9. In § 291.100, paragraphs (a)(5), (c), and (d) are revised to read as follows:

§ 291.100 General policy.

(a) * * *

(5) In accordance with § 291.410 of this part, eligible properties may be offered to providers of housing for the homeless before being offered for sale to the general public.

* * * * *

(c) *Method of sale.* (1) Properties are sold on an "as-is" basis, without repairs or warranties. The principal method of sale is the competitive sales procedure, as described in § 291.105 of this part. Where appropriate, the Secretary may utilize any of the other sales procedures described in § 291.110 of this part.

(2) Properties may be sold under the following programs:

(i) *Insured.* A property that HUD believes meets the intent of the Minimum Property Standards (MPS) for existing dwellings (*i.e.*, structurally sound, free of roof leaks, with operable mechanical system) will be offered for sale in "as-is" condition with mortgage insurance available, as described in § 291.115 of this part.

(ii) *Insured with repair escrow.* A property that requires no more than $5,000 for repairs to meet the intent of the MPS, as determined by the Secretary, will be offered for sale in "as-is" condition with mortgage insurance available, provided the mortgagor establishes a cash escrow to ensure the completion of the required repairs, as described in § 291.120.

(iii) *Uninsured.* A property that fails to qualify under either paragraph (c)(2)(i) or (ii) of this section will be offered for sale in "as-is" condition without mortgage insurance available, as described in § 291.125.

(d) *Financing.* (1) Except as provided in paragraph (d)(2) of this section, the purchaser is entirely responsible for obtaining financing for purchasing a property.

(2) In revitalization areas targeted either by HUD or by a city, HUD will take back purchase money mortgages (PMMs) on property purchased by governmental entity or private nonprofit organization direct sale purchasers who purchase property for ultimate resale to owner-occupant purchasers with incomes at or below 115 percent of the area median income. PMMs will be available for 85 percent of the purchase price, at market rate interest, for a period not to exceed five years. Mortgagors must meet FHA mortgage credit standards.

* * * * *

10. In § 291.105, paragraphs (a), (b)(1)(i) and the first sentence of paragraph (c) are revised to read as follows:

§ 291.105 Competitive sales procedure.

(a) *General.* (1) Properties are sold to the general public on a competitive bid basis through local real estate brokers. If a property fails to generate an acceptable bid or offer during the bidding period, it will remain on the market for an extended listing period, as described in paragraph (f) of this section.

(2) In areas designated as revitalization areas, priority will be given to owner-occupant purchasers for properties offered with FHA mortgage insurance for a period of up to 30 days. In all other areas, priority will be given to owner-occupant purchasers for a period of time to be set by the local Field Office, depending on circumstances in the areas.

(b) *Net offer.* (1)(i) If requested by the purchaser in the bid, HUD will pay all or a portion of the financing and loan closing costs and the broker's sales commission, not to exceed the percentage of the purchase price determined appropriate by the Secretary for the area. In no event will the amount for broker's sales commission exceed 6 percent of the purchase price, except for cash bonuses as described in paragraph (b)(1)(ii) of this section. * * *

(c) *Acceptable bid.* HUD will accept the bid producing the greatest acceptable net return to HUD and otherwise meeting the terms of HUD's offering of the property, with priority given to owner-occupant purchasers as described in paragraph (a)(2) of this section. * * *

* * * * *

11. Section 291.110 is amended by revising paragraphs (a) and (b)(1), and

by adding paragraph (g), to read as follows:

§ 291.110 Other sales procedures.

(a) *Direct sales to governmental entities and private nonprofit organizations.* (1) State and local governments, public agencies, and qualified private nonprofit organizations may purchase properties on a direct sale basis, at a discount off the list price determined by the Secretary to be appropriate, but not less than 10 percent, for use in HUD and local housing or homeless programs. The amount of the discount may vary, depending on the area or the number of properties purchased in a single transaction.

(2) (i) Direct sale purchasers, except tenants in occupancy and displacees, under paragraph (a)(1) of this section must designate geographical areas of interest, by ZIP code, to appropriate HUD Field Offices. Upon request, after properties have been offered for sale to owner-occupant purchasers and before they are listed for sale to the general public, Field Offices will notify direct sale purchasers in writing when eligible properties become available in the areas designated by the purchaser. Field Offices will coordinate the dissemination of the information to ensure that where more than one purchaser designate a specific area, those purchasers receive the list of properties at the same time, based on intervals agreed upon between HUD and the purchasers. Properties will be sold on a first come-first served basis.

(ii) Direct sale purchasers must notify HUD of preliminary interest in specific properties within five days of the notification of available properties (where notification is by mail, the five days will begin to run five days after mailing). Those properties in which purchasers express an interest will be held off the market for a ten-day consideration and inspection period. Other properties on the list will continue to be processed for public sale. HUD may limit the number of properties held off the market for a purchaser at any one time, based upon the purchaser's financial capacity as determined by HUD and upon past performance in HUD programs. At the end of the ten-day consideration and inspection period, properties in which no direct sale purchaser has expressed a specific intent to purchase will be offered for sale to the general public. Properties in which a direct sale purchaser expressed an intent to purchase, during the ten-day period, will continue to be held off the market pending receipt of the sales contract. If a sales contract is not received within a time period of up to ten days, as determined by HUD, following expiration of the ten-day consideration and inspection period, and no other direct sale purchaser has expressed an interest, then the property will be offered for sale to the general public.

(b) *Direct sales to displaced persons.* (1) At the discretion of the field office manager, properties eligible for insured financing are offered for direct sale, at a discount off the list price determined by the Secretary to be appropriate, but not less than 10 percent, to displaced persons who will occupy the properties. Properties offered will be only those in the general area in which the displacement is occurring.

* * * * *

(g) *Direct sales to other individuals or entities.* A direct sale may be made to an individual or entity that does not meet any of the categories specified in this section, if a finding is made by the Assistant Secretary for Housing-Federal Housing Commissioner or his or her designee in writing that such a sale would further the goals of the National Housing Act and would be in the best interests of the Secretary.

12. In § 291.130, paragraph (b)(2) is revised and paragraph (b)(3) is added to read as follows:

§ 291.130 Closing.

* * * * *

(b) *Extensions.* * * *

(2) A request for an extension must be in writing, accompanied by the non-refundable fee in an amount not less than $10 a day or more than $25 a day, except as provided in paragraph (b)(3) of this section. The amount charged by a field office depends on circumstances in the area, such as the average holding costs to HUD, the average sales price of properties, and the number of sales that fail to close. Extensions will be granted in 15-day increments only. If a closing occurs in fewer than 15 days, the purchaser credited for any unused portion of the extension fee.

(3) The initial 15-day extension will be provided to owner-occupant purchasers at no cost if documentation is provided indicating that proper and timely loan application was made, that the delayed closing is not the fault of the buyer, and that mortgage approval is imminent. An extension will be provided at any time and to any purchaser at no cost where the delay is the fault of HUD or a direct endorsement lender. In the case of a Section 203(k) loan, an extension of up to 30 days will be granted at no cost where documentation indicates the buyer is not the cause for the delay.

13. Section 291.135 is amended by redesignating paragraph (c)(1)(v) as paragraph (c)(1)(vi), by adding a new paragraph (c)(1)(v), by revising paragraph (c)(2), and by adding a new paragraph (d), to read as follows:

§ 291.135 Forfeiture of earnest money deposits.

* * * * *

(c) * * *

(1) * * *

(v) In the case of an uninsured sale, and the purchaser was pre-approved for mortgage financing in an appropriate amount by a recognized mortgage lender, where the purchaser is unable, despite good faith efforts, to obtain mortgage financing; or

(vi) * * *

(2) In those instances where the purchaser was not pre-approved for mortgage financing by a recognized mortgage lender, and despite good faith efforts by the purchaser there is an inability to obtain a mortgage loan from a recognized mortgage lender, 50 percent of the earnest money deposit will be returned.

(d) *Direct sale purchasers except tenants in occupancy or displacees.* (1) The entire earnest money deposit will be returned to a direct sale purchaser, except tenants in occupancy or displacees, who fails to close where, since the contract of sale was signed:

(i) In the case of an insured sale, HUD (or a Direct Endorsement lender using HUD guidelines) determines that the purchaser is not an acceptable borrower; or

(ii) For other good cause, as determined by the field office.

(2) Direct sale purchaser who are tenants in occupancy or displacees are subject to the earnest money forfeiture rules that apply to owner-occupant purchasers, as described in paragraph (c) of this section.

Dated: September 24, 1993.

Nicholas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 93–25629 Filed 10–19–93; 8:45 am]

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Wednesday
October 20, 1993

Part IX

Department of Transportation

Federal Transit Administration

Recommended Fire Safety Practices for Transit Bus and Van Materials Selection; Notice

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket 90–A]

Recommended Fire Safety Practices for Transit Bus and Van Materials Selection

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Transit Administration (FTA), after receiving comments on two previously published Notices, is revising its Recommended Fire Safety Practices for Transit Bus and Van Materials Selection guidelines. This Notice describes FTA's recommended procedure for testing the ability of foam materials to retain fire retardant chemicals after they have been exposed to water, discusses FTA's position on smoke emission performance criteria for seat cushions, and corrects a typographical error. These practices are recommendations rather than requirements and are not binding on FTA's grantees, but do reflect FTA's interest in promoting safety issues.

DATES: Effective date: October 20, 1993.

FOR FURTHER INFORMATION CONTACT: For program issues: Judy Meade, Acting Deputy Director, or Roy Field, Transit Safety Specialist, both of the Office of Safety and Security, (202) 366–2896 (telephone) or (202) 366–3765 (fax).

SUPPLEMENTARY INFORMATION:

I. Overview

A. Introduction

In this Notice FTA makes one change in its "Recommendations for Testing the Flammability and Smoke Emission Characteristics of Transit Bus and Van Materials" (Recommended Practices), which are contained in Table 1 of this notice, and which previously have been published in the **Federal Register**. Specifically, FTA recommends the use of FED-STD–191A Test Method 5830 (191A) to test the ability of foam materials to retain fire retardant chemicals if, in the opinion of the grantee based on its own unique operating conditions, the foam materials will be exposed to water. This change is located in Note 3 to Table 1. FTA makes no other change in its Recommended Practices.

In addition, we discuss FTA's position concerning smoke emission performance criteria and toxicity requirements, and we clarify a typographical error that appeared in the Notice published on January 13, 1992.

B. Organization of the Notice

This Notice consists of five sections of text, the first four of which discuss, generally, the development of procedures used to test the flammability and smoke emission characteristics of certain materials, the issues raised in two previously published related Notices, the decisions made by the FTA in this Notice, and comments addressed to the January 13, 1992, Notice. Section V, Recommended Practices, consists of subsections entitled "Scope," "Application," and "Recommended Test Procedures and Performance Criteria," which together comprise FTA's "Recommended Practices for Testing the Flammability and Smoke Emission Characteristics of Transit Bus and Van Materials." The "Scope" subsection explains the reason for these recommendations, "Application" indicates the types of vehicles covered by the recommendations, and "Recommended Test Procedures and Performance Criteria" provides general directions for testing certain materials.

The most important part of this Notice, however, is contained in Table 1 and in the Notes following it. Table 1 contains the actual recommended test procedures for certain components of buses and vans, namely, seats, panels, floors, and insulating materials. (See Table 1). The Notes, labelled 1 through 9, modify or explain those specific testing procedures. This Notice concerns Note 3 in particular.

A list of defined terms and references also follows Table 1.

II. Background

A. The Test Procedures

FTA's Recommended Practices for transit bus and van materials are based on another set of FTA Recommended Practices, "Recommended Fire Safety Practices for Rail Transit Materials Selection" published in the **Federal Register** on August 14, 1984, at 49 FR 32482. Neither set of Recommended Practices is regulatory in nature. Rather, they are recommendations containing voluntary testing procedures (see Table 1 and accompanying Notes), which are intended to be used to assess the fire risk of certain materials. The testing procedures are small-scale laboratory tests designed by organizations such as the American Society for Testing Materials (ASTM) and the Federal Aviation Administration (FAA), and are used to determine how quickly certain materials will burn and the amount of smoke density the fire will produce. These laboratory tests do not duplicate actual fire conditions, but nevertheless have been proven to result in the selection of materials that reduce the threat of fire, thus reducing injuries and property damage resulting from fires. Similar guidelines have been published by the Federal Railroad Administration (FRA) for railroad passenger cars and by the National Fire Protection Association (NFPA) in its 130 Standard for Fixed Guideway Transit Systems.

B. Prior Notices

This Notice is the third that FTA has published about its Recommended Practices for bus and van materials, and responds to an issue that was raised in both of the previous Notices. In the first Notice, published in the **Federal Register** on July 2, 1990, at 55 FR 27402, (first Notice), FTA asked, in general, whether FTA's Recommended Practices for transit buses and vans should be modified. Several commenters suggested that we change the particular recommended procedure used to test whether water will dilute fire retardant chemicals from foam cushions. In response to these comments, in the Notice published in the **Federal Register** on January 13, 1992, at 57 FR 1360 (second Notice), FTA changed that particular test procedure—at Note 3 to Table 1—by deleting the words "if appropriate". Note 3 then read, "[t]he surface flammability and smoke emission characteristics of seat cushion materials should be demonstrated to be permanent by washing according to FED–STD–191A Textile Test Method 5830." Because 191A is designed for textiles and not for foams, the effect of the revision of Note 3 was to no longer recommend 191A for foam materials. In the second Notice FTA also specifically asked for comment about whether any existing test could be used in lieu of 191A for foam materials. In response to that request, FTA received ten comments in support of 191A and thirteen comments in support of ASTM–D–3574 Standard Methods of Testing Flexible Cellular Materials—Slab, Bonded, and Molded Urethane Foams Section J1 along with either Sections I2 or I3 (ASTM–D–3574). This Notice (third Notice) presents a summary of those comments, as well as FTA's decision concerning the use of a standard test for foam materials.

It is important to note that comments were received on other issues as well and those comments are also discussed and addressed below.

III. Discussion of FTA's Decision on the Recommended Test Procedures for Fire Retardants in Foam Materials

In response to comments received on the second notice, discussed below, FTA has made only one change to its

Recommended Practices, and that change concerns the test which should be used to test foam materials. Specifically, FTA has reinserted the words "if appropriate" into Note 3 of Table 1. Note 3 now reads "[t]he surface flammability and smoke emission characteristics of seat cushion materials should be demonstrated to be permanent by washing, if appropriate, according to FED–STD–191A Textile Test Method 5830." As indicated by the words "if appropriate," FTA now believes that 191A is a relevant selection criterion only for foam materials that, in the opinion of the grantee based on its own unique operating conditions, will be exposed to water.

We note that 191A is recommended by the Federal Railroad Administration and by the National Fire Protection Association in its 130 Fixed Guideway Transit Systems Standard.

The comments on 191A suggest a need for a standard test, representative of the transit environment, to determine the ability of foams to retain fire retardant chemicals if exposed to water. It is our understanding that the ASTM is in the process of developing a suitable test for the retention of fire retardant chemicals in foam materials. Should such a test be developed, the FTA will consider updating its Recommended Practices.

IV. Discussion of Comments

The FTA received thirty-six comments from twenty-nine respondents on the second Notice. Responding organizations included eight materials suppliers, four transit authorities, five seating manufacturers, seven bus manufacturers, a State railroad administration, two consultants, one transit industry organization, and three rubber companies. Although respondents could comment on any issue under the Recommended Practices, most of them focused on Note 3 to Table 1, which concerns the appropriate method for testing the ability of foam materials to retain fire retardant chemicals after they have been exposed to water. This test method is called, generically, a wash test.

A. Wash Test

In general, a wash test is designed to determine whether fire retardant chemicals are permanent, or whether water will dilute them from foam cushions. An important consideration in selecting a particular test is to match the characteristics of the test to the actual operating conditions of a particular transit system. Thirteen respondents recommended the ASTM–D–3574 in the belief that it most appropriately corresponded to the actual transit environment. Ten respondents believed otherwise and recommended 191A as the standard test.

The comments were about evenly divided because the respondents were uncertain about how much water is necessary to replicate transit operating conditions. Respondents who supported ASTM–D–3574, a steam autoclave test, claimed that 191A does not replicate the transit operating environment because they believe it is unnecessarily stringent, requiring a foam material to be soaked continuously for 24 hours in water that is changed every 15 minutes. Because most transit agencies cover their foam materials with nonporous vinyl, these respondents maintained that it is highly unlikely that foams used in transit buses and vans will ever be submerged in water to that extent. On the other hand, these respondents maintained, ASTM–D–3574 does replicate the actual operating conditions of transit buses and vans because it merely exposes the foam to water but does not submerge it in water.

In contrast, respondents who favored 191A maintained that its adoption was in the best interest of safety, precisely because it is so stringent. These respondents stated that transit systems often encounter situations in which cushions are soaked with water, for instance, when a bus window is left open in a rain storm, when a wet passenger sits down, or when a passenger spills a drink on a seat. Given these operating conditions, respondents favoring 191A believed that the steam autoclave test method used in ASTM–D–3574 did not adequately replicate transit operating conditions.

B. Smoke Emission Criteria for Seat Cushions

Seven respondents suggested changing the performance criteria (See Table 1) corresponding to the seat cushion category. These respondents wanted to make the seat cushion smoke emission criteria at four minutes more restrictive, changing it from 200 to 175. FTA decided that this change was unnecessary, because the 200-level criterion is consistent with the National Fire Prevention Association National Standard 130 (NFPA 130) as well as with FTA's Recommended Practices for Rail Transit Vehicles.

C. Toxicity Requirements

Two respondents expressed concern that the FTA was considering adding toxicity requirements to its Recommended Practices, and asked to be kept informed of any FTA activity in that direction. The FTA has taken no action to include toxicity in its Recommended Practices. Instead, FTA requested the National Research Council's (NRC) Transportation Research Board and Materials Advisory Board of the Commission on Engineering and Technical Systems to assist in addressing this issue. In response to this request, the NRC established a Committee on Toxicity Hazards of Materials Used in Rail Transit Vehicles. This committee, consisting of representatives of industry and academia, has reviewed the present state of knowledge concerning combustion toxicity, identifying specific toxicity hazards related to the use of polymeric materials in transit vehicles. A report, "Fires in Mass Transit Vehicles: Guidelines for the Evaluation of Toxic Hazards," was published on June 15, 1991, and reviews the test methods used to evaluate the toxicity of various construction materials for transit vehicles.

D. Carpet Critical Radiant Flux

One respondent noted an error in the Recommended Practices listed in Table 1 as published in the January 13, 1992, **Federal Register** Notice. The Carpet Critical Radiant Flux (C.R.F.) as measured in Test Procedure ASTM–E–648 should be ≥.5 watts per square centimeter, and not ≤.5 watts per square centimeter which appeared in the Notice. (When using ASTM–E–648, the greater the magnitude for C.R.F., the less flammable the material.) This error has been corrected in Table 1 accompanying this Notice.

V. Recommended Practices

A. Scope

The recommended Fire Safety Practices for Transit Bus and Van Materials Selection are directed at improving the selection practices for interior materials procured for new vehicles and the retrofit of existing vehicles. Adoption of these recommended fire safety practices will help to minimize the fire threat in these vehicles and, thereby, reduce the injuries and damage resulting from fires.

B. Application

This document provides recommended fire safety practices for testing the flammability and smoke emission characteristics of materials used in the construction of transit buses and vans. Vehicles considered as transit buses and vans are those used for urban, suburban, rural, and specialized transit services. Types covered by these

recommended practices are revenue (passenger carrying) vehicles that are placed in mass transit service by a recipient of Federal funds from the Federal Transit Administration. Some of the functions in the recommendations may not apply to all vehicles (e.g., not all vehicles have windscreens).

C. Recommended Test Procedures and Performance Criteria

(a) The materials used in transit buses and vans should be tested according to the procedures and performance criteria set forth in Table 1.

(b) Transit agencies should require certification that combustible materials to be used in the construction of vehicles have been tested by a recognized testing laboratory, and that the results are within the recommended limits.

BILLING CODE 4910-57-P

TABLE 1: RECOMMENDATIONS FOR TESTING THE FLAMMABILITY AND SMOKE EMISSION CHARACTERISTICS OF TRANSIT BUS AND VAN MATERIALS

Category	Function of Material	Test Procedure	Performance Criteria
Seating	Cushion[1;2;3;5;9*]	ASTM D-3675	$I_s \leq 25$
		ASTM E-662	$D_s(1.5) \leq 100; D_s(4.0) \leq 200$
	Frame[1;5;8]	ASTM E-162	$I_s \leq 35$
		ASTM E-662	$D_s(1.5) \leq 100; D_s(4.0) \leq 200$
	Shroud[1;5]	ASTM E-162	$I_s \leq 35$
		ASTM E-662	$D_s(1.5) \leq 100; D_s(4.0) \leq 200$
	Upholstery[1;3;4;5]	FAR 25.853 (Vertical)	Flame time $\leq$ 10 seconds; burn length $\leq$ 6 inches
		ASTM E-662	$D_s(4.0) \leq 250$ coated; $D_s(4.0) \leq 100$ uncoated
Panels	Wall[1;5]	ASTM E-162	$I_s \leq 35$
		ASTM E-662	$D_s(1.5) \leq 100; D_s(4.0) \leq 200$
	Ceiling[1;5]	ASTM E-162	$I_s \leq 35$
		ASTM E-662	$D_s(1.5) \leq 100; D_s(4.0) \leq 200$
	Partition[1;5]	ASTM E-162	$I_s \leq 35$
		ASTM E-662	$D_s(1.5) \leq 100; D_s(4.0) \leq 200$
	Windscreen[1;5]	ASTM E-162	$I_s \leq 35$
		ASTM E-662	$D_s(1.5) \leq 100; D_s(4.0) \leq 200$
	HVAC Ducting[1;5]	ASTM E-162	$I_s \leq 35$
		ASTM E-662	$D_s(4.0) \leq 100$
	Light Diffuser[5]	ASTM E-162	$I_s \leq 100$
		ASTM E-662	$D_s(1.5) \leq 100; D_s(4.0) \leq 200$
Flooring	Wheel Well and Structural[6]	ASTM E-119	Pass
	Carpeting[7]	ASTM E-648	C.R.F. ≥ 0.5 w/cm^2
Insulation	Thermal[1;3;5]	ASTM E-162	$I_s \leq 25$
		ASTM E-662	$D_s(4.0) \leq 100$
	Acoustic[1;3;5]	ASTM E-162	$I_s \leq 25$
		ASTM E-662	$D_s(4.0) \leq 100$
Miscellaneous	Firewall[6]	ASTM E-119	Pass
	Exterior Shell[1;5]	ASTM E-162	$I_s \leq 35$
		ASTM E-662	$D_s(1.5) \leq 100; D_s(4.0) \leq 200$

* Refers to Notes on Table 1

BILLING CODE 4910-13-C

1. Materials tested for surface flammability should not exhibit any flaming running, or flaming dripping.

2. The surface flammability and smoke emission characteristics of seat cushion materials should be demonstrated to be permenent after testing according to ASTM D–3574 Dynamic Fatigue Tests I_5 (Procedure B).

3. The surface flammability and smoke emission characteristics of a material should be demonstrated to be permanent by washing, if appropriate, according to FED–STD–191A Textile Test Method 5830.

4. The surface flammability and smoke emission characteristics of a material should be demonstrated to be permanent by dry cleaning, if appropriate, according to ASTM D–2724. Materials that cannot be washed or dry-cleaned should be so labeled, and should meet the applicable performance criteria after being cleaned as recommended by the manufacturer.

5. ASTM E–662 maximum test limits for smoke emission (specific optical density) should be measured in either the flaming or non-flaming mode, depending on which mode generates more smoke.

6. Flooring and Fire Wall assemblies should meet the performance criteria during a nominal test period determined by the transit property. The nominal test period should be twice the maximum expected period of time, under normal circumstances, for a vehicle to come to a complete, safe stop from maximum speed, plus the time necessary to evacuate all passengers from a vehicle to a safe area. The nominal test period should not be less than 15 minutes. Only one specimen need be tested. A proportional reduction may be made in dimensions of the specimen provided that it represents a true test of its ability to perform as a barrier against vehicle fires. Penetrations (ducts, piping, etc.) should be designed against acting as conduits for fire and smoke.

7. Carpeting should be tested in according with ASTM E–648 with its padding, if the padding is used in actual installation.

8. Arm rests, if foamed plastic, are tested as cushions.

9. Testing is performed without upholstery.

Definition of Terms

1. Flame spread index (I_5) as defined in ASTM E–162 is a factor derived from the rate of progress of the flame front (F) and the rate of heat liberation by the material under test (Q), such that $I_5=F_5\times Q$.

2. Specific optical density (D_5) is the optical density measured over unit path length within a chamber of unit volume produced from a specimen of unit surface area, that is irradiated by a heat flux of 2.5 watts/cm² for a specified period of time.

3. Surface flammability denotes the rate at which flames will travel along surfaces.

4. Flaming running denotes continuous flaming material leaving the site of the during material at its installed location.

5. Flaming dripping denotes periodic dripping of flaming material from the site of burning material at its installed location.

Referenced Fire Standards

The source of test procedures listed in Table 1 is as follows:

(1) Leaching Resistance of Cloth, FED–STD–191A–Textile Test Method 5830.

Availability from: General Services Administration Specifications Division, Building 197, Washington, Navy Yard, Washington, DC 20407.

(2) Federal Aviation Administration Vertical Burn Test, FAR–25–853.

Available from: Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

(3) American Society for Testing Materials (ASTM)

(a) Surface Flammability of Materials Using a Radiant Heat Energy Source, ASTM E–162;

(b) Surface Flammability for Flexible Cellular Materials Using a Radiant Heat Energy Source, ASTM D–3675;

(c) Fire Tests of Building Construction and Materials, ASTM E–119;

(d) Specific Optical Density of Smoke Generated by Solid Materials, ASTM E–662;

(e) Bonded and Laminated Apparel Fabrics, ASTM D–2724;

(f) Flexible Cellular Materials—Slab, Bonded, and Molded Urethane Foams, ASTM D–3574.

Available from: American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

In all instances, the most recent issue of the document or the revision in effect at the time of request should be employed in the evaluation of the material specified herein.

Issued: October 14, 1993.

Grace Crunican,

Deputy Administrator.

[FR Doc. 93–25709 Filed 10–19–93; 8:45 am]

BILLING CODE 4910–57–P

federal register

Wednesday
October 20, 1993

Part X

Office of Management and Budget

Budget Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Budget Rescissions and Deferrals

To the Congress of the United States:

In accordance with the Congressional Budget and Impoundment Control Act of 1974, I herewith report eight deferrals of budget authority, totaling $1.2 billion.

These deferrals affect International Security Assistance programs as well as programs of the Agency for International Development and the Departments of Agriculture, Defense, Health and Human Services, and State. The details of these deferrals are contained in the attached report.

William J. Clinton,

The White House, October 13, 1993.

BILLING CODE 3110-01-M

CONTENTS OF SPECIAL MESSAGE
(In thousands of dollars)

DEFERRAL NO.	ITEM	BUDGET AUTHORITY
	Funds Appropriated to the President:	
	International Security Assistance:	
D94-1	Economic support fund	394,175
	Agency for International Development:	
D94-2	Demobilization and transition fund	8,000
	Department of Agriculture:	
	Forest Service:	
D94-3	Cooperative work	461,639
D94-4	Expenses, brush disposal	40,195
D94-5	Timber salvage sales	256,897
	Department of Defense, Civil:	
	Wildlife Conservation, Military Reservations:	
D94-6	Wildlife conservation	1,852
	Department of Health and Human Services:	
	Social Security Administration:	
D94-7	Limitation on administrative expenses	7,317
	Department of State:	
	Bureau for Refugee Programs:	
D94-8	United States emergency refugee and migration fund	27,100
	Total, deferrals	1,197,175

Deferral No. 94-1

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Funds Appropriated to the President	New budget authority..... $ _____
BUREAU: International Security Assistance	Other budgetary resources..... $ 740,470,519
Appropriation title and symbol: Economic support fund 1/ 113/41037 11X1037	Total budgetary resources..... $ 740,470,519
	Amount to be deferred: Part of year..... $ 394,175,203
	Entire year..... $ _____
OMB identification code: 11-1037-0-1-152	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act
Grant program: [X] Yes [ ] No	[ ] Other _____
Type of account or fund: [ ] Annual [X] Multi-year: September 30, 1994 (expiration date) [X] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other _____

Coverage:

Appropriation	Account Symbol	OMB Identification Code	Deferred Amount Reported
Economic support fund.....	11X1037	11-1037-0-1-152	56,083,203
Economic support fund.....	113/41037	11-1037-0-1-152	338,092,000
			394,175,203

JUSTIFICATION: This account provides economic and counternarcotics assistance to selected countries in support of U.S. efforts to promote stability and U.S. security interests in strategic regions of the world. This account also includes contributions to the International Fund for Ireland. This action defers funds pending review and approval of specific loans and grants to eligible countries. This interagency review process will ensure that each approved transaction is consistent with the foreign and financial policies of the United States and will not exceed the limits of available funds. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in FY 1993 (D93-1A).

Deferral No. 94-2

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Funds Appropriated to the President	New budget authority..... $ _____
BUREAU: Agency for International Development	Other budgetary resources..... $ 9,000,000
Appropriation title and symbol: Demobilization and transition fund 1/ 11X1500	Total budgetary resources..... $ 9,000,000
	Amount to be deferred: Part of year..... $ 8,000,000
	Entire year..... $ _____
OMB identification code: 11-1500-0-1-152	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act
Grant program: [ ] Yes [X] No	[ ] Other _____
Type of account or fund: [ ] Annual [ ] Multi-year: _____ (expiration date) [X] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other

JUSTIFICATION: This account was established to facilitate cease-fire monitoring, demobilization, and transition to peace in El Salvador. Funds were transferred into this account pursuant to P.L. 101-513, Section 531(f)(2). These funds are available solely to support costs of demobilization, retraining, relocation, and reemployment in civilian pursuits of former combatants in the conflict in El Salvador. Funds are available for obligation and expenditure only upon notification by the President to the Congress that the Government of El Salvador and representatives of the Farabundo Marti National Liberation Front (FMLN) have reached a permanent settlement of the conflict, including a final agreement on a cease-fire. This is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in FY 1993 (D93-2).

Deferral No. 94-3

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Agriculture	**New budget authority.....** $ 312,534,000 (16 U.S.C. 576b)
BUREAU: Forest Service	**Other budgetary resources.....** $ 424,848,323
Appropriation title and symbol: Cooperative work 1/ 12X8028	**Total budgetary resources.....** $ 737,382,323
	Amount to be deferred: Part of year..... $ _____ Entire year..... $ 461,639,323
OMB identification code: 12-8028-0-7-999	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act [ ] Other _____
Grant program: [ ] Yes [X] No	
Type of account or fund: [ ] Annual [ ] Multi-year: _____ (expiration date) [X] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other

JUSTIFICATION: Under the Cooperative work account, funds are received from States, counties, timber sale operators, individuals, associations, and others. These funds are expended by the Forest Service as authorized by law and the terms of the applicable trust agreements. The work benefits the national forest users, research investigations, reforestation, and administration of private forest lands. Much of the work for which deposits have been made cannot be done, or is not planned to be done, during the same year that the collections are being realized. Examples include areas where timber operators have not completed all of the contract obligations during the year funds are deposited. As a result, restoration efforts cannot begin, and the funds cannot be obligated this year. This deferral action is taken under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in FY 1993 (D93-3).

Deferral No. 94-4

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Agriculture	New budget authority..... $ 24,732,000 (16 U.S.C. 576b)
BUREAU: Forest Service	Other budgetary resources..... $ 58,576,527
Appropriation title and symbol: Expenses, brush disposal 1/ 12X5206	Total budgetary resources..... $ 83,308,527
	Amount to be deferred: Part of year..... $ _____ Entire year..... $ 40,194,527
OMB identification code: 12-9922-0-2-302	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act [ ] Other _____
Grant program: [ ] Yes [X] No	
Type of account or fund: [ ] Annual [ ] Multi-year: _____ (expiration date) [X] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other

JUSTIFICATION: Purchasers of National Forest timber are required to deposit to the Forest Service the estimated cost for disposing of brush and other debris resulting from timber cutting operations by 16 U.S.C. 490. The deposits becoming available in the current year are estimated and the related disposal operations are planned for the following year. Efficient program planning and accomplishment is facilitated by operating a stable program well within the funds available in any one year for this purpose . Much of the brush disposal work for which fees are collected cannot be done in the same year because of weather conditions or because harvesting is not completed. The Forest Service is planning for a stable year-to-year program, which will require $43 million in 1994. The current fiscal year reserve of $40 million is established pursuant to the provisions of the Antideficiency Act (31 U.S.C. 1512) as a reserve for contingencies.

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in FY 1993 (D93-4B).

Deferral No. 94-5

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Agriculture	New budget authority..... $ 170,000,000 (16 U.S.C. 576b)
BUREAU: Forest Service	Other budgetary resources..... $ 224,890,140
Appropriation title and symbol: Timber salvage sales 1/ 12X5204	Total budgetary resources..... $ 394,890,140
	Amount to be deferred: Part of year..... $ _____ Entire year..... $ 256,897,140
OMB identification code: 12-9922-0-2-302	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act [ ] Other _____
Grant program: [ ] Yes [X] No	
Type of account or fund: [ ] Annual [ ] Multi-year: _____ (expiration date) [X] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other

JUSTIFICATION: The Timber salvage sales fund was established under the provisions of the National Forest Management Act of 1976, as amended, to enable immediate harvesting of dead and dying trees when required by market conditions or catastrophes. Purchasers of dead, damaged, insect-infested, or downed timber are required to make monetary deposits into this fund to cover the preparation costs for future salvage sales.

The salvage sale program is a part of the timber sales program and has specific timber volume targets assigned. Receipts to the Timber salvage sales fund are derived from annual salvage sales, net of authorized payments to States. Specific timber volume targets are assigned based on current information on salvage opportunities.

The Forest Service is pursuing a program to achieve maximum salvage volumes while protecting the full range of environmental values. The sale of approximately 1.7 billion board feet of new and existing salvage timber is planned for FY 1994. Funds are deferred pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in FY 1993 (D93-12).

Deferral No. 94-6

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Department of Defense - Civil

BUREAU: Wildlife Conservation
Military Reservations

Appropriation title and symbol:

Wildlife Conservation, Army 1/	21X5095
Wildlife Conservation, Navy 1/	17X5095
Wildlife Conservation, Air Force 1/	57X5095

OMB identification code:
97-5095-0-2-303

Grant program:
☐ Yes ☒ No

Type of account or fund:
☐ Annual
☐ Multi-year: _____ (expiration date)
☒ No-Year

New budget authority (16 U.S.C. 670F)	$	2,525,000
Other budgetay resources	$	2,052,000
Total budgetary resources	$	4,577,000
Amount to be deferred:		
Part of year	$	_____
Entire year	$	1,852,000

Legal authority (in addition to sec. 1013):
☒ Antideficiency Act
☐ Other _____

Type of budget authority:
☒ Appropriation
☐ Contract authority
☐ Other _____

Coverage:

Appropriation	Account Symbol	OMB Identification Code	Deferred Amount Reported
Wildlife Conservation, Army	21X5095	97-5095-0-2-303	$ 1,250,000
Wildlife Conservation, Navy	17X5095	97-5095-0-2-303	$ 275,000
Wildlife Conservation, Air Force	57X5095	97-5095-0-2-303	$ 327,000
			$ 1,852,000

JUSTIFICATION: These are permanent appropriations of receipts generated from hunting and fishing fees in accordance with the purpose of the law – to carry out a program of natural resource conservation. These programs are carried out through cooperative plans agreed upon by the local representatives of the Secretary of Defense, the Secretary of the Interior, and the appropriate agency of the State in which the reservation is located. These funds are being deferred (1) until, pursuant to the authorizing legislation (16 U.S.C. 670f(a)), installations have accumulated funds over a period of time sufficient to fund a major

1/ These accounts were the subject of a similar deferral in FY 1993 (D93-5).

D94-6

project; (2) until individual installations have designed and obtained approval for the project; and (3) because there is a seasonal relationship between the collection of fees and their subsequent expenditure since most of the fees are collected during the winter and spring months. Funds collected in a prior year are deferred in order to be available to finance the program during summer and fall months or in subsequent years. Additional amounts will be apportioned when projects are identified and project approval is obtained. This deferral is made under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

Deferral No. 94-7

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Health and Human Services	**New budget authority**..... $ _____
BUREAU: Social Security Administration	**Other budgetary resources**..... $ 7,366,594
Appropriation title and symbol: Limitation on administrative expenses 1/ 75X8704	**Total budgetary resources**..... $ 7,366,594
	Amount to be deferred: Part of year..... $ _____ Entire year..... $ 7,316,594
OMB identification code: 20-8007-0-7-651	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act [ ] Other _____
Grant program: [ ] Yes [X] No	
Type of account or fund: [ ] Annual [ ] Multi-year: _____ (expiration date) [X] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other _____

JUSTIFICATION: This account provides funding for construction, renovation, and expansion of Social Security Trust Fund owned headquarters and field office buildings. In addition, funds remain available for costs associated with acquisition of land in Colonial Park. In FY 1994, the Social Security Administration has received an approved apportionment for $50,000 to cover potential upward adjustments for obligation in FY 1994. This deferral reflects the actual amount available for construction in FY 1994, less the $50,000 apportioned for potential upward adjustments in FY 1994. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in FY 1993 (D93-6A).

Deferral No. 94-8

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of State	**New budget authority.....** $ _____
BUREAU: Bureau for Refugee Programs	**Other budgetary resources.....** $ 27,100,000
Appropriation title and symbol: United States emergency refugee and migration assistance fund 1/ 11X0040	**Total budgetary resources.....** $ 27,100,000
	Amount to be deferred: **Part of year.....** $ 27,100,000
	Entire year..... $ _____
OMB identification code: 11-0040-0-1-151	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act
Grant program: [ ] Yes [X] No	[ ] Other _____
Type of account or fund: [ ] Annual	**Type of budget authority:** [X] Appropriation
[ ] Multi-year: _____ (expiration date)	[ ] Contract authority
[X] No-Year	[ ] Other _____

JUSTIFICATION: Section 501(a) of the Foreign Relations Authorization Act of 1976 (Public Law 94-141) and Section 414(b) (1) of the Refugee Act of 1980 (Public Law 96-212) amended Section 2(c) of the Migration and Refugee Assistance Act of 1962 (22 U.S.C. 2601) by authorizing a fund to enable the President to provide emergency assistance for unexpected urgent refugee and migration needs.

Executive Order No. 11922 of June 16, 1976, allocated all funds appropriated to the President for the Emergency Fund to the Secretary of State but reserved for the President the determination of assistance to be furnished and the designation of refugees to be assisted by the Fund.

These funds have been deferred pending Presidential decisions required by Executive Order No. 11922. Funds will be released as the President determines assistance to be furnished and designates refugees to be assisted by the Fund. This deferral action is taken under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in FY 1993 (D93-7A).

[FR Doc. 93-25725 Filed 10-19-93; 8:45 am]
BILLING CODE 3110-01-C

federal register

Wednesday
October 20, 1993

Part XI

The President

Proclamation 6615—National Mammography Day, 1993

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Federal Register
Vol. 58, No. 201
Wednesday, October 20, 1993

Presidential Documents

Title 3—

The President

Proclamation 6615 of October 18, 1993

National Mammography Day, 1993

By the President of the United States of America

A Proclamation

Breast cancer is an insidious disease that takes the lives of far too many women. This year alone, 182,000 American women are expected to develop breast cancer, and 46,000 will die of this disease. The risk of death from breast cancer is significantly reduced when the cancer is found in the earlier, more treatable stages of development. If women follow early detection guidelines, we should see a 30-percent drop in the breast cancer death rate. We all must work to ensure that every woman is informed about the serious risk of breast cancer and about the importance of regular breast exams and screening mammography. Most important, these health care procedures must be within the reach of all women.

The high survival rates of women who are diagnosed as having early stage breast cancer have motivated health professionals and other concerned citizens to focus their educational efforts on the importance of early detection. Women can take an active role in the fight against breast cancer through clinical breast exams, breast self-examination, and mammography. In many cases, cancers can be seen on a mammogram up to 2 years before they could be detected by a woman or her physician. The key to that advantage, however, is access to such screening.

I am pleased that third-party reimbursement for mammography is increasing, allowing more women to benefit from this life-saving procedure. Through Medicare, the Department of Health and Human Services covers much of the cost of screening mammography for women 65 and older. Most states and the District of Columbia now have laws requiring private insurers to offer coverage for this procedure. I urge every State government, insurance company, medical facility, and business to develop policies that ensure all women access to appropriate and affordable mammography. Of course, women must take responsibility for availing themselves of screening when it is available.

Likewise, health care professionals must make sure that their patients receive regular breast cancer screening. Businesses must offer screening to their employees in the form of insurance coverage or services offered. Community organizations and individuals not only must spread the word about the importance of early detection, but also must motivate women to get regular screenings.

I am heartened that we have the technology to discover breast cancer in its earliest stages, the means to motivate women to get regular mammograms, and the capability to treat early breast cancer successfully in most cases. These resources can save the lives of countless women. For the sake of American women and their loved ones, we all must strive to see that every woman is educated about early breast cancer detection and that she has access to all needed health care.

In recognition of the crucial role of mammography in the battle against breast cancer, the Congress, by House Joint Resolution 265, has designated October 19, 1993, as "National Mammography Day" and has authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim October 19, 1993, as "National Mammography Day." I invite the Governors of the 50 States and the Commonwealth of Puerto Rico, the Mayor of the District of Columbia, and the appropriate officials of all other jurisdictions under the American flag to issue similar proclamations. I also ask health care professionals, private industry, advocacy groups, community associations, insurance companies, and all other interested organizations and individuals to observe this day by publicly reaffirming our Nation's continuing commitment to the control of breast cancer.

IN WITNESS WHEREOF, I have hereunto set my hand this eighteenth day of October, in the year of our Lord nineteen hundred and ninety-three, and of the Independence of the United States of America the two hundred and eighteenth.

William J. Clinton

[FR Doc. 93-26011
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Editorial note: For the President's remarks on signing this proclamation, see the *Weekly Compilation of Presidential Documents* (vol. 29, no. 42).

Reader Aids

Federal Register

Vol. 58, No. 201

Wednesday, October 20, 1993

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202–523–5227
Public inspection desk	523–5215
Corrections to published documents	523–5237
Document drafting information	523–3187
Machine readable documents	523–3447

Code of Federal Regulations

Index, finding aids & general information	523–5227
Printing schedules	523–3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523–6641
Additional information	523–5230

Presidential Documents

Executive orders and proclamations	523–5230
Public Papers of the Presidents	523–5230
Weekly Compilation of Presidential Documents	523–5230

The United States Government Manual

General information	523–5230

Other Services

Data base and machine readable specifications	523–3447
Guide to Record Retention Requirements	523–3187
Legal staff	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (PLUS)	523–6641
TDD for the hearing impaired	523–5229

ELECTRONIC BULLETIN BOARD

Free Electronic Bulletin Board service for Public Law numbers, and Federal Register finding aids.	202–275–1538, or 275–0920

FEDERAL REGISTER PAGES AND DATES, OCTOBER

51211–51664.....1
51665–51756.....4
51757–51972.....5
51973–52206.....6
52207–52396.....7
52397–52628.....8
52629–52874.....12
52675–53096.....13
53097–53392.....14
53393–53634.....15
53635–53832.....18
53833–54024.....19
54025–54270.....20

CFR PARTS AFFECTED DURING OCTOBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6598.....51559
6599.....51561
6600.....51721
6601.....51723
6602.....52205
6603.....52387
6604.....52389
6605.....52627
6606.....52875
6607.....53097
6608.....53099
6609.....53101
6610.....53103
6611.....53831
6612.....53833
6613.....54025
6614.....54027
6615.....54269

Executive Orders:
July 9, 1910 (Revoked in part by PLO 7004).....53429
3053 (Revoked in part by PLO 7004).....53429
3406 (Revoked in part by PLO 7001).....52683
5327 (Revoked in part by PLO 7002).....52684
8578 (See PLO 7005).....54049
11145 (Continued by EO 12869).....51751
11183 (Continued by EO 12869).....51751
11287 (Continued by EO 12869).....51751
11776 (Continued by EO 12869).....51751
12002 (See EO 12867).....51747
12131 (Continued by EO 12869).....51751
12197 (Continued by EO 12869).....51751
12214 (See EO 12867).....51747
12216 (Continued by EO 12869).....51751
12291 (Revoked by EO 12866).....51735
12345 (Continued by EO 12869).....51751
12367 (Continued by EO 12869).....51751
12382 (Continued by EO 12869).....51751
12498 (Revoked by EO 12866).....51735
12675 (Revoked in part EO 12869).....51751
12687 (Revoked by EO 12869).....51751
12696 (Revoked by EO 12869).....51751
12700 (See EO 12869).....51751
12720 (Revoked by EO 12869).....51751
12730 (See EOs 12867, 12868).....51747, 51749
12735 (Revoked by EO 12867; See EO 12868).....51747, 51749
12774 (Superseded by EO 12869).....51751
12775 (See notice of September 30).....51563
12775 (See EO 12872).....54029
12779 (See EO 12872).....54029
12779 (See notice of September 30).....51563
12792 (Revoked by EO 12869).....51751
12813 (Revoked by EO 12869).....51751
12853 (See notice of September 30).....51563
12853 (See EO 12872).....54029
12866.....51735
12867.....51747
12868.....51749
12869.....51751
12870.....51753
12871.....52201
12872.....54029

Administrative Orders:

Memorandums:
August 19, 1993.....52397
September 30, 1993.....52391
October 1, 1993.....52393

Notices:
September 30, 1993.....51563

Presidential Determinations:
No. 93–39 of September 17, 1993.....51973
No. 93–40 of September 28, 1993.....51975
No. 93–41 of September 29, 1993.....51977
No. 93–42 of September 30, 1993.....52629
No. 93–43 of September 30, 1993.....52207

No. 93–44 of September 30, 1993 52209
No. 93–45 of September 30, 1993 52211
No. 94–1 of October 1, 1993 52213

5 CFR

Ch. XLI 52637
294 52677
532 51211
591 51585
831 52877
838 52877
842 52877
890 52877
2429 53105
2471 53105
2472 53105

Proposed Rules:

2502 51255
2504 51256

7 CFR

2 51211
246 51566
300 52398
301 ..... 51979, 51982, 53105
400 53109
401 53393
906 ..... 52400, 53111
907 ..... 53112, 53114
908 ..... 53112, 53114
910 52401
928 53117
931 53119
967 52402
1002 51982
1004 ..... 52404, 52405
1205 52215
1211 51568
1427 51982
1477 51757
1478 51757
1717 53836
1744 52639
1900 52644
1910 52644
1951 52644
1955 52644
1972 52644
1975 52644

Proposed Rules:

400 53150
1007 53436
1093 53436
1094 53436
1096 53436
1099 53436
1106 53436
1108 53436
1124 53439
1135 53439
1413 ..... 51934, 52696, 52928
1703 52698
1955 53891
1965 53891
3406 53153

9 CFR

201 52894
203 52894
317 52858
381 52858

Proposed Rules:

82 52240
301 54012
312 54012
317 51581
318 51581
322 54012
350 54012
362 54012
381 54012
391 54012

10 CFR

19 52406
30 52406
40 52406
50 52406
60 52406
61 52406
70 52406
72 ..... 51762, 52406
150 52406

Proposed Rules:

20 54071
21 53158
32 53670
73 52035
602 53671

11 CFR

Proposed Rules:

100 52040
107 52700
113 52040
114 52700
9008 52700

12 CFR

265 53393
574 52140
611 52668
613 52668
614 52668
618 51993
620 52668
621 52668
627 52668
933 52808

Proposed Rules:

3 52808
208 52808
325 52808
615 52701
650 53161

13 CFR

101 53120
121 52415

Proposed Rules:

121 ..... 52452, 52929

14 CFR

23 51870
39 ..... 51212, 51215, 51770, 51771, 52220, 52669, 53120, 53635, 53636, 53852, 53853, 53855, 53857, 54031, 54032, 54034
71 ..... 51773, 52140, 52808, 53122, 53123, 53394, 53395, 53859
73 52690
91 ..... 51876, 52140
95 53860
97 ..... 51774, 51776, 53863
1260 53636

Proposed Rules:

23 52702
39 ..... 51583, 51585, 51587, 51589, 51793, 52041, 52240, 52243, 52714, 52717, 52929, 52931, 52932, 53457, 53678, 53893, 54072
71 ..... 51256, 51257, 53164, 53166, 53167, 53459, 54073
91 51938
121 ..... 51938, 51944
125 51938
129 51944
135 ..... 51938, 51944

15 CFR

773 ..... 52166, 52168
778 52166
799 ..... 52166, 52169
806 53124
940 53865

Proposed Rules:

Ch. VII 54074

17 CFR

140 52656
200 ..... 52416, 52891
203 52416
240 ..... 52416, 52891
250 51488
259 51488

Proposed Rules:

240 52934
250 51508

18 CFR

11 54035
35 ..... 51217, 51777
38 51777
141 52420
284 52660
292 51777
293 51777
346 53654
375 51222
381 53654
382 51777
1301 53656

Proposed Rules:

35 51258
284 53895

19 CFR

Proposed Rules:

7 52246
10 52246
148 52246

20 CFR

229 53396
404 52346
416 ..... 52346, 52909
422 52914

Proposed Rules:

416 ..... 52458, 52464, 52943
655 52152

21 CFR

172 52221
176 51994
341 ..... 54232, 54238
522 52222
558 53882
821 52440
864 51570
1308 53404

Proposed Rules:

5 52719
25 52719
101 ..... 53254, 53298
103 52042
136 53305
137 53305
139 53305
170 52719
171 52719
172 53312
174 52719
201 ..... 54224, 54228
352 53460
700 53460
740 53460
812 ..... 52142, 52144, 53245
813 52142
814 52729
1301 52248
1304 53680
1311 52248

23 CFR

650 52663

Proposed Rules:

660 51794

24 CFR

203 54244
291 54244
511 52560
888 51416
905 51952
965 51952

Proposed Rules:

92 52560
135 52534
215 53461
219 52560
221 53461
236 53461
570 52560
572 52560
574 52560
576 52560
583 52560
700 52560
880 53461
881 53461
882 53461
883 53461
884 53461
885 53461
886 53461
888 ..... 52560, 53461
890 ..... 52560, 53461
905 ..... 51261, 52560, 53461
960 53461
961 52560
963 52560
990 51261

25 CFR

Proposed Rules:

294 53026

26 CFR

1 ..... 51571, 53125, 53656, 54037
602 ..... 51571, 54037

Proposed Rules:

1 ..... 53168, 53682, 54075, 54077
602 54077

27 CFR

Proposed Rules:
5.....53682
24.....52222

28 CFR

1.....53658
2.....51779
11.....51223
51.....51225

29 CFR

2610.....53406
2619.....53407
2622.....53406
2644.....53410
2676.....53407

Proposed Rules:
507.....52152
1609.....51266

30 CFR

917.....51225
946.....52666
950.....52232

Proposed Rules:
230.....53470
250.....52731
253.....52059
256.....52731
280.....52731
281.....52731
700.....52374
701.....52374
705.....52374
706.....52374
715.....52374
716.....52374
785.....52374
825.....52374
870.....52374
925.....53683, 53686

31 CFR

580.....54024

Proposed Rules:
103.....51269

32 CFR

40.....51780
80.....51996
86.....52010
185.....52667
199.....51227, 53411
706.....51241
725.....53683

33 CFR

2.....51726
3.....51726
100.....51242, 52440
117.....52441
165.....51243, 52442, 53884
175.....51576
181.....51576
334.....53426, 53427

Proposed Rules:
117.....52466, 53696
126.....51906
127.....51906
187.....51920, 53624

34 CFR

642.....51518
645.....51518
646.....51518
668.....52194
674.....52194
675.....52194
676.....52194
682.....52194
690.....52194

Proposed Rules:
370.....52414
386.....52606
668.....51712

36 CFR

Proposed Rules:
10.....53697

37 CFR

301.....53822
311.....53822

38 CFR

3.....52017, 53659
4.....52017
21.....51780, 51781

Proposed Rules:
3.....51798
17.....51799

40 CFR

52.....52237, 53885, 54041, 54041
61.....51784
81.....53886, 53888
180.....54043
258.....51536, 53136
271.....51244, 54044
272.....52674, 52677, 52679
300.....52018
372.....51785
721.....51672, 51694

Proposed Rules:
Ch. 1.....53688
35.....53688
52.....51591, 51593, 52467, 53693, 54081, 54086, 54089
63.....53478, 53900
68.....54190
80.....51595
122.....53168
123.....53168
131.....53168
132.....53168
180.....54092, 54094
185.....54094
186.....54094
300.....53688

41 CFR

101–17.....52917
101–37.....53660
101–40.....53889
302–6.....53137

42 CFR

403.....54045
435.....51408
436.....51408
440.....51408

Proposed Rules:
431.....53481
440.....51288, 53481
441.....51288, 53481
447.....53481
1003.....054096

43 CFR

37.....51550

Proposed Rules:
4700.....51257

Public Land Orders:
4522 (Revoked in part by PLO 7002).....52684
6998.....52238
6999.....52238
7000.....52682
7001.....52683
7002.....52684
7003.....53428
7004.....53429
7005.....54049

44 CFR

64.....51576, 52019

Proposed Rules:
67.....51598

45 CFR

1602.....52918

46 CFR

160.....51576

Proposed Rules:
10.....51408
12.....51408
30.....52598
31.....52598
32.....52598
67.....51298
585.....52248

47 CFR

1.....51246
15.....51247
64.....53663
73.....51250, 51578, 51579, 53664, 53665
74.....51250
76.....53429
87.....52021
90.....51251, 53245, 53431
97.....51787, 53138

Proposed Rules:
1.....53489
15.....51299
22.....53169
25.....53169
36.....52254
73.....51603, 51799, 52733, 52734, 52735, 53902
74.....52256
76.....53696
80.....53169
87.....53169
90.....51299, 53169
95.....53169
99.....53169

48 CFR

501.....52442
503.....52442
507.....52442
508.....52442
509.....52442
511.....52442
514.....52442
515.....52442
519.....52442
522.....52442
525.....52442
528.....52442
529.....52442
532.....52442
536.....52442
542.....52442
543.....52442
552.....52442
570.....52442
1816.....52446
1828.....54050
1833.....53136
1852.....52446, 54050

49 CFR

107.....51524, 53626
171.....51524, 53626
172.....51524
173.....51524, 53626
174.....51524
175.....51524
176.....51524
177.....51524
178.....51524, 53626
179.....51524
180.....51524, 53626
571.....51788, 52021, 52922, 53666
604.....52684
1002.....52027
1017.....52027
1018.....52027
1039.....53433
1145.....53667
1312.....52027
1313.....52027
1314.....52027

Proposed Rules:
23.....52050
37.....52735
172.....52574
173.....52574
179.....52574
390.....51800
571.....54099
572.....54099
821.....54102
1063.....51603
1105.....51800
1121.....51800
1152.....51800

50 CFR

17.....52027, 52031, 53800, 53804, 54053
217.....54066
227.....53136, 54066
229.....51788
285.....53434, 53668
301.....51253
625.....52685
642.....51579, 51789
661.....53143
663.....52031
669.....53145
672.....51791, 52032, 53138, 53148, 53668
675.....51253, 52033, 52451, 53136, 53148

Proposed Rules:
17.....51302, 51804, 52058, 52059, 52063, 52740, 53696, 53702, 53904
32.....53703
52.....51270, 51279
215.....53320
216.....53320
222.....53220, 53703
227.....53703
228.....53491
622.....53172

625	53172
628	53172
641	52063, 52073, 52474
642	54106
646	53183
649	53172
650	53172
651	52073, 53172
652	53172
655	53172
675	53497

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last List October 18, 1993

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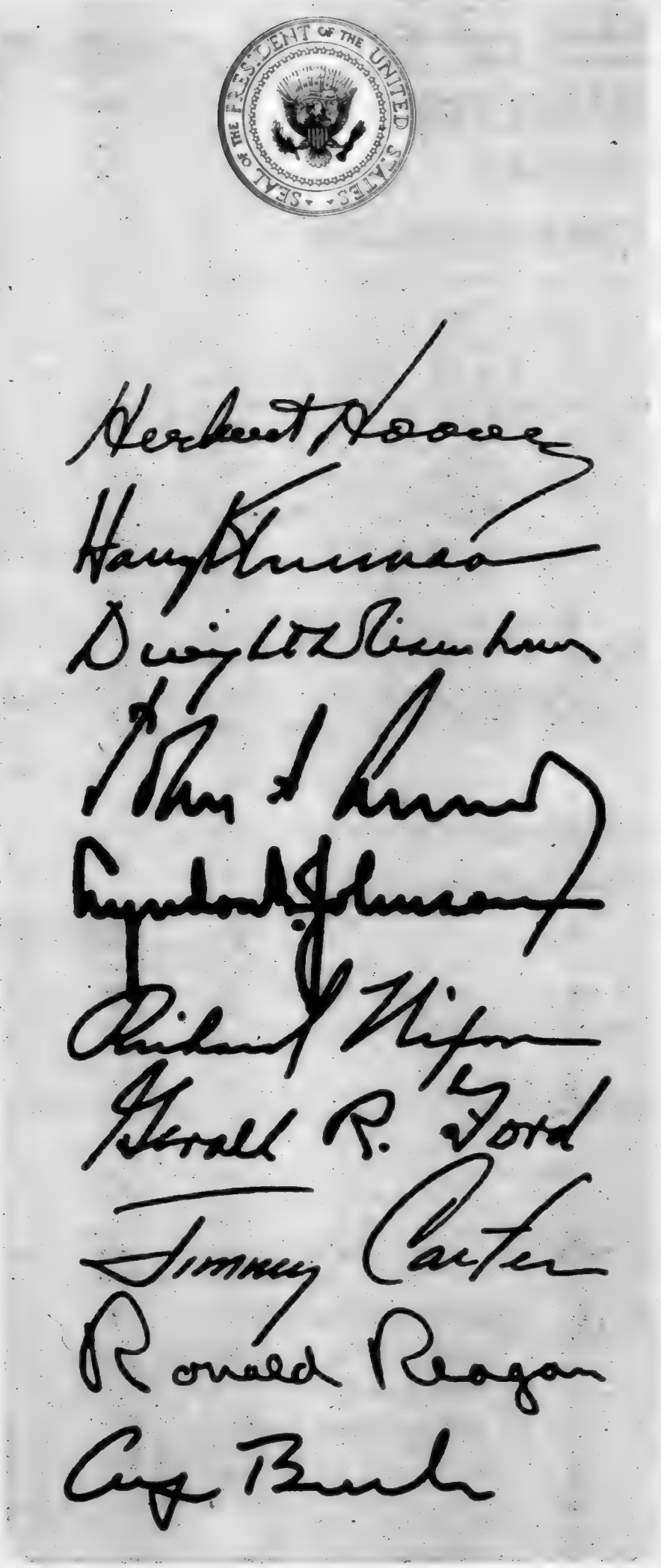

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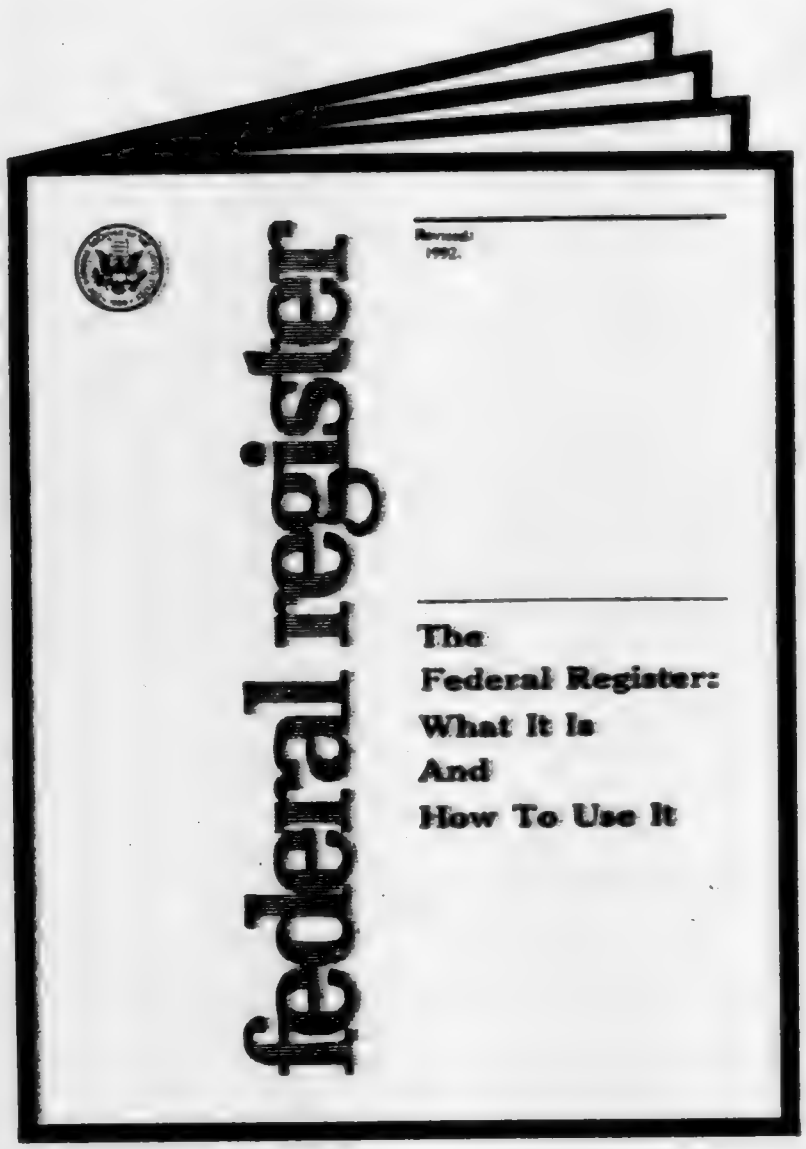

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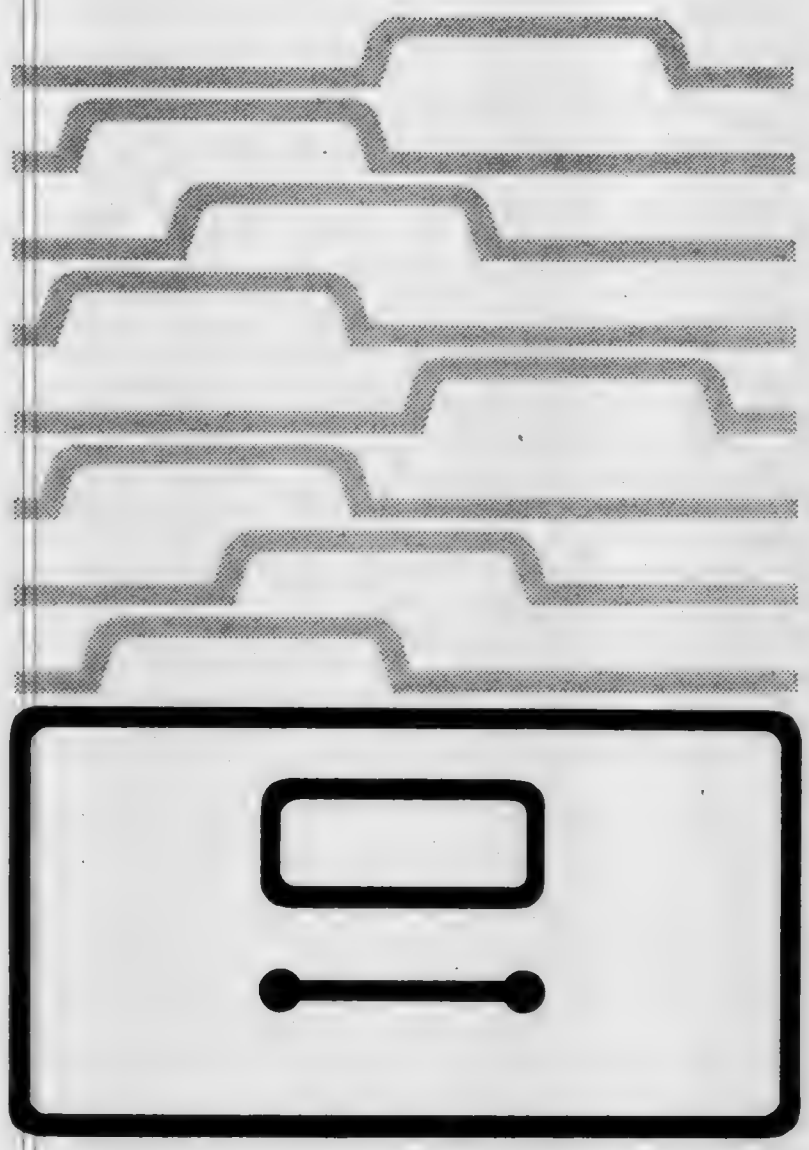

Guide to Record Retention Requirements

in the Code of Federal Regulations (CFR)

GUIDE: Revised January 1, 1992

SUPPLEMENT: Revised January 1, 1993

The GUIDE and the SUPPLEMENT should be used together. This useful reference tool, compiled from agency regulations, is designed to assist anyone with Federal recordkeeping obligations.

The various abstracts in the GUIDE tell the user (1) what records must be kept, (2) who must keep them, and (3) how long they must be kept.

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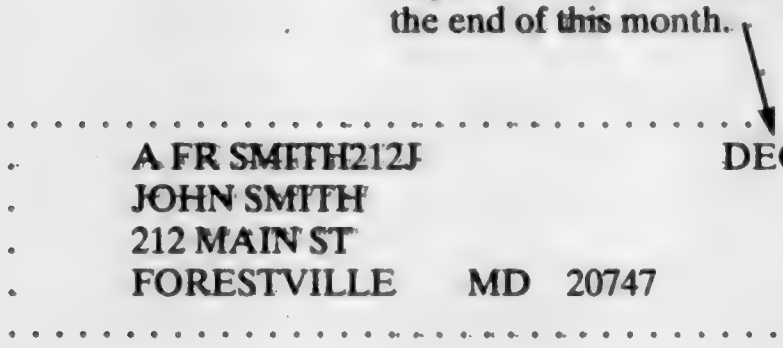

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Contents

Federal Register

Vol. 58, No. 202

Thursday, October 21, 1993

Administrative Conference of the United States
RULES
Recommendations:
Administrative practice and procedure, 54271

Agency for International Development
NOTICES
Agency information collection activities under OMB review, 54325

Agriculture Department
See Food Safety and Inspection Service
See Forest Service
NOTICES
Agency information collection activities under OMB review, 54325

Air Force Department
NOTICES
Meetings:
Scientific Advisory Board, 54333

Army Department
NOTICES
Meetings:
Historical Advisory Committee, 54334
Science Board, 54334
Yakima Training Center Cultural and Natural Resources Committee, 54335

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Children and Families Administration
NOTICES
Agency information collection activities under OMB review, 54360

Coast Guard
RULES
Drawbridge operations:
Illinois, 54289
PROPOSED RULES
Overfill devices for tank vessels that carry oil as their primary cargo; meeting, 54315

Commerce Department
See Export Administration Bureau
See International Trade Administration
See Minority Business Development Agency
See National Oceanic and Atmospheric Administration

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Pakistan, 54332
Special access and special regime programs; participation denial:
Bond requirement for participants
Implementation delay, 54332

Copyright Office, Library of Congress
NOTICES
Copyright protection duration; public hearing, 54378

Customs Service
RULES
Customs services user fees, 54271

Defense Department
See Air Force Department
See Army Department

Delaware River Basin Commission
NOTICES
Hearings, 54335

Education Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Educational media research, production, distribution, and training program, 54434

Employment and Training Administration
NOTICES
Adjustment assistance:
Augat Automotive, 54376
Bull HN Information Systems, 54376
Mobil Mining & Mineral Co. et al., 54376
Sundstrand Electrical Power Systems et al., 54377

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Foreign research reactor spent nuclear fuel of U.S. origin; acceptance policy, 54336

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Illinois, 54291
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Clopyralid, 54296
Hexane, etc., 54294
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update, 54297
PROPOSED RULES
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Carbophenothion, 54316
Radiation protection programs:
Radionuclides-contaminated site cleanup level requirements, 54474
NOTICES
Confidential business information and data transfer to contractors, 54347
Pesticide, food, and feed additive petitions:
Uniroyal Chemical Co., 54350

Pesticide programs:
Pesticide assessment guidelines—
Dermal absorption studies (Section 85-3); humans and domestic animals (Subdivision F hazard evaluation), 54350
Pesticide registration, cancellation, etc.:
Ciba-Geigy Corp. et al., 54351
Unocal Corp., 54352
Pesticides; emergency exemptions, etc.:
Bifenthrin, etc., 54348
Pesticides; temporary tolerances:
Miles, Inc., et al., 54353

Equal Employment Opportunity Commission
NOTICES
Meetings; Sunshine Act, 54401

Export Administration Bureau
NOTICES
Meetings:
Telecommunications Equipment Technical Advisory Committee, 54327

Federal Aviation Administration
PROPOSED RULES
Air carrier certification and operations:
Major repair data development (SFAR No. 36-6), 54477
Airworthiness directives:
British Aerospace, 54310
Fokker, 54312

Federal Communications Commission
NOTICES
Agency information collection activities under OMB review, 54357
Radio broadcasting:
Emergency alerting systems; test results, 54358
Applications, hearings, determinations, etc.:
Bryan, Darrell, et al.; correction, 54358

Federal Deposit Insurance Corporation
NOTICES
Meetings; Sunshine Act, 54401

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 54401

Federal Energy Regulatory Commission
NOTICES
Electric rate, small power production, and interlocking directorate filings, etc.:
PacifiCorp et al., 54340
Environmental statements; availability, etc.:
Tennessee Gas Pipeline Co., 54342
Natural gas certificate filings:
Texas Eastern Transmission Co. et al., 54343
Applications, hearings, determinations, etc.:
Iowa Electric Light & Power Co., 54347

Federal Housing Finance Board
NOTICES
Meetings; Sunshine Act, 54401

Federal Maritime Commission
NOTICES
Freight forwarder licenses:
United World International, Inc., et al., 54358
Investigations, hearings, petitions, etc.:
Transax Data, 54358
Venezuelan American Maritime Association et al., 54358
Meetings; Sunshine Act, 54401

Federal Reserve System
NOTICES
Applications, hearings, determinations, etc.:
Allied Bank Capital, Inc., et al., 54359
Community Bankshares, Inc. Employee Stock Ownership Trust, 54359
NationsBank Corp. et al., 54359

Fish and Wildlife Service
NOTICES
Endangered and threatened species permit applications, 54371

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
Bambermycins, 54286
Human drugs:
Digestive aid drug products (OTC); final monograph, 54450
Skin protectant products (OTC)—
Astringent products, 54458
PROPOSED RULES
Human drugs:
Orally ingested (OTC) drug products containing alcohol as an inactive ingredient; maximum concentration limit, 54466
NOTICES
Meetings:
Advisory committees, panels, etc., 54362

Food Safety and Inspection Service
NOTICES
Rapid microbiological testing methods; evaluation criteria, 54325

Forest Service
NOTICES
Environmental statements; availability, etc.:
Wallowa-Whitman National Forest, OR, 54326

Health and Human Services Department
See Children and Families Administration
See Food and Drug Administration
See National Institutes of Health

Housing and Urban Development Department
RULES
Manufactured home construction and safety standards:
Energy conservation standards; availability, 54484

Indian Affairs Bureau
RULES
Law and order on Indian reservation:
Courts of Indian offenses; jurisdiction, 54406
NOTICES
Indian entities recognized and eligible to receive services from BIA; list, 54364

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See Land Management Bureau

See National Park Service
See Surface Mining Reclamation and Enforcement Office

International Development Cooperation Agency
See Agency for International Development

International Trade Administration
NOTICES
Antidumping:
Bicycle speedometers from—
Japan, 54328

Interstate Commerce Commission
PROPOSED RULES
Contracts and exemptions:
Rail general exemption authority—
Carbon dioxide, 54323
Grease or inedible tallow, etc., 54321
Hydraulic cement, 54321
Paints, enamels, lacquers, shellacs, etc., 54318
Rock salt and salt, 54320
NOTICES
Environmental statements; availability, etc.:
Golden Cat Railroad Corp., 54373
Rail carriers:
Waybill data; release for use; correction, 54373
Railroad operation, acquisition, construction, etc.:
Peninsula Corridor Joint Powers Board; correction, 54403

Justice Department
NOTICES
Pollution control; consent judgments:
Blue Earth Equipment Co. et al., 54374
Browning-Ferris Industries et al., 54374
CSX Transportation, Inc., 54375
Kenner, LA, et al., 54373
Laclede Steel Co., 54375
Lowe, 54373
Superior Toy & Manufacturing Co., 54374

Labor Department
See Employment and Training Administration
See Pension and Welfare Benefits Administration

Land Management Bureau
NOTICES
Environmental statements; availability, etc.:
Chain of Craters Wilderness Study Unit, NM, 54369
Realty actions; sales, leases, etc.:
Idaho, 54370
Nevada, 54371
Nevada; correction, 54403
Wyoming, 54371

Library of Congress
See Copyright Office, Library of Congress

Minority Business Development Agency
NOTICES
Business development center program applications:
Michigan, 54329
Missouri, 54330

National Aeronautics and Space Administration
RULES
Acquisition regulations:
Discussions and negotiation with multiple offerors; approval authorities for conducting multiple rounds, 54299
MidRange procurement procedures; test notification, 54300

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
Arts National Council, 54378
Visual Arts Advisory Panel, 54379

National Institutes of Health
RULES
Grants:
National Heart, Lung, and Blood Institute; prevention and control projects, 54297
NOTICES
Grants and cooperative agreements; availability, etc.:
Hormone interaction with novel hepatic orphan nuclear receptor; identification, 54362
Meetings:
National Eye Institute, 54363
National Institute of Environmental Health Sciences, 54363

National Oceanic and Atmospheric Administration
RULES
Pacific Salmon Commission:
Fraser River sockeye and pink salmon, 54307
NOTICES
Meetings:
Emergency striped bass research study progress, 54332
Gulf of Mexico Fishery Management Council, 54331

National Park Service
NOTICES
Environmental statements; availability, etc.:
Presidio of San Francisco, Golden Gate National Recreation Area, CA, 54372
Meetings:
Jimmy Carter National Historic Site Advisory Commission, 54372

National Science Foundation
NOTICES
Meetings:
Astronomical Sciences Special Emphasis Panel, 54379
Cell Biology Advisory Panel, 54379
Economics, Decision, Risk and Management Sciences Advisory Panel, 54380
Education and Human Resources Advisory Committee, 54380
Engineering Education and Centers Special Emphasis Panel, 54380
Geosciences Special Emphasis Panel, 54380
Materials Research Special Emphasis Panel, 54380
Neuroscience Advisory Panel, 54381
President's Committee on National Medal of Science, 54381
Social and Political Sciences Advisory Panel, 54381

Nuclear Regulatory Commission
NOTICES
Abnormal occurrence reports:
Periodic reports to Congress, 54381
Meetings:
Reactor Safeguards Advisory Committee, 54384
Reactor Safeguards Advisory Committee et al.
Proposed schedule, 54382

Reports; availability, etc.:
Revised analyses of decommissioning for reference pressurized water reactor power station, 54385

Pension and Welfare Benefits Administration
PROPOSED RULES
Employee Retirement Income Security Act:
Qualified domestic relations orders; information request, 54444

Public Health Service
See Food and Drug Administration
See National Institutes of Health

Railroad Retirement Board
NOTICES
Agency information collection activities under OMB review, 54385

Securities and Exchange Commission
NOTICES
Meetings; Sunshine Act, 54401
Self-regulatory organizations; proposed rule changes:
Chicago Stock Exchange, Inc., 54386
National Association of Securities Dealers, Inc., 54389
Applications, hearings, determinations, etc.:
Security First Life Insurance Co. et al., 54391

Small Business Administration
NOTICES
Agency information collection activities under OMB review, 54393
Disaster loan areas:
Kansas, 54394
Minnesota, 54394
Missouri, 54394
Oklahoma et al., 54394
Meetings; district and regional advisory councils:
Hawaii, 54394
Ohio, 54395

State Department
NOTICES
Environmental statements; availability, etc.:
Los Tomates/Matamoros International Bridge III and U.S. 77/83, TX, 54395

Surface Mining Reclamation and Enforcement Office
RULES
Permanent program and abandoned mine land reclamation plan submissions:
Alabama, 54287
PROPOSED RULES
Permanent program and abandoned mine land reclamation plan submissions:
Alabama, 54313

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Coast Guard
See Federal Aviation Administration

Treasury Department
See Customs Service

United States Information Agency
NOTICES
Grants and cooperative agreements; availability, etc.:
Summer institute in history of United States for foreign university teachers, 54396
Summer institute in U.S. economy and public policy for foreign university teachers, 54398

Separate Parts in This Issue

Part II
Department of the Interior, Bureau of Indian Affairs, 54406

Part III
Department of Education, 54434

Part IV
Department of Labor, Pension and Welfare Benefits Administration, 54444

Part V
Department of Health and Human Services, Food and Drug Administration, 54450

Part VI
Department of Health and Human Services, Food and Drug Administration, 54458

Part VII
Department of Health and Human Services, Food and Drug Administration, 54466

Part VIII
Environmental Protection Agency, 54474

Part IX
Department of Transportation, Federal Aviation Administration, 54478

Part X
Department of Housing and Urban Development, 54484

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

1 CFR
305.....54271
310.....54271

14 CFR
Proposed Rules:
39 (2 documents).....54310, 54312
121.....54478
127.....54478
135.....54478
145.....54478

19 CFR
4.....54271
24.....54271
111.....54271
122.....54271
123.....54271
145.....54271
178.....54271

21 CFR
310 (2 documents).....54450, 54458
347.....54458
558.....54286
Proposed Rules:
328.....54466

24 CFR
3280.....54484

25 CFR
11.....54006

29 CFR
Proposed Rules:
2530.....54444

30 CFR
901.....54287
Proposed Rules:
901.....54313

33 CFR
117.....54289
Proposed Rules:
155.....54315
156.....54315

40 CFR
52.....54291
180 (2 documents).....54294, 54296
300.....54297
Proposed Rules:
180.....54316
185.....54316
186.....54316
195.....54474

42 CFR
52e.....54297

48 CFR
1815.....54299
1870.....54299
1871.....54300

49 CFR
Proposed Rules:
1039 (5 documents).....54317, 54318, 54320, 54321, 54323

50 CFR
371.....54307

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Rules and Regulations

Federal Register
Vol. 58, No. 202
Thursday, October 21, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1 CFR Parts 305 and 310

Recommendations and Statements of the Administrative Conference Regarding Administrative Practice and Procedure

AGENCY: Administrative Conference of the United States.

ACTION: Removal of the texts of recommendations and statements of the Administrative Conference.

SUMMARY: It has been the policy of the Administrative Conference of the United States to publish in the Code of Federal Regulations complete lists of its formal recommendations and statements, together with the texts of those deemed to be of continuing interest. However, for budgetary reasons the Administrative Conference is removing the texts of all recommendations and statements from parts 305 and 310 of the Code of Federal Regulations for Fiscal Year 1994. This is purely a cost-cutting measure that does not reflect any change in the Conference's views set forth in the recommendations and statements. If funding is available in future years, the Conference may again include the texts of recommendations and statements in the Code of Federal Regulations for the convenience of the public.

DATES: The removal of the texts of recommendations and statements from the Code of Federal Regulations is to be effective October 21, 1993.

FOR FURTHER INFORMATION: Renee Barnow, Information Officer (202–254–7020).

SUPPLEMENTARY INFORMATION: The Administrative Conference of the United States is a federal agency whose mission includes making recommendations and other statements to improve the efficiency, adequacy, and fairness of the administrative procedures used by federal agencies in carrying out administrative programs (5 U.S.C. 594(1)). Recommendations and statements of the Administrative Conference are published in full text in the **Federal Register** upon adoption. In addition, it has been the policy of the Conference to publish the complete lists of recommendations and statements, together with the texts of those deemed to be of continuing interest, in the Code of Federal Regulations (1 CFR parts 305 and 310).

Although the Administrative Conference is removing the texts of all recommendations and statements from the Code of Federal Regulations for FY 1994, it will continue to publish the table of contents for all past Administrative Conference recommendations and statements. Copies of all recommendations and statements, and the research reports on which they are based, will continue to be available from the Office of the Chairman of the Administrative Conference, 2120 L Street, NW., suite 500, Washington, DC 20037; telephone: (202) 254–7020. Subscribers to the Code of Federal Regulations are advised to retain the 1993 edition of title 1 if they wish to maintain published copies of past Conference recommendations and statements.

For the reasons set forth in the preamble, 1 CFR Ch. III is amended as follows:

PART 305—RECOMMENDATIONS OF THE ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1. The authority citation for part 305 continues to read as follows:

Authority: 5 U.S.C. 591—596.

2. Part 305 is amended by removing the titles and texts (but not the table of contents) of all sections, and any notes following those sections, and by revising the note to part 305 to read as follows:

Note: Copies of the recommendations listed in this part may be obtained from the Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., suite 500, Washington, DC 20037; telephone (202) 254–7020.

PART 310—MISCELLANEOUS STATEMENTS

1. The authority citation for part 310 continues to read as follows:

Authority: 5 U.S.C. 591–596.

2. Part 310 is amended by removing the titles and texts (but not the table of contents) of all sections, and any notes following those sections, and by adding the following note to part 310:

Note: Copies of the statements listed in this part may be obtained from the Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., suite 500, Washington, DC 20037; telephone (202) 254–7020.

Dated: October 14, 1993.

William J. Olmstead,

Executive Director.

[FR Doc. 93–25820 Filed 10–20–93; 8:45 am]

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DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 4, 24, 111, 122, 123, 145 and 178

[T.D. 93–85]

RIN 1515–AA50

User Fees for Customs Services

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document sets forth final amendments to the Customs Regulations regarding fees for certain Customs services provided for in section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended. The fees, subject to certain limitations, involve arrival fees applicable to commercial vessels, commercial trucks, railroad cars, private vessels and private aircraft, passengers aboard commercial vessels and commercial aircraft, and barges and other bulk carriers from Canada or Mexico, a fee for each item of dutiable mail for which a Customs officer prepares documentation, and an annual fee for each Customs broker permit. This document replaces interim regulations to reflect current statutory requirements and provide additional clarification regarding circumstances under which the fees must be paid.

EFFECTIVE DATE: November 22, 1993.

FOR FURTHER INFORMATION CONTACT:
Operational Aspects: David Kahne, Office of Inspection and Control (202–927–0159).

Accounting Aspects: John Accetturo, National Finance Center (317–298–1308).

Audit Aspects: Cynthia Covell, Office of Regulatory Audit (202–927–1100).

SUPPLEMENTARY INFORMATION:

Background

Prior to enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985 as discussed below, the Customs Service had only limited statutory authority for the collection of fees or other charges for services rendered to the public. Such fees or charges applied only in specific contexts, including the following: (1) In connection with pre-clearance of passengers and private aircraft when such services were of special benefit to particular persons; (2) in connection with the operation of Customs bonded warehouses and foreign trade zones; (3) for the entry and clearance of vessels, and the entry and delivery of merchandise carried by vessel, outside the limits of a port of entry; (4) for specific services rendered to vessels under the Customs and navigation laws (navigation fees); (5) for overtime services rendered to carriers during non-business hours; and (6) in connection with services provided at certain small user fee airports. No general legal authority existed for the collection of fees or charges for the broad range of services rendered by Customs in connection with commercial operations. These were borne by the taxpayers rather than the parties receiving the services.

Consolidated Omnibus Budget Reconciliation Act of 1985

In section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (the COBRA, Public Law 99–272), Congress vested in the Secretary of the Treasury explicit authority to collect fees for providing Customs services in connection with the arrival of certain vessels, vehicles, railroad cars, aircraft, passengers and dutiable mail, and in connection with Customs broker permits. In addition, section 8101 of the Omnibus Budget Reconciliation Act of 1986, Public Law 99–509, amended section 13031 of the COBRA to provide for the assessment of a processing fee on entries of imported merchandise; this aspect of section 13031 of the COBRA is not the subject of this document.

The fees set forth in section 13031 of the COBRA were codified at 19 U.S.C. 58c and, as originally enacted, consisted of the following:

1. For the arrival of a commercial vessel of 100 net tons or more, $397 (the COBRA also defined "vessel" to "not include any ferry");
2. For the arrival of a commercial truck, $5 (the COBRA also provided in this regard that no such fee may be charged for the arrival of a commercial truck during any calendar year after a total of $100 in fees has been paid for the provision of Customs services for all arrivals of that truck during that calendar year);
3. For the arrival of each passenger or freight railroad car, $5 (the COBRA also provided in this regard that no such fee may be charged (a) for certain in-transit railroad cars which are part of a train that originates and terminates in the same country, and (b) as in the case of commercial trucks, once $100 in fees have been paid on the railroad car in the same calendar year);
4. For all arrivals made during a calendar year by a private vessel or private aircraft, $25;
5. For the arrival of each passenger aboard a commercial vessel or commercial aircraft, $5 (the COBRA also provided in this regard that no such fee may be charged in connection with the arrival of any passenger whose journey originated in Canada, in Mexico, in a territory or possession of the United States, or in any adjacent island within the meaning of 8 U.S.C. 1101(b)(5));
6. For each item of dutiable mail for which a document is prepared by a Customs officer, $5; and
7. For each Customs broker permit issued under 19 U.S.C. 1641(c) and held by an individual, partnership, association, or corporate Customs broker, $125 per year.

Interim Regulations

On June 11, 1986, Customs published as T.D. 86–109, 51 FR 21152, interim amendments to the Customs Regulations to implement the fee provisions in section 13031 of the COBRA. The fees described in items 1. through 6. above were covered by new 24.22 (19 CFR 24.22), and the substance of the Customs broker permit fee was covered by new section 111.96(c) (19 CFR 111.96(c)). In addition, appropriate cross-references to the new § 24.22 provisions were inserted (1) in part 4 (19 CFR part 4) which concerns vessels in foreign and domestic trades, (2) in part 6 (19 CFR part 6) which concerns air commerce regulations and which was subsequently revised and redesignated as part 122 (19 CFR part 122), (3) in part 123 (19 CFR part 123) which concerns Customs relations with Canada and Mexico, and (4) in part 145 (19 CFR part 145) which concerns mail importations. Although these regulatory changes were set forth as interim regulations and went into effect on July 7, 1986, in order to coincide with the effective date of the statutory provisions, the notice invited public comments on the interim regulations which would be considered before adoption of a final rule. The public comment period closed on August 11, 1986.

Tax Reform Act of 1986

Subsequent to the publication of the interim regulations, section 13031 of the COBRA was extensively amended by section 1893 of the Tax Reform Act of 1986 (the Tax Act, Public Law 99–514). The Tax Act amendments having a substantive effect on the interim regulatory provisions were as follows:

1. A new $100 fee was added for the arrival of a barge or other bulk carrier from Canada or Mexico. In addition, for purposes of this fee the Tax Act defined "barge or other bulk carrier" as "any vessel which (A) is not self-propelled, or (B) transports fungible goods that are not packaged in any form."
2. The fee provision for arriving railroad cars was amended to refer to each railroad car "carrying passengers or commercial freight" and the fee was increased to $7.50. Thus, the fee, as increased, would no longer apply to empty railroad cars.
3. With regard to the fee applicable to the arrival of each passenger aboard a commercial vessel or commercial aircraft, a new limitation was added which provided that no such arrival fee may be charged for any passenger "(A) who is in transit to a destination outside the customs territory of the United States, and (B) for whom customs inspectional services are not provided."
4. With regard to the $397 fee applicable to the arrival of a commercial vessel of 100 net tons or more, new limitations were added which provided that no such fee may be charged for the arrival of (a) a vessel during a calendar year after a total of $5,955 in fees (charged either as the $397 fee or as the $100 fee applicable to a barge or other bulk carrier from Canada or Mexico) has been paid for the provision of Customs services for all arrivals of that vessel during that calendar year, (b) any vessel which, at the time of arrival, is being used solely as a tugboat, or (c) any barge or other bulk carrier from Canada or Mexico.
5. With regard to barges and other bulk carriers, a limitation was added which provided that no fee for the arrival of a barge or other bulk carrier

from Canada or Mexico may be charged during a calendar year after a total of $1,500 in fees, charged either under the $397 fee provision applicable to a commercial vessel of 100 net tons or more (for example, when the barge or other bulk carrier did not arrive from Canada or Mexico) or under the $100 fee provision applicable to a barge or other bulk carrier from Canada or Mexico, has been paid for the provision of Customs services for all arrivals of that barge or other bulk carrier during that calendar year.

6. With regard to the fees applicable to commercial trucks, railroad cars, and private vessels, a limitation was added which provided that no such fees may be charged if the commercial truck, railroad car, or private vessel is being transported, at the time of arrival, by any vessel that is not a ferry.

7. The exemption from the arriving passenger fee was expanded to also cover passengers whose journey originated in the United States and was limited to Canada, Mexico, territories and possessions of the United States, and the identified adjacent islands.

8. An exemption from the arrival fees was added to cover "the arrival of any ferry", and the definition of "vessel" (which specifically excluded a ferry) was replaced by a definition of "ferry", *i.e.*, "any vessel which is being used (A) to provide transportation only between places that are no more than 300 miles apart, and (B) to transport only (i) passengers, or (ii) vehicles, or railroad cars, which are being used, or have been used, in transporting passengers or goods."

9. As regards the annual Customs broker permit fee, provisions were added stating that notice of the date on which payment of the fee is due shall be published in the **Federal Register** at least 60 days before the due date, that a permit may be revoked or suspended for nonpayment of the fee only if such required notice was published, and that a Customs broker license may not be revoked or suspended merely for nonpayment of the permit fee. In addition, the Tax Act provided that the permit fee payable for calendar year 1986 would be $62.50 and that any amount paid in excess of that amount would be refunded by Customs or, at the option of the broker, credited toward the 1987 fee.

Customs and Trade Act of 1990

Section 111 of the Customs and Trade Act of 1990 (the 1990 Act, Pub. L. 101–382) amended the COBRA in two respects which bear on the interim regulatory provisions. The first amendment modified the in-transit railroad car exemption so that its application would be based on the movement (journey) of the car rather than the train (thus, the car, rather than the arriving train of which it is a part, must originate and terminate in the same country in order for the exemption to apply). The second amendment involved the addition of a new paragraph providing that any fee under the COBRA shall be treated as a Customs duty (1) for purposes of applying the administrative and enforcement provisions of the Customs laws and regulations (including for purposes of computing penalties) except in the case of drawback or where otherwise provided in regulations, and (2) for purposes of determining the jurisdiction of any U.S. court or agency.

Additional Administrative Action

Pending analysis of the public comments received on the interim regulations, resolution of certain procedural issues, and anticipated further statutory changes, all of which necessitated a delay in adoption of the interim regulations as a final rule, and except for the changes to the annual broker permit fee provision, Customs implemented the Tax Act changes discussed above by means of directives or other instructions issued to Customs field offices and, through those offices, to the general public. The Tax Act change to the annual broker permit fee provision regarding 60-day advance publication of the due date for the fee was implemented in the Customs Regulations as a final rule on October 31, 1986, in T.D. 86–195, 51 FR 39746, which involved in this regard a revision of the text of section 111.96(c) as originally adopted on an interim basis. In addition, the two above changes to the COBRA effected by the 1990 Act were implemented on an interim basis (by revising § 24.22(d)(5) and by adding a new § 24.22(j)) on April 15, 1991, as part of T.D. 91–33, 56 FR 15036, the main purpose of which was to set forth new interim regulations implementing various changes that the 1990 Act made to the COBRA merchandise processing fee provisions; the interim regulatory provisions set forth in T.D. 91–33 were adopted as a final rule without change on December 5, 1991, as T.D. 91–95, 56 FR 63648.

Analysis of Comments

Comments were received from Members of Congress, Federal and state agencies, municipalities, trade associations, various airline, rail, vessel and commercial trucking concerns, customs brokers, private fliers and boaters, and other members of the general traveling and importing public.

Commercial Vessels

Comment: Numerous commenters stated that the $397 fee set forth in interim § 24.22(b) for the arrival of a commercial vessel of 100 net tons or more is burdensome, that the fee should not be assessed at other than the first port of arrival in the United States, and that a cap should be placed on the fee as it was for other fees. Some of these commenters further suggested that Great Lakes vessels should be exempted from the fee.

Customs response: The concerns reflected in these comments involve legislative policy issues that Customs cannot address in the regulatory texts where the statutory provisions do not provide a sufficient legal basis to support such regulatory changes. However, to the extent that some of these concerns were subsequently addressed by Congress in the Tax Act amendments discussed above, conforming changes to the interim regulations are appropriate.

The Tax Act provision establishing a per vessel limit of $5,955 in fees for arrivals during a calendar year addresses the comment regarding the need for a fee cap, and § 24.22(b) has been modified as set forth below to reflect this statutory change. However, in order to ensure both collection of required fees and proper application of the calendar year limit, and in recognition of the fact that records of prior individual arrival fee payments are not maintained by Customs so as to be available for verification at each port of entry, the modified regulatory text makes application of the annual statutory limit contingent on submission to Customs of adequate proof of payment to that limit. Such proof of payment of individual arrival fees normally would consist of Customs-certified copies of receipts (Customs Form 368 or 368A) which may be obtained at the time of payment of the individual arrival fee.

In regard to the comment that the fee should be assessed only at the first port of arrival rather than "at each port of arrival" as provided in the interim regulations, the Conference Report relating to the Tax Act, after noting that the fee cap was computed on the basis of fifteen arrivals per year, specifically reflected the conferees' intent that the commercial vessel fee "be applicable to each arrival at a U.S. port regardless of whether these arrivals occur as a series of calls at U.S. ports on the same trip or on several trips." Thus, the interim regulations in this regard are consistent

with the statutory language and the legislative history relating thereto. The sentence in interim § 24.22(b) which gave rise to this comment has been redrafted as set forth below to more clearly reflect the Congressional intent.

Although the COBRA, as amended, provides no specific exemption for Great Lakes vessels, the Tax Act addition of the $100 fee and $1,500 annual cap for arrivals of barges or other bulk carriers from Canada has the effect of substantially reducing the fees payable by such bulk carriers over 100 net tons which operate on the Great Lakes.

A new paragraph (2) has been added to § 24.22(b) to set forth the terms of the barge or other bulk carrier fee. In order to ensure that this bulk carrier fee will be applied only in the intended context as reflected in the Tax Act Conference Report (*i.e.*, where such bulk carriers compete with trucks and rail cars arriving by land from Canada or Mexico which are subject to much lower arrival fees), this new paragraph covers only bulk carriers arriving from Canada or Mexico either in ballast (*i.e.*, empty) or transporting only cargo laden in Canada or Mexico; thus, the $397 fee, rather than the lower bulk carrier fee, would apply to a bulk carrier of 100 net tons or more which arrives transporting any cargo laden in a country other than Canada or Mexico even if the voyage of the carrier includes a stop in Canada or Mexico immediately prior to its arrival in the United States. In addition, consistent with the treatment of the other commercial vessels as discussed above, this new paragraph both provides that the fee applies to each arrival even if a single voyage involves more than one arrival and makes application of the annual fee limit contingent on submission of proof of prior payments during the year.

It should also be noted that the two new fee limitation provisions in paragraph (b) have been drafted in such a way as to give effect to the intent reflected in the statute and the Tax Act Conference Report that, where a vessel is used in the same year both as a bulk carrier to which the $100 fee and $1,500 cap apply and as a vessel to which the $397 fee and $5,955 cap apply, (1) once a total of $5,955 in fees has been paid on the vessel under one or both of the fee categories, no further fee (or portion thereof) would have to be paid during that year when the vessel arrives under circumstances that would normally trigger the $397 fee and (2) once a total of $1,500 in fees has been paid on the vessel under one or both of the fee categories, no further fee (or portion thereof) would have to be paid during that year when the vessel arrives under circumstances that would normally trigger the $100 fee.

Comment: Several commenters stated that the term "ferry" should be defined broadly for purposes of the statutory exemption from the $397 commercial vessel fee.

Customs response: Section 24.22(a) as set forth below has been modified to incorporate the definition of a ferry as added by the Tax Act, and Customs has no authority to expand upon this specific statutory definition.

Even though the Tax Act amendments removed the statutory definition of "vessel" as not including any ferry (because the addition of the specific fee exemption for ferries accomplished the same purpose), the broader definition of "vessel" in § 24.22(a) has been retained because it serves to clarify the basic scope of the commercial vessel fees. However, this definition has been amended as set forth below by deleting the words "or any ferry" at the end (to avoid an inconsistency with the definition of a ferry which uses the word "vessel"), and a separate exemption provision covering ferries has been added to § 24.22(b) as set forth below.

Given the specific statutory (and corresponding regulatory) definition of "ferry", which involves the way in which the vessel is being used at the time of its arrival, Customs believes that standard statutory application requires that precedence be given to this definition in determining what arrival fee or fees should be collected. Thus, if a vessel at the time of arrival is being used in a manner consistent with the definition of a ferry, it will be treated as a ferry for purposes of the COBRA fees, with the result that (1) no arrival fee will be collected on the ferry itself and (2) arrival fees will be payable for each passenger, commercial truck and loaded or partially loaded railroad car being transported by the ferry.

Comment: Several commenters suggested that tugs and barges should be treated as one unit for purposes of assessing the commercial vessel fee.

Customs response: This comment is addressed by the Tax Act provision which added an exemption from the fee for any vessel which, at the time of arrival, is being used solely as a tugboat, and § 24.22(b) as set forth below has been amended to reflect this statutory change. It should be noted that, as stated in the Tax Act Conference Report, this exemption applies only when the tugboat is actually propelling a barge or accompanying a vessel (because the barge or vessel would be subject to an arrival fee) and thus does not apply to a tugboat which arrives alone.

Comment: One commenter suggested that the user fees assessed at ports other than the first port of arrival be secured by a bond.

Customs response: The suggested procedure would only serve to delay collection of the fee. Moreover, the total fees due for additional port arrivals during the same voyage would have to be collected prior to departure of the vessel for a foreign port, and such a collection procedure would impose an unacceptable recordkeeping burden on Customs. Accordingly, Customs does not believe that this suggestion should be adopted.

Comment: One commenter suggested that the fee should not be charged on vessels merely taking on bunkers.

Customs response: Vessels merely taking on bunkers are not required to enter under 19 U.S.C. 1441 and 19 CFR 4.3 and thus under the interim regulations are not subject to the fee. Accordingly, no change to the interim regulations is required in this regard.

Comment: A commenter suggested that user fees should not be collected on a vessel owned by or under the complete control of the United States.

Customs response: Customs agrees. Given the specific application of the fee to a "commercial vessel" (*i.e.*, a vessel carrying passengers or goods in trade), a vessel owned or operated by or on behalf of the United States Government or a foreign government normally would not be subject to the fee. In order to clarify this point and also ensure consistency with the regulations covering vessel reporting and entry requirements, § 24.22(b) as set forth below has been modified by adding an exemption which refers to any government vessel for which no report of arrival or entry is required under § 4.5 of the Customs Regulations (19 CFR 4.5).

Commercial Trucks

Comment: A number of commenters expressed general opposition to the commercial truck processing fee based on the argument that Customs services are required by law and must be used. These commenters also complained of the resulting administrative burden placed on industries and carriers.

Customs response: These comments are directed to legislative policy issues reflected in the statute itself. Accordingly, in the absence of a change to the statutory fee structure, Customs has no legal authority to modify the implementing regulations in response to these comments.

Comment: Some commenters suggested that the 1986 $100 yearly permit fee for commercial trucks be prorated due to its mid-year implementation, similar to the administrative decision set forth in the interim regulations notice prorating the $25 annual fee for private aircraft and vessels to $12.50 for 1986.

Customs response: Customs determined that it would not be appropriate to prorate the $100 commercial truck prepaid permit fee for 1986 for the following reason: whereas the fee applicable to private aircraft and vessels is an annual or "time period" fee, the basic commercial truck processing fee is set at $5 for each truck entry and thus is a "transaction" fee. Thus, proration due to mid-year implementation was considered inapposite in the context of the $100 commercial truck prepaid permit fee, the function of which is only to provide the option of making a one-time payment reflecting the statutory limit on the total amount of $5 fees payable for one truck during a single year.

Comment: Several commenters suggested allowing the accumulation of individual $5 payments toward the issuance of a $100 permit.

Customs response: In order to implement the $100 annual fee cap under the COBRA with the least possible administrative burden on Customs, the interim regulations (1) included a provision allowing prepayment of the $100 prior to the first clearance through Customs in any calendar year and (2) provided that no credit toward the $100 annual fee would be given for $5 individual crossing payments. Support for these regulatory provisions was found in the Conference Report pertaining to the COBRA which stated that the conferees expected Customs "to administer this fee as a one-time fee."

Customs remains of the view that the $100 annual fee cap can and should be administered only on a one-time payment basis rather than also by cumulation of individual arrival fee payments. However, on further consideration Customs believes that there is no compelling reason for limiting the time for making the $100 prepayment (or for affixing the decal to the truck windshield) to either prior to the beginning of the calendar year or prior to the first clearance through Customs in that calendar year.

Accordingly, § 24.22(c) as set forth below has been modified (1) to refer to the $100 annual payment as a fee limitation but only in the context of a prepayment thereof and only if the issued decal has been affixed to the vehicle windshield (the latter representing the only evidence that would be available to Customs at the time of an arrival to show that the $100 annual fee has in fact been paid) and (2) to provide for such prepayment and issuance of the windshield decal at any time during the calendar year so that the exemption from individual arrival fees would apply to either the whole calendar year or any remaining portion thereof.

Comment: Many commenters questioned the propriety of collecting processing fees on empty trucks, contending that no paperwork is involved and minimal effort is expended by Customs in processing empties. It was also suggested that in-transit trucks should be exempted from the fee.

Customs response: A commercial truck was defined in the interim regulations as a "self-propelled vehicle designed and used for the transportation of commercial merchandise, or the transportation of non-commercial merchandise on a for-hire basis", and the interim text further stated that the definition included empty trucks and truck cabs without trailers. This definition clarified the intent reflected in the Conference Report pertaining to the COBRA which was to cover "self-propelled vehicles designed and used for the transportation of property." The term "self-propelled vehicle" was used for two reasons. First, in the case of tractor/trailer and similar towing situations, it ensures that the charge will be assessed on the tractor or other towing vehicle and not on the trailer or other vehicle being towed. Second, truck tractors and other towing or pulling vehicles are not the only conveyances charged: Any vehicle which can be driven (including a truck tractor arriving without a trailer) is subject to the charge. As the definition implies, the key factor in determining which vehicles will be charged is the actual or intended commercial use of the vehicle. Although the COBRA, as amended by the Tax Act, specifically provides for the assessment of the railroad car fee only on cars that are not empty, the commercial truck fee in the COBRA is not so limited. Similarly, the COBRA, as amended by the 1990 Act, contains an exemption for in-transit railroad cars but provides no such exemption for in-transit trucks. Given the clear Congressional intent reflected in the different treatment given commercial trucks and railroad cars in the statute in these regards, Customs has no latitude to provide for an exemption in the regulations for empty or in-transit trucks.

Comment: Several companies requested an exemption from the commercial truck processing fee because of their participation in joint U.S./Canadian automotive entry release procedures, where monthly filing of entries of Automotive Products Trade Agreement (APTA) products is permitted.

Customs response: Monthly filing of APTA entries generally expedites release and facilitates formal entry processing, but it does not absolve the carrier from undergoing Customs inspection of the conveyance and its contents to the extent deemed necessary by the inspector at the time of entry. In the absence of a specific exemption in the COBRA, an exemption from the commercial truck processing fee for carriers of merchandise where monthly entry filing occurs cannot be provided for in the regulations.

Comment: Driveaway truck operators suggested allowing use of a "floater" commercial truck processing fee permit for drivers since the delivery of new trucks is accomplished by driving one new vehicle for delivery to a dealership while towing the others.

Customs response: As Customs understands it, the suggested use of a "floater" permit would allow drivers to use the permit with each such delivery or, in another instance, to interchange it within a bus line having only two of its routes as commercial routes. Customs notes, however, that the $100 commercial truck processing fee permit relates only to the commercial use of a vehicle, and the benefit of obtaining a permit arises when the same commercial vehicle has multiple arrivals during a given calendar year. Since the annual permit attaches to a specific vehicle in the same way that an individual $5 fee is applied to the arriving vehicle, Customs has no authority to allow a transfer of a permit from one vehicle to another in order to follow a driver or correspond to a particular commercial route.

Comment: One commenter requested that Customs allow payment of the commercial truck processing fee in Canadian funds.

Customs response: Since Customs duties, taxes, and other charges are required under 19 CFR 24.1(a)(1) to be paid in U.S. funds, and in light of the amendment to the COBRA discussed above regarding the treatment of fees under the Act as Customs duties for administrative and enforcement purposes, the commercial truck processing fees must also be paid in U.S. funds.

Comment: One commenter stated that there should be provision for a more

convenient form of individual payment such as tokens, stamps or cards in order to minimize delays in producing exact change.

Customs response: Customs inspectors and cashiers routinely make change without undue delay, and we are not aware of any particular problems with delays in this specific context. Moreover, any such delays may be avoided through use of the $100 calendar year permit which eliminates the need for individual payments.

Railroad Cars

Comment: One commenter objected to the railroad car fee on general grounds, stating that the fees will create economic hardship on the already depressed agricultural industry, will require excessive administrative collection costs, and are likely to provoke retaliation by Canada and Mexico.

Customs response: These comments involve legislative policy issues which are beyond the scope of Customs regulatory authority.

Comment: Several commenters stated that the annual $100 fee cap should be $50 for 1986.

Customs response: The response to the comment regarding proration of the 1986 $100 annual fee for commercial trucks set forth above is equally applicable here.

Comment: Several commenters stated that the fee should not be charged for empty railroad cars.

Customs response: As already noted, the COBRA was amended by the Tax Act so that the fee would not apply to empty railroad cars. Accordingly, § 24.22(d) as set forth below has been amended (1) in the basic fee provision, by referring to a "loaded or partially loaded passenger or commercial freight" railroad car, and (2) by adding a fee exemption to cover railroad cars transporting only containers, bins, racks, dunnage and other equipment or materials which have been used (as distinguished from such items in unused condition which could represent a commercial importation that would trigger collection of the arrival fee) for enclosing, supporting or protecting commercial freight, which Customs believes should be treated as empty railroad cars for purposes of the arrival fee.

Comment: A number of commenters argued that the fees paid for individual railroad car crossings should be permitted to accumulate toward satisfying the $100 annual fee cap.

Customs response: In light of the fact that the basic language in the COBRA regarding the annual fee limit for railroad cars is identical to that used in the case of commercial trucks, and since the Conference Report language discussed above in connection with commercial trucks applies equally to railroad cars, Customs believes that cumulation toward the annual fee limit should not be permitted for railroad cars but that prepayment of the $100 annual limit at any time during a calendar year should also be permitted in the case of railroad cars. Accordingly, § 24.22(d) as set forth below has been amended in a manner similar to the changes made to § 24.22(c) regarding commercial trucks as discussed above, the only essential difference being that in this case the prepayment will serve as a limitation on subsequent payment of individual arrival fees for a railroad car only if adequate records are maintained to enable Customs to verify that the $100 annual fee has in fact been paid on that railroad car, in recognition of the fact that railroad car fee payments and verification of those payments (including the applicability of a $100 prepayment to a specific railroad car) take place not at the time of arrival but rather at a time subsequent to the actual arrival.

Comment: Some commenters stated that individual carriers should be permitted to submit individual fee statements to Customs, rather than relying on their industry trade group to do so on their behalf.

Customs response: Customs has no objection to such an arrangement, and § 24.22(d) as set forth below has been modified accordingly.

Comment: A number of commenters requested that the time limit to remit payment be extended, from 60 days following the end of a month, to 60 or 90 days following a quarter.

Customs response: The suggestion by these commenters, if adopted, would significantly delay the collection of railroad car arrival fees. Given the fundamental administrative responsibility of Customs to ensure that statutorily mandated fees are collected in a timely fashion, it would not be appropriate to adopt this suggestion.

Comment: Several parties commented on payment procedures in the event a dispute arises between the AAR which calculates the fees owed and an individual carrier responsible for remitting those fees, arguing that payment should be withheld pending resolution of the dispute.

Customs response: Customs cannot agree to such an open-ended payment arrangement which could significantly delay collection of the fees. However, if the AAR and the individual carrier are unable to resolve any dispute during the 60-day time period following the close of the calendar month, a subsequent settlement of the dispute may be accounted for by means of an explanation in, and adjustment of, the next payment to Customs. Section 24.22(d) as set forth below has been amended to clarify the Customs position on this point.

Comment: Some commenters expressed confusion over the language concerning the exemption for in-transit trains. It was pointed out in this regard that the word "train" is too imprecise because a train is nothing more than the linkage of individual cars, and it was suggested that reference be made to "the country being transited" rather than "the United States".

Customs response: These points were resolved by the change to the in-transit exemption effected by the 1990 Act which was implemented by Customs in T.D. 91–33, as discussed above.

Comment: One commenter suggested that "railroad car" should be specifically defined in the regulations as a carrying vehicle measured from coupler to coupler.

Customs response: Customs agrees that such a definition would be useful, particularly in order to ensure that articulated cars are treated as one car. Accordingly, a definition of "railroad car" has been included in § 24.22(d) as set forth below.

Comment: One commenter stated that the regulations should provide a drawback, refund or allowance procedure for railroad cars that are received in error by a carrier and returned to the United States.

Customs response: Customs believes that such occurrences would most often involve empty cars, in which case no fee would apply as a result of the amendment to the railroad car fee provision effected by the Tax Act as discussed above. However, the fee would still apply in the case of such cars which are loaded or partially loaded, and Customs has no legal authority to provide otherwise in the regulations in the absence of supporting statutory language. It should be noted that such cars must still be cleared by Customs.

Comment: Two commenters suggested that the railroad company bringing a car into the United States and clearing it through Customs should be the party responsible for the fee payment, not another company receiving the car in interchange at the port of entry.

Customs response: Customs believes that the provisions regarding responsibility for fee payments as set forth in the interim regulations should be retained because they have provided

Customs with a workable method for identifying the party to which Customs will look for payment of the fees. However, so long as the actual payment to Customs is made by that party, there is nothing to prevent the two railroad companies from making their own private arrangements regarding reimbursement or allocation of the costs between them.

Comment: One commenter urged that the in-transit exemption provision be expanded to include in-transit cars which are set out (taken off line) for repairs outside the United States and then brought back on line, provided no cargo is loaded on or unloaded from the car.

Customs response: Customs agrees that the in-transit exemption remains applicable to such cars and, accordingly, § 24.22(d) as set forth below has been amended to clarify this point.

Private Vessels and Aircraft

Comment: Numerous commenters objected to the annual $25 fee for private vessels and aircraft on general grounds, stating that the assessment is unfair and discriminatory because automobiles entering the United States are not charged, that general taxes rather than user fees should be used to fund Customs operations, and that the private vessel fee will adversely affect business or trade and tourism in Canada.

Customs response: These comments relate to legislative policy issues that are beyond the scope of the regulations.

Comment: An association representing private vessel owners suggested the following:

1. Authorize procurement of a re-entry permit by mail order, in advance of departure to a foreign country.
2. Issue an identification permit number for the calendar year.
3. Allow permit number clearance by telephone whenever pleasure craft have nothing to clear through Customs.
4. Allow renewal of the permit number and fee, as well as pre-payment by mail for the following year, during the last 30 days of the current year.

Customs response: Section 24.22(e) presently states that the $25 fee may be prepaid to Customs, and Customs has instituted procedures for the advance issuance of decals either through local Customs offices or by mail, with the decal to be placed on the private vessel (or aircraft) as evidence that the fee has been paid for the calendar year in question. Accordingly, the first, second and fourth suggestions above have already been implemented by Customs, and § 24.22(e) as set forth below has been modified to reflect the current applicable procedures.

As regards the third suggestion, Customs currently permits telephonic report of arrival and clearance of private vessels in many districts, and such telephonic clearance normally includes verification of payment of the $25 annual fee. However, because special reporting and clearance requirements may apply in certain circumstances (see, for example, 19 CFR 4.2a), it would not be appropriate to provide for telephonic decal number clearance in these regulations.

Comment: One commenter stated that the annual $25 fee was reasonable but objected to the $25 overtime amount for Sunday inspectional services. This commenter suggested that Customs should stagger shifts during the week in order to provide free Sunday service.

Customs response: Pursuant to the decision of the Supreme Court in *U.S. v. Myers*, 320 U.S. 561 (1944), Customs inspectors must be paid overtime compensation for Sunday work without regard to whether the services are in addition to a regular weekly tour of duty. Therefore, staggered shifts would not alleviate the situation. However, Customs notes that section 6101(c)(1) of the Omnibus Budget Reconciliation Act of 1986 amended section 13031 of the COBRA so as to reinstate free overtime service for private aircraft on Sundays and holidays between the hours of 8 a.m. and 5 p.m. local time, thus addressing the substance of this commenter's objection as regards private aircraft but not as regards private vessels. In the absence of an appropriate statutory amendment similar to that made for private aircraft, Customs has no authority to eliminate overtime payments for Customs services provided in connection with private vessels. Section 24.22(e) as set forth below has been modified to clarify the overtime exception as regards private aircraft.

Comment: In order to exempt private vessels which are entered in regattas, one commenter made the following suggestions:

1. Exempt all pleasure craft not carrying merchandise regardless of size;
2. Exempt all participants in competitive events where the returning craft are not carrying merchandise; or
3. Extend the vessel length exemption from 30 feet to 65.6 feet (20 meters).

Customs response: The specific exemption for private pleasure vessels of less than 30 feet in length not carrying goods required to be declared was included in § 24.22(e) based on a statement of intent and regulatory mandate contained in the Conference Report relating to the COBRA (which noted in this regard that Customs incurs no processing costs in clearing such vessels). Customs has no authority to extend an exemption to other classes of vessels in the absence of support therefor in the statutory language and the legislative history relating thereto.

Dutiable Mail Entries

Comment: Two commenters requested that the regulations be revised to make it clear that the $5 processing fee is to be collected only when Customs prepares the entry documentation. Thus, when a customs broker prepares formal or informal entry documents, no fee would be assessed.

Customs response: Customs notes that the statute refers to "each item of dutiable mail for which a document is prepared by a customs officer" (emphasis added). Moreover, even though almost all dutiable formal mail entries are prepared by brokers, Customs in such cases still may have to prepare notices of arrival or other documentation in connection with the arrival, entry and clearance of the mail shipment. Accordingly, it would be inappropriate to refer only to "entry" documentation in § 24.22(f) or to otherwise limit the application of this regulatory provision which is in accord with the language and intent of the statute.

Comment: One commenter suggested exempting packages valued at less than $250 or reducing the amount of the fee because of the economic hardship the fee presents to small businesses.

Customs response: Since these suggestions involve legislative policy issues and are not supported by the statutory language, Customs has no authority to include such provisions in the regulations.

Commercial Vessel and Aircraft Passengers

Comment: Two commenters objected to the fee as a matter of principle. One commenter argued that the costs for services provided by Customs to arriving passengers should be covered out of general revenues. The other commenter argued that the fee is unfair because no other countries assess such a fee.

Customs response: These comments involve legislative policy issues implicitly reflected in the statute itself. Accordingly, Customs has no authority to address the comments in the regulatory texts.

Comment: One commenter stated that the exemption for transiting passengers should apply to all in-transit passengers rather than to only those not processed by Customs. This commenter

specifically suggested that the regulations be amended to refer simply to persons transiting the United States who stop over "for less than 24 hours prior to continuing on a journey to a foreign country".

Customs response: The regulatory provision in question was included in the interim regulations on the reasoning that the arrival fee is intended to apply only in cases where Customs actually processes the passenger, and the exemption for in-transit passengers added by the Tax Act, as discussed above, explicitly recognized this principle by referring to a passenger "for whom customs inspectional services are not provided." Accordingly, the suggestion of this commenter is inconsistent with the statutory language and thus cannot be adopted. Section 24.22(g) as set forth below has been modified in this regard to reflect more accurately the statutory language.

Comment: Two commenters stated that the exemption for in-transit passengers should not be limited to airline passengers but rather should also apply to cruise ship passengers who are transiting the United States on route to another country.

Customs response: Neither the statute nor the regulations limit applicability of the in-transit exemption to airline passengers. Thus, in principle, it is equally applicable to cruise ship and other commercial vessel passengers. However, the exemption will apply in either case only if the passenger is in-transit to a location outside the Customs territory of the United States and is not processed by Customs during the layover (in-transit) period. As a practical matter, the exemption is applied more frequently in the case of airline passengers who often disembark and are held in a sterile, supervised in-transit lounge, without undergoing any Customs inspection, until their continuing or connecting flight is ready to leave. Unless in-transit vessel passengers who disembark similarly remain in such a secure in-transit area so as to not require Customs processing, they will not be entitled to the exemption.

Comment: One commenter requested a list of airports which have sterile in-transit areas where passengers may remain and thus be covered by the in-transit exemption.

Customs response: A list of airports at which sterile in-transit lounges are maintained is set forth in a brochure entitled Travel Industry Tips (Publication No. 529) which Customs has published and made available to the public to explain the collection process for Federal inspection fees. Copies of this brochure may be obtained by writing to: U.S. Customs Service, P.O. Box 7407, Washington, DC 20044.

Comment: One commenter requested that the regulations include examples in order to address specific problems that arise when complex travel arrangements are involved (for example, when multiple layovers and arrivals in the United States occur on the same itinerary).

Customs response: Customs does not believe that the regulations are the proper place for such examples, given the legally binding nature of the regulations and the impossibility of anticipating the myriad of specific factual patterns that would have to be covered in order for the examples to be complete and sufficiently informative. However, examples of specific travel situations have been included in the Travel Industry Tips brochure mentioned above.

Comment: A commenter requested that an explicit statement be included in the regulations to the effect that arriving passengers who are exempt from application of the fee are also exempt from charges for inspectional services.

Customs response: The passenger arrival fee is specifically intended to cover Customs costs in providing inspectional services to passengers, and there are no other Customs charges for such services which apply specifically to commercial passengers. Accordingly, the suggested statement is neither necessary nor appropriate.

Comment: With reference to the exemption concerning persons whose journey originates in Canada, Mexico, a U.S. territory or possession, or any adjacent island, one commenter suggested that no fee should be charged if a passenger stops for layover in one of those locations even if the journey originated outside one of those locations.

Customs response: The statutory provision regarding the cited exempt locations is strictly limited to a journey which either originated in one of those locations or originated in the United States and was limited to those locations. Thus, there is no legal basis for the suggested broad fee exemption based merely on a layover in one of the exempt locations.

Section 24.22(g) as set forth below has been modified by revising paragraph (2)(i) to reflect the Tax Act addition of the exemption for a journey which originated in the United States and was limited to the exempt locations. In addition, in order to reflect the basic Customs position set forth in Headquarters Ruling Letters 112511 and 112554 regarding the applicability of the two fee exemptions in that paragraph, the following additional changes have been made to § 24.22(g) as set forth below: (1) A new paragraph (B) has been added to paragraph (2)(i) to clarify what constitutes a journey and its origination point; (2) in the first sentence of paragraph (3) concerning fee collection procedures, the words "for transportation into the customs territory of the United States" have been added to clarify the context in which ticket or travel document issuance triggers collection of the arrival fee; and (3) interim paragraph 3(ii), which does not reflect the current Customs position, has been replaced by a new text setting forth an example in which the arrival fee is collected because the journey did not meet all conditions for exemption under the provision added by the Tax Act.

Comment: One commenter stated that United Nations officials should be accorded the same exemption from the fee as persons who have full diplomatic status.

Customs response: The exemption for diplomats was included in the interim regulations because the Conference Report pertaining to the COBRA stated that the conferees agreed that the fee should not apply to "diplomats entering the United States." Customs believes that the conferees intended to exempt from the fee those officials and other personnel of foreign governments and international organizations (including the United Nations) who may be exempt from normal Customs clearance procedures and requirements under subchapter VI of chapter 98 of the Harmonized Tariff Schedule of the United States and as provided in part 148 of the Customs Regulations (19 CFR part 148). Customs further notes that diplomatic status for purposes of United States law is dependent on the issuance of the appropriate visa by the U.S. Department of State and is not controlled by the issuance of a passport or other identifying document by a foreign government. In order to ensure that the fee exemption for diplomats clearly reflects the intent and can be easily and consistently applied, § 24.22(g)(2)(iii) as set forth below has been modified so that the exemption will be applied with reference to specific classes of visas issued by the Department of State.

Comment: A commenter took issue with the requirement that commercial air carriers collect the fee since it is the passenger who is liable for paying the fee, and this commenter argued that the regulations should absolve carriers from responsibility for collecting the fee when the passenger refuses to pay it. This same commenter suggested that the

word "collected" should be changed to read "assessed" in interim § 24.22(g)(3).

Customs response: With regard to the first point, the statute sets forth the general rule that the fee shall be collected from the passenger by the person who issues a transportation document or ticket and that such collection shall take place when the document or ticket is issued. Given this statutory specificity, Customs cannot amend the regulations as this commenter suggests, and Customs further notes that when a passenger refuses to pay the fee, the carrier can solve the collection responsibility problem by simply declining to issue the document or ticket to that passenger. As regards the second point, since both the regulatory provision in question and the statutory provision on which it is based specifically concern the collection procedure (it is the statute itself which "assesses" the fee), it would not be appropriate to use the word "assessed" in the regulatory provision.

Comment: One commenter suggested that responsibility for collecting the fee should rest with the carrier which actually transports the passenger rather than the carrier which issued the ticket.

Customs response: Customs would also prefer to have responsibility for collection rest with the transporting carrier as this would greatly facilitate verification of required fee payments. However, given the specificity of the statute in this regard, in the absence of an appropriate statutory amendment Customs has no authority to amend the regulations to reflect this commenter's suggestion.

Comment: Two commenters argued that charter airlines should be responsible for the remittance of fees collected by tour operators, and they further suggested in this regard that the regulations be amended to require that tour operators remit the collected fees to the charter operators for this purpose.

Customs response: The statute states that the person "who collects" the passenger fees shall remit those fees to the Government. Since under the statute collection of the fees normally takes place when the transportation document or ticket is issued (in this case, by the tour operator), Customs has no authority to amend the regulations as suggested by these commenters.

Comment: Two commenters suggested that, in the case of charter operations, verification of fee payments should be based on the passenger manifest rather than on the tickets issued; under this procedure, tour operators would advise the carriers in writing via the manifests of the number of passengers who paid the fee. The same commenters also stated that the flight manifest should be used as the travel document for purposes of determining when remittance of the fees is due, because most charter airlines use the flight manifest in order to determine when a charter will leave and how many passengers are booked.

Customs response: In view of the specific statutory requirements regarding when and by whom the fees are to be collected and remitted, and in consideration of the fact that the intent of Congress was that the passenger (who is the recipient of the Customs inspectional services) pay the fee, the flight manifest cannot be used in the manner suggested by these commenters.

Comment: One commenter stated that commercial air carriers prefer to have the option of collecting the fee in lieu of collection by U.S.-based tour wholesalers who contract for passenger space.

Customs response: To the extent that the tour wholesalers issue the tickets (and thus under the statute are required to collect the fee), Customs has no authority to provide in the regulations for collection of the fee by the carrier.

Comment: One commenter criticized the requirement that carriers collecting the fee at a departure airport must issue a receipt to the passenger, stating that carriers should be allowed to issue a stamp similar to "U.S. Transportation Tax" in lieu of a receipt. Another commenter stated that the regulations should specify the types of receipts that are permissible.

Customs response: The regulatory requirement of issuance of a receipt to a passenger applies only when the fee is collected from the passenger at the time of departure from the United States due to a failure to collect the fee at the time of issuance of the ticket at an overseas location; the regulation reflects a specific statutory requirement and thus cannot refer to the issuance of anything other than a "receipt" as provided in the statute. Customs does not believe that it would be appropriate to specify in the regulations what type of "receipt" would be permissible because the party collecting the fee should have sufficient flexibility to adopt a procedure that is compatible with its particular operational requirements and procedures.

On a related point, Customs notes that the COBRA requires that the fee be separately identified on the document or ticket as a "Federal inspection fee", whereas interim § 24.22(g)(4) merely required that the ticket or travel document be "marked to indicate that the required fee has been collected from the passenger." The regulatory text as set forth below (and renumbered as § 24.22(g)(3) as discussed below) has been modified to conform to the statutory requirement but with reference to Federal inspection "fees" in order that other Federal agency inspection fees may be included as necessary.

Comment: With regard to the basic requirement that the carrier issuing the ticket or travel document is responsible for collecting the fee, one commenter stated that carriers should also be able to collect the fee on prepaid tickets or travel documents (in order to avoid, for example, having to collect the fee from a minor with a prepaid ticket).

Customs response: This commenter correctly notes that there may be a distinction between the time at which a passenger actually takes physical possession of a ticket and the time at which payment for the ticket is effected. However, this should not present a problem even in the case of prepaid tickets, provided it is understood that ticket "issuance" includes the act of preparing the ticket by the carrier, because the carrier can (and should) ensure collection of the fee by including the fee among the charges reflected on the ticket and paid by the ticket purchaser.

Comment: In consideration of the fact that refunds of collected fees will sometimes be necessary, one commenter requested that a procedure be implemented to allow airlines to adjust the remitted amount from quarter to quarter.

Customs response: Customs agrees that, if an explanation is provided with the payment, adjustments of previously remitted fees may be reflected in the next quarterly payment to Customs. Section 24.22(g) as set forth below has been modified accordingly.

Comment: In cases involving split charters whereby several tour operators charter space on one aircraft, one commenter suggested that the tour operator who contracts with the passengers, rather than the carrier, is in the best position to collect and remit the fees to Customs.

Customs response: If the tour operator issues the ticket or other travel document, the statute requires that the tour operator collect and remit the fees to Customs.

Although the last sentence of interim § 24.22(g)(4) clarified the responsibilities of U.S.-based tour wholesalers who issue non-carrier tickets, Customs notes that the first sentence of that section (which set forth the basic fee collection requirement) only referred to "carriers". Accordingly, the first sentence of interim § 24.22(g)(4) has been modified to refer to "each air

or sea carrier, travel agent, tour wholesaler, or other party" issuing a ticket or travel document in order to clarify the statutorially-mandated responsibility, and corresponding changes also have been made to the texts of interim § 24.22(g) (5) and (7) which are a direct consequence of the collection requirement. In addition, the first sentence of interim § 24.22(g)(4) has been further modified by removing the words "on or after July 7, 1986," which were included only because the interim regulations were published prior to the effective date of the statutory fees. Finally, the texts of interim § 24.22(g) (3) and (4) have been combined into one § 24.22(g)(3) covering all fee collection procedures, with a consequential renumbering of the succeeding paragraphs under § 24.22(g).

Comment: One commenter expressed concern that the required accounting and operating procedures to be followed by clerks and attendants in collecting and verifying the fees will be viewed by passengers as a reduction in the quality of service. This commenter also complained that the general records maintenance requirement will increase expenses by necessitating additional staff.

Customs response: Notwithstanding the perceived or actual effect which these requirements may have, they are central and thus necessary to the proper administration of the statutory fee provisions. Accordingly, there is no practical means for addressing these concerns in the regulations.

Comment: One commenter suggested that when fees are collected in a foreign country, they should be collected in the local currency using the exchange rate applicable on the date of collection and, for purposes of remittance to Customs, the fees so collected should be converted to U.S. dollars using the exchange rate in effect on the date of remittance.

Customs response: Customs currently allows for the procedure suggested by this commenter. The Customs position on this point is also reflected in the Travel Industry Tips brochure mentioned above.

Comment: One commenter requested that the second sentence of interim § 24.22(g)(7) be modified to require retention of records for 2 years after "fee collection" rather than "fee calculation".

Customs response: Customs cannot agree to this request. Given the fact that payments and statements are submitted to Customs only quarterly (and may be submitted as late as 31 days after the close of the quarter), the effect of this proposed change would be to significantly shorten the record retention period with regard to those fees collected in the early part of the subject quarter. In order to ensure that Customs is able to perform a timely and accurate verification of payments, the records retention period must cover both the calculation itself and all the collection records upon which the calculation was based.

Comment: One commenter requested that the regulations specify the types of records that are to be maintained.

Customs response: Customs agrees in principle that it would be useful to clarify in the regulations the types of records or information that should be maintained to enable Customs to verify that the fees have been properly collected and remitted. However, Customs believes that this document is not the proper vehicle for such action, which could have the effect of imposing new substantive requirements on the public and thus should be the subject of further public comment procedures.

Comment: One commenter suggested that the deadline for quarterly payment and statement filing (31 days after the close of the calendar quarter) be extended by 60 days to avoid the need for estimates and ensure remittance of the correct amount.

Customs response: The deadline set forth in the regulations reflects a requirement in the statute and thus must be retained. Moreover, Customs believes that the addition of a provision allowing reconciliation of quarterly payments in the following quarter, as discussed above, will address the main concerns of this commenter.

Comment: One commenter pointed out that charter airlines already file quarterly reports with the U.S. Department of Transportation (DOT) and suggested that Customs review those quarterly reports to see if they would be sufficient for Customs purposes.

Customs response: Although information filed with the DOT may be useful to Customs for fee verification purposes in some circumstances, it would not be sufficient in and of itself because it only reflects passengers transported by carriers and thus would not provide complete information regarding fee collection which is based on ticket issuance rather than passenger arrivals.

Comment: Three commenters raised issues regarding the provision of adequate services to passengers as required by the COBRA, which was not addressed in the interim regulations. One commenter stated that a system should be implemented allowing airlines to notify Customs of intended arrival and that there should be some assurance regarding adequacy of personnel to clear passengers so that no passenger is required to wait in line for more than 20 minutes. Another commenter requested that Customs specify how adequacy of service will be assured and suggested that a telephone number be provided for purposes of reporting bad service. The third commenter requested inclusion of language in the regulations stating that charter airline passengers are entitled to the same service, and at no additional cost, as in the case of scheduled airline passengers because charter airlines also operate on a schedule.

Customs response: As regards notification of arrival, Part 122 of the Customs Regulations contains detailed provisions regarding the applicable procedures. With respect to the issue of adequacy and cost of service provided by Customs, it is noted that the COBRA was extensively amended in this regard by section 8101(c) of the Omnibus Budget Reconciliation Act of 1986, by section 1893(d) of the Tax Act, and by section 9501(a) of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203). Those amendments expanded the scope of the services that must be adequately provided, included specific factors to be taken into account in determining whether service is adequately provided, and expanded the list of services for which only fees under the COBRA may be charged. Consistent with the statutory mandate, the policy of Customs is to provide the most efficient and responsive service possible to all carriers (whether regularly scheduled or charter) and passengers, and included in this policy is a goal of processing all passengers within 20 minutes or less. Because most delays or other inspectional or clearance problems result from conditions arising at the local level, Customs suggests that any complaints be directed to the regional commissioner or district director of Customs having jurisdiction over the location where the flight was processed. As regards inclusion of adequate service standards in the regulations, Customs believes that this final rule document is not the proper vehicle for such proposals.

Customs Brokers

One commenter made a number of points on behalf of brokers nationwide with regard to the permit fee.

Comment: The commenter stated that confusing instructions were issued to Customs personnel concerning the permit fee, in particular regarding its applicability to inactive brokers and to

individually-licensed brokers employed by a corporate broker.

Customs response: When these problems were brought to the attention of Customs Headquarters, additional clarifying instructions were issued to all Customs field offices.

Comment: The commenter stated that the automatic permit revocation procedure set forth in section 111.96 of the interim regulations for failure to timely pay the fee, by not allowing a reasonable opportunity to cure the default, amounts to a denial of due process.

Customs response: Even though the interim regulations were published on June 11, 1986, and went into effect on July 7, 1986, Customs gave brokers an additional grace period, until August 6, 1986, to pay the annual permit fee for 1986. Moreover, Customs exercised a policy of leniency as regarded payment of the 1986 fee in order to avoid precipitous revocation of permits for failure to timely pay the fee. Thus, brokers were given ample notice and opportunity to pay the 1986 fee and thus retain their permits.

On the broader issue of due process, Customs would point out that since the Tax Act amendments discussed above explicitly ratified the regulatory principle of permit revocation for failure to timely pay the fee, provided appropriate notice of the due date has been published in the **Federal Register**, the issue of due process is essentially moot from a regulatory standpoint.

Comment: This commenter argued that the permit fee for 1986 should be reduced to one-half the full-year amount due to its mid-year implementation.

Customs response: This issue was resolved in the Tax Act as discussed above.

Comment: The commenter stated that an actual permit document should be made available to each broker.

Customs response: Such documents were issued to all Customs districts for immediate use in December 1986.

Additional Changes to the Regulations

In addition to the changes to the interim regulatory texts discussed above, the final regulations as set forth below incorporate (1) a number of non-substantive, editorial (organizational or drafting) changes to improve the clarity and readability of the regulations and (2) some necessary substantive changes involving subsequent statutory amendments and other matters not specifically discussed above in connection with the public comments. The principal editorial changes and additional substantive changes are described below.

Section 24.22

Paragraph (a) has been limited to definitions that apply to more than one of the other paragraphs under the section. Those definitions which pertain to only one such paragraph appear as part of the substantive fee provision.

Where applicable, separate subparagraphs have been included to cover annual fee limitations for individual arrival fees, prepayment of fees, and fee exceptions where more than one category of exemption applies to the fee in question. Each prepayment subparagraph reflects current payment procedures, including procedures for lump sum mid-year payment of both annual fees and any remaining balance where a calendar year limit applies to an individual arrival fee. Fee exceptions have been added to cover the Tax Act addition of exemptions for commercial trucks, railroad cars and private vessels transported by any vessel other than a ferry.

With regard to the commercial passenger arrival fee, the fee exemption covering crew members and persons directly connected with the operation, navigation, ownership, or business of the vessel or aircraft has been modified to reflect the longstanding Customs position, as stated in the Travel Industry Tips brochure mentioned above, that the exemption applies only to official business travel and not to travel for pleasure. In addition, the following changes have been made to the paragraph covering payment and quarterly statement procedures (paragraph (g)(4) as set forth below): (1) In order to more clearly reflect the necessary correlation between the statutory obligation to collect the fees and the consequent statutory obligation to remit those fees to Customs, reference is made to payment to Customs of the fees "required to be" collected (thus, the amount remitted must be equal to the amount of fees required to be collected under the statute, even if some required fees were in fact not collected); and (2) the provision regarding fee payment responsibility where the (foreign) ticket or travel document issuer has not collected the fee has been changed to more closely align on the wording of the statute and paragraph (g)(3). Finally, the paragraph concerning the limitation on charges (paragraph (g)(7) as set forth below) has been redrafted to more accurately reflect the terms of the statutory provision on which it is based (19 U.S.C. 58c(e)(1)), in particular to cover the exception regarding reimbursement for costs incurred by Customs in connection with user fee airports, and the references in this paragraph to provisions within part 6 have been changed to reflect the replacement of part 6 by part 122 as further discussed below.

The payment procedures applicable under paragraph (i)(1) have been clarified by insertion of a cross-reference to § 24.1 (which concerns general collection requirements and procedures that are equally applicable to the fees under § 24.22) and by inclusion of the identifying payment class codes (subsequently implemented by Customs for accounting and reporting purposes) to be referenced on a check or money order payment.

Part 111

In order to ensure applicability of the proper procedures, the second sentence of section 111.96(c) has been amended by inserting a cross-reference to the remittance procedures set forth in § 24.22(i). In addition, the third sentence of § 111.96(c) has been redrafted (1) to clarify the intended effect of the sentence, *i.e.* that no proration of a mid-year fee payment will be allowed, and (2) to include a reference to a permit application under section 111.19(b) in order to ensure procedural consistency between that section and § 111.96(c).

Part 122

As noted above, Part 6 concerning air commerce regulations was revised and redesignated as part 122 following publication of the interim regulations implementing the COBRA (which included a new section 6.1a setting forth a cross-reference to the interim § 24.22 fees as regards private aircraft and passengers aboard commercial aircraft). The final texts of part 122 were adopted on April 21, 1988, as T.D. 88–12, 55 FR 9285.

It is further noted, however, that no direct counterpart to interim section 6.1a was included in the final texts of part 122. Moreover, present § 122.29, which concerns overtime services for private aircraft, is incorrect in referring in this context to overtime charges which no longer apply to private aircraft as discussed above. In addition, there is no need for a cross-reference to passenger fees which apply only in regard to commercial aircraft. In order to address these issues, § 122.29 has been revised (1) to set forth a cross-reference to § 24.22 as regards the private aircraft arrival fee and (2) to set forth a cross-reference to § 24.16 only with regard to the procedures for requesting overtime services.

Part 123

The interim texts implementing the COBRA included a new § 123.1a which referred to § 24.22 as regards fees applicable to commercial trucks, truck cabs, and railroad cars whether empty or otherwise. Customs now believes that it would be preferable to remove this section, which represents an exception to normal regulatory numbering rules, and to include an appropriate cross-reference to the § 24.22 fees in § 123.0 which describes the overall scope of part 123 and which already contains cross-references to part 122 as regards aircraft and to part 4 as concerns vessels. Accordingly, a new sentence, with a simplified text, has been added at the end of § 123.0 for this purpose.

Part 145

For the same reasons stated above in regard to part 123, interim § 145.1a has been removed and a new sentence containing a cross-reference to the § 24.22 dutiable mail fee has been added to § 145.0 which concerns the scope of part 145.

Part 178

The changes to part 178 involve removing from section 178.2 the listings for §§ 4.98(i), 123.1a and 145.1a, which either are simply cross-reference provisions containing no substantive requirements or have been replaced in this document by cross-reference provisions as discussed above.

Conclusion

Accordingly, based on the comments received and the analysis of those comments as set forth above, and based on the statutory changes and additional considerations discussed above, Customs believes that the interim regulations published as T.D. 86–109 should be adopted as a final rule with certain changes thereto as discussed above and set forth below.

Executive Order 12866

This document does not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

Regulatory Flexibility Act

Based on the supplementary information set forth above and because these regulations concern the collection of fees that are mandated by statute, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, the regulations are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Paperwork Reduction Act

The collection of information in these final regulations, contained in § 24.22, has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1515–0154. The estimated average annual burden associated with this collection is .25 hours per respondent or recordkeeper. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the U.S. Customs Service, Paperwork Management Branch, Room 6316, 1301 Constitution Avenue, N.W., Washington, D.C. 20229, or the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, D.C. 20503.

Drafting Information

The principal author of this document was Francis W. Foote, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 4

Customs duties and inspection, Maritime carriers, Cargo vessels, Passenger vessels, Yachts.

19 CFR Part 24

Customs duties and inspection, Accounting, Claims, Taxes, Wages, User fees.

19 CFR Part 111

Customs duties and inspection, Imports, Administrative practice and procedure, Brokers.

19 CFR Part 122

Customs duties and inspection, Imports, Air carriers, Air transportation, Aircraft, Airports.

19 CFR Part 123

Customs duties and inspection, Canada, Mexico, Motor carriers, Railroads, Vessels.

19 CFR Part 145

Customs duties and inspection, Postal service.

19 CFR Part 178

Reporting and recordkeeping requirements, Paperwork requirements, Collections of information.

Amendments to the Regulations

Parts 4, 24, 111, 122, 123, 145 and 178, Customs Regulations (19 CFR Parts 4, 24, 111, 122, 123, 145 and 178), are amended as set forth below:

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The authority citation for part 4 continues to read in part as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1624; 46 U.S.C. App. 3;

* * * * *

Section 4.98 also issued under 31 U.S.C. 9701;

* * * * *

2. Section 4.98(i) is revised to read as follows:

§ 4.98 Navigation fees.

* * * * *

(i) Private and commercial vessels, and passengers aboard commercial vessels, may be subject to the payment of fees for services provided in connection with their arrival as set forth in § 24.22 of this chapter.

* * * * *

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The authority citation for part 24 continues to read in part as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 58a–58c, 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1624, 31 U.S.C. 9701, unless otherwise noted.

* * * * *

2. The authority citation for section 24.23 is removed.

3. Section 24.22 is revised to read as follows:

§ 24.22 Fees for certain services.

(a) *Definitions.* For purposes of this section:

(1) The term *vessel* includes every description of watercraft or other contrivance used or capable of being used as a means of transportation on water but does not include any aircraft.

(2) The term *arrival* means arrival at a port of entry in the customs territory of the United States or at any place serviced by any such port of entry.

(3) The expression *calendar year* means the period from January 1 to December 31 of any particular year.

(4) The term *ferry* means any vessel which is being used to provide transportation only between places that are no more than 300 miles apart and which is being used to transport only:

(i) Passengers, and/or

(ii) Vehicles, or railroad cars, which are being used, or have been used, in transporting passengers or goods.

(b) *Fee for arrival of certain commercial vessels.*

(1) *Vessels of 100 net tons or more.*

(i) *Fee.* Except as provided in paragraphs (b)(2) and (b)(4) of this section, a processing fee in the amount of $397 shall be tendered by the master, licensed deck officer, or purser upon arrival of any commercial vessel of 100 net tons or more which is required to enter under § 4.3 of this chapter or upon arrival of any U.S.-flag vessel of 100 net tons or more proceeding coastwise under § 4.85 of this chapter. The fee shall be collected for each arrival regardless of the number of arrivals taking place in the course of a single voyage.

(ii) *Fee limitation.* No fee or portion thereof shall be collected under paragraph (b)(1)(i) of this section for the arrival of a vessel during any calendar year after a total of $5,955 in fees has been paid under paragraphs (b)(1)(i) and (b)(2)(i) of this section for all arrivals of such vessel during such calendar year, provided that adequate proof of such total payment is submitted to Customs.

(2) *Barges and other bulk carriers from Canada or Mexico.*

(i) *Fee.* A processing fee of $100 shall be tendered upon arrival of any barge or other bulk carrier which arrives from Canada or Mexico either in ballast or transporting only cargo laden in Canada or Mexico. The fee shall be collected for each arrival regardless of the number of arrivals taking place in the course of a single voyage. For purposes of this paragraph, the term "barge or other bulk carrier" means any vessel, other than a ferry, which is not self-propelled or which transports fungible goods that are not packaged in any form.

(ii) *Fee limitation.* No fee or portion thereof shall be collected under paragraph (b)(2)(i) of this section for the arrival of a barge or other bulk carrier during any calendar year after a total of $1,500 in fees has been paid under paragraphs (b)(1)(i) and (b)(2)(i) of this section for all arrivals of such vessel during such calendar year, provided that adequate proof of such total payment is submitted to Customs.

(3) *Prepayment.* The vessel operator, owner or agent may at any time prepay the maximum calendar year amount specified in paragraph (b)(1)(ii) or (b)(2)(ii) of this section or any remaining portion thereof if individual arrival fees have already been paid on the vessel for that calendar year. Prepayment may be made at a Customs district or port office or may be mailed to: U.S. Customs Service, National Finance Center, P.O. Box 68907, Indianapolis, Indiana 46268. In a case involving prepayment of the remaining portion of a maximum calendar year amount, certified copies of receipts (Customs Form 368 or 368A) issued for individual arrival fee payments during the calendar year shall accompany the payment. Where prepayment is made by mail, the payment shall be accompanied by a letter which sets forth the name of the vessel covered by the payment, the calendar year to which the payment applies, a return address, and any other information required under paragraph (i)(1) of this section.

(4) *Exceptions.* The following vessels are exempt from payment of the fees specified in paragraphs (b)(1) and (b)(2) of this section:

(i) Foreign passenger vessels making at least three trips a week from a port in the United States to the high seas and returning to the same U.S. port without having touched any foreign port or place, even though formal entry is still required;

(ii) Any vessel which, at the time of arrival, is being used solely as a tugboat;

(iii) Any government vessel for which no report of arrival or entry is required as provided in § 4.5 of this chapter; and

(iv) A ferry.

(c) *Fee for arrival of a commercial truck.*

(1) *Fee.* The driver or other person in charge of a commercial truck shall, upon arrival, proceed to Customs and tender the sum of $5 for the services provided. The fee shall not apply to any commercial truck which, at the time of arrival, is being transported by any vessel other than a ferry. For purposes of this paragraph, the term "commercial truck" means any self-propelled vehicle, including an empty vehicle or a truck cab without a trailer, which is designed and used for the transportation of commercial merchandise or for the transportation of non-commercial merchandise on a for-hire basis.

(2) *Fee limitation.* No fee shall be collected under paragraph (c)(1) of this section for the arrival of a commercial truck during any calendar year once a prepayment of $100 has been made and a decal has been affixed to the vehicle windshield as provided in paragraph (c)(3) of this section.

(3) *Prepayment.* The owner, agent or person in charge of a commercial truck may at any time prepay a fee of $100 to cover all arrivals of such commercial truck during a calendar year or any remaining portion of a calendar year. Prepayment may be made at a Customs district or port office or by mail in accordance with paragraph (i)(1) of this section, and each prepayment shall be accompanied by a properly completed Customs Form 339, Annual User Fee Decal Request. Once the prepayment has been made under this paragraph, a decal will be issued for placement in the lower left hand corner of the vehicle windshield to show that the vehicle is exempt from payment of the fee for an individual arrival during the applicable calendar year or any remaining portion thereof.

(d) *Fee for arrival of a railroad car.*

(1) *Fee.* Except as provided in paragraph (d)(6) of this section, a fee of $7.50 shall be charged for the arrival of each loaded or partially loaded passenger or commercial freight railroad car. The railroad company receiving a railroad car in interchange at a port of entry or, barring interchange, the company moving a car in line haul service into the customs territory of the United States, shall be responsible for payment of the fee. Payment of the fee shall be made in accordance with the procedures set forth in paragraph (d)(3) or (d)(4) of this section. For purposes of this paragraph, the term "railroad car" means any carrying vehicle, measured from coupler to coupler and designed to operate on railroad tracks, other than a locomotive or a caboose.

(2) *Fee limitation.* No fee shall be collected under paragraph (d)(1) of this section for the arrival of a railroad car during any calendar year once a prepayment of $100 has been made as provided in paragraph (d)(3) of this section, provided that adequate records are maintained to enable Customs to verify any such prepayment.

(3) *Prepayment.* As an alternative to the payment procedures set forth in paragraph (d)(4) of this section, a railroad company may at any time prepay a fee of $100 to cover all arrivals of a railroad car during a calendar year or any remaining portion of a calendar year. Each prepayment, accompanied by a letter setting forth the railroad car number(s) covered by the payment, the calendar year to which the payment applies, a return address, and any additional information required under paragraph (i)(1) of this section, shall be mailed to: National Finance Center, Revenue Branch, P.O. Box 68907, Indianapolis, Indiana 46268.

(4) *Statement filing and payment procedures.*

(i) The Association of American Railroads (AAR), the National Railroad Passenger Corporation (AMTRAK), and any railroad company preferring to act individually, shall file monthly statements with Customs, and shall make payment of the arrival fees to Customs, in accordance with the procedures set forth in paragraphs (d)(4)(ii) and (i) of this section. Each monthly statement shall indicate:

(A) The number of railroad cars subject to the arrival fee during the relevant period;

(B) The number of such railroad cars pulled by each carrier; and

(C) The total processing fees due from each carrier for the relevant period.

(ii) AMTRAK and railroad companies acting individually shall file each monthly statement within 60 days after the end of the applicable calendar month, and the fees covered by each statement shall be remitted with the statement. Monthly statements prepared by the AAR on behalf of individual railroad companies shall be filed within 60 days after the end of the applicable calendar month, and each railroad company shall remit the fees as calculated for it by the AAR within 60 days after the end of that calendar month. In cases of conflict between the AAR and an individual railroad company regarding calculation of the fees, the railroad company shall timely remit the amount as calculated by the AAR even if the dispute is unresolved. Subsequent settlements may be accounted for by an explanation in, and adjustment of, the next payment to Customs.

(5) *Maintenance of records.* The AAR, AMTRAK, and each railroad company preparing and filing its own statements shall maintain all documentation necessary for Customs to verify the accuracy of the fee calculations and to otherwise determine compliance under the law. Such documentation shall be maintained for a period of 3 years from the date of fee calculation. The AAR, AMTRAK, and each railroad company preparing and filing its own statements shall provide to Customs the name, address, and telephone number of a responsible officer who is able to verify any statements or records required to be filed or maintained under this section, and shall promptly notify Customs of any changes in identifying information previously submitted, in accordance with the procedures set forth in paragraph (i)(2) of this section.

(6) *Exceptions.* The following railroad cars are exempt from payment of the fee specified in paragraph (d)(1) of this section:

(i) Any railroad car whose journey originates and terminates in the same country, provided that no passengers board or disembark from the train and no cargo is loaded or unloaded from the car while the car is within any country other than the country in which the car originates and terminates, including any such railroad car which is set out for repairs outside the United States and then returned to on-line service without having undergone loading or unloading of passengers or cargo during the repair period;

(ii) Any railroad car transporting only containers, bins, racks, dunnage and other fixed or loose equipment or materials which have been used for enclosing, supporting or protecting commercial freight; and

(iii) Any railroad car which, at the time of arrival, is being transported by any vessel other than a ferry.

(e) *Fee for arrival of a private vessel or private aircraft.*

(1) *Fee.* Except as provided in paragraph (e)(3) of this section, the master or other person in charge of a private vessel or private aircraft shall, upon first arrival in any calendar year, proceed to Customs and tender the sum of $25 to cover services provided in connection with all arrivals of such vessel or aircraft during that calendar year. Upon payment of this annual fee, a decal will be issued and shall be affixed to the vessel or aircraft as evidence that the fee has been paid. Except in the case of private aircraft, all overtime charges provided for in this part remain payable notwithstanding payment of the fee specified in this paragraph.

(2) *Prepayment.* A private vessel or private aircraft owner or operator may, at any time during the calendar year, prepay the $25 annual fee specified in paragraph (e)(1) of this section. Prepayment may be made at a Customs district or port office, or by mail in accordance with paragraph (i)(1) of this section, and shall be accompanied by a properly completed Customs Form 339, Annual User Fee Decal Request.

(3) *Exceptions.* The following are exempt from payment of the fee specified in paragraph (e)(1) of this section:

(i) Private pleasure vessels of less than 30 feet in length, so long as they are not carrying any goods required to be declared to Customs;

(ii) Any private pleasure vessel granted a cruising license under § 4.94 of this chapter, during the term of the license; and

(iii) Any private vessel which, at the time of arrival, is being transported by any vessel other than a ferry.

(f) *Fee for dutiable mail.* The addressee of each item of dutiable mail for which a Customs officer prepares documentation shall be assessed a processing fee in the amount of $5. When the merchandise is delivered by the Postal Service, the fee shall be shown as a separate item on the entry and collected at the time of delivery of the merchandise along with any duty and taxes due. When Customs collects the fee directly from the importer or his agent, the fee will be included as a separate item on the informal entry or entry summary document.

(g) *Fee for arrival of passengers aboard commercial vessels and commercial aircraft.*

(1) *Fee.* Except as provided in paragraph (g)(2) of this section, a fee of $5 shall be collected and remitted to Customs for services provided in connection with the arrival of each passenger aboard a commercial vessel or commercial aircraft from a place outside the United States.

(2) *Exceptions.* The fee specified in paragraph (g)(1) of this section shall not apply to the following categories of arriving passengers:

(i)(A) Persons whose journey:

(*1*) Originates in Canada, Mexico, a territory or possession of the United States, or any adjacent island; or

(*2*) Originates in the United States and is limited to Canada, Mexico, territories and possessions of the United States, and adjacent islands.

(B) For purposes of paragraph (g)(2)(i)(A) and paragraph (g)(3) of this section, a journey, which may encompass multiple destinations and more than one mode of transportation, shall be deemed to originate in the location where the person's travel begins under cover of a transaction which includes the issuance of a ticket or travel document for transportation into the customs territory of the United States. In addition, for purposes of this paragraph, territories and possessions of the United States include American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands, and adjacent islands include all of the islands in the Caribbean Sea, the Bahamas, Bermuda, St. Pierre, Miquelon, and the Turks and Caicos Islands.

(ii) Crew members and persons directly connected with the operation, navigation, ownership or business of the vessel or aircraft, provided such crew member or other person is traveling for an official business purpose and not for pleasure;

(iii) Diplomats and other persons in possession of a visa issued by the U.S. Department of State in class A–1, A–2, C–2, C–3, G–1 through G–4, or NATO 1–6;

(iv) Persons departing from and returning to the United States without having touched a foreign port or place;

(v) Persons arriving as passengers on any aircraft used exclusively in the governmental service of the United States or a foreign government, including any agency or political subdivision thereof, so long as the aircraft is not carrying persons or

merchandise for commercial purposes. Passengers on commercial aircraft under contract to the U.S. Department of Defense are exempted if they have been precleared abroad under the joint DOD/ Customs Military Inspection Program;

(vi) Persons arriving on an aircraft due to an emergency or forced landing when the original destination of the aircraft was a foreign airport; and

(vii) Persons who are in transit to a destination outside the United States and for whom Customs inspectional services are not provided.

(3) *Fee collection procedures.* Each air or sea carrier, travel agent, tour wholesaler, or other party issuing a ticket or travel document for transportation into the customs territory of the United States is responsible for collecting from the passenger the fee specified in paragraph (g)(1) of this section. The fee shall be separately identified with a notation "Federal inspection fees" on the ticket or travel document to indicate that the required fee has been collected from the passenger. If the ticket or travel document is not so marked and was issued in a foreign country, the fee shall be collected by the departing carrier upon departure of the passenger from the United States. If the fee is collected at time of departure from the United States, the carrier making the collection shall issue a receipt to the passenger. U.S.-based tour wholesalers who contract for passenger space and issue non-carrier tickets or travel documents shall collect the fee in the same manner as a carrier. Collection of the fee shall include the following circumstances:

(i) When a through ticket or travel document is issued covering a journey into the customs territory of the United States which originates in a location other than one specified in paragraph (g)(2)(i)(A) of this section;

(ii) When a return ticket or travel document is issued in connection with a journey which originates in the United States and includes a stop in a location other than one specified in paragraph (g)(2)(i)(B) of this section; or

(iii) When a passenger arrives in the customs territory of the United States in transit from a location other than one specified in paragraph (g)(2)(i)(A) of this section and is processed by Customs.

(4) *Payment and quarterly statement procedures.* Payment to Customs of the fees required to be collected under paragraphs (g) (1) and (3) of this section shall be made no later than 31 days after the close of the calendar quarter in which the fees were required to be collected from the passenger. Payment of the fees shall be made by the air or sea carrier, travel agent, tour wholesaler, or other party which issued the ticket or travel document or, in the case of a ticket or travel document issued in a foreign country without the required notation to indicate that the fee was collected from the passenger, by the carrier which provided transportation to the passenger when departing from the United States. Each quarterly fee payment shall be remitted in accordance with the procedures set forth in paragraph (i) of this section and shall be accompanied by a statement which includes the following information:

(i) The name and address of the party remitting payment;

(ii) The taxpayer Identification number of the party remitting payment; and

(iii) The calendar quarter covered by the payment.

Overpayments or underpayments may be accounted for by an explanation in, and adjustment of, the next due quarterly payment to Customs.

(5) Each carrier contracting with a U.S.-based tour wholesaler is responsible for notifying Customs of each flight or voyage so contracted, the number of spaces contracted for on each flight or voyage, and the name, address and taxpayer identification number of the tour wholesaler, within 31 days after the close of the calendar quarter in which such a flight or voyage occurred.

(6) *Maintenance of records.* Each air or sea carrier, travel agent, tour wholesaler, or other party affected by this paragraph shall maintain all such documentation necessary for Customs to verify the accuracy of fee calculations and to otherwise determine compliance under the law. Such documentation shall be maintained for a period of 2 years from the date of fee calculation. Each such affected party shall provide to Customs the name, address, and telephone number of a responsible officer who is able to verify any statements or records required to be filed or maintained under this section, and shall promptly notify Customs of any changes in the identifying information previously submitted, in accordance with the procedures set forth in paragraph (i)(2) of this section.

(7) *Limitation on charges.* Except in the case of costs reimbursed under § 24.17(a)(14) of this part, Customs services provided to passengers arriving in the United States on scheduled airline flights (as defined in § 122.1(k) of this chapter and operating within the requirements of subpart D of part 122 of this chapter) shall be provided at no cost to airlines and airline passengers other than the fee specified in paragraph (g)(1) of this section.

(h) *Annual customs broker permit fee.* Customs brokers are subject to an annual fee for each permit held by an individual, partnership, association, or corporate broker as provided in § 111.96(c) of this chapter.

(i) *Fee remittance and information submission procedures.*

(1) *Fee remittance.* All fee payments required under this section shall be in the amounts prescribed and shall be made in U.S. currency, or by check or money order payable to the United States Customs Service, in accordance with the provisions of § 24.1 of this part. If payment is made by check or money order, the check or money order shall be annotated with the appropriate class code, as follows:

(i) Commercial vessels (other than barges and other bulk carriers from Canada or Mexico), 491;

(ii) Barges and other bulk carriers from Canada or Mexico, 498;

(iii) Commercial trucks, 492 for each individual arrival and 902 for any prepayment of the maximum calendar year fee;

(iv) Railroad cars, 493 for each individual arrival and 903 for any prepayment of the maximum calendar year fee;

(v) Private vessels, 904;

(vi) Private aircraft, 494;

(vii) Dutiable mail, 496;

(viii) Commercial vessel and commercial aircraft passengers, 495; and

(ix) Customs broker permits, 497.

Except as otherwise provided in this section, all fee payments not made at the time of arrival shall be mailed to: U.S. Customs Service, P.O. Box 198151, Atlanta, Georgia 30384. In addition to any information specified elsewhere in this section, each payment by mail shall be accompanied by information identifying the person or organization remitting the fee, the type of fee being remitted (for example, railroad car, commercial truck, private vessel), and the time period to which the payment applies.

(2) *Information submission.* Unless otherwise specified in this section, all information, summaries, reports, or other data required to be submitted to Customs under this section shall be mailed to the Director, National Finance Center, Attn: Revenue Branch, P.O. Box 68907, Indianapolis, Indiana 46268.

(j) *Treatment of fees as Customs duty.*

(1) *Administration and enforcement.* Unless otherwise specifically provided in this chapter, all administrative and enforcement provisions under the Customs laws and regulations, other than those laws and regulations relating to drawback, shall apply with respect to any fee provided for under this section,

and with respect to any person liable for the payment of such fee, as if such fee is a Customs duty. For purposes of this paragraph, any penalty assessable in relation to an amount of Customs duty, whether or not any such duty is in fact due and payable, shall be assessed in the same manner with respect to any fee required to be paid under this section.

(2) *Jurisdiction.* For purposes of determining the jurisdiction of any court or agency of the United States, any fee provided for under this section shall be treated as if such fee is a Customs duty.

PART 111—CUSTOMS BROKERS

1. The authority citation for part 111 is amended by revising the specific authority citation for § 111.96 to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1624, 1641; unless otherwise noted.

* * * * *

Section 111.96 also issued under 19 U.S.C. 58c, 31 U.S.C. 9701.

2. Section 111.96(c) is revised to read as follows:

§ 111.96 Fees.

* * * * *

(c) *User Fee.* An annual user fee of $125 will be assessed for each permit held by an individual, partnership, association, or corporate broker. The fee is payable for each calendar year in each district in which a broker has a permit to do business, shall be paid by the due date as published annually in the **Federal Register**, and shall be remitted in accordance with the procedures set forth in § 24.22(i) of this chapter. When a broker submits an application for a permit under § 111.19(b) of this part, the full $125 fee shall be remitted with the application regardless of the point during the calendar year at which the application is submitted. If a broker fails to pay the fee by the due date, the district director shall notify the broker in writing of the failure to pay and shall revoke the permit to operate. The notice will constitute revocation of the permit.

* * * * *

PART 122—AIR COMMERCE REGULATIONS

1. The authority citation for part 122 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 58b, 66, 1433, 1436, 1459, 1590, 1594, 1623, 1624, 1644, 49 U.S.C. App. 1509.

2. Section 122.29 is amended by revising the section heading and the section text to read as follows:

§ 122.29 Arrival fee and overtime services.

Private aircraft may be subject to the payment of an arrival fee for services provided as set forth in § 24.22 of this chapter. For the procedures to be followed in requesting overtime services in connection with the arrival of private aircraft, see § 24.16 of this chapter.

PART 123—CUSTOMS RELATIONS WITH CANADA AND MEXICO

1. The authority citation for part 123 continues to read in part as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1624.

* * * * *

2. Section 123.0 is amended by adding a sentence at the end to read as follows:

§ 123.0 Scope.

* * * * *

Fees for services provided in connection with the arrival of aircraft, vessels, vehicles and other conveyances from Canada or Mexico are set forth in § 24.22 of this chapter.

§ 123.1a [Removed]

3. Section 123.1a is removed.

PART 145—MAIL IMPORTATIONS

1. The authority citation for part 145 continues to read in part as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1624.

* * * * *

2. Section 145.0 is amended by adding a sentence at the end to read as follows:

§ 145.0 Scope.

* * * * *

The fee applicable to each item of dutiable mail for which Customs prepares documentation is set forth in § 24.22 of this chapter.

§ 145.1a [Removed]

3. Section 145.1a is removed.

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for part 178 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 1624, 44 U.S.C. 3501 *et seq.*

2. Section 178.2 is amended by removing the listings for sections 4.98(i), 123.1a, and 145.1a.

Michael H. Lane,

Acting Commissioner of Customs.

Approved: October 4, 1993.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 93–25835 Filed 10–20–93; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Bambermycins

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Hoechst-Roussel Agri-Vet Co. The supplemental NADA provides for expanding the use of currently approved bambermycins containing Type A medicated articles to making Type C medicated feeds for use in cattle fed in confinement for slaughter.

EFFECTIVE DATE: October 21, 1993.

FOR FURTHER INFORMATION CONTACT: Warner J. Caldwell, Center for Veterinary Medicine (HFV–126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1638.

SUPPLEMENTARY INFORMATION: Hoechst-Roussel Agri-Vet Co., Rt. 202–206 North, P. O. Box 2500, Somerville, NJ 08876–1258, has filed a supplement to NADA 44–759. The supplemental NADA provides for expanding the use of currently approved (broiler chickens, growing-finishing swine, and growing turkeys) 2-, 4-, and 10-gram-per-pound bambermycins Type A medicated articles to make Type C medicated feeds for use in cattle fed in confinement for slaughter for increased rate of weight gain and improved feed efficiency. The supplemental NADA is approved as of September 21, 1993, and the regulations are amended in 21 CFR 558.95(a) and (b) to reflect the approval.

As provided in 21 CFR 558.4(a) and (d), bambermycins are Category I drugs, which as the sole drug ingredient, do not require an approved Form FDA 1900 for making Type C feeds as in approved

NADA 44–759 and in 21 CFR 558.95, as amended herein.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii), this approval for food-producing animals qualifies for 3 years of marketing exclusivity beginning September 21, 1993, because the supplemental application contains reports of new clinical or field investigations (other than bioequivalence or residue studies) and, in the case of food-producing animals, human food safety studies (other than bioequivalence or residue studies) essential to the approval of the application and conducted or sponsored by the applicant. The 3 years of marketing exclusivity applies only to the claims of increased rate of weight gain and improved feed efficiency in cattle fed in confinement for slaughter for which the application is being approved.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

2. Section 558.95 is amended by revising paragraph (a)(1), by redesignating existing paragraph (b)(4) as paragraph (b)(5), and by adding new paragraph (b)(4) to read as follows:

§ 558.95 Bambermycins.

(a) * * *

(1) 2, 4, and 10 grams of activity per pound to 012799 in § 510.600(c) of this chapter for use as in paragraphs (b)(1), (b)(2), (b)(3), and (b)(4) of this section.

* * * * *

(b) * * *

(4) *Cattle*—(i) *Amount per ton.* 1 to 4 grams.

(*a*) *Indications for use.* For increased rate of weight gain and improved feed efficiency.

(*b*) *Limitations.* Feed only to cattle being fed in confinement for slaughter. Feed continuously in a Type C medicated feed at a rate of 10 to 20 milligrams of bambermycins per head per day. Not for use in animals intended for breeding.

(ii) [Reserved]

* * * * *

Dated: October 13, 1993.

Richard H. Teske,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 93–25866 Filed 10–20–93; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 901

Alabama Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval of a proposed amendment to the Alabama regulatory program (hereinafter referred to as the Alabama program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment concerns changes to sections 880–X–8, 880–X–10, and 880–X–12 of the Alabama Surface Mining and Reclamation Rules (Rules) and is intended to make the requirements of the Alabama program no less effective than the Federal program.

EFFECTIVE DATE: October 21, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Jesse Jackson, Jr., Director, Birmingham Field Office, Office of Surface Mining Reclamation and Enforcement, 135 Gemini Circle, Suite 215, Homewood, Alabama 35209. Telephone: (205) 290–7282.

SUPPLEMENTARY INFORMATION

I. Background on the Alabama Program.
II. Submission of Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Findings.
VI. Procedural Determinations.

I. Background on the Alabama Program

On May 20, 1982, the Secretary of the Interior conditionally approved the Alabama program. Information regarding general background on the Alabama program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Alabama program can be found in the May 20, 1982, **Federal Register** (47 FR 22030). Subsequent actions taken with regard to Alabama's program and program amendments can be found in 30 CFR 901.10, 901.15, and 901.30.

II. Submission of Amendment

Alabama submitted proposed changes to its program by letter dated June 23, 1993 (Administrative Record No. AL–499), in order to improve its regulations pertaining to blaster's certification and permit information and maps, and to correct cross-references. The program amendment modifies the following sections of the Rules: 880–X–8D, 880–X–8G, 880–X–8I, 880–X–8K, 880–X–10C, 880–X–10J, and 880–X–12A. The amendment adds the following sections to the Rules: 880–X–8D–.05(8), 880–X–8F–.08(2)(j), 880–X–8G–.05(8), and 880–X–8I–.07(2)(j).

OSM announced receipt of the proposed amendment in the July 27, 1993, **Federal Register** (58 FR 40104) and in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on August 26, 1993.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.17 are the Director's findings concerning the proposed amendment to the Alabama program submitted on June 23, 1993. Revisions not addressed below either concern cross-references and paragraph notations that have been updated to reflect organizational or nomenclature changes or involve nonsubstantive wording changes.

Revisions to Alabama's Rules that are Substantively Identical to the Corresponding Federal Regulations.

State regulation	Subject	Federal Counterpart
880–X–8D–.09(2).	Permit Term.	30 CFR 778.13(b).
880–X–8G–.09(2).	Permit Term.	30 CFR 778.13(b).
880–X–8I–.16(1).	Coal Mine Waste.	30 CFR 784.24(a).
880–X–8K–.10(1)(a).	Permit Applications.	30 CFR 773.15(a)(1).
880–X–10C–.41(1).	Coal Mine Waste.	30 CFR 816.84(a).

Because the above proposed revisions are identical in meaning to the corresponding Federal rules, the Director finds that Alabama's proposed rules are no less effective than the Federal rules.

Revisions to Alabama's Rules that are not Substantively Identical to the Corresponding Federal Regulations.

1. 880–X–8D–.05—Permit Applications

At 880–X–8D–.05(8), Alabama is proposing to add a new regulation requiring that each permit application identify the county(s) and any municipalities and their police jurisdictions from which coal will be mined or severed.

The Federal regulations at 30 CFR 778.13 pertaining to identification of interests contain no comparable provision. However, the Director finds the proposed regulation at 880–X–8D–.05(8) to be consistent with the Federal regulations at 30 CFR 778.13.

2. 880–X–8F–.08—Permit Maps

At 880–X–8F–.08(2)(j), Alabama is proposing to add a new regulation requiring that the map included in a permit application for surface mining show the boundaries of the county(s) and any municipalities and their police jurisdictions from which coal will be mined or severed.

The Federal regulations at 30 CFR 780.14(a) pertaining to operation plans for surface mining contain no comparable provision. However, the Director finds the proposed regulation at 880–X–8F–.08(2)(j) to be consistent with the Federal regulations at 30 CFR 780.14(a).

3. 880–X–8G–.05—Identification of Interests

At 880–X–8G–.05(8), Alabama is proposing to add a new regulation requiring that each permit application identify the county(s) and any municipalities and their police jurisdictions under which coal will be mined or severed.

The Federal regulations at 30 CFR 778.13 pertaining to identification of interests contain no comparable provision. However, the Director finds the proposed regulation at 880–X–8G–.05(8) to be consistent with the Federal regulations at 30 CFR 778.13.

4. 880–X–8I–.07—Permit Maps

At 880–X–8I–07(2)(j), Alabama is proposing to add a new regulation requiring that the map included in a permit application for underground mining show the boundaries of the county(s) and any municipalities and their police jurisdictions from under which coal will be mined or severed.

The Federal regulations at 30 CFR 784.23(b) pertaining to operation plans for underground mining contain no comparable provision. However, the Director find the proposed regulation at 880–X–8I–07(2)(j) to be consistent with the Federal regulations at 30 CFR 784.23(b).

5. 880–X–10J–.03—Coal Processing Plants

At 880–X–10J–.03(f), Alabama is proposing to revise its regulations pertaining to the use of water wells at coal processing plant operations by deleting this requirement due to an incorrect reference to its regulations at 880–X–10C–.24.

The Federal regulations at 30 CFR 827.12 pertaining to coal preparation plants do not contain provisions for the use of water wells. However, the Director finds that the proposed revision at 880–X–10J–.03(f) if not inconsistent with the Federal regulations at 30 CFR 827.12.

6. 880–X–12A–.07—Blasting Certification

At 880–X–12A–.07, Alabama is proposing to revise its regulations for blaster's certification. Subsections have been renumbered for organizational consistency. At subsection 2(b), applicants who fail to qualify in the blaster's certification examination after two attempts must reapply for certification. Current subsections (6) and (7) which required an annual fee and annual renewal of certificates are deleted. At subsection (4)(a), the term of certification is changed from one year to three years. At subsection (4)(b), the contents of the certification and the blaster's identification card are identified. At new subsection (5), the procedures for renewal of certification are specified. A certified blaster must apply for recertification no later than 90 days prior to expiration of the term of certification and must make certain demonstrations relating to employment and job knowledge.

The Federal regulations at 30 CFR 850.14 and 850.15 pertaining to the examination and certification of blasters require that the regulatory authority ensure that blaster certification candidates are examined and qualified candidates are certified for a fixed period of time. The regulatory authority shall specify the conditions for maintaining certification. The Director finds that the proposed regulations at 880–X–12A–.07 are no less effective than the Federal regulations at 30 CFR 850.14 and 850.15.

IV. Summary and Disposition of Comments

Public Comments

The public comment period and opportunity to request a public hearing announced in the July 27, 1993, **Federal Register** (58 FR 40104) ended on August 26, 1993. No comments were received and the scheduled public hearing was not held as no one requested an opportunity to provide testimony.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Alabama program. The Department of the Army, Corps of Engineers; the Department of Agriculture, Soil Conservation Service, and Forest Service; the Department of the Interior, Bureau of Land Management, Bureau of Mines, and Fish and Wildlife Service; and the Alabama Historical Commission concurred without comment.

EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency with respect to any provisions of a State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no provisions in these categories.

V. Director's Decision

Based on the above findings, the Director is approving the amendment to the Alabama program submitted on June 23, 1993.

The Federal rules at 30 CFR part 901 concerning the Alabama program are being amended to implement the

Director's decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to conform their programs to the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order 12866

This final rule is not considered a significant regulatory action under the criteria of section 3(f) of Executive Order 12866. Therefore, review by the Office of Management and Budget under section 6 of the Executive Order is not required prior to publication in the **Federal Register**.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR 901

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 15, 1993.

Carl C. Close,

Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 901—ALABAMA

1. The authority citation for Part 901 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In section 901.15, a new paragraph (p) is added to read as follows:

Section 901.15 Approval of Regulatory Program Amendments

* * * * *

(p) The following amendment submitted to OSM on June 23, 1993, is approved effective October 21, 1993.

1. Revision of the following Alabama Surface Mining Commission regulations:

880–X–8D–.09(2)—Permit Term
880–X–8G–.09(2)—Permit Term
880–X–8I–.16(1)—Coal Mine Waste
880–X–8K–.10(1)(a)—Permit Applications
880–X–10C–.41(1)—Coal Mine Waste
880–X–10J–.03(f)—Coal Processing Plants
880–X–12A–.07—Blasting Certification

2. Addition of the following Alabama Surface Mining Commission regulations:

880–X–8D–.05(8)—Permit Applications
880–X–8F–.08(2)(j)—Permit Maps
880–X–8G–.05(8)—Identification of Interests
880–X–8I–.07(2)(j)—Permit Maps

[FR Doc. 93–25851 Filed 10–20–93; 8:45 am]
BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CCGD09–93–032]

Drawbridge Operation Regulations, Chicago River, IL

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation.

SUMMARY: The Coast Guard hereby provides notice that the City of Chicago, Illinois, has been granted permission to temporarily deviate from the regulations governing the opening of certain drawbridges over the Chicago River, from October 1 through November 30, 1993, for the purpose of further evaluating the reasonableness of possible changes to the permanent regulations. This deviation requires the City to open the bridges on signal after receiving an advance notice of a vessel's intended time of passage through the draws without regard to the number of vessels to be afforded passage, and establishes specific periods of time in which these bridge openings are to be scheduled. The City is being granted this deviation to reduce the frequency with which it must open its drawbridges. This deviation is experimental in nature and is intended to provide the Coast Guard with evaluation periods from which to test the reasonableness of the current regulatory structure.

EFFECTIVE DATE: The period of deviation begins on Friday, October 1, 1993, and continues through Tuesday, November 30, 1993.

ADDRESSES: Comments may be mailed to Commander (obr), Ninth Coast Guard District, 1240 East Ninth Street, Cleveland, Ohio 44199–2060, or may be delivered to room 2083D at the same address between the hours of 6:30 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this evaluation of possible changes to the regulations governing bridges operated by the City of Chicago by submitting written data, views, or arguments to the address above. Persons submitting comments should include their name

and address, this docket number (CGD09–032), the basis for each comment and specific provisions of the deviation to which each comment applies. If acknowledgment of the receipt of comments is desired, a stamped, self-addressed postcard or envelope should be enclosed. If it appears appropriate to propose a permanent change to the regulations, the Coast Guard will publish a Notice of Proposed Rulemaking which will again request comments. A public hearing might also be held.

Drafting Information

The principal persons involved in drafting this document are Mr. Robert W. Bloom, Jr., Project Manager, and Lieutenant Karen E. Lloyd, Project Counsel, Ninth Coast Guard District.

Background and Purpose

The bridges owned and operated by the City of Chicago are presently governed in accordance with 33 CFR 117.391, which states that most bridges will open on signal, with exceptions of certain bridges that need not open unless advance notice is given of a vessel's time of intended passage. Additionally, the current regulation authorizes the City to not open the draws during peak vehicle traffic periods, i.e., morning and afternoon rush hours.

There are two vessel traffic periods, breakout and return, when there are as many as five to twenty-five boats on given days, leaving boatyards through the Chicago River system in the spring and returning in the fall. During the summer period, the boat traffic in the Chicago area consists of recreational vessels in need of repair which are returning to the yards on a temporary basis.

Thus, including the winter period, there appear to be four distinct periods in the Chicago River area, during which the need for bridge openings changes substantially. Therefore, it might be appropriate for the bridge regulations to vary by these four seasons.

The City requests that multiple boat transits be restricted to only Saturday and Sunday mornings, unless there is a special event on these days, during which time a bridge would not be required to open at all for vessel traffic to pass. The City submits that it is unduly burdensome to open the bridges for the passage of single recreational vessels within the Chicago River System. The City feels there is a need to schedule vessel movement on Saturdays and Sundays because of high volumes of vehicular traffic on these days.

A series of deviations has been granted to the city in order to evaluate the reasonableness of possible changes to the permanent regulations. The Coast Guard previously granted three temporary deviations to the regulations for bridges owned and operated by the City of Chicago.

On Wednesday, May 12, 1993, the Coast Guard published a temporary deviation in the **Federal Register**, 58 FR 27933, granting the City of Chicago permission to open their bridges from 6 a.m. on Saturdays through 7 p.m. on Sundays for the passage of vessels consisting of no less than five and not more than twenty-five boats; on Tuesdays and Thursdays the draws were required to open for the passage of vessels consisting of no less than five and not more than twenty-five boats, from 6:30 p.m. until all organized trips had safely completed.

On Wednesday, June 16, 1993, the Coast Guard published a second temporary deviation in the **Federal Register**, 58 FR 33191, which changed the starting times for scheduled trips on Tuesdays and Thursdays to start one half-hour earlier, from 6:30 p.m. to 6 p.m., and added a Wednesday trip to the regulated periods when vessels would be allowed to pass through the draws of the bridges. Thus, bridge openings for scheduled trips started at 6 p.m. on Tuesdays, Wednesdays, and Thursdays.

On Thursday, August 12, 1993, the Coast Guard published a third temporary deviation in the **Federal Register**, 58 FR 42856, which changed the Wednesday starting time to 11 a.m. The earlier starting time of 11 a.m. on Wednesdays was changed to provide recreational vessels returning to the boatyards for repairs, or returning to their regular moorings outside the Chicago River System, with more daylight hours to navigate the river. In addition, the requirement that a particular number of vessels accumulate before bridges need open for the passage of masted recreational vessels was eliminated.

This is the fourth temporary deviation being granted to the City of Chicago. The times that the bridges will be required to open for the passage of masted recreational vessels has been changed for Saturdays, Sundays, Tuesdays, Wednesdays and Thursdays. Also, a special Monday opening date has been included in this deviation because it is a holiday and opening the bridges on this day will not disrupt a great number of people transiting to and from work. The requirement that vessels give at least 24 hours notice in advance of the time of intended passage through the Chicago River System has not changed.

The Tuesday and Thursday requirement for the bridges to open starting at 6 p.m. has been changed to 6:30 p.m.

Comments received from the first three temporary deviations indicated concern with vessels navigating at night and the danger of a large number of vessels navigating the river at the same time. The city feels there is a need to schedule vessel movement on Saturdays and Sundays because of high volumes of vehicular traffic on these two days. Therefore, the starting time on Saturdays and Sundays has been changed. On Saturdays and Sundays the draws shall open for the passage of masted recreational vessels between the hours of 7 a.m. and 2 p.m. each day instead of from 6 a.m. on Saturdays through 7 p.m. on Sundays. A daylight opening during the week is necessary for those vessel operators who are not able to schedule a trip on weekends, and for those vessel operators who do not feel safe navigating during the hours of darkness. Therefore, the bridges shall open for the passage of masted recreational vessels between the hours of 10:30 a.m. and 2 p.m. on Wednesdays. The openings during the time frame of this temporary deviation are necessary because of the large number of masted recreational vessels returning to the boatyards for winter storage. However, the new Wednesday opening times should put the returning vessels through and past the main vehicle thoroughfares before the afternoon rush hours begin. This temporary deviation also includes a special opening on Monday, October 11, 1993, which will allow for the passage of masted recreational vessels between the hours of 10:30 a.m. and 2 p.m. The special Monday bridge opening is being added to enable vessels to transit the Chicago River System during a period when most businesses are closed for Columbus Day.

This temporary deviation is intended to best accommodate the City of Chicago while still providing for the reasonable needs of masted recreational vessels transiting the Chicago River System. The entire series of deviations will provide the Coast Guard with evaluation periods from which to test the reasonableness of the City's cited needs, the needs of navigation, and the current regulatory structure.

Deviation

Notice is hereby given that:

(1) The Coast Guard has granted the City of Chicago, Department of Transportation, a temporary deviation

from operating requirements of 33 CFR 117.391 governing certain bridges owned by the City of Chicago over the Chicago River, as follows:

Main branch	South branch	North branch
Lake Shore Drive.	Lake Street ..	Grand Avenue.
Columbus Drive.	Randolph Street.	Ohio Street.
Michigan Avenue.	Washington Street.	Chicago Avenue.
Wabash Avenue.	Madison Avenue.	North Halsted Street.
State Street ..	Monroe Street.	
Dearborn Street.	Adams Street	
Clark Street ..	Jackson Boulevard.	
La Salle Street.	Van Buren Street.	
Wells Street ..	Eisenhower Expressway.	
Franklin-Orleans Street.	Harrison Street.	
	Roosevelt Road.	
	18th Street ...	
	Canal Street .	
	South Halsted Street.	
	South Loomis Street.	
	South Ashland Avenue.	

(2) This deviation from normal operating regulations is authorized in accordance with the provisions of title 33 of the Code of Federal Regulations, § 117.43, for the purpose of evaluating possible changes to the permanent regulations. This temporary deviation applies only to the passage of recreational vessels. Under this deviation the bridges listed above operated by the City of Chicago shall open on signal for the passage of recreational vessels after receiving a 24 hour advance notice during the following periods, subject to the conditions indicated:

(a) From 7 a.m. to 2 p.m. on Saturdays and on Sundays.

(b) At 6:30 p.m. on Tuesdays and Thursdays.

(c) From 10:30 a.m. to 2 p.m. on Wednesday.

(d) On Monday, October 11, 1993, between the hours of 10:30 a.m. and 2 p.m.

(3) During the periods of time the bridges shall open on signal as specified in 2 (a), (b), (c), and (d) above, the bridges shall be operated in such a manner so as to allow all vessels to complete safe passage through the Chicago River System, and shall open without restriction as to the minimum or maximum number of vessels desiring passage.

(4) Notwithstanding this deviation, the City of Chicago, after receiving a minimum of twenty-four hours advance notice of the intended passage of vessels through the draws of the bridges, shall ensure that:

(a) The necessary bridgetenders are provided for the safe and prompt opening of the draws;

(b) The operating machinery of each draw is maintained in good condition; and

(c) The draws are operated at sufficient intervals to assure their satisfactory operation.

(5) The Kinzie Street bridge, mile 1.81 across the North Branch, and Cermak Road bridge, mile 4.05 across the South Branch, shall continue to operate in accordance with requirements presently established in 33 CFR 117.391.

(6) All draws shall open for commercial vessels in accordance with current regulations in 33 CFR 117.391. In accordance with current regulations, including 33 CFR 117.391, government vessels of the United States, state and local vessels used for public safety, and vessels in distress shall be passed through the draws of all bridges as soon as possible at all times.

(7) This period of deviation is effective from Friday, October 1, 1993, through Tuesday, November 30, 1993.

Dated: September 29, 1993.

W. R. Wilkins,

Captain, U.S. Coast Guard, Commander, Ninth Coast Guard District Acting.

[FR Doc. 93–25651 Filed 10–20–93; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL 13–2–5846; FRL4782–6]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: On March 2, 1993, USEPA proposed to approve a request by the State of Illinois to revise its State Implementation Plan (SIP) for particulate matter (PM). The purpose of the SIP revision is to satisfy the federal requirements for an approvable PM SIP for LaSalle County, Illinois area, which is designated as a moderate nonattainment area as specified under the Clean Air Act (Act) as amended by the Clean Air Act Amendments (CAAA) of 1990. The Act requires that a state have an approved SIP to achieve the federal air quality standards. The CAAA requires submission of a PM SIP for all initial PM nonattainment areas by November 15, 1991. This rule approves the SIP revision for the LaSalle County PM nonattainment area. USEPA's action is based upon a revision request that was submitted by the State on October 16, 1991, with supplementary material submitted on November 13, 1991.

EFFECTIVE DATE: This action will be effective on November 22, 1993.

ADDRESSES: A copy of this revision to the Illinois SIP is available for inspection at:

Regulation Development Section, Regulation Development Branch (AR–18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604

Jerry Kurtzweg (ANR–443), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460

FOR FURTHER INFORMATION CONTACT: Gustavo Felix, Regulation Development Branch, Regulation Development Section (AR–18J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 353–6009.

SUPPLEMENTARY INFORMATION:

I. Background

Previously, USEPA published a rule announcing the designations and classifications for PM occurring by operation of law upon enactment of the CAAA (see 56 FR 11101, March 15, 1991). In addition, USEPA has published a follow-up rule correcting the boundaries and designations of some areas in light of comments addressing the March 1991 notice (see 56 FR 37654, August 8, 1991). Both of these rules provide a detailed discussion of the history and current status of PM areas nationwide.

By November 15, 1991, States were to adopt and submit to USEPA a SIP rule for all those areas that were classified as moderate PM nonattainment areas by operation of law upon enactment of the 1990 CAAA (see subpart 4 of Part D of title I of the Act (section 189)). SIP rules submitted by States to meet this requirement were to comply with both the general requirements for nonattainment areas identified in section 172 of the Act, and the requirements specific to PM in subpart 4 of part D. In particular, section 189(a) of the Act required that all States with initial moderate PM nonattainment

areas were to submit responsive SIP regulations by November 15, 1991, which were to include:

(1) Either a demonstration (including air quality modeling) that the plan will provide for attainment by December 31, 1994, or a demonstration that attainment by that date is impracticable.

(2) Provisions to assure that reasonably available control measures (including reasonably available control technology) for the control of PM are implemented by December 10, 1993.

An additional requirement imposed by the CAAA, a new source permit program meeting the requirements of part D of the Act is required for the construction and operation of new and modified major stationary sources of PM (including, in some cases, PM precursors), and is due by June 30, 1992, for all of the initial moderate PM nonattainment areas. This requirement will be addressed in a separate rule.

Summary of State Submittal

What follows is a brief discussion of the State's submittal. For more detailed discussion of the State's submittal and USEPA's analysis of it, the reader is directed to the March 2, 1993 (58 FR 12006) proposed rule and to the rationale documents for these proposed and final rules which are part of the rulemaking docket and available from the Region 5 office listed above.

The revision is applicable to a single facility which is owned and operated by Lone Star Industries (Lone Star) in Oglesby, Illinois. Lone Star operates a Portland Cement manufacturing plant. The revision amends Part 212 Visible and Particulate Emissions of Chapter I Subtitle B of Title 35 of the Illinois Administrative Code (35 IAC), specifically Sections 212.110, 212.423, and 212.424 and Part 211, Definitions and General Provisions, 35 IAC, Section 211.122, of the Illinois State rules.

The titles of the revised sections are as follows:

Section 211.122 Definitions
Section 212.110 Measurement Methods
Section 212.111 Abbreviations and Units
Section 212.113 Incorporation by Reference
Section 212.423 Emission Limits for Portland Cement Manufacturing Plants Located in LaSalle County, South of the Illinois River.
Section 212.424 Fugitive Particulate Matter Control for the Portland Cement Manufacturing Plant and Associated Quarry Operations Located in LaSalle County, South of the Illinois River.

Control Strategy

A total of 32 point sources and 14 areas sources were identified as contributing to the PM nonattainment problem in LaSalle County. As presented in the accompanying table, four of the point sources will be controlled by specific mass emission limits contained in Section 212.423(b) of 35 IAC. The four point sources are a kiln, a clinker cooler, finish mill high efficiency air separator, and a raw mill roller mill (RMRM). See table below.

	PM–10 emission limits			
	Rate		Concentration	
	kg/hr	(lb/hr)	mg/scm	(gr/scf)
A. Clinker Cooler	4.67	(10.3)	28.147	(0.012)
B. Finish Mill High Efficiency Air Separator	2.68	(5.9)	26.087	(0.011)

	PM–10 emission limits including condensible PM–10			
	Rate		Concentration	
	kg/hr	(lbs/hr)	mg/scm	(gr/scf)
A. Raw Mill, Roller Mill (RMRM)	6.08	(13.4)	27.5	(0.012)
B. Kiln without RMRM Operating	19.19	(42.3)	91.5	(0.040)
C. Kiln with RMRM	11.43	(25.2)	89.2	(0.039)

It should be noted that the kiln has two emission limits. One limit applies when the RMRM is operating and the other applies when the RMRM is not operating. The reason for the two emission limits is that some of the kiln exhaust is fed to the RMRM when the RMRM is operating to help reduce the kiln emissions. However, when the RMRM is not operating and the kiln is in operation, the kiln's emission limit must be increased to include emissions not being fed to the RMRM.

All other point sources at the cement plant are regulated by a no visible emission limit specified in Section 212.423(c) of 35 IAC. The no visible emission limit assures that the baghouses controlling emissions from the point sources such as the conveyor transfer points will be operating properly. A list of point sources may be found in the Technical Support Documents for this rulemaking. Complete descriptions of the individual point sources may be found in the State submittal. Both are available for inspection at the Region 5 office listed above.

The area sources will be controlled by fugitive dust suppression methods such as intermittent water applications on roads and foam suppressant applications to material processes. These fugitive dust controls are required by Section 212.424(d) of 35 IAC. The fugitive dust sources that require controls include unpaved roads and open areas traversed by motor vehicles, and crushing, screening, and conveying operations at the quarry that provide raw materials for the Portland cement manufacturing process.

Attainment Demonstration

Illinois prepared an attainment demonstration using dispersion modeling for LaSalle County. The State's demonstration indicates that the National Ambient Air Quality Standards (NAAQS) for PM will be attained by 1994 in LaSalle County and maintained in future years. The 24-hour primary and secondary PM NAAQS are both 150 micrograms/cubic meter ($\mu g/m^3$), and the standard is attained when the expected number of days per calendar year with a 24-hour average concentration above 150 $\mu g/m^3$ is equal to or less than one. See 40 CFR 50.6. The annual primary and secondary PM NAAQS are both 50 $\mu g/m^3$, and the standard is attained when the expected annual arithmetic mean concentration is less than or equal to 50 $\mu g/m^3$. The

dispersion modeling in the attainment demonstration predicted 148 μg/m³ as the 24-hour design concentration, thereby demonstrating attainment of the 24-hour PM NAAQS. The dispersion modeling in the attainment demonstration predicted 47 μg/m³ as the annual design concentration, thus demonstrating attainment of the annual PM NAAQS. A copy of the dispersion modeling analysis and USEPA's review of it are available at the Region 5 office listed above.

The requested SIP submittal includes air quality status, ambient monitoring, modeling, emission inventory, control strategies, and reporting requirements. The individual elements of the SIP revision provide the degree of emission reductions necessary for attainment and maintenance of the PM NAAQS. The emission reductions come from implementing specific mass emission limits on four sources, from visible emission limits on any other portland cement manufacturing process, and from requiring control measures on fugitive sources such as roadways, conveyors, crushing, and screening.

Response to Public Comment

Comments were received in response to the proposed rule from Lone Star. In general, Lone Star is in agreement with USEPA's proposed action, but requested that their comments be made part of the administrative record of this requested SIP revision. Lone Star's comments and USEPA's responses are summarized below.

Comment: Lone Star questioned the appropriateness of USEPA's Method 202, 40 Code of Federal Regulations, part 51, appendix M, to test for condensible PM. The SIP revision requires the raw mill roller mill and the kiln to be tested for condensible PM. Lone Star believes this test method has two potential deficiencies.

(1) Ammonia gas in the kiln will react in the Method 202 impinger solution to form ammonium chloride, ammonium sulfate, and possibly other ammonium salts. This would result in ammonium salts being measured as condensible PM. Lone Star requested that USEPA declare that for the purpose of determining compliance of the raw mill roller mill and kiln with the PM emission limits, the weight of all the ammonium salts found in the Method 202 impinger solution shall be deducted in calculating condensible PM.

(2) All the condensible particulate are treated as PM–10 (particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers). Lone Star believes that some of the particles that condense may reach particle sizes greater than 10 microns.

USEPA Response on Both Deficiencies: The State regulations already exclude the ammonium chloride from the measurement of condensible PM. As for the ammonium sulfate, the calculation procedures used in Method 202 automatically subtracts the ammonium portion of ammonium sulfate. Any ammonium sulfate formed in the Method 202 impinger train would be collected as inorganic condensible PM. Equation 202–2 from Method 202 calculates the total inorganic condensibles.

$$m_i = m_r \frac{V_{ic}}{V_{ic} - V_b} - m_c$$

Eq. 202–2

m_i = Mass of inorganic condensibles, mg
m_r = Mass of dried sample from inorganic fraction, mg
V_{ic} = Volume of impinger contents sample, ml
V_b = Volume of aliquot taken for sulfate analysis, ml
m_c = Mass of Ammonium Ions (NH_4^+) from ammonium sulfate, mg

The mass of the ammonium from ammonium sulfate is calculated from

$$m_c = KC_{so_4} V_{ic}$$

Eq. 202–1

K = −0.0205, when correcting for NH_4^+ and H_2O (use this factor when adding back two water molecules and 2 hydrogen molecules)
= .3542, when only correcting for NH_4^+ (two hydrogen molecules are added back)
C_{SO4} = Concentration of sulfate ions in the sample, mg/ml

It should be noted that 40 CFR 51, Appendix M list the K factors at +0.0205 and 0.184. These values are incorrect and a rule correction will be published in the near future correcting the K factors. The second K factor is calculated as followed:

$$K = \frac{\text{molecular weight (MW) of two } NH_4^+ \text{ molecules} - \text{MW of two H molecules}}{\text{MW of } SO_4^{-2}}$$

The first K factor is calculated in a similar fashion.

As for other ammonium salts, there is no evidence that any other ammonium salts besides ammonium chloride and ammonium sulfate would be produced in the Method 202 impinger train. Lone Star has not provided any evidence that other ammonium salts are formed in the Method 202 impinger train.

It should be noted that Method 202 is cited in the State regulations as 55 FR 41546 (October 12, 1990). The requested SIP revision is approvable with this citation for Method 202 because the condensible emission calculations are more conservative then to the correct calculations. However, once USEPA makes the needed correction to Method 202, it would be appropriate for the State to revise its regulations to cite the correct reference for Method 202.

In response to the second deficiency identified by Lone Star, particulate matter that condenses from a gaseous state to a liquid or solid state is likely to condense to very small particles. There is no evidence that condensible particles reach sizes greater than 10 microns. Lone Star has not provided any evidence that a significant amount of condensible particulate matter may reach sizes greater than 10 microns.

Comment: Another Lone Star comment concerns contingency measures, as required by section 172(c)(9) of the Act. See generally 57 FR 13543–44. These measures must be submitted by November 15, 1993 for the initial moderate nonattainment areas. Contingency measures should consist of other available measures that are not part of the area's control strategy. These measures must take effect without further action by the State, upon a determination by USEPA that the area has failed to make Reasonable Further Progress or attain the PM NAAQS by the applicable statutory deadline.

Lone Star believes it would be unfair and unreasonable to assume that additional emission reductions could come only from Lone Star sources, which are already controlled.

USEPA Response: Contingency measures for the LaSalle County nonattainment area are not due until November 15, 1993. It is the State of Illinois' responsibility to adopt additional control measures and submit them to USEPA as the contingency plan for LaSalle County. USEPA's

responsibility is to determine if the contingency control strategy Illinois submits meets the requirements of the Act. If the State of Illinois fails to submit an approvable contingency plan for LaSalle County, sanctions may be imposed and a Federal Implementation Plan may be required. Contingency measures are a separable requirement for the LaSalle nonattainment area PM SIP, and are not germane to this rulemaking. This issue will be addressed in a future rulemaking.

Final Rulemaking Action

Based on the March 2, 1993, proposed rule and in consideration of the public comments received in response to the proposed rule, USEPA approves the requested plan revision submitted to USEPA on October 16, 1991, and November 13, 1991, for the LaSalle County nonattainment area. The State of Illinois has demonstrated that the LaSalle County moderate PM nonattainment area will attain the PM NAAQS by December 31, 1994. As noted above, additional submittals for the initial moderate PM nonattainment areas are due subsequent to this rule. USEPA will determine the adequacy of any such submittal once any are received.

USEPA specifically approves the incorporation of the revisions and additions to the following State rules into the Illinois SIP: 35 IAC, Sections 211.122, 212.110, 212.111, 212.113, and 212.423. Section 212.424 was already approved for incorporation into the SIP in an earlier Final Rule. See 40 CFR 52.720 (58 FR 3847, January 12, 1993).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 20, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Incorporation by reference, Particulate matter.

Note: Incorporation by reference of the State Implementation Plan for the State of Illinois was approved by the Director of the Federal Register on July 1, 1982.

Dated: September 23, 1993.

Carol M. Browner,

Administrator.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart O—Illinois

2. Section 52.720 is amended by adding paragraph (c)(95) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(95) On October 16, 1991, and November 13, 1991, the State submitted particulate matter regulations adopted as part of Pollution Control Board Proceeding R91–6. These regulations concern particulate matter controls for LaSalle County, Illinois.

(i) *Incorporation by reference.* Illinois Administrative Code, Title 35: Environmental Protection, Subtitle B: Air Pollution, Chapter I: Pollution Control Board.

(A) The addition of definitions for "Condensible PM–10", "PM–10", "Portland Cement Manufacturing Process Emission Source", and the modification of the definition of "Portland Cement Process" to Part 211 Definitions and General Provisions: Section 211.122 Definitions; adopted at 15 Illinois Register 15673, effective October 14, 1991.

(B) Part 212 Visible and Particulate Matter Emissions: Section 212.110 Measurement Methods; the addition of an abbreviation for pounds per hour to Section 212.111 Abbreviations and Units; additions and deletions to Section 212.113 Incorporations by Reference including the addition and/or renumbering of paragraphs (a), (b), (c), (d), (e), and (h) and the deletion of paragraphs earlier numbered as (a) and (f); Section 212.423 Emission Limits for Portland Cement the Manufacturing Plant Located in LaSalle County, South of the Illinois River; adopted at 15 Illinois Register 15708, effective October 4, 1991.

[FR Doc. 93–25906 Filed 10–20–93; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 180

[OPP–300258A; FRL–4631–8]

RIN 2070–AB78

Revocation of Exemption from Requirement of a Tolerance for Certain Inert Chemicals in Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document revokes the exemptions from the requirement of a tolerance for seven pesticidally inert ingredients in or on raw agricultural commodities (RACs) listed in 40 CFR 180.1001(c)—hexane, methyl chloride, perchloroethylene, and propylene oxide; 40 CFR 180.1001(d)—chloroform, epichlorohydrin, ethylene dichloride (1,2-dichloroethane), and hexane (including isomeric hexanes); and 40 CFR 180.1001(e)—ethylene dichloride (1,2-dichloroethane), perchloroethylene, and propylene oxide. EPA initiated this action because the data base for these inerts is so deficient that the Agency cannot conclude that a tolerance is not necessary to protect the public health.

EFFECTIVE DATE: This regulation becomes effective October 21, 1993.

ADDRESSES: Written objections, identified by document control number [OPP–300258A], may be submitted to: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Melissa Chun, Registration Division (7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, Crystal Station I, 2800 Crystal Drive, Arlington, VA 22202, (703)–308–8318.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of January 13, 1993 (57 FR 4131), which proposed the revocation of the exemptions from the requirement of a tolerance for residues of seven pesticidally inert ingredients in or on RACs established under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, listed in 40 CFR 180.1001(c)—hexane, methyl chloride, perchloroethylene, and propylene oxide; 40 CFR 180.1001(d)—chloroform, epichlorohydrin, ethylene dichloride (1,2-dichloroethane), and hexane (including isomeric hexanes); and 40 CFR 180.1001(e)—ethylene dichloride (1,2-dichloroethane), perchloroethylene, and propylene oxide.

No public comments or requests for referral to an advisory committee were

received in response to the proposed rule. Therefore, based on the information considered by EPA and discussed in detail in the January 13, 1993 proposal and in this final rule, the Agency is hereby revoking the exemptions from the requirement of a tolerance for these seven inert ingredients listed in 40 CFR 180.1001(c), (d), and (e) in or on various RACs. Since these inerts have been eliminated from products or product registrations have been canceled or suspended, there is no legal sale or distribution in the United States. EPA believes there has been adequate time for legally treated agricultural commodities to have gone through channels of trade. Since sufficient time has elapsed in order for residues to dissipate, residues are not expected to appear in any domestically produced commodities. Consequently, the Agency is not recommending the establishment of action levels in place of these exemptions from the requirement of a tolerance.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections and/or a request for a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objection (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which the hearing is requested, the requestor's contentions must include a statement of factual contentions on each issue, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

This document has been reviewed by the Office of Management and Budget as required by section 3 of Executive Order 12291.

Executive Order 12291

As explained in the proposal published January 13, 1993, the Agency has determined, pursuant to the requirements of Executive Order 12291, that the removal of these exemptions from the requirement of a tolerance will not cause adverse economic impact on significant portions of U.S. enterprises.

Regulatory Flexibility Act

This rulemaking has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354; 94 Stat 1164, 5 U.S.C. 601 et seq.), and it has been determined that it will not have a significant impact on a substantial number of small businesses, small governments, or small organizations. The reasons for this conclusion are discussed in the January 13, 1993 proposal.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 27, 1993.

Victor J. Kimm,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR part 180 is amended as follows:

Part 180—[Amended]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C 346a and 371.

2. In § 180.1001(c), (d), and (e) tables, by removing the following entries, as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Uses
* * *	* * *	* * *
Hexane [Removed]	[Removed]	[Removed]
* * *	* * *	* * *
Methyl chloride [Removed]	[Removed]	[Removed]
* * *	* * *	* * *
Perchloroethylene [Removed]	[Removed]	[Removed]
* * *	* * *	* * *
Propylene oxide [Removed]	[Removed]	[Removed]
* * *	* * *	* * *

(d) * * *

Inert ingredients	Limits	Uses
* * *	* * *	* * *
Chloroform [Removed]	[Removed]	[Removed]
* * *	* * *	* * *
Epichlorohydrin [Removed]	[Removed]	[Removed]
Ethylene dichloride (1,2-dichloroethane) [Removed]	[Removed]	[Removed]

Inert ingredients	Limits	Uses
• • •	•	• • •
Hexane (including isomeric hexanes) [Removed]	[Removed]	[Removed]
• • •	•	• • •

(e) * * *

Inert ingredients	Limits	Uses
• • •	•	• • •
Ethylene dichloride (1,2-dichloroethane) [Removed] ...	[Removed]	[Removed]
• • •	•	• • •
Perchloroethylene [Removed]	[Removed]	[Removed]
• • •	•	• • •
Propylene oxide [Removed]	[Removed]	[Removed]
• • •	•	• • •

[FR Doc. 93-25939 Filed 10-20-93; 8:45 am]
BILLING CODE 6560-50-F

40 CFR Part 180

[PP 1E4033/R2015; FRL-4644-7]

RIN 2070-AB78

Pesticide Tolerance for Clopyralid

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes a tolerance for residues of the herbicide clopyralid in or on the raw agricultural commodity mint hay. The regulation to establish a maximum permissible level for residues of the herbicide in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

EFFECTIVE DATE: This regulation becomes effective October 21, 1993.

ADDRESSES: Written objections, identified by the document control number, [PP 1E4033/R2015], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Emergency Response and Minor Use Section, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Hwy., Arlington, VA 22202, (703)-308-8783.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 4, 1993 (58 FR 41453), EPA issued a proposed rule that gave notice that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition 1E4033 to EPA on behalf of the Agricultural Experiment Stations of Idaho, Oregon, Washington, and Wisconsin. The petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)), propose the establishment of a tolerance for residues of the herbicide clopyralid (3,6-dichloro-2-pyridinecarboxylic acid) in or on the raw agricultural commodity mint hay at 3.0 parts per million (ppm).

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above (40 CFR 178.20). The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or food additive regulations, or raising tolerance levels or food additive regulations, or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 29, 1993.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. By amending § 180.431(a) in the table therein by adding and alphabetically inserting the following raw agricultural commodity, to read as follows:

§ 180.431 Clopyralid; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Mint, hay	3.0
* * * * *	

* * * * *

[FR Doc. 93–25933 Filed 10–20–93; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 300

[FRL–4786–3]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of the Aidex Corporation Site from the National Priorities List (NPL).

SUMMARY: The Environmental Protection Agency (EPA) Region VII announces the deletion of the Aidex Corporation Site in Glenwood, Iowa, from the National Priorities List (NPL). The NPL is appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. EPA and the State of Iowa have determined that all appropriate Fund-financed responses under CERCLA have been implemented and that no further cleanup by responsible parties is appropriate. Moreover, EPA and the State of Iowa have determined that remedial actions conducted at the site, to date, have been protective of public health, welfare, and the environment.

EFFECTIVE DATE: October 21, 1993.

ADDRESSES: Comprehensive information on this site is available at the following addresses:

EPA Region VII Waste Management Division Records Center, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101.

Glenwood, Iowa City Hall, City of Glenwood, 107 S. Locust Street, Glenwood, Iowa. 51534.

FOR FURTHER INFORMATION CONTACT: Steve Sanders, Remedial Project Manager, Waste Management Division/ Superfund Branch, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66201, telephone 913–551–7578.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is: Aidex Corporation Superfund Site, Glenwood, Iowa.

A notice of intent to delete for this site was published in the **Federal Register** August 12, 1993 (58 FR 42916). The closing date for comments on the notice of intent was September 13, 1993. EPA received no comments on the proposed deletion. Therefore, no responsiveness summary was prepared.

Based on a review of monitoring and other data for the site, EPA in consultation with the State of Iowa, has determined that the site does not pose a significant risk to human health or the environment. The site shall continue to be monitored by the Iowa Department of Natural Resources (IDNR). EPA and IDNR will review the groundwater monitoring as part of each five-year review.

EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment, and it maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Fund-financed remedial actions. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.425(e)(3) of the NCP provides that Fund-financed actions may be taken at sites deleted from the NPL when conditions warrant. Deletion of a site from the NPL does not affect responsible party liability or impede EPA efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Air Pollution control, Chemicals, Environmental protection, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: September 28, 1993.

Susan Gordon,

Acting Regional Administrator.

For the reasons set out in the preamble 40 CFR part 300 is amended as follows:

PART 300–[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 42 U.S.C. 9601–9657; 33 U.S.C. 1321(c)(2); E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp.; p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp.; p. 193.

Appendix B–[Amended]

2. Table 1 of appendix B to part 300 is amended by removing the Site for "Aidex Corporation, Glenwood, Iowa" and by revising the total number of sites from 1,077 to read 1,076.

[FR Doc. 93–25932 Filed 10–20–93; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

42 CFR Part 52e

RIN 0905–AD48

National Heart, Lung, and Blood Institute Grants for Prevention and Control Projects

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Final rule.

SUMMARY: The National Institutes of Health (NIH) is amending regulations governing grants by the National Heart, Lung, and Blood Institute for prevention and control projects authorized under section 419 of the Public Health Service (PHS) Act, as amended, to correct the authority citation and PHS Act section numbers included in the regulations, and references to several HHS regulations that apply to grants awarded under the regulations and make minor language changes.

EFFECTIVE DATE: Effective November 22, 1993.

FOR FURTHER INFORMATION CONTACT: John J. Migliore, NIH Regulations Officer, National Institutes of Health, Building 31, room 3B–11, 9000 Rockville Pike, Bethesda, Maryland 20892, or telephone (301) 496–2832 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Regulations governing grants by the National Heart, Lung, and Blood Institute for prevention and control projects authorized under section 419 of the PHS Act, as amended (42 U.S.C. 285b–1), were last amended on February 25, 1980 (45 FR 12249). Subsequently, on November 20, 1985, the Health Research Extension Act of 1985 (Pub. L. 99–158) was enacted, amending the provisions of the PHS Act that authorize NIH programs. As a result of this statutory amendment, the sections of the PHS Act that authorized various National Heart, Lung, and Blood Institute programs were renumbered which necessitates changing the section numbers referenced in the regulations at 42 CFR part 52e. The NIH is amending part 52e to make these changes and to add references to several HHS regulations that apply to awards made under this part. Additionally, NIH is revising the section headings in accordance with Department efforts to simplify the language in its regulations, and is making several minor language changes.

The NIH announced its intention to make these changes in the notice of proposed rulemaking published in the Federal Register on August 19, 1992 (57 FR 37502). We gave the public 60 days to comment. We received no substantive comments. Consequently, these regulations are the same as the proposed regulations except for minor editorial changes. The following statements are provided as public information.

1. Regulatory Impact Statement

This rule has been reviewed in accordance with the requirements of Executive Order No. 12291. The Secretary has determined that it does not constitute a major rule as specified in the Order, and that a Regulatory Impact Analysis is not required.

2. Regulatory Flexibility Analysis

This rule has been reviewed in accordance with the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. chapter 6). The Secretary has determined that compliance with the regulations will not have a significant economic impact on a substantial number of small entities and, therefore, a Regulatory Flexibility Analysis is not required.

3. Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbered programs affected by these proposed regulations are:

93.837—Heart and Vascular Diseases Research
93.838—Lung Diseases Research
93.839—Blood Diseases and Resources Research

List of Subjects in 42 CFR Part 52e

Grant programs—health; Health; Medical research.

Dated: September 23, 1993.

Philip R. Lee,

Assistant Secretary for Health.

Approved: September 30, 1993.

Donna E. Shalala,

Secretary.

Accordingly, part 52e of title 42 of the Code of Federal Regulations is amended to read as set forth below.

PART 52e—NATIONAL HEART, LUNG, AND BLOOD INSTITUTE GRANTS FOR PREVENTION AND CONTROL PROJECTS

1–2. Revise the authority citation for part 52e to read as follows:

Authority: 42 U.S.C. 216, 285b–1.

3. Revise the headings for §§ 52e.1, and 52e.3—52e.7 to read as follows:

§ 52e.1 To what programs do these regulations apply?

* * * * *

§ 52e.3 Who is eligible to apply?

§ 52e.4 How to apply.

§ 52e.5. What are the project requirements?

§ 52e.6 How will NIH evaluate applications?

§ 52e.7 What are the terms and conditions of awards?

* * * * *

4. Amend § 52e.1 by revising paragraph (a) to read as follows:

§ 52e.1 To what programs do these regulations apply?

(a) This part applies to grants under section 419 of the Act (42 U.S.C. 285b–1) for projects to:

(1) Demonstrate and evaluate the effectiveness of new techniques or procedures for the diagnosis, prevention, and treatment of heart, blood vessel, lung, and blood diseases, appropriately emphasizing the prevention, diagnosis and treatment of these diseases in children;

(2) Develop and evaluate methods of educating health practitioners concerning the prevention and control of these diseases; and

(3) Develop and evaluate methods of educating the public concerning the prevention and control of these diseases.

* * * * *

5. Revise § 52e.2 to read as follows:

§ 52e.2 Definitions.

As used in this part:

Act means the Public Health Service Act, as amended (42 U.S.C. 201 et seq.)

Council means the National Heart, Lung, and Blood Advisory Council, established under section 406 of the Act (42 U.S.C. 284a).

Director means the Director of the National Heart, Lung, and Blood Institute and any official to whom the authority involved may be delegated.

Emergency medical services means the services utilized in responding to the perceived individual need for immediate medical care in order to prevent loss of life or aggravation of physiological or psychological illness or injury.

HHS means the Department of Health and Human Services.

National program means the National Heart, Blood Vessel, Lung, and Blood Diseases and Blood Resources Program referred to in section 421 of the Act (42 U.S.C. 285b–3).

Nonprofit as applied to any agency or institution means an agency or institution which is a corporation or an association, no part of the net earnings of which inures or may lawfully inure to the benefit of any private shareholder or individual.

PHS means the Public Health Service.

6. Amend § 52e.4 by removing ", NHLBI," in paragraphs (a) and (c).

7. Amend § 52e.6 by revising paragraph (a) introductory text to read as follows:

§ 52e.6 How will NIH evaluate applications?

(a) Within the limits of funds available, after consultation with the Council, the Director may award grants to applicants with proposed projects which in the Director's judgment will best promote the purposes of section 419 of the Act, taking into consideration among other pertinent factors:

* * * * *

8. Revise § 52e.8 to read as follows:

§ 52e.8 Other HHS regulations that apply.

Several other regulations apply to grants under this part. These include but are not necessarily limited to:

42 CFR Part 50, Subpart A—Responsibility of PHS awardee and applicant institutions for dealing with and reporting possible misconduct in science

42 CFR Part 50, Subpart D—Public Health Service grant appeals procedure

45 CFR Part 16—Procedures of the Departmental Grant Appeals Board

45 CFR Part 46—Protection of human subjects
45 CFR Part 74—Administration of grants
45 CFR Part 75—Informal grant appeals procedures
45 CFR Part 76—Governmentwide debarment and suspension (nonprocurement) and governmentwide requirements for drug-free workplace (grants)
45 CFR Part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services—Effectuation of Title VI of the Civil Rights Act of 1964
45 CFR Part 81—Practice and procedure for hearings under Part 80 of this title
45 CFR Part 84—Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance
45 CFR Part 86—Nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from Federal financial assistance
45 CFR Part 91—Nondiscrimination on the basis of age in HHS programs or activities receiving Federal financial assistance
45 CFR Part 92—Uniform administrative requirements for grants and cooperative agreements to State and local governments
45 CFR Part 93—New restrictions on lobbying
51 FR 16958 or successor—NIH Guidelines for Research Involving Recombinant DNA Molecules
"Public Health Service Policy on Humane Care and Use of Laboratory Animals," Office for Protection from Research Risks, NIH (Revised September 1986), or successor

§§ 52e.5, 52e.7, and 52e.9 [Amended]

9. Remove, "NHLBI," each place it appears in the following provisions:
a. Section 52e.5(a) and (b);
b. Section 52e.7(b); and
c. Section 52e.9.

[FR Doc. 93–25525 Filed 10–20–93; 8:45 am]
BILLING CODE 4140–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1815 and 1870

Approval Authorities for Conducting Multiple Rounds of Discussions and Negotiation With Multiple Offerors

AGENCY: Office of Procurement, Procurement Policy Division, National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: NASA has revised the NASA FAR Supplement to make editorial corrections and administrative changes to clarify internal approval procedures for source selection procedures.

DATES: This final rule is effective October 21, 1993.

FOR FURTHER INFORMATION CONTACT: Tom O'Toole, NASA Headquarters, Office of Procurement, Procurement Policy Division (Code HP), Washington, DC 20546. Telephone: (202) 358–0482.

SUPPLEMENTARY INFORMATION:

Background

NASA source selection procedures permit multiple rounds of written/oral discussions and negotiation with multiple offerors. Existing agency regulations are not clear regarding which agency official has the authority to approve use of these procedures, and the NASA FAR Supplement is revised to clarify the appropriate approval authorities. These revisions affect internal procedures only and have no direct impact on external entities. The revisions are issued as a final rule to ensure immediate implementation.

Availability of NASA FAR Supplement

The NASA FAR Supplement, of which this proposed coverage will become a part, is codified in 48 CFR, chapter 18, and is available in its entirety on a subscription basis from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. Cite GPO Subscription Stock Number 933–003–00000–1. It is not distributed to the public, either in whole or in part, directly by NASA.

Impact

NASA certifies that this regulation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. et seq.). This rule does not impose any reporting or recordkeeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 48 CFR Parts 1815 and 1870

Government procurement.

Tom Luedtke,

Acting Deputy Associate Administrator for Procurement.

Accordingly, 48 CFR parts 1815 and 1870 are amended as follows:

1. The authority citation for 48 CFR parts 1815 and 1870 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1815—CONTRACTING BY NEGOTIATION

1815.611 [Added]

2. Section 1815.611 is added to read as follows:

1815.611 Best and final offers.

After receipt of Best and Final Offers (BAFOs), the SSO may consider the evaluation findings not sufficiently comprehensive to make a selection decision. In this rare circumstance, it may be necessary to reopen discussions and issue an additional request for BAFOs to all offerors in the competitive range. For competitive procurements of $25 million or more, approval of the Associate Administrator for Procurement (Code HS) is required for this course of action. For competitive procurements with values less than $25 million, approval of the Procurement Officer is required.

1815.613–71 [Amended]

3. In section 1815.613–71, paragraph (b)(5)(i) is revised to read as follows:

1815.613–71 Evaluation and negotiation of procurements conducted in accordance with source evaluation board (SEB) procedures.

* * * * *

(b) * * *

(5) *Conduct of written or oral discussions.*

(i) *General.* Careful judgment must be exercised in determining the extent of discussions. The SEB should consider such factors as the time available, the expense and administrative limitations, and the size and significance of the procurement in deciding on the type, duration, and depth of the discussions. Normally, written or oral discussions are completed with each offeror in the competitive range in one round. In some cases, however, good business practice may warrant having more than one round of discussions with the offerors whose proposals are in the competitive range. In these cases, when discussions have been declared closed and BAFOs requested, the approval of the Associate Administrator for Procurement (or the Procurement Officer when the value of the procurement is less than $25 million) is required to reopen discussions (see 1815.611). Each subsequent round of discussions is subject to the same groundrules as the initial round (e.g., no discussion of weaknesses where such discussion is otherwise prohibited).

* * * * *

4. In section 1815.613–71, paragraph (b)(6) is removed and paragraphs (b)(7) and (b)(8) are redesignated (b)(6) and (b)(7), respectively.

PART 1870—NASA SUPPLEMENTARY REGULATIONS

Appendix I to 1870.303 [Amended]

5. In section 1870.303, Appendix I, chapter 4, paragraph 407 is amended by revising paragraph 2.g. to read as follows:

Appendix I to 1870.303—NASA Source Evaluation Board Procedures (Handbook)

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CHAPTER 4—SEB OPERATING PROCEDURES FOR SOLICITATION AND EVALUATION

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407 *Final Evaluation*

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2. Written and/or Oral Discussions

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g. Normally, written or oral discussions are completed with each offeror in the competitive range in one round. In some cases, however, a single round of discussions prior to requesting BAFOs may be insufficient for a comprehensive evaluation, and multiple sessions may be conducted. In these cases, when discussions have been declared closed and BAFOs requested, the approval of the Associate Administrator for Procurement (or the Procurement Officer when the value of the procurement is less than $25 million) is required to reopen discussions (see 1815.611). Each subsequent round of discussions is subject to the same groundrules as the initial round (e.g., no discussion of weaknesses where such discussion is otherwise prohibited).

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[FR Doc. 93–25774 Filed 10–20–93; 8:45 am]
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48 CFR Part 1871

Notification of Test of MidRange Procurement Procedures

AGENCY: Office of Procurement, Procurement Policy Division, NASA.

ACTION: Temporary rule.

SUMMARY: The Office of Federal Procurement Policy has approved a test of NASA's MidRange Procurement Procedures under the authority of section 15 of the Office of Federal Procurement Policy Act. The MidRange Procurement Procedures were developed to address relatively low dollar value procurements above the small purchase threshold. The test will be conducted at the Marshall Space Flight Center for up to 4 years on procurements other than construction and A&E services estimated to be between $25,000 and $500,000 in basic annual value. Up to four 1-year options are permitted allowing a total estimated contract value of $2.5M.

DATES: This regulation is effective July 1, 1993, and expires June 30, 1997. Section 1871.102(b) will not be implemented until Congressional approval is granted and notice is published in the **Federal Register** and Code of Federal Regulations.

FOR FURTHER INFORMATION CONTACT: Mr. T. Deback, (202) 358–0431.

SUPPLEMENTARY INFORMATION: NASA's MidRange Procurement procedures include (1) The use of an Electronic Bulletin Board to replace synopses of contracting opportunities in the Commerce Business Daily and (2) bid and proposal response times less than currently permitted by statute. Approval for those aspects of the MidRange Procedures requires Congressional approval which has not been granted as yet. Those aspects of the MidRange Procedures will not be fully implemented until Congressional approval is granted. NASA intends to implement these procedures on a parallel test basis; that is, an Electronic Bulletin Board will be established and used in addition to conventional Commerce Business Daily synopses for selected procurements. This will provide the Agency with valuable practical experience in the effective use of EBBs prior to full implementation of the EBB as the sole method of advising potential offerors of contracting opportunities. Notice of the use of the EBB will be published in the Commerce Business Daily (CBD).

List of Subjects in 48 CFR Part 1871

Government procurement.

Tom Luedtke,

Acting Deputy Associate Administrator for Procurement.

Accordingly, under the authority of 42 U.S.C. 2473(c)(1), 48 CFR ch. 18 is amended by adding part 1871 as follows:

PART 1871—MIDRANGE PROCUREMENT PROCEDURES

1871.000 Scope of part.

Subpart 1871.1—General

1871.101 Purpose.
1871.102 Authority.
1871.103 Applicability.
1871.104 Definitions.
1871.105 Policy.

Subpart 1871.2—Planning and Requirements Process

1871.201 Use of buying team.
1871.202 Organizational responsibilities.
1871.202–1 Requiring organization.
1871.202–2 Procurement organization
1871.202–3 Supporting organizations
1871.202–4 Center management.
1871.203 Buying team responsibilities.
1871.204 Small business set-asides.

Subpart 1871.3—Publicizing of Solicitation

1871.301 Publicizing policy.
1871.302 Publicizing procedure.

Subpart 1871.4—Request for Offer (RFO)

1871.401 Types of RFO's.
1871.401–1 Low, responsive, responsible offeror.
1871.401–2 Two-step competitive procurement.
1871.401–3 Competitive negotiated procurement not using qualitative criteria.
1871.401–4 Competitive negotiation using qualitative criteria.
1871.401–5 Noncompetitive negotiations.
1871.402 Preparation of the RFO.
1871.403 Offer preparation period and limitations.
1871.404 Protection of offers.
1871.405 Model contract.
1871.406 RFO by electronic bulletin board.
1871.406–1 Methods of disseminating information.
1871.406–2 Special situations.
1871.406–3 Publicizing and response time
1871.406–4 Method of soliciting offers.

Subpart 1871.5—Award

1871.501 Representations and certifications.
1871.502 Determination of responsible contractor.
1871.503 Negotiation documentation.
1871.504 Award documents.
1871.505 Notifications to unsuccessful offerors.
1871.506 Synopsis of award for subcontracting opportunities.
1871.507 Debriefing of unsuccessful offerors.

Subpart 1871.6—"Best Value Selection"

1871.601 General.
1871.602 Specifications for MidRange procurements.
1871.603 Establishment of evaluation criteria.
1871.604 Evaluation phases.
1871.604–1 Initial Evaluation.
1871.604–2 Determination of "Finalists."
1871.604–3 Discussions with "Finalists."
1871.604–4 Selection of "Best Value" Offer.
1871.605 Negotiation methods and procedures.
1871.606 Debriefings.

Authority: 42 U.S.C. 2473(c)(1).

PART 1871—MIDRANGE PROCUREMENT PROCEDURES

1871.000 Scope of part.

This part prescribes policies and procedures for the acquisition of supplies and services from commercial sources as a pilot test procurement program.

Subpart 1871.1—General

1871.101 Purpose.

The purpose of this part is to establish policies and procedures that implement the MidRange procurement process. This will be a pilot test program in NASA.

1871.102 Authority.

(a) The Office of Federal Procurement Policy has provided authority for the National Aeronautics and Space Administration to conduct a pilot test of a new procurement process within the scope of this part.

(b) (1) NASA's MidRange Procurement procedures include the use of an Electronic Bulletin Board to replace synopses of contracting opportunities in the Commerce Business Daily and bid and proposal response times less than currently permitted by statute. Approval for these aspects of the MidRange Procedures requires Congressional approval which has not been granted as yet. These aspects of the MidRange Procedures will not be implemented until Congressional approval is granted and notice is published in the **Federal Register** and *Code of Federal Regulations.*

(2) NASA intends to implement these procedures on a parallel test basis; that is, an Electronic Bulletin Board will be established and used in addition to conventional Commerce Business Daily synopses for selected procurements. This will provide the Agency with valuable practical experience in the effective use of EBBs prior to full implementation of the EBB as the sole method of advising potential offerors of contracting opportunities. Notice of the use of the EBB will be published in the Commerce Business Daily (CBD).

1871.103 Applicability.

(a) This part applies to all acquisitions, as described in paragraph (b) of this section, conducted at the Marshall Space Flight Center.

(b) This part applies to all contract actions, other than construction and A&E, the aggregate amount of which is greater than the small purchases limitation (FAR part 13) and not more than $500,000 in basic annual value. For services contracts, up to four annual options of not more than $500,000 each are permitted where the option requirements are substantially the same as the basic requirement. For supply contracts, four options of not more than $500,000 each are permitted but not more than $500,000 in funding is to be required in any fiscal year. The total amount of the basic award plus options may not exceed $2,500,000 in either the case of supplies or services except as provided in paragraph (c) of this section.

(c) When the government estimate for the annual award amount exceeds the limits of 1871.103(b), the procurement will be processed under FAR and NFS procurement procedures applicable to large procurements (see FAR parts 14 and 15). When the estimate is within the range of paragraph (b) of this section, and the procurement was started using these procedures but the lowest offered prices exceed the MidRange ceiling, the procurement may continue under MidRange procedures, provided that:

(1) The price can be determined fair and reasonable,

(2) The successful offeror accepts incorporation of required FAR and NFS clauses applicable to large procurements, and

(3) The procurement does not exceed $750,000 on an annual basis or $3,750,000 in total.

1871.104 Definitions.

The following terms are used throughout part 1871 as defined in this subpart.

(a) *NASA Acquisition Bulletin Board* or *NABB* means an electronic bulletin board; i.e., a computer system through which users may access messages or documents available in electronic format.

(b) *MidRange procurement procedure* means a set of procedures within the authority of 1871.102 and the applicability of 1871.103.

(c) *Pilot test* means a test of MidRange procurement procedures conducted within the authority of 1871.102 and applicability of 1871.103.

(d) *Request for Offer (RFO)* means the solicitation method used to request offers for all authorized MidRange procurements.

(e) *Clarification* and *Discussion* are used as defined in FAR 15.601.

(f) *Negotiation* is used as defined in FAR 15.101 and includes bargaining as described in FAR 15.102.

1871.105 Policy.

(a) The procedures prescribed in this part shall be used for all procurements within the scope of part 1871 at the NASA pilot test field installation.

(b) Under MidRange procedures, cost or pricing data and certification thereof shall be in accordance with FAR 15.804.

(c) Procurements conducted under part 1871, unless otherwise properly restricted under the provisions of FAR part 6, are considered to be full and open competition after exclusion of sources in accordance with FAR 6.203, Set-asides for small business and labor surplus area concerns, or full and open competition in accordance with FAR subpart 6.1. Procurements not conducted as small business set asides and under less than full and open competition require a Justification for Other than Full and Open Competition pursuant to FAR part 6.

(d) Options may be included in the acquisition provided they conform to 1871.103(b) or do not exceed $500,000 for the total requirement, options included.

(e) The appropriate part 1871 post-selection processes (negotiation, award, publication of award, and debriefing) may be used for Small Business Innovation Research (SBIR), broad agency announcement procurement actions, and Small Business Administration 8(a) sole source procurement actions within the applicability of 1871.103(b) to the extent applicable. Notwithstanding the threshold requirements set forth in 1871.103(b), SBIR Phase II contracts may be awarded in amounts not exceeding $750,000. Contracts resulting from unsolicited proposals, evaluated under the provisions of FAR subpart 15.5, may be awarded using MidRange procedures, if they meet the threshold requirements.

(f) The NABB will be used to the maximum extent practicable to disseminate advance procurement information and transact part 1871 procurements.

(g) Use of locally generated forms are encouraged where they will contribute to the efficiency and economy of the process. Contractor generated forms or formats for solicitation response should be allowed whenever possible. There is no requirement for uniform formats (see FAR 15.406).

Subpart 1871.2—Planning and Requirements Process

1871.201 Use of buying team.

MidRange procedures are based on the use of a buying team to conduct the procurement. The concept is to designate individuals who are competent in their respective functional areas, provide those individuals with the basic authority to conduct the procurement and hold them accountable for the results. The buying team will normally consist of one technical member and one procurement member, but may be augmented with additional members as desired. Personnel providing normal functional assistance to the team (e.g., legal, financial) will not be considered a part of the team unless so designated. To function properly, the team should be given the

maximum decision authority in matters related to the procurement. When higher level management approvals remain essential, it will be incumbent upon the functional team member to obtain such approvals. The team may accept, as final, the decision of the responsible buying team member.

1871.202 Organizational responsibilities.

1871.202–1 Requiring organization.

The requirements organization will appoint, by name, the technical member of the buying team. This individual will normally be an end user or the one most familiar with the technical aspects of the requirement. The individual appointed, whatever the relationship with the procured item, is expected to totally fulfill the responsibilities to the buying team. If the requiring organization elects not to appoint a technical member to the buying team, standard interfaces and authorities applicable to large procurements will be used. The procedures in this part will be used to the extent practical; however, priority will be afforded to procurements fully using buying teams.

1871.202–2 Procurement organization.

The procurement organization shall appoint the procurement member of the buying team. This individual shall be a warranted contracting officer or a contract specialist with broad latitude to act for the contracting officer. The procurement member shall be the team leader with the ultimate responsibility to conduct the procurement.

1871.202–3 Supporting organizations.

Buying team members may require additional team members to perform specialized functions or to assist in the evaluation of offers. Requests for supporting members shall be made by the organization identifying the need for the support and directed to the appropriate management level in the supporting organization. Supporting team members, once designated for the team, shall fulfill all applicable responsibilities to the team as other members.

1871.202–4 Center management.

Center managers shall, to the maximum extent practical and consistent with their responsibilities to manage the Center mission, convey sufficient authority to members of the buying team to conduct the procurement. Administrative or technical approvals should be minimized, and where deemed essential, facilitated to the maximum extent practicable. Center managers should lend their full support to the buying team should problems arise from the procurement.

1871.203 Buying team responsibilities.

(a) The buying team shall conduct the procurement in a manner that best satisfies the user requirements and meets the norms expected of a Government procurement. Team members should develop open communications, rely on decisions of other team members and meet their obligations to the team. The team will typically—

(1) Refine the final specifications for the solicitations;

(2) Decide the most appropriate solicitation method;

(3) Establish milestones for the procurement;

(4) Finalize the evaluation criteria;

(5) Develop the RFO and model contract; and

(6) Evaluate offers and determine the awardee.

(b) The buying team shall use a simplified procurement plan not subject to management review and approval.

(c) The procurement member of the buying team shall lead clarifications, discussions, negotiations, be the source selection official, and conduct debriefings.

1871.204 Small business set-asides.

(a) Except as provided in paragraph (b) of this section, each MidRange acquisition of supplies or services shall be reserved exclusively for small business concerns.

(b) The requirement for small business MidRange set-asides does not relieve the buying office of its responsibility to make purchases from required sources of supply, such as Federal Prison Industries, Industries for the Blind and Other Severely Handicapped, and mandatory multiple award Federal Supply Schedule contracts.

(c) Each written solicitation under a small business MidRange set-aside shall contain the provision at FAR 52.219–6, Notice of Total Small Business Set-Aside.

(1) If the buying team procurement member determines there is no reasonable expectation of obtaining offers from two or more responsible small business concerns that will be competitive in terms of market price, quality, and delivery, the buying team need not proceed with the small business set-aside and may purchase on an unrestricted basis utilizing MidRange procedures. If the SBA procurement center representative disagrees with a buying team procurement member's decision not to proceed with a small business set-aside, the SBA procurement center representative may appeal the decision in accordance with the procedures set forth in FAR 19.505.

(2) If the buying team proceeds with the small business MidRange set-aside and receives an offer from only one responsible small business concern at a reasonable price, the contracting officer will normally make an award to that concern. However, if the buying team does not receive a reasonable offer from a responsible small business concern, the buying team procurement member may cancel the small business set-aside and complete the procurement on an unrestricted basis utilizing MidRange procedures. The buying team procurement member shall document in the file the reason for the unrestricted purchase.

Subpart 1871.3—Publicizing of Solicitation

1871.301 Publicizing policy.

[Implementation of the NASA Acquisition Bulletin Board aspects of this procedure are dependent upon Congressional approval as discussed in 1871.102(b).]

Use of the MidRange procedure is intended to streamline and expedite the acquisition process. Presolicitation publication requirements are streamlined; however, it is in the Government's interest to provide as much advance notice as possible of a pending acquisition in order for the Government to obtain maximum competition. As soon as practicable after a requirement has been finalized and before the RFO is ready for release, a notice of the anticipated procurement action shall be published on the NABB. The NABB has the capability to quickly communicate with the potential offerors on a solicitation through a "message board." The procurement team member can easily add messages that update the status of the RFO. If the RFO is going to be delayed, posting a brief message can avoid numerous telephone calls while still effectively informing potential offerors. Where possible, a forecast posting date should be added to the "message board".

1871.302 Publicizing procedure.

(a) Synopses are not to be sent to or published in the Commerce Business Daily.

(b) A separate presolicitation notice for each requirement shall be published on the NABB. The presolicitation notice shall be published prior to the actual release of the solicitation.

(c) The presolicitation notice, at a minimum, shall briefly: Describe the

requirement; state that the solicitation will be released via the NABB and that potential offerors will be responsible for downloading their own copy of the solicitation; state that hard copies of the solicitation shall be made subsequently available on request, but the closing date will be the same as that required for the NABB released solicitation; state the projected solicitation release date; provide notice that it is the offeror's responsibility to monitor the NABB for solicitation release as the solicitation will be released as soon as permissible whether prior or subsequent to the projected date; and identify the name and telephone number of a point of contact. The presolicitation notice shall only be updated to reflect significant changes to the original notice.

(d) The presolicitation notice described at paragraph (b) of this section shall not be published in the CBD but only on the NABB. The MidRange procedure shall ensure that a perpetual notice is published in the CBD to:

(1) Alert potential offerors to the MidRange procedure in general; and

(2) Provide instructions on how to access the NABB.

Subpart 1871.4—Request for Offer (RFO)

In MidRange procedures, solicitation of sources shall be accomplished by use of an RFO. The RFO will be solely a solicitation document incorporating only those elements of information required to solicit the offer. Offers will be provided on a model contract furnished with the RFO.

1871.401 Types of RFO's

The RFO may be used for all types of procurements that fall within the MidRange dollar values. The distinguishing difference will be the evaluation and award criteria specified in the RFO. This, in turn, will be driven by the buying team's decisions on the extent of discussion required, the amount of non-price factors that will influence the award and the amount of competition available. If the conditions in FAR 6.401(a) are met, the RFOs described in 1871.401–1 and 1871.401–2, of this section, shall be used. Once the evaluation and award criteria have been specified in the RFO, the procurement must conform to the procedures applicable to these criteria, unless changed by formal amendment to the RFO.

1871.401–1 Low, responsive, responsible offeror.

(a) *Policy.*

RFO's specifying that award will be made to the responsive, responsible offeror providing the most advantageous offer considering only price and price related factors shall comply with the requirements of FAR Part 14 that relate to Sealed Bidding.

(b) *Public opening of offers.* In accordance with FAR part 14, offers, whether received by facsimile or sealed envelope delivery, shall be publicly opened at the designated time and place. Interested members of the public will be permitted to attend the opening.

(c) *Abstracts of offers.* Offers shall be abstracted pursuant to FAR Part 14 and be available for public inspection. Locally generated forms, to facilitate electronic transcription, may be used. A summary abstract, containing offerors, prices and any essential information specific to that procurement, for unclassified acquisitions shall be posted on the NABB. A copy shall be maintained in the contract file in accordance with FAR 14.204.

§ 1871.401–2 Two-step competitive procurement.

(a) *Policy.* (1) RFO's may specify that evaluation and award may be conducted in two distinct steps, similar in concept to "Two Step Sealed Bidding". When it is desirable to award to the lowest, responsive, responsible offeror after determining that the initial technical proposal, or the negotiated revised technical proposal, is acceptable, the MidRange Two-Step process should be used.

(2) The procedures of FAR 14.503–2(a) shall be used once Step two of this process begins.

(b) *Procedures.* (1) The RFO shall request offerors to provide both a technical and a price proposal by the closing date specified. Price proposals are requested to ensure that they are accomplished in a timely manner and to reduce the time required for Step two.

(2) The technical proposal will be evaluated to determine if the product or service offered is acceptable. If the proposal does not meet the requirement, but is reasonably susceptible to being made acceptable, the buying team procurement member shall enter into discussions to request the offeror to submit additional clarifying or supplementing information to make it acceptable. This is not required if there are sufficient acceptable proposals to ensure adequate price competition under Step Two, and if further time, effort and delay to make additional proposals acceptable and thereby increase competition would not be in the Government's interest.

(3) After completion of discussions in accordance with paragraph (b)(2) of this section, the buying team shall afford all offerors who have submitted acceptable proposals an opportunity, by a common date, to revise their price offers to reflect the results of discussions. Offerors with acceptable initial proposals shall also have the opportunity to revise their price offer, even though their proposal has not changed. No changes to technical proposals will be permitted during this process.

§ 1871.401–3 Competitive negotiated procurement not using qualitative criteria.

(a) *Policy.* (1) RFO's may provide for discussion of all aspects of the offer but award is based on the lowest price (or most probable cost) for the offer as negotiated. This method should be used when qualitative factors are not material in the award decision, but it is important to assure that technical offers and contract terms are fully compliant with the Government's needs. This method also permits direct discussion of price with offerors and is particularly appropriate when different approaches can be offered to satisfy the government's need.

(2) The RFO should reserve the right to award without discussions or make selection and conduct negotiations with the successful offeror, based on the initial evaluation of offers submitted. FAR 52.215–16 shall be amended at Center level to reflect this procedure.

(b) *Procedures.* (1) The RFO shall request offerors to provide both a technical and a price offer by the closing date specified.

(2) The offer will be evaluated to determine if the product or service proposed meets the RFO requirements. If the offer does not meet the RFO requirements but is reasonably susceptible to being made acceptable, the buying team procurement member shall enter into discussions to request the offeror to submit additional clarifying or supplementing information to make it acceptable. Offerors may be afforded an opportunity to revise their offers. This is not required if there are sufficient acceptable offers to ensure adequate price competition, and if further time, effort and delay to make additional proposals acceptable and thereby increase competition would not be in the Government's interest.

(3) From among the acceptable technical offers received, the buying team may rank the offers based on price (or cost). These offers constitute the most probable winners of the contract. Only in exceptional cases will this number be less than two offers. The procurement buying team member shall succinctly record the basis for the decision and post the names of the "finalists" on the NABB.

[Implementation of the NASA Acquisition Bulletin Board aspects of this procedure are dependent upon Congressional approval as discussed in 1871.102(b).]

(4) The buying team will enter into negotiations with all of the "finalists" and may discuss any aspect of the offer. The objective of the negotiations should be to achieve revisions to the offer, consistent with the RFO, that are more favorable to the Government.

(5) Upon conclusion of negotiations with each offeror, the offeror shall be asked to submit a revised offer (in full or amended), reflecting the results of negotiations, that is sufficient for acceptance and immediate award of a contract. A reasonable amount of time (normally less than 5 working days) will be afforded for the revision, giving due consideration to the extent of revision necessary. Award will be made to the offeror submitting the lowest evaluated price.

1871.401–4 Competitive negotiation using qualitative criteria.

(a) *Policy.* (1) MidRange procurements shall normally use the Best Value Selection (BVS) source selection method, prescribed in 1871.6 when it is desirable to base evaluation and award on a combination of price and non-price qualitative criteria.

(2) The RFO should reserve the right to award without discussions or make selection and conduct negotiations with the successful offeror, based on the initial evaluation of offers submitted. FAR 52.215–16 shall be amended at Center level to reflect this procedure.

(3) In exceptionally complex procurements where it is desirable to use a highly structured approach and multiple evaluators, a source selection method following the principles specified in NASA Source Evaluation Board Handbook, 1870.303, Appendix I, may be more appropriate than BVS. This may be appropriate in cases in which the following factors cannot be accommodated within the MidRange/BVS selection methodology: (i) The ability to predefine the value attributes that will constitute the discriminators among the offers; (ii) the complexity of the interrelationships that must be evaluated; (iii) the number of evaluators required to address the disciplines that will be involved in the offers; or (iv) the impact that the procurement may have on higher level mission management (level of selection official) or future procurements.

(4) A source selection process combining both of the above approaches shall not be used.

(b) *Procedures.* (1) The buying team will determine which of the source selection methodologies is most appropriate to the specific procurement.

(2) The team shall record its rationale for selecting the SEB methodology rather than BVS. Once this decision is made, the team shall no longer function as a MidRange buying team, but shall follow the instructions prescribed in the local procedures for the source selection method.

1871.401–5 Noncompetitive negotiations.

(a) *Policy.* (1) The RFO may be used as the solicitation method for non-competitive procurements.

(2) MidRange procedures may be used in non-competitive acquisitions to the extent they are applicable.

(b) *Procedures.* (1) Posting a "Notice of Procurement Action" on the NABB meets the requirement of FAR 5.201 and complies with the notice required by the Competition in Contracting Act. [Implementation of the NASA Acquisition Bulletin Board aspects of this procedure are dependent upon Congressional approval as discussed in 1871.102(b).]

(2) The buying team shall require submission of certified cost and pricing data in accordance with FAR 15.804–2.

(3) The technical member of the buying team shall provide technical assistance to the procurement member during evaluation and negotiation of the contractor's offer.

1871.402 Preparation of the RFO.

(a) The RFO form will be an electronically produced format providing for merged format and text. The form shall provide all standard information required for the offeror to submit an offer.

(b) The RFO contains space for all necessary additional instructions to offerors. As a minimum, the RFO shall contain the following:

(1) Incorporation by reference of required standard provisions and clauses.

(2) A provision notifying offerors that standard Representations and Certifications will be required from the successful offeror prior to award, or from all offerors selected for parallel negotiations.

(3) Evaluation and award criteria.

(4) A provision requiring offerors to submit offers on an attached model contract.

(c) Requirements for the content and format of the offer should be the minimum required to provide for proper evaluation. Offerors' formats should be allowed to the maximum extent possible.

(d) Facsimile offers, defined by FAR 14.202–7, shall normally be authorized for MidRange procurements. In special circumstances, the buying team may elect to require only original offers.

1871.403 Offer preparation period and limitations.

The buying team should establish deadlines for receipt of offers based on an assessment of the minimum amount of time required to respond to the solicitation. The time required will depend on the complexity of the requirement and amount of cost and technical information required to be submitted. The information required shall be limited to the amount required to determine technical acceptability and price reasonableness. The offer preparation period established in the RFO shall not be less than 15 calendar days unless the procurement is urgent and the reasons for urgency are documented in the contract file.

1871.404 Protection of offers.

A facsimile machine(s) shall be dedicated for receipt of offers and placed in a secure location where offers received on it can be safeguarded. All offers submitted shall be recorded, sealed in an envelope marked with the RFO number and taken to the buying team procurement member. Facsimile attendants shall make a good faith effort to inspect the document for completeness and legibility. If the attendant believes there are missing or illegible pages, the document will be promptly referred to the buying team procurement member for notification to the offeror that it should resubmit the offer. The Government shall not assume responsibility for proper transmission.

1871.405 Model contract.

MidRange procedures uses a simplified contract format. The simplified contract format may be used with any type of contract, as long as the provisions appropriate to the contract type are included.

1871.406 RFO by electronic bulletin board.

[Implementation of the NASA Acquisition Bulletin Board aspects of this procedure are dependent upon Congressional approval as discussed in 1871.102(b).]

1871.406–1 Methods of disseminating information.

(a) In accordance with 1871.302(b), advance notices of solicitations for MidRange Procurements may be posted on the NABB. The advance notice should indicate the nature of the procurement and the anticipated date

the solicitation will be posted on the NABB.

(b) Solicitations for MidRange Procurements shall be made available on the NABB. Priority shall be given to users of the NABB to download the RFO. Paper copies of such solicitations will be furnished on request as described for other types of solicitations in FAR 5.102. Paper copies shall be mailed within 5 working days from the date the RFO is posted on the NABB or receipt of the request, whichever is later.

(c) Solicitations available on the NABB are exempt from the requirement in FAR 14.203–1 that delivery of the solicitations be made pursuant to FAR 14.205.

(d) For the purposes of FAR 15.402(a), a solicitation posted on the NABB is a written solicitation.

(e) Solicitations posted on the NABB in accordance with these regulations are exempt from the requirement in FAR 15.408(a) to issue solicitations using the procedures in FAR part 5.

1871.406–2 Special situations.

Notices for special situations as described in FAR 5.205 involving MidRange Procurements must be published in the Commerce Business Daily. Such special situations include R&D sources sought, intent to sponsor or change the mission of an Federally Funded Research and Development Center, effort to locate commercial sources under OMB Circular A–76, and section 8(a) competitive national buy acquisitions.

1871.406–3 Publicizing and response time.

In accordance with 1871.403, contracting activities shall allow at least 15 calendar days response time for receipt of offers from the date of posting of the solicitation on the NABB. Contracting activities shall check the NABB immediately after uploading a solicitation to assure that the solicitation is properly posted.

1871.406–4 Method of soliciting offers.

(a) Solicitations for MidRange Procurements shall be generated in, or converted to, electronic files and uploaded to the NABB.

(1) Each contracting activity will designate two or more individuals to perform the upload and check the uploaded files to assure that the data was not corrupted during transmission.

(2) Each solicitation uploaded to the NABB shall be accompanied by a title, which shall include a very brief description of the nature of the procurement, the opening and closing dates for the solicitation, and the product/service classification code (see FAR 5.207(g)). This title is not intended to provide the amount of detail used in synopses published in the Commerce Business Daily, since the entire solicitation is available for immediate review.

(b) Amendments to a solicitation posted on the NABB shall be uploaded to the NABB, and the solicitation and amendment number shall be added to the index of amended solicitations. When an interested part, i.e., one that has downloaded the solicitation from the NABB, next contacts the NABB, the party will receive notification that an amendment exists.

Subpart 1871.5—Award

1871.501 Representations and certifications.

Upon determination of the successful offer, the buying team procurement member will determine if the offeror has on file valid Representations and Certifications. If the offeror has not completed the required forms, or they have expired, the offeror will be requested to provide the forms promptly. Should the offeror fail to provide the required Representations and Certifications or fail to meet a required condition, the buying team may reject the offer and proceed to the next highest ranked offeror who is responsive and responsible.

1871.502 Determination of responsible contractor.

Contractor responsibility shall be determined in accordance with FAR part 9.

1871.503 Negotiation documentation.

The prenegotiation memorandum, if required, and the results of negotiation will be in abbreviated form and will be approved by the buying team.

1871.504 Award documents.

Contract award shall be accomplished by Contracting Officer execution of the contract document and providing a paper copy to the successful offeror. If facsimile documents were used in the evaluation process, the successful offeror may be required to execute original copies of the contract to facilitate legibility during the administration phase of the contract.

1871.505 Notifications to unsuccessful offerors.

[Implementation of the NASA Acquisition Bulletin Board aspects of this procedure are dependent upon Congressional approval as discussed in 1871.102(b).]

For solicitations that were posted on the NABB, a notice of award in accordance with FAR 15.1001 may be posted on the NABB in lieu of furnishing a post-award notice to each unsuccessful offeror.

1871.506 Synopsis of award for subcontracting opportunities.

[Implementation of the NASA Acquisition Bulletin Board aspects of this procedure are dependent upon Congressional approval as discussed in 1871.102(b).]

The award will be synopsized for subcontracting opportunities on the NABB for 7 calendar days after posting. The information required by FAR 5.206 shall be included in the synopsis.

1871.507 Debriefing of unsuccessful offerors.

If the procurement method used provides for a debriefing of unsuccessful offerors, the procedures applicable to that selection process shall be used in the debriefing. The procurement buying team member shall conduct debriefings.

Subpart 1871.6—"Best Value Selection"

1871.601 General.

(a) Best Value Selection (BVS) seeks to select an offer based on the best combination of price and qualitative merit of the offers submitted and reduce the administrative burden on the offerors and the Government.

(b) BVS takes advantage of the lower complexity of MidRange procurements and predefines the value characteristics which will serve as the discriminators among offers. It eliminates the use of area evaluation factors and the highly structured scoring.

1871.602 Specifications for MidRange procurements.

Best Value Selection refines the traditional approach to preparing specifications. BVS envisions that the specification will focus on the end result that is to be achieved and will serve as a statement of the Government's baseline requirements. The offeror will be guided in meeting the Government's need by a separate set of value characteristics which establish what the Government considers to be valuable in an offer. These value characteristics will be performance based and will permit the selection of the offer which provides better results for a reasonable marginal increase in price.

1871.603 Establishment of evaluation criteria.

(a) The requiring organization will provide, along with the specification, a

list of value characteristics against which the offers will be judged. There is no limit to the number or the type of characteristics that may be specified. The only standard will be whether the characteristic is rationally related to the need specified in the specification. Characteristics may include such factors as improved reliability, innovativeness of ideas, speed of service, demonstrated delivery performance, higher speeds, ease of use, qualifications of personnel, solutions to operating problems, level of service provided on previous similar contracts, or any of numerous other characteristics that may be of value to the Government in satisfying its need.

(b) Cost and technical will be considered equal in importance. The value characteristics will not be assigned weights. Where certain characteristics are of major importance to the Government, they should be identified as primary value characteristics to permit the offerors to better propose a product or service that meets our needs.

(c) Both general and specific characteristics may be listed in the RFO. All subsequent evaluations will consider these characteristics when determining the finalists or making the final selection for award. Additional characteristics, not listed in the RFO, shall not be used as a basis for discriminating among proposals.

1871.604 Evaluation phases.

1871.604–1 Initial evaluation.

(a) Offers will be reviewed to determine if all required information has been provided and the offeror has made a reasonable attempt to present an acceptable offer. Offerors may be contacted only for clarification purposes during the initial evaluation. No further evaluation shall be made of any offer that is deemed unacceptable because:

(1) It does not represent a reasonable effort to address itself to the essential requirements of the RFO or clearly demonstrates that the offeror does not understand the requirements of the RFO; or

(2) It contains major technical or business deficiencies or omissions or out-of-line costs which discussions with the offeror could not reasonably be expected to cure.

(3) In R&D procurement, a substantial design drawback is evident in the proposal and sufficient correction or improvement to consider the proposal acceptable would require virtually an entirely new proposal.

(b) Offerors determined not to be acceptable shall be notified of their rejection and the reasons therefor and excluded from further consideration.

(c) *Documentation.* If it is concluded that all offers are acceptable, then no documentation is required and evaluation proceeds. If one or more offers are not acceptable, the procurement member of the team will notify the offeror of the rejection and the reasons therefor. The documentation should consist of one or more succinct statements of fact that show the offer is not acceptable.

1871.604–2 Determination of "finalists."

(a) All acceptable offers will be evaluated against the specifications and the value characteristics. Based on this evaluation, the team will identify the finalists from among the offers submitted. Finalists will include all offers having a reasonable chance of being selected for final award, as prescribed in 1815.613–71(b)(4)(i) for competitive range. Generally, finalists will include the offer having the best price (or lowest most probable cost) and the offer having the highest qualitative merit, plus those determined to have the best combination of price and merit. Offers not qualifying as finalists will be excluded from the balance of the evaluation process.

(b) Whenever possible, the buying team will conduct parallel negotiations of complete contracts with all finalists as discussed in 1871.604–5. This approach, which provides for the negotiation of definitive contracts prior to selection, serves to maintain the competitive environment among offerors throughout the acquisition cycle.

(c) In some cases, the buying team may choose to conduct discussions with the finalists as opposed to conducting parallel negotiations of complete contracts. This may be appropriate when: (1) certain aspects of offers are unclear, and clarifying the offers could determine that a finalist actually has no reasonable chance of being selected for final award; or (2) the finalists are so numerous that negotiating complete contracts with all finalists is not practical, considering the time and resources available. Discussions shall be conducted in accordance with 1871.604–3.

(d) The buying team may choose to conduct parallel negotiations with all acceptable offerors without a determination of finalists. This could particularly apply where few offers were received.

(e) The selection official may elect to make selection in lieu of determining finalists, provided it can be clearly demonstrated that (1) Negotiation of an initial offer(s) will result in the best value for the Government, considering both price and non-price qualitative criteria; and (2) discussions with other acceptable offerors are not anticipated to change the outcome of the initial evaluation relative to the best value offer(s).

(f) *Documentation.* If finalists are identified as discussed in paragraphs (b) and (c) of this section, the documentation expected and required to result from this phase of evaluation is approximately one-quarter of a page for each finalist. The documentation shall succinctly describe how the value characteristics in the RFO were provided by the offeror and cost/price considerations that caused the offer to qualify as a finalist. The evaluator(s) shall not be required to justify why other offers provided less qualitative merit. It is expected that, should the decision be challenged, the documented reason for selection, when compared with the non-selected offer, shall clearly demonstrate the difference that resulted in non-selection. It is expected and recommended that all informal worksheets used in the evaluation process be included in the official contract file for use in any debriefings requested. When selection of the successful offeror(s) is made, the buying team shall document the selection in accordance with 1871.604–4.

(g) The names of offerors determined to be finalists or selected for negotiations and/or final contract award will be posted on the NABB. This will serve as notification to those offerors that were not selected for further evaluation.

1871.604–3 Discussions with "finalists."

(a) The procurement team member shall lead discussions with each finalist. The discussions are intended to assist the buying team in fully understanding each finalist's offer and to assure that the meanings and points of emphasis of the RFO have been adequately conveyed to the finalists so that all are competing equally on the basis intended. Care must be exercised to ensure these discussions adhere to the guidelines set forth in 1815.613–71(b)(5) for the applicable contract type. Technical transfusion, technical leveling, and auction techniques are prohibited. It is expected that these discussions will be conducted on an informal basis with each finalist.

(b) After completion of discussions, each finalist shall be afforded an opportunity to revise its offer to support and clarify its offer. A reasonable amount of time (normally less than 5 working days) will be afforded for the

revision. The amount of time given shall be the same for each finalist.

1871.604–4 Selection of "Best Value" offer.

(a) The procurement team member shall be the source selection official.

(b) The BVS source selection is based on the premise that, if all offers are of approximately equal qualitative merit, award will be made to the offer with the lowest evaluated price (fixed price contracts) or the Government-determined most probable cost (cost type contracts). However, the Government will consider awarding to an offeror with higher qualitative merit if the difference in price is commensurate with added value. Conversely, the Government will consider making award to an offeror whose proposal has lower qualitative merit if the price (or cost) differential between it and other proposals warrant doing so.

(c) *Documentation.* Rationale for selection of the successful offeror shall be recorded in a selection statement which succinctly records the value characteristics upon which selection was made. The statement need not and should not reveal details of the successful offer that are proprietary or business sensitive. Since the value characteristics are expressed in performance terms, the reasons for selection can focus on results to be achieved, rather than the detailed approach the offeror will use. The statement shall also comment on the rationale used to equate cost and qualitative merit. Little or no comment would be required when the selected offeror possessed the highest merit and lowest price. When a marginal analysis is made between value characteristics and price—in most cases this will be a subjective, integrated assessment of all pertinent factors—specific rationale should be provided to the extent possible. It is expected that the statement will not ordinarily exceed one page. Where the procurement is closely contested, it would be prudent to expand on the rationale provided in the statement.

(d) The name of the offeror(s) selected for award and the selection statement shall be posted on the NABB, and this will serve as a notification to those offerors that were not selected.

1871.605 Negotiation methods and procedures.

(a) *Policy.*

(1) The buying team may choose to initiate parallel negotiations of complete contracts with those offerors determined to be finalists or with all acceptable offerors. Parallel negotiation may also be used where more than one offeror is selected for negotiations after discussions. Use of parallel negotiations takes advantage of the competitive atmosphere and the responsiveness of offerors in completing negotiations. It also provides the selection official a higher confidence in the offer, since only the contracting officer's signature is required to make the offer a binding contract.

(2) When the selection official has chosen to make selection in lieu of conducting parallel negotiations, negotiations may be conducted with the successful offeror(s) to resolve any open issues necessary to effect a binding contract(s). This may be typical of R&D and service contracts where the Government desires to negotiate changes in emphasis or orientation in a otherwise superior offer(s).

(b) *Procedure.* (1) Upon conclusion of parallel negotiations with each offeror, the offeror shall be asked to submit a revised offer (in full or amended) reflecting the results of the negotiations and including the offeror's signature on the negotiated contract. A reasonable amount of time (normally less than 5 working days) will be afforded for the revision. The amount of time given shall be the same for each offeror. Upon receipt of all offers, the procurement team member of the buying team shall make selection and document as required in 187.604–4(c). Upon selection, the contracting officer shall execute the selected contract.

(2) If negotiation is conducted after selection, the buying team shall first select the offer and document as required in 1871.604–4(c), then negotiate the terms of the contract. The offeror shall be asked to submit a revised offer reflecting the results of negotiation, and including the offeror's signature on the negotiated contract. A reasonable amount of time (normally less than 5 working days) will be afforded for the revision. After receipt of the revised offer, the contracting officer shall execute the contract.

1871.606 Debriefings.

In addition to posting the selection statement on the NABB, a debriefing will be provided by the buying team procurement member to any offeror submitting a written request. The debriefing will concentrate on the reasons why the successful offeror was selected. If the contract is unclassified, the debriefer may reveal any aspect of the contract and how it relates to the merits used to select the successful offer. If the successful offer had value characteristics which are proprietary or business sensitive and had an impact on the selection, the debriefer should so state and summarize the results which are expected to accrue to the Government. The debriefer shall not divulge the details of the proprietary or business sensitive information.

[FR Doc. 93–25647 Filed 10–20–93; 8:45 am]
BILLING CODE 7510–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 371

Fraser River Sockeye and Pink Salmon Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason orders.

SUMMARY: The Secretary of Commerce (Secretary) hereby publishes the inseason orders regulating fisheries in United States waters that were issued by the Fraser River Panel (Panel) of the Pacific Salmon Commission (Commission) and subsequently approved and issued by the Secretary during the 1993 sockeye and pink salmon fisheries within the Fraser River Panel Area (U.S.). These orders established fishing times, areas, and types of gear for U.S. treaty Indian and all-citizen fisheries during the period the Commission exercised jurisdiction over these fisheries.

Due to the frequency with which inseason orders are issued, publication of individual orders is impracticable. The 1993 orders are therefore being published in this document to avoid fragmentation.

DATES: Each of the following inseason orders was effective upon announcement on telephone hotline numbers as specified at 50 CFR 371.21(b)(1).

ADDRESSES: Comments on these inseason orders may be sent to Rolland A. Schmitten, Director, Northwest Region, NMFS, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115.

FOR FURTHER INFORMATION CONTACT: William L. Robinson (206) 526–6140.

SUPPLEMENTARY INFORMATION: The Treaty between the Government of the United States of America and the Government of Canada Concerning Pacific Salmon (Treaty) was signed at Ottawa on January 28, 1985, and subsequently was given effect in the

United States by the Pacific Salmon Treaty Act (Act) at 16 U.S.C. 3631–3644.

Under authority of the Act, an emergency interim rule was promulgated at 51 FR 23420, June 27, 1986 (codified at 50 CFR part 371) to provide a framework for implementation of certain regulations of the Commission and inseason orders of the Commission's Panel for sockeye and pink salmon fisheries in the Fraser River Panel Area (U.S.). The emergency interim rule was effective on June 22, 1986, and remains in effect until modified, superseded, or rescinded. It applies to fisheries for sockeye and pink salmon in the Fraser River Panel Area (U.S.) during the period each year when the Commission exercises jurisdiction over these fisheries.

The emergency interim rule closes the Fraser River Panel Area (U.S.) to sockeye and pink salmon fishing unless opened by Panel regulations or by inseason orders of the Secretary that give effect to Panel orders, unless such orders are determined not to be consistent with domestic legal obligations. During the fishing season, the Secretary may issue orders that establish fishing times and areas consistent with the annual Commission regime and inseason orders of the Panel. Such orders must be consistent with domestic legal obligations. The Secretary issues inseason orders through his delegate, the Northwest Regional Director of NMFS. Official notice of these inseason actions of the Secretary is provided by two telephone hotline numbers described at 50 CFR 371.21(b)(1). Inseason orders of the Secretary must be published in the **Federal Register** as soon as practicable after they are issued. Due to the frequency with which inseason orders are issued, publication of individual orders is impracticable. The 1993 orders are therefore being published in this notice to avoid fragmentation.

The following inseason orders were adopted by the Panel and issued for U.S. fisheries by the Secretary during the 1993 fishing season. The times listed are local times, and the areas designated are Puget Sound Management and Catch Reporting Areas as defined in the Washington State Administrative Code at Chapter 220–22.

Order No. 1993–1: Issued 1:00 p.m., July 16, 1993

All-citizen Fishery:
Area 4 and Area 3 north of 48° 00′ 15″ N.—The Fraser Panel relinquished regulatory control of troll fishing effective July 18 through August 7, 1993.

Order No. 1993–2: Issued 12:20 p.m., July 20, 1993

Referred only to fishing in Canadian area Panel Waters.

Order No. 1993–3: Issued 1:10 p.m., July 23, 1993

Treaty Indian Fishery:
Areas 4B, 5, and 6C—Drift gillnets open 12:00 p.m., July 26 to 12:00 p.m., July 30.

Order No. 1993–4: Issued 2:05 p.m., July 30, 1993

Treaty Indian Fishery:
Areas 4B, 5, and 6C—Drift gillnet extended 12:00 p.m., July 30 to 12:00 p.m., August 6.
Areas 7 and 7A—Net fishing open 5:00 a.m., August 2 to 9:00 a.m., August 3.

All-citizen Fishery:
Areas 7 and 7A—Reefnets open 5:00 a.m. to 9:00 p.m., August 1 and 3.
Gillnets open 12:00 p.m. to 12:00 a.m., August 3. Purse seines open 5:00 a.m. to 9:00 p.m., August 4.

Order No. 1993–5: Issued 11:50 a.m., August 2, 1993

All-Citizen Fishery:
Areas 6, 7 and 7A—Reefnets open 5:00 a.m. to 9:00 p.m., August 5.

Order No. 1993–6: Issued 12:45 p.m., August 6, 1993

Treaty Indian Fishery:
Areas 4B, 5, and 6C—Gillnets extended 12:00 p.m., August 6 to 12:00 p.m., August 11.
Areas 6, 7, and 7A—Net fishing open 6:00 p.m., August 8, to 9:00 p.m., August 10.

All-citizen Fishery:
Areas 6, 7 and 7A—Gillnets open 12:00 p.m., August 11 to 7:00 a.m., August 12.
Purse seines open 5:00 a.m. to 9:00 p.m., August 12.
Areas 4 and 3 north of 48° 00′ 15″ N—Commerical trolling open 12:01 a.m., August 8 until further notice.

Order No. 1993–7: Issued 12:25 p.m., August 10, 1993

Treaty Indian Fishery:
Areas 4B, 5 and 6C—Drift gillnets extended 12:00 p.m., August 11 to 12:00 p.m., August 14.

Order No. 1993–8: Issued 11:55 a.m., August 12, 1993

Treaty Indian Fishery:
Areas 4B, 5 and 6C—Drift gillnets extended 12:00 p.m., August 12 to 12:00 p.m., August 18.
Areas 6, 7, and 7A—Net fishing open 11:00 a.m., August 13 to 11:00 a.m., August 17.

Order No. 1993–9: Issued 12:05 p.m., August 13, 1993

All-citizen Fishery:
Areas 6, 7, and 7A—Reef nets open 5:00 a.m. to 9:00 p.m., August 15 and 17.
Gillnets open 12:00 p.m., August 18 to 7:00 a.m., August 18.
Purse seines open 5:00 a.m. to 9:00 p.m., August 18 and 19.

Order No. 1993–10: Issued 12:20 p.m., August 17, 1993

Treaty Indian Fishery:
Areas 4B, 5 and 6C—Drift gillnets extended 12:00 p.m., August 18 to 12:00 p.m., August 21.

All-citizen Fishery:
Areas 6, 7, and 7A: Reefnets open 5:00 a.m. to 9:00 p.m., August 18 and 19.
Purse seines cancel 5:00 a.m. to 9:00 p.m., August 19 opening.

Order No. 1993–11: Issued 10:30 a.m., August 19, 1993

Treaty Indian Fishery:
Areas 6, 7 and 7A—Net fishing open 6:00 p.m., August 19 to 9:00 p.m., August 21.

Order No. 1993–12: Issued 1:15 p.m., August 20, 1993

Treaty Indian Fishery:
Areas 4B, 5, and 6C—Drift gillnets extended 12:00 p.m., August 21 to 12:00 p.m., August 28.
Areas 6, 7, and 7A—Net fishing extended 9:00 p.m., August 21 to 9:00 a.m., August 22.

All-citizen Fishery:
Areas 7 and 7A: Reefnets open 5:00 a.m. to 9:00 p.m., August 21, 22, and 24.
Gillnets open 12:00 p.m. to 12:00 a.m., August 22 and 7:00 p.m., August 23 to 9:00 a.m., August 24.
Purse seines open 5:00 a.m. to 9:00 p.m., August 23 and 24.

Order No. 1993–13: Issued 1:30 p.m., August 24, 1993

Treaty Indian Fishery:
Areas 6, 7 and 7A—Net fishing open 9:00 p.m., August 25 to 9:00 p.m., August 28.

All-citizen Fishery:
Areas 7 and 7A: Reefnets open 5:00 a.m. to 9:00 p.m., August 25 and 26.
Gillnets open 7:00 p.m., August 24 to 9:00 a.m., August 25.
Purse seines open 5:00 a.m. to 9:00 p.m., August 25.

Order No. 1993–14: Issued 4:05 p.m., August 27, 1993

Treaty Indian Fishery:
Areas 4B, 5, and 6C—Drift gillnets

extended 12:00 p.m., August 28 to 12:00 p.m., September 5.
Areas 6, 7, and 7A—Net fishing extended 9:00 p.m., August 28 to 9:00 a.m., August 29 and re-open 9:00 p.m., August 30 to 9:00 p.m., August 31.
All-citizen Fishery:
Areas 7 and 7A: Reefnets open 5:00 a.m. to 9:00 p.m., August 28, 29, and 30.
Gillnets open 12:00 p.m., August 29 to 9:00 a.m., August 30.
Purse seines open 5:00 a.m. to 9:00 p.m., August 30.

Order No. 1993–15: Issued 5:00 p.m., August 30, 1993

Referred only to fishing in Canadian area Panel Waters.

Order No. 1993–16: Issued 12:50 p.m., August 31, 1993

Treaty Indian Fishery:
Areas 6, 7, and 7A—Net fishing extended 9:00 p.m., August 31 to 9:00 a.m., September 3.
All-citizen Fishery:
Areas 7 and 7A—Gillnets open 12:00 p.m., September 3 to 9:00 a.m., September 4.

Order No. 1993–17: Issued 12:25 p.m., September 1, 1993

Referred only to fishing in Canadian area Panel Waters.

Order No. 1993–18: Issued 12:30 p.m., September 3, 1993

Treaty Indian Fishery:
Areas 6, 7, and 7A—Net fishing open 5:00 a.m., September 6 to 8:00 a.m., September 7.
All-citizen Fishery:
Areas 7 and 7A: Gillnets extended 9:00 a.m., September 4 to 7:00 p.m., September 5.
Purse seines open 8:00 a.m. to 9:00 p.m., September 7.

Order No. 1993–19: Issued 10:00 a.m., September 8, 1993

Referred only to fishing in Canadian area Panel Waters.

Order No. 1993–20: Issued 12:45 p.m., September 10, 1993

Treaty Indian Fishery:
Areas 4B, 5 and 6C—Relinquish regulatory control effective 11:59 p.m., September 11.

Order No. 1993–21: Issued 12:35 p.m., September 14, 1993

Referred only to fishing in Canadian area Panel Waters.

Classification

This action is taken under authority of 50 CFR 371.21 (51 FR 23420, June 27, 1986).

List of Subjects in 50 CFR Part 371

Fisheries, Fishing, Pacific Salmon Commission, Treaty Indians.

Authority: 16 U.S.C. 3636(b).

Dated: October 18, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–25923 Filed 10–20–93; 8:45 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 58, No. 202
Thursday, October 21, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–92–AD]

Airworthiness Directives; British Aerospace Model BAe 146 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all British Aerospace Model BAe 146 series airplanes equipped with Dunlop brakes. This proposal would require that the brake wear limits prescribed in this proposal be incorporated into the FAA-approved maintenance inspection program. This proposal is prompted by an accident in which a transport category airplane executed a rejected takeoff (RTO) and was unable to stop on the runway due to worn brakes. The actions specified by the proposed AD are intended to prevent the loss of brake effectiveness during a high energy RTO.

DATES: Comments must be received by December 16, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–92–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mark I. Quam, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2145; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–92–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–92–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

In 1988, a McDonnell Douglas Model DC–10 series airplane was involved in an aborted takeoff accident in which eight of the ten brakes failed and the airplane ran off the end of the runway. Investigation revealed that there were failed pistons on each of the eight brakes, with O-rings damaged by over-extension due to extensive wear. Fluid leaking from the damaged pistons caused the hydraulic fuses to close, releasing all brake pressure.

This accident prompted a review of allowable wear limits for all brakes installed on transport category airplanes. The FAA and the Aerospace Industries Association (AIA) jointly developed a set of dynamometer test guidelines that could be used to validate appropriate wear limits for all airplane brakes. It should be noted that this worn brake accountability determination validates brake wear limits with respect to brake energy capacity only and is not meant to account for any reduction in brake force due solely to the wear state of the brake. The guidelines for validating brake wear limits allow credit for use of reverse thrust with a critical engine inoperative to determine energy level absorbed by the brake during the dynamometer test.

The FAA has requested that airframe manufacturers of transport category airplanes:

(1) Determine required adjustments in allowable wear limits for all of its brakes in use,

(2) Schedule dynamometer testing to validate wear limits as necessary, and

(3) Submit information from items (1) and (2) to the FAA so that appropriate rulemaking action(s) can be initiated.

British Aerospace has conducted worn brake rejected takeoff (RTO) dynamometer testing and analyses on various brakes installed on Model BAe 146 series airplanes. Based on the results of that testing and analyses, the FAA has determined that the maximum brake wear limits currently recommended in the Component Maintenance Manual for Model BAe 146 series airplanes equipped with Dunlop brakes are acceptable as they relate to the effectiveness of the brakes during a high energy RTO. Consequently, the FAA finds that the specified maximum wear limits for those brakes must be incorporated into the FAA-approved maintenance inspection program.

The FAA has determined that, in order to prevent loss of brake effectiveness during a high energy RTO, the following maximum brake wear limits are necessary for Model BAe 146 series airplanes equipped with Dunlop brakes:

Brake type	Brake part no.	Maximum brake wear limit (inch)—lineal axial wear as measured by the brake wear pin (inch)
Carbon	AHA 1412/13	2.34" (1.5" original wear pin setting + 0.84" spacer).
Carbon	AHA 1558/59	2.34" (1.5" original wear pin setting + 0.84" spacer).
Steel	AHA 1455/56	0.866".

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. The FAA has determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require the incorporation of the specified maximum wear limits for the specified brakes into the FAA-approved maintenance inspection program.

The FAA estimates that 45 airplanes of U.S. registry and 6 U.S. operators that would be affected by this proposed AD. Although the proposed rule would require the incorporation of maximum brake wear limits into the FAA-approved maintenance inspection program, no other specific additional action, inspection, or part replacement costs are involved; such actions are currently a part of the normal maintenance program. However it is estimated that it would require 20 work hours, at an average labor rate of $55 per work hour, for each operator to incorporate the requirement into its FAA-approved maintenance inspection program. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $6,600, or $1,100 per operator. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Docket 93–NM–91–AD.

Applicability: All Model BAe 146 series airplanes equipped with Dunlop brakes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of main landing gear braking effectiveness, accomplish the following:

(a) Within 180 days after the effective date of this AD, incorporate the maximum brake wear limits specified in the following table into the FAA-approved maintenance inspection program and comply with these measurements thereafter.

DUNLOP BRAKES

Brake type	Brake part no.	Maximum brake wear limit (inch)—lineal axial wear as measured by the brake wear pin (inch)
Carbon	AHA 1412/13	2.34" (1.5" original wear pin setting + 0.84" spacer).
Carbon	AHA 1558/59	2.34" (1.5" original wear pin setting + 0.84" spacer).
Steel	AHA 1455/56	0.866".

Note 1: The measuring instructions for carbon and steel brake thicknesses and instructions for setting the wear pin length specified in the BAe 146 AMM, Section 32–42–24, or in the Dunlop CMM, Section 32–42–58, are based currently on the minimum brake thicknesses specified in the table.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on October 15, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–25847 Filed 10–20–93; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 93–NM–148–AD]

Airworthiness Directives; Fokker Model F–28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Fokker Model F–28 Mark 0100 series airplanes. This proposal would require inspection, necessary repair, and modification of the engine mount shear shelf webs. This proposal is prompted by reports of interference between the engine mount shear shelf web and the fixed cowl mid and aft hooks, which caused fatigue cracks in the web. The actions specified by the proposed AD are intended to prevent fatigue cracking and other damage to the structure of the shear shelf web, which subsequently could lead to loss of the engine mounting structure.

DATES: Comments must be received by December 16, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–148–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mark Quam, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2145; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–148–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–148–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for The Netherlands, recently notified the FAA that an unsafe condition may exist on certain Fokker Model F–28 Mark 0100 series airplanes. The RLD advises that interference has been found to be possible between the fixed cowl mid and aft hooks, and the engine mount shear shelf web. Aside from a noticeable increase in vibration and the resulting noise, this interference can cause cracking and other damage to the shear shelf web, which can adversely affect the fatigue life of the shear shelf web. Such fatigue, if not corrected in a timely manner, can lead to structural failure of the shear shelf web and subsequent loss of the engine mounting structure.

Fokker has issued Service Bulletin SBF100–71–012, dated February 7, 1992, that describes procedures for modifying the engine mount shear shelf web. The modification entails reinforcing the web to eliminate the interference problems. The RLD classified this service bulletin as mandatory and issued Netherlands Airworthiness Directive BLA No. 92–032, dated February 25, 1992, in order to assure the continued airworthiness of these airplanes in The Netherlands.

This airplane model is manufactured in The Netherlands and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require a visual inspection to detect cracking and other damage of the engine mount shear shelf webs around the areas of the fixed cowl mid and aft hooks. Cracked or damaged parts would be required to be repaired in accordance with the applicable structural repair manual.

This proposed AD also would require modification of the engine mount shear shelf webs to eliminate the interference problems. The modification would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 20 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 120 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $2,390 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $179,800, or $8,990 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44

FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Fokker: Docket 93–NM–146–AD.

Applicability: Model F–28 Mark 0100 series airplanes; having serial numbers 11244 to 11308 inclusive, 11310, 11312, 11313, 11314, 11316, 11321, 11328, and 11329; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking and other damage to the engine mount shear shelf web, which subsequently could lead to loss of the engine mounting structure, accomplish the following:

(a) Prior to the accumulation of 12,000 total flight hours or within 90 days after the effective date of this AD, whichever occurs later, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

(1) Conduct a detailed visual inspection to detect cracking or other damage of the engine mount shear shelf webs around the areas of the fixed cowl aft hook centerline and the fixed cowl mid hook centerline. If cracking or damage is detected, prior to further flight, repair it in accordance with the Fokker F–28 Mark 0100 Structural Repair Manual.

Note 1: Location of the inspection area is detailed in Figure 2 of Fokker Service Bulletin SBF100–71–012, dated February 7, 1992.

(2) Modify (reinforce) the engine mount shear shelf webs in accordance with Part 1 or Part 2, as applicable, of the Accomplishment Instructions of Fokker Service Bulletin SBF100–71–012, dated February 7, 1992.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, FAA, Transport Airplane Directorate, ANM–113. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on October 15, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–25846 Filed 10–20–93; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 901

Alabama Abandoned Mine Land Reclamation Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing the receipt of a proposed amendment to the Alabama Abandoned Mine Land Reclamation (AMLR) Plan (hereinafter referred to as the Alabama Plan) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) submitted by Alabama on October 1, 1993. The amendment would revise the eligibility date for abandoned mine land reclamation from August 3, 1977, to November 5, 1990, and would affect both nonemergency and emergency reclamation. The amendment is intended to meet the requirements of title IV and the Federal regulations.

This document sets forth the times and locations that the Alabama Plan and proposed changes will be available for public inspection, the comment period during which interested persons may submit written comments, and the procedures that will be followed regarding a public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on November 22, 1993. Comments received after that date will not necessarily be considered in the decision process. If requested, a public hearing on the proposed amendment will be held at 1 p.m. on November 15, 1993. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on November 5, 1993.

ADDRESSES: Written comments should be mailed or hand delivered to Jesse Jackson, Jr., Director, Birmingham Field Office, at the address listed below. Copies of the Alabama program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below, during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendment by contacting the OSM Birmingham Field Office.

Birmingham Field Office, 135 Gemini Circle, suite 215, Birmingham, Alabama 35209, Telephone: (205) 290–7287

Alabama Department of Industrial Relations, Abandoned Mine Lands Program, 649 Monroe Street, Montgomery, Alabama 36130, Telephone: (205) 242–8265.

FOR FURTHER INFORMATION CONTACT: Jesse Jackson, Jr., Director, Birmingham Field Office, (205) 290–7283.

SUPPLEMENTARY INFORMATION:

I. Background on the Alabama Program

Title IV of SMCRA, Public Law 95–87, 30 U.S.C. 1202 et seq., establishes an AMLR program for the purposes of reclaiming and restoring lands and water resources adversely affected by past mining. This program is funded by a reclamation fee imposed upon the production of coal. As enacted in 1977, lands and waters eligible for reclamation were those that were mined or affected by mining and abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility under State or Federal law. The AML Reclamation Act of 1990 (Pub. L. 101–508, title VI, subtitle A, Nov. 5, 1990, effective Oct. 1, 1991) amended SMCRA, 30 U.S.C. 1231 et seq., to provide changes in the eligibility of project sites for AML expenditures. Title IV of SMCRA now provides for reclamation of certain mine sites where the mining occurred after August 3, 1977. These include interim program sites where bond forfeiture proceeds were insufficient for adequate

reclamation and sites affected any time between August 4, 1977, and November 5, 1990, for which there were insufficient funds for adequate reclamation due to the insolvency of the bond surety. Title IV provide that a State with an approved AMLR program has the responsibility and primary authority to implement the program.

The Secretary of the Interior approved the Alabama Plan on May 20, 1982. Information pertinent to the general background, revisions, and amendments to the initial plan submission, as well as the Secretary's findings and the disposition of comments can be found in the May 20, 1982, **Federal Register** (47 FR 22062). Information concerning the previously approved plan and the proposed amendments may be obtained from the agency offices listed under **ADDRESSES**. Subsequent actions taken with regard to the Alabama Plan can be found at 30 CFR 901.25.

The Secretary has adopted regulations at 30 CFR part 884 that specify the content requirements of a State reclamation plan and the criteria for plan approval. The regulations provide that a State may submit to the Director proposed amendments or revisions to the approved reclamation plan. If the amendments or revisions change the scope or major policies followed by the State in the conduct of its reclamation program, the Director must follow the procedures set out in 30 CFR 884.13 in approving or disapproving an amendment or revision.

II. Discussion of Proposed Amendment

By letter dated October 1, 1993, Alabama submitted a reclamation plan amendment to OSM (Administrative Record No. AL 0504). This formal amendment request was preceded by a letter dated July 12, 1993, which requested that the Alabama Plan be updated by revision. OSM determined on September 17, 1993, that the proposed revision represented a major change in the scope of the AMLR program and would necessitate processing as a formal Plan amendment. The proposed amendment consists of revised narratives to replace portions of three sections of the approved Alabama Plan as provided for by 30 CFR 884.13. Specifically, the Alabama Plan is being revised to modify the eligibility date for AMLR reclamation from August 3, 1977, to November 5, 1990. This change will be applicable to both nonemergency and emergency AMLR project sites and will allow reclamation of sites mined for coal after August 3, 1977.

III. Public Comment Procedures

In accordance with the provision of 30 CFR 884.14, OSM is now seeking comments on whether the amendment proposed by Alabama satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Alabama program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Birmingham Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Records.

Public Hearings

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4 p.m. November 5, 1993. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepared adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the OSM office listed under "**ADDRESSES**" by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "**ADDRESSES.**" A written summary of each meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This proposed rule is not considered a significant regulatory action under the criteria of section 3(f) of Executive Order 12866. Therefore, review by the Office of Management and Budget under section 6 of the Executive Order is not required prior to publication in the **Federal Register**.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State and Tribal abandoned mine land reclamation plans and revisions thereof since each such plan is drafted and adopted by a specific State or Tribe, not by OSM. Decisions on proposed State and Tribal abandoned mine land reclamation plans and revisions thereof submitted by a State or Tribe are based on a determination of whether the submittal meets the requirements of title IV of SMCRA (30 U.S.C. 1231–1243) and the Federal regulations at 30 CFR parts 884 and 888.

National Environmental Policy Act

No environmental impact statement is required for this rule since agency decisions on proposed State and Tribal abandoned mine land reclamation plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior [516 DM 6, appendix 8, paragraph 8.4B(29)].

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 et seq.

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The State [or Tribal] submittal which is the subject of this rule is based upon Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities.

Hence, this rule will ensure that existing requirements established by SMCRA or previously promulgated by OSM will be implemented by the State [or Tribe]. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions in the analyses for the corresponding Federal regulations.

List of Subjects in 30 CFR Part 901

Intergovernmental relations, Surface Mining, Underground mining.

Dated: October 15, 1993.

Carl C. Close,

Assistant Director, Eastern Support Center.

[FR Doc. 93–25850 Filed 10–20–93; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 155 and 156

[CGD 90–071a]

Overfill Devices

AGENCY: Coast Guard, DOT.

ACTION: Notice of public meeting and availability of revised regulatory evaluation.

SUMMARY: The Coast Guard is establishing regulations to require overfill devices for tank vessels that carry oil as their primary cargo, as mandated by the Oil Pollution Act of 1990 (OPA 90). A public meeting will be held to discuss the applicability of, and methods of compliance with, this rulemaking. The Coast Guard has also placed a revised Regulatory Evaluation (RE), based on changes and additional data, in the docket for public comment.

DATES: A public meeting will be held between 1 p.m. and 4 p.m., on Wednesday, November 17, 1993. Comments must be received on or before November 22, 1993.

ADDRESSES: The meeting will be held at the U.S. Coast Guard Headquarters, room 2200, 2100 Second Street, SW., Washington, DC 20593–0001.

Comments concerning the public meeting or the revised RE may be mailed to the Executive Secretary, Marine Safety Council, (G–LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. For more information, the telephone number is (202) 267–1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Mr. Randall N. Crenwelge, Project Manager, Oil Pollution Act (OPA 90) Staff, at (202) 267–6220.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 90–071a) and the specific section of the RE to which each comment applies, and give the reason for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. If not practical, a second copy of any bound materials is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change the RE in view of the comments.

Drafting Information

The principal persons involved in drafting this document are Mr. Randall N. Crenwelge, Project Manager, and Ms. Pamela Pelcovits, Project Counsel, OPA 90 Staff (G–MS).

Background and Discussion

On January 12, 1993, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled, "Overfill Devices," in the **Federal Register** (58 FR 4040). Information concerning the statutory and technical basis for the proposed regulations are included in the preamble of that document.

The Coast Guard received 32 letters commenting on the NPRM. At that time, a public hearing was not requested. Comments to the NPRM both favored and discouraged the use of high level indicating devices. Since the close of the comment period, the Coast Guard has received several questions from representatives of the marine industry. Industry is concerned with the Coast Guard's final decision on whether to allow high level indicating devices or stick gauges to serve as alternative overfill devices under proposed 33 CFR 155.480.

The Coast Guard has reviewed its records of tank overfills occurring in 1990 and 1991. The data show that inattentive or unskilled personnel are the most often reported causes of overfill spills on barges. The data suggest that stick gauges would not have prevented any of those tank overflows.

For example, one overfill incident occurred because the tankerman had left the barge to have lunch. Another overfill incident occurred when the tankerman was busy sounding tanks at the forward end of the barge. A tank overfilled at the aft end of the barge because the tankerman was not aware of its oil level.

Since data shows that sole reliance on stick gauges is unwarranted, the Coast Guard plans to require an audible alarm whether or not a high level indicating device is used. The alarm requirement will address problems with busy or inattentive tankermen. The Coast Guard does, however, agree with those comments suggesting that one alarm, rather than two alarms, will be sufficient.

Other segments of the marine industry have contacted the Coast Guard to discuss applicability and exemption issues. The NPRM proposed to exclude only secondary cargo carriers (such as offshore supply vessels (OSVs) and certain fish tenders) and vessels with cargo carrying capacities of less than 40 cubic meters (250 barrels).

After a review of data showed that only a small amount of cargo oil is spilled from vessels with a cargo carrying capacity of less than 1,000 cubic meters, the Coast Guard has decided to raise the applicability threshold for oil tankers (as defined in 33 CFR 151.05) to those with a capacity of 1,000 cubic meters (approximately 6,290 barrels) or more.

Based on comments, the Coast Guard also has decided to exempt existing vessels which will be phased-out over the next five years. It agrees that this exemption will eliminate the unrecoverable costs of upgrading devices on vessels which will soon be taken out of service.

In response to this public input, the Overfill rulemaking and the accompanying preliminary RE have been revised. A copy of the revised RE has been placed in the public docket (CGD 90–017a) and is available for inspection or copying at the address listed herein. The Coast Guard is also soliciting comment on the revised RE.

To further address these issues, the Coast Guard will conduct a public meeting on November 17, 1993, to obtain information from the public on the applicability provisions of, and the methods of compliance with, the NPRM.

The public meeting will include discussions of the benefits and disadvantages of high level indicating devices, such as the problems of human error. The Coast Guard is especially interested in the public's evaluation of the effectiveness and costs of the proposed devices.

Dated: October 4, 1993.

Joseph J. Angelo,

Acting Chief, Office of Marine Safety, Security & Environmental Protection.

[FR Doc. 93–25654 Filed 10–20–93; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 180, 185, and 186

[OPP–300297; FRL–4639–8]

RIN No. 2070–AC18

Carbophenothion; Proposed Revocation of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to revoke all tolerances on raw agricultural commodities, and all food and feed additive regulations, for residues of the insecticide carbophenothion. EPA is initiating this action because all registered uses of carbophenothion on these commodities have been cancelled. Therefore, there is no need to maintain the tolerances. Ample time has elapsed for treated items to clear the marketplace as these uses have been cancelled for over 3 years.

DATES: Written comments, identified by the document control number OPP-300297, must be received on or before November 22, 1993 in the **Federal Register**.

ADDRESSES: By mail, submit comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4 p.m. Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Paul Parsons, Special Review and Reregistration Division (7508W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Special Review Branch, Rm. WF32G5, Crystal Station #1, 2800 Crystal Drive, Arlington, VA 22202, Telephone: 703-308-8037.

SUPPLEMENTARY INFORMATION: This document proposes the revocation of tolerances established under sections 408 and 409 of the Federal Food, Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 346(a) and 348) for residues of the insecticide carbophenothion in or on the commodities listed in 40 CFR 180.156, 40 CFR 185.700, and 40 CFR 186.700. These commodities are: alfalfa (fresh and hay); almond hulls; apples; apricots; beans (dry); beans, lima (succulent); beans, snap (succulent); bean straw; beets, garden (root and top); blueberries; cantaloupe; cattle fat; cherries; clover (fresh and hay); corn (kernels plus cob with husks removed); corn forage; cottonseed, undelinted; crabapples; cucumbers; eggplants; figs; goats, fat; grapefruit; grapes; hogs, fat; lemons; limes; milk; nectarines; olives; onions (dry bulb and green); oranges; peaches; pears; peas (succulent); pecans; peppers; pimentos; plums (fresh prunes); quinces; sheep, fat; sorghum, forage; sorghum, grain; soybeans (succulent); spinach; strawberries; sugarbeets (roots and tops); summer squash; tangerines; tomatoes; walnuts and watermelons (180.156); dried tea (185.700); and dehydrated citrus pulp and citrus meal for cattle feed (186.700). All uses of carbophenothion products have been cancelled, and any provision for sales and/or distribution of stocks has expired.

In October 1989, all registrations under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) of pesticide products containing the insecticide carbophenothion were cancelled. Because carbophenothion is no longer registered in the U.S. for use on any food or animal feed crops, and a tolerance is generally not necessary for a pesticide chemical which is not registered for the particular food use, EPA now proposes to revoke the tolerances listed in 40 CFR 180.156, 185.700, and 186.700 for residues of carbophenothion.

Since the registrations for carbophenothion products were cancelled over 3 years ago, existing stocks of those products should have been depleted. Thus, EPA believes there has been adequate time for legally treated agricultural commodities to have gone through the channels of trade. Further, there is no anticipation of a residue problem due to environmental contamination. Consequently, no action levels will be recommended to replace the tolerances upon their revocation.

Any person who has registered or submitted an application for the registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, which contains carbophenothion may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal as it pertains to the section 408 tolerances be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA).

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number [OPP-300297]. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1128, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, between 8 a.m. and 4 p.m., Monday through Friday, except legal holidays.

In order to satisfy requirements for analysis as specified by Executive Order 12291 and the Regulatory Flexibility Act, EPA has analyzed the costs and benefits of this proposal. This analysis is available for public inspection in Rm. 1128 at the address given above.

Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, the Agency must determine whether a proposed regulatory action is "major" and therefore subject to requirements of a Regulatory Impact Analysis. The Agency has determined that this proposed rule is not a major regulatory action, i.e., it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, and individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based

enterprises to compete with foreign-based enterprises in domestic or export markets.

B. Regulatory Flexibility Act

This proposed rule has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354; 94 Stat. 1164, 5 U.S.C. 601 et seq.), and it has been determined that it will not have a significant impact on a substantial number of small businesses, small governments, or small organizations. This regulatory action is intended to prevent the sale of food commodities containing pesticide residues where the subject pesticide has been used in an unregistered or illegal manner. Since all domestic registrations for use of carbophenothion were cancelled over 3 years ago, it is anticipated that no economic impact would occur at any level of business enterprises if the related tolerances were revoked. Accordingly, I certify that this regulatory action does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act.

C. Paperwork Reduction Act

This proposed regulatory action does not contain any information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

List of Subjects in 40 CFR Parts 180, 185, and 186

Environmental protection, Administrative practice and procedure, Agricultural Commodities, Food additives, Feed Additives, Pesticides and pests, Reporting and recorkeeping requirements.

Dated: October 1, 1993.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, it is proposed that chapter I of title 40 of the Code of Federal Regulations be amended as follows:

PART 180—[AMENDED]

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

§ 180.156 [Removed]

b. By removing § 180.156 *Carbophenothion; tolerances for residues.*

PART 185—[AMENDED]

2. In part 185:

a. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 348.

§ 185.700 [Removed]

b. By removing § 185.700 *Carbophenothion.*

PART 186—[AMENDED]

3. In part 186:

a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 348.

§ 186.700 [Removed]

b. By removing § 186.700 *Carbophenothion.*

[FR Doc. 93-25934 Filed 10-20-93; 8:45 am]
BILLING CODE 6560-50-F

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1039

[Ex Parte No. 346 (Sub-No. 34)]

Rail General Exemption Authority—Exemption of Hydraulic Cement

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is investigating whether to exempt from regulation the rail transportation of hydraulic cement. If this commodity is exempted, it will be added to the list of exempt commodities in the Commission's regulations as Standard Transportation Commodity Code (STCC) No. 324, and the exemption will be subject to the conditions and limitations provided therein.

DATES: Comments are due on November 22, 1993.

ADDRESSES: Participants must send an original and 10 copies of their statement referring to Ex Parte No. 346 (Sub-No. 34) to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Maynard H. Dixon, Jr., (202) 927-5293, or Joseph H. Dettmar, (202) 927-5660. (TDD for hearing impaired: (202) 927-5721.)

SUPPLEMENTARY INFORMATION: In Ex Parte No. 346 (Sub-No. 29), Rail General Exemption Authority—Petition of AAR To Exempt Rail Transportation of Selected Commodity Groups, the railroad petitioners requested that we commence separate investigations of whether this and five other commodity groups involved in that proceeding should be exempted from regulation pursuant to 49 U.S.C. 10505. By this and four other notices of proposed rulemaking published today in the **Federal Register**, we are granting this request by launching five separate investigations.

Persons submitting comments should address whether the exemption of this commodity meets the statutory criteria of section 10505. Especially useful would be modal market share data, revenue-to-variable cost ratio data, and data indicating the percentage of rail shipments that may already be moving exempt from regulation.

Attached to this notice as an appendix is information derived from our waybill sample that we propose to consider as part of the record. Interested persons are invited to comment on this information. Persons seeking data or work papers underlying this information should contact Thomas A. Schmitz at (202) 927-5720. Persons seeking waybill data must comply with 49 CFR 1244.8.

Environmental and Energy Considerations

We preliminarily conclude that, if an exemption were granted, it would not significantly affect either the quality of the human environment or the conservation of energy resources. We invite comments in this area.

Regulatory Flexibility Act Certification

Pursuant to 5 U.S.C. 605(b), we preliminarily conclude that an exemption would not have significant economic impact on a substantial number of small entities. No new regulatory requirements would be imposed, directly or indirectly, on such entities. If an exemption were granted, it would be based on a finding that (a) the transportation at issue was of limited scope and/or (b) regulation of this transportation was not necessary to protect shippers (including small shippers) from abuse of market power. See 49 U.S.C. 10505(a). These requirements make it unlikely that a substantial number of small entities would be significantly affected. We invite comments in this area.

List of Subjects in 49 CFR Part 1039

Agricultural commodities, Intermodal transportation, Manufactured commodities, Railroads.

Authority: 49 U.S.C. 10321, 10505, 10708, 10762, and 11105; 5 U.S.C. 553.

Decided: October 7, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin and Walden. Vice Chairman

Simmons dissented with a separate expression.

Sidney L. Strickland, Jr.,

Secretary.

Note: The following Appendix will not appear in the Code of Federal Regulations.

Appendix

Shown below is an array of revenue-to-variable cost (R/VC) ratios for STCC No. 32411, hydraulic cement. These ratios were developed by the Commission's Office of Economics through a sorting of the costed waybill file. The computerized waybill file provides a stratified sample of waybills reported by all United States railroads that terminate more than 4,500 cars annually. It is the most representative and reliable sample of rail freight traffic publicly available.

Unit cost data, applicable to individual class I carriers, were applied to the movement characteristics contained on each waybill record using costing procedures adopted by the Commission.[1] Regional cost data were used for class II and class III carriers. Rates applicable to each sample movement were taken directly from the waybill file. However, certain class I carriers report estimated tariff revenues in place of actual contract rates. Those carriers provide the Commission with a rate decoder that can be used to ascertain the actual contract rate applicable to each of those coded waybills. The R/VC ratios profiled below reflect the actual contract rates for those carriers reported rates for all others.

In each row in the table below, expanded data[2] have been depicted for the estimated industry revenues, variable costs, and car counts associated with the movement of this commodity in calendar years 1991 and 1992. Additionally, the tables show the average R/VC ratio applicable to all rail movements of this commodity as well as a percentage array of revenues in various R/VC (profitability) categories.

STCC 32411—HYDRAULIC CEMENT

	Calendar year	Number of waybills	Total carloads	Carloads >180	Revenue ($000)	Variable cost ($000)	Average R/VC ratio (%) Percent of revenue in each R/VC category			
							R/VC >100	R/VC >100–<140	R/VC >140–<180	R/VC >180
1992	3,082	173,238	31,532	192,278	142,919	134.54	10.75	41.80	28.66	18.78
1991	2,919	159,708	29,324	179,713	133,586	134.53	12.23	40.34	26.91	18.52

The R/VC ratios depicted above show that, on average, the rail revenues for the transportation of hydraulic cement have exceeded variable costs by a margin of over 30%. However, those R/VC ratios may be somewhat overstated to the extent that some reported rates may reflect tariffs rather than the contracts that actually apply to the traffic. Additionally, even reported contract rates may be overstated to the extent they do not reflect year-end adjustments applicable to volume incentive provisions of the contract. This would likewise overstate the R/VC ratios shown above.

We estimate that, nationwide, 31,532 carloads in calendar year 1992 and 29,324 carloads in calendar year 1991 generated R/VC ratios higher than the jurisdictional threshold (180%). Thus, 18% of the total carloads, which represented 19% of total industry revenues from this commodity, in calendar years 1992 and 1991, could potentially fall within our regulatory review.

However, the Commission's data indicate that approximately 24% of all rail revenues from hydraulic cement are contract rates. Because only some railroads voluntarily indicate whether or not their sampled waybill movements are moved under contract, the true extent of contract rates associated with this commodity is likely to be much higher.

[FR Doc. 93–25920 Filed 10–20–93; 8:45 am]

BILLING CODE 7035–01–P

[1] The costing process, which develops system average costs, was adopted by the Commission in Ex Parte No. 431 (Sub-No. 1), Adoption Of The Uniform Railroad Costing System As A General Purpose Costing System For All Regulatory Purposes, 5 I.C.C.2d 894–933 (1989). The costing process was also modified to include "make-whole adjustments" recently adopted by the Commission in a joint decision in Ex Parte No. 399, Cost Recovery Percentage and Ex Parte No. 431 (Sub-No. 2), Review Of The General Purpose Costing System, (not printed) served March 1, 1993.

[2] The waybill sample data allow estimation of industry totals for revenues, variable costs, and car counts. Because the waybill file provides a stratified sample of terminated railroad shipments, a statistical expansion factor, related to the sampling rate, is associated with each stratum to estimate industry totals.

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49 CFR Part 1039

[Ex Parte No. 346 (Sub-No. 33)]

Rail General Exemption Authority—Exemption of Paints, Enamels, Lacquers, Shellacs, Etc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is investigating whether to exempt from regulation the rail transportation of paints, enamels, lacquers, shellacs, and other commodities included within Standard Transportation Commodity Code (STCC) No. 285. If these commodities are exempted, they will be added to the list of exempt commodities the Commission's regulations, and the exemption will be subject to the conditions and limitations provided therein.

DATES: Comments are due on November 22, 1993. There will be only one round of comments.

ADDRESSES: Participants must send an original and 10 copies of their statement referring to Ex Parte No. 346 (Sub-No. 33) to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Maynard H. Dixon, Jr., (202) 927–5293, or Joseph H. Dettmar, (202) 927–5660. (TDD for hearing impaired: (202) 927–5721.)

SUPPLEMENTARY INFORMATION: In Ex Parte No. 346 (Sub-No. 29), Rail General Exemption Authority—Petition Of AAR To Exempt Rail Transportation Of Selected Commodity Groups, the railroad petitioners requested that we commence separate investigations of whether this and five other commodity groups involved in this proceeding should be exempted from regulation pursuant to 49 U.S.C. 10505. By this and four other notices of proposed rulemaking published today in the **Federal Register**, we are granting this

request by launching five separate investigations.

Persons submitting comments should address whether the exemption of these commodities meets the statutory criteria of section 10505. Especially useful would be modal market share data, revenue-to-variable cost ratio data, data indicating the percentage of rail shipments that may already be moving exempt from regulation, and information as to whether subclasses of STCC No. 285 merit special treatment.

Attached to this notice as an appendix is information derived from our waybill sample that we propose to consider as part of the record. Interested persons are invited to comment on this information. Persons seeking data or work papers underlying this information should contact Thomas A. Schmitz at (202) 927–5720. Persons seeking waybill data must comply with 49 CFR 1244.8.

Environmental and Energy Considerations

We preliminarily conclude that, if an exemption were granted, it would not significantly affect either the quality of the human environment or the conservation of energy resources. We invite comments in this area.

Regulatory Flexibility Act Certification

Pursuant to 5 U.S.C. 605(b), we preliminarily conclude that an exemption would not have significant economic impact on a substantial number of small entities. No new regulatory requirements would be imposed, directly or indirectly, on such entities. If an exemption were granted, it would be based on a finding that (a) the transportation at issue was of limited scope and/or (b) regulation of this transportation was not necessary to protect shippers (including small shippers) from abuse of market power. See 49 U.S.C. 10505(a). These requirements make it unlikely that a substantial number of small entities would be significantly affected. We invite comments in this area.

List of Subjects in 49 CFR Part 1039

Agricultural commodities, Intermodal transportation, Manufactured commodities, Railroads.

Authority: 49 U.S.C. 10321, 10505, 10708, 10762, and 11105; 5 U.S.C. 553.

Decided: October 7, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin and Walden. Vice Chairman Simmons dissented with a separate expression.

Sidney L. Strickland, Jr.,

Secretary.

Note: The following Appendix will not appear in the Code of Federal Regulations.

Appendix

Shown below is an array of revenue-to-variable cost (R/VC) ratios for STCC No. 285, paints, enamels, lacquers, shellacs, etc. These ratios were developed by the Commission's Office of Economics through a sorting of the costed waybill file. The computerized waybill file provides a stratified sample of waybills reported by all United States railroads that terminate more than 4,500 cars annually. It is the most representative and reliable sample of rail freight traffic publicly available.

Unit cost data, applicable to individual class I carriers, were applied to the movement characteristics contained on each waybill record using costing procedures adopted by the Commission.[1] Regional cost data were used for class II and class III carriers. Rates applicable to each sample movement were taken directly from the waybill file. However, certain class I carriers report estimated tariff revenues in place of actual contract rates. Those carriers provide the Commission with a rate decoder that can be used to ascertain the actual contract rate applicable to each of those coded waybills. The R/VC ratios profiled below reflect the actual contract rates for those carriers reported rates for all others.

In each row in the table below, expanded data[2] have been depicted for the estimated industry revenues, variable costs, and car counts associated with the movement of these commodities in calendar years 1991 and 1992. Additionally, the table shows the average R/VC ratio applicable to *all* rail movements of these commodities as well as a percentage array of revenues in various R/VC (profitability) categories.

STCC 285—PAINTS, ENAMELS, LACQUERS, SHELLACS, ETC.

Calendar year	Number of waybills	Total carloads	Carloads >180	Revenue ($000)	Variable cost ($000)	Average R/VC ratio (%)	Percent of revenue in each R/VC category			
							R/VC <100	R/VC >100–<140	R/VC >140–<180	R/VC >180
1992	269	11,306	800	16,286	13,604	119.72	23.42	32.53	21.55	22.50
1991	261	11,624	1,100	15,917	13,257	120.07	29.95	27.87	15.07	27.12

The R/VC ratios depicted above show that, on average, the rail revenues for the transportation of paint, enamels, lacquers, shellacs, etc. have exceeded variable costs by only a slight margin. Those R/VC ratios may be somewhat overstated to the extent that some reported rates may reflect tariffs rather than the contracts that actually apply to the traffic. Additionally, even reported contract rates may be overstated to the extent they do not reflect year-end adjustments applicable to volume incentive provisions of the contract. This would likewise overstate the R/VC ratios shown above.

We estimate that, nationwide, 880 carloads in calendar year 1992 and 1,100 carloads in calendar year 1991 generated R/VC ratios higher than the jurisdictional threshold (180%). Therefore, approximately 9% of the total carloads, which represented 23% and 27% of total industry revenues from this commodity (in 1992 and 1991, respectively), could potentially fall within our regulatory review.

Additionally, the Commission's data indicate that approximately 22% of all rail revenues from these commodities are contract rates. Because not all railroads voluntarily indicate whether or not their sampled waybill movements

[1] The costing process, which develops system average costs, was adopted by the Commission in Ex Parte No. 431 (Sub-No. 1), Adoption Of The Uniform Railroad Costing System As A General Purpose Costing System For All Regulatory Purposes, 5 I.C.C.2d 894–933 (1989). The costing process was also modified to include "make-whole adjustments" recently adopted by the Commission in a joint decision in Ex Parte No. 399, Cost Recovery Percentage and Ex Parte No. 431 (Sub-No. 2), Review Of The General Purpose Costing System, (not printed) served March 1, 1993.

[2] The waybill sample data allow estimation of industry totals for revenues, variable costs, and car counts. Because the Waybill File provides a stratified sample of terminated railroad shipments, a statistical expansion factor, related to the sampling rate, is associated with each stratum to estimate industry totals.

are moved under contract, the true extent of contract rates associated with these commodities is likely to be higher. Likewise, our data show that over 43% of the industry's 1991 and 1992 revenues from these commodities were derived from movements in exempt equipment (TOFC or boxcar).

[FR Doc. 93–25921 Filed 10–20–93; 8:45 am]
BILLING CODE 7035–01–P

49 CFR Part 1039

[Ex Parte No. 346 (Sub-No. 30)]

Rail General Exemption Authority—Exemption of Rock Salt, Salt

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is investigating whether to exempt from regulation the rail transportation of rock salt and salt. If these commodities are exempted, they will be added to the list of exempt commodities in the Commission's regulations as Standard Transportation Commodity Code (STCC) Nos. 14715 (rock salt) and 28991 (salt), and the exemption will be subject to the conditions and limitations provided therein.

DATES: Comments are due on November 22, 1993.

ADDRESSES: Participants must send an original and 10 copies of their statement referring to Ex Parte No. 346 (Sub-No. 30) to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Maynard H. Dixon, Jr., (202) 927–5293, or Joseph H. Dettmar, (202) 927–5660. (TDD for hearing impaired: (202) 927–5721.)

SUPPLEMENTARY INFORMATION: In Ex Parte No. 346 (Sub-No. 29), Rail General Exemption Authority—Petition Of AAR To Exempt Rail Transportation Of Selected Commodity Groups, the railroad petitioners requested that we commence separate investigations of whether these and four other commodity groups involved in that proceeding should be exempted from regulation pursuant to 49 U.S.C. 10505. By this and four other notices of proposed rulemaking published today in the **Federal Register**, we are granting this request by launching five separate investigations.

We are considering rock salt and salt jointly in this proceeding because it appears that these commodities have similar transportation characteristics. Interested persons may address the appropriateness of an exemption for either of these commodities on a separate basis, however.

Persons submitting comments should address whether the exemption of these commodities meets the statutory criteria of section 10505. Especially useful would be modal market share data, revenue-to-variable cost ratio data, and data indicating the percentage of rail shipments that may already be moving exempt from regulation.

Attached to this notice as an appendix is information derived from our waybill sample that we propose to consider as part of the record. Comments are invited on this information. Persons seeking data or work papers underlying this information should contact Thomas A. Schmitz at (202) 927–5720. Persons seeking waybill data must comply with 49 CFR 1244.8. Environmental and Energy Considerations

We preliminarily conclude that, if an exemption were granted, it would not significantly affect either the quality of the human environment or the conservation of energy resources. We invite comments in this area.

Regulatory Flexibility Act Certification

Pursuant to 5 U.S.C. 605(b), we preliminarily conclude that an exemption would not have significant economic impact on a substantial number of small entities. No new regulatory requirements would be imposed, directly or indirectly, on such entities. If an exemption were granted, it would be based on a finding that (a) the transportation at issue was of limited scope and/or (b) regulation of this transportation was not necessary to protect shippers (including small shippers) from abuse of market power. See 49 U.S.C. 10505(a). These requirements make it unlikely that a substantial number of small entities would be significantly affected. We invite comments in this area.

List of Subjects in 49 CFR Part 1039

Agricultural commodities, Intermodal transportation, Manufactured commodities, Railroads.

Authority: 49 U.S.C. 10321, 10505, 10708, 10762, and 11105; 5 U.S.C. 553.

Decided: October 7, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners, Phillips, Philbin and Walden. Vice Chairman Simmons dissented with a separate expression.

Sidney L. Strickland, Jr.,

Secretary.

Note: The following Appendix will not appear in the Code of Federal Regulations.

Appendix

Shown below are separate arrays of revenue-to-variable cost (R/VC) ratios for rock salt and salt. These ratios were developed by the Commission's Office of Economics through a sorting of the costed waybill file. The computerized waybill file provides a stratified sample of waybills reported by all United States railroads that terminate more than 4,500 cars annually. It is the most representative and reliable sample of rail freight traffic publicly available.

Unit cost data, applicable to individual class I carriers, were applied to the movement characteristics contained on each waybill record using costing procedures adopted by the Commission.[1] Regional cost data were used for class II and class III carriers. Rates applicable to each sample movement were taken directly from the waybill file. However, certain class I carriers report estimated tariff revenues in place of actual contract rates. Those carriers provide the Commission with a rate decoder that can be used to ascertain the actual contract rate applicable to each of those coded waybills. The R/VC ratios profiled below reflect the actual contract rates for those carriers reported rates for all others.

In each row in the tables below, expanded data[2] have been depicted for the estimated industry revenues, variable costs, and car counts associated with the movement of rock salt and salt in calendar years 1991 and 1992. Additionally, the tables show the average R/VC ratio applicable to *all* rail movements of the commodity as well as a percentage array of revenues in various R/VC (profitability) categories.

[1] The costing process, which develops system average costs, was adopted by the Commission in Ex Parte No. 431 (Sub-No. 1), Adoption Of The Uniform Railroad Costing System As A General Purpose Costing System For All Regulatory Purposes, 5 I.C.C.2d 894–933 (1989). The costing process was also modified to include "make-whole adjustments" recently adopted by the Commission in a joint decision in Ex Parte No. 399, Cost Recovery Percentage and Ex Parte No. 431 (Sub-No. 2), Review Of The General Purpose Costing System, (not printed) served March 1, 1993.

[2] The waybill sample data allow estimation of industry totals for revenues, variable costs, and car counts. Because the waybill file provides a stratified sample of terminated railroad shipments, a statistical expansion factor, related to the sampling rate, is associated with each stratum to estimate industry totals.

STCC No. 14715—Rock Salt

Calendar year	Number of waybills	Total carloads	Carloads >180	Revenue ($000)	Variable cost ($000)	Average R/VC ratio (%)	Percent of revenue in each R/VC category			
							R/VC >100	R/VC >100—<140	R/VC >140—<180	R/VC >180
1992	310	25,287	2,772	23,557	20,153	116.89	21.13	49.23	17.55	12.09
1991	318	28,561	1,532	28,021	23,915	117.17	22.21	49.18	21.83	6.77

The R/VC ratios depicted above show that, on average, the rail revenues for the transportation of rock salt have exceeded variable costs by only a slight margin. Those R/VC ratios may be somewhat overstated to the extent that some reported rates may reflect tariffs rather than the contracts that actually apply to the traffic. Additionally, even reported contract rates may be overstated to the extent they do not reflect year-end adjustments applicable to volume incentive provisions of the contract. This would likewise overstate the R/VC ratios shown above.

We estimate that, nationwide, 2,772 carloads in calendar year 1992 and 1,532 carloads in calendar year 1991 generated R/VC cost ratios higher than the jurisdictional threshold (180%). Therefore, approximately 8% of the total carloads, which represented 12% and 7% of total industry revenues from this commodity (in 1992 and 1991, respectively), could potentially fall within our regulatory review.

Additionally, the Commission's data indicate that over 54% of all rail revenues from rock salt are contract rates. Because not all railroads voluntarily indicate whether or not their sampled waybill movements are moved under contract, the true extent of contract rates associated with this commodity is likely to be higher.

STCC No. 28991—Salt, Common

Calendar year	Number of waybills	Total carloads	Carloads >180	Revenue ($000)	Variable cost ($000)	Average R/VC ratio (%)	Percent of revenue in each R/VC category			
							R/VC <100	R/VC >100—<140	R/VC >140—<180	R/VC >180
1992	610	27,712	1,804	35,589	38,697	91.97	47.07	29.85	14.65	8.43
1991	515	24,048	1,304	31,865	37,333	85.35	46.32	34.34	12.27	7.07

The R/VC ratios depicted above show that, on average, rail revenues for the transportation of common salt have failed to cover associated variable costs. Those R/VC ratios may be somewhat overstated to the extent that some reported rates may reflect tariffs rather than the contracts that actually apply to the traffic. Additionally, even reported contract rates may be overstated to the extent they do not reflect year-end adjustments applicable to volume incentive provisions of the contract. This would likewise overstate the R/VC ratios shown above.

We estimate that, nationwide, 1,804 carloads in calendar year 1992 and 1,304 carloads in calendar year 1991 generated revenue-to-variable cost ratios higher than the jurisdictional threshold (180%). Therefore, approximately 6% of the total carloads, which represented approximately 8% of total industry revenues from this commodity in the years 1992 and 1991, could potentially fall within our regulatory review.

Additionally, the Commission's data indicate that approximately 19% of all rail revenues from common salt are contract rates. Because not all railroads voluntarily indicate whether or not their sampled waybill movements are moved under contract, the true extent of contract rates associated with this commodity is likely to be higher. Likewise, our data show that over 35% of the industry's 1991 and 1992 revenues from this commodity were derived from movements in exempt equipment (TOFC or boxcar).

[FR Doc. 93–25924 Filed 10–20–93; 8:45 am]
BILLING CODE 7035-01-P

49 CFR Part 1039

[Ex Parte No. 346 (Sub-No. 31)]

Rail General Exemption Authority—Exemption of Grease or Inedible Tallow, Etc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is investigating whether to exempt from regulation the rail transportation of grease or inedible tallow and other products in Standard Transportation Commodity Code (STCC) No. 20143. If these commodities are exempted, they will be added to the list of exempt commodities in the Commission's regulations, and the exemption will be subject to the conditions and limitations provided therein.

DATES: Comments are due on November 22, 1993.

ADDRESSES: Participants must send an original and 10 copies of their statement referring to Ex Parte No. 346 (Sub-No. 31) to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Maynard H. Dixon, Jr., (202) 927–5293, or Joseph H. Dettmar, (202) 927–5660. (TDD for hearing impaired: (202) 927–5721.)

SUPPLEMENTARY INFORMATION: In Ex Parte No. 346 (Sub-No. 29), Rail General Exemption Authority—Petition of AAR To Exempt Rail Transportation of Selected Commodity Groups, the railroad petitioners requested that we commence separate investigations of whether this and five other commodity groups involved in that proceeding should be exempted from regulation pursuant to 49 U.S.C. 10505. By this and four other notices of proposed rulemaking published today in the **Federal Register**, we are granting this request by launching five separate investigations.

Persons submitting comments should address whether the exemption of these commodities meets the statutory criteria of section 10505. Especially useful would be modal market share data,

revenue-to-variable cost ratio data, data indicating the percentage of rail shipments that may already be moving exempt from regulation, and data showing that subclasses of STCC No. 20143 require special treatment.

Attached to this notice as an appendix is information derived from our waybill sample that we propose to consider as part of the record. Interested persons are invited to comment on this information. Persons seeking data or work papers underlying this information should contact Thomas A. Schmitz at (202) 927–5720. Persons seeking waybill data must comply with 49 CFR 1244.8.

Environmental and Energy Considerations

We preliminarily conclude that, if an exemption were granted, it would not significantly affect either the quality of the human environment or the conservation of energy resources. We invite comments in this area.

Regulatory Flexibility Act Certification

Pursuant to 5 U.S.C. 605(b), we preliminarily conclude that an exemption would not have significant economic impact on a substantial number of small entities. No new regulatory requirements would be imposed, directly or indirectly, on such entities. If an exemption were granted, it would be based on a finding that (a) the transportation at issue was of limited scope and/or (b) regulation of this transportation was not necessary to protect shippers (including small shippers) from abuse of market power. See 49 U.S.C. 10505(a). These requirements make it unlikely that a substantial number of small entities would be significantly affected. We invite comments in this area.

List of Subjects in 49 CFR Part 1039

Agricultural commodities, Intermodal transportation, Manufactured commodities, Railroads.

Authority: 49 U.S.C. 10321, 10505, 10708, 10762, and 11105; 5 U.S.C. 553.

Decided: October 7, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin and Walden. Vice Chairman Simmons dissented with a seprate expression.

Sidney L. Strickland, Jr.,

Secretary.

Note: The following Appendix will not appear in the Code of Federal Regulations.

Appendix

Shown below is an array of revenue-to-variable cost (R/VC) ratios for STCC No. 20143, grease or inedible tallow. These ratios were developed by the Commission's Office of Economics through a sorting of the costed waybill file. The computerized waybill file provides a stratified sample of waybills reported by all United States railroads that terminate more than 4,500 cars annually. It is the most representative and reliable sample of rail freight traffic publicly available.

Unit cost data, applicable to individual class I carriers, were applied to the movement characteristics contained on each waybill record using costing procedures adopted by the Commission.[1] Regional cost data were used for class II and class III carriers. Rates applicable to each sample movement were taken directly from the waybill file. However, certain class I carriers report estimated tariff revenues in place of actual contract rates. Those carriers provide the Commission with a rate decoder that can be used to ascertain the actual contract rate applicable to each of those coded waybills. The R/VC ratios profiled below reflect the actual contract rates for those carriers reported rates for all others.

In each row in the table below, expanded data[2] have been depicted for the estimated industry revenues, variable costs, and car counts associated with the movement of grease or inedible tallow in calendar years 1991 and 1992. Additionally, the table shows the average R/VC ratio applicable to *all* rail movements of these commodities as well as a percentage array of revenues in various R/VC (profitability) categories.

STCC 20143—GREASE OR INEDIBLE TALLOW

Calendar year	Number of waybills	Total carloads	Carloads >180	Revenue ($000)	Variable Cost ($000)	Average R/VC ratio (%)	Percent of revenue in each R/VC category			
							R/VC <100	R/VC >100–<140	R/VC >=140–<180	R/VC >180
1992	429	17,268	2,360	37,482	28,225	132.80	9.76	52.25	20.45	17.54
1991	374	15,772	1,200	33,123	27,671	119.70	21.09	54.71	15.97	8.22

The R/VC ratios depicted above show that, on average, rail revenues for the transportation of grease/tallow have exceeded variable costs by a small margin. Those R/VC ratios may be somewhat overstated to the extent that some reported rates may reflect tariffs rather than the contracts that actually apply to the traffic. Additionally, even reported contract rates may be overstated to the extent they do not reflect year-end adjustments applicable to volume incentive provisions of the contract. This would likewise overstate the R/VC ratios shown above.

We estimate that, nationwide, 2,360 carloads in calendar year 1992 and 1,200 carloads in calendar year 1991 generated R/VC ratios higher than the jurisdictional threshold (180%). Therefore, approximately 11% of the total carloads, which represented 18% and 8% of total industry revenues from these commodities (in 1992 and 1991, respectively), could potentially fall within our regulatory review.

Additionally, the Commission's data indicate that 13% and 8% of all rail revenues from grease/tallow were contract rates (for 1992 and 1991, respectively). Because not all railroads voluntarily indicate whether or not their sampled waybill movements are moved under contract, the true extent of contract rates associated with these commodities is likely to be higher.

[FR Doc. 93–25925 Filed 10–20–93; 8:45 am]

BILLING CODE 7035–01–P

[1] The costing process, which develops system average costs, was adopted by the Commission in Ex Parte No. 431 (Sub-No. 1), Adoption of the Uniform Railroad Costing System as a General Purpose Costing System for All Regulatory Purposes, 5 I.C.C.2d 894–933 (1989). The costing process was also modified to include "make-whole adjustments" recently adopted by the Commission in a joint decision in Ex Parte No. 399, Cost Recovery Percentage and Ex Parte No. 431 (Sub-No. 2), Review of the General Purpose Costing System (not printed), served March 1, 1993.

[2] The waybill sample data allow estimation of industry totals for revenues, variable costs, and car counts. Because the waybill file provides a stratified sample of terminated railroad shipments, a statistical expansion factor, related to the sampling rate, is associated with each stratum to estimate industry totals.

49 CFR Part 1039

[Ex Parte No. 346 (Sub-No. 32)]

Rail General Exemption Authority—Exemption of Carbon Dioxide

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Commission is investigating whether to exempt from regulation the rail transportation of carbon dioxide. If this commodity is exempted, it will be added to the list of exempt commodities in the Commission's regulations as Standard Transportation Commodity Code (STCC) No. 28133, and the exemption will be subject to the conditions and limitations provided therein.

DATES: Comments are due on November 22, 1993.

ADDRESSES: Participants must send an original and 10 copies of their statement referring to Ex Parte No. 346 (Sub-No. 32) to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Maynard H. Dixon, Jr., (202) 927–5293, or Joseph H. Dettmar, (202) 927–5660. [TDD for hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: In Ex Parte No. 346 (Sub-No. 29), *Rail General Exemption Authority—Petition Of AAR To Exempt Rail Transportation Of Selected Commodity Groups*, The railroad petitioners requested that we commence separate investigations or whether this and five other commodity groups involved in that proceeding should be exempted from regulation pursuant to 49 U.S.C. 10505. By this and four other notices of proposed rulemaking published today in the **Federal Register**, we are granting this request by launching five separate investigations.

Persons submitting comments should address whether the exemption of this commodity meets the statutory criteria of section 10505. Especially useful would be modal market share data, revenue-to-variable cost ratio data, and data indicating the percentage of rail shipments that may already be moving exempt from regulation.

Attached to this notice as an Appendix is information derived from our waybill sample that we propose to consider as part of the record. Interested persons are invited to comment on this information. Persons seeking data or work papers underlying this information should contact Thomas A. Schmitz at (202) 927–5720. Persons seeking waybill data must comply with 49 CFR 1244.8.

Environmental and Energy Considerations

We preliminarily conclude that, if an exemption were granted, it would not significantly affect either the quality of the human environment or the conservation of energy resources. We invite comments in this area.

Regulatory Flexibility Act Certification

Pursuant to 5 U.S.C. 605(b), we preliminarily conclude that an exemption would not have significant economic impact on a substantial number of small entities. No new regulatory requirements would be imposed, directly or indirectly, on such entities. If an exemption were granted, it would be based on a finding that (a) the transportation at issue was of limited scope and/or (b) regulation of this transportation was not necessary to protect shippers (including small shippers) from abuse of market power. See 49 U.S.C. 10505(a). These requirements make it unlikely that a substantial number of small entities would be significantly affected. We invite comments in this area.

List of Subjects in 49 CFR Part 1039

Agricultural commodities, Intermodal transportation, Manufactured commodities, Railroads.

Authority: 49 U.S.C. 10321, 10505, 10708, 10762, and 11105; 5 U.S.C. 553.

Decided: October 7, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin and Walden.

Sidney L. Strickland, Jr.,

Secretary.

Note: The following Appendix will not appear in the Code of Federal Regulations.

Appendix

Shown below is an array of revenue-to-variable cost (R/VC) ratios of STCC No. 28133, carbon dioxide. These ratios were developed by the Commission's Office of Economics through a sorting of the costed waybill file. The computerized waybill file provides a stratified sample of waybills reported by the United States railroads that terminate more than 4,500 cars annually. it is the most representative and reliable sample of rail freight traffic publicly available.

Unit cost data, applicable to individual class I carriesr, were applied to the movement characteristics contained on each waybill record using costing procedures adopted by the Commission.[1] Regional cost data were used for class II and class III carriers. Rates applicable to each sample movement were taken directly from the waybill file. However, certain class I carriers report estimated tariff revenues in place of actual contract rates. Those carriers provide the Commission with a rate decoder that can be used to ascertain the actual contract rate applicable to each of those coded waybills. The R/VC ratios profiled below reflect the actual contract rates for those carriers reported rates for all others.

In each row in the table below, expanded data[2] have been depicted for the estimated industry revenues, variable costs, and car counts associated with the movement of carbon dioxide in calendar years 1991 and 1992. Additionally, the table shows the average R/VC ratio applicable to *all* rail movements of this commodity as well as a percentage array of revenues in various R/VC (profitability) categories.

[1] The costing process, which develops system average costs, was adopted by the Commission in Ex Parte No. 431 (Sub-No. 1), *Adoption of the Uniform Railroad Costing System As A General Purpose Costing System For All Regulatory Purposes*, 5 I.C.C.2d 894–933 (1989). The costing process was also modified to include "make-whole adjustments" recently adopted by the Commission in a joint decision in Ex Parte No. 399, *Cost Recovery Percentage* and Ex Parte No. 431 (Sub-No. 2), *Review of the General Purpose Costing System*, (not printed) served March 1, 1993.

[2] The waybill sample data allow estimation of industry totals for revenues, variable costs, and car counts. Because the waybill file provides a stratified sample of terminated railroad shipments, a statistical expansion factor, related to the sampling rate, is associated with each stratum to estimate industry totals.

STCC No. 28133—Carbon Dioxide

Calendar year	Number of waybills	Total carloads	Carloads >180	Revenue ($000)	Variable cost ($000)	Average R/VC ratio (percent)	Percent of revenue in each R/VC category			
							R/VC <100	R/VC >100–<140	R/VC >140–<180	R/VC >180
1992	440	18,488	1,560	29,438	24,583	119.75	24.06	47.61	14.27	14.06
1991	312	13,200	960	22,004	18,167	121.12	21.59	49.70	17.00	17.71

The R/VC ratios depicted above show that, on average, the rail revenues for the transportation of carbon dioxide have exceeded variable costs by only a slight margin. Those R/VC ratios may be somewhat overstated to the extent that some reported rates may reflect tariffs rather than the contracts that actually apply to the traffic. Additionally, even reported contract rates may be overstated to the extent they do not reflect year-end adjustments applicable to volume incentive provisions of the contract. This would likewise overstate the R/VC ratios shown above.

We estimate that, nationwide, 1,560 carloads in calendar year 1992 and 960 carloads in calendar year 1991 generated R/VC ratios higher than the jurisdictional threshold (180%). Therefore, approximately 8% of the total carloads, which represented 14% and 12% of total industry revenues from this commodity (in 1992 and 1991, respectively), could potentially fall within our regulatory review.

Additionally, the Commission's data indicate that approximately 24% of all rail revenues from carbon dioxide are contract rates. Because not all railroads voluntarily indicate whether or not their sampled waybill movements are moved under contract, the true extent of contract rates associated with this commodity is likely to be higher.

[FR Doc. 93–25922 Filed 10–20–93; 8:45 am]
BILLING CODE 7035–01–P

Notices

Federal Register
Vol. 58, No. 202
Thursday, October 21, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Public Information Collection Requirements Submitted to OMB for Review

The Agency for International Development (A.I.D.) submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Comments regarding these information collection should be addressed to the OMB reviewer listed at the end of the entry no later than ten days after publication. Comments may also be addressed to, and copies of the submissions obtained from the Records Management Officer, Renee' Poehls, (202) 736–4743, FA/AS/ISS/RM, Room B930 NS, Washington, DC 20523.

Date Submitted: October 1, 1993
Submitting Agency: Agency for International Development
OMB Number: 0412–0524
Type of Submission: Renewal
Title: Guidelines for Development Education Project Grants
Purpose: The Biden-Pell Amendment to the International Security and Development Cooperation Act of 1980 urges the Administrator of A.I.D. to provide support to the ongoing efforts of private and voluntary organizations engaged in increasing public awareness of the issues pertaining to world hunger and poverty. A.I.D.'s major response to this legislative mandate is the Development Education Grants Program, initiated in FY 1982. Through this competitive, cost-shared grants programs, applications for funding are considered on an annual basis. The information is used by A.I.D. officials in order to select the most qualified candidates for grant awards.
Annual Reporting Burden: Respondents: 10, annual responses: 10; average hours per response: 5; annual burden hours: 50
Reviewer: Jeffery Hill (202) 395–7340, Office of Management and Budget, room 3201, New Executive Office Building, Washington, DC 20503.

Dated: October 14, 1993.

Elizabeth Baltimore,
Information Support Services Division.
[FR Doc. 93–25848 Filed 10–20–93; 8:45 am]
BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

October 15, 1993.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection;
(2) Title of the information collection;
(3) Form number(s), if applicable;
(4) How often the information is requested;
(5) Who will be required or asked to report;
(6) An estimate of the number of responses;
(7) An estimate of the total number of hours needed to provide the information;
(8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

New Collection

- Animal and Plant Health Inspection Service

Animal Damage Control Client Satisfaction Survey
Annually
Individuals or households; State or local governments; Farms; Businesses or other for-profit; Federal agencies or employees; 1,120 responses; 280 hours
Kenneth Waters, (301) 436–8889.

Larry K. Roberson,
Deputy Department Clearance Officer.
[FR Doc. 93–25839 Filed 10–20–93; 8:45 am]
BILLING CODE 3410–01–M

Food Safety and Inspection Service

[Docket No. 93–011N]

Criteria for Evaluation of Rapid Microbiological Testing Methods

AGENCY: Food Safety and Inspection Service, USDA.
ACTION: Notice.

SUMMARY: FSIS is pursuing new methodologies for detection of pathogenic microorganisms in samples of meat and poultry within hours of sample collection. The purpose of this notice is to inform interested parties of the criteria FSIS is using to evaluate and/or develop new testing methods.

FOR FURTHER INFORMATION CONTACT: Dr. Ann Marie McNamara, Director, Microbiology Division, Science and Technology, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250; (202) 205–0212.

Background

FSIS is responsible for ensuring the safety and wholesomeness of meat and poultry products distributed in interstate commerce (21 U.S.C. *et seq.*, 21 U.S.C. 451 *et seq.*). Various inspection procedures are used to determine if meat and poultry products are adulterated. These procedures include organoleptic techniques, rapid screening methods used by in-plant inspectors, and sophisticated laboratory test methods used to confirm the presence of adulterants. In-plant testing methods can provide information rapidly to inspectors so that potentially adulterated product can be held until confirming tests are completed in FSIS laboratories.

FSIS has developed many test methods in its own laboratories in the past. All test methods used by FSIS laboratory staff and/or in-plant inspectors have been evaluated in FSIS laboratories to ensure they meet required criteria. All microbiological test methods approved for the use of

FSIS are published in the Microbiological Laboratory Guidebook (MLG)[1] its supplements.

In the past when FSIS was developing new methods, design criteria were shared with interested parties in the scientific community. Similarly, the purpose of this notice is to provide to such interested parties the criteria and FSIS is using to evaluate and/or develop in-plant rapid testing methods to detect pathogenic and indicator microorganisms.

FSIS does not approve test methods for the food industry; it in only interested in evaluating and/or developing test methods needed to meet its statutory responsibilities for ensuring the safety of death and poultry products.

Desirable Characteristic of In-Plant Testing Methods

Modern technology is moving toward development of rapid, real-time, microbiological testing methods that may be suitable for use in meat and poultry slaughter/processing establishments. The testing methods that FSIS is interested in developing must be applicable to FSIS' regulatory mandates; be simple enough for use by FSIS inspectors; to inexpensive enough to be used frequently; create no biological hazards for the environment or the inspectors; and produce rapid, accurate, and easy to interpret results. The methods presently published in the MLG do not fulfill all these requirements. The specific criteria which FSIS is using to evaluate and/or develop new methodologies to detect pathogenic microorganisms[2] is as follows:

1. Faster results: Presently results are available approximately 24 hours after sample collection; a significantly shorter time period is desired;

2. Improved sensitivity, specificity, and accuracy: The test methodology should detect accurately specific pathogens with no false negatives and few or no false positives;

3. Eliminate enrichment steps: The present need to growout pathogens to sufficient numbers for identification is time consuming and creates biological hazards;

4. Minimize biological hazards: Present methodologies create potential biological hazards for the environment as well as for inspectors and laboratory technicians;

5. Minimize hands-on technical time: The test methodology should not require more than a few minutes of an inspector's time to perform after the sample has been collected;

6. Minimize technical competence: The test methodology should be capable of being performed and interpreted by a non-microbiologist with limited training;

7. Minimize physical resources: The test methodology should not require expensive specialized equipment; and

8. Minimize test cost: The test methodology should be inexpensive so that FSIS can contemplate at least one test per working day/per relevant organism in each of its 6500 inspected establishments.

FSIS is devoting its resources to the development of test methodologies that meet the above criteria. After a method is developed, it must be evaluated scientifically in FSIS laboratories before it can be considered for use by FSIS. FSIS method evaluation is a lengthy process which can take 1–2 yeas to complete. For this reason, there must be sufficient evidence that the test methodology meets the above criteria before FSIS will undertake the evaluation process.

Interest Parties Contact

Interested parties with information concerning methodologies that would meet the above criteria should contact the Technology Transfer and Coordination Staff, FSIS, USDA, room 301 Annex Building, Washington, DC 20250, for additional information.

Done at Washington, DC, on: October 15, 1993.

H. Russell Cross,

Administrator.

[FR Doc. 93–25751 Filed 10–20–93; 8:45 am]

BILLING CODE 3410-DM-M

[1] A copy is available for review at the United States Department of Agriculture, Food Safety and Inspection Service, Hearing Clerk's office, room 3171, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250.

[2] Pathogenic microorganisms of interest are listed in the following publication of the American Public Health Association—Compendium of Methods for the Microbiological Examination of Foods, Third Edition, edited by Carl Vanderzant, PhD and Don F. Splittstoesser, PhD.

Forest Service

Baker City Watershed/Washington Gulch Vegetation Management Projects, Wallowa-Whitman National Forest, Baker County, Oregon

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Notice is hereby given that the USDA, Forest Service, will prepare an environmental impact statement (EIS) for vegetation management actions in the Baker City Municipal Watershed and Washington Gulch analysis areas to improve ecosystem health, reduce fire hazard, and maintain water quality. The proposed actions for the Watershed are likely to include salvage tree harvest, fuels reduction, road construction, fuel break construction, prescribed burning, reforestation, and wildlife habitat enhancement. The Washington and Watershed analysis areas are about 8 miles due west of Baker City. Drainages include Goodrich, Mill, Marble, Salmon, and Elk Creeks. The agency gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATES: Comments concerning the scope of the analysis should be received in writing by December 31, 1993.

ADDRESSES: Send written comments and suggestions concerning the management of this area to Charles Ernst, District Ranger, 3165 10th St., Baker City, OR 97814.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and EIS to Joanne Britton, Environmental Coordinator, 3165 10th St., Baker City, OR 97814, phone (503) 523–4476.

SUPPLEMENTARY INFORMATION: The proposed action is intended to implement the Forest Service Chief's direction to implement ecosystem management and to provide relief and recovery from insects, disease, and fuel buildup within the Baker City Municipal Watershed (referred to as "the Watershed"), and the Washington Gulch area which is adjacent to the Watershed, and is included in this proposal. Projects proposed within these analysis areas will contribute to the health of the Watershed, produce some timber volume for the local market, and meet wildlife and water quality standards and guidelines. The overall goal of the projects is to take care of the land by restoring and sustaining the integrity of soils, air, water, biological diversity, and ecological processes.

The Forest Service and Baker City recognize the high potential for an uncontrolled wildfire in the Watershed due to insect infestation and fuels buildup, and the devastating effects that a wildfire could have on water quality. The Watershed is unique in that it operates without a filtration system. If a fire were to occur within the Watershed, the effects would be long-lasting and would probably necessitate the need for

installation of an expensive filtration system.

Most of the Watershed lies within an inventoried roadless area. Some of the actions proposed, particularly road construction and timber harvest, will alter the roadless character and eliminate the potential for wilderness designation.

Considering both analysis areas, the municipal watershed and Washington Gulch, about 18,000 acres will be evaluated. The proposed actions include creating several fuelbreaks through timber harvest and underburning (about 2,700 acres); creating fuelbreaks through precommercial thinning or felling of understory trees (no tree removal in combination with underburning (about 500 acres); creating fuelbreaks with no mechanical treatment (about 750 acres); designating fuelbreaks with no treatment at this time, but which will be maintained over time as fuelbreaks (about 1,800 acres); and stocking control (timber sale harvest, generally commercial thins) in areas outside the fuelbreaks (about 4,300 acres).

Within both analysis areas there is 150–200 million board feet of standing timber, of which as much as 13 million board feet may be moved through harvest to achieve the objectives mentioned above.

It is anticipated that tree removal will be by helicopter. Depending on the amount of roads necessary to support a helicopter or other system, from 7 to 15 miles of road construction will be necessary.

This EIS will tier to the final EIS for the Wallowa-Whitman Land and Resource Management Plan and will be consistent with the Forest Plan, which provides the overall guidance for management of this area. The EIS will also include direction from agreements with the City of Baker and the Forest Service in relation to management of this area. In addition, direction from the 1988 Regional Competing and Unwanted Vegetation EIS will be incorporated.

Standards and guidelines in the Forest Plan for managing municipal watersheds emphasize the importance of maintaining or enhancing water quality. These standards and guidelines will form the basis for developing actions for this project.

Public involvement will be especially important at several points during the analysis, beginning with the scoping process. The Forest Service will be seeking information, comments, and assistance from Federal, State, local agencies, tribes, and other individuals or organizations who may be interested in or affected by the proposals. The scoping process includes:

1. Identifying and clarifying issues.
2. Identifying key issues to be analyzed in depth.
3. Exploring alternatives based on themes which will be derived from issues recognized during scoping activities.
4. Identifying potential environmental effects of the proposals and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).
5. Determining potential cooperating agencies and task assignments.
6. Developing a list of interested people to keep apprised of opportunities to participate through meetings, personal contacts, or written comment.
7. Developing a means of informing the public through the media and/or written material (e.g., newsletters, correspondence, etc.).

Preliminary public issues identified during scoping include:

—Sustaining and maintaining water quality and quantity (timing and amount);
—Restoring ecosystem/tree health;
—Reducing the fire hazard;
—Maintaining and improving wildlife habitat;
—Balancing projects with economic considerations;
—Consideration for the roadless/unroaded character of the land impacts of road building on all the resources, and
—Maintaining a high level of visual quality over the landscape.

The analysis will also address use of the area for roosting by bald eagles, old-growth management, and other concerns as developed through the scoping process.

Public comments are appreciated throughout the analysis process. The draft EIS is expected to be completed about April 1994. The final EIS is scheduled for completion July 1994. The comment period on the draft EIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice of this early stage of public participation and of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could have been raised at the draft stage may be waived or dismissed by the court if not raised until after completion of the final EIS. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningful consider and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

In the final EIS, the Forest Service will respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making a decision regarding the proposal. The Responsible Official is Robert M. Richmond, Forest Supervisor for the Wallowa-Whitman National Forest. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to appeal under 36 CFR part 217.

Dated: October 12, 1993.

R.M. Richmond,

Forest Supervisor.

[FR Doc. 93–25845 Filed 10–20–93; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Telecommunications Equipment Technical Advisory Committee; Closed Meeting

A meeting of the Telecommunications Equipment Technical Advisory Committee will be held November 9,

1993, 9:30 a.m., in the Herbert C. Hoover Building, room 1617–M2, 14th Street & Pennsylvania Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to telecommunications and related equipment and technology.

The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on February 5, 1992, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6020, U.S. Department of Commerce, Washington, DC 20230. For further information, contact Lee Ann Carpenter on (202) 482–2583.

Dated: October 15, 1993.

Betty Ferrell,

Director, Technical Advisory Committee Unit.

[FR Doc. 93–25948 Filed 10–20–93; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

[A–588–038]

Bicycle Speedometers From Japan; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On August 9, 1993, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping finding on bicycle speedometers from Japan. The review covers one manufacturer/exporter, Cat Eye Co., Ltd. (Cat Eye), and the period November 1, 1991 through October 31, 1992.

We gave interested parties an opportunity to comment on our preliminary results. We received comments from the respondent, Cat Eye. Based on our analysis of the comments received, the final results of this review have changed from those presented in the preliminary results of review.

EFFECTIVE DATE: October 21, 1993.

FOR FURTHER INFORMATION CONTACT: Arthur N. DuBois or Thomas F. Futtner, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC. 20230; telephone (202) 482–6312/3814.

SUPPLEMENTARY INFORMATION:

Background

On August 9, 1993, the Department published in the **Federal Register** (58 FR 42289) the preliminary results of its administrative review of the antidumping finding on bicycle speedometers from Japan (37 FR 24826, November 22, 1972). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Review

Imports covered by the review are shipments of bicycle speedometers. This merchandise is currently classifiable under the *Harmonized Tariff Schedule* (HTS) item numbers 9020.20.20, 9029.40.80, and 9029.90.40. HTS item numbers are provided for convenience and Customs purposes. Our written description remains dispositive.

The review covers the shipments of Cat Eye, a manufacturer/exporter of bicycle speedometers during the period November 1, 1991 through October 31, 1992.

Analysis of Comment Received

We gave interested parties an opportunity to comment on the preliminary results as provided by § 353.38 of the Commerce Regulations. We received a comment from the respondent, Cat Eye.

Comment: Cat Eye requested clarification of the difference-in-merchandise adjustments used and noted that the pre-paid tooling costs should have been added to the U.S. price.

Department's Position: Cat Eye's question regarding the difference-in-merchandise adjustments used are explained in detail in our verification report. Cat Eye had not received the verification report when it submitted its comments because it submitted the comments well before the comment deadline. As discussed in the disclosure memorandum and in the verification report, we were not able to use Cat Eye's tape of July 28, 1993, in reaching our preliminary results. However, we did use it in these final results of review, and we have recalculated our results accordingly. Finally, we agree with Cat Eye that the amortization of tooling costs should be added to the U.S. price, not subtracted.

Final Results of Review

As a result of our review, we have determined that the following margin exists for the period November 1, 1991 through October 31, 1992:

Manufacturer/Exporter	Margin (Percent)
Cat Eye Co., Ltd.	0.43

The Department will instruct the Customs Service to assess, antidumping duties on all appropriate entries. Individual differences between U.S. price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) Since the margin for Cat Eye is less than 0.50 percent and, therefore, *de minimis* for cash deposit purposes, the Department will require a cash deposit of zero for all entries from Cat Eye; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review, the cash deposit rate will be the "new shipper" rate established in the first administrative review, as discussed below.

On May 25, 1993, the court of International Trade (CIT) in *Floral Trade Council* v. *United States*, Slip Op. 93–79, and *Federal-Mogul Corporation and the Torrington Company* v. *United States*, Slip Op. 93–83, decided that once an "all others" rate is established for a company, it can only be changed through an administrative review. The Department has determined that in order to implement these decisions, it is appropriate to reinstate the original "all others" rate from the less-than-fair-value (LTFV) investigation (or that rate as amended for correction for clerical errors or as a results of litigation) in proceedings governed by antidumping duty orders. In proceedings governed by antidumping findings, unless we are able to ascertain the "all others" rate from the Treasury LTFV investigation, the Department has determined that is appropriate to adopt the "new shipper" rate established in the first final results of the administrative review published by the Department (or that rate as amended for correction of clerical error or as a result of litigation) as the "all others" rate for the purposes of establishing cash deposits in all current and future administrative reviews.

Because this proceeding is governed by an antidumping finding, and we are unable to ascertain the "all others" rate from the Treasury LTFV investigation, the "all others" rate for the purposes of the review will be 26.44 percent, the "new shipper" rate established in the first final results of administrative review published by the Department (47 FR 28978, July 2, 1982).

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties has occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of return/destruction of APO materials or coversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)), and 19 CFR 353.22.

Dated: October 15, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–25949 Filed 10–20–93; 8:45 am]

BILLING CODE 3510–DS–M

Minority Business Development Agency

Business Development Center Applications: Detroit, MI MSA

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) program. The total cost of performance for the first budget period (12 months) from April 1, 1994 to March 31, 1995 is estimated at $333,125. The application must include a minimum cost-share of 15% of the total project cost through non-Federal contributions. Cost-sharing contributions may be in the form of cash contributions, client fees, in-kind contributions or combinations thereof. The MBDC will operate in the Detroit, Michigan geographic service area. The award number of this MBDC will be 05–10–94004–01.

The funding instrument for this project will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program provides business development services to the minority business community to help establish and maintain viable minority businesses. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of minority individuals and firms; to offer a full range of management and technical assistance to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points).

An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an applicant not being considered for award. The applicant with the highest point score will not necessarily receive the award.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist in this technical assistance (M&TA) rendered. Based on a standard rate of $50 per hour, the MBDC will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less, and 35% of the total cost for firms with gross sales of over $500,000.

Quarterly reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as the MBDC's performance, the availability of funds and Agency priorities.

DATES: The closing date for applications is December 1, 1993. Applications must be postmarked on or before December 1, 1993.

ADDRESSES: Chicago Regional Office, 55 E. Monore Street, suite 1440, Chicago, Illinois 60603, (312) 353–0182.

FOR FURTHER INFORMATION CONTACT: David Vega, Regional Director, Chicago Regional Office, telephone (312) 353–0182.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. The Collection of information requirements for this

project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640-0006. A pre-bid conference will be held on November 10, 1993, at 10 a.m. at the Chicago Regional Office. Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address.

Pre-Award Costs-Applications are hereby notified that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award cost. Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Outstanding Account Receivable—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing charges such as fraud, theft, perjury or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Award Termination—The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which may cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the MBDC work requirements; and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements—A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications—All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

Drug Free Workplace—Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

Anti-Lobbying—Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements and contracts for more than $100,000.

Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR Part 28, Appendix B.

Lower Tier Certifications—Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier, Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

(11.800 Minority Business Development Catalog of Federal Domestic Assistance)

Dated: October 15, 1993.

David Vega,

Regional Director, Chicago Regional Office.

[FR Doc. 93–25881 Filed 10–20–93; 8:45 am]

BILLING CODE 3510–21–M

Business Development Center Applications; Kansas City, Missouri—Kansas MSA

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) program. The total cost of performance for the first budget period (12 months) from April 1, 1994 to March 31, 1995 is estimated at $222,196. The application must include a minimum cost-share of 15% of the total project cost through non-Federal contributions. Cost-sharing contributions may be in the form of cash contributions, client fees, in-kind contributions or combinations thereof. The MBDC will operate in the Kansas City, Missouri—Kansas geographic service area. The award number of this MBDC will be 07–10–94003–01.

The funding instrument for this project will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program provides business development services to the minority business community to help establish and maintain viable minority businesses. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of minority individuals and firms; to offer a full range of management and technical assistance to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications

determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an applicant not being considered for award. The applicant with the highest point score will not necessarily receive the award.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist in this effort, the MBDCs may charge client fees for management and technical assistance (M&TA) rendered. Based on a standard rate of $50 per hour, the MBDC will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less, and 35% of the total cost for firms with gross sales of over $500,000.

Quarterly reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as the MBDC's performance, the availability of funds and Agency priorities.

DATES: The closing date for applications is December 1, 1993. Applications must be postmarked on or before December 1, 1993.

ADDRESSES: Chicago Regional Office, 55 E. Monroe Street, suite 1440, Chicago, Illinois 60603, (312) 353–0182.

FOR FURTHER INFORMATION CONTACT: David Vega, Regional Director, Chicago Regional Office, telephone (312) 353–0182.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–0006. A pre-bid conference will be held on November 10, 1993, at 10 a.m. at the Chicago Regional Office. Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address.

Pre-Award Costs—Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government.

Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award cost. Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Outstanding Account Receivable—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing charges such as fraud, theft, perjury or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Award Termination—The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which may cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the MBDC work requirements; and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements—A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications—All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

Drug Free Workplace—Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F, "Government-wide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

Anti-Lobbying—Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000.

Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR Part 28, Appendix B.

Lower Tier Certifications—Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

(11.800 Minority Business Development Catalog of Federal Domestic Assistance)

Dated: October 15, 1993.

David Vega,

Regional Director, Chicago Regional Office.

[FR Doc. 93–25880 Filed 10–20–93; 8:45 am]

BILLING CODE 3510–21–M

National Oceanic and Atmospheric Administration

[I.D. 101593A]

Gulf of Mexico Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS); National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council's (Council) Ad

Hoc Advisory Panel (Panel), consisting of commercial red snapper vessel owners, captains (or operators), and owners who operate their vessels, will meet on November 8, 1993, at the New Orleans Airport Hilton and Conference Center, 901 Airline Highway, Kenner, LA; telephone: (504) 469–5000. The meeting will be held from 10 a.m. until 5 p.m.

The Panel will advise the Council on allocation alternatives for inclusion in a draft amendment pertaining to limited access and allocation of individual transferable quota (ITQ) shares or vessel licenses among the above three groups.

This meeting is physically accessible to the disabled. Requests for sign language interpretation or other auxiliary aids should be directed to Beverly Badillo by November 1, 1993, at the address below.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 331, Tampa, FL; telephone: (813) 228–2815.

Dated: October 15, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–25843 Filed 10–20–93; 8:45 am]

BILLING CODE 3510–22–P

[I.D. 101393E]

Progress on Emergency Striped Bass Research Study

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: NMFS and the U.S. Fish and Wildlife Service will hold a joint meeting to discuss progress on the Emergency Striped Bass Research Study as authorized by the amended Anadromous Fish Conservation Act. The meeting will convene on Thursday, December 2, 1993, at 10 a.m., and will adjourn at approximately 2 p.m. The meeting is open to the public and will be held in room 200, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: David G. Deuel, Office of Fisheries Conservation and Management, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Telephone: (301) 713–2347.

Authority: Pub. L. 96–118)

Dated: October 14, 1993.

Richard H. Schaefer,

Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–25842 Filed 10–20–93; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Special Access and Special Regime Programs; Delay in Implementation of Bond Requirement for Participants

October 15, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs changing the implementation date for the bond requirement.

EFFECTIVE DATE: October 15, 1993.

FOR FURTHER INFORMATION CONTACT: Lori E. Goldberg, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to delay implementation of the bond requirement for participants in the Special Access and Special Regime Programs until November 1, 1993. See notices published in the **Federal Register** on August 3, 1993 (58 FR 41245) and September 20, 1993 (58 FR 48851).

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 15, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on September 15, 1993, by the Chairman, Committee for the Implementation of Textile Agreements. That directive directed you to delay implementation of the bond requirement for the Special Access and Special Regime Programs to begin on October 18, 1993.

Effective on October 15, 1993, you are directed to amend the September 15, 1993 directive to delay the implementation of the bond requirement to begin on November 1, 1993. Customs will provide importers with a 30-day grace period to post the bond.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–25814 Filed 10–20–93; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

October 15, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 18, 1993.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6714. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for swing and carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 56904, published on December 1, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist

only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 15, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 25, 1992, as amended, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 1993 and extends through December 31, 1993.

Effective on October 18, 1993, you are directed to amend further the directive dated November 25, 1992 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Pakistan:

Category	Adjusted twelve-month limit [1]
Specific Limits	
237	244,320 dozen.
239	920,440 kilograms.
331/631	1,687,120 dozen pairs.
334/634	169,060 dozen.
335/635	261,080 dozen.
336/636	356,310 dozen.
351/651	237,540 dozen.
352/652	593,850 dozen.
359–C/659–C [2]	968,086 kilograms.
613/614	18,563,068 square meters.
615	19,639,565 square meters.
617	14,126,732 square meters.
638/639	128,792 dozen.
647/648	598,197 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1992.

[2] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.3014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–25931 Filed 10–20–93; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board (SAB) Science and Technology Review Panel will meet from 8 a.m. to 5 p.m. on 3–4 November 1993 at the Eglin Air Force Base, FL.

The purpose of this meeting is to review the Conventional Armament programs at Wright Laboratory, Eglin AFB, FL. The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4).

For further information, contact the SAB Secretariat at (703) 697–8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 93–25960 Filed 10–20–93; 8:45 am]

BILLING CODE 3910–01–W

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board (SAB) Science and Technology Review Panel will meet from 8 a.m. to 5 p.m. on 3–4 November 1993 at Wright-Patterson Air Force Base, OH, Armstrong Laboratory.

The purpose of this meeting is to review the Human Systems Technology programs. The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4).

For further information, contact the SAB Secretariat at (703) 697–8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 93–25961 Filed 10–20–93; 8:45 am]

BILLING CODE 3910–01–W

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board (SAB) Science and Technology Review Panel will meet from 8 a.m. to 5 p.m. on 8–10 November 1993 at Kirtland Air Force Base, NM, Phillips Laboratory, on 8–10 November 1993.

The purpose of this meeting is to review the Advanced Weapons. The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4).

For further information, contact the SAB Secretariat at (703) 697–8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 93–25958 Filed 10–20–93; 8:45 am]

BILLING CODE 3910–01–W

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board (SAB) Science and Technology Review Panel will meet from 8 a.m. to 5 p.m. on 8–10 November 1993 at Kirtland Air Force Base, NM, Phillips Laboratory (8–9 Nov 93) and Edwards Air Force Base, CA, Phillips Laboratory (10 Nov 93).

The purpose of this meeting is to review the Space and Missiles programs. The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4).

For further information, contact the SAB Secretariat at (703) 697–8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 93–25959 Filed 10–20–93; 8:45 am]

BILLING CODE 3910–01–W

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board (SAB) Science and Technology Review Panel will meet from 8 a.m. to 5 p.m. on 16–17 November 1993 at Hanscom Air Force Base, MA.

The purpose of this meeting is to review the Geophysics programs. The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4).

For further information, contact the SAB Secretariat at (703) 697–8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 93–25957 Filed 10–20–93; 8:45 am]

BILLING CODE 3910–01–W

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board (SAB) Science and Technology Review Panel will meet from 8 a.m. to 5 p.m. on 18–19 November 1993 at Griffiss Air Force Base, NY.

The purpose of this meeting is to review the Command, Control and Communications (C31) programs. The meeting will be closed to the public in

accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4).

For further information, contact the SAB Secretariat at (703) 697–8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 93–25956 Filed 10–20–93; 8:45 am]

BILLING CODE 3910–01–M

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board (SAB) Science and Technology Review Panel will meet from 8 a.m. to 5 p.m. on 22–23 November 1993 at Wright-Patterson Air Force Base, OH, Wright Laboratory.

The purpose of this meeting is to review the Manufactoring Technology programs. The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4).

For further information, contact the SAB Secretariat at (703) 697–8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 93–25954 Filed 10–20–93; 8:45 am]

BILLING CODE 3910–01–M

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board (SAB) Science and Technology Review Panel will meet from 8 a.m. to 5 p.m. on 22–23 November 1993 at Griffiss Air Force Base, NY.

The purpose of this meeting is to review the Computer Science programs. The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4).

For further information, contact the SAB Secretariat at (703) 697–8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 93–25955 Filed 10–20–93; 8:45 am]

BILLING CODE 3910–01–M

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board (SAB) Science and Technology Review Panel will meet from 8 a.m. to 5 p.m. on 22–24 November 1993 at the Air Force Office of Science and Research, Washington, DC.

The purpose of this meeting is to review the Basic Research programs. The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4).

For further information, contact the SAB Secretariat at (703) 697–8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 93–25962 Filed 10–20–93; 8:45 am]

BILLING CODE 3910–01–M

Department of the Army

Advisory Committee Meeting Notice

AGENCY: U.S. Army Center of Military History, DoD.

ACTION: Notice of meeting.

In according with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following committee meeting:

Name of Committee: Department of the Army Historical Advisory Committee.

Date of Meeting: 23 Oct 93.

Place of Meeting: Franklin Court Building, U.S. Army Center of Military History, 1099 14th Street NW., 2nd Floor, Washington DC 20005–3402.

Time of Meeting: 0900–1500.

Proposed Agenda: Review and discussion of the status of historical activities in the U.S. Army.

1. Purpose of meeting: The Committee will review the Army's historical activities for FY93 and those projected for FY94 based on reports and manuscripts received throughout the period and formulate recommendations through the Chief of Military History to the Chief of Staff, Army, and the Secretary of the Army for advancing the use of history in the U.S. Army.

2. Meeting of the Advisory Committee is open to the public. Due to space limitations, attendance may be limited to those persons who have notified the Advisory Committee Management Office in writing, at least five days prior to the meeting of their intention to attend the 23 October meeting.

3. Any members of the public may file a written statement with the Committee before, during or after the meeting. To the extent that time permits the Committee Chairman may allow public presentations of oral statements at the meeting.

4. All communications regarding this Advisory Committee should be addressed to Dr. Jeffrey J. Clarke, U.S. Army Center of Military History, Franklin Court Building, 1099 14th Street NW., Washington, DC 20005–3402. Telephone number (202) 504–5402.

Gregory D. Showalter,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 93–26017 Filed 10–20–93; 8:45 am]

BILLING CODE 5000–03–M

Army Science Board; Notice of Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 4 November 1993.

Time of Meeting: 1400–1600 hours.

Place: Pentagon, Washington, DC.

Agenda: The Army Science Board C3I Issue Group members will meet with their sponsor (DISC4) to discuss the status of two sponsor initiated studies. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 93–25902 Filed 10–20–93; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Notice of Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 8–10 November 1993.

Time of Meeting: 0800–1630 hours, 8 November 1993. 0800–1630 hours, 9 November 1993. 0900–1130 hours, 10 November 1993.

Place: Pentagon, Washington, DC 8&9 November. Dumfries, VA, 10 November.

Agenda: The Army Science Board's C3I Issue Group will commence their Director of Information Systems for Command, Control, Communication, and Computers (DISC4) initiated Issue Group study on Moving Army Tactical Command and Control System (ATCCS) from a Character-Oriented Message System to a Data-Oriented Message System. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer,

Sally Warner, may be contacted for further information (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 93–25815 Filed 10–20–93; 8:45 am]

BILLING CODE 3710-08-M

Yakima Training Center Cultural and Natural Resources Committee; Meeting

AGENCY: Headquarters, I Corps and Fort Lewis, WA, Department of the Army, DoD.

ACTION: Notice of meeting.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting:

Name of committee: Yakima Training Center Cultural and Natural Resources Committee—Technical Committee.

Date of meeting: November 18, 1993.

Place of meeting: Yakima Training Center, Building 266, Yakima, Washington.

Time of meeting: 1 p.m.

Proposed agenda: Cultural and Natural Resources Management Plan development and review.

All proceedings are open. For further information contact Stephen Hart, Chief, Civil Law, (206) 967–4540.

Gregory D. Showalter,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 93–25883 Filed 10–20–93; 8:45 am]

BILLING CODE 3000-00-M

Delaware River Basin Commission

Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, October 27, 1993. The hearing will be part of the Commission's regular business meeting which is open to the public and scheduled to begin at 1 p.m. in the Goddard Conference Room of the Commission's offices at 25 State Police Drive, West Trenton, New Jersey.

An informal conference among the Commissioners and staff will be open for public observation at 10 a.m. at the same location and will include status reports on the Commission's proposed Special Protection Waters nonpoint pollution regulations; flood preparedness in the Basin; compliance with DRBC water conservation ordinance requirements and potential use of a Commission Geographical Information System.

The subjects of the hearing will be as follows:

Current Expense and Capital Budgets. A proposed current expense budget for the fiscal year beginning July 1, 1994, in the aggregate amount of $3,063,000 and a capital budget for the same period in the amount of $1,722,500 in revenue and $1,302,500 in expenditures. Copies of the current expense and capital budget are available from the Commission on request by contacting Richard C. Gore.

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact

1. *Moyer Packing Company D–87–5 RENEWAL.* An application for the renewal of a ground water withdrawal project to supply up to 1.95 million gallons (mg)/30 days of water to the applicant's meat processing operation from Well Nos. 19 and 21. Commission approval on October 28, 1987 was limited to five years. The applicant requests that the total withdrawal from all wells remain limited to 1.95 mg/30 days. The project is located in Lower Salford Township, Montgomery County and is in the Southeastern Pennsylvania Ground Water Protected Area.

2. *The Geon Company D–89–74.* An application for approval of a ground water withdrawal project to supply up to 15.12 mg/30 days of water to the applicant's industrial facility from a proposed new well, and to retain the existing withdrawal limit from all wells of 43.2 mg/30 days. The project is located in Oldmans Township, Salem County, New Jersey.

3. *Alpine Mountain Ski Area D–90–8.* An application for approval of a surface water withdrawal of up to 0.50 million gallons per day (mgd) for purposes of snowmaking at the applicant's ski resort. Water will be withdrawn from an intake on the Brodhead Creek and pumped to a nearby manmade storage pond from which it will be pumped to supply the applicant's snowguns. The project is located in Price Township, Monroe County, Pennsylvania.

4. *New Jersey Department of Corrections D–90–21 CP.* A project to upgrade and expand the Bayside State Prison sewage treatment plant (STP) from 0.235 mgd to 0.55 mgd. The expanded STP will serve only the correctional facilities. The treated effluent will continue to discharge, via a new outfall point to Riggins Ditch, a tributary of the Delaware Bay, in Maurice River Township, Cumberland County, New Jersey.

5. *Township of Sparta D–92–23 CP.* An application for approval of a ground water withdrawal project to supply up to 10 mg/30 days of water to the applicant's distribution system from Newstar Well Nos. 1 and 2, and Autumn Hill Well Nos. 1 and 2; and to retain the existing withdrawal limit from all wells located within the Delaware River Basin of 18.84 mg/30 days. The project is located in Sparta and Byram Townships, Sussex County, New Jersey.

6. *Hickory Valley Golf Club D–92–24.* An application for approval of withdrawal of up to 0.5 mgd from Swamp Creek, a tributary of the Perkiomen Creek, to irrigate the Hickory Valley Golf Club 36-hole, 254-acre golf course. The Swamp Creek intake is located on the golf course property and is situated just north of Ludwick Road and west of Big Road at the confluence of Schlegel Run in New Hanover Township, Montgomery County, Pennsylvania.

7. *Northampton, Bucks County, Municipal Authority D–93–5 CP.* A revised application to include additional sources of ground water to supply up to 18.0 mg/30 days of water to the applicant's distribution system from new Well Nos. 5, 6 and 13, and to increase the existing withdrawal limit of 48.0 mg/30 days from all wells to 66.0 mg/30 days. The project is located in Northampton Township, Bucks County and is located in the Southeastern Pennsylvania Ground Water Protected Area.

8. *RHI-Oak Terrace Inc. D–93–30.* A revised application for approval of a ground water withdrawal project for golf course irrigation. New Well No. PW–1 will supply up to 5.0 mg/30 days to supplement two existing wells which have been in service since the 1950's, and the limit from all wells will be 5.0 mg/30 days. The project is located in Horsham Township, Montgomery County, in the Southeastern Pennsylvania Ground Water Protected Area.

9. *City of Millville D–93–33 CP.* An application to replace the withdrawal of water from Airport Well No. 3 in the applicant's water supply system due to ground water contamination. The applicant requests that the withdrawal from replacement Airport Well No. 4 be limited to 43.2 mg/30 days, and that the total withdrawal from all wells remain limited to 200 mg/30 days. The project is located in the City of Millville, Cumberland County, New Jersey.

10. *The Upper Hanover Authority D–93–36 CP.* An application to consolidate the various ground and surface water supply facilities of The Upper Hanover Authority (TUHA) and the Red Hill Water Authority (RHWA) into one comprehensive docket for a consolidated system operated by the TUHA. The proposed total allocation of

22.4 mg of ground water is not an increase in existing allocations. Well Nos. TUHA–3, RH–1, and RH–2 are located in Upper Hanover Township, Montgomery County; Well Nos. TUHA–1 and TUHA–2 are located in Hereford Township, Berks County, all in the Southeastern Pennsylvania Ground Water Protected Area. Kemmerer Spring is located in Upper Milford Township, Lehigh County, Pennsylvania.

11. *Big Boulder Corp. D–93–53.* A proposal to construct a replacement intake on Big Boulder Lake, remove the existing intake structure, and continue to serve the applicant's snow making operations at the Big Boulder ski area. The maximum daily pumping rate will continue to be 4.03 mgd. The intake project is located on the west side of Big Boulder Lake, on an unnamed tributary of Tunkhonnock Creek, in Kidder Township, Carbon County, Pennsylvania.

12. *Metropolitan Edison Company (Met-Ed) D–93–60.* An application for approval of Met-Ed's proposed 152 megawatt (MW) oil/gas fired combustion turbine (CT) to be constructed at its existing Portland Generating Station, situated on the west bank of the Delaware River in Upper Mount Bethel Township, Northampton County, Pennsylvania. The project will entail a new use of approximately 100,380 gallons per day during peak month operation. The new CT project will not entail modification of the existing water withdrawal, treatment or discharge facilities at the station. Cooling water and treated wastewater will continue to discharge to Water Quality Zone 1–D of the Delaware River. Water for the proposed CT will be provided via the existing Delaware River intake facilities. The project withdrawal will continue to serve only the Met-Ed Portland Generating Station.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact George C. Elias concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

Dated: October 12, 1993.

Susan M. Weisman,

Secretary.

[FR Doc. 93–25832 Filed 10–20–93; 8:45 am]

BILLING CODE 6560–01–P

DEPARTMENT OF ENERGY

Notice of Intent to Prepare an Environmental Impact Statement on a Proposed Policy for the Acceptance of United States Origin Foreign Research Reactor Spent Nuclear Fuel

AGENCY: United States Department of Energy (DOE).

ACTION: Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) for a proposed policy for the acceptance of United States origin foreign research reactor spent nuclear fuel.

SUMMARY: DOE announces its intent to prepare an EIS pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, *et seq.*) to evaluate the potential environmental impacts of the adoption and implementation of a policy to accept spent nuclear fuel containing United States origin enriched uranium from foreign research reactors, and to conduct public scoping meetings. The implementation of this policy would result in the receipt of foreign research reactor spent nuclear fuel at one or more United States marine ports of entry, and overland transport to one or more DOE sites for storage pending ultimate disposal.

Under the proposed policy, the United States would accept up to 15,000 highly enriched uranium (HEU) or low-enriched uranium (LEU) spent nuclear fuel elements during a maximum 15 year period from foreign research reactors in about 28 nations. The United States would subsidize the costs of transport, storage, handling and disposal of United States origin foreign research reactor spent nuclear fuel from developing nations. Developed nations would be charged a fee for the storage, handling and disposal of their spent nuclear fuel. "Developing nations," for the purposes of this proposal, are those nations eligible for assistance under the United Nations programs that are based on a combination of economic and demographic factors. The EIS will assess reasonable alternatives to adoption and implementation of the proposed policy, including alternative ports of entry, overland transportation routes, and storage sites, along with the no action alternative.

The purpose of the agency action is to support United States nuclear non-proliferation policy by removing the spent nuclear fuel from these reactors from international commerce (i.e., by returning the fuel to the United States) to preclude its diversion for use in nuclear weapons. In addition, the proposed action would serve the purpose of encouraging the conversion of foreign research reactors currently using United States origin HEU fuels to LEU fuels.

DOE has requested that the Department of State be a cooperating agency in the preparation of this EIS.

DATES: DOE invites all interested parties to submit comments related to the proposed implementation of the foreign research reactor spent nuclear fuel acceptance policy to ensure that all relevant environmental issues are considered. Written comments should be directed to John J. Jicha, Jr., at the address indicated below. Interested parties are also invited to present oral and written comments pertinent to the preparation of this EIS at nine (9) public scoping meetings to be held in November and December of 1993 at the times and places indicated below. Additional notice will be given via appropriate local media. At the scoping meetings, DOE also will provide the public with an opportunity to engage in more informal discussions with DOE representatives regarding DOE's proposed foreign research reactor spent nuclear fuel acceptance policy. The times and places of the scoping meetings are shown below.

The public scoping process begins with the date of this notice and extends until December 8, 1993. Written comments submitted by mail should be postmarked by December 8, 1993, to ensure consideration. Envelopes should be marked: "FRR SNF EIS." Written comments mailed after that date will be considered to the extent practicable.

Oral and written comments will be given equal consideration. Individuals desiring to speak at a public scoping meeting (or meetings) should pre-register to do so by contacting, either by telephone or in writing, the contact person(s) designated for the meeting(s). Pre-registration should occur at least two days before the designated meeting. The meetings will be chaired by a presiding officer. The public scoping meetings will not be conducted as evidentiary hearings. Speakers will not be cross-examined, although DOE representatives present may ask clarifying questions.

To ensure that everyone has an adequate opportunity to speak, five minutes will be allotted each speaker. Depending on the number of persons who request an opportunity to speak, the presiding officer may allow more time for speakers representing multiple parties or organizations. Persons wishing to speak on behalf of organizations should identify the

organization in their request. Persons who have not submitted a timely request to speak may register at the meetings and will be called on to speak if time permits. Written comments also will be accepted at the meetings, and speakers are encouraged to provide written versions of their oral comments for the record.

DOE will make a transcript of each meeting. Copies will be made available for inspection during business hours at the DOE Freedom of Information Reading Room (Room 1E–190), Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday and in local DOE reading rooms. Locations of local reading rooms for the scoping meetings are listed below.

Scoping Meetings Schedule, Contact Persons, and Reading Room Locations

Meeting: Idaho Falls, ID
Date: Tuesday, November 9, 1993
Time: 9 a.m.–1 p.m., 2 p.m.–5 p.m., 6:30 p.m.–9 p.m.
Location: Westbank Inn, 475 River Parkway, Idaho Falls, ID 83402 (208) 523–8000

Contact For The Meeting Above

Mr. Briant Charboneau, United States Department of Energy, Idaho Field Office, One Energy Drive, Mailstop 1214, Idaho Falls, ID, 83402, (208) 526–0845.

Public Reading Room For The Meeting Above

Idaho Falls: DOE-ID Public Reading Room. INEL Technical Library, 1776 Science Center Drive, Idaho Falls, ID 83402 (208) 526–1191 or (208) 526–1144. Hours: 8 a.m.–7 p.m. Mon.–Thurs., 8 a.m.–5 p.m. Fri., 9 a.m.–1 p.m. Sat., 8 a.m.–5 p.m. Summer (Mon.–Fri).

Meeting: Aiken, SC/Augusta, GA area
Date: Wednesday, November 10, 1993
Time: 9 a.m.–1 p.m., 2 p.m.–5 p.m., 6:30 p.m.–9 p.m.
Location: North Augusta Community Center, 495 Brookside Avenue, N. Augusta, SC 29841, (803) 441–4290.

Meeting: Savannah, GA
Date: Monday, November 15, 1993
Time: 9 a.m.–1 p.m., 2 p.m.–5 p.m., 6:30 p.m.–9 p.m.
Location: Hyatt Regency Savannah, 2 West Bay Street, Savannah, GA 31401, (912) 238–1234.

Meeting: Charleston, SC
Date: Wednesday, November 17, 1993
Time: 9 a.m.–1 p.m., 2 p.m.–5 p.m., 6:30 p.m.–9 p.m.
Location: Holiday Inn, Mt. Pleasant, 250 Highway 17, Mt. Pleasant, SC 29464, (803) 884–6000.

Contact For The Three Meetings Above

Mr. James R. Giusti, United States Department of Energy, Public Information Specialist, Office of External Affairs, P.O. Box A, Aiken, SC 29802 1–800–242–8269

Public Reading Room For The Three Meetings Above

Aiken: DOE-Public Reading Room, Gregg Graniteville Library, 171 University Parkway, Aiken, SC 29801 (803) 641–3465. Hours: 8 a.m.–11 p.m. Mon.–Thrs., 8 a.m.–5 p.m. Fri., 10 a.m.–5 p.m. Sat., 2 p.m.–11 p.m. Sun.

Savannah: County Library, 2002 Bull Street, Savannah, GA 31499–4301 (912) 234–5127. Hours: 9 a.m.–9 p.m. Mon–Thrs., 9 a.m.–6 p.m. Fri., 10 a.m.–6 p.m. Sat., 2 p.m.–6 p.m. Sun.

Charleston: County Library, 404 King Street, Charleston, SC 29403 (803) 723–1645. Hours: 9:30 a.m.–9 p.m. Mon. Thrs., 9:30 a.m.–6 p.m. Fri. & Sat., 2 p.m.–6 p.m. Sun.

Meeting: Oakland, CA
Date: Thursday, November 18, 1993
Time: 9 a.m.–1 p.m., 2 p.m.–5 p.m., 6:30 p.m.–9 p.m.
Location: Parc Oakland Hotel, 1001 Broadway, Oakland, CA, 94607, (510) 451–4000.

Contact For The One Meeting Above

Ms. Brenda Fleming, United States Department of Energy, EM–37, 1000 Independence Avenue, SW., Suite GB215, Washington, DC 20585, 1–800–242–8269

Public Reading Room for the One Meeting Above

Oakland: DOE-Public Reading Room, San Francisco Operations Office, 1333 Broadway, Oakland, CA 94612 (415) 273–4429. Hours: 8:30 a.m.–4:30 p.m. Mon.-Fri.

Meeting: Hampton Roads, VA
Date: Monday, November 22, 1993
Time: 9 a.m.–1 p.m., 2 p.m.–5 p.m., 6:30 p.m.–9 p.m.
Location: Holiday Inn Portsmouth-Waterfront, 8 Crawford Parkway, Portsmouth, VA, 23704, (804) 393–2573.

Contact for the One Meeting Above

Ms. Brenda Fleming, United States Department of Energy, EM–37, 1000 Independence Avenue, SW. Suite GB215, Washington, DC 20585, 1–800–242–8269

Public Reading Room for the One Meeting Above

Portsmouth: Portsmouth Main Library, 601 Court Street, Portsmouth, VA 23704 (804) 393–8501. Hours: 9 a.m.–9 p.m. Mon.-Fri., 9 a.m.–5 p.m. Sat.

Meeting: Richland, WA
Date: Monday, November 29, 1993
Time: 1 p.m.–5 p.m., 6:30 p.m.–9 p.m.
Location: Shiloh Inn-Rivershore, 50 Comstock, Richland, WA, 99352, (509) 946–9006

Meeting: Portland, OR
Date: Wednesday, December 1, 1993
Time: 1 p.m.–5 p.m., 6:30 p.m.–9 p.m.
Location: Red Lion Inn-Jantzen Beach, 909 N. Hayden Island Drive, Portland, OR, 97217, (503) 283–4466

Meeting: Seattle, WA
Date: Thursday, December 2, 1993
Time: 1 p.m.–5 p.m., 6:30 p.m.–9 p.m.
Location: The Westin Hotel, 1900 5th Avenue, Seattle, WA, 98101, (206) 728–1000.

Contact for the Three Meetings Above

Mr. Michael L. Talbot, Office of Communications, Richland Operations Office, United States Dept. of Energy, P.O. Box 550, Richland, WA 99352, (509) 376–7501.

Public Reading Rooms for the Three Meetings Above

Richland: Washington State University/Tri Cities, 100 Sprout Road, room 130, Richland, WA 99352, (509) 376–8583. Hours: 8 a.m.–12 Noon, and 1 p.m.–4:30 p.m. Mon.-Fri., 9 a.m.–1 p.m. Sat.

Portland: Portland State University Library, 934 S.W. Harrison, Portland, OR 97207, (503) 464–4617. Hours: 8 a.m.–5 p.m. Mon.-Fri., Closed Saturdays and Sundays.

Seattle: University of Washington, Suzzalo Library, FM–25 Government Publications, Seattle, WA 98195 (206) 543–0242. Hours: 7:30 a.m.–12 Midnight Mon.-Thrs., 7:30 a.m.–6 p.m. Fri., 9 a.m.–5 p.m. Sat., 12 Noon to 12 Midnight Sun.

Following completion of the public scoping process, DOE will issue an EIS Implementation Plan that will summarize the results of the scoping process and define the alternatives and issues to be addressed in the EIS. DOE plans to complete the draft EIS in December 1994. DOE will announce its availability in the **Federal Register** and will provide the public, organizations, and agencies with an opportunity to submit comments. These comments will be considered and addressed in the final EIS, scheduled for issuance in June 1995.

ADDRESSES AND FURTHER INFORMATION: Written comments on the scope of the EIS, questions about the foreign research reactor spent nuclear fuel acceptance program, and requests for copies of the

Implementation Plan and/or the draft EIS should be directed to: Mr. John J. Jicha, Jr., Acting Director, Office of Spent Fuels and Special Projects (EM–37), United States Department of Energy, 1000 Independence Avenue, S.W, Washington, DC 20585. Mr. Jicha's telephone number is 202–586–9441.

For further information on the DOE NEPA review process, please contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Oversight (EH–25), United States Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. Ms. Borgstrom's telephone number is 202–586–4600; a message may be left using the toll free number 800–472–2756.

DOE will have transcripts made of oral presentations at the scoping meetings. The transcripts, written comments, and relevant NEPA documents and other relevant documents will be available for review by members of the public, organizations, and agencies at various DOE public reading rooms during normal business hours. The addresses of the reading rooms that are located near the scoping meeting sites are those that have been identified previously in this Notice.

SUPPLEMENTARY INFORMATION:

Background

Since 1945, successive United States administrations have recognized that preventing the further spread of nuclear weapons is an important national security and foreign policy objective. At the same time, the United States has engaged in cooperative activities and promotion of "peaceful" uses of nuclear technologies in other countries.

As part of this nuclear cooperation, beginning with the "Atoms for Peace" program in the 1950s, the United States provided HEU for use as fuel in research and materials testing reactors and in special purpose nuclear reactors around the world. Although the HEU could be used in nuclear weapons, the HEU was provided to these countries as part of a trade-off in which the other countries agreed to forgo the development of nuclear weapons if the United States would assist them in peaceful applications of nuclear technologies. Early arrangements provided for the lease of the HEU, but most of the lease arrangements were converted to sales in 1964. In 1968, the United States began accepting returns of foreign research reactor spent nuclear fuel containing United States origin HEU.

The policy under which the previous acceptance of foreign research reactor spent nuclear fuel was conducted has been referred to generally as the "Off-Site Fuels" policy. Under this policy, the United States reprocessed the spent nuclear fuel and provided credits to the foreign research reactors for HEU recovered from their spent nuclear fuels. The reprocessing was done in turn by the Atomic Energy Commission, the Energy Research and Development Administration, and finally by DOE. [At the present time, the United States has ceased all reprocessing of nuclear materials for extraction of fissile material for weapons use. DOE announced its intention to phase out reprocessing for HEU extraction in 1992, and presently has no intention of altering this policy. DOE is now planning activities to allow shutdown or alternative uses of its chemical separation facilities.]

To reduce the amount of HEU available in international commerce (in support of United States nuclear non-proliferation policy), DOE established the Reduced Enrichment for Research and Test Reactor (RERTR) fuels program in 1978. The RERTR program is aimed at reducing the demand for HEU by civilian users by developing high density foreign research reactor fuels using LEU to replace the HEU foreign research reactor fuels. To further encourage foreign research reactor operators to switch to the use of LEU fuels, the "Off-Site Fuels" policy was extended in 1986 to include the acceptance of spent nuclear fuel containing LEU of United States origin. The RERTR program has helped to bring about the conversion of a significant number of foreign reactors from the use of United States origin HEU or HEU from other western countries, and has contributed to the reduction in the level of United States exports of HEU.

In 1992, the United States non-proliferation policy was strengthened by the enactment of the Energy Policy Act of 1992 (42 U.S.C. 13201), which restricts the export of HEU from the United States. As a result, no further United States origin HEU will be made available to any foreign research reactor, other than to those for which the United States is actively developing a replacement LEU fuel. Furthermore, the United States is separately pursuing other arrangements that would restrict or eliminate sources of HEU from other countries.

The "Off-Site Fuels" policy as it pertained to the acceptance of HEU fuels expired in 1988. Acceptance of LEU fuels under the policy expired at the end of 1992. Due to the expiration of that policy, no United States origin HEU spent fuel has been transported to the United States since the end of 1988. In addition, presumably because insufficient quantities of LEU spent fuel have emerged from reactors that have been converted from the use of HEU fuel, no LEU spent fuel has been transported to the United States since approximately 1988.

In 1991, DOE prepared an environmental assessment and issued for public comment a proposed finding of no significant impact concerning the proposed renewal of the "Off-Site Fuels" policy. The 1991 environmental assessment considered the impacts of reprocessing as a part of the proposed renewal of the "Off-Site Fuels" policy. DOE received a significant amount of public comment on the proposed finding of no significant impact, much of it in opposition to the proposed renewal. Subsequent to DOE's decision in 1992 to phase out reprocessing, DOE took no further action under the proposed finding of no significant impact to finalize a decision under NEPA concerning the proposed renewal of the "Off-Site Fuels" policy.

In late 1992 the Department of State and the Arms Control and Disarmament Agency requested that DOE reinstitute the acceptance of spent nuclear fuel from abroad. Other United States government agencies, such as the Nuclear Regulatory Commission, expressed concerns about the lack of a policy similar to the former "Off-Site Fuels" policy. The major issue raised by these agencies was the need to further the national policy of guarding against proliferation of nuclear materials (such as HEU) that could be diverted for weapons development. In July 1993, the Secretary of State reiterated his predecessor's request to the Secretary of Energy to reinstitute DOE's policy for acceptance of spent nuclear fuel from abroad to avoid situations in which certain foreign research reactors might withdraw from further cooperation with the RERTR program and renew their use of HEU fuels. As a result of these requests and the national interests at stake, the Secretary of Energy proposed the adoption of the policy to be addressed in this EIS.

Concurrent with the 1993 request from the Secretary of State, DOE was notified that spent nuclear fuel storage at certain foreign research reactor sites had reached or was fast reaching capacity. To maintain the status quo (relative to participation in the RERTR program) while this EIS is being prepared, preclude the need to shut down these foreign research reactors, and discourage reprocessing of spent nuclear fuel abroad, the Secretary of Energy proposed that DOE expeditiously evaluate the return of a limited amount of foreign research

reactor spent nuclear fuel to the United States for storage in an existing facility at the Savannah River Site. In order to respond to such near-term situations, the Secretary originally proposed to analyze the return of up to 550 foreign research reactor spent nuclear fuel elements in an environmental assessment, pending completion of the EIS on the proposed foreign research reactor spent nuclear fuel acceptance policy. Upon further analysis, however, it was determined that up to 700 fuel elements may need to be accepted while the EIS is being prepared in order to preserve the status quo and address nonproliferation interests. Thus, the environmental assessment will analyze the potential environmental consequences of the receipt, overland transport, and underwater (wet) storage of up to 700 elements of foreign research reactor spent nuclear fuel. The 700 elements are made up of 550 elements of foreign research reactor spent nuclear fuel from specifically identified foreign research reactors, plus another 150 foreign research reactor spent nuclear fuel elements that DOE may need to accept from as yet unidentified foreign research reactors to prevent an actual or potential near-term proliferation threat. DOE's proposed alternative ports for the acceptance of up to 700 fuel elements are Charleston, SC, or Hampton Roads, Virginia, with subsequent overland transport to and temporary wet storage in the Receiving Basin for Off-Site Fuels (RBOF) at DOE's Savannah River Site in South Carolina. The EA will specify the criteria by which the spent nuclear fuel elements to be accepted would be selected. These criteria will articulate the need for the near-term action that DOE is proposing before the completion of the EIS for the policy renewal. The subsequent removal of the up to 700 foreign research reactor spent nuclear fuel elements from RBOF and their preparation for and placement in dry storage, if required, will be assessed in the EIS.

Preliminary Description of Alternatives

DOE solicits recommendations for addressing the environmental impacts of the proposed policy described in this notice, and reasonable alternatives thereto. DOE intends to assess, in addition to the no action alternative, all reasonable alternatives to adoption and implementation of the proposed policy, including alternative marine ports of entry, overland transportation systems and routes, and storage technologies and sites.

The Proposed Action.

DOE proposes the adoption and implementation of a policy for the acceptance of foreign research reactor spent nuclear fuel containing United States origin enriched uranium. The implementation of this policy would involve the receipt of foreign research reactor spent nuclear fuel at one or more marine ports, and overland transportation from the port(s) to one or more DOE sites for storage pending disposal. DOE would take title to up to 15,000 fuel elements (up to 9,000 HEU and 6,000 LEU) from about 28 foreign countries. This is an amount equal to the projected spent fuel discharges of foreign research reactors using United States origin fuels over the next 15 years. Beyond that time frame, it becomes difficult to foresee the number of spent fuel discharges. This amount (15,000 fuel elements) would constitute only about 0.08% of the total quantity of spent nuclear fuel that DOE is currently managing. The United States would bear the full costs of transport, handling, storage and disposal of foreign research reactor spent nuclear fuel from developing nations. However, for developed nations, the United States would charge a fee for the handling, storage and disposal activities conducted by the United States.

Policy Alternatives

The EIS will assess alternatives to the proposed policy. Identified alternatives include (1) no action; (2) full-cost recovery from all participating nations; and (3) subsidization of costs for all participating nations. Other policy alternatives will be discussed, such as where the United States takes title to the foreign research reactor spent nuclear fuel, whether the policy should be limited to countries that have agreed to convert their foreign research reactors to the use of LEU fuels, and whether the policy should be limited to the acceptance of spent nuclear fuel only from countries that present a potential proliferation threat.

Storage Site Alternatives

The EIS will assess the potential impacts associated with the following alternatives for storage of the foreign research reactor spent nuclear fuel accepted under any of the above policy alternatives: (1) Storage at the Savannah River Site (SRS), Idaho National Engineering Laboratory (INEL), and the Hanford Site (HS) (i.e. decentralized storage); (2) storage at SRS and INEL (i.e., regionalized storage); and (3) storage of all foreign research reactor spent nuclear fuel at one of the previously named DOE sites (i.e., centralized storage). In addition, DOE will consider in this EIS other potential sites identified as reasonable alternatives in the DOE-wide programmatic review of spent nuclear fuel management that is currently under preparation as part of an EIS for environmental restoration and waste management activities at INEL (see "Relationship with Other Actions," below). In response to a recent notice (58 FR 46951, September 3, 1993) regarding the INEL EIS, DOE has received comments to the effect that a broader range of DOE sites and non-DOE sites should be considered as reasonable alternatives. DOE is currently evaluating these comments. The Implementation Plan for the INEL EIS will reflect this consideration. As noted above, however, spent nuclear fuel from foreign research reactors that might be brought to the United States under the proposed acceptance policy would constitute a very small addition to the fuel DOE already manages. Therefore, DOE does not believe it is reasonable to consider managing any foreign research reactor fuel returned to the United States at any sites other than those that would be considered for DOE-wide programmatic purposes. DOE welcomes comments on this approach.

Transportation Alternatives and Analysis

The EIS will assess the impact of marine transport within the territorial waters of the United States, including the port of entry, and overland truck and rail transportation from alternative receiving port(s) to the alternative storage site(s). Because the proposed action involves ocean transport in the global commons, the EIS also will include consideration of potential environmental impacts on the global commons in accordance with Executive Order 12114.

DOE intends to analyze in the EIS the ports listed below as the proposed ports of entry at which foreign research reactor spent nuclear fuel would be received under the proposed foreign research reactor spent nuclear fuel acceptance policy:

Charleston, SC
Hampton Roads, VA
Oakland, CA
Portland, OR
Savannah, GA
Seattle-Tacoma, WA

Several criteria were used in development of the above list of proposed ports. These criteria include (a) adequacy of harbor and dock characteristics to satisfy the cask-

carrying ship requirements; (b) availability of safe and secure lag storage; (c) adequacy of overland transportation systems from ports to the storage site(s); (d) experience in safe and secure handling of hazardous cargo; (e) emergency preparedness status at the port and nearby communities; and (f) proximity to the proposed storage sites. A range of alternative ports also will be analyzed against these criteria for comparison. DOE requests comments on this approach and welcomes suggestions regarding the proposed and alternative ports. The analyses of the proposed and alternative ports will consider the population density of the area surrounding the ports and other factors that may affect the potential environmental impacts associated with use of the ports, including incident free operations and potential accidents.

DOE plans to assess transportation impacts using recognized computer codes such as RADTRAN and RISKIND for radiological and non-radiological incident-free and accident conditions, taking account of both the probabilities and consequences of accidents.

Storage Technology Alternatives

The EIS will discuss the potential impacts of proven (licensed or otherwise approved) dry storage and underwater "wet storage" technologies. Several above-ground dry storage technologies, including multi-purpose casks, metal casks, concrete casks, and horizontal multiple vault storage units, will be assessed. The configuration of stored casks will take criticality safety into consideration. The radiological monitoring systems and programs associated with the foreign research reactor spent nuclear fuel storage technologies will be described and assessed. DOE estimates that about 4 acres would be required to store up to 15,000 spent fuel elements proposed to be stored under the foreign research reactor policy. The impacts of construction of storage facilities also will be assessed. Ultimate disposal will be discussed to the limited extent possible, inasmuch as it is speculative at this time to determine what conditions or locations will be involved in the ultimate disposal of spent nuclear fuel. DOE plans to assess storage for approximately a 40 year period.

Identification of Environmental Issues

The following environmental issues have been identified for analysis in the foreign research reactor spent nuclear fuel EIS. This list is presented to facilitate discussion on the scope of the EIS and is not intended to be all-inclusive or to predetermine the scope. Therefore, DOE invites comments on these and any other issues relevant to the analysis in this EIS.

(1) Potential radiological impacts in terms of both radiation doses and resulting health risks to the environment and to people, including workers and the general public (i.e., individuals and the total population, children and adults, present and future generations) under the various alternatives under routine and accident conditions.

(2) Potential impacts on the public, workers and the environment associated with the proposed construction of any facilities needed for the handling and storage of the foreign research reactor spent nuclear fuel.

(3) Direct, indirect and cumulative effects resulting from the proposed action and alternatives, including impacts on: public and worker health and safety; natural ecosystems (including but not limited to air quality, water resources, plants and animals); the cultural environment (including but not limited to land use, historic resources and archaeological sites); and the socioeconomic situation. Effects to be analyzed include potential effects from marine transport in the territorial waters of the United States, receipt of the foreign research reactor spent nuclear fuel at the port of entry, handling operations in the port of entry, transportation to the storage site, handling operations at the storage site and storage of the foreign research reactor spent nuclear fuel.

(4) Other relevant issues identified by DOE or the public through the scoping process.

Relationship With Other Actions

DOE has prepared, or is currently preparing, NEPA documents for related programmatic, project specific and site specific actions. These relevant NEPA documents are listed below:

1. Environmental Assessment of the Urgent Relief/Acceptance of Foreign Research Reactor Spent Nuclear Fuel—The environmental assessment and resulting decision document, when available, will be placed in DOE public reading rooms. The removal of the foreign research reactor spent nuclear fuel analyzed in the environmental assessment from wet storage and its emplacement in dry storage, if necessary, will be assessed in this EIS.

2. Environmental Restoration and Waste Management and Programmatic Spent Nuclear Fuel EIS for the Idaho National Engineering Laboratory (INEL)—This EIS will include a comprehensive assessment of spent nuclear fuel receipt, transport, processing, and storage at INEL. This is in compliance with the order of the United States District Court for the District of Idaho [*Public Service Company of Colorado* v. *Andrus*, Memorandum Opinion (September 21, 1993)]. Under a subsequest court order, the scheduled date for publishing the final EIS and Record of Decision is June 1995. No decisions concerning the transporting, receipt, processing, and storage of spent nuclear fuel from foreign research reactors at the INEL will be made until both the INEL EIS and this EIS have been completed.

3. Environmental Restoration and Waste Management Programmatic EIS (EM PEIS)—The EM PEIS is being prepared to address, among other issues, the potential environmental impacts associated with various DOE-wide configurations for managing radioactive waste. However, as specified in the Notice of Opportunity for Additional Public Comment on the scope of the INEL ER&WM EIS, "In view of the Court's Order with respect to the analysis of spent nuclear fuel, the INEL ER&WM EIS will include the programmatic analysis of spent nuclear fuel alternatives that was being prepared for the PEIS" (58 FR 46951, September 3, 1993; also see a related notice, 58 FR 47725, September 10, 1993). Accordingly, programmatic spent nuclear fuel management configurations will not specifically be assessed in the EM PEIS and, therefore, decisions resulting from the foreign research reactor spent nuclear fuel EIS will not be affected by the EM PEIS. The final EM PEIS (which will contain a summary of the programmatic spent nuclear fuel analysis now being prepared as part of the INEL EIS) is scheduled to be issued in early 1995 and its Record of Decision is scheduled to be published in late 1995.

Issued in Washington, DC, on October 18, 1993.

Tara O'Toole,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 93–25919 Filed 10–20–93; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket Nos. ER94–13–000, et al.]

PacifiCorp, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

October 14, 1993.

Take notice that the following filings have been made with the Commission:

1. PacifiCorp

[Docket No. ER94–13–000]

Take notice that PacifiCorp on October 8, 1993, tendered for filing a Notice of Termination of the Firm Transmission Service Agreement (Service Agreement) under PacifiCorp's FERC Electric Tariff, Original Volume No. 5 dated November 9, 1989, as amended, with Montana Power Company (Montana).

PacifiCorp requests a waiver of prior notice be granted and that an effective date for termination of the Service Agreement be October 1, 1993. This date is consistent with the termination of service under the Service Agreement.

Copies of the Notice of Termination were served upon Montana, Black Hills Power and Light Company, the Montana Public Service Commission, the Public Utility Commission of Oregon, and the Public Service Commission of Wyoming.

Comment date: October 28, 1993, in accordance with Standard Paragraph E at the end of this notice.

2. Houston Lighting & Power Co.

[Docket No. ER94–12–000]

Take notice that on October 7, 1993, Houston Lighting & Power Company (HL&P) tendered for filing executed transmission service agreements under HL&P's FERC Electric Tariff, Original Volume No. 1 for Transmission Service To, From and Over Certain HVDC Interconnections.

The filing consists of three firm power Transmission Service Agreements (TSA's) with (1) Public Service Company of Oklahoma (PSO), (2) Central Power and Light Company (CP&L) and (3) West Texas Utilities Company (WTU) providing in each instance for the transmission of up to 220 MW of power to be scheduled over the North HVDC Tie. The TSA's have terms that extend until December 31, 2007, unless earlier terminated upon 30 days notice to HL&P. HL&P has requested an effective date of October 7, 1993.

A copy of this filing has been sent to WTU, PSO and CP&L and to the Public Utility Commission of Texas.

Comment date: October 28, 1993, in accordance with Standard Paragraph E at the end of this notice.

3. New York State Electric & Gas Corp.

[Docket No. ER94–9–000]

Take notice that New York State Electric & Gas Corporation (NYSEG) on October 6, 1993, tendered for filing pursuant to § 35.12 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 35.12 (1993), as an initial rate schedule, an agreement with Consolidated Edison Company of New York, Inc. (Con Edison). The agreement provides a mechanism pursuant to which the parties can enter into separately scheduled transactions under which NYSEG will sell to Con Edison and Con Edison will purchase from NYSEG either capacity and associated energy or energy only as the parties may mutually agree.

NYSEG requests that the agreement become effective on October 7, 1993, so that the parties may, if mutually agreeable, enter into separately scheduled transactions under the agreement. NYSEG has requested waiver of the notice requirements for good cause shown.

NYSEG served copies of the filing upon the New York State Public Service Commission and Con Edison.

Comment date: October 28, 1993, in accordance with Standard Paragraph E at the end of this notice.

4. Western Resources, Inc. Kansas Gas and Electric Co.

[Docket No. ER94–15–000]

Take notice that on October 8, 1993, Western Resources, Inc. (WRI) tendered for filing cost data in support of a contractual discount rate contained in an Agreement on Prepayment and Security dated April 23, 1993, between WRI, Kansas Gas and Electric Company, and Oklahoma Municipal Power Authority. WRI states that upon acceptance, the parties intend to implement the prepayment provisions of that Agreement prior to March 31, 1994. This filing is proposed to become effective November 1, 1993.

A copy of this filing was served upon Kansas Gas and Electric Company, Oklahoma Municipal Power Authority, and the Kansas Corporation Commission.

Comment date: October 28, 1993, in accordance with Standard Paragraph E at the end of this notice.

5. Florida Power & Light Co.

[Docket No. ER93–507–000]

Take notice that on October 8, 1993, Florida Power & Light Company (FPL) tendered for filing Amendment Number Three to the Long-Term Agreement to Provide Capacity and Energy by FPL to the City Electric System of the Utility Board of the City of Key West, Florida and Supplemental Prepared Direct Testimony of one of FPL's witnesses

FPL states that the amended filing is in accordance with section 35 of the Commission's regulations

Comment date: October 28, 1993, in accordance with Standard Paragraph E at the end of this notice.

6. Niagara Mohawk Power Corp.

[Docket No. ER93–944–000]

Take notice that Consolidated Edison Company New York, Inc. (Con Edison) on October 8, 1993, tendered for filing a Certificate of Concurrence in Docket No. ER93–944–000. In this docket, Niagara Mohawk Power Corporation (Niagara Mohawk) filed a transmission service agreement pursuant to which Con Edison and Niagara Mohawk provide interruptible wheeling service to one another.

Con Edison requests that November 10, 1993, be allowed as the effective date of the filing.

Copies of Con Edison's filing were served upon the Public Service Commission of the State of New York and Niagara Mohawk.

Comment date: October 28, 1993, in accordance with Standard Paragraph E at the end of this notice.

7. Columbus Southern Power

[Docket No. ER93–637–000]

Take notice that on September 24, 1993, American Electric Power Service Corporation, on behalf of Columbus Southern Power Company tendered for filing a request for a one-month deferral of action in the above referenced docket.

A copy of this filing was served upon the City of Columbus, Ohio, American Municipal Power-Ohio Inc., and the Public Utility Commission of Ohio.

Comment date: October 28, 1993, in accordance with Standard Paragraph E at the end of this notice.

8. Louis Dreyfus Electric Power Co.

[Docket No. ER92–850–003]

Take notice that on May 6, 1993, Louis Dreyfus Electric Power Company tendered for filing its compliance filing in the above-referenced docket.,

Comment date: October 28, 1993, in accordance with Standard Paragraph E at the end of this notice.

9. New York State Electric & Gas Co.

[Docket No. ER94–11–000]

Take notice that on October 7, 1993, New York State Electric & Gas Corporation (NYSEG) tendered for filing an amendment to its Rate Schedule FERC No. 112, an agreement for the installation, ownership and maintenance by NYSEG of certain facilities at its Coopers Corners and Fraser Substations in connection with the construction by the Power Authority of the State of New York (NYPA) of its Marcy-south Transmission Lines. The

amendment consists of a letter agreement between NYSEG and NYPA and revises the payment schedule and otherwise updates and modifies the rates under Rate Schedule FERC No. 112. NYSEG has requested waiver of the notice requirements so that the amendment can be made effective as of July 1, 1993.

NYSEG states that a copy of the amendment has been served upon NYPA and upon the Public Service Commission of the State of New York.

Comment date: October 28, 1993, in accordance with Standard Paragraph E at the end of this notice.

10. Northeast Utilities Service Co.

[Docket No. ER94-10-000]

Take notice that on Northeast Utilities Service Company (NUSCO), on October 7, 1993, tendered for filing a Service Agreement to provide non-firm transmission service to New England Power Company (NEP) under the NU System Companies' Transmission Service Tariff No. 2.

NUSCO states that a copy of the filing has been mailed to NEP.

Comment date: October 28, 1993, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-25827 Filed 10-20-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP93-616-000]

Tennessee Gas Pipeline Co.; Intent to Prepare an Environmental Assessment for the Conesville Lateral Project and Request for Comments on its Scope

October 15, 1993.

Summary

Notice is hereby given that the staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) on the facilities proposed in the above-referenced docket pertaining to the Conesville Lateral Project.

On August 3, 1993, Tennessee Gas Pipeline Company (Tennessee) filed an application, pursuant to section 7(c) of the Natural Gas Act, requesting a certificate of public convenience and necessity for authorization to construct and operate about 16.7 miles of new pipeline and associated data acquisition and control equipment.

The purpose of the project is to provide up to 117,000 dekatherms of natural gas per day to Columbus Southern Power Company's existing Conesville power plant.

Tennessee intends to complete construction and place the proposed facilities in service by January 1, 1995.[1] The total estimated cost of the proposed facilities is $7,180,178.

By this notice, the FERC staff is requesting written comments on the scope of the issues it will address in the EA. All comments received are taken into account during the preparation of the EA. Comments should focus on potential environmental effects and measures to mitigate adverse impact. Written comments must be submitted by November 15, 1993, in accordance with the "Comment Procedures" discussed at the end of this notice.

Proposed facilities

The general location of the facilities is shown on the attached map.[2] Tennessee proposes to construct 16.7 miles of 14-inch-diameter pipeline. The proposed route would begin where Tennessee's existing pipeline crosses Brush Run Road in Guernsey County, Ohio. The pipeline would end about 1.7 miles southeast of Conesville, on the west side of Wills Creek in Coshocton County, Ohio. Natural Gas & Fuel Corporation (National), a local distribution company, would construct a 2-mile pipeline to connect the Conesville Lateral with the power plant. National's pipeline will not be analyzed in this EA. Tennessee would install its data acquisition and control equipment within facilities constructed by National.

Construction Procedures

The proposed pipeline requires, in general, a 75-foot-wide construction right-of-way.

Construction of the pipeline would follow standard pipeline construction methods such as right-of-way clearing and grading, trenching, pipe stringing, bending, welding, joint coating, and lowering in; backfilling of the trench; and cleanup and restoration. Tennessee proposes to implement erosion control and revegetation measures and to use special construction techniques for wetland and water crossings. a detailed discussion of these construction procedures and mitigation plans will be in the EA.

Tennessee would hydrostatically test the new pipeline before placing it in service according to U.S. Department of Transportation minimum safety standards and specifications. Tennessee would not use chemicals during testing. Tennessee would obtain appropriate Federal and state discharge permits before testing.

Current Environmental Issues

The EA will address the environmental concerns identified by the FERC staff, intervenors, and concerned resource agencies and individuals. The following issues have been identified for consideration in the EA:

Geology and Soils:
- —Erosion control.
- —Geological hazards.
- —Impact on exploitable mineral resources such as sand, gravel, and coal.
- —Effect on cropland.
- —Right-of-way restoration, revegetation, and maintenance.

Water Resources:
- —Effect on potable water supplies.
- —Effect on surface water quality.
- —Effect on wetland hydrology.

Biological Resources:
- —Impact on wetlands.
- —Impact on forest lands.
- —Impact of habitat alteration.
- —Short- and long-term effects of right-of-way clearing and maintenance.

[1] The Conesville power plant is being converted to allow the burning of natural gas during periods of peak electric demand in order to comply with the 1990 amendments to the Clean Air Act (Amendments). American Electric Power Corporation and its subsidiary, Columbus Southern's system, must be in compliance with the Amendments starting January 1, 1995.

[2] The map referenced in this notice is not printed in the **Federal Register**, but was sent to all those receiving this notice. Copies are also available from the Commission's Public Reference Branch, room 3104, 941 North Capitol Street, NE., Washington, DC 20426 or call (202) 208-1371.

—Impact on threatened and endangered species.
—Impact on fisheries.

Cultural Resources:
—Effect of the project on properties listed on or eligible for listing on the National Register of Historic Places.

Land Use:
—Impact on residences.
—Use of existing rights-of-way for pipeline construction and operation.
—Impact on crossing known and potential hazardous waste sites.

Alternatives:
—Route variations to avoid sensitive areas.

Comment Procedures

The FERC staff has sent a copy of this notice and request for comments on environmental issues to Federal, state and local environmental agencies, parties to this proceeding, and the public. File your comments on the scope of the EA as soon as possible but no later than November 15, 1993. All written comments must reference Docket No. CP93–618–000 and be sent to: Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

A copy of the comments should also be sent to: Ms. Laura Turner, Environmental Project Manager, Federal Energy Regulatory Commission, Room 7312, 825 North Capitol Street, NE., Washington, DC 20426.

Support comments recommending that the FERC staff address specific environmental issues with a detailed explanation of the need to consider such issues.

The FERC staff's EA will be an independent analysis of the proposal and, together with the scoping comments received, will constitute part of the record for consideration by the Commission in this proceeding. The EA may be offered as evidentiary material if an evidentiary hearing is held in this proceeding. In the event that an evidentiary hearing is held, anyone not previously a party to this proceeding and wishing to present evidence on environmental or other matters must first file a motion to intervene with the Secretary of the Commission, pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214).

Organizations, landowners, and other individuals receiving this notice have been selected to ensure public awareness of the Conesville Lateral Project and public involvement in the review process under the National Environmental Policy Act.

Additional information about the proposal, including detailed route maps for specific locations, is available from Ms. Laura Turner, telephone (202) 208–0916.

Lois D. Cashell,

Secretary.

[FR Doc. 93–25826 Filed 10–20–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP92–717–001, et al.]

Texas Eastern Transmission Co., et al.; Natural Gas Certificate Filings

October 14, 1993.

Take notice that the following filings have been made with the Commission:

1. Texas Eastern Transmission Corp.

[Docket No. CP92–717–001]

Take notice that on October 1, 1993, Texas Eastern Transmission Corporation (Applicant), 5400 Westheimer Court, Houston, Texas 77056–5310, filed pursuant to section 7(c) of the Natural Gas Act, an amendment to its September 21, 1992, application for a certificate of public convenience and necessity in Docket No. CP92–717–000.

By this amendment Applicant requests authorization to delay the requested in service date from November 1, 1994 to November 1, 1996. Applicant states that this change is needed because of changes in the scope of certain projects. Applicant continues to request the same compression facility increases proposed in Docket No. CP92–717–000.

Comment date: November 4, 1993, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

2. Texas Eastern Transmission Corp.

[Docket No. CP92–719–001]

Take notice that on September 1, 1993 Texas Eastern Transmission Corporation (Applicant), 5400 Westheimer Court, Houston, Texas 77056–5310, filed pursuant to section 7(c) of the Natural Gas Act, an amendment to its September 21, 1992, application for a certificate of public convenience and necessity in Docket No. CP92–719–000.

This amendment reflects the changes to Applicant's proposal in Docket No. CP92–719–000 as a result of revising the targeted in-service date in the Liberty Project from November 1, 1994, to November 1, 1995, and phasing the original construction and transportation over a two-year period. This amendment describes the Phase I facilities proposed for Applicant's system to transport volumes from Lebanon, Ohio, to Leidy, Pennsylvania.

By this Amendment, Applicant also proposes to provide firm transportation services commencing on November 1, 1995, (Phase I) and November 1, 1996 (Phase II) for the following shippers:

Dth/day

Shipper	Phase I	Phase II	Total
Consolidated Edison Company of New York, Inc	18,630	19,974	38,604
The Brooklyn Union Gas Company	0	20,980	20,980
Long Island Lighting Company	19,134	19,469	38,603
KIAC Partners	16,113	0	16,113
Nissequogue Cogen Partners	1,511	0	1,511
Total	55,388	60,423	115,511

Applicant's Phase I facilities are estimated to cost $55,125,400. The proposed Phase I facilities include:

(a) Approximately 5,350 HP of additional compression at its Lebanon Compressor Station, Ohio;

(b) New impellers at its Five Points Compressor Station, Ohio;

(c) Approximately 11.5 miles of 30" pipeline loop between Five Points, Ohio, and Somerset, Ohio;

(d) Approximately 3.25 miles of 36" pipeline loop between Somerset, Ohio, and Somerfield, Ohio;

(e) Approximately 4.44 miles of 36" pipeline loop between Holbrook, Pennsylvania, and Uniontown, Pennsylvania;

(f) Approximately 4 miles of 36" pipeline loop between Delmont, Pennsylvania, and Aramargh, Pennsylvania;

(g) Approximately 3 miles of 36" pipeline loop between Lilly,

Pennsylvania, and Entriken, Pennsylvania;

(h) Station piping modification and one impeller at the Perulack Compressor Station, Pennsylvania;

(i) A new metering and regulating station at the proposed interconnection of Texas Eastern Transmission Corporation's and Transcontinental Gas Pipe Line Corporation's pipelines near Leidy, Pennsylvania.

Due to this change of facilities the Applicant proposes rates different from those in the original application. The initial rates proposed for Phase I service under Schedule FTS–9 area:

Rate Per Dekatherm	
Reservation Charge	$18.683
Authorized Overrun Charge	$0.6143

By supplement to this amendment filed on October 1, 1993, Applicant stated that Phase II facilities are estimated to cost $59,540,000 and would include the following:

(a) Approximately 6.29 miles of 30" pipeline loop between Lebanon, Ohio and Five Points, Ohio;

(b) Approximately 1,650 HP of additional compression at Applicant's Five Points Compressor Station, Ohio;

(c) Approximately 6.73 miles of 30" pipeline loop between Five Points, Ohio, and Somerset, Ohio;

(d) Approximately 4.34 miles of 36" pipeline loop between Berne, Ohio, and Holbrook, Pennsylvania;

(e) Approximately 3.35 miles of 36" pipeline loop between Holbrook, Pennsylvania, and Uniontown, Pennsylvania;

(f) Approximately 3.55 miles of 36" pipeline loop between Delmont, Pennsylvania, and Armagh, Pennsylvania;

(g) Approximately 3.59 miles of 36" pipeline loop between Lily, Pennsylvania, and Entriken, Pennsylvania;

(h) Approximately 4,600 HP of new compression at the Leidy Compressor Station, Pennsylvania.

The initial rates for Phase II service under Schedule FTS–9 are:

Rate Per Dekatherm	
Reservation Charge	$18.094
Authorized Overrun Charge	$0.5949

The Commission staff will convene a technical conference, if necessary, after expiration of the protest/intervention period to allow all active parties the opportunity to identify and address substantive, non-environmental issues.

3. Liberty Pipeline Co.

[Docket No. CP92–715–001]

Take notice that on September 1, 1993, Liberty Pipeline Company (Applicant), Transco Tower, 2800 Post Oak Boulevard, Houston, Texas 77056, filed pursuant to section 7(c) of the Natural Gas Act, an amendment to its September 21, 1992 application for a certificate of public convenience and necessity in Docket No. CP92–715–000.

By this Amendment the applicant is proposing an in-service date of November 1, 1995 and an increase in the estimated cost of the project. Capitol costs are estimated to change from $152.2 million to $162.2 million. The change in these costs reflects Applicant's revised in-service date. The Amendment has new rates to reflect these increased costs. Applicant proposes to charge a Reservation Rate of $6.4573 (per month per Dth of MDQ) for its FT Rate Schedule and a Commodity Rate of $0.2123 per Dth for its IT Rate Schedule.

Those pipelines proposing facilities for transportation upstream of Applicant are also filing amendments to their applications requesting a phased pattern of construction for the Liberty Project.

The Commission staff will convene a technical conference, if necessary, after expiration of the protest/intervention period to allow all active parties the opportunity to identify and address substantive, non-environmental issues.

Comment date: November 4, 1993, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

4. Transcontinental Gas Pipe Line Corp.

[Docket No. CP92–721–001]

Take notice that on September 1, 1993, Transcontinental Gas Pipe Line Corporation (Applicant), Post Office Box 1396, Houston, Texas 77251, filed, pursuant to section 7(c) of the Natural Gas Act, an amendment to its applications for a certificate of public convenience and necessity filed on September 21, 1992 in Docket No. CP92–721–000.

In this Amendment applicant seeks Commission authorization to delay the proposed in-service date to November 1, 1995, and to construct the proposed facilities in two phases.

By this Amendment Applicant proposes to provide firm transportation services commencing on November 1, 1995 (Phase I) and November 1, 1996 (Phase II) for the following shippers:

MCF/DAY

Shipper	Phase I	Phase II	Total
Consolidated Edison Company of New York, Inc	18,500	19,834	38,334
The Brooklyn Union Gas Company	0	20,833	20,833
Long Island Lighting Company	19,000	19,333	38,333
KIAC Partners	16,000	0	16,000
Nissequogue Cogen Partners	1,500	0	1,500
Total	55,000	60,000	115,000

The construction of the proposed facilities is planned to be undertaken in two phases. The Phase I facilities are proposed to be constructed during the 1995 construction season with a proposed in-service date of November 1, 1995. The Phase II facilities are proposed to be constructed during the 1996 construction season with a proposed in-service date of November 1, 1996. In order to provide firm transportation for 55,000 Mcf/day, proposed to be in service by November 1, 1995, Applicant proposes the following facilities:

1. New 16-inch tap on 36-inch Leidy Storage Field Header at M.P. 194.06, to receive volumes from Texas Eastern Transmission Corporation in Clinton County, Pennsylvania;

2. 6.67 mile 36-inch Leidy Loop from M.P. 142.74—M.P. 149.41 in Lycoming County, Pennsylvania;

3. 1.10 mile 26-inch pipeline segment from the existing M&R Station in Morgan, New Jersey northward to a proposed M&R Station near South Amboy, New Jersey;

4. New Delivery Point, including an M&R Station near South Amboy, New Jersey.

In order to provide firm transportation of 60,000 Mcf/day proposed to be in service by November 1, 1996, for a total expansion of 115,000 Mcf/day,

Applicant proposes the following facilities;

1. 10.51 mile 36-inch Leidy Loop from M.P. 161.29—M.P. 171.80 in Lycoming and Clinton Counties, Pennsylvania;

2. 12,000 HP of additional compression and "A" Line regulator at Station 205 at M.P. 1773.40 in Lawrence Township, New Jersey;

3. Regulator Station Expansion at Milltown Regulator Station M.P. 1790.84, North Brunswick, New Jersey.

The total estimated cost for this project is higher than the cost originally filed in Docket No. CP92–721–000 because Applicant has adjusted the cost of the facilities to reflect the anticipated increase caused by phasing the construction and by revising the in-service dates of the project. The Phase I facilities are estimated to cost $29,412,000 and the Phase II facilities are estimated to cost $48,217,000, for a total revised project cost of $77,629,000.

Upon placing the Phase I facilities into service, Applicant proposes to charge an initial monthly reservation rate of $8.4025 per Mcf. Upon placing the Phase II facilities into service. Applicant proposes to charge all shippers a monthly reservation rate of $10.7083 per Mcf for the total service level of 115,000 Mcf per day.

The Commission staff will convene a technical conference, if necessary, after expiration of the protest/intervention period to allow all active parties the opportunity to identify and address substantive, non-environmental issues.

Comment date: November 4, 1993, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

Texas Gas Transmission Corp.

[Docket No. CP92–730–001]

Take notice that on September 1, 1993, Texas Gas Transmission Corporation (Applicant), Post Office Box 1160, Owensboro, Kentucky 42302, filed pursuant to section 7(c) of the Natural Gas Act, an amendment to its September 24, 1992, application for a certificate of public convenience and necessity in Docket No. CP92–730–000.

In this Amendment, applicant seeks Commission authorization to delay the proposed in-service date to November 1, 1995, and to construct the proposed facilities in two phases.

By this Amendment, Applicant proposes to provide firm transportation services commencing on November 1, 1995, (Phase I) and November 1, 1996 (Phase II) for the following shippers:

MMBTU/DAY

Shipper	Phase I	Phase II	Total
Consolidated Edison Company of New York, Inc.	7,238	26,876	34,114
Long Island Lighting Company	7,238	26,876	34,114
Brooklyn Union Gas Company	0	17,739	17,739
KIAC Partners	16,543	(168)	16,375
Total	31,019	71,323	102,342

The construction of the proposed facilities is planned to be undertaken in two phases. The Phase I facilities are proposed to be constructed during the 1995 construction season with a proposed in-service date of November 1, 1995. The Phase II facilities are proposed to be constructed during the 1996 construction season with a proposed in-service date of November 1, 1996.

In order to provide firm transportation service of 31,019 MMBtu/day, starting November 1, 1995, Applicant states that it needs the following facilities:

1. 3.50 miles of 36-inch pipeline looping beginning at the north end of the existing 36-inch No. 1 line, Mile 473+1755, and extending northward to Mile 476+4393, Webster and Hopkins Counties, Kentucky;

2. 1.60 miles of 36-inch pipeline looping, beginning at the north end of the existing 36-inch No. 1 line, Mile 570+3900, and extending northward to Mile 572+1790, Jefferson County, Kentucky;

3. 3.70 miles of 36-inch pipeline looping, beginning at the north end of the existing 36-inch No. 1 line, Mile 600+3278, and extending northward to Mile 604+1695, Oldham County, Kentucky;

4. 2.30 miles of 36-inch pipeline looping, beginning at the south end of the existing 36-inch No. 1 line, Mile 704+1969, and extending southward to Mile 702+0385, Butler County, Ohio;

In order to provide firm transportation service of 71,323 MMBtu/day starting November 1, 1996, for a total expansion of 102,342 MMBtu/day, Applicant proposes the following facilities;

1. 6.25 miles of 36-inch pipeline looping, beginning at Mile 480+4509, and extending to Mile 487+0548, McLean County, Kentucky;

2. 4.18 miles of 36-inch pipeline looping, beginning at Mile 575+1200, and extending northward to Mile 579+2139, Jefferson County, Kentucky;

3. 8.24 miles of 36-inch pipeline looping, beginning at Mile 608+2223, and extending northward to Mile 616+3500, Oldham and Trimble Counties, Kentucky;

4. 2.79 miles of 36-inch pipeline looping, beginning at the Dillsboro Compressor Station, Mile 657+0079, and extending northward to Mile 659+4253, Dearborn County, Indiana;

5. 4.41 miles of 36-inch pipeline looping, beginning at Mile 697+4609, and extending the line southward to Mile 693+2451, Butler County, Ohio;

The Phase I facilities are estimated to cost $16,050,000, and the Phase II facilities are estimated to cost $43,360,000. The total revised project cost of $59,410,000. The Applicant proposes to charge a Zone SL–4 rate and a Zone 1–4 rate.

Zone SL–4

Demand Charge—$9.77

Commodity Charge—$.0411

Zone 1–4

Demand Charge—$8.47

Commodity Charge—$.0386

The Commission staff will convene a technical conference, if necessary after expiration of the protest/intervention period to allow all active parties the opportunity to identify and address substantive, non-environmental issue.

Comment date: November 4, 1993, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

6. Texas Eastern Transmission Corp.

[Docket No. CP92–720–001]

Take notice that on September 1, 1993 Texas Eastern Transmission Corporation (Applicant), 5400 Westheimer Court, Houston, Texas 77056–5310, filed pursuant to section 7(c) of the Natural Gas Act, an amendment to its September 21, 1992 application for a certificate of public convenience and necessity in Docket No. CP92–720–000.

This amendment reflects the changes to Applicant's proposal in Docket No. CP92–720–000 as a result of revising the targeted in-service date in the Liberty Project from November 1, 1994, to

November 1, 1995, and phasing the original construction and transportation over a two-year period. This amendment describes the Phase I facilities proposed for Applicant's system to transport volumes from Lebanon, Ohio, to South Amboy, New Jersey.

By this Amendment, Applicant also proposes to provide firm transportation services commencing on November 1, 1995 (Phase I) and November 1, 1996 (Phase II) for the following shippers:

DTH/DAY

Shipper	Phase I	Phase II	Total
Consolidated Edison Company of New York, Inc	8,500	28,166	36,666
The Brooklyn Union Gas Company	10,500	9,833	20,333
Long Island Lighting Company	8,000	20,334	28,334
Power Authority of the State of New York	35,000	0	35,000
Nissequogue Cogen Partners	8,000	0	8,000
Total	70,000	58,333	128,333

Applicant's Phase I facilities are estimated to cost $115,170,400. The proposed Phase I facilities include:

(a) approximately 8 miles of 30" pipeline loop between Five Points, Ohio, and Somerset, Ohio;

(b) approximately 1,650 HP of additional compression at its Somerset Compressor Station;

(c) approximately 3 miles of 36" pipeline loop between Somerset, Ohio, and Summerfield, Ohio;

(d) approximately 6,500 HP of additional compression at its Holbrook Compressor Station, Pennsylvania;

(e) approximately 1,650 HP of additional compression at its Uniontown Compressor Station, Pennsylvania;

(f) approximately 6.5 miles of 36" pipeline loop between Uniontown, Pennsylvania, and Bedford, Pennsylvania;

(g) approximately 6 miles of 36" pipeline loop between Bedford, Pennsylvania, and Chambersburg, Pennsylvania;

(h) approximately 11,000 HP of additional compression at its Marietta Compressor Station, Pennsylvania;

(i) approximately 1.52 miles of 42" pipeline loop between Lambertville, New Jersey, and Linden, New Jersey;

(j) approximately 11.7 miles of 24" pipeline connecting Texas Eastern Transmission Corporation's existing pipeline system in South Plainfield, New Jersey, to an interconnection with Liberty's proposed pipeline near South Amboy, New Jersey;

(k) one new meter and regulating station near South Amboy, New Jersey, for deliveries into the Liberty Pipeline Company's facility.

Due to this change of facilities, the Applicant proposes rates different from those in the original application. The initial rates proposed for Phase I service under Schedule FTS–6 are:

Rate Per Dekatherm	
Reservation Charge	$26.006
Authorization Overrun Charge	$0.8550

By supplement to this amendment filed on October 1, 1993, Applicant stated that Phase II facilities are estimated to cost $70,044,000 and would include the following:

(a) approximately 3.19 miles of 24" pipeline loop and 10 miles of 30" pipeline loop between Lebanon, Ohio, and Five Points, Ohio;

(b) approximately 5.5 miles of 30" pipeline loop between Five Points, Ohio, and Somerset, Ohio;

(c) upgrade station piping at the Somerset Compressor Station, Ohio;

(d) approximately 4,500 HP of additional compression at its Holbrook Compressor Station, Ohio;

(e) approximately 2 miles of 36" pipeline loop between Holbrook, Ohio, and Uniontown, Pennsylvania;

(f) approximately 3.75 miles of 36" pipeline loop between Uniontown, Ohio, and Bedford, Pennsylvania;

(g) approximately 5.97 miles of 36" pipeline loop between Bedford, Pennsylvania, and Chambersburg, Pennsylvania;

(h) approximately 3.82 miles of 36" pipeline replacement between Eagle, Pennsylvania, and Lambertville, New Jersey;

(i) approximately 1.53 miles of 42" pipeline loop between Lambertville, New Jersey, and Linden, New Jersey.

The initial rates for Phase II service under Schedule FTS–6 are:

Rate Per Dekatherm	
Reservation Charge	$26.965
Authorized Overrun Charge	$0.8865

The Commission staff will convene a technical conference, if necessary, after expiration of the protest/intervention period to allow all active parties the opportunity to identify and address substantive, non-environmental issues.

Comment date: November 4, 1993, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

Texas Gas Transmission Corp.

[Docket No. CP92–734–001]

Take notice that on September 2, 1993, Texas Gas Transmission Corporation (Applicant), Post Office Box 1160, Owensboro, Kentucky 42302, filed pursuant to section 7(c) of the Natural Gas Act, an amendment to its September 25, 1992 application for a certificate of public convenience and necessity in Docket No. CP92–734–000.

In this Amendment applicant seeks Commission authorization to delay the proposed in-service date to November 1, 1995, and to construct facilities different than those originally proposed.

By this Amendment Applicant proposes to provide firm transportation services commencing on November 1, 1995 for The Power Authority of the State of New York (NYPA) in the amount of 35,461 MMBtu/day. This amount would decrease to 35,247 MMBtu/day on November 1, 1996.[1] Applicant states that these volumes reflect a change in the fuel required to transport NYPA's gas through Texas Eastern Transmission Corporation's system.

Applicant also proposes to reposition the looping described in Docket No. CP92–734–000 in order to avoid complications along the pipeline route. Applicant states that these include urban congestion in Jefferson County, Kentucky and rough terrain in Ohio County, Kentucky. To provide service to

[1] Applicant states that the quantity of gas it delivers to Texas Eastern Transmission Corporation at Lebanon, Ohio, for NYPA's account decreases on November 1, 1996, because the mix of pipeline and compression is different at the beginning of each winter season. Texas Eastern Transmission Corporation is installing a greater proportion of compression to begin the 1995 winter and a greater proportion of pipeline to begin the 1996 winter.

NYPA Applicant now proposes the following facilities:

1. 3.18 miles of 36-inch looping, beginning at Mile 476+4393, and extending northward to Mile 480+4509;

2. 2.89 miles of 36-inch pipeline looping, beginning at Mile 572+1790 and extending northward to Mile 575+1200, Jefferson County, Kentucky;

3. 4.10 miles of 36-inch pipeline looping, beginning at Mile 604+695, and extending northward to Mile 608+2223, Oldham County, Kentucky;

4. 4.20 miles of 36-inch pipeline looping, beginning at Mile 702+0385, and extending southward to Mile 697+4609, Butler County, Ohio.

The total cost of these facilities is estimated to be $20,900,000. The Applicant proposes to charge a Zone SL–4 rate and a Zone 1–4 rate.

Zone SL–4
Demand Charge—$9.77
Commodity Charge—$.0411
Zone 1–4
Demand Charge—$8.47
Commodity Charge—$.0386

The Commission staff will convene a technical conference, if necessary, after expiration of the protest/intervention period to allow all active parties the opportunity to identify and address substantive, non-environmental issues.

Comment date: November 4, 1993, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93–25828 Filed 10–20–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ES91–47–001]

Iowa Electric Light and Power Co.; Amended Application

October 15, 1993.

Take notice that on October 14, 1993, Iowa Electric Light and Power Company (Iowa Electric) filed an amendment to said application with the Commission seeking an extension to November 30, 1993, of the period during which Iowa Electric may, in accordance with the terms and conditions set forth in the Commission's Letter Order, issued August 20, 1991, authorizing the issuance of not more than $100 million of First Mortgage Bonds and guarantee not more than $17 million of Tax-Exempt Bonds, over a two-year period.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before October 28, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–25825 Filed 10–20–93; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4793–1]

Access to Confidential Business Information By Booz-Allen, & Hamilton, Inc.

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: EPA is authorizing Booz-Allen, & Hamilton to conduct reviews of selected Superfund recipients' procurement, property, financial, and general administrative management systems. During the review of these systems, the contractor will have access to information which has been submitted to EPA under section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Some of this information may be claimed or determined to be Confidential Business Information (CBI).

DATES: The contractor (Booz-Allen, & Hamilton, Inc.) will have access to this data five working days from the date of this notice.

ADDRESSES: Send or deliver written comments to Richard A. Johnson, Grants Policy and Procedures Branch, Grants Administration Division (3903F), 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Richard A. Johnson, Grants Policy and Procedures Branch, Grants Administration Division, 401 M St. SW., Washington, DC 20460. Telephone (202) 260–5268.

SUPPLEMENTARY INFORMATION: Under Contract 68–W3–0002, Delivery Order 004, Booz-Allen, & Hamilton, Inc., will be conducting on-site technical assistance reviews of the Superfund financial, property, procurement, and administrative systems in the States of Illinois and Montana, and of the Puallup Indian Tribal Government to determine whether their systems comply with EPA regulations and policies. These reviews involve conducting transaction testing to evaluate recipient conformance with applicable regulations and acceptable business practices and documenting findings. The contractor will examine transactions for the following:

(1) *Expenditures.* Review expenditure documentation such as expense reports, time sheets, and purchase requests from the point of origination to the point of payment to determine compliance with such requirements as site-specific accounting data, authorizing signature, and reconciliation of time sheets to expense reports;

(2) *Financial Reports.* Review financial drawdowns, Financial Status Reports, and internal status reports to determine if information is consistent between these documents, if recipient is properly using information, and if the reports are submitted when required;

(3) *Procurement Transactions.* Review a sample of bid requests and/or requests for proposals, and the resulting contracts to determine compliance with Superfund procurement requirements;

(4) *Property.* Review a sample of property purchased in whole or in part with Superfund money (including how the property was used) to determine the degree of compliance with Superfund property requirements to acquire, manage, and dispose of the property; and

(5) *Recordkeeping Procedures.* Review a sample of Superfund documentation to determine the effectiveness of the recipient procedures to manage and reconcile this documentation (focusing on site-specific documentation, retention schedules, and the ability of the recipient to provide EPA with required financial documentation for cost recovery purposes in the specified time frame).

In providing this support, Booz-Allen, & Hamilton, Inc., employees may have access to recipient documents which potentially include financial documents submitted under section 104 of CERCLA, some of which may contain information claimed or determined to be Confidential Business Information.

Pursuant to EPA regulations at 40 CFR part 2, subpart B, EPA has determined that Booz-Allen, & Hamilton, Inc., requires access to Confidential Business Information to provide the support and services required under this Delivery Order. These regulations provide for five working days notice before contractors are given access to CBI.

Booz-Allen, & Hamilton, Inc., will be required by contract to protect confidential information. These documents are maintained in recipient office and file space.

Dated: October 15, 1993.

Sallyanne Harper,

Acting Assistant Administrator for Administration and Resources Management.

[FR Doc. 93–25929 Filed 10–20–93; 8:45 am]

BILLING CODE 6560–50–M

[OPP–180903; FRL–4645–6]

Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the control of various pests to the 21 States as listed below. There were also 14 crisis exemptions initiated by various States. These exemptions, issued during the months of June and July 1993, are subject to application and timing restrictions and reporting requirements designed to protect the environment to the maximum extent possible. EPA has denied specific exemption requests from the Arizona, Minnesota, Nebraska, and North Carolina Departments of Agriculture. Information on these restrictions is available from the contact persons in EPA listed below.

DATES: See each specific and crisis exemption for its effective date.

FOR FURTHER INFORMATION CONTACT: See each emergency exemption for the name of the contact person. The following information applies to all contact persons: By mail: Registration Division (H7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, CS #1, 2800 Jefferson Davis Highway, Arlington, VA, (703–308–8417).

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the:

1. Arizona Department of Agriculture for the use of bifenthrin on melons to control the sweet potato whitefly; June 30, 1993, to May 19, 1994. (Andrea Beard)

2. California Environmental Protection Agency, Department of Pesticide Regulation, for the use of myclobutanil on strawberries to control powdery mildew; July 28, 1993, to July 27, 1994. (Susan Stanton)

3. California Environmental Protection Agency, Department of Pesticide Regulation, for the use of methyl bromide on carrots to control nematodes; July 30, 1993, to July 29, 1994. (Libby Pemberton)

4. California Environmental Protection Agency, for the use of hexakis on watermelons to control mites; July 23, 1993, to October 15, 1993. (Andrea Beard)

5. California Environmental Protection Agency, Department of Pesticide Regulation, for the use of myclobutanil on tomatoes to control powdery mildew; June 18, 1993, to June 17, 1994. California had initiated a crisis exemption for this use. (Susan Stanton)

6. California Environmental Protection Agency for the use of cypermethrin on dry-bulb onions to control thrips; June 18, 1993, to September 30, 1993. (Andrea Beard)

7. Colorado Department of Agriculture for the use of lambda cyhalothrin on dry-bulb onions to control thrips; June 9, 1993, to September 15, 1993. Colorado had initiated a crisis exemption for this use. (Andrea Beard)

8. Georgia Department of Agriculture for the use of permethrin on southern peas to control the cowpea curculio; June 4, 1993, to October 31, 1993. (Andrea Beard)

9. Hawaii Department of Agriculture for the use of hydramethylonon on pineapples to control big-headed and Argentina ants; June 10, 1993, to June 9, 1994. (Libby Pemberton)

10. Idaho Department of Agriculture for the use of lambda cyhalothrin on dry-bulb onions to control thrips; June 9, 1993, to September 1, 1993. (Andrea Beard)

11. Kansas State Board of Agriculture for the use of bifenthrin on corn to control mites; July 2, 1993, to September 15, 1993. (Andrea Beard)

12. Louisiana Department of Agriculture and Forestry for the use of cyfluthrin on sugarcane to control the sugarcane borer; July 12, 1993, to September 15, 1993. (Libby Pemberton)

13. Maryland Department of Agriculture for the use of clomazone on snap beans, watermelons, and cucumbers to control annual broadleaf and grassweeds; June 15, 1993, to August 31, 1993. (Libby Pemberton)

14. Michigan Department of Agriculture for the use of cypermethrin on dry-bulb onions to control thrips; June 18, 1993, to September 1, 1993. (Andrea Beard)

15. Minnesota Department of Agriculture for the use of triclopyr on aquatic sites to control purple loopestrife; July 19, 1993, to September 30, 1993. (Libby Pemberton)

16. Nebraska Department of Agriculture for the use of bifenthrin on corn to control mites; July 2, 1993, to September 15, 1993. (Andrea Beard)

17. New Mexico Department of Agriculture for the use of bifenthrin on corn to control mites; July 2, 1993, to September 15, 1993. (Andrea Beard)

18. New Mexico Department of Agriculture for the use of cypermethrin on dry-bulb onions to control thrips; June 18, 1993, to July 31, 1993. New Mexico had initiated a crisis exemption for this use. (Andrea Beard)

19. New York Department of Environmental Conservation for the use of vinclozolin on snap beans to control gray and white molds; June 18, 1993, to September 30, 1993. (Libby Pemberton)

20. North Dakota Department of Agriculture for the use of sethoxydim on crambe to control volunteer grains; July 19, 1993, to July 31, 1993. North Dakota

had initiated a crisis exemption for this use. (Susan Stanton)

21. Oklahoma Department of Agriculture for the use of bifenthrin on field corn to control mites; July 28, 1993, to August 25, 1993. (Andrea Beard)

22. Oregon Department of Agriculture for the use of lambda cyhalothrin on dry-bulb onions to control thrips; June 9, 1993, to November 1, 1993. (Andrea Beard)

23. Oregon Department of Agriculture for the use of bifenthrin on raspberrries to control weevils; June 10, 1993, to August 15, 1993. (Andrea Beard)

24. Oregon Department of Agriculture for the use of vinclozolin on snap beans to control gray and white molds; June 18, 1993, to September 10, 1993. (Libby Pemberton)

25. Pennsylvania Department of Agriculture for the use of vinclozolin on snap beans to control gray and white molds; June 18, 1993, to October 31, 1993. (Libby Pemberton)

26. Texas Department of Agriculture for the use of esfenvalerate on sorghum to control sorghum midge/headworms; June 10, 1993, to September 30, 1993. (Libby Pemberton)

27. Texas Department of Agriculture for the use of chlorothalonil on mushrooms to control *verticillium* diseases; July 1, 1993, to June 30, 1994. (Susan Stanton)

28. Texas Department of Agriculture for the use of bifenthrin on corn to control mites; July 2, 1993, to September 15, 1993. (Andrea Beard)

29. Texas Department of Agriculture for the use of cyromazine on peppers (bell, chili, and jalapeno) to control vegetable leafminers; June 18 1993, to December 31, 1993. (Susan Stanton)

30. Washington Department of Agriculture for the use of lambda cyhalothrin on dry-bulb onions to control thrips; June 9, 1993, to September 1, 1993. (Andrea Beard)

31. Washington Department of Agriculture for the use of vinclozolin on snap beans to control gray and white molds; June 18, 1993, to September 30, 1993. (Libby Pemberton)

32. Washington Department of Agriculture for the use of bifenthrin on raspberries to control weevils; June 10, 1993, to August 10, 1993. (Andrea Beard)

33. Washington Department of Agriculture for the use of esfenvalerate on cranberries to control black vine weevils; June 25, 1993, to August 31, 1993. (Susan Stanton)

34. Wisconsin Department of Agriculture, Trade, and Consumer Protection for the use of cypermethrin on dry-bulb onions to control thrips; June 18, 1993, to September 30, 1993. (Andrea Beard)

35. Wisconsin Department of Agriculture, Trade, and Consumer Protection for the use of vinclozolin on green beans to control white mold; July 23, 1993, to September 15, 1993. (Libby Pemberton)

Crisis exemptions were initiated by the:

1. Arkansas State Plant Board on July 2, 1993, for the use of sodium chlorate on wheat to control weeds. This program has ended. (Susan Stanton)

2. Colorado Department of Agriculture on July 29, 1993, for the use of bifenthrin on corn to control mites. This program has ended. (Andrea Beard)

3. Iowa Department of Agriculture and Land Stewardship on July 20, 1993, for the use of propiconazole on seed corn to control foliar diseases. This program has ended. (Andrea Beard)

4. Louisiana Department of Agriculture on July 19, 1993, for the use of lambda cyhalothrin on sorghum to control sorghum midge. This program is expected to last until December 31, 1993. (Libby Pemberton)

5. Minnesota Department of Agriculture on July 21, 1993, for the use of propiconazole on corn to control foliar diseases. This program is expected to last until September 30, 1993. (Andrea Beard)

6. Montana Department of Agriculture on June 1, 1993, for the use of carbaryl on canola to control flea beetles. This program has ended. (Andrea Beard)

7. Nevada Department of Agriculture on July 6, 1993, for the use of lambda cyhalothrin on dry-bulb onions to control thrips. This program has ended. (Andrea Beard)

8. New Mexico Department of Agriculture on July 30, 1993, for the use of cyfluthrin on chili peppers to control the pepper weevil. This program will end on December 31, 1993. (Libby Pemberton)

9. North Dakota Department of Agriculture on June 23, 1993, for the use of sethoxydim on crambe to control volunteer grains. This program has ended. (Susan Stanton)

10. Ohio Department of Agriculture on July 19, 1993, for the use of cypermethrin on dry-bulb onions to control thrips. This program has ended. (Andrea Beard)

11. Oregon Department of Agriculture on June 10, 1993, for the use of chlorpyrifos on hops to control aphids. This program has ended. (Andrea Beard)

12. Texas Department of Agriculture on June 18, 1993, for the use of lambda cyhalothrin on rice to control armyworms. This program has ended. (Andrea Beard)

13. Washington Department of Agriculture on June 3, 1993, for the use of chlorpyrifos on hops to control aphids. This program has ended. (Andrea Beard)

14. Washington Department of Agriculture on July 6, 1993, for the use of chlorothalonil on rhubarb to control *Ramularia* leaf/stalk spot. This program has ended. (Susan Stanton)

EPA has denied specific exemption requests from the:

1. Arizona Department of Agriculture for the use of imidacloprid on cotton to control the sweet potato whitefly. A notice published in the **Federal Register** of June 10, 1993 (58 FR 32534), and no comments were received. Available data do not show that imidacloprid is significantly more effective at controlling the sweet potato whitefly than the currently registered alternatives. (Andrea Beard)

2. Minnesota Department of Agriculture for the use of norsulfuron on sweet corn to control wild proso millet. Since wild proso millet has been a serious weed pest in Minnesota since 1970, and the registered pesticides have never provided adequate or consistent control, EPA could not make a finding that the situation is nonroutine. (Andrea Beard)

3. Nebraska Department of Agriculture for the use of methyl 3-chloro-5-(4,6-dimethoxypyrimidin-2-yl carbamoylsulfamoyl)-1-methyl pyrazole-4-carboxylate, also known as "MON 12000" (trade name Permit) on grain sorghum to control broadleaf weeds. A notice published in the **Federal Register** of April 14, 1993 (58 FR 19426), and no comments were received. Although there is an effective registered pesticide available (atrazine) the applicant requested an exemption for use of this unregistered pesticide because of potential risk of ground and surface water contamination with atrazine. EPA believes that the regulations governing section 18 do not allow for authorization of exemptions based soley upon a determination that an unregistered pesticide is environmentally preferable to a pesticide which is registered for that use. (Andrea Beard)

4. North Carolina Department of Agriculture for the use of iprodione on apples to control alternaria blotch. The Agency has denied this emergency exemption because, under the May 7, 1993, Environmental Protection Agency (EPA) and the Food and Drug Administration (FDA) policy on the Delaney Clause and section 18 emergency exemption under FIFRA, EPA cannot find progress toward registration of iprodione on apples.

Since iprodione is likely to meet the Delaney Clause's standards for inducing cancer in animals and under existing EPA policy the use of iprodione on apples would need a food additive regulation. (Susan Stanton)

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Crisis exemptions.

Dated: September 29, 1993.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 93-25940 Filed 10-20-93; 8:45 am]

BILLING CODE 6560-50-F

[PF-582; FRL-4648-7]

Uniroyal Chemical Co.; Amended Pesticide Petition and Amended Food Additive Petition for Triflumizole

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received from the Uniroyal Chemical Co. the filing of an amendment to pesticide petition (PP) 6F3372 and food additive petition (FAP) 6H5497 proposing to establish various tolerances for residues of the fungicide triflumizole in or on various raw agricultural commodities.

ADDRESSES: By mail, submit written comments, identified by the document control number [PF-582], to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Clarence Lewis, Acting Product Manager (PM 21), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 261, CM#2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6117.

SUPPLEMENTARY INFORMATION: EPA has received from the Uniroyal Chemical Co., 74 Amity Rd., Bethany, CT, 06542-3402, an amendment to the notice of filing under section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a) for pesticide petition (PP) 6F3372 and food additive petition (FAP) 6H5497, which appeared in the Federal Register of March 19, 1986 (51 FR 9514). The original petitions are described below.

1. *PP 6F3372.* Proposed amending 40 CFR part 180 by establishing tolerances for the combined residues of the fungicide triflumizole, 1-(1-((4-chloro-2-(trifluoromethyl)phenyl)imino)-2-propoxyethyl)-1*H*-imidazole and its analine-containing metabolites 4-chloro-2-trifluoromethylaniline and *N*-(4-chloro-2-trifluoromethylaniline and *N*-(4-chloro-2-trifluoromethylphenyl)-propoxyacetamide, in or on the following commodities: apples at 0.1 part per million (ppm); cattle, fat, meat and meat byproducts (mbyp) at 0.05 ppm; grapes at 0.3 ppm; hogs, fat, meat and mbyp at 0.05 ppm; milk at 0.05 ppm; pears at 0.1 ppm; and poultry, eggs, fat, meat and mbyp at 0.05 ppm. The proposed method for determining residues is chromatography and mass spectroscopy.

2. *FAP 6H5497.* Proposed amending 21 CFR part 193 (redesignated as 40 CFR part 185) by establishing a regulation permitting the combined residues of the fungicide described in PP 6F3372 in or on the agricultural commodities as follows: apples, dried at 3.0 parts per million (ppm); apple pomace, dry at 1.0 ppm; apple pomace, wet at 3.0 ppm; grape juice at 1.0 ppm; grape pomace, dry at 1.0 ppm; grape pomace, wet at 4.0 ppm; raisins at 1.0 ppm; and raisin waste at 2.0 ppm.

Uniroyal has submitted amendments to the above-described petitions to change the chemical expression for the fungicide. Uniroyal proposes to amend PP 6F3372 and FAP 6H5497 to establish the tolerances for the combined residues of the fungicide triflumizole (1-(-((4-chloro-2-(trifluoromethyl) phenyl) imino)-2-propoxyethyl)-1*H*-imidazole), the metabolite 4-chloro-2-hydroxy-6-trifluoromethylaniline sulfate, and other metabolites containing the 4-chloro-2-trifluoromethylaniline moiety, calculated as the parent compound.

Authority: 7 U.S.C. 346a and 371.

List of Subjects

Environmental protection, Agricultural commodities, Pesticides and pests.

Dated: September 28, 1993.

Stephanie Irene,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 93-25938 Filed 10-20-93; 8:45 am]

BILLING CODE 6560-50-F

[OPP-00367; FRL-4650-2]

Subdivision F Hazard Evaluation--Humans and Domestic Animals; Proposed New Guideline Section 85-3 Dermal Absorption Studies of Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Request for comments.

SUMMARY: The Environmental Protection Agency is making available, for public comment, a revised proposed guideline for Dermal Absorption Studies of Pesticides. This revised guideline is based on the proposed guideline as presented in the Federal Register of March 13, 1991. This guideline, when final, will serve to formalize the protocol on dermal absorption that has been in experimental development since the publication of Subdivision F in October 1982. A copy of the revised guideline, a background document which provides the history and scientific rationale for the guideline and a document presenting the revisions and rationale therefore are available at the address listed below for the Public Docket and Freedom of Information Section.

DATE: Comments must be received on or before December 6, 1993.

ADDRESSES: Submit three copies of written comments, identified with the docket control number "OPP-00367" by mail to: Public Docket and Freedom of Information Section, Field Operations Division (7509C), Office of Pesticide Programs, U.S. Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. In person deliver comments to: Public Docket and Freedom of Information Section, Field Operations Division, Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305-5805.

Information submitted as a comment in response to this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information"

(CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket without prior notice. The public docket will be available for public inspection in Rm. 1132 at the address given above, from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Robert P. Zendzian, Health Effects Division (7509C), Office of Pesticide Programs, U.S. Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Office location and telephone number: Rm. 1004, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5495.

SUPPLEMENTARY INFORMATION: The Pesticide Assessment Guidelines, Subdivision F, describe protocols for performing toxicology and related tests to support registration of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Some of the tests are also used in tolerance reviews under the Federal Food, Drug, and Cosmetic Act (FFDCA). Subdivision F was proposed for public comment in 1978 and published in October 1982. At that time the Agency published the criteria for performing a dermal absorption study on a pesticide and reserved a line item, Section 85–3, for a guideline on Dermal Absorption Studies of Pesticides.

On Wednesday, March 13, 1991 a notice of request for comments on the proposed dermal absorption guideline was published in the **Federal Register** (56 FR 10556). Seven written comments were received during a 90–day comment period. Changes have been made in the proposed guideline based on these comments and information received subsequent to the **Federal Register** announcement. A background document has been prepared which presents and addresses the comments received. The modifications of the guideline are mainly explanatory, enlarging or modifying points that were found to be obscure or misleading. Some critical changes have been made in experimental design, particularly in the section on additional dermal absorption studies.

In developing this proposed guideline, the Agency has relied on data generated in a large number of dermal absorption studies performed and submitted by companies which have registered pesticides. As of April 1993 these numbered 181 submitted studies on 116 chemicals. Since this data is not available in the scientific literature, the background documents present and reference critical information supporting the proposed guideline. For these reasons, copies of both background documents are included in the information package. It is strongly recommended that both documents be read before attempting to comment on the proposed guideline. In addition to general background information, each document contains an item by item discussion of the guideline with data presented to support critical points. Individuals reviewing the proposed guideline should follow paragraph by paragraph the comments in the background documents in order to understand the rationale for the guideline.

All interested parties are encouraged to submit comments on the proposed guideline for dermal absorption itself. Specific comments should reference the specific number and paragraph or subparagraph of the proposed guideline. Recommended technical or scientific changes/modifications should be supported by current scientific/technical knowledge and include supporting references. References may be to the published literature, studies submitted to the Agency in support of registration and unpublished data. Citations must be sufficiently detailed so as to allow the Agency to obtain copies of the original documents and unpublished data supplied in sufficient detail to allow their evaluation.

Comments on the proposed guideline will be considered by the Agency and such modifications of the guideline as are considered to be of merit will be incorporated into the guideline. The draft modifications and the public comments will be presented to the FIFRA Scientific Advisory Panel at a public meeting for its comments before being published in a final form. Notice of this meeting will be published in the **Federal Register** and all interested parties will be offered the opportunity to present written and public comments to the FIFRA Scientific Advisory Panel at the public meeting.

List of Subjects

Environmental protection.

Dated: October 7, 1993.

Penelope A. Fenner-Crisp

Director, Health Effects Division, Office of Pesticide Programs.

[FR Doc. 93–25937 Filed 10–20–93; 8:45 am]

BILLING CODE 6560-50-F

[OPP–30354; FRL–4650–7]

Certain Companies; Applications to Register a Pesticide Product

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products, containing a new active ingredient not included in any previously registered products and products involving a changed use pattern pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by November 22, 1993.

ADDRESSES: By mail submit comments identified by the document control number [OPP–30354] and the registration/file symbol to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Attention PM 22, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, Environmental Protection Agency, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: PM 22, Cynthia Giles-Parker, Rm. 229, CM #2, (703–305–5540).

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register pesticide products containing a new active ingredient not included in any previously registered products and products involving a changed use pattern pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

I. Products Containing Active Ingredients Not Included In Any Previously Registered Products

1. File Symbol: 100–TUN. Applicant: Ciba-Geigy Corporation, P.O. Box 18300, Greensboro, NC 27419-8300. Product name: Dividend Fungicide. Fungicide. Active ingredient: Difenocenazole [(2*S*,4*R*) / (2*R*,4*S*)] / [(2*R*,4*R*/2*S*,4*S*)] 1-(2-[4-(4-chlorophenoxy)-2-chlorophenyl]-4-methyl-1,3-dioxolan-2-yl-methyl)-1H-1,2,4-triazole, at 32.8 percent. Proposed classification/Use: General. A seed treatment for the control of diseases of wheat and spring barley. (PM 22

2. File Symbol: 100–TGO. Applicant: Ciba-Geigy Corporation. Product name: Technical CGA-169374. Fungicide. Active ingredient: Difenocenazole [(2*S*,4*R*) / (2*R*,4*S*)] / [(2*R*,4*R*/2*S*,4*S*)] 1-(2-[4-(4-chlorophenoxy)-2-chlorophenyl]-4-methyl-1,3-dioxolan-2-yl-methyl)-1H-1,2,4-triazole, at 92 percent. Proposed classification/Use: General. For formulation into end-use fungicide products. (PM 22)

II. Product Involving a Changed Use Pattern

File Symbol: 53219–T. Applicant: Mycogen Corporation, 5451 Oberlin Drive, San Diego, CA 92121. Product name: MYX-6121 Herbicide. Herbicide. Active ingredients: Pelargonic acids at 57 percent and related fatty acids (C_6-C_{12}) at 3 percent. Proposed classification/Use: General. To include in its presently registered food processing and dairy equipment use indoors, a new outdoor noncrop use. (PM 22)

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will be available in the Public Response and Program Resources Branch, Field Operations Division (FOD) office at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the FOD office (703–305–5805), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

List of subjects

Environmental protection, Pesticides and pests, product registration.

Dated: October 8, 1993.

Stephen L. Johnson,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 93–25935 Filed 10–20–93; 8:45 am]

BILLING CODE 6560-50-F

[OPP–30287B; FRL–4643–4]

Unocal Corp.; Approval of a Pesticide Product Registration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of an application submitted by Unocal Corp., to conditionally register the pesticide product Enzone containing a new active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(7)(C) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Cynthia Giles-Parker, Product Manager (PM) 22, Registration Division (H7505C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 229, CM #2, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202, (703–305–5540).

SUPPLEMENTARY INFORMATION: EPA issued a notice published in the **Federal Register** of March 30, 1988 (53 FR 10284), which announced that Unocal Chemical Division, Unocal Corp., 1201 W. 5th St., Los Angeles, CA 90017, had submitted an application to conditionally register the nematicide/fungicide product GY-81 (EPA File Symbol 612–L) containing the active ingredient sodium tetrathiocarbonate at 31.8 percent, an active ingredient not included in any previously registered product.

The application as originally applied was for the product "GY-81." The application was approved on June 17, 1993, as "Enzone" (EPA Registration Number 612–5) for management of plant-parasitic nematodes, *phylloxera*, and oak root fungus on grapes and for the management of citrus nematodes, oak root fungus, and phytophthora root rot on grapefruit, lemons, and oranges.

A conditional registration may be granted under section 3(c)(7)(C) of FIFRA for a new active ingredient where certain data are lacking, on condition that such data are received by the end of the conditional registration period and do not meet or exceed the risk criteria set forth in 40 CFR 154.7; that use of the pesticide during the conditional registration period will not cause unreasonable adverse effects; and that use of the pesticide is in the public interest.

The Agency has considered the available data on the risks associated with the proposed use of sodium tetrathiocarbonate, and information on social, economic, and environmental benefits to be derived from such use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of sodium tetrathiocarbonate during the period of conditional registration is not expected to cause any unreasonable adverse effect on the environment, and that use of the pesticide is in the public interest.

Consistent with section 3(c)(7)(C), the Agency has determined that this conditional registration is in the public interest. Use of the pesticides are of significance to the user community, and appropriate labeling, use directions, and other measures have been taken to ensure that use of the pesticides will not result in unreasonable adverse effects to man and the environment.

More detailed information on this conditional registration is contained in a Chemical Fact Sheet on sodium tetrathiocarbonate.

A copy of the fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the Product Manager. The data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 1132, CM #2, Arlington, VA 22202 (703–305–5805). Requests for data must be made in

accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), 401 M St., SW., Washington, DC 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

List of subjects

Environmental protection, Pesticides and pest, product registration.

Dated: September 21, 1993.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 93–25936 Filed 10–20–93; 8:45 am]

BILLING CODE 6560–50–F

[PF–581; FRL–4645–7]

Pesticide Tolerance Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions (PP) and food and feed additive petitions (FAP) proposing the establishment of regulations for residues of certain pesticide chemicals in or on certain agricultural commodities. It also announces three amended petitions.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, contact the PM named in each petition at the following office location/ telephone number:

Product Manager	Office location/ telephone number	Addresses
George LaRocca (PM-13).	Rm. 202, CM #2, 703-305-6100.	1921 Jefferson Davis Hwy., Arlington, VA.
Phil Hutton (PM-18).	Rm. 213, CM #2, 703-305-7690.	Do.
Dennis Edwards (PM-19).	Rm. 207, CM #2, 703-305-6386.	Do.
Clarence Lewis (Acting PM-21).	Rm. 227, CM #2, 703-305-6117.	Do.
Cynthia Giles-Parker (PM-22).	Rm. 229, CM #2, 703-305-5540.	Do.
JoAnne Miller (PM-23).	Rm. 237, CM #2, 703-305-7830.	Do.
Robert Taylor (PM-25).	Rm. 241, CM #2, 703-305-6800.	Do.
Hoyt Jamerson (PM-43).	6th Flr., CS #1, 703-308-8783.	2805 Jefferson Davis Hwy., Arlington, VA.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions (PPs) and food/feed additive petitions (FAPs) as follows proposing the establishment and/or amendment of regulations for regulations for residues of certain pesticide chemicals in or on various agricultural commodities.

Initial Filings

1. *PP 3F4167.* Miles, Inc., Agricultural Division, 8400 Hawthorn Rd., P.O. Box 4913, Kansas City, MO 64120-0013, proposes to amend 40 CFR part 180 by establishing a regulation to permit residues of tebuconazole (a-[2-(4-chlorophenyl)ethyl]-a-(1,1-dimethylethyl)-H-1,2,4-triazole-1-ethanol) in or on bananas at 0.05 part per million. (PM-21)

2. *PP 3F4169.* Miles, Inc., 8400 Hawthorn Rd., P.O. Box 4913, Kansas City, MO 64120-0013, proposes to amend 40 CFR part 180 by establishing a regulation to permit residues of imidacloprid, 1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine, and its metabolites in or on apples, fruit at 1.0 ppm, cotton, seed at 3.5 ppm, cotton, forage at 30.0 ppm, potatoes, tuber at 0.4 ppm, milk at 0.05 ppm, eggs at 0.02 ppm, meat, fat, and meat byproducts of cattle, goats, hogs, horses, and sheep at 0.2 ppm, and meat, fat, and meat byproducts of poultry at 0.02 ppm. (PM-19)

3. *PP 3F4174.* Du Pont, Agricultural Products, Walker's Mill, Barley Mill Plaza, P.O. Box 80038, Wilmington, DE 19880-0038, proposes to amend 40 CFR part 180 by establishing a regulation to permit residues of chlorethoxyfos in or on corn, field, forage at 0.01 ppm, corn, field, fodder at 0.01 ppm, corn, field, silage at 0.01 ppm, corn, pop, forage at 0.01 ppm, corn, pop, fodder at 0.01 ppm, corn, grain at 0.01 ppm, corn, sweet (kernels, cob with husk removed) at 0.01 ppm, corn, sweet, forage at 0.01 ppm, and corn, sweet, fodder at 0.01 ppm. (PM-19)

4. *PP 3F4177.* Sandoz Agro, Inc., 1300 East Touhy Ave., Des Plaines, IL 60018, proposes to amend 40 CFR part 180 by establishing a regulation to permit residues of dimethenamid (2-chloro-N-[(1-methyl-2-methoxy)ethyl]-N-(2,4-dimethyl-thien-3-yl-acetamide) in or on soybean grain at 0.01 ppm. (PM-22)

5. *PP 3F4179.* Monsanto Co., Suite 1100, 700 14th St., NW., Washington, DC 20005, proposes to amend 40 CFR part 180 by establishing a regulation to permit residues of alachlor (2-chloro-2'-6'-diethyl-N-(methoxymethyl)-acetanilide) and its metabolites 2,6-diethylanilide (DEA) and 2-(1-hydroxyethyl)-6-ethylaniline (HEEA) in or on dry beans forage and fodder at 5.0 ppm. (PM-25)

6. *PP 3F4182.* Hoechst Celanese Corp., Route 202-206, P.O. Box 2500, Somerville, NJ 08876-1258, proposes to amend 40 CFR part 180 by establishing a regulation to permit residues of fenoxaprop-ethyl, (±)-ethyl 2-[4-[(6-chloro-2-benezoxazolyl) phenoxy]propanoate], and its metabolites 2-[4-[(6-chloro-2-benzolyloxy] phenoxy] propanoic acid and 6-chloro-2,3-dihydrobenzoxazol-2-one in or on barley grain at 0.05 ppm and barley straw at 0.10 ppm. (PM-23)

7. *PP 3F4183.* Nor-Am Chemical Co., 3509 Silverside Rd., P.O. Box 7495, Wilmington, DE 19803, proposes to amend 40 CFR part 180 by establishing a regulation to permit residues of desmedipham (ethyl-m-hydroxycarbanilate carbanilate) in or on sugar beet roots at 0.2 ppm and sugar beet tops at 15.0 ppm. (PM-25)

8. *PP 3F4185.* DowElanco, 9002 Purdue Rd., Indianapolis, IN 46268-

1189, proposes to amend 40 CFR part 180 by establishing a regulation to permit residues of flumetsulam (N-(2,6-difluorophenyl)-5-methyl-(1,2,4)-triazole[1,5a]-pyrimidine-2-sulfonamide) in or on corn (except pop and sweet) at 0.05 ppm, corn, fodder at 0.05 ppm, corn, forage at 0.05 ppm, and corn, grain at 0.05 ppm. (PM-23)

9. *PP 3F4186.* Valent U.S.A. Corp., 1333 N. California Blvd., Suite 600, Walnut Creek, CA 94596, proposes to amend 40 CFR part 180, by establishing a regulation to permit residues of fenpropathrin (alpha-cyano-3-phenoxybenzyl 2,2,3,3-tetramethylcyclopropane-carboxylate) in or on strawberries at 2 ppm and tomatoes (fresh market, Florida only) at 0.5 ppm. (PM-13)

10. *PP 3F4187.* Monsanto Co., 700 14th St., NW., Washington, DC 20005, proposes to amend 40 CFR part 180 by establishing a regulation to permit residues of thiazopyr (3-pyridinecarboxylic acid, 2-(difluoromethyl)-5-(4,5-dihydro-2-thiazolyl)-4-(2-methylpropyl)-6-(trifluoromethyl)-, methyl ester and its metabolites determined as 3-pyridinecarboxylic acid, 5-(aminocarbonyl)-2-(difluoromethyl)-4-(2-methylpropyl)-6-trifluoromethyl)-, methyl ester and 3-pyridinecarboxylic acid, 2-(fifluoromethyl)-4-(2-methylpropyl)-5-[(2-sulfoethyl)amino] carbonyl-6-(trifluoromethyl) and expressed as parent equivalents, in or on citrus whole fruit at 0.05 ppm, cotton seed at 0.05 ppm, and cotton forage at 0.2 ppm. (PM-23)

11. *PP 3F4188.* DowElanco, 9002 Purdue Rd., Indianapolis, IN 46268-1189, proposes to amend 40 CFR part 180 by establishing a regulation to permit residues of chlopyrifos (O,O-diethyl O-(3,5,6-trichloro-2-pyridyl)phosphorothioate) in or on barley grain at 0.3 ppm, barley forage at 1.5 ppm, and barley straw at 1.5 ppm. (PM-19)

12. *PP 3F4193.* Monsanto Co., Suite 1100, 700 14th St., NW., Washington, DC 20005, proposes to amend 40 CFR part 180, by establishing a regulation to permit residues of Permit Herbicide (methyl 5-[(4,6-dimethoxy-2-pyrimidinyl) amino] carbonylaminosulfonyl-3-chloro-1-methyl-1H-pyrazole-4-carboxylate, and its metabolites determined as 3-chloro-1-methyl-5-sulfamoylpyrazole-4-carboxylic acid and expressed as parent equivalents), in or on corn, field grain at 0.1 ppm, corn, field forage at 0.3 ppm, corn, field fodder at 1.3 ppm, and grain sorghum (milo) grain at 0.02 ppm (lower limit of method validation), grain sorghum (milo) forage at 0.07 ppm, grain sorghum (milo) stover at 0.08 ppm, grain sorghum (milo) silage at 0.14 ppm, grain sorghum (milo) hay, no tolerance proposals. (PM-23)

13. *PP 3F4194.* Rohm & Haas Co., Independence Mall West, Philadelphia, PA 19105, proposes to amend 40 CFR part 180, by establishing a regulation to permit residues of fenbuconazole, (RH-7592) [alpha-(2-[4-chlorophenyl]-ethyl)-alpha-phenyl-3-(1H-1,2,4-triazole)-1-propanenitrile], RH-9129 and RH-9130, the diastereo-metric lactone metabolites of fenbuconazole [5-(4-chlorophenyl)-dihydro-3-phenyl-3-(methyl-1H-1,2,4-triazole-1-yl)-2-3H-furanone] in or on almond nuts at 0.05 ppm and almond hulls at 3.0 ppm. (PM-22)

14. *PP 3F4196.* Micro Flo Co., P.O. Box 5948, Lakeland, FL 33807, proposes to amend 40 CFR part 180 by establishing a regulation to exempt from the requirement of a tolerance residues of the New Biochemical Pesticide, Plant Floral Volatile Attractant Compounds: cinnamaldehyde, cinnamyl alcohol, 4-methoxycinnamaldehyde, 3-phenyl propanol, 4-methoxyphenethyl alcohol, indole and 1,2,4-trimethoxybenzene when used at specific application rates on specific raw agricultural commodities. (PM-18)

15. *PP 3F4204.* Miles, Inc., 8400 Hawthorn Rd., P.O. Box 4913, Kansas City, MO 64120-0013, proposes to amend 40 CFR 180.436, by establishing a regulation to permit the residues of the insecticide cyfluthrin (cyano(4-fluoro-3-phenoxyphenyl)methyl 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropane carboxylate) in or on sugarcane at 0.05 ppm. (PM-13)

16. *PP 3F4215.* Du Pont Co., Agricultural Products, Walker's Mill, Barley Mill Plaza, P.O. Box 80038, Wilmington, DE 19880-0038, proposes to amend 40 CFR 180.428, by establishing a regulation to permit the combined residues of the herbicide metsulfuron methyl (methyl 2-[[[[(4-methoxy-6-methyl-1, 3, 5 - triazin - 2yl)amino] carbonyl]amino] sulfonyl]benzoate) and its metabolite methyl 2-[[[[(4-methoxy-6-methyl-1-, 3, 5- triazin - 2 - yl)amino]carbonyl] amino] sulfonyl]-4-hydroxybenzoate in or on sorghum grain at 0.1 ppm, sorghum forage at 0.3 ppm, sorghum fodder at 0.3 ppm, and sorghum hay at 0.3 ppm. (PM-25)

17. *PP 3F4222.* Miles, Inc., Agricultural Division, 8400 Hawthorn Rd., P.O. Box 4913, Kansas City, MO 64120-0013, proposes to amend 40 CFR part 180 by establishing a regulation to permit residues of the fungicide tebuconazole (alpha-[2-(4-chlorophynyl)ethyl]-alpha-(1,1-dimethylethyl)-H-1,2,4-triazole-1-ethanol) in or on cherries at 3.5 ppm and peaches at 1.0 ppm. (PM-21)

18. *PP 3F4225.* Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419-8300, proposes to amend 40 CFR part 180 by establishing a regulation to permit residues of triasulfuron, 3-(6-methoxy-4-methyl-1,3,5-triazin-2-yl)-1-(2-chloroethoxy)phenylsulfonyl]urea, in or on grass gorage at 7.0 ppm and grass hay at 2.0 ppm. (PM-25)

19. *PP 3F4229.* Rohm & Haas Co., Independence Mall, Philadelphia, PA 19105, proposes to amend 40 CFR part 180 by establishing a regulation to permit residues of the herbicide oxyfluorfen [2-chloro-1-(3-ethoxy-4-nitrophenoxy)-4-(trifluoromethyl)benzene] and its metabolites containing the diphenyl ether linkage in or on peanut meat at 0.05 ppm, peanut vine at 0.05 ppm, peanut hay at 0.05 ppm, and peanut hulls at 0.10 ppm. (PM-23)

20. *PP 3F4231.* Miles, Inc., Agricultural Division, P.O. Box 4913, Kansas City, MO 64120-0013, proposes to amend 40 CFR part 180, by establishing a regulation to permit the residues of imidacloprid, 1-[(6-chloro-3-pyridinyl) methyl]-N-nitro-2 imidazolidinimine, and its metabolites in or on fruiting vegetables (including tomato, eggplant, and pepper), at 1.0 ppm, brassica (cole) leafy vegetables (including broccoli, cauliflower, brussels sprouts, and cabbage) at 3.5 ppm, lettuce (head and leaf) at 3.5 ppm, grape, fruit at 1.0 ppm, milk at 0.1 ppm, meat, fat, and meat byproducts of cattle, goats, hogs, horses, and sheep at 0.3 ppm. (PM-19)

21. *PP 3F4232.* Zeneca AG Products, P.O. Box 751, Wilmington, DE 19897, proposes to amend 40 CFR part 180 by establishing a regulation to permit residues of acetochlor and its metabolites containing the ethyl methyl aniline (EMA) moiety and the hydroxy ethyl methyl aniline (HEMA) moiety in or on the following raw agricultural commodities, to be analyzed as acetochlor, EMA and HEMA and expressed as acetochlor equivalents: soybean grain at 0.1 ppm, soybean forage at 0.7 ppm, soybean hay at 1.1 ppm, wheat forage at 0.5 ppm, wheat straw at 0.1 ppm, sorghum forage at 0.1 pp, sorghum fodder at 0.1 ppm, sorghum silage at 0.05 ppm, and sorghum hay at 0.2 ppm. (PM-25)

22. *PP 3F4233.* Rhone-Poulenc AG Co., P.O. Box 12014, T.W. Alexander Drive, Research Triangle Park, NC 27709, proposes to amend 40 CFR part 180 by establishing a regulation to permit residues of the herbicide bromoxynil (3,5-dibromo-4-hydroxybenzonitrile) resulting from the

application of its octanoic and heptanoic acid esters in or on cotton seed at 0.04 ppm. (PM-25)

23. *PP 3F4237.* Rhone-Poulenc AG Co., P.O. Box 12014, T.W. Alexander Drive, Research Triangle Park, NC 27709, proposes to amend 40 CFR part 180 by establishing a regulation to permit the residues of the herbicide bromoxynil (3,5-dibromo-4-hydroxybenzonitrile) resulting from the application of its octanoic and heptanoic acid ester in or on wheat forage at 3.0 ppm, wheat straw at 2.0 ppm, corn forage at 10.0 ppm, corn fodder at 0.2 ppm, barley forage at 4.0 ppm, barley straw at 4.0 ppm, sorghum forage at 1.0 ppm, sorghum hay at 1.0 ppm. (PM-25)

24. *PP 3F4238.* Zeneca AG Products, Concord Pike and New Murphy Rd., P.O. Box 751, Wilmington, DE 19897, proposes to amend 40 CFR part 180 by establishing a regulation to permit residues of Touchdown Herbicide (containing glyphosate-trimesium (formerly SC-0224 of sulfonate)) in or on stone fruit. (PM-25)

25. *PP 3F4251.* Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27819-8300, proposes to amend 40 CFR 180.368 by establishing a regulation to permit residues of the herbicide metolachlor [2-chloro-*N*-(2-ethyl-6-methyphenyl)-*N*-(2-methoxy-1-methylethyl)acetamide] and its metabolites determined as the derivatives, 2-[(2-ethyl-6-methyl phenyl)amino]-1-propanol and 4-(2-ethyl-6-methylphenyl)-2-hydroxy-5-methyl-3-morpholinone, each expressed as the parent compound, in or on the raw agricultural commodities grass seed screenings at 0.1 ppm, grass forage at 30.0 ppm, and grass hay (straw) at 0.2 ppm. The proposed analytical method for determining residues is gas chromatography. (PM-23)

26. *FAP 3H5647.* Arizona Department of Agriculture, 1688 West Adams, Phoenix, AZ 85007, proposes to amend 40 CFR parts 185 and 186 by establishing a food/feed additive regulation to permit residues of fenpropathrin (alpha-cyano-3-phenoxybenzyl 2,2,3,3-tetramethycyclopropanecarboxylate) in or on cotton seed oil at 3 ppm and cotton soapstock at 2 ppm. (PM-13)

27. *FAP 3H5648.* Valent, U.S.A., Corp., 1333 N. California Blvd., Suite 600, P. O. Box 8025, Walnut Creek, CA 94596-8025, proposes to amend 40 CFR part 185 by establishing a food additive regulation to permit residues of fenproprathrin (alpha-cyano-3-phenoxybenzyl 2, 2,3,3-tetramethycyclopanecarboxylate) in or on cotton seed oil at 3 ppm. (PM-13)

28. *FAP 3H5649.* ICI Americas, Inc., Agricultural Products, Wilmington, DE 19897, proposes to amend 40 CFR part 186 by establishing a feed additive regulation to permit residues of paraquat, 1,1'-dimethyl-4, 4'-bipyridinium-ion, in or on alfalfa meal at 12 ppm. (PM-25)

29. *FAP 3H5650.* Monsanto Co., Suite 1100, 700 14th St., NW., Washington, DC 20005, proposes to amend 40 CFR part 186, by establishing a feed additive regulation to permit residues of glyphosate (N-(phosphonomethyl)glycine) and its metabolite aminomethylphosphonic acid resulting from application of the isopropylamine salt of glyphosate in or on rape (canola) meal at 25 ppm. (PM-25)

30. *FAP 3H5651.* McLaughlin, Gormley, King Co., 8810 Tenth Avenue North, Minneapolis, MN 55427, proposes to amend 40 CFR part 186 by establishing a feed additive regulation to permit residues of (RS)-2-methyl-4-oxo-3-(2-propynyl)cyclopent-2-enyl(1RS)-cis, trans-chrysanthemate [ETOC; Prallethrin] in food-handling establishments at 1.0 ppm. (PM-13)

31. FAP 3H5652. Rohm & Haas Co., Independence Mall West, Philadelphia, PA 19105, proposes to amend 40 CFR parts 185 and 186 by establishing a food/feed additive regulation to permit residues of fenbuconazole (alpha-(2-[4-chlorophenyl]-ethyl)-alpha-phenyl-3-(1H-1,2,4-triazole)-1-propanenitrile) in or on apple processed fractions , apple juice at 0.8 ppm, apple pomace (wet) at 0.8 ppm, and apple pomace (dry) at 3.0 ppm. (PM-22)

32. *FAP 3H5654.* Zoecon Co., 12200 Denton Drive, Dallas, TX 75234, proposes to amend 40 CFR part 185 by establishing a food/feed additive regulation to permit residues of insect growth regulator methoprene at 10 ppm for cereal grain milled fractions (except flour and rice hulls) and 25 ppm on rice hulls. (PM-18)

33. *FAP 3H5655.* Miles, Inc., 8400 Hawthorn Rd., P.O. Box 4913, Kansas City, MO 64120-0013, proposes to amend 40 CFR parts 185 and 186 by establishing a food/feed additive regulation to permit residues of imidacloprid, 1-[(6-chloro-3-pyridinyl)methyl]-N-nitro-2-imidazolidinimine, and its 6-chloronicotinic acid metabolites in or on apple, pomace (wet) at 2.0 ppm, apple pomace (dry) at 7.0 ppm, potato chips at 0.7 ppm, potato dried at 1.5 ppm, and cotton seed meal at 5.5 ppm. (PM-19)

34. *FAP 3H5656.* IR-4 Project Coordinator, Office of IR-4, Cook College, P.O. Box 231, Rutgers State University of NJ 08903-0231, proposes to amend 40 CFR part 185 by establishing a food additive regulation to permit residues of sethoxydim (2-[(1-ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one) and its metabolites containing the 2-cyclohexene-1-one moiety (calculated as the herbicide) in or on parsley (dried) at 25 ppm. (PM-43)

35. *FAP 3H5658.* Nor-Am Chemical Co., 3509-Silverside Rd., P.O. Box 7495, Wilmington, DE 19803, proposes to amend 40 CFR part 185 by establishing a food additive regulation to permit residues of flutolanil (N-[3-(1-methylethoxy)-phenyl]-2(trifluoromethyl)-benzamide) and its metabolites converted to 2-trifluoromethyl benzoic acid methyl ester in the following processed food commodities when present therein as a result of application of the fungicide to growing crops, in or on polished (hulled) rice at 0.50 ppm, rice hulls at 7.0 ppm, rice bran at 2.0 ppm, and grain dust (rice) at 10.0 ppm. (PM-21)

36. *FAP 3H5659.* Du Pont, Agricultural Products, Walker's Mill, Barley Mill Plaza, P.O. Box 80038, Wilmington, DE 19880-0038, proposes to amend 40 CFR parts 185 and 186 by establishing a food/feed additive regulation to permit residues of the fungicide hexakis ([2-methyl-2-phenylpropyl]distannoxane) and its organotin metabolites calculated as hexakis, [2-methyl-2-phenylpropyl] distannoxane be established on citrus oil at 140 ppm and increased on dried citrus pulp from 35 ppm to 100 ppm, increased on dried apple pomace from 75 ppm to 100 ppm, and increased on raisin waste from 20 ppm to 80 ppm. (PM-19)

37. *FAP 3H5660.* Du Pont, Agricultural Products, Walker's Mill, Barley Mill Plaza, P.O. Box 80038, Wilmington, DE 19880-0038, proposes to amend 40 CFR parts 185 and 186 by establishing a food/feed additive regulation to permit residues of the insecticide methomyl (S-methyl N-[methycarbamoyl] thioacetimidate) in or on wheat bran at 2.0 ppm and dehydrated citrus pulp at 6.0 ppm. (PM-19)

38. *FAP 3H5661.* Valent, U.S.A., Corp., 1333 N. California Blvd., Suite 600, P.O. Box 8025, Walnut Creek, CA 94596-8025, proposes to amend 40 CFR part 186 by establishing a feed additive regulation to permit residues of fenpropathrin, alpha-cyano-3-phenoxybenzyl 2,2,3,3-tetramethylcyclopropanecarboxylate, in or on tomato cannery waste at 5 ppm. (PM-13)

39. *FAP 3H5662.* DowElanco, 9002 Purdue Rd., Indianapolis, IN 46268-1189, proposes to amend 40 CFR part 186 by establishing a feed additive regulation to permit residues of chlorpyrifos (O,O-diethyl O-(3,5,6-trichloro-2-pyridyl)phosphorothioate) in or on barley milling fractions (except flour) at 1 ppm. (PM-19)

40 *FAP 3H5663.* Rohm & Haas Co., Independence Mall West, Philadelphia, PA 19105, proposes to amend 40 CFR part 186 by establishing a feed additive regulation to permit residues of fenbuconazole (RH-7592) (alpha-(2-(4-chlorophenyl)-ethyl)-alpha-phenyl-3-(1H-1,2,4-triazole-1-propanenitrile) in or on almond nuts at 0.05 ppm and almond hulls at 3.0 ppm. (PM-22)

41. *FAP 3H5664.* Rhone-Poulenc AG Co., P.O. Box 12014, T.W. Alexander Drive, Research Triangle Park, NC 27709, proposes to amend 40 CFR parts 185 and 186 by establishing a food and feed additive regulation to permit residues of ethephon plant growth regulator in or on apple pomace at 10.0 ppm and grape pomace at 8.0 ppm. (PM-22)

42. FAP 3H5665. Valent U.S.A. Corp., 1333 N. California Blvd., Suite 600, P.O. Box 8025, Walnut Creek, CA 94596-8025, proposes to amend 40 CFR part 186 by establishing a feed additive regulation to permit residues of Resource, pentyl 2-chloro-4-fluoro-5-(3,4,5,6-tetrahydrophthalimido)phenoxyacetate, of Resource Herbicide, in or on soybean hulls at 0.02 ppm. (PM-23)

43. *FAP 3H5666.* Monsanto Co., Suite 1100, 700 14th St., NW., Washington, DC 20005, proposes to amend 40 CFR part 186 by establishing a feed additive regulation to permit residues of (Mon 21250-Genesis) [2-(4-chlorophenyl)-3-ethyl-2,5-dihydro-5-oxo-4-pyridazinecarboxylic acid, potassium salt], (Mon 21200) and its metabolites [2-(4-chlorophenyl)-3-ethyl-2,5-dihydro-5-oxo-4-pyridazine carboxylic acid] in or on wheat milling fractions (except flour) at 375 ppm. (PM-22)

44. *FAP 3H5667.* Hoechst Roussel Agri-Vet Co., Route 202-206, P.O. Box 2500, Somerville, NJ 08876-1258, proposes to amend 40 CFR part 186 by establishing a feed additive regulation to permit residues of the insecticide deltamethrin: (1R,3R)-3(2,2-dibromovinyl)-2,2-dimethylcyclopropane-carboxylic acid (S)-alpha-cyano-3-phenoxybenzyl ester, and its major metabolites, trans-deltamethrin: (1S,3R)-3(2,2-dibromovinyl)-2,2-dimethylcyclopropane-carboxylic acid (S)-alpha-cyano-3-phenoxybenzyl ester and alpha-R-deltamethrin; (1R,3R)-3-(2,2-dibromovinyl)-2,2-dimethylcyclopropane-carboxylic acid (R)-alpha-cyano-3-phenoxybenzyl ester, calculated as parent, in or on soybean hulls at 0.30 ppm. (PM-13)

45. *FAP 3H5668.* IR-4 Project Coordinator, Office of IR-4, Cook College, P.O. Box 231, Rutgers State University of NJ, New Brunswick, NJ 08903-0231, proposes to amend 40 CFR part 186 by establishing a feed additive regulation to permit residues of the insecticide malathion (O,O-dimethyl dithiophosphate of diethyl mercaptosuccinate) in or on dried hops and spent hops at 5.0 ppm. (PM-43)

46. *FAP 3H5669.* American Cyanamid Co., Agricultural Research Division, P.O. Box 400, Princeton, NJ 08543-0400, proposes to amend 40 CFR part 186, by establishing a feed additive regulation to permit the residues of Cadre Herbicide ((±)-2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1H-imidazol-2-yl]-5-methyl-3-pyridinecarboxylic acid as the ammonium salt and its metabolite, (±)-2-[4,5-dihydro-4-methyl-4-(methylethyl)-5-oxo-1H-imidazol-2-yl]-5-(1-hydroxymethyl)-3-pyridinecarboxylic acid) in or on peanut hulls at 0.1 ppm. (PM-25)

47. *FAP 3H5670.* Miles, Inc., 8400 Hawthorn Rd., P.O. Box 4913, Kansas City, MO 64120-0013, proposes to amend 40 CFR part 186 by establishing a feed additive regulation to permit residues of the insecticide cyfluthrin (cyano(4-fluoro-3-phenoxyphenyl)methyl 3-(2,2-dichloroethyl)-2,2-dimethylcyclopropane carboxylate) in or on sugarcane bagasse at 0.20 ppm and sugarcane molasses at 0.20 ppm. (PM-13)

48. *FAP 3H5671.* Biologic, Inc., 11 Lake Ave. Extension, Danbury, CT 06811, proposes to amend 40 CFR part 186 by establishing a feed additive regulation to permit residues of the insecticide teflubenzuron (CME 134; NOMOLT), in or on potatoes processed fractions. (PM-21)

49. *FAP 3H5672.* Nor-Am Chemical Co., 3509 Silverside Rd., P.O. Box 7495, Wilmington, DE 19803, proposes to amend 40 CFR part 185 by establishing a food additive regulation to permit combined residues of flutolanil (N-[3-(1-methylethoxy)phenyl]-2-(trifluoro-methyl)-benzamide) and its metabolites converted to 2-trifluoro-methyl benzoic acid methyl ester in the following processed food commodities when present therein as a result of application of the fungicide to growing crops, peanut meat at 1.0 ppm, peanut soapstock at 1.0 ppm, peanut crude oil at 0.20 ppm, and peanut refined oil at 0.20 ppm. (PM-21)

50. *FAP 3H5673.* Rod Products Co., 4600 Glencoe Ave., #4, Marina del Rey, CA 90292, proposes to amend 40 CFR part 185 by establishing a food additive regulation for an exemption from pesticide residues with respect to Bugchaser Insect Repellant Tablecloth, d-Limonene, Dihydro-5-Pentyl-2 (3H)-furanone, dihydro-5-heptyl-2(3H)-furanone, in the public interest. (PM-14)

51. *FAP 3H5674.* Rohm & Haas Co., Independence Mall West, Philadelphia, PA 19105, proposes to amend 40 CFR part 185 by establishing a food additive regulation to permit residues of oxyfluorfen (2-chloro-1-(3-ethoxy-4-nitrophenoxy)-4-(trifluoromethyl) benzene) and its metabolites containing the diphenyl ether linkage in or on peanut processed fractions, peanut meal at 0.05 ppm, peanut crude oil at 0.05 ppm, peanut soapstock at 0.05 ppm, and peanut refined oil at 0.05 ppm. (PM-23)

52 *FAP 3H5675.* Miles, Inc., Agricultural Division, P.O. Box 4913, Kansas City, MO 64120, proposes to amend 40 CFR parts 185 and 186 by establishing a food/feed additive regulation to permit residues of imidacloprid (1-[(6-chloro-3-pyridinyl) methyl]-N-nitro-2-imidazolidinimine) and its metabolites in or on tomato puree at 2.0 ppm, grape, raisin at 1.5 ppm, grape juice at 1.5 ppm, tomato pomace, wet at 2.0 ppm, tomato pomace, dry at 6.0 ppm, grape pomace, wet at 2.5 ppm, grape pomace, dry at 5.0 ppm, and grape raisin waste at 15.0 ppm. (PM-19)

53. *FAP 3H5676.* BASF Corp., Agricultural Products, P.O. Box 13528, Research Triangle Park, NC 27709-3525, proposes to amend 40 CFR parts 185 and 186 by establishing a food/feed additive regulation to permit residues of mepiquat chloride in or on raisins at 5.0 ppm, raisin waste at 25.0 ppm, and grape pomace (wet and dry) at 3.0 ppm. (PM-22)

54. *FAP 3H5677.* BASF Corp., Agricultural Products, P.O. Box 13528, Research Triangle Park, NC 27709-3525, proposes to amend 40 CFR part 186 by establishing a feed additive regulation to permit residues of the herbicide Poast (2-[1(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one and its metabolites containing the 2-cyclohexen-1-one moiety (calculated as the herbicide)) in or on rice straw at 0.5 ppm. (PM-25)

55. *FAP 3H5678.* Roussel UCLAF Corp., 95 Chestnut Ridge Rd., P.O. Box 30, Montvale, NJ 07645, proposes to amend 40 CFR parts 185 and 186 by establishing a food/feed additive regulation to permit residues of tralomethrin ((1R,3S) 3-[(1',RS) (1',2',2-tetrabromoethyl)]-2,2-

dimethylcyclopropanecarboxylic acid (S)-alpha-cyano 3-phenoxybenzyl ester) to establish use in food/feed handling establishments. (PM-13)

56. *FAP 3H5679.* Zeneca AG Products, P.O. Box 751, Wilmington, DE 19897, proposes to amend 40 CFR part 185 by establishing a food/feed additive regulation to permit residues of the insecticide 1-alpha(S)-(±), 3-alpha (Z)-(±)-cyano(3-phenoxyphenyl)methyl 3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate (lambda-cyhalothrin) for use in food-handling establishments. (PM-13).

57. *FAP 3H5680.* Janssen at Washington Crossing, 1125 Trenton-Harbourton Rd., P.O. Box 200, Titusville, NJ 08560-0200, proposes to amend 40 CFR part 185 by establishing a food additive regulation to permit residues of the fungicide imazalil (1-(2-(2,4-dichlorophenyl)-2-(2-propenyl)ethyl)-1H-imidazole) and its metabolite 1-(2,4-dichlorophenyl)-2-(1H-imidazole-1-yl)-1-ethanol in or on citrus oil at 150 ppm and bananas (pulp) at 0.5 ppm. (PM-22)

Amended Petition

58. *PP 1F2507.* Duphar, B.V., P.O. 695, Lake Mary, FL 32746, proposes to amend 40 CFR 180.377 by establishing a regulation to permit residues of diflubenzuron (*N*-[[(4-chlorophenyl)amino]carbonyl]-2,6-difluorobenzamide) in or on the raw agricultural commodities oranges, grapefruit, mandarins, and orange/grapefruit hybrids (such as Temple) at 0.50 ppm. The proposed analytical method for determining residues is gas chromatography with electron capture detector. Notice of filing for PP 1F2507 was originally published in the **Federal Register** of January 29, 1987 (52 FR 2960) and proposed establishing tolerances for diflubenzuron in or on grapefruit and oranges (whole) at 0.5 ppm. (PM-18)

59. *FAP 1H5301.* Duphar, B.V., P.O. 695, Lake Mary, FL 32746, proposes to establish regulations to permit residues of diflubenzuron (*N*-[[(4-chlorophenyl)amino]carbonyl]-2,6-difluorobenzamide) in or on the food additive citrus oil at 75.0 ppm (40 CFR part 185) and in or on the animal feed citrus pulp at 1.0 ppm (40 CFR 186.2000). The proposed analytical method for determining residues is gas chromatography with electron capture detector. Notice of filing for FAP 1H5301 was originally published in the **Federal Register** of January 29, 1987 (52 FR 2960). (PM-18)

60. *PP 1F3991.* DowElanco, 9002 Purdue Rd., Indianapolis, IN 46268-1189, proposes to amend 40 CFR 180.417 by establishing a regulation to permit combined residues of the herbicide tirclopyr, [(3,5,6-trichloro-2-pyridinyl)oxy]acetic acid, and its metabolite, 2-methoxy-3,5,6-trichloro-pyridine, in or on a number of agricultural commodities. In the **Federal Register** of March 24, 1993 (58 FR 15873), EPA issued a notice of amendments requested by DowElanco. EPA is giving notice that DowElanco has submitted further amendments proposing tolerances under 40 CFR 180.417 for tirclopyr as follows: a tolerance for combined residues of the herbicide triclopyr, [(3,5,6-trichloro-2-pyridinyl)oxy]acetic acid, and its metabolites, 2-methoxy-3,5,6-trichloropyridine and 3,5,6-trichloro-2-pyridinol, in or on rice grain at 0.30 ppm and rice straw at 10.0 ppm; and triclopyr, (3,5,6-trichloro-2-pyridinyl)oxy]acetic acid, and its metabolite, 3,5,6-trichloro-2-pyridinol, in/on poultry meat, fat, and meat byproducts (except liver and kidneys) at 0.10 ppm and eggs at 0.05 ppm. (PM 25)

Authority: 7 U.S.C. 136a.

List of subjects

Environmental protection.

Dated: October 6, 1993.

Stephen L. Johnson,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 93-25941 Filed 10-20-93; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

October 14, 1993.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857-3800. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632-0276. Persons wishing to comment on these information collections should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: 3060-0208
Title: Section 73.1870, Chief operators
Action: Extension of a currently approved collection
Respondents: Non-profit institutions and businesses or other for-profit (including small businesses)
Frequency of Response: Recordkeeping requirement
Estimated Annual Burden: 13,350 recordkeepers; 26.166 hours average burden per recordkeeper; 349,316 hours total annual burden
Needs and Uses: Section 73.1870 requires that the licensee of an AM, FM, or TV broadcast station designate a chief operator of the station. Section 73.1870(b)(3) requires that this designation must be in writing and posted at the transmitter site. Agreements with chief operators serving on a contract basis must be in writing with a copy kept in the station files. Section 73.1870(c)(3) requires that the chief operator review the station records at least once a week to determine if required entries are being made correctly, and verify that the station has been operated in accordance with FCC rules and the station authorization. Upon completion of the review, the chief operator must date and sign the log, initiate any corrective action which may be necessary and advise the station licensee of any condition which is repetitive. The posting of the designation of the chief operator is used by interested persons to readily identify the chief operator. The review of the station records is used by the chief operator, and FCC staff in investigations, to assure that the station is operating in accordance with its station authorization and the FCC rules and regulations.

OMB Number: 3060-0310
Title: Section 76.12, Registration statement required
Action: Extension of a currently approved collection
Respondents: State or local governments, non-profit institutions and businesses or other for-profit (including small businesses)
Frequency of Response: On occasion reporting requirement
Estimated Annual Burden: 600 responses; 0.25 hours average burden per response; 150 hours total annual burden
Needs and Uses: Section 76.12 requires that a registration statement be filed with the Commission before a system community unit shall be authorized to commence operation. A system community unit is a cable television system, or portion of a cable

television system, that operates or will operate within a separate and distinct community or municipal entity. The data is used by FCC staff to maintain complete records regarding cable systems and to ensure compliance with FCC rules and regulations.

Federal Communications Commission

LaVera F. Marshall,

Acting Secretary.

[FR Doc. 93-25809 Filed 10-20-93; 8:45 am]

BILLING CODE 6712-01-M

[FO Dockets 91-301 and 91-171; DA 93-1211]

Emergency Alerting Systems Test Results

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: Formal field testing of proposed enhanced emergency alerting systems has been completed. The Western field testing was held June 27th through June 30th, 1993, in Denver, Colorado. The Eastern field testing was held September 12th through September 15th, 1993, in Pikesville, Maryland. Interested parties may review the test results and file comments on or before November 12, 1993, and reply comments by November 26, 1993.

FOR FURTHER INFORMATION CONTACT: The EBS staff at (202) 632-3906.

SUPPLEMENTARY INFORMATION:

Comments Solicited Regarding Emergency Alerting Systems Test Results in FO Dockets 91-301/91-171

October 6, 1993.

The Commission has completed formal field testing of proposed enhanced emergency alerting systems involved in FO Dockets 91-301/91-171. Proposed standards for the modernization of the Emergency Broadcast System (EBS) were outlined in the FCC's Notice of Proposed Rulemaking/Further Notice of Proposed Rulemaking, FO Docket 91-301/91-171, adopted by the Commission on September 17, 1992 and released on October 8, 1992. The Commission is proposing updating emergency alerting equipment to improve its early warning capacity and to make it compatible with cable systems and other new and future communications technologies.

The Western field testing was held June 27th through June 30th, 1993, in Denver, Colorado. The Easter field testing was held September 12th through September 15th, 1993, in Pikesville, Maryland. The results of the field tests have been condensed to two documents of approximately 500 pages each. They are entitled "Western" and "Eastern" Field Tests and are divided into (1) Plenary meetings, (2) Field testing, (3) Final reports, and (4) Miscellaneous.

Interested parties are invited to review the test results and file comments on or before November 12, 1993. Reply comments must be filed by November 26, 1993. Comments and reply comments filed in the docket must conform to the requirements of the Commission's Rules. Copies of the Western and Eastern field tests results are available for review in the Commission's Docket Branch, room 230, or may be obtained from the Commission's copy contractor, International Transcript Service, room 246, (202) 857-3824. Additional copies of the tests results and the voluminous supporting documents are available for review in the EBS office, 1919 M St. NW., room 720.

Any questions regarding this Public Notice may be directed to the EBS staff at (202) 632-3906.

Federal Communications Commission

LaVera F. Marshall,

Acting Secretary.

[FR Doc. 93-25808 Filed 10-20-93; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR part 510.

License Number: 3625

Name: United World International, Inc.

Address: 1952 Lancaster, Grosse Pointe Woods, MI 48236

Date Revoked: September 3, 1993

Reason: Failed to maintain a valid surety bond.

License Number: 1435

Name: Donald K. Bollhorst dba Anchor International

Address: 1703 E. Joppa Rd., Baltimore, MD 21234

Date Revoked: September 29, 1993

Reason: Failed to maintain a valid surety bond.

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 93-25831 Filed 10-20-93; 8:45 am]

BILLING CODE 6730-01-M

[Petition No. P79-93]

Petition for Temporary Exemption From Electronic Tariff Filing Requirements; Transax Data on Behalf of Various Carriers; Filing

Notice is hereby given of the filing of a petition by the Transax Data on behalf of various carriers pursuant to 46 CFR 514.8(a), for temporary exemption from the October 8, 1993, electronic tariff filing requirements of the Commission's ATFI System.

To facilitate thorough consideration of the petition, interested persons are requested to reply to the petition no later than October 27, 1993. Replies shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573-0001, shall consist of an original and 15 copies, and shall be served on Mr. Michael A. Sarro, Conversion Control Account Manager, Transax Data, 721 Route 202/206, Bridgewater, New Jersey 08807.

Copies of the petition are available for examination at the Washington, DC office of the Secretary of the Commission, 800 N. Capitol Street, NW., room 1046.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 93-25830 Filed 10-20-93; 8:45 am]

BILLING CODE 6730-01-M

[Petition No. P80-93, et al.]

Petitions for Temporary Exemption From Electronic Tariff Filing Requirements; Filing

In the Matter of Petition No. P80-93, Venezuelan American Maritime Association; Petition No. P81-93, United States/Central America Liner Association and the United States/Panama Freight Association.

Notice is hereby given of the filing of petitions by the above named petitioners, pursuant to 46 CFR 514.8(a), for temporary exemption from the November 12, 1993, electronic tariff filing requirements of the Commission's ATFI System.

To facilitate thorough consideration of the petitions, interested persons are requested to reply to the petitions no later than October 27, 1993. Replies shall be directed to the Secretary, Federal Maritime Commission,

Washington, DC 20573–0001, shall consist of an original and 15 copies, and shall be served on counsel for petitioners, Wayne R. Rohde, Esq., Sher & Blackwell, 1255 23rd Street, NW., suite 500, Washington, DC 20037–1194.

Copies of the petitions are available for examination at the Washington, DC office of the Secretary of the Commission, 800 N. Capitol Street, NW., room 1046.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 93–25829 Filed 10–20–93; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Allied Bank Capital, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than November 12, 1993.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Allied Bank Capital, Inc., Sanford, North Carolina; to acquire 100 percent of the voting shares of the successor to Peoples Savings Bank, SSB, Wilmington, North Carolina.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. ANB Corporation, Muncie, Indiana; to merge with Winchester Bancorporation, Winchester, Indiana, and thereby indirectly acquire Peoples Loan and Trust Bank, Winchester, Indiana.

2. First Financial Corporation, Terre Haute, Indiana; to merge with First Marshall Bancshares, Inc., Marshall, Illinois, and thereby indirectly acquire First National Bank, Marshall, Illinois.

3. Peotone Bancorp, Inc., Peotone, Illinois; to acquire 20.32 percent of the voting shares of Southwest Bancorp, Inc., Worth, Illinois, and thereby indirectly acquire Mount Greenwood Bank, Chicago, Illinois; Worth Bank and Trust, Worth, Ilinois; First National Bank of Danville, Danville, Illinois; and Sun City, Bank, Sun City, Arizona.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Central Arkansas Bancshares, Inc., Arkadelphia, Arkansas; to acquire 100 percent of the voting shares of GCB Bancshares, Inc., Sheridan, Arkansas, and thereby indirectly acquire Grant County Bank, Sheridan, Arkansas.

D. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Stockton Bancshares Inc., Stockton, Kansas; to merge with Western Bancshares, Inc., Stockton, Kansas, and thereby indirectly acquire Rooks County State Bank, Woodston, Kansas.

E. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Southwestern Bancorp, Inc., Sanderson, Texas; to acquire 100 percent of the voting shares of Cross Plains Bankshares, Inc., Cross Plains, Texas, and thereby indirectly acquire Citizens State Bank, Cross Plains, Texas.

F. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Pacific Rim Bancorporation, San Francisco, California; to become a bank holding company by acquiring 100 percent of the voting shares of Golden Gate Bank, San Francisco, California.

Board of Governors of the Federal Reserve System, October 15, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-25854 Filed 10-20-93; 8:45 am]

BILLING CODE 6210-01-F

Community Bankshares, Inc.; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than November 12, 1993.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Community Bankshares, Inc. Employee Stock Ownership Trust, to acquire an additional 0.53 percent of the voting shares of Community Bankshares, Inc., Petersburg, Virginia, for a total of 10.21 percent, and thereby indirectly acquire The Community Bank, Petersburg, Virginia.

Board of Governors of the Federal Reserve System, October 15, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-25855 Filed 10-20-93; 8:45 am]

BILLING CODE 6210-01-F

NationsBank Corporation, et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal

Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 9, 1993.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. NationsBank Corporation, Charlotte, North Carolina; to engage *de novo* through its subsidiary, NationsBank Trust Company of New York, New York, New York, in providing fiduciary services for corporate and municipal entities pursuant to § 225.25(b)(3) of the Board's Regulation Y.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Anglo-American Bancshares Corporation, Baton Rouge, Louisiana; to engage *de novo* in making, acquiring, or servicing loans or other extensions of credit pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted throughout the United States and the United Kingdom.

C. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Bank of Montreal, Montreal, Quebec, Canada; Bankmont Financial Corporation, Inc., New York, New York; and Harris Bankcorp, Inc., Chicago, Illinois; to expand the activities of its subsidiary, Harris Investors Direct, Inc., Chicago, Illinois, to engage in the provision of investment advice and brokerage services for retail and institutional customers pursuant to § 225.25(b)(15) of the Board's Regulation Y.

D. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. National Commerce Bancorporation, Memphis, Tennessee; to engage *de novo* through its subsidiary, National Commerce Finance Company, Germantown, Tennessee, in making, acquiring, and servicing consumer loans pursuant to § 225.25(b)(1); and acting as principal, agent, or broker in the sale of credit life, disability, involuntary unemployment and property insurance pursuant to §§ 225.25(b)(8)(i) and (b)(8)(ii) of the Board's Regulation Y. These activities will be conducted in the State of Tennessee and those states which are contiguous to Tennessee.

Board of Governors of the Federal Reserve System, October 15, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-25856 Filed 10-20-93; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Agency Information Collection Under OMB Review

Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), the Administration for Children and Families' (ACF) Office of Community Services (OCS) has submitted to the Office of Management and Budget (OMB) a request to extend the expiration date of five program announcements for OCS discretionary grants programs. Information collected from the requirements contained in these five program announcements will be the sole source of information available to OCS in reviewing applications leading to awards of discretionary grants to eligible applicants.

ADDRESSES: Copies of the information collection request may be obtained from Steve R. Smith of the Office of Information Systems Management, ACF, by calling (202) 401–6964.

Written comments and questions regarding the requested approval should be sent directly to: Laura Oliven, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, Room 3002, 725 17th Street, NW., Washington, DC 20503. (202) 395–7316.

Information on Document

Title: Availability of Funds and Requests for Applications under the Office of Community Services' FY 1994 Discretionary Grants Programs

OMB No.: 0970–0062

Description: Information collected from the requirements contained in these five program announcements will be the sole source of information available to OCS in reviewing applications leading to awards of discretionary grants to eligible applicants. Previously, an information collection package was submitted for each program announcement until OMB recommended that OCS submit one information collection package covering all OCS program announcements.

The OCS Program Announcements covered in this Submission are:

I. Discretionary Grants Program

The Office of Community Services makes discretionary grants available in the areas of economic development, rural housing, community facilities, migrant and seasonal farm workers, and training and technical assistance.

II. Community Food and Nutrition Grants Program

The purpose of this demonstration program is to improve the health and well being of individuals through improved preventive health care and promotion of personal responsibility. The Office of Community Services seeks through discretionary grants to unify the approach to health promotion and disease prevention activities with families and communities. OCS encourages community efforts to improve the coordination and integration of health services for all low-income families, and to identify opportunities for integrating other program services for this population.

III. Demonstration Partnership Program

The Office of Community Services makes discretionary grants available to test and evaluate new approaches to providing greater self-sufficiency among low-income individuals and their families.

IV. Family Support Centers and Gateway Demonstration Program

The purpose of this demonstration program is to develop and operate Family Support Centers and Gateway projects that administer and provide comprehensive and intensive supportive services that enhance the physical, social educational development of low and very low-

income individuals in very low-income families who were previously homeless and currently residing in governmental subsidized housing or those at risk of becoming homeless.

V. Job Opportunities for Low-Income Individuals Program

The purpose if these discretionary grants is to conduct demonstration projects to create employment and business opportunities for certain low-income individuals.

Annual Number of Respondents: 920.
Annual Frequency: 1.
Average Burden Hours Per Response: *.
Total Burden Hours: 21,400.

*See supporting statement.

Dated: September 30, 1993.

Larry Guerrero,

Deputy Director, Office of Information Systems Management.

[FR Doc. 93–25816 Filed 10–20–93; 8:45 am]

BILLING CODE 4184–01–M

Administration For Children and Families

Agency Information Collection Under OMB Review

Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), The Family and Youth Services Bureau (FYSB) of the Administration for Children and Families (ACF) is requesting clearance from the Office of Management and Budget (OMB) for instruments to be used to conduct a national evaluation of home-base services for runaway youth or potential runaway youth and their families. The National Evaluation of Home-Based Services Programs for Runaway Youth will provide information to assist FYSB in making policy and programmatic decisions regarding alternative service delivery options to the runaway youth population.

ADDRESSES: Copies of the information collection may be obtained from Steve R. Smith of the Office of Information Systems Management, ACF, by calling (202) 401–6964.

Written comments and questions regarding this information collection should be sent directly to: Laura Oliven, OMB Desk Officer for ACF, OMB Reports Management Branch New Executive Office Building, room 3002, 725 17th Street, NW., Washington, DC. 20503. (202) 395–7316.

Information on Document

Title: National Evaluation of Home-Based Services Programs for Runaway Youth

OMB No.: New Request

Description: Three home-based services demonstration initiatives were funded in fiscal year 1991. The home-based services initiatives were designed to provide a continuum of in-home, family-based support services to runaway youth and their families. Currently, runaway youth, homeless youth, gang youth, and the families of these youth who seek assistance from FYSB are served primarily through shelter-based services systems. The Home-Based Services Programs target youth who were not involved in the child welfare or juvenile justice system but who had otherwise run away or were judged to be at-risk of running away. The Home-Based demonstration models focus on in-home parent-youth mediation and counseling services to resolve intra-family crisis while protecting the well-being of the youth.

The National Evaluation of Home-Based Services Programs for Runaway Youth is intended to determine, among other things, whether home-based services are an effective approach to serving the families of runaway youth and youth at risk for running away.

Annual Number of Respondents: 480
Frequency: 1.00
Average Burden Hours Per Response: 0.75
Total Burden Hours: 360

Dated: September 30, 1993.

Larry Guerrero,

Deputy Director, Office of Information Systems Management.

[FR Doc. 93–25817 Filed 10–20–93; 8:45 am]

BILLING CODE 4184–01–M

Administration For Children And Families

Agency Information Collection Under OMB Review

Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), we have submitted to the Office of Management and Budget (OMB) a request for approval of a national survey of Head Start grantees and delegate agencies. The survey entitled: "Survey of Head Start Family Self-Sufficiency Initiatives" is designed to obtain national data regarding self-sufficiency needs of Head Start families in the areas of literacy, employability, and substance abuse and to ascertain the extent that local Head Start programs independently or in collaboration with other community agencies assist Head Start families with their self-sufficiency needs.

ADDRESSES: Copies of this information collection may be obtained from Stephen R. Smith of the Office of Information Systems Management of the Administration for Children and Families (ACF) by calling (202) 401–6964. Written comments and questions regarding this information collection should be sent directly to. Laura Oliven, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street, NW., Washington, D.C. 20503.

Information on Document

Title: Survey of Head Start Family Self-Sufficiency Initiatives

OMB No.: 0980—New request

Description: This survey is part of a national study to provide descriptive information on obstacles confronting self-sufficiency of Head Start families. Experts in the human services areas have generally recognized the changing demographics of Head Start families and that Head Start programs cannot take into consideration the full range of relevant social, psychological, educational, substance abuse, health and economic factors impacting Head Start families. Due to the sheer complexity of the problems and issues affecting Head Start families, it is clear that no single organization possesses the substantial resources necessary to develop and implement complete services without active program coordination and collaboration among community resources and agency services. Thus, this study is designed to identify the resources available for collaborative efforts that confront these problems.

In particular, the experts have recognized that problems in the areas of literacy, employability, and substance abuse were affecting a family's ability to become self-sufficient. The survey is designed to gather descriptive information on the number and type of efforts undertaken by Head Start programs, either directly or in collaboration with other agencies, to help families address the problem areas which jeopardize their self-sufficiency.

By conducting a national survey of all Head Start grantees, managers of Head Start Programs and ACF will gain a better understanding of current levels of involvement in community efforts to address the three major problem areas that threaten self-sufficiency, as well as the potential role that grantees could play in these efforts. This information will be used to provide recommendations on how to foster and support Head Start programs' attempts to address these problems, and will help

to ensure that the policies and practices of programs serving Head Start families support an effective, collaborative, and integrated approach to confronting the myriad of problems that threaten self-sufficiency.

Annual Number of Respondents: 1,900
Frequency: 1
Average Burden Hours Per Responses: .833
Total Burden Hours: 1,583

Dated: October 7, 1993.

Larry Guerrero,

Deputy Director, Office of Information Systems Management.

[FR Doc. 93–25819 Filed 10–20–93; 8:45 am]

BILLING CODE 4184–01–M

Food and Drug Administration

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETING: The following advisory committee meeting is announced:

Subcommittee Meeting of the Antiviral Drugs Advisory Committee

Date, time, and place. November 22, 1993, 8 a.m., Parklawn Bldg., Conference rms. D and E, 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, 8 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 4 p.m.; Lee L. Zwanziger or Valerie Mealy, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695.

General function of the committee. The committee reviews and evaluates data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of acquired immune deficiency syndrome (AIDS), AIDS-related complex (ARC), and other viral, fungal, and mycobacterial infections.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify a contact person before November 15, 1993, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The subcommittee will discuss data on safety and efficacy regarding new drug applications (NDA's) 50–708 and 50–709, tacrolimus (Prograf®), Fujisawa USA, Inc., for use in prophylaxis of rejection of primary liver allografts.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting. This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: October 14, 1993.

Jane E. Henney,

Deputy Commissioner for Operations.

[FR Doc. 93–25867 Filed 10–20–93; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

[Billing Code 4140–01]

National Institute of Environmental Health Sciences: Opportunity for a Cooperative Research and Development Agreement (CRADA) for the Identification of a Hormone Interacting With a Novel Hepatic Orphan Nuclear Receptor

AGENCY: National Institute of Environmental Health Sciences, National Institutes of Health, PHS, DHHS.

ACTION: Notice.

SUMMARY: National Institute of Environmental Health Sciences (NIEHS) seek a pharmaceutical company that can effectively pursue the isolation and

molecular structure determination of a hormone activating a novel orphan nuclear receptor belonging to the family of steroid and thyroid hormone receptors. The receptor's ligand-dependency has been clearly established and initial purification methods have been developed for separation of the hormone activity from other components in tissue extracts. The potential partner should have the facilities to extract kilogram quantities of biological material with organic solvents as well as possess the necessary expertise for characterizing the hormone's chemical structure using techniques such as nuclear magnetic resonance, infrared, ultraviolet, and mass spectroscopy. The prospective partner should also be proficient in both analytical and synthetic organic chemistry techniques for small molecule structure determination.

ADDRESSES: Questions about this opportunity may be addressed to Dr. Cary Weinberger, NIEHS, Mail Drop 3B–02, P.O. Box 12233, Research Triangle Park, NC 27709. Telephone (919) 541–1355.

DATES: Proposal must be received by November 29, 1993.

SUPPLEMENTARY INFORMATION: NIEHS is seeking a pharmaceutical company possessing the wherewithal to aid in the isolation of novel hormones interacting with receptors of the class that bind steroid and thyroid hormones, retinoids, and vitamin D. These receptor polypeptides bind lipophilic, small molecular weight ligands endowing the receptor with higher DNA binding affinities resulting in transcription modulation from a limited number of target genes. The scientific literature boasts a collection of fifteen orphan nuclear receptors whose activating ligands remain unidentified. One particular unpublished orphan receptor, expressed in the liver and intestine, has recently been shown to source of hormone activity of transcription. A suitable source of hormone activity has been identified and initial chromatographic techniques have been applied to separate this activity from the remainder of the complex mixture.

The role of the CRADA partner will be the following:

1. To aid in the extraction of sufficient quantities of the hormone activity from biological samples for its physico-chemical analysis. All necessary methods and reagents for following the activity through these purification steps will be transferred to the partner. The purity of the active fractions will be assessed at predetermined intervals.

2. To provide the analytical means and expertise for characterizing the physical and chemical characteristics of the active principle, specifically its molecular weight and structure. These should include but not be limited to knowledge of nuclear magnetic resonance spectroscopy, infrared spectroscopy, ultraviolet spectroscopy, and mass spectroscopy. In addition, the partner should possess the capacity for derivatization of the active principle using methods of organic synthesis. Experience with these analytical methods for structure determination should be grounded in the study of small lipophilic molecules such as steroids or terpenes.

3. Organic synthesis of the hormone as the final proof of its biological activity and for physiological and pharmacological testing in animals.

Selection criteria for choosing the CRADA partner(s) will include, but not be limited to the following:

1. Willingness to provide NIEHS with sufficient amounts of the purified hormone for subsequent physiological studies in animals and humans.

2. Experience and ability to produce, package, market, and distribute any pharmaceutical products in the United States arising from this cooperative venture for hormone structure determination.

3. Willingness to share the synthesized material for defined studies with outside laboratories.

4. Willingness to accept provisions for the equitable distribution of patent rights to any inventions. Generally the rights of ownership are retained by the organization which is the employer of the inventor, with (1) an irrevocable, nonexclusive, royalty-free research license to the Government (when a company employee is the sole inventor); or (2) an exclusive or nonexclusive license to the company on terms that are appropriate (when the Government employee is the sole or joint inventor).

Dated: October 13, 1993.

Reid G. Adler,

Director, Office of Technology Transfer.

[FR Doc. 93–25879 Filed 10–20–93; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Environmental Health Sciences; Notice of Meeting of Environmental Health Sciences Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Environmental Health Sciences Review Committee on November 15–16, 1993, at the National Institute of Environmental Health Sciences, Building 18 Conference Room, North Campus, Research Triangle Park, North Carolina. The meeting will be open to the public on November 15 from 1 p.m. until approximately 2 p.m. for general discussion. Attendance by the public is limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92–463, the meeting will be closed to the public November 15, from approximately 8:30 a.m. until 12 Noon, from 2 p.m. to recess and from 8:30 a.m to adjournment on November 16, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Drs. John Braun, Allen Dearry and Carol Shreffler, Scientific Review Administrators, Environmental Health Sciences Review Committee, National Institute of Environmental Health Sciences, National Institutes of Health, P.O. Box 12233, Research Triangle Park, North Carolina 27709, (telephone 919–541–7826), will provide summaries of meeting and rosters of committee members. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact any of the above named Scientific Review Administrators in advance of the meeting.

(Catalog of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation; 98.894, Resource and Manpower Development, National Institutes of Health)

Dated: October 14, 1993.

Wendy Baldwin,

Acting Deputy Director for Extramural Research.

[FR Doc. 93–25869 Filed 10–20–93; 8:45 am]

BILLING CODE 4140–01–M

National Eye Institute; Vision Research Review Committee; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Vision Research Review Committee, National Eye Institute, October 18 and 19, 1993, at the Ramada Inn at Congressional Park, 1775 Rockville Pike, Rockville, Maryland 20852.

This meeting will be open to the public on October 18 from 8:30 to 9 a.m. for opening remarks and discussion of program guidelines. Attendance by the public will be limited to space available.

In accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92–463, the meeting will be closed to the public from 9 a.m. on October 18 until adjournment for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Lois DeNinno, Committee Management Officer, National Eye Institute, EPS, suite 350, National Institutes of Health, Bethesda, Maryland 20892, 301/496–5301, will provide, upon request, summaries of the meeting, rosters of committee members, and substantive program information, as well as, information regarding sign language interpretation or other reasonable accommodations.

This notice is being published less than 15 days prior to the meeting due to the difficulty of coordinating the attendance of members because of conflicting schedules.

(Catalog of Federal Domestic Assistance Program No. 93.867, Vision Research; National Institutes of Health.)

Dated: October 14, 1993.

Wendy Baldwin,

Acting Deputy Director for Extramural Research, NIH.

[FR Doc. 93–25868 Filed 10–20–93; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs

AGENCY: Bureau of Indian Affairs.

ACTION: Notice.

SUMMARY: Notice is hereby given of the revision and update of the list of entities recognized and eligible for funding and services from the Bureau of Indian Affairs and is published pursuant to 25 CFR part 83.

FOR FURTHER INFORMATION CONTACT: Patricia Simmons, Bureau of Indian Affairs, Division of Tribal Government Services, 1849 C Street NW., Washington, DC 20240. Telephone number: (202) 208–7445.

SUPPLEMENTARY INFORMATION: This notice is published in exercise of authority delegated to the Assistant Secretary—Indian Affairs under 25 U.S.C. 2 and 9 and 209 DM 8.

Published below are lists of federally acknowledged tribes in the contiguous 48 states and in Alaska. The list for the contiguous 48 states is updated from the last such list published in 1988 to include tribes acknowledged through the Federal acknowledgment process and legislation. The list for Alaska has been substantially revised from the 1988 list of Alaska entities for the following reasons:

In 1978 the Department of the Interior adopted regulations setting out "Procedures for Establishing That an American Indian Group Exists as an Indian Tribe." 43 FR 39361 (Sept. 5, 1978). The regulations "establish a departmental procedure and policy for acknowledging that certain American Indian tribes exist. Such acknowledgment of tribal existence by the Department is a prerequisite to the protection, services, and benefits from the Federal Government available to Indian tribes. Such acknowledgment shall also mean that the tribe is entitled to the immunities and privileges available to other federally acknowledged Indian tribes by virtue of their status as Indian tribes as well as the responsibilities and obligations of such tribes. Acknowledgment shall subject the Indian tribe to the same authority of Congress and the United States to which other federally acknowledged tribes are subjected." 25 CFR 83.2.

Under the procedures, groups not recognized as tribes by the Federal Government may apply for Federal acknowledgment. Tribes, bands, pueblos or communities already acknowledged as such and receiving services from the Bureau of Indian Affairs were not required to seek acknowledgment anew. 25 CFR 83.3 (a), (b). To assist groups in determining whether they were required to apply, the procedures provided for the publication within 90 days of a list of "all Indian tribes which are recognized and receiving services from the Bureau of Indian Affairs." 25 CFR 83.6(b). This list is to be updated annually. *Ibid.*

The first list of acknowledged tribes was published in 1979. 44 FR 7325 (Feb. 9, 1979). The list used the term "entities" in the preamble and elsewhere to refer to and include all the various anthropological organizations, such as bands, pueblos and villages, acknowledged by the Federal Government to constitute tribes with a government-to-government relationship with the United States. A footnote defined "entities" to include "Indian tribes, bands, villages, groups and pueblos as well as Eskimos and Aleuts." 44 FR at 7325, n. *.

The 1979 list did not, however, contain the names of any Alaska Native entities. The preamble stated that: "[t]he list of eligible Alaskan entities will be published at a later date." 44 FR at 7235.

In 1982 the Department added to the list of tribal entities in the contiguous 48 states a "preliminary list" of Alaska Native entities under the heading Alaska Native Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs. 47 FR 53133 (Nov. 24, 1982). The preamble to this list stated:

> [U]nique circumstances have made eligible additional entities in Alaska which are not historical tribes. Such circumstances have resulted in multiple, overlapping eligibility of Native entities in Alaska. To alleviate any confusion which might arise from publication of a multiple eligibility listing, the following preliminary list shows those entities to which the Bureau of Indian Affairs gives priority for purposes of funding and services.

47 FR at 53133–53134.

The meaning of this preamble was clarified by the 1982 list itself. The entities appearing on the list were traditional councils that were identified as tribes in the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. 1602(c), and that had been dealt with by the Bureau of Indian Affairs on a government-to-government basis and Indian Reorganization Act councils organized under the Indian Reorganization Act (IRA), 25 U.S.C. 473a, and dealt with on a government-to-government basis by the BIA. These entities parallel the kinds of entities listed on the list for the contiguous 48 states. Not listed on the Alaska list were regional, village and urban corporations organized under state law in accordance with ANCSA. These corporations are not governments, but they have been designated as "tribes" for the purposes of some Federal laws, primarily the Indian Self-Determination and Education Assistance Act (ISDA), 25 U.S.C. 450b(b), creating the overlapping eligibility referred to in the preamble.

The 1982 preamble, nonetheless, caused confusion as to the Department's intent. *See, e.g., Board of Equalization* v. *Alaska Native Brotherhood,* 666 P.2d 1015, 1024, n. 1 (Alaska 1983) (concurring opinion). A number of Alaska Native organizations complained

that the preamble was ambiguous and cast doubt on the tribal status of Alaska Native villages and regional tribes. The statement was dropped from the subsequent lists published in 1983, 48 FR 56862 (Dec. 23, 1983); 1985, 50 FR 6058 (Feb. 13, 1985); and 1986, 51 FR 25118 (July 10, 1986). However, this deletion did not eliminate lingering uncertainties over whether inclusion on, or exclusion from, the Alaska Native entities list constituted an official determination of the United States government as to the tribal status of Native entities. In addition, in 1986, a number of Alaska Native entities complained that they had been wrongly omitted from the lists published between 1982 and 1986.

In 1988, as part of the annual publication required by 25 CFR 83.6(b), the Department published a new list of Alaska entities. The 1988 list departed from the previous lists in a number of respects. Rather than being limited to traditional Native governments and governments reorganized under Federal law, as were the prior lists, the 1988 list was expanded to include nine categories of Alaska entities, including the state-chartered regional, village and urban corporations established pursuant to ANCSA. The number of listed entities thus more than doubled to 500. The preamble to the list stated that the revised list responded to a "demand by the Bureau and other Federal agencies * * * for a list of organizations which are eligible for their funding and services based on their inclusion in categories frequently mentioned in statutes concerning Federal programs for Indians." 53 FR at 52,832.

The inclusion of non-tribal entities on the 1988 Alaska entities list departed from the intent of 25 CFR 83.6(b) and created a discontinuity from the list of tribal entities in the contiguous 48 states, which was republished as part of the same **Federal Register** notice. As in Alaska, Indian entities in the contiguous 48 states other than recognized tribes are frequently eligible to participate in Federal programs under specific statutes. For example, "tribal organizations" associated with recognized tribes, but not themselves tribes, are eligible for contracts and grants under the ISDA. 25 U.S.C. 450b(c), 450f, 450g. Unlike the Alaska entities list, the 1988 entities list for the contiguous 48 states was not expanded to include such entities.

Even more significantly, the change to the Alaska entities list compounded, rather than resolved, the question of the status of Alaska tribes raised by prior lists. First, the list did not distinguish between entities listed on the basis of their status as tribes and non-tribal entities listed because of their eligibility to participate in Federal programs under specific statutes. Second, it omitted the language on some of the earlier lists which described the listed Indian groups as "Indian tribal entities which are recognized as having a special relationship with the United States" and instead included language applicable only to Alaska stating that:

> Inclusion on a list of entities already receiving and eligible for Bureau funding does not constitute a determination that the entity either would or would not qualify for Federal Acknowledgment under the regulations, but only that no such effort is necessary to preserve eligibility. Furthermore, inclusion on or exclusion from this list of any entity should not be construed to be a determination by this Department as to the extent of the powers and authority of that entity.

53 FR at 52,832. Finally, the 1988 list further confused the status of a number of specific entities by using names for some villages that were different from the names of these villages used by the Native traditional councils.

These changes in the 1988 publication have raised a number of questions with respect to the Department's intent and the effect of the 1988 list. The omission in the preamble of all references acknowledging the tribal status of the listed villages, and the inclusion of ANCSA corporations, which lack tribal status in a political sense, called into question the status of all the listed entities. Numerous Native villages, regional tribes and other Native organizations objected to the 1988 list on the grounds that it failed to distinguish between Native corporations and Native tribes and failed to unequivocally recognize the tribal status of the listed villages and regional tribes.

In January 1993 the Solicitor of the Department of the Interior issued a comprehensive opinion analyzing the status of Alaska Native villages as "Indian tribes," as that term is commonly used to refer to Indian entities in the contiguous 48 states. The Solicitor analyzed the unique circumstances of Alaska Native villages. After a lengthy historical review, the Solicitor concluded that there are tribes in Alaska:

> By the time of enactment of the IRA [Indian Reorganization Act of 1934, as amended in 1936], the preponderant opinion was that Alaska Natives were subject to the same legal principles as Indians in the contiguous 48 states, and had the same powers and attributes as other Indian tribes, except to the extent limited or preempted by Congress.
>
> What constitutes a tribe in the contiguous 48 states is sometimes a difficult question. So also is it in Alaska. The history of Alaska is unique, but so is that of California, New Mexico and Oklahoma. While the Department's position with regard to the existence of tribes in Alaska may have vacillated between 1867 and the opening decades of this century, it is clear that for the last half century, Congress and the Department have dealt with Alaska Natives as though there were tribes in Alaska. The fact that the Congress and the Department may not have dealt with all Alaska Natives as tribes at all times prior to the 1930's did not preclude it from dealing with them as tribes subsequently.

Sol. Op. M–36,975, at 46, 47–48 (Jan. 11, 1993).

The Solicitor found it unnecessary for the purposes of his opinion to identify specifically those villages which are tribes, although he observed that Congress's listing of specific villages in the Alaska Native Claims Settlement Act and the repeated inclusion of such villages within the definition of "tribe" over the 20 years since the passage of ANCSA arguably constituted a congressional determination that the villages found eligible for benefits under ANCSA, referred to as the "modified ANCSA list," are considered Indian tribes for purposes of Federal law. M–36,975, at 58–59.

In view of the foregoing, and to comply with the requirement of 25 CFR 83.6(b), the Department of the Interior has determined it necessary to publish a new list of Alaska tribal entities. The Bureau of Indian Affairs has reviewed the "modified ANCSA list" of villages and the list of those villages and regional tribes previously listed or dealt with by the Federal Government as governments and found that the villages and regional tribes listed below have functioned as political entities exercising governmental authority and are, therefore, acknowledged to have "the immunities and privileges available to other federally acknowledged Indian tribes by virtue of their status as Indian tribes as well as the responsibilities and obligations of such tribes."

The purpose of the current publication is to publish an Alaska list of entities conforming to the intent of 25 CFR 83.6(b) and to eliminate any doubt as to the Department's intention by expressly and unequivocally acknowledging that the Department has determined that the villages and regional tribes listed below are distinctly Native communities and have the same status as tribes in the contiguous 48 states. Such acknowledgement of tribal existence by the Department is a prerequisite to the protection, services, and benefits from the Federal Government available to

Indian tribes. This list is published to clarify that the villages and regional tribes listed below are not simply eligible for services, or recognized as tribes for certain narrow purposes. Rather, they have the same governmental status as other federally acknowledged Indian tribes by virtue of their status as Indian tribes with a government-to-government relationship with the United States; are entitled to the same protection, immunities, privileges as other acknowledged tribes; have the right, subject to general principles of Federal Indian law, to exercise the same inherent and delegated authorities available to other tribes; and are subject to the same limitations imposed by law on other tribes.[1]

A directive accompanying the Department of the Interior and Related Agencies Appropriations Act for FY 1992 directed the Secretary to study the historical evidence relating to five villages for purposes of determining whether they were inadvertently denied village or urban status under ANCSA. H.R. Rep. No. 102–256, 102d Cong., 1st Sess. 42–43 (1991). Four of these villages are listed below on the basis of their reorganization under Federal law. A decision on inclusion of the remaining village (Tenakee) will be made after the completion of the study.

Because the list published by this notice is limited to entities found to be Indian tribes, as that term is defined and used in 25 CFR part 83, it does not include a number of non-tribal Native entities in Alaska that currently contract with or receive services from the Bureau of Indian Affairs pursuant to specific statutory authority, including ANCSA village and regional corporations and various tribal organizations. These entities are made eligible for Federal contracting and services by statute and their non-inclusion on the list below does not affect the continued eligibility of the entities for contracts and services.[2]

[1] Sol. Op. M–36,975 concluded, construing general principles of Federal Indian law and ANCSA, that "notwithstanding the potential that Indian country still exists in Alaska in certain limited cases, Congress has left little or no room for tribes in Alaska to exercise governmental authority over land or nonmembers." M–36,975, at 108. That portion of the opinion is subject to review, but has not been withdrawn or modified.

[2] Under longstanding BIA policy, priority for contracts and services in Alaska is given to reorganized and traditional governments over non-tribal corporations. Proposed regulations to implement the 1988 Amendments to the Indian Self-Determination Act scheduled to be published in the near future will incorporate this policy.

Ada E. Deer,

Assistant Secretary-Indian Affairs.

Indian Tribal Entities Within the Contiguous 48 States Recognized and Eligible to Receive Services from The United States Bureau of Indian Affairs

Absentee-Shawnee Tribe of Indians of Oklahoma
Agua Caliente Band of Cahuilla Indians of the Agua Caliente Indian Reservation, California
Ak Chin Indian Community of Papago Indians of the Maricopa, Ak Chin Reservation, Arizona
Alabama and Coushatta Tribes of Texas
Alabama-Quassarte Tribal Town of the Creek Nation of Oklahoma
Alturas Rancheria of Pit River Indians of California
Apache Tribe of Oklahoma
Arapahoe Tribe of the Wind River Reservation, Wyoming
Aroostook Band of Micmac Indians of Maine
Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana
Augustine Band of Cahuilla Mission Indians of the Augustine Reservation, California
Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin
Bay Mills Indian Community of the Sault Ste. Marie Band of Chippewa Indians, Bay Mills Reservation, Michigan
Berry Creek Rancheria of Maidu Indians of California
Big Lagoon Rancheria of Smith River Indians of California
Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation, California
Big Sandy Rancheria of Mono Indians of California
Big Valley Rancheria of Pomo & Pit River Indians of California
Blackfeet Tribe of the Blackfeet Indian Reservation of Montana
Blue Lake Rancheria of California
Bridgeport Paiute Indian Colony of California
Buena Vista Rancheria of Me-Wuk Indians of California
Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon
Cabazon Band of Cahuilla Mission Indians of the Cabazon Reservation, California
Cachil DeHe Band of Wintun Indians of the Colusa Indian Community of the Colusa Rancheria, California
Caddo Indian Tribe of Oklahoma
Cahuilla Band of Mission Indians of the Cahuilla Reservation, California
Cahto Indian Tribe of the Laytonville Rancheria, California
Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California
Capitan Grande Band of Diegueno Mission Indians of California:
  Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California
  Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California
Cayuga Nation of New York
Cedarville Rancheria of Northern Paiute Indians of California
Chemehuevi Indian Tribe of the Chemehuevi Reservation, California
Cher-Ae Heights Indian Community of the Trinidad Rancheria, California
Cherokee Nation of Oklahoma
Cheyenne-Arapaho Tribes of Oklahoma
Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota
Chickasaw Nation of Oklahoma
Chicken Ranch Rancheria of Me-Wuk Indians of California
Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana
Chitimacha Tribe of Louisiana
Choctaw Nation of Oklahoma
Citizen Band Potawatomi Indian Tribe of Oklahoma
Cloverdale Rancheria of Pomo Indians of California
Coast Indian Community of Yurok Indians of the Resighini Rancheria, California
Cocopah Tribe of Arizona
Coeur D'Alene Tribe of the Coeur D'Alene Reservation, Idaho
Cold Springs Rancheria of Mono Indians of California
Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California
Comanche Indian Tribe of Oklahoma
Confederated Salish & Kootenai Tribes of the Flathead Reservation, Montana
Confederated Tribes of the Chehalis Reservation, Washington
Confederated Tribes of the Colville Reservation, Washington
Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians of Oregon
Confederated Tribes of the Goshute Reservation, Nevada and Utah
Confederated Tribes of the Grand Ronde Community of Oregon
Confederated Tribes of the Siletz Reservation, Oregon
Confederated Tribes of the Umatilla Reservation, Oregon
Confederated Tribes of the Warm Springs Reservation of Oregon
Confederated Tribes and Bands of the Yakima Indian Nation of the Yakima Reservation, Washington
Coquille Tribe of Oregon
Cortina Indian Rancheria of Wintun Indians of California
Coushatta Tribe of Louisiana
Covelo Indian Community of the Round Valley Reservation, California
Cow Creek Band of Umpqua Indians of Oregon
Coyote Valley Band of Pomo Indians of California
Creek Nation of Oklahoma
Crow Tribe of Montana
Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota
Cuyapaipe Community of Diegueno Mission Indians of the Cuyapaipe Reservation, California
Death Valley Timbi-Sha Shoshone Band of California
Delaware Tribe of Western Oklahoma
Devils Lake Sioux Tribe of the Devils Lake Sioux Reservation, North Dakota
Dry Creek Rancheria of Pomo Indians of California
Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada

Eastern Band of Cherokee Indians of North Carolina
Eastern Shawnee Tribe of Oklahoma
Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria, California
Elk Valley Rancheria of Smith River Tolowa Indians of California
Ely Shoshone Tribe of Nevada
Enterprise Rancheria of Maidu Indians of California
Flandreau Santee Sioux Tribe of South Dakota
Forest County Potawatomi Community of Wisconsin Potawatomie Indians, Wisconsin
Fort Belknap Indian Community of the Fort Belknap Reservation of Montana
Fort Bidwell Indian Community of Paiute Indians of the Fort Bidwell Reservation, California
Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, California
Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada
Fort McDowell Mohave-Apache Indian Community of the Fort McDowell Indian Reservation, Arizona
Fort Mojave Indian Tribe of Arizona
Fort Sill Apache Tribe of Oklahoma
Gila River Pima-Maricopa Indian Community of the Gila River Indian Reservation of Arizona
Grand Traverse Band of Ottawa & Chippewa Indians of Michigan
Greenville Rancheria of Maidu Indians of California
Grindstone Indian Rancheria of Wintun-Wailaki Indians of California
Guidiville Rancheria of California
Hannahville Indian Community of Wisconsin Potawatomie Indians of Michigan
Havasupai Tribe of the Havasupai Reservation, Arizona
Hoh Indian Tribe of the Hoh Indian Reservation, Washington
Hoopa Valley Tribe of the Hoopa Valley Reservation, California
Hopi Tribe of Arizona
Hopland Band of Pomo Indians of the Hopland Rancheria, California
Houlton Band of Maliseet Indians of Maine
Hualapai Tribe of the Hualapai Indian Reservation, Arizona
Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California
Iowa Tribe of Kansas and Nebraska
Iowa Tribe of Oklahoma
Jackson Rancheria of Me-Wuk Indians of California
Jamestown Klallam Tribe of Washington
Jamul Indian Village of California
Jicarilla Apache Tribe of the Jicarilla Apache Indian Reservation, New Mexico
Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona
Kalispel Indian Community of the Kalispel Reservation, Washington
Karuk Tribe of California
Kashia Band of Pomo Indians of the Stewarts Point Rancheria, California
Kaw Indian Tribe of Oklahoma
Keweenaw Bay Indian Community of L'Anse and Ontonagon Bands of Chippewa Indians of the L'Anse Reservation, Michigan
Kialegee Tribal Town of the Creek Indian Nation of Oklahoma
Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas
Kickapoo Tribe of Oklahoma
Kickapoo Traditional Tribe of Texas
Kiowa Indian Tribe of Oklahoma
Klamath Indian Tribe of Oregon
Kootenai Tribe of Idaho
La Jolla Band of Luiseno Mission Indians of the La Jolla Reservation, California
La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California
La Courte Oreilles Band of Lake Superior Chippewa Indians of the Lac Courte Oreilles Reservation of Wisconsin
Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin
Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan
Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada
Los Coyotes Band of Cahuilla Mission Indians of the Los Coyotes Reservation, California
Lovelock Paiute Tribe of the Lovelock Indian Colony, Nevada
Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota
Lower Elwha Tribal Community of the Lower Elwha Reservation, Washington
Lower Sioux Indian Community of Minnesota Mdewakanton Sioux Indians of the Lower Sioux Reservation in Minnesota
Lummi Tribe of the Lummi Reservation, Washington
Lytton Rancheria of California
Makah Indian Tribe of the Makah Indian Reservation, Washington
Manchester Band of Pomo Indians of the Manchester-Point Arena Rancheria, California
Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California
Mashantucket Pequot Tribe of Connecticut
Mechoopda Indian Tribe of Chico Rancheria, California
Menominee Indian Tribe of Wisconsin
Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California
Mescalero Apache Tribe of the Mescalero Reservation, New Mexico
Miami Tribe of Oklahoma
Miccosukee Tribe of Indians of Florida
Middletown Rancheria of Pomo Indians of California
Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lac Band; White Earth Band)
Mississippi Band of Choctaw Indians, Mississippi
Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Nevada
Modoc Tribe of Oklahoma
Mooretown Rancheria of Maidu Indians of California
Morongo Band of Cahuilla Mission Indians of the Morongo Reservation, California
Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington
Narragansett Indian Tribe of Rhode Island
Navajo Tribe of Arizona, New Mexico & Utah
Nez Perce Tribe of Idaho
Nisqually Indian Community of the Nisqually Reservation, Washington
Nooksack Indian Tribe of Washington
Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana
Northfork Rancheria of Mono Indians of California
Northwestern Band of Shoshoni Indians of Utah (Washakie)
Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota
Omaha Tribe of Nebraska
Oneida Nation of New York
Oneida Tribe of Wisconsin
Onondaga Nation of New York
Osage Tribe of Oklahoma
Ottawa Tribe of Oklahoma
Otoe-Missouria Tribe of Oklahoma
Paiute Indian Tribe of Utah
Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, California
Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada
Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation, California
Pala Band of Luiseno Mission Indians of the Pala Reservation, California
Pascua Yaqui Tribe of Arizona
Passamaquoddy Tribe of Maine
Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation, California
Pawnee Indian Tribe of Oklahoma
Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California
Penobscot Tribe of Maine
Peoria Tribe of Oklahoma
Picayune Rancheria of Chukchansi Indians of California
Pinoleville Rancheria of Pomo Indians of California
Pit River Tribe of California (includes Big Bend, Lookout, Montgomery Creek & Roaring Creek Rancherias & XL Ranch)
Poarch Band of Creek Indians of Alabama
Ponca Tribe of Indians of Oklahoma
Ponca Tribe of Nebraska
Port Gamble Indian Community of the Port Gamble Reservation, Washington
Potter Valley Rancheria of Pomo Indians of California
Prairie Band of Potawatomi Indians of Kansas
Prairie Island Indian Community of Minnesota Mdewakanton Sioux Indians of the Prairie Island Reservation, Minnesota
Pueblo of Acoma, New Mexico
Pueblo of Cochiti, New Mexico
Pueblo of Jemez, New Mexico
Pueblo of Isleta, New Mexico
Pueblo of Laguna, New Mexico
Pueblo of Nambe, New Mexico
Pueblo of Picuris, New Mexico
Pueblo of Pojoaque, New Mexico
Pueblo of San Felipe, New Mexico
Pueblo of San Juan, New Mexico
Pueblo of San Ildefonso, New Mexico
Pueblo of Sandia, New Mexico
Pueblo of Santa Ana, New Mexico
Pueblo of Santa Clara, New Mexico
Pueblo of Santo Domingo, New Mexico
Pueblo of Taos, New Mexico
Pueblo of Tesuque, New Mexico
Pueblo of Zia, New Mexico

Puyallup Tribe of the Puyallup Reservation, Washington
Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Washington
Quapaw Tribe of Oklahoma
Quartz Valley Rancheria of Karok, Shasta & Upper Klamath Indians of California
Quechan Tribe of the Fort Yuma Indian Reservation, California
Quileute Tribe of the Quileute Reservation, Washington
Quinault Tribe of the Quinault Reservation, Washington
Ramona Band or Village of Cahuilla Mission Indians of California
Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin
Red Lake Band of Chippewa Indians of the Red Lake Reservation, Minnesota
Redding Rancheria of Pomo Indians of California
Redwood Valley Rancheria of Pomo Indians of California
Reno-Sparks Indian Colony, Nevada
Rincon Band of Luiseno Mission Indians of the Rincon Reservation, California
Robinson Rancheria of Pomo Indians of California
Rohnerville Rancheria of Bear River or Mattole Indians of California
Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota
Rumsey Indian Rancheria of Wintun Indians of California
Sac & Fox Tribe of Mississippi in Iowa
Sac & Fox Tribe of Missouri in Kansas and Nebraska
Sac & Fox Tribe of Oklahoma
Saginaw Chippewa Indian Tribe of Michigan, Isabella Reservation
Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona
San Carlos Apache Tribe of the San Carlos Reservation, Arizona
San Juan Southern Paiute Tribe of Arizona
San Manual Band of Serrano Mission Indians of the San Manual Reservation, California
San Pasqual Band of Diegueno Mission Indians of California
Santa Rosa Indian Community of the Santa Rosa Rancheria, California
Santa Rosa Band of Cahuilla Mission Indians of the Santa Rosa Reservation, California
Santa Ynez Band of Chumash Mission Indians of the Santa Ysabel Reservation, California
Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, California
Santee Sioux Tribe of the Santee Reservation of Nebraska
Sauk-Suiattle Indian Tribe of Washington
Sault Ste. Marie Tribe of Chippewa Indians of Michigan
Scotts Valley Band of Pomo Indians of California
Seminole Nation of Oklahoma
Seminole Tribe of Florida, Dania, Big Cypress & Brighton Reservations
Seneca Nation of New York
Seneca-Cayuga Tribe of Oklahoma
Shakopee Mdewakanton Sioux Community of Minnesota (Prior Lake)
Sheep Ranch Rancheria of Me-Wuk Indians of California
Sherwood Valley Rancheria of Pomo Indians of California
Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California
Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation, Washington
Shoshone Tribe of the Wind River Reservation, Wyoming
Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho
Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada
Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation, South Dakota
Skokomish Indian Tribe of the Skokomish Reservation, Washington
Skull Valley Band of Goshute Indians of Utah
Smith River Rancheria of California
Soboba Band of Luiseno Mission Indians of the Soboba Reservation, California
Sokaogon Chippewa Community of the Mole Lake Band of Chippewa Indians, Wisconsin
Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado
Spokane Tribe of the Spokane Reservation, Washington
Squaxin Island Tribe of the Squaxin Island Reservation, Washington
St. Croix Chippewa Indians of Wisconsin, St. Croix Reservation
St. Regis Band of Mohawk Indians of New York
Standing Rock Sioux Tribe of North & South Dakota
Stockbridge-Munsee Community of Mohican Indians of Wisconsin
Stillaguamish Tribe of Washington
Summit Lake Paiute Tribe of Nevada
Suquamish Indian Tribe of the Port Madison Reservation, Washington
Susanville Indian Rancheria of Paiute, Maidu, Pit River & Washoe Indians of California
Swinomish Indians of the Swinomish Reservation, Washington
Sycuan Band of Diegueno Mission Indians of California
Table Bluff Rancheria of Wiyot Indians of California
Table Mountain Rancheria of California
Te-Moak Tribes of Western Shoshone Indians of Nevada
Thlopthlocco Tribal Town of the Creek Nation of Oklahoma
Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota
Tohono O'odham Nation of Arizona (formerly known as the Papago Tribe of the Sells, Gila Bend & San Xavier Reservation, Arizona)
Tonawanda Band of Seneca Indians of New York
Tonkawa Tribe of Indians of Oklahoma
Tonto Apache Tribe of Arizona
Torres-Martinez Band of Cahuilla Mission Indians of California
Tule River Indian Tribe of the Tule River Reservation, California
Tulalip Tribes of the Tulalip Reservation, Washington
Tunica-Biloxi Indian Tribe of Louisiana
Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California
Turtle Mountain Band of Chippewa Indians of North Dakota
Tuscarora Nation of New York
Twenty-Nine Palms Band of Luiseno Mission Indians of California
United Keetoowah Band of Cherokee Indians of Oklahoma
Upper Lake Band of Pomo Indians of Upper Lake Rancheria of California
Upper Sioux Indian Community of the Upper Sioux Reservation, Minnesota
Upper Skagit Indian Tribe of Washington
Ute Indian Tribe of the Uintah & Ouray Reservation, Utah
Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah
Utu Utu Gwaitu Paiute Tribe of the Benton Paiute Reservation, California
Walker River Paiute Tribe of the Walker River Reservation, California
Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts
Washoe Tribe of Nevada & California (Carson Colony, Dresslerville & Washoe Ranches)
White Mountain Apache Tribe of the Fort Apache Reservation, Arizona
Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie) of Oklahoma
Winnebago Tribe of Nebraska
Winnemucca Indian Colony of Nevada
Wisconsin Winnebago Indian Tribe of Wisconsin
Wyandotte Tribe of Oklahoma
Yankton Sioux Tribe of South Dakota
Yavapai-Apache Indian Community of the Camp Verde Reservation, Arizona
Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona
Yerington Paiute Tribe of the Yerington Colony & Campbell Ranch, Nevada
Yomba Shoshone Tribe of the Yomba Reservation, Nevada
Ysleta Del Sur Pueblo of Texas
Yurok Tribe of the Hoopa Valley Reservation, California
Zuni Tribe of the Zuni Reservation, New Mexico

Native Entities Within the State of Alaska Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs

Village of Afognak
Native Village of Akhiok
Akiachak Native Community
Akiak Native Community
Native Village of Akutan
Village of Alakanuk
Alatna Village
Native Village of Aleknagik
Algaaciq Native Village (St. Mary's)
Allakaket Village
Native Village of Ambler
Village of Anaktuvuk Pass
Yupiit of Andreafski
Angoon Community Association
Village of Aniak
Anvik Village
Arctic Village (See Native Village of Venetie Tribal Government)
Native Village of Atka
Atqasuk Village (Atkasook)
Village of Atmautluak
Native Village of Barrow
Beaver Village
Native Village of Belkofski
Village of Bill Moore's Slough
Birch Creek Village
Native Village of Brevig Mission

Native Village of Buckland
Native Village of Cantwell
Native Village of Chanega (aka Chenega)
Chalkyitsik Village
Village of Chefornak
Chevak Native Village
Chickaloon Native Village
Native Village of Chignik
Native Village of Chignik Lagoon
Chignik Lake Village
Chilkat Indian Village (Klukwan)
Chilkoot Indian Association (Haines)
Chinik Eskimo Community (Golovin)
Native Village of Chistochina
Native Village of Chitina
Native Village of Chuatbaluk (Russion Mission, Kuskokwim)
Chuloonawick Native Village
Circle Native Community
Village of Clarks's Point
Native Village of Council
Craig Community Association
Village of Crooked Creek
Native Village of Deering
Native Village of Dillingham
Native Village of Diomede (aka Inalik)
Village of Dot Lake
Douglas Indian Association
Native Village of Eagle
Native Village of Eek
Egegik Village
Eklutna Native Village
Native Village of Ekuk
Ekwok Village
Native Village of Elim
Emmonak Village
Evansville Village (aka Bettles Field)
Native Village of Eyak (Cordova)
Native Village of False Pass
Native Village of Fort Yukon
Native Village of Gakona
Galena Village (aka Louden Village)
Native Village of Gambell
Native Village of Georgetown
Native Village of Goodnews Bay
Organized Village of Grayling (aka Holikachuk)
Gulkana Village
Native Village of Hamilton
Healy Lake Village
Holy Cross Village
Hoonah Indian Association
Native Village of Hooper Bay
Hughes Village
Huslia Village
Hydaburg Cooperative Association
Igiugig Village
Village of Iliamna
Inupiat Community of the Arctic Slope
Ivanoff Bay Village
Kaguyak Village
Organized Village of Kake
Kaktovik Village (aka Barter Island)
Village of Kalskag
Village of Kaltag
Native Village of Kanatak
Native Village of Karluk
Organized Village of Kasaan
Native Village of Kasigluk
Kenaitze Indian Tribe
Ketchikan Indian Corporation
Native Village of Kiana
Agdaagux Tribe of King Cove
King Island Native Community
Native Village of Kipnuk
Native Village of Kivalina
Klawock Cooperative Association
Native Village of Kluti Kaah (aka Copper Center)
Knik Village
Native Village of Kobuk
Kokhanok Village
Koliganek Village
Native Village of Kongiganak
Village of Kotlik
Native Village of Kotzebue
Native Village of Koyuk
Koyukuk Native Village
Organized Village of Kwethluk
Native Village of Kwigillingok
Native Village of Kwinhagak (aka Quinhagak)
Native Village of Larsen Bay
Levelock Village
Lesnoi Village (aka Woody Island)
Lime Village
Village of Lower Kalskag
Manley Hot Springs Village
Manokotak Village
Native Village of Marshall (aka Fortuna Ledge)
Native Village of Mary's Igloo
McGrath Native Village
Native Village of Mekoryuk
Mentasta Lake Village
Metlakatla Indian Community, Annette Island Reserve
Native Village of Minto
Native Village of Mountain Village
Naknek Native Village
Native Village of Nanwalek (aka English Bay)
Native Village of Napaimute
Native Village of Napakiak
Native Village of Napaskiak
Native Village of Nelson Lagoon
Nenana Native Association
New Stuyahok Village
Newhalen Village
Newtok Village
Native Village of Nightmute
Nikolai Village
Native Village of Nikolski
Ninilchik Village
Native Village of Noatak
Nome Eskimo Community
Nondalton Village
Noorvik Native Community
Northway Village
Native Village of Nuiqsut (aka Nooiksut)
Nulato Village
Native Village of Nunapitchuk
Village of Ohogamiut
Village of Old Harbor
Orutsararmuit Native Village (aka Bethel)
Oscarville Traditional Village
Native Village of Ouzinkie
Native Village of Paimiut
Pauloff Harbor Village
Pedro Bay Village
Native Village of Perryville
Petersburg Indian Association
Native Village of Pilot Point
Pilot Station Traditional Village
Native Village of Pitka's Point
Platinum Traditional Village
Native Village of Point Hope
Native Village of Point Lay
Native Village of Port Graham
Native Village of Port Heiden
Native Village of Port Lions
Portage Creek Village (aka Ohgsenakale)
Pribilof Islands Aleut Communities of St. Paul & St. George Islands
Qagan Toyagungin Tribe of Sand Point Village
Rampart Village
Village of Red Devil
Native Village of Ruby
Native Village of Russion Mission (Yukon)
Village of Salamatoff
Organized Village of Saxman
Native Village of Savoonga
Saint George (See Pribilof Islands Aleut Communities of St. Paul & St. George Islands)
Native Village of Saint Michael
Saint Paul (See Pribilof Islands Aleut Communities of St. Paul & St. George Islands)
Native Village of Scammon Bay
Native Village of Selawik
Seldovia Village Tribe
Shageluk Native Village
Native Village of Shaktoolik
Native Village of Sheldon's Point
Native Village of Shishmaref
Native Village of Shungnak
Sitka Tribe of Alaska
Skagway Village
Village of Sleetmute
Village of Solomon
South Naknek Village
Stebbins Community Association
Native Village of Stevens
Village of Stony River
Takotna Village
Native Village of Tanacross
Native Village of Tanana
Native Village of Tatitlek
Native Village of Tazlina
Telida Village
Native Village of Teller
Native Village of Tetlin
Traditional Village of Togiak
Native Village of Toksook Bay
Tuluksak Native Community
Native Village of Tuntutuliak
Native Village of Tununak
Twin Hills Village
Native Village of Tyonek
Ugashik Village
Umkumiute Native Village
Native Village of Unalakleet
Qawalingin Tribe of Unalaska
Native Village of Unga
Village of Venetie (See Native Village of Venetie Tribal Government)
Native Village of Venetie Tribal Government (Arctic Village and Village of Venetie)
Village of Wainwright
Native Village of Wales
Native Village of White Mountain
Wrangell Cooperative Association
Yakutat Tlingit Tribe

[FR Doc. 93–25822 Filed 10–20–93; 8:45 am]
BILLING CODE 4310–62–P

Bureau of Land Management

[NM010–4332–01/G910G0001]

Environmental Impact Statement (EIS); Chain of Craters Wilderness Study Unit (WSU), NM

AGENCY: Bureau of Land Management (BLM).

ACTION: Notice of Intent to Prepare an EIS on the wilderness suitability of the Chain of Craters WSU in west-central New Mexico and notice of a thirty-(30-) day public scoping period.

SUMMARY: Pursuant to the El Malpais Legislation (Public Law 100–225, signed on December 31, 1987) and Section 102(2)(c) of the National Environmental Policy Act of 1969, the BLM Albuquerque District will prepare an EIS to address the anticipated impacts of designating or not designating the Chain of Craters WSU for preservation as wilderness. The recommendation will be made through the Secretary of the Interior to the President, followed by congressional action. Only Congress can either designate the area as wilderness or release it from the wilderness review process. Pending congressional action, the Chain of Craters WSU is being managed under the BLM's *Interim Management Policy and Guidelines for Lands Under Wilderness Review.*

DATES: Written comments regarding the scope of this proposal will be accepted until November 24, 1993, or until 30 days after the date of this notice in the **Federal Register**, whichever is later. Public meetings have not been planned but individuals or groups with interest in this proposal are invited to call or come into the Albuquerque District Office and meet with members of the interdisciplinary team. The Draft EIS is tentatively scheduled to be released to the public for a 90-day comment period by the end of March 1994.

ADDRESSES: Comments should be sent to the District Manager, Bureau of Land Management, 435 Montano NE, Albuquerque, NM 87107, Attn. Team Leader, Chain of Craters EIS.

FOR FURTHER INFORMATION CONTACT: John Bristol (505) 761–8755.

SUPPLEMENTARY INFORMATION: The El Malpais National Conservation Area (NCA) near Grants, New Mexico, was established on December 31, 1987, with the enactment of Public Law 100–225. The NCA, managed by the BLM's Albuquerque District, encompasses 262,600 acres of public land. The Chain of Craters WSU, established through the same legislation and totalling 18,300 acres, is included within the boundaries of the NCA. An Environmental Assessment (EA) evaluating the impacts of designating or not designating the Chain of Craters WSU for wilderness designation was completed by the Albuquerque District in July 1991. The decision has now been made to proceed directly from that EA to an EIS. This decision is based upon the addition of wilderness studies to the list of actions the Department of the Interior considers major actions normally requiring the preparation of an EIS. The analysis contained in the July 1991 EA, which included extensive public participation, is being used to identify the proposed issues and alternatives identified to be evaluated in the EIS. Public comments on the issues and alternatives identified to date, as well as any new issues or alternatives that arise through this early and open scoping process, will be considered by the BLM in preparing the EIS.

The proposed issues to be addressed in the EIS include wilderness values, livestock grazing management, American Indian uses, and dispersed recreational opportunities. Cultural resources has been raised as an issue but no sites were found, and only a few isolated artifacts were discovered during a 10 percent sampling of 8 sections. With the passage of Public Law 100–225, all federal minerals were withdrawn from entry and all outstanding mineral rights were acquired by the BLM in 1990. No state or federally listed threatened or endangered species exist within the WSU. (Note: The U.S. Fish and Wildlife Service concurs with this finding.)

The proposed alternatives to be addressed in the EIS include All Wilderness and No Wilderness. Under the All Wilderness Alternative, all 18,300 acres within the Chain of Craters would be considered for wilderness designation by the Congress. Under the No Wilderness Alternative, the Chain of Craters would be managed in accordance with the NCA prescriptions set forth in Public Law 100–225 and further described in the El Malpais General Management Plan (GMP, 1990–91). Copies of the El Malpais GMP may be reviewed in the Albuquerque District Office. An alternative to designate the Chain of Craters as an Area of Critical Environmental Concern (ACEC) has been raised but is now believed by the BLM to be unnecessary. The Chain of Craters is fully within the boundaries of the NCA and the management prescriptions contained in Public Law 100–225 are considered by the BLM to more than adequately meet the proposed objectives of an ACEC designation.

The El Malpais NCA was established to protect the area's unique and nationally significant resources for the benefit and enjoyment of present and future generations. These resources include recreational opportunities and the geological, archeological, ecological, cultural, scenic, and scientific features that surround the lava flows near Grants, New Mexico. The legislative emphasis for the NCA is on conservation.

Dated: October 13, 1993.

Michael R. Ford,

District Manager.

[FR Doc. 93–25857 Filed 10–20–93; 8:45 am]

BILLING CODE 4310–FB–M

[ID–943–04–4210–04; IDI–28747]

Notice of Issuance of Land Exchange Conveyance Document; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Exchange of Public and State Lands.

SUMMARY: The United States has issued an exchange conveyance document to the State of Idaho under Section 206 of the Federal Land Policy and Management Act.

EFFECTIVE DATE: October 21, 1993.

FOR FURTHER INFORMATION CONTACT: Sally Carpenter, BLM, Idaho State Office, 3380 Americana Terrace, Boise, Idaho, (208) 384–3163.

1. In an exchange made under the provisions of Section 206 of the Act of October 21, 1976, 90 Stat. 2756, 43 U.S.C. 1716, the following described lands have been conveyed from the United States:

Boise Meridian

T. 9 N., R. 2 E.,
  Sec. 11, NW¼SE¼.
T. 9 N., R. 3 E.,
  Sec. 11, S½NW¼ and N½SW¼;
  Sec. 14, SE¼SW¼, W½SE¼, SE¼SE¼.
T. 10 N., R. 3 E.,
  Sec. 23, S½SW¼;
  Sec. 26, W½;
  Sec. 27, SE¼NE¼SW¼, S½S½SW¼, NE¼SE¼SW¼, S½N½SE¼, and S½ SE¼;
  Sec. 34, NW¼NW¼.
T. 16 N., R. 4 E.,
  Sec. 12, NE¼NE¼ and SE¼;
  Sec. 13, NE¼NE¼.
T. 17 N., R. 4 E.,
  Sec. 21, E½SW¼;
  Sec. 22, S½SE¼NE¼ and SW¼SW¼;
  Sec. 34, S½.
T. 18 N., R. 4 E.,
  Sec. 6, lot 1;
  Sec. 9, S½.
T. 17 N., R. 2 W.,
  Sec. 5, S½SW¼;
  Sec. 8, lots 2 to 4, inclusive, SW¼NW¼, and W½SW¼;
  Sec. 21, S½SW¼ and SW¼SE¼.
T. 16 N., R. 4 W.,
  Sec. 17, N½NE¼.

Comprising 2, 542.81 acres of public land.

2. In exchange for these lands, the United States acquired the following described lands:

Boise Meridian

T. 49 N., R. 4 W.,
Sec. 16, SW¼NE¼ south of high water mark, SW¼NW¼, SW¼, and W½SE¼.
T. 48 N., R. 5 W.,
Sec. 36, lots 3 and 4, E½NE¼.
Comprising 492.34 acres of State land.

The purpose of the exchange was to acquire non-Federal lands which have high public values for recreation. The public interest was well served through completion of the exchange. The values of the Federal and State lands in the exchange were each appraised at $2,800,000

Dated: October 12, 1993.

William E. Ireland,

Realty Operations Sections.

[FR Doc. 93–25858 Filed 10–29–93; 8:45 am]

BILLING CODE 4310–GG–M

[NV–930–4210–04; N–57917]

Notice of Realty Action; Exchange of Public Lands in Clark County, NV

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of realty action N–57917 for exchange of lands in Clark County, Nevada.

SUMMARY: The following described public lands in Las Vegas, Clark County, Nevada, including the mineral estate, are being considered for disposal by exchange pursuant to Sections 206 and 209 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716.

Mount Diablo Meridian, Nevada

T. 20 S., R. 59 E.,
Sec. 11, S½ NW¼, SW¼.
T. 21 S., R. 59 E.,
Sec. 15, lots 10, 11, 16, and 17.
Sec. 22, lots 1, 2, 7, and 8.
Aggregating 582.72 acres more or less.

Final determination on disposal will await completion of an environmental analysis. In accordance with the regulations under title 43 CFR 2201.1(b), subject to valid and existing rights, publication of this notice in the **Federal Register**, will segregate the public lands, as described in this Notice, from all forms of appropriation under the public land laws, including the general mining laws, but not the mineral leasing laws and from any subsequent exchange proposals filed by any other proponent other than Summerlin Corporation or their nominee.

The segregation of the above-described lands shall terminate upon issuance of a document conveying such lands or upon publication in the **Federal Register** of a notice of termination of the segregation, or the expiration of two years from the date of publication, whichever comes first.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director.

Dated: October 7, 1993.

Gary Ryan,

Acting District Manager.

[FR Doc. 93–25901 Filed 10–20–93; 8:45 am]

BILLING CODE 4310–HC–M

[WY–040–04–4210–03; WYW–105817]

Lease for Recreation and Public Purposes

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, Recreation and Public Purposes Classification and Application for Lease in Lincoln County.

SUMMARY: The following public lands have been identified and examined and are classified as suitable for lease or purchase under the Recreation and Public Purposes Act, as amended, 43 U.S.C. 869 et seq.

Sixth Principal Meridian, Lincoln County, Wyoming

T.33N., R.118 W.,
Section 11, E½NW¼.
The above land aggregates 80 acres.

FOR FURTHER INFORMATION CONTACT: Mark R. Hatchel, Realty Specialist, Kemmerer Resource Area, Rock Springs District, Bureau of Land Management, 312 Highway 189 North, Kemmerer, Wyoming 83101, (307), 877–3933.

SUPPLEMENTARY INFORMATION: The purpose of this lease application is for the Teton Peaks Council of the Boy Scouts of America to construct and operate a short-term camping area. The Dry Canyon grazing allotment is composed entirely of this 80 acre parcel. The grazing permit will be terminated when the lease is issued. The proposed lease is consistent with the Kemmerer Resource Management Plan, and all other existing rights upon the land.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for recreation and public purposes and leasing under the mineral leasing laws.

The lands will not be offered for lease until at least December 20, 1993.

For a 45 day period ending on December 6, 1993, interested parties may submit comments to the Bureau of Land Management, District Manager, P.O. Box 1869, Rock Springs, Wyoming 82902–1869. Any adverse comments will be evaluated by the State Director, who may sustain, vacate, or modify this reality action. In the absence of any objections, this proposed realty action will become final.

Dated: October 8, 1993.

Darrel J. Short,

Area Manager.

[FR Doc. 93–25818 Filed 10–20–93; 8:45 am]

BILLING CODE 4310–22–M

Fish and Wildlife Service

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, et seq.):

PRT–782693

Applicant: St. Louis Zoo, St. Louis, MO

Applicant requests a permit to import blood, fecal, and hair samples of black-and-white ruffed lemur (*Lemur variegatus, variegatus*) for genetic testing. Animals from captive and wild populations in Betampona, Madagascar will be tranquilized for collecting the samples.

PRT–782692

Applicant: St. Louis Zoo, St. Louis, MO

Applicant requests a permit to import blood, fecal, and hair samples of red-ruffed lemur (*Lemur variegatus ruber*), white-fronted brown lemur (*Eulemur fulvus albifrons*), and gentle bamboo lemur (*Hapalemur griseus*) for genetic testing. Animals from the wild populations in Masoala Peninsular, Madagascar will be placed under mild sedation while samples are collected.

PRT–783339

Applicant: St. Louis Zoo, St. Louis, MO

Applicant requests a permit to import blood, fecal, and hair samples of red-ruffed lemur (*Lemur variegatus ruber*), black-and-white ruffed lemur (*Lemur variegatus, variegatus*), the Crowned sifaka (*Propithecus verreauxi coronatus*), and Coquerel's sifaka (*Propithecus verreauxi coquereli*) for genetic testing. Animals from wild populations from the Betsiboka River Basin and the Maroantsetra area of Madagascar will be placed under mild sedation while samples are collected.

PRT–783343

Applicant: San Diego Zoo, San Diego, CA

Applicant requests a permit to import two male and two female captive-bred Cabot's tragopans (*Tragopan caboti*) from the Tianhu Park, People's Republic of China, for enhancement of propagation.

PRT–769110

Applicant: David Konkol, Neenah, WI

Applicant requests a permit to purchase in interstate commerce three male and two female captive-bred Darwin's Rheas (*Pterocnemia pennata*) from Mel Royal, Fort Wayne, IN, for enhancement of propagation.

PRT–783625

Applicant: William W. Dodgson, V, Ogden, UT

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by Mr. L. Kock, "Verborgenfontein", Merriman, Republic of South Africa, for the purpose of enhancement of survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: October 15, 1993.

Margaret Tieger,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 93–25849 Filed 10–20–93; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

General Management Plan Amendment Presidio of San Francisco, Golden Gate National Recreation Area; Notice of Availability of Draft General Management Plan Amendment and Environmental Impact Statement

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (P.L. 91–190, as amended), the National Park Service, Department of the Interior, has prepared a Draft General Management Plan Amendment/ Environmental Impact Statement (GMPA/EIS) that describes and analyzes a proposed action and three alternatives for future management and use of the Presidio of San Francisco, Golden Gate National Recreation Area, California. The draft GMPA/EIS is being presented in two companion documents—the Draft General Management Plan Amendment, which describes the proposed action in detail; and the Draft Environmental Impact Statement, which presents the proposal and three alternatives along with the analysis of environmental consequences of their respective implementations.

The proposed action and alternatives all have been designed to protect and preserve exceptional resources and to meet planning objectives and goals for the future Presidio. They differ primarily in approach to overall management, level and extent of resource preservation and enhancement, and diversity and level of visitor programs. The proposed action, Alternative A, provides goals for creating a park setting where cultural and natural resources are preserved and enhanced, and major new programs are established through public/private partnerships to provide an understanding of those resources, encourage stewardship and cultural awareness, promote international exchange and seek solutions to critical global problems. A federally chartered partnership institution would be created through congressional legislation to assist in managing park partners and legislation also would be required to include the former Public Health Service hospital complex within the Presidio.

Alternative B, the no action/minimum requirements option, uses existing authorities for management, provides fewer visitor programs and opportunities, and excludes the former Public Health Service Hospital. Alternative C, the expanded open space, restoration and interpretation option, provides a similar high level of overall resource protection as Alternative A, but relies on existing management authorities as in Alternative B. Also identical to Alternative B, the Public Health Service Hospital is excluded and, in addition under this option, the Letterman Army Hospital and Research Center would be excluded. Alternative D, the partial military reuse option, shares Alternative B's lower level of overall resource protection and fewer visitor programs and opportunities; but is similar to Alternative A with respect to inclusion of the former Public Health Service Hospital and otherwise seeking legislation for new management authorities.

Major impact topics assessed for the proposed action and alternatives include natural and cultural resources, traffic and transportation systems, city services, native plant communities, regional economy and employment, noise, and air quality.

SUPPLEMENTARY INFORMATION: Written comments on the draft GMPA/EIS will be accepted until December 21, 1993 and should be addressed to: Superintendent, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California, 94123. Public meetings will be held on the draft GMPA/EIS in San Francisco, San Rafael, Oakland and Palo Alto, California. The specific dates, times and locations will be announced through news releases. Inquiries on the draft GMPA/EIS or on the public meetings should be directed to the Presidio Planning and Information Office at either the above address or telephone number (415) 556–3111.

Copies of the draft GMPA/EIS are available at the Presidio Project Office, National Park Service, Building 102, Montgomery Street, Presidio of San Francisco, CA 94129. Copies are also available for inspection at libraries located in San Francisco Bay area and at the following address: Western Regional Office, National Park Service, Division of Planning, Grants and Environmental Quality, 600 Harrison Street, Suite 600, San Francisco, CA 94107–1372.

Dated: October 1, 1993.

Stanley T. Albright,

Regional Director, Western Region.

[FR Doc. 93–25852 Filed 10–20–93; 8:45 am]

BILLING CODE 4310–70–M

Jimmy Carter National Historic Site Advisory Commission; Meeting

AGENCY: National Park Service, Jimmy Carter National Historic Site, Interior.

ACTION: Notice of advisory commission meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Commission Act that a meeting of the Jimmy Carter National Historic Site Advisory Commission will be held at 8:30 a.m. to 4 p.m., at the following location and date.

DATES: October 29, 1993.

LOCATION: The Windsor Hotel, Roosevelt Board Room, Windsor Avenue,

Americus, Georgia 31709, (912) 924–1555.

FOR FURTHER INFORMATION CONTACT: Mr. Fred Boyles, Superintendent, Jimmy Carter National Historic Site, Route 1 Box 800, Andersonville, Georgia 31711, (912) 924–0343.

SUPPLEMENTARY INFORMATION: The purpose of the Jimmy Carter National Historic Site Advisory Commission is to advise the Secretary of the Interior or his designee on achieving balanced and accurate interpretation of the Jimmy Carter National Historic Site.

The members of the Advisory Commission are as follows:

Dr. Steven Hochman
Dr. James Sterling Young
Dr. Donald B. Schewe
Dr. Henry King Stanford
Dr. Barbara Fields
Director, National Park Service, Ex-Officio member

The matters to be discussed at this meeting include the status of park development and planning activities. This meeting will be open to the public. However, facilities and space for accommodating members of the public are limited. Any member of the public may file with the commission a written statement concerning the matters to be discussed. Written statements may also be submitted to the Superintendent at the address above. Minutes of the meeting will be available at Park Headquarters for public inspection approximately 4 weeks after the meeting.

Dated: October 13, 1993.

James W. Coleman, Jr.,

Regional Director, Southeast Region.

[FR Doc. 93–25853 Filed 10–20–93; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

Availability of Environmental Assessments

Pursuant to 42 U.S.C. 4332, the Commission has prepared and made available environmental assessments for the proceedings listed below. Dates environmental assessments are available are listed below for each individual proceeding.

To obtain copies of these environmental assessments contact Ms. Tawanna Glover-Sanders or Ms. Johnnie Davis, Interstate Commerce Commission, Section of Energy and Environment, room 3219, Washington, DC 20423, (202) 927–6212 or (202) 927–6245.

Comments on the following assessment are due 15 days after the date of availability:

None

Comments on the following assessment are due 30 days after the date of availability:.

AB–399X, Golden Cat Railroad Corp. petition for individual exemption to discontinue rail service and abandon a rail line (Delta Branch) in Scott and Cape Girardeau Counties, MO. EA available 10/15/93.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–25926 Filed 10–20–93; 8:45 am]

BILLING CODE 7035–01–P

Release of Waybill Data

The **Federal Register** Notice published on October 12, 1993 at 58 FR 52787, "Release of Waybill Data", incorrectly gave Gellman Research Associates as the requestor. The correct requestor is the Policy and Special Projects Department, Association of American Railroads.

Contact: James A. Nash,(202) 927–6196.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–25927 Filed 10–20–93; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Under the Clean Water Act

In compliance with Departmental policy, 28 CFR 50.7, notice is hereby given that on September 30, 1993, a proposed consent decree in *United States* v. *City of Kenner, et al.*, No. 92–2210 "N" was lodged with the United States Court for the Eastern District of Louisiana. The City of Kenner owns and operates publicly owned treatment works ("POTW") in Jefferson Parish, Louisiana pursuant to National Pollutant Discharge Elimination System ("NPDES") Permits LA0038326, LA0038334, and LA0066800. The consent decree requires the City of Kenner to pay a civil penalty to the United States in the sum of $215,000.00, and to perform certain remedial measures in order to cause Kenner to come into and remain in compliance with the terms and conditions of these Permits and its approved Pretreatmant Program.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States* v. *City of Kenner, et al.*, D.J. # 90–5–1–1–3615.

The proposed consent decree may be examined at the Office of the Clerk of Court of the United States District Court for the Eastern District of Louisiana, United States Courthouse, 500 Camp St., room C–151, New Orleans, Louisiana, 70130; at the Office of the United States Attorney, 501 Magazine Street, Second Floor, New Orleans, Louisiana, 70130; at the Region 6 Office of the Environmental Protection Agency, 1445 Ross Ave., Dallas, Texas 75202; and at the Environmental Enforcement Section Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please enclose a check in the amount of $5.50 (25 cents per page reproduction costs), made payable to the Consent Decree Library.

Lois J. Schiffer,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 93–25893 Filed 10–20–93; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Settlement Agreement Pursuant to CERCLA

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on October 5, 1993 a proposed Settlement Agreement in *United States* v. *Lowe*, Civil Action No. H–91–829, was lodged with the United States District Court for the Southern District of Texas. The proposed Settlement Agreement resolves claims against defendant JOC Oil Exploration Company, Inc. ("JOC") for reimbursement of response costs associated with the Brio Superfund Site near Friendswood, Harris County, Texas. These claims were brought against JOC pursuant to section 107 of the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9607.

The Settlement Agreement requires defendant JOC to pay $20,000 in settlement of the United States' claim for response costs. This settlement is based on JOC's limited ability to pay, as it is no longer conducting any businesses.

The Department of Justice will receive for a period of thirty (30) days from the date of the publication comments

relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, United States Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Lowe*, Ref. No. 90–11–2–325A.

The proposed Settlement Agreement may be examined at the following locations: (a) Office of the United States Attorney for the Southern District of Texas, 440 Louisiana, Suite 900, Houston, Texas 77002; (b) the Region 6 Office of Regional Counsel, U.S. Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733; (c) the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, 202–624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy of the decree, please enclose a check for copying costs in the amount of $4.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Myles E. Flint,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 93–25892 Filed 10–20–93; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Stipulation and Settlement Order Pursuant to Comprehensive Environmental Response, Compensation and Liability Act; In re Superior Toy & Manufacturing Co.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed settlement of the United States' claims in *In re Superior Toy & Manufacturing Company*, No. 90 B 4481, was lodged with the United States Bankruptcy Court for the Northern District of Illinois on September 30, 1993. The settlement is in the form of a prospective purchaser agreement which resolves CERCLA cost recovery claims asserted against Superior Toy Manufacturing Company ("Superior"), a Chapter 7 Debtor, and the potential liability of the prospective purchaser of Superior's facility in Rockford, Illinois (the "Superior property"). Under the proposed agreement, Superior will apply the $1,025,000 sale proceeds first to performance of a drum removal at the Superior property, payment of back real estate taxes, and closing costs. Superior will then pay fifty percent of the remaining sale proceeds to the United States. The United States will provide the following parties covenants not to sue for "Present Contamination" existing at the Superior property as of the effective date of the agreement: Superior, Chapter 7 Trustee Catherine Steege, Thomas A. Nelson, TAN Books & Publishers, Inc. and Continental Bank, N.A.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed settlement. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *In re Superior Toy & Manufacturing Company*, DOJ Ref. #90–11–3–645.

The proposed settlement may be examined at the office of the United States Attorney, Everett McKinley Dirksen Building, room 1200, 219 South Dearborn Street, Chicago, Illinois, 60604; the Region 5 Office of the Environmental Protection Agency, 77 West Jackson Blvd., Chicago, Illinois; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the settlement document may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $5.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93–25898 Filed 10–20–93; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Stipulation and Settlement Order Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed stipulation and settlement order in *United States* v. *Blue Earth Equipment Co. et al.*, Civil Action No. 4–92–938, was lodged on September 15, 1993 with the United States District Court for the District of Minnesota. The stipulation settles the United States' claim against the Maynard Public School District, one of three defendants in this Clean Air Act case brought to enforce the notice and work practice requirements of the National Emission Standard for Hazardous Air Pollutants relating to asbestos renovation operations. Under the stipulation, the Maynard Public School District agrees to settle its alleged liability for a civil penalty of $3,250.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed stipulation and settlement order. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Blue Earth Equipment Co. et al.*, DOJ Ref. #90–5–2–1 1560.

The proposed stipulation and settlement order may be examined at the office of the United States Attorney, 234 United States Courthouse, 110 South 4th Street, Minneapolis, Minnesota 55401; the Region 5 Office of the Environmental Protection Agency, 77 West Jackson Blvd., Chicago, Illinois 60604; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed stipulation may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $1.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93–25897 Filed 10–20–93; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Resource Conservation and Recovery Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed First Modified Consent Decree in *United States* v. *Browning-Ferris Industries, Chemical Services, Inc. and CECOS International, Inc., and the State of Louisiana* v. *Browning-Ferris Industries, Chemical Services, Inc. and CECOS International, Inc.*, Civil Action No. 87–317, Section B, was lodged on 9/29/93 with the United States District Court for the Middle District of Louisiana. This First Modified Consent Decree revises injunctive relief requirements because Defendants are closing the facility pursuant to State and Federal Resource Conservation and Recovery Act ("RCRA") requirements. The proposed modified Decree stays and, after the facility is closed, deletes the requirements for a second environmental audit and implementation of a computerized waste tracking system. This proposed

Decree adds leachate monitoring and recordkeeping requirements and a requirement that Defendants retain all existing records pertaining to the waste disposal in the cells at the facility.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed First Modified Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Browning-Ferris Industries, Chemical Services, Inc. and CECOS International, Inc., and the State of Louisiana* v. *Browning-Ferris Industries, Chemical Services, Inc. and CECOS International, Inc.*, DOJ Ref. No. 90–7–1–404.

The proposed First Modified Consent Decree may be examined at the Office of the United States Attorney, 339 Florida St., Sixth Floor, Baton Rouge, LA; the Region 6 Office of the Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005; 202–624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $17.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environment and Natural Resources Division.

[FR Doc. 93–25895 Filed 10–20–93; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Department of Justice Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *CSX Transportation, Inc.* Civ No. 92–356–Civ–J–10 was lodged with the United States District Court for the Middle District of Florida (Jacksonville Division) on September 27, 1993. This agreement resolves a judicial enforcement action brought by the United States against the defendant pursuant to sections 309 and 311 of the Federal Water Pollution Control Act (Clean Water Act), 33 U.S.C. 1319, 1321. In its complaint, the United States alleged that CSX had discharged pollutants to navigable waters in excess of permitted levels at six separate facilities. Five of the facilities are located in Florida, the sixth in North Carolina.

The proposed Consent Decree provides that CSX will pay a civil penalty of $ $3.0 million in settlement of claims alleged in the Complaint. In addition, the Decree requires that CSX perform compliance audits at 22 active facilities in Alabama, Florida, Georgia, Kentucky, South Carolina, and Tennessee, to determine whether these facilities are in compliance with Clean Water Act requirements. In addition, the Decree requires that CSX perform environmental assessments at an additional 61 inactive facilities located in 15 states Furthermore, the Decree requires that CX develop and implement an Environmental Awareness Training Program for its managers and supervisors. Finally, the Decree requires that CSX develop, and share with other railroads nationwide, a Stormwater Assessment Manual, that is designed to provide suggested ways of capturing and treating contaminated stormwater runoff from railroad maintenance and refueling facilities.

The Department of Justice will receive for a period of 30 days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *CSX Transportation, Inc.*, D.O.J. Ref. No. 90–5–1–1–3493.

This proposed Consent Decree may be examined at the offices of the United States Attorney, 311 West Monroe Street; room 409, Jacksonville, Florida 32202, at the Office of Regional Counsel, Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC (20005), 202–624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC (20005). In requesting a copy, please refer to the referenced case and enclose a check in the amount of $14.00 (25 cents per page reproduction costs), payable to the Consent Decree Library

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93–25894 Filed 10–20–93; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree In Action Under the Resource Conservation and Recovery Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on September 24, 1993, the United States Department of Justice, by the authority of the Attorney General and acting at the request of and on behalf of the Administrator of the United States Environmental Protection Agency, lodged a Consent Decree in *United States* v. *Laclede Steel Company*, Civil Action No. 90–03460, with the United States District Court for the Southern District of Illinois. The Consent Decree addresses the liability of Laclede Steel Company ("Laclede") in an action brought under section 3008(a) and (g) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6928(a) and (g), for alleged violations of land disposal restrictions at Laclede's facility in Alton, Illinois. The Consent Decree requires Laclede to pay a civil penalty of $300,000. In addition, the Consent Decree requires Laclede to implement a state-approved closure plan for the Alton facility.

The Department of Justice will receive written comments relating to the Consent Decree for a period of thirty (30) days from the date of this notice Comments should be addressed to Assistant General, Environment and National Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Laclede Steel Company*, DOJ Reference No. 90–7–1–549.

The Consent Decree may be examined at the Region V Office of Regional Counsel, United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604, and at the Consent Decree Library, United States Department of Justice, 1120 G Street, NW., 4th Floor, Washington, DC 20005 (202–624–0892). A copy of the Consent Decree may be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please enclose a check for $7.25 (25 cents per page reproduction cost) payable to Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93–25896 Filed 10–20–93; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-28,896]

Augat Automotive; San Antonio, TX; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on July 26, 1993 in response to a worker petition which was filed on behalf of workers at Augat Automotive, San Antonio, Texas.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 13th day of October, 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93-25907 Filed 10-20-93; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-28,805]

Bull HN Information Systems, Phoenix, Arizona; Negative Determination Regarding Application for Reconsideration

By an application dated September 21, 1993, the company requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on September 15, 1993 and will soon be published in the **Federal Register**.

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

Company officials state that the Department (1) Did not address the Research and Development worker separations and (2) the workers should be certified for TAA since nothing has changed since the workers were last certified in 1991 under TA-W-25,527.

The Department's denial was based on the fact that the Phoenix workers currently do not produce an article within the meaning of the Trade Act of 1974. The workers perform research and development operations and refurbish computers that were previously produced and sold by the subject firm.

Workers providing services can only be certified in very limited circumstances. Their worker separations must have been caused by a reduced demand for their services from a parent or controlling firm or subdivision whose workers produce an article and who are currently under a certification for TAA. These limited conditions for service workers have not been met.

The findings show that the last production of a new computer at the subject plant was in 1991 when the workers who produced the 8000 series computers were covered under the certification TA-W-25,527 issued on June 24, 1991. The 8000 series computers are now being produced at another corporate facility in Boston but the workers are not under a certification for TAA.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 13th day of October 1993.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Service, Unemployment Insurance Service.

[FR Doc. 93-25903 Filed 10-20-93; 8:45 am]

BILLING CODE 4510-30-M

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of September and October, 1993.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-28,921; Mobil Mining & Mineral Co., Nichols, FL

TA-W-28,724; Cherry-Burrell Process Equipment Div., Little Falls, NY

TA-W-28,218; Phoenix Steel, Inc., Eau Claire, WI

TA-W-28,725; Schmitt Forge, Inc., Portland, OR

TA-W-28,771; General Motors Corp., Inland Fisher Guide, Trenton, NJ

TA-W-28,868; GEC Marconi, Electronic Systems, San Marcos, CA

TA-W-28,863; I.C. Rainbows, Homestead, PA

TA-W-28,910; Micro Abrasive Corp., Westfield, MA

TA-W-28,887; AT&T Merrimack Valley Works, North Andover, MA

TA-W-28,714; Barnes Group, Inc., Advanced Fabrications Div., Jet Die Plant, Lansing, MI

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA-W-28,968; Plains Petroleum Operating Co., Midland, TX

The investigation revealed that criterion (1) and criterion (2) have not been met. A significant number or proportion of the workers did not become totally or partially separated as required for certification. Sales or production did not decline during the relevant period as required for certification.

TA-W-28,809; AT&T Operator Services, Shreveport, LA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-28,785; Leviton Manufacturing, Warwick, RI

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-28,905; Dunbar Slag Co., Inc., Sharon, PA

U.S. imports of slag (from iron and steel mfg) increased absolutely in 1992 compared to 1991 and declined in the first 6 months of 1993 compared to the same period in 1992.

TA–W–29,022; X-Ray Products Corp., Rico Rivera, CA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–28,861; Big Three Industries, Inc., Farrell, PA

U.S. imports of nitrogen, oxygen and argon declined absolutely in 1992 compared to 1991 and in the twelve month period ending June 1993.

TA–W–28,941; Supercomputer Systems, Inc., Eau Claire, WI

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–28,899; Meehan Seaway Service of Milwaukee, Limited, Milwaukee, WI

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–28,854; Goulds Pumps, Lubbock, TX

U.S. imports of turbine pumps were negligible in 1991, 1992 and first quarter 1993.

TA–W–28,979; Formosa Exploration, Inc., Riddle, OR

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–28,851; Digital Equipment Corp., Thin Film Media Manufacturing, Tempe, AZ

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–28,952; Stevcoknit Fabrics Co., Fayetteville, NC

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–28,876; Sheldahl, Inc., Northfield, MN

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–28,736; Rhodes Plastics, Linden, NJ

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–28,945; Texas Instruments Computer Systems & Service, Cypress, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–28,911; Honeywell Keyboard Div., El Paso, TX

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–28,908; Duffy Electronics & Manufacturing Co., Belmar, NJ

Separations at Duffy Electronics & Manufacturing Co., Belmar, NJ were due to a corporate decision to consolidate operations and move all production to another existing domestic company facility.

TA–W–28,920: Alliance Resources (USA), Inc., New Orleans, LA

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–28,840; M.O.S.T. Manufacturing, Inc., Monument, CO

The investigation revealed that criterion (2) and criterion (3) have not been met. Sales or production did not decline during the relevant period for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and the absolute decline in sales or production.

Affirmative Determinations

TA–W–28,922; General Electro Mechanical Corp., (GEMCOR), Buffalo, NY

A certification was issued covering all workers separated on or after November 11, 1992.

TA–W–29,025; General Motors Corp., Inland Fisher Guide Div., O'Fallon, MO

A certification was issued covering all workers separated on or after September 3, 1992.

TA–W–28,003; Johnson & Johnson Medical, Inc., Arlington, TX

A certification was issued covering all workers separated on or after August 25, 1992.

TA–W–28,890; Sandvik Special Metals Corp., Titanium Sports Div., Kennewick, WA

A certification was issued covering all workers separated on or after July 13, 1992.

TA–W–28,900; Public Group, Huntingdon, TN

A certification was issued covering all workers separated on or after July 15, 1992.

TA–W–28,912; Halliburton Reservoir Services, Carrollton, TX

A certification was issued covering all workers separated on or after August 22, 1992.

TA–W–28,913; Halliburton Energy Services Group, Carrollton, TX

A certification was issued covering all workers separated on or after August 22, 1992.

TA–W–28,878; X'Int Diskette Products, Inc., Allen, TX

A certification was issued covering all workers separated on or after July 7, 1992.

TA–W–28,055; GRL Production Services, Inc., Denver, CO and Operating at All Locations in The Following States: A; TX (Except Houston (28,701), B; WY, C; CA, D; MT, E; ND and F; NM

A certification was issued covering all workers separated on or after September 8, 1992.

TA–W–28,016; Imperial Wallcoverings, Inc., Waterford, NY

A certification was issued covering all workers separated on or after September 7, 1992 and before October 5, 1993.

TA–W–28,931; Fisher-Rosemount Systems, Inc., Burnsville, MN

A certification was issued covering all workers separated on or after May 18, 1992.

TA–W–28,998, TA–W–29,020; Chalk Line, Inc., Shelbyville, TN and Anniston, AL

A certification was issued covering all workers separated on or after August 17, 1992 and August 27, 1992 respectively.

TA–W–28,939; Radiometer Technology, Inc., Westlake, OH

A certification was issued covering all workers separated on or after July 1, 1993.

I hereby certify that the aforementioned determinations were issued during the month of September and October, 1993. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 during normal business hours wil be mailed to persons to write to the above address.

Dated: October 13, 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93–25905 Filed 10–20–93; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment

and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 1, 1993.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 1, 1993.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 4th day of October, 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Sundstrand Electrical Power Systems (IUE).	Lima, OH	10/04/93	09/20/93	29,086	Electrical components.
Charles E. Gillman Co (Co)	Rio Rico, AZ	10/04/93	09/21/93	29,087	Wire harnesses.
Season-ALL Industries, Inc (IUE)	Indiana, PA	10/04/93	09/10/93	29,088	Extrusion of metal and paint processing.
Pikes Peak Greenhouses, Inc (Workers).	Lafayette, CO	10/04/93	09/20/93	29,089	Fresh flowers and roses.
McMurry Oil Tools, Inc (Workers)	Huntsville, TX	10/04/93	09/17/93	29,090	Oilfield tools.
UVC Corp (Workers)	Irvine, CA	10/04/93	09/14/93	29,091	Video compressions.
Great Northern Paper, Inc (CO)	Millinocket, ME	10/04/93	09/14/93	29,092	Newsprint paper.
Gladco Services, Inc (Co)	Ira, TX	10/04/93	10/04/93	29,093	Oilwell services.
Mueller Industries (IAM)	Shelby, OH	10/04/93	09/24/93	29,094	Plastic and copper pipe fittings.
AeroJet Electronic Systems (Workers)	Azusa, CA	10/04/93	09/01/93	29,095	Electronic sensors.
Nelbro Packing Co (WSLC)	Anacortes, WA	10/04/93	09/27/93	29,096	Processed salmon and other species.
F.D. Services, Inc (Workers)	Casper, WY	10/04/93	09/23/93	29,097	Oil and gas drilling.
Northrop Corporation (Workers)	Hawthorne, CA	10/04/93	09/28/93	29,098	Skin panels and floor beans for 747.
Northrop Aircraft (Workers)	Anaheim, CA	10/04/93	09/28/93	29,099	Skin panels and floor beans for 747.

[FR Doc. 93-25904 Filed 10-20-93; 8:45 am]

BILLING CODE 4510-30-M

LIBRARY OF CONGRESS

Copyright Office

[Docket No. RM 93-8A]

Duration of Copyright Term of Protection

AGENCY: Copyright Office, Library of Congress.

ACTION: Extension of comment period.

SUMMARY: The Copyright Office is preparing a report on the arguments for and against possible amendment of the copyright law to extend the duration of copyright protection under U.S. copyright law. In order to assist in the preparation of this report, the Copyright Office held an open public hearing on September 29, 1993 to obtain public input, and requested the submission of written comments. By this notice, the Copyright Office extends the time for filing written comments until November 30, 1993.

DATES: Comments including reply comments are due November 30, 1993.

ADDRESSES: Interested persons should submit ten copies of their written comments, if delivered by mail, to: Library of Congress, Department 17, Washington, DC 20540. If delivered by hand, ten copies should be brought to: Office of the General Counsel, James Madison Memorial Building, room LM-407, 101 Independence Avenue, SE., Washington, DC 20559.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, U.S. Copyright Office, Library of Congress, Washington, DC 20559, Telephone (202) 707-8380.

SUPPLEMENTARY INFORMATION: The Copyright Office is conducting a study examining the term of protection for copyrighted works under U.S. law, 17 U.S.C. 300 *et seq.* This study is conducted in light of the recent developments in Europe favoring harmonization of the terms of protection. For further information about the background of the study, see the notice at 58 FR 40838 (July 30, 1993) inviting public comment and announcing the hearing, which was subsequently held on September 29, 1993.

The Copyright Office invites written comment from any interested persons on or before November 30, 1993.

Dated: October 13, 1993.

Dorothy Schrader,

Associate Register of Copyrights for Legal Affairs.

[FR Doc. 93-25837 Filed 10-20-93; 8:45 am]

BILLING CODE 1410-07-F

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Council on the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the National Council on the Arts will be held on November 5-6, 1993, from 9 a.m. to 5:30 p.m. on November 5, 1993 and from 9 a.m. to 1 p.m. on November 6, 1993, in room M-09 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public. Topics for discussion will include opening remarks; Legislative update; reports from the Arts Education Steering Group Report; Program Review

and/or Guidelines and/or Application Review for the Dance, Design Arts, Challenge, Expansion Arts, International, Media Arts, and Presenting and Commissioning Programs; and an update of the International Program.

If, in the course of application discussion review, it becomes necessary for the Council to discuss non-public commercial or financial information of intrinsic value, the Council will go into closed session pursuant to subsection (c)(4) of the Government in the Sunshine Act, 5 U.S.C. 552b. Additionally, discussion concerning purely personal information about individuals, submitted with grant applications, such as personal biographical and salary data or medical information, may be conducted by the Council in closed session in accordance with subsection (c)(6) of 5 U.S.C. 552b.

Any interested persons may attend, as observers, Council discussions and reviews which are open to the public.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682/5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Ginny Terzano, Director, Public Affairs Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5570.

Dated: October 15, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93–25833 Filed 10–20–93; 8:45 am]

BILLING CODE 7537–01–M

Visual Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Visual Arts Advisory Panel (Visual Artists Organizations Section) to the National Council on the Arts will be held on November 15–19, 1993 from 9 a.m. to 9 p.m. on November 15–18, 1993, and from 9:30 a.m. to 5 p.m. on November 19, 1993. This meeting will be held in room 716, at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 3:30 p.m. to 5 p.m. on November 19, 1993 for policy and guidelines discussion.

The remaining portions of this meeting from 9 a.m. to 9 p.m. on November 15–18, 1993, and from 9 a.m. to 3:30 p.m. on November 19, 1993 are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5439.

Dated: October 14, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93–25834 Filed 10–20–93; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Astronomical Sciences; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Astronomical Sciences.

Date and time: November 18, 1993, 8:30 a.m.–5 p.m.

Place: National Science Foundation, 1800 G Street, NW., Washington, DC, room 615.

Type of meeting: Closed meeting to discuss proposals.

Contact person: Dr. James P. Wright, Program Director, Education, Human Resources, and Special Programs, Division of Astronomical Sciences, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Purpose of meeting: Review proposals for REU sites.

Agenda: The proposals will be discussed and reviewed by participants of the panel.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: October 18, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–25911 Filed 10–20–93; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Cell Biology; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting: Advisory Panel for Cell Biology (Sub-Panel B)

Date and time: November 8–10, 1993; 8:30 a.m. to 6 p.m.

Place: Holiday Inn, Clarendon Conference Room, 4610 North Fairfax Drive, Arlington, VA 22203.

Type of meeting: Closed.

Contact person: Dr. Eve Ida Barak, Program Director for Cell Biology Program (Cellular Organization); National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Telephone: 202/357–7474.

Purpose of meeting: To provide advice and recommendations concerning research proposals submitted to the Cell Biology Program of the Division of Molecular and Cellular Biosciences at NSF for financial support.

Agenda: To review and evaluate research proposals in the area of Cell Biology (Cellular Organization) as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: October 18, 1993.

M. Rebecca Walker,

Committee Management Officer.

[FR Doc. 93–25917 Filed 10–20–93; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Economics, Decision, and Management Sciences; Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following two meetings:

Name: Advisory Panel for Economics, Decision, Risk and Management Sciences #1759.

Date and time: November 12–13, 1993; 8:30 a.m.–5 p.m.

Place: National Science Foundation, Stafford Place, 4201 Wilson Boulevard, room 330-room 340, Arlington, VA 22230.

Contact persons: Dr. Daniel H. Newlon, Dr. Lynn A. Pollnow and Dr. Martin Williams, Program Directors for Economics, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (202) 357–9674.

Agenda: To review and evaluate economic proposals as part of the selection process for awards.

Date and time: November 18–19, 1993; 8:30 a.m.–5:30 p.m.

Place: National Science Foundation, Stafford Place, 4201 Wilson Boulevard, room 380, Arlington, VA 22230.

Contact persons: Dr. Robin Cantor and Dr. Hal Arkes, Program Directors for Decision, Risk, and Management Science, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone (202) 357–7569—(202) 357–7417.

Agenda: To review and evaluate decision, risk, and amangement science proposals as part of the selection process for awards.

Types of meetings: Closed.

Purpose of meetings: To provide advice and recommendations concerning support for research proposals submitted to the NSF for financial support.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: October 18, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–25914 Filed 10–20–93; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Education and Human Resources; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Committee for Education and Human Resources.

Date and time: Nov. 9, 1993, 12:30 p.m.–5 p.m. Nov. 10, 1993, 8:30 a.m.–5 p.m.

Place: Arlington Renaissance Hotel, 950 N. Stafford Street, Arlington, VA 22203.

Type of meeting: Open.

Contact person: Peter E. Yankwich, Executive Secretary, Directorate for Education and Human Resources, room 805, Arlington, VA 22230, (703) 306–1604.

Summary minutes: May be obtained from contact person listed above.

Purpose of committee: To provide advice and recommendations concerning NSF support for Education and Human Resources.

Agenda: Review of FY 1993 Programs and Initiatives Review of FY 1994 Programs and Initiatives Strategic Planning for FY 1995 and Beyond.

Dated: October 18, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–25910 Filed 10–20–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Engineering, Education and Centers; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Date and time: November 16, 1993: 8:30 a.m.

Place: 4201 Wilson Boulevard, Arlington, Virginia, room 7 and 8.

Type of meeting: Closed.

Contact person: Ms. Susan Kemnitzer, National Science Foundation, 1776 G St. NW., Washington, DC 20550. Telephone: (202)786–9631.

Purpose of meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Research Experiences For Undergraduates proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 18, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–25913 Filed 10–20–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Geosciences; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Geosciences (1756).

Date and Time: November 17–18, 1993; 9 a.m. to 5 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA, room 3602.

Type of meeting: Closed.

Contact person: Dr. Leonard E. Johnson, Program Director, Division of Earth Sciences, room 785, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA, Telephone: (703) 306–1559.

Purpose of meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate San Andreas Fault/KTB proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 18, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–25912 Filed 10–20–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Materials Research; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Materials Research (DMR).

Dates and times: November 15, 1993, 6 p.m.–9 p.m.; November 16, 1993, 8 a.m.–9 p.m.; November 17, 1993, 8 a.m.–5 p.m.

Place: National Science Foundation at Stafford Place; 4201 Wilson Boulevard, Arlington, VA 22230; rooms 370, 340, 320, 310.02, and 390.

Type of meetings: Closed.

Contact person: Dr. W. Lance Hanworth or Dr. John C. Hurt, Program Directors, Materials Research Science and Engineering Center, Division of Materials Research, Room 408 National Science Foundation, Washington, DC, 20550. Telephone (202) 357–0791.

Purpose of meetings: To provide advice and recommendations concerning pre-proposals submitted to NSF for financial support by the Materials Research Science and Engineering Centers Program.

Agenda: Review and evaluate pre-proposals as part of the selection process for subsequent solicitation of full proposals.

Reason for closing: The proposals being reviewed may include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b.(c)(4) and (6) of the Government in the Sunshine Act.

Dated: October 18, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–25915 Filed 10–20–93; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Neuroscience; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Panel for Neuroscience.

Date and time: November 4th & 5th, 1993; 9 a.m.–5 p.m.

Place: National Science Foundation, room 380, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of meeting: Part-Open.

Contact person: Dr. Kathie L. Olsen, Program Director, Division of Integrative Biology and Neuroscience, suite 685, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1423.

Purpose of meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: Closed session November 4th & 5th, 1993; 9 a.m.–5 p.m. and November 5th, 1993; except where noted below. To review and evaluate Neuroendocrinology proposals as part of the selection process for awards.

Open session: November 5th, 1993 10 a.m.–11:30 a.m.; To discuss research trends and opportunities in Neuroscience.

Reason for closing: The proposal being reviewed included information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 18, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–25909 Filed 10–20–93; 8:45 am]

BILLING CODE 7555–01–M

President's Committee on the National Medal of Science; Meeting

In accordance with the Federal Advisory Committee Act (Pub.L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: President's Committee on the National Medal of Science.

Date and time: Monday, November 8, 1993; 9 a.m.–3 p.m.

Place: Room 543, National Science Foundation, 1800 G Street, NW., Washington, DC.

Type of meeting: Closed.

Contact person: Mrs. Susan E. Fannoney, Staff Assistant, room 545, National Science Foundation, 1800 G Street, NW., Washington, DC 20550. Telephone: 202/357–7512.

Purpose of meeting: To provide advice and recommendations to the President in the selection of the National Medal of Science recipients.

Agenda: To review and evaluate nominations as part of the selection process for awards.

Reason for closing: The nominations being reviewed include information of a personal nature where disclosure would constitute unwarranted invasions of personal privacy. These matters are exempt under 5 U.S.C. 552b(c)(6) of the Government in the Sunshine Act.

Dated: October 18, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–25918 Filed 10–20–93; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Social and Political Sciences; Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following four meetings.

Name: Advisory Panel for Social and Political Sciences #1761.

Date and time: November 15–16, 1993; 8:30 a.m.–5 p.m.

Place: National Science Foundation, Stafford Place, 4201 Wilson Boulevard, room 310, Arlington, VA 22230.

Contract persons: Dr. Frank P. Scioli, Jr. and Dr. James Campbell, Program Directors for Political Science, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (202) 357–7534

Agenda: To review and evaluate political science proposals as part of the selection process for awards.

Date and time: November 18–19, 1993; 8:30 a.m.–5:30 p.m.

Place: National Science Foundation, Stafford Place, 4201 Wilson Boulevard, room 365, Arlington, VA 22230.

Contract persons: Dr. Susan O. White, Program Director and Dr. Patricia E. White, Staff Associate for Sociology, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (20) 357–9567.

Agenda: To review and evaluate law and social science proposals as part of the selection process for awards.

Date and time: November 16–17, 8 a.m.–5 p.m.

Place: National Science Foundation, Stafford Place, 4201 Wilson Boulevard, room 365, Arlington, VA 22230.

Contract persons: Dr. William S. Bainbridge and Dr. Martin K. Whyte, Program Directors for Sociology, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (202) 357–7802.

Agenda: To review and evaluate sociology proposals as part of the selection process for awards.

Date and time: December 13–14, 1993; 8:30 a.m.–5 p.m.

Place: National Science Foundation, Stafford Place, 4201 Wilson Boulevard, Room 310, Arlington, VA 22230.

Contract persons: Dr. James H. Blackman, Acting Program Director for Methodology, Measurement, and Statistics in the Social Sciences. National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (202) 357–7966.

Agenda: To review and evaluate methodology, measurement, and statistics proposals as part of the selection process for awards.

Type of meeting: Closed.

Purpose of meetings: To provide advice and recommendations concerning support for research proposals submitted to the NSF for financial support.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: October 18, 1993

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–25916 Filed 10–20–93; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Abnormal Occurrence Report; Section 208 Report Submitted to the Congress

Notice is hereby given that pursuant to the requirements of Section 208 of the Energy Reorganization Act of 1974, as amended, the Nuclear Regulatory Commission (NRC) has published and issued another periodic report to Congress on abnormal occurrences (NUREG–0090, Vol. 16, No. 2).

Under the Energy Reorganization Act of 1974, which created the NRC, an abnormal occurrence is defined as "an unscheduled incident or event that the Commission (NRC) determines is significant from the standpoint of public health or safety." The NRC has made a determination that events involving an actual loss or significant reduction in the degree of protection against radioactive properties of source, special nuclear, and by-product material are abnormal occurrences.

The report to Congress is for the second calendar quarter of 1993. The report identifies the occurrences or events that the Commission determined to be significant and reportable; the

remedial actions that were undertaken are also described.

This report discusses four abnormal occurrences at NRC-licensed facilities, three involving medical brachytherapy misadministrations and one involving a research reactor that operated without a safety system. One pool irradiation facility contamination event, two medical misadministrations (one "sodium iodide" and one brachytherapy), and one industrial radiographer overexposure event that were reported by NRC Agreement States are also discussed. The report also contains information updating one previously reported abnormal occurrence and information on three other events of interest.

A copy of the report is available for inspection or copying for a fee at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC 20555, or at any of the nuclear power plant Local Public Document Rooms throughout the country.

Copies of NUREG–0090, Vol. 16, No. 2 (or any of the previous reports in this series), may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082. A year's subscription to the NUREG–0090 series publication, which consists of four issues, is also available.

Copies of the report may also be purchased from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

Dated at Rockville, MD this 15th day of October 1993.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Assistant Secretary of the Commission.

[FR Doc. 93–25891 Filed 10–20–93; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards (ACRS) and Advisory Committee on Nuclear Waste (ACNW); Proposed Meetings

In order to provide advance information regarding proposed public meetings of the ACRS Subcommittees and meetings of the ACRS full Committee, of the ACNW, and the ACNW Working Groups the following preliminary schedule is published to reflect the current situation, taking into account additional meetings that have been scheduled and meetings that have been postponed or cancelled since the last list of proposed meetings was published on September 23, 1993 (58 FR 49531). Those meetings that are firmly scheduled have had, or will have, an individual notice published in the **Federal Register** approximately 15 days (or more) prior to the meeting. It is expected that sessions of ACRS and ACNW full Committee meetings designated by an asterisk (*) will be closed in whole or in part to the public. The ACRS and ACNW full Committee meetings begin at 8:30 a.m. and ACRS Subcommittee and ACNW Working Group meetings usually begin at 8:30 a.m. The time when items listed on the agenda will be discussed during ACRS and ACNW full Committee meetings, and when ACRS Subcommittee and ACNW Working Group meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the November 1993 ACRS and ACNW full Committee meetings can be obtained by contacting the Office of the Executive Director of the Committees (telephone: 301/492–4600 (recording) or 301/492–7288, Attn: Barbara Jo White) between 7:30 a.m. and 4:15 p.m. (EDT).

ACRS Subcommittee Meetings

Advanced Boiling Water Reactors, October 26–27, 1993, Bethesda, MD. The Subcommittee will begin its review of the NRC staff's Final Safety Evaluation Report for the General Electric Nuclear Energy (GE) ABWR design.

Thermal Hydraulic Phenomena, October 28, 1993, Bethesda, MD. The Subcommittee will review selected aspects of the NRC–RES-sponsored ROSA–V confirmatory test program being developed in support of the Westinghouse AP600 passive plant design certification effort. Specific review topics will include: facility design modifications and additions, the test matrix, and instrumentation and controls. Also, the Subcommittee will discuss the status of the RES contract with Purdue University to perform integral thermal-hydraulic testing in support of the GE Simplified Boiling Water Reactor (SBWR) passive plant design. A portion of this meeting may be closed to discuss material deemed proprietary by the Westinghouse Electric Corporation [5 U.S.C. 552b(c)(4)].

Computers in Nuclear Power Plant Operations/Ad Hoc Subcommittee on Design Acceptance Criteria, November 2, 1993, Bethesda, MD. The Subcommittees will review Chapter 7, "Instrumentation and Control Systems," of the Standard Safety Analysis Report and the Associated Certified Design Material (Tier 1) for the ABWR design, and related matters. A portion of this meeting may be closed to discuss material deemed proprietary by GE [5 U.S.C. 552b(c)(4)].

Safeguards and Security, November 3, 1993, Bethesda, MD. The Subcommittee will review the proposed Commission paper on Internal Threat, SECY–93–270, "Proposed Amendments to 10 CFR part 73 to Protect Against Malevolent Use of Vehicles at Nuclear Power Plants," and safeguards and security requirements for the GE Advanced Boiling Water Reactor design. A portion of this meeting may be closed to discuss safeguards and security information [5 U.S.C. 552b(c)(3)].

Planning and Procedures, November 3, 1993, Bethesda, MD. (2 p.m.–4:30 p.m.). The Subcommittee will discuss proposed ACRS activities and related matters. A portion of this meeting may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS and matters the release of which would represent a clearly unwarranted invasion of personal privacy.

Advanced Boiling Water Reactors, November 16–17, 1993, Bethesda, MD. The Subcommittee will continue its review of the NRC staff's Final Safety Evaluation Report for the GE ABWR design.

Individual Plant Examinations, November 18, 1993, Bethesda, MD. The Subcommittee will discuss the: (1) Status of and insights gained from the Individual Plant Examination (IPE) Program, (2) general status of the methodologies used by the licensees, (3) status of resolution of generic issues through the IPE and Individual Plant Examination of External Events (IPEEE) programs, and (4) general status of accident management programs.

ABB–CE Standard Plant Designs, December, 1993, Bethesda, MD. The Subcommittee will begin its review of the Standard Safety Analysis Report for the ABB–CE System 80+ design.

Planning and Procedures, December 8, 1993, Bethesda, MD (4 p.m.–6 p.m.). The Subcommittee will discuss proposed ACRS activities and related matters. A portion of this meeting may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS and matters the release of which would represent a clearly unwarranted invasion of personal privacy.

Materials and Metallurgy, December 16, 1993, Bethesda, MD. The Subcommittee will discuss with representatives of the NRC staff and NUMARC regarding steam generator

operating experiences and related rulemaking activities.

Thermal Hydraulic Phenomena, December 17, 1993, Bethesda, MD. The Subcommittee will discuss the results of the NRC staff's inspection of GE's QA Program Plan for the SBWR GIST Test Facility and TRACG code. A portion of this meeting may be closed to discuss information deemed proprietary by GE [5 U.S.C. 552b(c)(4)].

Advanced Boiling Water Reactors, January 25–26, 1994, Bethesda, MD. The Subcommittee will review any residual issues associated with the ABWR design and prepare a proposed ACRS report on ABWR issues for consideration by the full Committee.

ACRS Full Committee Meetings

403rd ACRS Meeting, November 4–6, 1993, Bethesda, MD. During this meeting, the Committee plans to consider the following:

A. *PRA Working Group Final Report*—Review and comment on the proposed PRA Working Group Final Report and an associated Commission paper. Representatives of the NRC staff will participate.

*B. *Revised Security Requirements*—Review and comment on the proposed Commission paper on Internal Threat, SECY–93–270, "Proposed Amendments to 10 CFR part 73 to Protect Against Malevolent Use of Vehicles at Nuclear Power Plants," and safeguards and security requirements for the GE ABWR design. A portion of this session may be closed to discuss safeguards and security information [5 U.S.C. 552b(c)(3)]. Representatives of the NRC staff will participate.

*C. *NRC–RES ROSA AP600 Confirmatory Test Program*—Review and comment on the adequacy of the proposed text matrix and modifications and additions to the ROSA test facility prior to initiation of the RES test program in support of the AP600 design certification review. A portion of this session may be closed to discuss material deemed proprietary by the Westinghouse Electric Corporation [5 U.S.C. 552b(c)(4)]. Representatives of the NRC staff will participate.

D. *Preapplication Safety Evaluation Report (PSER) for the PRISM Design*—Review and comment on the NRC staff's draft PSER for the PRISM liquid-metal-cooled reactor design. Representatives of the NRC staff will participate.

E. *Instrumentation and Control Systems and Certified Design Material for the ABWR Design*—Review and comment on Chapter 7, "Instrumentation and Control Systems," of the Standard Safety Analysis Report for the ABWR design and Certified Design Material (Tier 1) for the Instrumentation and Control Systems, Human Factors, Radiation Protection, and Piping Design. Representatives of the NRC staff and GE will participate.

F. *Regulatory Treatment of Non-Safety Systems*—Review and comment on the draft Commission paper that includes proposed NRC staff positions on issues related to the regulatory treatment of non-safety systems. Representatives of the NRC staff will participate.

G. *Technical Training Programs*—Hear a briefing by and hold discussions with representatives of the NRC's Office for Analysis and Evaluation of Operational Data (AEOD) on the technical training programs being developed by AEOD for the Technical Training Center in Chattanooga, Tennessee.

*H. *Westinghouse Analytical and Experimental Programs Related to the AP600 Passive Plant Design Certification*—Hear briefings by and hold discussions with representatives of the Westinghouse Electric Corporation and the NRC staff regarding the Westinghouse analytical and experimental programs related to the AP600 passive plant design certification effort. A portion of this session may be closed to discuss information deemed proprietary by the Westinghouse Electric Corporation [5 U.S.C. 552b(c)(4)].

I. *Resolution of ACRS Comments and Recommendations*—Discuss responses from the NRC Executive Director for Operations to recent ACRS comments and recommendations.

*J. *Report of the Planning and Procedures Subcommittee*—Hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business. A portion of this session may be closed pursuant to 5 U.S.C. 552B(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS and matters the release of which would represent a clearly unwarranted invasion of personal privacy.

K. *ACRS Subcommittee Activities*—Hear a report and hold a discussion regarding the activities of the Advanced Boiling Water Reactors Subcommittee.

L. *Future Activities*—Discuss topics proposed for consideration by the full Committee during future meetings.

M. *Miscellaneous*—Discuss miscellaneous matters related to the conduct of Committee activities and complete discussion of matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

404th ACRS Meeting, December 9–11, 1993, Bethesda, MD. Agenda to be announced.

405th ACRS Meeting, January 6–8, 1994, Bethesda, MD. Agenda to be announced.

406th ACRS Meeting, February 10–12, 1994, Bethesda, MD. Agenda to be announced.

ACNW Full Committee Meetings

58th ACNW Meeting, October 27–28, 1993, Holiday Inn, Bethesda, MD. During this meeting, the Committee plans to:

A. Continue discussions of matters related to implementation plans for future ACNW activities, including the preparation of reports on ACNW protocols, topics for review, and resource requirements.

*B. Continue discussions of matters related to the appointment of new members, and organizational and personnel matters related to the ACNW members and ACNW staff. A portion of this session may be closed to public attendance to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. 552b(c)(6).

C. Hear reports from ACNW members and staff on recent technical meetings that they have attended. Topics will include: radionuclide migration and related near-field phenomena, hydrological research, the Exploratory Studies Facility, and surface-based testing associated with the Yucca Mountain Project. Representatives of the NRC staff will participate, as appropriate.

*D. Elect ACNW officers for CY 1994. This session will be closed pursuant to 5 U.S.C. 552b(c)(6) to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

E. Discuss topics proposed for consideration during future ACNW meetings.

F. Hear a briefing by and hold discussions with representatives of the NRC's Office for Analysis and Evaluation of Operational Data (AEOD) on technical training programs being developed by AEOD for the Technical Training Center in Chattanooga, Tennessee.

G. *Miscellaneous*—Discuss miscellaneous matters related to the conduct of Committee activities and complete discussion of matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

59th ACNW Meeting, November 15–16, 1993, Bethesda, MD. Agenda to be announced.

60th ACNW Meeting, December 15, 1993, St. Tropez All Suite Hotel, Las Vegas, NV. Agenda to be announced.

ACNW Working Group Meetings

Characterization of the Unsaturated Zone Flow and Transport Properties, December 14, 1993, St. Tropez All Suite Hotel, Las Vegas, NV. The Working Group will examine the relationships between precipitation, recharge, and flux through the unsaturated zone at the proposed Yucca Mountain site, and the adequacy of ongoing field studies to ascertain these relationships. Emphasis will be placed on the modeling of flow in the unsaturated zone, alternative conceptual models of fracture versus matrix flow, and conditions under which fracture flow can be shown to predominate. The Working Group will also focus on the recharge term in hydrogeologic models, alternative conceptual models for how and where regional recharge occurs, and the effect of assumptions about recharge on model results.

Dated: October 15, 1993.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 93–25890 Filed 10–20–93; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards, Subcommittee Meeting on Planning and Procedures; Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on November 3, 1993, room P–422, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance, with the exception of certain portions that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS and matters the release of which would represent a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Wednesday, November 3, 1993—2 p.m. Until 4:30 p.m.

The Subcommittee will discuss proposed ACRS activities, practices and procedures for conducting the Committee business, and organizational and personnel matters relating to ACRS and its staff. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefore can be obtained by contacting the cognizant ACRS staff person, Dr. John T. Larkins (telephone 301/492–4516) between 7:30 a.m. and 4:15 p.m., EDT. Persons planning to attend this meeting are urged to contact the above named individual five days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: October 13, 1993.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 93–25884 Filed 10–20–93; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards; Joint Meeting of the ACRS Subcommittee on Computers in Nuclear Power Plant Operations and Ad Hoc Subcommittee on Design Acceptance Criteria

The ACRS Subcommittee on Computers in Nuclear Power Plant Operations and the Ad Hoc Subcommittee on Design Acceptance Criteria will hold a joint meeting on November 2, 1993, Room P–110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance, with the exception of portions that may be closed to discuss information deemed proprietary to General Electric Nuclear Energy (GE) [5 U.S.C. 552b(c)(4)].

The agenda for the subject meeting shall be as follows:

Tuesday, November 2, 1993—8:30 a.m. Until the Conclusion of Business

The Subcommittees will review Chapter 7, "Instrumentation and Control Systems," of the Standard Safety Analysis Report and associated Certified Design Material (Tier 1) for the ABWR design, and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, its consultants, GE representatives, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by contacting the cognizant ACRS staff engineer, Mr. Douglas Coe (telephone 301/492–8972) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual five days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: October 14, 1993.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 93–25885 Filed 10–20–93; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards; Subcommittee Meeting on Safeguards and Security

The ACRS Subcommittee on Safeguards and Security will hold a meeting on November 3, 1993, room P–110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed to discuss safeguards and security information [5 U.S.C. 552(c)(3)].

The agenda for the subject meeting shall be as follows:

Wednesday, November 3, 1993—8:30 a.m. Until the Conclusion of Business

The Subcommittee will review the proposed Commission paper on Internal Threat, SECY–93–270, "Proposed Amendments to 10 CFR part 73 to Protect Against Malevolent Use of Vehicles at Nuclear Power Plants," and safeguards and security requirements for the GE Advanced Boiling Water Reactor design. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Mr. Herman Alderman (telephone 301/492–7750) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual five days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: October 14, 1993.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 93–25886 Filed 10–20–93; 8:45 am]

BILLING CODE 7590–01–M

Draft NUREG: Issuance Availability

The Nuclear Regulatory Commission has issued a draft report entitled "Revised Analyses of Decommissioning for the Reference Pressurized Water Reactor Power Station" (NUREG/CR–5884). This draft report, prepared for the NRC by Battelle Pacific Northwest Laboratories (PNL), is available for review and comment.

The draft report presents the results of a review and reevaluation of the 1978 pressurized water reactor (PWR) decommissioning study (NUREG/CR–0130) and subsequent addenda which addressed technology, safety and cost issues associated with decommissioning a large nuclear power plant. This reevaluation was performed to update the current cost estimates to decommission the reference PWR which was Trojan.

This report should be viewed as a first step in developing a more parametric approach to estimating decommissioning costs and comments on the usefulness of such an approach are requested. The NRC staff is particularly interested in comments on the usefulness of the present report in terms of preparation of case specific parametric analyses. The boiling water rector (BWR) reevaluation underway at this time will incorporate additional parametric analyses to permit a more comprehensive look at decommissioning costs. This report will be issued in early 1994 for public comment. The results of these studies, including input from the public, will be utilized by the NRC staff as part of its effort to determine if revisions of the decommissioning regulations are warranted.

A separate draft report, NUREG/CR—6054, entitled "Estimating Pressurized Water Reactor Decommissioning Costs" is also being issued which describes a computer program developed by PNL and used in the development of NUREG/CR–5884 to arrive at the cost estimates. This draft report has been prepared in the form of a user's manual. The NRC staff is considering use of the program in evaluating licensee submittals of their decommissioning cost estimates. This report is also being issued for public comment.

NUREG/CR–5884 and NUREG/CR–6054 are not a substitute for NRC regulations, and compliance is not required. The approaches and/or methods described in these NUREG/CRs are provided for information only. Publication of the reports does not necessarily constitute NRC approval or agreement with the information cited therein.

Copies of NUREG/CR–5884 and NUREG/CR–6054 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082. Copies are also available from the National Technical Information service, 5285 Port Royal Road, Springfield, Virginia 22161. A copy is also available for inspection and/or copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

Free single copies of draft NUREG/CR–5884 and/or NUREG/CR–6054 may be requested by those considering public comment by writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of the software for NUREG/CR–6054 will be made available by contacting the NRC Project Manager, George J. Mencinsky, at (301) 492–3735.

Comments on the draft reports should be sent to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Mail Stop P–223, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of the comments received may be examined at the NRC Public Document Room at 2120 L Street, NW. (Lower Level), Washington, DC. Comments will be most helpful if they are received by December 31, 1993.

For further information contact George J. Mencinsky, Radiation Protection and Health Effects Branch, Mail Stop NLS–139, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–3735.

Dated at Rockville, Maryland, this 4th day of October, 1993

For the Nuclear Regulatory Commission.

Bill M. Morris,

Director, Division of Regulatory Applications Office of Nuclear Regulatory Research.

[FR Doc. 93–25888 Filed 10–20–93; 8:45 am]

BILLING CODE 7590–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of

Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Statement of Authority to Act for Employee
(2) *Form(s) submitted:* SI–10
(3) *OMB Number:* 3220–0034
(4) *Expiration date of current OMB clearance:* Three years from date of OMB approval
(5) *Type of request:* Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection
(6) *Frequency of response:* On occasion
(7) *Respondents:* Individuals or households, Businesses or other for-profit
(8) *Estimated annual number of respondents:* 400
(9) *Total annual responses:* 400
(10) *Average time per response:* .1 hours
(11) *Total annual reporting hours:* 40
(12) *Collection description:* Under 20 CFR 335.2, the Railroad Retirement Board (RRB) accepts claims for sickness benefits executed by other than the sick or injured employees, provided the RRB has the information needed to satisfy itself that the delegation should be made.

Additional Information or Comments

Copies of the form and supporting documents can be obtained from Dennis Eagan, the agency clearance officer (312–751–4693). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503.

Dennis Eagan,

Clearance Officer.

[FR Doc. 93–25813 Filed 10–20–93; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–33055; File No. SR–CHX–93–25]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Inc, to Establish a Policy Concerning the Designated Primary Market Maker of a Basket "Clearing the Post"

October 15, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 13, 1993, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX proposes to publish to members the following policy concerning the Designated Primary Market Maker ("DPM") in a Basket (Exchange Article XXVI) and "clearing the post:"

The Designated Primary Market Maker, as that term is used in the Exchange's new rules concerning basket trading (Article XXXVI), may comply with the Exchange's "Clearing the Post" Rules by using an electronic order delivery system to send an order to a specialist's post for execution. In the event that such order is not executed by the specialist within ten seconds, the Designated Primary Market Maker may send that order to another exchange for execution. If the Designated Primary Market Maker sends an order to another exchange because the order was not executed by the specialist, but there are public orders in the specialist's book at the same price that could have been executed against the Designated Primary Market Maker's order if the Designated Primary Market Maker's order had been executed at the post, the specialist shall still be obligated to execute those orders (up to the size of the Designated Primary Market Maker's order) at such orders' limit price.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed change is to publish to members an Exchange policy, concerning the manner in which the DPM for a basket may clear the post.

The proposed policy would permit the DPM to clear the post electronically rather than physically walking to the specialists' posts of all the stocks underlying a basket. If, after sending an order to a specialist, the DPM does not get a response within 10 seconds, the DPM would be permitted to send the order to another exchange for execution.

2. Statutory Basis

The proposed rule change is consistent with section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed rule Change Received From Members, Participants or Others

The proposed rule change has been endorsed by the Exchange's Floor Procedure Committee.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change constitutes a stated policy, practice or interpretation with respect to the meaning, administration or enforcement of an existing rule of the Exchange and therefore has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of rule 19b–4 thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and

arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–93–25 and should be submitted by November 12, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–25942 Filed 10–20–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33056; File No. SR–CHX–93–24]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Inc. to Waive Exchange Transaction Fees on Trades in the Chicago Basket

October 15, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 13, 1993, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX proposes to waive, through December 31, 1993, Exchange transaction fees. The text of the proposed rule change is italicized:

(c) Transaction Fee Schedule Round Lots/ Mixed Lots.	45 cents per 100 shares.
	$100 maximum per trade.
Odd Lots	35 cents per trade.
	$400 maximum monthly fee.

The above fees shall not apply to transactions in the Chicago Basket ("CXM") through December 31, 1993.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed change is to waive certain Exchange fees for trades in the Chicago Basket, through December 31, 1993.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(4) of the Act in that it provides for the equitable allocation of reasonable fees and other charges among members using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and therefore has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–93–24 and should be submitted by November 12, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–25943 Filed 10–20–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34-33058; File No. SR-CHX-93-27]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Chicago Stock Exchange, Inc. To Establish a Policy Concerning the Designated Primary Market Maker and the Registered Market Maker of a Basket

October 15, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 13, 1993, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX proposes to publish to members an interpretation and policy concerning the interactions between the Designated Primary Market Maker ("DPM") and the Registered Market Makers ("RM") in trading the Chicago Basket ("CXM").[1]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed change is to clarify that Article XXXIV, Rule 8 of the Exchange's rules providing for a two-thirds/one-third parity between a specialist and registered market makers in the same issue will also apply to trades in the CXM.

The Exchange proposes to adopt the following interpretation to Article XXXIV, Rule 8:

.01 When the Designated Primary Market Maker and a Registered Market Maker, as those terms are used in Article XXXVI, are both displaying, through the quotation system, the same bid or offer price for a basket, the Designated Primary Market Maker and the Registered Market Maker will be entitled to participate in transactions on a ⅔ to ⅓ parity, respectively, up to the size of their displayed quotations. (*i.e.*, the Designated Primary Market Maker is entitled to twice the size of a Registered Market Maker's order up to the size of the Designated Primary Market Maker's quotation. Conversely, a Registered Market Maker is entitled to participate at ½ the size of the Designated Primary Market Maker's order up to the size of the Registered Market Maker's displayed quotation.) In the event that the Designated Market Maker or a Registered Market Maker has not displayed a size greater than or equal to the size he or she would be entitled to based on the ⅔ to ⅓ parity, the Designated Market Maker or a Registered Market Maker, as the case may be, shall only participate up to their displayed size.

Simultaneously with this filing, the Exchange has requested temporary accelerated approval (for 60 days) of the proposal.[2]

2. Statutory Basis

The proposed rule change is consistent with section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The proposed rule change has been endorsed by the Exchange's Floor Procedure Committee.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR-CHX-93-27 and should be submitted by November 12, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-25944 Filed 10-20-93; 8:45 am]

BILLING CODE 8010-01-M

[1] Today, the Commission is approving a proposed rule change by the CHX which amends the Rules of the Exchange to establish rules allowing for and governing the trading of standardized baskets on the Exchange Floor, and to trade a specific basket product to be known as the Chicago "CHX" Basket. *See* Securities Exchange Act Release No. 34-33053 (October 15, 1993) (order approving File No. SR-CHX-93-18).

[2] See Securities Exchange Act Release No. 34-33057 (October 15, 1993) (order granting temporary accelerated approval of File No. SR-CHX-93-26).

[Release No. 34–33052; File No. SR–NASD–93–56]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Codification of Basic Requirements Respecting Access to the Use of the OTC Bulletin Board Service

October 15, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 8, 1993 the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to section 19(b)(1) of the Act and Rule 19b–4 thereunder, the NASD has filed this proposed rule change to codify the existing requirements respecting access to and use of the OTC Bulletin Board service ("OTCBB"). Following is the full text of the proposed codification that would appear as a discrete section in the NASD Manual. (Proposed new language is italicized.)

OTC Bulletin Board Service Rules

Applicability

Section 1. These rules shall be known as the "OTC Bulletin Board Rules" and govern the operation and use of the OTC Bulletin Board service ("OTCBB" or "Service") by broker-dealers admitted to membership in the National Association of Securities Dealers, Inc. ("NASD") and their associated persons. Unless otherwise indicated, the requirements of the OTC Bulletin Board Rules are in addition to the requirements contained in the NASD's Rules of Fair Practice, By-Laws, Schedules to the By-Laws, and Rules of Practice and Procedure for the Automated Confirmation Transaction Service.

Operation of the Service

Section 2. The OTCBB provides an electronic quotation medium for subscribing members to reflect market making interest in OTCBB-eligible securities. Subscribing market makers can utilize the Service to enter, update, and display their proprietary quotations in individual securities on a real-time basis. Such quotation entries may consist of a priced bid and/or offer; an unpriced indication of interest (including "bid wanted" or "offer wanted" indications); or a bid/offer accompanied by a modifier to reflect unsolicited customer interest. A subscribing market maker can also access the proprietary quotations that other firms have entered into the Service along with highest bid and lowest offer (i.e., an inside bid-ask calculation) in any OTCBB-eligible security with at least two market makers displaying two-sided markets.

OTCBB-Eligible Securities

Section 3. The following categories of securities shall be eligible for quotation in the Service:

(a) any domestic equity security that is not listed on The Nasdaq Stock Market or a registered national securities exchange in the U.S.; and

(b) any foreign equity security or American Depositary Receipt ("ADR") that is not listed on The Nasdaq Stock Market or a registered national securities exchange in the U.S.

Requirements Applicable to Market Makers

Section 4. Market-maker participation in the OTCBB is voluntary and open to any NASD member firm that: satisfies the financial/operational requirements applicable to member firms engaged in over-the-counter market making; subscribes to Level 3 Nasdaq Workstation service; and demonstrates compliance with (or qualifies for an exception from) Rule 15c2–11 [17 CFR 240.15c2–11] under the Securities Exchange Act of 1934 at the time of initiating (or resuming) the quotation of any OTCBB-eligible security in the Service. Section 4 of Schedule H to the NASD By-Laws sets forth the procedure for demonstrating compliance with Rule 15c2–11.

OTCBB-eligible securities that meet the frequency-of-quotation requirement for the so called "piggyback" exception in paragraph (f)(3)(i) of Rule 15c2–11 are identified in the Service as "active" securities. A member can commence market making in any active security by registering as a market maker through a Nasdaq Workstation at the firm. In all other instances, a member must follow the procedure contained in Section 4 of Schedule H to become qualified as a market maker in a particular OTCBB-eligible security.[1]

(a) Permissible Quotation Entries.

1. A member firm that has qualified as a market maker in a particular OTCBB-eligible security may enter into the Service a priced bid and/or offer, an unpriced indication of interest (including "bid wanted" and "offer wanted" indications) or a bid or offer accompanied by a modifier to reflect unsolicited customer interest. Every quotation entry must include the appropriate telephone number for the firm's trading desk.

2. A priced bid and/or offer entered into the Service for a domestic equity security must be firm up to the minimum quotation size specified in Section 5 of Schedule H to the NASD By-Laws. This firmness requirement applies only during normal business hours, i.e., 9:30 a.m. to 4 p.m. E.T.

3. A priced bid and/or offer entered into the Service for a foreign equity security or an ADR shall be non-firm.[2] *Moreover, a market maker is only permitted to update quotation entries in such securities twice daily, i.e., once between 8:30 a.m. and 9:30 a.m. E.T., and once between noon and 12:30 p.m. E.T.*[3]

(b) Voluntary Termination of Registration.

A market maker can voluntarily terminate its registration in an OTCBB-eligible security by withdrawing its quotations in that security from the Service. The firm may re-register to

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[1] On February 28, 1992, the Securities and Exchange Commission granted the NASD's request to create a limited exemption from Rule 15c2–11 that permits a broker-dealer to publish in or submit to a quotation medium quotations for a security immediately after such security is no longer authorized for quotation in The Nasdaq Stock Market, without having information specified by the Rule. This exemption is only available if all the following conditions are satisfied:

(1) the security's removal was attributable solely to the issuer's failure to satisfy the revised maintenance standards approved in Release No. 34–29638 (August 30, 1991), 56 FR 44108 (September 6, 1991);

(2) the security must have been quoted continuously in The Nasdaq Stock Market during the thirty calendar days preceding its delisting, exclusive of any trading halt not exceeding one day to permit the dissemination of material news concerning the security's issuer;

(3) the issuer must not be the subject of bankruptcy proceedings;

(4) the issuer must be current in its reporting pursuant to section 13(a) or 15(d) of the Exchange Act; and

(5) a broker-dealer relying upon this exemption must have been a market maker registered with the NASD in the security during the thirty day period preceding its removal from The Nasdaq Stock Market.

[2] The non-firm or indicative nature of a priced entry in a foreign or ADR issue is specifically identified on the montage of market maker quotation accessible through the Nasdaq Workstation service for this subset of OTCBB-eligible securities.

[3] Examples of entries that would be considered an update include a market maker inserting a new, non-firm priced quotation, substituting an unpriced indication for a non-firm priced entry, or an initial registration without a price.

quote the security by satisfying the requirements specified above in this Section.

Transaction Reporting

Section 5. Member firms that affect transactions in OTCBB-eligible securities shall report them pursuant to the requirements of Part XIII of Schedule D to the NASD By-Laws.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comment it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

The purpose of the proposed rule change is to codify various operational requirements that the Commission has approved since the OTCBB was launched as a pilot program on June 1, 1990. More specifically, these requirements are contained in the following Rule 19b–4 filing made by the NASD: (1) File No. SR–NASD–88–19 (as amended), approved in Securities Exchange Act Release No. 27975 (May 30, 1990) and containing the basic operational requirements for the OTCBB; (2) File No. SR–NASD–90–37, approved in Securities Exchange Act Release No. 28404 (August 31, 1990), and expanding by one-half hour quotation-update period applicable to market makers in foreign/ADR issues; (3) File No. SR–NASD–91–12, approved in Securities Exchange Act Release No. 29261 (May 31, 1991), and establishing a firmness requirement for all price bids/offers in domestic equity securities; and (4) File No. SR–NASD–91–38, approved in Securities Exchange Act Release No. 29616 (August 27, 1991) and establishing the parameters for an inside bid-ask calculation.[4]

Additionally, the codified language references two recently-approved regulatory initiatives affecting the OTCBB and participating member firms: (1) File No. SR–NASD–92–48—real-time trade reporting requirements for OTC equity securities (Securities Exchange Act Release No. 32647, July 16, 1993) and (2) File No. SR–NASD–93–17—revised minimum quotation size requirements for OTCBB market maker (Securities Exchange Act Release No. 32570, July 1, 1993). These initiatives will be published, respectively, in Part XIII of Schedule D to the NASD By-Laws and Section 5 of Schedule H to the NASD By-Laws.

The requirements embodied in this codification do not reflect any substantive change in the requirements that the Commission had previously approved in the context of the aforementioned filings. Rather, the codification is a restatement of the requirements in the form of operational rules that can be published in the NASD Manual. (The NASD has followed a similar approach in formulating and publishing specialized rules for the Nasdaq International Service and the Fixed Income Pricing System.) As a result, it will be much easier for NASD members to research the pertinent requirements by referencing a discrete section of the NASD manual. In sum, the proposed codification should facilitate the NASD's administration of and member firms' compliance with the operational requirements that are unique to the OTCBB.

The NASD believes that the proposed rule change is consistent with Sections 15A(b)(6) and (11) of the Act. Section 15A(b)(6) requires, in pertinent part, that NASD rules be designed to prevent fraudulent and manipulative acts or practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and in general to protect investors and the public interest. Section 15A(b)(11) authorizes the NASD to adopt rules governing the form and content of quotations disseminated by member firms relating to securities traded over-the-counter. The NASD believes that the proposed codification of rules governing participation in the OTCBB is fully consistent with these statutory provisions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so findings or (ii) as to which the NASD consents,the Commission will:

A. By order approved such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by November 12, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–25945 Filed 10–20–93; 8:45 am]

BILLING CODE 8010–01–M

[4] For any equity security quoted in the OTCBB, an inside bid-ask calculation (i.e., the highest bid and lowest offer being displayed by market makers registered in a particular security) is available only if the security has at least two registered market makers, each displaying a period bid and offer. If additional market markers are displaying either one or two-sided quotations, those entries are also factored into the inside calculation. On the other hand, if the basic requirement of two market markers is not satisfied, an indication is generated denoting that no inside calculation is available.

[Rel. No. IC–19791; 812–8530]

Security First Life Insurance Company, et al.; Application

October 15, 1993.

AGENCY: Securities and Exchange Commission (the "SEC" or the "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Security First Life Insurance Company ("Security First"), Security First Life Separate Account A ("Account A"), Fidelity Standard Life Insurance Company ("Fidelity Standard", together with Security First, the "Companies"), and Fidelity Standard Life Separate Account ("Fidelity Account", together with Account A, the "Accounts").

RELEVANT 1940 ACT SECTIONS: Order requested under section 26(b) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order approving the proposed substitution of shares of the Money Market Portfolio of the Variable Insurance Products Fund for shares of the Money Market Series of Security First Trust (the "Trust") held by the Accounts.

FILING DATE: The application was filed on August 10, 1993 and an amended and restated application was filed on October 8, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on November 9, 1993 and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, by certificate. Hearing requests should state the nature of the interest, the reason for the request and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, Richard C. Pearson, Esq., The Holden Group, 11365 West Olympic Boulevard, Los Angeles, California 90064.

FOR FURTHER INFORMATION CONTACT: Barbara J. Whisler, Attorney, or Michael V. Wible, Special Counsel, both at (202) 272–2060, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the Public Reference Branch of the SEC.

Applicants' Representations

1. Security First, a stock life insurance company founded in 1960 under Delaware law, has its principal executive offices at 11365 West Olympic Boulevard, Los Angeles, California 90064. Security First is a wholly owned subsidiary of the Holden Group, Inc. ("THG"). 59% of the outstanding voting stock of THG is owned by London Insurance Group, Inc. (formerly, Lonvest Corporation), a Canadian insurance service corporation and publicly traded subsidiary of Trilon Financial Corporation. 40% of the outstanding voting stock of THG is owned by The Holden Company, a general partnership controlled by Glen A. Holden, and the remaining 1% is held by three individuals who are current or former employees of THG.

2. Account A, established by Security First on May 29, 1980 in accordance with the Delaware Insurance Code, is used to fund various variable annuity contracts issued by Security First. Account A is registered with the Commission under the 1940 Act as a unit investment trust. Account A is divided into a number of series, each of which invests solely in the shares of a registered investment company, or investment series thereof, including shares of Security First Trust, a registered open-end diversified management investment company.

3. Fidelity Standard, a stock life insurance company founded in 1981 under Delaware law, is a wholly owned subsidiary of Security First. The principal executive offices of Fidelity Standard are located at 11265 West Olympic Boulevard, Los Angeles, California 90064.

4. Fidelity Account, established by Fidelity Standard on May 13, 1985 in accordance with the Delaware Insurance Code, is used to fund variable annuity contracts issued by Fidelity Standard (collectively, with the variable annuity contracts issued by Security First and funded through Account A, the "Contracts"). Fidelity Account is registered with the Commission under the 1940 Act as a unit investment trust. Fidelity Account is divided into a number of series, each of which invests solely in the shares of a registered investment company, or investment series thereof, including shares of the Trust.

5. The Trust has a number of investment series currently available under the Contracts. The Money Market Series of the Trust seeks preservation of capital, liquidity and the highest possible level of current income consistent with these objectives. Security First Investment Management Corp. ("Security Management"), a subsidiary of THG and an affiliate of the Companies, provides investment management services to the Money Market Series of the Trust. T. Rowe Price Associates ("T. Rowe") provides investment management services to the Money Market Series of the Trust pursuant to a subadvisory agreement with Security Management. Applicants state that T. Rowe is not affiliated with either of the Companies. Shares of the Money Market Series of the Trust are purchased, without sales charge, for the corresponding series of the Accounts at the net asset value per share next determined following receipt of the applicable payment. Any dividend or capital gain distributions received from the Money Market Series are reinvested in additional shares which are retained as assets of the applicable Account's series. Shares of the Money Market Series of the Trust are redeemed without fee to the Accounts' series to the extent necessary for the Companies to make annuity or other payments under the Contracts.

6. Security Management receives an annual investment advisory and management fee, accrued daily and payable in monthly installments, from the Money Market Series of the Trust based on an annual rate of 0.5% of the average daily net assets of the series. T. Rowe receives a subadvisory fee from Security Management, accrued daily and payable in monthly installments, equal to 0.35% of the average daily net assets of the series. As of the Trust's fiscal year ending July 31, 1993, the Money Market Series had $4,479,577 in net assets. The total expenses of the Money Market Series of the Trust for that fiscal year were 0.75% of its average net assets. This expense ratio reflects certain advisory fee waivers and reimbursement of expenses by Security Management to the series. Applicants state that in the absence of these advisory fee waivers and expense reimbursements, the expenses of the series for its fiscal year ending July 31, 1993 would have been 1.58%.

7. The Variable Insurance Products Fund (the "Fund"), a Massachusetts business trust, is registered with the Commission under the 1940 Act as an open-end, diversified management investment company. The Fund is divided into separate investment portfolios, including the Money Market Portfolio which seeks to obtain as high

a level of current income as is consistent with preserving capital and providing liquidity. Applicants state that the Money Market Portfolio of the Fund will invest only in high quality U.S. dollar denominated money market securities of domestic and foreign issuers. Fidelity Management & Research Company ("Fidelity Management") is the investment advisor for the Fund. Applicants represent that Fidelity Management is not affiliated with either of the Companies.

8. Fidelity Management's advisory fee for the Money Market Portfolio is based upon the gross income of that portfolio. The amount of the monthly gross income which is equivalent to an annualized yield of 5% or less is subject to an annual fee of 4%. For monthly gross income in excess of an annualized yield of 5%, the annual rate is 6%. The portfolio's management fee is limited, however, to a weighted average of a graduated series of annual limitation rates ranging from 0.5% of its average monthly net assets up to $1.5 billion to 0.4% of its average monthly net assets in excess of $6 billion. As of the Fund's fiscal year ending December 31, 1992, the Money Market Portfolio had $298.9 million in net assets. As of June 30, 1993, net assets decreased to approximately $288.6 million. The total expenses of the Money Market Portfolio of the Fund for its 1992 fiscal year were .24% of its average net assets.

9. On July 13, 1993, the Board of Directors of each of the Companies adopted resolutions authorizing the substitution of shares of the Money Market Portfolio of the Fund for shares of the Money Market Series of the Trust held by the Accounts.

Applicant's Legal Analysis and Conditions

1. Applicants request that the Commission grant an order pursuant to section 26(b) of the 1940 Act to permit substitution of the shares of the Money Market Portfolio of the Fund for shares of the Money Market Series of the Trust held by the Accounts.

2. Section 26(b) of the 1940 Act makes it unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved that substitution based upon a finding that the substitution is consistent with the protection of investors and the purposes fairly intended by the policy and the provisions of the 1940 Act. Section 26(b) was intended to allow for Commission scrutiny of proposed substitutions which could force those shareholders dissatisfied with the substituted security to redeem their shares, thereby possibly incurring a loss of the sales load previously deducted from initial purchase payments, an additional sales load upon reinvestment of the reinvestment proceeds, or both.

3. Applicants state that the Contracts reserve to the Companies the right to replace the shares of the Money Market Series held by the Accounts with shares of another registered investment company such as the Fund, if the substitution is approved by vote of a majority of the outstanding Account units entitled to vote, and as otherwise provided under the 1940 Act.

4. Applicants represent that the Companies believe that further investment in shares of the Money Market Series of the Trust is no longer appropriate in light of the Contracts' purposes. The application states that owners of Contracts with contract values allocated to series of the Accounts invested in the Money Market Series of the Trust will be given the opportunity to vote on the proposed substitution, pursuant to the provisions of section 20 of the 1940 Act and the applicable rules thereunder. If the requisite approval by the owners of the Contracts is obtained, and if the order sought in the application is granted, shares of the Money Market Portfolio of the Fund would be substituted for shares of the Money Market Series of the Trust held by each of the Accounts. Substitution would be effected by redeeming the shares of the Money Market Series held by the Accounts and immediately investing the redemption proceeds in shares of the Money Market Portfolio of the Fund. Applicants state that the substitution will, therefore, be based upon the relative net asset values of the Money Market Series and of the Money Market Portfolio at the time of substitution.

5. Applicants note that the investment objectives of the Money Market Portfolio and of the Money Market Series are substantially similar in that both are "money market" funds. Moreover, Applicants note that both the Money Market Portfolio and the Money Market Series are subject to the requirements relating to diversification, quality and portfolio maturity set forth in Rule 2a–7 under the 1940 Act.

6. Applicants contend that the proposed substitution is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. Applicants represent that because of the diversification requirements applicable to open-end investment companies, and, in particular, because of the diversification requirements applicable to money market funds pursuant to Rule 2a–7 under the 1940 Act, it is difficult to make appropriate investments for the Money Market Series of the Trust due to the relatively insignificant total net assets, $4,958,174 as of July 31, 1992, of the series. Therefore, Applicants argue that T. Rowe, in managing the investments of the Money Market Series, is not in a position to invest freely in certain potentially advantageous securities issues.

7. Applicants further argue that expenses incurred by the Money Market Series have remained relatively high at .75% of average net assets even with waiver of advisory fees and reimbursement of expenses. Applicants state that a large portion of these expenses remain fixed, and that these fixed expenses therefore represent a relatively large percentage of average daily net assets because the size of the Money Market Series is relatively small.

8. Although Security Management has previously voluntarily waived its advisory fee below that required by state expense limitations and reimbursed the Money Market Series in order to maintain the expense ratio at 0.75%, the application states that Security Management intends to discontinue the voluntary waiver and reimbursement in the near future.

9. Applicants also note that the Money Market Series has assumed a contingent obligation to repay Security Management for reimbursements made in prior years, provided the repayment would not cause the expenses for the Money Market Series for a fiscal year to exceed expense limitations imposed by state law. Applicants state that, as of July 31, 1993, the aggregate amount of this contingent obligation was $525,892. Therefore, Applicants argue that even if the assets of the Money Market Series were to grow substantially to a point where repayment of the obligation to Security Management could begin, repayment would, in Applicants' opinion, result in maintaining the expense ratio at a high level. Applicants therefore submit that there is no realistic expectation of the Money Market Series becoming a viable and competitive money market fund in the foreseeable future.

10. Applicants submit that the interests of owners of the Contracts would be better served if the money market investment options under the Contracts were funded through the Money Market Portfolio of the Fund. The Fund offers its shares to separate accounts of insurance companies offering variable annuity and variable life insurance products and, therefore,

the Money Market Portfolio of the Fund is more likely to increase in size than is the Money Market Series of the Trust, whose shares are not actively marketed to other separate accounts. Because of its larger asset base, Applicants argue that it may reasonably be expected that the Money Market Portfolio will not experience the type of difficulties experienced by the Money Market Series in adhering to the diversification requirements of Rule 2a–7 of the 1940 Act. Similarly, Applicants argue that the expense ratio for the Money Market Portfolio, which at .24% is lower than that of the Money Market Series, is likely to continue to be lower in view of the larger asset base of the Money Market Portfolio.

11. Finally, the Companies undertake to assume all costs the Accounts might otherwise bear in connection with the proposed substitution, so that the substitution will be effected at no cost to owners of the Contracts. Applicants represent that there will be no tax consequences to owners of the Contracts or to any Applicant as a result of the substitution. Applicants further represent that, upon liquidation of the Money Market Series, the contingent liability of $525,892 owned by the Money Market Series to Security Management will be extinguished and therefore will never become payable by owners of the Contracts.

Conclusion

For the reasons and upon the facts set forth above, Applicants submit that the requested order under Section 26(b) is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–25946 Filed 10–20–93; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted on or before November 22, 1993. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency clearance officer: Cleo Verbillis, Small Business Administration, 409 3RD Street, SW., 5th Floor, Washington, DC 20416, Telephone: (202) 205–6629

OMB reviewer: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503

Title: How Small Businesses Learn

Form No.: N/A

Frequency: One-Time Nonrecurring

Description of Respondents: Small business owners and managers

Annual Responses: 1,632

Annual Burden: 408

Dated: October 18, 1993.

Cleo Verbillis,

Chief, Administrative Information Branch.

[FR Doc. 93–25870 Filed 10–20–93; 8:45 am]

BILLING CODE 8025–01–M

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted on or before November 22, 1993. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency clearance officer: Cleo Verbillis, Small Business Administration, 409 3rd Street SW., 5th Floor, Washington, DC 20416, Telephone: (202) 205–6629

OMB reviewer: Gary Waxman, Office of Information and Budget, New Executive Office Building, Washington, DC 20503

Title: Amendments to License Application

Form No. SBA Form 415C

Frequency: On occasion

Description of Respondents: Small Business Investment Companies

Annual Responses: 1,256

Annual Burden: 314

Dated: October 18, 1993.

Cleo Verbillis,

Chief, Administrative Information Branch.

[FR Doc. 93–25871 Filed 10–20–93; 8:45 am]

BILLING CODE 8025–01–M

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted on or before November 22, 1993. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency clearance officer: Cleo Verbillis, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416, Telephone: (202) 205–6629

OMB reviewer: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503

Title: Other Borrower Reports and Records, and Requests

Form No.: N/A

Frequency: On Occasion

Description of Respondents: Recipients of SBA Loans

Annual Responses: 206,000
Annual Burden: 154,500

Dated: October 18, 1993.

Cleo Verbillis,

Chief, Administrative Information Branch.

[FR Doc. 93–25872 Filed 10–20–93; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2669; Amendment #3]

Declaration of Disaster Loan Area; Kansas

The above-numbered Declaration is hereby amended, effective September 29, 1993, to include Cherokee and Crawford Counties in the State of Kansas as a disaster area as a result of damages caused by flooding and severe storms. Also, the incident period for this disaster is hereby reopened and amended to be June 28, 1993 and continuing.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Bourbon, Labette, and Neosho in Kansas, and Craig and Ottawa Counties in Oklahoma may be filed until the specified date at the previously designated location.

Any counties contiguous to the above-named primary counties and not listed herein are covered under a separate declaration for the same occurrence.

All other information remains the same, i.e., the termination date for filing applications for physical damage is November 15, 1993, and for economic injury the deadline is April 25, 1994.

The economic injury number for Kansas is 793500 and for Oklahoma the number is 793600.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 4, 1993.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 93–25876 Filed 10–20–93; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2664; Amendment #5]

Declaration of Disaster Loan Area; Minnesota

The above-numbered Declaration is hereby amended, effective September 28, 1993, to include Dodge, Fillmore, Kandiyohi, and Pope Counties in the State of Minnesota as a disaster area as a result of damages caused by severe storms, flooding, and tornadoes beginning on May 6, 1993 and continuing through August 26, 1993.

All counties contiguous to the above-named primary counties have been previously declared.

All other information remains the same, i.e., the termination date for filing applications for physical damage is November 15, 1993 and for economic injury the deadline is April 11, 1994.

(Catalog of Federal Domestic Assistant Program Nos. 59002 and 59008)

Dated: October 4, 1993.

Bernard Kulik

Assistant Administrator for Disaster Assistance.

[FR Doc. 93–25874 Filed 10–20–93; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2663; Amendment #7]

Declaration of Disaster Loan Area; Missouri

The above-numbered Declaration is hereby amended in accordance with Notices from the Federal Emergency Management Agency dated September 28 and 29, 1993 to include Christian, Dallas, Greene, Laclede, Lawrence, Phelps, Polk, Taney, Texas, Washington, Webster, and Wright Counties in the State of Missouri as a disaster area as a result of damages caused by severe storms and flooding beginning on June 10, 1993 and continuing.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Douglas, Howell, Ozark, and Shannon in Missouri, and Marion County in Arkansas may be filed until the specified date at the previously designated location.

Any counties contiguous to the above-named primary counties and not listed herein have been previously declared.

All other information remains the same, i.e., the termination date for filing applications for physical damage is November 15, 1993 and for economic injury the deadline is April 11, 1994.

The economic injury number for Missouri is 793300 and for Arkansas the number is 793700.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 4, 1993.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 93–25873 Filed 10–20–93; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2682]

Oklahoma (And Contiguous Counties in Kansas and Missouri); Declaration of Disaster Loan Area

Ottawa County and the contiguous counties of Craig and Delaware in the State of Oklahoma; Cherokee County in Kansas; and McDonald and Newton Counties in Missouri constitute a disaster area as a result of damages caused by severe storms and flooding which occurred September 24 through September 26, 1993. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on December 3, 1993 and for economic injury until the close of business on July 5, 1994 at the address listed below: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., suite 102 Ft. Worth, TX 76155 or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.00
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.625
For Economic Injury: Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster for physical damage are 268206 for Oklahoma; 268306 for Kansas; and 268406 for Missouri. For economic injury the numbers are 806200 for Oklahoma; 806300 for Kansas; and 806400 for Missouri.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: October 4, 1993.

Erskine B. Bowles,

Administrator.

[FR Doc. 93–25875 Filed 10–20–93; 8:45 am]

BILLING CODE 8025–01–M

Honolulu District Advisory Council; Public Meeting

The U.S. Small Business Administration Honolulu District Advisory Council will hold a public

meeting at 12:30 p.m. on Friday, November 5, 1993, at the Prince Kuhio Federal Building, 300 Ala Moana Boulevard, Conference Room 4113A, Honolulu, Hawaii, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Andrew K. Poepoe, District Director, U.S. Small Business Administration, 300 Ala Moana Boulevard, room 2314, Honolulu, Hawaii 96850, (808) 541–2965.

Dated: October 15, 1993.

Dorothy A. Overal,

Acting Assistant Administrator, Office of Advisory Councils.

[FR Doc. 93–25877 Filed 10–20–93; 8:45 am]

BILLING CODE 8025–01–M

Cleveland District Advisory Council; Public Meeting

The U.S. Small Business Administration Cleveland District Advisory Council will hold a public meeting from 9 a.m. to 12 noon, Friday, November 5, 1993, at the U.S. Small Business Administration, 1111 Superior Avenue, suite 630, Cleveland, Ohio, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Norma M. Nelson, District Director, U.S. Small Business Administration, 1111 Superior Avenue, suite 630, Cleveland, Ohio 44114–2507, (216) 522–4180 ext 107.

Dated: October 15, 1993.

Dorothy A. Overal,

Acting Assistant Administrator, Office of Advisory Councils.

[FR Doc. 93–25878 Filed 10–20–93; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice 1888]

Los Tomates/Matamoros International Bridge III and US 77/83 at Brownsville, Texas: Finding of No Significant Impact

AGENCY: Department of State.

ACTION: Notice of a finding of no significant impact with regard to issuance of a permit to build a cross-border bridge.

SUMMARY: The Department of State is announcing a finding of no significant impact on the environment for the Los Tomates/Matamoros International Bridge project sponsored by Cameron County, Texas. A draft environmental assessment of the project was prepared by Traffic Engineers, Inc. of Houston, Texas for the sponsor. The draft environmental assessment was reviewed by over two dozen federal, state, and local agencies. After revisions based on comments received from interested agencies and other parties, the final assessment was reviewed and approved by the Immigration and Naturalization Service, General Services Administration, Department of the Interior Fish and Wildlife Service, Department of Agriculture, Department of Commerce, U.S. Customs Service, U.S. Coast Guard, Federal Highway Administration, Food and Drug Administration, International Boundary and Water Commission—U.S. Section, Department of Defense, and the Department of State.

Based on the environmental assessment, and comments received, the Department has concluded that issuance of the permit will not have a significant effect on the quality of the human environment within the United States. An environmental impact statement will not be prepared.

ADDRESSES: Copies of the environmental assessment and the finding of no significant impact may be obtained from Stephen R. Gibson, Office of Mexican Affairs, room 4258, Department of State, Washington, DC 20520 (Telephone 202–647–8529).

SUPPLEMENTARY INFORMATION:

Proposed Action

Cameron County, Texas, has requested a permit to build the first span of a new bridge, with access road, to be constructed across the Rio Grande between Brownsville, Texas, USA, and Matamoros, Tamaulipas, Mexico. The bridge will carry passenger and freight traffic, and is intended to relieve the traffic burden on existing bridges and downtown areas. The work will also include the following items: Relocation of 10,100 linear feet of levee; relocation of a local park; addition of land to a wildlife corridor; and construction of a border inspection station. The new bridge is needed because current cross-boundary routes in the area are at capacity, and no further improvements to current routes are possible.

Factors Considered

The bridge sponsors reviewed eight alternatives, including the no-action alternative, and have identified two preferred construction alternatives, designated "A" and "C" in their Environmental Assessment. Both alternatives are identical except that alternative "A" involves the construction of a road through Lincoln Park in Brownsville, while alternative "C" contemplates the construction of an elevated roadway over the park. No residential or commercial developments are to be removed to construct the project.

Among the factors considered in evaluating the environmental impact of the project were: effects on land use of adjoining properties; opportunities for short and long term development and employment; effects on community cohesion and social groups; traffic safety; changes in travel patterns and travel times; air quality impacts; absorptive capacity of current public facilities; impacts on storm water drainage and the floodplain; and historical and archaeological preservation.

The project sponsors expect that there will be additional development on some adjoining properties, and construction-related employment opportunities due to changes in traffic patterns. There are two other vehicle bridges between Brownsville and Matamoros; both routes have reached or exceeded capacity. The calculated worst one hour CO concentration for the expected traffic load is 3.3 PPM, which is 9.4% of the one hour National Ambient Air Quality Standard.

The preferred alternative routing will not break up any neighborhoods or involve the taking of residential property for construction, thus minimizing impacts on the residential community. All properties are served by city public utilities. Construction will not raise the elevation of the site more than one foot, so there should be no adverse effects on flooding. Storm drainage from the site will be replaced.

Mitigation of traffic noise is proposed for all receivers who will experience an increase in noise levels exceeding the Noise Abatement Criteria. Construction of noise barriers is the most likely approach.

Area farmlands have already been committed to urban, non-agricultural uses within the project area. The project is within the city limits of Brownsville, Texas.

Construction of the first bridge span will cause a slight temporary increase in water turbidity. This is a short-term disturbance without any permanent impact on the quality of Rio Grande river water. No direct or indirect impact on the ground water supply or quality is expected.

The mitigation plan for the project includes the exchange of undeveloped land for Lincoln Park, which lies in the construction zone. Pedestrian-bicycle facilities around Lincoln Park will remain or be reconstructed. Local roads will continue to provide pedestrian-bicycle access across the new traffic lanes.

The project will result in the permanent conversion of Lincoln Park's approximately 23.3 acres to Highway US 77/83 right of way. Lincoln Park will be replaced with 33 acres of land at a nearby location, minimizing the effect of the loss of the original park land. The new park land will adjoin a new Wildlife Refuge. Title to 167.6 acres of undeveloped land, located between the proposed new levee and the Rio Grande, adjacent to the new Lincoln Park site, will be transferred to the U.S. Fish and Wildlife Service (USFWS) by the City of Brownsville. USFWS will, in turn, transfer title of a 17.4 acre National Wildlife Refuge to the City, with covenants to ensure that it remains in its natural state.

The 167.6 acres will become part of the Lower Rio Grande Valley National Wildlife Refuge. A wildlife corridor will be developed between the two (old and new) Refuges. A 100-foot wide buffer zone will surround both properties. This action will increase vegetation and enhance habitat for all wildlife. Actual loss of habitat and wildlife from construction activity will be a short-term disturbance. A mitigation plan to establish and maintain the wildlife travel corridor while avoiding adverse impacts on bilateral flood control efforts has been prepared. This corridor will be maintained for wildlife, not as a park, and will form part of a more than 200-mile long wildlife corridor along the Rio Grande.

5.36 acres of Town Resaca and 0.16 acre of Los Tomates Banco are considered wetland/inland water and will be destroyed by the project. These wetlands will be replaced by an equal or larger acreage of man-made wetland/inland waters located south of the proposed new levee. Nine acres of wetlands/inland water in Lincoln Park will be replaced by the same amount of wetlands within the wildlife corridor.

Actual loss of habitat and potential loss of wildlife is a short-term disturbance with a long-term increase in habitat and potential increase in wildlife, including endangered species such as jaguarundi and ocelot. None of the fish species at the site are endangered or threatened.

Lights on the access road and bridge will illuminate only the roadway. Brush will be planted below the bridge to provide further protection for wildlife.

Construction methods designed to minimize adverse temporary effects are described in the assessment.

There are no hazardous material waste sites in the immediate project area. The promoter states that the probability of an extreme occurrence is low. Minor spills may occur more frequently. GSA plans a hazardous materials containment area for those transports which require it.

Finding of the Environmental Assessment

On the basis of the Environmental Assessment, a finding of no significant impact ("FONSI") is adopted and an environmental impact statement will not be prepared. This FONSI is issued based on the project sponsor's (Cameron County) full compliance with all mitigation provisions and stipulations for transfer of the site to the General Services Administration as previously agreed.

Dated: October 4, 1993.

Stephen R. Gibson,

Coordinator, Office of Mexican Affairs, U.S.-Mexico Border Affairs Unit.

[FR Doc. 93–25821 Filed 10–20–93; 8:45 am]

BILLING CODE 4710–10–M

UNITED STATES INFORMATION AGENCY

Summer Institute in the History of the United States for Foreign University Teachers

AGENCY: United States Information Agency.

ACTION: Notice—Request for Proposals.

SUMMARY: The United States Information Agency (USIA) invites applications to conduct a six-week, graduate-level summer institute (including an integrated follow-on tour) in the history of the United States for approximately 18 foreign university teachers (primarily members of history and American studies faculties) who are either currently teaching about some aspect of United States history or are planning to do so. Participants will be nominated by United States Information Service (USIS) posts overseas and will have high-level fluency in English. USIA is asking for detailed proposals from colleges, universities, consortia of colleges and universities, and other not-for-profit academic organizations that have an established reputation in the discipline of history and its related subdisciplines, and can demonstrate expertise in conducting graduate-level programs for foreign educators.

DATES: Deadline for proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time, on Monday, January 10, 1994. Faxed documents will not be accepted, nor will documents postmarked January 10, 1994, but received at a later date. It is the responsibility of each applicant to ensure that proposals are received by the above deadline. In order to allow adequate preparation time, grants should begin by March 15, 1994. Approximate institute program dates should be July 2 to August 12, 1994. Participants will be scheduled to arrive in the U.S. on or about July 1, and depart on August 13, 1994.

ADDRESSES: The original and 14 copies of the completed application, including required forms, should be submitted by the deadline to: U.S. Information Agency, Ref.: Summer Institute in the History of the United States for Foreign University Teachers, Grants Management Division, E/XE, 301 4th Street, SW., room 336, Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested organizations or institutions should contact Don Q. Washington at the U.S. Information Agency, Division for the Study of the U.S., E/AAS, room 256, 301 4th St. SW., Washington, DC 20547, telephone: (202) 619–4559, to request detailed application packets, which include award criteria additional to this announcement, all necessary forms, and guidelines for preparing proposals, including specific budget information.

SUPPLEMENTARY INFORMATION: The authority for this exchange program is contained in the Mutual Educational and Cultural Exchange Act of 1961, as amended, Public Law 87–256 (Fulbright-Hays Act). Programs seek to increase mutual understanding between the people of the United States and the people of other countries. Pursuant to the Bureau's authorizing legislation, programs must "maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life," and must "maintain their scholarly integrity and shall meet the highest standards of academic excellence * * *"

Overview: The Summer Institute in the History of the United States for Foreign University Teachers aims to provide approximately 18 foreign university teachers with opportunities to improve teaching about the U.S. by enriching their knowledge of the United

States through the study of a field or specialized topic of American history. The proposed field or topic should be sufficiently broad to expose participants to the range of the U.S. historical experience and focused enough to reflect the methods, trends, and perspectives of the current practice of history in the United States. The equivalent of one day a week should be available to participants to pursue individual research interests or curriculum development projects. Participants should be paired with faculty mentors.

Guidelines

Eligibility: Accredited colleges, universities, consortia of colleges and universities, and other not-for-profit academic organizations that have an established reputation in the discipline of history and its related sub-disciplines, and can demonstrate expertise in conducting graduate-level programs for foreign educators are eligible to apply. Proposals from consortia may be submitted by a member institution with documented authority to represent all members.

Applicant institutions must have a minimum of four years' experience in conducting international exchange programs. The project director, or one of the key program staff responsible for the academic program, must have an advanced degree in history. University staff escorts traveling under USIA cooperative agreement support must be U.S. citizens with demonstrated qualifications for this service.

Objectives: The objective of the institute is to provide foreign university teachers with opportunities to improve teaching about the U.S. by enriching their knowledge of the United States through the study of a field or specialized topic of American history that is sufficiently broad to expose participants to the range of the U.S. historical experience, and focused enough to reflect the methods, trends, and perspectives of the current practice of history in the United States.

Audience: The program should be designed for approximately 18 experienced university-level teachers who are currently teaching some aspect of American history or plan to do so. Institute participants will come primarily from history or American studies faculties. Participants will be nominated by United States Information Service (USIS) posts worldwide and will have high-level fluency in English. Although some participants may have visited the U.S. previously, an initial orientation to the U.S. and the American campus should be an integral part of the institute and should be held at the beginning of the program.

Program Design: The institute should be specially designed for experienced foreign university-level teachers and should not duplicate courses designed by graduate departments for American graduate-degree candidates. Although it is important that the topics and readings of the institute be clearly organized, the institute should not be structured like a lecture course or a graduate seminar. Rather, it should facilitate the development of a collegial atmosphere in which institute faculty and participants discuss relevant texts, issues, and concepts. Total program length is six weeks with a minimum of five weeks devoted to the academic component at the host institution. The last week of the seminar should provide an escorted tour that includes two-to-three program days in Washington, DC., to reinforce the academic content of the institute. A visit to one additional site for scholarly purposes is recommended.

Academic and Tour Components: The institute is offered for foreign university teachers in the fields of history and American studies who want to deepen and revitalize their understanding of the foundations, development, and current practice of the history of the United States. The institute should provide participants with an overview of the state of the discipline of history in the United States, and should facilitate their access to scholarly and institutional contacts and to bibliographic information that will be useful to them once they return to their teaching duties in their home countries. It is important that the academic program be clearly organized, and that its topics and organization be broad enough to accommodate the diverse backgrounds of its participants. The institute should begin with an orientation to the U.S. and the American campus. During the course of the institute, participants are expected to pursue individual research or curriculum development projects. The institution that conducts the program should be prepared to offer the level of scholarly resources and professional assistance necessary to support such projects.

The tour component of the institute should be planned, arranged, and conducted by the program director and principal project staff and should be seen as an integral part of the program, complementing and reinforcing the academic component. It must include two-to-three program days in Washington, DC; a visit to an additional site is recommended. Either the Washington program or the program at an optional third site should include visits to libraries and archives, and should be structured so that participants are given a chance to pursue individual professional interests. Programming in Washington should include a half-day wrap-up session at the United States Information Agency. The selected grantee institution will consult closely with USIA in planning the Washington itinerary. Details of the academic and tour programs may be modified in consultation with USIA's Branch for the Study of the U.S. following the grant award.

Proposed Budget: Applicants must submit a comprehensive line-item budget for which specific details are available in the application packet. The total USIA-funded budget must not exceed $145,300. USIA-funded administrative costs as defined in the application packet must not exceed $43,648. Applications requesting more than $43,648 for administrative costs, and/or more than $145,300 for total institute costs to USIA, or that do not allocate these costs consistent with the budget instructions will not be considered. The Agency reserves the right to reduce, revise or increase proposal budgets in accordance with the needs of the program. Organizations submitting proposals are urged to cost share program and administrative expenses to the greatest degree possible. Participant international travel costs will be covered by USIA, and should not be included in the budget submission.

Cost-sharing may be in the form of allowable direct or indirect costs. The recipient must maintain written records to support all allowable costs which are claimed as being its contribution to cost participation, as well as cost to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A110, Attachment E. Cost sharing and matching should be described in the proposal. In the event the Recipient does not provide the minimum amount of cost-sharing as stipulated in the Recipient's budget, the Agency's contribution will be reduced in proportion to the Recipient's contribution.

The recipient's proposal shall include the cost of an audit that:

(1) Complies with the requirements of OMB Circular No. A–133, Audits of Institutions of Higher Education and Other Nonprofit Institutions;

(2) Complies with the requirements of American Institute of Certified Public Accountants (AICPA) Statement of Position (SOP) No. 92–9; and,

(3) Includes review by the recipient's independent auditor of a recipient-prepared supplemental schedule of indirect cost rate computation, if such a rate is being proposed.

The audit costs shall be identified separately for:

(1) Preparation of basic financial statements and other accounting services; and,

(2) Preparation of the supplemental reports and schedules required by OMB Circular No. A–133, AICPA SOP 92–9, and the review of the supplemental schedule of indirect cost rate computation.

Review Process: USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the application packet. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by USIA's geographic area offices, and the budget and contracts offices. Proposals may also be reviewed by the Agency's Office of General Counsel. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for cooperative agreement awards resides with USIA's contracting officer.

Review Criteria: Technically eligible applications will be reviewed competitively according to the following criteria:

1. Overall quality.

A. The content, significance, definition, organization, and academic rigor of the proposed program (including the follow-on tour) and its appropriateness to program objectives.

B. Evidence of careful planning.

C. Content representative of current expert knowledge in the field; consistency with the requirements of the Bureau's legislative charter, in particular, the requirement that the program meet the highest professional qualitative standards of achievement.

2. Institutional capacity. Adequacy of proposed resources, including faculty, library, and other research and scholarly resources; availability, adequacy, and appropriateness of housing and other institutional support important to a collegial setting.

3. Experience of professionals and staff assigned to the program with foreign educators; institution's track record with international exchange programs.

4. Evaluation and follow-up.

A. Adequacy of plan for an evaluation at the conclusion of the institute by the grantee institution.

B. Adequacy of provisions made for "multiplier effect," i.e., future follow-up and networking between grantees and appropriate U.S. scholarly organizations and institutions.

5. Evidence of strong, on-site administrative and managerial capabilities (with specific discussion of how managerial and logistical arrangements will be undertaken).

6. Availability of local and state resources for the orientation, institute, and follow-on tour.

7. Cost effectiveness. The overhead and administrative components of grants, as well as salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. In-kind contributions should be considered.

Notice: The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final awards cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification: All applicants will be notified of the results of the review process on or about March 1, 1994. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: October 14, 1993.

Barry Fulton,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 93–25805 Filed 10–20–93; 8:45 am]

BILLING CODE 8230–01–M

Summer Institute in the U.S. Economy and Public Policy for Foreign University Teachers

AGENCY: United States Information Agency.

ACTION: Notice—Request for Proposals.

SUMMARY: The United States Information Agency (USIA) invites applications to conduct a six-week, graduate-level summer institute (including an integrated follow-on tour) in the American economic system for approximately 18 foreign university teachers (primarily members of economics, social science, business or public policy faculties) who are either currently teaching about some aspect of the American economic system or are planning to do so. Participants will be selected by the United States Information Service (USIS) posts overseas and will have high-level fluency in English. USIA is asking for detailed proposals from colleges, universities, consortia of colleges and universities, and other not-for-profit academic organizations that have an established reputation in the discipline of economics and/or public policy and expertise in conducting graduate-level programs for foreign educators.

DATES: Deadline for proposals: All copies must be received at the U.S. Information Agency by 5 p.m., Washington, D.C. time on Monday, January 10, 1994. Faxed documents will not be accepted, nor will documents postmarked on January 10 but received at a later date. It is the responsibility of each grant applicant to ensure that proposals are received by the above deadline. To allow adequate preparation time, grants should begin by March 15, 1994. Approximate institute program dates should be July 2–August 12, 1994. Participants will be scheduled to arrive in the U.S. on or about July 1 and will depart on August 13.

ADDRESSES: The original and 14 copies of the completed application, including required forms, should be submitted by the deadline to: U.S. Information Agency, Ref: Summer Institute in the American Economic System for Foreign University Teachers, Grants Management Division, E/XE, 301 4th St., SW., room 336, Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested organizations/institutions should contact Don Q. Washington, Chief, U.S. Studies Branch at the U.S. Information Agency, Office of Academic Programs, Division for the Study of the U.S., 301 4th St., SW., Washington, DC 20547, telephone: (202) 619–4559, to request detailed application packets, which include award criteria additional to this announcement, all necessary forms, and guidelines for preparing proposals, including specific budget preparation information.

SUPPLEMENTARY INFORMATION: The authority for this exchange program is contained in the Mutual Educational and Cultural Exchange Act of 1961, as amended, Public Law 87–256 (Fulbright-Hays Act). Programs seek to increase mutual understanding between the people of the United States and people of other countries. Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of

American political, social, and cultural life. Programs must maintain their scholarly integrity and shall meet the highest standards of academic excellence.

Overview: The summer institute in the U.S. economy and public policy issues aims to provide approximately 18 foreign university educators with opportunities to improve teaching about the U.S. by enriching their knowledge of the U.S. economic system and its relationship to public policy by working with distinguished scholars and by undertaking individuals projects (for example, intensive reading, scholarly research, or writing) of their own choosing. The program should familiarize participants with significant trends resources and current methods in the discipline. The equivalent of one day a week should be available to participants to pursue individual research interests or curriculum development projects. Participants should be paired with faculty mentors.

Guidelines

Eligibility: Accredited universities, colleges, consortia of universities and colleges, and other not-for-profit academic organizations which demonstrate an acknowledged reputation in the relevant subdisciplines of economics and expertise in conducting graduate level programs for foreign educators are eligible to apply. Proposals from consortia may be submitted by a member institution with documented authority to represent all members.

Applicant institutions must have a minimum of four years' experience in conducting international exchange programs. The project director, or one of the key program staff responsible for the academic program, must have an advanced degree in economics. University staff escorts traveling under USIA cooperative agreement support must be U.S. citizens with demonstrated qualifications for this service.

Objectives: The objective of the institute is to provide foreign university teachers with opportunities to improve teaching about the U.S. by enriching their knowledge of the foundations of the American economic system and its current structure and functioning, with special reference to public policy issues. The institute should expose the participants to relevant elements of U.S. economic history, the role of economic issues in American society, and current U.S. national/regional economic trends and perspectives.

Participants: The program should be designed for approximately 18 experienced university-level educators who are currently teaching some aspect of the U.S. economic system, or plan to do so. Institute participants will come primarily from the fields of economics, social science, or business. Participants will be selected by USIS posts worldwide and will have high-level fluency in English.

Although some participants may have visited the U.S. previously, an initial orientation to the U.S. and the American campus should be an integral part of the program and should be held at the beginning of the program.

Program Design: The institute should be designed specifically for experienced foreign university-level educators and should not duplicate courses normally given by graduate departments for American graduate degree candidates. Although it is important that the topics and the reading for the institute be clearly organized, the institute should not have the structure of a lecture course or graduate seminar. Rather, it should facilitate the development of a collegial atmosphere in which institute faculty and participants discuss relevant texts, issues and concepts. Total program length is six weeks with a minimum of five weeks devoted to the academic component at the host institution. The last week of the seminar should provide an escorted tour which includes three or four program days in Washington, DC to reinforce the academic component of the institute. A visit to one more additional site for scholarly purposes is optional.

Academic and Tour Component: The institute is offered for foreign university-level educators in the fields of economics, social science, or business or public policy who want to deepen and revitalize their understanding of the current functioning of the U.S. economic system and its relationship to important public policy issues. Following a brief orientation to the American campus and to the U.S., the institute should provide a brief review of the American economic system, an analysis of the structural changes now occurring, and a review of the major issues guiding economic analysis. The institute should address the relationship between the current U.S. economic system and the most important public policy issues in the U.S. (e.g., health care, trade, the environment, etc.). The institute should familiarize participants with current major sources of information about the U.S. economy, including macroeconomic and regional forecasts.

It is important that the academic program be clearly organized, and that its organization be broad enough to accommodate the diverse backgrounds of the participants. During the course of the institute, participants should be encouraged to engage in individual scholarly and/or curriculum projects. The institution which conducts the program should be prepared to offer the level of scholarly resources and professional assistance necessary to give adequate support to such projects. It should also offer participants an overview of the state of the discipline of economics in the United States, and familiarize them with scholarly and institutional contacts and bibliographic information which will be useful to them in follow-up activities.

The tour component of the institute should be planned, arranged, and conducted by the program director and principal project staff and should be seen as an integral part of the program, complementing and reinforcing the academic component. It must include three or four program days in Washington, DC, and may include a visit to one more site. Either the Washington program or the optional third site should include visits to academic institutions, think tanks, or other relevant sites, and should be structured so that the participants are given a chance to pursue separate professional interests. Participants should meet with American economists, officials in financial institutions, and trade experts.

Programming in Washington should include a half-day wrap-up session at USIA. The grantee institution should consult closely with USIA in planning the Washington itinerary. Details of the academic and tour programs may be modified in consultation with USIA's Branch for the Study of the United States following grant award.

Proposed Budget: Applicants must submit a comprehensive line-item budget for which specific details are available in the application packet. The total USIA-funded budget must not exceed $145,300. USIA-funded administrative costs as defined in the application packet must not exceed $43,648. Applications requesting more that $43,648 for administrative costs, and/or more than $145,300 for the total institute costs to USIA, or that do not allocate these costs consistently with the budget instructions will not be considered. The Agency reserves the right to reduce, revise or increase proposal budgets in accordance with the needs of the program. Organizations submitting proposals are urged to cost share program and administrative costs to the greatest degree possible. Participant international travel will be covered by USIA, and should not be included in the budget submission.

Cost-sharing may be in the form of allowable direct or indirect costs. The recipient must maintain written records to support all allowable costs which are claimed as being its contribution to cost participation, as well as cost to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A110, Attachment E.

Cost-sharing and matching should be described in the proposal. In the event the recipient does not provide the minimum amount of cost sharing as stipulated in the Recipient's budget, the Agency's contribution will be reduced in proportion to the recipient's contribution.

The recipient's proposal shall include the cost of an audit that:

(1) Complies with the requirements of OMB Circular No. A–133, Audits of Institutions of Higher Education and Other Nonprofit Institutions;

(2) Complies with the requirements of American Institute of Certified Public Accountants (AICPA) Statement of Position (SOP) No. 92–9; and

(3) Includes review by the recipient's independent auditor of a recipient-prepared supplemental schedule of indirect cost rate computation, if such a rate is being proposed.

The audit costs shall be identified separately for:

(1) Preparation of basic financial statements and other accounting services; and

(2) Preparation of the supplemental reports and schedules required by OMB Circular No. A–133, AICPA SOP 92–9, and the review of the supplemental schedule of indirect cost rate computation.

Review Process: USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the application packet. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the appropriate geographic area office, and the budget and contracts office. Proposals may also be reviewed by the Agency's Office of the General Counsel. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for cooperative agreement awards resides with USIA's contracting officer.

Review Criteria: Technically eligible applications will be reviewed competitively according to the following criteria:

1. Overall quality.

A. The content, significance, definition, and academic rigor of the proposed program (including the follow-on tour) and its appropriateness to program objectives.

B. Evidence of careful planning.

C. The degree to which the content is representative of current expert knowledge in the field and is consistent with the requirements of the Bureau's legislative charter, meeting the highest professional qualitative standards of achievement.

2. Institutional capacity. Adequacy of proposed resources, including faculty, library and other research facilities; housing availability, and other institutional support important to a collegial setting, should be adequate to achieve the program goals.

3. Experience of professionals and staff assigned to the program with foreign educators; institution's track record with international exchange programs.

4. Evaluation and follow-up.

A. Adequacy of plan for evaluation at the conclusion of the program by the institute by the grantee institution.

B. Adequacy of the provisions made for "multiplier effect," i.e. contact with non-faculty Americans and future follow-up and networking between grantees and appropriate U.S. scholarly organizations and institutions.

5. Evidence of strong on-site administrative and managerial capabilities (with specific discussion of how managerial and administrative-logistical arrangements will be undertaken).

6. Availability of local and state resources for the orientation, institute and follow-on tour.

7. Cost-effectiveness. The overhead and administrative components of grants, as well as salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. In-kind contributions should be considered.

Notice: The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final awards cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedure.

Notification: All applicants will be notified of the results of the review process on or about March 1, 1994. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: October 14, 1993.

Barry Fulton,

Acting Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 93–25806 Filed 10–20–93; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 202
Thursday, October 21, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 58 FR 52138, Wednesday, October 6, 1992.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 P.M. (Eastern Time) Tuesday, October 19, 1993.

CHANGE IN THE MEETING:

Closed Session

The closed portion of the meeting has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer on (202) 663-4070.

Dated: October 19, 1993.

Frances M. Hart,

Executive Office, Executive Secretariat.

[FR Doc. 93-26090 Filed 10-19-93; 2:30 am]

BILLING CODE 6750-06-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:08 a.m. on Tuesday, October 19, 1993, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider (1) matters relating to the probable failure of an insured depository institution; (2) matters relating to the Corporation's corporate activities; and (3) a personnel matter.

In calling the meeting, the Board determined, on motion of Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), seconded by Director Eugene A. Ludwig (Comptroller of the Currency), concurred in by Acting Chairman Andrew C. Hove, Jr., that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550-17th Street, NW., Washington, DC.

Dated: October 19, 1993.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 93-26103 Filed 10-19-93; 3:25 pm]

BILLING CODE 6714-01-M

FEDERAL ELECTION COMMISSION

FEDERAL REGISTER NUMBER: 93-25396.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, October 21, 1993, 10:00 a.m., Meeting Open to the Public.

THE FOLLOWING ITEM WAS DELETED FROM THE AGENDA: Briefing on REGO.

DATE AND TIME: Tuesday, October 26, 1993 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Wednesday, October 27, 1993 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This oral hearing will be open to the public.

MATTERS BEFORE THE COMMISSION: Federal Funding of Presidential Nominating Conventions (11 C.F.R. Parts 107, 114, and 9008).

DATE AND TIME: Thursday, October 28, 1993 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Advisory Opinion 1993-19: Charles F.C. Ruff on behalf of Friends of John Glenn.

Revised Final Ex Parte Communications Rules, with Statement of Basis and Purpose (continued from meeting of September 16, 1993).

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 219-4155.

Delores Hardy,

Administrative Assistant.

[FR Doc. 93-26101 Filed 10-19-93; 3:24 pm]

BILLING CODE 6715-01-M

FEDERAL HOUSING FINANCE BOARD

TIME AND DATES: 9:00 a.m., Wednesday, October 27, 1993.

PLACE: Board Room Second Floor, Federal Housing Finance Board 1777 F Street, NW., Washington, DC 20006.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED

PORTIONS OPEN TO THE PUBLIC: The Board will consider the following:

1. FHLBank System Reports
   A. Monthly Financial Report
   B. Monthly Membership Report
   C. Third Quarter 1993 CIP Report
   D. Quarterly Office of Finance Report
2. Amendment of Affordable Housing Program and Community Support Requirements Regulations
3. Publication of the methodology to be used by the Finance Board in determining compliance with the Private Sector Adjustment Factor (PSAF) Pricing Requirements
4. Approval of three State Housing Finance Agencies as Eligible Nonmember Mortgagee Borrowers

PORTIONS CLOSED TO THE PUBLIC: The Board will consider the following:

1. Approval of the September Board Minutes
2. Key Issues to be Addressed in Revisions to AHP Regulations
3. FHLBank Presidents' Compensation Plan - 1994 salary ranges, grade designations and merit increase guidelines
4. Board Management Issues

The above matters are exempt under one or more of sections 552b(c)(6) and (9)(B) of title 5 of the United States Code.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Executive Secretary to the Board, (202) 408-2837.

Philip L. Conover,

Managing Director.

[FR Doc. 93-26021 Filed 10-19-93; 12:02 pm]

BILLING CODE 6725-01-P

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m.—October 27, 1993.

PLACE: Hearing Room One—800 North Capital St., NW., Washington, DC 20573–0001.

STATUS: Part of the meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTER(S) TO BE CONSIDERED:

Portion Open to the public:

1. Docket No. 92–31—*Service Contracts*—Consideration of Comments on Proposed Rule.

2. Docket No. 93–10—*Amendments to Rules Governing Rate Proceedings in the Domestic Offshore Trades*—Consideration of Comments on Proposed Rule.

Portion Closed to the public:

1. Docket No. 91–27—*American President Lines, Ltd. v. Cyprus Mines Corporation and Cyprus Minerals Company;* and

Docket No. 92–01—*American President Lines, Ltd. v. Cyprus Cooper Company and Cyprus Mineral Company*—Consideration of the Record.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523–5725.

Joseph C. Polking,

Secretary.

[FR Doc. 93–26100 Filed 10–19–93; 2:55 pm]

BILLING CODE 6730–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of October 18, 1993.

A closed meeting will be held on Wednesday, October 20, 1993, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Beese, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Wednesday, October 20, 1993, at 10:00 a.m., will be:

Institution of injunctive actions.
Settlement of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceedings of an enforcement nature.
Regulatory matter regarding financial institutions.
Opinions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Bruce Rosenblum at (202) 272–2300.

Dated: October 15, 1993.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–26039 Filed 10–19–93; 8:45 am]

BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 58, No. 202
Thursday, October 21, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

FEDERAL COMMUNICATIONS COMMISSION

Applications for Consolidated Hearing

Correction

In notice document 93-21597 appearing on page 47139 in the issue of Tuesday, September 7, 1993, in the second column, in the table, the MM Docket No. "93-421" should read "93-241".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-930-4210-04; N-57773]

Realty Action: Exchange of Public Lands in Clark County, Nevada

Correction

In notice document 93-22015, beginning on page 47472 in the issue of Thursday, September 9, 1993 make the following correction:

On page 47473, in the first column, in the third paragraph, in the sixth line, "for" should read "from".

BILLING CODE 1505-01-D

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32359]

Peninsula Corridor Joint Powers Board—Trackage Rights Exemption—Southern Pacific Transportation Co.; Exemption

Correction

In notice document 93-25086 appearing on page 52977 in the issue of Wednesday, October 13, 1993, the docket number should read as set forth above.

BILLING CODE 1505-01-D

federal register

Thursday
October 21, 1993

Part II

Department of the Interior

Bureau of Indian Affairs

25 CFR Part 11

Law and Order on Indian Reservations; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 11

RIN: 1076–AA01

Law and Order on Indian Reservations

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Indian Affairs (BIA) is revising its regulations governing Courts of Indian Offenses to provide those courts with a complete and updated code of laws, and to clarify the jurisdiction of those courts and their relationship to tribal governments and the Department of the Interior.

EFFECTIVE DATE: November 22, 1993.

FOR FURTHER INFORMATION CONTACT: Chief, Branch of Judicial Services, Bureau of Indian Affairs, 1849 C St., NW., Mail Stop 2611–MIB, Washington, DC 20240–4001, telephone number (202) 208–4400.

SUPPLEMENTARY INFORMATION: This rule is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Proposed regulations were published in the **Federal Register** on October 24, 1985 (50 FR 43235). The period of public comment closed on December 23, 1985. Numerous comments were received and reviewed. As a result, some changes were made as discussed in detail below.

Background and Need for Changes to Existing Regulations

Courts of Indian Offenses are established by the Department of the Interior in those areas of Indian country where tribes retain jurisdiction over Indians that is exclusive of state jurisdiction, but where the tribe has not established a tribal court to exercise that jurisdiction.

Although the rules of these courts are established and the judges appointed by the BIA, the regulations provide for substantial participation by tribal governments in their operation. For instance, the appointment and removal of judges is subject to tribal council action, and judges and tribal councils may supplement or supersede provisions in the regulations by adopting their own ordinances subject to the approval of the BIA.

While the United States Supreme Court has treated these courts as exercising tribal authority, *Williams* v. *Lee*, 358 U.S. 217, 222–223 (1959), it has expressly reserved the question of the extent to which these courts are to be regarded as Federal instrumentalities. *United States* v. *Wheeler*, 435 U.S. 313, 327 n.26 (1978). The Department of the Interior must, however, define for administrative purposes the effect of the decisions of Courts of Indian Offenses on its own decision-making process. Accordingly, the new rules provide that decisions of Courts of Indian Offenses will be given the same weight in decision-making by the Department of the Interior that is accorded to decisions by tribal courts (courts established by purely tribal action).

To further implement that concept, the rule explicitly states that decisions of a Court of Indian Offenses are appealable only to the appellate division of the Court of Indian Offenses, and that appellate division decisions are not subject to administrative appeals within the Department of the Interior. Additionally, jurisdiction over federal and state officials is limited to the jurisdiction a tribal court would have over such officials.

The term "Indian country" is used instead of "reservation" in describing the jurisdiction of Courts of Indian Offenses for consistency with federal jurisdictional statutes.

The present regulations contain a very incomplete criminal code that does not cover many areas of the law that are usually covered in the laws of the state where the reservation is located. The present regulations also contain very sketchy provisions on criminal and civil procedure. The regulations do provide, however, for the local tribal government to enact ordinances that will be enforced in, but apply only to, the tribe's Indian country. Many tribes have taken advantage of this provision to supplement the existing regulations extensively.

These new regulations update the sections on criminal offenses, and essentially create new sections on criminal procedure, domestic relations, probate proceedings, appellate proceedings, and juvenile proceedings.

The criminal procedure sections are largely derived from the draft model code which was prepared pursuant to Title III of the 1968 Civil Rights Act, 82 Stat. 73, 77–78 (codified at 25 U.S.C. 1311–1312). THe sections on criminal offenses are derived to a large extent from the Model Penal Code of the American Law Institute which has stimulated revision and codification of the substantive criminal law of the United States and of numerous states which have drawn upon the Model Code in their code revisions. However, some sections of the Model Code have been modified, and some eliminated totally according to the needs and particular circumstances of Courts of Indian Offenses. The sections on criminal offenses are divided into six important areas of penal law: (1) Offenses involving injury or danger to the person such as assault, reckless endangering, threats, false imprisonment and criminal coercion; (2) sexual offenses; (3) the major offenses against property including reckless burning, criminal mischief, theft, forgery, and fraudulent practices; (4) offenses against the family such as endangering child welfare, and persistent non-support; (5) offenses against public administration including bribery, corrupt influence, perjury and other falsification; (6) offenses against public order such as disorderly conduct, riot, harassment, carrying concealed weapons, and others. In addition, it is provided that violations of duly enacted tribal ordinances are punishable as provided for in the ordinance.

Crimes under this part have been divided in three groups: Misdemeanors, petty misdemeanors, and violations. Felonies that are covered by the Major Crimes Act are excluded in order to avoid the possibility that someone who has committed a serious offense may be immunized from federal prosecution because of the prohibition against double jeopardy by a prosecution in a Court of Indian Offenses where the maximum penalty is limited by the Indian Civil Rights Act, 25 U.S.C. 1302(7).

The sections on gambling and game violations have been deleted because these violations are covered by § 11.449, violation of an approved tribal ordinance.

Sections on civil actions remain essentially unchanged from the proposal. However, § 11.503 provides for the applicability of the Federal Rules of Civil Procedure to Courts of Indian Offenses.

The sections on domestic relations have been expanded to provide better guidance to the courts in dealing with such matters. These sections are derived from the Uniform Marriage and Divorce Act, with minor modifications. Similarly, sections on probate proceedings have also been expanded. Sections on appellate proceedings have been expanded to provide basic appeal procedures which do not exist under the present code.

New sections creating a children's court have also been developed. These sections are divided into three parts: A general section dealing with definitions, personnel, and jurisdiction; sections dealing with juvenile offender procedure; and sections dealing with

minor-in-need-of-care procedure. These sections are based on the Model Children's Code that was developed by the American Indian Law Center in Albuquerque, New Mexico. These sections supplant 25 CFR 11.36 which is inadequate to address the role of the courts in dealing with juvenile problems.

Sections 11.6C, 11.7C, 11.20C, 11.22C, 11.24C, 11.26C, 11.29C, 11.31C, 11.32C, 11.34C, 11.36C, 11.50C, 11.60C, 11.63C, 11.64C, and 11.75C have been removed because the Crow Tribe has converted their Court of Indian Offense into a tribal court. For similar reasons, §§ 11.50ME, 11.55ME, 11.70ME, and §§ 11.88ME–11.98ME pertaining to the Menominee Tribe are also deleted. In addition, §§ 11.76H to 11.87H are deleted because these regulations pertain to the Hopi Tribe and should be enforced in the Hopi Tribal Court.

The Omaha Tribe is deleted from the listing of Courts of Indian Offenses under § 11.100(a) because it has converted their Court of Indian Offenses into a tribal court.

As is presently the case, courts will be established or abolished through the Federal rulemaking procedure by adding or deleting the name of a tribe from the list. The BIA will continue to assist tribes with Courts of Indian Offenses to develop their own codes and convert to tribal courts. It is the BIA's policy to encourage the replacement of Courts of Indian Offenses with tribal courts.

A new section has been added to make it clear that changes in the regulations do not affect criminal or civil liability for actions that occurred prior to the effective date of the change.

This final rule is not made effective until 30 days after its publication in the **Federal Register**.

Clarifications

The final rule includes various clarifications to the proposed rule which have been made principally in response to recommendations of commentators. Many of the clarifications address specific recommendations that certain text be revised to remove unclear or confusing language as noted in specific comments. With a few exceptions, these clarifications have not been individually discussed below, as the reasons for the clarifications become self-evident simply by comparing the text of the clarified rule with the corresponding proposed rule text. Certain clarifications have also been made to make the text consistent with the text of various substantive changes which are discussed below.

Analysis of Comments and Changes Made to Proposed Regulations

Section 11.100 Listing of Courts of Indian Offenses

Several comments questioned why the Osage Tribe was excluded from the list of tribes within the jurisdiction of the Court of Indian Offenses for tribes located in the former Oklahoma Territory. The Osage Tribe is not included because there has been no determination that a Court of Indian Offenses should be established to serve that tribe, nor has the Osage Tribal Council requested that a Court of Indian Offenses be set up to serve the Tribe.

Several comments suggested that § 11.100(a)(18) be amended to list those Oklahoma tribes which are served by the intertribal Court of Indian Offenses located there. This recommendation was adopted.

One comment recommended deletion of Secretarial approval of tribal ordinances under § 11.100(e). This recommendation was not adopted because Courts of Indian Offenses are Federal instrumentalities, and as such, the laws they enforce cannot be inconsistent with Federal law. Secretarial approval of tribal ordinances under § 11.100(e) is necessary to ensure such compliance.

Section 11.102 Criminal Jurisdiction; Limitation of Actions

Pursuant to a comment, this section was amended by adding a new subsection (b) to provide that a criminal prosecution is barred unless it is instituted by the filing of a complaint within five years of the commission of the offense. The five-year limitation period is similar in length to those found in federal statutes of limitations applicable to the prosecution of federal offenses. This section has been retitled to reflect this modification.

Section 11.103 Civil Jurisdiction; Limitation of Actions

As with the criminal jurisdiction section, this section has been amended to include a three-year limitation period within which to file a civil action. This limitation period is similar in length to those found in numerous state statutes of limitations applicable in civil actions. This section has been retitled accordingly.

In addition, several comments recommended that this section be amended to permit Courts of Indian Offenses to acquire jurisdiction over lawsuits by Indian plaintiffs against non-Indian defendants absent stipulation by the parties. This recommendation has not been adopted. Although tribal court jurisdiction over non-Indians has been upheld by the U.S. Supreme Court under certain conditions, Courts of Indian offenses are not the equivalent of tribal courts, and the Federal Government is not disposed to unnecessarily expand the jurisdiction of its Courts of Indian Offenses.

Indian tribes served by Courts of Indian Offenses are authorized to create their own tribal court systems should they desire to assume additional jurisdiction.

Section 11.104 Jurisdictional Limitations

Several comments objected to the provision prohibiting Courts of Indian Offenses from adjudicating tribal government disputes absent a tribal council resolution or ordinance conferring such jurisdiction. They argue that these courts should be regarded as part of the tribal government and that resolution of such disputes by these courts is preferable to resolution by the BIA.

It is clear, however, that Courts of Indian Offenses are part of the Federal Government. *United States* v. *Red Lake Band of Chippewa Indians*, 827 F.2d 380, 383 (8th Cir. 1987), *cert. denied*, 108 S. Ct. 1109 (1988). Their involvement, without the consent of the tribal government, in tribal government disputes, is an unwarranted interference in tribal affairs. Unless the tribal government requests it, Court of Indian Offenses should not become a competing forum for those matters.

Although the BIA must occasionally decide who speaks for the tribe in order to carry out its responsibilities, it gives great weight to conclusions of the appropriate tribal forum when it does so. The use of the Court of Indian Offenses as such a forum would not affect the degree of involvement of other parts of the BIA in such matters.

One comment objected to the use of the term "tribal resolution" in §§ 11.104 (b) and (e) and recommended substituting the term "tribal ordinance". These provisions have been modified to provide tribes the option to choose between the two instruments.

Section 11.201 Appointment of Magistrates

Several comments objected to the role of the Assistant Secretary—Indian Affairs in appointing magistrates under § 11.201(a), or to his or her approval of judicial qualifications under § 11.201(e), and recommended only a tribal role in such decisions. These recommendations were not adopted because Courts of Indian Offenses are Federal instrumentalities and not tribal bodies.

Federal supervision is therefore mandatory.

Section 11.202 Removal of Magistrates

One comment objected to the role of the Assistant Secretary—Indian Affairs in removing magistrates, and recommended that the decision to remove a magistrate be left to the tribe or tribes affected. For the reasons stated above under § 11.201, this recommendation has not been adopted.

Section 11.203 Court Clerks

One comment suggested including a new subsection to provide for the disposition of moneys received on judgments. This recommendation has been adopted and incorporated as § 11.203(c).

Section 11.205 Standards Governing Appearance of Attorneys and Lay Counselors

Two comments objected to § 11.205(a) because it appears to conflict with a provision of the Indian Civil Rights Act (ICRA). Courts of Indian Offenses, however, are Federal instrumentalities and are bound not only by the ICRA, but by the requirements of the United States Constitution as well.

Section 11.206 Court Records

Two comments recommended adding a provision giving the magistrate discretion to seal certain court records. This recommendation has been adopted.

Section 11.207 Cooperation by Bureau of Indian Affairs Employees

In response to a comment, this section was expanded to provide for specific BIA assistance in the preparation and presentation of facts.

Section 11.300 Complaints

Some comments suggested that the signature of a complaining witness should not be required on a complaint, and that prosecutors should be allowed to file complaints independently. These recommendations were not adopted because it is felt that personal knowledge of the wrongful act must be a prerequisite to the filing of a complaint.

Section 11.301 Arrests

Several comments objected to § 11.301(b)(3) because it grants too much authority to an arresting officer, and is a rule that is not applicable to misdemeanors in most jurisdictions. This recommendation has been adopted and the subsection has been deleted.

Section 11.303 Notification of Rights at Time of Arrest

Several comments took exception to the requirement of notification of rights at the time of arrest, and suggested that a more appropriate time for such notification was prior to custodial interrogation. This recommendation has been adopted and the title of the section changed accordingly.

Section 11.308 Commitments

Several comments recommended amending this section to increase the time for detention from the proposed 36 hours which was deemed unnecessarily short. This recommendation has been adopted and the time limit has been increased to 72 hours.

Section 11.311 Subpoenas

Two comments recommended that the clerk of court also be permitted to sign subpoenas, as is the case in most court systems. This recommendation was adopted. In addition, a comment recommended modifying § 11.311(d) to set a definite age for a person with whom a subpoena may be left to make it unnecessary for police officers to ascertain what is a "suitable age". This recommendation has also been adopted and the age limit has been set at 18 years of age or older.

Section 11.312 Witness Fees

Pursuant to a comment, this section was amended to reflect that only subpoenaed fact witnesses are covered under § 11.312(a).

Section 11.313 Trial Procedure

Several comments objected to § 11.313(b) on the grounds that rules of evidence are necessary. This recommendation has been adopted, and the subsection amended to provide that Federal Rules of Evidence shall be applicable in Courts of Indian Offenses except insofar as such rules are superseded by order of the court or by the existence of inconsistent tribal rules of evidence.

Section 11.314 Jury Trials

Several comments objected to the requirement in § 11.314(d) that verdicts must be unanimous, citing the difficulty to obtain such verdicts. These comments merit consideration. However, in *Burch* v. *Louisiana*, 441 U.S. 130 (1979), the Supreme Court held that conviction by a non-unanimous six-person jury in a state criminal trial for a non-petty offense violates the rights of an accused to trial by jury guaranteed by the Sixth and Fourteenth Amendments. Although jury trials in Courts of Indian Offenses for offenses with potential punishment of up to six months in jail are conducted, they cannot be compared to jury trials in state courts for non-petty offenses. However, the rationale of the Burch decision may still be applicable here because the IRCA requires jury trials for all offenses where imprisonment is sought. To resolve this problem, this section has been modified to provide for an eight-person jury, six of whom must concur to render a verdict.

One comment recommended the alternative use of an advisory jury composed of reservation elders. This recommendation has not been adopted because it is felt that the use of such juries depends on tribal custom and may be implemented by individual tribes through specific tribal ordinances.

Section 11.315 Sentencing

One comment recommended clarification of this section to make it clear that a criminal defendant may be sentence and/or fined for each offense for the violation of multiple offenses of the same section of the Code of Criminal Offenses. This recommendation has not been adopted because it is quite clear that such sentencing is permissible under the regulation.

Section 11.316 Probation

Two comments recommended increasing the potential probation period to one year for all crimes as a deterrent to criminal activity. This recommendation has been adopted.

Section 11.318 Extradition

One comment recommended that Courts of Indian Offenses only honor extradition requests of jurisdictions that honor theirs. This recommendation has not been adopted because it is too inflexible.

Section 11.400 Assault

One comment recommended defining the term "physical menace" to avoid proof problems. This recommendation has not been adopted because that term has been defined by case law.

Section 11.406 Criminal Coercion

One comment recommended deletion of proposed § 11.406(a)(3) because it is vague and over broad. This recommendation has been adopted.

Section 11.407 Sexual Assault

One comment recommended modification of § 11.407(b) to recognize the varied contexts within which sexual abuse may occur. This recommendation has been adopted and the subsection modified by expanding the definition of sexual contact.

Section 11.408 Indecent Exposure

One comment noted that it is difficult for a prosecutor to prove motivation and recommended deletion of the motivation clause under this section. This recommendation has been adopted.

Section 11.424 Neglect of Children

Pursuant to a comment, this section has been modified and retitled to include a new subsection on compulsory school attendance which was omitted from the proposed rule through oversight. The present regulations do contain such a provision.

Section 11.445 Driving Violations

Several comments asked that this provision be modified to provide that the offense of driving while intoxicated be included independently of the offense of reckless driving. This suggestion has been adopted.

In addition, numerous comments noted the absence of a traffic code and recommended that one be included in these regulations. This section has been redrafted to provide for the applicability of state traffic laws in the absence of a tribal traffic code. The section's title has been modified accordingly.

Section 11.450 Maximum Fines and Sentences of Imprisonment

Since the publication of the proposed rule, the ICRA, 25 U.S.C. 1302(7) has been amended by Pub. L. 99–570, Title IV, section 4217, Oct. 27, 1986, 100 Stat. 3207–146, increasing penalty and punishment for any one offense from a term of six months or a fine of $500.00 to a term of one year and a fine of $5,000.00. The rule was not modified to reflect the increased penalty and punishment authorized under the ICRA.

Section 11.502 Cost in Civil Actions

One comment noted that the provision authorizing the court to require a complainant to place a deposit with the clerk of the court to cover costs may restrict access to the courts by those with legitimate claims. This recommendation has not been adopted because the provision is not mandatory and affords the court flexibility to control the filing of frivolous complaints.

Section 11.504 Applicable Rules of Evidence

Pursuant to comments similar to those offered under § 11.313, this section has been amended to provide for the general applicability of the Federal Rules of Evidence.

Section 11.600 Marriages

One comment suggested increasing the time for recording traditional marriages with the clerk of the court. This recommendation has been adopted and § 11.600(b)(2) has been modified to increase the recordation time to thirty days.

One comment noted that tribal law should be referenced under § 11.600(c)(6) since some tribes may have their own health laws on the subject. This recommendation has been adopted.

One comment requested the inclusion of a form for marriage license applications. This recommendation has been adopted.

Section 11.603 Invalid or Prohibited Marriages

Two comments objected to this section on the grounds that it may contravene tribal customs or represent an attempt to legislate morality. This recommendation has not been adopted because Indian tribes are authorized to adopt tribal ordinances superseding these regulations if a conflict exists.

One comment noted that in *Israel* v. *Allen*, 577 P.2d 762 (1978), the Colorado Supreme Court struck down as unconstitutional a Colorado statute prohibiting marriages between adoptive brothers and sisters. Section 11.603(a)(3) has been amended to comply with this decision.

Section 11.606 Dissolution Proceedings

One comment objected to the need to verify the petition or response, and recommended instead that one party should be required to appear and testify as to the prima facie case for divorce even if the other party defaults. This recommendation has not been adopted because it is felt that verification secures the accountability of the petitioners or parties.

Section 11.608 Final Decree; Disposition of Property; Maintenance; Child Support; Custody

Pursuant to a comment, § 11.600(b)(1) has been amended to clarify that Courts of Indian Offenses do not have the authority to divide trust assets.

One comment recommended more comprehensive child support procedures to include wage withholding, reciprocal enforcement of child support orders, and collection of past-due support from Federal tax refunds. This recommendation has been adopted.

Section 11.609 Determination of Paternity and Support

Pursuant to a comment, this section has been modified to include a new subsection conferring standing to bring an action under this section to any person or agency who has provided support or assistance to a minor.

Section 11.803 Record on Appeal

The deadline for the clerk's certification of the record has been extended to 20 days pursuant to a comment that the proposed five-day period was unrealistically short.

Subpart G Probate Proceedings

One comment noted that the proposed regulations under this subpart were too restrictive and may infringe on some tribal customs of descent and distribution. This comment has not been adopted because the regulations defer to tribal customs in the area of descent and distribution.

Section 11.900 Definitions

Several comments recommended shortening the two-year period under the definition of the word "abandon" to one year because of permanency concerns. This recommendation has been adopted.

Several comments recommended including a definition of either "status offense" or "status offender", and amending the definition of "minor-in-need-of-care" to include a minor who has been committing status offenses. This recommendation has been adopted.

Section 11.904 Guardian Ad Litem

One comment suggested amending this section to provide for the appointment of a guardian ad litem where the parent, guardian, or custodian has been accused of abusing or neglecting the child. This recommendation has been adopted.

Section 11.906 Rights of Parties

One comment suggested amending this provision to require the court to appoint counsel for the minor where there is a potential conflict of interest between the minor and his or her parents, guardian, or custodian. This recommendation has been adopted because the legal interests of the child often do not coincide with those of the parents.

Section 11.907 Transfer to Court of Indian Offenses

One comment complained of the relative short deadline in § 11.907(b)(1) in which to hold a transfer hearing to determine whether to transfer a case to the Court of Indian Offenses, as well as

other deadlines under this subpart, on the grounds that unrealistic or unnecessarily short deadlines are not in the interest of either the court or the minor. This recommendation has been adopted, and the following modifications were made to certain deadlines under this subpart: (1) The ten-day deadline in § 11.907(b)(1) has been extended to 30 days; (2) the ten-day deadline in § 11.1008 has been extended to 15 days; (3) the ten-day deadline in § 11.1011(a) has been extended to 15 days; (4) the ten-day deadline in § 11.1108(a) has been extended to 15 days; (5) the ten-day deadline in § 11.1111(a) has been extended to 15 days; and (6) the five-day deadline in § 11.1114(c) has been extended to 15 days.

Section 11.1000 Complaint

Pursuant to a comment, this section has been amended to permit the presenting officer to also file a complaint. Section 11.1100 has been similarly amended.

Section 11.1004 Detention and Shelter Care

Several comments recommended deleting the requirement that detention facilities be located on the reservation because of a potential lack of such facilities on some reservations. This recommendation has been adopted.

One comment recommended a clarification of what is "adequate supervision" under § 11.1004(b). This recommendation has been adopted and the term defined to mean that routine inspection of the room where the minor is housed is conducted every 30 minutes to assure his or her safety and welfare. A similar provisions was inserted under § 11.1104(b).

Section 11.1005 Preliminary Inquiry

One comment objected to the 24-hour deadline for preliminary inquiries in § 11.1005(a) as being too short. This recommendation has not been adopted because it is unreasonable to hold minors in detention without a prompt preliminary inquiry.

Section 11.1009 Summons

One comment suggested deleting the provision in § 11.1009(d) permitting delivery of a summons by publication to protect the child's privacy rights. This recommendation has been adopted. For the same reasons, the same provision has been deleted from § 11.1109 and § 11.1113(e)(4).

Section 11.1012 Dispositional Alternatives

One comment suggested that restitution by the minor be allowed as a dispositional alternative. This recommendation has been adopted.

Section 11.1104 Shelter Care

One comment objected to the provision in § 11.1104(b) permitting minors-in-need-of-care to be detained in the same facility as juvenile offenders. Although commendable, this recommendation is not adopted because of the relative shortage of such facilities on or near Indian reservations.

Section 11.1108 Date of Hearing

Pursuant to a comment, this provision has been modified to permit the refiling of a petition to protect the interest of the child.

Section 11.1112 Dispositional Alternatives

One comment recommended that only the presenting officer be permitted to recommend that termination proceedings be initiated, and that the magistrate should not be allowed to make such a recommendation and then proceed to determine it. This recommendation has been adopted and proposed § 11.1112(a)(6) has been deleted.

One comment urged that this section be modified to emphasize that efforts must be made to permit a minor to return or remain in his or her home. This recommendation has been adopted and the section modified accordingly.

One comment recommended adding a new subsection to provide for a permanency hearing within 18 months of the original placement. This recommendation has also been adopted.

Section 11.1114 Termination

One comment recommended a modification to this section to emphasize that reasonable efforts must be made to prevent removal of the minor from his or her home. This recommendation has been adopted.

One comment suggested that it should not be the function of the magistrate to review the petition until the parties have had an opportunity to be heard. This recommendation has been adopted and proposed § 11.1114(c) was deleted. The lettering of the subsections have been changed accordingly.

One comment objected to excusing the parents from testifying. The suggestion that parents should be forced to testify has not been adopted because the right against self-incrimination is not limited to criminal proceedings.

One comment noted that adoption procedures should be included in these regulations. Although this section provides that the Court of Indian Offenses must follow tribal adoption procedures, this section has been amended to provide that in the absence of such tribal procedures, state adoption procedures shall apply.

Evaluation and Certification

The Department of the Interior has determined that this document is not a major rule under the criteria established by Executive Order 12291 and does not have a significant economic effect on a substantial number of small entities under the criteria established by the Regulatory Flexibility Act. The intended effect of this rule is to update the sections under 25 CFR part 11 to provide Courts of Indian Offenses with a more complete set of rules. The proposed revision will not require additional staffing for these courts. It is not anticipated that this revision will have any effect on the annual caseload of these courts because it does not enlarge their jurisdiction, but mandates procedural guarantees. While it is true that some criminal provisions such as issuance of bad checks and defrauding secured creditors have been added, others, such as giving venereal disease to another and illicit cohabitation have been deleted, so that the net effect on caseload is going to be negligible. Courts of Indian Offenses are funded in their entirety by the Federal Government and do not receive additional funding from tribal governments. Because we do not foresee any economic effect on Courts of Indian Offenses as a result of this revision, there will be no requirement of additional outlays by the Federal Government or the tribes affected by the proposed revision.

The Department of the Interior has certified to the Office of Management and Budget that this final rule meets the applicable standards provided in sections 2(a) and 2(b) of Executive Order 12778.

In accordance with Executive Order 12630, the Department has determined that this final rule does not have significant takings implications.

The Department has also determined that this final rule does not have significant federalism effects.

The information collection requirements contained in § 11.600 and § 11.606 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*, and assigned approval number 1076–0094. The information is being collected to obtain a marriage license (§ 11.600) and a divorce decree (§ 11.606) from the

Courts of Indian Offenses, and will be used by the courts to issue a marriage license or divorce decree. Response to this request is required to obtain a benefit.

Public reporting for this information collection is estimated to average .25 hours per response, including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the information collection. Direct comments regarding the burden estimate or any other aspect of this information collection to the Bureau of Indian Affairs, Information Collection Clearance Officer, Room 336–SIB, 1849 C Street, NW., Washington, DC 20240; and the Office of Information and Regulatory Affairs (Project 1076–0094), Office of Management and Budget, Washington, DC 20502.

Drafting Information

The primary author of this document is George T. Skibine, Office of the Solicitor, Division of Indian Affairs, Department of the Interior.

List of Subjects in

25 CFR Part 11

Courts, Indians—law, law enforcement and penalties.

25 CFR Part 12

Indians, Law enforcement, Police, and detention programs.

For the reasons given in the preamble, title 25, chapter I of the Code of Federal Regulations is amended as set forth below.

§§ 11.301–11.306 [Redesignation as 12.100–12.105 in New Part 12]

1. Part 11 is amended by redesignating §§ 11.301 through 11.306 as §§ 12.100 through 12.105 of a new Part 12, The Indian Police.

2. Part 11 is revised to read as follows:

PART 11—LAW AND ORDER ON INDIAN RESERVATIONS

Subpart A—Application; Jurisdiction

Sec.

11.100 Listing of Courts of Indian Offenses.
11.101 Prospective application of regulations.
11.102 Criminal jurisdiction; limitation of actions.
11.103 Civil jurisdiction; limitation of actions.
11.104 Jurisdictional limitations.

Subpart B—Courts of Indian Offenses; Personnel; Administration

11.200 Composition of court.
11.201 Appointment of magistrates.
11.202 Removal of magistrates.
11.203 Court clerks.
11.204 Prosecutors.
11.205 Standard governing appearance of attorneys and lay counselors.
11.206 Court records.
11.207 Cooperation of Bureau of Indian Affairs employees.
11.208 Payment of judgments from individual Indian money accounts.
11.209 Disposition of fines.

Subpart C—Criminal Procedure

11.300 Complaints.
11.301 Arrests.
11.302 Arrest warrants.
11.303 Notification of rights prior to custodial interrogation.
11.304 Summons in lieu of warrant.
11.305 Search warrants.
11.306 Search without a warrant.
11.307 Disposition of seized property.
11.308 Commitments.
11.309 Arraignments.
11.310 Bail.
11.311 Subpoenas.
11.312 Witness fees.
11.313 Trial procedure.
11.314 Jury trials.
11.315 Sentencing.
11.316 Probation.
11.317 Parole.
11.318 Extradition.

Subpart D—Criminal Offenses

11.400 Assault.
11.401 Recklessly endangering another person.
11.402 Terroristic threats.
11.403 Unlawful restraint.
11.404 False imprisonment.
11.405 Interference with custody.
11.406 Criminal coercion.
11.407 Sexual assault.
11.408 Indecent exposure.
11.409 Reckless burning or exploding.
11.410 Criminal mischief.
11.411 Criminal trespass.
11.412 Theft.
11.413 Receiving stolen property.
11.414 Embezzlement.
11.415 Fraud.
11.416 Forgery.
11.417 Extortion.
11.418 Misbranding.
11.419 Unauthorized use of automobiles and other vehicles.
11.420 Tampering with records.
11.421 Bad checks.
11.422 Unauthorized use of credit cards.
11.423 Defrauding secured creditors.
11.424 Neglect of children.
11.425 Persistent non-support.
11.426 Bribery.
11.427 Threats and other improper influence in official and political matters.
11.428 Retaliation for past official action.
11.429 Perjury.
11.430 False alarms.
11.431 False reports.
11.432 Impersonating a public servant.
11.433 Disobedience to lawful order of court.
11.434 Resisting arrest.
11.435 Obstructing justice.
11.436 Escape.
11.437 Bail jumping.
11.438 Flight to avoid prosecution or judicial process.
11.439 Witness tampering.
11.440 Tampering with or fabricating physical evidence.
11.441 Disorderly conduct.
11.442 Riot; Failure to disperse.
11.443 Harassment.
11.444 Carrying concealed weapons.
11.445 Driving violations.
11.446 Cruelty to animals.
11.447 Maintaining a public nuisance.
11.448 Abuse of office.
11.449 Violation of an approved tribal ordinance.
11.450 Maximum fines and sentences of imprisonment.

Subpart E—Civil Actions

11.500 Law applicable to civil actions.
11.501 Judgments in civil actions.
11.502 Costs in civil actions.
11.503 Applicable civil procedure.
11.504 Applicable rules of evidence.

Subpart F—Domestic Relations

11.600 Marriages.
11.601 Marriage licenses.
11.602 Solemnization.
11.603 Invalid or prohibited marriages.
11.604 Declaration of invalidity.
11.605 Dissolution.
11.606 Dissolution proceedings.
11.607 Temporary orders and temporary injunctions.
11.608 Final decree; Disposition of property; Maintenance; Child support; Custody.
11.609 Determination of paternity and support.
11.610 Appointment of guardians.
11.611 Change of name.

Subpart G—Probate Proceedings

11.700 Probate jurisdiction.
11.701 Duty to present will for probate.
11.702 Proving and admitting will.
11.703 Petition and order to probate estate.
11.704 Appointment and duties of executor or administrator.
11.705 Removal of executor or administrator.
11.706 Appointment and duties of appraiser.
11.707 Claims against estate.
11.708 Sale of property.
11.709 Final account.
11.710 Determination of the court.
11.711 Descent and distribution.
11.712 Closing estate.
11.713 Small estates.

Subpart H—Appellate Proceedings

11.800 Jurisdiction of appellate division.
11.801 Procedure on appeal.
11.802 Judgment against surety.
11.803 Record on appeal.
11.804 Briefs and memoranda.
11.805 Oral argument.
11.806 Rules of court.

Subpart I—Children's Court

11.900 Definitions.
11.901 The children's court established.
11.902 Non-criminal proceedings.
11.903 Presenting officer.
11.904 Guardian ad litem.
11.905 Jurisdiction.
11.906 Rights of parties.

11.907 Transfer to Court of Indian Offenses.
11.908 Court records.
11.909 Law enforcement records.
11.910 Expungement.
11.911 Appeal.
11.912 Contempt of court.

Subpart J—Juvenile Offender Procedure

11.1000 Complaint.
11.1001 Warrant.
11.1002 Custody.
11.1003 Law enforcement officer's duties.
11.1004 Detention and shelter care.
11.1005 Preliminary inquiry.
11.1006 Investigation by the presenting officer.
11.1007 Petition.
11.1008 Date of hearing.
11.1009 Summons.
11.1010 Adjudicatory hearing.
11.1011 Dispositional hearing.
11.1012 Dispositional alternatives.
11.1013 Modification of dispositional order.
11.1014 Medical examination.

Subpart K—Minor-in-need-of-care Procedure

11.1100 Complaint.
11.1101 Warrant.
11.1102 Custody.
11.1103 Law enforcement officer's duties.
11.1104 Shelter care.
11.1105 Preliminary inquiry.
11.1106 Investigation by the presenting officer.
11.1107 Petition.
11.1108 Date of hearing.
11.1109 Summons.
11.1110 Minor-in-need-of-care adjudicatory hearing.
11.1111 Minor-in-need-of-care dispositional hearing.
11.1112 Dispositional alternatives.
11.1113 Modification of dispositional order.
11.1114 Termination.
11.1115 Information collection.

Authority: 5 U.S.C. 301; R.S. 463, 25 U.S.C. 2; R.S. 465, 25 U.S.C. 9; 42 Stat. 208, 25 U.S.C. 13; 38 Stat. 586, 25 U.S.C. 200.

Subpart A—Application; Jurisdiction

§ 11.100 Listing of Courts of Indian Offenses.

(a) Except as otherwise provided in this title, the regulations under this part are applicable to the Indian country (as defined in 18 U.S.C. 1151) occupied by the following tribes:

(1) Flandreau Santee Sioux Tribe (South Dakota).

(2) Yankton Sioux Tribe (South Dakota).

(3) Shoshone and Arapahoe Tribes of the Wind River Reservation (Wyoming).

(4) Bois Forte Band of the Minnesota Chippewa Tribe (Minnesota).

(5) Red Lake Band of Chippewa Indians (Minnesota).

(6) Cocopah Tribe (Arizona).

(7) Kaibab Band of Paiute Indians (Arizona).

(8) Paiute Shoshone Tribe of the Fallon Reservation and Colony (Nevada).

(9) Confederated Tribes of the Goshute Reservation (Nevada).

(10) Lovelock Paiute Tribe (Nevada).

(11) Te-Moak Band of Western Shoshone Indians (Nevada).

(12) Yomba Shoshone Tribe (Nevada).

(13) Duckwater Shoshone Tribe (Nevada).

(14) Kootenai Tribe (Idaho).

(15) Shoalwater Bay Tribe (Washington).

(16) Eastern Band of Cherokee Indians (North Carolina).

(17) Mississippi Band of Choctaw Indians (Mississippi).

(18) For the following tribes located in the former Oklahoma Territory (Oklahoma):

Absentee Shawnee Tribe of Indians of Oklahoma
Apache Tribe of Oklahoma
Caddo Tribe of Oklahoma
Cheyenne-Arapaho Tribes of Oklahoma
Citizen Band of Potawatomi Indians of Oklahoma
Comanche Tribe of Oklahoma (except Comanche Children's Court)
Delaware Tribe of Western Oklahoma
Fort Sill Apache Tribe of Oklahoma
Kaw Tribe of Oklahoma
Iowa Tribe of Oklahoma
Kickapoo Tribe of Oklahoma
Kiowa Tribe of Oklahoma
Otoe-Missouria Tribe of Oklahoma
Pawnee Tribe of Oklahoma
Tonkawa Tribe of Oklahoma
Wichita and Affiliated Tribes of Oklahoma

(19) Hoopa Valley Tribe, Yurok Tribe, and Coast Indian Community of California (California) (Jurisdiction limited to special fishing regulations).

(20) Louisiana Area (Includes Coushatta and other tribes in the State of Louisiana which occupy Indian country and which accept the application of this part; *Provided* that this part shall not apply to any Louisiana tribe other than the Coushatta Tribe until notice of such application has been published in the **Federal Register**).

(b) It is the purpose of the regulations in this part to provide adequate machinery for the administration of justice for Indian tribes in those areas of Indian country where tribes retain jurisdiction over Indians that is exclusive of state jurisdiction but where tribal courts have not been established to exercise that jurisdiction.

(c) The regulations in this part shall continue to apply to tribes listed under § 11.100(a) until a law and order code which includes the establishment of a court system has been adopted by the tribe in accordance with its constitution and by-laws or other governing documents, has become effective, and the Assistant Secretary—Indian Affairs or his or her designee has received a valid tribal enactment identifying the effective date of the code's implementation, and the name of the tribe has been deleted from the listing of Courts of Indian Offenses under § 11.100(a).

(d) For the purposes of the enforcement of the regulations in this part, an Indian is defined as a person who is a member of an Indian tribe which is recognized by the Federal Government as eligible for services from the BIA, and any other individual who is an "Indian" for purposes of 18 U.S.C. 1152–1153.

(e) The governing body of each tribe occupying the Indian country over which a Court of Indian Offenses has jurisdiction may enact ordinances which, when approved by the Assistant Secretary—Indian Affairs or his or her designee, shall be enforceable in the Court of Indian Offenses having jurisdiction over the Indian country occupied by that tribe, and shall supersede any conflicting regulation in this part.

(f) Each Court of Indian Offenses shall apply the customs of the tribe occupying the Indian country over which it has jurisdiction to the extent that they are consistent with the regulations of this part.

§ 11.101 Prospective application of regulations.

Civil and criminal causes of actions arising prior to the effective date of these regulations shall not abate but shall be determined in accordance with the regulations in effect at the time the cause arose.

§ 11.102 Criminal jurisdiction; limitation of actions.

(a) Except as otherwise provided in this title, each Court of Indian Offenses shall have jurisdiction over any action by an Indian (hereafter referred to as person) that is made a criminal offense under this part and that occurred within the Indian country subject to the court's jurisdiction.

(b) No person shall be prosecuted, tried or punished for any offense unless the complaint is filed within five years after such offense shall have been committed.

§ 11.103 Civil jurisdiction; limitation of actions.

(a) Except as otherwise provided in this title, each Court of Indian Offenses shall have jurisdiction over any civil action arising within the territorial jurisdiction of the court in which the defendant is an Indian, and of all other suits between Indians and non-Indians which are brought before the court by stipulation of the parties.

(b) Any civil action commenced in a Court of Indian Offenses shall be barred unless the complaint is filed within three years after the right of action first accrues.

§ 11.104 Jurisdictional limitations.

(a) No Court of Indian Offenses may exercise any jurisdiction over a Federal or state official that it could not exercise if it were a tribal court.

(b) Unless otherwise provided by a resolution or ordinance of the tribal governing body of the tribe occupying the Indian country over which a Court of Indian country over which a Court of Indian Offenses has jurisdiction, no Court of Indian Offenses may adjudicate an election dispute or take jurisdiction over a suit against the tribe or adjudicate any internal tribal government dispute.

(c) The decision of the BIA on who is a tribal official is binding in a Court of Indian Offenses.

(d) The Department of the Interior will accord the same weight to decisions of a Court of Indian Offenses that it accords to decisions of a tribal court.

(e) A tribe may not be sued in a Court of Indian Offenses unless its tribal governing body explicitly waives its tribal immunity by tribal resolution or ordinance.

Subpart B—Courts of Indian Offenses; Personnel; Administration

§ 11.200 Composition of court.

(a) Each court shall be composed of a trial division and an appellate division.

(b) A chief magistrate will be appointed for each court who will, in addition to other judicial duties, be responsible for the administration of the court and the supervision of all court personnel.

(c) Appeals shall be heard by a panel of three magistrates who were not involved in the trial of the case.

(d) Decisions of the appellate division are final and are not subject to administrative appeals within the Department of the Interior.

§ 11.201 Appointment of magistrates.

(a) Each magistrate shall be appointed by the Assistant Secretary—Indian Affairs or his or her designee subject to confirmation by a majority vote of the tribal governing body of the tribe occupying the Indian country over which the court has jurisdiction, or, in the case of multi-tribal courts, confirmation by a majority of the tribal governing bodies of the tribes under the jurisdiction of a Court of Indian Offenses.

(b) Each magistrate shall hold office for a period of four years, unless sooner removed for cause or by reason of the abolition of the office, but is eligible for reappointment.

(c) No person is eligible to serve as a magistrate of a Court of Indian Offenses who has ever been convicted of a felony or, within one year of the date of service or application, of a misdemeanor.

(d) No magistrate shall be qualified to act as such wherein he or she has any direct conflicting interest, real or apparent.

(e) A tribal governing body may set forth such other qualifications for magistrates of the Court of Indian Offenses as it deems appropriate, subject to the approval of the Assistant Secretary—Indian Affairs, or his or her designee.

(f) A tribal governing body may also recommend requirements for the training of magistrates of the Court of Indian Offenses to the Assistant Secretary—Indian Affairs.

§ 11.202 Removal of magistrates.

Any magistrate of a Court of Indian Offenses may be suspended, dismissed or removed by the Assistant Secretary—Indian Affairs, or his or her designee, for cause, upon the written recommendation of the tribal governing body, and, in the case of multi-tribal courts, upon the recommendation of a majority of the tribal governing bodies of the tribes under the jurisdiction of a Court of Indian Offenses, or pursuant to his or her own discretion.

§ 11.203 Court clerks.

(a) Except as may otherwise be provided in a contract with the tribe occupying the Indian country over which the court has jurisdiction, the chief magistrate shall appoint a clerk of court for the Court of Indian Offenses within his or her jurisdiction, subject to the superintendent's approval.

(b) The clerk shall render assistance to the court, to local law enforcement officers and to individual members of the tribe in the drafting of complaints, subpoenas, warrants, commitments, and other documents incidental to the functions of the court. The clerk shall also attend and keep a record of all proceedings of the court and manage all monies received by the court.

(c) The clerk of court shall forward any monies received on judgments due to the person, agency, or corporation to which entitled, within 30 days unless directed otherwise by a magistrate of the Court of Indian Offenses.

§ 11.204 Prosecutors.

Except as may otherwise be provided in a contract with the tribe occupying the Indian country over which the court has jurisdiction, the superintendent shall appoint a prosecutor for each Court of Indian Offenses within his or her jurisdiction.

§ 11.205 Standards governing appearance of attorneys and lay counselors.

(a) No defendant in a criminal proceeding shall be denied the right to counsel.

(b) The chief magistrate shall prescribe in writing standards governing the admission and practice in the Court of Indian Offenses of professional attorneys and lay counselors.

§ 11.206 Court records.

(a) Each Court of Indian Offenses shall keep a record of all proceedings of the court containing the title of the case, the names of the parties, the complaint, all pleadings, the names and addresses of all witnesses, the date of any hearing or trial, the name of any magistrate conducting such hearing or trial, the findings of the court or jury, the judgment and any other information the court determines is important to the case.

(b) The record in each case shall be available for inspection by the parties to the case.

(c) Except for cases in which a juvenile is a party or the subject of a proceeding, and for cases whose records have been sealed by the court, all case records shall be available for inspection by the public.

(d) Such court records are part of the records of the BIA agency having jurisdiction over the Indian country where the Court of Indian Offenses is located and shall be protected in accordance with 44 U.S.C. 3102.

§ 11.207 Cooperation by Bureau of Indian Affairs Employees.

(a) No employee of the BIA may obstruct, interfere with, or control the functions of any Court of Indian Offenses, or influence such functions in any manner except as permitted by Federal statutes or the regulations in this part or in response to a request for advice or information from the court.

(b) Employees of the BIA shall assist the court, upon its request, in the preparation and presentation of facts in the case and in the proper treatment of individual offenders.

§ 11.208 Payment of judgments from individual Indian money accounts.

(a) Any Court of Indian Offenses may make application to the superintendent who administers the individual Indian money account of a defendant who has failed to satisfy a money judgment from the court to obtain payment of the judgment from funds in the defendant's

account. The court shall certify the record of the case to the superintendent. If the superintendent so directs, the disbursing agent shall pay over to the injured party the amount of the judgment or such lesser amount as may be specified by the superintendent.

(b) A judgment of a Court of Indian Offenses shall be considered a lawful debt in all proceedings held by the Department of the Interior or by a Court of Indian Offenses to distribute decedents' estates.

§ 11.209 Disposition of fines.

All money fines imposed for the commission of an offense shall be in the nature of an assessment for the payment of designated court expenses. The fines assessed shall be paid over by the clerk of the court to the disbursing agent of the reservation for deposit as a "special deposit, court funds" to the disbursing agent's official credit in the Treasury of the United States. The disbursing agent shall withdraw such funds, in accordance with existing regulations, upon order of the clerk of the court signed by a judge of the court for the payment of specified expenses. The disbursing agent and the clerk of the court shall keep an account of all such deposits and withdrawals available for public inspection.

Subpart C—Criminal Procedure

§ 11.300 Complaints.

(a) A complaint is a written statement of the essential facts charging that a named individual(s) has committed a particular offense. All criminal prosecutions shall be initiated by a complaint filed with the court by a law enforcement officer and sworn to by a person having personal knowledge of the offense.

(b) Complaints shall contain:

(1) The signature of the complaining witness, or witnesses, sworn before a magistrate, a court clerk, a prosecutor, or any law enforcement officer.

(2) A written statement by the complaining witness or witnesses having personal knowledge of the violation, describing in ordinary language the nature of the offense committed including the time and place as nearly as may be ascertained.

(3) The name or description of the person alleged to have committed the offense.

(4) A description of the offense charged and the section of the code allegedly violated.

(c) Complaints must be submitted without unnecessary delay by a law enforcement officer to the prosecutor and, if he or she approves, to a judge to determine whether an arrest warrant or summons should be issued.

(d) When an accused has been arrested without a warrant, a complaint shall be filed forthwith with the court for review as to whether probable cause exists to hold the accused, and in no instance shall a complaint be filed later than at the time of arraignment.

§ 11.301 Arrests.

(a) Arrest is the taking of a person into police custody in order that he or she may be held to answer for a criminal offense.

(b) No law enforcement officer shall arrest any person for a criminal offense except when:

(1) The officer shall have a warrant signed by a magistrate commanding the arrest of such person, or the officer knows for a certainty that such a warrant has been issued; or

(2) The offense shall occur in the presence of the arresting officer; or

(3) The officer shall have probable cause to believe that the person arrested has committed an offense.

§ 11.302 Arrest warrants.

(a) Each magistrate of a Court of Indian Offenses shall have the authority to issue warrants to apprehend any person the magistrate has probable cause to believe has committed a criminal offense in violation of the regulations under this part based on a written complaint filed with the court by a law enforcement officer and bearing the signature of the complainant.

(b) The arrest warrant shall contain the following information:

(1) Name or description and address, if known, of the person to be arrested.

(2) Date of issuance of the warrant.

(3) Description of the offense charged.

(4) Signature of the issuing magistrate.

(c) Such warrants may be served only by a BIA or tribal police officer or other officer commissioned to enforce the regulations of this part.

§ 11.303 Notification of rights prior to custodial interrogation.

Prior to custodial interrogation, the suspect shall be advised of the following rights:

(a) That he or she has the right to remain silent.

(b) That any statements made by him or her may be used against him or her in court.

(c) That he or she has the right to obtain counsel and, if indigent, to have counsel appointed for him/her.

§ 11.304 Summons in lieu of warrant.

(a) When otherwise authorized to arrest a suspect, a law enforcement officer or a magistrate may, in lieu of a warrant, issue a summons commanding the accused to appear before the Court of Indian Offenses at a stated time and place and answer to the charge.

(b) The summons shall contain the same information as a warrant, except that it may be signed by a police officer.

(c) The summons shall state that if a defendant fails to appear in response to a summons, a warrant for his or her arrest shall be issued.

(d) The summons, together with a copy of the complaint, shall be served upon the defendant by delivering a copy to the defendant personally or by leaving a copy at his or her usual residence or place of business with any person 18 years of age or older who also resides or works there. Service shall be made by an authorized law enforcement officer, who shall file with the record of the case a form indicating when the summons was served.

§ 11.305 Search warrants.

(a) Each magistrate of a Court of Indian Offenses shall have the authority to issue a warrant for the search of premises and for the seizure of physical evidence of a criminal violation under the regulations of this part located within the Indian country over which the court has jurisdiction.

(b) No warrant for search or seizure may be issued unless it is based on a written and signed statement establishing, to the satisfaction of the magistrate, that probable cause exists to believe that the search will lead to discovery of evidence of a criminal violation under the regulations of this part.

(c) No warrant for search or seizure shall be valid unless it contains the name or description of the person, vehicle, or premises to be searched, describes the evidence to be seized, and bears the signature of the magistrate who issued it.

(d) Warrants may be executed only by a BIA or tribal police officer or other official commissioned to enforce the regulations under this part. The executing officer shall return the warrant to the Court of Indian Offenses within the time limit shown on the face of the warrant, which in no case shall be longer than ten (10) days from the date of issuance. Warrants not returned within such time limits shall be void.

§ 11.306 Search without a warrant.

No law enforcement officer shall conduct any search without a valid warrant except:

(a) Incident to making a lawful arrest; or

(b) With the voluntary consent of the person being searched; or

(c) When the search is of a moving vehicle and the officer has probable cause to believe that it contains contraband, stolen property, or property otherwise unlawfully possessed.

§ 11.307 Disposition of seized property.

(a) The officer serving and executing a warrant shall make an inventory of all seized property, and a copy of such inventory shall be left with every person from whom property is seized.

(b) A hearing shall be held by the Court of Indian Offenses to determine the disposition of all seized property. Upon satisfactory proof of ownership, the property shall be delivered immediately to the owner, unless such property is contraband or is to be used as evidence in a pending case. Property seized as evidence shall be returned to the owner after final judgment. Property confiscated as contraband shall be destroyed or otherwise lawfully disposed of as ordered by the Court of Indian Offenses.

§ 11.308 Commitments.

No person may be detained, jailed or imprisoned under the regulations of this part for longer than 48 hours unless the Court of Indian Offenses issues a commitment bearing the signature of a magistrate. A temporary commitment shall be issued for each person held before trial. A final commitment shall be issued for each person sentenced to jail after trial.

§ 11.309 Arraignments.

(a) Arraignment is the bringing of an accused before the court, informing him or her of his or her rights and of the charge(s) against him or her, receiving the plea, and setting conditions of pretrial release as appropriate in accordance with this part.

(b) Arraignment shall be held in open court without unnecessary delay after the accused is taken into custody and in no instance shall arraignment be later than the next regular session of court.

(c) Before an accused is required to plead to any criminal charges the magistrate shall:

(1) Read the complaint to the accused and determine that he or she understands it and the section(s) of this part that he or she is charged with violating, including the maximum authorized penalty; and

(2) Advise the accused that he or she has the right to remain silent, to be tried by a jury if the offense charged is punishable by imprisonment, to be represented by counsel (which shall be paid for by the government if the accused is indigent) and that the arraignment will be postponed should he or she desire to consult with counsel.

(d) The magistrate shall call upon the defendant to plead to the charge:

(1) If the accused pleads "not guilty" to the charge, the magistrate shall then inform the accused of the trial date and set conditions for release prior to trial.

(2) If the accused pleads "guilty" to the charge, the magistrate shall accept the plea only if he or she is satisfied that the plea is made voluntarily and that the accused understands the consequences of the plea, including the rights waived by the plea. The magistrate may then impose sentence or defer sentencing for a reasonable time in order to obtain any information he or she deems necessary for the imposition of a just sentence. The accused shall be afforded an opportunity to be heard by the court prior to sentencing.

(3) If the accused refuses to plead, the judge shall enter a plea of "not guilty" on his or her behalf.

(3) The court may, in its discretion, allow a defendant to withdraw a plea of guilty if it appears that the interest of justice would be served by doing so.

§ 11.310 Bail.

(a) Each person charged with a criminal offense under this part shall be entitled to release from custody pending trial under whichever one or more of the following conditions is deemed necessary to reasonably assure the appearance of the person at any time lawfully required:

(1) Release on personal recognizance upon execution by the accused of a written promise to appear at trial and all other lawfully required times;

(2) Release to the custody of a designated person or organization agreeing to assure the accused's appearance;

(3) Release with reasonable restrictions on the travel, association, or place of residence of the accused during the period of release;

(4) Release after deposit of a bond or other sufficient collateral in an amount specified by the magistrate or a bail schedule;

(5) Release after execution of a bail agreement by two responsible members of the community; or

(6) Release upon any other condition deemed reasonably necessary to assure the appearance of the accused as required.

(b) Any law enforcement officer authorized to do so by the court may admit an arrested person to bail pending trial pursuant to a bail schedule and conditions prepared by the court.

(c) A convicted person may be released from custody pending appeal on such conditions as the magistrate determines will reasonably assure the appearance of the accused unless the magistrate determines that release of the accused is likely to pose a danger to the community, the accused, or any other person.

(d) The Court of Indian Offenses may revoke its release of the defendant and order him or her committed at any time where it determines that the conditions of release will not reasonably assure the appearance of the defendant, or if any conditions of release have been violated.

§ 11.311 Subpoenas.

(a) Upon request of any party, the court shall issue subpoenas to compel the testimony of witnesses, or the production of books, records, documents or any other physical evidence relevant to the determination of the case and not an undue burden on the person possessing the evidence. The clerk of the court may act on behalf of the court and issue subpoenas which have been signed either by the clerk of the court or by a magistrate of the Court of Indian Offenses and which are to be served within Indian country over which the Court of Indian Offenses has jurisdiction.

(b) A subpoena shall bear the signature of the chief magistrate of the Court of Indian Offenses, and it shall state the name of the court, the name of the person or description of the physical evidence to be subpoenaed, the title of the proceeding, and the time and place where the witness is to appear or the evidence is to be produced.

(c) A subpoena may be served at any place but any subpoena to be served outside of the Indian country over which the Court of Indian Offenses has jurisdiction shall be issued personally by a magistrate of the Court of Indian Offenses.

(d) A subpoena may be served by any law enforcement officer or other person appointed by the court for such purpose. Service of a subpoena shall be made by delivering a copy of it to the person named or by leaving a copy at his or her place of residence or business with any person 18 years of age or older who also resides or works there.

(e) Proof of service of the subpoena shall be filed with the clerk of the court by noting on the back of the subpoena the date, time and place that it was served and noting the name of the person to whom it was delivered. Proof of service shall be signed by the person who actually served the subpoena.

(f) In the absence of a justification satisfactory to the court, a person who fails to obey a subpoena may be deemed to be in contempt of court and a bench

warrant may be issued for his or her arrest.

§ 11.312 Witness fees.

(a) Each fact witness answering a subpoena is entitled to a fee of not less than the hourly minimum wage scale established by 29 U.S.C. 206(a)(1) and any of its subsequent revisions, plus actual cost of travel. Each fact witness testifying at a hearing shall receive pay for a full day (eight hours) plus travel allowance.

(b) The Court of Indian Offenses may order any party calling a witness to testify without a subpoena to compensate the witness for actual traveling and living expenses incurred in testifying.

(c) If the Court of Indian Offenses finds that a complaint was not filed in good faith but with a frivolous or malicious intent, it may order the complainant to reimburse the court for expenditures incurred under this section, and such order may constitute a judgment upon which execution may levy.

§ 11.313 Trial procedure.

(a) The time and place of court sessions, and all other details of judicial procedure shall be set out in rules of court approved by the chief magistrate of the Court of Indian Offenses.

(b) Courts of Indian Offenses shall be bound by the Federal Rules of Evidence, except insofar as such rules are superseded by order of the court or by the existence of inconsistent tribal rules of evidence.

§ 11.314 Jury trials.

(a) In any criminal case punishable by a sentence of six months in jail and in any criminal case in which the prosecutor informs the court before the case comes to trial that a jail sentence will be sought, the defendant has a right, upon demand, to a jury trial. If the prosecutor informs the court that no prison sentence will be sought, the court may not impose a prison sentence for the offense.

(b) A jury shall consist of eight Indian residents of the vicinity in which trial is held, selected from a list of eligible jurors prepared each year by the court. An eligible juror shall be at least 18 years of age, shall not have been convicted of a felony, and shall not otherwise be unqualified according to standards established by the Court of Indian Offenses under its general rulemaking authority. Any party may challenge without cause not more than three members of the jury panel so chosen.

(c) The magistrate shall instruct the jury with regard to the applicable law and the jury shall decide all questions of fact on the basis of the law.

(d) The jury shall deliberate in secret and return a verdict of guilty or not guilty. Six out of the eight jurors must concur to render a verdict.

(e) Each juror who serves on a jury is entitled to a fee not less than the hourly minimum wage scale established by 29 U.S.C. 206(a)(1), and any of its subsequent revisions, plus mileage not to exceed the maximum rate per mile established by the Federal Government of jurors and witnesses. Each juror shall receive pay for a full day (eight hours) for any portion of a day served, plus travel allowance.

§ 11.315 Sentencing.

(a) Any person who has been convicted in a Court of Indian Offenses of a criminal offense under the regulations of this part may be sentenced to one or a combination of the following penalties:

(1) Imprisonment for a period not to exceed the maximum permitted by the section defining the offense, which in no case shall be greater than six months.

(2) A money fine in an amount not to exceed the maximum permitted by the section defining the offense, which in no case shall be greater than five hundred dollars ($500).

(3) Labor for the benefit of the tribe.

(4) Rehabilitative measures.

(b) In addition to or in lieu of the penalties provided in paragraph (a) of this section, the court may require a convicted offender who has inflicted injury upon the person or property of another to make restitution or compensate the injured person by means of the surrender of property, payment of money damages, or the performance of any other act for the benefit of the injured party.

(c) If, solely because of indigence, a convicted offender is unable to pay forthwith a money fine assessed under any applicable section, the court shall allow him or her a reasonable period of time to pay the entire sum or allow him or her to make reasonable installment payments to the clerk of the court at specified intervals until the entire sum is paid. If the offender defaults on such payments the court may find him or her in contempt of court and imprison him or her accordingly.

§ 11.316 Probation.

(a) Where a sentence of imprisonment has been imposed on a convicted offender, the Court of Indian Offenses may, in its discretion, suspend the serving of such sentence and release the person on probation under any reasonable conditions deemed appropriate by the court, provided that the period of probation shall not exceed one year.

(b) Any person who violates the terms of his or her probation may be required by the court to serve the sentence originally imposed or such part of it as the court may determine to be suitable giving consideration to all the circumstances, provided that such revocation of probation shall not be ordered without a hearing before the court at which the offender shall have the opportunity to explain his or her actions.

§ 11.317 Parole.

(a) Any person sentenced by the court of detention or labor shall be eligible for parole at such time and under such reasonable conditions as set by the Court of Indian Offenses.

(b) Any person who violates the conditions of his or her parole may be required by the court to serve the whole original sentence, provided that such revocation or parole shall not be ordered without a hearing before the court at which the offender shall have the opportunity to explain his or her actions.

§ 11.318 Extradition.

Any Court of Indian Offenses may order delivery to the proper state, tribal or BIA law enforcement authorities of any person found within the jurisdiction of the court, who is charged with an offense in another jurisdiction. Prior to delivery to the proper officials, the accused shall be accorded a right to contest the propriety of the court's order in a hearing before the court.

Subpart D—Criminal Offenses

§ 11.400 Assault.

(a) A person is guilty of assault if he or she:

(1) Attempts to cause or purposely, knowingly or recklessly causes bodily injury to another; or

(2) Negligently causes bodily injury to another with a deadly weapon; or

(3) Attempts by physical menace to put another in fear of imminent serious bodily injury.

(b) Assault is a misdemeanor unless committed in a fight or scuffle entered into by mutual consent, in which case it is a petty misdemeanor.

§ 11.401 Recklessly endangering another person.

A person commits a misdemeanor if he or she recklessly engages in conduct which places or may place another person in danger of death or serious bodily injury. Recklessness and danger shall be presumed where a person

knowingly points a fireman at or in the direction of another person, whether or not the actor believed the firearm to be loaded.

§ 11.402 Terroristic threats.

A person is guilty of a misdemeanor if he or she threatens to commit any crime of violence with purpose to terrorize another or to cause evacuation of a building, place of assembly or facility of public transportation, or otherwise to cause serious public inconvenience or in reckless disregard of the risk of causing such terror or inconvenience.

§ 11.403 Unlawful restraint.

A person commits a misdemeanor if he or she knowingly:

(a) Restrains another unlawfully in circumstances exposing him or her to risk of serious bodily injury; or

(b) Holds another in a condition of involuntary servitude.

§ 11.404 False imprisonment.

A person commits a misdemeanor if he or she knowingly restrains another unlawfully so as to interfere substantially with his or her liberty.

§ 11.405 Interference with custody.

(a) *Custody of children.* A person commits a misdemeanor if he or she knowingly or recklessly takes or entices any child under the age of 18 from the custody of his or her parent, guardian or other lawful custodian, when he or she has no privilege to do so.

(b) *Custody of committed person.* A person is guilty of a misdemeanor if he or she knowingly or recklessly takes or entices any committed person away from lawful custody when he or she does not have the privilege to do so. *Committed person* means, in addition to anyone committed under judicial warrant, any orphan, neglected or delinquent child, mentally defective or insane person, or other dependent or incompetent person entrusted to another's custody by or through a recognized social agency or otherwise by authority of law.

§ 11.406 Criminal coercion.

(a) A person is guilty of criminal coercion if, with purpose to unlawfully restrict another's freedom of action to his or her detriment, he or she threatens to:

(1) Commit any criminal offense; or

(2) Accuse anyone of a criminal offense; or

(3) Take or withhold action as an official, or cause an official to take or withhold action.

(b) Criminal coercion is classified as a misdemeanor.

§ 11.407 Sexual assault.

(a) A person who has sexual contact with another person not his or her spouse, or causes such other person to have sexual contact with him or her, is guilty of sexual assault as a misdemeanor, if:

(1) He or she knows that the conduct is offensive to the other person; or

(2) He or she knows that the other person suffers from a mental disease or defect which renders him or her incapable of appraising the nature or his or her conduct; or

(3) He or she knows that the other person is unaware that a sexual act is being committed; or

(4) The other person is less than ten years old; or

(5) He or she has substantially impaired the other person's power to appraise or control his or her conduct, by administering or employing without the other's knowledge drugs, intoxicants or other means for the purpose of preventing resistance; or

(6) The other person is less than 16 years old and the actor is at least four years older than the other person; or

(7) The other person is less than 21 years old and the actor is his or her guardian or otherwise responsible for general supervision of his or her welfare; or

(8) The other person is in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over him or her.

(b) Sexual contact is any touching of the sexual or other intimate parts of the person for the purpose of arousing or gratifying sexual desire, or for the purpose of abusing, humiliating, harassing, or degrading the victim.

§ 11.408 Indecent exposure.

A person commits a misdemeanor if he or she exposes his or her genitals under circumstances in which he or she knows his or her conduct is likely to cause affront or alarm.

§ 11.409 Reckless burning or exploding.

A person commits a misdemeanor if he or she purposely starts a fire or causes an explosion, whether on his or her property or another's, and thereby recklessly:

(a) Places another person in danger of death or bodily injury; or

(b) Places a building or occupied structure of another in danger of damage or destruction.

§ 11.410 Criminal mischief.

(a) A person is guilty of criminal mischief if he or she:

(1) Damages tangible property of another purposely, recklessly, or by negligence in the employment of fire, explosives, or other dangerous means; or

(2) Purposely or recklessly tampers with tangible property of another so as to endanger person or property; or

(3) Purposely or recklessly causes another to suffer pecuniary loss by deception or threat.

(b) Criminal mischief is a misdemeanor if the actor purposely causes pecuniary loss in excess of $100, or a petty misdemeanor if he or she purposely or recklessly causes pecuniary loss in excess of $25. Otherwise, criminal mischief is a violation.

§ 11.411 Criminal trespass.

(a) A person commits an offense if, knowing that he or she is not licensed or privileged to do so, he or she enters or surreptitiously remains in any building or occupied structure. An offense under this subsection is a misdemeanor if it is committed in a dwelling at night. Otherwise it is a petty misdemeanor.

(b) A person commits an offense if, knowing that he or she is not licensed or privileged to do so, he or she enters or remains in any place as to which notice against trespass is given by:

(1) Actual communication to the actor; or

(2) Posting in a manner prescribed by law or reasonably likely to come to the attention of intruders; or

(3) Fencing or other enclosure manifestly designed to exclude intruders.

(c) An offense under this section constitutes a petty misdemeanor if the offender defies an order to leave personally communicated to him or her by the owner of the premises or other authorized person. Otherwise it is a violation.

§ 11.412 Theft.

A person who, without permission of the owner, shall take, shoplift, possess or exercise unlawful control over movable property not his or her own or under his or her control with the purpose to deprive the owner thereof or who unlawfully transfers immovable property of another or any interest therein with the purpose to benefit himself or herself or another not entitled thereto shall be guilty of theft, a misdemeanor.

§ 11.413 Receiving stolen property.

A person is guilty of receiving stolen property, a misdemeanor, if he or she purposely receives, retains, or disposes of movable property of another knowing that it has been stolen, or believing that

it has probably been stolen, unless the property is received, retained, or disposed with purpose to restore it to the owner. *Receiving* means acquiring possession, control or title, or lending on the security of the property.

§ 11.414 Embezzlement.

A person who shall, having lawful custody of property not his or her own, appropriate the same to his or her own use, with intent to deprive the owner thereof, shall be guilty of embezzlement, a misdemeanor.

§ 11.415 Fraud.

A person who shall by willful misrepresentation or deceit, or by false interpreting, or by the use of false weights or measures obtain any money or other property, shall be guilty of fraud, a misdemeanor.

§ 11.416 Forgery.

(a) A person is guilty of forgery, a misdemeanor, if, with purpose to defraud or injure anyone, or with knowledge that he or she is facilitating fraud or injury to be perpetrated by anyone, he or she:

(1) Alters, makes, completes, authenticates, issues or transfers any writing of another without his or her authority; or

(2) Utters any writing which he or she knows to be forged in a manner above specified.

(b) "Writing" includes printing or any other method of recording information, money, coins, tokens, stamps, seals, credit cards, badges, trademarks, and other symbols of value, right, privilege, or identification.

§ 11.417 Extortion.

A person who shall willfully, by making false charges against another person or by any other means whatsoever, extort or attempt to extort any moneys, goods, property, or anything else of any value, shall be guilty of extortion, a misdemeanor.

§ 11.418 Misbranding.

A person who shall knowingly and willfully misbrand or alter any brand or mark on any livestock of another person, shall be guilty of a misdemeanor.

§ 11.419 Unauthorized use of automobiles and other vehicles.

A person commits a misdemeanor if he or she operates another person's automobile, airplane, motorcycle, motorboat, or other motor-propelled vehicle without consent of the owner. It is an affirmative defense to prosecution under this section that the actor reasonably believed that the owner would have consented to the operation had he or she known of it.

§ 11.420 Tampering with records.

A person commits a misdemeanor if, knowing that he or she has no privilege to do so, he or she falsifies, destroys, removes or conceals any writing or record, with purpose to deceive or injure anyone or to conceal any wrongdoing.

§ 11.421 Bad checks.

(a) A person who issues or passes a check or similar sight order for the payment of money, knowing that it will not be honored by the drawee, commits a misdemeanor.

(b) For the purposes of this section, an issuer is presumed to know that the check or order would not be paid, if:

(1) The issuer had no account with the drawee at the time the check or order was issued; or

(2) Payment was refused by the drawee for lack of funds, upon presentation within 30 days after issue, and the issuer failed to make good within 10 days after receiving notice of that refusal.

§ 11.422 Unauthorized use of credit cards.

(a) A person commits a misdemeanor if he or she uses a credit card for the purpose of obtaining property or services with knowledge that:

(1) The card is stolen or forged; or

(2) The card has been revoked or cancelled; or

(3) For any other reason his or her use of the card is unauthorized by the issuer.

(b) *Credit card* means a writing or other evidence of an undertaking to pay for property or services delivered or rendered to or upon the order of a designated person or bearer.

§ 11.423 Defrauding secured creditors.

A person commits a misdemeanor if he or she destroys, conceals, encumbers, transfers or otherwise deals with property subject to a security interest with purpose to hinder that interest.

§ 11.424 Neglect of children.

(a) A parent, guardian, or other person supervising the welfare of a child under 18 commits a misdemeanor if he or she knowingly endangers the child's welfare by violating a duty of care, protection or support.

(b) A parent, guardian, or other person supervising the welfare of a child under 18 commits a violation if he or she neglects or refuses to send the child to school.

§ 11.425 Persistent non-support.

A person commits a misdemeanor if he or she persistently fails to provide support which he or she can provide and which he or she knows he or she is legally obliged to provide to a spouse, child or other dependent.

§ 11.426 Bribery.

(a) A person is guilty of bribery, a misdemeanor, if he or she offers, confers or agrees to confer upon another, or solicits, accepts or agrees to accept from another:

(1) Any pecuniary benefit as consideration for the recipient's decision, opinion, recommendation, vote or other exercise of discretion as a public servant, party official or voter; or

(2) Any benefit as consideration for the recipient's decision, vote, recommendation or other exercise of official discretion in a judicial or administrative proceeding; or

(3) Any benefit as consideration for a violation of a known legal duty as a public servant or party official.

(b) It is no defense to prosecution under this section that a person whom the actor sought to influence was not qualified to act in the desired way, whether because he or she had not yet assumed office, or lacked jurisdiction, or for any other reason.

§ 11.427 Threats and other improper influence in official and political matters.

(a) A person commits a misdemeanor if he or she:

(1) Threatens unlawful harm to any person with purpose to influence his or her decision, vote or other exercise of discretion as a public servant, party official or voter; or

(2) Threatens harm to any public servant with purpose to influence his decision, opinion, recommendation, vote or other exercise of discretion in a judicial or administrative proceeding; or

(3) Threatens harm to any public servant with purpose to influence his decision, opinion, recommendation, vote or other exercise of discretion in a judicial or administrative proceeding; or

(b) It is no defense to prosecution under this section that a person whom the actor sought to influence was not qualified to act in the desired way, whether because he or she had not yet assumed office, or lacked jurisdiction, or for any other reason.

§ 11.428 Retaliation for past official action.

A person commits a misdemeanor if he or she harms another by any unlawful act in retaliation for anything lawfully done by the latter in the capacity of public servant.

§ 11.429 Perjury.

A person is guilty of perjury, a misdemeanor, if in any official proceeding he or she makes a false

statement under oath or equivalent affirmation, or swears or affirms the truth of a statement previously made, when the statement is material and he or she does not believe it to be true.

(a) No person shall be guilty of an offense under this section if he or she retracted the falsification in the course of the proceeding in which it was made before it became manifest that the falsification was or would be exposed and before the falsification substantially affected the proceeding.

(b) No person shall be convicted of an offense under this section where proof of falsity rests solely upon contradiction by testimony of a single person other than the defendant.

§ 11.430 False alarms.

A person who knowingly causes a false alarm of fire or other emergency to be transmitted to, or within any organization, official or volunteer, for dealing with emergencies involving danger to life or property commits a misdemeanor.

§ 11.431 False reports.

(a) A person who knowingly gives false information to any law enforcement officer with the purpose to implicate another commits a misdemeanor.

(b) A person commits a petty misdemeanor if he or she:

(1) Reports to law enforcement authorities an offense or other incident within their concern knowing that it did not occur; or

(2) Pretends to furnish such authorities with information relating to an offense or incident when he or she knows he or she has no information relating to such offense or incident.

§ 11.432 Impersonating a public servant.

A person commits a misdemeanor if he or she falsely pretends to hold a position in the public service with purpose to induce another to submit to such pretended official authority or otherwise to act in reliance upon that pretense to his or her prejudice.

§ 11.433 Disobedience to lawful order of court.

A person who willfully disobeys any order, subpoena, summons, warrant or command duly issued, made or given by any Court of Indian Offenses or any officer thereof is guilty of a misdemeanor.

§ 11.434 Resisting arrest.

A person commits a misdemeanor if, for the purpose of preventing a public servant from effecting a lawful arrest or discharging any other duty, he or she creates a substantial risk of bodily injury to the public servant or anyone else, or employs means justifying or requiring substantial force to overcome the resistance.

§ 11.435 Obstructing justice.

A person commits a misdemeanor if, with purpose to hinder the apprehension, prosecution, conviction or punishment of another for a crime, he or she harbors or conceals the other, provides a weapon, transportation, disguise or other means of escape, warns the other of impending discovery, or volunteers false information to a law enforcement officer.

§ 11.436 Escape.

A person is guilty of the offense of escape, a misdemeanor, if he or she unlawfully removes himself or herself from official detention or fails to return to official detention following temporary leave granted for a specific purpose or limited period.

§ 11.437 Bail jumping.

A person set at liberty by court order, with or without bail, upon condition that he or she will subsequently appear at a specified time or place, commits a misdemeanor if, without lawful excuse, he or she fails to appear at that time and place.

§ 11.438 Flight to avoid prosecution or judicial process.

A person who shall absent himself or herself from the Indian country over which the Court of Indian Offenses exercises jurisdiction for the purpose of avoiding arrest, prosecution or other judicial process shall be guilty of a misdemeanor.

§ 11.439 Witness tampering.

(a) A person commits a misdemeanor if, believing that an official proceeding or investigation is pending or about to be instituted, he or she attempts to induce or otherwise cause a witness or informant to:

(1) Testify or inform falsely; or

(2) Withhold any testimony, information, document or thing; or

(3) Elude legal process summoning him or her to supply evidence; or

(4) Absent himself or herself from any proceeding or investigation to which he or she has been legally summoned.

(b) A person commits a misdemeanor if he or she harms another by any unlawful act in retaliation for anything lawfully done in the capacity of witness or informant.

§ 11.440 Tampering with or fabricating physical evidence.

A person commits a misdemeanor if, believing that an official proceeding or investigation is pending or about to be instituted, he or she:

(a) Alters, destroys, conceals, or removes any record, document or thing with purpose to impair its verity or availability in such proceeding or investigation; or

(b) Makes, presents or uses any record, document or thing knowing it to be false and with the purpose to mislead a public servant who is or may be engaged in such proceeding or investigation.

§ 11.441 Disorderly conduct.

(a) A person is guilty of disorderly conduct if, with purpose to cause public inconvenience, annoyance or alarm or recklessly creating a risk thereof, he or she:

(1) Engages in fighting or threatening, or in violent or tumultuous behavior;

(2) Makes unreasonable noise or offensively coarse utterance, gesture or display, or addresses abusive language to any person present; or

(3) Creates a hazardous or physically offensive condition by any act which serves no legitimate purpose of the actor.

(b) *Public* means affecting or likely to affect persons in a place to which the public has access; among the places included are highways, schools, prisons, apartments, places of business or amusement, or any neighborhood.

(c) An offense under this section is a petty misdemeanor if the actor's purpose is to cause substantial harm or serious inconvenience, or if he or she persists in disorderly conduct after reasonable warning or request to desist. Otherwise, disorderly conduct is a violation.

§ 11.442 Riot; failure to disperse.

(a) A person is guilty of riot, a misdemeanor, if he or she participates with two or more others in a course of disorderly conduct:

(1) With purpose to commit or facilitate the commission of a felony or misdemeanor; or

(2) With purpose to prevent or coerce official action; or

(3) When the actor or any other participant to the knowledge of the actor uses or plans to use a firearm or other deadly weapon.

(b) Where three or more persons are participating in a course of disorderly conduct likely to cause substantial harm or serious inconvenience, a law enforcement officer may order the participants and others in the immediate vicinity to disperse. A person who refuses or knowingly fails to obey such an order commits a misdemeanor.

§ 11.443 Harassment.

A person commits a petty misdemeanor if, with purpose to harass another, he or she:

(a) Makes a telephone call without purpose or legitimate communication; or

(b) Insults, taunts or challenges another in a manner likely to provoke violent or disorderly response; or

(c) Makes repeated communications anonymously or at extremely inconvenient hours, or in offensively coarse language; or

(d) Subjects another to an offensive touching; or

(e) Engages in any other course of alarming conduct serving no legitimate purpose.

§ 11.444 Carrying concealed weapons.

A person who goes about in public places armed with a dangerous weapon concealed upon his or her person is guilty of a misdemeanor unless he or she has a permit to do so signed by a magistrate of the Court of Indian Offenses.

§ 11.445 Driving violations.

(a) A person who shall operate any vehicle in a manner dangerous to the public safety is guilty of reckless driving, a petty misdemeanor, unless it is committed while under the influence of alcohol, in which case it is a misdemeanor.

(b) A person who shall drive, operate or be in physical control of any motor vehicle when his or her alcohol concentration is 0.10 or more shall be guilty of driving while intoxicated, a misdemeanor.

(c) Any person who drives, operates, or is in physical control of a motor vehicle within the Indian country under the jurisdiction of a Court of Indian Offenses consents to a chemical test of his or her blood, breath, or urine for the purpose of determining the presence of alcohol, to be administered at the direction of a law enforcement officer. The test may be required when the officer has reasonable cause to believe that a person is driving while intoxicated, and the person has either been lawfully placed under arrest for a violation of this section, or has been involved in a motor vehicle accident or collision resulting in property damage, personal injury, or death.

(d) In the absence of an applicable tribal traffic code, the provisions of state traffic laws applicable in the state where a Court of Indian Offenses is located shall apply to the operation of motor vehicles within the Indian country under the jurisdiction of the Court of Indian Offenses with the exception that any person found guilty of violating such laws shall, in lieu of the penalties provided under state law, be sentenced according to the standards found in § 11.450 depending on the nature of the traffic code violation, and may be deprived of the right to operate any motor vehicle for a period not to exceed 6 months.

§ 11.446 Cruelty to animals.

A person commits a misdemeanor if he or she purposely or recklessly:

(a) Subjects any animal in his or her custody to cruel neglect; or

(b) Subjects any animal to cruel mistreatment; or

(c) Kills or injures any animal belonging to another without legal privilege or consent of the owner.

(d) Causes one animal to fight with another.

§ 11.447 Maintaining a public nuisance.

A person who permits his or her property to fall into such condition as to injure or endanger the safety, health, comfort, or property of his or her neighbors, is guilty of a violation.

§ 11.448 Abuse of office.

A person acting or purporting to act in an official capacity or taking advantage of such actual or purported capacity commits a misdemeanor if, knowing that his or her conduct is illegal, he or she:

(a) Subjects another to arrest, detention, search, seizure, mistreatment, dispossession, assessment, lien or other infringement of personal or property rights; or

(b) Denies or impedes another in the exercise or enjoyment of any right, privilege, power or immunity.

§ 11.449 Violation of an approved tribal ordinance.

A person who violates the terms of any tribal ordinance duly enacted by the governing body of the tribe occupying the Indian country under the jurisdiction of the Court of Indian Offenses and approved by the Assistant Secretary—Indian Affairs or his or her designee, is guilty of an offense and upon conviction thereof shall be sentenced as provided in the ordinance.

§ 11.450 Maximum fines and sentences of imprisonment.

(a) A person convicted of an offense under this code may be sentenced as follows:

(1) If the offense is a misdemeanor, to a term of imprisonment not to exceed six months or to a fine not to exceed $500.00, or both;

(2) If the offense is a petty misdemeanor, to a term of imprisonment not to exceed three months or to a fine not to exceed $250.00, or both;

(3) If the offense is a violation, to a term of imprisonment not to exceed one month or to a fine not to exceed $100.00, or both;

(b) The fines listed above may be imposed in addition to any amounts ordered paid as restitution.

Subpart E—Civil Actions

§ 11.500 Law applicable to civil actions.

(a) In all civil cases the Court of Indian Offenses shall apply any laws of the United States that may be applicable, any authorized regulations of the Interior Department, and any ordinances or customs of the tribe occupying the area of Indian country over which the court has jurisdiction, not prohibited by Federal laws.

(b) Where any doubt arises as to the customs and usages of the tribe the court may request the advice of counselors familiar with these customs and usages.

(c) Any matters that are not covered by the traditional customs and usages of the tribe, or by applicable Federal laws and regulations, shall be decided by the Court of Indian Offenses according to the law of the State in which the matter in dispute lies.

§ 11.501 Judgments in civil actions.

(a) In all civil cases, judgment shall consist of an order of the court awarding damages to be paid to the injured party, or directing the surrender of certain property to the injured party, or the performance of some other act for the benefit of the injured party, including injunctive relief and declaratory judgments.

(b) Where the injury inflicted was the result of carelessness of the defendant, the judgment shall fairly compensate the injured party for the loss he or she has suffered.

(c) Where the injury was deliberately inflicted, the judgment shall impose an additional penalty upon the defendant, which additional penalty may run either in favor of the injured party or in favor of the tribe.

(d) Where the injury was inflicted as a result of accident, or where both the complainant and the defendant were at fault, the judgment shall compensate the injured party for a reasonable part of the loss he or she has suffered.

(e) No judgment shall be given on any suit unless the defendant has actually received notice of such suit and ample opportunity to appear in court in his or her defense.

§ 11.502 Costs in civil actions.

(a) The court may assess the accruing costs of the case against the party or parties against whom judgment is given. Such costs shall consist of the expenses of voluntary witnesses for which either party may be responsible and the fees of jurors in those cases where a jury trial is had, and any further incidental expenses connected with the procedure before the court as the court may direct.

(b) In all civil suits the complainant may be required to deposit with the clerk of the court a fee or other security in a reasonable amount to cover costs and disbursements in the case.

§ 11.503 Applicable civil procedure.

The procedure to be followed in civil cases shall be the Federal Rules of Civil Procedure applicable to United States district courts, except insofar as such procedures are superseded by order of the Court of Indian Offenses or by the existence of inconsistent tribal rules of procedure.

§ 11.504 Applicable rules of evidence.

Courts of Indian Offenses shall be bound by the Federal Rules of Evidence, except insofar as such rules are superseded by order of the Court of Indian Offenses, or by the existence of inconsistent tribal rules of evidence.

Supart F—Domestic Relations

§ 11.600 Marriages.

(a) A magistrate of the Court of Indian Offenses shall have the authority to perform marriages.

(b) A valid marriage shall be constituted by:

(1) The issuance of a marriage license by the Court of Indian Offenses and by execution of a consent to marriage by both parties to the marriage and recorded with the clerk of the court; or

(2) The recording of a tribal custom marriage with the Court of Indian Offenses within 30 days of the tribal custom marriage ceremony by the signing by both parties of a marriage register maintained by the clerk of the court.

(c) A marriage license application shall include the following information:

(1) Name, sex, occupation, address, social security number, and date and place of birth of each party to the proposed marriage;

(2) If either party was previously married, his or her name, and the date, place, and court in which the marriage was dissolved or declared invalid or the date and place of death of the former spouse;

(3) Name and address of the parents or guardian of each party;

(4) Whether the parties are related to each other and, if so, their relationship; and

(5) The name and date of birth of any child of which both parties are parents, born before the making of the application, unless their parental rights and the parent and child relationship with respect to the child have been terminated.

(6) A certificate of the results of any medical examination required by either applicable tribal ordinances, or the laws of the State in which the Indian country under the jurisdiction of the Court of Indian Offenses is located.

§ 11.601 Marriage licenses.

A marriage license shall be issued by the clerk of the court in the absence of any showing that the proposed marriage would be invalid under any provision of this part or tribal custom, and upon written application of an unmarried male and unmarried female, both of whom must be eighteen (18) years or older. If either party to the marriage is under the age of eighteen (18), that party must have the written consent of parent or his or her legal guardian.

§ 11.602 Solemnization.

(a) In the event a judge, clergyman, tribal official or anyone authorized to do so solemnizes a marriage, he or she shall file with the clerk of the court certification thereof within thirty (30) days of the solemnization.

(b) Upon receipt of the marriage certificate, the clerk of the court shall register the marriage.

§ 11.603 Invalid or prohibited marriages.

(a) The following marriages are prohibited:

(1) A marriage entered into prior to the dissolution of an earlier marriage of one of the parties;

(2) A marriage between an ancestor and a descendant, or between a brother and a sister, whether the relationship is by the half or the whole blood;

(3) A marriage between an aunt and a nephew or between an uncle and a niece, whether the relationship is by the half or the whole blood, except as to marriages permitted by established tribal custom;

(4) A marriage prohibited by custom and usage of the tribe.

(b) Children born of a prohibited marriage are legitimate.

§ 11.604 Declaration of invalidity.

(a) The Court of Indian Offenses shall enter a decree declaring the invalidity of a marriage entered into under the following circumstances:

(1) A party lacked capacity to consent to the marriage, either because of mental incapacity or infirmity or by the influence of alcohol, drugs, or other incapacitating substances; or

(2) A party was induced to enter into a marriage by fraud or duress; or

(3) A party lacks the physical capacity to consummate the marriage by sexual intercourse and at the time the marriage was entered into, the other party did not know of the incapacity; or

(4) The marriage is prohibited under § 11.603.

(b) A declaration of invalidity may be sought by either party to the marriage or by the legal representative of the party who lacked capacity to consent.

§ 11.605 Dissolution.

(a) The Court of Indian Offenses shall enter a decree of dissolution of marriage if:

(1) The court finds that the marriage is irretrievably broken, if the finding is supported by evidence that (i) the parties have lived separate and apart for a period of more than 180 days next preceding the commencement of the proceeding, or (ii) there is serious marital discord adversely affecting the attitude of one or both of the parties towards the marriage;

(2) The court finds that either party, at the time the action was commenced, was domiciled within the Indian country under the jurisdiction of the court, and that the domicile has been maintained for 90 days next preceding the making of the findings; and

(3) To the extent it has jurisdiction to do so, the court has considered, approved, or provided for child custody, the support of any child entitled to support, the maintenance of either spouse, and the disposition of property; or has provided for a separate later hearing to complete these matters.

(b) If a party requests a decree of legal separation rather than a decree of dissolution of marriage, the Court of Indian Offenses shall grant the decree in that form unless the other party objects.

§ 11.606 Dissolution proceedings.

(a) Either or both parties to the marriage may initiate dissolution proceedings.

(b) If a proceeding is commenced by one of the parties, the other party shall be served in the manner provided by the applicable rule of civil procedure and within thirty days after the date of service may file a verified response.

(c) The verified petition in a proceeding for dissolution of marriage or legal separation shall allege that the marriage is irretrievably broken and shall set forth:

(1) The age, occupation, and length of residence within the Indian country

under the jurisdiction of the court of each party;

(2) The date of the marriage and the place at which it was registered;

(3) That jurisdictional requirements are met and that the marriage is irretrievably broken in that either (i) the parties have lived separate and apart for a period of more than 180 days next preceding the commencement of the proceeding or (ii) there is a serious marital discord adversely affecting the attitude of one or both of the parties toward the marriage, and there is no reasonable prospect of reconciliation;

(4) The names, age, and addresses of all living children of the marriage and whether the wife is pregnant;

(5) Any arrangement as to support, custody, and visitation of the children and maintenance of a spouse; and

(6) The relief sought.

§ 11.607 Temporary orders and temporary injunctions.

(a) In a proceeding for dissolution of marriage or for legal separation, either party may move for temporary maintenance or temporary support of a child of the marriage entitled to support. The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and the amounts requested.

(b) As a part of a motion for temporary maintenance or support or by an independent motion accompanied by an affidavit, either party may request the Court of Indian Offenses to issue a temporary injunction for any of the following relief:

(1) Restraining any person from transferring, encumbering, concealing, or otherwise disposing of any property except in the usual course of business or for the necessities of life, and, if so restrained, requiring him or her to notify the moving party of any proposed extraordinary expenditures made after the order is issued;

(2) Enjoining a party from molesting or disturbing the peace of the other party or of any child;

(3) Excluding a party from the family home or from the home of the other party upon a showing that physical or emotional harm would otherwise result;

(4) Enjoining a party from removing a child from the jurisdiction of the court; and

(5) Providing other injunctive relief proper in the circumstances.

(c) The court may issue a temporary restraining order without requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that irreparable injury will result to the moving party if no order is issued until the time for responding has elapsed.

(d) A response may be filed within 20 days after service of notice of a motion or at the time specified in the temporary restraining order.

(e) On the basis of the showing made, the Court of Indian Offenses may issue a temporary injunction and an order for temporary maintenance or support in amounts and on terms just and proper under the circumstances.

(f) A temporary order or temporary injunction:

(1) Does not prejudice the rights of the parties or the child which are to be adjudicated at subsequent hearings in a proceeding;

(2) May be revoked or modified before the final decree as deemed necessary by the court;

(3) Terminates when the final decree is entered or when the petition for dissolution or legal separation is voluntarily dismissed.

§ 11.608 Final decree; disposition of property; maintenance; child support; custody.

(a) A decree of dissolution of marriage or of legal separation is final when entered, subject to the right of appeal.

(b) The Court of Indian Offenses shall have the power to impose judgment as follows in dissolution or separation proceedings:

(1) Apportion or assign between the parties the non-trust property and non-trust assets belonging to either or both and whenever acquired, and whether the title thereto is in the name of the husband or wife or both;

(2) Grant a maintenance order for either spouse in amounts and for periods of time the court deems just;

(3) Order either or both parents owing a duty of support to a child to pay an amount reasonable or necessary for his or her support, without regard to marital misconduct, after considering all relevant factors. In addition:

(i) When a support order is issued by a Court of Indian Offenses, the order may provide that a portion of an absent parent's wages be withheld to comply with the order on the earliest of the following dates: When an amount equal to one month's support becomes overdue; when the absent parent requests withholding; or at such time as the Court of Indian Offenses selects. The amount to be withheld may include an amount to be applied toward liquidation of any overdue support.

(ii) If the Court of Indian Offenses finds that an absent parent who has been ordered to pay child support is now residing within the jurisdiction of another Court of Indian Offenses, an Indian tribal court, or a state court, it shall petition such court for reciprocal enforcement and provide it with a copy of the support order.

(iii) If the Court of Indian Offenses receives a petition from another Court of Indian Offenses, an Indian tribal court or a state court, it shall take necessary steps to determine paternity, establish an order for child support, register a foreign child support order or enforce orders as requested in the petition.

(iv) The Court of Indian Offenses shall assist a state in the enforcement and collection of past-due support from Federal tax refunds of absent parents living within the Indian country over which the court has jurisdiction.

(v) Any person or agency who has provided support or assistance to a child under 18 years of age shall be a proper person to bring an action under this section and to recover judgment in an amount equal to such past-paid support or assistance, including costs of bringing the action.

(4) Make child custody determinations in accordance with the best interest of the child.

(5) Restore the maiden name of the wife.

§ 11.609 Determination of paternity and support.

The Court of Indian Offenses shall have jurisdiction of all suits brought to determine the paternity of a child and to obtain a judgment for the support of the child. A judgment of the court establishing the identity of the father of the child shall be conclusive of that fact in all subsequent determinations of inheritance by the Court of Indian Offenses or by the Department of the Interior.

§ 11.610 Appointment of guardians.

The court shall have the jurisdiction to appoint or remove legal guardians for minors and for persons who are incapable of managing their own affairs under terms and conditions to be prescribed by the court.

§ 11.611 Change of name.

The Court of Indian Offenses shall have the authority to change the name of any person upon petition of such person or upon the petition of the parents of any minor, if at least one parent is Indian. Any order issued by the court for a change of name shall be kept as a permanent record and copies shall be filed with the agency superintendent, the governing body of the tribe occupying the Indian country under the jurisdiction of the court, and any appropriate agency of the State in which the court is located.

Subpart G—Probate Proceedings

§ 11.700 Probate jurisdiction.

The Court of Indian Offenses shall have jurisdiction to administer in probate the estate of a deceased Indian who, at the time of his or her death, was domiciled or owned real or personal property situated within the Indian country under the jurisdiction of the court to the extent that such estate consists of property which does not come within the jurisdiction of the Secretary of the Interior.

§ 11.701 Duty to present will for probate.

Any custodian of a will shall deliver the same to the Court of Indian Offenses within 30 days after receipt of information that the maker thereof is deceased. Any custodian who fails to do so shall be liable for damages sustained by any person injured thereby.

§ 11.702 Proving and admitting will.

(a) Upon initiating the probate of an estate, the will of the decedent shall be filed with the court. Such will may be proven and admitted to probate by filing an affidavit of an attesting witness which identifies such will as being the will which the decedent executed and declared to be his or her last will. If the evidence of none of the attesting witnesses is available, the court may allow proof of the will by testimony that the signature of the testator is genuine.

(b) At any time within 90 days after a will has been admitted to probate, any person having an interest in the decedent's estate may contest the validity of such will. In the event of such contest, a hearing shall be held to determine the validity of such will.

(c) Upon considering all relevant information concerning the will, the Court of Indian Offenses shall enter an order affirming the admission of such will to probate, or rejecting such will and ordering that the probate of the decedent's estate proceed as if the decedent had died intestate.

§ 11.703 Petition and order to probate estate.

(a) Any person having an interest in the administration of an estate which is subject to the jurisdiction of the court may file a written petition with the court requesting that such estate be administered in probate.

(b) The Court of Indian Offenses shall enter an order directing that the estate be probated upon finding that the decedent was an Indian who, at the time of his or her death, was domiciled or owned real or personal property situated within the Indian country under the jurisdiction of the court other than trust or other restricted property, that the decedent left an estate subject to the jurisdiction of the court, and that it is necessary to probate such estate.

§ 11.704 Appointment and duties of executor or administrator.

(a) Upon ordering the estate to be probated, the court shall appoint an administrator to administer the estate of the decedent. The person nominated by the decedent's will, if any, to be the executor of the estate shall be so appointed, provided such person is willing to serve in such capacity.

(b) The executor or administrator appointed by the court shall have the following duties and powers during the administration of the estate and until discharged by the court:

(1) To send by certified mail true copies of the order to probate the estate and the will of the decedent admitted to probate by such order, if any, to each heir, devisee and legatee of the decedent, at their last known address, to the governing body of the tribe or tribes occupying the Indian country over which the court has jurisdiction, and to the agency superintendent;

(2) To preserve and protect the decedent's property within the estate and the heirs, so far as is possible;

(3) To investigate promptly all claims against the decedent's estate and determine their validity;

(4) To cause a written inventory of all the decedent's property within the estate to be prepared promptly with each article or item being separately set forth and cause such property to be exhibited to and appraised by an appraiser, and the inventory and appraisal thereof to be filed with the court;

(5) To give promptly all persons entitled thereto such notice as is required under these proceedings;

(6) To account for all property within the estate which may come into his or her possession or control, and to maintain accurate records of all income received and disbursements made during the course of the administration.

§ 11.705 Removal of executor or administrator.

The Court of Indian Offenses may order the executor or administrator to show cause why he or she should not be discharged, and may discharge the executor or administrator for failure, neglect or improper performance of his or her duties.

§ 11.706 Appointment and duties of appraiser.

(a) Upon ordering an estate to be probated, the court shall appoint a disinterested and competent person as an appraiser to appraise all of the decedent's real and personal property within the estate.

(b) It shall be the duty of the appraiser to appraise separately the true cash value of each article or item of property within the estate, including debts due the decedent, and to indicate the appraised value of each such article or item of property set forth in the inventory of the estate and to certify such appraisal by subscribing his or her name to the inventory and appraisal.

§ 11.707 Claims against estate.

(a) Creditors of the estate or those having a claim against the decedent shall file their claim with the clerk of the court or with the executor or administrator within 60 days from official notice of the appointment of the executor or administrator published locally in the press or posting of signs at the tribal and agency offices, giving appropriate notice for the filing of claims.

(b) The executor or administrator shall examine all claims within 90 days of his or her appointment and notify the claimant whether his or her claim is accepted or rejected. If the claimant is notified of rejection, he or she may request a hearing before the court by filing a petition requesting such hearing within 30 days following the notice of rejection.

§ 11.708 Sale of property.

After filing the inventory and appraisal, the executor or administrator may petition the court for authority to sell personal property of the estate for purposes of paying the expenses of last illness and burial expenses, expenses of administration, claims, if any, against the estate, and for the purpose of distribution. If, in the court's judgment, such sale is in the best interest of the estate, the court shall order such sale and prescribe the terms upon which the property shall be sold.

§ 11.709 Final account.

(a) When the affairs of an estate have been fully administered, the executor or administrator shall file a final account with the court, verified by his or her oath. Such final account shall affirmatively set forth:

(1) That all claims against the estate have been paid, except as shown, and that the estate has adequate unexpended and unappropriated funds to fully pay such remaining claims;

(2) The amount of money received and expended by him or her, from whom received and to whom paid, referring to the vouchers for each of such payments;

(3) That there is nothing further to be done in the administration of the estate except as shown in the final account;

(4) The remaining assets of the estate, including unexpended and unappropriated money, at the time of filing the final account;

(5) The proposed determination of heirs and indicate the names, ages, addresses and relationship to the decedent of each distributee and the proposed distributive share and value thereof each heir, devisee or legatee is to receive; and

(6) A petition that the court set a date for conducting a hearing to approve the final account, to determine the heirs, devisees and legatees of the decedent and the distributive share each distributee is to receive.

§ 11.710 Determination of the court.

At the time set for hearing upon the final account, the Court of Indian Offenses shall proceed to examine all evidence relating to the distribution of the decedent's estate, and consider objections to the final account which may have been filed by any heir, devisee, legatee, or other person having an interest in the distribution of the estate. Upon conclusion of the hearing, the court shall enter an order:

(a) Providing for payment of approved claims;

(b) Determining the decedent's heirs, devisees and legatees, indicating the names, ages and addresses of each, and the distributive share of the remaining estate which each distributee is to receive; and

(c) Directing the administrator or executor to distribute such distributive share to those entitled thereto.

§ 11.711 Descent and distribution.

(a) The court shall distribute the estate according to the terms of the will of the decedent which has been admitted to probate.

(b) If the decedent died intestate or having left a will which has been rejected by the court, the estate shall be distributed as follows:

(1) According to the laws and customs of the tribe if such laws and customs are proved; or

(2) According to state law absent the existence of tribal laws or customs.

(c) If no person takes under the above subsections, the estate shall escheat to the tribe.

§ 11.712 Closing estate.

(a) Upon finding that the estate has been fully administered and is in a condition to be closed, the court shall enter an order closing the estate and discharging the executor or administrator.

(b) If an order closing the estate has not been entered by the end of nine months following appointment of executor or administrator, the executor or administrator shall file a written report with the court stating the reasons why the estate has not been closed.

§ 11.713 Small estates.

An estate having an appraised value which does not exceed $2,000.00 and which is to be inherited by a surviving spouse and/or minor children of the deceased may, upon petition of the executor or administrator, and a hearing before the court, be distributed without administration to those entitled thereto, upon which the estate shall be closed.

Subpart H—Appellate Proceedings

§ 11.800 Jurisdiction of appellate division.

The jurisdiction of the appellate division shall extend to all appeals from final orders and judgments of the trial division, by any party except the prosecution in a criminal case where there has been a jury verdict. The appellate division shall review all issues of law presented to it which arose in the case, but shall not reverse the trial division decision unless the legal error committed affected a substantial right of a party or the outcome of the case.

§ 11.801 Procedure on appeal.

(a) An appeal must be taken within 15 days from the judgment appealed from by filing a written notice of appeal with the clerk of the court.

(b) The notice of appeal shall specify the party or parties taking the appeal, shall designate the judgment, or part thereof appealed from, and shall contain a short statement of reasons for the appeal. The clerk of the court shall mail a copy of the notice of appeal to all parties other than parties taking the appeal.

(c) In civil cases, other parties shall have 15 days to respond to the notice of appeal.

(d) In civil cases, the appellant may request the trial division to stay the judgment pending action on the notice of appeal, and, if the appeal is allowed, either party may request the trial division to grant or stay an injunction pending appeal. The trial division may condition a stay or injunction pending appeal on the depositing of cash or bond sufficient to cover damages awarded by the court together with interest.

§ 11.802 Judgment against surety.

Any surety to a bond submits himself or herself to the jurisdiction of the Court of Indian Offenses, and irrevocably appoints the clerk of the court as his or her agent upon whom any papers affecting his or her liability on the bond may be served.

§ 11.803 Record on appeal.

Within 20 days after a notice of appeal is filed, the clerk of court shall certify and file with the appellate division the record of the case.

§ 11.804 Briefs and memoranda.

(a) Within 30 days after the notice of appeal is filed, the appellant may file a written brief in support of his or her appeal. An original and one copy for each appellee shall be filed with the clerk of court who shall mail one copy by registered or certified mail to each appellee.

(b) The appellee shall have 30 days after receipt of the appellant's brief within which to file an answer brief. An original and one copy for each appellant shall be filed with the clerk of the court who shall mail one copy, by registered or certified mail, to each appellant.

§ 11.805 Oral argument.

The appellate division shall assign all criminal cases for oral argument. The court may in its discretion assign civil cases for oral argument or may dispose of civil cases on the briefs without argument.

§ 11.806 Rules of court.

The chief magistrate of the appellate division shall prescribe all necessary rules concerning the operation of the appellate division and the time and place of meeting of the court.

Supart I—Children's Court

§ 11.900 Definitions.

For purposes of sections pertaining to the children's court:

(a) *Abandon* means the leaving of a minor without communication or failing to support a minor for a period of one year or more with no indication of the parents' willingness to assume a parental role.

(b) *Adult* means a person eighteen (18) years or older.

(c) *Counsel* means an attorney admitted to the bar of a state or the District of Columbia or a lay advocate admitted to practice before the Court of Indian Offenses.

(d) *Custodian* means one who has physical custody of a minor and who is providing food, shelter and supervision to the minor.

(e) *Custody* means the power to control the day-to-day activities of the minor.

(f) *Delinquent Act* means an act which, if committed by an adult, would be designated a crime under this part or under an ordinance of the tribe.

(g) *Detention* means the placement of a minor in a physically restrictive facility.

(h) *Guardian* means a person other than the minor's parent who is by law responsible for the care of the minor.

(i) *Guardian ad Litem* means a person appointed by the court to represent the minor's interests before the court.

(j) *Juvenile Offender* means a person who commits a delinquent act prior to his or her eighteenth birthday.

(k) *Minor* means:

(1) A person under 18 years of age,

(2) A person 18 years of age or older concerning whom proceedings are commenced in the children's court prior to his or her eighteenth birthday, or

(3) A person 18 years of age or older who is under the continuing jurisdiction of the children's court.

(l) *Minor-in-need-of-care* means a minor who:

(1) Has no parent or guardian available and willing to take care of him or her;

(2) Is unwilling to allow his or her parent or guardian to take care of him or her;

(3) Has suffered or is likely to suffer a physical or emotional injury, inflicted by other than accidental means, which causes or creates a substantial risk of death, disfigurement, impairment of bodily functions or emotional health;

(4) Has not been provided with adequate food, clothing, shelter, medical care, education or supervision by his or her parent, guardian or custodian;

(5) Has been sexually abused;

(6) Has been committing delinquent acts as a result of parental pressure, guidance or approval; or,

(7) Has been committing status offenses.

(m) *Status offense* means an offense which, if committed by an adult, would not be designated a crime under this part or under an ordinance of the tribe.

§ 11.901 The children's court established.

When conducting proceedings under §§ 11.900–11.1114 of this part, the Court of Indian Offenses shall be known as the "Children's Court".

§ 11.902 Non-criminal proceedings.

No adjudication upon the status of any minor in the jurisdiction of the children's court shall be deemed criminal or be deemed a conviction of a crime, unless the children's court refers the matter to the Court of Indian Offenses. Neither the disposition nor evidence given before the children's court shall be admissible as evidence against the child in any proceeding in another court.

§ 11.903 Presenting officer.

(a) The agency superintendent and the chief magistrate of the children's court shall jointly appoint a presenting officer to carry out the duties and responsibilities set forth under §§ 11.900–11.1114 of this part. The presenting officer's qualifications shall be the same as the qualifications for the official who acts as prosecutor for the Court of Indian Offenses. The presenting officer may be the same person who acts as prosecutor in the Court of Indian Offenses.

(b) The presenting officer shall represent the tribe in all proceedings under §§ 11.900–11.1114 of this part.

§ 11.904 Guardian ad litem.

The children's court, under any proceeding authorized by this part, shall appoint, for the purposes of the proceeding, a guardian ad litem for a minor, where the court finds that the minor does not have a natural or adoptive parent, guardian or custodian willing and able to exercise effective guardianship, or where the parent, guardian, or custodian has been accused of abusing or neglecting the minor.

§ 11.905 Jurisdiction.

The children's court has exclusive, original jurisdiction of the following proceedings:

(a) Proceedings in which a minor who resides in a community for which the court is established is alleged to be a juvenile offender, unless the children's court transfers jurisdiction to the Court of Indian Offenses pursuant to § 11.907 of this part.

(b) Proceedings in which a minor who resides in a community for which the court is established is alleged to be a minor-in-need-of-care.

§ 11.906 Rights of parties.

(a) In all hearings and proceedings under §§ 11.900–11.1114 of this part the following rights will be observed unless modified by the particular section describing a hearing or proceeding:

(1) Notice of the hearing or proceeding shall be given the minor, his or her parents, guardian or custodian and their counsel. The notice shall be delivered by certified mail. The notice shall contain:

(i) The name of the court;

(ii) The title of the proceeding; and

(iii) The date, time and place of the proceeding.

(b) The children's court magistrate shall inform the minor and his or her parents, guardian or custodian of their right to retain counsel, and, in juvenile delinquency proceedings, shall tell them: "You have a right to have a lawyer or other person represent you at this proceeding. If you cannot afford to hire counsel, the court will appoint counsel for you."

(c) If the children's court magistrate believes there is a potential conflict of interest between the minor and his or her parents, guardian, or custodian with respect to legal representation, the court shall appoint another person to act as counsel for the minor.

(d) The minor need not be a witness against, nor otherwise incriminate, himself or herself.

(e) The children's court shall give the minor, and the minor's parent, guardian or custodian the opportunity to introduce evidence, to be heard on their own behalf and to examine witnesses.

§ 11.907 Transfer to Court of Indian Offenses.

(a) The presenting officer or the minor may file a petition requesting the children's court to transfer the minor to the Court of Indian Offenses if the minor is 14 years of age or older and is alleged to have committed an act that would have been considered a crime if committed by an adult.

(b) The children's court shall conduct a hearing to determine whether jurisdiction of the minor should be transferred to the Court of Indian Offenses.

(1) The transfer hearing shall be held no more than 30 days after the petition is filed.

(2) Written notice of the transfer hearing shall be given to the minor and the minor's parents, guardian or custodian at least 72 hours prior to the hearing.

(c) All the rights listed in § 11.906 shall be afforded the parties at the transfer hearing.

(d) The following factors shall be considered when determining whether to transfer jurisdiction of the minor to the Court of Indian Offenses:

(1) The nature and seriousness of the offense with which the minor is charged.

(2) The nature and condition of the minor, as evidenced by his or her age; mental and physical condition; past record of offenses; and responses to past children's court efforts at rehabilitation.

(e) The children's court may transfer jurisdiction of the minor to the Court of Indian Offenses if the children's court finds clear and convincing evidence that both of the following circumstances exist:

(1) There are no reasonable prospects for rehabilitating the minor through resources available to the children's court; and

(2) The offense allegedly committed by the minor evidences a pattern of

conduct which constitutes a substantial danger to the public.

(f) When a minor is transferred to the Court of Indian Offenses, the children's court shall issue a written transfer order containing reasons for its order. The transfer order constitutes a final order for purposes of appeal.

§ 11.908 Court records.

(a) A record of all hearings under §§ 11.900–11.1114 of this part shall be made and preserved.

(b) All children's court records shall be confidential and shall not be open to inspection to anyone but the minor, the minor's parents or guardian, the presenting officer, or others by order of the children's court.

§ 11.909 Law enforcement records.

(a) Law enforcement records and files concerning a minor shall be kept separate from the records and files of adults.

(b) All law enforcement records and files shall be confidential and shall not be open to inspection to anyone but the minor, the minor's parents or guardian, the presenting officer, or others by order of the children's court.

§ 11.910 Expungement.

When a minor who has been the subject of any proceeding before the children's court attains his or her twenty-first birthday, the children's court magistrate shall order the court records and the law enforcement records pertaining to the minor to be destroyed, except for adoption records which shall not be destroyed under any circumstances.

§ 11.911 Appeal.

(a) For purposes of appeal, a record of the proceedings shall be made available to the minor and parents, guardian or custodian. Costs of obtaining the record shall be paid by the party seeking the appeal.

(b) Any party to a children's court hearing may appeal a final order or disposition of the case by filing a written notice of appeal with the children's court within 30 days of the final order of disposition.

(c) No decree or disposition of a hearing shall be stayed by such appeal.

(d) All appeals shall be conducted in accordance with this part.

§ 11.912 Contempt of court.

Any willful disobedience or interference with any order of the children's court constitutes contempt of court which may be punished in accordance with this part.

Subpart J—Juvenile Offender Procedure

§ 11.1000 Complaint.

A complaint must be filed by a law enforcement officer or by the presenting officer and sworn to by a person who has knowledge of the facts alleged. The complaint shall be signed by the complaining witness, and shall contain:

(a) A citation to the specific section(s) of this part which gives the children's court jurisdiction of the proceedings;

(b) A citation to the section(s) of this part which the minor is alleged to have violated;

(c) The name, age, and address of the minor who is the subject of the complaint, if known; and

(d) A plain and concise statement of the facts upon which the allegations are based, including the date, time, and location at which the alleged facts occurred.

§ 11.1001 Warrant.

The children's court may issue a warrant directing that a minor be taken into custody if the court finds there is probable cause to believe the minor committed the delinquent act alleged in the complaint.

§ 11.1002 Custody.

A minor may be taken into custody by a law enforcement officer if:

(a) The officer observes the minor committing a delinquent act; or

(b) The officer has reasonable grounds to believe a delinquent act has been committed that would be a crime if committed by an adult, and that the minor has committed the delinquent act; or

(c) A warrant pursuant to § 11.1001 has been issued for the minor.

§ 11.1003 Law enforcement officer's duties.

A law enforcement officer who takes a minor into custody pursuant to § 11.1002 of this part shall:

(a) Give the following warnings to any minor taken into custody prior to any questioning:

(1) The minor has a right to remain silent;

(2) Anything the minor says can be used against the minor in court;

(3) The minor has the right to the presence of counsel during questioning; and

(4) If he or she cannot afford counsel, the court will appoint one.

(b) Release the minor to the minor's parent, guardian, or custodian and issue a verbal advice or warning as may be appropriate, unless shelter care or detention is necessary.

(c) If the minor is not released, make immediate and recurring efforts to notify the minor's parents, guardian, or custodian to inform them that the minor has been taken into custody and inform them of their right to be present with the minor until an investigation to determine the need for shelter care or detention is made by the court.

§ 11.1004 Detention and shelter care.

(a) A minor alleged to be a juvenile offender may be detained, pending a court hearing, in the following places:

(1) A foster care facility approved by the tribe;

(2) A detention home approved by the tribe; or

(3) A private family home approved by the tribe.

(b) A minor who is 16 years of age or older may be detained in a jail facility used for the detention of adults only if:

(1) A facility in paragraph (a) of this section is not available or would not assure adequate supervision of the minor;

(2) The minor is housed in a separate room from the detained adults; and

(3) Routine inspection of the room where the minor is housed is conducted every 30 minutes to assure his or her safety and welfare.

§ 11.1005 Preliminary inquiry.

(a) If a minor is placed in detention or shelter care, the children's court shall conduct a preliminary inquiry within 24 hours for the purpose of determining:

(1) Whether probable cause exist to believe the minor committed the alleged delinquent act; and

(2) Whether continued detention or shelter care is necessary pending further proceedings.

(b) If a minor has been released to the parents, guardian or custodian, the children's court shall conduct a preliminary inquiry within three days after receipt of the complaint for the sole purpose of determining whether probable cause exists to believe the minor committed the alleged delinquent act.

(c) If the minor's parents, guardian or custodian is not present at the preliminary inquiry, the children's court shall determine what efforts have been made to notify and to obtain the presence of the parents, guardian, or custodian. If it appears that further efforts are likely to produce the parents, guardian or custodian, the children's court shall recess for no more than 24 hours and direct that continued efforts be made to obtain the presence of parents, guardian or custodian.

(d) All the rights listed in § 11.906 shall be afforded the parties in a preliminary inquiry.

(e) The children's court shall hear testimony concerning:

(1) The circumstances that gave rise to the complaint or the taking of the minor into custody; and

(2) The need for detention or shelter care.

(f) If the children's court finds that probable cause exists to believe the minor performed the delinquent act, the minor shall be released to the parents, guardian or custodian, and ordered to appear at the adjudicatory hearing unless:

(1) The act is serious enough to warrant continued detention or shelter care;

(2) There is reasonable cause to believe the minor will run away and be unavailable for further proceedings; or

(3) There is reasonable cause to believe that the minor will commit a serious act causing damage to person or property.

(g) The children's court may release a minor pursuant to paragraph (f) of this section to a relative or other responsible adult tribal member if the parent, guardian, or custodian of the minor consents to the release. If the minor is ten years of age or older, the minor and the parents, guardian or custodian must both consent to the release.

(h) Upon a finding that probable cause exists to believe that the minor has committed the alleged delinquent act and that there is need for detention or shelter care, the minor's detention or shelter care shall be continued. Otherwise, the complaint shall be dismissed and the minor released.

§ 11.1006 Investigation by the presenting officer.

(a) The presenting officer shall make an investigation following the preliminary inquiry or the release of the minor to his or her parents, guardian or custodian to determine whether the interests of the minor and the public require that further action be taken. Upon the basis of this investigation, the presenting officer may:

(1) Determine that no further action be taken;

(2) Begin transfer proceedings to the Court of Indian Offenses pursuant to § 11.907 of this part; or

(3) File a petition pursuant to § 11.1007 of this part to initiate further proceedings. The petition shall be filed within 48 hours of the preliminary inquiry if the minor is in detention or shelter care. If the minor has been previously released to his or her parents, guardian or custodian, relative or responsible adult, the petition shall be filed within ten days of the preliminary inquiry.

§ 11.1007 Petition.

(a) Proceedings under §§ 11.1000–11.1014 of this part shall be instituted by a petition filed by the presenting officer on behalf of the tribe and in the interests of the minor. The petition shall state:

(1) The name, birth date, and residence of the minor;

(2) The names and residences of the minor's parents, guardian or custodian;

(3) A citation to the specific section(s) of this part which gives the children's court jurisdiction of the proceedings;

(4) A citation to the section(s) of this part which the minor is alleged to have violated; and

(5) If the minor is in detention or shelter care, the time the minor was taken into custody.

§ 11.1008 Date of hearing.

Upon receipt of the petition, the children's court shall set a date for the hearing which shall not be more than 15 days after the children's court receives the petition from the presenting officer. If the adjudicatory hearing is not held within 15 days after filing of the petition, the petition shall be dismissed and cannot be filed again, unless;

(a) The hearing is continued upon motion of the minor; or

(b) The hearing is continued upon motion of the presenting officer by reason of the unavailability of material evidence or witnesses and the children's court finds the presenting officer has exercised due diligence to obtain the material evidence or witnesses and reasonable grounds exist to believe that the material evidence or witnesses will become available.

§ 11.1009 Summons.

(a) At least five working days prior to the adjudicatory hearing, the children's court shall issue summons to:

(1) The minor;

(2) The minor's parents, guardian or custodian; and

(3) Any person the children's court or the minor believes necessary for the adjudication of the hearing.

(b) The summons shall contain the name of the court, the title of the proceedings, and the date, time and place of the hearing.

(c) A copy of the petition shall be attached to the summons.

(d) The summons shall be delivered personally by a law enforcement officer or appointee of the children's court. If the summons cannot be delivered personally, the court may deliver it by certified mail.

§ 11.1010 Adjudicatory hearing.

(a) The children's court shall conduct the adjudicatory hearing for the sole purpose of determining the guilt or innocence of the minor. The hearing shall be private and closed.

(b) All the rights listed in § 11.906 shall be afforded the parties at the adjudicatory hearing. The notice requirements of § 11.906(a) are met by a summons issued pursuant to § 11.1009.

(c) If the minor admits the allegations of the petition, the children's court shall proceed to the dispositional stage only if the children's court finds that:

(1) The minor fully understands his or her rights as set forth in § 11.906 of this part and fully understands the potential consequences of admitting the allegations;

(2) The minor voluntarily, intelligently and knowingly admits to all facts necessary to constitute a basis for children's court action; and

(3) The minor has not, in the purported admission to the allegations, set forth facts which, if found to be true, constitute a defense to the allegations.

(d) The children's court shall hear testimony concerning the circumstances which gave rise to the complaint.

(e) If the allegations of the petition are sustained by proof beyond a reasonable doubt, the children's court shall find the minor to be a juvenile offender and proceed to the dispositional hearing.

(f) A finding that a minor is a juvenile offender constitutes a final order for purposes of appeal.

§ 11.1011 Dispositional hearing.

(a) A dispositional hearing shall take place not more than 15 days after the adjudicatory hearing.

(b) At the dispositional hearing, the children's court shall hear evidence on the question of proper disposition.

(c) All the rights listed in § 11.906 shall be afforded the parties in the dispositional hearing.

(d) At the dispositional hearing, the children's court shall consider any predisposition report, physician's report or social study it may have ordered and afford the parents an opportunity to controvert the factual contents and conclusions of the reports. The children's court shall also consider the alternative predisposition report prepared by the minor and his or her attorney, if any.

(e) The dispositional order constitutes a final order for purposes of appeal.

§ 11.1012 Dispositional alternatives.

(a) If a minor has been adjudged a juvenile offender, the children's court may make the following disposition:

(1) Place the minor on probation subject to conditions set by the children's court;

(2) Place the minor in an agency or institution designated by the children's court; or

(3) Order restitution to the aggrieved party.

(b) The dispositional orders are to be in effect for the time limit set by the children's court, but no order may continue after the minor reaches 18 years of age, unless the dispositional order was made within six months of the minor's eighteenth birthday or after the minor had reached 18 years of age, in which case the disposition may not continue for more than six months.

(c) The dispositional order is to be reviewed at the children's court discretion, but at least once every six months.

§ 11.1013 Modification of dispositional order.

(a) A dispositional order of the children's court may be modified upon a showing of a change of circumstances.

(b) The children's court may modify a dispositional order at any time upon the motion of the minor or the minor's parents, guardian or custodian.

(c) If the modification involves a change of custody, the children's court shall conduct a hearing pursuant to paragraph (d) of this section.

(d) A hearing to review a dispositional order shall be conducted as follows:

(1) All the rights listed in § 11.906 shall be afforded the parties in the hearing to review the dispositional order. The notice required by paragraph (a) of § 11.906 shall be given at least 48 hours before the hearing.

(2) The children's court shall review the performance of the minor, the minor's parents, guardian or custodian, and other persons providing assistance to the minor and the minor's family.

(3) In determining modification of disposition, the procedures prescribed in § 11.1011 of this part shall apply.

(4) If the request for review of disposition is based upon an alleged violation of a court order, the children's court shall not modify its dispositional order unless it finds clear and convincing evidence of the violation.

§ 11.1014 Medical examination.

The children's court may order a medical examination for a minor who is alleged to be a juvenile offender.

Subpart K—Minor-in-Need-of-Care Procedure

§ 11.1100 Complaint.

A complaint must be filed by a law enforcement officer or by the presenting officer and sworn to by a person who has knowledge of the facts alleged. The complaint shall be signed by the complaining witness and shall contain:

(a) A citation to the specific section of this part which gives the children's court jurisdiction of the proceedings;

(b) The name, age and address of the minor who is the subject of the complaint, if known; and

(c) A plain and concise statement of the facts upon which the allegations are based, including the date, time and location at which the alleged facts occurred.

§ 11.1101 Warrant.

The children's court may issue a warrant, directing that a minor be taken into custody if the children's court finds there is probable cause to believe the minor is a minor-in-need-of-care.

§ 11.1102 Custody.

A minor may be taken into custody by a law enforcement officer if:

(a) The officer has reasonable grounds to believe that the minor is a minor-in-need-of-care and that the minor is in immediate danger from his or her surroundings and that removal is necessary; or

(b) A warrant pursuant to § 11.1101 of this part has been issued for the minor.

§ 11.1103 Law enforcement officer's duties.

Upon taking a minor into custody the officer shall:

(a) Release the minor to the minor's parents, guardian or custodian and issue a verbal advice or warning as may be appropriate, unless shelter care is necessary.

(b) If the minor is not released, make immediate and recurring efforts to notify the minor's parents, guardian or custodian to inform them that the minor has been taken into custody and inform them of their right to be present with the minor until an investigation to determine the need for shelter care is made by the children's court.

§ 11.1104 Shelter care.

(a) A minor alleged to be a minor-in-need-of-care may be detained, pending a court hearing, in the following places:

(1) A foster care facility authorized under tribal or state law to provide foster care, group care or protective residence;

(2) A private family home approved by the tribe; or

(3) A shelter care facility operated by a licensed child welfare services agency and approved by the tribe.

(b) A minor alleged to be a minor-in-need-of care may not be detained in a jail or other facility used for the detention of adults. If such minor is detained in a facility used for the detention of juvenile offenders, he or she must be detained in a room separate from juvenile offenders, and routine inspection of the room where the minor is detained must be conducted every 30 minutes to assure his or her safety and welfare.

§ 11.1105 Preliminary inquiry.

(a) If a minor is placed in shelter care, the children's court shall conduct a preliminary inquiry with 24 hours for the purpose of determining:

(1) Whether probable cause exists to believe the minor is a minor-in-need-of care; and

(2) Whether continued shelter care is necessary pending further proceedings.

(b) If a minor has been released to the parents, guardian or custodian, the children's court shall conduct a preliminary inquiry within three days after receipt of the complaint for the sole purpose of determining whether probable cause exists to believe the minor is a minor-in-need-of-care.

(c) If the minor's parents, guardian or custodian is not present at the preliminary inquiry, the children's court shall determine what efforts have been made to notify and obtain the presence of the parent, guardian or custodian. If it appears that further efforts are likely to produce the parent, guardian or custodian, the children's court shall recess for no more than 24 hours and direct that continued efforts be made to obtain the presence of the parents, guardian or custodian.

(d) All the rights listed in § 11.906 of this part shall be afforded the parties in the minor-in-need-of care preliminary inquiry except that the court is not required to appoint counsel if the parties cannot afford one. Notice of the inquiry shall be given to the minor, and his or her parents, guardian or custodian and their counsel as soon as the time for the inquiry has been established.

(e) The children's court shall hear testimony concerning:

(1) The circumstances that gave rise to the complaint or the taking of the minor into custody; and

(2) The need for shelter care.

(f) If the children's court finds that probable cause exists to believe the minor is a minor-in-need-of-care, the minor shall be released to the parents, guardian or custodian, and ordered to appear at the adjudicatory hearing, unless:

(1) There is reasonable cause to believe that the minor will run away and be unavailable for further proceedings;

(2) There is reasonable cause to believe that the minor is in immediate danger from parents, guardian or

custodian and that removal from them is necessary; or

(3) There is a reasonable cause to believe that the minor will commit a serious act causing damage to person or property.

(g) The children's court may release the minor pursuant to paragraph (f) of this section to a relative or other responsible adult tribal member if the parents, guardian or custodian of the minor consent to the release. If the minor is ten years to age or older, the minor and the parents, guardian or custodian must both consent to the release.

(h) Upon finding that probable cause exists to believe that the minor is a minor-in-need-of-care and that there is a need for shelter care, the minor's shelter care shall be continued. Otherwise, the complaint shall be dismissed and the minor released.

§ 11.1106 Investigation by the presenting officer.

The presenting officer shall make an investigation following the preliminary inquiry or the release of the minor to the parents, guardian or custodian to determine whether the interests of the minor and the public require that further action be taken. Upon the basis of this investigation, the presenting officer may:

(a) Determine that no further action be taken; or

(b) File a petition pursuant to § 11.1107 of this part in the children's court to initiate further proceedings. The petition shall be filed within 48 hours of the preliminary inquiry if the minor is in shelter care. If the minor has been previously released to the parents, guardian or custodian, relative or responsible adult, the petition shall be filed within ten days of the preliminary inquiry.

§ 11.1107 Petition.

Proceedings under §§ 11.1100–11.1114 of this part shall be instituted by a petition filed by the presenting officer on behalf of the tribe and the interests of the minor. The petition shall state:

(a) The name, birth date, and residence of the minor;

(b) The names and residences of the minor's parents, guardian or custodian;

(c) A citation to the specific section of this part which gives the children's court jurisdiction of the proceedings; and

(d) If the minor is in shelter care, the place of shelter care and the time he or she was taken into custody.

§ 11.1108 Date of hearing.

Upon receipt of the minor-in-need-of-care petition, the children's court shall set a date for the hearing which shall not be more than 15 days after the children's court receives the petition from the presenting officer. If the adjudicatory hearing is not held within 15 days after the filing of the petition, it shall be dismissed unless;

(a) The hearing is continued upon motion of the minor; or

(b) The hearing is continued upon motion of the presenting officer by reason of the unavailability of material evidence or witnesses and the children's court finds the presenting officer has exercised due diligence to obtain the material evidence or witnesses and reasonable grounds exist to believe that the material evidence or witnesses will become available.

§ 11.1109 Summons.

(a) At least five working days prior to the adjudicatory hearing for a minor-in-need-of-care, the children's court shall issue summons to:

(1) The minor;

(2) The minor's parents, guardian or custodian; and

(3) Any person the children's court or the minor believes necessary for the proper adjudication of the hearing.

(b) The summons shall contain the name of the court; the title of the proceedings, and the date, time and place of the hearing.

(c) A copy of the petition shall be attached to the summons.

(d) The summons shall be delivered personally by a tribal law enforcement officer or appointee of the children's court. If the summons cannot be delivered personally, the court may deliver it by certified mail.

§ 11.1110 Minor-in-need-of-care adjudicatory hearing.

(a) The children's court shall conduct the adjudicatory hearing for the sole purpose of determining whether the minor is a minor-in-need-of-care. The hearing shall be private and closed.

(b) All the rights listed in § 11.906 of this part shall be afforded the parties in the adjudicatory hearing, except that the court may not appoint counsel if the parties cannot afford one. The notice requirements of § 11.906(a) are met by a summons issued pursuant to § 11.1109.

(c) The children's court shall hear testimony concerning the circumstances which gave rise to the complaint.

(d) If the circumstances of the petition are sustained by clear and convincing evidence, the children's court shall find the minor to be a minor-in-need-of-care and proceed to the dispositional hearing.

(e) A finding that a minor is a minor-in-need-of-care constitutes a final order for purposes of appeal.

§ 11.1111 Minor-in-need-of-care dispositional hearing.

(a) No later than 15 days after the adjudicatory hearing, a dispositional hearing shall take place to hear evidence on the question of proper disposition.

(b) All the rights listed in § 11.906 of this part shall be afforded the parties in the dispositional hearing except the right to free court-appointed counsel. Notice of the hearing shall be given to the parties at least 48 hours before the hearing.

(c) At the dispositional hearing the children's court shall consider any predisposition report or other study it may have ordered and afford the parties an opportunity to controvert the factual contents and conclusions of the reports. The children's court shall also consider the alternative predisposition report prepared by the minor and his or her attorney, if any.

(d) The dispositional order constitutes a final order for purposes of appeal.

§ 11.1112 Dispositional alternatives.

(a) If a minor has been adjudged a minor-in-need-of-care, the children's court may:

(1) Permit the minor to remain with his or her parents, guardian or custodian subject to such limitations and conditions as the court may prescribe; or, if reasonable efforts to have the minor return or remain in his or her own home are unsuccessful, the children's court may make whichever of the following dispositions is in the best interest of the minor;

(2) Place the minor with a relative within the boundaries of the reservation subject to such limitations and conditions as the court may prescribe;

(3) Place the minor in a foster home within the boundaries of the reservation which has been approved by the tribe subject to such limitations and conditions as the court may prescribe;

(4) Place the minor in shelter care facilities designated by the court;

(5) Place the minor in a foster home or a relative's home outside the boundaries of the reservation subject to such limitations and conditions as the court may prescribe; or

(6) Recommend that termination proceedings begin.

(b) Whenever a minor is placed in a home or facility located outside the boundaries of the reservation, the court may require the party receiving custody of the minor to sign an agreement that the minor will be returned to the court upon order of the court.

(c) The dispositional orders are to be in effect for the time limit set by the children's court, but no order may continue after the minor reaches 18 years of age, unless the dispositional order was made within six months of the minor's eighteenth birthday, in which case the disposition may not continue for more than six months.

(d) The dispositional orders are to be reviewed at the children's court discretion, but at least once every six months to determine the continuing need for and appropriateness of placement, to determine the extent of progress made, and to assess the probability of the minor's return to his or her home.

(e) A permanency planning hearing must be held within 18 months after the original placement and every six months thereafter to determine the future status of the minor except when the minor is returned to his or her home and court supervision ceases.

§ 11.1113 Modification of dispositional order.

(a) A dispositional order of the children's court may be modified upon a showing of a change of circumstances.

(b) The children's court may modify a dispositional order at any time upon motion of the minor or the minor's parents, guardian or custodian.

(c) If the modification involves a change of custody, the children's court shall conduct a hearing pursuant to paragraph (d) of this section to review the dispositional order.

(d) A hearing to review a dispositional order shall be conducted as follows:

(1) All the rights listed in § 11.906 of this part shall be afforded the parties in the review of the disposition hearing except the right to free court-appointed counsel. Notice of the hearing shall be given the parties at least 48 hours before the hearing.

(2) The children's court shall review the performance of the minor, the minor's parents, guardian or custodian, and other persons providing assistance to the minor and the minor's family.

(3) In determining modification of disposition, the procedures prescribed in § 11.1111 of this part shall apply.

(4) If the request for review of disposition is based upon an alleged violation of a court order, the children's court shall not modify its dispositional order unless it finds clear and convincing evidence of the violation.

§ 11.1114 Termination.

(a) Parental rights to a child may be terminated by the children's court according to the procedures in this section.

(b) Proceedings to terminate parental rights shall be instituted by a petition filed by the presenting officer on behalf of the tribe or by the parents or guardian of the child. The petition shall state:

(1) The name, birth date, and residence of the minor;

(2) The names and residences of the minor's parents, guardian or custodian;

(3) If the child is in detention or shelter care, the place of detention or shelter care and the time he was taken into custody; and

(4) The reasons for the petition.

(c) Upon receipt of the petition, the children's court shall set a date for the termination hearing which shall not be more than 15 days after the children's court receives the petition from the presenting officer. The hearing may be continued:

(1) On motion of the minor's parents, guardian or custodian; or

(2) Upon motion of the presenting officer by reason of the unavailability of material evidence or witnesses and the children's court finds the presenting officer has exercised due diligence to obtain the material evidence or witnesses and reasonable grounds exist to believe that the material evidence or witnesses will become available.

(d) Summons:

(1) At least five working days prior to the termination hearing, the children's court shall issue summons to the minor, the minor's parents, guardian or custodian, and any other person the court or the minor's parents, guardian or custodian believes necessary for the proper adjudication of the hearing.

(2) The summons shall contain the name of the court, the title of the proceedings, and the date, time and place of the hearing.

(3) A copy of the petition shall be attached to the summons.

(4) The summons shall be delivered personally by a law enforcement officer or appointee of the children's court. If the summons cannot be delivered personally, the court may deliver it by certified mail.

(e) The children's court shall conduct the termination hearing for the sole purpose of determining whether parental rights shall be terminated. The hearing shall be private and closed.

(1) All the rights listed in § 11.906 shall be afforded the parties in the termination hearing except the right to a free court-appointed counsel. The minor's parents may not be compelled to be witnesses against, nor otherwise incriminate themselves.

(2) The children's court shall hear testimony concerning the circumstances that gave rise to the petition, and the need for termination of parental rights.

(3) The children's court may terminate parental rights if, following efforts to prevent or eliminate the need to remove the minor, it finds such efforts to have been unsuccessful, and it finds beyond a reasonable doubt that:

(i) The child has been abandoned;

(ii) The minor has suffered physical injuries, willfully and repeatedly inflicted by his or her parent(s) which cause or create a substantial risk of death, disfigurement, or impairment of bodily functions;

(iii) The parent(s) has subjected the minor to willful and repeated acts of sexual abuse;

(iv) The minor has suffered serious emotional or mental harm due to the act of the parent(s); or

(v) The voluntary written consent of both parents has been acknowledged before the court.

(f) Dispositional alternatives:

(1) If parental rights to a child are terminated, the children's court shall place the minor in a foster care or shelter care facility which has been approved by the tribe, and follow the adoption procedures of the tribe, or, in their absence, the adoption procedures of the state within which it is located.

(2) If parental rights to a child are not terminated, the children's court shall make a disposition according to § 11.1112 of this part.

(g) The termination order constitutes a final order for purposes of appeal.

(h) No adjudication of termination of parental rights shall affect the minor's enrollment status as a member of any tribe or the minor's degree of blood quantum of any tribe.

§ 11.1115 Information collection.

(a) The information collection requirements contained in § 11.600 and § 11.606 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*, and assigned approval number 1076–0094. The information is being collected to obtain a marriage license (§ 11.600) and a divorce decree (§ 11.606) from the Courts of Indian Offenses, and will be used by the courts to issue a marriage license or divorce decree. Response to this request is required to obtain a benefit.

(b) Public reporting for this information collection is estimated to average .25 hours per response, including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the information collection. Direct comments regarding the burden estimate or any other aspect of this information collection to the Bureau of Indian Affairs, Information Collection

Clearance Officer, Room 336–SIB, 1849 C Street, NW., Washington, DC 20240; and the Office of Information and Regulatory Affairs [Project 1076–0094], Office of Management and Budget, Washington, DC 20502.

3. A new part 12, The Indian Police, is added, containing newly redesignated §§12.100 through 12.105. The table of contents and authority for the new part 12 are as follows:

PART 12—THE INDIAN POLICE

Sec. 12.100 Superintendent in command.
Sec. 12.101 Police commissioners.
Sec. 12.102 Police training.
Sec. 12.103 Minimum standards for police programs.
Sec. 12.104 Minimum standards for detention programs.
Sec. 12.105 Return of equipment.

Authority: 25 U.S.C. 2, 13.

Woodrow W. Hopper, Jr.,

Acting Assistant Secretary, Indian Affairs.

[FR Doc. 93–25714 Filed 10–20–93; 8:45 am]

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October 21, 1993

Part III

Department of Education

Educational Media Research, Production, Distribution, and Training Program; Notices

DEPARTMENT OF EDUCATION

Educational Media Research, Production, Distribution, and Training Program

AGENCY: Department of Education.

ACTION: Notice of final funding priorities for fiscal year 1994.

SUMMARY: The Secretary announces funding priorities for fiscal year 1994 under the Educational Media Research, Production, Distribution, and Training Program. The Secretary takes this action to focus Federal financial assistance on those areas of greatest need. These priorities are intended to ensure the continued availability of closed-captioned television sports programming, expand on the number and types of video-described projects, include research on video description and research on captioning technology as a language development tool, continue the video captioning process, and explore the future direction of captioned media programs.

EFFECTIVE DATE: These priorities take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these priorities, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Ernest E. Hairston, U.S. Department of Education, 400 Maryland Avenue SW., room 4629, Switzer Building, Washington, DC 20202–2644. Telephone: (202) 205–9172. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8169; or the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: This notice contains seven priorities under the Educational Media Research, Production, Distribution, and Training Program authorized under part F of the Individuals with Disabilities Education Act (IDEA). The purposes of the program are to promote the general welfare of deaf and hard of hearing individuals and individuals with visual impairments, and to promote the educational advancement of individuals with disabilities.

One priority in this notice provides cooperative agreements to ensure the continued availability of closed-captioned sports programming. In addition, other priorities will expand on the number and types of video-described projects to include (1) broadcast and cable video description, (2) described home videos, and (3) research on video description. These priorities will also provide (1) research on captioning technology as a language development tool and (2) a symposium to explore the future directions of captioned media programs.

An additional priority in this notice provides for a cooperative agreement to assist in the provision of video captioning services such as obtaining, screening, evaluating, and captioning educational videos and related media.

These priorities support the National Education Goals by assisting those with disabilities in meeting Goal 1, school readiness, and Goal 5, adult literacy.

On June 23, 1993 the Secretary published a notice of proposed priorities in the **Federal Register** (58 FR 34168).

Note: This notice of final priorities does not solicit applications. A notice inviting applications under this program is published in a separate notice in this issue of the **Federal Register**.

Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed priorities, twenty-one parties submitted comments. An analysis of the comments and of changes in the priorities since publication of the notice of the proposed priorities follows. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under applicable statutory authority—are not addressed.

General

Comment: Two commenters urged the Secretary to make more than one award under the various priorities in order to continue to generate private sector support or to increase competition.

Discussion: In announcing priorities, the Secretary does not generally establish numbers of awards unless it is critical to the activities included under the priority.

Changes: The specified number of projects has been dropped from priorities two and three, thereby allowing for the possibility of more than one award.

Comment: Three commenters recommended a priority for captioned videos, and one suggested deleting the priority for described videos.

Discussion: The Secretary recognizes the importance of captioned videos, and supports it under activities described in Priority 7. The Secretary also recognizes the importance of video description for persons with visual impairments and the need for continued support of this activity which is not currently supported through other sources.

Changes: None.

Comment: Four commenters indicated an interest in support for closed-captioning of basic cable television programming.

Discussion: The Secretary recognizes the importance of access to programs shown on local stations, national commercial and public broadcast networks, as well as syndicated and cable programs shown nationally. In making awards the Secretary will continue to support the closed-captioning of basic cable television programming under activities such as Priority 1 of this notice as well as under several current awards.

Changes: None.

Comment: One commenter proposed a cooperative agreement for a series of deaf theatre arts festivals to share the wealth of talent, skill, and theatrical productions developed by grantees under the program during the past two years.

Discussion: The Secretary agrees that there is a need to systematically and broadly disseminate the rich cultural experiences being developed by the grantees. Although the priorities in this notice do not address this issue, consideration may be given to it or a similar vehicle for sharing experiences in future years.

Changes: None.

Comment: One commenter proposed a priority to support the videotape productions of original cultural programs by and for deaf and hard of hearing individuals. The priority would provide seed money to develop the productions. The dissemination of the videotapes would provide a wider audience of consumers access to quality cultural arts programming.

The commenter also proposed a priority to provide support for the development of videotape materials that deal with issues in mental and physical health affecting deaf and hard of hearing individuals. Videotapes would make use of innovative approaches to portray deaf and hard of hearing persons dealing with these issues and identifying possible solutions.

Discussion: The Secretary agrees that there is merit in producing a varied set of videotapes geared toward deaf and hard of hearing individuals, as well as those with other disabilities. However, the activities described in these final priorities are of even greater importance if individuals with disabilities are to have continued access to existing media.

Changes: None.

Absolute Priority 1—Closed-Captioned Sports Programs

Comment: One commenter requested that the Secretary add to this priority specific language giving preference to continued captioning of sports programs currently captioned as well as language to indicate inclusion of specific types of cable programming (i.e., basic, premium, and pay-per-view).

Discussion: The Secretary is not inclined to give preference to currently captioned sports programs because programs that have been previously captioned may have been captioned as the result of program availability, and not necessarily consumer preference. The Secretary wishes to give emphasis to consumer preference. Further, the priority as written encompasses all types of cable programming.

Changes: None.

Comment: One commenter suggested that priorities for captioning should focus on persuading networks and stations to assume a greater degree of responsibility for covering the cost of captioning.

Discussion: The Secretary agrees that increased private sector funding of closed-captioning is important. In fact, since 1980 the portion of captioning paid for through non-federal support has grown significantly, particularly in prime-time news and sports programming on major broadcast networks. The Secretary believes that as the implementation of the Decoder Circuitry Act increases the number of homes with decoders, this trend is likely to accelerate. Therefore, the Secretary believes there is no need at this time to add such a focus to the language of this priority.

Changes: None.

Absolute Priority 2—Broadcast and Cable Television Description and Absolute Priority 3—Described Home Video

Comment: One commenter requested a clarification regarding the requirement for identification of sources of private sector funding. The commenter urged that private funding not be made mandatory, stating that private sector funding was particularly difficult to obtain at this stage of development for description services.

Discussion: The Secretary does not intend to require private sector funding under this priority, but rather to encourage projects to seek any support that might become available.

Changes: Priorities two and three have been changed to indicate that sources of private or other public support for description, should any be available, must be identified.

Comment: Two commenters sought clarification of the methods used to provide description. Another commenter requested clarification of the difference between description for broadcast television and description for cable television. One commenter stated that commercial networks, included under this priority for the first time, may resist description because of the high cost of audio routing equipment for a separate description channel.

Discussion: Two examples of the current methods used for description are identified in the priority: One method uses the Secondary Audio Program (SAP), the other uses open description (similar to open captioning, where all viewers are subject to the descriptions). Public television has primarily broadcast descriptions using the SAP channel, although it has provided open descriptions upon occasion. Providers of video description for cable and home video have used open descriptions. However, the method to be used to provide description is not stipulated in the priority. The inclusion of the terms broadcast and cable within the priority is to indicate that programs on both types of networks may be included in the activities under this priority.

As with open captioning, the commercial networks may prefer not to broadcast open descriptions for regular programming because of overall viewer preference. Further, the Secretary agrees that commercial networks may also resist video description because of the high cost of audio routing equipment for a separate description channel. The priority does not stipulate that commercial broadcast networks must be included in the activities under this priority. The Secretary, however, does not wish to preclude commercial broadcast networks from the priority.

Changes: None.

Comment: One commenter expressed the concern that outreach was not identified as an activity in the priorities for video description.

Discussion: The Secretary agrees that outreach (marketing and dissemination) is a necessary component to approved projects for video description. All applications submitted to the Secretary under these priorities are evaluated under the established selection criteria at 34 CFR 332.32, which include information related to marketing and dissemination.

Changes: None.

Comment: One commenter expressed an interest in a priority for video description of televised sports.

Discussion: While the Secretary agrees that video description of televised sports may be of interest to persons with visual impairments, the Secretary believes that research is needed as to viewer demographics and interests before designating specific types of programs for description.

Changes: None.

Absolute Priority 4—Research on Video Description

Comment: Three commenters expressed an interest in promoting the educational benefits of descriptive video through research.

Discussion: The Secretary acknowledges the value of research on the educational benefits of descriptive video. The Secretary believes that this topic may be addressed as a related issue under the priority for Research on Video Description.

Changes: None.

Absolute Priority 5—Research on Captioning as a Language Development Tool

Comment: Three commenters strongly supported this priority and stated that it will extend opportunities for developing literacy skills, not only of students with other disabilities, but non-disabled children as well as those for whom English is a second language. One commenter encouraged the Department to broaden this priority to include research into the potential benefits of captioning as a preventive technique, thus covering individuals for whom English is a second language.

Discussion: The authorizing legislation and program regulations at 34 CFR 332.10 clearly state that projects funded under the Educational Media Research, Production, Distribution, and Training Program are to benefit individuals with disabilities. However, research findings and resulting benefits may be useful to other agencies or individuals serving specific populations.

Changes: None.

Comment: One commenter suggested that the word "standards," as used in the background information be replaced by the word "styles" because "standards" suggests an official process that overstates any current activities in this area.

Discussion: The Secretary agrees that the use of the term "standards" may be misleading.

Changes: "Styles" has been substituted for "standards."

Comment: One commenter indicated that a 18-month project period is not an adequate amount of time to refine the research design, conduct the study, and disseminate the results of the project, and recommended that research projects

be 24 months in length with 12-month extensions at the option of the Department.

Discussion: The priority did not specify any project period. The Secretary, however, agrees that a reasonable amount of time should be provided to allow researchers to adequately conduct research efforts. Information about project periods is provided in the Secretary's notice inviting application for new awards.

Changes: None.

Comment: One commenter pointed out that the priority did not mention dissemination of the results of studies or projects.

Discussion: The Secretary acknowledges the importance of disseminating project results. The program regulations at 34 CFR 332.41 require that all projects funded under the Educational Media Research, Production, Distribution, and Training Program disseminate their findings and products broadly.

Changes: None.

Comment: One commenter requested clarification on what was meant by the term "outcomes data" as referred to in paragraph (4) of the priority.

Discussion: The Secretary understands how the term "outcomes" can cause some confusion since it has also been used in reference to educational goals expected of students. However, under this priority the term is intended to mean any concrete or existing data that are collected or result from the research study. In other words, the term refers to actual rather than expected results.

Changes: None.

Comment: One commenter sought clarification on whether a project must conduct the research in more than one setting or more than one type of setting, as referred under paragraph (5) of the priority.

Discussion: The Secretary agrees with the commenter that depending on the population one intends to study or the nature of the study, one setting or type of setting may be appropriate. In establishing this requirement the Secretary intended to emphasize that the settings must be realistic and as natural as possible as opposed to being laboratory-like or in isolation. The settings listed are examples of settings that might be included in the research, but a particular project would not necessarily focus on more than one setting.

Changes: The words "a variety of" have been removed from the priority.

Comment: One commenter suggested that the educational/linguistic implications of caption capture technology be investigated as a tool in enhancing reading and language development.

Discussion: This priority allows projects to address the issues described in the priority or other issues related to captioning as a language development tool. Thus, research on caption capture technology could be included under this priority.

Changes: None.

Absolute Priority 6—Symposium on Exploring New Strategies for Providing Captioned Media Services

Comment: Three commenters expressed support for using a symposium format to study long-term strategies for expanding the availability of captioned media. One commenter objected to the emphasis on closed captions rather than on open captions, stating that the greatest percentage of deaf and hard of hearing students are in mainstream programs that might not have access to decoders.

Discussion: The Secretary did not intend for this priority to focus on any one method or form of captioning. The main purpose of the symposium is to explore as many strategies as possible to make captioned media available to as wide a number of deaf and hard of hearing individuals as possible. The term closed-captioning was used in reference to television programming that has been close-captioned.

Changes: None.

Comment: One commenter expressed concern regarding the lack of promotion and dissemination of the educational film and video lesson guides, and proposed that this issue be reviewed and discussed at the symposium. Several commenters suggested various additional pre-symposium activities or additional topics that should be included in the symposium. Other commenters suggested types of individuals that should be symposium attendees or presenters. One commenter suggested that attendance be free of charge and that the proceedings be distributed beyond the participants.

Discussion: The Secretary appreciates the commenters' suggestions and agrees that they could be taken into consideration by applicants responding to this priority. However, the Secretary does not believe this priority should be overly prescriptive. The successful applicant will be encouraged to consider various options in terms of participants, topics, and dissemination of conference proceedings.

Changes: None.

Absolute Priority 7—Educational Video Selection and Captioning

Comment: Twelve comments were received in support of this priority. Nine commenters expressed similar concerns regarding two areas: (1) closed-captioned educational videos and (2) the omission of the lesson guide production. Several pointed out that closed-captioned videos are not fully accessible nor desirable for educational purposes since many schools or programs do not have access to decoders. They also stated that the production of lesson guides has been a standard procedure for several years and has become an integral part of the program and serve a unique purpose. They suggested keeping this activity as an ongoing activity under this priority. One commenter supported the decision to leave out the lesson guide activity because of the low usage statistics, production limitations, and cost factors. The commenter offered support for the activity if these problems were resolved.

Discussion: The rationale and support for open-captioned educational videos is strong and convincing. The Secretary also recognizes the value of the lesson guides to educators who use them. However, the Secretary is also aware of the low usage, high cost factors, and complicated production logistics associated with the guides and believes the Department should evaluate this activity more closely before continuing this activity.

Through a separate mechanism the Secretary plans to review the impact of the lesson guides, teacher usage, and ensuing costs. If warranted, an activity for the development and production of lesson guides may be considered at a future date.

Changes: The priority has been changed to indicate that the educational videos procured for classroom use will include open-captioned and close-captioned videos for each title.

Comment: Three commenters indicated that many people do not know the difference between open, closed, and real-time captioning and know very little about the process. They suggested a clearinghouse that could disseminate captioning information to consumers, agencies, corporations, businesses and schools. Another commenter suggested that information on captioned videos from private databases be disseminated under this activity.

One commenter indicated that providers of new video formats and delivery systems (satellite, CD–ROM, and others) should be made aware of the benefits of captioned materials for other

special-needs groups, as well as for individuals with a hearing loss.

Discussion: The Secretary agrees with the importance of disseminating information about captioning, but believes the operation of a general clearinghouse on captioning or disseminating information from private databases is beyond the intended scope of this priority. Further, activities funded under this program are restricted to individuals who are deaf or hard of hearing. The Secretary will explore under other mechanisms ways to disseminate information about captioning to relevant organizations serving other special-needs groups.

Changes: None.

Comment: One commenter suggested that since advances in technology allow captions to be prepared on computers and since diskettes are used to transfer caption data directly to the finished product, the reference to preparation of captioned scripts is outmoded.

Discussion: The Secretary agrees with this observation.

Changes: This priority has been changed to require the preparation of captions on computer diskettes.

Comment: Two commenters indicated that in the past, the functions of two current contracts (one that parallels the activities under this priority) were under one contract and recommended that many of the current splintered and scattered activities be brought under this cooperative agreement. They suggested that the project evaluate, select, and caption new titles and also maintain a computer database of all video records, including production company, lease company, date of production, date of receipt in the program, lease expiration date, and lease documentation for continual coordination and follow-up with the video companies. Through this arrangement, commenters believe that the Captioned Film and Video Loan Service will more efficiently and effectively meet the needs of consumers.

Discussion: The Secretary will consider this recommendation at the same time the results and recommendations from the symposium under Priority 6 are considered.

Changes: None.

Comment: One commenter recommended that an extensive weeding process be initiated to eliminate theatrical, special interest, and educational titles that are no longer in demand or useful and convene re-evaluation groups and develop guidelines for withdrawing or replacing titles.

Discussion: The Secretary understands the importance of re-evaluating dated titles and withdrawing obsolete titles and replacing them with more current titles. This is included in the process of evaluating and selecting titles.

Changes: None.

Comment: One commenter recommended that a more broadly based evaluation of videos for captioning and inclusion in the theatrical and special interest collection should be included.

Discussion: The Secretary believes the evaluation process described in the priority will be more broadly based than similar activities in past years and allows for the inclusion of feature and special interest titles.

Change: None.

Comment: Two commenters thought the priority should address the issue of increased duplication from video masters of captioned educational and general interest titles. They anticipated an increasing demand for many titles by consumers because of the American with Disabilities Act (ADA), and stated that contract controlled duplication should be allowed to meet this increased demand.

Discussion: The Secretary is aware of the need to increase the number of duplicate copies of captioned video titles. This effort will be addressed through the process to procure the video titles.

Changes: None.

Comment: One commenter believed that work under the current contract has demonstrated the capability to select and caption 150 educational titles. Therefore, this individual recommended that the number of annual new educational title procurements be increased from 100 to 200–300 titles.

Discussion: The Secretary is pleased that technology and production systems are available to make it possible to caption an increased number of educational titles. The priority, as written, does not specify any given number. Applicants may propose a number they deem reasonable and practical.

Changes: None.

Comment: One commenter suggested that a consumer work group be convened biennially to provide input to the project, and that a similar advisory group of educators be a requirement.

Discussion: The priority as proposed requires strategies for determining the curricular needs of deaf and hard of hearing students as well as an evaluation program that incorporates consumer information into the selection and captioning process. Consumer advisory groups represent one approach to these requirements, and may be proposed by applicants under this program.

Changes: None.

Comment: One commenter suggested that making captioned videos available through general distribution mechanisms will require the Department to make distribution a prerequisite in the procurement of videos by the captioned film and video loan service.

Discussion: The Secretary will work closely with the successful applicant to determine what measures are necessary to make captioned videos available through general distribution mechanisms.

Changes: None.

Priorities

Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to applications that meet the following priorities. The Secretary funds under these competitions only applications that meet these absolute priorities:

Absolute Priority 1—Closed-Captioned Sports Programs

Background: This priority supports cooperative agreements to continue and expand closed-captioning of major national sports programs shown on national commercial broadcast or cable television networks. Captioning provides a visual representation of the audio portion of the programming and enables persons who are deaf or hard of hearing to participate in the shared educational, social, and cultural experiences of national sporting events.

Priority: To be considered for funding under this priority, a project must—

(1) For selecting programs to be captioned, include criteria that take into account the preference of consumers for particular programs, the diversity of programming available, and the contribution of programs to the general educational, social, and cultural experiences of individuals with hearing impairments;

(2) Determine the total number of hours and the projected cost per hour for each program to be captioned;

(3) For each proposed program to be captioned, identify the source of private or other public support and the projected dollar amount of that support;

(4) Identify the methods of captioning to be used for each hour—indicating whether captioning is provided in real-time or offline—and the projected cost per hour for each method used;

(5) Provide and maintain back-up systems that would ensure successful, timely captioning service;

(6) Demonstrate the willingness of major national commercial broadcast or

cable networks to permit captioning of their programs; and

(7) Implement procedures for monitoring the extent to which full and accurate captioning is provided and use this information to make refinements in captioning operations.

Absolute Priority 2—Broadcast and Cable Television Description

Background: This priority supports cooperative agreements for the description of television programming shown on national commercial or public broadcast networks or cable networks, as well as syndicated programs, in order to make television programming more accessible to persons with visual impairments. The intent of this priority is to provide continued and expanded access to described television programming in order to enhance shared educational, social, and cultural experiences for persons who are visually impaired.

Currently, there are two types of described television available to persons with visual impairments: (1) WGBH's descriptive video services (DVS), which offers described video as part of its PBS programming, using the Second Audio Program (SAP) and (2) Narrative Television Network (NTN), which produces and airs described videos via the Nostalgia Channel cable service and affiliated stations. To date, commercial networks and local stations have been unwilling to broadcast described television (using the SAP) due to the required equipment modification and extensive equipment operations. Alternative approaches must be explored.

Priority: To be considered for funding under this priority, a project must—

(1) For selecting programs to be video described, include criteria that take into account the preference of consumers for particular programs, the diversity of programming available, and the contribution of programs to the general educational, social, and cultural experiences of individuals with visual impairments;

(2) Determine the total number of hours and the projected cost per hour for each program to be described;

(3) For each program to be described, identify the source of private or other public support, if any, and the projected dollar amount of that support;

(4) Identify the methods to be used in the provision of described video;

(5) Demonstrate the willingness of major national commercial or public broadcast networks or cable networks, as well as providers of syndicated programming, to permit video description of their programs; and

(6) Implement procedures for monitoring the extent to which an accurate description is provided and use this information to make refinements in the video description operations.

Absolute Priority 3—Described Home Video

Background: This priority supports cooperative agreements for describing and making available described home videos in order to enhance shared social, educational, and cultural experiences for persons who are visually impaired.

Priority: To be considered for funding under this priority, a project must—

(1) For selecting videos to be described, include criteria that take into account the preference of consumers for particular titles or subjects, the diversity of video titles available, and the contribution of the videos to the general social, educational, and cultural experience of individuals with visual impairments;

(2) Determine the total number of videos and the projected cost per original video to be described;

(3) For each proposed video to be described and made available, identify the source of private or other public support, if any, and the projected dollar amount of that support;

(4) Show evidence that copyright holders would permit video description and distribution of their videos;

(5) Identify strategies for making described home videos available to persons with visual impairments, including any public awareness activities used to inform persons with visual impairments about described home videos; and

(6) Evaluate the effectiveness of the methods and technologies used in providing this service, barriers encountered, and impact on intended populations.

Absolute Priority 4—Research on Video Description

Background: This priority supports research projects on video description services for persons who are visually impaired. Issues to be explored by projects funded under this priority would include, but not be limited to, the incidence of visual impairment within the general population; demographics of the target population; the extent of consumer interest in video description services; the degree of awareness of the availability of video description services; the percentage of visually impaired individuals with stereo televisions; and the feasibility of alternative methods of distribution, including cablecast open descriptions, broadcast descriptions inserted within the vertical blanking interval, simulcast descriptions, and the Second Audio Programming channel (SAP).

Research resulting from these projects would make major contributions to the body of knowledge regarding video description, would produce findings regarding the impact and relative effectiveness of various distribution methods, and may provide alternative technologies for broadcast distribution.

Priority: To be considered for funding under this priority, a project must—

(1) Address all of the issues identified in the background to this priority, and may also address any related issues;

(2) Identify specific strategies that would be used in the investigation;

(3) Carry out the research within a conceptual framework, based on previous research or theory, that provides a basis for the strategies to be studied, the research design, and target population;

(4) Collect, analyze, and report (a) a variety of descriptive and demographic data, including information regarding the potential target population, settings, and the service providers; and (b) outcome data on the effects of different distribution methods on the provision of video description services;

(5) Conduct the research using methodological procedures that would (a) produce unambiguous findings regarding the effects of the identified issues and alternative approaches; and (b) permit use of the findings in policy analyses; and

(6) Design the research activities in a manner that would lead to improved video-described services for individuals with visual impairments.

Absolute Priority 5—Research on Captioning as a Language Development Tool

Background: This priority supports research projects on the effectiveness of captioning as a language development tool for enhancing the reading and literacy skills of individuals who are deaf or hard of hearing, as well as the reading and literacy skills of individuals with other disabilities. Issues to be explored by projects funded under this priority could include, but are not limited to (1) captioning styles currently being developed or studied; (2) captioning features as effective educational tools; and (3) the use of captions with other media and multi-media technologies such as interactive videodiscs and CD–ROMs.

Priority: To be considered for funding under this priority, a project must—

(1) Address any of the issues identified in the background to this priority or closely related issues;

(2) Identify specific technological approaches that would be investigated;

(3) Carry out the research within a conceptual framework, based on previous research or theory, that provides a basis for the strategies to be studied, the research design, and target population;

(4) Collect, analyze and report (a) characteristics and outcomes data, including the settings, the service providers, and the individuals targeted by the project (e.g., age, disability, level of functioning, membership in a special population, if appropriate); and (b) multiple, functional outcome data on the individuals who are the focus of the technological approaches;

(5) Conduct the research in settings such as residential or integrated schools or colleges, or in community settings, as appropriate;

(6) Conduct the research using methodological procedures that would (a) produce unambiguous findings regarding the effects of the approaches and interaction effects between particular approaches and particular groups of individuals or particular settings; and (b) permit use of the findings in policy analyses; and

(7) Design the research activities in a manner that would lead to improved services for individuals with hearing impairments or with other disabilities, as may apply.

Absolute Priority 6—Symposium on Exploring New Strategies for Providing Captioned Media Services

Background: This priority supports one cooperative agreement for a three-day symposium to determine the best strategy or strategies for expanding the availability of captioned media, including captioned videos and closed-captioned television programs, to deaf and hard of hearing individuals in various educational and non-educational settings.

The Captioned Films Loan Service for the Deaf Program (CFD) was created in 1958 by Public Law 85–905 with the original purpose of giving people who are deaf access to motion pictures and enhancing the cultural, educational, and general welfare of that population. At that time most students who are deaf were educated at residential schools. Therefore, when CFD expanded to include the distribution of captioned educational films to students who are deaf, film depositories were established on, though not limited to, some of those campuses.

The depository system has changed little since that time, although deaf and hard of hearing students are now educated primarily in more integrated and local settings. The Secretary is particularly interested in seeking more effective means of providing educational media services to this population while continuing to serve students in residential settings.

During the 1970's closed-captioned television was included among CFD's projects. In 1972 a contract was awarded to develop and test Line 21 concepts and, eventually, prototype decoders. Closed-captioned television, which was entirely supported with Federal funds, officially began in 1980, and the first real-time closed-captioned broadcast took place in October 1982. The number of captioning hours of prime time television started with 16 hours in 1981. Currently all prime time programming, all Saturday morning children's programs, and many daytime and late night programs are closed captioned.

Closed-captioned television is an example of cooperative efforts between the public and private sectors. Department of Education funding provides approximately 40 percent of the current captioning available. The networks currently provide approximately 30 percent, and corporate advertisers, foundations, and contributions account for the remaining 30 percent. Meanwhile, there has been a significant increase in the number of programs being captioned. Further, the Television Decoder Circuitry Act of 1990 mandates that, after July 1993, all television sets with screens 13 inches and larger manufactured in the United States or imported for use in the United States must have built-in circuitry designed to display closed captioning. This Act, along with the increase in the number of available captioned programs, the increase in the number of private funding sources, and the expanded array of television programming options combine to make it necessary to consider the most effective ways to ensure full access to expanded captioned programs in the future.

Thus, the symposium aims to explore strategies that the Department may consider making captioned videos available to a wider number of deaf and hard of hearing individuals, especially those attending local or mainstreamed schools, and strategies for expanding captioned television programming in light of future technology that will increase the number of available channels to 500.

Priority: To be considered for funding under this priority, the project must—

(1) Conduct pre-symposium activities, including reviewing reports and recommendations that resulted from previous evaluation studies of the Captioned Films Program, closed-captioned television, and related materials;

(2) Conduct a symposium that offers at least six work sessions, led by professionals or experts in areas including, but not limited to (a) educational media and technology, (b) television captioning technology, (c) special education administration, covering both mainstream and residential programs, (d) media distribution, (e) consumer advocacy, and (f) film and television post-production services;

(3) Make arrangements for participants to discuss and respond to issues and strategies that would be raised at the symposium—particularly strategies for improving services for deaf and hard of hearing consumers;

(4) Conduct post-symposium activities, including refining formally presented papers, reflecting group discussions and concerns expressed at the symposium, as well as potential strategies and directions for improved services i.e., for better delivery of captioned videos and expanding the availability of closed-captioned television programming; and

(5) Publish a proceedings document and distribute this document to symposium participants and relevant clearinghouses and organizations.

Absolute Priority 7—Educational Video Selection and Captioning

Background: This priority supports one cooperative agreement that will screen, evaluate, caption, and make available educational videos, including classics and special interest titles, for use by students and other individuals who are deaf or hard of hearing, parents of deaf and hard of hearing individuals, and other individuals directly involved in activities promoting the advancement of deaf and hard of hearing individuals in the United States. This activity includes the preparation of captions on computer diskettes. This priority will ensure that students and other individuals with hearing impairments benefit from the same educational videos used to enrich the educational experiences of students and other individuals without hearing impairments.

Priority: To be considered for funding under this priority, the project must—

(1) Develop strategies and procedures to be used in determining curricular needs of deaf and hard of hearing

students in all types of school settings for captioned videos;

(2) Develop and implement an on-going evaluation program for incorporating the reaction and suggestions of users into the selection and captioning process;

(3) Establish liaison with and obtain videos from film and video distributors for viewing and evaluation. Select from among submitted video titles those that closely match the curricular needs identified under paragraph (1) of this proposed priority, taking into account the videos most commonly used in school districts across the Nation for all students;

(4) Develop and implement criteria and procedures for screening and evaluating selected titles;

(5) Make arrangements with respective producers and distributors to have selected videos captioned and made available through general distribution mechanisms (such as video sales catalogues), as well as through the captioned film and video loan service authorized under part F of IDEA and 34 CFR part 330 (by purchasing up to 100 copies of each captioned title, some which will be open-captioned and some which will be closed-captioned);

(6) For selected titles, prepare captions on computer diskettes and check for accuracy. These captions would take into account the age and reading levels of the likely target audience;

(7) Identify, select, and, if necessary, provide training to video evaluators and caption checkers;

(8) Develop and implement quality control guidelines and procedures for checking videocassettes after they are captioned; and

(9) Prepare and make available to potential consumers information about the availability of captioned videos, including information about the captioned film and video loan service, regulations governing the use of captioned films and videos in the collection, procedures for applying for these services, and descriptions of the videos available.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Applicable Program Regulations: 34 CFR parts 330, 331, and 332 Program Authority: 20 U.S.C. 1451, 1452.

Dated: October 15, 1993.

Andrew Pepin,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

(Catalogue of Federal Domestic Assistance Number: 84.026, Educational Media Research, Production, Distribution, and Training Program)

[FR Doc. 93–25810 Filed 10–20–93; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.026]

Educational Media Research, Production, Distribution, and Training Program; Inviting Application for New Awards for Fiscal Year (FY) 1994

Purpose of Program: The purposes of this program are to promote the general welfare of deaf, hard-of-hearing, and visually impaired individuals, and the educational advancement of individuals with disabilities.

These priorities support the National Educational Goals by assisting those with disabilities in meeting Goal 1, school readiness, and Goal 5, adult literacy.

Eligible Applicants: Profit and nonprofit public and private agencies, organizations, and institutions are eligible to apply for a grant.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85 and 86; and (b) The regulations for this program in 34 CFR part 332.

Priorities: The priorities in the notice of final priorities for this program as published elsewhere in this issue of the **Federal Register**, apply to these competitions.

Applications Available: October 26, 1993.

EDUCATIONAL MEDIA RESEARCH, PRODUCTION, DISTRIBUTION, AND TRAINING

Title and CFDA No.	Deadline for transmittal of applications	Deadline for intergovernmental review	Available funds	Estimated range of awards	Estimated size of awards	Estimated number of awards	Project period in months
Closed-Captioned Sports Program (CFDA 84.026A).	2/04/94	4/05/94	$750,000	$250,000–750,000	$250,000	1 to 3	Up to 36.
Broadcast and Cable Television Description (CFDA 84.026C).	2/03/94	4/04/94	$500,000	$250,000–500,000	$250,000	1 to 2	Up to 36.
Described Home Video (CFDA 84.026H).	3/03/94	5/02/94	$250,000	$225,000–250,000	$250,000	1	Up to 36.
Research on Video Description (CFDA 84.026G).	2/04/94	4/05/94	$250,000	$50,000–250,000	$62,500	1 to 4	Up to 24.
Research on Captioning as a Language Development Tool (CFDA 84.026R).	2/04/94	4/05/94	$400,000	$75,000–100,000	$100,000	4	Up to 24.
Symposium on Exploring New Strategies (CFDA 84.026M).	2/04/04	4/05/94	$150,000	$125,000–150,000	$150,000	1	Up to 18.
Educational Video Selection and Captioning (CFDA 84.026D).	1/03/94	3/04/94	$700,000	$650,000–700,000	$700,000	1	Up to 36.

Note: The Department is not bound by any estimates in this notice.

For Applications: To request an application, telephone (202) 205–8485. Individuals who use a telecommunications device for the deaf (TDD) may call (202) 205–8169.

For Further Information Contact: Ernest E. Hairston, U.S. Department of Education, 400 Maryland Avenue, SW., room 4629, Switzer Building, Washington, DC 20202–2644. Telephone: (202) 205–9172. Individuals who use a telecommunications device for the deaf (TDD) may call (202) 205–8169.

Program Authority: 20 U.S.C. 1451, 1452.

Dated: October 15, 1993.

Andrew Pepin,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 93–25811 Filed 10–20–93; 8:45 am]

BILLING CODE 4000–01–P

Federal Register

Thursday
October 21, 1993

Part IV

Department of Labor

Pension and Welfare Benefits Administration

29 CFR Part 2530

Qualified Domestic Relations Orders; Request for Information

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2530

Qualified Domestic Relations Orders

AGENCY: Pension and Welfare Benefits Administration.

ACTION: Request for information.

SUMMARY: This document is a request for information to assist the Department of Labor (the Department) in assessing the need for a regulation clarifying certain statutory requirements set forth in Title I of the Employee Retirement Income Security Act (ERISA) and in the Internal Revenue Code (the Code) with regard to qualified domestic relations orders (QDROs). Under provisions creating a limited exception to the anti-assignment and alienation provisions of ERISA and the Code and to the preemption provision of ERISA (hereinafter collectively the QDRO provisions), benefits under a pension plan may be assigned or alienated pursuant to an order issued under state domestic relations law if the order constitutes a qualified domestic relations order. The QDRO provisions generally specify the circumstances under which plan administrators and other plan fiduciaries are required to give effect to a QDRO.

The Department anticipates that information and views provided by plan sponsors, plan fiduciaries, service providers to plans, plan participants and beneficiaries, and other interested persons will aid it in assessing the need for issuing a regulation under the QDRO provisions and the appropriate scope and content of any such regulation. The Department also anticipates that a regulation under the QDRO provisions may have some impact on the interpretation of ERISA's provisions relating to qualified medical child support orders, which were enacted as part of the Omnibus Budget Reconciliation Act of 1993 (OBRA '93). A regulation on the QDRO provisions would affect participants and beneficiaries (including alternate payees) of certain pension benefit plans, as well as the sponsors and fiduciaries of such plans.

DATES: Written comments should be received by the Department of Labor on or before December 20, 1993.

ADDRESSES: Comments (preferably, at least six copies) should be addressed to the Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, room N–5669, U.S. Department of Labor, Washington, DC 20210. Attention: QDRO RFI. All comments received will be available for public inspection at the Public Disclosure Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, room N–5507, 200 Constitution Ave., NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Deborah Hobbs, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor, Washington, DC 20210, telephone (202) 219–7901; or Susan Rees, Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, Washington, DC 20210, telephone (202) 219–9141. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

A. General

1. Qualified Domestic Relations Order Provisions

Section 206(d)(3) of Title I of ERISA, and the related provisions of section 414(p) of the Code,[1] establish a limited exception to the prohibitions against assignment and alienation contained in ERISA section 206(d)(1) and Code section 401(a)(13).[2] Under this limited exception, a participant's benefits under a pension plan may be assigned or alienated pursuant to an order that constitutes a qualified domestic relations order (QDRO) within the meaning of those provisions.[3] Such QDROs, in addition, survive the federal preemption of State law imposed by ERISA section 514(a) by virtue of ERISA section 514(b)(7), which provides that section 514(a) "shall not apply to qualified domestic relations orders (within the meaning of section 206(d)(3)(B)(i))."

Pursuant to the QDRO provisions, a plan administrator must determine, in accordance with specified procedures, whether an order purporting to divide a participant's benefits under a plan meets the applicable requirements set forth in section 206(d)(3) of ERISA. If the plan administrator determines that the order meets these requirements and is, accordingly, a QDRO within the meaning of section 206(d)(3), the plan administrator must distribute the assigned portion of the participant's benefits to the alternate payee or payees[4] named in the order in accordance with the terms of the order. An alternate payee named in a QDRO must be treated as a beneficiary under the plan pursuant to section 206(d)(3)(J).[5]

Subparagraphs (G) and (H) of ERISA section 206(d)(3) set forth provisions relating to the procedures that a plan must establish, and a plan administrator must observe, in determining whether an order is a qualified domestic relations order, and in administering the plan and the participant's benefits during the period in which the plan administrator is making such a determination. The plan's procedures must be reasonable, must be in writing, must require prompt notification and disclosure of the procedures to participants and alternate payees upon receipt of an order, and must permit alternate payees to designate representatives for notice purposes. In addition, the plan administrator must complete the determination process and notify participants and alternate payees of its determination within a reasonable period after receipt of the order.[6]

Subparagraph (H) of section 206(d)(3) provides specific procedural protection

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[1] All references herein to ERISA section 206(d)(1) should be read to refer also to Code section 401(a)(13). Similarly, except where no corresponding provision exists, all references to paragraphs of ERISA section 206(d)(3) should be read to refer also to the corresponding provisions of Code section 414(p).

[2] The QDRO provisions were added to ERISA and the Code by the Retirement Equity Act of 1984 (REA), Public Law No. 98–397, 98 Stat. 1426 (1984). Section 302(a) of REA provided that, except as otherwise provided in sections 302 or 303, the amendments made by REA were applicable to plan years beginning after December 31, 1984. REA, Public Law No. 98–397, sections 302, 303, 98 Stat. 1426, 1451–1454. Amendments were made to the QDRO provisions by the Tax Reform Act of 1986, Public Law No. 99–514, section 1898, 100 Stat. 2085, 2957 (1986); by the Technical and Miscellaneous Revenue Act of 1988, Public Law No. 100–647, section 1018(t), 102 Stat. 3342, 3589 (1988); and by the Omnibus Budget Reconciliation Act of 1989, Public Law No. 101–239, section 7841(a), 103 Stat. 2106, 2427 (1989).

[3] The QDRO exception is applicable to pension plans that are subject to the prohibition against assignment and alienation contained in ERISA section 206(d)(1) and Code section 401(a)(13). ERISA section 206(d)(3)(L). See also Code sections 414(p) (9) and (11).

[4] Section 206(d)(3)(K) defines the term "alternate payee" to mean any spouse, former spouse, child or other dependent of a participant who is recognized by a domestic relations order as having a right to receive all, or a portion of, the benefits payable under a plan with respect to such participant.

The legislative history of this section indicates that a QDRO may, under certain circumstances, order that payment be made to an agent of the alternate payee. See Staff of Joint Committee on Taxation, 99th Cong., 2d Sess., Explanation of Technical Corrections to the Tax Reform Act of 1984 and Other Recent Tax Legislation 222 (Comm. Print 1187).

[5] The Code contains no provision parallel to ERISA section 206(d)(3)(J).

[6] The legislative history of REA specifically authorizes the Secretary of Labor to prescribe regulations defining what is a reasonable period for this purpose. See H.R. Rep. No. 655, 98th Cong., 2d Sess. 20 (1984); and S. Rep. No. 575, 98th Cong., 2d Sess. 22 (1984).

of a potential alternate payee's interest in a participant's benefits during the plan's determination process and for a period of up to 18 months (the 18-month period) during which the issue of the qualified status of a domestic relations order is being determined—whether by the plan administrator, by a court of competent jurisdiction, or otherwise. During the 18-month period, a plan administrator must separately account for any amounts that would have been payable to the alternate payee if the order had been immediately treated as a QDRO and must pay these amounts (including any interest thereon) to the alternate payee if the order is deemed qualified within such period. If the issue as to whether the order is a QDRO is not resolved within the 18-month period, the plan administrator is to pay such amounts to the person or persons who would have been entitled to the amounts if there had been no order. Any determination that an order is a QDRO which is made after the close of the 18-month period is to be applied prospectively only.[7]

In addition, there is evidence that Congress intended to permit plan administrators to take additional steps to protect an alternate payee's potential interest in plan benefits, where the plan administrator is on notice that rights to such benefits are in dispute. The Conference Committee Report on the Tax Reform Act of 1986, in discussing technical corrections to the QDRO provisions, states:

> [T]he committee intends that the plan administrator may delay payment of benefits for a reasonable period of time if the plan administrator receives notice that a domestic relations order is being sought. For example, a participant in a profit-sharing plan which is exempt from the survivor benefit rules requests a lump sum distribution from the plan. Before the distribution is made, the plan administrator receives notice that the participant's spouse is seeking a domestic relations order.
>
> The plan administrator may delay payment of benefits.

H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess. II–858 (1986). See also Staff of Joint Committee on Taxation, 99th Cong., 2d Sess., Explanation of Technical Corrections to the Tax Reform Act of 1984 and Other Recent Tax Legislation 225 (Comm. Print 1187).[8]

If a plan fiduciary, acting in accordance with the fiduciary responsibility provisions of part 4 of title I of ERISA, treats an order as a QDRO (or determines that such an order is not qualified) and distributes benefits in accordance with that determination, paragraph (I) of section 206(d)(3) provides that the obligations of the plan and its fiduciaries to the affected participants and alternate payees with respect to the distribution shall be treated as discharged.[9]

The QDRO provisions detail specific requirements that an order must satisfy in order to constitute a QDRO.[10] The order must be a "domestic relations order" issued pursuant to a State domestic relations law (including a community property law) that relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child or other dependent of a participant.[11] Section 206(d)(3)(B)(ii). It must create or recognize the existence of an alternate payee's right to receive all or a portion of the benefits payable to a participant under a plan. Section 206(d)(3)(B)(i). Further it must clearly specify the name and last known mailing address (if any) of the participant and the name and mailing address of each alternate payee covered by the order; the amount or percentage of the participant's benefits to be paid by the plan(s) to each such alternate payee, or the manner in which such amount or percentage is to be determined; the number of payments or period to which the order applies; and each plan to which the order applies. Section 206(d)(3)(C). An order will fail to qualify as a QDRO, however, if it requires the plan to provide any type or form of benefit, or any option, not otherwise provided under the plan; to provide increased benefits determined on the basis of actuarial value; or to pay benefits to an alternate payee that are required to be paid to another alternate payee under another order previously determined to be a qualified domestic relations order.[12] Section 206(d)(3)(D).

An order may provide for payments to an alternate payee before the participant has separated from service if such payments begin on or after the date on which the participant attains (or would have attained) his or her "earliest retirement age." Section 206(d)(3)(E). "Earliest retirement age" is defined as the earlier of (1) the date on which the participant is entitled to a distribution under the terms of the plan; or (2) the later of the date the participant attains age 50 or the earliest date on which the participant could begin receiving benefits under the plan.[13] Section 206(d)(3)(E)(ii).

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[7] In this regard, the legislative history of REA explains that, if the plan administrator determines that the order is qualified after the end of the 18-month period, the plan is not liable for payments to the alternate payee for the period before the order is determined to be qualified. The legislative history also indicates, however, that an alternate payee may have a cause of action under state law against the participant for any amounts paid to the participant that should have been paid to the alternate payee. See S. Rep. No. 575, 98th Cong., 2d Sess. 22 (1984); and H.R. Rep. No. 655, 98th Cong., 2d Sess. 21 (1984).

[8] The Joint Committee on Taxation further indicated that Congress intended to permit a plan administrator to honor a State court's restraining order, even if the order does not constitute a QDRO. The Joint Committee on Taxation stated: "Notice of issuance of a stay during the time an appeal is pending is deemed to be notice that the parties are attempting to cure deficiencies in a domestic relations order. Further, the Congress intends that a plan administrator will honor a restraining order prohibiting the disposition of a participant's benefits pending resolution of a dispute with respect to a domestic relations order."

Staff of Joint Committee on Taxation, 99th Cong., 2d Sess., Explanation of Technical Corrections to the Tax Reform Act of 1984 and Other Recent Tax Legislation 224–25 (Comm. Print 1187).

[9] There is no parallel provision in section 414(p) of the Code. Code section 414(p)(10) provides, however, that, with respect to the requirements of subsections (a) and (k) of section 401, section 403(b), and section 409(d), a plan shall not be treated as failing to meet such requirements solely by reason of payments made to an alternate payee pursuant to a QDRO.

[10] The Department has taken the position, pursuant to section 5 of ERISA Procedure 76–1, that it will not ordinarily issue advisory opinions addressing whether a particular order constitutes a qualified domestic relations order under section 206(d)(3) because such a determination requires resolution of a number of factual issues, as well as the interpretation and application of the provisions of the plan(s) to which the order applies. The issuance of this Request for Information does not reflect any change in the Department's views on this issue.

[11] In Advisory Opinion 90–46A, dated December 4, 1990, the Department concluded the term "domestic relations order" as used in section 206(d)(3)(B)(ii) did not include a state probate court's order recognizing, on the basis of state community property law, an estate's interest in the pension benefits of the deceased's surviving spouse. The Department noted that Congress intended that the QDRO provisions would have application in those court proceedings conducted primarily to resolve domestic relations issues and would not be available to serve as a mechanism by which a non-participant spouse's interest derived only from state community property law could be enforced against a pension plan.

[12] The legislative history of the QDRO provisions provides guidance concerning the manner in which benefits may be divided pursuant to a QDRO. It is indicated, for example, that a QDRO may, but is not required to, provide that an alternate payee's portion of a participant's benefits shall increase if the participant's total accrued benefits increase. See H.R. Rep. No. 655, 98th Cong., 2d Sess. 20 (1984). A QDRO may also, but is not required to, provide the alternate payee with a portion of any subsidy to which the participant may become entitled. See S. Rep. No. 575, 98th Cong., 2d Sess. 21 (1984). See also S. Rep. No. 575, 98th Cong., 2d Sess. 21 (1984) (stating general rule that payments to an alternate payee made before the participant retires should be calculated based only on benefits actually accrued and not taking into account any subsidy to which the participant might become entitled); 130 Cong. Rec. 23486–23487 (1984) (floor debate setting out examples of permissible methods of calculating an alternate payee's share and demonstrating how the prohibition against increased benefits should operate).

[13] The Conference Committee Report on the Tax Reform Act of 1986, discussing this provision, explains: "For example, in the case of a plan which provides for payment of benefits upon separation

Continued

A QDRO may provide that the former spouse of a participant shall be treated as a surviving spouse for purposes of section 205 of ERISA. To the extent that a QDRO so provides, the current spouse of the participant shall not be treated as the participant's surviving spouse for those purposes.[14] Section 206(d)(3)(F).

2. Qualified Medical Child Support Order Provisions

The Omnibus Budget Reconciliation Act of 1993 (OBRA '93) amended Part 6 of subtitle B of title I of ERISA to add a new section 609 that provides, in part, that group health plans must provide benefits with respect to a child of a participant in accordance with the applicable requirements of any qualified medical child support order (QMCSO) (hereinafter collectively the QMCSO provisions).[15] OBRA '93 also amended ERISA section 514 to provide, *inter alia*, that an order that is a QMCSO within the meaning of section 609(a)(2)(A) shall survive the preemption of state law imposed by that section.[16] The Department notes that section 609(e) grants the Secretary of Labor authority to issue regulations under section 609 of ERISA in consultation with the Secretary of Health and Human Services.

The QMCSO provisions of ERISA section 609(a) were modelled in large part on the QDRO provisions and, therefore, contain many similar requirements. For example, section 609(a)(5) imposes procedural requirements on the administrator of a group health plan with respect to any medical child support order received by the plan that are substantially similar to the procedural requirements that a pension plan administrator must follow in determining whether a domestic relations order constitutes a QDRO. Because of the similarities between the QDRO provisions and the QMCSO provisions and the resulting likelihood that regulations under the QDRO provisions would affect the interpretation of the QMCSO provisions, the Department asks that commentators consider these similarities in formulating comments on the QDRO provisions.

B. Comments

As described herein, the QDRO provisions impose numerous obligations on a variety of parties. The QDRO provisions establish procedures and provide roles for participants, persons seeking the status of alternate payee, State courts adjudicating domestic relations laws, Federal courts acting under ERISA, and plan administrators. The Department, in assessing the need for administrative rulemaking in this area, is interested in information from the public on the problems, if any, that have arisen in interpreting the QDRO provisions.[17] The Department invites interested parties to submit comments that pertain to any such problems. The Department further invites interested parties to submit their views on the extent to which such problems could be resolved through the issuance of regulatory guidance.

In order to assist interested parties in responding, this Notice describes specific areas in which the Department is particularly interested. The Department, however, also requests comments and suggestions concerning any other problems or issues pertinent to the Department's assessment of the possible need for regulatory guidance in this area. It is requested that the public, in responding to specific questions proposed by this Notice, refer to the question number listed in this Notice. Reference to the appropriate question number will aid the Department in analyzing submissions.

Specific areas with respect to which the Department is interested include:

1. Whether problems have arisen relating to whether, and to what extent, state or federal law applies to issues arising under the QDRO provisions.

2. Whether fiduciary or other problems have arisen relating to the plan administrator's various duties under the QDRO provisions, including providing information to participants and potential alternate payees, determining whether an order constitutes a QDRO, making such a determination within a "reasonable period" after receipt of the order, protecting the plan from adverse consequences (including double payment to participants and alternate payees), and administering plan benefits that have been divided pursuant to a QDRO.

3. Whether problems have arisen relating to interpretation of the particular requirements and limitations enumerated in ERISA section 206(d)(3) with respect to the qualified status of a domestic relations order.

4. Whether problems have arisen relating to the procedural requirements established by subparagraphs (G) and (H) of section 206(d)(3) for the process by which a plan administrator must determine whether a proposed order is a qualified domestic relations order, and for the interim administration of the plan and the participant's benefits during the period in which the plan administrator is making such a determination.

5. Whether problems have arisen in determining whether rights and benefits granted to an alternate payee pursuant to a QDRO, or pursuant to a plan's provisions, or both, are consistent with Title I of ERISA and the applicable provisions of the Code.

All submitted comments will be made a part of the record of the proceeding referred to herein and will be available for public inspection.

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from service (but not before then), the earliest date on which a QDRO can require payments to an alternate payee to begin is the date the participant separates from service. A QDRO could also require such a plan to begin payments to an alternate payee when the participant attains age 50, even if the participant has not then separated from service."

H.R. Conf. Rep. No. 841, 99th Cong. 2d Sess. II–858 (1986).

[14] The legislative history of the QDRO provisions discusses the effect of a QDRO's treating a former spouse as the surviving spouse. See S. Rep. No. 575, 98th Cong., 2d Sess. 20 (1984) (indicating that, to the extent that a QDRO provides that a participant's current spouse shall not be treated as his spouse under the plan with respect to benefits awarded to an alternate payee, the participant's current spouse would have no spousal rights under ERISA section 205); 130 Cong. Rec. 23486–23487 (1984) (floor debate asserting that if a former spouse is named as alternate payee, the qualified joint and survivor annuity (QJSA) and qualified preretirement survivor annuity (QPSA) protections of ERISA section 205 shall not apply to the benefits awarded to the alternate payee, except to the extent consistent with the QDRO); H.R. Rep. No. 655, 98th Cong., 2d Sess. 19–20 (1984); and S. Rep. No. 575, 98th Cong., 2d Sess. 21 (1984) (stating that, if a former spouse is named by a QDRO as an alternate payee, but the participant dies before attaining earliest retirement age under the plan and before the alternate payee receives payment of the assigned portion of the participant's benefits, the alternate payee shall be entitled to survivor benefits only to the extent that the QDRO specifically requires survivor benefits to be paid).

[15] ERISA section 609, added by OBRA '93, Public Law No. 103–66, section 4301(a) (1993). Section 609(a) relates to QMCSOs.

[16] OBRA '93, Public Law No. 103–66, section 4301(c)(4) (1993) (amending ERISA section 514(b)(7)).

[17] Pursuant to section 206(d)(3)(N) of ERISA and section 414(p)(12) of the Code, the Secretary of Labor has the authority to promulgate regulations under section 206(d)(3) of ERISA and section 414(p) of the Code after consultation with the Secretary of the Treasury.

Pursuant to section 401(n) of the Code, the Secretary of the Treasury also has authority to prescribe rules or regulations as may be necessary to coordinate the requirements of Code section 401(a)(13)(B) and Code section 414(p) (and any regulations issued by the Secretary of Labor thereunder) with the other provisions of Chapter 1 of Subtitle A of the Code. The Treasury Department has promulgated certain regulations relating to distributions pursuant to a QDRO. See Treas. Reg. §§ 1.401(a)–13(g); 1.401(a)–20, Q&A 10, Q&A 25(b), Q&A 27, Q&A 28, and Q&A 31; See also Prop. Treas. Reg. §§ 1.401(a)(9)–1, Q&A H–4; 1.401(a)(9)–2, Q&A 7 and Q&A 11.

Signed at Washington, DC this 15th day of October 1993.

Olena Berg,

Assistant Secretary for Pension and Welfare Benefits, U.S. Department of Labor.

[FR Doc. 93–25908 Filed 10–20–93; 8:45 am]

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federal register

Thursday
October 21, 1993

Part V

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 310

Digestive Aid Drug Products for Over-the-Counter Human Use; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 310

[Docket No. 81N–0106]

RIN 0905–AA06

Digestive Aid Drug Products for Over-the-Counter Human Use

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule establishing that activated charcoal and certain other digestive aid ingredients for over-the-counter (OTC) human use are not generally recognized as safe and effective and are misbranded. FDA is issuing this final rule after considering public comments on the agency's proposed regulation, which was issued in the form of a tentative final monograph, and all new data and information on OTC digestive aid drug products that have come to the agency's attention. This final rule is part of the ongoing review of OTC drug products conducted by FDA.

EFFECTIVE DATE: April 21, 1994.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD–810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 5, 1982 (47 FR 454), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking to establish a monograph for OTC digestive aid drug products, together with the recommendations of the Advisory Review Panel on OTC Miscellaneous Internal Drug Products (the Panel), which was the advisory review panel responsible for evaluating data on the active ingredients in this drug class. Interested persons were invited to submit comments by April 5, 1982. Reply comments in response to comments filed in the initial comment period could be submitted by May 5, 1982.

In a document that published in the **Federal Register** on March 30, 1982 (47 FR 13385), the agency advised that it had extended the comment period until June 4, 1982, and the reply comment period to July 5, 1982, on the advance notice of proposed rulemaking for OTC digestive aid drug products to allow for consideration of additional data and information.

In accordance with § 330.10(a)(10), the data and information considered by the Panel, after deletion of a small amount of trade secret information, were placed on display in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

The agency's proposed regulation, in the form of a tentative final monograph, for OTC digestive aid drug products was published in the **Federal Register** of January 29, 1988 (53 FR 2706). Interested persons were invited to file by March 29, 1988, written comments, objections, or requests for oral hearing before the Commissioner of Food and Drugs regarding the proposal. Interested persons were invited to file comments on the agency's economic impact determination by May 31, 1988. New data could have been submitted until January 30, 1989, and comments on the new data until March 29, 1989.

In a document that published in the **Federal Register** on April 19, 1988 (53 FR 12779), the agency advised that it had extended the comment period until May 27, 1988, to allow adequate time for one manufacturer to fully evaluate information it had recently received from the agency and to prepare comments to the notice of proposed rulemaking.

In the **Federal Register** of November 7, 1990 (55 FR 46914), the agency published a final rule establishing that certain active ingredients that had been under consideration in a number of OTC drug rulemaking proceedings were not generally recognized as safe and effective. That final rule was effective on May 7, 1991, and included in § 310.545(a)(8) (21 CFR 310.545(a)(8)) 21 ingredients that had been under consideration as part of this rulemaking for OTC digestive aid drug products.

In the **Federal Register** of May 10, 1993 (58 FR 27636), the agency published a final rule establishing that certain additional active ingredients that had been under consideration in a number of OTC drug rulemaking proceedings were not generally recognized as safe and effective. That final rule is effective on November 10, 1993, and included in § 310.545(a)(8)(ii) 83 additional ingredients that had been under consideration as part of this rulemaking for OTC digestive aid drug products.

After these two final rules were published, only two ingredients remained to be evaluated in this rulemaking: Activated charcoal and lactase enzyme. The agency's action in this document completes the OTC digestive aids rulemaking with respect to activated charcoal. In this final rule, the agency is adding new paragraph (a)(8)(iii) to § 310.545 to establish that activated charcoal is not generally recognized as safe and effective and is misbranded when present in OTC digestive aid drug products. The agency will publish its final decision on the status of lactase enzyme in OTC digestive aid drug products in a future issue of the **Federal Register**.

The agency stated in the tentative final monograph (53 FR 2706 at 2709) that at that time no submissions had been made to the agency regarding lactase enzyme products, nor was the agency aware of any specific data that would establish general recognition of safety and effectiveness for this ingredient. The agency acknowledged that lactase enzyme is contained in a number of marketed products and is promoted for use as a digestive aid for persons who are intolerant to lactose-containing foods. Although lactase deficiency can be controlled by ingestion of a lactose-free diet, the agency stated that lactase enzyme products could be potentially useful for those persons who do not wish to avoid lactose in their diets. Therefore, the agency invited interested persons to submit specific data and information regarding the use of lactase enzyme products.

In response to the proposed rule, two manufacturers submitted the results of several new studies to demonstrate the effectiveness of lactase enzyme derived from *Aspergillus oryzae* and *A. niger*. The agency is currently reviewing these studies and is awaiting additional information from both manufacturers. Accordingly, in order to complete this rulemaking with regard to all other conditions except lactase enzyme, the agency is not addressing the data submitted on lactase enzyme at this time. Those data will be addressed as soon as the agency's review is completed. If the data support the safety and effectiveness of lactase enzyme, the agency will propose to establish a monograph for OTC digestive aid drug products at that time. Appropriate labeling will be proposed based on the results of the studies being evaluated. In the interim, products containing lactase enzyme may remain in the marketplace and are not subject to this final rule.

In the tentative final monograph for OTC digestive aid drug products (53 FR 2706), the agency did not propose any active ingredient as generally recognized as safe and effective and not misbranded. However, the agency proposed monograph labeling in the

event that data were submitted that resulted in the upgrading of any ingredient to monograph status. In this final rule, no active ingredient has been determined to be generally recognized as safe and effective for use in OTC digestive aid drug products. As noted above, the monograph status of lactase enzyme is still under evaluation. Therefore, proposed subpart D of part 357 (21 CFR part 357) for OTC digestive aid drug products is being held in abeyance until the agency's review of lactase enzyme is completed.

This final rule declares OTC digestive aid drug products containing the active ingredient activated charcoal to be new drugs under section 201(p) of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 321(p)), for which an application or abbreviated application (hereinafter called application) approved under section 505 of the Act (21 U.S.C. 355) and 21 CFR part 314 is required for marketing. In the absence of an approved application, products containing activated charcoal for this use also would be misbranded under section 502 of the Act (21 U.S.C. 352). In appropriate circumstances, a citizen petition to establish a monograph may be submitted under § 10.30 (21 CFR 10.30) in lieu of an application.

The OTC drug procedural regulations (§ 330.10) now provide that any testing necessary to resolve the safety or effectiveness issues that formerly resulted in a Category III classification, and submission to FDA of the results of that testing or any other data, must be done during the OTC drug rulemaking process before the establishment of a final monograph. Accordingly, FDA does not use the terms "Category I" (generally recognized as safe and effective and not misbranded), "Category II" (not generally recognized as safe and effective or misbranded), and "Category III" (available data are insufficient to classify as safe and effective, and further testing is required) at the final monograph stage. In place of Category I, the term "monograph conditions" is used; in place of Categories II or III, the term "nonmonograph conditions" is used.

In the proposed rule for OTC digestive aid drug products (53 FR 2706), the agency advised that it would provide a period of 12 months after the date of publication of the final monograph in the **Federal Register** for relabeling and reformulation of digestive aid drug products to be in compliance with the monograph. Although data and information were submitted on activated charcoal in response to the proposed rule, they were not sufficient to support monograph conditions, and no monograph is being established at this time. Therefore, digestive aid drug products that are subject to this rule are not generally recognized as safe and effective and are misbranded (nonmonograph conditions). In the advance notice of proposed rulemaking (47 FR 454 at 455), the agency advised that conditions for OTC digestive aid drug products that are not generally recognized as safe and effective and are misbranded would be effective 6 months after the date of publication of a final rule in the **Federal Register**. Because no OTC drug monograph is being established for this class of drug products, the agency is adopting this 6-month effective date for the nonmonograph conditions in this final rule. This 6-month effective date is also consistent with the effective dates for the other digestive aid active ingredients included in § 310.545(a)(8). Therefore, on or after April 21, 1994, no OTC drug products that are subject to this final rule may be initially introduced or initially delivered for introduction into interstate commerce unless they are the subject of an approved application.

In response to the proposed rule on OTC digestive aid drug products, two drug manufacturers and three physicians submitted comments on activated charcoal, and four drug manufacturers submitted comments on lactase enzyme. A request for an oral hearing before the Commissioner of Food and Drugs was received on one issue. Copies of the comments and the hearing request received are on public display in the Dockets Management Branch (address above). Any additional information that has come to the agency's attention since publication of the proposed rule is also on public display in the Dockets Management Branch.

The hearing request is discussed in comment 1. (see section I.A. of this document). In proceeding with this final rule, the agency has considered all objections, requests for oral hearing, and the changes in the procedural regulations. A summary of the comments and the new data with FDA's responses to them follows.

I. The Agency's Conclusions on the Comments

A. Comments on Activated Charcoal

1. Two comments submitted data (Refs. 1 through 6) to support the use of activated charcoal for the treatment of intestinal distress related to gas. The comments requested that activated charcoal be included in either the monograph for OTC antiflatulent or OTC digestive aid drug products. One comment requested an oral hearing regarding inclusion of activated charcoal in the OTC antiflatulent monograph if it was found to be a Category I ingredient in the OTC digestive aid monograph. Two other comments argued that activated charcoal was an antiflatulent ingredient and objected to its inclusion in the OTC digestive aid monograph.

The agency has reviewed the data and concludes that they are insufficient to support the use of activated charcoal for the treatment of intestinal distress related to gas. Accordingly, activated charcoal will not be included in either monograph, and a hearing is not necessary.

Jain et al. (Ref. 1) conducted a randomized, placebo-controlled, double-blind, crossover study in which the effect of activated charcoal in reducing gas in the lower intestinal tract was evaluated by measuring breath hydrogen levels. Sixty-nine healthy adults in India and 30 in the United States participated in the study. Serial end-expiratory breath samples were collected at 30-minute intervals from each subject for 4½ hours. A dose of 1,040 milligrams (mg) of activated charcoal or placebo was administered after the first sample was collected and again 1 hour later. Lactulose, the substrate used to produce hydrogen in the colon, was administered ½ hour after the first dose. Symptoms of bloating, abdominal cramps, and diarrhea were recorded for 4 hours. The investigators reported that activated charcoal compared to placebo significantly ($p < 0.05$) reduced breath hydrogen levels and provided symptomatic relief (reduced symptoms of bloating, abdominal cramps, and diarrhea). One design problem with this study was that activated charcoal was given before the lactulose (the substance used to produce the hydrogen).

In a triple-crossover, double-blind, placebo-controlled study (Ref. 2), Jain et al. evaluated the effects of activated charcoal, placebo, and simethicone in reducing gas in the colon as measured by breath hydrogen levels in 10 healthy subjects. Results were provided for nine subjects; one subject was excluded due to failure to produce hydrogen gas. The study design was similar to that used in the first Jain et al. study (Ref. 1), except that 8 ounces (oz) of baked beans were used as the gas-producing substrate and serial breath samples were collected at 30-minute intervals for 7 hours. The beans were eaten 30 minutes after the first doses of either activated charcoal, simethicone, or placebo. Simethicone was administered at a dose of 80 mg and

activated charcoal at 1,040 mg, with repeat doses given after 1 hour. The investigators reported that only activated charcoal significantly ($p < 0.05$) reduced breath hydrogen levels and reduced abdominal symptoms (bloating and abdominal discomfort).

In a placebo-controlled, crossover study (Ref. 3), Vargo, Ozick, and Floch evaluated the effect of activated charcoal on breath hydrogen levels in 12 subjects after a bean meal using a design and dosage similar to the Jain studies. A statistically significant reduction ($p < 0.05$) in breath hydrogen levels was found only at the 7-hour (420-minute) collection period. Further, this study only measured breath hydrogen; symptoms of gas were not evaluated.

Hall, Thompson, and Strother (Ref. 4) evaluated the effects of activated charcoal on breath hydrogen levels and the number of flatus events in a randomized, double-blind, placebo-controlled, crossover study. Baseline data were collected on the number of times flatus was passed each hour for 7 hours following administration of a normal meal (containing no known gas-forming items). Each of the 13 subjects in this part of the study also had a bean meal on two separate occasions (with a period of at least 2 days between bean meals) and recorded flatus events after each bean meal. The subjects received either 582 mg of activated charcoal or placebo administered immediately after the bean meal and 2 hours later. In an additional test to determine the effectiveness of a smaller dose, seven subjects were given 388 mg of activated charcoal only at 2 hours after the meal. In the breath hydrogen portion of the study, 10 subjects were fed a normal meal and 10 subjects were fed a bean meal. The subjects fed the normal meal were not treated. The subjects receiving the bean meal were treated with either 582 mg of activated charcoal or placebo immediately after the meal and every 30 minutes thereafter for a total of five doses (2,910 mg of activated charcoal).

The mean number of flatus events per subject was almost three following the normal meal and 14.5 following the bean meal. When the bean meal was followed by activated charcoal, the mean number of flatus events decreased to less than three ($p < 0.001$ compared to placebo). In the additional study involving 388 mg of activated charcoal, the mean number of flatus events during the first 3 hours after the meal was greater compared to the subjects who received 582 mg. However, there was no significant difference between the two groups in the number of flatus events during the last 4 hours of observation. The authors explained this lack of difference on normal transit time to the colon (2 to 3 hours) and stated that once activated charcoal reaches the colon, the lower dose is also effective in reducing flatus events. In the breath hydrogen portion of the study, the mean breath hydrogen concentrations were similar for 4 hours following the normal meal and the bean meal followed by placebo. Thereafter, the concentrations increased threefold for the next 4 hours. Concentrations following the bean meal and activated charcoal remained low throughout the study and after the 4th hour were significantly different ($p < 0.001$) compared to the bean meal-placebo group.

In another study (Ref. 5), Potter et al. used in vitro and in vivo methods to evaluate the ability of activated charcoal to reduce intestinal gas production. The in vivo evaluation involved a double-blind study that measured breath hydrogen levels and flatus events of 10 healthy subjects. Each subject was studied on four occasions, twice with placebo and twice with activated charcoal. Subjects were fed a bean meal followed by 1,000 mg of activated charcoal or placebo. Doses were repeated every 30 minutes for a total of four doses. Breath hydrogen levels were obtained at time zero and every hour for 9 hours. Subjects also recorded the number of times they passed flatus. The investigators reported no significant differences in breath hydrogen levels or the number of flatus events between the treatment and placebo groups. The investigators concluded that activated charcoal does not reduce the volume of bowel gas.

Riggs (Ref. 6) reported the results of a study involving a pretest and test meal. Fifty-three subjects ate a gas-producing pretest meal and took two placebo capsules upon onset of symptoms. Subjects were dropped from the study if they did not develop symptoms within 1 hour or if they developed symptoms but responded to the placebo medication. Subsequently, 42 subjects were given a test meal (identical to the pretest meal). At the onset of symptoms, subjects were randomized to receive activated charcoal or placebo in a blinded fashion. One subject was dropped for not having symptoms after consuming the test meal. Twenty-one subjects received activated charcoal, and 20 subjects received placebo. Every 30 minutes the subject could take an additional dose, up to a maximum of four doses. The subjects rated the degree of overall symptom relief as none, poor, fair, good, or excellent. Riggs reported that 71 percent of the subjects who took activated charcoal rated their relief (of pain and/or cramping and overall symptom relief) "as good to excellent," as compared to only 35 percent who took placebo. Riggs noted, however, that several factors (the time to complete relief, the percentage of subjects with complete relief within 2 hours, and the duration of flatulence) did not demonstrate a statistically significant difference. Riggs stated that these factors did show a "trend" favoring activated charcoal, particularly when only those subjects that had a significant history of symptoms were considered.

The agency concludes that these studies do not provide sufficient evidence to establish that activated charcoal can be generally recognized as safe and effective for use as an OTC antiflatulent or digestive aid. The majority of the studies (Refs. 1 through 5) are not presented in sufficient detail for an indepth agency review. The statistical significance of the findings cannot be verified because of the absence of individual subject data, which have never been provided. Further, the subjects used were inappropriate in most studies. The agency considers it necessary that studies be conducted in a population where all subjects have the condition in question, rather than relying entirely on volunteers in which the condition may or may not occur. Riggs (Ref. 6) was the only investigator that used subjects with a history of meal-induced gastrointestinal discomfort. Although Riggs used the correct type of subjects, the sample size was too small to demonstrate a clinically important difference.

Regarding this sample size, the comment stated that a sample size of 21 subjects in each group provides 90-percent power for detecting a clinically important difference. However, the agency maintains that to obtain a 90-percent power at a 0.05 level (two-sided), the sample size should be approximately 80 subjects per group. If the number were doubled as a precaution, as stated in the protocol, the final sample size would be 160 subjects per group. The study included 21 subjects in the activated charcoal group and 20 subjects in the placebo group.

The study (without invoking considerations of interim analyses and multiple comparisons) was negative for its primary prestated endpoints. While numerically these results are in the right direction, the study was too small to be definitive. Issues such as interim analyses, multiple comparisons, and unspecified subsetting must be considered. With those considerations, the findings in the Riggs study at best might help plan additional studies;

however, they do not change the outcome of this negative trial.

Finally, additional data are needed to establish the dosage range, dosage interval, or dosage duration. In addition, data would be needed to establish whether subsequent dosing is needed because colon gas will eventually dissipate without treatment. Because the submitted data are inadequate to establish the effectiveness of activated charcoal for the relief of symptoms of intestinal distress related to gas, activated charcoal is not a monograph ingredient.

The agency's detailed comments and evaluation of the above data are on file in the Dockets Management Branch (Refs. 7, 8, and 9).

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(6) Riggs, M.W., "Activated Charcoal Study, Final Report," copy included in Comment No. CP2, Docket No. 81N–0106, Dockets Management Branch.

(7) Letter from W.E. Gilbertson, FDA, to J. Geils, Requa, Inc., Coded LET1, Docket No. 81N–0106, Dockets Management Branch.

(8) Letter from W.E. Gilbertson, FDA, to J. L. Geils, Requa Inc., Coded LET5, Docket No. 81N–0106, Dockets Management Branch.

(9) Letter from W.E. Gilbertson, FDA, to W.R. Weaver, Gulf Bio-Systems, Inc., Coded ANS1, Docket No. 81N–0106, Dockets Management Branch.

2. Two comments stated that activated charcoal could be placed in either the digestive aid monograph or the antiflatulent monograph because the indications for ingredients covered by both monographs are strikingly similar. One of the comments stated that there is very little difference between the indications proposed in the digestive aid tentative final monograph (i.e., "for relief of symptoms of gastrointestinal distress such as * * * fullness, pressure, bloating, or stuffed feeling," (optional: "commonly referred to as gas,") (optional: "pain," and/or "cramping,") "which occur(s) after eating,") (53 FR 2706 at 2713)) and the indications proposed in the amendment to the antiflatulent final monograph (i.e., "alleviates" or "relieves" * * * "bloating," "pressure," "fullness," or "stuffed feeling" "commonly referred to as gas," (53 FR 2716 at 2717)). The comment stated that the only apparent difference is that the digestive aid indication associates the symptoms of gas with the consumption of food, whereas the antiflatulent indication does not. The comment contended that this approach does not make scientific sense because the symptoms of gaseousness are almost always associated with the ingestion of a symptom-provoking meal. The comment argued that consumers will become confused because antiflatulent drug products are able to use the term "antigas" and digestive aid products cannot, even though "antigas" may be the best term to describe the symptomatic relief provided by activated charcoal. The comment requested that FDA allow the term "antigas" as an alternative statement of identity to "digestive aid" because "antigas" is the most accurate and recognizable term describing the symptomatic relief provided by activated charcoal.

The agency has considered activated charcoal in both the antiflatulent and the digestive aid drug products rulemakings. The data submitted to both rulemakings were found to be insufficient to classify activated charcoal as a monograph ingredient for either of these uses. Accordingly, because activated charcoal is not being included in either monograph, the agency does not need to address the statement of identity for this ingredient. Should activated charcoal achieve monograph status in the future, the agency will address its statement of identity at that time.

B. Comments on Testing Digestive Aid Ingredients

3. Two comments stated that FDA should provide clinical protocol design criteria appropriate for OTC digestive aid drug products. The first comment stated that the agency had greatly modified the approach recommended by the Panel for the digestive aid drug category. The comment was concerned that the agency had not published alternative guidelines to clarify how a sponsor should go about investigations to obtain Category I labeling claims.

The second comment stated that if the agency wanted to be helpful in this area it should clearly articulate protocol standards and criteria that can be commented upon, revised if necessary, and then followed. The comment expressed dissatisfaction with certain testing criteria provided at the March 8, 1988, meeting (Ref. 1). The comment felt that the criteria were not applicable to OTC drug products designed to provide symptomatic relief for self-limiting conditions, but rather were applicable to "new drugs" designed to treat serious, chronic, and organic disease. The comment stated that the public and the industry are unaware, as a whole, of what testing criteria are or are not acceptable. The comment argued that if the agency does not know or cannot articulate what label claims it will permit or the protocol criteria it would require to gain Category I status as a digestive aid, it is quite clearly preventing the industry from ever achieving this goal. The comment requested that the agency waive its general policy of not publishing testing guidelines in tentative final monographs and officially state and notify the public, through a written guideline in a revision to the digestive aid tentative final monograph, as to its proposed protocol design criteria to obtain Category I status for OTC digestive aid ingredients.

The Panel provided fairly extensive testing guidelines in its report on OTC digestive aid drug products (47 FR 454 at 485 through 486). The Panel recognized that a generally accepted protocol for the testing of drug products used for the treatment of symptoms of intestinal distress was not available. Further, because of the several categories of drugs marketed for the relief of these symptoms and the different mechanisms of these drugs, the Panel realized that it was unlikely that a single protocol, which would be appropriate for all of these drugs, could be developed. The Panel did not attempt to produce such a protocol. However, the Panel believed that there were important issues that must be considered to ensure proper evaluation of these drugs, and it developed guidelines to aid investigators in designing effectiveness tests. The Panel suggested that deviations from these guidelines be discussed with the appropriate FDA personnel prior to initiation of a study.

The agency did not address testing guidelines in its proposed rule on OTC digestive aid drug products (53 FR 2706 at 2712) and is not providing specific testing guidelines in this document. In revising the OTC drug review

procedures relating to Category III ingredients, published in the **Federal Register** of September 29, 1981 (46 FR 47730), the agency announced its policy that tentative final and final monographs will not include recommended testing guidelines for conditions that industry wishes to upgrade to monograph status. In the same issue of the **Federal Register** (46 FR 47740), the agency published a policy statement concerning the submission and review of protocols to evaluate an ingredient or condition in the OTC drug review. The agency has stated that it will meet with manufacturers, at their request, to discuss protocols and other testing issues involving conditions that industry is interested in upgrading and to advise industry on the adequacy of proposed testing protocols.

The March 8, 1988, meeting (Ref. 1) referred to by the comment involved a discussion of clinical data submitted to establish the effectiveness of an ingredient for OTC digestive aid or antiflatulent use. The agency's view was that the data were insufficient to justify the dosage range, interval, or duration and the indications requested by the comment. The meeting included a discussion of the patient population to be used in any future studies. The data from the studies and the agency's minutes of this meeting are included as part of the public administrative file for this rulemaking and can be obtained by any interested manufacturer who wishes to ascertain the agency's views. Based on this open public record and the agency's willingness to review testing protocols, the agency sees no need to develop protocol design criteria through notice and comment rulemaking.

Reference

(1) Comment No. MM1, Docket No. 81N–0106, Dockets Management Branch.

C. Comments on Labeling

3. Several comments discussed proposed labeling for OTC digestive aid drug products. Because no active ingredients have been classified as a monograph condition in this final rule for OTC digestive aid drug products, the agency is not addressing the comments' requests at this time. In the future, should a monograph be established for this class of OTC drug products, the agency will consider labeling recommendations, such as those made by the comments, at that time.

II. The Agency's Final Conclusions on OTC Digestive Aid Drug Products

At this time, the agency has determined that no active ingredient has been found to be generally recognized as safe and effective and not misbranded for use as an OTC digestive aid.

In the **Federal Register** of November 7, 1990 (55 FR 46914), the agency published a final rule establishing that 21 active ingredients for OTC digestive aid use were not generally recognized as safe and effective. That final rule was effective on May 7, 1991, and listed 21 ingredients in § 310.545(a)(8) (currently designated as § 310.545(a)(8)(i)). In the **Federal Register** of May 10, 1993 (58 FR 27636), the agency published a final rule establishing that 83 additional active ingredients for OTC digestive aid use were not generally recognized as safe and effective. That final rule is effective on November 10, 1993, and lists the 83 ingredients in paragraph (a)(8)(ii). In this final rule, the agency is adding new paragraph (a)(8)(iii) to § 310.545 to include activated charcoal. This final rule expands the list of nonmonograph ingredients and establishes that any OTC digestive aid drug product containing activated charcoal is not generally recognized as safe and effective. Therefore, activated charcoal, when labeled, represented, or promoted for OTC use as a digestive aid, is considered nonmonograph and misbranded under section 502 of the act and is a new drug under section 201(p) of the act, for which an approved application under section 505 of the act and 21 CFR part 314 of the regulations is required for marketing. In appropriate circumstances, a citizen petition to establish a monograph may be submitted under § 10.30 in lieu of an application. In conclusion, any OTC digestive aid drug product containing any of the 105 ingredients listed in § 310.545(a)(8) that is initially introduced or initially delivered for introduction into interstate commerce after the applicable effective date in this paragraph is subject to regulatory action.

No comments were received in response to the agency's request for specific comment on the economic impact of this rulemaking (53 FR 2706 at 2713). The agency has examined the economic consequences of this final rule in conjunction with other rules resulting from the OTC drug review. In a notice published in the **Federal Register** of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that no one of these rules, including this final rule for OTC digestive aid drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (Pub. L. 96–354). That assessment included a discretionary regulatory flexibility analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking for OTC digestive aid drug products is not expected to pose such an impact on small businesses. As noted above, two earlier final rules established that a total of 104 active ingredients used in OTC digestive aid drug products were nonmonograph ingredients. This final rule covers one additional ingredient: Activated charcoal. The agency is aware of only a few products that contain this for OTC digestive aid use. Based on the limited number of affected products, the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 310 is amended as follows:

PART 310—NEW DRUGS

1. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 512–516, 520, 601(a), 701, 704, 705, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 360b–360f, 360j, 361(a), 371, 374, 375, 376); secs. 215, 301, 302(a), 351, 354–360F of the Public Health Service Act (42 U.S.C. 216, 241, 242(a), 262, 263b–263n).

2. Section 310.545 is amended by adding paragraph (a)(8)(iii); by adding and reserving paragraphs (d)(16) through (d)(20); by adding paragraph (d)(21); and by revising the introductory text of paragraph (d) to read as follows:

§ 310.545 Drug products containing certain active ingredients offered over-the-counter (OTC) for certain uses.

(a) * * *

(8) * * *

(iii) Charcoal, activated

* * * * *

(d) Any OTC drug product that is not in compliance with this section is subject to regulatory action if initially introduced or initially delivered for introduction into interstate commerce after the dates specified in paragraphs (d)(1) through (d)(21) of this section.

* * * * *

(21) April 21, 1994, for products subject to paragraph (a)(8)(iii) of this section.

Dated: September 3, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–25841 Filed 10–20–93; 8:45 am]

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October 21, 1993

Part VI

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 310 and 347

Skin Protectant Drug Products for Over-the-Counter Human Use; Astringent Drug Products; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 310 and 347

[Docket No. 78N–021A]

RIN 0905–AA06

Skin Protectant Drug Products for Over-the-Counter Human Use; Astringent Drug Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule in the form of a final monograph for over-the-counter (OTC) skin protectant drug products and establishing conditions under which OTC astringent drug products are generally recognized as safe and effective and not misbranded. FDA is issuing this final rule after considering public comments on the agency's proposed regulation, which was issued in the form of a tentative final monograph, and all new data and information on OTC astringent drug products that have come to the agency's attention. This final monograph is part of the ongoing review of OTC drug products conducted by FDA.

EFFECTIVE DATE: October 21, 1994.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD–810), Food and Drug Administration, 7520 Standish Place, Rockville, MD 20855, 301–594–5000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 7, 1982 (47 FR 39412 and 39436), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), advance notices of proposed rulemaking for OTC external analgesic drug products and OTC skin protectant drug products. The agency also reopened the administrative records for these rulemakings to allow for consideration of the reports and recommendations on OTC astringent drug products prepared by the Advisory Review Panel on OTC Miscellaneous External Drug Products (Miscellaneous External Panel), which was the advisory review panel responsible for evaluating data on the active ingredients used as astringents. Interested persons were invited to submit comments by December 6, 1982. Reply comments in response to comments filed in the initial comment period could be submitted by January 5, 1983.

In accordance with § 330.10(a)(10), the data and information considered by the Panel, after deletion of a small amount of trade secret information, were placed on display in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

In the **Federal Register** of February 15, 1983 (48 FR 6820), the agency published a notice of proposed rulemaking for OTC skin protectant drug products. The agency issued this notice after considering the report and recommendations of the Advisory Review Panel on OTC Topical Analgesic, Antirheumatic, Otic; Burn, and Sunburn Prevention and Treatment Drug Products (Topical Analgesic Panel) and public comments on an advance notice of proposed rulemaking that was based on those recommendations. Interested persons were invited to submit comments by April 18, 1983, new data by February 15, 1984, and comments on the new data by April 16, 1984.

The agency's proposed regulation, in the form of a tentative final monograph, for OTC skin protectant drug products used as astringents was published in the **Federal Register** of April 3, 1989 (54 FR 13490). Interested persons were invited to file by June 2, 1989, written comments, objections, or requests for oral hearing before the Commissioner of Food and Drugs regarding the proposal. New data could have been submitted until April 3, 1990, and comments on the new data until June 4, 1990. Interested persons were invited to file comments on the agency's economic impact determination by August 1, 1989.

The agency stated in the proposal that it had determined that the external analgesic and skin protectant uses of OTC astringent drug products are so closely related that it would not serve the public interest to proceed with two separate rulemakings for the same ingredients. Accordingly, the agency proposed to combine the rulemakings for the external analgesic and skin protectant uses of OTC astringent drug products and to place the monograph for these products in the OTC skin protectant monograph. Final agency action occurs with the publication of this final monograph, which is a final rule establishing a monograph for OTC skin protectant drug products used as astringents.

The OTC drug procedural regulations (21 CFR 330.10) provide that any testing necessary to resolve the safety or effectiveness issues that formerly resulted in a Category III classification, and submission to FDA of the results of that testing or any other data, must be done during the OTC drug rulemaking process before the establishment of a final monograph. Accordingly, FDA does not use the terms "Category I" (generally recognized as safe and effective and not misbranded), "Category II" (not generally recognized as safe and effective or misbranded), and "Category III" (available data are insufficient to classify as safe and effective, and further testing is required) at the final monograph stage. In place of Category I, the term "monograph conditions" is used; in place of Categories II or III, the term "nonmonograph conditions" is used.

In the proposed regulation for OTC skin protectant drug products used as astringents (54 FR 13490), the agency advised that the conditions under which the drug products that are subject to this monograph would be generally recognized as safe and effective and not misbranded (monograph conditions) will be effective 12 months after the date of publication in the **Federal Register**. Therefore, on or after October 21, 1994, no OTC drug product that is subject to the monograph and that contains a nonmonograph condition, i.e., a condition that would cause the drug to be not generally recognized as safe and effective or to be misbranded, may be initially introduced or initially delivered for introduction into interstate commerce unless it is the subject of an application or abbreviated application (hereinafter called application) approved under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) and 21 CFR part 314. Further, any OTC drug product subject to this monograph that is repackaged or relabeled after the effective date of the monograph must be in compliance with the monograph regardless of the date the product was initially introduced or initially delivered for introduction into interstate commerce. Manufacturers are encouraged to comply voluntarily with the monograph at the earliest possible date.

In response to the proposed rule on OTC skin protectant drug products used as astringents, two manufacturers submitted comments. Copies of the comments are on public display in the Dockets Management Branch (address above). Any additional information that has come to the agency's attention since publication of the proposed rule is also on public display in the Dockets Management Branch.

All "OTC Volumes" cited throughout this document refer to the submissions made by interested persons pursuant to

the call-for-data notices published in the **Federal Register** of November 16, 1973 (38 FR 31697) and August 27, 1975 (40 FR 38179) or to additional information that has come to the agency's attention since publication of the notice of proposed rulemaking. The volumes are on public display in the Dockets Management Branch.

I. The Agency's Conclusions on the Comments

A. Comment on Ferric Subsulfate

1. One comment submitted information (Refs. 1 through 32) to support both OTC and professional use of ferric subsulfate solution (Monsel's Solution) as an astringent. The comment suggested consumer use as an astringent/hemostatic agent to arrest bleeding caused by minor surface cuts and grazes; professional use would be to arrest bleeding of superficial skin wounds resulting from minor surgical procedures, such as biopsies and curettage. The comment requested an oral hearing if the agency found the information to be inadequate.

The agency finds the information submitted by the comment insufficient to include ferric subsulfate solution in the final monograph as a topical astringent for either consumer or health professional use.

Most of the references provided refer to the use of ferric subsulfate solution as a hemostatic agent/styptic by medically trained health professionals in a clinical setting after biopsies, minor surgery, and other procedures causing minimal bleeding. None of the data provided suggest that a product containing ferric subsulfate as an astringent/hemostatic agent has ever been used or could be safely used by consumers. Further, the agency is not aware of any other data that show safety or effectiveness for OTC use by consumers. Therefore, the agency has no basis to include ferric subsulfate as an astringent for OTC consumer use in this monograph.

Regarding professional use, the references suggest that there are undesirable side effects and safety risks associated with using ferric subsulfate solution to arrest bleeding due to minor surgical procedures. Several references include reports of ferric subsulfate solution pigmenting the skin. Larson (Ref. 1) states that, although not common, pigmentation of the skin may result from sideroblast deposits or from stimulation of melanocytes. Larson adds that ferric subsulfate has a long-lasting cytotoxic effect that may make subsequent histologic examination of tissue difficult. Olmstead, Lund, and Leonard (Ref. 2) consider ferric subsulfate a histologic nuisance and discourage its use following biopsies of pigmented lesions or tumors that may present diagnostic difficulties. They claim ferric subsulfate promotes artifacts that can be troublesome to the pathologist if rebiopsy of a lesion is necessary, adding that ferric subsulfate may distort or obscure the basic pathologic process. Amazon, Robinson, and Rywlin (Ref. 3) describe the capacity of ferric subsulfate to produce ferrugination of collagen fibers, skeletal muscle, and perichondrium and to produce permanent discoloration of the skin. They state that when there is injury to skeletal muscle and other deep tissues by ferric subsulfate solution, an inflammatory reaction persists at these sites for weeks. They caution that clinicians should be aware that ferric subsulfate solution has demonstrable cytotoxic effects with long-lasting sequelae, and pathologists should be aware of the histopathologic findings that follow application of this solution. Wood and Severin (Ref. 4) suggest that ferric subsulfate may induce granulomas. These granulomas are rarely pigmented and must be differentiated histologically from pigmented neoplasms. Wood and Severin described a case in which a dermal nodule of atypical histiocytes (a macrophage present in connective tissue) developed at the site where ferric subsulfate solution had been applied to a wound 30 days earlier. Duray and Livolsi (Ref. 5) reported that the use of ferric subsulfate solution to achieve hemostasis at a biopsy site can also produce a clinically irregular area of hyperpigmentation accompanied by a pathologic pigmented and cellular dermal reaction. Davis, et al. (Ref. 6) mention the potential effect of ferric subsulfate solution obscuring the basic disease process in the uterine cervix.

Many uses of ferric subsulfate solution were discussed in the references submitted by the comment. However, questions remain concerning which procedures are safe and which are not. Standards for safety of OTC human drugs in § 330.10(a)(4)(i) (21 CFR 330.10(a)(4)(i)) include a low incidence of adverse reactions or significant side effects under adequate directions for use and warnings against unsafe use as well as low potential for harm that may result from abuse under conditions of widespread availability. If ferric subsulfate is cytotoxic as suggested by Larson (Ref. 1), the question of long-term adverse effects for the patient remains unanswered.

The agency finds that permitting the use of ferric subsulfate only in external dermatologic applications would also present difficulties. It is not clear from the references submitted how large a wound may be safely treated with ferric subsulfate solution. Although discoloration of the tissue sometimes results after using the product, there is no indication of the frequency or the severity of this problem. Without such information, the risk to the patient cannot be evaluated.

While ferric subsulfate solution has been in use for over 100 years, its iatrogenic effects (unfavorable response to medical intervention, induced by the intervention itself) have been recognized only recently (Refs. 2, 3, and 4). The agency does not have an adequate safety profile on this ingredient for the various uses suggested by the comment. The safety issues relevant to the product are not adequately addressed by the information provided.

The clinical effectiveness data provided were taken from the medical literature and involved situations where the product was applied by medically trained professionals (Refs. 7 through 32). The references do not provide any clinical information or data on which to base appropriate OTC drug labeling of the product for self-medication. Standards for effectiveness for OTC human drugs in § 330.10(a)(4)(ii) require controlled clinical investigations for proof of effectiveness, and specifically state that isolated case reports, random experience, and reports lacking the details which permit scientific evaluation will not be considered. Further, § 330.10(a)(4)(iii) requires the benefit-to-risk ratio of a drug to be considered in determining its safety and effectiveness.

The references include case reports of the uses of ferric subsulfate solution but do not include any controlled clinical studies to show effectiveness. Because other recognized safe astringent products are available for OTC human use and potential risks are associated with the use of ferric subsulfate solution, the benefit-to-risk ratio for ferric subsulfate solution for general consumer use is unfavorable based upon current information. While ferric subsulfate solution may have utility as an astringent/hemostatic when used by health professionals, substantive clinical data are necessary to establish the proper safe and effective conditions for use.

Accordingly, the agency concludes that the data provided are not sufficient to support monograph status for ferric subsulfate solution as an astringent for OTC topical use by consumers or by health professionals. Therefore, ferric subsulfate is not included in this final

monograph. The agency's detailed comments and evaluation of the data are on file in the Dockets Management Branch (Refs. 33 and 34).

Based on the lack of adequate safety and effectiveness data, the agency concludes that an oral hearing before the Commissioner is not warranted.

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(30) McFadden, N., T. Lyberg, and A. Hensten-Pettersen, "Aluminum-Induced Granulomas in a Tattoo," *Journal of the American Academy of Dermatology*, 20:903–908, 1989.

(31) Camisa, C., and W. Roberts, "Monsel's Solution Tattooing," *Journal of the American Academy of Dermatology*, 5:753–754, 1983.

(32) Epstein, E., "Monsel's Solution," *Journal of the American Academy of Dermatology*," 4:606, 1981.

(33) Letter from W. E. Gilbertson, FDA, to D. B. DeVogel, American Dermal Corp., coded LET1, Docket No. 78N–021A, Dockets Management Branch.

(34) Letter from W. E. Gilbertson, FDA, to D. B. DeVogel, American Dermal Corp., coded LET6, Docket No. 78N–021A, Dockets Management Branch.

B. Comments on Hamamelis Water

2. One comment requested that FDA consider the use of specifically denatured alternative preservatives in the manufacture of Hamamelis water. The comment stated that by using its own aromatic and hamamelitannin ingredients as denaturants in the manufacture of Hamamelis water, the preparation would be in compliance with Hamamelis water National Formulary (N.F.) XI. The comment stated that the Bureau of Alcohol, Tobacco, and Firearms (BATF) should give it permission to use those alternative preservatives in the manufacture of Hamamelis water.

OTC drug monographs do not provide special exceptions to methods used to manufacture specific products. At the time that the tentative final monograph was published, Hamamelis water was not included in an official compendium. The agency's reference to "NF XI" in the tentative final monograph (54 FR 13490 at 13493) was intended to provide a standard for the preparation of Hamamelis water. Since that time, the United States Pharmacopeial Convention, Inc. (U.S.P.C.), has initiated development of a current compendial monograph for "Hamamelis water" (Refs. 1 and 2). The agency anticipates that a final monograph will be included in the United States Pharmacopeia (U.S.P.)—N.F. before the effective date of the final monograph for OTC astringent drug products. The proposed new U.S.P.—N.F. monograph is very similar to the former monograph in NF XI and provides a method of preparation. Accordingly, the final monograph for OTC astringent drug products in this document refers to the new U.S.P.—N.F. monograph for Hamamelis water.

The U.S.P.—N.F. provides under "General Notices" (Ref. 3) that a suitable formula of specially denatured alcohol may be substituted for alcohol in the manufacture of pharmacopeial preparations intended for internal or topical use, provided that the denaturant is volatile and does not remain in the finished product. It further states that a finished product that is intended for topical application to the skin may contain specially denatured alcohol, provided that the denaturant is either a normal ingredient or a permissible added substance. Any denatured alcohol used in the preparation of Hamamelis water would need to meet these requirements in order for the product to be marketed OTC in accordance with the final monograph in new part 347.

References

(1) "Pharmacopeial Forum," The United States Pharmacopeial Convention, Inc., Rockville, MD, p. 3855, September through October 1992.

(2) "Pharmacopeial Forum," The United States Pharmacopeial Convention, Inc., Rockville, MD, p. 5266, May through June 1993.

(3) "The United States Pharmacopeia XXII—The National Formulary XVII," The United States Pharmacopeial Convention, Inc., Rockville, MD, p. 3, 1989.

3. One comment requested that the agency reconsider and include in the final monograph several indications for use for Hamamelis water. The comment mentioned that these indications were not included in the agency's notice of proposed rulemaking, but had been recommended by the Miscellaneous External Panel in § 347.52(b)(2) of its advance notice of proposed rulemaking (47 FR 39436 at 39450 and 39451), as follows:

(i) "For use as an astringent for the treatment of bruises, contusions, and sprains."

(ii) "For protecting slight cuts and scrapes."

(iii) "For relieving muscular pains."

(iv) "For treating the pain and swelling of insect bites."

(v) "For use as an astringent for the treatment of skin irritation, sunburn, and external hemorrhoids."

The comment also requested an oral hearing if necessary.

As discussed in the proposed rule for OTC astringent drug products (54 FR 13490 at 13497), the agency is not aware of any data to support the use of Hamamelis water as an astringent for "bruises," "contusions," "sprains," "sunburn," or "relieving muscular pains." The comment did not submit any new data to substantiate any of these claims. Therefore, the agency has no basis for including any of these indications in this final monograph.

Claims for using Hamamelis water for external hemorrhoids are covered in the rulemaking for OTC anorectal drug products. Indications for Hamamelis water products for that use are included in § 346.50(b) of the final monograph for OTC anorectal drug products (21 CFR 346.50(b)). Claims for insect bites, minor cuts, and minor scrapes were proposed in § 347.52(b)(3) of the tentative final monograph (54 FR 13490 at 13497) and appear in new § 347.50(b)(3) of this final monograph. Because the comment did not submit any substantive or new information to support the indications not included in this final monograph, the agency concludes that an oral hearing is not warranted.

II. Summary of Changes From the Proposed Rule

1. In the tentative final monograph the agency proposed to identify Hamamelis water as "NF XI." Now that a new U.S.P. monograph has been established, the agency is identifying Hamamelis water as "U.S.P." (See comment 2.)

2. The definition for an astringent drug product proposed in § 347.3(c) appears in new § 347.3(a) of this final monograph. The active ingredients proposed in § 347.12 appear in new § 347.10 of this final monograph. The labeling of astringent drug products proposed in § 347.52 appears in new § 347.50 of this final monograph.

III. The Agency's Final Conclusions on OTC Astringent Drug Products

Based on available evidence, the agency is issuing a final monograph establishing conditions under which OTC skin protectant drug products used as astringents are generally recognized as safe and effective and not misbranded. Specifically, the agency has determined that the only ingredients that meet monograph conditions are aluminum acetate, aluminum sulfate, and Hamamelis water. All other ingredients considered in this rulemaking have been determined to be nonmonograph. These ingredients include, but are not limited to, acetone, alcohol, alum ammonium, alum potassium, aluminum chlorhydroxy complex (aluminum chloride hexahydrate), aromatics, benzalkonium chloride, benzethonium chloride, benzocaine, benzoic acid, boric acid, calcium acetate, camphor (gum camphor), clove oil (oil of cloves), colloidal oatmeal, cresol, cupric sulfate, eucalyptus oil (oil of eucalyptus), eugenol, ferric subsulfate (Monsel's Solution), honey, isopropyl alcohol, menthol, methyl salicylate (oil of wintergreen), oxyquinoline sulfate, p-t-butyl-m-cresol (para-tertiary-butyl-meta-cresol), peppermint oil (oil of peppermint), phenol (carbolic acid), polyoxyethylene laurate (polyoxyethylene monolaurate), potassium ferrocyanide, sage oil (oil of sage), silver nitrate, sodium borate (borax), sodium diacetate, talc, tannic acid, tannic acid glycerite, thymol, topical starch (starch), zinc chloride, zinc oxide, zinc phenolsulfonate, zinc stearate, zinc sulfate. All of these ingredients except ferric subsulfate (Monsel's Solution) were listed as nonmonograph in § 310.545(a)(18)(ii) (21 CFR 310.545(a)(18)(ii)) in a final rule published in the **Federal Register** of May 10, 1993 (58 FR 27636 at 27642). Ferric subsulfate is being included in that same section in this final rule. Accordingly, any skin protectant drug product labeled, represented, or promoted for use as an OTC astringent that contains any of the ingredients listed in § 310.545(a)(18)(ii) or that is not in conformance with this final monograph (new part 347) is considered a new drug within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(p)) and misbranded under section 502 of the act (21 U.S.C. 352) and may not be marketed for this use unless it is the subject of an approved application under section 505 of the act (21 U.S.C. 355) and 21 CFR part 314. An appropriate citizen petition to amend the monograph may also be submitted under 21 CFR 10.30 in lieu of an application. Any OTC skin protectant drug product for use as an astringent that is initially introduced or initially delivered for introduction into interstate commerce after the effective dates of § 310.545(a)(18)(ii) or this final rule that is not in compliance with the regulations is subject to regulatory action. Further, any OTC drug product subject to this monograph that is repackaged or relabeled after the effective date of the monograph must be in compliance with the monograph regardless of the date the product was initially introduced or initially delivered for introduction into interstate commerce.

No comments were received in response to the agency's request for specific comment on the economic impact of this rulemaking (51 FR 27346 at 27362, July 30, 1986). The agency has examined the economic consequences of this final rule in conjunction with other rules resulting from the OTC drug review. In a notice published in the **Federal Register** of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that no one of these rules, including this final rule for OTC skin protectant drug products used as astringents, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (Pub. L. 96–354). That assessment included a discretionary regulatory flexibility analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking for OTC skin protectant drug products used as astringents is not expected to pose such an impact on small businesses. This final rule will require some relabeling of products containing monograph ingredients. Manufacturers will have 1 year to implement this new labeling. Nonmonograph ingredients except ferric subsulfate (Monsel's Solution) were addressed previously when § 310.545(a)(18)(ii) was published.

Therefore, the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects

21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 347

Labeling, Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR chapter I is amended as follows:

PART 310—NEW DRUGS

1. The authority citation for 21 CFR part 310 is revised to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 512–516, 520, 601(a), 701, 704, 705, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 360b-360f, 360j, 361(a), 371, 374, 375, 379e); secs. 215, 301, 302(a), 351, 354–360F of the Public Health Service Act (42 U.S.C. 216, 241, 242(a), 262, 263b-263n).

2. Section 310.545 is amended in paragraph (a)(18)(ii) by alphabetically adding the entry "Ferric subsulfate (Monsel's Solution)," by revising paragraph (d)(11), and by adding new paragraph (d)(22) to read as follows:

§ 310.545 Drug products containing certain active ingredients offered over-the-counter (OTC) for certain uses.

(a) * * *

(18) * * *

(ii) * * *

* * * * *

Ferric subsulfate (Monsel's Solution)

* * * * *

(d) * * *

(11) November 10, 1993, for products subject to paragraph (a)(18)(ii) of this section, except products that contain ferric subsulfate.

* * * * *

(22) April 21, 1993, for products subject to paragraph (a)(18)(ii) of this section that contain ferric subsulfate.

3. Part 347 is added as follows:

PART 347—SKIN PROTECTANT DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

Subpart A—Astringent Drug Products

Sec.

347.1 Scope.
347.3 Definitions.
347.10 Astringent active ingredients.
347.50 Labeling of astringent drug products.

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371).

Subpart A—Astringent Drug Products

§ 347.1 Scope.

(a) An over-the-counter skin protectant drug product in a form suitable for topical administration is generally recognized as safe and effective and is not misbranded if it meets each condition in this part and each general condition established in § 330.1 of this chapter.

(b) References in this part to regulatory sections of the Code of Federal Regulations are to Chapter I of Title 21 unless otherwise noted.

§ 347.3 Definitions.

As used in this part:

(a) *Astringent drug product* means a drug product that is applied to the skin or mucous membranes for a local and limited protein coagulant effect.

(b) [Reserved]

§ 347.10 Astringent active ingredients.

The active ingredient of the product consists of any one of the following within the specified concentration established for each ingredient:

(a) Aluminum acetate, 0.13 to 0.5 percent (depending on the formulation and concentration of the marketed product, the manufacturer must provide adequate directions so that the resulting solution to be used by the consumer contains 0.13 to 0.5 percent aluminum acetate).

(b) Aluminum sulfate, 46 to 63 percent (the concentration is based on the anhydrous equivalent).

(c) Hamamelis water, U.S.P.

§ 347.50 Labeling of astringent drug products.

(a) *Statement of identity.* The labeling of the product contains the established name of the drug, if any, and identifies the product as an "astringent."

(b) *Indications.* The labeling of the product states, under the heading "Indications" any of the phrases listed in this paragraph (b), as appropriate. Other truthful and nonmisleading statements describing only the indications for use that have been established and listed in this paragraph (b) may also be used, as provided in § 330.1(c)(2) of this chapter, subject to the provisions of section 502 of the Federal Food, Drug, and Cosmetic Act (the act) relating to misbranding and the prohibition in section 301(d) of the act against the introduction or delivery for introduction into interstate commerce of unapproved new drugs in violation of section 505(a) of the act.

(1) *For products containing aluminum acetate identified in § 347.10(a).* "For temporary relief of minor skin irritations due to" (select one or more of the following: "poison ivy," "poison oak," "poison sumac," "insect bites," "athlete's foot," or "rashes caused by soaps, detergents, cosmetics, or jewelry").

(2) *For products containing aluminum sulfate identified in § 347.10(b) for use as a styptic pencil.* "Stops bleeding caused by minor surface cuts and abrasions as may occur during shaving."

(3) *For products containing Hamamelis water identified in § 347.10(c).* (i) "For relief of minor skin irritations due to" (select one or more of the following: "insect bites," "minor cuts," or "minor scrapes").

(c) *Warnings.* The labeling of the product contains the following warnings under the heading "Warnings":

(1) "For external use only. Avoid contact with the eyes."

(2) *For products containing aluminum acetate identified in § 347.10(a) or hamamelis water identified in § 347.10(c).* "If condition worsens or symptoms persist for more than 7 days, discontinue use of the product and consult a" (select one of the following: "physician" or "doctor").

(3) *For products containing aluminum acetate identified in § 347.10(a) used as a compress or wet dressing.* "Do not cover compress or wet dressing with plastic to prevent evaporation."

(d) *Directions.* The labeling of the product contains the following information under the heading "Directions":

(1) *For products containing aluminum acetate identified in § 347.10(a)*—(i) *For products used as a soak.* "For use as a soak: Soak affected area in the solution for 15 to 30 minutes. Discard solution after each use. Repeat 3 times a day."

(ii) *For products used as a compress or wet dressing.* "For use as a compress or wet dressing: saturate a clean, soft, white cloth (such as a diaper or torn sheet) in the solution, gently squeeze, and apply loosely to the affected area. Saturate the cloth in the solution every 15 to 30 minutes and apply to the affected area. Discard solution after each use. Repeat as often as necessary."

(2) *For products containing aluminum sulfate identified in § 347.10(b) for use as a styptic pencil.* "Moisten tip of pencil with water and apply to the affected area. Dry pencil after use."

(3) *For products containing hamamelis water identified in § 347.10(c).* "Apply to the affected area as often as necessary."

Dated: August 26, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–25739 Filed 10–20–93; 8:45 am]

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Thursday
October 21, 1993

Part VII

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 328

Drug Products Intended for Oral Ingestion That Contain Alcohol; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 328

[Docket No. 93N-0107]

Over-the-Counter Drug Products Intended for Oral Ingestion That Contain Alcohol

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a notice of proposed rulemaking that would establish a maximum concentration limit for alcohol (ethyl alcohol) as an inactive ingredient in over-the-counter (OTC) drug products intended for oral ingestion (0.5 percent alcohol for children under 6 years of age, 5 percent alcohol for children 6 to under 12 years of age, and 10 percent alcohol for anyone 12 years of age and over). In addition, the proposal requires that the alcohol content be stated conspicuously or prominently on the principal display panel (front) of product labeling. FDA is issuing this notice of proposed rulemaking after considering recommendations from its OTC Drugs Advisory Committee (the Committee).

DATES: Written comments by January 19, 1994. Written comments on the agency's economic impact determination by January 19, 1994. The agency is proposing that any final rule that may issue based on this proposal become effective 12 months after the date of publication in the **Federal Register**.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-810), Food and Drug Administration, 7520 Standish Place, Rockville, MD 20855, 301-594-5000.

SUPPLEMENTARY INFORMATION: Alcohol is present as an inactive ingredient (e.g., solvent, preservative) in many different types of OTC drug products that are orally ingested: Analgesic, cough-cold, laxative, menstrual, and other drug products. The use of alcohol in those products has been discussed in several rulemakings for OTC drug products, with the majority of the discussion in the rulemaking for OTC cough-cold drug products.

I. Rulemaking for OTC Cough-Cold Drug Products

The Advisory Review Panel on OTC Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products (the Panel) took the position that medications administered to children should contain either a minimum amount of alcohol or none at all. (See the **Federal Register** of September 9, 1976, 41 FR 38312 at 38333.) The Panel concluded that alcohol in pediatric formulations should be maintained at the lowest possible concentration, that products should be formulated without alcohol if pharmaceutically possible, and that cough-cold drug products containing alcohol greater than 10 percent weight-to-weight should not be given to children under 6 years of age except under the advice and supervision of a physician.

Subsequently, FDA asked the American Academy of Pediatrics Committee on Drugs (AAP/CD) to evaluate the use of alcohol in OTC drug products for children. The AAP/CD stated that ideally medicinal products intended for use in children should contain no alcohol. However, if alcohol is required to solubilize the active ingredients in a product intended for use in children, the AAP/CD made the following recommendations to FDA: (1) OTC liquid preparations should be limited to a maximum of 5 percent volume-to-volume alcohol, (2) physician supervision is suggested for children less than 6 years of age who use OTC preparations containing alcohol, (3) the amount of alcohol contained in any medicinal preparation should not be capable of producing a blood alcohol concentration greater than 25 milligrams (mg) per 100 milliliters (mL) after a single recommended dose, (4) appropriate intervals between doses should be prescribed to prevent the accumulation of blood alcohol, (5) the packaged volume of alcohol-containing products should be kept to a reasonable minimum to prevent potential lethal ingestions, and (6) safety closures should be used for medications with greater than a 5-percent alcohol content (Ref. 1). The AAP/CD concluded that pediatricians and other health care providers should be aware of the widespread presence of alcohol in liquid medications and its potential toxicity. The AAP/CD recommended that continued efforts be made to remove alcohol from liquid preparations intended for children.

In the tentative final monograph for OTC cough-cold combination drug products, the agency stated that it was considering adopting the AAP/CD recommendations and invited public comment. (See the **Federal Register** of August 12, 1988, 53 FR 30522 at 30528 and 30529.) The agency cited data in support of the proposition that alcohol depresses the central nervous system over a wide range of doses, that threshold effects are observed at blood levels of 20 to 50 mg per 100 mL, and that a detectable impairment of vision occurs at a blood level of about 15 mg per 100 mL (Ref. 2).

In response, the Nonprescription Drug Manufacturers Association (NDMA) objected to many of the AAP/CD recommendations. NDMA contended that alcohol has a number of legitimate uses in formulating OTC drug products, that it: (1) Enhances flavor, (2) provides palatability to distasteful ingredients, especially those extracted from natural sources, (3) acts as an effective preservative against microbial growth and chemical change, (4) enhances the antimicrobial potency of other preservatives that may be needed in a product, (5) maintains stability more effectively with less added volume than water-miscible alternatives, and (6) is less toxic than most alternative solvents. NDMA contended that AAP/CD's recommendation of a 5-percent alcohol limit is unduly restrictive in relation to the dose and package volumes of current OTC drug products. NDMA concluded that the alcohol limit proposed by AAP/CD would not appear to offer greater safety to children when OTC drug products are taken at recommended doses or accidentally ingested.

The agency subsequently received letters from groups concerned about the presence of alcohol in OTC drug products (Refs. 3, 4, and 5). The American Psychiatric Association (Ref. 3) suggested that the agency minimize the alcohol content in medicines. The National Council on Alcoholism and Drug Dependence, Inc. (Ref. 4) stated that drug products should contain only the amount of alcohol that is minimally necessary, as determined solely by the physical and chemical characteristics of the medication. The Consumer Protection Board of the State of New York (Ref. 5) urged the agency to determine whether manufacturers of alcohol-containing OTC drug products could obtain the same results without the use of alcohol.

The subject of alcohol in OTC drug products was also discussed in the final monograph for OTC antihistamine drug products (57 FR 58356, December 9, 1992). This monograph includes warnings in § 341.72(c)(3) (21 CFR 341.72(c)(3)) that advise consumers to avoid alcoholic beverages while taking

products containing any of the following antihistamines: Brompheniramine maleate, chlorcyclizine hydrochloride, chlorpheniramine maleate, dexbrompheniramine maleate, dexchlorpheniramine maleate, diphenhydramine citrate, diphenhydramine hydrochloride, phenindamine tartrate, pheniramine maleate, pyrilamine maleate, thonzylamine hydrochloride, or triprolidine hydrochloride. Those warnings advise that the product may cause drowsiness and that alcohol may increase the drowsiness effect.

II. The OTC Drugs Advisory Committee Meeting

Because of the concerns discussed above, the agency asked its OTC Drugs Advisory Committee to advise the agency on the appropriate alcohol content of OTC drug products. On December 17, 1992 (Ref. 6), the Committee was presented information on the following topics: Types of OTC drug products that contain alcohol, the pharmaceutical role of alcohol, the pharmacokinetics and pharmacodynamics of alcohol, numerous safety issues concerning alcohol and its use in OTC drug products, possible alcohol content limitations, and nonalcohol formulation alternatives. The Committee considered the benefits and risks of alcohol in OTC drug products and whether limits should be placed on the alcohol concentration in these products. The Committee discussed the bases for alcohol content limitations and sought to determine whether there should be differences in requirements for products intended to be used by consumers of different ages: (1) Under the age of 6 years, (2) age 6 to under 12 years, (3) for adult use (over 12), and (4) for use by the elderly. The Committee considered whether alcohol in OTC drug products contributes significantly to alcohol abuse, what effect it has on alcoholics and children of alcoholics, and what specific actions could be recommended to reduce any risks. The Committee also addressed the pharmaceutical uses of alcohol in OTC drug products and possible alternative solvents or vehicles.

A transcript (Ref. 6) containing the various presentations and the Committee's discussion is on public display in the Dockets Management Branch (address above). A summary of the presentations and discussion follows.

Alcohol has been well recognized as a pharmaceutical excipient and is most commonly used as a solvent in the formulation of oral drug products. Certain drugs are insoluble in water and must be delivered in an alternate vehicle. Alcohol is the preferred solvent because of its high relative ability to dissolve many water-insoluble ingredients, including flavors used in OTC drug products. Alcohol is also used with other solvents, such as glycols and glycerin, to reduce the amount of solvent needed in a product. Alcohol increases the antimicrobial activity of glycol solvents. Alcohol is also used as a preservative to ensure stability, and as a copreservative in conjunction with parabens, benzoates, sorbates, or ethylenediaminetetraacetic acid to broaden and enhance the antimicrobial activity of the preservative system. For example, alcohol shows less pH dependency than the benzoates and parabens and, as a copreservative, makes antimicrobial activities of parabens and benzoates less dependent on the product's pH. Thus, the alcohol-benzoate or alcohol-paraben preservative system can be used in a broader range of products than benzoate or paraben preservatives alone. At a 10-percent concentration, alcohol prevents inactivation of parabens by nonionic surfactants.

Although alcohol offers certain advantages in formulation, as discussed above, one Committee member noted that it is not an absolute pharmaceutical necessity. Glycerin, polyethylene glycol, and propylene glycol can be used as substitutes. However, these other ingredients lack the solvent power of alcohol. Polyethylene glycol and propylene glycol are on FDA's Generally Recognized As Safe (GRAS) list of food additive ingredients. However, ingestion of large amounts of propylene glycol has resulted in lactic acidosis (increased blood lactic acid concentrations). Also, when propylene glycol is eliminated from the body, isopropyl alcohol is a metabolic byproduct. When excess amounts of glycerin are ingested, hyperosmolar nonketotic coma, diabetic acidosis, pulmonary edema, and minor symptoms of headache, nausea, vomiting, and dizziness can occur.

The pharmacokinetics and pharmacodynamic effects of alcohol were discussed by the Committee. Alcohol at significant blood concentration levels exhibits zero order (or saturable) pharmacokinetics, i.e., the quantity of alcohol elimination per unit of time is constant and is not proportional to the concentration of alcohol in the body. Alcohol does not have a defined half-life because the half-life changes according to the quantity of alcohol remaining in the body. The amount of alcohol does not decrease by a constant fraction per unit time, but decreases by a constant amount per unit time. Zero order pharmacokinetics can create a blood alcohol concentration that is no longer proportional to the dose, i.e., a small increase in dose may have a large increase in the blood alcohol concentration. One Committee member stated that several studies have shown that there is little difference in alcohol pharmacokinetics for the geriatric population. Also, there is insufficient scientific data in the literature to demonstrate the pharmacokinetics of alcohol in the pediatric population.

In acute alcohol intoxication, lactic acidosis develops, with hypoglycemia occurring in some people. These effects pose a serious toxicologic problem, especially in children who consume alcohol-containing products. The principal action of alcohol is central nervous system depression. As increasing levels of depression occur, changes in perception and motor incoordination occur and, finally, coma and loss of dependent reflexes can occur. Different effects occur as the blood alcohol concentration increases: At 50 mg per deciliter (dL), some motor function impairment occurs; at about 80 mg per dL, the motor impairment becomes very evident; at about 200 mg per dL, significant central nervous system depression occurs; at 400 mg per dL, respiratory failure can occur. Death can occur due to respiratory failure or as a result of pulmonary aspiration of gastric contents.

Individuals can vary greatly in their sensitivity to alcohol, i.e., in the concentration that produces a particular intensity of effect. Individuals who have developed a tolerance to alcohol will experience a less intense effect at a particular concentration than normal, nontolerant individuals.

Other effects of alcohol are cutaneous vasodilation (a relatively small effect on the cardiovascular system), withdrawal syndrome, stimulation of gastric acid secretion, and stomach irritation. Alcohol is a teratogen. Fetal alcohol syndrome has been well described in babies of women who consume large amounts of alcohol during certain stages of pregnancy.

A number of studies have correlated alcoholism with age, sex, race, drinking pattern, socioeconomic status, family history, genetic factors, environmental factors, consumption, and cirrhosis mortality and morbidity. A large number of case reports on hepatic and renal injury have involved simultaneous use of alcohol and OTC drugs, particularly acetaminophen. Large doses of acetaminophen (greater than recommended in labeling) taken with

alcohol can produce potentially fatal hepatic and renal necrosis. Data from studies in monkeys suggest that alcohol increases the reinforcing effects of other drugs in terms of implications for human behavior and increased liability for abuse. Alcoholics are known to drink mouthwashes that contain alcohol, and it is not unusual for individuals in addiction treatment programs to use OTC medications that are formulated with alcohol as a source of alcohol.

Children's exposure to medicines having a high alcohol content raises special concerns. However, one Committee member noted that there are little data on the use of alcohol in children, probably because alcohol intake is not legal in children or in young adults under 18 to 21 years of age. In March 1984, the AAP/CD (Ref. 1) established that a child's blood alcohol concentration should not exceed 25 mg per dL following a single dose of alcohol-containing medication. The AAP/CD estimated the volumes (mL) of alcohol preparations predicted to produce a blood alcohol concentration of 25 mg/dL in different aged children, as stated in the following chart:

ESTIMATED VOLUMES (ML) OF ALCOHOL PREPARATION REQUIRED TO PRODUCE A BLOOD ALCOHOL CONCENTRATION OF 25 MG PER DL

Percent absolute ethanol (v/v) in product	Age (weight)					
	2 yr (12 kg)	4 yr (16 kg)	6 yr (21 kg)	8 yr (27 kg)	10 yr (32 kg)	12 yr (38 kg)
2.5	91	122	160	205	243	289
5.0	46	61	80	103	122	144
7.5	30	41	53	68	81	96
10.0	23	30	40	51	61	72
12.5	18	24	32	41	49	58
20.0	11	15	20	26	30	36
25.0	9	12	16	21	24	29

These figures are based on data taken from adults and, therefore, are strictly hypothetical with respect to children. Nonetheless, after this paper was published, many manufacturers voluntarily reduced the amount of alcohol in their products. The AAP/CD report did not endorse the use of alcohol in orally ingested OTC drug products intended for use in children. The report stated that it was desirable to have no alcohol in medicinal products intended for use in children and recommended that a continued effort be made to remove alcohol from these products.

It was noted by one Committee member that the concentration of alcohol in OTC drug products was not as much a concern as the palatability of the product and the willingness of a child to take the product. Once ingested, alcohol's effects are the same regardless of the source or vehicle. Between 1987 and 1991, 17,000 cases of ingestion of alcohol-containing mouthwashes were reported to poison control centers, with 39 cases experiencing major (life-threatening) effects. Several of these cases involved children, and there were four deaths, including one child. Out of 145,000 reported incidents involving alcohol in perfume, cologne, and aftershave, only 14 cases were classified as major, with no deaths reported.

According to NDMA, reports from the American Association of Poison Control Centers National Data Collection System showed no deaths in children less than 6 years of age due to accidental ingestion of alcohol-containing OTC drug products intended for oral ingestion. Data from poison control centers do not indicate a widespread acute intoxication problem from the accidental ingestion of alcohol in OTC drug products. For example, in a study monitored by the Maryland Poison Control Center, covering the period from June 1989 to June 1992, there was no major difference in adverse effects between products containing alcohol (10 to 25 percent) and alcohol-free products. No deaths, major effects, or moderate effects were reported. Most ingestions involving products containing alcohol were in the 2 ounce (oz) range, with the maximum ingestion reported being 4 oz in a slightly older child.

A representative from Canada stated that manufacturers of pediatric medications marketed in Canada are encouraged to use other suitable solvents, and they are required to justify the use of alcohol. When use can be justified, the concentration of alcohol should not exceed 5 percent volume-to-volume, with the amount of alcohol contained in the product not capable of producing a blood concentration greater than 25 mg per dL per dose, when taken as directed.

NDMA proposed to the Committee the following alcohol concentration limits for OTC monographed drug products intended for oral ingestion: 10 percent alcohol volume-to-volume for adults and children ages 12 and over, except in cases where higher concentrations of alcohol must be used (e.g., plant extracts); up to 5 percent volume-to-volume for children 6 to under 12 years of age, and alcohol-free products (defined as less than 0.5 percent alcohol) for children under 6 years of age (Ref. 7). These limits would be implemented by the OTC drug industry on a voluntary basis. The NDMA program also includes current agency required warnings (such as for antihistamines, as discussed above) and additional direction statements for OTC alcohol-containing drug products. According to NDMA, directions for use of products containing between 5 and 10 percent alcohol should convey that physician supervision is recommended for children under 12 years of age. For pediatric products with an alcohol concentration above 0.5 percent, directions for use should state that supervision of a physician is recommended for children under 6 years of age. NDMA member companies with affected OTC drug products intend to make these changes "as soon as practicable," with the goal of voluntary compliance for reformulating and labeling to the new 5- and 10-percent alcohol limitations targeted for November 1993. The goal for the reformulation and labeling of alcohol-free OTC drug products is December 1994.

Reference was made to the Cough-Cold Panel's recommendation that products containing alcohol 10 percent weight-to-weight, equivalent to about 12 to 13 percent volume-to-volume, not be given to children under 6 years of age, except under the advice and supervision of a physician. NDMA concluded that its proposed maximum alcohol concentration of 10 percent volume-to-volume is more conservative than that recommended by the Cough-Cold Panel.

The Committee members concluded that OTC drug products for oral ingestion should not contain more than the minimum amount of alcohol needed as a solvent for the active ingredient, for preservative purposes, or for taste enhancement.

The Committee agreed with NDMA's recommendations as follows:

1. For persons 12 years of age and above, a maximum alcohol concentration up to and including 10 percent volume-to-volume. (While the Committee members could not identify any specific data that showed a difference in safety between 5 and 10 percent concentrations of alcohol in products, they generally preferred that a lower concentration, closer to 5 percent, be used whenever possible.)

2. For children age 6 to under 12, a maximum alcohol concentration up to and including 5 percent volume-to-volume. (However, the Committee stated that a lower concentration, closer to 0.5 percent, should be used whenever possible.)

3. For children under 6 years of age, a maximum alcohol concentration up to and including 0.5 percent volume-to-volume.

The Committee recognized that metabolism and toxicity data in children under 12 years of age were lacking, but decided that these recommendations were reasonable and the best guidelines to follow at this time. For products intended for use in children under 6 years of age, the Committee recommended that only products containing no alcohol be labeled "alcohol free." Some Committee members felt that all products for use in children under 12 years of age should be alcohol free because a number of these products have been reformulated to remove the alcohol, which suggests that no alcohol is needed for the formulation of these products.

The Committee concluded that the only exception to the 10 percent maximum alcohol concentration should be those products that cannot be formulated with a 10 percent or lower alcohol concentration (e.g., plant extracts). The Committee recommended that such products obtain a special exemption from FDA based upon suitable justification.

The Committee also discussed where the alcohol content should be disclosed in the product's labeling, e.g., the principal display panel (front) or the product information panel (not usually the front). Several Committee members, who felt that the information should be conspicuous, favored placement of this information on the principal display panel. However, no formal vote was taken on this issue.

III. The Agency's Tentative Conclusions on the Committee's Recommendations

The agency agrees with the Committee's recommendations to limit the use of alcohol in OTC drug products. The agency has considered whether such limits should be voluntary, as suggested by NDMA. The agency is aware that a voluntary program may not involve all OTC drug manufacturers and their products. Further, a voluntary program would not be enforceable by the agency. Therefore, the agency is proposing that alcohol limitations and related labeling requirements for all OTC drug products intended for oral ingestion be implemented by regulation. These regulations would apply to OTC drug products regulated under the monograph system (21 CFR parts 330 to 358), and those approved under new drug applications.

The agency concurs with the Committee that OTC drug products for oral ingestion should not contain more than the minimum amount of alcohol needed as a solvent for the active ingredient, for preservative purposes, or for taste enhancement. In keeping with public health goals, the agency strongly encourages the lowest amount of alcohol necessary for pharmaceutical purposes to be used. Lower concentrations would help limit potential misuse of products for their alcohol content and reduce undesirable alcohol ingestions by adolescents. Therefore, a 5-percent alcohol concentration limit is preferred, even though no specific data have been presented to demonstrate a difference in safety between 5 and 10 percent alcohol in OTC drug products intended for oral ingestion.

However, in this document, based on the Committee's concurrence with NDMA's proposal for OTC drug products intended for oral ingestion that contain alcohol, the agency is proposing: (1) A 10-percent alcohol limit for OTC drug products intended for adults and children 12 years of age and over, (2) a 5-percent alcohol limit for OTC drug products intended for children 6 to under 12 years of age, and (3) a 0.5-percent alcohol limit for OTC drug products intended for children under 6 years of age. The agency invites specific comment on the proposed 10-percent maximum alcohol concentration, including specific data and reasons that might support lowering this concentration to a 5-percent limit.

The agency notes that NDMA suggested that products containing up to 0.5 percent alcohol be called "alcohol free." However, this designation would be misleading because it infers that the product contains no alcohol whatsoever. Individuals taking an alcohol-deterrent medication, such as disulfiram, could suffer untoward reactions by ingesting an alcohol-containing drug product labeled as "alcohol free" that actually contained a small amount of alcohol. Therefore, the agency is proposing that the term "alcohol free" mean that the product contains no alcohol at all. The agency also invites specific comment on this labeling term.

The agency agrees with the NDMA suggestion (see Section II of this document) that products containing alcohol include additional directions regarding supervised use by a physician when the product is used in children below a certain age. However, it is possible that these age limitations based on alcohol content may differ from age limitations based on other ingredients contained in the product that are included in an OTC drug monograph. Therefore, the agency is including a provision in the proposed regulation that if age limitation statements differ, the direction referring to the higher age limitation should be used. For example, for an OTC drug product containing the antihistamine ingredient diphenhydramine hydrochloride and 10 percent alcohol, the antihistamine monograph requires labeling for diphenhydramine products to advise users to consult a physician for use in children under 6 years of age. The proposed alcohol regulation would require the labeling direction to consult a physician for use in children under 12 years of age for products containing between 5 and 10 percent alcohol. In this case, the direction for the higher age limitation (i.e., to consult a physician for use in children under 12 years of age) would be required in the product's labeling, and the labeling could not include directions for children age 6 to under 12. A provision to use this higher age-limitation labeling is being included in the proposed regulation.

The agency has considered where the alcohol content of a product should be stated in labeling. The agency believes that consumers need to know this information when they purchase the product. The agency is concerned that consumers do not necessarily read all of a product's labeling at the time of purchase. The agency believes that the product's alcohol content should be prominently and conspicuously displayed in the product's labeling, and that this information should be readily available and visible to consumers at the time of purchase. Therefore, the agency

is proposing that this information appear on the front (principal) display panel of the product's labeling and that the information be in a size reasonably related to the most prominent printed matter on that panel. In addition, some manufacturers are presently placing the term "alcohol free" on their products' principal display panel and will likely do so for new or revised products containing no alcohol. Therefore, to facilitate comparison, the agency believes that the alcohol content of products containing alcohol should also appear on the principal display panel. Further, because section 502(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352(e)) requires that the quantity, kind, and proportion of alcohol be stated on a drug product's label, the alcohol content will also need to appear on the immediate container label when the immediate container (e.g., a glass bottle) is marketed in another retail package, e.g., an outer box. This dual labeling of alcohol content will be beneficial should a consumer discard the outer package. The agency invites specific comment on the location of this information in OTC drug product labeling, particularly from consumers who have an interest in this type of information.

The agency is proposing that any final rule that may issue based on this proposal become effective 12 months after the date of publication in the **Federal Register**. Based on the time that this is likely to occur, the effective date would be consistent with NDMA's goals for its voluntary program, which are November 1993 for the reformulation and labeling of affected OTC drug products to the new 5- and 10-percent alcohol limitations, and December 1994 for the reformulation and labeling of alcohol-free OTC drug products.

If the agency determines that any condition included in the final regulation should be implemented sooner than the 12-month effective date, a shorter deadline may be established. Similarly, if a safety problem is identified for a particular condition not in conformance with the final regulation, a shorter deadline may be set for removal of that condition from OTC drug products. The agency encourages manufacturers to implement voluntarily the provisions of this proposed rule at their earliest convenience.

Within the OTC drug product marketplace, the agency is not aware of a significant number of products that would be affected due to their alcohol content as an inactive ingredient. Products that would be affected consist of a limited number of OTC liquid cough-cold, internal analgesic, and laxative drug products. Therefore, the agency concludes that the economic impact of this proposed rule, if implemented, would be minimal and that the proposed rule is not a major rule as defined in Executive Order 12291. Further, the agency certifies that the proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act.

The agency invites public comment regarding any substantial or significant economic impact that this rulemaking would have on OTC drug products intended for oral ingestion that contain alcohol as an inactive ingredient. Types of impact may include, but are not limited to, costs associated with reformulating, product (stability) testing, repackaging, and relabeling. Comments regarding the impact of this rulemaking on OTC drug products intended for oral ingestion that contain alcohol as an inactive ingredient should be accompanied by appropriate documentation. A period of 90 days from the date of publication of this proposed rulemaking in the **Federal Register** will be provided for comments on this subject to be developed and submitted. The agency will evaluate any comments and supporting data that are received and will reassess the economic impact of this rulemaking in the preamble to the final rule.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Interested persons may, on or before January 19, 1994, submit to the Dockets Management Branch (address above) written comments on the proposed amendment and on the agency's economic impact determination. Three copies of all comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

References

The following information has been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

(1) American Academy of Pediatrics, Committee on Drugs, "Ethanol in Liquid Preparations Intended for Children," Pediatrics, 73:405–407, 1984.

(2) Maling, H.M., "Toxicology of Single Doses of Ethyl Alcohol," in International Encyclopedia of Pharmacology and Therapeutics, Pergamom Press, Elmsford, NY, 2:227–299, 1970.

(3) Letter from M. Sabshin, Medical Director, American Psychiatric Association to FDA, July 28, 1992.

(4) Letter from P. Wood, National Council on Alcoholism and Drug Independence, Inc.; to FDA, July 30, 1992.

(5) Letter from R.M. Kessel, State of New York Consumer Protection Board to FDA, July 12, 1991.

(6) Transcript of Open Proceedings of OTC Drugs Advisory Committee, December 17, 1992.

(7) Alcohol Content Limitation for Monograph'd OTC's Intended for Oral Ingestion, Nonprescription Drug Manufacturers Association, presented at OTC Drugs Advisory Committee meeting, December 17, 1992.

List of Subjects in 21 CFR Part 328

Alcohol, Drugs, Labeling.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that chapter I of title 21 of the Code of Federal Regulations be amended to add part 328 as follows:

PART 328—OVER-THE-COUNTER DRUG PRODUCTS INTENDED FOR ORAL INGESTION THAT CONTAIN ALCOHOL

Subpart A—General Provisions

Sec.
328.1 Scope.
328.3 Definitions.

Subpart B—Ingredients

328.10 Alcohol.

Subpart C—Labeling

328.50 Principal display panel of all OTC drug products intended for oral ingestion that contain alcohol.

Authority: Secs. 201, 301, 501, 502, 503, 505, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 371).

Subpart A—General Provisions

§ 328.1 Scope.

Reference in this part to regulatory sections of the Code of Federal Regulations are to chapter I of title 21 unless otherwise noted.

§ 328.3 Definitions.

As used in this part:

(a) *Alcohol* means the substance known as ethanol, ethyl alcohol, or Alcohol USP.

(b) *Inactive ingredient* means any component of a product other than an active ingredient as defined in § 210.3(b)(7) of this chapter.

Subpart B—Ingredients

§ 328.10 Alcohol.

(a) Any over-the-counter (OTC) drug product intended for oral ingestion shall not contain alcohol as an inactive ingredient in concentrations that exceed those established in this part, unless a specific exemption, as provided in paragraph (e) of this section, has been approved.

(b) For any OTC drug products intended for oral ingestion and labeled for use by adults and children 12 years of age and over, the amount of alcohol in the product shall not exceed 10 percent.

(c) For any OTC drug product intended for oral ingestion and labeled for use by children 6 to under 12 years of age, the amount of alcohol in the product shall not exceed 5 percent.

(d) For any OTC drug product intended for oral ingestion and labeled for use by children under 6 years of age, the amount of alcohol in the product shall not exceed 0.5 percent.

(e) The Food and Drug Administration will grant an exemption from paragraphs (b), (c), and (d) of this section where appropriate, upon petition under the provisions of § 10.30 of this chapter. Appropriate cause, such as a specific solubility or manufacturing problem, must be adequately documented in the petition. Decisions with respect to requests for exemption shall be maintained in a permanent file for public review by the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

Subpart C—Labeling

§ 328.50 Principal display panel of all OTC drug products intended for oral ingestion that contain alcohol.

(a) The amount (percentage) of alcohol present in a product shall be stated in terms of percent volume of absolute alcohol at 60 °F (15.56 °C) in accordance with § 201.10(d)(2) of this chapter.

(b) A statement expressing the amount (percentage) of alcohol present in a product shall appear prominently or conspicuously on the "principal display panel," as defined in § 201.60 of this chapter. For products whose principal display panel is on the immediate container label and that are not marketed in another retail package (e.g., an outer box), the statement of the percentage of alcohol present in the product shall appear prominently or conspicuously on the "principal display panel" of the immediate container label.

(c) For products whose principal display panel is on the retail package and the retail package is not the immediate container, the statement of the percentage of alcohol present in the product shall also appear on the immediate container label; it may appear anywhere on that label in accord with section 502(e) of the Federal Food, Drug, and Cosmetic Act.

(d) The statement expressing the amount (percentage) of alcohol present in the product shall be in a size reasonably related to the most prominent printed matter on the panel or label on which it appears, and shall be in lines generally parallel to the base on which the package rests as it is designed to be displayed.

(e) For a product to state in its labeling that it is "alcohol free," it must contain no alcohol (0 percent).

(f) For any OTC drug product intended for oral ingestion containing over 5 percent alcohol and labeled for use by adults and children 12 years of age and over, the labeling shall contain the following statement in the directions section: "Consult a physician for use in children under 12 years of age."

(g) For any OTC drug products intended for oral ingestion containing over 0.5 percent alcohol and labeled for use by children ages 6 to under 12 years of age, the labeling shall contain the following statement in the directions section: "Consult a physician for use in children under 6 years of age."

(h) When the direction regarding age in paragraph (f) or (g) of this section differs from an age-limiting direction contained in any OTC drug monograph in this chapter, the direction containing the higher age limitation shall be used.

Dated: July 30, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–25836 Filed 10–20–93; 8:45 am]

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federal register

Thursday
October 21, 1993

Part VIII

Environmental Protection Agency

40 CFR Part 195

Radiation Site Cleanup Regulations; Advance Notice of Proposed Rulemaking

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 195

[FRL–4792–8]

Radiation Site Cleanup Regulations

AGENCY: Environmental Protection Agency.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is developing regulations that will set forth requirements for cleanup levels for sites contaminated with radionuclides. These regulations will be designed to protect human health and the environment from exposure to ionizing radiation, and will be applicable to sites contaminated with radioactive material subject to the Atomic Energy Act (AEA) and to sites covered under the authority of the Comprehensive Environmental Response, Compensation and Liability Act (i.e., Superfund sites), including but not limited to Federal facilities.

The purpose of this action is to solicit general comments, information and data that are applicable to the broad issues identified in the Supplementary Information section and which will shape the overall scope and direction of this rulemaking. In addition to this early request for input, EPA will announce additional opportunities for public participation as this rulemaking progresses.

In a separate rulemaking, EPA will also develop regulations for the management and disposal of radioactive waste generated during site remediation and will explore the feasibility of recycling or reusing site structures, equipment, and metals after cleanup. Comments on waste management and recycle/reuse issues are also being solicited at this time. However, it is important to note that the current rulemaking effort focuses on development of the radiation site cleanup regulations.

DATES: Comments and information are requested on or before December 20, 1993.

ADDRESSES: Comments should be submitted, in duplicate, to the docket clerk at the following address: U.S. Environmental Protection Agency, Mail Stop LE–131, Air Docket No. A–93–27, room M–1500, First Floor Waterside Mall, 401 M Street, SW., Washington, DC 20460. The Docket is open from 8:30 a.m. to 12 noon and from 1:30 p.m. to 3:30 p.m., Monday through Friday, excluding Federal holidays. A reasonable fee may be charged for copies of docket material.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Hostage, Chief, Radiation Studies Branch, Radiation Studies Division, Office of Radiation and Indoor Air, U.S. Environmental Protection Agency, Washington, DC 20460, (202) 233–9237.

SUPPLEMENTARY INFORMATION: On June 18, 1986, EPA published an Advance Notice of Proposed Rulemaking (ANPR) titled "Radiation Protection Criteria for Cleanup of Land and Facilities Contaminated with Residual Radioactive Materials" (51 FR 22264). Many of the issues and discussions presented in the 1986 ANPR are similar to those considered in the current rulemaking effort and may be consulted for additional background information.

Statutory Authority

Under the Atomic Energy Act (42 U.S.C. 2201/AEA 161; 42 U.S.C. 2021/AEA 274) and Reorganization Plan No. 3 of 1970 (5 U.S.C. Appendix 1), EPA is authorized to develop Federal guidance and regulations to protect public health and the environment from the effects of radiation. The Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601) authorizes the President to take response action whenever there is a release or threat of a release of hazardous substances, which includes radionuclides.

Current Approach to Site Cleanup

Progress to date in cleaning up radiation sites has, in general, been limited and slow. The total number of sites eventually requiring cleanup may number in the thousands and may cost hundreds of billions of dollars to remediate. In the absence of promulgated standards that specifically address cleanup requirements, the majority of these sites have been and continue to be cleaned up using a variety of criteria. EPA believes that the lack of specific cleanup standards has led to confusion and public concern, increased costs with marginal increases in protection levels, and delays in accomplishing necessary cleanups.

Proposed Regulatory Strategy

The Agency recognizes that the selection of a regulatory approach and the choice of cleanup levels involve many difficult technical and policy decisions with wide-ranging economic and environmental implications. EPA believes that the development of regulations that specifically address cleanup requirements will assist in ensuring that radioactively contaminated sites are cleaned up in a consistent, protective and cost-effective manner. To this end, EPA is proposing a comprehensive regulatory strategy. As an initial step in this strategy, the Agency is developing cleanup levels for soil and groundwater contaminated with radionuclides. These will correspond to an acceptable risk limit and may be based on different land use scenarios, such as residential or commercial/industrial use. EPA is currently exploring several different approaches for deriving these levels and has not yet selected a specific approach or type of regulation (or a combination).

As future steps in the regulatory strategy, EPA will develop waste management regulations that will include standards for the handling and disposal of radioactive waste generated during cleanup. As a component of this, EPA will also examine the feasibility of recycling or reusing site structures, equipment and metals contaminated with low levels of radioactivity after cleanup. EPA is not including the development of waste management regulations in its current rulemaking effort on radiation site cleanup regulations. The waste management regulations will be developed in a separate rulemaking.

Cleanup Issues Under Consideration

To assist in shaping its regulatory strategy for cleanup, EPA has prepared an Issues Paper to present issues, alternative regulatory approaches, and preliminary analyses that are relevant to the development of radiation site cleanup regulations. A copy of this paper may be obtained by calling the Superfund/RCRA Hotline at 1–800–424–9346 (TDD 1–800–553–7672). In the Washington DC area, dial 703–412–9810. Interested parties can also contact the Cleanup Regulation Electronic Bulletin Board at 1–800–700–STDS (dial 703–790–0825 in the Washington, DC area) for information on rulemaking activities and available documents.

Currently, EPA is evaluating several important issues related to the cleanup regulations, including but not limited to the following:

A. Level of Protection

What level or levels of risk should the proposed regulation(s) achieve to ensure protection of human health and the environment after cleanup? Should the level apply to a maximally exposed individual, the average member of the most exposed group, or to some other entity? Should there be different levels of cleanup for different land use scenarios? Should members of future generations be protected at the same

level as members of the current generation?

B. Consistency with Existing Regulations

In what manner and to what degree should the proposed cleanup regulation(s) be consistent with existing Federal, state, and local cleanup statutes, regulations, requirements, and guidance?

C. Regulatory Approaches and Type of Regulation(s)

What regulatory approaches should be considered? Should the proposed regulation(s) include a single dose or risk limit, or a range of limits? Should the regulations contain a table or tables of default media- and radionuclide-specific concentration limits based on generic site conditions? Should the regulation(s) correspond to site-specific concentration limits derived from an Agency-approved pathways model based on actual site conditions? Should the proposed regulation(s) be technology-based linked to an acceptable risk level?

D. Practicality Issues

How should the availability, development, advantages and limitations of current remediation technologies, fate and transport models, exposure and risk assumptions, detection limits, and site characterization techniques be considered? How should cleanup costs and financial responsibilities be assessed? What weight should be placed on these considerations in developing the regulation(s), and in what order of importance should they be addressed? What liability issues arise? How can pollution prevention considerations be incorporated?

E. NARM/NORM Issues

Should naturally occurring and accelerator-produced radioactive material (NARM), and in particular diffuse naturally occurring radioactive materials (NORM), be included in the proposed cleanup regulation(s)? If so, how should they be included? What is the current nature and extent of NORM contamination at Superfund sites and Federal facilities? Would future legislation be useful and, if so, what legislation would be most effective in regulating the cleanup of NORM sites? How would Federal NORM requirements affect existing state regulations?

F. Mixed Waste Issues

Should mixed AEA radioactive and Resource Conservation and Recovery Act (RCRA) hazardous waste be addressed in the regulation(s)? Should the regulation(s) address only the radioactive component of the waste? What is the current nature and extent of mixed waste contamination at Superfund sites and, in particular, at Federal facilities?

EPA is also considering a number of waste management and recycle/reuse issues that may have a significant impact on the development of the cleanup regulations:

A. Waste Management Issues

How should the management of radioactive waste generated during cleanup be addressed? Should separate rules and guidance be developed to deal with waste handling, treatment, storage, transportation, and disposal activities? How should the availability of waste disposal sites and their capacities be factored into decisions concerning protection level(s) of the regulation(s)? How should the corresponding volumes of waste and cleanup costs anticipated with each protection level be considered? Given the potential inadequacy of existing licensed disposal sites to accommodate the volumes of radioactive waste anticipated from cleanups, should one waste management option be partial site cleanups with above-ground onsite retrievable storage? Should another waste management option be the cleanup and consolidation of wastes from multiple sites with the storage or disposal of these wastes at another contaminated site? How should NORM and mixed radioactive and nonradioactive hazardous wastes be addressed?

B. Recycle/Reuse Issues

Should decontaminated structures, equipment, and metal be reused or recycled? What level or levels of residual radioactivity contamination should be set for these materials, and how should the level(s) be established? How would these materials be used and what potential public health impacts would they pose? What potential liabilities exist for future distributors or sellers of these materials, and what notice to buyers should be required?

Coordination With Interested Parties

EPA is committed to moving forward with the rulemaking expeditiously while coordinating with all interested parties, as follows:

A. Public Participation

EPA strongly encourages public participation throughout the rulemaking process to ensure that all interests are adequately represented. EPA will provide opportunities for the public to review and comment on supporting rulemaking documents.

B. NACEPT

EPA is establishing a subcommittee under the auspices of the National Advisory Council for Environmental Policy and Technology (NACEPT). Chartered under the Federal Advisory Committee Act, NACEPT provides extramural environmental policy information and advice to the Administrator of EPA and other Agency officials. Membership of this subcommittee will consist of individuals from a wide variety of governmental agencies, industry, and public interest groups so as to ensure a balanced representation.

C. Other Interested Parties

EPA will also coordinate with the following groups: other Federal agencies; state and local governmental agencies; Indian Nations; environmental groups; and industry and trade associations.

Relationship of EPA Cleanup Standards to NRC Decommissioning Standards

On March 16, 1992, EPA and the Nuclear Regulatory Commission (NRC) signed a Memorandum of Understanding (MOU) to "establish a basic framework within which EPA and NRC will endeavor to resolve issues of concern to both agencies that relate to the regulation of radionuclides in the environment." This MOU governs these proposed EPA regulations and the proposed NRC decommissioning standards. It formally defines the roles, responsibilities, and separate rulemaking activities of each agency concerning regulations that affect NRC licensees and NRC-licensed facilities and radioactive materials.

Under the MOU, if EPA determines that NRC's regulatory program achieves a sufficient level of protection of the public health and the environment, EPA will propose in the **Federal Register** that NRC licensees be exempted from the EPA radiation site cleanup regulations. EPA believes that this dual track approach provides the best means to help ensure that EPA cleanup regulations and NRC decommissioning standards are consistent.

Coordinated Implementation of Regulations

EPA is also coordinating with the Department of Energy (DOE), Department of Defense (DOD), and NRC on technical implementation issues for the cleanup of radioactive contamination at Federal facilities. EPA,

DOE, DOD, and NRC face several of the same steps during cleanup, such as initial site characterization, exposure and risk modeling, remedial design and action, onsite radiation monitoring, and compliance sampling and analysis. Each step presents many technical challenges, and all four agencies understand the clear advantages of meeting these challenges with a unified Federal approach that combines the best scientific and technical resources and real-world experiences of each agency. It is EPA's intent to coordinate this Federal effort and to ensure all facets of the technical implementation guidance are based on scientifically sound and technologically feasible principles and methods.

List of Subjects in 40 CFR Part 195

Environmental protection, Cleanup standards, Decommissioning, Decontamination, Intergovernmental relations, Radiation protection, Radioactive contamination, Recycle/reuse, Site remediation, Waste management standards.

Dated: October 15, 1993.

Carol M. Browner,

Administrator.

[FR Doc. 93–25928 Filed 10–20–93; 8:45 am]

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federal register

Thursday
October 21, 1993

Part IX

Department of Transportation

Federal Aviation Administration

14 CFR Part 121, et al.
Special Federal Aviation Regulation No. 36, Development of Major Repair Data; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121, 127, 135, and 145

[Docket No. 17551; SFAR No. 36–6]

Special Federal Aviation Regulation No. 36, Development of Major Repair Data

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to amend and extend Special Federal Aviation Regulation (SFAR) No. 36, which provides that authorized repair station and aircraft operating certificate holders may approve aircraft products or articles for return to service after accomplishing major repairs using self-developed repair data that have not been directly approved by the Federal Aviation Administration (FAA). Proposed amendments include clarification of the scope of the SFAR authorization. Extension of the regulation would continue to provide, for those that qualify, an alternative from the requirement to obtain direct FAA approval of major repair data on a case-by-case basis, and would allow additional time for the FAA to incorporate the SFAR provisions into the regulations.

DATES: Comments must be received on or before November 22, 1993.

ADDRESSES: Comments on this proposal should be mailed, in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–10), Docket No. 17551, 800 Independence Ave., SW., Washington, DC 20591. Comments delivered must be marked Docket No. 17551. Comments may be examined in room 915G weekdays between 8:30 a.m. and 5 p.m., except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Continued Airworthiness Staff, Aircraft Engineering Division, AIR–107, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591, telephone: (202) 267–7218.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Comments relating to environmental, energy, or economic impacts that might result from adoption of the proposal contained in this notice are invited. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address above. All communications received on or before the closing date for comments will be considered by the Administrator before taking action on the proposals; the proposals contained in this notice may be changed in light of comments received. All comments submitted will be available in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this proposal will be filed in the Rules Docket. Commenters wishing acknowledgment of mailed comments should enclose a stamped, self-addressed postcard on which the following statement is made: "Comments on Docket No. 17551." The postcard will be dated and time stamped and returned to the commenter.

Availability of NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–430, 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 267–3483. Each communication must identify the notice number of this NPRM.

Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

Statement of the Problem

Special Federal Aviation Regulation No. 36 allows authorized certificate holders (domestic repair stations, air carriers, air taxi operators of large aircraft, and commercial operators of large aircraft) to approve aircraft products and articles for return to service after accomplishing major repairs using data developed by the holder that have not been directly approved by the FAA. More than 40 air carrier and domestic repair station certificate holders currently have SFAR 36 authorizations. Because SFAR 36 will terminate on January 23, 1994, these authorizations will not be renewable unless the termination date of the SFAR is extended. Since the SFAR was initially adopted in 1978, some of the regulatory language has been subjected to differing field interpretation. As a result, some repaired products have been returned to service by SFAR 36 authorization holders that did not have return to service authority. These interpretations are the result of changes in the repair industry since the initial adoption of the rule. The original SFAR 36 did not foresee that some repair stations would be authorized only to perform maintenance on parts or components of articles without authorization to return them to service. These interpretations of eligibility have allowed several SFAR 36 authorizations to be issued and used inconsistently with the original intent of the SFAR.

An aircraft "product" is an aircraft, airframe, aircraft engine, propeller, or appliance. An aircraft "article" is an airframe, powerplant, propeller, instrument, radio, or accessory. Although some repair stations are authorized only to perform maintenance on parts of articles or products, some SFAR 36 authorizations were used by these repair station certificate holders to approve the articles and products for return to service.

The FAA has found that while repair stations that specialize in the repair of parts or components of aircraft articles or products may have the technical capability and scope sufficient for the individual repair, they do not necessarily possess the overall knowledge necessary for returning an article or product to service. Only repair stations and air carriers that understand the form, fit, and function of an aircraft article or products should be authorized to approve that article or product for return to service after a major repair. Furthermore, one must understand the form, fit, and function of the article or product in order to appreciate the ramifications of a major repair being developed for that article or product. When the FAA finds that a repair station or air carrier has that necessary understanding, the FAA issues it a certificate and operations specifications commensurate with that finding, and the repair station or air carrier is granted return to service authority. This higher level of certitude by the FAA in the work and knowledge of the repair station or carrier that is authorized to approve the rated article or product for return to service is the basis for the SFAR 36 authorization to develop and use data for major repairs without direct FAA approval of the data. The preamble to the original SFAR 36 reflected this intent to limit the authorization to these repair stations and carriers when it discussed the need to have damaged aircraft repaired and returned to service as quickly as possible. The SFAR 36

system was never intended to support repairs accomplished further up in the repair stream.

Current Requirements

Current SFAR 36 states that, contrary provisions of §§ 121.379(b), 127.140(b), and 145.51 of the Federal Aviation Regulations notwithstanding, a certificate holder may approve an aircraft, airframe, aircraft engine, propeller, or appliance for return to service after accomplishing a major repair if the data used for the repair was developed by that certificate holder in accordance with an authorization issued under Special Federal Aviation Regulation No. 36. The current SFAR terminates on January 23, 1994.

History

Prior to the adoption of SFAR 36, certificate holders that were qualified to make repairs were required to obtain FAA approval on a case-by-case basis for data they had developed to perform major repairs. The only alternative to the time-consuming, case-by-case approval method was to petition for and obtain an exemption granting relief from the regulation. The number of exemptions being granted indicated that revisions to the Federal Aviation Regulations (FAR) were necessary, and SFAR 36 was adopted on January 23, 1978, as an interim rulemaking action. Adoption of the SFAR eliminated the requirement for the authorized certificate holders to petition for exemption from the regulation, and allowed the FAA additional time to obtain the information necessary to develop a permanent rule change. Most of the affected certificate holders, however, did not use the provisions of SFAR 36 until it was well into its second year and nearing its expiration date of January 23, 1980. Since the FAA did not yet have sufficient data upon which to base a permanent rule change, the termination date for SFAR 36 was extended to January 23, 1982.

Although the FAA has considered consolidating certain authorizations along with those issued under SFAR 36 to make them permanent parts of the regulations, no rulemaking action has been undertaken, and SFAR 36 has been extended three times. Currently, regulatory action is under consideration by the Aviation Rulemaking Advisory Committee (ARAC), and is discussed below.

Related Activity

The FAA has delegated to the ARAC the task of reviewing the current system of delegations to perform certain aircraft certification functions to determine what, if anything, would improve the safety, quality, and effectiveness of the system. The ARAC may then forward to the FAA any recommendations for new or revised rules incorporating the provisions of SFAR 36, and any advisory, guidance, or collateral materials. Rulemaking actions based on the recommendations, if any, are not expected to be accomplished before the termination date of SFAR 36, January 23, 1994.

General Discussion of the Proposal

Section 1

The FAA proposes to define aircraft "product," "article," and "component" for the purpose of the SFAR. The definitions would help to explain more clearly an authorization holder's return to service authority.

Section 2

The FAA proposes to restate the general provisions of the current SFAR in terms applicable to the individual types of eligible certificate holders. Proposed paragraph (c) of section 2 clarifies that an SFAR 36 authorization does not expand the scope of authority of a repair station certificate holder; i.e., it does not give a repair station return to service authority for any article for which it is not rated or change the articles it is rated to repair.

Section 3

Proposed section 3 states that an authorized certificate holder may approve an aircraft product or article for return to service after accomplishing a major repair, using data not approved by the Administrator, only in accordance with the amended SFAR. Proposed section 3 requires that the data used to perform the major repair be developed and "approved" in accordance with the holder's authorization and procedures manual. Proposed section 3 also enables an authorization holder to use its developed repair data on a subsequent repair of the same type of product or article. For each subsequent repair, the holder would determine that accomplishment of the repair, using previously developed data, will return the product or article to its original or properly altered condition, to conform to all applicable airworthiness requirements. In addition, each subsequent use of the data would have to be recorded in the authorization holder's SFAR records.

Section 4

Proposed section 4 describes the procedures for applying for an SFAR 36 authorization.

Section 5

Proposed section 5 provides the requirements a certificate holder must meet to be eligible for an SFAR 36 authorization. Paragraphs (a)(2), (a)(3), and (b) define the personnel required and incorporate clarifying changes from the current SFAR. Paragraph (c) contains the reporting requirement of the current SFAR that pertains to changes that could affect the holder's continuing ability to meet the SFAR requirements.

Section 6

Proposed section 6 describes the procedures manual requirements. Paragraph (c) of proposed section 6 requires that an authorization holder that experiences a change in procedures or staff obtain and record FAA approval in order to continue to approve products or articles for return to service.

Section 7

Proposed section 7 states that the amended SFAR 36 terminates on January 23, 1999. All authorizations issued under the amended SFAR would terminate on that date unless earlier surrendered, suspended, revoked, or otherwise terminated.

Section 8

Proposed section 8 prohibits the transfer of an SFAR 36 authorization. This prohibition is retained from section 7 of the current SFAR.

Section 9

Proposed section 9 contains the inspection provisions of the current SFAR. It also emphasizes that the FAA must be able to determine whether an applicant has, or a holder maintains, personnel adequate to comply with the provisions of the SFAR and any additional limitations contained in the authorization.

Section 10

Proposed section 10 re-emphasizes that an SFAR 36 authorization does not expand the scope of products or articles that an aircraft operator or repair station is authorized to approve for return to service. This proposed section also emphasizes that the authorization allows a holder to approve for return to service a product or article after major repair performed by the holder using data developed by the holder without direct FAA approval of that data.

Section 11

Proposed section 11 contains the additional limitations provision of the current SFAR.

Sections 12 and 13

Proposed sections 12 and 13 retain, with clarifying changes, the data review and service experience requirements and the record keeping requirements of the current SFAR. Section 12 states the circumstances in which a holder would be required to submit the information necessary for corrective action on a repair. Paragraph (b) of section 13 lists the identification information required rather than use the term "FAA identification," which has been the source of confusion.

As noted above, the FAA is proposing a termination date of January 23, 1999, for SFAR No. 36. The 5-year extension was chosen to allow enough time for the ARAC to deliberate and forward a recommendation, and enough time for the FAA to deliberate and act upon it. If this proposed rule is adopted, each FAA office having jurisdiction over a current SFAR 36 authorization will reevaluate each holder in terms of the amended rule. All current holders would be notified in writing as to whether they continue to qualify under the amended rule.

Some current SFAR 36 holders' authorizations will lapse on the current termination date, January 23, 1994, unless they are authorized under the amended SFAR. The FAA would work with these holders that no longer qualify to establish, where possible, other means to perform major repairs. The means may include submitting repair data to an aircraft certification office (ACO) for approval, utilizing a consultant designated engineering representative (DER) to approve the data, or employing a company DER.

The extension of SFAR 36 would allow uninterrupted activity of the current authorization holders that qualify under the amended SFAR; those authorizations would be extended without the holders reapplying for authorization. The extension would also allow a new, qualified applicant to obtain an authorization, instead of petitioning for exemption from the regulations.

Paperwork Reduction Act

The reporting requirements of SFAR 36 have been submitted to the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

Regulatory Evaluation

This section summarizes the regulatory evaluation prepared by the FAA on the amendments to 14 CFR parts 121, 127, 135, and 145—Special Federal Aviation Regulation No. 36, Development of Major Repair Data. This summary and the full regulatory evaluation quantify, to the extent practicable, estimated costs and anticipated benefits to the private sector, consumers, and Federal, State, and local governments.

The FAA has determined that this rulemaking is not a significant regulatory action as defined by Executive Order 12866, and no Regulatory Impact Analysis was prepared. Nevertheless, in accordance with Department of Transportation Policies and Procedures, the FAA has evaluated the anticipated costs and benefits, which are summarized below. For more detailed economic information, see the full regulatory evaluation contained in the docket.

Cost Analysis

The FAA estimates that the one-time total cost of compliance would be $54 for the industry and about $840 for the FAA. This cost estimate was derived based upon two components: (1) Current SFAR 36 certificate holders (that would not qualify under the amended rule) applying for a DER, and (2) FAA costs to review SFAR 36 and DER authorizations.

Benefit Analysis

The proposed rule, with the changes noted in the preamble and the extended termination date, would allow certificate holders that qualify under the amended SFAR to continue to use their SFAR 36 authority and not incur the time and cost involved in applying for individual approvals of repair data or applying for exemptions from the regulations regarding major repairs.

The changes incorporated in the proposed rule will also eliminate ambiguities that exist because of the language in the present rule. These ambiguities have allowed component repair stations that do not have return to service authorization for articles to receive SFAR 36 authorizations "allowing" them to return articles to service. The FAA does not have as high a level of certitude in these facilities as it does in facilities that have been granted return to service authority for articles. The intent of SFAR 36, which allows authorized holders to approve self-developed data for major repairs, was to limit its scope to those repair stations in which the FAA had the highest level of certitude for the repairs they accomplish.

While there have been no documented instances of compromised safety as a result of articles repaired by those that hold the SFAR 36 authorization as a result of error, the FAA has determined that the level of certitude in major repairs should not be compromised. Only those that understand the form, fit, and function of the articles and products they repair (i.e., those with return to service authorization for articles and products, but not components or parts) were meant to perform major repairs using self-developed and approved data. The benefit of this action would be to ensure that the major repairs accomplished under SFAR 36 authorizations are accomplished by the repair stations and air carriers with the necessary understanding of the form, fit, and function of the article or product being returned to service.

Comparison of Costs and Benefits

The costs associated with this proposed rulemaking ($54 for industry and $840 for the FAA) are negligible. In view of the negligible costs of the rule, coupled with benefits discussed above that affect all aircraft operators, the FAA has determined that the rule will be cost beneficial.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) ensures that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review rules that may have a significant economic impact on a substantial number of small entities. The costs associated with this proposed rule are below any threshold established by FAA Order 2100.14A. Therefore, the proposed rule would not have a significant economic impact on any small entity.

International Trade Impact Statement

The proposed rule would have neither an effect on the sale of foreign aviation products or services in the United States, nor an effect on the sale of U.S. products or services in foreign countries since it would not impose costs on aircraft operators or U.S. or foreign aircraft manufacturers.

Federalism Implications

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, nor the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposed rule would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

I certify that the proposed rule: (1) Is not a significant regulatory action under Executive Order 12866; (2) is not a significant rule under DOT Regulatory Policies and Procedures for Simplification, Analysis, and Review of Regulations (44 CFR 11304, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. In addition, this proposed rule has little or no impact on trade opportunities for U.S. firms doing business overseas, or on foreign firms doing business in the United States.

List of Subjects

14 CFR Part 121

Air carriers, Airworthiness directives and standards, Aviation safety, Safety.

14 CFR Part 127

Air carriers, Aircraft, Airmen, Airworthiness, Aviation safety, Helicopters.

14 CFR Part 135

Air carriers, Air taxis, Air transportation, Aircraft, Airmen, Airplanes, Airworthiness, Aviation safety, Helicopters, Safety.

14 CFR Part 145

Air carriers, Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR parts 121, 127, 135, and 145 as follows:

PART 121—[AMENDED]

1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. app. 1354(a), 1355, 1356, 1357, 1401, 1421–1430, 1472, 1485, and 1502; 49 U.S.C. 106(g).

PART 127—[AMENDED]

2. The authority citation for part 127 continues to read as follows:

Authority: 49 U.S.C. app. 1354(a), 1421, 1422, 1423, 1424, 1425, 1430, 49 U.S.C. 106(g).

PART 135—[AMENDED]

3. The authority citation part 135 continues to read as follows:

Authority: 49 U.S.C. app. 1354(a), 1355(a), 1421–1431, and 1502; 49 U.S.C. 106(g).

PART 145—REPAIR STATIONS

4. The authority citation for part 145 continues to read as follows:

Authority: Secs. 313, 314, 601, and 607, 72 Stat. 752; 49 U.S.C. app. 1354(a), 1355, 1421 and 1427; unless otherwise noted.

5. Special Federal Aviation Regulation No. 36, the text of which is found at the beginning of part 121, is revised to read as follows:

SFAR No. 36

1. Definitions. For purposes of this Special Federal Aviation Regulation—

(a) A product is an aircraft, airframe, aircraft engine, propeller, or appliance;

(b) An article is an airframe, powerplant, propeller, instrument, radio, or accessory; and

(c) A component is a part of an article or product.

2. General

(a) Contrary provisions of § 121.379(b) of the Federal Aviation Regulations notwithstanding, the holder of an air carrier operating or commercial operating certificate, or the holder of an air taxi operating certificate who operates large aircraft, who has been issued operations specifications for operations required to be conducted in accordance with 14 CFR part 121, may perform a major repair on a product, as described in § 121.379(a), using technical data that have not been approved by the Administrator, and approve that product for return to service, if authorized in accordance with this Special Federal Aviation Regulation.

(b) Contrary provisions of § 127.40(b) of the Federal Aviation Regulations notwithstanding, the holder of an air carrier operating certificate who has been issued operations specifications for operations required to be conducted in accordance with 14 CFR part 127 may perform a major repair on a product as described in § 127.140(a), using technical data that have not been approved by the Administrator, and approve that product for return to service, if authorized in accordance with this Special Federal Aviation Regulation.

(c) Contrary provisions of § 145.51 of the Federal Aviation Regulations notwithstanding, the holder of a domestic repair station certificate under 14 CFR part 145 may perform a major repair on an article for which it is rated, using technical data not approved by the Administrator, and approve that article for return to service, if authorized in accordance with this Special Federal Aviation Regulation. If the certificate holder holds a rating limited to a component of an article or product, the holder may not, by virtue of this Special Federal Aviation Regulation, approve that article or product for return to service.

3. Major repair data and return to service.

(a) As referenced in section 2 of this Special Federal Aviation Regulation, a certificate holder may perform a major repair on a product or article using technical data that have not been approved by the Administrator, and approve that product or article for return to service, if the certificate holder—

(1) Has been issued an authorization under, and a procedures manual that complies with, Special Federal Aviation Regulation No. 36, as amended on January 24, 1994;

(2) Has developed the technical data in accordance with the procedures manual;

(3) Has developed the technical data specifically for the product or article being repaired; and

(4) Has accomplished the repair in accordance with the procedures manual and the procedures approved by the Administrator for the certificate.

(b) For purposes of this section, an authorization holder may develop technical data to perform a major repair on a product or article and use that data to repair a subsequent product or article of the same type as long as the holder—

(1) Evaluates each subsequent repair and the technical data to determine that performing the subsequent repair with the same data will return the product or article to its original or properly altered condition, and that the repaired product or article conforms with applicable airworthiness requirements; and

(2) Records each evaluation in the records referenced in paragraph (a) of section 13 of this Special Federal Aviation Regulation.

4. Application. The applicant for an authorization under this Special Federal Aviation Regulation must submit an application, in writing and signed by an officer of the applicant, to the FAA Flight Standards District Office charged with the overall inspection of the applicant's operations under its certificate. The application must contain—

(a) If the applicant is

(1) The holder of an air carrier operating or commercial operating certificate, or the holder of an air taxi operating certificate who operates large aircraft, the—

(i) The applicant's certificate number; and

(ii) The specific product(s) the applicant is authorized to maintain under its certificate, operations specifications, and maintenance manual; or

(2) The holder of a domestic repair station certificate—

(i) The applicant's certificate number;

(ii) A copy of the applicant's operations specifications; and

(iii) The specific article(s) for which the applicant is rated;

(b) The name, signature, and title of each person for whom authorization to approve, on behalf of the authorization holder, the use of technical data for major repairs is requested; and

(c) The qualifications of the applicant's staff that show compliance with section 5 of this Special Federal Aviation Regulation.

5. Eligibility.

(a) To be eligible for an authorization under this Special Federal Aviation Regulation, the applicant must—

(1) Hold an air carrier, commercial, or air taxi operating certificate, and have been issued operations specifications for operations required to be conducted in accordance with 14 CFR part 121, 127, or 135.2, or hold a domestic repair station certificate under 14 CFR part 145;

(2) Have an adequate number of sufficiently trained personnel in the United

States to develop data and repair the products that the applicant is authorized to maintain under its operating certificate or the articles for which it is rated under its domestic repair station certificate; and

(3) Employ, or have available, a staff of engineering personnel that can determine compliance with the applicable airworthiness requirements of the Federal Aviation Regulations.

(b) At least one member of the staff required by paragraph (a)(3) of this section must—

(1) Have a thorough working knowledge of the applicable requirements of the Federal Aviation Regulations;

(2) Occupy a position on the applicant's staff that has the authority to establish a repair program that ensures that each repaired product or article meets the applicable requirements of the Federal Aviation Regulations;

(3) Have at least one year of satisfactory experience in processing engineering work, in direct contact with the FAA, for type certification or major repair projects; and

(4) Have at least eight years of aeronautical engineering experience (which may include the one year of experience in processing engineering work for type certification or major repair projects).

(c) The holder of an authorization issued under this Special Federal Aviation Regulation shall notify the Administrator within 48 hours of any change (including a change of personnel) that could affect the ability of the holder to meet the requirements of this Special Federal Aviation Regulation.

6. Procedures Manual.

(a) A certificate holder may not approve a product or article for return to service under section 2 of this Special Federal Aviation Regulation unless the holder—

(1) Has a procedures manual that has been approved by the Administrator as complying with paragraph (b) of this section; and

(2) Complies with the procedures contained in the procedures manual.

(b) The approved procedures manual must contain—

(1) The procedures for developing and determining the adequacy of technical data for major repairs;

(2) The identification (names, signatures, and responsibilities) of officials and of each staff member described in section 5 of this Special Federal Aviation Regulation who—

(i) Has the authority to make changes in procedures that require a revision to the procedures manual; and

(ii) Prepares or determines the adequacy of technical data, plans or conducts tests, and approves, on behalf of the authorization holder, test results; and

(3) A "log of revisions" page that identifies each revised item, page, and date of revision, and contains the signature of the person approving the change for the Administrator.

(c) The holder of an authorization issued under this Special Federal Aviation Regulation may not approve a product or article for return to service after a change in staff necessary to meet the requirements of section 5 of this regulation or a change in procedures from those approved under paragraph (a) of this section, unless that change has been approved by the FAA and entered in the procedures manual.

7. Duration of Authorization. Each authorization issued under this Special Federal Aviation Regulation is effective from the date of issuance until January 23, 1999, unless it is earlier surrendered, suspended, revoked, or otherwise terminated.

8. Transferability. An authorization issued under this Special Federal Aviation Regulation is not transferable.

9. Inspections. Each holder of an authorization issued under this Special Federal Aviation Regulation and each applicant for an authorization must allow the Administrator to inspect its personnel, facilities, products, and records upon request.

10. Limits of Applicability. An authorization issued under this Special Federal Aviation Regulation applies only to—

(a) A product that the air carrier, commercial, or air taxi operating certificate holder is authorized to maintain pursuant to its continuous airworthiness maintenance program or maintenance manual; or

(b) An article for which the domestic repair station certificate holder is rated. If the certificate holder is rated for a component of an article, the holder may not, in accordance with this Special Federal Aviation Regulation, approve that article for return to service.

11. Additional Authorization Limitations. Each holder of an authorization issued under this Special Federal Aviation Regulation must comply with any additional limitations prescribed by the Administrator and made a part of the authorization.

12. Data Review and Service Experience. If the Administrator finds that a product or article has been approved for return to service after a major repair has been performed under this Special Federal Aviation Regulation, that the product or article may not conform to the applicable airworthiness requirements or that an unsafe feature or characteristic of the product or article may exist, and that the nonconformance or unsafe feature or characteristic may be attributed to the repair performed, the holder of the authorization, upon notification by the Administrator, shall—

(a) Investigate the matter;

(b) Report to the Administrator the results of the investigation and any action proposed or taken; and

(c) If notified that an unsafe condition exists, provide the information necessary for the issuance of an airworthiness directive under part 39 of the Federal Aviation Regulations within the time period stated by the Administrator.

13. Current Records. Each holder of an authorization issued under this Special Federal Aviation Regulation shall maintain, at its facility, current records containing—

(a) For each product or article for which it has developed and used major repair data, a technical data file that includes all data and amendments thereto (including drawings, photographs, specifications, instructions, and reports) necessary to accomplish the major repair;

(b) A list of products or articles by make, model, manufacturer's serial number (including specific part numbers and serial numbers of components) and, if applicable, FAA Technical Standard Order (TSO) or Parts Manufacturer Approval (PMA) identification, that have been repaired under the authorization; and

(c) A file of information from all available sources on difficulties experienced with products and articles repaired under the authorization.

This Special Federal Aviation Regulation terminates January 23, 1999.

Issued in Washington, DC, on October 13, 1993.

Brenda H. Uttaro,

Acting Director, Aircraft Certification Service.

[FR Doc. 93–25789 Filed 10–20–93; 8:45 am]

BILLING CODE 4910–13–M

federal register

Thursday
October 21, 1993

Part X

Department of Housing and Urban Development

Office of Assistant Secretary

24 CFR Part 3280

Manufactured Home Construction and Safety Standards; Notice of Availability of Final Rule for Inspection

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 3280

[Docket No. R–93–1497; FR–2622–N–04]

RIN 2502–AE66

Manufactured Home Construction and Safety Standards; Notice of Availability of Final Rule for Inspection

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of availability of final rule for inspection.

SUMMARY: This notice informs the public of the availability of the final rule amending energy conservation and ventilation standards for manufactured housing for inspection at the Office of the Federal Register and at HUD.

FOR FURTHER INFORMATION CONTACT: Philip W. Schulte, Chief, Compliance Branch, Manufactured Housing and Construction Standards Division, Department of Housing and Urban Development, 451 Seventh Street SW., room B–133, Washington, DC 20410. Telephones: (voice) (202) 755–7420; (TDD) (202) 708–4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: A final rule amending 24 CFR part 3280 to promulgate energy conservation and ventilation standards for manufactured housing was issued by the Assistant Secretary for Housing-Federal Housing Commissioner on October 18, 1993. The rule was submitted to the Federal Register on October 19, 1993 and will be filed for public display, and is available for copying, on October 21, 1993 at the Office of the Federal Register, 800 North Capitol Street, NW., Washington, DC between 8:45 a.m. and 5:15 p.m. The rule will be published on October 25, 1993. A copy is also available for inspection and copying in the Office of the Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC between 7:30 a.m. and 5:30 p.m.

Dated: October 19, 1993.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 93–26121 Filed 10–20–93; 8:45 am]

BILLING CODE 4210–27–M

Reader Aids

Federal Register

Vol. 58, No. 202

Thursday, October 21, 1993

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202–523–5227
Public inspection desk	523–5215
Corrections to published documents	523–5237
Document drafting information	523–3187
Machine readable documents	523–3447

Code of Federal Regulations

Index, finding aids & general information	523–5227
Printing schedules	523–3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523–6641
Additional information	523–5230

Presidential Documents

Executive orders and proclamations	523–5230
Public Papers of the Presidents	523–5230
Weekly Compilation of Presidential Documents	523–5230

The United States Government Manual

General information	523–5230

Other Services

Data base and machine readable specifications	523–3447
Guide to Record Retention Requirements	523–3187
Legal staff	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (PLUS)	523–6641
TDD for the hearing impaired	523–5229

ELECTRONIC BULLETIN BOARD

Free Electronic Bulletin Board service for Public Law numbers, and Federal Register finding aids.	202–275–1538, or 275–0920

FEDERAL REGISTER PAGES AND DATES, OCTOBER

51211–51664.....1
51665–51756.....4
51757–51972.....5
51973–52206.....6
52207–52396.....7
52397–52628.....8
52629–52674.....12
52675–53096.....13
53097–53392.....14
53393–53634.....15
53635–53832.....18
53833–54024.....19
54025–54270.....20
54271–54484.....21

CFR PARTS AFFECTED DURING OCTOBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR

305.....54271
310.....54271

3 CFR

Proclamations:

6598.....51559
6599.....51561
6600.....51721
6601.....51723
6602.....52205
6603.....52387
6604.....52389
6605.....52627
6606.....52875
6607.....53097
6608.....53099
6609.....53101
6610.....53103
6611.....53831
6612.....53833
6613.....54025
6614.....54027
6615.....54269

Executive Orders:

July 9, 1910 (Revoked in part by PLO 7004).....53429
3053 (Revoked in part by PLO 7004).....53429
3406 (Revoked in part by PLO 7001).....52683
5327 (Revoked in part by PLO 7002).....52684
8578 (See PLO 7005).....54049
11145 (Continued by EO 12869).....51751
11183 (Continued by EO 12869).....51751
11287 (Continued by EO 12869).....51751
11776 (Continued by EO 12869).....51751
12002 (See EO 12867).....51747
12131 (Continued by EO 12869).....51751
12197 (Continued by EO 12869).....51751
12214 (See EO 12867).....51747
12216 (Continued by EO 12869).....51751
12291 (Revoked by EO 12866).....51735
12345 (Continued by EO 12869).....51751
12367 (Continued by EO 12869).....51751
12382 (Continued by EO 12869).....51751
12498 (Revoked by EO 12866).....51735
12675 (Revoked in part EO 12869).....51751
12687 (Revoked by EO 12869).....51751
12696 (Revoked by EO 12869).....51751
12700 (See EO 12869).....51751
12720 (Revoked by EO 12869).....51751
12730 (See EOs 12867, 12868).....51747, 51749
12735 (Revoked by EO 12867; See EO 12868).....51747, 51749
12774 (Superseded by EO 12869).....51751
12775 (See notice of September 30).....51563
12775 (See EO 12872).....54029
12775 (See DOT rule of Oct. 15).....54024
12779 (See EO 12872).....54029
12779 (See notice of September 30).....51563
12779 (See DOT rule of Oct. 15).....54024
12792 (Revoked by EO 12869).....51751
12813 (Revoked by EO 12869).....51751
12853 (See notice of September 30).....51563
12853 (See EO 12872).....54029
12853 (See DOT rule of Oct. 15).....54024
12866.....51735
12867.....51747
12868.....51749
12869.....51751
12870.....51753
12871.....52201
12872.....54029

Administrative Orders:

Memorandums:

August 19, 1993.....52397
September 30, 1993.....52391
October 1, 1993.....52393

Notices:

September 30, 1993.....51563

Presidential Determinations:

No. 93–39 of September 17, 1993.....51973
No. 93–40 of September 28,

1993 51975
No. 93–41 of September 29, 1993 51977
No. 93–42 of September 30, 1993 52629
No. 93–43 of September 30, 1993 52207
No. 93–44 of September 30, 1993 52209
No. 93–45 of September 30, 1993 52211
No. 94–1 of October 1, 1993 52213

5 CFR
Ch. XLI 52637
294 52877
532 51211
591 51565
831 52877
838 52877
842 52877
890 52877
2429 53105
2471 53105
2472 53105
Proposed Rules:
2502 51255
2504 51256

7 CFR
2 51211
246 51566
300 52399
301 ..... 51979, 51982, 53105
400 53109
401 53393
906 ..... 52400, 53111
907 ..... 53112, 53114
908 ..... 53112, 53114
910 52401
928 53117
931 53119
967 52402
1002 51982
1004 ..... 52404, 52405
1205 52215
1211 51568
1427 51982
1477 51757
1478 51757
1717 53835
1744 52639
1900 52644
1910 52644
1951 52644
1955 52644
1972 52644
1975 52644
Proposed Rules:
400 53150
1007 53436
1093 53436
1094 53436
1096 53436
1099 53436
1106 53436
1108 53436
1124 53439
1135 53439
1413 ..... 51934, 52686, 52928
1703 52686
1955 53891
1965 53891
3408 53153

9 CFR
201 52884
203 52884
317 52856
381 52856
Proposed Rules:
82 52240
301 54012
312 54012
317 51581
318 51581
322 54012
350 54012
362 54012
381 54012
391 54012

10 CFR
19 52406
30 52406
40 52406
50 52406
60 52406
61 52406
70 52406
72 ..... 51762, 52406
150 52406
Proposed Rules:
20 54071
21 53159
32 53670
73 52035
602 53671

11 CFR
Proposed Rules:
100 52040
107 52700
113 52040
114 52700
9008 52700

12 CFR
265 53393
574 52140
611 52888
613 52888
614 52888
618 51993
620 52888
621 52888
627 52888
933 52808
Proposed Rules:
3 52808
208 52808
325 52808
615 52701
650 53161

13 CFR
101 53120
121 52415
Proposed Rules:
121 ..... 52452, 52929

14 CFR
23 51970
39 ..... 51212, 51215, 51770, 51771, 52220, 52889, 53120, 53635, 53636, 53852, 53853, 53855, 53857, 54031, 54032, 54034
71 ..... 51773, 52140, 52808, 53122, 53123, 53394, 53395, 53859
73 52890
91 ..... 51976, 52140
95 53860
97 ..... 51774, 51776, 53863
1260 53638
Proposed Rules:
23 52702
39 ..... 51583, 51585, 51587, 51589, 51793, 52041, 52240, 52243, 52714, 52717, 52929, 52931, 52932, 53457, 53678, 53693, 54072, 54310, 54312
71 ..... 51256, 51257, 53164, 53166, 53167, 53459, 54073
91 51938
121 ..... 51938, 51944, 54478
125 51938
127 54478
129 51944
135 ..... 51938, 51944, 54478
145 54478

15 CFR
773 ..... 52166, 52168
778 52166
799 ..... 52166, 52169
806 53124
940 53865
Proposed Rules:
Ch. VII 54074

17 CFR
140 52656
200 ..... 52416, 52891
203 52416
240 ..... 52416, 52891
250 51488
259 51488
Proposed Rules:
240 52934
250 51508

18 CFR
11 54035
35 ..... 51217, 51777
38 51777
141 52420
284 52660
292 51777
293 51777
346 53654
375 51222
381 53654
382 51777
1301 53656
Proposed Rules:
35 51259
284 53895

19 CFR
4 54271
24 54271
111 54271
122 54271
123 54271
145 54271
178 54271
Proposed Rules:
7 52246
10 52246
148 52246

20 CFR
229 53396
404 52346
416 ..... 52346, 52909
422 52914
Proposed Rules:
416 ..... 52458, 52464, 52943
655 52152

21 CFR
172 52221
178 51994
310 ..... 54450, 54458
341 ..... 54232, 54236
347 54458
522 52222
558 ..... 53882, 54266
821 52440
864 51570
1308 53404
Proposed Rules:
5 52719
25 52719
101 ..... 53254, 53296
103 52042
136 53305
137 53305
139 53305
170 52719
171 52719
172 53312
174 52719
201 ..... 54224, 54228
328 54466
352 53460
700 53460
740 53460
812 ..... 52142, 52144, 53245
813 52142
814 52729
1301 52246
1304 53680
1311 52246

23 CFR
650 52663
Proposed Rules:
660 51794

24 CFR
203 54244
291 54244
511 52566
888 51410
905 51952
965 51952
3280 54484
Proposed Rules:
92 52560
135 52534
215 53461
219 52560
221 53461
236 53461
570 52560
572 52560
574 52560
576 52560
583 52560
700 52560
880 53461
881 53461

882.....53461
883.....53461
884.....53461
885.....53461
886.....53461
889.....52560, 53461
890.....52560, 53461
905.....51261, 52560, 53461
960.....53461
961.....52560
963.....52560
990.....51261

25 CFR

11.....54006

Proposed Rules:

294.....53026

26 CFR

1.....51571, 53125, 53656, 54037
602.....51571, 54037

Proposed Rules:

1.....53168, 53682, 54075, 54077
602.....54077

27 CFR

Proposed Rules:

5.....53682
24.....52222

28 CFR

1.....53658
2.....51779
11.....51223
51.....51225

29 CFR

2610.....53406
2619.....53407
2622.....53406
2644.....53410
2676.....53407

Proposed Rules:

507.....52152
1609.....51266
2530.....54444

30 CFR

901.....54287
917.....51225
946.....52666
950.....52232

Proposed Rules:

230.....53470
250.....52731
253.....52059
256.....52731
280.....52731
281.....52731
700.....52374
701.....52374
705.....52374
706.....52374
715.....52374
716.....52374
785.....52374
825.....52374
870.....52374
901.....54313
925.....53683, 53686

31 CFR

580.....54024

Proposed Rules:

103.....51269

32 CFR

40.....51780
80.....51996
86.....52010
185.....52667
199.....51227, 53411
706.....51241
725.....53883

33 CFR

2.....51726
3.....51726
100.....51242, 52440
117.....52441, 54289
165.....51243, 52442, 53884
175.....51576
181.....51576
334.....53426, 53427

Proposed Rules:

117.....52466, 53896
126.....51906
127.....51906
155.....54315
156.....54315
187.....51920, 53624

34 CFR

642.....51518
645.....51518
646.....51518
668.....52194
674.....52194
675.....52194
676.....52194
682.....52194
690.....52194

Proposed Rules:

370.....52414
386.....52606
668.....51712

35 CFR

Proposed Rules:

10.....53897

37 CFR

301.....53822
311.....53822

38 CFR

3.....52017, 53659
4.....52017
21.....51780, 51781

Proposed Rules:

3.....51798
17.....51799

40 CFR

52.....52237, 53885, 54041, 54041, 54291
61.....51784
81.....53886, 53888
180.....54043, 54294, 54296
258.....51536, 53136
271.....51244, 54044
272.....52674, 52677, 52679
300.....52018, 54297
372.....51785
721.....51672, 51694

Proposed Rules:

Ch. 1.....53688
35.....53688
52.....51591, 51593, 52467, 53893, 54081, 54086, 54089
63.....53478, 53900
68.....54190
89.....51595
122.....53168
123.....53168
131.....53168
132.....53168
180.....54092, 54094, 54316
185.....54094, 54316
186.....54094, 54316
195.....54474
300.....53688

41 CFR

101-17.....52917
101-37.....53660
101-40.....53889
302-6.....53137

42 CFR

52e.....54297
403.....54045
435.....51408
436.....51408
440.....51408

Proposed Rules:

431.....53481
440.....51288, 53481
441.....51288, 53481
447.....53481
1003.....054096

43 CFR

37.....51550

Proposed Rules:

4700.....51297

Public Land Orders:

4522 (Revoked in part by PLO 7002).....52684
6998.....52238
6999.....52238
7000.....52682
7001.....52683
7002.....52684
7003.....53428
7004.....53429
7005.....54049

44 CFR

64.....51576, 52019

Proposed Rules:

67.....51598

45 CFR

1602.....52918

46 CFR

160.....51576

Proposed Rules:

10.....51408
12.....51408
30.....52598
31.....52598
32.....52598
67.....51298
585.....52248

47 CFR

1.....51246
15.....51247
64.....53663
73.....51250, 51578, 51579, 53664, 53665
74.....51250
76.....53429
87.....52021
90.....51251, 53245, 53431
97.....51787, 53138

Proposed Rules:

1.....53489
15.....51299
22.....53169
25.....53169
36.....52254
73.....51603, 51799, 52733, 52734, 52735, 53902
74.....52256
76.....53696
80.....53169
87.....53169
90.....51299, 53169
95.....53169
99.....53169

48 CFR

501.....52442
503.....52442
507.....52442
508.....52442
509.....52442
511.....52442
514.....52442
515.....52442
519.....52442
522.....52442
525.....52442
528.....52442
529.....52442
532.....52442
536.....52442
542.....52442
543.....52442
552.....52442
570.....52442
1815.....54299
1816.....52446
1828.....54050
1833.....53138
1852.....52446, 54050
1870.....54299
1871.....54300

49 CFR

107.....51524, 53626
171.....51524, 53626
172.....51524
173.....51524, 53626
174.....51524
175.....51524
176.....51524
177.....51524
178.....51524, 53626
179.....51524
180.....51524, 53626
571.....51788, 52021, 52922, 53666
604.....52684
1002.....52027
1017.....52027
1018.....52027
1039.....53433
1145.....53667
1312.....52027
1313.....52027
1314.....52027

Proposed Rules:

23.....52050
37.....52735
172.....52574

173.....52574
179.....52574
390.....51800
571.....54099
572.....54099
821.....54102
1039.....54317, 54318, 54320, 54321, 54323
1063.....51603
1105.....51800
1121.....51800
1152.....51800

50 CFR

17.....52027, 52031, 53800, 53804, 54053
217.....54066
227.....53138, 54066
229.....51788
285.....53434, 53668
301.....51253
371.....54307
625.....52685
642.....51579, 51789
661.....53143
663.....52031
669.....53145
672.....51791, 52032, 53138, 53148, 53668
675.....51253, 52033, 52451, 53138, 53148

Proposed Rules:

17.....51302, 51604, 52058, 52059, 52063, 52740, 53696, 53702, 53904
32.....53703
52.....51270, 51279
215.....53320
216.....53320
222.....53220, 53703
227.....53703
228.....53491
622.....53172
625.....53172
628.....53172
641.....52063, 52073, 52474
642.....54106
646.....53183
649.....53172
650.....53172
651.....52073, 53172
652.....53172
655.....53172
675.....53497

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H.J. Res. 218/P.L. 103–108

Designating October 16, 1993, and October 16, 1994, each as World Food Day. (Oct. 18, 1993; 107 Stat. 1034; 2 pages)

H.J. Res. 265/P.L. 103–109

To designate October 19, 1993, as "National Mammography Day". (Oct. 18, 1993; 107 Stat. 1036; 1 page)

Last List October 15, 1993

Public Laws

103d Congress, 1st Session, 1993

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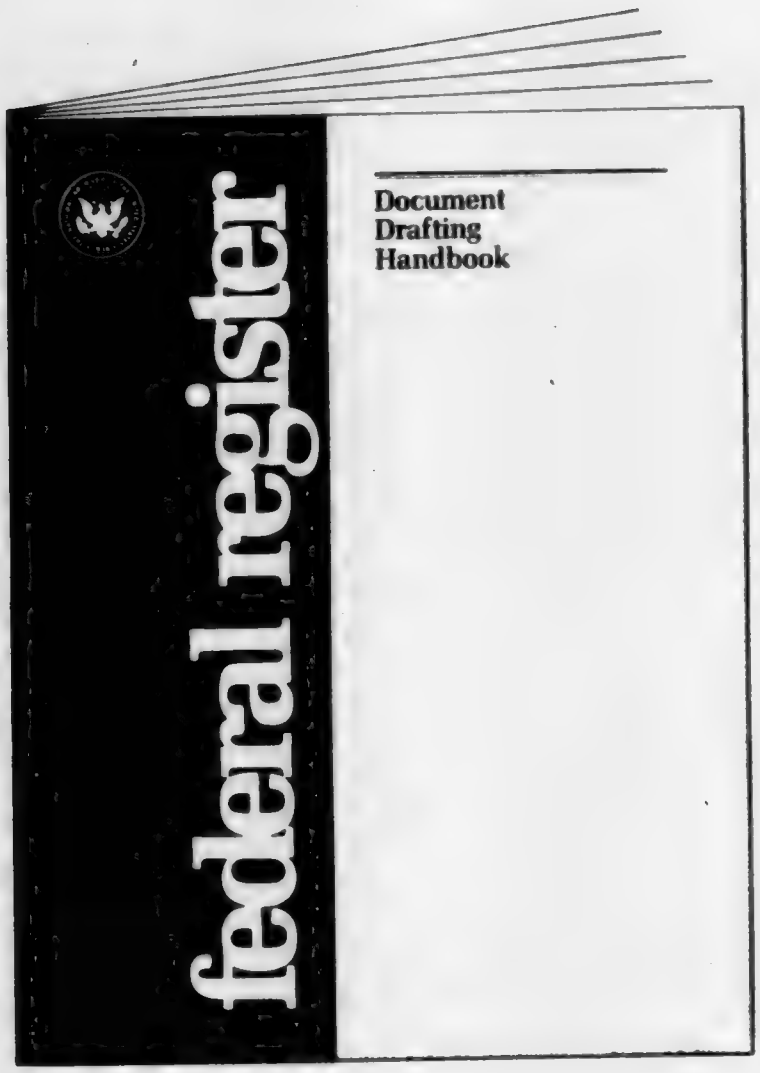

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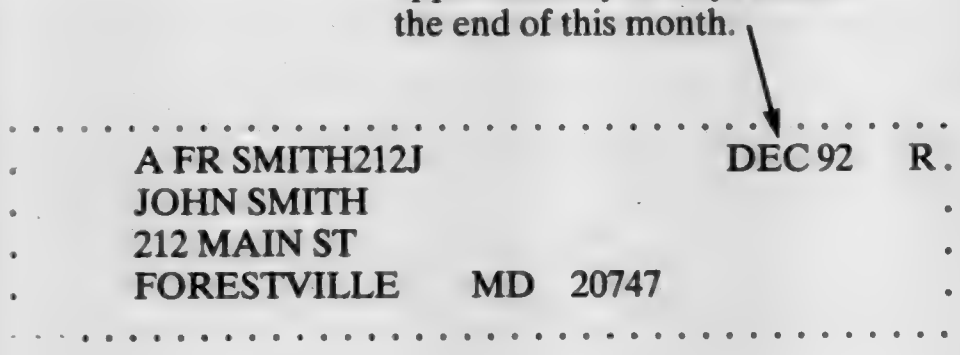

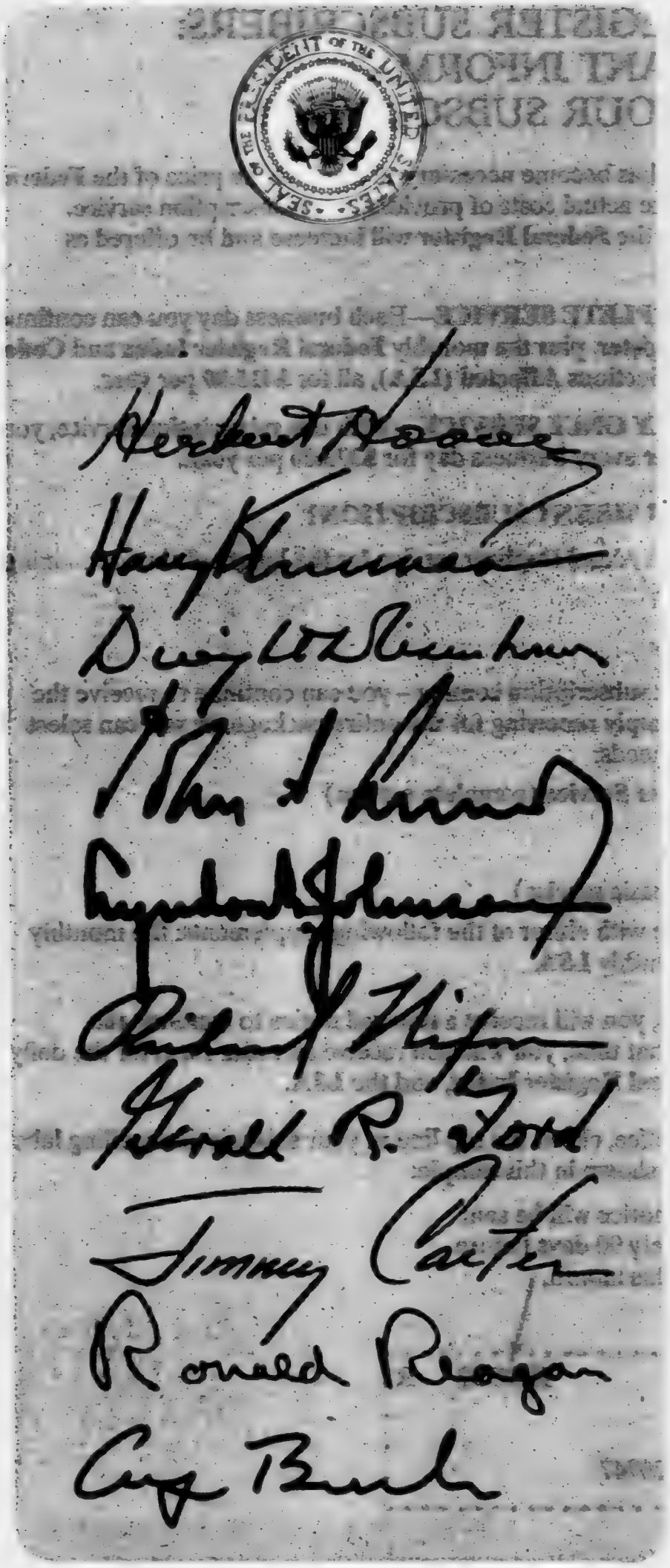

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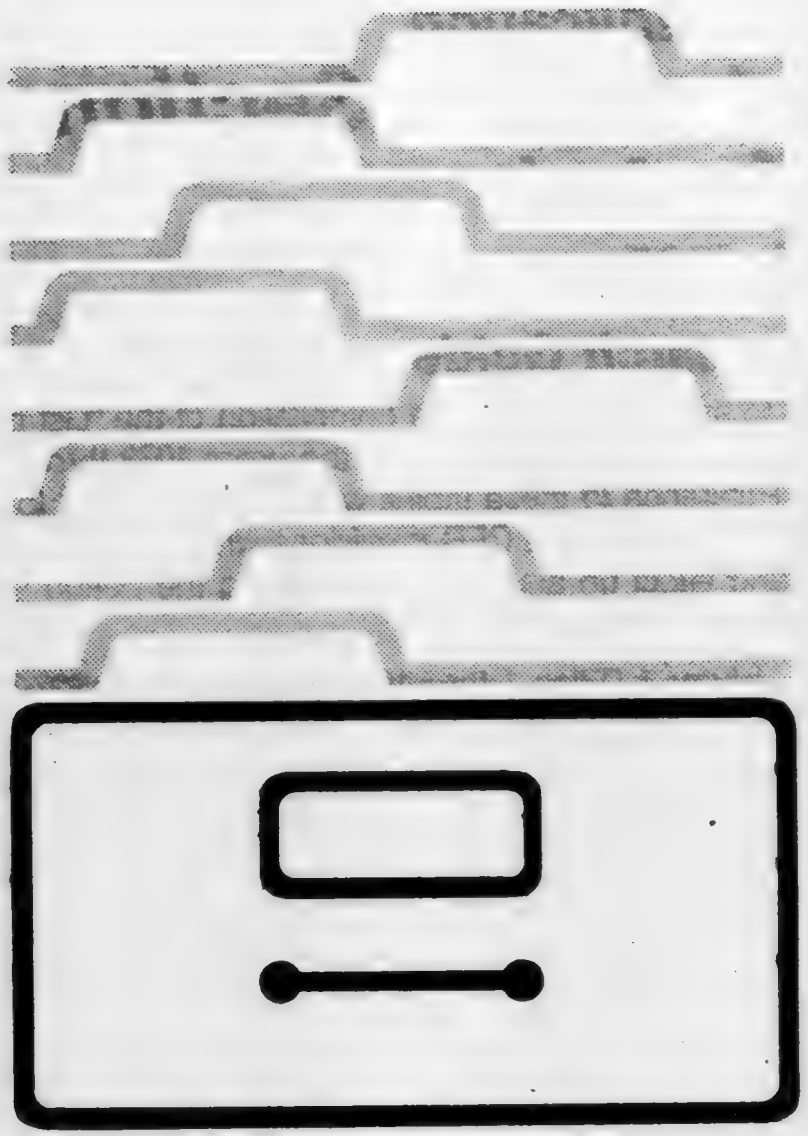

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Contents

Federal Register

Vol. 58, No. 203

Friday, October 22, 1993

African Development Foundation
NOTICES
Meetings; Sunshine Act, 54645

Agricultural Marketing Service
See Packers and Stockyards Administration
PROPOSED RULES
Milk marketing orders:
Greater Louisiana, 54530

Agriculture Department
See Agricultural Marketing Service
See Farmers Home Administration
See Forest Service
See Packers and Stockyards Administration

Blind or Severely Disabled, Committee for Purchase From People Who Are
See Committee for Purchase From People Who Are Blind or Severely Disabled

Centers for Disease Control and Prevention
NOTICES
Control of air contaminants during manual dye weigh-out operations; NIOSH meeting, 54595

Coast Guard
PROPOSED RULES
Pollution:
Existing tank vessels without double hulls; structural and operational measures to reduce oil spills, 54870

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration
See Patent and Trademark Office

Commission of Fine Arts
NOTICES
Meetings, 54551

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Procurement list; additions and deletions, 54558, 54559

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Bangladesh, 54554
Bulgaria, 54555
Dominican Republic, 54555
Guatemala, 54556
Malaysia, 54556
Pakistan, 54557
Textile consultation; review of trade:
Korea, 54557

Commodity Futures Trading Commission
NOTICES
Meetings; Sunshine Act, 54645

Consumer Product Safety Commission
NOTICES
Backyard play set standards; petition requesting issuance, 54560

Defense Department
See Uniformed Services University of the Health Sciences
NOTICES
Federal Acquisition Regulation (FAR):
1993 consolidated reprint; looseleaf edition, 54890
Privacy Act:
Systems of records, 54560

Education Department
PROPOSED RULES
Postsecondary education:
Student assistance general provisions—
Consumer information; disclosure requirements, 54902

Employment and Training Administration
NOTICES
Adjustment assistance:
A&A Materials, 54604
Penn Footwear Co., 54604

Employment Standards Administration
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 54604

Energy Department
See Federal Energy Regulatory Commission
See Hearings and Appeals Office, Energy Department

Environmental Protection Agency
RULES
Air programs:
Stratospheric ozone protection—
Ozone-depleting chemicals; substitutes evaluation and regulation and significant new alternatives policy program, 54892
Air quality implementation plans; approval and promulgation; various States:
Kentucky, 54516
Ohio, 54513
PROPOSED RULES
Air programs; fuel and fuel additives:
Deposit control additives specifications; consent decree, 54547
Clean Air Act:
Enhanced monitoring program, 54648
Hazardous waste:
Reportable quantity adjustments, 54836
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update, 54702
NOTICES
Drinking water:
Public water supply supervision program—
Pennsylvania, 54588

Environmental statements; availability, etc.:
Agency statements—
Comment availability, 54588
Weekly receipts, 54589
Meetings:
Environmental Policy and Technology National Advisory Council, 54590
Phosphoric Acid Production Waste Dialogue Committee, 54590

Equal Employment Opportunity Commission
NOTICES
Senior Executive Service:
Performance Review Board; membership, 54591

Executive Office of the President
See Presidential Documents

Farmers Home Administration
RULES
Program regulations:
Loan and grant program funds allocation; methodology and formulas, 54485

Federal Aviation Administration
RULES
Restricted areas, 54486
Standard instrument approach procedures, 54487
PROPOSED RULES
Restricted areas, 54531
NOTICES
Airport noise compatibility program:
Gulfport-Biloxi Regional Airport, MS, 54631
Exemption petitions; summary and disposition, 54632
Meetings:
Aviation Rulemaking Advisory Committee, 54633
Passenger facility charges; applications, etc.:
Greater Rockford Airport Authority, IL, et al., 54633
Memphis International Airport, TN, 54638

Federal Communications Commission
RULES
Radio stations; table of assignments:
Idaho et al., 54522
NOTICES
Agency information collection activities under OMB review, 54591
Meetings:
Alaska Federal-State Joint Board, 54924
Rulemaking proceedings; petitions filed, granted, denied, etc., 54591
Applications, hearings, determinations, etc.:
Delta Radio, Inc., 54592
DeSoto Broadcasting Corp. et al., 54592
DuRoss, Frank B., et al., 54592
Quality Communications, Inc., 54592

Federal Emergency Management Agency
NOTICES
Disaster and emergency areas:
Kansas, 54593
Missouri, 54593

Federal Energy Regulatory Commission
NOTICES
Meetings:
Natural Gas Council, 54562
Natural gas certificate filings:
Florida Gas Transmission Co. et al., 54562
Natural Gas Policy Act:
Self-implementing transactions, 54564
Applications, hearings, determinations, etc.:
Bay Gas Storage Co., Ltd., 54579
Citizens Utilities Co., 54579
Columbia Gas Transmission Corp. et al., 54579
Field Gas Gathering Inc., 54580
Northern Border Pipeline Co., 54580
Northwest Alaskan Pipeline Co., 54580
Northwest Pipeline Corp., 54581
Pacific Gas Transmission Co., 54581
Pan-Alberta Gas (U.S.) Inc., 54581
Superior Offshore Pipeline Co., 54582
Texas Eastern Transmission Corp., 54583, 54584
Transcontinental Gas Pipe Line Corp., 54584

Federal Highway Administration
RULES
Engineering and traffic operations:
Speed limit enforcement certification, 54812
PROPOSED RULES
Engineering and traffic operations:
Speed limit enforcement certification, 54832

Federal Mediation and Conciliation Service
NOTICES
Agency information collection activities under OMB review, 54593

Federal Reserve System
NOTICES
Agency information collection activities under OMB review, 54594
Meetings; Sunshine Act, 54645

Federal Transit Administration
NOTICES
Americans with Disabilities Act:
Equivalent facilitation for accessibility of transportation vehicles and facilities; determinations summary, 54864

Fine Arts Commission
See Commission of Fine Arts

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
White sturgeon, 54549

Food and Drug Administration
PROPOSED RULES
Food for human consumption:
Food labeling—
Dietary supplements; health claims requirements; correction, 54539
NOTICES
Meetings:
Antioxidant vitamins and cancer and cardiovascular disease risk; public conference, 54595

Forest Service
NOTICES
Meetings:
Allegheny Wild and Scenic River Southern and Northern Advisory Councils, 54551

General Services Administration
RULES
Acquisition regulations:
Multiple award schedule contractors' submission and distribution of authorized pricelists, 54523
NOTICES
Federal Acquisition Regulation (FAR):
1993 consolidated reprint; looseleaf edition, 54890

Health and Human Services Department
See Centers for Disease Control and Prevention
See Food and Drug Administration
See National Institutes of Health
See Public Health Service
See Social Security Administration

Health Resources and Services Administration
See Public Health Service

Hearings and Appeals Office, Energy Department
NOTICES
Cases filed, 54585
Decisions and orders, 54586

Housing and Urban Development Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Facilities to assist homeless—
Excess and surplus Federal property, 54598

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See Surface Mining Reclamation and Enforcement Office

Internal Revenue Service
RULES
Income taxes:
Minimum funding requirements; plan restoration, 54489

International Trade Administration
NOTICES
Antidumping:
64K dynamic random access memory components from—
Japan, 54552
Countervailing duties:
Textile mill products from—
Colombia et al., 54552

Interstate Commerce Commission
NOTICES
Motor carriers:
Agricultural cooperative transportation filing notices, 54603
Compensated intercorporate hauling operations, 54603
Railroad operation, acquisition, construction, etc.:
Columbus & Ohio River Rail Road Co. et al., 54603
Hardin Southern Railroad, Inc., 54603

Labor Department
See Employment and Training Administration
See Employment Standards Administration

Land Management Bureau
NOTICES
Realty actions; sales, leases, etc.:
California, 54599
Nevada et al., 54600
Oregon, 54602
Withdrawal and reservation of lands:
Colorado; correction, 54646

National Aeronautics and Space Administration
NOTICES
Agency information collection activities under OMB review, 54605
Federal Acquisition Regulation (FAR):
1993 consolidated reprint; looseleaf edition, 54890

National Archives and Records Administration
PROPOSED RULES
Public availability and use:
Records and donated historical materials; public use, 54540

National Highway Traffic Safety Administration
RULES
Engineering and traffic operations:
Speed limit enforcement certification, 54812.
PROPOSED RULES
Engineering and traffic operations:
Speed limit enforcement certification, 54832

National Institutes of Health
NOTICES
Meetings:
National Heart, Lung, and Blood Institute, 54596

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Bering Sea and Aleutian Islands groundfish, 54529
NOTICES
Fishery conservation and management:
Gulf of Alaska groundfish, 54533
Fishery management councils; hearings:
Mid-Atlantic—
Summer flounder, 54554
Permits:
Marine mammals, 54554

National Science Foundation
RULES
Antarctic animals and plants, conservation; waste management and disposal regulations; enforcement and hearing procedures
Correction, 54522
NOTICES
Antarctic Conservation Act of 1978; permit applications, etc., 54606

Nuclear Regulatory Commission
RULES
Whistleblower protection provision
Correction, 54646
PROPOSED RULES
Public and radiation worker safety protection; workshop, 54531
NOTICES
Environmental statements; availability, etc.:
Georgia Power Co. et al., 54606
Applications, hearings, determinations, etc.:
Entergy Operations, Inc., 54607

Packers and Stockyards Administration
NOTICES
Stockyards; posting and deposting:
H Bar M Horse Auction, TN, et al., 54551

Tri County Marketing, NC, et al., 54551

Patent and Trademark Office
RULES
Patent and trademark cases:
Correspondence practice changes; signature and filing requirements, 54494
Patent cases:
Practice and procedure; miscellaneous amendments, 54504

Postal Rate Commission
RULES
Practice and procedure rules:
Domestic mail classification schedule; pre-barcoded mail definition, 54511
NOTICES
Post office closings; petitions for appeal:
Extension, LA, 54607
Visits to facilities, 54608

Presidential Documents
PROCLAMATIONS
Special observances:
Biomedical Research Day, National (Proc. 6616), 54909
EXECUTIVE ORDERS
Committees; establishment, renewal, termination, etc.:
Emergency board to investigate dispute between the Long Island Rail Road and certain of its employees (EO 12874), 54921
Government agencies and employees:
Federal acquisition, recycling, and waste prevention (EO 12873), 54911

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration
See National Institutes of Health
NOTICES
Agency information collection activities under OMB review, 54597

Research and Special Programs Administration
RULES
Pipeline safety:
Leakage surveys on distribution lines located outside business districts, 54524

Securities and Exchange Commission
NOTICES
Agency information collection activities under OMB review, 54608
Self-regulatory organizations; proposed rule changes:
Chicago Stock Exchange, Inc., 54608, 54610
Midwest Clearing Corp., 54620
National Association of Securities Dealers, Inc., 54616, 54617, 54621
Philadelphia Stock Exchange, Inc., 54619
Applications, hearings, determinations, etc.:
Farm Bureau Life Insurance Co. et al., 54623
Gruntal & Co., Inc., 54625
MFS California Municipal Bond Fund, 54629
MFS Lifetime Gold & Natural Resources Fund, 54628
MFS Managed Sectors Fund, 54627
MFS Special Fund, 54628
MFS Utilities Fund, 54626
Public utility holding company filings, 54630
United States Filter Corp., 54630

Small Business Administration
NOTICES
Agency information collection activities under OMB review, 54631

Social Security Administration
PROPOSED RULES
Social security benefits and supplemental security income:
Disability determination procedures; testing modifications, 54532

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Permanent program and abandoned mine land reclamation plan submissions:
Wyoming, 54540

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Highway Administration
See Federal Transit Administration
See National Highway Traffic Safety Administration
See Research and Special Programs Administration

Treasury Department
See Internal Revenue Service
NOTICES
Agency information collection activities under OMB review, 54639, 54642

Uniformed Services University of the Health Sciences
NOTICES
Meetings; Sunshine Act, 54645

Veterans Affairs Department
PROPOSED RULES
Acquisition regulations:
Service contracting—
Indemnification and medical liability insurance, and nonpersonal health care; deviations, 54548
NOTICES
Meetings:
Women Veterans Advisory Committee, 54643
Privacy Act:
Systems of records, 54643
Senior Executive Service:
Performance Review Boards; membership, 54644

Separate Parts In This Issue

Part II
Environmental Protection Agency, 54648

Part III
Environmental Protection Agency, 54702

Part IV
Department of Transportation, National Highway Traffic Safety Administration, 54812

Part V
Environmental Protection Agency, 54836

Part VI
Department of Transportation, Federal Transit Administration, 54864

Part VII
Department of Transportation, Coast Guard, 54870

Part VIII
Department of Defense; General Services Administration; National Aeronautics and Space Administration, 54890

Part IX
Environmental Protection Agency, 54892

Part X
Department of Education, 54902

Part XI
The President, 54907

Part XII
Federal Communications Commission, 54924

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamation:
6616.....54909
Executive Orders:
12780 (Revoked by EO 12873).....54911
12873.....54911
12874.....54921

7 CFR
1940.....54485
Proposed Rules:
1096.....54530

10 CFR
19.....54646
30.....54646
40.....54646
50.....54646
60.....54646
61.....54646
70.....54646
72.....54646
150.....54646
Proposed Rules:
20.....54531
21.....54531
30.....54531
31.....54531
32.....54531
35.....54531
40.....54531
61.....54531

14 CFR
73.....54486
97.....54487
Proposed Rules:
73.....54531

20 CFR
Proposed Rules:
404.....54532
416.....54532

21 CFR
Proposed Rules:
101.....54539

23 CFR
659.....54812
1260.....54812
Proposed Rules:
1260.....54832

26 CFR
1.....54489

30 CFR
Proposed Rules:
950.....54540

33 CFR
Proposed Rules:
157.....54870

34 CFR
Proposed Rules:
668.....54902

36 CFR
Proposed Rules:
1252.....54540
1254.....54540
1260.....54540

37 CFR
1 (2 documents).....54494, 54504
2.....54494
5.....54504
10 (2 documents).....54494, 54504

39 CFR
3001.....54511

40 CFR
52 (2 documents).....54513, 54516
82.....54892
Proposed Rules:
51.....54648
52.....54648
60.....54648
61.....54648
64.....54648
80.....54547
117.....54836
300.....54702
302.....54836
355.....54836

45 CFR
670.....54522
671.....54522
672.....54522

47 CFR
73.....54522

48 CFR
538.....54523
552.....54523
Proposed Rules:
837.....54548
852.....54548

49 CFR
192.....54524

50 CFR
675.....54529
Proposed Rules:
17.....54549

Rules and Regulations

Federal Register
Vol. 58, No. 203
Friday, October 22, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1940

Methodology and Formulas for Allocation of Loan and Grant Program Funds

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FnHA) amends its regulation that is utilized by the Rural Development Administration (RDA) in allocating program funds by State. A change is needed in the way RDA program funds are allocated by State to give a better nationwide distribution. This action is to inform the public of a change in the criteria used to calculate the program funds allocated by State.

EFFECTIVE DATE: October 22, 1993.

FOR FURTHER INFORMATION CONTACT: Jerry W. Cooper, Loan Specialist, Water and Waste Disposal Division, Rural Development Administration, USDA, South Agriculture Building, room 6328, Washington, DC 20250, telephone: (202) 720-9589.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be exempt from those requirements because it has no adverse impact on RDA borrowers or other members of the public and it involves only internal Agency management. It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comments notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This action, however, is not published for proposed rulemaking since it involves only internal Agency management and publication for comment is unnecessary.

Intergovernmental Review

This action affects the following RDA programs listed in the Catalog of Federal Domestic Assistance and will be subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials:

10.760 Water and Waste Disposal Systems for Rural Communities
10.766 Community Facilities Loans
10.768 Business and Industrial Loans
10.769 Rural Business Enterprise Grants

Environmental Impact Statement

This action has been reviewed in accordance with FmHA Instruction 1940–G, "Environmental Program." RDA has determined that the action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Discussion

The criteria utilized to distribute RDA program funds to States is being revised to better reflect the Agency's goals and objectives. This action will allow the Agency to take into consideration a State's percentage of the National nonmetropolitan unemployment figure in allocating program funds. This change will give a better distribution of program funds by taking into consideration the economic conditions in each State. This action will not have a major impact on the program funds each State will receive, however, it will give a more equitable balance in the allocation process.

List of Subjects in 7 CFR Part 1940

Administrative practice and procedure, Agriculture, Allocations, Grant programs—Housing and community development, Loan programs—Agriculture, Rural areas.

Therefore, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1940—GENERAL

1. The authority citation for part 1940 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; CFR 2.70.

Subpart L—Methodology and Formulas for Allocation of Loan and Grant Program Funds

2. Section 1940.585 is amended by revising paragraph (b) to read as follows:

§ 1940.585 Community Facility Loans.

* * * * *

(b) *Basic formula criteria, data source and weight.* See § 1940.552(b) of this subpart.

(1) The criteria used in the basic formula are:

(i) State's percentage of national rural population—50 percent.

(ii) State's percentage of national rural population with incomes below the poverty level—25 percent.

(iii) State's percentage of national nonmetropolitan unemployment—25 percent.

(2) Data source for each of these criterion is based on the latest census data available. Each criterion is assigned a specific weight according to its relevance in determining need. The percentage representing each criterion is multiplied by the weight factor and summed to arrive at a State factor (SF). The SF cannot exceed .05.

SF = (criterion (b)(1)(i) × 50 percent) +
(criterion (b)(1)(ii) × 25 percent) +
(criterion (b)(1)(iii) × 25 percent)

* * * * *

3. Section 1940.586 is amended by revising paragraph (b) to read as follows:

§ 1940.586 Water and Waste Disposal Loans.

* * * * *

(b) *Basic formula criteria, data source and weight.* See § 1940.552(b) of this subpart.

(1) The criteria used in the basic formula are:

(i) State's percentage of national rural population—50 percent.

(ii) State's percentage of national rural population with incomes below the poverty level—25 percent.

(iii) State's percentage of national nonmetropolitan unemployment—25 percent.

(2) Data source for each of these criterion is based on the latest census

data available. Each criterion is assigned a specific weight according to its relevance in determining need. The percentage representing each criterion is multiplied by the weight factor and summed to arrive at a State factor (SF). The SF cannot exceed .05.

SF = (criterion (b)(1)(i) × 50 percent) + (criterion (b)(1)(ii) × 25 percent) + (criterion (b)(1)(iii) × 25 percent)

* * * * *

4. Section 1940.587 is amended by revising paragraph (b) to read as follows:

§ 1940.587 Water and Waste Disposal grants.

* * * * *

(b) *Basic formula criteria, data source and weight.* See § 1940.552(b) of this subpart.

(1) The criteria used in the basic formula are:

(i) State's percentage of national rural population—50 percent.

(ii) State's percentage of national rural population with incomes below the poverty level—25 percent.

(iii) State's percentage of national nonmetropolitan unemployment—25 percent.

(2) Data source for each of these criterion is based on the latest census data available. Each criterion is assigned a specific weight according to its relevance in determining need. The percentage representing each criterion is multiplied by the weight factor and summed to arrive at a State factor (SF). The SF cannot exceed .05.

SF = (criterion (b)(1)(i) × 50 percent) + (criterion (b)(1)(ii) × 25 percent) + (criterion (b)(1)(iii) × 25 percent)

* * * * *

5. Section 1940.588 is amended by revising paragraph (b) to read as follows:

§ 1940.588 Business and Industrial guaranteed loans.

* * * * *

(b) *Basic formula criteria, data source and weight.* See § 1940.552(b) of this subpart.

(1) The criteria used in the basic formula are:

(i) State's percentage of national rural population—50 percent.

(ii) State's percentage of national rural population with incomes below the poverty level—25 percent.

(iii) State's percentage of national nonmetropolitan unemployment—25 percent.

(2) Data source for each of these criterion is based on the latest census data available. Each criterion is assigned a specific weight according to its relevance in determining need. The percentage representing each criterion is multiplied by the weight factor and summed to arrive at a State factor (SF). The SF cannot exceed .05.

SF = (criterion (b)(1)(i) × 50 percent) + (criterion (b)(1)(ii) × 25 percent) + (criterion (b)(1)(iii) × 25 percent)

* * * * *

6. Section 1940.589 is amended by revising paragraph (b) to read as follows:

§ 1940.589 Rural Business Enterprise Grants.

* * * * *

(b) *Basic formula criteria, data source and weight.* See § 1940.552(b) of this subpart.

(1) The criteria used in the basic formula are:

(i) State's percentage of national rural population—50 percent.

(ii) State's inverse percentage of nonmetropolitan per capita income—25 percent.

(iii) State's percentage of national nonmetropolitan unemployment—25 percent.

(2) Data source for each of these criterion is based on the latest census data available. Each criterion is assigned a specific weight according to its relevance in determining need. The percentage representing each criterion is multiplied by the weight factor and summed to arrive at a State factor (SF). The SF cannot exceed .05.

SF = (criterion (b)(1)(i) × 50 percent) + (criterion (b)(1)(ii) × 25 percent) + (criterion (b)(1)(iii) × 25 percent)

* * * * *

7. Section 1940.591 is amended by revising paragraph (b) to read as follows:

§ 1940.591 Community Program Guaranteed loans.

* * * * *

(b) *Basic formula criteria, data source and weight.* See § 1940.552(b) of this subpart.

(1) The criteria used in the basic formula are:

(i) State's percentage of national rural population—50 percent.

(ii) State's percentage of national rural population with incomes below the poverty level—25 percent.

(iii) State's percentage of national nonmetropolitan unemployment—25 percent.

(2) Data source for each of these criterion is based on the latest census data available. Each criterion is assigned a specific weight according to its relevance in determining need. The percentage representing each criterion is multiplied by the weight factor and summed to arrive at a State factor (SF). The SF cannot exceed .05.

SF = (criterion (b)(1)(i) × 50 percent) + (criterion (b)(1)(ii) × 25 percent) + (criterion (b)(1)(iii) × 25 percent)

* * * * *

Dated: October 14, 1993.

Bob J. Nash,

Under Secretary for Small Community and Rural Development.

[FR Doc. 93–25900 Filed 10–21–93; 8:45 am]

BILLING CODE 3410–07–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Airspace Docket No. 93–ASW–7]

Change of Time of Designation and Using Agency for Restricted Areas R–3801A, B, and C, Camp Claiborne, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action reduces the time of designation and changes the using agency for Restricted Areas R–3801A, B, and C, Camp Claiborne, LA. The U.S. Air Force has determined that there is no longer a requirement for these restricted areas to retain a "continuous" time of designation. This action lessens the burden on the public by reducing the basic time of designation from 168 hours per week to 70 hours per week, with the provision to activate the areas at other times by Notice to Airman (NOTAM) when required.

EFFECTIVE DATE: 0901 u.t.c., January 6, 1994.

FOR FURTHER INFORMATION CONTACT: Steve Riley, Military Operations Program Office (ATM–420), Office of Air Traffic System Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–7130.

SUPPLEMENTARY INFORMATION:

The Rule

This amendment to part 73 of the Federal Aviation Regulations reduces the time of designation for Restricted Areas R–3801A, R–3801B, and R–3801C, Camp Claiborne, LA, from "continuous" to "0800–2200 local time, Monday-Friday; other times by NOTAM." Following a review of the Claiborne Bombing Range, the U.S. Air Force has determined that it has a continuing requirement for the restricted areas; however, the current "continuous" time of designation is no longer needed.

Furthermore, the former using agency for the range, the 23rd Fighter Wing, at England Air Force Base (AFB), LA, has been relocated, and England AFB closed as part of the Base Closure and Realignment process. In conjunction with that process, management responsibility for the operation of R–3801A, B, and C, was transferred to the 917 Fighter Wing, Barksdale AFB, LA, which has been the primary user of the range since 1973.

This action also amends the description of R–3801A, R–3801B, and R–3801C, to reflect the current using agency. This action reduces the time of designation and updates the assigned using agency, but does not change the existing boundaries of, or the types of activities currently conducted with R–3801A, B, and C. Therefore, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor technical amendment in which the public would not be particularly interested. Section 73.38 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8A dated March 3, 1993.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a significant regulatory action under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will not affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This action reduces the time of designation for Restricted Areas R–3801A, R–3801B, and R–3801C, but does not expand the boundaries or altitudes, or change the activities currently conducted within the areas. No FAA action will be required to regulate the flow of nonparticipating aircraft as a result of this action. Therefore, the FAA has determined that this action is consistent with existing environmental policies and objectives as set forth in section 101(a) of the National Environmental Policy Act of 1969 (NEPA) and that it will not significantly affect the quality of the human environment or otherwise include any condition requiring consultation pursuant to section 102(2)(c) of NEPA.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510, 1522; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 73.38 [Amended]

2. In each designation in § 73.38 listed below remove the word "continuous" for the time of designation and add, in its place, the words "0800–2200 local time, Monday-Friday; other times by NOTAM" and also remove the words "Commander, England AFB, LA" for the using agency and add, in their place, the words "U.S. Air Force, 917 Fighter Wing, Barksdale AFB, LA."

(a) R–3801A Camp Claiborne, LA.
(b) R–3801B Camp Claiborne, LA.
(c) R–3801C Camp Claiborne, LA.

Issued in Washington, DC, on October 12, 1993.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 93–26064 Filed 10–21–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 97

[Docket No. 27480; Amdt. No. 1568]

Standard Instrument Approach Procedures: Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviations Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim

publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled. The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPs criteria were applied to only these specific conditions existing at the affected airports.

This amendment to part 97 contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments require making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the US Standard for Terminal Instrument Approach Procedures (TERPs). Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12866; is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control Approaches, Standard Instrument, Incorporation by reference (1) navigation.

Issued in Washington, DC on October 15, 1993.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 U.T.C. on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

Effective	State	City	Airport	FDC No.	SIAP
9/16/93	NY	Islip	Long Island Mac Arthur	FDC 3/5526	NDB Rwy 6 Amdt 20... This corrects NOTAM published in TL 93–21
9/17/93	NC	Roxboro	Person County	FDC 3/5247	NDB Rwy 6 Amdt 2...
9/23/93	AR	Little Rock	Adams Field	FDC 3/5334	ILS Rwy 22L Amdt 1...
9/23/93	IL	Chicago	Lansing Muni	FDC 3/5331	VOR–A Amdt 4...
9/23/93	MS	Natchez	Hardy-Anders Field Natch-ez-Adams County.	FDC 3/5323	NDB Rwy 17 Amdt 4...
9/23/93	MS	Natchez	Hardy-Anders Field Natch-ez-Adams County.	FDC 3/5326	VOR Rwy 17 Amdt 10A...
9/23/93	NM	Albuquerque	Albuquerque Intl	FDC 3/5333	VOR Rwy 8/TAC/ Amdt 18A...
9/28/93	VA	Chesapeake	Chesapeake Muni	FDC 3/5411	NDB Rwy 5 Amdt 1...
9/28/93	VA	Fredericksburg	Shannon	FDC 3/5408	NDB Rwy 23 Orig...
9/28/93	VA	Newport News	Newport News/Williamsburg Intl	FDC 3/5407	NDB Rwy 7 Amdt 3...
9/28/93	VA	Newport News	Newport News/Williamsburg Intl	FDC 3/5409	NDB Rwy 30 Amdt 3...
9/28/93	VA	Newport News	Newport News/Williamsburg Intl	FDC 3/5410	Loc BC Rwy 25 Amdt 13...
9/30/93	MD	Baltimore	Baltimore-Washington Intl	FDC 3/5444	Procedures...

Effective	State	City	Airport	FDC No.	SIAP
9/30/93	MI	Detroit	Detroit Metropolitan Wayne County	FDC 3/5437	Radar-1 Amdt 22...
9/30/93	MI	Menominee	Menominee-Marinette Twin County	FDC 3/5448	NDB Rwy 3 Amdt 2...
9/30/93	MI	Menoninee	Menominee-Marinette Twin County	FDC 3/5449	ILS Rwy 3 Amdt 2...
9/30/93	MI	Menominee	Menominee-Marinette Twin County	FDC 3/5451	VOR-A Amdt 2...
10/01/93	OH	Alliance	Miller	FDC 3/5462	VOR-A Amdt 8A...
10/04/93	SC	Sumter	Sumter Muni	FDC 3/5505	NDB Rwy 22 Amdt 2B...
10/06/93	MI	Menominee	Menominee-Marinette Twin County	FDC 3/5533	RNAV Rwy 21 Amdt 1...

[FR Doc. 93-26060 Filed 10-21-93; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8494]

RIN 1545-AP13

Minimum Funding Requirements—Plan Restoration

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains amendments to the final regulations under section 412 of the Internal Revenue Code of 1986. These regulations govern the application of the minimum funding requirements of section 412 to pension plans that are being or have been terminated pursuant to section 4041(c) or 4042 of the Employee Retirement Income Security Act of 1974 (ERISA) and are restored to their sponsoring employers by order of the Pension Benefit Guaranty Corporation (PBGC) pursuant to section 4047 of ERISA. The regulations provide taxpayers with guidance necessary to determine the amount that must be contributed to a restored plan in order to satisfy the minimum funding requirements of section 412.

EFFECTIVE DATE: These regulations are effective on October 22, 1993.

FOR FURTHER INFORMATION CONTACT: Michael Roach at (202) 622-6060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On October 23, 1990, a notice of proposed rulemaking by cross-reference to temporary regulations was published in the **Federal Register** (55 FR 42728). On the same day, temporary regulations were published in the **Federal Register** (55 FR 42704). These temporary regulations supplement the existing regulations on the minimum funding requirements under section 412 of the Internal Revenue Code of 1986 (Code). The temporary regulations provide guidance on the proper application of the minimum funding requirements to plans that have been or are being restored to their sponsoring employers by order of the PBGC as authorized under section 4047 of ERISA.

Written comments were received from the public on the proposed regulations incorporated by cross-reference in the notice of proposed rulemaking, and on July 19, 1991, the Internal Revenue Service held a public hearing concerning these proposed regulations. After consideration of all of the written comments received and the statements made at the public hearing, the proposed regulations are adopted as revised by this Treasury decision.

1. Overview

Section 4047 of ERISA authorizes the PBGC to restore a terminated pension plan to its sponsoring employer whenever the PBGC determines that this action is appropriate and consistent with its duties under Title IV of ERISA. The statutory provisions of section 4047 grant broad authority to the PBGC to take any actions necessary to restore terminated plans in situations where it determines the action to be necessary and appropriate. The legislative history further demonstrates specific Congressional intent to confer broad authority on the PBGC to control the details of plan restorations.

This regulation provides rules for applying the minimum funding provisions of section 412 of the Code to a plan that has been terminated and restored under section 4047 of ERISA. The application of the minimum funding standards of section 412 of the Code to a restored pension plan presents unique problems because a restored plan is being or has been terminated and administered as a terminated plan during the time from the date of termination of the plan to the date of the restoration (or its implementation). During the period between the dates of termination and restoration (or its implementation), Schedule B of Form 5500 will not have been completed by the plan actuary, nor will contributions have been made to the plan. When the PBGC acts to restore the plan, the funding standard account required by section 412 of the Code must be reestablished and maintained for all subsequent plan years.

The restoration of a terminated plan under section 4047 of ERISA retroactively reinstates benefit accruals under the plan because the statute provides for restoration of the plan to its pre-termination status. Because the plan will have been underfunded upon plan termination and because the plan sponsor will ordinarily not have made any contributions to the plan while it was being administered as a terminated plan, the plan is likely to be even more underfunded on restoration. This underfunding will be significantly increased if the plan has been administered as a terminated plan for an extended period of time.

2. Explanation of Provisions

Restoration Funding Method

These regulations create a special funding method, known as the restoration method, which adapts the underlying funding method used by the plan to the special circumstances that exist when the PBGC restores a terminated pension plan to the plan sponsor pursuant to section 4047 of ERISA. The regulations require the use of the restoration method by plans that have been or are being terminated and restored under title IV of ERISA.

The restoration method rules contained in these regulations give the PBGC flexibility in determining the timing and amount of the contributions to be made to fund plan liabilities arising prior to the first valuation date after the restoration of the plan by providing for the funding of a restored plan under a restoration payment schedule order issued by the PBGC that specifies the timing and amount of contributions to amortize plan liabilities arising prior to the first valuation date after restoration. The regulations also contain minimum standards designed to

assure that plan funding does not become worse while the restoration payment schedule order is in effect, and that the employer makes systematic progress toward funding the outstanding liabilities of the plan while it is being funded under a restoration payment schedule order. The final regulations adopt these provisions essentially as proposed with minor clarifications in response to comments.

Certification by the PBGC

The final regulations retain the requirement that when the PBGC issues a restoration payment schedule order, the Executive Director of the PBGC must certify to the PBGC's Board of Directors, and to the Internal Revenue Service, that the PBGC has reviewed the funding of the plan, the financial condition of the plan sponsor and its controlled group members, the payments required under the restoration payment schedule (taking into account the availability of the deferrals permitted under the regulations), and any other factor that the PBGC deems relevant, and, based on that review, determines that it is in the best interests of participants and beneficiaries of the plan and the pension insurance program that the restored plan not be reterminated.

Requirement That Restored Plan Must Use Restoration Method

Under the final regulations, as in the proposed regulations, a plan that is being or has been terminated and restored, must use the restoration method until the initial restoration amortization base has been fully amortized. Use of the restoration method continues to be permitted without securing prior approval from the Commissioner.

Initial Restoration Amortization Base

Section 1.412(c)(1)–3(b) of the regulations describes a special amortization base, known as the initial restoration amortization base, that consists of the unfunded liability of the plan as of the valuation for the plan year in which the initial post restoration valuation date falls, based upon the assets and liabilities restored by the PBGC. The regulation prescribes procedures for the amortization of this base over not more than 30 years in accordance with a restoration payment schedule order issued by the PBGC under § 1.412(c)(1)–3(c).

The outstanding balance of the initial restoration amortization base must be calculated each year in conformity with the usual actuarial practice applicable to other amortization bases established under section 412(b) of the Internal Revenue Code. In determining the outstanding balance of this base, however, the calculation must be based upon the charges under the restoration payment schedule. Under the regulations, the PBGC may grant a deferral of the payment required under the restoration payment schedule for a particular year, under the conditions and in the manner provided in the regulations.

Charges and Credits to Funding Standard Account

The normal operation of the funding standard account, and the other provisions of section 412 and the regulations thereunder, are unchanged except as provided in this plan restoration regulation § 1.412(c)(1)–3. If the actuarial assumptions and methods used in calculating the assets and liabilities of the plan are changed consistent with the requirements of section 412(c)(3), the plan administrator must notify the PBGC of the changes so that the PBGC can make any appropriate changes to the restoration payment schedule.

Some commentators on the proposed regulations requested clarification of the relationship between the payments in the restoration payment schedule order and the charges and credits to the funding standard account of the plan. Paragraph (d) of the regulation has been corrected to state that each annual payment under the restoration payment schedule shall be charged against the funding standard account of the plan for the plan year to which that payment is attributed in the restoration payment schedule. A sentence has been added to paragraph (d) stating that if the restoration payment schedule requires payments before the end of the plan year, the annual charge to the funding standard account is equal to the sum of the periodic payments for the plan year accumulated with interest at the valuation rate to the last day of the plan year.

Section 412(l) Calculations Under the Restoration Method

When a plan is under the restoration method, the deficit reduction contribution under section 412(l)(2) of the Internal Revenue Code is composed of the unfunded section 412(l) restoration liability amount plus the unfunded new liability amount. The regulation provides rules allowing the PBGC to prescribe the timing and amounts of the annual installments to amortize the unfunded section 412(l) restoration liability over a period of not more than 30 years.

Deferral by PBGC of Scheduled Charges

Paragraph (c)(4) of the regulation authorizes the PBGC to grant a deferral of the charges required under a restoration payment schedule if the PBGC determines that the plan sponsor and its controlled group members are unable to make the scheduled restoration payments without experiencing temporary substantial business hardship. The PBGC may grant no more than five deferrals during the restoration payment period and no more than three of these deferrals may be granted during the first ten years of that period. In response to comments received on the proposed regulation, the final regulation has been clarified to state that the deferrals granted under this authority override the minimum annual charges and the interim amortization requirements otherwise applicable.

Modification of Restoration Payment Schedule Order by PBGC

The PBGC retains the authority to modify the restoration payment schedule at any time during the period of up to 30 years that the schedule is effective. Any modification must, however, comply with the requirements of the regulation, including the minimum payment requirements and the requirement that the 30-year period not be extended. In addition, the PBGC must conduct a funding review of the plan at least once a year, and may conduct a funding review at any time it deems appropriate. As part of the required annual funding review, the Executive Director of the PBGC must certify to the PBGC's Board of Directors, and to the Internal Revenue Service, that the PBGC has reviewed the funding of the plan, the financial condition of the plan sponsor and its controlled group members, the payments required under the restoration payment schedule (taking into account the availability of the deferrals allowed under the regulations), and any other factor that the PBGC deems relevant, and, based on that review, determines that it is in the best interests of participants and beneficiaries of the plan and the pension insurance program that the restored plan not be reterminated.

Effect on Other Laws

Pursuant to the Reorganization Plan No. 4 of 1978, satisfaction of the restoration method requirements set forth in these regulations will be treated as satisfaction of the minimum funding requirements under section 302 of subtitle B of title I of the Employee Retirement Income Security Act of 1974

(ERISA). Failure to make a payment required to avoid a deficiency in the funding standard account under the restoration method may be treated by the Secretary of Labor as a failure to meet the minimum funding standard under ERISA section 302 for purposes of the notice required under ERISA section 101(d).

Effective date

These regulations are effective on October 22, 1993. They continue and make permanent the authority of the PBGC to issue restoration payment schedule orders contained in § 1.412(c)(1)–3T, published as TD 8317, 55 FR 42704 (1990). Under the temporary regulations, the PBGC has been authorized to issue restoration payment schedule orders to the sponsoring employers of restored plans, provided that certain requirements are satisfied. All restoration payment schedule orders issued pursuant to the temporary regulations remain in force under these regulations unless and until modified or withdrawn by the PBGC.

Special Analyses

It has been determined that these rules do not constitute a significant regulatory action as defined in Executive Order 12866. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Michael Roach of the Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), Internal Revenue Service. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.412(c)(1)–3 is added to read as follows:

§ 1.412(c)(1)–3 Applying the minimum funding requirements to restored plans.

(a) *In general*—(1) *Restoration method.* The restoration method is a funding method that adapts the underlying funding method of section 412 in the case of certain plans that are or have been terminated and are later restored by the Pension Benefit Guaranty Corporation (PBGC). The normal operation of the funding standard account, and all other provisions of section 412 and the regulations thereunder, are unchanged except as provided in this § 1.412(c)(1)–3. Under the restoration method, the PBGC shall determine a restoration payment schedule, extending over no more than 30 years, that replaces all charges and credits to the funding standard account attributable to pre-restoration amortization bases. The restoration payment schedule is determined on the basis of an actuarial valuation of the accrued liability of the plan on the initial post-restoration valuation date less the actuarial value of the plan assets on that date. The initial post-restoration valuation date is the date of the valuation that falls in the first plan year beginning on or after the date of the restoration order.

(2) *Applicability of restoration method.* A plan must use the restoration method if, and only if—

(i) The plan is being or has been terminated pursuant to section 4041(c) or section 4042 of the Employee Retirement Income Security Act of 1974 (ERISA); and

(ii) The plan has been restored by the PBGC pursuant to its authority under section 4047 of ERISA.

(b) *Computation and effect of the initial restoration amortization base*—(1) *In general.* The initial restoration amortization base is determined under the underlying funding method used by the plan. When the plan uses a spread gain funding method that does not maintain an unfunded liability, the plan must change either to an immediate gain method that directly calculates an accrued liability or to a spread gain method that maintains an unfunded liability. A plan may adopt any cost method that satisfies this requirement and that is acceptable under section 412 and the regulations thereunder, provided that the plan administrator follows the procedures established by the Commissioner for changes in funding methods. The initial restoration amortization base is determined using the valuation for the plan year in which the initial post-restoration valuation date falls. The initial restoration amortization base equals the accrued liability with respect to plan benefit liabilities returned by the PBGC less the value of the plan assets returned by the PBGC. The initial restoration amortization base replaces all prior amortization bases including those under section 412(b)(2) (B), (C), and (D) and under section 412(b)(3)(B). Any base resulting from a change in funding method, including a change required under this paragraph, is treated as a prior amortization base within the meaning of this paragraph (b). Any accumulated funding deficiency or credit balance in the funding standard account is set equal to zero when the initial restoration amortization base is established.

(2) *Example.* The following example illustrates the provisions of this paragraph (b):

Example. A pension plan uses the calendar year as its plan year, makes its annual periodic valuation as of January 1, and uses the unit credit actuarial cost method for funding purposes. The plan is in the process of being terminated. By order of the PBGC the plan is restored as of July 1, 1991. The initial post-restoration valuation date is January 1, 1992, and a restoration payment schedule order is issued on October 31, 1992. If, as of January 1, 1992, the accrued liability of the plan is $1,000,000 and the value of the plan assets is $200,000, the initial restoration amortization base is $800,000.

(c) *Establishment of a restoration payment schedule—(1) Certification requirement.* When the PBGC establishes a restoration payment schedule, the Executive Director of the PBGC must certify to the PBGC's Board of Directors, and to the Internal Revenue Service, that the PBGC has reviewed the funding of the plan, the financial condition of the plan sponsor and its controlled group members, the payments required under the restoration payment schedule (taking into account the availability of deferrals authorized under paragraph (c)(4) of this section), and any other factor that the PBGC deems relevant, and, based on that review, determines that it is in the best interests of participants and beneficiaries of the plan and the pension insurance program that the restored plan not be reterminated.

(2) *Requirements for restoration payment schedule*—(i) *Amortization of base over period of no more than 30 years.* The restoration payment schedule

must be prescribed in an order requiring the employer to make stated contributions to the plan sufficient to amortize the initial restoration amortization base over a period extending not more than 30 years after the initial post-restoration valuation date (the restoration payment period). Payments included in the restoration payment schedule order are charged to the funding standard account of the plan at the end of each plan year in accordance with paragraph (d) of this section. The restoration payment schedule must provide for total charges that are sufficient to amortize the entire amount of the initial restoration amortization base by the end of the restoration payment period. The scheduled charges need not be in level amounts, but the present value of the prescribed charges on the initial post-restoration valuation date, computed with interest at the valuation rate, must equal the initial restoration amortization base.

(ii) *Minimum annual charge.* The restoration payment schedule must prescribe annual charges that are sufficient to prevent the outstanding balance of the initial restoration amortization base from exceeding whichever of the following amounts is applicable—

(A) During the first 10 plan years on the restoration payment schedule, the amount of the initial restoration amortization base on the date the base was established; or

(B) During plan years 11 through 20 on the restoration payment schedule, the maximum permitted outstanding balance of the initial restoration amortization base at the end of the tenth plan year, as calculated under paragraph (c)(2)(iii) of this section; or

(C) During plan years 21 through the end of the restoration payment schedule, the maximum permitted outstanding balance of the initial restoration amortization base at the end of the twentieth plan year, as calculated under paragraph (c)(2)(iii) of this section.

(iii) *Interim amortization requirements.* The restoration payment schedule must provide for sufficient periodic charges so that the outstanding balance of the initial restoration amortization base at the end of the tenth plan year and at the end of the twentieth plan year of the restoration payment period will not be larger than the outstanding balance that would have remained at the end of the tenth plan year and at the end of the twentieth plan year, respectively, if the initial restoration amortization base had been amortized in level annual amounts over the restoration payment period at the valuation rate.

(3) *Amendments to the restoration payment schedule.* The order establishing the restoration payment schedule may be amended by the PBGC from time to time with respect to any remaining payments, provided that no amendment may extend the restoration payment period beyond 30 years from the initial post-restoration valuation date, and provided further that the restoration payment schedule, as amended, satisfies the requirements of paragraph (c)(2) of this section.

(4) *Deferral of minimum scheduled annual payment amounts—(i) Authority to grant deferral.* Not later than 2½ months following the end of the plan year, the PBGC may grant a deferral of the charges required in the restoration payment schedule for that plan year if the requirements in paragraph (c)(4)(ii) of this section are satisfied. The PBGC may require the plan sponsor and its controlled group members to provide security to the plan as a condition to granting a deferral.

(ii) *Determination of business hardship.* Before granting a deferral under this paragraph (c)(4), the PBGC must make a determination that the granting of the deferral is in the best interests of plan participants and the plan termination insurance system, and that the plan sponsor and its controlled group members are unable to make the scheduled restoration payments without experiencing temporary substantial business hardship. In making these determinations, the factors the PBGC shall consider, include, but are not limited to, the following—

(A) Whether the plan sponsor and its controlled group members are operating at an economic loss;

(B) Whether there is substantial unemployment or underemployment in the trades or businesses of the plan sponsor and its controlled group members;

(C) Whether the sales and profits of the industry or industries are depressed or declining; and

(D) Whether it is reasonable to expect that the plan termination insurance system will suffer a greater loss if the plan is terminated than if it is continued as a restored plan.

(iii) *Amount of deferral.* The amount of the deferral for any particular plan year may not exceed the lesser of the amount that would have been required to be contributed under the restoration payment schedule for that year or interest at the valuation rate on the outstanding balance of the initial restoration amortization base for that year. An amortization payment for a deferral granted for a prior plan year may not be deferred. No deferral may extend the overall restoration payment period beyond 30 years.

(iv) *Modification of payment schedule.* The restoration payment schedule must be adjusted to reflect any deferral granted for a plan year in the manner prescribed in this paragraph (c). The charge otherwise specified in the schedule is reduced by the amount of any deferral. The charges under the restoration payment schedule for the subsequent plan years are increased by the amounts in paragraph (c)(4)(v) of this section.

(v) *Amortization of deferred amount.* The amount of any deferral granted by the PBGC for any plan year must be amortized in level amounts over five years or such shorter period as may be prescribed by the PBGC, at the valuation rate, beginning with the plan year following the year of the deferral.

(vi) *Number of deferrals permitted.* The PBGC may not grant more than five deferrals of the minimum scheduled payments as required by this section during the restoration payment period and no more than three of these deferrals may be granted during the first ten years of that period.

(vii) *Deferrals override minimum annual charges and interim amortization requirements.* In determining the minimum annual charge under paragraph (c)(2)(ii) of this section and in applying the interim amortization requirements of paragraph (c)(2)(iii) of this section, the unamortized balances of any deferrals granted by the PBGC under this paragraph shall be added to the outstanding balance of the initial restoration amortization base otherwise allowable.

(d) *Charging the scheduled restoration payments to the funding standard account.* In addition to any other charges and credits prescribed in the normal operation of the funding standard account under section 412, the amount of each payment specified in the restoration payment schedule shall be charged against the funding standard account of the plan for the plan year to which that payment is attributed in the restoration payment schedule. To the extent that the restoration payment schedule provides for payments before the end of the plan year, the annual charge to the funding standard account attributable to the restoration payment schedule is equal to the sum of the periodic payments for the plan year accumulated with interest at the valuation rate to the last day of the plan year.

(e) *Changes in actuarial assumptions or methods.* The plan administrator must notify the PBGC of any changes in the actuarial assumptions or methods used by the plan. Upon notification of any such change, the PBGC may make any changes to the restoration payment schedule that it deems appropriate.

(f) *Change to restoration method.* A plan that has been restored must use the restoration method until the initial restoration amortization base has been fully amortized. The use of this method does not require prior approval from the Commissioner. A plan using the restoration method must compute the charges to the funding standard account to amortize the initial restoration amortization base in accordance with the order of the PBGC and in accordance with this section.

(g) *Deficit reduction contribution*—(1) *Calculation of deficit reduction contribution.* For any plan using the restoration method, the deficit reduction contribution under section 412(l)(2) is equal to the sum of—

(i) The unfunded section 412(l) restoration liability amount; plus

(ii) The unfunded new liability amount.

(2) *Unfunded section 412(l) restoration liability amount.* The unfunded section 412(l) restoration liability amount is the amount necessary to amortize fully the unfunded section 412(l) restoration liability in installments, as prescribed by the PBGC, over not more than 30 years. The annual amount need not be level, but at all times the present value of the future amortization charges prescribed under the restoration payment schedule, at the current liability interest rate, must equal the outstanding balance of the unfunded section 412(l) restoration liability and the schedule must provide that at the end of no more than 30 years the entire amount of the unfunded section 412(l) restoration liability base will have been fully amortized. The schedule prescribed for amortization of the unfunded section 412(l) restoration liability must comply with the requirements imposed in paragraph (c) of this section on the restoration payment schedule, except as provided in paragraph (g)(7) of this section and except that the maximum permitted outstanding balance of the unfunded section 412(l) restoration liability at the end of the tenth plan year must not be greater than the outstanding balance of the section 412(l) restoration liability that would have remained at the end of the tenth plan year if the unfunded section 412(l) restoration liability had been amortized in level amounts over the restoration payment period at the actual current liability interest rate for each year, increased by the current liability interest rate differential as defined under paragraph (g)(7) of this section. The unfunded section 412(l) restoration liability amount for the tenth plan year otherwise prescribed under the restoration payment schedule is increased by any outstanding current liability interest rate differential. By issuing an appropriate order, the PBGC may permit the outstanding current liability interest rate differential to be amortized over the tenth through the fourteenth plan years. If the PBGC permits the amortization of the outstanding current liability interest rate differential, then the unfunded section 412(l) restoration liability amount for each year to which an amortization payment is attributed under the order shall be increased by such payment. The outstanding balance otherwise required by paragraph (g)(2) of this section is increased by the outstanding balance, if any, of the base resulting from the amortization of the current liability interest rate differential. The PBGC may amend the amortization schedule for the unfunded section 412(l) restoration liability subject to the limits on amendments to the amortization schedule prescribed for the initial restoration amortization base.

(3) *Establishment of unfunded section 412(l) restoration liability.* In the plan year in which the initial post-restoration valuation date falls, the unfunded section 412(l) restoration liability is equal to the unfunded current liability of the plan.

(4) *Unfunded new liability amount.* In the case of a plan using the restoration method, the unfunded new liability amount is the applicable percentage, as defined in section 412(l)(4)(C), of the unfunded new liability determined under paragraph (g)(5) of this section.

(5) *Unfunded new liability.* The unfunded new liability of a plan using the restoration method is the excess, if any, of the unfunded current liability of the plan, within the meaning of section 412(l)(8)(A) for the plan year (determined without taking into account any unpredictable contingent event benefits, even if the event has occurred) over the outstanding balance of the unfunded section 412(l) restoration liability determined under paragraph (g)(3) of this section.

(6) *Offset of amortization charges.* The amounts charged to the funding standard account pursuant to the restoration payment schedule in order to amortize the initial restoration base, as described in paragraph (d) of this section, must be offset against the deficit reduction contribution in paragraph (g)(1) of this section along with any other applicable amounts provided in section 412(l)(1)(A)(ii).

(7) *Interest rate differential.* During the first 10 plan years after the initial post-restoration valuation date, the restoration payment schedule must prescribe an unfunded section 412(l) restoration liability amount for each plan year that is sufficient to prevent the outstanding balance of the unfunded section 412(l) restoration liability from exceeding the initial amount of the unfunded section 412(l) restoration liability increased by the current liability interest rate differential. The current liability interest rate differential at any point during the first ten years of the restoration payment period is the excess, if any, of the outstanding balance of the unfunded section 412(l) restoration liability determined using the actual current liability interest rate for each year, taking into account the charges described in paragraph (d) of this section, over the outstanding balance of the unfunded section 412(l) restoration liability determined using the lowest, for each year, of the initial current liability interest rate, the current liability interest rate for the computation year, and the valuation interest rate, taking into account the charges described in paragraph (d) of this section.

(h) *Election of the alternative minimum funding standard.* A plan using the restoration method may not elect the alternative minimum funding standard under section 412(g).

(i) *Funding review by the PBGC.* The PBGC must review the funding of any plan using the restoration method at least once in each plan year. As a result of a funding review, the PBGC may amend the restoration payment schedule as provided in paragraph (c)(3) of this section. As part of the funding review, the Executive Director of the PBGC must certify to the PBGC's Board of Directors, and to the Internal Revenue Service, that the PBGC has reviewed the funding of the plan, the financial condition of the plan sponsor and its controlled group members, the payments required under the restoration payment schedule (taking into account the availability of deferrals authorized under paragraph (c)(4) of this section), and any other factor that the PBGC deems relevant, and, based on that review, determines that it is in the best interests of participants and beneficiaries of the plan and the

pension insurance program that the restored plan not be reterminated.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: October 12, 1993.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 93–25785 Filed 10–21–93; 8:45 am]

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DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1, 2 and 10

[Docket No. 920671–3225]

RIN 0651–AA55

Changes in Signature and Filing Requirements for Correspondence Filed in the Patent and Trademark Office

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The Patent and Trademark Office (Office) is amending the rules of practice in patent and trademark cases to: Specify the types of correspondence which will no longer require original signatures; provide for facsimile transmission of certain correspondence to the Office; discontinue use of the drop boxes at Crystal Plaza Building 3 and at the Department of Commerce Building in Washington, DC; and clarify other provisions with respect to practice before the Office.

EFFECTIVE DATE: November 22, 1993. These rules will be applicable to all correspondence filed with the Office on or after the effective date.

FOR FURTHER INFORMATION CONTACT: Abraham Hershkovitz by telephone at (703) 305–9282, by facsimile transmission at (703) 305–8825, or by mail marked to his attention and addressed to Office of the Assistant Commissioner for Patents, Box DAC, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: In a Notice of Proposed Rulemaking published in the **Federal Register** at 57 FR 36034 (August 12, 1992) and in the Patent and Trademark Office Official Gazette at 1142 Off. Gaz. Pat. Office 8–13 (Sept. 1, 1992), the Office proposed to amend the rules of practice in patent and trademark cases to simplify the manner in which correspondence may be transmitted to the Office and clarify other provisions with respect to practice before the Office. This rulemaking includes changes to expand those situations where a party can use the Certificate of Mailing or Transmission procedure, and minor technical modifications in part 2 of title 37 of the Code of Federal Regulations which were not part of the proposed rulemaking.

Written comments were submitted by twenty-two law firms, five individuals, nine corporations, two organizations and three agencies. An oral hearing was not conducted.

The following includes a discussion of the rules being changed and the reasons for those changes, and an analysis of the comments received in response to the notice of proposed rulemaking.

Discussion of Specific Sections to be Changed or Added

(1) Types of Correspondence No Longer Requiring Original Signatures (Section 1.4)

Section 1.4 is amended to include a new paragraph (d) to specify that most correspondence filed in the Office, which requires a person's signature, may be an original, or a copy thereof. See §§ 1.4 (e) and (f) for types of correspondence where the original must be filed in the Office. The word original, as used in this rulemaking, is defined as correspondence which is personally signed in permanent ink by the person whose signature appears thereon. Where copies of correspondence are acceptable, photocopies or facsimile transmissions may be filed. For example, a photocopy or facsimile transmission of an original of an amendment, declaration, petition, issue fee transmittal form, authorization to charge a deposit account, etc., may be submitted in a patent or trademark application. Furthermore, where copies are permitted, second and further generation copies (i.e., copy of a copy) are acceptable. The original, if not submitted to the Office, should be retained as evidence of proper execution in the event that questions arise as to the authenticity of the signature reproduced on the photocopy or facsimile-transmitted correspondence. If a question of authenticity arises, the Office may require submission of the original.

Section 1.4(e) identifies types of correspondence in which an original must be submitted to the Office. Where an original is required, copies are not acceptable and will not be accorded a receipt date. Correspondence, as referred to in this section, includes application forms for registration to practice before the Office and data sheets for the register of patent attorneys and agents.

Section 1.4(f) provides that when a document that is required by statute to be certified must be filed (such as a certified copy of a foreign patent application, pursuant to 35 U.S.C. 119; a certified copy of an international application, pursuant to 35 U.S.C. 365; a certified copy of a foreign trademark registration, pursuant to 15 U.S.C. 1126(e); a certified copy of a final court order, pursuant to 15 U.S.C. 1119; or a certified copy of a U.S. trademark registration), a copy of the certification, including a photocopy or facsimile transmission, will not be acceptable. The requirement for an original certification does not apply to certifications such as required under §§ 1.8, 1.10, 1.60, 1.97(e) and 3.73(b), since these certifications are not required by statute.

(2) Identification of Applications (Section 1.5)

Section 1.5(a) is amended to make reference to the certificate procedure under § 1.8 consistent with the new title for § 1.8.

(3) Receipt of Correspondence (Section 1.6)

A descriptive heading is added to each paragraph of § 1.6 to identify the content of that paragraph.

The phrase "correspondence" is used in § 1.6 since the terms "papers", "letters" and "fees" all fall within the generic definition of "correspondence".

Section 1.6(a) is amended to clarify that correpondence transmitted by facsimile on weekends or Federal holidays within the District of Columbia, will be accorded the next business day as the date of receipt.

Sections 1.6 (b) and (c) are amended to clarify that weekdays refer to any day except a Saturday, Sunday, or Federal holiday within the District of Columbia.

Section 1.6(c) is amended to delete reference to the box locations in the lobby of Crystal Plaza Building 3, Arlington, Virginia, and at the Department of Commerce Building in Washington, DC. The use of the drop boxes was discontinued on April 21, 1992, and the hours of operation for the attorney's window were extended to midnight, the same hours the drop boxes were available. The public can now deposit correspondence with the Office and obtain an acknowledgement of receipt after normal business hours. See "Changes in How Papers May be Filed in the Patent and Trademark Office," 1137 Off. Gaz. Pat. Office 7 (April 7, 1992).

Use of the drop boxes at Crystal Plaza Building 3 and Department of Commerce Building locations had

caused problems for both the public and the Office. Occasionally, it had been difficult to determine the dates of actual deposit of correspondence in the boxes. On occasion, Office employees and/or members of the public had been denied access to the drop box at the Department of Commerce by building security guards due to a special event taking place at the Department. Additionally, there were instances of correspondence being found outside of the drop boxes (e.g. on the floor of the main lobby of the Department of Commerce Building, on the guard's desk, on a nearly table, etc.). As a result, on occasion, the Office lacked confidence in assigning correct dates of receipt to correspondence deposited in the boxes at Crystal Plaza Building 3 and at the Department of Commerce Building. Given these difficulties, and the fact that the necessity for these boxes has been greatly diminished as a result of the facsimile transmission and certificate of mailing procedures, § 1.6(c) is amended by deleting reference to the drop boxes at Crystal Plaza Building 3 and the Department of Commerce Building.

A new § 1.6(d) is added to specify the types of correspondence which may be transmitted by facsimile and former § 1.6(d) is revised to be consistent with § 1.8(b) and redesignated as § 1.6(e). The widespread use of facsimile transmission and the resulting time saved in correspondence between applicants and the Office prompted the Office to establish a trial program to accept facsimile transmission of certain correspondence. The policy on "Filing of Certain Papers and Authorizations to Charge Deposit Accounts by Facsimile Transmissions" was published at 1096 Off. Gaz. Pat. Office 30 (November 15, 1988) and was supplemented in the notice "Filing of Certain Papers with the Board of Patent Appeals and Interferences by Facsimile Transmission" published at 1108 Off. Gaz. Pat. Office 15 (November 14, 1989). The policy on "Filing of Certain Trademark Papers and Authorizations to Charge Deposit Accounts by Facsimile Transmission" was published at 1123 Off. Gaz. TM. Office 18 (February 12, 1991). In light of the success of the trial program, a policy on acceptance of facsimile transmission is incorporated into § 1.6(d). The situations where transmission of correspondence by facsimile is permitted have been increased over those permissible under the trial program outlined above. The situations where transmissions by facsimile remain prohibited are identified in § 1.6(d)(1)–(9). Prohibitions cover situations where originals are required as specified in § § 1.4(e) and (f), and situations where accepting a facsimile transmission would be unduly burdensome on the Office. As a courtesy, the Office will attempt to notify senders whenever correspondence is sent to the Office by facsimile transmission that falls within one of these prohibitions. Senders are cautioned against submitting correspondence by facsimile transmission which is not permitted under § 1.6(d) since such correspondence will not be accorded a receipt date.

This final rulemaking expands the acceptability of facsimile transmissions to certain patent interference proceedings, not included in the proposed rulemaking, to reflect the practice set forth at 1108 Off. Gaz. Pat. Office 15 (November 14, 1989).

Under § 1.6(d)(4) as adopted in this final rulemaking, drawings submitted under §§ 1.81, 1.83–1.85, 1.152, 1.165, 1.174, 1.437, 2.51, 2.52 or 2.72 may not be filed by facsimile in patent and trademark applications. The experience of the Office is that the quality of the drawings received by facsimile transmission is generally not sufficient to comply with the drawing requirements set forth in these rules. However, applicants may submit by facsimile transmission proposed drawing corrections for approval by the Office.

In trademark proceedings, the facsimile transmission of specimens in response to an Office action will be permitted. Facsimile-transmitted specimens must be legible in order to be accepted and examined as specimens.

The date of receipt accorded to any correspondence permitted to be sent by facsimile transmission is the date the complete transmission is received by an Office facsimile unit, unless the transmission is completed on a Saturday, Sunday, or Federal holiday within the District of Columbia. Correspondence for which transmission was completed on a Saturday, Sunday, or Federal holiday within the District of Columbia, will be accorded a receipt date on the next succeeding day which is not a Saturday, Sunday, or Federal holiday within the District of Columbia. For example, a facsimile transmission to the Office from California starting on a Friday at 8:45 p.m. Pacific time and taking 20 minutes, would be completed at 9:05 p.m. Pacific time. The complete transmission would be received in the Office around 12:05 a.m. Eastern time on Saturday. The receipt date accorded to the correspondence is the date of the following business day, which in this case, would be Monday (assuming that Monday was not a Federal holiday within the District of Columbia).

The following lists itemize types of correspondence which may not be filed by facsimile transmission and, if submitted by facsimile, will not be accorded a date of receipt:

Correspondence Relative to Patents and Patent Applications Where Filing by Facsimile Transmission is Not Permitted

(1) A document that is required by statute to be certified;

(2) A national patent application specification and drawing or other correspondence for the purpose of obtaining an application filing date;

(3) Drawings submitted under §§ 1.81, 1.83–1.85, 1.152, 1.165, 1.174, or 1.437;

(4) Correspondence in an interference which an examiner-in-chief orders to be filed by hand or "Express Mail";

(5) Agreements between parties to an interference under 35 U.S.C. 135(c);

(6) Correspondence to be filed in an interference proceeding which consists of a preliminary statement under § 1.621; a transcript of a deposition under § 1.676 or of interrogatories, cross-interrogatories, or recorded answers under § 1.684(c); or an evidentiary record and exhibits under § 1.653;

(7) Correspondence to be filed in a patent application subject to a secrecy order under §§ 5.1–5.8 of this chapter and directly related to the secrecy order content of the application;

(8) An international application for patent;

(9) A copy of the international application and the basic national fee necessary to enter the national stage, as specified in § 1.494(b) or § 1.495(b);

(10) a Request for reexamination under § 1.510.

Correspondence Relative to Trademark Registrations and Trademark Applications Where Filing by Facsimile Transmission is Not Permitted

(1) The filing of a trademark application;

(2) Drawings submitted under §§ 2.51, 2.52, or 2.72;

(3) An affidavit showing that a mark is still in use or containing an excuse for nonuse under section 8 (a) or (b) or section 12(c) of the Trademark Act, 15 U.S.C. 1058(a), 1058(b), 1062(c);

(4) An application for renewal of a registration under section 9 of the Trademark Act, 15 U.S.C. 1059;

(5) A petition to cancel a registration of a mark under section 14, subsection (1) or (2) of the Trademark Act, 15 U.S.C. 1064;

(6) In an application under section 1(b) of the Trademark Act, 15 U.S.C.

1051(b), the filing of an amendment to allege use in commerce under section 1(c) of the Trademark Act, 15 U.S.C. 1051(c); or the filing of a statement of use under section 1(d)(1) of the Trademark Act, 15 U.S.C. 1051(d)(1);

(7) Requests for cancellation or amendment of a registration under section 7(e) of the Trademark Act, 15 U.S.C. 1057(e); and certificates of registration surrendered for cancellation or amendment under section 7(e) of the Trademark Act, U.S.C. 1057(e);

(8) Correspondence to be filed with the Trademark Trial and Appeal Board, except the notice of ex parte appeal.

Correspondence Relative to Practitioner Registrations, Investigations, and Disciplinary Proceedings Where Filing by Facsimile Transmission is Not Permitted

Correspondence requiring a person's signature and relating to:

(1) Registration to practice before the Patent and Trademark Office in patent cases;

(2) Enrollment and disciplinary investigations; or

(3) Disciplinary proceedings.

(4) Certificate of Mailing or Transmission Procedure (Section 1.8)

The title of § 1.8 is changed from Certificate of Mailing to Certificate of Mailing or Transmission so as to include facsimile transmissions.

Section 1.8(a) prescribes procedures for the use of a certificate of mailing or transmission to file papers or fees in the Office by first class mail or by facsimile transmission. The description of the Certificate of Mailing or Transmission practice is set forth in § 1.8(a)(1), and the list of exceptions to the certificate practice is found in § 1.8(a)(2). The phrase "papers or fees" in § 1.8(a) is changed to "correspondence" since both "papers" and "fees" fall within the generic definition of "correspondence". Paragraphs (a) and (b) of § 1.8 are amended to include correspondence transmitted by facsimile. In the event that correspondence is filed by facsimile transmission, it is recommended that the sending facsimile machine generate a report confirming transmission for each transmission session. This report should be retained by the applicant, along with the correspondence used as the original, as evidence of content and date of transmission. Paragraph (a)(2) of § 1.8 is amended to include separate headings for correspondence which relate to patents, trademarks and disciplinary proceedings. The sequence of some of the paragraphs found in § 1.8(a)(2) has been changed in order to have those paragraphs listed under the appropriate heading. The ability to use the Certificate of Mailing or Transmission procedures has been expanded to the filing of an affidavit under section 15, subsection (3) of the Trademark Act, 15 U.S.C. 1065(3), the filing of a notice of election to proceed by civil action in an inter partes proceeding under 35 U.S.C. 141 or 15 U.S.C. 1071(a)(1), in response to another party's appeal to the Court of Appeals for the Federal Circuit, the filing of a notice and reasons of appeal under 35 U.S.C. 142 or a notice of appeal under 15 U.S.C. 1071(a)(2), and the filing of a statement under 42 U.S.C. 2182 or 42 U.S.C. 2457(c).

Paragraph (a)(2)(vi) of § 1.8 is redesignated as paragraph (a)(2)(x) and amended to refer to section 14(1) or 14(2) of the Trademark Act, 15 U.S.C. 1064, to conform with the numbering of the Trademark Law Revision Act of 1988. Other sections of paragraph (a)(2) of § 1.8 are amended to identify the types of correspondence which will not receive the benefit of a certificate of mailing or transmission.

Paragraph (b) of § 1.8 outlines procedures to be followed to document the timely filing of correspondence in accordance with § 1.8(a) where such correspondence is not received by the Office. The phrase "correspondence or fees" in § 1.8(b) is changed to "correspondence" since "fees" fall within the generic definition of "correspondence". Before adoption of this final rule, § 1.8(b) required that the party forwarding the correspondence or fee include a declaration, under §§ 1.68 or 2.20 of this chapter, attesting to the previous timely mailing or transmission. In order to be consistent with other sections in parts 1 and 2 of this chapter, the practice under § 1.8(b) is amended to permit a practitioner, as defined in § 10.1(r), to submit a statement rather than an oath or declaration under § 1.68 or 2.20 of this chapter.

New paragraph (c) of § 1.8 is added to explicitly provide for a requirement for additional evidence relating to the mailing or transmission of correspondence in accordance with paragraph (a) of this section. The Office may invoke this requirement when it is deemed appropriate to establish an actual date of mailing or transmission. See, e.g., *In re Klein*, 6 USPQ2d 1547 (Comm'r Pat. 1987), *aff'd sub. nom. Klein* v. *Peterson*, 696 F. Supp. 695, 8 USPQ2d 1434 (D.D.C. 1988), *aff'd*, 866 F.2d 412, 9 USPQ2d 1558 (Fed. Cir.), *cert. denied*, 490 U.S. 1091 (1989).

(5) Time for Appeal or Civil Action (Section 1.304)

In section 1.304, paragraphs (a) and (c) are amended to delete a statement that use of the certificate procedure under § 1.8 is prohibited so as to be consistent with changes to § 1.8. Also, a cross reference to § 1.658 in paragraph (a) is clarified.

(6) Submission of Maintenance Fees (Section 1.366)

Section 1.366(b) is amended by deleting the words "of mailing" to conform with the new title for § 1.8.

(7) Filing Date of Application for Extension of Patent Term (Section 1.741)

Section 1.741(a) is amended to conform with the new title for the certificate procedure under § 1.8.

(8) Appeal to Court and Civil Action (Section 2.145)

Sections 2.145(c)(3) and 2.145(d)(1) are amended to conform with the revised list of types of correspondence excluded from the certificate of mailing or transmission procedure set out in § 1.8. Formerly, the notice of election to proceed by civil action in an inter partes proceeding under 35 U.S.C. 141 or section 21(a)(1) of the Trademark Act, 15 U.S.C. 1071(a)(1), and the filing of notice and reasons of appeal under 35 U.S.C. 142 or a notice of appeal under section 21(a)(2) of the Trademark Act, 15 U.S.C. 1071(a)(2), were specifically excluded, under §§ 1.8(a)(2) (viii) and (ix), respectively, from the certificate of mailing procedure. Since these notices are no longer excluded under amended § 1.8(a)(2), §§ 2.145(c)(3) and 2.145(d)(1) are amended to conform with § 1.8 by deleting the last sentence which provided that the certificate of mailing procedure was not available.

(9) Reconsideration of Affidavit or Declaration (Section 2.165)

Section 2.165(a)(1) is amended to refer to the new title for the certificate procedure under § 1.8 of this chapter.

(10) Signature and Certificate of Practitioner (Section 10.18)

Section 10.18 is modified to clarify signature requirements for correspondence signed by practitioners. The reference to § 1.4 of this chapter will make it apparent that copies, including photocopies or facsimile transmissions, of correspondence signed by practitioners will be accepted under appropriate circumstances.

(11) Misconduct (Section 10.23(c))

Section 10.23(c) is amended to refer to the new title for the certificate procedure under § 1.8 of this chapter.

Response to Comments on the Rules

The comments received in response to the notice of proposed rulemaking have been given careful consideration and a number of the suggested modifications have been adopted. The comments and responses are discussed below.

Comment: In order to clarify how the Office will treat a copy of a paper, one comment suggested changing the second sentence in proposed § 1.4(d) to indicate that, except as provided in §§ 1.4(e) and (f), a copy would be treated by the Office as if the original had been filed.

Response: While the suggested language was not adopted, the rule was modified to clarify that, except as provided in §§ 1.4(e) and (f), an original or a copy thereof may be filed. The rules as stated in this final rulemaking are clear that, where an original is not required, a paper filed will be treated in the same way regardless of whether it is an original or a copy.

Comment: Five comments objected to a perceived requirement in § 1.4(d) that the color of ink used for signing a paper be different from the printing on the paper.

Response: Proposed § 1.4(d) did not require that the color of ink used for signing a paper be different from the printing on the paper. The suggested use of different colors of ink is a preferred procedure for distinguishing between an original and a copy. However, in order to avoid further confusion, the suggestion that a different color of ink be used has been deleted.

Comment: One comment recommended that the issue of signature authenticity end upon issuance of a patent in order to reduce the need to keep files in storage for long periods of time and to remove the burden on applicants of having to retrieve files from storage.

Response: Once a patent issues, the Office is not likely to inquire into any matters related to signature authenticity of correspondence filed in that patent application. Nevertheless, on rare occasions, a question of signature authenticity might arise after the issuance of a patent. Applicants must therefore make their own decisions as to how long to retain originals.

Comment: Two comments questioned the justification for proposed § 1.4(e) requiring originals to be submitted in international patent applications.

Response: Section 1.4(e), as adopted, does not prohibit the filing of photocopies in an international patent application. With regard to facsimile transmissions, Patent Cooperation Treaty (PCT) Rule 92.4, as revised on July 1, 1992, permits the filing by facsimile of certain correspondence related to an international patent application. However, as indicated in §§ 1.6(d)(3), 1.8(a)(2)(iv) and 1.8(a)(2)(vi), the filing by facsimile is not permitted in the following situations relative to international applications for patent: (1) the filing of an international application for patent and (2) the filing of a copy of the international application and the basic national fee necessary to enter the national stage, as specified in §§ 1.494(b) or 1.495(b).

Applicants are cautioned, however, that the Certificate of Mailing or Transmission provisions of § 1.8 do not apply to correspondence filed in an international application before the U.S. Receiving Office, the U.S. International Searching Authority, or the U.S. International Preliminary Examining Authority, regardless of whether the correspondence was filed by mail or facsimile transmission. See § 1.8(a)(2)(5).

Comment: One comment suggested that, in applications filed under § 1.60, the certification that the application and papers being filed are true copies of those filed in the parent application should be excluded from the original signature requirement.

Response: Filing of copies of statements under § 1.60 as well as certifications under §§ 1.8, 1.10, 1.97(e) and 3.73(b) will be permitted. The certified documents referred to in § 1.4(f) are those which are required to be certified by statute (e.g., certified documents under 35 U.S.C. 119).

Comment: One comment questioned whether routine papers could be photocopied with a practitioner's signature thereon with appropriate information being filled in later by another person.

Response: Section 10.18(a) states that the signature of a practitioner, on correspondence filed, constitutes a certificate that the correspondence has been read by the practitioner. Accordingly, the photocopying of papers with a practitioner's signature thereon and subsequently having appropriate information filled in by another person, is not authorized or permitted under the rules.

Comment: One comment questioned whether a docket clerk could use a signature stamp of a registered attorney on a transmittal letter.

Response: Section 10.18(a) states that correspondence filed by a practitioner must be personally signed by that practitioner. Accordingly, use of a signature stamp of a registered attorney by a docket clerk would not be permitted.

Comment: Two comments suggested that the facsimile transmission practice be further liberalized to permit scanned-in signatures to be affixed to facsimile or electronically transmitted correspondence. The personal, handwritten signature would be affixed on a copy of the transmitted correspondence which would be kept by the applicant or his or her representative.

Response: The Office is actively considering acceptance of electronically filed applications and papers related thereto. See "Electronic Filing of Patent and Trademark Applications" published at 57 FR 56537 (November 30, 1992) and 1145 Off. Gaz. Pat. Office 378 (December 22, 1992). Until an acceptable program is established, every paper, requiring a signature, filed in the Office, regardless of the manner in which it was transmitted, will have to be a paper which was signed by the person whose signature appears thereon, or be a copy thereof. Scanned signatures affixed to papers which were not personally signed will not be permitted at this time.

Comment: One comment indicated that proposed § 1.5(a) appeared to be contrary to PCT Article 27(1) in that it added the additional requirement not set forth in the PCT of requiring correspondence concerning an international application to identify the international application number.

Response: PCT Rule 92.1 requires any paper relating to an international application to identify the international application to which it relates. In order to ensure prompt and proper association of correspondence with the intended application file, it is essential to use the application number on all papers. The practice (which was not a new one added in this rulemaking) is a mere implementation of the requirement in PCT Rule 92.1 and is not contrary to PCT Article 27(1) as no additional requirement is being placed on applicants.

Comment: Two comments recommended an increase from two weeks to 30 days or one month in the period provided in § 1.5(a) for resubmission of correspondence.

Response: The two-week period provided in § 1.5(a) is to enable applicants to provide the necessary identifying data where such data was not provided during the original submission. This is intended to permit immediate resubmission and no additional time is deemed to be

necessary. Extending this period to 30 days would unnecessarily delay prosecution of applications.

Comment: Section 1.5(a) suggests that all letters directed to the Office concerning applications for patents should also state "Patent Application". One comment suggested that § 1.5(a) be amended to replace the restrictive reference to a "Patent Application" to read "identifying the correspondence as relating to a patent application".

Response: In order to make it easier for Office employees handling incoming correspondence to direct mail, § 1.5(a) recommends that letters relating to a patent application should state "Patent Application". The suggestion in the comment was not adopted since uniformity in the reference to "Patent Application" is desirable. Furthermore, this suggested labeling is not a requirement as evidenced by the use of the word "should" rather than "must".

Comment: Section 1.5(a) states that "No correspondence relating to an application should be filed prior to when notification of the application number is received from the Patent and Trademark Office". One comment suggested that the phrase "notification of the application number" was not adequately defined as it was not clear if applicants had to wait for the official filing receipt before information disclosure statements or other papers could be filed.

Response: The phrase "notification of the application number" as used in § 1.5(a) includes any manner in which an applicant becomes aware of the application number. The phrase is purposely broad and is not limited to the mailing of an official filing receipt. Rather, it includes a return post card which has an application number stamped thereon. The reasoning behind the statement in § 1.5(a) that no correspondence should be filed prior to notification of the application number is that correspondence received without an application number is difficult to match with the appropriate file. Further defining the phrase "notification of the application number" in § 1.5(a) is not warranted.

Comment: One comment suggested defining a business day as Monday through Friday, except for Federal holidays in the District of Columbia.

Response: It is not clear which section the comment was directed to, but § 1.6 indicates that no correspondence will be received by the Office on Saturdays, Sundays or Federal holidays within the District of Columbia. Since the language has not created problems in the past, the suggestion will not be adopted.

Comment: Two comments suggested amending § 1.6(c) to indicate the hours of operation in the "walk-up window".

Response: Specifying in the regulations the hours of operation of the "walk-up window" is unnecessary. The hours of operation have been published in Official Gazette announcements and if those hours are changed in the future, the new schedule will be published. Should the hours of operation of the "walk-up window" be changed due to unforeseen circumstances (i.e., snow emergency, etc.), a sign will be posted at the "walk-up window" giving an alternate location to deposit correspondence for the Office.

Comment: Two comments requested that the Office reconsider and withdraw the proposal to eliminate the mail drop box at the guard's desk at the Department of Commerce Building in Washington, DC.

Response: As indicated in the notice of proposed rulemaking, members of the public were occasionally denied access to the drop box at the Department of Commerce. Additionally, the Office lacked confidence in assigning correct dates of receipt to correspondence deposited in the box as a result of instances when correspondence was found outside of the drop box. Further, since there are many ways to file papers with the Office (i.e., certificate of mailing or transmission, Express Mail, facsimile transmission, longer hours at the "walk-up window"), there is no need to maintain an off-site drop box.

Comment: One comment suggested that the Office publish phone numbers for facsimile machines at various locations, (i.e., Publishing Division, various examining groups, etc.), in order to enable the public to direct their transmissions to a particular location, rather than a central location.

Response: The suggestion has been adopted. See "Patent and Trademark Office (PTO) Information Contacts", 1149 Off. Gaz. Pat. Office 67 (April 27, 1993). The Office will publish in the Official Gazette periodic updates of this list.

Comment: Three comments advocated a further expansion of the facsimile transmission practice to permit transmission of any paper which did not require an original signature. According to the comment, it was difficult to understand why the Office would not permit facsimile transmission of certain papers directly to the Office, but would accept those same papers if transmitted by facsimile to a third party who then hand-delivered the papers to the Office.

Response: The only papers, not requiring an original signature or certification, which the Office will not accept by facsimile transmission are those which, for various reasons, would cause an undue burden on the Office. For example, papers submitted for the purpose of obtaining an application filing date are often rather voluminous, difficult to collate and would create inefficiencies in tying up the Office facsimile machines for long periods of time. In addition, there is a time and content criticality to papers filed for the purpose of obtaining a filing date which is not shared by other types of papers. Another example would be drawings submitted under §§ 1.81, 1.83–1.85, 1.152, 1.165, 1.174, 1.437, 2.51, 2.52, or 2.72. Experience has shown that the quality of drawings received by facsimile transmission would typically result in an objection by the Official Draftsman. Disputes might arise at that point as to whether the cause of the poor quality was applicant's transmitting unit or the receiving unit of the Office. Hence, the Office will continue to prohibit facsimile transmission of certain papers as specified in § 1.6(d).

Comment: Section 1.6(d) states that the receipt date accorded to a paper transmitted by facsimile will be the date on which the complete transmission is received in the Office. Three comments objected to this language by arguing that this practice discriminated against West Coast practitioners and gave an advantage to East Coast practitioners because the West Coast practitioners had only until 9 p.m. to complete a transmission in order to receive the benefit of that day's filing.

Response: The facsimile transmission practice is similar to regular mail practice. Thus, a West Coast practitioner depositing correspondence with the local postal service without a certificate of mailing will receive as a receipt date the date on which the Office receives the correspondence, rather than the date on which the correspondence was deposited. Similarly, a paper transmitted by facsimile will be accorded, as the date of receipt, the date on which the complete transmission was received in the Office, unless the date of receipt is a Saturday, Sunday, or Federal holiday within the District of Columbia, in which case, the date of receipt will be the next business day.

The certificate practice provided in § 1.8, on the other hand, permits the sender to indicate on the correspondence the date of mailing or transmission from the sender's perspective, which date would then be effective to meet a deadline set for response. Use of the certificate of mail or transmission is applicable to correspondence submitted by mail and

correspondence transmitted by facsimile. If transmitted by facsimile, the person signing the certificate certifies the expectation that the transmission would be initiated before midnight, local time.

By way of example, a West Coast practitioner preparing a response on the last day of the period for response would have to use the § 1.8 certificate of mailing procedure or the § 1.10 Express Mail procedure, for the response to be considered timely, if the correspondence was sent by way of the U.S. Postal Service. If the practitioner chose to send the correspondence by facsimile on the last day for response and the transmission was started before 9 p.m. Pacific time, but was completed after 9 p.m. Pacific time, the Office would accord that correspondence a receipt date as of the next business day, which would be after the period for response expired because the Office would have received the correspondence after midnight Eastern time of the last day for response. However, if the practitioner affixed a certificate of transmission to the correspondence sent by facsimile transmission, indicating that the correspondence was being transmitted on the last day in the period for response, then the correspondence would be considered timely filed.

As another example, a transmission started before midnight, Pacific time, on the last day for response and having a certificate of transmission affixed thereto, would be considered timely filed even though the transmission was completed after midnight, Pacific time and was received in the Office the day after the deadline for response.

Comment: One comment suggested replacing "drawings" in § 1.6(d)(4) with "formal drawings" for clarity.

Response: The suggestion has not been adopted because the phrase "formal drawings" does not find support or antecedent basis in sections referred to in § 1.6(d)(4).

Comment: One comment objected to the perceived requirement for a certificate of transmission in order for a facsimile-transmitted document to be accorded a date of receipt.

Response: The receipt date accorded to correspondence eligible for facsimile transmission, whether containing a certificate of transmission or not, will be the date of receipt in the Office of the complete transmission (unless that date is a Saturday, Sunday, or Federal holiday within the District of Columbia, in which case the date accorded will be the next business day). The certificate of transmission, if used, is for purposes of establishing timely filing if the correspondence is transmitted within the period for response but is (1) received in the Office after expiration of the period for response, or (2) lost or (3) not received by the Office.

Comment: One comment requested clarification as to what constituted a "complete transmission" as used in § 1.6(d).

Response: The context in which the phrase "complete transmission" was used in § 1.6(d) was to indicate that the transmission was finished. For example, if page 1 of a ten-page facsimile transmission is received in the Office at 11:55 p.m. on a Tuesday and page 10 of that transmission is received at 12:05 a.m. Wednesday, the receipt date accorded to that correspondence will be the date of that Wednesday. (This example assumes that Wednesday is not a Federal holiday within the District of Columbia).

Comment: One comment questioned whether a confirmation in the sender's facsimile machine that the entire facsimile was received constituted sufficient proof that a transmission was complete.

Response: A confirmation by the sender's facsimile machine is evidence that a transmission was made. As such, the confirmation will be considered together with any other evidence presented when questions of filing by facsimile transmission arise. It is therefore suggested that a certificate of transmission be used to enable the sender to rely on the procedures set forth in § 1.8(b).

Comment: One comment requested clarification as to what constituted an incomplete, faulty or illegible facsimile. Also, if an incomplete transmission was sent near the end of the period for response, will the sender be able to rely on the date the facsimile was initially transmitted, or would the sender have to rely on § 1.137 to revive the application if it became abandoned?

Response: If an incomplete, faulty or illegible facsimile transmission is received, that correspondence will be treated by the Office in the same manner that a comparably incomplete, faulty or illegible piece of correspondence would be treated if the correspondence were hand-delivered or mailed to the Office. Whether the application would be held abandoned upon receipt of an incomplete facsimile transmission or whether an opportunity would be provided to complete the transmission will be decided on a case-by-case basis using the same standards that are currently used—for example, for incomplete responses to Office actions, see § 1.135(c).

Comment: One comment indicated that the proposed practice of not accepting papers related to international applications if transmitted by facsimile and the indication that papers transmitted by facsimile, when prohibited, may be disposed of is contrary to PCT practice wherein PCT expressly provides for facsimile transmission of such papers and when not acceptable, an opportunity to correct is provided.

Response: PCT does not mandate acceptance of facsimile transmissions; it merely authorizes their acceptance. See PCT Rule 92.4(h). Additionally, as indicated above, the suggestion that the Office permit facsimile transmission of correspondence relative to an already filed international application has been adopted to a large extent.

There is no provision in PCT to provide an opportunity for correction when correspondence is filed by facsimile in spite of a refusal by a national Office to accept that type of correspondence by facsimile. As with national applications, the Office will attempt to notify senders whenever a facsimile transmission received is of a type which the Office has not agreed to accept by facsimile. Senders are cautioned against submitting such correspondence by facsimile transmission since the correspondence will not be accorded a filing date or date of receipt in the Office.

Comment: One comment suggested changing the phrase "Certificate of Transfer" in § 1.8 to "Certificate of Transmittal" or "Certificate of Sending" because "transfer" typically implies transfer of ownership interest in patents or trademarks.

Response: While each phrase has its own advantages and drawbacks, the suggestion will not be adopted. Nevertheless, in order to avoid confusion, this rulemaking leaves the old "Certificate of Mailing" intact, while adding "or Transmission" to include correspondence filed by facsimile transmission.

Comment: In the notice of proposed rulemaking, it was recommended that the facsimile machine transmission report be retained by the sender along with the correspondence used as the original, as evidence of content and date of transfer. One comment indicated that the correspondence used as the original can only be retained using the older stand-alone type of facsimile machine, since there is no such physical document with the newer in-computer facsimile cards.

Response: Section 1.4(d)(2) provides for submission of copies, e.g., by facsimile, of originals as defined in

§ 1.4(d)(1). Section 1.4(d)(2) does not provide for transmission of unsigned correspondence from a computer. While § 1.4(d)(2) does not require the sender to retain the original, there may be occasions when the sender will have to document the date and content of a document previously filed by facsimile transmission. The recommendation made in the notice of proposed rulemaking will apply to any situation where a paper document served as the original from which a facsimile was transmitted. If a facsimile transmission by using a computer is desired, a paper copy of the document to be transmitted may be printed out, signed and retained by the sender as evidence of content of the document transmitted. Once signed, if filing of a copy is permitted, the document could be scanned into the computer and facsimile transmitted to the Office.

Comment: In proposed § 1.8(a)(1) published in the **Federal Register**, paragraphs (i) and (ii) were joined with the alternative "or" to indicate that correspondence could be filed by being deposited with the U.S. Postal Service or transmitted by facsimile. This same section was published in the Official Gazette, by having paragraphs (i) and (ii) joined with the connective "and". Numerous comments, received apparently from individuals who saw the proposed rules in the Official Gazette, objected to the requirement that, in order to receive benefits under § 1.8, correspondence transmitted by facsimile also had to be mailed.

Response: Section 1.8(a)(1) as published in the **Federal Register** was correct, while the version published in the Official Gazette contained a typographical error. Hence, §§ 1.8(a)(1)(i) (A) and (B), as adopted in this rulemaking, make clear that the certificate of mailing or transmission practice will be applicable to correspondence mailed or sent by facsimile. The Office discourages the practice of having the same papers submitted by both methods as this practice would result in unnecessary duplication of papers and processing requirements.

Comment: One comment indicated that since all facsimile transmissions include the date and time of the actual facsimile transmission, the Office should not require a certificate of transmission, in order to get the benefit of an earlier filing date under § 1.8(a), when correspondence is transmitted by facsimile.

Response: The Office is concerned that some older machines may not print the date and time of the actual transmission. Furthermore, even on the new machines the date and time printed by the sending unit may not always be correct, particularly after a temporary electrical disconnection, change in time, etc. Hence, for purposes of being considered timely filed, if the sender wishes to obtain the benefits of a date earlier than the date the complete transmission is received in the Office, the correspondence must include a certification in accordance with § 1.8(a).

A suggested format for a Certificate of Mailing and a Certificate of Transmission under § 1.8, to be included with the correspondence, is reproduced below:

Certificate of Mailing

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to:

Commissioner of Patents and Trademarks
Washington, DC 20231
on _____
Date

Signature _____
Typed or printed name of person signing certificate _____

Certificate of Transmission

I hereby certify that this correspondence is being facsimile transmitted to the Patent and Trademark Office:
on _____
Date

Signature _____
Typed or printed name of person signing certificate _____

Other Considerations

The rule changes are in conformity with the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), Executive Orders 12291 and 12612 and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration, that these rule changes will not have a significant economic impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)). The principal impact of these changes is to incorporate existing Office policy into the regulations, permit the filing of certain correspondence without an original signature and permit the filing of certain correspondence by facsimile transmission.

The Office has determined that these rule changes are not major rules under Executive Order 12291. The annual effect on the economy will be less than $100 million. There will be no major increase in costs or prices for consumers, individuals, industries, Federal, state or local government agencies, or geographic regions because most of the changes reduce procedural burdens. There will be no significant effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Office has also determined that these changes have no Federalism implications affecting the relationship between the National Government and the States as outlined in Executive Order 12612.

These rule changes contain collection-of-information requirements subject to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, which have previously been approved by the Office of Management and Budget under Control Nos. 0651–0009 and 0651–0011. The public reporting burden for these collections of information for Certificates of Mailing or Transmission is estimated to average 0.1 hours each, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding these burden estimates, or any other aspect of these collections of information, including suggestions for reducing the burden, to Abraham Hershkovitz, Office of the Assistant Commissioner for Patents, Box DAC, Washington, DC 20231, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (ATTN: Paperwork Reduction Act Projects 0651–0009 and 0651–0011).

List of Subjects

37 CFR Part 1

Administrative practice and procedure; Freedom of information, Inventions and patents, Reporting and record keeping requirements.

37 CFR Part 2

Administrative practice and procedure, Courts, Lawyers, Trademarks.

37 CFR Part 10

Administrative practice and procedure, Conflicts of interest, Courts Inventions and patents, Lawyers.

For the reasons set out in the preamble, and pursuant to the authority contained in 15 U.S.C. 1123 and 35 U.S.C. 6, parts 1, 2 and 10 of title 37 of the Code of Federal Regulations are amended as set forth below:

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR part 1 continues to read as follows:

Authority: 35 U.S.C. 6, unless otherwise noted.

2. In Section 1.4, the heading is revised and paragraphs (d) through (f) are added to read as follows:

§ 1.4 Nature of correspondence and signature requirements.

* * * * *

(d) Each piece of correspondence, except as provided in paragraphs (e) and (f) of this section, filed in a patent or trademark application, reexamination proceeding, patent or trademark interference proceeding, patent file or trademark registration file, trademark opposition proceeding, trademark cancellation proceeding, or trademark concurrent use proceeding, which requires a person's signature, must either:

(1) Be an original, that is, have an original signature personally signed in permanent ink by that person; or

(2) Be a copy, such as a photocopy or facsimile transmission (§ 1.6(d)), of an original. In the event that a copy of the original is filed, the original should be retained as evidence of authenticity. If a question of authenticity arises, the Patent and Trademark Office may require submission of the original.

(e) Correspondence requiring a person's signature and relating to registration to practice before the Patent and Trademark Office in patent cases, enrollment and disciplinary investigations, or disciplinary proceedings must be submitted with an original signature personally signed in permanent ink by that person.

(f) When a document that is required by statute to be certified must be filed, a copy, including a photocopy or facsimile transmission, of the certification is not acceptable.

3. Section 1.5(a) is revised to read as follows:

§ 1.5 Identification of application, patent or registration.

(a) No correspondence relating to an application should be filed prior to when notification of the application number is received from the Patent and Trademark Office. When a letter directed to the Patent and Trademark Office concerns a previously filed application for a patent, it must identify on the top page in a conspicuous location, the application number (consisting of the series code and the serial number, e.g., 07/123,456), or the serial number and filing date assigned to that application by the Patent and Trademark Office, or the international application number of the international application. Any correspondence not containing such identification will be returned to the sender where a return address is available. The returned correspondence will be accompanied with a cover letter which will indicate to the sender that if the returned correspondence is resubmitted to the Patent and Trademark Office within two weeks of the mail date on the cover letter, the original date of receipt of the correspondence will be considered by the Patent and Trademark Office as the date of receipt of the correspondence. Applicants may use either the Certificate of Mailing or Transmission procedure under § 1.8 or the Express Mail procedure under § 1.10 for resubmissions of returned correspondence if they desire to have the benefit of the date of deposit in the United States Postal Service. If the returned correspondence is not resubmitted within the two-week period, the date of receipt of resubmission will be considered to be the date of receipt of the correspondence. The two-week period to resubmit the returned correspondence will not be extended. If for some reason returned correspondence is resubmitted with proper identification later than two weeks after the return mailing by the Patent and Trademark Office, the resubmitted correspondence will be accepted but given its date of receipt. In addition to the application number, all letters directed to the Patent and Trademark Office concerning applications for patent should also state "PATENT APPLICATION," the name of the applicant, the title of the invention, the date of filing the same, and if known, the group art unit or other unit within the Patent and Trademark Office responsible for considering the letter and the name of the examiner or other person to which it has been assigned.

* * * * *

4. Section 1.6 is revised to read as follows:

§ 1.6 Receipt of correspondence.

(a) *Date of receipt and Express Mail date of deposit.* Correspondence received in the Patent and Trademark Office is stamped with the date of receipt except as follows:

(1) No correspondence is received in the Patent and Trademark Office on Saturdays, Sundays or Federal holidays within the District of Columbia;

(2) Correspondence filed in accordance with § 1.10 will be stamped with the date of deposit as "Express Mail" with the United States Postal Service unless the date of deposit is a Saturday, Sunday, or Federal holiday within the District of Columbia in which case the date stamped will be the next succeeding day which is not a Saturday, Sunday, or Federal holiday within the District of Columbia;

(3) Correspondence transmitted by facsimile to the Patent and Trademark Office will be stamped with the date on which the complete transmission is received in the Patent and Trademark Office unless that date is a Saturday, Sunday, or Federal holiday within the District of Columbia, in which case the date stamped will be the next succeeding day which is not a Saturday, Sunday, or Federal holiday within the District of Columbia.

(b) *Patent and Trademark Office Post Office pouch.* Mail placed in the Patent and Trademark Office pouch up to midnight on any day, except Saturdays, Sundays and Federal holidays within the District of Columbia, by the post office at Washington, DC, serving the Patent and Trademark Office, is considered as having been received in the Patent and Trademark Office on the day it was so placed in the pouch by the U.S. Postal Service.

(c) *Correspondence delivered by hand.* In addition to being mailed, correspondence may be delivered by hand during hours the Office is open to receive correspondence.

(d) *Facsimile transmission.* Except in the cases enumerated below, correspondence, including authorizations to charge a deposit account, may be transmitted by facsimile. The receipt date accorded to the correspondence will be the date on which the complete transmission is received in the Patent and Trademark Office, unless that date is a Saturday, Sunday, or Federal holiday within the District of Columbia. See § 1.6(a)(3). To facilitate proper processing, each transmission session should be limited to correspondence to be filed in a single application or other proceeding before the Patent and Trademark Office. The application number of a patent or trademark application, the control number of a reexamination proceeding, the interference number of an interference proceeding, the patent number of a patent, or the registration number of a trademark should be entered as a part of the sender's identification on a facsimile cover sheet. Facsimile transmissions are not permitted and if submitted, will not be accorded a date of receipt, in the following situations:

(1) Correspondence as specified in § 1.4(e), requiring an original signature;

(2) Certified documents as specified in § 1.4(f);

(3) Correspondence which cannot receive the benefit of the certificate of mailing or transmission as specified in § 1.8(a)(2) (i) through (iv), (vi) through (xi) and (xiii);

(4) Drawings submitted under §§ 1.81, 1.83 through 1.85, 1.152, 1.165, 1.174, 1.437, 2.51, 2.52, or 2.72;

(5) A request for reexamination under § 1.510;

(6) Correspondence to be filed in a patent application subject to a secrecy order under §§ 5.1 through 5.8 of this chapter and directly related to the secrecy order content of the application;

(7) Requests for cancellation or amendment of a registration under section 7(e) of the Trademark Act, 15 U.S.C. 1057(e); and certificates of registration surrendered for cancellation or amendment under section 7(e) of the Trademark Act, 15 U.S.C. 1057(e);

(8) Correspondence to be filed with the Trademark Trial and Appeal Board, except the notice of ex parte appeal;

(9) Correspondence to be filed in an interference proceeding which consists of a preliminary statement under § 1.621; a transcript of a deposition under § 1.676 or of interrogatories, cross-interrogatories, or recorded answers under § 1.684(c); or an evidentiary record and exhibits under § 1.653.

(e) *Interruptions in U.S. Postal Service.*

If interruptions or emergencies in the United States Postal Service which have been so designated by the Commissioner occur, the Patent and Trademark Office will consider as filed on a particular date in the Office any correspondence which is:

(1) Promptly filed after the ending of the designated interruption or emergency; and

(2) Accompanied by a statement indicating that such correspondence would have been filed on that particular date if it were not for the designated interruption or emergency in the United States Postal Service. Such statement must be a verified statement if made by a person other than a practitioner as defined in § 10.1(r) of this chapter.

5. Section 1.8 is revised to read as follows:

§ 1.8 Certificate of mailing or transmission.

(a) Except in the cases enumerated in paragraph (a)(2) of this section, correspondence required to be filed in the Patent and Trademark Office within a set period of time will be considered as being timely filed if the procedure described in this section is followed. The actual date of receipt will be used for all other purposes.

(1) Correspondence will be considered as being timely filed if:

(i) The correspondence is mailed or transmitted prior to expiration of the set period of time by being:

(A) Deposited with the U.S. Postal Service with sufficient postage as first class mail addressed to the Commissioner of Patents and Trademarks, Washington, DC 20231; or

(B) Transmitted by facsimile to the Patent and Trademark Office in accordance with § 1.6(d); and

(ii) The correspondence includes a certificate for each piece of correspondence stating the date of deposit or transmission. The person signing the certificate should have reasonable basis to expect that the correspondence would be mailed or transmitted on or before the date indicated.

(2) The procedure described in paragraph (a)(1) of this section does not apply to, and no benefit will be given to a Certificate of Mailing or Transmission on, the following:

(i) Relative to Patents and Patent Applications—

(A) The filing of a national patent application specification and drawing or other correspondence for the purpose of obtaining an application filing date;

(B) The filing of correspondence in an interference which an examiner-in-chief orders to be filed by hand or "Express Mail";

(C) The filing of agreements between parties to an interference under 35 U.S.C. 135(c);

(D) The filing of an international application for patent;

(E) The filing of correspondence in an international application before the U.S. Receiving Office, the U.S. International Searching Authority, or the U.S. International Preliminary Examining Authority;

(F) The filing of a copy of the international application and the basic national fee necessary to enter the national stage, as specified in § 1.494(b) or § 1.495(b).

(ii) Relative to Trademark Registrations and Trademark Applications—

(A) The filing of a trademark application;

(B) The filing of an affidavit showing that a mark is still in use or containing an excuse for nonuse under section 8 (a) or (b) or section 12(c) of the Trademark Act, 15 U.S.C. 1058(a), 1058(b), 1062(c);

(C) The filing of an application for renewal of a registration under section 9 of the Trademark Act, 15 U.S.C. 1059;

(D) The filing of a petition to cancel a registration of a mark under section 14, subsection (1) or (2) of the Trademark Act, 15 U.S.C. 1064;

(E) In an application under section 1(b) of the Trademark Act, 15 U.S.C. 1051(b), the filing of an amendment to allege use in commerce under section 1(c) of the Trademark Act, 15 U.S.C. 1051(c); or the filing of a statement of use under section 1(d)(1) of the Trademark Act, 15 U.S.C. 1051(d)(1);

(F) In an application under section 1(b) of the Trademark Act, 15 U.S.C. 1051(b), the filing of a request under section 1(d)(2) of the Trademark Act, 15 U.S.C. 1051(d)(2), for an extension of time to file a statement of use under section 1(d)(1) of the Trademark Act, 15 U.S.C. 1051(d)(1).

(iii) Relative to Disciplinary Proceedings

(A) Correspondence filed in connection with a disciplinary proceeding under part 10 of this chapter.

(B) *Reserved.*

(b) In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the Patent and Trademark Office, and the application is held to be abandoned or the proceeding dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

(1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence,

(2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate, and

(3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Commissioner to the previous timely mailing or transmission. Such statement must be a verified statement if made by a person other than a practitioner as defined in § 10.1(r) of this chapter. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

(c) The Office may require additional evidence to determine if the correspondence was timely filed.

6. Section 1.304 paragraphs (a) and (c) are revised to read as follows:

§ 1.304 Time for appeal or civil action.

(a) (1) The time for filing the notice of appeal to the U.S. Court of Appeals for the Federal Circuit (§ 1.302) or for

commencing a civil action (§ 1.303) is two months from the date of the decision of the Board of Patent Appeals and Interferences. If a request for consideration or modification of the decision is filed within the time period provided under § 1.197(b) or § 1.658(b), the time for filing an appeal or commencing a civil action shall expire two months after action on the request. In interferences, the time for filing a cross-appeal or cross-action expires:

(i) 14 days after service of the notice of appeal or the summons and complaint, or

(ii) Two months after the date of decision of the Board of Patent Appeals and Interferences, whichever is later.

(2) The time periods set forth in this section are not subject to the provisions of §§ 1.136, 1.550(c) or 1.645 (a) or (b).

(3) The Commissioner may extend the time for filing an appeal or commencing a civil action:

(i) For good cause shown if requested in writing before the expiration of the period for filing an appeal or commencing a civil action, or

(ii) Upon written request after the expiration of the period for filing an appeal or commencing a civil action upon a showing that the failure to act was the result of excusable neglect.

* * * * *

(c) If a defeated party to an interference has taken an appeal to the U.S. Court of Appeals for the Federal Circuit and an adverse party has filed notice under 35 U.S.C. 141 electing to have all further proceedings conducted under 35 U.S.C. 146 (§ 1.303(c)), the time for filing a civil action thereafter is specified in 35 U.S.C. 141. The time for filing a cross-action expires 14 days after service of the summons and complaint.

(7) Section 1.366(b) is revised to read as follows:

§ 1.366 Submission of maintenance fees.

* * * * *

(b) A maintenance fee and any necessary surcharge submitted for a patent must be submitted in the amount due on the date the maintenance fee and any necessary surcharge are paid and may be paid in the manner set forth in § 1.23 or by an authorization to charge a deposit account established pursuant to § 1.25. Payment of a maintenance fee and any necessary surcharge or the authorization to charge a deposit account must be submitted within the periods set forth in § 1.362(d), (e) or (f). Any payment or authorization of maintenance fees and surcharges filed at any other time will not be accepted and will not serve as a payment of the maintenance fee expect insofar as a delayed payment of the maintenance fee is accepted by the Commissioner in an expired patent pursuant to a petition filed under § 1.378. Any authorization to charge a deposit account must authorize the immediate charging of the maintenance fee and any necessary surcharge to the deposit account. Payment of less than the required amount, payment in a manner other than that set forth in § 1.23, or the filing of an authorization to charge a deposit account having insufficient funds will not constitute payment of a maintenance fee or surcharge on a patent. The certificate procedures of either § 1.8 or § 1.10 may be utilized in paying maintenance fees and any necessary surcharges.

* * * * *

8. Section 1.741, paragraph (a) is revised to read as follows:

§ 1.741 Filing date of application.

(a) The filing date of an application for extension of patent term is the date on which a complete application is received in the Patent and Trademark Office or filed pursuant to the "Certificate of Mailing or Transmission" provisions of 37 CFR 1.8 or "Express Mail" provisions of 37 CFR 1.10.

* * * * *

PART 2—RULES OF PRACTICE IN TRADEMARK CASES

9. The authority citation for 37 CFR part 2 continues to read as follows:

Authority: 15 U.S.C. 1123; 35 U.S.C. 6, unless otherwise noted.

10. Section 2.145 is amended by revising paragraphs (c)(3) and (d)(1) to read as follows:

§ 2.145 Appeal to court and civil action.

* * * * *

(c) * * *

(3) Any adverse party to an appeal taken to the U.S. Court of Appeals for the Federal Circuit by a defeated party in an inter partes proceeding may file a notice with the Commissioner within twenty days after the filing of the defeated party's notice of appeal to the court (paragraph (b) of this section), electing to have all further proceedings conducted as provided in section 21(b) of the Act. The notice of election must be served as provided in § 2.119.

* * * * *

(d) *Time for appeal or civil action.*

(1) The time for filing the notice of appeal to the U.S. Court of Appeals for the Federal Circuit (paragraph (b) of this section), or for commencing a civil action (paragraph (c) of this section), is two months from the date of the decision of the Trademark Trial and Appeal Board or the Commissioner, as the case may be. If a request for rehearing or reconsideration or modification of the decision is filed within the time specified in §§ 2.127(b), 2.129(c) or 2.144, or within any extension of time granted thereunder, the time for filing an appeal or commencing a civil action shall expire two months after action on the request. In inter partes cases, the time for filing a cross-action or a notice of a cross-appeal expires

(i) 14 days after service of the notice of appeal or the summons and complaint; or

(ii) Two months from the date of the decision of the Trademark Trial and Appeal Board or the Commissioner, whichever is later.

* * * * *

11. Section 2.165(a)(1) is revised to read as follows:

§ 2.165 Reconsideration of affidavit or declaration.

(a)(1) If the affidavit or declaration filed pursuant to § 2.162 is insufficient or defective, the affidavit or declaration will be refused and the registrant will be notified of the reason. Reconsideration of the refusal may be requested within six months from the date of the mailing of the action. The request for reconsideration must state the grounds for the request. A supplemental or substitute affidavit or declaration required by section 8 of the Act of 1946 cannot be considered unless it is filed before the expiration of six years from the date of the registration or from the date of publication under section 12(c) of the Act. The "Certificate of Mailing or Transmission" procedure provided by § 1.8 does not apply to affidavits or declarations or to supplemental or substitute affidavits or declarations filed under section 8(a) or (b) of the Act, but the certificate by "Express Mail" procedure provided by § 1.10 does apply thereto.

* * * * *

PART 10—REPRESENTATION OF OTHERS BEFORE THE PATENT AND TRADEMARK OFFICE

12. The authority citation for 37 CFR part 10 continues to read as follows:

Authority: 5 U.S.C. 500; 15 U.S.C. 1123; 35 U.S.C. 6, 31, 32, 41.

13. Section 10.18 is revised to read as follows:

§ 10.18 Signature and certificate of practitioner.

(a) Except where a copy, including a photocopy or facsimile transmission, of

a personally signed piece of correspondence is permitted to be filed pursuant to § 1.4 of this chapter, every piece of correspondence filed by a practitioner on behalf of himself or herself or representing an applicant or a party to a proceeding in the Patent and Trademark Office must bear an original signature personally signed in permanent ink by such practitioner except for correspondence which is required to be signed by the applicant or party. The signature of a practitioner on correspondence filed by the practitioner, regardless of whether the correspondence has an original signature or is a copy, including a photocopy or facsimile transmission, of correspondence bearing an original signature, constitutes a certificate that:

(1) The correspondence has been read by the practitioner;

(2) The filing of the correspondence is authorized;

(3) To the best of practitioner's knowledge, information, and belief, there is good ground to support the correspondence, including any allegations of improper conduct contained or alleged therein; and

(4) The correspondence is not interposed for delay.

(b) Any practitioner knowingly violating the provisions of this section is subject to disciplinary action. See § 10.23(c)(15).

14. Section 10.23, paragraph (c)(9), is revised to read as follows:

§ 10.23 Misconduct.

* * * * *

(c) * * *

(9) Knowingly misusing a "Certificate of Mailing or Transmission" under § 1.8 of this chapter or a certificate of "Express Mail" under § 1.10 of this chapter.

* * * * *

Dated: October 15, 1993.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 93–25864 Filed 10–21–93; 8:45 am]

BILLING CODE 3510–16–M

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37 CFR Parts 1, 5, and 10

[Docket No. 920779–3226]

RIN 0651–AA34

Miscellaneous Changes in Patent Practice

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The Patent and Trademark Office (Office) is amending the rules of practice in patent cases to: Expand the authority to sign a terminal disclaimer in a patent application or a disclaimer in a patent; eliminate some formal requirements for an appeal brief for an appellant appearing without counsel; prohibit fee extensions of time to file reply briefs and requests for oral hearing; clarify the requirements for claiming foreign priority; specify the manner in which the fee deficiency is computed when applicants seek to correct an error in claiming small entity status; and correct errors in published regulations.

EFFECTIVE DATE: June 3, 1994. The time periods and extension of time provisions of §§ 1.193 and 1.194 for filing reply briefs and requests for oral hearing will be applicable where the examiner's answer was mailed on or after the effective date.

FOR FURTHER INFORMATION CONTACT: Abraham Hershkovitz by telephone at (703) 305–9282, or by facsimile transmission at (703) 305–8825, or by mail marked to his attention and addressed to: Office of the Assistant Commissioner for Patents, Box DAC, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: In a Notice of Proposed Rulemaking published in the **Federal Register** at 57 FR 43412 (September 21, 1992) and in the Patent and Trademark Office Official Gazette at 1143 Off. Gaz. Pat. Office 33–40 (October 13, 1992), the Office proposed to amend several rules of practice in patent and trademark cases. This rulemaking includes changes in § 1.9(d) which were not part of the proposed rules. The changes in § 1.9(d) were made in order to update the information pertaining to establishing small entity status as a small business. No substantive changes have been made in § 1.9(d). The proposed rule requiring that the specification of a design application describe the nature and intended use of the article being claimed has been withdrawn. Additionally, the proposed rule prohibiting a fee extension of time to file corrected drawings after allowance has been withdrawn.

Written comments were submitted by 13 firms, one association and one individual. An oral hearing was not conducted.

The following includes a discussion of the rules being changed and the reasons for those changes and an analysis of the comments received in response to the notice of proposed rulemaking.

Discussion of Specific Sections To Be Changed or Added

(1) Definitions (Section 1.9)

Section 1.9(d) is amended in order to update the information therein regarding the regulations of the Small Business Administration (SBA). The SBA's rule for defining a small business has been modified. Section 1.9(d) will no longer repeat the SBA rule in its entirety. Rather, § 1.9(d), as adopted, contains a short summary of the SBA definitions. The size limit of 500 employees (including those of its affiliates) for a small business concern has not been changed. Information on size standards for a small business concern may be obtained from the Small Business Administration by calling (202) 205–6618, or by writing to: Small Business Administration, Size Standards Staff, 409 Third Street, SW., Washington, DC 20416.

(2) Copies of Papers (Section 1.13)

Section 1.13(a) is amended to clarify that the paragraph pertains to non-certified copies, and that copies of patents, trademark registrations and other papers within the jurisdiction of the Office, as opposed to being within the jurisdiction of another agency, may be obtained from the Office upon payment of the fee therefor.

Section 1.13(b) is amended to clarify that certified copies of the above items may be obtained from the Office upon payment of the fee for a certified copy.

(3) Patent Applications Preserved in Secrecy (Section 1.14)

Section 1.14(b) is amended to correct a typographical error in that the second and third sentences of this section were inadvertently deleted during an earlier revision of this section. See 50 FR 9378 (March 7, 1985) and 1053 Off. Gaz. Pat. Office 10–26 (April 2, 1985). Section 1.14(b) is amended by restoring the deleted sentences and by changing, in the first sentence, the plural "applicants" to the singular "applicant".

(4) Effect on Fees of Failure To Establish Status, or Change Status, as a Small Entity (Section 1.28)

Section 1.28(c) is amended to reflect Office practice in calculating fee deficiencies when fees have been improperly paid as a small entity. The Office receives deficiency payments that differ based on varying interpretations of § 1.28(c). Some simply double the small entity fee in effect when the fee was originally paid in error in the small entity amount, while others compute the difference between the fee already

paid and the other than small entity fee level in effect at the time the deficiency is paid. The Office requires payments to be based on fee levels in effect at the time the other than small entity fee is paid.

Since 1989, fee levels have been adjusted annually. In view of these adjustments, there are frequently situations where the fee amount has changed since it was originally paid erroneously at the small entity rate. Calculation of deficiency amounts based on fee levels in effect at the time the deficiency is paid conforms with the general concept that fees to be paid are those in effect at the time of receipt of the fees. Section 1.28(c) is amended to reflect this practice of calculating the amount of the deficiency based on the § 029fee level in effect at the time of the deficiency payment.

(5) Claim for Foreign Priority (Section 1.55)

Section 1.55(a) is amended to incorporate the limitations of 35 U.S.C. 119, which provides that the claim for priority and the appropriate copy of the foreign application must be filed before the patent is granted. Additionally, some applicants did not realize that submission of priority papers after payment of the issue fee, but before the grant of the patent, required the filing of a petition to accept submission of priority papers after payment of the issue fee. After a patent is granted, applicants may still be able to establish priority benefits by filing a reissue application to correct the failure to perfect the claim for priority. *Brenner* v. *State of Israel*, 400 F.2d 789, 158 USPQ 584 (D.C. Cir. 1968). Section 1.55(a) lists separately those instances when priority documents must be filed prior to payment of the issue fee to receive the benefit of the filing date of a prior foreign application. Furthermore, § 1.55(a) is amended to clarify when a verified English language translation of a priority application not in the English language must be filed and to require a statement from the translator that the translation of the priority document is accurate. *Krenitsky* v. *Utagawa*, 215 USPQ 713 (Comm'r Pat. 1981).

(6) Claiming Benefit of Earlier Filing Date and Cross References to Other Applications (Section 1.78)

Section 1.78(a) is amended to correct a typographical error. In the reference to the fee in § 1.21(l), the letter (l) should have appeared instead of the numeral (1). Section 1.78(a) is further amended to be consistent with § 1.5(a), by permitting the identification of the prior application by application number or serial number and filing date.

(7) Prohibition of Fee Extensions of Time (Section 1.136(a))

Section 1.136(a) is amended by adding two additional situations in which applicants would no longer be able to use fee extensions. Section 1.136(a) is rearranged so that referenced sections appear in numerical order. The new prohibitions will apply to situations where the request to extend the time is: (1) To permit filing reply briefs under § 1.193(b); and (2) to permit filing requests for oral hearing under § 1.194(b) before the Board of Patent Appeals and Interferences (Board). Fee extensions of time to file reply briefs or requests for oral hearing delay transfer of jurisdiction of the appeal to the Board and unnecessarily delay final disposition of the appeal.

The Office has considered changing the practice to require payment of the fee and filing the request for an extension of time before the period set for response expires in the situations addressed in this rulemaking, but did not adopt that approach because of the complexity that it would introduce into the system.

Under the previous rules, applicants could request a maximum four-month extension of time under § 1.136(a) to file reply briefs or request oral hearings. Since the backlog of cases awaiting a decision by the Board has been reduced, these extension requests have resulted in unnecessary delays in transmitting appeals to the Board and increased pendency of applications. The periods specified in §§ 1.193(b) and 1.194(b), as adopted, are considered sufficient to file a reply brief or request an oral hearing. Extensions of time for cause may be available under § 1.136(b). Therefore, § 1.136(a) is amended to prohibit fee extensions of time to file a reply brief or request an oral hearing.

(8) Appeal to the Board of Patent Appeals and Interferences (Section 1.191)

Section 1.191(d) is amended to be consistent with the changes to § 1.136(a).

(9) Appellant's Brief (Section 1.192)

Sections 1.192(a) and (d) are amended by moving the last sentence of current § 1.192(d) to § 1.192(a) to highlight that the Board may refuse consideration of any arguments or authorities not included in the brief.

Section 1.192(c) is amended to eliminate some of the formal requirements for an appeal brief for a pro se appellant, that is, an appellant appearing without counsel. An appellant appearing without counsel means there is no attorney or agent of record in the application or reexamination proceeding, the brief was not prepared by a registered practitioner, and the brief was not signed by a registered practitioner. Paragraph (c) is amended to allow a pro se appellant's brief to be accepted provided it is at least in substantial compliance with the requirements of subparagraphs (1), (2), (6) and (7) of paragraph (c). If a pro se appellant's brief is accepted, it will be presumed that a rejected group of claims stand or fall together unless an argument is included in the brief that presents reasons as to why appellant considers one or more claims in the rejected group of claims to be separately patentable from the other claims in the group.

(10) Examiner's Answer (Section 1.193)

Section 1.193(b) is amended to clarify the consequence of failure to file a reply brief in response to an expressly stated new ground of rejection made in an examiner's answer. The failure to file a reply brief will result in dismissal of the appeal as to the claims made subject to the expressly stated new ground of rejection. If the dismissal of the appeal applies to all claims in the application, the application will be abandoned. Additionally, this section is amended to change the period for filing a reply brief to two months from the date of the examiner's answer, regardless of whether the examiner's answer includes a new ground of rejection. The change to two months will avoid confusion in those cases in which there is a disagreement as to whether the examiner's answer in fact states a new ground of rejection and will provide an adequate period of time to file a reply brief without the need to request an extension of time. Finally, this section is amended to be consistent with the changes to § 1.136(a).

(11) Oral Hearing (Section 1.194)

Section 1.194(b) is amended to be consistent with the changes to § 1.136(a). Under the previous rule, if a new ground of rejection was made in an examiner's answer, two months were permitted for filing a reply brief and, if a reply brief was filed, an applicant was permitted three months after the date of filing a reply brief to file a request for an oral hearing. In order to provide a more consistent approach vis-a-vis time periods for filing reply briefs and requests for oral hearing and to permit earlier decisions of issues on appeal, the period for filing a request for oral hearing has been changed to two (2)

months from the date of an examiner's answer, regardless of whether the examiner's answer includes a new ground of rejection. This period should be sufficient to request an oral hearing without the need to request an extension of time.

(12) Decision by the Board of Patent Appeals and Interferences (Section 1.196)

Section 1.196(f) is amended to refer to § 1.550(c) for extensions of time in reexamination proceedings.

(13) Action Following Decision (Section 1.197)

Section 1.197(b) is amended to refer to § 1.550(c) for extensions of time in reexamination proceedings.

(14) Amendments After Allowance (Section 1.312)

Section 1.312(b) is amended to clarify that the fee required for a petition under this section is that specified in § 1.17(i)(1).

(15) Statutory Disclaimers, Including Terminal Disclaimers (Section 1.321)

The title of § 1.321 is amended to clarify that this section applies to terminal disclaimers, as well as to statutory disclaimers in general. Section 1.321 is further amended to permit the signing of a disclaimer in a patent by the patentee, or an attorney or agent of record, whereas, persons permitted to sign a disclaimer in a patent application will be any person specified in § 1.33(a)(1)–(4). The person signing the disclaimer must state the present extent of the disclaiming party's (i.e., patentee's or assignee's) interest in the patent or patent application. Naturally, a disclaimer signed on behalf of a party who no longer has an ownership interest in the patent or patent application cannot be accepted since 35 U.S.C. 253 requires a disclaimer to be signed by the owner of the whole or any sectional interest in the patent or patent application.

Section 253 of title 35 of the United States Code states that disclaimer of any complete claim in a patent may be made by the patentee. Furthermore, any terminal part of the patent granted or to be granted may be disclaimed by the patentee, or applicant, respectively. It was the recent policy of the Office to accept disclaimers only if signed by the owner of record. This policy was too restrictive in that it precluded authorized patent practitioners from signing disclaimers. Furthermore, it was often difficult to ascertain whether the person signing was in fact an officer of the entity owning rights to the application. Accordingly, the rules as adopted, permit an attorney or agent of record to sign terminal disclaimers.

If the patent or patent application is assigned to an organization, such as a corporation, partnership, university, Government agency, or similar entity, and the disclaimer is signed by the assignee, the assignee must comply with § 3.73(b). See "Taking Action in a Patent Matter Before the Office by the Assignee Under 37 CFR 3.73", at 1150 Off. Gaz. Pat. Office 62 (May 25, 1993). However, the rules, as adopted, permit an attorney or agent of record to sign a terminal disclaimer without the need to comply with § 3.73(b). Paragraph (a) of this section is further amended to refer only to disclaimers filed in patents. The Office does not record a disclaimer of part of a claim or claims. Hence, paragraph (a) of this section is amended to indicate that a disclaimer which does not disclaim a complete claim or claims will be refused recordation, rather than "may be refused recordation" as the rule read previously.

Paragraph (b) of this section is amended to refer only to terminal disclaimers filed in a patent application. Section 1.321(b) is also amended to include a reminder that the disclaimer is binding upon the grantee and its successors or assigns.

Paragraph (c) of this section incorporates the language of former paragraph (b) of this section concerning terminal disclaimers to obviate a double patenting rejection. This paragraph also includes reference to terminal disclaimers filed in reexamination proceedings for the same purpose.

(16) Publication of Notice of Proposed Amendments (Section 1.352(a))

Section 1.352(a) is amended to delete the language "and in other cases whether practicable" so that the Office may engage in expedited rulemaking when publication of a notice of proposed amendments to regulations is not required by law.

(17) Time for Payment of Maintenance Fees (Section 1.362)

Section 1.362 is amended to clarify applicability and due dates for payment of maintenance fees. Paragraph (c)(3) of § 1.362 indicates that the actual filing date of a continuing application determines applicability of maintenance fees, while paragraph (c)(4) indicates that in the case of a reissue application, the filing date of the original non-reissue application determines applicability of maintenance fees. Some patentees and patent practitioners expressed confusion with respect to applicability of maintenance fees in the case of a continuing application of a reissue application. Uncertainty has been expressed as to whether this type of application would fall within paragraph (c)(3) or (c)(4). The amendment to § 1.362(c)(4) clarifies that a continuing reissue application of a reissue application is subject to maintenance fees only if the original (non-reissue) patent would be subject to such fees.

These amendments also remove any confusion that may have existed with regard to the due dates for payment of maintenance fees in reissued patents by adding § 1.362(h) to specify that the due dates for payment of maintenance fees in such reissued patents are computed from the date of grant of the original (non-reissue) patent. The due dates for payment of maintenance fees in a reissued patent are computed from the date of grant of the original (non-reissue) patent. Note the distinction between a continuing reissue application of a reissue application, and a regular continuing application of a reissue application as discussed in *In re Bauman*, 683 F.2d 405, 214 USPQ 585 (CCPA 1982).

In a notice entitled "Revision of Patent and Trademark Fees" published in the **Federal Register** at 56 FR 65142 (December 13, 1991), the Office announced an amendment to its rules of practice. Included in that notice was a change to paragraph (e) of § 1.362 which was not intended. See 56 FR at 65146. The portion of paragraph (e) which was not intended to be amended is changed back to its earlier version.

(18) Request by Applicant for Interference With Patent (Section 1.607)

Section 1.607(a)(5)(i) is amended to correct a typographical error in the spelling of the word "count".

(19) Export of Technical data (Section 5.19)

Section 5.19(a) is amended to correct the citations set forth in the rule and to update the name of the office in the Department of Commerce.

(20) Sharing legal fees (Section 10.48)

Section 10.48(b) is amended to correct a typographical error in the spelling of the word "deceased".

Response to Comments on the Rules

The comments received in response to the notice of proposed rulemaking have been given careful consideration and a number of the suggested modifications have been adopted. The comments and responses are discussed below.

Comment: One comment inquired as to why the phrase by "serial number

and filing date" was used in § 1.78(a), whereas the phrase "application number (consisting of the series code and serial number, e.g., 07/123,456), or the serial number and filing date" was used in § 1.5(a).

Response: The inconsistency has been removed by having section 1.78(a) changed to use terminology consistent with § 1.5(a).

Comment: A number of comments directed to § 1.85(c) expressed concern that applications would become abandoned as a result of the proposal that fee extensions of time under § 1.136(a) could not obtained for filing corrected drawings.

Response: The proposal that fee extensions of time under § 1.136(a) not be permitted for filing corrected drawings has been withdrawn.

Comment: Regarding § 1.85(c), one comment recommended that the Notice of Draftsman's Patent Drawing Review (PTOL–948) include separate boxes for each drawing objection (e.g., a separate box for each of "pale," "rough," "blurred," and "jagged"); that drafting personnel be better trained to more completely communicate the objection to any particular drawing; and that the Notice of Allowability indicate for which specific figure formal drawings are required.

Response: The proposed rule change to § 1.85(c) has been withdrawn. Questions concerning the Notice of Draftsman's Patent Drawing Review may be referred to the Official Draftsman at (703) 305–8335, and questions concerning any requirement on a Notice of Allowability should be directed to the examiner.

Comment: Regarding § § 1.153 and 1.154, a number of comments objected to the proposed requirement that the specification of a design application contain a statement of the nature and intended use of the article claimed.

Response: The proposed rule change regarding § § 1.153 and 1.154 has been withdrawn. The Office will continue its current practice of mailing a request for information where the nature or intended use of the article is not evident in the application file.

Comment: Regarding § 1.153, one comment stated that the language of the proposed rule is unclear as to whether an abstract is required. The comment recommended that the Office should require an abstract and require it to provide the necessary information.

Response: As discussed above, the proposed rule change regarding §§ 1.153 and 1.154 has been withdrawn. The present rules do not require an Abstract. Suggestions concerning this issue may be directed to the Director of Examining Group 2900.

Comment: Regarding §§ 1.193(b) and 1.194(b), one comment opposed the elimination of fee extensions in the filing of reply briefs and requests for oral hearings, as one month, while often a sufficient time to file a reply brief, is insufficient where counsel must communicate with a patent department or foreign applicants, especially where there is a delay between the time the Office mails the communication and it is received by counsel.

Response: The period for filing a reply brief or request for oral hearing has been changed to two months from the date of the examiner's answer. The period was extended to two months in this rulemaking, as adopted, to provide appellants adequate time to take appropriate action, and to provide a uniform period in the rules to file a reply brief or request an oral hearing. Extensions of time for cause under § 1.136(b) will be available for those rare situations when an extension is necessary.

Comment: Regarding §§ 1.193(b) and 1.194(b), one comment opposed the elimination of fee extensions in the filing of reply briefs and requests for oral hearings, as a one-month period for response is insufficient for sole practitioners and persons who do not maintain offices for the sole purpose of responding to Office communications.

Response: As discussed above, the period for filing a reply brief or request for oral hearing has been changed to two months from the date of the examiner's answer. This two-month period should be an adequate period of time for filing a reply brief or a request for an oral hearing. Extensions of time for cause under § 1.136(b) will be available for those rare situations when an extension is necessary.

Comment: Regarding §§ 1.193(b) and 1.194(b), one comment deemed it reasonable and necessary that the Board have at its disposal all possible arguments. The refusal to enter a reply brief was characterized as an impediment to a decision based upon a complete record. Additionally, the comment argued that the refusal to enter a reply brief would result in attempts to enter the arguments under another guise, such as during oral argument or by filing a memorandum of oral argument.

Response: An appellant should present all arguments for patentability in the appeal brief. A reply brief should not be necessary to present a complete record, and would be inappropriate except in those cases where the examiner has introduced a new point of argument or new ground of rejection in the examiner's answer.

Comment: Regarding §§ 1.193(b) and 1.194(b), one comment noted that fee extensions for filing reply briefs and requests for oral hearings do not create any more of a delay in the final disposition of an appeal than a fee extension for filing the Notice of Appeal or the brief in support of the appeal.

Response: The comment reflects a misunderstanding of the appeal process and the handling of applications in which an appeal has been filed. Under the existing rules before this rulemaking, appellants were able, with the maximum four-month fee extension, to file reply briefs or request oral hearings up to six months after an examiner's answer. As a result, appeals otherwise ready for a decision were either held in the examining group for that period of time before transmittal to the Board or when transmitted to the Board earlier, were occasionally acted upon by a Board panel before the reply briefs or requests for oral hearing were filed, requiring the Board to vacate its decision. As the backlog of appeals awaiting a decision by the Board has been reduced, retaining applications in the examining group has resulted in unnecessarily prolonging the pendency of applications. Under the rules as adopted, appellants are generally given more time (two months instead of one month) to file a reply brief or request an oral hearing, and the Office minimizes the delay necessary before transmitting the appeal to the Board for decision.

Comment: Regarding § 1.193(b), one comment stated that an appeal should not be dismissed for failure to file a reply brief to a new ground of rejection made in the examiner's answer, unless the examiner's answer expressly states that there is a new ground of rejection. The comment suggests that this rule should recite "If the examiner's answer expressly states a new ground of rejection is being made * * *."

Response: The proposal has been adopted to the extent that the final rule, as adopted, states "If the examiner's answer expressly states that it includes a new ground of rejection, appellant must file a reply thereto within two months from the date of such answer to avoid dismissal of the appeal as to the claims subject to the new ground of rejection."

Comment: Regarding § 1.193(b), one comment recommended that appellants should be given three months to respond to a new ground of rejection in an examiner's answer, as the current two-month time period is inadequate, and this period would be equal to the

period given for response to rejections under § 1.106.

Response: This recommendation is not adopted. The Office experience has shown that the two-month period from the date of an examiner's answer has been an adequate period of time for filing a reply brief in response to a new ground of rejection. Also, it is desirable to set a uniform period of time in the rules to file a reply brief. Extensions of time for cause under § 1.136(b) will be available for those rare situations when an extension is necessary.

Comment: One comment recommended that appellants should be permitted to obtain fee extensions where the examiner's answer includes a new ground of rejection.

Response: This recommendation is not adopted. As indicated above, fee extensions for filing reply briefs have resulted in unnecessarily prolonging the pendency of applications. Extensions of time for cause under § 1.136(b) will be available for those rare situations when an extension is necessary.

Comment: Regarding §§ 1.193(b) and 1.194(b), one comment suggested that the rule be modified to permit the filing of a request for an oral hearing concurrently with a reply brief as one cannot appropriately determine the necessity for an oral hearing until a reply brief is drafted.

Response: Under the proposed rules, the time period for filing a request for an oral hearing was the later of one month from the date of an examiner's answer, or the date of filing a timely reply brief. Under the rules as adopted, an appellant has two months from the date of the examiner's answer to file a reply brief and request an oral hearing. Therefore, a request for oral hearing may be filed concurrently with a reply brief.

Comment: Regarding § 1.312, one comment recommended that amendments under § 1.312 be processed expeditiously, as the current system for the processing of such amendments is inadequate.

Response: Examiners are instructed to act promptly on all amendments under § 1.312. Any problems should be brought to the attention of the Group Director.

Other Considerations

The rule changes are in conformity with the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), Executive Orders 12291 and 12612 and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration, that these rule changes will not have a significant economic impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)). The principal impact of these changes is to permit persons other than the assignee of a patent application or patent to sign certain disclaimers, incorporate existing Office policy into the regulations and eliminate the opportunity to pay for extensions of time in certain situations where the extensions substantially interfere with the efficient operation of the Office.

The Office has determined that this rule change is not a major rule under Executive Order 12291. The annual effect on the economy will be less than $100 million. There will be no major increase in costs or prices for consumers; individuals; industries; Federal, state or local government agencies; or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Office has also determined that this notice has no Federalism implications affecting the relationship between the National Government and the States as outlined in Executive Order 12612.

These rule changes contain collection-of-information requirements subject to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, which has previously been approved by the Office of Management and Budget under Control No. 0651–0011. Public reporting burden for these collections of information is estimated to average 0.1 hours each for fee extensions of time under § 1.136(a), and 0.2 hours each for disclaimers under § 1.321, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates, or any other aspect of this collection of information, including suggestions for reducing the burden, to Abraham Hershkovitz, Office of the Assistant Commissioner for Patents, Box DAC, Washington, DC 20231, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (ATTN: Paperwork Reduction Act Project No. 0651–0031).

List of Subjects

37 CFR Part 1

Administrative practice and procedure, Freedom of information, Inventions and patents, Reporting and recordkeeping requirements.

37 CFR Part 5

Classified information, Exports, Foreign relations, Inventions and patents.

37 CFR Part 10

Administrative practice and procedure, Conflicts of interest, Courts, Inventions and patents, Lawyers.

For the reasons set out in the preamble, parts 1, 5 and 10 of title 37 of the Code of Federal Regulations are amended as set forth below.

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR part 1 continues to read as follows:

Authority: 35 U.S.C. 6, unless otherwise noted.

2. Section 1.9, paragraph (d) is revised to read as follows:

§ 1.9 Definitions.

* * * * *

(d) A small business concern as used in this chapter means any business concern as defined by the regulations of the Small Business Administration in 13 CFR 121.1301 through 121.1305, which define a small business concern as one whose number of employees, including those of its affiliates, does not exceed 500 persons and which has not assigned, granted, conveyed, or licensed, and is under no obligation under contract or law to assign, grant, convey or license, any rights in the invention to any person who could not be classified as an independent inventor if that person had made the invention, or to any concern which would not qualify as a small business concern or a nonprofit organization under this section. Questions related to size standards for a small business concern may be directed to: Small Business Administration, Size Standards Staff, 409 Third Street, SW., Washington, DC 20416.

* * * * *

3. Section 1.13 is revised to read as follows:

§ 1.13 Copies and certified copies.

(a) Non-certified copies of patents and trademark registrations and of any records, books, papers, or drawings within the jurisdiction of the Patent and Trademark Office and open to the

public, will be furnished by the Patent and Trademark Office to any person, and copies of other records or papers will be furnished to persons entitled thereto, upon payment of the fee therefor.

(b) Certified copies of the patents and trademark registrations and of any records, books, papers, or drawings within the jurisdiction of the Patent and Trademark Office and open to the public or persons entitled thereto will be authenticated by the seal of the Patent and Trademark Office and certified by the Commissioner, or in his name attested by an officer of the Patent and Trademark Office authorized by the Commissioner, upon payment of the fee for the certified copy.

4. Section 1.14, paragraph (b) is revised to read as follows:

§ 1.14 Patent applications preserved in secrecy.

* * * * *

(b) Except as provided in § 1.11(b) abandoned applications are likewise not open to public inspection, except that if an application referred to in a U.S. patent, or in an application in which the applicant has filed an authorization to open the complete application to the public, is abandoned and is available, it may be inspected or copies obtained by any person on written request, without notice to the applicant. Complete applications (§ 1.51(a)) which are abandoned may be destroyed after 20 years from their filing date, except those to which particular attention has been called and which have been marked for preservation. Abandoned applications will not be returned.

* * * * *

5. Section 1.28, paragraph (c) is revised to read as follows:

§ 1.28 Effect on fees of failure to establish status, or change status, as a small entity.

* * * * *

(c) If status as a small entity is established in good faith, and fees as a small entity are paid in good faith, in any application or patent, and it is later discovered that such status as a small entity was established in error or that through error the Patent and Trademark Office was not notified of a change in status as required by paragraph (b) of this section, the error will be excused (1) if any deficiency between the amount paid and the amount due is paid within three months after the date the error occurred or (2) if any deficiency between the amount paid and the amount due is paid more than three months after the date the error occurred and the payment is accompanied by a statement explaining how the error in good faith occurred and how and when the error was discovered. The statement must be a verified statement if made by a person not registered to practice before the Patent and Trademark Office. The deficiency is based on the amount of the fee, for other than a small entity, in effect at the time the deficiency is paid in full.

* * * * *

6. Section 1.55, paragraph (a) is revised to read as follows:

§ 1.55 Claim for foreign priority.

(a) An applicant may claim the benefit of the filing date of a prior foreign application under the conditions specified in 35 U.S.C. 119 and 172. The claim to priority need be in no special form and may be made by the attorney or agent if the foreign application is referred to in the oath or declaration as required § 1.63. The claim for priority and the certified copy of the foreign application specified in the second paragraph of 35 U.S.C. 119 must be filed:

(1) In the case of an interference (§ 1.630);

(2) When necessary to overcome the date of a reference relied upon by the examiner;

(3) When specifically required by the examiner; and

(4) In all cases, before the patent is granted. If the claim for priority or the certified copy of the foreign application is filed after the date the issue fee is paid, it must be accompanied by a petition requesting entry and by the fee set forth in § 1.17(i)(1). If the certified copy filed is not in the English language, a translation need not be filed except in the case of an interference; or when necessary to overcome the date of a reference relied upon by the examiner; or when specifically required by the examiner, in which event an English language translation must be filed together with a statement that the translation of the certified copy is accurate. The statement must be a verified statement if made by a person not registered to practice before the Patent and Trademark Office.

* * * * *

7. Section 1.78, paragraph (a) is revised to read as follows:

§ 1.78 Claiming benefit of earlier filing date and cross references to other applications.

(a)(1) An application may claim an invention disclosed in a prior filed copending national application or international application designating the United States of America. In order for an application to claim the benefit of a prior filed copending national application, the prior application must name as an inventor at least one inventor named in the later filed application and disclose the named inventor's invention claimed in at least one claim of the later filed application in the manner provided by the first paragraph of 35 U.S.C. 112. In addition, the prior application must be

(i) Complete as set forth in § 1.51; or

(ii) Entitled to a filing date set forth in § 1.53(b) and include the basic filing fee set forth in § 1.16; or

(iii) Entitled to a filing date as set forth § 1.53(b) and have paid therein the processing and retention fee set forth in § 1.21(l) within the time period set forth in § 1.53(d).

(2) Any application claiming the benefit of a prior filed copending national or international application must contain or be amended to contain in the first sentence of the specification following the title a reference to such prior application, identifying it by application number (consisting of the series code and serial number), or serial number and filing date or international application number and international filing date and indicating the relationship of the applications. Cross-references to other related applications may be made when appropriate. (See § 1.14(b)).

* * * * *

8. Section 1.136, paragraph (a) is revised to read as follows:

§ 1.136 Filing of timely responses with petition and fee for extension of time and extensions of time for cause.

(a)(1) If an applicant is required to respond within a nonstatutory or shortened statutory time period, applicant may respond up to four months after the time period set if a petition for an extension of time and the fee set in § 1.17 are filed prior to or with the response, unless:

(i) Applicant is notified otherwise in an Office action,

(ii) The response is a reply brief submitted pursuant to § 1.193(b),

(iii) The response is a request for an oral hearing submitted pursuant to § 1.194(b),

(iv) The response is to a decision by the Board of Patent Appeals and Interferences pursuant to §§ 1.196, 1.197 or 1.304, or

(v) The application is involved in an interference declared pursuant to § 1.611.

(2) The date on which the response, the petition, and the fee have been filed is the date of the response and also the date for purposes of determining the period of extension and the corresponding amount of the fee. The expiration of the time period is

determined by the amount of the fee paid. In no case may an applicant respond later than the maximum time period set by statute, or be granted an extension of time under paragraph (b) of this section when the provisions of this paragraph are available. See § 1.136(b) for extensions of time relating to proceedings pursuant to §§ 1.193(b), 1.194, 1.196 or 1.197. See § 1.304 for extension of time to appeal to the U.S. Court of Appeals for the Federal Circuit or to commence a civil action. See § 1.550(c) for extension of time in reexamination proceedings and § 1.645 for extension of time in interference proceedings.

* * * * *

9. Section 1.191, paragraph (d) is revised to read as follows:

§ 1.191 Appeal to Board of Patent Appeals and Interferences.

* * * * *

(d) The time periods set forth in §§ 1.191 and 1.192 are subject to the provisions of § 1.136 for patent applications and § 1.550(c) for reexamination proceedings. The time periods set forth in §§ 1.193, 1.194, 1.196 and 1.197 are subject to the provisions of § 1.136(b) for patent applications or § 1.550(c) for reexamination proceedings. See § 1.304(a) for extensions of time for filing a notice of appeal to the U.S. Court of Appeals for the Federal Circuit or for commencing a civil action.

* * * * *

10. Section 1.192, paragraphs (a), (c) introductory text, and (d) are revised to read as follows:

§ 1.192 Appellant's brief.

(a) The appellant shall, within 2 months from the date of the notice of appeal under § 1.191 in an application, reissue application, or patent under reexamination, or within the time allowed for response to the action appealed from, if such time is later, file a brief in triplicate. The brief must be accompanied by the requisite fee set forth in § 1.17(f) and must set forth the authorities and arguments on which the appellant will rely to maintain the appeal. Any arguments or authorities not included in the brief may be refused consideration by the Board of Patent Appeals and Interferences.

(b) * * *

(c) The brief shall contain the following items under appropriate headings and in the order here indicated unless there is no attorney or agent of record in the application or reexamination proceeding, the brief was not prepared by a registered practitioner, and the brief was not signed by a registered practitioner, wherein the brief will be accepted as complying with this paragraph provided it is at least in substantial compliance with the requirements of paragraphs (c)(1), (2), (6) and (7):

* * * * *

(d) If a brief is filed which does not comply with the requirements of paragraph (c) of this section, the appellant will be notified of the reasons for non-compliance and provided with a period of one month within which to file an amended brief. If the appellant does not file an amended brief during the one-month period, or files an amended brief which does not overcome all the reasons for non-compliance stated in the notification, the appeal will be dismissed.

11. Section 1.193, paragraph (b) is revised to read as follows:

§ 1.193 Examiner's answer.

* * * * *

(b) The appellant may file a reply brief directed only to such new points of argument as may be raised in the examiner's answer, within two months from the date of such answer. The new points of argument shall be specifically identified in the reply brief. If the examiner determines that the reply brief is not directed only to new points of argument raised in the examiner's answer, the examiner may refuse entry of the reply brief and will so notify the appellant. If the examiner's answer expressly states that it includes a new ground of rejection, appellant must file a reply thereto within two months from the date of such answer to avoid dismissal of the appeal as to the claims subject to the new ground of rejection; such reply may be accompanied by any amendment or material appropriate to the new ground. See § 1.136(b) for extensions of time for filing a reply brief in a patent application and § 1.550(c) for extensions of time in a reexamination proceeding.

* * * * *

12. Section 1.194, paragraph (b) is revised to read as follows:

§ 1.194 Oral hearing.

* * * * *

(b) If appellant desires an oral hearing, appellant must file a written request for such hearing accompanied by the fee set forth in § 1.17(g) within two months after the date of the examiner's answer. If appellant requests an oral hearing and submits therewith the fee set forth in § 1.17(g), an oral argument may be presented by, or on behalf of, the primary examiner if considered desirable by either the primary examiner or the Board. See § 1.136(b) for extensions of time for requesting an oral hearing in a patent application and § 1.550(c) for extensions of time in a reexamination proceeding.

* * * * *

13. Section 1.196, paragraph (f) is revised to read as follows:

§ 1.196 Decision by the Board of Patent Appeals and Interferences.

* * * * *

(f) See § 1.136(b) for extensions of time to take action under this section in a patent application and § 1.550(c) for extensions of time in a reexamination proceeding.

14. Section 1.197, paragraph (b) is revised to read as follows:

§ 1.197 Action following decision.

* * * * *

(b) A single request for reconsideration or modification of the decision may be made if filed within one month from the date of the original decision, unless the original decision is so modified by the decision on reconsideration as to become, in effect, a new decision, and the Board of Patent Appeals and Interferences so states. The request for reconsideration shall state with particularity the points believed to have been misapprehended or overlooked in rendering the decision and also state all other grounds upon which reconsideration is sought. See § 1.136(b) for extensions of time for seeking reconsideration in a patent application and § 1.550(c) for extensions of time in a reexamination proceeding.

* * * * *

15. Section 1.312, paragraph (b) is revised to read as follows:

§ 1.312 Amendments after allowance.

* * * * *

(b) Any amendment pursuant to paragraph (a) of this section filed after the date the issue fee is paid must be accompanied by a petition including the fee set forth in § 1.17(i)(1) and a showing of good and sufficient reasons why the amendment is necessary and was not earlier presented.

16. Section 1.321 is revised to read as follows:

§ 1.321 Statutory disclaimers, including terminal disclaimers.

(a) A patentee owning the whole or any sectional interest in a patent may disclaim any complete claim or claims in a patent. In like manner any patentee may disclaim or dedicate to the public the entire term, or any terminal part of the term, of the patent granted. Such disclaimer is binding upon the grantee and its successors or assigns. A notice of the disclaimer is published in the

Official Gazette and attached to the printed copies of the specification. The disclaimer, to be recorded in the Patent and Trademark Office, must:

(1) Be signed by the patentee, or an attorney or agent of record;

(2) Identify the patent and complete claim or claims, or term being disclaimed. A disclaimer which is not a disclaimer of a complete claim or claims, or term will be refused recordation;

(3) State the present extent of patentee's ownership interest in the patent; and

(4) Be accompanied by the fee set forth in § 1.20(d).

(b) An applicant or assignee may disclaim or dedicate to the public the entire term, or any terminal part of the term, of a patent to be granted. Such terminal disclaimer is binding upon the grantee and its successors or assigns. The terminal disclaimer, to be recorded in the Patent and Trademark Office, must:

(1) Be signed:

(i) By the applicant, or

(ii) If there is an assignee of record of an undivided part interest, by the applicant and such assignee, or

(iii) If there is an assignee of record of the entire interest, by such assignee, or

(iv) By an attorney or agent of record;

(2) Specify the portion of the term of the patent being disclaimed;

(3) State the present extent of applicant's or assignee's ownership interest in the patent to be granted; and

(4) Be accompanied by the fee set forth in § 1.20(d).

(c) A terminal disclaimer, when filed to obviate a double patenting rejection in a patent application or in a reexamination proceeding, must:

(1) Comply with the provisions of paragraphs (b)(2) through (b)(4) of this section;

(2) Be signed in accordance with paragraph (b)(1) of this section if filed in a patent application, or in accordance with paragraph (a)(1) of this section if filed in a reexamination proceeding; and

(3) Include a provision that any patent granted on that application or any patent subject to the reexamination proceeding shall be enforceable only for and during such period that said patent is commonly owned with the application or patent which formed the basis for the rejection.

(17) Section 1.352 is amended by revising paragraph (a) to read as follows:

§ 1.352 Publication of notice of proposed amendments.

(a) Whenever required by law, notice of proposed amendments to the regulations in this part will be published in the *Official Gazette* and in the **Federal Register**. If not published with the notice, copies of the text will be furnished to any person requesting the same. All comments, suggestions, and briefs received within a time specified in the notice will be considered before adoption of the proposed amendments which may be modified in the light thereof.

* * * * *

18. Section 1.362 is amended by revising paragraphs (c) (4) and (e) and adding paragraph (h) to read as follows:

§ 1.362 Time for payment of maintenance fees.

* * * * *

(c) * * *

(4) For a reissue application, including a continuing reissue application claiming the benefit of a reissue application under 35 U.S.C. 120, United States filing date of the original non-reissue application on which the patent reissued is based.

* * * * *

(e) Maintenance fees may be paid with the surcharge set forth in § 1.20(h) during the respective grace periods after:

(1) 3 years and 6 months and through the day of the 4th anniversary of the grant for the first maintenance fee.

(2) 7 years and 6 months and through the day of the 8th anniversary of the grant for the second maintenance fee, and

(3) 11 years and 6 months and through the day of the 12th anniversary of the grant for the third maintenance fee.

* * * * *

(h) The periods specified in §§ 1.362 (d) and (e) with respect to a reissue application, including a continuing reissue application thereof, are counted from the date of grant of the original non-reissue application on which the reissued patent is based.

19. Section 1.607, paragraph (a)(5)(i) is revised to read as follows:

§ 1.607 Request by applicant for interference with patent.

(a) * * *

(5) * * *

(i) Identified as corresponding to the count, and

* * * * *

PART 5—CLASSIFIED INFORMATION, EXPORTS, FOREIGN RELATIONS, INVENTIONS AND PATENTS

20. The authority citation for 37 CFR part 5 continues to read as follows:

Authority: 35 U.S.C. 6, 41, 181–188, as amended by the Patent Law Foreign Filing Amendments Act of 1988, Pub. L. 100–418, 102 Stat. 1567; the Arms Export Control Act, as amended, 22 U.S.C. 2751 *et. seq.*, the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 *et seq.*, and the Nuclear Non-Proliferation Act of 1978, 22 U.S.C. 3201 *et. seq.*, and the delegations in the regulations under these acts to the Commissioner (15 CFR 370.10(j), 22 CFR 125.04, and 10 CFR 810.7).

21. Section 5.19, paragraph (a) is revised to read as follows:

§ 5.19 Export of technical data.

(a) Under regulations (15 CFR 770.10(j)) established by the U.S. Department of Commerce, Bureau of Export Administration, Office of Export Licensing, a validated export license is not required in any case to file a patent application or part thereof in a foreign country if the foreign filing is in accordance with the regulations (37 CFR 5.11 through 5.33) of the Patent and Trademark Office.

* * * * *

PART 10—REPRESENTATION OF OTHERS BEFORE THE PATENT AND TRADEMARK OFFICE

22. The authority citation for 37 CFR part 10 continues to read as follows:

Authority: 5 U.S.C. 500; 15 U.S.C. 1123; 35 U.S.C. 6, 31, 32, 41.

23. Section 10.48, paragraph (b) is revised to read as follows:

§ 10.48 Sharing legal fees.

* * * * *

(b) A practitioner who undertakes to complete unfinished legal business of a deceased practitioner may pay to the estate of the deceased practitioner that proportion of the total compensation which fairly represents the services rendered by the deceased practitioner.

* * * * *

Dated: October 15, 1993.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 93–25865 Filed 10–21–93; 8:45 am]

BILLING CODE 3510–16–M

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket Nos. RM94–1 and MC93–2; Order No. 993]

Amendments to Domestic Mail Classification Schedule: Definition of Pre-barcoded Mail, 1992

AGENCY: Postal Rate Commission.

ACTION: Final rule.

SUMMARY: In accordance with the August 2, 1993, decision by the Governors of the Postal Service approving the Commission's Docket No. MC93–2 recommended decision, the Commission is publishing the changes made in the Domestic Mail Classification Schedule (DMCS). As a result of the Docket No. MC93–2 proceeding, a number of changes were made in the classification provisions for postal services with regard to the definition of the barcode necessary to qualify for discounts.

EFFECTIVE DATE: August 11, 1993.

ADDRESSES: Correspondence should be sent to Charles L. Clapp, Secretary of the Commission, 1333 H Street, NW., suite 300, Washington, DC 20268–0001 (telephone: 202/789–6840).

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, Acting Legal Advisor, 1333 H Street, NW., suite 300, Washington, DC 20268–0001 (telephone: 202/789–6820).

SUPPLEMENTARY INFORMATION: On November 9, 1992, the Postal Service initiated a proceeding, pursuant to Chapter 36 of Title 39 of the United States Code, requesting a recommended decision on proposed changes in the requirements for letter mail qualifying for a pre-barcode discount. The Commission invited interested parties to comment and participate in the proceeding. 57 FR 54866 (November 20, 1992). Eighteen intervenors and the Commission's Office of the Consumer Advocate participated. The Commission held formal, on-the-record hearings, receiving testimony from eight witnesses. In addition to participating in oral argument, interested parties submitted briefs and reply briefs.

The changes allow the Postal Service to specify a delivery point barcode, which represents no more than 11 digits (not including "correction" digits), for mailers to qualify for the pre-barcode discount in first-, second- and third-class rates. Previously, mailers could qualify for the pre-barcode discount by using barcodes representing the ZIP+4 Code.

The amendments to the DMCS which are published in this order reflect the Governors' decision of August 2, 1993. Consistent with the Commission's explanation in the rulemaking (Docket No. RM85–1) which led to the publication of the DMCS in the **Federal Register**, these additions are published as a final rule, since procedural safeguards and ample opportunities to have different viewpoints considered have already been afforded to all interested persons.

List of Subjects in 39 CFR Part 3001

Administrative practice and procedure, Postal Service.

PART 3001—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for 39 CFR part 3001 continues to read as follows:

Authority: 39 U.S.C. 404(b), 3603, 3662–3624, 3661, 84 Stat. 759–762, 764, 90 Stat. 1303; (5 U.S.C. 553), 80 Stat. 383.

Subpart C—Rules Applicable to Requests for Establishing or Changing the Mail Classification Schedule

2. Appendix A to subpart C to part 3001 is amended by revising 100.0204, 100.0214, 100.031, 100.043, 100.047, 100.100, 200.095, 300.0232, 300.0235 and 300.0236 to read as follows:

Appendix A to Subpart C—Postal Service Rates and Charges

* * * * *

100.0204 Pre-barcoded Presorted Mail

Pre-barcoded presorted mail is First-Class Mail presented in mailings of 500 or more pieces presorted to three- or five-digit ZIP Codes or both, which bears a barcode representing not more than 11 digits (not including "correction" digits) as prescribed by the Postal Service, which meets the machinability, addressing, and barcoding specifications and other preparation requirements prescribed by the Postal Service, and which meets the preparation requirements in section 100.047.

* * * * *

100.0214 Pre-barcoded Rate Category Post Cards

A pre-barcoded rate category post card is a privately printed mailing card for the transmission of messages which meets the eligibility and preparation requirements in sections 100.0211b, 100.043, and 100.047.

a. Double post cards may be mailed at the pre-barcoded rate for post cards. A double post card consists of two attached cards, one of which may be detached by the receiver and returned by mail as a single post card.

b. Pre-barcoded rate category post cards must:

i. Bear a barcode representing not more than 11 digits (not including "correction" digits) as prescribed by the Postal Service.

ii. Be presented in mailings of 500 or more pieces.

iii. Meet machinability criteria as prescribed by the Postal Service but may not exceed any of the following dimensions:

(1) Length not greater than 6 inches;

(2) Width not greater than 4–1/4 inches; or,

(3) Thickness not greater than 0.0095 inch and uniform.

iv. Meet addressing specifications for applicable mail processing equipment as prescribed by the Postal Service.

v. Meet barcoding specifications and other preparation requirements prescribed by the Postal Service.

vi. Have postage paid in a manner not requiring cancellation.

* * * * *

100.031 Cards exceeding the maximum post card dimensions set forth in section 100.021c or 100.0211b or section 100.0214 for ZIP+4 and pre-barcoded rate category cards may be mailed only under sections 100.020, 100.0201, 100.0203, and 100.0204, as appropriate.

* * * * *

100.043 Postal and post cards, including ZIP+4 and pre-barcoded rate category post cards, with any of the following four characteristics are not mailable unless prepared as prescribed by the Postal Service:

a. Numbers or letters unrelated to postal purposes appearing on the address side of the card;

b. Punched holes;

c. Vertical tearing guide;

d. An address portion which is smaller than the remainder of the card.

* * * * *

100.047 Pieces mailed under sections 100.0201, 100.0202, 100.0203, 100.0204, 100.0205, 100.0206, 100.0211, and 100.023 must be prepared as follows:

a. All pieces in a mailing must be presented in a manner specified by the Postal Service.

b. All pieces in a mailing must bear markings as required by the Postal Service.

c. Pieces not within the same postage increment may be mailed at ZIP+4 rate category or pre-barcoded presorted mail rates or presorted pre-barcoded flat rates only when specific methods approved by the Postal Service for ascertaining and verifying postage are followed.

d. Pieces mailed at presorted ZIP+4 rate category or pre-barcoded presorted mail rates or presorted pre-barcoded flat rates must be properly prepared and presorted as prescribed by the Postal Service.

* * * * *

100.100 A presorted mailing fee as set forth in Rate Schedule 1000 must be paid once each year at each office of mailing by any person who mails presorted mail, including presorted ZIP+4 rate category mail and pre-barcoded presorted mail.

* * * * *

200.095 Copies of any automation compatible second-class mail which bear a proper ZIP+4 code, or which bear a barcode representing not more than 11 digits (not including "correction" digits) as prescribed by the Postal Service, and which meet the machinability, addressing, and barcoding specifications and other preparation requirements prescribed by the Postal Service qualify for the applicable ZIP+4 or pre-barcoding discounts as set forth in Rate Schedules 200, 201, 202, and 203.

* * * * *

300.0232 Basic Sortation, Pre-barcoded Mail. Basic sortation pre-barcoded mail is mail mailed under section 300.0230 which bears a barcode representing not more than 11 digits (not including "correction" digits) as prescribed by the Postal Service, and which meets the machinability, addressing, and barcoding specifications and other

preparation requirements prescribed by the Postal Service.

* * * * *

300.0235 Three-Digit Presort Level, Prebarcoded Mail. Three-digit presort level, prebarcoded mail is mail mailed under section 300.0233 which is presorted to three digits, which bears a barcode representing not more than 11 digits (not including "correction" digits) as prescribed by the Postal Service, and which meets the machinability, addressing, and barcoding specifications and other preparation requirements prescribed by the Postal Service.

* * * * *

300.0236 Five-Digit Presort Level, Prebarcoded Mail. Five-digit presort level, prebarcoded mail is mail mailed under section 300.0233 which is presorted to five digits, which bears a barcode representing not more than 11 digits (not including "correction" digits) as prescribed by the Postal Service, and which meets the machinability, addressing, and barcoding specifications, and other preparation requirements prescribed by the Postal Service.

Issued by the Commission on October 18, 1993.

Charles L. Clapp,

Secretary.

[FR Doc. 93–25964 Filed 10–21–93; 8:45 am]

BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH–43–1–5911; FRL–4784–6]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The United States Environmental Protection Agency (EPA) is approving and disapproving specific portions of a requested site-specific State Implementation Plan (SIP) revision to Ohio's ozone SIP for the Columbus Coated Fabrics (CCF) facility in Franklin County, Ohio. The EPA's action responds to a revision request which was submitted by the State to satisfy the requirements of the Clean Air Act. At the time of application to the State, Franklin County was designated as a nonattainment area for ozone. Franklin County was redesignated as an attainment area effective December 12, 1985, and remained in attainment until January 6, 1992, when it was redesignated as marginal nonattainment for ozone. The revision request is for an extended compliance schedule and an alternative emission reduction plan (bubble) with monthly averaging for 15 vinyl coating lines, and a permanent relaxation from Ohio's Rule 3745–21–09(H) for 11 U-frame vinyl coating lines at the CCF facility. In this action, the EPA is disapproving the revision for the 15 vinyl coating lines from the initial compliance date, April 1, 1982, until December 12, 1985, and from January 6, 1992, on, because the revision does not meet the requirements of EPA's compliance date extension policy and averaging time policy for nonattainment areas. The EPA is approving the revision for the 15 vinyl coating lines from December 12, 1985, to January 6, 1992, because it does meet the requirements of EPA's emissions trading policy for attainment areas. Finally, the EPA is approving the relaxation for the 11 U-frame vinyl coating lines as alternative reasonably available control technology (RACT), from April 1, 1982, to January 6, 1992. The EPA is disapproving the revision for the SIP relaxation from January 6, 1992, on because relaxation from SIP requirements in an ozone nonattainment area is prohibited by the Clean Air Act as amended in 1990 (CAA).

EFFECTIVE DATE: This final rulemaking becomes effective on November 22, 1993.

FOR FURTHER INFORMATION CONTACT: Bonnie J. Bush, Air Enforcement Branch, Regulation Development Section (AE–17J), U.S. Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 353–6684.

SUPPLEMENTARY INFORMATION:

I. Summary of State Submittal

On June 24, 1985, the Ohio Environmental Protection Agency (OEPA) submitted to the EPA a request to revise Ohio's ozone SIP for the Columbus Coated Fabrics (CCF) facility located in Columbus, Ohio. This revision request was for a compliance date extension and a volatile organic compound (VOC) bubble with monthly averaging for 15 vinyl coating lines and a permanent SIP relaxation for 11 "U-frame" vinyl coating lines. CCF is located in Franklin County, currently classified as a marginal nonattainment area for ozone. In 1982, when CCF first applied to the OEPA for the revision, Franklin County was classified as a nonattainment area for ozone. Franklin County was redesignated as an attainment area for ozone effective December 12, 1985, and remained in attainment status until it was redesignated to its current nonattainment status effective January 6, 1992.

On April 12, 1993, the EPA published a Notice of Proposed Rulemaking (58 FR 19075) approving and disapproving specific portions of the requested revision, based on the ozone designation of Franklin County. The public comment period was open through May 12, 1993. The only comments on the proposed rulemaking were received from the law firm of Sidley & Austin, attorneys for CCF. The first comments were received on May 12, 1993, along with a request for extension of the public comment period. A 30-day extension was granted, closing on June 14, 1993. On June 30, 1993, Sidley & Austin contacted the EPA by telephone and requested another extension because they felt that they received notice of the first extension too late to adequately prepare data to support their initial comments. The EPA agreed to consider any data or comments received by July 6, 1993, and further data and comments were received from Sidley & Austin on July 6, 1993.

II. Public Comment/EPA Response

The following evaluation summarizes the EPA's proposed action on each portion of the requested revisions, Sidley & Austin's comments on the proposed actions, and the EPA's responses to the comments. A more detailed discussion of the State submittal and the rationale for the EPA's proposed actions based on the CAA and EPA policy appears in EPA technical support documents dated August 29, 1984; November 29, 1985; January 10, 1986; October 29, 1986; and June 15, 1992.

A. Compliance Date Extension Request

1. Proposed Action

A compliance date extension to December 31, 1985, was requested for both the 3 lines complying by add-on controls and the 12 remaining lines. The State did not adequately research the compliance status of other similar sources to determine if achieving compliance by the original deadline was reasonable, as required by EPA's Compliance Date Extension Policy (53 FR 45103). Therefore, the revision for a compliance date extension for the 15 vinyl coating lines was proposed for disapproval for the timeframe that Franklin County was designated nonattainment.

2. Comments on Proposed Disapproval and EPA Response

a. Comment 1. The EPA's Compliance Date Extension Policy provides that "reasonable efforts to determine and adequately document the availability of complying coatings or other kinds of control" include not only researching

similar facilities in the State, but also consulting the EPA or other States for information and contacting suppliers available to the source. The purpose of these requirements is to ensure that a source is attempting to comply. There is ample evidence in the file already that CCF has attempted to comply, so approval of the compliance date extension is required by law.

b. EPA response. The purpose of the Compliance Date Extension Policy is to ensure: (1) that an "extension will not interfere with timely attainment * * * and maintenance of the ozone standard, and where relevant, 'reasonable further progress' (RFP) towards timely attainment," and (2) that an extension is "consistent with the requirement that nonattainment area SIPs provide for 'implementation of all reasonably available control measures as expeditiously as practicable' * * *." While the EPA believes that item (1) above was satisfied by the State submittal, item (2) calls for an adequate assessment of reasonably available control measures, including the research described in Comment 1. Notwithstanding the good intentions of CCF, there is nothing in the State submittal that indicates that the State made an effort to contact other States, the EPA, or coating and control equipment suppliers available to CCF for information on complying coatings or other kinds of control; therefore, an adequate assessment of reasonably available control measures was not performed, and the Compliance Date Extension Policy has not been satisfied.

B. Bubble Request

1. Proposed Action

A bubble was requested for 12 of the 15 vinyl coating lines. The EPA determined that the requested revision is consistent with the bubble principles contained in the EPA's Emissions Trading Policy Statement (ETPS) both for the periods when Franklin County was designated nonattainment for ozone and when it was designated attainment. However, compliance with the requested bubble is based on monthly averaging for the 12 lines, and although the revision conforms to the ETPS, it does not conform to EPA's Long-Term Averaging Time Policy or to the Compliance Date Extension Policy, as they apply to nonattainment areas. The monthly averaging time and compliance date extension requests are not separable from the bubble request, and, therefore, the bubble was proposed for disapproval for the periods when Franklin County is/was designated nonattainment.

2. Comments on Proposed Disapproval and EPA Response

a. Comment 1. CCF needs monthly averaging because its products require a variety of coatings with different VOC contents. CCF currently has no data for the early 1980's, but the facts regarding its operations during the 1980's support the use of monthly averaging, including the fact that coatings being used now have lower solvent content than coatings that were used in the early 1980's, and that in the early 1980's, only 16% of CCF's bubble sources used water-based coatings, whereas 40% used water-based coatings from 1989 to 1991. For these reasons, CCF believes that data from the early 1980's, if available, would have shown monthly averaging to be the shortest practicable averaging period.

b. EPA Response. The use of a variety of coatings with different VOC contents is a common practice in coating industries, and this alone does not justify extended averaging. Neither the submittal nor the comments contain data that demonstrate that CCF is in a situation unique among coating operations, which would support monthly averaging. Appropriate support of monthly averaging must include data which reflect operating conditions during Franklin County's nonattainment periods, i.e., from April 1, 1982, until December 12, 1985, and from January 6, 1992, on. The commenter has stated that no data are available from the early 1980's. However, an accurate picture of the current operations is more relevant. The raw data submitted during the public comment period are from 1989 through 1991; no 1992 data were submitted, and no explanation was given for such non-submittal. Therefore, while the 1989–1991 data may well reflect operating conditions after January 6, 1992, documentation of such conditions is necessary (e.g., production data or a detailed description of the bubble sources in operation, past and present). In addition, the raw data submitted do not appear sufficient to allow a meaningful analysis: There are no legends with the tables defining the column headings, and there is no information relating the coatings used to the individual bubble sources. It is the responsibility of the commenter to provide a coherent analysis of the data.

Adequate documentation supporting any extended averaging time would demonstrate the necessity of the requested averaging time and the infeasibility of a shorter time-frame. An acceptable demonstration of the infeasibility of anything less than a 30 day averaging time might include calculations of 29 day averages over 2 years which are representative of operations during the nonattainment periods, that show an inability to comply with RACT using 29 day averaging. These calculations would be accompanied by a description of the changes in coating usage that would be necessary to bring the 29 day average within acceptable RACT limits and an explanation of the infeasibility of such changes. An acceptable demonstration must also include verification that coatings with the lowest feasible VOC content are being used.

Regarding the changes in VOC content of the coatings used at CCF since application for the bubble, the trend in coating technology has been toward water-based and high solids coatings. Neither the submittal nor the comments demonstrate a relationship between the fact that CCF has kept current with coating technology and a need for monthly averaging.

c. Comment 2. Upon review of the 1989 to 1991 data, CCF has determined that the data support a minimum 10 day averaging time, and the data reflect current operating conditions. CCF would accept approval of the bubble with the condition of a 10 day averaging time. The holding in *Bethlehem Steel Corp.* v. *Gorsuch*, 742 F.2d 1028 (7th Cir. 1984), does not prevent the EPA from approving the bubble on the condition of establishment of a 10 day averaging time because: (1) A 10 day average is not more stringent than the original SIP requirement of daily averaging, (2) if the EPA can approve part of a SIP revision request to prevent weakening of the SIP, surely it can conditionally approve part of a revision request to decrease weakening of the SIP that would be caused by the revision, (3) even if 10 day averaging is more stringent, there is no tangible effect on CCF, (4) with a conditional approval, the EPA is not revising the SIP, but merely stating conditions, and the OEPA would actually revise the SIP, and (5) CCF does not object to a 10 day averaging time, and CCF believes that the OEPA would not object to it.

d. EPA response. The SIP revision submitted by the OEPA requests monthly averaging, which the EPA recommends for disapproval as discussed above in the response to Comment 1. Under section 110(k)(4) of the CAA, the EPA cannot conditionally approve an alternate, hypothetical revision that the State has made no commitment to adopt. If the OEPA were to submit a SIP revision request for 10 day averaging, including adequate and appropriate data (see EPA Response to Comment 1) supporting 10 day

averaging, the EPA would give such a request a full review. Regarding the comments on the *Bethlehem Steel* holding, the EPA agrees that the *Bethlehem Steel* case may not be an impediment to approval of a 10 day averaging time, but *Bethlehem Steel* does not authorize the EPA to create and approve substitute provisions that are not contained in the State's submittal. Therefore, the *Bethlehem Steel* issues raised by the commenter do not support approval of the State's request, since, as stated above, there is no SIP revision request for 10 day averaging before the EPA.

e. Comment 3. The bubble is not dependent on the request for extension of the compliance date, but CCF will consider withdrawing the request for the compliance date extension if the EPA would then approve the bubble.

f. EPA response. The State submittal states that the bubble sources are to be in compliance with the requested bubble by December 31, 1985, which is an extension of the compliance date; therefore, while the bubble request may not be "dependent" on the request for a compliance date extension, the extension request is certainly part of the bubble request. The OEPA may withdraw the request for the compliance date extension at any time. Nonetheless, if the compliance date extension request were to be withdrawn, the bubble request is still not approvable for the nonattainment time frames because of the issues relating to the monthly averaging time.

C. SIP Relaxation Request

1. Proposed Action

The request for a permanent SIP relaxation for the 11 U-frame vinyl coating lines was proposed for approval for the period from April 1, 1982, to January 6, 1992. However, the EPA proposed to disapprove this requested revision as RACT from January 6, 1992, on, because relaxation from the SIP without offsetting reductions in an ozone nonattainment area is prohibited by the General Savings Clause of the CAA.

2. Comments on Proposed Disapproval and EPA Response

a. Comment 1. The EPA, in its proposed rulemaking, concluded that this relaxation request "is approvable for the period between November 18, 1983, [sic] and January 6, 1992;" therefore, the "requirement in effect" on November 15, 1990, is the relaxed emission limit, the "requirement in effect" does not change pre- and post-enactment, and there is no "relaxation."

b. EPA response. Until the April 12, 1993, Notice of Proposed Rulemaking, no part of this SIP revision request had completed any portion of the Federal rulemaking process. Therefore, as of November 15, 1990, the relaxation request was not approved, and the "requirement in effect" (i.e., the limit in the SIP) was (and is now) Ohio Administrative Code Rule 3745–21–09(H), limiting the VOC content of the coatings to 4.8 lb per gallon of coating. Approval of a higher emission limit at any time after November 15, 1990, would constitute a "relaxation."

EPA notes that, as part of its VOC RACT "Catchups" package required by the CAA, the OEPA has adopted a site-specific rule for CCF, which includes a VOC content limit of 3.2 lb VOC per gallon of coating for coatings used on 7 U-frame vinyl coating lines and an in-line vinyl coating line; therefore, 6.1 lb VOC per gallon of coating is obviously not RACT for U-frame vinyl coating lines.

c. Comment 2. There is no evidence that Congress intended the General Savings Clause to be applied retroactively to approvable SIP revision requests submitted pre-enactment. The disapproval is solely due to the EPA's delay in acting on this request.

d. EPA response. The EPA proposed to disapprove the relaxation for the period from January 6, 1992, on, which is after November 15, 1990, the effective date of the General Savings Clause. Therefore, the EPA is not applying the General Savings Clause retroactively. See also EPA's Response to Comment 1 above.

e. Comment 3. If the EPA maintains that the General Savings Clause prohibits approval of the relaxation request after January 6, 1992, CCF requests the opportunity to demonstrate that the appropriate offsets exist for compliance with the offset requirements of the General Savings Clause.

f. EPA response. CCF has had the opportunity to make such a demonstration during the initial public comment period (April 12, 1993, to May 12, 1993), during the extension of the public comment period (May 12, 1993 to June 14, 1993), and during the period granted to CCF's attorneys, Sidley & Austin, for submittal of further data for the EPA consideration (June 14, 1993, through July 6, 1993). Despite such ample opportunity, the EPA has received no demonstration that the offset provisions of the General Saving Clause would be satisfied by the requested revision. However, the OEPA can resubmit a SIP revision request which includes a demonstration of sufficient offsets.

III. Rulemaking Action

None of the comments were found to justify changes from proposed to final action on this SIP revision request. Accordingly: (1) The requested revision for the 15 vinyl coating lines (the bubble and the compliance date extension) is approved for the period from December 12, 1985, to January 6, 1992, because it meets the EPA's emissions trading policy for attainment areas, and it was adequately demonstrated, using methodology conforming to the EPA policy in effect at that time, that emissions allowed by this SIP revision should not have interfered with maintenance of the ozone standard in Franklin County; (2) the requested revision for the 15 vinyl coating lines is disapproved for the period from April 1, 1982, to December 12, 1985, and from January 6, 1992, on, because it does not meet the EPA's compliance date extension policy and monthly averaging policy for nonattainment areas; and (3) the requested revision for the 11 U-frame vinyl coating lines (the SIP relaxation) is approved for the period from April 1, 1982, to January 6, 1992, and disapproved from January 6, 1992, on, because relaxation from the SIP in an ozone nonattainment area is prohibited by the CAA.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. The EPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of 2 years. The EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on the EPA's request.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit

enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *EPA*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. section 7410(a)(2).

This disapproval affects only one source, Columbus Coated Fabrics. Therefore it does not have a significant impact on a substantial number of small entities. Furthermore, as explained in this notice, the request does not meet the requirements of the CAA and EPA cannot approve the request. Therefore, EPA has no option but to disapprove the submittal.

The EPA's disapproval of the State request under section 110 and subchapter I, part D of the CAA does not affect any existing requirements applicable to small entities. Any pre-existing Federal requirements remain in place after this disapproval. Federal disapproval of the State submittal does not affect its State-enforceability. Moreover, EPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it impose any new Federal requirements.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [Insert date 60 days from publication]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

The Agency has reviewed this request for revision of the federally-approved State Implementation Plan for conformance with the provisions of Clean Air Act Amendments of 1990 enacted on November 15, 1990. The Agency has determined that a portion of this action does not conform with the statute as amended and must be disapproved. The Agency has examined the issue of whether this action should be reviewed only under the provisions of the law as it existed on the date of submittal to the Agency (i.e., prior to November 15, 1990) and has determined that the Agency must apply the new law to this revision.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Ozone, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of Ohio was approved by the Director of the **Federal Register** on July 1, 1982.

Dated: September 22, 1993.

David A. Ullrich,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart KK—Ohio

2. Section 52.1870 is amended by adding paragraph (c)(94) as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(94) On June 24, 1985, the Ohio Environmental Protection Agency submitted revisions to its ozone control State Implementation Plan which would establish a volatile organic compounds (VOC) bubble and alternative VOC reasonably available control technology for vinyl and U-frame vinyl coating lines at Columbus Coated Fabrics in Franklin County, Ohio.

(i) Incorporation by reference.

(A) Condition Number 8 (which references special Terms and Conditions Numbers 1 through 7) within each of 15 State of Ohio Environmental Protection Agency Permits and Variances to Operate an Air Contaminant Source, Application Numbers 0125040031 K001 through 0125040031 K015 for Columbus Coated Fabrics. The date of issuance is November 2, 1983. These permits and variances are approved for the period 12/12/85 to 1/6/92.

(B) Condition Number 8 (which references special Terms and Conditions Numbers 1 through 4) within each of 11 State of Ohio Environmental Protection Agency Variances to Operate an Air Contaminant Source, Application Numbers 0125040031 K016 through 0125040031 K026 for Columbus Coated Fabrics. The date of issuance is November 2, 1983. These variances are approved for the period 4/1/82 to 1/6/92.

(C) State of Ohio Environmental Protection Agency Orders to Modify Variances to Operate modifying Special Condition Number 1 of Ohio Environmental Protection Agency Variances to Operate an Air Contaminant Source, Application Numbers 0125040031 K016 through 0125040031 K026 for Columbus Coated Fabrics. The date of issuance is May 21, 1985. These orders are approved for the period 4/1/82 to 1/6/92.

[FR Doc. 93–26018 Filed 10–21–93; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[KY–065–5615; FRL–4784–5]

Approval and Promulgation of Implementation Plans Kentucky: Approval of Revisions to the Jefferson County Portion of the State Implementation Plan Regulating Volatile Organic Compounds

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On February 12, 1992, the Commonwealth of Kentucky, through the Natural Resources and Environmental Protection Cabinet, submitted revisions to its State Implementation Plan (SIP). The submittal included revisions to Appendix N of the Kentucky SIP, relating to the control of Volatile Organic Compounds (VOCs) in Jefferson County. The revisions corrected most of the deficiencies between EPA's requirements and the Commonwealth's SIP or pending SIP submittal. These deficiencies were identified in the November 9, 1987, letter from Winston A. Smith, Director of Air, Pesticides & Toxics Management Division, to Robert T. Offutt, Secretary-Treasurer, Jefferson County Air Pollution Control District.

Subsequently, the SIP call letter for ozone from Greer C. Tidwell, the EPA Regional Administrator, to Governor Wallace G. Wilkinson on May 26, 1988,

required the Commonwealth to correct these deficiencies.

EFFECTIVE DATE: This action will be effective December 20, 1993. Unless notice is received by November 22, 1993 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the material submitted by the Commonwealth of Kentucky may be examined during normal business hours at the following locations:

Environmental Protection Agency, Attn: Jerry Kurtzweg, ANR 443, 401 M Street, SW., Washington, DC 20460.
Region IV Air Programs Branch, Environmental Protection Agency, 345 Courtland Street, Atlanta, Georgia 30365.
Division for Air Quality, Department for Environmental Protection, Natural Resources and Environmental Protection Cabinet, 316 St. Clair Mall, Frankfort, Kentucky 40601.

FOR FURTHER INFORMATION CONTACT: Scott Southwick of the EPA Region IV Air Programs Branch at (404) 347–2864.

SUPPLEMENTARY INFORMATION: On March 3, 1978 (43 FR 8962), EPA designated Jefferson County, Kentucky, as nonattainment for ozone. The Commonwealth was subsequently required to revise its ozone SIP for Jefferson County. Kentucky officially submitted Appendix N, the portion of the SIP for Jefferson County, to the EPA on June 6, 1979. On January 25, 1980, the EPA announced final approval of the Kentucky ozone SIP.

The approved control strategy did not result in attainment of the National Ambient Air Quality Standard (NAAQS) for ozone by December 31, 1987. Consequently, Greer C. Tidwell, Region IV Regional Administrator, sent a letter to Wallace G. Wilkinson, Governor of Kentucky, on May 26, 1988. This letter, pursuant to section 110(a)(2)(H) of the 1977 Clean Air Act, notified Kentucky that the SIP was substantially inadequate to achieve the NAAQS for ozone in Jefferson County and called upon the Commonwealth to revise the SIP. The Clean Air Act (CAA) was amended on November 15, 1990, Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A), Congress statutorily adopted the requirement that ozone nonattainment areas fix their deficient Reasonably Available Control Technology (RACT) rules for ozone. Areas designated nonattainment before amendment of the CAA and which retained that designation and were classified as marginal or above as of enactment are required to meet the RACT fix-ups requirement. Under section 182(a)(2)(A), those areas were required by May 15, 1991, to correct RACT regulations as required under pre-amendment guidance.[1] The SIP call letters interpreted that guidance and indicated corrections necessary for specific nonattainment areas. The Jefferson County nonattainment area is classified as moderate.[2] Therefore, this area is subject to the RACT fix-up requirement and the May 15, 1991, deadline.

Kentucky failed to meet the May 15, 1991, deadline date and EPA notified the Commonwealth on June 25, 1991, that a finding of failure to submit had been made. This finding of failure to submit was published (56 FR 54554) October 22, 1991. The finding triggered the 18-month time clock for mandatory application of sanctions under section 179(a), the Administrator's discretionary authority to impose sanctions under section 110(m), and the 2-year time clock for promulgation of Federal VOC regulations for these areas as required by section 110(c)(1). The 18-month period prior to application of mandatory sanctions ended on April 22, 1993.

The Commonwealth submitted SIP revisions to EPA on February 12, 1992, meeting most of the RACT fix-up requirements. Based on the following analysis, EPA is approving these submitted revisions to Appendix N of the Kentucky SIP. On March 4, 1993, Kentucky submitted SIP revisions which addressed the remaining RACT fix-up deficiencies other than emissions trading. This submittal stopped the 18-month sanctions clock and the revisions will be addressed under a separate **Federal Register** notice.

"Coating Line"—The definition has been revised to clarify that coating lines without an oven and/or flashoff area are included. Additionally, definition 2.4.7 viii and 2.4.7 ix have been removed because a compliance section has been added within regulations that contained this definition. This definition has been revised within the following regulations:

6.16 Standard of Performance for Existing Large Appliance Surface Coating Operations;
6.19 Standard of Performance for Existing Metal Furniture Surface Coating Operations;
6.30 Standard of Performance for Existing Factory Surface Coating Operations of Flat Wood Paneling;
6.31 Standard of Performance for Existing Miscellaneous Metal Parts and Products Surface Coating Operations;
6.35 Standard of Performance for Existing Fabric, Vinyl and Paper Surface Coating Operations;
7.16 Standard of Performance for New Large Appliance Surface Coating Operations;
7.19 Standard of Performance for New Metal Furniture Surface Coating Operations;
7.52 Standard of Performance for New Fabric, Vinyl and Paper Surface Coating Operations;
7.58 Standard of Performance for New Factory Surface Coating Operations of Flat Wood Paneling;
7.59 Standard of Performance for New Miscellaneous Metal Parts and Products Surface Coating Operations.

"True Vapor Pressure"—The revised definition specifies true vapor pressure to be determined in accordance with the method described in the American Petroleum Institute Bulletin 2517, "Evaporation Loss from Floating Roof Tanks," Second Edition, February 1990. This definition has been revised within the following regulations:

6.13 Standard of Performance for Existing Storage Vessels for Volatile Organic Compounds;
7.12 Standards of Performance for New Storage Vessels for Volatile Organic Compounds.

Applicability—The applicability requirements have been revised to state, "Any source that is ever subject to the provisions of this regulation will always be subject to these provisions, unless the source changes its process to one not covered by this regulation." The revision of Section 1.0 Applicability, has been incorporated within the following regulations:

6.13, 6.16, 6.19, 6.30, 6.31, 6.35, 7.12, 7.16, 7.19, 7.52, 7.58, 7.59;
6.12 Standard of Performance for Existing Asphalt Paving Operations;
6.18 Standards of Performance for Existing Solvent Metal Cleaning Equipment;
6.23 Standard of Performance for Existing Dry Cleaning Facilities;
6.29 Standard of Performance for Existing Graphic Arts Facilities

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[1] Among other things, the pre-amendment guidance consists of the VOC RACT portions of the Post-87 policy, 52 FR 45044 (Nov. 24, 1987); the Bluebook, "Issues Relating to VOC Regulation Cutpoints, Deficiencies and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (of which notice of availability was published in the **Federal Register** on May 25, 1988); and the existing Control Technology Guidelines (CTGs).

[2] Jefferson County retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon enactment of the Amendments. 56 FR 56694 (November 6, 1991).

Using Rotogravure and Flexography;
6.33 Standard of Performance for Existing Synthesized Pharmaceutical Product Manufacturing Operations;
6.34 Standard of Performance for Existing Pneumatic Rubber Tire Manufacturing Plants;
7.11 Standard of Performance for New Asphalt Paving Operations;
7.18 Standards of Performance for New Solvent Metal Cleaning Equipment;
7.23 Standard of Performance for New Perchloroethylene Dry Cleaning Facilities;
7.57 Standard of Performance for New Graphic Arts Facilities Using Rotogravure and Flexography;
7.60 Standard of Performance for New Synthesized Pharmaceutical Product Manufacturing Operations;
7.61 Standard of Performance for New Pneumatic Rubber Tire Manufacturing Plants.

Compliance—The compliance section for the following regulations has been revised to state that EPA Reference Method 24 shall be the method for determining the amount of VOCs in coatings:

6.16, 6.19, 6.30, 6.31, 6.35, 7.16, 7.19, 7.52, 7.58, 7.59.

The compliance section for the following regulations has been revised to state that the VOC content and density of rotogravure publication inks shall be determined by EPA Reference Method 24A:

6.29, 6.30, 7.57.

The compliance section for the following regulations has been revised to state that control system capture efficiency shall be measured according to methods specified in Regulation 1.05, Section 2:

6.16, 6.19, 6.29, 6.31, 6.35, 7.16, 7.19, 7.52, 7.57, 7.59.

The compliance section for the following regulations has been revised to state that the following methods of analysis have been deleted: (i) ASTM D 1644–75 Method A, (ii) ASTM D 1465–60(74), (iii) ASTM D 2369–73, and (iv) Federal Standard 141 a, Method 4082.1. This revision of Section 4.0 Compliance, has been incorporated within the following regulations: 6.16, 6.19, 6.29, 6.30, 6.31, 6.35.

Exemptions—The calculation to compute the Daily-Weighted Average VOC Content was added to the exemption section. Also, language was added stating that no surface coating line shall operate when the Daily-Weighted Average VOC Content exceeds emission limits. These changes are in the following regulations:

6.16, 6.19, 6.30, 6.31, 6.35, 7.16, 7.19, 7.52, 7.58, 7.59.

Recordkeeping Requirements—This new section details all recordkeeping required to document compliance. Subsequent sections within regulations containing a Recordkeeping Section have been renumbered. The following Regulations have added a Recordkeeping Section:

6.12, 6.16, 6.29, 6.30, 6.31, 6.35, 7.11, 7.19, 7.52, 7.57, 7.58, 7.59.

Compliance Time Table—Section 6.0 has been eliminated because the final compliance date for all existing sources has passed. Language has been added to the applicability section to identify affected facilities. Subsequent sections within regulations eliminating this section have been renumbered. The following regulations have eliminated 6.0 Compliance Time Table:

6.13, 6.16, 6.18, 6.19, 6.29, 6.30, 6.31, 6.33, 6.34, 6.35;
6.32 Standard of Performance for Leaks from Existing Petroleum Refinery Equipment.

Deviations—This section was struck. Deviations from the regulations due to economic or technological circumstances are no longer permissible. The following regulations have eliminated the aforementioned section:

6.33, 6.34, 6.35.

Regulation 1.02 Definitions—The definition of "organic compound" has been added and the definitions of "outside air," "lowest achievable emission rate," and "volatile organic compound" have been updated. The definition of "volatile organic compound" was updated to exclude a list of compounds which the Administrator has determined do not participate in atmospheric photochemical reactions.

Regulation 1.08 Administrative Procedures

Section 1.0 Public Hearings—Subsections 1.1.1 and 1.1.3 were amended to require a public hearing before adoption of any order for any source or person, and before adoption of a new regulation of the District.

Section 2.0 Compliance Plans and Schedules—Subsection 2.2.7 adds a requirement that all compliance plans and/or schedules inconsistent with any provision of the Kentucky SIP for the attainment and maintenance of NAAQS must be approved by the EPA as a revision to the SIP. Subsection 2.3 details additional agents required to sign applications for compliance schedules. Subsection 2.5 was revised to add "in its judgement" for clarification purposes.

Section 3.0 Procedures at Public Hearings—Subsection 3.6 now states that the board no longer has to act on a matter from a public hearing during the next scheduled board meeting.

Section 4.0 Variance Procedures—Subsection 4.6 was revised to state that variances final for Kentucky purposes must be approved by the EPA to be considered federally approved and enforceable.

Section 8.0 Appeals to the Board—Subsection 8.1 was revised to change "appeal" to "written appeal." Subsection 8.4 was revised to update proceedings for an evidentiary hearing.

Regulation 6.13 Standard of Performance for Existing Storage Vessels for Volatile Compounds

Section 1.0 Applicability—This regulation now applies to all affected facilities in existence or having a construction permit prior to September 1, 1976, in lieu of April 9, 1976.

Section 5.0 Monitoring of Operations—Procedures to measure and inspect secondary seal gap, and record the types and true pressures of volatile petroleum liquids stored have been added to the section.

Regulation 6.16 Standard of Performance for Existing Large Appliance Surface Coating Operations

Section 5.0 Exemptions—The regulation has been updated to state that exempt solvents are excluded when determining VOC content. Subsection 5.2 was revised to strike the arithmetic average method to determine exemptions from this regulation.

Regulation 6.18 Standards of Performance for Existing Solvent Metal Cleaning Equipment

Section 2.0 Definitions—The definition of "Freeboard height" has been updated to include vapor conveyorized degreasers and cold conveyorized degreasers.

Section 5.0 Open Top Vapor Degreasers—Subsections 5.1.3.1 and 5.1.3.3 were revised to further clarify a rule and to correct a spelling error.

Regulation 6.23 Standard of Performance for Existing Dry Cleaning Facilities

Section 4.0 Compliance—Subsection 4.3 was revised to state that all of the EPA Guideline Series document, Measurement of Volatile Organic Compounds, EPA–2–780–041, is to be

used to determine the amount of solvent in filter and distillation wastes.

Regulation 6.29 Standard of Performance for Existing Graphic Arts Facilities Using Rotogravure and Flexography

Section 2.0 Definitions—The definition of "Printing line" was revised to clarify that it is not necessary to have an oven or flashoff area in order to be included in this definition.

Section 5.0 Exemption—This section was revised to exempt inks that meet an emission limit of 0.5 lb VOC/lb solids.

Section 6.0 Deviation—The section was revised to state that deviations from standards and limitations now require federal approval pursuant to Regulation 1.08, Section 4.0.

Regulation 6.30 Standard of Performance for Existing Factory Surface Coating Operations of Flat Wood Paneling

Section 5.0 Exemptions—The VOC limits in subsections 5.1–5.3 were revised so that conversions from metric units to English units would be more consistent.

Regulation 6.31 Standard of Performance for Existing Miscellaneous Metal Parts and Products Surface Coating Operations

Section 2.0 Definitions—Definition 2.2 was revised to change "Air or forced air-dried items" to "Air-dried coatings" with an updated definition for the latter. The definition 2.4 "Clear coat" was added. Definition 2.7 "Heat sensitive material" was revised to mean materials that cannot be exposed to temperatures greater than 93 degrees C, 200 degrees F in lieu of 82 degrees C, 180 degrees F. Definition 2.8.7 was revised to include any industrial category which coats metal parts or products under Standard Industrial Classification Code of Major Group 33, 35, 36, 37, 38, and 39.

Section 5.0 Exemptions—The section was revised to exclude exempt solvents when tabulating VOC content.

Regulation 6.32 Standard of Performance for Leaks From Existing Petroleum Refinery Equipment

Section 2.0 Definitions—Definitions 2.4 "Gas service" and 2.6 "Liquid service" have been revised and are now defined as "equipment that processes, transfers, or contains a volatile organic compound or mixture of volatile organic compounds in the gaseous (liquid in the case of definition 2.6) phase."

Regulation 6.33 Standard of Performance for Existing Synthesized Pharmaceutical Product Manufacturing Operations

Section 2.0 Definitions—Definition 2.1 "Affected facility," was revised to include all sources of VOC at any pharmaceutical manufacturing facility as determined by the Control Technology Guideline (CTG) of Pharmaceutical Manufacture. Definition 2.2 "Production equipment exhaust system," was added and it is defined as a device that collects and directs out of the work area VOC fugitive emissions. Definition 2.3 "Reactor," was added and is defined as a vat or vessel, which may be jacketed to permit temperature control, designed to contain chemical reactions. Definition 2.4 "Separation operation," was added and is defined as a process that separates a mixture of compounds and solvents into two or more components. Definition 2.5 "Synthesized pharmaceutical manufacturing" was added and is defined as manufacture of pharmaceutical products and intermediates by chemical syntheses. The definitions "Extraction", "Fermentation", and "Formulation and packaging" were eliminated.

Regulation 6.34 Standard of Performance for Existing Pneumatic Rubber Tire Manufacturing Plants

Section 2.0 Definitions—Definition 2.2 "Bead dipping," was added and is defined as the dipping of an assembled tire bead into a solvent based cement. Definition 2.3 "Green tire," was added and means an assembled, uncured tire. Definition 2.4 "Green tire spraying" was added and is defined as a treatment to the inside and/or the outside of a green tire to facilitate the curing process. Definition 2.5 "Manufacture of pneumatic rubber tires," was changed to "Pneumatic rubber tire manufacture" and retains a similar definition. Definition 2.6 "Tread end cementing," was added and is defined as the application of a solvent-based cement to one or both ends of the tread or combined tread-sidewalls component. Definition 2.7 "Undertread cementing" was added and is defined as the application of a solvent-based cement to a continuous strip of thread or combined tread/sidewall component. The definition "Pneumatic rubber tire" was eliminated.

Section 3.0 Standard for Volatile Organic Compounds—New emission standards have been added for Undertread Cementing, Tread End Cementing, Bead Dipping, and Green Tire Spraying. The emission standards are consistent with the federal CTG.

Regulation 6.35 Standard of Performance for Existing Fabric, Vinyl and Paper Surface Coating Operations

Section 2.0 Definitions—The definition of "Vinyl coating" has been revised to state that vinyl coating does not include the application of vinyl plastisol.

Section 5.0 Exemptions—Subsections 5.1 and 5.2 have been revised to state that exempt solvents are no longer included when determining VOC compound content.

7.11 Standard of Performance for New Asphalt Paving Operations

Section 7.0 Additional Applicable Regulation(s)—This section was added to state that any source subject to this regulation will also be subject to the provisions of 40 CFR part 60 subpart I, adopted by reference in District Regulation 7.02.

7.12 Standard of Performance for New Storage Vessels for Volatile Organic Compounds

Section 5.0 Monitoring of Operations—Subsections 5.3 and 5.4 detail additional records required to be maintained.

Section 8.0 Additional Applicable Regulation(s)—This section was added to state that any source subject to this regulation will also be subject to provisions of 40 CFR part 60, subpart K, adopted by reference in District Regulation 7.02.

7.16 Standard of Performance for New Large Appliance Surface Coating Operations

Section 7.0 Additional Applicable Regulation(s)—This section was added to state that any source subject to this regulation will also be subject to all the provisions of 40 CFR part 60, subpart SS, adopted by reference in District Regulation 7.02.

7.18 Standards of Performance for New Solvent Metal Cleaning Equipment

Section 2.0 Definitions 2.4—The definition of "Freeboard height" has been revised to include vapor conveyorized degreasers and cold conveyorized degreasers.

7.19 Standard of Performance for New Metal Furniture Surface Coating Operations

Section 7.0 Additional Applicable Regulation(s)—This section was added to state that any source subject to this regulation will also be subject to all of the provisions of 40 CFR part 60,

subpart EE, adopted by reference in District Regulation 7.02.

7.52 Standard of Performance for New Fabric, Vinyl and Paper Surface Coating Operations

Section 2.0 Definitions—The definition of "Vinyl coating" has been revised to state that vinyl coating does not include the application of vinyl plastisol.

Section 4.0 Compliance—Subsection 4.1 has been revised to require a new affected facility to comply with requirements on start-up.

7.56 Standard of Performance for Leaks From New Petroleum Refinery Equipment

Section 2.0 Definitions—The definition of "Gas service" has been added and it is defined as equipment that contains a VOC in the gaseous phase.

Section 7.0 Additional Regulations—This section was added to state that any source subject to this regulation will also be subject to all of the provisions of 40 CFR part 60, subpart GG, adopted by reference on District Regulation 7.02.

7.57 Standard of Performance for New Graphic Arts Facilities Using Rotogravure and Flexography

Section 2.0 Definitions—The definition of "Printing line" has been revised to state that it is not necessary to have an oven or flashoff area in order to be included in this definition.

Section 5.0 Exemption—Subsection 5.2—This section was added to exempt inks which meet an emission limit of 0.5 lb VOC/lb solids.

Section 6.0 Deviations—This section was revised to state that deviations will require federal approval in a manner pursuant to Regulation 1.08, section 4.0.

Section 8.0 Additional Applicable Regulations(s)—This section was added to state that any source subject to this regulation will also be subject to all of the provisions of 40 CFR part 60, Subpart QQ, adopted by reference in District Regulation 7.02.

7.59 Standard of Performance for New Miscellaneous Metal Parts and Products Surface Coating Operations

Section 2.0 Definitions—The definitions of "Air-Dried coatings" and "Clear coat" have been added. The definition of "Miscellaneous metal parts and products" has been revised to include any metal parts or products under the SIC codes 33, 34, 35, 36, 37, 38, and 39.

Section 5.0 Exemptions—Subsections 5.1.1, 5.1.2, and 5.1.4 were revised to exclude exempt solvents when tabulating VOC content.

7.60 Standard of Performance for New Synthesized Pharmaceutical Manufacturing Operations

Section 2.0 Definitions—Definition 2.1 "Affected facility" was revised to include all sources of VOC at any pharmaceutical manufacturing facility as determined by Appendix B of the CTG of Pharmaceutical Manufacture. Definition 2.2 "Production equipment exhaust system" was added and is defined as a device for collecting and directing out of the work area VOC fugitive emissions. Definition 2.3 "Reactor" was added and is defined as a vat or vessel, which may be jacketed to permit temperature control, designed to contain chemical reactions. Definition 2.4 "Synthesized pharmaceutical manufacturing" was added and is defined as a process that separates a mixture of compounds and solvents into two or more components. Definition 2.5 "Synthesized pharmaceutical manufacturing" means manufacture of pharmaceutical products and intermediates by chemical syntheses. The definitions of "Extraction", "Fermentation", and "Formulation and packaging" were eliminated.

7.61 Standard of Performance for New Pneumatic Rubber Tire Manufacturing Plants

Section 2.0 Definitions—Definition 2.2 "Bead dipping" was added and is defined as the dipping of an assembled tire bead into a solvent based cement. Definition 2.3 "Green tire" was added and means an assembled, uncured tire. Definition 2.4 "Green tire spraying" was added and is defined as a treatment to the inside and/or the outside of a green tire to facilitate the curing process. Definition 2.5 "Manufacture of pneumatic rubber tires" was changed to "Pneumatic rubber tire manufacture" and retains the same definition. Definition 2.6 "Tread end cementing" was added and is defined as the application of a solvent-based cement to one or both ends of the tread or combined tread-sidewalls component. Definition 2.7 "Undertread cementing" was added and is defined as the application of a solvent-based cement to a continuous strip of tread or combined tread/sidewall component. The definition "Pneumatic rubber tire" was eliminated.

3.0 Standard for Volatile Organic Compounds—Emission standards have been revised for Undertread Cementing, Tread End Cementing, Bead Dipping, and Green Tire Spraying. The revised standards are consistent with the federal CTG.

The above referenced regulations of the Jefferson County portion of the Commonwealth of Kentucky SIP are being approved. The revisions to the regulations correct most of the deficiencies between EPA's requirements and the Commonwealth's SIP. These deficiencies were identified in the November 9, 1987, letter from Winston A. Smith, Director of Air, Pesticides & Toxics Management Division to Robert T. Offutt, Secretary-Treasurer, Jefferson County Air Pollution Control District. Subsequently, the SIP call letter for ozone from Greer C. Tidwell, the EPA Regional Administrator, to Governor Wallace G. Wilkinson on May 26, 1988, required the Commonwealth to correct these deficiencies.

On March 4, 1993, Kentucky submitted revised regulations which addressed the remaining RACT fix-up deficiencies other than emissions trading. This submittal stopped the 18-month sanctions clock and The revisions will be addressed under a separate **Federal Register** notice.

Final Action

EPA is today approving the above referenced revision to the Jefferson County portion of the Kentucky SIP. These revisions are consistent with EPA guidelines. This action is being taken without prior proposal because the changes are noncontroversial and EPA anticipates no significant comments on them. The public should be advised that this action will be effective on December 20, 1993. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted, Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In the amended Act, Congress codified the requirement that States with areas classified as marginal or above, revise their SIPs for these classified ozone nonattainment areas so that the SIPs conform with EPA's pre-amendment guidance.[3]

[3] Among other things, the pre-amendment guidance consists of the Post-87 Policy, 52 FR 45044 (Nov 24, 1987 the Blue Book, "Issues Relating to VOC Regulation Cutpoints, Deficiencies,

Section 182(a)(2)(A) established a deadline of May 15, 1991, for submittal of these RACT fix-ups.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 20, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review, nor, does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request. Nothing in this action shall be construed as permitting, allowing, or establishing a precedent for any future request for a revision to any State Implementation Plan. Each request for revision to the State Implementation Plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604.

Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not for profit enterprises, and government entities with jurisdiction over populations less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, EPA certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of State action. The CAA forbids EPA to base its actions concerning SIPS on such grounds. *Union Electric Co.* v. *U.S.E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Incorporation by reference, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 26, 1993.

Patrick M Tobin,

Acting Regional Administrator.

Part 52 of chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42.U.S.C. 7401–7671q.

Subpart S—Kentucky

2. Section 52.920 is amended by adding paragraph (c) (68) to read as follows:

§ 52.920 Identification of plan.

* * * * *

(c) * * *

(68) Revisions to the Commonwealth of Kentucky State Implementation Plan (SIP) concerning Jefferson County Volatile Organic Compounds were submitted on February 12, 1992 by the Kentucky Natural Resources and Environmental Protection Cabinet.

(i) Incorporation by reference.

(A) Revisions to the following Jefferson County Regulations were effective May 15, 1991.

(*1*) Regulation 1.02 Definitions: (45), (61), (62), and (91).

(*2*) Regulation 1.08 Administrative Procedures: Subsections 1.1.1, 1.1.3, 2.2.7, 2.3, and 2.5, Section 3.0 closing paragraph, and Subsections 4.6, 8.1 and 8.4.

(*3*) Regulation 6.12 Standard of Performance for Existing Asphalt Paving Operations: Sections 1.0 and 5.0.

(*4*) Regulation 6.13 Standard of Performance for Existing Storage Vessels for Volatile Organic Compounds.

(*5*) Regulation 6.16 Standard of Performance for Existing Large Appliance Surface Coating Operations.

(*6*) Regulation 6.18 Standards of Performance for Existing Solvent Metal Cleaning Equipment.

(*7*) Regulation 6.19 Standard of Performance for Existing Metal Furniture Surface Coating Operations.

(*8*) Regulation 6.23 Standard of Performance for Existing Dry Cleaning Facilities: Section 1.0 and Subsection 4.3.

(*9*) Regulation 6.29 Standard of Performance for Existing Graphic Arts Facilities Using Rotogravure and Flexography.

(*10*) Regulation 6.30 Standard of Performance for Existing Factory Surface Coating Operations of Flat Wood Paneling.

(*11*) Regulation 6.31 Standard of Performance for Existing Miscellaneous Metal Parts and Products Surface Coating Operations.

(*12*) Regulation 6.32 Standard of Performance for Leaks from Existing Petroleum Refinery Equipment.

(*13*) Regulation 6.33 Standard of Performance for Existing Synthesized Pharmaceutical Product Manufacturing Operations.

(*14*) Regulation 6.34 Standard of Performance for Existing Pneumatic Rubber Tire Manufacturing Plants.

(*15*) Regulation 6.35 Standard of Performance for Existing Fabric, Vinyl and Paper Surface Coating Operations.

(*16*) Regulation 7.11 Standard of Performance for New Asphalt Paving Operations: Sections 1.0, 6.0, and 7.0.

(*17*) Regulation 7.12 Standard of Performance for New Storage Vessels for Volatile Organic Compounds: Section 1.0, Subsections 2.10, 5.3.2, 5.3.3, and 5.4, and Section 8.0.

(*18*) Regulation 7.16 Standard of Performance for New Large Appliance Surface Coating Operations: Section 1.0, Subsections 2.3, 4.2, 4.4, 5.3 and 5.4, and Sections 6.0 and 7.0.

(*19*) Regulation 7.18 Standards of Performance for New Solvent Metal Cleaning Equipment: Section 1.0 and Subsection 2.4.

(*20*) Regulation 7.19 Standard of Performance for New Metal Furniture Surface Coating Operations: Section 1.0, Subsections 2.3, 4.3, 4.5.1, 5.2, and Sections 6.0 and 7.0.

(*21*) Regulation 7.23 Standard of Performance for New Perchloroethylene Dry Cleaning Facilities: Section 1.0 and Subsection 4.5.

(*22*) Regulation 7.52 Standard of Performance for New Fabric, Vinyl, and Paper Surface Coating Operations: Section 1.0, Subsections 2.3, 2.12, 4.1, 4.3, 4.5.1, and 5.3, and Section 6.0.

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and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" and the existing CTGs.

(23) Regulation 7.56 Standard of Performance for Leaks from New Petroleum Refinery Equipment: Subsection 2.4 and 2.6, and Section 7.0.

(24) Regulation 7.57 Standard of Performance for New Graphic Arts Facilities Using Rotogravure and Flexography: Section 1.0, Subsections 2.8, 4.2, 4.4.1, and 5.2, and Sections 6.0, 7.0, and 8.0.

(25) Regulation 7.58 Standard of Performance for New Factory Surface Coating Operations of Flat Wood Paneling: Section 1.0, Subsection 2.5, 4.4.1, and 5.4, and Section 6.0.

(26) Regulation 7.59 Standard of Performance for New Miscellaneous Metal Parts and Products Surface Coating Operations: Section 1.0, Subsections 2.2, 2.4, 2.5, 2.8.7, 4.3, 4.5.1, 5.1.1, 5.1.2, 5.1.4, 5.2, and 5.4, and Sections 6.0 and 7.0.

(27) Regulation 7.60 Standard of Performance for New Synthesized Pharmaceutical Product Manufacturing Operations: Section 1.0 and Section 2.0.

(28) Regulation 7.61 Standard of Performance for New Pneumatic Rubber Tire Manufacturing Plants: Section 1.0, Subsections 2.2, 2.3, 2.4, 2.5, 2.6, and 2.7, and Section 3.0.

(ii) Other material.

(A) Letter dated February 12, 1992, from the Commonwealth of Kentucky Natural Resources and Environmental Protection Cabinet.

3. Section 52.934 is added to read as follows:

§ 52.934 VOC rule deficiency correction.

Section 1.02, 1.08, 6.12, 6.13, 6.16, 6.18, 6.19, 6.23, 6.29, 6.30, 6.31, 6.32, 6.33, 6.34, 6.35, 7.11, 7.12, 7.16, 7.18, 7.19, 7.23, 7.52, 7.56, 7.57, 7.58, 7.59, 7.60 and 7.61 of the Jefferson County portion of the Commonwealth of Kentucky SIP are being approved. The Commonwealth submitted these regulations to EPA for approval on February 12, 1992. These sections were intended to correct deficiencies cited in a letter calling for the Commonwealth to revise its SIP for ozone from Greer C. Tidwell, the EPA Regional Administrator, to Governor Wallace G. Wilkinson on May 26, 1988 and clarified in a letter from Winston A. Smith, Air, Pesticides & Toxics Management Division Director, to William C. Eddins, Director of the Commonwealth of Kentucky Division for Air Quality.

(a) Deficiencies in the following regulations, however, have not been corrected:

(1) 1.05 Compliance with Emission Standards and Maintenance Requirements;

(2) 1.06 Source Self-Monitoring and Reporting;

(3) 1.12 Emissions Trading;

(4) 6.17 Standard of Performance for Existing Automobile and [Light Duty] Truck Surface Coating Operations;

(5) 6.36 Standard of Performance for Existing Metal Parts and Products Surface Coating Operations at Auto and Truck Manufacturing Plants; and

(6) 6.40 Standards of Performance for Gasoline Transfer to Motor Vehicles (Stage II Vapor Recovery and Control).

(b) The above deficiencies must be corrected according to the letters mentioned above, the proposed post-1987 ozone policy (52 FR 45044), and other EPA guideline relating to the deficiencies before the SIP for ozone can be fully approved.

[FR Doc. 93–26020 Filed 10–21–93; 8:45 am]

BILLING CODE 6560–50–P

NATIONAL SCIENCE FOUNDATION

45 CFR Parts 670, 671 and 672

Conservation of Antarctic Animals and Plants; Waste Regulation; Enforcement and Hearing Procedures

AGENCY: National Science Foundation (NSF).

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations that were published on Thursday, June 29, 1993, (58 FR 34713). The regulations govern waste management and waste disposal in Antarctica.

EFFECTIVE DATE: August 15, 1993.

FOR FURTHER INFORMATION CONTACT: Miriam M. Leder, Office of the General Counsel at 202–357–9435.

SUPPLEMENTARY INFORMATION: The final regulations are being technically revised to conform to **Federal Register** requirements and to correct a numbering error. Accordingly, the publication on Thursday, June 29, 1993, of final regulations that were the subject of FR Doc 93–15113 (58 FR 34713), is corrected as follows:

Paragraph 1. On page 34718, in the third column, in amendatory instruction 2, line 4, the number "672.22" is corrected to read "672.23".

Paragraph 2. The date identified on page 34713, column two, as the Effective Date is corrected to read "August 15, 1993", although the regulations themselves shall not apply to nongovernmental activities until after March 1, 1994, and the provisions of 45 CFR 671.4 shall not apply to governmental activities covered by permit applications submitted no later than August 15, 1993, until NSF takes final action on those applications.

Dated: October 18, 1993.

Anita Eisenstadt,

Acting General Counsel, National Science Foundation.

[FR Doc. 93–26022 Filed 10–21–93; 8:45 am]

BILLING CODE 7555–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–166; RM–8242]

Radio Broadcasting Services; Rexburg, Idaho and Afton, Wyoming

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 251C1 for Channel 251C3 at Rexburg, Idaho, and modifies the construction permit for Station KRXK–FM to specify operation on Channel 251C1; it also substitutes Channel 254A for Channel 252A at Afton, Wyoming, and modifies the license for Station KRSV(FM) to specify operation on Channel 254A at the request of Communicast Consultants, Inc. See 58 FR 34555, June 28, 1993. Channel 251C1 can be allotted to Rexburg in compliance with the Commission's minimum distance separation requirements with a site restriction of 32.2 kilometers (20 miles) south of the community. Channel 254A can be allotted to Afton at the authorized transmitter site of Station KRSV(FM). The coordinates for Channel 251C1 at Rexburg are North Latitude 43–32–34 and West Longitude 111–53–07. The coordinates for Channel 254A at Afton are North Latitude 42–51–02 and West Longitude 110–58–46. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 22, 1993.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–166, adopted September 29, 1993, and released October 8, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International

Transcription Service, Inc., (202) 857–3800, 1919 M Street, NW., Room 246, or 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Idaho, is amended by removing Channel 251C3 and adding Channel 251C1 at Rexburg.

§ 73.202 [Amended]

3. Section 73.202(b), the Table of FM Allotments under Wyoming, is amended by removing Channel 252A and adding Channel 254A at Afton.

Federal Communications Commission.

Victoria M. McCauley,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–25965 Filed 10–21–93; 8:45 am]

BILLING CODE 6712–01–M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 538 and 552

[APD 2800.12A CHGE 48]

General Services Administration Acquisition Regulation; Multiple Award Schedule Contractors' Submission and Distribution of Authorized GSA Schedule Pricelists

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR) is amended to incorporate the new clause, Submission and Distribution of Authorized GSA Schedule Pricelists and Alternates. The pricelist is similar to a firm's commercial catalog, and serves the same function as a marketing tool, but it is tailored specifically for Federal agency customers.

An on-line electronic data base has been developed for the MAS program. The data base allows electronic (computer) access to MAS contract information, including contractor pricelists, for agency users. The new clause continues the present requirement for contractor submission and distribution of paper copies of the pricelists; it also requires submission of the authorized GSA Schedule Pricelist on an electronic media, for inclusion on the data base.

EFFECTIVE DATE: October 26, 1993.

FOR FURTHER INFORMATION CONTACT: Les Davison, Office of GSA Acquisition Policy, (202) 501–1224.

SUPPLEMENTARY INFORMATION:

A. Public Comments

A notice of proposed rulemaking was published in the **Federal Register** on November 16, 1992 (57 FR 54036). Public comments were received from the Computer and Business Equipment Manufacturers Association (CBEMA) and Information Technology Association of America (ITAA). Comments received were fully considered and where appropriate incorporated in the final rule.

B. Executive Order 12291

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this final rule.

C. Regulatory Flexibility Act

The rule is not expected to have an economic impact on a substantial number of small entities as defined under the Regulatory Flexibility Act.

An initial regulatory flexibility analysis was prepared and submitted to the Acting Chief Counsel for Advocacy of the Small Business Administration. Copies of the initial regulatory flexibility analysis were available for public comment. No comments were received on the impact of the rule on small business. The final regulatory flexibility analysis indicates that the rule will affect contractors, including small businesses, that are awarded contracts under GSA's Multiple Award Schedule program. Over the years, approximately seventy percent of MAS contractors have been small businesses. Based on the number of MAS contracts awarded in 1991, it is estimated that 2,300 small businesses will be impacted by the new rule. The final regulatory analysis has been submitted to the Chief Counsel for Advocacy of the Small Business Administration. Copies of the final regulatory analysis are available form the office identified above.

D. Paperwork Reduction Act

The "Submission and Distribution of Authorized GSA Schedule Pricelists" clause contains an information collection requirement which has been approved by OMB under section 3504(h) of the Paperwork Reduction Act and has been assigned OMB Control Number 3090–0258. The title of the information collection is, "GSAR 538, Submission and Distribution of Authorized GSA Schedule Pricelists."

The GSAR clause provides for submission and distribution of paper pricelists, as well as the submission of the same pricelist on an electronic medium to the contracting officer. Contractors also distribute pricelists to Federal agency users of schedules consistent with the standard commercial practice of sending pricelists to potential customers. The authorized GSA schedule pricelists are used by Government agencies to evaluate and consider particular items for acquisition, and to place and administer orders. The estimated annual burden for submission and distribution of paper pricelists is 40 hours per contractor (130,000 total hours). Twenty-five percent of current MAS contractors are estimated to already have their pricelists on an electronic database. For those, the additional burden of submitting an electronic pricelist is estimated at 2 hours. For other contractors, the estimated burden to submit an electronic pricelist is 20 hours. For electronic submission, then, the estimated annual burden is 48,584 hours.

In total, the estimated additional annual burden for paper submission, paper distribution, and electronic submission for 3250 MAS contractors is 178,584 hours.

Any comments concerning the accuracy of the burden may be directed to the Director, Office of GSA Acquisition Policy (VP), 18th and F Streets, NW., room 4006, Washington, DC 20405 and to the Office of Information and Regulatory Affairs of OMB, Attention Desk Officer for GSA, Washington, DC 20503.

List of Subjects in 48 CFR parts 538 and 552

Government procurement.

Accordingly, 48 CFR parts 538 and 552 are amended to read as follows:

1. The authority citation for 48 CFR parts 538 and 552 continues to read as follows:

Authority: 40 U.S.C. 486(c).

PART 538—GSA SCHEDULE CONTRACTING

2. Section 538.203–71 is amended by adding paragraph (c) to read as follows:

538.203–71 Contract clauses.

* * * * *

(c) The contracting officer shall insert the clause at 552.238–74, Submission and Distribution of Authorized GSA Schedule Pricelists, in solicitations and contracts awarded under the multiple award schedule program. When GSA is not prepared to accept electronic submissions for a particular schedule, the contracting officer is authorized to modify the clause by deleting subparagraph (c)(1)(ii) and (c)(3) and modifying subparagraph (c)(1) to eliminate "(i)" and the word "and" at the end of subparagraph (i).

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 552.238–74 is added to read as follows:

552.238–74 Submission and distribution of authorized GSA schedule pricelists.

As prescribed in 538.203–71(c), insert the following clause:

SUBMISSION AND DISTRIBUTION OF AUTHORIZED GSA SCHEDULE PRICELISTS (SEP 1993)

(a) Definition. For the purposes of this clause, the Mailing List is [Contracting officer shall insert either: "the list of Federal addressees provided to the Contractor by the Contracting Officer" or "the Contractor's listing of its Federal government customers"].

(b) The Contracting Officer will return one copy of the Authorized GSA Schedule Pricelist to the Contractor with the notification of contract award. The Contractor shall not print or distribute the pricelist without written approval from the Contracting Officer. NOTE: Approval by the Contracting Officer shall not absolve the contractor from responsibility for the accuracy of the pricelist.

(c)(1) The Contractor shall provide to the GSA Contracting Officer:

(i) Two paper copies of Authorized GSA Schedule Pricelist; and

(ii) The Authorized GSA Schedule Pricelist on a common-use electronic medium.

The Contracting Officer will provide detailed instructions for the electronic submission with the award notification. Some structured data entry in a prescribed format may be required.

(2) The Contractor shall provide to each addressee on the mailing list either:

(i) One paper copy of the Authorized GSA Schedule Price List; or

(ii) A self-addressed, postage-paid envelope or postcard to be returned by addressees that want to receive a paper copy of the pricelist. The Contractor shall distribute price lists within 20 calendar days after receipt of returned requests.

(3) The Contractor shall advise each addressee of the availability of pricelist information through the on-line Multiple Award Schedule electronic data base.

(d) The Contractor shall make all of the distributions required in paragraph (c) at least 15 calendar days before the beginning of the contract period, or within 30 calendar days after receipt of the Contracting Officer's approval for printing, whichever is later.

(e) During the period of the contract, the contractor shall provide one copy of its Authorized GSA Schedule Pricelist to any authorized schedule user, upon request. Use of the mailing list for any other purpose is not authorized.

(End of Clause)

Dated: October 5, 1993.

Richard H. Hopf, III,

Associate Administrator for Acquisition Policy.

[FR Doc. 93–25947 Filed 10–21–93; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Docket PS–123; Amdt. 192–70]

RIN 2137–AB64

Leakage Surveys on Distribution Lines Located Outside Business Districts

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This final rule requires operators of distribution lines located outside business districts to use leak detectors to carry out required leakage surveys. Instead of using leak detectors, some operators survey for leaks by looking for dead or dying vegetation, a less reliable method. The rule will provide greater assurance that operators identify all hazardous leaks during required leakage surveys.

Also, where electrical surveys for corrosion are impractical on cathodically unprotected metallic distribution lines located outside business districts, operators commonly use leakage survey data to determine whether the lines are corroding. However, under the present leakage survey standard, those data may be too old for purposes of evaluating lines for corrosion at 3-year intervals. Thus, the final rule assures that leakage survey data no more than 3 years old are used to evaluate lines for corrosion.

EFFECTIVE DATE: November 22, 1993.

FOR FURTHER INFORMATION CONTACT: L.M. Furrow, (202) 366–2392, regarding the subject matter of this final rule, or the Dockets Unit, (202) 366–5046, regarding copies of this final rule document or other material in the docket.

SUPPLEMENTARY INFORMATION:

Background

A string of accidents due to corrosion and other causes occurred on residential service lines operated by the Kansas Power and Light Company (KPL) in Kansas and Missouri during a 7-month period of 1988 and 1989. Overall, four persons were killed and 16 were injured, with property damage exceeding $740,000. The service lines were mostly steel lines installed by contractors of the operator's customers before issuance of the gas pipeline safety standards in 49 CFR part 192.

The lines had been checked for leaks through vegetation surveys carried out by KPL's meter readers, but KPL had never used gas detectors to survey the lines for leaks. Responding to the accidents, KPL conducted a comprehensive gas detector survey that revealed 2,156 leaks in 55,213 house service lines. KPL considered 303 of these leaks to need immediate repair.

After the KPL accidents, the National Transportation Safety Board (NTSB) recommended the following to RSPA:

- Amend the provisions of 49 CFR part 192 that allow alternatives to the use of electric surveys for identifying areas of active corrosion to require that any alternative must provide data equivalent, both in timeliness and quality, to that obtained using electrical surveys. (P–90–17)
- Amend 49 CFR part 192 to disallow the use of vegetation-type surveys for complying with any leakage survey requirement. (P–90–18)

In addition, the National Association of Pipeline Safety Representatives (NAPSR), an organization of State pipeline inspectors, has recommended that operators use gas detectors in leakage surveys on distribution lines. NAPSR believes that vegetation surveys are too imprecise to assure safety in residential areas.

Vegetation surveys are based on the assumption that a high proportion of natural gas in the subsurface environment displaces air in the soil. Lack of air inhibits the growth of vegetation, producing an effect visible on the ground. Hence, observation of dead or dying vegetation is used to infer the existence of an underground gas leak. While the vegetation survey is a well-established technique, it suffers from a number of weaknesses. At various times of the year, primarily because of seasonal, weather, or climatical conditions, the growth of vegetation is insufficient to support a proper vegetation survey. In addition, vegetation is noticeably affected only after gas has leaked at a significant rate

for a significant time. Thus, vegetation surveys may not discover incipient leaks; and very small, or "pinhole," leaks may not be discovered unless they increase in size.

In contrast, leakage surveys using portable gas detector equipment can be done at any time of the year. Although the sensitivity of available gas detectors varies, all equipment can detect the presence of natural gas in the atmosphere without the aid of human judgment. Consequently, the uncertainty associated with vegetation surveys is eliminated with gas detector surveys. Whenever a trained technician does a gas detector survey, the operator can assume with reasonable certainty that all hazardous leaks will be found.

Notice of Proposed Rulemaking

Because of the KPL accidents and the NTSB and NAPSR recommendations, RSPA proposed to strengthen the rule that governs leakage surveys of gas distribution lines in residential areas (§ 192.723(b)(2)). In a notice of proposed rulemaking (NPRM) published October 23, 1991 (56 FR 54816), RSPA proposed to require that operators use gas detection equipment in leakage surveys under § 192.723(b)(2). (Operators who survey their lines for leaks more often than once every 5 years, the minimum frequency under § 192.723(b)(2), could continue to use vegetation surveys for those additional leakage surveys.) At the same time, RSPA proposed to clarify § 192.723(b)(2) and make it consistent with § 192.723(b)(1) by replacing the phrase, "outside of the principal business areas," with "outside business districts."

Another proposed amendment of § 192.723(b)(2) concerned cathodically unprotected metallic distribution lines that must be evaluated for corrosion under § 192.465(e). Operators must evaluate these pipelines at least every 3 years to determine whether areas of active corrosion exist on the lines. Areas of active corrosion must be determined by electrical survey, or if an electrical survey is impractical, by the study of corrosion and leak history records, by leak detection survey, or by other means.

It is common practice for operators to rely on leakage surveys as an alternative to electrical surveys in complying with § 192.465(e). RSPA's concern is that when only 5-year-old data collected under § 192.723(b)(2) are used for this purpose, corrosion may go unchecked on distribution lines in residential areas longer than the 3 years that § 192.465(e) allows. Therefore, RSPA proposed to amend § 192.723(b)(2) to require that when electrical surveys are impractical on cathodically unprotected distribution lines that are subject to § 192.465(e), leakage surveys must be done at least every 3 years.

Disposition of Comments

The 56 organizations that filed comments on the NPRM are categorized as follows:

Federal agency—2: NTSB, U.S. Environmental Protection Agency (EPA)
State pipeline agency—6: Oregon, Kansas, Iowa, Massachusetts, Kentucky, Maryland
Trade association—3: American Gas Association (AGA), NY Gas Group, Oil Heat Task Force
Professional association—1: Gas Piping Technology Committee
Leak survey business—1: Southern Cross
Consultant—1: ConReg Associates
Distribution operator—42: Alagasco; ARKLA; Atlanta Gas Light Company; Atmos Energy Corporation; Boston Gas Company; The Brooklyn Union Gas Company; Citizens Gas and Coke Utility; Colorado Springs Utilities; The Columbia Distribution Companies; Consolidated Edison Company of N.Y., Inc.; Consumers Power Company; The East Ohio Gas Company; Entex; Equitable Resources, Inc.; Hope Gas, Inc.; Iowa-Illinois Gas and Electric Company; Laclede Gas Company; Louisiana Gas Service Company; Minnegasco; Mississippi Valley Gas Company; Montana-Dakota Utilities Co.; Mountain Fuel Supply Company; National Fuel Gas Distribution Corporation; Natural Gas Pipeline Company of America; New York State Electric and Gas Corporation; Northern Indiana Public Service Company; Northern Illinois Gas; Northern Minnesota Utilities; Northwest Natural Gas Company; Okaloosa County Gas District; Oklahoma Natural Gas Company; Pacific Gas and Electric Company; The Peoples Gas Light and Coke Company; Peoples Gas System, Inc.; The Peoples Natural Gas Company; Philadelphia Electric Company; Public Service Company of Colorado; Southern California Gas Company; Southwest Gas Corporation; Washington Gas; Willmut Gas & Oil Company; Wisconsin Natural Gas Co.

Gas Detector v. *Vegetation Survey*

Some 50 commenters addressed the issue of whether operators should be required to use gas detectors in leakage surveys of distribution systems outside business districts. Of these commenters, 16, including NTSB, Oregon, Kansas, Massachusetts, Maryland, NY Gas Group, Oil Heat Task Force, and 9 distribution operators, voiced general support for the proposal. Another 17 commenters, all distribution operators, supported the proposal because they now use gas detectors, either hydrogen flame ionization equipment or combustible gas indicators, or both, in their surveys.

Two distribution operators supported the proposal, but preferred that the final rule use the term "instrumented leak detection equipment" instead of "gas detector." They said this change would allow the use of sonics for leakage surveys, a technology that does not rely on actual detection of gas. This comment is important because RSPA does not want the final rule to deter the use of advancements in leakage survey technology. In addition, § 192.706, governing leakage surveys of transmission lines, requires the use of "leak detector equipment." To be consistent with § 192.706, final § 192.723(b)(2) uses the term "leakage survey with leak detector equipment" instead of "gas detector survey." For consistency, we also replaced "gas detector survey" in § 192.723(b)(1) with "leakage survey with leak detector equipment."

Three other distribution operators supported the proposal, but suggested we limit the final rule to buried pipe. They saw no need to include interior piping under the leakage survey requirement, stating that leaks inside buildings are readily detectable without gas detectors. However, existing § 192.723(b)(2) requires leakage surveys on interior piping that is subject to part 192. Although the NPRM did not propose to alter this requirement, RSPA does not agree that there is no need for leakage surveys on interior piping. Many people have a diminished sense of smell, and conceivably could not readily smell odorized gas escaping from a pinhole leak. Periodic interior leakage surveys protect against accidents caused by otherwise undetected leaks.

Several commenters thought the term "business district" should be defined in the final rule. Two of these commenters referred to the definition in the *Guide for Gas Transmission and Distribution Piping Systems*. One asked that we define the term to distinguish older innercity business areas from newer commercial developments. RSPA did not adopt these comments because the term "business district" has been used in § 192.723(b)(1) since the rule's inception without significant compliance difficulties.

Two commenters thought we should define "gas detector survey." As discussed above, the final rule uses "leakage survey with leak detector equipment" instead of "gas detector survey." RSPA believes this alternative term is clear and needs no definition.

Another commenter disliked the term "gas detector survey" because it would allow use of combustible gas indicators, a method the commenter said is not as effective as hydrogen flame ionization equipment. The NPRM did not propose to standardize the equipment operators

may use in conducting leakage surveys. Rather, the purpose of the proposal was to disallow the use of vegetation surveys to meet leakage survey requirements. So any kind of equipment capable of detecting leaks in gas distribution systems may be used under the final rule.

Several commenters opposed the gas detector proposal because they favored the continued use of vegetation surveys to meet leakage survey requirements. One said that vegetation surveys are 35% effective on a single pass (compared to 85 percent for hydrogen flame ionization equipment), 5 times faster than hydrogen flame ionization equipment, and 20 percent as expensive. This commenter said vegetation surveys are reliable if run by trained personnel at frequent intervals (2 or 3 times as often as hydrogen flame ionization). Two other commenters argued that an abundance of vegetation is available for efficient scheduling and running of effective vegetation surveys. One of these commenters also said a recent trial survey with gas detectors produced only 5% more leaks than a vegetation survey, and they were of low priority.

RSPA does not find these arguments persuasive. The above statistics themselves show that vegetation surveys are less effective than leak detector equipment on a single pass over distribution lines, even when using trained personnel. Also, the savings in time and money seem to be offset by the need to run vegetation surveys more often for results as reliable as with gas detectors. This need for more frequent surveys is not compatible with the 5-year minimum frequency specified by § 192.723(b)(2). Further, while vegetation is essential for vegetation surveys, abundant vegetation does not overcome these drawbacks: leaks must be inferred rather than detected, and incipient leaks need time before they visually affect vegetation. The fact that a commenter found only minor additional leaks with leak detector equipment is fortunate but not necessarily typical, as the KPL experience shows. Moreover, undetected minor leaks can grow to become hazardous.

One commenter argued against the mandatory use of gas detectors by asserting that most leaks are reported through odorization of gas. Only 10 percent or less are found by leakage surveys the commenter said. Even so, public safety demands that operators use reliable means to discover leaks not reported through odorization. Gas detectors, unquestionably, are more reliable than vegetation surveys. And our analysis shows that gas detectors can be used to meet the present leakage survey rule at minimal additional cost. Thus, RSPA believes that disallowing the use of vegetation surveys to meet that rule is reasonable.

AGA opposed the proposal on the ground that one company's results are inadequate justification to change § 192.723(b)(2). AGA also saw only minimal potential benefits from mandatory gas detector surveys, because since 1984 there have been only 57 distribution incidents caused by corrosion, with 6 deaths, 39 injuries, and $2.35 million of property damage. However, RSPA notes that the KPL accidents were not the sole justification for proposing to change § 192.723(b)(2). The NPRM was also based on an analysis of the effectiveness of vegetation surveys, on recommendations by NTSB and NAPSR, and the fact that Kansas, Missouri, and other states have required operators to use gas detectors in residential leakage surveys. Moreover, corrosion is not the only cause of leaks on distribution lines located outside business districts. Outside force damage to pipe is a major cause of leaks, as are pipeline construction and material defects. These other causes of leaks add to the corrosion-related benefits of leakage surveys. As with corrosion, leaks from these other causes can result long after the damage or defect occurs, creating an opportunity for the operator to discover the leak during a leakage survey.

One commenter asked that RSPA exempt lines in unoccupied rural areas where steep terrain and high vegetation growth limit the effectiveness of gas detector surveys. Although leakage surveys with gas detectors may take longer in areas of steep terrain and high vegetation, RSPA does not have evidence that such surveys are less effective in those areas. Considering the allowable interval between required surveys (5 years), RSPA feels operators have ample time to survey lines in those areas with leak detection equipment. The final rule does not have the suggested exemption.

Corrosion Evaluation by Leakage Survey

Forty-two commenters addressed the issue of whether cathodically unprotected pipe subject to the 3-year electrical survey requirement of § 192.465(e) should be surveyed for leaks at least every 3 years if electrical surveys are impractical. Of these commenters, 16, including NTSB, Southern Cross, Kansas, Iowa, Massachusetts, Oil Heat Task Force, and 10 distribution operators, expressed general support for the proposal. Another 7 of the 42, all distribution operators, said they supported the proposal because they now survey their unprotected lines for leaks at 3-year intervals.

Four distribution operators supported the proposal, but suggested that the proposed frequency (intervals not exceeding 3 years) be changed to read "at intervals within 3 calendar years, but not exceeding 39 months." They said this change would be consistent with other part 192 requirements for periodic inspections by allowing time to cope with extreme weather conditions. RSPA agrees that in scheduling leakage surveys to comply with the rule, operators will have to consider the weather. However, 3 years should be ample time within which to schedule and conduct a survey in good weather. None of the present part 192 standards that prescribe inspections every 3 years allow more than 36 months between inspections (e.g., § 192.465(e)).

Three commenters, including AGA, opposed the proposal on the ground that every 3 years is too frequent to check for leaks, given the low corrosion accident rate. They suggested we extend the 3-year electrical survey minimum frequency to 5 years to match the minimum leak survey frequency. This change, they said, would reduce compliance cost with no adverse safety impact. RSPA did not adopt this approach, because it would weaken the existing rule on monitoring unprotected metallic pipelines for corrosion (§ 192.465(e)). This rule was established to hold down the corrosion accident rate on distribution lines. The low corrosion accident rate that has been attained with this rule is not a sufficient reason to slacken the minimum frequency of corrosion monitoring.

Four distribution operators opposed the proposal because they felt the use of 5-year old leak survey data has not caused a safety problem. One of these commenters pointed out that under § 192.465(e), the use of leak history data as an alternative to electrical surveys includes data from sources besides leak surveys, such as reports from the public. Another of these commenters thought the existing § 192.723(b)(2) is satisfactory because it requires surveys "as frequently as necessary." Similarly, another of the four said the use of improved leak survey techniques and reliance on corrosion and leak history are sufficient measures under § 192.465(e) to insure pipeline integrity, without more frequent surveys.

RSPA did not change the final rule as a result of these comments. The available safety data are insufficient to substantiate the commenters' assertion

that using 5-year old data to meet a 3-year monitoring rule has not caused a safety problem. In the absence of such information, since pipeline corrosion continues to pose a serious threat to public safety, it is reasonable to require that unprotected pipelines be evaluated for corrosion on the basis of current data. Admittedly, the other considerations the commenters mentioned compensate to some degree for the use of out-of-date leak survey data. However, in our opinion, they do not overcome the need for leak survey data that reflect the state of corrosion activity within the prescribed period of evaluation.

Five operators opposed the proposal because of the scattered nature of unprotected parts of their distribution systems. For cost effective leakage surveys, these commenters said they would have to survey areas of their systems at 3-year intervals regardless of whether the areas contain protected or unprotected lines. It would be too impractical, they said, to survey unprotected lines selectively at 3-year intervals and the remainder at 5-year intervals. One operator suggested that changing the 5-year survey requirement to 6 years would alleviate this problem.

In response to these operators, RSPA notes that under § 192.465(a), protected lines must be monitored at least annually, while under § 192.465(e), operators have as long as 3 years to monitor unprotected lines. Thus, distribution systems with both protected and unprotected pipelines are already subject to different intervals for corrosion monitoring. In RSPA's experience, operators have not had significant trouble in applying these different monitoring intervals to separate parts of their systems. Since the proposed 3-year leakage survey is merely a means of carrying out the 3-year corrosion monitoring requirement on unprotected pipelines, RSPA does not believe it would add to the operators' present burden of compliance with § 192.465(e). Therefore, RSPA was not persuaded to alter the final rule because of the alleged impracticality of surveying different parts of a system at different rates. Moreover, the prescribed intervals under final § 192.723(b)(2) are maximum times between surveys. Operators who find it more convenient to survey separate parts of their systems at compatible frequencies, such as 2 and 4 years, or at the same frequency, such as every 3 years, may do so, provided the prescribed intervals are not exceeded.

Specific Comments Requested

In the NPRM, RSPA announced that it was reconsidering the need for more frequent leakage surveys on all distribution lines outside business districts. In that regard, we requested comments on the following topics to help us decide whether to propose a 1-year minimum frequency for leakage surveys on unprotected lines and a 3-year minimum frequency on all other lines.

(1) The need to increase from every 5 years to every 3 years the minimum frequency of leakage surveys on distribution lines of any material located outside business districts.

Only four commenters supported the notion of increasing from every 5 years to every 3 years the minimum frequency required for leak surveys on portions of distribution systems outside business districts. The Oil Heat Task Force favored more frequent surveys on the ground that total reported leaks are high, and more frequent surveys would positively affect the environment by reducing methane emissions. However, EPA advised that preliminary results of a Gas Research Institute study commissioned under the Clean Air Act show that system-wide leak rates are low. AGA argued that the Oil Heat Task Force merely wants to increase the cost of gas to enlarge the market for oil.

NTSB asserted that 5 years is too long between checks for leaks on flammable gas systems in view of aging systems. The agency suggested RSPA study incident data to learn the correlation between leak rate and age, type of pipe, and other characteristics. NTSB then said leak survey frequency should be set according to these correlations. One other commenter also said leak survey frequency should be based on age, material, leak history, and soil characteristics.

AGA opposed the idea of an increased frequency, saying an increase is not likely to have a beneficial effect given the low leak rate from corrosion since 1984. AGA foresaw minimal benefits but a significant increase in costs.

The large majority of commenters on this issue opposed the increase, saying it is not justified and would not be cost beneficial. Numerous commenters said a minimum 5-year frequency is sufficient for cathodically protected steel pipe and plastic pipe, because these pipes experience relatively few leaks. Another commenter who opposed an increase argued that gas detectors eliminate the need for more surveys. Still another commenter noted that effective cathodic protection and odorization programs make more frequent surveys unnecessary. One commenter who expressed opposition said its existing leak survey and replacement program was satisfactory, while another commenter stated its opposition succinctly: expensive, impractical, and unnecessary.

One commenter who argued a minimum 3-year rate was unjustified noted that the KPL incidents involved old, customer-owned, unprotected lines that had been vegetation surveyed by meter readers. This commenter said the KPL evidence showed a need for gas detector surveys, but not more frequent surveys. More frequent surveys, this commenter said, should be tied to high leak rates, as from corrosion, deteriorating couplings, or construction defects. Another commenter similarly said that a frequency of more than 5 years should be based on need.

(2) The need to conduct leakage surveys at least annually on cathodically unprotected metallic distribution lines that lie outside business districts and on which electrical surveys are impractical.

The Oil Heat Task Force supported the notion of annual surveys on unprotected steel lines because of what the commenter considered a large number of leaks annually across the nation.

Three other commenters supported annual surveys to help combat the effects of corrosion on old unprotected lines and prevent multiple leaks from existing for up to 5 years between surveys. An additional commenter supported the increase because it surveys annually now.

One commenter supported annual surveys, but only in areas of high leakage.

Most who commented on the issue were opposed to the suggested increase in leak survey frequency, saying it lacked corresponding safety benefits. Many said it's too impractical to schedule more frequent surveys on unprotected parts of a system, since cathodic protection can vary by area or street. In some cases, these commenters said, unprotected services are randomly scattered over a city. The suggested increase would cause whole areas or systems to be surveyed annually without sufficient cause.

One commenter who saw no benefit said older systems are the source of corrosion leaks. These systems, the commenter said, have already been surveyed many times and possible areas of corrosion are protected or replaced.

Two other commenters who opposed the increase said there would be no corresponding benefits because

corrosion incidents can occur shortly after a survey.

(3) How would such an increase (in survey frequency) affect the present costs of conducting leakage surveys on distribution lines in small and large systems?

About 15 commenters gave estimates ranging from $140,000 to $4 million a year per operator if the 5 year frequency were increased to 3 years. The range of estimated cost increases for surveying unprotected lines annually was from $66,000 to $19 million a year per operator. These estimates covered the costs of equipment, personnel, and training.

(4) [What] benefits would result from such rules. Information concerning accidents that operators might have avoided had they surveyed pipelines for leaks more frequently would be helpful.

Only a few commenters responded to this inquiry. None saw any benefit to increasing the survey frequencies. Some of the reasons were: Low corrosion accident rate; lack of corrosion accidents and system difference from KPL situation; know of no accidents that would have been avoided had survey been every 3 instead of every 5 years; most lines plastic, little likelihood of accident avoidance through increased leak survey frequency.

Conclusion

Based on our review of the information submitted, we have concluded that the number of accidents that might be prevented by surveying at the proposed increased frequencies is uncertain. In addition, the current safety data for the nation's population of gas distribution lines are not sufficient to determine if a correlation exists between leak rates and pipe age, material, or other characteristics. Also, state pipeline safety agencies commonly impose more frequent survey requirements on individual distribution lines that are found to pose an unusual risk. Under these circumstances and given the need to learn the effect of the final rule on leak rates, we are not at present considering any further amendment of the leak survey frequency rule.

Advisory Committee

As part of this rulemaking proceeding, RSPA obtained advice from the Technical Pipeline Safety Standards Committee (TPSSC) on the technical feasibility, reasonableness, and practicability of the proposed rule. The TPSSC is a statutory advisory committee comprised of 15 members, representing the natural gas industry, government, and the general public.

The TPSSC met in Washington, DC on March 11, 1992, and discussed the NPRM. The TPSSC voted for the proposed rule 10 to 1, with 1 member abstaining. A suggested revision concerning a typographical error in the text of the proposed rule has been corrected. The transcript and report of the meeting are available in the docket.

Rulemaking Analyses

E.O. 12866 and DOT Regulatory Policies and Procedures

RSPA has concluded that the amendment to § 192.723(b)(2) is not a significant rule under Executive Order 12866. Also, it is not a significant regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

RSPA believes that the final rule will add minimally to the average compliance expense of the present rule. With respect to requiring the use of leak detectors, first, operators of gas distribution systems already have the equipment. They use portable gas detectors in business districts and to check enclosed spaces for gas leaks. Second, in leakage surveys outside business districts, most operators already use gas detectors for mains, because they generally lie beneath paved areas where vegetation surveys are inappropriate. Also, for service lines in these areas, many operators are voluntarily using gas detectors instead of vegetation surveys, and some State laws require operators subject to State jurisdiction to do so. Third, gas detector equipment is easy to use. Personnel that operators have trained to do vegetation surveys will need only slight, if any, additional training to use the equipment. Finally, although the survey process will take longer with leak detectors, any resulting additional costs will be mitigated by the period between surveys (maximum interval is 5 years) and the ability to conduct surveys with leak detectors any time of the year.

The benefits of requiring the use of leak detectors in leakage surveys are prevention of deaths, injuries, and property damage that might otherwise occur when hazardous gas leaks go undetected in residential neighborhoods. As an example of these potential benefits, the NPRM discussed the results of leak detector surveys in Kansas City, Missouri. Following a string of residential accidents in which four persons were killed and 16 were injured, with property damage exceeding $740,000, the local gas company conducted leakage surveys with leak detector equipment. Until then the company had relied on vegetation surveys by meter readers to discover previously undetected gas leaks. The leak detector surveys revealed a large number of previously undetected hazardous leaks. For instance, during one period, leak detector surveys revealed 2,156 leaks in 55,213 house service lines, of which the gas company considered 303 leaks to need immediate repair. Had these leak detector surveys been conducted earlier, many of the Kansas City accidents might have been prevented by timely repair of the leaking lines. The final rule should achieve similar benefits nationwide where operators are not using leak detector equipment to conduct leakage surveys.

With respect to surveys of certain unprotected metallic lines at 3-year intervals, the final rule will merely assure that when operators use leakage data to evaluate these lines for corrosion the data are not less timely than what § 192.465(e) intends for that purpose. RSPA did not attribute any additional compliance costs to this aspect of the final rule because the use of timely data is an inherent requirement of the existing § 192.465(e).

RSPA believes the final rule does not warrant a more detailed evaluation of its impact. The comments on the NPRM and the advice of the TPSSC are consistent with this view.

Regulatory Flexibility Act

Based on the facts available concerning the impact of this final rule, I certify under Section 605 of the Regulatory Flexibility Act that it will not have a significant economic impact on a substantial number of small entities.

E.O. 12612

RSPA has analyzed this final rule under the criteria of Executive Order 12612 (52 FR 41685; October 30, 1987). We find it does not warrant preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 192

Natural gas, Pipeline safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, RSPA amends 49 CFR part 192 as follows:

PART 192—[AMENDED]

1. The authority citation for part 192 continues to read as follows:

Authority: 49 App. U.S.C. 1672 and 1804; 49 CFR 1.53.

2. In § 192.723(b)(1), the words "A gas detector survey" are removed and the words "A leakage survey with leak

detector equipment" are added in their place.

3. Section 192.723(b)(2) is revised to read as follows:

§ 192.723 Distribution systems: Leakage surveys and procedures.

* * * * *

(b) * * *

(2) A leakage survey with leak detector equipment must be conducted outside business districts as frequently as necessary, but at intervals not exceeding 5 years. However, for cathodically unprotected distribution lines subject to § 192.465(e) on which electrical surveys for corrosion are impractical, survey intervals may not exceed 3 years.

Issued in Washington, DC, on October 14, 1993.

Rose A. McMurray,

Acting Administrator for Research and Special Programs Administration.

[FR Doc. 93-25980 Filed 10-21-93; 8:45 am]

BILLING CODE 4910-60-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 921185-3021; ID 101893A]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Modification of a closure.

SUMMARY: NMFS is rescinding the closure to directed fishing for Pacific ocean perch in the Aleutian Islands subarea (AI) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to fully utilize the total allowable catch (TAC) of Pacific ocean perch in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), October 22, 1993, until 12 midnight, A.l.t., December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, NMFS, 907-586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

In accordance with § 675.20(a)(7)(ii), the Pacific ocean perch TAC for the AI was established by the final 1993 initial specifications of groundfish (58 FR 8703, February 17, 1993) and later augmented from the reserve (58 FR 44136, August 19, 1993) to a total of 13,900 metric tons (mt). The directed fishery for Pacific ocean perch was closed on April 22, 1993 (58 FR 21951, April 26, 1993); the closure was rescinded on August 9, 1993 (58 FR 42031, August 6, 1993); and the fishery was again closed on August 19 (58 FR 44465, August 23, 1993). NMFS has determined that as of October 9, 1,575 mt remain unharvested.

The Regional Director, Alaska Region, NMFS, has determined that the 1993 TAC for Pacific ocean perch in the AI has not been reached. Therefore, NMFS is rescinding the August 19, 1993, closure and is re-opening directed fishing for Pacific ocean perch in the AI, effective at 12 noon, A.l.t., October 22, 1993, until 12 midnight, A.l.t., December 31, 1993.

Classification

This action is taken under § 675.20.

List of Subjects in 50 CFR Part 675

Fisheries, Recordkeeping and reporting requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 19, 1993.

Richard H. Schaefer,

Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93-26077 Filed 10-21-93; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 58, No. 203
Friday, October 22, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1096

[DA–93–31]

Milk in the Greater Louisiana Marketing Area; Notice of Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This action invites written comments on a proposal to suspend certain portions of a provision of the Greater Louisiana Federal milk marketing order (Order 96), beginning November 1993 and continuing through May 1995. The proposed action would allow a plant that qualified as a pool plant under Order 96 to retain its pool status regardless of whether a greater proportion of its route disposition is made in another order marketing area in succeeding months. The suspension was requested by Mid-America Dairymen, Inc. (Mid-America), on behalf of Southern Milk Sales (SMS). The proponent contends the proposed action is necessary to assure that producer milk which historically has been associated with the market will continue to be pooled under the order.

DATES: Comments are due no later than November 8, 1993.

ADDRESSES: Comments (two copies) should be sent to USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 690–1932.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This rule is being issued in conformance with Executive Order 12866, and it has been determined that it is not a "significant regulatory action."

This proposed action has been reviewed under Executive Order 12778, Civil Justice Reform. This action in not intended to have a retroactive effect. If adopted, this proposed action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 601–674) (the Act) provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Notice is hereby given that, pursuant to the provisions of the Act, suspension of the following provisions of the order regulating the handling of milk in the Greater Louisiana marketing area is being considered for the months of November 1993 through May 1995:

In § 1096.7(d)(3), the words "until the third consecutive month in which a greater proportion of such route disposition is made in such other marketing area".

All persons who want to submit written data, views or arguments about the proposed suspension should send two copies of their views to USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456 by the 15th day after publication of this notice in the **Federal Register**. The filing period is limited to fifteen days because a longer period would not provide the time needed to complete the required procedures before the requested suspension is to be effective.

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Division during regular business hours (7 CFR 1.27 (b)).

Statement of Consideration

The proposed action would suspend for the months of November 1993 through May 1995 certain portions of the pool plant definition which require that plants having greater route disposition in another marketing area for three consecutive months be considered as pool plants under the other order.

According to Mid-America, SMS historically has pooled milk on the Greater Louisiana marketing order through sales to Guth Dairy, a pool distributing plant located in Lake Charles, Louisiana. Mid-America stated that Guth Dairy recently was awarded school milk contracts in Houston, Texas. As a result, Mid-America claimed that a greater portion of the plant's packaged milk sales could be distributed in the Texas marketing order, causing the plant to switch regulation from Order 96 to the Texas marketing order.

Mid-America pointed out that for the twelve-month period ending August 1993 the Texas order blend price at Lake Charles averaged 63 cents per hundredweight less than the Greater Louisiana Federal order blend price at Lake Charles. The proponent stressed that producers supplying milk to Guth Dairy and pooled on the Greater Louisiana order could not continue to afford to supply milk to Guth Dairy if Guth Dairy became regulated under the Texas order. Likewise, Guth Dairy could not afford to pay 63 cents more to producers to compete with other

handlers in the Greater Louisiana marketing area for a supply of milk.

List of Subjects in 7 CFR Part 1096

Milk marketing orders.

The authority citation for 7 CFR Part 1096 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Dated: October 15, 1993.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 93–25981 Filed 10–21–93; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 20, 21, 30, 31, 32, 35, 40 and 61

Meeting to Discuss Upcoming Regulations and Revisions

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The Nuclear Regulatory Commission (NRC) staff plans to convene a public meeting with representatives of Agreement States to discuss the provisions of proposed revisions of its regulations in several different areas. The revisions are needed to clarify and enhance certain requirements designed to protect the safety of the public and radiation workers. The revisions are also needed to clarify some existing definitions and to incorporate additional definitions in order to bring NRC regulations more in line with regulations used by other organizations that regulate similar byproduct and source material.

DATES: The public meeting will be held on Monday, October 25, 1993 from 8 a.m. to 12 noon.

ADDRESSES: The meeting is to be held at the Fiesta Inn, 2100 South Priest Drive, Tempe, Arizona, Telephone (1–800–528–6481).

FOR FURTHER INFORMATION CONTACT: Lloyd A. Bolling, Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 504–2327).

SUPPLEMENTARY INFORMATION: the regulations in 10 CFR part 21 address the reporting of Defects and Non-Compliance. The recent comprehensive revision of 10 CFR part 21 incorporates requirements for materials licensees of the NRC and the Agreement States. The regulations in 10 CFR part 20 regarding the Clean Air Act will be discussed. A proposed rulemaking regarding 10 CFR parts 20 and 35 will clarify the requirements for Unintended Radiation Exposures to an Embryo, Fetus or Breast Fed Child. Revisions 10 CFR parts 30, 40, and 70, Decommissioning Funding will require facilities to be decontaminated and decommissioned with licensee controlled funds. Revisions to 10 CFR part 40 will clarify numerous definitions, exemptions and general licenses for many source material facilities. Revisions to 10 CFR parts 30, 40, and 70 will establish a low-level waste shipment manifest information and reporting system. Further revisions to 10 CFR parts 30, 40, and 70 will address Financial Assurance for Institutional Control at Low-Level Waste Sites. The addition of land ownership requirements for low-level waste sites in 10 CFR part 61 will be discussed.

The workshop will be chaired by Mr. Richard L. Bangart, Director, Office of State Programs, U.S. Nuclear Regulatory Commission. The public meeting will be conducted in a manner that will expedite the orderly conduct of business. A transcript of the public meeting will be available for inspection and copying for a fee, at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555 on or about November 15, 1993.

The following procedures apply to public attendance at the workshop:

1. Questions or statements from attendees other than participants, i.e., participating representatives of each Agreement State and participating NRC staff will be entertained as time permits; and

2. Seating for the public will be on a first-come, first-served basis.

Dated at Rockville, Maryland this 18th day of October, 1993.

For the Nuclear Regulatory Commission.

Richard L. Bangart,

Director, Office of State Programs.

[FR Doc. 93–26031 Filed 10–21–93; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Airspace Docket No. 93–ASW–6]

Proposed Change of Time of Designation to Restricted Areas R–6302C and D, Fort Hood; TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend the time of designation for Restricted Areas R–6302C and R–6302D, Fort Hood, TX, to more accurately reflect current user requirements for the airspace. This action is proposed as a result of a Special Use Airspace Review conducted by the FAA at Fort Hood, TX, in May 1993.

DATES: Comments must be received on or before December 8, 1993.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ASW–500, Docket No. 93–ASW–6, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX 76193–0500.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Steve Riley, Military Operations Program Office (ATM–420), Office of Air Traffic System Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–7130.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93–ASW–6." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light

of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 73 of the Federal Aviation Regulations (14 CFR part 73) to amend the time of designation of Restricted Area R–6302C and R–6302D at Fort Hood, TX. In May 1993, the FAA conducted an on-site evaluation of the special use airspace at Fort Hood, TX. The review team concluded that the published time of designation for R–6302C and R–6302D should be amended to more accurately reflect current user requirements. As proposed, the time of designation for R–6302C would be changed from the current "By NOTAM 2 hours in advance" to more specific times "0700–1900 local time, Monday–Friday; other times by NOTAM." This change would more clearly indicate the primary hours of use for the restricted area, while retaining the provision to activate the restricted area on a "By NOTAM" basis when required. In addition, the time of designation for R–6302D would be changed from "0600–2100 local time, daily; other times by NOTAM" to "0700–1900 local time, Monday–Friday; other times by NOTAM." This would result in a reduction by 21 hours per week from the currently published basic time of designation for R–6302D, while retaining the provision to activate R–6302D "By NOTAM" when necessary. These changes would enhance airspace management, and more clearly indicate to the public the times when the restricted areas may be expected to be in use for military purposes. This proposal would not alter the dimensions of, or activities conducted within, R–6302C and R–6302D. Section 73.63 or part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8A dated March 3, 1993.

Environmental Review

This proposed action will be reviewed for environmental impact prior to an FAA decision on the matter.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 73 as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510, 1522; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 73.63 [Amended]

R–6302C Fort Hood, TX [Amended]

By removing the words "By NOTAM 2 hours in advance" and substituting the words "0700–1900 local time, Monday-Friday; other times by NOTAM."

R–6302D Fort Hood, TX [Amended]

By removing the words "0600–2100 local time, daily; other times by NOTAM" and substituting the words "0700–1900 local time, Monday-Friday; other times by NOTAM."

Issued in Washington, DC, on October 13, 1993.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 93–26063 Filed 10–21–93; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 416

[Regulations Nos. 4 and 16]

RIN 0960–AD63

Testing Modifications to the Disability Determination Procedures

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rules.

SUMMARY: We propose to add new rules which would establish authority to test models that modify the disability determination procedures we follow under titles II and XVI of the Social Security Act (the Act). These models will provide us with information so we can determine their effectiveness in improving the disability process. The intended result is to enable us to make recommendations for national implementation of improvements identified by the tests. These proposed regulations only refer to the changes to the disability procedures we may test. Unless specified, all other regulations related to the disability determination procedures remain unchanged.

DATES: To be sure that your comments are considered, we must receive them no later than November 22, 1993.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, MD 21235, or delivered to 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8 a.m. and 4:30 p.m. on regular business days. Alternatively, you may submit comments by telefax to (410) 966–0869. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Henry D. Lerner, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Blvd., Baltimore, MD 21235, (410) 965–1762.

SUPPLEMENTARY INFORMATION:

Background

We are proposing to establish the authority to test model projects designed to improve the initial disability determination process. These models will test, on a limited basis, the effect of: having disability specialists in field offices of the Social Security Administration (SSA) request and

evaluate medical evidence before sending the claim to the State agency; expanding the authority of the disability specialist in SSA field offices to make presumptive disability findings in claims for supplemental security income (SSI) benefits based on disability under title XVI; providing a claimant with an opportunity for a face-to-face interview with a decisionmaker earlier in the disability adjudication process; giving the decisionmaker authority to make initial or reconsideration determinations without requiring the medical consultant to sign the disability determination; having the reconsideration determination made by a Federal disability reconsideration officer who will schedule a face-to-face interview with the claimant when a reconsideration determination is requested; and eliminating the reconsideration step from the administrative review process in claims for Social Security or SSI based on disability.

In recent years, various studies have been conducted on how to improve the disability determination process. One such project was the personal appearance demonstration (PAD) project, which we conducted pursuant to section 6 of Public Law (Pub. L.) 98–460, the Social Security Disability Benefits Reform Act of 1984. Although we were not able to gain statistically valid results from that project, we did gain valuable operating knowledge and experience. Specifically, we learned from the PAD that we need to monitor more closely and follow up more closely on the operations in the field offices and State agencies so that the study or test outcomes and results will be valid and reliable. By doing this in connection with the proposed models, we will be able to choose the best processes for making disability determinations and recommend specific changes on a national basis.

The models described below are designed to test enhancement of our current goals which are to:

- Provide assistance to the disability applicant by making the filing of a disability claim simpler, more responsive and more compassionate;
- Promote fairness in each disability determination by ensuring that each disability applicant is given an opportunity to provide all the necessary information to complete the claim and is aware of his/her rights under the program; and
- Ensure that the Agency's determination is both inclusive and equitable.

We expect the number of disability claims will increase in the next few years independent of the models discussed below. We do not know whether this increase will be permanent or temporary. We will continue to closely monitor the workload situation and take appropriate management action as necessary.

For the long term, we want to obtain information about alternatives to our current procedures to see if they enable us to have better decisionmaking earlier in the process.

The five models described in the proposed rules are designed to test modifications to certain aspects of the disability determination process both before and after the initial determination. We are affording the public an opportunity to comment on them, and before issuing final rules on the testing of any of the proposed models, we will give full consideration to all of the significant comments we receive.

Provisions of the Regulations

In the proposed regulations, we describe five models which would modify the disability determination procedures we follow under titles II and XVI of the Act. The disability process models that we test may be conducted in as many as five States. The individuals who participate in the tests will be randomly assigned to a test group or control group in each site where the test are conducted.

The first model, the disability specialist model, would measure the effects of having disability specialists in SSA field offices request and evaluate existing medical evidence. Disability specialists are claims representatives in our field offices who would be given special disability program training similar to the training that State agency disability examiners receive. They would review the claim before it is sent to the State agency, request and evaluate existing medical evidence and, if appropriate, arrange for a consultative examination. With respect to applications for SSI benefits based on disability, they would, where appropriate, make presumptive disability findings based on the authority existing in §§ 416.933 and 416.934, without the limitations imposed by Social Security Ruling (SSR) 80–36.

The second model, the claims intake and determination model, would measure the effects of having the applicant interviewed by a decisionmaker when a claim for disability benefits is filed. The decisionmaker would have the authority to make the initial disability determination. Medical consultants would assist the decisionmaker and would be available for consultation throughout this process. The applicant would be offered the opportunity to have the interview conducted face-to-face. The decisionmaker may either be a State agency disability examiner or a Federal employee. Videoconferencing may be used in some instances, in one or more sites, to conduct face-to-face interviews in this model.

The third model, the face-to-face predenial interview model, would measure the effects of having a State agency provide an applicant with the opportunity for a face-to-face interview before an initial determination denying the claim is made. If the applicant requests the interview, it would be conducted by a State agency disability examiner who would make the initial disability determination. Medical consultants would assist the disability examiner and would be available for consultation throughout this process. In addition, videoconferencing may be used in some instances in one or more sites to conduct the face-to-face interview.

The fourth model, the face-to-face reconsideration model, would measure the effects of having a face-to-face interview conducted by a Federal disability reconsideration officer who would make the reconsideration determination.

The fifth model, the reconsideration elimination model, would measure the effects of eliminating the reconsideration step of the administrative review process. The outcomes of the tests we conduct would be measured from intake through the administrative law judge (ALJ) hearing in the current administrative review process. The proposed regulations describe the models and explain the procedures and a claimant's rights in connection with the face-to-face interview conducted under the third and fourth models.

Existing Procedures

Under our existing procedures, the claimant often talks in person to an SSA field office employee when the claim for benefits is filed. The field office employee prepares the necessary claims intake forms and records observations about the claimant. Currently, field office employees are not trained to read and evaluate medical reports. Although field office employees review applications for SSI benefits based on disability and make presumptive disability and presumptive blindness findings, they make such findings only in the situations set out in § 416.934 of our regulations, SSR 80–36 and

§ 416.933 of our regulations insofar as it involves SSI claims based on an infection with the human immunodeficiency virus (See 58 FR 36059 (July 2, 1993)). The field office employee also sends the claims information and evidence provided by the claimant to the State agency.

Under existing procedures, an initial determination as to whether a claimant is disabled is made by a State agency on the basis of the evidence in the claimant's case file. This evidence may include, but is not limited to, written medical reports and observations of the claimant prepared by an SSA employee at the field office when the claim is filed. The claimant can give us, or we can obtain, information such as reports from doctors, hospitals, employers or others that would be pertinent to the disability determination.

The initial determination of whether a person is disabled under title II or title XVI is made by a State agency under sections 221 and 1633 of the Act and the regulations at 20 CFR part 404, subpart Q, and part 416, subpart J. The State agency decisionmaking team consists of a disability examiner who is not a physician, and a medical consultant who is a physician or psychologist. The disability examiner is qualified to interpret and evaluate medical reports and other evidence relating to a person's physical and mental impairments, and, as necessary, to determine the claimant's capacity for performing substantial gainful activity, as defined in §§ 404.1572 and 416.972. The State agency has the authority to make a presumptive disability or presumptive blindness finding in any SSI case in which the evidence, though not sufficient to make a formal determination of disability or blindness, is sufficient to find there is a high degree of probability that the claimant is disabled or blind.

The State agency disability examiner evaluates the available evidence in the claimant's case file and obtains any additional evidence necessary, including medical evidence from the claimant's own sources, reports from the physicians who examined the claimant at the State agency's request and non-medical evidence. The State agency decisionmaking team then makes the initial determination with the disability examiner and medical consultant being co-decisionmakers. When the State agency makes the initial determination about the claimant's entitlement to or eligibility for benefits, a notice is sent to the claimant to inform him or her of the determination. The notice includes information about the claimant's appeal rights. The claimant may appeal by requesting a reconsideration determination.

Reconsideration is the first step in the administrative review process. It consists of a review by a disability examiner and medical consultant who were not the decisionmakers who made the initial determination. The reconsideration determination is based on all the evidence in the case file and any new evidence submitted. When the reconsideration determination is made, the claimant is notified of the determination. The notice advises the claimant that if he or she is dissatisfied with the determination, he or she may request a hearing before an ALJ. At the hearing, the claimant is given the opportunity to testify about his or her medical condition, submit additional evidence, and introduce witnesses, if any, on his or her own behalf. Following the decision, the claimant may request Appeals Council review, if he or she disagrees with the hearing decision.

Tests of Modifications to the Disability Determination Procedures

The first model, the disability specialist model, is designed to test whether the claims intake process would be improved by giving selected SSA field office personnel more authority to obtain and evaluate more medical evidence and, in SSI cases, to make presumptive disability findings. This model is intended to allow us to see if giving the State agency this additional information would improve our overall processing times.

The field office personnel who would participate in a test of this model would be specially trained as disability specialists. The training would enable them to request and evaluate the claimant's medical records, and, if appropriate, arrange for a consultative examination. Another result of this training would be to give the disability specialists the ability to make a presumptive disability or presumptive blindness finding in a greater number of SSI cases.

The second model, the claims intake and determination model, would measure the effects of having the applicant interviewed by a decisionmaker when a claim for disability benefits is filed. Physicians and psychologists (medical consultants) would be available for consultation with the decisionmaker, but the decisionmaker would have authority to request, review, and evaluate evidence and make the disability determination without having the medical consultant sign the disability determination forms. The applicant would be offered the opportunity to have the interview conducted face-to-face. The decisionmaker may either be a State agency disability examiner or a Federal employee. Videoconferencing may be used in some instances, in one or more sites, to conduct face-to-face interviews in this model.

The third model, the face-to-face predenial interview model, is designed to test the effect of face-to-face predenial interviews conducted by State agency disability examiners. In this model, prior to releasing the initial determination denying the claim, the State agency would notify the claimant that he or she has the opportunity for a face-to-face interview with the State agency disability examiner. A notice would be mailed to the claimant at least 20 days before the date of the interview unless the claimant waives (in writing) his/her right to the 20-day advance notice. In this model, the claimant should not waive his/her right to the 20-day advance notice if the claimant needs time to get ready for the interview. If the claimant does waive his/her right to the 20-day advance notice, an interview would be scheduled for the claimant as soon as possible and a notice of the time and place of the interview would be mailed to the claimant. In this instance, the notice would be mailed at least 10 days before the date of the interview. In this model, claimants who waive the right to appear at the face-to-face interview, or do not appear for a scheduled interview, and do not submit additional evidence, or do not respond within a specified period to our attempts to communicate with them, would receive an initial determination denying their claim and notice that they may appeal to an ALJ. If a claimant shows that there was good cause for failing to take one of these actions, we would provide another opportunity for a face-to-face interview. At any time in the process when a determination fully favorable to a claimant can be made, it would be. Physicians or psychologists (medical consultants) would be available for consultations with the disability examiner both before and after the face-to-face interview. Since the physician/psychologist involvement would be as a consultant, the State agency disability examiner would make the initial determination after the interview without having the medical consultant sign the disability determination form.

The fourth model, the face-to-face Federal reconsideration model, would test whether the disability process is improved by a face-to-face reconsideration interview between the claimant and a Federal decisionmaker. In response to a claimant's request for

reconsideration of a less than fully favorable initial disability determination, we would schedule a face-to-face interview for the claimant with a Federal disability reconsideration officer who would make the reconsideration determination. The Federal disability reconsideration officer would consult with a medical consultant when it is necessary before making the reconsideration determination.

Prior to the date of the face-to-face interview with the claimant, the Federal disability reconsideration officer would review the file. If this review results in the need for additional information, it would be requested before the face-to-face interview is to occur. If the claimant submits additional evidence prior to the date of the interview, it would also be considered. If the review indicates that a fully favorable determination can be made it would be made and the interview would be canceled. Otherwise, a face-to-face interview would remain scheduled. The claimant would be mailed a notice of the time and place of the interview at least 20 days before the date of the interview unless the claimant waives (in writing) his/her right to the 20-day advance notice. In this model, the claimant should not waive his/her right to the 20-day advance notice if the claimant needs time to get ready for the interview. If the claimant does waive his/her right to the 20-day advance notice, an interview would be scheduled for the claimant as soon as possible and a notice of the time and place of the interview would be mailed to the claimant. In this instance, the notice would be mailed at least 10 days before the date of the interview. If the claimant is unable to travel or has some other reason why he or she cannot attend the interview, the Federal disability reconsideration officer would change the time or place if there is good cause under the standards in § 404.936 (c) and (d) or § 416.1436 (c) and (d), as appropriate.

Claimants may waive the right to appear for the face-to-face interview. If the claimant does not appear at the interview, the Federal disability reconsideration officer would prepare and issue a reconsidered determination based on the information in the case file. If the claimant submits additional evidence, even though he or she waives the face-to-face interview, that evidence would be considered by the Federal disability reconsideration officer when he or she makes the reconsidered determination. Written notice of the determination would be sent to the claimant with a copy of the determination.

In both the third and fourth models, the claimant would have the opportunity to waive our advance notice of the interview date and the right to request reimbursement for travel if the distance travelled to the interview site exceeds 75 miles.

The fifth model, the reconsideration elimination model, is designed to test whether the disability process is improved by the elimination of the reconsideration step. If a claimant is not satisfied with the initial determination, he or she may request a hearing before an ALJ. The procedures we currently follow when review by an ALJ is requested would be followed in this model.

Regulatory Procedures

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because these regulations do not meet any of the threshold criteria for a major rule. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

Data collection involved in the evaluation of any of the models would necessitate new reporting or recordkeeping requirements which would need clearance by the Office of Management and Budget (OMB). These requirements are still being developed. When specifics have been determined, a request for clearance will be forwarded to OMB as required by the Paperwork Reduction Act of 1980.

Regulatory Flexibility Act

We certify that these proposed regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities because they affect individuals. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program Nos. 93.802, Social Security-Disability Insurance; 93.807, Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-Age, Reporting and recordkeeping requirements, Survivors and Disability Insurance.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income.

Lawrence H. Thompson,

Principal Deputy Commissioner of Social Security.

Approved: September 2, 1993.

Donna E. Shalala,

Secretary of Health and Human Services.

For the reasons set out in the preamble, parts 404 and 416 of chapter III of title 20 of the Code of Federal Regulations are amended as set forth below.

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

1. The authority citation for 20 CFR part 404, subpart J, continues to read as follows:

Authority: Secs. 201(j), 205(a), (b), (d)–(h), and (j), 221(d), and 1102 of the Social Security Act; 42 U.S.C. 401(j), 405(a), (b), (d)–(h), and (j), 421(d), and 1302.

2. Section 404.906 is revised to read as follows:

§ 404.906 Testing modifications to the disability determination procedures.

(a) *Applicability and scope.* Notwithstanding any other provision in this part or part 422, we are establishing the procedures set out in this section to test modifications to our disability determination process. These modifications will enable us to test either individually or in one or more combinations, the effect of: Having disability specialists in our field offices request and evaluate medical evidence before it is forwarded to the State agency; providing persons who have applied for benefits based on disability with the opportunity for a face-to-face interview with a decisionmaker earlier in the disability determination process; having a single decisionmaker make initial or reconsideration determinations in those claims; having the disability reconsideration determination made by a Federal disability reconsideration officer who will schedule a face-to-face interview with the claimant; and having a claimant who is dissatisfied with the initial determination request a hearing before an administrative law judge rather than a reconsideration determination. The models which we test will be designed to provide us with current information regarding the effect of the procedural modifications we test and enable us to decide whether and to

what degree the disability determination process would be improved, if they were implemented on a national level.

(b) *Procedures for cases included in the tests.* The individuals who participate in the tests will be selected randomly and assigned to a test group or control group in each test State. The disability specialist model and the claims intake and determination model are described in paragraphs (b) (1) and (2) of this section, respectively. The other three models are described in paragraphs (b) (3), (4) and (5) of this section. We may test the models described in this section separately, or we may test either of the models described in paragraphs (b) (1) or (2) in conjunction with one or more of the models described in paragraphs (b) (3), (4), or (5) of this section.

(1) In the disability specialist model, the initial claims intake process will be modified by having specially trained SSA field office personnel review the claim before forwarding it to the State agency. These field office personnel will be specially trained as disability specialists. They will request and evaluate existing medical evidence, and if appropriate, arrange for a consultative examination.

(2) In the claims intake and determination model, when you file a claim for disability benefits, you will be interviewed by a decisionmaker who has the authority to assess your residual functional capacity and to make the determination of disability. Physicians and psychologists (medical consultants) will be available for consultation with the decisionmaker. Although the medical consultant will be available for consultation after the interview, the decisionmaker will have authority to make the disability determination without having the medical consultant sign the disability determination forms. You will be offered the opportunity for your interview to be conducted face-to-face. In some instances, in one or more sites, videoconferencing may be used to conduct face-to-face interviews in this model. The decisionmaker who interviews you may either be a State agency disability examiner or a Federal employee. The decisionmaker will be able to request, review, and evaluate all evidence necessary to make a determination of disability.

(3) In the face-to-face predenial interview model, we will modify the initial determination process. If you are selected to participate in a test of this model, we will provide you with the opportunity to have a face-to-face interview with a State agency disability examiner before the State agency makes an initial determination denying your claim. If the disability examiner finds that the evidence in your file requires an initial determination denying your claim, the State agency will mail a written notice to you. The notice will tell you that, before the State agency makes a formal determination about whether you are disabled, you may have an interview with the State agency disability examiner. You must request an interview within 30 days after the date you receive the notice. If you make a late request for an interview but show in writing that you had good cause under the standards in § 404.911 for missing the deadline, the disability examiner will extend the deadline. This notice will also explain that we will notify you of the date of the interview at least 20 days before the date of the interview unless you waive (in writing) your right to the advance notice. You should not waive your right to the 20-day advance notice if you need time to get ready for the interview. If you do waive your right to the 20-day advance notice, an interview will be scheduled for you as soon as possible and a notice of the time and place of your interview will be mailed to you. In this instance, the notice will be mailed to you at least 10 days before the date of the interview. If you waive your right to appear for the face-to-face interview or if you do not appear for a scheduled interview and do not submit additional evidence, or if you do not respond before the date of the interview to our attempts to communicate with you, you will receive an initial determination. A written notice of that determination will be mailed to you and will state the reasons for the determination and its effect, and will inform you of your right to a hearing before an administrative law judge. If you request an interview, the disability examiner will mail a notice to you informing you of the time and place of your interview. The notice will be mailed to you at least 20 days before the date of the interview, unless you have waived (in writing) your right to the 20-day advance notice. At any time in the process when a fully favorable determination can be made, it will be. Physicians and psychologists (medical consultants) will be available for consultation with the disability examiner. Although the medical consultant will also be available for consultation after the face-to-face predenial interview, the State agency disability examiner will have authority to make the initial disability determination without having the medical consultant sign the disability determination on the forms we provide to the State agency (see § 404.1615). The State agency disability examiner will also have the authority to assess your residual functional capacity. If you are unable to travel or have some other reason why you cannot attend your interview at the scheduled time or place, you should request at the earliest possible date before the date of the interview that the time or place be changed. The disability examiner will change the time or place if there is good cause for doing so under the standards in § 404.936 (c) and (d). If you attend the interview, or if you do not attend the interview but you submit additional evidence, the State agency disability examiner will make an initial determination based on the evidence in your file, including the evidence obtained at the interview, or any additional evidence you submit. If your initial determination is less than fully favorable following the interview and/or after you submit additional evidence, you will be notified that you may request a hearing before an administrative law judge if the issue you want reviewed is based on the medical factors involved in the initial determination. In some instances, in one or more sites, videoconferencing may be used to conduct face-to-face interviews in this model.

(i) *Your rights.* In connection with your interview—

(A) You may request that we or the State agency assist you in obtaining pertinent evidence about your disability;

(B) You may have a representative, appointed under subpart R of this part, at your interview, or you may represent yourself;

(C) You or your representative may review the evidence in your case file, either on the date of your interview or at an earlier time at your request;

(D) You or your representative may present additional evidence and bring witnesses to support your case at your interview; and

(E) You, your representative, and your witnesses may be eligible for reimbursement of travel expenses under §§ 404.999a through 404.999d incurred in connection with your interview if the distance from the person's residence or office (whichever he or she travels from) to the interview site exceeds 75 miles.

(ii) [Reserved]

(4) In the face-to-face Federal reconsideration model, we will modify the reconsideration step of review by scheduling individuals selected to participate in the model for a face-to-face interview with a Federal decisionmaker, called a Federal disability reconsideration officer. In response to your request for

reconsideration of a less than fully favorable initial disability determination (see § 404.907), we will schedule a face-to-face interview for you with a Federal disability reconsideration officer. We will notify you that you will be notified of the date of the interview at least 20 days before the interview unless you waive (in writing) your right to advance notice. You should not waive your right to the 20-day advance notice if you need time to get ready for the interview. If you do waive your right to the 20-day advance notice, an interview will be scheduled for you as soon as possible and a notice of the time and place of your interview will be mailed to you. In this instance, the notice will be mailed to you at least 10 days before the date of the interview. You may also waive your right to appear at the interview. If you waive your right to appear at the interview, or if you do not appear at the interview, the Federal disability reconsideration officer will make a reconsidered determination based on the evidence in your case file. The Federal disability reconsideration officer will have the authority to make the disability determination without having the medical consultant sign the disability determination form. The Federal disability reconsideration officer will also have the authority to assess your residual functional capacity. Physicians and psychologists (medical consultants) will be available for consultation with the Federal disability reconsideration officer. Prior to the date of your face-to-face interview, the Federal disability reconsideration officer will review your file. If you have submitted additional evidence, it will be considered. If this review results in the need for additional information, it will be requested before the face-to-face interview is to occur. If the additional information is received prior to the date of the interview, it will, as soon as possible, be reviewed with the other information in your file by the Federal disability reconsideration officer. If a fully favorable determination can be made at that time, it will be made, the scheduled interview will be canceled, and you will be so notified. If a fully favorable determination cannot be made, the face-to- face interview will not be canceled. If you are unable to travel or have some other reason why you cannot attend your interview at the scheduled time or place, you should request at the earliest possible date before the date of the interview that the time or place be changed. The Federal disability reconsideration officer will change the time or place if there is good cause for doing so under the standards in § 404.936 (c) and (d). If you attend the interview, the Federal disability reconsideration officer will make a reconsideration determination based on the evidence in your file, including evidence obtained at the interview or any additional evidence you submit or we requested prior to the interview.

(i) *Your rights.* In connection with your interview—

(A) You may request that we assist you in obtaining pertinent evidence about your disability;

(B) You may have a representative, appointed under subpart R of this part, at your interview, or you may represent yourself;

(C) You or your representative may review the evidence in your case file, either on the date of your interview or at an earlier time at your request;

(D) You or your representative may present additional evidence and bring witnesses to support your case at your interview; and

(E) You, your representative, and your witnesses may be eligible for reimbursement of travel expenses under §§ 404.999a–404.999d incurred in connection with your interview if the distance from the person's residence or office (whichever he or she travels from) to the interview site exceeds 75 miles.

(ii) [Reserved]

(5) In the reconsideration elimination model, we will modify the initial disability determination process by eliminating the reconsideration step of the administrative review process. If you receive an initial disability determination that is less than fully favorable, you will be notified that you may request a hearing before an administrative law judge. If you request a hearing before an administrative law judge, we will apply our usual procedures contained in subpart J of this part.

(c) *Authority and purpose.* Any tests we conduct will be under the authority given the Secretary by sections 205(a) and 1102 of the Act to promulgate reasonable and proper rules and regulations and to establish appropriate procedures for administering the Social Security program. The purpose of the tests of any of the models described above is to enable SSA to make recommendations for national implementation of improvements to the disability process.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

1. The authority citation for 20 CFR part 416, subpart N continues to read as follows:

Authority: Secs. 1102, 1631, and 1633 of the Social Security Act; 42 U.S.C. 1302, 1383, and 1383b; sec. 6 of Pub. L. 98–460, 98 Stat. 1802.

2. Section 416.1406 is revised to read as follows:

§ 416.1406 Testing modifications to the disability determination procedures.

(a) *Applicability and scope.* Notwithstanding any other provision in this part or part 422, we are establishing the procedures set out in this section to test modifications to our disability determination process. These modifications will enable us to test either individually or in one or more combinations, the effect of: Having disability specialists in our field offices request and evaluate medical evidence before it is forwarded to the State agency and make presumptive disability or presumptive blindness findings pursuant to §§ 416.933 and 416.934, without the limitations in Social Security Ruling (SSR) 80–36; providing persons who have applied for benefits based on disability with the opportunity for a face-to-face interview with a decisionmaker earlier in the disability determination process; having a single decisionmaker make initial or reconsideration determinations in those claims; having the disability reconsideration determination made by a Federal disability reconsideration officer who will conduct a face-to-face interview with the claimant; and having a claimant who is dissatisfied with the initial determination request a hearing before an administrative law judge rather than a reconsideration determination. The models we test will be designed to provide us with current information regarding the effect of the procedural modifications we test and enable us to decide whether and to what degree the disability determination process would be improved, if they were implemented on a national level.

(b) *Procedures for cases included in the tests.* The individuals who participate in the tests will be selected randomly and assigned to a test group or control group in each State. The disability specialist model and the claims intake and determination model are described in paragraphs (b) (1) and (2) of this section, respectively. The other three models are described in paragraphs (b) (3), (4) and (5) of this section. We may test the models described in this section separately, or we may test either of the models described in paragraphs (b) (1) or (2) in conjunction with one or more of the models described in paragraphs (b) (3), (4), or (5) of this section.

(1) In the disability specialist model, the initial claims intake process will be modified by having specially trained SSA field office personnel review the claim before forwarding it to the State agency. These field office personnel will be specially trained as disability specialists. They will request and evaluate existing medical evidence, and if appropriate, arrange for a consultative examination. They will also make a presumptive disability or presumptive blindness finding pursuant to §§ 416.933 and 416.934, without the limitations imposed by SSR 80–36.

(2) In the claims intake and determination model, when you file a claim for SSI payments based on disability, you will be interviewed by a decisionmaker who has the authority to assess your residual functional capacity and to make the determination of disability. Physicians and psychologists (medical consultants) will be available for consultation with the decisionmaker. Although the medical consultant will be available for consultation after the interview, the decisionmaker will have authority to make the disability determination without having the medical consultant sign the disability determination forms. You will be offered the opportunity for your interview to be conducted face-to-face. In some instances, in one or more sites, videoconferencing may be used to conduct face-to-face interviews in this model. The decisionmaker who interviews you may either be a State agency disability examiner or a Federal employee. The decisionmaker will be able to request, review, and evaluate all evidence necessary to make a determination of disability.

(3) In the face-to-face predenial interview model, we will modify the initial determination process. If you are selected to participate in a test of this model, we will provide you with the opportunity to have a face-to-face interview with a State agency disability examiner before the State agency makes an initial determination denying your claim. If the disability examiner finds that the evidence in your file requires an initial determination denying your claim, the State agency will mail a written notice to you. The notice will tell you that before the State agency makes a formal determination about whether you are disabled, you may have an interview with the State agency disability examiner. You must request an interview within 30 days after the date you receive the notice. If you make a late request for an interview but show in writing that you had good cause under the standards in § 416.1411 for missing the deadline, the disability examiner will extend the deadline. This notice will also explain that we will notify you of the date of the interview at least 20 days before the date of the interview unless you waive (in writing) your right to the advance notice. You should not waive your right to the 20-day advance notice if you need time to get ready for the interview. If you do waive your right to the 20-day advance notice, an interview will be scheduled for you as soon as possible and a notice of the time and place of your interview will be mailed to you. In this instance, the notice will be mailed to you at least 10 days before the date of the interview. If you waive your right to appear for the face-to-face interview or if you do not appear for a scheduled interview and do not submit additional evidence, or if you do not respond before the date of the interview to our attempts to communicate with you, you will receive an initial determination. A written notice of that determination will be mailed to you and will state the reasons for the determination and its effect, and will inform you of your right to a hearing before an administrative law judge. If you request an interview, the disability examiner will mail a notice to you informing you of the time and place of your interview. The notice will be mailed to you at least 20 days before the date of the interview, unless you have waived (in writing) your right to the 20-day advance notice. At any time in the process when a fully favorable determination can be made, it will be. Physicians and psychologists (medical consultants) will be available for consultation with the disability examiner. Although the medical consultant will also be available for consultation after the face-to-face predenial interview, the State agency disability examiner will have authority to make the initial disability determination without having the medical consultant sign the disability determination on forms we provide to the State agency (see § 416.1015). The State agency disability examiner will also have the authority to assess your residual functional capacity. If you are unable to travel or have some other reason why you cannot attend your interview at the scheduled time or place, you should request at the earliest possible date before the date of the interview that the time or place be changed. The disability examiner will change the time or place if there is good cause for doing so under the standards in § 416.1436 (c) and (d). If you attend the interview, or if you do not attend the interview but you submit additional evidence, the State agency disability examiner will make an initial determination based on the evidence in your file, including the evidence obtained at the interview, or any additional evidence you submit. If your initial determination is less than fully favorable following the interview and/or after you submit additional evidence, you will be notified that you may request a hearing before an administrative law judge if the issue you want reviewed is based on the medical factors involved in the initial determination. In some instances, in one or more sites, videoconferencing may be used to conduct face-to-face interviews in this model.

(i) *Your rights.* In connection with your interview—

(A) You may request that we or the State agency assist you in obtaining pertinent evidence about your disability;

(B) You may have a representative, appointed under subpart O of this part, at your interview, or you may represent yourself;

(C) You or your representative may review the evidence in your case file, either on the date of your interview or at an earlier time at your request;

(D) You or your representative may present additional evidence and bring witnesses to support your case at your interview; and

(E) You, your representative, and your witnesses may be eligible for reimbursement of travel expenses under §§ 416.1495 through 416.1499 incurred in connection with your interview if the distance from the person's residence or office (whichever he or she travels from) to the interview site exceeds 75 miles.

(ii) [Reserved]

(4) In the face-to-face Federal reconsideration model, we will modify the reconsideration step of review by scheduling individuals selected to participate in the model for a face-to-face interview with a Federal decisionmaker, called a Federal disability reconsideration officer. In response to your request for reconsideration of a less than fully favorable initial disability determination (see § 416.1407), we will schedule a face-to-face interview for you with a Federal disability reconsideration officer. We will notify you that you will be notified of the date of the interview at least 20 days before the interview unless you waive (in writing) your right to advance notice. You should not waive your right to the 20-day advance notice if you need time to get ready for the interview. If you do waive your right to the 20-day advance notice, an interview will be scheduled for you as soon as possible and a notice of the time

and place of your interview will be mailed to you. In this instance, the notice will be mailed to you at least 10 days before the date of the interview. You may also waive your right to appear at the interview. If you waive your right to appear at the interview, or if you do not appear at the interview, the Federal disability reconsideration officer will make a reconsidered determination based on the evidence in your case file. The Federal disability reconsideration officer will have the authority to make the disability determination without having the medical consultant sign the disability determination form. The Federal disability reconsideration officer will also have the authority to assess your residual functional capacity. Physicians and psychologists (medical consultants) will be available for consultation with the Federal disability reconsideration officer. Prior to the date of your face-to-face interview, the Federal disability reconsideration officer will review your file. If you have submitted additional evidence, it will be considered. If this review results in the need for additional information, it will be requested before the face-to-face interview is to occur. If the additional information is received prior to the date of the interview, it will, as soon as possible, be reviewed with the other information in your file by the Federal disability reconsideration officer. If a fully favorable determination can be made at that time, it will be made, the scheduled interview will be canceled, and you will be so notified. If a fully favorable determination cannot be made, the face-to-face interview will not be canceled. If you are unable to travel or have some other reason why you cannot attend your interview at the scheduled time or place, you should request at the earliest possible date before the date of the interview that the time or place be changed. The Federal disability reconsideration officer will change the time or place if there is good cause for doing so under the standards in § 416.1436 (c) and (d). If you attend the interview, the Federal disability reconsideration officer will make a reconsideration determination based on the evidence in your file, including evidence obtained at the interview or any additional evidence you submit or we requested prior to the interview.

(i) *Your rights.* In connection with your interview—

(A) You may request that we assist you in obtaining pertinent evidence about your disability;

(B) You may have a representative, appointed under subpart O of this part, at your interview, or you may represent yourself;

(C) You or your representative may review the evidence in your case file, either on the date of your interview or at an earlier time at your request;

(D) You or your representative may present additional evidence and bring witnesses to support your case at your interview; and

(E) You, your representative, and your witnesses may be eligible for reimbursement of travel expenses under §§ 416.1495 through 416.1499 incurred in connection with your interview if the distance from the person's residence or office (whichever he or she travels from) to the interview site exceeds 75 miles.

(ii) [Reserved]

(5) In the reconsideration elimination model, we will modify the initial disability determination process by eliminating the reconsideration step of the administrative review process. If you receive an initial disability determination that is less than fully favorable, you will be notified that you may request a hearing before an administrative law judge. If you request a hearing before an administrative law judge, we will apply our usual procedures contained in subpart N of this part.

(c) *Authority and purpose.* Any tests we conduct will be under the authority given the Secretary by sections 1102 and 1631(d)(1) of the Act to promulgate reasonable and proper rules and regulations and to establish appropriate procedures for administering the Supplemental Security Income program. The purpose of the tests of any of the models described above is to enable SSA to make recommendations for national implementation of improvements to the disability process.

[FR Doc. 93–26025 Filed 10–21–93; 8:45 am]

BILLING CODE 4190–29–P

Food and Drug Administration

21 CFR Part 101

[Docket Nos. 93N–0289, 93N–289C, 93N–289F, 93N–289A, 93N–289O, and 93N–289Z]

RIN 0905–AD96

Food Labeling; Health Claims for Dietary Supplements; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a proposed rule that appeared in the Federal Register of October 14, 1993 (58 FR 53296). The document proposed not to authorize health claims relating to an association between fiber and cancer, fiber and heart disease, antioxidant vitamins and cancer, *omega*-3 fatty acids and coronary heart disease, and zinc and immune function in the elderly on the label or in the labeling of dietary supplements of vitamins, minerals, herbs, or other similar nutritional substances. The document was published with some inadvertent editorial errors. This document corrects those errors.

DATES: Written comments by December 13, 1993.

FOR FURTHER INFORMATION CONTACT: Judith W. Riggins, Office of Policy (HF–23), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2831.

In FR Doc. 93–25029, appearing on page 53296, in the Federal Register of October 14, 1993, the following corrections are made:

1. On page 53296, in the first column, "[Docket No. 93N–0289]" is corrected to read "[Docket Nos. 93N–0289, 93N–289C, 93N–289F, 93N–289A, 93N–289O, and 93N–289Z]".

2. On page 53305, in the first column, under section "IX.", in the second paragraph, after the third sentence, a sentence is added to read as follows: * * *. "Comments relating to an association between fiber and cancer should be directed to docket number 93N–289C; comments relating to an association between fiber and heart disease should be directed to docket number 93N–289F; comments relating to an association between antioxidant vitamins and cancer should be directed to docket number 93N–289A; comments relating to an association between *omega-3* fatty acids and coronary heart disease should be directed to docket number 93N–289O; and comments relating to an association between zinc and immune function in the elderly should be directed to docket number 93N–289Z." * * *

Dated: October 18, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–26151 Filed 10–20–93; 12:15 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 950

Wyoming Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening and extension of comment period.

SUMMARY: OSM is announcing the receipt of additional information pertaining to a previously proposed amendment to the Wyoming permanent regulatory program (hereinafter, the "Wyoming program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment would establish shrub density standards and working definitions applicable to all lands.

This document sets forth the times and locations that the Wyoming program and proposed amendment to that program are available for public inspection and the reopened comment period during which interested persons may submit written comments on the proposed amendment.

DATES: Written comments must be received by 4 p.m., m.s.t. November 8, 1993.

ADDRESSES: Written comments should be mailed or hand delivered to Guy V. Padgett at the address listed below.

Copies of the Wyoming program, the proposed amendment, the additional information, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Casper Field Office.

Guy V. Padgett, Director; Casper Field Office, Office of Surface Mining Reclamation and Enforcement; 100 East B Street, room 2128; Casper, Wyoming 82601–1918. Telephone: (307) 261–5776.

Dennis Hemmer, Director; Wyoming Department of Environmental Quality; Herschler Building; 122 West 25th Street; Cheyenne, Wyoming 82002. Telephone: (307) 777–7756.

FOR FURTHER INFORMATION CONTACT: Guy V. Padgett, Director, Telephone: (307) 261–5776

SUPPLEMENTARY INFORMATION:

I. Background on the Wyoming Program

On November 26, 1980, the Secretary of the Interior conditionally approved the Wyoming program. General background information on the Wyoming program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Wyoming program can be found in the November 26, 1980 **Federal Register** (45 FR 78637). Subsequent actions concerning Wyoming's program and program amendments can be found at 30 CFR 950.12, 950.15, and 950.16.

II. Proposed Amendment

By letter dated January 6, 1993, (Administrative Record No. WY–21–1) Wyoming submitted the shrub density rules as a proposed amendment to its permanent program pursuant to SMCRA. The Wyoming proposed amendment is a State response designed to establish a shrub density standard applicable to all lands (excluding cropland and pastureland) used jointly by livestock and wildlife. The changes to the regulatory rule package are also reflected in changes made to Appendix A, Vegetation Sampling Methods and Reclamation Success Standards for Surface Coal Mining Operations.

OSM published a notice in the March 22, 1993 **Federal Register** (58 FR 15318) announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment. The public comment period ended April 21, 1993. During this public comment period (March 21, 1993 through April 21, 1993), Wyoming submitted additional information regarding shrub density legislation, Enrolled Act No. 86 [Senate File No. 39] (Administrative Record No. WY–21–21). This proposed legislation amended W.S. 35–11–103(e) by creating new paragraphs (xxviii) through (xxx); modifying the paragraph at W.S. 35–11–402(b); and creating a new subsection (c) at W.S. 35–11–402.

OSM published a notice in the April 30, 1993 **Federal Register** (58 FR 26079) announcing receipt of this additional information, reopening and extending the comment period, and providing an opportunity for a public hearing.

OSM sent an issue letter to the Wyoming, on August 17, 1993, that allowed the State an opportunity to submit draft proposed rule changes, policy statements, clarifying opinions, or other evidence that the proposed rules are no less effective than the Federal regulations and no less stringent than SMCRA (Administrative Record No. WY–21–50). By letter dated October 7, 1993, (Administrative Record No. WY–21–51) Wyoming submitted additional information in response to OSM's issue letter. Wyoming's submittal includes a table identifying the proposed statutes and rules that are in conflict with each other and those that complement one and other, and discussions on some of the concerns in the issue letter.

III. Public Comment Procedures

OSM is reopening the comment period on the proposed Wyoming program amendment to provide the public an opportunity to reconsider the adequacy of the amendment in light of the additional materials submitted. In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Wyoming program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commentor's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Casper Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

List of Subjects in 30 CFR Part 950

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 19, 1993.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

[FR Doc. 93–26081 Filed 10–21–93; 8:45 am]

BILLING CODE 4310–05–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Parts 1252, 1254, and 1260

RIN 3095–AA53

Public Use of Records and Donated Historical Materials

AGENCY: National Archives and Records Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: The National Archives and Records Administration (NARA) is proposing to update and clarify its regulations relating to public use of records and donated historical materials

that have been transferred to NARA. Most of the changes proposed in this regulation merely clarify existing practices and will have no significant impact upon the public. Changes in research room rules, such as requiring a picture identification when applying for a research card and prohibiting ink pens and chewing gum in rooms where original records are present, are intended to provide greater protection for the historically valuable holdings of NARA. Included in this proposed rule are two information collections for which OMB approval is being requested under the provisions of the Paperwork Reduction Act.

DATES: Comments must be received by December 20, 1994.

ADDRESSES: Comments on the proposed rule and information collections should be sent to Director, Policy and Program Analysis Division (NAA), National Archives and Records Administration, Washington, DC 20408.

Copies of the proposed information collection forms and supporting documentation may be obtained from the Policy and Program Analysis Division (NAA), Room 409, National Archives Building, 7th and Pennsylvania Avenue, NW., Washington, DC 20408 (telephone 202–501–5110). A copy of any comments on the information collections should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for NARA, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mary Ann Hadyka or Nancy Allard on 202–501–5110.

SUPPLEMENTARY INFORMATION:

Information collections under the Paperwork Reduction Act.

This proposed rule contains information collections in § 1254.4 (application for researcher identification card) and § 1254.92 (request to microfilm records). OMB approval of these collections has been requested. Copies of the information collections and supporting documentation are available from the address shown in the preamble. A brief description of each information collection is provided below:

Application for researcher identification card. This form is completed by individuals who wish to use original records at the National Archives facilities in the Washington, DC, area, regional archives, and Presidential libraries. Upon completion of the form, the researcher is given a researcher identification card which is valid for two years at the National Archives and regional archives and for one year at the Presidential library at which the card is issued. NARA estimates that completion of the form requires 5 minutes. There are approximately 27,500 respondents per year, for an annual reporting burden of 2,292 hours.

Request to microfilm records. Micropublishers who want to microfilm archival records and donated historical materials for the purpose of producing a microfilm publication must submit a narrative request to NARA that provides detailed information about the project, as specified in § 1254.92. The information is used by NARA to determine whether the proposed project meets the criteria in § 1254.94, to ensure that the project will not cause damage to the records being filmed, and to schedule the use of the limited space available for private microfilming. Approximately 5 requests are received each year. NARA estimates that the reporting burden for each respondent is 10 hours, for a total annual reporting burden of 50 hours.

Following is a description of the changes being made by this proposed rule:

The definitions in § 1252.2 are being updated to reflect a change in the title of the regional archives and to make other minor clarifications. A definition of "document" is added to describe collectively the different types of holdings that may be used in NARA research rooms. Definitions of "Nixon Presidential historical materials" and "Presidential records" are added for the convenience of researchers who use such holdings in NARA research rooms covered by the regulations in subchapter C; regulations concerning access to these types of holdings are found in subchapters E and F, respectively. The definition of "researcher" has been revised to cover all individuals who perform research in NARA holdings, whether original documents or copies on microfilm or another media. The current definition inadvertently excludes researchers who are not required to obtain a researcher identification card.

Throughout Part 1254, we are changing the terms "record" and "records" to "document" and "documents" for improved clarity wherever the provision applies to donated historical materials, Nixon Presidential historical materials, and/or Presidential records as well as to archives and FRC records. "Document" includes holdings on media other than paper, such as photographs, motion pictures, sound and video recordings, maps, drawings, and electronic files.

Non-substantive clarifications are made to §§ 1254.1 and 1254.2.

In § 1254.4 we are clarifying the requirement for "proper identification" to specify that the identification must contain a picture of the applicant, e.g., a driver's license, or work or school identification card, unless the head of the unit issuing the researcher identification card grants an exception to the requirement. To improve records security, we are also replacing the requirement to furnish a letter of reference or introduction when seeking access to large quantities of records or to records that are especially fragile or valuable with a requirement to furnish additional information about personal or professional qualifications or additional reasons why access is required in such instances.

Section 1254.12(a) is modified to add the requirement to show a researcher identification card when receiving records in the research room. Usually researchers place their requests for records to be brought to the research room with a staff archivist in an archival branch; for security purposes, the research room attendant must be able to verify that the person receiving the records is the individual who requested them. We have clarified in paragraph (b) of this section that NARA staff will assist researchers with general information concerning the microfilm holdings and operation of the microfilm readers and reader-printers, but that where microfilm is provided on a self-service basis, the researcher must retrieve the roll of microfilm from the microfilm storage area, place it on the equipment, and review the information himself or herself. Finally, we have added a new paragraph (c) to remind researchers of their responsibility to observe the Copyright Act when making reproductions of copyrighted materials.

Section 1254.14 has been revised to provide a 3–hour time limit on microfilm readers during busy periods instead of the current 2–hour limit. Researchers may put their names on the waiting list when they have relinquished use of a reader because of the time limit. Because the Microfilm Research Room in the National Archives Building is very crowded and prompt exit in an emergency is difficult, we are adding a restriction that only individuals who have been assigned microfilm readers can be in the room. The lobby outside the room has seating areas for other persons who accompany a researcher or who are waiting their turn for a microfilm reader.

We have made several changes to § 1254.16 to reduce the possibility of damage to records. We are adding here

a prohibition on having food or liquid at a desk where records are used; in the current § 1254.20(a) eating and drinking are prohibited activities in the research room. We are also requiring that only pencils be used in research rooms where original records are used to prevent possible ink damage to records from pens. (In § 1254.26(f) we have specified that NARA will provide pencils.) We propose to eliminate the practice of identifying records for copying by placing paper clips or rubber bands around the records. NARA has, for many years, provided acid-free paper tabs that can be used to indicate which records are to be copied and most researchers use the tabs. The proposed rule will require all researchers to follow this practice.

We are moving the existing § 1254.22 to § 1254.17 because it belongs with other sections concerning proper handling of records. We are adding a provision to require researchers to use only one folder of records at a time to prevent inadvertent misfiling of the records.

We have modified paragraph (a) of § 1254.20 to reference NARA facility regulations instead of GSA regulations, which do not apply to the National Archives Building and Presidential Libraries. The current regulation prohibits eating and drinking in a research room; we propose also to prohibit chewing gum because gum can be a danger to the records and a serious annoyance to other researchers. Finally, we have added computers to the list of special equipment that researchers can use only in designated areas.

In § 1254.20 (b) and (c), we are clarifying that rules and regulations of a NARA facility include rules on use of NARA viewing and copying equipment; refusal to comply with rules on equipment use are grounds for revocation of the researcher identification card and research privileges.

In § 1254.26, we have included the Pickett Street facility, where the Cartographic and Architectural Records research room and the Nixon Presidential materials research room are located, as locations where "clean research room" procedures must be followed because original documents are used. Researchers are already observing the "clean research room" procedures in these research rooms. The holdings in the Pickett Street facility are scheduled to be moved to the new Archives II facility in College Park, Maryland, this winter; at that time NARA intends to promulgate "clean research room" rules for the new facility.

In § 1254.26 (a), we are providing an exception to the exclusion of children who do not have research privileges from a research room where original documents are used to allow a child to enter the research room for a short time to view specific documents that a parent or other accompanying adult is using. The Reference Services Branch Chief will authorize the exception for a child who is able to read and who will be closely supervised by the adult researcher while in the research room. Children admitted to the research room under this exception may not participate actively in research activities (e.g., removing, copying or refiling documents) without specific NARA permission.

In paragraph (d) we have corrected the name of the research room sign-in register.

In § 1254.26 (h), which provides additional procedures for use of the Motion Picture, Sound, and Video Research Room, we propose to eliminate the system of reservations for afternoon, evening, and Saturday use of NARA viewing equipment. All equipment would be available on a first-come-first-served basis and the research room would routinely be open for use during the same extended evening and Saturday hours as the Central Research Room and Microfilm Research Room are. A 3-hour limit may be imposed when other researchers are waiting to use the equipment. These changes were recommended by a representative group of users of the research room. During the past six months since the reservation system was established, equipment has not been fully occupied by holders of reservations. Walk-in users have been able to obtain a viewing or listening station during the reserved use period.

In § 1254.27, we have added Federal records centers to the coverage and corrected the title of the regional archives. We have also made a terminology change for the title of the person responsible for the research room in several places. In paragraph (b) we have corrected the title of the sign-in register and removed the requirement to record the time the researcher leaves the research room for the day. In paragraph (f) we have modified the wording to clarify that NARA self-service copiers are not available in all locations and to make changes in copying restrictions to correspond with proposed changes in § 1254.71 which are discussed later in this supplementary information.

We have added a new § 1254.35 to provide information on where access regulations for Presidential records and Nixon Presidential materials are located in Title 36 of the CFR. We have also referenced access regulations for these holdings in § 1254.40.

In § 1254.36, we specify that researchers should consult the appropriate director to determine whether donated historical materials contain any copyrights. The current regulation refers to "literary property rights."

We propose to move § 1254.42, Declassification responsibility, to a new § 1260.2. This section provides a general description of NARA and originating agency declassification responsibilities, with an emphasis on systematic review responsibilities. Because systematic review is not an access procedure available to the public and researchers must submit requests for access to classified NARA holdings to NARA, the section may be misleading in its present location in part 1254. We believe that it is more appropriate to place this section in part 1260, which contains regulations concerning NARA and agency declassification actions.

In § 1254.48, paragraph (a) has been modified to remove the reference to forms to apply for permission to examine classified information. NARA does not process security clearances or nondisclosure agreements for researchers. Instead NARA directs researchers who wish to apply for access to classified information under the special historical researchers and Presidential appointees access program to the agency that originated the information or that has primary subject matter interest. Paragraph (c) has been rewritten for improved clarity.

Section 1254.71 has been modified to clarify that the procedures in this section apply to the Suitland Research Room in the Washington National Records Center. The time limit for use of unreserved paper-to-paper copiers has been raised from 3 minutes to 5 minutes. A 3–copy limit is being added for unreserved self-service microfilm reader-printers and a provision for reserved use of microfilm reader-printers is added. Debitcards for self-service copiers may now be purchased with credit cards at the Cashier's Office; we have added this to paragraphs (f) and (g).

We have made two changes to the types of records not suitable for self-service copying. We have replaced the current size limitation of 11 inches by 14 inches with a limit that the record must fit entirely on the glass plate of the copier; the purpose of the original restriction was to prevent self-service copying where the record might be bent or damaged because it was larger than the glass plate on which the record is

placed. The revised restriction accomplishes the same purpose, but allows larger records to be copied in a reduced size if the copier can accommodate them. We have added records which may be subject to possible damage if copied to the prohibition on copying records in poor physical condition. Certain records, such as 19th century photographs, may not be in poor physical condition but are vulnerable to damage when placed on a copier.

The current § 1254.76 refers to "authentication" of copies of records. This term formerly was used to describe the process of signing a declaration that the copies provided are true copies of the original documents in NARA custody. The more accurate term for the process is "certification." The proposed rule changes the terminology and provides that designees of the named officials may also certify the copies.

Section 1254.92 is amended to clarify the NARA official to whom requests are made and to correct the statement required for films of donated historical materials to reflect current copyright law.

This is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. As required by the Regulatory Flexibility Act, it is hereby certified that this proposed rule will not have a significant impact on small entities.

List of Subjects

36 CFR part 1252

Archives and records.

36 CFR part 1254

Archives and records, Confidential business information, Freedom of information, Micrographics, Reporting and recordkeeping requirements.

36 CFR part 1260

Archives and records, Classified information.

For the reasons set forth in the preamble under 44 U.S.C. 2104(a), NARA proposes to amend chapter XII of title 36 of the Code of Federal Regulations as follows:

PART 1252—PUBLIC USE OF RECORDS, DONATED HISTORICAL MATERIALS, AND FACILITIES; GENERAL

1. The authority citation for Part 1252 continues to read as follows:

Authority: 44 U.S.C. 2104(a).

2. Section 1252.1 is revised to read as follows:

§ 1252.1 Scope.

This subchapter prescribes rules and procedures governing the public use of records and donated historical materials in the custody of the National Archives and Records Administration (NARA). Except for part 1250, this subchapter does not apply to current operating records of NARA. This subchapter also prescribes rules and procedures governing the public use of certain NARA facilities.

3. In § 1252.2, the definitions of "Director," "Federal records center," "Federal records center records," "Records," and "Researcher" are revised; the definition of "Archives" is removed, and the definitions of "Archives" or 'archival records'," "Documents," "Nixon Presidential historical materials" and "Presidential records" are added in alphabetical order to read as follows:

§ 1252.2 Definitions.

* * * * *

Archives or *archival records* means Federal records that have been determined by NARA to have sufficient historical or other value to warrant their continued preservation by the U.S. Government, and have been transferred to the National Archives of the United States.

Director means the head of a Presidential library, the head of a Presidential Materials Staff, the head of a NARA division, branch, archival center, or unit responsible for servicing archival records, the head of a regional archives, or the head of a Federal records center.

Documents mean, for purposes of part 1254, archives, FRC records, donated historical materials, Nixon Presidential historical materials, and Presidential records, regardless of the media on which they are contained. Document form may include paper, microforms, photographs, sound recordings, motion pictures, maps, drawings, and electronic files.

* * * * *

Federal records center includes the Washington National Records Center, the National Personnel Records Center, and the Federal records centers listed in § 1253.6.

Federal records center records (*FRC records*) means records which, pending their transfer to the National Archives of the United States or their disposition in any other manner authorized by law, have been transferred to a Federal records center operated by NARA.

Nixon Presidential historical materials has the meaning specified in § 1275.16 of this chapter.

Presidential records has the meaning specified in § 1270.14 of this chapter.

Records means records or microfilm copies of records transferred to NARA under 44 U.S.C. 2107 and 3103; namely, archives and Federal records center records as the terms are defined in § 1252.2. The term "records" does not include current operating records of NARA, the public availability of which is governed by part 1250 of this chapter, or donated historical materials as defined in this section.

Researcher means a person who has been granted access to original documents or copies of documents.

PART 1254—AVAILABILITY OF RECORDS AND DONATED HISTORICAL MATERIALS

4. The authority citation for part 1254 continues to read as follows:

Authority: 44 U.S.C. 2101–2118, 5 U.S.C. 552, and E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235.

5. Part 1254 is amended by removing the terms "record" and "records" or "Records" in the sections shown in the following table and adding in their place the terms "document" and "documents" or "Documents" respectively.

a. Replace "record" with "document" in:

Sec. 1254.27(f)(2)
1254.98(c)

b. Replace "records" or "Records" with "documents" or "Documents" in:

Sec. 1254.1(a)
1254.1(d)
1254.2(a)
1254.2(c)
1254.2(d)
1254.4(a) wherever it appears
1254.4(b)
1254.4(d) wherever it appears
1254.8(c)
1254.18 wherever it appears
1254.20(b)
1254.26(e)(2)
1254.27(c)(2)
1254.27(f)(2)
1254.27(f)(4)
1254.27(f)(5)
1254.70(a)
1254.71(c)(1)
1254.71(c)(2) wherever it appears
1254.71(c)(3) wherever it appears
1254.71(d) introductory text wherever it appears
1254.71(d)(2) wherever it appears
1254.71(d)(4)
1254.71(d)(5)
1254.92(c)(1) introductory text
1254.94(b) whenever it appears
1254.94(f) introductory text
1254.94(f)(3)

1254.94(g) introductory text
1254.94(g)(1)
1254.94(g)(2)
1254.94(g)(3)
1254.94(g)(4)
1254.94(g)(5) wherever it appears
1254.94(g)(6) wherever it appears
1254.94(h)
1254.94(i) wherever it appears
1254.96(a) introductory text wherever it appears
1254.96(a)(1)
1254.96(a)(2)
1254.96(a)(3)
1254.96(a)(5)
1254.96(b)
1254.98(a)
1254.98(d)
1254.100(b) wherever it appears
1254.100(c)
1254.100(d)
1254.102(d)

6. Section 1254.1 is amended by revising paragraphs (b) and (e) to read as follows:

§ 1254.1 General provisions.

* * * * *

(b) Original documents will not normally be made available when microfilm copies or other alternative copies of the documents are available.

* * * * *

(e) Requests received in the normal course of reference service that do not specifically cite the Freedom of Information Act (5 U.S.C. 552) are not considered requests made under the act. Requests under the act must follow the procedure set forth in subpart C or subpart D of this part.

* * * * *

7. Section 1254.2 is amended by revising the section heading and paragraph (b) to read as follows:

§ 1254.2 Location of documents and hours of use.

* * * * *

(b) The locations and hours of operation (expressed in local time) of the depositories administered by the National Archives and Records Administration are shown in part 1253.

* * * * *

8. Section 1254.4 is amended by revising paragraph (c) to read as follows:

§ 1254.4 Research procedures.

* * * * *

(c) Researchers who wish to use documents not on microfilm in a depository where the microfilm research room is separate from textual research rooms, must complete a researcher identification application form and provide the information needed to decide which documents can be made available. Researchers who wish to use only microfilm documents in a depository where the microfilm research room is not separate from textual research rooms must also comply with this paragraph. Applicants must show identification containing a picture or physical description of the applicant, e.g., a driver's license or school identification card. Exceptions to this requirement must be approved by the director. If applying for access to large quantities of documents or to documents that are especially fragile or valuable, the researcher may be required to furnish additional information about personal or professional qualifications or to furnish additional reasons why access is required. The collection of information contained in this paragraph has been approved by the Office of Management and Budget with the control number 3095-_____.

* * * * *

§ 1254.8 [Amended]

9. In § 1254.8, paragraph (c) is amended by removing the term "National Archives Field Archives Branch" and adding the term "Regional Archives."

10. Section 1254.10 is revised to read as follows:

§ 1254.10 Registration.

Researchers must register each day they enter a research facility, furnishing the information asked on the registration sheet and may be asked to provide additional personal identification.

11. Section 1254.12 is revised to read as follows:

§ 1254.12 Researcher's responsibility for documents.

(a) The research room attendant may limit the quantity of documents delivered to a researcher at one time. The researcher must sign for the documents received and may be required to show his/her researcher identification card. The researcher is responsible for all documents delivered to him/her until he/she returns them. When the researcher is finished using the documents, the documents must be returned to the research room attendant. The reference service slip that accompanies the documents to the research room must not be removed. If asked to do so, the researcher must return documents as much as 15 minutes before closing time. Before leaving a research room, even for a short time, a researcher must notify the research room attendant and place all documents in their proper containers.

(b) When microfilm is available on a self-service basis, research room attendants will assist researchers in identifying research sources on microfilm and provide information concerning how to locate and retrieve the roll(s) of film containing the information of interest. The researcher is responsible for pulling and examining the roll(s). Unless a researcher requires assistance in learning how to operate microfilm reading equipment, the researcher is expected to install the microfilm on the reader. Unless otherwise permitted, a researcher is limited to one roll of microfilm at a time. After using each roll, the researcher is responsible for refiling the roll of microfilm in the location from which it was removed, unless instructed otherwise.

(c) Researchers are responsible for complying with provisions of the Copyright Act (Title 17, United States Code) which governs the making and use of electrostatic copies or other reproductions of copyrighted materials.

12. Section 1254.14 is revised to read as follows:

§ 1254.14 Restrictions on using microfilm readers.

(a) Use of the microfilm readers will be on a first-come, first-served basis. When other researchers are waiting to use a microfilm reader, a 3-hour limit may be placed on using a reader. After 3 hours of machine use, the researcher may sign the waiting list for an additional 3-hour period.

(b) The number of researchers in the microfilm research room in the National Archives Building will be limited, for fire safety reasons, to those researchers assigned a microfilm reader.

13. Section 1254.16 is revised to read as follows:

§ 1254.16 Prevention of damage to documents.

(a) Researchers must exercise all possible care to prevent damage to documents.

(b) Documents may not be used at a desk where there is food or liquid or where an ink pen is being used. Only pencils may be used in research rooms where original documents are used.

(c) Documents must not be leaned on, written on, folded anew, traced, or handled in any way likely to cause damage.

(d) Documents must be identified for reproduction only with a paper tab provided by NARA. Documents may not be fastened with paper clips or rubber bands.

(e) Microfilm must be carefully removed from and returned to the proper microfilm boxes. Care must be taken loading and unloading microfilm

from microfilm readers. Damaged microfilm must be reported to the research room attendant as soon as it is discovered.

(f) Exceptionally valuable or fragile documents may be used only under the conditions specified by the research room attendant.

§ 1254.22 [Redesignated as § 1254.17 and revised]

14. Section 1254.22 is redesignated as § 1254.17 and revised to read as follows:

§ 1254.17 Keeping documents in order.

A researcher must keep unbound documents in the order in which they are delivered to him/her. Documents that appear to be in disorder must not be rearranged by the researcher, but must be referred to the research room attendant. Researchers may use only one folder at a time. Researchers are not allowed to remove documents from more than one container at a time. Researchers should bring to the attention of the research room attendant microfilm put in the wrong box or file cabinet.

15. In § 1254.20, paragraph (a) is revised to read as follows:

§ 1254.20 Conduct.

(a) *Regulations.* Researchers are subject to the provisions of part 1280 of this chapter and to all rules and regulations issued and posted or distributed by a facility director supplementing subpart B of this part, including rules on the use of NARA equipment. Eating, drinking, and chewing gum in a research room are prohibited. Smoking is prohibited except in designated smoking areas. Loud talking and other activities likely to disturb other researchers are also prohibited. Persons desiring to use typewriters, computers, sound recording devices, or similar equipment must work in areas designated by the research room attendant.

* * * * *

16. The section heading of § 1254.26 and paragraphs (a), (b), (d), (f) and (h)(1) are revised to read as follows:

§ 1254.26 Additional rules for use of certain research rooms in NARA facilities in the Washington, DC, area.

(a) Admission to research rooms in the National Archives Building, the Washington National Records Center, and the Pickett Street facility at which original documents are made available is limited to individuals examining and/or copying documents and other materials in the custody of the National Archives and Records Administration. Children under the age of 16 will not be admitted to these research rooms unless they have been granted research privileges or are granted an exception to this provision to view specific documents that a parent or other accompanying adult researcher is using. The exception will be granted by the Reference Services Branch Chief for a child who is able to read and who will be closely supervised by the adult researcher while in the research room. Normally, such a child will be admitted only for the short period required to view the documents. Unless otherwise permitted, children under the age of 16 who have been granted special permission to accompany an adult using records may not actively participate in research activities, e.g., removing, copying, or refiling documents. Students under the age of 16 who wish to perform research on original documents must apply in person to the Chief of the Reference Services Branch and present a letter of reference from a teacher. Students under the age of 16 who have been granted research privileges will be required to be accompanied in the research room by an adult with similar privileges, unless the Chief of the Reference Services Branch specifically waives this requirement with respect to individual researchers.

(b) The procedures in paragraphs (c) through (g) of this section apply to all research rooms in the National Archives Building (except the Microfilm Research Room); the Suitland Research Room in the Washington National Records Center; and the Cartographic and Architectural Records Research Room and the Nixon Presidential Materials research room in the Pickett Street Facility. These procedures are in addition to the procedures specified elsewhere in this part.

* * * * *

(d) Researchers must present a valid researcher identification card to the guard or research room attendant on entering the room. All researchers are required to sign each day the research room registration sheet at the entrance to the research room. Researchers will also record the time they leave the research room at the end of the visit for that day. Researchers are not required to sign in or out when leaving the area temporarily.

* * * * *

(f) NARA will furnish to researchers, without charge, pencils and specially marked lined and unlined notepaper and notecards, for use in the research rooms. Pencils and unused notepaper and notecards should be returned to the research room attendant at the end of the day.

* * * * *

(h) * * *

(1) Use of NARA viewing and listening equipment in the research room is provided on a first-come-first-served basis. When others are waiting to use the equipment, a three-hour limit may be imposed on the use of the equipment.

* * * * *

17. Section 1254.27 is amended by revising the section heading, by removing from paragraph (a) the title "National Archives field branch" and adding in its place the title "regional archives," by revising paragraph (b), by removing from paragraphs (c)(2) and (c)(3) the title "chief of the branch administering the research room" and adding in its place the title "director," and by revising the introductory text of paragraph (f) and paragraphs (f)(3) and (f)(6) to read as follows:

§ 1254.27 Additional rules for use of certain research rooms in Federal records centers, regional archives, and Presidential libraries.

* * * * *

(b) Researchers must present a valid researcher identification card to the guard or research room attendant on entering the room. All researchers are required to sign each day the research room registration sheet at the entrance to the research room. Where instructed to do so, researchers also sign out when leaving the research room for the day. Researchers are not required to sign in or out when leaving the area temporarily or at the end of the day.

* * * * *

(f) Researchers may use NARA self-service copiers if available or authorized personal paper-to-paper copiers to copy documents in accordance with NARA document handling instructions and after review of the documents by the research room attendant to determine their suitability for copying. The director or the senior archivist on duty in the research room will review the determination of suitability if requested by the researcher. The following types of documents are not suitable for copying on a self-service or personal copier:

* * * * *

(3) Documents larger than the glass copy plate of the copier;

* * * * *

(6) Documents which, in the judgement of the research room attendant, are in poor physical condition or which may be subject to possible damage if copied.

18. Section 1254.35 is added to read as follows:

§ 1254.35 Presidential records and Nixon Presidential materials.

Access to Presidential records transferred to NARA is governed by 36 CFR part 1270. Access to the Nixon Presidential materials is governed by 36 CFR part 1275.

19. Section 1254.36 is revised to read as follows:

§ 1254.36 Donated historical materials.

The public use of donated historical materials is subject to restrictions on their use and availability as stated in writing by the donors or depositors of such materials and other restrictions imposed by statute. (Researchers are encouraged to confer with the appropriate director or reference staff member on any question of copyright.) In addition, use is subject to all conditions specified by the Archivist of the United States for purposes of archival preservation.

20. Section 1254.40 is revised to read as follows:

§ 1254.40 Access to national security information.

(a) Declassification of and public access to national security information and material, hereinafter referred to as "classified information" or collectively termed "information" is governed by Executive Order 12356 of April 2, 1982 (3 CFR, 1982 Comp., p. 166), the implementing Information Security Oversight Office Directive Number 1 of June 22, 1982 (47 FR 27836, June 25, 1982) and the Freedom of Information Act (5 U.S.C. 552).

(b) Public access to documents declassified in accordance with this regulation may be restricted or denied for other reasons under the provisions of 5 U.S.C. 552(b) for accessioned agency records; 36 CFR 1254.36 for donated historical materials; 44 U.S.C. 2201 et seq. and 36 CFR part 1270 for Presidential records; and 44 U.S.C. 2111 note and 36 CFR part 1275 for Nixon Presidential materials.

§ 1254.42 [Redesignated as § 1260.2]

21. Section 1254.42 is redesignated as § 1260.2 in subchapter D of this chapter.

22. In § 1254.48, paragraphs (a) and (c) are revised to read as follows:

§ 1254.48 Access by historical researchers and former Presidential appointees.

(a) Access to classified information may be granted to U.S. citizens who are engaged in historical research projects or who previously occupied policy-making positions to which they were appointed by the President. Persons desiring permission to examine material under this special historical researcher/Presidential appointees access program should contact NARA at least 4 months before they desire access to the materials to permit time for the responsible agencies to process the requests for access. NARA will inform requesters of the agencies to which they will have to apply for permission to examine classified information, including classified information originated by the White House or classified information in the custody of the National Archives which was originated by a defunct agency.

* * * * *

(c) To protect against the possibility of unauthorized access to restricted documents, a director may issue instructions supplementing the research room rules provided in subpart B.

23. Section 1254.50 is revised to read as follows:

§ 1254.50 Fees.

NARA will charge requesters for copies of declassified documents according to the fees listed in § 1258.12 of this chapter.

24. In § 1254.70, paragraph (b) is revised to read as follows:

§ 1254.70 NARA copying services.

* * * * *

(b) In order to preserve the original documents, documents which are available on microfilm or other alternate copy will not be copied by other means as long as a legible copy (electrostatic, photographic, or microfilm) can be made from the microfilm.

25. In § 1254.71, paragraphs (a), (b)(1), (b)(2)(i), (d)(3), (d)(6), (f), and (g)(1) are revised to read as follows:

§ 1254.71 Researcher use of the self-service card-operated copiers in the National Archives Building and the Washington National Records Center.

(a) *General.* Self-service card-operated copiers are located in research rooms in the National Archives Building and the Suitland Research Room in the Washington National Records Center. Other copiers set aside for use by reservation are located in designated research areas. Procedures for use are outlined in paragraphs (b) through (g) of this section.

(b) * * *

(1) Copiers located in research rooms in the National Archives Building and the Suitland Research Room in the Washington National Records center may be used until 15 minutes prior to closing of the research room. There is a five-minute time limit on these copiers when others are waiting to use the copier. Researchers using microfilm reader-printers may be limited to three copies when others are waiting to use the machine. Researchers wishing to copy large quantities of documents should see a staff member in the research room to reserve a copier for an extended time period.

(2) * * *

(i) A copier may be reserved for one hour at a time in the textual research room in the National Archives Building and for one-half hour at a time in the Microfilm Research Room in the National Archives Building and in the Suitland Research Room in the Washington National Records Center. Another appointment may be reserved after completing the scheduled appointment. The appointment may be forfeited if the researcher does not arrive within 10 minutes after the scheduled time.

* * * * *

(d) * * *

(3) Documents larger than the glass copy plate of the copier;

* * * * *

(6) Documents which, in the judgment of the research room attendant, are in poor physical condition or which may be subject to possible damage if copied.

(f) *Purchasing debitcards for copiers.* Researchers may use cash to purchase a debitcard from a vending machine during the hours that self-service copiers are in operation. Additionally, debitcards may be purchased with cash, check, money order, credit card, or funds from an active deposit account from the Cashier's Office located in room G–1 of the National Archives Building between the hours of 8:45 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. During the evening and weekend hours, the research room supervisor can make change for $20 or less. The debitcard will, when inserted into the copier, enable the user to make copies, for the appropriate fee, up to the value on the debitcard. Researchers may add value to the debitcard by using the vending machine. The fee for self-service copies is found in § 1258.12 of this chapter.

(g) * * *

(1) To obtain a refund of any unused amount on a debitcard, a researcher must bring the debitcard to the Cashier's Office in room G–1 of the National Archives Building. Cash refunds for debitcards are currently limited to $20.00 or less. Refunds due for more than $20.00 are currently paid by U.S. Treasury check in approximately 6–8 weeks. Refunds due on debitcards obtained using credit cards will be made by issuing a credit of the refund amount to the credit card. Refunds due on debitcards obtained using funds from a

deposit account will be made by crediting the refund to the deposit account.

* * * * *

26. Section 1254.72 is revised to read as follows:

§ 1254.72 Information about documents.

(a) Upon request, overall information pertaining to holdings or about specific documents will be furnished, provided that the time required to furnish the information is not excessive, and provided that the information is not restricted (see subpart C and subpart D).

(b) When so specified by a director, requests must be made on prescribed forms. Such forms will be approved by OMB as information collections and will bear the approved control number.

27. Section 1254.74 is revised to read as follows:

§ 1254.74 Information from documents.

Normally, information contained in the documents will be furnished in the form of photocopies of the documents, subject to the provisions of § 1254.70. NARA will certify facts and make administrative determinations on the basis of archives, or of FRC records when appropriate officials of other agencies have authorized NARA to do so. Such certifications and determinations will be authenticated by the seal of NARA, the National Archives of the United States, or the transferring agency, as appropriate.

28. Section 1254.76 is revised to read as follows:

§ 1254.76 Certification of copies.

The responsible director, or any of his or her superiors, the Director of the Federal Register, and their designees are authorized to certify copies of documents as true copies.

29. Section 1254.90 is amended by revising paragraph (a) to read as follows:

§ 1254.90 General.

(a) This subpart establishes rules and procedures governing the use of privately owned microfilm equipment to film archival records and donated historical materials in the National Archives Building, the Washington National Records Center, the regional archives, and the Presidential libraries.

* * * * *

30. Section 1254.92 is amended by revising the section heading and paragraph (a), redesignating paragraphs (c)(5), (c)(5)(i), (c)(5)(ii), and (c)(6) as paragraphs (d), (d)(1), (d)(2), and (e), respectively, and revising redesignated paragraph (d)(2) to read as follows:

§ 1254.92 Requests to microfilm records and donated historical materials.

(a) Requests to microfilm archival records or donated historical materials (except donated historical materials under the control of the Office of Presidential Libraries) in the National Archives Building, the Washington National Records Center, or the regional archives must be made in writing to the Assistant Archivist for the National Archives (NN), NARA, Washington, DC 20408. Requests to microfilm records or donated historical materials in a Presidential library or donated historical materials in the National Archives Building under the control of the Office of Presidential Libraries must be made in writing to the Assistant Archivist for Presidential Libraries (NL), NARA, Washington, DC 20408. OMB control number 3095–_____ has been assigned to the information collection contained in this section.

* * * * *

(d) * * *

(2) If the original documents are donated historical materials, the requester must agree to include on the film this statement: "The documents reproduced in this publication are donated historical materials from (name of donor) in the custody of the (name of Presidential library or National Archives). The National Archives administers them in accordance with the requirements of the donor's deed of gift and the U.S. Copyright Law, Title 17, U.S.C.".

* * * * *

§ 1254.96 [Amended]

31. In section 1254.96, the word "evluation" in paragraph (a) is corrected to read "evaluation."

PART 1260—DECLASSIFICATION OF AND PUBLIC ACCESS TO NATIONAL SECURITY INFORMATION

32. The authority citation for part 1260 continues to read as follows:

Authority: 44 U.S.C. 2104(a); Executive Order 123356 of April 2, 1982 (3 CFR 1982 Comp., p. 166).

§ 1260.2 [Redesignated from 1254.42]

33. Section 1260.2 is redesignated from § 1254.42 of this chapter.

Dated: October 14, 1993.

Trudy Huskamp Peterson,

Acting Archivist of the United States.

[FR Doc. 93–25882 Filed 10–21–93; 8:45 am]

BILLING CODE 7515–01–W

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL–4793–2]

Proposed Consent Decree; Specifications for Deposit Control Additives

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, notice is hereby given of a proposed consent decree conditionally entered into by the United States Environmental Protection Agency ("EPA") on September 30, 1993, in litigation concerning the deadline for promulgating specifications for gasoline additives to prevent the accumulation of deposits in engines and fuel supply systems. For a period of thirty days following the date of publication of this notice, the Agency will receive written comments relating to the proposed consent decree from persons who were not named as parties to the litigation in question. EPA or the Department of Justice is authorized under section 113(g) to withdraw its consent to the proposed consent decree if appropriate in light of the public comments.

DATES: Written comments on the proposed consent decree must be received by November 22, 1993.

ADDRESSES: Written comments should be sent, preferably in triplicate, to Jonathan S. Martel, Air and Radiation Division Mail Code (2344), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260–7699. Copies of the proposed consent decree are available from Shermanita Isler-Simmons, Air and Radiation Division (2344), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260–7606. A copy of the proposed consent decree has been lodged with the Clerk of the United States District Court for the District of Oregon.

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Herzog (313) 668–4227 at U.S. Environmental Protection Agency, Office of Mobile Sources.

SUPPLEMENTARY INFORMATION: Section 211(1) of the Clean Air Act provides that the Administrator of the EPA is to promulgate a rule, not later than November 15, 1992, establishing specifications for gasoline additives to prevent the accumulation of deposits in engines or fuel supply systems. In

Oregon Natural Resources Council, Inc. v. *Browner*, Civ. No. 93–79–AS (D. Ore.), plaintiffs seek an order compelling the Administrator to promulgate a rule establishing such specifications. EPA and the plaintiffs have entered into a conditional consent decree providing that the Administrator will sign a notice to be published in the **Federal Register** proposing a conditional consent decree providing that the Administrator will sign a notice to be published in the **Federal Register** proposing a rule establishing such specifications no later than November 22, 1993, and will sign a notice of final action with respect to such proposal no later than October 15, 1994.

Section 113(g) of the Clean Air Act (42 U.S.C. 7413(g)) requires, with exceptions not pertinent here, that EPA publish notice of a proposed consent decree in the **Federal Register** and provide a reasonable opportunity for public comment. EPA or the Department of Justice may withhold consent to the proposed consent decree if the comments disclose facts or circumstances that indicate that such consent is inappropriate, improper, inadequate or inconsistent with the requirements of the Clean Air Act.

Dated: October 13, 1993.

Gerald H. Yamada,

Acting General Counsel.

[FR Doc. 93–26158 Filed 10–21–93; 8:45 am]

BILLING CODE 6560–60–M

DEPARTMENT OF VETERANS AFFAIRS

48 CFR Parts 837 and 852

RIN–2900–AG67

VA Acquisition Regulation: Service Contracting

AGENCY: Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend the VA Acquisition Regulation (VAAR) to implement a class deviation from Federal Acquisition Regulation (FAR), Policy, and FAR Clause, Indemnification and Medical Liability Insurance. In addition to waiving the requirement at the FAR, a deviated clause is proposed to be added for nonpersonal health care service contracts. A prescription is also proposed to be added to instruct VA contracting officers when to insert the clause.

DATES: Comments must be received by December 20, 1993. All comments received will be available for public inspection until December 31, 1993. This amendment is proposed to be effective on the date of publication of the final rule.

ADDRESSES: Comments should be sent to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington DC 20420. All written comments received will be available for public inspection only in the Veterans Service Unit, Room 170 of the above address, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) until December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Patricia A. Viverette, Acquisition Policy Division (95A), Office of Acquisition and Materiel Management, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington DC 20420, (202) 233–5001.

SUPPLEMENTARY INFORMATION:

I. Background

FAR Section 37.401 and FAR Clause 52.237–7 include indemnification requirements that contractors providing nonpersonal health care services to VA are unable to comply with due to conflict with state statutes or excessive cost. To facilitate execution of nonpersonal health care service contracts, more than 100 individual deviations waiving FAR requirements have been executed. To relieve VA contracting officers from requesting individual deviations, the Deputy Secretary of Veterans Affairs approved a class deviation from portions of FAR section 37.401 and FAR Clause 52.237–7. Specifically, the Deputy Secretary waived paragraph (c) of FAR section 37.401. The Deputy Secretary also waived the indemnification, insurance, and extended reporting endorsement requirements contained in paragraphs (a), (b), and (c) of FAR Clause 52.237–7. To implement this deviation, a prescription is proposed to be added at VAAR section 837.403 to instruct VA contracting officers when to insert the deviated clause. The deviated clause is also proposed to be added to VAAR part 852, Solicitation Provisions and Contract Clauses.

II. Regulatory Flexibility Act (RFA)

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601(2). Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected VA Acquisition Regulation subpart will also be considered in accordance with section 610 of the Act.

III. Paperwork Reduction Act

This amendment does not impose any additional reporting or recordkeeping requirements on the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Parts 837 and 852

Government procurement.

Approved: October 5, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 48 CFR parts 837 and 852 are amended as set forth below:

1. The authority citation for part 837 is revised to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

PART 837—SERVICE CONTRACTING

2. Subpart 837.4, section 837.403 is added to read as follows:

Subpart 837.4—Nonpersonal Health Care Services

837.403 Contract Clause

The contracting officer shall insert the clause at 852.237–7, Indemnification and Medical Liability Insurance (Deviation), in solicitations and contracts for nonpersonal health care services. The contracting officer may include the clause in bilateral purchase orders for nonpersonal health care services awarded under the procedures in FAR part 13 and VAAR part 813.

PART 852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 852.2—[Amended]

3. The authority citation for part 852 continues to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

4. Section 852.237–7 is added to read as follows:

852.237–7 Indemnification and Medical Liability Insurance (Deviation)

As prescribed in 837.403, insert the following clause:

Indemnification and Medical Liability Insurance (Oct 1993)

(a) It is expressly agreed and understood that this is a nonpersonal services contract, as defined in Federal Acquisition Regulation (FAR) 37.101, under which the professional

services rendered by the Contractor or its health care providers are rendered in its capacity as an independent contractor. The Government may evaluate the quality of professional and administrative services provided, but retains no control over professional aspects of the services rendered, including by example, the Contractor's or its health care providers' professional medical judgment, diagnosis, or specific medical treatments. The Contractor and its health care providers shall be liable for their liability producing acts or omissions. The Contractor shall maintain or require all health care providers performing under this contract to maintain, during the term of this contract, professional liability insurance issued by a responsible insurance carrier of not less than the following amount(s) per specialty per occurrence: _____*. However, if the Contractor is an entity or subdivision of a state that either provides for self-insurance or limits the liability or the amount of insurance purchased by State entities, then the insurance requirement of this contract shall be fulfilled by incorporating the provisions of the applicable State law.

(b) An apparently successful offeror, upon request by the Contracting Officer, shall furnish prior to contract award evidence of the insurability of the offeror and/or of all health care providers who will perform under this contract. The submission shall provide evidence of insurability concerning the medical liability insurance required by paragraph (a) of this clause or the provisions of state law as to self-insurance, or limitations on liability or insurance.

(c) The Contractor shall, prior to commencement of services under this contract, provide to the Contracting Officer Certificates of Insurance or insurance policies evidencing the required insurance coverage and an endorsement stating that any cancellation or material change adversely affecting the Government's interest shall not be effective until 30 days after the insurer or the Contractor gives written notice to the Contracting Officer. Certificates or policies shall be provided for the Contractor and/or for each health care provider who will perform under this contract.

(d) The Contractor shall notify the Contracting Officer if it, or any of the health care providers performing under this contract, change insurance providers during the performance period of this contract. The notification shall provide evidence that the Contractor and/or health care providers will meet all the requirements of this clause, including those concerning liability insurance and endorsements. These requirements may be met either under the new policy, or a combination of old and new policies, if applicable.

(e) The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts for health care services under this contract. The Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the provisions set forth in paragraph (a) of this clause.

(End of clause)

* Contracting Officer insert the dollar value(s) of standard coverage(s) prevailing within the local community as to the specific medical specialty, or specialties, concerned, or such higher amount as the Contracting Officer deems necessary to protect the Government's interests.

[FR Doc. 93–25978 Filed 10–21–93; 8:45 am]
BILLING CODE 6320–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB94

Endangered and Threatened Wildlife and Plants; Notice of Extension of Public Comment Period on Proposed Endangered Status for Kootenai River Population of the White Sturgeon

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of extension of public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service), pursuant to the Endangered Species Act of 1973, as amended (Act), gives notice that the comment period on the proposed endangered status for the Kootenai River population of the white sturgeon (*Acipenser transmontanus*) is extended. This fish is found in the Kootenai River in Idaho, Montana, and British Columbia, Canada. The Service is extending the comment period to provide the public with more time in which to submit comments. The proposed rule, which stated the deadline for public comment was November 4, 1993, was published in the **Federal Register** on July 7, 1993 (58 FR 36379).

DATES: The comment period on the proposal is extended until November 19, 1993. Any comments received after the closing date may not be considered in the final decision on this proposal.

ADDRESSES: Written comments and materials concerning this proposal should be sent to the Field Supervisor, Boise Field Office, U.S. Fish and Wildlife Service, 4696 Overland Road, room 576, Boise, Idaho, 83705. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Charles H. Lobdell, Field Supervisor, at the above address or (208) 334–1931.

SUPPLEMENTARY INFORMATION:

Background

The Kootenai River population of the white sturgeon (*Acipenser transmontanus*) is restricted to approximately 270 kilometers (168 miles) of the Kootenai River, in Idaho, Montana, and British Columbia, Canada, primarily upstream from Cora Linn Dam at the outflow Kootenay Lake, British Columbia. A natural barrier at Bonnington Falls downstream of Kootenay Lake has isolated the Kootenai River Sturgeon from other white sturgeon populations in the Columbia River basin. The free-flowing river habitat for this fish has been adversely affected from development in the Kootenai River basin. Construction of Libby Dam for hydropower and flood control has reduced river flows critical to successful reproduction during the May to July sturgeon spawning season, and reduces the availability of nutrients in the river system. The Kootenai River population of white sturgeon declined to an estimated 880 individuals, with approximately 80 percent of the sturgeon over 20 years old. In addition to the lack of recruitment of juveniles into the population, this fish is threatened by disease and poor water quality.

On July 7, 1993, the Service proposed to list the Kootenai River population of the white sturgeon as an endangered species, without critical habitat, pursuant to the Endangered Species Act of 1973 (Act) (58 FR 36379). The public comment period originally closed on November 4, 1993; however, the Service is extending the comment period to provide the public with more opportunities to comment. Comments must be submitted to the Field Supervisor, Boise Field Office (see **ADDRESSES** section), by November 19, 1993.

Author

The primary author of this notice is Monica Tomosy, U.S. Fish and Wildlife Service, Portland Regional Office, 911 N.E. 11th Avenue, Portland, Oregon 97232 (telephone 503/231–6131).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Dated: October 18, 1993.

William E. Martin,

Acting Regional Director, Fish and Wildlife Service, Portland, Oregon.

[FR Doc. 93-26016 Filed 10-21-93; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 58, No. 203
Friday, October 22, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Advisory Council Meetings; Allegheny Wild and Scenic River, Allegheny National Forest, Pennsylvania

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The Southern Advisory Council for the Allegheny National Wild and Scenic River will meet at 7 p.m., Tuesday, November 16, 1993 at the Franklin Public Library, Franklin, PA. The Council will continue to discuss recommendations for meeting draft Management Goals for the river between Franklin and Emlenton.

The Northern Advisory Council will meet at 7 p.m., Wednesday, November 17, 1993, at the Tidioute Towers, Tidioute, PA. The Northern Council will discuss recommendations for meeting draft Management Goals for the river corridor between Kinzua Dam and Oil City.

Meetings are open to the public. A sign language interpreter will be provided if requested by November 5, 1993.

FOR FURTHER INFORMATION CONTACT: Lionel Lemery, Wild and Scenic River Coordinator, Allegheny National Forest, 222 Liberty Street, Warren, Pennsylvania 16365, 814/723–5150 or 814/726–2710 (TTY).

Dated: October 18, 1993.

Lionel A. Lemery,

Wild and Scenic River Coordinator.

[FR Doc. 93–26015 Filed 10–21–93; 8:45 am]

BILLING CODE 3410–11–M

Packers and Stockyards Administration

Proposed Posting of Stockyards

The Packers and Stockyards Administration, United States Department of Agriculture, has information that the livestock markets named below are stockyards as defined in section 302 of the Packers and Stockyards Act (7 U.S.C. 202), and should be made subject to the provisions of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*).

NC–165
Tri County Marketing, Beulaville, North Carolina
NC–166
Mountain Livestock Auction, Murphy, North Carolina
OK–210
Winter Livestock, Inc., Enid, Oklahoma
TN–191
Somerville Livestock Sales, Inc., Somerville, Tennessee
TX–342
Hills Prairie Livestock Auction, Co., Bastrop, Texas

Pursuant to the authority under section 302 of the Packers and Stockyards Act, notice is hereby given that it is proposed to designate the stockyards named above as posted stockyards subject to the provisions of said Act.

Any person who wishes to submit written data, views or arguments concerning the proposed designation may do so by filing them with the Director, Livestock Marketing Division, Packers and Stockyards Administration, Room 3408 South Building, U.S. Department of Agriculture, Washington, D.C. 20250 by November 1, 1993. All written submissions made pursuant to this notice will be made available for public inspection in the office of the Director of the Livestock Marketing Division during normal business hours.

Done at Washington, DC this 18th day of October 1993.

Harold W. Davis,

Director, Livestock Marketing Division.

[FR Doc. 93–26068 Filed 10–21–93; 8:45 am]

BILLING CODE 3410–KD–P

Posting of Stockyards

Pursuant to the authority provided under Section 302 of the Packers and Stockyards Act (7 U.S.C. 202), it was ascertained that the livestock markets named below are stockyards as defined by section 302(a). Notice was given to the stockyard owners and to the public as required by section 302(b), by posting notices at the stockyards on the dates specified below, that the stockyards are subject to the provisions of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*).

Facility No., name, and location of stockyard	Date of posting
TN–190 H Bar M Horse Auction, Athens, Tennessee.	September 13, 1993.
TX–341 Decatur Livestock Market, Inc., Decatur, Texas.	June 14, 1993.
VA–160 Abingdon Stockyard Exchange, Inc., Abingdon, Virginia.	September 21, 1993.

Done at Washington, D.C. this 18th day of October 1993.

Harold W. Davis,

Director Livestock Marketing Division Packers and Stockyards Administration.

[FR Doc. 93–26069 Filed 10–21–93; 8:45 am]

BILLING CODE 3410–KD–P

COMMISSION OF FINE ARTS

Meeting

The Commission of Fine Arts' meeting scheduled for 21 October 1993 has been cancelled. The next meeting is scheduled for 18 November 1993 at 10 a.m. in the Commission's offices in the Pension Building, suite 312, Judiciary Square, 441 F Street NW., Washington, DC 20001 to discuss various projects affecting the appearance of Washington, DC, including buildings, memorials, parks, etc.; also matters of design referred by other agencies of the government.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, DC 15 October 1993.

Charles H. Atherton,

Secretary.

[FR Doc. 93–25974 Filed 10–21–93; 8:45 am]

BILLING CODE 6330–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-588-503]

64K Dynamic Random Access Memory Components From Japan Revocation of Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of revocation of antidumping duty order.

SUMMARY: The Department of Commerce is revoking the antidumping duty order on 64K dynamic random access memory components from Japan because it is no longer of any interest to domestic interested parties.

EFFECTIVE DATE: October 22, 1993.

FOR FURTHER INFORMATION CONTACT: Tom Futtner, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone (202) 482–5253.

SUPPLEMENTARY INFORMATION:

Background

On June 18, 1993, the Department of Commerce (the Department) published in the **Federal Register** (58 FR 33619) its intent to revoke the antidumping duty order on 64K dynamic random access memory components from Japan (51 FR 21781, June 16, 1986).

Additionally, as required by 19 CFR 353.25(d)(4)(ii), the Department served written notice of its intent to revoke this duty order to each domestic interested party on the service list. Domestic interested parties who might object to the revocation were provided the opportunity to submit their comments not later than thirty days from the date of publication.

Scope of the Order

The merchandise covered by the order is 64K dynamic random access memory components from Japan. This merchandise is currently classifiable under Harmonized Tariff Schedules (HTS) item numbers 8542.11.00.22 and 8542.11.00.32. The HTS numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The Department may revoke an antidumping duty order if the Secretary concludes that the duty order is no longer of any interest to interested parties. We conclude that there is no interest in an antidumping duty order when no interested party has requested an administrative review for five consecutive review periods and when no domestic interested party objects to revocation.

In this case we have received no request for review for five consecutive review periods. Furthermore, no domestic interested party has expressed opposition to revocation. Based on these facts, we have concluded that the antidumping duty order covering 64K dynamic random access memory components from Japan is no longer of any interest to interested parties. Accordingly, we are revoking this antidumping duty order in accordance with 19 CFR 353.25(d)(4)(iii).

This revocation applies to all unliquidated entries of 64K dynamic random access memory components from Japan entered, or withdrawn from warehouse, for consumption on or after June 1, 1993. Entries made during the period June 1, 1992 through May 31, 1993, will be subject to automatic assessment in accordance with 19 CFR 353.22(e). The Department will instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after June 1, 1993, without regard to antidumping duties, and to refund any estimated antidumping duties collected with respect to those entries.

This notice is in accordance with 19 CFR 353.25(d).

Dated: October 6, 1993.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 93–26085 Filed 10–21–93; 8:45 am]

BILLING CODE 3510-DS-M

[C–301–401, C–549–401, C–333–402, and C–542–401]

Certain Textile Mill Products From Colombia and Thailand and Certain Textile Mill Products and Apparel From Peru and Sri Lanka; Final Court Decision and Reinstatement of Agreements Suspending the Countervailing Duty Investigations and Reinstatement of Countervailing Duty Orders

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final court decision and reinstatement of agreements suspending the countervailing duty investigation and reinstatement of countervailing duty orders.

SUMMARY: On October 12, 1993, the United States Court of Appeals for the Federal Circuit (CAFC) affirmed the decision of the Court of International Trade (CIT) that an interested party timely objected to the Department of Commerce's (the Department) Notice of Intent to Terminate the suspended countervailing duty investigations in Certain Textile Mill Products from Colombia and Certain Textile Mill Products from Thailand, reversed the CIT's finding that an interested party timely objected to the Department's Notice of Intent to Terminate the suspended countervailing duty investigation regarding Certain Apparel from Colombia, and affirmed the CIT's denial of the motions of Sri Lanka and Peru to intervene in the litigation after the judgment of the CIT. *Belton Industries, Inc.* v. *United States, et al.*, CAFC Nos. 92–1419, 92–1451, and *Belton Industries, Inc.* v. *United States, et al.*, CAFC Nos. 92–1452, 92–1483. As a result, the Department must reinstate the agreements suspending the countervailing duty investigations regarding Certain Textile Mill Products from Colombia, and Certain Textile Mill Products from Thailand, and reinstate the countervailing duty orders on Certain Textile Mill Products and Apparel from Peru, and Certain Textile Mill Products and Apparel from Sri Lanka.

FOR FURTHER INFORMATION CONTACT: Will Sjoberg, Joe Kaesshaefer, Linda Pasden (for suspension agreements), Office of Agreements Compliance, telephone (202) 482–3793, and James Doyle or Kelly Parkhill (for countervailing duty orders), Office of Countervailing Compliance, telephone (202) 482–2786, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On August 13, 1990, the Department revoked the countervailing duty orders concerning Certain Textile Mill Products and Apparel from Peru and Sri Lanka (55 FR 32940–42). On that same date, the Department terminated the suspended countervailing duty investigation on Certain Textile Mill Products and Apparel from Colombia (55 FR 32940). On November 3, 1990, the Department terminated in part the suspended countervailing duty investigation on Certain Textile Mill Products from Thailand (55 FR 48885).

Subsequent to publication of the Department's revocations and terminations, ten domestic producers of textile products and the American Textile Manufacturing Institute (ATMI) filed a lawsuit with the CIT challenging the Department's revocations and

terminations. On March 24, 1992, the CIT issued a decision (*Belton Industries, Inc.* v. *Unites States*, CIT Slip Op. 92–39) and on May 7, 1992, issued its judgment in the matter, directing the Department to rescind the terminations and revocations in the textile and apparel cases and reinstate the related suspended investigations and countervailing duty orders.

In its decision in *The Timken Company* v. *United States*, 893 F.2d 337 (Fed. Cir. 1990), the CAFC held that the Department must publish notice of final decision of the CIT or the CAFC which is not in harmony with the Department's determination. The CAFC also held in *Timken* that in such a case the Department must suspend liquidation until there is a "conclusive" decision in the action. Therefore, on May 18, 1992, the Department directed the United States Customs Service to suspend liquidation of entries of the subject merchandise in Certain Textile Mill Products and Apparel from Peru and Sri Lanka at zero percent pending the expiration of the period to appeal the CIT's order of May 7, 1992, or pending a final decision of the CAFC if that order were appealed. See 57 FR 21960 (May 26, 1992). Because entries of the subject merchandise were not suspended previously under the suspended countervailing duty investigations involving Certain Textile Mill Products from Thailand and Certain Textile Mill Products and Apparel from Colombia, the Department did not order Customs to suspend liquidation in those matters.

Prior to the expiration of the appeal period, the United States, Thailand, and Colombia filed notices of appeal of the CIT's decision and order in the *Belton* litigation to the CAFC. However, on October 30, 1992, the CAFC granted the United States' motion to dismiss its action, thus changing the United States from an appellant in the *Belton* appeals to an appellee. Additionally, Peru and Sri Lanka appealed the CIT's separate denial of their motions to intervene post-judgment in the litigation to the CAFC. *See Belton Industries, Inc.* v. *United States*, CIT Slip Op. 92–102 (July 7, 1992).

On October 12, 1993, the CAFC issued its judgement affirming the decision of the CIT that an interested party timely objected to the Department's Notice of Intent to Terminate the suspended countervailing duty investigations in Certain Textile Mill Products from Colombia and Certain Textile Mill Products from Thailand; reversing the CIT's finding that an interested party timely objected to the Department's Notice of Intent to Terminate the suspended countervailing duty investigation regarding Certain Apparel from Colombia; and affirming the CIT's denial of the motions of Sri Lanka and Peru to intervene in the litigation after the judgment of the CIT. *Belton Industries, Inc.* v. *United States, et al.*, CAFC Nos. 92–1419 and –1451, and *Belton Industries, Inc.* v. *United States, et al.*, CAFC Nos. 92–1452, –1483.

Because the CAFC affirmed the CIT's order to reinstate the suspended countervailing duty investigations in Certain Textile Mill Products from Colombia and Certain Textile Mill Products from Thailand, the Department is reinstating these agreements. The anniversary month for these two suspension agreements continues to be March.

Additionally, because the CAFC affirmed the CIT's order to reinstate the countervailing duty orders on Certain Textile Mill Products and Apparel from Peru and Sri Lanka, the Department hereby reinstates these orders, effective May 18, 1992. The Department will instruct Customs to continue to suspend liquidation of entries of the subject merchandise. In accordance with the countervailing duty orders published at 50 FR 9871 (Peru) and 50 FR 9826 (Sri Lanka), the Department is directing the U.S. Customs Service to require a cash deposit in the amount of 2.88 percent *ad valorem* for certain textile mill products and zero percent *ad valorem* for certain apparel, the last published deposit rates for each entry of the subject merchandise from Peru, and 5.00 percent *ad valorem* for textiles and 3.06 percent *ad valorem* for apparel, the last published deposit rates for each entry of the subject merchandise from Sri Lanka, which are entered, or withdrawn from warehouse, for consumption on or after the date of issuance of this notice, October 22, 1993. Merchandise entered between May 18, 1992, and October 22, 1993, was suspended at zero in accordance with the **Federal Register** notice of the CIT decision. The anniversary month for these two countervailing duty orders continues to be March.

The Department intends to publish separate **Federal Register** notices for each suspension agreement and order that will contain the proposed conversion of the scope of the orders and the suspension agreements from the Tariff Schedules of the United States to the Harmonized Tariff Schedule. Interested parties will be invited to comment at that time.

Dated: October 20, 1993.

Joseph A. Spetrini

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–26182 Filed 10–21–93; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

[I.D. 072093A]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Approval of a fishery management plan amendment.

SUMMARY: NMFS announces approval of Amendment 31 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). This amendment removes Atka mackerel from the "other species" category and establishes Atka mackerel as a separate target species in the Gulf of Alaska (GOA). The action is intended to promote conservation and improve management of Atka mackerel and "other species," and to further the goals and objectives of the FMP.

EFFECTIVE DATE: October 18, 1993.

ADDRESSES: Copies of Amendment 31 and the environmental assessment (EA) prepared for the amendment are available from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, Alaska 99510 (telephone 907–271–2809).

FOR FURTHER INFORMATION CONTACT: Jessica A. Gharrett, NMFS, Alaska Region, 907–586–7228.

SUPPLEMENTARY INFORMATION: Since 1988, Atka mackerel has been managed under the FMP as a component of the "other species" category of groundfish. In recent years, target fishing for that species in the Western Regulatory Area has preempted fishing activities for remaining components of "other species". During 1992, the Council requested preparation of an FMP amendment that would establish Atka mackerel as a separate target species in the GOA. At its June 1993 meeting, the Council reviewed the resultant EA and approved Amendment 31 for review by the Secretary of Commerce (Secretary) under section 304(b) of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

A Notice of Availability of Amendment 31, which described the proposed action and solicited comments from the public until September 20, 1993, was published in the **Federal**

Register (58 FR 39794, July 26, 1993). No comments were received during the public comment period. After review under the Magnuson Act, the Secretary determined that Amendment 31 is consistent with the Magnuson Act and other applicable laws and approved Amendment 31 on October 18, 1993.

Implementation of the Amendment

No regulatory changes are necessary to implement this FMP amendment. Total allowable catch for target species and the "other species" category are specified annually under existing regulations at § 672.20(a)(2).

Response to Comments

No written comments on the proposed action were received.

Dated: October 19, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–26078 Filed 10–21–93; 8:45 am]

BILLING CODE 3510–22–M

National Oceanic and Atmospheric Administration

[ID 101593C]

Mid-Atlantic Fishery Management Council; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public hearings and request for comment.

SUMMARY: The Mid-Atlantic Fishery Management Council will hold public hearings to allow for input on Amendment 6 to the Fishery Management Plan for the Summer Flounder Fishery (FMP). The purpose of this amendment is to allow otter trawl vessels to carry more than one mesh size codend under certain conditions and to change the annual management measure setting schedule.

DATES: Written comments on the proposed amendment will be accepted until November 30, 1993. See **SUPPLEMENTARY INFORMATION** for time and locations of hearings.

ADDRESSES: Send comments to David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, room 2115, Federal Building, 300 South New Street, Dover, DE 19901.

FOR FURTHER INFORMATION CONTACT: David R. Keifer, (302–674–2331) Executive Director, Mid-Atlantic Fishery Management Council, room 2115 Federal Building, 300 South New Street, Dover, DE 19901.

SUPPLEMENTARY INFORMATION: All hearings begin at 7 p.m. except the New York hearing and will be tape recorded with the tapes filed as the official transcript of the hearing. The New York hearing will begin at 7:30 p.m.

The scheduled public hearings are as follows:

1. November 3, 1993: Danfords Inn, 25 East Broadway, Pt. Jefferson, NY.
2. November 8, 1993: Holiday Inn, 290 Highway 37 East, Toms River, NJ.
3. November 9, 1993: Days Inn, 500 Hathaway Road, I–95 and Route 140, New Bedford, MA.
4. November 10, 1993: Dutch Inn, Great Island Road, Galilee, RI.
5. November 10, 1993: Holiday Inn, 916 Carolina Avenue, Washington, NC.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 18, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–26079 Filed 10–21–93; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce

ACTION: Application for Public Display Permit, Safari World (P533A)

SUMMARY: Notice is hereby given that an applicant has applied in due form for a permit to obtain the care and custody of marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

1. *Applicant*: Safari World Co., Ltd., 99 Ramindra 1, KM. 9, Minburi Bankkok 10510 Thailand.

2. *Type of Permit:* Public Display.

3. *Number and Name of Animals*: Ten California sea lions (*Zalophus californianus*) from captive stock.

The applicant requests authorization to obtain permanent custody of ten California sea lions, five males and five females for the purposes of public display.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, NMFS, NOAA, U.S. Department of Commerce, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries.

Documents submitted in connection with the above application are available for review, by appointment, in the following offices:

Permits Division, Office of Protected Resources, NMFS, NOAA, 1315 East-West Highway, room 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Northeast Region, NMFS, NOAA, One Blackburn Drive, Gloucester, MA 01930 (508/281–9200);

Director, Southeast Region, NMFS, NOAA, 9450 Koger Blvd., St. Petersburg, FL 33702 (813/893–3141);

Director, Southwest Region, NMFS, NOAA, 501 West Ocean Blvd., suite 4200, Long Beach, CA 90802–4213 (310/980–4016); and

Director, Northwest Region, NMFS, NOAA, 7600 Sand Point Way, NE., BIN C15700, Seattle, WA 98115 (206/526–6150).

Dated: October 15, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–26012 Filed 10–21–93; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Bangladesh

October 19, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 26, 1993.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on

embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for swing and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 60174, published on December 18, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 19, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 11, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Bangladesh and exported during the twelve-month period which began on February 1, 1993 and extends through January 31, 1994.

Effective on October 26, 1993, you are directed to amend further the directive dated December 11, 1992 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the People's Republic of Bangladesh:

Category	Adjusted twelve-month limit [1]
237	242,036 dozen.
334	106,357 dozen.
335	178,471 dozen.
340/640	1,964,624 dozen.
351/651	511,287 dozen.
634	372,093 dozen.
635	228,438 dozen.
641	393,987 dozen.
647/648	856,577 dozen.

[1] The limit has not been adjusted to account for any imports exported after January 31, 1993.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–26089 Filed 10–21–93; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Restraint Limits for Certain Wool Textile Products Produced or Manufactured in Bulgaria

October 18, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 19, 1993.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Category 435 is being increased for swing. The limit for Category 410 is being reduced to account for the swing being applied.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 58 FR 15485, published on March 23, 1993.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Memorandum of Understanding dated March 10, 1993, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 18, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 18, 1993, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain wool textile products, produced or manufactured in Bulgaria and exported during the twelve-month period which began on January 1, 1993 and extends through December 31, 1993.

Effective on October 19, 1993, you are directed to adjust the limits for wool textile products in the following categories, as provided under the terms of the Memorandum of Understanding dated March 10, 1993 between the Governments of the United States and the Republic of Bulgaria:

Category	Twelve-month limit [1]
410	661,860 square meters.
435	21,400 dozen.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–26092 Filed 10–21–93; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Dominican Republic

October 18, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 25, 1993.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the

bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Category 448 is being increased by application of swing, reducing the limit for Categories 342/642 to account for the increase.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 53882, published on November 13, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 18, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 6, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Dominican Republic and exported during the twelve-month period which began on January 1, 1993 and extends through December 31, 1993.

Effective on October 25, 1993, you are directed to amend the directive dated November 6, 1992 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the Dominican Republic:

Category	Adjusted twelve-month limit [1]
342/642	420,308 dozen.
448	42,130 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1992.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–26095 Filed 10–21–93; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Guatemala

October 18, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 25, 1993.

FOR FURTHER INFORMATION CONTACT: Nicole Bivens Collinson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Categories 340/640 is being increased for swing and carryforward. The limit for Category 448 is being reduced to account for the swing being applied.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 59334, published on December 15, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 18, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 9, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Guatemala and exported during the twelve-month period which began on January 1, 1993 and extends through December 31, 1993.

Effective on October 25, 1993, you are directed to amend further the December 9, 1992 directive to adjust the limits for the following categories, as provided by the current bilateral agreement between the Governments of the United States and Guatemala:

Category	Adjusted twelve-month limit
340/640	992,268 dozen.
448	16,590 dozen.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–26093 Filed 10–21–93; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Malaysia

October 19, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: October 19, 1993.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6712. For information on

embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Categories 331/631 is being increased for carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 54772, published on November 20, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of their provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 19, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 17, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in Malaysia and exported during the twelve-month period which began on January 1, 1993 and extends through December 31, 1993.

Effective on October 19, 1993, you are directed to increase the limit for Categories 331/631 to 1,716,273 dozen pairs [1], as provided under the terms of the current bilateral agreement between the Governments of the United States and Malaysia.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–26088 Filed 10–21–93; 8:45 am]

BILLING CODE 3510–DR–F

[1] The limit has not been adjusted to account for any imports exported after December 31, 1992.

Transshipment Charges for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

October 19, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs charging illegal transshipments to 1993 limits.

EFFECTIVE DATE: October 19, 1993.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Based on investigations conducted by the Governments of the United States and Pakistan, CITA has determined that textile products in Categories 226/313 and 315 were transshipped during 1991 and 1992 in circumvention of the U.S.-Pakistan Bilateral Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement, effected by exchange of notes dated May 20, 1987 and June 11, 1987, as amended and extended. The U.S. Government informed the Government of Pakistan of the charges to be made to the 1993 quotas. Accordingly, in the letter published below, the Chairman of CITA directs the Commissioner of Customs to charge the following amounts to the 1993 quota levels for Categories 226/313 and 315:

Category	Amount to be charged
226	1,144,449 square meters.
313	2,536,325 square meters.
315	1,654,248 square meters.

U.S. Customs continues to conduct other investigations of such transshipments of textiles produced in Pakistan and exported to the United States. The charges resulting from these investigations will be published in the **Federal Register**.

The U.S. Government is taking this action pursuant a Memorandum of Understanding dated August 19, 1993 between the Governments of the United States and Pakistan and the current bilateral U.S.-Pakistan bilateral textile agreement, and in conformity with Paragraph 16 of the Protocol of Extension and Article 8 of the Arrangement Regarding International Trade in Textiles, done at Geneva on December 20, 1973 and extended on December 14, 1977, December 22, 1981, July 31, 1986, July 31, 1991 and December 9, 1992.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 56904, published on December 1, 1992.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 19, 1993:

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: To facilitate implementation of the Bilateral Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement, effected by exchange of notes dated May 20, 1987 and June 11, 1987, as amended and extended, between the Governments of the United States and Pakistan, I request that, effective on October 19, 1993, you charge the following amounts to the following categories for 1993 (see directive dated November 25, 1992):

Category	Amount to be charged
226	1,144,449 square meters.
313	2,536,325 square meters.
315	1,654,248 square meters.

This letter will be published in the **Federal Register**.

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–26091 Filed 10–21–93; 8:45 am]

BILLING CODE 3510–DR–F

Announcement of a Request for Bilateral Textile Consultations on Certain Cotton and Man-Made Fiber Fabric Produced or Manufactured in Korea

October 18, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on categories for which consultations have been requested, call (202) 482–3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On October 4, 1993, the Government of the United States requested consultations with the Government of the Republic of Korea regarding imports of woven pile fabric in Category 224pt. (HTS numbers 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010 and 5801.36.0020), produced or manufactured in Korea. This request was made on the basis of the current bilateral agreement between the Governments of the United States and the Republic of Korea.

The United States reserves the right to control imports at the level under paragraph 7 of the agreement. The United States remains committed to finding a solution concerning this category. Should such a solution be reached in consultations with the Government of the Republic of Korea, further notice will be published in the **Federal Register**.

Anyone wishing to comment or provide data or information regarding the treatment of Category 224pt., under the agreement with the Government of the Republic of Korea, or in any aspect thereof, to comment on domestic production or availability of products included in Category 224pt., is invited to submit 10 copies of such comments or information to Rita D. Hayes, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande. The comments received will be considered in the context of the consultations with the Government of the Republic of Korea.

Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, rm H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992).

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–26094 Filed 10–21–93; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletion

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled

ACTION: Additions to and deletion from the procurement list.

SUMMARY: This action adds to the Procurement List commodities and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List a service previously furnished by such agencies.

EFFECTIVE DATE: November 22, 1993.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 603–7740.

SUPPLEMENTARY INFORMATION: On April 16, August 13 and 27, 1993, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (58 FR 19805, 43096 and 45317) of proposed additions to and deletion from the Procurement List:

Additions

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and service, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and service to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and service.

3. The action will result in authorizing small entities to furnish the commodities and service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and service proposed for addition to the Procurement List.

Accordingly, the following commodities and service are hereby added to Procurement List:

Commodities

Tool Box, Portable

5140–00–329–6305

5140–00–226–9020

5140–00–226–9021

Service

Janitorial/Custodial, Naval Intelligence Command Building 1, Suitland, Maryland.

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Deletion

After consideration of the relevant matter presented, the Committee has determined that the service listed below is no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following service is hereby deleted from the Procurement List:

Grounds Maintenance, U.S. Naval Security Activity, Skaggs Island, Sonoma, California.

E. R. Alley, Jr.
Deputy Executive Director

[FR Doc. 93–26084 Filed 10–21–93; 8:45 am]
BILLING CODE 6820–33–P

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete commodities and services previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: November 22, 1993.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed action.

Additions

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following commodities and services to the Procurement List for production by the nonprofit agency listed:

Commodities

Cup, Disposable
7350–00–162–3006
7350–01–056–2896
Nonprofit Agency: Royal Maid Association for the Blind
Hazlehurst, Mississippi

Tape, Pressure-Sensitive, Adhesive
7510–00–074–4996
7510–00–074–4954
7510–00–074–4963
7510–00–074–4955
7510–00–074–5029
7510–00–074–4964
7510–00–074–4960
7510–00–074–4946
7510–00–074–5124
7510–00–074–4969
7510–00–266–5016
7510–00–074–4961
7510–00–074–4952
7510–00–074–4978
7510–00–074–4962
Nonprofit Agency: Cincinnati Association for the Blind
Cincinnati, Ohio

Necktab, Women's Shirt
8445–01–295–3434
8445–01–101–1649
8445–01–280–2215
Nonprofit Agency: Northeastern Association of the Blind at Albany,
Albany, New York

Services

Commissary Shelf Stocking and Custodial
Naval Air Station, Moffett Field
San Jose, California
Nonprofit Agency: Pride Industries
Roseville, California

Janitorial/Custodial
Social Security Administration Building
1530 4th Street
Peru, Illinois
Nonprofit Agency: Gateway Services, Inc., Princeton, Illinois

Deletions

It is proposed to delete the following commodities and services from the Procurement List:

Commodities

Assembly, Support Panel
7105–00–NSH–0004

Base, Grooming Unit
7105–01–007–1830
7105–01–019–0375
7105–01–019–0376
7105–01–019–0379

Bookcase, Drop-Lid
7105–01–005–8408
7105–01–005–8409
7105–01–007–1760
7105–01–009–2567
7105–01–047–3557

Bookcase, Open-Shelf
7105–01–007–9798
7105–01–047–3558
7105–01–047–3556

Box, Vanity
7105–01–007–1831

Bracket, Overchest Support
7105–00–NSH–0003

Chest, Five-Drawer
7105–01–005–8403
7105–01–005–8404
7105–01–007–9797
7105–01–011–8397

Chest, Six-Drawer
7105–01–005–8403
7105–01–005–8407
7105–01–005–8406
7105–01–023–4636

Chest, Stereo
7105–01–005–8474
7105–01–017–6104
7105–01–019–0377
7105–01–019–0378
7105–01–047–3573

Chest, Three-Drawer
7105–01–046–8855

Overchest
7105–01–005–8475
7105–01–047–3574

Top, Grooming Unit
7105–01–005–8476

Services

Commissary Warehousing, Langley Air Force Base, Virginia

Grounds Maintenance, LBJ Memorial Grove, Constitution Gardens, Washington, DC

Janitorial/Custodial, Pentagon Officers Athletic Club, Washington, DC

Pallet Repair, Naval Supply Center, Norfolk, Virginia.

E.R. Alley, Jr.,
Deputy Executive Director.

[FR Doc. 93–26082 Filed 10–21–93; 8:45 am]
BILLING CODE 6820–33–P

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: November 22, 1993.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 603–7740

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities to the Government.

2. The action will result in authorizing small entities to furnish the commodities to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities have been proposed for addition to the Procurement List for production by the nonprofit agency listed:

Folder, File, Hanging
- 7530–01–357–6854
- 7530–01–357–6855
- 7530–01–357–6856
- 7530–01–357–6857
- 7530–01–364–9487
- 7530–01–364–9495
- 3753–01–364–9496
- 7530–01–364–9497
- 7530–01–364–9498
- 7530–01–364–9499
- 7530–01–364–9500
- 7530–01–364–9501

Nonprofit Agency:
- Lions Club Industries, Inc., Durham, North Carolina
- The Lighthouse for the Blind, Inc., Seattle, Washington

Cake Mix
- 8920–00–823–7227
- 8920–00–823–7229

Nonprofit Agency: Association for Retarded Citizens of Putnam, County, Inc., Algood, Tennessee.

E. R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 93–26083 Filed 10–21–93; 8:45 am]

BILLING CODE 6820–33–P

CONSUMER PRODUCT SAFETY COMMISION

Petition Requesting Issuance of Standards for Backyard Play Sets

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The City of New York Department of Consumer Affairs has petitioned the Commission to issue standards for backyard play sets under provisions of the Federal Hazardous Substances Act. The Commission solicits written comments concerning the petition from all interested parties.

DATES: Comments on the petition should be received in the Office of the Secretary by December 20, 1993.

ADDRESSES: Comments on the petition should be addressed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, telephone (301) 504-0800, and should be captioned "Petition HP 93-1 for Issuance of Backyard Play Set Standards." Copies of the petition are available by writing or calling the Office of the Secretary.

FOR FURTHER INFORMATION CONTACT: Sheldon D. Butts, Deputy Secretary, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 504-0800.

SUPPLEMENTARY INFORMATION: The Commission has docketed correspondence from the City of New York Department of Consumer Affairs requesting that the Commission issue standards for backyard play sets under the Federal Hazardous Substances Act (15 U.S.C. 1261 *et seq.*)

The petition defines backyard play sets as "those children's products covered by the voluntary guidelines developed by the American Society for Testing and Materials standard F1148-91." The petition states that such structures may be or include such equipment as swings, slides, climbers, seesaws, merry-go-rounds and exercise bars. The petition asserts that the existing voluntary standard does not adequately address all equipment-related hazards. It requests that the Commission issue a rule to declare that certain backyard play sets intended for use by children present a mechanical hazard and are therefore banned hazardous substances.

Interested parties may obtain a copy of the petition by writing or calling the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504-0800. A copy of the petition is available for inspection from 8:30 a.m. to 5 p.m., Monday through Friday, in the Commission's Public Reading Room, room 420, 5401 Westbard Avenue, Bethesda Maryland.

The Commission is particularly interested in information that may help in assessing the degree of compliance of backyard play sets with the ASTM voluntary standard F 1148-91.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 93-26087 Filed 10-21-93; 8:45 am]

BILLING CODE 6355-01-F

DEPARTMENT OF DEFENSE

Defense Investigation Service

Privacy Act of 1974; Notice To Amend Systems of Records

AGENCY: Defense Investigative Service, DOD.

ACTION: Notice to amend systems of records.

SUMMARY: The Defense Investigative Service proposes to amend an existing system of records to its inventory of systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, by deleting the exemption.

The Defense Investigative Service has also identified a system of records that was missing from the DOD February 22, 1993 publication of its Privacy Act systems of records notices. The notice is identified as V2–01, entitled 'Inspector General Complaints', last published September 10, 1991, at 56 FR 46163. The notice remains current and should

be added to those published February 22, 1993.

DATES: The proposed actions will be effective on October 22, 1993.

ADDRESSES: Send comments to the Defense Investigative Service, Chief, Information and Public Affairs Office, 1340 Braddock Road, Alexandria, VA 22314-1651.

FOR FURTHER INFORMATION CONTACT: Mr. Dale Hartig at (202) 475–1062.

SUPPLEMENTARY INFORMATION: The Defense Investigative Service compilation of systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), has been published in the **Federal Register** and are available from the above address:

The amendment is not within the purview of subsection (r) of the Privacy Act (5 U.S.C. 552a), as amended, which requires the submission of an altered system report. The specific change to the system of records notice is set forth below followed by the system notice, as amended, published in its entirety.

Dated: October 15, 1993.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

V9–01

SYSTEM NAME:

Litigation Case Files *(February 22, 1993, 58 FR 10919).*

CHANGES:

* * * * *

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Delete entry and replace with 'None'.

* * * * *

V9–01

SYSTEM NAME:

Litigation Case Files.

SYSTEM LOCATION:

Defense Investigative Service, Office of the General Counsel, 1340 Braddock Place, Alexandria, VA 22314–1651.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Indivduals who have been the subject of adverse actions generated by the agency employee relations process, Merit Systems Protection Board (MSPB) and Equal Employment Opportunity Commission (EEOC) appellants, Freedom of Information Act (FOIA) and Privacy Act litigants, and individuals involved in civil litigation against DIS or other government agencies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Legal or factual memoranda, legal briefs, correspondence, decisions, claims, grievances, MSPB, EEO, FOIA and Privacy Act materials.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; Department of Defense Directive 5105.42, The Defense Investigative Service (32 CFR part 361).

PURPOSE(S):

To collect documentation pertinent to litigation, disciplinary matters, and administrative actions concerning the Agency. Information is compiled to support various legal-related activities of the Department of Defense, Department of Justice, the Office of Personnel Management, or other adjudicative agencies of the U.S. Government as may be necessary or required in the disposition of an individual case.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of DIS's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Alphabetically by surname of individual.

SAFEGUARDS:

Records are kept in locked cabinets and are accessible only to authorized personnel.

RETENTION AND DISPOSAL:

Records are held 5 years after date of last action, then retired to the Washington National Records Center. They are destroyed when 25 years old.

SYSTEM MANAGER(S) AND ADDRESS:

Defense Investigative Service, Office of the General Counsel, 1340 Braddock Place, Alexandria, VA 22314–1651.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Defense Investigative Service, Office of Information and Public Affairs, 1340 Braddock Place, Alexandria, VA 22314–1651.

A request for information must contain the full name and Social Security number of the subject individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system should address written inquiries to the Defense Investigative Service, Privacy Act Office, PO Box 1211, Baltimore, MD 21203–1211.

A request for information must contain the full name and Social Security number of the subject individual. Personal visits will require a valid driver's license or other picture identification and are limited to the Defense Investigative Service, Privacy Act Office, 2200 Van Deman Street, Baltimore, MD 21224–6603.

CONTESTING RECORD PROCEDURES:

DIS' rules for accessing records, contesting contents, and appealing initial determinations are contained in DIS Regulation 01–13; 32 CFR part 321; or may be obtained from the Defense Investigative Service, Office of Information and Public Affairs, 1340 Braddock Place, Alexandria, VA 22314–1651.

RECORD SOURCE CATEGORIES:

Information is provided by DIS field elements, Employee Relations Branch; Director, DIS Office of Affirmative Action and Equal Opportunity Policy; Directorates of Industrial Security and Investigations; Office of the Secretary of Defense; other DoD components.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

V2–01

SYSTEM NAME:

Inspector General Complaints.

SYSTEM LOCATION:

Defense Investigative Service, Inspector General, 1340 Braddock Road, Alexandria, VA 22314–1651.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Past and present employees of Defense Investigative Service (DIS) and individuals who have made a complaint, or are the subject of a complaint; or whose request for action, assistance or information has been referred to the Inspector General.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents relating to the organization, planning and execution of internal/external investigations, records created as a result of investigations conducted by the Office of the Inspector General including reports of investigations, records of action taken and supporting papers. Files may include documents which have been provided by individual complainants or by others. These records include investigations of both organizational elements and individuals.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; DoD Directive 5105.42, Defense Investigative Service; DoD Directive 5200.26, Defense Investigative Program.

PURPOSES:

Information in the system is collected to resolve a complaint, redress a problem or provide assistance, correct records, take or recommend disciplinary action, reevaluate or rescind previous actions or decisions, conduct or recommend formal investigations or inquiries, provide assistance or guidelines in following prescribed procedures for specific problems, provide advice on how to obtain exception to policy, and to inform the Director of DIS on activities of the Office of the Inspector General.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The 'Blanket Routine Uses' published at the beginning of DIS' compilation of system of record notices apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and computerized log.

RETRIEVABILITY:

Paper records are filed by subject matter and case/accession number. Electronic records are filed by case/accession numbers.

SAFEGUARDS:

Files are contained in security containers accessible only to the Inspector General staff. Information from this record system is made available only to authorized personnel

RETENTION AND DISPOSAL:

Records are temporary and are destroyed two years after final action. Paper records are destroyed by shredding or burning. Electronic records are erased or overwritten.

SYSTEM MANAGER(S) AND ADDRESS:

Defense Investigative Service, Inspector General, 1340 Braddock Road, Alexandria, VA 22314–1651.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Defense Investigative Service, 2200 Van Deman Street, Baltimore, MD 21224–1651.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Defense Investigative Service, 2200 Van Deman Street, Baltimore, MD 21224–1651.

A request for information must contain the full name of the subject individual.

Personal visits will require a valid driver's license or other picture identification and are limited to the Privacy Act office.

CONTESTING RECORD PROCEDURES:

DIS' rules for accessing records, contesting contents, and appealing initial determinations are contained in DIS Regulation 01–13; 32 CFR part 321; or may be obtained from the Defense Investigative Service, Information and Public Affairs Office, 1340 Braddock Road, Alexandria, VA 22314–1651.

RECORD SOURCE CATEGORIES:

Personal interviews; DIS personnel office; consolidated civilian personnel offices; DIS comptroller; military personnel offices, finance offices, and medical record repositories; DIS investigative files.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 93–26026 Filed 10–21–93; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Meeting

October 18, 1993

Take notice that on Tuesday, November 2, 1993, at 2 p.m. the Commissioners and Commission staff will be meeting with representatives of the Natural Gas Council to hear a report on the status of a proposed Gas Industry Standards Board. The meeting will take place in the Commission Meeting Room, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

Interested persons are invited to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 93–25987 Filed 10–21–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP94–24–000, et al.]

Florida Gas Transmission Co., et al.; Natural Gas Certificate Filings

October 15, 1993

Take notice that the following filings have been made with the Commission:

1. Florida Gas Transmission Company

[Docket No. CP94–24–000]

Take notice that on October 13, 1993, Florida Gas Transmission Company (FGT) 1400 Smith Street, Houston, Texas 77002, filed Docket No. CP94–24–000 a request pursuant to § 157.205(b) and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205(b) and 157.212) for authorization to construct and operate a delivery point for The Town of Walker (Walker), Louisiana, under FGT's blanket certificate issued in Docket No. CP82–553–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

FGT proposes to construct and operate a new tap, a side valve, electronic flow measurement and communication instruments, a gas sampler, approximately 20 feet of 2-inch connecting pipe, and related appurtenant facilities. It is stated that the proposed delivery point would be connected to FGT's 30-inch mainline near mile post 13.7 in St. Helena Parish, Louisiana. It is further stated that the gas quantity that FGT proposes to deliver for Walker at the delivery point is: Up to 500 MMBtu per day; and up to 182,500 MMBtu per year. FGT states that Walker shall reimburse it for all construction costs; estimated to be $49,500. It is also stated that the ultimate end-use would be commercial and residential.

Comment date: November 29, 1993, in accordance with Standard Paragraph G at the end of this notice.

2. Penn-York Energy Corporation

[Docket No. CP94–10–000]

Take notice that on October 6, 1993, Penn-York Energy Corporation (Penn-

York) 10 Lafayette Square, Buffalo, New York 14203, filed an application in Docket No. CP94–10–000, pursuant to section 7(c) of the Natural Gas Act (NGA) and § 157.7 of the Commission's Regulations 18 CFR 157.7, for a certificate of public convenience and necessity authorizing Penn-York to modify the General Terms and Conditions of its FERC Gas Tariff to provide for the assignment of storage service to third parties, all as more fully set forth in the application on file with the Commission and open to public inspection.

Penn-York seeks authority to authorize its customers to assign their storage service under Rate Schedule SS–1 and SS–2 to third parties as set out fully in the revised Section 19 of the General Terms and Conditions of its FERC Gas Tariff.

Penn-York states that it is seeking this authority to comply with the settlement that was approved, as modified by the Commission's order on July 8, 1993.[1] Article XIV of the settlement established that upon approval of the settlement, Penn-York would file within 90 days for certificate authority to allow customers to assign rights to storage service to third parties. There are no new facilities being constructed.

Comment date: November 5, 1993, in accordance with Standard Paragraph F at the end of this notice.

3. CNG Transmission Corporation

[Docket No. CP94-14-000]

Take notice that on October 12, 1993, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP94-14-000 an application, as supplemented on October 13, 1993, pursuant to section 7(b) of the Natural Gas Act for authorization to abandon sales service and related standby service to New York Electric and Gas Corporation (NYSEG), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

CNG states that it received timely notice from NYSEG of an election to convert 10,000 dt equivalent of natural gas under Rate Schedule ACD to transportation service under Rate Schedule TF to be effective November 1, 1992. It is indicated that the effectiveness of the modified sales service is only for the period of November 1, 1992, until September 30, 1993, the date CNG's Order 636 compliance filing is effective. CNG states that it seeks the necessary abandonment authorization to effectuate the conversion effective as of November 1, 1992. It is further indicated that, without the requested retroactive authorization, NYSEG would incur additional demand charges of $843,050.

Comment date: November 5, 1993, in accordance with Standard Paragraph F at the end of this notice.

4. Columbia Gas Transmission Corporation

[Docket No. CP94–26–000]

Take notice that on October 13, 1993, Columbia Gas Transmission Corporation (Columbia Gas), Post Office Box 1273, Charleston, West Virginia 25325, filed in Docket No. CP94–26–000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate eleven delivery taps to existing customers Columbia Gas of Ohio, Inc. (Columbia of Ohio), Columbia Gas of Pennsylvania, Inc. (Columbia of Pennsylvania) and Mountaineer Gas Company (Mountaineer) at which points Columbia Gas has been requested to provide firm and interruptible transportation service under its part 284 blanket certificate, under the blanket certificate issued in Docket No. CP86–240, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia Gas proposes to construct and operate delivery taps to serve the following services:

Customer	Residential	Commerical	Industrial	Estimated design day quantity (Dth)	Estimated annual quantity (Dth)
Columbia of Ohio	2		1	950	23,300
Columbia of Pennsylvania		1		30	3,000
Mountaineer	7			10.5	1,050

Columbia Gas states that in each instance it proposes to construct and operate a meter to implement the requested transportation service. Columbia Gas indicates that, in addition to the meter for Columbia of Pennsylvania, it also proposes to insert a 1,950 feet segment of 3-inch plastic line through a previously abandoned 6-inch pipeline not currently in service. Columbia Gas also states that the services provided through the proposed facilities would remain within Columbia Gas' authorized level of services. Columbia Gas concludes that construction of the facilities and providing the requested transportation service would not result in any impact on Columbia Gas' existing design day and annual obligations to its customers.

Comment date: November 29, 1993, in accordance with Standard Paragraph G at the end of this notice.

5. Tennessee Gas Pipeline Company

[Docket No. CP94–16–000]

Take notice that on October 12, 1993, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252 filed in Docket No. CP94–16–000, a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a delivery point consisting of a 2″ hot tap assembly to accommodate the delivery of natural gas to Elizabeth Natural Gas Company (Elizabeth) under the blanket certificate issued in Docket No. CP82–413–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Tennessee states that it has entered into an amendment to a gas transportation agreement with Elizabeth to establish a new delivery point so as to transport and deliver up to 1,235 Dekatherms per day of natural gas on a firm basis pursuant to Tennessee's Rate Schedule FT–GS. In order to establish this delivery point, Tennessee seeks authorization to install, own, operate and maintain a 2″ hot tap assembly at M.P. 502–1+9.40 on its existing right-of-way in Vernon Parish, Louisiana. All costs associated with the construction of

[1] 64 FERC ¶61,040 (1993).

the proposed delivery point will be borne by Elizabeth.

Tennessee does not propose to increase the total daily and/or annual quantities it is authorized to deliver to Elizabeth. Tennessee asserts that the establishment of the proposed delivery point is not prohibited by Tennessee's tariff, and that it has sufficient capacity to accomplish the deliveries at the proposed new delivery point without detriment or disadvantage to any of Tennessee's other customers.

Comment date: November 29, 1993, in accordance with Standard Paragraph G at the end of this notice.

6. K N Interstate Gas Transmission Company

[Docket No. CP94–18–000]

Take notice that on October 12, 1993, K N Interstate Gas Transmission Co. (KNI), P.O. Box 281304, Lakewood, Colorado 80228–8304, filed in Docket No. CP94–18–000, a request pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to install and operate six new delivery taps in Buffalo, Cheyenne, Hall and Madison Counties, Nebraska and Goshen County, Wyoming. It is stated that these points will be added as delivery points under an existing transportation agreement between KNI and K N Energy, Inc. (K N)[2] and will be used by K N to facilitate the delivery of natural gas to direct retail customers, under the authorization issued in Docket Nos. CP83–140–000 and CP83–141–001 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

KNI states that K N, as a local distribution company, has requested the addition of six new delivery points under an existing transportation agreement between KNI and K N. It is stated that the proposed delivery points would be located on KNI's main transmission system in Nebraska and Wyoming and would facilitate the delivery of natural gas to K N for distribution to new direct retail customers.

Comment date: November 29, 1993, in accordance with Standard Paragraph G at the end of this notice.

[2] In Docket No. CP93–41–000, 63 FERC ¶ 61,155 (1993), K N was authorized to abandon all its jurisdictional facilities and activities by transfer to KNI, and KNI was authorized to replace K N as the holder of the certificates previously issued by the Commission in the name of K N.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–25988 Filed 10–21–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. ST93–5008–000 through ST93–5513–000]

Transamerican Natural Gas Corp., et al.; Self-Implementing Transactions

October 18, 1993.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to part 284 of the Commission's regulations, sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA), section 7 of the NGA and section 5 of the Outer Continental Shelf Lands Act.[1]

The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction.

A "B" indicates transportation by an interstate pipeline on behalf of an intrastate pipeline or a local distribution company pursuant to § 284.102 of the Commission's regulations and section 311(a)(1) of the NGPA.

A "C" indicates transportation by an intrastate pipeline on behalf of an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.122 of the Commission's regulations and section 311(a)(2) of the NGPA.

A "D" indicates a sale by an intrastate pipeline to an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline to any interstate pipeline or local distribution company pursuant to § 284.163 of the Commission's regulations and section 312 of the NGPA.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.222 and a blanket certificate issued under

[1] Notice of a transaction does not constitute a determination that the terms and conditions of the proposed service will be approved or that the noticed filing is in compliance with the Commission's regulations.

§ 284.221 of the Commission's regulations.

A "G–I" indicates transportation by an intrastate pipeline company pursuant to a blanket certificate issued under Section 284.227 of the Commission's regulations.

A "G–S" indicates transportation by interstate pipelines on behalf of shippers other than interstate pipelines pursuant to § 284.223 and a blanket certificate issued under § 284.221 of the Commission's regulations.

A "G–LT" or "G–LS" indicates transportation, sales or assignments by a local distribution company on behalf of or to an interstate pipeline or local distribution company pursuant to a blanket certificate issued under § 284.224 of the Commission's regulations.

A "G–HT" or "G–HS" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.224 of the Commission's regulations.

A "K" indicates transportation of natural gas on the Outer Continental Shelf by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.303 of the Commission's regulations.

A "K–S" indicates transportation of natural gas on the Outer Continental Shelf by an interstate pipeline on behalf of shippers other than interstate pipelines pursuant to § 284.303 of the Commission's regulations.

Lois D. Cashell,

Secretary.

Docket No.	Transporter/Seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity**	AFF. Y/A/N***	Rate Sch.	Date commenced	Projected termination date
ST93–5008 ..	Transamerican Natural Gas Corp.	Texas Eastern Transmission Co.	08–02–93	C	25,000	N	I	07–01–93	Indef.
ST93–5009 ..	Transamerican Natural Gas Corp.	Natural Gas Pipe Line Co.	08–02–93	C	25,000	N	I	06–01–93	Indef.
ST93–5010 ..	Transamerican Natural Gas Corp.	United Gas Pipe Line Co. et al.	08–02–93	C	60,000	N	I	06–01–93	Indef.
ST93–5011 ..	Transamerican Natural Gas Corp.	Natural Gas Pipe Line Co.	08–02–93	C	25,000	N	I	06–01–93	Indef.
ST93–5012 ..	High Island Offshore System.	Trunkline Gas Co	08–02–93	K	3,000	N	I	07–01–93	06–15–94.
ST93–5013 ..	Panhandle Eastern Pipe Line Co.	Kimball Energy Corp .	08–02–93	G–S	40,000	N	I	07–01–93	03–31–95.
ST93–5014 ..	Panhandle Eastern Pipe Line Co.	Semco Energy Services, Inc.	08–02–93	G–S	2,500	N	F	07–01–93	07–31–93.
ST93–5015 ..	Panhandle Eastern Pipe Line Co.	Appalachian Gas Sales Corp.	08–02–93	G–S	6,000	N	F	07–01–93	07–31–93.
ST93–5016 ..	Panhandle Eastern Pipe Line Co.	Tenaska Marketing Ventures.	08–02–93	G–S	1,031,000	N	I	07–01–93	04–30–98.
ST93–5017 ..	Panhandle Eastern Pipe Line Co.	Unigas Energy, Inc ...	08–02–93	G–S	8,576	N	F	07–01–93	07–31–93.
ST93–5018 ..	Panhandle Eastern Pipe Line Co.	Vesta Energy Co	08–02–93	G–S	30,000	N	I	07–01–93	05–31–98.
ST93–5019 ..	Panhandle Eastern Pipe Line Co.	Tenaska Marketing Ventures.	08–02–93	G–S	5,000	N	F	07–01–93	07–31–93.
ST93–5020 ..	Panhandle Eastern Pipe Line Co.	Enron Gas Marketing, Inc.	08–02–93	G–S	4,180	N	F	07–01–93	07–31–93.
ST93–5021 ..	Panhandle Eastern Pipe Line Co.	Vesta Energy Co	08–02–93	G–S	200,000	N	I	07–01–93	04–30–98.
ST93–5022 ..	High Island Offshore System.	ANR Pipeline Co	08–02–93	K	2,900,000	Y	I	07–01–93	Indef.
ST93–5023 ..	High Island Offshore System.	ANR Pipeline Co	08–02–93	K	2,900,000	Y	I	07–01–93	Indef.
ST93–5024 ..	Northern Natural Gas Co.	Westar Transmission Co.	08–02–93	B	200,000	N	F/I	04–29–93	Indef.
ST93–5025 ..	Northern Natural Gas Co.	Minnegasco	08–02–93	B	800,000	N	F/I	04–27–93	09–30–96.
ST93–5026 ..	Northern Natural Gas Co.	Midwest Natural Gas, Inc.	08–02–93	B	5,785	N	F/I	04–27–93	Indef.
ST93–5027 ..	Florida Gas Transmission Co.	Endevco Pipeline Co .	08–02–93	B	600,000	A	I	07–01–93	Indef.
ST93–5028 ..	Tennessee Gas Pipeline Co.	Sonat Marketing Co ..	08–02–93	G–S	40,000	N	I	07–24–93	Indef.
ST93–5029 ..	Tennessee Gas Pipeline Co.	Diamond Shamrock Offshore Partners.	08–02–93	G–S	107,000	N	I	07–02–93	Indef.
ST93–5030 ..	Columbia Gas Transmission Corp.	Cobra Petroleum Production Corp.	08–02–93	G–S	900	N	I	07–12–93	Indef.
ST93–5031 ..	Columbia Gas Transmission Corp.	National Fuel Gas Supply Corp.	08–02–93	G	2,900	N	I	07–26–93	Indef.
ST93–5032 ..	Arkansas Western Gas Co.	Arkla Energy Resources, et al.	08–02–93	G–LT	2,000	N	I	07–01–93	05–31–92.
ST93–5033 ..	Natural Gas P/L Co. of America.	CNG Producting Co ..	08–02–93	G–S	100,000	N	I	07–08–93	Indef.
ST93–5034 ..	Natural Gas P/L Co. of America.	Midcon Gas Services Corp.	08–02–93	G–S	100,000	A	I	07–08–93	Indef.

Docket No.	Transporter/Seller	Recipient	Date filed	Part 284 sub-part	Est. max. daily quantity**	AFF. Y/A/ N***	Rate Sch.	Date commenced	Projected termination date
ST93-5035 ..	Colorado Interstate Gas Co.	Union Pacific Fuels, Inc.	08-03-93	G-S	10,000	N	F	05-01-93	09-30-93.
ST93-5036 ..	Williams Natural Gas Co.	Hugoton Energy Corp	08-04-93	G-S	500	N	I	07-17-93	Indef.
ST93-5037 ..	United Gas Pipe Line Co.	Polaris Pipeline Corp	08-04-93	G-S	20,960	N	I	07-30-93	11-27-93.
ST93-5038 ..	United Gas Pipe Line Co.	Citizens Gas Supply Corp.	08-04-93	G-S	20,960	N	I	07-30-93	11-27-93.
ST93-5039 ..	United Gas Pipe Line Co.	Endevco Pipeline Co .	08-04-93	B	730,000	N	I	07-30-93	Indef.
ST93-5040 ..	Gateway Pipeline Co	Valero Gas Marketing, LP.	08-04-93	G-S	47,710	N	I	07-16-93	11-13-93.
ST93-5041 ..	Transcontinental Gas P/L Corp.	United Texas Transmission Co.	08-04-93	B	50,000	N	I	07-22-93	Indef.
ST93-5042 ..	Panhandle Eastern Pipe Line Co.	Coenergy Trading Co	08-05-93	G-S	17,755	N	F	07-09-93	07-31-93.
ST93-5043 ..	Panhandle Eastern Pipe Line Co.	Amgas, Inc	08-05-93	G-S	432	N	F	07-09-93	08-31-93.
ST93-5044 ..	Trunkline Gas Co	Citrus Marketing, Inc .	08-05-93	G-S	100,000	N	I	07-21-93	Indef.
ST93-5045 ..	Trunkline Gas Co	Citrus Marketing, Inc .	08-05-93	G-S	100,000	N	I	07-21-93	Indef.
ST93-5046 ..	Trunkline Gas Co	Coastal Gas Marketing Co.	08-05-93	G-S	100,000	N	I	07-30-93	Indef.
ST93-5047 ..	Trunkline Gas Co	NGC Transportation, Inc.	08-05-93	G-S	50,000	N	I	07-31-93	Indef.
ST93-5048 ..	Trunkline Gas Co	Louisiana Resources Co.	08-05-93	B	50,000	N	I	07-24-93	Indef.
ST93-5049 ..	Trunkline Gas Co	Fina Natural Gas Co .	08-05-93	G-S	30,000	N	I	07-24-93	Indef.
ST93-5050 ..	CNG Transmission Corp.	Appalachian Gas Sales Corp.	08-06-93	G-S	50,000	N	I	08-01-93	Indef.
ST93-5051 ..	CNG Transmission Corp.	Volunteer Energy Corp.	08-06-93	G-S	2,000	N	I	07-27-93	Indef.
ST93-5052 ..	CNG Transmission Corp.	Clinton Gas Marketing	08-06-93	G-S	10,000	N	I	07-31-93	Indef.
ST93-5053 ..	Tennessee Gas Pipeline Co.	Laser Marketing Co ..	08-06-93	G-S	83,325	N	I	07-07-93	Indef.
ST93-5054 ..	U-T Offshore System	Transco Liquids Co ...	08-06-93	G-S	150,000	N	I	08-01-93	07-31-94.
ST93-5055 ..	Northern Natural Gas Co.	Phoenix Chemical Co	08-06-93	G-S	39,678	N	F/I	07-27-93	10-31-93.
ST93-5056 ..	Northern Natural Gas Co.	Twister Transmission Co.	08-06-93	G-S	50,000	N	F/I	07-08-93	Indef.
ST93-5057 ..	Northern Natural Gas Co.	Border Resources Inc	08-06-93	G-S	3,000	N	F/I	07-21-93	Indef.
ST93-5058 ..	Northern Natural Gas Co.	Minnegasco	08-06-93	B	550	N	F/I	07-27-93	Indef.
ST93-5059 ..	Midcon Texas Pipeline Corp.	Mobile Natural Gas Inc.	08-06-93	G-I	20,000	N	I	07-14-93	Indef.
ST93-5060 ..	Natural Gas P/L Co. of America.	North Canadian Marketing Corp.	08-06-93	G-S	10,000	N	F	08-01-93	07-31-06.
ST93-5061 ..	Chandeleur Pipe Line Co.	International Paper Co.	08-06-93	K-S	73,000	N	I	12-01-92	Indef.
ST93-5062 ..	Chandeleur Pipe Line Co.	Santa Fe International	08-06-93	K-S	30,000	N	I	12-01-91	Indef.
ST93-5063 ..	Chandeleur Pipe Line Co.	Hall-Houston Oil Co ..	08-06-93	K-S	50,000	N	I	09-01-92	Indef.
ST93-5064 ..	Chandeleur Pipe Line Co.	BG Exploration America, Inc.	08-06-93	K-S	32,000	N	I	12-01-91	Indef.
ST93-5065 ..	Chandeleur Pipe Line Co.	Arco Natural Gas Marketing, Inc.	08-06-93	K-S	18,000	N	I	12-01-91	Indef.
ST93-5066 ..	Chandeleur Pipe Line Co.	Kogas Inc	08-06-93	K-S	100,000	N	I	05-01-92	Indef.
ST93-5067 ..	Chandeleur Pipe Line Co.	Ledco, Inc	08-06-93	K-S	100,000	N	I	01-01-92	Indef.
ST93-5068 ..	Chandeleur Pipe Line Co.	Sonat Marketing Co ..	08-06-93	K-S	20,000	N	I	11-16-91	Indef.
ST93-5069 ..	Chandeleur Pipe Line Co.	Eagle Natural Gas Co	08-06-93	K-S	15,000	N	I	04-01-92	Indef.
ST93-5070 ..	Chandeleur Pipe Line Co.	United Gas Services Co.	08-06-93	K-S	5,000	N	I	12-01-91	Indef.
ST93-5071 ..	Chandeleur Pipe Line Co.	Enermax	08-06-93	K-S	50,000	N	I	02-01-92	Indef.

Docket No.	Transporter/Seller	Recipient	Date filed	Part 284 sub-part	Est. max. daily quantity**	AFF. Y/A/ N***	Rate Sch.	Date com-menced	Projected ter-mination date
ST93-5072 ..	Chandeleur Pipe Line Co.	Excel Gas Marketing, Inc.	08-06-93	K-S	40,000	N	I	04-01-92	Indef.
ST93-5073 ..	Chandeleur Pipe Line Co.	Midcon Marketing Corp.	08-06-93	K-S	80,000	N	I	02-01-92	Indef.
ST93-5074 ..	Chandeleur Pipe Line Co.	MG Natural Gas Corp	08-06-93	K-S	50,000	N	I	02-01-92	Indef.
ST93-5075 ..	Chandeleur Pipe Line Co.	Seagull Marketing Services, Inc.	08-06-93	K-S	75,000	N	I	03-01-92	Indef.
ST93-5076 ..	Chandeleur Pipe Line Co.	Chevron U.S.A. Inc ...	08-06-93	K-S	100,000	N	I	05-01-93	Indef.
ST93-5077 ..	Chandeleur Pipe Line Co.	Energy International Marketing Corp.	08-06-93	K-S	31,500	N	I	05-01-93	Indef.
ST93-5078 ..	Chandeleur Pipe Line Co.	United Gas Pipe Line Co.	08-06-93	K-S	100,000	N	I	04-01-92	Indef.
ST93-5079 ..	Chandeleur Pipe Line Co.	Enron Gas Marketing, Inc.	08-06-93	K-S	30,000	N	I	06-01-92	Indef.
ST93-5080 ..	Chandeleur Pipe Line Co.	Endevco Oil & Gas Co.	08-06-93	K-S	30,000	N	I	05-01-92	Indef.
ST93-5081 ..	Chandeleur Pipe Line Co.	Eastex Hydrocarbons, Inc.	08-06-93	K-S	30,000	N	I	05-01-92	Indef.
ST93-5082 ..	Chandeleur Pipe Line Co.	KCS Energy Market-ing, Inc.	08-06-93	K-S	50,000	N	I	06-01-92	Indef.
ST93-5083 ..	Chandeleur Pipe Line Co.	Aquila Energy Market-ing Corp.	08-06-93	K-S	20,000	N	I	10-01-92	Indef.
ST93-5084 ..	Delhi Gas Pipeline Corp.	Panhandle Eastern Pipeline Co.	08-09-93	C	250,000	N	I	07-08-93	Indef.
ST93-5085 ..	Transok Gas Trans-mission Co.	ANR Pipeline Co., Et Al.	08-09-93	C	100,000	N	I	07-20-93	Indef.
ST93-5086 ..	Transok Gas Trans-mission Co.	ANR Pipeline Co., Et Al.	08-09-93	C	200,000	N	I	07-10-93	Indef.
ST93-5087 ..	Colorado Interstate Gas Co.	Continental Natural Gas, Inc.	08-09-93	G-S	20,000	N	I	07-22-93	Indef.
ST93-5088 ..	Colorado Interstate Gas Co.	Continental Natural Gas, Inc.	08-09-93	G-S	20,000	N	I	07-23-93	Indef.
ST93-5089 ..	Colorado Interstate Gas Co.	KN Gas Marketing, Inc.	08-09-93	G-S	15,000	N	I	07-23-93	Indef.
ST93-5090 ..	Trunkline Gas Co	AGIP Petroleum Co., Inc.	08-09-93	G-S	100,000	N	I	07-24-93	Indef.
ST93-5091 ..	Trunkline Gas Co	Equitable Resources Marketing Co.	08-09-93	G-S	100,000	N	I	07-24-93	Indef.
ST93-5092 ..	Trunkline Gas Co	CMS Marketing Co ...	08-09-93	G-S	50,000	N	I	07-23-93	Indef.
ST93-5093 ..	Trunkline Gas Co	Pennzoil Gas Market-ing Co.	08-09-93	G-S	15,000	N	I	07-24-93	Indef.
ST93-5094 ..	Natural Gas P/L Co. of America.	GGR Energy	08-09-93	G-S	50,000	N	I	08-01-93	Indef.
ST93-5095 ..	Canyon Creek Com-pression Co.	Texaco Gas Market-ing, Inc.	08-09-93	G-S	193,000	N	I	07-02-93	Indef.
ST93-5096 ..	Questar Pipeline Co ..	Mountain Fuel Supply Co.	08-10-93	B	153,530	Y	F	05-08-93	Indef.
ST93-5097 ..	Columbia Gas Trans-mission Corp.	United Gas Services Co.	08-10-93	G-S	200,000	Y	I	08-01-93	Indef.
ST93-5098 ..	Columbia Gas Trans-mission Corp.	Southern Gas Co., Inc.	08-10-93	G-S	399	N	F	08-01-93	Indef.
ST93-5099 ..	Natural Gas P/L Co. of America.	Enron Gas Marketing Inc.	08-10-93	G-S	20,000	N	F	08-01-93	08-31-93.
ST93-5100 ..	Natural Gas P/L Co. of America.	Minnegasco, Inc	08-10-93	G-S	25,000	N	F	08-05-93	10-31-93.
ST93-5101 ..	Natural Gas P/L Co. of America.	Minnegasco, Inc	08-10-93	G-S	25,000	N	F	08-05-93	10-31-93.
ST93-5102 ..	Natural Gas P/L Co. of America.	North Canadian Mar-keting.	08-10-93	G-S	150,000	N	I	08-01-93	Indef.
ST93-5103 ..	Natural Gas P/L Co. of America.	Peoples Natural Gas Co.	08-10-93	G-S	150,000	N	I	08-01-93	Indef.
ST93-5104 ..	Texas Gas Trans-mission Corp.	Western Kentucky Gas Co.	08-10-93	B	256	N	I	07-28-93	Indef.
ST93-5105 ..	Texas Gas Trans-mission Corp.	Western Kentucky Gas Co.	08-10-93	B	153	N	I	07-31-93	Indef.
ST93-5106 ..	Texas Gas Trans-mission Corp.	Enron Gas Marketing, Inc.	08-10-93	G-S	300,000	N	I	07-29-93	Indef.
ST93-5107 ..	El Paso Natural Gas Co.	GPM Gas Corporation	08-10-93	G-S	226,600	N	I	07-12-93	Indef.

Docket No.	Transporter/Seller	Recipient	Date filed	Part 284 sub-part	Est. max. daily quantity**	AFF. Y/A/ N***	Rate Sch.	Date com-menced	Projected ter-mination date
ST93-5108 ..	K N Energy, Inc	Anthem Energy Co., L.P.	08-11-93	G-S	50,000	N	I	06-01-93	Indef.
ST93-5109 ..	K N Wattenberg Trans. L.L. Co.	Panhandle Eastern Pipe Line Co.	08-11-93	G	100,000	N	I	05-01-93	Indef.
ST93-5110 ..	K N Energy, Inc	Northern Natural Gas Co.	08-11-93	G	10,000	N	I	06-01-93	Indef.
ST93-5111 ..	K N Energy, Inc	Interenergy Corp	08-11-93	G-S	15,000	N	I	08-01-93	Indef.
ST93-5112 ..	ANR Pipeline Co	Kerr-McGee Corp	08-11-93	G-S	100,000	N	F	08-01-93	Indef.
ST93-5113 ..	ANR Pipeline Co	Kerr-Mcgee Corp	08-11-93	G-S	100,000	N	F	08-01-93	Indef.
ST93-5114 ..	ANR Pipeline Co	Tenaska Marketing Ventures.	08-11-93	G-S	50,000	N	I	08-01-93	Indef.
ST93-5115 ..	ANR Pipeline Co	Entrade Corp	08-11-93	G-S	500,000	N	F	08-01-93	Indef.
ST93-5115 ..	ANR Pipeline Co	Chevron U.S.A. Production Co.	08-11-93	G-S	50,000	N	F	07-29-93	Indef.
ST93-5117 ..	ANR Pipeline Co	Coenergy Ventures, Inc.	08-11-93	G-S	100,000	N	F	08-01-93	Indef.
ST93-5118 ..	ANR Pipeline Co	Olympic Fuels Co	08-11-93	G-S	50,000	N	I	07-27-93	Indef.
ST93-5119 ..	ANR Pipeline Co	CMS Gas Marketing ..	08-11-93	G-S	150,000	N	F	07-20-93	Indef.
ST93-5120 ..	Tennessee Gas Pipeline Co.	Anadarko Trading Co	08-11-93	G-S	20,000	N	I	07-15-93	Indef.
ST93-5121 ..	Northwest Pipeline Corp.	Development Associates, Inc.	08-11-93	G-S	2,464	N	F	07-01-93	Indef.
ST93-5122 ..	Northwest Pipeline Corp.	Enron Gas Marketing, Inc.	08-11-93	G-S	25,000	N	F	07-01-93	Indef.
ST93-5123 ..	Northwest Pipeline Corp.	Washington Natural Gas Co.	08-11-93	G-S	100,000	N	F	07-01-93	Indef.
ST93-5124 ..	Northwest Pipeline Corp.	Grand Valley Gas Co	08-11-93	G-S	2,464	N	F	07-01-93	Indef.
ST93-5125 ..	Northwest Pipeline Corp.	Brooklyn Interstate Nat. Gas Corp.	08-11-93	G-S	100,000	N	I	08-01-93	Indef.
ST93-5126 ..	Northwest Pipeline Corp.	Columbia Power Associates, L.P.	08-11-93	G-S	25,000	N	F	08-02-93	Indef.
ST93-5127 ..	Transok Gas Transmission Co.	ANR Pipeline Co., et al.	08-11-93	C	35,000	N	I	07-22-93	Indef.
ST93-5128 ..	Transok Gas Transmission Co.	ANR Pipeline Co., et al.	08-11-93	C	50,000	N	I	07-01-93	Indef.
ST93-5129 ..	Transok Gas Transmission Co.	ANR Pipeline Co., et al.	08-11-93	C	1,200	N	I	08-01-93	Indef.
ST93-5130 ..	Chandeleur Pipe Line Co.	NGC Transportation, Inc.	08-12-93	G-S	100,000	N	I	04-01-93	Indef.
ST93-5131 ..	Valero Transmission, L.P.	Texas Eastern Transmission Corp.	08-12-93	C	3,300	N	I	08-17-93	Indef.
ST93-5132 ..	Valero Transmission, L.P.	Transcontinental Gas Pipeline.	08-12-93	C	4,400	N	I	07-08-93	Indef.
ST93-5133 ..	K N Wattenberg Trans., L.L. Co.	Vessels Oil & Gas Co	08-12-93	G-S	60,000	N	I	04-01-93	12-11-12.
ST93-5134 ..	Arkla Energy Resources Co.	Sonat Marketing Co ..	08-12-93	G-S	85,000	N	I	08-01-93	Indef.
ST93-5135 ..	Arkla Energy Resources Co.	Bayou South Gas Gathering Co.	08-12-93	G-S	50,000	N	I	08-01-93	Indef.
ST93-5136 ..	Arkla Energy Resources Co.	Tidewest Trading & Transport Co.	08-12-93	G-S	25,000	N	I	08-01-93	Indef.
ST93-5137 ..	Arkla Energy Resources Co.	JMC Exploration Co ..	08-12-93	G-S	10,000	N	I	08-01-93	Indef.
ST93-5138 ..	Transcontinental Gas P/L Corp.	Virginia Natural Gas, Inc.	08-12-93	B	140,000	N	I	07-28-93	Indef.
ST93-5139 ..	El Paso Natural Gas Co.	Amoco Energy Trading Corp.	08-12-93	G-S	9,343	N	F	08-01-93	10-31-93
ST93-5140 ..	Midwestern Gas Transmission Co.	Triumph Natural Gas, Inc.	08-13-93	G-S	19,800	N	F	08-01-93	Indef.
ST93-5141 ..	Questar Pipeline Co ..	Nephi City Corp	08-13-93	B	2,000	N	I	07-28-93	Indef.
ST93-5142 ..	Questar Pipeline Co ..	Union Pacific Fuels, Inc.	08-13-93	G-S	90,000	N	I	08-01-93	Indef.
ST93-5143 ..	Transcontinental Gas P/L Corp.	GGR Energy	08-13-93	G-S	50,000	N	F/I	07-23-93	Indef.
ST93-5144 ..	Valero Transmission, L.P.	Texas Gas Transmission Corp.	08-16-93	C	12,500	N	I	08-01-93	01-01-99.
ST93-5145 ..	Valero Transmission, L.P.	EL Paso Natural Gas Co.	08-16-93	C	2,000	N	I	08-03-93	Indef.
ST93-5146 ..	Valero Transmission, L.P.	Tennessee Gas Pipeline Co.	08-16-93	C	4,302	N	I	08-01-93	Indef.

Docket No.	Transporter/Seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity**	AFF. Y/A/ N***	Rate Sch.	Date commenced	Projected termination date
ST93-5147 ..	Valero Transmission, L.P.	El Paso Natural Gas Co.	08-16-93	C	10,000	N	I	08-01-93	Indef.
ST93-5148 ..	Valero Transmission, L.P.	United Gas Pipeline Co.	08-16-93	C	25,000	N	I	08-01-93	Indef.
ST93-5149 ..	Valero Transmission, L.P.	Tennessee Gas Pipeline Co.	08-16-93	C	8,578	N	I	08-01-93	Indef.
ST93-5150 ..	Transok, Inc	ANR Pipeline Co., et al.	08-16-93	C	100,000	N	I	07-17-93	Indef.
ST93-5151 ..	Sea Robin Pipeline Co.	GGR Energy Co	08-16-93	G-S	100,000	N	I	08-06-93	Indef.
ST93-5152 ..	North Penn Gas Co ..	New York State Electric & Gas Corp.	08-23-93	G-HT	20,000	N	I	04-01-93	03-31-9.
ST93-5153 ..	Valero Transmission, L.P.	El Paso Natural Gas Co.	08-16-93	C	25,000	N	I	07-24-93	Indef.
ST93-5154 ..	Enogex Inc	ANR Pipeline Co	08-16-93	C	50,000	N	I	07/17/93	Indef.
ST93-5155 ..	Northern Natural Gas Co.	Anadarko Trading Co	08-16-93	G-S	25,000	N	F/I	07/01/93	ndef.
ST93-5156 ..	Northern Natural Gas Co.	Grand Valley Gas Co	08-16-93	G-S	100,000	N	F/I	06/28/93	Indef.
ST93-5157 ..	Acadian Gas Pipeline System.	Nat. Gas P/L Co. of America, et al.	08-16-93	C	55,000	N	I	08/01/93	Indef.
ST93-5158 ..	Mojave Pipeline Co ...	Destec Gas Services, Inc.	08-17-93	G-S	10,000	N	I	07/03/93	06-30-94.
ST93-5159 ..	El Paso Natural Gas Co.	Enron Gas Marketing, Inc.	08-17-93	G-S	20,600	N	F	07/22/93	09-30-93.
ST93-5160 ..	El Paso Natural Gas Co.	Premier Gas Co	08-17-93	G-S	51,500	N	I	07/22/93	Indef.
ST93-5161 ..	El Paso Natural Gas Co.	Grand Valley Gas Co	08-17-93	G-S	4,001	N	F	07/19/93	07-31-93.
ST93-5162 ..	Florida Gas Transmission Co.	Florida Power Corp ...	08-17-93	G-S	190,000	N	I	07/03/93	Indef.
ST93-5163 ..	Tennessee Gas Pipeline Co.	Appalachian Gas Sales.	08-17-93	G-S	73,601	N	I	07/29/93	Indef.
ST93-5164 ..	Enogex, Inc	Williams Natural Gas	08-18-93	C	50,000	N	I	07/29/93	Indef.
ST93-5165 ..	Enogex, Inc	Phillips Gas Pipeline Co.	08-18-93	C	100,000	N	I	08/01/93	Indef.
ST93-5166 ..	Enogex, Inc	William Natural Gas ..	08-18-93	C	15,000	N	I	08/11/93	Indef.
ST93-5167 ..	Tennessee Gas Pipeline Co.	Petroleum Source & Systems Group.	08-18-93	G-S	4,000	N	I	06/01/93	Indef.
ST93-5168 ..	Northwest Pipeline Corp.	Development Associates, Inc.	08-18-93	G-S	40,784	N	F	08/01/93	Indef.
ST93-5169 ..	Natural Gas P/L Co. of America.	Illinois Power Co	08-18-93	G-S	15,000	N	F	08/01/93	08-31-93.
ST93-5170 ..	Northwest Pipeline Corp.	Enron Gas Marketing, Inc.	08-18-93	G-S	100,000	N	I	07/05/93	Indef.
ST93-5171 ..	Natural Gas P/L Co. of America.	National Gas Resources, L.P.	08-18-93	G-S	9,274	N	F	08/02/93	09-30-93.
ST93-5172 ..	El Paso Natural Gas Co.	Texas-Ohio Gas, Inc .	08-18-93	G-S	2,487	N	F	08/01/93	08-31-93.
ST93-5173 ..	El Paso Natural Gas Co.	Los Gatos Tomato Products.	08-18-93	G-S	4,120	N	F	08/01/93	08-31-93.
ST93-5174 ..	El Paso Natural Gas Co.	American Hunter Exploration Ltd.	08-18-93	G-S	2,487	N	F	07/24/93	07-29-93.
ST93-5175 ..	El Paso Natural Gas Co.	Chevron U.S.A. Inc ...	08-18-93	G-S	10,300	N	F	08/01/93	08-31-93.
ST93-5176 ..	El Paso Natural Gas Co.	Mercado Gas Services, Inc.	08-18-93	G-S	2,575	N	F	07/31/93	09-30-93.
ST93-5177 ..	El Paso Natural Gas Co.	Watsonville Cogeneration Partner.	08-18-93	G-S	4,120	N	F	08/01/93	08-31-93.
ST93-5178 ..	El Paso Natural Gas Co.	Suncor Inc	08-18-93	G-S	7,125	N	F	08/01/93	08-31-93.
ST93-5179 ..	El Paso Natural Gas Co.	Mock Resources, Inc	08-18-93	G-S	14,000	N	F	08/01/93	08-31-93.
ST93-5180 ..	El Paso Natural Gas Co.	Pacific Gas & Electric Co.	08-18-93	G-S	82,400	N	F	08/05/93	08-06-93.
ST93-5181 ..	Texas Gas Transmission Corp.	Centran Corp	08-19-93	G-S	2,000	N	I	08/01/93	Indef.
ST93-5182 ..	Texas Gas Transmission Corp.	Yuma Gas Corp	08-19-93	G-S	75,000	Y	I	08/02/93	Indef.
ST93-5183 ..	Texas Gas Transmission Corp.	Fuel Services Group, Inc.	08-19-93	G-S	1,000	N	I	08/01/93	Indef.

Docket No.	Transporter/Seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity**	AFF. Y/A/ N***	Rate Sch.	Date commenced	Projected termination date
ST93-5184 ..	Texas Gas Transmission Corp.	O & R Energy, Inc	08-19-93	G-S	15,000	N	I	08/03/93	Indef.
ST93-5185 ..	Texas Gas Transmission Corp.	Union Oil Co. of California.	08-19-93	G-S	10,000	N	I	08/01/93	Indef.
ST93-5186 ..	Texas Gas Transmission Corp.	Energy Transportation Mgmt., Inc.	08-19-93	G-S	12,000	N	I	08/05/93	Indef.
ST93-5187 ..	Trunkline Gas Co	MG Ventures	08-19-93	G-S	1,000	N	F	08/01/93	Indef.
ST93-5188 ..	Trunkline Gas Co	GGR Energy	08-19-93	G-S	50,000	N	I	08/01/93	Indef.
ST93-5189 ..	Trunkline Gas Co	Castex Energy, Inc ...	08-19-93	G-S	20,000	N	I	08/01/93	Indef.
ST93-5190 ..	Trunkline Gas Co	Hadson Gas Systems, Inc.	08-19-93	G-S	10,000	N	I	08/01/93	Indef.
ST93-5191 ..	Trunkline Gas Co	Exxon Co., U.S.A	08-19-93	G-S	25,000	N	I	08/01/93	Indef.
ST93-5192 ..	Trunkline Gas Co	Transco Liquids Co ...	08-19-93	G-S	150,000	N	I	08/01/93	Indef.
ST93-5193 ..	Trunkline Gas Co	MG Natural Gas Corp	08-19-93	G-S	25,000	N	I	08/01/93	Indef.
ST93-5194 ..	Trunkline Gas Co	UGI Utilities, Inc	08-19-93	G-S	10,000	N	I	08/07/93	Indef.
ST93-5195 ..	Trunkline Gas Co	Shoats Creek Investing Partners.	08-19-93	G-S	1,000	N	I	08/01/93	Indef.
ST93-5196 ..	Trunkline Gas Co	Tenaska Marketing Ventures.	08-19-93	G-S	100,000	N	I	08/05/93	Indef.
ST93-5197 ..	Trunkline Gas Co	Thermic Refractories, Inc.	08-19-93	G-S	500	N	I	08/06/93	Indef.
ST93-5198 ..	El Paso Natural Gas Co.	NGC Transportation, Inc.	08-20-93	G-S	19,590	N	F	08/01/93	08-31-93.
ST93-5199 ..	El Paso Natural Gas Co.	DY-Dee Service of Pasadena, Inc.	08-20-93	G-S	43	N	F	08/01/93	08-31-93.
ST93-5200 ..	El Paso Natural Gas Co.	MGC Transportation, Inc.	08-20-93	G-S	19,967	N	F	08/01/93	10-31-93.
ST93-5201 ..	El Paso Natural Gas Co.	NGC Transportation, Inc.	08-20-93	G-S	29,335	N	F	08/01/93	09-30-93.
ST93-5202 ..	El Paso Natural Gas Co.	Entrade Corp	08-20-93	G-S	18,173	N	F	08/01/93	08-31-93.
ST93-5203 ..	El Paso Natural Gas Co.	Entrade Corp	08-20-93	G-S	24,392	N	F	08-01-93	09-30-93.
ST93-5204 ..	El Paso Natural Gas Co.	Redwood Resources Inc.	08-20-93	G-S	15,141	N	F	08-01-93	08-31-93.
ST93-5205 ..	El Paso Natural Gas Co.	Union Oil Co. of California.	08-20-93	G-S	8,297	N	F	08-01-93	01-31-94.
ST93-5206 ..	El Paso Natural Gas Co.	Domtar Gypsum, Inc .	08-20-93	G-S	2,575	N	F	08-01-93	08-31-93.
ST93-5207 ..	El Paso Natural Gas Co.	Grand Valley Gas Co	08-20-93	G-S	1,545	N	F	08-01-93	07-31-94.
ST93-5208 ..	El Paso Natural Gas Co.	Access Energy Corp .	08-20-93	G-S	14,559	N	F	08-01-93	08-31-93.
ST93-5209 ..	El Paso Natural Gas Co.	Imperial Irrigation District.	08-20-93	G-S	10,300	N	F	08-01-93	09-30-95.
ST93-5210 ..	El Paso Natural Gas Co.	Broad Street Oil & Gas Co.	08-20-93	G-S	1,199	N	F	08-01-93	01-31-94.
ST93-5211 ..	El Paso Natural Gas Co.	Brooklyn Interstate Nat. Gas Corp.	08-20-93	G-S	8,900	N	F	08-01-93	08-31-93.
ST93-5212 ..	El Paso Natural Gas Co.	San Diego Gas & Electric Co.	08-19-93	G-S	24,720	N	F	08-01-93	08-31-95.
ST93-5213 ..	El Paso Natural Gas Co.	Grand Valley Gas Co	08-19-93	G-S	7,000	N	F	08-01-93	08-31-93.
ST93-5214 ..	El Paso Natural Gas Co.	Pacific Gas & Electric Co.	08-19-93	G-S	334,750	N	F	08-01-93	08-31-93.
ST93-5215 ..	El Paso Natural Gas Co.	Enron Gas Marketing, Inc.	08-19-93	G-S	70,000	N	F	08-01-93	09-30-93.
ST93-5216 ..	El Paso Natural Gas Co.	Amoco Energy Trading Corp.	08-19-93	G-S	9,343	N	F	08-01-93	07-31-94.
ST93-5217 ..	El Paso Natural Gas Co.	San Diego Gas & Electric Co.	08-19-93	G-S	42,230	N	F	08-01-93	08-31-95.
ST32-5218 ..	Monterey Pipeline Co	Trunkline Gas Co	08-19-93	C	25,000	N	I	08-01-91	Indef.
ST93-5219 ..	Columbia Gulf Transmission Co.	Phillips Petroleum Co	08-19-93	G-S	100,000	N	I	08-01-93	Indef.
ST93-5220 ..	Columbia Gulf Transmission Co.	Direct Gas Supply Corp.	08-19-93	G-S	25,000	N	I	08-01-93	Indef.
ST93-5221 ..	Columbia Gulf Transmission Co.	Coastal Gas Marketing Co.	08-19-93	G-S	100,000	N	I	07-30-93	Indef.
ST93-5222 ..	Columbia Gulf Transmission Co.	Aquila Energy Marketing Corp.	08-19-93	G-S	100,000	N	I	07-23-93	Indef.

Docket No.	Transporter/Seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity**	AFF. Y/A/ N***	Rate Sch.	Date commenced	Projected termination date
ST93-5223 ..	Algonquin Gas Transmission Co.	CNG Producing Co ...	08-20-93	G-S	96,000	N	I	07-29-93	Indef.
ST93-5224 ..	Algonquin Gas Transmission Co.	Direct Gas Supply Corp.	08-20-93	G-S	120,000	N	I	07-30-93	Indef.
ST93-5225 ..	Algonquin Gas Transmission Co.	Consolidated Edison Co of New York.	08-20-93	B	2,544	N	F	08-01-93	Indef.
ST93-5226 ..	Algonquin Gas Transmission Co.	Providence Gas Co ...	08-20-93	B	56,035	N	F	07-24-93	Indef.
ST93-5227 ..	Algonquin Gas Transmission Co.	Colonia Gas Co	08-20-93	B	11,577	N	F	08-01-93	Indef.
ST93-5228 ..	Williston Basin Inter. P/L Co.	Koch Hydrocarbon Co	08-20-93	G-S	409,002	Y	I	07-22-93	04-30-95.
ST93-5229 ..	Tennessee Gas Pipeline Co.	Channel Industries Gas Co.	08-20-93	B	100,000	Y	I	07-22-93	Indef.
ST93-5230 ..	Sabine Pipeline Co ...	NGC Transportation Inc.	08-20-93	G-S	45,000	N	F	07-31-93	Indef.
ST93-5231 ..	Sabine Pipeline Co ...	Texaco Gas Marketing Inc.	08-20-93	G-S	25,000	A	F	07-31-93	Indef.
ST93-5232 ..	Superior Offshore Pipeline Co.	Union Oil Co of California.	08-20-93	G-S	50,000	N	I	08-01-93	Indef.
ST93-5233 ..	Natural Gas P/L Co of America.	Catex Energy Inc	08-20-93	G-S	11,401	N	F	08-01-93	08-31-93.
ST93-5234 ..	Transwestern Pipeline Co.	Enron Gas Marketing, Inc.	08-20-93	G-S	5,000	A	F	08-01-93	08-31-93.
ST93-5235 ..	Transwestern Pipeline Co.	Richardson Products Co.	08-20-93	G-S	5,000	N	F	08-01-93	08-31-93.
ST93-5236 ..	Transwestern Pipeline Co.	Richardson Products Co.	08-20-93	G-S	5,000	N	F	08-01-93	08-31-93.
ST93-5237 ..	Transwestern Pipeline Co.	Richardson Products Co.	08-20-93	G-S	5,000	N	F	08-01-93	08-31-93.
ST93-5238 ..	Transwestern Pipeline Co.	Richardson Products Co.	08-20-93	G-S	5,000	N	F	08-01-93	08-31-93.
ST93-5239 ..	Transwestern Pipeline Co.	Richardson Products Co.	08-20-93	G-S	5,000	N	F	08-01-93	08-31-93.
ST93-5240 ..	Transwestern Pipeline Co.	Richardson Products Co.	08-20-93	G-S	5,000	N	F	08-01-93	08-31-93.
ST93-5241 ..	Transwestern Pipeline Co.	Richardson Products Co.	08-20-93	G-S	5,000	N	F	08-01-93	08-31-93.
ST93-5242 ..	Transwestern Pipeline Co.	Richardson Products Co.	08-20-93	G-S	5,000	N	F	08-01-93	08-31-93.
ST93-5243 ..	Transwestern Pipeline Co.	Richardson Products Co.	08-20-93	G-S	5,000	N	F	08-01-93	08-31-93.
ST93-5244 ..	Transwestern Pipeline Co.	Continental Natural Gas, Inc.	08-20-93	G-S	5,000	N	F	07-22-93	07-31-93.
ST93-5245 ..	Transwestern Pipeline Co.	Richardson Products Co.	08-20-93	G-S	5,000	N	F	08-01-93	08-31-93.
ST93-5246 ..	Transwestern Pipeline Co.	Richardson Products Co.	08-20-93	G-S	5,000	N	F	08-01-93	08-31-93.
ST93-5247 ..	Transwestern Pipeline Co.	Enron Gas Marketing, Inc.	08-20-93	G-S	10,000	A	F	08-01-93	08-31-93.
ST93-5248 ..	Transwestern Pipeline Co.	Enron Gas Marketing, Inc.	08-20-93	G-S	10,000	A	F	08-01-93	08-31-93.
ST93-5249 ..	Transwestern Pipeline Co.	Enron Gas Marketing, Inc.	08-20-93	G-S	5,000	A	F	08-01-93	08-31-93.
ST93-5250 ..	Transwestern Pipeline Co.	Enron Gas Marketing, Inc.	08-20-93	G-S	2,500	A	F	08-01-93	08-31-93.
ST93-5251 ..	Transwestern Pipeline Co.	Enron Gas Marketing, Inc.	08-20-93	G-S	5,000	A	F	08-01-93	08-31-93.
ST93-5252 ..	Transwestern Pipeline Co.	Richardson Products Co.	08-20-93	G-S	10,000	N	F	08-01-93	08-31-93.
ST93-5253 ..	Transwestern Pipeline Co.	Richardson Products Co.	08-20-93	G-S	10,000	N	F	08-01-93	08-31-93.
ST93-5254 ..	Transwestern Pipeline Co.	Enron Gas Marketing, Inc.	08-20-93	G-S	10,000	A	F	08-01-93	08-31-93.
ST93-5255 ..	Transwestern Pipeline Co.	NGC Transportation, Inc.	08-20-93	G-S	5,000	N	F	08-01-93	08-31-93.
ST93-5256 ..	Transwestern Pipeline Co.	NGC Transportation, Inc.	08-20-93	G-S	5,000	N	F	08-01-93	08-31-93.
ST93-5257 ..	Transwestern Pipeline Co.	NGC Transportation, Inc.	08-20-93	G-S	5,000	N	F	08-01-93	08-31-93.

Docket No.	Transporter/Seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity**	AFF. Y/A/ N***	Rate Sch.	Date commenced	Projected termination date
ST93–5258 ..	Transwestern Pipeline Co.	Texaco Gas Marketing, Inc.	08–20–93	G–S	2,500	N	F	08–01–93	08–31–93.
ST93–5259 ..	Transwestern Pipeline Co.	Tennegasco Corp	08–20–93	G–S	2,500	N	F	08–01–93	08–31–93.
ST93–5260 ..	Transwestern Pipeline Co.	Enron Gas Marketing, Inc.	08–20–93	G–S	5,000	A	F	08–01–93	08–31–93.
ST93–5261 ..	Transwestern Pipeline Co.	Enron Gas Marketing, Inc.	08–20–93	G–S	5,000	A	F	08–01–93	08–31–93.
ST93–5262 ..	Transwestern Pipeline Co.	Enron Gas Marketing, Inc.	08–20–93	G–S	5,000	A	F	08–01–93	08–31–93.
ST93–5263 ..	Transwestern Pipeline Co.	Enron Gas Marketing, Inc.	08–20–93	G–S	5,000	A	F	08–01–93	08–31–93.
ST93–5264 ..	Transwestern Pipeline Co.	NGC Transportation, Inc.	08–20–93	G–S	3,647	N	F	08–01–93	08–31–93.
ST93–5265 ..	Transwestern Pipeline Co.	NGC Transportation, Inc.	08–20–93	G–S	3,647	N	F	08–01–93	08–31–93.
ST93–5266 ..	Transwestern Pipeline Co.	NGC Transportation, Inc.	08–20–93	G–S	5,000	N	F	08–01–93	08–31–93.
ST93–5267 ..	Transwestern Pipeline Co.	Enron Gas Marketing, Inc.	08–20–93	G–S	16,500	A	F	08–05–93	08–31–93.
ST93–5268 ..	Transwestern Pipeline Co.	Aquila Energy Marketing Corp.	08–20–93	G–S	10,400	N	F	08–08–93	08–31–93.
ST93–5269 ..	Transwestern Pipeline Co.	Anthem Energy Co., L.P.	08–20–93	G–S	14,600	N	F	08–07–93	08–31–93.
ST93–5270 ..	Transwestern Pipeline Co.	Vintage Gas, Inc	08–20–93	G–S	8,882	N	F	08–01–93	08–31–93.
ST93–5271 ..	Transwestern Pipeline Co.	Continental Natural Gas, Inc.	08–20–93	G–S	10,500	N	F	08–01–93	08–31–93.
ST93–5272 ..	Transwestern Pipeline Co.	Tristar Gas Co	08–20–93	G–S	20,000	N	F	08–01–93	08–31–93.
ST93–5273 ..	Transwestern Pipeline Co.	NGC Transportation, Inc.	08–20–93	G–S	5,000	N	F	08–01–93	08–31–93.
ST93–5274 ..	Transwestern Pipeline Co.	NGC Transportation, Inc.	08–20–93	G–S	5,000	N	F	08–01–93	08–31–93.
ST93–5275 ..	Transwestern Pipeline Co.	NGC Transportation, Inc.	08–20–93	G–S	5,000	N	F	08–01–93	08–31–93.
ST93–5276 ..	Transwestern Pipeline Co.	NGC Transportation, Inc.	08–20–93	G–S	5,000	N	F	08–01–93	08–31–93.
ST93–5277 ..	Transwestern Pipeline Co.	NGC Transportation, Inc.	08–20–93	G–S	5,000	N	F	08–01–93	08–31–93.
ST93–5278 ..	Transwestern Pipeline Co.	NGC Transportation, Inc.	08–20–93	G–S	5,000	N	F	08–01–93	08–31–93.
ST93–5279 ..	Transwestern Pipeline Co.	NGC Transportation, Inc.	08–20–93	G–S	5,000	N	F	08–01–93	08–31–93.
ST93–5280 ..	Transwestern Pipeline Co.	U.S.A. Production Co	08–20–93	G–S	12,067	N	F	08–01–93	08–31–93.
ST93–5281 ..	Transok Gas Transmission Co.	ANR Pipeline Co., et al.	08–20–93	C	50,000	N	I	07–24–93	Indef.
ST93–5282 ..	Delhi Gas Pipeline Corp.	Natural Gas Pipeline Co. of America.	08–23–93	C	375,000	N	I	07–23–93	Indef.
ST93–5283 ..	Delhi Gas Pipeline Corp.	United Gas Pipeline Co.	08–23–93	C	250,000	N	I	07–23–93	Indef.
ST93–5284 ..	K N Energy, Inc	U.S. Gas Transportation, Inc.	08–23–93	G–S	20,000	N	I	08–08–93	Indef.
ST93–5285 ..	Arkla Energy Resources Co.	Excel Gas Marketing, Inc.	08–23–93	G–S	100,000	N	I	07–01–93	Indef.
ST93–5286 ..	Southern Natural Gas Co.	Highland Energy Co ..	08–23–93	G–S	10,000	N	I	08–01–93	Indef.
ST93–5287 ..	Columbia Gulf Transmission Co.	American Hunter Energy.	08–23–93	G–S	50,000	N	I	08–01–93	Indef.
ST93–5288 ..	Columbia Gulf Transmission Co.	Atlas Gas Marketing, Inc.	08–23–93	G–S	250	N	I	08–01–93	Indef.
ST93–5289 ..	Kern River Gas Transmission Co.	Union Pacific Fuels, Inc.	08–23–93	G–S	25,000	N	I	08–03–93	Indef.
ST93–5290 ..	Kern River Gas Transmission Co.	Union Pacific Fuels, Inc.	08–23–93	G–S	25,000	N	I	08–03–93	Indef.
ST93–5291 ..	El Paso Natural Gas Co.	County of Los Angeles.	08–23–93	G–S	2,274	N	F	08–01–93	08–31–93.
ST93–5292 ..	El Paso Natural Gas Co.	Broad Street Oil & Gas Co.	08–23–93	G–S	1,200	N	F	08–01–93	08–30–93.

Docket No.	Transporter/Seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity**	AFF. Y/A/ N***	Rate Sch.	Date commenced	Projected termination date
ST93-5293 ..	El Paso Natural Gas Co.	Arco Oil & Gas Co	08-23-93	G-S	10,000	N	F	08-01-93	08-31-93.
ST93-5294 ..	El Paso Natural Gas Co.	Southwest Gas Corp .	08-23-93	G-S	25,750	N	F	08-01-93	07-31-95
ST93-5295 ..	El Paso Natural Gas Co.	Arco Oil & Gas Co	08-23-93	G-S	10,000	N	F	08-01-93	08-30-93
ST93-5296 ..	Transwestern Pipeline Co.	Taylor Energy Corp ...	08-23-93	G-S	7,500	N	I	06-30-93	Indef.
ST93-5297 ..	Transwestern Pipeline Co.	Mountain Front Pipeline Co., Inc.	08-23-93	G-S	30,000	N	I	07-01-93	Indef.
ST93-5298 ..	Florida Gas Transmission Co.	Coca-Cola Foods	08-23-93	G-S	3,531	N	I	08-01-93	Indef.
ST93-5299 ..	Florida Gas Transmission Co.	Winnie Pipeline Co ...	08-23-93	B	200,000	N	I	08-01-93	Indef.
ST93-5300 ..	Northern Natural Gas Co.	NGC Transportation, Inc.	08-23-93	G-S	200,000	N	F/I	07-20-93	Indef.
ST93-5301 ..	Northern Natural Gas Co.	Southern Natural Gas Co.	08-23-93	G	50,000	N	F/I	07-01-93	Indef.
ST93-5302 ..	Northern Natural Gas Co.	NGC Transportation, Inc.	08-23-93	G-S	100,000	N	F/I	07-01-93	Indef.
ST93-5303 ..	Northern Natural Gas Co.	NGC Transportation, Inc.	08-23-93	G-S	200,000	N	F/I	06-01-93	Indef.
ST93-5304 ..	Texas Gas Transmission Corp.	GGR Energy	08-23-93	G-S	50,000	Y	I	08-01-93	Indef.
ST93-5305 ..	Texas Gas Transmission Corp.	Neste Trading (USA) Inc.	08-23-93	G-S	100,000	Y	I	08-13-93	Indef.
ST93-5306 ..	Texas Gas Transmission Corp.	Arkla Energy Marketing Co.	08-23-93	G-S	100,000	Y	I	08-01-93	Indef.
ST93-5307 ..	El Paso Natural Gas Co.	Enron Gas Marketing, Inc.	08-24-93	G-S	3,600	N	F	08-01-93	09-30-93
ST93-5308 ..	El Paso Natural Gas Co.	Zacky Farms	08-24-93	G-S	350	N	F	08-01-93	08-31-93.
ST93-5309 ..	El Paso Natural Gas Co.	Chevron U.S.A., Inc ..	08-24-93	G-S	10,300	N	F	08-01-93	10-31-93.
ST93-5310 ..	El Paso Natural Gas Co.	Gallagher & Burk, Inc	08-24-93	G-S	20,584	N	F	08-01-93	08-31-93.
ST93-5311 ..	El Paso Natural Gas Co.	Access Energy Corp .	08-24-93	G-S	2,046	N	F	08-01-93	08-31-93.
ST93-5312 ..	El Paso Natural Gas Co.	Martinez Cogen L.P ..	08-24-93	G-S	8,255	N	F	08-01-93	09-30-93
ST93-5313 ..	El Paso Natural Gas Co.	Access Energy Corp .	08-24-93	G-S	31	N	F	08-01-93	08-31-93.
ST93-5314 ..	El Paso Natural Gas Co.	Access Energy Corp .	08-24-93	G-S	2,542	N	F	08-01-93	08-31-93.
ST93-5315 ..	El Paso Natural Gas Co.	Access Energy Corp .	08-24-93	G-S	49	N	F	08-01-93	08-31-93.
ST93-5316 ..	Transwestern Pipeline Co.	New Mexico Natural Gas, Inc.	08-24-93	G-S	500	N	I	07-31-93.	Indef.
ST93-5317 ..	Northern Natural Gas Co.	Peoples Natural Gas Co.	08-24-93	G-S	176,341	N	F/I	06-01-93	Indef.
ST93-5318 ..	Northern Natural Gas Co.	Oxy USA, Inc	08-24-93	G-S	42,466	N	F/I	06-01-93	Indef.
ST93-5319 ..	Tennessee Gas Pipeline Co.	National Fuel Gas Distribution Corp.	08-24-93	G-S	172,288	N	F	08-01-93	Indef.
ST93-5320 ..	Northern Illinois Gas .	Broad Street Oil & Gas Co.	08-24-93	C	100,000	N	I	08-04-93	07-31-94.
ST93-5321 ..	Northern Illinois Gas .	Natural Gas Clearinghouse.	08-24-93	C	100,000	N	I	07-28-93	07-31-94.
ST93-5322 ..	Valero Transmission, L.P.	Texas Eastern Transmission Corp.	08-25-93	C	10,000	N	I	08-11-93	Indef.
ST93-5323 ..	Arkla Energy Resources Co.	Mountain Iron & Supply Co.	08-25-93	G-S	1,000	N	I	08-19-93	Indef.
ST93-5324 ..	Tennessee Gas Pipeline Co.	Prior Intrastate Corp ..	08-25-93	G-S	90,000	N	I	06-01-93	Indef.
ST93-5325 ..	Tennessee Gas Pipeline Co.	Yuma Gas Corp	08-25-93	G-S	125,000	N	I	07-26-93	Indef.
ST93-5326 ..	Tennessee Gas Pipeline Co.	Transco Liquids Co ...	08-25-93	G-S	132,495	N	I	08-01-93	Indef.
ST93-5327 ..	El Paso Natural Gas Co.	Kelco Division of Merck & Co., Inc.	08-26-93	G-S	36	N	F	08-01-93	08-31-93.

Docket No.	Transporter/Seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity**	AFF. Y/A/ N***	Rate Sch.	Date commenced	Projected termination date
ST93-5328 ..	El Paso Natural Gas Co.	Lockheed Advanced Development Co.	08-26-93	G-S	248	N	F	08-01-93	08-31-93.
ST93-5329 ..	El Paso Natural Gas Co.	Dugan Production Corp.	08-26-93	G-S	103	N	I	07-30-93	Indef.
ST93-5330 ..	El Paso Natural Gas Co.	Access Energy Corp .	08-26-93	G-S	25	N	F	08-01-93	08-31-93.
ST93-5331 ..	El Paso Natural Gas Co.	Access Energy Corp .	08-26-93	G-S	1	N	F	08-01-93	08-31-93.
ST93-5332 ..	El Paso Natural Gas Co.	Access Energy Corp .	08-26-93	G-S	38	N	F	08-01-93	08-31-93.
ST93-5333 ..	El Paso Natural Gas Co.	Access Energy Corp .	08-26-93	G-S	125	N	F	08-01-93	08-31-93.
ST93-5334 ..	El Paso Natural Gas Co.	Access Energy Corp .	08-26-93	G-S	10	N	F	08-01-93	08-31-93.
ST93-5335 ..	El Paso Natural Gas Co.	Access Energy Corp .	08-26-93	G-S	10	N	F	08-01-93	08-31-93.
ST93-5336 ..	El Paso Natural Gas Co.	Access Energy Corp .	08-26-93	G-S	10	N	F	08-01-93	07-31-94.
ST93-5337 ..	Great Lakes Gas Trans., L.P.	AIG Trading Corp	08-26-93	G-S	50,000	N	F	08-10-93	10-31-93.
ST93-5338 ..	Great Lakes Gas Trans., L.P.	AIG Trading Corp	08-26-93	G-S	25,000	N	F	07-29-93	10-31-93.
ST93-5339 ..	Great Lakes Gas Trans., L.P.	GAZ Metropolitan & Co., L.P.	08-26-93	G-S	100,000	N	F	08-03-93	09-30-93.
ST93-5340 ..	Natural Gas P/L Co. of America.	Tide West Trading & Transport Co.	08-26-93	G-S	50,000	N	I	08-07-93	Indef.
ST93-5341 ..	Natural Gas P/L Co. of America.	Eastex Hydrocarbons, Inc.	08-26-93	G-S	11,300	N	F	08-01-93	08-31-93.
ST93-5342 ..	Panhandle Eastern Pipe Line Co.	City of Sunray	08-26-93	G-S	100	N	I	07-27-93	07-31-98.
ST93-5343 ..	Northwest Pipeline Corp.	Development Associates, Inc.	08-26-93	G-S	40,000	N	F	07-01-93	Indef.
ST93-5344 ..	United Gas Pipe Line Co.	Okaloosa County Gas Dist.	08-26-93	G-S	10,000	N	I	08-13-93	12-11-93.
ST93-5345 ..	United Gas Pipe Line Co.	Phillips Petroleum Co	08-26-93	G-S	20,000	N	I	08-16-93	12-14-93.
ST93-5346 ..	United Gas Pipe Line Co.	Delhi Gas Pipeline Corp.	08-26-93	G-S	104,800	N	I	08-10-93	12-08-93.
ST93-5347 ..	United Gas Pipe Line Co.	Olympic Pipeline Co ..	08-26-93	G-S	1,700	N	F	08-16-93	12-14-93.
ST93-5348 ..	United Gas Pipe Line Co.	Anadarko Trading Co	08-26-93	G-S	20,000	N	I	08-13-93	12-11-93.
ST93-5349 ..	United Gas Pipe Line Co.	Seagull Marketing Services, Inc.	08-26-93	G-S	524,000	N	I	08-16-93	12-14-93.
ST93-5350 ..	United Gas Pipe Line Co.	Excel Gas Marketing, Inc.	08-26-93	G-S	102,704	N	I	08-13-93	12-11-93.
ST93-5351 ..	Tennessee Gas Pipeline Co.	Interstate Gas Marketing, Inc.	08-26-93	G-S	11,060	N	I	07-28-93	Indef.
ST93-5352 ..	Tennessee Gas Pipeline Co.	Enron Gas Marketing, Inc.	08-26-93	G-S	703,297	N	I	07-27-93	Indef.
ST93-5353 ..	Tennessee Gas Pipeline Co.	City of Admasville	08-26-93	B	1,050	N	I	07-27-93	Indef.
ST93-5354 ..	Tennessee Gas Pipeline Co.	O&R Energy Inc	08-26-93	G-S	300,000	N	I	08-05-93	Indef.
ST93-5355 ..	Arkansas Oklahoma Gas Corp.	Ozark Gas Trans. System, et al.	08-26-93	G-HT	500	N	I	06-01-93	Indef.
ST93-5356 ..	Arkansas Oklahoma Gas Corp.	Ozark Gas Trans. System, et al.	08-26-93	G-HT	4,000	N	I	05-01-93	Indef.
ST93-5357 ..	Arkansas Oklahoma Gas Corp.	Ozark Gas Trans. System, et al.	08-26-93	G-HT	3,520	N	I	07-01-93	Indef.
ST93-5358 ..	ANR Pipeline Co	Elf Exploration, Inc	08-27-93	G-S	50,000	N	I	08-01-93	Indef.
ST93-5359 ..	ANR Pipeline Co	Meridian Oil Trading, Inc.	08-27-93	G-S	100,000	N	F	08-01-93	10-31-93.
ST93-5360 ..	ANR Pipeline Co	Jackson Pipeline Co .	08-27-93	B	20,000	N	I	08-01-93	Indef.
ST93-5361 ..	ANR Pipeline Co	OXY USA Inc	08-27-93	G-S	20,000	N	F	08-01-93	10-31-93.
ST93-5362 ..	ANR Pipeline Co	Rochester Gas and Electric Corp.	08-27-93	G-S	150,000	A	I	08-01-93	Indef.
ST93-5363 ..	Trunkline Gas Co	Tylex, Inc	08-27-93	G-S	100	N	I	08-11-93	Indef.
ST93-5364 ..	Texas Eastern Transmission Corp.	National Fuel Gas Dist. Corp.	08-27-93	G-S	20,000	N	I	08-01-93	10-31-99

Docket No.	Transporter/Seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity**	AFF. Y/A/ N***	Rate Sch.	Date commenced	Projected termination date
ST93-5365 ..	Texas Eastern Transmission Corp.	National Fuel Gas Dist. Corp.	08-27-93	G-S	52,652	N	I	08-01-93	10-31-99.
ST93-5366 ..	Texas Eastern Transmission Corp.	Bristol & Warren Gas Co.	08-27-93	G-S	161	N	I	08-01-93	10-31-12.
ST93-5367 ..	Texas Eastern Transmission Corp.	Elizabethtown Gas Co	08-27-93	G-S	2,829	N	I	08-01-93	10-31-99.
ST93-5368 ..	Texas Eastern Transmission Corp.	Providence Gas Co ...	08-27-93	G-S	764	N	I	08-01-93	10-31-12.
ST93-5369 ..	Texas Eastern Transmission Corp.	Middleborough Gas & Electric Dept.	08-27-93	G-S	35	N	I	08-01-93	10-31-12.
ST93-5370 ..	Trunkline Gas Co	AIG Trading Corp	08-27-93	G-S	150,000	N	I	08-11-93	Indef.
ST93-5371 ..	Tennessee Gas Pipeline Co.	Nashville Gas Co	08-27-93	B	26,000	N	I	07-30-93	Indef.
ST93-5372 ..	Tennessee Gas Pipeline Co.	O&R Energy, Inc	08-27-93	G-S	10,000	N	F	08-30-93	09-01-93.
ST93-5373 ..	Tennessee Gas Pipeline Co.	Texas-Ohio Gas, Inc .	08-27-93	G-S	75,000	N	I	08-02-93	11-13-93.
ST93-5374 ..	Tennessee Gas Pipeline Co.	Woodward Marketing, Inc.	08-27-93	G-S	200,000	N	I	07-29-93	Indef.
ST93-5375 ..	Williston Basin Inter. P/L Co.	Natural Gas Processing Co.	08-27-93	G-S	20,495	N	I	07-30-93	07-19-95.
ST93-5376 ..	Williston Basin Inter. P/L Co.	Interenergy Corp	08-27-93	G-S	105,550	A	I	08-09-93	05-31-95.
ST93-5377 ..	Trunkline Gas Co	Eastex Hydrocarbons, Inc.	08-27-93	G-S	50,000	N	I	08-18-93	Indef.
ST93-5378 ..	Lone Star Gas Co	Arkla Energy Resources, et al.	08-27-93	C	100,000	N	I	08-07-93	Indef.
ST93-5379 ..	El Paso Natural Gas Co.	Southern California Edison Co.	08-27-93	G-S	100,000	N	F	08-02-93	08-06-93.
ST93-5380 ..	El Paso Natural Gas Co.	Sunrise Energy Services, Inc.	08-27-93	G-S	9,015	N	F	08-02-93	08-31-93.
ST93-5381 ..	El Paso Natural Gas Co.	Access Energy Corp .	08-27-93	G-S	14,788	N	F	08-01-93	08-31-93.
ST93-5382 ..	El Paso Natural Gas Co.	Anadarko Trading Co	08-27-93	G-S	4,504	N	F	08-01-93	08-31-93.
ST93-5383 ..	El Paso Natural Gas Co.	Southern California Gas Co.	08-27-93	G-S	941	N	F	08-02-93	08-31-93.
ST93-5384 ..	El Paso Natural Gas Co.	Sunrise Energy Services, Inc.	08-27-93	G-S	5,718	N	F	08-02-93	08-31-93.
ST93-5385 ..	El Paso Natural Gas Co.	Broad Street Oil & Gas Co.	08-27-93	G-S	13,882	N	F	08-01-93	08-31-93.
ST93-5386 ..	Natural Gas P/L Co. of America.	Olympic Fuels Co	08-27-93	G-S	13,800	N	F	08-01-93	08-31-93.
ST93-5387 ..	Gas Co. of New Mexico.	El Paso Natural Gas Co.	08-27-93	G-HT	20,000	N	I	08-28-93	Indef.
ST93-5388 ..	Kentucky West Virginia Gas Co.	Kentucky Hydrocarbon.	08-30-93	G-S	20,000	N	I	07-01-93	Indef.
ST93-5389 ..	ANR Pipeline Co	Trinity Pipeline, Inc ...	08-30-93	G-S	20,000	N	F	08-01-93	10-31-93.
ST93-5390 ..	Delhi Gas Pipeline Corp.	ANR Pipeline Co., et al.	08-30-93	C	10,000	N	I	07-29-93	Indef.
ST93-5391 ..	ANR Pipeline Co	AIG Trading Corp	08-30-93	G-S	100,000	N	F	08-01-93	10-31-93.
ST93-5392 ..	ANR Pipeline Co	O&R Energy, Inc	08-30-93	G-S	50,000	N	F	08-04-93	10-31-93.
ST93-5393 ..	Tennessee Gas Pipeline Co.	Kerr-McGee Corp	08-30-93	G-S	450,000	N	I	08-01-93	Indef.
ST93-5394 ..	Tennessee Gas Pipeline Co.	Ocean State Power ...	08-30-93	G-S	110,000	N	I	08-08-93	Indef.
ST93-5395 ..	Tennessee Gas Pipeline Co.	Distrigas of Massachusetts Corp.	08-30-93	B	110,000	N	I	07-31-93	Indef.
ST93-5396 ..	Tennessee Gas Pipeline Co.	Direct Gas Supply Corp.	08-30-93	G-S	91,500	N	I	08-05-93	Indef.
ST93-5397 ..	Tennessee Gas Pipeline Co.	Pennsylvania and Southern Gas Co.	08-30-93	G-S	1,500	N	F	08-01-93	Indef.
ST93-5398 ..	Tennessee Gas Pipeline Co.	MG Natural Gas Corp	08-30-93	G-S	160,000	N	I	08-01-93	Indef.
ST93-5399 ..	Tennessee Gas Pipeline Co.	East Ohio Co	08-30-93	B	10,000	N	I	08-07-93	Indef.
ST93-5400 ..	Tennessee Gas Pipeline Co.	Equitable Resources Marketing Co.	08-30-93	G-S	307,500	N	I	08-05-93	Indef.
ST93-5401 ..	Westar Transmission Co.	Natural Gas P/L Co. of America.	08-30-93	C	50,000	N	I	06-23-93	Indef.

Docket No.	Transporter/Seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity**	AFF. Y/A/ N***	Rate Sch.	Date commenced	Projected termination date
ST93-5402 ..	Westar Transmission Co.	Northern Natural Gas Co.	08-30-93	C	50,000	N	I	06-11-93	Indef.
ST93-5403 ..	Transamerican Natural Gas Corp.	Florida Gas Transmission Co.	08-30-93	C	50,000	N	I	12-02-92	Indef.
ST93-5404 ..	Transamerican Natural Gas Corp.	Trunkline Gas Co	08-30-93	C	50,000	N	I	01-15-92	Indef.
ST93-5405 ..	Transamerican Natural Gas Corp.	Trunkline Gas Co	08-30-93	C	25,000	N	I	01-02-92	Indef.
ST93-5406 ..	Transamerican Natural Gas Corp.	Transcontinental Gas P/L Corp.	08-30-93	C	25,000	N	I	09-14-92	Indef.
ST93-5407 ..	Transamerican Natural Gas Corp.	Florida Gas Transmission Co.	08-30-93	C	25,000	N	I	07-22-92	Indef.
ST93-5408 ..	Transamerican Natural Gas Corp.	Floride Gas Transmission Co.	08-30-93	C	50,000	N	I	12-01-92	Indef.
ST93-5409 ..	Transamerican Natural Gas Corp.	Trunkline Gas Co	08-30-93	C	25,000	N	I	05-09-92	Indef.
ST93-5410 ..	Transamerican Natural Gas Corp.	Trunkline Gas Co	08-30-93	C	50,000	N	I	11-06-92	Indef.
ST93-5411 ..	Transamerican Natural Gas Corp.	Trunkline Gas Co	08-30-93	C	50,000	N	I	01-01-92	Indef.
ST93-5412 ..	Transamerican Natural Gas Corp.	Trunkline Gas Co	08-30-93	C	50,000	N	I	01-14-92	Indef.
ST93-5413 ..	Transamerican Natural Gas Corp.	Trunkline Gas Co	08-30-93	C	25,000	N	I	06-20-92	Indef.
ST93-5414 ..	Transamerican Natural Gas Corp.	Transcontinental Gas P/L Corp.	08-30-93	C	25,000	N	I	11-02-92	Indef.
ST93-5415 ..	Transamerican Natural Gas Corp.	Transcontinental Gas P/L Corp.	08-30-93	C	25,000	N	I	10-22-92	Indef.
ST93-5416 ..	Transamerican Natural Gas Corp.	Transcontinental Gas P/L Corp.	08-30-93	C	15,000	N	I	03-01-92	Indef.
ST93-5417 ..	Transamerican Natural Gas Corp.	Transcontinental Gas P/L Corp.	08-30-93	C	50,000	N	I	04-22-92	Indef.
ST93-5418 ..	Transamerican Natural Gas Corp.	Transcontinental Gas P/L Corp.	08-30-93	C	15,000	N	I	10-22-92	Indef.
ST93-5419 ..	Transamerican Natural Gas Corp.	Transcontinental Gas P/L Corp.	08-30-93	C	15,000	N	I	04-01-92	Indef.
ST93-5420 ..	Transamerican Natural Gas Corp.	Texas Eastern Transmission Corp.	08-30-93	C	15,000	N	I	07-24-92	Indef.
ST93-5421 ..	Transamerican Natural Gas Corp.	Texas Eastern Transmission Corp.	08-30-93	C	50,000	N	I	11-01-92	Indef.
ST93-5422 ..	Transamerican Natural Gas Corp.	Texas Eastern Transmission Corp.	08-30-93	C	15,000	N	I	10-02-92	Indef.
ST93-5423 ..	Transamerican Natural Gas Corp.	Tennessee Gas Pipeline Co., et al.	08-30-93	C	25,000	N	I	10-01-92	Indef.
ST93-5424 ..	Transamerican Natural Gas Corp.	United Gas Pipe Line Co.	08-30-93	C	25,000	N	I	08-28-92	Indef.
ST93-5425 ..	Transamerican Natural Gas Corp.	United Gas Pipe Line Co.	08-30-93	C	50,000	N	I	01-01-92	Indef.
ST93-5426 ..	Transamerican Natural Gas Corp.	United Gas Pipe Line Co.	08-30-93	C	50,000	N	I	02-01-92	Indef.
ST93-5427 ..	Transamerican Natural Gas Corp.	United Gas Pipe Line Co.	08-30-93	C	50,000	N	I	01-01-92	Indef.
ST93-5428 ..	Transamerican Natural Gas Corp.	United Gas Pipe Line Co.	08-30-93	C	50,000	N	I	07-11-92	Indef.
ST93-5429 ..	Transamerican Natural Gas Corp.	United Gas Pipe Line Co.	08-30-93	C	50,000	N	I	01-01-92	Indef.
ST93-5430 ..	Transamerican Natural Gas Corp.	United Gas Pipe Line Co.	08-30-93	C	10,000	N	I	03-03-92	Indef.
ST93-5431 ..	Transamerican Natural Gas Corp.	Natural Gas P/L Co. of America.	08-30-93	C	50,000	N	I	02-22-92	Indef.
ST93-5432 ..	Transamerican Natural Gas Corp.	Natural Gas P/L Co. of America.	08-30-93	C	50,000	N	I	05-08-92	Indef.
ST93-5433 ..	Transamerican Natural Gas Corp.	Natural Gas P/L Co. of America.	08-30-93	C	50,000	N	I	01-17-92	Indef.
ST93-5434 ..	Transamerican Natural Gas Corp.	Natural Gas P/L Co. of America.	08-30-93	C	50,000	N	I	10-09-92	Indef.
ST93-5435 ..	Transamerican Natural Gas Corp.	Natural Gas P/L Co. of America.	08-30-93	C	50,000	N	I	01-08-92	Indef.
ST93-5436 ..	Transamerican Natural Gas Corp.	Natural Gas P/L Co. of America.	08-30-93	C	50,000	N	I	08-21-92	Indef.

Docket No.	Transporter/Seller	Recipient	Date filed	Part 284 sub-part	Est. max. daily quantity**	AFF. Y/A/ N***	Rate Sch.	Date commenced	Projected termination date
ST93-5437 ..	Transamerican Natural Gas Corp.	Natural Gas P/L Co. of America.	08-30-93	C	25,000	N	I	03-04-92	Indef.
ST93-5438 ..	Transamerican Natural Gas Corp.	Southern Natural Gas Co.	08-30-93	C	50,000	N	I	12-05-92	Indef.
ST93-5439 ..	Transamerican Natural Gas Corp.	Southern Natural Gas Co.	08-30-93	C	25,000	N	I	12-31-92	Indef.
ST93-5440 ..	Transamerican Natural Gas Corp.	Tennessee Gas Pipeline Co.	08-30-93	C	50,000	N	I	01-24-02	Indef.
ST93-5441 ..	Transamerican Natural Gas Corp.	Tennessee Gas Pipeline Co.	08-30-93	C	50,000	N	I	05-23-92	Indef.
ST93-5442 ..	Transamerican Natural Gas Corp.	Tennessee Gas Pipeline Co.	08-30-93	C	50,000	N	I	01-07-92	Indef.
ST93-5443 ..	Transamerican Natural Gas Corp.	Tennessee Gas Pipeline Co.	08-30-93	C	50,000	N	I	05-08-92	Indef.
ST93-5444 ..	Transamerican Natural Gas Corp.	Tennessee Gas Pipeline Co.	08-30-93	C	50,000	N	I	01-07-92	Indef.
ST93-5445 ..	Transamerican Natural Gas Corp.	Tennessee Gas Pipeline Co.	08-30-93	C	50,000	N	I	01-01-92	Indef.
ST93-5446 ..	Transamerican Natural Gas Corp.	Tennessee Gas Pipeline Co.	08-30-93	C	50,000	N	I	04-02-92	Indef.
ST93-5447 ..	Transamerican Natural Gas Corp.	Tennessee Gas Pipeline Co.	08-30-93	C	25,000	N	I	02-19-92	Indef.
ST93-5448 ..	Transamerican Natural Gas Corp.	Tennessee Gas Pipeline Co.	08-30-93	C	50,000	N	I	10-30-90	Indef.
ST93-5449 ..	Transcontinental Gas P/L Corp.	National Fuel Gas Dist. Corp.	08-31-93	G-S	25,442	Y	I	08-01-93	10-31-04.
ST93-5450 ..	Transcontinental Gas P/L Corp.	ANR Production Co ..	08-31-93	G-S	2,000	N	I	08-01-93	Indef.
ST93-5451 ..	Transcontinental Gas P/L Corp.	Nerco Oil & Gas, Inc .	08-31-93	G-S	975,000	N	I	08-20-93	Indef.
ST93-5452 ..	El Paso Natural Gas Co.	Broad Street Oil & Gas Co.	08-30-93	G-S	580	N	F	08-01-93	08-31-93.
ST93-5453 ..	El Paso Natural Gas Co.	Broad Street Oil & Gas Co.	08-30-93	G-S	4,540	N	F	08-01-93	08-31-93.
ST93-5454 ..	Natural Gas P/L Co. of America.	American Central Gas Cos., Inc.	08-30-93	G-S	100,000	N	I	05-04-90	Indef.
ST93-5455 ..	Natural Gas P/L Co. of America.	Valero Gas Marketing, L.P.	08-30-93	G-S	40,000	N	F	05-01-90	08-31-93.
ST93-5456 ..	Northern Natural Gas Co.	Mountain Front Pipeline Co., Inc.	08-30-93	B	30,000	N	F/I	06-28-93	Indef.
ST93-5457 ..	Northern Natural Gas Co.	Quivira Gas Co	08-30-93	G-S	20,000	N	F/I	04-01-93	Indef.
ST93-5458 ..	Northern Natural Gas Co.	Virginia Public Utilities	08-30-93	G-S	1,000	N	F	05-28-93	Indef.
ST93-5459 ..	El Paso Natural Gas Co.	Access Energy Corp .	08-30-93	G-S	2,747	N	F	08-01-93	08-31-93.
ST93-5460 ..	Columbia Gulf Transmission Co.	Excel Gas Marketing, Inc.	08-31-93	G-S	150,000	N	I	08-21-93	Indef.
ST93-5461 ..	Iroquois Gas Trans. System, L.P.	Gaslantic Corp	08-31-93	G-S	20,000	N	I	08-02-93	Indef.
ST93-5462 ..	Iroquois Gas Trans. System, L.P.	Appalachian AS Sales	08-31-93	G-S	29,126	N	I	07-30-93	Indef.
ST93-5463 ..	Natural Gas P/L Co. of America.	Green Valley Chemical Corp.	08-31-93	G-S	4,000	N	F	08-01-93	05-31-96.
ST93-5464 ..	Pacific Gas Transmission Co.	Pacific Gas and Electric Co.	08-31-93	G-S	203,000	N	I	08-04-93	Indef.
ST93-5465 ..	Ozark Gas Transmission System.	Tristar Gas Marketing Co.	08-31-93	G-S	10,000	N	F/I	08-01-93	Indef.
ST93-5466 ..	Mississippi River Trans. Corp.	United Cities Gas Co	08-31-93	G-S	300	N	F	08-01-93	Indef.
ST93-5467 ..	ANR Pipeline Co	Centra Gas Manitoba Inc.	08-31-93	G-S	18,000	N	I	08-11-93	08-31-93.
ST93-5468 ..	ANR Pipeline Co	Northern Illinois Gas Co.	08-31-93	G-S	300,000	N	I	08-07-93	Indef.
ST93-5469 ..	ANR Pipeline Co	Philadelphia Gas Works.	08-31-93	G-S	100,000	A	I	08-16-93	10-31-93.
ST93-5470 ..	ANR Pipeline Co	Gaz Metropolitan and Co., L.P.	08-31-93	G-S	51,379	Y	I	08-06-93	Indef.
ST93-5471 ..	Panhandle Eastern Pipe Line Co.	Arco Natural Gas Marketing, Inc.	08-31-93	G-S	100,000	N	I	08-01-93	07-31-98.

Docket No.	Transporter/Seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity**	AFF. Y/A/ N***	Rate Sch.	Date commenced	Projected termination date
ST93-5472 ..	Panhandle Eastern Pipe Line Co.	Aquila Energy Marketing Corp.	08-31-93	G-S	10,000	N	F	08-01-93	08-31-93.
ST93-5473 ..	Panhandle Eastern Pipe Line Co.	Coastal Gas Marketing Co.	08-31-93	G-S	3,100	N	F	08-01-93	08-31-93.
ST93-5474 ..	Panhandle Eastern Pipe Line Co.	Tristar Gas Marketing Co.	08-31-93	G-S	20,000	N	I	08-01-93	08-31-93.
ST93-5475 ..	Panhandle Eastern Pipe Line Co.	Eastex Hydrocarbons, Inc.	08-31-93	G-S	5,240	N	F	08-01-93	10-31-93.
ST93-5476 ..	Panhandle Eastern Pipe Line Co.	KN Gas Marketing, Inc.	08-31-93	G-S	5,000	N	F	08-01-93	08-31-93.
ST93-5477 ..	Panhandle Eastern Pipe Line Co.	Gas Energy Development.	08-31-93	G-S	20,000	N	I	08-01-93	07-31-98.
ST93-5478 ..	Panhandle Eastern Pipe Line Co.	Panhandle Trading Co.	08-31-93	G-S	4,199	Y	F	08-01-93	07-31-98.
ST93-5479 ..	Panhandle Eastern Pipe Line Co.	Centana Energy Corp	08-31-93	G-S	11,000	Y	F	08-01-93	09-30-93.
ST93-5480 ..	Panhandle Eastern Pipe Line Co.	Union Pacific Fuels, Inc..	08-31-93	G-S	25,000	N	I	08-01-93	07-31-98.
ST93-5481 ..	Panhandle Eastern Pipe Line Co.	Amgas, Inc	08-31-93	G-S	1,497	N	F	08-01-93	08-31-93.
ST93-5482 ..	Panhandle Eastern Pipe Line Co.	Catex Energy, Inc	08-31-93	G-S	2,511	N	F	08-02-93	08-31-93.
ST93-5483 ..	Panhandle Eastern Pipe Line Co.	Associated Natural Gas, Inc.	08-31-93	G-S	10,000	N	F	08-01-93	08-31-93.
ST93-5484 ..	Panhandle Eastern Pipe Line Co.	Eastex Hydrocarbons, Inc.	08-31-93	G-S	127	N	F	08-01-93	08-31-93.
ST93-5485 ..	Panhandle Eastern Pipe Line Co.	Gas Energy Development.	08-31-93	G-S	3,000	N	F	08-01-93	08-31-93.
ST93-5486 ..	Panhandle Eastern Pipe Line Co..	Ives Corp	08-31-93	G-S	500	N	F	08-01-93	07-31-94.
ST93-5487 ..	Panhandle Eastern Pipe Line Co.	Eastex Ohio Gas Co .	08-31-93	G-S	10,000	N	F	08-01-93	09-30-93.
ST93-5488 ..	Panhandle Eastern Pipe Line Co.	Gas Energy Development.	08-31-93	G-S	20,000	N	I	08-01-93	07-31-98.
ST93-5489 ..	Florida Gas Transmission Co.	City Gas Co. of Florida.	08-31-93	G-S	35,810	N	F	08-01-93	Indef.
ST93-5490 ..	Florida Gas Transmission Co.	Cargill Fertilizer, Inc ..	08-31-93	G-S	3,082	N	I	08-01-93	Indef.
ST93-5491 ..	Valero Transmission, L.P.	Northern Natural Gas Co.	08-31-93	C	100,000	N	I	08-22-93	Indef.
ST93-5492 ..	Delhi Gas Pipeline Co	Arkla Energy Resources.	08-31-93	C	55,000	N	I	08-01-93	Indef.
ST93-5493 ..	Delhi Gas Pipeline Co	Panhandle Eastern Gas Pipeline Co.	08-31-93	C	375,000	N	I	08-01-93	Indef.
ST93-5494 ..	Delhi Gas Pipeline Co	Arkla Energy Resources.	08-31-93	C	375,000	N	I	08-01-93	Indef.
ST93-5495 ..	Delhi Gas Pipeline Co	ANR Pipeline Co., et al.	08-31-93	C	5,000	N	I	08-05-93	Indef.
ST93-5496 ..	Delhi Gas Pipeline Co	ANR Pipeline Co., et al.	08-31-93	C	25,000	N	I	08-01-93	Indef.
ST93-5497 ..	Gulf States Pipeline Corp.	Gulf States Transmission Corp.	8-31-93	C	30,000	N	I	08-01-93	Indef.
ST93-5498 ..	Valero Transmission, L.P.	Northern Natural Gas Co.	8-31-93	C	100,000	N	I	08-22-93	Indef.
ST93-5499 ..	Midcon Texas Pipeline Corp.	United Texas Trans. Co., et al.	8-31-93	C	200,000	N	I	08-01-93	Indef.
ST93-5500 ..	Tejas Gas Corp	Mississippi River Trans., et al.	8-31-93	C	15,000	N	I	07-13-93	07-13-95.
ST93-5501 ..	ONG Transmission Co.	Arkla Energy Resources.	8-31-93	C	50,000	N	I	08-01-93	Indef.
ST93-5502 ..	ONG Transmission Co.	Phillips Gas Pipeline Co.	8-31-93	C	100,000	N	I	08-01-93	Indef.
ST93-5503 ..	ONG Transmission Co.	Arkla Energy Resources.	8-31-93	C	10,000	N	I	08-01-93	Indef.
ST93-5504 ..	Florida Gas Transmission Co.	Kissimmee Utility Authority.	8-31-93	G-S	5,526	N	F	08-01-93	Indef.
ST93-5505 ..	Florida Gas Transmission Co.	Peoples Gas System, Inc.	8-31-93	G-S	217,167	N	F	08-01-93	Indef.
ST93-5506 ..	Florida Gas Transmission Co.	Cargill Fertilizer, Inc ..	8-31-93	G-S	1,238	N	F	08-01-93	Indef.

Docket No.	Transporter/Seller	Recipient	Date filed	Part 284 sub-part	Est. max. daily quantity**	AFF. Y/A/ N***	Rate Scn.	Date commenced	Projected termination date
ST93-5507 ..	Florida Gas Transmission Co.	Florida Public Utilities Co.	8-31-93	G-S	4,315	N	I	08-01-93	Indef.
ST93-5508 ..	Florida Gas Transmission Co.	Chesapeake Utilities Corp.	8-31-93	G-S	20,023	N	F	08-01-93	Indef.
ST93-5509 ..	Florida Gas Transmission Co.	City of Vero Beach	8-31-93	G-S	9,120	N	F	08-01-93	Indef.
ST93-5510 ..	Florida Gas Transmission Co.	Peoples Gas System, Inc.	8-31-93	G-S	6,308	N	I	08-01-93	Indef.
ST93-5511 ..	Florida Gas Transmission Co.	Florida Public Utilities Co.	8-31-93	G-S	20,412	N	F	08-01-93	Indef.
ST93-5512 ..	Florida Gas Transmission Co.	City Gas Co of Florida.	8-31-93	G-S	1,125	N	F	08-01-93	Indef.
ST93-5513 ..	Florida Gas Transmission Co.	City Gas Co. of Florida.	8-31-93	G-S	300	N	F	08-01-93	Indef.

*Notice of Transactions Does Not Constitute a Determination that Filings Comply with Commission Regulations in Accordance with Order No. 436 (Final Rule and Notice Requesting Supplemental Comments, 50 FR 42,372, 10/10/85).
**Estimated Maximum Daily Volumes Includes Volumes Reported by the Filing Company in MMBTU, MCF and DT.
***Affiliation of Reporting Company to Entities Involved in the Transaction. A "Y" Indicates Affiliation, an "A" Indicates Marketing Affiliation, and a "N" Indicates no Affiliation.

[FR Doc. 93-25989 Filed 10-21-93; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. PR94-1-000]

Bay Gas Storage Co., Ltd.; Petition for Rate Approval

October 18, 1993.

Take notice that on October 12, 1993, Bay Gas Storage Company, Ltd. (Bay Gas) filed pursuant to § 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve as fair and equitable market based rates for firm and interruptible storage services performed under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA).

Bay Gas states that it is an intrastate pipeline within the meaning of section 2(16) of the NGPA and it owns and operates an intrastate Bay Gas system in the State of Alabama. Bay Gas proposes that the rates become effective upon approval of the instant petition.

Pursuant to § 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rates will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150-day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data, and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before November 8, 1993. The petition for rate approval is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-25990 Filed 10-21-93; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ES-93-43-005]

Citizens Utilities Co.; Amended Application

October 19, 1993

Take notice that by letter order dated September 7, 1993, Citizens Utilities Company (Citizens) was authorized through November 30, 1995, to issue not more than $1.25 billion of unsecured promissory notes; $750 million aggregate principal amount of long term debt securities; and up to $500 million in preferred and common stock with the total amount of securities outstanding at any one time limited to $1.25 billion. On October 14, 1993, Citizens amended its application to request authorization to allow these issuances to be used to fund other acquisitions that may become available during the authorization period or for other general corporate purposes.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before October 27, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-26080 Filed 10-21-93; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. RP91-161-014 and RP91-160-011]

Columbia Gas Transmission Corp. and Columbia Gulf Transmission Co.; Proposed Changes in FERC Gas Tariff

October 18, 1993.

Take notice that on October 13, 1993, Columbia Gas Transmission Corporation (Columbia) and Columbia Gulf Transmission Company (Columbia Gulf) (collectively Columbia) tendered for filing proposed changes to their respective FERC Gas Tariffs, First Revised Volumes No. 1, to be effective October 1, 1993 as set forth on Appendices A and B to the filing.

Columbia states the tariff sheets listed on Appendices A and B to the filing set forth the rates applicable to the settling and non-settling parties to the Stipulation and Agreement in Docket Nos. RP91-160-000, et al. and RP91-161-000, et al. as approved by the Commission on September 29, 1993.

Columbia states that copies of the filing were served upon the Columbia's jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before October 25, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will serve to make protestants parties to the proceeding. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–25991 Filed 10–21–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–20–000]

Field Gas Gathering Inc.; Petition for Declaratory Order

October 18, 1993.

Take notice that on October 12, 1993, Field Gas Gathering Inc. (Field Gas Gathering), 4 Greenway Plaza, Houston, Texas 77046, filed in Docket No. CP94–20–000 a petition under Rule 207 of the Commission's Rules of Practice and Procedure (18 CFR 385.207(a)(2)) for a declaratory order disclaiming jurisdition over its partial interest acquired from Superior Offshore Pipeline Company (SOPCO) in a 12-inch diameter pipeline extending from a production platform in West Cameron Block 331 to a subsea interconnection with the High Island Offshore System (HIOS) in West Cameron Block 342, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 8, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

[FR Doc. 93–25992 Filed 10–21–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–22–000]

Northern Border Pipeline Co.; Application for Abandonment and Certificate Authority

October 18, 1993.

Take notice that on October 13, 1993, Northern Border Pipeline Company (Northern Border), 111 South 103rd Street, Omaha, Nebraska 68124–1000, filed an application pursuant to sections 7(b) and (c) of the Natural Gas Act and section 9 of the Alaska Natural Gas Transportation Act, for (i) permission and approval to abandon its certificate authorization to transport natural gas in interstate commerce for Northern Natural Gas Company (Northern); and (ii) certificate authorization to provide firm natural gas transportation service in interstate commerce to Pan-Alberta Gas (U.S.) Inc. (PAG–US), all as more fully set forth in the application on file with the Commission and open to public inspection.

Specifically, Northern Border proposes to abandon the firm transportation of 200,000 Mcf per day of natural gas volumes for Northern and provide firm transportation of 200,000 Mcf per day of natural gas volumes for PAG–US. The natural gas volumes transported by Northern Border for PAG–US will be received at Port of Morgan, Montana for delivery at Aberdeen, South Dakota; Welcome, Minnesota; and Ventura, Iowa. The primary term of the transportation arrangement extends through October 31, 2001. Northern Border has also requested a limited waiver of Order Nos. 636–A and 636–B in order to allow PAG–US to participate in Northern Border's temporary capacity release program for the proposed transportation as set forth in Subsection 27.2 of the General Terms and Conditions of Northern Border's tariff.

Northern Border states that in Northern's Stipulation and Agreement (S&A) filed with the Commission on May 7, 1993 in Docket No. RS92–8–001, et al. and approved by the Commission's order issued July 16, 1993, 64 FERC ¶61,073 (1993), Northern proposed, among other things, as part of its reverse auction process, to assign to PAG–US 200,000 Mcf/d of Northern's capacity on Northern Border along with its associated Canadian gas purchase agreement with Northwest Alaskan Pipeline Company (Northwest Alaskan).

Any person desiring to be heard or to make any protest with reference to said application should file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10) on or before October 25, 1993. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any party wishing to become a party to this proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, or if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Lois D. Cashell,

Secretary.

[FR Doc. 93–25993 Filed 10–21–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP78–123–032]

Northwest Alaskan Pipeline Co.; Application for Abandonment and Certificate Amendment

October 18, 1993.

Take notice that on October 15, 1993, Northwest Alaskan Pipeline Company (Northwest Alaskan), One Williams Center, Tulsa, Oklahoma 74172, filed in Docket No. CP78–123–032, an application pursuant to section 7 of the Natural Gas Act and section 9 of the Alaska natural Gas Transportation Act (ANGTA) of 1976. By such application, Northwest Alaskan seeks to: (1) Abandon the sale to Northern Natural Gas Company (Northern) of a daily

average of 200,000 Mcf of Canadian natural gas transported through the Eastern Leg of the Alaskan Natural Gas Transportation System (ANGTS) previously authorized by the Commission in Docket No. CP78–123, et al; and (2) amend the certificate of public convenience and necessity previously granted by the Commission in Docket Nos. CP78–123, et al. to authorize the sale for resale to Pan-Alberta Gas (U.S.) Inc. (PAG–US) as a replacement for Northern of an average daily quantity of 200,000 Mcf of Canadian natural gas transported through the Eastern Leg of the ANGTS.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before October 25, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–25994 Filed 10–21–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–753–000]

Northwest Pipeline Corp.; Request Under Blanket Authorization

October 18, 1993.

Take notice that on October 30, 1993, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP93–753–000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct, operate, and own new mainline taps, valves, and appurtenant facilities at five locations in Utah and Colorado. Northwest also proposes to construct and operate the measurement and any other interconnecting facilities to be owned by Mid-America Pipeline Company (MAPCO), under Northwest's blanket certificate issued in Docket No. CP82–433–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northwest states that the Mainline Tap facilities and the meter station facilities would be constructed at a cost of $15,000 to serve five new pump stations being constructed by MAPCO. Northwest indicates that it would make transportation deliveries to the delivery meter stations under firm and interruptible basis.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filling a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–25995 Filed 10–21–93 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–1–86–001]

Pacific Gas Transmission Co.; Annual Charge Adjustment Errata

October 18, 1993.

Take notice that on October 13, 1993, Pacific Gas Transmission Company (PGT) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, First Revised Fifth Revised Sheet No. 5, with an effective date of October 1, 1993.

PGT states that above tariff sheet has been revised to reflect a correction to the Monthly Demand and Commodity Unit Charges, which were incorrectly submitted in PGT's Annual Charge Adjustment filing at Docket TM94–1–86–000 filed September 1, 1993, as well as a pagination error. PGT requests waiver of FERC and PGT tariff regulations to allow this corrected tariff sheet to become effective October 1, 1993, as approved by FERC in its order dated September 30, 1993.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before October 25, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–25996 Filed 10–21–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–28–000]

Pan-Alberta Gas (U.S.) Inc.; Application for Abandonment and Certificate Authority

October 18, 1993.

Take notice that on October 14, 1993 Pan-Alberta Gas (U.S.) Inc. (PAG–US), 500, 707 Eighth Avenue, SW., Calgary, Alberta, Canada, T2P 3V3, filed an abbreviated application pursuant to section 7(b) of the Natural Gas Act, 15 U.S.C. 717f(b), section 9 of the Alaska Natural Gas Transportation Act (ANGTA), 15 U.S.C. 719g, and part 157 of the Regulations of the Federal Energy Regulatory Commission (Commission), 18 CFR part 157, for permission and approval to abandon the sale of up to 100,000 Mcf of natural gas per day to Northern Natural Gas Company (Northern) all as more fully set forth in the application which is on file with the Commission and open to public inspection. PAG–US requests that the Commission find that the authorizations requested by the application are necessary or related to the construction and initial operation of the Alaska Natural Gas Transportation System (ANGTS). PAG–US requests further that the Commission waive any electronic filing requirements to the extent that they might otherwise apply to this application.

PAG–US states that the requested abandonment is consistent with the public convenience and necessity because, among other things, it will relieve Northern of gas supply obligations which, after restructuring, will no longer be needed for Northern to meet sales requirements, and it will permit Northern's services to be restructured in a manner that does not violate the international obligations of the U.S. to the ANGTS project. PAG–US states further that it is submitting this application in conjunction with contemporaneous related filings of Northwest Alaskan Pipeline Company and Northern Border Pipeline Company.

PAG–US states that a copy of this filing has been served on Northern.

Any person desiring to be heard or to make any protest with reference to said application should file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10) on or before October 25, 1993. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any party wishing to become a party to this proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, or if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Lois D. Cashell,

Secretary.

[FR Doc. 93–25997 Filed 10–21–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–19–000]

Superior Offshore Pipeline Co.; Application

October 18, 1993.

Take notice that on October 12, 1993, Superior Offshore Pipeline Company (SOPCO), 12450 Greenspoint Drive, Houston, Texas, 77060–1991, filed in Docket No. CP94–19–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon its interest in certain pipeline facilities, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, SOPCO proposes to abandon its 50 percent interest in the West Cameron Block 331–A line which extends from a production platform in West Cameron Block 331 to a subsea tap in West Cameron Block 332 and its 54.29 percent interest in the West Cameron Block 331–B line which extends from a subsea tap in West Cameron Block 332 to a point of interconnection with High Island Offshore System (HIOS) in West Cameron Block 342. SOPCO states that its interest in the West Cameron Block 331–A line and the West Cameron Block 331–B line has been disposed of by sale to Field Gas Gathering Inc. on September 30, 1993.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 8, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the National Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for SOPCO to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93–25998 Filed 10–21–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–57–001]

Superior Offshore Pipeline Co.; Amendment

October 18, 1993.

Take notice that on October 12, 1993, Superior Offshore Pipeline Company (SOPCO), 12450 Greenspoint Drive, Houston, Texas, 77060–1991, filed to amend its petition in Docket No. CP93–57–000 for a declaratory order dislocating jurisdiction over all of its facilities and operations, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Specifically, SOPCO proposes to delete from the description of its facilities in Docket No. CP93–57–000 those designated as the "HIOS Lateral." SOPCO states that the HIOS Lateral is composed of the West Cameron Block 331–A line which extends from a production platform in West Cameron Block 331 to a subsea tap in West Cameron Block 332 and the West Cameron Block 331–B line which extends from a subsea tap in West Cameron Block 332 to a point of interconnection with High Island Offshore System (HIOS) in West Cameron Block 342. SOPCO states that its interest in the HIOS Lateral has been disposed of by sale to Field Gas Gathering Inc. on September 30, 1993.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before November 8, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's

Rules. All persons who have heretofore filed need not file again.

Lois D. Cashell,

Secretary.

[FR Doc. 93-25999 Filed 10-21-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GT94-1-000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

October 18, 1993.

Take notice that on October 8, 1993 Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the tariff sheets listed on Appendix A of the filing.

Texas Eastern states that in light of the Commission's August 2, 1993 "Order on Compliance Filing, and Granting in Part and Denying in Part Rehearing" for Equitrans, Inc. (Equitrans) in Docket No. RS92-15 et al., (August 2 Order), this filing is submitted for the purpose of reflecting that, pursuant to the August 2 Order, an Equitrans customer, Equitable Gas Company (Equitable), became a direct customer of Texas Eastern, effective September 1, 1993, by taking assignment as of August 31, 1993 of all service rights attributable to Equitrans' service agreement with Texas Eastern under Texas Eastern's Rate Schedule FT-1.

In order to reflect the transfer of Equitrans' entitlements to Equitable, Texas Eastern states that it is submitting Second Revised Sheet Nos. 546-551, 553-558, 560-565, 567-572, 575-583 and 599-601 to reflect modifications to Sections 9.2, 9.3, 9.4, 9.5, 9.9 and 14.4 of the General Terms and Conditions of its FERC Gas Tariff, Sixth Revised Volume No. 1. Upon receipt of the executed service agreement from Equitable, Texas Eastern states that it will file with the Commission the executed service agreement and update the Index of Firm Customers contained in its FERC Gas Tariff, Sixth Revised Volume No. 1.

Also, in addition to the changes discussed above, Texas Eastern states that it is submitting Second Revised Sheet Nos. 547, 550, 554, 557, 561, 564, 568, 571, 576, 579, 582 and 600 to reflect the modifications to Sections 9.2, 9.3, 9.4, 9.5, 9.9 and 14.4 of the General Terms and Conditions of its FERC Gas Tariff, Sixth Revised Volume No. 1 necessary to reflect a permanent reallocation of Base and Operational Segment Capacity Entitlements, pursuant to the Commission's Regulations promulgated in Order No. 636-A, from Lawrenceburg Gas Company to Midwest Natural Gas Company for North Vernon, Indiana under Texas Eastern's Rate Schedule SCT. Texas Eastern states that both parties to the reallocation have agreed to the effective date of September 1, 1993.

The proposed effective date of the tariff sheets is September 1, 1993, the effective date of assignment of Equitrans' entitlements to Equitable and the reallocation between the Rate Schedule SCT customers as described above. Texas Eastern requests that the Commission waive all necessary rules and regulations to permit the tariff sheets listed on Appendix A to become effective on September 1, 1993.

Texas Eastern states that copies of the filing were served on firm customers of Texas Eastern and interested state commissions. A copy of the filing has also been served on Equitable, Midwest Natural Gas Company for North Vernon, Indiana, and Lawrenceburg Gas Company.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 25, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-26000 Filed 10-21-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP93-108-001]

Texas Eastern Transmission Corp.; Amendment

October 18, 1993.

Take notice that on October 1, 1993, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056-5310, filed to amend its application in Docket No. CP93-108-000 for a certificate of public convenience and necessity authorizing it to provide a new incremental firm transportation service pursuant to Rate Schedule FTS-11 and to construct and operate the associated incremental facilities required to perform the proposed transportation service, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Texas Eastern requested authorization in Docket No. CP93-108-000 to construct, install, own and operate the following facilities required to provide the proposed transportation service:

(a) 3.0 miles of 30-inch diameter pipeline in Warren County, Ohio;

(b) 1.4 mile of 36-inch diameter pipeline in Monroe County, Ohio;

(c) 0.96 mile of 36-inch diameter pipeline loop in Greene County, Pennsylvania;

(d) replace approximately 1.07 miles of 24-inch diameter pipeline with 36-inch diameter pipeline at the Uniontown Compressor Station discharge in Somerset County, Pennsylvania;

(e) replace approximately 1.00 mile of 24-inch diameter pipeline with 36-inch diameter pipeline at the Bedford Compressor Station discharge in Fulton County, Pennsylvania; and

(f) replace approximately 1.21 miles of 20-inch diamet pipeline with 36-inch diameter pipeline at the discharge of Eagle Compressor Station in Bucks County, Pennsylvania.

Texas Eastern indicated that the facilities proposed in Docket No. CP93-108-000 would be used to render firm incremental transportation of up to 11,600 Dth equivalent of natural gas per day for Staten Island Cogeneration Corporation (Staten Island) from the existing point of interconnection between Texas Eastern and ANR Pipeline Company (ANR) near Lebanon, Ohio to an existing point of interconnection between the facilities of Texas Eastern and the Brooklyn Union Gas Company (BUG) at Goethals Bridge, New York.

In Docket No. CP93-108-001 Texas Eastern indicates that its original proposal is unchanged except for the redesign of the proposed facility additions and the resulting changes to the proposed Rate Schedule FTS-11 initial rate as a result of the facility changes. In lieu of the facilities referenced above, Texas Eastern in the instant application requests authority to install, construct, own and operate the following additions to its pipeline system together with appurtenant facilities:

(a) Approximately 1.88 miles of 24" pipeline between Lebanon, Ohio and Five Points, Ohio;

(b) Approximately 1.48 miles of 36" pipeline loop between Somerset, Ohio and Summerfield, Ohio;

(c) Approximately 2.37 miles of 36" pipeline loop between Holbrook,

Pennsylvania and Uniontown, Pennsylvania;

(d) Approximately 0.55 miles of 36" pipeline loop between Uniontown, Pennsylvania and Bedford, Pennsylvania; and

(e) Approximately 1.3 miles of 36" pipeline loop between Bedford, Pennsylvania and Chambersburg, Pennsylvania.

Texas Eastern indicates that the changes reflected in Docket No. CP93–108–001 are necessary to accommodate changes in the proposed in-service date for Staten Island from November 1, 1994, to November 1, 1995. Texas Eastern states that the estimated cost of the proposed amended facilities is $15,711,400.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before November 8, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. All persons who have heretofore filed need not file again.

Lois D. Cashell,

Secretary.

[FR Doc. 93–26001 Filed 10–21–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–20–000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

(October 18, 1993).

Take notice that on October 13, 1993, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets, with a proposed effective date of November 1, 1993:

First Revised Sheet No. 215
First Revised Sheet No. 216
First Revised Sheet No. 217
First Revised Sheet No. 246
First Revised Sheet No. 247
First Revised Sheet No. 248

Texas Eastern states that on October 4, 1993, the Commission issued Order No. 559, the final rule in Docket No. RM93–8–000. By this order, the Commission states it is amending certain regulations and removing certain other regulations which were promulgated to implement section 5 of the Outer Continental Shelf Lands Act (OCSLA). Section 5 of the OCSLA requires open-access, nondiscriminatory transportation of natural gas on the Outer Continental Shelf (OSC). The pertinent regulations were promulgated in Order No. 509, and are contained in subpart K of part 284 of the Commission's regulations. Among other things, the Commission is removing the regulations governing the OCSLA capacity allocation program and the regulation which provides for abandonment authority.

Pursuant to Order No. 559, Texas Eastern states that it submits the above captioned tariff sheets to remove provisions from its currently effective Rate Schedules FT–1 and IT–1 which specifically implement certain regulations promulgated in Order No. 509.

Texas Eastern respectfully requests that the Commission waive all necessary rules and regulations to permit the above referenced tariff sheet to become effective on November 1, 1993, which is the effective date of Order No. 559.

Texas Eastern states that copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 25, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–26002 Filed 10–21–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–3–29–000]

Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

October 18, 1993.

Take notice that on October 13, 1993 Transcontinental Gas Pipe Line Corporation (TGPL) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, certain revised tariff sheets included in Appendix A attached to the filing.

TGPL states that the purpose of the instant filing is to track rate changes attributable to: (1) Transportation services purchased from National Fuel Gas Supply Corporation (National Fuel) under its Rate Schedule X–42 the costs of which are included in the rates and charges payable under TGPL's Rate Schedule LSS, (2) transportation services purchased from National Fuel under its Rate Schedule X–54 the costs of which are included in the rates and charges payable under TGPL's Rate Schedule SS–2, (3) storage services purchased from Consolidated Natural Gas (CNG) under its Rate Schedule GSS the costs of which are included (4) storage services purchased from Texas Eastern Transmission Corporation (TETCO) under its Rate Schedule X–28 the costs of which are included in the rates and charges payable under TGPL's Rate Schedule S–2, (5) transportation services purchased from Texas Gas Transmission Corporation (Texas Gas) under its Rate Schedule FT the costs of which are included in the rates and charges payable under TGPL's Rate Schedule FT–NT, (6) transportation services purchased from CNG under its Rate Schedule X–74 the costs of which are included in the rates and charges payable under TGPL's Rate Schedule FT–NT and (7) transportation services purchased from National Fuel under its Rate Schedule X–58 the costs of which are included in the rates and charges payable under TGPL's Niagara Import Point Project—System Expansion (NIPPs-SE). The tracking filing is being made pursuant to Section 4 of TGPL's Rate Schedule LSS, Section 4 of TGPL's Rate Schedule SS–2, Section 26 of the General Terms and Conditions, Section 8.01(i) of TGPL's NIPPs–SE Rate Schedules X–314, X–315, X–316, X–317, X–318 and X–324 and Section 4 of TGPL's Rate Schedule FT–NT.

TGPL states that included in Appendices B through F attached to the filing are the explanations of the rate changes and details regarding the computation of the revised LSS, SS–2, S–2, NIPPs–SE and FT–NT rates.

TGPL states that copies of the filing are being mailed to each of its LSS, SS–

2, S–2, NIPPs–SE and FT–NT customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before October 25, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–26003 Filed 10–21–93; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Cases Filed During the Week of October 1 Through October 8, 1993

During the Week of October 1 through October 8, 1993, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: October 18, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Oct. 1 through Oct. 8, 1993]

Date	Name and location of applicant	Case No.	Type of submission
Sept. 15, 1993	Browning Elementary #9, Browning, Montana.	RR272–118	Request for modification/rescission in the crude oil refund proceeding. *If Granted:* The August 24, 1993 Decision and Order issued to Browning Elementary #9 would be modified regarding the firm's application for refund submitted in the Crude Oil refund proceeding.
Oct. 5, 1993	John W. Osenbaugh, Lucas, Iowa	LFA–0324	Appeal of an information request denial. *If Granted:* The August 23, 1993 Freedom of Information Request Denial issued by the Golden Field Office would be rescinded, and John W. Osenbaugh would receive access to budget and pricing information and contract progress reports for the contract between DOE's National Renewable Energy Laboratory and Battelle Memorial Institute for research on biomass gasification.
Oct. 7, 1993	Rand Oil Company, Groesbeck, Texas	LEE–0053	Exception to the reporting requirements. *If Granted:* Rand Oil Company would not be required to file Form EIA–782–B, Resellers'/Retailers' Monthly Petroleum Product Sales Report.
Do	Ted True, Inc. and Ted W. True, Washington, DC.	LEF–0015	Implementation of special refund procedures. *If Granted:* The office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR part 205, Subpart V, in connection with the settlement approved in an October 25, 1990 order of the U.S. Bankruptcy Court for the Northern District of Texas.
Do	Telum, Inc.	LEF–0114	Implementation of special refund procedures. *If Granted:* The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR part 205, Subpart V, in connection with May 30, 1990 Consent Order which the DOE entered into with Telum, Inc.
Do	Texaco/Billy's Texaco, Capitol Heights, Maryland.	RR321–136	Request for modification/rescission in the Texaco refund proceeding. *If Granted:* The September 15, 1993 Dismissal Letter (RF321–19194) issued to Billy's Texaco would be modified regarding the firm's application for refund submitted in the Texaco Refund Proceeding.
Do	Valley Times, Pleasanton, California	LFA–0325,	Appeal of an information request denial. *If Granted:* The September 3, 1993 Freedom of Information Request Denial issued by the Office of the Inspector General would be rescinded, and Valley Times would receive access to expunged witness names, pronouns, and other information from two reports of the Office of the Inspector General concerning the transfer of technology at the Lawrence Livermore Laboratory.

REFUND APPLICATIONS RECEIVED WEEK OF OCTOBER 1 THROUGH OCTOBER 8, 1993

Date received	Name of refund proceeding/name of refund applicant	Case No.
9/30/93	Shannon County School District 65	RA272–55.
10/1/93 thru 10/8/93	Atlantic Richfield refund applications received	RF304–14614 thru RF304–14647.
10/1/93 thru 10/8/93	Texaco Oil refund applications received	RF321–19918 thru RF321–19928.
10/1/93 thru 10/8/93	Crude Oil refund applications received	RF272–94911 thru RF272–94935.

[FR Doc. 93–26076 Filed 10–21–93; 8:45 am]
BILLING CODE 6450–01–P

Issuance of Decisions and Orders Office of Hearings and Appeals

During the Week of August 2 Through August 6, 1993

During the week of August 2 through August 6, 1993, the decisions and orders summarized below were issued with respect to applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Request for Exception

New England Self-Serve, Inc., 8/4/93, LEE–0050

New England Self-Serve, Inc. (NESS) filed an Application for Exception from the requirement that it file Form EIA–782B, entitled "Reseller/Retailers' Monthly Petroleum Product Sales Report," and Form EIA–821, entitled "Annual Fuel Oil and Kerosene Sales Report." The exception request, if granted, would exempt NESS from filing Forms EIA–782B and EIA–821. Due to its precarious financial position, NESS showed that the reporting requirements impose an inordinate burden on the firm and impede the firm's operations to such an extent that a gross inequity exists. Thus, the DOE determined that exception relief should be granted which relieves NESS of those reporting requirements. However, due to the impermanence of NESS' financial situation, the exception relief granted will be effective for a period of two years, ending August 31, 1995. At that time, if NESS wishes to receive continued exemption from filing requirements, it must reapply with the DOE. Accordingly, the Application was partially granted.

Refund Applications

Atlantic Richfield Company/Wemett Corporation, the Wemett Corp., 8/4/93, RF304–13459, RF304–14224

The DOE issued a Decision and Order granting an Application for Refund filed by C.E. Wemett & Co. and rescinding in part an earlier Decision which granted a refund to The Wemett Corp. in the Atlantic Richfield Company Subpart V special refund proceeding. The Wemett Corp. had been granted a refund based upon purchases made by a retail motor gasoline sales outlet located in East Avon, New York. In its Application, The Wemett Corp. indicated that there had been no change of ownership of the outlet during the March 6, 1973 through January 27, 1981 refund period. However, on December 14, 1992, the OHA received an Application submitted by C.E. Wemett & Co. requesting a refund based upon purchases made at the same East Avon outlet during the first twelve months of the refund period. In its Application, C.E. Wemett & Co. provided documentation that proved they owned the outlet until March 1, 1974, when it was sold to The Wemett Corp. Accordingly, the OHA granted a refund of $677 to C.E. Wemett & Co. based upon purchases made at the East Avon outlet from March 1973 to March 1, 1974. Because The Wemett Corp. did not own the outlet during that time, it is not entitled to the portion of the refund that it received based upon ARCO purchases made during the March 7, 1973 through March 1, 1974 period. Accordingly, the OHA directed The Wemett Corp. and Bassman, Mitchell & Alfano, their representative, to remit a total of $677 to the DOE.

Citronelle-Mobile Gathering/Globe Manufacturing Co., et al., 8/3/93, RR336–38, et al.,

The DOE issued a Decision and Order directing payment of refunds to 37 applicants in the Citronelle-Mobile Gathering (Citronelle) special refund proceeding. These funds had been collected from Citronelle pursuant to a March 17, 1988 decision of the United States District Court for the Southern District of Alabama. The court ordered the transfer of the Citronelle overcharges funds from the registry of the court to the DOE deposit escrow fund account, and ordered the transfer of any additional payments into the registry to the DOE escrow account on a quarterly basis. The court directed the DOE Office of Hearings and Appeals (OHA) to make payments to the claimants, in proportion to the number of gallons of eligible refined petroleum products purchased by each claimant, whenever the amount in the DOE escrow account exceeds $1,000,000. On July 16, 1993, a payment of $149,949.59 from the court registry was deposited into the Citronelle escrow fund. That payment increased the total in the DOE's Citronelle overcharge account to $1,115,465.24. Accordingly, the DOE directed that the funds in the Citronelle account be disbursed to the 37 eligible claimants.

Hall High School, District 502, 8/4/93, RF272–81578

The DOE issued a Decision and Order granting an Application for Refund filed by Hall High School, District 502 (Hall), in the Subpart V crude oil refund proceeding. The district certified that it required an average of 7,900,900,000 BTU's of heat during the most recent three fiscal years (1991–93), and that its heating requirements, based on square footage heated, would not have substantially changed since the refund period. Under the circumstances, the DOE found that a reasonable estimate of Hall's fuel oil usage during the crude oil refund period could be derived from the district's current heating requirements. Based on the approximate number of BTU's of heat produced by one gallon of fuel oil, Hall would have required approximately 423,842 gallons of fuel oil to meet its heating requirements during the refund period. Based on this estimated usage, the refund granted in this Decision was $339.

State of New Jersey, 8/2/93, RF272–69744

The DOE issued a Decision and Order granting an Application for Refund filed by the State of New Jersey in the Subpart V crude oil refund proceeding. The Application was based on purchases of petroleum products by various state entities, specified in the Decision and Order, during the crude oil price control period. The Application

did not include purchases made by counties, municipalities, or school districts. In granting the refund, the DOE rejected an objection filed by a group of utilities, transporters, and manufacturers. The total refund granted to the State of New Jersey was $258,762.

Texaco Inc./Collingswood Texaco, Yardville Texaco Truck Stop, Fairless Hills Texaco, Cherry Hill Texaco, 8/6/93, RF321–16904, RF321–16905, RF321–16906, RF321–16907

The DOE issued a Decision and Order denying four Applications for Refund filed by Sure Oil Company (Sure) in the Texaco Inc. Subpart V special refund proceeding on behalf of four retail outlets that Texaco operated. Sure is a corporation whose sole shareholder, William C. D'Ippolito, is also the majority shareholder of one of the four outlets' suppliers, Edw. J. Sweeney & Sons, Inc. (Sweeney). The DOE determined that this common ownership made Sure and Sweeney affiliates. Because Sweeney had already received the maximum refund allowed under the medium-range presumption of injury, the DOE determined that Sure was ineligible to receive any refund. Accordingly, the four Applications for Refund filed by Sure was denied.

Texaco, Inc./J.H. Bare Estate, James & Bianca Bare Disharoon, 8/2/93, RF321–16896, RF321–17322

The DOE issued a Decision and Order concerning two Applications for Refund filed in the Texaco Inc. Subpart V special refund proceeding on behalf of the J.H. Bare distributorship located in Port Gibson, Mississippi. Both of the applicants claimed the right to receive the refund for the distributorship's Texaco purchases made during the refund period. One applicant, Bianca Bare Disharoon, claimed the right to the full refund based upon the fact that she purchased the distributorship during the refund period. The DOE examined the Warranty Deed and found that the right to a refund was not transferred to Ms. Bare when she purchased the business. In addition, the DOE found that Ms. Bare and her former husband had each owned a one-half interest in the distributorship. Accordingly, each applicant received a refund based upon purchases made during the period that each owned the business. Ms. Bare received one half of the refund for the distributorship for the period during which she had an interest in the business. The total amount of the refunds granted in this Decision and Order was $6,024 ($4,420 principal and $1,604 interest).

Texaco Inc./Limerick Texaco, Paulsboro Texaco, Montgomeryville Texaco, Essington Service Station, Arms Texaco Service Station, Avondale Texaco, 8/5/93, RF321–16848, RF321–16849, RF321–16850, RF321–16851, RF321–16852, RF321–16853

The DOE issued a Decision and Order denying six Applications for Refund filed by Mission Gas Oil Products, Inc. (Mission) in the Texaco Inc. Subpart V special refund proceeding on behalf of six retail outlets that it operated. Mission is a corporation whose majority shareholder, William C. D'Ippolito, is also the majority shareholder of the six outlets' supplier, Edw. J. Sweeney & Sons, Inc. (Sweeney). The DOE determined that this common ownership made Mission and Sweeney affiliates. Because Sweeney had already received the maximum refund allowed under the medium-range presumption of injury and because Sweeney had already received a refund for purchases of the same gallons of product that its affiliate (Mission) was claiming, the DOE determined that Mission was ineligible to receive any refund. Accordingly, the six Applications for Refund filed by Mission were denied.

Texaco Inc./Time Oil Company, 8/14/93, RR321–74

Time Oil Company (Time) filed a Motion for Reconsideration of a Decision and Order that denied duplicate refund applications that the firm had filed in the Texaco refund proceeding. According to the Motion, the filing of the second application without any reference to the earlier application resulted from miscommunication among the attorneys for the firm that prepared the second application. The DOE agreed to consider Time's refund claim, finding that Time was not attempting to obtain two refunds and that it should not be penalized for the poor communication among its attorneys. With respect to Time's claim for a refund at a level above the volumetric presumption level of $0.0011 per gallon, the DOE found that Time was likely overcharged by Texaco in the amount of $0.008 per gallon. This determination was based upon the findings in a Remedial Order that was substantively affirmed by the Federal Energy Regulatory Commission prior to the settlement of the enforcement proceeding by the Texaco Consent Order. The Decision also permitted Time to take advantage of the medium-range presumption of injury. The total amount of the refund granted by the DOE was $13,631.

Texaco Inc./Toast Texaco, Brewer's Texaco, 8/2/93, RF321–2010, RF321–2195

The DOE issued a Decision and Order denying the Applications for Refund that Toast Texaco and Brewer's Texaco filed in the Texaco Inc. special refund proceeding. These applicants were unable to document their gallonage claim and instead submitted estimates based on the average monthly gallonage of Texaco outlets in their states during the refund period, as compiled from the National Petroleum News (NPN) Fact Book. The DOE found that the use of the NPN Fact Book figures was not a reliable method of estimating an individual outlet's purchases.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the office of Hearings and Appeals.

American Standard, Inc., American Standard, Inc	RF272–16177 RD272–16177	08/04/93
Atlantic Richfield Company/Dave's Parkside Arco	RF304–14282	08/04/93
Atlantic Richfield Company/Harvatis Arco Service et al	RF304–13898	08/04/93
Atlantic Richfield Company/Jack's Arco et al	RF304–14200	08/02/93
Beacon Oil Company/Don Rose Oil Company, Inc	RF238–71	08/02/93
Freuhauf Trailer Corp. et al	RF272–91203	08/05/93
Grainger Ready Mix et al	RF272–91236	08/05/93
Gulf Oil Corporation/General Crushed Stone et al	RF300–16452	08/04/93
Gulf Oil Corporation/Gulf in Farmersville	RF300–13513	08/02/93
Gulf Oil Corporation/Johnston's Service Garage et al	RF300–19626	08/04/93
Metropolitan Petroleum & Fuel/Jesus Ramirez Armando Tundidor	RF349–3 RF349–4	08/02/93
North Chicago Community Unit School District 187 et al	RF272–91284	08/04/93

Shell Oil Company/James W. Hunter, Dahlke Oil Co	RF315–8863 RF315–10175	08/02/93
Texaco Inc./Academy Blvd. Texaco et al	RF321–13881	08/04/93
Texaco Inc./Adolph's Texaco	RF321–19811	08/02/93
Texaco Inc./American Commercial Barge Line et al	RF321–3104	08/06/93
Texaco Inc./Curt Labansky's Texaco et al	RF321–5663	08/04/93
Texaco Inc./Selmont Texaco	RR321–130	08/04/93
Texaco Inc./Swedes Texaco Service	RF321–19813	08/04/93
Texaco Inc./United Tire Service et al	RF321–15516	08/02/93

Dismissals

The following submissions were dismissed:

Name	Case No.
American Forest Products	RF321–17969
Bob's Texaco	RF321–9283
Bobby K. Grady's Texaco	RF321–12080
Cherry Texaco	RF321–10906
City of Seven Hills	RF272–85194
Clay Oil Terminal	RF321–8812
Clinton County	RF272–85180
Collette's Texaco	RF321–10636
Eastside Texaco	RF321–9492
Gables Texaco Service Center.	RF321–11009
Hartford County	RF272–85190
Holloway Texaco	RF321–9491
Home Market	RF321–12403
Homer Bourque Distribution	RF300–19996
Jarrolls' Texaco	RF321–11010
Jay Swab Texaco	RF321–9415
Kenneth Bollinger	RF321–14210
Lincoln & Lincoln Garage	RF321–11039
Lyon County	RF272–85185
Morrissette Texaco	RF321–11090
Northridge Texaco	RF321–12466
Northside Texaco	RF321–9490
Oklahoma Rendering Co.	RF300–15111
Platte County School District 010.	RF272–87167
Premium Oil Co.	RF321–7859
Pressley Texaco	RF321–10926
Royson's Texaco	RF321–10955
Salem County	RF272–85177
Salem-Keizer School District 24J.	RF272–87992
Sherwood Texaco	RF321–7849
St. Albans Service Center	RF300–15469
Stafford County	RF272–85188
Westpark Texaco	RF321–10982
Williams Texaco Service Station.	RF321–11946
Yakama Valley Tire	RF321–9401

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: October 18, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 93–26075 Filed 10–21–93; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4793–3]

Public Water System Supervision Program Revision for the Commonwealth of Pennsylvania

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Public notice is hereby given in accordance with the provisions of 1213 of the Safe Drinking Water Act as amended, 42 U.S.C. 300f et seq., and 40 CFR 142.10, the National Primary Drinking Water Regulations, that the Commonwealth of Pennsylvania has revised its approved State Public Water System Supervision Primacy Program. Pennsylvania has adopted pubic notice regulations that correspond to the revised EPA public notice requirements promulgated on October 28, 1987 (52 FR 41534). EPA has determined that these State program revisions are no less stringent than the corresponding Federal regulations and has tentatively decided to approve these State program revisions.

All interested parties are invited to request a public hearing. A request for a public hearing must be submitted by November 22, 1993 to the Acting Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Acting Regional Administrator. However, if a substantial request for a public hearing is made by November 22, 1993, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Acting Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become effective on November 22, 1993.

A request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing. (2) A brief statement of the requesting person's interest in the Acting Regional Administrator's determination and of information that the requesting person intends to submit at such a hearing. (3) The signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

Acting Regional Administrator, U.S. Environmental Protection Agency, Region 3, 841 Chestnut Building, Philadelphia, Pennsylvania 19107.

Pennsylvania Department of Environmental Resources, P.O. Box 8467, Harrisburg, Pennsylvania 17105–8467.

FOR FURTHER INFORMATION CONTACT:

Catherine M. McCaffrey, U.S. EPA, Region 3, Drinking Water Section (3WM41), at the Philadelphia address given above; telephone (215) 597–8992.

Dated: October 5, 1993.

Stanley L. Laskowski,

Acting Regional Administrator, EPA, Region 3.

[FR Doc. 93–26044 Filed 10–21–93; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–4704–8]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared October 4, 1993 through October 8, 1993 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1993 (58 FR 18392).

Draft EISs

ERP No. D–AFS–J65149–MT Rating EC2, Big Mountain Ski and Summer Resort Expansion Project, Special-Use-Permit, Flathead National Forest, Tally Lake and Glacier View Ranger Districts, Whitefish County, MT.

Summary: EPA expressed environmental concerns about the potential for aggravating channel erosion due to higher flows from snowmaking in a stream channel that currently is unstable and erodible and potential air quality impacts. EPA requested that these issues be discussed in more detail in the final document.

ERP No. D–AFS–J65207–CO Rating EC2, Mountain Plover (Charadruis Montanus) Management Strategy, Implementation, Pawnee National Grassland, Arapaho and Roosevelt National Forests, Weld County, CO.

Summary: EPA expressed environmental concerns about the proposed management plan since there is a lack of detailed knowledge concerning the requirements for sustainability of both the target species and other biotic components of the ecosystem.

ERP No. D–AFS–J65208–MT Rating EC2, Smokey-Corridor Timber Sales, Timber Management and Road Construction/Reconstruction, Implementation, Lewis and Clark National Forest, White Sulphur Springs, Meagher County, MT.

Summary: EPA expressed environmental concerns about projected increases in sediment loadings and the effects they may have on aquatic resources. EPA also requested additional information on wetlands and associated monitoring.

ERP No. D–AFS–J65209–MT Rating EC2, Middle Fork Ecosystem Management Project, Implementation, Flathead National Forest, Hungry Horse Ranger District, Flathead River, Flathead County, MT.

Summary: EPA expressed environmental concerns regarding protection of air quality in Class I areas, and compliance with conformity requirements of the Clean Air Act.

ERP No. D–BPA–L05204–WA Rating EC2, Tenaska—Washington II Generation Electric Power Plant Construction, Operation and NPDES Permit, Pierce County, WA.

Summary: EPA expressed environmental concerns with the incremental regional impact of project-related air emissions and the potential for infiltration of pollutants at the site during construction and operations.

ERP No. D–NPS–J80005–SD Rating LO, Jewel Cave National Monument General Management Plan (GMP), Implementation, Black Hills National Forest, Custer County, SD.

Summary: EPA had no objections to the proposed action. ERP No. D–NPS–J80006–SD Rating LO, Wind Cave National Park, General Management Plan (GMP), Implementation, Black Hills, Custer County, SD.

Summary: EPA had no objections to the proposed action.

ERP No. D–SFW–J99050–WY Rating LO, Gray Wolves (Canis Lupus) Reintroduction into the Yellowstone National Park and Central Idaho, Implementation, MT, WY and ID.

Summary: EPA did not identify potential environmental impacts requiring substantive changes to the proposal.

ERP No. DA–COE–E36013–MS Rating EC2, Mississippi River and Tributaries Flood Control, Updated Information, Upper Yazoo Projects (UYP), Yazoo River Basin, several Counties, MS.

Summary: EPA expressed environmental concerns regarding the sufficiency and/or successfulness of project mitigation. Necessary additional information will need to be collected during the forthcoming monitoring to determine efficacy of the plan and its sufficiency.

Final EISs

ERP No. F–AFS–J65185–UT North Slope Timber Sale and Road Construction/ Reconstruction, Implementation, Dixie National Forest, Teasdale Ranger District, Wayne County, UT.

Summary: EPA had no objections to the proposed action as the final document adequately addressed old growth management issues.

ERP No. F–AFS–J65202–MT Buck-Little Boulder Timber Sales and Timber Harvest, Implementation, Bitterroot River, Bitterroot National Forest, West Fork Ranger District, Ravalli County, MT.

Summary: EPA had no objections to the selection of alternative 5. EPA suggested that additional monitoring to validate projected impacts be included in the action.

ERP No. F–FHW–J40125–MT Shiloh Road Interchange Project, Construction, I–90 in the vicinity of the existing Shiloh Road Overpass (I–90 milepost 443) and Improvements to the South Frontage Road, Funding and Section 404 Permit, between the Cities of Laurel and Billings, Yellowstone County, MT.

Summary: EPA had no objections to the Federal Highway Administration's proposed construction of a new interchange for Interstate Highway 90 at Shiloh road, west of Billings, Montana in Yellowstone County.

ERP No. F–NPS–J61086–MT Grant-Kohrs Ranch National Historic Site, General Management Plan and Development Concept Plan, Implementation, Northern Rockies, Powell County, MT.

Summary: EPA had no objections to the proposed action.

ERP No. F–UAF–E11028–GA Moody Air Force Base Beddown of a Composite Wing for F–16, A/OA–10 and C–130 Aircraft, Implementation, Lowndes and Lanier Counties, GA.

Summary: EPA had no objections to the proposed action as previous concerns have been adequately addressed in the final document.

Regulations

ERP No. R–DOE–A09817–00 10 CFR Part 60 Disposal of High-Level Radioactive Wastes in Geologic Repositories: Investigation Evaluation of Potentially Adverse Conditions.

Summary: EPA had no comments to the proposed regulation.

ERP No. R–DOT–A59009–00 49 CFR Part 106 et al—Research and Special Program Administration—Proposal for Safeguarding Food from Contamination during Transportation.

Summary: EPA requested that wording be added to the preamble requesting that all residues from the clean-out of the vehicles comply with applicable environmental regulations. Additionally, EPA suggested that the carrier be required to certify that the vehicle tank is cleaned and by what method.

Dated: October 19, 1993

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 93–26045 Filed 10–21–93; 8:45 am]

BILLING CODE 6560–50–U

[ER–FRL–4704–7]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 or (202) 260–5075.

Weekly receipt of Environmental Impact Statements filed October 11, 1993 through October 15, 1993 pursuant to 40 CFR 1506.9.

EIS No. 930360, DRAFT EIS, AFS, CA, Mount Baldy Land Exchange Project, Implementation and Special-Use-Permit, Angeles National Forest, San Antonio Canyon, Los Angeles and San Bernardino Counties, CA, Due: December 6, 1993, Contact: Michael J. Rogers (818) 574–1613.

EIS No. 930361, DRAFT EIS, FHW, WI, US 151/WI–41 Waupun to Fond du Lac Project, Construction, Funding and Possible COE Section 404 Permit, Fond du Lac County, WI, Due: December 6, 1993, Contact: James Zavoral (608) 264–5944.

EIS No. 930362, FINAL EIS, EPA, AL, TX, LA, MS, ADOPTION—1993 Central and Western Gulf of Mexico Outer Continental Shelf (OSC) Oil and Gas Lease Sales No. 142 and No. 143, Implementation and Lease Offerings, offshore AL, LA, TX and AL, Contact: Norm Thomas (214) 655–2260.

The US Environmental Protection Agency has adopted the US Department of the Interior, Minerals Management Service's, final EIS filed with the US Environmental Protection Agency on 10–30–92. The EPA was a Cooperating Agency on the DOI's EIS. Recirculation of the document in not necessary.

EIS No. 930363, FINAL EIS, FHW, CA, CA–17 at Lexington Reservoir Interchange Project, Interchange and Frontage Roads Construction south of the Town of Los Gatos, Funding and COE Section 404 Permit, Santa Clara County, CA, Due: November 22, 1993, Contact: John R. Schultz (916) 551–1314.

EIS No. 930364, FINAL EIS, AFS, OR, 1991 Warner Creek Fire Recovery Project, Northern Spotted Owl Habitat and Other Resources Reforestation, Northern Spotted Owl Habitat Conservation Area 0–10, Willamette National Forest, Oakridge Ranger District, Lane County, OR, Due: November 22, 1993, Contact: Terri Jones (503) 782–2291.

EIS No. 930365, DRAFT EIS, FTA, OR, New Eugene Transfer Station Construction and Site Selection, Funding, McDonald Site or IHOP Site, Lane County, OR, Due: December 6, 1993, Contact: Terry L. Ebersole (206) 220–7954.

EIS No. 930366, DRAFT EIS, AFS, ID, Savant Sage Resource Area Land and Resource Management Plan, Implementation, Idaho Panhandle National Forests, Fernan Ranger District, Bonner and Kootenai Counties, ID, Due: December 6, 1993, Contact: Patrick Sheridan (202) 720–1614.

EIS No. 930367, DRAFT EIS, AFS, ID, Prichard Creek Analysis Area Land and Resource Management Plan, Implementation, Idaho Panhandle National Forests, Wallace Ranger District, Coeur d'Alene River, ID, Due: December 6, 1993, Contact: Don Garringer (208) 769–6110.

EIS No. 930368, DRAFT EIS, NPS, CA, Presido of San Francisco General Management Plan, Golden Gate National Recreation Areas, Implementation, San Francisco, CA, Due: December 21, 1993, Contact: Brian O'Neill (415) 556–2920.

EIS No. 930369, FINAL EIS, COE, CA, Bel Marin Key Unit 5 (BMK5) Residential Community Construction and Development, Master Plan and Rezoning Application Approvals and Permits, Novato Creek, Marin County, CA, Due: November 22, 1993, Contact: Lars Forsman (415) 744–3318.

EIS No. 930370, FINAL EIS, FTA, MD, Baltimore-Washington International Airport Extension, Central Light Rail Line (CLRL), Funding, Anne Arundel, Baltimore and Howard Counties, MD, Due: November 22, 1993, Contact: Sheldon A. Kinbar (215) 656–6900.

EIS No. 930371, FINAL EIS, FTA, MD, Hunt Valley Light Rail Line Extension, Timonium Fairgrounds Station to Hunt Valley, Funding, Baltimore Central Light Rail Line, Baltimore and Anne Arundel Counties, MD, Due: November 22, 1993, Contact: Sheldon A. Kinbar (215) 656–6900.

Amended Notices

EIS No. 930288, DRAFT EIS, COE, CA, Syar Mining Operation and Reclamation Plan, Six Sites Selected along the Russian River, Construction, Mining-Use-Permit and COE Section 404 Permit, City of Healsburg, Sononma County, CA, Due: October 28, 1993, Contact: Lars Forsman (415) 744–3322. Published FR -08–27–93—Review period extended.

EIS No. 930316, DRAFT EIS, AFS, CA, NV, Interagency Motor Vehicle Use Plan (IMVUP) Revision, Implementation, Acquisition for Land within the Inyo National Forest and Bishop Resource Area, Inyo, Madera, Tulare and Mono Counties, CA and Esmeralda and Mineral Counties, NV, Due: December 9, 1993, Contact: Ernie DeGraff (619) 873–2439. Published FR 09–17–93—Review period extended.

EIS No. 930356, DRAFT SUPPLEMENT, EPA, TX, LA, Gulf of Mexico Outer Continental Shelf (OCS) Region Oil and Gas Extraction Activities, General New Source NPDES Permit Issuance, offshore TX and LA , Due: November 29, 1993, Contact: Norm Thomas (214) 655–2260. Published FR 10–15–93—Title Change and notification that this document is open for a 45-day review period ending on 11–29–93.

Dated: October 19, 1993.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 93–26046 Filed 10–21–93; 8:45 am]

BILLING CODE 6560–50–U

[FRL–4793–4]

Open Meeting of the Superfund Evaluation Committee of the National Advisory Council for Environmental Policy and Technology (NACEPT)

Under Public Law 92463 (The Federal Advisory Committee Act), EPA gives notice of a meeting on November 8, 1993 of the Superfund Evaluation Committee. The Superfund Evaluation Committee is a subcommittee of the National Advisory Council for Environmental Policy and Technology (NACEPT), an advisory committee to the Administrator of the EPA. The Subcommittee will discuss their recommendations for improving key aspect of the Superfund Program. The meeting will take place at the J.W. Marriott Hotel (1331 Pennsylvania Avenue, NW.) from 12:30–5 p.m. Interested parties may call the RCRA/Superfund Hotline at 1–800–424–9346, 703–920–9810, or 1–800–486–3323 (TDD) for copies of the materials EPA is providing to the Committee.

Written comments will be reviewed by the Committee if received one week prior to the meeting. Written comments of preferably not more than 25 pages (at least 25 copies) may be provided to the committee up until the meeting. Those interested in attending must contact Abby Pirnie (U.S. EPA 401 M Street SW. Washington, DC 20460, mail code, 1601 or phone, 202–260–7567, or fax, 202–260–3682.

Dated: October 15, 1993.

Abby J. Pirnie,

NACEPT Designated Federal Official.

[FR Doc. 93–26043 Filed 10–21–93; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4793–5]

Public Meeting of the Phosphoric Acid Production Waste Dialogue Committee

AGENCY: Environmental Protection Agency.

ACTION: Federal Advisory Committee meeting.

SUMMARY: As required by the Federal Advisory Committee Act, we are giving notice of the August meeting of the Phosphoric Acid Production Waste Dialogue Committee. The meeting is open to the public without advance registration.

The purpose of the meeting is to continue to review information regarding process changes that will reduce the volume and/or toxicity of phosphogypsum and process wastewater from the production of phosphoric acid.

DATES: The Committee meeting will be held on November 9, 1993 from 10 a.m. to 4:30 p.m. and November 10, 1993 from 8 a.m. to 3 p.m.

ADDRESSES: The meeting will be held at the Sheraton National Hotel, Columbia Pike and Washington Blvd., Arlington, Virginia 22204; (703) 521–2122.

FOR FURTHER INFORMATION CONTACT: Persons needing further information on the technical or scientific matters related to phosphoric acid wastes should contact Dr. Daniel R. Bushman, Office of Pollution Prevention and Toxics, Economics, Exposure and Technology Division, TS–779, Environmental Protection Agency, Washington, DC, 20460; phone (202) 260–6700. Persons needing further information on the committee's procedural and logistical matters should call the Committee's facilitator, Greg Bourne, Southeast Negotiation Network, Georgia Institute of Technology, Atlanta, GA (404) 853–9846.

Dated: October 19, 1993.

Deborah Dalton,

Designated Federal Official, Office of Regulatory Management & Evaluation, Office of Policy, Planning and Evaluation.

[FR Doc. 93–26040 Filed 10–21–93; 8:45 am]

BILLING CODE 6560–50–F

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

SES Performance Review Board Members

AGENCY: Equal Employment Opportunity Commission (EEOC).

ACTION: Notice.

SUMMARY: Notice is hereby given of the names of the members of the SES Performance Review Board of EEOC.

FOR FURTHER INFORMATION CONTACT: Patricia Cornwell Johnson, Director, Human Resources Management Services, Equal Employment Opportunity Commission, 1801 L Street, NW., Washington, DC 20507, (202) 663–4306.

SUPPLEMENTARY INFORMATION: Pursuant to the requirement of section 4314(c)(1), chapter 43 title 5 U.S.C., membership of the SES Performance Review Board is as follows: Ms. Ronnie Blumenthal, Director, Office of Federal Operations, Equal Employment Opportunity Commission (Chairperson); Mr. Bland Brockenborough, Assistant Commissioner, Administration, Financial Management Service, Department of Treasury; Mr. Doug Newkirk, Assistant, U.S. Trade Representative, Office of U.S. Trade Representative; Ms. Elizabeth Thornton, Acting Legal Counsel, Equal Employment Opportunity Commission (Alternate).

Signed at Washington, DC, on this 18th day of October 1993.

For the Commission.

Tony E. Gallegos,

Chairman.

[FR Doc. 93–25982 Filed 10–21–93; 8:45 am]

BILLING CODE 6570–06–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

October 18, 1993.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: 3060–0076.

Title: Annual Employment Report for Common Carriers.

Form Number: FCC Form 395.

Action: Revision of a currently approved collection.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Responses: Annual reporting requirement.

Estimated Annual Burden: 1,200 responses; 1 hour average burden per response; 1,200 hours total annual burden.

Needs and Uses: The Annual Employment Report is a data collection device for enforcement and assessment of the Commission's EEO Rules. All common carrier licensees or permittees with sixteen (16) or more full-time employees are required to file this report and retain it for a two-year period. The report identifies each carrier's staff by gender, race, color and/or national origin in each of nine major job categories. The FCC Form 395 and instructions have been edited. In addition to the style and grammatical changes, we have amended the instructions to clearly indicate that reporting units with fewer than sixteen full-time employees do not have to file this form but may do so to comply with another filing requirement under 47 CFR 21.307, 22.307, or 23.55 and have added a new section to the form that the reporting unit merely has to check in order to comply unless it has had EEO complaints filed against it. For reporting units with sixteen or more full-time employees, the new section of the form reduces the filing burden from two (2) reports to only one (1). Also the number of copies of the report to be filed as been reduced from two to one.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–25971 Filed 10–21–93; 8:45 am]

BILLING CODE 6712–01–M

[Report No. 1979]

Petitions for Reconsideration and/or Clarification of Actions in Rulemaking Proceedings

October 18, 1993.

Petitions for reconsideration and/or clarification have been filed in the Commission rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in room 239, 1919 M Street, NW. Washington, DC or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857–3800. Opposition to these petitions must be filed November 8, 1993. See § 1.4(b)(1) of the Commission's rule (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies (ET Docket No. 92–9, RM No. 7981 and 8004).

Petition for Reconsideration
Number of Petitions Filed: 2
Petition for Clarification and/or Reconsideration
Number of Petitions Filed: 4
Petition for Partial Reconsideration
Number of Petitions Filed: 2
Petition for Reconsideration and Partial Clarification
Number of Petitions Filed: 1

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–25972 Filed 10–21–93; 8:45 am]

BILLING CODE 6712–01–M

Licensee Order to Show Cause

The Chief, Audio Service Division, Mass Media Bureau, has before him the following matter:

Applicant, city/state	MM docket No.
Delta Radio, Inc., Licensee of WDTL (AM), Cleveland, MS	93–262

(Regarding the silent status of Station WDTL (AM))

Pursuant to section 312(a) (3) and 4 of the Communications Act of 1934, as amended, Delta Radio, Inc. has been directed to show cause why the license for Station WDTL (AM) should not be revoked, at a proceeding in which the above matter has been designated for hearing concerning the following issues:

1. To determine whether Delta Radio, Inc. has the capability and intent to expeditiously resume broadcast operations of WKLO (AM) consistent with the Commission's rules.

2. To determine whether Delta Radio, Inc. has violated §§ 73.1740 and/or 73.1750 of the Commission's rules.

3. To determine, in light of the evidence adduced pursuant to the forgoing issues, whether Delta Radio, Inc. is qualified to be and remain the licensee of Station WDTL (AM).

A copy of the complete Show Cause Order and HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 320), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street, NW., Suite 140, Washington, DC 20037 (telephone 202–857–3800).

Federal Communications Commission.

Larry D. Eads,

Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 93–25968 Filed 10–21–93; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for a new FM station.

Applicant, city/ state	File No.	MM docket No.
A. DeSoto Broadcasting Corp., Mansfield, LA.	BPH–920324ME	93–263
B. Cary D. Camp, Mansfield, LA.	BPH–920402MI	.....
C. Mitchell Tyner, Mansfield, LA.	BPH–920403MA	.....

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding heading at 51 FR 19,347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicants

1. Comparative, A, B, C
2. Ultimate, A, B, C

3. If there are any non-standardized issues in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street, NW., Suite 140, Washington, DC 20037 (telephone 202–857–3800).

Larry D. Eads,

Chief, Audio Services Division Mass Media Bureau.

[FR Doc. 93–25967 Filed 10–21–93; 8:45 am]

BILLING CODE 6712-01-M

Renewal Application Designated for Hearing

1. The Chief, Audio Services Division, Mass Media Bureau has before him the following application for renewal of license:

Applicant, city/ state	File No.	MM Docket No.
A. Quality Communications, Inc. Nelsonville, Ohio.	BR–890606UF	93–261

(Seeking a renewal of the license of Station WYNO (AM))

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above application has been designated for hearing in a proceeding upon whose issues are set forth below:

1. To determine whether Quality Communications, Inc. has the capability and intent to expeditiously resume broadcast operations of WYNO (AM) consistent with the Commission's Rules.

2. To determine whether Quality Communications, Inc. has violated §§ 73.1740 and/or 73.1750 of the Commission's Rules.

3. To determine, in light of the evidence adduced pursuant to the preceding issues, whether or not grant of the subject renewal of license application would serve the public interest, convenience and necessity.

A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 320), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street, NW., Suite 140, Washington, DC 20037 (telephone 202–857–3800).

Federal Communications Commission.

Larry D. Eads,

Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 93–25969 Filed 10–21–93; 8:45 am]

BILLING CODE 6712-01-M

Application for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for a new FM Station:

Applicant, city/ state	File No.	MM Docket
A. Frank B. DuRoss, Whitesboro, New York.	BPH–920512MC	93–264
B. New Horizons Broadcasting, Whitesboro, New York.	BPH–920513MF	.....
C. Kenneth F. Roser, Jr., Whitesboro, New York.	BPH–920513MI	.....
D. Kevin O'Kane, Whitesboro, New York.	BPH–920514MK	.....

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the

issues whose headings are set forth below. The text of each of the issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown below each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicants

1. Comparative, A, B, C, D
2. Ultimate, A, B, C, D

3. If there are any non-standardized issues in this proceeding, the full text of each such issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street, NW., Suite 140, Washington, DC 20037 (telephone 202–857–3800).

Larry D. Eads,

Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 93–25966 Filed 10–21–93; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1000–DR]

Kansas; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Kansas. (FEMA–1000–DR), dated July 22, 1993, and related determinations.

EFFECTIVE DATE: October 12, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Kansas dated July 22, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 22, 1993:.

Barton, Graham, and Thomas Counties for Public Assistance and Individual Assistance.

Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–26038 Filed 10–21–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–995–DR]

Missouri; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Missouri, (FEMA–995–DR), dated July 9, 1993, and related determinations.

EFFECTIVE DATE: October 14, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Missouri dated July 9, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 9, 1993:

Howell and Vernon Counties for Individual Assistance.

Douglas County for Individual Assistance and Public Assistance.

Barton, DeKalb, Greene, Morgan, Pemiscot, Stone, and Texas Counties for Public Assistance. (Already designated for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Dennis H. Kwiatkowski,

Assistant Associate Director, Disaster Assistance Programs.

[FR Doc. 93–26047 Filed 10–21–93; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL MEDIATION AND CONCILIATION SERVICE

Agency Form Under Review by the Office of Management and Budget

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Notice of Forms R–19, R–22 and R–43 submitted for extension and review to the Office of Management and Budget.

The Federal Mediation and Conciliation Service (FMCS) submitted to the Office of Management and Budget (OMB) a request for review of three FMCS forms: R–19, Arbitrator's Report and Fee Statement, R–22, Arbitrator's Personal Data Questionnaire, and R–43, Request for Arbitration Services. The request seeks OMB approval to extend the expiration data of Forms R–19, R–22 and R–43 until January 31, 1996. The request was submitted pursuant to the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Information pertaining to the requests are as follows:

Agency: Federal Mediation and Conciliation Service
Title: Arbitrator's Report and Fee Statement
Form Number: Agency—Form R–19; OMB No. 3076–0003.
Type of Request: Extension of Expiration date of a currently approved collection without any change in the substance or method of collection.
Affected Public: Individuals who apply.
Frequency: Once per application.
Burden: Approximately 7,000 responses per year. The form is only filled out once and the time required is approximately ten minutes.
Needs and Uses: FMCS uses the R–19 to review arbitrator conformance with its fee and expense reporting requirements. This data is compiled under the individual arbitrator's name and is used to provide requesting parties with a panel of arbitrators to meet their needs.
Respondents Obligation: Pursuant to 29 U.S.C. 171(b), 29 CFR part 1404

Agency: Federal Mediation and Conciliation Service
Title: Arbitrator's Personal Data Questionnaire
Form Number: Agency—Form R–22; OMB No. 3076–0001.
Type of Request: Extension of Expiration date of a currently approved collection without any change in the substance or method of collection.
Affected Public: Individuals who apply to be on FMCS' Roster of Arbitrators.
Frequency: Once per application.
Burden: The number of respondents is approximately 250 as approximately that number request membership on the roster. The time required is approximately 1½ hours to complete the application.
Needs and Uses: This Questionnaire is needed in order that FMCS may select highly qualified arbitrators for the arbitrator roster. The respondents are private citizens who make application for appointment to the FMCS roster.
Respondents Obligation: Pursuant to 29 U.S.C. 171(b), 29 CFR part 1404.

Agency: Federal Mediation and Conciliation Service
Title: Request for Arbitration Services
Form Number: Agency—Form R–43; OMB No. 3076–0002.
Type of Request: Extension of Expiration date of a currently approved collection without any change in the substance or method of collection.
Affected Public: Employees and labor organizations who request arbitration services Individuals who apply.
Frequency: Once per application.
Burden: Approximately 28,000 respondents per year. In most instances the form is made out only once and takes about ten minutes to complete.
Needs and Uses: The need for this Form is to obtain information-name, address, type of assistance desired-so that FMCS can respond to requests for various arbitration services: e.g. furnishing a list of seven arbitrators to parties.
Respondents Obligation: Pursuant to 29 U.S.C. 171(b), 29 CFR part 1404.
OMB Desk Officer: Angela Antonelli, (202) 395–6880 Copies of the request for review may be obtained from Eileen B. Hoffman, General Counsel, Federal Mediation and Conciliation Service, 2100 K Street, NW., room 712, Washington, DC 20427, (202) 653–5305.

Written comments pertaining to the request should be sent to Angela Antonelli, Assistant Branch Chief, room 3001, New Executive Office Building, Washington, DC 20503.

Dated: October 15, 1993.

Brian Flores,

Acting Director.

[FR Doc. 93–25973 Filed 10–21–93; 8:45 am]

BILLING CODE 6372–01–M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

BACKGROUND:

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9. Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument will be placed into OMB's public docket files. The following form, which is being handled under this delegated authority, has received initial Board approval and is hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATES: Comments must be submitted on or before November 19, 1993.

ADDRESSES: Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, or delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments received may be inspected in room B-1122 between 9 a.m. and 5 p.m., except as provided in section 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Gary Waxman, Office of Information and Regulatory Affairs (202/395-7340), Office of Management and Budget, New Executive Office Building, room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the request for clearance (SF 83), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer: Mary M. McLaughlin, Division of Research and Statistics (202-452-3829), Board of Governors of the Federal Reserve System, Washington, DC 20551. For the hearing impaired only, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202-452-3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal To Approve Under OMB Delegated Authority the Following Report:

1. *Report title:* National Survey of Small Business Finances
Agency form number: FR 3044
OMB Docket number: 7100-0262
Frequency: One-time survey
Reporters: Small businesses
Annual reporting hours: 4,500
Estimated average hours per response: 0.75
Number of respondents: 6,000
Small businesses are affected.

General description of report: This information collection is voluntary and is authorized by law. (12 U.S.C. 251, 1817(j), 1828(c), and 1841 *et seq.*) and individual respondent information is given confidential treatment. (5 U.S.C. 552(b)(4)).

This one-time telephone survey of small businesses will be conducted between November 1993 and April 1994 by employees of a private contractor. The primary purpose of the survey is to provide information that can be reported to Congress in compliance with section 477 of FDICIA regarding the availability of credit to small businesses, including minority-owned businesses.

The following is an outline of expected content of the survey questionnaire:

Firm characteristics

Industry (4 digit SIC code)
Number of offices
Location of main office (name of SMSA or county)
Location of subsidiary offices (number in different SMSAs or counties, number of different states)
Type of ownership (proprietorship, partnership, corporation)
Number of employees (current, one year ago, five years ago, full-time equivalent)
Age of firm
Fiscal year

Characteristics of investors

Individuals (number, relationship to owner or largest investor, ownership share, sex, race)
Organizations (number, type of organization, ownership share)

Assets

Cash

Currency and coin (amount)
Demand deposit and NOW accounts (number, amount, sources, location)
Money market deposit and savings accounts (number, amount, sources, location)

Certificates of deposit (amount, sources, location)
Money market mutual fund accounts (number, amount, sources, location)

Marketable securities (amount, type of security)

Accounts and Notes Receivable

Inventory

Other investments (amount, type of investment)

Property, plant, and equipment

Other fixed assets (patents, trademarks, copyrights, franchises, goodwill, deferred charges and prepayments)

Other assets (specify)

Liabilities

Accounts payable

Loans with less than one year maturity remaining

Loans with more than one year maturity remaining
Lines of credit (number, amount outstanding, amount of line, collateral, guarantees, sources, location)
Capital leases (number, amount outstanding, source location)
Mortgages (number, amount outstanding, source, location, guarantees)
Vehicle loans (number, amount outstanding, source, location, guarantees)
Equipment loans (number, amount outstanding, source, location, guarantees)
Other loans not elsewhere classified (number, amount outstanding, source, location, guarantees, collateral)
Loans from owners (amount outstanding)

Accrued expenses and income taxes payable

Other liabilities, including bonds (specify)

Equity

Sources: firms, individuals, family members, venture capital firms

Capital (proprietorships and partnerships)
Stock (corporations)
Retained earnings (corporations)

Income and expenses

Sales, sales one year ago, sales five years ago

Cost of goods sold and operating expenses

Operating expenses

Income taxes

Other income (interest, capital gains)

Interest expense

Operating lease expense

Other expense

Extraordinary expenses

Net income

Recent borrowing experiences

Amount of borrowing in last two years (sources, location, loan terms, collateral, guarantees, variable/fixed rate, etc.)
Information on credit denial during last two years and when credit ultimately obtained
Firm's view of current credit conditions, loan terms, and accessibility of credit

Miscellaneous

Use of non-traditional sources for firm financing: venture capital, equity issues
Use of trade credit (number of suppliers, percent where cash discounts offered, percent where cash discounts taken, percentage of time payments made after due date)
Changes to capital during last two years
Use of other financial services (Payroll processing, coin and currency, lockbox/night depository, trust services, cash management, investment advice, brokerage services, pensions, other (specify).

Board of Governors of the Federal Reserve System, October 18, 1993.

William W. Wiles,

Secretary of the Board.

[FR Doc. 93-26024 Filed 10-21-93; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Control of Air Contaminants During Manual Dye Weigh-Out Operations; Meeting

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Control of Air Contaminants during Manual Dye Weigh-Out Operations.

Time and Date: 1 p.m.–4 p.m., November 2, 1993.

Place: Alice Hamilton Laboratory, Conference Room A, NIOSH, CDC, 5555 Ridge Avenue, Cincinnati, Ohio 45213.

Status: Open to the public, limited only by the space available.

Purpose: The purpose is to conduct an open meeting for the review of a NIOSH project entitled, "Control of Air Contaminants during Manual Dye Weigh-Out Operations." This project will evaluate workers exposure to dye dust during the handling and weighing of dyes in the drug room of a small dyehouse. Control recommendations will include the design of a ventilated booth which will be installed at an actual site and evaluated for effectiveness. The project is being conducted jointly with the Ecological and Toxicological Association of the Dyestuffs Manufacturing Industry (ETAD). Viewpoints and suggestions from industry, labor, academia, other government agencies, and the public are invited.

Contact Person for Additional Information: Marjorie A. Edmonds, NIOSH, CDC, 4674 Columbia Parkway, Mailstop R5, Cincinnati, Ohio 45226, telephone 513/841–4221.

Dated: October 18, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–26014 Filed 10–21–93; 8:45 am]

BILLING CODE 4160–19–M

Food and Drug Administration

[Docket No. 93N-0389]

Antioxidant Vitamins and Risk of Cancer and of Cardiovascular Disease; Notice of Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it is cosponsoring, with other major health research organizations, a public conference. The purpose of this conference is to review and summarize the scientific information available for foods, including dietary supplements, on the association between the antioxidant vitamins and cancer and the antioxidant vitamins and cardiovascular disease. The conference will also provide an opportunity to discuss criteria by which significant scientific agreement on the validity of a nutrient-disease relationship may be ascertained. The antioxidant vitamins to be addressed are *beta*-carotene, vitamin C, and vitamin E. The conference will include invited summary papers, panel discussions, and general open

discussions. Those wishing to submit new data not publicly available to the agency for consideration at the conference should do so as soon as possible.

DATES: The public conference will be held on November 1, 2, and 3, 1993; 8 a.m. to 5:30 p.m.; 8 a.m. to 5:30 p.m.; and 8:30 a.m. to 1 p.m.; respectively. New data should be submitted as quickly as possible to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12340 Parklawn Dr., Rockville, MD 20857. Data received by October 25, 1993, will be forwarded to the individuals preparing papers or serving as panelists for the conference for possible inclusion in their reviews and discussions. Copies of all data and comments received on antioxidant vitamins and cancer before, as well as after, that date will be included in the agency's docket on its current proposal to deny a health claim on this topic for dietary supplements (Docket No. 93N–289A). Interested persons who would like to submit written comments should do so by November 22, 1993. Comments on antioxidant vitamins and cancer may be submitted to Docket No. 93N–289A until December 13, 1993.

ADDRESSES: The conference will be held at the National Academy of Sciences, Main Auditorium, 2101 Constitution Ave. NW., Washington, DC 20418.

FOR FURTHER INFORMATION CONTACT: James T. Tanner, Office of Special Nutritionals (HFS–451), Food and Drug Administration, Washington, DC 20204, 202–205–4168.

SUPPLEMENTARY INFORMATION: The Nutrition Labeling and Education Act of 1990 required FDA to consider health claims on food labels for 10 nutrient-disease relationships and to determine, based on the totality of the publicly available scientific evidence, if there is significant scientific agreement among qualified experts regarding these claims. On January 6, 1993, FDA issued a final rule (58 FR 2622) announcing its decision not to authorize the use on the label or labeling of foods, other than dietary supplements of vitamins, minerals, herbs, or other nutritional substances, of health claims relating to an association between antioxidant vitamins and cancer. The agency concluded that there was not significant scientific agreement among qualified experts that a claim relating vitamin C, vitamin E, or *beta*-carotene to reduced risk of cancer is adequately supported. FDA concluded that the role for antioxidant vitamins per se was not supported by the available data, but that consumption of fruit and vegetables, which are sources of these nutrients, is associated with reduced cancer risk. Therefore, FDA authorized a health claim for fruits and vegetables and cancer (58 FR 2622 at 2639) but concluded that it could not authorize a claim on antioxidant vitamins and cancer.

In the **Federal Register** of October 14, 1993 (58 FR 53296), the agency published a proposed rule not to authorize health claims on five nutrient-disease relationships, including antioxidant vitamins and cancer, on the label or in the labeling of dietary supplements. In that proposal, FDA reviews the available evidence on the relationship of antioxidant vitamins and cancer and explains the basis for the proposed denial of the health claim for dietary supplements.

On November 1 through 3, 1993, FDA will cosponsor a public conference with other units of the Department of Health and Human Services, including the National Institutes of Health and the Centers for Disease Control and Prevention, the American Cancer Society, the American Heart Association, the Institute of Medicine, the American Medical Association, the Federal Trade Commission, and the Congressional Research Service to review the publicly available evidence on the association between antioxidant vitamins from all foods and cancer and the relationship of these nutrients to cardiovascular disease. The conference will be held at the National Academy of Sciences. The purpose of this public conference is to review and summarize the scientific information available on these associations. In addition, in one session of the conference there will be a discussion of the criteria by which significant scientific agreement on the validity of a nutrient-disease relationship may be ascertained. The agency will solicit the input of all segments of the food industry on these issues.

The first seven parts of the November conference will focus on antioxidant vitamins. The antioxidant vitamins that the agency has considered for a health claim relating to their effects on the risk of cancer are *beta*-carotene, vitamin C, and vitamin E. FDA has invited experts in medicine, nutrition, epidemiology, pathology, and other disciplines related to antioxidant vitamins and cancer and to antioxidant vitamins and cardiovascular disease to serve as speakers. They will summarize the publicly available evidence and serve as panelists who will react to the presentations made and provide additional comments based on their individual expertise. Cancer and cardiovascular disease will be the focus of the conference because they are the diseases with respect to which the effects of antioxidant vitamins have been most closely studied. Others may submit data from new research and will be given the opportunity to participate during discussion. New data should be submitted to the FDA contact person listed above.

The conference is divided into eight major parts as follows:

1. Opening and overview of antioxidants.
2. Antioxidant vitamins and cardiovascular disease.
3. Vitamin E and cancer.
4. *Beta*-carotene and cancer.
5. Vitamin C and cancer.
6. Indepth review of *beta*-carotene and lung cancer.
7. Indepth review of vitamin C and gastrointestinal cancer.
8. The basis for determining significant scientific agreement.

Those who would like to comment on these topics but are unable to attend the conference should either submit comments to the Dockets Management Branch, identifying their comments with the docket number found in brackets in the heading of this document, or, if they wish to comment on antioxidant vitamins and cancer, identify their comments with Docket No. 93N–289A.

All submissions should be made in triplicate.

Dated: October 19, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–26150 Filed 10–20–93; 12:15 pm]

BILLING CODE 4160–01–F

National Institutes of Health

National Heart, Lung, and Blood Institute; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meetings of the following Heart, Lung, and Blood Special Emphasis Panels.

These meetings will be closed in accordance with the provisions set forth in sec. 552(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications, contract proposals, and/or cooperative agreements. These applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the

applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Panel: NHBI SEP for three RO1 Grant Applications.

Dates of Meeting: November 2, 1993.

Time of Meeting: 2 p.m.

Place of Meeting: Chevy Chase Holiday Inn, Chevy Chase, Maryland.

Agenda: To evaluate and review grant applications.

Contact Person: Dr. C. James Scheirer, 5333 Westbard Avenue, room 548, Bethesda, Maryland 20892, (301) 594–7452.

Name of Panel: NHBI SEP on Blood Resource Research.

Dates of Meeting: November 15–16, 1993.

Time of Meeting: 7 p.m.

Place of Meeting: Holiday Inn, Bethesda, Maryland.

Agenda: To review and evaluate four R18's and one RO1.

Contact Person: Dr. Anthony M. Coelho Jr., 5333 Westbard Avenue, room 648, Bethesda, Maryland 20892, (301) 594–7485.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: October 19, 1993.

Wendy Baldwin,

Acting Deputy Director for Extramural Research.

[FR Doc. 93–26107 Filed 10–21–93; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection requests it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on October 8, 1993.

(Call PHS Reports Clearance Officer on (202) 690–7100 for copies of requests.)

1. Study to Determine the Impact of the Final Rule, "Health Care Services of the Indian Health Service, 42 CFR Part 36"—New—This submission is for approval to conduct a survey to determine the impact of the Final Rule on the economic, social, cultural, and health status of reservation and urban Indian populations. Respondents will be users of the Indian Health Service (IHS) and tribal health care facilities, at least 18 years of age and will be selected from 11 IHS Areas (excluding California for which a separate study is legislatively mandated). Respondents: Individuals or households; Number of Respondents: 1,071; Number of Responses Per Respondent: 1; Average Burden Per Response; .66 hr.; Estimated Annual Burden hours: 706 hours.

2. 1994 National Health Interview Survey on Disability (NIHS–D)—0920–0214—The National Health Interview Survey, and ongoing survey of the civilian, non-institutionalized population, monitors the Nation's health. This submission is for addition of a supplement on disability. Respondents; Individual or households.

Title	Number of respondents	Number of responses per respondent	Average burden per response (hour)
Currently Approved	48,500	1	1.01
Disability Supplement	48,500	1	1.12
Estimated Total Annual Burden—103,113.			

3. Substance Abuse Prevention and Treatment Block Grant—45 CFR Part 96—0930–0163—This Interim Final Rule provides guidance for States regarding the Substance Abuse Prevention and Treatment Block Grant legislation. The rule implements the reporting and recordkeeping requirements of Public Law 102–321 by specifying the content of the States' annual report on and application for Block Grant funds. The application and annual report are separately approved under OMB control number 0930–0080 for FY 1994 and 1995. Respondents: State or local governments; Number of Respondents: 60; Number of Responses Per Respondent: 1; Average Burden per Response: 16 hours; Estimated Annual Burden: 960 hours.

4. Petitions for Affirmation of Generally Recognized as Safe (GRAS) Substances—21 CFR Part 170—0910–0132—Section 201(s) of the FD&C Act defines food ingredients other than food additives as substances generally recognized as safe (GRAS). Under authority of sections 409 and 701 of the Act, the FDA reviews petitions for affirmation as GRAS which are submitted on a voluntary basis by the industry and other interested parties. Respondents: Small businesses or organizations; Businesses or other for-profit; Federal agencies or employees; Number of Respondents: 9; Number of Responses Per Respondent: 1; Average Burden Per Response: 2,500 hours; Estimated Annual Burden: 22,500.

5. Schizophrenia Patient Outcomes Research Team (PORT)—New—This survey of 1,200 persons under care for schizophrenia in two states will assess their treatment experiences and needs, and outcomes of care. The findings will be used to develop treatment recommendations for schizophrenia. The dissemination of the recommendations to practitioners and the public will be evaluated for changes in patient outcomes, practice patterns, public knowledge and attitudes, and resource use. Respondents: Individuals or households; Number of Respondents: 1,720; Number of Responses per Respondent: 1; Average Burden per Response: hours; 0.9279 hours; Estimated Annual Burden: 1,596 hours.

6. List of Ingredients Added to Tobacco in the Manufacture of Cigarette Products—0920–0210 (Reinstatement)—Public Law 98–474 (15 U.S.C. 1336) requires cigarette manufacturers, packagers, and importers to submit a list of the ingredients added to tobacco in the manufacturer of cigarettes. This list should include each additive along with its common name, chemical name, and chemical abstract number (CAS) and be submitted to the Secretary, DHHS. Respondents: Businesses or other for-profit; Number of Respondents: 14; Number of Responses per Respondent: 1; Average Burden per Response: 2 hours; Estimated Annual Burden: 28 hours.

7. Veterinary Adverse Drug Reaction, Lack of Effectiveness, Product Defect—Report 21 CFR 510—0910–0012—Information is gathered by the Food and Drug Administration from manufacturers of animal drug products and veterinarians on adverse drug reactions to new animal drugs. This regulation requires the submission of full reports of information pertinent to the safety and effectiveness of the new animal drug. Respondents: Businesses or other for-profit.

Title	Number of respondents	Number of responses per respondent	Average burden per response (hour(s))
Reporting (21 CFR 510.300–302)	350	3.1	1.02
Recordkeeping (21 CFR 510.300(a) and 510.301(a)	250	1	.5
Estimated Total Annual Burden—1,250			

8. NPRM—Food Additives—Threshold of Regulation for Substances Used in Food-Contact Articles—New—The Food and Drug Administration (FDA) is proposing a policy for determining when the likelihood or extent of migration of a component of a food-contact article is so trivial as not to require regulation as a food additive. This NPRM lists the criteria which must be met for a food-contact material to be reviewed under this policy and identifies the types of data that FDA will need for its review. Respondents: Business or other for-profit; Number of Respondents: 1; Number of Responses per Respondent: 1; Average Burden per Response: 1 hour; Estimated Annual Burden: 1 hour.

9. Family and Genetic Study of Cardiovascular Disease: Phase II—New—The primary goal of this study is to identify and evaluate genetic and non-genetic determinants of coronary hear disease, preclinical atherosclerosis, and coronary heart disease risk factors. It is designed to expand family and genetic studies of cardiovascular disease in ongoing population-based epidemiologic studies. Respondents: Individuals or households; State or local governments, Businesses or other for-profit; Non-profit institutions; Small businesses or organizations; Number of Respondents: 3,376; Number of Responses per Respondent: 3.7823; Average Burden per Response: 0.8668 hours; Estimated Annual Burden: 11,068 hours.

Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated below at the following address: Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, room 3002, Washington, DC 20503.

Dated: October 18, 1993.

James Scanlon,

Director, Division of Data Policy, Office of Health Planning and Evaluation.

[FR Doc. 93–26023 Filed 10–21–93; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–93–1917; FR–3350–N–54]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact Mark Johnston, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions

or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *U.S. Navy:* John J. Kane, Deputy Division Director, Dept. of Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300; (703) 325–0474; *GSA:* Leslie Carrington, Federal Property Resources Services, GSA, 18th and F Streets NW, Washington, DC 20405; (202) 208–0619; (These are not toll-free numbers).

Dated: October 15, 1993.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program Federal Register Report for 10/22/93

Suitable/Available Properties

Land (by State)

Florida

Former US Army Reserve Center
Belvedere Rd. and Clubhouse Dr.
West Palm Beach Co: Palm Beach FL 33409-
Landholding Agency: GSA
Property Number: 549310005
Status: Unutilized
Comment: 3.10 acres, utilities, previously leased by non-profit for homeless assistance use
GSA Number: 4–GR–FL–682A

Unsuitable Properties

Buildings (by State)

California

Morris Dam Test Facility Range
Azusa Co: Los Angeles CA 91702-
Landholding Agency: Navy
Property Number: 779410001
Status: Unutilized
Reason: Secured Area

[FR Doc. 93–25950 Filed 10–21–93; 8:45 a.m.]

BILLING CODE 4210-39-F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–062–04–5440–10–B043, CACA 33071]

Realty Action; Exchange of Public and Private Lands, San Bernardino County, CA

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of realty action; exchange of public and private lands in San Bernardino County, California.

SUMMARY: The following described public lands are being considered for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716), as amended:

San Bernardino Meridian

T.16N., R.13E.,
Section 11: S½SE¼NE¼, SE¼SW¼NE¼, E½SW¼SW¼NE¼, SE¼, E½E½SW¼;
Section 12: lots 1–5, W½NW¼SE¼NE¼, SW¼SE¼NE¼, S½SE¼SE¼SE¼NE¼, SW¼SW¼NE¼NE¼, SW¼NE¼, S½S½NW¼NE¼, N½NE¼SE¼, SE¼NE¼SE¼, S½SE¼SE¼SE¼, NW¼SW¼, S½S½NE¼NW¼, SE¼NW¼, SW¼SW¼NW¼, S½SE¼NW¼NW¼, E½SW¼NW¼;
Section 13: lot 1, MS 6774 A&B, NW¼NE¼NE¼, N½SE¼NE¼NE¼;
Section 14: lot 2, NE¼, E½NE¼NW¼, NE¼NE¼SE¼, N½SE¼NE¼SE¼, W½NE¼NW¼SE¼, NW¼NW¼SE¼.
T.16N., R.14E.,
Section 30: lot 2, S½SE¼NW¼, S½SW¼NE¼, SW¼SE¼NE¼.

Containing 879.61 acres of public land, more or less.

In exchange for these lands, the United States would acquire an equal value of the following private lands in San Bernardino County from Molycorp Inc.:

San Bernardino Meridian

T.5N., R.22E.,
Section 5: lots 1&2 of NE¼, N½S½, lots 1&2 of NW¼, S½SE¼;
Section 9: N½N½, S½NE¼.
T.6N., R.4E.,
Section 36.
T.6N., R.22E.,
Sections 5 and 9.
T.7N., R.21E.,
Section 5,9,13,17,21,25,29 and 33.
T.7N., R.22E.,
Sections 29 and 33.

SUPPLEMENTARY INFORMATION: The purpose of the exchange is to acquire and preserve private lands containing high value desert tortoise habitat and high public recreation values. The desert tortoise has been listed as a threatened species under the Endangered Species Act of 1973. The public lands to be exchanged have been impacted by Molycorp's Mountain Pass mine operations, and are no longer suitable for multiple use management. The exchange is scheduled to be completed in December of 1993. Publication of this Notice in the **Federal Register** segregates the public lands from the operation of the public land laws and the general mining laws, but not the mineral leasing laws. The segregative effect will end upon issuance of patent, or two years from the date of publication, whichever occurs first.

The value of the lands to be exchanged will be equal, or if not equal, full equalization of values will be achieved under the provisions of section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716), as amended. Public or private lands may be deleted from the exchange to balance values. The public lands will be transferred out of federal ownership with the following reservations:

1. A right of way to the United States for ditches and canals, pursuant to the Act of August 30, 1890 (43 U.S.C. 945).
2. A right of way to the United States for access to public lands.
3. Federal Aid Highway rights of ways, serial numbers S 030881 and R 1718, held by the State of California.

The transfer of public lands will also be subject to the following right of way interests held by third parties:

1. Serial number LA 0162054, powerline, to Southern California Edison.
2. Serial number LA 0113528, road, to American Telephone and Telegraph.
3. Serial number LA 0127125, telephone cable, to Pacific Bell.
4. Serial number R 01730, telephone cable to Southern California Edison.
5. Serial numbers LA 0168855 and S 5597, natural gas pipelines, to Calnev Pipeline.
6. Serial number LA 0144389, telephone cable, to Pacific Bell.
7. Serial number R 239, water pipeline, to the State of California.
8. Serial number R 1806, powerline, to Southern California Edison.

The private lands will be acquired subject to easements of record.

For further information concerning this exchange, contact Tom Gey, California Desert District, 6221 Box Springs Blvd., Riverside, CA 92507. Phone number (909) 697–5352. For a period of 45 days after publication of this notice in the **Federal Register** interested parties may submit comments to the District Manager, California Desert District, in care of the above address. Objections will be reviewed by the State Director, who may sustain, vacate, or modify this realty action.

Dated: October 13, 1993.

G. Ben Koski,

Acting District Manager.

[FR Doc. 93–26013 Filed 10–21–93; 8:45 am]

BILLING CODE 4310–40–M

[NV–930–04–4210–04]

Realty Action

October 13, 1993.

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice of Realty Action; exchange of public lands in Clark County, Nevada, for private lands in Washoe, Lyon, Storey Counties, Nevada; and San Bernardino County, California.

SUMMARY: This notice modifies the Notice of Realty Action; Non-Competitive Sale of Public Lands in Clark County, Nevada, published in the **Federal Register** Vol 58, No. 124; June 30, 1993; page 35038. The identified notice is modified to change the determination of the suitability of the public land for sale under section 203 and 209 of Public Law 94–579 to a determination that the land is more suited for exchange under section 206 of Public Law 94–579. This notice also identifies the offered private lands being considered for exchange.

The following described private lands are being considered for acquisition by exchange under authority of section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716), as amended. The private lands to be acquired, that are presently owned by the Galena Resort Company or the Venture Development Corporation or the Granite Construction Company, within the Toiyabe National Forest, will be transferred to USFS management. Private lands acquired in and around the Pyramid Lake Indian Reservation would be managed by the Bureau of Land Management or transferred to the Bureau of Indian Affairs if within the reservation boundaries. The remaining private lands acquired in California will be managed by BLM, consistent with the management direction provided by BLM planning documents or management designations. The private lands specifically identified below, if acquired, will serve the public interest well.

Catellus Land San Bernardino Co., California (CACA–32685)

Mount Diablo Meridian, California

T. 32 S., R. 44 E.,
Secs. 1,3,5,11,13,15,19,21,23,25,27,29,31&33: all.
T. 32 S., R. 45 E.,
Secs. 7,11,21,25,29&33: all.

San Bernardino Meridian, California

T. 2 N., R. 12 E.,
Secs. 1&13: all;
Sec. 23: N½.
T. 2 N., R. 13 E.,
Secs. 1,5,9&13: all;
Sec. 15: S½;
Sec. 17: all;
Sec. 19: lots 1–3 of NW¼,NE¼,SE¼NW¼;
Secs. 21&23: all.
T. 2 N., R. 14 E.,
Secs. 1,5,9,13,17,19&21: all;
Sec. 23: S½;
Sec. 25: N½;
Sec. 27: N½;
Sec. 29: N½.
T. 2 N., R. 15 E.,
Sec. 17: all;
Sec. 19: lots 1&2 of SW¼,SE¼;
Sec. 21: all;
Sec. 29: N½.
T. 3 N., R. 13 E.,
Secs. 1,5,9,13,17,21,25,29&33: all.
T. 3 N., R. 14 E.,
Secs. 5,9,17,21,25,29&33: all.
T. 3 N., R. 16 E.,
Secs. 1,13&25: all.
T. 3 N., R. 17 E.,
Secs. 1,5,9,17: all;
Sec. 11: SE¼;
Sec. 21: lots 1–8, NE¼,E½W½,W½SE¼;
Sec. 29: NE¼,W½;
Sec. 31: lots 1&2 of the SW¼.
T. 4 N., R. 13 E.,
Secs. 25&33: all.
T. 4 N., R. 14 E.,
Secs. 29&33: all.
T. 4 N., R. 16 E.,
Secs. 1,5,9,13,17,21,29,&33: all;
Sec. 25: S½.
T. 4 N., R. 17 E.,
Secs. 1,9,13,25,29&33: all;
Sec. 5: lots 2–4, W½SW¼NE¼,S½NW¼, S½;
Sec. 17: N½,SW¼,N½SE¼,SW¼SE¼;
Sec. 21: E½,E½W½,SW¼SW¼.
T. 4 N., R. 18 E.,
Secs. 5&9: all;
Sec. 11: NW¼;
Sec. 15: lots 1&2,4&5, W½NE¼,NW¼,N½SW¼;
Secs. 17,21&29: all;
Sec. 31: lots 1–3,6&7, W½NE¼,NW¼SE¼.
T. 5 N., R. 18 E.,
Sec. 1,13&33: all;
Sec. 25: N½,SW¼.
T. 5 N., R. 21 E.,
Sec. 1: E½ of lot 1 of NE¼, E½ of lot 2 of NE¼.
T. 5 N., R. 22 E.,
Sec. 1: all;
Sec. 5: lots 1&2 of the NE¼, lots 1&2 of the NW¼, N½S½, S½SE¼;
Sec. 9: N½N½, S½NE¼;
Sec. 13: N½N½.
T. 5 N., R. 23 E.,
Tracts 37 to 39&41;
Sec. 13: N½.
T. 5 N., R. 24 E.,
Tract 37.
T. 6 N., R. 16 E.,
Sec. 33: all;
T. 6 N., R. 17 E.,
Sec. 1: all;
Sec. 13: W½NE¼, SE¼NE¼, E½NW¼, SW¼NW¼, S½.
T. 6 N., R. 20 E.,
Sec. 1&5: all.
Sec. 7: SE¼;
Sec. 13: NE¼;
Sec. 17: W½NW¼.
T. 6 N., R. 22 E.,
Secs. 1,5,9,13&25: all.
T. 6 N., R. 23 E.,
Secs. 1,5,9,13,17,21,25,29&33: all.
T. 6 N., R. 24 E.,
Secs. 5,9,17,21,29&33: all.
T. 7 N., R. 3 E.,
Secs. 1,13&25: all.
T. 7 N., R. 4 E.,
Secs. 1,5,9,17,21&29: all.
T. 7 N., R. 17 E.,
Secs. 1,5,9,13,25,29&33: all.
T. 7 N., R. 18 E.,
Secs. 1,5&9: all.
T. 7 N., R. 20 E.,
Secs. 21,25,29&33: all.
T. 7 N., R. 22 E.,
Sec. 25: all.
T. 7 N., R. 23 E.,
Secs. 5,9,13,17,21,25,29&33: all.
T. 7 N., R. 24 E.,
Secs. 17,21,29&33: all.
T. 8 N., R. 4 E.,
Secs. 29&33: all.
T. 8 N., R. 17 E.,
Secs. 21,25&33: all.
T. 8 N., R. 18 E.,
Sec. 1: SE¼NE¼, SE¼;
Secs. 5,9,13,17,25,29&33: all.
T. 8 N., R. 19 E.,
Secs. 1,5,9,17&29: all.
T. 8 N., R. 20 E.,
Tracts 37 to 39;
Secs. 9&17: all.
T. 9 N., R. 5 E.,
Secs. 13&25: all.
T. 9 N., R. 6 E.,
Secs. 1,9,13,17,21,25,29&33: all.
T. 9 N., R. 7 E.,
Secs. 1,5,9,17,21&29: all.
T. 9 N., R. 19 E.,
Secs. 25,29&33: all;
T. 9 N., R. 20 E.,
Secs. 25,29&33: all.
T. 9 N., R. 21 E.,
Sec. 17: all.
T. 10 N., R. 5 E.
Sec. 13: all.
T. 10 N., R. 6 E.,
Secs. 13,17,21&25: all.
T. 10 N., R. 7 E.,
Secs. 1,9,13,17,21,25,29&33: all.
T. 11 N., R. 3 E.,
Secs. 1,9&13: all.
T. 11 N., R. 7 E.
Secs. 21&27: all.
T. 12 N., R. 3 E.,
Sec. 33: all.

For further information concerning the above listed private lands, contact Tom Gey, California Desert District, 6221 Box Springs Blvd., Riverside, CA 92507. Phone number (909) 697–5352.

Massacre Ranch Lands, Washoe County, Nevada (CANVN–57582)

Mount Diablo Meridian, Nevada

T. 41 N., R. 21 E.,
Sec. 1: SW¼SW¼;
Sec. 2: SE¼SW¼;
Sec. 11: NE¼NW¼;
Sec. 12: NW¼NE¼, SE¼SW¼;
Sec. 13: Tract 39;
Sec. 14: Tract 37;
Sec. 24: Tract 40.
T. 41 N., R. 22 E.,
Sec. 4: lot 4;
Sec. 5: lots 1 and 2, S½NW¼;
Sec. 6: SE¼NE¼.
T. 42 N., R. 20 E.,
Sec. 36: NE¼SE¼.
T. 42 N., R. 21 E.,
Sec. 2: lot 4, SW¼NW¼;
Sec. 3: lot 1, SE¼NE¼, E½SE¼;
Sec. 9: NE¼SE¼;
Sec. 10: NE¼NE¼;
Sec. 11: SW¼NW¼, E½SW¼;
Sec. 14: SW¼NE¼, E½W½, SW¼SW¼, N½SE¼, SE¼SE¼;
Sec. 16: S½SE¼, NW¼SE¼;
Sec. 18: SW¼SE¼;
Sec. 19: NE¼SE¼;
Sec. 21: NW¼NE¼;
Sec. 22: NE¼NE¼;
Sec. 23: NE¼NE¼;
Sec. 27: NW¼SW¼;
Sec. 31: lot 3, NE¼SW¼, NW¼SE¼;
Sec. 34: NE¼NE¼;
Sec. 35: NW¼NE¼, SW¼NW¼.
T. 42 N., R. 22 E.,
Sec. 4: SE¼SE¼;
Sec. 5: Lot 4, SW¼NW¼;
Sec. 6: SE¼NE¼, E½SE¼;
Sec. 7: NE¼, W½SE¼;
Sec. 17: SW¼SE¼, SW¼SW¼;
Sec. 18: W½NE¼, SE¼NE¼, E½SE¼;
Sec. 19: S½SE¼;
Sec. 20: NE¼SE¼;
Sec. 33: SW¼SW¼.
T. 43 N., R. 22 E.,
Sec. 4: NE¼SW¼;
Sec. 5: NW¼SE¼;
Sec. 8: SW¼SW¼;
Sec. 10: NW¼NW¼;
Sec. 11: SW¼NW¼;
Sec. 16: SE¼NE¼ S½NW¼;
Sec. 18: NE¼NW¼;
Sec. 19: lot 4;
Sec. 20: NW¼SW¼;
Sec. 22: SW¼NW¼, NW¼SW¼;
Sec. 25: SW¼NW¼, NW¼SW¼;
Sec. 27: NE¼NW¼;
Sec. 30: lot 1;
Sec. 33: SE¼NW¼.

Aggregating 4,200 acres more or less. The Bureau of Land Management will also acquire all water and mineral rights owned by the American Land Conservancy. For detailed information concerning the private lands listed under CANVN–57582 immediately above contact J. Anthony Danna, BLM Surprise Resource Area, at (916) 279–6101.

Granite Construction Company Lands, Washoe County, Nevada (N–57877)
Mount Diablo Meridian, Nevada
Washoe County, Nevada
T. 20 N., R. 18 E.,
Sec. 1: NE¼SW¼;
Sec. 2: S½;
Sec. 3: all;
Sec. 4: all;
Sec. 8: S½NE¼;
Sec. 9: all;
Sec. 10: N½;
Sec. 11: all;
Sec. 13: all;
Sec. 14: N½NE¼;
Sec. 15: all;
Sec. 16: all;
Sec. 17: N½;
Sec. 20: NE¼, NW¼SE¼.

Venture Development Corporation Lands, Washoe County, Nevada (N–57877)

T. 20 N., R. 18 E.,
Sec. 17: S½;
Sec. 20: N½NW¼ S½NW¼, E½SW¼, S½SE¼, NE¼SE¼;
Sec. 21: all;
Sec. 22: W½;
Sec. 27: N½, NW¼SW¼;
Sec. 28: all;
Sec. 29: W½, SE¼, NW¼NE¼.

Galena Resort Company, Washoe County, Nevada (N–57877)

T. 17 N., R. 18 E.,
Sec. 13: S½;
Sec. 15: E½SE¼;
Sec. 21: all;
Sec. 23: all;
Sec. 24: N½,SW¼, SE¼ east and west of State Rte 27;
Sec. 25: NE¼NW¼, NW¼NE¼;
T. 17 N., R. 19 E.,
Sec. 17: NW¼NE¼, S½NE¼, SE¼, SE¼SW¼, N½SW¼, NW¼;
Sec. 18: E½,SW¼, E½NW¼;
Sec. 19: NE¼, NE¼NW¼,
Sec. 20: NE¼, N½NW¼SE¼, N½SE¼SE¼, NE¼SE¼, NW¼;
Sec. 21: all;
Sec. 23: all.

For further information concerning the above listed private lands, contact Marcia Joesph, Toiyabe National Forest, 1200 Franklin Way, Sparks, Nevada, 89431. Phone number (702) 355–5300.

Pyramid Lakes Indian Reservation, Washoe, Lyon, Storey Counties, Nevada. (N–57815)

Additional lands will be acquired to implement Congressional direction provided by Public Law 101–618, section 210(b)(18). The Congress has determined that the private lands within and adjacent to the Pyramid Lake Indian Reservation should be acquired to benefit the Reservation. The listed lands will accomplish the Congressional goals by acquiring lands from willing sellers. The private landowners willing to sell their lands are as follows.

1. Approximately 11,000 acres generally known as the DePaoli Ranch located in Washoe and Storey Counties, Nevada.

2. Approximately 250 acres generally known as the Big Bend Ranch located in Washoe County, Nevada.

3. Approximately 115 acres generally known as the Urrutia Ranch located in Washoe County, Nevada.

4. Approximately 37 acres generally known as the Pace Ranch located in Washoe County, Nevada.

5. Approximately 228 acres generally known as the Logan/Keever property located in Washoe County, Nevada.

6. Approximately 1 acre generally known as the Pulver property located in Washoe County, Nevada.

7. Approximately 1 acre generally known as the Coomer property located in Washoe County, Nevada.

For detailed information, including legal descriptions of property concerning the private lands listed above contact the Carson City District Manager at 1535 Hot Springs Rd, Suite 300, Carson City, NV 89706–0638; Telephone: (702) 885–6000.

Additional lands containing sensitive resources may be acquired in and around the Red Rock Canyon National Conservation Area and the Spring Mountains National Recreation Area. When specific lands or interest in lands are identified this NORA will be modified.

The lands to be acquired in San Bernardino County, California (CACA–32685) are within or adjacent to areas proposed for wilderness designation, or are in proposed tortoise habitat management areas. The desert tortoise has been listed as a threatened species under the Endangered Species Act of 1973.

The lands in Washoe County, Nevada (CANVN–57582) are to be acquired to improve the Bureau's management of adjoining public land, and allow multiple resource planning and management for wildlife, recreation, watershed, riparian habitat and an Area of Critical Environmental Concern. Acquisition of the private lands will meet the goals and objectives of the Bureau's Cowhead/Massacre Management Framework Plan.

The publication of this notice is for the purpose of soliciting comments on the offered private lands listed above.

SUPPLEMENTARY INFORMATION:

A. The private lands described above will be acquired by the United States from the American Land Conservancy, 456 Montgomery Street, Suite 1800, San Francisco, CA 94104, in exchange for an equal value of public lands.

B. The private lands will be acquired subject to easements of record.

C. The value of the lands to be exchanged will be equal, or if not equal, full equalization of values will be achieved under the provisions of section 206 of the Federal Land Policy and

Management Act of 1976 (43 U.S.C. 1716), as amended.

D.The exchange of the lands in California will be completed only after passage of special legislation permitting an interstate land exchange. In the absence of specific Congressional authorization the acquisition of the lands in California would not be completed and that portion of this Notice will be vacated.

E. The public lands are located in the City of North Las Vegas, Clark County, Nevada, and were identified in a Notice of Realty Action previously published in the **Federal Register** (58 FR 35038–35039, June 30, 1993). The public lands will be disposed of by patent to the City of North Las Vegas and the values of the public lands credited to the American Land Conservancy under the terms of the exchange agreement between BLM and ALC.

F. The Federal land will be conveyed subject to the valid existing rights identified in the original NORA published for the public lands.

G. Publication of this notice in the **Federal Register** merely changes the disposal authority for the public land from public sale under authority of section 203 of FLPMA to disposal of the lands by exchange under section 206 of FLPMA. The segregation imposed by the previously published notice cited above is not affected by this notice and the lands will still remain segregated from appropriation under all the other public land laws, including the general mining laws. This segregation will terminate upon issuance of a patent or 2 years from the date of publication of this notice in the **Federal Register** whichever occurs first.

H. Prior to the BLM issuing patents for the subject Federal Lands an environmental analysis will be completed for the disposal of the land by exchange. The EA will address the impacts associated with the acquisition of private lands to be included into public land management by land exchange. Potential mitigating measures associated with the private development of the public lands in the City of North Las Vegas will also be analyzed.

For a period of 45 days from the publication of this notice in the **Federal Register** interested parties may submit comments to the State Director, Nevada BLM State Office, P.O. Box 12000, Reno, Nevada, 89520–0006. All comments should specifically identify the portion of the exchange to which they pertain. Comments will be reviewed by the State Director, who may sustain, vacate, or modify this realty action.

K Lynn Bennett,

Associate State Director, Nevada.

[FR Doc. 93–26028 Filed 10–21–93; 8:45 am]

BILLING CODE 4310–HC–M

[OR–014–3110–10–H040; GP–4–007]

Realty Action; Segregation of Public Lands in Klamath County, OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following described lands are being evaluated to determine if they are suitable for disposal by exchange under section 206 of the Federal Land Policy Land Management Act of 1976, 43 U.S.C. 1716. These public lands have been identified for disposal in the Lost River Management Framework Plan and the Land Tenure Adjustment Amendment to that plan dated, March 21, 1989.

T. 37 S., R. 9 E.
Sec. 3—SE¼NW¼, NE¼SW¼
T. 37 S., R. 10 E.
Sec. 12—S½SE¼
Sec. 13—NE¼NW¼
T. 37 S., R. 11½ E.
Sec. 13—E½NW¼
Sec. 14—SE¼NE¼
Sec. 17—SE¼SW¼
Sec. 20—NE¼SE¼
Sec. 21—W½NE¼, SE¼NE¼, N½NW¼, SW¼SW¼, N½SE¼, SE¼SE¼
Sec. 22—W ½SW¼
Sec. 26—NE¼NW¼
Sec. 27—NW¼SW¼
Sec. 28—SW¼NE¼, W½NW¼, SE¼NW¼, NW¼SW¼
Sec. 29—SE¼NE¼, E½SW¼, E½SE¼
T. 37 S., R. 11 E.
Sec. 26—SW¼
Sec. 27—E½SW¼, SE¼
Sec. 29—N½SW¼, SE¼SW¼
Sec. 30—N½SE¼
Sec. 33—SE¼NW¼, W½SE¼
Sec. 34—E½, NE¼NW¼, N½SW¼, SE¼SW¼
Sec. 35—S½NE¼, W½, SE¼
T. 38 S., R. 11 E.
Sec. 1—N½SW¼, SW¼SW¼
Sec. 2—Lot 4, S½NW¼, SW¼, NE¼SE¼
Sec. 3—Lots 1, 2, and 3, S½NE¼, SE¼NW¼, SE¼
Sec. 10—E½, E½NW¼, NE¼SW¼
Sec. 11—SW¼SW¼, S½SE¼
Sec. 12—SW¼NE¼, W½NW¼, SE¼NW¼, N½SW¼, SE¼SW¼, E½SE¼
Sec. 13—W½NE¼, NW¼, E½SW¼, W½SE¼
Sec. 14—W½NE¼, N½NW¼, SE¼NW¼, W½SE¼, SE¼SE¼
Sec. 22—S½NE¼, N½SE¼, SE¼SE¼
Sec. 23—E½, S½SW¼
Sec. 26—all
Sec. 35—N½, SW¼, NE¼SE¼
T. 39 S., R. 11 E.
Sec. 2 Lots 1, 3, and 4.

The area described aggregates approximately 7,445.17 acres in Klamath County, Oregon.

In exchange for some or all of these lands, the Federal Government proposes to acquire the following described private lands in Klamath County Oregon from the American Land Conservancy, a nonprofit public benefit corporation: Parcel 1 of Land Partition 1–93, situated in Sections 10, 11, 13, 14, 15, 16, 21, 22, and 23 Township 34 South, Range 7½ East Willamette Meridian, Klamath County, Oregon.

The parcel of land to which the above descriptions apply contains 1,680 acres, more or less.

The purpose of this exchange is to acquire the north half of the Wood River Ranch. In the 1993 appropriations act, Congress directed the BLM to purchase, at fair market value, the Wood River Ranch and after acquisition to administer the land and to consult with the Bureau of Reclamation and the Fish and Wildlife Service with regard to common management issues affecting the Klamath Basin. Congress also stated that BLM should dispose of appropriate lands under its control in Klamath County in order to compensate for the loss of local tax revenues associated with the Wood River Ranch acquisition. This exchange will fulfill part of BLM's congressional commitment. The Wood River Ranch has very important values for wetlands and contains habitat for at least three threatened or endangered species. The public interest will well served by making the exchange.

Publication of this notice in the **Federal Register** segregates the public lands described above from settlement, location, and entry under the public lands laws and the general mining laws. As provided by the regulations of 43 CFR 2201.1(b), any subsequently tendered application, allowance of which is discretionary, shall not be accepted, shall not be considered as filed, and shall be returned to the applicant. This segregative effect shall terminate upon issuance of a patent to such lands, upon publication in the **Federal Register** of a termination of the segregation, or two years from date of this publication, which ever occurs first.

Interested parties may submit comments to the Area Manager, Klamath Falls Resource Area, 2795 Anderson Ave. Bldg. 25 Klamath Falls, OR 97603.

FOR FURTHER INFORMATION CONTACT:

Tom Cottingham at 503–883–6916, Klamath Falls Resource Area Office,

2795 Anderson Avenue, Building 25, Klamath Falls, OR 97603

A. Barron Bail,

Area Manager.

[FR Doc. 93-25899 Filed 10-21-93; 8:45 am]

BILLING CODE 4310-33-M

INTERSTATE COMMERCE COMMISSION

Agricultural Cooperative Notice to the Commission of Intent To Perform Interstate Transportation for Certain Nonmembers

Date: October 19, 1993.

The following Notices were filed in accordance with section 10526(a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperatives intending to perform nonmember, nonexempt, interstate transportation must file the Notice, Form BOP 102, with the Commission within 30 days of its annual meeting each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2) the location of the records (3) and the name and address of the person to whom inquiries and correspondence should be addressed (4) are published here for interested persons. Submission of information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, DC 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, DC.

(1) Knouse Foods, Inc.
(2) Peach Glen, PA 17375
(3) Peach Glen, PA 17375
(4) Arlene Jennings, Peach Glen, PA 17375

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93-26072 Filed 10-21-93; 8:45 am]

BILLING CODE 7035-01-M

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation: Jones Petroleum Company, Inc., 407 East Second Street, Jackson, Georgia 30233.

2. Wholly owned subsidiaries which will participate in the operations, and State of incorporation:

Knight Petroleum Company, Inc.—Georgia
Stark Properties, Inc.—Georgia
Convenience Stores, Inc.—Georgia
Commercial Properties, Inc.—Georgia

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93-26073 Filed 10-21-93; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 32361]

The Columbus & Ohio River Rail Road Company and Norfolk and Western Railway Company—Joint Relocation Project Exemption

On September 22, 1993, The Columbus & Ohio River Rail Road Company (CUOH) and Norfolk and Western Railway Company (NW) jointly filed a notice of exemption under 49 CFR 1180.2(d)(5) to relocate their interchange operations. CUOH and NW presently interchange freight at Columbus, OH. The joint project involves: (1) CUOH's use of a 212-foot connecting track to be jointly owned with NW and constructed between CUOH's main line near Leonard Avenue and NW's industrial lead track, parallel and contiguous thereto; and (2) CUOH's acquisition of bridge trackage rights over approximately 9,140 feet of NW's existing industrial lead track and use of a new side track, approximately 1,940 feet in length and parallel thereto, to be constructed by NW for use by the parties to interchange with one another.

The joint relocation will result in more direct routing of freight interchanged between the carriers. The direct route will improve service to shippers by eliminating the delays and expense associated with the present circuitous routing that involves the yarding of the tariff at Conrail's Buckeye Yard, thereby providing for a more efficient and effective utilization of railroad equipment and resources. The transaction may be consummated on or after September 29, 1993.[1]

Service to shippers will not be disrupted and, in fact, should be enhanced. CUOH's financial viability should also be enhanced. There will be no expansion into new territory, nor will there be a change in the existing competitive situations.

The Commission will exercise jurisdiction over the construction component of a relocation project only where the proposal involves, for example, a change in service to shippers, expansion into new territory, or a change in existing competitive situations. See, generally, Denver & R.G.W.R. Co.—Jt. Proj.—Relocation over BN, 4 I.C.C.2d 95 (1987). Under these standards, the construction of track is not subject to the Commission's jurisdiction. The remainder of the joint relocation project involving the acquisition of overhead trackage rights qualifies for the class exemption at 49 CFR 1180.2(d)(5) and (7). The Commission has determined that joint relocations embrace trackage rights transactions such as the one proposed here. *See D.T. & I.R.—Trackage Rights,* 363 I.C.C. 878 (1981).

As a condition to the use of this exemption, any employees affected by the trackage rights agreement will be protected by the conditions in *Norfolk and Western Ry. Co.—Trackage Rights—B.N,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: M.J. Connor, The Columbus & Ohio River Rail Road Company, 136 South Fifth Street, Coshocton, OH 43812; and R. Allan Wimbish, Norfolk and Western Railway Company, Three Commercial Place, Norfolk, VA 23510-2191.

Decided: October 15, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93-26071 Filed 10-21-93; 8:45 am]

BILLING CODE 7035-01-M

[1] Under 49 CFR 1180.4(g), a verified notice of exemption must be filed with the Commission at least one week before the transaction is consummated. The applicants, in their verified notice, indicated that the proposed date for consummation of the transaction is upon completion of all required track construction, or as soon thereafter as possible. Mr. Wimbish was placed prior to September 29, 1993.

[Finance Docket No. 32347]

Hardin Southern Railroad, Inc.—Acquisition and Operation Exemption—Line of J and J Railroad, Inc.

Hardin Southern Railroad, Inc., a non-carrier, has filed a notice of exemption to acquire and operate approximately 8.34 miles of rail line owned by J and J Railroad, Inc., in Marshall and Calloway Counties, KY. The line

extends generally between milepost 30.0 and milepost 38.34, beginning at the north edge of the City of Murray, KY, continuing northward generally following the Clarks River, and terminating at Hardin, KY. This exemption will become effective on or after September 23, 1993. [1]

Any comments must be filed with the Commission and served on: Francis G. McKenna, Esq., Anderson and Pendleton, P.O. Box 65891, Washington, DC 20035.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: September 22, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–26070 Filed 10–21–93; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–28,275]

A & A Materials, A/K/A Artiguez E. Alicia Materials, Inc., Brownsville, Texas; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 2, 1993, applicable to all workers of A & A Materials, Brownsville, Texas. The certification notice was published in the **Federal Register** on March 26, 1993 (58 FR 16420).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The investigation findings show that several of the claimants' wages are reported under the Unemployment Insurance tax account for Artiguez e Alicia Materials, Inc., in Brownsville, Texas.

Accordingly, the Department is amending the certification to properly reflect the correct worker group.

The amended notice applicable to TA–W–28,275 is hereby issued as follows:

All workers of A & A Materials, Brownsville, Texas a/k/a Artiguez e Alicia Materials, Inc., Brownsville, Texas producing rags who became totally or partially separated from employment on or after January 21, 1992 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this October 14, 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93–26067 Filed 10–21–93; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–29,064]

Penn Footwear Co., Nanticoke, Pennsylvania; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on September 27, 1993 in response to a worker petition which was filed on September 27, 1993 on behalf of workers at Penn Footwear Company, Nanticoke, Pennsylvania.

An active certification covering the petitioning group of workers remains in effect through October 22, 1993 (TA–W–26,195). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 14th day of October 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93–26066 Filed 10–21–93; 8:45 am]

BILLING CODE 4510–30–M

Employment Standards Administration

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage condition and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act on March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determination as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR part 1 and 5. Accordingly, the applicable decisions, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitle "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor,

[1] Applicant states that the parties intend to convey the line on October 1, 1993.

Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., room S–3014, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume and State.

Volume II

Kansas
KS930040 (Oct. 22, 1993)
KS930041 (Oct. 22, 1993)
KS930042 (Oct. 22, 1993)
KS930043 (Oct. 22, 1993)
KS930044 (Oct. 22, 1993)
KS930045 (Oct. 22, 1993)
KS930046 (Oct. 22, 1993)
KS930047 (Oct. 22, 1993)
KS930048 (Oct. 22, 1993)
KS930049 (Oct. 22, 1993)
KS930050 (Oct. 22, 1993)
KS930051 (Oct. 22, 1993)
KS930052 (Oct. 22, 1993)
KS930053 (Oct. 22, 1993)
KS930054 (Oct. 22, 1993)
KS930055 (Oct. 22, 1993)
KS930056 (Oct. 22, 1993)
KS930057 (Oct. 22, 1993)
KS930058 (Oct. 22, 1993)
KS930059 (Oct. 22, 1993)

Volume III

Oregon
OR930006 (Oct. 22, 1993)
OR930007 (Oct. 22, 1993)
OR930008 (Oct. 22, 1993)
OR930009 (Oct. 22, 1993)
OR930010 (Oct. 22, 1993)
OR930011 (Oct. 22, 1993)
OR930012 (Oct. 22, 1993)
OR930013 (Oct. 22, 1993)
OR930014 (Oct. 22, 1993)
OR930015 (Oct. 22, 1993)
OR930016 (Oct. 22, 1993)
Washington
WA930015 (Oct. 22, 1993)
WA930016 (Oct. 22, 1993)
WA930017 (Oct. 22, 1993)
WA930018 (Oct. 22, 1993)
WA930019 (Oct. 22, 1993)
WA930020 (Oct. 22, 1993)
WA930021 (Oct. 22, 1993)
WA930022 (Oct. 22, 1993)
WA930023 (Oct. 22, 1993)
WA930024 (Oct. 22, 1993)
WA930025 (Oct. 22, 1993)

Modification to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis—Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I

Florida
FL930013 (Feb. 19, 1993)
FL930032 (Feb. 19, 1993)
Maryland
MD930013 (Feb. 19, 1993)
MD930014 (Feb. 19, 1993)
New York
NY930002 (Feb. 19, 1993)

Volume II

Arkansas
AR930007 (Feb. 19, 1993)
Kansas
KS930030 (Oct. 15, 1993)
Nebraska
NE930003 (Feb. 19, 1993)
NE930005 (Feb. 19, 1993)
NE930011 (Feb. 19, 1993)
Ohio
OH930001 (Feb. 19, 1993)
Oklahoma
OK930013 (Feb. 19, 1993)

Volume III

Alaska
AK930001 (Feb. 19, 1993)
Arizona
AZ930001 (Feb. 19, 1993)
California
CA930001 (Feb. 19, 1993)
Colorado
CO930002 (Feb. 19, 1993)
Hawaii
HI930001 (Feb. 19, 1993)
Idaho
ID930002 (Feb. 19, 1993)
Washington
WA930001 (Feb. 19, 1993)
WA930002 (Feb. 19, 1993)
WA930008 (Feb. 19, 1993)

General Wage and Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 15th day of Oct. 1993.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 93–25788 Filed 10–21–93; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 93–082]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Agency Report Forms Under OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the Federal Register notifying the public that the agency has made the submission.

Copies of the proposed forms, the request for clearance (S.F. 83's), supporting statements, instructions, transmittal letters and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Acting Agency Clearance Officer and the OMB Reviewer.

DATES: Comments are requested by November 1, 1993. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Paperwork Reduction Project and the Acting Agency Clearance Officer of your intent as early as possible.

ADDRESSES: Eva L. Layne, Acting NASA Agency Clearance Officer, Code JTD, NASA Headquarters, Washington, DC 20546; Office of Management and Budget, Paperwork Reduction Project (2700–0007) Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Shirley C. Peigare, NASA Reports Officer, (202) 358–1474.

Reports

Title: Radioactive Material Transfer Receipt.
OMB Number: 2700–0007.
Type of Request: Extension.
Frequency of Report: On Occasion.
Type of Respondent: Business or other for-profit, Federal agencies or

employees, Non-profit institutions, Small businesses or organizations.

Number of respondents: 50.

Responses per respondent: 10.

Annual Responses: 500.

Hours per response: .5.

Recordkeeping hours: 40.

Annual Burden Hours: 290.

Abstract-Need/Uses: The Nuclear Regulatory Commission has authorized NASA to use radioactive material at temporary job sites throughout the U.S. for research and development purposes as well as launching of space vehicles. This report furnishes NASA with the necessary records on the possession, location, and use of radioactive materials.

Dated: October 14, 1993.

Eva L. Layne,

Acting Chief, IRM Policy and Acquisition Management Office.

[FR Doc. 93–26086 Filed 10–21–93; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL SCIENCE FOUNDATION

Office of Polar Programs; Permit Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION: Thomas F. Forhan, Permit Office, Office of Polar Programs, National Science Foundation, Washington, DC 20550.

SUPPLEMENTARY INFORMATION: On September 17, 1993 the National Science Foundation published a notice in the **Federal Register** of permit applications received. Permit for enter site of special interest, was issued to Diane McKnight, Cathy Tate, Paul von Gurrard, Harry House, Andrew Fountain, Bruce Vaughn on October 17, 1993.

Thomas Forhan,

Permit Office, Office of Polar Programs.

[FR Doc. 93–26027 Filed 10–21–93; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–424]

Georgia Power Co., et al., Vogtle Electric Generating Plant, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of a schedular exemption from the requirements of 10 CFR part 50, Appendix J. Section III.D.3, to Georgia Power Company, acting for itself, Olgethorpe Power Corporation, Municipal Electric Authority of Georgia, and City of Dalton, Georgia (the licensees), for the Vogtle Electric Generating Plant, Unit 1 (Vogtle or the facility), located in Burke County, Georgia.

Environmental Assessment

Identification of the Proposed Action

The proposed action would grant a one-time, temporary exemption from the requirements of Section III.D.3 of Appendix J to 10 CFR part 50, to extend the interval for Type C local leak rate testing of the Unit 1 auxiliary component cooling water (ACCW) supply and return containment isolation valves. Section III.D.3 requires that Type C tests be performed during each reactor shutdown for refueling but in no case at intervals greater than 2 years. The proposed exemption would allow the required test interval for valves HV–1974 (and associated check valve 1–217–U4–113), HV–1975, HV–1978, and HV–1979 to be extended from 24 months to prior entry into Mode 4 following the next scheduled refueling outage (or the next forced outage requiring entry into Mode 5), but no later than November 1, 1994. The proposed exemption in accordance with the licensee's application dated September 30, 1993.

The Need for the Proposed Action

The proposed exemption is needed to prevent the shutdown of Unit 1 solely for the purposes of testing the subject valves.

Environmental Impacts of the Proposed Action

The proposed exemption will not result in a significant change in the types or significant increase in the amounts of any effluents that may be released offsite. The proposed action will not increase potential radiological environmental effects due to containment leakage beyond those already permitted by the regulations. Testing of Type B and C components under Appendix J to 10 CFR part 50 is intended to demonstrate that containment leakage from these components is within defined acceptable limits of less than 0.6 times the maximum allowable containment leakage rate with the containment pressurized to its design limit, which provide information used to calculate the maximum radiological consequences of a design basis accident.

The subject ACCW valves have been Type C tested during all previous refueling outages with the exception of the Unit 1 spring 1993 outage. A review of the previous Type C test data has shown that sufficient margin existed and that there has been no significant degradation of the valves isolation capability.

The probability of containment isolation failure following a core damage accident is modeled in the Vogtle individual plant examination (IPE). The IPE was submitted by letter dated December 23, 1992. In order to model a more conservative scenario of containment isolation failure than was considered in the base case Vogtle IPE, the licensee assumed that the occurrence of any core damage scenario would cause a break in the ACCW flow path and that the operator would be required to isolate the ACCW system for successful containment isolation. Based on a Type C test interval of 2 years, the frequency of core damage with containment isolation failure was found by the licensee to be on the order of 10^{-7} per reactor year. The licensee has stated that extending the required Type C test interval for these valves beyond the Appendix J 2-year period has a negligible impact on that probability. Thus, the probability of an event that leads to core damage and a failure of the ACCW piping inside containment with a failure to isolate containment is not considered to be credible by the licensee. The staff concurs that the additional operation period, between expiration of the current leak tests to prior to entry into Mode 4 following the next scheduled refueling outage (or the next forced outage requiring entry into Mode 5), but no later than November 1, 1994, is not expected to significantly decrease the margin between expected as-found leak rate and L_a.

Therefore, radiological releases will not differ from those determined previously, and the proposed exemption does not otherwise affect facility radiological effluent or occupational exposures. With regard to potential nonradiological impacts, the proposed action does not affect plant nonradiological effluents and has no

other nonradiological environmental impact.

Therefore, there will not be a significant increase in the types or amounts of any effluent that may be released offsite and, as such, the proposed exemption does not involve irreversible environmental consequences beyond those already associated with normal operation of the plant.

Based on its review, the Commission concludes that the proposed exemption is acceptable. The staff has determined that the proposed exemption does not alter any initial conditions assumed for the design basis accidents previously evaluated nor change operation of safety systems utilized to mitigate the design basis accidents.

The proposed exemption does not increase the probability or consequences of accidents. No changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that proposed action would result in no significant radiological environmental impact.

With regard to potential nonradiological impacts, the proposed exemption involves components in the plant which are located within the restricted areas as defined in 10 CFR part 20. It does not affect nonradiological plant effluents and has no other environmental impacts. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Since the Commission has concluded that there are no significant environmental effects that would result from the proposed actions, any alternatives with equal or greater environmental impacts need not be evaluated. The principal alternative would be to deny the licensee's request for exemption. This would not reduce environmental impacts of plant operation.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement for the Vogtle Electric Generating Plant, Units 1 and 2, dated March 1985.

Agencies and Persons Consulted

The staff consulted with the State of Georgia regarding the environmental impact of the proposed action

Finding of No Significant Impact

Based on the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to this action, see the application for exemption, dated September 30, 1993, which is available for public inspection in the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and the local public document room located at the Burke County Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Dated at Rockville, Maryland this 18th day of October 1993.

For the Nuclear Regulatory Commission.

Victor Nerses,

Acting Director, Project Directorate II–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93–26029 Filed 10–21–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–313]

Entergy Operations, Inc.; Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Entergy Operations, Inc. (the licensee) to withdraw its June 27, 1991, application for proposed amendment to Facility Operating License No. DPR–51 for the Arkansas Nuclear One, Unit No. 1 (ANO–1), located in Pope County, Arkansas.

The proposed amendment would have revised Technical Specifications (TSs) 3.9 and 4.10 regarding the control room emergency ventilation (air conditioning and air filtration) system and control room isolation system, to achieve consistency with the requirements for ANO–2 and to avoid misinterpretation of the TSs and enhance the operability of the systems.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on August 7, 1991 (56 FR 31580). However, by letter dated October 1, 1993, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated June 27, 1991, and the licensee's letter dated October 1, 1993, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Dated at Rockville, Maryland, this 15th day of October, 1993.

For the Nuclear Regulatory Commission.

Roby B. Bevan,

Project Manager, Project Directorate IV–1, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 93–26030 Filed 10–21–93; 8:45 a.m.]

BILLING CODE 7590–01–M

POSTAL RATE COMMISSION

[Docket No. A94–2; Order No. 994]

Extension, Louisiana 71239: (M.P. Dailey, Petitioner); Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)

Decided October 14, 1993.
Issued October 18, 1993.

Docket Number: A94–2.
Name of Affected Post Office: Extension, Louisiana 71239.
Name(S) of Petitioner(S): M.P. Dailey.
Type of Determination: Closing.
Date of Filing of Appeal Papers: October 13, 1993.
Categories of Issues Apparently Raised:

1. Effect on the community [39 U.S.C. 404(b)(2)(A)].
2. Effect on postal services [39 U.S.C. 404(b)(2)(C)].
3. Economic savings [39 U.S.C. 404(b)(2)(D)].

Other legal issues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition, in light of the 120-day decision schedule [39 U.S.C. 404(b)(5)], the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the petitioners. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memoranda previously filed.

The Commission orders:

(A) The record in this appeal shall be filed on or before October 28, 1993.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register**.

By the Commission.

Charles L. Clapp,

Secretary.

October 13, 1993
Filing of Petition
October 18, 1993
Notice and Order of Filing of Appeal
November 8, 1993
Last day of filing of petitions to intervene [*see* 39 CFR 3001.111(b)]
November 17, 1993
Petitioner's Participant Statement or Initial Brief [*see* 39 CFR 3001.115 (a) and (b)]
December 7, 1993
Postal Service Answering Brief [*see* 39 CFR 3001.115(c)]
December 22, 1993
Petitioner's Reply Brief should Petitioner choose to file one [*see* 39 CFR 3001.115(d)]
December 29, 1993
Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [*see* 39 CFR 3001.116]
February 9, 1994
Expiration of 120-day decisional schedule [*see* 39 U.S.C. 404(b)(5)]

[FR Doc. 93–25963 Filed 10–21–93; 8:45 am]

BILLING CODE 7710–FW–P

Notice of Commission Visit

October 20, 1993.

Notice is hereby given that during the period October 26 through October 30, members of the Commission and certain advisory staff personnel will visit and be briefed on facilities of private industry and the U.S. Postal Service.

The on-site visits will include: U.S. Postal Service Sacramento Processing and Distribution Center and the Sacramento Bee; the U.S. Postal Service San Diego Processing and Distribution Center and its attendant remote "key" encoding facility in Otay Mesa, Ca.; the headquarters and training facilities of Mail Boxes Etc., in San Diego; the mail processing and forwarding operations of U.S.Marine Corps Recruit Depot, San Diego.; Roger's Bindery/Times Mirror, in Colton, Ca.; the headquarters and operations of Harte Hanks Shoppers, in Brea Ca.; and the United Parcel Service Ontario (Ca.) Airport hub.

A report of on-site visits will be on file in the Commission's Docket Room. For further information contact Charles L. Clapp, Secretary of the Commission at 202–789–6840.

Charles L. Clapp,

Secretary.

[FR Doc. 93–26237 Filed 10–21–93; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget; Agency Clearance Officer—John J. Lane (202) 272–3900

Upon written request copy available from: Securities and Exchange Commission, Office of Filings, Information and Consumer Services, Washington, DC 20549.

Extension

Rule 17a–7
File No. 270–238
Rule 18f–1 and Form N–18F–1
File No. 270–187
Rule 19a–1
File No. 270–240

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et. seq.*), the Securities and Exchange Commission has submitted to the Office of Management and Budget requests for approval of extension on currently approved rules and forms under the Investment Company Act of 1940.

Rule 17A–7 requires registered investment companies to keep various records in connection with certain purchase or sale transactions between investment companies and certain of their affiliates. It is anticipated that approximately 500 recordkeepers will spend a total of 500 hours to comply with this rule.

Rule 18f–1 enables a registered open-end management investment company that may redeem its securities in kind to elect to commit to make limited cash redemptions without violating section 18(f) of the Investment Company Act of 1940. Form N–18F–1 provides notification of this election. It is anticipated that approximately 62 respondents will spend a total of 62 hours to comply with this rule.

Rule 19a–1 requires a written statement to accompany certain dividend payments. Approximately 3,300 respondents incur an aggregate annual burden of 1,650 hours to comply with this rule.

The estimated average burden hours are made solely for purposes of the Paperwork Reduction Act and not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

General comments regarding the estimated burden hours should be directed to Gary Waxman at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to John J. Lane, Associate Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Gary Waxman, Clearance, Officer, Office of Management and Budget, (Paperwork Reduction Act Numbers 3235–0214, 3235–0211, and 3235–0216), room 3208, New Executive Office Building, Washington, DC 20503.

Dated: October 14, 1993.

[FR Doc. 93–26055 Filed 10–21–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33057; File No. SR–CHX–93–26]

Self-Regulatory Organizations; Notice of Filing and Order Granting Temporary Accelerated Approval of Proposed Rule Change by the Chicago Stock Exchange, Inc. to Establish a Policy Concerning the Designated Primary Market Maker and Registered Market Maker of a Basket

October 15, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 13, 1993, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.[3]

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX proposes to publish to members Interpretation and Policy .01 under Exchange Article XXXIV, Rule 8 concerning the interactions between the Designated Primary Market Maker ("DPM") and the Registered Market Makers ("RMs") in trading the Chicago Basket ("CXM Basket").[4]

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] The Exchange also has requested permanent approval of this proposal in File No. SR–CHX–93–27. Today, the Commission is publishing notice of that proposal in Securities Exchange Act Release No. 33058 (October 15, 1993).

[4] Today, the Commission is approving a proposed rule change by the CHX which amends the Rules of the Exchange to establish rules allowing for and governing the trading of standardized baskets on the Exchange Floor, and to trade a specific basket product to be known as the Chicago CXM Basket. *See* Securities Exchange Act Release No. 33053 (October 15, 1993) (order approving File No. SR–CHX–93–18). The present proposal provides an

The specific "Interpretation and Policy" is as follows:

.01 When the Designated Primary Market Maker and a Registered Market Maker, as those terms are used in Article XXXVI, are both displaying, through the quotation system, the same bid or offer price for a basket, the Designated Primary Market Maker and the Registered Market Maker will be entitled to participate in transactions on a ⅔ to ⅓ parity, respectively, up to the size of their displayed quotations. (i.e. the Designated Primary Market Maker is entitled to twice the size of a Registered Market Maker's order up to the size of the Designated Primary Market Maker's quotation. Conversely, a Registered Market Maker is entitled to participate at ½ the size of the Designated Primary Market Maker's order up to the size of the Registered Market Maker's displayed quotation.) In the event that the Designated Market Maker or a Registered Market Maker has not displayed a size greater than or equal to the size he or she would be entitled to based on the ⅔ to ⅓ parity, the Designated Market Maker or a Registered Market Maker, as the case may be, shall only participate up to their displayed size.

The Exchange requests accelerated approval of the proposal so that the proposed Interpretation and Policy will be in effect when the CXM Basket commences trading on October 15, 1993. This would ensure that the DPM and RMs trading the CXM Basket know their respective obligations under Exchange Article XXXIV, Rule 8, and that the Exchange's Floor Procedure Committee's interpretation and method of implementation of that Rule will be applied if a DPM or RM invokes the Rule while trading the CXM Basket.[5]

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed change is to clarify that Article XXXIV, Rule 8 of the Exchange rules providing for a two-thirds/one-third parity between a specialist and registered market makers in the same issue will also apply to trades in the CXM Basket.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that no burden will be placed on competition as a result of the proposed rule change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The proposed rule change has been endorsed by the Exchange's Floor Procedure Committee.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR-CHX-93-26 and should be submitted by November 12, 1993.

IV. Commission's Findings and Order Granting Temporary Accelerated Approval of Proposed Rule Change

The Commission finds that the CHX's proposal to add an Interpretation and Policy to Exchange Article XXXIV, Rule 8, on a temporary basis is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular with Section 6(b)(5) of the Act.[6] Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to facilitate transactions in securities.

Current Exchange Article XXXIV, Rule 8, provides for a two-thirds/one-third split between a specialist and one or more market makers, as a group, in a security when the specialist participates in a transaction in one of his or her specialty securities while one or more market makers are bidding or offering at the transaction price. The present proposal applies Rule 8 to the trading of market baskets on the Exchange. The proposal also adds a provision that essentially limits the number of baskets in which a DPM or RM may participate in the above situation to the number of baskets he or she is bidding or offering at the transaction price. The Commission believes that, because the proposal specifies the respective rights of the DPM and RMs on parity in certain basket transactions, the Exchange is clarifying and adapting its rule to basket trading. This interpretation should help to facilitate basket transactions and may prevent trading disputes between market participants. The Commission also believes that temporary approval of the proposal is appropriate to provide the Commission and the Exchange with an opportunity to evaluate this interpretation of Exchange Rule 8 and its application to market basket trading.

The Commission finds good cause for approving the proposed rule change prior the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. As noted above, the proposal clarifies the application of an existing Exchange rule to the trading of baskets. The Commission believes that accelerated approval of the proposal is appropriate in order to allow the CHX to implement the Interpretation and Policy before the Exchange begins trading the CHX Basket on October 15, 1993.

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additional Exchange "Interpretation and Policy" which would work in concert with the rules and procedures approved in Securities Exchange Act Release No. 33053. The DPM will act as the specialist in making markets and executing transactions in the CXM Basket, while one or more RMs act as market makers in the Basket.

[5] Telephone conversation between David Rusoff, Foley & Lardner, and Betsy Prout, Commission, on October 13, 1993.

[6] 15 U.S.C. 78f(b)(5) (1988).

It is therefore ordered, Pursuant to section 19(b)(2)[7] that the proposed rule change is hereby approved on a temporary basis through December 15, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–26005 Filed 10–21–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33053; File No. SR–CHX–93–18]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc., Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 1, 2, and 3 to Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to the Establishment of Rules to Allow for and Govern the Trading of Standardized Baskets and To Trade a Specific Basket of Stocks, the Chicago Basket

October 15, 1993.

I. Introduction

On August 2, 1993, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange")[1] filed with the Securities and Exchange Commission ("Commission") the proposed rule change, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[2] and Rule 19b–4 thereunder,[3] as amended on October 1, 1993,[4] on October 7, 1993,[5] and on October 12, 1993,[6] to establish rules allowing for and governing the trading of standardized baskets on the Exchange floor. The Exchange also is seeking Commission approval to trade a specific basket product on the Exchange.[7]

The proposed rule change was published for comment in Securities Exchange Act Release No. 32731 (August 10, 1993), 58 FR 43664 (August 17, 1993). No comments were received on the proposal. This order approves the proposed rule change.

II. Background and Description of Market Baskets

A. Description and Terms of Market Basket Contracts

The Exchange has proposed to amend its rules to add Article XXXVI, Baskets, which would establish general rules for the trading of baskets on the CHX floor.[8] The Exchange also seeks Commission approval to trade a specific basket product which would be known as the Chicago "CXM" Basket. Proposed Article XXXVI includes "Interpretations and Policies .01" which would establish the specific contract terms and trading procedures for the CXM Basket.

The proposal enables the trading of standardized baskets of stocks at an aggregate price in a single execution on the Exchange's floor. A market basket trade will result in a transfer to the buyer of ownership of each of the component stocks. When the transaction is completed, the buyer will be entitled to all rights attending ownership of the basket stocks (including rights to vote and receive dividends), and will be free to sell or hold each stock separately. That same buyer may later sell the basket stocks he or she acquired, either individually or through an offsetting trade of the identical basket.

Rule 3 of proposed Article XXXVI would provide that only baskets approved by, and currently open for trading on, the Exchange could be purchased or sold on the Exchange. A basket may be dealt in on the Exchange only if each of its component securities has been admitted to dealings on the Exchange, pursuant to listing or unlisted trading privileges, on an "issued," "when issued," or "when distributed" basis, including component securities subject to the exemption contained in Rule 12a–7, promulgated under Section 12(a) of the Act.[9] Proposed Rule 3(c) provides that, after approving a particular basket, the Exchange may from time to time replace, add or delete one or more of the basket's component securities, change a component security's relative representation in a basket by changing the quantity and number of shares of that security that the basket includes, and may make such other basket-related changes as the Exchange may from time to time specify. The Exchange has represented to the Commission, however, that any change made pursuant to proposed Rule 3(c) will not alter the Basket's relationship to the underlying index upon which the Basket's approval is based.[10] Proposed Rule 3(c) will only be used to make corresponding changes to the Basket when there have been changes made to the index upon which the Basket is based.[11]

The specific basket which the Exchange proposes to trade is the CXM Basket which will be a basket of stocks comprised of the stocks included in the "MMI" stock index futures contract which began trading on the Chicago Mercantile Exchange ("Merc") on September 7, 1993. The CXM Basket will offer a highly correlative hedge to

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[7] 15 U.S.C. 78s(b)(2) (1988).

[8] 17 CFR 200.30–3(a)(12) (1991).

[1] As of July 8, 1993, the Midwest Stock Exchange, Inc. ("MSE") changed its name to the Chicago Stock Exchange, Inc. See Securities Exchange Act Release Nos. 32488 (June 18, 1993), 58 FR 34284 (June 24, 1993) (File No. SR–MSE–93–13) (immediate effectiveness of proposed rule change relating to amendments to the MSE's Certificate of Incorporation and Constitution to effect a name change) and 32489 (June 18, 1993), 58 FR 34285 (June 24, 1993) (File No. SR–MSE–93–16) (immediate effectiveness of proposed rule change relating to amendments to the MSE's Rules to make conforming changes in accordance with its name change).

[2] 15 U.S.C. 78s(b) (1) (1988).

[3] 17 CFR 240.19b–4 (1991).

[4] See letter from David T. Rusoff, Foley & Lardner, to Diana Luka-Hopson, Commission, dated September 30, 1993. Amendment No. 1 clarifies language in the proposed rule amendment concerning customer confirmations of basket transactions.

[5] See letter from David T. Rusoff, Foley & Lardner, to Diana Luka-Hopson, Commission dated October 6, 1993. Amendment No. 2 establishes rules that would govern trading halts in baskets.

[6] See letter from David T. Rusoff, Foley & Lardner, to Diana Luka-Hopson, Commission, dated October 11, 1993. Amendment No. 3 amends the portion of the original proposal to provide that Exchange Article XX, Rule 40, ITS "Trade-Throughs" and "Locked markets" shall be inapplicable with respect to trading in the basket only when basket trading causes a trade-through or otherwise affects the individual securities comprising the basket.

[7] Simultaneously with the filing of the present proposed rule change, the Exchange withdrew file No. SR–MSE–92–10 which was submitted to the Commission on August 12, 1992. See letter from George T. Simon, Foley & Lardner, to Diana Luka-Hopson, Branch Chief, Commission, dated July 29, 1993. The Commission published, for notice and comment, File No. SR–MSE–92–10 which, like the File No. SR–CHX–93–18, proposed to establish rules for the trading of a standardized basket. See Securities Exchange Act Release No. 32011 (March 17, 1993), 58 FR 15886. No comments were received on the proposal contained in File No. SR–MSE–92–10.

[8] Rules 1 and 2 of proposed Article XXXVI would provide the definitions of the terms "Basket," "Basket Contract," "Component Security" and the terms of baskets generally. According to the proposed rules, the term "Basket" would mean a group of securities that the Exchange designates as eligible for execution in a single trade and that consists of securities whose inclusion and relative representation in the group are determined by the Exchange. "Basket Contract" would mean a contract obligating the seller to sell and the purchaser to buy the designated quantity of each issue contained in the basket, with delivery of such securities to be made as provided in the Rules of a registered clearing agency. "Underlying security" would mean a component security included in the basket. According to proposed Rule 2, the number and quantity of the component securities deliverable upon settlement of a basket would be determined by the Exchange.

[9] The Commission notes that Rule 12a–7 under the Act, 17 CFR 240.12a–7, expressly provides an exemption from registration of component securities of a basket only where the basket is comprised of at least 100 stocks. The CXM basket which the Exchange currently proposes to trade is comprised of 20 stocks and, therefore, would not fall within the Rule 12a–7 exemption.

[10] See letter from David T. Rusoff, Foley & Lardner, to Betsy Prout, Commission, dated September 30, 1993 ("September Letter").

[11] *Id.*

that contract. This basket will be comprised of a fixed quantity of 25 shares of each of the stocks included in the new Merc futures contract. The new Merc futures contract is a stock index futures contract which is based on the American Stock Exchange's ("Amex") MMI. The Amex's MMI, in turn, is a broadbased, price-weighted index currently based on 20 stocks listed on the New York Stock Exchange ("NYSE"). The new Merc futures contract replaces the "BC" futures contract, a stock-index futures contract based on the Amex's MMI, which was traded on the Chicago Board of Trade ("CBOT") until recently.

For many years, the CBOT traded the BC futures contract as well as options on that futures contract. The CHX states that, since the beginning of trading in the BC futures contract, an interest and need was expressed for an efficient way to hedge the futures contract with the equity cash market. Based upon this need, the CHX developed the equity cash market trading facility in order to create an offsetting position with the BC futures contract. Now that the BC futures contract is traded on the Merc as the MMI futures contract, this basket facility will be used to create an offsetting position with the Merc's new contract.

B. Market Structure for the Trading of Market Basket Contracts

1. DPM and Market Makers

The trading market for the CXM on the CHX floor will consist of a registered specialist, known as a Designated Primary Market Maker ("DPM"), and Registered Market Makers ("RM"). DPMs will be required to quote continuously a two-sided market for four CXM baskets.[12] RMs will be required to quote continuously a two-sided market for one CXM basket. Pursuant to proposed Interpretation and Policy .01, the DPM will be required to maintain $250,000 in excess net capital for the CXM Basket.[13] The CHX has represented to the Commission that the Exchange will file a proposed rule change with the Commission for approval if the Exchange should seek to change the $250,000 net capital requirements for DPMs.[14]

The DPMs and RMs in the CXM Basket would be members registered as specialists in the securities underlying the baskets and would be entitled to obtain exempt credit by financing their CXM Basket transactions. The DPM would be chosen by the Committee on Specialist Assignment and Evaluation upon the recommendation of the Exchange's New Product Committee. In acting as a specialist, the DPM will conduct the opening procedures for each basket at or as soon as practicable after the Exchange opening, or upon resumption in trading after trading has been halted or suspended in such a manner as to result in a single price opening.[15] Pursuant to proposed Article XXXVI, Rule 16, Basket Quotation Dissemination Requirements, DPMs and RMs will have the same quotation duties with respect to baskets that dealers and market makers have with respect to securities pursuant to Rule 11Ac1–1 of the Act.[16]

2. Location of the Market Basket Posts

The Exchange proposes to trade the CXM Basket at a specific, fixed location of the CHX trading floor. All members of the Exchange will have access to buy and sell the CXM. The Exchange states that the floor will be configured to accommodate a sizable "crowd" without disrupting others on the trading floor. Facilities will be visible to the crowd to display information from the futures and options markets. The displays also will show market information for the CXM. The Exchange's automated order routing system ("MAX") could be used to enter orders and send reports as with any other issue. However, MAX could be used only for its order routing capability and not for its automatic execution feature.

C. Application of Exchange Rules to Market Basket Contracts

Proposed Article XXXVI establishes rules which would be applicable to the trading of market baskets. Baskets also would be subject to the general rules of the Exchange to the same extent that the rules apply to securities, except where the context otherwise requires. Because a market basket contract is a stock product, there are areas where the Exchange proposes to modify or clarify the applicable Exchange rules.

1. Bids, Offers, and Units of Trading

Proposed Rules 4 and 12 provide general rules for bids, offers and the units of trading in basket transactions. Specifically, Rules 4 and 12(c) provide that bids and offers must be expressed in terms of dollars and fractions of one dollar. Rule 12 also provides that the unit of trading of each basket is one hundred shares as specified by the Exchange, that all bids or offers for baskets are deemed to be for one unit of trading unless a larger number of baskets is expressed in the bid or offer, and that all bids made and accepted, and all offers made and accepted, in accordance with the proposed Basket Rules and other Rules made applicable to basket transactions executed will be binding.

Proposed Interpretation and Policy .01 provides more specific terms for the trading of the CXM Basket. The CXM Basket will trade with a minimum variation of ⅛th point and in quantities of one hundred shares where one hundred shares equals 1 CXM basket.[17] One hundred shares will be the minimum unit of trade for the CXM. In the price expression, one point will equal one dollar.

2. Exchange Dissemination of Transactions and Quotations

Proposed Rule 5 requires the Exchange to disseminate or cause to be disseminated, after the close of business and from time-to-time on days on which transactions in baskets are made on the Exchange, the price at which each transaction in baskets has been effected, the transaction volume of baskets at such price, and the prices at which bids and offers are made on the floor of the Exchange. CXM Basket trades and quotes will be available on "Network B." As with any other CHX exclusive

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[12] Each basket will be expressed as one hundred shares for the purpose of disseminating quotations and transactions in the CXM Basket. Therefore, the DPM will be required to quote a four hundred share two-sided market in the CXM Basket.

[13] The proposal does not establish specific net capital rules for the RMs. However, RMs will be Exchange market makers and, therefore, will be subject to the Exchange's market maker net capital requirements. See Exchange Article XI, Rule 3(b)(2). The Commission notes that the DPM will be subject to the Commission's Net Capital Rule, 17 CFR 15c3–1(b)(1) as of April 1, 1994.

[14] See September Letter, *supra* note 10.

[15] See proposed Exchange Article XXXVI, Baskets, Rule 6, Opening of Trading.

[16] 17 CFR 240.11Ac1–1 (1991).

[17] On October 12, 1993, 100 shares of CXM was equal to 500 individual equity shares (25 shares of each stock) where 1300 shares of CXM is approximately equal to two futures contracts. The closing price of CXM on October 12 would have been approximately 282⅛. The closing price multiplied by 100 (the number of shares) equals $28,212.50. The closing value of the futures on October 12, 1993 was $182,100. Therefore, 13 CXM's equate to $327,762.50 which compares with two futures contracts which equates to $264,200. Telephone conversation between David Rusoff, Foley & Lardner, and Betsy Prout, Commission, on October 13, 1993. The Commission notes that in the notice of this proposal published in the Federal Register, the Exchange provided similar calculations based on closing prices from April 6, 1993. *See* Securities Exchange Act Release No. 32731 (August 10, 1993), 58 FR 43662 (August 17, 1993). The only differences between the calculations in the notice and the above calculations are the closing values and the resultant price values, and the fact that the future contracts are now traded on the Merc. The share and pricing formulas, however, are the same.

issue, the DPM will disseminate quotes through CQS. In its Letter Requesting Exemptions, the Exchange stated that the Exchange intends to disseminate bid and offer quotations for the Basket, representing the highest bid and lowest offer price at which any Exchange member is willing to buy or sell that Basket (in addition to any customer interest that a specialist would be required to display if the Basket were a security) on the floor throughout the trading day.[18]

3. Clearance, Settlement and Margin Requirements

Proposed Rule 7 provides that delivery of the component securities upon the sale of a basket, and the payment of the basket price in respect thereof, shall be in accordance with the Rules of a registered clearing agency.[19]

The CXM Basket will be traded for settlement on T + 5 (*i.e.*, regular way), but special settlements and cash settlements will be allowed. At the end of the trading day, all CXM transactions will be recorded with Midwest Clearing Corporation ("MCC"). MCC will then aggregate all CXM buy transactions within one account as well as all sell transactions. These two aggregated transactions will be burst into the component stocks. Dollar values will be assigned to each individual stock based upon the NYSE closing price of each stock relative to the total closing price of all stocks in the CXM basket. Then, the component securities will be entered into MCC's Continuous Net Settlement system for netting with each participant's other transactions in the same security.

Proposed Rule 8 provides that the margin requirements for baskets will be determined in accordance with the provisions of Article X of the Exchange's Rules, which apply to the positions (long or short) in the component securities. Under the proposed clearance and settlement procedures, on the day after the transaction is completed, the bursting process for basket transactions will result in an end-of-day net buyer of a basket receiving 25 shares in its account of each of the underlying securities in the baskets to be settled on T + 5. This bursting process enables the Exchange to calculate margins for baskets as if the buyer (or seller) had actually purchased (or sold) the component securities on the transaction date.[20]

4. Trading Halts

Proposed Rule 19 establishes Exchange rules regarding basket trading halts or suspensions. Specifically, proposed Rule 19 would require that, in addition to any halt in basket trading pursuant to Article IX, Rule 10A (Trading Halts Due to Extraordinary Market Volatility), trading in a basket will be halted whenever the Chairman, or in his absence, the Vice Chairman or other Exchange Officer(s) designated by the Chairman, in consultation with a majority, but not fewer than two Floor Governors then available on the floor, determine that market conditions warrant such a halt in the interests of a fair and orderly market and to protect investors. Under the proposed rule, among the facts that may be considered are the following: trading has been halted or suspended in underlying stocks whose weighted value represents 20% or more of the underlying index value; the current calculation of the index derived from the current market prices of the stocks is not available; or other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.[21] Trading in the CXM Basket will be halted in the event that there is a regulatory halt in the underlying Merc futures contract. Finally, if the Commission suspends trading pursuant to section 12(k) of the Act,[22] in any security underlying the Basket, the CHX will halt trading in the Basket for the period of such summary suspension, so long as the security or securities which are subject to the summary suspension remain a security underlying the Basket.[23]

5. Customer Protection Rules

The Exchange does not propose to exempt basket trading from its customer protection rules for securities. Instead, the CHX proposes to clarify: (1) The impact basket trading will have on Exchange Rules that regulate the markets for component stocks; and (ii) the impact that certain stock rules will have on basket trading. First, the Exchange proposes that Article IX, Rule 5 shall not preclude a member or member organization from initiating basket transactions when the member or an associated party holds or has knowledge of an unexecuted order for one or more of a basket's component stocks. Second, the Exchange proposes that Article XXX, Rule 9 shall not preclude a specialist from initiating basket transactions solely because the basket contains his specialty stocks. Next, the Exchange proposes that Article VIII, Rule 20 shall not preclude a member organization from effecting transactions for the account of any customer in, or from making recommendations with respect to a basket that contains a security issued by the member organization or any corporation controlling, controlled by or under common control with the member organization. Fourth, the Exchange proposes that Article IX, Rule 15 shall not preclude a member or member organization who holds or has granted a put, call, straddle or option on one or more of a basket's component stocks from initiating basket purchases and sales on the Exchange for any account in which the member, member organization or any of its associated parties has a direct or indirect interest. Finally, the Exchange proposes that Article IX, Rule 3 shall not preclude a specialist from originating for a discretionary account orders for a basket that contains his specialty stock.

With respect to the confirmation of customer transactions, member organizations must provide details, not only as to the market basket transaction itself, but also information as to the identity, price and number of shares of each of the component stocks that comprise the basket. Specifically, proposed Rule 9(b) provides, among other things, that the confirmations must comply with Rule 10b–10(a) of the Act,[24] except that pursuant to an exemption from Rule 10b–10,[25] each confirmation must show the class of basket, the Exchange, basket price and number of baskets purchased or sold.

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[18] See Letter Requesting Exemptions, *infra* note 32. The Commission notes that, pursuant to Rule 11Ac1–1 under the Act, the Exchange must ensure the dissemination of real-time quotations and transaction reports for securities traded on its floor. The Exchange has not requested exemptive relief from Rule 11Ac1–1 for quotation and transaction reporting in the actual baskets traded on the Exchange floor and, therefore, the Exchange must provide real-time disseminations of quotations and transactions in baskets. The Commission has granted limited exemptive relief from the Rule 11Ac1–1 requirements, however, concerning the underlying securities in the CXM baskets when quotes or transactions are effected in the CXM basket. See Exemptive Relief Letter, *infra* note 42.

[19] For a more detailed discussion of the Exchange's proposal concerning the clearance and settlement of baskets, and the Commission's approval of those procedures, *See* Securities Exchange Act Release No. 33054 (October 15, 1993) (order approving File No. SR–MCC–93–3).

[20] *Id.*

[21] See Amendment No. 2 to the proposal, *supra* note 5. Amendment No. 2 also specifies when trading is a basket that has been subject to a halt or suspension by the CHX may resume. *See* proposed Article XXXVI, Rule 19(b).

[22] 15 U.S.C. 78*l*(k) (1988).

[23] See September Letter, *supra* note 10.

[24] 17 CFR 240.10b–10(a) (1991).

[25] See Exemptive Relief Letter, *infra* note 42. In its Exemptive Relief Letter, the Commission describes more fully the specific exemption it is providing with respect to Rule 10b–10 as it relates to customer confirmations for the CXM Basket, and the Commission's reasons for providing that exemption.

Proposed Rule 9(b) also provides that a member organization that participates in the National Institutional Delivery System of the Depositories may use the confirmations generated by that System to satisfy the requirements of proposed Rule 9 to the extent that the confirmations contain the information required to be furnished to customers, provided that the member firm will remain responsible for ensuring that all required information is furnished to its customers. Further, pursuant to proposed Rule 9 (b), each basket confirmation that contains less than complete information as to each component security purchased or sold must contain a statement that, upon request, the broker-dealer will furnish complete written information reflecting the identity, price, and number of shares of each of the component stocks included in the transaction. Finally, proposed Rule 9(b) provides that the additional information must be furnished as soon as practicable following the request, but in any event within five business days of the request, or if the transaction was more than thirty days prior to the request, within fifteen business days.

III. Discussion

A. Introduction

After careful review, the Commission believes that the CHX's market basket proposal is reasonably designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and, in general, protect investors and the public interest. For these reasons and for the additional reasons set forth below, the Commission finds that approval of the Exchange's proposed rule change relating to the trading of market basket contracts is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, in general, and the requirements of section 6(b)(5)[26] of the Act and the rules and regulations thereunder, in particular.

B. Benefits of Market Baskets

For many years, the Commission has been supportive of the exchanges' initiatives concerning the development of market basket facilities.[27] The Division of Market Regulation's Report on The October 1987 Market Break ("Staff Report"), and an NYSE-commissioned study entitled An Overview of Program Trading and Its Impact on Current Market Practices ("Katzenbach Report"), recommended, among other things, the listing and trading of a basket of stocks on an exchange as a means to enhance market efficiency and, possibly, the market's ability to absorb institutional portfolio trading.[28]

The Commission believes that the CXM Basket will provide investors with a cost efficient means to make investment decisions based on the direction of standardized measures of stock market segments and the stock market as a whole, and may provide stock market participants several advantages over existing methods of effecting program trades of stocks and transactions in portfolios of securities. For the reasons discussed below, the Commission finds that the market structure proposed by the CHX reasonably is designed to promote just and equitable principles of trade and fair and orderly markets. Furthermore, the Commission believes that market basket trading will not lead unduly toward a more fragmented and volatile market, and that the CHX proposal to trade market baskets is consistent with the development of an open and competitive national market system.

C. Price Dissemination and Reporting

The CHX proposes to disseminate basket last sale information and quotations through Network B and to require that the DPM disseminate quotes through CQS, thereby ensuring that all market participants will have ready access to market basket transaction reports and quotations. Rule 11Aa3–1 under the Act (the "Tape Rule")[29] requires that every national securities exchange file a reporting plan that would govern transaction reporting of certain securities traded on that exchange. Among other things, the Tape Rule precludes an exchange from disseminating transaction reports except pursuant to that plan. The CHX, along with the other national securities exchanges, has filed a plan ("CTA Plan") with the Commission pursuant to which the Exchange disseminates transaction reports in reported securities. The CTA Plan, however, does not contemplate or permit reporting in baskets. With respect to the Tape Rule, the Exchange has requested, among other things, that the Commission provide a limited exemption from the transaction reporting plan requirement, provided that the Exchange collects and disseminates transaction reports as it does with any other exclusive issue, thereby ensuring that customers have up-to-the-minute, last sale information with respect to the Basket. The Commission has granted this limited exemption.[30] The Commission believes that transaction reporting in the Basket which is performed identically to transaction reporting in CHX exclusive issues should provide sufficient information to the public concerning trades in the Basket.

Rule 11Ac1–1 under the Act (the "Quote Rule")[31] requires national securities exchanges to disseminate throughout the trading day bid and offer quotations with respect to reported securities traded on their floors. Consistent with the Quote Rule, the Exchange will ensure dissemination of Basket quotations through CQS, representing the highest bid price and lowest offer price at which any Exchange member is willing to buy or sell that basket on the floor throughout the trading day. The Exchange will disseminate this quotation information to vendors in the same manner it disseminates quotations with respect to its exclusive listings through CQS.[32] Moreover, the proposal requires DPMs and RMs to make firm quotes for market basket contracts which is consistent with the requirement in Commission Rule 11Ac1–1 that quotations be firm.

No quotes or last sale reports will be generated or disseminated for the individual constituent stocks comprising the market basket during the trading day. In order to ensure that the Tape Rule and the Quote Rule are not read to require the Exchange to disseminate transaction reports and quotations in the securities underlying the CXM Basket at the same time that transactions and quotations in the CXM Basket are generated, the Exchange has requested that the Commission provide exemptions from those rules with respect to the component securities

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[26] 15 U.S.C. 78f(b)(5) (1988).

[27] The Commission has approved proposed rule changes for the New York Stock Exchange, Inc., and for the Chicago Board Option Exchange which provide for the trading of market baskets on their floors. See Securities Exchange Act Release Nos. 27382 (October 26, 1989), 54 FR 45834 (October 31, 1989) (order approving File No. SR–NYSE–89–06) and 27383 (October 26, 1989), 54 FR 45846 (October 31, 1989) (order approving File No. SR–CBOE–88–20).

[28] Division of Market Regulation, The October 1987 Market Break (February 1988). See also Securities and Exchange Commission Recommendations Regarding the October 1987 Market Break contained in Testimony of David S. Ruder, Chairman, SEC, Before the U.S. Senate Committee on Banking, Housing, and Urban Affairs, on February 2, 1988.

[29] 17 CFR 240.11Aa3–1 (1991).

[30] See Exemptive Relief Letter, *infra* note 42.

[31] 17 CFR 240.11Ac1–1 (1991).

[32] See letter from George T. Simon, Foley & Lardner, to Diana Luka-Hopcos, Branch Chief, Commission, dated September 13, 1993 ("Letter Requesting Exemptions").

underlying the Basket.[33] The Commission has provided those exemptions as requested by the Exchange.[34]

The Tape Rule also requires an exchange to disseminate consolidated total daily trading volume. The CHX has requested a temporary exemption from this requirement.[35] For the first six months of basket trading, the CHX will not disseminate on a consolidated basis the total trading volume represented by basket trades. While the Commission is aware of the limited usefulness of price information on the underlying securities in the baskets, it believes that dissemination of the share volume in the underlying securities is important information and should be included in the daily consolidated volume for each of the underlying securities. Because this presents a number of technological difficulties for the CHX, the CHX has represented that it will attempt to cure its technology problems so that at the end of the first six months of Basket trading, the Exchange will be able to include end-of-day transaction volume in each component stock in the consolidated transactions volume figures.[36]

D. Market Structure

The Commission believes that the trading structure for market basket contracts is adequate to provide fair and orderly markets.[37] The Commission believes that the use of DPMs should help to ensure continuous quotations for the basket products. Moreover, supplemental market making support for baskets will be provided by potentially numerous market makers, the RMs. These market makers will be obligated to make markets, and, specifically, provide bid and/or offer quotations which will be subject to immediate acceptance.

The Commission believes the proposed financial requirements for the DPM and RMs to trade market basket contracts are appropriate. Specifically, the financial requirement for the DPM will ensure that the DPM has sufficient resources to perform effectively its market making obligations. Additionally, the Commission believes the extension of Exchange net capital requirements for market makers[38] in securities to RMs is sufficient to ensure adequate capital to support the potential equity demands on RMs. At the same time, these financial standards are not so high as to result in an inadequate number of market basket market makers. The Commission believes that the Exchange has balanced concerns regarding liquidity and required capital, and, accordingly, designed standards to ensure sufficient market making resources at the market basket trading post.

In regard to the physical location of market basket trading, the Commission believes that the Exchange's designation of a specified, fixed location of the CHX trading floor for CXM Basket trading, with adequate space around that area to accommodate a sizable "crowd" and facilities with which to transmit Basket and futures and index data to that crowd, is consistent with the Act. Specifically, the Commission believes that these elements of the Exchange's proposal should help to ensure that maintenance of fair and orderly markets in the CXM Basket, thereby promoting just and equitable principles of trade consistent with sections 11A(a)(1)(C), 11A(a)(2) and 6(b)(5) of the Act.

E. Application of Current Rules to Market Basket Contracts

The Commission believes that the application of the existing Exchange securities trading rules to market basket transactions will assist in the maintenance of a fair and orderly market for the new market basket contracts. Moreover, the Commission believes that the application of the current trading rules will promote just and equitable principles of trade at the market basket trading post and protect investors and the general public.

For example, because the baskets will be burst into component securities for clearance and settlement, the Commission believes that margin rules for customers, DPMs, and RMs should be based on current Exchange rules applicable to the underlying stocks involved in a market basket transaction.

The Commission recognizes that because transactions in market basket contracts result in the transfer of the underlying stocks, certain Exchange rules designed for securities contracts may not be entirely appropriate for the trading of market basket contracts. For example, the Commission believes that proposed Rule 19 regarding basket trading halts or suspensions appropriately enhances the CHX's Rules to provide for certain circumstances which may arise in the trading of market baskets. Specifically, as noted above, proposed Rule 19 allows the Exchange, to halt trading in the Basket when a substantial portion of the component securities' value cannot be ascertained, subject to specific provisions set forth in Rule 19, or whenever conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. The Commission believes that these provisions should help to ensure that basket pricing is linked efficiently to pricing in the underlying indexes, futures, and component securities. Moreover, the Commission believes that these provisions should help to ensure efficient settlement pricing of the component securities when they are burst into accounts. Finally, the Commission believes that the Exchange's proposal is consistent with the Act with regard to the prohibition of basket trading if such trading would result in a transaction in a security halted by the Commission pursuant to section 12(k) of the Act, and by requiring basket trading halts pursuant to the Exchange's Circuit Breaker provisions.[39]

The Commission also believes that the proposed rules regarding customer protection are appropriate for market basket contracts. The Commission recognizes that, because of the size of a market basket contract, it is unlikely that small, unsophisticated investors would buy them. The Commission notes, however, that except in areas where the Commission is granting exemptive relief, or approving proposed rules which limit the application of Exchange Rules designed to protect the public, the Exchange will apply substantially all of its customer protection rules to market basket transactions.

The Commission believes that proposed CHX Rule 15, which clarifies the interplay between stock trading and basket trading on the Exchange is appropriate to accommodate the trading of a standardized basket such as the CXM Basket. Specifically, as noted above, proposed Rule 15 provides that

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[33] *Id.*

[34] See Exemption Relief Letter, *infra* note 42.

[35] See Letter Requesting Exemptions, *supra* note 32.

[36] *Id.* The Commission expects the CHX to submit a proposed rule change to the Commission by March 15, 1994, which should either request an additional six month exemption from the end-of-day trade reporting requirement or propose a rule change which would implement end-of-day consolidated transaction reporting in the component securities underlying the Basket. If the Exchange requests an extension to this exemption, the Exchange also must report to the Commission on or before March 15, 1994, the status of the Exchange's efforts in resolving its technological difficulties concerning end-of-day reporting and the reasons for its continued inability to comply with the end-of-day consolidated trade reporting requirements.

[37] The Commission notes that the DPM system has been used successfully on the CBOE for Basket trading.

[38] See Exchange Article XI, Rule 3(b)(2).

[39] See Exchange Article IX, Rule 10A, Trading Halts Due to Extraordinary Market Volatility.

the following Exchange Rules shall not preclude member organizations or specialists in particular, where relevant, from participating in basket transactions where transactions in one or more of the underlying component securities would be prohibited: Exchange Article IX, Rule 5, Personal Selling and Purchasing Prohibited (specialists only); Exchange Article XXX, Rule 9, Dealings in Self-Interest Securities; Exchange Article VIII, Rule 20, Trading by a Member Corporation in Its Own or Its Parent Firm's Securities; Exchange Article IX, Rule 15, Dealings in Stocks on Put, Call, Straddle or Option; and Exchange Article IX, Rule 3, Discretion of Members Prohibited (specialists only).

The Commission believes that these proposed exceptions for members or specialists participating in basket transactions are appropriate measures to facilitate liquidity in a market of primarily sophisticated investors. Because the CXM Basket represents a correlative hedge to the MMI stock futures contract, the Commission believes that the number of component securities underlying the CXM Basket is sufficient to justify the limited preclusion of application of the Exchange Rules listed in proposed Rule 15. While the Commission is concerned that basket trading may provide an opportunity for traders to obtain positions in the component securities that might otherwise be prohibited, the Commission also recognizes that CXM Basket transactions and the unwinding of basket positions present trading strategies and histories which, subject to proper Exchange market surveillance monitoring, should serve to help ensure protection of customer interests and the public interest in general.

While the Commission is approving proposed Rule 15, the Commission expects the Exchange to undertake adequate surveillance procedures to ensure that basket trading does not create any opportunities for abuses which are prohibited under Exchange Rules, or the Act and the Rules thereunder. Moreover, the Commission will review the applicability of Rule 15 as it may relate to any other basket products the Exchange may propose to trade in the future. As noted above, the Exchange has represented that it will submit to the Commission a proposed rule change for approval prior to initiating trading in any other baskets of securities.[40] At that time, the Commission would reexamine the appropriateness of extending Rule 15 to any other basket which the Exchange may propose to trade.

F. Exemption Requests

The Exchange has requested that the Commission grant exemptions from or interpretive advise regarding, Sections 7 and 11(a)(1)(D) of the Act and Rules 10a–1, 10b–6, 10b–7, 10b–8, 10b–10, 10b–13, 11a1–1(T), 11Aa3–1, 11Aa3.2, and 11ac1–1 thereunder with respect to the trading of the CXM Basket.[41] Based on the Exchange's representations in its Letter Requesting Exemptive Relief and as discussed more fully by the Commission in its response to the Exchange, the Commission has provided the Exchange with the interpretive advice and exemptions requested with respect to those Rules.[42]

IV. Conclusion

The Commission believes that the market structure for trading market baskets is consistent with just and equitable principles of trade. Moreover, given the sophisticated character of stock portfolio trading that market basket trading is designed to capture, the Commission believes that the Exchange's chosen market structure is a fair and competitive market structure. Finally, the Commission's Section 19 authority and the Rule 19b–4 process allow the Commission and the Exchange sufficient flexibility to modify market basket trading in light of actual trading experience and any future developments.

Accordingly, based upon the aforementioned factors, the Commission finds that the Exchange's proposed rule change relating to the trading of market baskets is properly within its jurisdiction and consistent with the requirements of section 6(b)(5) of the Act and the rules and regulations thereunder.[43]

The Commission finds good cause for approving those portions of the proposal that were amended by Amendment Nos. 1, 2 and 3 prior to the thirtieth day after the date of publication of the amendments in the **Federal Register**. The original filing was the subject of a 30-day notice period and the amendments made only minimal changes to the proposal as noticed. In addition, accelerated approval is necessary because market basket trading is scheduled to begin on October 15, 1993. Because of the Commission's view of the benefits that may result from the trading of the CXM market baskets, the Commission believes a good cause finding is justified.

V. Solicitation of Comments

Interested persons are invited to subject written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC, 20549. Copies of such filing also will be available for inspection and copying at the principal office of the CHX. All submission should refer to file number SR–CHX–93–18, and should be submitted by November 12, 1993.

It is Therefore Ordered, Pursuant to section 19(b)(2) of the Act,[44] that the proposed rule change (SR–CHX–93–18) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[45]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–26004 Filed 10–21–93; 8:45 am]

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[40] See September Letter, *supra* note 10.

[41] See Letter Requesting Exemptions, *supra* note 32.

[42] See letter from Robert Colby, Deputy Director, Commission, to George T. Simon, Foley & Lardner, dated October 15, 1993 ("Exemptive Relief Letter").

[43] The Commission notes that approval of the proposed rule change is based upon a determination that the terms of market basket trading are consistent with the requirements of the Act. If the terms of the market basket contract, including the index multiplier, or market structure are changed in any material way, however, it would be necessary for the CHX to submit a proposed rule change in order to afford the public an opportunity to review and comment on the proposed modification and for the Commission to review its prior determination.

[44] 15 U.S.C. 78s(b)(2) (1988).

[45] 17 U.S.C. 200.30–3(a)(12) (1991).

[Release No. 34–33080; International Series Release No. 591; File No. SR–NASD–93–55]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc. Notice of Filing and Order Granting Accelerated Temporary Approval of Proposed Rule Change Relating to the Quotation Linkage With the London Stock Exchange.

October 15, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on October 12, 1993, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. SELF-REGULATORY ORGANIZATION'S STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

On October 2, 1987, the Commission issued an order approving operation of a market information linkage between the NASD and the London Stock Exchange ("LSE") (formerly, the International Stock Exchange of the United Kingdom and the Republic of Ireland) for a pilot term of two years.[2] This experimental linkage is designed to provide an interchange of quotation information ("linkage information") on about 740 securities ("linkage securities"); of that total, each marketplace has designated approximately half as its "pilot group" of linkage securities. NASD and LSE members that function as market makers in one or more of a subset of linkage securities that are quoted in both the Nasdaq and LSE dealer systems ("common issues") are authorized to access linkage information without paying a separate charge to receive it. Operation of the linkage in this fashion comports with the terms of the Commission's October 1987 Order. Most recently, the Commission authorized an extension of this pilot linkage through November 5, 1993, by approving File No. SR–NASD–93–27.[3]

Pursuant to section 19(b)(1) of the Act and Rule 19b–4 thereunder, the NASD submits this proposed rule change to obtain Commission approval of the NASD/LSE pilot linkage through May 5, 1994.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this rule filing is to obtain an interim extension of the Commission's temporary approval of the NASD/LSE linkage through May 5, 1994. Absent an extension, authorization for the linkage will expire as of November 5, 1993.

During the proposed extension, the NASD and LSE will continue to consider possible options regarding the linkage's future structure and operational capabilities in relation to the needs of the international investment community. These discussions may lead to a substantive enhancement of the linkage, the pursuit of another joint initiative, or a decision to act independently in developing international systems that are responsive to the business needs of the sponsors constituencies. Any decision to enhance the linkage or to develop jointly an alternative system will entail another Rule 19b–4 filing that will afford the Commission (and other interested parties) an opportunity to focus on the relevant policy and regulatory issues. Meanwhile, continuation of the pilot linkage, as proposed, would be supportive of the NASD's and LSE's efforts to define systems capable of accommodating cross-border trading more efficiently.

The NASD submits that the statutory bases for the NASD/LSE pilot linkage and the requested extension thereof are contained in sections 11A(a)(1)(B) and (C), 15A(b)(6), and 17A(a)(1) of the Act. Subsections (B) and (C) of section 11A(a)(1) set forth the Congressional goals of achieving more efficient and effective market operations, the availability of information with respect to quotations for securities and the execution of investor orders in the best market through the application of new data processing and communications techniques. Section 15A(b)(6) requires, inter alia, that the rules of the NASD be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market. Section 17A(a)(1) set forth the Congressional goal of linking all clearance and settlement facilities and reducing costs involved in the clearance and settlement process through new data processing and communications techniques. The NASD believes that the requested extension of the linkage's pilot operation is fully consistent with the policy goals articulated in the foregoing statutory provisions and with the Commission's efforts to advance the process of internationalization of securities markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

In its original release announcing interim approval of the NASD/LSE pilot linkage, the Commission referenced certain competitive concerns raised by Instinet Corporation ("Instinet") through counsel.[4] In response, the NASD, after consultation with the LSE, made a good faith effort to address those concerns by narrowing the universe of firms and terminals permitted access to linkage information at no cost. Those changes were reflected in File No. SR–NASD–87–20, which the Commission approved by issuing the October 1987 Order. Further, in File No. SR–NASD–89–44 (which resulted in extension of the linkage's authorization until December 1, 1990), the NASD submitted statistical and cost information relative to its participation in the pilot project. In the event that the NASD and LSE determine to seek permanent approval of, or materially enhance the linkage, every effort will be made to supply the Commission with the empirical data needed for its deliberations on the corresponding Rule 19b–4 filing.

With respect to the instant filing, the NASD believes that the proposed extension of the pilot linkage will not create any competitive burden *vis-à-vis* Instinet or any other vendor of securities market information. Moreover, Instinet and other interested parties will have

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 24870 (October 2, 1987), 52 FR 37084 (October 8, 1987), (the "October 1987 Order").

[3] Securities Exchange Act Release No. 32287 (May 5, 1993), 58 FR 28079 (May 12, 1993).

[4] See Securities Exchange Act Release No. 23188 (April 21, 1986), 51 FR 15999 (April 29, 1986). See also letter from Daniel T. Brooks, Counsel for Instinet, to John Wheeler, Secretary, SEC, dated April 16, 1986.

ample opportunity to comment on any subsequent Rule 19b–4 filing involving permanent approval or substantive enhancement of the linkage. Finally, during the requested extension, the sponsoring markets will not use linkage information for purposes of operating of an intermarket, automated execution system.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD requests that the Commission find good cause for approving this proposed rule change prior to the 30th day following publication of notice of the filing in the **Federal Register**, and, in any event, by November 5, 1993, the expiration of the linkage's present authorization. The NASD believes that the requested extension of the pilot period is fully consistent with the statutory provisions and policy goals referenced in Section III of this Rule 19b–4 filing. Moreover, the additional time will enable the sponsoring markets to consider various options and determine the future course of this experimental project. Those deliberations will focus on evaluating feasible enhancements to the linkage as well as alternative projects intended to advance the internationalization of securities markets through more efficient computerized systems. Under these circumstances, it would be counterproductive to allow the NASD/LSE linkage to cease operation. Accordingly, the NASD believes that good cause exists to accelerate the effectiveness of this rule change to a date no later than November 5, 1993.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of sections 11A(a)(1)(B) and (C), 15A(b)(6), and 17A(a)(1) and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof. The Commission believes that accelerated approval will avoid an unnecessary interruption of the pilot linkage while allowing the NASD and LSE to consider feasible options for enhancing the linkage or defining other automation initiatives to facilitate the efficient handling of international order flow. Accordingly, the Commission believes the NASD/LSE linkage should not be terminated while these efforts are ongoing.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number SR–NASD–93–55 should be submitted by November 12, 1993.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, temporarily approved thereby extending the NASD/LSE linkage until May 5, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–26037 Filed 10–21–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33061; International Series Release No. 592; File No. SR–NASD–93–57]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Filing and Order Granting Accelerated Temporary Approval of Proposed Rule Change Relating to the Informational Linkage With the Stock Exchange of Singapore Ltd.

October 15, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934,[1] ("Act"), notice is hereby given that on October 12, 1993, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD hereby files, pursuant to section 19(b)(1) of the Act and Rule 19b–4 thereunder, for Commission authorization to extend the operation of its Pilot Program with the Stock Exchange of Singapore Limited ("SES") for six months. The Pilot Program currently consists of an interchange of closing price and volume data on up to 35 Nasdaq securities that are also traded through the SES's facilities. With the thirteen hour time difference (twelve hours during EDT), the trading hours of the SES and NASD markets do not overlap. The end-of-day information being exchanged under the Pilot Program may assist in the establishment of opening prices the following business day. The Pilot Program currently involves no automated order routing or execution capabilities, and no such capability will be established during the proposed extension.

The Commission originally authorized operation of the NASD–SES Pilot Program for a two-year term[2] that was extended most recently through November 12, 1993.[3] Commission approval of the instant filing would permit continuation of this Pilot Program through May 12, 1994. During this interval, no more than 35 Nasdaq issues will be included in this Pilot Program. That figure corresponds to the number originally authorized at the inception of the Pilot Program in 1988. As noted in the last filing on this matter (File No. SR–NASD–93–28), the SES information being transmitted to the NASD reflects the SES's use of an order-driven trading system (known as the "CLOB").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any

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[8] 17 CFR 200.30–3(a)(12) (1992).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] See Securities Exchange Act Release No. 25457 (March 14, 1988), 53 FR 9138 (March 21, 1988).

[3] See Securities Exchange Act Release No. 32298 (May 12, 1993), 58 FR 29017 (May 18, 1993).

comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The NASD–SES Pilot Program commenced operation with the Commission's approval of File No. SR–NASD–87–40 on March 14, 1988. The principal features of this Program were fully described in Section 1 of that Form 19b–4, which description is hereby incorporated by reference.[4]

The current authorization of the NASD–SES Pilot Program will expire on November 12, 1993. The NASD, on its own as well as the SES's behalf, hereby requests that the Commission approve a further extension of the Pilot Program for six months, expiring on May 12, 1994.

During the proposed extension, each market will transmit to the other static price/volume information compiled at the end of each trading day on approximately 35 Nasdaq securities which are also traded on the SES. The NASD will transmit for each Pilot security the closing inside quotes, cumulative volume, last sale price and the closing quote of every Nasdaq market maker in each of the Pilot securities (collectively referred to as "NASD information"). In recognition of the SES's use of the order-driven CLOB system, the SES will transmit the following data elements for each Pilot security: Closing price (i.e., the price of the final transaction in the CLOB on that business day), the highest and lowest prices at which transactions were effected, and the aggregate volume (collectively referred to as "SES information").[5] Because all trading of Nasdaq securities also traded on the SES occurs in the CLOB, the price information sent to the NASD will reflect the prices of actual trades consummated by the automated matching of buy and sell orders resident in the CLOB system.

The CLOB is a fully automated trading system that was instituted by the SES in 1989. Prior to that time, the SES employed a quote-driven, market maker system similar to the Nasdaq System. Orders to buy and sell securities are entered into the CLOB through some 1,800 trading terminals on the premises of 26 SES member firms. The CLOB provides an electronic limit order file with open orders ranked by price and time in each security. When the terms of two orders match, the CLOB generates an automated execution accompanied by confirmations back to the originating brokers.

As noted in File No. SR–NASD–93–28, the SES intends to incorporate the Nasdaq pilot stocks into "CLOB International." The latter is a separate section of the SES market system for the trading of foreign issues that are not listed on the SES. These securities trade through the CLOB in the same manner as SES-listed securities. CLOB International currently includes the stocks of Malaysian, Hong Kong, and Philippine issuers. The SES regards inclusion of the Nasdaq pilot stocks in CLOB International as a logical step in the progression of the Pilot Program. Further, the SES believes that this step could stimulate greater trading interest in Nasdaq securities among Singapore investors. Accordingly, both the NASD and the SES desire to continue the Pilot Program.

The incorporation of Nasdaq securities into CLOB International will not alter the basic operation of the Pilot Program, namely, the interchange of static, end-of-day information on the Pilot securities. SES information will continue to be offered only to subscribers of Nasdaq Level 2/3 services.[6] Similarly, NASD information transmitted to Singapore will be available only on the terminals used by SES members to access the exchange's CLOB system. The original linkage agreement between the NASD and the SES will remain in effect for the term of the extended Pilot Program. That agreement, which provides for the sharing of regulatory information as needed, is believed adequate given the limited nature and limited scope of the Pilot Program.

Finally, the NASD acknowledges that any further enhancement to the Pilot Program, including the introduction of automated order routing and execution facilities, would require concurrent authorizations from the Commission and the Monetary Authority of Singapore. No such enhancement is planned for implementation during the requested extension.

The NASD believes that sections 11A(a)(1)(B) and (C), 15A(b)(6), and 17A(a)(1) of the Act provide the statutory basis for this proposed rule change. Subsections (B) and (C) of section 11A(a)(1) set forth the Congressional goals of achieving more efficient and effective market operations, the availability of information with respect to quotations for securities and the execution of investor orders in the best market through the application of new data processing and communications techniques. Section 15A(b)(6) requires, inter alia, that the rules of the NASD be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market. Finally, section 17A(a)(1) reflects the Congressional goals of linking all clearance and settlement facilities and reducing costs involved in the clearance and settlement process through new data processing and communications techniques. The NASD submits the extension of the Pilot Program will further these ends by providing the cooperative regulatory environment and operating experience needed for advancement of these goals in the context of internationalization of securities markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

The extended Pilot Program will permit the continued exchange of static market data on a limited group of Nasdaq securities between the NASD and the SES on a nonexclusive basis. The costs of supporting the Pilot Program are nominal, and the sponsoring markets absorb their respective costs. The market information being exchanged by the NASD and SES under the Pilot Program is deemed to constitute an exchange of equivalent value. Hence, no additional fee is paid by NASD and SES member firms for receipt of the static data being provided on Pilot securities.

The NASD submits that neither the structure nor operations of the present Pilot Program poses any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The NASD did not solicit or receive written comments on this rule proposal.

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[4] See also Securities Exchange Act Release No. 25063 (October 28, 1987), 52 FR 42167 (November 3, 1987).

[5] If no trades are effected in a Pilot security on a given day, the SES will transmit no data on that issue even if orders to buy or sell had been entered into the CLOB for possible execution.

[6] To retrieve this information, a Nasdaq subscriber must enter a discrete query through a Nasdaq Workstation device.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD requests that the Commission find, pursuant to section 19(b)(2) of the Act, good cause for approving the proposed rule change prior to the 30th day after the date of publishing notice of the filing, and in any event, by November 12, 1993. The NASD believes that accelerated approval is appropriate for the following reasons: (1) The experimental character of the Pilot Program and the need to maintain continuity in its operation; (2) the limited nature of the Pilot Program, both in terms of the number of Pilot securities and the amount of market information being exchanged; and (3) the limited utility of end-of-day, static information to the NASD and SES member firms capable of accessing, respectively, SES and NASD information. Moreover, during the period of the proposed extension, the sponsoring markets remain committed to exchange regulatory information whenever the need arises. Finally, if accelerated approval is not granted, the sponsors will be obliged to terminate this experimental program before its potential benefits can be realized in relation to the globalization of securities markets.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of sections 11A(a)(1)(B) and (C), 15A(b)(6), 17A(a)(1) and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publishing of notice of filing thereof. The Commission believes that accelerated approval is appropriate to maintain continuity in the Pilot Program and to allow the sponsors to continue to assess the impact of the trading of these securities in the international section of the SES's order-driven market system. Further, the Pilot Program is of a limited nature. Accordingly, the Commission believes that the Pilot Program should not be terminated under these circumstances.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD.

All submissions should refer to file number SR–NASD–93–57 and should be submitted by November 12, 1993.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, temporarily approved thereby extending the NASD–SES Pilot Program until May 12, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–26036 Filed 10–21–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33063; File No. SR–PHLX–93–18]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to the Listing of 2½ Point Strike Price Intervals for Equity Options With Strike Prices Below $35

October 18, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 7, 1993, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Sec" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Currently, the PHLX's rules allow the Exchange to list strike price intervals of $2.50 for equity options with strike prices of $25.00 or less, and intervals of $5.00 for stocks with strike prices over $25.00 and up to $200.00.[2] The PHLX proposes to amend Exchange Rule 1012, "Series of Options Open for Trading," by adding Commentary .04, which will allow the Exchange to list strike price intervals of $2.50 or greater for individual stock options with strike prices of less than $35.00, and intervals of $5.00 or greater for individual stock options with strike prices of $35.00 but less than $200.00.[3]

The text of the proposed rule change is available at the Office of the Secretary, PHLX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule changed. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Currently, the PHLX's rules allow the Exchange to list strike price intervals of $2.50 for equity options with strike prices of $25.00 or less, and intervals of $5.00 for stocks with strike prices over $25.00 and up to $200.00. The PHLX proposes to amend Exchange Rule 1012, "Series of Options Open for Trading," to allow the Exchange to list strike price intervals of $2.50 or greater for individual stock options with strike prices of less than $35.00 and intervals of $5.00 or greater where the strike price

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[7] 17 CFR 200.30–3(a)(12) (1992).

[1] The PHLX clarified its proposal by indicating that the proposed strike price interval of $5.00 or greater will apply to stock options with strike prices between $35.00 and $200.00. See Letter from Edith Hallahan, Special Counsel, Regulatory Services, PHLX, to Richard Zack Branch Chief, Options Regulations, Division of market Regulation ("Division"), commission, dated August 4, 1993 ("August 4 Letter").

[2] See Securities Exchange Act Release No. 21985 (April 25, 1985), 50 FR 18595 (order approving File Nos. SR–PHLX–85–9 and SR–PSE–85–9). See also Securities Exchange Act Release No. 21929 (April 10, 1985), 50 FR 15258 (order approving File Nos. SR–CBOE–85–1 and SR–Amex–85–6).

[3] See August 4 Letter, supra note 1.

is $35.00 but less than $200.00. The PHLX explains that the listing of $2.50 strikes for equity options trading between $25.00 and $35.00 would add two strike prices, 27½ and 32½, in affected issues.

Specifically, the PHLX states that 56 PHLX equity options would be affected by the proposal and that if two additional strikes prices were listed in all of these issues, a total of 896 new strike prices would be added, including both puts and calls on all four listed expiration months. The Exchange notes that there are two remaining Options Price Reporting Authority ("OPRA") strike price format codes, "Y" and "Z," not yet in use for equity options, which could be used to denote the 27½ and 32½ strike prices.

The Exchange believes that the addition of two new 2½ strike prices will stimulate customer interest by creating greater trading opportunity and flexibility. For example, 2½ point strikes will provide customers with the ability to more closely tailor investment strategies to the precise movement of the underlying security. An increase in customer interest will, in turn, enhance the depth and liquidity of the markets in the affected equity options.

The Exchange believes that the proposed rule change is consistent with section 6 of the Act, in general, and, in particular with section 6(b)(5), in that it is designed to promote just and equitable principles of trade as well as to protect investors and the public interest, by increasing trading opportunities which should, in turn, increase the depth and liquidity of the marketplace.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either received or requested.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by November 12, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–26054 Filed 10–21–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33054; File No. SR–MCC–93–3]

Self-Regulatory Organizations; Midwest Clearing Corp.; Order Approving a Proposed Rule Change Relating to the Processing of Basket Trades

October 15, 1993.

On August 18, 1993, Midwest Clearing Corporation ("MCC") filed with the Securities and Exchange Commission ("Commission") under section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] a proposed rule change (File No. SR–MCC–93–3) relating to the processing of basket trades.[2] The Commission published notice of this proposal in the **Federal Register** on September 7, 1993.[3] MCC filed technical amendments to its proposal on September 20, 1993,[4] and on October 12, 1993,[5] that did not require republication of notice. No public comments have been received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

MCC is amending its rules to enable it to process basket trades.[6] Specifically, MCC will process trades in a new basket product, the Chicago Basket ("CXM"), which will be traded on the Chicago Stock Exchange ("CHX"). The CXM will be comprised of twenty-five shares of each of the stocks included in the Chicago Mercantile Exchange's ("Merc") new stock index futures contract,[7] the MMI. The CXM will offer a highly correlative hedge to the MMI.[8]

MCC will accept locked-in basket trade data (i.e., compared trade data) from an exchange or other market place SRO on the day of the trade ("T").[9] For

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Simultaneous with the submission of is current proposal, MCC withdrew a previous proposed rule change, File No. SR–MCC–92–10, relating to the processing of basket trades. Notice of File No. SR–MCC–92–10 had been published on February 22, 1993. Securities Exchange Act Release No. 31850 (February 16, 1993), 58 FR 9581.

[3] Securities Exchange Act Release No. 32818 (August 27, 1993), 58 FR 47163.

[4] Amendment No. 1 clarified that the new basket will settle "regular way" unless negotiated otherwise by the parties. Letter from David T. Rusoff, Foley & Lardner, to Richard C. Strasser, Attorney, Division of Market Regulation ("Division"), Commission (September 17, 1993).

[5] Amendment No. 2 clarified that MCC will report to participants the securities components of their basket transactions prior to netting. Letter from David T. Rusoff, Foley & Lardner, to Jerry W. Carpenter, Branch Chief, Division, Commission (October 12, 1993).

[6] Under MCC's amended rules, a basket trade is defined as a trade in a group of securities that an exchange or other market place self-regulatory organization ("SRO") has designated as eligible for execution in a single trade. MCC Art. I, Rule 1.

[7] The Merc's MMI is a stock index futures contract which is based on the American Stock Exchange's Major Market Index. The Major Market Index is a broad-based, price-weighted index currently based on twenty stocks listed on the New York Stock Exchange. The MMI began trading on September 7, 1993, and replaced the stock index futures contract based on the Major Market Index that traded on the Chicago Board of Trade.

[8] A detailed description of the CXM is contained in CHX's proposal seeking approval to trade the basket. Securities Exchange Act Release Nos. 32731 (August 10, 1993), 58 FR 43665 (File No. SR–CHX–93–18) notice of filing of proposed rule change) and 33053 (October 15, 1993) (order approving proposed rule change).

[9] On the day following the basket trade ("T+1"), MCC will report to each participant its locked-in basket trade data. Reported information will include: (1) The quantity of basket purchases and sales; (2) the contra side of each basket trade; (3)

each participant, MCC will aggregate the trade data to arrive at an aggregate basket purchase figure and an aggregate basket sale figure. MCC then will "burst" the aggregated basket purchase transactions and the aggregated basket sale transactions into the component securities. The component securities will be entered into MCC's Continuous Net Settlement ("CNS") system for netting with each participant's other purchase and sale transactions in the same security.[10]

To process baskets, including the settlement of component securities, MCC will have to provide participants with appropriate values for the component securities. To do so, MCC will calculate a settlement price for each component security based on an algorithm that uses each component security's closing price on its primary market.[11] MCC will apply its current, standard trade recording fees based on transactions in the individual component stocks.

II. Discussion

The Commission believes that MCC's proposal is consistent with the Act and in particular with section 17A(b)(3)(F) thereunder.[12] That section requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, to assure the safeguarding of securities and funds that are in the clearing agency's custody or under its control or for which it is responsible, and to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.

MCC's proposal allows participants who wish to trade the CXM to utilize MCC's netting and guarantee services.[13] These services help to promote the prompt and accurate clearance and settlement of basket trades by limiting participants' exposure to their net, as opposed to their gross, deliver and receive obligations.

MCC's processing of basket transactions appears to have been designed in a manner consistent with its responsibilities under the Act to safeguard securities and funds in its custody or under its control. MCC participants who trade baskets will be subject to the same financial responsibility and reporting requirements as other MCC participants. Furthermore, because the baskets will be burst into their component securities for processing and MCC currently processes trades in the underlying component securities, MCC's existing risk management systems will apply to the processing of basket trades.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the Act and in particular with section 17A thereunder.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[14] that the proposed rule change (File No. SR–MCC–93–3) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–26006 Filed 10–21–93; 8:45 am]

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the security components of the basket trades; (4) the settlement value of each such security component; (5) the aggregate settlement value of all such components, determined after aggregating buy side and sell side transactions and bursting them into component parts; (6) any adjustments to basket trades or component securities; and (7) any other details that MCC may decide to report. MCC Art. II, Rule 1, Section 7.

[10] Aggregate buy side and aggregate sell side component securities will be entered into the CNS system (i.e., buy and sell sides will not be netted prior to entry in the CNS system). After the component securities are entered into the CNS system for netting, they will be reflected in MCC's regular CNS purchase and sales report. MCC Art. II, Rule 1, Section 8.

[11] The algorithm for calculating the settlement value of each component security in the CXM uses the following information:

(1) The market value of each component derived by multiplying the primary market closing price by the number of shares of each component;

(2) The total market value of the basket calculated by summing the market value of each component security;

(3) The percent value of each component security derived by dividing the total market value of the basket by the market value of the basket by the market value of each component security; and

(4) The settlement value of each component security calculated by multiplying the actual market value of the basket by the percent value of each component security.

[12] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[13] The Commission has recognized that the trading of securities baskets may benefit the securities system and its participants. Securities Exchange Act Release No. 27380 (October 26, 1989), 54 FR 45870 [File No. SR–NSCC–89–09] (order approving a proposed rule change providing for the National Securities Clearing Corporation's processing of basket trades). Among other things, such products have been cited as one way to moderate market volatility and to alleviate liquidity problems such as those experienced during the market decline of October of 1987. See *id.* at nn.11–12 and accompanying text; see also Division, The October 1987 Market Break 2–18 (February 1988).

[14] 15 U.S.C. 78s(b)(2) (1988).

[15] 17 CFR 200.30–3(a)(12) (1992).

[Release No. 34–33059; File No. SR–NASD–93–59]

Self-Regulatory Organizations; Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Elimination of the Professional Trading Account Rules for the Small Order Execution System

October 15, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 15, 1993, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Below is the text of the proposed rule change. Proposed deletions are in brackets.

SOES RULES

RULES OF PRACTICE AND PROCEDURE FOR THE SMALL ORDER EXECUTION SYSTEM

a) DEFINITIONS

* * * * *

[10. The term "professional trading account" shall mean

(A) an account in which five or more day trades have been executed through SOES during any trading day; or

(B) an account in which there has been a professional trading pattern in SOES as demonstrated by

(1) a pattern or practice of executing day trades;

(2) executing a high volume of day trades in relation to the total transactions in the account;

(3) executing a high volume of day trades in relation to the amount and value of securities held in the account;

(4) excessive frequency of short-term trading;

(5) excessive frequency of short sale transactions;

(6) existence of discretion; or

(7) direct or physical access to SOES execution capability or to Nasdaq Level 2 (NQDS) service.

11. The term "day trade" or "day trading" shall mean the execution through SOES of either one or both sides of offsetting trades in the same security for generally the same size during the same trading day.]

Subsections 12 and 13 renumbered 10 and 11, respectively.

* * * * *

(c) PARTICIPANT OBLIGATIONS IN SOES

* * * * *

3. SOES Order Entry Firms—

* * * * *

[(E) (i) No member or person associated with a member shall enter any order for execution in SOES on behalf of a professional trading account. The Association shall take into account the factors enumerated in Section (a)(10) in determining whether an account will be designated as a professional trading account.

(ii) A member will be presumed to be in compliance with Subsection (i) if (a) the member instructs persons associated with the member that no such person shall knowingly accept any order for entry into SOES from a professional trading account, and (b) the Association has not notified the member that the account has been classified as a professional trading account pursuant to subsection (iii) hereof.

(iii) Upon receiving written notice from the Association, a member shall report to the Association information concerning transactions entered in SOES by the firm and such other information as the Association may request. Based upon such information, the Association may identify to the member specific accounts as professional trading accounts.

(F) Article IX of the Code of Procedure shall apply to Order Entry Firms and other persons seeking review of the restrictions imposed due to the designation of a professional trading account, pursuant to this Subsection.]

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Association is proposing to eliminate the "professional trading account" rules found in the Rules of Practice and Procedure for the Small Order Execution System ("SOES Rules"). The professional trading account rules, adopted in 1988 [1] and amended in 1991,[2] were implemented in response to misuse of SOES by customers of brokers who, by reason of their day trading activities, were deemed to be professional traders. Because the NASD designed SOES to accommodate small investor orders with immediate executions from Nasdaq market makers, the NASD believed that the distinction between small investors and day traders was an appropriate and valid basis upon which to curtail access to market markers' capital through automated executions in SOES.

The NASD continues to believe that the distinction between investment activity and professional trading activity remains a valid regulatory distinction. A recent decision by the District of Columbia Court of Appeals,[3] however, remanded the 1991 professional trading account rule amendments to the SEC for further explanation and economic analysis. Although the SEC's approval of the rules was not vacated, the Court questioned whether the standards contained in the rules were unacceptably vague. In light of the concerns raised by the Court, the NASD has determined to withdraw the professional trading account rules.

Because of continuing concerns with SOES operations and the deleterious impact of SOES active trading firm volume on market volatility and spreads,[4] the NASD has submitted new rules to the Commission proposing across-the-board modifications to SOES that may curtail misuse of the system.[5] In addition, the NASD contemplates long-term modifications to SOES operations that will be submitted to the SEC for review. The NASD continues to believe that patterns of trading using SOES to lock in profits from momentary aberrations in pricing akin to arbitrage opportunities between different markets are not appropriate for an automated execution system designed for investor use and made mandatory for market makers in Nasdaq National Market System securities by NASD requirement. However, to eliminate confusion resulting from the current professional trading account definitions, the NASD is proposing to eliminate the rules and urges the Commission to approve the SOES proposals on file as soon as possible.

The NASD believes the proposed rule change is consistent with section 15A(b)(6) of the Act. Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and in general to protect investors and the public interest. By eliminating any confusion resulting from the current professional trading account standards, the NASD believes that the proposed rule change is fully consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions

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[1] Securities Exchange Act Release No. 26361 (December 15, 1988), 53 FR 51605 (December 22, 1988).

[2] Securities Exchange Act Release No. 29809 (October 10, 1991), 56 FR 52092 (October 17, 1991).

[3] *Timpinaro, et al.* v. *SEC*, (Current Transfer Binder) Fed. Sec. L. Rep. (CCH) ¶ 97,702 (D.C. Cir., Aug. 13, 1993).

[4] See Amendment No. 3 to SR–NASD–93–16, Securities Exchange Act Release No. 32313 (May 17, 1993), 58 FR 29647 (May 21, 1993).

[5] See SR–NASD–93–16, Securities Exchange Act Release No. 32143 (April 14, 1993), 58 FR 21484 (April 21, 1993).

should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by November 12, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-26007 Filed 10-21-93; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-19792; 812-8534]

Farm Bureau Life Insurance Co., et al.; Application for Exemption

October 15, 1993.

AGENCY: Securities and Exchange Commission (the "SEC" or the "Commission").

ACTION: Notice of application for exemptions under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Farm Bureau Life Insurance Company ("FB Life"), Farm Bureau Life Annuity Account (the "Account"), and FBL Marketing Services, Inc.

RELEVANT 1940 ACT SECTIONS: Order requested under section 6(c) for exemptions from sections 26(a)(2) and 27(c)(2).

SUMMARY OF APPLICATION: Applicants seek an order to permit them to deduct a mortality and expense risk charge from the assets of the Account, which funds individual flexible premium deferred variable annuity contracts.

FILING DATE: August 17, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 9, 1993, and should be accompanied by proof of service on the Applicants in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Farm Bureau Life Insurance Company, 5400 University Avenue, West Des Moines, Iowa 50266.

FOR FURTHER INFORMATION CONTACT: C. Christopher Sprague, Senior Counsel, at (202) 504-2802, or Michael V. Wible, Special Counsel, at (202) 272-2026, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. FB Life is a stock life insurance company that was incorporated in Iowa in 1944. FB Life's outstanding voting stock is owned by Iowa Farm Bureau Federation, Farm Bureau Mutual Insurance Company (an Iowa mutual property and casualty insurance company), and Rural Mutual Insurance Company (a Wisconsin mutual property and casualty company). FB Life is engaged principally in the offering of life insurance policies, disability income and other health insurance policies, and annuity contracts. FB Life is admitted to do business in Iowa, Minnesota, Nebraska, South Dakota, Utah, and Wisconsin. FB Life is the depositor and sponsor of the Account, as those terms have been interpreted by the Commission with respect to life insurance company separate accounts.

2. On July 26, 1993, FB Life established the Account as a separate investment account under Iowa law to fund individual flexible premium deferred variable annuity contracts (the "Contracts"). The Account is registered under the 1940 Act as a unit investment trust, and has the following six subaccounts: The Growth Common Stock Subaccount, High Grade Bond Subaccount, High Yield Bond Subaccount, Money Market Subaccount, Managed Subaccount, and Blue Chip Subaccount (collectively, the "subaccounts"). Under Iowa law, the assets of the Account equal to the reserves and other Contract liabilities are owned by FB Life, but are held separately from all other assets of FB Life for the benefit of owners of, and the persons entitled to payments under, the Contracts. Consequently, such assets are not chargeable with liabilities arising out of any other business FB Life may conduct. The income, gains and losses, realized and unrealized, from the assets of the Account will be credited to or charged against the Account, without regard to other income, gains or losses of FB Life. The Account meets the definition of a "separate account" in Rule 0-1(e) under the 1940 Act.

3. Each subaccount will invest exclusively in shares of a designated investment portfolio of the FBL Variable Insurance Series Fund (the "Fund"). In the future, FB Life may establish other subaccounts, which will invest in specified portfolios of the Fund or other similar funds. The Fund was organized as a Massachusetts business trust under a declaration of trust dated November 3, 1986, and is registered under the 1940 Act as an open-end diversified management investment company. The Fund is a series investment company that is comprised of the following six portfolios: Growth Common Stock Portfolio, High Grade Bond Portfolio, High Yield Bond Portfolio, Managed Portfolio, Money Market Portfolio, and Blue Chip Portfolio.

4. The Contracts may be purchased on a non-tax qualified basis, or they may be purchased and used in connection with retirement plans, including retirement programs described in section 401(a) or section 403(b) of the Internal Revenue Code of 1986, as amended (the "Code") or as individual retirement annuities that qualify for favorable federal income tax treatment under section 408 of the Code. The Contracts require a minimum initial premium payment of $1,000. Subsequent premium payments must be at least $50. The Contract owner can allocate premium payments to one or more subaccounts, each of which will invest in a corresponding portfolio of the Fund. The Contract owner also can allocate premium payments to the Declared Interest Option, which is part of FB Life's general account, and such payments will be credited with interest as provided for in the Contracts.

5. Prior to the retirement date, a Contract owner may transfer cash values among the subaccounts or from a subaccount to the Declared Interest Option an unlimited number of times, or may surrender all or a portion of the cash value at any time. A Contract owner may transfer cash value from the Declared Interest Option to the Account once per Contract year. Transfers must be for amounts of at least $100, and partial surrenders must be for amounts

of at least $500. FB Life reserves the right to impose a $25 charge for each transfer request after the first request in each Contract year. Applicants represent that this charge will be deducted in reliance on Rule 26a–1 under the 1940 Act, and represents reimbursement only for administrative costs expected to be incurred over the life of the Contract. FB Life does not anticipate making any profit from this charge.

6. The Contract provides for a series of annuity payments beginning on the retirement date. The Contract owner may select from five fixed annuity payment options.

7. If the annuitant (who is always the Contract owner) dies prior to the retirement date, a death benefit is payable to the beneficiary upon receipt of due proof of death and proof that the annuitant died prior to the retirement date. The death benefit is equal to the greater of the cash value on the date of receipt of due proof of death or the premiums paid, less partial surrenders (including any applicable surrender charge).

8. FB Life will impose an annual administrative charge of $30, which will be deducted from the Contract's cash value on the Contract date and on each Contract anniversary prior to the retirement date, to compensate FB Life for the administrative services provided to Contract owners. This charge is guaranteed not to increase for the duration of the Contract. Applicants represent that this charge will be deducted in reliance on Rule 26a–1 under the 1940 Act. FB Life does not anticipate making any profit from this charge. No administrative charge is deducted during the annuity period.

9. In order to permit investment of the entire initial premium payment, FB Life does not deduct sales charges at the time of investment. However, a contingent deferred sales charge of up to 6% of the amount withdrawn is imposed on certain partial or full surrenders of cash value and upon election of certain annuity payment options during the first six Contract years to cover expenses relating to the sale of the Contracts, including commissions payable to registered representatives and other promotional expenses. The amount of this charge decreases by one percent each year that the Contract is in force. The aggregate contingent deferred sales charges are guaranteed never to exceed 8.5% of the premium payments. FB Life does not anticipate that the contingent deferred sales charges will generate sufficient revenues to pay the cost of distributing the Contracts. If these charges are insufficient to cover distribution expenses, the deficiency will be met from FB Life's general account assets, which may include amounts derived from the charge for mortality and expense risks discussed below.

10. FB Life seeks to impose a daily charge to compensate it for bearing certain mortality and expense risks in connection with the Contracts. This charge will be equal to an effective annual rate of 1.25% of the value of the net assets in the Account. Of that charge, approximately .86% is attributable to mortality risks and .39% is attributable to expense risks. FB Life guarantees that this charge will never exceed 1.25%. If the mortality and expense risk charge is insufficient to cover actual costs and assumed risks, the loss will fall on FB Life. Conversely, if the charge is more than sufficient to cover costs, any excess will be profit to FB Life. FB Life currently anticipates making a profit from the charge.

11. The mortality risks borne by FB LIfe arise from its contractual obligation to make annuity payments (determined in accordance with the annuity tables and other provisions contained in the Contract) regardless of how long all annuitants or any individual annuitant may live. This undertaking assures that neither an annuitant's own longevity, nor an improvement in general life expectancy, will adversely affect the monthly annuity payments that the annuitant will receive under the Contract. FB Life also incurs a risk in connection with the death benefit guarantee. On the death of the annuitant (who is always the owner), FB Life will pay the greater of (a) the cash value, or (b) premium payments (net of withdrawals, including applicable surrender charges). There is no extra charge for this guarantee. The expense risk assumed by FB Life is the risk that FB Life's actual administration costs will exceed the amount recovered through the administrative charge.

12. FB Life will not make a deduction for premium taxes. FB Life reserves the right, however, to deduct such taxes from cash values. No charges are currently made for other federal, state, or local taxes that FB Life incurs or that may be attributable to the Account or the Contracts. FB Life reserves the right, however, to deduct a charge in the future for any such tax or economic burden on it resulting from application of the tax laws that it determines to be properly attributable to the Account or the Contracts.

Applicants' Legal Analysis

1. Applicants request that the Commission, pursuant to section 6(c) of the 1940 Act, grant exemptions from the provisions described below to the extent necessary to permit the assessment of the daily charge for mortality and expense risks. Applicants state that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Section 26(a)(2)(C) provides that no payment to the depositor of, or principal underwriter for, a registered unit investment trust shall be allowed the trustee or custodian as an expense except compensation, not exceeding such reasonable amount as the Commission may prescribe, for performing bookkeeping and other administrative duties normally performed by the trustee or custodian. Section 27(c)(2) prohibits a registered investment company or a depositor or underwriter for such company from selling periodic payment plan certificates unless the proceeds of all payments on such certificates, other than sales loads, are deposited with a trustee or custodian having the qualifications prescribed in section 26(a)(1), and are held by such trustee or custodian under an agreement containing substantially the provisions required by sections 26(a)(2) and 26(a)(3) of the 1940 Act. Applicants request an exemptive order because the proposed mortality and expense risk charge is not a bookkeeping or administrative charge allowed by sections 26(a)(2) and 27(c)(2).

3. Applicants submit that FB Life is entitled to reasonable compensation for its assumption of mortality and expense risks. Applicants represent that the charge of up to 1.25% under the Contracts made for mortality and expense risks is consistent with the protection of investors because it is a reasonable and proper insurance charge. As described above, in return for this amount, FB Life guarantees certain risks in the Contracts. The mortality and expense risk charge is a reasonable charge to compensate FB Life for the risk that annuitants under the Contracts will live longer than has been anticipated in setting the annuity rates guaranteed in the Contracts, for the risk that the cash value will be less than the death benefit, and for the risk that administrative expenses will be greater than amounts derived from the administrative charge.

4. FB Life represents that the charge of 1.25% for mortality and expense risks is within the range of industry practice with respect to comparable annuity products. This representation is based upon FB Life's analysis of publicly available information about similar

industry products, taking into consideration such factors as current charge levels, the existence of charge level guarantees, and guaranteed annuity rates. FB Life will maintain at its administrative offices, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey.

5. Applicants acknowledge that the proceeds of surrender charges may be insufficient to cover all costs relating to the distribution of the Contracts. Applicants also acknowledge that if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be viewed by the Commission as being offset by distribution expenses not reimbursed by the sales charge. FB Life has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Account and the Contract owners. The basis for such conclusion is set forth in a memorandum which will be maintained by FB Life at its administrative offices, and will be available to the Commission. FB Life also represents that the Account will only invest in management investment companies which undertake, in the event such company adopts a plan under Rule 12b–1 to finance distribution expenses, to have a board of directors (or trustees), a majority of whom are not interested persons of the company, formulate and approve any such plan under Rule 12b–1.

Applicants' Conclusion

Applicants request exemptions from sections 26(a)(2) and 27(c)(2) to the extent necessary to permit them to deduct on a daily basis a charge equal to 1.25% annually of the assets of the Account for the assumption of mortality and expense risks described herein. For the reasons set forth above, Applicants believe that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the purpose fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–26008 Filed 10–21–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19793; 812–8504]

Gruntal & Co., Inc.; Temporary Order and Notice of Application

October 18, 1993.

AGENCY: Securities and Exchange Commission (the "SEC" or "Commission").

ACTION: Temporary order and notice of application for permanent order of exemption under the Investment Company Act of 1940 (the "Act").

APPLICANT: Gruntal & Co., Incorporated.

RELEVANT ACT SECTIONS: Exemption from section 9(a) under section 9(c).

SUMMARY OF APPLICATION: Applicant has been granted a temporary conditional order, and has requested a permanent conditional order, under section 9(c) exempting applicant from section 9(a) to the extent necessary to permit applicant to employ an individual who is subject to a securities related injunction.

FILING DATE: The application was filed on October 12, 1993.

HEARING OR NOTIFICATION OF HEARING: Interested persons may request a hearing on the application by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 12, 1993, and should be accompanied by proof of service on applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; Applicant, 14 Wall Street, New York, NY 10005.

FOR FURTHER INFORMATION CONTACT: John V. O'Hanlon, Staff Attorney, at (202) 272–3922, or Elizabeth G. Osterman, Branch Chief, at (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a securities brokerage and investment banking firm. Applicant also is a registered investment adviser. Applicant serves as a selected dealer for various registered open-end investment companies, and as an investment adviser to individuals and entities other than registered investment companies. Applicant states that it could be construed to be a principal underwriter of various unit investment trusts.

2. Applicant proposes to employ Robert J. DeCanio ("DeCanio") as a registered representative, subject to receiving the requested exemption. Decanio was employed by Shearson Lehman Bros. Inc. ("Shearson") from 1969 until April 12, 1993.

3. In 1976, DeCanio was permanently enjoined from engaging in certain manipulative or deceptive practices in connection with the offer or sale of securities. DeCanio consented to the injunction in a suit brought by the Commission alleging violations of section 17(a) of the Securities Act of 1933, and section 10(b) of the Securities Exchange Act of 1934 and rule 10b–5 thereunder. *SEC* v. *Orofino*, 76 Civ. 5553 (S.D.N.Y.), Litigation Release No. 7709 (Dec. 27, 1976). The Commission's complaint alleged that in 1975 DeCanio was offered and received stock in Tucker Drilling Company Inc. as compensation for his efforts in soliciting purchasers of Tucker's stock, and that DeCanio failed to disclose the compensation to the prospective purchasers of Tucker's stock. DeCanio also was suspended from association with any broker, dealer, or investment company for a period of sixty days under a settlement of an administrative proceeding instituted by the Commission involving the same conduct.

4. In 1988 and 1989, DeCanio was involved in two arbitration proceedings arising from customer complaints, and a customers complaint which did not result in a formal arbitration proceeding but was settled. One of the arbitration proceedings was settled for a payment by Shearson of $100,000. The other proceeding resulted in an award against the respondents of $65,000, which was paid by Shearson. The customer complaint that did not result in a formal arbitration proceeding was settled for the payment by Shearson of $175,000. Shearson assessed 45% of the $175,000 against DeCanio.

5. Applicant notes that it has extensive compliance and registration procedures to ensure that prospective employees who are subject to a statutory disqualification under section 9 of the Act do not become employed by applicant until the section 9 issues are appropriately resolved.

Applicant's Legal Analysis

1. Section 9(a)(2) of the Act, in pertinent part, prohibits any person who has been enjoined from engaging in or

continuing any conduct or practice in connection with the purchase or sale of a security from acting as an employee, officer, director, member of an advisory board, investment adviser, or depositor of any registered investment company, or principal underwriter for any registered open-end company, registered unit investment trust, or registered face amount certificate company. A company with an employee or other affiliated person ineligible to serve in any of these capacities under section 9(a)(2) is similarly ineligible under section 9(a)(3).

2. Section 9(c) provides that the Commission shall grant an application for an exemption from the disqualification provisions of section 9(a), either unconditionally or on an appropriate temporary or other conditional basis, if it is established that these provisions, as applied to the applicant, are unduly or disproportionally severe or that the conduct of the applicant has been such as not to make it against the public interest or protection of investors to grant such application.

3. If DeCanio becomes an employee of applicant, applicant will be subject to the disqualification provisions of section 9(a). Applicant requests (a) a temporary exemption under section 9(c) from the provisions of section 9(a) for a period of 90 days following the date of entry of the temporary order to relieve applicant from any ineligibility under section 9(a) by reason of the employment by applicant of DeCanio; and (b) a permanent order under section 9(c) granting the requested relief.

4. Applicant asserts that the application of the prohibitions of section 9(a) to applicant by reason of the employment of DeCanio would be unduly and disproportionately severe. Applicant also asserts that the conduct of applicant and DeCanio has been such as to make it not against the public interest or the protection of investors to grant the requested relief.

5. Applicant states that DeCanio will not serve in any capacity related in any way to the provision of investment advice to any registered investment company or to acting as principal underwriter to any registered open-end investment company or as principal underwriter or depositor to any registered unit investment trust.[1] DeCanio will not be a corporate officer of applicant or serve in a policy-making role or participate in the management or administrative activities of applicant relating to registered investment companies.

6. Applicant states that the conduct complained of by the Commission on the part of DeCanio did not relate to investment company activities. Applicant notes that the injunction against DeCanio was entered more than 16 years ago. DeCanio has not been subject to similar action, nor to the knowledge of applicant have any complaints (other than the complaints described above) been filed against DeCanio with the Commission, any self-regulatory organization, or any state securities commission, since the date of the injunction.

7. Finally, applicant asserts that the balance of fairness requires that the requested relief be granted. If the exemption is not granted, applicant will not offer to employ DeCanio because to do so would subject applicant to a section 9(a) bar on investment company activities. Consequently, DeCanio would be cut off from his livelihood and his customers would lose the benefit of continuity in service.

Applicant's Condition

Applicant agrees that any order granted by the Commission pursuant to the application will be subject to the condition set forth below:

Applicant will not employ DeCanio in any capacity related directly to the provision of investment advisory services for registered investment companies, or acting as a principal underwriter for a registered open-end investment company, or as a principal underwriter or depositor for a registered unit investment trust.

Temporary Order

The Division of Investment Management, pursuant to delegated authority, has considered the matter and finds, under the standards of section 9(c), that applicant has made the necessary showing to justify granting a temporary exemption. Accordingly,

It is ordered, under section 9(c) of the Act, that, subject to the conditions set forth above, applicant is hereby temporarily exempted from the provisions of section 9(a) of the Act until the earlier of January 16, 1994 or the date on which the Commission takes final action on the application for an order granting applicant a permanent exemption from the provisions of section 9(a).

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–26056 Filed 10–21–93; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 19798; 811–6427]

MFS Utilities Fund; Application

October 18, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 ("Act").

APPLICANT: MFS Utilities Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on October 8, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 15, 1993 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 500 Boylston Street, Boston, Massachusetts 02116.

FOR FURTHER INFORMATION CONTACT: James E. Sanderson, Staff Attorney, at (202) 272–7027, or C. David Messman, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

1. Applicant is a non-diversified open-end management investment company organized as a Massachusetts business trust. On October 4, 1991, applicant filed a notification of

[1] Applicant states that it expects that DeCanio will be involved to some degree in the retail sale of investment company securities.

registration pursuant to section 8(a) of the Act and a registration statement pursuant to the Securities Act of 1933. The registration statement became effective on February 6, 1992, and applicant commenced its initial public offering on or about the effective date.

2. On June 25, 1993, the applicant and MFS Series Trust VI entered into an agreement for the purchase of the applicant assets. The Agreement provided that applicant would transfer all of its assets and liabilities to the MFS Utilities Fund (the "Acquiring Fund"), a portfolio of MFS Series Trust VI, in exchange for Class A shares of beneficial interest of the Acquiring Fund.

3. On June 9, 1993, applicant's board of trustees approved the reorganization. In accordance with rule 17a–8 of the Act, applicant's trustees determined that the sale of applicant's assets to the Acquiring fund was in the best interests of applicant shareholders, and that the interests of the existing shareholders would not be diluted as a result.

4. Definitive proxy materials soliciting shareholder approval of the reoganization were filed with the SEC on July 6, 1993 and were mailed to shareholders on or about June 25, 1993. The reorganization was approved, in accordance with Massachusetts law, by applicant shareholders at a meeting held on August 20, 1993.

5. On September 7, 1993, the reorganization was consummated. Applicant transferred all its assets and liabilities to the Acquiring fund. In exchange for $37,925,556.25 of net assets transferred to the Acquiring Fund, applicant received 4,841,554.552 Class A shares at a net asset value per share of $7.83. The exchanges were made at net asset value determined as of the opening of business on September 7, 1993. The shares received in exchange for applicant's assets were distributed to applicant's shareholders pro rata in accordance with their respective interests in applicant.

6. The Acquiring Fund assumed all expenses in connection with the reorganization. These expenses included legal, accounting, printing, transfer agency, proxy solicitor and other expenses totalling approximately $19,424.

7. As of the date of the amended application, applicant had no shareholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–26052 Filed 10–21–93; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 19796; 811–4578]

MFS Managed Sectors Fund; Application

October 18, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 ("Act").

APPLICANT: MFS Managed Sectors Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on October 8, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 15, 1993 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 500 Boylston Street, Boston, Massachusetts 02116.

FOR FURTHER INFORMATION CONTACT: James E. Anderson, Staff Attorney, at (202) 272–7027, or C. David Messman, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representatives

1. Applicant is a non-diversified open-end management investment company organized as a Massachusetts business trust. On February 5, 1986, applicant filed a notification of registration pursuant to section 8(a) of the Act. On January 31, 1986, applicant filed a registration statement pursuant to the Securities Act of 1933. The registration statement became effective on April 29, 1986, and applicant commenced its initial public offering on or about the effective date.

2. On April 14, 1993, the applicant and MFS Series Trust I entered into an agreement for the purchase of the applicant's assets. The Agreement provided that applicant would transfer all of its assets and liabilities to the MFS Managed Sectors Fund (the "Acquiring Fund"), a portfolio of MFS Series Trust I, in exchange for Class A shares of beneficial interest of the Acquiring Fund.

3. On April 14, 1993, applicant's board of trustees approved the reorganization. In accordance with rule 17a–8 of the Act, applicant's trustees determined that the sale of applicant's assets to the Acquiring Fund was in the best interests of applicant's shareholders, and that the interests of the existing shareholders would not be diluted as a result.

4. Definitive proxy materials soliciting shareholder approval of the reorganization were filed with the SEC on June 16, 1993 and were mailed to shareholders on or about that date. The reorganization was approved, in accordance with Massachusetts law, by applicant's shareholders at a meeting held on August 3, 1993.

5. On September 20, 1993, the reorganization was consummated. Applicant transferred all its assets and liabilities to the Acquiring Fund. In exchange for $142,822,786.80 of net assets transferred to the Acquiring Fund, applicant received 9,110,083.872 Class A shares at a net asset value per share of $15.67. The exchanges were made at net asset value determined as of the close of business on September 17, 1993. The shares received in exchange for applicant's assets were distributed to applicant's shareholders pro rata in accordance with their respective interests in applicant.

6. The applicant and the Acquiring Fund each assumed its own expenses in connection with the reorganization. These expenses included legal, accounting, printing, transfer agency, proxy solicitor and other expenses totalling approximately $70,072, borne by applicant, and $83,958, borne by the Acquiring Fund.

7. As of the date of the amended application, applicant had no shareholders, assets, or liabilities. Applicant is not a party to any litigation

or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–26051 Filed 10–21–93; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 19795; 811–5507]

MFS Lifetime Gold & Natural Resources Fund; Application

October 18, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 ("Act").

APPLICANT: MFS Lifetime Gold & Natural Resources Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on October 8, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 15, 1993 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 500 Boylston Street, Boston, Massachusetts 02116.

FOR FURTHER INFORMATION CONTACT: James E. Anderson, Staff Attorney, at (202) 272–7027, or C. David Messman, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a non-diversified open-end management investment company organized as a Massachusetts business trust. On March 18, 1988, applicant filed a notification of registration pursuant to section 8(a) of the Act and a registration statement pursuant to the Securities Act of 1933. The registration statement became effective on July 20, 1988, and applicant commenced its initial public offering on or about the effective date.

2. On June 3, 1993, the applicant and MFS Series Trust II entered into an agreement for the purchase of the applicant's assets. The Agreement provided that applicant would transfer all of its assets and liabilities to the MFS Gold & Natural Resources Fund (the "Acquiring Fund"), a portfolio of MFS Series Trust II, in exchange for Class B shares of beneficial interest of the Acquiring Fund.

3. On April 14, 1993, applicant's board of trustees approved the reorganization. In accordance with rule 17a–8 of the Act, applicant's trustees determined that the sale of applicant's assets to the Acquiring Fund was in the best interests of applicant's shareholders, and that the interests of the existing shareholders would not be diluted as a result.

4. Definitive proxy materials soliciting shareholder approval of the reorganization were filed with the SEC on June 14, 1993 and were mailed to shareholders on or about that date. The reorganization was approved, in accordance with Massachusetts law, by applicant's shareholders at a meeting held on July 30, 1993.

5. On September 7, 1993, the reorganization was consummated. Applicant transferred all its assets and liabilities to the Acquiring Fund. In exchange for $20,210,779.15 of net assets transferred to the Acquiring Fund, applicant received 3,344,691.345 Class B shares at a net asset value per share of $6.04. The exchanges were made at net asset value determined as of the opening of business on September 7, 1993. The shares received in exchange for applicant's assets were distributed to applicant's shareholders pro rata in accordance with their respective interests in applicant.

6. The Acquiring Fund assumed all expenses in connection with the reorganization. These expenses included legal, accounting, printing, transfer agency, proxy solicitor and other expenses totalled approximately $17,076.

7. As of the date of the amended application, applicant had no shareholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–26050 Filed 10–21–93; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 19794; 811–3704]

MFS Special Fund; Application

October 18, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 ("Act").

APPLICANT: MFS Special Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on October 8, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 15, 1993 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 500 Boylston Street, Boston, Massachusetts 02116.

FOR FURTHER INFORMATION CONTACT: James E. Anderson, Staff Attorney, at (202) 272–7027, or C. David Messman, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the

application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a diversified open-end management investment company organized as a Massachusetts business trust. On March 31, 1993, applicant filed a notification of registration pursuant to section 8(a) of the Act and a registration statement pursuant to the Securities Act of 1933. The registration statement became effective on May 31, 1993, and applicant commenced its initial public offering on or about the effective date.

2. On June 9, 1993, the applicant and MFS Series Trust VII entered into an agreement for the purchase of the applicant's assets. The Agreement provided that applicant would transfer all of its assets and liabilities to the MFS Value Fund (the "Acquiring Fund"), a portfolio of MFS Series Trust VII, in exchange for Class A shares of beneficial interest of the Acquiring Fund.

3. On April 21, 1993, applicant's board of trustees approved the reorganization. In accordance with rule 17a–8 of the Act, applicant's trustees determined that the sale of applicant's assets to the Acquiring Fund was in the best interests of applicant's shareholders, and that the interests of the existing shareholders would not be diluted as a result.

4. Definitive proxy materials soliciting shareholder approval of the reorganization were filed with the SEC on June 18, 1993 and were mailed to shareholders on or about that date. The reorganization was approved, in accordance with Massachusetts law, by applicant's shareholders at a meeting held on August 5, 1993.

5. On September 7, 1993, the reorganization was consummated. Applicant transferred all its assets and liabilities to the Acquiring Fund. In exchange for $131,460,972.30 of net assets transferred to the Acquiring Fund, applicant received 12,280,366.94 Class A shares at a net asset value per share of $10.71. The exchange were made at net asset value determined as of the opening of business on September 7, 1993. The shares received in exchange for applicant's assets were distributed to applicant's shareholders pro rata in accordance with their respective interests in applicant.

6. The Acquiring Fund assumed all expenses in connection with the reorganization. These expenses included legal, accounting, printing, transfer agency, proxy solicitor and other expenses totalling approximately $17,778.

7. As of the date of the amended application, applicant had no shareholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–26049 Filed 10–21–93; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 19797; 811–4277]

MFS California Municipal Bond Fund; Application

October 18, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 ("Act").

APPLICANT: MFS California Municipal Bond Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on October 8, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 15, 1993 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 500 Boylston Street, Boston, Massachusetts 02116.

FOR FURTHER INFORMATION CONTACT: James E. Anderson, Staff Attorney, at (202) 272–7027, or C. David Messman, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a non-diversified open-end management investment company organized as a Massachusetts business trust. On April 9, 1985, applicant filed a notification of registration pursuant to section 8(a) of the Act and a registration statement pursuant to the Securities Act of 1933. The registration statement became effective on June 10, 1985, and applicant commenced its initial public offering on or about the effective date.

2. On June 3, 1993, the applicant and MFS Municipal Series Trust entered into an agreement for the purchase of the applicant's assets. The Agreement provided that applicant would transfer all of its assets and liabilities to the MFS California Municipal Bond Fund (the "Acquiring Fund"), a portfolio of MFS Municipal Series Trust, in exchange for Class A shares of beneficial interest of the Acquiring Fund.

3. On April 14, 1993, applicant's board of trustees approved the reorganization. In accordance with rule 17a–8 of the Act, applicant's trustees determined that the sale of applicant's assets to the Acquiring Fund was in the best interests of applicant's shareholders, and that the interests of the existing shareholders would not be diluted as a result.

4. Definitive proxy materials soliciting shareholder approval of the reorganization were mailed to shareholders on or about June 3, 1993, and were filed with the SEC on June 14, 1993. The reorganization was approved, in accordance with Massachusetts law, by applicant's shareholders at a meeting held on July 30, 1993.

5. On September 7, 1993, the reorganization was consummated. Applicant transferred all its assets and liabilities to the Acquiring Fund. In exchange for $333,295,526.70 of net assets transferred to the Acquiring Fund, applicant received 55,540,032.968 Class A shares at a net asset value per share of $6.00. The exchanges were made at net asset value determined as of the opening of business on September 7, 1993. The shares received in exchange for applicant's assets were distributed to applicant's shareholders pro rata in accordance with their respective interests in applicant.

6. The Acquiring Fund assumed all expenses in connection with the reorganization. These expenses

included legal, accounting, printing, transfer agency, proxy solicitor and other expenses totalling approximately $20,132.

7. As of the date of the amended application, applicant had no shareholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–26048 Filed 10–21–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–25908]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

October 15, 1993.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by November 8, 1993, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Public Service Company of New Hampshire (70–8036)

Public Service Company of New Hampshire ("PSNH"), 1000 Elm Street, Manchester, New Hampshire 03101, an electric utility subsidiary company of Northeast Utilities ("Northeast"), a registered holding company, has filed a post-effective amendment under sections 6(a) and 7 of the Act and Rule 50(a)(5) thereunder to its declaration.

In a series of transactions not jurisdictional under the Act at the time, the Business Finance Authority of the State of New Hampshire (formerly, The Industrial Development Authority of the State of New Hampshire) issued five series of pollution control revenue bonds ("Bonds") for financing PSNH's share of the cost of constructing certain pollution control, sewage, and solid waste disposal facilities at the Seabrook Nuclear Electric Generating Station, Unit No. 1. The Bonds included two series of taxable pollution control revenue bonds: (i) The $114,500,000 Pollution Control Revenue Bonds (Public Service Company of New Hampshire Project—1991 Taxable Series D Bonds) ("Series D Bonds"); and (ii) the $114,500,000 Pollution Control Revenue Bonds (Public Service Company of New Hampshire Project—1991 Taxable Series E Bonds) ("Series E Bonds") (collectively, "Taxable Bonds").

In order to improve the credit ratings of, and to support, the Taxable Bonds, PSNH obtained two letters of credit from Citibank, N.A. ("Citibank"), one for each series of the Taxable Bonds.

After the Taxable Bonds were issued, Citibank's rating in the financial markets deteriorated. In addition, after obtaining the Citibank letters of credit, PSNH was advised by remarketing agents that: (i) Many institutional investors that otherwise would be interested in purchasing the Taxable Bonds would not purchase securities secured by letters of credit issued by Citibank; and (ii) those investors that were still willing to purchase the Taxable Bonds were demanding an interest rate premium that was causing PSNH's effective interest cost to be higher than it would have otherwise been.

In response to PSNH's concerns with Citibank, by order dated September 4, 1992 (HCAR No. 25623), PSNH received authority to replace the Citibank letter of credit for the Series D Bonds with a substitute letter of credit issued by Barclays Bank PLC, New York Branch ("Barclays").

PSNH now proposes to obtain extensions and modifications of and replacements for (i) the Barclays letter of credit and the associated reimbursement agreement for the Series D Bonds (and any previous extensions and modifications thereof and replacements therefor) and (ii) the Citibank letter of credit and the associated reimbursement agreement for the Series E Bonds (and any other extensions and modifications thereof and replacements therefor), in each case from time-to-time during the term of the Taxable Bonds, provided that: (A) The total amount available to be drawn under any such extended, modified or replacement letter of credit does not exceed $121,014,000; (B) the annual letter of credit commission applicable to any such extension, modification or replacement does not exceed 1% per annum of the total amount available to be drawn under the extended, modified or replacement letter of credit; (C) the reimbursement agreement applicable to any such extension, modification or replacement shall provide (or shall afford PSNH the option to elect) that drawings to pay the principal portion of the purchase price for unremarketed, tendered Taxable Bonds would bear interest until paid at a rate not to exceed the higher of (1) the prime rate plus 200 basis points or (2) the federal funds rate plus 200 basis points; (D) such extension, modification or replacement is otherwise on terms that are substantially similar in all material respects to those applicable to the letter of credit and reimbursement agreement (or previous extension or modification thereof or replacement therefor) being extended, modified or replaced; and, (E) PSNH shall have obtained all necessary State commission approvals applicable to such extension, modification or replacement.

PSNH also requests authorization to begin negotiations pursuant to an exception from the requirements of Rule 50, pursuant to subsection (a)(5) thereunder, with any future issuer of a letter of credit to document the terms of the extension, modification or replacement of the present letter of credit. It may do so.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–26009 Filed 10–21–93; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Application to Withdraw From Listing and Registration; (United States Filter Corp., Common Stock, $.01 Par Value) File No. 1–10728

October 18, 1993.

United States Filter Corporation ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities

Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

According to the Company, in addition to being listed on the Amex, its common stock is listed on the New York Stock Exchange, Inc. ("NYSE"). The Company's common stock commenced trading on the NYSE at the opening of business on September 1, 1993 and concurrently therewith, such stock was suspended from trading on the Amex.

In making the decision to withdraw its common stock from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant in maintaining the dual listing of its common stock on the NYSE and on the Amex. The Company does not see any particular advantage in the dual trading of its common stock and believes that dual listing would fragment the market for its common stock.

Any interested person may, on or before November 8, 1993, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–26010 Filed 10–21–93; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted on or before November 22, 1993. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Cleo Verbillis, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416. Telephone: (202) 205–6629.

OMB Reviewer: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: Debt Collection Activities and Financial Statement of Debtor

Form No: SBA Form 770

Description of Respondents: Recipients of SBA Loans

Annual Responses: 169,000

Annual Burden: 169,000

Dated: October 18, 1993.

Cleo Verbillis,

Chief, Administrative Information Branch.

[FR Doc. 93–26035 Filed 10–21–93; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Receipt of Noise Compatibility Program and Request for Review; Gulfport-Biloxi Regional Airport, Gulfport, Mississippi

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed noise compatibility program that was submitted for Gulfport-Biloxi Regional Airport under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) (hereinafter referred to as "the Act") and 14 CFR part 150 by Gulfport-Biloxi Regional Airport Authority. This program was submitted subsequent to a determination by FAA that associated noise exposure maps submitted under 14 CFR part 150 for Gulfport-Biloxi Regional Airport were in compliance with applicable requirements effective May 21, 1993. The proposed noise compatibility program will be approved or disapproved on or before April 3, 1994.

EFFECTIVE DATE: The effective date of the start of FAA's review of the noise compatibility program is October 5, 1993. The public comment period ends December 4, 1993.

FOR FURTHER INFORMATION CONTACT: Walter Bauer, Program Manager, Atlanta Airports District Office, 1680 Phoenix Parkway, Suite 101, College Park, Georgia 30349. Telephone: (404) 994–5306. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed noise compatibility program for Gulfport-Biloxi Regional Airport which will be approved or disapproved on or before April 3, 1994. This notice also announces the availability of this program for public review and comment.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has formally received the noise compatibility program for Gulfport-Biloxi Regional Airport, effective on October 5, 1993. It was requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act. Preliminary review of the submitted material indicates that it conforms to be requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before April 3, 1994.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33 The primary

considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, Atlanta Airports District Office, 1680 Phoenix Parkway, Suite 101, College Park, Georgia 30349.

Mr. Bruce Frallic, Executive Director, Gulfport-Biloxi Regional Airport Authority, 14035–L Airport Road, Gulfport, Mississippi 39501.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Atlanta, Georgia, October 5, 1993.

Howard M. Robinson,

Acting Manager, Atlanta Airports District Office.

[FR Doc. 93–26062 Filed 10–21–93; 8:45 am]

BILLING CODE 4910–13–M

[Summary Notice No. PE–93–45]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before November 11, 1993.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Ave, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick M. Haynes, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Ave, SW., Washington, DC 20591; telephone (202) 267–3939.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on October 18, 1993.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 27403
Petitioner: Mr. Doyle Vaughan
Sections of the FAR Affected: 14 CFR 121.383(c)
Description of Relief Sought/ Disposition: To permit the petitioner to serve as a pilot in part 121 air carrier operations after his 60th birthday.

Docket No.: 27423
Petitioner: Mr. Lawrence Edwin Davis
Sections of the FAR Affected: 14 CFR 21.183(d)(2)
Description of Relief Sought/ Disposition: To permit issuance of a Standard Airworthiness Certificate for a Falcon Biplane, model F–1.

Docket No.: 27428
Petitioner: Snow Aviation International, Inc.
Sections of the FAR Affected: 14 CFR 21.19(a) and (b)(1)
Description of Relief Sought: To allow Snow Aviation, Inc. to apply for a Supplemental Type Certificate for a design change that changes the number of engines from three to two on the Boeing model 727–200 airplanes.

Docket No.: 27457
Petitioner: Daniel Webster College and Miss Robin L. Bray
Sections of the FAR Affected: 14 CFR 141.35(d)(2)
Description of Relief Sought: To allow Miss Bray to serve as the Chief Flight Instructor at Daniel Webster College administering a course of training other than those that lead to the issuance of a private pilot certificate or rating or an instrument rating, or a rating with instrument privileges, without the required minimum of 2000 hours as pilot in command (PIC).

Dispositions of Petitions

Docket No.: 26532
Petitioner: McCall Air Taxi, Inc.
Sections of the FAR Affected: 14 CFR 43.3(g)
Description of Relief Sought/ Disposition: To extend and amend Exemption No. 5381 to continue to permit the appropriately trained and certified pilots employed by McCall Air Taxi, Inc. to convert the cabins of its aircraft (minus the Cessna 320–B and plus a Britten-Normand BN–2A and Cessna 210) operated under FAR Part 135 from passenger to cargo configurations, and the converse, by removing and replacing seats when certified mechanics are not available to perform the maintenance.

Grant, October 5, 1993, Exemption No. 5381A

Docket No.: 27283
Petitioner: Northwest Airlines, Inc.
Sections of the FAR Affected: 14 CFR 121.356
Description of Relief Sought/ Disposition: To permit the petitioner to operate six DC–9–10 aircraft between December 30, 1993 and June 30, 1994, without those aircraft being equipped with an approved Traffic Alert and Collision Avoidance System (TCAS).

Denial, October 8, 1993, Exemption No. 5763

Docket No.: 27329
Petitioner: Comair Airlines
Sections of the FAR Affected: 14 CFR 135.167(a)(2), (b), and (c)
Description of Relief Sought: To allow Comair to operate in extended overwater operations without carrying certain emergency equipment, such as liferafts, emergency locator Transmitters, pyrotechnical signaling devices, and survival kits on its airplanes.

Denial, October 5, 1993, Exemption No. 5760

Docket No.: 27383

Petitioner: Hudson Air Service, Inc.
Sections of the FAR Affected: 14 CFR 43.3(g)
Description of Relief Sought: To allow the pilots employed by Hudson Air Service, Inc. to remove and reinstall aircraft cabin seats in company aircraft.

Grant, October 5, 1993, Exemption No. 5762

Docket No. 27430
Petitioner: Midwest Flying Service, Inc.
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To permit Midwest Flying Service, Inc. to operate without a TSO–C112 (Mode S) transponder installed on its aircraft operating under the provisions of Part 135.

Grant, October 4, 1993, Exemption No. 5757

Docket No.: 27441
Petitioner: Department of the Army
Sections of the FAR Affected: 14 CFR 45.29(b)(3)
Description of Relief Sought: To allow for the use of smaller aircraft nationality and registration markings in place of the 12-inch high markings required by the regulations.

Grant, October 6, 1993, Exemption No. 5761

[FR Doc. 93–26059 Filed 10–21–93; 8:45 am]
BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee Meeting on Aircraft Certification Procedures Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration's Aviation Rulemaking Advisory Committee to discuss aircraft certification procedures issues.

DATES: The meeting will be held on October 28, 1993, at 9 a.m. Arrange for oral presentations by October 18, 1993.

ADDRESSES: The meeting will be held at the General Aviation Manufacturers Association, Suite 801, 1400 K Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Ms Kathy Ball, Aircraft Certification Service (AIR–1), 800 Independence Avenue, SW., Washington, DC, telephone (202) 267–8235.

SUPPLEMENTARY INFORMATION: Pursuant to section 101(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Aviation Rulemaking advisory committee to be held on October 28, 1993, at the General Aviation Manufacturers Association, Suite 801, 1400 K Street, NW., Washington, DC 20005. The agenda for the meeting will include:

- Opening Remarks
- Review of Action Items
- Working Group Reports
  - ICPTF
  - ELT
  - Delegation System
  - Parts
  - Production Certification
- New Business

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by October 18, 1993, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Assistant Executive Director for Aircraft Certification Procedures or by bringing the copies to him at the meeting. Arrangements may be made by contacting the person listed under the heading "**FOR FURTHER INFORMATION CONTACT.**"

Sign and oral interpretation can be made available at the meeting, as well as an assistant listening device, if requested 10 calender days before the meeting.

Issued in Washington, DC, on October 6, 1993.

William J. Sullivan,

Assistant Executive Director, for Aircraft Certification Procedures, Aviation Rulemaking Advisory Committee.

[FR Doc. 93–26058 Filed 10–21–93; 8:45 am]
BILLING CODE 4910–13–M

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In September 1993, there were seven applications approved.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IV of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC APPLICATIONS APPROVED

Public Agency: Greater Rockford Airport Authority, Rockford, Illinois.
Application Number: 93–02–U–OO–RFD.
Application Type: Use PFC Revenue.
PFC Level: $3.00.
Total Approved Net PFC Revenue: $1,168,937.
Earliest Permissible Charge Effective Date: October 1, 1992.
Estimated Charge Expiration Date: October 1, 1996.
Class of Air Carriers not Required to Collect PFS's:

Previously approved in July 24, 1992 decision.

Brief Description of Projects approved to use PFC Revenue:
Complete extension of runway 6,
Construct parallel taxiway to runway 6 extension,
Acquire Parcel P,
Rehabiltate runway 18/36,
Environmental assessment,
Update Part 150 study,
Security upgrade to meet Part 107.14.
Decision date: September 2, 1993.
FOR FURTHER INFORMATION CONTACT: Louis H. Yates, Chicago Airports District Office, (312) 694–6335.

Public Agency: Yuma County Airport Authority, Yuma, Arizona.
Application Number: 93–01–C–OO–YUM.
Application Type: Impose and Use PFC Revenue.
PFC Level: $3.00.
Total Approved Net PFC Revenue: $1,678,064.
Earliest Permissible Charge Effective Date: December 1, 1993.
Estimated Charge Expiration Date: June 1, 2003.
Class of Air Carriers not Required to Collect PFC's:

Part 135 air taxi/commercial operators and Part 135 air ambulances.

Determination: Approved. Based on information submitted in the Yuma County Airport Authority's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total enplanements at Yuma International Airport.
Brief Description of Projects Approved for Collection and Use:
Expand large aircraft parking apron,
Construct a new access road,
Intall Precision Approach Path Indicators on each end of runways 8, 26, and 35,
Construct two heliports (helipads),
Erosion protection/soil stabilization,
Construct new terminal.
Brief Description of Project Disapproved:

Land acquisition.

Determination: Disapproved. This project is ineligible under section 158.3. Acquisition costs were incurred prior to November 5, 1990 and therefore, the project is not PFC eligible.

Decision Date: September 9, 1993.

FOR FURTHER INFORMATION CONTACT: John P. Milligan, Western-Pacific Region Airports Division, (310) 297–1029.

Public Agency: City of New Haven, New Haven, Connecticut.

Application Number: 93–01–C–OO–HVN.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $2,490,450.

Earliest Permissible Charge Effective Date: December 1, 1993.

Estimated Charge Expiration Date: June 1, 1999.

Class of Air Carriers Not Required To Collect PFC'S:

On demand air taxi/charter operators filing FAA Form 1800–31.

Determination: Approved. Based on information submitted in the City of New Haven's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total enplanements at Tweed-New Haven Airport.

Brief Description of Project Approved For Collection and Use:

Acquire land.

Decision Date: September 10, 1993.

FOR FURTHER INFORMATION CONTACT: Priscilla Soldan, New England Region Airports Division, (617) 238–7614.

Public Agency: Greater Orlando Airport Authority, Orlando, Florida.

Application Number: 93–02–C–OO–MCO.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $12,957,000.

Earliest Estimated Charge Effective Date: July 1, 1997.

Estimated Charge Expiration Date: February 1, 1998.

Class of Air Carriers Not Required To Collect PFC'S:

None.

Brief Description of Projects Approved For Collection and Use:

New east airfield land purchase,

Interest of the existing land acquisition program.

Decision Date: September 24, 1993.

FOR FURTHER INFORMATION CONTACT: Pablo G. Auffant, Orlando Airports District Office, (407) 648–6583.

Public Agency: Luzerne and Lackawanna Counties Bi-County Airport Board, Avoca, Pennsylvania.

Application Number: 93–01–C–OO–AVP.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $2,369,566.

Earliest Permissible Charge Effective Date: December 1, 1993.

Estimated Charge Expiration Date: June 1, 1997.

Class of Air Carriers Not Required to Collect PFC'S:

Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information submitted in the Luzerne and Lackawanna Counties Bi-County Airport Board's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total enplanements at Wilkes Barre/Scranton International Airport.

Brief Description of Projects Approved For Collection and Use:

Purchase snow removal equipment,

Purchase aircraft rescue and firefighting (ARFF) vehicle.

Brief Description of Projects Approved For Collection Only:

Design passenger terminal,

Design passenger terminal apron,

Design ARFF building,

Construct parallel taxiway—runway 10/28,

Construct phase I—air cargo,

Construct ARFF building.

Decision Date: September 24, 1993.

FOR FURTHER INFORMATION CONTACT: L.W. Walsh, Harrisburg Airports District Office, (717) 975–3423.

Public Agency: Flathead Muncicpal Airport Authority, Kalispell, Montana.

Application Number: 93–01–C–OO–FCA.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $1,211,000.

Earliest Permissible Charge Effective Date: December 1, 1993.

Estimated Charge Expiration Date: November 1, 1999.

Class of Air Carriers not Required to Collect PFC's:

Air taxi commercial operators.

Determination: Approved. Based on information submitted in the Flathead Municipal Airport Authority's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total enplanements at Glacier Park International Airport (FCA).

Brief Description of Projects Approved for Collection and Use:

Runway 2/20 rehabilitation.

Runway snowplow and truck replacement.

Brief Description of Project Approved in-Part for Collection and use:

ARFF hydrant water system.

Determination: Approved in part. The project is generally airport improvement program (AIP) eligible in accordance with paragraphs 562 and 567 of FAA Order 5100.38A and will enhance safety at FCA. However, the hydrant and distribution line serving the fuel farm are not eligible since they serve a facility that is not AIP eligible; therefore, that portion of the project is not approved.

Decision Date: September 29, 1993.

FOR FURTHER INFORMATION CONTACT: David P. Gabbert, Helena Airports District Office, (406) 449–5271.

Public Agency: City of Chico, Chico, California.

Application Number: 93–01–C–OO–CIC.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved PFC Revenue: $137,043.

Earliest Permissible Charge Effective Date: December 1, 1993.

Estimated Charge Expiration Date: June 1, 1997.

Class of Air Carriers not Required to Collect PFC's:

None.

Brief Description of Project Approved for Collection and use:

Terminal building sterile and baggage areas.

Decision Date: September 29, 1993.

FOR FURTHER INFORMATION CONTACT: Joseph R. Rodriguez, San Francisco Airports District Office, (415) 876–2805.

Issued in Washington, DC on October 18, 1993.

Lowell Johnson,

Manager, Airports Financial Assistance Division.

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED

State, Application No., Airport, City	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date
Alabama:					
92-01-I-00-HSV., Huntsville Intl-Carl T Jones Field, Huntsville	03/06/1992	$3	$19,002,366	06/01/1992	11/01/2008
93-02-U-00-HSV., Huntsville Intl-Carl T Jones Field, Huntsville	06/03/1993	3	19,002,366	09/01/1993	11/01/2008
92-01-C-00-MSL., Muscle Shoals Regional, Muscle Shoals	02/18/1992	3	104,100	06/01/1992	02/01/1995
Arizona:					
92-01-C-00-FLG., Flagstaff Pullam, Flagstaff	09/29/1992	3	2,463,581	12/01/1992	01/01/2015
California:					
92-01-C-00-ACV., Arcata, Arcata	11/24/1992	3	188,500	02/01/1993	05/01/1994
92-01-C-000-IYK., Inyokern, Inyokern	12/10/1992	3	127,500	03/01/1993	09/01/1995
93-01-C-00-LAX., Los Angeles International, Los Angeles	03/26/1993	3	360,000,000	07/01/1993	07/01/1998
92-01-C-00-OAK., Metropolitan Oakland International, Oakland	06/26/1992	3	12,343,000	09/01/1992	05/01/1994
93-01-I-00-ONT., Ontario International, Ontario	03/26/1993	3	49,000,000	07/01/1993	07/01/1998
92-01-C-00-PSP., Palm Springs Regional, Palm Springs	06/25/1992	3	81,888,919	10/01/1992	11/01/2032
92-01-C-00-SMF., Sacramento Metropolitan, Sacramento	01/26/1993	3	24,045,000	04/01/1993	03/01/1996
92-01-C-00-SJC., San Jose International, San Jose	06/11/1992	3	29,228,826	09/01/1992	08/01/1995
93-02-U-00-SJC., San Jose International, San Jose	02/22/1993	3	29,228,826	05/01/1993	08/01/1995
93-03-C-00-SJC., San Jose International, San Jose	06/16/1993	3	16,245,000	08/01/1995	05/01/1997
92-01-C-00-SBP., San Luis Obispo County-McChesney Field, San Luis Obispo	11/24/1992	3	502,437	02/01/1993	02/01/1995
92-01-C-00-STS., Sonoma County, Santa Rosa	02/19/1993	3	110,500	05/01/1993	04/01/1995
91-01-I-00-TVL., Lake Tahoe, South Lake Tahoe	05/01/1992	3	928,747	08/01/1992	03/01/1997
Colorado:					
92-01-C-00-COS., Colorado Springs Municipal, Colorado Springs	12/22/1992	3	5,622,000	03/01/1993	02/01/1996
92-01-C-00-DVX., Denver International (New), Denver	04/28/1992	3	2,330,734,321	07/01/1992	01/01/2026
93-01-C-00-EGE., Eagle County Regional, Eagle	06/15/1993	3	572,609	09/01/1993	04/01/1998
93-01-C-00-FNL., Fort Collins-Loveland, Fort Collins	07/14/1993	3	207,857	10/01/1993	06/01/1996
92-01-C-00-GJT., Walker Field, Grand Junction	01/15/1993	3	1,812,000	04/01/1993	08/01/1998
93-01-C-00-GUC., Gunnison County, Gunnison	08/27/1993	3	702,133	11/01/1993	03/01/1998
93-01-C-00-HDN., Yampa Valley, Hayden	08/23/1993	3	532,881	11/01/1993	04/01/1997
93-01-C-00-MTJ., Montrose County, Montrose	07/29/1993	3	1,461,745	11/01/1993	02/01/2009
93-01-C-00-PUB., Pueblo Memorial, Pueblo	08/16/1993	3	1,200,745	11/01/1993	08/01/2010
92-01-C-00-SBS., Steamboat Springs/Bob Adams Field, Steamboat Springs	01/15/1993	3	1,887,337	04/01/1993	04/01/2012
92-01-C-00-TEX., Telluride Regional, Telluride	11/23/1992	3	200,000	03/01/1993	11/01/1997
Connecticut:					
93-02-I-00-BDL., Bradley International, Windsor Locks	07/09/1993	3	12,030,000	10/01/1993	09/01/1995
Florida:					
93-01-C-00-DAB., Daytona Beach Regional, Daytona Beach	04/20/1993	3	7,967,835	07/01/1993	11/01/1999
92-01-C-00-RSW., Southwest Florida International, Fort Myers	08/31/1992	3	252,548,262	11/01/1992	06/01/2014
93-02-U-00-RSW., Southwest Florida International, Fort Myers	05/10/1993	3	252,548,262	11/01/1992	06/01/2014
92-01-C-00-EYW., Key West International, Key West	12/17/1992	3	945,937	03/01/1993	12/01/1995
92-01-C-00-MTH., Marathon, Marathon	12/17/1992	3	153,556	03/01/1993	06/01/1995
92-01-C-00-MCO., Orlando International, Orlando	11/27/1992	3	167,574,527	02/01/1993	02/01/1998
92-01-C-00-PNS., Pensacola Regional, Pensacola	11/23/1992	3	4,715,000	02/01/1993	04/01/1996
92-01-I-00-SRQ., Sarasota-Bradenton International, Sarasota	06/29/1992	3	38,715,000	09/01/1992	09/01/2005
92-01-I-00-TLH., Tallahassee Regional, Tallahassee	11/13/1992	3	8,617,154	02/01/1993/	12/01/1998
93-01-C-00-TPA., Tampa International, Tampa	07/15/1993	3	87,102,000	10/01/1993	09/01/1999
Georgia:					
91-01-C-00-SAV., Savannah International, Savannah	01/23/1992	3	39,501,502	07/01/1992	03/01/2004
92-01-I-00-VLD., Valdosta Regional, Valdosta	12/23/1992	3	260,526	03/01/1993	10/01/1997
Idaho:					
93-01-C-00-SUN., Friedman Memorial, Hailey	06/29/1993	3	188,000	09/01/1993	09/01/1997
92-01-C-00-IDA., Idaho Falls Municipal, Idaho Falls	10/30/1992	3	1,500,000	01/01/1993	01/01/1998
92-01-C-00-TWF., Twin Falls-Sun Valley Regional, Twin Falls	08/12/1992	3	270,000	11/01/1992	05/01/1998
Illinois:					
93-01-C-00-MDW., Chicago Midway, Chicago	06/28/1993	3	79,920,958	09/01/1993	08/01/2001
93-01-C-00-ORD., Chicago O'Hare International, Chicago	06/28/1993	3	500,418,285	09/01/1993	10/01/1999

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED—Continued

State, Application No., Airport, City	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date
92-01-I-00-RFD., Greater Rockford, Rockford	07/24/1992	3	1,177,348	10/01/1992	10/01/1996
92-01-I-00-SPI., Capital, Springfield	03/27/1992	3	562,104	06/01/1992	02/01/1994
93-02-U-00-SPI., Capital, Springfield	04/28/1993	3	562,104	06/01/1992	02/01/1994
Indiana:					
92-01-C-00-FWA., Fort Wayne International, Fort Wayne	04/05/1993	3	26,563,457	07/01/1993	03/01/2015
93-01-C-00-IND., Indianapolis International, Indianapolis	06/28/1993	3	117,344,750	09/01/1993	07/01/2005
Iowa:					
92-01-I-00-DBQ., Dubuque Regional, Dubuque	10/06/1992	3	108,500	01/01/1993	05/01/1994
93-01-C-00-SUX., Sioux Gateway, Sioux City	03/12/1993	3	204,465	06/01/1993	06/01/1994
Kentucky:					
93-01-C-00-LEX., Blue Grass, Lexington	08/31/1993	3	12,378,791	11/01/1993	05/01/2003
Louisiana:					
92-01-I-00-BTR., Baton Rouge Metropolitan, Ryan Field, Baton Rouge	09/28/1992	3	9,823,159	12/01/1992	12/01/1998
93-02-U-00-BTR., Baton Rouge Metropolitan, Ryan Field, Baton Rouge	04/23/1993	3	9,823,159	12/01/1992	12/01/1998
93-01-C-00-MSY., New Orleans International/Moisant Field, New Orleans	03/19/1993	3	77,800,372	06/01/1993	04/01/2000
Maryland:					
92-01-I-00-BWI., Baltimore-Washington International, Baltimore	07/27/1992	3	141,866,000	10/01/1992	09/01/2002
Massachusetts:					
93-01-C-00-BOS., General Edward L Logan International, Boston	08/24/1993	3	598,800,000	11/01/1993	10/01/2011
92-01-C-00-ORH., Worcester Municipal, Worcester	07/28/1992	3	2,301,382	10/01/1992	10/01/1997
Michigan:					
92-01-C-00-DTW., Detroit Metropolitan-Wayne County, Detroit	09/21/1992	3	640,707,000	12/01/1992	06/01/2009
92-01-I-00-ESC., Delta County, Escanaba	11/17/1992	3	158,325	02/01/1993	08/01/1996
93-01-C-00-FNT., Bishop International, Flint	06/11/1993	3	32,296,450	09/01/1993	09/01/2030
92-01-I-00-GRR., Kent County International, Grand Rapids	09/09/1992	3	12,450,000	12/01/1992	05/01/1998
92-01-C-00-CMX., Houghton County Memorial, Hancock	04/29/1993	3	162,986	07/01/1993	01/01/1996
93-01-C-00-IWD., Gogebic County, Ironwood	05/11/1993	3	74,690	08/01/1993	10/01/1998
93-01-C-00-LAN., Capital City, Lansing	07/23/1993	3	7,355,483	10/01/1993	03/01/2002
92-01-I-00-MQT., Marquette County, Marquette	10/01/1992	3	459,700	12/01/1992	04/01/1996
92-01-C-00-PLN., Pellston Regional—Emmet County, Pellston	12/22/1992	3	440,875	03/01/1993	06/01/1995
Minnesota:					
93-01-C-00-BRD., Brainerd-Crow Wing County Regional, Brainerd	05/25/1993	3	43,000	08/01/1993	12/31/1995
92-01-C-00-MSP., Minneapolis-St. Paul International, Minneapolis	03/31/1992	3	66,355,682	06/01/1992	06/01/1994
Mississippi:					
91-01-C-00-GTR., Golden Triangle Regional, Columbus	05/08/1992	3	1,693,211	08/01/1992	09/01/2006
92-01-C-00-GPT., Gulfport-Biloxi Regional, Gulfport-Biloxi	04/03/1992	3	384,028	07/01/1992	12/01/1993
92-01-C-00-PIB., Hattiesburg-Laurel Regional, Hattiesburg-Laurel	04/15/1992	3	119,153	07/01/1992	01/01/1998
93-01-C-00-JAN., Jackson International, Jackson	02/10/1993	3	1,918,855	05/01/1993	04/01/1995
92-01-C-00-MEI., Key Field, Meridian	08/21/1992	3	122,500	11/01/1992	06/01/1994
Missouri:					
93-01-C-00-SGF., Springfield Regional, Springfield	08/30/1993	3	1,937,090	11/01/1993	10/01/1996
92-01-C-00-STL., Lambert-St. Louis International, St. Louis	09/30/1992	3	84,507,850	12/01/1992	03/01/1996
Montana:					
93-01-C-00-BZN., Gallatin Field, Bozeman	05/17/1993	3	4,198,000	08/01/1993	06/01/2005
92-01-C-00-GTF., Great Falls International, Great Falls	08/28/1992	3	3,010,900	11/01/1992	07/01/2002
93-02-U-00-GTF., Great Falls International, Great Falls	05/25/1993	3	3,010,900	11/01/1992	07/01/2002
92-01-C-00-HLN., Helena Regional, Helena	01/15/1993	3	1,056,190	04/01/1993	12/01/1999
92-01-C-00-MSO., Missoula International, Missoula	08/12/1992	3	1,900,000	09/01/1992	08/01/1997
Nevada:					
91-01-C-00-LAS. McCarran International, Las Vegas	02/24/1992	3	944,028,500	06/01/1992	02/01/2014
93-02-C-00-LAS., McCarran International, Las Vegas	06/07/1993	3	36,500,000	06/01/1992	09/01/2014
New Hampshire:					
92-01-C-00-MHT., Manchester, Manchester	10/13/1992	3	5,461,000	01/01/1993	03/01/1997
New Jersey:					
92-01-C-00-EWR., Newark International, Newark	07/23/1992	3	84,600,000	10/01/1992	08/01/1995
New York:					

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED—Continued

State, Application No., Airport, City	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date
93-01-C-00-BGM., Binghamton Regional/Edwin A Link Field, Binghamton	06/18/1993	3	1,872,264	11/01/1993	11/01/1997
92-01-I-00-Buf., Greater Buffalo International, Buffalo	05/29/1992	3	189,873,00	08/01/1992	03/01/2026
92-01-I-00-ITH., Tompkins County, Ithaca	09/28/1992	3	1,900,000	01/01/1993	01/01/1999
92-01-C-00-JHW., Chautauqua County/Jamestown, Jamestown	03/19/1993	3	434,822	06/01/1993	06/01/1996
92-01-C-00-JFK., John F Kennedy International, New York	07/23/1992	3	109,980,000	10/01/1992	08/01/1995
92-01-C-00-LGA., Laguardia, New York	07/23/1992	3	87,420,000	10/01/1992	08/01/1995
92-01-I-C-00-PLB., Clinton County, Plattsburgh	04/30/1993	3	227,830	07/01/1993	01/01/1998
92-01-C-00-HPN., Westchester County, White Plains	11/09/1992	3	27,883,000	02/01/1993	06/01/2022
North Dakota:					
92-01-C-00-GFK., Grand Forks International, Grand Forks	11/16/1992	3	1,016,509	02/01/1993	02/01/1997
Ohio:					
92-01-C-00-CAK., Akron-Canton Regional, Akron	06/30/1992	3	3,594,000	09/01/1992	08/01/1996
92-01-C-00-CLE., Cleveland-Hopkins International, Cleveland	09/01/1992	3	34,000,000	11/01/1992	11/01/1995
92-01-I-00-CMH., Port Columbus International, Columbus	07/14/1992	3	7,341,707	10/01/1992	03/01/1994
93-02-I-00-CMH., Port Columbus International, Columbus	07/19/1993	3	16,270,256	02/01/1994	09/01/1996
93-01-C-00-TOL., Toledo Express, Toledo	06/29/1993	3	2,750,896	09/01/1993	09/01/1996
Oklahoma:					
92-01-C-00-LAW., Lawton Municipal, Lawton	05/08/1992	3	334,078	08/01/1992	01/01/1996
92-01-I-00-TUL., Tulsa International, Tulsa	05/11/1992	3	8,450,000	08/01/1992	08/01/1994
Oregon:					
93-01-C-00-EUG., Mahlon Sweet Field, Eugene	08/31/1993	3	3,729,699	11/01/1993	11/01/1998
93-01-C-00-MFR., Medford-Jackson County, Medford	04/21/1993	3	1,066,142	07/01/1993	11/01/1995
92-01-C-00-PDX., Portland International, Portland	04/08/1992	3	17,961,850	07/01/1992	07/01/1994
93-01-C-00-RDM., Roberts Field, Redmond	07/02/1993	3	1,191,552	10/01/1993	03/01/2000
Pennsylvania:					
92-01-I-00-ABE., Allentown-Bethlehem-Easton, Allentown	08/28/1992	3	3,778,111	11/01/1992	04/01/1995
92-01-C-00-ADD., Altoona-Blair County, Altoona	02/03/1993	3	198,000	05/01/1993	02/01/1996
92-01-C-00-ERI., Erie International, Erie	07/21/1992	3	1,997,885	10/01/1992	06/01/1997
93-01-C-00-JST., Johnstown-Cambria County, Johnstown	08/31/1993	3	307,500	11/01/1993	02/01/1998
92-01-I-00-PHL., Philadelphia International, Philadelphia	06/29/1992	3	76,169,000	09/01/1992	07/01/1995
93-02-U-00-PHL., Philadelphia International, Philadelphia	05/14/1993	3	76,169,000	08/01/1993	07/01/1995
92-01-C-00-UNV., University Park, State College	08/28/1992	3	1,495,974	11/01/1992	07/01/1997
South Caroline:					
93-01-C-00-CAE., Columbia Metropolitan, Columbia	08/23/1993	3	32,969,942	11/01/1993	09/01/2008
Tennessee:					
92-01-I-00-MEM., Memphis International, Memphis	05/28/1992	3	26,000,000	08/01/1992	12/01/1994
92-01-C-00-BNA., Nashville International, Nashville	10/09/1992	3	143,358,000	01/01/1993	02/01/2004
Texas:					
93-02-C-00-AUS., Robert Mueller Municipal, Austin	06/04/1993	2	6,189,300	11/01/1993	06/01/1995
92-01-C-00-ILE., Killeen Municipal, Killeen	10/20/1992	3	243,339	01/01/1993	11/01/1994
93-01-I-00-LRD., Laredo International, Laredo	07/23/1993	3	11,983,000	10/01/1993	09/01/2013
93-01-C-00-LBB., Lubbock International, Lubbock	07/09/1993	3	10,699,749	10/01/1993	02/01/2000
92-01-I-00-MAF., Midland International, Midland	10/16/1992	3	35,529,521	01/01/1993	01/01/2013
93-01-C-00-SJT., Mathis Field, San Angelo	02/24/1993	3	873,716	05/01/1993	11/01/1998
Virginia:					
92-01-I-00-CHO., Charlottesville-Albemarle, Charlottesville	06/11/1992	2	255,559	09/01/1992	11/01/1993
92-02-U-00-CHO., Charlottesville-Albemarle, Charlottesville	12/21/1992	2	255,559	09/01/1992	11/01/1993
93-01-C-00-DCA., Washington National, Washington, DC	08/16/1993	3	166,739.071	11/01/1993	11/01/2000
Washington:					
93-01-C-00-BLI., Bellingham International, Bellingham	04/29/1993	3	366,000	07/01/1993	07/01/1994
93-01-C-00-PSC., Tri-Cities, Pasco	08/03/1993	3	1,230,731	11/01/1993	11/01/1996
93-01-C-00-CLM., William R. Fairchild International, Port Angeles	05/24/1993	3	52,000	08/01/1993	08/01/1994
92-01-C-00-SEA., Seattle-Tacoma International, Seattle	08/13/1992	3	28,847,488	11/01/1992	01/01/1994
93-01-C-00-GEG., Spokane International, Spokane	03/23/1993	3	15,272,000	06/01/1993	12/01/1999
93-01-I-00-ALW., Walla Walla Regional, Walla Walla	08/03/1993	3	1,187,280	11/01/1993	11/01/2014
93-01-C-00-EAT., Pangborn Field, Wenatchee	05/26/1993	3	280,500	08/01/1993	10/01/1995

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED—Continued

State, Application No., Airport, City	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date
92-01-C-00-YKM., Yakima Air Terminal, Yakima	11/10/1992	3	416,256	02/01/1993	04/01/1995
West Virginia:					
93-01-C-00-CRW., Yeager, Charleston	05/28/1993	3	3,256,126	08/01/1993	04/01/1998
92-01-C-00-MGW., Morgantown Muni-Walter L. Bill Hart, Morgantown	09/03/1992	3	55,500	12/01/1992	01/01/1994
Wisconsin:					
92-01-C-00-GRB., Austin Straubel International, Green Bay	12/28/1992	3	8,140,000	03/01/1993	03/01/2003
93-01-C-00-MSN., Dane County Regional-Truax Field, Madison	06/22/1993	3	6,746,000	09/01/1993	03/01/1998
93-01-I-00-CWA., Central Wisconsin, Mosinee	08/10/1993	3	7,725,600	11/01/1993	11/01/2012
93-01-C-00-RHI., Rhinelander-Oneida County, Rhinelander	08/04/1993	3	167,201	11/01/1993	04/01/1996
Wyoming:					
93-01-C-00-CPR., Natrona County International, Casper	06/14/1993	3	506,144	09/01/1993	10/01/1996
93-01-C-00-CYS., Cheyenne, Cheyenne	07/30/1993	3	742,261	11/01/1993	06/01/2000
93-01-I-00-GCC., Gillette-Campbell County, Gillette	06/28/1993	3	331,540	09/01/1993	09/01/1999
93-01-C-00-JAC., Jackson Hole, Jackson	05/25/1993	3	1,081,183	08/01/1993	02/01/1996
Guam:					
92-01-C-00-NGM., Agana Nas, Agana	11/10/1992	3	5,632,000	02/01/1993	06/01/1994
Puerto Rico:					
92-01-C-00-BQN., Rafael Hernandez, Aguadilla	12/29/1992	3	1,053,000	03/01/1993	01/01/1999
92-01-C-00-PSE., Mercedita, Ponce	12/29/1992	3	866,000	03/01/1993	01/01/1999
92-01-C-00-SJU., Luis Munoz Marin International, San Juan	12/29/1992	3	49,768,000	03/01/1993	02/01/1977
Virgin Islands:					
92-01-I-00-STT., Cyril E. King, Charlotte Amalie	12/08/1992	3	3,871,005	03/01/1993	02/01/1995
92-01-I-00-STX., Alexander Hamilton, Christiansted St. Croix	12/08/1992	3	2,280,465	03/01/1993	05/01/1995

*The estimated charge expiration date is subject to change due to the rate of collection and actual allowable project costs.

[FR Doc. 93-26065 Filed 8-21-93; 8:45 am]
BILLING CODE 4910-13-M

Notice of Intent to Rule on Previously Deferred Projects in Application to Impose a Passenger Facility Charge (PFC) and to Rule on Application To Use the Revenue From a PFC at Memphis International Airport, Memphis, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on applications.

SUMMARY: The FAA proposes to rule and invites public comment on projects previously deferred from ruling on the application to impose a PFC and proposes to rule and invites public comment on the application to use the revenue from a PFC at Memphis International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before November 22, 1993.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Memphis Airports District Office, 2851 Directors Cove, Suite 3, Memphis, Tennessee 38131-0301.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Larry D. Cox of the Memphis International Airports at the following address: Mr. Larry D. Cox, President, Memphis-Shelby County Airport Authority, Memphis International Airport, P. O. Box 30168, Memphis, Tennessee 38131-0168.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Memphis-Shelby County Airport Authority under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Jerry O. Bowers, Memphis Airports District Office, 2851 Directors Cove, Suite 3, Memphis, Tennessee, 38131-0301, (901) 544-3495. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on projects previously deferred from ruling on the application to impose a PFC and proposes to rule and invites public comment on the application to use the revenue from a PFC at Memphis International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and part 158 of the Federal Aviation regulations (14 CFR part 158).

On May 28, 1992, FAA issued a Record of Decision on an application to impose a PFC, ruling on several projects and deferring ruling on several other projects at the request of the Memphis-Shelby County Airport Authority. On September 16, 1993, the FAA received a request to rule on the previously deferred projects and an application to use PFC revenue from the Memphis-Shelby County Airport Authority. On October 12, 1993, the FAA determined that the application to use the revenue from a PFC submitted by Memphis-Shelby County Airport Authority was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the previously deferred projects in the impose application, and will approve or disapprove the use application, in

whole or in part, no later than January 14, 1994.

The following is a brief overview of the request and the application.

Level of the approved PFC: $3.000.

Actual charge effective date: August 1, 1992.

Estimated charge expiration date: October 1, 1999.

Total approved net PFC revenue: $26,000,000.

Proposed net increase in total net PFC revenue: $24,026,000.

Total estimated net PFC revenue: $50,026,000.

Estimated PFC revenue to be used on projects in the application to use PFC revenue: $42,689,000.

Brief description of proposed project(s):

A. Impose Only Project (Previously Deferred)
   1. Extend Runway 18L–36R (Memphis-Shelby County Airport Authority (MSCAA) Airport Capital Plan (ACP) projects D.9 & D.10)

B. Impose and Use Projects (Previously Deferred)
   1. Land Acquisition, Roadways, and Utilities (MSCAA ACP projects A.2, A.5, A.6, A.7 & B.1–B.4)
   2. Construct Third Parallel Runway, 18E–36E (MSCAA ACP projects D.2, D.3, & D.3–D.6)

C. Use Only Projects
   1. Taxiways & Other Projects (MSCAA ACP projects D.14–D.18)
   2. Taxiway "S" (MSCAA ACP project D.12)

Proposed amendment of class or classes of air carriers for which the FAA has approved exemption from the requirement to collect PFCs: From "On-demand Air Taxi/Commercial Operators that (1) do not enplane or deplane passengers at the Memphis International Airport's main passenger terminal buildings and (2) enplane less than 500 passengers per year at Memphis International Airport" to "Any carrier that enplanes less than 500 passengers per year at Memphis International Airport".

Any person may inspect the application in person at the FAA office listed above under "**FOR FURTHER INFORMATION CONTACT.**"

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Memphis-Shelby County Airport Authority.

Issued in Atlanta, Georgia on October 13, 1993.

Troy R. Butler,

PFC Program Manager, Southern Region.

[FR Doc. 93–26061 Filed 10–21–93; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

October 15, 1993.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

SPECIAL REQUEST: The Department of the Treasury is requesting review and approval the Internal Revenue Service information collection described below by 10/31/93. In accordance with 5 CFR 1320.18, a copy of Form 2678 will accompany this notice for public review. All comments must be received by close of business October 22, 1993.

Internal Revenue Service

OMB Number: 1545–0748
Form Number: IRS Form 2678
Type of Review: Extension
Title: Employer Appoint of Agent
Description: 26 U.S.C. 3504 authorizes an employer to designate a fiduciary, agent, etc., to perform the same acts as required of employers.
Respondents: Farms, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations
Estimated Number of Respondents: 94,020
Estimated Burden Hours Per Respondent: 30 minutes
Frequency of Response: Other (as necessary)
Estimated Total Reporting Burden: 47,010 hours
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

BILLING CODE 4830–01–P

Department of the Treasury — Internal Revenue Service

Form **2678** (Rev. October 1993)

Employer Appointment of Agent

Under Section 3504 of the Internal Revenue Code

(For use by employers or payers)

OMB Number 1545-0748
Expires: 10-31-96

1. To

Director

_____ Service Center

Instructions

Employer or Payer: Please complete this form and give it to the agent.

Agent: Please attach a letter requesting authority to do either all that is required of the employer for wages you pay on the employer's behalf or all that is required of the payer for requirements of backup withholding. *(See applicable Revenue Procedures 70-6 or 84-33.)* Forward both the letter of request and Form 2678 to the Director of the Internal Revenue Service Center where you file your returns. *(See reverse side for addresses.)*

Note: Rev. Proc. 70-6 is available in Publication 1271 and Rev. Proc. 84-33 is available in Publication 1272.

2. Employer's or Payer's name

3. Employer's or Payer's address *(Number and street, city, town or post office, State and ZIP code)*

4. Employer identification number

5. Agent's name

6. Agent's address *(Number and street, city, town or post office, State and ZIP code)*

7. Agent's employer identification number

8. Effective for *(Check the box or boxes that apply)*

- ☐ Employment taxes *(Rev. Proc. 70-6)*
- ☐ Backup withholding *(Rev. Proc. 84-33)*

9. If filing under Rev. Proc. 70-6, does this apply to all employees?

☐ Yes ☐ No

10. Effective date of appointment by employer or payer

Under section 3504 of the Internal Revenue Code, please authorize this agent to do all that is required under *(Check the one(s) that apply)*

- ☐ Chapter 21 *(FICA)*
- ☐ Chapter 22 *(Railroad Retirement)*
- ☐ Chapter 24—
  - ☐ Withholding and/or
  - ☐ Backup withholding
- ☐ Chapter 25 *(General Provisions)* of Subtitle C

The agent named above has been appointed either to pay wages for employers and/or report and deposit backup withholding amounts for payers. This appointment is effective on the date shown in Item 10.

It is understood that the agent and the employer or payer are subject to all provisions of law and regulations *(including penalties)* which apply to employers or payers.

Signature of employer or payer

Date

Title of signing official *(Indicate whether the person signing is an owner, partner, member of firm, fiduciary, or a corporate officer.)*

For Internal Revenue Service Use Only

Effective date granted by IRS ▶

For the Paperwork Reduction Act Notice, please see the back of this form.

Paperwork Reduction Act Notice

We ask for this information to carry out the Internal Revenue laws of the United States. We need it to ensure that taxpayers are complying with these laws and to allow us to figure and collect the right amount of tax. You are required to give us this information. The time needed to complete this form will vary depending on individual circumstances. The estimated average time is: 30 minutes. If you have comments concerning the accuracy of this time estimate or suggestions for making this form more simple, we would be happy to hear from you. You can write to both the **Internal Revenue Service**, attn: Reports Clearance Officer, PC:FP, Washington, DC 20224, and the **Office of Management and Budget**, Paperwork Reduction Project (1545-0748), Washington, DC 20503. Do not send this form to either of these offices. Instead, send it to the Director of the Internal Revenue Service Center where you file your returns.

File with the Internal Revenue Service Center at:

Holtsville, NY 00501

Andover, MA 05501

Philadelphia, PA 19255

Atlanta, GA 39901

Cincinnati, OH 45999

Austin, TX 73301

Ogden, UT 84201

Kansas City, MO 64999

Fresno, CA 93888

Memphis, TN 37501

[FR Doc. 93–25985 Filed 10–21–93; 8:45 am]
BILLING CODE 4830–01–C

Form 2678 (Rev. 10-93)

Public Information Collection Requirements Submitted to OMB for Review

October 15, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0718
Form Number: IRS Form 941–M
Type of Review: Extension
Title: Employer's Monthly Federal Tax Return
Description: Form 941–M is used by certain employers to report payroll taxes on a monthly rather than quarterly basis. Employers who have failed to file Form 941 or who have failed to deposit taxes as required are notified by the District Director that they must file Form 941–M monthly.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents/ Recordkeepers: 12,000
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—11 hrs., 43 min.
Learning about the law or the form—12 min.
Preparing, copying, assembling, and sending the form to the IRS—14 min.
Frequency of Response: Monthly
Estimated Total Reporting/ Recordkeeping Burden: 147,840 hours
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 93–25986 Filed 10–21–93; 8:45 am]
BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

October 18, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0029
Form Number: IRS Forms 941, 941E, and 941–SS; Schedule A (Form 941) and Schedule B (Form 941)
Type of Review: Revision
Title: Employer's Quarterly Federal Tax Return (941); Quarterly Return Withheld Federal Income Tax and Medicare Tax (941E); Employer's Quarterly Federal Tax Return—American Samoa, Guam, The Commonwealth of Northern Mariana Islands, and the Virgin Islands (941–SS); Record of Federal Backup Withholding Tax Liability (Schedule A); and Employer's Record of Federal Tax Liability (Schedule B)
Description: Form 941 is used by employers to report payments made to employees subject to income and social security/Medicare taxes and the amounts of these taxes. Form 941E is used primarily by state and local governments to report withheld income and Medicare taxes only. Form 941–SS is used by employers in the U.S. possessions to report social security and Medicare taxes only. Schedule A is used by payers who elect to report backup withholding separately. Schedule B is used by employers to record their employment tax liability.
Respondents: Individuals or households, State or local governments, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations.
Estimated Number of Respondents/ Recordkeepers: 12,494,773
Estimated Burden Hours Per Respondent/Recordkeeper:

	941	941E	941–SS	Sched. A	Sched. B
Recordkeeping	10 hr. 3 min.	9 hr. 5 min.	7 hr. 54 min.	2 hr. 40 min.	2 hr. 40 min.
Learning about the law or the form	22 min.	28 min.			
Preparing, copying, assembling, and sending the form to the IRS.	1 hr. 45 min.	1 hr. 45 min.	8 min..		

Frequency of Response: Quarterly
Estimated Total Reporting/ Recordkeeping Burden: 307,385,880 hours
Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 93–26032 Filed 10–21–93; 8:45 am]
BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

October 18, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0049
Form Number: IRS Form 990–BL, Schedule A (Form 990–BL), Form 6069
Type of Review: Extension
Title: Information and Initial Excise Tax Return for Black Lung Benefit Trusts and Certain Persons (990–BL); Computation of Initial Excise Taxes on Black Lung Benefit Trusts and Certain Related Persons Schedule A (Form 990–BL); Return of Excise Tax on Excess Contributions to Black Lung Benefit Trust Under Section 4953 and Computation of Section 192 Deduction (6069)
Description: IRS uses Form 990–BL to monitor activities of black lung benefit trusts, and to collect excise taxes on these trusts and certain related persons if they engage in prescribed activities. The tax is figured on Schedule A and attached to the 990–BL. Form 6069 is used by coal mine operators to figure the maximum deduction to a black lung trust. If excess contributions are made, IRS uses the form to figure and collect the tax on excess contributions.
Respondents: Individuals or households, Businesses or other for-profit, Non-profit institutions
Estimated Number of Respondents/ Recordkeepers: 27
Estimated Burden Hours Per Respondent/Recordkeeper:

	Form 990–BL	Schedule A	Form 6069
Recordkeeping	16 hours, 44 minutes	6 hours, 56 minutes	6 hours, 49 minutes.
Learning about the law or the form	6 hours, 16 minutes	18 minutes	2 hours, 25 minutes.
Preparing, copying, assembling, and sending the form to the IRS	6 hours, 49 minutes	25 minutes	3 hours, 58 minutes.

Frequency of Response: Monthly
Estimated Total Reporting/ Recordkeeping Burden: 700 hours
Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 93–26033 Filed 10–21–93; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Women Veterans; Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 that a meeting of the Advisory Committee on Women Veterans will be held November 9–10, 1993, in room 946, Tech World, 801 I Street, NW., Washington, DC. The purpose of the Advisory Committee on Women Veterans is to advise the Secretary regarding the needs of women veterans with respect to health care, rehabilitation, compensation, outreach and other programs administered by the Department of Veterans Affairs, and the activities of the Department of Veterans Affairs designed to meet such needs. The Committee will make recommendations to the Secretary regarding such activities.

The session will convene on November 9 a.m.–4:30 p.m.; November 10 from 9 a.m.–4:30 p.m., room 946, Tech World, 801 I Street, NW., Washington, DC. All sessions will be open to the public up to the seating capacity of the room. Because this capacity is limited, it will be necessary for those wishing to attend to contact Mrs. Barbara Brandau, Committee Coordinator, Department of Veterans Affairs (phone 202/535–7571) prior to October 22, 1993.

Dated: October 12, 1993.

Heyward Bannister,
Committee Management Officer.
[FR Doc. 93–25977 Filed 10–21–93; 8:45 am]
BILLING CODE 8320–01–M

Privacy Act of 1974;

Amendment of System Notice

AGENCY: Department of Veterans Affairs.
ACTION: Notice.

Notice is hereby given that the Department of Veterans Affairs (VA) is considering adding a new routine use to the system of records entitled Compensation, Pension, Education and Rehabilitation Records—VA (58 VA 21/22) as set forth in **Federal Register** publication, "Privacy Act Issuances," 1991 Compilation, Volume II, pages 967–971 as amended at 57 FR 12374 (4–9–92), and 57 FR 44007 (9–23–92).

If a court that is located in a state other than where the veteran's claims folder is located issues a garnishment order, the court must be able to obtain the veteran's claims file number and the regional office location of the claims folder in order to request that office to properly effect the garnishment.

This routine use would add provisions to allow the release of a defendant veteran's claims file number and the folder location to a court of proper jurisdiction which has issued a garnishment order for that veteran under 42 U.S.C. 659 through 662.

VA has determined that release of information under the circumstances described above is a necessary and proper use of information in this system of records and that a specific routine use for transfer of this information is appropriate.

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposed amended routine use statements to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, 20420. All relevant material received before November 22, 1993, will be considered. All written comments received will be available for public inspection at the above address only between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) until December 1, 1993.

If no public comment is received during the 30 day review period allowed for public comment or unless otherwise published in the **Federal Register** by the Department of Veterans Affairs, the amendments to 58 VA 21/22 included herein are effective November 22, 1993, or 40 days after the notice was approved, whichever is latest.

Approved: October 13, 1993.

Jesse Brown,
Secretary of Veterans Affairs.

Notice of Amendment to System of Records

The system of records identified as 58 VA 21/22, "Compensation, Pension, Education and Rehabilitation records—VA" as set forth in **Federal Register** publication, "Privacy Act Issuances," 1989 Compilation, Volume II, pages 918–922, is amended by adding the following:

58 VA 21/22

SYSTEM NAME:

Compensation, Pension, Education and Rehabilitation Records—VA.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THEIR PURPOSES OF SUCH USES:

* * * * *

57. A veteran's claims file number and folder location may be disclosed to a court of proper jurisdiction which has issued a garnishment order for that veteran under 42 U.S.C. 659 through 662.

* * * * *

[FR Doc. 93–25979 Filed 10–21–93; 8:45 am]

BILLING CODE 8320–01

Performance Review Board Members

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Under the provisions of 5 U.S.C. 4314(c)(4) agencies are required to publish a notice in the **Federal Register** of the appointment of Performance Review Board (PRB) members. This notice revises the list of members of the Department of Veterans Affairs (VA) Performance Review Boards which was published in the **Federal Register** on November 19, 1992, (57 FR 54638).

EFFECTIVE DATE: October 13, 1993.

FOR FURTHER INFORMATION CONTACT: Carol A. Kummer, Office of Human Resources Management (053), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 535–8723.

VA Performance Review Board (PRB)

Ronald E. Cowles, Acting Assistant Secretary for Human Resources and Administration (Chairperson)
Shirley Carozza, Deputy Assistant Secretary for Budget
Norman B. (Gabby) Hartnett, Chief of Staff, Office of the Secretary
C. Wayne Hawkins, Deputy Under Secretary for Health for Administration and Operations
Gerald K. Hinch, Deputy Assistant Secretary for Equal Opportunity
Mary Lou Keener, General Counsel
William T. Merriman, Deputy Inspector General
Roger R. Rapp, Director of Field Operations, National Cemetery System
John Vogel, Acting Deputy Chief Benefits Director

Veterans Benefits Administration PRB

Harold F. Gracey, Jr., Chief of Staff (Chairperson)
Raymond H. Avent, Director, Eastern Area
David A. Brigham, Director, Veterans Assistance Service
J. Gary Hickman, Director, Compensation and Pension Service
Rhoda R. Mancher, Director, Office of Information Technology
Richard Pell, Jr., Deputy Chief of Staff
David M. Walls, Director, Western Area

Veterans Health Administration PRB

John T. Farrar, M.D., Deputy Under Secretary for Health (Chairperson)
C. Wayne Hawkins, Deputy Under Secretary for Health for Administration and Operations (Co-Chairperson)
Bernice P. Dorse, R.D., Director, Dietetic Service
Clark R. Doughty, Regional Director, Western Region
Barbara L. Gallagher, Regional Director, Eastern Region
Sanford M. Garfunkel, Associate Chief Medical Director (CMD) for Operations
Norman B. (Gabby) Hartnett, Chief of Staff, Office of the Secretary
David H. Law, M.D., Acting Associate Deputy CMD for Clinical Programs
Charles A. Milbrandt, Acting Associate CMD for Resource Management
Richard P. Miller, Regional Director, Southern Region
Alline L. Norman, Associate CMD for Administration
Elizabeth M. Short, M.D., Associate CMD for Academic Affairs
Dennis H. Smith, Executive Assistant to the Under Secretary for Health
Nancy M. Valentine, Ph.D., R.N., Assistant CMD for Nursing Programs
Charles V. Yarbrough, Associate CMD for Construction Management
Thomas T. Yoshikawa, M.D., Assistant CMD for Geriatrics and Extended Care
Albert Zamberlan, Regional Director, Central Region

Office of Inspector General PRB

Milton M. MacDonald, Deputy Assistant Inspector General for Audit, Department of State (Chairperson)
David A. Brinkman, Assistant Inspector General for Analysis and Follow-up, Department of Defense
Sebastian R. Lorigo, Deputy Inspector General for Investigations, Department of Housing and Urban Development

Dated: October 13, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

[FR Doc. 93–25976 Filed 10–21–93; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 203
Friday, October 22, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

AFRICAN DEVELOPMENT FOUNDATION

Board of Directors Meeting

TIME: 11:00 a.m.–1:00 p.m.

PLACE: ADF Headquarters.

DATE: Wednesday, October 27, 1993.

STATUS: Open.

Agenda

11:00
President's Report
12:00
Audit Committee Report
12:30
Executive Session

If you have any questions or comments, please direct them to Ms. Janis McCollim, Executive Assistant to the President, who can be reached at (202) 673–3916.

Gregory Robeson Smith,
President.

[FR Doc. 93–26176 Filed 10–20–93; 2:32 pm]

BILLING CODE 6116–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, November 5, 1993.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 93–26126 Filed 10–20–93; 10:23 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, November 12, 1993.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 93–26127 Filed 10–20–93; 10:23 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, November 19, 1993.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 26128 Filed 10–20–93; 10:23 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, November 26, 1993.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 93–26129 Filed 10–20–93; 10:23 am]

BILLING CODE 6351–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, October 27, 1993.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: October 19, 1993.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 93–26134 Filed 10–20–93; 10:37 am]

BILLING CODE 6210–01–P

UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

Meeting Notice

TIME AND DATE: 9:00 a.m., November 1, 1993.

PLACE: Uniformed Services University of the Health Sciences, Room D3001, 4301 Jones Bridge Road, Bethesda, Maryland 20814–4799.

STATUS: Open—under "Government in the Sunshine Act" (5 U.S.C. 552b(e)(3)).

MATTERS TO BE CONSIDERED:

9:00 a.m.
Meeting—Board of Regents

(1) Approval of Minutes—9 August 1993; (2) Awards; (3) Graduate Degrees; (4) Faculty Matters; (5) Departmental Reports; (6) Financial Report; (7) Report—President, USUHS; (8) Comments—Chairman, Board of Regents.

New Business

CONTACT PERSON FOR MORE INFORMATION: George A. Drumbor, Executive Secretary of the Board of Regents, 301/295–3886.

Dated: October 20, 1993.

Patricia L. Toppings,
OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–26199 Filed 10–20–93; 2:33 pm]

BILLING CODE 5000–04–M

Corrections

Federal Register
Vol. 58, No. 203
Friday, October 22, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO-930-4214-10; COC-55779]

Proposed Withdrawal; Opportunity for Public Meeting; Colorado

Correction

In notice document 93-24226 beginning on page 51647 in the issue of Monday, October 4, 1993, make the following correction:

On page 51648, in the first column, under **DATES:**, in the last line, "January 3, 1993." should read "January 3, 1994."

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO-932-4214-10; COC-55323]

Proposed Withdrawal; Opportunity for Public Meeting; Colorado

Correction

In notice document 93-24225 beginning on page 51648 in the issue of Monday, October 4, 1993, make the following correction:

On page 51648, in the second column, under **DATES:**, in the last line, "January 3, 1993." should read "January 3, 1994."

BILLING CODE 1505-01-D

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 19, 30, 40, 50, 60, 61, 70, 72, and 150

RIN 3150-AE50

Whistleblower Protection for Employees of NRC-Licensed Activities

Correction

In rule document 93-24787 beginning on page 52406 in the issue of Friday October 8, 1993, make the following correction:

On page 52406, in the third column, in the **EFFECTIVE DATE:**, in the first line, "October 8, 1993." should read "November 8, 1993."

BILLING CODE 1505-01-D

Friday
October 22, 1993

Part II

Environmental Protection Agency

40 CFR Part 51, et al.
Enhanced Monitoring Program; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51, 52, 60, 61 and 64

[IL-64-2-5807; FRL-4787-6]

RIN 2060-AD18

Enhanced Monitoring Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of opportunity for public hearing.

SUMMARY: Pursuant to the Clean Air Act (the Act) the EPA is proposing a new Enhanced Monitoring Program, including both new regulations and certain amendments to several existing air pollution program regulations. The program would require owners or operators of both major stationary sources of non-hazardous air pollutants and of sources subject to existing national emission standards for hazardous air pollutants, to perform enhanced monitoring at significant emissions units of air pollution. The proposed rule would require that enhanced monitoring data be used to determine the compliance status of affected emissions units with certain applicable emission limitations or standards.

The proposed rule would establish the criteria and procedures that owners or operators must satisfy in evaluating, selecting and demonstrating enhanced monitoring, and would include appendices containing enhanced monitoring performance and quality assurance requirements. Proposed reporting and recordkeeping requirements would identify the basis, content, frequency and other requirements for enhanced monitoring reports. The reporting requirements would also specify that enhanced monitoring data be used by an owner or operator to certify compliance pursuant to 40 CFR part 70 for those applicable requirements subject to enhanced monitoring. Finally, the proposed amendments to existing regulations would clarify that the enhanced monitoring program could be implemented through preconstruction permits issued under the Act and that enhanced monitoring and certain other information collected could be used to determine compliance with applicable emission limitations or standards.

DATES: Comments on the proposed rule must be received by December 20, 1993. The EPA will hold a public hearing in Washington, DC on the proposed regulations on November 19, 1993. Requests to present oral testimony must be received on or before November 5, 1993. If possible, comments should be sent in both computerized form and hardcopy. Comments generated using word processing software should be sent on a clearly labeled, 3.5 inch IBM-compatible diskette. Comments formatted in WordPerfect 5.0 or 5.1 may be submitted as is; comments prepared by other word processing software, should be submitted in an "unformatted" mode. All comments submitted in hardcopy should be submitted in duplicate. Comments should refer to page numbers and columns whenever possible.

Docket: Supporting information used in developing the proposed regulations is contained in Docket No. A-91-52. This docket is available for public inspection and copying between 8:30 a.m. and 3:30 p.m. Monday through Friday, at the address listed below. A reasonable fee may be charged for copying.

ADDRESSES: Comments must be mailed (in duplicate, if possible) to: EPA Air Docket (LE-131), Attention: Docket No. A-91-52, room M-1500, Waterside Mall, 401 M Street SW., Washington, DC 20460. The public hearing will be held in the Waterside Mall auditorium at the EPA's Washington, DC Headquarters Office on November 19, 1993. Persons interested in attending the hearing or wishing to present oral testimony should contact Mr. Keith Brown, Stationary Source Compliance Division (EN-341W), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, telephone (703) 308-8676.

FOR FURTHER INFORMATION CONTACT: Keith Brown at (703) 308-8676.

SUPPLEMENTARY INFORMATION: The contents of the preamble are listed in the following outline:

I. Background and Purpose
  A. Statutory Authority
  B. Alternatives Considered
  C. Benefits of Enhanced Monitoring
  D. Public Participation
II. Implementation Principles
  A. Ensure Environmental Protection
  B. Incorporate Broad-Based Perspective for Rule Development
  C. Maintain an Effective Partnership With State and Local Governments
  D. Minimize Small Business Concerns
  E. Promote Pollution Prevention
  F. Facilitate Use of Market-Based Incentives
  G. Allow Flexibility in State Programs and Source Permits
  H. Enable Effective and Efficient Information Transfer
  I. Promote Simple and Streamlined Regulations
III. Summary of Key Concepts
  A. Development and Selection of Enhanced Monitoring Protocols
  B. Purpose of Enhanced Monitoring
  C. Relationship to Title V Permit Program
IV. Detailed Discussion of the Provisions of the Proposed Regulations
  A. Section 64.1—Applicability
  B. Section 64.2—Definitions
  C. Section 64.3—Implementation Requirements
  D. Section 64.4—Enhanced Monitoring Protocol Requirements
  E. Section 64.5—Reporting Requirements
  F. Section 64.6—Recordkeeping Requirements
  G. Section 64.7—Permit Application Requirements
  H. Section 64.8—Permit Requirements
  I. Section 64.9—Prohibitions
  J. 40 CFR Parts 51, 52, 60 and 61
  K. SIP Call
V. Other Topics for Discussion
  A. Relationship to Nonattainment Area Provisions
  B. Relationship to Section 112 Regulatory Developments
  C. Relationship to Title I Permit Programs
VI. Administrative Requirements
  A. Public Hearing
  B. Docket
  C. Office of Management and Budget (OMB) Review
  D. Regulatory Flexibility Act
  E. Paperwork Reduction Act

The first section of this preamble provides background on the statutory provisions under the Act that require owners or operators of stationary sources to perform enhanced monitoring and to submit compliance certifications. This section also provides information on the purpose, basic options, and the expected benefits of the proposed enhanced monitoring program. This section also relates the proposed enhanced monitoring program to the compliance certification requirements of 40 CFR part 70.

The second section explains the implementation principles EPA has followed while developing the proposed regulations, and EPA's position on associated issues. These implementation principles should be considered when the reader reviews the preamble and proposed regulations.

The third section provides a summary of the general approach EPA has taken in developing the proposed regulations.

The fourth section of the preamble presents a summary of each section of the proposed enhanced monitoring program. This section includes background on the provisions and a discussion of issues that EPA has identified and would like especially to be considered during the public comment period.

The fifth section then provides discussion on relationships between the enhanced monitoring program and other provisions of the Act. The sixth and final section of the preamble contains

the administrative requirements that accompany Federal regulatory actions.

The preamble includes many citations which refer the reader to more detailed discussions of a topic or to the origin of certain requirements. These citation sections will generally not be followed by their origin, such as "of this preamble" or "of the Act." Rather, the reader can recognize the origins of the sections by their nature: sections of the preamble begin with a Roman numeral; sections of the proposed regulations range from §§ 64.1 to 64.8; sections of existing EPA regulations are preceded by 40 CFR; and sections of the Act are referenced by a three digit number, such as 114 or 504.

This preamble often refers to "State" or "permitting authority." The reader should assume that where the preamble refers to a "State," such term also includes local air pollution agencies, Indian tribes, and territories of the United States to the extent they are or will be the permitting authority for their area or have been or will be delegated permitting responsibilities under the Act. In addition, the term "permitting authority" would also include EPA to the extent EPA is the permitting authority of record.

Finally, this preamble often refers to 40 CFR part 70, the regulations promulgated July 21, 1992, implementing the operating permits program under title V of the Act (see 57 FR 32250). Those regulations provide requirements applicable to federally-approved, State-administered operating permits programs. Where a State fails to submit an approvable program or to adequately administer and enforce an approved program, EPA will have to promulgate, administer and enforce a Federal program for issuing permits in that State. The reader should assume that where the preamble refers to 40 CFR part 70, such term may also refer to an EPA-administered (Federal) operating permits program, which may be promulgated under another part of 40 CFR.

I. Background and Purpose

A. Statutory Authority

The proposed regulations respond principally to the statutory mandate in section 702(b) of the Clean Air Act Amendments of 1990, Public Law 101–549, 104 Stat. 2399, which requires the Administrator of EPA to promulgate rules on enhanced monitoring and compliance certifications. Section 702(b) of the 1990 Amendments revised section 114(a) of the Act by adding a new paragraph (3) that provides, in part:

> The Administrator shall in the case of any person which is the owner or operator of a major stationary source, and may, in the case of any other person, require enhanced monitoring and submission of compliance certifications. Compliance certifications shall include (A) identification of the applicable requirement that is the basis of the certification, (B) the method used for determining the compliance status of the source, (C) the compliance status, (D) whether compliance is continuous or intermittent, (E) such other facts as the Administrator may require * * *

The 1990 Amendments also revised section 114(a)(1) of the Act to provide additional authority concerning monitoring, reporting, and recordkeeping requirements. As amended, that section provides the Administrator with the authority to require any owner or operator of a source:

> On a one-time, periodic or continuous basis to—
>
> (A) Establish and maintain such records;
>
> (B) Make such reports;
>
> (C) Install, use, and maintain such monitoring equipment * * *
>
> (D) Sample such emissions (in accordance with such procedures or methods, at such locations, at such intervals, during such periods and in such manner as the Administrator shall prescribe);
>
> (E) Keep records on control equipment parameters, production variables, or other indirect data when direct monitoring of emissions is impractical;
>
> (F) Submit compliance certifications in accordance with section 114(a)(3); and
>
> (G) Provide such other information as the Administrator may reasonably require * * *.

In addition, related provisions under title V of the Act specify that operating permits must include requirements for monitoring and compliance certification. Section 504(c) requires that each permit must set forth "monitoring, compliance certification and reporting requirements to assure compliance with the permit terms and conditions." Section 504(b) permits the Administrator to promulgate appropriate test methods and monitoring requirements for determining compliance. That section states that "continuous emissions monitoring need not be required if alternative methods are available that provide sufficiently reliable and timely information for determining compliance." Because this section directly refers to promulgating monitoring requirements for determining compliance, the proposal cites this section in addition to section 114(a)(3) as explicit authority for the proposed regulations.

Section 504(a) states that permits shall include "a requirement that the permittee submit to the permitting authority, no less often than every six months, the results of any required monitoring, and such other conditions as are necessary to assure compliance with applicable requirements of the Act." Section 503(b)(2) states that permitted sources must certify compliance with any applicable permit requirements "no less frequently than annually * * * and promptly report any deviation from permit requirements to the permitting authority."

The 1990 Amendments also revised section 113 to clarify what evidence may be used to prove violations of the Act. Section 113(e), as amended, provides that "the duration" of a violation may be established "by any credible evidence (including evidence other than the applicable test method)." The Legislative history for this provision states that by this amendment, Congress meant to clarify that, in an enforcement action, "courts may consider any evidence of violation or compliance admissible under the Federal Rules of Evidence, and that they are not limited to consideration of evidence that is based solely on the applicable test method in the State implementation [sic] or regulation." (S. Rep. No. 228, 101st Cong., 1st Sess., 366 (1989) *reprinted in* 1990 U.S. Code Cong. & Admin. News 3385, 3749.)

Coupled with these changes to section 113, section 114(a)(3) specifically requires that a certification be based upon a determination of whether compliance was continuous or intermittent. Therefore, the enhanced monitoring protocol must collect data that can be used to document compliance and facilitate enforcement of documented violations. Congress noted in a Senate Committee Report that "similar to the reporting requirements of the Clean Water Act, 33 U.S.C. 1342, compliance certifications and emission data submitted pursuant to this [section 114(a)(3)] authority will facilitate enforcement, due in part to the fact that such data and certifications can be used as evidence." (S. Rep. 228, 101st Cong., 1st Sess., at 368 (1989)). Similarly, a House Committee Report stated that this section "confirms that EPA has authority under section 114(a) to require enhanced monitoring and to require such monitoring in compliance certifications." (H.R. Rep. 490, 101st Cong. 2d Sess., pt. 1, at 394 (1990)). Thus, Congress linked enhanced monitoring and compliance

certifications, with the idea that enhanced monitoring data would serve as the basis for certifying compliance and could be used to determine the existence of an enforceable violation.

In this proposal, EPA is proposing a new part 64 to respond to the direct mandate in section 114(a)(3). To assure that this mandate is carried out effectively and in a manner that responds to amended section 113, EPA also is proposing as part of this proposal revisions to portions of 40 CFR parts 51, 52, 60 and 61. These proposed revisions include proposed Federal implementation language that will be incorporated into SIP's for States that do not adequately respond to a SIP Call that EPA will issue in February 1994. See sections III.B, IV.J. and IV.K. below. For these proposed revisions to 40 CFR parts 51, 52, 60, and 61, EPA is relying on the procedural requirements of section 307(d) of the Act.

B. Alternatives Considered

One clear objective inherent in all of these statutory provisions is to assure that owners or operators are accountable for their emissions and compliance status on a continuous basis. Thus, these proposed regulations would require that the owners or operators of all major sources of non-hazardous air pollutants, or any permitted emissions unit subject to existing hazardous air pollutant requirements under 40 CFR part 61, conduct enhanced monitoring for the purpose of determining their compliance status and report on that status in compliance certifications.

To achieve that objective in a cost-effective manner that is integrated with other regulatory initiatives under the Act, EPA investigated alternatives for three separate decisions. First, EPA considered the degree to which the proposed regulations should prescribe enhanced monitoring requirements. Second, EPA considered to which regulated air pollutants and sources the proposed regulations should apply. Finally, the Agency considered in what manner the proposed regulations could ensure that enhanced monitoring provides a determination of whether compliance is continuous or intermittent, as mandated by section 114(a)(3).

1. Enhanced Monitoring Prescriptiveness

With respect to enhanced monitoring prescriptiveness, one possible option for achieving accountability would be to obtain the most accurate, timely and reliable data that is technologically feasible. For some sources, that option would entail the frequent use of reference test method procedures, while for others it would entail use of continuous emission monitoring systems (CEMS's). This "top-down" option was rejected by EPA as too burdensome and as inconsistent with congressional recognition under section 504(b) that other monitoring options may provide sufficiently reliable and timely information to determine compliance. The EPA solicits comments on the proposal to reject this option.

A second option considered was to specify the precise enhanced monitoring requirements for each major source category. That option was considered impractical given the short time period for issuing the enhanced monitoring program, the large number of source categories affected, and the Agency resource commitments that approach would require. The EPA solicits comments on the proposal to reject this option, including comments as to whether it may be feasible to develop specific requirements for a limited number of source categories and use the general requirements in the proposed regulations for all other source categories. For those comments that support the development of specific requirements, EPA also solicits comments on which source categories should have specific requirements.

A third option considered was to specify technical criteria that an enhanced monitoring protocol must achieve and then allow an owner or operator to demonstrate that its proposed enhanced monitoring protocol is the best monitoring for its particular emissions unit that could achieve these criteria. This option forms the basis for the proposal. It provides the owner or operator with significant flexibility in proposing the type of monitoring that best fits the owner or operator's circumstances, while at the same time assuring that all proposed monitoring methodologies meet the technical criteria that would ensure that a proposed protocol provides quality-assured, representative monitoring data that can be used to determine continuous compliance as required by section 114(a)(3).

It is important to note that the term "best" as would be used in the proposed regulations is not intended to require a top-down selection process that focuses on the best monitoring system that is technically and economically feasible. Rather, the term "best" focuses on what monitoring can best provide an assurance that a particular emissions unit remains in compliance. This use of the term "best" would require evaluating several site-specific factors, such as emissions unit and control system design, operating processes at the facility, the demonstrated margin of compliance and the potential variability of emissions.

For instance, the best monitoring for determining continuous compliance at a large uncontrolled SIP industrial boiler burning high sulfur coal that results in emissions close to the SIP emission limit may be a CEMS given the potential variability in the fuel. However, the best system for a similar uncontrolled boiler burning fuel oil may be a fuel sampling and analysis program. The assurance of continuing compliance, and not the technological elements of the monitoring, would be the appropriate measure of what is "best."

The selection approach described above would serve as the basis for the proposed regulations. However, to ensure that owners or operators make informed proposals and to ensure that the permitting authority has adequate information to act upon proposed enhanced monitoring protocols, the proposed regulations would include some additional evaluation procedures for the enhanced monitoring protocol selection process.

The first option for evaluating a monitoring methodology that could be used as enhanced monitoring would be to consider the best "established monitoring." The proposed regulations would define this term to include monitoring that has been established in certain previous regulatory actions governing many source categories. The EPA believes that the use of established monitoring should serve to decrease the burden on permitting authorities because these methods are familiar and will increase the standardization of the selection process. The second option that an owner or operator would have is to identify all technologically feasible monitoring approaches in order to select the best monitoring methodology for a particular emissions unit that can satisfy all of the requirements for an enhanced monitoring protocol. These monitoring approaches would include both established monitoring and other monitoring identified by the owner or operator. This evaluation process is discussed in further detail in section III. A.

The proposed regulations would use the operating permits program as the primary vehicle for implementing the evaluation and selection process described above. The owner or operator would include its proposed enhanced monitoring protocol and supporting information as part of a permit application. The permitting authority would then review and approve or deny the proposed protocol as part of its

permit issuance process. The performance of verification tests to certify that the protocol achieves technical specifications and requirements then would occur after permit issuance in order to finally demonstrate that the enhanced monitoring protocol achieves all of the requirements of the proposed regulations.

The operating permits program will provide a vehicle for selecting the best monitoring for emissions units at a particular source. Provided that the criteria in the proposed regulations are satisfied, a broad range of monitoring approaches may be approved as the best monitoring at a particular emissions unit. Depending on the circumstances at the emissions unit being monitored, enhanced monitoring could involve procedures such as maintaining records of, analyzing, and reporting on fuel or raw material usage, or systems such as control device parameter monitors or continuous emission monitoring systems. The types of monitoring procedures and systems that could be used under the proposed regulations are discussed in section III.A.

The reader should note that the proposed regulations also would be implemented through the preconstruction permit programs for new and modified sources under parts C and D of title I of the Act. Selection of enhanced monitoring at the preconstruction stage would assure that enhanced monitoring needs are considered in the design and construction of an emissions unit. Implementation through preconstruction permits would also allow for streamlined conversion of preconstruction permits into operating permits where a permitting authority separates the issuance of the two permits. The proposed amendments to 40 CFR part 51 and 40 CFR 52.21 in the proposal would assure that permitting authorities adopt sufficient legal authority to impose enhanced monitoring conditions in preconstruction permits. This issue is discussed in further detail in section V.C.

As stated in its operating permits rule, the Agency intends that title V permits contain all the requirements of the Act applicable to the permitted source. The title V process was not intended to establish more stringent or new requirements. However, the one exception is for compliance provisions required in all permits by title V and 40 CFR 70.6. The part 70 rule allows in some circumstances for the addition or clarification of compliance requirements—as opposed to new emission limits or standards. For example, an addition might be made through this process to specify an averaging period or periodic monitoring requirement where the underlying standard fails to specify these elements as a part of the monitoring requirement. EPA continues to intend that the role of the title V permitting process is to express all of the underlying requirements applicable to the source.

2. Enhanced Monitoring Program Applicability

With respect to the scope of the proposed part 64 regulations, EPA considered several alternatives for defining the universe of sources, regulated air pollutants, emission limitations or standards, and emissions units that should be subject to the enhanced monitoring requirement. Section 114(a)(3) provides a general requirement that EPA must require enhanced monitoring at major stationary sources. However, section 114(a)(3) does not provide EPA with any further guidance as to which regulated air pollutants, emissions units, and emission limitations or standards at a major source must be covered by enhanced monitoring requirements.

In contrast, section 504(c) provides that each permit must include "inspection, entry, monitoring, compliance certification and reporting requirements to assure compliance with the permit terms and conditions." Furthermore, section 503(b)(2) requires a compliance certification for "any applicable permit requirements." Because of the language in these two title V sections, EPA has required monitoring and certification at all emissions units for all applicable requirements under the Act in 40 CFR part 70 because Congress clearly required in title V that all applicable requirements be subject to appropriate monitoring to "assure compliance."

Section 114(a)(3) does not contain such specific language regarding the scope of the part 64 program. Thus, Congress having remained silent on the precise question at issue, EPA believes the legislative branch was providing the Agency with broad discretion to determine what type of monitoring is enhancement enough for various emissions units at major sources. See *Chevron USA, Inc.*, v. *Natural Resources Defense Council*, 456 U.S. 837 (1984). First, as a general rule, EPA has determined that the proposed rules should only apply at the units that emit pollutants for which the source is major. EPA believes that Congress's intent in requiring enhanced monitoring of major sources was an attempt to focus on imposing monitoring most immediately on the sources that may emit a particular pollutant in large amounts. With respect to which emission limitations and standards are covered by the enhanced monitoring rule, EPA believes that part 64 should apply to all emission limitations and standards applicable to the pollutants for which the source is major and at an emissions unit subject to part 64. Finally, the following two subsections will describe the emissions units that would be subject to part 64.

EPA has divided the applicability requirement into two parts: hazardous air pollutants and other regulated pollutants. With respect to these two categories of pollutants, EPA independently explored the range of applicability.

a. *Hazardous Air Pollutant Sources.* Requirements for hazardous air pollutants under the Act include existing NESHAP requirements under 40 CFR part 61 and will include new standards developed under section 112 as amended by the 1990 Amendments. The EPA recognizes that both minor and major sources of hazardous air pollutants are of significant concern and warrant enhanced monitoring. Therefore, EPA intends to apply enhanced monitoring under section 114(a)(3) of the Act to as many hazardous air pollutant sources as possible.

First, with respect to sources subject to existing part 61 requirements, the proposed regulations would apply to any emissions unit required to obtain a permit (regardless of whether the source is a major or area source). The EPA is not required to establish enhanced monitoring for area sources under section 114(a)(3), but has been granted discretion to establish enhanced monitoring for those sources. Because of the significance of hazardous air pollutants, EPA believes that area sources that must also obtain permits under part 70 should develop methods for enhanced monitoring in the permit application process. However, asbestos demolition and renovation projects subject to subpart M of part 61 are exempt from the requirements of part 70. Because EPA is not requiring States to permit these sources and the permit program is the established method for implementing enhanced monitoring, EPA has exempted these sources from the requirements of part 64.

With respect to emissions units subject to new hazardous air pollutant requirements under amended section 112 of the Act, EPA will include appropriate enhanced monitoring requirements as part of those new

hazardous air pollutant requirements. This approach is consistent with EPA's statement in the July 21, 1992 preamble to 40 CFR part 70 that all future rulemakings will have no gaps in their monitoring provisions (see 57 FR 32278). Therefore, EPA will exercise its section 114(a)(3) authority to require enhanced monitoring for sources subject to new section 112 requirements in actions taken pursuant to the amended section 112. These actions include the general provisions of 40 CFR part 63 and the individual subparts of that new part, as well as case-by-case permit decisions in certain instances. The interrelationship between the proposed regulations and NESHAP regulatory development is discussed in further detail in Section V.B.

Finally, as to sources that achieve early reductions in accordance with the regulation promulgated pursuant to section 112(i)(5), 57 FR 61970 (Dec. 29, 1992), to be codified at 40 CFR 63.70 et seq., EPA believes that the monitoring required pursuant to the permits program is enhancement enough. The early reductions program is a temporary program; these sources will ultimately need to comply with the new standards being developed under section 112. The EPA believes that during this interim period, the monitoring requirements of the permits program will provide monitoring sufficient for these sources to certify compliance with applicable emission limitations.

b. *Criteria Air Pollutant Sources.* With respect to sources and emissions units that emit non-hazardous pollutants, EPA determined to use its discretion to limit the scope of applicability more than for hazardous air pollutants. First, EPA determined not to exercise its discretion to require enhanced monitoring at non-major sources at this time. With respect to the Act's undefined mandate to require enhanced monitoring at major stationary sources, EPA has determined that some proposed limitations on the applicability of part 64 at certain emissions units located at major stationary sources would be appropriate. In making that determination, EPA considered three factors: the statutory requirement of enhanced monitoring at major stationary sources, the results of its Regulatory Impact Analysis (RIA), and the monitoring requirements of the part 70 operating permits program.

EPA is required to perform an RIA pursuant to E.O. 12291 in order to assess the costs and benefits of the proposed rule and to maximize the net benefits to society. The RIA calculates net benefits in two ways. For attainment areas, the calculation involves weighing health and welfare benefits associated with emissions reductions against the costs of complying with enhanced monitoring requirements. In nonattainment areas, the anticipated net benefits also include the avoided cost to the regulated source of alternative emission reduction regulations that would be necessary to achieve emission reductions required for attainment in the absence of enhanced monitoring requirements.

The RIA takes into account both the permitting authority burden costs and costs to the regulated community. The costs to the permitting authorities include costs associated with review and approval of proposed enhanced monitoring methods and subsequent review of monitoring reports. The costs analyzed for the regulated community include all aspects of implementing enhanced monitoring at a source. These include any one-time capital costs for purchasing and installing new monitoring equipment, and recurring annual costs for monitor operation and maintenance, quality assurance activities, and reporting, compliance certification, and recordkeeping burden costs. Because enhanced monitoring does not change the stringency of underlying standards or limitations, any costs associated with coming into compliance with these emissions limitations or standards by sources are not considered costs associated with this rule. The EPA solicits comments on this approach, and on whether other costs to the permitting authorities and regulated community should be incorporated in the analysis.

Because of EPA's uncertainty as to the scope of applicability, the Agency established a range of options in the RIA for imposing the enhanced monitoring rule to units at major stationary sources. The RIA explored in detail five gradations of coverage for the part 64 requirements:

(1) All units emitting pollutants for which the source is major (Option 1);

(2) All units that have the potential to emit pollutants in an amount equal to or greater than 10% of the applicable major source definition (Option 2);

(3) All units that have the potential to emit pollutants in an amount equal to or greater than 30% of the applicable major source definition (Option 3);

(4) All units that have the potential to emit pollutants in an amount equal to or greater than 50% of the applicable major source definition (Option 4); and

(5) All units that have the potential to emit pollutants in an amount equal to or greater than the applicable major source definition (Option 5).

The EPA also considered the fact that the regulations developed under part 70 require monitoring at all emissions units at a major source. The monitoring required by part 70 in many instances will be an enhancement over the existing monitoring at an emissions unit. In this sense, many units will have established some enhancement through the permit process even in the absence of part 64. For the other units covered by part 70 monitoring, EPA believes the existing monitoring is sufficiently enhanced..

Based on the three factors discussed above, EPA has decided not to propose Option 5. The EPA recognized that under that option, many major stationary sources would avoid any additional monitoring beyond that required by part 70. The RIA analysis indicates that only 47 percent of all major stationary sources would be subject to the part 64 requirement at one or more emissions units. In addition, this option would have the undesirable effect of excluding many significant emissions units from the part 64 enhanced monitoring requirements. For example, a source with several 90 tons per year emissions units would avoid any part 64 enhanced monitoring requirement. By contrast, a source consisting of one 110 tons per year unit would be subject to part 64 enhanced monitoring under this option. Finally, the RIA indicates that this option would not present the greatest net benefits (i.e., further net benefits are achieved by moving to Option 4). Therefore, balancing the fact that Option 5 would require part 64 monitoring at less than 50 percent of all major stationary sources with the fact that it did not produce the greatest net savings, EPA determined that Option 5 would not be an acceptable proposed approach.

As to the remaining options, EPA determined that there were positive and negative factors supporting each option. Option 1 would ensure that part 64 monitoring is performed at all emissions units that emit the pollutant for which the source is major. However, this option also would provide the lowest net benefits of the options considered. The RIA estimates the loss of net benefits of moving from Option 4 (which would maximize net benefits, i.e. any other option selected would result in net costs) to Option 1 at $735 million; in addition, the RIA indicated that the marginal cost of obtaining further emission reductions by moving from Option 4 to Option 1 would be extremely high (approximately $11,750 per ton). Option 2, while ensuring that approximately 82 percent of all major stationary sources would be subject to

the part 64 requirements at one or more emissions units, also would result in lower net benefits ($197 million less) than those provided under Option 4; in addition, the RIA indicates that the costs for the incremental emission reductions would remain high (approximately $5600 per ton).

Although the RIA indicates that Option 4 would maximize net benefits, only 56 percent of all major stationary sources would have emissions units subject to the part 64 requirements under this option. Moreover, Option 4 would require part 64 monitoring at less than ⅓ of all regulated emissions units at major stationary sources that emit the pollutant for which the source is major, leaving some significant emissions units to be regulated by the monitoring requirements of part 70. While EPA believes that there would be some support for this option because of the application of part 70 periodic monitoring requirements at the remaining major stationary sources, the Agency questions whether that monitoring would be sufficiently enhanced for the potentially large emissions units that would not be subject to part 64 enhanced monitoring.

Finally, Option 3 would provide increased coverage of major stationary sources—65 percent of all stationary sources that are major for one or more criteria pollutants—and the RIA indicates that the additional emission reductions that could be achieved from moving from Option 4 to 3 would be reasonable in light of the projected additional costs achieved (approximately $3000 per ton of additional emissions reduced). The EPA also believes that many of the additional emissions units that would be subject to part 64 monitoring under Option 3 should be considered significant emissions units that warrant part 64 enhanced monitoring.

Because Option 3 appears to be the best approach when balancing the three factors described earlier, EPA has selected this option for the proposed rule. Option 3 would ensure part 64 enhanced monitoring at one or more emissions units at a significant number of major stationary sources (65 percent). The remaining major sources would still be subject to monitoring under part 70 that EPA views as "enhanced" for units that size. Moreover, those emissions units that would be required to meet only the part 70 monitoring requirements would be those with the potential to emit less than 30 percent of the pollutant for which the source is major, presumably the less significant units.

EPA solicits comment on its proposed general approach, the proposal to adopt Option 3 as the best approach. We are also interested in soliciting comments on any or all options appropriate for consideration, especially Option 1 which is the most inclusive, and Options 4 and 5, which have the highest net benefits. With respect to the decision to cover only units that emit the pollutant for which the source is major, EPA solicits comment on the policy and legal implications of the decision. As an alternative basis for not applying the part 64 requirements to certain units, EPA also solicits comments on the possible use of a de minimis exception to exempt certain units from the part 64 monitoring requirements in light of the general statutory requirement that EPA require enhanced monitoring at major stationary sources. EPA believes that a de minimis exception for certain units at major sources may be acceptable because the broad language of section 114(a)(3) would not preclude the drafting of such an exception. See *Alabama Power Co.* v. *Costle*, 636 F.2d 323, 357 (D.C. Cir. 1979). However, EPA believes that a de minimis exception to the general requirement of enhanced monitoring at all major sources would be appropriate only if there were trivial gains in requiring enhanced monitoring at some subset of emissions units. *Id.* at 361.

Finally, EPA also solicits comment on other reasonable alternatives. For example, EPA solicits comment on whether it should adopt a method for determining the universe of units subject to part 64 that is based upon uncontrolled emissions rather than potential to emit, as such an approach arguably would better address the units with the greatest environmental risk. In other words, in a monitoring rule such as part 64, should EPA use a different definition of potential to emit than EPA has used for other purposes.

The reader should note that the same 30 percent threshold that is applied to a single emissions unit as described above would apply to a group of emissions units in certain circumstances. A group of emissions units at a major source may in some instances achieve compliance with applicable emission limitations or standards by aggregating, averaging, apportioning or trading emissions among the group of emissions units. For instance, a source may be operating with an approved bubble plan or similar scheme. In such circumstances, if, collectively, the potential emissions of the group exceed the tons per year threshold described above for a single emissions unit, then the proposed rule would apply to all emissions units in the group.

One final alternative approach that EPA considered was to apply these rules only to major stationary sources in nonattainment areas. The EPA rejected this approach as inconsistent with the explicit language of section 114(a)(3) and because it would fail to address the benefits that can be achieved by improving compliance with maintenance-related requirements in attainment as well as nonattainment areas.

3. Use of Enhanced Monitoring to Determine Compliance

As discussed in further detail in Section III.B., the purpose of enhanced monitoring is to provide a means for determining and certifying whether compliance is continuous or intermittent. Many existing regulations do not include a regulatory method for determining compliance on that basis. In addition, some such regulations are written in such a manner as to prohibit the use of methods not included in the applicable regulation as a means for determining compliance. Therefore, some existing rules as written could not allow for effective implementation of the enhanced monitoring program mandated by section 114(a)(3).

The EPA considered three alternative means for addressing this concern. First, EPA considered requiring an owner or operator to establish a separately enforceable permit condition whenever an existing rule would not permit a determination of compliance with the underlying emission limitation or standard on the basis of enhanced monitoring. This alternative was rejected as inconsistent with the concept discussed in the part 70 operating permits rule that the permit generally would not be used as a means of establishing new requirements. (The part 70 rule does in limited circumstances allow for clarifying or adding compliance requirements as opposed to new emission limitations or standards, e.g., specifying an averaging period or specifying a periodic monitoring requirement where no current monitoring exists.)

The second alternative considered was to construct the enhanced monitoring rule in a manner designed to work within the structure of existing applicable requirements, and to provide incentive for owners or operators to voluntarily consent to the use of enhanced monitoring to determine compliance where the underlying applicable requirement would allow. Under this alternative, the specified compliance test method would have to

be included as part of an enhanced monitoring protocol if the underlying rule prohibited alternative means of determining compliance or the owner or operator did not consent to the alternative means. The proposed rule would have required an owner or operator to conduct the compliance method specified in the applicable regulation on a more frequent basis than currently required and whenever a set amount of deviations occurred. This alternative was rejected because in many instances it would fail to provide sufficient data to satisfy the statutory requirement that the enhanced monitoring be able to establish whether an emissions unit is in continuous compliance with an applicable requirement.

The third alternative, which is the approach selected for the proposed rule, would be to make amendments to the general provisions in Federal regulations, and to issue a SIP Call to correct any deficiencies in State regulations. These amendments and SIP changes would allow for a determination of compliance to be made on the basis of enhanced monitoring. These changes would best address the new statutory mandate in section 114(a)(3) and would allow for effective implementation of the enhanced monitoring program. The details of the proposed amendments and SIP Call are discussed in sections III.B., IV.J. and IV.K. below.

It should be noted that the proposed regulations, although intended to fulfill the mandate to determine whether compliance is continuous or intermittent, are not intended to change the stringency of any underlying emission limitations or standards. Federal regulations, including approved SIP regulations, generally are intended to be complied with at all times, consistent with any associated averaging time and any federally-approved excused periods such as startup, shutdown or malfunction. The proposed regulations would measure compliance consistent with averaging periods, and would recognize the federally-enforceable provisions that may allow for periods of excess emissions. The EPA solicits comments on the issue of whether, and if so how, the proposed regulations would increase the stringency of an emission limitation or standard.

C. Benefits of Enhanced Monitoring

A primary benefit of the proposed enhanced monitoring program would be a reduction in overall emissions through increased compliance with the requirements of the Act. Continuing compliance with regulations after demonstrating initial compliance is necessary to assure that the emission reductions intended by regulations are achieved. One of the key elements to assure that reductions are achieved is a self-monitoring program that can quickly alert owners or operators so that they may take corrective or preventive action in order to prevent non-complying conditions and to minimize the amount of environmental harm caused.

In addition to the direct environmental benefit of decreased emissions, increased compliance rates would also achieve a corollary economic benefit. As a general matter, increased compliance rates with existing rules would lower the long-term overall cost of air pollution control by decreasing the need for additional command and control regulations to obtain the necessary emission reductions. For nonattainment areas, this benefit would be especially important as States that contain those areas prepare to demonstrate that reasonable further progress toward attainment is being achieved. Increasing the effectiveness of existing and future rules would allow States in many instances to reduce the level of additional control measures needed to achieve the necessary emissions reductions. The extent to which the States with an enhanced monitoring program would be able to rely upon increased rule effectiveness in meeting their attainment demonstration burdens under title I of the Act is discussed in greater detail in section V.A.

The information developed through the use of enhanced monitoring would have other benefits as well. First, enhanced monitoring data could be used to establish baseline emission information in those areas where economic incentive programs (such as emissions trading) may be implemented. Economic incentive programs will also require accurate data bases of monitoring information to allow for emissions trading or other marketable emissions concepts. The data developed from the enhanced monitoring protocols that would be required under the proposed regulations would assist in establishing these required data bases. This point is addressed in greater detail in section V.A. of the preamble. The increased data accuracy that would result from conducting enhanced monitoring would also improve the accuracy of title I emission inventories and emission statements, and may allow for increased accuracy in the assessment of permit fees under the title V operating permits program to the extent a permitting authority bases its fee program on actual emissions.

Enhanced monitoring would also result in benefits to the regulated community. Although a self-monitoring program may not always be justified purely on the basis of economic benefit to a source, a monitoring program often provides an owner or operator with information beneficial to reducing other costs. Self-monitoring can in some situations reduce operating costs. For example, monitoring data can be used to increase combustion efficiency in an industrial boiler or to increase capture and reuse of solvents at a coating plant. A 1990 study by the General Accounting Office entitled "Air Pollution: Improvements Needed in Detecting and Preventing Violations" noted several instances in which companies have achieved such operating cost reductions. An enhanced monitoring program could also alert owners or operators that potential control device problems may exist. The owner or operator can use this information to target control devices for routine maintenance and repair, and reduce the potential of significant, costly breakdowns.

As discussed in section VI.C., a complete analysis of the costs and benefits of the proposed regulations is included in the RIA. As stated previously, the Agency solicits comments on its approach. The RIA document is available in the docket.

D. Public Participation

The proposed regulations were developed with the benefit of insight from many parties that would be affected by the proposed regulations. These groups include State and local air pollution control agencies, major industries, trade associations and environmental organizations.

To obtain the views of all these parties, as well as the general public, EPA published a notice in the **Federal Register** on August 8, 1991 to make available a Public Information Document on enhanced monitoring and to provide notice of a public meeting on the subject (56 FR 37700–01). The meeting was held in Washington, DC on August 22, 1991, and was attended by representatives from over fifty organizations. In response to the public meeting, EPA received many comments which are included in the docket.

Since the public meeting, EPA has held a series of informal informational and discussion sessions with interested organizations to receive their views on enhanced monitoring, as well as a recent informational meeting with approximately fifty attendees held on

August 12, 1993. (A summary of those contacts is included in the docket.) The EPA is interested in receiving comments from these and other interested parties during the public comment period for the proposed regulations.

II. Implementation Principles

In the May 10, 1991 preamble to the proposed 40 CFR part 70 regulations, EPA announced several principles that "should guide the design and implementation of title V regulations and related programs" (56 FR 21714). As noted in section I. above, the proposed regulations would be related to many of the provisions of title V. In addition, these proposed regulations would be implemented in large part through the operating permits program. Thus EPA has developed the proposed regulations in a manner consistent with these implementation principles of title V. The following discussion provides a brief outline of some of the title V implementation principles that most significantly relate to the proposed regulations.

A. Ensure Environmental Protection

Congress' basic goal in adopting section 114(a)(3) and related provisions is to ensure that sources continue to remain in compliance with applicable requirements of the Act after demonstrating initial compliance. The proposed enhanced monitoring program would provide EPA and States with the information necessary to oversee sources' compliance with the Act. The EPA anticipates that through improved oversight capabilities, overall compliance with the Act's requirements will improve and result in lowered emissions and improved air quality. This increased rule effectiveness will reduce the need to adopt additional air pollution control requirements in order to achieve national ambient air quality standards (see section V.A.). The EPA believes that the other implementation objectives stated below must complement this objective and not undercut the potential of the proposed regulations for strengthening air quality management efforts across the country.

B. Incorporate Broad-Based Perspective for Rule Development

The EPA continually seeks a better understanding of the key concerns of those most affected by proposed rulemakings in order to have a broad-based perspective during the regulation development process. By considering the views of various parties affected by a proposed regulation, EPA hopes to ease implementation of the proposed regulations and to minimize resource expenditures. As noted above in section I.D., the proposed regulations were developed with the benefit of insight from important affected parties (including State and local governments, major industries, trade associations, and environmental organizations) that are actively involved in implementation of the Act. The EPA is interested in receiving additional input from these and other interested parties during the public comment period.

C. Maintain an Effective Partnership With State and Local Governments

The EPA recognizes that the bulk of the responsibility for implementing the proposed regulations would fall upon permitting authorities at the State and local level. A key principle in developing the proposed rules has been to build upon existing monitoring programs and to provide the States with flexibility wherever possible to reduce the burden of implementing the rules. In addition, EPA has developed a reference document to accompany these rules that would provide assistance in implementing the proposed rules.

D. Minimize Small Business Concerns

The EPA is sensitive to the potential impact of regulations on small businesses. To minimize such impacts, the proposed regulations would apply only to emissions units at sources of the most significant concern. In addition, the proposal could complement cost-effective permitting techniques, such as general permits, that can simplify the permit application and issuance process. For instance, in some circumstances, a group of facilities with similar emissions units subject to the proposed rule could develop a suggested enhanced monitoring protocol that, if considered acceptable, could then be incorporated as the enhanced monitoring requirement in a general permit applicable to each facility in the group. Finally, EPA has developed, but not mandated, a standardized summary reporting format that could be used for reporting under the proposed regulations. Use of the suggested standardized format would simplify and streamline reporting procedures. The standardized format is included as part of the draft Enhanced Monitoring Reference Document (see section III.A.3.) and will be available on the technology transfer network bulletin board system (TTNBBS) operated by EPA's Office of Air Quality Planning and Standards.

E. Promote Pollution Prevention

The EPA encourages permitting authorities to promote cost-effective pollution prevention alternatives where possible in their permitting activities. Because these proposed regulations would not cover emissions units with potential emissions below a minimum applicable threshold of regulated non-hazardous air pollutants, the proposal would encourage sources to limit their potential emissions by undertaking enforceable pollution prevention measures rather than be required to conduct enhanced monitoring. In addition, the flexible monitoring approach in the proposed regulations, including the use of material balance procedures where appropriate, would be compatible with materials recovery and other pollution prevention approaches for controlling emissions.

F. Facilitate Use of Market-Based Incentives

The operating permits program and the proposed enhanced monitoring program are intended to be useful administrative tools for achieving cost-effective improvements in air quality through market-based principles. The proposed regulations would facilitate implementation of market-based programs by requiring information to be collected that could be used to determine emission baselines and subsequent reductions. This type of information will be an essential element of any economic incentive program that may be implemented.

G. Allow Flexibility in State Programs and Source Permits

The EPA recognizes the need for flexibility to consider different but effective monitoring techniques that would meet the requirements of the proposed enhanced monitoring program. Therefore the proposed regulations would allow States and owners or operators a flexible range of options in designing source-specific enhanced monitoring requirements.

H. Enable Effective and Efficient Information Transfer

The EPA intends that information contained in enhanced monitoring reports (to the extent not protected under laws of confidentiality) would be used for several air quality management purposes. The EPA intends to promote consistent data submittals to track progress, consolidate current reporting burdens, and inform affected parties of a source's compliance status relative to its applicable requirements.

I. Promote Simple and Streamlined Regulations

It is EPA's intent to simplify and streamline these regulations to the

extent possible. To this end, EPA solicits comments as to how this proposal might be further simplified or streamlined.

III. Summary of Key Concepts

In developing these proposed rules to implement the statutory mandates and intent under amended section 114(a) and title V of the Act, there are several key concepts that have guided the overall approach taken in the proposed regulations:

(1) Enhanced monitoring requirements should be flexible and allow for technological innovation and development;

(2) Enhanced monitoring data must be able to detect deviations with sufficient representativeness, accuracy, precision, reliability, frequency and timeliness in order for an owner or operator to determine and certify whether compliance with applicable emission limitations or standards is continuous or intermittent; and

(3) A link between the provisions under section 114(a) and the provisions under title V of the Act was intended by Congress.

Each of these concepts is addressed in further detail in the following subsections.

A. Development and Selection of Enhanced Monitoring Protocols

1. General Approach

The proposed regulations envision that enhanced monitoring systems and procedures applicable to an individual emissions unit would be set forth in an enhanced monitoring protocol to be developed and proposed by an owner or operator for approval by the permitting authority. The proposed regulations would require an owner or operator to implement an enhanced monitoring protocol that can be used to determine and certify continuous or intermittent compliance in accordance with section 114(a)(3) of the Act. This link between the enhanced monitoring protocol and determining whether an emissions unit is in continuous compliance would serve as the fundamental criterion on which all proposed enhanced monitoring protocols must be evaluated.

To assure sufficient data quality for purposes of determining continuous compliance and to assist in the selection and evaluation of proposed enhanced monitoring, the proposed regulations would require that an enhanced monitoring protocol provide for the collection of data with sufficient representativeness, accuracy, precision, reliability, frequency and timeliness to satisfy the basic requirement of determining continuous compliance. The proposed regulations would include specifications and requirements related to monitoring equipment, installation, performance, performance verification test, and quality assurance procedures to assure that these data quality objectives are achieved.

The EPA has determined that there are many monitoring systems and procedures that can potentially satisfy these basic requirements for enhanced monitoring. Depending upon the nature of the emissions unit being monitored, an enhanced monitoring protocol could contain elements such as: continuous emission monitoring systems; continuous process or control device parameter monitoring systems or procedures; emission calculations based on accepted engineering estimation techniques; maintenance and analysis of records of fuel or raw materials usage; periodic verification of emissions, process parameters or control device parameters using portable or in situ measurement devices; recording results of a program or protocol to conduct specific operation and maintenance procedures, leak detection, fugitive dust control, or other work practices; any other form of measuring emissions, process parameters or control device parameters that can achieve the requirements of the proposed regulations; or any combination of the above.

Many sources subject to Federal regulatory or permit requirements, and some SIP sources, use one or more of these types of monitoring systems or procedures already. For many other SIP sources, one or more of these monitoring methodologies are used by similar new sources. The EPA has proposed to classify much of this existing monitoring as "established monitoring." "Established monitoring" would be defined as monitoring that has previously been demonstrated as a feasible means of assessing compliance at a specific type of emissions unit at a source, without taking into account the date of construction or modification of the emissions unit. For instance, a monitoring requirement in an NSPS subpart would be considered "established" for both NSPS and SIP emissions units that are of the type covered by the applicable subpart. Established monitoring includes the monitoring requirements specified in 40 CFR part 60 (the NSPS program), 40 CFR part 61 (the NESHAP program), appendix P of part 51 (SIP CEMS requirements), provisions in SIP's that implement monitoring systems and procedures identified in Control Technique Guidelines developed by EPA pursuant to section 108 of the Act, monitoring requirements in preconstruction permits issued pursuant to title I of the Act, and, the Acid Rain Program monitoring requirements in 40 CFR part 75.

The proposed regulations would provide as one option that an owner or operator consider using the best established monitoring for the owner or operator's particular emissions unit for the purpose of enhanced monitoring. As noted in Section I.B.1., the determination of what is the "best" monitoring would involve an assessment of the circumstances at the particular emissions unit in question, and would not necessarily require the use of the best technologically and economically feasible monitoring.

If the established monitoring satisfies the requirements of part 64, then the owner or operator could propose that monitoring system or procedure for purposes of its proposed enhanced monitoring protocol. If necessary, the owner or operator would modify or add to the performance and operating requirements applicable to the established monitoring in order to satisfy enhanced monitoring performance and operating requirements specified under § 64.4(b), such as data availability requirements or quality-assurance procedures. Where parameter monitoring is involved, the owner or operator may also have to include procedures for establishing a "demonstrated compliance parameter level" in order to demonstrate compliance with an applicable emission limitation or standard. (See section IV.D. for discussions of these topics.)

If no established monitoring applies, or if the owner or operator considers the established monitoring inappropriate, then the owner or operator would be able to propose alternative monitoring for its enhanced monitoring protocol. In these circumstances, the owner or operator would have to identify all monitoring methodologies that are technologically feasible for the particular emissions unit. From that group of potential monitoring approaches, the owner would then have to select a methodology that can best satisfy enhanced monitoring requirements for the particular emissions unit. Again, the determination of what is "best" would involve an assessment of site-specific circumstances.

After the evaluation process, the owner or operator would describe and justify in a permit application the proposed enhanced monitoring protocol selected on the basis of the owner or operator's evaluation. The application

would have to list the monitoring methodologies identified, include a summary explanation of how the proposed monitoring approach would best satisfy the enhanced monitoring requirements at the particular emissions unit, and provide detailed supporting documentation and information.

The EPA has proposed this process of identifying, evaluating and proposing an enhanced monitoring protocol because it emphasizes the use of monitoring systems and procedures that EPA has previously established to be acceptable for specific emissions units, based on the specific source category, the type of industry, and the size and nature of the emissions unit. Where an owner or operator proposes to use a different form of monitoring, then the process of identifying technologically feasible monitoring methodologies before evaluating a methodology for use in an enhanced monitoring protocol would assure that there is sufficient information for both the source and the permitting authority to select and approve an enhanced monitoring protocol.

It should be noted that existing monitoring systems and procedures, including many established monitoring methodologies, may need to be upgraded, either through improved instrumentation or through improved practices such as quality assurance, to meet the proposed enhanced monitoring protocol requirements. This upgrading would in large part be necessary to satisfy the enhanced quality assurance and data availability requirements in the proposed regulations.

The EPA has proposed this flexible approach for selecting an enhanced monitoring protocol for several reasons. Given the short time-frame provided by Congress for promulgating regulations pursuant to section 114(a)(3), it would be infeasible for EPA to develop regulations dictating the enhanced monitoring approach that each possible source category must adopt. More importantly, the proposed approach would promote the development of technological advances and innovative ideas for cost-effective enhanced monitoring by the private sector. EPA is committed to allowing the private market to develop new and innovative means of achieving the air quality goals contained in the Act. One of the primary forces behind the 1990 Amendments was the drive to increase the reliance upon market-based efficiencies in developing air pollution control requirements, such as Congress included in the allowance trading provisions for the Acid Rain Program under title IV of the Act. By allowing source owners or operators to have a greater input on the type of monitoring that can be used, these regulations can allow for the development of cost-effective monitoring alternatives by the regulated community.

This flexible approach will also allow for differences in sources' potential variability in emissions to be taken into account. The emphasis in the proposed rule is on providing monitoring data that can determine accurately whether a source remains in compliance with applicable emission limitations or standards. If a particular emissions unit has a large margin of compliance and low potential variability in emissions, then less sophisticated monitoring would be more appropriate than if only a small margin of compliance exists or the potential variability of emissions is high.

The EPA anticipates that there generally would be a need for some type of continuous instrumental monitoring for those emissions units that use an add-on control device to achieve compliance with an applicable emission limitation or standard. Proper operation of a control device is essential for compliance with an applicable emission limitation or standard, and a failure of the control device can lead to significant emission exceedances even if a large margin of compliance is demonstrated while the control device is functioning properly.

Because many types of control devices are subject to potential reduced efficiency, enhanced monitoring generally would have to measure on a continuous basis the effectiveness of a control device in order to determine continuous compliance with the applicable emission limitation or standard. For some types of control devices, an owner or operator may be able to justify less frequent measurements (e.g., less frequent measurements may be justified for carbon bed adsorbers used to control VOC emissions because of the operational characteristics of that particular control device). A source generally would have to either monitor the emissions exiting the control device (and entering if a reduction efficiency requirement applies), or monitor one or more operating parameters of the control device and maintain appropriate records for the emissions unit.

As noted earlier in section I.B., the selection and use of monitoring, regardless of the degree of instrumentation or frequency of data collection, is not intended to affect the stringency of underlying emission limitations or standards.

2. Distinguishing Continuous Compliance From Continuous Monitoring

The reader should note that EPA has included within the monitoring approaches listed above both continuous and periodic monitoring systems and procedures. It is important to distinguish between the requirement under section 114(a)(3) to determine "whether compliance is continuous or intermittent" and the use of continuous or periodic monitoring approaches. Continuous compliance generally means to remain in compliance during all times that compliance is required, consistent with the applicable averaging period. Continuous monitoring generally means to measure emissions or parameters on an extremely frequent basis and then to average those results over some period of time.

For instance, a gaseous CEMS is required under 40 CFR part 60 to complete one cycle of measurement, analysis and data recording every fifteen minutes, and then those individual measurements are averaged over a period of time, often one hour, to provide a single average emissions value. For many emissions units, frequent measurements and averaging the results is unnecessary to determine whether compliance is continuous. In these circumstances, periodic measurements can be used to determine continuous compliance.

The determination of measurement frequency is a function of both the averaging period for the emission limitation or standard and the potential variability of emissions. As a general matter, a determination of continuous compliance will require some data for all applicable averaging periods for a standard. Where the potential variability in emissions is high, then several measurements within an averaging period may be required. Where the potential variability is low, a single periodic measurement that covers several averaging periods may be appropriate.

For instance, fuel sampling and analysis may be an appropriate form of enhanced monitoring at some fossil fuel-fired steam generating emissions units. By conducting proper fuel sampling and analysis, sulfur dioxide (SO_2) emission rates can be determined based on the sulfur content of the fuel used and the amount of fuel consumed. If an hourly averaging time is specified, usage rates may have to be determined on a more frequent basis than if the averaging time is daily. As another example, since the sulfur content of coal is more variable than that of distillate

oil, coal generally would require more frequent sampling and analysis. See section IV.D. for a further discussion of measurement frequency and related performance specifications.

In public comments received during development of the proposal, some commenters suggested that the phrase "continuous or intermittent" as used in section 114(a)(3) referred to whether the methodology used for determining compliance was continuous or intermittent, not whether compliance was continuous or intermittent. The EPA believes that this interpretation of the statute is contrary to the explicit language of section 114(a)(3). Section 114(a)(3) states that a compliance certification must include, among other items, two discreet elements: the methods used to "determine the compliance status of the source" and "whether compliance is continuous or intermittent." If Congress had intended the latter phrase to apply to the methodology for determining compliance, Congress would have required that the certification identify whether compliance was determined on a continuous or intermittent basis.

The confusion on this issue may stem in part from language in section 114(a)(1) that gives the Administrator the authority to require any source to conduct monitoring, testing, reporting and recordkeeping "on a one-time, periodic or continuous basis." This language was added to section 114(a)(1) to clarify EPA's long-standing ability to require any owner or operator to collect and submit data pursuant to section 114 of the Act. The new language in section 114(a)(1) reaffirms EPA's authority to obtain this information on a one-time, periodic, or continuous basis. The EPA believes that the citations to discussions in a Senate report (see S. Rep. 228, 101st Cong., 1st Sess., at 368 (1989)) made by these commenters apply to this general provision and are not related to the term "enhanced monitoring" or the related provisions of section 114(a)(3).

3. Enhanced Monitoring Reference Document

Included in the docket for the proposed regulations is a separate preliminary draft "Enhanced Monitoring Reference Document" (referred to hereafter as the "EM Reference Document"). The EPA believes that this document, when finalized, will serve to reduce the burden on permitting authorities and sources by laying out the protocol evaluation process and including many examples of acceptable protocols.

The EM Reference Document provides an overview of the enhanced monitoring program and the types of issues that must be addressed by an owner or operator that seeks to comply with the proposed part 64 requirements. The document also reviews the selection process and provides a summary of the "established monitoring" from existing monitoring regulations that could be evaluated by an owner or operator where applicable. (See the discussion of "established monitoring" in sections III.A.1. and IV.D.5.)

The EM Reference Document also provides examples of other monitoring systems and procedures that potentially could be used as enhanced monitoring. The document also describes performance specifications, calibration and quality assurance procedures, and data availability requirements for enhanced monitoring protocols. Finally, the document provides guidance on how enhanced monitoring can be addressed in preparing permit applications and in developing permit terms and conditions.

The EM Reference Document is not included as part of the proposed regulation and is not intended to be viewed as a regulatory requirement. Rather, the EM Reference Document is intended to simplify the permitting process to the maximum extent possible by providing a compendium of established monitoring and other potential approaches to enhanced monitoring. Thus, for many situations, an owner or operator would be able to rely on the EM Reference Document as support in justifying that a proposed enhanced monitoring protocol can satisfy the regulatory requirements.

In some instances, however, the owner or operator, or the permitting authority, may decide that a system or procedure identified in the EM Reference Document is inappropriate for an emissions unit at a particular source because of unit-specific concerns, such as measurement interferences or unique design considerations. In other instances, an owner or operator may propose another alternative that will provide sufficient data to satisfy enhanced monitoring requirements, but that is less costly for the source. Finally, due to the scope of the enhanced monitoring program, the EM Reference Document cannot be all-encompassing. For emissions units not included, the owner or operator would have to demonstrate to the permitting authority that its proposed enhanced monitoring protocol meets the requirements of the proposed regulations.

The EPA intends that the EM Reference Document will be a dynamic document and that additional non-instrumental and instrumental monitoring approaches will be added over time to increase the effectiveness of the document as a reference tool for permitting authorities and the regulated community. The EPA anticipates adding additional examples to the document prior to promulgation of final enhanced monitoring rules. In addition, EPA encourages all affected parties to submit comments on the EM Reference Document and to propose enhanced monitoring protocols for consideration, not only before promulgation of the part 64 regulations, but after that time as well. In this manner, the document can be updated on a regular basis.

B. Purpose of Enhanced Monitoring

The enhanced monitoring and compliance certification program constitutes a new initiative under sections 114(a)(3) and 113(e) of the Act designed to increase overall compliance with applicable emission limitations or standards. Historically, the determination of the compliance status of an emissions unit has been made in many cases on the basis of a single compliance demonstration, sometimes followed by additional (usually infrequent) compliance demonstrations to confirm continuing compliance. For new sources, an initial performance test using reference test method procedures is conducted in order to document an emissions unit's capability to comply with applicable emission limitations or standards. After demonstrating that an emissions unit is capable of compliance through this initial test, EPA has generally relied upon surveillance techniques (e.g., inspections, citizen complaints, etc.) to target sources for further compliance demonstrations.

The requirements of section 114(a)(3) shift to the owner or operator the burden to document and report whether an emissions unit remains in compliance with applicable emission limitations or standards over time. As required by section 114(a)(3), a responsible official of the source must certify "whether compliance is continuous or intermittent" during the reporting period. In order to meet the clean air goals of the Act, owners or operators, not EPA and States, must collect sufficient data to determine and report on the continuous compliance status of their emissions units.

The EPA anticipates that for those source's subject to the enhanced monitoring requirements, the proposed enhanced monitoring program coupled with the compliance certification provisions of part 70 would improve overall compliance with emission limitations or standards under the Act and bring noncomplying owners or

operators into compliance. The increased compliance that can be achieved through effective implementation of these proposed regulations and the part 70 regulations would reduce emissions significantly below current levels. The data analyzed by EPA in developing the RIA for these proposed regulations (see section VI.C.) indicate that where monitoring programs have been initiated for determining continuous compliance, emissions have been reduced significantly. The reduced emissions that would occur from effective implementation is thus a primary environmental benefit of these proposed regulations.

In addition to environmental benefits, such emissions reductions will probably result in substantial reductions in the overall cost of air pollution control. The RIA performed to support the proposal documents that enhanced monitoring can achieve emissions reduction more cost-effectively than additional control technology requirements. By increasing the compliance rate with existing requirements through the performance of enhanced monitoring, the need for additional, more costly control regulations can be avoided. For instance, with respect to VOC emission inventories required in nonattainment areas, EPA currently allows States to take credit for only 80 percent of the emission reductions that could be achieved by full compliance with a regulation. Increased compliance would allow States to take credit for additional reductions. In particular, where a State must document reasonable further progress in nonattainment areas pursuant to title I of the Act, EPA is considering the option of allowing a State that has implemented these proposed rules to take credit for a significant portion of its required progress demonstration; this point is discussed in further detail in section V.A.

Finally, as noted earlier in section I.C., a self-monitoring program can have economic benefits for many sources as well. Self-monitoring can increase operating efficiencies and reduce process costs. Monitoring can also document the need to perform routine maintenance of control equipment and avoid the need to perform costly repairs to, or even replacement of, a large capital investment. Instrumental systems can frequently be used to diagnose control device problems. In addition, self-monitoring could provide data that would allow an owner or operator to rectify control device problems before a period of non-compliance occurs and eliminate potential exposure to enforcement actions.

Section 114(a)(3) specifically requires that a certification be based upon a determination of whether compliance was continuous or intermittent. Therefore, the enhanced monitoring protocol must collect data that can be used to document compliance and facilitate enforcement of documented violations. Congress noted in a Senate Committee Report that "similar to the reporting requirements of the Clean Water Act, 33 U.S.C. 1342, compliance certifications and emission data submitted pursuant to this [section 114(a)(3)] authority will facilitate enforcement, due in part to the fact that such data and certifications can be used as evidence." (S. Rep. 228, 101st Cong., 1st Sess., at 368 (1989)). Similarly, a House Committee Report stated that this section "confirms that EPA has authority under section 114(a) to require enhanced monitoring and to require such monitoring in compliance certifications." (H.R. Rep. 490, 101st Cong. 2d Sess., pt. 1, at 394 (1990).) Thus, Congress linked enhanced monitoring and compliance certifications, with the idea that enhanced monitoring data would serve as the basis for certifying compliance and could be used to determine the existence of an enforceable violation.

To be effective, this program must also be practical and cost-effective for both the regulated community and the regulatory agencies at the local, State and Federal level. The EPA realizes that, because many existing reference test methods require expensive in-stack sampling techniques, it would often be impractical to require a source to conduct such tests frequently enough to have representative data with which to determine and certify its compliance status over a period of time. However, some existing provisions in 40 CFR parts 51, 52, 60 and 61, and in some SIP's, are written in a manner that potentially limits determinations of compliance to such reference method test procedures. To implement the new statutory mandate effectively, the existing provisions must be modified to allow explicitly for the enhanced monitoring and compliance certification requirements to be implemented through 40 CFR parts 64 and 70.

Thus, this proposal would include several changes to 40 CFR parts 52, 60 and 61 to address this issue. (Additional amendments to parts 51 and 52 to address preconstruction permit implementation issues are discussed in section V.C.) These amendments would allow for the use of enhanced monitoring protocols approved through the part 64 process, if applicable (and on the basis of other monitoring approved through the part 70 process), for the purpose of certifying compliance, in addition to the means of determining and certifying compliance provided for in the referenced regulations. The EPA also intends to require through State implementation plan (SIP) call procedures that all SIP's contain adequate authority to allow for the enhanced monitoring (and other part 70 monitoring) to be used for compliance certification purposes.

In addition to making enhanced monitoring and periodic monitoring data usable for compliance certifications, the amendments and the SIP Call also will make changes which make EPA's enforcement scheme consistent with the changes made by Congress to section 113 of the Act. Congress made these changes, such as providing EPA with the authority to issue administrative penalty orders under the Act, to strengthen EPA's ability to bring enforcement actions for violations of the Act.

The change to the Act most relevant to the proposed amendments is section 113(e). Section 113(e) of the Act is entitled "Penalty Assessment Criteria," which in addition to establishing the factors to be assessed in the penalty phase of trial, also creates presumptions for proving continuing violations. (See section 113(e)(2) of the Act, 42 U.S.C. 7413(e)(2).) In addition, most relevant for the purposes of this proposed rule, section 113(e)(1) clarifies that violations can be proved based on any credible evidence admissible under the Federal Rules of Evidence. Section 113(e)(1) now provides that "in determining the amount of any penalty to be assessed * * * the Administrator or the court, as appropriate, shall take into consideration * * * the duration of the violation as established by any credible evidence (including evidence other than the applicable test method)* * * *." (See section 113(e)(1) of the Act, 42 U.S.C. 7413(e)(1).) Under the Act, penalties are assessed for each day of violation. (See sections 113(b), 113(d) and 113(e)(2), 42 U.S.C. 7413(b), 7413(d) and 7413(e)(2).) Therefore, penalties cannot be considered or assessed unless, and until, liability for the underlying days of violation has been established. In order for a court to consider penalty assessment for the "duration of the violation," liability for the violation must first be established by appropriate means, including "as established by any credible evidence."

The legislative history explains that Congress intended to grant the Agency

greater flexibility in its use of evidence in proving a violation. Congress stated:

> • • • the amendment clarifies that courts may consider any evidence of violation or compliance admissible under the Federal Rules of Evidence, and that they are not limited to consideration of evidence that is based solely on the applicable test method in the State implementation [plan] or regulation. For example, Courts may consider evidence from continuous emission monitoring systems, expert testimony, and bypassing and control equipment malfunctions, even if these are not the applicable test methods. Thus, this amendment overrules the ruling in *United States* v. *Kaiser Steel Corp.*, No. 82–2623–IH (C.D. Cal. January 17, 1984) to the extent that the court in that case excluded the consideration of such evidence. (S. Rep. No. 228, 101st Cong., 1st Sess. 1, 366 (1989), *reprinted in* 1990 U.S. Code Cong. & Admin. News 3385, 3749.)

In addition, Congress also stated that the enforcement title of the Clean Air Act Amendments of 1990 makes "clear that the Agency may rely upon any credible evidence of violations in pursuing alleged violations." (S. Rep. No. 228, 101st Cong., 1st Sess. 1, 366 (1989), *reprinted in* 1990 U.S. Code Cong. & Admin. News 3385, 3741.)

The statutory language and the legislative history demonstrate that Congress intended to amend the penalty assessment provision in part to overrule *Kaiser Steel*. In *Kaiser Steel*, EPA argued to the court that it should be able to prove violations based on evidence other than the applicable "reference" test method. Then, as now, section 113(a) allowed the initiation of an enforcement action based on any information available to the Administrator. (See section 113(a), 42 U.S.C. 7413(a).) The court disagreed with EPA's argument and ruled that expert testimony of the opacity of Kaiser's blast furnace exhaust gases was inadmissible because the testimony did not strictly comply with the applicable test method. Thus, EPA was limited to proving violations on days for which reference test data was available. In overruling *Kaiser Steel*, Congress intended that section 113(e) would facilitate enforcement by allowing for the use of any credible evidence to prove a violation.

Thus, section 113(e), read in conjunction with sections 113(a), (b) and (d), authorizes the Agency to bring enforcement actions based on any credible evidence. However, some provisions now in applicable state implementation plans and in existing Federal regulations (e.g., 40 CFR 52.12(c), 60.11, and 61.12) appear to conflict with these statutory provisions.

Accordingly, EPA is planning to call for States to amend their applicable implementation plans to ensure that owners or operators may use enhanced monitoring (or other monitoring approved for the source pursuant to part 70) for compliance certification purposes, and that data from this monitoring, along with any other credible evidence, may be used as evidence of a violation of an applicable plan. The proposed amendments to parts 51, 52, 60, and 61 would have the same goal.

The EPA considered the option of requiring States to revise the applicable plan by amending each individual federally-enforceable regulation applicable to emissions units. This approach, however, would have taken an enormous investment of time and resources by the States and by EPA; moreover, it would have been difficult to implement in a timely manner, thereby frustrating implementation of a significant new initiative under the Act. The EPA, therefore, believes that the proposed revisions to the general provisions of the applicable regulations and plans would achieve the statutory mandates in the most efficient manner.

The EPA solicits comments on the proposed approaches discussed in this section.

C. Relationship to Title V Permit Program

In accordance with title V of the Act, EPA promulgated regulations requiring States to implement and enforce operating permits programs at 40 CFR part 70 on July 21, 1992 (57 FR 32314). The operating permits program signifies an important development in the administration of the Act and makes the air program consistent with other environmental programs that use operating permit systems, such as the National Pollutant Discharge Elimination System (NPDES) program under the Clean Water Act (40 CFR parts 122–124) and the hazardous waste permit program under the Resource Conservation and Recovery Act (40 CFR parts 270 and 271).

The proposed regulations have been developed to work in concert with the operating permits program. (The reader should note that the proposed regulations also would be implemented through preconstruction permits programs pursuant to parts C and D of title I of the Act. The relationship between the proposal and these permit programs is discussed in section V.C. of this preamble.) The following discussion highlights the most significant areas of interrelationship between the proposed enhanced monitoring program and the operating permits program.

1. Implementation

To allow for a flexible approach for enhanced monitoring protocol selection, the proposed regulations would require that the enhanced monitoring protocol for each affected emissions unit be approved through the operating permit process. An owner or operator would be required to propose an enhanced monitoring protocol in its operating permit application which could then be reviewed and acted upon by the permitting authority. The operating permit issued to the owner or operator would contain the requirements associated with the enhanced monitoring protocol.

The enhanced monitoring requirements under part 64 would be independent requirements separate from the part 70 regulations. However, because of the close link between these requirements and the operating permits program, proposed part 64 would also contain permit application and content requirements. The EPA believes that this implementation guidance would facilitate effective implementation of part 64 under the operating permits program.

It should also be noted that, although part 64 requirements are independent of part 70, owners or operators would satisfy the general part 70 monitoring requirements for those emissions units and applicable requirements for which sources conduct part 64 enhanced monitoring. For example, an emissions unit currently may have no monitoring under existing requirements that can be used for certifying whether compliance is continuous or intermittent. The general provisions of § 70.6(a)(3) would require the source to fill that gap as part of the part 70 process. If, however, that same emissions unit would be subject to the part 64 requirements, part 64 would fill the gap without additional measures required under part 70. (See the earlier discussion of the role of gap-filling in the title V process in section I.B.)

2. Reporting

As mentioned in Section I., title V requires monitoring and compliance certification. Under 40 CFR 70.6, all permits must contain terms and conditions specifying monitoring and compliance certification requirements. Moreover, 40 CFR 70.6(c)(5) includes all of the statutory criteria required under section 114(a)(3) for the content of a compliance certification, including a requirement that the certification state whether compliance was continuous or intermittent. That section also states

that the certification shall include such other information as may be required pursuant to regulations developed under section 114(a)(3). Because the 40 CFR part 70 provisions include the minimum statutory criteria concerning content of a certification, the proposed regulations would not require a separate annual compliance certification under part 64, but would simply require that the annual compliance certification submitted under 40 CFR part 70 be based on enhanced monitoring data for all emissions units and applicable requirements subject to part 64. Thus the reader should note that, although the proposed regulations focus on enhanced monitoring requirements, the proposed regulations would act together with the previously promulgated part 70 regulations to create an integrated enhanced monitoring and compliance certification program.

3. Flexible and Market Strategies

As noted in section II., flexibility and the use of market-based incentives are both guiding principles behind the implementation of the title V operating permits program and the proposed regulations. Two specific flexible strategies highlighted in the promulgation of part 70 have been incorporated into these proposed regulations. First, 40 CFR 70.4(b)(12)(ii), 70.6(a)(8) and 70.6(a)(10) allow a State program to allow permitted sources to trade emissions within a single source where the applicable implementation plan allows for such trading. These provisions are intended to promote greater reliance on market-based programs and least cost compliance planning. The proposal would apply to such emissions units at a source allowed to trade emissions under this part 70 provision. This approach, coupled with the flexible monitoring selection process incorporated in the proposed regulations, would give the sources the necessary flexibility while at the same time requiring the accurate emissions tracking information needed for a successful and enforceable trading program.

The second strategy in part 70 is the concept of alternative limits adopted at permit issuance. 40 CFR 70.6(a)(1)(iii) allows a State to incorporate at permit issuance an alternative limit that is equivalent to the underlying requirement, if the applicable implementation plan allows for such action. That section requires that the alternative limit be quantifiable, accountable, enforceable and based on replicable procedures.

This part 70 provision could assist in the facilitation of the flexible enhanced monitoring protocol selection approach taken in the proposed regulation, especially where parameter monitoring may be used. Once the monitored parameter (or parameters) satisfies the requirements above, the appropriate parameter limitation(s) could be established as the alternative limit to the underlying emission limitation or standard. The compliance status with the alternative limit would then be determined based upon the enhanced monitoring protocol data.

4. Permit Fees

The cost of implementing part 64 will be one of the costs that can be recovered through permit fees required under title V of the Act. Section 502(b)(3)(A) provides that a State program must require sources subject to part 70 to pay an annual fee to cover all "reasonable (direct and indirect) costs" required to develop and administer the permit program. Under 40 CFR 70.9(b), the costs of "emissions monitoring," "supporting and tracking of permit applications, compliance certifications, and data entry," and all costs associated with "implementing and enforcing the terms of any part 70 permit" are all covered by the fee requirements.

Enhanced monitoring will prove to be an aid to owners or operators that are assessed a fee based on the preceding year's actual emissions. Through the implementation of the proposed enhanced monitoring requirements, an owner or operator would have a more accurate data base with which to document its most significant emissions. This could lead to reduced overall fees for the owner or operator because emissions documented through enhanced monitoring would replace other more general emission estimation techniques which, by not being able to take into account actual operating conditions, can inflate the actual emissions that occur at a source.

IV. Discussion of the Key Aspects of the Proposed Regulation

A. 64.1—Applicability

1. Applicability To Hazardous Air Pollutant Sources

Section 64.1(a) would state that the enhanced monitoring requirements under part 64 apply to all emission limitations or standards established under 40 CFR part 61 at any source that is required to obtain an operating permit under part 70. Part 61 (the existing NESHAP program) governs the control of several hazardous air pollutants from several different categories of stationary sources.

These existing NESHAP's generally contain monitoring requirements and part 64 would state that part 61 monitoring requirements are considered "established monitoring" for the applicable emissions units. The EPA believes that owners or operators generally would be able to use such monitoring to propose an enhanced monitoring protocol without making substantial additional efforts to comply with proposed part 64. However, the part 61 emission standards are of significant environmental importance and thus EPA considers it appropriate to ensure that an owner or operator be required to monitor for continuous compliance with all such standards.

The EPA considers future standards that are being developed for hazardous air pollutants to be of significant importance and intends to require enhanced monitoring of sources subject to such standards. However, EPA intends to address the enhanced monitoring requirements pursuant to section 114(a)(3) in the requirements developed for such pollutants and not as part of the general provisions in proposed part 64. The following discussion briefly summarizes this proposed approach.

As amended in 1990, section 112 of the Act requires EPA to promulgate emission standards for categories or subcategories of additional hazardous air pollutant sources according to a prescribed regulatory schedule. The emission standards are to be based on maximum achievable control technology (MACT). These standards will be promulgated at 40 CFR part 63. If EPA fails to promulgate a standard in a timely fashion, section 112(j) of the Act requires that a permit include a standard that is equivalent to the standard that would be required under a promulgated rulemaking. Similarly, section 112(g) requires a case-by-case emission standard for any new or modified major hazardous air pollutant source if no emission standard has been promulgated by EPA.

EPA intends that the general provisions of part 63, MACT standards promulgated by rulemaking in individual subparts of part 63, or permit-specific conditions pursuant to sections 112 (g) and (j), will include, pursuant to the authority in section 114(a)(3) of the Act, appropriate enhanced monitoring provisions. Therefore, the general enhanced monitoring requirements in the proposed part 64 regulations would apply only to the part 61 NESHAP requirements that have been established without implementing section 114(a)(3)

of the Act and not to these new section 112 requirements.

2. Other Regulated Air Pollutant Sources

For sources of non-hazardous regulated air pollutants, the proposed regulations would apply only to emissions units at "major stationary sources." As defined under section 302 of the Act, that term generally applies to any stationary source with the potential to emit 100 tons or more per year of any air pollutant. However, other sections of the Act modify this general definition by lowering the applicable threshold. The definition of "major source" included in the 40 CFR part 70 operating permit regulations incorporates both the general section 302 definition (100 tons per year of any air pollutant) and the more stringent thresholds created under other sections of the Act. It is important to note that this part 70 definition does not include the "major source" threshold established for prevention of significant deterioration (PSD) permitting under part C of title I of the Act. That threshold in some instances is set at 250 tons or more per year. The maximum threshold under part 70 is 100 tons per year.

Since the part 70 definition of "major source" also includes "major" sources of hazardous air pollutants for which enhanced monitoring will be addressed in the rulemakings proposed under the amended section 112 of the Act, the part 70 definition would be too broad for these proposed rules. Therefore, for purposes of the proposal, the term "major source" would be defined more narrowly than under part 70 to include only the following sources:

(1) Sources of air pollutants, as defined in section 302 of the Act, with the potential to emit 100 tpy or more of any air pollutant; and

(2) Sources subject to the nonattainment area provisions of title I, part D of the Act, with the potential to emit pollutants in the following or greater amounts:

Pollutant	Nonattainment status	Major source threshold (in TPY)
(i) Ozone (VOC and NO_X)[1]	Serious	50.
	Areas in transport regions not classified as severe or extreme	50 (VOC only).
	Severe	25.
	Extreme	10.
(ii) Carbon Monoxide	Serious (where stationary sources contribute significantly)	50.
(iii) Particulate Matter (PM–10)	Serious	70.

[1] For this purpose, title I treats volatile organic compounds (VOC) and oxides of nitrogen (NO_X) sources differently. Certain areas and sources may qualify for an exemption under section 182(f) of the Act. (Generally, certain sources may be exempt if, during implementation plan approval, the Administrator determines net air quality benefits are greater in the absence of NO_X reductions from such sources. In addition, areas may be exempt (in whole or in part) if the Administrator determines that, for certain areas, additional reductions of NO_X would not contribute to ozone attainment or, for certain other areas, not produce net ozone air quality benefits.) In those areas and for those sources covered by a section 182(f) exemption, sources with the potential to emit less than 100 tpy of NO_X would not be considered major sources under part D of title I. In areas not qualifying for this exemption, NO_X sources are subject to the lower thresholds created by section 182(f). In ozone transport regions, a lower threshold of 50 tpy for VOC sources is created by section 184(b). Because section 182(f) does not refer to section 184(b), the lower threshold in ozone transport regions applies to VOC sources, but not to NO_X sources. Whatever its location, any 100 tpy source would be considered a major source under section 302 of the Act.

At these major sources, the proposed regulations would apply only to the emission limitations or standards applicable to those regulated air pollutants for which a source is classified as a major source. This approach would focus part 64 requirements on the more significant pollutants at each source. The RIA conducted in support of the proposal documents greater net benefits using this approach than using other alternatives because of the increased amount of potential emissions reductions of the more significant pollutants. Furthermore, 40 CFR part 70 will still require monitoring to assure compliance with the emission limitations or standards for the other pollutants.

With respect to those emission limitations or standards applicable to the "major" regulated air pollutants, the proposed regulations generally would apply only to those emissions units at a major source with potential emissions of the "major" regulated air pollutant equal to or greater than 30 percent of the tons per year necessary to qualify the source as a major source for that pollutant.

As an example of how the thirty percent threshold would apply, a source of VOC in an attainment area, which is defined under part 70 as being major at 100 tons per year, would conduct enhanced monitoring at all emissions units within its facility that had the potential to emit VOC in amounts equal to or greater than 30 tons per year. A source of VOC in an area that is classified as extreme nonattainment would be a major source if it had the potential to emit 10 tons per year of VOC; at such a major source, emissions units which had the potential to emit 3 tons per year of VOC would be subject to enhanced monitoring.

It is important to note that the enhanced monitoring rule applies to major sources as defined at part 70, and not as defined under all applicable sections of the Act. Although part 70 refers to sections 112, 302 and part D of the Act for definitions of major source, the part 70 regulations do not adopt the major source definition of the Prevention of Significant Deterioration (PSD) provisions at part C of title I of the Act. (Under the PSD requirements, a source can, in some instances, be defined as a major source if it has the potential to emit as much as 250 tons per year of regulated pollutant.) This means that a major source, including a PSD source, is one that has the potential to emit 100 tons or more per year of a regulated pollutant, or some lesser amount as set forth in part 70. Thus, for purposes of applicability under this rule, the 30 percent threshold amount would never be greater than 30 tons per year.

The EPA realizes that this proposed approach would not apply part 64 requirements to all emissions units at a major source given that those below the percent threshold would be excluded. In addition, because a major source may be comprised only of such small emissions units, the proposed rules would not necessarily apply to all major sources.

However, as noted above in section I.B., the RIA conducted in support of the proposed regulations documents that requiring part 64 enhanced monitoring at all emissions units at a major source

would result in less net benefits than the proposed option. In addition, that earlier discussion noted that part 70 monitoring data must assure compliance with all applicable requirements. Section 70.6(c)(5) specifically links the monitoring required under § 70.6(a)(3) to the compliance certification submitted by the owner or operator. Based on the results of the RIA evaluation, EPA is proposing to consider those compliance monitoring requirements under part 70 as sufficient to satisfy § 114(a)(3) of the Act for small emissions units at a major source without requiring such monitoring to be further enhanced. As noted in section I.B., EPA solicits comments on this proposed approach.

a. *Applicability to Multiple Emissions Units.* In certain instances, the potential emissions from several emissions units would be combined for determining whether, as a group, such emissions units are subject to enhanced monitoring. Section 64.1(b)(2) would provide that, in order to determine if an emissions unit was subject to enhanced monitoring, all emissions from any group of emissions units that participate in an emissions aggregating, averaging, apportioning, or trading program at a source would be combined to determine whether, collectively, the potential emissions from such group of units exceed the thirty percent of a major source threshold established for a typical single emissions unit. The first type of emissions unit group to which this provision would apply would be those emissions units involved in some form of "bubbling" or trading plan within a single facility. This would include, for instance, a source with emissions units subject to either an approved "bubble" consistent with EPA's December 4, 1986 Emission Trading Policy Statement (51 FR 43829) or, in the future, EPA's policy and rule on economic incentives programs. (For EPA's guidance to States on establishing economic incentive programs, see 58 FR 11110, February 23, 1993. This guidance also served as a proposed rulemaking for final economic incentive program rules.) Emissions units also may participate in source-wide emissions trading plans as contemplated by 40 CFR part 70 (see discussion at 57 FR 32267–32268, July 21, 1992).

In these and similar circumstances, the potential emissions from all such emissions units are treated collectively for the purposes of the underlying regulatory program and thus would be similarly treated under the proposed part 64 regulations. Although the emissions from such emissions units would be treated collectively to determine if the proposed regulations are applicable to such emissions units, EPA anticipates that such emissions units often may require separate monitoring in order to provide sufficient data to determine compliance.

The second type of emissions unit group for which emissions would be combined under this provision would be fugitive emissions points for which compliance is evaluated on a process-wide or facility-wide basis. If the total fugitive emissions from such points at the source exceeds an applicable major source threshold, then those emissions would be subject to the part 64 requirements. As discussed below in section IV.D.3., in these circumstances multiple point monitoring of these fugitive emissions would be expected. For instance, a facility-wide visible emission observation protocol might be used for the purpose of monitoring fugitive particulate emissions at a non-metallic mineral processing facility. Under that protocol, not all emissions points creating fugitive particulate emissions would necessarily have to be monitored with the same frequency that a single emissions unit would be monitored.

Finally, the reader should note that this combined treatment of emissions units would not apply to emissions units that trade allowances, or in any other manner act in concert, for the sole purpose of compliance with annual emission limitations or standards under the Acid Rain Program promulgated pursuant to title IV of the Act. As discussed below in section IV.A.3., part 64 would not apply to those emission limitations since title IV requires the establishment of distinct continuous compliance monitoring requirements for the Acid Rain Program. Therefore, this combined treatment of emissions units would not apply to owners or operators seeking to comply with those exempt annual acid rain emission limitations.

b. *Meaning of "Potential to Emit."* In determining whether a particular emissions unit at a major source would be subject to the proposed regulations, the owner or operator and the permitting authority must first determine an emissions unit's "potential to emit" an applicable regulated air pollutant. The definition of "potential to emit" considers the maximum capacity of an emissions unit to emit an air pollutant under the emissions unit's physical and operational design. Certain factors can be considered part of an emissions unit's design and thus reduce its maximum potential to emit. These factors include air pollution control equipment, restrictions on hours of operation, or restrictions on the type or content of fuel or raw materials combusted, stored or used at a facility. In order to take these factors into consideration, however, the use of control equipment or other operating restrictions must constitute limitations that are enforceable by the Administrator. Because proposed part 64 would apply only to sources required to obtain a permit, such restrictions would have to be included as part of the operating permit applicable to the emissions unit. In contrast, under 40 CFR part 70, a federally-enforceable limitation may be outside of the operating permit because an owner or operator may rely on that limitation to avoid being considered a "major source" and, therefore, avoid having to obtain a part 70 operating permit.

A requirement to use control equipment or to adopt other operating restrictions will only be federally-enforceable if such requirement meets two criteria. First, the requirement either must be an "applicable requirement" under the Act as that term is defined under 40 CFR 70.2 or be a voluntary emission limitation assumed at the request of an owner or operator. As noted above, for the purpose of the proposed regulations, that voluntary limit would have to be included as part of the source's federally-enforceable operating permit. Second, the requirement must be enforceable as a practical matter.

The EPA has previously provided guidance on the issue of "federally-enforceable as a practical matter" in the context of new source permitting. (See "Guidance on Limiting Potential to Emit in New Source Permitting," Memorandum from Terrel E. Hunt, Associate Enforcement Counsel, Air Enforcement Division, and John S. Seitz, Director, Stationary Source Compliance Division, June 13, 1989. This document is included in the docket established for this rulemaking; see also the discussion in the preamble to the final rule revising 40 CFR parts 51 and 52 to amend the Federal enforceability requirements in those two parts (54 FR 27274, 27283, June 28, 1989).) A critical element of determining whether a restriction is in fact federally-enforceable is whether adequate monitoring, including recordkeeping and reporting requirements, exists. For instance, where add-on controls operating at a certain efficiency are used to limit an emissions unit's potential to emit, the guidance states that operating parameters must be included as enforceable conditions of any permit. In addition, in circumstances where setting appropriate operating parameters is

infeasible, short-term emission limits that reflect operation of the control equipment at the required efficiency level and requirements to use CEMS data to determine compliance may be used to limit an emissions unit's potential to emit.

Thus, for purposes of these proposed regulations, in determining the potential to emit of an emissions unit, an owner or operator may use control equipment as a means of defining potential to emit only if an operating permit includes enforceable conditions requiring the owner or operator to either:

(1) measure and report on control device operating parameters to demonstrate compliance with specific operating parameter requirements established in the source's permit; or

(2) use CEMS data to demonstrate compliance with a short-term emission limit which assures that the control system operates at the required efficiency.

Similarly, if a source uses operational restrictions to define its potential to emit (e.g., an operating time restriction), then the source's permit must require the source to record and report on the restricted operations (e.g., maintain and report on an operating log).

The EPA believes that the requirement that any restrictions on potential to emit must be enforceable in practice can assure that emissions units posing significant air quality concerns would not be able to avoid necessary monitoring requirements. In essence, the requirements that assure that the restrictions on an emissions unit's potential to emit are enforceable in practice would involve requirements to monitor facility operations that are similar to enhanced monitoring requirements. However, as noted in section I.B., EPA solicits comments on whether the applicability of enhanced monitoring should be based on uncontrolled rather than potential emissions. That approach would eliminate the need for EPA to oversee proper implementation of the potential to emit guidance on a permit-specific basis.

3. Exemptions

The proposed regulation would include five specific exemptions. First, § 64.1(c)(1) would provide that any emission limitation or standard developed pursuant to sections 404, 405, 406, 407(a) and 407(b) of title IV of the Act (the Acid Rain Program) would not be subject to part 64 requirements. Continuous compliance with these annual emission limitations created under title IV are subject to monitoring, reporting and certification requirements under regulations promulgated on January 11, 1993 at 40 CFR parts 72–75 (58 FR 3590). Those requirements are sufficient to satisfy the enhanced monitoring requirements that would be required in the proposed regulations.

An emissions unit subject to title IV that meets the proposed part 64 applicability threshold for emissions units would still have to comply with part 64 with respect to other emission limitations or standards that may apply pursuant to a SIP or NSPS requirement. In that situation, the title IV monitoring requirements could be used to fulfill the proposed enhanced monitoring protocol requirements, since the monitoring could produce data useable to determine compliance with the other emission limitations or standards pursuant to an applicable NSPS or SIP provision. For this reason, the definition of "established monitoring" includes the Acid Rain Program monitoring requirements.

Because of the emphasis placed on the use of established monitoring in the proposed regulations (see section IV.D.5.) and the belief that owners or operators desire to minimize costs, EPA anticipates that owners or operators of title IV emissions units would in most instances use the required title IV monitoring to meet the enhanced monitoring requirements (using any appropriate conversion factors to report data in terms of the applicable emission limitation or standard).

Second, § 64.1(c)(2) would exempt from part 64 requirements any emission limitation or standard required to be monitored under section 603 of the Act concerning stratospheric ozone protection. The stratospheric ozone protection program is separate and distinct from the other programs under the Act, applies to producers of certain substances and not necessarily to the sources of emissions of those substances, and will be subject to separate monitoring and certification requirements for compliance purposes. The EPA believes that these circumstances warrant an explicit exemption from the proposed part 64 regulations for these applicable requirements.

Third, as discussed earlier in this section of the preamble, the proposed rule would specifically exempt all emission limitations or standards established pursuant to section 112 of the Act, except for standards established in 40 CFR part 61.

The fourth and fifth exemptions would be for requirements applicable to two source categories exempt under part 70: NESHAP standards for asbestos demolition and renovation projects, and NSPS standards for residential woodheaters. Because neither of these source types is required to obtain a permit, it would be impractical to apply the proposed regulations to such sources.

5. Other Monitoring Requirements

The proposed enhanced monitoring program requirements would not affect the monitoring requirements that exist under other regulations. Other Federal and State regulations may impose additional or more restrictive monitoring requirements, and § 64.1(d) would act as an anti-backsliding provision to assure that those requirements are still met. Section 64.1(d) of the proposed regulation also would clarify that the part 64 requirements would not restrict the authority of States to adopt more stringent requirements under State laws and regulations, or to prevent the Administrator from requiring enhanced monitoring, testing, reporting or recordkeeping of any owner or operator when using other authority under the Act, including the Administrator's general section 114(a) authority.

B. Section 64.2—Definitions

This section of the proposed regulations would define the terms used in the regulations. Many of the proposed definitions would incorporate the language provided in other regulations developed under the Act, including part 70. As discussed above, these proposed regulations would be implemented through the operating permits program to a large extent, and EPA believes that the two regulations must be closely coordinated. The proposed regulations would rely explicitly on the part 70 definitions for "major source" (excluding any hazardous air pollutant source), "regulated air pollutant," and "responsible official."

Some additional definitions that are of particular importance will be noted here. Under section 302 of the Act, the terms "emission limitation," "emission standard," "means of emission limitation" and "standard of performance" are all used to define the types of standards that can be used to control emissions, ranging from a numerical mass emissions limitation to a general work practice requirement. These terms would include any "alternative" or "equivalent" emission limitation, emission standard, means of emission limitation or standard of performance that may be applied pursuant to the Act (e.g., an alternative means of emission limitation under section 112(h)(3) of the Act). The proposed regulations would combine

these terms into the single term "emission limitation or standard." The proposed regulations would then define "applicable emission limitation or standard" for purposes of part 64 as any such limitation or standard applicable to either a non-hazardous regulated air pollutant for which a source is considered a "major source" or a regulated hazardous air pollutant under 40 CFR part 61.

The proposed regulations would require that the data from an enhanced monitoring protocol be used to certify compliance. Thus, the protocol would have to provide sufficient data to determine whether compliance is "continuous or intermittent." The proposed terms "deviation," "continuous compliance," and "intermittent compliance" under § 64.2 would have a bearing on this determination of continuous or intermittent compliance.

The term "deviation" would be defined to include any condition which indicates that an emissions unit has failed to meet an applicable emission limitation or standard. The term deviation would include emissions that exceed an emission limitation or standard. It would also include a failure to meet a required minimum limit (e.g., a minimum incinerator combustion temperature limit). A deviation could also be a failure to observe a required work practice (e.g., failure to wet down a surface area or to repair a leaking seal at a bulk terminal).

These types of conditions include both actual violations of the limitation or standard, and conditions that would be violations except for a federally-approved or federally-promulgated exemption. One example of such an exemption is the limited exemption for startup, shutdown or malfunctions provided in many NSPS requirements. Regardless of whether a deviation would constitute a violation, all deviations would have to be reported.

The proposed regulations would also define the related terms "continuous compliance" and "intermittent compliance." An owner or operator would have to document three events in order to be in continuous compliance with an applicable emission limitation or standard. First, the owner or operator would have to obtain sufficient quality-assured data from the enhanced monitoring protocol to comply with the data availability requirement imposed by the permitting authority pursuant to § 64.4. Second, the data obtained from the enhanced monitoring protocol would have to document that the owner or operator remained in compliance with the applicable emission limitation or standard throughout the reporting period. Third, if any other data were collected during the reporting period for the purpose of determining compliance, that data would also have to document that the owner or operator remained in compliance with the applicable emission limitation or standard throughout the reporting period.

In contrast, a source or emissions unit would be in "intermittent compliance" with an applicable emission limitation or standard if, during the reporting period, either the data availability requirement was not satisfied because insufficient quality-assured data was obtained from the enhanced monitoring protocol, or the owner or operator violated the applicable emission limitation or standard because a deviation occurred during a period for which no federally-approved or federally-promulgated exemption applied.

Other proposed definitions are discussed as necessary in the context of the individual sections of the proposed regulations.

C. Section 64.3—Implementation Requirements

Section 64.3(a) of the proposed regulations would require that the requirements of part 64 be implemented through the operating permits program under 40 CFR part 70 and the preconstruction permits programs developed under parts C and D of title I of the Act. Sections 64.7 and 64.8 of the proposed regulations would provide the details of how permit applications and permits must address enhanced monitoring requirements (see section IV.G. below).

The proposed regulations do not specify how operating permit applications received prior to the effective date of these proposed regulations should be treated. Under 40 CFR part 70, a source must include in its permit application proposed monitoring procedures only for all promulgated or approved regulations. However, in the event that a permit application is submitted but not approved prior to the effective date of the part 64 requirements, EPA anticipates that, pursuant to 40 CFR 70.5(b), the permitting authority will require the source to submit the necessary supplemental information.

The proposed regulations also do not specify how operating permits issued prior to the effective date of these proposed regulations would be treated. However, 40 CFR 70.7(f)(1)(i) requires that if three or more years remain in the term of a permit, a permit must be reopened to add applicable requirements that become effective after issuance of the permit. Because State operating permits program submissions are due by November 1993 and EPA has twelve months to approve or disapprove the submittals, EPA believes few permits will be approved before promulgation of part 64; therefore, it is unlikely that many permits would have to be reopened for the purpose of adding enhanced monitoring requirements.

With respect to new source permits, the proposed regulations would not apply if an owner or operator has received a preconstruction permit or has submitted a complete preconstruction permit application prior to the effective date of the proposed regulations. In those instances, § 64.3(c) would require the owner or operator to satisfy part 64 requirements only when the owner or operator is required to receive an operating permit under part 70. However, if the source files a joint preconstruction and operating permit application, then, as discussed above, the owner or operator would be required to supplement the application prior to permit issuance.

Section 64.3(d) would clarify that any change in an approved enhanced monitoring protocol would require a significant permit modification under 40 CFR 70.7. That approach is consistent with 40 CFR 70.7(e)(4) which requires a significant permit modification for any significant change to an underlying monitoring requirement. In addition, § 64.3(d) would apply to situations in which an emissions unit is modified after issuance of an operating permit in such a manner as to trigger the applicability of part 64 requirements or to make an existing approved enhanced monitoring protocol no longer capable of meeting the requirements of part 64. Because part 64 would rely on the permit application and issuance process as a vehicle for selecting an enhanced monitoring protocol, an owner or operator would not be able in such situations to comply with part 64 without the involvement of the permitting authority. Thus, § 64.3(d) would require that in such circumstances, the procedures for a significant permit modification under 40 CFR part 70 be followed.

The EPA believes that the significant modifications procedures would apply using the criteria provided in 40 CFR 70.7(e)(2)(i) even without this explicit language in proposed § 64.3(d). The EPA believes that this explicit cross-reference, as with the other references to permit applications, and permit terms and conditions provided in §§ 64.7 and 64.8 of the proposal, would assist in the

implementation of part 64, but would not modify any requirements or procedures adopted in 40 CFR part 70.

D. Section 64.4—Enhanced Monitoring Protocol Requirements

1. General Requirements

Section 64.4(a) would establish the basic requirements applicable to all enhanced monitoring protocols. This section would require that an enhanced monitoring protocol be capable of detecting deviations with sufficient representativeness, accuracy, precision, reliability, frequency, and timeliness to determine whether an emissions unit's compliance with applicable emission limitations or standards over the reporting period was continuous or intermittent. As noted in section III.B., Congress specifically stated that enhanced monitoring would be used to document compliance and facilitate enforcement against violations. Thus, these basic enhanced monitoring criteria rely on the statutory requirement that a source conduct enhanced monitoring that is sufficient to certify whether compliance is "continuous or intermittent."

To satisfy that requirement, enhanced monitoring data first must be "representative." For instance, where an enhanced monitoring protocol uses emission monitoring techniques, the sample taken by the monitoring device would have to be "representative" of the gas stream emitted from the emissions unit, and requirements for proper location of a sampling device would be an element of satisfying this criterion.

An enhanced monitoring protocol would also have to be verified initially as producing accurate and precise data and then be subject to quality assurance requirements to provide a check on monitor accuracy and precision over time. Relative accuracy or parameter correlation tests would be required to assure an accurate and precise correlation exists between the monitoring data and that from the applicable test method. In addition, the enhanced monitoring protocol would have to be "reliable," which would require that the protocol be able to produce data over time on a specific schedule without unreasonably frequent breakdowns and quality-assurance adjustments.

The frequency criterion would require that sufficient enhanced monitoring data be collected to provide an accurate assessment of the compliance status throughout the reporting period. As discussed earlier in section III.A., the frequency of data collection would be a function of the averaging time of the applicable limitations or standards, the likely variability of potential emissions from an emissions unit, and the margin of compliance demonstrated by the source. Finally, the data also would have to be available on a timely basis to allow for determining compliance and reporting compliance status.

2. Parameter Monitoring Protocols

If a source proposes to use process or control device parameter monitoring, § 64.4(c) would require the owner or operator of a source to justify that a known and consistent relationship exists between the emissions subject to an applicable limitation or standard and the parameters being monitored. The general known and consistent relationship would then be specifically correlated for the particular emissions unit by comparing emission test method data with contemporaneous parameter monitoring data as part of the performance verification test procedures for demonstrating the system's effectiveness. Appendix C to the proposed regulations would provide the correlation test procedures for parameter monitoring.

One type of correlation that can apply to a limited number of parameter monitoring methodologies is where the owner or operator uses parameter data to predict emissions subject to an applicable emission limitation or standard. A common form of this approach is to use surface coating VOC content records and then calculate VOC emissions based on that process parameter data. Another example would be fuel sampling and analysis procedures that monitor the sulfur content of fuel to predict SO_2 emissions. Another example is the use of parametric relationships to predict NO_x emissions, such as is provided for in appendix E to 40 CFR part 75 (alternative NO_x monitoring for oil- and gas-fired peaking units subject to the Acid Rain Program based on a load/NO_x emission rate relationship). In all of these situations, appendix C of the proposed regulations would define the testing procedures, including a relative accuracy test, that would be required for such predictive parameter monitoring systems and procedures.

A second type of correlation, most common with control device parameter monitoring, is a demonstrated compliance correlation. The owner or operator first would select parameters to be monitored based on known relationships between parameters and emissions. The permit application would have to include general empirical or theoretical data to justify to the permitting authority that the relationship exists and that non-monitored parameters will not adversely affect the relationship.

If the permitting authority approves an enhanced monitoring protocol based on this type of parametric relationship, then the owner or operator would monitor those parameters during a series of reference method tests that show compliance with an applicable emission limitation or standard to verify the performance of the approved protocol. The owner or operator would then use the measured parameter values to establish for each parameter a parameter value (or range of parameter values) that, if monitored and achieved, would assure that the compliance documented by the reference method tests would be maintained. For each separate parameter monitored, the value (or range of values) that would assure compliance with the applicable emission limitation or standard would be referred to as a "demonstrated compliance parameter level" (DCPL).

If an owner or operator chooses to propose a correlation process that results in a DCPL (or series of DCPL's if multiple parameters must be monitored to assure compliance), the proposed regulations would provide that a failure to achieve the DCPL (or any one DCPL if multiple DCPL's apply) will be deemed to be a deviation from the applicable emission limitation or standard. In essence, a DCPL would constitute a surrogate compliance/deviation measurement in place of the explicit terms of the applicable emission limitation or standard. It is important to note that part 64 would not state that a failure to achieve a DCPL is a deviation of a requirement separate from the applicable emission limitation or standard, but only a deviation from the applicable emission limitation or standard. However, under separate authority the permitting authority may include the DCPL as a separate federally-enforceable permit condition. For instance, a DCPL may be a federally-enforceable permit condition in a preconstruction permit issued under title I of the Act that serves as a federally-enforceable limit on an emissions unit's potential to emit.

Finally, it should also be noted that where an applicable requirement requires an owner or operator to comply with a parameter limitation, the use of parameter monitoring for purposes of enhanced monitoring with respect to that parameter limitation would be appropriate without having to conduct any correlation analysis. In these cases, however, the owner or operator would still have to demonstrate that the parameter monitor satisfied the general

regulatory criteria of representativeness, accuracy, precision, reliability, frequency and timeliness.

3. Fugitive Emissions Monitoring

Section 64.4(d) of the proposed regulations would allow a source to use a multi-point monitoring protocol where fugitive emissions would be subject to the proposed regulations. In this situation, EPA recognizes that for many sources, requiring separate monitoring at each fugitive emissions point would be impractical. For instance, many sources have VOC fugitive emissions from hundreds or even thousands of emissions points. These VOC fugitive emission points are generally not regulated separately, but are covered by leak detection and repair requirements applicable on a process unit or even a facility-wide basis. Where a process unit basis is used, these fugitive emissions would be subject to enhanced monitoring if the process (i.e., emissions) unit meets the proposed applicability thresholds for an emissions unit in proposed § 64.1(b). If a facility-wide requirement applies, then the fugitive points would be subject to the proposed regulations if the total of such emissions exceeded the applicability threshold because of the provisions in § 64.1(b) that combine emissions from a group of emissions units to determine applicability. (See the discussion of this issue in section IV.A.2.)

At other types of operations, fugitive particulate emissions can arise from certain mineral processing operations or can come from storage areas, roadways and other non-production facilities. Again, at many of those sources, the emission limitation or standard applicable to the fugitive emissions is a source-wide work practice standard or other set of operation and maintenance procedures. In this situation, these fugitive emissions points could be subject to the proposal if the combined emissions from all such points exceed the applicability thresholds in proposed § 64.1(b).

Under any of these scenarios, EPA believes it would be impractical to require that each separate fugitive emissions point be monitored separately. Because of that concern, § 64.4(d) would provide the owner or operator the ability to use multiple point monitoring of fugitive emissions. That provision would require only that a fugitive emissions enhanced monitoring protocol collect data that are sufficiently frequent to assure that representative periods of deviation are detected at each emissions point.

4. Protocol Performance and Operating Requirements

Section 64.4(b) of the proposed regulations would require that every enhanced monitoring protocol be subject to minimum performance specifications, performance verification, quality assurance and data availability requirements. Both instrumental and non-instrumental monitoring elements of an enhanced monitoring protocol would be subject to these general requirements, although only certain elements within each general category would apply to certain monitoring techniques.

To implement the requirements in § 64.4(b), appendices A through D of part 64 would provide general performance specifications (including installation, equipment and calibration gas specifications), performance verification test procedures and quality assurance procedures. For continuous emission and opacity monitoring systems, existing Federal requirements already have developed specific procedures for each of these areas. Each of the appendices would refer to these existing requirements and would require that, if such systems are used as part of an enhanced monitoring protocol, the existing requirements be followed in addition to any additional requirements imposed in the part 64 appendices. For elements of an enhanced monitoring protocol where those types of specific procedures are not available, the appendices would provide the basic criteria for establishing these procedures on a source-specific basis.

Section 64.4(b)(5) would state that a permitting authority could allow an owner or operator to adopt alternative procedures to those provided in appendices A through D. This decision would be especially important for CEMS's and COMS's for which some States have highly developed performance and quality assurance requirements that vary slightly from corresponding Federal requirements.

This section would require that any alternative procedures satisfy three criteria. First, the alternative procedures must have elements that correspond to the elements in appendices A through D. For instance, if a test to determine calibration error is required, the alternative procedure must also include a calibration error test.

The second criterion is that the alternative must provide relative accuracy, calibration error and measurement frequency specifications that are at least as stringent as the specifications in the part 64 appendices. For instance, by cross-referencing appendix B of 40 CFR part 60, appendix A of part 64 would require a CEMS to satisfy a 20 percent relative accuracy specification. Similarly, by cross-referencing 40 CFR 60.13, appendix A would also require a gas CEMS to use four equally-spaced data points to calculate hourly averages.

The third and final criterion would require that the alternative procedures provide the same degree of confidence in the data from the enhanced monitoring protocol in terms of representativeness, accuracy, precision, reliability, frequency and timeliness. This criterion would apply to confidence at both the initial verification stage and over time as documented by quality assurance activities.

With respect to non-instrumental monitoring approaches, the requirements of § 64.4(b) and the appendices would apply only to the extent that they are relevant. For example, if leak detection monitoring involves the use of a portable VOC detection device, the requirements under § 64.4(b) would require that appropriate performance specifications, calibration and quality assurance procedures be followed for those devices, such as are required under 40 CFR part 60, appendix A, Method 21.

The basic performance and operating requirements of § 64.4(b) would be the following:

a. *Performance Specifications.* Section 64.4(b)(1) would require an owner or operator to satisfy performance specification procedures as set forth in appendices A and B of part 64. Those appendices provide general elements that all performance specifications must address, and in some cases create specific requirements. In addition, because existing requirements already impose specific performance specifications for CEMS's and COMS's, those specifications would be cross-referenced and would have to be followed to satisfy part 64.

The basic performance specifications that would have to be addressed are as follows:

Measurement frequency. Section 2 of appendix A would establish the criteria for evaluating the appropriate measurement frequency of an enhanced monitoring protocol. The required objective would be that measurements be performed frequently enough to allow the owner or operator to certify whether the owner or operator achieved compliance with an applicable emission limitation or standard on a continuous or intermittent basis, consistent with the

averaging time period of the permitted emission limitation or standard.

To satisfy this objective, the required specification would be that the owner or operator specify a frequency of measurements for the elements of a protocol and for calculating averages of data points that are commensurate with the averaging time of the emission limit. Measurement frequency would have to be sufficient such that the enhanced monitoring protocol can provide data within each averaging period during operation of an emissions unit, with two exceptions.

First, the requirements for measurements within each averaging period would not apply if measurements are not obtainable because of periods of allowable monitor downtime to perform quality assurance and routine maintenance as provided in § 64.4(b)(4).

Second, the permitting authority may approve less frequent measurements where the owner or operator demonstrates that the potential variability of emissions, when considered in conjunction with the margin of compliance demonstrated for the emissions unit, is sufficiently low so that a determination of continuous or intermittent compliance does not require data to be collected within each averaging period. In such circumstances, the measurement frequency would have to be established at a level that can reliably determine if compliance is achieved on a continuous basis.

Relative accuracy. Relative accuracy is an evaluation of monitor accuracy by correlating data from the enhanced monitoring protocol with that of a specified reference emission testing method (RM) over a series of measurements under actual source conditions. A relative accuracy test consists of a series of at least nine comparison measurements.

The owner or operator would have to specify in a permit application a proposed relative accuracy specification in terms of ranges of measurement or the permitted emission limitations or standards. The stringency of the proposed relative accuracy would have to be at least 20 percent, which is the relative accuracy required for a CEMS pursuant to appendix B of 40 CFR part 60. The demonstration that the enhanced monitoring protocol achieves the proposed relative accuracy would be determined as part of the verification tests required by appendix C.

Some types of monitoring methodologies would not require a relative accuracy specification. First, a parameter monitoring system would only require a relative accuracy specification if the owner or operator intends to use the parameter monitoring to predict emissions (such as fuel sampling and analysis used to predict SO_2 emissions). In place of the relative accuracy requirement, specifications for parametric relationships, verified by correlation tests establishing parameter levels that demonstrate compliance with emission limitations or standards, would be required. These correlation test procedures would be similar to the relative accuracy test procedures except that the relative accuracy equation applied to the test results would not be used. Parameter correlation testing may also require testing under a broader range of operating conditions. (See the preceding section IV.D.2. for a discussion of parameter monitoring.)

Second, a relative accuracy specification and test requirements would not apply to a continuous opacity monitoring system because there is no scientifically independent test method for determining in-stack opacity. This approach is consistent with existing requirements for opacity monitors. (Theoretically, an owner or operator could propose to use a COMS as a predictive parameter methodology for predicting particulate emissions, in which case a relative accuracy specification and test would apply. In practice, this use of a COMS is not expected to occur given the greater burden of establishing a predictive, as opposed to demonstrated compliance, relationship between opacity levels and particulate emissions.)

Calibration error. Calibration error is the difference in enhanced monitoring protocol output readings from an established reference value (e.g., known concentration of the cylinder gas, value of a parameter, or concurrent emission measurements) after a stated period of operation during which no unscheduled maintenance, repair, or adjustment to the monitoring protocol takes place. To assure accuracy over the measurement range, the owner or operator would have to propose in the permit application a level of calibration error, with no single comparison measurement during a test for calibration error to exceed ±5 percent. Appendix C would specify the initial test procedure to check calibration error at the low, mid, and high measurement levels. As discussed below in this section, the proposed quality assurance plan would have to include procedures for periodic calibration error checks both at low and high measurement levels, and, at less frequent intervals, at low, mid, and high measurement levels. The permitting authority would have discretion to approve fewer measurement levels where appropriate.

Measurement span. Measurement span is the anticipated range of emissions or parameters that must be measured to determine the compliance status of the affected emissions unit with the applicable emission limitations or standards. The owner or operator would have to consider the measurement span in any existing regulation and propose a span for the enhanced monitoring protocol which meets any required measurement span. Where no existing span requirement applies, the owner or operator would have to propose a span that is sufficient to assure that the enhanced monitoring protocol can provide accurate data for all potential emission or parameter values that may occur.

There are two types of span specifications. First, some spans include all potential concentrations. This type of specification may require multiple range pollutant or flow analyzers and parameter instrumentation in the enhanced monitoring protocol to meet the required accuracy. The frequency of measurements also may be affected. Second, some spans include a limited range of emission concentrations or correlated parameter ranges. This type of specification sets an upper limit that normally includes the permitted levels plus a range or value beyond the permitted emission standard or parameter limitation (e.g., 1.25 times the parameter or emission limitation).

Response time. Response time is the time interval between the start of a step change in the system input (e.g., change of calibration gas or change in source concentration) and the time when the data acquisition and handling system (DAHS) displays 95 percent of the final value. This type of response time is most important when time-sharing of enhanced monitoring protocols among two or more measurement locations occurs, or when the regulations require an enhanced monitoring protocol to measure short duration permit limitation exceedances, e.g., concentration spikes.

Response time also would be defined to include the time interval between the initial accumulation of information to assess the affected emissions unit's emissions and the availability of the information for emission level status review. Thus, for a VOC surface coating operation, response time could be the review within 24 hours of the daily records and coating analyses to determine compliance with a daily VOC limitation.

The owner or operator would have to include in a permit application a

proposed response time specification for the enhanced monitoring protocol that includes upscale and downscale response times for all instrumental components of the protocol, and a combined response time for the system output. The combined response time would have to be commensurate with the measurement frequency requirements. Since response time is inherently rapid with some instruments, the permitting authority would have the authority to waive the individual component specification. Finally, where a proposed protocol includes recordkeeping procedures to assess compliance, the response time specification would have to reflect the time interval appropriate for analyzing such records and providing an output that relates to the compliance status of the monitored emissions unit.

Parametric relationship. If a proposed enhanced monitoring protocol includes the use of parameter monitoring, a parametric relationship specification would apply. The parametric relationship is the known relationship between the monitored parameters and the applicable emission limitations or standards. Requirements for parametric relationship specifications would not apply where the emission limitation or standard is already expressed in terms of the monitored parameters. For example, no parametric relationship specification would apply if an owner or operator proposed to use a fuel sampling and analysis protocol to monitor compliance with a sulfur in fuel standard.

Appendix A would establish a two-step process for establishing a parametric relationship specification. In the permit application, an owner or operator would be required to propose a general specification, describing the known relationship. The owner or operator would have to provide general empirical or theoretical data to justify the general specification. Finally, the application would have to include the correlation test plan the owner or operator would use to refine and verify the known relationship.

The second step would be to perform the correlation tests to further establish and verify the known relationship. Based on these tests, the owner or operator would describe the correlation in the form of an equation or graph if the owner or operator intends to use the parameter monitoring to predict emissions, emission rates, or control efficiency rates. If the owner or operator intends to establish parameter levels that demonstrate compliance with an emission limitation or standard, then the correlation would be described in the form of a minimum or maximum value (or range of values between a minimum and maximum value) for one or more parameters that, if achieved, assures compliance with an emission limitation or standard.

Measurement technique procedures. An enhanced monitoring protocol that includes recordkeeping or qualifies under § 64.4(d) as multiple fugitive emissions point monitoring would have to include appropriate measurement technique procedures. For instance, a protocol that relies primarily on calculating VOC emissions from coating manufacturer formulation data would also have to include periodic measurements of coatings to verify the accuracy of the formulation records.

Measurement technique procedures may include, but are not limited to: Method 9 or 22 of appendix A of part 60 of this chapter for opacity or particulate emission limitations; Method 21 of appendix A of part 60 of this chapter for volatile or toxic organic compound leak detection and repair programs; Method 19 of appendix A of part 60 of this chapter for sulfur dioxide emissions from combustion devices without control devices; and Method 24 of appendix A of part 60 of this chapter for VOC content of coatings. The owner or operator would have to consider the measurement technique procedures in any existing regulation and propose a measurement technique procedure that is based on the affected emissions unit's operation.

b. *Equipment, Installation and Calibration Gas Specifications.* Appendix B would establish requirements for equipment design and location, and for calibration gas materials. For other types of enhanced monitoring protocols, specifications for equipment design and location, and calibration reference materials, would have to be handled on a case-by-case basis in order to assure that representative measurements are obtained by the monitoring protocol.

c. *Performance Verification Test Procedures.* Verification that the monitoring procedures or systems provide data that satisfy all of the regulatory criteria is an essential part of enhanced monitoring. Section 64.4(b)(2) would require, as provided in appendix C to the proposed regulations, that an owner or operator conduct certain test procedures similar to those under existing programs. The three basic tests that would be required, as applicable, are a calibration error test, response time test and relative accuracy test. Where existing Federal provisions contain requirements that satisfy these general test requirements, the owner or operator would not be required to conduct separate verification tests under part 64. In addition, appendix C would specify the procedures for correlation of parameter monitoring to an applicable emission limitation or standard. This concept was discussed above in section IV.D.2.

d. *Quality Assurance.* Section 64.4(b)(3) would require that an owner or operator conduct quality assurance activities that are designed to identify periods of unreliable data in accordance with the specifications in appendix D to the proposed regulations. If the enhanced monitoring protocol uses a CEMS, appendix D would require the owner or operator to follow appendix F of 40 CFR part 60 as well as any additional general requirements in appendix D. If the protocol uses a COMS, appendix D would require that 40 CFR part 51, appendix M, Method 203 also be followed as well as any additional general requirements in appendix D.

Of course, the permitting authority could allow the use of alternative procedures as described above and thus appendix F or Method 203 would not have to be followed exactly. Some existing quality assurance provisions, while fundamentally similar, may have slight variations that EPA believes should be allowed to remain without requiring duplicative efforts (e.g., the Commonwealth of Pennsylvania has established different quality assurance requirements from appendix F).

Where systems or procedures other than a CEMS or COMS are used, the proposed regulations would require that the enhanced monitoring protocol include procedures that satisfy the general elements described in appendix D to part 64. The quality assurance plan would have to include a program of frequent (e.g., daily) and less frequent (e.g., quarterly and annual) checks of an enhanced monitoring protocol. Quality control programs used for the certification of emissions and enhanced monitoring protocol output verification could include daily, quarterly and annual evaluations. Such programs would not be limited to just instrumental sampling and analysis, but also quality assessments of material inventories used for establishing affected unit emissions. The rigorousness and frequency of assessment would have to be commensurate with the proposed protocol and would be proposed by the source owner or operator at the time of permit application for incorporation into the permit. The basic elements to be included would be:

Quality control (QC) checks and error assessments. QC checks and error assessments (e.g., temperature and pressure recording devices have failed) would have to be done daily, unless the permit applicant can justify less frequent assessments to the permitting authority. For recordkeeping components of a proposed protocol, the QC checks would have to involve checking the data forms to see that all required information is recorded and the information is recorded correctly. For a proposed protocol that involves instrumental measurements, the QC checks would have to describe the procedure for checking the calibration error of each instrument at the zero (low) and span (high) levels. Alternatives could be used subject to the approval of the permitting authority.

The proposed quality assurance plan would also have to specify the criteria for excessive error, i.e., when the enhanced monitoring protocol's data are invalid (e.g., outside performance specifications including recording of insufficient information). The plan proposed by the owner or operator would have to ensure that the beginning and ending times of the invalid data period are identified.

Data accuracy assessment. The QA plan would have to include procedures (e.g., calibration error, relative accuracy testing, inventory assessment, or fugitive emission assessment plan review) for a quarterly and annual assessment of the proposed protocol's data accuracy and would have to specify the criteria for excessive error (e.g., does not meet the relative accuracy requirement or fails to statistically prove that leaks were less than 1 percent of all potential leaks).

Minimum data availability. The proposed regulations require owners or operators to operate and maintain an enhanced monitoring protocol to ensure quality data during all times when an emissions unit is operating, except during defined periods of calibration, routine maintenance, and QA activities. The QA plan submitted by the owner or operator as a part of an enhanced monitoring protocol would have to include an identification of and justification for the periods of monitor downtime associated with QA activities and accounting for and responding to mechanical breakdowns. This topic is discussed in the section following this discussion of quality assurance plan requirements.

Reporting and recordkeeping. The requirements for reporting and recordkeeping for enhanced monitoring protocols would be provided in §§ 64.5 and 64.6. The QA plan proposed by the owner or operator would have to detail how the information necessary for conformance with those sections will be obtained and maintained.

e. *Data Availability.* Section 64.4(b)(4) would require that an enhanced monitoring protocol satisfy a data availability requirement. For some enhanced monitoring protocols, an applicable NSPS or NESHAP may already include a data availability requirement (e.g., 40 CFR part 60, subpart Ea includes a data availability requirement for SO_2, NO_x, CO, and temperature monitoring systems at municipal waste combustors). The proposed regulations would allow an owner or operator to use such existing requirements where applicable. The proposed regulations would not rely on existing data availability requirements in SIP's because of a concern that such data availability requirements may not have been designed to support monitoring used for determining continuous compliance.

Where an existing Federal data availability requirement does not apply, the owner or operator must generally provide quality-assured data for all periods of emissions unit operation (consistent with the required measurement frequency of data collection for the enhanced monitoring protocol). The only acceptable downtime would be the period of time that the owner or operator justifies to the permitting authority (and that the permitting authority approves) as necessary to conduct required quality assurance activities, including routine maintenance. Pursuant to § 64.8, the permitting authority would include a data availability requirement in the permit (often expressed as a percentage of operating time) that reflects the proposed requirements of § 64.4(b)(4).

The EPA has received input from several industry representatives that have argued for an exception to a data availability requirement if a sudden and unforeseeable event causes elements of a protocol to be out of service for an extended period. In response to those concerns, § 64.4(g)(2) would provide that where an enhanced monitoring protocol fails to perform due to a sudden and unforeseeable monitor malfunction beyond the control of the owner or operator (e.g., a lightning strike), the owner or operator could use the existence of that malfunction as an affirmative defense against a violation of the data availability requirement (imposed pursuant to § 64.4(b)(4)) that occurs as a result of the malfunction. (There would be, however, a duty to submit other interim monitoring data if the enhanced monitoring protocol is down for an extended period; see Section IV.D.6.)

Monitor failures that are due in whole or in part to poor maintenance, careless operation or other preventable conditions would not be considered to be "malfunction" events "beyond the control of the owner or operator." In addition, if an enhanced monitoring protocol for a particular emissions unit includes a backup monitoring system, including statistical missing data procedures, the malfunction of the primary monitoring system would not relieve the owner or operator from employing the backup system or procedures. In addition, the defense does not preclude the Administrator or the permitting authority from requiring additional testing and monitoring or from taking enforcement action based on that or any other credible information.

Finally, § 64.4(g)(3) would clarify that the owner or operator has the burden of proof at all times that a monitor failure was in fact a sudden and unforeseeable malfunction. (For further discussion of notice and other requirements related to monitor failures generally, see section IV.D.6. below.)

5. Proposed Enhanced Monitoring Protocol Evaluation and Demonstration

Sections 64.4(e) and (f) would detail the procedures an owner or operator must follow in order to obtain approval of an enhanced monitoring protocol, and the consequences of failing to achieve compliance with enhanced monitoring requirements. As a starting point, the owner or operator would have the option to first evaluate the best "established monitoring" (as defined in § 64.2) for the particular emissions unit. As discussed in section I.B.1., the determination of what is the "best" monitoring would focus on what is the best means for the particular emissions unit to determine continuous compliance, not what is the "best" technologically available monitoring system.

Established monitoring would include any monitoring methodology that has already been evaluated by EPA and determined to be a feasible means of assessing compliance with an emission limitation or standard for a specific type of emissions unit at a source. The types of monitoring that would be included are:

(1) Monitoring identified in an applicable subpart of 40 CFR part 60 or part 61 (NSPS and NESHAP standards);

(2) Appendix P of part 51 (SIP CEMS requirements);

(3) Monitoring requirements in implementation plans approved or

promulgated by the Administrator pursuant to Title I of the Act that reflect a Control Technique Guideline published by the Administrator under section 108 of the Act;

(4) Monitoring requirements established in any preconstruction permit issued pursuant to regulations approved or promulgated through rulemaking under title I, including parts C or D, of the Act; and

(5) Monitoring requirements established in 40 CFR part 75.

This type of established monitoring would be of most assistance to SIP sources that can look to NSPS or new source review permit requirements to assess the types of monitoring that are required of new facilities within a similar source category. The reader should also note that the reference to new source permits has been included with the knowledge that the "established monitoring" in these permits will vary. The EPA recognizes that many older permits may in fact have monitoring that would no longer be considered adequate and would not likely satisfy enhanced monitoring requirements. The EM Reference Document will provide a list of generally applied monitoring in new source review permits that could potentially be used to satisfy part 64 as well as general guidance on how the owner or operator can access information on monitoring requirements in new source review permits that could be used for enhanced monitoring purposes.

The "established monitoring" methodology could be one that has been established for the purpose of either determining compliance or merely indicating compliance. Thus, a monitoring methodology could qualify as established monitoring and not necessarily satisfy enhanced monitoring requirements. Therefore, an owner or operator that proposes a monitoring methodology in its enhanced monitoring protocol that qualifies as established monitoring still would be required to justify that the methodology would be able to satisfy the requirements for enhanced monitoring in part 64. The owner or operator would not be required to compare its proposed monitoring against other potential monitoring methods, even if other established monitoring methods may apply.

Established monitoring that is already used to determine continuous compliance would likely satisfy enhanced monitoring requirements without any additional enhancements. However, other forms of established monitoring could often require enhancements in order for the monitoring to satisfy enhanced monitoring requirements. Examples of the types of enhancements that could be required include: (1) Imposing quality assurance procedures, (2) requiring more frequent measurements, or (3) establishing a data availability requirement.

Unless the owner or operator proposes to use established monitoring, § 64.4(e)(2) would require an owner or operator to identify all technologically feasible monitoring methodologies for a particular emissions unit. The owner or operator would then be able to select and propose the identified methodology that best satisfies at the particular emissions unit all of the technical criteria for an enhanced monitoring protocol. Again, in determining what is the "best" monitoring for the particular emissions unit, the owner or operator would take into account circumstances at the particular emissions unit and not necessarily be required to propose the "best" technologically feasible monitoring system.

Section 64.4(e)(3) would state that an owner or operator has the burden of proof to justify that a proposed enhanced monitoring protocol can satisfy all of the enhanced monitoring requirements in part 64. To assist the owner or operator in meeting this burden, § 64.4(e)(3) would state that, in accordance with § 64.7, a permit application include all necessary information concerning the proposed enhanced monitoring protocol.

Section 64.7(b) would provide a general requirement that a permit application include all descriptions, explanations, justifications, and supporting information necessary to show that a proposed protocol can satisfy part 64 requirements. Section 64.7(b) then provides a list of particular types of information to be included.

The application would have to include a complete description of the proposed protocol. The description would have to include a description of the components and procedures that comprise the protocol. This type of information should include manufacturer literature and model number of any instrumental components. The description should also include scaled drawings of the emissions unit that indicate the location of any fixed monitor components, or sampling locations for non-fixed components. This type of description would also have to include calculation, data reduction and conversion, and similar types of procedures. The description would also have to include, as applicable, all performance, equipment, and installation specifications; a proposed quality assurance plan; and a proposed data availability requirement.

The permit application would also have to describe the physical and operational characteristics of the emissions unit and any potential interferences or other adverse impacts on the proposed protocol that such characteristics may have. This information will be essential for the permitting authority in determining whether the proposed protocol can satisfy the part 64 requirements given the expected range of facility operations.

Second, the permit application would have to include justifications for the specifications, quality assurance procedures and data availability requirement proposed by the owner or operator. This type of information could include, for instance, a justification for reduced measurement frequency based on the potential variability of emissions and the demonstrated margin of compliance at the emissions unit. (See section IV.D.4.a. above.)

The third type of information that would be included relates to the evaluation process. If required, the owner or operator would list the monitoring methodologies identified as technologically feasible and then provide documentation of any evaluations conducted. In all instances, however, the owner or operator would have to explain how the proposed monitoring could provide sufficiently representative, accurate, precise, reliable, frequent and timely data to detect deviations and determine whether compliance is continuous or intermittent.

The fourth item that § 64.7(b) would require to be included in a permit application is a test plan and schedule for conducting performance verification testing in accordance with appendix C that includes the elements described in § 64.4(f).

Section 64.4(f) would require that the plan describe the conditions under which tests will be performed, the reference test procedures to be employed, and any other pertinent or unique information that describes the testing approach. If the proposed enhanced monitoring protocol includes the use of parameter monitoring, then the test plan would have to include the correlation test procedures to be employed. This would include a description of the operating conditions to be varied during the correlation test to demonstrate the validity of the correlation over the potential range of facility operations. The test plan would also have to describe any parameters not

monitored as part of the protocol that could affect the correlation and demonstrate that excluding such parameters will not adversely affect the validity of the correlation.

Section 64.4(f)(2) would establish as a general requirement that all testing be completed and test results submitted "as expeditiously as practicable" after approval of the selection of the proposed enhanced monitoring protocol, and would require that an enforceable test schedule be included in the permit that reflects this general duty. No outside date for completion of the tests would be specified in the regulation because of the wide variety of systems and procedures to be tested and the desire not to establish that outside date as the presumptive norm for all types of enhanced monitoring protocols. For instance, if an enhanced monitoring protocol involved the proposal to install and operate a continuous opacity monitoring system, "as expeditiously as practicable" would have to provide a significant period to allow time for delivery and installation prior to conditioning and operational test periods, and performance tests. On the other hand, if the enhanced monitoring protocol involved the use of a previously installed continuous opacity monitoring system, "as expeditiously as practicable" would require less time because there would be no allowance for delivery and installation.

Once an owner or operator has completed the performance verification tests, § 64.4(f)(3) would require that the enhanced monitoring protocol be operated and maintained in accordance with all requirements, including quality assurance procedures. The owner or operator would also have to record and report data as required under part 64.

Section 64.4(f)(4) would then detail under what circumstances the owner or operator would be considered to have failed to achieve compliance with enhanced monitoring requirements. The proposed regulations would list three instances in which such failure could occur:

(1) If the owner or operator fails to submit complete test results;

(2) If the test results submitted demonstrate that the enhanced monitoring protocol fails to satisfy the applicable performance specifications and other requirements for the enhanced monitoring protocol specified in the permit; or

(3) If, after approval of test results, the permitting authority or EPA obtains information that a previously approved enhanced monitoring protocol no longer is achieving the performance requirements of the proposed regulations.

The proposed regulations do not specify what actions will be taken upon a failure to achieve compliance with part 64. Under these circumstances, the owner or operator would be subject to enforcement, including administrative or judicial actions depending upon the circumstances. Section 64.4(f)(5) of the proposed regulations would specifically state that one non-exclusive option available to EPA or the permitting authority upon a failure to achieve compliance would be to reopen the source's permit to assure compliance with part 64. This explicit provision would clarify the general authority under 40 CFR 70.7(f)(1)(iv) of the operating permit regulations, and is not intended in any manner to alter the requirements of part 70.

6. Monitor Failures

Sections 64.4(g) and 64.5(e) of the proposed regulations would establish requirements for responding to monitor failures. Section 64.4(g) would detail the types of monitor failures that could occur and the owner or operator's general obligations as a result of the failure. Section 64.5(e) would detail the notice and reporting requirements.

For any failure that has the potential to interrupt the normal operation of an enhanced monitoring protocol for more than 48 hours, the owner or operator would have to notify the permitting authority. The notice would have to be in accordance with notification requirements established by the permitting authority, or, if there are none, within 24 hours.

The next required step to address a monitor failure would be to correct the problem and return the monitoring protocol to normal operation. Section 64.5(e)(2) would require the owner or operator to certify that the corrective action has taken place and that the enhanced monitoring protocol has resumed operation and production of valid quality-assured data within two weeks of the failure.

There may be certain monitor failures that cannot feasibly be addressed within a two-week timeframe. In these instances, instead of the two-week certification, § 64.5(e)(3) would require the owner or operator to submit for approval by the permitting authority a proposed corrective action plan that addressed two separate issues: correcting the problem and collecting data in the interim. The proposed plan would have to be submitted within two weeks of the failure.

To address how the owner or operator intends to correct the failure, the proposed plan would have to include a schedule with milestones to correct the failure as expeditiously as possible, but in no event later than six months after the occurrence of the failure. For interim monitoring, the owner or operator would have to provide substitute monitoring to determine compliance; the permitting authority could accept substitute monitoring that does not satisfy all of the enhanced monitoring performance and operating criteria in § 64.4(b) of the proposed regulations.

As noted earlier in section IV.D.4., where an owner or operator can prove that a monitor failure occurs as a result of a sudden and unforeseeable malfunction, the owner or operator would be able to use that occurrence as a defense against an alleged violation of the data availability requirement. Where the defense does not apply, the owner or operator would be subject to enforcement for alleged violations that result from the monitor failure. The proposed notice and other reporting requirements for monitor failure (i.e., either a certification that corrective action is completed or a proposed corrective action plan) are not intended to excuse the failure or in any way limit the permitting authority, the Administrator or a citizen (to the extent permitted under section 304 of the Act) from seeking enforcement against the owner or operator for any alleged violation of the proposed regulations.

E. Section 64.5—Reporting Requirements

1. General Requirements

Section 64.5 of the proposal contains the basic reporting requirements that each major source would have to meet to satisfy section 114(a)(3) of the Act. First, § 64.5(a) of the proposed regulations would require that a responsible official for a source subject to these regulations use the enhanced monitoring data (and any other data collected for the purpose of determining compliance during the period) as the basis for an annual compliance certification submitted under 40 CFR part 70 for those emissions units and emission limitations or standards that are subject to these proposed regulations.

Section 64.5(a) would create an interim exemption from this requirement where an underlying SIP requirement establishes a different method as the exclusive method for certifying compliance. As discussed below in section IV.K., EPA plans to issue a SIP call to cure this problem, but is concerned that there may be some

time period when permits are being issued prior to the correction of the underlying SIP. Section 64.5(a) would allow the source to use the SIP method until the underlying provision is changed. The permitting authority and the owner or operator could also at the time of permit issuance specify in the permit that when the SIP provision is corrected, the approved enhanced monitoring protocol could be used for certifying compliance. Unless that type of provision is included in the permit, the permit would have to be reopened to allow for the enhanced monitoring protocol to be used as a basis for a compliance certification. This topic is discussed in further detail in section IV.K.

Second, a responsible official would have to submit quarterly enhanced monitoring reports. Section 64.5(b) of the proposal would require a report for each enhanced monitoring protocol used at a source.

2. *Content of the Report.* Section 64.5(b) of the proposed regulations would outline the general information that must be included in an enhanced monitoring report. The proposed reporting requirements are based primarily upon the summary monitoring reports required for NSPS sources pursuant to 40 CFR 60.7.

First, § 64.5(b)(1)–(7) would require that a report contain basic information concerning the source, the emissions unit and the enhanced monitoring protocol. Second, the report would have to identify the pollutant and applicable emission limitations or standards for which information is being provided. Finally, the basic information would have to include the calendar period covered by the report and the operating time for the emissions unit during the period. Operating time information is necessary to ensure compliance with applicable monitoring data availability requirements and to provide a normalized basis for assessing the total duration of deviations.

Following the basic data requirements, § 64.5(b) would specify that the report summarize the monitoring results for the quarter. The report would identify the number and duration of deviations detected by enhanced monitoring. The proposed regulations would require that deviations be classified by reason for the deviation, including known causes for which a federally-approved or federally-promulgated exemption from an emission limitation or standard applies, unknown causes, and known causes for which no federally-approved or federally-promulgated exemption from an emission limitation or standard applies. This approach is consistent with the summary report format under the NSPS general provisions.

Under the proposal, deviations are not necessarily violations and would be reported whether they are in fact violations of the standards. For example, even if deviations are exempt under existing regulations, these deviations would be reported, with an indication that the owner or operator believes the deviations to be from known causes but exempt under applicable requirements. The EPA considers this requirement necessary, in part to ensure that the reports do not omit any potential violation based on an interpretation made by the owner or operator, and in part to help the reviewing agency ensure that proper action was taken to minimize excess emissions or other deviations. The proposed requirement to report exempt deviations is also consistent with EPA's longstanding policy on the reporting of exceedances under the NSPS program pursuant to 40 CFR 60.7.

The proposed regulations would not require that information concerning the magnitude of each deviation be reported, nor would supporting documentation be required in all submissions. However, where the owner or operator identifies any deviation as resulting from a known cause for which no federally-approved or federally-promulgated exemption from an emission limitation or standard applies, or where deviations occur for a certain percentage of the emissions unit's operating time, then §§ 64.5(b)(11) and 64.5(b)(12), respectively, would require that the report include full documentation pertaining to all periods of violations and deviations, including magnitude information.

The proposed rule would allow the permitting authority to establish the appropriate percentage threshold for not including full documentation on a case-by-case basis, but not to exceed five percent. This requirement is similar to the NSPS approach (see 40 CFR 60.7(d)(1)), but provides greater flexibility in establishing the exact operating time percentage. The EPA believes that this flexibility is appropriate given the large variety of sources that will be covered by these proposed rules.

The report would also have to include information on the performance of the enhanced monitoring protocol. First, the report would specify the data availability achieved during the reporting period. Second, the report would have to identify any periods in which the protocol was not operating in accordance with its design while the emissions unit was in operation, or in which the protocol was operating but producing data that did not meet data quality requirements. Again, this approach would be consistent with NSPS reporting requirements for monitor performance.

Similar to the deviation reporting provisions, § 64.5(b)(13) would require that documentation pertaining to all periods of monitor downtime be submitted only if a monitoring protocol failed to achieve an established percentage of data availability. Again, the permitting authority would establish the percentage on a case-by-case basis, but the percentage could not be less than the data availability requirement established in the permit for the enhanced monitoring protocol.

Following the basic data requirements and the deviation and monitor downtime summaries, § 64.5(b)(10) would require that the report indicate the compliance status of the emissions unit with those emission limitations or standards monitored pursuant to part 64. The report would indicate the compliance status as of the end of the reporting period and whether compliance was continuous or intermittent during the reporting period. This information would act as a summary of compliance based on the reported monitoring data and monitor operation information.

Section 64.5(b)(14) would require that the report also include a narrative description and the results, if applicable, of any other required activity related to compliance with an applicable emission limitation or standard for which information is being provided or to an enhanced monitoring protocol requirement (other than quality assurance activities). This provision is necessary so that all information relevant to compliance with an applicable limitation or standard, or with the enhanced monitoring requirements of the proposed regulation, is obtained in the report.

One example of the information that could be required pursuant to this section is data related to the performance of an enhanced monitoring protocol for fugitive emissions. For instance, for some leak detection and repair programs, the existence of a leak may not constitute a deviation that must be reported under § 64.5(b)(8). However, the permitting authority may need to obtain a summary of the number of leaking points found and the number repaired in order to determine whether a deviation has occurred. (This approach would be consistent with existing NSPS leak detection and repair reporting; see, for example, 40 CFR

60.487.) The proposed language of § 64.5(b)(14) is intended to be broad enough to allow such information to be included in the report where these special circumstances exist.

The proposed regulations would also establish certain other procedural requirements for enhanced monitoring reports. Under § 64.5(c), the report would have to be signed by a responsible official as defined under 40 CFR part 70 who would certify as to the truth, accuracy and completeness of the report reciting verbatim specific certification language in the proposed regulation. This requirement would mirror the certification of reports required under the Acid Rain Program (40 CFR part 72) and the National Pollutant Discharge Elimination System (NPDES) under the Clean Water Act (see 40 CFR part 122). In addition, § 64.5(d) of the proposal would require that the report be postmarked no later than thirty days following the last day of the reporting period.

As noted above, the reporting elements in proposed § 64.5 are modelled in major part after 40 CFR 60.7, which sets forth reporting requirements for continuous monitoring systems and monitoring devices for NSPS sources. Similar to the approach under § 60.7, EPA has developed a standard summary report format for this program. Although the proposed rules would not require use of this example format, its use by permitting authorities and owners or operators of affected emissions units would be strongly encouraged because the summary format would reduce the burden for owners or operators of affected emissions units that must report and for agencies reviewing the reports.

To facilitate use of this format, EPA has included the format in the draft Enhanced Monitoring Reference Document (see Section III.A.) and, after receiving public comment on that document, intends to place the format on an electronic bulletin board system accessible to both owners or operators of affected emissions units and permitting authorities.

Although these proposed regulations would not require the use of electronic reporting media, the format can be used in conjunction with electronic reporting and States are encouraged to do so whenever possible. Electronic reporting will provide greater flexibility and responsiveness to the needs of different agencies and will simplify the burden of data handling for all concerned. The EPA solicits comment on whether the Agency should add to the proposed regulation a presumption of electronic submission of reports except where otherwise directed by the permitting authority.

The EPA also solicits comments on the general approach to reporting in the proposed regulations. Specifically, EPA requests comments on how the reporting provisions should address potential overlap with other reporting requirements and whether the proposed requirements, in conjunction with the proposed recordkeeping requirements, provide adequate information to facilitate enforcement of violations of the Act by EPA, States, and citizens.

3. Confidential Information

Section 64.5(f) of the proposed regulations would provide explicitly that an owner or operator may assert a confidentiality claim for information reported under § 64.5 to the extent such information is entitled to protection under section 114(c) of the Act. A number of representatives from industries that would be affected by the proposed regulations have stated that they consider certain information, especially emissions unit operating time, to be confidential information. Section 114(c) of the Act provides explicit protection of information (other than emissions-related information) upon a satisfactory showing that reported information constitutes a trade secret. The provisions of 40 CFR part 2 provide further detail on the procedures an owner or operator must follow to make a confidentiality claim and the procedures EPA will use to act on that claim. This proposed section would simply reiterate that this statutory protection may extend to information submitted in enhanced monitoring reports.

4. Use of Reported Information

The EPA believes that § 114(a)(3) requires the Agency to establish an enhanced monitoring and compliance certification program that will be used to determine compliance and facilitate enforcement. Thus it is the intent of these proposed regulations that where EPA or a permitting authority determines that reported deviations constitute noncompliance, the owner or operator of an emissions unit may be subject to enforcement under sections 113 or 304 of the Act and any similar State enforcement authority. In accordance with the provisions of section 113 of the Act, an owner or operator of an emissions unit may also be subject to enforcement and penalties for other reasons, such as failing to report or keep records, failing to satisfy required monitor performance and operating requirements, omitting required data, or reporting inaccurate or false data.

F. Section 64.6—Recordkeeping Requirements

Recordkeeping provisions would be included in § 64.6 of the proposed regulations. These provisions would require that all documentation relating to enhanced monitoring, including raw enhanced monitoring data and all documents supporting the enhanced monitoring reports and compliance certifications submitted pursuant to § 64.5, be available to the permitting authority for at least five years after the date that any required activity occurs. For instance, records concerning installation of a system would be kept for five years from the required installation date (or actual installation date, if later), and records supporting a compliance certification would be kept for five years from the date of the certification. The recordkeeping requirements (including the five year period) are consistent with the minimum recordkeeping provisions in 40 CFR 70.6(a)(3).

Although each major area of documentation would be noted in the proposed regulation, detailed formats and specifications would not be included. This is due in part to practical limitations involving the large variety of monitoring approaches and data requirements that would ultimately be included under part 64 as proposed, and in part to a desire to give the permitting authority the flexibility to implement these regulations with reasonable latitude.

The records must be available at the source for inspection or at a different site approved by the permitting authority. The use of a different site would likely be necessary for remote sources (such as some natural gas pipeline compressor stations) where the data may be relayed and stored at a central location. In addition, such records must be maintained so as to permit prompt submittal if requested by EPA or the permitting authority or if required pursuant to § 64.5. In general, however, EPA has not proposed that records be submitted (except as required under proposed § 64.5 if significant deviations or monitor downtime occurs); this approach would reduce the burden of the proposed regulations on both the regulated community and the regulatory agencies.

G. Section 64.7—Permit Application Requirements

The proposal would include application requirements for preconstruction and operating permits,

including the application requirements discussed in section IV.D. with respect to § 64.4(e) of the proposed regulations.

Section 64.7(c) would require that an owner or operator identify in an application for renewal of a permit any new technologically feasible monitoring methodologies that have become available since the original permit was issued. The application could include a new proposed enhanced monitoring protocol if the owner or operator considers any of the new methodologies to be a more appropriate methodology than the enhanced monitoring protocol previously approved. This provision would assure that as new monitoring technologies are developed, those technologies would be considered for application at existing sources. However, provided that the already approved enhanced monitoring protocol remains in compliance with the requirements of this part, an owner or operator would not be obligated to propose replacing the existing enhanced monitoring protocol with a new protocol.

These application requirements would be supplementary to other permit application requirements under existing permit programs and, as is the case with other provisions in proposed part 64, they would not preempt any other requirements unless they are in conflict and the part 64 requirements are more restrictive. In many cases the permitting authority will have established policies or guidelines to assist each applicant in proposing adequate monitoring. The EM Reference Document published together with the proposal would also provide assistance to the applicant. However, the proposed regulations would allow the applicant to recommend the most cost-effective approach for its particular circumstances, taking into account the policies and guidelines adopted by the permitting authority.

H. Section 64.8—Permit Requirements

Section 64.8(a) of the proposed regulations would specify the operating permit conditions needed to satisfy enhanced monitoring requirements. These conditions would restate and cross reference the applicable requirements of part 64. Under these proposed regulations, the operating permit for every emissions unit would contain all of the requirements needed to implement part 64 and these requirements would be independently enforceable permit conditions. It is not EPA's intent that § 64.8 would create new procedural obligations for the permitting authority. Rather, § 64.8 would instruct the permitting authority on how to adopt the part 64 requirements as permit conditions in a preconstruction or operating permit.

One specific provision in § 64.8 should be noted. In general, an owner or operator would be required to use data from an enhanced monitoring protocol as an enforceable basis for certifying compliance. However, as discussed above in section IV.E.1. and below in section IV.K., there may be certain emission limitations or standards in existing State implementation plans for which the underlying requirement may not allow a certification of compliance to be based on the approved enhanced monitoring. The EPA is planning to issue a SIP Call to address this issue, but there may be permits approved prior to the applicable SIP requirement being corrected. Sections 64.8(a)(3) and (4), and (b) would address this interim concern, as discussed in detail below in section IV.K. concerning the SIP Call.

I. Section 64.9—Prohibitions

Section 64.9 would clarify that any failure to satisfy a requirement of proposed part 64 would constitute a violation of the proposed regulations and of the Act, and would subject the owner or operator to enforcement under the Act. This section would also clarify that each day of a continuing violation would be treated as a separate violation.

J. 40 CFR Parts 51, 52, 60 and 61

The proposal includes several amendments to existing regulations that EPA believes are necessary to effectively implement the statutory mandates of sections 113 and 114 of the Act. Several provisions in 40 CFR parts 51, 52, 60 and 61 appear to establish exclusive methods for determining compliance with an underlying emission limitation or standard. In addition, many sources and States interpret SIP's to limit the methods for determining compliance with emission limitations and standards. The EPA believes that this language is inconsistent with the requirements of sections 110(a)(2), 113(a) and (e), and 114(a). As stated in section III.B., EPA believes that the amended Act significantly revised the process for determining compliance and establishing violations of the Act's requirements. Therefore, EPA is proposing to amend various provisions in 40 CFR parts 51, 52, 60 and 61 so that they will conform with the requirements of the amended Act and with the enhanced monitoring regulations being proposed for promulgation into part 64.

Section 114(a)(3) provides that "[t]he Administrator shall in the case of any person which is the owner or operator of a major stationary source, and may, in the case of any other person, require enhanced monitoring and the submission of compliance certifications." The EPA believes this requires the Administrator to develop regulations requiring major stationary sources to perform enhanced monitoring and to certify compliance with applicable emission limitations and standards. By this provision, EPA believes Congress intended to accomplish two results. First, with respect to monitoring, Congress wanted sources to perform monitoring that was better than is currently being performed. In many instances, sources perform an initial test at start-up, but are not required to follow-up with monitoring or testing that is representative of continuing compliance after the initial compliance demonstration. In other instances, monitoring or testing may be required infrequently in relation to the terms of the emission limitation or standard (e.g., a once a year stack test for a source that has an hourly emission limitation). The EPA believes that Congress' call for enhancement means that sources should perform monitoring that is representative of continuous compliance with applicable emission limitations or standards.

Second, EPA believes that Congress established a link between the enhanced monitoring and compliance certification. In other words, Congress wanted sources to not only perform enhanced monitoring, but also to be able to certify compliance based on the results of that monitoring. See H.R. Rep. 490, 101st Cong. 2d Sess., pt. 1, at 394 (The "amendment clarifies and confirms that EPA has authority under section 114(a) to require enhanced monitoring and to require such monitoring in compliance certifications.").

The proposed enhanced monitoring regulations have been developed with those goals in mind. However, to accomplish those goals, EPA also needs to revise those regulations that EPA previously had promulgated and that could now be interpreted to hinder the use of enhanced monitoring as a basis for determining compliance. Therefore, EPA is proposing revisions to 40 CFR 51.165(a)(2)(ii), 51.166, 51.212, 52.12, 52.21, 60.11 and 61.12 that would clarify that enhanced monitoring data may be used for the purpose of certifying compliance. In order to ensure that underlying requirements will be interpreted consistently with the enhanced monitoring requirement, EPA has based the proposed revisions to these provisions on the language in proposed § 64.5(a). The proposed revisions would state that, in addition to any underlying compliance test methods, compliance certification may

be based on enhanced monitoring or part 70 monitoring. These proposed revisions would allow sources to certify compliance consistent with the terms of parts 64 and 70 which require sources to certify compliance based on the monitoring adopted pursuant to the permitting process.

In addition, section 113(e) of the amended Act now clarifies that for purposes of enforcement actions brought in Federal court, neither EPA nor the source is bound by the method indicated in the underlying regulation for purposes of proving whether a violation of the emission standard or limitation has occurred. In the past, courts have interpreted language in EPA's regulations as well as in SIP's as limiting the evidence that could be used in enforcement cases. In order to ensure that EPA's regulations and the SIP's will be interpreted consistent with section 113(e), EPA is proposing specific language that would address enforcement as well as compliance certification in the Federal regulatory provisions identified above. Section 113(e) provides the basis for EPA to revise its Federal regulations and to call for revisions to SIP's, as Federal laws, in order to clarify what will be the basis for establishing a violation of the underlying emission limitation or standard in Federal court.

In order to implement sections 113 and 114, EPA is proposing the following revisions to existing regulations. Revisions to the preconstruction permit program requirements under 40 CFR 51.165, 51.166 and 52.21 would be included to assure that the enhanced monitoring program could be implemented through Federal and State programs for issuing permits under parts C and D of title I of the Act. Many existing preconstruction permit programs already require extensive monitoring that could be used for enhanced monitoring purposes. As stated previously, because EPA is concerned that for certain programs, the permitting authority may consider enhanced monitoring requirements to be beyond the scope of authority granted in their current programs, the proposed amendments would require changes to these existing permit programs to account for the new mandate to adopt enhanced monitoring through the preconstruction permit process.

EPA has determined to make these revisions because of the history of establishing by regulation the requirements for the new source review program. However, these revisions are duplicative of the SIP Call (described below) since it will require a revision to address all SIP provisions including new source review. EPA believes that the language suggested for purposes of the SIP Call would adequately address new source review to the extent it is adopted into the SIP.

The second set of amendments that would be made under the proposal are to the compliance certification and enforcement provisions in 40 CFR 51.212, 52.12(c), 60.11, and 61.12. As noted earlier, EPA is also planning to issue a call for States to revise their SIP's to be consistent with the authority in section 113(e) and 114(a)(3). EPA is proposing to revise the general provisions of 40 CFR parts 60 and 61 to clarify what the bases are for certifying compliance and for establishing violations for NSPS and NESHAP sources.

It is important to note that these proposed revisions to 40 CFR parts 51, 52, 60 and 61 and SIP's are not changes which in and of themselves would create new methods for certifying compliance or establishing a violation of any emission limitation or standard. Rather these proposed revisions simply would allow EPA to fully implement the compliance certification provisions of parts 64 and 70 and to fully enforce these provisions in accordance with sections 113(e) and 114(a)(3) of the Act.

For purposes of compliance certification, the proposed revisions to 40 CFR parts 51, 52, 60 and 61, as well as the SIP Call, merely would indicate that the regulation or SIP does not establish an exclusive method for determining compliance. The revisions would allow that monitoring methods developed in accordance with part 64 or 70, and approved for the source into a federally-enforceable permit, may be used as a basis for certifying compliance with the applicable emission limits.

For purposes of enforcement, the proposed revisions would include changes to several sets of regulatory language concerning methods used for establishing whether the source is in violation of an emission limitation or standard. First, in the proposed rule, EPA would establish that data from certain testing and monitoring methods are presumptively credible evidence that a violation did or did not occur. The methods would be those that have been specifically adopted as compliance test methods for the source (or source category) in a SIP, in Federal regulations (e.g., NSPS) or through the process of developing monitoring or testing in issuing a federally-enforceable permit, including both part 70 operating permits and preconstruction permits under part C or D of title I of the Act.

Second, these proposed revisions would identify other testing and monitoring methods that have been adopted through notice-and-comment rulemaking procedures. These methods would be considered presumptively credible methods, but there would be no automatic presumption as to whether data from these methods indicate that a source did or did not violate an emission limitation or standard. To the extent that EPA offers data from such methods or other credible evidence to the court in a case, the burden would be on EPA to show that data from such methods is credible evidence of a violation and the burden would be on the source to rebut a claim of violation on the basis of data from such methods or other credible evidence.

There are several instances in which EPA may need to rely on evidence that is something other than the monitoring or testing method specified in an operating permit or a regulation in order to establish a violation of an emission limitation or standard. The following is a simplified, hypothetical example. Source A has an operating permit that includes use of a continuous emission monitoring system (CEMS) as the enhanced monitoring method for one of its emissions units. The CEMS fails and must be repaired. During this period, EPA gathers other information concerning the temperatures at which the control system at Source A's emissions unit has been operating. Experts will testify that one critical component of proper operation of the control equipment at that unit is temperature, and that if the control equipment is operated below a specific temperature it will not achieve the control efficiency necessary for Source A to achieve compliance with the applicable emission limit. The EPA has information that shows the control equipment was operated below that temperature on several occasions. The EPA would be able to present that information and the accompanying expert testimony to the court in an enforcement action; the court would determine whether such information was credible evidence of a violation at Source A.

A second example is for a source, Source B, that has an enhanced monitoring system that Source B claims is operating correctly. In fact, Source B's monitoring system is faulty and shows compliance with the emission limitation or standard when, in fact, violations are occurring. The EPA has other information that shows violations of the applicable emission limitation or standard. The EPA would have the opportunity to present such information to the court and the court would

determine whether it was credible evidence of a violation at Source B.

By these proposed revisions, EPA would not be promulgating any new emission limits, test methods or monitoring requirements; rather, EPA would be ensuring that the door is open for adopting part 64 and part 70 monitoring methods for compliance certification and ensuring that for enforcement in Federal court, the court may rely on any evidence admissible under the Federal Rules of Evidence.

New methods for certifying compliance will be adopted through the permitting processes of part 70 and parts C and D to title I of the Act. The revisions to the SIP's and Federal regulatory changes would ensure that these methods may be used by both EPA and sources for compliance certifications and for enforcement. As stated above, however, there may be instances when it is necessary to rely on evidence other than these methods; EPA believes that section 113 of the Act authorizes the use of other evidence in enforcement actions. If such other evidence is used, the court is the arbiter of whether that evidence is credible. A determination of whether evidence other than that specifically identified in the permit for a source is credible may depend in some instances on the language in the underlying regulatory requirement. In such cases, the court will ultimately decide whether the parties have sufficiently demonstrated whether the evidence is credible in light of the regulatory language.

K. SIP Call

In addition to revising 40 CFR 52.12, which establishes the basis for Federal enforcement actions involving SIP's, EPA will issue a SIP Call pursuant to section 110(k)(5) of the Act, requiring States to revise their SIP's on the basis that they are substantially inadequate to comply with the requirements of sections 110(a)(2) (A), (C) and (F), 113 (a) and (e) and 114(a)(3). Paragraphs (A), (C) and (F) of section 110(a)(2) focus on the need for a SIP to provide enforceable emission limitations, to establish an adequate enforcement program by the State and to require "as may be prescribed by the Administrator" owners or operators of stationary sources to implement other necessary steps to monitor emissions from such sources, submit periodic reports of such emissions, and to require States to correlate such reports with the applicable emission limitation or standard. The EPA believes that existing SIP's are inadequate for States (as permitting authorities) or EPA to fully implement section 114(a)(3) added to the Act as part of the 1990 Amendments (for purposes of compliance certification and enforceability) as required by section 110(a)(2), because the SIP's may be interpreted to limit the types of testing or monitoring data that may be used for determining compliance and establishing violations.

For the same reason, such SIP provisions may further be interpreted to restrict EPA's enforcement authorities as provided in section 113 (a) and (e). Therefore, EPA is also requiring States to revise their SIP's to clarify that any monitoring under part 64 or part 70 that is approved for the source and included in a federally-enforceable operating permit may form the basis of the compliance certification and that any credible evidence may be used for purposes of enforcement in Federal court. Furthermore, because the SIP becomes Federal law when approved by EPA, EPA is concerned that some courts may inappropriately interpret a SIP to restrict the authority of 113(e) and the Federal regulations promulgated concerning enforcement of SIP's (e.g., 40 CFR 52.12). The EPA believes that all ambiguity with respect to the issue should be eliminated; States must revise their SIP's to ensure consistent interpretation of section 113(e) in all Federal actions.

Therefore, in addition to proposing revisions to 40 CFR parts 51, 52, 60 and 61, EPA will issue a SIP Call by February 15, 1994 pursuant to section 110(k)(5) to require States to clarify in their SIP's that other testing and monitoring methods may be used for determining compliance with and for establishing violations of the underlying emission limitation or standard. Sources will be required to revise their SIP's by the later of the final promulgation of the enhanced monitoring rule on November 15, 1994. In addition, EPA is proposing Federal implementation plan language for those areas that fail to submit a SIP revision in response to the SIP Call or submit a revision that EPA disapproves. The EPA anticipates final action on the SIP's and FIP's by June 30, 1995.

1. Interim Compliance Certification

The EPA has established the above dates for the purpose of ensuring that this language is in the SIP prior to the time the State begins to issue permits. Many emission limits in existing SIP's are not exclusively linked to test methods. In such instances, the permitting authority would be required under §§ 64.5(a) and 64.8(a) to identify in the permit that the enhanced monitoring method is a means of certifying compliance with the emission limitation or standard. However, because EPA recognizes that some SIP's may not be revised before permits are issued, the proposed enhanced monitoring rule would provide in §§ 64.5(a) and 64.8(b) that, if the existing SIP provides an exclusive means of determining compliance with an applicable emission limitation or standard, the permitting authority may insert that method in the permit as the means of certifying compliance with that limitation or standard for an interim period until the approval of the SIP revision or the promulgation of a FIP by EPA. However, under these circumstances, the permitting authority is not excused from providing an enhanced monitoring protocol in the permit. Although the underlying SIP may prohibit the use of information from enhanced monitoring for purposes of certifying compliance with the underlying emission limitation, the source would still be required to perform enhanced monitoring under part 64. Upon approval of the SIP revision or promulgation of a Federal implementation plan by EPA, the permitting authority would have to reopen the permit in order to require the use of the enhanced monitoring in the permit as a means for certifying compliance.

Although the State may issue a permit, as provided above, on the basis that the SIP prohibits the use of methods other than the compliance method for certifying compliance with the underlying emission limitation or standard, EPA does not believe that this will limit EPA's authority to bring an enforcement action based on any credible evidence. The proposed revisions to EPA's regulations at 40 CFR 52.12(c) would clarify that EPA may use any credible evidence to establish a violation of a SIP requirement and would set forth evidentiary guidelines for EPA's Federal enforcement of SIP requirements. As stated previously, the proposed revisions to 40 CFR 52.12(c) would not establish any substantive requirements, they simply would identify some credible methods that may be used to determine whether a violation of the substantive provisions of the SIP have occurred.

Although EPA is proposing numerous revisions to its regulations to clarify that section 113(e) allows enforcement actions to be brought based on any credible evidence, EPA believes that even in the absence of these proposed regulations section 113(e) would control over limiting language in SIP's, permits or other requirements. Therefore, even though a limited number of permits may not specify the enhanced monitoring method as a means of certifying

compliance with an applicable emission limitation or standard, information from the enhanced monitoring method as well as any other credible evidence may be presented in Federal court to establish whether a violation at that source has occurred; the court would then rule on the credibility of the evidence and the existence of a violation based on all of the evidence before it. As stated before, the proposed revisions to 40 CFR 52.12, as well as to the other regulations in 40 CFR parts 51, 52, 60 and 61, would ensure that EPA's enforcement provisions are consistent with sections 113 (a) and (e) and 114(a)(3) of the Act.

Finally, EPA notes that the part 70 permits rule allows States to create a permit shield, shielding the source in some instances from claims based on violations of emission limits or standards that are not in the permit. (This shield would not apply to emission limitations or standards that were promulgated or established subsequent to the permit being issued.) However, where the emission limitation or standard is already in the permit, EPA does not believe that the permit shield would protect a source from an enforcement action alleging a violation based on a monitoring or testing method not expressly provided in the permit. The EPA believes the permit shield is intended to protect the source in some instances from alleged violations of emission limits or standards not in the permit, but it does not shield the source from enforcement based on evidence not specified in the permit. This interpretation is consistent with section 113(e), which provides that a court may consider any credible evidence—including evidence other than that produced by the applicable test method—in an enforcement action.

V. Other Topics for Discussion

A. Relationship to Nonattainment Area Provisions

The amended Act contains significant new provisions related to those areas that have not yet achieved full compliance with national ambient air quality standards. Many of those provisions require States and sources to improve upon existing data for stationary source emissions, especially with respect to VOC and NO_x emissions. The following discussion provides further detail on the interrelationship of the amended title I nonattainment provisions and the proposed regulations.

1. Economic Incentive Programs

Under section 182(g)(4)(B) of the Act, EPA is required to promulgate rules for economic incentive programs. Other sections of the Act mandate, or identify as one of three options, the use of economic incentive programs in certain cases. For example, section 182(g)(5) requires a State in an extreme ozone nonattainment area to implement an economic incentive program upon the failure of the State to submit a periodic demonstration of reasonable further progress (or to meet applicable milestones for reasonable further progress). Also, section 182(g)(3) lists adoption of an economic incentive program as one option for responding to such failure in serious and severe ozone attainment areas. Section 187(d)(3) also requires a State to adopt an economic incentive program upon the failure of the State to submit a milestone demonstration, to meet a required specific emission reduction milestone, or to attain the standard in serious carbon monoxide (CO) nonattainment areas. The EPA has established guidance to assist States in developing economic incentive programs in these cases (58 FR 11110, February 23, 1993). (This guidance also served as a proposed rulemaking for final economic incentive program rules.)

Section 182(g)(4)(B) of the Act lists some examples of strategies that may be used in the development of an economic incentive program. One such strategy is based on marketable emission limits. In such programs, emission sources may achieve their permitted emission limits either directly or by purchasing emission credits from other sources. Allowing sources with lower cost abatement alternatives to trade emission credits to sources facing more expensive alternatives reduces the overall cost of meeting a given total level of abatement.

Another category of economic incentive programs is based on the use of emission fees. Such programs establish and collect a fee on emissions, providing a direct economic incentive for emitters to decrease emissions to the point where the cost of abating emissions equals the fee.

The monitoring, recordkeeping, and reporting requirements contained in these proposed regulations would be beneficial in helping sources comply with economic incentive programs that are developed by the States. Economic incentive programs, which are inherently more flexible and less prescriptive than traditional technology or performance standards, depend more strongly on monitoring, recordkeeping, and reporting to ensure compliance and to allow for adequate enforcement. The EPA anticipates that in many instances sources subject to an economic incentive program will be subject to more stringent monitoring and reporting requirements than contained in these proposed regulations. However, the monitoring, recordkeeping, and reporting requirements of this proposed regulation would provide a reliable monitoring baseline that in some instances would require only minor enhancements to satisfy the more stringent requirements of an economic incentive program.

In addition, the requirements of this proposed regulation would establish a level playing field for sources, regardless of their location, and thus maintain regional competitiveness. Without the monitoring, reporting, and recordkeeping requirements of the proposed enhanced monitoring regulations, only those major sources located in areas for which economic incentive programs are mandated would be faced with the costs of complying with the additional monitoring requirements of an economic incentive program. Under this proposal, all major sources would face similar cost burdens. As a result, promulgation of an economic incentive program would be less likely to harm the competitiveness of industries in an area subject to such a program.

2. Reasonable Further Progress and Emission Inventory Efforts

Prior to the 1990 Clean Air Act Amendments, all ozone nonattainment areas were required to make "reasonable further progress" each year toward meeting the national ambient air quality standards. Section 182 of the amended Act now defines this requirement based on the severity of the ozone problem within a specific area. For moderate (and worse) nonattainment areas, an area must reduce VOC emissions by 15 percent over the six year period from November 15, 1990 to November 15, 1996. (Section 182(b)(1)(A).) For serious, severe, and extreme areas, there is an additional 3 percent per year average reduction requirement for emissions of VOC and/or NO_x for each subsequent 3 year period until the attainment date. (Section 182(c)(2)(B).)

In addition, under sections 182(a) (1) and (3)(A) of the Act, States must submit for each ozone nonattainment area a revised inventory of actual emissions within two years after enactment of the 1990 Amendments (by November 15, 1992), and then every three years thereafter until the area is redesignated as attainment. The EPA anticipates that following the inventory

that was due in 1992, subsequent inventories will be performed in conjunction with reasonable further progress milestone demonstrations. (See discussion of this topic in the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990, 57 FR 13498, April 16, 1992.)

As noted in section III.B., EPA believes that compliance levels would increase significantly if these proposed regulations are implemented. Increased compliance would in turn result in significant emission reductions. In recognition of the benefits of implementing this proposal, EPA is considering the possibility of granting nonattainment areas a credit toward the 15 percent reasonable further progress reduction requirement upon implementation of an enhanced monitoring and compliance certification program. One mechanism for implementing this credit would be to adjust the 80 percent rule effectiveness rate used as the baseline for estimating emission reductions resulting from implementation of VOC rules that apply to source categories in which a significant percentage of emissions units would be subject to enhanced monitoring. For States that apply enhanced monitoring to additional, smaller emissions units on a source category basis, the adjustment to the 80 percent rule effectiveness figure would be increased to reflect the increased percentage of emissions units required to conduct enhanced monitoring. The EPA solicits comment on the feasibility of this option, including the possibility of demonstrating, through a pilot study or other mechanism, the appropriate emission reduction credit that should be allowed under this option.

Even if EPA determines that this option is not appropriate, EPA believes that the data developed pursuant to this proposal would greatly ease the burden of documenting the required emission reductions. Moreover, if added reductions are achieved at already controlled sources, this could potentially alleviate the need for more stringent controls.

The data collected and reported under the proposed regulations would also improve the overall accuracy of a State's emission inventory efforts. In addition, section 182(a)(3)(B)(i) also generally requires sources that emit VOC or NO_x and that are located in a nonattainment area to submit annual statements of actual emissions. The data collected and reported pursuant to these proposed regulations would enable many such sources to comply with the emission statement requirement with little or no additional effort for those units regulated under part 64.

B. Relationship to Section 112 Regulatory Developments

The hazardous air pollutant provisions in the Act have expanded significantly from the pre-1990 Act. Section 112 of the Act now includes a list of 189 hazardous air pollutants. For many sources of those pollutants, EPA must develop emission standards under section 112. The EPA published a list of source categories or subcategories of major sources (and such area sources as warrant regulation under section 112) that emit these pollutants on July 16, 1992 (57 FR 31576). The EPA must issue maximum achievable control technology (MACT) standards for each listed major source category or subcategory according to a prescribed regulatory schedule. For example, standards for 40 categories must be set within 2 years of enactment. The standards for new sources are to be based on the maximum emissions reductions achieved on the best controlled similar source, while the standards for existing sources must, in general, be at least as stringent as the average of the best controlled 12 percent of the sources in the category. Companies that accomplish early reductions of emissions receive a 6-year compliance extension for meeting the MACT requirements if they reduce their annual emissions of listed hazardous air pollutants by 90 percent over a given baseline (95 percent for particulate pollutants) subject to certain criteria. All major sources subject to section 112 must obtain a permit issued pursuant to a title V permit program. (States are not required to issue operating permits to area sources under 40 CFR part 70 until such time as EPA promulgates revisions to part 70 to cover such sources.) The following subsections discuss the relationship of these section 112 requirements and the proposal.

1. Emission Standards

As noted in sections I.B. and IV.A. of the preamble, part 64 would apply to emissions units at major and non-major hazardous air pollutant sources only to the extent requirements under 40 CFR part 61 apply. Part 61 contains existing NESHAP requirements applicable to several source categories. For sources that are subject to these existing NESHAP requirements, EPA believes that the existing monitoring requirements would in most cases generally satisfy enhanced monitoring protocol requirements with little or no modification. All part 61 NESHAP monitoring would be considered "established monitoring" as defined in part 64 (see section IV.B. above) and owners or operators would be expected to use their existing monitoring as the starting point for addressing enhanced monitoring.

The EPA also is currently developing general provisions for the new MACT standards to be promulgated at 40 CFR part 63. These general provisions would be based primarily on the existing general provisions for the NESHAP program under 40 CFR part 61, but would also include general enhanced monitoring provisions. As currently envisioned, the new MACT standards in the individual subparts to part 63 will include their own specific enhanced monitoring requirements to comply with section 114(a)(3). Finally, EPA intends that specific enhanced monitoring requirements be adopted as part of establishing case-by-case MACT requirements pursuant to paragraphs (g) or (j) of section 112. Therefore, these new requirements being developed under section 112 will not be subject to the enhanced monitoring requirements established in this part 64.

Because enhanced monitoring requirements will be incorporated directly into these new section 112 rulemakings, part 64 would not apply to such requirements. The benefits and costs associated with applying enhanced monitoring to hazardous air pollutant sources, therefore, will be evaluated as part of the section 112 rulemaking process.

2. Early Reductions

Section 112(i)(5) provides an extension for existing sources to comply with otherwise applicable standards for hazardous air pollutants provided certain criteria concerning early reductions are met. That subsection requires that an operating permit under title V allow an existing source to meet an alternative emission limitation that reflects a 90 percent reduction in hazardous air pollutant emissions (95 percent in the case of particulate hazardous emissions) in lieu of the otherwise applicable standard. The extension would apply for six years from the compliance date for the otherwise applicable standard, provided that the reduction is achieved prior to proposal, or provided that the source makes a federally-enforceable commitment to achieve the reductions by January 1, 1994. The EPA promulgated regulations for determining when reductions are sufficient and verifiable on December 29, 1992 (57 FR 61970).

The EPA anticipates that a source that opts for the early reduction program

will have to adopt adequate monitoring to verify the emission reductions that it achieves. That monitoring would become part of a source's enforceable commitment under the early reduction program. Thus, EPA would expect that a source that has entered the early reduction program would propose, when it is required to obtain a permit, to use the monitoring it uses to verify its reductions. The EPA believes that this monitoring approved under the part 70 permits program is sufficient for the sources that take advantage of the interim early reductions program. The explicit enhanced monitoring for those sources will be included in the MACT standards that will become effective for those sources at the end of the six year extension period.

C. Relationship to Title I Permit Programs

The proposed regulations would be implemented in part through preconstruction permits issued pursuant to parts C and D of title I of the Act. In many cases, States have already been using these permit processes to require the equivalent of enhanced monitoring at new sources. However, there may be certain State preconstruction permit programs that have insufficient authority to effectively implement an enhanced monitoring program. Because of this concern, the proposal includes certain amendments to the preconstruction permit program provisions in 40 CFR parts 51 and 52. These amendments are intended to require States to have adequate authority to require enhanced monitoring in preconstruction permits. Although this approach may cause some short-term burdens on particular States, the long-term result will be coordinated title I and title V permit procedures that will reduce burdens on both the regulated sources and the permitting authorities.

VI. Administrative Requirements

A. Public Hearing

A public hearing will be held to discuss the proposed regulations. Persons wishing to make oral presentations at the public hearing should contact EPA at the address given in the **ADDRESSES** section of this preamble. If necessary, oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement with EPA before, during, or within 30 days after the hearing. Written statements should be addressed to the Air Docket address given in the **ADDRESSES** section of this preamble.

A verbatim transcript of the public hearing and all written statements will be available for public inspection and copying during normal working hours at EPA's Air Docket in Washington, DC (see the **ADDRESSES** section of this preamble).

B. Docket

The docket for this regulatory action is A–91–52. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed rulemaking. The principal purposes of the docket are: (1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the rulemaking process, and (2) to serve as the record in case of judicial review. The docket is available for public inspection at EPA's Air Docket, which is listed under the **ADDRESSES** section of this notice.

C. Office of Management and Budget (OMB) Review

Under Executive Order 12291 (E.O. 12291), EPA must judge whether a regulation is "major," and therefore subject to the requirement "to the extent permitted by law" to prepare a Regulatory Impact Analysis (RIA) in connection with each major rule. Major rules are defined as those likely to result in the following:

(1) An annual cost to the economy of $100 million or more.

(2) A major increase in costs or prices for consumers or individual industries.

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or international trade.

The total cost of implementing the enhanced monitoring and compliance certification requirements for all major sources would incur annualized costs in excess of $100 million. The requirements for these costs are contained in section 114(a)(3) of the Act, as well as related provisions under section 114(a)(1) and title V of the Act. Although some of these costs may represent some baseline costs due to existing State and Federal monitoring and compliance certification requirements and not new costs, EPA has accounted for these costs in these proposed regulations. Accordingly, a Regulatory Impact Analysis has been prepared.

Given the mandate under section 114 of the Act to develop these regulations, EPA has taken steps to provide for the timely accomplishment of the required objectives. In following the implementation principles previously described in section II., EPA has proposed to allow flexibility in monitoring selection and has developed a draft EM Reference Document to expedite the selection process for many sources. The flexibility and the EM Reference Document will generally enable some sources to rely on existing monitoring systems with little or no modifications. The EPA has thus reduced the overall societal cost and any adverse economic impact associated with meeting the environmental objectives of section 114. Moreover, EPA's analysis shows that there are net societal benefits to implementing this rule in conjunction with 40 CFR part 70 under the Act. In addition, the permit fee revenue collections from sources under title V will provide State and local agencies the resources to develop and implement an accountable and enforceable enhanced monitoring and compliance certification program.

These regulations and the draft RIA will be submitted to OMB for review as required by E.O. 12291. Any written comments from OMB to EPA, and any EPA responses to those comments, will be included in Docket A–91–52.

D. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, whenever an Agency publishes any proposed or final rule in the **Federal Register**, it must prepare a Regulatory Flexibility Analysis (RFA) that describes the impact of the rule on small entities (i.e., small businesses, organizations, and governmental jurisdictions). That analysis is not necessary, however, if an Agency's Administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The EPA has established guidelines for determining whether an RFA is required to accompany a rulemaking package. The guidelines state the criteria for determining when the number of affected small entities is "substantial" and whether there is a significant impact. The determination of significant impact for small businesses depends essentially upon compliance costs, production costs, and predicted closures. For small governments, the determination of significant impact depends upon compliance costs, operating costs, and recordkeeping costs.

A regulatory flexibility screening analysis was prepared to examine the potential for significant adverse impacts on small entities associated with specific monitoring and certification provisions. The initial results of this analysis reveal that substantial numbers of small entities will not be adversely

impacted, in large part because EPA has proposed to apply the regulations only to certain emissions units at major sources and to emissions units subject to 40 CFR part 61 (NESHAP) requirements, and to rely on the section 112 standards setting process to determine enhanced monitoring for all other hazardous air pollutant emissions units. In addition, EPA has also allowed for the use of general permits under title V and will provide assistance through the small business assistance program provisions of title V. These initiatives will provide further relief to those small businesses that may be affected by the proposed regulations.

Consequently, EPA does not believe that a substantial number of small entities will be adversely affected or experience significant impacts. As such, EPA proposes to certify that this rule, if promulgated, would not have a significant economic impact on a substantial number of small business entities and thereby does not require an RFA. The EPA, however, solicits any information or data that might affect this proposed certification, and EPA will reexamine this issue if necessary. Any subsequent analysis of information received would also be available in the docket and will be taken into account before promulgation.

E. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1663.01) and a copy may be obtained from Sandy Farmer, Information Policy Branch (PM–223Y), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, or by calling (202) 260–2740.

This collection of information is estimated to have an average annual reporting burden ranging from 119 to 503 hours and to require from 1 to 45 hours per recordkeeping annually depending on the enhanced monitoring protocol required. This includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Chief, Information Policy Branch (PM–223Y), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects

40 CFR Part 51

Environmental protection, Air pollution control, Continuous emission monitors, New source review, Prevention of significant deterioration, Reporting and recordkeeping requirements.

40 CFR Part 52

Environmental protection, Air pollution control, Continuous emission monitors, Prevention of significant deterioration, Reporting and recordkeeping requirements.

40 CFR Part 60

Environmental protection, Air pollution control, Continuous emission monitors, Reporting and recordkeeping requirements.

40 CFR Part 61

Environmental protection, Air pollution control, Continuous emission monitors, Reporting and recordkeeping requirements.

40 CFR Part 64

Environmental protection, Air pollution control, Continuous emission monitors, New source review, Operating permits, Prevention of significant deterioration, Reporting and recordkeeping requirements.

Dated: September 30, 1993.

Carol M. Browner,

Administrator, U.S. Environmental Protection Agency.

For the reasons set forth in the preamble chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

1. The authority citation for part 51 is revised to read as follows:

Authority: 42 U.S.C. 7401(b)(1), 7401, 7411, 7414, 7470–7479, 7491, 7501–7508, 7601, 7602 and 7661c.

2. Section 51.165 is amended by revising paragraph (a)(2) to read as follows:

§ 51.165 Permit requirements.

(a) * * *

(2)(i) Each plan shall adopt a preconstruction review program to satisfy the requirements of sections 172(b)(6) and 173 of the Act for any area designated nonattainment for any national ambient air quality standard under 40 CFR 81.300. Such a program shall apply to any new major stationary source or major modification that is major for the pollutant for which the area is designated nonattainment, if the stationary source or modification would locate anywhere in the designated nonattainment area.

(ii) A preconstruction permit program or its equivalent required under this section shall include adequate authority and procedures for implementing the enhanced monitoring requirements of part 64 of this chapter, including the authority to require that such enhanced monitoring be used to determine compliance with any emission limitations or standards imposed pursuant to sections 172(b)(6) and 173 of the Act.

* * * * *

3. Section 51.166 is amended by adding new paragraphs (a)(7), (j)(5) and (n)(2)(iv) and revising paragraph (n)(2)(iii) to read as follows:

§ 51.166 Prevention of significant deterioration of air quality.

(a) * * *

(7) *Enhanced monitoring implementation.* A preconstruction permit program or its equivalent required under this section shall include adequate authority and procedures for implementing the enhanced monitoring requirements of part 64 of this chapter, including the authority to require that such enhanced monitoring be used to determine compliance with any emission limitations or standards imposed pursuant to section 160 of the Act.

* * * * *

(j) * * *

(5) For the air pollution control requirements applicable pursuant to this section, the source will monitor, keep records, and provide reports necessary to determine compliance with and deviations from applicable requirements and meet the enhanced monitoring requirements of part 64 of this chapter.

* * * * *

(n) * * *

(2) * * *

(iii) A detailed description as to what system of continuous emission reduction is planned by the source or modification, emission estimates, and any other information as necessary to determine that best available control technology as applicable would be applied; and

(iv) A detailed description as to what continuous monitoring methodology is planned by the source to determine compliance with and deviations from applicable emission limitations or standards, and compliance with emission reductions planned or assurance that emission reductions are achieved, and any information necessary to determine that the enhanced monitoring requirements of part 64 of this chapter would be met.

* * * * *

4. Section 51.212 is revised to read as follows:

§ 51.212 Testing, inspection, enforcement and complaints.

(a) The plan must provide for:

(1) Periodic testing and inspection of stationary sources.

(2) Establishment of a system for detecting violations of any rules and regulations through the enforcement of appropriate emission limitations and for investigating complaints.

(3) Enforceable test methods for each emission limit specified in the plan. Inclusion of such methods, however, shall not preclude enforcement based on other credible evidence. As an enforceable method, States may use:

(i) Any of the appropriate methods in appendix M of this part, Recommended Test Methods for State Implementation Plans; or

(ii) An alternative method following review and approval of that method by the Administrator; or

(iii) Any appropriate method in appendix A of part 60 of this chapter.

(b) The plan must provide that, for the purpose of submitting compliance certifications, an owner or operator is not prohibited from using the following in addition to any specified compliance test methods:

(1) An enhanced monitoring protocol approved for the source pursuant to part 64 of this chapter.

(2) Any other monitoring method approved for the source pursuant to § 70.6(a)(3) of this chapter and incorporated in a federally-enforceable operating permit.

(c) The plan must allow for the use of any credible evidence for the purpose of establishing whether a person has violated or is in violation of any such plan and must provide for the following:

(1) Information from the use of the following methods is presumptively credible evidence of whether a violation has occurred at a source:

(i) An enhanced monitoring protocol approved for the source pursuant to part 64 of this chapter.

(ii) A monitoring method approved for the source pursuant to § 70.6(a)(3) of this chapter and incorporated in a federally-enforceable operating permit.

(iii) Compliance test methods specified in the applicable plan.

(iv) Testing or monitoring methods approved for the source in a federally-enforceable permit issued pursuant to part C or D of title I of the Act.

(2) The following testing, monitoring or information-gathering methods are presumptively credible testing, monitoring or information-gathering methods:

(i) Any federally-enforceable monitoring or testing methods, including those in parts 51, 60, 61 and 75 of this chapter.

(ii) Other testing, monitoring or information-gathering methods that produce information comparable to that produced by any method in paragraph (c)(1) or (c)(2)(i) of this section.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 is revised to read as follows:

Authority: 42 U.S.C. 7401 *et. seq.*

2. Section 52.12 is amended by revising paragraph (c) to read as follows:

§ 52.12 Source surveillance.

* * * * *

(c) Notwithstanding any other provisions of this part, for purposes of enforcement under sections 113 or 304 of the Act of any plan promulgated or approved by the Administrator, any credible evidence may be used for the purpose of establishing whether a person has violated or is in violation of any such plan.

(1) Information from the use of the following methods is presumptively credible evidence of whether a violation has occurred at a source:

(i) An enhanced monitoring protocol approved for the source pursuant to part 64 of this chapter.

(ii) A monitoring method approved for the source pursuant to § 70.6(a)(3) of this chapter and incorporated in a federally-enforceable operating permit.

(iii) Compliance test methods specified in the applicable plan approved in this part.

(iv) Testing or monitoring methods approved for the source in a federally-enforceable permit issued pursuant to part C or D of title I of the Act.

(2) The following testing, monitoring or information-gathering methods are presumptively credible testing, monitoring or information-gathering methods:

(i) Any federally-enforceable monitoring or testing methods, including those in parts 51, 60, 61 and 75 of this chapter.

(ii) Other testing, monitoring or information-gathering methods that produce information comparable to that produced by any method in paragraph (c)(1) or (c)(2)(i) of this section.

3. Section 52.21 is amended by adding new paragraphs (j)(5), (n)(2)(iii) and (n)(2)(iv) to read as follows:

§ 52.21 Prevention of significant deterioration of air quality.

* * * * *

(j) * * *

(5) For the air pollution control requirements applicable pursuant to this section, the source will monitor, keep records, and provide reports necessary to determine compliance with and deviations from the applicable requirements and meet the enhanced monitoring requirements of part 64 of this chapter.

* * * * *

(n) * * *

(2) * * *

(iii) A detailed description as to what system of continuous emission reduction is planned by the source or modification, emission estimates, and any other information as necessary to determine that best available control technology as applicable would be applied; and

(iv) A detailed description as to what continuous monitoring methodology is planned by the source to determine compliance with and deviations from applicable emission limitations or standards, and compliance with emission reductions planned or assurance that emission reductions are achieved, and any information necessary to determine that the enhanced monitoring requirements of part 64 of this chapter would be met.

4. Subpart A of part 52 is amended by adding a new § 52.30 to read as follows:

§ 52.30 Compliance certifications.

(a) Notwithstanding any other provision in any plan promulgated or approved by the Administrator and listed in paragraph (c) of this section, for the purpose of submission of compliance certifications an owner or operator is not prohibited from using the following in addition to any specified compliance test methods:

(1) An enhanced monitoring protocol approved for the source pursuant to part 64 of this chapter.

(2) Any other monitoring method approved for the source pursuant to § 70.6(a)(3) of this chapter and incorporated in a federally-enforceable operating permit.

(b) For the purposes of enforcement under sections 113 or 304 of the Act of

any plan promulgated or approved by the Administrator and listed in paragraph (c) of this section, § 52.12(c) shall apply.

(c) For the following state and federal implementation plans, paragraphs (a) and (b) of this section are incorporated into the plan:

(1) The federal implementation plan provisions at §§ 52.741–52.742 (Chicago, IL).

(2) The federal implementation plan provisions at § 52.1881 (Cuyahoga, OH).

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

1. The authority citation for part 60 is revised to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7414, 7416, 7601, and 7661c.

2. Section 60.11 is amended by revising paragraphs (a), (b), (e)(5) and (f) and by adding paragraphs (g) and (h) to read as follows:

§ 60.11 Compliance with standards and maintenance requirements.

(a) Compliance with standards in this part, other than opacity standards, may be determined by performance tests established by § 60.8 as required by this part, unless otherwise specified in the applicable subpart. Nothing in this paragraph (a) of this section shall preclude the use of other methods and procedures for the purposes set forth in paragraphs (g) and (h) of this section.

(b) Compliance with opacity standards in this part may be determined by conducting observations as required by this part in accordance with Reference Method 9 in appendix A of this part, any alternative or equivalent method that is approved by the Administrator pursuant to § 60.8, or as provided in paragraph (e)(5) of this section. For purposes of determining initial compliance, the minimum total time of observations shall be 3 hours (30 6-minute averages) for the performance test or other set of observations (meaning those fugitive-type emission sources subject only to an opacity standard). Nothing in paragraph (b) of this section shall preclude the use of other methods and procedures for the purposes set forth in paragraphs (g) and (h) of this section.

* * * * *

(e) * * *

(5) An owner or operator of an affected facility subject to an opacity standard may submit, for compliance purposes, continuous opacity monitoring system (COMS) data results produced during any performance test required under § 60.8 in lieu of Method 9 observation data. If an owner or operator elects to submit COMS data for compliance with the opacity standard, he shall notify the Administrator of that decision, in writing, at least 30 days before any performance test required under § 60.8 is conducted. For the purpose of determining compliance with the opacity standard during a performance test required under § 60.8 using COMS data, the minimum total time of COMS data collection shall be averages of all 6-minute continuous periods within the duration of the mass emission performance test. Results of the COMS opacity determinations shall be submitted along with the results of the performance test required under § 60.8. The owner or operator of an affected facility using a COMS for compliance purposes is responsible for demonstrating that the COMS meets the requirements specified in § 60.13(c), that the COMS has been properly maintained and operated, and that the resulting data have not been altered in any way.

(f) Special provisions set forth under an applicable subpart of this part shall supersede any conflicting provisions of this section, provided that no such special provisions shall be deemed to exclude the use of monitoring methods pursuant to paragraph (g) of this section for the purpose of certifying compliance or the use of any credible evidence pursuant to paragraph (h) of this section for the purpose of establishing whether a person has violated or is in violation of a standard in this part.

(g) Notwithstanding any other provision in this part, for the purpose of submission of compliance certifications for any standard under this part, an owner or operator is not prohibited from using the following methods in addition to any appropriate specified test methods in this section or the applicable subpart:

(1) An enhanced monitoring protocol approved for an affected facility pursuant to part 64 of this chapter.

(2) Any other monitoring method approved for an affected facility pursuant to § 70.6(a)(3) of this chapter and incorporated in a federally-enforceable operating permit.

(h)(1) Notwithstanding any other provisions of this part, for purposes of an enforcement action under section 113 or 304 of the Act, any credible evidence may be used for the purpose of establishing whether a person has violated or is in violation of a requirement in this part.

(2) Information from the use of the following methods is presumptively credible evidence of whether a violation has occurred at an affected facility:

(i) An enhanced monitoring protocol approved for the affected facility pursuant to part 64 of this chapter.

(ii) A monitoring method approved for the affected facility pursuant to § 70.6(a)(3) of this chapter and incorporated in a federally-enforceable operating permit.

(iii) Testing or monitoring methods approved for the affected facility in a federally-enforceable permit issued pursuant to part C or D of title I of the Act.

(iv) Compliance test methods established in the applicable subpart of this part, including observations conducted in accordance with Reference Method 9 in appendix A of this part for the purpose of opacity standards.

(v) Alternative or equivalent test methods approved by the Administrator and established pursuant to § 60.8, or a continuous opacity monitoring system as provided for in § 60.11(e)(5).

(vi) Compliance test methods specified in an applicable plan approved pursuant to subpart B of this part with respect to designated facilities as defined in § 60.21.

(3) The following testing, monitoring or information-gathering methods are presumptively credible testing, monitoring or information-gathering methods:

(i) Any federally-enforceable monitoring or testing methods, including those in parts 51, 60, 61 and 75 of this chapter.

(ii) Other testing, monitoring or information-gathering methods that produce information comparable to that produced by any method in paragraph (h)(2) or (h)(3)(i) of this section.

PART 61—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

1. The authority citation for part 61 is revised to read as follows:

Authority: 42 U.S.C. 7401, 7412, 7414, 7416, 7601, and 7661c.

2. Section 61.12 is amended by revising paragraphs (a) and (b), and adding paragraphs (e) and (f), to read as follows:

§ 61.12 Compliance with standards and maintenance requirements.

(a) Compliance with numerical emission limits may be determined by emission tests established in § 61.13 or as otherwise specified in an individual subpart. Nothing in paragraph (a) of this section shall preclude the use of other methods and procedures for the purposes set forth in paragraphs (e) and (f) of this section.

(b) Compliance with design, equipment, work practice or operational

standards may be determined as specified in an individual subpart. Nothing in paragraph (b) shall preclude the use of other methods and procedures for the purposes set forth in paragraphs (e) and (f) of this section.

* * * * *

(e) Notwithstanding any other provision in this part, for the purpose of submission of compliance certifications for any standard under this part, an owner or operator is not prohibited from using the following in addition to any specified test methods in § 61.13 or the applicable subpart:

(1) An enhanced monitoring protocol approved for an affected facility pursuant to part 64 of this chapter.

(2) Any other monitoring method approved for an affected facility pursuant to § 70.6(a)(3) of this chapter and incorporated in a federally-enforceable operating permit.

(f)(1) Notwithstanding any other provisions of this part, for purposes of an enforcement action under section 113 or 304 of the Act, any credible evidence may be used for the purpose of establishing whether a person has violated or is in violation of a standard in this part.

(2) Information from the use of the following methods is presumptively credible evidence of whether a violation has occurred at an affected facility:

(i) Emission tests established in § 61.13 or as otherwise specified in the applicable subpart.

(ii) An enhanced monitoring protocol approved for the source pursuant to part 64 of this chapter.

(iii) A monitoring method approved for the source pursuant to § 70.6(a)(3) of this chapter and incorporated in a federally-enforceable operating permit.

(iv) Testing or monitoring methods approved for the affected facility in a federally-enforceable permit issued pursuant to part C or D of title I of the Act.

(3) The following testing, monitoring or information-gathering methods are presumptively credible testing, monitoring or information-gathering methods:

(i) Any federally-enforceable monitoring or testing methods, including those in parts 51, 60, 61 and 75 of this chapter.

(ii) Other testing, monitoring or information-gathering methods that produce information comparable to that produced by any method in paragraph (f)(2) or (f)(3)(i) of this section.

Part 64 is added to read as follows:

PART 64—ENHANCED MONITORING PROGRAM

Sec.

64.1 Applicability.
64.2 Definitions.
64.3 Implementation requirements.
64.4 Enhanced monitoring protocol requirements.
64.5 Reporting requirements.
64.6 Recordkeeping requirements.
64.7 Permit application requirements.
64.8 Permit requirements.
64.9 Prohibitions.

Appendix A to Part 64—General Performance Specifications for Enhanced Monitoring Protocols

Appendix B to Part 64—General Equipment, Installation, and Calibration Gas Specifications for Enhanced Monitoring Protocols

Appendix C to Part 64—General Performance Verification Test Procedures for Enhanced Monitoring Protocols

Appendix D to Part 64—General Quality Assurance Plan Specifications for Enhanced Monitoring Protocols

Authority: 42 U.S.C. 7414 and 7661c.

§ 64.1 Applicability.

(a) *Regulated hazardous air pollutant sources.* The requirements of this part shall apply to each emissions unit that is subject to an emission limitation or standard under part 61 of this chapter and is required to obtain a permit, but only with respect to such emission limitation or standard.

(b) *Other regulated air pollutant sources.* Except as provided in paragraph (a) of this section with respect to emissions units subject to requirements under part 61 of this chapter, the requirements of this part shall apply to the following emissions units at a major source, but only with respect to emission limitations or standards applicable to a regulated air pollutant for which the stationary source is classified as a major source:

(1) Each emissions unit that has the potential to emit any such regulated air pollutant in amounts equal to or greater than thirty percent of the minimum potential emissions, in tons per year, required for the source to be classified as a major source under the Act for that regulated air pollutant.

(2) Each group of emissions units at a major source for which compliance with an applicable emission limitation or standard is achieved by aggregating, averaging, apportioning or trading emissions among such units if, collectively, the group of emissions units has the potential to emit any such regulated air pollutant in amounts equal to or greater than thirty percent of the minimum potential emissions, in tons per year, required for the source to be classified as a major source under the Act for that regulated air pollutant.

(c) *Exemptions.* The provisions of this part shall not apply to any emission limitations or standards established pursuant to the following:

(1) Sections 404, 405, 406, 407(a), and 407(b) of the Act.

(2) Section 603 of the Act.

(3) Section 112 of the Act, except for standards established in part 61 of this chapter. The requirements for enhanced monitoring under section 114(a)(3) of the Act for emission limitations or standards under section 112 of the Act, other than standards established in part 61 of this chapter, shall be specified in the individual emission limitations or standards established pursuant to section 112 of the Act.

(4) Part 61 of this chapter, Subpart M—National Emission Standard for Hazardous Air Pollutants for Asbestos, § 61.145, Standard of Demolition and Renovation.

(5) Part 60 of this chapter, Subpart AAA—Standards of Performance for New Residential Wood Heaters.

(d) *Additional requirements.* Unless explicitly stated otherwise, nothing in this part shall:

(1) Excuse the owner or operator of a source from any other monitoring, recordkeeping or reporting requirement that may apply pursuant to any other provision of the Act.

(2) Restrict the authority of the Administrator or the permitting authority to impose additional or more restrictive monitoring, recordkeeping, testing, or reporting requirements on any owner or operator of a source under any other provision of the Act, including section 114(a)(1), or State law, as applicable.

§ 64.2 Definitions.

The following definitions apply to part 64. Except as specifically provided in this section, terms used in this part retain the meaning accorded them under the applicable provisions of the Act.

Act means the Clean Air Act, as amended by Public Law 101–549, 42 U.S.C. 7401 *et seq.*

Applicable emission limitation or standard means an emission limitation or standard subject to the requirements of this part, including:

(1) An emission limitation or standard applicable to a regulated hazardous air pollutant under part 61 of this chapter; or

(2) An emission limitation or standard applicable to a regulated air pollutant, other than a hazardous air pollutant under section 112 of the Act, for which the source is classified as a major source.

Continuous compliance means, with respect to an applicable emission limitation or standard, that:

(1) An owner or operator has obtained quality-assured data from an enhanced monitoring protocol for all periods in a reporting period during which the enhanced monitoring protocol is required to operate;

(2) Such data demonstrate that an owner or operator has complied with the applicable emission limitation or standard during all monitored periods during the reporting period; and

(3) Any other data collected for the purpose of determining compliance during the period demonstrate that an owner or operator has complied with an applicable emission limitation or standard during the periods in which such data were collected.

Demonstrated compliance parameter level means a minimum or maximum value (or range of values between a minimum and maximum value) established for a control device or process parameter which, if achieved by itself or in combination with one or more other demonstrated compliance parameter levels, demonstrates that an owner or operator has complied with an applicable emission limitation or standard. A demonstrated compliance parameter level is established pursuant to the correlation test procedures in appendix C of this part.

Deviation means any condition determined by data from an enhanced monitoring protocol, or any other data collected that can be used to determine compliance, that identifies that an emissions unit subject to this part has failed to meet an applicable emission limitation or standard. A deviation includes a condition that either violates an applicable emission limitation or standard or that would constitute a violation except for a provision promulgated or approved by the Administrator pursuant to the Act that exempts such condition from being a federally-enforceable violation. Included within the meaning of "deviation" are any of the following:

(1) Emissions that exceed an emission limitation or standard.

(2) A process or control device parameter value which demonstrates that an emission limitation or standard has not been met.

(3) Any other condition in which data collected that can be used to determine compliance identifies that an applicable emission limitation or standard has not been met.

Emission limitation or standard means any federally-enforceable emission limitation, emission standard, standard of performance or means of emission limitation as defined under the Act. An emission limitation or standard may be expressed in terms of the pollutant, expressed either as a specific quantity, rate or concentration of emissions (e.g., lbs. of SO_2/hr, lbs. of SO_2/mmBtu, or kilograms of VOC/liter of applied coating solids) or as the relationship of uncontrolled to controlled emissions (e.g., percentage capture and destruction efficiency of VOC or percentage reduction of SO_2). An emission limitation or standard may also be expressed either as a work practice (e.g., leak detection and repair programs for VOC or mercury emissions), process or control device parameter (e.g., incinerator temperature for VOC destruction efficiency), or other form of design, equipment, operational or operation and maintenance requirement.

Emissions unit means any part or activity of a source that emits or has the potential to emit any regulated air pollutant for which an emission limitation or standard has been established. This term is not meant to alter or affect the definition of the term "unit" for purposes of title IV of the Act or of the term "emissions unit" for purposes of title V of the Act.

Enhanced monitoring means the methodology used by an owner or operator to detect deviations with sufficient representativeness, accuracy, precision, reliability, frequency and timeliness in order to determine if compliance is continuous during a reporting period. Such monitoring shall be conducted through an enhanced monitoring protocol established in accordance with § 64.4.

Enhanced monitoring protocol means the methodology, and all installation, equipment, performance, operation and quality assurance requirements applicable to such methodology, developed by the owner or operator and approved by the permitting authority for the purpose of conducting enhanced monitoring.

Established monitoring means a monitoring methodology that has been demonstrated to be a feasible means of assessing compliance with emission limitations or standards for a specific type of emissions unit. In considering whether established monitoring is applicable to a particular emissions unit, limitations in the applicable requirement in which the monitoring is established that relate to the date of construction or modification of an emissions unit shall not be taken into account. Monitoring methodologies developed pursuant to the following requirements shall be considered established monitoring methodologies:

(1) Monitoring requirements established under part 60 or 61 of this chapter.

(2) Monitoring requirements established in appendix P of part 51 of this chapter.

(3) Monitoring requirements in implementation plans approved or promulgated by the Administrator pursuant to title I of the Act that reflect a Control Technique Guideline published by the Administrator under section 108 of the Act.

(4) Monitoring requirements established in any preconstruction permit issued pursuant to regulations approved or promulgated through rulemaking under title I, including part C or D, of the Act.

(5) Monitoring requirements established in part 75 of this chapter.

Fugitive emissions are those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening.

Intermittent compliance means, with respect to an applicable emission limitation or standard, that an owner or operator has either:

(1) Deviated from the applicable emission limitation or standard for a period in which no federally-approved or promulgated exemption from such deviation applies; or

(2) Failed to obtain quality-assured enhanced monitoring protocol data during a period in which obtaining such data was required to be obtained under an approved enhanced monitoring protocol.

Major source means any major source as defined in § 70.2 of this chapter, excluding any hazardous air pollutant source included in paragraph (1) of that definition.

Owner or operator means any person who owns, leases, operates, controls or supervises a stationary source subject to this part.

Permit means any applicable permit issued, renewed, amended, revised, or modified under part C or D of title I of the Act, or title V of the Act.

Permitting authority means either of the following with respect to any permit program:

(1) The Administrator, in the case of EPA-implemented programs; or

(2) The State air pollution control agency, local agency, other State agency, or other agency authorized by the Administrator to manage a permit program under part C or D of title I of the Act, or title V of the Act.

Potential to emit means the maximum capacity of a stationary source or an emissions unit to emit any air pollutant under its physical and operational design. Any physical or operational

limitation on the capacity of an emissions unit to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored or processed, shall be treated as part of its design if the limitation is enforceable by the Administrator. This term does not alter or affect the use of this term for any other purposes under the Act, or the term "capacity factor" as used in title IV of the Act or the regulations promulgated thereunder.

Regulated air pollutant shall have the same meaning as provided under part 70 of this chapter.

Responsible official shall have the same meaning as provided under part 70 of this chapter.

§ 64.3 Implementation requirements.

(a) *Implementation through permits.* The enhanced monitoring requirements of this part shall be implemented through the regulations established for issuing permits pursuant to part C or D of title I of the Act, or title V of the Act, and as further specified in §§ 64.7 and 64.8.

(b) *Effective date.* The requirements of this part shall become effective [Insert date 30 days from the date of publication of the final rule].

(c) *Previously submitted part C or D permit applications.* If a source has submitted a permit application for a permit required under part C or D of title I of the Act prior to the effective date of the regulations under this part, the requirements of this part shall not apply to such source until such source is required to obtain an operating permit pursuant to title V of the Act.

(d) *Permit modifications.* In accordance with the requirements specified in § 70.7 of this chapter, subsequent to the issuance of an operating permit pursuant to a program approved under title V of the Act, an owner or operator shall submit a proposed enhanced monitoring protocol and be required to obtain a significant permit modification pursuant to the procedures in § 70.7(e)(4) of this chapter (or any corresponding procedures included in any Federal permit program promulgated under title V of the Act) prior to modifying an approved enhanced monitoring protocol, or modifying any emissions unit in such a manner that:

(1) The emissions unit becomes subject to the requirements of this part; or

(2) The enhanced monitoring protocol previously approved for such emissions unit would fail to satisfy the requirements of this part after such modification.

§ 64.4 Enhanced monitoring protocol requirements.

(a) *General requirements.* (1) An owner or operator shall use an enhanced monitoring protocol that meets the requirements of this section for each emissions unit subject to this part in order to determine continuous or intermittent compliance with each applicable emission limitation or standard. To meet this requirement, the enhanced monitoring protocol shall be sufficiently representative, accurate, precise, reliable, frequent and timely to determine whether a deviation from an applicable emission limitation or standard occurs.

(2) An enhanced monitoring protocol may include existing, modified or new monitoring systems or other monitoring procedures at an emissions unit. Depending on the type of emission limitation or standard, regulated air pollutant and emissions unit, an enhanced monitoring protocol could include one or more of the following upon a demonstration that the requirements in this part are satisfied:

(i) Continuous emission monitoring systems.

(ii) Continuous process or control device parameter monitoring systems or procedures.

(iii) Emission calculations based on accepted engineering estimation techniques.

(iv) Maintenance and analysis of records of fuel or raw materials usage.

(v) Periodic verification of emissions, process parameters or control device parameters using portable or in situ measurement devices.

(vi) Recording results of a program or protocol to conduct specific operation and maintenance procedures, leak detection, fugitive dust control, or other work practices.

(vii) Any other form of measuring emissions, process parameters or control device parameters that can achieve the requirements of this part.

(b) *Protocol performance and operating requirements.* The owner or operator shall:

(1) Satisfy applicable performance, equipment, installation and calibration gas specifications in accordance with the specifications and procedures provided in appendices A and B of this part.

(2) Conduct applicable performance verification test procedures in accordance with the procedures provided in appendix C of this part.

(3) Conduct a program of quality assurance activities in accordance with the quality assurance procedures provided in appendix D of this part.

(4) Obtain quality-assured data from the enhanced monitoring protocol, consistent with the measurement frequency specification for, and the other design elements of, the protocol, for all periods of emissions unit operating time that is sufficient to satisfy:

(i) Any minimum data availability requirement that an owner or operator must satisfy with respect to an applicable emission limitation or standard pursuant to part 60 or 61 of this chapter; or

(ii) If no such provision applies to an applicable emission limitation or standard, a minimum data availability requirement that reflects obtaining quality-assured data for all emissions unit operating time periods excluding a fixed percentage of operating time that the owner or operator justifies to the permitting authority as necessary to conduct quality assurance procedures pursuant to paragraph (b)(3) of this section, including routine maintenance activities.

(5) A permitting authority may allow an owner or operator to use alternative performance specifications, equipment, installation and calibration gas specifications, performance verification procedures or quality assurance procedures that are comparable to the specifications and procedures set forth in appendices A, B, C and D of this part, provided that such alternative specifications and procedures:

(i) Contain elements that correspond to the elements in the specifications, tests and procedures included in the appendices of this part;

(ii) Require relative accuracy, calibration error and measurement frequency specifications that are at least as stringent as the specifications included in appendix A of this part; and

(iii) In all other respects provide, at a minimum, the same degree of confidence in the representativeness, accuracy, precision, reliability, frequency and timeliness of the data from the enhanced monitoring protocol as the performance and operating requirements set forth in appendices A, B, C and D of this part.

(c) *Parameter monitoring.* (1) If the owner or operator proposes to use the monitoring of process or control device parameters as part of an enhanced monitoring protocol, the owner or operator shall:

(i) Establish and demonstrate a correlation specification between the monitored parameters and the applicable emission limitations or

standards in accordance with appendices A and C of this part.

(ii) If necessary, propose to establish demonstrated compliance parameter levels in accordance with section 7 of appendix C in order for the measurements taken by the parameter monitoring system to act as surrogate measurements of compliance with the applicable emission limitation or standard.

(2) If an enhanced monitoring protocol includes the use of one or more demonstrated compliance parameter levels, a failure to achieve such parameter level (or any one such level if the proposed enhanced monitoring protocol involves the monitoring of more than one parameter) shall constitute a deviation from the applicable emission limitation or standard being monitored. Nothing in this part shall require that a failure to achieve a demonstrated compliance parameter level constitutes a deviation of a requirement of this part in addition to a deviation from the applicable emission limitation or standard.

(d) *Fugitive emissions monitoring.* Where an owner or operator must conduct enhanced monitoring of fugitive emissions of a regulated air pollutant, an owner or operator may use a single enhanced monitoring protocol for multiple fugitive emissions points at a source. Such protocol shall provide assurance that representative periods of deviation from an applicable emission limitation or standard will be detected and recorded at all fugitive emissions points monitored by such protocol.

(e) *Selection and proposal requirements for proposed enhanced monitoring protocols*—(1) *Established monitoring*—(i) *Use of best established monitoring.* The owner or operator may propose to use the best established monitoring for the particular emissions unit for purposes of an enhanced monitoring protocol if the established monitoring can satisfy the requirements of this part.

(ii) *Determining the best established monitoring.* In determining what is the best established monitoring for a particular emissions unit, an owner or operator may take into account any of the circumstances at the particular emissions unit that affect the ability of the proposed enhanced monitoring protocol to determine continuous or intermittent compliance, including:

(A) The terms of the applicable emission limitation or standard.

(B) Design and process operating circumstances.

(C) The demonstrated margin of compliance at the emissions unit in conjunction with the potential variability of emissions from the emissions unit.

(iii) *Modifications to Established Monitoring.* The owner or operator may consider modifying or adding to the established monitoring in order to meet the requirements of this part, including:

(A) Performance and operating specifications and procedures to satisfy paragraph (b) of this section; and

(B) Requirements for demonstrated compliance parameter levels to satisfy paragraph (c) of this section.

(2) *Use of other potential protocols.* Unless the owner or operator proposes to use the best established monitoring for the particular emissions unit pursuant to paragraph (e)(1) of this section, the owner or operator shall identify all technologically feasible monitoring methodologies for a particular emissions unit in order to select as a proposed enhanced monitoring protocol the best other monitoring methodology for providing sufficiently representative, accurate, precise, reliable, frequent and timely data to satisfy the requirements of this part at the particular emissions unit. The owner or operator may consider the particular circumstances at the emissions unit, as provided in paragraph (e)(1)(ii) of this section, in determining what is the best other monitoring methodology for the particular emissions unit.

(3) *Permit application submittal requirements.* The owner or operator shall have the burden of proof that a proposed enhanced monitoring protocol, if approved, will satisfy all of the requirements of this part. In accordance with § 64.7, the owner or operator shall submit as part of a permit application all of the descriptions, explanations, justifications and supporting data necessary to justify that a proposed enhanced monitoring protocol can satisfy the requirements of this part, including documentation of all monitoring methods and procedures evaluated pursuant to this section.

(f) *Performance verification test requirements*—(1) *Test plan requirements.* The owner or operator shall submit a test plan with a permit application that describes the procedures, reference methods, test preparations, locations, and other pertinent information for all performance verification tests required pursuant to appendix C of this part. For correlation tests involving parameter monitoring, the owner or operator also shall, pursuant to section 7 of appendix C of this part, describe any significant parameters that are not included in the proposed enhanced monitoring protocol, demonstrate that the tests being conducted will account for the potential effect of variations in such parameters, and demonstrate that the validity of the correlation will not be affected by the maximum potential variations in such parameters.

(2) *Test schedule.* The owner or operator shall propose in a permit application a schedule for conducting the performance verification tests required in appendix C of this part. The schedule shall provide for the commencement and completion of such tests and the submittal of all test results as expeditiously as practicable after issuance of a permit. Approval of an enhanced monitoring protocol in a permit shall be conditional until all performance verification tests are completed in accordance with the schedule and the results of such tests demonstrate that the enhanced monitoring protocol achieves the performance requirements of this part. The permitting authority may approve the enhanced monitoring protocol on the condition that the owner or operator modifies such schedule as the permitting authority considers appropriate. The permitting authority also may designate the form for submittal of test results.

(3) *Completion of tests.* After the date on which performance verification tests are completed, the owner or operator shall operate the enhanced monitoring protocol in accordance with the requirements of this part and shall record and report data measured and recorded by the enhanced monitoring protocol in accordance with § 64.5 and § 64.6. Unless the permitting authority or the Administrator determines that the test results demonstrate that the enhanced monitoring protocol fails to achieve compliance with this part, all such data will be considered valid, quality-assured data retroactive to the completion date of the performance verification tests.

(4) *Failure to achieve compliance.* After issuance of a permit specifying enhanced monitoring requirements pursuant to this part, the owner or operator shall be considered to have failed to achieve compliance with this section if any of the events set forth in paragraph (f)(4) of this section occur. The events deemed to constitute a violation of this section that are listed in paragraph (f)(4) of this section shall be supplemental to, and not be a limitation of, any other events that could constitute a violation of this part. The following events shall constitute a violation of this section:

(i) The owner or operator fails to submit complete test results as required

in this section in accordance with the approved schedule.

(ii) The test results submitted by the owner or operator demonstrate that the enhanced monitoring protocol has failed to achieve the performance requirements of this part.

(iii) Upon information available to the permitting authority or the Administrator after approval of the test results submitted by the owner or operator, the permitting authority or the Administrator determines that the enhanced monitoring protocol fails to satisfy the requirements of this part.

(5) *Permit reopenings.* (i) In the event an enhanced monitoring protocol fails to achieve compliance with this part for any of the reasons provided in paragraph (f)(4) of this section, the Administrator or the permitting authority may reopen a permit for cause pursuant to § 70.7(f)(1)(iv) of this chapter to assure compliance with the requirements of this part.

(ii) Reopening of a permit shall be supplemental to, and shall not be a defense to any alleged violation of, the requirements of this part.

(g) *Monitor failures.* (1) If the normal operation of an enhanced monitoring protocol is interrupted as a result of a monitor failure, and such interruption has the potential to continue in excess of 48 consecutive hours, the owner or operator shall report such failure to the permitting authority and comply with other notification requirements as specified in § 64.5(e).

(2) In the event that an enhanced monitoring protocol fails to perform in accordance with this section because of a monitor malfunction that results from a sudden and unforeseeable event beyond the control of the owner or operator, such event shall be a defense to any alleged violation of this part with respect to an applicable data availability requirement pursuant to § 64.4(b)(4). This defense shall not apply to the extent a monitor failure is caused by improperly designed equipment, lack of preventive maintenance, careless or improper operation, or operator error. The owner or operator shall have the burden of proof in demonstrating that a monitor malfunction was sudden and unforeseeable through properly signed, contemporaneous operating logs, or other relevant evidence that:

(i) A sudden and unforeseeable malfunction occurred and that the owner or operator can identify the cause(s);

(ii) The monitoring systems and procedures had been properly operated and maintained at the time of and prior to the malfunction; and

(iii) During the period of the monitor malfunction, the owner or operator took all reasonable steps to minimize the period of inoperation of the monitoring systems and procedures.

(3) In the written two-week notice or corrective action plan required by § 64.5(e), the owner or operator shall describe any monitor malfunction subject to paragraph (g)(2) of this section and demonstrate to the permitting authority that such monitor malfunction was sudden and unforeseeable. Such demonstration shall include, at a minimum, the information required in paragraph (g)(2) of this section. In any enforcement proceeding, the owner or operator seeking to establish the occurrence of a sudden and unforeseeable malfunction has the burden of proof.

§ 64.5 Reporting requirements.

(a) *Compliance certifications.* (1) Except as provided in paragraph (a)(2) of this section, for each applicable emission limitation or standard at an emissions unit subject to the requirements of this part, a responsible official shall use the data collected from the enhanced monitoring protocol, and any other data collected for the purpose of determining compliance during the period, to certify compliance in accordance with section 114(a)(3) of the Act pursuant to part 70 of this chapter or pursuant to any Federal permit program promulgated under title V of the Act.

(2) If at the time of issuance of the permit a requirement in an applicable implementation plan approved or promulgated by the Administrator pursuant to title I of the Act specifies an exclusive means of determining compliance, the permitting authority and the source may establish that method as the sole basis for certifying compliance. In addition to specifying that method as the sole basis for certifying compliance, the permit may also establish that a compliance certification will be based upon the enhanced monitoring data upon revision of the applicable requirement to allow for a certification of compliance on such basis.

(3) If under paragraph (a)(2) of this section the permitting authority and the source do not identify the enhanced monitoring method as a basis for certifying compliance with an applicable emission limitation or standard, the permit must be reopened pursuant to § 70.7(f)(1)(iv) of this chapter upon revision of the applicable requirement to provide that the enhanced monitoring method or other additional means of determining compliance with the emission limitation or standard must be used for purposes of certifying compliance.

(b) *Enhanced monitoring reports.* On and after the effective date of this part, the responsible official of a source subject to this part shall submit to the permitting authority, no less frequently than quarterly, an enhanced monitoring report for each enhanced monitoring protocol required. The enhanced monitoring report shall include all of the following information:

(1) The company name and mailing address, the facility name and street location, if different, and the identification code for the facility assigned by the Administrator.

(2) The name, daytime telephone number and facsimile number (if available) of the responsible official submitting the report, and of the facility site manager or contact, if different.

(3) The emissions unit(s) (or fugitive emissions points) and regulated air pollutant for which information is being provided.

(4) Specific identification of the applicable regulation and permit condition, and the emission limitation or standard for which information is being provided.

(5) A brief identification of the enhanced monitoring protocol.

(6) The calendar period covered by the report.

(7) The number of hours during the reporting period that the emissions unit operated.

(8) A summary of the number and duration of deviations during the reporting period, classified by reason, including known causes for which a federally-approved or promulgated exemption from an emission limitation or standard may apply.

(9) Identification of the data availability achieved during the reporting period, including a summary of the number and total duration of incidents that the enhanced monitoring protocol failed to operate in accordance with the design of the protocol or produced data that did not meet minimum data accuracy and precision requirements, classified by reason.

(10) Identification of the compliance status as of the last day of the reporting period and whether compliance was continuous or intermittent during the reporting period.

(11) If, pursuant to paragraph (b)(8) of this section, the owner or operator identifies any deviation as resulting from a known cause for which no federally-approved or promulgated exemption from an emission limitation or standard applies, the enhanced monitoring report shall also include a

copy of the records required to be maintained pursuant to § 64.6(a)(3) (i) and (v) that pertain to the periods during which such deviation occurred.

(12) If the total duration of deviations for the reporting period exceeds a percentage of the total enhanced monitoring time for the reporting period established by the permitting authority (not to exceed five percent), the enhanced monitoring report shall also include a copy of the records required to be maintained pursuant to § 64.6(a)(3) (i) and (v) that pertain to the periods during which a deviation occurred.

(13) If the total data availability for an enhanced monitoring protocol during the reporting period is less than a percentage of the total source operating time for the reporting period established by the permitting authority (not less than the data availability requirement for the enhanced monitoring protocol established pursuant to § 64.8(a)(2)), the enhanced monitoring report shall also include a copy of the records required to be maintained pursuant to § 64.6(a)(3) (iii) and (iv).

(14) The enhanced monitoring report shall summarize the results of any other required activity during the reporting period (other than any required quality assurance activity) which was required to attain or demonstrate compliance with an applicable emission limitation or standard, or with an enhanced monitoring protocol requirement.

(c) *Signature requirement.* Each enhanced monitoring report submitted pursuant to this part shall be signed by a responsible official. The responsible official shall certify, by his or her signature, the following statement: "I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

(d) *Due date.* Each enhanced monitoring report shall be postmarked no later than thirty days following the last day of the reporting period.

(e) *Monitor failure notification and corrective action plan requirements*—(1) *Initial Notice.* In the event a monitor failure occurs pursuant to § 64.4(g), the owner or operator shall notify the permitting authority in accordance with any applicable notification requirements established by the permitting authority or if no such requirements exist then within twenty-four hours of such failure.

(2) *Certification of failure correction.* Except as provided in paragraph (e)(3) of this section, within two weeks of a failure subject to § 64.4(g) the owner or operator shall submit to the permitting authority a statement certifying that the monitor failure has been corrected and the enhanced monitoring protocol has resumed operation and production of quality-assured data.

(3) *Corrective action plan.* In the event that a failure subject to § 64.4(g) cannot feasibly be repaired within the two week period required for the certification statement in paragraph (e)(2) of this section, the owner or operator shall submit in place of such statement a proposed corrective action plan that includes all of the following elements:

(i) A schedule with appropriate milestones to perform one of the following activities as expeditiously as practicable but within a period not to exceed six months from the date of the failure:

(A) Correction of the failure; or

(B) Development, installation (if necessary), testing, maintenance and operation of a new enhanced monitoring protocol.

(ii) Collection and reporting of data from other monitoring systems or procedures to detect deviations with sufficient representativeness, accuracy, precision, reliability, frequency and timeliness to determine whether compliance is continuous or intermittent with applicable emission limitations or standards during the period that quality-assured data from the enhanced monitoring protocol are not available. During this interim period, the permitting authority may accept data from monitoring systems or procedures that do not satisfy all of the enhanced monitoring protocol performance and operating requirements of § 64.4(b).

(4) The owner or operator shall comply with the proposed corrective action plan until such plan is denied, modified or approved by the permitting authority. If the plan is approved or modified by the permitting authority, the owner or operator shall comply with such approved or modified plan. If the plan is denied by the permitting authority, notwithstanding any other provisions of this part, operation of an emissions unit without the use of an approved enhanced monitoring protocol shall be a violation of this part until such time as a corrective action plan is approved by the permitting authority.

(5) *Sudden and unforeseeable monitor malfunction information.* The description of any sudden and unforeseeable monitor malfunction required pursuant to § 64.4(g)(3) shall accompany either the certification statement or proposed corrective action plan required pursuant to paragraph (e)(2) or (e)(3) of this section.

(6) *Nonwaiver of remedies.* Except for a sudden and unforeseeable monitor malfunction as set forth in § 64.4 (g)(2) and (g)(3), compliance with the requirements of this paragraph (e) shall be supplemental to, and shall not be a defense to any alleged violation of, the other requirements of this part.

(f) *Confidentiality requirements.* The provisions of section 114(c) of the Act shall apply to the protection from public disclosure of information (other than emission data) submitted pursuant to this section.

§ 64.6 Recordkeeping requirements.

(a) *General requirements.* On and after the effective date of this part, the owner or operator of a source subject to this part shall maintain records of all monitoring data and supporting information for a minimum of five years from the date of any monitoring sample, measurement, testing, certification, report or other activity required under this part. These records shall include:

(1) All documentation relating to the design, installation and testing of all elements of the enhanced monitoring protocol and all required corrective action or compliance plan activities.

(2) All maintenance logs, calibration checks, and other required quality assurance activities, and all records of corrective and preventive action.

(3) All documentation supporting the enhanced monitoring report required under § 64.5 and those elements of a compliance certification submitted pursuant to part 70 of this chapter (or pursuant to any Federal permit program promulgated under title V of the Act) that are based upon data from an enhanced monitoring protocol, including documentation of all of the following:

(i) Each period that the enhanced monitoring protocol identified deviations from the applicable emission limitations or standards, including:

(A) The date and time that each period of deviation began and ended;

(B) The magnitude of each deviation (or of each failure to achieve a demonstrated compliance parameter level, where applicable);

(C) The reason for each deviation; and

(D) A description of the corrective action taken for each deviation, including action taken to minimize each deviation and action taken to prevent recurrence.

(ii) The date and time of the beginning and ending of each period that the emissions unit was not in operation.

(iii) Each period that any element of the enhanced monitoring protocol was not operating in accordance with its design while the emissions unit was in operation, and each period that the enhanced monitoring protocol was in operation but producing unacceptable data (as determined by applicable quality assurance procedures established pursuant to appendix D of this part), including:

(A) The date and time that each period began and ended;

(B) An indication for each period of whether the monitoring protocol was not in operation or was producing unacceptable data;

(C) The reason for inoperation or unacceptable data; and

(D) A description of the corrective action that was taken for each incident, including action taken to prevent a recurrence.

(iv) All calibrations and other quality assurance activities performed on any element of the enhanced monitoring protocol.

(v) All calculation factors and equations.

(vi) All measurements and calculations.

(vii) All other data collected or recorded as part of the enhanced monitoring protocol.

(b) *Availability.* The owner or operator of a source subject to this part shall maintain the records required by this section at the source, or at such other site approved by the permitting authority, in a manner so that they may be inspected by the permitting authority or the Administrator, and so that they may be submitted expeditiously to the permitting authority or the Administrator, if so requested or required.

§ 64.7 Permit application requirements.

(a) *General requirements.* On and after the effective date of this part, each application for a permit shall include a proposed enhanced monitoring protocol that can meet the requirements of this part for every applicable emission limitation or standard at each emissions unit subject to the requirements of this part.

(b) *Content.* The application shall contain all of the information, descriptions, explanations, justifications, and supporting documentation required by any provision of this part, including the following:

(1) A description of all elements, components and procedures of the enhanced monitoring protocol, including all proposed performance specifications, equipment, installation and calibration gas specifications, data reduction and calculation procedures, quality assurance procedures, and data availability requirements.

(2) A description of the physical and operational characteristics of the emissions unit that may affect the performance of the enhanced monitoring protocol.

(3) A justification for all proposed performance specifications, equipment, installation and calibration gas specifications, quality assurance procedures, and data availability requirements to the extent necessary under the requirements of this part.

(4) A list of all technologically feasible monitoring methodologies identified pursuant to § 64.4(e)(2).

(5) Documentation of monitoring methodologies evaluated for use as an enhanced monitoring protocol.

(6) An explanation of how the proposed enhanced monitoring protocol best provides for the particular emissions unit sufficiently representative, accurate, precise, reliable, frequent and timely data to determine whether a deviation occurs in order to determine whether compliance is continuous or intermittent.

(7) A test plan and schedule for conducting performance verification tests required pursuant to appendix C of this part that contain the elements described in § 64.4(f).

(8) Such other supporting information as may be necessary to justify that the proposed enhanced monitoring protocol can satisfy the requirements of this part.

(c) *Permit renewal applications.* Prior to submitting an application for renewal of a permit, an owner or operator shall identify technologically feasible monitoring methodologies that have become available since approval of the current enhanced monitoring protocol used by the owner or operator. The application shall include a list of all such potential protocols, and, if appropriate, a revised or new proposed enhanced monitoring protocol.

(d) *Additional requirements.* Nothing in this section shall excuse the owner or operator of a source from complying with any other permit application requirement established by Federal regulation or by a permitting authority under a federally-approved permit program.

§ 64.8 Permit requirements.

(a) *Permit conditions.* On and after the effective date of this part, each permit shall include, as applicable, enforceable conditions that shall require the owner or operator to comply with all of the requirements of this part by the date of permit issuance, or, as applicable, the scheduled date for completion of performance verification tests and submittal of test results, including:

(1) Implementation of an enhanced monitoring protocol that satisfies the requirements of this part for determining the compliance status of each emissions unit subject to this part.

(2) Performance and operating requirements applicable to an enhanced monitoring protocol, including a minimum data availability requirement that reflects the requirements of § 64.4(b)(4).

(3) Certification of compliance for each emissions unit and each applicable emission limitation or standard as required in § 64.5(a), using data collected from the enhanced monitoring protocol required in § 64.4, except as otherwise provided in § 64.5(a).

(4) If applicable pursuant to § 64.5(a), a condition specifying that the enhanced monitoring data will be used to certify compliance upon revision of an applicable requirement that specifies a method different from the enhanced monitoring protocol as the sole means of determining compliance.

(5) Submission of enhanced monitoring reports required pursuant to § 64.5 and maintenance of records required pursuant to § 64.6.

(6) An enforceable condition requiring an owner or operator to comply with a test schedule in accordance with § 64.4(f) for conducting performance verification tests and submitting the test results.

(7) Where necessary pursuant to § 64.4(c) for enhanced monitoring protocols that involve parameter monitoring, a permit condition specifying the use of demonstrated compliance parameter levels as a surrogate measurement of compliance with an applicable emission limitation or standard upon the establishment and verification of such parameter levels pursuant to the test procedures in section 7 of appendix C of this part.

(b) *Permit reopenings.* If, at the time of issuance of a permit, an applicable requirement specifies as an exclusive means of determining compliance a method other than the approved enhanced monitoring protocol, and a permit does not include a condition pursuant to paragraph (a)(4) of this section that provides for certifying compliance based upon the enhanced

monitoring data upon revision of the applicable requirement, then a permit issued pursuant to part 70 of this chapter must be reopened under § 70.7(f)(1)(iv) of this chapter upon revision of the applicable requirement to provide for the additional means of determining compliance.

§ 64.9 Prohibitions.

(1) Failure to comply with any requirement of this part shall be a violation of this part and the Act for each day that a violation occurs or continues.

Appendix A to Part 64—General Performance Specifications for Enhanced Monitoring Protocols

1. Introduction

This appendix provides direction on the basic performance specification requirements of an enhanced monitoring protocol (EMP). An EMP may include, provided that the criteria in § 64.4 are satisfied:

(a) Continuous emission monitoring systems (CEMS's) or continuous opacity monitoring systems (COMS's);

(b) Continuous process or control device parameter monitoring systems or procedures;

(c) Emission calculations based on accepted engineering estimation techniques;

(d) Maintenance and analysis of records of fuel or raw materials usage;

(e) Periodic verification of emissions, process parameters or control device parameters using in situ or portable measurement devices;

(f) Recording results of a program to conduct specific operation and maintenance procedures, leak detection, fugitive dust control, or other work practices;

(g) Other forms of monitoring emissions, process parameters or control device parameters such as continuous emission rate monitoring systems (CERMS's); and

(h) Any combination of the above.

1.1 An EMP proposed in an operating permit application by an owner or operator of an affected emission unit must be accompanied by proposed performance specifications (PS's) which define the criteria for an acceptable EMP and shall consist of the following, as applicable:

(a) Measurement frequency;
(b) Relative accuracy (RA);
(c) Calibration error (CE);
(d) Instrument span (range);
(e) Response time;
(f) Parametric relationship limits; and
(g) Measurement technique procedures.

In accordance with § 64.4, the ability of the EMP to achieve the performance specifications will be verified in accordance with the procedures in appendix C of this part after issuance of a permit.

1.2 This appendix also provides specific Performance Specifications (PS 101 and 102) for volatile organic compound monitoring systems being proposed for an EMP. These specifications are included because appendix A is anticipated to be a repository of specific performance specifications as those specifications are developed in the event that particular monitoring systems are used to satisfy part 64. However, the presence of these performance specifications are not intended to require that such monitoring systems be used for enhanced monitoring or intended to prohibit the use of monitoring systems for which no specific performance specifications are provided.

1.3 Owners or operators proposing an EMP which includes recordkeeping, or qualifying under § 64.4(d) for monitoring multiple fugitive emission points, must address the following aspects of performance specifications:

(a) Measurement frequency;
(b) Calibration error;
(c) Response time; and
(d) Measurement technique procedures.

1.4 Unless otherwise specified in this part, owners or operators proposing an EMP which includes a parameter monitoring system, CEMS, COMS or CERMS must address the following aspects of performance specifications:

(a) Measurement frequency;
(b) Relative accuracy (RA);
(c) Calibration error (CE);
(d) Instrument span (range);
(e) Response time; and
(f) Parametric relationship limits for a parameter monitoring system.

In addition to the general requirements contained in this appendix A, the following monitoring systems shall use the following referenced specifications:

1.4.1 *CEMS's and COMS's.* All CEMS's and COMS's that are included as part of an enhanced monitoring protocol shall follow the corresponding performance specifications provided in appendix B of part 60 of this chapter. Unless a CEMS or COMS is subject to part 60 pursuant to a Federal regulation (other than this part or part 51 of this chapter), where reference is made to the "Administrator" in appendix B of part 60, the term "permitting authority" should be inserted for the purpose of this appendix; and where the term "Reference Method" is used in appendix B of part 60, a permitting authority may allow the use of either the reference method approved by the permitting authority or the federally-approved reference method included in part 60 of this chapter. The owner or operator also can elect to follow the specifications provided in appendix A of part 75 of this chapter for a gas CEMS, with the same modifications in terms as provided in the previous sentence. In addition, all such systems shall:

1.4.1.1 Conduct zero and span check procedures as provided in § 60.13(d) of this chapter;

1.4.1.2 Satisfy the frequency of measurement requirements contained in § 60.13(e) of this chapter; and

1.4.1.3 Reduce data and calculate averages in accordance with procedures in § 60.13(h) of this chapter.

1.4.2 *VOC monitoring systems.* All continuous monitoring systems designed to measure VOC that are included as part of an enhanced monitoring protocol shall meet Performance Specifications 101 or 102, as applicable, included in this appendix A.

1.4.3 *CERMS's.* All continuous emission rate monitoring systems shall meet the performance specifications in appendix B of part 60 of this chapter. The owner or operator also can elect to follow the specifications provided in appendix A of part 75 of this chapter for a CERMS. Modifications to the terms "Administrator" and "Reference Method" in the referenced appendices shall be made as specified in section 1.4.1 of this appendix A.

2. Measurement Frequency

2.1 *Definition of "continuous."* Although the term "continuous" means "at all times," the Agency has determined that less frequent measurements can be used to determine continuous compliance. The potential variability of the emissions or parameters about a mean value is a primary factor in establishing frequency of measurements, especially when considered in conjunction with the demonstrated margin of compliance under normal operating conditions at a source. If the potential variability is high relative to the margin of compliance, measurements must be done more frequently than if the potential variability is low. For example, 40 CFR 60.13(e)(2) requires measurements once every 15 minutes for gas CEMS's. In subpart Db of 40 CFR part 60, distillate fuel sulfur analysis conducted by the vendor according to American Society for Testing and Materials procedures can be submitted on an as-received basis. Measurements, however, must be performed frequently enough to allow the owner or operator to certify whether the owner or operator achieved compliance with an applicable emission limitation or standard on a continuous or intermittent basis, consistent with the averaging time period of the permitted emission limitation or standard.

2.2 *Objective.* In addition to the potential variability of the emissions or parameters, the specification for measurement frequency must consider the averaging time of the emission limit and must show the method for calculating the average. Some examples are: average four 15-minute measurements to obtain a 1-hour average, average three 1-hour averages to obtain a 3-hour average, average thirty-six 10-second readings to obtain a 6 minute average, and average the results of fifteen days of 24-hour samples for a rolling daily average emission limitation.

2.3 *Specification.* The owner or operator shall specify in the permit application a proposed frequency of measurements for the elements of an EMP and for calculating averages of data points that are commensurate with the averaging time of the emission limit. Measurement frequency must be sufficient such that the enhanced monitoring protocol will provide data for each averaging period during operation of an emissions unit, except as follows:

2.3.1 *QA activities.* The requirements for measurements within each averaging period shall not apply if measurements are not obtainable because of periods of allowable monitor downtime to perform quality assurance and routine maintenance as provided in § 64.4(b).

2.3.2 *Potential emissions variability.* The permitting authority may approve less frequent measurements than would otherwise be required pursuant to this

section 2.3 where the owner or operator demonstrates that the potential variability of emissions, when considering the margin of compliance demonstrated for the emissions unit, is sufficiently low so that a determination of continuous or intermittent compliance does not require data to be collected within each averaging period of an emission limitation or standard during operation of an emissions unit. In such circumstances, measurement frequency shall, at a minimum, be established at a level that can reliably determine if compliance is achieved on a continuous basis.

3. Relative Accuracy

3.1 *Definition.* The RA test (see appendix C of this part) evaluates the EMP accuracy by correlating data from the EMP with that of a specified reference emission testing method (RM) over a series of measurements under actual source conditions. Relative accuracy is "the absolute mean difference between the EMP output values and the RM output values plus a 2.5 percent error confidence coefficient divided by the mean of the RM values expressed as a percentage." The RA test consists of a series of at least nine comparison measurements. In mathematical terms:

$$RA = \frac{|\text{Mean Difference}| + \text{Confidence Coefficient}}{\text{Reference Method Average}} \times 100$$

In cases where a source's measured emission levels are less than 50 percent of the permitted emission standard, the emission standard value may be substituted into the equation in place of the RM average to allow EMP acceptance flexibility in the lower measurement range.

3.1.1 Requirements for relative accuracy do not apply to a COMS (unless the owner or operator proposes to use the COMS as a parameter methodology to predict particulate emissions), to a parameter monitoring system that is used to determine compliance with an emission limitation or standard expressed in terms of the monitored parameter, or to a parameter monitoring system that involves establishing a demonstrated compliance parameter level pursuant to Section 7 of appendix C of this part.

3.2 *Specification.* The owner or operator shall specify in the permit application a proposed RA specification in terms of a range of measurement or the permitted emission limitations or standards. The RA must be at least as stringent as the RA required for a CEMS pursuant to appendix B of part 60 of this chapter. The RA must be determined as part of the validation demonstration of appendix C by the owner or operator prior to approval of the EMP.

4. Calibration Error

4.1 *Definition.* The calibration error (CE) test demonstrates the stability of the EMP measurements or calibration over time and documents the calibration (or measurement ability) of the EMP equipment over the entire emission or parameter measurement range. Calibration error is the difference in the average of a certain number of reported responses from an established reference value (e.g., known concentration of the cylinder gas, value of a parameter, or concurrent emission measurements) after a stated period of operation during which no unscheduled maintenance, repair, or adjustment to the monitoring protocol takes place. No one response shall exceed ±5 percent of the reference value.

4.2 *Specification.* To assure accuracy over the measurement range, the owner or operator of an affected emissions unit shall specify in the permit application a proposed level of CE and procedures for periodic (e.g., daily) CE checks at low and high measurement levels. Initial and periodic (see appendices C and D of this part) checks shall also be specified in the permit application and include CE checks at low, mid, and high measurement levels.

4.3 The demonstration of the CE levels of the EMP shall be conducted immediately prior to or after any RA demonstration.

5. Measurement Span

5.1 *Definition.* Measurement span is the anticipated range of emissions or parameters that must be measured to determine the compliance status of the affected emissions unit with the applicable emission limitations or standards.

5.2 *Specification.* The owner or operator should consider the measurement span in the existing regulation and shall specify in the permit application a proposed EMP span which meets any existing measurement span requirement or the anticipated range of emissions or parameter that must be measured. There are two types of span specifications:

5.2.1 Spans that include all potential concentrations. This type of specification may require multiple range pollutant or flow analyzers and parameter instrumentation in the EMP to meet the required accuracy. The frequency of measurements also may be affected.

5.2.2 Spans that include a limited range of emission concentrations or correlated parameter ranges. This type of specification sets an upper limit that normally includes the permitted levels plus a range or value beyond the permitted emission standard or parameter limitation (e.g., 1.25 times the parameter or emission limitation).

6. Response time

6.1 *Definition.* Response time is the time interval between the start of a step change in the system input (e.g., change of calibration gas or change in source concentration) and the time when the data acquisition and handling system (DAHS) displays 95 percent of the final value. A response time also may be the time interval between the initial accumulation of information to assess the affected emissions unit's compliance status and the availability of the information for emission level status review (e.g., a daily VOC emission limit based on the evaluation of three coating analyses and daily coating use records). Response times are most important when time-sharing of EMPs among two or more measurement locations occurs, or when the regulations require the EMP to measure short duration permit limitation exceedances, e.g., concentration spikes.

6.2 *Specification.* The owner or operator shall specify in a permit application a proposed response time for the EMP which will include: upscale and downscale response times for all instrumental components of the EMP and a combined response time for the system output. A demonstration of the associated response time(s) shall be performed under normal operation, including all EMP components to be used in obtaining and recording measurements, and, if applicable, during time sharing operations. Since response time is inherently rapid with some instruments, the permitting authority may waive the individual component specification. The combined EMP response time shall be commensurate with the measurement frequency requirements. Where an EMP includes recordkeeping procedures to assess compliance, the response time specification shall reflect the time interval appropriate for analyzing such records and providing an output that relates to the compliance status of the monitored emissions unit.

7. Parametric Relationship

7.1 *Definition.* The parametric relationship for a parameter monitoring system is the correlation between the monitored parameters and the affected emissions units' permitted emission limitations or standards (other than emission limitations or standards that are already expressed in terms of the monitored parameters, e.g., use of a fuel sampling and analysis protocol to monitor compliance with a sulfur in fuel standard). The correlation can be described in the form of an equation or graph if a parameter monitoring system is used to predict emissions, emission rates, or control efficiency rates. If a parameter monitoring system involves the use of a demonstrated compliance parameter limitation established pursuant to section 7 of appendix C of this part in order to determine compliance with an applicable emission limitation or standard, then the correlation can be described, for each parameter included in the EMP, in the form of a minimum or maximum value (or a range of values), depending on the type of parameter monitored.

7.2 *Specification.*

7.2.1 *Initial specification.* For each parameter monitoring system EMP, the owner or operator shall describe in the permit application the known relationship between the parameters and emission rates, propose a range of applicability, and limit its application to these ranges. The known

relationship may be based on site-specific studies, other empirical studies, or theoretical considerations based on generally accepted engineering principles. The permit application must describe how the known relationship can be further defined through correlation tests performed pursuant to section 7 of appendix C of this part and shall include a correlation test plan in accordance with § 64.4.

7.2.2 *Verified specification.* The correlation of the monitored parameters to the emission limitations or standards being monitored shall be established and verified pursuant to performance verification tests conducted pursuant to appendix C of this part. The final specification for the parametric relationship shall be described in the form of a parametric equation, graph, or demonstrated compliance parameter level(s), as applicable.

8. Measurement Technique Procedures

8.1 An EMP which includes recordkeeping or qualifies under § 64.4(d) as multiple fugitive emissions point monitoring must include appropriate measurement technique procedures. Measurement technique procedures may include, but are not limited to: Methods 9 or 22 of appendix A of part 60 of this chapter for opacity or particulate emission limitations; Method 21 of appendix A of part 60 of this chapter for volatile or toxic organic compound leak detection and repair programs; Method 19 of appendix A of part 60 of this chapter for sulfur dioxide emissions from combustion devices without control devices; and Method 24 of appendix A of part 60 of this chapter for VOC content of coatings.

8.2 *Specification.* The owner or operator should consider the measurement technique procedures in the existing regulation and shall include in a permit application a proposed EMP measurement technique procedure based on the affected emissions unit's operation.

Performance Specification 101—Performance Specifications for Volatile Organic Compound Continuous Emission Monitoring Systems in Stationary Sources

1. Applicability and Principle

1.1 *Applicability.*

1.1.1 These requirements apply to continuous emission monitoring systems (CEMS's) that measure volatile organic compound (VOC) emissions. The analyzer may operate by flame ionization detection (FID), photoionization detection (PID), non-dispersive infrared (NDIR) absorption, or other detection principles that respond to VOC levels. The requirements include procedures to evaluate the acceptability of the CEMS at the time of its installation and whenever specified in regulations or permits. The procedures evaluate CEMS performance at the time of installation and not over an extended period of time. Quality assurance procedures for calibrating, maintaining, and operating the CEMS properly at all times are given in appendix D of this part.

1.1.2 In most cases, VOC monitors provide only a measure of the relative concentration level of a mixture of organics, rather than quantitation of the organic species present. This trait necessitates the use of VOC CEMS's more as a relative indicator than a conventional emissions monitor. However, it may be possible to consider the VOC monitor as a conventional CEMS in some instances. These instances include cases where only one organic species is present, or where equal incremental amounts of each of the organic species present generate equal instrument responses.

1.2 *Principle.* Calibration error, response time, and performance audit tests are conducted to determine conformance of the CEMS with these specifications. The requirements include specifications for installation and measurement location, equipment and performance, and procedures for testing and data reduction.

2. Definitions

The definitions are the same as in the other portions of appendix A of this part and the following:

2.1 *Instrument range.* The minimum and maximum concentrations that can be measured by a specific instrument. The range statement often assumes the minimum to be zero and expresses the range only as the maximum.

2.2 *Instrument span or span value.* Full scale range of interest.

3. Installation and Measurement Location Specifications

3.1 *CEMS installation and measurement locations.* Same as in section 3.1 of appendix B of this part. The CEMS shall be installed in a location where measurements give representative indication of the source's emissions.

3.2 *Stratification test procedure.* To determine whether VOC stratification exists, use a dual probe system as follows: Measure the VOC concentration at each traverse point according to Method 1 (40 CFR part 60, appendix A) with one probe and the VOC concentration at the stack or duct centroid with the other probe. Alternatively measure 5-minute VOC concentrations at each traverse point and at the centroid. Normalize the data using the measurements at the centroid. Then calculate the deviation of the VOC concentration at each traverse point from the overall average. The installation location is unacceptable if the VOC concentration deviation at any point more than two inches from the duct or stack wall exceeds 10 percent. If the location is acceptable, then locate the CEMS probe at a point of average concentration that is within or closest to the centroidal area.

4. CEMS Performance and Equipment Specifications

4.1 *Presurvey sample analysis.* Use Method 18 (40 CFR part 60, appendix A), process chemistry, or previous studies to determine at least 90 percent of the VOC components in the effluent stream. Then select an appropriate CEMS for measuring the VOC. If applied in highly explosive areas, exercise caution in choosing and installing the CEMS.

4.2 *Sampling system.* Unless the owner or operator can demonstrate otherwise to the satisfaction of the permitting authority, the sampling system shall require heating to maintain the temperature of the sample gas above 150°C (300°F) throughout the system. This means heating all system components such as the probe, calibration valve, filter, sample lines, pump, and the analyzer to prevent moisture from condensing. In addition, the sampling system shall include an in-stack or heated out-of-stack filter.

4.3 *Instrument span.* For a CEMS intended to measure uncontrolled emissions, the instrument span must be between 1.1 and 1.3 times the average potential emission. For a CEMS installed to measure controlled emissions or emissions that comply with an applicable regulation, the instrument span must be between 1.5 and 2 times the level of the emission limit.

4.4 *Calibration gases.*

4.4.1 *Zero gas.* High purity air with less than 0.1 ppm by volume of hydrocarbons as methane or carbon equivalent or less than 0.1 percent of the span, whichever is greater.

4.4.2 *Upscale calibration gases.* Same as in section 4.1.3 in appendix B of this part. Have the manufacturer of the cylinder provide a recommended shelf life for each calibration gas cylinder over which the concentration does not change by more than 2 percent from the certified value. Prepare mid-level (40 to 60 percent of span) and high-level (80 to 100 percent of span) calibration gases by source type containing the following components:

4.4.2.1 *Process source.* Use the VOC components in the same proportion that make up 90 percent of the VOC in the effluent stream.

4.4.2.2 *Combustion source.* Use propane gas.

4.5 *Performance audit gas.* A certified EPA audit gas shall be used, when possible. A Protocol 1 gas mixture within the calibration range may be used when EPA performance audit materials are not available.

4.6 *Data recorder scale.* The strip chart recorder, computer, or digital recorder must be capable of recording all readings within the CEMS measurement range and shall have a resolution of 0.5 percent of span.

4.7 *Response time.* The response time for the CEMS must not exceed 2 minutes to achieve 95 percent of the final stable value.

4.8 *Calibration error.* The CEMS must allow the determination of daily calibration error (CE) at all three calibration levels. For the initial 7-day CE test, the CEMS calibration response must not differ by more than 5 percent from the calibration gas value at each level after each 24-hour period.

4.9 *Performance audit specification.* The instrument relative error shall be less than or equal to 10 percent.

4.10 *Measurement and recording frequency.* The sample shall flow continuously through the measurement section of the analyzer. The detector shall measure the sample concentration at least once every minute, and the data acquisition system shall compute and record from these determinations an average hourly VOC concentration.

5. Performance Specification Test (PST) Periods

5.1 *Pretest preparation period.* Install the CEMS, prepare the test site according to the

specifications in Section 3, and prepare the CEMS for operation and calibration according to the manufacturer's written instructions. To verify the operational status of the CEMS, the owner or operator should conduct a pretest conditioning period similar to that of the 7-day CE test.

5.2 *7-Day CE test period.* Same as in section 3.3.1 of appendix C of this part.

5.3 *Response time test period.* Conduct the response time test once during the 7-day CE test period and quarterly thereafter.

5.4 *Performance audit test periods.* Conduct the performance audit once during the initial CE test and quarterly thereafter.

6. Performance Specification Test Procedures

6.1 *7-Day CE test.*

6.1.1 *Sampling strategy.* Conduct the 7-day CE test at 24-hour intervals for seven consecutive days following Section 4.1 of appendix C of this part, except determine CE at the specified three levels.

6.1.2 *Calculations.* Summarize the results on a data sheet. Average the differences between the instrument response and the certified cylinder gas value for each gas. Calculate three CE results according to Equation 1 of appendix C of this part. The CE calculations do not use a confidence coefficient.

6.2 *Response time.* Same as in section 5.1 of appendix C of this part.

6.3 *Performance audit.*

6.3.1 *Testing strategy.* Conduct the performance audit following the daily calibration of the instrument. Introduce the audit gases into the sampling system at the sampling probe. The gas shall pass through all CEMS components used during normal sampling.

6.3.2 *Calculation.* Calculate the CEMS relative error using the following Equation 1:

$$RE = \frac{C_m - C_a}{C_a} \times 100$$

where:

RE = Relative error of the performance audit test, percent.

C_m = Average CEMS response, ppm.

C_a = Audit gas reference value, ppm.

Performance Specification 102—Performance Specifications for Gas Chromatographic Continuous Emission Monitoring Systems in Stationary Sources

1. Applicability and Principle

1.1 *Applicability.* These requirements apply to continuous emission monitoring systems (CEMS's) that use gas chromatography (GC) to measure gaseous organic compound emissions. The requirements include procedures intended to evaluate the acceptability of the CEMS at the time of its installation and whenever specified in regulations or permits. The procedures evaluate CEMS performance at the time of installation and not over extended periods of time. Quality assurance procedures for calibrating, maintaining, and operating the CEMS properly at all times are given in appendix D of this part. A GC CEMS may not be suitable for applications where the number of VOC components to be monitored exceeds five.

1.2 *Principle.* Calibration error, calibration precision, and performance audit tests are conducted to determine conformance of the CEMS with these specifications. The requirements include specifications for installation and measurement location, equipment and performance, and procedures for testing and data reduction.

2. Definitions

The definitions are the same as in the other parts of appendix A of this part, including Performance Specification (PS) 101, and also include the following:

2.1 *Gas chromatograph (GC).* That portion of the system that separates and detects organic analytes and generates an output proportional to the gas concentration. The GC must be temperature programmable.

2.1.1 *Column.* An analytical column capable of separating the analytes of interest.

2.1.2 *Detector.* A detection system capable of detecting and quantifying all analytes of interest.

2.1.3 *Integrator.* That portion of the system that quantifies the area under a particular sample peak generated by the GC.

2.2 *Calibration precision.* The agreement between triplicate injections of each calibration standard.

3. Installation and Measurement Location Specifications

These specifications are the same as in section 3 of PS 101.

4. CEMS Performance and Equipment Specifications

4.1 *Presurvey sample analysis and GC selection.* Use Method 18 (40 CFR part 60, appendix A), process chemistry, or previous studies as a guide to determine at least 98 percent of the organic components by mass in the effluent stream. Then select an appropriate GC configuration to measure the organic compounds. The GC components shall include a heated sample injection loop, separation column, temperature-programmable oven, and detector. If this method is applied in highly explosive areas, caution should be exercised in selecting the equipment and method of installation.

4.2 *Sampling system.* Same as in section 4.2 of PS 101, except the sample loop and chromatograph shall also be heated.

4.3 *Calibration gases.* Same as in section 4.1.3 of appendix B of this part. The techniques specified in section 6.2 of Method 18 (40 CFR part 60, appendix A) may also be used. A gas dilution system may be used if its operation is consistent with section 4.3 of appendix B of this part. The calibration gases may be mixtures of the compounds of interest. Prepare three different concentrations of each organic analyte in the following ranges:

4.3.1 *Low-level.* 40–60 percent of measured concentration.

4.3.2 *Mid-level.* 90–110 percent of measured concentration.

4.3.3 *High-level.* 140–160 percent of measured concentration, or select highest expected concentration.

(Note: Measured concentration is from section 4.1.)

4.4 *Performance audit gas.* Same as in section 4.5 of PS 101.

4.5 *Data recorder scale.* Same as in section 4.6 of PS 101.

4.6 *Calibration error.* The CEMS must allow the determination of CE daily at all three calibration levels. For the initial 7-day CE test, the CEMS calibration response must not differ by more than 5 percent from the calibration gas value at each level after each 24 hour period.

4.7 *Calibration precision and linearity.* The deviation from the measured average at each level shall not exceed 5 percent for each compound per triplicate injection. The linear regression curve for each organic compound at all three levels shall have an $r^2 \geq 0.995$.

4.8 *Performance audit.* The instrument relative error shall be less than or equal to 10 percent.

4.9 *Measurement frequency.* The sample to be analyzed shall flow continuously through the sampling system. The analytical system shall be capable of measuring the effluent stream at the frequency specified in the appropriate regulation or permit.

5. Performance Specification Test (PST) Periods

5.1 *Pretest preparation period.* Using the procedures described in Method 18 (40 CFR part 60, appendix A), perform initial tests to determine GC conditions that provide good resolution and minimum analysis time for the compounds of interest. Potential resolution interferences can be eliminated by choosing the appropriate GC column and detector or by shifting the retention times by changing the column flow rate or using temperature programming. Use Procedure 1 (40 CFR part 61, appendix C) to verify adequate peak resolution.

5.2 *7-Day CE test period.* Same as in Section 3.3.1 of appendix C of this part.

5.3 *Performance audit test periods.* Conduct the performance audit once during the initial CE test and quarterly thereafter.

6. Performance Specification Test Procedures

6.1 *Calibration error, precision, and linearity tests.*

6.1.1 *Sampling strategy.* Conduct the 7-day CE test at 24-hour intervals for seven consecutive days following section 4.1 of appendix C of this part, except use the calibration gases at the three concentration levels specified in section 4.3.

6.1.2 *Calculations.* Summarize the results on a data sheet. Calculate the differences between the CEMS responses and the reference values. Calculate the deviation from the average and the coefficient of determination (r^2) using Equation 1 in section 7 of this PS 102. Calculate CE using Equation 1 of appendix C of this part.

6.2 *Performance audit.* The performance audit test procedure and calculation are the same as in section 6.3 of PS 101.

7. Equations

7.1 *Coefficient of determination.* Calculate r^2 using linear regression analysis and the average concentrations obtained at three calibration points as shown in the following Equation 1:

$$r^2 = \left(\frac{n\sum x_i y_i - \left(\sum x_i\right)\left(\sum y_i\right)}{\sqrt{\left(n\sum y_i^2 - \sum y_i \sum y_i\right)\left(n\sum x_i^2 - \sum x_i \sum x_i\right)}} \right)^2$$

where:
r^2 = Coefficient of determination
n = Number of measurement points
x = CEMS response
y = Actual value of calibration standard

8. Reporting

The owner or operator of the affected emissions unit shall submit with the permit application a summary in tabular form of the results of the CE tests, as appropriate. Include all data sheets, calculations, CEMS data records, and cylinder gas or reference material certifications.

Appendix B to Part 64—General Equipment, Installation, and Calibration Gas Specifications for Enhanced Monitoring Protocols

1. Introduction.

This appendix covers the equipment, installation, and (if applicable) calibration gas specifications for an enhanced monitoring protocol (EMP).

2. Equipment Specifications

2.1 *CEMS and COMS EMP's.*

2.1.1 The CEMS includes the pollutant (e.g., SO_2, VOC or NO_X) concentration monitor and the data acquisition and handling system (DAHS). The design of the equipment shall allow for checking the entire system for sample line losses and calibration changes. The pollutant monitor and DAHS must be able to measure and record information over the measurement span. In addition, the CEMS must allow the detection of changes in the instrument calibration and applicable accuracy requirement.

2.1.2 The design of the pollution concentration monitor shall include an injection port for calibration gases to check all components of the entire measurement system. The components include, as applicable, sample lines, filters, scrubbers, conditioners, and as much of the probe as is practicable. For in situ type monitors, the design of the monitor must allow for a calibration check against the optical filter or cell values for the performance of all active electronic and optical components (e.g., transmitter, receiver, analyzer). For extractive monitors, the injection port must be at a point no closer to the analyzer than the back of the probe. For dilution probe equipped monitors, the injection port must be placed before dilution occurs to allow a check of the dilution system. For educator or aspirator equipped monitors, the injection port must be before the port for the sample slip stream.

2.1.3 A COMS shall comply with the design specifications provided in Performance Specification 1 of appendix B of part 60 of this chapter.

2.2 *Parameter monitoring systems or CERMS's.* The parameter monitoring system or CERMS includes the parameter or flow sensor and the DAHS. The design of the equipment shall allow for checking the entire system for calibration changes, which affect measurement accuracy and precision. The parameter monitoring system and CERMS must be able to measure and record information over the measurement span. In addition, the parameter monitoring system or CERMS must allow the detection of changes in the instrument calibration and applicable accuracy requirement.

2.3 *Calibration error (CE) determination.* The design of the EMP must allow determinations of CEs, positive or negative, at the low and high measurement levels. For a CEMS, daily determinations are required and are done using the calibration gas injection ports. For a COMS or CERMS, daily determinations are required. For a parameter monitoring system, determinations shall be conducted prior to installation. Thereafter, CE determinations for a parameter monitoring system shall be as frequently as practicable. If the EMP automatically adjusts (mechanically or electronically) the calibration, the EMP must record:

(a) The amount of adjustment in measurement units (i.e., the difference of data output before adjustments from the reference value); or

(b) The output in measurement units before calibration adjustments to allow the determination of the amount of adjustment in the measurement units.

2.4 *Data acquisition and handling system.* The DAHS must record the desired data over the range of operation. The DAHS must allow the detection of changes in the instrument calibration and applicable accuracy requirement.

2.5 *Measurement frequency.* Refer to sections 1.4.1.2 and 2 of appendix A of this part.

3. Installation and Measurement Location Specifications

Sections 3 and 4 are primarily for a CEMS or a COMS and, as applicable, a CERMS. Where an EMP is composed of parameter measurements, periodic sampling, or recordkeeping, locations and measurements are to be finalized as they are verified through the validation demonstrations of appendix C of this part and § 64.4. These specifications assure that the EMP will provide measurements that are representative of the source's compliance status with emission limitations or standards. Representativeness is defined by the performance verification test procedure (see appendix C of this part). These specifications are guidelines, except for those cases where reference method (RM) tests are not required.

3.1 *Installation.* Install the CEMS, COMS, CERMS, or components of the EMP in a location where the measurements are representative as defined in appendix C of this part. Several other factors determine the optimum location. These include ease of access for calibration, quality control (QC) checks, maintenance, readability and the degree of sample conditioning required. The location should be as free from in-leakage influences as possible. For CEMS, the exhaust gas sample location should be at least two equivalent duct diameters downstream from the nearest control device, point of pollutant generation, or other point at which a change in the pollutant concentration or emission rate occurs and at least 0.5 diameter upstream from the exhaust or control device. Method 1 of 40 CFR part 60, appendix A provides the equation for calculating the equivalent duct diameter. For COMS, follow the procedures contained in Performance Specification 1 of appendix B of part 60 of this chapter.

3.2 *Stratification check.* Pollutant concentration or flow rate stratification may cause the selection of non-representative locations. Therefore, the owner or operator should check the location for possible stratification before installing the CEMS, CERMS, or exhaust gas parameter instrumentation.

4. CEMS Calibration Gas Specifications

4.1 *Calibration gases.* Gases used for initial and quarterly 3-point CE tests shall be traceable to the National Institute of Standards and Technology (NIST), Gaithersburg, MD 20899 whenever possible.

4.1.1 The highest quality NIST standards are Standard Reference Materials (SRMs). These can be obtained from the Office of Standard Reference Materials NIST at (301) 975–6776, which maintains an inventory of SRMs.

4.1.2 When an SRM does not exist, NIST can develop NIST-certified materials through its NIST Traceable Reference Material (NTRM) and Research Grade Material (RGM) programs. The requestor reimburses NIST for the cost of developing and certifying NTRMs and RGMs. For more information, contact Dr. Willie May of NIST at (301) 975–3108.

4.1.3 Other gaseous reference materials that are traceable to an NIST certification are the EPA Protocol Gases. These can be obtained from specialty gas suppliers at a cost considerably less than that of SRMs and NTRMs. Protocol Gases are individually assayed using SRMs and NTRMs as the reference standards and in accordance with the requirements in EPA's "Protocol for Assay and Certification of Calibration Standards." If an SRM or NTRM exists, a Protocol Gas can be made.

4.2 *Dilution systems for calibration gases.* Gas dilution systems may be used if their operation is consistent with the protocol distributed through the EPA Emission Measurement Technical Information Center entitled "Verification of Gas Dilution Systems for Field Instrument Calibrations," by Rima Dishakjian. A copy of the protocol may be obtained by calling (919) 541–0200 and asking for EMTIC CTM–007 (April 2, 1991), or by contacting the EMTIC Bulletin Board System at (919) 541–5742.

Appendix C to Part 64—General Performance Verification Test Procedures for Enhanced Monitoring Protocols

1. Introduction

This appendix provides (a) the procedures to be used by an owner or operator for validating the representativeness of an Enhanced Monitoring Protocol (EMP) to emission standards or limitations and (b) performance verification procedures for continuous process or control device parametric monitoring systems or procedures, continuous emission monitoring systems (CEMS's), continuous opacity monitoring systems (COMS's), continuous emission rate monitoring systems (CERMS's), periodic emission or parameter monitoring systems, or other systems and procedures used in EMP's. All EMP's proposed in a permit application by an owner or operator shall include a test plan and schedule for validation of the representativeness of the EMP to the emission limitations or standards within the time period specified pursuant to § 64.4.

1.1 *CEMS's and COMS's.* In addition to the general procedures contained in this appendix C, any CEMS or COMS that is included as part of an EMP shall follow the performance specification test procedures provided in appendix B of part 60 of this chapter. Alternatively, where applicable for gas CEMS's, the owner or operator can elect to use the performance specification test procedures provided in appendix A of part 75 of this part. Where appropriate, modifications to terms used in the referenced appendices shall be made in accordance with section 1.4.1 of appendix A of this part.

2. Reference Method (RM) Test Location

The reference method testing locations for EMP validation may include: stacks; ducts; application or storage containers for coatings; leak detection locations; or other appropriate sampling locations. Where exhaust gas emission testing is necessary to validate the EMP, the following requirements shall apply to the EMP performance verification demonstration:

2.1 *Measurement location.* The RM location must provide a representative measurement of the source emissions or effluent flow rates. The location must be: (1) Accessible, (2) at least two equivalent diameters downstream from the nearest control device or other point at which a change in the pollutant concentration or flow rate may occur, and (3) at least one-half equivalent diameter upstream from the effluent exhaust. An owner or operator may select other locations if the Permitting Authority is satisfied that the locations provide a representative measurement over the stack or duct cross-section. The EMP (as appropriate) and RM measurement locations need not be coincident.

2.2 *Relative accuracy (RA) traverse points.*

2.2.1 *Gas concentration measurements.* For gas concentration measurements, locate three traverse points at 16.7, 50.0, and 83.3 percent of a "measurement line" that passes through the centroid. If the location of this measurement line affects the EMP measurements, the tester may displace the measurement line by up to 12 inches (or 5 percent of the equivalent diameter of the cross-section, whichever is less) from the centroidal area. Conduct the RM measurements within an inch (but no less than an inch from the stack or duct wall) of the three traverse points.

2.2.2 *Effluent flow rates.* Locate the traverse points according to Method 1 of 40 CFR part 60, appendix A.

3. Test Periods

3.1 *Pretest preparation period.* The owner or operator shall identify the reference method test and test location procedures according to the general specifications in Section 2, and prepare the EMP (as appropriate) for operation and calibration according to either the manufacturer's, or, where no manufacturer exists, the owner or operator's, written instructions as specified in the approved test plan for the EMP.

3.2 *Operating conditions for RA and EMP validation testing.* The owner or operator shall conduct the RA test during periods representative of the affected emission unit's normal operating conditions as approved by the permitting authority.

3.3 *CEMS's and CERMS's.* The owner or operator shall ensure that the following provisions are met in addition to other requirements as specified by the permitting authority.

3.3.1 *7-Day CE test period.* While the emissions unit is operating under normal permitted operating conditions, determine the CE of the EMP at 24-hour intervals for 7 consecutive days according to the procedure given in section 4.1. All CE determinations must be made following a 24-hour period during which no unscheduled maintenance, repair, or manual adjustment of the EMP took place. Where periodic automatic or manual adjustments are made routinely to the EMP zero and calibration settings, conduct the CE test immediately before these adjustments, or conduct it in such a way that the longest period of nonadjustment can be measured. If the emissions unit is taken out of service during the test period, record the onset and duration of the downtime and continue the CE test when the unit resumes operation.

3.3.2 *Three-Point CE test and response time test periods.* Conduct the three-point CE test under section 4.2 of this appendix and response time test under section 5 of this appendix once during the initial 7-day CE test period of the EMP.

3.4 *Parameter monitoring systems.* The owner or operator shall demonstrate and validate the representativeness of a parameter monitoring system in accordance with the following requirements and those additional requirements specified by the permitting authority.

3.4.1 The test period of the parameter monitoring system shall consist of the operating period during which the parameter system output is directly compared to RM emission levels during a correlation test (see section 6, Relative Accuracy Tests and section 7, Parameter Monitoring System Validation Requirements, below) comprised of a minimum series of 9 reference method test runs or samples.

3.4.2 The operation of the parameter monitoring system shall be uninterrupted during the test period. During this period, there will be no unscheduled maintenance, repair, or adjustment of the parameter monitoring system.

3.5 *Periodic material sampling, recordkeeping, and multiple point monitoring.* An EMP which relies on a combination of periodic material sampling and analysis, and material use recordkeeping procedures must include demonstration of its known relationship to the permitted emission limitations (e.g., ink VOC content and gallons used to determine VOC emissions in pounds per day). Multiple point monitoring protocols must utilize appropriate measurement technique procedures. Examples of appropriate measurement technique procedures are: Method 9 of appendix A of 40 CFR part 60 for opacity and particulate emission limitations; Method 21 of appendix A of 40 CFR part 60 for VOC leak detection and repair programs; use of emission factors; and a demonstrated relationship between production and emissions.

3.6 If the above test periods are interrupted because of EMP failure, restart the entire test when the EMP becomes operational.

4. Calibration Error (CE) Test

4.1 *7-Day CE test procedure.* Determine the magnitude of the CEs at the low- and high-level values once each day (at 24-hour intervals) for 7 consecutive days. Before making any periodic automatic or manual adjustments to the EMP zero and calibration settings, determine the CE at the low- and high-measurement levels of the EMP. Record the EMP responses of each (i.e., the output from the data recorder).

4.2 *3-Point CE test procedure.* Determine the CE at the low-, medium-, and high-measurement levels three non-consecutive times at each measurement point. Operate the EMP in its normal sampling, analysis, and data recording mode as nearly as possible. Record the EMP responses (i.e., the output from the data recorder or DAHS). To demonstrate sampling system integrity, conduct these tests after a conditioning period of at least one hour of parametric, emission, or flow measurements.

4.3 *Calculations.* Summarize the results on a data sheet. Average the differences between the instrument responses and the certified calibration values. Calculate the CE results according to Equation 1. The CE calculation does not use a confidence coefficient.

$$\textit{Equation 1: } CE = \frac{(R_m - R_v)}{R_v} \times 100$$

where:
CE = Calibration error of the EMP, percent.
R_m = Average EMP response.
R_v = Reference value.

5. EMP Response Time Test

5.1 *CEMS's.* The owner or operator shall conduct the following requirements for the proposed EMP in addition to conformance with any corresponding existing

requirements. Conformance only with such existing requirements may be used at the discretion of the permitting authority as demonstrating conformance with these requirements.

5.1.1 Introduce the calibration gases through the injection port. For time shared systems, use the system with the shortest cycle mode and with the longest line from injection to the analyzer (this may involve two systems). Introduce the low-level gas into the system. When the system output stabilizes (no change greater than 1 percent of full scale for 30 seconds), switch to monitor stack effluent and wait for a stable value. Record the time required (upscale response time) from the moment of switching until 95 percent of the final stable value is achieved.

5.1.2 Next, introduce the high level gas and repeat the above procedure. Record the time (downscale response time) required from the moment of switching until 95 percent of the final stable value is achieved.

5.1.3 Repeat the entire procedure three times and determine the mean upscale and downscale response times. The longer of the two means is the system response time.

5.2 *Parameter monitoring systems and CERMS's.* In most cases, these monitors have such rapid response times that a response time test is not necessary. The owner or operator shall evaluate each monitor and provide justification to the Permitting Authority that a response time test is not necessary.

5.3 *Other EMP's.* The owner or operator shall demonstrate to the permitting authority's satisfaction that the system produces a valid output that represents the emissions unit's emission level, considering averaging time, within the specified response time of the emissions unit's operating permit.

6. Relative Accuracy Tests

The owner or operator shall provide a determination of the relative accuracy of the EMP (excluding those EMP's identified in Section 3.2 of appendix A of this part as not requiring an RA specification). The relative accuracy determination shall form the basis for identification of the known relationship of the EMP to the emission limitation or standard being monitored.

6.1 *Performance verification methods.* The permitting authority and the performance specifications of these appendices specify the reference methods (RM) for the RA tests (see appendix A of this part).

6.2 *Number of RM measurements.*

6.2.1 Conduct a minimum of nine sets of all necessary RM runs (e.g., pollutant, moisture, O_2, etc). Conduct each set for 30 to 60 minutes in duration. The owner or operator may choose to perform more than nine sets of RM runs. If more than nine RM runs are performed, the owner or operator may reject a maximum of three sets of the test measurements as long as the total number used to determine the RA is equal to or greater than nine. All data including the rejected data must be reported.

6.2.2 For parameter monitoring system EMP's that provide predicted emissions data output to determine compliance with an emission limitation or standard, the owner or operator shall compare the EMP data output obtained in terms of the emission limitation or standard (as determined using the equation or graph required to be established pursuant to section 7 of appendix A of this part to represent the known relationship between the parameters and emissions being monitored) to the concurrent RM results.

6.2.2.1 *Variable parameter monitoring systems.* Generally, a parameter monitoring system used to predict emissions in terms of the emission limitation or standard is practical if the number of variable parameters is minimal. Using the specified range of applicability, select at least three points over the range, and conduct at least three measurements of the RA test at each point. If the owner or operator wishes to extend the parameter monitoring system applicability and relationships beyond the tested range, the owner or operator must provide empirical data based on past studies or predicted data based on theory to justify the extension.

6.3 *Correlation of RM and EMP.* The owner or operator shall conduct the specified RM measurements to obtain results representative of the emissions from the affected emission unit and to correlate the results to the output data of the EMP. Mark the beginning and end of the test period and each RM measurement (including the exact time of day) on the individual chart recorder(s) or other permanent recording device(s) for the EMP recorder. Take into account appropriate response times.

6.4 *Calculations.*

6.4.1 *Arithmetic mean ($\bar{d}$).* The owner or operator shall calculate, record, and report on the difference of a paired EMP and RM data set using Equation 2. If applicable, correct the data for moisture.

Equation 2: $$\bar{d} = \frac{1}{n}\sum_{i=1}^{n} d_i$$

where

n = Number of pairs.

$\sum_{i=1}^{n} d_i$ = Algebraic sum of the individual differences d_i between the pair of EMP and RM values.

6.4.2 *Standard deviation (S_d).* The owner or operator shall calculate, record, and report S_d using Equation 3.

Equation 3: $$s_d = \sqrt{\frac{\left(\sum_{i=1}^{n} x_i\right)^2}{\sum_{i=1}^{n} x_i^2 - \frac{n}{(n-1)}}}.$$

6.4.3 *Confidence coefficient (CC).* The owner or operator shall calculate, record, and report the 2.5 percent error CC (one-tailed) using Equation 4.

Equation 4: $$CC = t_{0.975}\frac{s_d}{\sqrt{n}}$$

where:

$t_{0.975}$ = t-value (see Table 1).

TABLE 1.—T-VALUES

n[a]	$t_{0.975}$
2	12.706
3	4.303
4	3.182
5	2.776
6	2.571
7	2.447
8	2.365
9	2.306
10	2.662
11	2.228
12	2.201
13	2.179
14	2.160
15	2.145
16	2.131

[a] The values in this table are already corrected for n-1 degrees of freedom. Use n equal to the number of individual values.

6.4.4 *Relative accuracy.* The owner or operator shall calculate, record, and report the RA of the set of data using Equation 5.

Equation 5: $$RA = \frac{|\bar{d}| + |CC|}{\overline{RM}} \times 100$$

where:

d = Absolute mean of the differences (Equation 2).

CC = Confidence coefficient (Equation 4).

RM = Average reference value or applicable standard.

6.5 *Notes.* If the 3-point RM result differs greatly from the CEMS or CERMS result, make a 1-point RM measurement close to the CEMS or CERMS measurement point to check for stratification. Agreement between the 1 point RM result and the CEMS or CERMS result would indicate that stratification might exist; therefore, relocate the CEMS or CERMS measurement point to a point of average value. If there is disagreement, the cause for the high mean difference might be significant losses of pollutant in the sample lines. A way to check for line losses is to calibrate the CEMS or CERMS at the analyzer and through the probe and compare the results. Other causes of high mean differences include erroneously labeled calibration gases, interferences, and errors in conversion factors or assumed values (e.g., moisture content) used in calculations. Also, check NO_X CEMS's for NO_2 losses.

7. Parameter Monitoring System Validation Requirements

In order for a parameter monitoring system to be used as part of an enhanced monitoring protocol, the owner or operator must establish a correlation (a known relationship between the output of a parameter monitoring system and the applicable emission limitation or standard), except where the emission limitation or standard itself is expressed in terms of the monitored

parameter. A correlation can either be a predictive relationship in which parameter output values are given predicted emission values or a demonstrated compliance relationship in which a parameter value (or range of parameter values) is established at which compliance with the applicable emission limitation or standard is achieved without attempting to predict and verify that such parameter value will result in a specified emission value.

7.1 *Validation requirements for a predictive parameter monitoring system.* In addition to the relative accuracy verification test procedures under section 6 of this appendix C, the owner or operator that chooses to use a parameter monitoring system to predict emissions must provide additional documentation that establishes the correlation between the monitored parameters and the predicted emission values.

7.1.1 Except for parameter monitoring systems that involve fuel sampling and analysis, fuel supplier certification procedures, calculations of VOC emissions based on a combination of manufacturer formulation data and reference method data, or other parameter monitoring systems that predict emissions output solely on the content of process materials, the correlation shall require additional site-specific testing involving comparisons of concurrent RM and parameter monitoring system measurements performed prior to the RA test required pursuant to Section 6 of this appendix C. The permitting authority may accept testing performed at other emissions units with equivalent design and operating conditions in place of site-specific data upon a demonstration by the owner or operator that such prior test results on similar emissions units document that site-specific conditions would not affect the parametric relationship.

7.1.2 The number of tests shall be, at a minimum, three concurrent RM and parameter monitoring system measurements at three process operating loads (low, mid, and high loads). The owner or operator must identify any other process or operating conditions that may affect the parametric relationship, and, for each such condition, the owner or operator must conduct at least three test runs at representative points over the maximum potential range for the applicable process or operating condition. The results of these site-specific tests will be used to develop the predictive relationship (expressed as an algorithm or graph) which will then be tested using the RA procedures in Section 6 of this appendix C.

7.2 *Validating other parameter monitoring systems.*

Section 64.4(c) allows an owner or operator that proposes to use a parameter monitoring system to establish parameter levels that assure compliance with the applicable emission limitations or standards. Such a parameter level is defined in part 64 as a demonstrated compliance parameter level (DCPL).

7.2.1 *Establishing a demonstrated compliance parameter level (DCPL).* If the owner or operator elects not to use the parameter monitoring system as a predictive monitoring method, the owner or operator shall identify through testing, and report with the EMP validation demonstration, a DCPL. The DCPL may be established at a minimum or maximum parameter level, or within a range of values, depending upon the type of parameter monitored. The owner or operator must conduct at least three concurrent parameter and RM measurements at the specified levels of these parameters that provide an assurance that any applicable emission limitations or standards that are monitored by the parameter monitoring system are achieved at such parameter levels. If the RM tests demonstrate a significant margin of compliance at the concurrently measured parameter levels, the permitting authority may approve a DCPL that varies from the measured demonstrated compliance parameter level upon a demonstration by the owner or operator that such variation will satisfy the requirements for a DCPL in this part. The owner or operator shall use empirical relationships based on previous studies or theoretical relationships with sensitivity analyses to make such demonstration.

7.2.2 *Additional demonstration requirements.* The owner or operator must identify any other process or operating conditions that may affect the parametric relationship. Where such other process and operating conditions may affect the correlation of the parameter EMP output to compliance with the applicable emission limitation or standard, the owner or operator must either:

7.2.2.1 Establish DCPL's limiting variations in such other process and operating conditions so that the parameter monitoring system can provide a valid demonstration of compliance with the applicable emission limitation or standard; or

7.2.2.2 Conduct such additional site-specific concurrent RM and parameter monitoring system testing as may be necessary to demonstrate that the DCPL remains a valid demonstration of compliance with the applicable emission limitations or standards being monitored under maximum potential variations in such other process and operating conditions. At a minimum, the number of concurrent RM and parameter monitoring system measurements shall be comparable to the specifications in section 7.1 of this appendix.

Appendix D to Part 64—General Quality Assurance Plan Specifications for Enhanced Monitoring Protocols

1. Introduction

The quality assurance (QA) plan is the basis for assessing and maintaining the quality of data for enhanced monitoring protocols (EMP's). Quality-assured EMP data are essential since EMP data are used for certifying compliance with permitted emission limitations or standards. A quality assurance plan has two functions: (1) Assessment of the quality (accuracy and precision) of the EMP data, and (2) quality control (QC), which involves activities to maintain or improve data quality. Both functions form a control loop. When accuracy or precision is unacceptable, QC must increase until the quality of the EMP data is acceptable. .

1.1 *CEMS and COMS EMP's.* In addition to the general requirements provided in this appendix D, if a gas CEMS or a COMS is used as part of an EMP, the owner or operator shall follow the quality assurance and quality control procedures provided in appendix F of part 60 of this chapter and in Method 203 in appendix M of part 51 of this chapter, respectively. As an alternative for gas CEMS's, the owner or operator can elect to use the quality assurance requirements in appendix B of part 75 of this chapter. Where appropriate, modifications of terms in the referenced appendices shall be made in accordance with section 1.4.1 of appendix A of this part.

2. Basic Elements of a QA Plan

The quality assurance plan must include a program of frequent (e.g., daily) and less frequent (e.g., quarterly and annual) checks of the EMP. Quality control programs used for the certification of emissions and EMP output verification may include daily, quarterly and annual evaluations. Such programs are not limited to just instrumental sampling and analysis, but also quality assessments of material inventories or other non-instrumental procedures used for providing EMP data. The rigorousness and frequency of assessment must be commensurate with the EMP and shall be proposed by the source owner or operator at the time of permit application for incorporation into the permit.

2.1 *Quality control (QC) checks and error assessments.* QC checks and error assessments (e.g., temperature and pressure recording devices have failed) shall be done daily, unless the permit applicant can justify less frequent assessments to the permitting authority.

2.1.1 For recordkeeping components of an EMP, the QC checks shall involve checking the data forms to see that all required information is recorded and the information is recorded correctly.

2.1.2 For an EMP that involves instrumental measurements, the QC checks shall describe the procedure for checking the calibration error of each instrument at the zero (low) and span (high) levels. Alternatives may be used subject to the approval of the permitting authority.

2.1.3 The criteria for excessive error, i.e., when the EMP's data are invalid (e.g., outside performance specifications including recording of insufficient information), shall be stated in the QC plan. The plan proposed by the owner or operator shall ensure that the beginning and ending times of the invalid data period are identified.

2.2 *Data accuracy assessment.* The QA plan must include procedures (e.g., calibration error, relative accuracy testing, inventory assessment, or fugitive emission assessment plan review) for a quarterly and annual assessment of the EMP's data accuracy and must specify the criteria for excessive error (e.g., does not meet the relative accuracy requirement, failed to statistically prove that leaks were less than 1 percent of all potential leaks).

2.3 *Minimum data availability.* 40 CFR 64.4 requires owners or operators to operate and maintain an EMP to ensure quality data

during all times when an emissions unit is operating, except during defined periods of calibration, routine maintenance, and QA activities. The QA plan submitted by the owner or operator as a part of the EMP shall include an identification of and justification for the periods of EMP downtime associated with QA activities and accounting for and responding to mechanical breakdowns.

2.4 *Reporting and recordkeeping.* The requirements for reporting and recordkeeping for EMP's are provided in §§ 64.5 and 64.6. The QA plan proposed by the owner or operator and approved by the permitting authority shall assure that the information necessary for conformance with §§ 64.5 and 64.6 are obtained and maintained. The plan should also include the following provisions as applicable to the QA plan for the EMP:

2.4.1 Recording of parameter data and downtime of the process and control systems and reasons for downtime.

2.4.2 Recording of reasons for deviations from permit terms and conditions.

2.4.3 Recording of downtime, adjustments, and repairs of EMP components or procedures.

2.4.4 Reviewing and editing of the EMP data.

3. Reverification of Parametric Relationship

The owner or operator shall include procedures and a schedule in the QA plan for reverifying over time that data from an EMP that includes the use of parameter monitoring correlate to compliance with the emission limitations or standards.

4. Quality assurance

4.1 *QA plan organization.* The owner or operator shall submit with the permit application a description of the QA plan. This document shall include at a minimum the following: (a) QA responsibilities (including maintaining records, preparing reports, and reviewing reports) among the various departments, groups, or individuals at the facility; (b) schedules for the daily checks, periodic audits, and preventive maintenance; (c) check lists, data sheets, and a spare parts inventory; (d) preventive maintenance procedures specified by the monitor manufacturer; and (e) description of the media, format, and location of all records and reports for submission to the Permitting Authority.

4.2 *QA plan revision.* The QA plan shall include provisions for a review at least once a year of all data generated by the EMP. Based on the results of the annual review, the owner or operator shall revise or update the QA plan, if necessary.

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Part III

Environmental Protection Agency

40 CFR Part 300
National Oil and Hazardous Substances Pollution Contingency Plan; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–4544–8]

National Oil and Hazardous Substances Pollution Contingency Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA or "the Agency") is today proposing revisions to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The Oil Pollution Act of 1990 (OPA) amends existing provisions of the Clean Water Act (CWA) and creates major new authorities addressing oil and, to a lesser extent, hazardous substance spill response. The revised CWA requires the President to revise the NCP to reflect these changes. The OPA specifies a number of revisions to the NCP that are intended to enhance and expand upon the current framework, standards, and procedures for response. The last revisions to the NCP were promulgated on March 8, 1990. The proposed revisions will affect all NCP subparts except F (State Involvement in Hazardous Substance Response) and I (Administrative Record for Selection of Response Action).

DATES: Comments must be received on or before December 20, 1993.

ADDRESSES: Comments: Comments should be submitted in triplicate to Emergency Response Division, Attn: Superfund Docket Clerk, Docket Number NCP–R2/A, Superfund Docket, room M2427, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Docket: Copies of materials relevant to the rulemaking are contained in the Superfund Docket, room M2427, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. (Docket Number NCP–R2/A) This docket is available for inspection between the hours of 9 am and 4 pm, Monday through Friday, excluding federal holidays. Appointments to review the docket may be made by calling 202–260–3046. The public may copy a maximum 267 pages from any regulatory docket at no cost. If the number of pages copied exceeds 267, however, a charge of $0.15 will be incurred for each page after page 100.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Zeller, Emergency Response Division (5202–G), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, or call 703–603–8780.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Introduction

A. Statutory Authority
B. Background of This Rulemaking

II. Revisions to the NCP

Subpart A: Introduction
Subpart B: Responsibility and Organization for Response
Subpart C: Planning and Preparedness
Subpart D: Operational Response Phases for Oil Removal
Subpart E: Hazardous Substance Response
Subpart G: Trustees for Natural Resources
Subpart H: Participation by Other Persons
Subpart J: Use of Dispersants and Other

III. Regulatory Analyses

A. Executive Order 12291
B. Regulatory Flexibility Act
C. Paperwork Reduction Act

I. Introduction

A. Statutory Authority

Under section 311(d) of the Clean Water Act (CWA), as amended by section 4201 of the Oil Pollution Act of 1990 (OPA), Public Law No. 101–380, and pursuant to authority delegated by the President in Executive Order (E.O.) No. 12777, the U.S. Environmental Protection Agency (EPA), in consultation with the member agencies of the National Response Team (NRT), is today proposing revisions to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300. Some of the major goals of the OPA that affect the NCP include expanding prevention and preparedness activities and enhancing the response capability of the federal government.

One of the primary purposes of the NCP is to provide for efficient, coordinated, and effective action to minimize adverse impact from oil discharges and hazardous substance releases.[1] Today's revisions are intended to incorporate changes made by the OPA that have expanded federal removal authority, added responsibilities for federal on-scene coordinators (OSCs), and broadened coordination and preparedness planning requirements.

The OPA was enacted to strengthen the national response system. The OPA provides for better coordination of spill contingency planning among federal, state, and local authorities. The addition of the National Strike Force Coordination Center (NSFCC), for example, would relieve equipment and personnel shortages that have interfered with response to oil spills posing particularly significant environmental or human health threats. Today's rule proposes to revise the NCP to implement a strongly coordinated, multi-level national response strategy. The national response strategy, contained primarily in subparts B and D of the NCP, would contain the framework for notification, communication, logistics, and responsibility for response to discharges of oil, including worst-case discharges and discharges that pose a substantial threat to the public health or welfare of the United States.[2] The amended NCP would further strengthen the federal OSC's ability to coordinate the response on scene and would also incorporate a new level of contingency planning—Area Committees and area contingency plans (ACPs). These committees and plans are designed to improve coordination among the national, regional, and local planning levels and to enhance the availability of trained personnel, necessary equipment, and scientific support that may be needed to adequately address all discharges.

The major revisions to the NCP being proposed today reflect changes the OPA made to section 311 of the CWA. These changes increase Presidential authority to direct oil spill and hazardous substance cleanup and augment preparedness and planning activities on the part of the federal government, as well as vessel and facility owners and operators. For example, revised CWA section 311(c) requires the President to direct removal actions for discharges and substantial threats of discharges posing a substantial threat to the public health or welfare. Revised section 311(d) requires a number of specific changes to the NCP, including the establishment of "criteria and procedures to ensure immediate and effective [f]ederal identification of, and response to, a discharge, or the threat of a discharge, that results in a substantial threat to the public health or welfare of the United States."

Section 311(d) also mandates the establishment of procedures and standards for removing a worst-case discharge of oil and for mitigating or preventing a substantial threat of such a discharge. Furthermore, this section requires the NCP to establish a fish and wildlife response plan "for the

[1] Throughout the NCP, "discharge" also includes "substantial threat of discharge," and "release" also means "threat of release."

[2] Throughout the NCP, the term "substantial threat to the public health or welfare" is used interchangeably with "substantial threat to the public health or welfare of the United States."

immediate and effective protection, rescue, and rehabilitation of, and the minimization of risk of damage to, fish and wildlife resources and their habitat that are harmed or that may be jeopardized by a discharge." Section 311(d)(2)(G) authorizes consideration of "other spill mitigating devices and substances" for inclusion on the NCP Product Schedule, and section 311(d)(2)(L) requires the establishment of procedures for the coordination of activities of OSCs, Area Committees, U.S. Coast Guard (USCG) strike teams, and District Response Groups (DRGs).

Section 311(j)(2) of the CWA requires that a national response unit, included in today's proposed revisions as the NSFCC, be established in Elizabeth City, North Carolina. The NSFCC "shall compile and maintain a comprehensive computer list of spill removal resources, personnel, and equipment" and "shall provide technical assistance" to federal OSCs. Section 311(j)(2) provides that the NSFCC will also coordinate efforts to remove worst-case discharges. Pursuant to section 311(j)(3), the USCG must establish DRGs in each of the 10 USCG districts to provide "technical assistance, equipment, and other resources" to federal OSCs to assist their response activities. Pursuant to section 311(d)(2)(K), OSCs must be designated for each area for which an ACP is required to be prepared.

Section 311(j)(4) addresses the development of an expanded national oil spill response planning system. Under this section, Area Committees, which are composed of qualified federal, state, and local agency personnel, are directed to develop ACPs that will address planning and response-related issues and concerns, including removal of worst-case discharges, responsibilities of owners and operators and government agencies in removing discharges, and procedures for obtaining an expedited decision regarding the use of dispersants.

Section 4202(b)(4) of the OPA requires that the President issue regulations within two years of enactment for owners or operators of certain vessels and facilities to prepare response plans to address, among other matters, response to a worst-case discharge to the maximum extent practicable. These facility response plans must be consistent with the NCP. For onshore facilities that can cause "significant and substantial harm" in the event of a worst-case spill, these plans must be approved by the federal government. Pursuant to E.O. 12777, EPA is developing regulations that include the criteria for determining which onshore, non-transportation-related facilities are to submit response plans and which of these plans are to be reviewed and approved by EPA, requirements for the preparation of those plans, and criteria for EPA's review and approval of the submitted plans. The Agency proposed these regulations on February 17, 1993 (58 FR 8824). EPA will develop a data base to track both facilities and facility response plans. USCG and the Department of the Interior (DOI) will develop similar regulations, requirements, criteria, and a data base for offshore and transportation-related facilities and vessels.

B. Background of This Rulemaking

The President signed the OPA on August 18, 1990, after both houses of Congress passed the Act unanimously. After several similar proposals had been unsuccessful over the past 15 years, Congress enacted this legislation partly in response to the *Exxon Valdez* spill and several other incidents, including the *Mega Borg* and the *American Trader* spills.

The NCP was most recently revised on March 8, 1990 (55 FR 8666) pursuant to the Superfund Amendments and Reauthorization Act of 1986 (SARA). The 1990 revisions, focusing on hazardous substance response, reorganized the NCP to describe more accurately the sequence in which response actions are taken pursuant to the NCP, clarified existing language on roles, responsibilities, and activities of affected parties, and incorporated changes required by SARA as well as those suggested by program experience.

II. Revisions to the NCP

Subpart A—Introduction

Subpart A, the preface to the NCP, contains statements of purpose, authority, applicability, and scope. It also explains the abbreviations and defines the terms used in the NCP.

Authority and Applicability (Section 300.2)

The citation of section 311 of the CWA as an authorizing statute for the NCP is proposed to be revised to reflect the amendment of the CWA by the OPA and the implementing Executive Order.

Scope (Section 300.3)

This section has been revised to reflect a change in CWA section 311(c) by adding a reference to the exclusive economic zone and deleting certain other language that describes the geographic coverage of the NCP.

A reference to on-scene coordinator (OSC) contingency plans is proposed to be replaced by a reference to ACPs. Further information regarding this change can be found in the discussion of § 300.110, National Response Team, and § 300.210, Federal contingency plans.

EPA also is including a discussion of the Federal Response Plan (FRP) in several sections of today's revisions to the NCP, including § 300.3(d). The FRP, signed by 27 federal departments and agencies in April 1992, was developed under the Disaster Relief Act of 1974, as amended by the Stafford Disaster Relief Act of 1988. The FRP establishes a foundation for coordinating federal assistance to supplement state and local response efforts to save lives, protect public health and safety, and protect property in the event of a natural disaster, catastrophic earthquake, or other disaster incident declared a major disaster by the President.

The delivery of federal assistance is facilitated through 12 annexes, or Emergency Support Functions (ESFs), which describe a single functional area of response activity: Transportation, communications, public works, fire fighting, information and planning, mass care, resources support, health and medical services, urban search and rescue, hazardous materials, or food. The Hazardous Materials annex, ESF #10, addresses releases of oil and hazardous substances that occur as a result of a natural disaster or catastrophic event and incorporates preparedness and response actions carried out under the NCP. EPA serves as the Chair of ESF #10 and is responsible for overseeing all preparedness and response actions associated with ESF #10 activities. All NRT/RRT departments and agencies serve as support agencies to ESF #10.

The current NCP in § 300.3(c) indicates that actions taken pursuant to the NCP shall "conform to the provisions of the international joint contingency plans." EPA is proposing to modify this section to clarify that response actions taken pursuant to an international joint contingency plan must be consistent with the NCP, to the greatest extent possible.

Abbreviations (Section 300.4)

EPA is proposing to add new abbreviations used in the NCP to this section.

Definitions (Section 300.5)

EPA is proposing a number of changes to definitions currently included in the NCP. The term "Biological additives" is proposed to be changed to "Bioremediation agents" to reflect that "nutrient additives," which are bioremediation agents currently

available in the marketplace, are included under the term. EPA is also preparing changes to the definition to reflect the current definition of bioremediation in the scientific community and to focus on the discernible effect of the agent, rather than the purpose of its use.

The definition of "Chemical agent" has been revised in today's proposed rule to provide examples of chemical agents and to clarify that the term does not include sorbents.

"Claim" has been expanded in today's proposed rule to include separate definitions for purposes of a discharge under the CWA and a release under CERCLA.

Currently, the definition of "Discharge" includes threats of discharges. Today's proposal would add the word "substantial" before the phrase "threat of discharge" in order to more closely match the language in the OPA.

"Miscellaneous oil spill control agent" is proposed to be revised to clarify that the term does not include bioremediation agents, sorbents, or surface washing agents.

EPA is proposing to modify the definition of "Preliminary assessment" to clarify that it applies only in the CERCLA context.

"Remove or removal" has been expanded in today's proposal as a result of the OPA's change to the CWA definition to include the containment of oil or hazardous substances. Additional detail from the CWA definition further explaining the term "welfare" also has been included. Further, monitoring of action to remove a discharge has been added to the definition to clarify that costs of those activities designed to evaluate the effectiveness of CWA removal actions are considered to be part of the removal and give rise to liability in cost recovery cases. Scientific research and development specifically has not been included in this definition.

"Specified ports and harbors" is proposed to be revised to include the requirement that they be identified in area contingency plans.

The definition of "State" is proposed to be revised to clarify that § 300.515(b) addresses treatment of Indian tribes as states for purposes of CERCLA.

The definition of "Trustee" has been expanded in today's proposed rule to reflect the fact that, in the case of discharges covered by the OPA, trustee may also refer to a foreign government official who may pursue claims for damages under the OPA.

The definitions of "Facility," "Oil," and "Person" have been expanded in today's proposal to include their definitions under section 1001 of the OPA in addition to their current CERCLA definitions.

The term "Oil pollution fund" has been replaced by "Oil Spill Liability Trust Fund" in today's proposed rule.

The definition of "United States" now references the OPA, in addition to CERCLA, in today's proposal.

Finally, EPA is proposing to incorporate in the NCP new definitions based on provisions in the OPA, provisions added to the CWA by the OPA, and other changes being proposed for the NCP today. Thus, in today's rule, EPA is proposing the addition of the following new definitions: "Area Committee," "Area contingency plan," "Claimant," "Coast Guard District Response Group," "Damages," "Exclusive economic zone," "Federal Radiological Emergency Response Plan," "Federal Response Plan," "Indian tribe," "Lead administrative trustee," "National Pollution Funds Center," "National response system," "National Strike Force," "National Strike Force Coordination Center," "Removal costs," "Responsible party," "Sorbents," "Spill of national significance," "Surface washing agent," "Tank vessel," and "Worst case discharge."

Subpart B—Responsibility and Organization for Response

Subpart B describes the responsibilities of federal agencies for response and preparedness planning and describes the organizational structure within which response takes place. It lists the federal participants in the response organization, their responsibilities for preparedness planning and response, and the means by which state and local governments, Indian tribes, and volunteers may participate in preparedness and response activities. The term "federal agencies" is meant to include the various departments and agencies within the Executive Branch of the federal government.

The changes being proposed in subpart B reflect specific changes to response organization and responsibilities made by the OPA, as well as revisions to clarify existing provisions and conform to changes being made elsewhere in this proposal.

There are a number of important changes to the organization for planning and response being proposed, reflecting the creation of a new national response strategy in the OPA. These changes include the addition of several new entities, each of which is discussed in detail in this preamble. A brief overview of this organization and how the various entities involved are expected to interact is provided here to introduce the more detailed, comprehensive discussions that follow.

The OSC (§ 300.120) is the key actor in the national response system. The OSC is the lead federal official at the scene of a discharge, responsible for taking whatever actions are necessary, consistent with federal law, to remove the threat posed. All other entities in the national response system are intended to utilize their expertise to support the OSC during a response action. Coordination between the OSC and other components of the national response system is critical to the success of the oil spill response program.

The national response system functions as an incident command system, which is an organized approach to effectively control and manage operations at an emergency incident. The individual in charge of an incident command system is the senior official responding to the incident; for the national response system, this individual is the OSC.

The national response system, typical of an incident command system, can expand or contract to accommodate the response effort required based on the size and complexity of a particular discharge. Responses for small discharges may be performed by a relatively small number of individuals who together assume all functions of the national response system. Responses to larger, more complex discharges may require additional personnel to fill each position in the national response system and carry out the difficult time-consuming efforts to control the discharge. Whatever the complexity of an incident may be, requiring implementation of the national response system ensures there will be one individual who makes decisions and provides instructions. This system should result in reduced confusion, improved safety, better organized and coordinated response actions, and more effective management of the incident.

National policy making, preparedness planning, and coordination are the responsibility of the multi-agency NRT (§ 300.110). In carrying out these responsibilities, the NRT addresses issues of general applicability across agencies, sites, and programs. In some situations, particularly those that transect regional boundaries, the NRT may be activated as an incident-specific team to support the OSC's emergency response efforts. In that capacity, its role generally will consist of bringing the widest possible range of resources to bear and providing expertise and insight consistent with its position as the senior

level support organization in the national response structure.

The Regional Response Teams (RRTs) (§ 300.115) are designed to function in much the same way as the NRT, except on a regional level. The standing RRT serves as a planning and coordination body, while incident-specific RRTs are formed from appropriate RRT member agencies in a limited number of situations, such as when a discharge transects state boundaries or poses a substantial threat to the public health or welfare. Key responsibilities of the incident-specific RRT are monitoring the response, providing communications support, making recommendations to the OSC consistent with the RRT's expertise, and mobilizing resources available in the region, as requested by the OSC in specific response situations.

The NSFCC (§ 300.145(a)), administered by the USCG, is a new entity that will focus its efforts on identifying, coordinating, and mobilizing all public and private spill removal resources, both personnel and equipment. The NSFCC administers the USCG strike teams (§ 300.145(a)), which are available to the OSC for a variety of response needs, including the provision of specialized knowledge and equipment. The NSFCC will support the activities of and serve as a resource for the OSC, NRT, and RRT to ensure that all appropriate resources are brought to bear in a given response situation.

The new DRGs created by the OPA (§ 300.145(g)) provide a framework for each USCG district to deliver its entire response capability to the removal of a spill within its borders. These groups will provide an efficient mechanism for the OSC to call upon the wide-ranging skills, experience, and equipment of the USCG district staff. Because DRGs represent strictly USCG resources, they will not eliminate the need for incident-specific RRTs, which can provide expertise and resources from any of the RRT's member agencies. When spills cross USCG district lines, DRGs can work with the NSFCC to ensure that their response efforts are fully coordinated.

In addition to the response-oriented entities described above, the OPA creates a new system of Area Committees and ACPs within the national planning structure (see subpart C). The Area Committees are composed of federal, state, and local representatives; their primary responsibility is ACP development. Area Committees are planning bodies, not response entities, although members of the Area Committees may have specific roles during response operations. ACPs are intended to provide detailed information on the geographic area covered by the plan and the response resources available within the area. They should complement other required planning activities by providing a level of localized site-specific detail unavailable in either the National or regional contingency plans. ACPs will be prepared under the direction of an OSC, who should draw on the expertise of the above described entities (in addition to state and local resources).

Use of the Term "Direct"

The NCP currently uses the term "direct" to describe broadly and generally the OSC's role in removal response operations, particularly those that are, at least initially, federally funded. The term is a shorthand expression for a wide range of management responsibilities of the OSC. The term "direct" is used in this sense in §§ 300.115(b)(2), 300.120(a), 300.120(e), and 300.135(a).

The OPA amends section 311(c) of the CWA to strengthen federal removal authority. One new feature of this authority is the ability to "direct" response actions under sections 311(c)(1)(B)(ii) and (c)(2)(A). Today's proposed changes also use the term "direct" to describe a potential OSC role in situations other than federally funded actions or private party cleanups being monitored by the OSC. "Direct," in this latter sense, is intended to convey more than management responsibility, and includes specific legal authority of the OSC to guide the activities of all parties responding to a discharge. This revised and expanded response authority is described in greater detail in the preamble discussions to subpart D, Operational Response Phases for Oil Removal, and subpart E, Hazardous Substance Response.

Duties of President Delegated to Federal Agencies (Section 300.100)

This section is proposed to be revised to incorporate references to the OPA and its implementing Executive Order.

General Organization Concepts (Section 300.105)

This section is proposed to be revised to incorporate Area Committees and ACPs into the list of organizational elements in § 300.105(c) and to make minor editorial changes. Figure 1 also is proposed to be revised to reflect changes made in today's proposal.

National Response Team (Section 300.110)

Section 300.110 proposes to include a number of changes that reflect new language contained in the OPA and revisions to other provisions in the proposed rule. Modifications are proposed to reflect the addition of Area Committees to the national response structure. The term "area contingency plan," for example, is proposed to be used in place of the existing "OSC contingency plan" (see preamble discussion of § 300.210, Contingency Plans Under the National Response System).

The functions of the NRT, such as developing recommendations for response training, reviewing regional responses, and activation to support response actions, remain unchanged for the most part. However, a number of changes are proposed. Section 300.110(e) is proposed to be revised to clarify the role of the NRT with regard to recommending changes to the NCP. Specifically, the NRT is now expected to recommend, to the Administrator of EPA, changes to the NCP including drafting of regulatory language.

Paragraph (h), which details the direct planning and preparedness responsibilities of the NRT also is proposed to be revised. Section 300.110(h)(5) is proposed to be modified to indicate that coordination procedures should be developed "in coordination with the NSFCC, as appropriate." Coordination with the NSFCC is appropriate in the case of discharges of oil and releases of hazardous substances under CWA section 311. Section 300.110(h)(6) is proposed to be modified to make the NRT responsible for facilitating research in support of response activities. This change is proposed to enhance the NRT's role in research activities in light of the emphasis placed on such activities by the OPA. The NRT is also now responsible for developing a national exercise program, in coordination with the NSFCC, to ensure nationwide preparedness and coordination (§ 300.110(h)(9)). This new responsibility reflects the new CWA requirement (section 311(j)(7)) for periodic area response drills.

A conforming change is proposed in paragraph (j) of this section. The language of § 300.110(j)(1)(iii) currently states that the NRT should be activated as an emergency team when an oil discharge or hazardous substance release involves a "*significant* threat to the public health or welfare or the environment." This last phrase is proposed to read "*substantial* threat to

public health or welfare or the environment" to reflect revisions made to CWA section 311(c) by the OPA.

In addition to circumstances where discharges or releases pose a substantial threat to the public health or welfare or the environment, the OSC may, depending on the circumstances of the discharge or release, request activation of the NRT to assist in responding to worst case discharges. In the event of a worst case discharge, the OSC shall "take whatever additional response actions are deemed appropriate" (see § 300.324). Because the OPA definition of worst case discharge (see § 300.5) focuses on weather conditions and relative amounts of discharged contents from a vessel or facility, not on the absolute size of a discharge, the size of a worst case discharge and its effects on the public health or welfare or the environment could vary greatly. For example, in the case of a discharge during a severe thunderstorm from an onshore facility that contained 150 gallons of fuel oil, the effects of a discharge of all 150 gallons might be confined to a relatively small area. Under these circumstances, local response capability probably would be sufficient. By contrast, if multiple onshore facilities located along major rivers containing 100,000 gallons of fuel oil ruptured during a hurricane, discharging their entire contents into the river, the OSC could request activation of the NRT to assist in coordinating local and regional response resources, or otherwise supporting the response.

Regional Response Teams (Section 300.115)

The language in § 300.115 is proposed to be changed to reflect the new language contained in the OPA and revisions to other provisions in the proposed rule. Furthermore, the language in § 300.115 (a) and (b) will be changed to ensure consistency between ACPs and regional contingency plans (RCPs). This includes tasking the RRTs with providing guidance to Area Committees to ensure inter-area consistency within each region.

Section 300.115(g) also is proposed to be changed to reflect the addition of the Area Committee structure. New CWA section 311(j)(4) gives the President the responsibility to appoint members to the Area Committees. The President delegated this authority to the Secretary of Transportation and the EPA Administrator in Executive Order 12777. However, because RRT members are well positioned to determine who from their own agencies are most qualified to work with OSCs in developing and maintaining ACPs, today's proposed rule gives the RRTs the opportunity to nominate Area Committee candidates.

Further conforming changes have been made to § 300.115(i)(9) to reflect the addition of ACPs to the national response system. It is important to note that RRTs will not merely consider changes to ACPs, as they do for OSC contingency plans in the existing rule. Rather, the proposed NCP would provide that the RRT recommend modifications to ACPs.

Several other changes are proposed for § 300.115. The language of § 300.115(h) is proposed to be changed to clarify that Indian tribes are not governed by state law. Section 300.115(i)(6) is proposed to be modified to conform to new § 300.910. Thus, RRTs and Area Committees would share responsibility for creating preauthorization plans for the use of dispersants, surface washing agents, and bioremediation agents. This new language reflects the incorporation of Area Committees into the preexisting planning process concerning the use of chemical agents. Section 300.115(i)(11) is proposed to be added to reflect the RRT's role in the national exercise program (see preamble discussion of § 300.110, supra, for explanation of this program).

Finally, § 300.115(j) would state that RRTs may be activated as incident-specific response teams if a spill is a worst case discharge as described in § 300.324.

On-scene Coordinators and Remedial Project Managers: General Responsibilities (Section 300.120)

New CWA section 311(d)(2)(K) will require the NCP to designate a federal OSC for each area for which an ACP is required. Section 300.120 of the NCP currently requires EPA and the USCG to predesignate OSCs for all portions of each region.

In a Federal Register notice of April 24, 1992 (57 FR 15201), USCG Captains of the Port (COTPs) were designated OSCs for coastal areas for which an ACP is required under CWA section 311(j). These new designations are the same as existing OSC designations made by the USCG. EPA Regional Administrators are authorized to designate OSCs for inland areas for which an ACP is required. The EPA Regions will consider their existing designations when making these newly required designations to minimize or avoid duplication or overlap of responsibilities among OSCs. These new designations are discussed in a new § 300.120(b). Remaining subsections have been re-lettered accordingly.

Newly designated § 300.120(e) also is proposed to be changed to reflect the OSC's responsibilities concerning the new area planning concept. Specifically, the proposed NCP would indicate that OSCs are responsible for overseeing development of ACPs in cooperation with RRTs.

Notification and Communications (Section 300.125)

Section 300.125(a) is proposed to be revised to eliminate the need for the NRC to notify FEMA of evacuation situations. As discussed later in the preamble (§ 300.135), FEMA no longer performs evacuations.

Determinations to Initiate Response and Special Conditions (Section 300.130)

Prior to the OPA, CWA section 311(d) gave the federal government the discretionary authority to take certain actions in cases where a marine disaster created a substantial threat of a pollution hazard to the public health or welfare of the United States (including, but not limited to, fish, shellfish, wildlife, and the public and private shorelines and beaches). These actions included: (1) Coordinating and directing all public and private efforts to remove a discharge, or an imminent discharge of large quantities of oil or a hazardous substance from a vessel; and (2) removing, and if necessary, destroying the vessel without regard to any provisions of law governing the employment of personnel or the expenditure of appropriated funds. This CWA response authority for marine disasters was deleted by the OPA, thus existing § 300.130(b)(3) and (c) are deleted in today's proposal.

CWA section 311(c)(2), as amended by the OPA, now requires the federal government to direct removal actions in response to a similar, but broader class of events—any discharge of oil or a hazardous substance (regardless of whether it qualifies as a "marine disaster," and whether it is from a vessel, offshore facility, or onshore facility) that is of such a size or character as to be a substantial threat to the public health or welfare of the United States. In directing removal actions in the case of a discharge that poses a substantial threat to public health or welfare of the United States, the President may act without regard to any other provision of law governing contracting procedures or employment of personnel by the federal government and may destroy the vessel that is discharging or threatening to discharge. Section 311(c)(1), as amended by the OPA, continues to provide discretionary authority to the President to direct or

monitor all federal, state, and private actions to remove any discharge of oil or a hazardous substance that does not pose a substantial threat to the public health and welfare of the United States.

These changes, as well as an effort to clarify the distinction between CWA and CERCLA authorities are reflected in new § 300.130(b) and redesignated § 300.130(c) (formerly (b)(2)). Specifically, proposed § 300.130(b) describes the new OPA authorities (discussed above) in the case of a discharge of oil or a CWA hazardous substance. Re-designated § 300.130(c) discusses existing authority for responding to releases of CERCLA hazardous substances.

Additionally, § 300.130(d) is proposed to be revised to reflect the new language on the authority to issue administrative orders that is contained in CWA section 311(e), as amended by the OPA. Section 311(e) authorizes the President, upon determining that there may be an imminent and substantial threat to the public health or welfare of the United States, to take any other action, including issuing an administrative order, that may be necessary to protect the public health and welfare of the United States. This new authority allows EPA and USCG officials to issue an order to protect public health expeditiously, without pursuing the relatively time-consuming process of having the Attorney General initiate a civil judicial action. This section also has been modified to clarify the distinction between authorities for oil and CWA hazardous substance discharges on the one hand (§ 300.130(d)(1)), and CERCLA hazardous substance releases on the other (§ 300.130(d)(2)). Finally, the language in § 300.130(d)(1) has been changed to track new language in the OPA. Specifically, the phrase "that there is an imminent and substantial threat * * *" has been changed to "that there may be an imminent and substantial threat * * *."

A number of clarifying changes are proposed for § 300.130(f) in order to eliminate any possible confusion about the applicability of the FRERP. The FRERP is activated during any peacetime radiological emergency that is or will be expected to have a significant radiological effect in the U.S. or its territories requiring multi-federal agency support. Non-FRERP radioactive releases should be addressed in accordance with the NCP as appropriate, but it is important for EPA and USCG officials to work in coordination with the FRERP if that plan is in effect.

A new § 300.130(i) is proposed to be added to describe the role of Federal Response Plans. More detail on the Federal Response Plan is included in today's proposal under the preamble discussion of proposed § 300.3.

Response operations (Section 300.135)

In addition to several minor editorial changes made in §§ 300.135(d) and 300.135(c), a number of clarifying changes are proposed in these sections. Paragraph (c) describes the requirement for the OSC/RPM to collect information about discharges and releases. As part of this duty, under today's proposed revisions the OSC/RPM would be required, to the extent practicable, to determine whether a discharge is a worst case discharge and whether the discharge or release poses a substantial threat to the public health or welfare of the United States. This change has been proposed to reflect the incorporation of these OPA concepts into the revised NCP (worst case discharges and substantial threats to the public health or welfare are discussed in detail in the preamble discussion of §§ 300.322 and 300.324).

The first sentence in paragraph (g) concerning FEMA is proposed to be deleted because FEMA no longer performs evacuations. In addition, the language requiring the OSC/RPM to evaluate incoming information and immediately advise FEMA of potential major disaster situations has been changed from "shall" to "should." This revision has been proposed because the relationship between the OSC/RPM and FEMA is now detailed in the new Federal Response Plan.

Section 300.135(h) is proposed to be modified to provide for a potentially greater role for OSHA and HHS on worker health and safety issues. Specifically, their role can now go beyond "advice" and include whatever "assistance" is necessary and appropriate.

Section 300.135(j) is proposed to be revised to reflect more accurately the policy on notification of natural resource trustees and a new OPA requirement for consultation with affected trustees on the appropriate removal action to be taken in connection with an oil spill. Specifically, the policy requires that trustees be notified of all discharges and releases, not only those that are injuring or may injure natural resources; the OPA requires trustees to assess natural resource damage resulting from discharges, which necessitates that they be notified of every discharge or release.

This requirement need not be met by the OSC/RPM personally, but he or she must ensure that trustees are notified. Thus, the NCP states "[t]he OSC/RPM shall ensure that the trustees for natural resources are promptly notified of discharges or releases."

In the event of an oil discharge, the OSC is also required, pursuant to OPA Section 1011, to consult with the affected trustees on the appropriate removal action to be taken. This requirement is reflected in new language contained in § 300.135(j)(2).

Section 300.135(k) is proposed to be revised to clarify the requirement that the OSC/RPM consult with the Department of the Interior or the Department of Commerce (NOAA) and, if appropriate, the cognizant federal land managing agency, in the event of a discharge or release that may affect endangered or threatened species. This change from discretionary to mandatory consultation is proposed to reflect an Endangered Species Act requirement that the responsible federal agency be notified after such an occurrence.

Multi-regional response (Section 300.140)

Conforming changes are proposed in this section to reflect the new provisions addressing ACPs and the elimination of OSC Contingency Plans.

Special teams and other assistance available to OSCs/RPMs (Section 300.145)

This section is proposed to be revised and reorganized to better describe existing resources and incorporate new resources available as a result of the OPA. Special teams are federally funded and may provide resources locally to the OSC/RPM. These teams may provide the following: scientific information, manpower, equipment, support information systems, training, cleanup expertise, and public information coordination assistance. Section 300.145 details these special teams and other assistance available to OSCs/RMs.

National Strike Force (NSF)

The discussions of the strike teams and Public Information Assist Team (currently §§ 300.145(a) and (g)) are proposed to be revised and consolidated with a new discussion of NSFCC. Combined, they are now presented as the National Strike Force in proposed § 300.145(a).

Strike Teams

Revised CWA section 311(d)(2)(C) authorizes the establishment of Coast Guard strike teams consisting of (1) personnel "trained, prepared, and available to provide necessary services to carry out the National Contingency

Plan;" (2) "adequate oil and hazardous substance pollution control equipment and material;" and (3) "a detailed oil and hazardous substance pollution and prevention plan, including measures to protect fisheries and wildlife." The Conference Committee Report accompanying the OPA states that strike teams are to be available upon request by any OSC to provide assistance, guidance, and training (H.R. Rep. No. 101–653, 101st Cong. 2d Sess. at p. 149). Strike teams are considered to be part of the NSF "special team" within the meaning of § 300.145.

Each strike team is designed to airlift highly skilled pollution response experts to the scene of a discharge to assist and advise the OSC. They can assist in coordination with contractors, private party responders, civic volunteers, state and local government responders, and the media. Their expertise in vessel salvage and inventory of specialized oil response equipment can be critical to initial first aid response.

Under the current NCP, a single strike team covers the Atlantic and Gulf coast regions, and a second covers the Pacific coast. Immediately following the Exxon Valdez spill, the USCG conducted a study to determine the need, if any, for additional strike teams. The study determined that an additional strike team was required, with a configuration similar to the two existing teams. The proposed revisions to § 300.145(a) would create a new strike team for the Atlantic coast, retain the current Atlantic and Gulf Coast strike team solely for the Gulf coast, and retain the current strike team on the Pacific coast. OSCs can request strike team support through the RRT, NSFCC, National Response Center (NRC), or directly through the commanding officer of the appropriate strike team.

National Strike Force Coordination Center

Revised CWA section 311(j)(2) establishes a National Response Unit at Elizabeth City, North Carolina. Today's proposed revisions would add the NSFCC, in § 300.145(a), as part of the NSF special team, satisfying the requirement for the National Response Unit. All requirements, responsibilities, and duties of the National Response Unit are assumed by the NSFCC. The name is proposed to be changed to reflect more accurately its function in coordinating response resources rather than participating directly in response operations.

CWA section 311(j)(2) provides that this entity: (1) Shall compile and maintain a comprehensive list of spill removal resources, personnel, and equipment that is available worldwide and within each designated area; (2) shall provide technical assistance, equipment, and other resources requested by an OSC; (3) shall coordinate use of private and public personnel and equipment to remove a worst case discharge and to mitigate or prevent a substantial threat of such a discharge; (4) may provide technical assistance in the preparation of ACPs; (5) shall administer Coast Guard strike teams and provide technical assistance; and (6) shall review and maintain on file ACPs. The OPA Conference Report explains that this provision is intended to create a system in which private parties supply the bulk of any equipment and personnel needed for oil spill response in a given area (H.R. Rep. No. 653, 101st Cong. 2d Sess. at p. 148 (1990)). In addition, the NSFCC is designed to reduce the OSC's time demands for logistical organization by coordinating use of private and public response personnel and equipment for a worst case discharge. The Report emphasizes that the National Response Unit (i.e., the NSFCC), in its coordination of private and public response resources, should avoid duplication of private initiatives (Id.).

The NSFCC will provide technical assistance to the OSC in: (1) Selecting, locating, and employing specialized pollution response equipment (such as booms and skimmers) that would be effective in responding to specific problems at the site; (2) establishing site-specific equipment and manpower requirements to monitor and conduct clean-up operations; (3) establishing the necessary site-specific logistics requirements for the local transportation of equipment into spill area receiving and staging areas; and (4) planning day-to-day response operations after a spill.

Scientific Support Coordinators

A revised discussion of scientific support coordinators (SSCs) is included as § 300.145(d) which more accurately describes the roles and capabilities of these individuals. Section 300.145(d) also would introduce into the NCP the concept of the lead administrative trustee who would be a federal natural resource trustee who is designated on an incident-by-incident basis and chosen by the other federal trustees whose natural resources are affected by the incident. The lead administrative trustee would facilitate effective and efficient communication between the OSC and the other federal natural resource trustees during response operations. The lead administrative trustee also would be responsible for applying to the OSC for access to federal response resources on behalf of all trustees for initiation of damage assessment and claims for injuries to natural resources. These response resources include both response equipment and financial resources. (The lead administrative trustee also is discussed in §§ 300.155, 300.305, and 300.615 of this proposed rule.)

Radiological Emergency Response Teams

The current NCP in § 300.145(f) refers to Radiological Assistance Teams. This paragraph is proposed to be modified to update this reference to "Radiological Emergency Response Teams" and to clarify that requests for their support may be made through the NRC or directly to the EPA Radiological Response Coordinator in the Office of Radiation Programs.

District Response Groups

New CWA section 311(j)(3) mandates the establishment of Coast Guard DRGs for each of the Coast Guard districts. Today's proposal incorporates the DRGs in § 300.145(g) as "other assistance." CWA section 311(j)(3) provides that each DRG shall consist of USCG personnel and equipment for each port within the district, additional pre-positioned equipment, and a district response advisory staff. Section 311(j)(3) also indicates that each DRG: (1) Shall provide technical assistance, equipment, and other resources when required by an OSC through the RRT co-chair; (2) shall maintain all USCG response equipment within its district; (3) may provide technical assistance in the preparation of ACPs; and (4) shall review each of those plans that affect its area of geographic responsibility. The entity referred to in the OPA as the "district response advisory staff" will be known as the District Response Advisory Team (DRAT) and will consist of several full-time spill professionals who will be available to provide technical assistance to the OSC through the RRT co-chair in the event a spill exceeds local response capabilities. The DRAT staff will help ensure that ACPs in different areas within the district are compatible and that pre-staged response equipment is available to address spills exceeding local response capabilities. The pre-staged equipment would include equipment owned by contractors and other private parties, as well as the USCG.

The Conference Report states that the USCG should give priority emphasis to several factors in determining where to locate the DRG personnel and pre-positioned equipment, including: (1)

The availability of facilities for loading and unloading heavy or bulky equipment by barge; (2) the proximity to an airport capable of supporting large military transport aircraft; (3) the flight time to provide response to oil spills in all areas of the Coast Guard district with the potential for marine casualties; (4) the availability of trained local personnel capable of responding in an oil spill emergency; and (5) areas where large quantities of petroleum products are transported (H.R. Rep. No. 101–653, 101st Cong., 2d Sess., at p. 149).

Each of these factors is important in ensuring adequate capability to respond to oil spills requiring a substantial commitment of clean-up resources. During the response to the *Exxon Valdez* spill, equipment adequate to contain and clean up the spilled oil was not available during the initial days of the incident. In addition, staging (i.e., assembly) of equipment had to be performed at the scene of the spill from mobile platforms, requiring that the equipment be lowered from aircraft or delivered by boat. The small airstrip at Valdez could not accommodate large transport planes that are capable of carrying booms, skimmers, and other oil spill response equipment. Furthermore, personnel trained to move such equipment were not available locally. All of these factors exacerbated the slow delivery of clean-up equipment, allowing the oil spill to spread across larger areas.

The new DRGs create a framework by which each USCG district is able to deliver its full resources in the most efficient manner to respond to an actual discharge or to a substantial threat of a discharge.

National Pollution Funds Center (NPFC)

Title I of the OPA sets out requirements and procedures for the Oil Spill Liability Trust Fund (OSLTF). Executive Order 12777, section 7, delegates those OPA functions respecting payment of removal costs and claims and determining consistency with the NCP to the Secretary of the Department in which the Coast Guard is operating. The NPFC has been established by the Secretary of Transportation and the USCG Commandant to implement these functions. Today's proposal would make the NPFC a special team under § 300.145. The NPFC's responsibilities include:

- Providing OSLTF moneys for removal actions and to initiate natural resource damage assessments;
- Implementing procedures for presentation, filing, processing, settlement, and adjudication of claims against the OSLTF;
- Paying appropriate costs, damages, and claims, including activities to process, settle, and administratively adjudicate such costs, damages, and claims, resulting from oil discharges;
- Issuing Certificates of Financial Responsibility to those owners and operators that have demonstrated the ability to pay for costs and damages that may be incurred by their vessel in the event of a discharge;
- Recovering money from responsible parties for costs and damages resulting from oil discharges to the full extent of liability under the law; and
- Establishing procedures for assigning project numbers, fund ceilings, and related accounting data for: (1) Incident-specific removal activities performed by federal OSCs; (2) incident-specific removal activities by states as described in the preamble discussion of § 300.180; (3) the initiation of natural resource damage assessment activities as described in the preamble discussion of subpart G; and (4) claims, as described in § 300.700(h).

Concentrating OSLTF responsibilities in the NPFC should help to ensure that the OSC is not preoccupied with funding issues during a response. In this sense, the NPFC is similar to the other special teams described in § 300.145 that provide specialized expertise to support the OSC's response efforts.

Emergency Task Forces

Section 300.145(b) is proposed to be deleted in today's rule and the subsequent sections would be renumbered. This change is proposed because the requirement formerly contained in section 311(c)(2) of the CWA has been revised by the OPA to eliminate the language addressing requirements for emergency task forces in major ports. As noted in the preamble discussion of "specific requirements for inland and coastal zones" in subpart C, the duties of these emergency task forces have been assumed by Area Committees in the coastal zone.

Worker Health and Safety (Section 300.150)

Section 300.150(a) is proposed to be revised to clarify that the national response system is an incident command system (see discussion of incident command system elsewhere in the preamble discussion of subpart B). The phrase "with plans approved under section 18 of the OSH Act" is proposed to be moved from paragraph (e) to paragraph (c).

Public Information and Community Relations (Section 300.155)

The language of today's proposed rule reflects the proposed role of the lead administrative trustee in coordinating information dissemination relating to natural resource damage assessments. (See discussion of lead administrative trustee in the preamble discussion of § 300.145(d).)

The implementation of § 300.155 may vary across sites as a result of the OPA and associated changes made elsewhere in this proposal. Specifically, §§ 300.322(c) and 300.415(c) now provide greater opportunities for the OSC to seek support in disseminating information to the public in the case of substantial threats to the public health or welfare. Specific OSC responsibilities described in § 300.155 may be delegated by the OSC to lead agency or RRT officials to permit the OSC to focus his or her efforts on directing activities associated with the actual removal actions being taken. For more detail on how responses to substantial threats to the public health or welfare will be conducted, see the preamble discussions for §§ 300.322(c) and 300.415(c).

Documentation and Cost Recovery (Section 300.160)

Language in § 300.160(a)(2) concerning OSC reports is proposed to be deleted because of the decreased importance of these reports in the revised NCP. (See preamble discussion of § 300.165, immediately following.)

OSC Reports (Section 300.165)

Today's proposed revisions to the NCP would delete the current requirement in § 300.165 to prepare OSC reports for all responses to major discharges or releases. The original purpose of the OSC report was to summarize activities at the site and to communicate lessons learned, discuss any problems encountered in the response, and recommend improvements which need to be shared throughout the response community. In the March 8, 1990, revisions to the NCP (55 FR 8666), EPA recognized that OSCs have extensive responsibilities and that responding to discharges and releases is a higher priority than drafting the OSC report. Consequently, the Agency extended the deadline for completing OSC reports from 60 days to one year after completion of the response action or when requested by the RRT.

Recently, EPA has reassessed the desirability of requiring an OSC report for all responses to major discharges or releases. The already considerable time

demands placed on the OSC have increased dramatically with the enactment of the OPA. New OSC responsibilities under the OPA include chairing the Area Committees, overseeing the drafting of ACPs, and directing responses to discharges that pose a substantial threat to the public health or welfare. Preparing the OSC report is an additional paperwork burden that is not statutorily mandated. Furthermore, the most important information contained in the OSC report—lessons learned in specific responses—is expected to be available from other materials prepared by the OSC, including the pollution report and the OSC log book. These documents could also be used for enforcement purposes in lieu of the OSC report. Today's rule, therefore, proposes to delete the § 300.165 requirement to prepare OSC reports following a major discharge or release. Section 300.165, however, retains the authority of the RRT to request that an OSC report be prepared on a case-by-case basis. The authority of the NRT to do likewise has been added.

Paragraph (c), which details the format of the OSC report, is proposed to be deleted. This change is consistent with a decreased importance of OSC reports in the revised NCP.

Federal Agency Participation (Section 300.170)

The introduction to this section is proposed to be modified to track more closely the language used in OPA section 1006(c) and CERCLA section 107(j) regarding the functions of natural resource trustees. Also, references to Area Committees and ACPs are proposed to be added. Finally, the words "facilities or" are proposed to be added to § 300.170(d) to correct an apparent oversight in previous NCP revisions.

Federal Agencies: Additional Responsibilities and Assistance (Section 300.175)

Language in this section is proposed to be clarified to make the agency descriptions listed in the NCP more complete and up-to-date. For example, the DOC description is proposed to be expanded to include providing information on the sensitivity of coastal environments to clean-up and mitigation methods. The DOI description is proposed to be expanded to include its expertise in determining the effects of oil and hazardous substances on natural resources through the Fish and Wildlife Service. In addition, the Minerals Management Service description is proposed to be changed to reflect its expertise regarding oil spill response technology research and oversight of offshore oil/gas exploration and production facilities. Finally, the description of the National Park Service is proposed to be expanded to detail its expertise in responding to threats to park system lands and resources.

Section 300.175(b) is proposed to be revised to include a description of the General Services Administration, which has been added to the list of participating federal agencies since the NCP was last revised. This section is proposed to be further revised to clarify, in the Department of Justice description, the role of agency counsel and to include a more detailed and accurate description of FEMA's roles and responsibilities. In addition, the description of OSHA's responsibilities is proposed to be changed to better reflect OSHA's commitment to active participation in response. Finally, the description of HHS is proposed to be rewritten to better reflect the duties of that department.

State and Local Participation in Response (Section 300.180) and Nongovernmental Participation (Section 300.185)

Section 300.180(b) is proposed to be added to clarify the significant role played by state and local officials in preparing ACPs. The term "state" in § 300.180 is also meant to encompass Indian tribes. This understanding reflects the definition of "state" contained in § 300.5, which states that Indian tribes are included as states for the purposes of the NCP. Also, the reference to subpart D of the NCP in proposed § 300.180(e) will be eliminated. This was apparently an oversight in previous NCP revisions that eliminated references to section 311 of the CWA from this provision. Conforming changes are proposed to be made to §§ 300.180 and 300.185 to reflect the new language of CWA section 311(j) as amended by the OPA, particularly with regard to the preparation of facility and vessel response plans and the integration into ACPs of technical and scientific information. Finally, it should be noted that, in accordance with OPA section 1012(d)(1) and (d)(2) and E.O. 12777, the USCG, upon request of a state Governor or pursuant to an agreement with a state, not including Indian tribes, may obligate the OSLTF for payment in an amount not to exceed $250,000 per incident for removal costs consistent with the NCP. These funds may be used only for the immediate removal of a discharge, or the mitigation or prevention of a substantial threat of a discharge of oil.

Subpart C—Planning and Preparedness

Subpart C describes the levels of contingency planning under the national response system and cross-references state and local emergency preparedness activities under SARA title III. The changes being proposed in subpart C today reflect OPA requirements for Area Committees and ACPs as well as for a Fish and Wildlife and Sensitive Environments Plan.

Area Committees/Area Contingency Plans

The OPA expands the existing planning and response framework in several ways. As discussed earlier, the OPA establishes the NSFCC and USCG DRGs and also creates a new requirement for facility and tank vessel response plans. In addition, the OPA creates an area-level planning and coordination structure to supplement national, regional, state, and local contingency planning efforts. Amended CWA section 311(j)(4) establishes Area Committees and ACPs as the primary components of this structure. OPA section 4202(b) requires the President to designate areas for which the Area Committees are established. Through Executive Order 12777 (56 FR 54757, October 18, 1991), the President delegated to the Administrator of EPA responsibility for designating the areas and appointing the committees for the "inland zone" (as defined in NCP § 300.5). The USCG was given responsibility for designating areas and appointing Area Committees for the "coastal zone" (as defined in § 300.5).

This section of the preamble describes the general requirements for Area Committees and ACPs. The next section describes how these requirements are to be implemented in the inland and coastal zones, respectively.

Area Committees

Area Committees are to consist of members appointed by the President from qualified personnel of federal, state, and local agencies. Area Committees have three primary responsibilities: (1) Preparation of ACPs; (2) working with state and local officials to enhance contingency planning and "assure pre-planning of joint response efforts, including appropriate procedures for mechanical recovery, dispersal, shoreline cleanup, protection of sensitive environmental areas, and protection, rescue, and rehabilitation of fisheries and wildlife;" and (3) working with state and local officials "to expedite decisions for the use of

dispersants and other mitigating substances and devices."

Including local, state, and federal representatives on Area Committees would facilitate the development of a comprehensive plan, ensure coordination among various response plans, and discourage unnecessary duplication of planning efforts. In addition, the Area Committee structure will allow response experts, as well as persons, groups, and agencies with concerns and responsibilities for the environmental integrity of an area, to play a role in the planning process. In today's proposal, a new § 300.205(c) has been added to incorporate Area Committees into the existing planning and coordination structure and to describe their responsibilities.

Area Committees are encouraged to solicit advice, guidance, and expertise from all appropriate sources (e.g., facility owners and operators, shipping company representatives, cleanup contractors, emergency planning and response officials, marine pilots associations, members of academia, environmental advocacy groups, response organizations, and concerned citizens). The Area Committees may establish subcommittees as necessary to accomplish the preparedness and planning tasks. The SSC, an NSF representative, and members of the DRAT also will be available to assist the Area Committee as consultants.

Area Contingency Plans

CWA section 311(j)(4) requires each Area Committee, under the direction of the OSC for its area, to prepare an ACP for its area. The statute requires that each ACP:

(1) When implemented in conjunction with the NCP be adequate to remove a worst case discharge, and to mitigate or prevent a substantial threat of such a discharge, from a vessel, offshore facility, or onshore facility operating in or near the area;

(2) Describe the area covered by the plan, including the areas of special economic or environmental importance that might be adversely affected by a discharge. In describing areas of special economic and environmental importance, several factors should be considered, including but not limited to the presence and proximity of natural resources, environmentally sensitive areas, and population concentrations; the location of drainage basins and appropriate geographic and/or topographic features; the location of water supplies; and beaches, ports, recreational areas, areas of seasonal significance, and migratory bird flyways. Compliance with this requirement may be accomplished in part through the Fish and Wildlife and Sensitive Environments Plan (discussed later in this preamble), which is to be a part of an ACP;

(3) Describe in detail the responsibilities of an owner or operator and of federal, state, and local agencies in removing a discharge, and in mitigating or preventing a substantial threat of a discharge. These responsibilities should include specific duties, tasks, personnel, and equipment expected, and the stage of response in which they are expected (i.e., initial response, long-term remediation);

(4) List the equipment (including firefighting equipment), dispersants or other mitigating substances and devices, and personnel available to an owner or operator and federal, state, and local agencies, to ensure an effective and immediate removal of a discharge, and to ensure mitigation or prevention of a substantial threat of a discharge;

(5) Describe the procedures to be followed for obtaining an expedited decision regarding the use of dispersants;

(6) Describe in detail how the plan is integrated into other ACPs and vessel, offshore facility, and onshore facility response plans approved under CWA section 311(j), and into operating procedures of the NSFCC; and

(7) Include any other information the President requires.

The contents of an ACP are not limited to these elements but may include other information relevant to the statutory requirements (e.g., the geographical area's facilities, vessel traffic, oil transportation industry, and environmental characteristics).

CWA section 311(j)(4)(D) requires that each ACP be reviewed and approved by the President (delegated to EPA and the USCG in Executive Order 12777) and be periodically updated by the Area Committee.

Today's proposal would create a new § 300.210(c) that describes the requirement to prepare ACPs and the required contents of such plans.

ACPs are similar in purpose to the OSC contingency plans described in current § 300.210(d). OSC contingency plans identify probable locations of discharges or releases, the available resources to respond to multi-media incidents, where such resources can be obtained, waste disposal methods and facilities consistent with local and state plans, and a local structure for responding to discharges or releases. Existing OSC contingency plans in the coastal zone may already describe an area and plan similar to the ACPs required by the CWA. In addition, EPA Regions generally have not exercised their authority to draft OSC contingency plans for the inland zone because other plans, including RCPs and title III local emergency response plans, were considered to be adequate to provide for a well-coordinated response. For these reasons, EPA proposes to delete § 300.210(d). Nonetheless, Area Committees may wish to use existing OSC contingency plans and/or RCPs in developing ACPs. As part of today's proposed revisions, all references to "OSC Contingency Plans" in the NCP would be changed to "area contingency plans."

The existing requirement in § 300.210(d)(2) that OSC plans be coordinated with all appropriate response plans—especially with title III local emergency response plans—has been incorporated in § 300.210(c)(2) of today's proposal to apply to ACPs. Today's proposed § 300.210(c)(3)(C) notes that lengthy equipment lists need not be included in the body of the ACP, but may be provided in an appendix or by reference to other relevant emergency plans.

As one part of an overall preparedness program, CWA section 311(j)(7) requires periodic unannounced drills of removal capability in areas for which ACPs are required and under relevant tank vessel and facility response plans. These drills may include participation by federal, state, and local agencies, the owners and operators of vessels and facilities in the area, and private industry. The NSFCC, together with the cognizant program managers of the USCG and EPA, would act as a clearinghouse for these exercises, participating in the development, execution, and evaluation process. The Administrator and the Secretary of the department in which the Coast Guard is operating may publish annual reports on these drills, including an assessment of the effectiveness of the plans and a list of amendments made to improve plans. The NSFCC may, in conjunction with the cognizant program managers of the USCG and EPA, conduct unannounced area or multi-area exercises. Today's proposal would create a new § 300.212 that describes the requirement for these area response drills.

Specific Requirements For Inland and Coastal Zones

Under the current NCP, EPA and the USCG have taken different approaches to planning and preparedness in the inland and coastal zones respectively. For example, the USCG has Emergency Task Forces required under CWA section 311(c)(2)(c). "Multiple-Agency Local Response Teams" (MALRTs) exist

in several ports. As noted above, EPA has relied more on RCPs and Title III local emergency response plans rather than develop numerous OSC contingency plans. Similarly, EPA and the USCG have now chosen to build upon different features of the existing oil spill planning and response structure in ensuring that all navigable waters and adjoining shorelines are subject to an ACP. Specifically, while the USCG is using its Captain of the Port structure for the coastal zone, EPA is initially using the 13 RRTs and their associated geographical areas for the inland zone.

Inland zone—EPA. The existing NCP divides the United States, its territories, and its possessions, including portions of the high seas, into 13 areas of responsibility (40 CFR 300.105(b) and (d)). These areas correspond to the ten standard federal regions with the exception of the separate areas established for (1) Puerto Rico and the U.S. Virgin Islands of Region II; (2) Alaska of Region X; and (3) Hawaii, Guam, Northern Mariana Islands, Pacific Island Governments, and American Samoa of Region IX. Each of these areas is covered by its own RRT and RCP. Each of the 13 areas of responsibility is divided further into coastal and inland zones.

EPA has designated these 13 "RRT areas" as the initial areas for which ACPs must be prepared in the inland zone (57 FR 15198, April 24, 1992). EPA Regional Administrators may designate new subregional geographic areas and appoint Area Committees for them. In the process of designating subregional areas in the inland zone, every section within a region may be screened. If smaller or subregional areas are designated within a region, EPA intends to publish the subregional designations in the **Federal Register** at a later date.

Designation of subregional areas is to be based on an analysis of the potential risk of oil spills and the environmental sensitivity of areas within each region. Analysis of these geographic areas would include consideration of the following criteria: The pattern of past spills and the likelihood of future spills; the presence and proximity of natural resources, environmentally sensitive areas, and population concentrations; the concentration of facilities, pipelines, and transportation routes within the region; the location of drainage basins and appropriate geographic and/or topographic features; the location of water supplies; and the location and capabilities of existing preparedness and response organizations. These criteria are consistent with the requirements in CWA section 311(j)(4)(C) that each ACP "describe the area covered by the plan, including the areas of special economic or environmental importance that might be damaged by a discharge." EPA believes that the relevant information is generally available.

Pursuant to E.O. 12777, the EPA Administrator has designated the 13 RRTs to serve as the initial Area Committees for each region (57 FR 15200, April 24, 1992). RRTs have the desired composition, functions, and experience initially to fulfill the role of Area Committees. RRTs are composed of representatives of the 15 federal agencies having a broad range of environmental responsibilities, state agency representatives, members of Indian tribes, and local representatives (as arranged by the state's representative). RRTs are officially designated for interagency and intergovernmental planning and coordination of preparedness and response actions at the regional level. They are responsible for developing RCPs to address oil and hazardous substance spills (see NCP § 300.115).

The EPA Administrator has delegated to the Regional Administrators authority to designate a different Area Committee or committee members. OSCs should develop the ACP in close collaboration with the Area Committee; Area Committee members must be active in the planning process if the plan is to be effective.

For all subregional areas, each RRT agency will recommend representatives to EPA Regional Administrators for appointment to Area Committees. In addition to the RRT agency representatives, there will be appropriate representatives from each state and Indian tribe and from local government in the area, including representatives of State Emergency Response Commissions (SERCs) and Local Emergency Planning Committees (LEPCs).

The RRT will serve as the Area Committee for the balance of the region not covered by any newly designated subregional areas and their committees, unless the Regional Administrator designates a different committee for the balance of the region. This will ensure that all navigable waters and adjoining shorelines are subject to an ACP.

As provided in OPA section 4202(b)(1)(B), ACPs for the inland zone are to be submitted to EPA. The Regional Administrator shall approve ACPs for the inland zone. In cases where the RRT is not serving as the Area Committee or where subregional areas have been designated, the Regional Administrator will request the RRTs to review proposed ACPs and provide recommendations regarding approval.

Coastal zone—USCG. The USCG has designated areas for the coastal Area Committees and noted the designation of COTPs as OSCs for the coastal zones (57 FR 15201, April 24, 1992). The USCG designated contingency planning areas based on the 47 COTP areas. The areas covered by the COTPs are smaller than the RRT areas and include major river systems associated with ports. Each COTP zone is described in USCG regulations at 33 CFR part 3. The USCG designated as areas those portions of the COTP zone that are within the "coastal zone," as defined by the NCP.

In E.O. 12777, the USCG was delegated authority to appoint Area Committees for the coastal zone. Area Committees will replace the Emergency Task Forces formerly required under section 311(c)(2)(c) of the CWA and the MALRTs, which currently exist in several ports. Although the Area Committee is not a response organization, it is anticipated that most committee members will have specific roles in the response structure.

Federal agency members of the Area Committee should be recommended by the RRT member agencies for appointment by the OSC. Primary state representatives to the Area Committee should be chosen by the lead agency designated by each governor for pollution preparedness and response. For states with more than one agency involved in pollution-related missions, the OSC should ask each agency to consider representatives from these agencies. For local membership, the OSC should coordinate with LEPCs.

As part of their planning activities, the Area Committees should address the desirability of using appropriate dispersants, surface washing agents, surface collecting agents, bioremediation agents, or miscellaneous oil spill control agents listed on the NCP Product Schedule, and the desirability of using appropriate burning agents. The ACPs should, as appropriate, include applicable preauthorization plans and address the specific contexts in which such products should and should not be used. The preauthorization plans should address factors such as the potential sources and types of oil that might be spilled, the existence and location of environmentally sensitive resources that might be impacted by spilled oil, available product and storage locations, available equipment and adequately trained operators, and the available means to monitor product application and effectiveness. RRTs have the authority to review and approve, disapprove, or approve with

modification the preauthorization plans, as appropriate. Approved preauthorization plans should be included in the ACP. For dispersants and other mitigating substances, devices, or technologies not pre-approved, the ACP should outline the process established by the RRT for that region for an expedited decision regarding the use of these items.

For areas in the coastal zone, the Area Committee should forward the completed ACP to the District Commander via the District Chief of the Marine Safety, Security, and Environmental Protection Division for review and approval. The district will be responsible for distributing the ACP to the NSFCC and the RRT for review and comment. The district will compile and review the comments received and recommend to the District Commander that the plan be approved or returned for correction. The ACP review process will verify that all issues are addressed, including consistency with the NCP, adjacent coastal and inland zone ACPs, and other federal, state, and regional plans.

Fish and Wildlife and Sensitive Environments Plan

Today's proposed revisions to the NCP set forth the requirements for a response strategy addressing fish and wildlife and sensitive environments. The Fish and Wildlife and Sensitive Environments Plan would be an annex to each ACP and would include new provisions for the RRTs, OSCs, and Area Committees regarding appropriate planning and preparation for potential spills. Pursuant to CWA section 311(d)(2)(M), as amended by OPA section 4201(b), the President is required to include in the revisions to the NCP a "fish and wildlife response plan * * * for the immediate and effective protection, rescue, and rehabilitation of, and the minimization of risk of damage to, fish and wildlife resources and their habitat that are harmed or that may be jeopardized by a discharge." Also, CWA section 311(j)(4)(B) (i) and (ii) and section 311(j)(4)(c)(ii), added by the OPA section 4202(a), call for the assurance of joint preplanning by the Area Committees, including "* * * protection of sensitive environmental areas, and protection, rescue, and rehabilitation of fisheries and wildlife" and a description of "the area covered by the plan, including the areas of special economic or environmental importance that might be damaged by a discharge." Based on the experience and recommendations of the U.S. Fish and Wildlife Service (FWS) and NOAA, today's proposal integrates a broad range of factors to incorporate into this new response plan. The new Fish and Wildlife and Sensitive Environments Plan would include a "fish and wildlife" component addressing the specific criteria contained in new CWA section 311(d)(2)(M). Based on general authority contained in CWA section 311(d)(2), there also would be a "sensitive environments" component that incorporates consideration of broader factors designed to complement the specific fish and wildlife criteria in order to better ensure achievement of the goals underlying the new requirements.

Sensitive environments for the purposes of this section are considered to be those areas identified in the EPA's Hazard Ranking System (HRS), Appendix A of 40 CFR part 300, without their associated HRS weights. In addition to those areas recognized in the HRS list, additional areas have been identified for inclusion in the definition of sensitive environments under this section. They include wetlands, national forests, national conservation areas, various state lands, biological resource areas, and sources of drinking water. These additional inclusions are considered sensitive environments under this section because they offer habitat to fish and wildlife, are critical habitat, are areas designated for protection under a state or federal policy, contain significant biological resources other than fish and wildlife, or are more susceptible to adverse impacts from oil or specific countermeasures. Water bodies that are utilized for drinking water are considered a sensitive environment because of the direct and dependent relationship of the water bodies to the overall quality of the ecosystem.

The requirement in CWA section 311(d)(2)(M) is proposed to be met through an annex to each ACP developed by the Area Committees, in consultation with the FWS, NOAA, and other interested parties, including state fish and wildlife conservation officials and Indian tribes. Today's proposed rule is intended to provide the framework for the Area Committees to develop consistent and compatible annexes for the protection of and mitigation of injury to fish and wildlife resources and sensitive environments.

Each annex is to:

- Identify and establish priorities for protection of fish and wildlife resources and habitats, and other sensitive environments;
- Provide a mechanism for use during response to a discharge to expeditiously define protection priorities;
- Identify the potential effects of response and countermeasure activities on fish and wildlife, their habitats, and sensitive environments and prioritize the appropriateness of such activities in specific areas;
- Provide for preapproval of appropriate removal actions in specific areas;
- Plan for monitoring to evaluate the effectiveness of response activities in protecting fish and wildlife, their habitats, and sensitive environments;
- Identify and provide for the acquisition and use of necessary response capabilities to protect fish and wildlife, their habitats, and sensitive environments;
- Identify appropriate state and federal agency contacts responsible for fish and wildlife rescue and rehabilitation as well as necessary permits or other legal requirements to carry out fish and wildlife response activities;
- Identify training required under the Occupational Safety and Health Administration (OSHA) and SARA for volunteers in fish and wildlife response activities and the means for securing such training during a response; and
- Define the requirements for evaluating the compatibility between this annex and non-federal response plans on issues affecting fish and wildlife, their habitats, and sensitive environments.

In addition to the framework provided in the proposed rule, guidance will also be developed by NOAA and the FWS, in consultation with other federal natural resource agencies, and provided to the Area Committees. This guidance will cover collection and management of annex-related information and requirements, classification and sensitivity of different environments to oil or hazardous substances, and the environmental considerations of different defensive measures used to mitigate the impacts of a discharge.

The existing spill response system under the NCP already addresses many of the provisions of the OPA and has many components that address protection of fish and wildlife and their habitats. For example, § 300.330 addresses Phase III wildlife rescue and conservation planning and response activities. In addition, § 300.310 addresses minimizing the threat to the environment during removal actions and selection of defensive actions, such as chemical or physical countermeasures (see § 300.900) that are most consistent with protection of the environment. Coordination among the RRT, state fish and wildlife conservation agencies, OSCs, federal

SSCs, as well as federal, state, and Indian tribal trustees, and other public and private response agencies, both during contingency planning and actual spill response activities presently includes steps to: (1) Identify resources and habitats at risk; (2) establish priorities for areas of protection; (3) rescue and rehabilitate wildlife; and (4) facilitate consistency and compliance with laws for protection of fish and wildlife.

The integration into the Fish and Wildlife and Sensitive Environments Plan of the numerous objectives listed in the CWA, as amended by the OPA, is designed to ensure consideration of the various elements that comprise a comprehensive approach to ensuring "the immediate and effective protection" of fish and wildlife, their habitat, and other sensitive environments. Inclusion of the sensitive environments component would offer the most effective approach for planning to avoid or mitigate spill-induced injuries in areas that have been identified under this designation and therefore have an elevated level of importance in addition to fish and wildlife populations and their habitat. Sensitive environments may include a human-use component which can translate to economically important environmental areas, such as national and state seashore recreational areas. These sensitive environments also may be susceptible to the direct impacts of oil or susceptible to the effects of response actions. These areas may be determined to be sensitive because of the economic value of the natural resource (e.g., from both a recreational or commercial perspective), or they may be habitat that is considered "unique" (such as aquaculture areas, fishing grounds, or seasonal habitats). For example, in the *Exxon Valdez* spill in 1989, one of the richest marine fisheries habitats in the United States was contaminated. Both the fish and shellfish of this area form a complex ecosystem that supports other species, including man. Many of the species affected by the spill had a commercial, recreational, and subsistence value.

Other examples of sensitive environments identified under this section are archeological and Indian tribal sites. During the *Exxon Valdez* oil spill, such sites were destroyed from the direct effects of the oil and from the effects caused by response actions. Many of these sites were originally located in specific areas because of a particular characteristic in nature. The inclusion of these sites under the definition of sensitive environments will help to preserve the historical and cultural importance found in these sites and their original association with the environment.

Sensitive environments may also include bodies of water that are of importance for fish and wildlife habitat and human use, such as areas that include drinking water supplies. For example, in January 1988, the rupture of an aboveground storage tank owned by the Ashland Oil Company allowed 750,000 gallons of diesel oil to spill indirectly into the Monongahela River at Floreffe, Pennsylvania. As a result of the contamination of the Monongahela River by the spill, more than 70 communities had to shut down their drinking water supplies. Identification of these areas as sensitive would lead to the appropriate preplanning necessary to protect the natural resource.

This proposed rule is designed to provide the framework for Area Committees to develop consistent and compatible annexes to the ACPs for the protection and mitigation of injury to fish and wildlife resources, their habitat, and sensitive environments. These ACPs will contain criteria for use by the OSC for the "protection of sensitive environmental areas, and protection, rescue, and rehabilitation of fisheries and wildlife." The resources identified in the ACPs should be prioritized regarding their sensitivity to oil and specific countermeasures. Such a prioritization would allow the OSCs to better address the threats to fish and wildlife, their habitat, and sensitive environments. Preplanning for dispersants and bioremediation products and burning agents is required for inclusion in the ACP by subpart J. Such planning must reflect local environmental conditions. Such issues are within the purview of the RRTs and should be coordinated with them.

Additional guidance regarding collection and management of annex-related information and requirements, the classification and sensitivity of different environments to oil or hazardous substances, and the environmental considerations of different defensive measures used to mitigate the impacts from a discharge will be developed by NOAA and the FWS, in consultation with other qualified federal agencies, and provided to the Area Committees. The process of developing Fish and Wildlife and Sensitive Environments Plans for ACPs should involve the appropriate qualified federal, state, and Indian tribal trustees. The creation of this annex is not intended to duplicate existing coordination mechanisms nor to replicate plans and other data that have already been developed to protect fish and wildlife resources. Rather, the intent is to strengthen response capability, and make more compatible the multiple efforts that are initiated to protect, rescue, and rehabilitate those resources and to minimize risk or impact to their habitats from a discharge.

The Fish and Wildlife and Sensitive Environments Plan, which is to be an annex to the ACP, is intended to ensure compatibility between various possible response activities and measures to protect fish and wildlife resources, their habitat, and other special areas of ecological sensitivity that may be adversely affected by a discharge. As a consequence, the effectiveness of the OSC in removing a discharge and mitigating oil spill effects in a timely fashion should be enhanced through coordinated and integrated efforts. Experience has shown that pre-planning and response activities are most effective when accomplished at the local level because coordination and response activities can more accurately focus on local fish and wildlife, their habitats, and sensitive environments of an area.

Mechanisms that currently exist to accomplish the necessary identification, ranking, planning, and assignment of duties in order to carry out effective response activities (e.g., RRTs, RCPs, EPA Regional Offices, LEPCs, and the USCG Marine Safety Office) will exist through the Area Committees and ACPs. In addition, many federal and state agencies, as well as many private organizations, have tools available to identify resources and habitats at risk and can support the identification and prioritization of fish and wildlife resources and sensitive environments, both during contingency planning and incident response. For example, NOAA's coastal environmental sensitivity index maps rank shoreline area sensitivities to spilled oil. The FWS and state wildlife resource agencies facilitate and implement rescue and rehabilitation efforts as well as consult with the OSC on wildlife protection activities during a discharge. In addition, the federal SSCs synthesize technical information for the RRTs and the OSCs on the effects of defensive actions (see § 300.145). They also assist in planning for and responding to discharges of oil or hazardous substances to minimize environmental impacts, including impacts to fish and wildlife, their habitats, and sensitive environmental areas.

The Conference Committee's Report on the OPA indicates that the provision adding a new requirement for a fish and wildlife plan was added by section 2002

of the House bill (H.R. Rep. No. 653, 101st Congress, 2nd Session at p. 147 (1990)). The language of the House bill, which was not included in the statute as enacted, included a number of specific provisions addressing the actual contents of a fish and wildlife plan. For example, the House bill specified that the plan incorporate procedures assigning responsibilities and facilitating communication among federal, state, and local agencies with expertise in these matters. In addition, the House bill required the plan to provide for early identification and prioritization of fish and wildlife and their habitat threatened by a spill.

The specific provisions of the House bill that were to be included in the plan clearly were intended to ensure that fish and wildlife priorities would be taken into account when conducting immediate and effective response actions. As enacted, the statute reflects this intent, but does so through a more general requirement that leaves the details of implementation to the discretion of federal agencies (in coordination with appropriate state officials) developing the revised NCP. To the extent these provisions can best effectuate the goals of the OPA's requirement to develop a fish and wildlife plan, the proposed rule adopts in part the approach reflected by some of the specific provisions that would have been required by the House bill. Other elements—such as the identification and ranking of sensitive environmental areas, defining environmental consequences of different kinds of response actions, and coordinating various response plans with regard to aspects concerning fish and wildlife resources and habitat—have been added because of their interrelation with the protection of fish and wildlife and their habitats. This approach satisfies the intent of the OPA for a comprehensive approach in preparing Fish and Wildlife and Sensitive Environments Plans.

This comprehensive approach is of particular importance because the requirement for a Fish and Wildlife and Sensitive Environments Plan will be implemented primarily at the level of ACPs developed under CWA section 311(j)(4). The biological diversity of fish and wildlife and their habitat between different regions and areas of the country necessitates a thorough consideration of all relevant factors that are critically important.

OPA not only expands planning requirements for dischargers by requiring that certain onshore facilities, offshore facilities, and tank vessels prepare and submit response plans, but also reinforces the importance of environmental protection by requiring that such plans consider the environmental consequences of a worst case discharge or a substantial threat of such a discharge (CWA section 311(j)(5)). It also requires that ACPs prepared under section 311(j)(4) describe how vessel and facility response plans will be integrated with the ACPs.

An annex addressing various components of the Fish and Wildlife and Sensitive Environments Plan would be prepared on a scale appropriate to various scenarios as defined by OPA and implementing regulations. Some Area Committees may need to prepare several Fish and Wildlife and Sensitive Environments Plans because of the size or environmental complexity/diversity of their area. However, it is critical that consistent or standardized evaluation methodologies and terminology be used among these annexes, within a region, and, as appropriate, between adjacent regions. In addition, there should be consistency on these environmental issues with vessel and facility response plans, including those for pipelines, that are within the purview of the Area Committee. Although the OPA considers pipelines within the definition of "facility," the environmental considerations required in planning for a pipeline spill can be more complex than those of fixed facilities because of the potential variety of habitats traversed by a long-distance pipeline. Past experience has shown that very sensitive environments can be impacted by pipeline leakage, as happened in the Santa Clara River in 1991 when 76,000 gallons of oil impacted 12 miles of endangered species habitat in California. Consequently, because of the variety of sources of discharges and the potentially wide range of geographic areas to be included in a response plan by a single source (e.g., single pipeline or vessel with several ports), it is essential to have consistency in methodology, terminology, and classification of sensitive environments among all facility, pipeline, and vessel plans within the area covered by an ACP and between adjacent areas and regions.

Because effective response countermeasures are dependent upon timely decisions and actions, this proposed revision places a new emphasis upon preplanning for approval of removal actions. Because appropriate and rapid removal actions are intended to avoid or lessen injuries to fish and wildlife, their habitats, and other sensitive environments, pre-approval of such actions, many of which are dependent upon application within the first 1–2 days following a discharge, should allow an OSC more options in implementing an effective response strategy and thus minimize adverse environmental impact. It is also being proposed that for certain removal or mitigation strategies, a plan for monitoring the effects of countermeasures be included in the annex to ensure that the benefits of oil removal are not offset by the adverse effects of the specific application of the removal action. Research on past spills has suggested that the removal action can sometimes cause more harm than the oil spill itself; therefore, monitoring and evaluating the environmental benefit of certain response countermeasures is justified.

Discharges of oil may give rise to potential liability under the CWA, as revised by the OPA. The discharger is also subject to prosecution under both civil and criminal provisions of several federal and state laws regulating fish and wildlife. The "taking" of fish and wildlife is defined in various ways under the laws which protect these species, but generally includes not only non-permitted hunting or fishing, but also deaths and injuries caused by other means, including discharges of oil, as well as harassment, live capture, handling, and holding in captivity (or attempting to engage in any such activity), which may be elements of a response action. Some of these laws regulating fish and wildlife "taking" provide for emergency permit authorities. Thus, the proposed rule calls for the Fish and Wildlife and Sensitive Environments Plan to address advance planning to identify legal constraints and provide for appropriate permitting and law enforcement investigative support regarding fish and wildlife, including the Endangered Species Act (ESA) section 7 consultations and permits issued under the authority of the ESA, the Marine Mammal Protection Act and Migratory Bird Treaty Act, the Marine Protection, Research, and Sanctuary Act, related state laws, and laws regulating activity in other sensitive environments. This would facilitate response actions and reduce the risk that agencies responsible for fish and wildlife are unable to carry out their responsibilities, which could be detrimental to rescue and rehabilitation of wildlife, as well as interfering with potential law enforcement and damage assessment activities.

Other Changes in Subpart C

In § 300.200 of today's proposed rule the phrase "describes the federal, state, and local planning structure; provides for levels of federal contingency plans" has been changed to "describes the three levels of contingency planning under the national response system" to more accurately describe the contents of this subpart. Similar references to the national response system have been added to § 300.210.

Throughout this subpart, EPA is proposing to change all references to the "Emergency Planning and Community Right-to-Know Act of 1986" to "title III" (see § 300.200). The title III requirement for the LEPC to designate a community emergency coordinator is proposed to be added to § 300.205(e) of today's proposed rule to make the NCP consistent with title III.

Title III requires LEPCs to prepare a comprehensive emergency plan and review the plan annually or more frequently as needed. EPA has consistently encouraged LEPCs (e.g., see *Hazardous Materials Emergency Planning Guide*) to consider chemical hazards at all facilities—not just those "subject" to section 302 of title III—when developing the comprehensive emergency plan. Today's proposal would delete the word "subject" from § 300.215(a) in recognition of the fact that other facilities (e.g., those submitting material safety data sheets (MSDSs) under section 311 and tier I and II reports under section 312) should be included in a comprehensive plan under title III.

Subpart D—Operational Response Phases for Oil Removal

Subpart D of the NCP generally sets forth requirements for procedures to respond to discharges of oil. These requirements are intended to clarify the responsibilities of OSCs, other federal and state government personnel, and responsible parties in ensuring that responses to oil discharges are sufficient to protect public health and welfare and the environment.

The OPA requires revisions to several sections in subpart D. The most significant changes are the requirements that the NCP include criteria and procedures for response to discharges that result in substantial threats to public health or welfare of the United States, and procedures and standards for preventing, mitigating, and removing a worst-case discharge. These changes are included in two new sections of today's proposed rule, §§ 300.322 and 300.324, respectively. Additional proposed revisions include a provision dealing with spills of national significance (SONS) (§ 300.323), the deletion of § 300.330 ("Wildlife conservation"), which is being replaced by new language in § 300.210, and revisions to conform to changes being made elsewhere in today's proposed rule.

In revising the NCP, the desirability of further distinguishing between the response requirements for oil discharges on one hand and releases of hazardous substances, pollutants, and contaminants on the other hand became evident. In order to assist participants and responders under the national response system, as well as other interested persons, in implementing and understanding the NCP, EPA is proposing to include a new appendix to the rule. This appendix to the NCP would consolidate in one place all provisions of the NCP relevant to oil spill response, including the organizational structure and procedures to prepare for and respond to oil discharges. It can serve as a single source of direction and guidance to OSCs, as well as a consolidated source of information for other interested parties regarding the requirements and procedures applicable to oil spill response. The wording may vary in some instances between the appendix and the various subparts of the NCP. Generally, this has resulted from the need to paraphrase or restructure certain passages to address oil discharges only. Nothing in the appendix changes the substantive requirements, meaning, or policy contained in the body of the NCP.

Phase I—Discovery or Notification (Section 300.300)

Pursuant to OPA section 4301(a), revised section 311(b)(5) of the CWA provides that the "[f]ederal agency shall immediately notify the appropriate State agency of any State which is, or may reasonably be expected to be, affected by the discharge of oil * * *." A state that may reasonably be expected to be affected by a discharge would include any state that water current, prevailing weather patterns, and other factors indicate is in the direct path of a discharge or any state in which response personnel will be activated or used. To ensure the proper notification of state agencies, today's proposal would modify the language of § 300.300(d) to indicate that the OSC must notify the appropriate state agency.

Section 300.300(d) also has been revised in today's proposal to reference the ACP along with the RCP as plans that will guide the OSC's activities.

Phase II—Preliminary Assessment and Initiation of Action (Section 300.305)

New section 311(c) of the CWA describes federal removal authority for discharges or substantial threats of discharges. This section authorizes the President to: (1) Conduct or arrange for the removal of a discharge, or mitigate or prevent the threat of a discharge; (2) monitor cleanup by state or private personnel; (3) direct federal, state, or private actions to remove a discharge, or mitigate or prevent the threat of a discharge; and (4) remove and, if necessary, destroy a vessel by whatever means are available. Pursuant to E.O. 12777, this authority was delegated to EPA for discharges occurring in the inland zone and to the USCG for discharges occurring in the coastal zone.

Furthermore, CWA section 311(c)(2) now requires the President to direct federal, state, and private removal actions if the discharge or substantial threat of a discharge may pose a "substantial threat to the public health or welfare of the United States." This requirement replaces and expands upon former section 311(d), which authorized the federal government, in the case of a marine disaster, to coordinate and direct all public and private efforts directed at the removal or elimination of a threat, and to summarily remove and, if necessary, destroy the vessel.

Section 300.305(c) describes the process by which the OSC decides the appropriate extent of federal involvement in response actions. Currently, § 300.305(c) provides that the OSC must make reasonable efforts to have the responsible party take proper response actions; if this is not successful or appropriate, the OSC must decide whether to initiate a federal response. Today's proposed revisions retain as an option the possibility of allowing the responsible party to take the lead where the OSC determines this approach will result in immediate and effective response action. The reason for this change is that under the amended CWA, it is clear that the OSC rather than the responsible party determines the appropriate course of action for response. In an effort to prevent cost recovery problems, proposed § 300.305(c) would add the provision that an OSC should "notify the responsible party of the potential liability for federal response costs." At the same time, the proposed rule incorporates the changes described above, including giving the OSC authority to direct response actions.

The OSC's authority with respect to directing the actions of the responsible party applies equally to "private

resources" hired by the responsible party to assist in responding to a discharge. When an OSC directs an oil discharge response, the responsible party's contracted private resources will take direction from the OSC on-scene. OSC direction shall have the same primacy for private resources as it does the responsible party's resources involved in an oil discharge response.

The authority of the President to "direct" removal of discharges allows the OSC to fashion the federal role, as appropriate, to ensure that removal activity is adequate to protect public health or welfare, without necessarily requiring the federal government to use its own resources exclusively to perform the cleanup. "Directing" the removal activity could involve a range of federal roles, from taking over all response action (and seeking cost recovery later), to ordering action to imposing specific procedures and requirements on the response effort and directly supervising their implementation, to coordinating all federal, state, and private party efforts involved in the response through more general oversight and guidance. The OSC may direct the response to require the responsible party to use proper cleanup techniques or resources, to prevent further impact to the environment caused by the response, or to mitigate the threat to the public health or welfare of the United States. Today's changes are intended to reserve for the OSC broad and flexible authority to direct the removal of all discharges, including those that may pose a substantial threat to the public health or welfare of the United States. Section 300.322, discussed below, would provide a complete discussion of the criteria for identifying a substantial threat to the public health or welfare of the United States and the requirement that the OSC direct the response in all such cases. In all cases where the OSC elects or is required to direct the response, the OSC should declare unequivocally to spill response participants as soon as practicable that the federal government will direct the response.

It should be noted that federal agencies from which the OSC requests assistance may be reimbursed in accordance with the provisions of 33 CFR subchapter M. Specific interagency reimbursement agreements may be used when necessary to ensure that the federal resources will be available for a timely response to a discharge of oil.

OPA section 1011 addresses the issue of consultation on the selection and termination of removal actions. Of relevance to NCP § 300.305 is the requirement that the President consult with affected natural resource trustees on the appropriate removal action to be taken in connection with any discharge of oil. This requirement would be implemented in the NCP by revising § 300.305(d) to include the requirement to consult with the affected trustees. In this regard, certain lands specially designated by Congress may require a greater degree of care in carrying out response activities than in normal circumstances. These special needs should be addressed in area contingency planning, specifically the Fish and Wildlife and Sensitive Environment Plan annexes to ACPs. Special designations include units of the National Park System, National Wildlife Refuges, and Wilderness areas. In such cases, consultation with affected trustees should, at a minimum, include discussion of barrier placement, debris burning, and any use of biological and chemical treatments.

Today's proposal would revise § 300.305(d) to incorporate an expanded notification requirement to better effectuate the purposes of the OPA. Thus, natural resource trustees are to be notified in the case of any discharge of oil, not only those where the OSC believes natural resources are or may be injured. EPA anticipates that details of notification protocols will be included in the Fish and Wildlife and Sensitive Environments Response Plan annex to the ACPs. It should also be noted that the USCG will promulgate regulations detailing the lead administrative trustee's authority to access federal response resources on behalf of all trustees.

Section 300.305(b)(4), which required the OSC to ensure that authority exists for undertaking additional response actions, has been deleted in its entirety in today's proposed rule. The OPA amendments to CWA section 311 and subsequent delegations grant the OSC the authority to take whatever removal action he or she deems necessary upon notification or discovery of a discharge.

Phase III—Containment, Countermeasures, Cleanup, and Disposal (Section 300.310)

Today's proposed changes to the NCP include new language in § 300.310. The new text references the ACP prepared under § 300.210(c), and directs that the ACP should be consulted for appropriate procedures to obtain an expedited decision regarding the use of dispersants and other products listed on the NCP Product Schedule. These procedures are one of the elements of ACPs addressed in revised CWA section 311(j)(4).

Today's proposal also modifies the list of examples of defensive actions in paragraph (a) to indicate that the use of physical barriers should be considered when necessary to protect not only natural resources, but sensitive ecosystems as well.

Finally, language has been proposed to be added to § 300.310(c) to provide guidance on how RRT and ACP guidelines might address disposal plans for oil spill response.

Phase IV—Documentation and Cost Recovery (Section 300.315)

This section has been revised in today's proposed rule to reflect the establishment of the OSLTF and to ensure consistency with the USCG's own regulations on documentation (33 CFR subchapter M), which are undergoing revision and are expected to be promulgated before promulgation of today's proposed revisions to the NCP. Also, new paragraph (c) reflects proposed changes in § 300.165 regarding the preparation of OSC reports.

National Response Priorities (Section 300.317)

In addition to the general procedures and patterns for response, today's proposal includes a description of the overall priorities for responding to discharges of oil. New § 300.317 formalizes the following priorities that the OSC should consider during an oil discharge:

- The safety of human life, including search and rescue efforts;
- The stabilization of the situation to prevent further damage, including securing the source of the spill and/or removing the remaining oil from the container (vessel, tank, or pipeline) to prevent additional spillage; and
- Coordination of containment, removal, and disposal efforts.

These priorities should facilitate the OSC's ranking the importance of response actions. These priorities reflect the fact that every event is multifaceted and must be approached in a step-by-step, logical manner. The language of proposed § 300.317 is broad and does not preclude the consideration of other priorities that may arise on a site-specific basis.

The safety of human life must be the top priority during every response action. Training, expertise, forethought, and experience all contribute to developing a response approach that ensures the safety of all. Search and rescue efforts directed toward crew members or response personnel fall within this category. Responders must ensure their own safety in order to avoid greater threats to public health and

welfare from a discharge. Next, the site of the discharge must be stabilized. All efforts expended during stabilization should focus on saving a vessel, facility, or other source that is discharging oil so that it is not damaged further (for example, by collision, fire, or explosion). Any of these situations can threaten response personnel and the environment and compound the effects of the incident. Securing the source of the spill could involve a range of actions as simple as closing a valve or as complicated as removing a substantial amount of oil from a leaking tank. The goal is to reduce the need for follow-up response action. Finally, the OSC should use containment and removal tactics in a coordinated manner to ensure a timely, effective response that minimizes damage to the environment.

All priorities in this section should be considered concurrently, but safety and stabilization are the highest priorities. The OSC should not delay containment and removal decisions and should take appropriate actions to prevent additional discharges because environmental damage begins as soon as a discharge occurs.

The priorities outlined above are not intended to restrict the discretion of the OSC in directing or monitoring responses to oil discharges. The OSC must quickly assess all facets of an incident and immediately commence appropriate response actions. Each incident will present some unique problems for the OSC to address. These problems should be viewed in conjunction with the priorities outlined above, and the OSC should act accordingly. Therefore, although the priorities in this section outline the general model for a response, they do not preclude the OSC from developing individual tactics for responding to individual incidents. The national response priorities should help those outside the response community to recognize that response efforts to address an oil discharge include critical elements beyond containment and removal activities.

General Pattern of Response (Section 300.320)

Section 300.320(a) has been revised and reorganized in today's proposal for greater clarity, to reflect changes made to the CWA by the OPA, and to reflect revisions being made elsewhere in this proposal. For example, § 300.320(a)(1), the procedures to be followed in the event of an actual or potential major discharge, was moved to § 300.320(a)(2)(i) to present an OSC's responsibilities in a more orderly fashion.

Because of the changes required by the OPA amendments to CWA section 311, existing subsection (b) no longer adequately addresses all spill scenarios. Therefore, today's rule proposes to incorporate former subsection (b) into subsection (a) to present a clear and concise general pattern of response that an OSC should follow after receiving a report of a discharge. The new spill scenarios created by the CWA section 311, as amended, are a part of this framework.

To make this section more clear, EPA is proposing to add "type" to "size" as spill classification characteristics. These "types" (i.e., substantial threat to the public health or welfare and worst case discharge) are discussed extensively in their own preamble sections (§§ 300.322 and 300.324, respectively).

Although size and type of discharge involve some overlap, there are cases where a particular spill will demand the response action only one size or type classification addresses. For this reason, EPA believes that all of these spill types and sizes are necessary to guarantee effective spill response.

Currently, paragraph (b) describes four response scenarios in the case of a discharge. As written, it essentially consolidates requirements discussed in various other sections of the NCP, particularly §§ 300.305, 300.310, and 300.315. At the same time, the CWA now includes two new response scenarios (i.e., substantial threats to the public health or welfare, and worst case discharges) and provides the OSC with a broader range of potential actions in the case of a discharge. These new response scenarios are addressed in §§ 300.322 and 300.324, and the OSC's expanded authorities have been included in § 300.305. As a result, EPA concluded that, because current paragraph (b) would require significant restructuring to accurately reflect the OPA's amendments to CWA section 311 and because its essential provisions were addressed in other sections (e.g., former § 300.320(b)(3)(iii) would now be addressed in § 300.335), it could be eliminated from the NCP without affecting the document's explanation of response to oil discharges.

EPA is proposing to add a new paragraph (b) to incorporate the language of section 1011 of the OPA regarding completion of removals. That language indicates that a removal shall be considered completed when so determined by the President (here delegated to the OSC) in consultation with the Governor or Governors of the affected states. Section 1011 goes on to indicate that this determination shall not preclude additional removal actions under applicable state law. As described in the Conference Report, "(o)rdinarily, removal costs incurred by a Governor after the President has determined that cleanup is complete will not be recoverable from the Fund unless the President determines that the additional costs were necessary to maintain the level of cleanup previously approved by the President. Reimbursement may be sought, however, from the responsible party, or from the responsible party's guarantor, for all removal costs covered by this (provision)" (H.R. Rep. No. 101-653, 101st Cong., 2d Sess. at p. 112). Along with this provision, an additional sentence has been added in today's proposal (i.e., "(w)hen the OSC considers removal complete, OSLTF removal funding shall end") to clarify the availability of the OSLTF.

Further discussion of the requirements of § 300.320 is included below in order to facilitate a comprehensive discussion of new § 300.322, Response to substantial threats to public health or welfare.

Three Release Scenarios: Substantial Threats to Public Health or Welfare (Section 300.322); Spills of National Significance (Section 300.323); and Worst Case Discharges (Section 300.324)

As noted above, the CWA now includes two new response scenarios, i.e., substantial threats to public health or welfare and worst case discharges. EPA is today proposing a third scenario for inclusion in the NCP: spills of national significance. This overview explains the relationship among the three; each one is described separately in detail below.

As discussed below, discharges posing substantial threats to public health or welfare are to be identified by looking at a number of factors, including size and character of the discharge and the potential effects on public health and the environment. Thus, it is not only how much oil is discharged, but also its proximity to humans and sensitive environmental systems. Discharges classified as substantial threats may be both large and small, depending upon where they occur and other factors. Most discharges are not expected to be identified by OSCs as substantial threats to public health or welfare.

Spills of national significance are a rare subset of those discharges defined as posing substantial threats to public health or welfare. Generally, these will be only those spills where the potential impacts are extremely severe. The key difference that would set them apart from other spills posing substantial threats is the need for particularly

extensive coordination and communication in order to respond adequately in a timely manner. SONS has been established as a distinct scenario to address this need to support the OSC in these areas.

Worst case discharges may be substantial threats to public health or welfare (and SONS), but may differ from spills posing substantial threats to public health or welfare in at least several ways. For example, worst case discharges are measured specifically in relation to other possible spills at that same facility or vessel, rather than all spills generally. In other words, each facility or vessel has its own worst case scenario, which is not dependent on spills occurring at other facilities or vessels. In addition, worst case discharges are not characterized in terms of the threat they pose to public health or welfare, but rather by size in relation to a vessel's or facility's capacity. Finally, the OPA suggests that a vessel or facility has only one event that would be its worst case, whereas there may be many different specific circumstances and factual settings that could pose a significant threat to public health or welfare.

Response to Substantial Threats to Public Health or Welfare (Section 300.322)

CWA section 311(d)(2)(I), added by section 4201(b) of the OPA, requires the NCP to include "criteria and procedures to ensure immediate and effective federal identification of, and response to, a discharge, or the threat of a discharge, that results in a substantial threat to the public health or welfare of the United States." Today's proposal would add a new § 300.322 to address identification of and response to oil discharges posing a substantial threat to the public health or welfare. Discussion of response to substantial threats to public health or welfare from hazardous substance releases is included later in this preamble under subpart E.

The proposed approach combines proven procedures with additional requirements that together will ensure that Congressional objectives in adding this provision are fully addressed. This new section also reflects CWA section 311(c)(2)(B), which authorizes the President to act "without regard to any other provision of law governing contracting procedures or employment of personnel by the Federal government" in removing or arranging for the removal of the discharge, or mitigating or preventing the substantial threat of the discharge, and removing and, if necessary, destroying a vessel discharging, or threatening to discharge, by whatever means are available.

Identification of Discharges That May Pose a Substantial Threat to the Public Health or Welfare

CWA section 311(c)(2)(A), as amended by the OPA, indicates that a "substantial threat to the public health or welfare" is defined by the size or character of the discharge and that "public health or welfare" includes, but is not limited to, "fish, shellfish, wildlife, other natural resources, and the public and private beaches and shorelines of the United States." The Conference Report on the OPA provides some insight into the types of incidents that could be characterized as a substantial threat to public health or welfare by citing three examples: (1) The *Exxon Valdez* spill in Alaska's Prince William Sound; (2) the *American Trader* incident in California's coastal waters; and (3) the spill and substantial threat of a larger spill from the *Mega Borg* in the Gulf of Mexico (H.R. Rep. No. 101–653, 101st Congress, 2d Sess., at p. 146). These three incidents exhibited the following characteristics:

- The *Exxon Valdez* spilled over 10 million gallons of oil, resulting in large fish and bird kills and extensive oil deposits on beaches and the shoreline.
- The *American Trader* discharged 397,000 gallons of oil, threatening California's largest wildlife sanctuary.
- The *Mego Borg* released 50,000 gallons of oil, with a threatened spill of 38 million gallons. This incident posed a threat to bays and estuaries containing birds and shellfish.

Although these examples involve coastal spills and threats of spills, substantial threats to public health or welfare could also result from spills or threats of spills to inland waters. For example, at an Ashland Oil Company facility in Floreffe, Pennsylvania, 750,000 gallons of diesel oil were discharged into the Monongahela River. This incident disrupted the water supply of approximately 2.7 million residents of communities along the Monongahela and Ohio Rivers and caused the death of an estimated 10,000 fish and 2,000 birds, as well as other serious ecological damage. The spill also resulted in schools and businesses being closed in many of these communities. These effects are comparable to the effects associated with the examples cited in the Conference Report.

In addition, the Senate noted that some smaller spills, such as those that occurred in June 1989 off the Rhode Island coast and in the Delaware River, can pose substantial threats to public health and welfare (S. Rep. No. 94, 101st Cong., 1st Sess., at p. 18). The Greek tanker *World Prodigy* grounded on Brenton Reef, spilling 6,873 barrels of No. 2 fuel oil near Newport, Rhode Island. The Uruguayan tanker *Presidente Rivera*, carrying 452,000 barrels of fuel oil, grounded and leaked 7,310 barrels into the Delaware River.

New § 300.322(a) focuses on the broad factor categories cited in the legislation for identifying "substantial threats," i.e., size of the discharge, character of the discharge, and public health or welfare (including fish, wildlife, other natural resources, and beaches and shorelines). However, the language leaves open the possibility that other factors may be considered as well. EPA's intent is to provide a reliable framework for determining which spills may present a "substantial threat," but to leave the OSC with the discretion to decide, on a case-by-case basis, whether a specific discharge or threat of discharge may pose a substantial threat to the public health or welfare.

The factor categories mentioned above encompass many specific elements that may be considered if relevant, based on the circumstances of the discharge. For instance, in evaluating the size of the discharge, the OSC should consider factors such as the quantity of oil discharged, the quantity threatened to be discharged, and the rate of discharge. In considering the character of the discharge, the OSC should, as appropriate, evaluate the characteristics (e.g., toxicity) of the oil discharged, the potential for explosion or fire, and the rate at which the oil is likely to spread and dissipate considering weather and water conditions. In assessing the potential effect on public health or welfare, the OSC should, as appropriate, take into account the threat of serious, irreparable, or immediate harm or damage to human populations, drinking water, and food supplies (including subsistence resources), and proximity to environmentally sensitive areas, including fish and wildlife and their habitats (including breeding areas, feeding grounds, nurseries, wetlands, significant concentrations of birds, mammals, threatened or endangered species, and other living resources).

The proposed revision authorizes the OSC to consider other factors, as appropriate. One such factor that may be considered by the OSC is the capacity of locally available response resources. If such response capacity is limited, the time necessary to bring adequate response equipment and personnel to the scene of the discharge may be increased substantially and the discharge may become more severe and

affect a larger area. For example, in the *Exxon Valdez* incident, response equipment and personnel were at least 36 hours from the discharge. By the time these resources arrived at the scene, the discharge had become much more extensive and difficult to control. Another factor that may be appropriate is the response record of the discharger. For example, if the OSC is aware of significant spills that have not been addressed adequately by the discharger in the past, the OSC may conclude that a substantial threat would be more likely to result.

Upon considering the relevant information concerning the characteristics of the discharge, the OSC shall, under today's proposal, conduct an evaluation of the threat posed based on (1) the OSC's experience assessing other discharges, and (2) consultation, as appropriate, with senior lead agency officials and readily available authorities on issues outside the OSC's technical expertise. The senior official would likely be the District Commander in the case of USCG-lead responses. The appropriate senior official in EPA-lead response would be the Regional Administrator. An example of a situation where such senior-level consultation may be appropriate would be if the OSC believes that there is an unusually high level of public interest in the incident, and policy guidance and other insight from senior management may be useful. Examples of technical consultations would include situations where other lead agency OSCs have specialized knowledge of, or experience responding to the type of oil discharged from the same or similar facilities.

Based on the examples provided in the legislative history and experience over the years, EPA anticipates that the majority of discharges, or threats of discharges, will not be identified by OSCs as substantial threats to the public health or welfare within the meaning of CWA sections 311(c)(2) and 311(d)(2)(I); rather, only those discharges or threats of discharges with the most serious potential consequences will qualify.

Response to Substantial Threats to Public Health or Welfare

Currently, § 300.320(a) of the NCP outlines a general pattern of response that an OSC should follow after receiving a report of a discharge. The process described leaves considerable discretion with the OSC in carrying out response efforts. First, if the discharge is an actual or potential major discharge, the OSC should immediately notify the RRT, including the trustees of affected natural resources in accordance with the applicable ACP, the affected state, if appropriate, and the NRC. The OSC should then investigate the report to determine the threat posed to public health or welfare, the type and quantity of the polluting material, and the source of the discharge. The OSC should officially classify the size of the discharge and determine the course of action to be followed. The OSC also should determine whether the discharger is properly carrying out removal (i.e., the cleanup is sufficient to minimize or mitigate threats to public health and welfare and the environment, and removal actions are consistent with applicable regulations, including the NCP).

As part of this general response process, the NCP uses a series of discharge classifications to delineate appropriate activities in each situation. This existing classification system currently includes consideration of substantial threats to public health or welfare. Section 300.5 of the NCP describes three size categories of discharges: (1) A minor discharge is a discharge to inland waters of less than 1,000 gallons or a discharge to coastal waters of less than 10,000 gallons; (2) a medium discharge is a discharge of 1,000 to 10,000 gallons to inland waters or 10,000 to 100,000 gallons to coastal waters; and (3) a major discharge is a discharge of more than 10,000 gallons to inland waters or more than 100,000 gallons to coastal waters. This section provides that "[a]ny oil discharge that poses a substantial threat to public health or welfare or the environment or results in significant public concern shall be classified as a major discharge, regardless of (these size classifications)."

EPA has carefully re-examined these response procedures and concluded that for discharges that may pose substantial threats to the public health or welfare, additional measures would further enhance the ability of the federal government to ensure immediate and effective response. Section 300.322 has been added in today's proposal to describe response procedures for these situations. Specifically, proposed § 300.322(c) would require that if the discharge is identified as posing a substantial threat to the public health or welfare, the OSC must specifically assess opportunities for the use of various special teams and other assistance described in § 300.145. These special teams are capable of providing public affairs assistance, communications support, advice, and assistance for oil removal; have knowledge of shipboard damage control; have access to specialized containment and removal equipment; and have rapid transportation available. Special teams also include the Environmental Response Team (ERT), established by EPA in accordance with its disaster and emergency responsibilities. The ERT has expertise in treatment technology, biology, chemistry, hydrology, geology, and engineering. Other available assistance includes the NSFCC, established under section 311(j)(2) of the CWA (and described more fully in § 300.145), and USCG DRGs established under section 311(j)(3) (also described in § 300.145), both of which can provide technical assistance, equipment, and other resources that may be needed by an OSC. NOAA can also provide SSCs, who have specialized expertise on coastal environmental considerations for spill response and planning, including spill trajectory modeling, environmental consequences of removal countermeasures, chemical analyses, information management, and response strategies that minimize environmental impact.

Proposed § 300.322(c) also requires the OSC to request that the RRT be activated immediately. This differs from the current requirement for medium or major discharges that the OSC recommend activation of the RRT, if appropriate. The RRT has two major components: (1) A standing team that consists of representatives of each federal agency that is a member of the NRT, state government representatives, and local government representatives; and (2) an incident-specific team that is formed from the standing team when the RRT is activated for a response. On incident-specific teams, participation by RRT member agencies is directed toward the technical nature of the incident and its geographic location (see § 300.115(b)).

Beyond these two obligations, proposed § 300.322(c) also authorizes the OSC to take whatever additional response actions are deemed appropriate, including but not limited to, implementation of the ACP as required by section 311(j)(4) of the CWA or the relevant tank vessel or facility response plan required by section 311(j)(5) of the CWA.

Proposed § 300.322(c) also provides that in the case of a substantial threat to the public health or welfare, the lead OSC may request the agency or RRT to dispatch appropriate personnel to the scene of the discharge to assist the OSC with technical support and public information and interagency coordination efforts. It is anticipated that the OSC will identify in advance those activities that can be performed by others and then assign such activities to appropriate personnel.

The function of these personnel is to relieve the OSC of duties indirectly related to actual removal actions so that the OSC can focus on directing response operations. This added support is particularly important when a substantial threat to the public health or welfare exists, because such a situation is likely to be of increased interest and concern to the media and the public. In these situations, the significant effort required to keep all parties adequately informed of the circumstances of the discharge and the response measures that are being taken should not fall on the OSC. During the first hours and days following the grounding of the *Exxon Valdez*, competing demands of this nature strained the OSC's ability to control the response effort. Typically in response operations, there is a relatively brief period of time in which action must be taken to minimize potential damage within any given specific set of conditions. If action is not taken decisively during this "window of opportunity," the ability to control the response most effectively may be lost.

As an example, when the USCG is the lead agency for the response and lead agency senior level involvement has been deemed appropriate, the added support for public information and interagency coordination efforts may be provided by the District Commander. The presence and participation of the District Commander reflects the Coast Guard's military chain of command with respect to its response structure; however, the OSC will remain in charge of operational aspects of the response. The function of the senior level officials will be to serve as a focal point for satisfying the demands for information on the status of the response from the press, local, state, and national elected officials, and the public. Thus, the additional staffing can help insulate the OSC from competing time demands that might otherwise divert the OSC's attention from directing response operations.

Finally, proposed § 300.322(c) also requires the lead agency to send a contracting officer to the scene of the discharge at the request of the OSC. Although EPA recognizes that CWA section 311(c)(2)(B), as amended by OPA section 4201(a), renders invalid all customary contractual procurement restrictions, this requirement is included to facilitate expedited contracting agreements that may be required due to the nature of the incident.

Spills of National Significance (Section 300.323)

EPA is today proposing a new section intended to enhance the federal government's ability to manage the response to SONS. A SONS is defined in § 300.5 of today's proposed rule as a spill that, due to its extreme severity, size, location, or actual or potential impact on the public health, welfare, or the environment, requires extraordinary coordination of federal, state, local, and responsible party resources to contain and clean up. EPA expects these spills to be infrequent. Over the past 20 years, only two oil spills might have been designated as SONS: The 1979 Ixtoc well blowout in the Gulf of Mexico and the 1989 *Exxon Valdez* spill.

In situations such as these, coordinating resources at the national level and managing relations among various government officials and the public requires significant time and effort. This may divert attention away from the actions necessary to respond to the spill itself, which, in the case of a SONS, would be expected to be particularly complicated. Furthermore, while OSCs are thoroughly familiar with their regions or districts, they may be less knowledgeable about areas outside their regions or districts. The OSC in charge of responding to a spill that affects several regions, districts, or countries may benefit from communication assistance to identify and coordinate resources, evaluate site-specific conditions, and assess threats to the environment.

For these reasons, EPA is today proposing a "strategic management" framework designed to assist the OSC in dealing with resource administration, government coordination, public relations, and communication. The Administrator of EPA and the Commandant of the USCG may declare a discharge to be a SONS. In the case of a SONS in the inland zone of the United States, the Administrator may designate a senior Agency official to assist the OSC in: (1) Communicating with affected parties, the public, and the media, and (2) coordinating federal, state, local, and international resources at the national level. This strategic coordination would involve, as appropriate, the NRT, RRT(s), the Governor(s) of affected state(s), the mayor(s) or other chief executive(s) of local government(s), and the responsible party. The "assistance" in support of the OSC is intended to relieve the OSC of certain communication/coordination burdens associated with directing response efforts. It does not mean the designated senior Agency official is subordinate to the OSC. This official will simply fill the role of the OSC for these specific, limited activities.

For a SONS in the coastal zone, the Commandant may activate a National Incident Task Force (NITF). Membership on the NITF would be determined by the USCG, who will include a National Incident Commander (NIC), a flag officer (e.g., admiral or above) appointed by the Commandant; a chief of staff, filled by the commanding officer of the NSFCC; an area operations coordinator, the predesignated OSC for the area affected by the SONS; and federal, state, local, and responsible party representatives.

The USCG will develop a protocol to establish lines of authority for SONS response activities and facilitate coordination between the USCG OSC and the NITF. This protocol will delineate lines of communication and identify critical functions and key personnel in the case of a SONS, and provide standard operating procedures for administrative management.

Response to Worst Case Discharges (Section 300.324)

CWA section 311(d)(2)(J), added by OPA section 4201(b), requires the NCP to include "procedures and standards for removing a worst case discharge of oil, and for mitigating or preventing a substantial threat of such a discharge." New § 300.324 would be added by today's proposal to address this new requirement.

Section 4201(b) adds a new definition for "worst case discharge" to CWA section 311(a)(24) as follows: "(A) in the case of a vessel, a discharge in adverse weather conditions of its entire cargo; and (B) in the case of an offshore facility or onshore facility, the largest foreseeable discharge in adverse weather conditions."

According to the OPA Conference Report (H.R. Rept. No. 653, 101st Cong., 2nd Sess. at p. 147 (1990)), Congress phrased the definition of a worst case discharge from a facility more generally than the definition of a worst case discharge from a vessel because it may be more difficult to describe the entire contents of some kinds of facilities, such as pipelines. The Report indicates that the term "largest foreseeable discharge" from a facility is intended to characterize "a case that is worse than either the largest spill to date or the maximum probable spill for that facility type." An example of a facility worst case would be the loss of the entire contents of a facility's single oil storage tank into navigable waters.

A number of other OPA provisions also include planning and response requirements for worst case discharges:

- OPA section 4202(a) adds new CWA section 311(j)(5) authorizing the President to issue regulations that require owners or operators of tank vessels and certain facilities to prepare and submit to the President a plan for responding, to the maximum extent practicable, to a worst case discharge and to a substantial threat of such a discharge.
- OPA section 4202(a) adds new section 311(j)(4) to the CWA, which provides that each Area Committee must prepare an ACP for its area that, when implemented in conjunction with the NCP, will be adequate to remove a worst case discharge and to mitigate or prevent a substantial threat of such a discharge.
- New CWA section 311(j)(2)(C) requires that the National Response Unit (i.e., the NSFCC) "shall coordinate use of private and public personnel and equipment to remove a worst case discharge, and to mitigate or prevent a substantial threat of such a discharge * * *."

Currently, § 300.320 in subpart D describes a general process for response to discharges of oil. Today's proposed rule would expand this process with additional procedures to be followed in the case of substantial threats to the public health or welfare (§ 300.322). EPA continues to believe that the existing process, with today's proposed changes regarding substantial threats to the public health or welfare, would in large part adequately address all discharge situations. Use of this revised process, in conjunction with implementation of the other CWA "worst case discharge" requirements listed directly above, should provide, in virtually all cases, the appropriate framework for removing worst case discharges, and for mitigating or preventing substantial threats of such discharges. There may be a few cases, however, (e.g., situations of unforseeably large discharges), where the implementation of these various requirements would prove to be inadequate. In those cases, the OSC would be expected to take whatever additional actions are necessary to ensure effective and immediate removal of the discharge by whatever means are available.

Specifically, today's proposal would modify the response structure by adding a new § 300.324 directing the OSC (in the case of a worst case discharge) to: (1) Notify the NSFCC; (2) require implementation of the tank vessel and facility-specific response plans required under the OPA that are intended to specifically address response to worst case discharges and substantial threats of such discharges; (3) implement the ACP designed to work in conjunction with the NCP to remove worst case discharges and substantial threats of such discharges; and (4) take whatever additional actions are necessary to respond to the situation at hand. These proposed additions to the current response process would provide an appropriate response framework for removing worst case discharges. In the event that a worst case discharge also results in a substantial threat to the public health or welfare or the environment, the proposed requirements of § 300.322, as well as the requirements of § 300.324, would apply.

Wildlife Conservation (Section 300.330)

Today's proposal would delete this section and replace it with a new § 300.210(c)(4) regarding the Fish and Wildlife and Sensitive Environments Plan. CWA section 311(d) requires the NCP to include "a fish and wildlife response plan, developed in consultation with the FWS, the National Oceanic and Atmospheric Administration (NOAA), and other interested parties (including state fish and wildlife conservation affiliates) for the immediate and effective protection, rescue, and rehabilitation of, and the minimization of risk of damage to fish and wildlife resources and their habitat that are harmed or that may be jeopardized by a discharge." The Fish and Wildlife and Sensitive Environments Plan is more fully described in the preamble to § 300.210.

Funding (Section 300.335)

Section 9001 of the OPA provides that the revolving fund established under CWA section 311(k) and the funds authorized by the Deepwater Port Act, the Outer Continental Shelf Lands Act, and the Trans-Alaska Pipeline Authorization Act are transferred to the OSLTF established pursuant to section 9509 of the Internal Revenue Code of 1986. The proposed revisions to the language of § 300.335(c) reflect the OPA amendments.

Under section 1012 of the OPA, the OSLTF is available to pay for certain removal costs, other specified costs determined by the President to be consistent with the NCP, and costs associated with implementation, administration, and enforcement of the OPA, including the costs of monitoring removal actions. Section 1001 defines "removal costs" for purposes of the OPA to encompass costs related only to a discharge or threat of a discharge of oil. These removal costs include: Costs of containment and removal of oil from water and shorelines and monitoring state and private action to remove a discharge; and costs of taking other related actions necessary to minimize or mitigate a threat to the public health and welfare or the environment, including, but not limited to adverse impact to fish, shellfish, wildlife, public and private property, shorelines and beaches.

The OPA definition of the term "oil" is similar to the broad definition in CWA section 311, except that any petroleum specifically listed or designated as a hazardous substance under CERCLA is excluded. As a consequence, it appears that there is no overlap in the funding and liability provisions of CERCLA and title I of the OPA. Certain petroleum refining industry wastes, for example, are specifically listed CERCLA hazardous substances; response to discharges of such wastes normally would be paid for under CERCLA, not the OPA, even if the wastes might also come within the CWA definition of "oil."

Proposed changes to § 300.335(a) are intended to clarify that the decision to access the OSLTF and conduct federal removal actions is solely the OSC's and may be taken at any time that, in his or her judgment, it is required. Also, separate, comprehensive procedures for accessing the OSLTF (33 CFR subchapter M) are referenced. Subchapter M is itself undergoing revision to reflect new provisions contained in the OPA and those changes are expected to be in place before today's revisions to the NCP are issued as a final rule.

Proposed changes to § 300.335(b) would remove the requirement that federal agencies be the sole funding source for their removal activities. Under the OPA, certain costs may be eligible for reimbursement from the OSLTF.

EPA is proposing to delete the original text of § 300.335(c) in its entirety to reflect the establishment of the OSLTF, which replaces several previously existing funding sources. In addition, language regarding cost documentation procedures has been deleted from this section, and now is addressed in proposed § 300.315. Section 300.335(c) now indicates that procedures for funding natural resource damage assessments may be found in 33 CFR subchapter M.

Section 300.335(e) would be revised by today's proposed rule to clarify that funding of a response to a discharge from facilities and vessels owned by the federal government is, like funding for

response at facilities and vessels operated or supervised by the federal government, the responsibility of the owning agency. EPA deleted much of the language previously included in § 300.335(f) because those funding issues are now addressed in 33 CFR subchapter M.

Subpart E—Hazardous Substance Response

This subpart contains a detailed plan covering authorized activities involved in abating and remedying releases or threats of releases of hazardous substances or pollutants or contaminants. Certain provisions of the OPA address releases of hazardous substances. These provisions include amendments to section 311 of the CWA, which establishes federal planning and response authority for both oil discharges and CWA hazardous substance releases.[3]

The NCP establishes a framework for response to releases of hazardous substances. The term "hazardous substance" is defined in NCP § 300.5, and generally includes substances designated as hazardous or toxic under section 311(b)(2)(A) of the CWA, section 102 of CERCLA, section 3001 of the Resource Conservation and Recovery Act, section 307(a) of the CWA, section 112 of the Clean Air Act, or section 7 of the Toxic Substances Control Act. Today's proposal does not alter the definition of "hazardous substance."

The OPA expands federal response authority within the framework established by the CWA for discharges of oil and releases of CWA hazardous substances; CWA section 311(c) authority does not extend to substances designated only under the other statutes listed above. The CWA authorizes the designation of hazardous substances in sections 307(a) and 311(b)(2)(A). Since the CWA became law in 1972, some 400 substances have been listed as hazardous under its provisions (see 40 CFR part 116).

CWA section 311(c) authorizes the President to direct the response to a discharge of oil or release of a CWA hazardous substance "(i) into or on the navigable waters; (ii) on the adjoining shorelines to the navigable waters; (iii) into or on the waters of the exclusive economic zone; or (iv) that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States." (A release that meets the above criteria will hereafter in this preamble be referred to as a release "to navigable waters.") Under CWA section 311(c)(2), if an actual or threatened discharge or release poses a substantial threat to the public health or welfare of the United States, the President is required to direct the response.

General (Section 300.400)

To acknowledge the statutory authority for the changes to CWA section 311 regarding hazardous substances discussed immediately above, EPA has added in today's proposal a reference to CWA section 311(c) to clarify that it is a source of authority for some of the requirements set forth in this subpart.

Discovery or Notification (Section 300.405)

EPA is proposing to add language to this section that clarifies how a release may be discovered and how certain releases may be reported. New § 300.405(a)(7) would recognize that certain hazardous substance releases may be discovered through reports submitted in accordance with section 311(b)(5) of the CWA. Section 300.405(f)(3) would state that notification of the Radiological Response Coordinator in the case of a release involving radioactive material may be accomplished directly by the OSC or through the NRC.

Removal Site Evaluation (Section 300.410)

In the event of an actual or threatened release of a hazardous substance to navigable waters, § 300.410(e) (1) and (2) of today's proposed rule would require the OSC to determine (1) if the hazardous substance is a CWA hazardous substance; and (2) if so, whether the actual or threatened release may pose a substantial threat to the public health or welfare of the United States. If the first condition is met, the OSC may choose to direct all federal, state, and private actions to remove the release. If both conditions are met, the OSC is required to direct response efforts. The OSC must make these determinations for every release of a hazardous substance to navigable waters that is being evaluated for a possible removal action.

The framework provided in today's proposal for identifying and responding to actual or threatened releases of CWA hazardous substances to navigable waters that may pose a substantial threat to the public health or welfare of the United States is consistent with the proposal included in subpart D, where the same process is described with respect to oil discharges.

Identifying a Release Posing a Substantial Threat to the Public Health or Welfare of the United States

In determining whether the actual or potential release may pose a substantial threat to the public health or welfare of the United States, the OSC should focus on the broad factor categories cited in the legislation for identifying "substantial threats." These are the size of the release, character of the release, and public health or welfare of the United States (including fish, wildlife, other natural resources, and beaches and shorelines). However, the new CWA authority leaves open the possibility that other factors may be considered, as well. EPA's intent is to provide a reliable framework for determining which releases may present a "substantial threat," but to give the OSC discretion to decide whether a specific release or threat of release results in a substantial threat to the public health or welfare of the United States. A more expansive discussion of identifying substantial threats is given in the preamble discussion to § 300.322 in subpart D. That discussion is applicable in the case of a release of a CWA hazardous substance to navigable waters as well, because EPA believes the response procedures discussed there generally are effective for hazardous substance releases.

This conceptual framework would be included in proposed § 300.410(e), which describes procedures for determining whether an actual or threatened CWA hazardous substance release to navigable waters may pose a substantial threat to the public health or welfare of the United States. The remaining paragraphs in this section have been renumbered accordingly. (Changes made to new § 300.410(h) are the result of other changes made by the OPA in the area of natural resources. Discussion of natural resource-related changes is in the preamble discussion for subpart G.)

Removal Action (Section 300.415)

Currently NCP § 300.415 describes a general pattern of response that an OSC must follow in conducting a hazardous substance removal action. However, the process outlined leaves considerable

[3] The OPA actually refers to "discharges" of hazardous substances, rather than "releases." The NCP has for some time, however, defined "discharge" to refer only to oil and "release" to refer to hazardous substances, pollutants, and contaminants. This was done to simplify the regulatory language and eliminate the need to continually modify the term "discharge" with "of oil" or "of CWA hazardous substances." Thus, the NCP will use the term "release" when discussing OPA requirements regarding CWA hazardous substances, but will modify it as appropriate to clarify that those requirements do not apply to the complete universe of CERCLA hazardous substances.

discretion with the OSC in carrying out response efforts. First, the lead agency reviews the removal site evaluation. If a responsible party is known, an effort is made to determine whether it can and will perform the necessary removal action promptly and properly. If the responsible party does not perform the removal, the lead agency may take any appropriate removal action to abate, prevent, minimize, stabilize, mitigate, or eliminate the release or the threat of release.

EPA has re-examined these response procedures and concluded that, for actual or threatened releases of CWA hazardous substances to navigable waters that may pose a substantial threat to the public health or welfare of the United States, additional measures would further enhance the ability of the federal government to ensure immediate and effective response. A new paragraph (c) is proposed to be added to § 300.415 (and the remaining paragraphs renumbered accordingly) to describe additional response procedures for actual or threatened "substantial threat" releases. Specifically, proposed § 300.415(c) requires that if the actual or threatened release is identified as posing a substantial threat to the public health or welfare of the United States, the OSC shall assess opportunities for the use of various special teams and other assistance described in § 300.145, as appropriate. These special teams are capable of providing public affairs assistance, communications support, advice, and assistance for oil and hazardous substance removal; have knowledge of shipboard damage control; have access to specialized containment and removal equipment; and have rapid transportation available. Special teams also include the ERT, established by EPA in accordance with its disaster and emergency responsibilities. The ERT has expertise in treatment technology, biology, chemistry, hydrology, geology, and engineering. Other available assistance includes the NSFCC and USCG DRGs (see § 300.145), both of which can provide technical assistance, equipment, and other resources that may be needed by an OSC. NOAA can also provide SSCs, which provide specialized expertise on coastal environmental considerations for spill response and planning, including spill trajectory modeling, environmental consequences of removal countermeasures, chemical analyses, information management, and response strategies that minimize environmental impact.

In addition, proposed § 300.415(c) would require the OSC to request that the RRT be activated immediately and authorizes whatever additional response actions are deemed appropriate.

Proposed § 300.415(c) also provides that, in the case of a substantial threat to the public health or welfare, the OSC may request the lead agency or RRT to dispatch appropriate personnel to the scene of the release to assist the OSC with technical support and public information and interagency coordination efforts. It is anticipated that the OSC will identify in advance those activities that can be performed by others, and then assign such activities to appropriate personnel.

This added support is particularly important when a substantial threat to the public health or welfare of the United States exists because such a situation is likely to be of increased interest and concern to the media and the public. In these situations, the significant effort required to keep all parties adequately informed of the circumstances of the release and the response measures taken should not fall on the OSC. These other officials will be able to serve as a focal point for satisfying the demands for information on the status of the response from the press, local, state, and national elected officials, and the public. Thus, the additional staffing can help insulate the OSC from competing time demands that might otherwise divert the OSC's attention from directing response operations.

Proposed § 300.415(c) would require the lead agency to send a contracting officer to the scene of the release at the request of the OSC. Although EPA recognizes that CWA section 311(c)(2)(B), as amended by OPA section 4201(a), eliminates the obligation to comply with all customary contractual procurement restrictions, this requirement is included to facilitate expedited contracting agreements that may be required due to the nature of the incident.

EPA is proposing to add the word "CERCLA" to all relevant removal action references in order to distinguish these actions from CWA removal actions.

Finally, worst case discharges and SONS are not discussed in subpart E, as they are in subpart D. The OPA created worst case discharges only in relation to oil discharges, not releases of hazardous substances or pollutants or contaminants. Similarly, the new spill classification of SONS, as proposed in § 300.323 of today's rule, would apply only to oil discharges.

Subpart G—Trustees for Natural Resources

Section 1006 and other sections of the OPA address natural resource damages resulting from oil spills and the role of trustees. These new statutory provisions necessitate certain changes to subpart G and other subparts of the NCP, and also require the promulgation of new damage assessment regulations. The latter regulations were promulgated by NOAA, in consultation with EPA, FWS, and the heads of other affected agencies, in a separate advance notice of proposed rulemaking (see 55 FR 53478, December 28, 1990).

Section 1006 of the OPA provides that liability for natural resource damages shall be to the United States Government, a state government, an Indian tribe, or to a foreign government. Natural resource trustees can claim monetary damages from responsible parties for injury to, destruction of, loss of, or loss of use (including subsistence use and revenues) of such resources. Federal officials authorized by the President and the authorized representatives of Indian tribes, state, and foreign governments act as public trustees to recover damages for injury to natural resources under their trusteeship.

The OSLTF can be used for initiating the assessment of natural resource damages and for developing and implementing plans for restoration by federal, state, and Indian tribal trustees. OPA section 6002(b) provides for immediate funding to initiate the assessment of natural resource damages without appropriation. All requests to the NPFC for payment for this activity must be made through the lead federal trustee designated at the time of the incident. Procedures for funding the initiation of natural resource damage assessment are covered in 33 CFR subchapter M.

Foreign trustees are newly designated under OPA section 1006(b). The trustees assess natural resource damages and develop and implement plans for restoring, rehabilitating, replacing, or acquiring equivalent natural resources under their trusteeship. Restoration plans developed by OPA trustees are subject to public notice, comment, and opportunity for hearing.

Designation of Federal Trustees (Section 300.600)

Currently, subpart G lists section 311(f)(5) of the CWA as one of the relevant authorities for trustee activities. Section 2002(a) of the OPA excludes the applicability of section 311(f) to oil spills governed by the liability

provisions in section 1002. At the same time, OPA section 1006 provides new authority for trustee designation and functions under the OPA. Therefore, today's revision proposes to add references to OPA section 1006. The current CWA provision in section 311(f) continues to provide authority in the case of discharges for which there is CWA liability, rather than OPA liability.

The language concerning natural resources in § 300.600 (a) and (b) is proposed to be changed to track more closely the definition of natural resources contained in section 1001 of the OPA. In addition, the term "protected" is proposed to be replaced by "controlled" throughout this section to more accurately reflect the trustees' responsibilities for natural resources.

Section 300.600(b) describes the situations under which natural resource trustees are authorized to act pursuant to section 107(f) of CERCLA, section 311(f)(5) of the CWA, and section 1006 of the OPA. Each trustee has responsibilities for protection of resources; mitigation and assessment of damage; and restoration, rehabilitation, replacement, or acquisition of resources equivalent to those affected. In these roles, trustees are responsible for providing advice to the OSC on environmental issues, including appropriate removal countermeasures, that should be considered in the ACP; for providing timely recommendations to the OSC during an incident for the application of various removal countermeasures; for initiating a preliminary survey of the area affected by a discharge to determine if trust resources are, or potentially may be, affected; and for carrying out a damage assessment of the area in order to recover monies to restore, rehabilitate, replace, or acquire equivalent natural resources. Preplanning and coordination for both response and damage assessment activities are specifically required at the regional and area levels, both during the area and regional plan preparation and during specific incidents when coordination must be with the predesignated OSC.

The Department of Commerce description of trustee responsibilities in § 300.600(b)(1) is also proposed to be changed. The phrase "or using" is proposed to be added to indicate that many migrating and/or pelagic species do use the waters navigable by deep draft vessels and tidally influenced waters that are not necessarily found year round, or specifically, in or under the water at all times. This phrase is meant to include natural resources that spend a portion of their life cycle in waters of the U.S. exclusive economic zone feeding, migrating, breeding, or using the area as critical habitats. An example of "using" would be marine mammals that migrate in and out of U.S. waters, feed and breed in U.S. waters, and feed in the open sea and foreign waters. Many species that inhabit or utilize the marine ecosystem, may not be acknowledged as a natural resource protected by the Department of Commerce under the NCP without this language. Finally, the language concerning anadromous fish is proposed to be changed to more accurately reflect the Secretary of Commerce's trusteeship.

State Trustees (Section 300.605)

Today's proposed regulation expands § 300.605, "State trustees," to encourage governors to designate a lead representative to coordinate among all state offices with trustee responsibilities and the RRT and OSC. The lead state trustee's representative (who may serve on the Area Committee) should have ready access to appropriate state officials with environmental protection, emergency response, and natural resource responsibilities. This mechanism will help avoid parallel state damage assessment activities by providing a means for state representatives to have input into federal planning and response efforts.

Foreign Trustees (Section 300.612)

This new provision is proposed to be added to address the language in section 1006 of the OPA recognizing the role of foreign trustees. These trustees are to act on behalf of their governments for natural resources belonging to, managed by, controlled by, or appertaining to those governments.

Responsibilities of Trustees (Section 300.615)

Sections 300.615(c)(2) and 300.615(c)(3) are proposed to be added to reflect the trustee's responsibilities in the event of an oil spill that affects natural resources pursuant to section 1006 of the OPA.

In addition, § 300.615(d)(4) is proposed to be added to reflect the authority of the federal trustees to initiate damage assessments pursuant to OPA section 6002.

Subpart H—Participation by Other Persons

Addition of Statutory Authorities for the Recovery of Oil Response Costs

The focus of this subpart is on those authorities that allow persons other than governments to respond to releases and to recover necessary response costs. Currently, subpart H only addresses participation by individuals, private entities, potentially responsible parties, and foreign entities eligible to submit claims for reimbursement for response actions from the Hazardous Substance Superfund (for example, claims made under CERCLA sections 111(a)(2) and 122(b)(1)). The current subpart H does not address claims for response to discharges of oil.

However, section 1013 of the OPA authorizes reimbursement for responses to discharges of oil from the OSLTF. In today's rule, EPA is proposing to incorporate in subpart H a reference to the procedures that apply to claims made by other persons responding to such discharges (§ 300.700(h)).

The current subpart H is supplemented by 40 CFR part 307, which contains the forms and detailed procedures required by section 112(b)(1) of CERCLA for filing CERCLA response claims. The USCG will in the near future promulgate a similar supplement to today's proposed subpart H, as required by OPA section 1013(e), describing the procedures and operation of the NPFC.

The NPFC can pay uncompensated removal costs and uncompensated damages from the OSLTF pursuant to section 1012(a)(4) of the OPA. Claimants should submit claims to either the designated responsible party or NPFC as specified in advertising. If the responsible party declines to pay the claim or fails to settle the claim within 90 days, then the claim may be submitted to the NPFC. Any claims received by agencies other than the NPFC should be immediately forwarded to the NPFC.

Questions regarding claims should be referred to the NPFC. However, if a responsible party/guarantor has advertised for claims, potential claimants can be referred directly to the responsible party/guarantor. If any third party interest in filing claims is noted or expected as a result of an incident, the NPFC case officer should be notified promptly.

The language in § 300.700(a) concerning both OPA and CERCLA response actions is also proposed to be changed. Section 300.700(a) currently provides that any person may undertake a response action to reduce or eliminate a release of a hazardous substance, pollutant, or contaminant. Today's proposed rule would place limits on this authority pursuant to language contained in CWA section 311(c)(2) which requires the Federal Government to direct discharges posing a substantial threat to the public health or welfare of the United States.

Subpart J—Use of Dispersants and Other Chemicals

Section 311(d)(2)(G) of the CWA, as amended by the OPA, requires that the NCP include a schedule identifying "dispersants, other chemicals, and other spill mitigating devices and substances, if any, that may be used in carrying out" the NCP. Currently, the use of dispersants, other chemical agents, and bioremediation agents to respond to oil spills in U.S. waters is governed by subpart J of the NCP (40 CFR 300.900).

Section 300.910 of subpart J concerns the authorization of the use of products on the NCP Product Schedule and specifies the conditions under which OSCs may authorize the use of dispersants, other chemicals, and other spill control agents. Under existing § 300.910(a), OSCs may authorize the use of products on the Product Schedule, with the concurrence of the EPA and state representatives to the RRT and, when practicable, in consultation with the DOC and DOI natural resource trustees.

Sections 300.915 and 300.920 describe the data requirements and the process for adding products to the Product Schedule. To list a product on the Schedule, subpart J currently requires a manufacturer to submit technical data on the product to EPA. Data on dispersants, surface collecting agents, and miscellaneous oil spill control agents must include the results of the Revised Standard Dispersant Toxicity Test set for these products in appendix C of the NCP. Data on dispersants must also include the results of the Revised Standard Dispersant Effectiveness Test, also set forth in appendix C. These tests may be conducted at the expense of the manufacturer and may be performed by any qualified laboratory.

The raw data and a summary of the results from these tests are then submitted to EPA, where they are reviewed to confirm that the data are complete and that the specified procedures were followed. Generally, EPA does not confirm these data in independent tests. The data requirements for placement of a product on the Product Schedule are designed to provide sufficient data for OSCs to judge whether and in what quantities a product may be used to control a particular discharge.

Inclusion of a product on the Product Schedule means only that the data submission requirements have been satisfied. The listing of a product on the Schedule does *not* mean that the product is recommended or authorized for use on an oil discharge. In addition, placement of a product on the Product Schedule does not imply that EPA has confirmed the safety or effectiveness of the product or in any other way endorsed the product for the use listed or for other uses. The purpose of the standardized testing procedures set forth in appendix C is to ensure that OSCs have comparable data regarding the toxicity, effectiveness, and other characteristics of different products.

Other Spill Mitigating Devices and Substances

Section 4201 of the OPA amends CWA section 311(c)(2)(G) (now section 311(d)(2)(G)) to add "other spill mitigating devices and substances" to the items that may be identified by the NCP Product Schedule. Consequently, EPA is proposing to revise subpart J to include "other spill mitigating devices and substances." Specifically, the phrase "other spill mitigating devices and substances" is being added to § 300.900(a).

EPA interprets the phrase "other spill mitigating devices and substances" to include certain products that are currently listed under the miscellaneous oil spill control agent category on the Product Schedule. EPA believes that Congress' primary intent in regulating products under the NCP Product Schedule is to protect the environment from possible deleterious effects caused by the application of these products. As stated in the Conference Report for the OPA (H.R. Rep. 101–653, 101st Cong., 2d Sess. at p. 147 (1990)), in preparing the NCP Product Schedule, "the President should consider the long- and short-term effects on the environment of spill mitigating devices and substances, and select those which are least harmful to the environment." Therefore, EPA is not interpreting the phrase "other spill mitigating devices and substances" to include mechanical devices such as pumps, booms, or skimmers, which present no such environmental dangers through their use. Although EPA believes that the use of mechanical devices, by themselves, will not create deleterious effects on the environment, commenters are encouraged to provide information on whether and how the improper use of these devices could result in negative environmental effects.

Preauthorization of Product Use and the Role of Area Committees

Section 300.910 sets forth the provisions for the authorization of the use of products on the NCP Product Schedule by OSCs in response to oil spills. Under existing § 300.910(e), RRTs are encouraged, as part of their contingency planning efforts, to make preauthorization decisions with respect to the use of certain dispersants or chemical agents in their area of geographical responsibility. If the appropriate state RRT representatives and the DOC and DOI natural resource trustees approve in advance the use of certain products under specified circumstances, the OSC may authorize the use of the products when a spill occurs without obtaining specific concurrences. The preauthorization of the use of regulated products by OSCs is currently an optional process. In the past, the preauthorization option under § 300.910(e) has been used relatively infrequently. Although some RRTs have developed preauthorization plans for the use of products in response to oil spills, the overall election to make use of this option has been less comprehensive than EPA envisioned when this provision was developed.

As discussed previously, the OPA amended the CWA to create a system of Area Committees, which are to consist of members appointed by the President from qualified personnel of federal, state, and local agencies. The statute expands the existing planning and response framework by creating an area-level planning and coordination structure, with the Area Committees and ACPs as the primary features of this structure. Under the CWA, Area Committee responsibilities include enhancing contingency planning and ensuring preplanning of joint federal, state, and local response efforts, and expediting decisions on the use of dispersants and other spill mitigating devices and substances. The ACPs must, among other things, include a list of the equipment, dispersants or other spill mitigating devices and substances, and personnel available to ensure an effective and immediate removal of a discharge and to ensure mitigation or prevention of a substantial threat of a discharge, and a description of the procedures to be followed for obtaining an expedited decision regarding the use of dispersants (see CWA section 311(j)(4)).

Because preauthorization can promote timely action in response to an oil spill, EPA is proposing to make the existing preauthorization option mandatory. Existing § 300.910(e) would be revised and moved to become new § 300.910(a). Given the creation of the system of Area Committees mandated by the OPA, EPA is proposing to revise new § 300.910(a) to require that the Area Committees be actively involved in the preauthorization process. Under this new paragraph, RRTs and Area Committees, as part of their planning activities, must address the desirability

of using appropriate products on the Product Schedule and the desirability of using appropriate burning agents. In addition, the results of this planning should address, in either the RCP, ACP, or a corresponding preauthorization plan, the specific contexts in which these products should and should not be used. This provision, however, would not require RRTs and Area Committees to specifically address the use of every product on the Product Schedule in their RCPs, ACPs, or corresponding preauthorization plans.

Section 300.910(a) also is proposed to be revised to authorize the RRTs to review and either approve, disapprove, or approve with modification the preauthorization plans developed by Area Committees, as appropriate. EPA believes that the RRTs should serve in an advisory and approval role regarding preauthorization plans developed by the Area Committees because the RRTs' expertise in oil spill response would be a valuable asset in the development of these preauthorization plans. In conducting the preauthorization process described in new § 300.910(a), the RRTs and Area Committees should work together closely. In order to facilitate the best possible response, it is important that the regional-level and area-level contingency planning efforts of the RRTs and Area Committees, respectively, are coordinated closely with each other and are consistent.

In addition, for the sake of consistency with the case-by-case authorization process described in new paragraphs (b), (c), and (d) of § 300.910, EPA is proposing to revise § 300.910(a) to require approval by the EPA RRT representative (in addition to the state representative's approval now required) for certain products under specified circumstances, as described in the preauthorization plan. This would allow the OSC to authorize the use of these products when a spill occurs without having to obtain specific concurrences in situations where time is of the essence.

In a number of instances (e.g., in the inland waters), RRTs may fulfill the role of the Area Committees. In these instances, coordination between the two separate entities will be facilitated to the extent the RRT addresses both regional-level and area-level contingency planning.

Revised § 300.910(a) states that preauthorization plans may address, but should not be limited to, factors such as the potential sources and types of oil that might be spilled, the existence and location of environmentally sensitive resources that might be impacted by spilled oil, available dispersants and storage locations, available equipment and adequately trained operators, and the available means to monitor dispersant application and effectiveness. RRTs and Area Committees also may want to consider the use of a zoned approach in the development of preauthorization plans. A number of existing preauthorization plans use criteria to classify coastal waters into three dispersant use zones that are defined by ocean depth, currents, biological parameters, nearshore human activities, and time required for response. When developing preauthorization plans, RRTs and Area Committees also should take into account the provisions in the Fish and Wildlife and Sensitive Environments Plans that will be incorporated into each ACP.

EPA also would like to stress that the OPA seeks to expedite preauthorization decisions. These decisions can be negative; for example, areas may be designated in which the use of certain dispersants or other spill mitigating devices and substances is prohibited.

As a result of the proposed reorganization of § 300.910 to emphasize preauthorization in the use of products on the NCP Product Schedule, existing § 300.910(a) would be moved to become new § 300.910(b). This paragraph is proposed to be revised to clarify that the case-by-case authorization provisions apply only to spill situations that are not addressed in a preauthorization plan. Existing paragraphs (b), (c), and (d) of § 300.910 would be moved to become new paragraphs (c), (d), and (e) of the same section, respectively. The language of new § 300.910(d) is proposed to be reworded for the sake of clarity.

Additional Testing and Data Requirements

EPA is proposing to add new § 300.910(f) to clarify the authority of the RRTs regarding the testing and data requirements for listing products on the NCP Product Schedule. This new provision would specifically allow the RRTs, when developing preauthorization plans, to require the performance of supplementary toxicity and effectiveness testing in addition to the test methods specified in § 300.915 and described in appendix C. For example, RRTs could require manufacturers to conduct additional dispersant effectiveness testing using grades of oil other than that which is specified by the dispersant effectiveness test method or could require additional toxicity testing on test species other than those designated under the stipulated toxicity test method. This supplementary testing might be required because of existing site-specific or area-specific concerns, such as the existence of a sensitive indigenous species that plays a critical role in the local sensitive environment or has special commercial value.

EPA is clarifying the authority of the RRTs concerning product testing requirements to provide more relevant information to RRTs for their response and contingency planning efforts. The test methods described in appendix C are intended to provide a basic set of test procedures that will provide baseline data for comparison of products on a national basis. The new provision now would specifically provide that RRTs may require supplementary effectiveness and toxicity testing in order to obtain data that will be more specific and relevant to the area-specific and site-specific conditions of spills for which they are responsible.

NCP Product Schedule Listing Process

Since the *Exxon Valdez* spill, nearly 60 products have been added to the NCP Product Schedule, bringing the total number of products on the Schedule to nearly 100. Because of this proliferation of products on the Schedule, there has been increased interest among users, particularly OSCs, for the establishment of some type of criteria to limit the products considered in a given spill situation. As a result, EPA is today proposing to revise the process under which some products, specifically dispersants, are listed on the Product Schedule. These proposed revisions to the listing process, which may result in a reduction of the number of products on the Schedule, are designed to provide more useful and reliable data to OSCs.

In order to place a dispersant on the NCP Product Schedule, subpart J currently requires that the manufacturer conduct specific toxicity and effectiveness tests and submit the corresponding technical product data to EPA. However, subpart J does not require that any minimum standards or criteria be met for a dispersant to be listed on the Schedule. Given the recent proliferation of products on the Schedule, including dispersants, EPA is proposing to establish an effectiveness[4] threshold or acceptability criterion for listing dispersants on the NCP Product Schedule.

Only those dispersants that meet or exceed the established effectiveness

[4] The effectiveness of an oil dispersant is measured by its ability to disperse a surface slick of oil into the water column and to hold the emulsion there.

threshold would be listed on the Schedule. EPA is not proposing to establish a threshold or acceptability criterion for dispersant toxicity because toxicity tends to be more relative. Also, EPA believes that the best approach to regulating dispersants is to provide OSCs and Area Committees with the toxicity data and allow them to make decisions on dispersant use by weighing the toxicity data against the effectiveness data for those dispersants that meet or exceed the effectiveness threshold. For example, in a particular location of possible dispersant use, an OSC may opt to use or an Area Committee may preplan for the use of a highly effective, but highly toxic dispersant. In a different location, the OSC or Area Committee may decide to use a moderately toxic, but less effective dispersant. In either situation, the OSC and Area Committee would know that the selected dispersant, at the very least, meets the level of effectiveness established by the effectiveness acceptability criterion.

EPA is also proposing to change the manner in which the required dispersant effectiveness and toxicity tests are performed. Subpart J currently requires that dispersant manufacturers arrange with qualified laboratories to conduct the specified effectiveness and toxicity tests for their products. However, given the establishment of an effectiveness acceptability criterion for dispersants, EPA believes it is necessary to maintain as much consistency and reproducibility in the dispersant effectiveness testing results as possible. Therefore, EPA believes that it is appropriate for EPA to conduct the required effectiveness tests for dispersants.

Only those dispersants that meet or exceed the established effectiveness acceptability criterion, and are therefore eligible to be listed on the Schedule, would be tested for toxicity, in accordance with the required toxicity testing protocol discussed below. Due to the fact that toxicity tests would be performed only on those dispersants that attain or exceed the effectiveness threshold, EPA is also proposing that EPA conduct the required dispersant toxicity tests.

Dispersant manufacturers are still required to submit to EPA the other technical product data specified in § 300.915(a), along with a two-liter sample of their product for the purposes of EPA performing the required effectiveness and toxicity tests.

EPA is focusing its efforts concerning revisions to the listing process and the establishment of effectiveness acceptability criteria on dispersants because these products constitute a large portion of the products on the Schedule (i.e., there are over 40 dispersants currently listed on the Schedule). In addition, effectiveness testing protocols for dispersants are more numerous and well established. EPA envisions that the proposed listing process for dispersants will serve as a model or pilot program, and that effectiveness acceptability criteria for the other categories of products (such as surface washing agents or bioremediation agents) will be established under subpart J when the effectiveness testing protocols for these products are standardized or validated. Accordingly, effectiveness testing protocols are currently being developed for other categories of products, but are not being proposed today.

Dispersant Acceptability Criterion

As discussed above, under existing subpart J there is no requirement that the percent effectiveness of a dispersant be above a certain threshold value in order for the dispersant to be listed on the Schedule. When compared to the requirements of other countries, this lack of an established minimum effectiveness level for dispersants represents the exception rather than the rule. For example, Brazil and Canada require effectiveness values of 50 percent or greater, while France and Norway require values of 60 percent or greater. In China and Japan, dispersant effectiveness must be 60 percent or greater after a 30-second mix time, and 20 percent or greater after a 10-minute mix time.

EPA is proposing to establish a 50 percent effectiveness acceptability criterion for listing dispersants on the NCP Product Schedule. EPA believes that the 50 percent threshold strikes an effective balance between restrictiveness and leniency in listing dispersants on the Schedule, is generally consistent with the effectiveness thresholds established by other countries, and allows for a broad range of dispersants at various levels of technical development to be used. Also, Paragraph 1 of Article 604 of the 1988 U.S.-Canada Free Trade Agreement states that "to the greatest extent possible, and taking into account international standardization activities, each Party shall make compatible its standards-related measures and procedures for product approval with those of the other Party." As discussed above, Canada uses a dispersant effectiveness threshold of 50 percent.

EPA recognizes that some degree of variability will be inherent in the dispersant effectiveness test results. In order to allow for this variability, EPA is proposing to establish the dispersant effectiveness acceptability criterion at 50 percent, plus or minus 5 percent. In other words, a dispersant tested in accordance with the required Swirling Flask testing protocol (discussed below) would have to attain an effectiveness value of 45 percent or greater (i.e., 50 percent minus 5 percent) to be listed on the Product Schedule.

It should be noted that dispersants currently listed on the Product Schedule also would have to attain an effectiveness value of 45 percent or greater to continue to be listed on the Schedule. Dispersants currently listed on the Schedule would remain on the Schedule until EPA has conducted the necessary tests. After these tests have been performed, manufacturers of those dispersants that do not attain an effectiveness value of 45 percent or greater would be notified in writing by EPA that, within a specified period of time, their dispersants will be removed from the Product Schedule.

EPA is proposing to add new § 300.920(a) to revise the listing process for placing dispersants on the Product Schedule and to establish the 45 percent effectiveness acceptability criterion. Existing paragraphs (a) and (b) of § 300.920 are being revised to become new § 300.920(b). As is currently the case, manufacturers of products other than dispersants need only submit the technical product data required by § 300.915 to have those products listed on the Product Schedule.

After EPA has received the required technical product data and a two-liter sample of the dispersant from the manufacturer, EPA would conduct the required Swirling Flask effectiveness test, as specified in appendix C to the NCP. EPA would then conduct the required dispersant toxicity test, as specified in appendix C, but only for those dispersants that attained an effectiveness value of 45 percent or greater.

EPA is also proposing to add new § 300.920(a)(5) to establish a process for those dispersant manufacturers that may disagree with EPA's decision to not list their dispersants on the Product Schedule. Within 30 days of receipt of EPA's notification to not list the dispersant on the Schedule, the manufacturer would have to submit in writing to the Administrator of EPA a clear and concise statement with supporting facts and technical analysis demonstrating that EPA's decision was incorrect. The Administrator or a designee may request additional information from the dispersant manufacturer, or any other person, and

may provide for a conference between EPA and the manufacturer, if appropriate. The Administrator or a designee would render a final Agency decision within 60 days of receiving the statement (or within 60 days of receiving requested additional information, if appropriate).

Existing paragraphs (a)(7), (8), and (12) of § 300.915 are proposed to be revised, and new § 300.920(a) is proposed to be added, to state that EPA will perform the required effectiveness and toxicity tests for dispersants. In addition, the order of existing paragraphs (a)(7) and (8) of § 300.915 is proposed to be reversed to reflect the order in which the tests will be performed by EPA (i.e., the dispersant effectiveness test will be performed before the dispersant toxicity test). Consistent with current EPA policy, manufacturers of products other than dispersants will be required to arrange for qualified laboratories to perform the specified effectiveness and toxicity tests for their products.

Dispersant Effectiveness Testing Protocol

Dispersants are defined in § 300.5 of the NCP as "those chemical agents that emulsify, disperse, or solubilize oil into the water column or promote the surface spreading of oil slicks to facilitate dispersal of the oil into the water column." Section 300.920 of the NCP currently requires that the Revised Standard Dispersant Effectiveness Test (RSDET) be performed and the test data be submitted to EPA in order for a dispersant to be placed on the NCP Product Schedule. The objective of this test is to measure the degree of dispersion that each particular chemical produces.

EPA, USCG, and other federal agencies have expressed a number of concerns regarding this effectiveness testing protocol, including: Skepticism about whether No. 6 fuel oil is readily dispersable; concern that the oil/water ratios are unrealistic; questions regarding the stability of the dispersion during the testing procedure; and concern that the energy levels utilized in the test are unrealistic. Also, the test is classified as a pumped tank type of test, which can create local regions of extremely high shear conditions that may cause misleading test results. The RSDET procedure is also cumbersome and relatively expensive because it requires specialized laboratory equipment, relatively skilled laboratory technicians, and a substantial amount of laboratory time, and it results in a large volume of wastewater.

A number of laboratory studies have been performed to compare the test results from different effectiveness testing apparatus and procedures. Reviews of these results demonstrate that there are poor correlations in effectiveness data among the various test methods. Several recent studies have indicated that this lack of correlation is a function of settling time, energy applied, natural dispersion, and the oil-to-water ratio used in the apparatus.[5] When these parameters are adjusted, however, test results from most apparatus are similar. This suggests that a simple, repeatable, and fast test can be chosen to make determinations of dispersant effectiveness.

Currently, over 35 dispersant effectiveness testing protocols have been developed, and approximately ten are used worldwide today. Approximately five dispersant effectiveness field tests have also been developed.[6]

Considering the wide range of effectiveness tests available, and the relative advantages and disadvantages of each, EPA convened a panel of experts to address the issue of dispersant effectiveness. In April 1991, U.S and international experts were invited to EPA's facility in Edison, NJ to discuss the current state-of-the-art on dispersant use and effectiveness. Over 45 scientists attended, representing the U.S., Canada, the United Kingdom, France, Norway, and the Netherlands. As a result of this meeting, EPA initiated a laboratory evaluation of three dispersant effectiveness testing protocols that were recommended by the meeting participants.

The three effectiveness tests that were reviewed in detail were the RSDET, the Swirling Flask test (used by researchers in Canada and expected to be adopted as the Canadian standard regulatory test), and the IFP-Dilution test (used in France and Norway). Six test oils and three dispersants were evaluated in varying combinations using these three effectiveness testing protocols. Screening efforts were used to focus on the most appropriate oil/dispersant combination for detailed study; that combination was determined to be Prudhoe Bay crude oil and the dispersant Corexit 9527. This combination is also the most likely to be encountered in real-world situations in U.S. coastal waters.

The conclusions reached by EPA through this research were that the three testing protocols produce similar effectiveness results, but that the Swirling Flask test is faster, less expensive, simpler, and requires less operator skill. Table 1 presents a summary of the data obtained by EPA through its evaluation of the dispersant effectiveness testing protocols. A copy of the report documenting this research, entitled *Chemical Oil Spill Dispersants: Evaluation of Three Laboratory Procedures for Estimating Performance*, is available in the public docket for today's proposed rule.

TABLE 1.—SUMMARY DATA FOR DISPERSANT EFFECTIVENESS TESTING PROTOCOLS

Test method	Estimate of dispersant effectiveness (% RSD)	Test runs/8 hours	Total equipment costs	Cost/test run	Complexity of protocol	Required operator skill level
RSDET	<35	2	$2,280	$600	High	High.
Swirling Flask	<35	24–36	1,225	21	Low	Low.
IFP-Dilution	<35	4–5	3,160	195	Medium	Medium.

[5] See: Fingas, Mervin F., Mark A. Bobra, and Ronald K. Vellcogna, *Laboratory Studies on the Chemical and Natural Dispersability of Oil. Proceedings of the 1987 Oil Spill Conference*, American Petroleum Institute, Washington, D.C., 1987, pp. 241–246; and Clayton, John R. Jr. and James R. Payne, *Chemical Oil Spill Dispersants: Update State-of-the-Art on Mechanisms of Actions and Factors Influencing Performance with Emphasis on Laboratory Studies*, Final Report prepared by Science Applications International Corporation for U.S. Environmental Protection Agency, 1992.

[6] See: Clayton, John R. Jr., Siu-Fai Tsang, Victoria Frank, Paul Marsden, and John Harrington, *Chemical Oil Spill Dispersants: Evaluation of Three Laboratory Procedures for Estimating Performance*, Final Report prepared by Science Applications International Corporation for U.S. Environmental Protection Agency, 1992; available in the public docket for this rulemaking.

Based on the results of this research, EPA is proposing to change the dispersant effectiveness testing protocol required by subpart J from the RSDET to the Swirling Flask test. The Swirling Flask test specifies the use of both Prudhoe Bay crude and South Louisiana crude oils. The final percent effectiveness value under this testing protocol is an average of the values achieved for each of these two test oils. New § 300.915(a)(7) and appendix C to the NCP is proposed to be revised to reflect this change; appendix C would include a description of the Swirling Flask testing protocol.

EPA recognizes that there may be other dispersant effectiveness testing protocols, either for laboratory or field use, that may warrant further investigation. Commenters are encouraged to provide information regarding any such testing protocols.

Dispersant Toxicity Testing Protocol

The major objective of toxicity testing is to provide data on the relative toxicities of chemicals on commonly used test species under standardized conditions. Subpart J of the NCP currently requires that toxicity tests be conducted on dispersants, surface collecting agents, and miscellaneous oil spill control agents using the Revised Standard Dispersant Toxicity Test.

For this test, saltwater mummichogs (*Fundulus heteroclitus*) and brine shrimp (*Artemia salina*) are used to determine the toxicity of the chemical being tested. In addition, tests are conducted to determine the toxicity of No. 2 fuel oil alone and in a 1:10 mixture of chemical to oil. In order to determine the toxicity of the test chemicals, various concentrations of these chemicals are prepared using a synthetic seawater solution as a standard medium. As an aid in comparing results from different laboratories, a toxicity test is also conducted using a reference chemical toxicant, dodecyl sodium sulfate (DSS). Control tests, which expose the organisms to the seawater solution alone, are also conducted.

At the end of the specified test period, a Median Lethal Concentration, or LC_{50}, is calculated using the observed mortalities of the organisms from the toxicity tests. An LC_{50} is the concentration of a particular test material (chemical, oil, or mixture) that is lethal to 50 percent of the organisms over the course of the test. Using the LC_{50} data, the toxicity of a chemical can be compared to that of oil and a mixture of the two. The relative toxicities of various chemicals (dispersants, surface collecting agents, and miscellaneous oil spill control agents) can also be compared.

As discussed above, the Revised Standard Dispersant Toxicity Test utilizes the saltwater mummichog and the brine shrimp as its required test species for fish and invertebrates, respectively. Analytical laboratories, in solicited letters to EPA[7] and industry participants, raised questions at a workshop on dispersant toxicity testing held in New Orleans in 1989[8] concerning the validity and advisability of using these species as the test species for the toxicity testing required by subpart J. Specifically, they suggested that the test species for fish be changed from *Fundulus* to a more commercially available and easily cultured species. The suitability of *Artemia* as the invertebrate test species was also questioned.

The 1990 American Society for Testing and Materials (ASTM) annual publication states that test species should be selected based on availability; commercial, recreational, and ecological importance; past successful use; and ease of handling in the laboratory. In addition to these criteria, the 1989 *Standard Methods for the Examination of Water and Wastewater* notes that the availability of methods for rearing organisms in the laboratory and a knowledge of their requirements should be considered. Although the mummichog is a generally available species in the wild, it is not widely cultured in the laboratory. Consequently, these fish may be obtained from environmentally diverse natural sources and, as a result, have differing sensitivities to, and tolerances of, pollutants. Using such fish as the test species introduces genetic differences, seasonal variations, differences in nutritional state and susceptibility to disease, and variation in availability over the course of a year. This introduces an additional source of variability into the tests, and toxicity data based on such tests are questionable.

As a result, EPA is proposing to change the required fish toxicity test species from *Fundulus heteroclitus* to *Menidia beryllina*, the silverside. Silversides are widely found along the entire United States east and Gulf coasts. A comparable variety of the east and Gulf coast silverside is found along the Pacific coast. In contrast to mummichogs, silversides are easily farmed and cultured in the laboratory, which allows for greater comparability of toxicity data generated by testing silversides. Silversides are also significantly more sensitive to pollutants than are mummichogs, and EPA has existing data concerning the sensitivity of silversides to pollutants.

Conducting toxicity tests on invertebrates is important because of their diversity and abundance in the marine environment, their commercial importance, and their sensitivity to oil and oil-related compounds. There has been some concern expressed by industry that the brine shrimp specified in EPA's standard toxicity test is not a sufficiently sensitive organism. Again, this issue was raised at the 1989 New Orleans workshop on dispersant toxicity testing. Also, the Minerals Management Service noted at this workshop that *Artemia* would not be considered an endemic species for most spills.

Consequently, EPA is proposing to change the required invertebrate toxicity test species from *Artemia salina* to *Mysidopsis bahia*, the mysid shrimp. Mysids are more sensitive to pollutants than are brine shrimp. Mysids are also widely found in U.S. coastal waters and can be easily farmed and cultured in the laboratory.

EPA is proposing to revise the required dispersant toxicity testing protocol contained in appendix C to reflect this change in the specified toxicity test species and to make corresponding technical revisions. The proposed revisions also would require the use of larval fish instead of adult fish. The current requirement that dispersants, surface collecting agents, and miscellaneous oil spill control agents undergo the specified toxicity testing would not be changed. In addition, products proposed for listing under the new surface washing agent category would be required to undergo this toxicity testing. In an attempt to provide OSCs and Area Committees with the most up-to-date and useful data regarding products on the Schedule, EPA also proposes to require that dispersants, surface collecting agents, and miscellaneous oil spill control agents presently listed on the Schedule undergo toxicity testing in accordance with the revised testing protocol.

Surface Washing Agents

Products currently listed on the NCP Product Schedule are divided into four basic categories: Dispersants, surface collecting agents, biological additives,

[7] Copies of these letters may be inspected at the public docket for this rulemaking at Room 2424, U.S. EPA, 401 M St., SW., LG, Washington, DC 20460.

[8] See: Duke, Thomas and Gary Petrazzolo, eds., *Oil and Dispersant Toxicity Testing, Proceedings of a Workshop on Technical Specifications*, U.S. Department of the Interior, New Orleans, January 1989; available for inspection in the public docket for this rulemaking.

and miscellaneous oil spill control agents. Dispersants are those agents that have approximately the same solubility in water and oil and will cause oil to be dispersed into the water column in the form of fine droplets. A number of the products currently listed under the dispersant category on the Product Schedule are surface washing agents (also known as beach cleaning agents) that remove oil from solid surfaces, such as beaches and rocks, through a detergency mechanism and do not involve dispersing or solubilizing the oil into the water column. The mechanisms of dispersion and detergency are quite different, and research has shown that a product that is a good surface washing agent is a poor dispersant and vice versa.[9] Therefore, in order to provide a more accurate and comprehensive list of products available to OSCs during a spill event, EPA is proposing to add a separate category to the NCP Product Schedule for surface washing agents. Those surface washing agents that are currently listed under the dispersant category would be moved to the new surface washing agent category.

EPA is proposing to add new § 300.915(b) to establish the surface washing agent category on the Product Schedule and to define the data requirements that must be satisfied in order to list a surface washing agent on the Schedule. The technical product data requirements for surface washing agents are similar to those required for dispersants, with the exception of the required effectiveness testing protocol. EPA has conducted research on various surface washing agent effectiveness testing protocols and may propose a required effectiveness testing protocol for surface washing agents at a later date.

Existing paragraphs (b), (c), (d), and (e) of § 300.915 would be moved to become new paragraphs (c), (d), (e), and (f) of the same section, respectively. Also, a definition of surface washing agents is proposed to be added to § 300.5.

Bioremediation Agents

Existing § 300.915(c) sets out the data requirements that must be satisfied in order to have a biological additive listed on the Product Schedule, specifically either "microbiological cultures" or "enzyme additives." The regulation, however, does not include specific data requirements for "nutrient additives," which are bioremediation agents currently available in the marketplace. In fact, a number of the products currently listed on the Schedule under the biological additive category are nutrient additives. Therefore, for the sake of accuracy and completeness, EPA is proposing to rename new § 300.915(d) "Bioremediation Agents" and to add new § 300.915(d)(10) to create a subcategory on the Schedule for "nutrient additives."

New § 300.915(d)(10) would provide specific data requirements for nutrient additives, requiring submission to EPA of a listing of each component of the total formulation, by chemical name and percentage by weight, and the optimum storage conditions. These data are important for OSCs, particularly when making decisions on whether to use a nutrient additive at a particular location.

New § 300.915(d)(9) would combine the data requirements for microbiological cultures and enzyme additives, which are contained in existing paragraphs (c)(8) and (9) of § 300.915, under the heading of "biological additives." EPA is proposing to add new paragraphs (d)(9)(i)(A) and (ii)(A) to § 300.915 to require submission to EPA of a listing of each component of the total formulation of biological additives, other than microorganisms or enzymes, respectively. This data requirement is being added because biological additives currently available in the marketplace are rarely pure microbiological cultures or enzyme additives, and the additional components may be potentially toxic or harmful to the environment.

Also, the definition of "biological additives" in § 300.5 would be revised for clarification and to reflect the changes discussed above. In particular, "* * * for the specific purpose of encouraging biodegradation * * *" would be changed to "* * * and that will significantly increase the rate of biodegradation * * *" to reflect the current definition of bioremediation in the scientific community and to focus on the discernible effect of the agent, rather than on the purpose of its use.

Bioremediation Agent Testing Protocols

Bioremediation agents are defined in the NCP as microbiological cultures, enzyme additives, or nutrient additives that are deliberately introduced into an oil discharge and that will significantly increase the rate of biodegradation to mitigate the effects of the discharge. Currently, to list a bioremediation agent on the NCP Product Schedule, there are no requirements concerning specified effectiveness and toxicity tests. EPA today is proposing to establish required effectiveness and toxicity testing protocols for listing bioremediation agents on the Schedule.

The ability of bacteria to degrade petroleum hydrocarbons has been recognized for decades. Immediately following the *Exxon Valdez* oil spill in March of 1989, EPA and other federal and state agencies received numerous offers of assistance from bioremediation agent manufacturers and vendors. Research conducted by EPA in Prince William Sound, Alaska, following the *Exxon Valdez* spill demonstrated that fertilizer-enhanced microbial communities were highly effective in their ability to degrade the Alaska North Slope crude oil spilled on the beaches.

Since the *Exxon Valdez* spill, there has been an increased focus on the use of bioremediation agents to respond to oil spills. Over 30 bioremediation agents have been listed on the Product Schedule since the *Exxon Valdez* spill. Given this increased focus on the use of bioremediation agents, EPA recognized the need for some type of standard testing protocols to provide baseline data for the comparison of the effectiveness and toxicity of the different bioremediation agents available in the marketplace. At the time of the *Exxon Valdez* spill, however, there were no existing or accepted bioremediation agent testing protocols.

In November 1989, EPA requested that the National Environmental Technology Applications Corporation (NETAC) assemble a panel of scientific experts from all areas involved with bioremediation research to develop standard testing protocols for comparing the effectiveness and toxicity of different bioremediation agents. NETAC is a non-profit corporation created in 1988 under a cooperative agreement between EPA's Office of Research and Development (ORD) and the University of Pittsburgh Trust to assist in the commercialization of innovative environmental technologies.

The laboratory-scale bioremediation testing protocols being proposed today are the first in a series of methods being developed by the Oil Spill Bioremediation Products Protocol Development Panel, which operates under the auspices of the Treatability Protocol Development Subcommittee of the Bioremediation Action Committee (BAC). The BAC is an affiliation of academia, government, and industry representatives who are working

[9] See Fingas, Mervin F., Robert Stoodley, Nanci Stone, Russel Hollins, and Ian Bier, *Testing the Effectiveness of Spill-Treating Agents: Laboratory Test Development and Initial Results. Proceedings of the 1991 International Oil Spill Conference*, Sponsored by U.S. Coast Guard, American Petroleum Institute, U.S. EPA, San Diego, CA, 1991, pp. 411–414; and Fingas, Merv, Gord Stoodley, Gary Harris, and Ariane Hsia, *Evaluation of Chemical Beach Cleaners*, Environment Canada, Ottawa, Ontario.

collectively to expand the responsible use of biotechnology for the prevention and remediation of environmental contamination. The Products Development Panel was assembled and is directed through the efforts of NETAC. NETAC also serves as the chair of the Treatability Protocol Development Subcommittee, and as such, works to facilitate the development of a screening process to determine the remediation capabilities of bioremediation agents or methods. A copy of the report documenting this research, entitled *Oil Spill Bioremediation Products Testing Protocol Methods Manual*, is available in the public docket for today's proposed rule.

The format of the bioremediation agent testing protocols being proposed today is designed to be a generic approach. This results in test parameters, such as shaker speed, water temperature, water composition, and oil type, being set at specific values. Where possible, average or "middle of the road values" were selected for these parameters to allow these protocols to screen a broad product base and to account for a variety of environmental conditions. The objective of these protocols is to provide empirical laboratory evidence that evaluates a bioremediation agent's ability to enhance biodegradation as compared to the natural population and indicates the toxicity of the combined product, oil, and any metabolic by-products.

The bioremediation agent effectiveness testing protocol evaluates product efficacy in the laboratory using shaker-flask studies and standard bioassay analyses. The protocol uses Alaska North Slope crude oil and Gulf Breeze coast seawater, which are both available from NETAC's Bioremediation Products Evaluation Center (BPEC). The effectiveness testing protocol uses both chemical and microbiological analyses to determine product effectiveness at a standard temperature, salinity, and oxygenation by evaluating the following criteria: (1) The relative change in aliphatic and aromatic oil constituents at various time intervals; and (2) the total hydrocarbon degrading microbial activity. The chemical analysis uses a high resolution gas chromatograph/mass spectrometer (GC/MS) because of its high degree of chemical separation and spectral resolution. The microbiological analysis is conducted to determine and monitor the viability of the microbial cultures being studied. Under this procedure, microbial enumerations of hydrocarbon degraders are performed at each sampling event using a microliter Most Probable Number (MPN) determination.

Under the bioremediation agent toxicity testing protocol, toxicity tests are conducted for specific fish (*Menidia beryllina*, silversides) and invertebrate (*Mysidopsis bahia*, mysid shrimp) species on the combined product and oil effluent using 7-day chronic estimator methods. This test represents the least complex dosing regimen suited for the estimation of the chronic effects of a bioremediation agent. The 7-day chronic test will provide an estimate of toxicity relative to survival of the organism and provide measures of toxicity in the form of a no observed effective concentration (NOEC) and lowest observed effective concentration (LOEC). Products are tested alone and in combination with a water-soluble fraction (WSF) of crude oil. The test does not account for toxicity as a function of the physical adherence/trapping of the organism by the product plus an oil slick, and makes the assumption that toxicity to organisms not associated with the slick will be a function of the direct interaction of the organism with the slick and the associated product. The product constituents are reviewed using existing mammalian toxicity data to determine if any special precautions need be taken with application methods, rates, or timing to protect indigenous wildlife.

Based on the results of the research discussed above, EPA is proposing to establish the bioremediation agent testing protocols under subpart J. Paragraphs (7) and (8) of new § 300.915(d) and appendix C to the NCP would be revised to reflect this change; appendix C would include a description of the new effectiveness and toxicity testing protocols. In order to have their products listed on the Product Schedule, manufacturers of bioremediation agents would have to provide to EPA the effectiveness and toxicity data specified by these protocols. In an attempt to provide OSCs and Area Committees with the most up-to-date and useful data regarding products on the Schedule, EPA would also require that biological additives presently listed on the Schedule undergo effectiveness and toxicity testing in accordance with the new bioremediation agent testing protocols.

NETAC has established a facility, the BPEC, that is available for conducting these tests. Product manufacturers or vendors may choose to have their products tested at commercial testing laboratories. If manufacturers or vendors choose to have the required tests performed by commercial laboratories, quality control/quality assurance procedures established by EPA must be met.

The bioremediation agent testing protocols discussed above have undergone verification testing and have been reviewed by an expert panel. EPA is proposing these protocols today and including them in appendix C so that the public may review and comment on them. EPA recognizes that there may be other bioremediation agent effectiveness and toxicity testing protocols, either for laboratory or field use, that may warrant further investigation. Commenters are encouraged to provide information regarding any such testing protocols.

Miscellaneous Oil Spill Control Agents

Existing § 300.915(e) (new § 300.915(f)) sets out the data requirements that must be satisfied in order to have a miscellaneous oil spill control agent listed on the Product Schedule. EPA is proposing to add new § 300.915(f)(4), which requires that manufacturers of miscellaneous oil spill control agents submit to EPA a brief description of the recommended uses of their product and how their product works. EPA believes that, due to the wide range of products included under the miscellaneous category, this is important and valuable information for OSCs to have in their decisionmaking capacity. As a result of this addition, existing paragraphs (e)(4) to (12) of § 300.915 would be moved to become new paragraphs (f)(5) to (13) of the same section, respectively.

Sorbents

EPA does not interpret the phrase "other spill mitigating devices and substances" to include sorbents. EPA believes that the use of sorbents, by themselves, does not create deleterious effects to the environment, and for the same reasons stated above, believes it is inappropriate to include sorbents on the NCP Product Schedule. Consequently, as has been EPA policy in the past, EPA will not regulate sorbents under subpart J. EPA is proposing to add a definition of sorbents to § 300.5, to revise the definitions of chemical agents and miscellaneous oil spill control agents in § 300.5, and to add new § 300.915(g) to clarify that sorbents will not be listed on the Product Schedule.

Sorbents are essentially inert and insoluble materials that are used to remove oil and hazardous substances from water through a variety of sorption mechanisms. Specifically, sorbents work through adsorption (in which the oil or hazardous substance is attracted to the sorbent surface and then adheres to it), absorption (in which the oil or

hazardous substance penetrates the pores of the sorbent material), or a combination of these two mechanisms. Sorbents are generally manufactured in particulate form for spreading over an oil slick or as sheets, rolls, pillows, or booms.

Currently available sorbents usually consist of one or more of the following materials: (1) Organic products, such as peat moss or straw, cellulose fibers or cork, corn cobs, or chicken, duck, or other bird feathers; (2) mineral compounds, such as volcanic ash or perlite, or vermiculite or zeolite; or (3) synthetic products, such as polypropylene, polyethylene, polyurethane, or polyester. Synthetic sorbents are presently more abundant than sorbents composed of either organic products or mineral compounds. A large majority of synthetic sorbents are composed of polypropylene, a plastic-based fiber made from petroleum products.

EPA believes that the use of sorbents does not create deleterious effects to the environment because these materials are essentially inert and insoluble in water and because the basic components of sorbents are non-toxic. The use of sorbents has been part of response efforts to virtually all past oil spills, without causing problems or deleterious effects to the environment. Sorbent materials of some kind are presently used in all phases of oil spill cleanups.

By their very nature, the components of organic and mineral sorbents are non-toxic. EPA conducted a review of several lists and data bases of hazardous substances and toxic materials to analyze the toxicity of the primary components of synthetic sorbents; i.e., polypropylene, polyethylene, polyurethane, and polyester. The results of this review indicate that these substances are also non-toxic.

None of these four substances are included in the first or second 100 substances listed under SARA section 110. They are not listed as extremely hazardous substances (EHSs) under SARA section 302 or as toxic chemicals under SARA section 313. In addition, they are not designated as hazardous substances under CERCLA. The Aquatic Information Retrieval data base (AQUIRE), which provides information on the aquatic toxicity of various substances, does not include any of these substances. Also, the Integrated Risk Information System (IRIS) and the Health Effects Assessment Summary Tables (HEAST) [10] do not include any of these substances. Although three of these four substances (polypropylene, polyethylene, and polyurethane) are listed in the Registry of Toxic Effects of Chemical Substances (RTECS), the data for mice and rat studies [11] appear to indicate that the toxicity of these substances is low or negligible.

As stated above, the large majority of synthetic sorbents are composed of polypropylene. According to various manufacturers' Material Safety Data Sheets (MSDSs), [12] the polypropylene products are non-toxic, pose no acute or chronic health hazards, and are not expected to create any adverse environmental impacts. In addition, the MSDSs indicate that the polypropylene products are expected to: (1) Have a low biological oxygen demand and cause little oxygen depletion in aquatic systems; (2) have a low potential to affect aquatic organisms, secondary waste treatment micro-organisms, and the germination and growth of some plants; and (3) be resistant to biodegradation, but are unlikely to bioconcentrate.

Because the primary components of synthetic sorbents are essentially insoluble and not biodegradable, [13] the breakdown of these products is not a concern. Although sunlight or ultraviolet light could cause a degradation of the synthetic sorbent material, it is very unlikely that the sorbent material would remain in the water long enough to allow for this to occur because sorbent materials are usually removed from the water after a short period of time.

EPA also intends to continue its policy of not listing sorbents on the NCP Product Schedule because EPA believes that there are no added benefits in listing sorbents and because listing sorbents would create an overly large and unwieldy Schedule. There are currently hundreds of different sorbents available in the marketplace. Listing all of these products on the Product Schedule would increase the size of the Schedule by a factor of at least two or three. This would create a significantly less useful Product Schedule because of the substantially increased quantity of data that OSCs would have to evaluate in spill situations.

Recent technological advances in the field of oil spill control agents have led to the development of products that, in some cases, are difficult to distinguish between sorbents or spill control chemicals. In addition, several of the products currently listed on the Product Schedule under the miscellaneous oil spill control agent category could be considered "chemisorbents" and have been informally referred to as sorbents by their manufacturers. These products, specifically viscoelastic enhancing agents, are added to oil spills to alter the physical behavior of the spilled oil and thereby facilitate its removal.

EPA would like to clarify that it considers viscoelastic enhancing agents to be spill control chemicals, and not sorbents.[14] These agents do not meet the definition of sorbents being proposed to be added to § 300.5. Consequently, these agents will be listed on the Product Schedule under the miscellaneous oil spill control agent category.

EPA recognizes that evolving technologies may result in the production of sorbent materials that do not necessarily fit the definition of sorbents being proposed in § 300.5. In such cases, EPA believes that it is important and necessary for EPA to review technical product data, including toxicity data, for these sorbent materials. As a result, EPA is proposing to add new § 300.915(g)(3), which requires manufacturers of sorbent materials that consist of materials other than those listed in EPA's definition of sorbents to submit to EPA the technical product data specified for miscellaneous oil spill control agents in new § 300.915(f). EPA will review these data and determine whether specific sorbents should be listed on the Product Schedule under the miscellaneous oil spill control agent category. EPA will inform sorbent manufacturers in writing, within 60 days of the receipt of the technical product data, of its decision. If EPA determines that a specific sorbent material does not have to be listed on the Schedule, EPA will provide a letter stating this decision to the sorbent manufacturer. EPA is also proposing to revise § 300.920(c) to include the technical product data submissions for sorbents discussed above under the provisions allowing assertions of confidential business information.

EPA is proposing to add new § 300.915(g)(4), which requires manufacturers of sorbent materials that

[10] IRIS and HEAST are published by EPA's Office of Research and Development.

[11] Copies of these data may be inspected at the public docket for this rulemaking.

[12] Copies of these MSDSs may be inspected at the public docket for this rulemaking.

[13] See Mark, Herman and Donald Othmer, eds., *Kirk-Othmer Encyclopedia of Chemical Technology*, John Wiley and Sons, New York, 1982; Gosselin, Robert E., Roger P. Smith, and Harold C. Hodge, *Clinical Toxicology of Commercial Products*, Williams and Wilkins, Baltimore, 1984; and Windholz, Martha, ed., *The Merck Index*, Merck & Co., Inc., Rahway, NJ, 1983.

[14] See the classification of viscoelastic enhancing agents, such as Elastol, in the *Oil Spill Intelligence Report—The International Oil Spill Control Directory, Eleventh Edition 1991–92*, Cutter Information Corp., Arlington, MA.

consist solely of the materials listed in EPA's definition of sorbents to sign a written certification stating this fact. When making a decision on the use of a specific sorbent material, an OSC may request a copy of this written certification and the sorbent manufacturer or vendor would have to provide this certification to the OSC. This new paragraph contains a model statement that should be included in the written certification. Any person who knowingly and willfully provides any false information as part of a sorbent written certification may, upon conviction, be fined and/or imprisoned in accordance with 18 U.S.C. 1001. If the sorbent material in question consists of materials other than those listed in EPA's definition of sorbents, but EPA has determined that the sorbent does not need to be listed on the Product Schedule, the manufacturer or vendor should provide to the OSC the letter from EPA stating this fact.

In the past, EPA has received complaints from sorbent manufacturers that they are being put at a disadvantage in the marketplace because their products are not being listed on the Product Schedule. EPA does not believe that this is the case. The listing of a product on the Product Schedule does not mean that EPA approves, recommends, licenses, certifies, or authorizes the use of that product on an oil spill; rather, the listing of a product means only that data have been submitted to EPA as required by subpart J of the NCP.

Section 311(d)(2)(G) of the CWA requires that the NCP include a schedule identifying "dispersants, other chemicals, and other spill mitigating devices and substances, if any, that may be used in carrying out" the NCP. As explained above, EPA does not interpret "dispersants, other chemicals, and other spill mitigating devices and substances" to include sorbents and, therefore, sorbents are not listed on the Product Schedule. This does not mean, however, that sorbents cannot be used by OSCs in response to discharges of oil. On the contrary, the fact that sorbents are not listed on the Product Schedule means that OSCs can use these products without being subject to the provisions in § 300.910 governing the authorization of use of products listed on the Product Schedule. In order to clarify this, EPA is proposing to add new § 300.915(g)(2), which states that EPA does not require technical product data submissions for sorbents and does not include sorbents on the NCP Product Schedule.

As stated above, EPA believes that the use of sorbents, by themselves, does not create deleterious effects to the environment. However, EPA solicits comment and information on whether the improper use of these products could result in negative environmental effects.

Mixed Products

EPA is proposing to add new § 300.915(h), which would require that manufacturers of products that consist of materials that meet the definitions of two or more of the product categories contained on the Product Schedule would have to submit to EPA the technical product data specified for each of those categories. For example, the manufacturer of a product that contains both dispersant and bioremediation agent materials would be required to submit to EPA the technical product data specified for both of these categories. In general, EPA would handle mixed products on a case-by-case basis and may not require that all of the specified product data be submitted. Consequently, EPA recommends that manufacturers of mixed products consult with EPA before submitting any technical product data. For the example given above, EPA may determine that, for the dispersant material, only toxicity data is necessary. After EPA has reviewed the submitted technical product data and performed any required dispersant effectiveness and toxicity tests, if appropriate, it would make a determination on whether and under which category the mixed product should be listed on the Schedule.

Other Changes

EPA is proposing to revise the data requirements in § 300.915 to update and correct citations to specific testing protocols. Section 300.915(a)(11)(iii) would be revised to state that EPA test methods 601 (Purgeable Halocarbons (Standard Method 6230 B)) and 608 (Organochlorine Pesticides and PCBs (Standard Method 6630 C)) should be used for chlorinated hydrocarbon analyses. This change would clarify an existing requirement in an attempt to avoid the confusion experienced by product manufacturers in the past. EPA is also proposing to streamline the data requirement language for surface collecting agents and miscellaneous oil spill control agents in new paragraphs (c)(8) and (f)(9) of § 300.915, respectively, to reference the data requirements for dispersants in § 300.915(a)(9), rather than listing the exact same data requirements several times for different product categories.

III. Regulatory Analysis

A. Executive Order 12291

E.O. 12291 requires that regulations be classified as major or non-major for purposes of review by the Office of Management and Budget (OMB). According to E.O. 12291, major rules are regulations that are likely to result in:

(1) An annual effect on the economy of $100 million or more; or

(2) A major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

An economic analysis performed by the Agency, available for inspection in room M2427 at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, shows that this proposed rule is non-major because it would result in estimated costs of approximately $33.4 million during the first year that the rule is in effect and approximately $11.5 million in each subsequent year. At a 10 percent interest rate over 10 years, the annualized costs are approximately $16.2 million. Virtually all costs are incurred by the federal government and, in particular, by the USCG and EPA.

The economic analysis prepared in support of this rule also includes a qualitative assessment of the environmental benefits associated with the proposed revisions. The NCP revisions are expected to lead to quicker, more efficient, and more appropriate responses to discharges of oil and releases of hazardous substances. The benefits that would result from such improvements (i.e., preventing oil spills from occurring or mitigating the severity of the spills that do occur) are assumed to be substantial. Benefits include avoided clean-up costs and natural resource damages as well as reductions in other damages caused by oil spills, such as damage to private property, lost profit by business, public health risks, and foregone existence/option values. This proposed rule has been submitted to OMB for review as required by E.O. 12291.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires that a Regulatory Flexibility Analysis be performed for all rules that are likely to have a "significant impact on a substantial number of small entities." To determine whether a

Regulatory Flexibility Analysis was necessary for this proposed rule, a preliminary analysis was conducted (see the "Economic Impact Analysis of the Proposed Revisions to the National Oil and Hazardous Substance Pollution Contingency Plan," Chapter 5, October 1992, available for inspection in room M2427 at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460). The results of the preliminary analysis indicate that this proposed rule will not have significant adverse impacts on small businesses because such entities are unlikely to be affected by revisions to the federal planning and response mechanism for pollution incidents. Proposed revisions to subpart J would impose certain additional requirements on small manufacturers of dispersants and bioremediation agents seeking to list products on the NCP Product Schedule. However, the analysis revealed that the proposed revisions would not significantly impact the economic viability of such concerns as the market is currently structured. Under the proposed revisions, certain local government agencies (e.g., LEPCs) would be required to play a supporting role in developing ACPs. The analysis revealed that fulfilling this role would not place a significant burden on a substantial number of such entities. Therefore, EPA certifies that this proposed rule is not expected to have a significant impact on small entities, and therefore that no Regulatory Flexibility Analysis is necessary.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to OMB under the *Paperwork Reduction Act*, 44 U.S.C. 3501 et seq. An Information Collection Request (ICR) has been prepared by EPA (ICR No. 1664.01) and a copy may be obtained from Sandy Farmer, Information Policy Branch (PM–223Y), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, or by calling (202) 260–2740. The collection of information required to prepare and submit materials for listing a product on the NCP Product Schedule is estimated to have a public reporting burden varying from 12 to 38 hours per response in the first year and subsequent years, with an average of 25 hours per response. This includes time to review instructions and guidance, search existing data sources, gather and maintain the data needed, and complete and review the collection of information. There is no recordkeeping burden associated with listing a product on the NCP Product Schedule.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch (PM–223Y), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects in 40 CFR Part 300

Air pollution control, Chemicals, Hazardous materials, Hazardous substances, Incorporation by reference, Intergovernmental relations, Natural resources, Occupational safety and health, Oil pollution, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Dated: September 30, 1993.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, it is proposed to amend title 40, Part 300 of the Code of Federal Regulations as follows:

PART 300—NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTINGENCY PLAN

1. The authority citation for part 300 is revised to read as follows:

Authority: 42 U.S.C. 9601–9657; 33 U.S.C. 1321(d); E.O. 11735, 38 FR 21243; E.O. 12580, 52 FR 2923; E.O. 12777, 56 FR 54757.

2. Subparts A, B, C, D, G, H, and J are revised; Subpart E is amended by revising paragraph (a) of § 300.400, by revising paragraph (a) and paragraph (f)(3) of § 300.405, and by revising §§ 300.410 and 300.415.

Subpart A—Introduction

Sec.

300.1 Purpose and objectives.
300.2 Authority and applicability.
300.3 Scope.
300.4 Abbreviations.
300.5 Definitions.
300.6 Use of number and gender.
300.7 Computation of time.

Subpart B—Responsibility and Organization for Response

300.100 Duties of President delegated to federal agencies.
300.105 General organization concepts.
300.110 National Response Team.
300.115 Regional Response Teams.
300.120 On-scene coordinators and remedial project managers: General responsibilities.
300.125 Notification and communications.
300.130 Determinations to initiate response and special conditions.
300.135 Response operations.
300.140 Multi-regional responses.
300.145 Special teams and other assistance available to OSCs/RPMs.
300.150 Worker health and safety.
300.155 Public information and community relations.
300.160 Documentation and cost recovery.
300.165 OSC reports.
300.170 Federal agency participation.
300.175 Federal agencies: Additional responsibilities and assistance.
300.180 State and local participation in response.
300.185 Nongovernmental participation.

Subpart C—Planning and Preparedness

300.200 General.
300.205 Planning and coordination structure.
300.210 Federal contingency plans.
300.212 Area response drills.
300.215 Title III local emergency response plans.
300.220 Related Title III issues.

Subpart D—Operational Response Phases for Oil Removal

300.300 Phase I—Discovery or notification.
300.305 Phase II—Preliminary assessment and initiation of action.
300.310 Phase III—Containment, countermeasures, cleanup, and disposal.
300.315 Phase IV—Documentation and cost recovery.
300.317 National response priorities.
300.320 General pattern of response.
300.322 Response to substantial threats to public health or welfare.
300.323 Spills of national significance.
300.324 Response to worst case discharges.
300.335 Funding.

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Subpart G—Trustees for Natural Resources

300.600 Designation of federal trustees.
300.605 State trustees.
300.610 Indian tribes.
300.612 Foreign trustees.
300.615 Responsibilities of trustees.

Subpart H—Participation by Other Persons

300.700 Activities by other persons.

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Subpart J—Use of Dispersants and Other Chemicals

300.900 General.
300.905 NCP Product Schedule.
300.910 Authorization of use.
300.915 Data requirements.
300.920 Addition of products to schedule.

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Subpart A—Introduction

§ 300.1 Purpose and objectives.

The purpose of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) is to provide

the organizational structure and procedures for preparing for and responding to discharges of oil and releases of hazardous substances, pollutants, and contaminants.

§ 300.2 Authority and applicability.

The NCP is required by section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9605, as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Public Law 99–499, (hereinafter CERCLA), and by section 311(d) of the Clean Water Act (CWA), 33 U.S.C. 1321(d), as amended by the Oil Pollution Act of 1990 (OPA), Public Law 101–380. In Executive Order (E.O.) 12777 (56 FR 54757, October 22, 1991), the President delegated to the Environmental Protection Agency (EPA) the responsibility for the amendment of the NCP. Amendments to the NCP are coordinated with members of the National Response Team (NRT) prior to publication for notice and comment. This includes coordination with the Federal Emergency Management Agency (FEMA) and the Nuclear Regulatory Commission in order to avoid inconsistent or duplicative requirements in the emergency planning responsibilities of those agencies. The NCP is applicable to response actions taken pursuant to the authorities under CERCLA and section 311 of the CWA, as amended.

§ 300.3 Scope.

(a) The NCP applies to and is in effect for:

(1) Discharges of oil into or on the navigable waters of the United States, on the adjoining shorelines, the waters of the contiguous zone, into waters of the exclusive economic zone, or that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States. (See sections 311(c)(1) and 502(7) of the CWA.)

(2) Releases into the environment of hazardous substances, and pollutants or contaminants which may present an imminent and substantial danger to public health or welfare.

(b) The NCP provides for efficient, coordinated, and effective response to discharges of oil and releases of hazardous substances, pollutants, and contaminants in accordance with the authorities of CERCLA and the CWA. It provides for:

(1) The national response organization that may be activated in response actions. It specifies responsibilities among the federal, state, and local governments and describes resources that are available for response.

(2) The establishment of requirements for federal, regional, and area contingency plans. It also summarizes state and local emergency planning requirements under SARA Title III.

(3) Procedures for undertaking removal actions pursuant to section 311 of the CWA.

(4) Procedures for undertaking response actions pursuant to CERCLA.

(5) Procedures for involving state governments in the initiation, development, selection, and implementation of response actions, pursuant to CERCLA.

(6) Designation of federal trustees for natural resources for purposes of CERCLA and the CWA.

(7) Procedures for the participation of other persons in response actions.

(8) Procedures for compiling and making available an administrative record for response actions.

(9) National procedures for the use of dispersants and other chemicals in removals under the CWA and response actions under CERCLA.

(c) In implementing the NCP, consideration shall be given to international assistance plans and agreements, security regulations and responsibilities based on international agreements, federal statutes, and executive orders. Actions taken pursuant to the provisions of any applicable international joint contingency plans shall be consistent with the NCP, to the greatest extent possible. The Department of State shall be consulted, as appropriate, prior to taking any action which may affect its activities.

(d) Additionally, the NCP applies to and is in effect when the Federal Response Plan and some or all its Emergency Support Functions (ESFs) are activated.

§ 300.4 Abbreviations.

(a) *Department and Agency Title Abbreviations:*

ATSDR—Agency for Toxic Substances and Disease Registry
CDC—Centers for Disease Control
DOC—Department of Commerce
DOD—Department of Defense
DOE—Department of Energy
DOI—Department of the Interior
DOJ—Department of Justice
DOL—Department of Labor
DOS—Department of State
DOT—Department of Transportation
EPA—Environmental Protection Agency
FEMA—Federal Emergency Management Agency
GSA—General Services Administration
HHS—Department of Health and Human Services
NIOSH—National Institute for Occupational Safety and Health
NOAA—National Oceanic and Atmospheric Administration
RSPA—Research and Special Programs Administration
USCG—United States Coast Guard
USDA—United States Department of Agriculture

Note: Reference is made in the NCP to both the Nuclear Regulatory Commission and the National Response Center. In order to avoid confusion, the NCP will spell out Nuclear Regulatory Commission and use the abbreviation "NRC" only with respect to the National Response Center.

(b) *Operational Abbreviations:*

AC—Area Committee
ACP—Area Contingency Plan
ARARs—Applicable or Relevant and Appropriate Requirements
CERCLIS—CERCLA Information System
CRC—Community Relations Coordinator
CRP—Community Relations Plan
DRAT—District Response Advisory Team
DRG—District Response Group
ERT—Environmental Response Team
ESF—Emergency Support Function
FCO—Federal Coordinating Officer
FRERP—Federal Radiological Emergency Response Plan
FRP—Federal Response Plan
FS—Feasibility Study
HRS—Hazard Ranking System
LEPC—Local Emergency Planning Committee
NCP—National Contingency Plan
NPFC—National Pollution Funds Center
NPL—National Priorities List
NRC—National Response Center
NRS—National Response System
NRT—National Response Team
NSF—National Strike Force
NSFCC—National Strike Force Coordination Center
O&M—Operation and Maintenance
OSC—On-Scene Coordinator
OSLTF—Oil Spill Liability Trust Fund
PA—Preliminary Assessment
PIAT—Public Information Assist Team
RA—Remedial Action
RCP—Regional Contingency Plan
RD—Remedial Design
RERT—Radiological Emergency Response Team
RI—Remedial Investigation
ROD—Record of Decision
RPM—Remedial Project Manager
RRC—Regional Response Center
RRT—Regional Response Team
SAC—Support Agency Coordinator
SERC—State Emergency Response Commission
SI—Site Inspection
SMOA—Superfund Memorandum of Agreement
SONS—Spill of National Significance
SSC—Scientific Support Coordinator
USFWS—United States Fish and Wildlife Service

§ 300.5 Definitions.

Terms not defined in this section have the meaning given by CERCLA, the OPA, or the CWA.

Activation means notification by telephone or other expeditious manner or, when required, the assembly of some or all appropriate members of the RRT or NRT.

Alternative water supplies as defined by section 101(34) of CERCLA, includes, but is not limited to, drinking water and household water supplies.

Applicable requirements means those cleanup standards, standards of control, and other substantive requirements, criteria, or limitations promulgated under federal environmental or state environmental or facility siting laws that specifically address a hazardous substance, pollutant, contaminant, remedial action, location, or other circumstance found at a CERCLA site. Only those state standards that are identified by a state in a timely manner and that are more stringent than federal requirements may be applicable.

Area Committee (AC) as provided for by CWA sections 311(a)(18) and (j)(4), means the entity appointed by the President consisting of members from qualified personnel of federal, state, and local agencies with responsibilities that include preparing an area contingency plan for an area designated by the President.

Area contingency plan (ACP) as provided for by CWA sections 311(a)(19) and (j)(4), means the plan prepared by an Area Committee that is developed to be implemented in conjunction with the NCP and RCP, in part to address removal of a worst case discharge and to mitigate or prevent a substantial threat of such a discharge from a vessel, offshore facility, or onshore facility operating in or near an area designated by the President.

Bioremediation agents means microbiological cultures, enzyme additives, or nutrient additives that are deliberately introduced into an oil discharge and that will significantly increase the rate of biodegradation to mitigate the effects of the discharge.

Burning agents means those additives that, through physical or chemical means, improve the combustibility of the materials to which they are applied.

CERCLA is the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986.

CERCLIS is the abbreviation of the CERCLA Information System, EPA's comprehensive data base and management system that inventories and tracks releases addressed or needing to be addressed by the Superfund program. CERCLIS contains the official inventory of CERCLA sites and supports EPA's site planning and tracking functions. Sites that EPA decides do not warrant moving further in the site evaluation process are given a "No Further Response Action Planned" (NFRAP) designation in CERCLIS. This means that no additional federal steps under CERCLA will be taken at the site unless future information so warrants. Sites are not removed from the data base after completion of evaluations in order to document that these evaluations took place and to preclude the possibility that they be needlessly repeated. Inclusion of a specific site or area in the CERCLIS data base does not represent a determination of any party's liability, nor does it represent a finding that any response action is necessary. Sites that are deleted from the NPL are not designated NFRAP sites. Deleted sites are listed in a separate category in the CERCLIS data base.

Chemical agents means those elements, compounds, or mixtures that coagulate, disperse, dissolve, emulsify, foam, neutralize, precipitate, reduce, solubilize, oxidize, concentrate, congeal, entrap, fix, make the pollutant mass more rigid or viscous, or otherwise facilitate the mitigation of deleterious effects or the removal of the pollutant from the water. Chemical agents include biological additives, dispersants, sinking agents, miscellaneous oil spill control agents, and burning agents, but do not include sorbents.

Claim for purposes of a release under CERCLA, means a demand in writing for a sum certain; for purposes of a discharge under CWA, it means a request, made in writing for a sum certain, for compensation for damages or removal costs resulting from an incident.

Claimant as defined by section 1001 of the OPA means any person or government who presents a claim for compensation under title I of the OPA.

Coastal waters for the purposes of classifying the size of discharges, means the waters of the coastal zone except for the Great Lakes and specified ports and harbors on inland rivers.

Coastal zone as defined for the purpose of the NCP, means all United States waters subject to the tide, United States waters of the Great Lakes, specified ports and harbors on inland rivers, waters of the contiguous zone, other waters of the high seas subject to the NCP, and the land surface or land substrata, ground waters, and ambient air proximal to those waters. The term coastal zone delineates an area of federal responsibility for response action. Precise boundaries are determined by EPA/USCG agreements and identified in federal regional contingency plans.

Coast Guard District Response Group (DRG) as provided for by CWA sections 311 (a)(20) and (j)(3), means the entity established by the Secretary of the department in which the USCG is operating, within each USCG district, and shall consist of: The combined USCG personnel and equipment, including marine firefighting equipment, of each port in the district; additional prepositioned response equipment; and a district response advisory team.

Community relations means EPA's program to inform and encourage public participation in the Superfund process and to respond to community concerns. The term "public" includes citizens directly affected by the site, other interested citizens or parties, organized groups, elected officials, and potentially responsible parties.

Community relations coordinator means lead agency staff who work with the OSC/RPM to involve and inform the public about the Superfund process and response actions in accordance with the interactive community relations requirements set forth in the NCP.

Contiguous zone means the zone of the high seas, established by the United States under Article 24 of the Convention on the Territorial Sea and Contiguous Zone, which is contiguous to the territorial sea and which extends nine miles seaward from the outer limit of the territorial sea.

Cooperative agreement is a legal instrument EPA uses to transfer money, property, services, or anything of value to a recipient to accomplish a public purpose in which substantial EPA involvement is anticipated during the performance of the project.

Damages as defined by section 1001 of the OPA means damages specified in section 1002(b) of the Act, and includes the cost of assessing these damages.

Discharge as defined by section 311(a)(2) of the CWA, includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping of oil, but excludes discharges in compliance with a permit under section 402 of the CWA, discharges resulting from circumstances identified and reviewed and made a part of the public record with respect to a permit issued or modified under section 402 of the CWA, and subject to a condition in such permit, or continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 402 of the CWA, that are caused by events occurring within the scope of relevant operating or treatment systems.

For purposes of the NCP, discharge also means substantial threat of discharge.

Dispersants means those chemical agents that emulsify, disperse, or solubilize oil into the water column or promote the surface spreading of oil slicks to facilitate dispersal of the oil into the water column.

Drinking water supply as defined by section 101(7) of CERCLA, means any raw or finished water source that is or may be used by a public water system (as defined in the Safe Drinking Water Act) or as drinking water by one or more individuals.

Environment as defined by section 101(8) of CERCLA, means the navigable waters, the waters of the contiguous zone, and the ocean waters of which the natural resources are under the exclusive management authority of the United States under the Magnuson Fishery Conservation and Management Act; and any other surface water, ground water, drinking water supply, land surface or subsurface strata, or ambient air within the United States or under the jurisdiction of the United States.

Exclusive economic zone, as defined by OPA section 1001, means the zone established by Presidential Proclamation Numbered 5030, dated March 10, 1983, including the ocean waters of the areas referred to as "eastern special areas" in Article 3(1) of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990.

Facility as defined by section 101(9) of CERCLA, means any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft, or any site or area, where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located; but does not include any consumer product in consumer use or any vessel. As defined by section 1001 of the OPA, it means any structure, group of structures, equipment, or device (other than a vessel) which is used for one or more of the following purposes: Exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting oil. This term includes any motor vehicle, rolling stock, or pipeline used for one or more of these purposes.

Feasibility study (FS) means a study undertaken by the lead agency to develop and evaluate options for remedial action. The FS emphasizes data analysis and is generally performed concurrently and in an interactive fashion with the remedial investigation (RI), using data gathered during the RI. The RI data are used to define the objectives of the response action, to develop remedial action alternatives, and to undertake an initial screening and detailed analysis of the alternatives. The term also refers to a report that describes the results of the study.

Federal Radiological Emergency Response Plan (FRERP) means the inter-agency agreement for coordinating the response of various agencies, under a variety of statutes, to a large radiological accident. The Lead Federal Agency (LFA), defined by the FRERP, activates the FRERP for any peacetime radiological emergency which, based upon its professional judgment, is expected to have a significant radiological effect within the United States, its territories, possessions, or territorial waters and that could require a response by several federal agencies.

Federal Response Plan (FRP) means the agreement signed by 25 federal departments and agencies in April 1987 and developed under the authorities of the Earthquake Hazards Reduction Act of 1977 and the Disaster Relief Act of 1974, as amended by the Stafford Disaster Relief Act of 1988.

First federal official means the first federal representative of a participating agency of the National Response Team to arrive at the scene of a discharge or a release. This official coordinates activities under the NCP and may initiate, in consultation with the OSC, any necessary actions until the arrival of the predesignated OSC. A state with primary jurisdiction over a site covered by a cooperative agreement will act in the stead of the first federal official for any incident at the site.

Fund or *Trust Fund* means the Hazardous Substance Superfund established by section 9507 of the Internal Revenue Code of 1986.

Ground water as defined by section 101(12) of CERCLA, means water in a saturated zone or stratum beneath the surface of land or water.

Hazard Ranking System (HRS) means the method used by EPA to evaluate the relative potential of hazardous substance releases to cause health or safety problems, or ecological or environmental damage.

Hazardous substance as defined by section 101(14) of CERCLA, means: Any substance designated pursuant to section 311(b)(2)(A) of the CWA; any element, compound, mixture, solution, or substance designated pursuant to section 102 of CERCLA; any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress); any toxic pollutant listed under section 307(a) of the CWA; any hazardous air pollutant listed under section 112 of the Clean Air Act; and any imminently hazardous chemical substance or mixture with respect to which the EPA Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act. The term does not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance in the first sentence of this paragraph, and the term does not include natural gas, natural gas liquids, liquified natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).

Indian tribe as defined by section 101(36) of CERCLA, means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village but not including any Alaska Native regional or village corporation, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. *Indian tribe*, as defined by OPA section 1001, means any Indian tribe, band, nation, or other organized group or community, but not including any Alaska Native regional or village corporation, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians and has governmental authority over lands belonging to or controlled by the tribe.

Inland waters, for the purposes of classifying the size of discharges, means those waters of the United States in the inland zone, waters of the Great Lakes, and specified ports and harbors on inland rivers.

Inland zone means the environment inland of the coastal zone excluding the Great Lakes and specified ports and harbors on inland rivers. The term inland zone delineates an area of federal responsibility for response action. Precise boundaries are determined by EPA/USCG agreements and identified in federal regional contingency plans.

Lead administrative trustee means a federal natural resource trustee who is designated on an incident-by-incident basis and chosen by the other federal trustees whose natural resources are affected by the incident. The lead administrative trustee facilitates

effective and efficient communication between the OSC and the other federal natural resource trustees during response operations and is responsible for applying to the OSC for access to federal response resources on behalf of all trustees for initiation of damage assessment and claims for injuries to natural resources.

Lead agency means the agency that provides the OSC/RPM to plan and implement response actions under the NCP. EPA, the USCG, another federal agency, or a state (or political subdivision of a state) operating pursuant to a contract or cooperative agreement executed pursuant to section 104(d)(1) of CERCLA, or designated pursuant to a Superfund Memorandum of Agreement (SMOA) entered into pursuant to subpart F of the NCP or other agreements may be the lead agency for a response action. In the case of a release of a hazardous substance, pollutant, or contaminant, where the release is on, or the sole source of the release is from, any facility or vessel under the jurisdiction, custody, or control of Department of Defense (DOD) or Department of Energy (DOE), then DOD or DOE will be the lead agency. Where the release is on, or the sole source of the release is from, any facility or vessel under the jurisdiction, custody, or control of a federal agency other than EPA, the USCG, DOD, or DOE, then that agency will be the lead agency for remedial actions and removal actions other than emergencies. The federal agency maintains its lead agency responsibilities whether the remedy is selected by the federal agency for non-NPL sites or by EPA and the federal agency or by EPA alone under CERCLA section 120. The lead agency will consult with the support agency, if one exists, throughout the response process.

Management of migration means actions that are taken to minimize and mitigate the migration of hazardous substances or pollutants or contaminants and the effects of such migration. Measures may include, but are not limited to, management of a plume of contamination, restoration of a drinking water aquifer, or surface water restoration.

Miscellaneous oil spill control agent is any product, other than a dispersant, sinking agent, surface washing agent, surface collecting agent, bioremediation agent, burning agent, or sorbent that can be used to enhance oil spill cleanup, removal, treatment, or mitigation.

National Pollution Funds Center (NPFC) means the entity established by the Secretary of Transportation whose function is the administration of the Oil Spill Liability Trust Fund (OSLTF). Among the NPFC's duties are: Providing appropriate access to the OSLTF for federal agencies and states for removal actions and for federal trustees to initiate the assessment of natural resource damages; providing appropriate access to the OSLTF for claims; and coordinating cost recovery efforts.

National Priorities List (NPL) means the list, compiled by EPA pursuant to CERCLA section 105, of uncontrolled hazardous substance releases in the United States that are priorities for long-term remedial evaluation and response.

National response system (NRS) is the mechanism for coordinating response actions by all levels of government in support of the OSC/RPM. The NRS is composed of the NRT, RRTs, OSC/RPM, IRPM, Area Committees, and Special Teams and related support entities. During oil spill response or a hazardous substance removal action, the NRS functions as an incident command system (ICS) under the direction of the OSC. Typical of an ICS, the NRS is capable of expanding or contracting to accommodate the response effort required by the size or complexity of the discharge or release.

National Strike Force (NSF) is a special team established by the USCG, including the three USCG Strike Teams, the Public Information Assist Team (PIAT), and the National Strike Force Coordination Center. The NSF is available to assist OSCs/RPMs in their preparedness and response duties.

National Strike Force Coordination Center (NSFCC), authorized as the National Response Unit by CWA sections 311 (a)(23) and (j)(2), means the entity established by the Secretary of the department in which the USCG is operating at Elizabeth City, North Carolina with responsibilities that include administration of the USCG Strike Teams, maintenance of response equipment inventories and logistic networks, and conducting a national exercise program.

Natural resources means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the exclusive economic zone defined by the Magnuson Fishery Conservation and Management Act of 1976), any state or local government, any foreign government, any Indian tribe, or, if such resources are subject to a trust restriction on alienation, any member of an Indian tribe.

Navigable waters as defined by 40 CFR 110.1, means the waters of the United States, including the territorial seas. The term includes:

(a) All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide;

(b) Interstate waters, including interstate wetlands;

(c) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, and wetlands, the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

(1) That are or could be used by interstate or foreign travelers for recreational or other purposes;

(2) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce;

(3) That are used or could be used for industrial purposes by industries in interstate commerce;

(d) All impoundments of waters otherwise defined as navigable waters under this section;

(e) Tributaries of waters identified in paragraphs (a) through (d) of this definition, including adjacent wetlands; and

(f) Wetlands adjacent to waters identified in paragraphs (a) through (e) of this definition: Provided, that waste treatment systems (other than cooling ponds meeting the criteria of this paragraph) are not waters of the United States.

Offshore facility as defined by section 101(17) of CERCLA and section 311(a)(11) of the CWA, means any facility of any kind located in, on, or under any of the navigable waters of the United States, and any facility of any kind which is subject to the jurisdiction of the United States and is located in, on, or under any other waters, other than a vessel or a public vessel.

Oil as defined by section 311(a)(1) of the CWA, means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil. Oil, as defined by section 1001 of the OPA means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil, but does not include petroleum, including crude oil or any fraction thereof, which is specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (42

U.S.C. 9601) and which is subject to the provisions of that Act.

Oil Spill Liability Trust Fund (OSLTF) means the fund established under section 9509 of the Internal Revenue Code of 1986 (26 U.S.C. 9509).

On-scene coordinator (OSC) means the federal official predesignated by EPA or the USCG to coordinate and direct federal responses under subpart D, or the official designated by the lead agency to coordinate and direct removal actions under subpart E of the NCP.

Onshore facility as defined by section 101(18) of CERCLA, means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under any land or non-navigable waters within the United States; and, as defined by section 311(a)(10) of the CWA, means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under any land within the United States other than submerged land.

On-site means the areal extent of contamination and all suitable areas in very close proximity to the contamination necessary for implementation of the response action.

Operable unit means a discrete action that comprises an incremental step toward comprehensively addressing site problems. This discrete portion of a remedial response manages migration, or eliminates or mitigates a release, threat of a release, or pathway of exposure. The cleanup of a site can be divided into a number of operable units, depending on the complexity of the problems associated with the site. Operable units may address geographical portions of a site, specific site problems, or initial phases of an action, or may consist of any set of actions performed over time or any actions that are concurrent but located in different parts of a site.

Operation and maintenance (O&M) means measures required to maintain the effectiveness of response actions.

Person as defined by section 101(21) of CERCLA, means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, United States government, state, municipality, commission, political subdivision of a state, or any interstate body. As defined by section 1001 of the OPA, *person* means an individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state, or any interstate body.

Pollutant or contaminant as defined by section 101(33) of CERCLA, shall include, but not be limited to, any element, substance, compound, or mixture, including disease-causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring. The term does not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under section 101(14) (A) through (F) of CERCLA, nor does it include natural gas, liquified natural gas, or synthetic gas of pipeline quality (or mixtures of natural gas and such synthetic gas). For purposes of the NCP, the term *pollutant* or *contaminant* means any pollutant or contaminant that may present an imminent and substantial danger to public health or welfare.

Post-removal site control means those activities that are necessary to sustain the integrity of a Fund-financed removal action following its conclusion. Post-removal site control may be a removal or remedial action under CERCLA. The term includes, without being limited to, activities such as relighting gas flares, replacing filters, and collecting leachate.

Preliminary assessment (PA) under CERCLA means review of existing information and an off-site reconnaissance, if appropriate, to determine if a release may require additional investigation or action. A PA may include an on-site reconnaissance, if appropriate.

Public participation, see the definition for community relations.

Public vessel as defined by section 311(a)(4) of the CWA, means a vessel owned or bareboat-chartered and operated by the United States, or by a state or political subdivision thereof, or by a foreign nation, except when such vessel is engaged in commerce.

Quality assurance project plan (QAPP) is a written document, associated with all remedial site sampling activities, which presents in specific terms the organization (where applicable), objectives, functional activities, and specific quality assurance (QA) and quality control (QC) activities designed to achieve the data quality objectives of a specific project(s) or continuing operation(s). The QAPP is prepared for each specific project or continuing operation (or group of similar projects or continuing operations). The QAPP will be prepared by the responsible program office, regional office, laboratory, contractor, recipient of an assistance agreement, or other organization. For an enforcement action, potentially responsible parties may prepare a QAPP subject to lead agency approval.

Release as defined by section 101(22) of CERCLA, means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance or pollutant or contaminant), but excludes: Any release which results in exposure to persons solely within a workplace, with respect to a claim which such persons may assert against the employer of such persons; emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine; release of source, byproduct, or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954, if such release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under section 170 of such Act, or, for the purposes of section 104 of CERCLA or any other response action, any release of source, byproduct, or special nuclear material from any processing site designated under section 102(a)(1) or 302(a) of the Uranium Mill Tailings Radiation Control Act of 1978; and the normal application of fertilizer. For purposes of the NCP, release also means threat of release.

Relevant and appropriate requirements means those cleanup standards, standards of control, and other substantive requirements, criteria, or limitations promulgated under federal environmental or state environmental or facility siting laws that, while not "applicable" to a hazardous substance, pollutant, contaminant, remedial action, location, or other circumstance at a CERCLA site, address problems or situations sufficiently similar to those encountered at the CERCLA site that their use is well suited to the particular site. Only those state standards that are identified in a timely manner and are more stringent than federal requirements may be relevant and appropriate.

Remedial design (RD) means the technical analysis and procedures which follow the selection of remedy for a site and result in a detailed set of plans and specifications for implementation of the remedial action.

Remedial investigation (RI) is a process undertaken by the lead agency to determine the nature and extent of the problem presented by the release. The RI emphasizes data collection and site characterization, and is generally performed concurrently and in an interactive fashion with the feasibility study. The RI includes sampling and monitoring, as necessary, and includes the gathering of sufficient information to determine the necessity for remedial action and to support the evaluation of remedial alternatives.

Remedial project manager (RPM) means the official designated by the lead agency to coordinate, monitor, or direct remedial or other response actions under subpart E of the NCP.

Remedy or remedial action (RA) means those actions consistent with permanent remedy taken instead of, or in addition to, removal action in the event of a release or threatened release of a hazardous substance into the environment, to prevent or minimize the release of hazardous substances so that they do not migrate to cause substantial danger to present or future public health or welfare or the environment. The term includes, but is not limited to, such actions at the location of the release as storage, confinement, perimeter protection using dikes, trenches, or ditches, clay cover, neutralization, cleanup of released hazardous substances and associated contaminated materials, recycling or reuse, diversion, destruction, segregation of reactive wastes, dredging or excavations, repair or replacement of leaking containers, collection of leachate and runoff, on-site treatment or incineration, provision of alternative water supplies, any monitoring reasonably required to assure that such actions protect the public health and welfare and the environment and, where appropriate, post-removal site control activities. The term includes the costs of permanent relocation of residents and businesses and community facilities (including the cost of providing "alternative land of equivalent value" to an Indian tribe pursuant to CERCLA section 126(b)) where EPA determines that, alone or in combination with other measures, such relocation is more cost-effective than, and environmentally preferable to, the transportation, storage, treatment, destruction, or secure disposition off-site of such hazardous substances, or may otherwise be necessary to protect the public health or welfare; the term includes off-site transport and off-site storage, treatment, destruction, or secure disposition of hazardous substances and associated contaminated materials. For the purpose of the NCP, the term also includes enforcement activities related thereto.

Remove or removal as defined by section 311(a)(8) of the CWA, refers to containment and removal of oil or hazardous substances from the water and shorelines or the taking of such other actions as may be necessary to minimize or mitigate damage to the public health or welfare (including, but not limited to, fish, shellfish, wildlife, public and private property, and shorelines and beaches) or to the environment. For the purpose of the NCP, the term also includes monitoring of action to remove a discharge. As defined by section 101(23) of CERCLA, remove or removal means the cleanup or removal of released hazardous substances from the environment; such actions as may be necessary taken in the event of the threat of release of hazardous substances into the environment; such actions as may be necessary to monitor, assess, and evaluate the release or threat of release of hazardous substances; the disposal of removed material; or the taking of such other actions as may be necessary to prevent, minimize, or mitigate damage to the public health or welfare or to the environment, which may otherwise result from a release or threat of release. The term includes, in addition, without being limited to, security fencing or other measures to limit access, provision of alternative water supplies, temporary evacuation and housing of threatened individuals not otherwise provided for, action taken under section 104(b) of CERCLA, post-removal site control, where appropriate, and any emergency assistance which may be provided under the Disaster Relief Act of 1974. For the purpose of the NCP, the term also includes enforcement activities related thereto.

Removal costs as defined by section 1001 of the OPA, means the costs of removal that are incurred after a discharge of oil has occurred, or in any case in which there is a substantial threat of a discharge of oil, the costs to prevent, minimize, or mitigate oil pollution from such an incident.

Respond or response as defined by section 101(25) of CERCLA, means remove, removal, remedy, or remedial action, including enforcement activities related thereto.

Responsible party as defined by section 1001 of the OPA, means the following:

(a) *Vessels*—In the case of a vessel, any person owning, operating, or demise chartering the vessel.

(b) *Onshore facilities*—In the case of an onshore facility (other than a pipeline), any person owning or operating the facility, except a federal agency, state, municipality, commission, or political subdivision of a state, or any interstate body, that as the owner transfers possession and right to use the property to another person by lease, assignment, or permit.

(c) *Offshore facilities*—In the case of an offshore facility (other than a pipeline or a deepwater port licensed under the Deepwater Port Act of 1974 (33 U.S.C. 1501 et seq.)), the lessee or permittee of the area in which the facility is located or the holder of a right of use and easement granted under applicable state law or the Outer Continental Shelf Lands Act (43 U.S.C. 1301–1356) for the area in which the facility is located (if the holder is a different person than the lessee or permittee), except a federal agency, state, municipality, commission, or political subdivision of a state, or any interstate body, that as owner transfers possession and right to use the property to another person by lease, assignment, or permit.

(d) *Deepwater ports*—In the case of a deepwater port licensed under the Deepwater Port Act of 1974 (33 U.S.C. 1501–1524), the licensee.

(e) *Pipelines*—In the case of a pipeline, any person owning or operating the pipeline.

(f) *Abandonment*—In the case of an abandoned vessel, onshore facility, deepwater port, pipeline, or offshore facility, the persons who would have been responsible parties immediately prior to the abandonment of the vessel or facility.

SARA is the Superfund Amendments and Reauthorization Act of 1986. In addition to certain free-standing provisions of law, it includes amendments to CERCLA, the Solid Waste Disposal Act, and the Internal Revenue Code. Among the free-standing provisions of law is Title III of SARA, also known as the "Emergency Planning and Community Right-to-Know Act of 1986" and Title IV of SARA, also known as the "Radon Gas and Indoor Air Quality Research Act of 1986." Title V of SARA amending the Internal Revenue Code is also known as the "Superfund Revenue Act of 1986."

Sinking agents means those additives applied to oil discharges to sink floating pollutants below the water surface.

Site inspection (SI) means an on-site investigation to determine whether there is a release or potential release and the nature of the associated threats. The purpose is to augment the data collected in the preliminary assessment and to generate, if necessary, sampling and other field data to determine if further action or investigation is appropriate.

Size classes of discharges refers to the following size classes of oil discharges which are provided as guidance to the OSC and serve as the criteria for the actions delineated in subpart D of this part. They are not meant to imply associated degrees of hazard to public health or welfare, nor are they a measure of environmental injury. Any oil discharge that poses a substantial threat to public health or welfare or the environment or results in significant public concern shall be classified as a major discharge regardless of the following quantitative measures:

(a) *Minor discharge* means a discharge to the inland waters of less than 1,000 gallons of oil or a discharge to the coastal waters of less than 10,000 gallons of oil.

(b) *Medium discharge* means a discharge of 1,000 to 10,000 gallons of oil to the inland waters or a discharge of 10,000 to 100,000 gallons of oil to the coastal waters.

(c) *Major discharge* means a discharge of more than 10,000 gallons of oil to the inland waters or more than 100,000 gallons of oil to the coastal waters.

Size classes of releases refers to the following size classifications which are provided as guidance to the OSC for meeting pollution reporting requirements in subpart B of this part. The final determination of the appropriate classification of a release will be made by the OSC based on consideration of the particular release (e.g., size, location, impact, etc.):

(a) *Minor release* means a release of a quantity of hazardous substance(s), pollutant(s), or contaminant(s) that poses minimal threat to public health or welfare or the environment.

(b) *Medium release* means a release not meeting the criteria for classification as a minor or major release.

(c) *Major release* means a release of any quantity of hazardous substance(s), pollutant(s), or contaminant(s) that poses a substantial threat to public health or welfare or the environment or results in significant public concern.

Sorbents means essentially inert and insoluble materials that are used to remove oil and hazardous substances from water through adsorption, in which the oil or hazardous substance is attracted to the sorbent surface and then adheres to it; absorption, in which the oil or hazardous substance penetrates the pores of the sorbent material; or a combination of the two. Sorbents are generally manufactured in particulate form for spreading over an oil slick or as sheets, rolls, pillows, or booms. The sorbent material may consist of, but is not limited to, the following materials:

(a) Organic products—

(1) Peat moss or straw;

(2) Cellulose fibers or cork;

(3) Corn cobs;

(4) Chicken, duck, or other bird feathers.

(b) Mineral compounds—

(1) Volcanic ash or perlite;

(2) Vermiculite or zeolite.

(c) Synthetic products—

(1) Polypropylene;

(2) Polyethylene;

(3) Polyurethane;

(4) Polyester.

Source control action is the construction or installation and start-up of those actions necessary to prevent the continued release of hazardous substances or pollutants or contaminants (primarily from a source on top of or within the ground, or in buildings or other structures) into the environment.

Source control maintenance measures are those measures intended to maintain the effectiveness of source control actions once such actions are operating and functioning properly, such as the maintenance of landfill caps and leachate collection systems.

Specified ports and harbors means those ports and harbor areas on inland rivers, and land areas immediately adjacent to those waters, where the USCG acts as predesignated on-scene coordinator. Precise locations are determined by EPA/USCG regional agreements and identified in Federal Regional Contingency Plans and Area Contingency Plans.

Spill of national significance (SONS) means a spill that due to its severity, size, location, actual or potential impact on the public health and welfare or the environment, or the necessary response effort, is so complex that it requires extraordinary coordination of federal, state, local, and responsible party resources to contain and cleanup the discharge.

State means the several states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the U.S. Virgin Islands, the Commonwealth of the Northern Marianas, and any other territory or possession over which the United States has jurisdiction. For purposes of the NCP, the term includes Indian tribes as defined in the NCP except where specifically noted. Section 126 of CERCLA provides that the governing body of an Indian tribe shall be afforded substantially the same treatment as a state with respect to certain provisions of CERCLA. Section 300.515(b) of the NCP describes the requirements pertaining to Indian tribes that wish to be treated as states under CERCLA.

Superfund Memorandum of Agreement (SMOA) means a nonbinding, written document executed by an EPA Regional Administrator and the head of a state agency that may establish the nature and extent of EPA and state interaction during the removal, pre-remedial, remedial, and/or enforcement response process. The SMOA is not a site-specific document although attachments may address specific sites. The SMOA generally defines the role and responsibilities of both the lead and the support agencies.

Superfund state contract is a joint, legally binding agreement between EPA and a state to obtain the necessary assurances before a federal-lead remedial action can begin at a site. In the case of a political subdivision-lead remedial response, a three-party Superfund state contract among EPA, the state, and political subdivision thereof, is required before a political subdivision takes the lead for any phase of remedial response to ensure state involvement pursuant to section 121(f)(1) of CERCLA. The Superfund state contract may be amended to provide the state's CERCLA section 104 assurances before a political subdivision can take the lead for remedial action.

Support agency means the agency or agencies that provide the support agency coordinator to furnish necessary data to the lead agency, review response data and documents, and provide other assistance as requested by the OSC or RPM. EPA, the USCG, another federal agency, or a state may be support agencies for a response action if operating pursuant to a contract executed under section 104(d)(1) of CERCLA or designated pursuant to a Superfund Memorandum of Agreement entered into pursuant to subpart F of the NCP or other agreement. The support agency may also concur on decision documents.

Support agency coordinator (SAC) means the official designated by the support agency, as appropriate, to interact and coordinate with the lead agency in response actions under subpart E of this part.

Surface collecting agents means those chemical agents that form a surface film to control the layer thickness of oil.

Surface washing agent is any product that removes oil from solid surfaces, such as beaches and rocks, through a detergency mechanism and does not involve dispersing or solubilizing the oil into the water column.

Tank vessel as defined by section 1001 of the OPA means a vessel that is constructed or adapted to carry, or that carries oil or hazardous material in bulk as cargo or cargo residue, and that: (1)

is a vessel of the United States; (2) operates on the navigable waters; or (3) transfers oil or hazardous material in a place subject to the jurisdiction of the United States.

Threat of discharge or release, see definitions for discharge and release.

Threat of release, see definition for release.

Treatment technology means any unit operation or series of unit operations that alters the composition of a hazardous substance or pollutant or contaminant through chemical, biological, or physical means so as to reduce toxicity, mobility, or volume of the contaminated materials being treated. Treatment technologies are an alternative to land disposal of hazardous wastes without treatment.

Trustee means an official of a federal natural resources management agency designated in subpart G of the NCP or a designated state official or Indian tribe or, in the case of discharges covered by the OPA, a foreign government official, who may pursue claims for damages under section 107(f) of CERCLA or section 1006 of the OPA.

United States when used in relation to section 311(a)(5) of the CWA, means the states, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, Guam, American Samoa, the United States Virgin Islands, and the Pacific Island Governments. United States, when used in relation to section 101(27) of CERCLA and section 1001(36) of the OPA, includes the several states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Marianas, and any other territory or possession over which the United States has jurisdiction.

Vessel as defined by section 101(28) of CERCLA, means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water; and, as defined by section 311(a)(3) of the CWA, means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water other than a public vessel.

Volunteer means any individual accepted to perform services by the lead agency which has authority to accept volunteer services (examples: See 16 U.S.C. 742f(c)). A volunteer is subject to the provisions of the authorizing statute and the NCP.

Worst case discharge as defined by section 311(a)(24) of the CWA, means, in the case of a vessel, a discharge in adverse weather conditions of its entire cargo, and, in the case of an offshore facility or onshore facility, the largest foreseeable discharge in adverse weather conditions.

§ 300.6 Use of number and gender.

As used in this regulation, words in the singular also include the plural and words in the masculine gender also include the feminine and vice versa, as the case may require.

§ 300.7 Computation of time.

In computing any period of time prescribed or allowed in these rules of practice, except as otherwise provided, the day of the event from which the designated period begins to run shall not be included. Saturdays, Sundays, and federal legal holidays shall be included. When a stated time expires on a Saturday, Sunday, or legal holiday, the stated time period shall be extended to include the next business day.

Subpart B—Responsibility and Organization for Response

§ 300.100 Duties of President delegated to federal agencies.

In Executive Orders 12580 and 12777, the President delegated certain functions and responsibilities vested in him by the CWA, CERCLA, and the OPA.

§ 300.105 General organization concepts.

(a) Federal agencies should:

(1) Plan for emergencies and develop procedures for addressing oil discharges and releases of hazardous substances, pollutants, or contaminants;

(2) Coordinate their planning, preparedness, and response activities with one another;

(3) Coordinate their planning, preparedness, and response activities with affected states, local governments, and private entities; and

(4) Make available those facilities or resources that may be useful in a response situation, consistent with agency authorities and capabilities.

(b) Three fundamental kinds of activities are performed pursuant to the NCP:

(1) Preparedness planning and coordination for response to a discharge of oil or release of a hazardous substance, pollutant, or contaminant;

(2) Notification and communications; and

(3) Response operations at the scene of a discharge or release.

(c) The organizational elements created to perform these activities are:

(1) The National Response Team (NRT), responsible for national response and preparedness planning, for coordinating regional planning, and for providing policy guidance and support to the Regional Response Teams (RRTs). NRT membership consists of representatives from the agencies specified in § 300.175(b).

(2) RRTs, responsible for regional planning and preparedness activities before response actions, and for providing advice and support to the OSC or RPM when activated during a response. RRT membership consists of designated representatives from each federal agency participating in the NRT together with state and (as agreed upon by the states) local government representatives.

(3) The OSC and the RPM, primarily responsible for directing response efforts and coordinating all other efforts at the scene of a discharge or release. The other responsibilities of OSCs and RPMs are described in § 300.135.

(4) Area Committees, responsible for developing, under direction of the OSC, Area Contingency Plans (ACPs) for each area designated by the President. Responsibilities of Area Committees are described in § 300.205(c).

(d)(1) The organizational concepts of the national response system are depicted in the following Figure 1:

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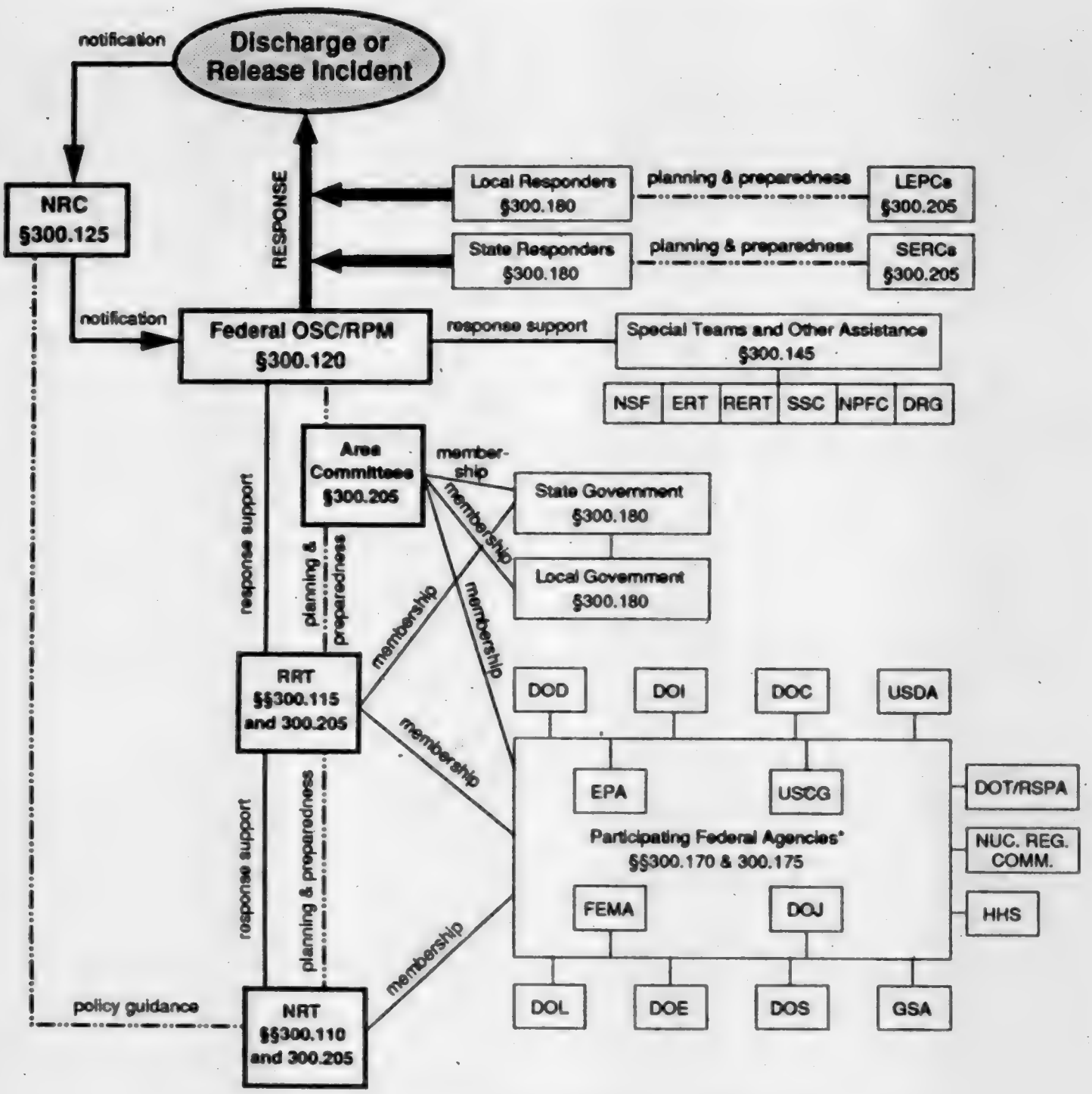
Figure 1

National Response System Concepts



*The same federal agencies participate on both the National Response Team (NRT) and the Regional Response Team (RRT). Federal agencies on the RRT are represented by regional staff. Abbreviations used in this figure are explained in §300.4.

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Figure 2 -- Standard Regional Boundaries for Ten Regions

(2) The standard federal regional boundaries (which are also the geographic areas of responsibility for the RRT RRTs) are shown in the following Figure 2:

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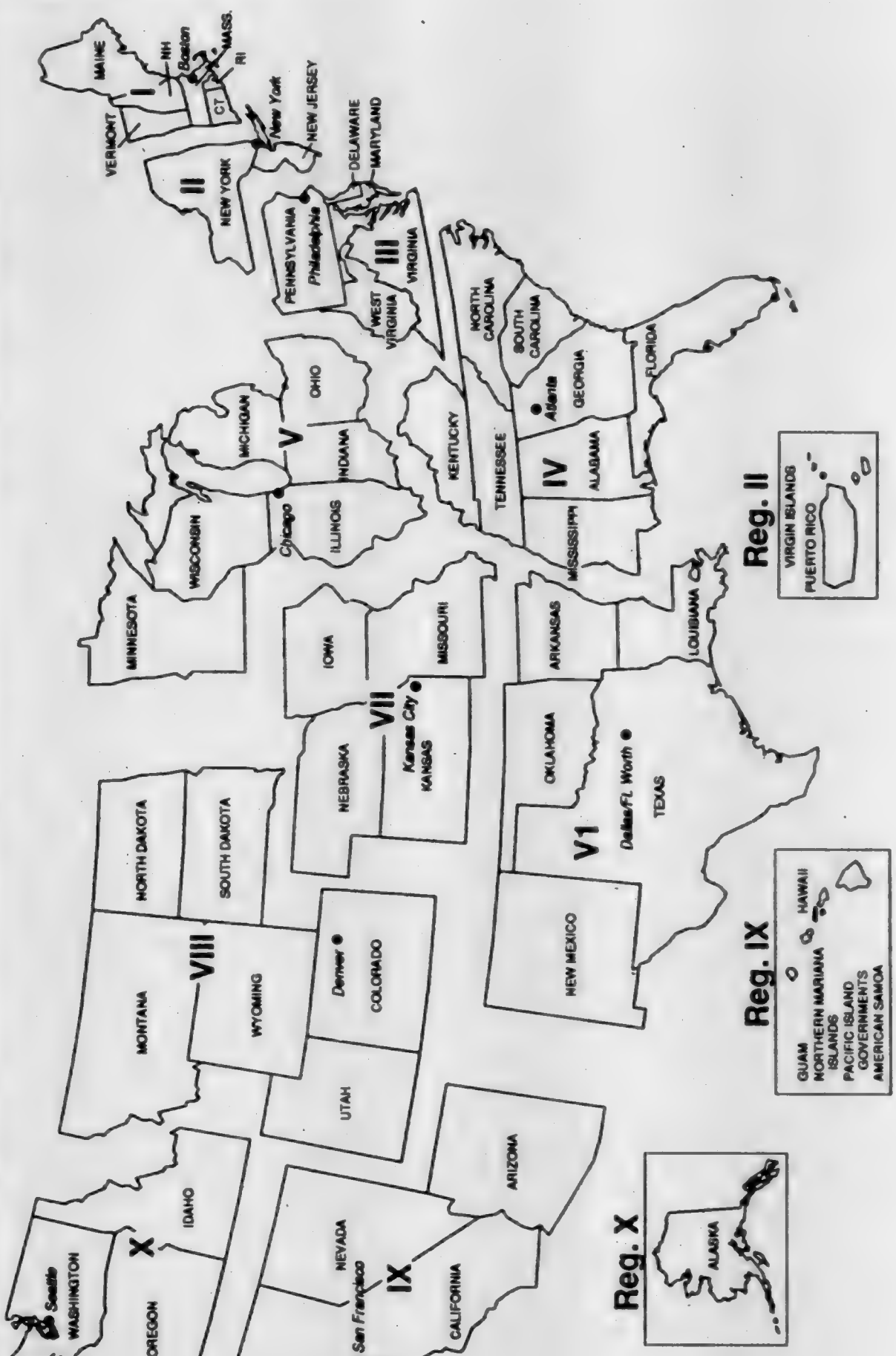
Figure 2 -- Standard Regional Boundaries for Ten Regions



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(3) The USCG District boundaries are shown in the following Figure 3:

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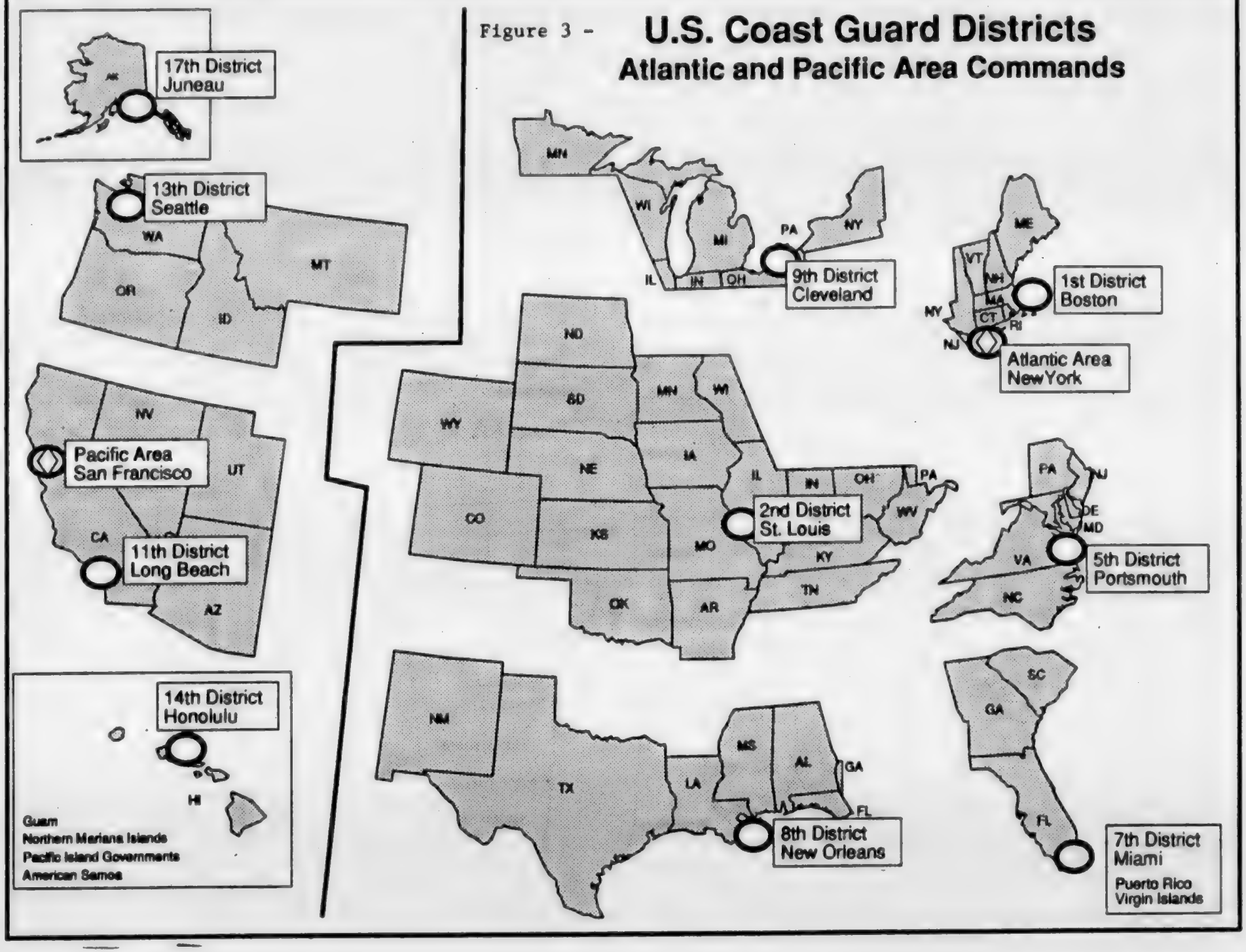
Figure 3 - **U.S. Coast Guard Districts**
Atlantic and Pacific Area Commands



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§ 3

§ 300.110 National Response Team.

National planning and coordination is accomplished through the NRT.

(a) The NRT consists of representatives from the agencies named in § 300.175(b). Each agency shall designate a member to the team and sufficient alternates to ensure representation, as agency resources permit. The NRT will consider requests for membership on the NRT from other agencies. Other agencies may request membership by forwarding such requests to the chair of the NRT.

(b) The chair of the NRT shall be the representative of EPA and the vice chair shall be the representative of the USCG, with the exception of periods of activation because of response action. During activation, the chair shall be the member agency providing the OSC/RPM. The vice chair shall maintain records of NRT activities along with national, regional, and area plans for response actions.

(c) While the NRT desires to achieve a consensus on all matters brought before it, certain matters may prove unresolvable by this means. In such cases, each agency serving as a participating agency on the NRT may be accorded one vote in NRT proceedings.

(d) The NRT may establish such bylaws and committees as it deems appropriate to further the purposes for which it is established.

(e) The NRT shall evaluate methods of responding to discharges or releases; shall recommend any changes needed in the response organization; and shall recommend to the Administrator of EPA changes to the NCP designed to improve the effectiveness of the national response system, including drafting of regulatory language.

(f) The NRT shall provide policy and program direction to the RRTs.

(g) The NRT may consider and make recommendations to appropriate agencies on the training, equipping, and protection of response teams and necessary research, development, demonstration, and evaluation to improve response capabilities.

(h) Direct planning and preparedness responsibilities of the NRT include:

(1) Maintaining national preparedness to respond to a major discharge of oil or release of a hazardous substance, pollutant, or contaminant that is beyond regional capabilities;

(2) Publishing guidance documents for preparation and implementation of SARA Title III local emergency response plans;

(3) Monitoring incoming reports from all RRTs and activating for a response action, when necessary;

(4) Coordinating a national program to assist member agencies in preparedness planning and response, and enhancing coordination of member agency preparedness programs;

(5) Developing procedures, in coordination with the NSFCC, as appropriate, to ensure the coordination of federal, state, and local governments, and private response to oil discharges and releases of hazardous substances, pollutants, or contaminants;

(6) Monitoring response-related research and development, testing, and evaluation activities of NRT agencies to enhance coordination, avoid duplication of effort, and facilitate research in support of response activities;

(7) Developing recommendations for response training and for enhancing the coordination of available resources among agencies with training responsibilities under the NCP;

(8) Reviewing regional responses to oil discharges and hazardous substance, pollutant, or contaminant releases, including an evaluation of equipment readiness and coordination among responsible public agencies and private organizations; and

(9) Assist in developing a national exercise program, in coordination with the NSFCC, to ensure preparedness and coordination nationwide.

(i) The NRT will consider matters referred to it for advice or resolution by an RRT.

(j) The NRT should be activated as an emergency response team:

(1) When an oil discharge or hazardous substance release:

(i) Exceeds the response capability of the region in which it occurs;

(ii) Transects regional boundaries; or

(iii) Involves a substantial threat to the public health or welfare or the environment, substantial amounts of property, or substantial threats to natural resources;

(2) If requested by any NRT member.

(k) When activated for a response action, the NRT shall meet at the call of the chair and may:

(1) Monitor and evaluate reports from the OSC/RPM and recommend to the OSC/RPM, through the RRT, actions to combat the discharge or release;

(2) Request other federal, state, and local governments, or private agencies, to provide resources under their existing authorities to combat a discharge or release, or to monitor response operations; and

(3) Coordinate the supply of equipment, personnel, or technical advice to the affected region from other regions or districts.

§ 300.115 Regional Response Teams.

(a) Regional planning and coordination of preparedness and response actions is accomplished through the RRT. In the case of a discharge of oil, preparedness activities will be carried out in conjunction with Area Committees, as appropriate. The RRT agency membership parallels that of the NRT, as described in § 300.110, but also includes state and local representation. The RRT provides:

(1) The appropriate regional mechanism for development and coordination of preparedness activities before a response action is taken and for coordination of assistance and advice to the OSC/RPM during such response actions; and

(2) Guidance to Area Committees, as appropriate, to ensure inter-area consistency and consistency of individual ACPs with the RCP and NCP.

(b) The two principal components of the RRT mechanism are a standing team, which consists of designated representatives from each participating federal agency, state governments, and local governments (as agreed upon by the states); and incident-specific teams formed from the standing team when the RRT is activated for a response. On incident-specific teams, participation by the RRT member agencies will relate to the technical nature of the incident and its geographic location.

(1) The standing team's jurisdiction corresponds to the standard federal regions, except for Alaska, Oceania in the Pacific, and the Caribbean area, each of which has a separate standing RRT. The role of the standing RRT includes communications systems and procedures, planning, coordination, training, evaluation, preparedness, and related matters on a regionwide basis. It also includes coordination of Area Committees for these functions in areas within their respective regions, as appropriate.

(2) The role of the incident-specific team is determined by the operational requirements of the response to a specific discharge or release. Appropriate levels of activation and/or notification of the incident-specific RRT, including participation by state and local governments, shall be determined by the designated RRT chair for the incident, based on the RCP. The incident-specific RRT supports the designated OSC/RPM. The designated OSC/RPM directs response efforts and coordinates all other efforts at the scene of a discharge or release.

(c) The representatives of EPA and the USCG shall act as co-chairs of RRTs except when the RRT is activated. When the RRT is activated for response

actions, the chair shall be the member agency providing the OSC/RPM.

(d) Each participating agency should designate one member and at least one alternate member to the RRT. Agencies whose regional subdivisions do not correspond to the standard federal regions may designate additional representatives to the standing RRT to ensure appropriate coverage of the standard federal region. Participating states may also designate one member and at least one alternate member to the RRT. Indian tribal governments may arrange for representation with the RRT appropriate to their geographical location. All agencies and states may also provide additional representatives as observers to meetings of the RRT.

(e) RRT members should designate representatives and alternates from their agencies as resource personnel for RRT activities, including RRT work planning, and membership on incident-specific teams in support of the OSCs/RPMs.

(f) Federal RRT members or their representatives should provide OSCs/RPMs with assistance from their respective federal agencies commensurate with agency responsibilities, resources, and capabilities within the region. During a response action, the members of the RRT should seek to make available the resources of their agencies to the OSC/RPM as specified in the RCP and ACP.

(g) RRT members should nominate appropriately qualified representatives from their agencies to work with OSCs in developing and maintaining ACPs.

(h) Affected states are encouraged to participate actively in all RRT activities. Each state governor is requested to assign an office or agency to represent the state on the appropriate RRT; to designate representatives to work with the RRT in developing RCPs; to plan for, make available, and coordinate state resources; and to serve as the contact point for coordination of response with local government agencies, whether or not represented on the RRT. The state's RRT representative should keep the State Emergency Response Commission (SERC), described in § 300.205(d), apprised of RRT activities and coordinate RRT activities with the SERC. Local governments are invited to participate in activities on the appropriate RRT as provided by state law or as arranged by the state's representative. Indian tribes are also invited to participate in such activities.

(i) The standing RRT shall recommend changes in the regional response organization as needed, revise the RCP as needed, evaluate the preparedness of the participating agencies and the effectiveness of ACPs for the federal response to discharges and releases, and provide technical assistance for preparedness to the response community. The RRT should:

(1) Review and comment, to the extent practicable, on local emergency response plans or other issues related to the preparation, implementation, or exercise of such plans upon request of a local emergency planning committee;

(2) Evaluate regional and local responses to discharges or releases on a continuing basis, considering available legal remedies, equipment readiness, and coordination among responsible public agencies and private organizations, and recommend improvements;

(3) Recommend revisions of the NCP to the NRT, based on observations of response operations;

(4) Review OSC actions to ensure that RCPs and ACPs are effective;

(5) Encourage the state and local response community to improve its preparedness for response;

(6) In coordination with Area Committees, conduct advance planning for use of dispersants, surface washing agents, surface collecting agents, burning agents, bioremediation agents, or other chemical agents in accordance with subpart J of this part;

(7) Be prepared to provide response resources to major discharges or releases outside the region;

(8) Conduct or participate in training and exercises as necessary to encourage preparedness activities of the response community within the region;

(9) Meet at least semiannually to review response actions carried out during the preceding period, consider changes in RCPs, and recommend changes in ACPs;

(10) Provide letter reports on RRT activities to the NRT twice a year, no later than January 31 and July 31. At a minimum, reports should summarize recent activities, organizational changes, operational concerns, and efforts to improve state and local coordination; and

(11) Ensure maximum participation in the national exercise program for announced and unannounced exercises.

(j)(1) The RRT may be activated by the chair as an incident-specific response team when a discharge or release:

(i) Exceeds the response capability available to the OSC/RPM in the place where it occurs;

(ii) Transects state boundaries;

(iii) May pose a substantial threat to the public health or welfare or the environment, or to regionally significant amounts of property; or

(iv) Is a worst case discharge, as described in § 300.324. RCPs shall specify detailed criteria for activation of RRTs.

(2) The RRT will be activated during any discharge or release upon a request from the OSC/RPM, or from any RRT representative, to the chair of the RRT. Requests for RRT activation shall later be confirmed in writing. Each representative, or an appropriate alternate, should be notified immediately when the RRT is activated.

(3) During prolonged removal or remedial action, the RRT may not need to be activated or may need to be activated only in a limited sense, or may need to have available only those member agencies of the RRT who are directly affected or who can provide direct response assistance.

(4) When the RRT is activated for a discharge or release, agency representatives shall meet at the call of the chair and may:

(i) Monitor and evaluate reports from the OSC/RPM, advise the OSC/RPM on the duration and extent of response, and recommend to the OSC/RPM specific actions to respond to the discharge or release;

(ii) Request other federal, state, or local governments, or private agencies, to provide resources under their existing authorities to respond to a discharge or release or to monitor response operations;

(iii) Help the OSC/RPM prepare information releases for the public and for communication with the NRT;

(iv) If the circumstances warrant, make recommendations to the regional or district head of the agency providing the OSC/RPM that a different OSC/RPM should be designated; and

(v) Submit pollution reports to the NRC as significant developments occur.

(5) At the regional level, a Regional Response Center (RRC) may provide facilities and personnel for communications, information storage, and other requirements for coordinating response. The location of each RRC should be provided in the RCP.

(6) When the RRT is activated, affected states may participate in all RRT deliberations. State government representatives participating in the RRT have the same status as any federal member of the RRT.

(7) The RRT can be deactivated when the incident-specific RRT chair determines that the OSC/RPM no longer requires RRT assistance.

(8) Notification of the RRT may be appropriate when full activation is not necessary, with systematic communication of pollution reports or other means to keep RRT members informed as to actions of potential concern to a particular agency, or to

assist in later RRT evaluation of regionwide response effectiveness.

(k) Whenever there is insufficient national policy guidance on a matter before the RRT, a technical matter requiring solution, a question concerning interpretation of the NCP, or a disagreement on discretionary actions among RRT members that cannot be resolved at the regional level, it may be referred to the NRT, described in § 300.110, for advice.

§ 300.120 On-scene coordinators and remedial project managers: General responsibilities.

(a) The OSC/RPM directs response efforts and coordinates all other efforts at the scene of a discharge or release. As part of the planning and preparedness for response, OSCs shall be predesignated by the regional or district head of the lead agency. EPA and the USCG shall predesignate OSCs for all areas in each region, except as provided in paragraphs (c) and (d) of this section. RPMs shall be assigned by the lead agency to manage remedial or other response actions at NPL sites, except as provided in paragraphs (c) and (d) of this section.

(1) The USCG shall provide OSCs for oil discharges, including discharges from facilities and vessels under the jurisdiction of another federal agency, within or threatening the coastal zone. The USCG shall also provide OSCs for the removal of releases of hazardous substances, pollutants, or contaminants into or threatening the coastal zone, except as provided in paragraph (b) of this section. The USCG shall not provide predesignated OSCs for discharges or releases from hazardous waste management facilities or in similarly chronic incidents. The USCG shall provide an initial response to discharges or releases from hazardous waste management facilities within the coastal zone in accordance with Department of Transportation (DOT)/EPA Instrument of Redelegation (May 27, 1988) except as provided by paragraph (b) of this section. The USCG OSC shall contact the cognizant RPM as soon as it is evident that a removal may require a follow-up remedial action, to ensure that the required planning can be initiated and an orderly transition to an EPA or state lead can occur.

(2) EPA shall provide OSCs for discharges or releases into or threatening the inland zone and shall provide RPMs for federally funded remedial actions, except in the case of state-lead federally funded response and as provided in paragraph (b) of this section. EPA will also assume all remedial actions at NPL sites in the coastal zone, even where removals are initiated by the USCG, except as provided in paragraph (b) of this section.

(b) In general, USCG Captains of the Port (COTP) shall serve as the designated OSCs for areas in the coastal zone for which an ACP is required under CWA section 311(j) and EPA Regional Administrators shall designate OSCs for areas in the inland zone for which an ACP is required under CWA section 311(j).

(c) For releases of hazardous substances, pollutants, or contaminants, when the release is on, or the sole source of the release is from, any facility or vessel, including vessels bareboat-chartered and operated, under the jurisdiction, custody, or control of DOD, DOE, or other federal agency:

(1) In the case of DOD or DOE, DOD or DOE shall provide OSCs/RPMs responsible for taking all response actions; and

(2) In the case of a federal agency other than EPA, DOD, or DOE, such agency shall provide OSCs for all removal actions that are not emergencies and shall provide RPMs for all remedial actions.

(d) DOD will be the removal response authority with respect to incidents involving DOD military weapons and munitions or weapons and munitions under the jurisdiction, custody, or control of DOD.

(e) The OSC is responsible for overseeing development of the ACP in the area of the OSC's responsibility. ACPs shall, as appropriate, be accomplished in cooperation with the RRT, and designated state and local representatives. The OSC coordinates, directs, and reviews the work of other agencies, Area Committees, responsible parties, and contractors to assure compliance with the NCP, decision document, consent decree, administrative order, and lead agency-approved plans applicable to the response.

(f) The RPM is the prime contact for remedial or other response actions being taken (or needed) at sites on the proposed or promulgated NPL, and for sites not on the NPL but under the jurisdiction, custody, or control of a federal agency. The RPM's responsibilities include:

(1) Fund-financed response: The RPM coordinates, directs, and reviews the work of EPA, states and local governments, the U.S. Army Corps of Engineers, and all other agencies and contractors to assure compliance with the NCP. Based upon the reports of these parties, the RPM recommends action for decisions by lead agency officials. The RPM's period of responsibility begins prior to initiation of the remedial investigation/feasibility study (RI/FS), described in § 300.430, and continues through design, remedial action, deletion of the site from the NPL, and the CERCLA cost recovery activity. When a removal and remedial action occur at the same site, the OSC and RPM should coordinate to ensure an orderly transition of responsibility.

(2) Federal-lead non-Fund-financed response: The RPM coordinates, directs, and reviews the work of other agencies, responsible parties, and contractors to assure compliance with the NCP, Record of Decision (ROD), consent decree, administrative order, and lead agency-approved plans applicable to the response. Based upon the reports of these parties, the RPM shall recommend action for decisions by lead agency officials. The RPM's period of responsibility begins prior to initiation of the RI/FS, described in § 300.430, and continues through design and remedial action and the CERCLA cost recovery activity. The OSC and RPM shall ensure orderly transition of responsibilities from one to the other.

(3) The RPM shall participate in all decision-making processes necessary to ensure compliance with the NCP, including, as appropriate, agreements between EPA or other federal agencies and the state. The RPM may also review responses where EPA has preauthorized a person to file a claim for reimbursement to determine that the response was consistent with the terms of such preauthorization in cases where claims are filed for reimbursement.

(g)(1) Where a support agency has been identified through a cooperative agreement, Superfund Memorandum of Agreement (SMOA), or other agreement, that agency may designate a support agency coordinator (SAC) to provide assistance, as requested, by the OSC/RPM. The SAC is the prime representative of the support agency for response actions.

(2) The SAC's responsibilities may include:

(i) Providing and reviewing data and documents as requested by the OSC/RPM during the planning, design, and cleanup activities of the response action; and

(ii) Providing other assistance as requested.

(h)(1) The lead agency should provide appropriate training for its OSCs, RPMs, and other response personnel to carry out their responsibilities under the NCP.

(2) OSCs/RPMs should ensure that persons designated to act as their on-scene representatives are adequately trained and prepared to carry out

actions under the NCP, to the extent practicable.

§ 300.125 Notification and communications.

(a) The National Response Center (NRC), located at USCG Headquarters, is the national communications center, continuously manned for handling activities related to response actions. The NRC acts as the single point of contact for all pollution incident reporting, and as the NRT communications center. Notice of discharges must be made telephonically through a toll free number or a special local number (Telecommunication Device for the Deaf (TDD) and collect calls accepted). (Notification details appear in §§ 300.300 and 300.405.) The NRC receives and immediately relays telephone notices of discharges or releases to the appropriate predesignated federal OSC. The telephone report is distributed to any interested NRT member agency or federal entity that has established a written agreement or understanding with the NRC. The NRC evaluates incoming information and immediately advises FEMA of a potential major disaster situation.

(b) The Commandant, USCG, in conjunction with other NRT agencies, shall provide the necessary personnel, communications, plotting facilities, and equipment for the NRC.

(c) Notice of an oil discharge or release of a hazardous substance in an amount equal to or greater than the reportable quantity must be made immediately in accordance with 33 CFR part 153, subpart B, and 40 CFR part 302, respectively. Notification shall be made to the NRC Duty Officer, HQ USCG, Washington, DC, telephone (800) 424–8802 or (202) 267–2675. All notices of discharges or releases received at the NRC will be relayed immediately by telephone to the OSC.

§ 300.130 Determinations to initiate response and special conditions.

(a) In accordance with CWA and CERCLA, the Administrator of EPA or the Secretary of the department in which the USCG is operating, as appropriate, is authorized to act for the United States to take response measures deemed necessary to protect the public health or welfare or environment from discharges of oil or releases of hazardous substances, pollutants, or contaminants except with respect to such releases on or from vessels or facilities under the jurisdiction, custody, or control of other federal agencies.

(b) The Administrator of EPA or the Secretary of the department in which the USCG is operating, as appropriate, is authorized to initiate and, in the case of a discharge posing a substantial threat to public health or welfare is required to initiate and direct, appropriate response activities when the Administrator or Secretary determines that any oil or CWA hazardous substance is discharged or there is a substantial threat of such discharge from any vessel or offshore or onshore facility into or on the navigable waters of the United States, on the adjoining shorelines to the navigable waters, into or on the waters of the exclusive economic zone, or that may affect natural resources belonging to, appertaining to, or under exclusive management authority of the United States; or

(c) The Administrator of EPA or the Secretary of the department in which the USCG is operating, as appropriate, is authorized to initiate appropriate response activities when the Administrator or Secretary determines that any hazardous substance is released or there is a threat of such a release into the environment, or there is a release or threat of release into the environment of any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare.

(d) In addition to any actions taken by a state or local government, the Administrator of EPA or the Secretary of the department in which the USCG is operating may request the U.S. Attorney General to secure the relief from any person, including the owner or operator of the vessel or facility necessary to abate a threat or, after notice to the affected state, take any other action authorized by section 311 of the CWA or section 106 of CERCLA as appropriate, including issuing administrative orders, that may be necessary to protect the public health or welfare, if the Administrator or Secretary determines:

(1) That there may be an imminent and substantial threat to the public health or welfare or the environment of the United States, including fish, shellfish, and wildlife, public and private property, shorelines, beaches, habitats, and other living and nonliving natural resources under the jurisdiction or control of the United States, because of an actual or threatened discharge of oil or a CWA hazardous substance from any vessel or offshore or onshore facility into or upon the navigable waters of the United States; or

(2) That there may be an imminent and substantial endangerment to the public health or welfare or the environment because of a release of a CERCLA hazardous substance from a facility.

(e) Response actions to remove discharges originating from operations conducted subject to the Outer Continental Shelf Lands Act shall be in accordance with the NCP.

(f) Where appropriate, when a discharge or release involves radioactive materials, the lead or support federal agency shall act consistent with the notification and assistance procedures described in the appropriate Federal Radiological Plan. For the purpose of the NCP, the Federal Radiological Emergency Response Plan (FRERP) (50 FR 46542, November 8, 1985) is the appropriate plan. Most radiological discharges and releases do not result in FRERP activation and should be handled in accordance with the NCP. However, releases from nuclear incidents subject to requirements for financial protection established by the Nuclear Regulatory Commission under the Price-Anderson amendments (section 170) of the Atomic Energy Act are specifically excluded from CERCLA and NCP requirements.

(g) Removal actions involving nuclear weapons should be conducted in accordance with the joint Department of Defense, Department of Energy, and Federal Emergency Management Agency (FEMA) Agreement for Response to Nuclear Incidents and Nuclear Weapons Significant Incidents (January 8, 1981).

(h) If the situation is beyond the capability of state and local governments and the statutory authority of federal agencies, the President may, under the Disaster Relief Act of 1974, act upon a request by the governor and declare a major disaster or emergency and appoint a Federal Coordinating Officer (FCO) to coordinate all federal disaster assistance activities. In such cases, the OSC/RPM would continue to carry out OSC/RPM responsibilities under the NCP, but would coordinate those activities with the FCO to ensure consistency with other federal disaster assistance activities.

(i) In the event of a declaration of a major disaster by the President, the Federal Emergency Management Agency (FEMA) may activate the Federal Response Plan (FRP). A Federal Coordinating Officer (FCO), designated by the President, may implement the FRP and coordinate and direct emergency assistance and disaster relief of impacted individuals, business, and public services under the Robert T. Stafford Disaster Relief Act. Delivery of federal assistance is facilitated through twelve functional annexes to the FRP known as Emergency Support Function

(ESFs). EPA coordinates activities under ESF #10—Hazardous Materials, which addresses preparedness and response to hazardous materials and oil incidents caused by a natural disaster or other catastrophic event. In such cases, the OSC/RPM should coordinate response activities with the FCO, through the incident-specific ESF #10 Chair, to ensure consistency with federal disaster assistance activities.

§ 300.135 Response operations.

(a) The OSC/RPM, consistent with §§ 300.120 and 300.125, shall direct response efforts and coordinate all other efforts at the scene of a discharge or release. As part of the planning and preparation for response, the OSCs/RPMs shall be predesignated by the regional or district head of the lead agency.

(b) The first federal official affiliated with an NRT member agency to arrive at the scene of a discharge or release should coordinate activities under the NCP and is authorized to initiate, in consultation with the OSC, any necessary actions normally carried out by the OSC until the arrival of the predesignated OSC. This official may initiate federal Fund-financed actions only as authorized by the OSC or, if the OSC is unavailable, the authorized representative of the lead agency.

(c) The OSC/RPM shall, to the extent practicable, collect pertinent facts about the discharge or release, such as its source and cause; the identification of potentially responsible parties; the nature, amount, and location of discharged or released materials; the probable direction and time of travel of discharged or released materials; whether the discharge is a worst case discharge as discussed in § 300.324; the pathways to human and environmental exposure; the potential impact on human health, welfare, and safety and the environment; whether the discharge or release poses a substantial threat to the public health or welfare as discussed in § 300.322; the potential impact on natural resources and property which may be affected; priorities for protecting human health and welfare and the environment; and appropriate cost documentation.

(d) The OSC's/RPM's efforts shall be coordinated with other appropriate federal, state, local, and private response agencies. OSCs/RPMs may designate capable persons from federal, state, or local agencies to act as their on-scene representatives. State and local governments, however, are not authorized to take actions under subparts D and E of the NCP that involve expenditures of the Oil Spill Liability Trust Fund or CERCLA funds unless an appropriate contract or cooperative agreement has been established.

(e) The OSC/RPM should consult regularly with the RRT and NSFCC, as appropriate, in carrying out the NCP and keep the RRT and NSFCC, as appropriate, informed of activities under the NCP.

(f) The OSC/RPM shall advise the support agency as promptly as possible of reported releases.

(g) The OSC/RPM should evaluate incoming information and immediately advise FEMA of potential major disaster situations.

(h) In those instances where a possible public health emergency exists, the OSC/RPM should notify the Department of Health and Human Services (HHS) representative to the RRT. Throughout response actions, the OSC/RPM may call upon the HHS representative for assistance in determining public health threats and call upon the Occupational Safety and Health Administration (OSHA) and HHS for assistance on worker health and safety issues.

(i) All federal agencies should plan for emergencies and develop procedures for dealing with oil discharges and releases of hazardous substances, pollutants, or contaminants from vessels and facilities under their jurisdiction. All federal agencies, therefore, are responsible for designating the office that coordinates response to such incidents in accordance with the NCP and applicable federal regulations and guidelines.

(j)(1) The OSC/RPM shall ensure that the trustees for natural resources are promptly notified of discharges or releases.

(2) The OSC or RPM shall coordinate all response activities with the affected natural resource trustees and, for discharges of oil, the OSC shall consult with the affected trustees on the appropriate removal action to be taken.

(k) Where the OSC/RPM becomes aware that a discharge or release may affect any endangered or threatened species or their habitat, the OSC/RPM shall consult with the Department of Interior (DOI), or the Department of Commerce (DOC) (NOAA) and, if appropriate, the cognizant federal land managing agency.

(l) The OSC/RPM is responsible for addressing worker health and safety concerns at a response scene, in accordance with § 300.150.

(m) The OSC shall submit pollution reports to the RRT and other appropriate agencies as significant developments occur during response actions, through communications networks or procedures agreed to by the RRT and covered in the RCP.

(n) OSCs/RPMs should ensure that all appropriate public and private interests are kept informed and that their concerns are considered throughout a response, to the extent practicable, consistent with the requirements of § 300.155 of this part.

§ 300.140 Multi-regional responses.

(a) If a discharge or release moves from the area covered by one ACP or RCP into another area, the authority for response actions should likewise shift. If a discharge or release affects areas covered by two or more ACPs or RCPs, the response mechanisms of each applicable plan may be activated. In this case, response actions of all regions concerned shall be fully coordinated as detailed in the RCPs and ACPs.

(b) There shall be only one OSC and/or RPM at any time during the course of a response operation. Should a discharge or release affect two or more areas, EPA, the USCG, DOD, DOE, or other lead agency, as appropriate, shall give prime consideration to the area vulnerable to the greatest threat, in determining which agency should provide the OSC and/or RPM. The RRT shall designate the OSC and/or RPM if the RRT member agencies who have response authority within the affected areas are unable to agree on the designation. The NRT shall designate the OSC and/or RPM if members of one RRT or two adjacent RRTs are unable to agree on the designation.

(c) Where the USCG has initially provided the OSC for response to a release from hazardous waste management facilities located in the coastal zone, responsibility for response action shall shift to EPA or another federal agency, as appropriate.

§ 300.145 Special teams and other assistance available to OSCs/RPMs.

(a) The NSF is a special team established by the USCG, including the three USCG Strike Teams, the Public Information Assist Team (PIAT), and the NSFCC. The NSF is available to assist OSCs/RPMs in their preparedness and response duties.

(1) The three Strike Teams (Atlantic, Gulf, and Pacific) provide trained personnel and specialized equipment to assist the OSC in training for spill response, stabilizing and containing the spill, and in monitoring or directing the response actions of the responsible parties and/or contractors. The OSC has a specific team designated for initial contact and may contact that team directly for any assistance.

(2) The NSFCC can provide the following support to the OSC:

(i) Technical assistance, equipment and other resources to augment the OSC staff during spill response.

(ii) Assistance in coordinating the use of private and public resources in support of the OSC during a response to or a threat of a worst case discharge of oil.

(iii) Review of the area contingency plan, including an evaluation of equipment readiness and coordination among responsible public agencies and private organizations.

(iv) Assistance in locating spill response resources for both response and planning, using the NSFCC's national and international computerized inventory of spill response resources.

(v) Coordination and evaluation of pollution response exercises.

(vi) Inspection of district prepositioned pollution response equipment.

(3) PIAT is an element of the NSFCC staff which is available to assist OSCs to meet the demands for public information during a response or exercise. Its use is encouraged any time the OSC requires outside public affairs support. Requests for PIAT assistance may be made through the NSFCC or NRC.

(b)(1) The Environmental Response Team (ERT) is established by EPA in accordance with its disaster and emergency responsibilities. The ERT has expertise in treatment technology, biology, chemistry, hydrology, geology, and engineering.

(2) The ERT can provide access to special decontamination equipment for chemical releases and advice to the OSC/RPM in hazard evaluation; risk assessment; multimedia sampling and analysis program; on-site safety, including development and implementation plans; clean-up techniques and priorities; water supply decontamination and protection; application of dispersants; environmental assessment; degree of clean-up required; and disposal of contaminated material.

(3) The ERT also provides both introductory and intermediate level training courses to prepare response personnel.

(4) OSC/RPM or RRT requests for ERT support should be made to the EPA representative on the RRT; EPA Headquarters, Director, Emergency Response Division; or the appropriate EPA regional emergency coordinator.

(c) Scientific Support Coordinators (SSCs) may be designated by the OSC (and RPM in the case of EPA SSCs) as the principal advisors for scientific issues, communication with the scientific community, and coordination of requests for assistance from state and federal agencies regarding scientific studies. The SSC strives for a consensus on scientific issues affecting the response, but ensures that differing opinions within the community are communicated to the OSC/RPM.

(1) Generally, SSCs are provided by NOAA in the coastal zones, and by EPA in the inland zone. OSC/RPM requests for SSC support can be made directly to the SSC assigned to the area or to the agency member of the RRT. NOAA SSCs can also be requested through NOAA's SSC program office in Seattle, WA. NOAA SSCs are assigned to USCG Districts and are supported by a scientific support team that includes expertise in environmental chemistry, oil slick tracking, pollutant transport modeling, natural resources at risk, environmental tradeoffs of countermeasures and cleanup, and information management.

(2) During a response, the SSC serves on the federal OSC's/RPM's staff and may, at the request of the OSC/RPM, lead the scientific team and be responsible for providing scientific support for operational decisions and for coordinating on-scene scientific activity. Depending on the nature and location of the incident, the SSC integrates expertise from governmental agencies, universities, community representatives, and industry to assist the OSC/RPM in evaluating the hazards and potential effects of releases and in developing response strategies.

(3) At the request of the OSC, the SSC may facilitate the OSC's work with the lead administrative trustee for natural resources to ensure coordination between damage assessment data collection efforts and data collected in support of response operations.

(4) SSCs support the Regional Response Teams and the Area Committees in preparing regional and area contingency plans and in conducting spill training and exercises. For area plans, the SSC provides leadership for the synthesis and integration of environmental information required for spill response decisions in support of the OSC.

(d) For marine salvage operations, OSCs/RPMs with responsibility for monitoring, evaluating, or supervising these activities should request technical assistance from DOD, the Strike Teams, or commercial salvors as necessary to ensure that proper actions are taken. Marine salvage operations generally fall into five categories: Afloat salvage; offshore salvage; river and harbor clearance; cargo salvage; and rescue towing. Each category requires different knowledge and specialized types of equipment. The complexity of such operations may be further compounded by local environmental and geographic conditions. The nature of marine salvage and the conditions under which it occurs combine to make such operations imprecise, difficult, hazardous, and expensive. Thus, responsible parties or other persons attempting to perform such operations without adequate knowledge, equipment, and experience could aggravate, rather than relieve, the situation.

(e) Radiological Emergency Response Teams (RERTs) have been established by EPA's Office of Radiation Programs (ORP) to provide response and support for incidents or sites containing radiological hazards. Expertise is available in radiation monitoring, radionuclide analysis, radiation health physics, and risk assessment. RERTs can provide on-site support including mobile monitoring laboratories for field analyses of samples and fixed laboratories for radiochemical sampling and analyses. Requests for support may be made 24 hours a day via the NRC or directly to the EPA Radiological Response Coordinator in the Office of Radiation Programs. Assistance is also available from DOE and other federal agencies.

(f)(1) DRGs assist the OSC by providing technical assistance, personnel, and equipment, including pre-positioned equipment. Each DRG consists of all Coast Guard personnel and equipment, including marine firefighting equipment, in its district, additional pre-positioned equipment, and a District Response Advisory Team (DRAT) that is available to provide support to the OSC in the event that a spill exceeds local response capabilities. Each DRG:

(i) Shall provide technical assistance, equipment, and other resources, as available, when requested by an OSC through the USCG representative to the RRT;

(ii) Shall ensure maintenance of all USCG response equipment within its district;

(iii) May provide technical assistance in the preparation of the ACP; and

(iv) Shall review each of those plans that affect its area of geographic responsibility.

(2) In deciding where to locate personnel and pre-positioned equipment, the USCG shall give priority emphasis to:

(i) The availability of facilities for loading and unloading heavy or bulky equipment by barge;

(ii) The proximity to an airport capable of supporting large military transport aircraft;

(iii) The flight time to provide response to oil spills in all areas of the Coast Guard district with the potential for marine casualties;

(iv) The availability of trained local personnel capable of responding in an oil spill emergency; and

(v) Areas where large quantities of petroleum products are transported.

(g) The National Pollution Funds Center (NPFC) is responsible for implementing those portions of Title I of the OPA that have been delegated to the Secretary of the department in which the Coast Guard is operating. The NPFC is responsible for addressing funding issues arising from discharges and threats of discharges of oil. The NPFC:

(1) Issues Certificates of Financial Responsibility to owners and operators of vessels to pay for costs and damages that are incurred by their vessels as a result of oil discharges;

(2) Provides funding for various response organizations for timely abatement and removal actions related to oil discharges;

(3) Provides equitable compensation to claimants who sustain costs and damages from oil discharges when the responsible party fails to do so;

(4) Recovers monies from persons liable for costs and damages resulting from oil discharges to the full extent of liability under the law; and

(5) Provides funds to initiate natural resource damage assessments.

§ 300.150 Worker health and safety.

(a) Response actions under the NCP will comply with the provisions for response action worker safety and health in 29 CFR 1910.120. The NRS meets the requirements of 29 CFR 1910.120 concerning use of an incident command system.

(b) In a response action taken by a responsible party, the responsible party must assure that an occupational safety and health program consistent with 29 CFR 1910.120 is made available for the protection of workers at the response site.

(c) In a response taken under the NCP by a lead agency, an occupational safety and health program should be made available for the protection of workers at the response site, consistent with, and to the extent required by, 29 CFR 1910.120. Contracts relating to a response action under the NCP should contain assurances that the contractor at the response site will comply with this program and with any applicable provisions of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et. seq.) (OSH Act) and state laws with plans approved under section 18 of the OSH Act.

(d) When a state, or political subdivision of a state, without an OSHA-approved state plan is the lead agency for response, the state or political subdivision must comply with standards in 40 CFR part 311, promulgated by EPA pursuant to section 126(f) of SARA.

(e) Requirements, standards, and regulations of the OSH Act and of state OSH laws not directly referenced in paragraphs (a) through (d) of this section, must be complied with where applicable. Federal OSH Act requirements include, among other things, Construction Standards (29 CFR part 1926), General Industry Standards (29 CFR part 1910), and the general duty requirement of section 5(a)(1) of the OSH Act (29 U.S.C. 654(a)(1)). No action by the lead agency with respect to response activities under the NCP constitutes an exercise of statutory authority within the meaning of section 4(b)(1) of the OSH Act. All governmental agencies and private employers are directly responsible for the health and safety of their own employees.

§ 300.155 Public information and community relations.

(a) When an incident occurs, it is imperative to give the public prompt, accurate information on the nature of the incident and the actions underway to mitigate the damage. OSCs/RPMs and community relations personnel should ensure that all appropriate public and private interests are kept informed and that their concerns are considered throughout a response. They should coordinate with available public affairs/community relations resources to carry out this responsibility.

(b) An on-scene news office may be established to coordinate media relations and to issue official federal information on an incident. Whenever possible, it will be headed by a representative of the lead agency. The OSC/RPM determines the location of the on-scene news office, but every effort should be made to locate it near the scene of the incident. If a participating agency believes public interest warrants the issuance of statements and an on-scene news office has not been established, the affected agency should recommend its establishment. All federal news releases or statements by participating agencies should be cleared through the OSC/RPM. Information dissemination relating to natural resource damage assessment activities shall be coordinated through the lead administrative trustee. The designated lead administrative trustee may assist the OSC/RPM by disseminating information on issues relating to damage assessment activities. Following termination of removal activity, information dissemination on damage assessment activities shall be through the lead administrative trustee.

(c) The community relations requirements specified in §§ 300.415, 300.430, and 300.435 apply to removal, remedial, and enforcement actions and are intended to promote active communication between communities affected by discharges or releases and the lead agency responsible for response actions. Community Relations Plans (CRPs) are required by EPA for certain response actions. The OSC/RPM should ensure coordination with such plans which may be in effect at the scene of a discharge or release or which may need to be developed during follow-up activities.

§ 300.160 Documentation and cost recovery.

(a) For releases of a hazardous substance, pollutant, or contaminant, the following provisions apply:

(1) During all phases of response, the lead agency shall complete and maintain documentation to support all actions taken under the NCP and to form the basis for cost recovery. In general, documentation shall be sufficient to provide the source and circumstances of the release, the identity of responsible parties, the response action taken, accurate accounting of federal, state, or private party costs incurred for response actions, and impacts and potential impacts to the public health and welfare and the environment. Where applicable, documentation shall state when the NRC received notification of a release of a reportable quantity.

(2) The information and reports obtained by the lead agency for Fund-financed response actions shall, as appropriate, be transmitted to the chair of the RRT. Copies can then be forwarded to the NRT, members of the RRT, and others as appropriate.

(3) The lead agency shall make available to the trustees of affected natural resources information and documentation that can assist the trustees in the determination of actual or potential natural resource injuries.

(b) For discharges of oil, documentation and cost recovery provisions are described in § 300.315.

(c) Response actions undertaken by the participating agencies shall be carried out under existing programs and authorities when available. Federal

agencies are to make resources available, expend funds, or participate in response to discharges and releases under their existing authority. Interagency agreements may be signed when necessary to ensure that the federal resources will be available for a timely response to a discharge or release. The ultimate decision as to the appropriateness of expending funds rests with the agency that is held accountable for such expenditures. Further funding provisions for discharges of oil are described in § 300.335.

(d) The Administrator of EPA and the Administrator of the Agency for Toxic Substances and Disease Registry (ATSDR) shall assure that the costs of health assessment or health effect studies conducted under the authority of CERCLA section 104(i) are documented in accordance with standard EPA procedures for cost recovery. Documentation shall include information on the nature of the hazardous substances addressed by the research, information concerning the locations where these substances have been found, and any available information on response actions taken concerning these substances at the location.

§ 300.165 OSC reports.

(a) As requested by the NRT or RRT, the OSC/RPM shall submit to the NRT or RRT a complete report on the removal operation and the actions taken. The RRT shall review the OSC report and send to the NRT a copy of the OSC report with its comments or recommendations within 30 days after the RRT has received the OSC report.

(b) The OSC report shall record the situation as it developed, the actions taken, the resources committed, and the problems encountered.

§ 300.170 Federal agency participation.

Federal agencies listed in § 300.175 have duties established by statute, executive order, or Presidential directive which may apply to federal response actions following, or in prevention of, the discharge of oil or release of a hazardous substance, pollutant, or contaminant. Some of these agencies also have duties relating to the restoration, rehabilitation, replacement, or acquisition of equivalent natural resources injured or lost as a result of such discharge or release as described in subpart G of this part. The NRT, RRT, and Area Committee organizational structure, and the NCP, RCPs and ACPs, described in § 300.210, provide for agencies to coordinate with each other in carrying out these duties.

(a) Federal agencies may be called upon by an OSC/RPM during response planning and implementation to provide assistance in their respective areas of expertise, as described in § 300.175, consistent with the agencies' capabilities and authorities.

(b) In addition to their general responsibilities, federal agencies should:

(1) Make necessary information available to the Secretary of the NRT, RRTs, Area Committees, and OSCs/RPMs.

(2) Provide representatives to the NRT and RRTs and otherwise assist RRTs and OSCs, as necessary, in formulating RCPs and ACPs.

(3) Inform the NRT, RRTs, and Area Committees, consistent with national security considerations, of changes in the availability of resources that would affect the operations implemented under the NCP.

(c) All federal agencies are responsible for reporting releases of hazardous substances from facilities or vessels under their jurisdiction or control in accordance with section 103 of CERCLA.

(d) All federal agencies are encouraged to report releases of pollutants or contaminants or discharges of oil from facilities or vessels under their jurisdiction or control to the NRC.

§ 300.175 Federal agencies: Additional responsibilities and assistance.

(a) During preparedness planning or in an actual response, various federal agencies may be called upon to provide assistance in their respective areas of expertise, as indicated in paragraph (b) of this section, consistent with agency legal authorities and capabilities.

(b) The federal agencies include:

(1) USCG, as provided in 14 U.S.C. 1–3, is an agency in DOT, except when operating as an agency in the United States Navy (USN) in time of war. The USCG provides the NRT vice chair, co-chairs for the standing RRTs, and predesignated OSCs for the coastal zone, as described in § 300.120(a)(1). The USCG maintains continuously manned facilities which can be used for command, control, and surveillance of oil discharges and hazardous substance releases occurring in the coastal zone. The USCG also offers expertise in domestic and international fields of port safety and security, maritime law enforcement, ship navigation and construction, and the manning, operation, and safety of vessels and marine facilities. The USCG may enter into a contract or cooperative agreement with the appropriate state in order to implement a response action.

(2) EPA chairs the NRT and co-chairs, with the USCG, the standing RRTs; provides predesignated OSCs for all inland areas for which an ACP is required under CWA section 311(j) and for discharges and releases occurring in the inland zone and RPMs for remedial actions except as otherwise provided; and generally provides the SSC for responses in the inland zone. EPA provides expertise on environmental effects of oil discharges or releases of hazardous substances, pollutants, or contaminants, and environmental pollution control techniques. EPA also provides legal expertise on the interpretation of CERCLA and other environmental statutes. EPA may enter into a contract or cooperative agreement with the appropriate state in order to implement a response action.

(3) FEMA provides guidance, policy and program advice, and technical assistance in hazardous materials, chemical, and radiological emergency preparedness activities (including planning, training, and exercising). FEMA's primary point of contact for administering financial and technical assistance to state and local governments to support their efforts to develop and maintain an effective emergency management and response capability is the State and Local Programs and Support (SLPS) Directorate.

(4) DOD has responsibility to take all action necessary with respect to releases where either the release is on, or the sole source of the release is from, any facility or vessel under the jurisdiction, custody, or control of DOD. DOD may also, consistent with its operational requirements and upon request of the OSC, provide locally deployed USN oil spill equipment and provide assistance to other federal agencies on request. The following two branches of DOD have particularly relevant expertise:

(i) The United States Army Corps of Engineers has specialized equipment and personnel for maintaining navigation channels, for removing navigation obstructions, for accomplishing structural repairs, and for performing maintenance to hydropower electric generating equipment. The Corps can also provide design services, perform construction, and provide contract writing and contract administrative services for other federal agencies.

(ii) The USN is the federal agency most knowledgeable and experienced in ship salvage, shipboard damage control, and diving. The USN has an extensive array of specialized equipment and

personnel available for use in these areas as well as specialized containment, collection, and removal equipment specifically designed for salvage-related and open-sea pollution incidents.

(5) DOE generally provides designated OSCs/RPMs that are responsible for taking all response actions with respect to releases where either the release is on, or the sole source of the release is from, any facility or vessel under its jurisdiction, custody, or control, including vessels bareboat-chartered and operated. In addition, under the FRERP, DOE provides advice and assistance to other OSCs/RPMs for emergency actions essential for the control of immediate radiological hazards. Incidents that qualify for DOE radiological advice and assistance are those believed to involve source, by-product, or special nuclear material or other ionizing radiation sources, including radium, and other naturally occurring radionuclides, as well as particle accelerators. Assistance is available through direct contact with the appropriate DOE Radiological Assistance Coordinating Office.

(6) The Department of Agriculture (USDA) has scientific and technical capability to measure, evaluate, and monitor, either on the ground or by use of aircraft, situations where natural resources including soil, water, wildlife, and vegetation have been impacted by fire, insects and diseases, floods, hazardous substances, and other natural or man-caused emergencies. The USDA may be contacted through Forest Service emergency staff officers who are the designated members of the RRT. Agencies within USDA have relevant capabilities and expertise as follows:

(i) The Forest Service has responsibility for protection and management of national forests and national grasslands. The Forest Service has personnel, laboratory, and field capability to measure, evaluate, monitor, and control as needed, releases of pesticides and other hazardous substances on lands under its jurisdiction.

(ii) The Agriculture Research Service (ARS) administers an applied and developmental research program in animal and plant protection and production; the use and improvement of soil, water, and air; the processing, storage, and distribution of farm products; and human nutrition. The ARS has the capabilities to provide regulation of, and evaluation and training for, employees exposed to biological, chemical, radiological, and industrial hazards. In emergency situations, the ARS can identify, control, and abate pollution in the areas of air, soil, wastes, pesticides, radiation, and toxic substances for ARS facilities.

(iii) The Soil Conservation Service (SCS) has personnel in nearly every county in the nation who are knowledgeable in soil, agronomy, engineering, and biology. These personnel can help to predict the effects of pollutants on soil and their movements over and through soils. Technical specialists can assist in identifying potential hazardous waste sites and provide review and advice on plans for remedial measures.

(iv) The Animal and Plant Health Inspection Service (APHIS) can respond in an emergency to regulate movement of diseased or infected organisms to prevent the spread and contamination of nonaffected areas.

(v) The Food Safety and Inspection Service (FSIS) has responsibility to prevent meat and poultry products contaminated with harmful substances from entering human food channels. In emergencies, the FSIS works with other federal and state agencies to establish acceptability for slaughter of exposed or potentially exposed animals and their products. In addition they are charged with managing the Federal Radiological Emergency Response Program for the USDA.

(7) DOC, through NOAA, provides scientific support for response and contingency planning in coastal and marine areas, including assessments of the hazards that may be involved, predictions of movement and dispersion of oil and hazardous substances through trajectory modeling, and information on the sensitivity of coastal environments to oil and hazardous substances and associated clean-up and mitigation methods; provides expertise on living marine resources and their habitats, including endangered species, marine mammals and National Marine Sanctuary and National Estuarine Research Reserve ecosystems; provides information on actual and predicted meteorological, hydrological, ice, and oceanographic conditions for marine, coastal, and inland waters, and tide and circulation data for coastal and territorial waters and for the Great Lakes.

(8) HHS assists with the assessment, preservation, and protection of human health and helps ensure the availability of essential human services. HHS provides technical and nontechnical assistance in the form of advice, guidance, and resources to other federal agencies as well as state and local governments.

(i) The principal HHS response comes from the U.S. Public Health Service and is coordinated from the Office of the Assistant Secretary for Health, and various Public Health Service regional offices. Within the Public Health Service, the primary response to a hazardous materials emergency comes from Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control (CDC). Both ATSDR and CDC have a 24-hour emergency response capability wherein scientific and technical personnel are available to provide technical assistance to the lead federal agency and state and local response agencies on human health threat assessment and analysis, and exposure prevention and mitigation. Such assistance is used for situations requiring evacuation of affected areas, human exposure to hazardous materials, and technical advice on mitigation and prevention. CDC takes the lead during petroleum releases regulated under the CWA and OPA while ATSDR takes the lead during chemical releases under CERCLA. Both agencies are mutually supportive.

(ii) Other Public Health Service agencies involved in support during hazardous materials incidents either directly or through ATSDR/CDC include the Food and Drug Administration, the Health Resources and Services Administration, the Indian Health Service, and the National Institutes of Health.

(iii) Statutory authority for HHS/National Institutes for Environmental Health Sciences (NIEHS) involvement in hazardous materials accident prevention is non-regulatory in nature and focused on two primary areas for preventing community and worker exposure to hazardous materials releases: (A) Worker safety training and (B) basic research activities. Under section 126 of SARA, NIEHS is given statutory authority for supporting development of curricula and model training programs for waste workers and chemical emergency responders. Under section 118(b) of the Hazardous Materials Transportation and Uniform Safety Act (HMTUSA), NIEHS also administers the Hazmat Employee Training Program to prepare curricula and training for hazardous materials transportation workers. In the basic research arena, NIEHS is authorized under section 311 of SARA to conduct a hazardous substance basic research and training program to evaluate toxic effects and assess human health risks from accidental releases of hazardous materials. Under Title IX, section 901(h) of the Clean Air Act Amendments, NIEHS also is authorized to conduct basic research on air pollutants, as well as train physicians in environmental

health. Federal research and training in hazardous materials release prevention represents an important non-regulatory activity and supplements ongoing private sector programs.

(9) DOI may be contacted through Regional Environmental Officers (REOs), who are the designated members of RRTs. Department land managers have jurisdiction over the national park system, national wildlife refuges and fish hatcheries, the public lands, and certain water projects in western states. In addition, bureaus and offices have relevant expertise as follows:

(i) United States Fish and Wildlife Service (USFWS): Anadromous and certain other fishes and wildlife, including endangered and threatened species, migratory birds, and certain marine mammals; waters and wetlands; effects on natural resources; and laboratory/research facilities.

(ii) Geological Survey: Geology, hydrology (ground water and surface water), and natural hazards.

(iii) Bureau of Land Management: Minerals, soils, vegetation, wildlife, habitat, archaeology, and wilderness; and hazardous materials.

(iv) Minerals Management Service: Oversight of offshore oil and gas exploration and production facilities and associated pipelines and pipeline facilities under the Outer Continental Shelf Lands Act and the CWA; and oil spill response technology research.

(v) Bureau of Mines: Analysis and identification of inorganic hazardous substances and technical expertise in metals and metallurgy relevant to site cleanup.

(vi) Office of Surface Mining: Coal mine wastes and land reclamation.

(vii) National Park Service: General biological, natural, and cultural resource managers to evaluate, measure, monitor, and contain threats to park system lands and resources; archaeological and historical expertise in protection, preservation, evaluation, impact mitigation, and restoration of cultural resources; emergency personnel.

(viii) Bureau of Reclamation: Operation and maintenance of water projects in the West; engineering and hydrology; and reservoirs.

(ix) Bureau of Indian Affairs: Coordination of activities affecting Indian lands; assistance in identifying Indian tribal government officials.

(x) Office of Territorial Affairs: Assistance in implementing the NCP in American Samoa, Guam, the Pacific Island Governments, the Northern Mariana Islands, and the Virgin Islands.

(10) The Department of Justice (DOJ) can provide expert advice on complicated legal questions arising from discharges or releases, and federal agency responses. In addition, the DOJ represents the federal government, including its agencies, in litigation relating to such discharges or releases. Other legal issues or questions shall be directed to the federal agency counsel for the agency providing the OSC/RPM for the response.

(11) The Department of Labor (DOL), through OSHA and the states operating plans approved under section 18 of the OSH Act, has authority to conduct safety and health inspections of hazardous waste sites to assure that employees are being protected and to determine if the site is in compliance with:

(i) Safety and health standards and regulations promulgated by OSHA (or the states) in accordance with section 126 of SARA and all other applicable standards; and

(ii) Regulations promulgated under the OSH Act and its general duty clause. OSHA inspections may be self-generated, consistent with its program operations and objectives, or may be conducted in response to requests from EPA or another lead agency, or in response to accidents or employee complaints. OSHA may also conduct inspections at hazardous waste sites in those states with approved plans that choose not to exercise their jurisdiction to inspect such sites. On request, OSHA will provide advice and assistance to EPA and other NRT/RRT agencies as well as to the OSC/RPM regarding hazards to persons engaged in response activities. Technical assistance may include development and maintenance of site safety plans and work practices, assistance with exposure monitoring, and help with other compliance questions. OSHA may also take any other action necessary to assure that employees are properly protected at such response activities. Any questions about occupational safety and health at these sites should be referred to the OSHA Regional Office.

(12) DOT provides response expertise pertaining to transportation of oil or hazardous substances by all modes of transportation. Through the Research and Special Programs Administration (RSPA), DOT offers expertise in the requirements for packaging, handling, and transporting regulated hazardous materials.

(13) The Department of State (DOS) will lead in the development of international joint contingency plans. It will also help to coordinate an international response when discharges or releases cross international boundaries or involve foreign flag vessels. Additionally, DOS will coordinate requests for assistance from foreign governments and U.S. proposals for conducting research at incidents that occur in waters of other countries.

(14) The Nuclear Regulatory Commission will respond, as appropriate, to releases of radioactive materials by its licensees, in accordance with the NRC Incident Response Plan (NUREG–0728) to monitor the actions of those licensees and assure that the public health and environment are protected and adequate recovery operations are instituted. The Nuclear Regulatory Commission will keep EPA informed of any significant actual or potential releases in accordance with procedural agreements. In addition, the Nuclear Regulatory Commission will provide advice to the OSC/RPM when assistance is required in identifying the source and character of other hazardous substance releases where the Nuclear Regulatory Commission has licensing authority for activities utilizing radioactive materials.

(15) The General Services Administration (GSA) provides logistic and telecommunications support to federal agencies. During an emergency situation, GSA quickly responds to aid state and local governments. The type of support provided might include leasing and furnishing office space, setting up telecommunications and transportation services, and advisory assistance.

(16) The National Response Center (NRC), located at USCG Headquarters, is the national communications center, continuously manned for handling activities related to response actions. The NRC acts as the single federal point of contact for all pollution incident reporting and as the NRT communications center. These response actions include: Oil and hazardous substances, radiological, biological, etiological, surety materials, munitions, and fuels. Notice of discharges must be made telephonically through a toll free number or a special local number (Telecommunication Device for the Deaf (TDD) and collect calls accepted.) The telephone report is distributed to any interested NRT member agency or federal entity that has established a written agreement or understanding with the NRC. Each telephone notice is magnetically voice recorded and manually entered into an on-line computer data base. The NRC tracks medium, major, and potential major spills and provides incident summaries to all NRT members and other interested parties. The NRC evaluates incoming information and immediately advises FEMA of a potential major disaster or evacuations situation. The NRC

provides facilities for the NRT to use in coordinating a national response action, when required; assists in arrangements for regular as well as special NRT meetings and maintains information on the time and place of such meetings; and sends representatives to RRT meetings as appropriate. The NRC is available to assist all NRT agencies as needed.

§ 300.180 State and local participation in response.

(a) Each state governor is requested to designate one state office/representative to represent the state on the appropriate RRT. The state's office/representative may participate fully in all activities of the appropriate RRT. Each state governor is also requested to designate a lead state agency that will direct state-lead response operations. This agency is responsible for designating the OSC/RPM for state-lead response actions, designating SACs for federal-lead response actions, and coordinating/communicating with any other state agencies, as appropriate. Local governments are invited to participate in activities on the appropriate RRT as may be provided by state law or arranged by the state's representative. Indian tribes wishing to participate should assign one person or office to represent the tribal government on the appropriate RRT.

(b) Appropriate local and state officials (including Indian tribes) will participate as part of the response structure as provided in the ACP.

(c) In addition to meeting the requirements for local emergency plans under SARA section 303, state and local government agencies are encouraged to include contingency planning for responses, consistent with the NCP, RCP, and ACP in all emergency and disaster planning.

(d) For facilities not addressed under CERCLA or the CWA, states are encouraged to undertake response actions themselves or to use their authorities to compel potentially responsible parties to undertake response actions.

(e) States are encouraged to enter into cooperative agreements pursuant to section 104 (c)(3) and (d) of CERCLA to enable them to undertake actions authorized under subpart E of the NCP. Requirements for entering into these agreements are included in subpart F of the NCP. A state agency that acts pursuant to such agreements is referred to as the lead agency. In the event there is no cooperative agreement, the lead agency can be designated in a SMOA or other agreement.

(f) Because state and local public safety organizations would normally be the first government representatives at the scene of a discharge or release, they are expected to initiate public safety measures that are necessary to protect public health and welfare and that are consistent with containment and cleanup requirements in the NCP, and are responsible for directing evacuations pursuant to existing state or local procedures.

§ 300.185 Nongovernmental participation.

(a) Industry groups, academic organizations, and others are encouraged to commit resources for response operations. Specific commitments should be listed in the RCP and ACP. Those entities required to develop tank vessel and facility response plans under CWA section 311(j) must be able to respond to a worst-case discharge to the maximum extent practicable, and should commit sufficient resources to implement other aspects of those plans.

(b) The technical and scientific information generated by the local community, along with information from federal, state, and local governments, should be used to assist the OSC/RPM in devising response strategies where effective standard techniques are unavailable. Such information and strategies will be incorporated into the ACP, as appropriate. The SSC may act as liaison between the OSC/RPM and such interested organizations.

(c) ACPs shall establish procedures to allow for well organized, worthwhile, and safe use of volunteers, including compliance with § 300.150 regarding worker health and safety. ACPs should provide for the direction of volunteers by the OSC/RPM or by other federal, state, or local officials knowledgeable in contingency operations and capable of providing leadership. ACPs also should identify specific areas in which volunteers can be used, such as beach surveillance, logistical support, and bird and wildlife treatment. Unless specifically requested by the OSC/RPM, volunteers generally should not be used for physical removal or remedial activities. If, in the judgment of the OSC/RPM, dangerous conditions exist, volunteers shall be restricted from on-scene operations.

(d) Nongovernmental participation must be in compliance with the requirements of subpart H of this part if any recovery of costs will be sought.

Subpart C—Planning and Preparedness

§ 300.200 General.

This subpart summarizes emergency preparedness activities relating to discharges of oil and releases of hazardous substances, pollutants, or contaminants; describes the three levels of contingency planning under the national response system; and cross-references state and local emergency preparedness activities under SARA title III, also known as the "Emergency Planning and Community Right-to-Know Act of 1986" but referred to herein as "title III." Regulations implementing title III are codified at 40 CFR subchapter J.

§ 300.205 Planning and coordination structure.

(a) *National.* As described in § 300.110, the NRT is responsible for national planning and coordination.

(b) *Regional.* As described in § 300.115, the RRTs are responsible for regional planning and coordination.

(c) *Area.* As required by section 311(j) of the CWA, under the direction of the federal OSC for its area, Area Committees comprising qualified personnel of federal, state, and local agencies shall be responsible for:

(1) Preparing an ACP for their areas (as described in § 300.210(c));

(2) Working with appropriate federal, state, and local officials to enhance the contingency planning of those officials and to assure pre-planning of joint response efforts, including appropriate procedures for mechanical recovery, dispersal, shoreline cleanup, protection of sensitive environmental areas, and protection, rescue, and rehabilitation of fisheries and wildlife; and

(3) Working with appropriate federal, state, and local officials to expedite decisions for the use of dispersants and other mitigating substances and devices.

(d) *State.* As provided by sections 301 and 303 of title III, the SERC of each state, appointed by the Governor, is to designate emergency planning districts, appoint Local Emergency Planning Committees (LEPCs), supervise and coordinate their activities, and review local emergency response plans, which are described in § 300.215. The SERC also is to establish procedures for receiving and processing requests from the public for information generated by title III reporting requirements and to designate an official to serve as coordinator for information.

(e) *Local.* As provided by sections 301 and 303 of title III, emergency planning districts are designated by the SERC in order to facilitate the preparation and

implementation of emergency plans. Each LEPC is to prepare a local emergency response plan for the emergency planning district and establish procedures for receiving and processing requests from the public for information generated by title III reporting requirements. The LEPC is to appoint a chair and establish rules for the LEPC. The LEPC is to designate an official to serve as coordinator for information and designate in its plan a community emergency coordinator.

§ 300.210 Federal contingency plans.

There are three levels of contingency plans under the national response system: The National Contingency Plan, RCPs, and ACPs. These plans are available for inspection at EPA regional offices or USCG district offices. Addresses and telephone numbers for these offices may be found in the United States Government Manual, issued annually, or in local telephone directories.

(a) *The National Contingency Plan.* The purpose and objectives, authority, and scope of the NCP are described in §§ 300.1 through 300.3.

(b) *Regional Contingency Plans.* The RRTs, working with the states, shall develop federal RCPs for each standard federal region, Alaska, Oceania in the Pacific, and the Caribbean to coordinate timely, effective response by various federal agencies and other organizations to discharges of oil or releases of hazardous substances, pollutants, or contaminants. RCPs shall, as appropriate, include information on all useful facilities and resources in the region, from government, commercial, academic, and other sources. To the greatest extent possible, RCPs shall follow the format of the NCP and be coordinated with state emergency response plans, ACPs, which are described in § 300.210(c), and title III local emergency response plans, which are described in § 300.215. Such coordination should be accomplished by working with the SERCs in the region covered by the RCP. RCPs shall contain lines of demarcation between the inland and coastal zones, as mutually agreed upon by USCG and EPA.

(c) *Area Contingency Plans.* (1) Under the direction of an OSC and subject to approval by the lead agency, each Area Committee, in consultation with the appropriate RRTs, Coast Guard DRGs, the NSFCC, SSCs, LEPCs, and SERCs, shall develop an ACP for its designated area. This plan, when implemented in conjunction with other provisions of the NCP, shall be adequate to remove a worst case discharge under § 300.324, and to mitigate or prevent a substantial threat of such a discharge, from a vessel, offshore facility, or onshore facility operating in or near the area.

(2) The areas of responsibility may include several title III local planning districts, or parts of such districts. In developing the ACP, the OSC shall coordinate with affected SERCs and LEPCs. The ACP shall provide for a well coordinated response that is integrated and compatible, to the greatest extent possible, with all appropriate response plans of state, local, and non-federal entities, and especially with title III local emergency response plans.

(3) The ACP shall include the following:

(i) A description of the area covered by the plan, including the areas of special economic or environmental importance that might be damaged by a discharge;

(ii) A description in detail of the responsibilities of an owner or operator and of federal, state, and local agencies in removing a discharge, and in mitigating or preventing a substantial threat of a discharge;

(iii) A list of equipment (including firefighting equipment), dispersants, or other mitigating substances and devices, and personnel available to an owner or operator and federal, state, and local agencies, to ensure an effective and immediate removal of a discharge, and to ensure mitigation or prevention of a substantial threat of a discharge (this may be provided in an appendix or by reference to other relevant emergency plans (e.g., state or LEPC plans), which include such equipment lists);

(iv) A description of procedures to be followed for obtaining an expedited decision regarding the use of dispersants; and

(v) A detailed description of how the plan is integrated into other ACPs and tank vessel, offshore facility, and onshore facility response plans approved by the President, and into operating procedures of the NSFCC.

(4)(i) In order to provide for coordinated, immediate and effective protection, rescue, and rehabilitation of, and minimization of risk of injury to, fish and wildlife resources and habitat, Area Committees shall incorporate into each ACP a detailed annex containing a Fish and Wildlife and Sensitive Environments Plan that is consistent with the RCP and NCP. The annex shall be prepared in consultation with the USFWS and NOAA and other interested natural resource management agencies and parties. It shall address fish and wildlife resources and their habitat, and shall include other areas considered sensitive environments in a separate section of the annex, based upon Area Committee recommendations. The annex will provide the necessary information and procedures to immediately and effectively respond to discharges that may adversely affect fish and wildlife and their habitat and sensitive environments, including provisions for a response to a worst case discharge. Such information shall include the identification of appropriate agencies and their responsibilities, procedures to notify these agencies following a discharge or threat of a discharge, protocols for obtaining required fish and wildlife permits and other necessary permits, and provisions to ensure compatibility of annex-related activities with removal operations.

(ii) The annex shall:

(A) Identify and establish priorities for fish and wildlife resources and their habitats and other important sensitive areas requiring protection from any direct or indirect effects from discharges that may occur. These effects include, but are not limited to, any seasonal or historical use, as well as all critical, special, significant or otherwise designated protected areas.

(B) Provide a mechanism to be used during a spill response for timely identification of protection priorities of those fish and wildlife resources and habitats and sensitive environmental areas that may be threatened or injured by a discharge. These include as appropriate, not only marine and freshwater species, habitats, and their food sources, but also terrestrial wildlife and their habitats that may be affected directly by onshore oil or indirectly by oil-related factors, such as loss or contamination of forage. The mechanism shall also provide for expeditious evaluation and appropriate consultations on the effects to fish and wildlife, their habitat, and other sensitive environments from the application of chemical countermeasures or other countermeasures not addressed under paragraph (c)(3)(iii) of this section.

(C) Identify potential environmental effects on fish and wildlife, their habitat, and other sensitive environments resulting from removal actions or countermeasures, including the option of no removal. Based on this evaluation of potential environmental effects, the annex should establish priorities for application of countermeasure and removal actions to habitats within the geographic region of the ACP. The annex should establish methods to minimize the identified effects on fish and wildlife because of response activities, including, but not limited to: Disturbance of sensitive areas and habitats; illegal or inadvertent

taking or disturbance of fish and wildlife or specimens by response personnel; and fish and wildlife, their habitat, and environmentally sensitive areas coming in contact with various cleaning or bioremediation agents. Furthermore, the annex should identify the areas where the movement of oiled debris may pose a risk to resident, transient, or migratory fish and wildlife, and other sensitive environments and should discuss measures to be considered for removing such oiled debris in a timely fashion to reduce such risk.

(D) Provide for pre-approval of application of specific countermeasures or removal actions that, if expeditiously applied, will minimize adverse spill-induced impacts to fish and wildlife resources, their habitat, and other sensitive environments. Such pre-approval plans must be consistent with paragraphs (c)(3) (i) and (iii) of this section and subpart J requirements, and must have the concurrence of the natural resource trustees.

(E) Provide monitoring plan(s) to evaluate the effectiveness of different countermeasures or removal actions in protecting the environment. Monitoring should include "set-aside" or "control" areas, where no mitigative actions are taken.

(F) Identify and provide for the acquisition and utilization of necessary response capabilities for protection, rescue, and rehabilitation of fish and wildlife resources and habitat. This may include appropriately permitted private organizations and individuals with appropriate expertise and experience. The suitable organizations should be identified in cooperation with natural resource law enforcement agencies. Such capabilities shall include, but not be limited to, identification of facilities and equipment necessary for deterring sensitive fish and wildlife from entering oiled areas, and for capturing, holding, cleaning, and releasing injured wildlife. Plans for the provision of such capabilities shall ensure that there is no interference with the OSC's removal operations.

(G) Identify appropriate federal and state agency contacts and alternates responsible for coordination of fish and wildlife rescue and rehabilitation and protection of sensitive environments; identify and provide for required fish and wildlife handling and rehabilitation permits necessary under federal and state laws; and provide guidance on the implementation of law enforcement requirements included under current federal and state laws and corresponding regulations. Requirements include, but are not limited to procedures regarding the capture, transport, rehabilitation, release of wildlife exposed to or threatened by oil, and disposal of contaminated carcasses of wildlife.

(H) Identify and secure the means for providing, if needed, the minimum required OSHA and EPA training for volunteers, including those who assist with injured wildlife.

(I) Define the requirements for evaluating the compatibility between this annex and non-federal response plans (including those of vessels, facilities and pipelines) on issues affecting fish and wildlife, their habitat, and sensitive environments.

§ 300.212 Area response drills.

The OSC periodically shall conduct drills of removal capability (including fish and wildlife response capability), without prior notice, in areas for which ACPs are required by § 300.210(c) and under relevant tank vessel and facility response plans.

§ 300.215 Title III local emergency response plans.

This section describes and cross-references the regulations that implement title III. These regulations are codified at 40 CFR part 355.

(a) Each LEPC is to prepare an emergency response plan in accordance with section 303 of title III and review the plan once a year, or more frequently as changed circumstances in the community or at any facility may require. Such title III local emergency response plans should be closely coordinated with applicable federal ACPs and state emergency response plans.

§ 300.220 Related Title III issues.

Other related title III requirements are found in 40 CFR part 355.

Subpart D—Operational Response Phases for Oil Removal

§ 300.300 Phase I—Discovery or notification.

(a) A discharge of oil may be discovered through:

(1) A report submitted by the person in charge of a vessel or facility, in accordance with statutory requirements;

(2) Deliberate search by patrols;

(3) Random or incidental observation by government agencies or the public; or

(4) Other sources.

(b) Any person in charge of a vessel or a facility shall, as soon as he or she has knowledge of any discharge from such vessel or facility in violation of section 311(b)(3) of the CWA, immediately notify the NRC. If direct reporting to the NRC is not practicable, reports may be made to the USCG or EPA predesignated OSC for the geographic area where the discharge occurs. The EPA predesignated OSC may also be contacted through the regional 24-hour emergency response telephone number. All such reports shall be promptly relayed to the NRC. If it is not possible to notify the NRC or predesignated OSC immediately, reports may be made immediately to the nearest Coast Guard unit. In any event such person in charge of the vessel or facility shall notify the NRC as soon as possible.

(c) Any other person shall, as appropriate, notify the NRC of a discharge of oil.

(d) Upon receipt of a notification of discharge, the NRC shall promptly notify the OSC. The OSC shall ensure notification of the appropriate state agency of any state which is, or may reasonably be expected to be, affected by the discharge. The OSC shall then proceed with the following phases as outlined in the RCP and ACP.

§ 300.305 Phase II—Preliminary assessment and initiation of action.

(a) The OSC is responsible for promptly initiating a preliminary assessment.

(b) The preliminary assessment shall be conducted using available information, supplemented where necessary and possible by an on-scene inspection. The OSC shall undertake actions to:

(1) Evaluate the magnitude and severity of the discharge or threat to public health or welfare or the environment;

(2) Assess the feasibility of removal; and

(3) To the extent practicable, identify potentially responsible parties.

(c) Except in a case when the OSC is required to direct the response to a discharge that may pose a substantial threat to the public health or welfare of the United States (including but not limited to fish, shellfish, wildlife, other natural resources, and the public and private beaches and shorelines of the United States), the OSC may allow the responsible party to voluntarily and promptly perform removal actions, provided the OSC determines such actions will ensure an effective and immediate removal of the discharge or mitigation or prevention of a substantial threat of a discharge. If the responsible party does conduct the removal, the OSC shall ensure adequate surveillance over whatever actions are initiated. If effective actions are not being taken to eliminate the threat, or if removal is not being properly done, the OSC should, to the extent practicable under the

circumstances, so advise the responsible party. If the responsible party does not respond properly the OSC shall take appropriate response actions and should notify the responsible party of the potential liability for federal response costs incurred by the OSC pursuant to the OPA and CWA. Where practicable, continuing efforts should be made to encourage response by responsible parties.

(1) In carrying out a response under this section, the OSC may:

(i) Remove or arrange for the removal of a discharge, and mitigate or prevent a substantial threat of a discharge, at any time;

(ii) Direct or monitor all federal, state, and private actions to remove a discharge; and

(iii) Remove and, if necessary, destroy a vessel discharging, or threatening to discharge, by whatever means are available.

(2) If the discharge results in a substantial threat to the public health or welfare of the United States (including, but not limited to fish, shellfish, wildlife, other natural resources, and the public and private beaches and shorelines of the United States), the OSC must direct all response efforts, as provided in § 300.322(b) of this part. The OSC should declare as expeditiously as practicable to spill response participants that the federal government will direct the response. The OSC may act without regard to any other provision of the law governing contracting procedures or employment of personnel by the federal government in removing or arranging for the removal of such a discharge.

(d) The OSC shall ensure that the natural resource trustees are promptly notified in the event of any discharge of oil, to the maximum extent practicable as provided in the Fish and Wildlife and Sensitive Environments Plan annex to the ACP for the area in which the discharge occurs. The OSC and the trustees shall coordinate assessments, evaluations, investigations, and planning with respect to appropriate removal actions. The OSC shall consult with the affected trustees on the appropriate removal action to be taken. The trustees will provide timely advice concerning recommended actions with regard to trustee resources potentially affected. The trustees also will assure that the OSC is informed of their activities in natural resource damage assessment that may affect response operations. When circumstances permit, the OSC shall share the use of response resources with the trustees, provided trustee activities do not interfere with response actions. The lead administrative trustee shall, as appropriate, apply to the OSC for access to federal response resources on behalf of all trustees.

§ 300.310 Phase III—Containment, countermeasures, cleanup, and disposal.

(a) Defensive actions shall begin as soon as possible to prevent, minimize, or mitigate threat(s) to the public health or welfare or the environment. Actions may include but are not limited to: Analyzing water samples to determine the source and spread of the oil; controlling the source of discharge; measuring and sampling; source and spread control or salvage operations; placement of physical barriers to deter the spread of the oil and to protect natural resources and sensitive ecosystems; control of the water discharged from upstream impoundment; and the use of chemicals and other materials in accordance with subpart J of this part to restrain the spread of the oil and mitigate its effects. The ACP prepared under § 300.210(c) should be consulted for procedures to be followed for obtaining an expedited decision regarding the use of dispersants and other products listed on the NCP Product Schedule.

(b) As appropriate, actions shall be taken to recover the oil or mitigate its effects. Of the numerous chemical or physical methods that may be used, the chosen methods shall be the most consistent with protecting public health and welfare and the environment. Sinking agents shall not be used.

(c) Oil and contaminated materials recovered in cleanup operations shall be disposed of in accordance with the RCP, ACP, and any applicable laws, regulations, or requirements. RRT and ACP guidelines may identify the disposal plans to be followed during an oil spill response and may address: The sampling, testing, and classifying of recovered oil and oiled debris; the segregation and stockpiling of recovered oil and oiled debris; prior state disposal approvals and permits; and the routes; methods (e.g. recycle/reuse, on-site burning, incineration, landfilling, etc.); and sites for the disposal of collected oil, oiled debris, and animal carcasses.

§ 300.315 Phase IV—Documentation and cost recovery.

(a) All OSLTF users need to collect and maintain documentation to support all actions taken under the CWA. In general, documentation shall be sufficient to support full cost recovery for resources utilized and shall identify the source and circumstances of the incident, the responsible party or parties, and impacts and potential impacts to public health and welfare and the environment. Documentation procedures are contained in 33 CFR subchapter M.

(b) When appropriate, documentation shall also be collected for scientific understanding of the environment and for research and development of improved response methods and technology. Funding for these actions is restricted by section 6002 of the OPA.

(c) OSCs shall submit OSC reports to the NRT or RRT, only if requested, as provided by § 300.165.

(d) OSCs shall ensure the necessary collection and safeguarding of information, samples, and reports. Samples and information shall be gathered expeditiously during the response to ensure an accurate record of the impacts incurred. Documentation materials shall be made available to the trustees of affected natural resources. The OSC shall make available to trustees of the affected natural resources information and documentation in the OSC's possession that can assist the trustees in the determination of actual or potential natural resource injuries.

(e) Information and reports obtained by the EPA or USCG OSC shall be transmitted to the appropriate offices responsible for follow-up actions.

§ 300.317 National response priorities.

(a) Safety of human life must be given the top priority during every response action. This includes any search and rescue efforts in the general proximity of the discharge and the insurance of safety of response personnel.

(b) Stabilizing the situation to preclude the event from worsening is the next priority. All efforts must be focused on saving a vessel that has been involved in a grounding, collision, fire, or explosion, so that it does not compound the problem. Comparable measures should be taken to stabilize a situation involving a facility, pipeline, or other source of pollution. Stabilizing the situation includes securing the source of the spill and/or removing the remaining oil from the container (vessel, tank, or pipeline) to prevent additional oil spillage, to reduce the need for follow-up response action, and to minimize adverse impact to the environment.

(c) The response must use all necessary containment and removal tactics in a coordinated manner to ensure a timely, effective response that minimizes adverse impact to the environment.

(d) All parts of this national response strategy should be addressed concurrently, but safety and stabilization are the highest priorities.

The OSC should not delay containment and removal decisions unnecessarily and should take actions to minimize adverse impact to the environment that begins as soon as a discharge occurs, as well as actions to minimize further adverse environmental impact from additional discharges.

(e) The priorities set forth in this section are broad in nature, and should not be interpreted to preclude the consideration of other priorities that may arise on a site-specific basis.

§ 300.320 General pattern of response.

(a) When the OSC receives a report of a discharge, actions normally should be taken in the following sequence:

(1) Investigate the report to determine pertinent information such as the threat posed to public health or welfare or the environment, the type and quantity of polluting material, and the source of the discharge.

(2) Officially classify the size (i.e., minor, medium, major) and type (i.e., substantial threat to the public health or welfare, worst case discharge) of the discharge and determine the course of action to be followed to ensure effective and immediate removal, mitigation, or prevention of the discharge. Some discharges that are classified as a substantial threat to the public health or welfare may be further classified as a spill of national significance by the Administrator of EPA or the Commandant of the USCG. The appropriate course of action may be prescribed in §§ 300.322, 300.323, and 300.324.

(i) When the reported discharge is an actual or potential major discharge, immediately notify the RRT, including the affected state, if appropriate, and the NRC, and ensure notification of the natural resource trustees, as required by § 300.305(d).

(ii) When the investigation shows that an actual or potential medium discharge exists, the OSC shall recommend activation of the RRT, if appropriate.

(iii) When the investigation shows that an actual or potential minor discharge exists, the OSC shall monitor the situation to ensure that proper removal action is being taken.

(3) If the OSC determines that effective and immediate removal, mitigation, or prevention of a discharge can be achieved by private party efforts, and where the discharge does not pose a substantial threat to the public health or welfare of the United States, determine whether the responsible party or other person is properly carrying out removal. Removal is being done properly when:

(i) The cleanup is fully sufficient to effectively and immediately remove, minimize, or mitigate threat(s) to public health and welfare and the environment. Removal efforts are improper to the extent that federal efforts are necessary to remove, minimize further, or mitigate those threats; and

(ii) The removal efforts are in accordance with applicable regulations, including the NCP.

(4) Where appropriate, determine whether a state or political subdivision thereof has the capability to carry out any or all removal actions. If so, the OSC may arrange funding to support these actions.

(5) Ensure prompt notification of the trustees of affected natural resources in accordance with the applicable RCP and ACP.

(b) Removal shall be considered complete when so determined by the OSC in consultation with the Governor or Governors of the affected states. When the OSC considers removal complete, OSLTF removal funding shall end. This determination shall not preclude additional removal actions under applicable state law.

§ 300.322 Response to substantial threats to public health or welfare.

(a) As part of the investigation described in § 300.320, the OSC shall determine whether a discharge results in a substantial threat to public health or welfare (including, but not limited to, fish, shellfish, wildlife, other natural resources, and the public and private beaches and shorelines of the United States). Factors to be considered by the OSC in making this determination include, but are not limited to, the size of the discharge, the character of the discharge, and the nature of the threat to public health or welfare. Upon obtaining such information, the OSC shall conduct an evaluation of the threat posed, based on the OSC's experience in assessing other discharges, and consultation with senior lead agency officials and readily available authorities on issues outside the OSC's technical expertise.

(b) If the investigation by the OSC shows that the discharge poses or may present a substantial threat to public health or welfare of the United States, the OSC shall direct all federal, state, or private actions to remove the discharge or to mitigate or prevent the threat of such a discharge, as appropriate. In directing the response in such cases, the OSC may act without regard to any other provision of law governing contracting procedures or employment of personnel by the federal government to:

(1) Remove or arrange for the removal of the discharge;

(2) Mitigate or prevent the substantial threat of the discharge; and

(3) Remove and, if necessary, destroy a vessel discharging, or threatening to discharge, by whatever means are available.

(c) In the case of a substantial threat to public health or welfare of the United States, the OSC shall:

(1) Assess opportunities for the use of various special teams and other assistance described in § 300.145, including the use of the services of the NSFCC, as appropriate;

(2) Request immediate activation of the RRT; and

(3) Take whatever additional response actions are deemed appropriate, including, but not limited to, implementation of the ACP as required by section 311(j)(4) of the CWA or relevant tank vessel or facility response plan required by section 311(j)(5) of the CWA.

When requested by the OSC, the lead agency or RRT shall dispatch appropriate personnel to the scene of the discharge to assist the OSC. This assistance may include technical support in the agency's areas of expertise and disseminating information to the public. The lead agency shall ensure that a contracting officer is available on scene, at the request of the OSC.

§ 300.323 Spills of national significance

(a) A discharge may be classified as a spill of national significance (SONS) by the Administrator of EPA for discharges occurring in the inland zone and the Commandant of the USCG for discharges occurring in the coastal zone.

(b) For a SONS in the inland zone, the EPA Administrator may name a senior Agency official to assist the OSC in:

(1) Communicating with affected parties and the public; and

(2) Coordinating federal, state, local, and international resources at the national level.

This strategic coordination will involve, as appropriate, the NRT, RRT(s), the Governor(s) of affected state(s), and the mayor(s) or other chief executive(s) of local government(s).

(c) For a SONS in the coastal zone, the USCG Commandant may name a National Incident Commander (NIC) who will assume the role of the OSC in:

(1) Communicating with affected parties and the public, and

(2) Coordinating federal, state, local, and international resources at the

national level. This strategic coordination will involve, as appropriate, the NRT, RRT(s), the Governor(s) of affected state(s), and the mayor(s) or other chief executive(s) of local government(s).

§ 300.324 Response to worst case discharges

(a) If the investigation by the OSC shows that a discharge is a worst case discharge or there is a substantial threat of such a discharge, the OSC shall:

(1) Notify the NSFCC;

(2) Require, where applicable, implementation of the worst case portion of an approved tank vessel or facility response plan required by section 311(j)(5) of the CWA;

(3) Implement the worst case portion of the ACP required by section 311(j)(4) of the CWA; and

(4) Take whatever additional response actions are deemed appropriate.

(b) Under the direction of the OSC, the NSFCC shall coordinate use of private and public personnel and equipment, including strike teams, to remove a worst case discharge and mitigate or prevent a substantial threat of such a discharge.

§ 300.335 Funding.

(a) The OSLTF is available under certain circumstances to fund removal of oil performed under section 311 of the CWA. Those circumstances and the procedures for accessing the OSLTF are described in 33 CFR subchapter M. The responsible party, is liable for costs of federal removal and damages in accordance with section 311(f) of the CWA, section 1002 of the OPA, and other federal laws.

(b) Where the OSC requests assistance from a federal agency, that agency may be reimbursed in accordance with the provisions of 33 CFR subchapter M. Specific interagency reimbursement agreements may be used when necessary to ensure that the federal resources will be available for a timely response to a discharge of oil.

(c) Procedures for funding the initiation of natural resource damage assessment are covered in 33 CFR subchapter M.

(d) Response actions other than removal, such as scientific investigations not in support of removal actions or law enforcement, shall be provided by the agency with legal responsibility for those specific actions.

(e) The funding of a response to a discharge from a federally owned, operated, or supervised facility or vessel is the responsibility of the owning, operating, or supervising agency.

(f) The following agencies have funds available for certain discharge removal actions:

(1) EPA may provide funds to begin timely discharge removal actions when the OSC is an EPA representative.

(2) DOD has two specific sources of funds that may be applicable to an oil discharge under appropriate circumstances. This does not consider military resources that might be made available under specific conditions.

(i) Funds required for removal of a sunken vessel or similar obstruction of navigation are available to the Corps of Engineers through Civil Works Appropriations, Operations and Maintenance, General.

(ii) USN may conduct salvage operations contingent on defense operational commitments, when funded by the requesting agency. Such funding may be requested on a direct cite basis.

(3) Pursuant to Title I of the OPA, the state or states affected by a discharge of oil may act where necessary to remove such discharge. Pursuant to 33 CFR subchapter M states may be reimbursed from the OSLTF for the reasonable costs incurred in such a removal.

Subpart E—Hazardous Substance Response

§ 300.400 General.

(a) This subpart establishes methods and criteria for determining the appropriate extent of response authorized by CERCLA and CWA section 311(c):

(1) When there is a release of a hazardous substance into the environment; or

(2) When there is a release into the environment of any pollutant or contaminant that may present an imminent and substantial danger to the public health or welfare.

* * * * *

§ 300.405 Discovery or notification.

(a) A release may be discovered through:

(1) A report submitted in accordance with section 103(a) of CERCLA, i.e., reportable quantities codified at 40 CFR part 302;

(2) A report submitted to EPA in accordance with section 103(c) of CERCLA;

(3) Investigation by government authorities conducted in accordance with section 104(e) of CERCLA or other statutory authority;

(4) Notification of a release by a federal or state permit holder when required by its permit;

(5) Inventory or survey efforts or random or incidental observation reported by government agencies or the public;

(6) Submission of a citizen petition to EPA or the appropriate federal facility requesting a preliminary assessment, in accordance with section 105(d) of CERCLA;

(7) A report submitted in accordance with section 311(b)(5) of the CWA; and

(8) Other sources.

* * * * *

(f) * * *

(3) If radioactive substances are present in a release, the EPA Radiological Response Coordinator should be notified for evaluation and assistance either directly or via the NRC, consistent with §§ 300.130(e) and 300.145(f).

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§ 300.410 Removal site evaluation.

(a) A removal site evaluation includes a removal preliminary assessment and, if warranted, a removal site inspection.

(b) A removal site evaluation of a release identified for possible CERCLA response pursuant to § 300.415 shall, as appropriate, be undertaken by the lead agency as promptly as possible. The lead agency may perform a removal preliminary assessment in response to petitions submitted by a person who is, or may be, affected by a release of a hazardous substance, pollutant, or contaminant pursuant to § 300.420(b)(5).

(c)(1) The lead agency shall, as appropriate, base the removal preliminary assessment on readily available information. A removal preliminary assessment may include, but is not limited to:

(i) Identification of the source and nature of the release or threat of release;

(ii) Evaluation by ATSDR or by other sources, for example, state public health agencies, of the threat to public health;

(iii) Evaluation of the magnitude of the threat;

(iv) Evaluation of factors necessary to make the determination of whether a removal is necessary; and

(v) Determination of whether a nonfederal party is undertaking proper response.

(2) A removal preliminary assessment of releases from hazardous waste management facilities may include collection or review of data such as site management practices, information from generators, photographs, analysis of historical photographs, literature searches, and personal interviews conducted, as appropriate.

(d) A removal site inspection may be performed if more information is needed. Such inspection may include a perimeter (i.e., off-site) or on-site

inspection, taking into consideration whether such inspection can be performed safely.

(e)(1) As part of the evaluation under this section, the OSC shall determine whether a release governed by CWA section 311(c)(2), has occurred.

(2) If such a release of a CWA hazardous substance has occurred, the OSC shall determine whether the release results in a substantial threat to the public health or welfare. Factors to be considered by the OSC in making this determination include, but are not limited to, the size of the release, the character of the release, and the nature of the threat to public health or welfare. Upon obtaining relevant elements of such information, the OSC shall conduct an evaluation of the threat posed, based on the OSC's experience in assessing other releases, and consultation with senior lead agency officials and readily available authorities on issues outside the OSC's technical expertise.

(f) A removal site evaluation shall be terminated when the OSC or lead agency determines:

(1) There is no release;

(2) The source is neither a vessel nor a facility as defined in § 300.5 of the NCP;

(3) The release involves neither a hazardous substance, nor a pollutant or contaminant that may present an imminent and substantial danger to public health or welfare;

(4) The release consists of a situation specified in § 300.400(b) (1) through (3) subject to limitations on response;

(5) The amount, quantity, or concentration released does not warrant federal response;

(6) A party responsible for the release, or any other person, is providing appropriate response, and on-scene monitoring by the government is not required; or

(7) The removal site evaluation is completed.

(g) The results of the removal site evaluation shall be documented.

(h) The OSC or lead agency shall ensure that natural resource trustees are promptly notified in order that they may initiate appropriate actions, including those identified in subpart G of this part. The OSC or lead agency shall coordinate all response activities with such affected trustees.

(i) If the removal site evaluation indicates that removal action under § 300.415 is not required, but that remedial action under § 300.430 may be necessary, the lead agency shall, as appropriate, initiate a remedial site evaluation pursuant to § 300.420.

§ 300.415 Removal action.

(a)(1) In determining the appropriate extent of action to be taken in response to a given release, the lead agency shall first review the removal site evaluation, any information produced through a remedial site evaluation, if any has been done previously, and the current site conditions, to determine if removal action is appropriate.

(2) Where the responsible parties are known, an effort initially shall be made, to the extent practicable, to determine whether they can and will perform the necessary removal action promptly and properly.

(3) This section does not apply to removal actions taken pursuant to section 104(b) of CERCLA. The criteria for such actions are set forth in section 104(b) of CERCLA.

(b)(1) At any release, regardless of whether the site is included on the National Priorities List (NPL), where the lead agency makes the determination, based on the factors in paragraph (b)(2) of this section, that there is a threat to public health or welfare or the environment, the lead agency may take any appropriate removal action to abate, prevent, minimize, stabilize, mitigate, or eliminate the release or the threat of release.

(2) The following factors shall be considered in determining the appropriateness of a removal action pursuant to this section:

(i) Actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances or pollutants or contaminants;

(ii) Actual or potential contamination of drinking water supplies or sensitive ecosystems;

(iii) Hazardous substances or pollutants or contaminants in drums, barrels, tanks, or other bulk storage containers, that may pose a threat of release;

(iv) High levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface, that may migrate;

(v) Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released;

(vi) Threat of fire or explosion;

(vii) The availability of other appropriate federal or state response mechanisms to respond to the release; and

(viii) Other situations or factors that may pose threats to public health or welfare or the environment.

(3) If the lead agency determines that a removal action is appropriate, actions shall, as appropriate, begin as soon as possible to abate, prevent, minimize, stabilize, mitigate, or eliminate the threat to public health or welfare or the environment. The lead agency shall, at the earliest possible time, also make any necessary determinations pursuant to paragraph (b)(4) of this section.

(4) Whenever a planning period of at least six months exists before on-site activities must be initiated, and the lead agency determines, based on a site evaluation, that a removal action is appropriate:

(i) The lead agency shall conduct an engineering evaluation/cost analysis (EE/CA) or its equivalent. The EE/CA is an analysis of removal alternatives for a site.

(ii) If environmental samples are to be collected, the lead agency shall develop sampling and analysis plans that shall provide a process for obtaining data of sufficient quality and quantity to satisfy data needs. Sampling and analysis plans shall be reviewed and approved by EPA. The sampling and analysis plans shall consist of two parts:

(A) The field sampling plan, which describes the number, type, and location of samples and the type of analyses; and

(B) The quality assurance project plan, which describes policy, organization, and functional activities and the data quality objectives and measures necessary to achieve adequate data for use in planning and documenting the removal action.

(5) CERCLA fund-financed removal actions, other than those authorized under section 104(b) of CERCLA, shall be terminated after $2 million has been obligated for the action or 12 months have elapsed from the date that removal activities begin on-site, unless the lead agency determines that:

(i) There is an immediate risk to public health or welfare or the environment; continued response actions are immediately required to prevent, limit, or mitigate an emergency; and such assistance will not otherwise be provided on a timely basis; or

(ii) Continued response action is otherwise appropriate and consistent with the remedial action to be taken.

(c)(1) In carrying out a response to a release of a CWA hazardous substance, as described in CWA section 311(c)(1)(A), the OSC may:

(i) Remove or arrange for the removal of a release, and mitigate or prevent a substantial threat of a release, at any time;

(ii) Direct or monitor all federal, state, and private actions to remove a release; and

(iii) Remove and, if necessary, destroy a vessel releasing or threatening to release CWA hazardous substances, by whatever means are available.

(2) If the investigation by the OSC under § 300.410 shows that the release of a CWA hazardous substance results in a substantial threat to public health or welfare, the OSC shall direct all federal, state, or private actions to remove the release or to mitigate or prevent the threat of such a release, as appropriate. In directing the response, the OSC may act without regard to any other provision of law governing contracting procedures or employment of personnel by the federal government to: (i) Remove or arrange for the removal of the release; (ii) mitigate or prevent the substantial threat of the release; and (iii) remove and, if necessary, destroy a vessel releasing, or threatening to release, by whatever means are available.

(3) In the case of a release of a CWA hazardous substance posing a substantial threat to public health or welfare, the OSC shall: (i) Assess opportunities for the use of various special teams and other assistance described in § 300.145, as appropriate; (ii) request immediate activation of the RRT; and (iii) take whatever additional response actions are deemed appropriate. When requested by the OSC, the lead agency or RRT shall dispatch appropriate personnel to the scene of the release to assist the OSC. This assistance may include technical support in the agency's areas of expertise and disseminating information to the public in accordance with § 300.155. The lead agency shall ensure that a contracting officer is available onscene, at the request of the OSC.

(d) Removal actions shall, to the extent practicable, contribute to the efficient performance of any anticipated long-term remedial action with respect to the release concerned.

(e) The following removal actions are, as a general rule, appropriate in the types of situations shown; however, this list is not exhaustive and is not intended to prevent the lead agency from taking any other actions deemed necessary under CERCLA, CWA section 311, or other appropriate federal or state enforcement or response authorities, and the list does not create a duty on the lead agency to take action at any particular time:

(1) Fences, warning signs, or other security or site control precautions—where humans or animals have access to the release;

(2) Drainage controls, for example, run-off or run-on diversion—where needed to reduce migration of hazardous substances or pollutants or contaminants off-site or to prevent precipitation or run-off from other sources, for example, flooding, from entering the release area from other areas;

(3) Stabilization of berms, dikes, or impoundments or drainage or closing of lagoons—where needed to maintain the integrity of the structures;

(4) Capping of contaminated soils or sludges—where needed to reduce migration of hazardous substances or pollutants or contaminants into soil, ground or surface water, or air;

(5) Using chemicals and other materials to retard the spread of the release or to mitigate its effects—where the use of such chemicals will reduce the spread of the release;

(6) Excavation, consolidation, or removal of highly contaminated soils from drainage or other areas—where such actions will reduce the spread of, or direct contact with, the contamination;

(7) Removal of drums, barrels, tanks, or other bulk containers that contain or may contain hazardous substances or pollutants or contaminants—where it will reduce the likelihood of spillage; leakage; exposure to humans, animals, or food chain; or fire or explosion;

(8) Containment, treatment, disposal, or incineration of hazardous materials—where needed to reduce the likelihood of human, animal, or food chain exposure; or

(9) Provision of alternative water supply—where necessary immediately to reduce exposure to contaminated household water and continuing until such time as local authorities can satisfy the need for a permanent remedy.

(f) Where necessary to protect public health or welfare, the lead agency shall request that FEMA conduct a temporary relocation or that state/local officials conduct an evacuation.

(g) If the lead agency determines that the removal action will not fully address the threat posed by the release and the release may require remedial action, the lead agency shall ensure an orderly transition from removal to remedial response activities.

(h) CERCLA removal actions conducted by states under cooperative agreements, described in subpart F of this part, shall comply with all requirements of this section.

(i) Facilities operated by a state or political subdivision at the time of disposal require a state cost share of at least 50 percent of Fund-financed response costs if a Fund-financed remedial action is conducted.

(j) Fund-financed removal actions under CERCLA section 104 and removal actions pursuant to CERCLA section 106 shall, to the extent practicable considering the exigencies of the situation, attain applicable or relevant and appropriate requirements (ARARs) under federal environmental or state environmental or facility siting laws. Waivers described in § 300.430(f)(1)(ii)(C) may be used for removal actions. Other federal and state advisories, criteria, or guidance may, as appropriate, be considered in formulating the removal action (see § 300.400(g)(3)). In determining whether compliance with ARARs is practicable, the lead agency may consider appropriate factors, including:

(1) The urgency of the situation; and

(2) The scope of the removal action to be conducted.

(k) Removal actions pursuant to section 106 or 122 of CERCLA are not subject to the following requirements of this section:

(1) Section 300.415(a)(2) requirement to locate responsible parties and have them undertake the response;

(2) Section 300.415(b)(2)(vii) requirement to consider the availability of other appropriate federal or state response and enforcement mechanisms to respond to the release;

(3) Section 300.415(b)(5) requirement to terminate response after $2 million has been obligated or 12 months have elapsed from the date of the initial response; and

(4) Section 300.415(g) requirement to assure an orderly transition from removal to remedial action.

(l) To the extent practicable, provision for post-removal site control following a CERCLA Fund-financed removal action at both NPL and non-NPL sites is encouraged to be made prior to the initiation of the removal action. Such post-removal site control includes actions necessary to ensure the effectiveness and integrity of the removal action after the completion of the on-site removal action or after the $2 million or 12-month statutory limits are reached for sites that do not meet the exemption criteria in paragraph (b)(5) of this section. Post-removal site control may be conducted by:

(1) The affected state or political subdivision thereof or local units of government for any removal;

(2) Potentially responsible parties; or

(3) EPA's remedial program for some federal-lead Fund-financed responses at NPL sites.

(m) OSCs/RPMs conducting removal actions shall submit OSC reports to the RRT as required by § 300.165.

(n) Community relations in removal actions. (1) In the case of all CERCLA removal actions taken pursuant to § 300.415 or CERCLA enforcement actions to compel removal response, a spokesperson shall be designated by the lead agency. The spokesperson shall

inform the community of actions taken, respond to inquiries, and provide information concerning the release. All news releases or statements made by participating agencies shall be coordinated with the OSC/RPM. The spokesperson shall notify, at a minimum, immediately affected citizens, state and local officials, and, when appropriate, civil defense or emergency management agencies.

(2) For CERCLA actions where, based on the site evaluation, the lead agency determines that a removal is appropriate, and that less than six months exists before on-site removal activity must begin, the lead agency shall:

(i) Publish a notice of availability of the administrative record file established pursuant to § 300.820 in a major local newspaper of general circulation within 60 days of initiation of on-site removal activity;

(ii) Provide a public comment period, as appropriate, of not less than 30 days from the time the administrative record file is made available for public inspection, pursuant to § 300.820(b)(2); and

(iii) Prepare a written response to significant comments pursuant to § 300.820(b)(3).

(3) For CERCLA removal actions where on-site action is expected to extend beyond 120 days from the initiation of on-site removal activities, the lead agency shall by the end of the 120-day period:

(i) Conduct interviews with local officials, community residents, public interest groups, or other interested or affected parties, as appropriate, to solicit their concerns, information needs, and how or when citizens would like to be involved in the Superfund process;

(ii) Prepare a formal community relations plan (CRP) based on the community interviews and other relevant information, specifying the community relations activities that the lead agency expects to undertake during the response; and

(iii) Establish at least one local information repository at or near the location of the response action. The information repository should contain items made available for public information. Further, an administrative record file established pursuant to subpart I of this part for all removal actions shall be available for public inspection in at least one of the repositories. The lead agency shall inform the public of the establishment of the information repository and provide notice of availability of the administrative record file for public review. All items in the repository shall be available for public inspection and copying.

(4) Where, based on the site evaluation, the lead agency determines that a CERCLA removal action is appropriate and that a planning period of at least six months exists prior to initiation of the on-site removal activities, the lead agency shall at a minimum:

(i) Comply with the requirements set forth in paragraphs (n)(3)(i), (ii), and (iii) of this section, prior to the completion of the engineering evaluation/cost analysis (EE/CA), or its equivalent, except that the information repository and the administrative record file will be established no later than when the EE/CA approval memorandum is signed;

(ii) Publish a notice of availability and brief description of the EE/CA in a major local newspaper of general circulation pursuant to § 300.820;

(iii) Provide a reasonable opportunity, not less than 30 calendar days, for submission of written and oral comments after completion of the EE/CA pursuant to § 300.820(a). Upon timely request, the lead agency will extend the public comment period by a minimum of 15 days; and

(iv) Prepare a written response to significant comments pursuant to § 300.820(a).

* * * * *

Subpart G—Trustees for Natural Resources

§ 300.600 Designation of federal trustees.

(a) The President is required to designate in the NCP those federal officials who are to act on behalf of the public as trustees for natural resources. Federal officials so designated will act pursuant to section 107(f) of CERCLA, section 311(f)(5) of the CWA, and section 1006 of the OPA. Natural resources means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled (hereinafter referred to as "managed or controlled") by the United States (including the resources of the exclusive economic zone).

(b) The following individuals shall be the designated trustee(s) for general categories of natural resources. They are authorized to act pursuant to section 107(f) of CERCLA, section 311(f)(5) of the CWA, or section 1006 of the OPA when there is injury to, destruction of, loss of, or threat to natural resources as a result of a release of a hazardous substance or a discharge of oil. Notwithstanding the other designations in this section, the Secretaries of Commerce and the Interior shall act as trustees of those resources subject to their respective management or control.

(1) *Secretary of Commerce.* The Secretary of Commerce shall act as trustee for natural resources managed or controlled by DOC or by other federal agencies and that are found in or under waters navigable by deep draft vessels, in, under, or using tidally influenced waters, or waters of the contiguous zone, the exclusive economic zone, and the outer continental shelf, and in upland areas serving as habitat for marine mammals and other protected species. However, before the Secretary takes an action with respect to an affected resource under the management or protection of another federal agency, he shall, whenever practicable, seek to obtain the concurrence of that other federal agency. Examples of the Secretary's trusteeship include marine fishery resources and their supporting ecosystems; most anadromous fish; certain endangered species and marine mammals; and the resources of National Marine Sanctuaries and National Estuarine Research Reserves.

(2) *Secretary of the Interior.* The Secretary of the Interior shall act as trustee for natural resources managed or controlled by the DOI. Examples of the Secretary's trusteeship include migratory birds; certain anadromous fish, endangered species, and marine mammals; federally owned minerals; and certain federally managed water resources. The Secretary of the Interior shall also be trustee for those natural resources for which an Indian tribe would otherwise act as trustee in those cases where the United States acts on behalf of the Indian tribe.

(3) *Secretary for the land managing agency.* For natural resources located on, over, or under land administered by the United States, the trustee shall be the head of the department in which the land managing agency is found. The trustees for the principal federal land managing agencies are the Secretaries of DOI, USDA, DOD, and DOE.

(4) *Head of authorized agencies.* For natural resources located in the United States but not otherwise described in this section, the trustee shall be the head of the federal agency or agencies authorized to manage or control those resources.

§ 300.605 State trustees.

State trustees shall act on behalf of the public as trustees for natural resources within the boundary of a state or belonging to, managed by, controlled by, or appertaining to such state. For the

purposes of subpart G of this part, the definition of the term "state" does not include Indian tribes. The governor of a state is encouraged to designate a state lead trustee to coordinate all state trustee responsibilities with other trustee agencies and with response activities of the RRT and OSC. The state's lead trustee would designate a representative to serve as contact with the OSC. This individual should have ready access to appropriate state officials with environmental protection, emergency response, and natural resource responsibilities. The EPA Administrator or USCG Commandant or their designees may appoint the state lead trustee as a member of the Area Committee. Response strategies should be coordinated between the state and other trustees and the OSC for specific natural resource locations in an inland or coastal zone and should be included in the Fish and Wildlife and Sensitive Environments Plan annex of the ACP.

§ 300.610 Indian tribes.

The tribal chairmen (or heads of the governing bodies) of Indian tribes, as defined in § 300.5, or a person designated by the tribal officials, shall act on behalf of the Indian tribes as trustees for the natural resources belonging to, managed by, controlled by, or appertaining to such Indian tribe, or held in trust for the benefit of such Indian tribe, or belonging to a member of such Indian tribe, if such resources are subject to a trust restriction on alienation. When the tribal chairman or head of the tribal governing body designates another person as trustee, the tribal chairman or head of the tribal governing body shall notify the President of such designation. Such officials are authorized to act when there is injury to, destruction of, loss of, or threat to natural resources as a result of a release of a hazardous substance.

§ 300.612 Foreign trustees.

Pursuant to section 1006 of the OPA, foreign trustees shall act on behalf of the head of a foreign government as trustees for natural resources belonging to, managed by, controlled by, or appertaining to such foreign government.

§ 300.615 Responsibilities of trustees.

(a) Where there are multiple trustees, because of coexisting or contiguous natural resources or concurrent jurisdictions, they should coordinate and cooperate in carrying out these responsibilities.

(b) Trustees are responsible for designating to the RRTs and the Area Committees, for inclusion in the RCP and the ACP, appropriate contacts to receive notifications from the OSCs/RPMs of discharges or releases.

(c)(1) Upon notification or discovery of injury to, destruction of, loss of, or threat to natural resources, trustees may, pursuant to section 107(f) of CERCLA, or section 311(f)(5) of the CWA, take the following or other actions as appropriate:

(i) Conduct a preliminary survey of the area affected by the discharge or release to determine if trust resources under their jurisdiction are, or potentially may be, affected;

(ii) Cooperate with the OSC/RPM in coordinating assessments, investigations, and planning;

(iii) Carry out damage assessments; or

(iv) Devise and carry out a plan for restoration, rehabilitation, replacement, or acquisition of equivalent natural resources. In assessing damages to natural resources, the federal, state, and Indian tribe trustees have the option of following the procedures for natural resource damage assessments located at 43 CFR part 11.

(2) Upon notification or discovery of injury to, destruction of, loss of, or loss of use of, natural resources, or the potential for such, resulting from a discharge of oil occurring after August 18, 1990, the trustees, pursuant to section 1006 of the OPA, are to take the following actions:

(i) In accordance with OPA section 1006(e), determine the need for assessment of natural resource damages, collect data necessary for a potential damage assessment, and, where appropriate, assess damages to natural resources under their trusteeship; and

(ii) As appropriate, and subject to the public participation requirements of OPA section 1006(c), develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent, of the natural resources under their trusteeship;

(3)(i) The trustees, through the lead administrative trustee, shall provide timely advice on recommended actions concerning trustee resources that are potentially affected by a discharge of oil. This may include providing assistance to the OSC in identifying/recommending pre-approved response techniques and in predesignating shoreline types and areas in ACPs.

(ii) The trustees shall assure, through the lead administrative trustee, that the OSC is informed of their activities regarding natural resource damage assessment that may affect response operations in order to assure coordination and minimize any interference with such operations.

(iii) When circumstances permit, the OSC shall share the use of federal response resources (including but not limited to aircraft, vessels, and booms to contain and remove discharged oil) with the trustees, providing trustee activities do not interfere with response actions. The lead administrative trustee shall, as appropriate, apply to the OSC for access to federal response resources on behalf of all trustees for initiation of damage assessment and claims for injuries to natural resources.

(d) The authority of federal trustees includes, but is not limited to the following actions:

(1) Requesting that the Attorney General seek compensation from the responsible parties for the damages assessed and for the costs of an assessment and of restoration planning; and

(2) Participating in negotiations between the United States and potentially responsible parties (PRPs) to obtain PRP-financed or PRP-conducted assessments and restorations for injured resources or protection for threatened resources and to agree to covenants not to sue, where appropriate.

(3) Requiring, in consultation with the lead agency, any person to comply with the requirements of CERCLA section 104(e) regarding information gathering and access.

(4) Initiating damage assessments, as provided in OPA section 6002.

(e) Actions which may be taken by any trustee pursuant to section 107(f) of CERCLA, section 311(f)(5) of the CWA, or section 1006 of the OPA include, but are not limited to, any of the following:

(1) Requesting that an authorized agency issue an administrative order or pursue injunctive relief against the parties responsible for the discharge or release; or

(2) Requesting that the lead agency remove, or arrange for the removal of, or provide for remedial action with respect to, any oil or hazardous substances from a contaminated medium pursuant to section 104 of CERCLA or section 311 of CWA.

Subpart H—Participation by Other Persons

§ 300.700 Activities by other persons.

(a) *General.* Except as provided (e.g., in CWA section 311(c)), any person may undertake a response action to reduce or eliminate a release of a hazardous substance, pollutant, or contaminant.

(b) *Summary of CERCLA authorities.* The mechanisms available to recover the costs of response actions under CERCLA are, in summary:

(1) Section 107(a), wherein any person may receive a court award of his

or her response costs, plus interest, from the party or parties found to be liable;

(2) Section 111(a)(2), wherein a private party, a PRP pursuant to a settlement agreement, or certain foreign entities may file a claim against the Fund for reimbursement of response costs;

(3) Section 106(b), wherein any person who has complied with a section 106(a) order may petition the Fund for reimbursement of reasonable costs, plus interest; and

(4) Section 123, wherein a general purpose unit of local government may apply to the Fund under 40 CFR part 310 for reimbursement of the costs of temporary emergency measures that are necessary to prevent or mitigate injury to human health or the environment associated with a release.

(c) *Section 107(a) cost recovery actions.* (1) Responsible parties shall be liable for all response costs incurred by the United States government or a state or an Indian tribe not inconsistent with the NCP.

(2) Responsible parties shall be liable for necessary costs of response actions to releases of hazardous substances incurred by any other person consistent with the NCP.

(3) For the purpose of cost recovery under section 107(a)(4)(B) of CERCLA:

(i) A private party response action will be considered "consistent with the NCP" if the action, when evaluated as a whole, is in substantial compliance with the applicable requirements in paragraphs (c) (5) and (6) of this section, and results in a CERCLA-quality cleanup; and

(ii) Any response action carried out in compliance with the terms of an order issued by EPA pursuant to section 106 of CERCLA, or a consent decree entered into pursuant to section 122 of CERCLA, will be considered "consistent with the NCP."

(4) Actions under § 300.700(c)(1) will not be considered "inconsistent with the NCP," and actions under § 300.700(c)(2) will not be considered not "consistent with the NCP," based on immaterial or insubstantial deviations from the provisions of 40 CFR part 300.

(5) The following provisions of this part are potentially applicable to private party response actions:

(i) Section 300.150 (on worker health and safety);

(ii) Section 300.160 (on documentation and cost recovery);

(iii) Section 300.400(c)(1), (4), (5), and (7) (on determining the need for a Fund-financed action); (e) (on permit requirements) except that the permit waiver does not apply to private party response actions; and (g) (on identification of ARARs) except that applicable requirements of federal or state law may not be waived by a private party;

(iv) Section 300.405(b), (c), and (d) (on reports of releases to the NRC);

(v) Section 300.410 (on removal site evaluation) except paragraphs (f)(5) and (6);

(vi) Section 300.415 (on removal actions) except paragraphs (a)(2), (b)(2)(vii), (b)(5), and (g); and including § 300.415(j) with regard to meeting ARARs where practicable except that private party removal actions must always comply with the requirements of applicable law;

(vii) Section 300.420 (on remedial site evaluation);

(viii) Section 300.430 (on RI/FS and selection of remedy) except paragraph (f)(1)(ii)(C)(6) and that applicable requirements of federal or state law may not be waived by a private party; and

(ix) Section 300.435 (on RD/RA and operation and maintenance).

(6) Private parties undertaking response actions should provide an opportunity for public comment concerning the selection of the response action based on the provisions set out below, or based on substantially equivalent state and local requirements. The following provisions of this part regarding public participation are potentially applicable to private party response actions, with the exception of administrative record and information repository requirements stated therein:

(i) Section 300.155 (on public information and community relations);

(ii) Section 300.415(n) (on community relations during removal actions);

(iii) Section 300.430(c) (on community relations during RI/FS) except paragraph (c)(5);

(iv) Section 300.430(f) (2), (3), and (6) (on community relations during selection of remedy); and

(v) Section 300.435(c) (on community relations during RD/RA and operation and maintenance).

(7) When selecting the appropriate remedial action, the methods of remedying releases listed in Appendix D of this part may also be appropriate to a private party response action.

(8) Except for actions taken pursuant to CERCLA section 104 or 106 or response actions for which reimbursement from the Fund will be sought, any action to be taken by the lead agency listed in paragraphs (c)(5) through (c)(7) of this section may be taken by the person carrying out the response action.

(d) *Section 111(a)(2) claims.* (1) Persons, other than those listed in paragraphs (d)(1) (i) through (iii) of this section, may be able to receive reimbursement of response costs by means of a claim against the Fund. The categories of persons excluded from pursuing this claims authority are:

(i) Federal government;

(ii) State governments, and their political subdivisions, unless they are potentially responsible parties covered by an order or consent decree pursuant to section 122 of CERCLA; and

(iii) Persons operating under a procurement contract or an assistance agreement with the United States with respect to matters covered by that contract or assistance agreement, unless specifically provided therein.

(2) In order to be reimbursed by the Fund, an eligible person must notify the Administrator of EPA or designee prior to taking a response action and receive prior approval, i.e., "preauthorization," for such action.

(3) Preauthorization is EPA's prior approval to submit a claim against the Fund for necessary response costs incurred as a result of carrying out the NCP. All applications for preauthorization will be reviewed to determine whether the request should receive priority for funding. EPA, in its discretion, may grant preauthorization of a claim. Preauthorization will be considered only for:

(i) Removal actions pursuant to § 300.415;

(ii) CERCLA section 104(b) activities; and

(iii) Remedial actions at National Priorities List sites pursuant to § 300.435.

(4) To receive EPA's prior approval, the eligible person must:

(i) Demonstrate technical and other capabilities to respond safely and effectively to releases of hazardous substances, pollutants, or contaminants; and

(ii) Establish that the action will be consistent with the NCP in accordance with the elements set forth in paragraphs (c) (5) through (8) of this section.

(5) EPA will grant preauthorization to a claim by a party it determines to be potentially liable under section 107 of CERCLA only in accordance with an order issued pursuant to section 106 of CERCLA, or a settlement with the federal government in accordance with section 122 of CERCLA.

(6) Preauthorization does not establish an enforceable contractual relationship between EPA and the claimant.

(7) Preauthorization represents EPA's commitment that if funds are appropriated for response actions, the response action is conducted in accordance with the preauthorization

decision document, and costs are reasonable and necessary, reimbursement will be made from the Superfund, up to the maximum amount provided in the preauthorization decision document.

(8) For a claim to be awarded under section 111 of CERCLA, EPA must certify that the costs were necessary and consistent with the preauthorization decision document.

(e) *Section 106(b) petition.* Subject to conditions specified in CERCLA section 106(b), any person who has complied with an order issued after October 16, 1986 pursuant to section 106(a) of CERCLA, may seek reimbursement for response costs incurred in complying with that order unless the person has waived that right.

(f) *Section 123 reimbursement to local governments.* Any general purpose unit of local government for a political subdivision that is affected by a release may receive reimbursement for the costs of temporary emergency measures necessary to prevent or mitigate injury to human health or the environment subject to the conditions set forth in 40 CFR part 310. Such reimbursement may not exceed $25,000 for a single response.

(g) *Release from liability.* Implementation of response measures by potentially responsible parties or by any other person does not release those parties from liability under section 107(a) of CERCLA, except as provided in a settlement under section 122 of CERCLA or a federal court judgment.

(h) *Oil Pollution Act Claims.* Claims are authorized to be presented to the OSLTF under section 1013 of the OPA, for certain uncompensated removal costs or uncompensated damages resulting from the discharge, or substantial threat of discharge, of oil from a vessel or facility into or upon the navigable waters, adjoining shorelines, or exclusive economic zone of the United States. Anyone desiring to file a claim against the OSLTF may obtain general information on the procedure for filing a claim from the Director, National Pollution Funds Center, Suite 1000, 4200 Wilson Boulevard, Arlington, Virginia 22203–1804, (703) 235–4756.

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Subpart J—Use of Dispersants and Other Chemicals

§ 300.900 General.

(a) Section 311(d)(2)(G) of the Clean Water Act requires that EPA prepare a schedule of dispersants, other chemicals, and other spill mitigating devices and substances, if any, that may be used in carrying out the NCP. This subpart makes provisions for such a schedule.

(b) This subpart applies to the navigable waters of the United States and adjoining shorelines, the waters of the contiguous zone, and the high seas beyond the contiguous zone in connection with activities under the Outer Continental Shelf Lands Act, activities under the Deepwater Port Act of 1974, or activities that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States, including resources under the Magnuson Fishery Conservation and Management Act of 1976.

(c) This subpart applies to the use of any chemical agents or other additives as defined in subpart A of this part that may be used to remove or control oil discharges.

§ 300.905 NCP Product Schedule.

(a) *Oil Discharges.* (1) EPA shall maintain a schedule of dispersants and other chemical or bioremediation products that may be authorized for use on oil discharges in accordance with the procedures set forth in § 300.910. This schedule, called the NCP Product Schedule, may be obtained from the Emergency Response Division (5202–G), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The telephone number is 1–202–260–2342.

(2) Products may be added to the NCP Product Schedule by the process specified in § 300.920.

(b) *Hazardous Substance Releases.* [Reserved]

§ 300.910 Authorization of use.

(a) RRTs and Area Committees shall address, as part of their planning activities, the desirability of using appropriate dispersants, surface washing agents, surface collecting agents, bioremediation agents, or miscellaneous oil spill control agents listed on the NCP Product Schedule, and the desirability of using appropriate burning agents. RCPs and ACPs shall, as appropriate, include applicable preauthorization plans and address the specific contexts in which such products should and should not be used. In meeting the provisions of this paragraph, preauthorization plans may address factors such as the potential sources and types of oil that might be spilled, the existence and location of environmentally sensitive resources that might be impacted by spilled oil, available product and storage locations, available equipment and adequately trained operators, and the available means to monitor product application and effectiveness. RRTs shall review and either approve, disapprove, or approve with modification the preauthorization plans developed by Area Committees, as appropriate. Approved preauthorization plans shall be included in the appropriate RCPs and ACPs. If the RRT representatives from EPA and the states with jurisdiction over the waters of the area to which a preauthorization plan applies and the DOC and DOI natural resource trustees approve in advance the use of certain products under specified circumstances as described in the preauthorization plan, the OSC may authorize the use of the products without obtaining the specific concurrences described in paragraphs (b) and (c) of this section.

(b) For spill situations that are not addressed by the preauthorization plans developed pursuant to paragraph (a) of this section, the OSC, with the concurrence of the EPA representative to the RRT and, as appropriate, the concurrence of the RRT representatives from the states with jurisdiction over the navigable waters threatened by the release or discharge, and in consultation with the DOC and DOI natural resource trustees, when practicable, may authorize the use of dispersants, surface washing agents, surface collecting agents, bioremediation agents, or miscellaneous oil spill control agents on the oil discharge, provided that the products are listed on the NCP Product Schedule.

(c) The OSC, with the concurrence of the EPA representative to the RRT and, as appropriate, the concurrence of the RRT representatives from the states with jurisdiction over the navigable waters threatened by the release or discharge, and in consultation with the DOC and DOI natural resource trustees, when practicable, may authorize the use of burning agents on a case-by-case basis.

(d) The OSC may authorize the use of any dispersant, surface washing agent, surface collecting agent, other chemical agent, burning agent, bioremediation agent, or miscellaneous oil spill control agent, including products not listed on the NCP Product Schedule, without obtaining the concurrence of the EPA representative to the RRT and, as appropriate, the RRT representatives from the states with jurisdiction over the navigable waters threatened by the release or discharge, when, in the judgment of the OSC, the use of the product is necessary to prevent or substantially reduce a hazard to human life. Whenever the OSC authorizes the use of a product pursuant to this paragraph, the OSC is to inform the EPA RRT representative and, as appropriate,

the RRT representatives from the affected states and, when practicable, the DOC/DOI natural resources trustees of the use of a product, including products not on the Schedule, as soon as possible. Once the threat to human life has subsided, the continued use of a product shall be in accordance with paragraphs (a), (b), and (c) of this section.

(e) Sinking agents shall not be authorized for application to oil discharges.

(f) When developing preauthorization plans, RRTs may require the performance of supplementary toxicity and effectiveness testing of products, in addition to the test methods specified in § 300.915 and described in Appendix C to part 300, due to existing site-specific or area-specific concerns.

§ 300.915 Data requirements.

(a) *Dispersants.* (1) Name, brand, or trademark, if any, under which the dispersant is sold.

(2) Name, address, and telephone number of the manufacturer, importer, or vendor.

(3) Name, address, and telephone number of primary distributors or sales outlets.

(4) Special handling and worker precautions for storage and field application. Maximum and minimum storage temperatures, to include optimum ranges as well as temperatures that will cause phase separations, chemical changes, or other alterations to the effectiveness of the product.

(5) Shelf life.

(6) Recommended application procedures, concentrations, and conditions for use depending upon water salinity, water temperature, types and ages of the pollutants, and any other application restrictions.

(7) Effectiveness. EPA will conduct the effectiveness tests for dispersant effectiveness, using the Swirling Flask effectiveness test methods described in appendix C to this part 300. Manufacturers shall submit a one liter sample of their dispersant to EPA for the purposes of EPA conducting these effectiveness tests. Manufacturers are also encouraged to provide data on product performance under conditions other than those captured by these tests.

(8) Dispersant Toxicity. EPA will conduct the toxicity tests for dispersant toxicity, using the standard toxicity test methods described in appendix C to this part 300. Manufacturers shall submit a one liter sample of their dispersant to EPA for the purposes of EPA conducting these toxicity tests.

(9) The following data requirements incorporate by reference standards from the 1991 or 1992 Annual Books of ASTM Standards. American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.[15]

(i) Flash Point—Select appropriate method from the following:

(A) ASTM—D 56–87, "Standard Test Method for Flash Point by Tag Closed Tester;"

(B) ASTM—D 92–90, "Standard Test Method for Flash and Fire Points by Cleveland Open Cup;"

(C) ASTM—D 93–90, "Standard Test Methods for Flash Point by Pensky-Martens Closed Tester;"

(D) ASTM—D 1310–86, "Standard Test Method for Flash Point and Fire Point of Liquids by Tag Open-Cup Apparatus;" or

(E) ASTM—D 3278–89, "Standard Test Methods for Flash Point of Liquids by Setaflash Closed-Cup Apparatus."

(ii) Pour Point—Use ASTM—D 97–87, "Standard Test Method for Pour Point of Petroleum Oils."

(iii) Viscosity—Use ASTM—D 445–88, "Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (and the Calculation of Dynamic Viscosity)."

(iv) Specific Gravity—Use ASTM—D 1298–85(90), "Standard Test Method for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method."

(v) pH—Use ASTM—D 1293–84(90), "Standard Test Methods for pH of Water."

(10) Dispersing Agent Components. Itemize by chemical name and percentage by weight each component of the total formulation. The percentages will include maximum, minimum, and average weights in order to reflect quality control variations in manufacture or formulation. In addition to the chemical information provided in response to the first two sentences, identify the major components in at least the following categories: surface active agents, solvents, and additives.

(11) Heavy Metals, Cyanide, and Chlorinated Hydrocarbons. Using standard test procedures, state the concentrations or upper limits of the following materials:

(i) Arsenic, cadmium, chromium, copper, lead, mercury, nickel, zinc, plus any other metals that may be reasonably expected to be in the sample. Atomic absorption methods should be used and the detailed analytical methods and sample preparation shall be fully described.

(ii) Cyanide. Standard calorimetric procedures should be used.

(iii) Chlorinated hydrocarbons. Gas chromatography should be used and the detailed analytical methods and sample preparation shall be fully described. At a minimum, the following test methods shall be used for chlorinated hydrocarbon analyses: EPA Method 601—Purgeable halocarbons (Standard Method 6230 B) and EPA Method 608—Organochlorine pesticides and PCBs (Standard Method 6630 C).[16]

(12) The technical product data submission shall include the identity of the laboratory that performed the required tests, the qualifications of the laboratory staff, including professional biographical information for individuals responsible for any tests, and laboratory experience with similar tests. It is the responsibility of the submitter to select competent analytical laboratories based on the guidelines contained herein. EPA reserves the right to refuse to accept a submission of technical product data because of lack of qualification of the analytical laboratory, significant variance between submitted data and any laboratory confirmation performed by EPA, or other circumstances that would result in inadequate or inaccurate information on the dispersing agent.

(b) *Surface washing agents.* (1) Name, brand, or trademark, if any, under which the surface washing agent is sold.

(2) Name, address, and telephone number of the manufacturer, importer, or vendor.

(3) Name, address, and telephone number of primary distributors or sales outlets.

(4) Special handling and worker precautions for storage and field application. Maximum and minimum storage temperatures, to include optimum ranges as well as temperatures that will cause phase separations, chemical changes, or other alterations to the effectiveness of the product.

(5) Shelf life.

(6) Recommended application procedures, concentrations, and

[15] Copies of these standards may be obtained from the publisher. Copies may be inspected at the U.S. Environmental Protection Agency, 401 M St., SW., Room LG, Washington, DC, or at the Office of the Federal Register, 800 North Capitol Street, NW., Room 700, Washington, DC 20408.

[16] These test methods may be obtained from: Standard Methods for the Examination of Water and Wastewater, 17th Edition, American Public Health Association, 1989; or Method 601—Purgeable halocarbons, 40 CFR part 136 and Method 608—Organochlorine pesticide and PCBs, 40 CFR part 136. Copies may be inspected at the U.S. Environmental Protection Agency, 401 M St., SW., Room LG, Washington, DC, or at the Office of the Federal Register, 800 North Capitol Street, NW., Room 700, Washington, DC 20408.

conditions for use depending upon water salinity, water temperature, types and ages of the pollutants, and any other application restrictions.

(7) Toxicity. Use standard toxicity test methods described in appendix C to this part 300.

(8) Follow the data requirement specifications in paragraph (a)(9) of this section.

(9) Surface Washing Agent Components. Itemize by chemical name and percentage by weight each component of the total formulation. The percentages will include maximum, minimum, and average weights in order to reflect quality control variations in manufacture or formulation. In addition to the chemical information provided in response to the first two sentences, identify the major components in at least the following categories: Surface active agents, solvents, and additives.

(10) Heavy Metals, Cyanide, and Chlorinated Hydrocarbons. Follow specifications in paragraph (a)(11) of this section.

(11) Analytical Laboratory Requirements for Technical Product Data. Follow specifications in paragraph (a)(12) of this section. In addition, laboratories performing toxicity tests for surface washing agent toxicity must demonstrate previous toxicity test experience in order for their results to be accepted.

(c) *Surface collecting agents.* (1) Name, brand, or trademark, if any, under which the product is sold.

(2) Name, address, and telephone number of the manufacturer, importer, or vendor.

(3) Name, address, and telephone number of primary distributors or sales outlets.

(4) Special handling and worker precautions for storage and field application. Maximum and minimum storage temperatures, to include optimum ranges as well as temperatures that will cause phase separations, chemical changes, or other alterations to the effectiveness of the product.

(5) Shelf life.

(6) Recommended application procedures, concentrations, and conditions for use depending upon water salinity, water temperature, types and ages of the pollutants, and any other application restrictions.

(7) Toxicity. Use standard toxicity test methods described in appendix C to this part 300.

(8) Follow the data requirement specifications in paragraph (a)(9) of this section.

(9) Test to Distinguish Between Surface Collecting Agents and Other Chemical Agents.

(i) Method Summary—Five milliliters of the chemical under test are mixed with 95 milliliters of distilled water and allowed to stand undisturbed for one hour. Then the volume of the upper phase is determined to the nearest one milliliter.

(ii) Apparatus.

(A) Mixing Cylinder: 100 milliliter subdivisions and fitted with a glass stopper.

(B) Pipettes: Volumetric pipette, 5.0 milliliter.

(C) Timers.

(iii) Procedure—Add 95 milliliters of distilled water at 22° C, plus or minus 3° C, to a 100 milliliter mixing cylinder. To the surface of the water in the mixing cylinder, add 5.0 milliliters of the chemical under test. Insert the stopper and invert the cylinder five times in ten seconds. Set upright for one hour at 22° C, plus or minus 3° C, and then measure the chemical layer at the surface of the water. If the major portion of the chemical added (75 percent) is at the water surface as a separate and easily distinguished layer, the product is a surface collecting agent.

(10) Surface Collecting Agent Components. Itemize by chemical name and percentage by weight each component of the total formulation. The percentages should include maximum, minimum, and average weights in order to reflect quality control variations in manufacture or formulation. In addition to the chemical information provided in response to the first two sentences, identify the major components in at least the following categories: Surface action agents, solvents, and additives.

(11) Heavy Metals, Cyanide, and Chlorinated Hydrocarbons. Follow specifications in paragraph (a)(11) of this section.

(12) Analytical Laboratory Requirements for Technical Product Data. Follow specifications in paragraph (b)(11) of this section.

(d) *Bioremediation Agents.* (1) Name, brand, or trademark, if any, under which the agent is sold.

(2) Name, address, and telephone number of the manufacturer, importer, or vendor.

(3) Name, address, and telephone number of primary distributors or sales outlets.

(4) Special handling and worker precautions for storage and field application. Maximum and minimum storage temperatures.

(5) Shelf life.

(6) Recommended application procedures, concentrations, and conditions for use depending upon water salinity, water temperature, types and ages of the pollutants, and any other application restrictions.

(7) Bioremediation Agent Effectiveness. Use bioremediation agent effectiveness test methods described in appendix C to this part 300.

(8) Bioremediation Agent Toxicity. Use bioremediation agent toxicity test methods described in appendix C to this part 300.

(9) Biological additives.

(i) For microbiological cultures, furnish the following information:

(A) Listing of each component of the total formulation, other than microorganisms, by chemical name and percentage by weight.

(B) Listing of all microorganisms by species.

(C) Percentage of each species in the composition of the additive.

(D) Optimum pH, temperature, and salinity ranges for use of the additive, and maximum and minimum pH, temperature, and salinity levels above or below which the effectiveness of the additive is reduced to half its optimum capacity.

(E) Special nutrient requirements, if any.

(F) Separate listing of the following, and test methods for such determinations: Salmonella, fecal coliform, Shigella, Staphylococcus Coagulase positive, and Beta Hemolytic Streptococci.

(ii) For enzyme additives, furnish the following information:

(A) Listing of each component of the total formulation, other than enzymes, by chemical name and percentage by weight.

(B) Enzyme name(s).

(C) International Union of Biochemistry (I.U.B.) number(s).

(D) Source of the enzyme.

(E) Units.

(F) Specific Activity.

(G) Optimum pH, temperature, and salinity ranges for use of the additive, and maximum and minimum pH, temperature, and salinity levels above or below which the effectiveness of the additive is reduced to half its optimum capacity.

(H) Enzyme shelf life.

(I) Enzyme optimum storage conditions.

(10) For nutrient additives, furnish the following information:

(i) Listing of each component of the total formulation by chemical name and percentage by weight.

(ii) Nutrient additive optimum storage conditions.

(11) Laboratory Requirements for Technical Product Data. Follow specifications in paragraph (b)(11) of this section.

(e) *Burning agents.* EPA does not require technical product data submissions for burning agents and does not include burning agents on the NCP Product Schedule.

(f) *Miscellaneous oil spill control agents.* (1) Name, brand, or trademark, if any, under which the miscellaneous oil spill control agent is sold.

(2) Name, address, and telephone number of the manufacturer, importer, or vendor.

(3) Name, address, and telephone number of primary distributors or sales outlets.

(4) Brief description of recommended uses of the product and how the product works.

(5) Special handling and worker precautions for storage and field application. Maximum and minimum storage temperatures, to include optimum ranges as well as temperatures that will cause phase separations, chemical changes, or other alternatives to the effectiveness of the product.

(6) Shelf life.

(7) Recommended application procedures, concentrations, and conditions for use depending upon water salinity, water temperature, types and ages of the pollutants, and any other application restrictions.

(8) Toxicity. Use standard toxicity test methods described in appendix C to this part 300.

(9) Follow the data requirement specifications in paragraph (a)(9) of this section.

(10) Miscellaneous Oil Spill Control Agent Components. Itemize by chemical name and percentage by weight each component of the total formulation. The percentages should include maximum, minimum, and average weights in order to reflect quality control variations in manufacture or formulation. In addition to the chemical information provided in response to the first two sentences, identify the major components in at least the following categories: surface active agents, solvents, and additives.

(11) Heavy Metals, Cyanide, and Chlorinated Hydrocarbons. Follow specifications in paragraph (a)(11) of this section.

(12) For any miscellaneous oil spill control agent that contains microbiological cultures, enzyme additives, or nutrient additives, furnish the information specified in paragraphs (d)(9) and (d)(10) of this section, as appropriate.

(13) Analytical Laboratory Requirements for Technical Product Data. Follow specifications in paragraph (b)(11) of this section.

(g) *Sorbents.* (1) Sorbent material may consist of, but is not limited to, the following materials:

(i) Organic products—

(A) Peat moss or straw;

(B) Cellulose fibers or cork;

(C) Corn cobs;

(D) Chicken, duck, or other bird feathers.

(ii) Mineral compounds—

(A) Volcanic ash or perlite;

(B) Vermiculite or zeolite.

(iii) Synthetic products—

(A) Polypropylene;

(B) Polyethylene;

(C) Polyurethane;

(D) Polyester.

(2) EPA does not require technical product data submissions for sorbents and does not include sorbents on the NCP Product Schedule.

(3) Manufacturers that produce sorbent materials that consist of materials other than those listed in paragraph (g)(1) of this section shall submit to EPA the technical product data specified for miscellaneous oil spill control agents in paragraph (f) of this section and EPA will consider listing those products on the NCP Product Schedule under the miscellaneous oil spill control agent category. EPA will inform the submitter in writing, within 60 days of the receipt of technical product data, of its decision on adding the product to the Schedule.

(4) Certification. OSCs may request a written certification from manufacturers that produce sorbent materials that consist solely of the materials listed in paragraph (g)(1) of this section prior to making a decision on the use of a particular sorbent material. The certification at a minimum shall state that the sorbent consists solely of the materials listed in § 300.915(g)(1) of the NCP. The following statement, when completed, dated, and signed by a sorbent manufacturer, is sufficient to meet the written certification requirement:

[SORBENT NAME] is a sorbent material and consists solely of the materials listed in § 300.915(g)(1) of the NCP.

(h) *Mixed products.* Manufacturers of products that consist of materials that meet the definitions of two or more of the product categories contained on the NCP Product Schedule shall submit to EPA the technical product data specified in this section for each of those product categories. After review of the submitted technical product data, and the performance of required dispersant effectiveness and toxicity tests, if appropriate, EPA will make a determination on whether and under which category the mixed product should be listed on the Schedule.

§ 300.920 Addition of products to Schedule.

(a) *Dispersants.* (1) To add a dispersant to the NCP Product Schedule, the technical product data specified in § 300.915(a) must be submitted to the Emergency Response Division (5202–G), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

(2) After the receipt of the required technical product data, EPA will conduct the required Swirling Flask tests, as specified in appendix C to this part 300, for dispersant effectiveness. In order to be added to the Schedule, a dispersant must attain an effectiveness value of 45 percent or greater.

(3) EPA will conduct the required toxicity tests for dispersant toxicity, as specified in appendix C to this part 300, after it has performed the required effectiveness tests and only for those dispersants that attain an effectiveness value of 45 percent or greater, and are therefore eligible for addition to the Schedule.

(4) EPA will inform the submitter in writing, after the receipt of the required technical product data and after EPA has performed the required effectiveness tests and toxicity tests, if applicable, of its decision on adding the dispersant to the Schedule.

(5) Request for review of decision. (i) A submitter of dispersant technical product data whose product did not meet the minimum 45 percent effectiveness threshold and, therefore, could not be listed on the NCP Product Schedule may request the Administrator of EPA to review the Agency's determination. The request must be made in writing within 30 days of receipt of the notification to not list the dispersant on the Schedule. The request shall contain a clear and concise statement with supporting facts and technical analysis demonstrating that EPA's decision was incorrect.

(ii) The Administrator or his designee may request additional information from the submitter, or from any other person, and may provide for a conference between EPA and the submitter, if appropriate. The Administrator or his designee shall render a decision within 60 days of receiving the request, or within 60 days of receiving requested additional information, if appropriate, and shall notify the submitter of his decision in writing.

(b) *Surface washing agents, surface collecting agents, bioremediation agents, and miscellaneous oil spill control agents.* (1) To add a surface washing agent, surface collecting agent, bioremediation agent, or miscellaneous

oil spill control agent to the NCP Product Schedule, the technical product data specified in § 300.915 must be submitted to the Emergency Response Division (5202–G), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. If EPA determines that the required data were submitted, EPA will add the product to the Schedule.

(2) EPA will inform the submitter in writing, within 60 days of the receipt of technical product data, of its decision on adding the product to the Schedule.

(c) The submitter may assert that certain information in the technical product data submissions, including technical product data submissions for sorbents pursuant to § 300.915(g)(3), is confidential business information. EPA will handle such claims pursuant to the provisions in 40 CFR part 2, subpart B. Such information must be submitted separately from non-confidential information, clearly identified, and clearly marked "Confidential Business Information." If the submitter fails to make such a claim at the time of submittal, EPA may make the information available to the public without further notice.

(d) The submitter must notify EPA of any changes in the composition, formulation, or application of the dispersant, surface washing agent, surface collecting agent, bioremediation agent, or miscellaneous oil spill control agent. On the basis of this data, EPA may require retesting of the product if the change is likely to affect the effectiveness or toxicity of the product.

(e) The listing of a product on the NCP Product Schedule does not constitute approval of the product. To avoid possible misinterpretation or misrepresentation, any label, advertisement, or technical literature that refers to the placement of the product on the NCP Product Schedule must either reproduce in its entirety EPA's written statement that it will add the product to the NCP Product Schedule under § 300.920 (a)(4) or (b)(2), or include the disclaimer shown below. If the disclaimer is used, it must be conspicuous and must be fully reproduced. Failure to comply with these restrictions or any other improper attempt to demonstrate the approval of the product by any NRT or other U.S. Government agency shall constitute grounds for removing the product from the NCP Product Schedule.

* * * * *

Disclaimer

[PRODUCT NAME] is on the U.S. Environmental Protection Agency's NCP Product Schedule. This listing does NOT mean that EPA approves, recommends, licenses, certifies, or authorizes the use of [PRODUCT NAME] on an oil discharge. This listing means only that data have been submitted to EPA as required by subpart J of the National Contingency Plan, § 300.915.

* * * * *

3. Appendices C and E are revised to read as follows:

Appendix C to Part 300—Swirling Flask Dispersant Effectiveness Test, Revised Standard Dispersant Toxicity Test, and Bioremediation Agent Effectiveness and Toxicity Tests

Table of Contents

1.0 Introduction
2.0 Swirling Flask Dispersant Effectiveness Test
3.0 Revised Standard Dispersant Toxicity Test
4.0 Bioremediation Agent Effectiveness Test
5.0 Bioremediation Agent Toxicity Test
6.0 Summary Technical Product Test Data Format

References

List of Illustrations

Figure Number

1 Swirling Flask Test Apparatus
2 Process for Conducting Bioremediation Agent Toxicity Test

List of Tables

Table Number

1 Major Ion Composition of "Instant Ocean" Synthetic Sea Salt
2 Test Oil Characteristics
3 Oil Standard Solutions: Concentrations in Final DCM Extractions
4 Synthetic Seawater (Toxicity Test)
5 Test Oil Characteristics: No. 2 Fuel Oil
6 Compounds Used in Five-Point Calibration Curve
7 Primary Ions Monitored for Each Target Analyte
8 Operating Conditions and Temperature Program of GC/MS
9 Summary of Operating Conditions for Bioremediation Agent Toxicity Test

1.0 Introduction

1.1 *Scope and Application.* The methods described below apply to "dispersants, surface washing agents, surface collecting agents, bioremediation agents, and miscellaneous oil spill control agents" involving subpart J (Use of Dispersants and Other Chemicals) in 40 CFR part 300 (National Oil and Hazardous Substances Pollution Contingency Plan). They are revisions and additions to the EPA's Standard Dispersant Effectiveness and Toxicity Tests (1). The new Swirling Flask Dispersant Effectiveness Test is used only for testing dispersants. The Revised Standard Dispersant Toxicity Test is used for testing dispersants, as well as surface washing agents, surface collecting agents, and miscellaneous oil spill control agents. The bioremediation agent effectiveness and toxicity tests are used for testing bioremediation agents only. The Environmental Protection Agency (EPA) will conduct the effectiveness and toxicity tests for dispersants, while the manufacturers of the other types of products will be responsible for conducting the effectiveness and toxicity tests required for their products.

1.2 *Definitions.* The definitions of dispersants, surface washing agents, surface collecting agents, bioremediation agents, and miscellaneous oil spill control agents are provided in 40 CFR 300.5.

2.0 Swirling Flask Dispersant Effectiveness Test

2.1 *Summary of Method.* This protocol was developed by Environment Canada to provide a relatively rapid and simple testing procedure for evaluating dispersant effectiveness (2). It uses a modified Erlenmeyer flask to which a side spout has been added for removing subsurface samples of water near the bottom of the flask without disturbing a surface oil layer. Seawater and a surface layer of oil are added to the flask. Turbulent mixing is provided by placing the flask on a standard shaker table at 150 rpm for 20 minutes to induce a swirling motion to the liquid contents. Following shaking, the flask is immediately removed from the shaker table and maintained in a stationary position for 10 minutes to allow the oil that will reform a slick to return to the water's surface. A sample of water for chemical analysis is then removed from the bottom of the flask through the side spout, extracted with methylene chloride (DCM), and analyzed for oil content by UV-visible absorption spectrophotometry at wavelengths of 340, 370, and 400 nm (2).

2.2 *Apparatus. Modified Erlenmeyer Flask.* Use 125-ml glass Erlenmeyer flasks that have been modified to include an attachment of a glass side spout that extends from the bottom of the flask upward to the neck region, as shown in Figure 1.

Shaker Table. Use a shaker table with speed control unit with variable speed (40–400 rpm) and an orbital diameter of approximately 0.75 inches (2 cm) to provide turbulence to solutions in test flasks.

Spectrophotometer. Use a UV-visible spectrophotometer capable of measuring absorbance at 340, 370, and 400 nm. A Hitachi Model U–2000 or equivalent is acceptable for this purpose.

Glassware. Glassware should consist of 5-, 10-, 25-, 100-, and 500-ml graduated cylinders; 125-ml separatory funnels with Teflon stopcocks; and 10-, 100-, and 1,000-ml volumetric flasks and micropipettes.

2.3 *Reagents. Synthetic Seawater.* The synthetic sea salt "Instant Ocean," manufactured by Aquarium Systems of Mentor, OH, can be used for this purpose. The synthetic seawater solution is prepared by dissolving 34 g of the salt mixture in 1 liter of distilled water (i.e., a salinity of 34 ppt). Table 1 provides a list of the ion composition of the seasalt mixture.

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Figure 1

Swirling Flask Test Apparatus

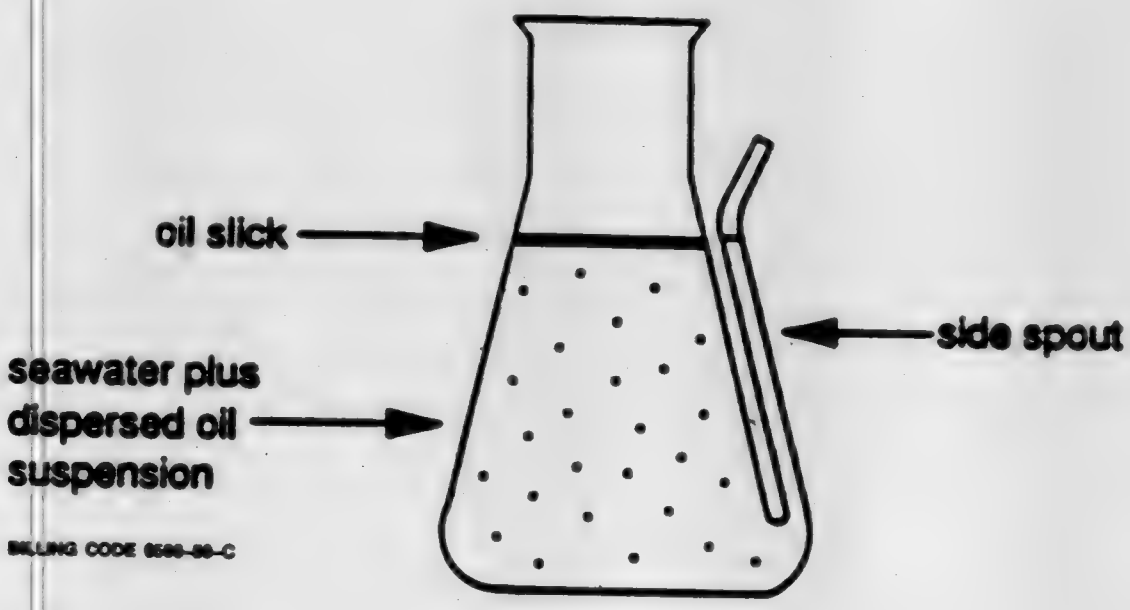

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TABLE 1.—MAJOR ION COMPOSITION OF INSTANT OCEAN SYNTHETIC SEA SALT

Major ion	Percent total weight	Ionic concentration at 34 ppt salinity (mg/l)
Chloride (Cl^-)	47.470	18,740
Sodium (NA^+)	26.280	10,454
Sulfate (SO_4^-)	6.602	2,631
Magnesium (Mg^{++})	3.230	1,256
Calcium (Ca^{++})	1.013	400
Potassium (K^+)	1.015	401
Bicarbonate (HCO_3^-)	0.491	194
Boron (B)	0.015	6.0
Strontium (Sr^{++})	0.001	7.5
Solids Total	86.11	34,089.50
Water	13.88	
Total	99.99	

Following the preparation, the saltwater solution is allowed to equilibrate to the ambient temperature of the laboratory and should be in the range of 22 ±3 °C.

Test Oil. Two EPA/American Petroleum Institute (API) standard reference oils, Prudhoe Bay and South Louisiana crude, should be used for this test. These should be obtained only from the Industrial Chemicals Repository, EPA, Environmental Monitoring Systems Laboratory, Cincinnati, OH, 45268 (James Longbottom, Custodian, (513) 569–7325). These oils have been thoroughly homogenized, as well as characterized physically and chemically for previous EPA and API studies. Various selected parameters are presented in Table 2.

TABLE 2.—TEST OIL CHARACTERISTICS

	Prudhoe Bay crude oil	South Louisiana crude oil
Specific gravity [1]	0.894 kg/l	0.840 kg/l.
API gravity [1]	26.8 degrees	37.0 degrees.
Sulfur	1.03 wt%	0.23 wt%.
Sulfur compounds, profile.		
Nitrogen	0.20 wt%	0.031 wt%.
Vanadium	21 mg/l	0.95 mg/l.
Nickel	11 mg/l	1.1 mg/l.
Simulated distillation profile.		
Infrared spectrum.		
UV fluorescence spectrum.		
Pour point	+25°F	0°F.
Viscosity at 40° C	14.09 cST	3.582 cST.
at 100° C	4.059 cST	1.568 cST.
Index	210	2.

[1] At 15°C.

[2] Not calculable when viscosity at 100° C is less than 2.0.

Methylene Chloride (Dichloromethane-DCM), Pesticide Quality. For extraction of all sample water and oil-standard water samples.

2.4 *Pretest Preparation. Preparation and Analysis of Oil Standards.* Standard solutions of oil for calibrating the UV-visible spectrophotometer are prepared with the specific reference oils and dispersant used for a particular set of experimental test runs. For experiments with no dispersant, only oil is used to make the standard solution. For experiments with the oil plus dispersant, the standard is made with a 1:10 (v:v) mixture of the dispersant to the test oil (i.e., a dispersant-to-oil ratio of 1:10). This ratio is used in the test tank with dispersant added. The presence of water and certain dispersants in DCM extracts can affect absorbance readings in a spectrophotometer. All standard solutions of oil (and dispersant, if present) should be prepared in a stepwise manner that reflects the analytical protocol used for the experimental water samples.

To prepare the standards, prepare a parent oil-DCM standard by mixing 1 part oil (plus 1/10 part premixed dispersant, if applicable) to 9 parts DCM (i.e., 1:10 dilution of the oil v:v). Add a specific volume of the parent oil-DCM standard to 30 ml of synthetic seawater in a separatory funnel. Extract the oil-water mixture with 5-ml volumes of DCM after 15 seconds of vigorous shaking followed by a 2 minute stationary period to allow for phase separation for each extraction. Repeat the extraction using a total of three 5-ml portions of DCM. Adjust the final DCM volume for the combined extracts to 20 ml with DCM in a 25-ml graduated cylinder.

The quantities of oil used to achieve the desired concentrations in the final 20-ml DCM extracts for the standard oil-solutions are summarized in Table 3. Specific masses for oil amounts in standards are determined as volumes of oil multiplied by the density of the oil.

TABLE 3.—OIL STANDARD SOLUTIONS: CONCENTRATION IN FINAL DCM EXTRACTIONS [1]

Final oil concentration (mg/ml of DCM)	Final extract volume (ml of DCM)	Total amount of oil in standard (mg)	Volume of parent oil-DCM std (µl) added to saltwater
4.0	20.0	80.0	890
2.0	20.0	40.0	440
1.0	20.0	20.0	220
0.50	20.0	10.0	110
0.10	20.0	2.0	22
0.05	20.0	1.0	11

[1] Assuming an oil density of 0.9 g/ml and an extraction efficiency of 100% for oil from the 30-ml of seawater.

Linear Stability Calibration of UV-Visible Spectrophotometer. Before DCM-extracts of dispersed oil-water samples can be analyzed for their oil content, the UV-visible spectrophotometer must meet an instrument stability calibration criterion. This criterion is determined with the six oil standards identified in Table 3. Determine the absorbance of standards at each of the three analytical wavelengths (i.e., 340, 370, and 400 nm). Determine the response factors (RFs) for the test oil at each of the three analytical wavelengths using the following equation:

$$RF_x = C/A_x \qquad (1)$$

where:

RF_x = Response factor at wavelength x (x = 340, 370, or 400 nm)

C = Oil concentration, in mg of oil/ml of DCM in standard solution

A_x = Spectrophotometric absorbance of wavelength x

Instrument stability for the initial calibration is acceptable when the RFs for the five highest standard extracts of oil are <20% different from the overall mean value for the five standards. If this criterion is satisfied, analysis of sample extracts can begin. RFs for the lowest concentration (0.05 mg oil/ml DCM) are not included in the consideration because the absorbance is close to the detection limit of the spectrophotometer (with associated high variability in the value) for the 1-cm path-length cell used for measurements. Absorbances ≥3.5 are not included because absorbance saturation occurs at and above this value.

If one or more of the standard oil extracts do not meet this linear-stability criterion, then the "offending" standard(s) can be prepared a second time (i.e., extraction of the specified amount of oil from 30-ml or seawater for the "offending" standard according to the pretest preparation procedure). If replacement of the reanalyzed standard solution(s) in the standard curve meets the linear-stability criterion (i.e., no RF >20% different from the overall mean), then analysis of sample extracts can begin.

If the initial-stability criterion is still not satisfied, analysis of sample extract cannot begin and the source of the problem (e.g., preparation protocol for the oil standards,

spectrophotometer stability, etc.) must be corrected.

The initial six-point calibration of the UV-visible spectrophotometer at the oil concentrations identified is required at least once per test day.

2.5 *Test Procedure. Preparation of Premixed Dispersant Oil.* Prepare a premixed dispersant oil by mixing 1 part dispersant to 10 parts oil. Store this mixture in a glass container.

The dispersant effectiveness test procedures are listed in steps 1–20:

1. Prepare 4 replicates (same test oil and dispersant), one control (i.e., no dispersant) and one method blank and run at the same time on the shaker table.

2. Add 120±2 ml of synthetic seawater to each of the modified 125-ml glass Erlenmeyer flasks. Measure and record the water temperature.

3. Place the flasks securely into the attached slot on the shaker table.

4. Carefully add 100 µl of an oil-dispersant solution onto the center of the water's surface using a positive displacement pipette.

5. Agitate the flasks for 20±1 minutes at 150±10 rpm on the shaker table.

6. After the 20±1 minutes shaking, remove the flasks from the shaker table and allow them to remain stationary for 10±1 minutes for oil droplet "settling."

7. At the conclusion of the 10-minute settling period, carefully decant a 30-ml sample through the side spout of the test flasks into a 50-ml graduated cylinder.

Note: Discard the first 1–2 ml of sample water to remove nonhomogeneous water-oil initially contained in the spout.

8. Transfer the samples from the graduated cylinder into a 125- or 250-ml glass separatory funnel fitted with a Teflon stopcock.

9. Add 5 ml of pesticide-quality DCM to the separatory funnel and shake vigorously for 15 seconds. Release the pressure carefully from the separatory funnel through the stopcock into a fume hood.

10. Allow the funnel to remain in a stationary position for 2 minutes to allow phase-separation of the water and DCM.

11. Drain the DCM layer from the separatory funnel into a glass-stoppered, 25-ml graduated glass cylinder.

12. Repeat the DCM-extraction process two additional times.

13. Combine the three extracts in the graduated cylinder and adjust the final volume to 20-ml with additional DCM.

14. Analyze the samples using a UV-spectrophotometer at 340, 370, and 400 nm-wavelengths and determine the quantity of oil as follows:

$$C_x = (A_x) \times (RF_x) \times (V_{DCM}) \times (V_{tw}/V_{ew}) \quad (2)$$

where:

C_x = Total mass of dispersed oil in swirling flask at wavelength x (x = 340, 370, or 400 nm)

A_x = Spectrophotometric absorbance at wavelength x

RF_x = Mean response factor at wavelength x (determined from equation 1)

V_{DCM} = Final volume of DCM-extract of water sample (20 ml)

V_{tw} = Total water volume in swirling flask vessel (120 ml)

V_{ew} = Volume of water extracted for dispersed oil content (30 ml)

15. Obtain three concentration values for oil in each experimental water sample (340, 370, and 400 nm).

16. Determine the mean of three values as follows:

$$C_{mean} = (C_{340} + C_{370} + C_{400})/3 \quad (3)$$

Note: Means will be used for all dispersion-performance calculations. Samples where one of the values for C_{340}, C_{370}, or C_{400} is more than 30% different from C_{mean} will be flagged. Whenever oil measurements are flagged as having a concentration based on one wavelength as >30% different from C_{mean}, raw data will be evaluated to establish that the measurements are valid. In addition, attempts will be made to correlate the difference to oil type, dispersant test, or dispersant used. If no errors or correlations are apparent and <10% of all oil measurements are flagged, the mean concentration data will be used in the calculation for dispersant performance and the subject data will be flagged.

17. Determine the dispersant performance (i.e., percent of oil that is dispersed, or EFF) based on the ratio of oil dispersed in the test system to the total oil added to the system as follows:

$$EFF\ (in\ \%) = (C_{mean}/C_{TOT}) \times 100 \quad (4)$$

where:

C_{mean} = Mean value for total mass of dispersed oil in the swirling flask determined by spectrophotometric analysis

C_{TOT} = Total mass of oil initially added to the experimental swirling flask

18. Calculate EFF using equation 4 for coupled experiments with and without dispersant (EFF_c and EFF_d, respectively). EFF_c is the effectiveness of the control and represents natural dispersion of the oil in the test apparatus. EFF_d is the measured uncorrected value.

19. Calculate the final dispersant performance of a chemical dispersant agent after correcting for natural dispersion using equation 5.

$$EFF_D = EFF_d - EFF_c \quad (5)$$

where:

EFF_D = % dispersed oil due to dispersant only

EFF_d = % dispersed oil with dispersant added

EFF_c = % dispersed oil with no dispersant added

20. Calculate the average dispersant effectiveness value by summing the corrected values (EFF_D) for each of the four replicates for each of the two test oils and dividing this sum by eight.

2.6 *Performance criterion.* The dispersant product tested will remain in consideration for addition to the NCP Product Schedule if the average dispersant effectiveness, as calculated in section 2.5 above, is at least 45% (i.e., 50%±5%).

2.7 *Quality Control (QC) Procedures for Measurements of Oil Concentrations. UV-visible Spectrophotometric Measurements.* At least 5% of all UV-visible spectrophotometric measurements will be performed in duplicate as a QC check on the analytical measurement method. The absorbance values for the duplicates should agree within ±5% of their mean value.

Method Blanks. Analytical method blanks involve an analysis of seawater blanks (i.e., seawater but no oil or dispersant in a swirling flask vessel) through testing and analytical procedures (3, pp 79–80). Method blanks are analyzed with a frequency of at least 1 for every 12 experimental swirling flask samples. Oil concentrations in method blanks must be <5% of that occurring for 100% dispersion of oil in testing apparatus.

3.0 Revised Standard Dispersant Toxicity Test

3.1 *Summary of Method.* The standard toxicity test for dispersants and other products involves exposing two species (*Menidia beryllina* (silvergides) and *Mysidopsis bahia* (mysid shrimp)) to five concentrations of the test product and No. 2 fuel oil alone and in a 1:10 mixture of product to oil. To aid in comparing results from assays performed by different workers, reference toxicity tests are conducted using dodecyl sodium sulfate (DSS) as a reference toxicant. The test length is 96 hours for *Menidia* and 48 hours for *Mysidopsis*. LC_{50}s are calculated based on mortality data at the end of the exposure period (for method of calculation, see section 3.6 below).

3.2 *Selection and Preparation of Test Materials. Test Organisms. Menidia beryllina.* Obtain fish (silversides) from a single source for each series of toxicity tests. In-house cultures are recommended wherever it is cost-effective; however, organisms are available from commercial suppliers. Information on the source of test organisms and any known unusual condition to which fish were exposed before use should be included in the data report. Use of animals previously treated with pesticides or chemotherapeutic agents should be avoided. Organisms should not be used if they appear to be unhealthy, discolored, or show signs of stress. Use 7-day old larval fish.

Fish should be cultured in accordance with the methods outlined in Middaugh, *et al.* (5). There should be no need to acclimate organisms to the 25±1°C temperature recommended for the toxicity tests if laboratory stock cultures of *Menidia* are maintained at the recommended culture temperature of 25±1°C. If test organisms must be obtained from a commercial source, it may become necessary to acclimate test fish to the test temperature of 25±1°C, a pH of 8.0±0.2, and 20±2 ppt salinity since changes in temperature may occur during shipping. Eliminate groups of fish having a mortality of more than 10% during the first 48 hours, and more than 5% thereafter. During acclimation, organisms should be maintained on a diet of freshly hatched *Artemia* (brine shrimp) nauplii. Feed the fish daily to satiation during the acclimation period, and once

daily during the 96-hour test. Care should be taken daily to remove excess food and fecal material from beakers during the test. Use only those organisms that feed actively and that appear to be healthy. Organisms should be free of disease, external parasites, and any signs of physical damage or stress. Discard any fish injured or dropped while handling.

Mysidopsis bahia. Several methods for culturing *Mysidopsis bahia* (mysid shrimp) may be used and are noted in appendix A of Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms (6). To ensure uniformity of mysids, recently hatched mysids should be collected daily from stock cultures and identified by the date of hatch. Mysids used in 48-hour tests should be from a single day's collection, but may have an age range of 5–7 days old. In cases where in-house cultures of mysids are unavailable, organisms may be purchased from a commercial source. Information on the source of test organisms should be submitted in the data report.

Preparation of Experimental Water. Filtered natural seawater is recommended for use since it represents a natural source of saltwater containing an inherent population of microorganisms. Synthetic seawater formulated according to the following method can serve as an acceptable alternative to filtered, natural seawater for toxicity tests performed in laboratories in which natural seawater is unavailable.

Synthetic Seawater Formation. To prepare standard seawater, mix technical-grade salts with 900 liters of distilled or demineralized water in the order and quantities listed in Table 4. These ingredients must be added in the order listed and each ingredient must be dissolved before another is added. Stir constantly after each addition during preparation until dissolution is complete.

TABLE 4.—SYNTHETIC SEAWATER

[Toxicity test]

Salt	(g)[1]
NaF	1.9
$SrC1_2 \cdot 6H_2O$	13.0
H_3BO_2	20.0
KBr	67.0
KC1	466.0
$CaC1_2 \cdot 2H_20$	733.0
Na_2SO_4	2,660.0
$MgC1_2 \cdot 6H_2O$	3,330.0
NaC1	15,650.0
$Na_2SiO_3 \cdot 9H_2O$	13.0
EDTA[2]	0.4
$NaHCO_3$	133.0

[1] Amount added to 900 liters of water, as described in the text.

[2] Ethylenediaminetetraacetate tetra sodium salt.

Add distilled or demineralized water to make up to 1,000 liters. The pH should now be 8.0±0.2. To attain the desired salinity of 20±1 ppt, dilute again with distilled or demineralized water at time of use.

3.3 *Sampling and Storage of Test Materials.* Toxicity tests are performed with No. 2 fuel oil having the characteristics defined in Table 5. Store oil used for toxicity tests in sealed containers to prevent the loss of volatiles and other changes. For ease in handling and use, it is recommended that 1,000-ml glass containers be used. To ensure comparable results in the bioassay tests, use oils packaged and sealed at the source. Dispose of unused oil in each open container on completion of dosing to prevent its use at a later date when it may have lost some of its volatile components. Run all tests in a bioassay series with oil from the same container and with organisms from the same group collected or secured from the same source.

TABLE 5.—TEST OIL CHARACTERISTICS: NO. 2 FUEL OIL

Characteristic	Minimum	Maximum
Gravity (°API)	32.1	42.8
Viscosity kinematic at 100°F (cs)	2.35	3.00
Flash point (°F)	150	.....
Pour point (°F)	.....	0
Cloud point (°F)	.....	10
Sulfur (wt %)	.....	0.35
Aniline point (°F)	125	180
Carbon residue (wt %)	.....	0.16
Water (vol %)	.....	0
Sediment (wt %)	.....	0
Aromatics (vol %)	10	15
Distillation:		
IBP (°F)	347	407
10% (°F)	402	456
50% (°F)	475	530
90% (°F)	542	606
End Point (°F)	596	655
Neutralization No	.....	0.05

3.4 *General Test Conditions and Procedures for Toxicity Tests. Temperature.* For these toxicity tests, use test solutions with temperatures of 25±1°C.

Dissolved Oxygen and Aeration.

Menidia. Because oils contain toxic, volatile materials, and because the toxicity of some water-soluble fractions of oil and degradation products are changed by oxidation, special care must be used in the oxygenation of test solutions. Aeration during the test is generally not recommended but should be used to maintain the required dissolved oxygen (DO) in cases where low DO is observed. The DO content of test solutions must not drop below 60% saturation during the first 48 hours of a static acute (96-hour) test and must remain between 40–100% after the first 48 hours of the test. Aeration at a rate of 100±15 bubbles per minute is supplied by a serological pipette as needed for maintenance of DO. If aeration is necessary, all test chambers should be aerated. At this rate, and with the proper weight of fish, DO concentration should remain slightly above 4 ppm over a 96-hour period. Take DO measurements daily.

Mysidopsis. Achieve sufficient DO by ensuring that the surface area to volume ratio of the test solution exposed is large enough. Oxygen content should remain high throughout the test because of the low oxygen demand of the organisms. Aeration is not recommended during 48-hour acute toxicity tests unless the DO falls below 60% saturation.

Controls. With each fish or mysid test or each series of simultaneous tests of different solutions, perform a concurrent control test in exactly the same manner as the other tests and under the conditions prescribed or selected for those tests. Use the diluent water alone as the medium in which the controls are held. There must be no more than 10% mortality among the controls during the course of any valid test.

Reference Toxicant. To aid in comparing results from tests performed by different workers and to detect changes in the condition of the test organisms that might lead to different results, perform reference toxicity tests with reagent grade DSS in addition to the usual control tests. Prepare a stock solution of DSS immediately before use by adding 1 gram of DSS per 500 ml of test water solution. Use exploratory tests before the full scale tests are begun to determine the amount of reference standard to be used in each of the five different concentrations.

Number of Organisms. At a minimum, 20 organisms of a given species are exposed for each test concentration. For the toxicity test procedures using *Menidia*, place 10 fish in each of two jars. For the toxicity tests using *Mysidopsis*, place 10 larvae in each of two containers.

Transfer of Organisms. Organisms should be handled as little as possible in order to minimize stress. Transfer *Menidia* and *Mysidopsis* from the acclimatization aquaria to the test chambers with a pipette or a wide-bore, smooth glass tube (4 to 8 mm internal diameter) fitted with a rubber bulb. Dip nets should be avoided when handling larval fish and mysids. Do not hold fish out of the water longer than necessary and discard any specimen accidentally dropped or otherwise mishandled during transfer.

Mysidopsis. To have the mysids ready for study, mysids may be sorted 24 hours prior to initiation of the 48-hour test. Transfer the mysids to a beaker containing a small volume of water; this vessel serves as a holding chamber during randomized transfer of the organisms to test solutions. Mysids are randomly selected from the batch of mysids in the holding chamber, and transferred to 50-ml beakers containing a small volume of seawater. One mysid is added per beaker using a small piece of flexible 500-µm screening until all of the beakers contain one mysid. The process of random selection and sorting is continued until the appropriate number of mysids has been delivered to each of the 50-ml beakers. The mysids are gently released from the 50-ml beakers into larger beakers filled with an appropriate volume of 20-ppt seawater (25°C) to bring the total volume to 200 ml. The beakers are randomly placed into a temperature-controlled water bath to acclimate overnight at 25°C.

The mysids are transferred to larger beakers (1-liter) for the 48-hour test after the addition of 800 ml of the test solution. A total of 10 mysids per beaker are used for 48-hour acute toxicity tests. A minimum of two replicate chambers are used for each test concentration and control.

Menidia and *Mysidopsis* are fed 50 brine shrimp nauplii/organism daily during the 96-

hour and 48-hour tests. Excess food should be removed daily by aspirating with a pipette.

Test Duration and Observations. Menidia. Observe the number of dead fish in each test container and record at the end of each 24-hour period. Fish are considered dead upon cessation of respiratory and all other overt movements, whether spontaneous or in response to mild mechanical prodding. Remove dead fish as soon as observed.

Also note and report when the behavior of test fish deviates from that of control fish. Such behavioral changes would include variations in opercular movement, coloration, body orientation, movement, depth in container, schooling tendencies, and others. Abnormal behavior of the test organisms (especially during the first 24 hours) is a desirable parameter to monitor in a toxicity test because changes in behavior and appearance may precede mortality. Toxicants can reduce an organism's ability to survive natural stresses. In these cases, the mortality is not directly attributed to the toxicant, but most certainly is an indirect effect. Reports on behavioral changes during a toxicity test can give insight into the non-acute effects of the tested material.

At the end of the 96-hour period, terminate the fish tests and determine the LC_{50} values.

The acute toxicity test is terminated after four days of exposure. The number of surviving fish are counted and recorded for each chamber in accordance with standard EPA methods (6). The LC_{50} is calculated using survival data from the test in accordance with the methods described in the guidelines (6).

Mysidopsis. Terminate the mysid test after 48 hours of incubation. To count the dead animals accurately, place the exposure vessels on a light table such that light passes through the bottom of the vessel. Most of the dead mysids will be on the bottom of the beaker and can readily be seen against the background of the light table. Also search the top of the liquid for mysids trapped there by surface tension. Exercise caution when determining death of the animals. Occasionally, an animal appears dead, but closer observation shows slight movement of an appendage or a periodic spasm of its entire body. For these tests, animals exhibiting any movement when touched with a pipette tip are considered alive. Account for all test animals to ensure accuracy since *Mysidopsis bahia* may disintegrate or be cannibalized by other mysids. Consider individuals not accounted for as dead.

At the end of 48 hours of exposure, terminate the mysid assay and determine the LC_{50} values in accordance with the methods described in the guidelines (6).

Physical and Chemical Determinations. Menidia. Determine the temperature, DO, and pH of the test solutions before the fish are added and at 24-, 48-, 72-, and 96-hour exposure intervals. It is necessary to take measurements from only one of the replicates of each of the toxicant series.

Mysidopsis. Determine the temperature, DO, and pH of the test solutions before the nauplii are added and at the 24- and 48-hour exposure interval. Measure DO and pH in only one of the replicates of each of the toxicant series.

Testing Laboratory. An ordinary heated or air-conditioned laboratory room with thermostatic controls suitable for maintaining the prescribed test temperatures generally will suffice to conduct the toxicity tests. Where ambient temperatures cannot be controlled to 25±1 °C, use water baths with the necessary temperature controls.

Test Containers. For tests with fish or mysids, use 1-liter glass beakers measuring approximately 10 cm in diameter. In conducting the test, add to each beaker 1 liter of the test solution or seawater formulation aerated to saturation with DO. To add the liter volume easily and accurately, use a large volume (1-liter) graduated cylinder.

Process all required glassware before each test. Immerse in normal hexane for 10 minutes. Follow this with a thorough rinse with hot tap water; three hot detergent scrubs; an additional hot tap-water rinse; and three rinses with distilled water. Oven or air dry the glassware in a reasonably dust-free atmosphere.

3.5 *Preparation of Test Concentrations. Menidia.* Place test jars (approximately 22.5 cm in height, 15 cm in diameter, 11 cm in diameter at the mouth) containing 2 liters of synthetic seawater on a reciprocal shaker. The shaker platform should be adapted to hold firmly six of the toxicity test jars. Add the desired amount of the petroleum product (if applicable) under test directly to each test jar. Dispense the appropriate amount of toxicant (if applicable) into the jars with a pipette. Tightly cap the test jars and shake for 5 minutes at approximately 315 to 333 2-cm (0.75-inch) strokes per minute in a reciprocal shaker or at approximately 150 to 160 rpm on orbital shakers. At the completion of shaking, remove the jars from the shaker and dispense 1 liter of the mixture to each of the 1-liter glass beakers. Randomly place beakers in a constant-temperature water bath or room, take water quality measurements, add fish, and initiate aeration:

Mysidopsis. To prepare test solutions for products and oil/product mixtures, blend or mix the test solutions with an electric blender having: speeds of 10,000 rpm or less; a stainless-steel cutting assembly; and a 1-liter borosilicate jar. To minimize foaming, blend at speeds below 10,000 rpm.

For the product test solution, add 550 ml of the synthetic seawater to the jar, then with the use of a gas-tight calibrated glass syringe with a Teflon-tipped plunger, add 0.55 ml of the product and mix for 5 seconds.

For the oil test solution, add 550 ml of the synthetic seawater to the jar. Then with the use of a gas-tight calibrated glass syringe equipped with a Teflon-tipped plunger, add 0.55 ml of the oil and mix for 5 seconds.

For the oil/product mixture, add 550 ml of the synthetic seawater to the mixing jar. While the blender is in operation, add 0.5 ml of the oil under study with the use of a calibrated syringe with a Teflon-tipper plunger and then 0.05 ml of the product as indicated above. Blend for 5 seconds after addition of product. These additions provide test solutions of the product, oil, and the oil/product mixture at concentrations of 1,000 ppm.

Immediately after the test solutions are prepared, draw up the necessary amount of test solution with a gas-tight Teflon-tipped glass syringe of appropriate size and dispense into each of the five containers in each series. If the series of five concentrations to be tested are 10, 18, 32, 56, and 100 ppm, the amount of the test solution in the order of the concentrations listed above would be as follows: 10, 18, 32, 56, and 100 ml.

Each time a syringe is to be filled for dispensing to the series of test containers, start the mixer and withdraw the desired amount in the appropriate syringe while the mixer is in operation. Turn off immediately after the sample is taken to limit the loss of volatiles.

Use exploratory tests before the full-scale test is set up to determine the concentration of toxicant to be used in each of the five different concentrations. After adding the required amounts of liquid, bring the volume in each of the test containers up to 800 ml with the artificial seawater. To ensure keeping each of the series separate, designate on the lid of each container the date, the material under test, and its concentration.

When the desired concentrations are prepared, gently release into each beaker the 10 test *Mysidopsis* (previously transferred into 200 ml of medium). This provides a volume of 1 liter in each test chamber. A pair of standard cover glass forceps with flat, bent ends is an ideal tool for handling and tipping the small beaker without risk of contaminating the medium.

After adding the test animals, incubate the test beakers at 25±1 °C for 48 hours. Recommended lighting is 2,000 lumens/m^2 (200 ft-c) of diffused, constant, fluorescent illumination.

Wash the blender thoroughly after use and repeat the above procedures for each series of tests. Wash the blender as follows: rinse with normal hexane; pour a strong solution of laboratory detergent into the blender to cover the blades; fill the container to about half of its volume with hot tap water; operate the blender for about 30 seconds at high speed; remove and rinse twice with hot tap water, mixing each rinse for 5 seconds at high speed; and then rinse twice with distilled water, mixing each rinse for 5 seconds at high speed.

3.6 *Calculating and Reporting.* At the end of the test period, the toxicity tests are terminated and the LC_{50} values are determined.

Calculations. The LC_{50} is the concentration lethal to 50% of the test population. It can be calculated as an interpolated value based on percentages of organisms surviving at two or more concentrations, at which less than half and more than half survived. The LC_{50} can be estimated with the aid of computer programs or graphic techniques (log paper). The 95% confidence intervals for the LC_{50} estimate should also be determined.

Reporting. The test product and oil and their source and storage are described in the toxicity test report. Note any observed changes in the experimental water or the test solutions. Also include the species of fish used; the sources, size, and condition of the fish; data of any known treatment of the fish for disease or infestation with parasites before their use; and any observations on the fish behavior at regular intervals during the

tests. In addition to the calculated LC_{50} values, other data necessary for interpretation (e.g., DO, pH, other physical parameters, and the percent survival at the end of each day of exposure at each concentration of toxicant) should be reported.

3.7 *Summary of Procedures. Menidia:*

1. Prepare adequate stocks of the appropriate standard dilution water.

2. Add 2 liters of the standard dilution water to the test jars. Each test consists of 5 replicates of each of 5 concentrations of the test material, a control series of 5 beakers, and a standard reference series of 5 different concentrations for a total of 35 beakers. Simultaneous performance of toxicity tests on the oil, product, and oil/product mixture requires a total of 105 beakers.

3. Add the determined amount (quarter points on the log scale) of test material to the appropriate jars. Preliminary tests will be necessary to define the range of definitive test concentrations.

4. Cap the jars tightly with the Teflon-lined screw caps and shake for 5 minutes at 315 to 333 2-cm (0.75-inch) strokes per minute on a reciprocal shaker.

5. Remove the jars from the shaker, take water quality data, dispense 1 liter of solution to the 1-liter glass beaker, and add 10 acclimated fish per beaker.

6. Aerate with 100±15 bubbles per minute through a 1-ml serological pipette, as needed, to maintain DO above 4.0 mg/l.

7. Observe and record mortalities, water quality, and behavioral changes every 24 hours.

8. After 96 hours, terminate the test, and calculate LC_{50} values and corresponding confidence limits.

Mysidopsis:

1. Initiate the procedure for hatching the *Mysidopsis* in sufficient time before the toxicity test is to be conducted so that 5–7 day old larvae are available.

2. With the use of a small pipette, transfer 10 *Mysidopsis* into small beakers, each containing 200 ml of the proper synthetic seawater.

3. To prepare the test stock product and oil solutions, add 550 ml of the artificial seawater to the prescribed blender jar. By means of a gas-tight glass syringe with a Teflon-tipped plunger, add 0.55 ml of the product (or oil) and mix at 10,000 rpm for 5 seconds. To prepare the test stock oil/product mixture, add 550 ml of the standard seawater to the blender jar. While the blender is in operation (10,000 rpm), add 0.5 ml of the oil, then 0.05 ml of the product with the use of a calibrated syringe with a Teflon-tipped plunger. Blend for 5 seconds after adding the product. One ml of these stock solutions added to the 100 ml of standard seawater in the test containers yields a concentration of 10 ppm product, oil, or oil/product combination (the test will be in a ratio of 1 part product to 10 parts of oil).

4. Each test consists of 5 replications of each of 5 concentrations of the material under study, a control series of 5 beakers and a standard reference series of 5 different concentrations, for a total of 35 beakers. Simultaneous performance of toxicity tests on the oil, product, and oil/product mixture requires a total of 105 beakers. Immediately after preparing the test solution of the product or oil/product solution, and using an appropriately sized syringe, draw up the necessary amount of test solution and dispense into each of the five containers in each series.

Each time a syringe is to be filled for dispensing to the series of test containers, start the mixer and withdraw the desired amount in the appropriate syringe while the mixer is in operation. Turn mixer off immediately after the sample is taken to limit the loss of volatiles. After adding the required amount of the test oil/product or product mixture, bring the volume of liquid in each of the test containers up to 800 ml with the artificial seawater.

When the desired concentrations have been prepared, gently release into each beaker the 10 mysids previously transferred into 200 ml of medium. This provides a volume of 1 liter in each test chamber.

5. Wash the blender as prescribed for each series of tests.

6. Incubate the test beakers at 25±1 °C for 48 hours with the prescribed lighting.

7. Terminate the experiment after 48 hours, observe and record the mortalities, and determine the LC_{50}s and corresponding confidence limits.

4.0 Bioremediation Agent Effectiveness Test

4.1 *Summary of Method.* The bioremediation agent effectiveness testing protocol is designed to determine a product's ability to biodegrade oil by quantifying changes in the oil composition resulting from biodegradation. The protocol quantifies the disappearance of saturated hydrocarbons and polynuclear aromatic hydrocarbons (PAHs). The sample preparation procedure partitions the oil phase into a neutral solvent (hexane). To effectively accomplish the goals of the testing protocol, it is necessary to normalize the concentration of the various analytes in oil to a non-biodegradable biomarker, hopane (7).

The test method targets the relatively easy to degrade normal alkanes and the more resistant and toxic PAHs. It normalizes their concentrations to $C_{30}17\alpha(H),21\beta(H)$-hopane on an oil weight basis (mg $C_{30}17\alpha(H),21\beta(H)$-hopane/kg oil, mg target analyte/kg oil).

The analytical technique uses a high resolution gas chromatograph/mass spectrometer (GC/MS) because of its high degree of chemical separation and spectral resolution. GC/MS has long been used to study the weathering and fate of oil spilled into the environment. For quantitative analyses, the instrument is operated in the selective ion detection (SIM) mode at a scan rate of greater than 1.5 scans per second to maximize the linear quantitative range and precision of the instrument. The sample preparation method does not exclude analysis of selected samples by GC/MS in the full scanning mode of operation to qualitatively assess changes in the oil not accounted for by the SIM approach.

Performed concurrently with the chemical analysis described above is a microbiological analysis. The microbiological analysis is performed to determine and monitor the viability of the microbial cultures being studied. Under this procedure, microbial enumerations of hydrocarbon degraders are performed at each sampling event using a microtiter Most Probable Number (MPN) determination.

4.2 *Apparatus.* The following materials and equipment are required for the protocol: Appropriate flasks and other glassware; sterile tubes; graduated cylinders (100-ml); D.I. water; p-iodonitrotetrazolium violet dye; weighing pans or paper; 250-ml borosilicate glass Erlenmeyer flasks with screw tops; Pasteur pipettes; laboratory notebook; microtiter MPN plates (24-well) multi-channel pipetting device; dilution tube and caps; autoclave; environmental room or incubator; balance accurate to 0.1 mg (XD–400); Hewlett-Packard 5890/5971 GC/MS instrument equipped with a DB–5 capillary column (30 m, 0.25-mm I.D., and 0.25-μm film thickness) and a split/splitless injection port operating in the splitless mode; and an autosampler for testing multiple samples.

4.3 *Reagents and Culture Medium.* Preparation of Seawater. All products are tested in unfiltered Gulf Breeze coast seawater [1], which is available from the EPA/Office of Research and Development's (ORD) Environmental Research Laboratory, Sabine Island, FL, 32561–5299. The seawater is used within seven days of collection. No microbial inoculum is added.

Preparation of Oil. A medium weight crude oil, Alaska North Slope (ANS), is artificially weathered by heating to 521°F to remove the light end hydrocarbons prior to experimental start-up. The method is described in the Draft International Standard ISO/DIS 8708 "Crude Petroleum Oil—Determination of Distillation Characteristics Using 15 Theoretical Plates Columns" by the International Organization for Standardization (8). The ANS crude oil can be obtained from the National Environmental Technology Applications Corporation's (NETAC) Bioremediation Products Evaluation Center (BPEC), University of Pittsburgh Applied Research Center, 615 William Pitt Way, Pittsburgh, PA, 15238, (412) 826–5511. The crude oil is heated to 374°F under atmospheric pressure. The system is then cooled and placed under vacuum (20 mm Hg). The oil is reheated to 521°F, then allowed to cool to between 230–250°F. The oil is nitrogen blanketed and stored.

Preparation of Mineral Nutrient Solution. If a commercial product is a microbial inoculum and does not contain its own nutrients, a mineral nutrient solution will be provided if requested by the product manufacturer or vendor. If a commercial product contains its own nutrients, no further nutrients will be added. The nutrient solution is a modified salt solution and is described below.

Nutrient Preparation:

1. N&P Salts. The following salts are added to distilled water and made up to a 1,000-ml volume. Adjust final pH to 7.8. The solution is sterilized by autoclaving at 121 °C at 15 psig for 20 minutes or by filtering through a sterile 0.22 μm membrane filter.

[1] This protocol was developed using the Gulf Breeze coast seawater. To ensure the reproducibility of test results, this type of seawater should be used when conducting this test.

$Na_2HPO_4 \cdot 2H_2$—18.40 g
KNO_3—76•30 g

2. $MgSO_4 \cdot 7H_2O$ solution. Dissolve 22.50 g in 1,000 ml distilled water. The solution is sterilized by autoclaving at 121°C at 15 psig for 20 minutes.

3. $CaCl_2$ solution. Dissolve 27.50 g in 1,000 ml of distilled water. The solution is sterilized by autoclaving at 121°C at 15 psig for 20 minutes.

4. $FeCl_3 \cdot 6H_2O$ solution. Dissolve 0.25 g in 1,000 ml of distilled water. The solution is sterilized by autoclaving at 121°C at 15 psig for 20 minutes.

5. Trace Element Solution. The following salts are added to distilled water and made up to a 1,000-ml volume. The solution is sterilized by autoclaving at 121°C at 15 psig for 20 minutes.

$MnSO_4 \cdot H_2O$—30.2 mg
H_3BO_3—57.2 mg
$ZnSO_4 \cdot 7H_2O$—42.8 mg
$(NH_4)6Mo_7O_{24}$—34.7 mg

Final Concentrations:

Ten (10) ml of solution 1 and 2 ml of solutions 2–5 are added to non-sterile seawater and made up to a 1,000-ml volume immediately prior to test start-up. This seawater/mineral nutrient solution is used for all flasks containing products requiring nutrient supplements and for the flasks containing no commercial additive. Seawater without the above nutrient solutions is used for products containing their own source of nutrients.

4.4 *Pretest Preparation. Experimental Setup.* The procedure consists of an experimental shaker flask setup and the specific set of microbiological and chemical analyses that are performed on individual product samples.

The following test flasks are prepared:

1. *Product Treatment.* Three product flasks containing oil, seawater (with or without nutrients as appropriate), and the commercial product being tested for each sampling event (12 total for each of four sampling events).

2. *Nutrient Treatment.* Three nutrient flasks containing oil and seawater (with nutrients) for each sampling event (12 total for each of four sampling events).

3. *Control.* Three flasks containing oil and seawater without nutrients for each sampling event (12 total for each of four sampling events).

The total number of flasks needed for a test, knowing that each test consists of a control, nutrient treatment, and product treatment, is 36 flasks.

For each test, a sheet listing the number of flasks, types of controls, number of replicates, product to be tested, and other information is prepared. The following steps should be adhered to for the experimental setup:

1. Borosilicate glass Erlenmeyer flasks (250-ml) are thoroughly cleaned and autoclaved for 20 minutes at 120 °C at 15 psi, then dried in the drying oven.

2. Flasks are labeled with the appropriate code: Product or control, sample day, and letter indicating replicate.

3. 100 ml of seawater is added to each flask.

4. For nutrient and product treatments that require the addition of nutrients, seawater containing the nutrient solution is prepared.

5. Pasteur pipettes should be sterilized in advance. Break off the tip to provide a larger opening prior to sterilization.

6. Pour the approximate amount of oil to be used from the large stock bottle into a sterile beaker. Keep the beaker covered when oil is not being removed.

7. The labeled flasks containing seawater and other additions, as necessary, are placed on the balance. The flask is tared. The appropriate amount of oil (500 mg) is added drop by drop using a sterile Pasteur pipette with the tip broken off to provide a wider opening. Care is taken to avoid splashing the oil or getting it on the sides of flasks. Precautions are taken when handling and charging the flasks to minimize the likelihood of contamination by exogenous microbes. This includes using a new sterile pipette for each series of flasks.

8. The weight of the oil is recorded in the laboratory notebook.

9. The product is prepared and added to the appropriate flasks according to the manufacturer's or vendor's instructions.

10. Flasks are carried upright and carefully placed in the holders on the shaker table to minimize the amount of oil that might adhere to the side of the flasks. Flasks in which a significant amount of oil is splashed on the sides are redone.

11. The prepared flasks are shaken at 200 rpm at 20 °C until such time that they will be removed for sampling.

Sampling. The control and treatments (nutrient and product flasks) are sampled four times over a 21-day period: day 0, day 5, day 13, and day 21. The entire flask is sacrificed for analysis. A 0.5-ml aliquot is removed from each flask for the microbiological analysis. The remainder of each flask is used for the chemical analysis. Specific procedures for both the microbiological and chemical analysis are described below. At the time of each sampling event, physical observations of each flask should be recorded.

4.5 *Microbiological Analysis.* To determine and monitor the viability of the microbial cultures being studied, microbial enumerations of hydrocarbon degraders are performed at each sampling event using a microtiter MPN determination.

Media Preparation. Media for microbial enumerations are carefully prepared according to manufacturer's or other instructions and sterilized using appropriate methods.

General Media Treatment: Buy Bushnell-Haas broth in quantities to last no longer than one year. Use media on a first-in, first-out basis. When practical, buy media in quarter-pound multiples, rather than one-pound multiples to keep supply sealed as long as possible. Keep an inventory of media, including kind, amount, lot number, expiration date, date received, and date opened. Check inventory before reordering media. Discard media that are caked, discolored, or show other deterioration.

Sterile Saline (pH adjusted):

1. Weigh 30 g of NaCl.

2. Dissolve in enough water to make 1,000 ml.

3. Adjust pH to 8.0 with NaOH (10M and 0.5M).

4. Sterilize by autoclaving for 15 minutes at 15 psig.

Standard Nutrient Concentrate (add 1 ml to each 100 ml of Bushnell-Haas medium for MPNs):

1. Weigh compounds listed below, dissolve in DIH_2O, dilute to 1 liter.

Potassium Phosphate, monobasic KH_2PO_4—0.633 g
Potassium Phosphate, dibasic K_2HPO_4—1.619 g
Sodium Phosphate, dibasic Na_2HPO_4—2.486 g
Ammonium Chloride NH_4Cl—3.850 g
Magnesium Sulfate, heptahydrate $MgSO_4 \cdot 7H_2O$—4.500 g
Calcium Chloride, dihydrate $CaCl_2 \cdot 2H_2O$—7.290 g
Ferric Chloride, hexahydrate $FeCl_3 \cdot 6H_2O$—0.250 g

Trace Elements

Manganese Sulfate, monohydrate $MnSO_4 \cdot H_2O$—6.04 mg
Boric Acid H_3Bo_3—11.44 mg
Zinc Sulfate, heptahydrate $ZnSO_4 \cdot 7H_2O$—8.56 mg
Ammonium Moybdate, tetrahydrate $(NH_4)_6Mo_7O_{24} \cdot 4H_2O$—6.94 mg

2. Adjust pH to 6.0.

3. Stir solution for approximately 3 hours, then filter through a Buchner funnel using #1 paper, which will retain approximately 3.8 g of insolubles.

4. Then filter through a 0.45 micron filter into sterile bottles.

5. Cap bottles, label, and store in refrigerator until used.

Quality Assurance/Quality Control (QA/QC):

1. Periodically check the effectiveness of sterilization using commercially available tapes or *Bacillus stearothermophilus* spore suspensions, following the instructions with these products.

2. Maintain a media log book that includes the dates, kinds and amounts of media made, pH, and any problems or observations.

3. Before use, check plates and tubes for signs of contamination, drying, or other problems.

Safety/Special Precautions:

1. Note any safety or other precautions for particular media.

2. Note precautions to be followed when using the autoclave.

3. Use gloves and other protective clothes when handling media.

4. Use care in handling hot media.

Microbial Enumeration. Standardized techniques for performing microbial enumerations are described below.

Dilutions:

1. Remove 0.5 ml of water from each flask to be tested and add it to a tube of 4.5 ml sterile buffered saline (see Media Preparation section above). This is the 10^{-1} dilution.

Note: Minimize the amount of oil that adheres to the tip of the pipette when performing this procedure. Any oil on the pipette should be rinsed back into the flask with the appropriate solvent. Use the solvent that will be used for the extraction procedure being carried out.

2. Mix the contents of the first dilution tube by forcefully pipetting the fluid up and down several times.

3. Using sterile techniques, remove 0.5 ml from the first dilution tube and add it to a second tube containing 4.5 ml of sterile buffered saline.

4. Repeat this procedure for a total of 8 serial 10-fold dilutions. A fresh sterile pipette should be used for the preparation of each dilution. On day 0, samples are taken out to dilutions of 10^7. On all other days, samples are taken out to dilutions of 10^8. Note that on each day a straight seawater sample is taken and diluted to 10^4.

Inoculating MPN Plates (Oil Degrader):

1. Prepare sufficient sterile Bushnell-Haas (B–H) broth (see Media Preparation section above) to fill the number of wells required for the test (1.75 ml/well).

2. Add 1 ml of standard nutrient concentrate (see Media Preparation section above) to each 100 ml of B–H media.

3. Using sterile technique, add 1.75 ml of B-H broth to each well.

4. Label the top of the plate with the proper dilution for each row.

5. Add 0.1 ml of fluid from each dilution tube to each well in the appropriate row, starting with the most dilute.

6. After adding the fluid to all the wells, add 20 µl of ANS521 oil to the top of each well.

7. Incubate each plate at 20°C.

8. After 14 days of incubation, add 100 µl of p-iodotetrazolium violet dye (50 mg/10 ml of D.I. water) to each well to determine growth.

9. View plates against a white background to determine if color is present. Development of a purple or pink color upon standing for 20 minutes constitutes a positive test.

10. Record the number of positive wells and the dilutions at which they occur.

Quality Assurance/Quality Control:

1. Check pH of medium before preparing wells (pH should be approximately 8.0). Adjust pH, if necessary, with dilute NaOH.

2. Keep prepared tetrazolium violet dye solution in the refrigerator in an amber bottle when not in use.

3. Have all laboratory personnel periodically run MPNs on the same sample to test precision.

Safety/Special Precautions:

1. Use sterile technique in preparing solutions, dilutions, plates, and MPN wells.

2. Do not pipette potentially hazardous solutions by mouth.

3. Autoclave all plates and wells before discarding.

4.6 *Chemical Analysis of Oil Composition. GC/MS Procedure.* Steps 1–10 below should be followed when conducting the GC/MS procedure.

1. After 0, 5, 13, and 21 days of rotary shaking and incubating at 20°C, the reaction vessels are sacrificed by adding hexane to the contents. Prior to the addition of hexane, a 0.5-ml sample of the aqueous phase is removed for the microbiological analysis.

2. A surrogate recovery standard is prepared in the following manner: 200 mg of d_{10}-phenanthrene and 200 mg of 5α-androstane are measured into a 500-ml volumetric flask and hexane is added to the mark to produce a 400-ng/µl stock solution. A 0.5-ml aliquot of the surrogate solution is added to each test flask.

3. Fifty (50) ml of hexane is placed in a Teflon squeeze bottle. The 0.5-ml pipette used to remove the water sample from the shaker flask is rinsed with hexane from the squeeze bottle. The hexane remaining in the bottle is emptied into the flask so that the total volume of hexane added to the flasks is exactly 50 ml. The final concentration of surrogates in each flask from step 2 is 4 ng/µ hexane. The aliphatics and hopane data should be corrected for percent recovery of the 5α-androstane surrogate and the aromatics for the d_{10}-phenanthrene surrogate.

4. A stir bar is added to the flasks and the hexane/seawater mixture is allowed to stir for at least 10 minutes. Note that the stirring should be vigorous enough that the two layers are thoroughly mixed.

5. The flask is set aside to allow the hexane and water layers to partition. This may take 5–10 minutes for some products and up to 3 hours for others if the product has caused formation of an emulsion.

6. The contents of the flask are placed into a separatory funnel, and 30 ml of the water fraction is emptied into a 50-ml vial. The pH of the water is adjusted to 3.0. The vial is sealed with a Teflon-lined cap and stored at 4°C. This water layer is kept as a precautionary measure. If the GC/MS analysis of the hexane layer indicates recovery of <85% for $C_{30}17\alpha(H),21\beta(H)$-hopane relative to surrogate recovery standards (d_{10}-phenanthrene and 5α-androstane), then the water layer should be extracted again using three separate extractions with methylene chloride followed by concentrating to 0.1 ml, and analyzing by GC/MS (SIM).

7. After draining approximately the first 10 ml of the hexane layer, 30 ml of the hexane layer is dried by passing it through a funnel packed with anhydrous sodium sulfate directly into a 50-ml sample vial.

Note: The sample vial should have a Teflon-lined cap.

8. Before the gravimetric analysis is attempted, all the asphaltenes should be removed from the dried hexane layer. This is accomplished by centrifuging the dried hexane extract at 4°C for 15 minutes at 3,000 rpm. Ten (10) ml of the supernatant is placed in a small vial and concentrated to dryness by nitrogen blowdown techniques. If the oil is severely biodegraded, a larger volume of hexane may be necessary for the gravimetric analysis. The residue is weighed 3 times for the gravimetric weight of oil. This is an important and necessary step that will enable reporting the data on an oil weight basis. The increase in hopane concentration with time, relative to the initial source of oil, is a measure of the amount of oil degraded. The percent depletion of the oil can be estimated by the following equation:

$$\% \text{ total oil depletion} = (1 - H_0/H_1) \times 100 \quad (6)$$

where:

H_0=$C_{30}17\alpha(H),21\beta(H)$-hopane concentration in the source oil

H_1=$C_{30}17\alpha(H),21\beta(H)$-hopane concentration in the degraded oil

Individual analyte depletion can be estimated by the following equation:

$$\% \text{ analyte depletion} = (1 - (C_1/C_0) \times (H_0/H_1)) \times 100 \quad (7)$$

where:

C_1=analyte concentration in the degraded oil

C_0=analyte concentration in the source oil

The hopane-normalized concentration of analytes is computed by the following equation:

$$\text{hopane-normalized analyte conc.} = (100 - \% \text{ analyte depleted}) \times C_0 \quad +100 \quad (8)$$

9. The hexane level of the remaining portion of the extract is marked on the vial with a grease pencil. At this point, samples are properly labelled and stored at 4°C for later analysis.

10. One (1) ml of the hexane extract is placed into a 1.5-ml vial for use on the autosampler of the GC/MS instrument. To this solution, 20 µl of a 500-ng/µl solution of the internal standards is added. The final concentration of the internal standards in each sample is 10 ng/µl. This solution contains 4 deuterated compounds: d_8-naphthalene, d_{10}-anthracene, d_{12}-chrysene, and d_{12}-perylene in methylene chloride.

Quality Assurance/Quality Control. At the start of any analysis period, the mass spectrometer (MS) is tuned to PFTBA by an autotune program to reduce operator variability (generally, the Hewlett-Packard quicktune routine will be used). An instrument blank and a daily standard are analyzed prior to analysis of unknowns. Internal standards are combined with the sample extracts and co-injected with each analysis to monitor the instrument's performance during each run. Miscellaneous information that should be included on the acquisition form include operator's name, sample name, sample preparation information, method information, GC column number, and EMV setting. If the instrument is operated for a period of time greater than 12 hours, the tune will be checked and another daily standard analyzed prior to continuing with analyses.

The QA/QC procedure is based on a modified version of EPA Method 8270 (9). Specifically, the concentrations of internal standards are 10 ng/µl instead of 40 ng/µl. The MS is calibrated using Method 8270. A five-point calibration curve is obtained for each compound listed in Table 6. The concentrations used for these curves are 1, 5, 10, 25, and 50 ng/µl in a 90:10 solution of hexane/methylene chloride. The standard mix (excluding $C_{30}17\beta(H),21\alpha(H)$-hopane) for this calibration curve may be obtained from Absolute Standards, Inc., 498 Russell St., New Haven, CT, 06513, (800) 368–1131; the $C_{30}17\beta(H),21\alpha(H)$-hopane may be obtained from Dr. Charles Kennicutt II, Geochemical and Environmental Research Group, Texas A&M University, 833 Graham Rd., College Station, TX, 77845. (409) 690–0095.

TABLE 6.—COMPOUNDS USED IN FIVE-POINT CALIBRATION CURVE

n-alkanes, C10–C35	Chrysene.
pristane	Benzo(b)fluoranthene.
phytane	Benzo(k)fluoranthene.
naphthalene	Benzo(e)pyrene.
fluorene	Benzo(a)pyrene.
dibenzothiophene	Perylene.
anthracene	Indeno(g,h,i)pyrene.
phenanthrene	Dibenzo(a,h)anthracene.
fluoranthene	Benzo(1,2,3-cd)perylene.
pyrene	$C_{30}17\beta(H)$, 21α(H)-hopane.

Table 7 lists the primary ions monitored for each target analyte during GC/MS analysis in the SIM mode.

Generally Accepted Laboratory Procedures. Samples are immediately logged into the laboratory, where they will be given a unique sample identification based on Julian data and the number logged in. Prior to the analysis of any experimental samples, a five-point standard curve is prepared. One of the standard curve concentration levels is analyzed daily before sample analysis. Relative response factors for all target analytes *should* be within 25% of the standard curve response values at day 0, and at any sampling event the check standard percent difference from the initial five-point calibration must not exceed 20% between the before and after daily standard mix (see below).

The collected GC/MS data are initially processed by a macro routine, which performs extracted chromatographic plots of the target compounds, integrates the target compounds, and shows integration results to include tabular numbers. The integration values are then transferred to a spreadsheet format to be quantified. Because of the complexity of the analyte matrix (oil), a very high degree of manual verification and reintegration of the spectral data is required.

TABLE 7.—PRIMARY IONS MONITORED FOR EACH TARGET ANALYTE

Compound	Ion
n-alkanes (C_{10}–C_{35}	85
pristane	85
phytane	85
decalin	138
C–1 decalin	152
C–2 decalin	166
C–3 decalin	180
naphthalene	128
C–1 naphthalenes	142
C–2 naphthalenes	156
C–3 naphthalenes	170
C–4 naphthalenes	184
fluorene	166
C–1 fluorenes	180
C–2 fluorenes	194
C–3 fluorenes	208
dibenzothiophenes	184
C–1 dibenzothiophenes	198
C–2 dibenzothiophenes	212
C–3 dibenzothiophenes	226
anthracene	178
phenanthrene	178
C–1 phenanthrenes	192
C–2 phenanthrenes	206

TABLE 7.—PRIMARY IONS MONITORED FOR EACH TARGET ANALYTE

Compound	Ion
C–3 phenanthrenes	220
fluoranthene/pyrene	202
C–1 pyrenes	220
C–2 pyrenes	230
chrysene	228
C–1 chrysenes	242
C–2 chrysenes	256
hopanes (177 family)	177
hopanes (191 family)	191
steranes (217 family)	217
benzo(b)fluoranthene	252
benzo(k)fluoranthene	252
benzo(e)pyrene	252
benzo(a)pyrene	252
perylene	252
ideno(g,h,i)pyrene	276
dibenzo(a,h)anthracene	278
benzo(1,2,3-cd)perylene	276
d_8-naphthalene	136
d_{10}-anthracene	188
d_{10}-phenanthrene	188
d_{12}chrysene	240
d_{12}perylene	264
α-androstane	260

The reliability of this method is dependent on the QC procedures followed. With each analytical batch (approximately 10 samples), one procedural blank, one duplicate (one before and one after all samples), and one standard source oil are analyzed. Surrogate recoveries should be within 70 to 120%, and duplicate relative percent difference values should be ±20%. A control chart of the standard oil should be prepared and monitored. Variations of analytes in the control chart should be no more than 25% from the historical averages. Injection port discrimination for n-C25 and greater alkanes must be carefully monitored; the ratio of relative response factor (RRF) n-C32/RRF n-C21 alkanes should not be allowed to fall below 80%. The mass discrimination can be reduced by replacing the quartz liner in the injection port after every analytical batch.

The instrument's performance and reproducibility are validated routinely by analyzing the reference crude oil standard. All analyses are recorded in instrument logs detailing operating conditions, date and time, file name, etc. After analysis, the sample extracts are archived at refrigeration temperatures. To document QA/QC, the following information is contained in the detailed quantitative reports: Average RRF derived from the standard curve; RRF from the daily standard; percent relative standard deviation; area of target analyte; concentration determined both on a weight and volume basis; and values for any surrogates and internal standards.

Instrument Configuration and Calibration. A 2-ml aliquot of the hexane extract prepared by the above procedure is injected into a Hewlett-Packard 5890/5971 GC/MS instrument. This instrument is equipped with a DB–5 capillary column (30 m, 0.25-mm I.D., and 0.25-μm film thickness) and a split/splitless injection port operating in the splitless mode. Table 8 summarizes the temperature program used for the analysis.

This temperature program has been optimized to give the best separation and sensitivity for analysis of the desired compounds on the instrument. Prior to the sample analysis, a five-point calibration must be conducted on a standard mix of the compounds listed in Table 7 to determine RRFs for the analytes.

TABLE 8.—OPERATING CONDITIONS AND TEMPERATURE PROGRAM OF GC/MS

Operating conditions	
Injector port	290°C.
Transfer line	320°C.
Total run time	73 minutes.
Column flow rate (He)	1.0 ml/minute.

Temperature program

Level	Temp. 1, °C	Time 1, minutes	Rate, °C/minute	Temp 2, °C	Time 2, minutes
1	55	3	5	280	5
2	280	0	3	310	10

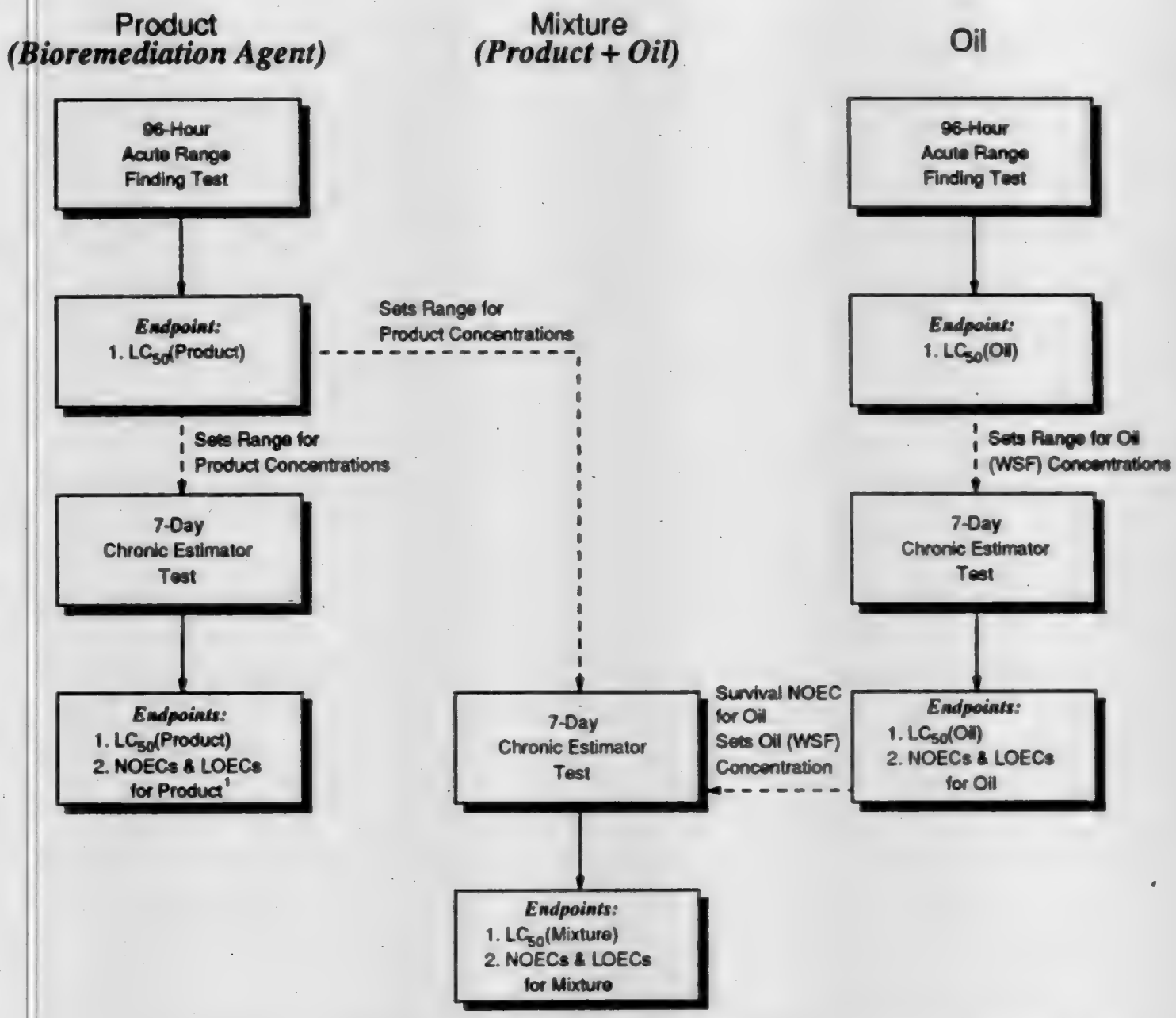
5.0 Bioremediation Agent Toxicity Test

5.1 *Summary of Method.* The toxicity test for bioremediation agents involves exposing two species (Menidia beryllina (silversides) and Mysidopsis bahia (mysid shrimp)) to five concentrations each of a bioremediation agent, a crude oil, and a mixture of bioremediation agent plus oil in a series of short-term bioassays. The testing proceeds from tests of a relatively short duration (96-hours) to toxicity tests of 7 days in length according to the scheme outlined in Figure 2. A 96-hour static, acute range finding test is conducted with the product to establish a narrower range of concentrations for the subsequent 7-day chronic estimator tests to

be conducted with the bioremediation agent and a mixture containing the bioremediation agent plus oil. A 96-hour static, acute range finding test is also conducted using the water-soluble fraction (WSF) of oil and appropriate (seawater) control.

BILLING CODE 6560-50-P

Figure 2
Process for Conducting Bioremediation Agent Toxicity Test



[1] For all tests, survival and growth NOECs & LOECs are calculated for both *Menidia* and *Mysidopsis*, and fecundity NOECs & LOECs are calculated for *Mysidopsis* only.

BILLING CODE 6560-50-C

Data from this 96-hour test are used in setting up a 7-day chronic estimator test to determine the no observed effective concentration (NOEC) and the lowest observed effective concentration (LOEC) for the treatment effects (i.e., growth and survival for both fish and mysids, and fecundity in mysids) of the specific type of oil. The LOEC is the lowest concentration of a substance having a statistically significant adverse effect on the exposed population when compared to the control, and the NOEC is the highest concentration of a substance not having a statistically significant adverse effect on the exposed population when compared to the control. The survival NOEC of oil is subsequently used as the test concentration for oil used in a 7-day chronic estimator test of a mixture of bioremediation agent plus oil.

Seven (7) day chronic estimator tests with the mixture include both a seawater control and a control for the oil (WSF at the survival NOEC). Reference tests using DSS are conducted to ensure the sensitivity of test organisms and to aid in comparisons of results from assays performed by different workers. The duration of the reference tests is 96 hours for both *Menidia beryllina* and *Mysidopsis bahia*. The acute range finding tests are static tests, while the chronic estimator tests are static-renewal tests.

Methods for the bioremediation agent toxicity test should follow the basic recommendations made for conducting acute (6) and chronic (10) tests with effluents using silversides and mysids. However, the guidelines in this Appendix should be followed in cases where there is disagreement between the two protocols. Because of a lack of information on the use of oil and bioremediation agents in the effluent guidelines, specific information on preparation of oil sample and oil plus bioremediation agent mixture will be provided below. Guidelines for the preparation of bioremediation agents and the manufacturer's recommended application rate for field use are determined by the product vendor and should be provided to the laboratory personnel conducting the toxicity tests. This information should be included as part of the necessary documentation when submitting information for consideration of a product for inclusion on the NCP Product Schedule.

Data from the 96-hour acute toxicity range finding tests are used to derive a concentration range for the LC_{50} according to standard methods (6). LC_{50}s are calculated based on mortality data at the end of the 7-day exposure period and are calculated according to the method in Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms (10). Survival, growth, and fecundity (for Mysidopsis only) data are used to calculate NOECs for the 7-day tests according to the EPA protocol (10).

Weathered crude oil (ANS521) is used as the standard oil for performance of these toxicity tests. However, product manufacturers wishing to evaluate their product's toxicity in the presence of other types of oil may utilize this protocol for additional toxicity testing of the bioremediation agent with other kinds of oil (e.g., heavy or light crude oil, or refined oils such as No. 2 or No. 6 fuel oil).

5.2 *Selection and Preparation of Test Materials. Test Organisms. Menidia beryllina.* Obtain fish from a single source for each series of toxicity tests. In-house cultures are recommended wherever it is cost-effective, although organisms are available from commercial suppliers. Information on the source of test organisms and any known unusual condition to which fish were exposed before use should be included in the data report. Use of animals previously treated with pesticides or chemotherapeutic agents should be avoided. Organisms should not be used if they appear to be unhealthy, discolored, or show signs of stress. Use 7-day old larval fish.

Fish should be cultured in accordance with the methods outlined in Middaugh, *et al.* (5). There should be no need to acclimate organisms to the 25-1C temperature recommended for the toxicity tests if laboratory stock cultures of Menidia are maintained at the recommended culture temperature of 25±1C. If test organisms must be obtained from a commercial source, it may become necessary to acclimate test fish to the test temperature of 25±1C, a pH of 8.0±0.2, and 20±2 ppt salinity since changes in temperature may occur during shipping. Eliminate groups of fish having mortality of more than 20% during the first 48 hours, and more than 5% thereafter.

During acclimation, organisms should be maintained on a diet of freshly hatched *Artemia* (brine shrimp) nauplii. Feed the fish daily to satiation during the acclimation period, and once daily during the 96-hour test. Care should be taken daily to remove excess food and fecal material from beakers during the 96-hour test. Use only those organisms that feed actively and that appear to be healthy. Organisms should be free of disease, external parasites, and any signs of physical damage or stress. Discard any fish injured or dropped while handling.

Mysidopsis. Several methods for culturing Mysidopsis bahia may be used and are noted in Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms (6). To ensure uniformity of mysids, recently hatched mysids should be collected daily from stock cultures and identified by the date of hatch. Mysids used in 96-hour tests should be from a single day's collection, but may have an age range of 5–7 days old. In cases where in-house cultures of mysids are unavailable, organisms may be purchased from a commercial source. Information on the source of test organisms should be submitted in the data report.

Preparation of Experimental Water. Filtered natural seawater (FNS) is recommended for use since it represents a natural source of saltwater containing an inherent population of microorganisms. Synthetic seawater formulated according to the following method can serve as an acceptable alternative to filtered natural seawater for toxicity tests in laboratories in which natural seawater is unavailable, and product effectiveness is not dependent upon the presence of a natural assemblage of microorganisms. The type of water used (i.e., natural or synthetic) should be identified in the data report.

Synthetic Seawater Formation. See section 3.2, Selection and Preparation of Test Materials for Dispersant Toxicity Test.

Apparatus. In addition to the above test materials, the following equipment is required for the toxicity tests: An aeration pump, regulators, and air lines for the air supply; electronic and top-loading balances; large polyethylene carboys; fluorescent lights with timer; glassware: 1 1-liter and 1 6-liter Erlenmeyer flask, 24 1-liter beakers, 24 400-ml beakers, 1 1-liter graduated cylinder, and volumetric and glass pipettes (disposable); light table; refractometer; shaker table; water bath; desiccator; and a dissecting microscope.

5.3 *Sampling and Storage of Test Materials.* Toxicity tests are performed with ANS521 crude oil, an artificially weathered product having characteristics that define it as a weathered, medium weight crude oil. ANS521 is prepared according to a draft method developed by the International Organization for Standardization (8), and is described in section 4.3.

Store oil used in toxicity tests in sealed containers protected from the light to prevent loss of volatiles and other changes. For ease in handling and use, it is recommended that 1-liter glass containers be used. To ensure comparable results in the toxicity tests, use oils packaged and sealed at the source. Dispose of unused oil from each open container on completion of dosing to prevent its use at a later date when it may have lost some of its volatile components. Run all tests in a bioassay series with oil from the same container or lot number, and with organisms from the same group collected or secured from the same source.

Water-Soluble Fraction. The WSF in toxicity tests is prepared according to an API method (11). The WSF is prepared by adding 1 part oil to 9 parts 20-ppt filtered natural seawater in a 4-liter Erlenmeyer flask. The contents of the flask are placed on a stir-table for 20 hours and stirred at a speed such that the vortex of oil at the top of the container does not extend more than 25% of the distance to the bottom of the flask. The mixture is allowed to settle for a minimum of one hour, and the aqueous portion is siphoned off.

The oil component (WSF) of the oil plus bioremediation agent mixture is produced in a similar manner as the oil (WSF) for toxicity tests using oil only. Actual concentrations of WSF used in the 7-day test may differ for each type of oil tested; based on NOEC data from tests with ANS521 and mysids, a concentration of 33% WSF would be added to the bioremediation agent to prepare the oil/product mixture. A seawater control and an oil control are used in addition to a total of five treatment mixtures. To prepare the mixtures, a total of five concentrations of bioremediation agent and one concentration of oil (i.e., the survival NOEC from the 7-day test with oil only) are used in the 7-day test.

5.4 *General Test Conditions and Procedures for Toxicity Tests. Temperature.* For these toxicity tests, use test solutions of 25±1°C.

Dissolved Oxygen and Aeration. Menidia. Because oils contain toxic, volatile materials,

and because the toxicity of some WSFs of oil and degradation products are changed by oxidation, special care must be used in the oxygenation of test solutions. Aeration during the test is generally not recommended but should be used to maintain the required DO in cases where low DO is observed. The DO content of test solutions must not drop below 60% saturation during the first 48 hours of a static acute (96-hour) test and must remain between 40–100% after the first 48 hours of the test. A DO reading of 60–100% saturation must be maintained within each exposure chamber throughout a 7-day static-renewal test. Aeration at a rate of 100±15 bubbles per minute is supplied by a serological pipette as needed for maintenance of DO. If aeration is necessary, all test chambers should be aerated. At this rate and with the proper weight of fish, DO concentration should remain slightly above 4 ppm. Take DO measurements daily.

Mysidopsis. Achieve sufficient DO by ensuring that the surface area to volume ratio of the test solution exposed is large enough. Oxygen content should remain high throughout the test because of the low oxygen demand of the organisms. Aeration is not recommended during 96-hour acute toxicity range finding tests unless the DO falls below 60% saturation.

Controls. With each fish or mysid test, or each series of tests of different solutions, perform a concurrent control test utilizing filtered natural seawater or other form of dilution water in exactly the same manner as the other tests and under the conditions prescribed or selected for those tests. There must be no more than 10% mortality among the controls during the course of any valid test. Twenty (20) % mortality is allowed for 7-day chronic estimator toxicity tests using *Mysidopsis.*

Reference Toxicant. See section 3.4, General Test Conditions and Procedures for Dispersant Toxicity Test.

Number of Organisms. For the 96-hour toxicity test procedures using *Menidia*, place 10 larval fish in each 1-liter glass beaker. Ten (10) mysids should be placed in each of the replicate 1-liter beakers for 96-hour toxicity tests. Fifteen (15) fish in a 1-liter beaker containing 750-ml test solution, and 5 mysids in a 400-ml beaker containing 150 ml of test solution are used for the 7-day chronic estimator tests.

Transfer of Organisms. Menidia. Organisms should be handled as little as possible in order to minimize stress. Transfer *Menidia* from the acclimatization aquaria to the test containers with a pipette. Dip nets should be avoided when handling larval fish. Do not hold fish out of the water longer than necessary and discard any specimen accidentally dropped or otherwise mishandled during transfer.

Mysidopsis. To have the mysids ready for study, mysids may be sorted 24 hours prior to initiation of the 96-hour test. Transfer mysids to a beaker containing a small volume of water; this vessel serves as a holding chamber during random transfer of the organisms to test solutions. Mysids are randomly selected from the batch of mysids, and transferred to 50-ml beakers containing a small volume of seawater. One mysid is added per beaker using a small piece of flexible 500-µm screening until all of the beakers contain one mysid. The process of random selection and sorting is continued until the appropriate number of mysids has been delivered to each of the 50-ml beakers. The beakers are filled with an appropriate volume of 20-ppt seawater (25°C) and placed into a temperature controlled water bath to acclimate overnight at 25°C.

The mysids are then transferred to the larger beakers (1-liter or 400-ml for 96-hour and 7-day toxicity tests, respectively) used as test chambers. A total of 10 mysids per beaker are used for 96-hour acute toxicity tests and 5 mysids per beaker are used for 7-day chronic estimator tests. Eight replicate test chambers are used for each test concentration used in a 7-day toxicity test. Two replicates are used per test concentration for the 96-hour acute range finding test.

Mysids are fed 50 brine shrimp nauplii/mysid daily during the acute toxicity range finding tests and 150 nauplii/mysid daily during the chronic estimator toxicity tests. Excess food should be removed daily by aspirating with a pipette.

Test Duration and Observations. Menidia. For duration and observations for the acute toxicity test, see section 3.4, General Test Conditions and Procedures for Dispersant Toxicity Test.

The chronic estimator test is terminated after 7 days of exposure. The number of surviving fish are counted for each chamber, and prepared as a group for drying and weighing in accordance with EPA Method 1006 (10). Utilizing survival and growth data from the test, the following endpoints are determined: LC_{50}, and LOEC and NOEC values for survival and growth in accordance with the methods described in EPA Method 1006 (10).

Mysidopsis. Terminate the mysid test after 96-hours of incubation. To count the dead animals accurately, place the exposure vessels on a light table such that light passes through the bottom of the vessel. Most of the dead mysids will be on the bottom of the beaker and can readily be seen against the background of the light table. Also search the top of the liquid for mysids trapped there by surface tension. Exercise caution when determining death of the animals. Occasionally, an animal appears dead, but closer observation shows slight movement of an appendage or a periodic spasm of its entire body. For these tests, animals exhibiting any movement when touched with a pipette tip are considered alive. Account for all test animals to ensure accuracy since *Mysidopsis bahia* may disintegrate or be cannibalized by other mysids. Consider individuals not accounted for as dead.

At the end of 96-hours of exposure, terminate the mysid assay and determine the LC_{50} values in accordance with EPA methods (6). For 7-day toxicity assays, the effects measured at the termination of the exposure period include the LC_{50}, and LOEC and NOEC values for survival, growth, and fecundity in accordance with the methods outlined in EPA Method 1007 (10).

Physical and Chemical Determinations. Determine the salinity, temperature, DO, and pH of the test solutions before the fish or mysids are added to the exposure vessel. These parameters should also be measured at 24-hour intervals during the 96-hour or 7-day exposure intervals. It is necessary to make measurements from only one of the replicates of each of the toxicant series on a given day. Other water quality parameters (e.g., free ammonia) should be measured at the initiation of the tests and periodically during the exposure period (96-hours or 7-days) to ensure the viability of the test organisms as high nutrient levels could adversely affect the test organisms.

Testing Laboratory. See section 3.4, General Test Conditions and Procedures for Dispersant Toxicity Test.

Test Containers. For tests with *Menidia*, use 1-liter glass beakers. For tests with *Mysidopsis*, use 1-liter or 400-ml glass beakers for 96-hour and 7-day toxicity tests, respectively. In conducting the test with *Menidia* or *Mysidopsis*, add to each of the beakers a volume of seawater aerated to saturation with DO. Refer to the methods manuals for the appropriate volume to be used for an acute or chronic test for the specific organism (6, 10). To add the appropriate volume easily and accurately, use a large capacity (1-liter) graduated cylinder.

Process all required glassware before each test. Immerse in normal hexane for 10 minutes. Follow this with a thorough rinse with hot tap water, three hot detergent scrubs, an additional hot tap-water rinse, and three rinses with distilled water. Oven or air dry the glassware in a reasonably dust-free atmosphere.

5.5 *Preparation of Test Concentrations. Preparation of Oil.* The methods to be used for preparing the working stocks of the oil WSF are those that are provided in the API publication No. 4249 (11); refer to section 3.5, Preparation of Test Concentration for Dispersant Toxicity Test, for additional discussion.

The WSF of ANS521 will be prepared by adding a 9:1 ratio of filtered natural seawater (20 ppt) and oil to a 4-liter Erlenmeyer flask. The mixture is then stirred on a stir plate for a period of 20 hours. The rate of mixing is adjusted so that the vortex at the surface of the mixture does not extend >25% of the distance to the bottom of the container. The mixture is allowed to settle for a period of 1–6 hours to allow the oil and water to separate. The aqueous portion is siphoned off for immediate use as stock solution. This stock solution represents 100% WSF.

Example: A 96-hour acute range finding test is conducted with a range of oil (WSF) concentrations (i.e., 100%, 33%, 11%, 3.3%, and 1.1% WSF) plus a seawater control. The undiluted water soluble fraction (100% WSF) represents the initial stock that is serially diluted to produce a lower concentration of WSF until five concentrations of WSF have been prepared. A minimum of 3,050 ml of 100% WSF is needed when 2 1-liter replicates are run per test concentration. 1,050 ml is reserved from the higher concentration to dilute for the next lowest concentration. The volumes of oil and seawater needed to achieve these test concentrations are shown below:

Concentration ANS521 oil (WSF) (% test media)	Volume (ml)	Seawater (20 ppt) (ml)	Total (ml)	Excess volume (ml)
100.0	3050.0		3050.0	
33.0	1050.0 of 100 WSF	2100.0	3150.0	100
11.0	1050.0 of 33 WSF	2100.0	3150.0	100
3.3	1050.0 of 11 WSF	2100.0	3150.0	100
1.1	1050.0 of 3.3 WSF	2100.0	3150.0	100
Control		2000.0	2000.0	

The LC_{50} estimate derived from the data generated during the 96-hour acute range finding test is used to narrow the range of concentrations over which the subsequent 7-day chronic estimator test will be performed. Exact procedures for formulation of the oil (WSF) concentrations used for the 7-day test are not provided since the actual concentration range tested is dependent on the value obtained in the 96-hour test. The preparation of oil (WSF) concentrations should follow the same concept of serial dilution of an initial stock solution (100% WSF) with a dilution factor of approximately 0.66.

Once the 7-day LC_{50} is determined for ANS521, and the NOEC and LOEC values are determined, the NOEC for survival will be used as the concentration of oil diluent used in chronic estimator tests with the bioremediation agents. For tests with mysids, each mysid test chamber will contain 150 ml of test solution and 5 mysids with 8 replicates per concentration (240 mysids/test). When performing 7-day tests with silversides, test chambers will contain 750 ml of test solution and 15 fish with 4 replicates per concentration (360 silversides/test). The test solution is renewed every 24 hours from a stock solution that is prepared daily. Table 9, Summary of Operating Conditions for Bioremediation Agent Toxicity Test, provides a brief synopsis of test parameters for both silversides and mysids. Information is provided on the volume needed per chamber and can be used to estimate the total volume of solution required for each test concentration during 96-hour and 7-day tests with silversides and mysids.

TABLE 9.—SUMMARY OF OPERATING CONDITIONS FOR BIOREMEDIATION AGENT TOXICITY TEST

Operating conditions	96-hour acute range finding test	7-day chronic estimator test
Test type	static	static-renewal.
Waterbath temperature	25 °C	25 °C.
Salinity	20±2 ppt	20±2 ppt.
Aeration	none, unless <60%	none, unless <60%.
Test chamber	1-liter beaker	1000-ml beaker (fish) 400-ml beaker (mysid).
Renewal solution	none	daily.
Number of treatments	5+ control	5+ control.
Number of replicates	2	4 (fish); 8 (mysid).
Dilution factor	= 0.5	= 0.66.
Endpoint	LC_{50}	LC_{50}, NOEC, LOEC.
Test duration	96-hour	7-day.
Light	20 µE/m²/s (50–100 ft.c)	20 µE/m²/s (50–100 ft.c)
Photoperiod	16-h light/8-h dark with phase in/phase out	16-h light/8-h dark with phase in/phase out.
Volume	1000 m	750 ml (fish); 150 ml (mysid).
Age of organisms	7 days	7 days.
Number of organisms	10/beaker	15/beaker (fish) 5/beaker (mysid).
Feeding	50 *Artemia* nauplii/organism	50 nauplii/mysid 0.1g nauplii/fish (day 0–2) 0.15g nauplii/fish (day 3–6).
Cleaning	pipette excess from cup daily	pipette excess from cup daily.
EPA Manual Reference	U.S. EPA, 1991 (6)	U.S. EPA, 1988 (10).

Preparation of Bioremediation Agent. Because some of the bioremediation agent formulations will require the addition of several components prior to use (e.g., addition of nutrient component to microbial component), all calculations of product concentrations used in acute and chronic toxicity tests with the product will be based on the final (combined bioremediation) product. This final product is prepared according to the manufacturer's instructions found in the product material safety data sheets (MSDSs). A working stock of 100,000 ppm will be prepared from the final product. Make a stock of 100,000 ppm in a 500-ml volumetric flask by adding 50 ml or 50 grams of final product and diluting with seawater to a final volume of 500 ml. A range finding test will be conducted to determine the concentration range for the chronic estimator test and will involve preparation of serially diluted samples of the 100,000 ppm stock solution to produce the 5 test concentrations of the bioremediation agent. For the acute range finding tests with seawater as the diluent, a control and 5 concentrations of product are prepared with 2 replications of each concentration.

Two types of chronic tests are performed with the bioremediation agent: a test with the bioremediation agent only, and a test with the bioremediation agent plus oil (WSF). The bioremediation agent concentration is not to exceed 1,000 ppm unless the manufacturer's guidelines indicate that the application rate will be greater than 1,000 ppm. For the chronic tests with mysids, there will also be 5 concentrations plus a control, conducted in 8 replications; only the NOEC of ANS521 oil will be used as diluent in tests with bioremediation agent plus oil (WSF). An example follows that indicates the volume of bioremediation agent and oil (WSF) at the NOEC that might be used if one were performing a 7-day mysid test with a mixture of bioremediation agent plus oil. A similar approach to preparing test solutions would be used when performing tests with *Menidia*. However, the volume of solution needed should be adjusted to allow for a total of 750 ml/test chamber with 5 concentrations plus controls and 4 replicates per concentration.

Example (7-day mysid test): Make up stock solution according to product's application instructions in the MSDS. If 1,000 ppm is the only concentration, then 1.2 g of product will be needed for the test. For stock solution, make up 10,000 ppm into 150 ml (1.5 ml of product). The test with oil will require approximately 250 ml of oil (WSF at the NOEC) per day; approximately 1,750 ml of the mixture (bioremediation agent plus oil) are needed per test.

Bio. agent (mg/1 ppm)	FNS (ml)	Oil NOEC (ml)	Agent (ml)	Stock media (ppm)	Vol. prev. (ml)	Total conc. (ml)
500.0	.....	1692.21	107.8	10000	.....	1800
200.0	.....	1200.0	.....	.....	600	1800
66.7	.....	1200.0	.....	.....	600	1800
22.2	.....	1200.0	.....	.....	600	1800
7.7	.....	1200.0	.....	.....	600	1800
Oil [1]	.....	1200.0	.....	.....	.....	1200
FNS [1]	1200	.....	.....	.....	.....	1200

[1] Control.

5.6 *Calculating and Reporting.* At the end of each test period, the toxicity tests are terminated and the LC_{50} values determined. Data resulting from 7-day chronic estimator tests are also used to determine the LOEC and NOEC values for survival, growth, and fecundity, as indicated.

Calculations. The LC_{50} is the concentration lethal to 50% of the test population. It can be calculated as an interpolated value based on percentages of organisms surviving at two or more concentrations in which partial mortality is observed. The LC_{50} can be estimated with the aid of computer programs or graphic techniques (log paper). The 95% confidence intervals for the LC_{50} estimate should also be determined. Methods for determining the 96-hour LC_{50} and 7-day LC_{50} are found in the EPA methods manuals (6) and (10), respectively.

LOECs and NOECs are estimated utilizing survival, growth, and fecundity (determined for *Mysidopsis* only) data from the 7-day tests in accordance with EPA methods (10).

Reporting. The bioremediation agent and oil, and their source and storage should be described in the toxicity test report. Note any observed changes in the experimental water or test solutions. Also, include the species of fish used; the sources, size, and condition of the fish; and any observations on the behavior of organisms at regular intervals during tests (e.g., notes on physical adherence or trapping of organisms in particulates associated with the product). In addition to the calculated LC_{50} values (method of estimation should be clearly stated), NOEC and LOEC for survival and growth should be indicated in the report for silversides, and NOEC and LOEC for survival, growth, and fecundity should be indicated in the report for mysids. Other data necessary for interpretation (e.g., DO, pH, other physical parameters, and the percent survival at the end of each day of exposure at each concentration of toxicant) should be reported.

5.6 *Summary of Procedures.* As noted in Figure 2, a series of toxicity tests will be performed with *Menidia beryllina* and *Mysidopsis bahia* and will range in duration from 96-hours (acute range finding tests) to 7-days (chronic estimator tests). The toxicity tests will include:

1. 96-hour acute range finding test of bioremediation agent.
2. 96-hour acute range finding test of WSFs of ANS521 oil.
3. Seven (7) day chronic estimator test of the bioremediation agent.
4. Seven (7) day chronic estimator test of WSFs of ANS521 oil.
5. Seven (7) day chronic estimator test of WSFs of ANS521 oil and the bioremediation agent.
6. Reference tests using DSS, with both the silversides and mysids.

The 96-hour acute toxicity tests will follow the guidelines in the EPA manual Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms (6). The 7-day chronic estimator tests will follow the guidelines in the EPA manual Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms (10).

96-hour Acute Range Finding Tests. The general sequence of events followed during set-up, conduct, and breakdown of the 96-hour acute range finding test is listed below.

1. Obtain glassware: 12 1-liter beakers and 1 1-liter graduated cylinder.
2. Label beakers.
3. Add seawater into glassware and check salinity. Add 1,000 ml into 1-liter beakers.
4. Prepare stock solution. Mix the solution immediately before test begins, cover solution and store it in the dark.
5. Dose.
6. Randomly count out organisms into each container and record start time.
7. Data sheets: Measure temperature, pH, salinity, dissolved oxygen.
8. Feed organisms: 50 Artemia nauplii/organism/day.
9. Check after 2 hours for mortality, aberrant behavior (e.g., animals moving slowly, swimming spirally), color change, or opaque color.
10. Check test every 0, 24, 48, 72, and 96 hours. Record data on data sheets.
11. Terminate test and calculate LC_{50} and 95% confidence intervals.
12. QA/QC: Each control should have no more than 20% mortality in each replicate, and the survival rate for all controls should be at least 90% (10% mortality).

7-day Chronic Estimator Tests. Seven (7) day chronic estimator tests generally follow the sequence below.

1. Make up aluminum weigh boats 24 hours in advance. Heat in oven 24 hours, cool, weigh, store in desiccator.
2. Obtain glassware: 48 400-ml beakers; 1 2-liter graduated cylinder; pipettes; and Erlenmeyer flasks.
3. Prepare stock solution. Mix solution immediately before test begins, cover solution and keep in the dark.
4. Dose.
5. Randomly count out organisms into each container and record start time.
6. Data sheets: Measure temperature, pH, salinity, dissolved oxygen.
7. Feed test organisms.
8. Check after 2 hours for mortality, aberrant behavior (e.g., animals moving slowly or swimming spirally), color change, or opaque color.
9. Check test every 0, 24, 48, 72, 96, 120, 144, and 168 hours. Record data on data sheets.
10. Terminate test.
11. QA/QC: A maximum of 20% mortality is allowed for each replicate control; all controls together should have a survival rate of at least 90% (10% mortality).
12. For tests using mysids, determine sex and record the number of females with and without eggs.
13. Put total number of organisms from each replicate cup in separate weigh boat. Dry in oven at 130 °F (55°C) for at least 24–48 hours. Weigh and record data.
14. Calculate LC_{50} and 95% confidence interval, and LOEC and NOEC for survival, growth, and fecundity, as appropriate.

6.0 Summary Technical Product Test Data Format

The purpose of this format is to summarize in a standard and convenient presentation the technical product test data required by the U.S. Environmental Protection Agency before a product may be added to EPA's NCP Product Schedule, which may be used in carrying out the National Oil and Hazardous Substances Pollution Contingency Plan. This format, however, is not to preclude the submission of all the laboratory data used to develop the data summarized in this format. Sufficient data should be presented on both the effectiveness and toxicity tests to enable EPA to evaluate the adequacy of the summarized data.

A summary of the technical product test data should be submitted in the following format. The numbered headings should be used in all submissions. The subheadings indicate the kinds of information to be supplied. The listed subheadings, however, are not exhaustive; additional relevant information should be reported where necessary. As noted, some subheadings may apply only to particular types of agents.

I. Name, Brand, or Trademark

II. Name, Address, and Telephone Number of Manufacturer

III. Name, Address, and Telephone Numbers of Primary Distributors

IV. Special Handling and Worker Precautions for Storage and Field Application

1. Flammability.
2. Ventilation.
3. Skin and eye contact; protective clothing; treatment in case of contact.
4. Maximum and minimum storage temperatures; optimum storage temperature range; temperatures of phase separations and chemical changes.

V. Shelf Life

VI. Recommended Application Procedure

1. Application method.
2. Concentration, application rate (e.g., gallons of dispersant per ton of oil).
3. Conditions for use: water salinity, water temperature, types and ages of pollutants.

VII. Toxicity (Dispersants, Surface Washing Agents, Surface Collecting Agents, and Miscellaneous Oil Spill Control Agents)

Materials tested	Species	LC_{50} (ppm) (hr.)
Product	*Menidia beryllina*	96
	Mysidopsis bahia	48
No. 2 fuel oil	*Menidia beryllina*	96
	Mysidopsis bahia	48
Product and No. 2 fuel Oil (1:10).	*Menidia beryllina*	96
	Mysidopsis bahia	48

VIII.(a). Effectiveness (Bioremediation Agents).

Raw data must be reported according to the format shown below. The first column lists the names of the analytes measured by GC/MS (SIM), the surrogate standards, and various ratios and sums. In the next three columns, the concentration of the analytes (ng/mg oil), the concentration of the analytes corrected for the recovery of the surrogate standard (α-androstane for alkanes, d_{10}-phenanthrene for aromatics), and the concentration of corrected analytes normalized against α,β-hopane, respectively, are reported for the first replicate from the first sampling event. These three columns are each repeated for the next two replicates, giving 9 total columns for the product of interest. The next 9 columns are the same as the product columns except they are for the no-nutrient control. The last nine columns are for the nutrient control. Thus, a total of 28 columns are needed in the spreadsheet. This spreadsheet is for the first sampling event (day 0). Three more identical spreadsheets will be needed for each of the next three sampling events (days 5, 13, and 21).

Date:
Testing Date: 0, 5, 13, 21 (Circle One)
Initial Oil Weight:

BIOREMEDIATION AGENT EFFECTIVENESS TEST RAW DATA

	Product replicate 1			Product replicate 2
	Concentration ng/mg	Surrogate corrected ng/mg	Normalized to hopane ng/mg	
ALKANE ANALYTE.				
nC–10				
nC–11				
nC–12				
nC–13				
nC–14				
nC–15				
nC–16				
nC–17				
Pristane.				
nC–18				
Phytane.				
nC–19				
nC–20				
nC–21				
nC–22				
nC–23				
nC–24				
nC–25				
nC–26				
nC–27				
nC–28				
nC–29				
nC–30				
nC–31				
nC–32				
nC–33				
nC–34				
nC–35				
nC–36				
α-androstane.				
Total alkanes.				
nC–17: Prinstane				
nC–18: Phytane.				
AROMATIC ANALYTE				
Naphthalene.				
c1 Naphthalenes				
c2 Naphthalenes				
c3 Naphthalenes				
c4 Naphthalenes				
Dibenzothiophene				

BIOREMEDIATION AGENT EFFECTIVENESS TEST RAW DATA—Continued

	Product replicate 1			Product replicate 2
	Concentration ng/mg	Surrogate corrected ng/mg	Normalized to hopane ng/mg	
Fluorene				
c1 Flurenes				
c2 Flurenes				
c3 Flurenes				
c1 Dibenzothiophenes				
c2 Dibenzothiophenes				
c3 Dibenzothiophenes				
Phenanthrene				
Anthracene				
c1 Phenanthrenes				
c2 Phenanthrenes				
c3 Phenanthrenes				
Naphthobenzothio.				
c1 Naphthobenzothio.				
c2 Naphthobenzothio.				
c3 Naphthobenzothio.				
Fluoranthene				
Pyrene				
c1 Pyrenes				
c2 Pyrenes				
Chrysene				
Benzo (a) anthracene				
c1 Chrysenes				
c2 Chrysenes				
Benzo (b) fluoranth.				
Benzo (k) fluoranth.				
Benso (e) pyrene				
Benzo (a) pyrene				
Perylene				
Indeno (1, 2, 3-cd) per.				
Benzo (g, h, i) pyrene				
Dibenz (ah) anthrac.				
α, β-hopane				
d8 Naphthalene				
d10 Phenanthrene				
d12 Chrysene				
d12 Perylene				
Total aromatics				
Grav. weight oil				
No. oil degraders/ml				

For the statistical analysis, a report showing the two-way analysis of variance (ANOVA) table created by the software used by the investigator must be shown in its entirety along with the name of the software package used. Another printout showing the mean separation table (protected LSD test results) generated by the software must be reported. The statistical analyses are conducted using the sum of the alkane concentrations and the sum of the aromatics concentrations from the raw data table. Thus, two ANOVAs are run for each sampling event, one for total alkanes and one for total aromatics, giving a total of 8 ANOVAs for a product test (2 ANOVAs × 4 sampling events). Only if significant differences are detected by a given ANOVA will it be necessary to run a protected LSD test.

VIII.(b). Toxicity (Bioremediation Agents)

Materials tested	Species	LC_{50} (ppm)	NOEC & LOEC (ppm or % WSF)
Product	*Menidia beryllina*	96-hr. & 7-day	Survival and growth.
	Mysidopsis bahia	96-hr. & 7-day	Survival, growth, and fecundity.
ANS521 Oil	*Menidia beryllina*	96-hr. & 7-day	Survival and growth.
	Mysidopsis bahia	96-hr. & 7-day	Survival, growth, and fecundity.
Product and ANS521 Oil	*Menidia beryllina*	7-day	Survival and growth.
	Mysidopsis bahia	7-day	Survival, growth, and fecundity.

IX. Microbiological Analysis (Bioremediation Agents)

X. Physical Properties of Dispersant/Surface Washing Agent/Surface Collecting Agent/ Miscellaneous Oil Spill Control Agent

1. Flash Point: (°F)
2. Pour Point: (°F)
3. Viscosity: _____at _____°F (furol seconds)
4. Specific Gravity: _____at _____°F
5. pH: (10% solution if hydrocarbon based)
6. Surface Active Agents (Dispersants and Surface Washing Agents)[2]
7. Solvents (Dispersants and Surface Washing Agents)[2]
8. Additives (Dispersants and Surface Washing Agents)
9. Solubility (Surface Collecting Agents)

XI. Analysis for Heavy Metals, Chlorinated Hydrocarbons, and Cyanide (Dispersants, Surface Washing Agents Surface Collecting Agents, and Miscellaneous Oil Spill Control Agents)

Compounds	Concentration (ppm)
Arsenic	
Cadmium	
Chromium	
Copper	
Lead	
Mercury	
Nickel	
Zinc	
Cyanide	
Chlorinated Hydrocarbons.	

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(1) L.T. McCarthy, Jr., I. Wilder, and J.S. Dorrier. *Standard Dispersant Effectiveness and Toxicity Tests*. EPA Report EPA–R2–73–201 (May 1973).

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(4) J.R. Clayton, Jr. and J.R. Payne. *Chemical Oil Spill Dispersants: Update State-of-the-Art on Mechanisms of Actions and Factors Influencing Performance With Emphasis on Laboratory Studies*. Final report prepared by Science Applications International Corporation for U.S. Environmental Protection Agency, 1992.

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(10) U.S. EPA. Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms. Environmental Monitoring and U.S. Environmental Protection Agency, Cincinnati, OH. EPA 600/4–87/028, 1988.

(11) J.W. Anderson. Laboratory Studies on the Effects of Oil on Marine Organisms. American Petroleum Institute, Publ. No. 4249, 1975.

[2] If the submitter claims that the information presented under this subheading is confidential, this information should be submitted on a separate sheet of paper clearly labeled according to the subheading and entitled "Confidential Information."

Appendix E to Part 300—Oil Spill Response

Table of Contents

1.0 Introduction.
1.1 Background.
1.2 Purpose/objective.
1.3 Scope.
1.4 Abbreviations.
1.5 Definitions.
2.0 National response system.
2.1 Overview.
2.2 Priorities.
2.3 Responsibility.
3.0 Components of national response system and responsibilities.
3.1 National.
3.1.1 National Response Team.
3.1.2 National Response Center.
3.1.3 National Strike Force Coordination Center.
3.2 Regional.
3.3 Area.
3.3.1 On-scene coordinator.
3.3.2 Area Committees.
3.3.3 Special teams.
4.0 Preparedness activities.
4.1 Federal contingency plans.
4.1.1 National contingency plan.
4.1.2 Regional contingency plans.
4.1.3 Area contingency plans.
4.1.4 Fish and Wildlife and Sensitive Environments Plan annex.
4.2 Relation to others plans.
4.2.1 Federal response plans.
4.2.2 Tank Vessel and Facility Response Plans.
4.3 Pre-approval authority.
4.4 Area response drills.
5.0 Response operations.
5.1 Phase I—Discovery or notification.
5.2 Phase II—Preliminary assessment and initiation of action.
5.3 Patterns of response.
5.3.1 Determinations to initiate response and special conditions.
5.3.2 General pattern of response.
5.3.3 Containment, countermeasures, and cleanup.
5.3.4 Response to a substantial threat to the public health or welfare.
5.3.5 Enhanced activities during a spill of national significance.
5.3.6 Response to worst case discharges.
5.3.7 Multi-regional responses.
5.3.8 Worker health and safety.
5.4 Disposal.
5.5 Natural resource trustees.
5.5.1 Damage assessment.
5.5.2 Lead administrative trustee.
5.5.3 On-scene coordinator (OSC) coordination.
5.5.4 Dissemination of information.
5.5.5 Responsibilities of trustees.
5.6 Oil Spill Liability Trust Fund.
5.6.1 Funding.
5.6.2 Claims.
5.7 Documentation and cost recovery.
5.8 National response priorities.
6.0 Response coordination.
6.1 Nongovernmental participation.
6.2 Natural resource trustees.
6.2.1 Federal agencies.
6.2.2 State.
6.2.3 Indian tribes.
6.2.4 Foreign trustees.
6.3 Federal agencies.
6.4 Other federal agencies.
6.4.1 Department of Commerce.
6.4.2 Department of Justice.
6.4.3 Department of Defense.
6.4.4 Department of Health and Human Services.
6.4.5 Department of the Interior.
6.4.6 Department of Labor.
6.4.7 Federal Emergency Management Agency.
6.4.8 Department of Energy.
6.4.9 Department of State.
6.4.10 General Services Association.
6.5 States and local participation in response.

1.0 Introduction

1.1 Background

The Oil Pollution Act of 1990 (OPA) amends the Federal Water Pollution Control Act (FWPCA), commonly referred to as the Clean Water Act (CWA), to require the revision of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). In revising the NCP, the need to separate the response requirements for oil discharges and release of hazardous substances, pollutants, and contaminants became evident.

1.2 Purpose/Objective

This document compiles general oil discharge response requirements into one

appendix to aid participants and responders under the national response system (NRS). This appendix provides the organizational structure and procedures to prepare for and respond to oil discharges. Nothing in this appendix alters the meaning or policy stated in other sections or subparts of the NCP.

1.3 Scope

(a) This appendix applies to discharges of oil into or upon the navigable waters of the United States and adjoining shorelines, the waters of the contiguous zone, or waters of the exclusive economic zone, or which may affect the natural resources belonging to, appertaining to, or under the exclusive management authority of the United States.

(b) This appendix is designed to facilitate efficient, coordinated, and effective response to discharges of oil in accordance with the authorities of the CWA. It addresses:

(1) The national response organization that may be activated in response actions, the responsibilities among the federal, state, and local governments, and the resources that are available for response.

(2) The establishment of regional and area contingency plans.

(3) Procedures for undertaking removal actions pursuant to section 311 of the CWA.

(4) Designation of federal trustees for natural resources for purposes of the CWA.

(5) Procedures for the participation of other persons in response actions.

(6) Procedures for compiling and making available cost documentation for response actions.

(7) National procedures for the use of dispersants and other chemicals in removals under the CWA.

(c) In implementing the NCP provisions compiled in this appendix, consideration shall be given to international assistance plans and agreements, security regulations and responsibilities based on international agreements, federal statutes, and executive orders. Actions taken pursuant to the provisions of any applicable international joint contingency plans shall be consistent with the NCP to the greatest extent possible. The Department of State shall be consulted, as appropriate, prior to taking action that may affect its activities.

1.4 Abbreviations

This section of the appendix provides abbreviations relating to oil.

(a) Department and Agency Title Abbreviations:

ATSDR—Agency for Toxic Substances and Disease Registry
CDC—Centers for Disease Control
DOC—Department of Commerce
DOD—Department of Defense
DOE—Department of Energy
DOI—Department of the Interior
DOJ—Department of Justice
DOL—Department of Labor
DOS—Department of State
DOT—Department of Transportation
EPA—Environmental Protection Agency
FEMA—Federal Emergency Management Agency
GSA—General Services Administration
HHS—Department of Health and Human Services
NIOSH—National Institute for Occupational Safety and Health
NOAA—National Oceanic and Atmospheric Administration
OSHA—Occupational Safety and Health Administration
RSPA—Research and Special Programs Administration
USCG—United States Coast Guard
USDA—United States Department of Agriculture

Note: Reference is made in the NCP to both the Nuclear Regulatory Commission and the National Response Center. In order to avoid confusion, the NCP will spell out Nuclear Regulatory Commission and use the abbreviation "NRC" only with respect to the National Response Center.

(b) Operational Abbreviations:

AC—Area Committee
ACP—Area Contingency Plan
DRAT—District Response Advisory Team
DRG—District Response Group
ERT—Environmental Response Team
ESF—Emergency Support Functions
FCO—Federal Coordinating Officer
FRERP—Federal Radiological Emergency Response Plan
FRP—Federal Response Plan
LEPC—Local Emergency Planning Committee
NCP—National Contingency Plan
NPFC—National Pollution Funds Center
NRC—National Response Center
NRS—National Response System
NRT—National Response Team
NSF—National Strike Force
NSFCC—National Strike Force Coordination Center
OSC—On-Scene Coordinator
OSLTF—Oil Spill Liability Trust Fund
POLREP—Pollution Report
PIAT—Public Information Assist Team
RCP—Regional Contingency Plan
RERT—Radiological Emergency Response Team
RRT—Regional Response Team
SERC—State Emergency Response Commission
SONS—Spill of National Significance
SSC—Scientific Support Coordinator

1.5 Definitions

Terms not defined in this section have the meaning given by CERCLA, the OPA, or the CWA. This appendix restates the NCP definitions relating to oil.

Activation means notification by telephone or other expeditious manner or, when required, the assembly of some or all appropriate members of the RRT or NRT.

Area Committee (AC) as provided for by CWA sections 311(a)(18) and (j)(4), means the entity appointed by the President consisting of members from qualified personnel of federal, state, and local agencies with responsibilities that include preparing an area contingency plan for an area designated by the President.

Area contingency plan (ACP) as defined by CWA sections 311(a)(19) and (j)(4) means the plan prepared by an Area Committee that is developed to be implemented in conjunction with the NCP and RCP, in part to address removal of a worst case discharge and to mitigate or prevent a substantial threat of such a discharge from a vessel, offshore facility, or onshore facility operating in or near an area designated by the President.

Bioremediation agents means microbiological cultures, enzyme additives, or nutrient additives that are deliberately introduced into an oil discharge and that will significantly increase the rate of biodegradation to mitigate the effects of the discharge.

Burning agents means those additives that, through physical or chemical means, improve the combustibility of the materials to which they are applied.

CERCLA is the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986.

Chemical agents means those elements, compounds, or mixtures that coagulate, disperse, dissolve, emulsify, foam, neutralize, precipitate, reduce, solubilize, oxidize, concentrate, congeal, entrap, fix, make the pollutant mass more rigid or viscous, or otherwise facilitate the mitigation of deleterious effects or the removal of the oil pollutant from the water. Chemical agents include biological additives, dispersants, sinking agents, miscellaneous oil spill control agents, and burning agents, but do not include solvents.

Claim in the case of a discharge under CWA means a request, made in writing for a sum certain, for compensation for damages or removal costs resulting from an incident.

Claimant as defined by section 1001 of the OPA means any person or government who presents a claim for compensation under Title I of the OPA.

Coastal waters for the purpose of classifying the size of discharges, means the waters of the coastal zone except for the Great Lakes and specified ports and harbors on inland rivers.

Coastal zone as defined for the purpose of the NCP, means all United States waters subject to the tide, United States waters of the Great Lakes, specified ports and harbors on inland rivers, waters of the contiguous zone, other waters of the high seas subject to the NCP, and the land surface or land substrata, ground waters, and ambient air proximal to those waters. The term coastal zone delineates an area of federal responsibility for response action. Precise boundaries are determined by EPA/USCG agreements and identified in federal regional contingency plans.

Coast Guard District Response Group (DRG) as provided for by CWA sections 311(a)(20) and (j)(3), means the entity established by the Secretary of the department in which the USCG is operating within each USCG district and shall consist of: The combined USCG personnel and equipment, including firefighting equipment, of each port within the district; additional prepositioned response equipment; and a district response advisory team.

Contiguous zone means the zone of the high seas, established by the United States under Article 24 of the Convention on the Territorial Sea and Contiguous Zone, which is contiguous to the territorial sea and which extends nine miles seaward from the outer limit of the territorial sea.

Damages as defined by section 1001 of the OPA means damages specified in section 1002(b) of the Act, and includes the cost of assessing these damages.

Discharge as defined by section 311(a)(2) of the CWA, includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping of oil, but excludes discharges in compliance with a permit under section 402 of the CWA, discharges resulting from circumstances identified and reviewed and made a part of the public record with respect to a permit issued or modified under section 402 of the CWA, and subject to a condition in such permit, or continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 402 of the CWA, that are caused by events occurring within the scope of relevant operating or treatment systems. For purposes of the NCP, discharge also means substantial threat of discharge.

Dispersants means those chemical agents that emulsify, disperse, or solubilize oil into the water column or promote the surface spreading of oil slicks to facilitate dispersal of the oil into the water column.

Exclusive economic zone as defined in OPA section 1001, means the zone established by Presidential Proclamation Numbered 5030, dated March 10, 1983, including the ocean waters of the areas referred to as "eastern special areas" in Article 3(1) of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990.

Facility as defined by section 1001 of the OPA means any structure, group of structures, equipment, or device (other than a vessel) which is used for one or more of the following purposes: Exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting oil. This term includes any motor vehicle, rolling stock, or pipeline used for one or more of these purposes.

Federal Response Plan (FRP) means the agreement signed by 25 federal departments and agencies in April 1987 and developed under the authorities of the Earthquake Hazards Reduction Act of 1977 and the Disaster Relief Act of 1974, as amended by the Stafford Disaster Relief Act of 1988.

First federal official means the first federal representative of a participating agency of the National Response Team to arrive at the scene of a discharge or a release. This official coordinates activities under the NCP and may initiate, in consultation with the OSC, any necessary actions until the arrival of the predesignated OSC.

Indian tribe as defined in OPA section 1001, means any Indian tribe, band, nation, or other organized group or community, but not including any Alaska Native regional or village corporation, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians and has governmental authority over lands belonging to or controlled by the Tribe.

Inland waters for the purposes of classifying the size of discharges, means those waters of the United States in the inland zone, waters of the Great Lakes, and specified ports and harbors on inland rivers.

Inland zone means the environment inland of the coastal zone excluding the Great Lakes, and specified ports and harbors on inland rivers. The term inland zone delineates an area of federal responsibility for response action. Precise boundaries are determined by EPA/USCG agreements and identified in federal regional contingency plans.

Lead administrative trustee means a federal natural resource trustee who is designated on an incident-by-incident basis and chosen by the other federal trustees whose natural resources are affected by the incident. The lead administrative trustee facilitates effective and efficient communication between the OSC and the other federal natural resource trustees during response operations and is responsible for applying to the OSC for access to federal response resources on behalf of all trustees for initiation of damage assessment and claims for injuries to natural resources.

Lead agency means the agency that provides the OSC to plan and implement response actions under the NCP.

Miscellaneous oil spill control agent is any product, other than a dispersant, sinking agent, surface washing agent, surface collecting agent, bioremediation agent, burning agent, or sorbent that can be used to enhance oil spill cleanup, removal, treatment, or mitigation.

National Pollution Funds Center (NPFC) means the entity established by the Secretary of Transportation whose function is the administration of the Oil Spill Liability Trust Fund (OSLTF). Among the NPFC's duties are: Providing appropriate access to the OSLTF for federal agencies and states for removal actions and for federal trustees to initiate the assessment of natural resource damages; providing appropriate access to the OSLTF for claims; and coordinating cost recovery efforts.

National Response System (NRS) is the mechanism for coordinating response actions by all levels of government in support of the OSC. The NRS is composed of the NRT, RRTs, OSC, Area Committees, and Special Teams and related support entities.

National Strike Force (NSF) is a special team established by the USCG, including the three USCG Strike Teams, the Public Information Assist Team (PIAT), and the National Strike Force Coordination Center. The NSF is available to assist OSCs in their preparedness and response duties.

National Strike Force Coordination Center (NSFCC), authorized as the National Response Unit by CWA section 311 (a)(23) and (j)(2), means the entity established by the Secretary of the department in which the USCG is operating at Elizabeth City, North Carolina, with responsibilities that include administration of the USCG Strike Teams, maintenance of response equipment inventories and logistic networks, and conducting a national exercise program.

Natural resources means land, fish, wildlife, biota, air, water, groundwater, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the exclusive economic zone defined by the Magnuson Fishery Conservation and Management Act of 1976), any state or local government, any foreign government, any Indian tribe, or, if such resources are subject to a trust restriction on alienation, any member of an Indian tribe.

Navigable waters as defined by 40 CFR 110.1 means the waters of the United States, including the territorial seas. The term includes:

(a) All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide;

(b) Interstate waters, including interstate wetlands;

(c) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, and wetlands, the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

(1) That are or could be used by interstate or foreign travelers for recreational or other purposes;

(2) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; and

(3) That are used or could be used for industrial purposes by industries in interstate commerce.

(d) All impoundments of waters otherwise defined as navigable waters under this section;

(e) Tributaries of waters identified in paragraphs (a) through (d) of this definition, including adjacent wetlands; and

(f) Wetlands adjacent to waters identified in paragraphs (a) through (e) of this definition: Provided, that waste treatment systems (other than cooling ponds meeting the criteria of this paragraph) are not waters of the United States.

Offshore facility as defined by section 311(a)(11) of the CWA means any facility of any kind located in, on, or under any of the navigable waters of the United States, and any facility of any kind which is subject to the jurisdiction of the United States and is located in, on, or under any other waters, other than a vessel or a public vessel.

Oil as defined by section 311(a)(1) of the CWA means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil. Oil, as defined by section 1001 of the OPA means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil, but does not include petroleum, including crude oil or any fraction thereof, which is specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601) and which is subject to the provisions of that Act.

Oil Spill Liability Trust Fund means the fund established under section 9509 of the Internal Revenue Code of 1986 (26 U.S.C. 9509).

On-scene coordinator (OSC) means the federal official predesignated by the EPA or

the USCG to coordinate and direct federal response under subpart D.

Onshore facility as defined by section 311(a)(10) of the CWA, means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under any land within the United States other than submerged land.

On-site means the areal extent of contamination and all suitable areas in very close proximity to the contamination necessary for implementation of a response action.

Person as defined by section 1001 of the OPA, means an individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state, or any interstate body.

Public vessel as defined by section 311(a)(4) of the CWA, means a vessel owned or bareboat-chartered and operated by the United States, or by a state or political subdivision thereof, or by a foreign nation, except when such vessel is engaged in commerce.

Remove or removal as defined by section 311(a)(8) of the CWA, refers to containment and removal of oil or hazardous substances from the water and shorelines or the taking of such other actions as may be necessary to minimize or mitigate damage to the public health or welfare (including, but not limited to, fish, shellfish, wildlife, public and private property, and shorelines and beaches) or to the environment. For the purpose of the NCP, the term also includes monitoring of action to remove a discharge.

Removal costs as defined by section 1001 of the OPA means the costs of removal that are incurred after a discharge of oil has occurred, or in any case in which there is a substantial threat of a discharge of oil the costs to prevent, minimize, or mitigate oil pollution from such an incident.

Responsible party as defined by section 1001 of the OPA means the following:

(a) *Vessels*—In the case of a vessel, any person owning, operating, or demise chartering the vessel.

(b) *Onshore facilities*—In the case of an onshore facility (other than a pipeline), any person owning or operating the facility, except a federal agency, state, municipality, commission, or political subdivision of a state, or any interstate body, that as the owner transfers possession and right to use the property to another person by lease, assignment, or permit.

(c) *Offshore facilities*—In the case of an offshore facility (other than a pipeline or a deepwater port licensed under the Deepwater Port Act of 1974 (33 U.S.C. 1501 et seq.)), the lessee or permittee of the area in which the facility is located or the holder of a right of use and easement granted under applicable state law or the Outer Continental Shelf Lands Act (43 U.S.C. 1301–1356) for the area in which the facility is located (if the holder is a different person than the lessee or permittee), except a federal agency, state, municipality, commission, or political subdivision of a state, or any interstate body, that as owner transfers possession and right to use the property to another person by lease, assignment, or permit.

(d) *Deepwater ports*—In the case of a deepwater port licensed under the Deepwater Port Act of 1974 (33 U.S.C. 1501–1524), the licensee.

(e) *Pipelines*—In the case of a pipeline, any person owning or operating the pipeline.

(f) *Abandonment*—In the case of an abandoned vessel, onshore facility, deepwater port, pipeline, or offshore facility, the person who would have been responsible parties immediately prior to the abandonment of the vessel or facility.

Sinking agents means those additives applied to oil discharges to sink floating pollutants below the water surface.

Size classes of discharges refers to the following size classes of oil discharges which are provided as guidance to the OSC and serve as the criteria for the actions delineated in subpart D. They are not meant to imply associated degrees of hazard to public health or welfare, nor are they a measure of environmental injury. Any oil discharge that poses a substantial threat to public health or welfare or the environment or results in significant public concern shall be classified as a major discharge regardless of the following quantitative measures:

(a) Minor discharge means a discharge in inland waters of less than 1,000 gallons of oil or a discharge to the coastal waters of less than 10,000 gallons of oil.

(b) Medium discharge means a discharge of 1,000 to 10,000 gallons of oil to the inland waters or a discharge of 10,000 to 100,000 gallons of oil to the coastal waters.

(c) Major discharge means a discharge of more than 10,000 gallons of oil to the inland waters or more than 100,000 gallons of oil to the coastal waters.

Sorbents means essentially inert and insoluble materials that are used to remove oil and hazardous substances from water through adsorption, in which the oil or hazardous substance is attracted to the sorbent surface and then adheres to it, absorption, in which the oil or hazardous substance penetrates the pores of the sorbent material, or a combination of the two. Sorbents are generally manufactured in particulate form for spreading over an oil slick or as sheets, rolls, pillows, or booms. The sorbent material may consist of, but is not limited to, the following materials:

(a) Organic products—(1) Peat moss or straw; (2) Cellulose fibers or cork; (3) Corn cobs; (4) Chicken or duck feathers.

(b) Mineral compounds—(1) Volcanic ash or perlite; (2) Vermiculite or zeolite.

(c) Synthetic products—(1) Polypropylene; (2) Polyethylene; (3) Polyurethane; (4) Polyester.

Specified ports and harbors means those ports and harbor areas on inland rivers, and land areas immediately adjacent to those waters, where the USCG acts as predesignated on-scene coordinator. Precise locations are determined by EPA/USCG regional agreements and identified in federal regional contingency plans and area contingency plans.

Spill of national significance (SONS) means a spill which due to its severity, size, location, actual or potential impact on the public health and welfare or the environment, or the necessary response effort, is so complex that it requires extraordinary coordination of federal, state, local, and responsible party resources to contain and clean up the discharge.

State means the several states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the U.S. Virgin Islands, the Commonwealth of the Northern Marianas, and any other territory or possession over which the United States has jurisdiction. For purposes of the NCP, the term includes Indian tribes as defined in the NCP except where specifically noted.

Surface collecting agents means those chemical agents that form a surface film to control the layer thickness of oil.

Surface washing agent is any product that removes oil from solid surfaces, such as beaches and rocks, through a detergency mechanism and does not involve dispersing or solubilizing the oil into the water column.

Tank vessel as defined by section 1001 of OPA means a vessel that is constructed or adapted to carry, or that carries, oil or hazardous material in bulk as cargo or cargo residue, and that: (1) Is a vessel of the United States; (2) operates on the navigable waters; or (3) transfers oil or hazardous material in a place subject to the jurisdiction of the United States.

Threat of discharge, see definition for discharge.

Trustee means an official of a federal natural resources management agency designated in subpart G of the NCP or a designated state official or Indian tribe or, in the case of discharges covered by the OPA, a foreign government official, who may pursue claims for damages under section 1006 of the OPA.

United States when used in relation to section 311(a)(5) of the CWA, mean the states, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, and the Pacific Island Governments.

Vessel as defined by section 311(a)(3) of the CWA means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water other than a public vessel.

Volunteer means any individual accepted to perform services by the lead agency which has authority to accept volunteer services (for examples, see 16 U.S.C. 742f(c)). A volunteer is subject to the provisions of the authorizing statute and the NCP.

Worst case discharge as defined by section 311(a)(24) of the CWA means, in the case of a vessel, a discharge in adverse weather conditions of its entire cargo, and in the case of an offshore facility or onshore facility, the largest foreseeable discharge in adverse weather conditions.

2.0 National Response System

2.1 Overview

The national response system (NRS) is the mechanism for coordinating response actions by all levels of government in support of the OSC. The NRS is composed of the National Response Team (NRT), Regional Response Teams (RRTs), On-scene coordinator (OSC), Area Committees, and Special Teams and related support entities. The NRS functions

as an incident command system (ICS) under the direction of the OSC. Typical of an ICS, the NRS is capable of expanding or contracting to accommodate the response effort required by the size or complexity of the discharge.

2.2 Priorities

(a) Safety of human life must be given the highest priority during every response action. This includes any search and rescue efforts in the general proximity of the discharge and the insurance of safety of response personnel.

(b) Stabilizing the situation to preclude the event from worsening is the next priority. All efforts must be focused on saving a vessel that has been involved in a grounding, collision, fire or explosion, so that it does not compound the problem. Comparable measures should be taken to stabilize a situation involving a facility, pipeline, or other source of pollution. Stabilizing the situation includes securing the source of the spill and/or removing the remaining oil from the container (vessel, tank, or pipeline) to prevent additional oil spillage, to reduce the need for follow-up response action, and to minimize adverse impact to the environment.

(c) The response must use all necessary containment and removal tactics in a coordinated manner to ensure a timely, effective response that minimizes adverse impact to the environment.

(d) All parts of this national response strategy should be addressed concurrently, but safety and stabilization are the highest priorities. The OSC should not delay containment and removal decisions unnecessarily and should take actions to minimize adverse impact to the environment that begins as soon as a discharge occurs, as well as actions to minimize further adverse environmental impact from additional discharges.

(e) The priorities set forth in this section are broad in nature, and should not be interpreted to preclude the consideration of other priorities that may arise on a site-specific basis.

2.3 Responsibility

(a) The predesignated OSC has the responsibility to direct response actions and coordinate all other response efforts at the scene of an oil discharge or threatened discharge. The OSC monitors or directs all federal, state, local, and private removal actions, or arranges for the removal of an actual or threatened oil discharge, removing and if necessary, requesting authority to destroy a vessel. Additionally, the CWA requires the OSC to direct all federal, state, local, and private removal actions to any incident that poses a substantial threat to the public health or welfare.

(b) Cleanup responsibility for an oil discharge immediately falls on the responsible party, unless the discharge poses a substantial threat to public health or welfare. In a large percentage of oil discharges, the responsible party shall conduct the cleanup. If the responsible party does conduct the removal, the OSC shall ensure adequate surveillance over whatever actions are initiated.

(1) If effective actions are not being taken to eliminate the threat, or if removal is not being properly done, the OSC should, to the extent practicable under the circumstances, so advise the responsible party. If the responsible party does not respond properly, the OSC shall take appropriate response actions and should notify the responsible party of the potential liability for federal response costs incurred by the OSC pursuant to the OPA and CWA. Where practicable, continuing efforts should be made to encourage response by responsible parties.

(2) If the Administrator of EPA or the Secretary of the department in which the USCG is operating determines that there may be an imminent and substantial threat to the public health or welfare or the environment of the United States (including fish, shellfish, and wildlife, public and private property, shorelines, beaches, habitats, and other living and nonliving natural resources under the jurisdiction or control of the United States, because of an actual or threatened discharge of oil from any vessel or offshore or onshore facility into or upon the navigable waters of the United States), the Administrator or Secretary may request the U.S. Attorney General to secure the relief from any person, including the owner or operator of the vessel or facility necessary to abate a threat or, after notice to the affected state, take any other action authorized by section 311 of the CWA including administrative orders, that may be necessary to protect the public health or welfare.

(3) The responsible party is liable for costs of federal removal and damages in accordance with section 311(f) of the CWA, section 1002 of the OPA, and other federal laws.

(c) In those incidents where a discharge or threat of discharge poses a substantial threat to the public health or welfare of the United States, the OSC shall direct all federal, state, or private actions to remove the discharge or to mitigate or prevent the threat of such a discharge, as appropriate. The OSC shall also request immediate activation of the RRT.

(d) During responses to any discharge the OSC may request advice or support from the Special Teams and any local support units identified by the Area Committee. Examples include scientific advice from the Scientific Support Coordinator (SSC), technical guidance or prepositioned equipment from the District Response Group (DRG), or public information assistance from the National Strike Force (NSF).

(e) When an oil discharge exceeds the response capability of the region in which it occurs, transects regional boundaries, or involves a substantial threat to the public health or welfare, substantial amounts of property, or substantial threats to the natural resources, the NRT should be activated as an emergency response team. If appropriate the RRT Chairman may contact the NRT Chairman and request the NRT activation.

3.0 Components of national response system and responsibilities

The NRS is the mechanism for coordinating response actions by all levels of government in support of the OSC. The NRS organization is divided into national, regional, and area levels. The national level comprises the NRT, the National Strike Force Coordination Center (NSFCC), and the National Response Center (NRC). The regional level is comprised of the RRT. The area level is made up of the OSC, Special Teams, and Area Committees.

3.1 National

3.1.1 National Response Team. (a) National planning and coordination is accomplished through the NRT. The NRT consists of representatives from the USCG, EPA, Federal Emergency Management Agency (FEMA), Department of Defense (DOD), Department of Energy (DOE), Department of Agriculture (DOA), Department of Commerce (DOC), Department of Health and Human Services (HHS), Department of the Interior (DOI), Department of Justice (DOJ), Department of Labor (DOL), Department of Transportation (DOT), Department of State (DOS), Nuclear Regulatory Commission, and General Services Administration (GSA). Each agency shall designate a member to the team and sufficient alternates to ensure representation, as agency resources permit. The NRT will consider requests for membership on the NRT from other agencies. Other agencies may request membership by forwarding such requests to the chair of the NRT (see Figure 1).

(b) The chair of the NRT shall be the representative of the EPA and the vice chair shall be the representative of the USCG, with the exception of periods of activation because of response action. During activation, the chair shall be the member agency providing the OSC. The vice chair shall maintain records of NRT activities along with national, regional, and area plans for response actions.

(c) While the NRT desires to achieve a consensus on all matters brought before it, certain matters may prove unresolvable by this means. In such cases, each agency serving as a participating agency on the NRT may be accorded one vote in NRT proceedings.

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Figure 1

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(d) The NRT may establish such bylaws, procedures, and committees as it deems appropriate to further the purposes for which it is established.

(e) The NRT shall evaluate methods of responding to discharges, shall recommend any changes needed in the response organization, and shall recommend to the Administrator of EPA changes to the NCP designed to improve the effectiveness of the national response system, including drafting of regulatory language.

(f) The NRT shall provide policy and program direction to the RRTs.

(g) The NRT may consider and make recommendations to appropriate agencies on the training, equipping, and protection of response teams and necessary research, development, demonstration, and evaluation to improve response capabilities.

(h) Direct planning and preparedness responsibilities of the NRT include:

(1) Maintaining national preparedness to respond to a major discharge of oil that is beyond regional capabilities;

(2) Monitoring incoming reports from all RRTs and activating for a response action, when necessary;

(3) Coordinating a national program to assist member agencies in preparedness planning and response, and enhancing coordination of member agency preparedness programs;

(4) Developing procedures, in coordination with the NSFCC, as appropriate, to ensure the coordination of federal, state, and local governments, and private response to oil discharges;

(5) Monitoring response-related research and development, testing, and evaluation activities of NRT agencies to enhance coordination, avoid duplication of effort, and facilitate research in support of response activities;

(6) Developing recommendations for response training and for enhancing the coordination of available resources among agencies with training responsibilities under the NCP;

(7) Reviewing regional responses to oil discharges, including an evaluation of equipment readiness and coordination among responsible public agencies and private organizations; and

(8) Assist in developing a national exercise program, in coordination with the NSFCC to ensure preparedness and coordination nationwide.

(i) The NRT shall consider matters referred to it for advice or resolution by an RRT.

(j) The NRT should be activated as an emergency response team:

(1) When an oil discharge:

(A) Exceeds the response capability of the region in which it occurs;

(B) Transects regional boundaries; or

(C) Involves a substantial threat to the public health or welfare, substantial amounts of property, or substantial threats to natural resources;

(2) If requested by any NRT member.

(k) When activated for a response action, the NRT will meet at the call of the chair and may:

(1) Monitor and evaluate reports from the OSC and recommend to the OSC, through the RRT, actions to combat the discharge;

(2) Request other federal, state and local governments, or private agencies, to provide resources under their existing authorities to combat a discharge, or to monitor response operations; and

(3) Coordinate the supply of equipment, personnel, or technical advice to the affected region from other regions or districts.

3.1.2 National Response Center. (a) The NRC, located at USCG Headquarters, is the national communications center, continuously manned for handling activities related to response actions, including those involving discharges of oil. The NRC acts as the single point of contact for all pollution incident reporting, and as the NRT communications center. Notice of discharges must be made by telephone through a toll free number or a special number (Telecommunication Device for the Deaf (TDD) and collect calls accepted). Upon receipt of a notification of discharge, the NRC shall promptly notify the OSC. The telephone report is distributed to any interested NRT member agency or federal entity that has established a written agreement or understanding with the NRC.

(b) The Commandant, USCG, in conjunction with other NRT agencies, provides the necessary personnel, communications, plotting facilities, and equipment for the NRC.

(c) Notice of an oil discharge in an amount equal to or greater than the reportable quantity must be made immediately in accordance with 33 CFR part 153, subpart B. Notification will be made to the NRC Duty Officer, HQ USCG, Washington, DC, telephone (800) 424–8802 or (202) 267–2675. All notices of discharges received at the NRC will be relayed immediately by telephone to the OSC.

3.1.3 National Strike Force Coordination Center. NSFCC, located in Elizabeth City, North Carolina, may assist the OSC by providing information on available spill removal resources, personnel, and equipment. The NSFCC can provide the following support to the OSC:

(a) Technical assistance, equipment, and other resources to augment the OSC staff during spill response;

(b) Assistance in coordinating the use of private and public resources in support of the OSC during a response to or a threat of a worst case discharge of oil;

(c) Review of the area contingency plan, including an evaluation of equipment readiness and coordination among responsible public agencies and private organizations;

(d) Assistance in locating spill response resources for both response and planning, using the NSFCC's national and international computerized inventory of spill response resources;

(e) Coordination and evaluation of pollution response exercises; and

(f) Inspection of district prepositioned pollution response equipment.

3.2 Regional. (a) Regional planning and coordination of preparedness and response actions is accomplished through the RRT. In the case of a discharge of oil, preparedness activities shall be carried out in conjunction with Area Committees as appropriate. The RRT agency membership parallels that of the NRT, but also includes state and local representation. The RRT provides: (1) The appropriate regional mechanism for development and coordination of preparedness activities before a response action is taken and for coordination of assistance and advice to the OSC during such response actions; and (2) guidance to Area Committees, as appropriate, to ensure inter-area consistency and consistency of individual ACPs with the RCP and NCP.

(b) The two principal components of the RRT mechanism are a standing team, which consists of designated representatives from each participating federal agency, state governments, and local governments (as agreed upon by the states); and incident-specific teams formed from the standing team when the RRT is activated for a response. On incident-specific teams, participation by the RRT member agencies will relate to the technical nature of the incident and its geographic location.

(1) The standing team's jurisdiction corresponds to the standard federal regions, except for Alaska, Oceania in the Pacific, and the Caribbean area, each of which has a separate standing RRT. The role of the standing RRT includes communications systems and procedures, planning, coordination, training, evaluation, preparedness, and related matters on a regionwide basis. It also includes coordination of Area Committees for these functions in areas within their respective regions, as appropriate.

(2) The role of the incident-specific team is determined by the operational requirements of the response to a specific discharge. Appropriate levels of activation and/or notification of the incident-specific RRT, including participation by state and local governments, shall be determined by the designated RRT chair for the incident, based on the RCP. The incident-specific RRT supports the designated OSC. The designated OSC manages response efforts and coordinates all other efforts at the scene of a discharge.

(c) The representatives of EPA and the USCG shall act as co-chairs of the RRTs except when the RRT is activated. When the RRT is activated for response actions, the chair is the member agency providing the OSC.

(d) Each participating agency should designate one member and at least one alternate member to the RRT. Agencies whose regional subdivisions do not correspond to the standard federal regions may designate additional representatives to the standing RRT to ensure appropriate coverage of the standard federal region. Participating states may also designate one member and at least one alternate member to the RRT. Indian tribal governments may arrange with the RRT for representation appropriate to their geographical location All agencies and states may also provide additional representatives as observers to meetings of the RRT.

(e) RRT members should designate representatives and alternates from their agencies as resource personnel for RRT activities, including RRT work planning, and

membership on incident-specific teams in support of the OSCs.

(f) Federal RRT members or their representatives should provide OSCs with assistance from their respective federal agencies commensurate with agency responsibilities, resources, and capabilities within the region. During a response action, the members of the RRT should seek to make available the resources of their agencies to the OSC as specified in the RCP and ACP.

(g) RRT members should nominate appropriately qualified representatives from their agencies to work with OSCs in developing and maintaining ACPs.

(h) Affected states are encouraged to participate actively in all RRT activities. Each state Governor is requested to assign an office or agency to represent the state on the appropriate RRT; to designate representatives to work with the RRT in developing RCPs; to plan for, make available, and coordinate state resources for use in response actions; and to serve as the contact point for coordination of response with local government agencies, whether or not represented on the RRT. The state's RRT representative should keep the State Emergency Response Commission (SERC) apprised of RRT activities and coordinate RRT activities with the SERC. Local governments are invited to participate in activities on the appropriate RRT as provided by state law or as arranged by the state's representative. Indian tribes are also invited to participate in such activities.

(i) The standing RRT shall recommend changes in the regional response organization as needed, revise the RCP as needed, evaluate the preparedness of the participating agencies and the effectiveness of ACPs for the federal response to discharges, and provide technical assistance for preparedness to the response community. The RRT should:

(1) Review and comment, to the extent practicable, on local emergency response plans or other issues related to the preparation, implementation, or exercise of such plans upon request of a local emergency planning committee;

(2) Evaluate regional and local responses to discharges on a continuing basis, considering available legal remedies, equipment readiness, and coordination among responsible public agencies and private organizations, and recommend improvements;

(3) Recommend revisions of the NCP to the NRT, based on observations of response operations;

(4) Review OSC actions to ensure that RCPs and ACPs are effective;

(5) Encourage the state and local response community to improve its preparedness for response;

(6) In coordination with the Area Committee, conduct advance planning for use of dispersants, surface washing agents, surface collecting agents, burning agents, bioremediation agents, or other chemical agents in accordance with subpart J of this part;

(7) Be prepared to provide response resources to major discharges or releases outside the region;

(8) Conduct or participate in training and exercises as necessary to encourage preparedness activities of the response community within the region;

(9) Meet at least semiannually to review response actions carried out during the preceding period, consider changes in RCPs, and recommend changes in ACPs;

(10) Provide letter reports on RRT activities to the NRT twice a year, no later than January 31 and July 31; and

(11) Ensure maximum participation in the national release program for announced and unannounced exercises.

(j)(1) The RRT may be activated by the chair as an incident-specific response team when a discharge:

(A) Exceeds the response capability available to the OSC in the place where it occurs;

(B) Transects state boundaries;

(C) May pose a substantial threat to the public health or welfare, or to regionally significant amounts of property; or

(D) Is a worst case discharge, as defined in section 1.5 of this appendix.

(2) The RRT shall be activated during any discharge upon a request from the OSC, or from any RRT representative, to the chair of the RRT. Requests for RRT activation shall later be confirmed in writing. Each representative, or an appropriate alternate, should be notified immediately when the RRT is activated.

(3) During prolonged removal or remedial action, the RRT may not need to be activated or may need to be activated only in a limited sense, or may need to have available only those member agencies of the RRT who are directly affected or who can provide direct response assistance.

(4) When the RRT is activated for a discharge or release, agency representatives will meet at the call of the chair and may:

(A) Monitor and evaluate reports from the OSC, advise the OSC on the duration and extent of response, and recommend to the OSC specific actions to respond to the discharge;

(B) Request other federal, state, or local governments, or private agencies, to provide resources under their existing authorities to respond to a discharge or to monitor response operations;

(C) Help the OSC prepare information releases for the public and for communication with the NRT;

(D) If the circumstances warrant, make recommendations to the regional or district head of the agency providing the OSC that a different OSC should be designated; and

(E) Submit pollution reports to the NRC as significant developments occur.

(5) RCPs shall specify detailed criteria for activation of RRTs.

(6) At the regional level, a Regional Response Center (RRC) may provide facilities and personnel for communications, information storage, and other requirements for coordinating response. The location of each RRC should be provided in the RCP.

(7) When the RRT is activated, affected states may participate in all RRT deliberations. State government representatives participating in the RRT have the same status as any federal member of the RRT.

(8) The RRT can be deactivated when the incident-specific RRT chair determines that the OSC no longer requires RRT assistance.

(9) Notification of the RRT may be appropriate when full activation is not necessary, with systematic communication of pollution reports or other means to keep RRT members informed as to actions of potential concern to a particular agency, or to assist in later RRT evaluation of regionwide response effectiveness.

(k) Whenever there is insufficient national policy guidance on a matter before the RRT, a technical matter requiring solution, a question concerning interpretation of the NCP, or a disagreement on discretionary actions among RRT members that cannot be resolved at the regional level, it may be referred to the NRT for advice.

3.3 Area.

3.3.1 On-scene coordinator. The OSC is the federal official predesignated by EPA or the USCG to coordinate and direct federal responses under subpart D of the NCP. The USCG shall provide OSCs for oil discharges, including discharges from facilities and vessels under the jurisdiction of another federal agency, within or threatening the coastal zone. EPA shall provide OSCs for discharges into or threatening the inland zone. In carrying out a response, the OSC may direct or monitor all federal, state, and private actions to remove a discharge. The OSC coordinates, directs, and reviews the work of other agencies, Area Committees, responsible parties, and contractors to assure compliance with the NCP, decision document, consent decree, administrative order, and lead agency-approved plans applicable to the response.

3.3.2 Area Committees. (a) Area Committees shall be responsible for: (1) Preparing an ACP for their areas; (2) working with appropriate federal, state, and local officials to enhance the contingency planning of those officials and to assure pre-planning of joint response efforts, including appropriate procedures for mechanical recovery, dispersal, shoreline cleanup, protection of sensitive environmental areas, and protection, rescue, and rehabilitation of fisheries and wildlife; and (3) working with appropriate federal, state, and local officials to expedite decisions for the use of dispersants and other mitigating substances and devices.

(b) The OSC is responsible for overseeing development of the ACP in the area of the OSC's responsibility. The ACP, when implemented in conjunction with other provisions of the NCP, shall be adequate to remove a worst case discharge, and to mitigate and prevent a substantial threat of such a discharge, from a vessel, offshore facility, or onshore facility operating in or near the area.

3.3.3 Special teams. (a) Special teams include: NOAA/EPA's SSCs; EPA's Environmental Response Team (ERT); and USCG's NSF; DRGs; and NPFC (see Figure 2).

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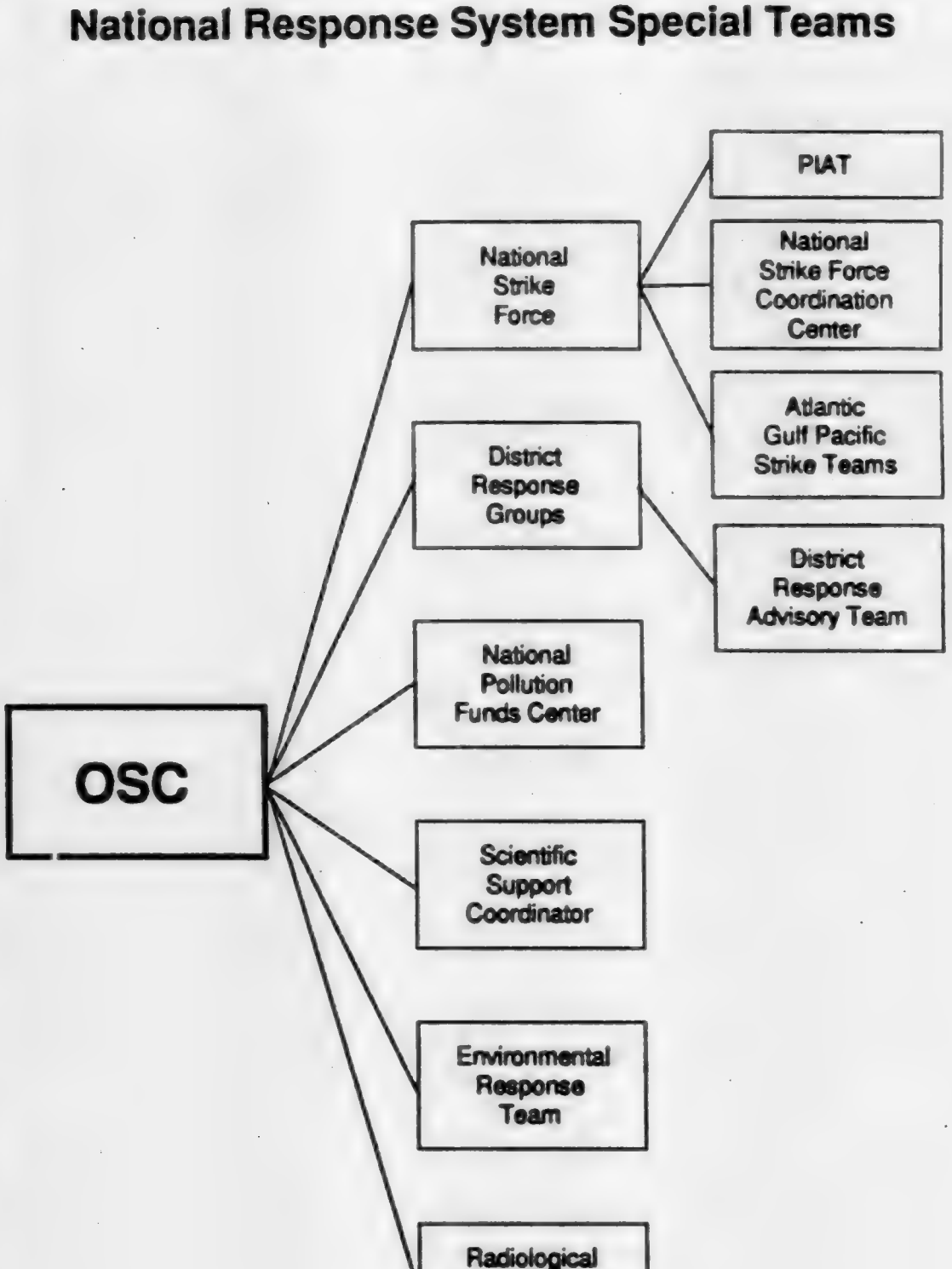
Figure 2

National Response System Special Teams



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(b) SSCs may be designated by the OSC as the principal advisors for scientific issues, communication with the scientific community, and coordination of requests for assistance from state and federal agencies regarding scientific studies. The SSC strives for a consensus on scientific issues affecting the response, but ensures that differing opinions within the community are communicated to the OSC.

(1) Generally, SSCs are provided by NOAA in the coastal zones, and by EPA in the inland zone. OSC requests for SSC support may be made directly to the SSC assigned to the area or to the agency member of the RRT. NOAA SSCs may also be requested through NOAA's SSC program office in Seattle, WA. NOAA SSCs are assigned to USCG Districts and are supported by a scientific support team that includes expertise in environmental chemistry, oil slick tracking, pollutant transport modeling, natural resources at risk, environmental tradeoffs of countermeasures and cleanup, and information management.

(2) During a response, the SSC serves on the federal OSC's staff and may, at the request of the OSC, lead the scientific team and be responsible for providing scientific support for operational decisions and for coordinating on-scene scientific activity. Depending on the nature and location of the incident, the SSC integrates expertise from governmental agencies, universities, community representatives, and industry to assist the OSC in evaluating the hazards and potential effects of releases and in developing response strategies.

(3) At the request of the OSC, the SSC may facilitate the OSC's work with the lead administrative trustee for natural resources to ensure coordination between damage assessment data collection efforts and data collected in support of response operations.

(4) SSCs support the RRTs and the Area Committees in preparing regional and area contingency plans and in conducting spill training and exercises. For area plans, the SSC provides leadership for the synthesis and integration of environmental information required for spill response decisions in support of the OSC.

(c) The ERT is established by the EPA in accordance with its disaster and emergency responsibilities. The ERT has expertise in treatment technology, biology, chemistry, hydrology, geology and engineering.

(1) The ERT can provide access to special decontamination equipment and advice to the OSC in hazard evaluation; risk assessment; multimedia sampling and analysis program; on-site safety, including development and implementation plans; cleanup techniques and priorities; water supply decontamination and protection; application of dispersants; environmental assessment; degree of cleanup required; and disposal of contaminated material. The ERT also provides both introductory and intermediate level training courses to prepare response personnel.

(2) OSC or RRT requests for ERT support should be made to the EPA representative on the RRT; EPA Headquarters, Director, Emergency Response Division; or the appropriate EPA regional emergency coordinator.

(d) The NSF is a special team established by the USCG, including the three USCG Strike Teams, the Public Information Assist Team (PIAT), and the NSFCC. The NSF is available to assist OSCs in their preparedness and response duties.

(1) The three Strike Teams (Atlantic, Gulf, and Pacific) provide trained personnel and specialized equipment to assist the OSC in training for spill response, stabilizing and containing the spill, and in monitoring or directing the response actions of the responsible parties and/or contractors. The OSC has a specific team designated for initial contact and may contact that team directly for any assistance.

(2) The NSFCC can provide the following support to the OSC:

—Technical assistance, equipment and other resources to augment the OSC staff during spill response;
—Assistance in coordinating the use of private and public resources in support of the OSC during a response to or a threat of a worst case discharge of oil;
—Review of the ACP, including an evaluation of equipment readiness and coordination among responsible public agencies and private organizations;
—Assistance in locating spill response resources for both response and planning, using the NSFCC's national and international computerized inventory of spill response resources;
—Coordination and evaluation of pollution response exercises; and
—Inspection of district prepositioned pollution response equipment.

(3) PIAT is an element of the NSFCC staff which is available to assist OSCs to meet the demands for public information during a response or exercise. Its use is encouraged any time the OSC requires outside public affairs support. Requests for PIAT assistance may be made through the NSFCC or NRC.

(e)(1) The DRG assists the OSC by providing technical assistance, personnel, and equipment, including pre-positioned equipment. Each DRG consists of all Coast Guard personnel and equipment, including marine firefighting equipment, in its district, additional pre-positioned equipment, and a District Response Advisory Team (DRAT) that is available to provide support to the OSC in the event that a spill exceeds local response capabilities. Each DRG:

(A) Shall provide technical assistance, equipment, and other resources as available when requested by an OSC through the USCG representative to the RRT;

(B) Shall ensure maintenance of all USCG response equipment within its district;

(C) May provide technical assistance in the preparation of the ACP; and

(D) Shall review each of those plans that affect its area of geographic responsibility.

(2) In deciding where to locate personnel and pre-positioned equipment, the USCG shall give priority emphasis to:

(A) The availability of facilities for loading and unloading heavy or bulky equipment by barge;

(B) The proximity to an airport capable of supporting large military transport aircraft;

(C) The flight time to provide response to oil spills in all areas of the Coast Guard district with the potential for marine casualties;

(D) The availability of trained local personnel capable of responding in an oil spill emergency; and

(E) Areas where large quantities of petroleum products are transported.

(f) The NPFC is responsible for implementing those portions of Title I of the OPA that have been delegated to the Secretary of the department in which the Coast Guard is operating. The NPFC is responsible for addressing funding issues arising from discharges and threats of discharges of oil. The NPFC:

(1) Issues Certificates of Financial Responsibility to owners and operators of vessels to pay for costs and damages that are incurred by their vessels as a result of oil discharges;

(2) Provides funding for various response organizations for timely abatement and removal actions related to oil discharges;

(3) Provides equitable compensation to claimants who sustain costs and damages from oil discharges when the responsible party fails to do so;

(4) Recovers monies from persons liable for costs and damages resulting from oil discharges to the full extent of liability under the law; and

(5) Provides funds to initiate natural resources damage assessment.

(g) The organizational concepts of the national response system discussed above are depicted in Figure 3.

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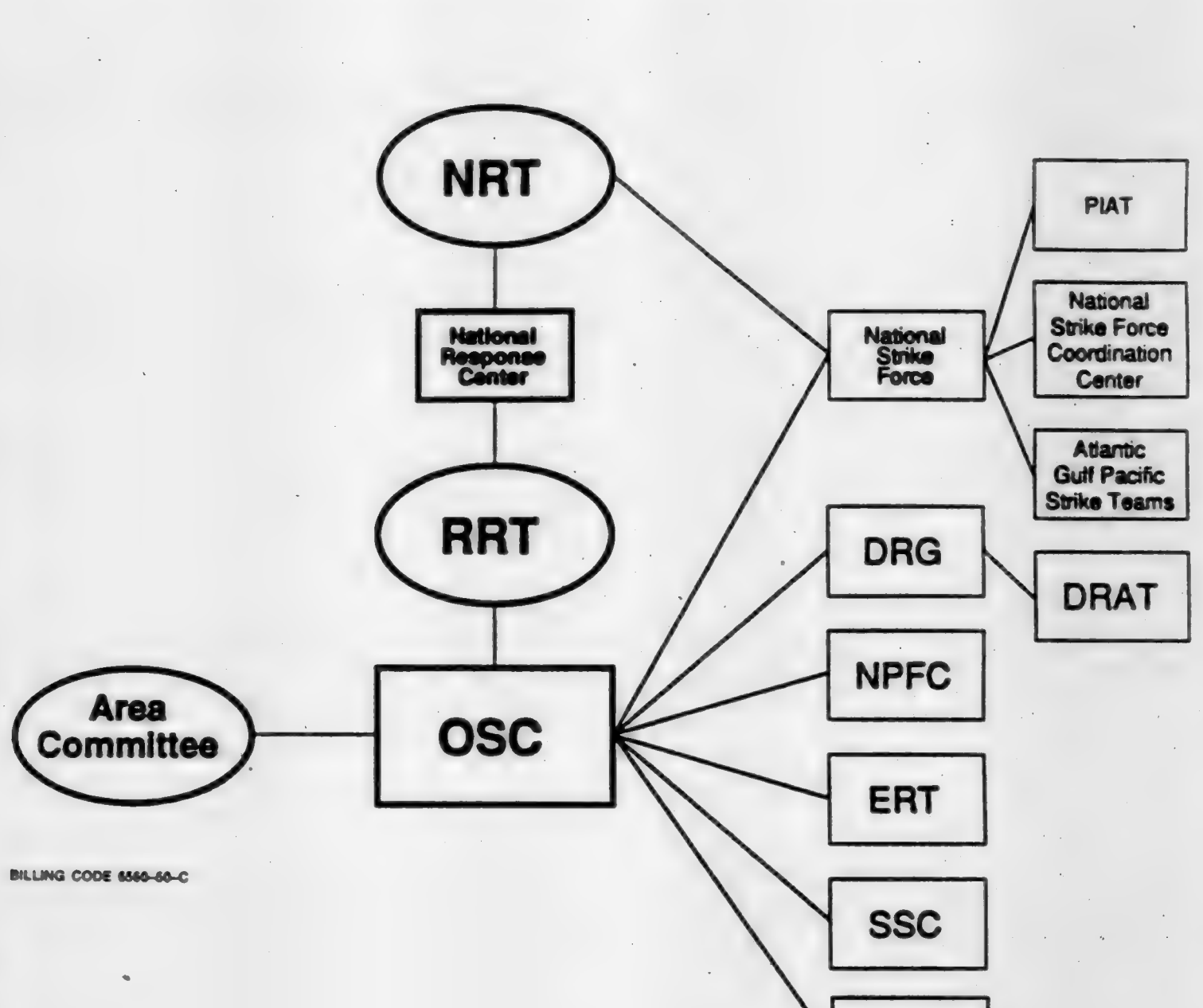
Figure 3

National Response System Organization



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4.0 Preparedness Activities

4.1 Federal contingency plans. This section summarizes emergency preparedness activities relating to discharges of oil and describes the three levels of contingency planning under the national response system.

4.1.1 National Contingency Plan. (a) The NCP provides for efficient, coordinated, and effective response to discharges of oil in accordance with the authorities of the CWA. It provides for:

(1) The national response organization that may be activated in response actions and specifies responsibilities among the federal, state, and local governments and describes resources that are available for response;

(2) The establishment of requirements for federal, regional, and area contingency plans;

(3) Procedures for undertaking removal actions pursuant to section 311 of the CWA;

(4) Procedures for involving state governments in the initiation, development, selection, and implementation of response actions;

(5) Designation of federal trustees for natural resources for purposes of the CWA;

(6) Procedures for the participation of other persons in response actions; and

(7) National procedures for the use of dispersants and other chemicals in removals under the CWA.

(b) In implementing the NCP, consideration shall be given to international assistance plans and agreements, security regulations and responsibilities based on international agreements, federal statutes, and executive orders. Actions taken pursuant to the provisions of any applicable international joint contingency plans shall be consistent with the NCP, to the greatest extent possible. The Department of State shall be consulted, as appropriate, prior to taking action which may affect its activities.

4.1.2 Regional contingency plans. The RRTs, working with the states, shall develop federal RCPs for each standard federal region, Alaska, Oceania in the Pacific, and the Caribbean to coordinate timely, effective response by various federal agencies and other organizations to discharges of oil. RCPs shall, as appropriate, include information on all useful facilities and resources in the region, from government, commercial, academic, and other sources. To the greatest extent possible, RCPs shall follow the format of the NCP and be coordinated with state emergency response plans, ACPs, and Title III local emergency response plans. Such coordination should be accomplished by working with the SERCs in the region covered by the RCP. RCPs shall contain lines of demarcation between the inland and coastal zones, as mutually agreed upon by the USCG and the EPA.

4.1.3 Area contingency plans. (a) Under the direction of an OSC and subject to approval by the lead agency, each Area Committee, in consultation with the appropriate RRTs, DRGs, the NSFCC, SSCs, Local Emergency Planning Committees (LEPCs), and SERCs, shall develop an ACP for its designated area. This plan, when implemented in conjunction with other provisions of the NCP, shall be adequate to remove a worst case discharge, and to mitigate or prevent a substantial threat of such a discharge, from a vessel, offshore facility, or onshore facility operating in or near the area.

(b) The areas of responsibility may include several Title III local planning districts, or parts of such districts. In developing the ACP, the OSC shall coordinate with affected SERCs and LEPCs. The ACP shall provide for a well coordinated response that is integrated and compatible to the greatest extent possible with all appropriate response plans of state, local, and non-federal entities, and especially with Title III local emergency response plans.

(c) The ACP shall include the following:

(1) A description of the area covered by the plan, including the areas of special economic or environmental importance that might be impacted by a discharge;

(2) A description in detail of the responsibilities of an owner or operator and of federal, state, and local agencies in removing a discharge, and in mitigating or preventing a substantial threat of a discharge;

(3) A list of equipment (including firefighting equipment), dispersants, or other mitigating substances and devices, and personnel available to an owner or operator and federal, state, and local agencies, to ensure an effective and immediate removal of a discharge, and to ensure mitigation or prevention of a substantial threat of a discharge (this may be provided in an appendix or by reference to other relevant emergency plans (e.g., state or LEPC plans), which include such equipment lists);

(4) A description of procedures to be followed for obtaining an expedited decision regarding the use of dispersants; and

(5) A detailed description of how the plan is integrated into other ACPs and tank vessel, offshore facility, and onshore facility response plans approved by the President, and into operating procedures of the NSFCC.

4.1.4 Fish and Wildlife and Sensitive Environments Plan annex. (a) In order to provide for coordinated, immediate and effective protection, rescue, and rehabilitation of, and minimization of risk of injury to, fish and wildlife resources and habitat, Area Committees shall incorporate into each ACP a detailed annex containing a Fish and Wildlife and Sensitive Environments Plan that is consistent with the RCP and NCP. The annex shall be prepared in consultation with the U.S. Fish and Wildlife Service (FWS) and NOAA and other interested natural resource management agencies and parties. It shall address fish and wildlife resources and their habitat, and shall include other areas considered sensitive environments in a separate section of the annex, based upon Area Committee recommendations. The annex shall provide the necessary information and procedures to immediately and effectively respond to discharges that may adversely affect fish and wildlife and their habitat and sensitive environments, including provisions for a response to a worst case discharge. Such information shall include the identification of appropriate agencies and their responsibilities, procedures to notify these agencies following a discharge or threat of a discharge; protocols for obtaining required fish and wildlife permits and other necessary permits, and provisions to ensure compatibility of annex-related activities with removal operations.

(b) The annex shall:

(1) Identify and establish priorities for fish and wildlife resources and their habitats and other important sensitive areas requiring protection from any direct or indirect effects from discharges that may occur. These effects include, but are not limited to, any seasonal or historical use, as well as all critical, special, significant or otherwise designated protected areas.

(2) Provide a mechanism to be used during a spill response for timely identification of protection priorities of those fish and wildlife resources and habitats and sensitive environmental areas that may be threatened or injured by a discharge. These include as appropriate, not only marine and freshwater species, habitats, and their food sources, but also terrestrial wildlife and their habitats that may be affected directly by onshore oil or indirectly by oil-related factors, such as loss or contamination of forage. The mechanism shall also provide for expeditious evaluation and appropriate consultations on the effects to fish and wildlife, their habitat, and other sensitive environments from the application of chemical countermeasures or other countermeasures not addressed under paragraph (3) of this section.

(3) Identify potential environmental effects on fish and wildlife, their habitat, and other sensitive environments resulting from removal actions or countermeasures, including the option of no removal. Based on this evaluation of potential environmental effects, the annex should establish priorities for application of countermeasure and removal actions to habitats within the geographic region of the ACP. The annex should establish methods to minimize the identified effects on fish and wildlife because of response activities, including, but not limited to, disturbance of sensitive areas and habitats; illegal or inadvertent taking or disturbance of fish and wildlife or specimens by response personnel; and fish and wildlife, their habitat, and environmentally sensitive areas coming in contact with various cleaning or bioremediation agents. Furthermore, the annex should identify the areas where the movement of oiled debris may pose a risk to resident, transient, or migratory fish and wildlife, and other sensitive environments and should discuss measures to be considered for removing such oiled debris in a timely fashion to reduce such risk.

(4) Provide for pre-approval of application of specific countermeasures or removal actions that, if expeditiously applied, will minimize adverse spill-induced impacts to fish and wildlife resources, their habitat, and other sensitive environments. Such pre-approval plans must be consistent with paragraphs (1) and (3) of this section and subpart J requirements of the NCP, and must have the concurrence of the natural resource trustees.

(5) Provide monitoring plan(s) to evaluate the effectiveness of different countermeasures or removal actions in protecting the environment. Monitoring should include "set-aside" or "control" areas, where no mitigative actions are taken.

(6) Identify and provide for the acquisition and utilization of necessary response capabilities for protection, rescue, and rehabilitation of fish and wildlife resources and habitat. This may include appropriately permitted private organizations and individuals with appropriate expertise and experience. The suitable organizations should be identified in cooperation with natural resource law enforcement agencies. Such capabilities shall include, but not be limited to, identification of facilities and equipment necessary for deterring sensitive fish and wildlife from entering oiled areas, and for capturing, holding, cleaning, and releasing injured wildlife. Plans for the provision of such capabilities shall ensure that there is no interference with the OSC's removal operations.

(7) Identify appropriate federal and state agency contacts and alternates responsible for coordination of fish and wildlife rescue and rehabilitation and protection of sensitive environments; identify and provide for required fish and wildlife handling and rehabilitation permits necessary under federal and state laws; and provide guidance on the implementation of law enforcement requirements included under current federal and state laws and corresponding regulations. Requirements include, but are not limited to procedures regarding the capture, transport, rehabilitation, release of wildlife exposed to or threatened by oil, and disposal of contaminated carcasses of wildlife.

(8) Identify and secure the means for providing, if needed, the minimum required Occupational Safety and Health Administration (OSHA) training for volunteers, including those who assist with injured wildlife.

(9) Evaluate the compatibility between this annex and non-federal response plans (including those of vessels, facilities and pipelines) on issues affecting fish and wildlife, their habitat, and sensitive environments.

4.2 Relation to Others Plans

4.2.1 Federal response plans. In the event of a declaration of a major disaster by the President, the FEMA may activate the Federal Response Plan (FRP). A Federal Coordinating Officer (FCO), designated by the President, may implement the FRP and coordinate and direct emergency assistance and disaster relief of impacted individuals, business, and public services under the Robert T. Stafford Disaster Relief Act. Delivery of federal assistance is facilitated through twelve functional annexes to the FRP known as Emergency Support Functions (ESFs). EPA coordinates activities under ESF #10—Hazardous Materials, which addresses preparedness and response to hazardous materials and oil incidents caused by a natural disaster or other catastrophic event. In such cases, the OSC should coordinate response activities with the FCO, through the incident-specific ESF #10 Chair, to ensure consistency with federal disaster assistance activities.

4.2.2 Tank Vessel and Facility Response Plans. (a) Under CWA section 311(j)(5), tank vessels, offshore facilities, and certain onshore facilities are required to prepare and submit response plans for review and approval by the President for the carriage, storage, and transportation of oil and hazardous substances. Separate regulations published by the appropriate federal agencies provide for required response plan development and/or approval.

(b) These plans shall be developed to coordinate responsible party actions with the OSC and the ACP response strategies, for response to oil discharges within the inland and coastal zones of the United States.

4.3 Pre-approval Authority

(a) RRTs and Area Committees shall address, as part of their planning activities, the desirability of using appropriate dispersants, surface washing agents, surface collecting agents, bioremediation agents, or miscellaneous oil spill control agents listed on the NCP Product Schedule, and the desirability of using appropriate burning agents. RCPs and ACPs shall, as appropriate, include applicable preauthorization plans and address the specific contexts in which such products should and should not be used. In meeting the provisions of this paragraph, preauthorization plans may address factors such as the potential sources and types of oil that might be spilled, the existence and location of environmentally sensitive resources that might be impacted by spilled oil, available product and storage locations, available equipment and adequately trained operators, and the available means to monitor product application and effectiveness. RRTs shall review and either approve, disapprove, or approve with modification the preauthorization plans developed by Area Committees, as appropriate. Approved preauthorization plans shall be included in the appropriate RCPs and ACPs. If the RRT representatives from EPA and the states with jurisdiction over the waters of the area to which a preauthorization plan applies and the DOC and DOI natural resource trustees approve in advance the use of certain products under specified circumstances as described in the preauthorization plan, the OSC may authorize the use of the products without obtaining the specific concurrences described in paragraphs (b) and (c) of this section.

(b) For spill situations that are not addressed by the preauthorization plans developed pursuant to paragraph (a) of this section, the OSC, with the concurrence of the EPA representative to the RRT and, as appropriate, the concurrence of the RRT representatives from the states with jurisdiction over the navigable waters threatened by the discharge, and in consultation with the DOC and DOI natural resource trustees, when practicable, may authorize the use of dispersants, surface washing agents, surface collecting agents, bioremediation agents, or miscellaneous oil spill control agents on the oil discharge, provided that the products are listed on the NCP Product Schedule.

(c) The OSC, with the concurrence of the EPA representative to the RRT and, as appropriate, the concurrence of the RRT representatives from the states with jurisdiction over the navigable waters threatened by the discharge, and in consultation with the DOC and DOI natural resource trustees, when practicable, may authorize the use of burning agents on a case-by-case basis.

(d) The OSC may authorize the use of any dispersant, surface washing agent, surface collecting agent, other chemical agent, burning agent, bioremediation agent, or miscellaneous oil spill control agent, including products not listed on the NCP Product Schedule, without obtaining the concurrence of the EPA representative to the RRT and, as appropriate, the RRT representatives from the states with jurisdiction over the navigable waters threatened by the discharge, when, in the judgment of the OSC, the use of the product is necessary to prevent or substantially reduce a hazard to human life. Whenever the OSC authorizes the use of a product pursuant to this paragraph, the OSC is to inform the EPA RRT representative and, as appropriate, the RRT representatives from the affected states and, when practicable, the DOC/DOI natural resource trustees of the use of a product, including products not on the Schedule, as soon as possible. Once the threat to human life has subsided, the continued use of a product shall be in accordance with paragraphs (a), (b), and (c) of this section.

(e) Sinking agents shall not be authorized for application to oil discharges.

(f) When developing preauthorization plans, RRTs may require the performance of supplementary toxicity and effectiveness testing of products, in addition to the test methods specified in § 300.915 and described in appendix C to part 300, due to existing site-specific or area-specific concerns.

4.4 Area response drills. The OSC periodically shall conduct drills of removal capability (including fish and wildlife response), without prior notice, in areas for which ACPs are required and under relevant tank vessel and facility response plans.

5.0 Response Operations

(a) The OSC shall direct response efforts and coordinate all other efforts at the scene of a discharge. As part of the planning and preparation for response, OSCs shall be predesignated by the regional or district head of the lead agency.

(b) The first federal official affiliated with an NRT member agency to arrive at the scene of a discharge should coordinate activities under the NCP and is authorized to initiate, in consultation with the OSC, any necessary actions normally carried out by the OSC until the arrival of the predesignated OSC. This official may initiate federal OSLTF-financed actions only as authorized by the OSC or, if the OSC is unavailable, the authorized representative of the lead agency.

(c) The OSC shall, to the extent practicable, collect pertinent facts about the discharge, such as its source and cause; the identification of responsible parties; the nature, amount, and location of discharged materials; the probable direction and time of travel of discharged materials; whether the discharge is a worst case discharge; the pathways to human and environmental

exposure; the potential impact on human health, welfare, and safety and the environment; whether the discharge poses a substantial threat to the public health or welfare; the potential impact on natural resources and property which may be affected; priorities for protecting human health and welfare and the environment; and appropriate cost documentation.

(d) The OSC's efforts shall be coordinated with other appropriate federal, state, local, and private response agencies. OSCs may designate capable persons from federal, state, or local agencies to act as their on-scene representatives. State and local governments, however, are not authorized to take actions under subpart D of the NCP that involve expenditures of the OSLTF unless an appropriate contract or cooperative agreement has been established.

(e) The OSC should consult regularly with the RRT and NSFCC, as appropriate, in carrying out the NCP and keep the RRT and NSFCC, as appropriate, informed of activities under the NCP.

(f) The OSC should evaluate incoming information and immediately advise FEMA of potential major disaster situations.

(g) The OSC is responsible for addressing worker health and safety concerns at a response scene.

(h) In those instances where a possible public health emergency exists, the OSC should notify the HHS representative to the RRT. Throughout response actions, the OSC may call upon the OSHA and HHS representative for assistance on worker health and safety issues.

(i) All federal agencies should plan for emergencies and develop procedures for dealing with oil discharges and releases of hazardous substances, pollutants, or contaminants from vessels and facilities under their jurisdiction. All federal agencies, therefore, are responsible for designating the office that coordinates response to such incidents in accordance with the NCP and applicable federal regulations and guidelines.

(j)(1) The OSC shall ensure that the natural resource trustees are promptly notified of discharges.

(2) The OSC shall coordinate all response activities with the affected natural resource trustees and shall consult with the affected trustees on the appropriate removal action to be taken.

(3) Where the OSC becomes aware that a discharge may affect any endangered or threatened species, or their habitat, the OSC shall consult with DOI, DOC, NOAA, and, if appropriate, the cognizant federal land managing agency.

(k) The OSC shall submit pollution reports (POLREPs) to the RRT and other appropriate agencies as significant developments occur during response actions, through communications networks or procedures agreed to by the RRT and covered in the RCP.

(l) The OSC should ensure that all appropriate public and private interests are kept informed and that their concerns are considered throughout a response, to the extent practicable.

5.1 Phase I—Discovery or Notification

(a) A discharge of oil may be discovered through:

(1) A report submitted by the person in charge of a vessel or facility, in accordance with statutory requirements;

(2) Deliberate search by patrols;

(3) Random or incidental observation by government agencies or the public; or

(4) Other sources.

(b) Any person in charge of a vessel or a facility shall, as soon as he or she has knowledge of any discharge from such vessel or facility in violation of section 311(b)(3) of the CWA, immediately notify the NRC. Notification shall be made to the NRC Duty Officer, HQ USCG, Washington, DC, telephone (800) 424–8802 or (202) 267–2675. If direct reporting to the NRC is not practicable, reports may be made to the USCG or EPA predesignated OSC for the geographic area where the discharge occurs. The EPA predesignated OSC may also be contacted through the regional 24-hour emergency response telephone number. All such reports shall be promptly relayed to the NRC. If it is not possible to notify the NRC or predesignated OSC immediately, reports may be made immediately to the nearest Coast Guard unit. In any event, such person in charge of the vessel or facility shall notify the NRC as soon as possible.

(c) Any other person shall, as appropriate, notify the NRC of a discharge of oil.

(d) Upon receipt of a notification of discharge, the NRC shall promptly notify the OSC. The OSC shall ensure notification of the appropriate state agency of any state which is, or may reasonably be expected to be, affected by the discharge. The OSC shall then proceed with the following phases as outlined in the RCP and ACP.

5.2 Phase II—Preliminary Assessment and Initiation of Action

(a) The OSC is responsible for promptly initiating a preliminary assessment.

(b) The preliminary assessment shall be conducted using available information, supplemented where necessary and possible by an on-scene inspection. The OSC shall undertake actions to:

(1) Evaluate the magnitude and severity of the discharge or threat to public health or welfare or the environment;

(2) Assess the feasibility of removal; and

(3) To the extent practicable, identify potentially responsible parties.

(c) Except in a case when the OSC is required to direct the response to a discharge that may pose a substantial threat to the public health or welfare (including, but not limited to fish, shellfish, wildlife, other natural resources, and the public and private beaches and shorelines of the United States), the OSC may allow the responsible party to voluntarily and promptly perform removal actions, provided the OSC determines such actions will ensure an effective and immediate removal of the discharge or mitigation or prevention of a substantial threat of a discharge. If the responsible party does conduct the removal, the OSC shall ensure adequate surveillance over whatever actions are initiated. If effective actions are not being taken to eliminate the threat, or if removal is not being properly done, the OSC should, to the extent practicable under the circumstances, so advise the responsible party. If the responsible party does not respond properly, the OSC shall take appropriate response actions and should notify the responsible party of the potential liability for federal response costs incurred by the OSC pursuant to the OPA and CWA. Where practicable, continuing efforts should be made to encourage response by responsible parties.

(1) In carrying out a response under this section, the OSC may:

(A) Remove or arrange for the removal of a discharge, and mitigate or prevent a substantial threat of a discharge, at any time;

(B) Direct or monitor all federal, state, and private actions to remove a discharge; and

(C) Remove and, if necessary, destroy a vessel discharging, or threatening to discharge, by whatever means are available.

(2) If the discharge results in a substantial threat to the public health or welfare of the United States (including, but not limited to fish, shellfish, wildlife, other natural resources, and the public and private beaches and shorelines of the United States), the OSC must direct all response efforts, as provided in section 5.3.4 of this appendix. The OSC should declare as expeditiously as practicable to spill response participants that the federal government will direct the response. The OSC may act without regard to any other provision of the law governing contracting procedures or employment of personnel by the federal government in removing or arranging for the removal of such a discharge.

(d) The OSC shall ensure that the natural resource trustees are promptly notified in the event of any discharge of oil, to the maximum extent practicable as provided in the Fish and Wildlife and Sensitive Environments Plan annex to the ACP for the area in which the discharge occurs. The OSC and the trustees shall coordinate assessments, evaluations, investigations, and planning with respect to appropriate removal actions. The OSC shall consult with the affected trustees on the appropriate removal action to be taken. The trustees will provide timely advice concerning recommended actions with regard to trustee resources potentially affected. The trustees also will assure that the OSC is informed of their activities in natural resource damage assessment that may affect response operations. When circumstances permit, the OSC shall share the use of response resources with the trustees, provided trustee activities do not interfere with response actions. The lead administrative trustee shall, as appropriate, apply to the OSC for access to federal response resources on behalf of all trustees.

5.3 Patterns of Response

5.3.1 Determinations to initiate response and special conditions.

(a) In accordance with the CWA, the Administrator of EPA or the Secretary of the department in which the USCG is operating, as appropriate, is authorized to act for the United States to take response measures deemed necessary to protect the public health or welfare or environment from discharges of oil.

(b) The Administrator of EPA or the Secretary of the department in which the

USCG is operating, as appropriate, is authorized to initiate and, in the case of a discharge posing a substantial threat to public health or welfare is required to initiate and direct, appropriate response activities when the Administrator or Secretary determines that any oil is discharged or there is a substantial threat of such discharge from any vessel or offshore or onshore facility into or on the navigable waters of the United States, on the adjoining shorelines to the navigable waters, into or on the waters of the exclusive economic zone, or that may affect natural resources belonging to, appertaining to, or under exclusive management authority of the United States.

(c) In addition to any actions taken by a state or local government, the Administrator of EPA or the Secretary of the department in which the USCG is operating may request the U.S. Attorney General to secure the relief from any person, including the owner or operator of the vessel or facility necessary to abate a threat or, after notice to the affected state, take any other action authorized by section 311 of the CWA, including issuing administrative orders, that may be necessary to protect the public health or welfare, if the Administrator or Secretary determines that there may be an imminent and substantial threat to the public health or welfare or the environment of the United States, including fish, shellfish, and wildlife, public and private property, shorelines, beaches, habitats, and other living and nonliving natural resources under the jurisdiction or control of the United States, because of an actual or threatened discharge of oil from any vessel or offshore or onshore facility into or upon the navigable waters of the United States.

(d) Response actions to remove discharges originating from operations conducted subject to the Outer Continental Shelf Lands Act shall be in accordance with the NCP.

(e) Where appropriate, when a discharge involves radioactive materials, the lead or support federal agency shall act consistent with the notification and assistance procedures described in the appropriate Federal Radiological Plan. For the purpose of the NCP, the Federal Radiological Emergency Response Plan (FRERP) (50 FR 46542, November 8, 1985) is the appropriate plan. Most radiological discharges and releases do not result in FRERP activation and should be handled in accordance with the NCP. However, releases from nuclear incidents subject to requirements for financial protection established by the Nuclear Regulatory Commission under the Price-Anderson amendments (section 170) of the Atomic Energy Act are specifically excluded from CERCLA and NCP requirements.

(f) Removal actions involving nuclear weapons should be conducted in accordance with the joint Department of Defense, Department of Energy, and FEMA Agreement for Response to Nuclear Incidents and Nuclear Weapons Significant Incidents (January 8, 1981).

(g) If the situation is beyond the capability of state and local governments and the statutory authority of federal agencies, the President may, under the Disaster Relief Act of 1974, act upon a request by the Governor and declare a major disaster or emergency and appoint a FCO to coordinate all federal disaster assistance activities. In such cases, the OSC would continue to carry out OSC responsibilities under the NCP, but would coordinate those activities with the FCO to ensure consistency with other federal disaster assistance activities.

(h) In the event of a declaration of a major disaster by the President, FEMA may activate the FRP. An FCO, designated by the President, may implement the FRP and coordinate and direct emergency assistance and disaster relief of impacted individuals, business, and public services under the Robert T. Stafford Disaster Relief Act. Delivery of federal assistance is facilitated through twelve functional annexes to the FRP known as ESFs. EPA coordinates activities under ESF #10—Hazardous Materials, which addresses preparedness and response to hazardous materials and oil incidents caused by a natural disaster or other catastrophic event. In such cases, the OSC/RPM should coordinate response activities with the FCO, through the incident-specific ESF #10 Chair, to ensure consistency with federal disaster assistance activities.

5.3.2 General pattern of response. (a) When the OSC receives a report of a discharge, actions normally should be taken in the following sequence:

(1) Investigate the report to determine pertinent information such as the threat posed to public health or welfare or the environment, the type and quantity of polluting material, and the source of the discharge.

(2) Officially classify the size (i.e., minor, medium, major) and type (i.e., substantial threat to the public health or welfare, worst case discharge) of the discharge and determine the course of action to be followed to ensure effective and immediate removal, mitigation, or prevention of the discharge. Some discharges that are classified as a substantial threat to the public health or welfare may be further classified as a spill of national significance by the Administrator of EPA or the Commandant of the USCG. The appropriate course of action may be prescribed in 5.3.4, 5.3.5, and 5.3.6 of this appendix.

(A) When the reported discharge is an actual or potential major discharge, immediately notify the RRT, including the affected state, if appropriate, and the NRC, and ensure notification of the natural resource trustees.

(B) When the investigation shows that an actual or potential medium discharge exists, the OSC shall recommend activation of the RRT, if appropriate.

(C) When the investigation shows that an actual or potential minor discharge exists, the OSC shall monitor the situation to ensure that proper removal action is being taken.

(3) If the OSC determines that effective and immediate removal, mitigation, or prevention of a discharge can be achieved by private party efforts, and where the discharge does not pose a substantial threat to the public health or welfare, determine whether the responsible party or other person is properly carrying out removal. Removal is being done properly when:

(A) The cleanup is fully sufficient to effectively and immediately remove, minimize, or mitigate threat(s) to public health and welfare and the environment. Removal efforts are improper to the extent that federal efforts are necessary to remove, minimize further, or mitigate those threats; and

(B) The removal efforts are in accordance with applicable regulations, including the NCP.

(4) Where appropriate, determine whether a state or political subdivision thereof has the capability to carry out any or all removal actions. If so, the OSC may arrange funding to support these actions.

(5) Ensure prompt notification of the trustees of affected natural resources in accordance with the applicable RCP and ACP.

(b) Removal shall be considered complete when so determined by the OSC in consultation with the Governor or Governors of the affected states. When the OSC considers removal complete, OSLTF removal funding shall end. This determination shall not preclude additional removal actions under applicable state law.

5.3.3 Containment, countermeosures, and cleanup. (a) Defensive actions shall begin as soon as possible to prevent, minimize, or mitigate threat(s) to the public health or welfare or the environment. Actions may include but are not limited to: Analyzing water samples to determine the source and spread of the oil; controlling the source of discharge; source and spread control or salvage operations; placement of physical barriers to deter the spread of the oil and to protect natural resources and sensitive ecosystems; measuring and sampling; control of the water discharged from upstream impoundment; and the use of chemicals and other materials in accordance with subpart J of part 300 of the NCP to restrain the spread of the oil and mitigate its effects. The ACP should be consulted for procedures to be followed for obtaining an expedited decision regarding the use of dispersants and other products listed on the NCP Product Schedule.

(b) As appropriate, actions shall be taken to recover the oil or mitigate its effects. Of the numerous chemical or physical methods that may be used, the chosen methods shall be the most consistent with protecting public health and welfare and the environment. Sinking agents shall not be used.

(c) Oil and contaminated materials recovered in cleanup operations shall be disposed of in accordance with the RCP, ACP, and any applicable laws, regulations, or requirements. RRT and ACP guidelines may identify the disposal plans to be followed during an oil spill response and may address: The sampling, testing, and classifying of recovered oil and oiled debris; the segregation and stockpiling of recovered oil and oiled debris; prior state disposal approvals and permits; and the routes; methods (e.g. recycle/reuse, on-site burning, incineration, landfilling, etc.); and sites for the disposal of collected oil, oiled debris, and animal carcasses.

5.3.4 Response to a substantial threat to the public health or welfare. (a) The OSC

shall determine whether a discharge results in a substantial threat to public health or welfare (including, but not limited to, fish, shellfish, wildlife, other natural resources, the public and private beaches, and shorelines of the United States). Factors to be considered by the OSC in making this determination include, but are not limited to, the size of the discharge, the character of the discharge, and the nature of the threat to public health or welfare. Upon obtaining such information, the OSC shall conduct an evaluation of the threat posed, based on the OSC's experience in assessing other discharges and consultation with senior lead agency officials and readily available authorities on issues outside the OSC's technical expertise.

(b) If the investigation by the OSC shows that the discharge poses or may present a substantial threat to public health or welfare, the OSC shall direct all federal, state, or private actions to remove the discharge or to mitigate or prevent the threat of such a discharge, as appropriate. In directing the response in such cases, the OSC may act without regard to any other provision of law governing contracting procedures or employment of personnel by the federal government to:

(1) Remove or arrange for the removal of the discharge;

(2) Mitigate or prevent the substantial threat of the discharge; and

(3) Remove and, if necessary, destroy a vessel discharging, or threatening to discharge, by whatever means are available.

(c) In the case of a substantial threat to the public health or welfare, the OSC shall:

(1) Assess opportunities for the use of various special teams and other assistance, including the use of the services of the NSFCC, as appropriate;

(2) Request immediate activation of the RRT; and

(3) Take whatever additional response actions are deemed appropriate, including but not limited to implementation of the ACP or relevant tank vessel or facility response plan.

(d) When requested by the OSC, the lead agency or RRT shall dispatch appropriate personnel to the scene of the discharge to assist the OSC. This assistance may include technical support in the agency's areas of expertise and disseminating information to the public. The lead agency shall ensure that a contracting officer is available on scene, at the request of the OSC.

5.3.5 Enhanced activities during a spill of national significance. (a) A discharge may be classified as a SONS by the Administrator of EPA for discharges occurring in the inland zone and the Commandant of the USCG for discharges occurring in the coastal zone.

(b) For a SONS in the inland zone, the EPA Administrator may name a senior Agency official to assist the OSC in: (1) Communicating with affected parties and the public; and (2) coordinating federal, state, local, and international resources at the national level. This strategic coordination will involve, as appropriate, the NRT, RRT(s), the Governor(s) of affected state(s), and the mayor(s) or other chief executive(s) of local government(s).

(c) For a SONS in the coastal zone, the USCG Commandant may name a National Incident Commander (NIC) who will assume the role the OSC in: (1) Communicating with affected parties and the public; and (2) coordinating federal, state, local, and international resources at the national level. This strategic coordination shall involve, as appropriate, the NRT, RRT(s), the Governor(s) of affected state(s), and the mayor(s) or other chief executive(s) of local government(s).

5.3.6 Response to worst case discharges. (a) If the investigation by the OSC shows that a discharge is a worst case discharge or there is a substantial threat of such a discharge, the OSC shall:

(1) Notify the NSFCC;

(2) Require, where applicable, implementation of the worst case portion of an approved tank vessel or facility response plan;

(3) Implement the worst case portion of the ACP, if appropriate; and

(4) Take whatever additional response actions are deemed appropriate.

(b) Under the direction of the OSC, the NSFCC shall coordinate use of private and public personnel and equipment, including strike teams, to remove a worst case discharge and mitigate or prevent a substantial threat of such a discharge.

5.3.7 Multi-regional responses. (a) If a discharge moves from the area covered by one ACP or RCP into another area, the authority for response actions should likewise shift. If a discharge affects areas covered by two or more ACPs or RCPs, the response mechanisms of each applicable plan may be activated. In this case, response actions of all regions concerned shall be fully coordinated as detailed in the RCPs and ACPs.

(b) There shall be only one OSC at any time during the course of a response operation. Should a discharge affect two or more areas, EPA, the USCG, DOD, DOE, or other lead agency, as appropriate, shall give prime consideration to the area vulnerable to the greatest threat, in determining which agency should provide the OSC. The RRT shall designate the OSC if the RRT member agencies who have response authority within the affected areas are unable to agree on the designation. The NRT shall designate the OSC if members of one RRT or two adjacent RRTs are unable to agree on the designation.

5.3.8 Worker health and safety. (a) Response actions under the NCP shall comply with the provisions for response action worker safety and health in 29 CFR 1910.120. The national response system meets the requirements of 29 CFR 1910.120 concerning use of an incident command system.

(b) In a response action taken by a responsible party, the responsible party must assure that an occupational safety and health program consistent with 29 CFR 1910.120 is made available for the protection of workers at the response site.

(c) In a response taken under the NCP by a lead agency, an occupational safety and health program should be made available for the protection of workers at the response site, consistent with, and to the extent required by, 29 CFR 1910.120. Contracts relating to a response action under the NCP should contain assurances that the contractor at the response site will comply with this program and with any applicable provisions of the Occupational Safety and Health Act of 1970 (OSH Act) and state laws with plans approved under section 18 of the OSH Act.

(d) When a state, or political subdivision of a state, without an OSHA-approved state plan is the lead agency for response, the state or political subdivision must comply with standards in 40 CFR part 311, promulgated by the EPA pursuant to section 126(f) of the Superfund Amendments and Reauthorization Act of 1986 (SARA).

(e) Requirements, standards, and regulations of the OSH Act and of state OSH laws not directly referenced in paragraphs (a) through (d) of this section, must be complied with where applicable. Federal OSH Act requirements include, among other things, Construction Standards (29 CFR part 1926), General Industry Standards (29 CFR part 1910), and the general duty requirement of section 5(a)(1) of the OSH Act (29 U.S.C. 654(a)(1)). No action by the lead agency with respect to response activities under the NCP constitutes an exercise of statutory authority within the meaning of section 4(b)(1) of the OSH Act. All governmental agencies and private employers are directly responsible for the health and safety of their own employees.

5.4 Disposal

Oil recovered in cleanup operations shall be disposed of in accordance with the RCP, ACP, and any applicable laws, regulations, or requirements. RRT and ACP guidelines may identify the disposal plans to be followed during an oil spill response and may address: The sampling, testing, and classifying of recovered oil and oiled debris; the segregation and stockpiling of recovered oil and oiled debris; prior state disposal approvals and permits; and the routes; methods (e.g. recycle/reuse, on-site burning, incineration, landfilling, etc.); and sites for the disposal of collected oil, oiled debris, and animal carcasses.

5.5 Natural Resource Trustees

5.5.1 Damage assessment. (a) Upon notification or discovery of injury to, destruction of, loss of, or threat to natural resources, trustees may, pursuant to section 1006 of the OPA, take the following actions as appropriate:

(1) Conduct a preliminary survey of the area affected by the discharge to determine if trust resources under their jurisdiction are, or potentially may be, affected;

(2) Cooperate with the OSC in coordinating assessments, investigations, and planning;

(3) Carry out damage assessments; or

(4) Devise and carry out a plan for restoration, rehabilitation, replacement, or acquisition of equivalent natural resources. In assessing damages to natural resources, the federal, state, and Indian tribe trustees have the option of following the procedures for natural resource damage assessments located at 43 CFR part 11.

(b) Upon notification or discovery of injury to, destruction of, loss of, or loss of use of, natural resources, or the potential for such,

resulting from a discharge of oil occurring after August 18, 1990, the trustees, pursuant to section 1006 of the OPA, are to take the following actions:

(1) In accordance with OPA section 1006(e), determine the need for assessment of natural resource damages, collect data necessary for a potential damage assessment, and, where appropriate, assess damages to natural resources under their trusteeship; and

(2) As appropriate, and subject to the public participation requirements of OPA section 1006(c), develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent, of the natural resources under their trusteeship.

(c)(1) The trustees, through the lead administrative trustee, shall provide timely advice on recommended actions concerning trustee resources that are potentially affected by a discharge of oil. This may include providing assistance to the OSC in identifying/recommending pre-approved response techniques and in predesignating shoreline types and areas in ACPs.

(2) The trustees shall assure, through the lead administrative trustee, that the OSC is informed of their activities regarding natural resource damage assessment that may affect response operations in order to assure coordination and minimize any interference with such operations.

(3) The OSC deploys federal response resources, including but not limited to aircraft, vessels, and booms to contain and remove discharged oil. When circumstances permit, the OSC shall share the use of federal response resources with the trustees, providing trustee activities do not interfere with response actions. The lead administrative trustee shall, as appropriate, apply to the OSC for access to federal response resources on behalf of all trustees.

(d) The authority of federal trustees includes, but is not limited to the following actions:

(1) Requesting that the Attorney General seek compensation from the responsible parties for the damages assessed and for the costs of an assessment and of restoration planning; and

(2) Participating in negotiations between the United States and potentially responsible parties (PRPs) to obtain PRP-financed or PRP-conducted assessments and restorations for injured resources or protection for threatened resources and to agree to covenants not to sue, where appropriate.

(3) Initiating damage assessments, as provided in OPA section 6002.

(e) Actions which may be taken by any trustee pursuant to section 311(f)(5) of the CWA or section 1006 of the OPA include, but are not limited to, any of the following:

(1) Requesting that an authorized agency issue an administrative order or pursue injunctive relief against the parties responsible for the discharge; or

(2) Requesting that the lead agency remove, or arrange for the removal of any oil from a contaminated medium pursuant to section 311 of the CWA.

5.5.2 Lead administrative trustee. The lead administrative trustee is a federal natural resource trustee who is designated on an incident-by-incident basis and chosen by the other federal trustees whose natural resources are affected by the incident. The lead administrative trustee facilitates effective and efficient communication between the OSC and the other federal natural resource trustees during response operations and is responsible for applying to the OSC for access to federal response resources on behalf of all trustees for initiation of damage assessment and claims for injuries to natural resources.

5.5.3 On-scene Coordinator (OSC) coordination. (a) The OSC shall ensure that the natural resource trustees are promptly notified in the event of any discharge of oil, to the maximum extent practicable, as provided in the Fish and Wildlife and Sensitive Environments Plan annex to the ACP for the area in which the discharge occurs. The OSC and the trustees shall coordinate assessments, evaluations, investigations, and planning with respect to appropriate removal actions. The OSC shall consult with the affected trustees on the appropriate removal action to be taken.

(b) The trustees will provide timely advice concerning recommended actions with regard to trustee resources that are potentially affected. This may include providing assistance to the OSC in identifying/recommending pre-approved response techniques, and in predesignating shoreline types and areas in ACPs.

(c) The trustees also will assure that the OSC is informed of their activities regarding natural resource damage assessment that may affect response operations.

5.5.4 Dissemination of Information. (a) When an incident occurs, it is imperative to give the public prompt, accurate information on the nature of the incident and the actions underway to mitigate the damage. OSCs and community relations personnel should ensure that all appropriate public and private interests are kept informed and that their concerns are considered throughout a response. They should coordinate with available public affairs/community relations resources to carry out this responsibility.

(b) An on-scene news office may be established to coordinate media relations and to issue official federal information on an incident. Whenever possible, it will be headed by a representative of the lead agency. The OSC determines the location of the on-scene news office, but every effort should be made to locate it near the scene of the incident. If a participating agency believes public interest warrants the issuance of statements and an on-scene news office has not been established, the affected agency should recommend its establishment. All federal news releases or statements by participating agencies should be cleared through the OSC. Information dissemination relating to natural resource damage assessment activities shall be coordinated through the lead administrative trustee. The designated lead administrative trustee may assist the OSC by disseminating information on issues relating to damage assessment activities. Following termination of the removal activity, information dissemination on damage assessment activities shall be through the lead administrative trustee.

5.5.5 Responsibilities of trustees. (a) Where there are multiple trustees, because of coexisting or contiguous natural resources or concurrent jurisdictions, they should coordinate and cooperate in carrying out these responsibilities.

(b) Trustees are responsible for designating to the RRTs and the Area Committees, for inclusion in the RCP and the ACP, appropriate contacts to receive notifications from the OSCs of discharges.

(c)(1) Upon notification or discovery of injury to, destruction of, loss of, or threat to natural resources, trustees may, pursuant to section 311(f)(5) of the CWA, take the following or other actions as appropriate:

(A) Conduct a preliminary survey of the area affected by the discharge or release to determine if trust resources under their jurisdiction are, or potentially may be, affected;

(B) Cooperate with the OSC in coordinating assessments, investigations, and planning;

(C) Carry out damage assessments; or

(D) Devise and carry out a plan for restoration, rehabilitation, replacement, or acquisition of equivalent natural resources. In assessing damages to natural resources, the federal, state, and Indian tribe trustees have the option of following the procedures for natural resource damage assessments located at 43 CFR part 11.

(2) Upon notification or discovery of injury to, destruction of, loss of, or loss of use of, natural resources, or the potential for such, resulting from a discharge of oil occurring after August 18, 1990, the trustees, pursuant to section 1006 of the OPA, are to take the following actions:

(A) In accordance with OPA section 1006(e), determine the need for assessment of natural resource damages, collect data necessary for a potential damage assessment, and, where appropriate, assess damages to natural resources under their trusteeship; and

(B) As appropriate, and subject to the public participation requirements of OPA section 1006(c), develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent, of the natural resources under their trusteeship;

(3)(A) The trustees, through the lead administrative trustee, shall provide timely advice on recommended actions concerning trustee resources that are potentially affected by a discharge of oil. This may include providing assistance to the OSC in identifying/recommending pre-approved response techniques and in predesignating shoreline types and areas in ACPs.

(B) The trustees shall assure, through the lead administrative trustee, that the OSC is informed of their activities regarding natural resource damage assessment that may affect response operations in order to assure coordination and minimize any interference with such operations.

(C) When circumstances permit, the OSC shall share the use of federal response resources (including but not limited to aircraft, vessels, and booms to contain and remove discharged oil) with the trustees, providing trustee activities do not interfere with response actions. The lead administrative trustee shall, as appropriate,

apply to the OSC for access to federal response resources on behalf of all trustees for initiation of damage assessment and claims for injuries to natural resources.

(d) The authority of federal trustees includes, but is not limited to the following actions:

(1) Requesting that the Attorney General seek compensation from the responsible parties for the damages assessed and for the costs of an assessment and of restoration planning; and

(2) Initiating damage assessments, as provided in OPA section 6002.

(e) Actions which may be taken by any trustee pursuant to section 1006 of the OPA include, but are not limited to, any of the following:

(1) Requesting that an authorized agency issue an administrative order or pursue injunctive relief against the parties responsible for the discharge or release; or

(2) Requesting that the lead agency remove, or arrange for the removal of, or provide for remedial action with respect to, any oil from a contaminated medium pursuant to section 311 of CWA.

5.6 Oil Spill Liability Trust Fund

5.6.1 Funding. (a) The OSLTF is available under certain circumstances to fund removal of oil performed under section 311 of the CWA. Those circumstances and the procedures for accessing the OSLTF are described in 33 CFR subchapter M. The responsible party is liable for costs of federal removal and damages in accordance with section 311(f) of the CWA, section 1002 of the OPA, and other federal laws.

(b) Response actions other than removal, such as scientific investigations not in support of removal actions or law enforcement, shall be provided by the agency with legal responsibility for those specific actions.

(c) The funding of a response to a discharge from a federally owned, operated, or supervised facility or vessel is the responsibility of the owning, operating, or supervising agency.

(d) The following agencies have funds available for certain discharge removal actions:

(1) EPA may provide funds to begin timely discharge removal actions when the OSC is an EPA representative.

(2) DOD has two specific sources of funds that may be applicable to an oil discharge under appropriate circumstances. This does not consider military resources that might be made available under specific conditions.

(i) Funds required for removal of a sunken vessel or similar obstruction of navigation are available to the Corps of Engineers through Civil Works Appropriations, Operations and Maintenance, General.

(ii) The U.S. Navy (USN) may conduct salvage operations contingent on defense operational commitments, when funded by the requesting agency. Such funding may be requested on a direct cite basis.

(3) Pursuant to Title I of the OPA, the state or states affected by a discharge of oil may act where necessary to remove such discharge. Pursuant to 33 CFR subchapter M, states may be reimbursed from the OSLTF for the reasonable costs incurred in such a removal.

5.6.2 Claims. (a) Claims are authorized to be presented to the OSLTF under section 1013 of the OPA of 1990, for certain uncompensated removal costs or uncompensated damages resulting from the discharge, or substantial threat of discharge, of oil from a vessel or facility into or upon the navigable waters, adjoining shorelines, or exclusive economic zone of the United States.

(b) Anyone desiring to file a claim against the OSLTF may obtain general information on the procedure for filing a claim from the Director, National Pollution Funds Center, Suite 1000, 4200 Wilson Boulevard, Arlington, Virginia, 22203–1804, (703) 235–4756.

5.7 Documentation and cost recovery

All OSLTF users need to collect and maintain documentation to support all actions taken under the CWA. In general, documentation shall be sufficient to support full cost recovery for resources utilized and shall identify the source and circumstances of the incident, the responsible party or parties, and impacts and potential impacts to public health and welfare and the environment. Documentation procedures are contained in 33 CFR subchapter M.

(b) When appropriate, documentation shall also be collected for scientific understanding of the environment and for research and development of improved response methods and technology. Funding for these actions is restricted by section 6002 of the OPA.

(c) As requested by the NRT or RRT, the OSC shall submit to the NRT or RRT a complete report on the removal operation and the actions taken. The RRT shall review the OSC report with its comments or recommendations within 30 days after the RRT has received the OSC report. The OSC report shall record the situation as it developed, the actions taken, the resources committed, and the problems encountered.

(d) OSCs shall ensure the necessary collection and safeguarding of information, samples, and reports. Samples and information shall be gathered expeditiously during the response to ensure an accurate record of the impacts incurred. Documentation materials shall be made available to the trustees of affected natural resources. The OSC shall make available to the trustees of affected natural resources information and documentation in the OSC's possession that can assist the trustees in the determination of actual or potential natural resource injuries.

(e) Information and reports obtained by the EPA or USCG OSC shall be transmitted to the appropriate offices responsible for follow-up actions.

5.8 National response priorities

(a) Safety of human life must be given the top priority during every response action. This includes any search and rescue efforts in the general proximity of the discharge and the insurance of safety of response personnel.

(b) Stabilizing the situation to preclude the event from worsening is the next priority. All efforts must be focused on saving a vessel that has been involved in a grounding, collision, fire, or explosion, so that it does not compound the problem. Comparable measures should be taken to stabilize a situation involving a facility, pipeline, or other source of pollution. Stabilizing the situation includes securing the source of the spill and/or removing the remaining oil from the container (vessel, tank, or pipeline) to prevent additional oil spillage, to reduce the need for follow-up response action, and to minimize adverse impact to the environment.

(c) The response must use all necessary containment and removal tactics in a coordinated manner to ensure a timely, effective response that minimizes adverse impact to the environment.

(d) All parts of this national response strategy should be addressed concurrently, but safety and stabilization are the highest priorities. The OSC should not delay containment and removal decisions unnecessarily and should take actions to minimize adverse impact to the environment that begin as soon as a discharge occurs, as well as actions to minimize further adverse environmental impact from additional discharges.

(e) The priorities set forth in this section are broad in nature, and should not be interpreted to preclude the consideration of other priorities that may arise on a site-specific basis.

6.0 Response coordination

6.1 Nongovernmental participation

(a) Industry groups, academic organizations, and others are encouraged to commit resources for response operations. Specific commitments should be listed in the RCP and ACP. Those entities required to develop tank vessel and facility response plans under CWA section 311(j) must be able to respond to a worst case discharge to the maximum extent practicable, and should commit sufficient resources to implement other aspects of those plans.

(b) The technical and scientific information generated by the local community, along with information from federal, state, and local governments, should be used to assist the OSC in devising response strategies where effective standard techniques are unavailable. Such information and strategies will be incorporated into the ACP, as appropriate. The SSC may act as liaison between the OSC and such interested organizations.

(c) ACPs shall establish procedures to allow for well organized, worthwhile, and safe use of volunteers, including compliance with requirements regarding worker health and safety. ACPs should provide for the direction of volunteers by the OSC or by other federal, state, or local officials knowledgeable in contingency operations and capable of providing leadership. ACPs also should identify specific areas in which volunteers can be used, such as beach surveillance, logistical support, and bird and wildlife treatment. Unless specifically requested by the OSC, volunteers generally should not be used for physical removal or remedial activities. If, in the judgment of the OSC, dangerous conditions exist, volunteers shall be restricted from on-scene operations.

(d) Nongovernmental participation must be in compliance with the requirements of subpart H of the NCP if any recovery of costs will be sought.

6.2 Natural resource trustees

6.2.1 Federal agencies. (a) The President is required to designate in the NCP those federal officials who are to act on behalf of the public as trustees for natural resources. These designated federal officials shall act pursuant to section 1006 of the OPA. *Natural resources* means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled (hereinafter referred to as "managed or controlled") by the United States, including the resources of the exclusive economic zone.

(b) The following individuals shall be the designated trustee(s) for general categories of natural resources. They are authorized to act pursuant to section 1006 of the OPA when there is injury to, destruction of, loss of, or threat to natural resources as a result of a discharge of oil. Notwithstanding the other designations in this section, the Secretaries of Commerce and the Interior shall act as trustees of those resources subject to their respective management or control.

(1) The Secretary of Commerce shall act as trustee for natural resources managed or controlled by DOC or by other federal agencies and that are found in, or under, or using waters navigable by deep draft vessels, in, under, or using tidally influenced waters or waters of the contiguous zone, the exclusive economic zone, the outer continental shelf, and in upland areas serving as habitat for marine mammals and other protected species. However, before the Secretary takes an action with respect to an affected resource under the management or protection of another federal agency, he shall, whenever practicable, seek to obtain concurrence of that other federal agency. Examples of the Secretary's trusteeship include marine fishery resources and their supporting ecosystems; most anadromous fish; certain endangered species and marine mammals; and the resources of National Marine Sanctuaries and National Estuarine Research Reserves.

(2) The Secretary of the Interior shall act as trustee for natural resources managed or controlled by DOI. Examples of the Secretary's trusteeship include migratory birds; certain anadromous fish, endangered species, and marine mammals; federally owned minerals; and certain federally managed water resources. The Secretary of the Interior shall also be trustee for those natural resources for which an Indian tribe would otherwise act as trustee in those cases where the United States acts on behalf of the Indian tribe.

(3) Secretary for the land managing agency. For natural resources located on, over, or under land administered by the United States, the trustee shall be the head of the department in which the land managing agency is found. The trustees for the principal federal land managing agencies are the Secretaries of DOI, USDA, DOD, and DOE.

(4) Head of Authorized Agencies. For natural resources located within the United States but not otherwise described in this section, the trustee is the head of the federal agency or agencies authorized to manage or control those resources.

6.2.2 State. (a) State trustees shall act on behalf of the public as trustees for natural resources within the boundary of a state or belonging to, managed by, controlled by, or appertaining to such state. For the purposes of section 6.1, the definition of the term "state" does not include Indian tribes.

(b) The Governor of a state is encouraged to designate a lead state trustee to coordinate all state trustee responsibilities with other trustee agencies and with response activities of the RRT and OSC. The state's lead trustee would designate a representative to serve as a contact with the OSC. This individual should have ready access to appropriate state officials with environmental protection, emergency response, and natural resource responsibilities. The EPA Administrator or USCG Commandant or their designees may appoint the lead state trustee as a member of the Area Committee. Response strategies should be coordinated between the state and other trustees and the OSC for specific natural resource locations in an inland or coastal zone, and should be included in the Fish and Wildlife and Sensitive Environments Plan annex of the ACP.

6.2.3 Indian tribes. The tribal chairmen (or heads of the governing bodies) of Indian tribes, as defined in section 1.5, or a person designated by the tribal officials, shall act on behalf of the Indian tribes as trustees for the natural resources belonging to, managed by, controlled by, or appertaining to such Indian tribe, or held in trust for the benefit of such Indian tribe, or belonging to a member of such Indian tribe, if such resources are subject to a trust restriction on alienation. When the tribal chairman or head of the tribal governing body designates another person as trustee, the tribal chairman or head of the tribal governing body shall notify the President of such designation.

6.2.4 Foreign trustees. Pursuant to section 1006 of the OPA, foreign trustees shall act on behalf of the head of a foreign government as trustees for natural resources belonging to, managed by, controlled by, or appertaining to such foreign government.

6.3 Federal agencies

(a) Federal agencies listed in this appendix have duties established by statute, executive order, or Presidential directive which may apply to federal response actions following, or in prevention of, the discharge of oil. Some of these agencies also have duties relating to the restoration, rehabilitation, replacement, or acquisition of equivalent natural resources injured or lost as a result of such discharge. The NRT, RRT, and Area Committee organizational structure, and the NCP, RCPs, and ACPs provide for agencies to coordinate with each other in carrying out these duties.

(b) Federal agencies may be called upon by an OSC during response planning and implementation to provide assistance in their respective areas of expertise, consistent with the agencies' capabilities and authorities.

(c) In addition to their general responsibilities, federal agencies should:

(1) Make necessary information available to the Secretary of the NRT, RRTs, Area Committees, and OSCs;

(2) Provide representatives to the NRT and RRTs and otherwise assist RRTs and OSCs, as necessary, in formulating RCPs and ACPs; and

(3) Inform the NRT, RRTs, and Area Committees consistent with national security considerations, of changes in the availability of resources that would affect the operations implemented under the NCP.

(d) All federal agencies are encouraged to report discharges of oil from vessels or facilities under their jurisdiction or control to the NRC.

6.4 Other federal agencies

6.4.1 Department of Commerce. (a) The DOC, through NOAA, provides scientific support for response and contingency planning in coastal and marine areas, including assessments of the hazards that may be involved, predictions of movement and dispersion of oil through trajectory modeling, and information on the sensitivity of coastal environments to oil and associated cleanup and mitigation methods; provides expertise on living marine resources and their habitats, including endangered species, marine mammals and National Marine Sanctuary and National Estuarine Research Reserve ecosystems; and provides information on actual and predicted meteorological, hydrological, ice, and oceanographic conditions for marine, coastal, and inland waters, and tide and circulation data for coastal and territorial waters and for the Great Lakes. In addition to this expertise, NOAA provides SSCs in the coastal zone, as described under section 3.3.3 of this appendix, Special teams.

6.4.2 Department of Justice. The DOJ can provide expert advice on complicated legal questions arising from discharges, and federal agency responses. In addition, the DOJ represents the federal government, including its agencies, in litigation relating to such discharges. Other legal issues or questions shall be directed to the federal agency counsel for the agency providing the OSC for the response.

6.4.3 Department of Defense. The DOD has responsibility to take all action necessary with respect to discharges where either the discharge is on, or the sole source of a discharge is from, any facility or vessel under the jurisdiction, custody, or control of DOD. DOD may also, consistent with its operational requirements and upon request of the OSC, provide locally deployed USN oil spill response equipment and provide assistance to other federal agencies upon request. The following two branches of DOD have particularly relevant expertise:

(a) The United States Army Corps of Engineers has specialized equipment and personnel for maintaining navigation channels, for removing navigation obstructions, for accomplishing structural repairs, and for performing maintenance to hydropower electric generating equipment. The Corps can also provide design services, perform construction, and provide contract

writing and contract administrative services for other federal agencies.

(b) The USN is the federal agency most knowledgeable and experienced in ship salvage, shipboard damage control, and diving. The USN has an extensive array of specialized equipment and personnel available for use in these areas as well as specialized containment, collection, and removal equipment specifically designed for salvage-related and open-sea pollution incidents.

6.4.4 Department of Health and Human Services. The HHS assists with the assessment, preservation, and protection of human health and helps ensure the availability of essential human services. HHS provides technical and nontechnical assistance in the form of advice, guidance, and resources to other federal agencies as well as state and local governments.

The principal HHS response comes from the U.S. Public Health Service and is coordinated from the Office of the Assistant Secretary for Health, and various Public Health Service regional offices. Within the Public Health Service, the primary response to a hazardous materials emergency comes from the Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control (CDC). Both ATSDR and CDC have a 24-hour emergency response capability wherein scientific and technical personnel are available to provide technical assistance to the lead federal agency and state and local response agencies on human health threat assessment and analysis, and exposure prevention and mitigation. Such assistance is used for situations requiring evacuation of affected areas, human exposure to hazardous materials, and technical advice on mitigation and prevention. CDC takes the lead during petroleum releases regulated under the CWA and OPA while ATSDR takes the lead during chemical releases under CERCLA. Both agencies are mutually supportive.

Other Public Health Service agencies involved in support during hazardous materials incidents either directly or through ATSDR/CDC include the Food and Drug Administration, the Health Resources and Services Administration, the Indian Health Service, and the National Institutes of Health.

Statutory authority for HHS/National Institutes for Environmental Health Sciences (NIEHS) involvement in hazardous materials accident prevention is non-regulatory in nature and focused on two primary areas for preventing community and worker exposure to hazardous materials releases: (1) Worker safety training and (2) basic research activities. Under section 126 of the SARA, NIEHS is given statutory authority for supporting development of curricula and model training programs for waste workers and chemical emergency responders. Under section 118(b) of the Hazardous Materials Transportation and Uniform Safety Act, NIEHS also administers the Hazmat Employee Training Program to prepare curricula and training for hazardous materials transportation workers. In the basic research arena, NIEHS is authorized under section 311 of SARA to conduct a hazardous substance basic research and training program to evaluate toxic effects and assess human health risks from accidental releases of hazardous materials. Under Title IX, section 901(h) of the Clean Air Act Amendments, NIEHS also is authorized to conduct basic research on air pollutants, as well as train physicians in environmental health. Federal research and training in hazardous materials release prevention represents an important non-regulatory activity and supplements ongoing private sector programs.

6.4.5 Department of the Interior. The DOI may be contacted through Regional Environmental Officers, who are the designated members of RRTs. Department land managers have jurisdiction over the national park system, national wildlife refuges and fish hatcheries, the public lands, and certain water projects in western states. In addition, bureaus and offices have relevant expertise as follows:

(a) FWS: Anadromous and certain other fishes and wildlife, including endangered and threatened species, migratory birds, and certain marine mammals; waters and wetlands; effects on natural resources; and laboratory/research facilities.

(b) Geological Survey: Geology, hydrology (ground water and surface water), and natural hazards.

(c) Bureau of Land Management: Minerals, soils, vegetation, wildlife, habitat, archaeology, and wilderness.

(d) Minerals Management Service: Oversight of offshore oil and gas exploration and production facilities and associated pipeline facilities under the Outer Continental Shelf Lands Act and the CWA; and oil spill response technology research.

(e) National Park Service: General biological, natural, and cultural resource managers to evaluate, measure, monitor, and contain threats to park system lands and resources; archaeological and historical expertise in protection, preservation, evaluation, impact mitigation, and restoration of cultural resources; emergency personnel.

(f) Bureau of Reclamation: Operation and maintenance of water projects in the West; engineering and hydrology; and reservoirs.

(g) Bureau of Indian Affairs: Coordination of activities affecting Indian lands; assistance in identifying Indian tribal government officials.

(h) Office of Territorial Affairs: Assistance in implementing the NCP in American Samoa, Guam, the Pacific Island Governments, the Northern Mariana Islands, and the Virgin Islands.

6.4.6 Department of Labor. The DOL, through OSHA and the states operating plans approved under section 18 of the OSH Act, has authority to conduct safety and health inspections of hazardous waste sites to assure that employees are being protected and to determine if the site is in compliance with:

(a) Safety and health standards and regulations promulgated by OSHA (or the states) in accordance with section 126 of SARA and all other applicable standards; and

(b) Regulations promulgated under the OSH Act and its general duty clause. OSHA inspections may be self-generated, consistent with its program operations and objectives, or may be conducted in response to requests from EPA or another lead agency, or in response to accidents or employee complaints. On request, OSHA shall provide advice and assistance to EPA and other NRT/RRT agencies as well as to the OSC regarding hazards to persons engaged in response activities. Technical assistance may include development and maintenance of site safety plans and work practices, assistance with exposure monitoring, and help with other compliance questions. OSHA may also take any other action necessary to assure that employees are properly protected at such response activities. Any questions about occupational safety and health at these sites should be referred to the OSHA Regional Office.

6.4.7 Federal Emergency Management Agency. FEMA provides guidance, policy and program advice, and technical assistance in hazardous materials, chemical, and radiological emergency preparedness activities (including planning, training, and exercising). FEMA's primary point of contact for administering financial and technical assistance to state and local governments to support their efforts to develop and maintain an effective emergency management and response capability is the State and Local Programs and Support Directorate.

6.4.8 Department of Energy. The DOE generally provides designated OSCs that are responsible for taking all response actions with respect to releases where either the release is on, or the sole source of the release is from, any facility or vessel under its jurisdiction, custody, or control, including vessels bareboat-chartered and operated. In addition, under the FRERP, DOE provides advice and assistance to other OSCs/RPMs for emergency actions essential for the control of immediate radiological hazards. Incidents that qualify for DOE radiological advice and assistance are those believed to involve source, by-product, or special nuclear material or other ionizing radiation sources, including radium, and other naturally occurring radionuclides, as well as particle accelerators. Assistance is available through direct contact with the appropriate DOE Radiological Assistance Coordinating Office.

6.4.9 Department of State. The DOS will lead in the development of international joint contingency plans. It will also help to coordinate an international response when discharges or releases cross international boundaries or involve foreign flag vessels. Additionally, DOS will coordinate requests for assistance from foreign governments and U.S. proposals for conducting research in incidents that occur in waters of other countries.

6.4.10 General Services Administration. The GSA provides logistic and telecommunications support to federal agencies. During an emergency situation, GSA quickly responds to aid state and local governments. The type of support provided might include leasing and furnishing office space, setting up telecommunications and transportation services, and advisory assistance.

6.5 States and local participation in response

(a) Each state Governor is requested to designate one state office/representative to represent the state on the appropriate RRT. The state's office/representative may participate fully in all activities of the appropriate RRT. Each state Governor is also requested to designate a lead state agency that shall direct state-lead response operations. This agency is responsible for designating the OSC for state-lead response actions, and coordinating/communicating with any other state agencies, as appropriate. Local governments are invited to participate in activities on the appropriate RRT as may be provided by state law or arranged by the state's representative. Indian tribes wishing to participate should assign one person or office to represent the tribal government on the appropriate RRT.

(b) Appropriate state and local officials (including Indian tribes) shall participate as part of the response structure as provided in the ACP.

(c) In addition to meeting the requirements for local emergency plans under SARA section 303, state and local government agencies are encouraged to include contingency planning for responses, consistent with the NCP, RCP, and ACP in all emergency and disaster planning.

(d) For facilities not addressed under the CWA for oil discharges, states are encouraged to undertake response actions themselves or to use their authorities to compel potentially responsible parties to undertake response actions.

(e) Because state and local public safety organizations would normally be the first government representatives at the scene of a discharge or release, they are expected to initiate public safety measures that are necessary to protect the public health and welfare and that are consistent with containment and cleanup requirements in the NCP, and are responsible for directing evacuations pursuant to existing state or local procedures.

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Friday
October 22, 1993

Part IV

Department of Transportation

Federal Highway Administration

National Highway Traffic Safety Administration

23 CFR Parts 659 and 1260

Certification of Speed Limit Enforcement; Revision of Procedures; Final Rule and Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

National Highway Traffic Safety Administration

23 CFR Parts 659 and 1260

[Docket No. 93–8; Notice 2]

RIN 2127–AE52

Certification of Speed Limit Enforcement; Revision of Procedures

AGENCY: Federal Highway Administration (FHWA) and National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: This notice replaces the National Maximum Speed Limit (NMSL) procedures contained in 23 CFR part 659 with new procedures as required by the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA). It revises the speed limit compliance formula, the speed monitoring plan, and the penalty for non-compliance in accordance with the requirements of this new legislation.

EFFECTIVE DATE: November 22, 1993.

FOR FURTHER INFORMATION CONTACT: In FHWA, Julie Anna Cirillo, Chief, Information Management and Analysis Branch, 202–366–2170. In NHTSA, J. Michael Sheehan, Chief, Police Traffic Services Division, 202–366–4295.

SUPPLEMENTARY INFORMATION:

Background

The 55 mph NMSL was first instituted in 1974. FHWA and NHTSA have shared responsibility for the enforcement of the NMSL, which includes imposing sanctions on States that do not comply. ISTEA, which was signed into law on December 18, 1991, requires the Secretary of Transportation to propose changes to the regulation governing the NMSL, 23 CFR part 659. Because of this statutory mandate, FHWA and NHTSA published proposed modifications to Part 659 in the **Federal Register** (58 FR 186) on January 4, 1993 (the NPRM), and proposed that the revised procedures be contained in 23 CFR part 1260.

ISTEA requires that a new rule establish speed limit compliance requirements on both 65 mph and 55 mph roads (previously, the NMSL covered only 55 mph roads), a formula for determining compliance by the States with such requirements and penalties for State noncompliance. The statute requires that the formula assign greater weight for violations of the applicable speed limits in proportion to the amount by which the speed of the motor vehicle exceeds the speed limit. The formula must also differentiate among the types of road on which the violations occur. In developing this formula, the Secretary was directed to consider factors relating to the enforcement efforts made by the States, data concerning fatalities and serious injuries occurring on roads posted at the NMSL, any other factors relating to speed limit enforcement and speed-related highway safety trends which the Secretary determines appropriate.

The ISTEA also requires the Secretary to consider—

(1) The variability of speedometer readings;

(2) The speeds of all vehicles or a representative sample of all vehicles;

(3) The number of speeding citations, travel speeds, and the posted speed limit for NMSL highways; and

(4) The design characteristics for the NMSL highways.

In addition, the ISTEA states that:

(1) The data shall be collected from uniform monitoring programs; and

(2) The data shall be obtained from devices and equipment placed at locations on NMSL highways, on a scientifically random basis, which take into account the relative risk of motor vehicle accidents occurring considering the classes of highways and the speeds being attained on such highways.

Discussion of Comments

The portions of the agencies' NPRM for which commenters expressed no opinion have not been discussed in this final rule. These portions are incorporated for the purposes of this Notice. To assist the reader, the agencies have attempted to group the topics discussed in this final rule in a manner similar to that found in the NPRM, except where comments fell into subject categories that did not logically belong under the NPRM topics.

A total of 79 comments were received: 4 from Governor's Highway Safety Representatives; 4 from individuals; 23 from law enforcement agencies and professional organizations; 7 from special interest groups; 39 from State transportation departments; and 2 joint responses from State regulatory entities. Many of the comments supported the proposed rule as being fair and equitable without creating any adverse impact on their operations. The New York State Department of Transportation stated that FHWA and NHTSA "are to be congratulated on their effort to respond in a reasonable and timely manner to the numerous and complex requirements" of the ISTEA.

Nevertheless, some commenters questioned why the Department was undertaking this rulemaking. One individual commenter described "the changes proposed in the NPRM as too complex and too expensive." The Nevada Department of Transportation commented that "Nevada remains opposed in principle to a National Maximum Speed Limit." The Utah Department of Public Safety remarked that Congress and the Federal Government have overstepped their bounds on coercing the States to follow a national inflexible speed limit standard. The Virginia Department of Transportation stated it remains "opposed to and very concerned with the regulation, either by statute or by rule-making, of speed limits by the Federal Government."

The agencies acknowledge the views of these commenters. However, the 55/65 mph national maximum speed limits have been established by Federal law. The agencies' role in this rulemaking is to carry out the responsibilities given to them by Congress. As indicated in the NPRM, the Department developed the compliance formula and monitoring plan provided in this final rule pursuant to the statutory requirements of ISTEA.

Speed Enforcement and Highway Safety

Some commenters contended that an inordinate amount of effort has already been expended by the States in the area of speed enforcement. The Colorado Department of Public Safety (DPS) remarked that it currently directs 68 percent of the resources toward a problem that represents only 3.6 percent of the State's fatalities. Colorado DPS estimated that there are two and one half times as many crashes caused by animals in that State as there are crashes caused by violations of posted speed limits.

The agencies question these statistics. It is very difficult to track the number of speed related crashes that actually occur in most States using currently reported crash data. For example, a rear-end collision may be reported as a violation for following too closely and not as speed-related when, in fact, the rearmost vehicle was travelling too fast to stop before colliding with the vehicle in front.

The North Dakota Department of Transportation commented that the new compliance methods will "cause a redirection of law enforcement onto [65 mph] roadways which, by their design, are already the safest in the transportation network." To the contrary, the purpose of the rule is to

allow the States to shift their law enforcement from the safest NMSL roads to the more dangerous NMSL roads. The factors in the formula proposed in the NPRM and adopted in the final rule include fatality and severity measures, and, thereby, take into account the relative risk of each type of roadway. In addition, States have the flexibility to direct enforcement efforts to those roadways with an identifiable speed violation and/or safety problem. Further, law enforcement agencies may not need to devote additional enforcement resources to achieve compliance on these roadways. Compliance may be achieved instead by increasing public awareness through the combined use of enforcement and vigorous public information and education campaigns.

The National Motorists Association stated that there is "* * * no compelling evidence that the rule will result in * * * improved highway safety (or) * * * overall economic benefits." The Coalition for Consumer Health and Safety, in contrast, stated that "speed is a major public health issue." The agencies' data support the latter view. According to the agencies' information, speeding is one of the most prevalent factors contributing to crash occurrences. Current data show that speeding is cited as a contributing factor in approximately 12 percent of all police-reported crashes and over one-third of all fatal crashes. In 1989, it is estimated that about 15,558 fatalities and 80,000 serious injuries occurred in speed-related crashes. The economic cost of these crashes was over $10 billion.

The final rule establishes a program that will measure compliance with speed limits on NMSL highways posted at 55 or 65 miles per hour. Using the specific data required to be collected under the final rule, enforcement efforts can be targeted at those areas identified at risk because of excessive speed.

State-by-State Standard

The NPRM proposed that State compliance be based on a national performance standard, rather than on State-by-State performance standards. The Dallas, Texas Police Department, Puerto Rico Department of Transportation, the National Association of Governor's Highway Safety Representatives (NAGHSR) and various other commenters agree on the concept of a national performance standard.

However, several comments expressed a desire for each State to determine its own score by the use of State specific data. NHTSA and FHWA considered such a State-by-State compliance score, as outlined in the NPRM. State-by-State performance standards recognize differences among States and would allow States to maintain the current level of compliance, but get no worse.

There are several difficulties associated with a State-by-State standard. State level compliance scores require the collection of data for a suitable baseline period. A single year of data is not statistically adequate to establish a permanent level of permissible speed compliance. A three-year baseline period was determined to be the minimum time needed to provide adequate data. Operationally, the first year would be designated for data collection only. During the second year, a compliance score would be calculated based upon the two years of data collection, and States would be permitted a 10 percent cushion for determining compliance since the score would have been based upon only two years of data. For year three, the compliance score would be established as the average of the three years and the State would be required to achieve at least this level of compliance. The agencies object to this approach because it requires additional data manipulation on the part of the States and results in an unacceptable delay in implementing the regulatory program.

In addition, the gathering of data over a three year period, to establish a State's compliance score, could result in a de facto delay in improving speed compliance. The better a State does during the baseline collection period, the more stringent the resulting compliance score. In this situation, there would be little or no incentive to improve compliance scores during this collection period. This would be counterproductive to the goals of the speed compliance program.

Further, States that achieved better compliance rates during the baseline collection period could find it more difficult than other States to maintain those rates of compliance.

Finally, if a State were to change its status, for example, from a non-65 mph State to a 65 mph State, existing data would no longer be relevant, and the exercise of establishing a baseline with three years of data collection would have to be repeated, further delaying the establishment of final compliance scores for that State. For all of these reasons, the agencies have rejected the use of a State-by-State compliance score in the final rule.

National Compliance Formula

Although the NPRM explained the proposed compliance formula in detail, there were numerous comments about the complexity of the formula. Comments from several sources requested clarification or offered alternate methods to construct the formula. Some of the issues include the use of a fatal crash rate rather than the fatality rate, discussion of Delta-V, use of hospitalization rates, dual speed limits, 60 mph speed limit, and the periodic revision of the formula.

ISTEA required that both fatalities and serious injuries be considered in developing a compliance formula. To address this requirement, the agencies used two factors: the relative risk of fatality and a measure of crash severity. The relative fatality risk was determined for each type of roadway. Delta-V (see Tables 1–4 of the NPRM) was used as the measure for crash severity.

Several commenters questioned the use of the fatality rate, stressing that it varies with traffic density and that it appears to be unfair to rural States.

The agencies agree that fatality rates vary by traffic density. In an attempt to account for this variation, the agencies defined three types of highways—freeways at 65 mph (rural), freeways at 55 mph (urban) and non freeways at 55 mph (rural). Additional subcategories could have been provided to account for traffic volumes and number of lanes (elements used to determine density). However, each additional category would have required additional data collection on the part of the States and additional factors in the formula. It was decided that this approach would prove too burdensome in terms of data collection and analysis.

Some commenters favored the use of the fatal crash rate in lieu of the fatality rate. The fatality rate is defined as the number of fatalities per 100 million vehicle miles of travel. The fatal crash rate is defined as the number of fatal crashes per 100 million vehicle miles of travel. The agencies considered this option, but found that the two rates are virtually identical. Moreover, the fatality rate is the more commonly used and generally accepted statistic.

One major area where a difference might occur between using fatality vs. fatal crash rates would be in determining whether a State, not in compliance, would receive penalty mitigation. However, after examining fatality and fatal accident data over a three year period among all States, the agencies found only one instance where a difference between these rates made a State eligible to mitigate the penalty. For

these reasons, the fatality rate has been retained in the final rule.

The Massachusetts State Police, the International Association of Chiefs of Police and the Oregon Department of Transportation suggested using hospitalization rates instead of fatality rates to ascertain relative risk and mitigation of penalty. However, uniform and accurate national or statewide information on hospitalization rates at the required level of detail are not available to ascertain relative risk. Requiring States to collect these data is not practical, and fatality rates based on VMT (vehicle miles of travel) have long been used to monitor overall safety trends.

The Departments of Transportation from Arizona, Ohio, Rhode Island and the Colorado Department of Public Safety suggested using VMT as an additional factor on each of the different types of roadways. However, the agencies believe that explicitly accounting for differences in VMT on the various highway types unnecessarily complicates site selection and data collection. This proposal would require data collection on each of the existing roadway types by the number of lane categories (3 or 5) and VMT categories. At a minimum, at least 5 VMT categories would be required for each site type. Thus the total number of site types would be 15 for 55 mph freeways, 15 for rural freeways, and 25 for 55 non-freeways. Once these categories were identified, each State would have to select an appropriate number of monitoring sites in each of the categories and collect the full range of data on each site. The agencies believe this process would constitute an excessive burden on the States, and have decided not to include VMT categories within the highway types.

The Massachusetts State Police felt the use of Delta-V was inappropriate due to the increasing use of seat belts, air bags, and significant improvements in highway engineering. The agencies agree with the Commonwealth of Massachusetts in its assertion that safety belts, air bags and improvements in highway engineering have all contributed to reductions in traffic fatalities. However, consideration of other factors, such as airbags, seatbelts, antilock brakes and similar devices in the formula would require excessive data collection by the States, and acceptable measures for their use are simply not available.

Moreover, Delta-V is the best available measure to estimate crash severity. Simply stated, crash severity increases disproportionately with speed at impact. The chances of death or serious injury increase dramatically as vehicle speed increases. NHTSA's "National Crash Severity Study (1977–1979)" revealed that a driver crashing with a 50 mph change in velocity is twice as likely to be killed as one crashing with a 40 mph change in velocity. In short, crashes at higher speeds increase the potential for death and disabling injury.

The Illinois Department of Transportation expressed concern that the monitoring proposal for dual speed roadways and highways of monitoring sites in each of the categories and collect the full range of data on each site. The agencies believe this process would constitute an excessive burden on the States, and have decided not to include VMT categories within the highway types.

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The Illinois Department of Transportation expressed concern that the monitoring proposal for dual speed roadways and highways posted at 60 mph would require data collection at the posted speed(s) and not at the higher speed level. In some States, dual speed limits are set for automobiles and trucks. In others, the dual speed limits change only during nighttime hours. For example, truck speed limits are reduced by 10 mph only during nighttime hours. A few States have lowered speed limits to 60 mph to accommodate safety and design concerns. Since monitoring is to be performed on a random basis, data collection to account for so few number of miles posted at 60 mph would be a formidable task for the few States required to collect these data. FHWA estimates that dual speed roadways and those posted at 60 mph comprise an extremely small amount of roadway mileage and that the data collection equipment necessary to complete the monitoring tasks would have to be extremely sophisticated. It would also require increases in the number of monitoring sites and burdensome recordkeeping activities. For these reasons, this option was rejected.

The Ohio Department of Transportation, the Arizona Department of Pubic Safety and one individual wanted the agencies to consider periodically revising the fatality rates, relative risk and other factors in the formula based upon new data that would become available in the future. While it is true that the purpose of the national compliance formula is to establish a national standard for both current and future use, periodic adjustments create relative criteria which are incompatible with a fixed standard. In addition, periodic revision of the formula factors presents the States with a "moving target," which makes consistent compliance scores more difficult to attain over time. Finally, the continuing upward trend in speed distributions make adjustments to the compliance score self-defeating. Therefore, the agencies have no plan to revise the formula factors in the future.

Calculation of the National Compliance Score

The Insurance Institute for Highway Safety and the Maryland Department of Transportation (MDT) commented that the formula is unfair to those States who had not increased eligible roadways to 65 mph. They indicated that those States are penalized when they could be in compliance by simply raising speed limits to 65, where applicable. They further suggested that States may choose to comply with the requirements by raising their speed limits to 65, and stated that such a result would not be in the best interests of highway safety.

MDT proposed that the final rule be modified to permit States that have roads eligible for posting at 65 mph (but have not exercised that option and maintain a 55 mph speed limit) to certify compliance using the allowable compliance score for 65 mph States. However, this result is clearly inconsistent with ISTEA, which was enacted to encourage State enforcement of prevailing speed limits. In addition, this change could lead to increased noncompliance on roads posted at 55 mph.

States currently decide whether to post eligible road segments at 65 mph. Rural Interstate highways have been eligible for posting at 65 mph since 1987. States have had the opportunity since that time to change the speed limit on these highways. There is no reason to believe that the monitoring requirements in this rule will encourage States to raise their speed limits now, when historically they have not done so. If a State does decide to raise its speed limits, the rule requires adherence to a different compliance score based upon an additional road type and associated additional speed categories. It also requires more monitoring sites. The agencies therefore believe that the rule is not unfair and does not encourage States with lower speed roadways to raise their speed limits.

Comments were received criticizing the agencies' proposal to require that States count vehicles travelling only 5 miles per hour over the posted speed limit. Massachusetts State Police remarked that speeds from 1–10 miles over the posted speed limit, referred to as a "zone of indifference," should not be counted.

As stated in the NPRM, the rationale to begin measuring speeds at 5 miles over the posted speed limit is based on customs and practices generally accepted by the law enforcement community and motorists. Police agencies do not strictly enforce minor speed infractions in any speed limit zone, and when enforcement action is taken for minor infractions, traffic courts generally do not impose sanctions. Traffic courts expect application of reasonable judgment by police when enforcing traffic laws. Enforcement action is more likely to occur in speed ranges of 5–9 miles per hour above the limit, and the issuance of a citation is virtually certain for violations exceeding 10 mph over the maximum speed limit.

Due to these enforcement practices, most drivers realize the police and courts tolerate moderate excesses of the 55 and 65 mph speed limits before applying enforcement and sanctions, and the average traffic speeds have slowly increased due to this perceived tolerance level. If the tolerance level is increased to the suggested 10 mph over the speed limit, higher speeds can be expected.

Studies over the past twenty-five years indicate that crash risk is associated with variations from the mean speed, which result in more frequent lane changes and passing maneuvers so that faster moving vehicles can avoid vehicles travelling at slower speeds. Empirical studies of the relationship between speed and crashes consistently show that crash involvement rates are lowest for vehicles traveling within 10 mph of the average speed; vehicles traveling at speeds outside of that range have involvement rates at least six times greater.

Data from the National Crash Severity Study (1979) show that while travelling 20 mph above the average speed, the estimated crash risk is about 11 times greater than at the average travel speed. The implication of this is that to reduce the incidence of motor vehicle crashes, speeds should be regulated within a range that will permit the free flow of traffic while simultaneously avoiding great variances in speed. Therefore, the final rule continues the measuring of speeds at 5 miles over the speed limit to account for traditional enforcement practices, while not creating higher speed tolerances.

ISTEA requires that any formula adopted must assign a "greater weight for violations of speed limits in proportion to the amount by which the speed of the motorist's vehicle exceeds the speed limit." In the NPRM, the agencies proposed a formula which assigns greater weight to more serious speed violations. Comments were submitted requesting an explanation for this aspect of the proposal. A penalty was proposed to be assessed for all vehicles exceeding the speed limit by 5 mph, additional penalty for vehicles exceeding the speed limit by 10 mph, and a third penalty for vehicles exceeding the speed limit by 15 mph. This methodology takes into account the greater penalties for higher speeds. In the formula, the compliance score is calculated so that vehicles exceeding the speed limit by 5 mph, 10 mph and 15 mph have a cumulative effect assessed in proportion to their excess speed. Thus, the multiple counting is a mechanism to implement the proportional requirement specified in ISTEA.

Commenters also questioned the use of certain error adjustments contained in the proposed rule. Prior to ISTEA, the agencies' regulation allowed the States to adjust for three potential sources of error: speedometer variability, statistical error, and speed monitoring equipment error (23 CFR 659.15(d)). The regulation provided that each potential source of error could be adjusted individually or by use of a single adjustment which addressed all three potential errors. Forty-four States have used this single adjustment when calculating speeds for the required annual certification.

The NMSL law continues to require that the regulation account for speedometer variability and the other potential sources of error in the speed monitoring data. The agencies have therefore continued to permit the use of a single adjustment in the final rule which addresses these three potential errors.

Citation Data

The NPRM explained that the agencies considered and rejected a number of factors for inclusion in the proposed compliance formula, and proposed to include only the fatality rate as a mitigation factor. Commenters offered other suggestions. The Arizona Department of Transportation suggested utilization of the level of enforcement as a mitigating factor in noncomplying States. The Maryland State Police advocated an adjustment to the State's compliance score allowing it to "reduce its compliance score by one point for each unit by which the number of speeding citations issued per mile on NMSL highways * * * exceeds the national average citation issuance rate on NMSL highways during the previous year."

Consideration was given to the use of an enforcement index, which is the number of hazardous moving violations (including forfeitures) divided by the number of personal injury and fatal crashes. However, it was apparent that this would necessitate additional data collection and analysis by the States. Further, this method may reinforce the public's misconception that police operate under some type of quota system. Quota systems have been declared unlawful in many parts of the country. Therefore, these approaches were rejected.

Collection of Citation Data

ISTEA requires the collection of data on speeding citations. Specifically, the law requires the States to report data necessary to support the annual certification, "* * * which shall include, but not be limited to, data on citations and travel speeds." The NPRM required the collection of the total number of citations written by the multiple agencies having NMSL jurisdiction.

One purpose of gathering information on speeding citations is to demonstrate each State's efforts to enforce the NMSL. However, several commenters pointed out that different law enforcement agencies are responsible for enforcement of the NMSL within the same State. For example, municipal or county agencies may be responsible for those NMSL highways within the municipalities or incorporated areas, while a highway patrol may be responsible for those

highway segments outside of these areas.

It was pointed out that many States, as reported by the Kansas Highway Patrol, do not have a central repository for traffic citation data. Thus, the citation collection proposed in the NPRM creates considerable hardship. Further, in most States, there is no requirement for municipal and county agencies to report citation data to the State. The commenters suggested that citation data be collected only from State agencies, and the agencies have decided to accept this recommendation. This revision is contained in § 1260.15(c)(2) of the regulation.

The final rule does not revise the current method of reporting citation data, and the political entities of the District of Columbia, State of Hawaii and Commonwealth of Puerto Rico, which have unique enforcement structures and reporting methods, will continue reporting speed citation data as they have done in the past.

The agencies have determined that retaining the current citation data collection requirement is sufficient to support the statutory requirement of 23 U.S.C. 154(e) for data supporting the certification required under 23 U.S.C. 141(a). Under the final rule, § 1260.13 continues to require the certification of the Governor, or other properly designated State official, in order to comply with these statutory mandates.

Plan for Collection of Monitoring Data

The South Dakota Department of Transportation expressed concern that the new data collected cannot be tied to the State's old data collection, causing a loss of the ability to link the old and new data. As demonstrated in the Speed Monitoring Program Procedural Manual, the speed monitoring program and its sampling plan are designed to ensure that data collected under this rule will be consistent with the data collected under the former procedures.

Most of the current monitoring stations can continue to be used under the final rule. In fact, the monitoring manual provides States the flexibility to use all current monitoring stations. In addition, the sampling plan and monitoring requirements contained in the NPRM were designed to provide the same level of confidence in the data collected. While additional monitoring for various road types has been added (sixty-five mph roadways were not monitored in the past), data from the two types of 55 mph roadways (freeways and non-freeways) may be combined to provide comparability with historical data.

The Colorado and Kansas Departments of Transportation requested information about the number of additional monitoring stations required and the requirement that data be collected quarterly at each monitoring station. The monitoring guidelines were prepared using the same level of statistical precision and monitoring activity as required under the existing monitoring procedures. Concerns about ISTEA's requirements to stratify data by highway type and to consider various levels exceeding the speed limit led the agencies to consider ways to avoid a large increase in the number of monitoring stations. In order to minimize the number of additional monitoring stations and maintain the same level of reliability in the collected data, the agencies proposed a reduced number of new sites in the NPRM, coupled with an increase in monitoring sessions to four times per year at each location.

In response to the comments received on this proposal, the agencies investigated additional alternatives to the proposed monitoring plan, with the goals of reducing the States' data collection burden without loss of statistical precision historically associated with the former regulation and of collecting reliable data to reduce the risk of non-compliance by chance alone.

The first alternative considered by the agencies was semi-annual monitoring. In order to maintain the same level of statistical accuracy and collect data semi-annually, the States would have to randomly select a data collection day, within the six month period, for each monitoring site. The present system allows the States to schedule monitoring activities to enable a data collection team to service many monitoring sites in a single day. If States were required to randomly select data collection days for each site, a data collection team might be able to service only one monitoring site each day.

This procedure would greatly increase the required staff hours to collect the speed data. For most States, the efficiency of collecting the data from all sites four times per year, in a short period of time, is more cost effective than the almost continuous collection of data half as often throughout the year. In addition, this alternative would require States to increase the number of monitoring sites by 10 percent above that indicated in the NPRM. Therefore, the agencies decided against this first alternative.

In a second alternative, the agencies considered monitoring compliance at each site semi-annually, but to maintain a reasonable level of statistical accuracy the States would have to increase the number of monitoring sites by 10 percent. All sites would have to be monitored twice each year with one half of the sites in the first and third quarters, and one half of the sites in the second and fourth quarters. This procedure would increase a State's fixed cost by increasing the number of monitoring sites, and would not reduce the collection burden very much since data would have to be collected four times per year. The second alternative was therefore rejected.

A third alternative was to provide for semi-annual data collection without the additional sites over the number identified in the NPRM. Under this scenario, States would collect data as they do under the previous regulation, but only twice per year. This alternative significantly reduces the statistical reliability of the data. Thus, each State would be at an additional risk of being out of compliance by chance alone, since only two data points would be collected for each site. Moreover, there is considerable variation, both between sites and within a site, in the collected speed data. To maintain the historical quality of the data collected and to lessen the risk of chance noncompliance, the agencies rejected this third alternative.

A variation of the third alternative was also considered. Under this variation, States would be permitted to collect data at each site semi-annually but would collect one half of the data in the first and third quarters and one half of the data in the second and fourth quarters. This alternative marginally increased the reliability of the data, but not to historical levels under the former regulation. In addition, this alternative caused some increase in cost since some data collection would have to take place four times per year. This alternative was also rejected.

Due to the combination of cost increase and administrative burden on the States in the first alternative and the degradation of the data and associated increase in risk of non-compliance with only a minimal decrease in costs of the second and third alternatives, the agencies determined that data should be collected on a quarterly basis as originally proposed in the NPRM.

Commenters from 15 State agencies with primary monitoring responsibility expressed concern that the proposed monitoring plan would require additional monitoring sites, additional personnel, and/or additional equipment to properly implement data collection. The majority of these commenters did not feel that adequate time was available

to procure and install the necessary equipment at the selected monitoring sites in order to meet the FY 1994 deadline proposed in the NPRM. Upon reviewing these comments, the agencies have concluded that additional time is necessary to obtain equipment and set up functional monitoring sites. Therefore, § 1260.9 (a), (b) and (c) and § 1260.11 (a) and (b) have been changed to require the States to submit a new monitoring plan, which contains two parts, by January 24, 1994. The date by which States must commence the actual collection of data has been extended to October 1, 1994.

Sanctions for Noncompliance

As required by statute, the NPRM proposed a penalty if a State exceeds the applicable NMSL compliance score. One and one-half percent of the funds apportioned to the State for Federal-aid highways and highway safety construction programs under section 104(b) of title 23, United States Code (other than paragraph (5)) would be transferred to the State's apportionment under 23 U.S.C. 402 for the fiscal year, not to exceed the total section 402 apportionment for that year. This transfer penalty was questioned by many commenters. Two individuals complained that speed enforcement does much less to promote highway safety than does the construction of safe highways. Comments from the International Association of Chiefs of Police Highway Safety Committee, Commercial Vehicle Safety Alliance, Operation CARE (Combined Accident Reduction Effort) and Police Traffic Services Committee of the American Association of Motor Vehicle Administrators suggested that the shifting of funds from construction agencies to enforcement agencies may lead to detrimental interdepartmental disputes over funds.

The Michigan Department of Transportation expressed the view that "the penalties for speed limit non-compliance should not be levied against a department that is not responsible for enforcement." The West Virginia Governor's Highway Safety Office added that the reduction of funds for road construction is especially unfair to small rural States.

The transfer of certain construction funds within a State for noncompliance is specifically required by ISTEA. The legislation expressly requires that the rule "* * * shall provide for the transfer of apportionments [of certain highway construction funds], if a State fails to enforce speed limits in accordance with * * * such rule." Therefore, these penalties remain a part of the final rule.

The Coalition for Consumer Health and Safety expressed the belief that utilizing a State's current section 402 apportionment as a penalty cap is arbitrary and does not reflect a State's ability to use such funds. They strongly oppose capping the penalty and support using at least 50% of the redirected funds for speed enforcement and education. The agencies believe their selection of this penalty level is reasonable and appropriate since a much larger sum could overburden a State's highway safety program and the State's ability to expend the funds in an efficient and effective manner.

Graduated Penalties for Noncompliance

The NPRM proposed a penalty for any State exceeding the maximum allowable compliance score. Several commenters felt that this pass/fail concept in the NPRM was too stringent. The Department of California Highway Patrol commented that it was inequitable to impose the maximum sanction on a State whether it is one point or 100 points out of compliance. Other States felt that a score in any year significantly higher than the maximum score would present them with an impossible task in attempting to come into compliance in future years. The Minnesota Department of Transportation suggested a penalty reduction which consisted of six graduations based on low fatality rates, and NAGHSR suggested three alternatives, including a graduated set of penalty reductions.

After an analysis of the docket comments, the agencies have decided to include several levels of penalties based on graduation of the noncompliance scores. The final rule provides for graduated penalties in one-half of one percent increments which correspond to the degree of noncompliance, with a maximum penalty of not more than one and one-half percent. These penalty increments will be imposed at ten and twenty percent intervals above the maximum allowable score. As proposed in the NPRM, the maximum penalty would not exceed a State's annual Section 402 highway safety grant program apportionment. This revision should encourage improvement by noncomplying States. Section 1260.19(b) has been modified and a new § 1260.19(c) has been added in the final rule to effect these graduated penalties.

Program Purpose for Penalty Transfer

The NPRM proposed that the penalty for NMSL noncompliance would consist of a transfer of certain highway construction funds to the noncomplying State's section 402 program with an emphasis on speed enforcement. The comments recommend that the agencies broaden that purpose. NAGHSR, for example, pointed out that the redirected funds should be used to improve State enforcement efforts, but the States should not be forced to use all of their funds for that purpose. NAGHSR also maintained that flexibility is particularly important for large States where the amount of redirected funds could be sizable. Ohio DOT's consolidated response suggested that the transfer of funds from construction to unsuccessful speed enforcement efforts gives the impression of reinforcing failure. They recommend funds should be transferred to highway safety activities generally.

The agencies recognize that the States are in the best position to determine the most effective use of the penalty transfer funds. For example, greater compliance with the NMSL can be achieved over a longer period of time if enforcement efforts are accompanied by vigorous public information and education campaigns. The agencies have therefore decided to provide the States with flexibility to use these funds for any purpose consistent with section 402 of title 23, United States Code (Section 402). Consequently, the emphasis on speed enforcement has been removed from § 1260.21(c) of the final rule.

Under the section 402 program, States are required to submit a Highway Safety Plan on an annual basis. These plans are systematically reviewed by both NHTSA and FHWA Regional offices to ensure consistency with the overall efforts of each State to improve highway safety. The funds transfer shall take place in the fiscal year subsequent to the fiscal year in which the compliance score exceeded the maximum allowable compliance score. States subject to a transfer under the NMSL will be required to detail their additional expenditures in the Highway Safety Plan for that fiscal year.

Mitigation of Noncompliance Penalty

The agencies proposed in the NPRM that a noncomplying State would be eligible to have its penalty reduced by one-third if it has a fatality rate at least twenty percent below the national fatality rate. The Insurance Institute for Highway Safety stated there is "* * * no reason to soften the penalty by forgiving the transfer" on this basis. Other commenters argued that the proposed one-third reduction in penalty for a fatality rate at least twenty percent below the national fatality rate is not

equitable to rural States since fatality rates vary inversely with traffic density. Achieving a fatality rate 20 percent below the national average would be particularly difficult for many rural States. The International Association of Chiefs of Police commented that consideration should be given to other alternatives, such as permitting States to show a significant improvement in their fatality rates, even if such rates are higher than the national average. They thought that this would serve as an incentive for improvement. Based on these comments, the agencies have reexamined this issue to determine the best method of encouraging State compliance and recognizing State highway safety achievements.

The agencies agree that the twenty-percent threshold is too restrictive. To provide the States a stronger incentive, taking into account both speed enforcement and overall highway safety issues, the agencies have determined that a ten percent reduction below the national fatality rate is a more equitable level for mitigation of penalty. Therefore, this final rule provides that a State's penalty will be reduced by one-third if the State's fatality rate, rounded to the nearest tenth, is at least ten percent below the national fatality rate. Section 1260.21(a) has been modified to reflect this change.

The Arizona Department of Transportation (ADOT) suggested that pedestrian, bicycle and non-NMSL roadway fatalities should be excluded from the fatality rate used for mitigation purposes. ADOT felt that it was unfair to penalize those responsible only for safety on NMSL roads for fatalities that occurred beyond their control. The agencies disagree with this position. The ultimate purpose of the NMSL is to save lives and reduce injuries on our nation's highways. States that do not comply with the NMSL requirements, but have found other means to advance highway safety and achieve overall fatality rates significantly lower than the national average deserve to be recognized for their accomplishments and have their penalties reduced. The agencies see no reason to exclude any particular classification of fatality for this purpose.

Under the previous regulatory procedures, a hearing was held to determine the level of penalty and to consider mitigating circumstances. The Arizona Department of Public Safety noted that the NPRM did not contain provisions for hearings and suggested that a State should have the option of requesting a hearing if it believed that there were mitigating circumstances. Under the procedures proposed in the NPRM, however, the only basis for mitigation is a State having a fatality rate ten percent below the national average. By adopting this basis for mitigation in the final rule, the agencies have eliminated any need for a subjective evaluation that would require that a hearing be held.

Successive Year Non-compliance Penalty

Some commenters objected to the absence of incentives in the NPRM for States to seek improvement in their NMSL compliance scores once they are found out of compliance, and suggested the creation of such incentives. One commenter proposed consideration of an additional penalty transfer for successive year non-compliance. However, since a successive year penalty was not proposed in the NPRM, it has not been included in the final rule. The sanctions for States with non-complying scores, which were proposed in the NPRM, are presently contained in the final rule, provided that the penalty transfer from highway construction funds to Section 402 programs would not exceed the greater of (i) one and one-half percent of the construction funds, or (ii) the total Section 402 apportionment for the applicable fiscal year. The agencies are willing to consider the possibility of providing incentives and have issued a Supplemental Notice of Proposed Rulemaking (SNPRM) in order to receive comments on proposed penalty increases to accomplish this goal. An SNPRM covering this subject is being published concurrently with this final rule in today's issue of the **Federal Register**.

Technical Clarifications

Definitions

Several commenters expressed the need to clarify or include additional definitions in § 1260.5 of the regulation. The Ohio Department of Transportation noted, for example, that the term "local" is used in the appendix, but is not defined in § 1260.5. The agencies therefore have added a definition for "local road." The definition selected is derived from the statutory requirement that requires designation of a functional system of highways. The definition is taken from the FHWA Highway Functional Classification Manual.

In the final rule, the agencies have made the definition of "roadway segment" more specific in accordance with the requirement designating a functional system of highways. This revision will also assist in making the maximum possible use of instrumented highway sites and in conserving resources of the States for use in sites instrumented for other purposes (e.g., weight-in-motion, pavement monitoring). Accordingly, the section in the appendix entitled "Selection of Sample Sizes" has been amended to reflect this change.

Some commenters expressed confusion about the definition of the term "non-freeway." Currently many different road classifications have speed limits posted at 55 mph including freeways, arterials, and major collectors. To account for distinctions between roadway types, 55 mph freeways were identified as a separate group. All other types of highways with speed limits posted at 55 mph were designated non-freeways for the purpose of speed monitoring. A non-freeway is therefore any highway which is not classified as a freeway. Since an adequate definition of a "freeway" was contained in the NPRM and has been adopted without change in the final rule, the agencies decided a separate definition for the term "non-freeway" was not necessary.

The Alaska Department of Transportation and Public Facilities asked how a portion of the Parks Highway in Alaska should be classified under the proposed rule. Although this part of the highway is uniquely rural and is posted at 65 mph for over 200 miles, it is not a "freeway" because its design characteristics are below freeway standards. The agencies have determined that this portion of the Parks Highway should be included in the 65 mph non-freeway mileage for Alaska. This change is incorporated into the final rule in § 1260.15(d) by changing "60 mph" to "65 mph" before the word "freeways" in the category with the score "138."

The agencies discovered a typographical error in § 1260.15(d) of the proposed rule although it had been correctly stated in the preamble. The second compliance score number, "1.155" in the proposed rule was incorrect. The correct number is "1.115" and is included in the final rule.

The agencies also corrected an inaccurate reference in subsection (b) of § 1260.19, and revised that subsection to clarify that any transfer of funds will take place in the fiscal year subsequent to the fiscal year in which a State submits its certification. Section 1260.19 is also revised to number each penalty category.

Finally, the agencies identified the need to provide for additional flexibility in the data collection schedule, should conditions at a site preclude the normal flow of traffic, and have amended § 1260.9(b)(5)(i) to address this need.

Speed Monitoring Program Procedural Manual

Comments were made that caused some minor changes to the Monitoring Program Procedural Manual located in the appendix. Several commenters raised questions about the need to calibrate the speed measuring equipment before each data collection session. Review of equipment and calibration standards indicate that the speed measuring equipment need only be calibrated once a year. This change has been incorporated into the section in the appendix entitled "Review Highway Conditions."

Other comments stated that existing speed measuring equipment only have the capacity to accumulate data into 12 data bins. In order to accommodate this limited capacity, the number of categories required for data collection is being reduced by 2 in the final rule. This has been accomplished by collapsing the first three categories into one category. This change is reflected in the section entitled "Reporting Results" and in the table called "Distribution of Vehicle Speeds."

The section of the appendix entitled "Selection of Sample Sizes" has been as revised to permit the maximum possible use of all instrumented highway sites.

Some commenters identified an error in the table entitled "Calculation of Compliance Score" in the appendix. This error has been corrected in the final rule. The factor for the category "percent exceeding 70 mph on 55 mph non-freeways" was incorrectly presented as 3.974. This number has been changed to 2.974.

Regulatory Analyses and Notices

Civil Justice Reform

This rule does not have any preemptive or retroactive effect. It imposes no requirements on the States, but rather encourages States to consider enacting and enforcing legislation requiring speed limits and speed limit enforcement through the potential redesignation of Federal highway construction funds to safety programs. Any redesignation of funds would not take place until FY 1997. If a State submits (1) data showing that its highway speeds are below a certain national level, and (2) a certification from the Governor reporting that the State is enforcing the speed limits on public highways in accordance with 23 U.S.C. 154, then it shall not be subject to a redesignation of funds. The authorizing legislation for the rule does not establish a procedure for judicial review promulgated under its provisions. There is no requirement that individuals submit a petition for reconsideration or other administrative proceedings before they may file suit in court.

Federal Regulation and DOT Regulatory Policies and Procedures

The agencies have analyzed the effect of this proposed action and determined that it is not "major." Because of the public's interest in the 55/65 mph speed limit, it is considered to be "significant" within the meaning of Department of Transportation regulatory policies and procedures. The agencies have prepared a Final Regulatory Evaluation (FRE) for this proposal, and made it available in the public docket. A copy of the FRE may be obtained by writing to Docket No. 93–8, HCC–10, FHWA, Room 4232, 400 Seventh Street SW., Washington, DC 20590.

A number of comments discussed the potential costs of this rule. The FRE addresses these comments and includes a discussion of the costs of this rule. The FRE estimates the costs of new speed monitoring devices to be $4.4 million. The FRE also presents estimated FY 1990 speed compliance data and finds that at least three States (Connecticut, Massachusetts and Wyoming) would have likely been out of compliance with the maximum allowable compliance scores had they been in effect in FY 1990.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act, the agencies have evaluated the effects of this proposed action on small entities. Based on the evaluation, we certify that this action does not have a significant economic impact on a substantial number of small entities. The FRE concludes that there is no significant impact on small businesses since the portion of the highway construction funds going to noncomplying States is not lost, but only transferred to highway safety programs. Accordingly, the preparation of a Regulatory Flexibility Analysis is unnecessary.

Paperwork Reduction Act

The requirement relating to this proposal, that each State must submit speed data and related certification information necessary to calculate its compliance score, is considered to be an information collection requirement, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1320.

Accordingly, this information collection requirement has been previously submitted to and approved by OMB, pursuant to the provisions of the Paperwork Reduction Act (44 U.S.C. 3501, et seq.) The requirement has been approved through January 31, 1996, with the OMB control number No. 2125–0027.

National Environmental Policy Act

The agencies have analyzed this action for the purpose of compliance with the National Environmental Policy Act and have determined that it does not have a significant effect on the human environment.

Executive Order 12612 (Federalism)

This action has been analyzed in accordance with Executive Order 12612, concerning Federalism. The rule's provisions are likely to affect the allocations of States' resources, the way they measure their success in traffic law enforcement, relationships among States agencies, and the distribution of Federal funds between States' highway construction and safety programs. All of these effects may fairly be regarded as Federalism impacts. However, the basic requirements of the rule (i.e., the potential redistribution of Federal funds) are mandated by statute, so the agencies do not have discretion to mitigate these impacts. The agencies have carefully considered the comments of State agencies in shaping the details of the rule.

List of Subjects in 23 CFR Parts 659 and 1260

Grant programs—Transportation, Highway and roads, Motor vehicles, Reporting and recordkeeping requirements, Speed limit, Traffic regulations.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: October 14, 1993.

Rodney E. Slater,

Administrator, Federal Highway Administration.

Howard M. Smolkin,

Executive Director, National Highway Traffic Safety Administration.

In consideration of the foregoing, under the authority at 23 U.S.C. 118, 141, 154, 315 and delegations of authority at 49 CFR 1.48 and 1.50 part 659 of chapter I, subchapter G of title 23, Code of Federal Regulations (CFR), is removed and part 1260 to chapter II, subchapter C of title 23, CFR, is established as set forth below.

PART 1260—CERTIFICATION OF SPEED LIMIT ENFORCEMENT

Sec.

1260.1 Purpose.
1260.3 Objective.
1260.5 Definitions.
1260.7 Adoption of national maximum speed limits.
1260.9 Formulation of a plan for monitoring speeds.
1260.11 Guidelines and evaluations of operations.
1260.13 Certification requirement.
1260.15 Certification content.
1260.17 Certification and statistical submittal.
1260.19 Effect of failure to certify or to meet compliance standards.
1260.21 Penalty reduction and notification of noncompliance.
Appendix to Part 1260—Speed Monitoring Program Procedural Manual

Authority: 23 U.S.C. 118, 141, 154, 315 and delegations of authority at 49 CFR 1.48 and 1.50.

§ 1260.1 Purpose.

This part prescribes requirements for administering a program for monitoring speeds on public highways in order to provide reliable data to be included in a State's annual certification of speed limit enforcement.

§ 1260.3 Objective.

To establish a valid statistical method of measuring a sample of vehicle speeds on a sample of highways to estimate the percentage of vehicles exceeding the speed limit on highways posted at 55 mph and on highways posted at 65 mph with sufficient accuracy to support a determination of compliance by a State's motoring public with the National Maximum Speed Limits in accordance with 23 U.S.C. 154; to prescribe the compliance reporting requirements for the States; and to specify fund transfer provisions for non-compliance with the National Maximum Speed Limits.

§ 1260.5 Definitions.

As used in this part:

(a) *FHWA* means the Federal Highway Administration.

(b) *Fiscal year* means the Federal fiscal year, consisting of twelve months beginning each October 1 and ending the following September 30.

(c) *Freeway* means a divided arterial highway for through traffic with full control of access and grade separated intersections.

(d) *Governor* means the Governor of any of the fifty States, Puerto Rico or the Mayor of the District of Columbia.

(e) *Highway* means all streets, roads or parkways under the jurisdiction of State, including its political subdivisions, open for use by the general public, and including toll facilities.

(f) *Interstate System* means the Interstate System described in 23 U.S.C. 103(e).

(g) *Local road* means a road which:

(i) Serves primarily to provide access to adjacent land,

(ii) Provides travel service over relatively short distances, and

(iii) Includes rural mileage not classified as part of principal arterial, minor arterial or collector roadway systems.

(h) *Motor vehicle* means any vehicle driven or drawn by mechanical power manufactured primarily for use on public highways, except any vehicle operated exclusively on a rail or rails.

(i) *National Maximum Speed Limits* mean the speed limits provided for the highways described in 23 U.S.C. 154.

(j) *NHTSA* means the National Highway Traffic Safety Administration.

(k) *Roadway Segment* means either a highway performance monitoring system sample section as defined by the States, a section of highway instrumented for another purpose on which required speed data may be collected, or a section of highway approximately five miles in length that is selected randomly from the universe of highway sections for each highway classification.

(l) *State* means any one of the 50 States, the District of Columbia, or Puerto Rico.

§ 1260.7 Adoption of national maximum speed limits.

The Secretary of Transportation shall not approve any Federal-aid projects under 23 U.S.C. 106 in a State which fails to adopt or maintain maximum speed limits as follows:

(a)(1) The maximum speed limit shall be 65 mph or less on a highway located outside of an urbanized area of 50,000 population or more, either on the Interstate System, or on a highway:

(i) Which is constructed to Interstate standards in accordance with 23 U.S.C. 109(b) and connected to a highway on the Interstate System;

(ii) Which is a divided 4-lane fully controlled access highway designed on constructed to connect to a highway on the Interstate System posted at 65 miles per hour and constructed to design and construction standards as determined by the Secretary which provide a facility adequate for a speed limit of 65 miles per hour; or

(iii) Which is constructed to the geometric and construction standards adequate for current and probable future traffic demands and for the needs of the locality and is designated by the Secretary as part of the Interstate System in accordance with 23 U.S.C. 139(c).

(2) The maximum speed limit on all other public highways in the State shall be 55 mph or less. Emergency and police motor vehicles may be authorized to operate at higher speeds when necessary to protect the public health and safety.

(b) Except as provided in paragraphs (c) and (d) of this section, the speed limit on any portion of a highway shall be uniformly applicable to all types of motor vehicles using such portion of highway, if on November 1, 1973, such portion of highway had a speed limit which was uniformly applicable to all types of vehicles using it.

(c) Notwithstanding the provisions of paragraph (b) of this section, a State may establish a lower speed limit for a motor vehicle operating under a special permit because of weight or dimension of such vehicle, including any load thereon.

(d) Notwithstanding the provisions of paragraph (b) of this section, a State may specify nonuniform speed limits on any portion of a highway when the condition of the highway, weather, a crash, or other condition creates a temporary hazard to the safety of traffic on such portion of a highway.

§ 1260.9 Formulation of a plan for monitoring speeds.

(a) Each State shall develop a speed sampling plan following the guidelines in the Speed Monitoring Program Procedural Manual (SMPPM), FHWA, 1992, which is set forth in the Appendix. The initial plan shall have two major parts. Part I shall provide details on how the State will select and instrument new speed monitoring sites. These details shall include identification of potential sites and schedules for equipment procurement, installation, and testing. Part II shall provide details on how the State will follow the guidelines provided in the SMPPM. Only Part II of the speed sample and monitoring plan, as described below, is required to be updated after the initial submission of the plan.

(b) At a minimum, the plan shall discuss the following subjects:

(1) Miles of highway posted at the National Maximum Speed Limit (NMSL) classified as follows:

(i) Miles of freeways posted at 55 mph;

(ii) Miles of freeways posted at 65 mph (including freeways with posted speed limits that are higher than 55 mph but lower than 65 mph);

(iii) Miles of nonfreeways posted at 55 mph;

(2) Number of sampling locations and their distribution by highway classification (55 mph freeways, 65 mph freeways and 55 mph nonfreeways), all of which shall be determined in accordance with the SMPPM. The minimum sample size needed by each State for each highway classification shall be determined in accordance with the SMPPM.

(3) Location of monitoring stations. The discussion of the location of the monitoring sites must include information on the functional classification of the highway where the monitoring station is located.

(4) Type and capabilities of speed measuring equipment to be used.

(5) Data collection. (i) Schedule. Speed monitoring sessions shall be scheduled evenly among the three-month periods of the year ending December 31, March 31, June 30, and September 30. Each monitoring station shall be monitored once per three-month period. The dates that monitoring is planned shall be included in the schedule. These dates may be changed if conditions at a site preclude the normal flow of traffic as indicated in clause (ii) of this subsection.

(ii) Field data collection. The choice of a data collection site within a given segment shall reflect the geometric design conditions of the segment. Data shall not be acceptable in determining compliance if conditions at a site are such that the normal flow of traffic is substantially restricted by activities such as highway construction, maintenance operations, extreme weather conditions, temporary lane closings, or the presence of non-routine enforcement activity.

(iii) A 24-hour monitoring period shall be the duration of any individual speed monitoring session.

(6) Any deviation from the analysis methods described in the SMPPM.

(c) Data collection shall start October 1, 1994.

§ 1260.11 Guidelines and evaluations of operations.

(a) The State shall submit its initial speed monitoring plan to the FHWA Division Administrator on or before January 24, 1994. The plan shall be evaluated annually and revised as conditions dictate. The plan may also be revised at any time during the 12-month data collection period ending September 30 if the State elects to change its speed limit on eligible roads.

(b) Annual evaluations of the State's speed monitoring plan shall be submitted to the FHWA Division Administrator by December 1 following the close of the data collection period of each year beginning with December 1, 1994, so that changes to the plan called for by the evaluation can go into effect with the subsequent quarter beginning January 1. At a minimum, the evaluation shall discuss:

(1) Adjustments to the number of sampling locations in a State.

(2) Any other changes to the plan proposed by the State.

(c) Plan revisions called for during the data collection period due to a State changing its speed limit shall be submitted to the FHWA Division Administrator for approval, and may take effect retroactively to the date on which the speed limit was changed if such approval is granted.

§ 1260.13 Certification requirement.

Each State shall certify to the Secretary of Transportation before January 1 of each year that it is enforcing the National Maximum Speed Limit on all public highways in accordance with 23 U.S.C. 154. The certification shall be supported by information on activities and results achieved during the 12-month period ending on September 30 preceding the January 1 date by which certification is required.

§ 1260.15 Certification content.

The certification shall consist of the following elements:

(a) (1) A statement by the Governor of the State, or an official designated by the Governor, that the National Maximum Speed Limits on public highways in the State are being enforced. The certifying statement shall be worded as follows:

(Name of the certifying official), (position title), of the (State or Commonwealth) of _____, do hereby certify that the (State or Commonwealth) of _____, is enforcing the National Maximum Speed Limits.

(2) If this statement is made by an official other than the Governor, a copy of the document designating the official, signed by the Governor, shall also be included in the certification made under this part.

(b) A copy of any State law, regulation, administrative order, statement of policy or any other written instruction relating to enforcement of the National Maximum Speed Limits shall be included with the initial certification required by this rule. If there has been no change in the applicable State law, regulation, administrative order, policy statement or written instruction concerning National Maximum Speed Limit Enforcement, then a State may include a statement to that effect with the annual certification. If a change has occurred then a State need only submit a copy of the changed document with subsequent annual certifications. If a written enforcement policy on the National Maximum Speed Limits does not exist, a statement to that effect must also be included.

(c) Information relating to enforcement and monitoring as follows:

(1) Miles of highway with a 55 mph or 65 mph speed limit, by the following highway categories:

(i) Freeways posted at 55 mph;

(ii) Freeways posted at 65 mph (including freeways posted higher than 55 mph but lower than 65 mph); and

(iii) Nonfreeways posted at 55 mph.

(2) Number of citations issued by State agencies for violations of the 55 mph speed limit and 65 mph speed limit during each month of the 12-month period ending on September 30 before the date by which certification is required.

(3) Number of monitoring locations and monitoring sessions.

(4) Number of vehicles observed during monitoring sessions.

(5) Distribution of vehicle speed by each highway category listed in paragraph (c)(1) of this section.

(6) For freeways and nonfreeways posted at 55 mph—the percentage of vehicles exceeding each of the following speeds: 55, 60, 65, 70 and 75 mph.

(7) For freeways posted at 65 mph—the percentage of vehicles exceeding each of the following speeds: 65, 70, 75, 80 and 85 mph.

(8) The data must be reported as required in the SMPPM.

(d) A calculation of the State's compliance scores is as follows: The statewide percentage of vehicles exceeding 60, 65 and 70 mph on all 55 mph highways, and 70, 75 and 80 mph on all 65 mph highways, is derived from the speed sampling plan specified in § 1260.9, and adjusted using a single adjustment procedure to take into account potential error sources. The single adjustment formula is:

$$H = \frac{(A + B)}{2}$$

where: H=The percent exceeding x mph after adjustment

A=the percent of vehicles exceeding x mph, and

B=the percent of vehicles exceeding +5 mph

These percents shall be calculated to the precision of a tenth of one percent. The adjusted percentages, also calculated to the precision of a tenth of one percent, are then inserted into the compliance formula and the State's compliance score is calculated. The percentage of vehicles exceeding a speed is expressed in percentage form. For example,

48.5 percent is expressed in the formula as 48.5, not 0.485.

The State's compliance score is determined by summing the product of relative fatality and a measure of crash severity, as derived from the 1989–1991 National Accident Sampling System data and 1990 Fatal Accident Reporting System data, and the percentage of vehicles exceeding 5 mph, 10 mph and 15 mph over the speed limit for each of the three highway categories. The compliance score formula is:

Compliance score=
- 1.055 × (percentage >60 on 55 mph freeways)
- +1.115 × (percentage >65 on 55 mph freeways)
- +1.180 × (percentage >70 on 55 mph freeways)
- +1.354 × (percentage >70 on 65 mph freeways)
- +1.434 × (percentage >75 on 65 mph freeways)
- +1.520 × (percentage >80 on 65 mph freeways)
- +2.659 × (percentage >60 on 55 mph nonfreeways)
- +2.811 × (percentage >65 on 55 mph nonfreeways)
- +2.974 × (percentage >70 on 55 mph nonfreeways)

The maximum allowable compliance scores are:

States with all highway categories	210
States with 55 mph freeways and 55 non-freeways	176
States with only 55 mph nonfreeways and 65 mph freeways	138
States with only 55 mph freeways	73

The State shall submit its compliance score in its annual certification statement.

§ 1260.17 Certification and statistical submittal.

(a) The Governor, or an official designated by the Governor, each year shall submit the certification to the FHWA Division Administrator. The FHWA Division Administrator will retain the original and forward two copies each to the Regional Administrators of FHWA and NHTSA. The Regional Administrators will each retain one copy and forward one copy of the submission, with any pertinent comments, to their respective Washington, DC Headquarters Chief Counsel.

(b) Any changes to the original certification or supplemental information necessitated by the review of the certifications as they are forwarded shall be submitted in the same manner as the original submission.

(c) The State is required to submit the information relating to enforcement, monitoring, and the compliance score as described in § 1260.15 (c) and (d).

(d) The data required for the annual certification under § 1260.15(c), with the exception of the speeding citation data required under § 1260.15(c)(2), shall be submitted by each State to the FHWA Division Administrator on a quarterly basis for the 3-month periods ending December 31, March 31, June 30 and September 30 of each year. The submission of the July–September quarter shall, in addition to the quarterly report, include a summary report of the entire year's speed monitoring data (starting from the previous October 1). This submission shall also include the State's annual citation information.

§ 1260.19 Effect of failure to certify or to meet compliance standards.

(a) If a State fails to certify as required by § 1260.13, no Federal-aid highway project shall be approved under 23 U.S.C. 106 in that State.

(b) Notwithstanding the proper submission of the certification and information supporting the speed monitoring activities of any State, if the Secretary determines that a State's compliance score calculated pursuant to § 1260.15(d) is greater than the maximum allowable compliance score as provided in § 1260.15(d), an amount calculated under paragraph (c) of this section from funds apportioned to that State under 23 U.S.C. 104(b)(1), 104(b)(2), 104(b)(3), 104(b)(4) and 104(b)(6) shall be transferred to such State's highway safety grant program fund under 23 U.S.C. 402 for the fiscal year subsequent to the fiscal year in which the State submitted its certification and supporting information upon which the compliance score is calculated.

(c) The amount of funds transferred shall be calculated by penalty category as follows:

(1) For States with all highway categories:

(i) Penalty category 1. If the compliance score exceeds 210 but is less than 231, one-half of one percent of the funds shall be transferred.

(ii) Penalty category 2. If the score is at least 231 but is less than 252, one percent shall be transferred.

(iii) Penalty category 3. If the score is 252 or greater, one and one-half percent shall be transferred.

(2) For States with 55 mph freeways and 55 nonfreeways:

(i) Penalty category 1. If the compliance score exceeds 176 but is less than 194, one-half of one percent of the funds shall be transferred.

(ii) Penalty category 2. If the score is at least 194 but less than 211, one percent shall be transferred.

(iii) Penalty category 3. If the score is 211 or greater, one and one-half percent shall be transferred.

(3) For States with only 55 mph nonfreeways and 65 mph freeways:

(i) Penalty category 1. If the compliance score exceeds 138 but is less than 152, one-half of one percent of the funds shall be transferred.

(ii) Penalty category 2. If the score is at least 152 but is less than 166, one percent shall be transferred.

(iii) Penalty category 3. If the score is 166 or greater, one and one-half percent shall be transferred.

(4) For States with only 55 mph freeways:

(i) Penalty category 1. If the compliance score exceeds 73 but is less than 80, one-half of one percent of the funds shall be transferred.

(ii) Penalty category 2. If the score is at least 80 but less than 88, one percent shall be transferred.

(iii) Penalty category 3. If the score is 88 or greater, one and one-half percent shall be transferred.

§ 1260.21 Penalty reduction and notification of noncompliance.

(a) If the FHWA and NHTSA Administrators determine that a noncomplying State's fatality rate, rounded to the nearest tenth, is at least ten percent below the national fatality rate, the Secretary shall reduce the amount of the apportionment transferred under § 1260.19 by one-third. The fatality rate is determined using fatality data contained in NHTSA's Fatal Accident Reporting System Annual Report and vehicle-miles of travel data reported in FHWA's Annual Highway Statistics publication. The State's fatality rate will be based on data for the calendar year preceding the fiscal year in which its compliance score is greater than the maximum allowable compliance score.

(b) On the basis of the information provided by the State and other information in the possession of the Department, the Secretary will notify the Governor of the State of the transfer of apportionments and direct the transfer of said apportionments. A copy of that notification will be transmitted promptly to the State by certified mail.

(c) The State shall expend any transferred funds pursuant to § 1260.19(b) for Section 402 programs within the State. In no instance shall such transfer exceed the total section 402 apportionment for that fiscal year, prior to any penalty reduction.

Appendix to Part 1260—Speed Monitoring Program Procedural Manual

Purpose

The speed monitoring program is intended to provide reliable data to be included in a State's annual certification of National Maximum Speed Limit (NMSL) enforcement.

Legislation

Section 205 of the Surface Transportation Assistance Act of 1978 and Section 1029 of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) are the basis for speed monitoring activities related to the National Maximum Speed Limit.

Development and Documentation of Sampling Plan

Following the guidelines in this rule, each State shall develop a Speed Sampling and Analysis Plan for approval by the FHWA Division Administrator. The plan shall be reviewed annually, and updated if there are changes in the number or location of monitoring stations, or in the dates that data collection is planned. At a minimum, the plan shall include:

- Grouping of highways by three highway categories:

—Freeways posted at 55 mph
—Freeways posted at 65 mph
—Non-Freeways posted at 55 mph

- Number of miles of highway with a 55 or 65 mph speed limit, by above categories.
- Number of monitoring stations, sessions, location, and the direction that monitoring takes place (Northbound, Westbound, etc.).
- Any request for an exemption if a State proposes to limit the number of monitoring stations to a number no less than 30 percent higher than the maximum number of monitoring stations under the previous program. This request should include a justification as well as demonstrable assurances that the data integrity is being preserved.
- Type and capabilities of speed measuring equipment used.
- Functional classification of selected monitoring sites.
- Dates of planned data collection for each monitoring station.
- Any deviation from analysis methods recommended in this document.

Sampling Plan Prerequisites

The three types of data that must be assembled before a sampling plan can be developed are:

1. Miles of highway, by highway category, with a 55 or 65 mph speed limit.
2. Location of Highway Performance Monitoring System (HPMS) sample sections.
3. Location of monitoring stations under old program.

Miles of Highway, by Highway Category, With a 55 mph or 65 mph Speed Limit

Miles of highway, by highway category, with a 55 or 65 mph speed limit will be used in the random selection of monitoring stations.

Highways will be grouped into the following categories:

—Freeways posted at 55 mph
—Freeways posted at 65 mph
—Non-Freeways posted at 55 mph

The monitoring category "non-freeways posted at 55 mph" will *NOT* include any facilities classified as "local," any unpaved roads, and any rural minor collectors.

Location of HPMS Sample Sections

The location of the HPMS sample sections will assist in the selection of monitoring stations. HPMS sections average five miles in length. Monitoring stations will be randomly selected from among the HPMS sample sections where the entire section is posted at 55 or 65 mph.

Location of Monitoring Stations Under the Old Program

The location of existing monitoring stations must be known. Since the old monitoring stations were selected randomly, many of those stations can be retained, under the procedures discussed in the section "Selection of Sample Sites".

Sampling Guidelines

This section presents a sampling plan designed to monitor the speeds vehicles travel on highways posting with a 55 mph or 65 mph speed limit. Monitoring stations will be randomly selected from road segments in three highway categories:

- 55 mph freeways.
- 65 mph freeways.
- 55 mph non-freeways.

The State shall be responsible for selecting the sites to be monitored in accordance with the procedures in this section.

The following issues are addressed:

- Determination of sample sizes;
- Selection of sample sites;
- Number of sampling sessions and length of monitoring period.

Determination of Sample Sizes

The number of monitoring stations required in each State is a function of the number of different highway categories, the variability in the number of vehicles using each highway type, and the number of vehicles exceeding the speed limit in each of the three different levels (exceeding 60, 65, 70 etc.). Data from past speed surveys indicate that speeds vary much more on 55 mph non-freeways than on 55 or 65 mph freeways. In addition, most States have much more 55 mph non-freeway mileage than 55 or 65 mph freeway mileage. Thus, most States will have more monitoring stations on non-freeways than on freeways.

Three tables have been developed to assist the States in determining sample sizes. The tables were derived using speed data from previous surveys. Estimates of sampling errors were calculated for the 55 mph freeway and 55 mph non-freeway monitoring categories. Since no data were available for 65 mph freeways, the assumption was made that the variability of speeds on this highway type were similar to the variability of speeds on the 55 mph freeways. An estimate of overall variance and percent of vehicles exceeding 55 mph were calculated using weighted averaging across the States examined. For the 55 mph freeways, the percent of vehicles exceeding 55 mph averaged 70.9 percent with an estimated population standard deviation of 21 percent. For the 55 mph non-freeways, the percent of vehicles exceeding 55 mph averaged 51.8 percent with an estimated population standard deviation of 40 percent.

Using these figures the sample size tables were created. The tables show sample sizes for each highway category as a function of the required precision and the number of road segments in each category. The sample sizes given in each table at the 7.5 percent level of precision are the *minimum* necessary in each category to met the precision requirement of these guidelines.

TABLE 1.—FREEWAYS WITH 55 MPH SPEED LIMIT

Number of road segments	Number of highway segments to be sampled*
1	1
2–3	2
4–6	3
7–10	4
11–18	5
19–36	6
37–141	7
142 or more	8

*Precision based on one standard deviation and the percent of vehicles exceeding 55 equal to 70.9 percent.

TABLE 2.—FREEWAYS WITH 65 MPH SPEED LIMIT

Number of road segments	Number of highway segments to be sampled*
1	1
2–3	2
4–6	3
7–10	4
11–18	5
19–36	6
37–141	7
142 or more	8

*Precision based on data from 55 mph Freeways and the assumption that the two roadway categories are similar in variation.

TABLE 3.—NON-FREEWAYS WITH 55 MPH SPEED LIMIT

Number of road segments	Number of highway segments to be sampled*
1	1
2	2
3	3
4–5	4
6	5
7–8	6
9–10	7
11–12	8
13–14	9
15–16	10
17–19	11
20–22	12
23–25	13
26–29	14

TABLE 3.—NON-FREEWAYS WITH 55 MPH SPEED LIMIT—Continued

Number of road segments	Number of highway segments to be sampled*
30–34	15
35–39	16
40–45	17
46–53	18
54–62	19
63–74	20
75–88	21
89–109	22
110–137	23
138–180	24
181–253	25
254–406	26
407–950	27
951 or more	28

*Precision based on one standard deviation and the percent of vehicles exceeding 55 equal to 51.8 percent.

Table 1 should be used to determine the number of monitoring stations for freeways with 55 mph speed limits. For example, in a State with 120 freeway road segments at 55 mph, seven monitoring stations would be required to meet the precision level of 7.5 percent.

Similarly, Table 2 should be used for determining the number of monitoring stations for 65 mph freeways and Table 3 for 55 mph non-freeways. Continuing the example, if this State had 60 segments of 65 mph freeways then a sample of seven monitoring stations would be required on these roads. If the State had 1,000 segments of 55 mph non-freeways then 28 monitoring stations would be required on these roads.

If the total number of monitoring stations required by the above methodology is more than 30 percent higher than the maximum number of stations used on roads in the State's existing speed monitoring program, then the State can petition the Division Administrator for a reduced number of stations. The reduction in stations can be to a level no lower than 30 percent higher than the maximum number of stations under the old program. However, there can be no reduction in the number of stations required on freeways posted at 65 mph. Therefore, any reduction in the number of stations must come from the highway categories freeways posted at 55 mph and non-freeways posted at 55 mph.

In lieu of the sample size tables, States can use their own data from past speed surveys to calculate sample sizes for each of the highway categories. However, the State must document in their sampling plan that their level of precision meets the precision requirements in each highway category. For 55 mph freeways and 65 mph freeways, a relative error of 11 percent for the total percent of vehicles exceeding the speed limit is required. For 55 mph non-freeways, a 14 percent relative error for the total percent of vehicles exceeding the speed limit is required. Relative error is defined as one standard error divided by the estimate of the percent of vehicles exceeding the speed limit. For example, for 55 mph freeways, the percent of vehicles exceeding the speed limit was 71 percent. One standard error was estimated at 7.5 percent. The relative error would be calculated as:

Relative Error = Standard Error/Estimate,
Relative Error = 7.5/71 = 11 percent.

If a State wishes to have a higher level of statistical reliability than a 7.5 percent level of precision, then the State can modify these monitoring requirements. The State can add monitoring stations or increase the number of days per year during which data are collected. The FHWA Division Administrator must accept the State's proposal before it can be implemented.

Selection of Sample Sizes

It is not feasible to select all new monitoring stations. Therefore, existing stations, including highway segments instrumented for other purposes such as weigh-in-motion or long term pavement monitoring, should be used to the maximum extent possible. States may either have too many or too few existing monitoring stations in each highway category. For example, many States may not have a sufficient number of stations on 65 mph freeways. Under the old monitoring program, all NMSL highways were divided into segments an average of about five miles long, and monitoring stations were randomly selected from these. A similar process will be used under the new monitoring program.

- Too few monitoring stations within a highway category. If more stations are needed, road segments should be chosen at random from all road segments in that category that currently do not have a monitoring station.
- Too many monitoring stations within a highway category. If a State has more stations in a monitoring category than required in the previous section, the State can choose to eliminate stations. However, the stations to be eliminated must be selected at random from the existing stations.

A random selection procedure for either alternative is provided in Appendix A. For all new stations one of the two directions of traffic should also be chosen at random. On existing monitoring stations, monitoring should take place in the same direction as under the old program. As under the old program, monitoring will take place on all lanes of the highway segment chosen as the monitoring station.

Each year, the number of monitoring stations should be reviewed to determine if any changes are required. Events that could precipitate changing the number of monitoring stations include:

- An increase or decrease in the number of HPMS sample sections in a highway category; and
- The introduction or elimination of a 65 mph maximum speed limit in a State.
- A significant increase or decrease in the amount of 55 mph highways.

Number and Length of Sessions

Each monitoring station will be monitored four times a year, once in each quarter. This is necessary to account for seasonal variation in traffic.

A *24-hour monitoring period* will be used to account for varying hourly traffic conditions and to facilitate the scheduling of data collection. It is expected that the number of vehicles counted during the 24-hour monitoring period will vary.

Data Collection

This section summarizes guidelines for data collection in the speed monitoring program. It is a brief outline of basic procedures that should be expanded on by each State in developing its speed monitoring program.

Organization

The program manager should be responsible for selection of monitoring sites, determining location of monitoring stations, obtaining necessary speed measurement equipment, scheduling equipment installation, scheduling data collection, managing data processing an analysis, and submission of required data and certifications. For the field operation a detailed schedule should be developed that includes as a minimum:

- Selection and location of stations;
- Date of permanent station installation;
- Date/time of equipment setup at each location;
- Date/time of equipment takedown at each location;
- Travel time;
- Makeup time for equipment malfunction; bad weather, etc; and
- Transfer of recorded data to program manager.

This schedule should be as comprehensive as possible so that each member of the data collection team knows what work is expected. This schedule should be coordinated with district or local engineers, and law enforcement officials so that data collection does not occur during construction/maintenance activities and periods of intensive enforcement that might affect vehicle speeds.

Selection and Location of Stations

Selection and location of stations should be as described in the Speed Sampling and Analysis Plan. Once sites are selected it must be determined which sites will be permanent monitoring stations and which ones temporary. Speed monitoring has been underway since the mid 1970s and is currently planned to extend at least until FY 1997. Thus it may be cost effective to seriously consider permanent monitoring stations. Equipment for permanent monitoring stations must be scheduled for loop installation. Temporary monitoring station equipment is installed and removed by the data collection team.

Installation of equipment at monitoring Stations—Segments which will have permanent monitoring stations should be surveyed to determine the optimum place for the installation of the monitoring station. The location of the monitoring station should be representative of typical conditions on the section. Situations to be avoided are:

- Near or at a sharp horizontal curve with a speed advisory plate less than the posted speed limit.
- Steep grades (i.e. greater than 4%).
- Within 1000 feet of a significant at-grade intersection.
- Within 1000 feet of an exit ramp or entrance ramp of an interchange.
- Anywhere within the interchange (defined as the distance from the beginning of a deceleration lane through the end of an acceleration lane).
- Where other unusual features exist that might influence vehicle speeds (e.g. a narrow bridge or railroad crossing).

Temporary monitoring stations should be subjected to the same criteria as permanent stations. In this case the field crew should drive the section (a minimum of twice) to become familiar with its characteristics and to identify any unusual conditions, in addition to those mentioned above, and any other criteria developed by the program manager. The criteria established for locating the monitoring station should be carefully followed since failure to do so may yield in speed data that could result in non-compliance due to data error and/or non-comparability.

Equipment Installation and Data Collection

Two common types of detectors are available to be placed on the roadways for speed monitoring. The first is the standard loop detector. Loop detectors are permanently placed in the pavement. The second type includes temporary sensors (e.g., tape switch, cable sensors) and pneumatic tubes. These sensors must be placed on the pavement just before the start of each speed monitoring station. Extreme care is needed in placing the cables on the pavement since all traffic in one direction must be stopped to place the temporary sensors on the highway. The sensors are attached to the pavement by glue, tape, or both. There may be some problems installing the sensors during wet or cool weather. Both types of sensors perform well when properly placed on the highway. However, under heavy traffic conditions temporary sensors may be damaged.

Data recorders can be placed at a distance from the sensors where the recorder can be secured. The deployment of the data recorder and the temporary sensors can take up to four hours depending on traffic and weather conditions. A shorter deployment period would be needed if permanent loop detectors were already in place.

Review Highway Conditions—Prior to going to the monitoring site, the State should check with district and local engineers and local enforcement officials to determine if any maintenance/construction and/or enforcement activities are present or planned for the site. When the State personnel arrive at the designated site, they should determine the suitability of conditions at the site. Speed monitoring should not be attempted under the following conditions:

- Extreme weather conditions expected during the next 24-hour period (severe rainstorms, heavy snow accumulating or icy roadway);
- Presence of non-routine enforcement activity; or
- Construction/maintenance activity or other disruptive activities which affect the speed of vehicle passing the site.

If any of these conditions exist, the field personnel should immediately contact the program manager or his/her representative so that the session can be rescheduled.

1. Document Speed Monitoring Station—The field data collection crew document the exact location, equipment setup, and equipment used. The following information should be included in station documentation:

- Location of site;
- Station number;
- Session number;
- Equipment used;
- Field data collection crew names;
- Time of arrival at site;
- Sketch of site indicating
  1. Location of speed monitoring equipment (sensor, recorder, etc.)
  2. Director of traffic monitored
  3. Geometrics of highway (lane, width, shoulder width, etc.), and
  4. Other physical features;
- Calibration of equipment checklist completed (check manufacturer's literature); and
- Time equipment is turned on.

Once each year the manufacturer's recommended calibration procedures should be completed. Any discrepancy should be reported to the program manager. No measurement should be taken with uncalibrated equipment.

2. End of Session Procedures—When the crew first arrives, they should determine if the equipment is still operating and run appropriate data checks. Any temporary speed monitoring equipment and all data recorders should be removed from the road and stored.

Scheduling the Data Collection

Data collection must account for variations in speed by the hour of the day, day of the week, and time of the year. To account for the hourly variation, all data collection sessions should be 24 hours long. At all monitoring stations one session of data will be obtained each *quarter*. All sessions should be evenly distributed by day of week. Data should not be collected on any monitoring station more than once on any day of the week in any one year.

Procedures for Obtaining and Recording Data—Data must be collected at each monitoring station to allow for the calculation of the following statistics:

- At monitoring stations on highways posted at 55 mph:
  —Percent of vehicles exceeding 55 mph,
  —Percent of vehicles exceeding 60 mph,
  —Percent of vehicles exceeding 65 mph,
  —Percent of vehicles exceeding 70 mph, and
  —Percent of vehicles exceeding 75 mph.
- At monitoring stations on freeways posted at 65 mph:
  —Percent of vehicles exceeding 65 mph,
  —Percent of vehicles exceeding 70 mph,
  —Percent of vehicles exceeding 75 mph,
  —Percent of vehicles exceeding 80 mph, and
  —Percent of vehicles exceeding 80 mph.
- The number of vehicles observed.

To determine the above statistics, each monitoring station must record a count of all vehicles and the speed of all vehicles that pass by the monitoring station in each 24-hour monitoring period.

Information on more categories of "percent exceeding" than is specified in the compliance formula is required to allow for error adjustments and to gather information on percent exceeding speed limit.

Data Analysis and Sample Design Evaluation

This section describes the procedures to be used in analyzing speed monitoring data. The main objective is to develop standard procedures applicable to all States. This section is divided into two parts:

- Computation of statistics related to the percentage of vehicles exceeding 55 mph, 60 mph, 65 mph, 70 mph, 75 mph, 80 mph, and 85 mph.
- Calculation of Compliance Score

Computation of Statistics

For monitoring stations on freeways and non-freeways posted at 55 mph it is necessary to compute the percentage of vehicles exceeding 55 mph, 60 mph, 65 mph, 70 mph, and 75 mph. For monitoring stations on freeways posted at 65 mph it is necessary to compute the percentage of vehicles exceeding 65 mph, 70 mph, 75 mph, 80 mph, and 85 mph.

The data in each category is then adjusted to account for the various errors inherent in the process. As under the old program (FY 1981 to FY 1993), a simplified adjustment will be used to take into account the potential error sources. The adjustment formula is:

$$H = \frac{(A + B)}{2}$$

where: A=the percent of vehicles exceeding x mph
B=the percent of vehicles exceeding x+5 mph, and
H=The percent exceeding x mph after adjustment

The adjusted percentages are then inserted into the compliance formula and the State's compliance score is calculated. The following examples demonstrates these calculations.

Example

Part 1—Percent Exceeding at One Station

The first two parts presents a computation of statistics on the percentage of vehicles exceeding 70 mph on freeways posted at 65 mph. The same procedure is to be used to calculate the percentage of vehicles exceeding 55 mph, 60 mph, 65 mph, 70 mph, and 75 mph on highways posted at 55 mph, and the percent of vehicles exceeding 65 mph, 70 mph, 75 mph, 80 mph, and 85 mph on freeways posted at 65 mph.

For each monitoring station, the proportion of vehicles exceeding 70 mph is computed by dividing the number of vehicles traveling in excess of 70 mph by the total number of vehicles measured during the four monitoring sessions. The percentage of vehicles exceeding 70 mph is derived simply by multiplying the proportion by 100.

Location Number 1

Quarter	Number of vehicles exceeding 70 mph	Total vehicles measured
1	2,936	9,786
2	3,473	11,875
3	3,616	12,429
4	3,229	11,064
Total	13,254	45,154

Percentage Exceeding 70 mph for Location Number 1:

$$100\left(\frac{13{,}254}{45{,}154}\right) = 29.4$$

Part 2—Percent Exceeding for One Highway Category

The percentage exceeding 70 mph for each highway category is derived by summing the number of vehicles exceeding 70 mph for all the monitoring stations within the highway category, dividing this sum by the total number of vehicles measured in the highway category, and multiplying the result by 100.

Freeways Posted at 65 MPH

Location No.	Number of vehicles exceeding 70 mph	Total vehicles measured
1	13,254	45,154
2	15,519	56,549
3	8,410	35,831
4	18,374	61,143
5	14,291	48,784
Total	69,848	247,461

Percentage Exceeding 70 mph for Freeways Posted at 65 mph:

$$100\left(\frac{69{,}848}{247{,}461}\right) = 28.2$$

Part 3—Simplified Adjustment

This adjustment is to be taken for each of the nine percentages exceeding that go into the base compliance score. Using the following percentages:

38.5 percent exceeding 60 mph on 55 mph Freeways
19.0 percent exceeding 65 mph on 55 mph Freeways

Calculate the adjusted percent exceeding 60 mph on 55 mph Freeways:

$$x = \frac{(38.0 + 19.5)}{2}$$

x=28.8, the adjusted percent exceeding 60 mph on 55 mph Freeways.

Part 4—Calculation of Compliance Score

Assume a State with all three highway categories has collected the following data:

38.5 percent exceeding 60 mph on 55 mph Freeways
19.0 percent exceeding 65 mph on 55 mph Freeways
9.1 percent exceeding 70 mph on 55 mph Freeways
1.5 percent exceeding 75 mph on 55 mph Freeways
28.2 percent exceeding 70 mph on 65 mph Freeways
10.2 percent exceeding 75 mph on 65 mph Freeways
3.3 percent exceeding 80 mph on 65 mph Freeways
0.9 percent exceeding 85 mph on 65 mph Freeways
27.0 percent exceeding 60 mph on 55 mph Non-Freeways
12.5 percent exceeding 65 mph on 55 mph Non-Freeways
4.9 percent exceeding 70 mph on 55 mph Non-Freeways
0.5 percent exceeding 75 mph on 55 mph Non-Freeways

Applying the simplified adjustment to these figures yield:

28.8 percent exceeding 60 mph on 55 mph Freeways
14.1 percent exceeding 65 mph on 55 mph Freeways
5.3 percent exceeding 70 mph on 55 mph Freeways
19.2 percent exceeding 70 mph on 65 mph Freeways
6.8 percent exceeding 75 mph on 65 mph Freeways
2.1 percent exceeding 80 mph on 65 mph Freeways
19.8 percent exceeding 60 mph on 55 mph Non-Freeways
8.7 percent exceeding 65 mph on 55 mph Non-Freeways
2.7 percent exceeding 70 mph on 55 mph Non-Freeways

These adjusted percent exceeding figures are used to calculate the compliance score as follows:

Compliance Score=[(1.055 * 28.8) + (1.115 * 14.1) + (1.180 * 5.3) + (1.345 * 19.2) + (1.434 * 6.8) + (1.520 * 2.1) + (2.659 * 19.8) + (2.811 * 8.7) + (2.974 * 2.7)]
= (30.38 + 15.72 + 6.25 + 25.82 + 9.75 + 3.19 + 52.65 + 24.46 + 8.03)
= 176.3

Reporting Results

Summary speed statistics from each State's monitoring program are required to be submitted to the FHWA as part of the annual certification of NMSL enforcement. In addition, the current practice of submitting quarterly reports showing results of speed monitoring during the previous 3-month period will continue. The Speed Summary Report form at the end of this chapter shows the desired format for reporting both annual and quarterly speed summary data. In addition, on the Speed Summary Report form the compliance score is to be calculated. In the annual certification, the following data must be reported:

- For freeways and non-freeways posted at 55 mph:
  - —Percent of vehicles exceeding 55 mph,
  - —Percent of vehicles exceeding 60 mph,
  - —Percent of vehicles exceeding 65 mph,
  - —Percent of vehicles exceeding 70 mph, and
  - —Percent of vehicles exceeding 75 mph.
- For freeways posted at 65 mph:
  - —Percent of vehicles exceeding 65 mph,
  - —Percent of vehicles exceeding 70 mph,
  - —Percent of vehicles exceeding 75 mph,
  - —Percent of vehicles exceeding 80 mph, and
  - —Percent of vehicles exceeding 85 mph.
- In addition to the above, the following must be determined for each highway category:
  - —Highway mileage posted at the NMSL,
  - —Number of vehicles observed,
  - —Number of monitoring locations,
  - —Number of monitoring sessions,

Data on freeways posted at 55 mph and non-freeways posted at 55 mph must be reported separately.

The data must be reported to the following precision:

- Number of Miles—Tenth of a Mile
- Number of Vehicles Observed—Exact Number of Vehicles
- Number of Locations—Exact Number of Locations
- Number of Sessions—Exact Number of Sessions
- Percent Exceeding 55 mph—Tenth of a Percent
- Percent Exceeding 60 mph—Tenth of a Percent
- Percent Exceeding 65 mph—Tenth of a Percent
- Percent Exceeding 70 mph—Tenth of a Percent
- Percent Exceeding 75 mph—Tenth of a Percent
- Percent Exceeding 80 mph—Tenth of a Percent
- Percent Exceeding 85 mph—Tenth of a Percent
- Compliance Score—1 Decimal Place

In addition, a distribution of vehicle speeds shall be reported for each highway category. The following categories shall be used in the reporting of the distribution of vehicle speeds:

- Number of vehicles at 40 mph and below;
- Number of vehicles from 41 to 45 mph;
- Number of vehicles from 46 to 50 mph;
- Number of vehicles from 51 to 55 mph;
- Number of vehicles from 56 to 60 mph;
- Number of vehicles from 61 to 65 mph;
- Number of vehicles from 66 to 70 mph;
- Number of vehicles from 71 to 75 mph;
- Number of vehicles from 76 to 80 mph;
- Number of vehicles from 81 to 85 mph;
- Number of vehicles at 86 mph and above.

These data should be reported on a formatted computer disk which will be provided to each State by the Division office.

SPEED SUMMARY REPORT

[Send quarterly report to Office of Highway Information Management HPM–30]
[Send annual report to Office of Highway Safety HHS–32]
[Quarterly report/Annual report (circle one)—Quarter or Year _____State _____]

Highway category	No. of miles	No. of vehicles observed	No. of locations	No. of sessions	Percent exceeding						
					55 mph	60 mph	65 mph	70 mph	75 mph	80 mph	85 mph
Freeways posted at 55 mph										XXXX	XXXX
Freeways posted at 65 mph					XXXX	XXXX					
Non-freeways posted at 55 mph										XXXX	XXXX

XXXX—Data not to be reported.

CALCULATION OF COMPLIANCE SCORE

[Send annual report to Office of Highway Safety HHS–32]
[Annual Report—Year _____State _____]

Highway category	Adjusted percent exceeding				
	60 mph	65 mph	70 mph	75 mph	80 mph
Freeways posted at 55 MPH	____.___	____.___	____.___	XXXX	XXXX
Freeways posted at 65 MPH	XXXX	XXXX	____.___	____.___	____.___
Non-freeways posted at 55 MPH	____.___	____.___	____.___	XXXX	XXXX

XXXX—Data not to be reported.

Computation of Compliance Score

Percent Exceeding 60 mph on 55 mph
Freeways: _____.___times
1.055= _____.___
Percent Exceeding 65 mph on 55 mph
Freeways: _____.___times
1.115= _____.___
Percent Exceeding 70 mph on 55 mph
Freeways: _____.___times
1.180= _____.___
Percent Exceeding 70 mph 65 mph
Freeways: _____.___times
1.354= _____.___
Percent Exceeding 75 mph on 65 mph
Freeways: _____.___times
1.434= _____.___
Percent Exceeding 80 mph on 65 mph
Freeways: _____.___times
1.520= _____.___
Percent Exceeding 60 mph on 55 mph
Non-Freeways: _____.___times
2.659= _____.___
Percent Exceeding 65 mph on 55 mph
Non-Freeways: _____.___times
2.811= _____.___
Percent Exceeding 70 mph on 55 mph
Non-Freeways: _____.___times
2.974= _____.___
Adjusted Compliance Score (sum of the scores for the nine highway categories)

DISTRIBUTION OF VEHICLE SPEEDS

[Send quarterly report to Office of Highway Information Statistics HPM–30, send annual report to Office of Highway Safety HHS–32]
[Quarterly Report/Annual Report (circle one)—Quarter or Year _____State _____]

Recorded speeds	Number of vehicles measured												
	Freeways posted at 55 mph						Freeways posted at 65 mph			Non-freeways posted at 55 mph			
	Rural			Urban			Rural			Rural		Urban	
	Int	Artri	Other	Int	Artri	Other	Int	Artri	Other	Artri	Other	Artri	Other
40 mph and below													
41 to 45 mph													
46 to 50 mph													
51 to 55 mph													
56 to 60 mph													
61 to 65 mph													
66 to 70 mph													
71 to 75 mph													
76 to 80 mph													
81 to 85 mph													
86 mph and Above													

Int—Interstate, Artri—Non-interstate Arterial, Other—Non-arterial.

Table of Random Numbers

This table consists of four pages, containing 2800 five-digit numbers organized in 200 rows by 14 columns. Numbers from this table may be selected by any random procedure. The procedure presented here consists of five steps:

1. Decide upon some arbitrary scheme of selecting the starting point (row, column) from the table. One method is a ask a person to select a number between 1 and 14. This will be the column number. Then ask a second person to select a number between 1 and 200. This will be the row number. A point (number) to start in the table has been selected.

2. Assign numbers 1 to 99,999 to all highway sections within a highway category from which the random selection will be made.

3. Decide upon some arbitrary scheme of selecting positional digits for each number chosen. If 500 is the highest sequence number used, you may decide to use the first, third, and fourth digit of each entry selected, and as a consequence a three-digit number is created from each entry choice.

4. If the number selected form the random number table is less than the highest sequence number, one highway section has been selected. If a number selected is greater than the highest sequence number or is a repeat of a number already selected, it should be passed over and the next number selected used. This process should continue until the desired number of highway sections have been selected.

5. A method should be designed to progress through the random number table from the first number selected. Any method can be used, but should be determined before the random numbers are selected. Continue whatever process is selected until the desired number of random numbers has been selected.

The following is an example that puts this procedure into practice.

Example

The problem is to randomly select 10 highway segments to be monitored from a population of 500 segments.

- Select starting point in the Random Number Table.
- a. Person one selected a number between 1 and 14, 7.
- b. Person two selected a number between 1 and 200, 3.
- Therefore, the starting point selected is row 3, column 7, random number 15179.
- Assign number to highway segment population 1 to 500.
- Selection of Position of Digits.

a. Since the highest sequence number is 500, three digits should be selected.

b. The first three digits from the random number table will be used to construct the random number.

- The highest number that can be used is 500, therefore, a number greater than 500 will be passed over. If the number 000 represents 1,000, and if it is encountered it will not be used as it is greater than 500.
- If a number appears more than once in a selection, it will not be selected the second time (or third time, fourth time, etc.).
- Selection of Random Numbers.

a. The progress through the random number table will be down the columns selected and up one of the columns on either side of the column used before.

b. Locate starting point row 3, column 7.

c. The first randomly selected number using the position of the digits in set 3 is 151. The next number is 394 (row 4, column 7). The next number, 604 (row 5, column 7), will not be used as it is greater than 500. Continue down the column selecting only numbers that are less than or equal to 500.

This process continues until all ten numbers have been selected. The result is the ten randomly selected highway segments listed below:

151
394
186
388
363
475
185
458
328
379

RANDOM NUMBER TABLE

Line Col.	1	2	3	4	5	6	7	8	9	10	11	12	13	14
1	10430	15011	01536	02011	81647	91646	69179	14194	62590	36207	20969	99570	91291	90700
2	22368	46573	25595	85393	30995	89198	27982	53402	93965	34095	52666	19174	39615	99505
3	24130	48360	22527	97265	76393	64809	15179	24830	49340	32081	30680	19655	63348	58629
4	42167	93093	06243	61680	07856	16376	39440	53537	71341	57004	00849	74917	97758	16379
5	37570	39975	81837	16656	06121	91782	60468	81305	49684	60672	14110	06927	01263	54613
6	77921	06907	11008	42751	27756	53498	18602	70659	90655	15053	21916	81825	44394	42880
7	99562	72905	56420	69994	98872	31016	71194	18738	44013	48840	63213	21069	10634	12952
8	96301	91977	05463	07972	18876	20922	94595	56869	69014	60045	18425	84903	42508	32307
9	89579	14342	63661	10281	17453	18103	57740	84378	25331	12566	58678	44947	05585	56941
10	85475	36857	43342	53988	53060	59533	38867	62300	08158	17983	16439	11458	18593	64952
11	28918	69578	88231	33276	70997	79936	56865	05859	90106	31595	01547	85590	91610	78188
12	63553	40961	48235	03427	49626	69445	18663	72695	52180	20847	12234	90511	33703	90322
13	09429	93969	52636	92737	88974	33488	36320	17617	30015	08272	84115	27156	30613	74952
14	10365	61129	87529	85689	48237	52267	67689	93394	01511	26358	85104	20285	29975	89868
15	07119	97336	71048	08178	77233	13916	47564	81056	97735	85977	29372	74461	28551	90707
16	51085	12765	51821	51259	77452	16308	60756	92144	49442	53900	70960	63990	75601	40719
17	02368	21382	52404	60268	89368	19885	55322	44819	01188	65255	64835	44919	05944	55157
18	01011	54092	33362	94904	31273	04146	18594	29852	71585	85030	51132	01915	92747	64951
19	52162	53916	46369	58586	23216	14513	83149	98736	23495	64350	94738	17752	35156	35749
20	07056	97628	33787	09998	42698	06691	76988	13602	51851	46104	88916	19509	25625	58104
21	48663	91245	85828	14346	09172	30168	90229	04734	59193	22178	30421	61666	99904	32812
22	54164	58492	22421	74103	47070	25306	76468	26384	58151	06646	21524	15227	96909	44592
23	32639	32363	05597	24200	13363	38005	94342	28728	35806	06912	17012	64161	18296	22851
24	29334	27001	87637	87308	58731	00256	45834	15398	46557	41135	10367	07684	36188	18510
25	02488	33062	28834	07351	19731	92420	60952	61280	50001	67658	32586	86679	50720	94953
26	81525	72295	04839	96423	24878	82651	66566	14778	76797	14780	13300	87074	79666	95725
27	29676	20591	68086	26432	46901	20849	89768	81536	86645	12659	92259	57102	80428	25280
28	00742	57392	39064	66432	84673	40027	32832	61362	98947	96067	64760	64584	96096	98253
29	05366	04213	25669	26422	44407	44048	37937	63904	45766	66134	75470	66520	34693	90449
30	91921	26418	64117	94305	26766	25940	39972	22209	71500	64568	91402	42416	07844	69618
31	00582	04711	87917	77341	42206	35126	74087	99547	81817	42607	43808	76655	62028	76630
32	00725	69884	62797	56170	86324	88072	76222	36086	84637	93161	76038	65855	77919	88006
33	69011	65797	95876	55293	18988	27354	26575	08625	40801	59920	29841	80150	12777	48501
34	25976	57948	29888	88604	67917	48708	18912	82271	65424	69774	33611	54262	85963	03547

RANDOM NUMBER TABLE—Continued

Line Col.	1	2	3	4	5	6	7	8	9	10	11	12	13	14
35	09763	83473	73577	12908	30883	18317	28290	35797	05998	41688	34952	37888	38917	88050
36	91567	42595	27958	30134	04024	86385	29880	99730	55536	84855	29080	09250	79656	73211
37	17955	56349	90999	49127	20044	59931	06115	20542	18059	02008	73708	83917	36103	42791
38	46503	18584	18845	49618	02304	51038	20655	58727	28168	15475	56942	53389	20562	87338
39	92157	89634	94824	78171	84610	82834	09922	25417	44137	48413	25555	21246	35509	20468
40	14577	62765	35605	81263	39667	47358	56873	56307	61607	49518	89656	20103	77490	19062
41	98427	07523	33362	64270	01638	92477	66969	98420	04880	45585	46565	04102	46880	45709
42	34914	63976	88720	82765	34476	17032	87589	40836	32427	70002	70663	88863	77775	69348
43	70060	28277	39475	46473	23219	53416	94970	25832	69975	94884	19661	72828	00102	66794
44	53976	54914	06990	67245	68350	82948	11398	42878	80287	88267	47363	46634	06541	97809
45	76072	29515	40980	07391	58745	25774	22987	80059	39911	96189	41151	14222	60697	59583
46	90725	52210	83974	29992	65831	38857	50490	83765	55657	14361	31720	57375	56228	41546
47	64364	67412	33339	31926	14883	24413	59744	92351	97473	89286	35931	04110	23726	51900
48	08962	00358	31662	25388	61642	34072	81249	35648	56891	69352	48373	45578	78547	81788
49	95012	68379	93526	70765	10593	04542	76463	54328	02349	17247	28865	14777	62730	92277
50	15664	10493	20492	38391	91132	21999	59516	81652	27195	48223	46751	22923	32261	85653
51	16408	81899	04153	53381	79401	21438	83035	92350	36693	31238	59649	91754	72772	02338
52	18629	81953	05520	91962	04739	13092	97662	24822	94730	06496	35090	04822	86772	98289
53	73115	35101	47498	87637	99016	71060	88824	71013	18735	20286	23153	72924	35165	43040
54	57491	16703	23167	49323	45021	33132	12544	41035	80780	45393	44812	12515	89831	91202
55	30405	83946	23792	14422	15059	45799	22716	19792	09983	74353	68668	30429	70735	25499
56	16631	35006	85900	98275	32388	52390	16815	69298	82732	38480	73817	32523	41916	44437
57	96773	20206	42559	78985	05300	22164	24369	54224	35083	19687	11052	91491	60383	19746
58	38935	64202	14349	82674	66523	44133	00697	35552	35970	19124	63318	29686	03387	59846
59	31624	76384	17403	53363	44167	64486	64758	75366	76554	31601	12614	33072	60332	92325
60	78919	19474	23632	27889	47914	02584	37680	20801	72152	39339	34806	08930	85001	87820
61	03931	33309	57047	74211	63445	17361	62825	39908	05607	91284	68833	25570	38818	46920
62	74426	33278	43972	10119	89917	15665	52872	73823	73144	88662	88970	74492	51805	99378
63	09066	00903	20795	95452	92648	45454	09552	88815	16553	51125	79375	97596	16296	66092
64	42238	12426	87025	14267	20979	04508	64535	31355	86064	29472	47689	05974	52468	16834
65	16153	08002	26504	41744	81959	65642	74240	56302	00033	67107	77510	70625	28725	34191
66	21457	40742	29820	96783	29400	21840	15035	34537	33310	06116	95240	15957	16572	06004
67	21581	57802	02050	89728	17937	37621	47075	42080	97403	48626	68995	43805	33386	21597
68	55612	78095	83197	33732	05810	24813	86902	60397	16489	03264	88525	42786	05269	92532
69	44657	66999	99324	51281	84463	60563	79312	93454	68876	25471	93911	25650	12682	73572
70	91340	84979	46949	81973	37949	61023	43997	15263	80644	43942	89203	71795	99533	50501
71	91227	21199	31935	27022	84067	05462	35216	14486	29891	68607	41867	14951	91696	85065
72	50001	38140	66321	19924	72163	09538	12151	06878	91903	18749	34405	56087	82790	70925
73	65390	05224	72958	28609	81406	39147	25549	48542	42627	45233	57202	94617	23772	07896
74	27504	96131	83944	41575	10573	08619	64482	73923	36152	05184	94142	25299	84387	34925
75	37169	94851	39117	89632	00959	16487	65536	49071	39782	17095	02330	74301	00275	48280
76	11508	70225	51111	38351	19444	66499	71945	05422	13442	78675	84081	66938	93654	59894
77	37449	30362	06694	54690	04052	53115	62757	95348	78662	11163	81651	50245	34971	52924
78	46515	70331	85922	38329	57015	15765	97161	17869	45349	61796	66345	81073	49106	79860
79	30986	81223	42416	58353	21532	30502	32305	86482	05174	07901	54339	58861	74818	46942
80	63798	64995	46583	09765	44160	78128	83991	42865	92520	83531	80377	35909	81250	54238
81	82486	84846	99254	67632	43218	50076	21361	64816	51202	88124	41870	52689	51275	83556
82	21885	32906	92431	09060	64297	51674	64126	62570	26123	05155	59194	52799	28225	85762
83	60336	98782	07408	53458	13564	59089	26445	29789	82505	41001	12535	12133	14645	23541
84	43937	46891	24010	25560	86355	33941	25786	54990	71899	15475	95434	98227	21824	19585
85	97656	63175	89303	16275	07100	92063	21942	18611	43748	20203	18534	03862	78095	50136
86	03299	01221	05418	38982	55758	92237	26759	86367	21216	98442	08303	56613	91511	75928
87	79626	06486	03574	17668	07785	76020	79924	25651	83325	88428	85076	72811	22717	50585
88	85636	68335	47539	08129	65651	11977	02510	26113	99447	68645	34327	15152	55230	93448
89	18039	14367	61337	06177	12143	46609	32989	74014	64708	00533	35398	58408	13261	47908
90	08362	15656	60627	36478	65648	16764	53412	09013	07832	41574	17639	82163	60859	75567
91	79556	29068	04142	16268	15387	12856	66227	38358	22478	73373	88732	09443	82558	05250
92	92608	82674	27072	32534	17075	27698	98204	63863	11951	34648	88022	56148	34925	57031
93	23982	25835	40055	67006	12293	02753	14827	22235	35071	99704	37543	11601	35503	85171
94	09915	96306	05908	97901	28395	14186	00821	80703	70426	75647	76310	88717	37890	40129
95	50937	33300	26695	62247	69927	76123	50842	43834	86654	70959	79725	93872	28117	19233
96	42488	78077	69882	61657	34136	79180	97526	43092	04098	73571	80799	76536	71255	64239
97	46764	86273	63003	93017	31204	36692	40202	35275	57306	55543	53203	18098	47625	88684
98	03237	45430	55417	63282	90816	17349	88298	90183	36600	78406	06216	95787	42579	90730
99	00091	81482	52667	61583	14972	90053	89534	76036	49199	43716	97548	04379	46370	28672
100	38534	01715	94964	87288	65680	43772	39560	12918	86537	62738	19636	51132	25739	56947

RANDOM NUMBER TABLE—Continued

Line Col.	1	2	3	4	5	6	7	8	9	10	11	12	13	14
101	13034	16334	74151	92027	24670	36665	00770	22878	02179	51602	07270	76517	97275	45960
102	21224	00370	30420	03883	96848	89428	41583	17564	27395	63904	41548	49197	82277	24120
103	99052	47887	81085	64933	66279	80432	65793	83287	34142	13241	30590	97760	35848	91983
104	00199	50993	98603	38452	87890	94624	69721	57484	67501	77638	44331	11257	71131	11059
105	60578	06483	28733	37867	07936	98710	96539	27186	31237	80612	44488	97819	70401	95419
106	92140	18312	17441	01929	18163	69201	31211	54288	39296	37318	65724	90401	79017	62077
107	97458	14229	12063	59611	32249	90466	33216	19358	02591	54263	88449	01912	07436	50813
108	35249	38646	34475	72417	60514	69257	12489	51924	86871	92446	36607	11458	30440	52639
109	38980	46600	11759	11900	46743	27860	77940	39298	97838	95145	32378	68038	89351	37005
110	10750	52745	38749	87365	58959	53731	89295	59062	39404	13198	59960	70408	29812	83126
111	36247	27850	73958	20673	37800	63835	71051	84724	52492	22342	78071	17456	96104	18327
112	70994	66986	99744	72438	01174	42159	11392	20724	54322	36923	70009	23233	65438	59685
113	99638	94702	11463	18148	81386	80431	90628	52506	02016	85151	88598	47821	00265	82525
114	72055	15774	43857	99805	10419	76939	25993	03544	21560	83471	43989	90770	22965	44247
115	24038	65541	85788	55835	38835	59399	13790	35112	01324	39520	76210	22487	83275	32286
116	74976	14631	35908	28221	39470	91548	12854	30166	09073	75887	36782	00268	97121	57676
117	35553	71628	70189	26436	63407	91178	90348	55359	80392	41012	36270	77786	89578	21059
118	35676	12797	51434	82976	42010	26344	92920	92155	58807	54644	58581	95331	78629	73344
119	74815	67523	72985	23183	02446	63594	98924	20633	58842	85961	07648	70164	34994	67662
120	45246	88048	65173	50989	91060	89894	36063	32819	68559	99221	49475	50558	34698	71800
121	76509	47069	86378	41797	11910	49672	88575	97966	32466	10083	54728	81972	58975	30761
122	19689	90332	04315	21358	97248	11188	39062	63312	52496	07349	79178	33692	57352	72862
123	42751	35318	97513	61537	54955	08159	00337	80778	27507	95478	21252	12748	37554	97775
124	11946	22681	45045	13964	57517	59419	58045	44067	58716	58840	45557	96345	33271	53464
125	96518	48688	20996	11090	48396	57177	83867	86464	14342	21545	48717	72364	86954	55580
126	35726	58643	76869	84622	39098	36083	72505	92265	23107	60278	05822	46760	44294	07672
127	39737	42750	48968	70536	84864	64952	38404	94317	65402	13589	01055	79044	19308	83623
128	97025	66492	56177	04049	80312	48028	26408	43591	75528	65341	49044	95495	81256	53214
129	62814	08075	09788	56350	76787	51591	54509	49295	85830	59860	30883	89660	96142	18354
130	25578	22950	15227	83291	41737	79589	96191	71845	86899	70694	24290	01551	80092	82118
131	68763	69576	88991	49662	46704	63362	56625	00481	73323	91427	15264	06969	57048	54149
132	17900	00813	64361	60725	88974	61005	99709	30666	26451	11528	44323	34778	60342	60388
133	71944	60227	63551	71109	05624	43836	58254	26160	32116	63403	35404	57146	10909	07346
134	54684	93691	85132	64399	29182	44324	14491	55226	78793	34107	30374	48429	51376	09559
135	25946	27623	11258	65204	52832	50680	22273	05554	99521	73791	85744	29276	70326	60251
136	01353	39318	44961	44972	91766	90262	56073	06606	51826	18893	83448	31915	97764	75091
137	99083	88191	27662	99113	57174	35571	99884	13951	71057	53961	61448	74909	07322	80960
138	52021	45406	37945	75234	24327	86978	22644	87779	23753	99926	63898	54886	18051	96314
139	78755	47744	43776	83098	03225	14281	83637	55984	13300	52212	58781	14905	46502	04472
140	25282	69106	59180	16257	22810	43609	12224	25643	89884	31149	85423	32581	34374	70873
141	11959	94202	02743	86847	79725	51811	12994	76844	05320	54236	53891	70226	38632	84776
142	11644	13792	98190	01424	30078	28197	55583	05197	47714	68440	22016	79204	06862	94451
143	06307	97912	68110	59812	95448	43244	31262	88880	13040	16458	43813	89416	42482	33939
144	76285	75714	89585	99296	52640	46518	55486	90754	88932	19937	57119	23251	55619	23679
145	55322	07589	39600	60866	63007	20007	66819	84164	61131	81429	80676	42807	78286	29015
146	78017	90028	90220	92503	83375	26986	74399	30850	88567	29169	72816	53357	15428	86932
147	44768	43342	20696	26331	43140	69744	82928	24988	94237	46138	77426	39039	55596	12655
148	25100	19336	14605	86603	51680	97678	24261	02464	86563	74812	60069	71674	15478	47642
149	83612	46623	62876	85197	07824	91392	58317	37726	84628	42221	10268	20692	15699	29167
150	41347	81666	82961	60413	71020	83658	02415	33322	66036	98712	46795	16308	28413	05417
151	38128	51178	75096	13609	16110	73533	42564	59870	29399	67834	91055	89917	51096	08901
152	60950	00455	73254	96067	50717	13878	03216	78274	65863	37011	91263	33914	91303	49326
153	90524	17320	29832	96118	75792	25326	22940	24904	80523	38928	91374	55597	97567	38914
154	49897	18278	67160	39408	97058	43517	84426	59650	20247	19293	02019	14790	02852	05819
155	18494	99209	81060	19488	65596	59787	47939	91225	98768	43688	00438	05548	09443	82897
156	65373	72984	30171	37741	70203	94094	87261	30056	58124	70133	16936	02138	59372	09075
157	40653	12843	04213	70925	95360	55774	76439	61768	52817	81151	52188	31940	54273	49032
158	51638	22238	56344	44587	83231	50317	74541	07719	25472	41602	77318	15145	57515	07633
159	69742	99303	62578	83575	30337	07488	51941	84316	42067	49692	28616	29101	03013	73449
160	58012	74072	67488	74580	47992	69482	58624	17106	47538	13452	22620	24260	40155	74716
161	18348	19855	42887	08279	43206	47077	42637	45606	00011	20662	14642	49984	94509	56380
162	59614	09193	58064	29086	44385	45740	70752	05663	49081	26960	57454	99264	24142	74648
163	75688	28630	39210	52897	62748	72658	98059	67202	72789	01669	13496	14663	87645	89713
164	13941	77802	69101	70061	35460	34576	15412	81304	58757	35498	94830	75521	00603	97701
165	96658	86420	96475	86458	54463	96419	55417	41375	76886	19008	66877	35934	59801	00497
166	03363	82042	15942	14549	36324	87094	19069	67590	11087	68570	22591	65232	85915	91499

RANDOM NUMBER TABLE—Continued

Line Col.	1	2	3	4	5	6	7	8	9	10	11	12	13	14
167	70366	08390	69155	25496	13240	57407	91407	49160	07379	34444	94567	66035	38918	65708
168	47870	36605	12927	16043	53257	93796	52721	73120	48025	76074	95605	67422	41646	14557
169	79504	77606	22761	30518	28373	73898	30550	76684	77366	32276	04690	61667	64798	66276
170	46967	74841	50923	15339	37755	98995	40162	89561	69199	42257	11647	47603	48779	97907
171	14558	50769	35444	59030	87516	48193	02945	00922	48189	04724	21263	20892	92955	90251
172	12440	25057	01132	38611	28135	68089	10954	10097	54243	06460	50856	65435	79377	53890
173	32293	29938	68653	10497	98919	46587	77701	99119	93165	67788	17638	23097	21468	36992
174	10640	21875	72462	77981	56550	55999	87310	69643	45124	00349	25748	00844	96831	30651
175	47615	23169	39571	56972	20628	21788	51736	33133	72696	32605	41569	76148	91544	21121
176	16948	11128	71624	72754	49084	96303	27830	45817	67867	18062	87453	17226	72904	71474
177	21258	61092	66634	70335	92448	17354	83432	49608	66520	06442	59664	20420	39201	69549
178	15072	48853	15178	30730	47481	48490	41436	25015	49932	20474	53821	51015	79841	32405
179	99154	57412	09858	65671	60655	71479	63520	31357	56868	06729	34465	70685	04184	25250
180	08759	61089	23706	32994	35426	36666	63988	98844	37533	08269	27021	45886	22835	78451
181	67323	57839	61114	62192	47547	58023	64630	34886	98777	75442	95592	06141	45096	73117
182	09255	13986	84834	20764	72206	89393	34548	93438	88730	61805	78955	18952	46436	58740
183	36304	74712	00374	10107	85061	69228	81969	92216	03568	39630	81869	52824	50937	27954
184	15884	67429	86612	47367	10242	44880	12060	44309	46629	55105	66793	93173	00480	13311
185	18745	32031	35303	06134	33925	03044	59929	95418	04917	57596	24878	61733	92834	64454
186	72934	40086	88292	65728	36300	42323	64068	96373	48971	09049	59943	36536	05976	82118
187	17626	02944	20910	57662	80181	38579	24580	90529	52303	50436	29401	57824	86039	81062
188	27117	61399	50967	41399	61636	16663	15634	79717	94696	59240	25543	97989	63306	90946
189	93995	18678	90012	63645	85701	85269	62263	68331	00389	72571	15210	20769	44686	96176
190	67392	88421	09623	80725	62620	84162	67368	29560	00519	84545	08004	24526	41252	14521
191	04910	12261	37566	80016	21245	69377	50420	85658	55263	68667	78770	04533	14513	18099
192	81453	20283	79929	59639	23875	13245	46808	74124	74703	35769	95588	21014	37078	39170
193	19480	75790	48539	23703	15537	48885	02861	86587	74539	65227	90799	58789	96257	02708
194	21456	13162	74606	81011	55512	07481	93551	72189	76261	91206	89941	15132	37738	59284
195	89406	20912	46189	76376	25538	87212	20748	12831	57166	35026	16817	79121	18929	40628
196	09866	07414	55977	16419	01101	69343	13305	94302	80703	57910	36933	57771	42546	03003
197	86541	24681	23421	13521	28000	94917	07423	57523	97234	63951	42676	46829	09781	58160
198	10414	96941	06205	72222	57167	83902	07460	69507	10600	08858	07685	44472	64220	27040
199	49942	06683	41479	56982	56288	42853	92196	20632	62045	78812	35895	51851	83534	10689
200	23995	68882	42291	23374	24299	27024	67460	94783	40937	16961	26053	78749	46704	21983

[FR Doc. 93-25689 Filed 10-21-93; 8:45 am]
BILLING CODE 4910-62-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

National Highway Traffic Safety Administration

23 CFR Part 1260

[Docket No. 93–8; Notice 3]

RIN 2127–AE52

Certification of Speed Limit Enforcement; Revision of Procedures

AGENCY: Federal Highway Administration (FHWA) and National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Supplemental notice of proposed rulemaking (SNPRM).

SUMMARY: This supplemental notice proposes additional sanctions against a State having a compliance score exceeding the national maximum speed limit compliance score for each consecutive year after a year of non-compliance. The purpose of this modification is to encourage non-complying States to make efforts to reduce their scores in years succeeding any year in which they exceed the national maximum speed limit compliance score under 23 CFR part 1260.

DATES: Comments must be received by December 20, 1993.

ADDRESSES: Comments should refer to the docket number set forth above and be submitted to Docket 93–8, Notice 3, HCC–10, Federal Highway Administration, room 4232, 400 Seventh Street, SW, Washington, DC 20590. Docket hours are from 8:30 a.m. to 3:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: In FHWA, Julie Anna Cirillo, Chief, Information Management and Analysis Branch, 202–366–2170. In NHTSA, J. Michael Sheehan, Chief, Police Traffic Services Division, 202–366–4295.

SUPPLEMENTARY INFORMATION:

Background

The 55 mph national maximum speed limit (NMSL) was first instituted in 1974. FHWA and NHTSA have shared responsibility for the enforcement of the NMSL. The Secretary of Transportation was required to propose changes to 23 CFR part 659, currently governing the NMSL, pursuant to section 1029 of Public Law 102–240, the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA). Because of this statutory mandate, FHWA and NHTSA published proposed modifications to part 659 in the **Federal Register** on January 4, 1993 (58 FR 186) (the NPRM).

ISTEA requires that a new rule establish speed limit compliance requirements on 65 mph roads, in addition to 55 mph roads, and include a formula for determining compliance by the States with such requirements. In addition, section 1029(c)(1)(A) of ISTEA provides "* * * for the transfer of apportionments under section 104(b) of title 23, United States Code (other than paragraph (5)), if a State fails to enforce speed limits in accordance with this section, [and the rulemaking authorized by section 1029]." However, the legislation does not specify the amount of the apportionments to be transferred or designate the program area to which the apportionments would be transferred.

A final rule, published elsewhere in today's **Federal Register**, revises NMSL procedures and provides that the penalty transfer from highway construction funds to 23 U.S.C. 402 programs would not exceed the greater of (i) one and one-half percent of the construction funds, or (ii) the total section 402 apportionment for the applicable fiscal year. A subsequent year penalty was not proposed in the NPRM and, therefore, is not incorporated into the final rule published today.

Some commenters objected to the absence of incentives in the NPRM for States to seek improvement in their national maximum speed limit compliance scores, and suggested the creation of such incentives. The Arizona Department of Public Safety said that the "most significant problem with the proposed rule is the lack of incentives for states to achieve higher compliance rates." Advocates for Highway and Auto Safety suggested that the transfer of an additional one percent of construction funds should occur for each succeeding year of non-compliance to a maximum of 5 percent.

The agencies stated in the NPRM that "a greater amount, exceeding the total section 402 apportionments, would overburden a States's highway safety planning process and ability to expend the funds as intended." One commenter, the Coalition for Consumer Health & Safety, strongly disagreed with this view, and encouraged the agencies to consider disregarding the amount of the section 402 apportionment as a limit for the funding of the penalty transfer.

The House bill had stated that the amount to be transferred would range from one to five percent of the designated apportionments for the first year of non-compliance and from two to ten percent for two or more consecutive years of non-compliance. The amounts were to be transferred to the highway safety grant programs, authorized under section 402 of the Highway Safety Act of 1966, 23 U.S.C. 402. The Senate bill did not provide for a transfer of apportionments. In adopting the House's transfer penalty without the House language pertaining to amounts, the conferees included the following statement on page 328 of the report accompanying the conference bill:

> The Conference Substitute applies that same reprogramming provision and Secretarial discretion with regard to the percentage transferred as in the House bill.

In reviewing the ranges of the House bill for the purpose of proposing a reasonable amount to be utilized by a non-complying State, the agencies determined that one and one-half percent of the designated apportionment for each State approximated the total amount of its 402 program. The NPRM therefore proposed a transfer of the above-referenced portion of these funds to the section 402 program with an emphasis on speed limit enforcement. However, the final rule, published elsewhere in today's **Federal Register**, no longer emphasizes speed limit enforcement or any other specific highway safety program.

Since the final rule provides additional flexibility to States to use the transferred funds for highway safety activities, other than speed enforcement, the agencies are reconsidering their proposal to limit the amount transferred. The agencies request comments on this SNPRM about revising the regulation to provide that the amount transferred may exceed the total section 402 program fiscal year apportionment, but only in years successive to a year in which a State's compliance score is greater than the maximum allowable compliance score. This would permit an increase to as high as two and one-half percent of funds apportioned for highway construction. This kind of penalty transfer would more closely follow the intent of the House bill for succeeding year non-complying NMSL States.

More importantly, the agencies believe that the proposed additional penalty transfer for succeeding year non-compliance provides incentive for NMSL score improvement. In its present form, the final rule would permit a non-complying State to remain in a penalty category year after year and adapt to a relatively minimal transfer of funds, especially in view of the graduated penalty categories adopted in the final rule.

Accordingly, the agencies propose to add subsection (d) to § 1260.19. This change, if adopted in a final rule, would have the effect of transferring a maximum of two and one-half percent of the funds apportioned to the State for Federal-aid highways and highway safety construction programs under section 104(b) of title 23, United States Code (other than paragraph (5)) to the State's apportionment under 23 U.S.C. 402 for the fiscal year. This maximum amount would be transferred if such State (1) was in the highest penalty category pursuant to § 1260.19(c) (i)–(iv) in the immediately previous fiscal year, and (2) did not improve its score in the current fiscal year so as to be within the range of scores for the applicable second highest penalty category established in § 1260.19(c) (i)–(iv).

Under this proposed change, a non-complying State may avoid the additional one percent subsequent year penalty transfer if it improves its score into a lower penalty category. Such a State would then be subject only to the amount of penalty for that category under § 1260.19(c). If a non-complying State does not improve into a lower penalty category, or has a worse score which moves it into a higher category, the State's penalty transfer shall be the transfer amount for that category plus the additional one percent penalty.

The agencies believe that it is appropriate to impose an additional penalty on any State that is out of compliance and does not make sufficient improvement to reduce its penalty in two or more consecutive years, particularly since the current range between penalty categories approximates only 10 per cent of the total score. However, the agencies solicit comments on whether States should be provided some relief from additional penalties if they show improvement in their compliance score (such as at least a 5 per cent improvement in compliance) but their compliance score does not place them in a lower category.

In addition, a minor revision would be made to § 1260.21(c) to clarify that the 23 U.S.C. 402 apportionment amount may be exceeded for non-complying subsequent year penalty transfers.

Regulatory Analyses and Notices

Civil Justice Reform

This proposed change to the rule would not have any preemptive or retroactive effect. It imposes no requirements on the States, but rather encourages States to consider enacting and enforcing legislation requiring speed limits and speed limit enforcement through the potential redesignation of Federal highway construction funds to safety programs. Any redesignation of funds would not take place until FY 1997. If a non-complying State (1) submits data showing that its highway speeds are below certain national levels, and (2) a certification from the Governor reporting that the State is enforcing the speed limits on public highways in accordance with 23 U.S.C. 154, then it shall not be subject to the proposed subsequent year sanction which redesignates an additional amount of funds to the State's apportionment of safety grant programs. The transfer amount could be as high as two and one-half percent of a State's apportionment for Federal-aid highways and highway safety construction programs. The authorizing legislation for the proposed rule does not establish a procedure for judicial review of final rules promulgated under its provisions. There is no requirement that individuals submit a petition for reconsideration or other administrative proceedings before they may file suit in court.

Federal Regulation and DOT Regulatory Policies and Procedures

The agencies have analyzed the effect of this proposed action and determined that it is not "major." Because of the public's interest in the 55/65 MPH speed limit, it is considered to be "significant" within the meaning of Department of Transportation regulatory policies and procedures. The agencies have prepared an addendum to the Final Regulatory Evaluation (AFRE) for this proposal, and made it available in the public docket. A copy of the AFRE may be obtained by writing to the public docket at the address referenced above.

The AFRE assigns no additional cost under this proposal. The AFRE indicates that at least three States (Connecticut, Massachusetts and Wyoming) could be subject to the subsequent year penalty if they were not able to improve their compliance scores during subsequent years.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act, the agencies have evaluated the effects of this proposed action on small entities. Based on the evaluation, we certify that this action will not have a significant economic impact on a substantial number of small entities. The Final Regulatory Evaluation concluded that there would be no significant impact on small businesses since the portion of the highway construction funds going to noncompliant States would not be lost, but only transferred to highway safety programs. Accordingly, the preparation of a Regulatory Flexibility Analysis is unnecessary.

Paperwork Reduction Act

The requirement relating to the final rule, that each State must submit speed data and related certification information necessary to calculate it compliance score, is considered to be an information collection requirement, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1320. Accordingly, this information collection requirement has been previously submitted to and approved by OMB, pursuant to the provisions of the Paperwork Reduction Act (44 U.S.C. 3501, et seq.) The requirement has been approved through January 31, 1996, with the OMB control number No. 2125–0027. This proposal contains no additional information collection requirement.

National Environmental Policy Act

The agencies have analyzed this proposed action for the purpose of compliance with the National Environmental Policy Act and have determined that it will not have a significant effect on the human environment.

Executive Order 12612 (Federalism)

This action has been analyzed in accordance with Executive Order 12612, concerning Federalism. The rule's provisions are likely to affect the allocations of States' resources, the way they measure their success in traffic law enforcement, relationships among State agencies, and the distribution of Federal funds between States' highway construction and safety programs. All of these effects may fairly be regarded as Federalism impacts. However, the basic requirements of the rule (i.e., the potential redistribution of Federal funds) are mandated by statute, so the agencies do not have discretion to mitigate these impacts. The agencies have carefully considered the comments of State agencies in shaping the details of the rule.

Comments to the Docket

The agencies are providing a 30-day comment period for interested parties to present data, views, and arguments on the proposed action. The agencies invite comments on the issues raised in this notice and any other issues commenters believe are relevant to this action. All comments must not exceed 15 pages in length (49 CFR 553.21). This limitation is intended to encourage commenters to detail their primary arguments in a

concise fashion. Necessary attachments may be appended to these submissions without regard to the 15-page limit.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule, if one is issued, will be considered as suggestions for further rulemaking action. The agencies will continue to file relevant information in the docket as it becomes available after the closing date and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified of receipt of their comments by the docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receipt of the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 23 CFR Part 1260

Grant programs—transportation, Highway and roads, Motor vehicles, Reporting and recordkeeping requirements, Speed limit, Traffic regulations.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program).

In consideration of the foregoing, the FHWA and NHTSA hereby propose to amend part 1260 to chapter II, subchapter C of title 23, CFR, as set forth below.

PART 1260—CERTIFICATION OF SPEED LIMIT ENFORCEMENT

1. The authority citation for part 1260 would continue to read as follows:

Authority: 23 U.S.C. 118, 141, 154, 315 and delegations of authority at 49 CFR 1.48 and 1.50.

2. Paragraph (d) would be added to § 1260.19 as follows:

§ 1260.19 Effect of failure to certify or to meet compliance standards

* * * * *

(d) An additional one percent of the funds apportioned to the State under 23 U.S.C. 104(b)(1), 104(b)(2), 104(b)(3), 104(b)(4) and 104(b)(6) shall be transferred pursuant to paragraph (b) of this section to such State's highway safety grant program fund under 23 U.S.C. 402 for the fiscal year subsequent to the fiscal year in which the State submitted its compliance score if the Secretary determines that the State's compliance score calculated pursuant to § 1260.15(d) is in the same or a higher penalty category as the State's compliance score submitted in the prior fiscal year, as provided by paragraphs (a) (1) through (4) of this section.

* * * * *

3. Section 1260.21 would be amended by revising paragraph (c) as follows:

§ 1260.21 Penalty reduction and notification of noncompliance.

* * * * *

(c) The State shall expend any transferred funds pursuant to § 1260.19(b) for section 402 programs within that State. In no instance shall such transfer exceed the total section 402 apportionment for that fiscal year, prior to any penalty reduction, except in the case of a subsequent year penalty as provided in § 1260.19(d).

Issued on: October 14, 1993.

Rodney E. Slater,

Administrator, Federal Highway Administration.

Howard M. Smolkin,

Executive Director, National Highway Traffic Safety Administration.

[FR Doc. 93–25690 Filed 10–21–93; 8:45 am]

BILLING CODE 4910–22–M

federal register

Friday
October 22, 1993

Part V

Environmental Protection Agency

40 CFR Part 117 et al.
Reportable Quantity Adjustments; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 117, 302, and 355

[SW H–FRL–4792–5]

Reportable Quantity Adjustments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing changes to the Designation, Reportable Quantities, and Notification requirements for hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The table of hazardous substances is being revised to: (1) Add 47 hazardous air pollutants and adjust their reportable quantities (RQs); (2) add five other hazardous air pollutants that are broad generic categories of substances; (3) add to the table of hazardous substances and adjust the RQs for 10 hazardous wastes listed or proposed to be listed under the Resource Conservation and Recovery Act (RCRA); and (4) adjust the RQs for five hazardous wastes that are already on the table. In addition, the Agency is proposing to make conforming changes to the Clean Water Act (CWA) table of hazardous substances and the Emergency Planning and Community Right-to-Know Act (EPCRA) tables of extremely hazardous substances.

DATES: Comments must be submitted on or before December 20, 1993.

ADDRESSES: *Comments:* Comments should be submitted in triplicate to: Emergency Response Division, Attention: Superfund Docket Clerk, Docket Number 102 RQ–CAA, Superfund Docket Room M2427, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Release Notification: The toll-free telephone number of the National Response Center is 800–424–8802; in the Washington, DC metropolitan area, the number is 202–267–2675.

Docket: Copies of materials relevant to this rulemaking are contained in room M2427 at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 (Docket Number 102 RQ–CAA). The docket is available for inspection between the hours of 9 a.m. and 4 p.m., Monday through Friday, excluding Federal holidays. Appointments to review the docket can be made by calling 202–260–3046. The public may copy a maximum of 267 pages from any regulatory docket at no cost. If the number of pages copied exceeds 267, however, a charge of $0.15 will be incurred for each page after page 100.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline at 800–424–9346 (in the Washington, DC metropolitan area, contact 703–920–9810). The Telecommunications Device for the Deaf (TDD) Hotline number is 800–553–7672 (in the Washington, DC metropolitan area, contact 703–486–3323); or Ms. Gerain H. Perry, Response Standards and Criteria Branch, Emergency Response Division (5202G), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 or at 703–603–8780.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Statutory Authority

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (Pub. L. 96–510), 42 U.S.C. 9601 *et seq.*, as amended, established broad Federal authority to respond to releases or threats of releases of hazardous substances from vessels and facilities. The term "hazardous substance" is defined in section 101(14) of CERCLA chiefly by reference to various Federal environmental statutes. For example, the term includes "any hazardous air pollutant listed under section 112 of the Clean Air Act" (CAA), and "any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act * * *," also known as the Resource Conservation and Recovery Act (RCRA). Under CERCLA section 102(a), any substance that, when released into the environment, may present substantial danger to public health or welfare or the environment may be designated as a CERCLA hazardous substance. Designation as a CERCLA hazardous substance means that a release of this substance requires an immediate report to the National Response Center when the amount released is equal to or greater than the reportable quantity (RQ) listed in 40 CFR part 302.

Section 102(b) of CERCLA establishes RQs for releases of CERCLA hazardous substances at one pound, unless a substance has a different RQ established under section 311(b)(4) of the Clean Water Act (CWA). Section 102(a) of CERCLA authorizes EPA to adjust these RQs by regulation.

Under CERCLA section 103(a), the person in charge of a vessel or facility from which a CERCLA hazardous substance has been released in a quantity that equals or exceeds its RQ must immediately notify the National Response Center (see 40 CFR 302.6) and State and local response authorities, as required by section 304 of the Emergency Planning and Community Right-to-know Act of 1986 (EPCRA) (Pub. L. 99–499), 42 U.S.C. 11001 *et seq.* (see 40 CFR 355.40).

B. Background of This Rulemaking

The CERCLA list needs to be changed because (1) RCRA listing rules and the rule revising the RCRA toxicity characteristics incorporated additional substances into the CERCLA list and (2) amendments to the CAA, signed into law on November 15, 1990 (Pub. L. 101–549), also incorporated substances into the CERCLA list.

Under section 112 of the CAA, as amended, 190 specific substances or broad generic categories of substances are listed as hazardous air pollutants; 52 of these, 47 individual substances and five broad generic categories of substances, were not previously listed individually on the CERCLA hazardous substance list. The substances not previously listed became hazardous substances pursuant to CERCLA section 101(14), and under CERCLA section 102(b) these substances were assigned a one-pound statutory RQ. The U.S. Environmental Protection Agency (EPA) is proposing today to adjust the statutory one-pound RQs for the 47 hazardous air pollutants that are individual substances.[1] EPA also is proposing today to adjust the RQs of 15 RCRA waste streams. The proposed RQ adjustments cover three classes of substances: (1) RCRA wastes that are already on the CERCLA list with one-pound RQs; (2) RCRA wastes that are already on the CERCLA list with 1,000-pound RQs; and (3) wastes proposed to be listed under RCRA that have not yet been finalized as RCRA wastes.

The methodology and criteria used to adjust RQs for CERCLA hazardous substances was promulgated in the final rules that were published on April 4, 1985 (50 FR 13456) and August 14, 1989 (54 FR 33418 and 54 FR 33426).

II. Reportable Quantity Adjustments

A. Introduction

In today's rule, EPA is proposing to adjust the one-pound statutory RQs for the 47 individual hazardous substances based upon specific scientific and technical criteria that relate to the possibility of harm from the release of

[1] As discussed in Section IV of this preamble, EPA is evaluating several possible options for assigning RQs to the five hazardous air pollutants that are broad generic categories and is requesting public comments on these options in this proposed rule.

a CERCLA hazardous substance in certain amounts.[2] RQs represent a determination only of possible or potential harm, not that releases of a particular amount of a hazardous substance necessarily will be harmful to the public health or welfare or the environment. The quantity released is but one factor considered by the government when assessing the need to respond to such a release. Other factors include, but are not limited to, the location of the release, its proximity to drinking water supplies or other valuable resources, and the likelihood of exposure or injury to nearby populations. The RQ adjustments proposed today would enable EPA to focus its resources on those releases that are most likely to pose potential threats to public health or welfare or the environment. These adjustments would also relieve the regulated community and emergency response personnel from the burden of making and responding to reports of releases that are unlikely to pose such threats.

B. Summary of the Reportable Quantity Adjustment Methodology

EPA has wide discretion in adjusting the statutory RQs for hazardous substances under CERCLA. Administrative feasibility and practicality are important considerations. EPA's methodology for adjusting the RQs of individual hazardous substances begins with an evaluation of the intrinsic physical, chemical, and toxicological properties of each hazardous substance.[3] The intrinsic properties examined—called "primary criteria"—are aquatic toxicity, mammalian toxicity (oral, dermal, and inhalation), ignitability, reactivity, chronic toxicity, and potential carcinogenicity.

Generally, for each intrinsic property, EPA ranks hazardous substances on a scale, associating a specific range of values on each scale with an RQ value of 1, 10, 100, 1,000, or 5,000 pounds. The data for each hazardous substance are evaluated using various primary criteria; each hazardous substance may receive several tentative RQ values based on its particular intrinsic properties. The lowest of the tentative RQs becomes the "primary criteria RQ" for that substance.

After the primary criteria RQs are assigned, substances are further evaluated for their susceptibility to certain degradative processes, which are used as secondary adjustment criteria. These natural degradative processes are biodegradation, hydrolysis, and photolysis (BHP).[4] If a hazardous substance, when released into the environment, degrades relatively rapidly to a less hazardous form by one or more of the BHP processes, its RQ (as determined by the primary RQ adjustment criteria), is generally raised one level.[5] This adjustment is made because the relative potential for harm to public health or welfare or the environment posed by the release of such a substance if reduced by these degradative processes. Conversely, if a hazardous substance degrades to a more hazardous product after its release, the original substance is assigned an RQ equal to the RQ for the more hazardous substance, which may be one or more levels lower than the RQ for the original substance. The downward adjustment is appropriate because the hazard posed by the release of the original substance is increased as a result of BHP.

After hazardous substances are evaluated for the primary and secondary criteria, EPA has proposed (54 FR 35988, August 30, 1989) that substances be further evaluated by applying the methodology for developing threshold planning quantities (TPQs) pursuant to EPCRA section 302 using the following steps. First, the screening criteria used to identify extremely hazardous substances (EHSs) (see 51 FR 41570, November 17, 1986) would be applied to the hazardous substances being evaluated. Second, a level of concern would be established for each hazardous substance that meets the screening criteria.[6] Third, the dispersion potential of each of these hazardous substances would be assessed by considering its physical state and volatility. The level of concern and dispersion potential would be combined to produce an index value, and the screened substances would be ranked according to this index value. Tentative RQs would be assigned to substances using a table of index value ranges. If the tentative RQ assigned in this way is lower than the primary and (if applicable) secondary criteria RQ, this tentative RQ resulting from application of the TPQ criteria would become the adjusted RQ.[7] Because EPA has determined that application of the TPQ criteria to the substances evaluated in today's proposed rule does not affect any of the tentative RQs using the primary and secondary criteria, the content of this proposed rule would be the same whether or not the proposed expanded methodology using the TPQ criteria is used.[8]

III. Releases of Ethylene Glycol

A. Automobile Antifreeze

EPA has received several letters expressed concern about the reporting burdens on operators of automobiles for personal use as a result of the addition of ethylene glycol to the list of CERCLA substances.[9] Ethylene glycol comprises over 90 percent of automobile antifreeze and has a one-pound statutory RQ. Currently, a release of just over one pound of antifreeze from an automobile must be reported to the National Response Center, the State emergency response commission (SERC), and the local emergency planning committee (LEPC). The proposed adjusted RQ for ethylene glycol is 5,000 pounds, based on chronic toxicity and application of the secondary RQ adjustment criterion of biodegradation. The proposed 5,000-pound RQ for ethylene glycol far exceeds the amount that would be released from an automobile. Consequently, if the proposed RQ is promulgated, releases of antifreeze generally would not require reporting.

B. Airplane De-icing

Another common use of ethylene glycol is in airplane de-icing operations

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[2] See Section IV of this preamble for a discussion of possible options for assigning RQs to the five broad generic categories.

[3] A different methodology applies for assigning adjusted RQs to radionuclides (see 54 FR 22524, May 24, 1989).

[4] For further information on the methodology for applying BHP, see the Technical Background Document to Support Rulemaking Pursuant to CERCLA Section 102, Volume 1, March 1985, available for inspection at room M2424, U.S. EPA, 401 M Street, SW., Washington, DC 20460.

[5] No RQ level increase based on BHP occurs if the primary criteria RQ is already at its highest possible level (100 pounds for potential carcinogens and 5000 pounds for all other types of hazardous substances except radionuclides). BHP is not applied to radionuclides.

[6] This level of concern may be based on the Immediately Dangerous to Life and Health (IDLH) level developed by the National Institute for Occupational Safety and Health. Because most substances do not have published IDLH values, however, levels of concern are usually estimated from acute mammalian toxicity data for the most sensitive species.

[7] For a more detailed description of how the TPQ criteria are used as a part of the RQ adjustment methodology, see the Technical Background Document to Support Adjustment of the Reportable Quantities of the Extremely Hazardous Substances Designated as CERCLA Hazardous Substances, Volume 5, available for inspection in the public docket at room M2427, U.S. EPA, 401 M Street, SW., Washington, DC 20460.

[8] For a more detailed discussion of the application of the TPQ criteria to the substances evaluated in this rule, see the Technical Background Document to Support Rulemaking Pursuant to CERCLA Section 102, Volume 7, available for inspection in the public docket at room M2427, U.S. EPA, 401 M Street, SW., Washington, DC 20460.

[9] Copies of these letters are available for inspection in the public docket (No. 102 REQ–CAA) at room 2427, U.S. EPA, 401 M Street, SW., Washington, DC 20460.

at airports. Regulated parties have argued that because ethylene glycol is released each time an airplane is de-iced, the volume and frequency of reports will result in an unnecessary burden on the National Response Center and on the airline industry. EPA suggests that one potential source of reporting relief for such releases may be the final rule on reporting continuous releases, 40 CFR 302.8, promulgated pursuant to CERCLA section 103(f)(2) (55 FR 30166, July 24, 1990). Under that regulation, the person in charge of the facility must establish that the release is continuous and stable in quantity and rate, and must complete the initial notification reports. EPA has defined "continuous" in the final rule to include routine, anticipated, intermittent releases that are incidental to normal plant operations.

The federally permitted releases exemption also may provide reporting relief to regulated parties. Federally permitted releases, defined in CERCLA section 101(10), are exempt from CERCLA notification and liability requirements. CERCLA section 101(10)(A), (B), and (C) exempts certain releases covered by permits issued under section 402 of the CWA. Section 101(10)(D) exempts releases that are specified in and in compliance with applicable pretreatment standards under section 307 of the CWA and that are into a publicly owned treatment works (POTW) with an approved pretreatment program. Section 101(10)(H) exempts releases subject to a permit or control regulation under the CAA hazardous air pollutant program. Therefore, if releases of ethylene glycol are covered by a National Pollutant Discharge Elimination System permit, are covered by a POTW pretreatment program, or are subject to a National Emission Standards for Hazardous Air Pollutants (NESHAPs) permit, they may be exempt from CERCLA notification and liability provisions. For further information on releases of ethylene glycol, contact the appropriate EPA Regional Office (or the docket) to obtain a copy of Directive Memorandum 9360.4–12, issued by EPA's Office of Solid Waste and Emergency Response on February 4, 1992.

IV. Broad Generic Categories

Of the broad generic categories of chemicals listed as hazardous air pollutants by the CAA Amendments, five categories (cobalt compounds, glycol ethers, manganese compounds, fine mineral fibers, and polycyclic organic matter) were not previously on the CERCLA list.

Each of these five categories contains hundreds or thousands of individual compounds with varying toxicological and chemical properties. EPA is currently considering several options for the CERCLA reporting requirements that could be applied to the five categories. Because of the broad range of relative hazards represented by the many compounds within the five CAA broad generic categories, the Agency must balance a variety of factors in choosing an approach that protects public health and the environment. These factors include: The length of time EPA would need to evaluate a large number of compounds individually; the need to have meaningful information reported to the National Response Center (i.e., avoiding either too much or too little information); and the need to avoid unnecessary and costly reporting burdens. EPA requests public comments on options for addressing these broad categories, including comments on the following five options:

(1) Assign no RQ level to the CAA broad generic categories;

(2) Retain a one-pound RQ for these categories (i.e., the lowest RQ EPA assigns to individual hazardous substances);

(3) Assign an RQ to each category that reflects either the average RQ or the lowest RQ of the substances within each category;

(4) Assign a 5,000-pound RQ to each category (i.e., the highest RQ EPA assigns to individual hazardous substances); or

(5) Identify and assign an RQ to certain substances within each category. For the remaining substances within each of the five categories not assigned a specific RQ, assign no RQ, retain a one-pound RQ, assign an average or lowest RQ, or assign a 5,000-pound RQ.

In particular, EPA requests public comments and supporting data that identify specific substances within the five categories, and data on their toxicological and chemical properties.

If the first option were promulgated, CERCLA notification requirements would no longer apply to specific substances that are within the five CAA broad generic categories, unless the specific substances are listed separately in Table 302.4 of 40 CFR 302.4. If RQs are assigned to the broad generic categories under the remaining four options, releases of an RQ or more of substances within the categories would need to be reported to the National Response Center.

It is important to note that, regardless of the option chosen by the Agency, CERCLA liability will continue to apply to releases of all specific compounds within each category. Parties responsible for releases of hazardous substances that fall under any of the broad generic categories are liable for the costs associated with cleanup and any natural resource damages resulting from the release.

V. Designation and RQ Adjustment of RCRA Hazardous Wastes

EPA today is also proposing to adjust the RQs of 15 RCRA hazardous wastes. The RQ adjustment methodology for mixtures of hazardous substances, used to adjust the RQs for RCRA hazardous wastes, differs somewhat from the methodology applied to individual hazardous substances. The procedure for assigning RQs to hazardous wastes is based on an analysis of the hazardous substance constituents of the wastes. The constituents of each RCRA hazardous waste are identified in 40 CFR part 261, appendix VII. The RQ of each constituent within the waste is determined, and the lowest RQ value of these constituents is established as the RQ for the waste.

Four of the hazardous wastes addressed in this rule (K088, K090, K091, F025) are already CERCLA hazardous substances by virtue of their listing under RCRA section 3001 on September 13, 1988 (53 FR 35412) and December 11, 1989 (54 FR 50968). Currently, these wastes are assigned the statutory one-pound RQ required by CERCLA section 102(b). Six other wastes addressed in this rule have been proposed to be listed under RCRA and will become CERCLA hazardous substances if and when RCRA designation becomes final. These wastes were proposed as RCRA wastes on May 1, 1985 (K119, K120, K121, U354, U355; 50 FR 18622) and February 25, 1986 (U357; 51 FR 6565). By promulgating adjusted RQs at the same time that the substances first become RCRA hazardous wastes, EPA would avoid imposing the reporting and response burden of a statutory one-pound RQ. The five remaining hazardous wastes (F004, D023, D024, D025, and D026) already have been listed on Table 302.4 and have adjusted RQs of 1,000 pounds. Pursuant to the methodology for adjusting RQs for RCRA wastes, these wastes have RQs based on the RQ for "cresol(s)," the constituent within each waste with the lowest RQ. Because the RQ for cresols is proposed to be adjusted from 1,000 pounds to 100 pounds, the RQs for the five wastes are also proposed to be adjusted from 1,000 pounds to 100 pounds (see Section VI for additional discussion of the RQ adjustment for "cresol(s)").

VI. Changes to Table 302.4: List of Hazardous Substances and Their RQs

EPA also is proposing in this rulemaking to adjust the RQs for two hazardous substance categories, "cresol(s)" and "xylene (mixed)," which are already listed on Table 302.4. The CERCLA listing for the hazardous substance cresols represents a mixture of the three individual cresol isomers, m-cresol, o-cresol, and p-cresol. Similarly, the listing for xylene represents a mixture of the three xylene isomers, m-xylene, o-xylene, and p-xylene. In 1990, the CAA Amendments added the three cresol isomers and the three xylene isomers individually to the CAA section 112 list of hazardous air pollutants.

In today's rulemaking, these six isomers are proposed to be listed as six separate entries on the 40 CFR 302.4 list of CERCLA hazardous substances. EPA has reviewed all relevant data on the cresol and xylene isomers, including studies published since the final rules designating the categories cresols and xylene as hazardous substances and assigning them 1,000-pound RQs. (See 51 FR 34561, September 29, 1986 and 50 FR 13456, April 4, 1985, respectively). As a result of this review, EPA has determined that the three cresol isomers and m- and p-xylene should receive adjusted RQs of 100 pounds. EPA's review of relevant data indicates that o-xylene should receive an adjusted RQ of 1,000 pounds. Because there are only three substances within the cresols and xylene categories and because EPA has sufficient data to assign RQs to each of these substances, the Agency proposes to assign the lowest RQ of the individual member substances to these categories. Therefore, EPA proposes today to adjust the RQ for these categories from 1,000 pounds to 100 pounds to be consistent with the data used to develop the 100-pound RQs for the m-, o-, and p-cresol and m- and p-xylene isomers.

To more clearly show the two types of changes to the list of CERCLA hazardous substances resulting from the addition of the CAA Amendments hazardous air pollutants and the RCRA hazardous wastes, EPA is publishing two sets of revisions to Table 302.4 of 40 CFR part 302 in today's proposed rule. One set of revisions contains the new listings for the CAA Amendments hazardous air pollutants (including the revised cresols and xylene entries) and the RCRA hazardous wastes with their proposed adjusted RQs. The other set of revisions adds a new statutory source code for certain hazardous substances that were already on the CERCLA list to indicate that, as a result of their listing as hazardous air pollutants in the CAA Amendments, an additional statutory source for designation of these hazardous substances is CAA section 112.

VII. Changes to 40 CFR Parts 355 and 117

Appendices A and B of 40 CFR part 355, which list EHSs and their TPQs under EPCRA, also show the RQs for EHSs. Five of the new CAA hazardous air pollutants whose RQs are proposed to be adjusted today are also EHSs. These substances are chloroacetic acid, hydroquinone, beta propiolactone, titanium tetrachloride, and o-cresol. This rule proposes that chloroacetic acid, hydroquinone, titanium tetrachloride, and o-cresol each receive an adjusted RQ of 100 pounds and that beta propiolactone receive an adjusted RQ of 10 pounds. Therefore, to fully reflect the proposed RQ adjustments for these five substances, EPA is today proposing to revise Appendices A and B of 40 CFR part 355.

EPA is also proposing to amend the RQs for "cresol" and "xylene (mixed)" in Table 117.3 of 40 CFR part 117. Table 117.3, the list of CWA hazardous substances and their RQs, currently contains listings for "cresol" and "xylene" (mixed)", each with an RQ of 1,000 pounds. "Cresol" and "xylene (mixed)" are included in Table 117.3 because they were originally listed as hazardous substances under CWA section 311(b)(4). EPA is proposing today to change the RQs for "cresol" and "xylene (mixed)" in Table 117.3 from 1,000 pounds to 100 pounds to ensure that the CWA RQs listed in Table 117.3 are identical to the CERCLA RQs listed in Table 302.4 for the substances that appear on both tables.

VIII. Regulatory Analyses

A. Executive Order 12291

Executive Order (E.O.) 12291 requires that regulations be classified as major or nonmajor for purposes of review by the Office of Management and Budget (OMB). According to E.O. 12291, major rules are regulations that are likely to result in:

(1) An annual effect on the economy of $100 million or more; or

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

An economic analysis performed by EPA [10] shows that this proposed rule is nonmajor because the rule will result in a net cost savings of approximately $39.2 million annually, and does not result in any of the other effects that define a major rule. In this proposed rule, RQs for 44 of the 47 hazardous air pollutants and 9 of the 10 RCRA wastes would be raised. In addition, as noted in Section IV of this preamble, EPA is evaluating several options for assigning RQs to the five broad generic categories of hazardous air pollutants and is requesting public comments on these options. Until such time as the Agency promulgates one of these options, the statutory one-pound RQ for these categories will remain in effect. The RQs of the cresols and xylene categories and the five hazardous wastes with RQs based on the RQ for cresols are proposed to be lowered. The estimated net effect of these changes to the current statutory RQs would be to reduce by approximately 31,250 the number of reportable releases for these hazardous substances each year (see the economic analysis mentioned above). The estimated $39.2 million net cost savings reflects only those effects of the RQ adjustments that are readily quantifiable in dollars and are associated with the release notification requirements under section 103 of CERCLA and section 304 of EPCRA (including the associated activities of recordkeeping, notification processing, monitoring, and response). This proposed rule has been submitted to OMB for review, as required by E.O. No. 12291.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires that a Regulatory Flexibility Analysis be performed for all rules that are likely to have a "significant impact on a substantial number of small entities." A Regulatory Flexibility Analysis is not necessary for this proposed rule, because the upper-bound total cost of compliance to small firms is negligible. See the Regulatory Impact Analysis of Reportable Quantity Adjustments Under Sections 102 and 103 of the Comprehensive Environmental Response, Compensation, and Liability Act, Volume I, March 1985, available for inspection at room M2427, U.S.

[10] See the Economic Impact Analysis of Reportable Quantity Adjustments for the Hazardous Air Pollutants and RCRA Hazardous Wastes Added as CERCLA Hazardous Substances, Volume VI, March 1993, available for inspection at room M2424, U.S. EPA, 401 M Street, SW., Washington, DC 20460.

Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Therefore, EPA hereby certifies that today's proposed rule will not have a significant impact on a substantial number of small entities. As a result, no Regulatory Flexibility Analysis is necessary.

C. Paperwork Reduction Act

The information collection requirements contained in this proposed rule have been approved by OMB under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The public reporting burden for the collection of information pursuant to CERCLA section 103 is estimated to vary from 2 to 5 hours per response, with an average of 2.1 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. These information collection requirements have been assigned OMB control number 2050–0046.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

List of Subjects

40 CFR Part 117

Hazardous substances, Penalties, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 302

Air pollution control, Chemicals, Emergency Planning and Community Right-to-Know Act, Extremely hazardous substances, Hazardous chemicals, Hazardous materials, Hazardous materials transportation, Hazardous substances, Hazardous wastes, Intergovernmental relations, Natural resources, Pesticides and pests, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

40 CFR Part 355

Air pollution control, Chemical accident prevention, Chemical emergency preparedness, Chemicals, Community emergency response plan, Community right-to-know, Contingency planning, Disaster assistance, Emergency Planning and Community Right-to-Know Act, Extremely hazardous substances, Hazardous substances, Intergovernmental relations, Natural resources, Penalties, Reportable quantity, Reporting and recordkeeping requirements, Superfund Amendments and Reauthorization Act, Threshold planning quantity, Water pollution control, Water supply.

Dated: October 7, 1993.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, it is proposed to amend title 40, chapter I of the Code of Federal Regulations as follows:

PART 117—DETERMINATION OF REPORTABLE QUANTITIES FOR HAZARDOUS SUBSTANCES

1. The authority citation for part 117 continues to read as follows:

Authority: Secs. 311 and 501(a), Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*), ("the Act") and Executive Order 11735, superceded by Executive Order 12777, 56 FR 54757.

2. Section 117.3 is amended by revising the entries in the "category" column and in the "RQ in pounds (kilograms)" column for "cresol" and "xylene (mixed)" in Table 117.3 from "C" to "B" and from "1,000 (454)" to "100 (45.4)", respectively, as set forth below:

§ 117.3 Determination of reportable quantities.

* * * * *

TABLE 117.3.—REPORTABLE QUANTITIES OF HAZARDOUS SUBSTANCES DESIGNATED PURSUANT TO SECTION 311 OF THE CLEAN WATER ACT

Material	Category	RQ in pounds (kilograms)
* * *	*	* *
Cresol	B	100 (45.4)
* * *	*	* *
Xylene (mixed)	B	100 (45.4)
* * *	*	* *

* * * * *

PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

3. The authority citation for part 302 continues to read as follows:

Authority: 42 U.S.C. 9602, 9603, 9604; 33 U.S.C. 1321 and 1361.

4. Section 302.4 is amended by adding the following new entries to Table 302.4 and its appendix A, and by adding footnotes "* * *" and "a" and "b" to Table 302.4 as set forth below:

§ 302.4 Designation of hazardous substances.

* * * * *

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES

[Note: All comments/notes are located at the end of this table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory RQ	Statutory Codet	Statutory RCRA waste number	Final RQ Category	Final RQ Pounds (kg)
* *	*	*	*		*		*
Acetamide	60355		1*	3		B	100 (45.4)
* *	*	*	*		*		*
4-Aminobiphenyl	92671		1*	3		X	1 (0.454)
* *	*	*	*		*		*
o-Anisidine	90040		1*	3		B	100 (45.4)

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All comments/notes are located at the end of this table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code†	RCRA waste number	Category	Pounds (kg)
Benzene•	(*)	(*)	(*)	(*)	(*)	(*)	(*)
Benzene, dimethyl-	1330207	Xylene Xylene (mixed). Xylenes (isomers and mixture).	1000	1,3,4	U239	B	100 (45.4)
Benzene, m-dimethyl-	108383	m-Xylene	1•	3		B	100 (45.4)
Benzene, o-dimethyl-	95476	o-Xylene	1•	3		C	1000 (454)
Benzene, p-dimethyl-	106423	p-Xylene	1•	3		B	100 (45.4)
Biphenyl	92524		1•	3		B	100 (45.4)
Bromacil	314409	5-Bromo-3-sec-butyl-6-methyluracil	1•	4	U354	B	100 (45.4)
5-Bromo-3-sec-butyl-6-methyluracil	314409	Bromacil	1•	4	U354	B	100 (45.4)
1,3-Butadiene	106990		1•	3		A	10 (4.54)
Calcium cyanamide	156627		1•	3		C	1000 (454)
Caprolactam	105602		1•	3		D	5000 (2270)
Carbonyl sulfide	463581		1•	3		B	100 (45.4)
Catechol	120809		1•	3		B	100 (45.4)
Chloramben	133904		1•	3		B	100 (45.4)
Chloroacetic acid	79118		1•	3		B	100 (45.4)
2-Chloroacetophenone	532274		1•	3		B	100 (45.4)
Chloroprene	126998		1•	3		B	100 (45.4)
Cobalt Compounds	N.A.		1•	3			(***)
Cresols (isomers and mixture)	1319773	Cresylic acid (isomers and mixture)	1000	1,3,4	U052	B	100 (45.4)
m-Cresol	108394	Phenol, methyl- m-Cresylic acid	1•	3		B	100 (45.4)
o-Cresol	95487	o-Cresylic acid	1•	3		B	100 (45.4)
p-Cresol	106445	p-Cresylic acid	1•	3		B	100 (45.4)
Cresylic acid (isomers and mixture)	1319773	Cresols (isomers and mixture)	1000	1,3,4	U052	B	100 (45.4)
m-Cresylic acid	108394	Phenol, methyl- m-Cresol	1•	3		B	100 (45.4)
o-Cresylic acid	95487	o-Cresol	1•	3		B	100 (45.4)
p-Cresylic acid	106445	p-Cresol	1•	3		B	100 (45.4)
DDE•	3547044		1•	3		D	5000 (2270)
Diazomethane	334883		1•	3		B	100 (45.4)
Dibenzofuran	132649		1•	3		B	100 (45.4)

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All comments/notes are located at the end of this table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code†	RCRA waste number	Category	Pounds (kg)
N-(3,4-dichlorophenyl)-N-methoxy-N-methylurea.	330552	Linuron	1*	4	U355	B	100 (45.4)
Diethanolamine	111422		1*	3		B	100 (45.4)
N,N-Diethylaniline	91667		1*	3		C	1000 (454)
Diethyl sulfate	64675		1*	3		A	10 (4.54)
N,N-Dimethylaniline	121697		1*	3		B	100 (45.4)
Dimethylformamide	68122		1*	3		A	10 (4.45)
Diphenylamine	122394		1*	4	U357	B	100 (45.4)
1,2-Epoxybutane	106887		1*	3		B	100 (45.4)
Ethylene glycol	107211		1*	3		D	5000 (2270)
Fine Mineral Fibers	N.A.		1*	3			(***)
Glycol Ethers	N.A.		1*	3			(***)
Hexamethylene-1,6 diisocyanate	822060		1*	3		B	100 (45.4)
Hexamethylphosphoramide	680319		1*	3		X	1 (0.454)
Hexane	110543		1*	3		D	5000 (2270)
Hydroquinone	123319		1*	3		B	100 (45.4)
Linuron	330552	N-(3,4-dichlorophenyl)-N-methoxy-N-methylurea.	1*	4	U355	B	100 (45.4)
Manganese Compounds	N.A.		1*	3			(***)
MDI	101688	Methylene diphenyl diisocyanate	1*	3		D	5000 (2270)
4,4'-Methylenedianiline	101779		1*	3		A	10 (4.54)
Methylene diphenyl diisocyanate	101688	MDI	1*	3		D	5000 (2270)
Methyl tert-butyl ether	1634044		1*	3		C	1000 (454)
Fine Mineral Fibers	N.A		1*	3			(***)
4-Nitrobiphenyl	92933		1*	3		A	10 (4.54)
N-Nitrosomorpholine	59892		1*	3		X	1 (0.454)

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All comments/notes are located at the end of this table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code†	RCRA waste number	Category	Pounds (kg)
• • •	•	•	•		•		•
Phenol, methyl-	1319773	Cresols (isomers and mixture) Cresylic acid (isomers and mixture)	1000	1,3,4	U052	B	100 (45.4)
• • •	•	•	•		•		•
p-Phenylenediamine	106503		1*	3		D	5000 (2270)
• • •	•	•	•		•		•
Polycyclic Organic Matter	N.A		1*	3			(***)
• • •	•	•	•		•		•
beta-Propiolactone	57578		1*	3		A	10 (4.54)
Propionaldehyde	123386		1*	3		C	1000 (454)
• • •	•	•	•		•		•
Propoxur (Baygon)	114261		1*	3		B	100 (45.4)
• • •	•	•	•		•		•
Styrene oxide	96093		1*	3		B	100 (45.4)
• • •	•	•	•		•		•
Titanium tetrachloride	7550450		1*	3		B	100 (45.4)
• • •	•	•	•		•		•
Trifluralin	1582098		1*	3		A	10 (4.54)
• • •	•	•	•		•		•
2,2,4-Trimethylpentane	540841		1*	3		C	1000 (454)
• • •	•	•	•		•		•
Unlisted Hazardous Wastes Characteristics.	N.A		1*	4			
Characteristic of Toxicity:							
• • •	•	•	•		•		•
o-Cresol (D023)	N.A		1*	4	D023	B	100 (45.4)
m-Cresol (D024)	N.A		1*	4	D024	B	100 (45.4)
p-Cresol (D025)	N.A		1*	4	D025	B	100 (45.4)
Cresol (D026)	N.A		1*	4	D026	B	100 (45.4)
• • •	•	•	•		•		•
Vinyl bromide	593602		1*	3		B	100 (45.4)
• • •	•	•	•		•		•
Xylene	1330207	Benzene, dimethyl- Xylene (mixed) Xylenes (isomers and mixture)	1000	1,3,4	U239	B	100 (45.4)
m-Xylene	108383	Benzene, m-dimethyl-	1*	3		B	100 (45.4)
o-Xylene	95476	Benzene, o-dimethyl-	1*	3		C	1000 (454)
p-Xylene	106423	Benzene, p-dimethyl-	1*	3		B	100 (45.4)
Xylene (mixed)	1330207	Benzene, dimethyl- Xylene Xylenes (isomers and mixture)	1000	1,3,4	U239	B	100 (45.4)
Xylenes (isomers and mixture)	1330207	Benzene, dimethyl- Xylene Xylene (mixed)	1000	1,3,4	U239	B	100 (45.4)
• • •	•	•	•		•		•
F004			1*	4	F004	B	100 (45.4)
The following spent non-halogenated solvents and the still bottoms from the recovery of these solvents:							
(a) Cresols/Cresylic acid	1319773		1000	1,3,4	U052	B	100 (45.4)
(b) Nitrobenzene	98953		1000	1,2,4	U169	C	1000 454)

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All comments/notes are located at the end of this table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code†	RCRA waste number	Category	Pounds (kg)
•	•	•	•		•		•
F025			1*	4	F025	X	1 (0.454)
Condensed light ends, spent filters and filter aids, and spent desiccant wastes from the production of certain chlorinated aliphatic hydrocarbons, by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution.							
•	•	•	•		•		•
K088			1*	4	K088	A	10 (4.54)
Spent potliners from primary aluminum reduction.							
K090			1*	4	K090	A	10 (4.54)
Emission control dust or sludge from ferrochromium production.							
K091			1*	4	K091	A	10 (4.54)
Emission control dust or sludge from ferrochromium production.							
•	•	•	•		•		•
K119			1*	4	K119	B	100 (45.4)
Wastes from the decanter in the production of linuron.							
K120			1*	4	K120	B	100 (45.4)
Wastes from the spill control trap in the production of linuron.							
K121			1*	4	K121	B	100 (45.4)
Wastewater from product filtration and water washing in the production of bromacil.							
•	•	•	•	•	•	•	•

† Indicates the statutory source as defined by 1, 2, 3 and 4 below.

• • • • • • •

[1] Indicates that the statutory source for designation of this hazardous substance under CERCLA is CWA section 311(b)(4).
[2] Indicates that the statutory source for designation of this hazardous substance under CERCLA is CWA section 307(a).
[3] Indicates that the statutory source for designation of this hazardous substance under CERCLA is CAA section 112.
[4] Indicates that the statutory source for designation of this hazardous substance under CERCLA is RCRA section 3001.
1* Indicates that the 1-pound RQ is a CERCLA statutory RQ.

• • • • • •

** Indicates that no RQ is being assigned to the generic or broad class.

*** The Agency is considering several options for the CERCLA reporting requirements that would apply to these broad generic categories of hazardous air pollutants and has requested public comments on these options.

• Benzene was already a CERCLA hazardous substance prior to the CAA Amendments of 1990 and received an adjusted 10-pound RQ based on potential carcinogenicity in an August 14, 1989, final rule (54 FR 33418). The CAA Amendments specify that "benzene (including benzene from gasoline)" is a hazardous air pollutant and, thus, a CERCLA hazardous substance.

• The CAA Amendments of 1990 list DDE (3547–04–4) as a CAA hazardous air pollutant. The CAS number, 3547–04–4, is for the chemical, p,p'-dichlorodiphenyl ethane. DDE or p,p'-dichlorodiphenyl dichloroethylene, CAS number 72–55–9, is already listed on Table 302.4 with a final RQ of 1 pound. The substance identified by the CAS number 3547–04–4 is evaluated for this proposed rule and listed as DDE to be consistent with the CAA section 112 listing, as amended.

APPENDIX A TO § 302.4—SEQUENTIAL CAS REGISTERY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES

CASRN	Hazardous substance
57578	beta-Propiolactone.
59892	N-Nitrosomorpholine.
• • • • •	
60355	Acetamide.
• • • • •	
64675	Diethyl sulfate.
• • • • •	
68122	Dimethylformamide.
• • • • •	
79118	Chloroacetic acid.
• • • • •	
90040	o-Anisidine.
• • • • •	
91667	N,N-Diethylaniline.
• • • • •	
92524	Biphenyl.
• • • • •	
92671	4-Aminobiphenyl.
• • • • •	
92933	4-Nitrobiphenyl.
• • • • •	
95476	Benzene, o-dimethyl.
• • • • •	
	o-Xylene.
95487	o-Cresol.
	o-Cresylic acid.
96093	Styrene oxide.
• • • • •	
101688	MDI
	Methylene diphenyl diisocyanate.
• • • • •	
101779	4,4'-Methylenedianiline.
• • • • •	
105602	Caprolactam.
• • • • •	
106423	Benzene, p-dimethyl.
	p-Xylene.
106445	p-Cresol.
	p-Cresylic acid.

APPENDIX A TO § 302.4—SEQUENTIAL CAS REGISTERY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous substance
106503	p-Phenylenediamine.
• • • • •	
106887	1,2-Epoxybutane.
• • • • •	
106990	1,3-Butadiene.
• • • • •	
107211	Ethylene glycol.
• • • • •	
108383	Benzene, m-dimethyl.
	m-Xylene.
108394	m-Cresol.
	m-Cresylic acid.
110543	Hexane.
• • • • •	
111422	Diethanolamine.
• • • • •	
114261	Propoxur (Baygon).
• • • • •	
120809	Catechol.
• • • • •	
121697	N,N-Dimethylaniline.
• • • • •	
122394	Diphenylamine.
• • • • •	
123319	Hydroquinone.
• • • • •	
123386	Propionaldehyde.
• • • • •	
126998	Chloroprene.
• • • • •	
132649	Dibenzofuran.
• • • • •	
133904	Chloramben.
• • • • •	
156627	Calcium cyanamide.
• • • • •	
314409	Bromacil.
	5-Bromo-3-sec-butyl-6-methyluracil.
330552	N-(3,4-dichlorophenyl)-N-methoxy-N-methylurea.
	Linuron.
334883	Diazomethane.
• • • • •	
463581	Carbonyl sulfide.
• • • • •	
532274	2-Chloroacetophenone.
• • • • •	
540841	2,2,4-Trimethylpentane.
• • • • •	
593602	Vinyl bromide.
• • • • •	
680319	Hexamethylphosphoramide.
• • • • •	
822060	Hexamethylene-1,6-diisocyanate.
• • • • •	
1319773	Cresols (isomers and mixture).
	Cresylic acid (isomers and mixture).
	Phenol, methyl-.
1330207	Benzene, dimethyl-.
	Xylene.
	Xylene (mixed).
	Xylenes (isomers and mixture).
• • • • •	
1582098	Trifluralin.
• • • • •	
1634044	Methyl tert-butyl ether.
• • • • •	
3547044	DDE
• • • • •	
7550450	Titanium tetrachloride.
• • • • •	

5. Section 302.4 is also amended by revising the following existing entries in Table 302.4 to add note "3" to the

statutory code column and to add the following regulatory synonyms as set forth below. In addition, appendix A to Table 302.4 is amended by adding the following regulatory synonyms as set forth below:

§ 302.4 Designation of hazardous substances.

* * * * *

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES

[Note: All comments/notes are located at the end of this table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory RQ	Statutory Code†	Statutory RCRA waste number	Final RQ Category	Final RQ Pounds (kg)
Acetaldehyde	75070	Ethanal	1000	1,3,4	U001	C	1000 (454)
* * *	*	*	*		*		*
Acetamide, N-9H-fluoren-2-yl-	53963	2-Acetylaminofluorene	1*	3,4	U005	X	1 (0.454)
* * *	*	*	*		*		*
Acetic acid (2,4-dichlorophenoxy)-, salts & esters.	94757	2,4-D Acid 2,4-D, salts and esters	100	1,3,4	U240	B	100 (45.4)
* * *	*	*	*		*		*
Acetonitrile	75058		1*	3,4	U003	D	5000 (2270)
Acetophenone	98862	Ethanone, 1-phenyl-	1*	3,4	U004	D	5000 (2270)
2-Acetylaminofluorene	53963	Acetamide, N-9H-fluoren-2-yl-	1*	3,4	U005	X	1 (0.454)
* * *	*	*	*		*		*
Acrolein	107028	2-Propenal	1	1,2,3,4	P003	X	1 (0.454)
Acrylamide	79061	2-Propenamide	1*	3,4	U007	D	5000 (2270)
Acrylic acid	79107	2-Propenoic acid	1*	3,4	U008	D	5000 (2270)
Acrylonitrile	107131	2-Propenenitrile	100	1,2,3,4	U009	B	100 (45.4)
* * *	*	*	*		*		*
Allyl chloride	107051		1000	1,3		C	1000 (454)
* * *	*	*	*		*		*
Aniline	62533	Benzenamine	1000	1,3,4	U012	D	5000 (2270)
* * *	*	*	*		*		*
Antimony and Compounds	N.A.	Antimony Compounds	1*	2,3			(**)
Antimony Compounds	N.A.	Antimony and Compounds	1*	2,3			(**)
* * *	*	*	*		*		*
Aroclor 1016	12674112	Aroclors PCBs Polychlorinated Biphenyls	10	1,2,3		X	1 (0.454)
Aroclor 1221	11104282	Aroclors PCBs Polychlorinated Biphenyls	10	1,2,3		X	1 (0.454)
Aroclor 1232	11141165	Aroclors PCBs Polychlorinated Biphenyls	10	1,2,3		X	1 (0.454)
Aroclor 1242	53469219	Aroclors PCBs Polychlorinated Biphenyls	10	1,2,3		X	1 (0.454)
Aroclor 1248	12672296	Aroclors PCBs Polychlorinated Biphenyls	10	1,2,3		X	1 (0.454)
Aroclor 1254	11097691	Aroclors PCBs Polychlorinated Biphenyls	10	1,2,3		X	1 (0.454)
Aroclor 1260	11096825	Aroclors PCBs Polychlorinated Biphenyls	10	1,2,3		X	1 (0.454)
Aroclors	1336363	PCBs Polychlorinated Biphenyls	10	1,2,3		X	1 (0.454)
Aroclor 1016	12674112		10	1,2,3		X	1 (0.454)
Aroclor 1221	11104282		10	1,2,3		X	1 (0.454)
Aroclor 1232	11141165		10	1,2,3		X	1 (0.454)
Aroclor 1242	53469219		10	1,2,3		X	1 (0.454)
Aroclor 1248	12672296		10	1,2,3		X	1 (0.454)
Aroclor 1254	11097891		10	1,2,3		X	1 (0.454)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All comments/notes are located at the end of this table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code†	RCRA waste number	Category	Pounds (kg)
Aroclor 1260	11096825		10	1,2,3		X	1 (0.454)
• •	•	•	•		•		•
Arsenic and Compounds	N.A.	Arsenic Compounds (inorganic including arsine).	1*	2,3			(**)
Arsenic Compounds (inorganic including arsine).	N.A.	Arsenic and Compounds	1*	2,3			(**)
• •	•	•	•		•		•
Aziridine	151564	Ethyleneimine	1*	3,4	P054	X	1 (0.454)
Aziridine, 2-methyl-	75558	2-Methyl aziridine 1,2-Propylenimine	1*	3,4	P067	X	1 (0.454)
• •	•	•	•		•		•
Benzenamine	62533	Aniline	1000	1,3,4	U012	D	5000 (2270)
• •	•	•	•		•		•
Benzenamine, N,N-dimethyl-4-(phenylazo-).	60117	Dimethyl aminoazobenzene p-Dimethylaminoazobenzene	1*	3,4	U093	A	10 (4.54)
Benzenamine, 2-methyl-	95534	o-Toluidine	1*	3,4	U328	B	100 (45.4)
• •	•	•	•		•		•
Benzenamine, 4,4'-methylenebis(2-chloro-.	101144	4,4'-Methylenebis(2-chloroaniline)	1*	3,4	U158	A	10 (4.54)
• •	•	•	•		•		•
Benzeneacetic acid, 4-chloro-α-(4-chlorophenyl) -α- hydroxy-, ethyl ester.	510156	Chlorobenzilate	1*	3,4	U038	A	10 (4.54)
• •	•	•	•		•		•
Benzene, chloro-	108907	Chlorobenzene	100	1,2,3,4	U037	B	100 (45.4)
Benzene, (chloromethyl)-	100447	Benzyl chloride	100	1,3,4	P028	B	100 (45.4)
Benzenediamine, ar-methyl-	95807 496720 823405 25376458	Toluenediamine 2,4-Toluene diamine	1*	3,4	U221	A	10 (4.54)
1,2-Benzenedicarboxylic acid, dibutyl ester.	84742	n-Butyl phthalate Dibutyl phthalate Di-n-butyl phthalate	100	1,2,3,4	U069	A	10 (4.54)
1,2-Benzenedicarboxylic acid, dimethyl ester.	131113	Dimethyl phthalate	1*	2,3,4	U102	D	5000 (2270)
• •	•	•	•		•		•
1,2-Benzenedicarboxylic acid, bis(2-ethylhexyl) ester.	117817	Bis(2-ethylhexyl)phthalate DEHP Diethylhexyl phthalate	1*	2,3,4	U028	B	100 (45.4)
• •	•	•	•		•		•
Benzene, 1,4-dichloro-	106467	p-Dichlorobenzene 1,4-Dichlorobenzene	100	1,2,3,4	U072	B	100 (45.4)
• •	•	•	•		•		•
Benzene, 1,3-diisocyanatomethyl-	91087 584849 26471625	Toluene diisocyanate 2,4-Toluene diisocyanate	1*	3,4	U223	B	100 (45.4)
• •	•	•	•		•		•
Benzene, hexachloro-	118741	Hexachlorobenzene	1*	2,3,4	U127	A	10 (4.54)
• •	•	•	•		•		•
Benzene, hydroxy-	108952	Phenol	1000	1,2,3,4	U188	C	1000 (454)
Benzene, methyl-	108883	Toluene	1000	1,2,3,4	U220	C	1000 (454)
Benzene, 1-methyl-2,4-dinitro-	121142	2,4-Dinitrotoluene	1000	1,2,3,4	U105	A	10 (4.54)
• •	•	•	•		•		•
Benzene, (1-methylethyl)-	98828	Cumene	1*	3,4	U055	D	5000 (2270)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All comments/notes are located at the end of this table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code†	RCRA waste number	Category	Pounds (kg)
Benzene, nitro-	98953	Nitrobenzene	1000	1,2,3,4	U169	C	1000 (454)
• •	•	•	•		•		•
Benzene, pentachloronitro-	82688	PCNB Pentachloronitrobenzene Quintobenzene	1*	3,4	U185	B	100 (45.4)
• •	•	•	•		•		•
Benzene, 1,1'-(2,2,2-trichloroethylidene) bis [4-methoxy-.	72435	Methoxychlor	1	1,3,4	U247	X	1 (0.454)
Benzene, (trichloromethyl)-	98077	Benzotrichloride	1*	3,4	U023	A	10 (4.54)
• •	•	•	•		•		•
Benzidine	92875	[1,1'-Biphenyl]-4,4'-diamine	1*	2,3,4	U021	X	1 (0.454)
• •	•	•	•		•		•
p-Benzoquinone	106514	2,5-Cyclohexadiene-1,4-dione Quinone	1*	3,4	U197	A	10 (4.54)
Benzotrichloride	98077	Benzene, (trichloromehtyl)-	1*	3,4	U023	A	10 (4.54)
• •	•	•	•		•		•
Benzyl chloride	100447	Benzene, (chloromehtyl)-	100	1,3,4	P028	B	100 (45.4)
• •	•	•	•		•		•
Beryllium and Compounds	N.A.	Beryllium Compounds	1*	2,3			(**)
Beryllium and Compounds	N.A.	Beryllium and Compounds	1*	2,3			(**)
• •	•	•	•		•		•
γ-BHC	58899	Cyclohexane, 1,2,3,4,5,6-hexachloro-, 1α,2α,3β,4α,5α,6β)- Hexachlorocyclohexane (gamma isomer) Lindane Lindane (all isomers)	1	1,2,3,4	U129	X	1 (0.454)
• •	•	•	•		•		•
[1,1'-Biphenyl]-4,4'diamine	92875	Benzidine	1*	2,3,4	U021	X	1 (0.454)
[1,1'-Biphenyl]-4,4'-diamine,3,3'-dichloro-.	91941	3,3'-Dichlorobenzidine	1*	2,3,4	U073	X	1 (0.454)
[1,1'-Biphenyl]-4,4'-diamine,3,3'-dimethoxy-.	119904	3,3'-Dimethoxybenzidine	1*	3,4	U091	B	100 (45.4)
[1,1'-Biphenyl]-4,4'-diamine, 3,3'-dimethyl-.	119937	3,3'-Dimethylbenzidine	1*	3,4	U095	A	10 (4.54)
• •	•	•	•		•		•
Bis(2-chloroethyl) ether	111444	Dichloroethyl ether Ethane, 1,1'-oxybis[2-chloro-	1*	2,3,4	U025	A	10 (4.54)
• •	•	•	•		•		•
Bis(chloromethyl) ether	542881	Dichloromethyl ether Methane, oxybis(chloro)-	1*	3,4	P106	A	10 (4.54)
Bis(2-ethylhexyl) phthalate	117817	1,2-Benzenedicarboxylic acid, bis(2-ethyl-hexyl) ester. DEHP Diethylhexyl phthalate	1*	2,3,4	U028	B	100 (45.4)
Bromoform	75252	Methane, tribromo- Tribromomethane	1*	2,3,4	U225	B	100 (45.4)
Bromomethane	74839	Methane, bromo- Methyl bromide	1*	2,3,4	U029	C	1000 (454)
• •	•	•	•		•		•
1,3-Butadiene, 1,1,2,3,4,4-hexachloro-.	87683	Hexachlorobutadiene	1*	2,3,4	U128	X	1 (0.454)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All comments/notes are located at the end of this table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory RQ	Statutory Code†	Statutory RCRA waste number	Final RQ Category	Final RQ Pounds (kg)
• • •	•	•	•		•		
2-Butanone	78933	MEK Methyl ethyl ketone	1*	3,4	U159	D	5000 (2270)
• • •	•	•	•		•		
n-Butyl phthalate	84742	1,2-Benzenedicarboxylic acid, dibutyl ester. Dibutyl phthalate Di-n-butyl phthalate	100	1,2,3,4	U069	A	10 (4.54)
• • •	•	•	•		•		
Cadmium and Compounds	N.A.	Cadmium Compounds	1*	2,3			(**)
Cadmium Compounds	N.A	Cadmium and Compounds	1*	2,3			(**)
• • •	•	•	•		•		
Camphene, octachloro-	8001352	Chlorinated camphene Toxaphene	1	1,2,3,4	P123	X	1 (0.454)
• • •	•	•	•		•		
Captan	133062		10	1,3		A	10 (4.54)
• • •	•	•	•		•		
Carbamic acid, ethyl ester	51796	Ethyl carbamate Urethane	1*	3,4	U238	B	100 (45.4)
• • •	•	•	•		•		
Carbamic chloride, dimethyl-	79447	Dimethylcarbamoyl chloride	1*	3,4	U097	X	1 (0.454)
• • •	•	•	•		•		
Carbaryl	63252		100	1,3		B	100 (45.4)
• • •	•	•	•		•		
Carbon disulfide	75150		5000	1,3,4	P022	B	100 (45.4)
• • •	•	•	•		•		
Carbonic dichloride	75445	Phosgene	5000	1,3,4	P095	A	10 (4.54)
• • •	•	•	•		•		
Carbon tetrachloride	56235	Methane, tetrachloro-	5000	1,2,3,4	U211	A	10 (4.54)
• • •	•	•	•		•		
Chlordane	57749	Chlordane, alpha & gamma isomers. Chlordane (technical mixture and metabolites) 4,7-Methano-1H-indene, 1,2,4,5,6,7,8,8-octachloro-2,3,3a,4,7,7, a-hexahydro-	1	1,2,3,4	U036	X	1 (0.454)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All comments/notes are located at the end of this table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code†	RCRA waste number	Category	Pounds (kg)
Chlordane, alpha & gamma isomers.	57749	Chlordane Chlordane (technical mixture and metabolites) 4,7-Methano-1H-indene, 1,2,4,5,6,7,8,8-octachloro-2,3,3a,4,7,7a-hexahydro-	1	1,2,3,4	U036	X	1 (0.454)
Chlordane (technical mixture and metabolites).	57749	Chlordane Chlordane, alpha & gamma isomers. 4,7-Methano-1H-indene, 1,2,4,5,6,7,8,8-octachloro-2,3,3a,4,7,7a-hexahydro	1	1,2,3,4	U036	X	1 (0.454)
• •	•	•	•		•		
Chlorinated camphene	8001352	Camphene, octachloro- Toxaphene	1	1,2,3,4	P123	X	1 (0.454)
• •	•	•	•		•		
Chlorine	7782505		10	1,3		A	10 (4.54)
• •	•	•	•		•		
Chlorobenzene	108907	Benzene, chloro-	100	1,2,3,4	U037	B	100 (45.4)
Chlorobenzilate	510156	Benzeneacetic acid, 4-chloro-α-(4-chlorophenyl)-α-hydroxy-, ethyl ester.	1*	3,4	U038	A	10 (4.54)
• •	•	•	•		•		•
1-Chloro-2,3-epoxypropane	106898	Epichlorohydrin Oxirane, (chloromethyl)-	1000	1,3,4	U041	B	100 (45.4)
Chloroethane	75003	Ethyl chloride	1*	2,3		B	100 (45.4)
• •	•	•	•		•		•
Chloroform	67663	Methane, trichloro-	5000	1,2,3,4	U044	A	10 (4.54)
Chloromethane	74873	Methane, chloro- Methyl chloride	1*	2,3,4	U045	B	100 (45.4)
Chloromethyl methyl ether	107302	Methane, chloromethoxy-	1*	3,4	U046	A	10 (4.54)
• •	•	•	•		•		•
Chromium and Compounds	N.A.	Chromium and Compounds	1*	2,3			(**)
Chromium Compounds	N.A.	Chromium Compounds	1*	2,3			(**)
• •	•	•	•		•		•
Cumene	98828	Benzene, (1-methylethyl)-	1*	3,4	U055	D	5000 (2270)
• •	•	•	•		•		•
Cyanide Compounds	N.A.	Cyanides	1*	2,3			(**)
Cyanides	N.A.	Cyanide Compounds	1*	2,3			(**)
• •	•	•	•		•		•
2,5-Cyclohexadiene-1,4-dione	106514	p-Benzoquinone Quinone	1*	3,4	U197	A	10 (4.54)
• •	•	•	•		•		•
Cyclohexane, 1,2,3,4,5,6-hexachloro-, (*α,2α,3β,4α,5α,β)-.	58899	γ-BHC Hexachlorocyclohexane (gamma isomer) Lindane Lindane (all isomers)	1	1,2,3,4	U129	X	1 (0.454)
•	•	•	•		•		•
1,3-Cyclopentadiene,1,2,3,4,5,5-hexachloro-.	77474	Hexachlorocyclopentadiene	1	1,2,3,4	U130	A	10 (4.54)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All comments/notes are located at the end of this table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code†	RCRA waste number	Category	Pounds (kg)
2,4-D Acid	94757	Acetic acid, (2,4-dichlorophenoxy)-, salts & esters. 2,4-D, salts and esters	100	1,3,4	U240	B	100 (45.4)
2,4-D, salts and esters	94757	Acetic acid, (2,4-dichlorophenoxy)-, salts & esters. 2,4-D Acid	100	1,3,4	U240	B	100 (45.4)
DDE	72559	4,4'-DDE	1*	2,3		X	1 (0.454)
4,4'-DDE	72559	DDE	1*	2,3		X	1 (0.454)
DEHP	117817	1,2-Benzenedicarboxylic acid, bis(2-ethyl-hexyl) ester. Bis(2-ethylhexyl)phthalate Diethylhexyl phthalate	1*	2,3,4	U028	B	100 (45.4)
1,2-Dibromo-3-chloropropane	96128	Propane, 1,2-dibromo-3-chloro-	1*	3,4	U066	X	1 (0.454)
Dibromoethane	106934	Ethane, 1,2-dibromo- Ethylene dibromide	1000	1,3,4	U067	X	1(0.454)
Dibutyl phthalate	84742	1,2-Benzenedicarboxylic acid, dibutyl ester. n-Butyl phthalate Di-n-butyl phthalate	100	1,2,3,4	U069	A	10(4.54)
Di-n-butyl phthalate	84742	1,2-Benzenedicarboxylic acid, dibutyl ester. n-Butyl phthalate Di-Butyl phthalate	100	1,2,3,4	U069	A	10(4.54)
1,4-Dichlorobenzene	106467	Benzene, 1,4-dichloro- p-Dichlorobenzene	100	1,2,3,4	U072	B	100(45.4)
p-Dichlorobenzene	106467	Benzene, 1,4-dichloro- 1,4-Dichlorobenzene	100	1,2,3,4	U072	B	100(45.4)
3,3'-Dichlorobenzidine	91941	[1,1'-Biphenyl]-4,4'-diamine,3,3'-dichloro-.	1*	2,3,4	U076	X	1 (0.454)
1,1-Dichloroethane	75343	Ethane, 1,1-dicholoro- Ethylidene dicholoride	1*	2,3,4	U076	C	1000(454)
1,2-Dichloroethane	107062	Ethane, 1,2-dicholoro- Ethylene dicholoride	5000	1,2,3,4	U078	B	100(45.4)
1,1-Dichloroethylene	75354	Ethane, 1,1-dichloro- Vinylidene chloride	5000	1,2,3,4	U078	B	100 (45.4)
Dichloroethyl ether	111444	Bis(2-chloroethyl) ether Ethane, 1,1'-oxybis[2-chloro-	1*	2,3,4	U025	A	10 (4.54)
Dichloromethyl ether	542881	Bis(chloromethyl) ether Methane, oxybis[chloro-	1*	3,4	P016	A	10(4.54)
Dichloromethane	75092	Methane, dichloro- Methylene chloride	1*	2,3,4	U080	C	1000(454)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All comments/notes are located at the end of this table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code†	RCRA waste number	Category	Pounds (kg)
• •	•	•	•		•		•
1,2-Dichloropropane	78875	Propane, 1,2-dichloro- Propylene dichloride	5000	1,2,3,4	U083	C	1000(454)
• •	•	•	•		•		•
1,3'-Dichloropropene	542756	1-Propane, 1,3-dichloro-	5000	1,2,3,4	U084	B	1000(45.4)
• •	•	•	•		•		•
Dichlorvos	62737		10	1,3		A	10(4.54)
• •	•	•	•		•		•
1,4-Diethyleneoxide	123911	1,4-Dioxane	1*	3,4	U108	B	100(45.4)
Diethylhexyl phthalate	117817	1,2-Benzenedicarboxylic acid, bis(2-ethylhexyl) ester. Bis(2-ehtylhexyl)phthalate DEHP	1*	2,3,4	U128	B	100(45.4)
• •	•	• •	•		•		•
3,3'-Dimethoxybenzidine	119904	[1,1'-Biphenyl]-4,4'-diamine,3,3'-dimethoxy-.	1*	3,4	U091	B	100(45.4)
• •	•	•	•		•		•
Dimethyl aminoazobenzene	60117	Benzenamine,N, N-dimethyl-4-(phenylazo)-,. p-Dimethylaminoazobenzene	1*	3,4	U093	A	10(4.54)
p-Dimethylaminoazobenzene	60117	Benzenamine, N, N-dimethyl-4-(phenylazo)-. Dimethyl aminoazobenzene	1*	3,4	U093	A	10 (4.54)
• •	•	•	•		•		•
3,3'-Dimethylbenzidine	119937	[1,1-Biphenyl]-4,4'-diamine,3,3'-dimethyl-.	1*	3,4	U095	A	10 (4.54)
• •	•	•	•		•		•
Dimethylcarbamoyl chloride	79447	Carbamic chloride, dimethyl-	1*	3,4	U097	X	1 (0.454)
• •	•	•	•		•		•
1,1-Dimethylhydrazine	57147	Hydrazine, 1,1-dimethyl-	1*	3,4	U098	A	10 (4.54)
• •	•	•	•		•		•
Dimethylphthalate	131113	1,2-Benzenedicarboxylic acid, dimethyl ester.	1*	2,3,4	U102	D	5000 (2270)
Dimethyl sulfate	77781	Sulfuric acid, dimethyl ester	1*	3,4	U103	B	100 (45.4)
• •	•	•	•		•		•
4,6-Dinitro-o-cresol, and salts	534521	Phenol, 2-methyl-4,6-dinitro-, & salts.	1*	2,3,4	P047	A	10 (4.54)
• •	•	•	•		•		•
2,4-Dinitrophenol	51285	Phenol, 2,4-dinitro-	1000	1,2,3,4	P048	A	10 (4.54)
• •	•	•	•		•		•
2,4-Dinitrotoluene	121142	Benzene, 1-methyl-2,4-dinitro-	1000	1,2,3,4	U105	A	10 (4.54)
• •	•	•	•		•		•
1,4-Dioxane	123911	1,4-Diethyleneoxide	1*	3,4	U108	B	100 (45.4)
• •	•	•	•		•		•
1,2-Diphenylhydrazine	122667	Hydrazine, 1,2-diphenyl-	1*	2,3,4	U109	A	10 (4.54)
• •	•	•	•		•		•
Epichlorohydrin	106898	1-Chloro-2,3-epoxypropane Oxirane, (chloromethyl)-	1000	1,3,4	U041	B	100 (45.4)
• •	•	•	•		•		•
Ethanal	75070	Acetaldehyde	1000	1,3,4	U001	C	1000 (454)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All comments/notes are located at the end of this table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code†	RCRA waste number	Category	Pounds (kg)
• •	•	•	•		•		•
Ethane, 1,2-dibromo	106934	Dibromoethane Ethylene dibromide	1000	1,3,4	U067	X	1 (0.454)
Ethane 1,1-dichloro	75343	1,1-Dichloroethane Ethylidene dichloride	1*	2,3,4	U076	C	1000 (454)
Ethane, 1,2-dichloro	107062	1,2-Dichloroethane Ethylene dichloride	5000	1,2,3,4	U077	B	100 (45.4)
• •	•	•	•		•		•
Ethane, hexachloro-	67721	Hexachloroethane	1*	2,3,4	U131	B	100 (45.4)
• •	•	•	•		•		•
Ethane, 1,1'-oxybis[2-chloro-	111444	Bis(2-chloroethyl) ether Dichloroethyl ether	1*	2,3,4	U025	A	10 (4.54)
• •	•	•	•		•		•
Ethane, 1,1,2,2-tetrachloro-	79345	1,1,2,2-Tetrachloroethane	1*	2,3,4	U209	B	100 (45.4)
• •	•	•	•		•		•
Ethane, 1,1,1-trichloro-	71556	Methyl chloroform 1,1,1-Trichloroethane	1*	2,3,4	U226	C	1000 (454)
Ethane, 1,1,2-trichloro-	79005	1,1,2-Trichloroethane	1*	2,3,4	U227	B	100 (45.4)
• •	•	•	•		•		•
Ethanone, 1-phenyl-	98862	Acetophenone	1*	3,4	U004	D	5000 (2270)
• •	•	•	•		•		•
Ethene, 1,1-dichloro-	75354	1,1-Dichloroethylene Vinylidene chloride	5000	1,2,3,4	U078	B	100 (45.4)
• •	•	•	•		•		•
Ethene, tetrachloro-	127184	Perchloroethylene Tetrachloroethene Tetrachloroethylene	1*	2,3,4	U210	B	100 (45.4)
• •	•	•	•		•		•
Ethene, trichloro-	79016	Trichloroethene Trichloroethylene	1000	1,2,3,4	U228	B	100 (45.4)
Ethyl acrylate	140885	2-Propenoic acid, ethyl ester	1*	3,4	U113	C	1000 (454)
Ethylbenzene	100414		1000	1,2,3		C	1000 (45.4)
Ethyl carbamate	51796	Carbamic acid, ethyl ester Urethane	1*	3,4	U238	B	100 (45.4)
Ethyl chloride	75003	Chloroethane	1*	2,3		B	100 (45.4)
• •	•	•	•		•		•
Ethylene dibromide	106934	Dibromoethane Ethane, 1,2-dibromo-	1000	1,3,4	U067	X	1 (0.454)
Ethylene dichloride	107062	1,2-Dichloroethane Ethane, 1,2-dichloro-	5000	1,2,3,4	U077	B	100 (45.4)
• •	•	•	•		•		•
Ethyleneimine	151564	Aziridine	1*	3,4	P054	X	1 (0.454)
Ethylene oxide	75218	Oxirane	1*	3,4	U115	A	10 (4.54)
Ethylenethiourea	96457	2-Imidazolidinethione	1*	3,4	U116	A	10 (4.54)
• •	•	•	•		•		•
Ethylidene dichloride	75343	1,1-Dichloroethane Ethane, 1,1-dichloro-	1*	2,3,4	U076	C	1000 (454)
• •	•	•	•		•		•
Formaldehyde	50000		1000	1,3,4	U122	B	100 (45.4)
• •	•	•	•		•		•
2,5-Furandione	108316	Maleic anhydride	5000	1,3,4	U147	D	5000 (2270)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All comments/notes are located at the end of this table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Codet	RCRA waste number	Category	Pounds (kg)
Heptachlor	76448	4,7-Methano-1H-indene, 1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro	1	1,2,3,4	P059	X	1 (0.454)
Hexachlorobenzene	118741	Benzene, hexachloro-	1*	2,3,4	U127	A	10 (4.54)
Hexachlorobutadiene	87683	1,3-Butadiene 1,1,2,3,4,4-hexachloro-.	1*	2,3,4	U128	X	1 (0.454)
Hexachlorocyclohexane (gamma isomer).	58899	γ-BHC Cyclohexane, 1,2,3,4,5,6-hexachloro-1α,2α,3β,4α,5α,6β)- Lindane Lindane (all isomers)	1	1,2,3,4	U129	X	1 (0.454)
Hexachlorocyclopentadiene	77474	1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro-.	1	1,2,3,4	U130	A	10 (4.54)
Hexachloroethane	67721	Ethane, hexachloro-	1*	2,3,4	U131	B	100 (45.4)
Hexone	108101	Methyl isobutyl ketone 4-Methyl-2 pentanone	1*	3,4	U161	D	5000 (2270)
Hydrazine	302012		1*	3,4	U133	X	1 (0.454)
Hydrazine, 1,1-dimethyl-	57147	1,1-Dimethylhydrazine	1*	3,4	U098	A	10 (4.54)
Hydrazine, 1,2-diphenyl-	122667	1,2-Diphenylhydrazine	1*	2,3,4	U109	A	10 (4.54)
Hydrazine, methyl-	60344	Methyl hydrazine	1*	3,4	P068	A	10 (4.54)
Hydrochloric acid	7647010	Hydrogen chloride	5000	1,3		D	5000 (2270)
Hydrofluoric acid	7664393	Hydrogen fluoride	5000	1,3,4	U134	B	100 (45.4)
Hydrogen chloride	7647010	Hydrochloric acid	5000	1,3		D	5000 (2270)
Hydrogen fluoride	7664393	Hydrofluoric acid	5000	1,3,4	U134	B	100 (45.4)
Hydrogen phosphide	7803512	Phosphine	1*	3,4	P096	B	100 (45.4)
2-Imidazolidinethione	96457	Ethylenethiourea	1*	3,4	U116	A	10 (4.54)
Iodomethane	74884	Methane, iodo- Methyl iodide	1*	3,4	U138	B	100 (45.4)
1,3-Isobenzofurandione	85449	Phtalic anhydride	1*	3,4	U190	D	5000 (2270)
Isophorone	78591		1*	2,3		D	5000 (2270)
Lead and Compounds	N.A.	Lead Compounds	1*	2,3			**
Lead Compounds	N.A.	Lead and Compounds	1*	2,3			**
Lindane	58899	γ-BHC Cyclohexane, 1,2,3,4,5,6-hexachloro-,. (1α,2α,3β,4α,5α,6β)-, Hexachlorocyclohexane (gamma isomer) Lindane (all isomers)	1	1,2,3,4	U129	X	1 (0.454)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All comments/notes are located at the end of this table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code†	RCRA waste number	Category	Pounds (kg)
Lindane (all isomers)	58899	γ-BHC Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1α, 2α,3β,4α,5α,6β-, Hexachlorocyclohexane (gamma isomer) Lindane	1	1,2,3,4	U129	X	1 (0.454)
• •	•	•	•		•		•
Maleic anhydride	108316	2,5-Furandione	5000	1,3,4	U147	D	5000 (2270)
• •	•	•	•		•		•
MEK	78933	2-Butanone Methyl ethyl ketone	1*	3,4	U159	D	5000 (2270)
• •	•	•	•		•		•
Mercury and Compounds	N.A.	Mercury Compounds	1*	2,3			**
Mercury Compounds	N.A.	Mercury and Compounds	1*	2,3			**
• •	•	•	•		•		•
Methanamine, N-methyl-N-nitroso-	62759	N-Nitrosodimethylamine	1*	2,3,4	P082	A	10 (4.54)
Methane, bromo-	74839	Bromomthane Methyl bromide	1*	2,3,4	U029	C	1000 (454)
Methane, chloro-	74873	Chloromethane Methyl chloride	1*	2,3,4	U045	B	100 (45.4)
Methane, chloromethoxy-	107302	Chloromethyl methyl ether	1*	3,4	U046	A	10 (4.54)
• •	•	•	•		•		•
Methane, dichloro-	75092	Methylene chloride Dichloromethane	1*	2,3,4	U080	C	1000 (454)
• •	•	•	•		•		•
Methane, iodo-	74884	Iodomethane Methyl iodide	1*	3,4	U138	B	100 (45.4)
• •	•	•	•		•		•
Methane, oxybis(chloro-	542881	Bis(chloromethyl)ether Dichloromethyl ether	1*	3,4	P016	A	10 (4.54)
• •	•	•	•		•		•
Methane, tetrachloro-	56235	Carbon tetrachloride	5000	1,2,3,4	U211	A	10 (4.54)
• •	•	•	•		•		•
Methane, tribromo-	75252	Bromoform Tribromomethane	1*	2,3,4	U225	B	100 (45.4)
Methane, trichloro-	67663	Chloroform	5000	1,2,3,4	U044	A	10 (4.54)
• •	•	•	•		•		•
4,7-Methano-1H-indene, 1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-	76448	Heptachlor	1*	1,2,3,4	P059	X	1 (0.454)
4,7-Methano-1H-indene, 1,2,4,5,6,7,8,8-octachloro-2,3,3a,4,7,7a-hexahydro-	57749	Chlordane Chlordane, alpha & gamma isomers Chlordane (technical mixture and metabolites)	1	1,2,3,4	U036	X	1 (0.454)
Methanol	67561	Methyl alcohol	1*	3,4	U154	D	5000 (2270)
• •	•	•	•		•		•
Methoxychlor	72435	Benzene, 1,1'-(2,2,2-trichloroethylidene)bis[4-methoxy-	1	1,3,4	U247	X	1 (0.454)
Methy alcohol	67561	Methanol	1*	3,4	U154	D	5000 (2270)
2-Methyl aziridine	75558	Aziridine, 2-methyl- 1,2-Propylenimine	1*	3,4	P067	X	1 (0.454)
Methyl bromide	74839	Bromomethane Methane, bromo-	1*	2,3,4	U029	C	1000 (454)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All comments/notes are located at the end of this table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code†	RCRA waste number	Category	Pounds (kg)
• •	•	•	•		•		•
Methyl chloride	74873	Chloromethane Methane, chloro-	1*	2,3,4	U045	B	100 (45.4)
• •	•	•	•		•		•
Methyl chloroform	71556	Ethane, 1,1,1-trichloro- 1,1,1-Trichloroethane	1*	2,3,4	U226	C	1000 (454)
• •	•	•	•		•		•
4,4'-Methylenebis(2-chloroaniline)	101144	Benzenamine, 4,4'-methylenebis(2-chloro-.	1*	3,4	U158	A	10 (4.54)
• •	•	•	•		•		•
Methylene chloride	75092	Dichloromethane Methane, dichloro-	1*	2,3,4	U080	C	1000 (454)
Methyl ethyl ketone	78933	2-Butanone MEK	1*	3,4	U159	D	5000 (2270)
• •	•	•	•		•		•
Methyl hydrazine	60344	Hydrazine, methyl-	1*	3,4	P068	A	10 (4.54)
Methyl iodide	74884	Iodomethane Methane, iodo-	1*	3,4	U138	B	100 (45.4)
Methyl isobutyl ketone	108101	Hexone 4-Methyl-2-pentanone	1*	3,4	U161	D	5000 (2270)
• •	•	•	•		•		•
Methyl methacrylate	80626	2-Propenoic acid, 2-methyl-, methyl ester.	5000	1,3,4	U162	C	1000 (454)
• •	•	•	•		•		•
4-Methyl-2-pentanone	108101	Hexone Methyl isobutyl ketone	1*	3,4	U161	D	5000 (2270)
• •	•	•	•		•		•
Naphthalene	91203		5000	1,2,3,4	U165	B	100 (45.4)
• •	•	•	•		•		•
Nickel and Compounds	N.A.	Nickel Compounds	1*	2,3			(**)
Nickel Compounds	N.A.	Nickel and Compounds	1*	2,3			(**)
Nitrobenzene	98953	Benzene, nitro-	1000	1,2,3,4	U169	C	1000 (454)
• •	•	•	•		•		•
p-Nitrophenol	100027	4-Nitrophenol Phenol, 4-nitro-	1000	1,2,3,4	U170	B	100 (45.4)
• •	•	•	•		•		•
4-Nitrophenol	100027	p-Nitrophenol Phenol, 4-nitro-	1000	1,2,3,4	U170	B	100 (45.4)
• •	•	•	•		•		•
2-Nitropropane	79469	Propane, 2-nitro-	1*	3,4	U171	A	10 (4.54)
• •	•	•	•		•		•
N-Nitrosodimethylamine	62759	Methanamine, N-methyl-N-nitroso-	1*	2,3,4	P082	A	10 (4.54)
• •	•	•	•		•		•
N-Nitroso-N-methylurea	684935	Urea, N-methyl-N-nitroso	1*	3,4	U177	X	1 (0.454)
• •	•	•	•		•		•
1,2-Oxathiolane, 2,2-dioxide	1120714	1,3-Propane sultone	1*	3,4	U193	A	10 (4.54)
• •	•	•	•		•		•
Oxirane	75218	Ethylene oxide	1*	3,4	U115	A	10 (4.54)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All comments/notes are located at the end of this table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code†	RCRA waste number	Category	Pounds (kg)
•	•	•	•		•		•
Oxirane, (chloromethyl)-	106898	1-Chloro-2,3,epoxypropane Epichlorohydrin	1000	1,3,4	U041	B	100 (45.4)
•	•	•	•		•		•
Parathion	56382	Phosphorothioic acid, O,O-diethyl O-(4-nitrophenyl) ester	1	1,3,4	P089	A	10 (4.54)
•	•	•	•		•		•
PCBs	1336363	Aroclors Polychlorinated Biphenyls	10	1,2,3		X	1 (0.454)
Aroclor 1016	12674112		10	1,2,3		X	1 (0.454)
Aroclor 1221	11104282		10	1,2,3		X	1 (0.454)
Aroclor 1232	11141165		10	1,2,3		X	1 (0.454)
Aroclor 1242	53469219		10	1,2,3		X	1 (0.454)
Aroclor 1248	12672296		10	1,2,3		X	1 (0.454)
Aroclor 1254	11097691		10	1,2,3		X	1 (0.454)
Aroclor 1260	11096825		10	1,2,3		X	1 (0.454)
•	•	•	•		•		•
PCNB	82688	Benzene, pentachloronitro- Pentachloronitrobenzene Quintobenzene	1*	3,4	U185	B	100 (45.4)
Pentachloronitrobenzene	82688	Benzene, pentachloronitro- PCNB Quintobenzene	1*	3,4	U185	B	100 (45.4)
Pentachlorophenol	87865	Phenol, pentachloro-	10	1,2,3,4	U242	A	10 (4.54)
•	•	•	•		•		•
Perchloroethylene	127184	Ethene, tetrachloro- Tetrachloroethene Tetrachloroethylene	1*	2,3,4	U210	B	100 (45.4)
•	•	•	•		•		•
Phenol	108952	Benzene, hydroxy-	1000	1,2,3,4	U188	C	1000 (454)
•	•	•	•		•		•
Phenol, 2,4-dinitro-	51285	2,4-Dinitrophenol	1000	1,2,3,4	P048	A	10 (4.54)
•	•	•	•		•		•
Phenol, 2-methyl-4,6-dinitro-, & salts.	534521	4,6-Dinitro-o-cresol, and salts	1*	2,3,4	P047	A	10 (4.54)
•	•	•	•		•		•
Phenol, 4-nitro-	100027	p-Nitrophenol 4-Nitrophenol	1000	1,2,3,4	U170	B	100 (45.4)
Phenol, pentachloro-	87865	Pentachlorophenol	10	1,2,3,4	U242	A	10 (4.54)
•	•	•	•		•		•
Phenol, 2,4,5-trichloro-	95954	2,4,5-Trichlorophenol	10	1,3,4	U230	A	10 (4.54)
Phenol, 2,4,6-trichloro-	88062	2,4,6-Trichlorophenol	10	1,2,3,4	U231	A	10 (4.54)
•	•	•	•		•		•
Phosgene	75445	Carbonic dichloride	5000	1,3,4	P095	A	10 (4.54)
Phosphine	7803512	Hydrogen phosphide	1*	3,4	P096	B	100 (45.4)
•	•	•	•		•		•
Phosphorothioic acid, O, O-diethyl O-(4-nitropheny) ester.	56382	Parathion	1	1,3,4	P089	A	10 (4.54)
•	•	•	•		•		•
Phosphorus	7723140		1	1,3		X	1 (0.454)
•	•	•	•		•		•
Phthalic anhydride	85449	1,3-Isobenzofurandione	1*	3,4	U190	D	5000 (2270)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All comments/notes are located at the end of this table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code†	RCRA waste number	Category	Pounds (kg)
• •	•	•	•		•		•
Polychlorinated biphenyls	1336363	Aroclors PCBs	10	1,2,3		X	1 (0.454)
Aroclor 1016	12674112		10	1,2,3		X	1 (0.454)
Aroclor 1221	11104282		10	1,2,3		X	1 (0.454)
Aroclor 1232	11141165		10	1,2,3		X	1 (0.454)
Aroclor 1242	53469219		10	1,2,3		X	1 (0.454)
Aroclor 1248	12672296		10	1,2,3		X	1 (0.454)
Aroclor 1254	11097691		10	1,2,3		X	1 (0.454)
Aroclor 1260	11096825		10	1,2,3		X	1 (0.454)
• •	•	•	•		•		•
Propane, 1,2-dibromo-3-chloro-	96128	1,2-Dibromo-3-chloropropane	1*	3,4	U066	X	1 (0.454)
Propane, 1,2,-dichloro-	78875	1,2-Dichloropropane Propylene dichloride	5000	1,2,3,4	U083	C	1000 (454)
• •	•	•	•		•		•
Propane, 2-nitro-	79469	2-Nitropropane	1*	3,4	U171	A	10 (4.54)
1,3-Propane sultone	1120714	1,2-Oxathiolane, 2,2-dioxide	1*	3,4	U193	A	10 (4.54)
• •	•	•	•		•		•
2-Propenal	107028	Acrolein	1	1,2,3,4	P003	X	1 (0.454)
2-Propenamide	79061	Acrylamide	1*	3,4	U007	D	5000 (2270)
• •	•	•	•		•		•
1-Propene, 1,3-dichloro-	542756	1,3'-Dichloropropene	5000	1,2,3,4	U084	B	100 (45.4)
2-Propenenitrile	107131	Acrylonitrile	100	1,2,3,4	U009	B	100 (45.4)
• •	•	•	•		•		•
2-Propenoic acid	79107	Acrylic acid	1*	3,4	U008	D	5000 (2270)
2-Propenoic acid, ethyl ester	140885	Ethyl acrylate	1*	3,4	U113	C	1000 (454)
• •	•	•	•		•		•
2-Propenoic acid, 2-methyl-, methyl ester.	80626	Methyl methacrylate	5000	1,3,4	U162	C	1000 (454)
• •	•	•	•		•		•
Propylene dichloride	78875	1,2-Dichloropropane Propane, 1,2-dichloro-	5000	1,2,3,4	U083	C	1000 (454)
Propylene oxide	75569		5000	1,3		B	100 (45.4)
1,2-Propylenimine	75558	Aziridine, 2-methyl- 2-Methyl aziridine	1*	3,4	P067	X	1 (0.454)
• •	•	•	•		•		•
Quinoline	91225		1000	1,3		D	5000 (2270)
Quinone	1,6514	p-Benzoquinone 2,5-Cyclochexadiene-1,4-dione	1*	3,4	U197	A	10 (4.54)
Quintobenzene	82688	Benzene, pentachloronitro- PCNB Pentachloronitrobenzene	1*	3,4	U185	B	100 (45.4)
Radionuclides (including radon)	N.A.		1*	3			§
• •	•	•	•		•		•
Selenium and Compounds	N.A.	Selenium Compounds	1*	2,3			(**)
Selenium Compounds	N.A.	SELENIUM COMPOUNDS	1*	2,3			(**)
• •	•	•	•		•		•
Styrene	100425		1000	1,3		C	1000 (454)
• •	•	•	•		•		•
Sulfuric acid, dimethyl ester	77781	Dimethyl sulfate	1*	3,4	U103	B	100 (45.4)
• •	•	•	•		•		•
TCDD	1746016	2,3,7,8-Tetrachlorodibenzo-p-dioxin	1*	2,3		X	1 (0.454)
• •	•	•	•		•		•
2,3,7,8-Tetrachlorodibenzo-p-dioxin	1746016	TCDD	1*	2,3		X	1 (0.454)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All comments/notes are located at the end of this table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code†	RCRA waste number	Category	Pounds (kg)
•	•	•	•		•		•
1,1,2,2-Tetrachloroethane	79345	Ethane, 1,1,2,2-tetrachloro-	1*	2,3,4	U209	B	100 (45.4)
Tetrachloroethene	127184	Ethene, tetrachloro- Perchloroethylene Tetrachloroethylene	1*	2,3,4	U210	B	100 (45.4)
Tetrachloroethylene	127184	Ethene, tetrachloro- Perchloroethylene Tetrachloroethene	1*	2,3,4	U210	B	100 (45.4)
•	•	•	•		•		•
Toluene	108883	Benzene, methyl-	1000	1,2,3,4	U220	C	1000 (454)
Toluenediamine	95807 496720 823405 25376458	Benzenediamine, ar-methyl- 2,4-Toluene diamine	1*	3,4	U221	A	10 (4.54)
2,4-Toluene diamine	95807 496720 823405 25376458	Benzenediamine, ar-methyl- Toluenediamine	1*	3,4	U221	A	10 (4.54)
Toluene diisocyanate	91087 584849 26471625	Benzene, 1,3-diisocyanatomethyl- 2,4-Toluene diisocyanate	1*	3,4	U223	B	100 (45.4)
2,4-Toluene diisocyanate	91087 584849 26471625	Benzene, 1,3-diisocyanatomethyl- Toluene diisocyanate	1*	3,4	U223	B	100 (45.4)
o-Toluidine	95534	Benzenamine, 2-methyl-	1*	3,4	U328	B	100 (45.4)
•	•	•	•		•		•
Toxaphene	8001352	Camphene, octachloro Chlorinated camphene	1*	1,2,3,4	P123	X	1 (0.454)
•	•	•	•		•		•
Tribromomethane	75252	Bromoform Methane, tribromo-	1*	2,3,4	U225	B	100 (45.4)
•	•	•	•		•		•
1,2,4-Trichlorobenzene	120821		1*	2,3		B	100 (45.4)
1,1,1-Trichloroethane	71556	Ethane, 1,1,1-trichloro- Methyl chloroform	1*	2,3,4	U226	C	1000 (454)
1,1,2-Trichloroethane	79005	Ethane, 1,1,2-trichloro-	1*	2,3,4	U227	B	100 (45.4)
Trichloroethane	79016	Ethene, trichloro- Trichloroethylene	1000	1,2,3,4	U228	B	100 (45.4)
Trichloroethylene	79016	Ethene, trichloro- Trichloroethene	1000	1,2,3,4	U228	B	100 (45.4)
•	•	•	•		•		•
2,4,5-Trichlorophenol	95954	Phenol 2,4,5-trichloro-	10	1,3,4	U230	A	10 (4.54)
2,4,6-Trichlorophenol	88062	Phenol, 2,4,6-trichloro-	10	1,2,3,4	U231	A	10 (4.54)
•	•	•	•		•		•
Triethylamine	121448		5000	1,3		D	5000 (2270)
•	•	•	•		•		•
Urea, N-methyl-N-nitroso	684935	N-Nitroso-N-methylurea	1*	3,4	U177	X	1 (0.454)
Urethane	51796	Carbamic acid, ethyl ester Ethyl carbamate	1*	3,4	U238	B	100 (45.4)
•	•	•	•		•		•
Vinyl acetate	108054	Vinyl acetate monomer	1000	1,3		D	5000 (2270)
Vinyl acetate monomer	108054	Vinyl acetate	1000	1,3		D	5000 (2270)
•	•	•	•		•		•
Vinylidene chloride	75354	1,1-Dichloroethylene Ethene, 1,1-dichloro-	5000	1,2,3,4	U078	B	100 (45.4)
•	•	•	•		•		•

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES

[Note: All comments/notes are located at the end of this table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code†	RCRA waste number	Category	Pounds (kg)
•	•	•	•		•		•

† Indicates the statutory source as defined by 1,2,3 and 4 below.

†† No reporting of releases of this hazardous substance is required if the diameter of the piece of the solid metal released is equal to or exceeds 100 micrometers (0.004 inches).

††† The RQ for asbestos is limited to friable forms only.

1- Indicates that the statutory source for designation of this hazardous substance under CERCLA is CWA section 311(b)(4).

2- Indicates that the statutory source for designation of this hazardous substance under CERCLA is CWA section 307(a).

3- Indicates that the statutory source for designation of this hazardous substance under CERCLA is CAA section 112.

4- Indicates that the statutory source for designation of this hazardous substance under CERCLA is RCRA section 3001.

1* Indicates that the 1-pound RQ is a CERCLA statutory RQ.

• • • • • • • •

The Agency may adjust the statutory RQ for this hazardous substance in a future rulemaking; until then the statutory RQ applies.

§ The adjusted RQs for radionuclides may be found in Appendix B to this table.

** Indicates that no RQ is being assigned to the generic or broad class.

• • • • • • • •

APPENDIX A TO § 302.4.—SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES

CASRN	Hazardous substance
•	•
51796	Carbamic acid, ethyl ester. Ethyl carbamate. Urethane.
•	•
57749	Chlordane. Chlordane, alpha & gamma isomers. Chlordane (technical mixture and metabolites). 4,7-Methano-1H-indene, 1,2,4,5,6,7,8,8,-octachloro-2,3,3a,4,7,7a-hexahydro-.
•	•
58899	γ-BHC. Cyclohexane, 1,2,3,4,5,6-hexachloro-(1α,2α,3β,4α,5α,6β)-. Hexachlorocyclohexane (gamma isomer). Lindane. Lindane (all isomers).
•	•
60117	Benzenamine, N,N-dimethyl-4-(phenylazo-). Dimethyl aminoazobenzene. p-Dimethylaminoazobenzene.
•	•
72559	DDE. 4,4'-DDE.
•	•
74839	Bromomethane. Methane, bromo. Methyl bromide.
•	•
74873	Chloromethane. Methane, chloro-. Methyl chloride.

APPENDIX A TO § 302.4.—SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous substance
•	•
74884	Iodomethane. Methane, iodo-. Methyl iodide.
•	•
75003	Chloroethane. Ethyl chloride.
•	•
75092	Dichloromethane. Methane, dichloro-. Methylene chloride.
•	•
75252	Bromoform. Methane, tribromo-. Tribromomethane.
•	•
75558	Aziridine, 2-methyl-. 2-Methyl aziridine. 1,2-Propylenimine.
•	•
78933	2-Butanone. MEK. Methyl ethyl ketone.
•	•
82688	Benzene, pentachloronitro-. PCNB. Pentachloronitrobenzene. Quintobenzene.
•	•
91087	Benzene, 1,3-diisocyanatomethyl-. Toluene diisocyanate. 2,4-Toluene diisocyanate.
•	•
92875	Benzidine. [1,1'-Biphenyl]-4,4' diamine.

APPENDIX A TO § 302.4.—SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous substance
•	•
94757	Acetic acid (2,4-dichlorophenoxy)-, salts & esters. 2,4-D Acid. 2,4-D, salts and esters.
•	•
95807	Benzenediamine, ar-methyl-. Toluenediamine. 2,4-Toluene diamine.
•	•
98828	Benzene, (1-methylethyl)-. Cumene.
•	•
106514	p-Benzoquinone. 2,5-Cyclohexadiene-1,4-dione. Quinone.
106898	1-Chloro-2,3-epoxypropane. Epichlorohydrin. Oxirane, (chloromethyl)-.
106934	Dibromoethane. Ethane, 1,2-dibromo-. Ethylene dibromide.
•	•
117817	1,2-Benzenedicarboxylic acid, bis(2-ethylhexyl) ester. Bis(2-ethylhexyl)phthalate. DEHP. Diethylhexyl phthalate.
•	•
123911	1,4-Diethyleneoxide. 1,4-Dioxane.
•	•
131113	Dimethylphthalate. 1,2-Benzenedicarboxylic acid, dimethyl ester.
•	•
151564	Aziridine.

APPENDIX A TO § 302.4.—SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous substance
	Ethyleneimine.
• • • • •	
496720	Benzenediamine, ar-methyl-. Toluenediamine. 2,4-Toluene diamine.
• • • • •	
510156	Benzeneacetic acid, 4-chloro-α-(4-chlorophenyl)-α-hydroxy-, ethyl ester. Chlorobenzilate.
• • • • •	
534521	4,6-Dinitro-o-cresol, and salts. Phenol, 2-methyl-4,6-dinitro-, & salts.
• • • • •	
542881	Bis(chloromethyl)ether. Dichloromethyl ether. Methane, oxybis(chloro)-.
• • • • •	
584849	Benzene, 1,3-diisocyanatomethyl-. Toluene diisocyanate. 2,4-Toluene diisocyanate.
• • • • •	
823405	Benzenediamine, ar-methyl-. Toluenediamine. 2,4-Toluene diamine.
• • • • •	
1336363	Aroclors. PCBs. Polychlorinated biphenyls.
• • • • •	
1746016	TCDD. 2,3,7,8-Tetrachlorodibenzo-p-dioxin.
• • • • •	
7803512	Hydrogen phosphide. Phosphine.
• • • • •	
8001352	Camphene, octachloro-. Chlorinated camphene. Toxaphene.
• • • • •	
11096825	Aroclor 1260. Aroclors. PCBs. Polychlorinated biphenyls.
11097691	Aroclor 1254. Aroclors. PCBs. Polychlorinated biphenyls.
11104282	Aroclor 1221. Aroclors. PCBs. Polychlorinated biphenyls.
• • • • •	
11141165	Aroclor 1232. Aroclors. PCBs. Polychlorinated biphenyls.
• • • • •	
12672296	Aroclor 1248. Aroclors. PCBs. Polychlorinated biphenyls.
12674112	Aroclor 1016. Aroclors. PCBs. Polychlorinated biphenyls.
• • • • •	
25376458	Benzenediamine, ar-methyl-. Toluenediamine. 2,4-Toluene diamine.
• • • • •	
26471625	Benzene, 1,3-diisocyanatomethyl-. Toluene diisocyanate. 2,4-Toluene diisocyanate.
• • • • •	
53469219	Aroclor 1242. Aroclors. PCBs. Polychlorinated biphenyls.
• • • • •	

PART 355—EMERGENCY PLANNING AND NOTIFICATION

6. The authority citation for part 355 continues to read as follows:

Authority: 42 U.S.C. 11002, 11004, and 11048.

7. Part 355 is amended by revising the following entries in appendices A and B, to read as set forth below:

* * * * *

APPENDIX A TO PART 355.—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES

[Alphabetical order]

CAS No.	Chemical name	Notes	Reportable quantity* (pounds)	Threshold planning quantity (pounds)
•	• • • •	•	•	•
79–11–8	Chloroacetic Acid		100	100/10,000
•	• • • •	•	•	•
95–48–7	Cresol, o-		100	1,000/10,000
•	• • • •	•	•	•
123–31–9	Hydroquinone	(1)	100	500/10,000
•	• • • •	•	•	•
57–57–8	Propiolactone, Beta-		10	500
•	• • • •	•	•	•
7550–45–0	Titanium Tetrachloride		100	100
•	• • • •	•	•	•

*Only the statutory or final RQ is shown. For more information, see 40 CFR table 302.4.

Notes:

• • • • • • •

[1] Chemicals on the original list that do not meet toxicity criteria but because of their high production volume and recognized toxicity are considered chemicals of concern ("Other chemicals").

APPENDIX B TO PART 355.—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES

[CAS Number order]

CAS No.	Chemical name	Notes	Reportable quantity* (pounds)	Threshold planning quantity (pounds)
57-57-8	Propiolactone, Beta-		10	500
79-11-8	Chloroacetic Acid		100	100/10,000
95-48-7	Cresol, o-		100	1,000/10,000
123-31-9	Hydroquinone	(1)	100	500/10,000
7550-45-0	Titanium Tetrachloride		100	100

* Only the statutory or final RQ is shown. For more information, see 40 CFR table 302.4.

Notes:

[1] Chemicals on the original list that do not meet toxicity criteria but because of their high production volume and recognized toxicity are considered chemicals of concern ("Other chemicals").

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federal register

Friday
October 22, 1993

Part VI

Department of Transportation

Federal Transit Administration

Determinations of Equivalent Facilitation for Accessibility of Transportation Vehicles and Facilities; Notice

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Determinations of Equivalent Facilitation for Accessibility of Transportation Vehicles and Facilities

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Transit Administration (FTA) is publishing a summary of its determinations of equivalent facilitation for transportation vehicles and facilities under the Americans with Disabilities Act of 1990 (ADA). In addition to reporting the Agency's findings of equivalent facilitation, this Notice describes the process for making such requests, and summarizes denied requests and other related issues.

FOR FURTHER INFORMATION CONTACT: Robert W. Stout, Director, Office of Regional Operations, Office of Grants Management, Federal Transit Administration, Department of Transportation, at (202) 366–1656.

SUPPLEMENTARY INFORMATION: On September 6, 1991, the Department of Transportation issued its Final Rule on Transportation for Individuals with Disabilities (49 CFR parts 27, 37, and 38) (56 FR 45584), which includes a mechanism for determinations of equivalent facilitation. Section 38.2 entitled, "Equivalent Facilitation," states that "Departures from particular technical and scoping requirements of these guidelines by use of other designs and technologies are permitted where the alternative designs and technologies used will provide substantially equivalent or greater access to and usability of the vehicle. Departures are to be considered on a case-by-case basis under procedures set forth in § 37.7 of this title." Section 37.9(d) is a similar provision for transit facilities.

Many of the requests for determinations of equivalent facilitation received by the FTA have lacked some of the information necessary for such determinations. Often, the FTA must send a letter to the requester stating what must be included in a complete submission and asking for the additional information. 49 CFR 37.7(b) states: "* * * An entity wishing to employ equivalent facilitation in relation to a specification of part 38 of this title shall submit such a request to the (FTA) or the Federal Railroad Administration, as applicable, and include the following information:

(1) Entity name, address, contact person, and telephone number;

(2) Specific provision of part 38 of this title with which the entity is unable to comply;

(3) Reasons for inability to comply;

(4) Alternative method of compliance, with demonstration of how the alternative meets or exceeds the level of accessibility or usability of the vehicle (or facility) provided in part 38 of this title; and

(5) Public participation used in developing alternative method of compliance and input from that participation."

Such requests should be addressed to: Gordon J. Linton, Administrator, Federal Transit Administration, 400 Seventh Street, SW., Room 9315, Washington, DC 20590.

The FTA does not "approve" any product or configuration, nor does it maintain lists of products that are in compliance with the regulation. Products or configurations which meet the specifications set out in part 38 of the Final Rule are not eligible for equivalent facilitation. Products or configurations in compliance with the regulation thus need no approvals, compliance letters, or other FTA documentation.

Since publication of the Final Rule, the FTA has received several dozen requests for equivalent facilitation under section § 38.2. This Notice addresses the requests by grouping them according to the purpose for which a determination is requested; vehicle lifts and ramps, for instance, are treated together. The relevant portion of the regulation incorporating the Americans with Disabilities Act Accessibility Guidelines (ADAAG) standards is presented, followed by a summary of the specific findings in that category. The FTA identified the following six categories: (1) Facilities: Detectable Warning Surfaces; (2) Facilities: Elevators; (3) Vehicles: Vehicle Lifts and Ramps; (4) Vehicles: Entryways; (5) Vehicles: Wheelchair Securements; and (6) Vehicles: Lighting.

Summary of Equivalent Facilitation Findings and Related Issues

(1) Facilities: Detectable Warning Surfaces

The ADAAG requirements for Detectable Warnings on Walking Surfaces (4.29.2) state: "Detectable Warnings shall consist of raised truncated domes with a diameter of nominal 0.9 in (23 mm), a height of nominal 0.2 in (5 mm) and a center-to-center spacing of nominal 2.35 in (60 mm) and shall contrast visually with adjoining surfaces, either light-on-dark, or dark-on-light.

The material used to provide contrast shall be an integral part of the walking surface. Detectable warnings used on interior surfaces shall differ from adjoining walking surfaces in resiliency or sound-on-cane contact."

Engineered Plastics sought equivalent facilitation for its "Armor-Tile" product. According to the drawings submitted by Engineered Plastics, its product meets the height requirement for truncated domes (nominal 2 inches), but its domes have a diameter of 1.325 inches, and the center-to-center spacing is 2.8 inches. Engineered Plastics submitted results from tests of its product conducted at transit properties in fulfillment of the public participation requirements.

The FTA responded to this request on January 30, 1992: "We have concluded our review of the data attached with your letter, which describes the technical specifications, the research, and the public participation efforts undertaken in the development and evaluation of the Armor-Tile design. Based on the results of the independent laboratory tests on the Armor-Tile and the public input obtained in the testing of the Armor-Tile at the Toronto Transit Commission and the Massachusetts Bay Transportation Authority, it is the finding of the Federal Transit Administration (FTA) that the Armor-Tile design provides equivalent facilitation to the requirements of Section 4.29.2."

In the area of detectable warnings particularly, there has been some confusion about the FTA's role in reviewing products. As stated above, the FTA does not "approve" any product or configuration, nor does it maintain lists of products which are in compliance with the regulation. Products or configurations which meet the specifications set out in part 38 of the Final Rule are not eligible for equivalent facilitation. However, a manufacturer or retailer does not need any written statement from the FTA if its product meets the specifications.

After publication of the ADAAG specifications for detectable warnings, the FTA issued letters to several manufacturers stating their products met the standard because the specifications could be construed as vague, and manufacturers and purchasers could not determine whether a product met the specifications. This situation has since been resolved by the United States Architectural and Transportation Barriers Compliance Board's (Access Board) publication of "Bulletin Number One: Detectable Warnings" in May 1992. Thus, there is no longer any need nor occasion for letters from the FTA or any other

Federal agency stating that products meet ADAAG specifications if the product meets the pattern and dimensions specified in Bulletin Number One.

(2) Facilities: Elevators

The ADAAG specifications for a Floor Plan of Elevator Cars (4.10.9) state: "The floor area of elevator cars shall provide space for wheelchair users to enter the car, maneuver within reach of controls, and exit from the car. Acceptable door opening and inside dimensions shall be as shown * * * (a minimum 54 inches in depth, and a minimum 68 inches in width; Fig. 22). The clearance between the car and platform sill and the edge of any hoistway landing shall be no greater than 1¼ in (32 mm)."

HNTB, an architectural, engineering, and planning firm, requested equivalent facilitation for hospital-style elevators at Syracuse Hancock Airport. According to the drawings and design specifications submitted, the elevators in question are 64 inches wide and 93.5 inches deep, four inches short of the minimum width but almost double the minimum depth.

The FTA responded to this request on November 10, 1992: "In the construction of new transportation facilities, ADAAG 4.10.9 addresses the floor plan of elevator cars, which is illustrated by ADAAG figure 2(b). The illustration specifies a minimum width of 68" and minimum depth of 51" on an elevator with a side opening door. The purpose of these minimum specifications was to permit a wheelchair user to turn around while inside the elevator."

According to your diagrams, the 64" width and 93.5" depth of your elevator would meet the intent of the ADAAG specifications by permitting an individual in a wheelchair to make a full 180 degree turn within the elevator, based on the 60" wheelchair turning space outlined in ADAAG section 4.2.3 (see ADAAG Figure 3(a)). In addition, Janice Hammerle, accessibility consultant for the Syracuse Center for Independent Living, stated "that the usability of such an elevator had been demonstrated after inspection of another elevator of the same size." The Administrator found that "this provides substantially equivalent access and usability as an elevator constructed to the specifications of ADAAG 4.10.9."

Hellmuth, Obata & Kassabaum requested equivalent facilitation for its inclined elevator design. According to the description and drawings submitted, the depth of the elevator cab is 84 inches, but its width is only 54 inches. However, as the accompanying letter explained, "The cab will be entered at one end and then exited at the opposite end. Operating controls will also be located at each end of the cab * * *. It is similar in concept to a double opening hospital elevator cab design or passing through a vestibule."

The FTA responded on March 10, 1992: (The ADAAG guidelines state in part that) "The floor area of elevator cars shall provide space for wheelchair users to enter the car, maneuver within reach of controls, and exit from the car. Based on the sketch provided, it appears as though the proposed inclined elevator cab meets the provisions of the Guideline and therefore, a finding of equivalent facilitation is unnecessary."

(3) Vehicles: Vehicle Lifts and Ramps

The requirements for vehicle lifts in Buses, Vans, and Systems are contained in § 38.23(b). The first request focused on § 38.23(b) (2) Controls—(i) Requirements. "The controls shall be interlocked with the vehicle brakes, transmission, or door, or shall provide other appropriate mechanisms or systems to ensure that the vehicle cannot be moved when the lift is not stowed and so the lift cannot be deployed unless the interlocks or systems are engaged * * *".

Flxible Corporation sought a determination on its lift interlock system. Flxible's lift requires the lift platform, which forms the lower step surface in the entrance stepwell areas, to move outward for a short distance (½–1 inches, depending on adjustments) in order to activate limit switches, which then actuate and cause application of the vehicle's interlocks. Flxible requested a finding of equivalent facilitation to allow for this function.

The FTA responded on March 5, 1992: "The operation of the lift interlock system * * * is within the meaning of the regulations * * * Therefore, no finding of equivalent facilitation is required."

Flxible also requested equivalent facilitation on the emergency operation of its lift. Section 38.23(b)(3) Emergency Operation, states: "The lift shall incorporate an emergency method of deploying, lowering to ground level with a lift occupant, and raising and stowing the empty lift if the power to the lift fails. No emergency method, manual or otherwise, shall be capable of being operated in a manner that could be hazardous to the lift occupant or to the operator when operated according to manufacturer's instructions, and shall not permit the platform to be stowed or folded when occupied, unless the lift is a rotary-lift intended to be stowed while occupied."

Flxible's letter explained its difficulty with meeting this requirement.

"With the loss of power to the wheelchair lift, the typical safeguards provided within the lift control logic would not be available. That is to say, in the case of Flxible's wheelchair lift, if power were lost, the load sensitive mat that would normally send a signal to the lift control logic indicating that the lift was occupied and in turn would prevent the lift from being stowed under power and at normal cycle speeds, would not be active. This could allow manual stowing with an occupant on the lift platform.

"As the manual stowing speeds are very slow, an operator, hand pumping the lift, could readily determine that he or she was stowing the platform long before any potential hazard could develop for the wheelchair lift occupant, whether in a wheelchair or standing on the platform."

The FTA continued: "The emergency operation of the lift mechanisms, as described in your letter, provides equivalent facilitation as long as the lift platform is in the direct line of sight of the operator while the emergency pump mechanism is being manually operated."

The FTA received several requests for determinations of equivalent facilitation for wheelchair lift and door height configurations for elevator-style bus lifts. The regulations state: "Lifts shall accommodate persons using walkers, crutches, canes or braces or who otherwise have difficulty using steps. The platform may be marked to indicate a preferred standing position." Section (38.23(b)(12). The regulations also require: "For vehicles in excess of 22 feet in length, the overhead clearance between the top of the door opening and the raised lift platform, or highest point of a ramp, shall be a minimum of 68 inches." Section (38.25(c)).

Several manufacturers of elevator-style lifts requested equivalent facilitation on the grounds that, even though the clearance was less than 68 inches when the platform was in its raised position, the configuration provided equivalent vertical clearance because the platform itself rises entirely within the bus. An individual enters the bus and stands on the platform in its lowered position. When the platform rises, the standee is completely within the bus and the clearance is 68 inches or greater during the entire operation of the lift. Several specific examples follow.

Gillig Corporation requested equivalent facilitation for its elevator-style bus lift. Gillig argued that "the requirement for the door height

clearance makes good sense on a bus where the wheelchair lift "translates," or moves both up and in while lifting a standee into the vehicle. With a translating lift, a taller standee on the platform in its lowered position outside the bus could easily * * * knock his head on the door header as the raised lift travels from the outside to the inside of the bus. This will not happen on the Gillig elevator lift equipped bus.

"The Gillig installed 'elevator' lift raises and lowers, but does not move in and out of the bus. As the lift is raised and lowered, the inner portion of the platform is always inside the bus * * * and the platform stays in that same relative position throughout the raising and lowering process, without ever passing back and forth under the header. When the standee stands on the lift platform in the indicated preferred standing position * * * he is standing on that portion of the platform that is always inside the bus. Marking the interior preferred standing position with footprints and providing convenient inboard standee grabrails helps assure that standees walk into the bus on a lowered platform that is 95 inches below the door header, and are raised to floor level on the inside of the bus, inboard of the header * * *. In this way, a standee passenger on the lift platform is always raised from ground to floor level without concern of impacting or confronting a height limitation imposed by the door header."

The FTA responded to Gillig on March 20, 1992: "The information that you provided indicates that the lift used by Gillig Corporation is enclosed within the interior of the vehicle, and in its deployed position provides a patron an excess of 68 inches (172.72 cm) as the door opening is traversed. Based on this, we have determined that Gillig Corporation's lift and door configuration meets the intent of the specification and constitutes equivalent facilitation pursuant to 49 CFR, § 37.7, 56 FR 45625, September 6, 1991."

Thomas Built Buses requested Equivalent Facilitation for door height requirement for its interior lift bus. This request, similar to Gillig's, stated that the Thomas elevator lift rises entirely within the interior of the vehicle as it transfers the passenger from ground level to bus floor level. The passenger proceeds from the lift to her seat once the platform reaches the full up position, without providing a clearance of less than 68 inches. In this full up position, the lift affords at least 73 inches clear headroom, depending on the type of bus in which it is installed.

The FTA responded on April 28, 1992. The Administrator wrote: "Based on the information provided, since the lift used by Thomas Built is enclosed within the interior of the vehicle, and in its deployed position provides a patron in excess of 68 in. (1.72 meters) as the door opening is traversed, I have determined that the Thomas Built lift and door configuration meets the intent of the specification and constitutes equivalent facilitation * * *."

Transportation Manufacturing Corporation made a similar request and was granted equivalent facilitation on the same grounds. The regulations governing wheelchair ramps, § 38.23(c)(2) Ramp Surface, states: "The ramp surface shall be continuous and slip resistant; shall not have protrusions from the surface greater than ¼ inch high; shall have a clear width of 30 inches; and shall accommodate both four-wheel and three-wheel mobility aids."

Independent Mobility Systems (IMS) requested equivalent facilitation for its wheelchair ramp. The ramp is manufactured by IMS for its conversions of minivans. The ramp width is determined by the Original Equipment Manufacturer (OEM) door opening width, which allows a ramp with a usable width of 29.2 inches. Modifications to increase the ramp width would require prohibitively expensive additional modifications. The slope of the ramp is relatively gradual in comparison with what the regulations allow. IMS also reported its previous safety record with this configuration and stated that testing has shown the ramp-equipped vehicle meets Federal Motor Vehicle Safety Standards.

The FTA responded to this request on April 28, 1992, stating in part: "I have reviewed these issues and determined that the ramp (29.2 inches in width) provided * * * meets the intent of the specifications and constitutes equivalent facilitation * * *." (IMS also requested equivalent facilitation for the door height requirements for minivans: see Vehicle Entryways, below.)

(4) Vehicles: Entryways (Width)

Section 38.153 contains requirements for over-the-road buses and systems. Section 38.153(c) states: "To the maximum extent practicable, doors shall have a minimum clear width when open of 30 inches, but in no case less than 27 inches."

The requests for determinations of equivalent facilitation the FTA has received in regard to this requirement deal primarily with the intrusion of hinges or other objects into the clear width area.

Prevost asked if its buses meet door specifications. The FTA responded to this request, on June 10, 1992: "According to the information you provided, the upper hinge on the H3–40/H5–60 plug-type door design protrudes 2.2 inches into the area 6.2 feet above the floor, while the lower hinge protrudes 2.2 inches into the area 15.5 inches above the floor. The upper hinge on the Mirage protrudes two inches into the area between 42 and 46 inches above the floor and the lower hinge protrudes two inches into the area between 2.5 and 6.5 inches above the floor. The upper hinge on the H3–40/H5–60 sedan-type door design protrudes 2 inches into the area between 41 and 45 inches above the floor, while the lower hinge protrudes two inches into the area between 8.5 and 12.5 inches above the floor.

"We have determined that the design for the H3–40/H5–60 plug-type door meets the minimum standards for compliance. However, neither the Mirage door nor the H3–40/H5–60 sedan-type door design meets the standard * * *. The lower hinges and actuators are located in a position where the potential for physical interference for (disabled) riders is greatly increased, and may impede these riders in boarding the vehicles."

Motor Coach Industries requested a waiver from bus door width requirements. Since the regulations do not provide for a waiver of the requirements, the FTA treated this as a request for equivalent facilitation. Motor Coach Industries manufactures an over-the-road bus that provides a door opening 27 inches wide up to a height of 58 inches. Between 41 to 47 inches above the floor level, the door hinge intrudes three inches into this clear space. The FTA determined on November 4, 1991, that this door design meets the intent of the requirements.

(4) Vehicles: Entryways (Height)

The requirement that has generated more correspondence than any other, except perhaps detectable warning surfaces, is the bus door height requirement. Section 38.25(c) states: "For vehicles in excess of 22 feet in length, the overhead clearance between the top of the door opening and the raised lift platform, or highest point of a ramp, shall be a minimum of 68 inches. For vehicles of 22 feet in length or less, the overhead clearance between the top of the door opening and the raised lift platform, or highest point of a ramp, shall be a minimum of 56 inches."

The letters centered mostly on problems associated with this requirement and the use of elevator-style lifts, addressed above in the

section under lifts. For vehicles 22 feet or less in length, including minivans, the FTA received several dozen letters. Many of these letters focused on the product marketed by Fair Access, Inc., a company modifying minivans for paratransit use. After lowering the floors of these vehicles, the opening between the highest point of the ramp and the top of the door opening is 53 inches. Raising the roof would require substantial redesign and remanufacturing costs. The FTA responded to this and other requests on April 9, 1992:

"Because the specifications for accessible vehicles were developed by the Architectural and Transportation Barriers Compliance Board (Access Board), the Federal Transit Administration (FTA) has consulted that agency for its review and comment on your request. The FTA has been informed that the ADA regulation was based on data in the 'Guidelines for Aircraft Boarding Chairs,' a publication of the Access Board; and Human Factors Design Handbook, Wesley E. Woodson, 1981. Based on anthropometric data contained in these publications, when measuring the vertical distance from the sitting surface to the top of the head for a person in a relaxed position, the 95th percentile male has a sitting height of 38 inches. Adding the 18 inches for the seat height of a wheelchair results in an overall height of 56 inches. The 56 inch height requirement accommodates this height and is compatible with most vehicles. You also may be interested to know that no comments on the door height requirement were received during the rulemaking process * * *. Therefore, we will not be able to grant * * * relief from complying with the 56 inch door height requirement."

(5) Vehicles: Wheelchair Securements

The requirement for wheelchair securement devices is contained in § 38.23(d). Almost all of the letters received by the FTA on this subject request either a change in the requirement that all wheelchair securements be either forward or rearward facing, or a determination of equivalent facilitation for side-facing wheelchair securement devices. The regulation states: "In vehicles in excess of 22 feet in length, at least one securement device or system required by paragraph (a) of this section shall secure the wheelchair or mobility aid facing toward the front of the vehicle. Additional securement devices or systems shall secure the wheelchair or mobility aid facing forward, or rearward with a padded barrier, extending from a height of 38 inches from the vehicle floor to a height of 56 inches from the vehicle floor with a width of 18 inches, laterally centered immediately in back of the seated individual. In vehicles 22 feet in length or less, the required securement device may secure the wheelchair or mobility aid either facing toward the front of the vehicle or facing rearward, with a padded barrier as described. Additional securement locations shall be either forward or rearward facing with a padded barrier. Such barriers need not be solid provided equivalent protection is afforded."

The FTA responded, explaining the origin of the standard: "To date, no one has provided test data indicating that side-facing wheelchair or mobility aid securement is as safe as forward or rearward facing securement positions * * *. Although we are sensitive to the economic effects of the ADA on the transportation industry, we are concerned about the safety of persons with disabilities who use public transportation services. We, therefore, based upon research data available to us, will be unable to grant you a finding of equivalent facilitation in meeting the requirements of the above-mentioned ADA rule.

"(The regulation prohibiting side-facing wheelchair securement in public transportation vehicles was developed by the Architectural and Transportation Barriers Compliance Board (Access Board), which considered the following information): "Wheelchair Securement on Bus and Paratransit Vehicles," prepared by the California Department of Transportation, July 1981, states that in impact testing, 'thus far, the side-facing tests have indicated this orientation is undesirable. The wheelchair user's neck, hips, and knees are subjected to bending in an abnormal direction, and the main wheels of the wheelchair usually collapse.' "Wheelchair Securement Systems in Transit Vehicles: A Summary Report," by Enid Brenner and R.V. Giangrande, August 1981, states that "Previous and current research has shown that there are definite advantages to some seating positions over others. For example, the rear-facing position is definitely the preferred position for frontal accidents; however, a rear-facing position has obvious disadvantages for some applications such as the driver of the van. The forward-facing orientation is the next preferred position from a safety standpoint and is recommended over side facing.

"* * * To date, no one has provided test data indicating that side-facing wheelchair or mobility aid securement is as safe as forward or rearward facing securement positions. We would welcome the opportunity to review any such data."

(6) Vehicles: Lighting

Section 38.31(c) of DOT's Final Rule, dealing with vehicle lighting, states: "The vehicle doorways, including doorways in which lifts or ramps are installed, shall have outside light(s) which, when the door is open, provide at least one foot-candle of illumination on the street surface for a distance of 3 feet perpendicular to all points on the bottom step tread outer edge. Such light(s) shall be located below window level and shielded to protect the eyes of entering and exiting passengers."

Bus Industries of America (BIA) requested a determination of equivalent facilitation for its bus lighting configuration. Bus Industries indicated that when the doors of the bus are opened for entrance or exit, they partially block the illumination required in the regulation.

The FTA responded on July 24, 1992: "After reviewing the information submitted, I have determined that BIA's exterior door light design meets the purpose and intent of the lighting specification of § 38.31(c) of the Final Rule, and constitutes equivalent facilitation."

Section 38.39 Destination and Route Signs, states: "(a) Where destination or route information is displayed on the exterior of a vehicle, each vehicle shall have illuminated signs on the front and boarding side of the vehicle. (b) Characters on signs required by paragraph (a) of this section shall have a width-to-height ratio between 3:5 and 1:1 and a stroke width-to-height ratio between 1:5 and 1:10, with a minimum character height (using an upper case X) of 1 inch for signs on the boarding side and a minimum character height of 2 inches for front "headsigns," with "wide" spacing (generally, the space between letters shall be 1/16 the height of upper case letters), and shall contrast with the background, either dark-on-light or light-on-dark."

Luminator requested a determination of equivalent facilitation for its MAX and SUPER MAX electronic destination signs. The FTA responded on January 30, 1992: "The data you supplied on the MAX destination sign indicates that its width-to-height and stroke-to-height ratios are outside the ranges permitted under the regulation (i.e., 0.492 instead of a minimum of 0.6, and 0.082 instead of a minimum of 1.0). Therefore, the MAX is found to be not in compliance with the ADA requirements. Your letter did not include any supporting data to indicate why the MAX destination sign

should be considered to be an acceptable facilitation under § 38.7(b). Therefore, I do not find that the MAX destination sign provides equivalent facilitation to the width-to-height and stroke-to-height ratios contained in 49 CFR 38.39(b).

"The data for the SUPER MAX destination sign indicates a width-to-height ratio of 0.578 (which is 3.7% below the minimum value) and a stroke-to-height ratio of 0.12 (which is above the minimum value), and a character height of 8.3 inches (which exceeds the minimum requirement of 2 inches). The difference between the SUPER MAX width-to-height ratio and that required under the regulation has been determined to be within conventional engineering tolerances for material properties and conditions, and, therefore, deemed to be acceptable under § 38.4(b), dimensional tolerances. Therefore, the SUPER MAX is found to be in compliance with the ADA requirements."

This concludes the summary of determinations of equivalent facilitation made by the FTA through August 20, 1993. The FTA will, from time to time, report additional findings if it deems the information contained in them useful to industry or to the general public.

Issued: October 18, 1993.

Gordon J. Linton,

Administrator.

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Part VII

Department of Transportation

Coast Guard

33 CFR Part 157

Structural and Operational Measures to Reduce Oil Spills From Existing Tank Vessels Without Double Hulls; Proposed Rules

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 157

[CGD 91–045]

RIN 2115–AE01

Structural and Operational Measures to Reduce Oil Spills From Existing Tank Vessels Without Double Hulls

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing regulations under the authority of section 4115(b) of the Oil Pollution Act of 1990 (OPA 90) that would require the owners or operators of existing tank vessels over 5,000 gross tons (GT) that do not have double hulls to comply with certain structural and operational measures. The Coast Guard finds these measures provide as substantial protection to the environment as is economically and technologically feasible.

DATES: Comments on this notice must be received on or before December 20, 1993.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 91–045), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

Comments on collection of information requirements must also be mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying in room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Randall N. Crenwelge, Project Manager, OPA 90 Staff, (202) 267–6220, between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their name and address, identify this rulemaking (CGD 91–045) and the specific section of this proposal to which each comment applies, and give the reason for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. If not practical, a second copy of any bound material is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address listed under "ADDRESSES." The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are Randall N. Crenwelge, Project Manager, and Pamela M. Pelcovits, Project Counsel, OPA 90 Staff.

Background and Purpose

In section 4115 of the Oil Pollution Act of 1990 (Pub. L. 101–380) (OPA 90), Congress mandated two regulatory initiatives. These initiatives require vessels that carry oil in bulk as cargo (tank vessels) in water subject to the jurisdiction of the U.S. to be equipped with improved protection from oil spills due to collisions and groundings.

The first initiative, section 4115(a), amended title 46 U.S.C. by adding section 3703a which provides a timetable for phasing in the requirement that tank vessels be equipped with double hulls by no later than January 1, 2015. Under 46 U.S.C. 3703a, there are limited exceptions to the double hull requirement, the most important exception being for vessels used only to respond to a discharge of oil.

The second initiative, section 4115(b), which appears as a statutory note at the end of 46 U.S.C. 3703a, directs the Coast Guard to develop regulations for existing tank vessels over 5,000 gross tons (GT) subject to the double hull requirement based on the phase-in schedule ending January 1, 2015. These regulations are to mandate structural and operational requirements that provide as substantial protection to the environment as is economically and technologically feasible.

The Coast Guard emphasizes that section 4115(b) of OPA 90 explicitly links the regulations developed under section 4115(b) to the requirement that existing tank vessels ultimately be equipped with double hulls or removed from service.

Regulatory Development

The Coast Guard published an advance notice of proposed rulemaking (ANPRM) on November 1, 1991 (56 FR 56284). The ANPRM discussed the broad range of possible structural and operational measures that could be considered under the language of section 4115(b). In addition, the ANPRM included a request for data on the technical and economic feasibility of measures with respect to the various types of tank vessels covered by section 4115(b).

Background information contained in the ANPRM is not repeated in this notice of proposed rulemaking (NPRM) unless it is of substantial importance to the proposed regulations. After the deadline for comments to the ANPRM was extended to January 30, 1992 (57 FR 1243), more than 80 comments were received from U.S. and foreign sources, including ship operators' associations, individual ship and barge operating companies, pilots' associations, maritime academies, environmental groups, technology innovators, and Federal, State, and local government agencies. All comments were considered in developing the regulations proposed in this NPRM.

The comments, described below, were carefully reviewed. Most were subjective and did not offer specific technical or economic information supporting the particular comments. Several comments advocated systems or concepts that have not been proven to the Coast Guard's satisfaction to be technically feasible or demonstrated to be effective on a scale appropriate to oceangoing tank vessels. Other comments made suggestions or recommendations that fall outside the scope of this rulemaking.

The Coast Guard issued an interim final rule (IFR) on double hull standards (57 FR 36222) that became effective September 11, 1992. The double hull standards were developed with a recognition of the impact U.S. regulations would have on the substantial number of foreign flag vessels that transport oil into U.S. waters. Similar considerations were made in developing the regulations in this NPRM. The IFR also added the definition of "oil tanker" to part 157.

This definition includes a tank barge. This rulemaking will be based on that definition. Exclusions are discussed later in the preamble.

In March 1992, the International Maritime Organization's (IMO) Marine Environment Protection Committee (MEPC) adopted Regulation 13G to Annex I of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 (MARPOL 73/78). Regulation 13G includes, in part, a requirement for tankers to be fitted with protectively located non-oil spaces (PL/Spaces), such as protectively located segregated ballast tanks (PL/SBTs). Other structural or operational arrangements are permissible as alternatives, such as hydrostatically balanced loading, provided they meet two requirements. The alternative devices must ensure at least the same level of protection as PL/Spaces against oil pollution in the event of a collision or stranding and they must be approved by, in the case of vessels subject to U.S. jurisdiction, the U.S. Coast Guard based on guidelines developed by the IMO.

Like double hulls, PL/Spaces keep cargo oil away from the side and/or bottom of a tank vessel. Regulation 13G requires the installation of PL/Spaces or an approved alternative before an existing oil tanker becomes 25 years old. The requirements of Regulation 13G take effect on July 6, 1995.

The Coast Guard recently has published its position on the applicability of Regulations 13F and 13G in U.S. waters (58 FR 39087; July 21, 1993).

A copy of IMO paper, MEPC/32/20, that contains Regulation 13G is in the public docket. The text of Regulation 13G was also included as an appendix to the IFR on double hull standards (57 FR 36222). Public comments are specifically requested concerning the effect of Regulation 13G on issues other than double hull implementation.

During the 34th session of MEPC (MEPC 34), a working group on oil tanker design met from July 5–9, 1993. Among other tasks, the working group developed draft guidelines (MEPC 34/8/1) for approval of alternative structural or operational arrangements for oil tankers, as required by Regulation 13G(7) of Annex I of MARPOL 73/78.

Included in the report of MEPC 34 is the reference to the first draft guidelines for oil tankers. These guidelines were based on information and comments submitted to an intersessional correspondence group and the discussions held during the 33rd session of MEPC. The guidelines provide damage and outflow criteria, the methodology for the calculation of hypothetical oil outflow, and proposals for endorsing International Oil Pollution Prevention certificates. The guidelines also contain specifications for underpressure systems (UPS), hydrostatic balance loading (HBL), and rapid emergency transfer of cargo.

MEPC 34, noting that the draft guidelines had been developed, requested that the IMO Secretariat forward these guidelines to the relevant Maritime Safety Committee (MSC) subcommittees for review of the safety aspects of the various methods.

The Coast Guard is considering using the guidelines developed by the working group to evaluate alternatives to PL/Spaces (as explained below). Public comments are specifically requested on these guidelines to assist the Coast Guard in developing this rule and the U.S. Delegation in its IMO deliberations. A copy of the report of the committee (MEPC 34./WP.4) and a copy of the draft guidelines (MEPC 34/8/1) are in the public docket. Copies of the reports may be obtained by calling (202) 267–6740 or by faxing requests to (202) 267–4624.

Major Alternatives Examined in the Regulatory Impact Analysis

Of the ten major alternatives examined by the Coast Guard in the Regulatory Impact Analysis (RIA), four are unproven. The others, PL/Spaces; SBT; HBL; PL/Spaces and HBL; Double Bottoms; and Double Sides, were shown to reduce the amount of oil spilled (with the exception of Double Sides). Some are more effective, but all are costly. The Coast Guard is proposing PL/Spaces as the minimum measure to prevent oil outflow because it is the least costly measure.

Although the overall cost of HBL is more than four times that of PL/Spaces, HBL has a lower cost per barrel of oil not spilled. Despite that advantage, HBL will not be required. It would result in a 36 to 50 percent reduction in cargo carrying capacity and have a present value cost of $3 billion. The rapid imposition of HBL in a very competitive and heavily regulated industry would subject the industry to sudden and severe financial shock. A significant exodus of existing vessels from the oil trade could result in economic dislocations and a possible shortfall in the capacity to supply the market, as well as increases in producer costs and consumer prices.

Furthermore, the reduced cargo carrying capacity would require more vessels to enter the industry to transport oil. This would increase traffic, hookups, and disconnections, thereby increasing the likelihood of spills from collisions, groundings, and transfer operations.

If many existing vessels did leave the U.S. trade, the replacement vessels would be required to have double hulls. This early implementation of the double hull requirements would reduce the amount of oil spilled, but the cost would be $73,000 per barrel of oil not spilled, significantly higher than the cost with PL/Spaces.

SBT also appears to have a lower cost per barrel of oil not spilled than PL/Spaces, but is twice as costly. Many owners of older, single hull vessels faced with the increased capital costs of retrofitting these pre-MARPOL vessels that have only a few years of service life left, would be forced to choose between removing the vessels from service earlier or paying significant capital costs. Since the costs of retrofitting could be amortized only over the remaining life of existing vessels, owners would introduce double hull vessels more quickly, accompanied by costs significantly higher than PL/Spaces.

Because OPA 90 requires the Coast Guard to address the issue of economic feasibility rather than merely cost per barrel of oil not spilled, the Coast Guard selected the option of PL/Spaces. Although HBL and SBT both may result in less cost per barrel of oil not spilled than PL/Spaces, they were not economically feasible.

Discussion of Proposed Amendments

1. Economic and Technological Feasibility

Section 4115(b) requires that the regulations include measures that provide as substantial protection to the environment as is economically and technologically feasible. However, there is no statutory formula or method to use to determine the technological or economic feasibility of measures that can be used to reduce oil spills from single hull vessels. This rulemaking, therefore, was developed by examining available information concerning—

(a) Oil outflow in groundings and collisions—the potential reduction in oil outflow attributable to each oil outflow prevention measure;

(b) Human interface required for effectiveness—the degree to which structural design or operator control contributes to prevent oil outflow;

(c) Operational history—the historic performance, if any, of a measure in the marine environment;

(d) Operational complexity—the additional burden to the operating crew of working with an inherently complex

system that would increase the probability of a spill due to human error;

(e) Costs—the capital costs to modify existing oil tankers and the costs associated with the loss in vessel cargo carrying capacity;

(f) Benefits—the number of barrels of oil not spilled associated with each oil outflow prevention measure; and

(g) Impacts—the consequences of each measure on the international industry serving U.S. markets, the ability of small owners/operators to finance required modifications, and the possibility that shipyards may not have the capacity for required modifications.

After collecting and reviewing this information, the Coast Guard proposes measures that it believes to be economically and technologically feasible. The Coast Guard seeks comment on the economic feasibility of PL/Spaces and other alternatives as they apply to each class of vessel.

2. Location Within the Regulations

The oil pollution prevention regulations for tank vessels, including standards for double hulls, are found in 33 CFR part 157. All citations in the discussion of the proposed amendments refer to 33 CFR unless otherwise noted.

The Coast Guard proposes to revise part 157 by adding subpart G, containing the requirements for structural and operational measures for existing oil tankers without double hulls. The Coast Guard is interested in comments addressing other possible locations for these regulations. If the Coast Guard issues the final regulations as subpart G to part 157, an explanatory note will be added to 46 CFR 30.01–5 to cross-reference these requirements.

In addition, a requirement for certain foreign flag tank vessels of 5,000 GT or more to report their IMO international number to the Captain of the Port is being proposed in § 160.207.

3. Applicability

Section 4115(b) applies to each tank vessel of more than 5,000 GT affected by 46 U.S.C. 3703a. Under the language of the Double Hull IFR, the requirement for double hulls applies to vessels constructed or adapted to carry oil in bulk as cargo. The 5,000 GT applicability threshold in section 4115(b) removes smaller tank vessels, including certain fishing vessels, and cargo vessels from the scope of the proposed regulations, although they meet the 46 U.S.C. 2101(39) definition of a tank vessel.

The proposed regulations do not address vessels over 5,000 GT that carry oil as a secondary cargo, including various fishing industry vessels and cargo ships. The amount of cargo oil spilled from these vessels is negligible. Because these vessels carry such small volumes of oil and on such an infrequent basis, it is not economically feasible to impose structural or operational requirements on these vessels.

These regulations also do not apply to oil spill response vessels (including escort vessels) because these vessels are exempt from the double hull requirements by the terms of 46 U.S.C. 3703a.

The proposed regulations will cover oil tankers, as defined by 33 CFR 157.03(oo) to include tank barges, that are greater than 5,000 GT. The proposed rule would apply to oil tankers that unload cargo at deepwater ports or lightering zones located in waters of the United States. These oil tankers are not required to have double hulls until January 1, 2015, under 33 CFR 157.08(n)(3).

The Coast Guard solicits comments on whether it is appropriate to require specific structural or operational measures for oil tankers by trade, tonnage, etc.

4. Definition of "Oil"

The statutory definition of "oil" added to part 157 by the IFR for double hull standards (57 FR 36246) includes oil of any type or in any form, including petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes except dredge spoil. Additionally, this definition includes non-petroleum oils such as vegetable and animal oil.

Under international agreements to which the U.S. is a signatory, a different definition of "oil," excluding non-petroleum oils, is used for purposes of preventing pollution to the marine environment. The Coast Guard believes that this more limited definition is appropriate for this rulemaking because the number of spills involving non-petroleum oil (animal and vegetable oils) is negligible. Imposing construction or operational requirements on oil tankers carrying only non-petroleum oils would not be economically feasible. This definition of "oil" is consistent with international treaties and within the discretion permitted under section 4115(b) of OPA 90.

Accordingly, the proposed regulations apply the definition of "oil" provided in § 151.05, which is based on Annex I to the International Convention for Preventing of Pollution by Ships, 1973, as amended by the Protocol of 1978 (MARPOL). The NPRM also revises the language of § 157.03 to reflect this definition, which excludes non-petroleum oils.

5. Interim Measures

In subpart G to part 157, the Coast Guard proposes two basic measurers for oil tankers covered by the regulations:

(1) 30 percent of the projected area of the sides or bottom of the cargo block of the oil tanker will have PL/Spaces or comply with a Coast Guard approved alternative measure; and

(2) Oil tankers will carry emergency lightering equipment. Additionally, § 160.207, as amended, would require foreign flag vessel owners and operators to provide their vessel's IMO international number when reporting advance notice of arrival. Each of these measures is discussed below.

In §§ 157.410 (b) and (c), the Coast Guard proposes the alternatives to PL/Spaces. An owner or operator of an existing oil tanker may submit an application to the Coast Guard Commandant (G–MVI) to use HBL or other alternative structural or operational measures as a substitute or the requirements of fitting 30 percent of the projected area of the sides or bottom of the cargo block with PL/Spaces. This flexibility allows owners and operators to submit alternatives that may be economically feasible and technically adequate for their vessels.

Structural or operational arrangements such as HBL will be considered by the Coast Guard as alternatives to PL/Spaces provided that such alternatives can also be shown to provide a substantial protection of the environment as economically and technologically feasible, and meet general safety considerations. Unproven oil outflow prevention arrangements will be considered on an individual basis by the Coast Guard.

In order to minimize the burden of compliance, the Coast Guard also considered two phase-in periods for the proposed regulations. The Coast Guard first considered requiring these structural changes to be made to an oil tanker during its next scheduled dry dock inspection, but not later than 3 years after the effective date of the final rule. The alternative was to require existing vessels over 5,000 GT to meet the phase-in schedule contained in Regulation 13G to Annex I of MARPOL 73/78, effective July 6, 1995. This NPRM requires compliance before an existing oil tanker becomes 25 years old. However, some overlap exists. Regulation 13G requires compliance earlier than the proposed regulations for those oil tankers reaching 25 years of age before July 6, 1995, or after that date

but in less than three years after the effective date of the final rule.

The cost-benefit analysis of these two phase-in periods is discussed below. However, the Coast Guard encourages interested parties to comment on these alternative phase-in periods.

6. PL/SBT and PL/Spaces

In § 157.410(a), the Coast Guard proposes to require that existing oil tankers of greater than 5,000 GT, without double hulls and operating in U.S. waters, be fitted with PL/Spaces, except as provided in § 157.410 (b) and (c) as previously discussed. The arrangement and location of the ballast tanks or void spaces must protect at least 30 percent of the cargo tank length encompassing the full depth on each side or encompassing at least 30 percent of the projected bottom area of the cargo tank length. The Coast Guard estimates that PL/Spaces will reduce the likelihood of oil outflow in collisions by 30 percent and reduce the outflow from groundings by 15 percent in comparison with a pre-MARPOL tanker.

The precise location of the PL/Spaces is not specified in these regulations. For U.S. waters, where groundings occur more often than collisions, 30 percent bottom protection may be more appropriate than 30 percent side protection. Moreover, locating this protective barrier toward the forward end of the cargo block might provide even better protection. However, the Coast Guard does not wish to specify the precise location of PL/Spaces, as it might be technically infeasible for the PL/Spaces to be in the same area on every existing oil tanker. For oil tankers of at least 20,000 deadweight tons (DWT) carrying crude oil and of at least 30,000 DWT carrying products, the structural requirements of proposed § 157.410(a) are consistent with Regulation 13G as adopted by MEPC. There are not similar international regulations for smaller oil tankers.

The proposed rule will affect oil tankers that do not meet the double hull requirements of § 157.10d. The proposed regulations do not change existing regulations for ballast capacity (to meet draft and trim requirements); instead, the ballast tanks or empty spaces must be protectively located in a specified manner.

Some existing oil tankers already will comply with the requirement to have 30 percent of the projected area of the sides or bottom of the cargo block protected by void spaces. These vessels include MARPOL 73/78 tankers required to meet the MARPOL requirements for PL/SBT. PL/SBT was required to eliminate environmental pollution from operations as well as provide significant protection from collision and grounding incidents.

Other oil tankers, such as pre-MARPOL 73 tankers most likely will not meet the PL/Space requirement proposed in § 157.410(a). These pre-MARPOL tankers have not been required to comply with MARPOL provisions regarding cargo tank size limits, oil outflow limitations, or segregated ballast requirements. It is estimated that 75 to 80 percent of the world fleet of crude carriers is in this category.

Pre-MARPOL 78 tankers will also probably not meet the requirements of proposed § 157.410(a). While these tankers satisfy requirements for SBT under MARPOL 73 for minimum operational draft and trim values, they were not required to have PL/SBT on PL/Spaces. The SBT requirement was established to eliminate environmental pollution resulting from deliberate discharge of oily ballast. All U.S. flag tankers, regardless of year of build, were required to meet the SBT standard in § 157.24 and appendix C of this part, either by new construction or by conversion.

Comments to the ANPRM on requiring PL/SBT or PL/Spaces were evenly divided between supporters and opponents. Qualified support was expressed by two foreign shipowners associations, one foreign shipping company, and an agency of a large city government. Opposition on economic and technical grounds was expressed by two U.S. barge operators, an international oil company, and a foreign operator/charterer.

The Coast Guard encourages interested parties to submit data regarding the technical or economic impact of requiring PL/Spaces, particularly for oil tankers under 30,000 DWT.

7. HBL

In § 157.410(b), the Coast Guard proposes to allow existing oil tankers of greater than 5,000 GT operating in U.S. waters, without double hulls and not meeting the requirements of § 157.410(a) or (c), to meet the requirement for oil outflow protection by operating with HBL.

HBL refers to an operational measure in which cargo tanks are loaded so that the hydrostatic pressure exerted by the cargo and an inert gas system (IGS) inside the tank is equal to, or less than, the hydrostatic pressure exerted by the seawater outside the tank. The Coast Guard expects that hydrostatic balance will be achieved by changing only the static head of cargo, not by reducing IGS pressures below the minimum 100 mm (4 inches) of water head currently required by 46 CFR 32.53–30. This balanced pressure will significantly mitigate oil outflow from a cargo tank in the event of damage because, in the event of a rupture to the bottom of the tank, seawater will flow into the tank, rather than oil flowing out. However, dynamic effects (such as currents, waves, or ebbing tides), could disturb the hydrostatic balance. Therefore, a safety factor is included in the proposed regulation. The Coast Guard estimates that if all existing oil tankers subject to this rulemaking employed HBL, oil outflow in collisions and groundings would be reduced by 15 percent and 96 percent, respectively.

While the Coast Guard recognizes that studies have been conducted that support the technical feasibility of HBL, the draft RIA concludes that this method is costly due to reduced cargo carrying capacity. The Coast Guard is also aware of some oil tankers which cannot be loaded in accordance with HBL due to expected structural problems when the sloshing of cargo oil increases loads. Comments are solicited regarding the costs of HBL, including indirect costs, and the economic feasibility of this method.

The technical definition of HBL, which includes a formula with three parts, is provided in proposed § 157.410(b). The first part is the liquid pressure exerted by the cargo on the bottom of the tank due to the static head of cargo. This value is obtained by multiplying the static head of cargo, the maximum density of cargo, the acceleration due to gravity, and a safety factor of 1.1. This safety factor ensures that this liquid pressure calculation could have a margin of error not exceeding 10 percent and still comply with the principle of HBL.

The second part of the formula expresses the pressure of the inert gas and cargo vapor in the ullage space above the cargo. This part of the formula is obtained by assuming that the pressure in this space will not exceed the maximum pressure setting of the pressure/vacuum relief values in the tank. The sum of the first two parts is the total internal pressure exerted on the bottom of the tank.

The third part of the formula is the external pressure exerted by the seawater at the bottom of the tank. It is obtained by multiplying the minimum expected draft for the voyage by the density of seawater and the acceleration due to gravity. The result provides the maximum depth of cargo that can be loaded in each tank for that voyage.

Comments are solicited regarding the use of HBL and the definition of the measure as proposed in § 157.410(b). The Coast Guard is particularly interested in comments on the adequacy of the margin of safety in the formula for HBL. The factor is intended to account for the uncertainties associated with HBL that cannot be fully quantified. These uncertainties include variations of pressure due to motions of the vessel, waves, and currents; changes in density of seawater; changes in cargo temperature; and possible inaccuracies in the assumed pressure in the ullage spaces above the cargo.

If an owner or operator proposes to use HBL, the Coast Guard also must be satisfied that each oil tanker's structural integrity and stability would not be compromised. Accordingly, owners or operators would be required to obtain endorsements from their class society, or otherwise demonstrate that each oil tanker can, in fact, safely operate under HBL. The stability information for this documentation is already required under 46 CFR 170.110. Specific public comments concerning these issues are invited.

In the comments to the ANPRM, strong endorsements for HBL were received from foreign shipowners' associations, independent operators, and environmental groups. Comments did recognize enforcement difficulties. Significant opposition to HBL was expressed by major oil companies, and international association of tanker operators, and tug and barge operators.

8. Alternative Oil Outflow Measures That May Be Acceptable to the Coast Guard

In § 157.410(c), the Coast Guard proposes to provide a means by which owners and operators of existing oil tankers of greater than 5,000 GT operating in U.S. waters, without double hulls, may comply with § 157.410. In lieu of complying with proposed § 157.410 (a) or (b), an owner or operator of an oil tanker may submit a request for approval to the Commandant (G–MVI) to use an alternative measure. The alternative measure must be shown to provide as substantial protection to the environment as is economically and technologically feasible, and satisfy general safety considerations.

9. Emergency Lightering Connections

The availability of specified lightering equipment on board an oil tanker would facilitate the transfer of oil from a stricken oil tanker to another vessel for temporary storage. The crew of a stricken oil tanker could prepare for lightering and begin the transfer immediately after the other vessel arrived on scene and the transfer hoses were connected. The time saved and the assurance that reducers would be on an oil tanker minimizes the likelihood of spillage from the cargo remaining aboard the oil tanker after an incident.

The Coast Guard has issued an IFR under the authority of OPA 90, "Vessel Response Plans" (VRP) (58 FR 7376; February 5, 1993), that also addresses lightering equipment requirements. The VRP IFR requires vessel owners and operators to show how they will obtain suitable equipment, rather than have it stored aboard the vessel. However, considering the moderate cost of storing connectors, the Coast Guard is proposing to require this specific equipment to be stored on board oil tankers subject to this rulemaking.

The proposed § 157.420 requires oil tankers to be equipped with certain size reducers; bolts, washers, nuts, gaskets, and appropriate quantities of spares; and certain additional hose connection equipment. Two of each size of reducers, would be required. The equipment must be stored in an on-deck locker as close to the manifolds as practical. This equipment must meet the requirements of 46 CFR 56.25 and conform to the descriptions set forth in each oil tanker's ship to ship transfer procedure as required by § 155.1035(c)(6) or 155.1040(d)(5).

The public is invited to comment on this lightering requirement which is in addition to the VRP requirements. Specific comments are requested concerning reducer sizes, bolting, and flange specifications, etc. Specific recommendations are requested concerning the reducer sizes.

Comments Relating to Other Operational or Structural Alternatives Mentioned in the ANPRM

In addition to comments on the measures selected, the Coast Guard received a significant number of comments on other measures.

10. Retrofit Double Hulls

Qualified support for the retrofit of double hulls was expressed in seven comments and opposed in three comments. Proponents included two U.S. shipyards, one U.S. based operator, and a foreign ship operators' association. The Coast Guard considers the retrofit of double hulls economically infeasible.

11. Retrofit Double Sides

Three comments were received regarding double sides. Comments were from a barge owner, a U.S. based ship owner, and a foreign ship operators' association. All said that retrofitting double sides was not economically feasible. The Coast Guard agrees.

12. Retrofit Double Bottoms

The retrofit of double bottoms was supported by a municipal department of environmental protection and opposed by two barge companies, a U.S. based ship owner, and a foreign ship operators' association. The opponents said retrofitting double bottoms was not economically feasible. The Coast Guard agrees.

13. Underpressure Systems

The Coast Guard has received several proposals advocating the use of UPS (vacuum) systems to reduce oil outflow in the event of a hull rupture. Fourteen comments addressing this measure were supportive and nine were in opposition. Supporters included two foreign shipowners' associations and proponents of proprietary active systems. Opposition was expressed by an international tanker operator's group, two international oil companies, and two U.S. barge operators.

UPS technology is still in the developmental stage and has no operational history. Its practicality and reliability in the marine environment are unknown. The Coast Guard has reservations about its practical application aboard oceangoing oil tankers. In principle, the UPS works by creating a partial vacuum in the cargo tank ullage space, thereby keeping the internal oil pressure lower than the external seawater pressure. Theoretically, UPS can reduce oil outflow in the event of grounding and can reduce the relative outflow in the event of certain collisions (when tanks are ruptured only below waterline). However, there are several technical concerns that the Coast Guard believes must be addressed and resolved before UPS can become practical.

The UPS must interact with the IGS required aboard certain vessels (46 CFR 32.53, International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS) Chapter II–2, Regulation 62). The basic premise of UPS is contrary to existing international tanker safety regulations that presently require IGSs with positive tank atmospheres. Any amount of IGS overpressure negates the underpressure effect; therefore, present IGS designs must be modified substantially in order to remain effective whenever the UPS is activated. A National Academy of Sciences study, titled "Tanker Spills: Prevention by Design," noted that the installation of such a system would require modifications to the cargo, vent, and

IGSs that include automation, elaborate sensing, and monitoring devices, as well as additional backup safeguards. The system also would have to conform to current U.S. regulations for vapor recovery systems on certain vessels.

The Coast Guard has not proposed UPS as a requirement because of unproven effectiveness, operational complexity, and the lack of operational history. However, their relatively inexpensive costs may make them appealing as an alternative. Owners and operators of oil tankers desiring to use this alternative could submit a request under § 157.410(c).

However, all of the concerns regarding the UPS would have to be addressed before the Coast Guard could make a determination on the feasibility of operating an UPS on a oil tanker. The Coast Guard invites specific comments regarding the use of UPSs.

14. Rescue Tanks/Emergency Transfer Systems

A number of different proprietary systems have been submitted to the Coast Guard that can be categorized as rescue tanks or emergency transfer systems. Comments received regarding the rescue tanks were all supportive. Concepts proposed generally involved oil transfers from damaged tanks to empty segregated ballast tanks and flexible containment bags. One comment recommended an emergency transfer system in combination with an UPS. Comments were received from proponents of proprietary systems, a foreign shipowners' group, system concept innovators, and environmental groups.

The Coast Guard recognizes that a number of these systems appear to be technologically feasible and, therefore, warrant further consideration. However, these systems have not been demonstrated yet as effective on a scale appropriate to the size of oil tankers addressed by this regulation. Additionally, because this system is not a structural hull design alternative, the system's degree of effectiveness depends on varying degrees of human interaction. Effectiveness depends upon crew response after an incident and crew management and maintenance of electronic and mechanical equipment.

The Coast Guard has not proposed rescue tanks or emergency transfer systems as a requirement because of its operational complexity and lack of operational history. Owners and operators of oil tankers desiring to use this alternative could submit a request under § 157.410(c). It is the Coast Guard's intention to develop regulations under section 4115(b) of OPA 90 without limiting future development of economically feasible systems that can mitigate further oil outflow after an accident. Specific comments regarding the use of rescue tanks and emergency transfer systems are invited.

15. Other Operational Measures

The Coast Guard recognizes that certain operational, manning, and equipment carriage measures may reduce oil tanker casualties without excessively burdening oil tanker owners or operators. The comments to the ANPRM on these regulations (56 FR 56284) suggested a variety of measures the Coast Guard could take to increase the safety of oil tanker navigation. Under other sections of OPA 90, the Coast Guard is proceeding with a number of rulemakings addressing operational measures to reduce the risk of oil tanker casualties. These other sections apply to all tank vessels, not only those over 5,000 GT subject to the note under 46 U.S.C. 3703a. Rulemakings under other provisions of OPA 90 that are being developed separately will not be discussed in this NPRM. Additional information is provided in other **Federal Register** documents for the following projects:

Automatic Pilot (CGD 91–046) (final rule).	58 FR 27628, May 10, 1993.
Discharge Removal Equipment (CGD 90–068).	57 FR 44912, Sept. 29, 1992.
Tug Escorts (CGD 91–202).	58 FR 16391, Mar. 26, 1993.
Vessel Traffic Service (CGD 90–020).	56 FR 36910, Aug. 1, 1991.
Engine Room Manning (CGD 91–203) (final rule).	58 FR 27628, May 10, 1993.
Vessel Communications (CGD 91–046) (final rule).	57 FR 14483, Apr. 21, 1992.
Second Officer on Bridge (CGD 91–222) (final rule).	58 FR 27628, May 10, 1993.

Comments on operational measures constituted the largest group of responses to the ANPRM. General support of these alternatives, in preference to more costly structural measures, was expressed by three U.S. government agencies, an association of U.S. operators, and an international oil company.

16. Advanced Navigation Equipment

Twelve comments suggested that the Coast Guard require that oil tankers carry certain types of advanced navigation equipment, such as a Global Positioning System (GPS) receiver and Electronic Chart Display and Information Systems (ECDIS). Differential Global Positioning System (DGPS) (a system that enhances accuracy of the GPS signals) also was suggested as equipment that should be required. One comment said that the current standards are adequate. Support was broad-based and included U.S. government agencies, major oil companies, environmental groups, and pilots' associations.

The Coast Guard recognizes the value of GPS, DGPS, and ECDIS and believes that these systems will reduce the number of vessel groundings and oil spills. However, it is premature to require these systems, because none are fully operational. The GPS network is not scheduled to be fully operational until 1995, and DGPS will not be operational in U.S. coastal areas until 1996. The IMO is examining appropriate standards for electronic charts, but the Defense Mapping Agency and the National Ocean and Atmospheric Administration (NOAA) have not yet developed a complete electronic chart portfolio. Once these systems and standards are fully developed, the Coast Guard will consider issuing regulations for these systems.

A few comments suggested that other types of navigational equipment should be required, including a certain type of sonar, collision avoidance radar, and doppler speed logs. One comment suggested requiring a sonar that had an audible alarm to warn bridge personnel of nearby shoals. Presently, 33 CFR part 164 requires certain vessels to have an echo sounding device, automatic radar plotting aids (ARPA), and a device to indicate speed and distance.

None of the recommendations from the comments were incorporated into the proposed rule because other OPA 90 rulemakings and future advanced navigation equipment requirements will address the need for other navigational equipment. The issue of navigation equipment for all oil tankers will be addressed as a part of the Tanker Navigation Safety Study the Coast Guard has undertaken under the requirements of section 4111 of OPA 90. This study includes evaluating the adequacy of navigation equipment and systems.

17. Pilotage and Manning

A number of comments suggested that vessel manning and pilotage policies and laws are not adequate to ensure the safe navigation of vessels. Specific issues included training, licensing, work hours, qualifications, and enforcement of such regulations.

Section 4111 of OPA 90 requires the Coast Guard to determine whether existing laws and regulations regarding

vessel personnel are adequate to ensure safe oil tanker navigation in U.S. waters. In addition to its other rulemakings, the Coast Guard is conducting or sponsoring a number of studies required under section 4111 of OPA 90. These studies encompass areas such as training, simulators, appropriate crew sizes, crew qualifications, the pilotage system, and inspection standards. The Coast Guard will consider the results and recommendations of these studies and may take appropriate action to address any problems identified in the studies.

18. Speed Limits

Some comments addressed the issue of speed limits. All but one stated that a national rule governing the speed of oil tankers would not only be inappropriate but may be dangerous because of the maneuvering characteristics of oil tankers. The Coast Guard agrees that a national speed limit is not appropriate. Local regulations governing speed have been issued for certain areas such as vessel traffic service areas, but the Coast Guard is neither proposing nor considering a rule to limit the speed of oil tankers in all U.S. waters.

19. Other Measures

Two comments recommended limiting cargo loading to center tanks, one comment recommended a recessed bottom, and two others recommended "imaginary" double bottoms—a special water mixture in the bottom of the cargo tanks. A request for approval of these measures could be submitted under § 157.410(c).

One comment recommended the installation of tank level or pressure monitoring devices to detect the loss of oil from a cargo tank. Tank level and pressure monitoring devices are being addressed under a separate rulemaking. The Coast Guard published an ANPRM addressing minimum standards for and the use of tank level or pressure monitoring devices on May 7, 1991 (56 FR 21116).

Many comments endorsed more detailed inspections and maintenance requirements. There was a broad range of proposals for mandated inspections involving the Coast Guard and the International Association of Classification Societies. Specific recommendations included formal inspection of tugs and mandated drydocking intervals for older tankers and barges. The Coast Guard agrees that inspections and maintenance improve oil tanker safety. However, this rulemaking specifically addresses measures to reduce oil outflow after collisions and groundings and will not include inspection and maintenance measures.

20. Special Notice of Arrival Requirement

The National Transportation Safety Board (NTSB) recommended that the Coast Guard require oil tankers to include their IMO international number when making their advance notice of arrival report required by § 160.207. The Coast Guard agrees.

On August 31, 1988, the cargo tank of the foreign oil tanker FIONA exploded while the vessel was moored in Long Island Sound. The Coast Guard was unable to identify the FIONA before its arrival in the U.S. because the FIONA had previously changed names. If properly identified, the Coast Guard might have determined from its Marine Safety Information System (MSIS) data that the FIONA was a vessel requiring special attention.

In 1987, IMO established the Ship Identification Number Scheme, which uses the Lloyd's Register of Shipping Identification Numbers. Lloyd's assigns an identification number to an oil tanker when it enters service. This number remains with that particular vessel forever. By using such a system, the Coast Guard would be able to better identify and target oil tankers for boarding. Section 160.207 will be amended to require the owners or operators of all foreign flag vessels constructed or adapted to carry, or that carry, oil in bulk as cargo or cargo residue to include their IMO international number when reporting the arrival of their vessel. This proposed regulation will also require new tank vessels which are not subject to section 4115(b) of OPA 90, to report their international number under the authority of 33 U.S.C. 1231.

Regulatory Evaluation

This proposal is major under Executive Order 12291 because the cost to the economy would be over $100 million annually for at least 5 of the 17 years the regulation is in effect. This proposed regulation is significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979) because of substantial public interest in the proposed rule. A draft RIA is available in the docket for inspection or copying where indicated under "ADDRESSES."

The Coast Guard intends to conduct a comprehensive, programmatic RIA for all regulations issued under titles IV and V of OPA 90, once they are all completed. This comprehensive RIA will evaluate the interaction of rules relative to each other and assess their impacts in toto. However, since the rules will be promulgated individually over several years, each rule, as it is developed, undergoes an interim evaluation against a baseline that assumes other OPA 90 requirements are not implemented.

The proposed structural and operational measures mandated by this rule would apply to certain tank vessels greater than 5,000 GT operating in U.S. waters. These vessels would be required to be fitted with protectively located non-oil spaces (PL/Spaces) or have other structural or operational arrangements, such as HBL, if those alternatives ensure equal protection against oil pollution in the event of collision or grounding as would be offered by PL/Spaces. Vessels would also be required to carry lightering equipment. In addition, each foreign flag vessel would be required to report its IMO shipping number to the Coast Guard Captain of the Port when reporting its advance notice of arrival. The requirements would take effect 3 years from the publication date of the final rule.

The costs and benefits of the alternatives are based on "economically feasible conversions." This approach evaluates the opportunity costs of retiring a vessel and the costs to retrofit a vessel with only a few years of service remaining. The approach recognizes that if the cost of retrofitting a vessel is greater than the cost of retiring it, the vessel will be retired.

Costs

The present value of the cost of this regulation for the period 1998 through 2015, when the double hull rule is phased-in, is estimated at $579 million. When the money is allocated on the basis of project type, the bulk of these costs, $573 million, are associated directly with structural modifications to build PL/Spaces. The remaining $6 million covers additional required emergency lightering equipment. When the costs are allocated on the basis of vessel type, costs for tankships are estimated at $561 million and costs for U.S. flag barges are estimate at $18 million. Jones Act vessels account for $125 million of total costs.

The principal costs of PL/Spaces and alternatives arise from capital costs, opportunity costs while the vessel is out of service for modifications, increases in operating costs resulting from required modifications, and reduced revenue attributable to loss of cargo carrying capacity and resulting decreases in operating efficiencies.

The projected annual cost of implementing this regulation peaks at $164 million in 1977 and declines to 0

by the year 2015. The decline is attributable to retirement of older ships resulting from the phased-in implementation of double hull requirements.

Summary of Benefits

The principal benefit from the proposed regulation for existing vessels is the reduction of oil spilled in the marine environment with a corresponding reduction in natural resource damages and cleanup costs. Benefits are expressed as barrels of oil not spilled, but are quantified in monetary terms because of the complexities of valuing a non-occurrence. These benefits are assumed to begin in 1997 and continue until the vessels are retired in accordance with the OPA 90 double hull implementation schedule (See part 157, appendix G). In determining the probable benefits of this proposed regulation, the Coast Guard did not consider the potential interaction between the existing vessel requirements and other regulations under OPA 90 rulemakings.

The Coast Guard estimated that the requirements for PL/Spaces would reduce oil outflows by 30 percent from vessels built according to pre-MARPOL specifications which are involved in collisions. For groundings, this oil spill reduction was estimated at 15 percent. Spills due to structural failure were also estimated to be reduced by 15 percent.

The present value of benefits due to spill prevention would be 20,644 barrels of oil not spilled. This quantity was calculated using a 10 percent discount rate over the 17 year life of this regulation. Unit costs of benefits would total $28,000 per barrel of oil not spilled. After the development of the RIA but prior to the publication of this NPRM, the Office of Management and Budget (OMB) issued new guidance on preparation of benefit-cost analyses (Circular No A–94, 57 FR 53519, November 10, 1992). The Coast Guard will use that guidance in preparing the RIA to accompany the final rule.

The principal benefit of carrying lightering equipment on board would be to facilitate rapid oil transfer from a stricken tank vessel to a temporary storage vessel. This ability to rapidly transfer oil will minimize the risk of further spillage by removing cargo, as when the EXXON VALDEZ lightered to the EXXON BATON ROUGE. Although the probable benefits of lightering equipment on board tankers cannot be calculated, substantial benefits could accrue in the small number of cases these connectors may be used.

Phase-In Alternates

The principal alternative considered was to require existing vessels over 5,000 GT to meet the phase-in schedule contained in Regulation 13G to Annex I of MARPOL 73/78, effective July 6, 1995. This regulation requires conversion when an existing oil tanker becomes 25 years old. The present value of the cost of this proposal from 1995 through 2015 (the year in which the double hull rule is fully phased-in) is estimated to be $141 million. The present value of the benefits of this provision would be 3,605 barrels of oil not spilled.

The principal choice of timeframes was between a three year phase-in of proposed requirements for existing vessels, and the Regulation 13G phase-in. The three year phase-in would cost the industry an estimated $579 million net present value to comply, but the domestic fleet would bear only 15 percent of the total cost, an estimated $86 million. Under the Regulation 13G phase-in option, the domestic fleet would carry 100 percent of the total cost, or an estimated $141 million.

Further, under the three year phase-in option, an estimated 20,644 barrels of oil would not be spilled with the proposed measures, providing a cost-to-benefit ratio of $28,000 per barrel of oil not spilled. Under the 13G phase-in option, only an estimated 3,605 barrels of oil would not be spilled with the proposed measures, resulting in a cost-to-benefit ratio of $39,000 per barrel of oil not spilled.

The Coast Guard is cognizant of Congress's desire to improve the condition of the existing vessel fleet as soon as possible. While the Regulation 13G option would start compliance sooner on vessels already over 25 years old, it would allow younger vessels to delay compliance for years, and the international fleet would never comply. The three-year phase-in option would require prompt compliance by all tank vessels regardless of age.

In sum, the advantages of the three year phase-in option, as compared to the Regulation 13G phase-in option, would be: (1) Less cost to the domestic fleet; (2) greater environmental benefit; (3) improved cost/benefit ratio; and (4) consistency with Congressional intent. The singular significant—but not overriding—disadvantage of the three-year phase-in option would be the greater overall cost to industry. Comparison data are summarized in the following table.

SECTION 4115(b) EXISTING TANK VESSEL HULL REQUIREMENTS COMPARISON OF PROTECTIVELY LOCATED SPACES REQUIREMENT UNDER 3-YEAR PHASE-IN V. MARPOL 13–G REQUIREMENTS [1]

Item [2]	Economically feasible conversions		
	3-year phase-in	13–G option	Percent difference 3-year/13–G
Costs ($ million NPV): [3]			
Barges	18	48	−63
Sml tnkrs	251	27	830
Sml vsls	269	75	259
Lge vsls	310	66	370
Total	579	141	311
Jones Act	86	141	−39
Benefits (barrels not spilled, NPV): [3]			
Barges	10,622	3,074	246
Sml tnkrs	5,795	454	1176
Sml vsls	16,417	3,528	365
Lge vsls	4,227	77	5390

SECTION 4115(b) EXISTING TANK VESSEL HULL REQUIREMENTS COMPARISON OF PROTECTIVELY LOCATED SPACES REQUIREMENT UNDER 3-YEAR PHASE-IN V. MARPOL 13–G REQUIREMENTS [1]—Continued

Item [2]	Economically feasible conversions		
	3-year phase-in	13–G option	Percent difference 3-year/13–G
Total	20,644	3,605	473
Jones Act	12,533	3,605	248
Cost/benefit ($ per barrels not spilled, NPV): [3]			
Barges	2,000	16,000	−88
Sml tnkrs	43,000	59,000	−27
Sml vsls	16,000	21,000	−24
Lge vsls	73,000	857,000	−91
Aggregate	26,000	39,000	−28
Jones Act	7,000	39,000	−82

[1] Effective date of final rule: 31 DEC 1994; MARPOL 13G requirement effective 6 JUL 1995; 3 yr. phase-in period results in compliance of 31 DEC 1997.
[2] Barges (U.S. flag) and small tanker categories add to small vessels. Small vessel and large vessel categories add to total. Jones Act vessels are included within both small and large vessel categories.
[3] Discounted to 1992 dollars at 10 percent.

A second alternative considered was to require that vessels be loaded only to the point of hydrostatic balance. Hydrostatic balance results when the cargo pressure and vapor pressure exerted on the bottom shell plating which forms a single boundary between the cargo and the sea do not exceed the external hydrostatic water pressure. "Economically feasible conversion" analysis indicated that 155 vessels would need to be retired under this alternative. The present value of the cost of using HBL, including the cost of retiring 155 vessels, is estimated to be $3.0 billion. The present value of this alternative's benefit would be 163,880 barrels of oil not spilled. Compared with PL/Spaces, this alternative would provide substantially greater benefits in terms of barrels not spilled, but at substantially greater costs to industry. The Coast Guard will accept this method as a suitable means of compliance with this regulation.

A third alternative considered was to require PL/Spaces plus HBL together. "Economically feasible conversion" analysis indicated that 231 vessels would be retired under this alternative. The present value of the cost of PL/Spaces plus HBL together would total $4.2 billion and the present value of expected benefits would be 145,159 barrels of oil not spilled.

This alternative would be 40 percent more costly than HBL alone and compared with HBL alone, would yield an 11 percent reduction in benefits, in large part because none of the existing fleet already comply and, in contrast with HBL alone, 76 additional tank vessels would likely be retired rather than converted.

However, the combined use of PL/Spaces and HBL would yield substantial benefits in barrels of oil not spilled, the Coast Guard will accept this method as a suitable means of compliance with this regulation.

A fourth alternative considered was to require double bottoms. The present value of the cost of double bottoms would total $1.2 billion, which would be expected to yield benefits at a present value totaling 38,163 barrels of oil not spilled. Although the double bottom alternative would be far less costly than either HBL alone or HBL plus PL/Spaces, the double bottom alternative would be more than twice as expensive as PL/Spaces alone. However, the present value of benefits exceed those for PL/Spaces, so the Coast Guard will accept double bottoms as a suitable method of compliance with this rulemaking.

A fifth alternative considered was to require double sides. The present value of the cost of double sides would be $1.7 billion. The RIA prepared for the Coast Guard indicated that this costly alternative would yield no clear benefits. However, the Coast Guard recognizes that double sides may prevent oil discharges during certain casualties and therefore, the Coast Guard will accept double sides as a suitable method of compliance with this rulemaking.

A sixth alternative considered was the use of emergency rescue systems (ERS). An analysis of the system based upon the propriety design of the system's principal proponents indicated that the present value of the system's cost would be $1.2 billion, resulting in benefits of 148,334 barrels of oil not spilled, net present value.

According to the manufacturer, the ERS is located inside the tank vessel. In the event of a grounding or collision, the ERS is designed to quickly contain the oil while the oil is still in the tank. This is accomplished using high flow rate pumps attached to flexible containment bags that expand and conform to the internal structure of the tank. The system's effectiveness is inversely proportional to the initial oil outflow rate from the breached hull and proportional to the design flow rate of the ERS. This alternative has not been proven and the costs and benefits shown above are based on manufacturer's representations. The Coast Guard will evaluate all proposals using ERS on an individual vessel basis.

A seventh alternative considered was the use of ERS and HBL together. The present value of the cost for such an alternative would be $2.1 billion. The present value of benefits for ERS plus HBL would be 203,719 barrels of oil not spilled. Based on "economically feasible conversion" analysis partially dependent on manufacturer's representations, the benefits of the ERS plus HBL system total nearly one-third greater than the benefits for HBL alone. However, as indicated in the discussion of the sixth alternative, the ERS component of this combination has not been proven effective, and the Coast Guard will evaluate this proposed combination of systems on an individual vessel basis.

An eighth alternative considered was the use of UPS. The present value of the cost of this option would be $367 million. The present value of the benefits are estimated to be 245,962 barrels of oil not spilled. UPS is an active inert gas control system that

controls the underpressure in the tank ullage space to a valve that would prevent oil spillage above the line of rupture. The system equalizes the pressure forces inside and outside ruptured tanks using exhaust hoses tapping into the IGS. This alternative has not been proven. Costs and benefits as shown are based on manufacturer's representations. The Coast Guard will evaluate all proposals using UPS on an individual vessel basis.

Finally, the Coast Guard considered an alternative to require the use of emergency rapid transfer systems (ERTS). According to an analysis of data provided by this system's main proponents concerning the propriety design, the present value of the cost of ERTS would be $2.9 billion. The present value of benefits would be 242,606 barrels of oil not spilled. ERTS consists of pipes with blank flanges that connect cargo tanks to ballast tanks. When damage to a tank occurs and the cargo level drops, sensors automatically cause the flange bolts to be ruptured. Cargo flows rapidly from the damaged tank into the empty ballast tank by force of gravity. This alternative has not been proven and the above costs and benefits are based on manufacturer's representations. The Coast Guard will evaluate all proposals using ERTS on an individual vessel basis.

The Coast Guard used capital cost and benefit estimates provided by proponents of the ERS, UPS, and ERTS to evaluate those systems. The accuracy of those data cannot be verified.

The Coast Guard proposes PL/Spaces for several reasons. This option will reduce the amount of oil spilled into the marine environment, requires no human interface, uses simple principles, is relatively inexpensive, and has proven to be effective.

The RIA showed that some of the alternatives are associated with more benefits or lower costs than PL/Spaces. However, the Coast Guard decided not to require installation of some of these measures on oil tankers because the effectiveness of such measures has not been proven. As noted earlier in the NPRM, the Coast Guard would allow other measures in lieu of PL/Spaces to be installed on existing vessels after consideration on a vessel-by-vessel basis. The Coast Guard found that the ideas of parties who commented on the ANPRM have merit and that those ideas should not be discarded merely because the effectiveness of measures proposed in their comments has not yet been proven.

The Coast Guard does not wish to inhibit progress and expects that owners and operators of oil tankers may pursue measures and systems costing less than PL/Spaces if they are convinced of their reliability and safety. As a result, the total cost to implement the measures required by this rule may be less than the $579 million estimated herein.

The Coast Guard also does not wish to limit innovation in the methods utilized to achieve the goal of increased environmental protection at the lowest practical cost. To that end, the Coast Guard specifically seeks recommendations and comments on the possibility of providing economic incentives with regard to this proposed rulemaking.

The purpose of an economic incentives program for this rulemaking must be clearly focused. The Coast Guard envisions that such a program would need to be focused on either improving potential total benefits, for example, in terms of estimated barrels of oil not spilled, or reducing potential costs. It is not practical to promote faster conversion because urgency is already a prime consideration. The proposal calls for implementation within three years of publication of the final rule. Earlier implementation is impractical because the rule is designed to permit vessel owners to accomplish measures during normal drydocking. Postponement is impractical because some vessels would avoid conversion, benefits would be substantially reduced, and Congressional intent would be thwarted.

Economic incentives have been used successfully in air pollution abatement and aircraft noise pollution reduction programs. It may be possible to develop an innovative program as part of this rulemaking which would achieve the same level of environmental protection while significantly lowering the overall cost to industry. The EPA air pollution abatement program allows companies which do not expend the full limit of their air pollution permit to sell the remainder of their permit to another company. The FAA aircraft noise pollution reduction program allows an airline which improves one airplane earlier than required to delay the improvement of another airplane. While neither of these concepts may be directly transferable to this particular rulemaking, they do illustrate the types of innovative programs which are sought here. In the case of this rulemaking, there are large differences in the cost-effectiveness of alternative actions, both within and across the vessel categories. On its face, this fact suggests that a carefully designed economic incentive mechanism has the potential for large cost savings and/or improved environmental protection.

Table 2 is derived from research presented in the Existing Vessel Hull RIA (July 1993) and shows prospective costs and benefits of the proposed rulemaking by type of vessel and type of measure in three displays—descending in order of benefits, ascending order to costs, and ascending order of cost-per-benefit. The table is based on economically feasible conversions to proven technologies, rather than unproven technologies for which data are based on the manufacturer's representations. With the exception of the zero cost-and-benefit items, each display highlights toward the top of the list the most favorable measures upon which the display is ordered. By reading down the table and including a selection from each vessel category—barges, small tankers, and large vessels—the "best" selections for maximizing benefits, minimizing costs, and minimizing costs per benefit can be identified. (Jones Act vessels are shown for information only and do not comprise a single, additive category.)

Table 2-a shows that by using proven measures (rather than unproven technologies for which data are based on manufacturer's representations), a combination of HBL for small tankers, PL/S+HBL for large vessels, and PL/S for barges yields the maximum potential benefit for the measures tested.

- Combined benefits for economical fleet conversion to maximize benefits would be an estimated: 307,346 barrels of oil not spilled.
- However, the cost to achieve this maximum level of benefit would be: $4.517 billion.
- Cost-per-benefit would average an estimated: $14,700 per barrel not spilled.

Table 2–b shows that among proven measures, PL/Spaces for barges, small tankers, and large vessels minimizes cost. (PL/Spaces is the basic measure recommended in this proposed rulemaking, although the Coast Guard will permit any proven approach and will consider proposals for unproven technology on an individual basis.) Under PL/Spaces—

- Combined benefits for economical fleet conversion to minimize costs would be an estimated: 20,684 barrels of oil not spilled.
- However, the cost of achieving this level of benefit would be only: $579 million.
- Cost-per-benefit would average an estimated: $27,990 per barrel not spilled.

Table 2–c shows that the lowest cost-per-benefit would be achieved by using

PL/Spaces for barges, HBL for small tankers, and SBT for large vessels.

- Combined benefits for economical fleet conversion to minimize costs would be an estimated: 260,493 barrels of oil not spilled.
- However, the cost of this benefit would nearly quadruple to: $2.203 billion.
- But cost-per-benefit would average an estimated: $8,457 per barrel not spilled, almost half the level of the maximum potential environmental benefits, and less than one-third the level which minimizes costs.

Table 3 is identical to Table 2, except that the models are highlighted to show choices that would result, were speculative approaches freely permitted in an economic incentive scheme. Speculative approaches are those which are unproven and for which data were provided by the measures' promoters. These are UPS, ERS, and ERTS. Table 3-a shows that the environmental view would remain the same. However, both the industry view and the economic view would shift choices to the UPS system, which could be applied to all vessels.

- Were UPS data in fact correct and the system proven, reliable and effective, combined benefits for economical fleet conversion would be an estimated: 245,962 barrels of oil not spilled.
- However, the cost of this benefit would be the lowest of all alternatives, only: $367 million.
- And the cost-per-benefit would average an estimated: $1,492 per barrel not spilled.

As written, this proposed rulemaking recommends the internationally accepted PL/Spaces approach, but will permit alternative options. The Coast Guard recognizes that in the absence of a command-and-control regulation that mandates either benefit maximization or cost-per-benefit minimization, and without a well-designed economic incentive system, vessel owners will gravitate to the PL/Spaces option. It is the least expensive measure using proven technology, and it conforms with the international hardware requirements of MARPOL Regulation 13G.

Economic incentives would need to be designed to cause measures which would result in either greater benefits for some vessel groups, or a lower cost-per-benefit for some vessel groups, than PL/Spaces, to be more financially attractive than PL/Spaces. To this end, the Coast Guard solicits detailed, clear comments on the specific nature of such incentives.

Coast Guard also solicits comments on how the public views the additional overhead necessary to administer such a program and requests views concerning funding the administration of such an economic incentives program. The Federal Aviation Administration reports that a desktop computer, a specialist to track the program, plus some setup costs and supervisory time are satisfactory to administer the carry-forward compliance credit provisions of their noise abatement rules. In contrast to a worldwide fleet of about 5,000 airplanes reported by FAA as being tracked under their rule, the Coast Guard would need to track credits for about 800 vessels. However, the program might become considerably more complex if the credits were marketable, as companies would likely be required to report credit transfers or sales to the Coast Guard.

In addition, the Coast Guard requests comments on an approach in which Coast Guard would assign credit points for certain measures and combinations of measures for improving existing vessel hulls. As-yet-unconverted vessels would receive no points. Vessels that converted to the baseline lowest-cost proven measure, PL/Spaces, or already have PL/Spaces, would receive a Coast Guard Certificate of Measures and Points for, say, one point. Vessels that converted to more beneficial measures would receive Coast Guard Certificates of Measures and Points that certified additional points.

The point system would serve as an indicator of environmental risk, in which the most points indicated the most risk reduction. Vessel owners or operators could then present the Coast Guard Certificate of Measures and Points to insurers. In turn, insurers would make market-based judgments over the life of the vessel, based in large part upon the level of points certified by the Coast Guard. Insurers would rule on the actual value of the measures, and express those values in insurance premium levels.

One market incentive alternative would be to allow the unrestricted exchange and use of credits among vessel owners. Owners of vessels for which highly protective measures were relatively inexpensive could generate credits by implementing such measures. Those credits would then be available for vessels whose compliance costs would otherwise be prohibitively expensive.

However, there are some practical problems with respect to evaluating programs such as PL/Space credits. Principally, available economic models evaluate costs for economic or total fleet conversions to each measure. But they do not reveal total per-vessel costs or the interactive effects of fleet segments converting to a range of measures. Because of the extremely high cost of having the models reworked and limited available resources, the Coast Guard must estimate costs and benefits of measures and combinations based on data available in its RIA.

There are also policy problems with regard to such a program. These problems include (1) The basic differences between regulating fixed industrial facilities and mobile vessels which spend a significant amount of their time out of U.S. jurisdiction; (2) the inconsistency which this would create with the international regulatory system and the fact that any "credits" acquired under a market incentives system could not be used in foreign waters; and (3) the fact that while air pollution and noise pollution are authorized at certain levels, there is no authorized level of oil pollution.

For several reasons, the Coast Guard does not believe it can or should allow a market incentive mechanism that would permit some carriers an exemption from or reduction of the basic "floor" requirement for improvement measures set forth in this proposed rulemaking. The Coast Guard seeks comment on these and other issues, with particular emphasis on whether, and how, these problems might be overcome.

TABLE 2.—EXISTING VESSEL HULL MEASURES: SELECTED MODELS TO MAXIMIZE BENEFITS, COSTS, AND COST-PER-BENEFIT RATIO, BASED ON PROVEN APPROACHES

Vessel type and measure	Benefit	Cost	Cost per benefit
	Bbls ns	$million	$1,000/bbls ns
Table 2–a.—Environmental (Benefit Maximization) Model: Existing vessel hull costs & benefits shown by vessel type and measures, ordered by benefits			
All vsls: UPS	245,962	367	1
Not bgs: ERTS	242,606	2,860	12
Not bgs: ERS+HBL	203,719	2,094	10
Not bgs: ERS	148,334	1,166	8
Sml Tnkr: HBL	115,270	894	8
Sml tnkr: HBL – PM	104,502	678	6
Jones: HBL	103,879	648	6
Jones: HBL – PM	96,488	305	3
Lge vsl: PLS+HBL	76,912	2,927	38
Sml tnkr: PLS+HBL	68,247	1,310	19
Sml tnkr: SBT	65,795	544	8
Lge vsl: HBL	47,858	2,122	44
Lge vsl: SBT	30,059	613	20
Lge vsl: DB	27,346	722	26
Jones: SBT	22,175	115	5
Lge vsl: HBL – PM	14,531	1,028	71
Jones: PLS	12,533	86	7
Sml tnkr: DB	10,817	452	42
Barges: PLS	10,662	18	2
Jones: PLS+HBL	10,225	626	61
Sml tnkr: PLS	5,795	251	43
Lge vsl: PLS	4,227	310	73
Jones: DB	3,284	265	81
Barges: ERS	0	0	0
Barges: HBL	0	0	0
Barges: SBT	0	0	0
Barges: ERTS	0	0	0
Barges: DB	0	0	0
Barges: HBL – PM	0	0	0
Barges: ERS+HBL	0	0	0
Barges: PLS+HBL	0	0	0
Model Results	307,346	4,517	14.697
Table 2–b.—Vessel Owner/Operator (Cost Minimization) Model: Existing vessel hull costs & benefits shown by vessel type and measures, ordered by costs			
Barges: ERS+HBL	0	0	0
Barges: HBL – PM	0	0	0
Barges: DB	0	0	0
Barges: ERTS	0	0	0
Barges: PLS+HBL	0	0	0
Barges: SBT	0	0	0
Barges: ERS	0	0	0
Barges: HBL	0	0	0
Barges: PLS	10,662	18	2
Jones: PLS	12,533	86	7
Jones: SBT	22,175	115	5
Sml tnkr: PLS	5,795	251	43
Jones: DB	3,284	265	81
Jones: HBL – PM	96,488	305	3
Lge vsl: PLS	4,227	310	73
All vsls: UPS	245,962	367	1
Sml tnkr: DB	10,817	452	42
Sml tnkr: SBT	65,795	544	8
Lge vsl: SBT	30,059	613	20
Jones: PLS+HBL	10,225	626	61
Jones: HBL	103,879	648	6
Sml tnkr: HBL – PM	104,502	678	6
Lge vsl: DB	27,346	722	26
Sml Tnkr: HBL	115,270	894	8
Lge vsl: HBL – PM	14,531	1,028	71
Not bgs: ERS	148,334	1,166	8
Sml tnkr: PLS+HBL	68,247	1,310	19
Not bgs: ERS+HBL	203,719	2,094	10
Lge vsl: HBL	47,858	2,122	44

TABLE 2.—EXISTING VESSEL HULL MEASURES: SELECTED MODELS TO MAXIMIZE BENEFITS, COSTS, AND COST-PER-BENEFIT RATIO, BASED ON PROVEN APPROACHES—Continued

Vessel type and measure	Benefit	Cost	Cost per benefit
	Bbls ns	$million	$1,000/bbls ns
Not bgs: ERTS	242,606	2,860	12
Lge vsl: PL/S+HBL	76,912	2,927	38
Model Results	20,684	579	27.993

Table 2–c.—Economic (Cost Per Benefit Unit) Model: Existing vessel hull costs & benefits shown by vessel type and measures, ordered by cost-per-benefit ratio

Barges: HBL – PM	0	0	0
Barges: DB	0	0	0
Barges: ERTS	0	0	0
Barges: ERS+HBL	0	0	0
Barges: PLS+HBL	0	0	0
Barges: HBL	0	0	0
Barges: SBT	0	0	0
Barges: ERS	0	0	0
All vsls: UPS	245,962	367	1
Barges: PLS	10,662	18	2
Jones: HBL – PM	96,488	305	3
Jones: SBT	22,175	115	5
Sml tnkr: HBL – PM	104,502	678	6
Jones: HBL	103,879	648	6
Jones: PLS	12,533	86	7
Not bgs: ERS	148,334	1,166	8
Sml Tnkr: HBL	115,270	894	8
Sml tnkr: SBT	65,795	544	8
Not bgs: ERS+HBL	203,719	2,094	10
Not bgs: ERTS	242,606	2,860	12
Sml tnkr: PLS+HBL	68,247	1,310	19
Lge vsl: SBT	30,059	613	20
Lge vsl: DB	27,346	722	26
Lge vsl: PLS+HBL	76,912	2,927	38
Sml tnkr: DB	10,817	452	42
Sml tnkr: PLS	5,795	251	43
Lge vsl: HBL	47,858	2,122	44
Jones: PLS+HBL	10,225	626	61
Lge vsl: HBL – PM	14,531	1,028	71
Lge vsl: PLS	4,227	310	73
Jones: DB	3,284	265	81
Model Results	260,493	2,203	8.457

Measures abbreviations:
PLS: Protectively located non-cargo tanks
SBT: Segregated ballast tanks
DB: Double bottoms
ERTS: Emergency Rapid Transfer System
ERS: Emergency Rescue System
Vessel abbreviations:
Vsl: Vessels
Bgs: Barges
Sml: Small
Tnkr: Tanker
Lge: Large
Jones: Jones Act vessels
Other abbreviations:
bbls ns: barrels of oil not spilled
* . . .*: Highlights measures that satisfy the model
UPS: Under Pressure System
HBL: Hydrostatic Balanced Loading
PM: Pre-MARPOL

TABLE 3.—EXISTING VESSEL HULL MEASURES: SELECTED MODELS TO MAXIMIZE BENEFITS, COSTS, AND COST-PER-BENEFIT RATIO, PERMITTING SPECULATIVE APPROACHES

Vessel type and measure	Benefit	Cost	Cost per benefit
	Bbls ns	$million	$1,000/bbls ns
Table 3–a.—Environmental (Benefit Maximization) Model: Existing vessel hull costs & benefits shown by vessel type and measures, ordered by benefits			
All vsls: UPS	245,962	367	1
Not bgs: ERTS	242,606	2,860	12
Not bgs: ERS+HBL	203,719	2,094	10
Not bgs: ERS	148,334	1,166	8
Sml Tnkr: HBL	115,270	894	8
Sml Tnkr: HBL–PM	104,502	678	6
Jones: HBL	103,879	648	6
Jones: HBL–PM	96,488	305	3
Lge vsl: PLS+HBL*	76,912	2,927	38
Sml tnkr: PLS+HBL	68,247	1,310	19
Sml tnkr: SBT	65,795	544	8
Lge vsl: HBL	47,858	2,122	44
Lge vsl: SBT	30,059	613	20
Lge vsl: DB	27,346	722	26
Jones: SBT	22,175	115	5
Lge vsl: HBL–PM	14,531	1,028	71
Jones: PLS	12,533	86	7
Sml tnkr: DB	10,817	452	42
Barges: PLS	10,662	18	2
Jones: PLS+HBL	10,225	626	61
Sml tnkr: PLS	5,795	251	43
Lge vsl: PLS	4,227	310	73
Jones: DB	3,284	265	81
Barges: ERS	0	0	0
Barges: HBL	0	0	0
Barges: SBT	0	0	0
Barges: ERTS	0	0	0
Barges: DB	0	0	0
Barges: HBL–PM	0	0	0
Barges: ERS+HBL	0	0	0
Barges: PLS+HBL	0	0	0
Model Results	307,346	4,517	14.697
Table 3–b.—Vessel Owner/Operator (Cost Minimization) Model: Existing vessel hull costs & benefits shown by vessel type and measures, ordered by costs			
Barges: ERS+HBL	0	0	0
Barges: HBL – PM	0	0	0
Barges: DB	0	0	0
Barges: ERTS	0	0	0
Barges: PLS+HBL	0	0	0
Barges: SBT	0	0	0
Barges: ERS	0	0	0
Barges: HBL	0	0	0
Barges: PLS	10,662	18	2
Jones: PLS	12,533	86	7
Jones: SBT	22,175	115	5
Sml tnkr: PLS	5,795	251	43
Jones: DB	3,284	265	81
Jones: HBL – PM	96,488	305	3
Lge vsl: PLS	4,227	310	73
All vsls: UPS	245,962	367	1
Sml tnkr: DB	10,817	452	42
Sml tnkr: SBT	65,795	544	8
Lge vsl: SBT	30,059	613	20
Jones: PLS+HBL	10,225	626	61
Jones: HBL	103,879	648	6
Sml tnkr: HBL – PM	104,502	678	6
Lge vsl: DB	27,346	722	26
Sml tnkr: HBL	115,270	894	8
Lge vsl: HBL – PM	14,531	1,028	71
Not bgs: ERS	148,334	1,166	8
Sml tnkr: PLS+HBL	68,247	1,310	19
Not bgs: ERS+HBL	203,719	2,094	10
Lge vsl: HBL	47,858	2,122	44

TABLE 3.—EXISTING VESSEL HULL MEASURES: SELECTED MODELS TO MAXIMIZE BENEFITS, COSTS, AND COST-PER-BENEFIT RATIO, PERMITTING SPECULATIVE APPROACHES—Continued

Vessel type and measure	Benefit	Cost	Cost per benefit
	Bbls ns	$million	$1,000/bbls ns
Not bgs: ERTS	242,606	2,860	12
Lge vsl: PLS+HBL	76,912	2,927	38
Model Results	245,962	367	1,492
Table 3–c.—Economic (Cost Per Benefit Unit) Model: Existing vessel hull costs & benefits shown by vessel type and measures, ordered by cost-per-benefit ratio			
Barges: HBL – PM	0	0	0
Barges: DB	0	0	0
Barges: ERTS	0	0	0
Barges: ERS+HBL	0	0	0
Barges: PLS+HBL	0	0	0
Barges: HBL	0	0	0
Barges: SBT	0	0	0
Barges: ERS	0	0	0
All vsls: UPS	245,962	367	1
Barges: PLS	10,662	18	2
Jones: HBL – PM	96,488	305	3
Jones: SBT	22,175	115	5
Sml tnkr: HBL – PM	104,502	678	6
Jones: HBL	103,879	648	6
Jones: PLS	12,533	86	7
Not bgs: ERS	148,334	1,166	8
Sml tnkr: HBL	115,270	894	8
Sml tnkr: SBT	65,795	544	8
Not bgs: ERS+HBL	203,719	2,094	10
Not bgs: ERTS	242,606	2,860	12
Sml tnkr: PLS+HBL	68,247	1,310	19
Lge vsl: SBT	30,059	613	20
Lge vsl: DB	27,346	722	26
Lge vsl: PLS+HBL	76,912	2,927	38
Sml tnkr: DB	10,817	452	42
Sml tnkr: PLS	5,795	251	43
Lge vsl: HBL	47,858	2,122	44
Jones: PLS+HBL	10,225	626	61
Lge vsl: HBL – PM	14,531	1,028	71
Lge vsl: PLS	4,227	310	73
Jones: DB	3,284	265	81
Model Results	245,962	367	1,492

Measures abbreviations:
PLS: Protectively located non-cargo tanks
SBT: Secregated ballast tanks
DB: Double bottoms
ERTS: Emergency Rapid Transfer System
ERS: Emergency Rescue System
Vessel abbreviations:
Vsl: Vessels
Bgs: Barges
Sml: Small
Tnkr: Tanker
Lge: Large
Jones: Jones Act vessels
Other abbreviations:
bbls ns: barrels of oil not spilled
"* * *": Highlights measures that satisfy the model
UPS: Under pressure System
HBL: Hydrostatic Balanced Loading
PM: Pre-MARPOL

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

The Coast Guard has evaluated the impact of this rule on small entities in accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Using the Small Business Administration's (SBA) definition of "small entities," there are only 11 U.S.

companies operating foreign flag tank vessels over 5,000 GT that could potentially qualify as small businesses. There are 363 foreign companies involved in the international shipping of oil to the U.S. market that could potentially qualify as small businesses. If this regulation were unduly burdensome to these companies, they would have the ability to remove their vessels from U.S. trade and still operate in other international trade.

Compared with the international tanker industry, the U.S. coastal tanker and barge industries are relatively small. The coastal tanker segment consists of 28 operators with 147 tankers; and 52 barge companies operating 191 barges. Of these, 14 companies operating tank ships or tank barges in the U.S. coastal trade are small entities.

Some U.S. companies operate both ships and barges. Among barge owners, three companies control almost 40 percent of coastal barges. However, 24 companies have only one barge. Compared with the barge industry, the tank vessel industry is less concentrated. The two largest companies control less than 20 percent of the market and three companies operate only one tanker each.

The Coast Guard supports PL/Spaces as the alternative of choice to meet the requirements of this rulemaking. Among the proven technologies, PL/Spaces is the least costly alternative on a per-vessel basis. For the foreign flag fleet, projected conversion costs range from an average of $40,000 per vessel for the smallest vessels covered by this rulemaking to an average $200,000 for the largest vessels. For U.S. flag vessels, projected conversion costs range from an average of $50,000 per vessel for the smallest vessels covered by this rulemaking to an average $220,000 for the largest vessels and $380,000 for barges of 5,000 GT and over. In the majority of cases, these costs are not out of line with the firm's capital investment. However, the Coast Guard has proposed to exclude from this rulemaking the U.S. barge and tank vessel fleet under 5,000 GT.

In addition, the Coast Guard has integrated measures into the rule to provide flexibility and accommodation to small entities affected by this rulemaking. Firms affected by the rule are not required to choose the Coast Guard's favored method of compliance, but may, subject to Coast Guard consideration and approval, either choose among the alternatives presented or propose their own alternatives. Small firms could explore approaches that would further reduce costs.

And, the Coast Guard has proposed a three-year phase-in of the rule from the date that the final rule is published. The Coast Guard estimates that the rule would become effective in early 1998. The phase-in period would permit affected entities to schedule conversions during normal drydocking periods, without the lost profits from removing their vessels from trade at an inconvenient time. This phase-in would also grant significant periods of time in which small entities could explore available alternatives, line up capital to perform conversions, and pre-arrange contracts with shipyards so as not to be shut out by large operators in a rush for shipyard space, were there no phase-in period. Domestic shipyards are in an excess capacity position, and bargaining power is expected to weigh in favor of the small operators with the foresight to plan ahead and take strategic advantage of the grace period permitted by the phase-in.

While this rule may result in the early retirement of some U.S. flag vessels from the domestic oil transportation business, the Coast Guard believes that this rule will not result in a significant impact on a substantial number of small entities, for several reasons: The exemption of tank vessels of less than 5,000 GT from this rulemaking, the flexibility of choosing among the options presented or to propose their other options, and the extension of the phase in period. However, if you are a small entity owner and believe that you will be significantly impacted by this rule, the Coast Guard requests that you send specific comments on the issue.

Collection of Information

Under the Paperwork Reduction Act of (44 U.S.C. 3501, *et seq.*), the Office of Management and Budget (OMB) reviews each proposed rule that contains a collection of information requirement to determine whether the practical value of the information is worth the burden imposed by its collection. Collection of information requirements include reporting, recordkeeping, notification, and other similar requirements.

This proposal contains new collection of information requirements in section § 157.415. The following particulars apply:

DOT No: 2115.

OMB Control No. XXXX.

Administration: U.S. Coast Guard.

Title: Structural and Operational Measures to Reduce Oil Spills from Existing Tank Vessels Without Double Hulls.

Need for Information: OPA 90 requires certain existing oil tankers without double hulls to comply with measures that provide as substantial protection to the environment as is economically and technologically feasible. The proposed rule specifically requires that existing single hull tank vessels over 5,000 GT that carry oil be fitted with PL/Spaces, or use measures equivalent to PL/Spaces that meet Coast Guard approval. The purpose of this rule is to reduce oil outflow from single hull vessels.

Plans, calculations, specifications, and operating manuals for an oil outflow protection system must be submitted to the Commandant (G–MVI), U.S. Coast Guard, Washington, DC 20593–0001 for approval prior to installation.

The Coast Guard's Marine Safety Program uses this information to ensure compliance with the proposed regulations for oil outflow prevention measures. It is a one-time submission of information. If no records were submitted, there would be no way of knowing if vessels are in proper compliance with the regulation. Without this information, each vessel would be subject to detailed and lengthy annual inspections to verify compliance.

Proposed Use of Information: The Coast Guard intends to use this collection of information to ensure regulatory compliance with required oil outflow prevention measures. Measures include: protectively located spaces and hydrostatic balance or an approved equivalent.

Frequency of Response: One time.

Burden Estimate: 592,956 hours.

Respondents: 234.

Average Burden Per Respondent: 2,534 hours/respondent.

The Coast Guard has submitted the requirements to OMB for review under section 3504(h) of the Paperwork Reduction Act. Persons submitting comments on the requirements should submit their comments both to OMB and to the Coast Guard as indicated in the "ADDRESSES" section of the preamble.

In addition, this NPRM contains a provision that would require the master, owner, or agent of each foreign flag vessel constructed or adapted to carry, or that carries, oil in bulk as cargo or cargo residue to include the oil tanker's international number in a report required under 33 CFR 160.207, "Notice of arrival." This required report is an approved collection of information (OMB control number 2115–0557) and expires July 19, 1993. The proposed addition is extremely minor and the information is readily available. Under OMB regulations (5 CFR 1320.14), the Coast Guard will include this new

requirement in its next request for renewed clearance.

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

This NPRM proposes requirements for the installation and use of structural and operational measures on single hull tank vessels over 5,000 GT. The authority to regulate tank vessel equipment is delegated to the Coast Guard by the Secretary of Transportation, whose authority is committed by statute.

Because tank vessels move between U.S. ports in the national marketplace and between U.S. and foreign ports in the international marketplace, standards for certain single hull tank vessels and their use are a matter for which regulations should be of national scope to avoid unreasonably burdensome variations. The Coast Guard intends these regulations to preempt State action addressing the same subject matter.

Environment

The Coast Guard has considered the environmental impact of this proposed rulemaking under COMDTINST M16475.1B. A draft Environmental Assessment (EA) is available in the docket for copying and inspection as indicated in the "ADDRESSES" section of this preamble. The draft EA discusses and compares the proposed action and alternatives, subsequent expected environmental impacts, and overall need for action.

By the year 2015, all vessels over 5,000 DWT operating in U.S. waters will be equipped with double hulls. In the interim, the Coast Guard has been given wide latitude under OPA 90 section 4115(b) to set structural and operational standards for single hull vessels for the purpose of reducing the amount of oil spilled into the marine environment. The Coast Guard has determined that compliance with either MARPOL structural specifications providing for PL/Spaces or an equivalent measure of protection will reduce the amount of oil spilled. Vessel owners or operators may instead use other measures, such as HBL, which the Coast Guard accepts as providing equally substantial environmental protection. Whatever alternative is chosen, however, the Coast Guard has proposed that all vessels must also carry lightering equipment. Foreign flag vessels must also report their international identification number.

Actual reductions in the numbers of oil spills and the volume of spilled oil as a result of the proposed regulation cannot be accurately estimated, due to the interrelationships of different prevention and mitigation regulations promulgated under OPA 90. Further, by complying with this proposed regulation, owners and operators may also be in compliance with the MARPOL requirements for existing vessels.

Sound structural design and efficient operational procedures, when combined with other requirements of OPA 90, should contribute to increased environmental protection and human safety. The impact of section 4115(b), however, is not expected to result in significant impact on the quality of the human environment, as defined in the National Environmental Policy Act (NEPA).

List of Subjects

33 CFR Part 157

Cargo vessels, Oil pollution, Reporting and recordkeeping requirements.

33 CFR Part 160

Administrative practice and procedure, Harbors, Hazardous materials transportation, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Vessels, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR parts 157 and 160 as follows:

PART 157—RULES FOR THE PROTECTION OF THE MARINE ENVIRONMENT RELATING TO VESSELS CARRYING OIL IN BULK

1. The authority citation for part 157 is revised to read as follows:

Authority: 33 U.S.C. 1903; 46 U.S.C. 3703; 49 CFR 1.46. Subpart G also is issued under section 4115(b), Pub. L. 101–380, 104 Stat. 520.

§ 157.03 [Amended].

2. Section 157.03 is amended by revising the introductory text to read "Except as otherwise stated in a subpart."

3. Subpart G is added to part 157 to read as follows:

Subpart G—Structural and Operational Measures for Certain Oil Tankers Without Double Hulls

Sec.
157.400 Purpose and scope.
157.410 Oil outflow protection for existing oil tankers.
157.415 Submission of oil outflow protection system designs.
157.420 Emergency lightering requirements for oil tankers.

Subpart G—Structural and Operational Measures for Certain Oil Tankers Without Double Hulls

§ 157.400 Purpose and scope.

(a) The Oil Pollution Act of 1990 requires certain existing oil tankers without double hulls to comply with measures that provide as substantial protection to the environment as is economically and technologically feasible.

(b) For the purposes of this subpart, "oil" has the same meaning as provided in § 151.05 of this chapter.

(c) This subpart is effective [Insert date three years from the date of publication of final rule].

(d) This subpart applies to each existing oil tanker of 5,000 gross tons or more that is not currently equipped with a double hull but required to be equipped with a double hull at a date set out in 46 U.S.C. 3703a(b)(3) and (c)(3). The timetable established by 46 U.S.C. 3703a(c) is contained in appendix G to this part.

§ 157.410 Oil outflow protection for existing oil tankers.

Each oil tanker covered by this subpart must be fitted or operated with one of the following measures no later than [Insert date three years from the date of publication of the final rule]—

(a) A double bottom or double sides as follows—

(1) On an oil tanker of 20,000 deadweight tons (DWT) or more that carries crude oil or an oil tanker of 30,000 DWT or more that carries oil other than crude oil—

(i) Double side tanks fitted in accordance with section 2(b)(1) of Appendix C to this part such that—

$EPA_c = J[L_t \times D]$, for each side where $J = 0.30$; or

(ii) Double bottom tanks fitted in accordance with section 2(b)(2) of appendix C to this part such that—

$EPA_c = J[L_t \times B]$, where $J = 0.30$;

(2) On an oil tanker of less than 20,000 DWT that carries crude oil or an oil tanker of less than 30,000 DWT that carries oil other than crude oil—

(i) Double side tanks, of the dimensions prescribed in § 157.10d(c)(1) or § 157.10d(d)(1) as appropriate, extending for the full depth of the side along at least 30 percent of each side within the cargo tank length; or

(ii) Double bottom tanks of the dimensions prescribed in § 157.10d(c)(2) or § 157.10d(d)(2), as appropriate, protecting at least 30 percent of the bottom plate area within the cargo tank length.

(b) Hydrostatic balanced loading.

(1) For purposes of this subpart, hydrostatic balanced loading means loading so that the cargo and vapor pressure exerted on the bottom shell plating (the plating which forms a single boundary between the cargo and the sea) does not exceed the external hydrostatic water pressure.

(2) The external hydrostatic water pressure is expressed by the following formula—

$(f)(hc)(Rc)(g)+(100)(dP)<or=(dn)(Rs)(g)$;

where—

f=safety factor=1.1; and,

hc=height of cargo in contact with the bottom shell plating in meters;

Rc=maximum cargo density in tons/cubic meter;

g=standard acceleration of gravity (9.81 meters/second squared);

dn=minimum operating draft under any expected loading conditions in meters;

dP=maximum set pressure of pressure/vacuum valve provided for the cargo tank in bars;

Rs=density of seawater in tons/cubic meter.

(c) Other structural or operational arrangements provided that the Commandant (G–MVI), U.S. Coast Guard determines that such arrangements provide as substantial protection to the environment as is economically and technologically feasible, and meet general safety considerations.

§ 157.415 Submission of oil outflow protection measure designs.

(a) Plans, calculations, specifications, and operating manuals for an oil outflow protection measure to be fitted or operated in accordance with § 157.410(b) or (c) must be submitted to the Commandant (G–MVI), U.S. Coast Guard, Washington, DC 20593–0001 for approval prior to installation.

(b) Upon satisfactory completion of plan review and inspection of the oil outflow protection measure, the Officer in Charge, Marine Inspection, shall endorse the Certificate of Inspection for U.S. flag vessels, or the Certificate of Compliance for foreign flag vessels to reflect that the vessel meets the requirements found in subpart G of this part.

§ 157.420 Emergency lightering requirements for oil tankers.

No later than [Insert date three years after the date of publication of the final rule], each oil tanker to which this subpart applies shall carry the following items in an on-deck locker located as close to the cargo manifold as practical:

(a) Reducers, bolts, and gaskets to allow at least two simultaneous transfer connections to be made from the vessel's cargo manifold to 6-inch, 8-inch, and 10-inch cargo hoses. All reducers must be permanently marked with sizes.

(b) One extra set of bolts, washers, nuts, and gaskets per reducer set must be carried as spares.

(c) Reducers, bolts, and gaskets must meet the requirements of 46 CFR 56.25.

PART 160—PORTS AND WATERWAYS SAFETY—GENERAL

4. The authority citation for part 160 continues to read as follows:

Authority: 33 U.S.C. 1231; 49 CFR 1.46.

5. In § 160.207, paragraph (c)(5) is added to read as follows:

§ 160.207 Notice of arrival: Vessels bound for ports or places in the United States.

* * * * *

(c) * * *

(5) No later than [Insert date three years after the date of publication of the final rule], the International Maritime Organization (IMO) international number of each foreign flag vessel of 5,000 gross tons or more, which is constructed or adapted to carry, or that carries, oil in bulk as cargo or cargo residue.

Dated: October 18, 1993.

J.W. Kime,

Admiral, U.S. Coast Guard Commandant.

[FR Doc. 93–26074 Filed 10–21–93; 8:45 am]

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federal register

Friday
October 22, 1993

Part VIII

Department of Defense
General Services Administration
National Aeronautics and Space Administration

Federal Acquisition Regulation; 1993 Consolidated Reprint, Looseleaf Edition; Notice

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); 1993 Consolidated Reprint, Looseleaf Edition

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of procedures for Federal agencies and departments to order the 1993 consolidated reprint of the looseleaf edition of the Federal Acquisition Regulation (FAR).

SUMMARY: This notice is to advise Federal agencies and departments to submit their copy requirements for the new 1993 consolidated reprint of the looseleaf edition of the FAR to the Government Printing Office (GPO). A consolidated reprint is a compilation of all current FAR pages with each page bearing the most recent FAC number, issuance date and change bars. It is the basic FAR with all FACs prefiled. Current subscribers who have maintained up-to-date FAR editions need not subscribe. Individual agency offices are responsible for making their requirements known to their agency GOP Liaison Officer. Agency GPO Liaison Officers are responsible for submitting agency copy requirements to GPO through their Printing and Publishing Official.

DATES: Agencies must submit their FAR copy requirements to GPO by November 30, 1993. The 1993 Consolidated Reprint will be distributed to agencies by GPO, beginning February 1994, based on agency-established copy requirements.

FOR FURTHER INFORMATION CONTACT: General Services Administration, FAR Secretariat (VRS), 18th and F Streets NW., room 4035, Attn: Ms. Beverly Fayson, Washington, DC 20405, (202) 501–4755.

SUPPLEMENTARY INFORMATION:

(1) The Federal Acquisition Regulation (FAR), established on April 1, 1984, is located in the Code of Federal Regulations at title 48, chapter 1. It is the primary regulation for use by all Federal Executive agencies in their acquisition of supplies and services with appropriated funds.

(2) The previous 1990 looseleaf edition of the FAR was distributed to agencies by the GPO, based on agency-established copy requirements. Updates (Federal Acquisition Circulars, FACs) to that edition were distributed in fiscal years (FY) 1990 through 1993, and also based on agency-established copy requirements for those years. GPO now requires agencies to submit by November 30, 1993, their copy requirements for the new 1993 Consolidated Reprint.

(3) Agency GPO Liaison Officers responsible for managing FAR distribution are being reminded to consolidate their agency's FAR copy requirements to make those requirements known to GPO through their agency Printing and Publication Official. All production costs will be prorated to participating agencies by GPO. The two volume set of the 1993 Consolidated Reprint of the FAR is expected to cost $13.

(4) Federal employees unable to obtain the new 1993 Consolidated Reprint through their agency GPO Liaison Officer may subscribe to the FAR directly with GPO by following the procedures in paragraph six of this notice. Agencies not submitting their Standard Form (SF) 1, Printing and Binding Requisition, for new copy requirements to GPO by November 30, 1993, will not be permitted to order by rider requisition; agencies will have to purchase their requirements from the Superintendent of Documents at a significantly increased per copy cost.

(5) FAC's will be issued in FY 1994, to be filed in the new basic 1993 consolidated reprint looseleaf edition of the FAR. Federal agencies/departments will also be required to submit by separate SF–1, their FY 1994 updated (FAC) requirements, when advised by GPO's Circular Letter to each agency Federal Printing and Publication Official.

(6) Private sector companies, associations, businesses, and other interested parties wishing to receive the 1993 consolidated reprint of the looseleaf edition of the FAR may place subscription orders with GPO by writing or calling: Superintendent of Documents, Government Printing Office, Washington, DC 20401, telephone: (202) 783–3238.

The price for each domestic or foreign subscription order is established by the Superintendent of Documents. GPO requires payment in advance unless charged to MasterCard, Visa, or GPO charge account.

Dated: October 18, 1993.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy, General Services Administration.

[FR Doc. 93–25984 Filed 10–21–93; 8:45 am]

BILLING CODE 6820–34–M

federal register

Friday
October 22, 1993

Part IX

Environmental Protection Agency

40 CFR Part 82
Protection of Stratospheric Ozone; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–4792–6]

RIN 2060–AD51

Protection of Stratospheric Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: With this action, EPA promulgates stratospheric ozone protection regulations required under Title VI of the Clean Air Act Amendments of 1990. This action promulgates regulations implementing the requirements of section 613 of the Act. The regulations also complement the Executive Order issued by President Clinton on April 21, 1993. This rule requires each department, agency, and instrumentality of the United States to conform its procurement regulations to the policies and requirements of Title VI of the Clean Air Act and to maximize the substitution of safe alternatives for ozone-depleting substances as identified under section 612 of the Act. The rule also requires each department, agency, and instrumentality of the United States to certify to OMB within twelve months of the final publication of this regulation that its procurement regulations have been modified in accordance with this rule. The promulgation of this rule satisfies EPA's obligation under section 613 of the Clean Air Act.

The substances affected by this rule are ozone-depleting substances which are listed as either class I or class II substances under rules promulgated under sections 604 and 606 of the Act. This regulation has been developed in consultation with the Administrator of the General Services Administration and the Secretary of Defense, as required by section 613.

EFFECTIVE DATE: This rule is effective on November 22, 1993.

ADDRESSES: Materials relevant to this rulemaking are contained in Air Docket A–93–12 at the U.S. Environmental Protection Agency (LE–131) 401 M Street SW., Washington, DC 20460. The Docket is located in room M–1500, First Floor, Waterside Mall. Material relevant to this rulemaking may be inspected from 8:30 a.m. to 12 noon and from 1:30 to 3:30 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Peter Voigt at (202) 233–9185, Program Implementation Branch, Stratospheric Protection Division, Office of Atmospheric Programs, Office of Air and Radiation, 6205J, 401 M Street SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

Outline

I. Background
II. Section 613—Federal Procurement
III. Summary of and Response to Comments on the Proposed Rule
  A. Class II Substances as Substitutes for Class I
  B. Stringency of Procurement Policies
  C. Section 610 Requirements
  D. Compliance with Title VI Requirements
  E. Impact of the Rule on Suppliers
  F. EPA Outreach Efforts
IV. Other Requirements of Title VI of the Clean Air Act
  1. Sections 604, 605, and 606—Phaseout of Ozone-depleting Substances
  2. Section 608—National Recycling and Emission Reduction Program
  3. Section 609—Servicing of Motor Vehicle Air Conditioners
  4. Section 610—Nonessential Products Containing Ozone-depleting Substances
  5. Section 611—Labeling
  6. Section 612—Significant New Alternative Policy (SNAP) Program
V. Implementation of Requirements Imposed Under Section 613
VI. Summary of Supporting Analyses
  A. Executive Order 12291
  B. Regulatory Flexibility Act
  C. Paperwork Reduction Act

I. Background

During the past decade, there has been a significant decrease in the detected amount of stratospheric ozone. Broad scientific consensus has emerged that such continuing depletion of the stratospheric ozone will lead to increased levels of UV-B radiation penetrating to the earth's surface, resulting in potential health and environmental harm, including increased incidence of certain skin cancers and cataracts, suppression of the immune system, damage to crops and aquatic organisms, increased formation of ground-level ozone, and increased weathering of outdoor plastics. According to information released on December 17, 1991, by the United Nations Environment Programme (UNEP) Scientific Assessment of Ozone Depletion, the rate of ozone depletion is significantly greater than originally estimated in 1989. To address this problem, the United Nations Environment Programme sponsored the successful negotiation of the Montreal Protocol on Substances that Deplete the Ozone Layer (the Montreal Protocol). In effect since 1988, the Protocol requires each nation party to it to control the production and consumption of substances which deplete stratospheric ozone. These substances include chlorofluorocarbons (CFCs), halons, carbon tetrachloride, methyl chloroform and hydrochlorofluorocarbons. The United States is a party to this international agreement. (For a more detailed explanation of the issues involved, see 57 FR 33755–33757 (July 30, 1992.)

The Clean Air Act, like the Montreal Protocol, establishes controls in the production and consumption of ozone-depleting substances and also creates additional regulatory programs aimed at reversing the trend of ozone depletion. As a result, EPA has issued, or will be issuing, a series of regulations which deal with the production, consumption, use, and treatment of ozone-depleting chemicals.

II. Section 613—Federal Procurement

Among the regulations that EPA must issue to address the use of ozone-depleting substances is a rule requiring federal agencies to modify their procurement regulations to maximize the use of safe alternatives to ozone-depleting substances and otherwise conform those regulations to the Clean Air Act's policies and requirements regarding ozone protection. This rule is required by section 613 of the Act which states: "Not later than 18 months after the enactment of the Clean Air Act Amendments of 1990, the Administrator, in consultation with the Administrator of the General Services Administration and the Secretary of Defense, shall promulgate regulations requiring each department, agency, and instrumentality of the United States to conform its procurement regulations to the policies and requirements of this Title and to maximize the substitution of safe alternatives identified under section 612 for class I and class II substances. Not later than 30 months after the enactment of the Clean Air Act Amendments of 1990, each department, agency and instrumentality of the United States shall conform its procurement regulations and certify to the President that its regulations have been modified in accordance with this section." As required by the statute, EPA consulted with the General Services Administration and with the Department of Defense in developing this rule.

In a separate action on April 21, 1993, President Clinton issued Executive Order No. 12843 titled "Procurement Requirements and Policies For Federal Agencies For Ozone-Depleting Substances." The Executive Order requires that Federal agencies revise their procurement practices and implement cost-effective programs both to modify specifications and contracts that require the use of ozone-depleting

substances and to substitute non-ozone-depleting substances to the extent economically practicable. The terms of this order are similar to the regulation being issued today. However, today's rule applies to broader groups of Federal entities than are covered by the executive order.

The aim of section 613, E.O. 12843, and today's regulation is the establishment of affirmative procurement programs in all federal agencies that will maximize the substitution of safe alternatives to ozone-depleting substances and further implementation of the other policies and requirements of Title VI.

Most Federal procurement is governed by the Federal Acquisition Regulation ("FAR"). The FAR is prepared, issued and maintained jointly by the Secretary of Defense, the Administrator of General Services, and the Administrator of the National Aeronautics and Space Administration. Revisions to the FAR are issued through two councils, the Defense Acquisition Regulations Council, and the Civilian Agency Acquisition Council. (See generally 48 CFR Subparts 1.1 and 1.2.) In addition, many, but not all, Federal agencies have promulgated regulations to supplement the FAR, which appear at 48 CFR parts 2 through 63.

This rule requires each Federal agency to amend its procurement regulations in Title 48 (or, where it has no such regulations at present, to adopt new regulations) to conform with the requirements and policies of Title VI of the Clean Air Act and the policies and requirements specified in this rule, and to direct that purchasing of safe substitutes for ozone-depleting substances will be maximized to the extent practicable. EPA believes that in implementing Title VI and these regulations, agencies should take into account the technical feasibility and costs of conversion as changes are made. These consideration are discussed in greater detail in section VI of this preamble.

At the same time, the councils responsible for amending the FAR and the Office of Federal Procurement Policy (OFPP) in the Office of Management and Budget are working with EPA to amend the FAR itself in a similar manner. Once the FAR is amended in this fashion, there would be no need for individual agencies subject to the FAR to adopt regulations, and the rule published today would relieve them of the need to do so in that event.

As noted at the time of the proposed rule, some agencies that fall within the term "department, agency or instrumentality of the United States" as defined in today's rule are not subject to the FAR, and each such entity will be required by this rule to adopt its own regulation, whether or not they are within the scope of the Executive Order. The entities most clearly affected in this way are the Postal Service, the Postal Rate Commission, the Senate, House of Representatives, and the Architect of the Capitol, all of which do not fall within the scope of the FAR or of the Executive Order.

It was also noted at proposal that decisions about what to purchase, or decisions on specifications for items to be purchased, are generally made by officials other than those who carry out the procurement process. Each agency should, therefore, take the steps necessary to ensure that officials responsible for substantive purchasing decisions are aware of, and properly implement, the requirements imposed by the regulations adopted pursuant to today's rule.

III. Summary of and Response to Comments on the Proposed Rule

A. Class II Substances as Substitutes for Class I

The Agency received a number of comments regarding the proposed rule. The most frequent comment indicated that the notice of proposed rulemaking seemed to treat class I and class II as equivalent and require agencies to find substitutes for both immediately, whereas class II substances are in fact frequently viable substitutes for class I substances. Commenters suggested that the preamble to the rule should indicate clearly that class II substances are viewed as viable substitutes for class I substances under both Title VI and under section 612, Significant New Alternative Program, regulations (58 FR 28094). It was indicated that the Agency should distinguish between the urgency of phasing out class I substances and the use of class II substances as viable interim alternatives.

In response, EPA intends that this rule mirror the policies enacted in Title VI, and these policies clearly indicate that class II substances may serve as interim substitutes for class I substances (i.e., prior to the statutory phaseout of class II substances). The Agency does not intend in today's rule to require or suggest to federal agencies that they should not use a class II ozone-depleting substance where such substitution is not precluded by section 612 and not precluded by the section 610 bans on nonessential products. The rule has been modified to make this clear.

Federal officials should look to section 612 requirements as they deal with the acquisition of ozone-depleting substances. The regulation implementing section 612, which was issued as a proposal on May 12, 1993 (58 FR 28093), will provide agencies with a source of information regarding acceptable and unacceptable substitutes and will promote the use of safe substitutes and processes in the elimination of ozone-depleting substances.

It should be noted that class I and class II substances are being phased out on different schedules. These schedules reflect both the variation in the ozone-depletion potential of these substances as well as the intended use of class II substances as substitutes for class I substances. Agencies should be aware of the phaseout schedules of these substances, the requirements of section 612, and all of the requirements of title VI when making purchasing decisions. Nothing in today's rule, however, precludes using class II substances in place of class I substances prior to the phaseout of class II substances.

B. Stringency of Procurement Policies

One commenter indicated that federal agencies should not be allowed to adopt procurement requirements that are inconsistent with any section of Subtitle VI of the Clean Air Act. It was suggested EPA prohibit agencies from adapting that differing requirements or policies that are more stringent than the recently published section 612 regulations because such policies could impact the marketplace, economics, product availability and the competitive bidding process.

EPA agrees with the principle that agencies' procurement policies and practices should be consistent with the policies and requirements of Subtitle VI. However, phasing out uses of ozone-depleting substances more quickly than the law requires that production be phased out is not inconsistent with the statute. Moreover, purchasing decisions rest with the individual agencies. EPA believes that federal agencies making purchasing decisions, like other consumers of goods and services, are influenced by product price and availability. As a result, it is believed that these market forces will continue to be the primary determinant in buying decisions made by agencies under this rule. However, it is within the discretion of agencies to eliminate the use of ozone-depleting substances on any schedule that satisfies these requirements.

The primary thrust of Subtitle VI is to phase out the availability of ozone-depleting substances under sections 604 and 606. Therefore, it is anticipated that

the decreasing availability of class I substances, coupled with the guidance on safe substitutes promulgated under section 612, will play a major role in changing the buying practices of federal agencies consistent with the intent of Title VI. This policy is reflected in § 82.84(a)(2) as promulgated in this rule.

C. Section 610 Requirements

One commenter indicated that the preamble to the proposed rule specifically cited banning the distribution of "any plastic foam product which contains or is manufactured with a class II substance" under section 610 without indicating that under section 610(d)(3)(4), foam insulation products are excluded from that prohibition. The commenter is correct in noting that section 610 contains certain exclusions, and the purchase of such products would not be prohibited under today's rule. No change from the proposed rule is required by this comment.

D. Compliance With Title VI Requirements

A commenter indicated that the federal government should be mindful of the leeway granted to industry in complying with the labeling regulation that became effective in May, 15, 1993, but which, according to the commenter, "EPA will not enforce for 9 months to give the industry an opportunity to comply."

EPA recognizes that because of concerns over the short time period in which companies had to comply, no enforcement actions will be taken until nine months after the date of the publication of the rule on labeling (i.e., before November 11, 1993). This nine month period is intended to recognize that some companies are making their best faith efforts to be in compliance with the regulations by either switching to an alternative technology/substance, or by implementing a labeling process. This is not meant as an extension of the May 15, 1993, effective date. However, it is not anticipated that the amendments to agency purchasing regulations pursuant to today's rule are likely to be finalized prior to November 1993, and certainly purchases under the amended rule are unlikely to occur prior to that date. Therefore, EPA does not expect that today's rule will have any impact inconsistent with its enforcement approach with respect to labeling.

The commenter further indicated that EPA should: (1) Encourage agencies to participate in a refrigerant banking program and bank only with an EPA-certified reclaimer; (2) maintain existing equipment in good working order and repair all substantial leaks; (3) require the certification of service technicians of [refrigeration] equipment.

EPA recognizes that several of these suggestions may be sound policy for adoption by some federal agencies. The use of halon banking was specifically recommended in the preamble to the proposed rule. However, this regulation is limited in scope to federal agency procurement regulations. It is beyond the scope of this regulation to mandate specific purchases or agency policies to reduce the need for purchases of class I or class II substances. Further, in developing policies and practices to meet the Title VI requirements, agencies should rely on the specific regulations governing each of the sections of Title VI as they are outlined below.

E. impact of the Rule on Suppliers

One commenter raised several questions regarding the impact of amending federal procurement regulations on government contractors and suppliers. The questions centered on the allocation of cost burdens of implementing new processes under existing contracts, the costs of acceptance testing, whether preferential treatment would be given in awarding contracts if ozone-depleting substances are eliminated, and whether procurement regulations will promote the use of unsafe processes in order to achieve such elimination.

In response, these are issues to be dealt with by federal agencies in adopting and implementing revisions to their procurement regulations. They are beyond the scope of today's rule, which simply requires agencies to make such revisions. EPA notes, however, that the safety of alternative products and substances is a consideration that agencies might choose to take into account in determining whether substitution is practicable.

F. EPA Outreach Activities

Several agencies requested that EPA establish activities to keep federal agencies informed of requirements and developments in this area. In addition, information on the requirements of all of the sections of Title VI was requested by agencies.

As was discussed at greater length in the preamble to the proposed rule, EPA is prepared to assist agencies in implementing the requirements of E.O. 12843, as well as the requirements of this regulation. In addition, as indicated previously, the section 612 regulation will be the definitive source of information regarding safe alternatives. In addition, the Agency is collecting information on model processes, specifications and substitution efforts. Materials regarding successful practices should be sent to and can be obtained from the contact person identified in the summary section at the beginning of this regulation.

IV. Other Requirements of Title VI of the Clean Air Act

Because the rule requires all agencies to conform their procurement regulations to the whole range of ozone protection policies and requirements, familiarity with many of the other regulations to be issued by EPA is important. Provisions of Title VI particularly relevant to today's proposed rule include the following:

(1) Phaseout of the Production and Importation of Controlled Substances (Sections 604, 605, and 606);
(2) Recycling and Reduction in Emissions of Ozone-depleting Substances (Section 608);
(3) Servicing of Motor Vehicle Air Conditioners (Section 609);
(4) Bans on Nonessential Products Containing Ozone-depleting Substances (Section 610);
(5) Labeling of Products Made with or Containing Controlled Substances (Section 611); and
(6) Safe Alternatives Policy (Section 612).

Familiarity with those requirements and policies will be essential to the development of agency regulations and practices under this rule. Therefore, a more detailed description of the proposed regulations follows.

1. Sections 604, 605, and 606—Phaseout of Ozone-Depleting Substances

Section 604 and 605 of the Act place production and consumption limits on class I and class II ozone-depleting chemicals, respectively. The same sections also require the phasing out of the production and consumption of these chemicals. Section 606 allows the Administrator of EPA to accelerate the phaseout of these chemicals if: (1)—"the Administrator determines that a more stringent schedule may be necessary to protect human health and the environment"—; (2)—"the Administrator determines that a more stringent schedule is practicable"—; or (3)—"the Montreal Protocol is modified to include a schedule to control or reduce production, consumption, or use of any substance more rapidly than the applicable schedule under this Title".

The phaseout of the class I substances addressed in today's rule is governed by regulations contained in 40 CFR part 82. An accelerated phaseout was proposed

on March 18, 1993 (58 FR 15014) in response to recent scientific findings and to changes in the Montreal Protocol. The proposal would phase out halons by January 1, 1994, and CFCs, carbon tetrachloride, halons, and methyl chloroform by January 1, 1996. In addition, hydrobromofluorocarbons (HBFCs) would be added and scheduled for phaseout on January 1, 1996, and methyl bromide would be added and scheduled for phaseout on January 1, 2001. HCFCs would also be scheduled for phaseout, beginning with HCFC 141b on January 1, 2003.

The phaseout requirements of section 604, 605, and 606, and the regulations to be promulgated thereunder, do not bear directly on the purchase of goods and services; rather, they are directed at the production, import and export of class I and class II substances. Therefore, the phaseout of the production and imports of these substances will affect the ability of federal agencies to obtain these substances, and products containing or made with them. As a result, familiarity with the phaseout is important for agency officials making purchasing decisions. At the same time, compliance with today's rule will reduce the demand for such products by federal agencies; therefore, this rule complements the phaseout requirements.

Given the proposed schedules for the accelerated phaseout, it is vital that efforts to implement the use of substitute chemicals and processes be conducted as quickly as possible. Agencies should take steps to convert existing equipment and processes to the use of alternatives in order to ensure compliance with the impending regulatory deadlines under Title VI of the Act.

Further, the accelerated phaseout proposal also addresses the phaseout of certain HCFCs on an accelerated schedule based on their ozone depletion potential. The faster phaseout of these substances was proposed as a result of longer term concerns regarding ozone depletion, and the actual or anticipated availability of non-ozone-depleting substitutes. These substances are at this time used primarily as substitutes for CFCs in refrigeration and cooling systems and insulation.

The proposed accelerated phaseout rule also contains provisions for considering exemptions for the manufacture of these substances for essential uses after the phaseout. In separate notices, EPA provided information regarding the requirements for and the procedures to be followed in applying for an "essential use" exemption. Copies of these notices (58 FR 6788 and 58 FR 29410) can be obtained by writing or calling the information contact listed in that proposed regulation. It should be noted that while the Act allows very limited exceptions, there is no guarantee that such exceptions will be granted. Such nominations for exemptions, if accepted by EPA and the United States, must also be authorized by Parties to the Montreal Protocol.

2. Section 608—National Recycling and Emission Reduction Program

Section 608 requires the Administrator of EPA to promulgate regulations establishing standards and requirements regarding the handling of ozone-depleting refrigerants during the service, repair, or disposal of refrigeration and air-conditioning equipment. Under section 608, EPA promulgated final regulations on May 14, 1993, (58 FR 28660) to recapture and recycle these substances. The requirements of section 608 include regulations covering class I and class II substances used or disposed of during the service, maintenance, repair, and disposal of air-conditioning and refrigeration equipment. In addition to mandating an effective date for regulations requiring recycling of class I refrigerants, section 608 specifically prohibits knowingly venting of both class I and class II refrigerants during service, maintenance, repair and disposal of air-conditioning and refrigeration equipment, effective July 1, 1992. "De minimis" releases associated with good faith efforts to recover or recycle are exempt from the prohibition.

EPA's final rule for section 608 has five main elements, which, taken together, satisfy the criteria for recycling, emission reduction, and disposal. First, the Agency requires technicians servicing and disposing of air-conditioning and refrigeration equipment to observe certain service practices that reduce refrigerant emissions. Second, EPA requires technicians servicing air-conditioning and refrigeration equipment to obtain certification through an EPA-approved testing organization and restricts sales of refrigerant to these certified technicians. Third, EPA regulations establish equipment and reclaimer certification programs. These have the goal of verifying: (1) That all recycling and recovery equipment sold is capable of minimizing emissions and (2) that reclaimed refrigerant on the market is of known and acceptable quality to avoid equipment failures from contaminated refrigerant. Fourth, EPA requires repairs of substantial leaks, based on annual leak rates which vary according to two categories of refrigeration equipment. Fifth, to implement the safe disposal requirements, EPA requires ozone-depleting refrigerants in appliances, machines and other goods to be removed from these items prior to their disposal, and that all air-conditioning and refrigeration equipment except for small appliances and room air-conditioners be provided with a servicing aperture that would facilitate the recovery of refrigerant.

At this time EPA believes that continued use of class I substances in existing equipment through recycling can serve as a useful bridge to alternative products while minimizing disruption of the current capital stock of equipment, preventing costly early retirement of equipment. Agencies will need to be aware of this as they develop their procurement policies, their plans for the management of refrigerants, and their schedules for retrofitting equipment currently requiring the use of ozone-depleting substances.

The requirements of section 608, and the regulations promulgated thereunder, apply to federal agencies independently of today's proposed rule. In addition, compliance with section 608 is a requirement of the procurement regulation being issued today.

3. Section 609—Servicing of Motor Vehicle Air Conditioners

Section 609 was established to control the release of refrigerant during servicing of motor vehicle air conditioners. Although each automobile has a relatively small refrigerant charge, it is estimated that motor vehicle air-conditioners consumed over 48,000 metric tons of CFC–12 in 1989. This amounts to 21.3 percent of total CFC use in the United States.

Section 609 provides that any person repairing or servicing motor vehicle air conditioners (MVACs) for consideration must properly use refrigerant recycling equipment that has been approved by EPA. All such persons must be properly certified.

The section 609 rule, 40 CFR 82.30–82.42, established standards for refrigerant recycling equipment and proper use of such equipment. The rule also established the criteria for technician certification programs and the standard for recycling equipment. Two independent testing organizations were approved by EPA to verify that the equipment meets the established standards. The Agency maintains the list of approved equipment. The sale in interstate commerce of any class I or class II substance suitable for use in a motor vehicle air-conditioning system

in small containers (less than 20 pounds) is also restricted to certified technicians.

The requirements of section 609, and the regulations promulgated thereunder, apply to federal agencies independently of today's proposed rule. Therefore, in servicing, replacing or retrofitting their vehicle fleets, agencies need to be cognizant of these requirements. However, compliance with these regulations will reduce the need for agencies to purchase class I substances.

Agency regulations adopted pursuant to today's rulemaking action, should specifically restrict the purchase of substances whose sale is restricted under section 609. Furthermore, agencies would be required to make compliance with section 609 and the regulations promulgated thereunder a condition of any contract involving the performance of a service activity subject to section 609.

4. Section 610—Nonessential Products Containing Ozone-Depleting Substances

Section 610 of the Act requires EPA to "identify nonessential products that release class I substances into the environment (including any release during manufacture, use, storage, or disposal) and prohibit any person from selling or distributing any such product, or offering any such product for sale or distribution, in interstate commerce." Specific products to be prohibited that use class I substances include "chlorofluorocarbon-propelled plastic party streamers and noise horns" and "chlorofluorocarbon-containing cleaning fluids for noncommercial electronic and photographic equipment."

EPA is further required to prohibit at a minimum "other consumer products" that are determined to release class I substances and to be nonessential. In determining whether a product is nonessential, EPA is instructed to consider: "the purpose or intended use of the product, the technological availability of substitutes for such product and for such class I substances, safety, health, and other relevant factors." EPA promulgated regulations that include a ban on congressionally banned products and flexible packaging foam and certain aerosol products not covered by the statutory ban. On January 15, 1993, the final regulation on the ban of nonessential products releasing class I ozone-depleting substances and requiring elimination of emissions from products using class I substances was promulgated. See 40 CFR 82.60–82.68.

In addition, section 610(d) states that after January 1, 1994, "it shall be unlawful for any person to sell or distribute, or offer for sale or distribution, in interstate commerce—(A) Any aerosol product or other pressurized dispenser which contains a class II substance; or (B) any plastic foam product which contains, or is manufactured with, a class II substance." Some exceptions that can be made by EPA are specified in the statute.

EPA believes that, unlike the class I ban, the class II ban is self-effectuating. EPA believes it has the authority to issue regulations as necessary to implement the class II ban under section 610 of the Clean Air Act, as amended, and is currently preparing a proposal.

Section 610 and the regulations promulgated thereunder apply to the sale, rather than the purchase, of nonessential products. However, to ensure conformity with the requirements and policies of Title VI, agency regulations adopted under today's rule prohibit the purchase of any product whose sale has been prohibited under section 610. Of course, to carry out the more general requirement of maximizing the substitution of safe alternatives to ozone-depleting substances, agencies will have to consider their need to purchase all such products, not just those prohibited under section 610.

5. Section 611—Labeling

Section 611 and the regulations promulgated thereunder specify labeling requirements, effective May 15, 1993, for containers of class I and class II substances, and products containing or manufactured with class I substances. See 58 FR 8136, 40 CFR 82.100–82.124. The Act stipulates that "no container in which a class I or class II substance is stored or transported, and no product containing a class I substance, shall be introduced into interstate commerce unless it bears a clearly legible and conspicuous label stating: "Warning: Contains [*insert name of substance*], a substance which harms public health and environment by destroying ozone in the upper atmosphere."

Section 611 also mandates that this same labeling requirement "shall apply to all products manufactured with a process that uses such class I substances, unless the Administrator determines that there are no substitute products or manufacturing processes that: (A) Do not rely on the use of such class I substance; (B) reduce the overall risk to human health and the environment; and (C) are currently or potentially available." The label for products manufactured with a class I substance is required to state: "Warning: Manufactured with [*insert name of substance*], a substance which harms public health and environment by destroying ozone in the upper atmosphere."

After May 15, 1993 and before 2015, the labeling requirement shall apply to products containing or manufactured with a class II substance only "if the Administrator determines, after notice and opportunity for public comment, that there are substitute products or manufacturing processes: (A) That do not rely on the use of such class II substance; (B) that reduce the overall risk to human health and the environment; and (C) that are currently or potentially available." The label is required to have the same wording as that for class I substances. After 2015, these labeling requirements shall apply to *all* products containing or manufactured with a class I and a class II substance.

Section 611 and the regulations thereunder apply to the labeling of products and containers, not to their purchase. However, to ensure conformity with the regulations and policies of Title VI, agency regulations adopted by today's rule must make compliance with section 611 a specification for the purchase of any product or container to which section 611 applies.

6. Section 612—Significant New Alternatives Policy (SNAP) Program

Section 612 states as a policy that "to the extent practicable, class I and class II substances shall be replaced by chemicals, product substitutes, or alternative manufacturing processes that reduce overall risks to human health and the environment." Substitutes can be either existing or new, currently or potentially available.

Section 613 specifically refers to the substitution of safe alternatives identified under section 612 for class I and class II substances. Thus, the above policy, as well as the other requirements of section 612, are relevant to this final rule.

Under section 612, EPA published on May 12, 1993, (58 FR 28094) a proposed list of unacceptable substitutes and a preliminary list of acceptable alternatives. In the same Notice of Proposed Rulemaking, EPA also described the structure of the SNAP Program, including the mechanism for ongoing expansion of the lists as new substitutes are developed, as well as the requirements for a petition process to add or remove substances from either of the two lists once they are finally issued. The authority provided in section 612(c) allows EPA to promulgate

regulations making it unlawful to replace any class I or class II substance with any substitute which may present adverse effects to human health or the environment, where an alternative to such a replacement has been identified that reduces overall risk and is currently or potentially available. Based on language in section 612, EPA's proposal defined a substitute as any new or existing chemical, product substitute, or alternative manufacturing process that is currently or potentially available. It should be noted that section 612 does not mandate the use of safe substitutes. Rather this section bans the use of unacceptable substitutes.

In evaluating substitutes, EPA's characterization of overall risk includes such factors as chlorine loadings, ozone-depletion potential, toxicity to human health, air, water, and solid/hazardous waste effects, exposure to workers, consumers, the general population, and aquatic organisms, flammability, and global-warming potential. Substitutes are evaluated by use and in the context of: (1) The risks the substitute is replacing (i.e., the risks of continued use of the class I or class II substances); and (2) the risks from other substitutes. Given the particular use of a substance within a given sector, effects on human health and the environment can vary significantly. Thus, risk characterizations are specific to each use sector and application.

In addition, economic feasibility must be assessed to ensure that the initial list of acceptable substitutes includes alternatives that are available and reasonable in terms of the cost of conversion. The Agency believes that such an examination helps to minimize uncertainty in the marketplace and encourage many to substitute sooner rather than later. EPA intends to issue the final SNAP rulemaking in early 1994.

At the same time as the publication of the final SNAP rule, EPA will also publish its revised list of acceptable substitutes and will promulgate the list of prohibited substitutes. Any substitute not reviewed by the Agency prior to the promulgation of the rules implementing the SNAP program will need to be submitted for review under the SNAP program once it becomes effective.

Today's rule is closely related to section 612, as the purchase of safe alternatives is expected to be the principal means through which agencies will minimize their purchase of ozone-depleting substances. To ensure conformity with section 612, the regulations adopted by agencies pursuant to today's rule require agency officials both to comply with the policy in section 612(a) of maximizing the use of alternatives to class I and class II substances in making agency purchasing decisions, and to comply with the regulations issued by EPA identifying unacceptable substitutes. It must be noted that class II substances are frequently considered safe alternatives to class I substances under the SNAP rule, and purchase of these substances as appropriate will be in compliance with section 612.

V. Implementation of Requirements Imposed Under Section 613

As indicated earlier, Executive Order 12843 has already directed agencies to take the actions necessary to take into account the phaseout of ozone-depleting substances. Many agencies are already implementing these requirements. However, the following discussion may provide additional information to agencies and assist them in their implementation activities. Much of this discussion appeared in the preamble to the proposed rule, but is restated here for the benefit of agency personnel affected by the rule.

Section 613 does not require EPA to issue detailed rules specifying the manner in which federal agencies are to reduce their use of ozone-depleting substances or related products, and substitute safer alternatives, and EPA is not attempting to do so here. Rather, EPA expects that these details will be addressed when agencies adopt and subsequently implement the regulations or other procedures required by today's rule. Because of the immense variety and complexity of agency decisions regarding which products to purchase to meet its mission, as well as the variety of agency procurement processes, EPA does not consider it appropriate to specify what agencies must adopt in greater detail than is specified here.

Translating the general requirement of this proposed rule into actual purchasing decisions will of course require further efforts by agencies to identify alternatives to currently used products, or to find entirely different approaches that avoid the need to purchase such products altogether. For example, agencies may change the specifications for cleaning requirements of electronic components from solvents that are ozone-depleting to cleaning agents that are safe, non-ozone-depleting substitutes. Based upon these efforts, agencies will need to develop internal plans, policies or guidance that will ensure compliance with the general requirement of maximizing the use of safe substitutes for ozone-depleting substances. However, EPA does not consider it appropriate to specify in this rule the precise nature of how such policies should be developed and structured in each agency, which is a matter of internal management.

It is important to note that today's regulation is intended to cover both new contracts and purchasing agreements, and contract renewals. Because the availability of class I and class II substances will be severely limited in the near future, agencies may also need to renegotiate existing contracts, or contract renewals, to ensure the successful conversion to substances and processes which do not require the use of controlled substances in time to comply with the requirements of Title VI of the Act.

It should also be noted that, consistent with the policy stated in section 612 of the Act, these proposed regulations require that agencies maximize the substitution of safe alternatives "to the extent practicable." This approach is intended to give agencies flexibility to deal with conditions resulting from the phaseout of ozone-depleting substances.

Not all agency practices that result in the potential release of ozone-depleting substances are within the scope of section 613. For example, existing equipment containing CFCs may be a potential source of releases, and neither section 613, nor today's proposed rule, requires that such equipment be immediately taken out of service. However, to the extent that the maintenance of such equipment requires the purchase of replacement CFCs, it would be affected by this rule, and agencies should adopt appropriate policies that maximize the substitution of safe alternatives to ozone-depleting substances to the extent practicable. This may include modifying existing equipment, or replacing it on a more rapid schedule than would otherwise be the case. In addition, where the purchase of ozone-depleting substances is unavoidable, agencies are strongly encouraged under today's proposal to further the broad aims of Title VI.

To the extent that the operation of existing equipment does not incur purchases or substitution and is thus beyond the scope of today's proposed rule, but otherwise involves the use of ozone-depleting substances, EPA urges agencies to adopt policies designed to minimize the release of ozone-depleting substances and to maximize recycling and conservation of the substances as required by sections 608 and 609 of the Act. For example, agencies dismantling halon systems might consider recycling these chemicals and providing them to halon banks. In addition, agencies are required to comply with the

prohibitions on venting under section 608 of Title VI of the Act and any requirements regarding recycling and emission control under that section and section 609.

EPA recognizes that there often are substantial financial requirements inherent in making conversions to processes that do not use ozone-depleting substances. The practicability feature of the rule will allow such considerations to be taken into account in selecting methods to reduce demand for ozone-depleting substances. The immense variety of equipment and processes used by the federal government make it impossible for EPA to specify in detail what types of actions must be taken and what lengths of time should be allowed to take them. EPA also notes that time is a consideration in determining what is practicable. What is impracticable in the short-term may be feasible over a longer period of time.

VI. Summary of Supporting Analyses

A. Executive Order 12291

Executive Order (E.O.) 12291 requires the preparation of a regulatory impact analysis for major rules, defined by the order as those likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, federal or state government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

EPA has determined that this regulation does not meet the definition of a major rule under E.O. 12291 and has therefore not prepared a formal regulatory impact analysis. EPA believes that this rule will not have a significant economic impact, since its underlying purpose is to prepare Federal agencies to deal with the phaseout of ozone-depleting substances required under Title VI of the Clean Air Act.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–612, requires that Federal Agencies examine the impact of their regulations on small entities. Under 5 U.S.C. 604(a), whenever an agency is required to publish a general notice of proposed rulemaking, it must prepare and make available for public comment an initial regulatory flexibility analysis (RFA). Such an analysis is not required if the head of an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, pursuant to 5 U.S.C. 605(b).

EPA believes that the regulation will not have a significant impact on a substantial number of small entities and has concluded that an RFA is unnecessary. This regulation requires Federal agencies to conform their procurement regulations to the regulations, policies and procedures governing the phaseout of ozone-depleting substances. EPA believes that most companies in industries supplying goods and services made with or containing ozone-depleting substances to the Federal government are already aware of the requirements of Title VI. Therefore, these companies are prepared to offer alternatives to meet amended or new federal procurement specifications required by this regulation. This regulation primarily affects government procurement specifications, to which small entities respond at a cost level appropriate to the goods and services purchased.

C. Paperwork Reduction Act

There are no information collection requirements under this rule which are covered by the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. Rather, this rule requires that those agencies that are not covered by the FAR certify to the Office of Management and Budget that their procurement regulations have been modified as required. Therefore, no Information Collection Request document has been prepared.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Chlorofluorocarbons, Exports, Hydrochlorofluorocarbons, Imports, Interstate commerce.

Dated: October 15, 1993.

Carol M. Browner,

Administrator.

Title 40, Code of Federal Regulations, part 82, is amended to read as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671(q).

2. A new subpart D is added to read as follows:

Subpart D—Federal Procurement

Sec.

82.80 Purpose and scope.
82.82 Definitions.
82.84 Requirements.
82.86 Reporting requirements.

Subpart D—Federal Procurement

§ 82.80 Purpose and scope.

(a) The purpose of this subpart is to require Federal departments, agencies, and instrumentalities to adopt procurement regulations which conform to the policies and requirements of Title VI of the Clean Air Act as amended, and which maximize the substitution in Federal procurement of safe alternatives, as identified under section 612 of the Clean Air Act, for class I and class II substances.

(b) The regulations in this subpart apply to each department, agency, and instrumentality of the United States.

§ 82.82 Definitions.

(a) *Class I substance* means any substance designated as class I by EPA pursuant to 42 U.S.C. 7671(a), including but not limited to chlorofluorocarbons, halons, carbon tetrachloride and methyl chloroform.

(b) *Class II substance* means any substance designated as class II by EPA pursuant to 42 U.S.C. 7671(a), including but not limited to hydrochlorofluorocarbons.

(c) *Controlled substance* means a class I or class II ozone-depleting substance.

(d) *Department, agency and instrumentality of the United States* refers to any executive department, military department, or independent establishment within the meaning of 5 U.S.C. 101, 102, and 104(1), respectively, any wholly owned Government corporation, the United States Postal Service and Postal Rate Commission, and all parts of and establishments within the legislative and judicial branches of the United States.

§ 82.84 Requirements.

(a) No later than October 24, 1994, each department, agency and instrumentality of the United States shall conform its procurement regulations to the requirements and policies of Title VI of the Clean Air Act, 42 U.S.C. 7671–7671g. Each such regulation shall provide, at a minimum, the following:

(1) That in place of class I or class II substances, or of products made with or containing such substances, safe alternatives identified under 42 U.S.C. 7671k (or products made with or containing such alternatives) shall be substituted to the maximum extent practicable. Substitution is not required for class II substances identified as safe

alternatives under 42 U.S.C. 7671k, or for products made with or containing such substances, and such substances may be used as substitutes for other class I or class II substances.

(2) That, consistent with the phaseout schedules for ozone-depleting substances, no purchases shall be made of class II substances, or products containing class II substances, for the purpose of any use prohibited under 42 U.S.C. 7671d(c);

(3) That all active or new contracts involving the performance of any service or activity subject to 42 U.S.C. 7671g or 7671h or regulations promulgated thereunder include, or be modified to include, a condition requiring the contractor to ensure compliance with all requirements of those sections and regulations;

(4) That no purchases shall be made of products whose sale is prohibited under 42 U.S.C. 7671h, except when they will be used by persons certified under section 609 to service vehicles, and no purchase shall be made of nonessential products as defined under 42 U.S.C. 7671i;

(5) That proper labeling under 42 U.S.C. 7671j shall be a specification for the purchase of any product subject to that section.

(b) For agencies subject to the Federal Acquisition Regulation, 48 CFR part 1, amendment of the FAR, consistent with this subpart, shall satisfy the requirement of this section.

§ 82.86 Reporting requirements.

(a) No later than one year after October 22, 1993, each agency, department, and instrumentality of the United States shall certify to the Office of Management and Budget that its procurement regulations have been amended in accordance with this section.

(b) Certification by the General Services Administration that the Federal Acquisition Regulation has been amended in accordance with this section shall constitute adequate certification for purposes of all agencies subject to the Federal Acquisition Regulation.

[FR Doc. 93–26042 Filed 10–21–93; 8:45 am]
BILLING CODE 6560–50–P

federal register

Friday
October 22, 1993

Part X

Department of Education

34 CFR Part 668
Student Assistance General Provisions; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 668

RIN 1840–AB86

Student Assistance General Provisions

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the Student Assistance General Provisions. These amendments are necessary to implement the Higher Education Amendments of 1992. The proposed regulations would require an institution of higher education to disclose certain consumer information to students and employees. The proposed rules also propose minor technical changes to subparts D and F of the Student Assistance General Provisions regulations, entitled Student Consumer Information Services and Misrepresentation, respectively.

DATES: Comments must be received on or before November 22, 1993.

ADDRESSES: All comments concerning these proposed regulations should be addressed as follows: Paula M. Husselmann, U.S. Department of Education, 400 Maryland Avenue, SW., room 4318, Regional Office Building 3, Washington, DC 20202–5346.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Paula M. Husselmann, U.S. Department of Education, 400 Maryland Avenue, SW., room 4318, ROB–3, Washington, DC 20202–5346. Telephone: (202) 708–7888. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Student Assistance General Provisions (34 CFR part 668) apply to all institutions that participate in the Student Financial Assistance Programs authorized by Title IV of the Higher Education Act of 1965, as amended (HEA). For purposes of subparts D and F, the title IV, HEA Student Financial Assistance Programs include the Federal Pell Grant, Federal Stafford Loan, Federal PLUS Loan, Federal Supplemental Loans for Students (SLS), Federal Direct Student Loan, State Student Incentive Grant (SSIG), Federal Perkins Loan, Federal Work-Study (FWS), and Federal Supplemental Educational Opportunity Grant (FSEOG) programs. The proposed changes in these regulations are necessary to implement the changes to the HEA made by the Higher Education Amendments of 1992, Pub. L. 102–325.

Encouraging students to pursue high quality postsecondary education is an important element of the National Education Goals; a safe campus environment facilitates education.

Negotiated Rulemaking

Part G, section 492 of the HEA contains procedural requirements that the Secretary is to follow in developing proposed regulations for parts B, G, and H of title IV of the HEA, as amended by the Higher Education Amendments of 1992 (Pub. L. 102–325). Section 492(a) requires the Secretary to convene regional meetings to gain input on the content of proposed regulations. Participants at these meetings are to include individuals and representatives of the groups involved in student financial assistance programs, such as students, legal assistance organizations that represent students, institutions of higher education, guaranty agencies, lenders, secondary markets, loan servicers, guaranty agency servicers, and collection agencies. During the meetings, the Secretary is to provide for a comprehensive discussion and exchange of information concerning the implementation of parts B, G, and H, and is to take information received at the meetings into account in the development of these proposed regulations.

Subsequent to these meetings, part G, section 492(b) of title IV of the HEA requires the Secretary to draft and submit regulations implementing parts B, G, and H to a negotiated rulemaking process. Section 492(b) provides that participants in the negotiations process shall be chosen by the Secretary from individuals nominated by groups participating in the regional meetings and shall reflect the diversity and sizes of organizations providing financial aid services to both local areas and national markets.

In accordance with these requirements, the Secretary convened four regional meetings to discuss issues related to implementation of parts B, G, and H. For purposes of these regulations that implement part G, student consumer provisions, the primary issues concerned: A requirement that an institution disclose to title IV borrowers various information about their loans, otherwise known as "exit counseling" as required by the Title IV loan programs; a requirement that an institution disclose to students a statement that a program of study abroad approved for credit by the home institution may be considered enrollment at the home institution for Title IV purposes; and a requirement that an institution disclose to students and employees statistics concerning the number of sex offenses that occurred on campus, a statement of the institution's policy concerning sexual assault programs to prevent these crimes, and procedures to follow when a sex offense occurs. Meetings were held in New York, New York; San Francisco, California; Atlanta, Georgia; and Kansas City, Missouri during the month of September, 1992. Participants in the meetings were invited to nominate individuals to serve as participants in the negotiated rulemaking sessions, which were held in January and February, 1993 in Washington, DC. Taking into account views expressed at the regional meetings, the Department prepared draft regulations on the primary issues discussed, which served as the basis for the negotiated rulemaking process.

The Secretary submitted for discussion at the negotiated rulemaking sessions the issues described above; however, a consensus was not reached on the language of the draft regulations. A summary of the significant changes proposed by these regulations follows:

Summary of Proposed Changes

Section 668.43 Financial Assistance Information (Section 485(a)(1)(M) of the HEA)

This section of the regulations requires an institution to publish and make readily available to current and prospective students certain consumer information on financial assistance. Section 668.43 would be revised to require a disclosure concerning information the institution must provide and collect during an exit counseling interview for borrowers under the Federal Direct Student Loan Program, the Federal Stafford Loan Program, the Federal SLS Program, and the Federal Perkins Loan Program. An exit counseling interview may be made individually or in groups and is counseling made available to these borrowers before they complete the course of study for which they are enrolled or at the time the borrower leaves the institution. The institution must disclose information such as the average indebtedness of students, the average anticipated monthly repayment based on the average indebtedness, available repayment options, management strategies to assist repayment, etc. A cross-reference is

made to other sections of regulations, 34 CFR 674.42 and 682.604, respectively, that will list the actual disclosures to be made. In the Notice of Proposed Rulemaking published on July 10, 1992 (57 FR 30826), the Secretary has proposed renumbering § 668.43 as § 668.44.

Section 668.44 Institutional Information (Section 485(a)(1)(N))

This section of the regulations requires an institution to publish and make readily available to current and prospective students certain consumer information concerning the institution. Section 668.44 would be revised to include another disclosure, that is a statement that a student who is enrolled in a program of study abroad that is approved for credit by the home institution may be considered enrolled in the home institution for the purpose of applying for assistance under the Title IV, HEA programs. Specific rules for regulating a student's enrollment in a program of study abroad will be proposed in other sections of the Student Assistance General Provisions. In the Notice of Proposed Rulemaking published on July 10, 1992 (57 FR 30826), the Secretary has proposed renumbering § 668.44 as § 668.45.

Section 668.48 Institutional Security Policies and Crime Statistics (Section 485(f))

This section is a new section, contained on pages 30832–30833 in the Notice of Proposed Rulemaking published on July 10, 1992 (57 FR 30826), to implement section 485(f) of the HEA, as added by the Student Right-to-Know and Campus Security Act, Pub. L. 101–542, and amended by the Higher Education Amendments of 1991, Pub. L. 102–26. The Higher Education Amendments of 1992 have further amended section 485(f). In general, section 485(f) requires institutions to publish and distribute an annual security report containing campus security policies and procedures as well as campus crime statistics. The institution must distribute the annual security report to all current students and employees, and to any applicant for enrollment or employment on request.

The Higher Education Amendments of 1992 require an institution to make additional disclosures as part of its annual security report, and replaces the disclosure of statistics concerning the occurrence of rape on campus with the disclosure of forcible and nonforcible sex offenses. In addition, the 1992 Amendments require an institution to disclose a statement of policy concerning its campus sexual assault programs designed to prevent sex offenses, and the procedures to follow once a sex offense occurs. The Secretary has reordered the disclosures required by the statute so that the disclosures follow a more logical sequence from notification of education programs to promote awareness through sanctions to be imposed following a sex offense. The statement of policy must include—

(1) Education programs to promote the awareness of rape, acquaintance rape, and other forcible and nonforcible sex offenses;

(2) Procedures students should follow if a sex offense occurs, including who should be contacted, the importance of preserving evidence as may be necessary to the proof of a criminal offense, and to whom the alleged offense should be reported;

(3) Informing students of their options to notify proper law enforcement authorities, including on-campus and local police, and that institutional personnel will assist the student in notifying these authorities, if the student requests;

(4) Notifying students of existing on and off-campus counseling, mental health, or student services for victims of a sex offense;

(5) Notifying students that the institution will change the victim's academic and living situations after an alleged sex offense and the options for these changes, if these changes are requested by the victim and are reasonably available;

(6) Procedures for an institutional disciplinary action in a case of alleged sex offense, including a statement that the accuser and the accused are entitled to the same opportunities to have others present during an institutional disciplinary proceeding, and that both the accuser and the accused will be informed of the outcome of any institutional disciplinary proceeding brought alleging a sex offense; and

(7) Sanctions the institution may impose following a final determination of an institutional disciplinary proceeding regarding rape, acquaintance rape, or other forcible or nonforcible sex offenses.

Disclosures number two and three raise the issue of to whom an alleged sex offense should be reported. During the negotiated rulemaking meetings, members of the academic community recommended that institutions be permitted to develop their own policies regarding to whom a sex offense should be reported. Moreover, these members of the community believe that students should have the right to decide whether or not to report an incident of this nature. However, they believe that institutions should facilitate the reporting of sex offenses. Section 485(f) of the HEA requires that certain crimes, including sex offenses, that are reported to a campus security authority must be acted upon by the institution to prevent the same crime from occurring again. The proposed rule of July 1992 proposed a definition of a campus security authority for institutions to follow when a crime is reported; the final regulations will address the comments received from the public concerning this definition.

Disclosure number two also requires a statement concerning the "importance of preserving evidence as may be necessary to the proof of criminal sexual assault." During the negotiated rulemaking meetings, members of the academic community recommended two approaches regarding the disclosure concerning preserving evidence.

The first recommendation was that the institution, not the Secretary, define what is meant by "preserving evidence as may be necessary to the proof of criminal sexual assault." The Secretary agrees with this recommendation and, therefore, has not regulated with respect to "preserving evidence." The second recommendation was to request that the Secretary consult with the Federal Bureau of Investigation (FBI) and "justice intervention groups," i.e., rape or crisis intervention centers or other victim-support groups, to determine the broader legal implications of preserving such evidence. The Secretary consulted with the FBI and on the basis of that consultation, the Secretary strongly urges institutions to consult with their campus security officials, local law enforcement officials, and to solicit guidance from the institution's local prosecutor's office in the development of the institution's specific disclosures, particularly with respect to the "preserving of evidence." The rape crisis professional contacted by the Secretary strongly supported the institution's consulting the local prosecutor's office, and further suggested that the institution develop a working relationship with the local emergency room and the local rape crisis program.

Disclosure number five concerns options for changing the living and academic circumstances of a victim after an alleged sexual assault, if the victim requests such a change and if the institution can reasonably provide such a change. The actual language of the statute requires "Notification of students of options for, and available assistance in, changing academic and living situations after an alleged sexual assault incident, if so requested by the

victim and if such changes are reasonably available." The Secretary has interpreted the language of the statute to require disclosure that an institution "will change" a victim's academic and living situations, if requested and if the change is "reasonably available." Some negotiators objected to the "will change" language as creating an unlimited obligation to accommodate the victim; these negotiators believe the statute simply requires an institution to notify students of options available to a victim. Similarly, other negotiators recommended that institutions be required only to accommodate a victim's request for a change in his or her living situation with respect only to housing under the control of the institution.

The Secretary strongly believes that the Congress intended that institutions will actually accommodate a victim's needs where possible and not merely provide "lip service" to availability of options. An institution is required only to make changes that are "reasonably available." Thus, the Secretary also believes that the Congress intended that reasonable assistance to the victim of a sexual assault would not necessarily be limited only to options exclusively under the control of an institution. An institution may, if housing is reasonably available, be quite able to facilitate a change of housing within the local community. For example, if alternative housing is not available on campus, an institution could release a student from an on-campus housing contract without penalty so that he or she could seek off-campus housing and assist the student in locating off-campus housing if it is reasonably available. Some negotiators strongly supported the Secretary's interpretation of the statute pertaining to these issues; it should be particularly noted that the student negotiators strongly supported the Secretary's interpretation.

As indicated in disclosure number six, the accuser and the accused must be informed of the outcome of any institutional disciplinary proceeding brought alleging a sex offense. For the purpose of that disclosure, the Secretary proposes that the outcome of an institutional disciplinary proceeding means only the institution's final determination with respect to the alleged sex offense and any sanction that is imposed against the accused. This proposed definition of outcome results from changes made by the Secretary pursuant to the negotiators' recommendation and reflects language agreed to by the negotiators.

As indicated in disclosure number seven, the institution must disclose possible sanctions to be imposed following the final determination of an institutional disciplinary proceeding regarding rape, acquaintance rape, or other forcible or nonforcible sex offenses.

During the negotiated rulemaking meetings, members of the academic community recommended that the Secretary allow an institution to define the sanctions it wishes to impose. The Secretary agrees with this recommendation.

During the negotiated rulemaking meetings, members of the academic community recommended that the institution define the term "campus", and that this term not be defined in regulations. The Secretary is unable to accept this recommendation because the term "campus" is defined in section 485(f) of the HEA and subsequently in the July 10, 1992 Notice of Proposed Rulemaking (57 FR 30826).

Additional comments from the negotiated rulemaking meetings included a request that additional regulations not be put into effect until current regulations are effective. With respect to delaying additional regulations concerning campus security, the Higher Education Amendments of 1992 require that certain policies and procedures be in place on certain dates mandated by this statute. An institution must have had the actual policies and procedures concerning the prevention of forcible and nonforcible sex offenses in place by July 1, 1993, and have included them in the annual security report that the institution must disclose on September 1, 1993. Therefore, it is not within the Secretary's authority to delay these regulations.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

The small entities affected by these regulations are small institutions of higher education. However, the regulations would not have a significant economic impact on the small institutions affected because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal burdens necessary to implement statutory requirements.

Paperwork Reduction Act of 1980

Sections 668.44, 668.45, and 668.48 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h))

These regulations affect the following types of entities that participate in the title IV, HEA programs: Businesses or other for-profit, and non-profit institutions. The Department administers the collection and reporting of this information by institutions to assist student consumerism by all current and prospective students. If the collection and reporting of information were not conducted, the Department would be improperly implementing its responsibility to administer certain aspects of the HEA.

Annual public reporting burden for this collection of information is estimated to average 1 hour per response for 7,000 institutions, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

In addition, a one-time public reporting burden for this collection of information is estimated to average 0.25 hours per response for 8,500 institutions, including the time for reviewing instructions and completing and reviewing the collection of information.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, room 3002, New Executive Office Building, Washington, DC 20503; Attention: Daniel J. Chenok.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room 4318, ROB–3, 7th and D Streets, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 668

Administrative practice and procedure, Colleges and universities,

Consumer protection, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Student aid, Vocational education.

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, and 1141.

Dated: July 27, 1993.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Numbers: 84.007 Federal Supplemental Educational Opportunity Grant Program; 84.032 Federal Stafford Loan Program; 84.032 Federal PLUS Program; 84.032 Federal Supplemental Loans for Students Program; 84.033 Federal Work-Study Program; 84.038 Federal Perkins Loan Program; 84.063 Federal Pell Grant Program; 84.069 State Student Incentive Grant Program; Catalog of Federal Domestic Assistance Numbers for the Federal Direct Loan Demonstration Program, National Early Intervention Scholarship and Partnership Program, and Presidential Access Scholarship Program have not been assigned)

The Secretary proposes to amend part 668 of title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for Part 668 continues to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, and 1141, unless otherwise noted.

2. Section 668.43, as proposed to be redesignated as § 668.44 on page 30830 in the Notice of Proposed Rulemaking published on July 10, 1992 (57 FR 30826), is amended by removing the word "and" at the end of paragraph (c)(4); removing the period in paragraph (c)(5) and adding in its place "; and"; and adding a new paragraph (c)(6) to read as follows:

§ 668.44 Financial assistance information.

* * * * *

(c) * * *

(6) The institution shall provide and collect exit counseling information as required by 34 CFR 674.42 for borrowers under the Federal Perkins Loan Program and by 34 CFR 682.604 for borrowers under the Federal Stafford Loan Program and the Federal Supplemental Loans for Students Program.

* * * * *

3. Section 668.44, as proposed to be redesignated as § 668.45 on page 30830 in the Notice of Proposed Rulemaking published on July 10, 1992 (57 FR 30826), is amended by removing "§ 668.45" in paragraph (a)(7), and adding, in its place, "§ 668.49".

4. Section 668.44, as proposed to be redesignated as § 668.45 on page 30830 in the Notice of Proposed Rulemaking published on July 10, 1992 (57 FR 30826), is further amended by removing "and" at the end of paragraph (a)(6), removing the period at the end of paragraph (a)(7), adding in its place "; and", and adding a new paragraph (a)(8) to read as follows:

§ 668.45 Institutional information.

(a) * * *

(8) A statement that a student's enrollment in a program of study abroad approved for credit by the home institution may be considered enrollment at the home institution for the purpose of applying for assistance under the title IV, HEA programs.

* * * * *

5. Section 668.48, as proposed to be added on pages 30832-30833 in the Notice of Proposed Rulemaking published on July 10, 1992 (57 FR 30826), is amended by adding a new paragraph (a)(12) to read as follows:

§ 668.48 Institutional security policies and crime statistics.

(a) * * *

(12) A statement of policy regarding its campus sexual assault programs to prevent sex offenses, and procedures to follow when a sex offense occurs, that includes—

(i) Education programs to promote the awareness of rape, acquaintance rape, and other forcible and nonforcible sex offenses;

(ii) Procedures students should follow if a sex offense occurs, including who should be contacted, the importance of preserving evidence for the proof of a criminal offense, and to whom the alleged offense should be reported;

(iii) Informing students of their options to notify proper law enforcement authorities, including on-campus and local police, and that institutional personnel will assist the student in notifying these authorities, if the student requests;

(iv) Notifying students of existing on- and off-campus counseling, mental health, or student services for victims of sex offense;

(v) Notifying students that the institution will change the victim's academic and living situations after an alleged sex offense and of the options for such changes, if a change is requested by the victim and is reasonably available;

(vi) Procedures for campus disciplinary action in cases of an alleged sex offense, including a clear statement that—

(A) The accuser and the accused are entitled to the same opportunities to have others present during a disciplinary proceeding; and

(B) Both the accuser and the accused shall be informed of the outcome of any institutional disciplinary proceeding brought alleging a sex offense. For the purpose of this paragraph, the outcome of a disciplinary proceeding means only the institution's final determination with respect to the alleged sex offense and any sanction that is imposed against the accused; and

(vii) Sanctions the institution may impose following a final determination of an institutional disciplinary proceeding regarding rape, acquaintance rape, or other forcible or nonforcible sex offenses.

* * * * *

6. Section 668.72 is amended by removing "§ 668.44" in paragraph (l), and adding, in its place, "§§ 668.45 and 668.46."

[FR Doc. 93–26053 Filed 10–21–93; 8:45 am]

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federal register

Friday
October 22, 1993

Part XI

The President

Proclamation 6616—National Biomedical Research Day, 1993

Executive Order 12873—Federal Acquisition, Recycling, and Waste Prevention

Executive Order 12874—Establishing an Emergency Board To Investigate a Dispute Between The Long Island Rail Road and Certain of Its Employees Represented by the United Transportation Union

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Federal Register
Vol. 58, No. 203
Friday, October 27, 1993

Presidential Documents

Title 3—

The President

Proclamation 6616 of October 20, 1993

National Biomedical Research Day, 1993

By the President of the United States of America

A Proclamation

The Congress has designated October 21, 1993, as "National Biomedical Research Day." On this day, we celebrate the central role played by biomedical research in improving human health and longevity, and we acknowledge the promise this wide-ranging endeavor holds for securing the future physical and mental well-being of people around the world. Biomedical research not only yields the requisite information that scientists and physicians need to prevent and treat diseases but also reveals the fundamental nature of life in humans, other animals, and plants.

There is an intriguing quality to biomedical research: A discovery does not always predict its future uses. As a consequence, it is essential that the Nation continue to champion broad-based studies of both the normal and the disease processes. These studies will yield a fundamental understanding of biological systems and will provide us with the foundation of knowledge needed to ensure successful responses to current and future health problems.

An event that took place 40 years ago illustrates how vital such fundamental knowledge is. In 1953, Nobel laureates Drs. James D. Watson and Francis H.C. Crick described the structure of DNA, the genetic material of all living things. Today, as a direct outcome of their basic research, gene therapy has been devised for children with severe combined immune deficiency; accurate diagnostic tests are available for many life-threatening diseases and conditions; and the genetic mechanisms underlying disorders like cystic fibrosis and Huntington's disease have been identified.

The discovery of the structure of DNA also set the stage for the development of recombinant DNA technology, out of which has blossomed the biotechnology industry. In just the past 10 years, some 1,300 biotechnology companies have been formed. Through biotechnology, chemists and biologists are able to design and produce novel medicines and vaccines for clinical use. Scientists have learned how to commandeer the cellular machinery of living organisms, so that these organisms produce needed proteins and other biological molecules. Researchers have also genetically "engineered" crop plants to make them hardier and resistant to pests. The success of the biotechnology industry has also enhanced the economic competitiveness of the United States in the world marketplace. There is no doubt that the future fruits of biotechnology, both medical and economic, will be even greater.

The continuing preeminence of the United States in biomedical research reflects the contributions of many groups of dedicated professionals at work in Federal agencies such as the National Institutes of Health and the Centers for Disease Control and Prevention and in government-supported laboratories at universities, hospitals, and private research facilities. Teachers at all levels—from those who encourage our kindergartners to those who train biomedical specialists—are also helping to ensure the future success of biomedical research, an enterprise that cannot go forward without both strong practitioners and a supportive public.

Unraveling the mysteries of living organisms remains a daunting task. But, through biomedical research, the ceaseless whooping coughs of children have been silenced; smallpox no longer exacts a human toll anywhere on the Earth; and vaccines, treatments, and cures are at hand for many diseases. As the struggles continue against AIDS, cancer, heart and lung diseases, arthritis, diabetes, Alzheimer's disease, epilepsy, multiple sclerosis, and a host of other afflictions, we look to the successes of the biomedical community for our inspiration.

We look to the future with our eyes open and with unflagging support for continued biomedical research that is broad enough and deep enough to establish a firm foundation of knowledge from which effective cures and therapies will emerge.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim October 21, 1993, as National Biomedical Research Day. I invite the Governors of the 50 States and the Commonwealth of Puerto Rico, and the appropriate officials of all other jurisdictions under the American flag, to issue similar proclamations. I ask every beneficiary of biomedical research; that is, every citizen of this country, to acknowledge the true worth of biomedical research. I ask biomedical researchers, health care professionals, schools and universities, community organizations, and businesses to join in efforts to celebrate the successes of biomedical research and to promote this enterprise.

IN WITNESS WHEREOF, I have hereunto set my hand this twentieth day of October, in the year of our Lord nineteen hundred and ninety-three, and of the Independence of the United States of America the two hundred and eighteenth.

William J. Clinton

[FR Doc. 93-26282
Filed 10-21-03; 11:23 am]
Billing code 3195-01-P

Presidential Documents

Executive Order 12873 of October 20, 1993

Federal Acquisition, Recycling, and Waste Prevention

WHEREAS, the Nation's interest is served when the Federal Government can make more efficient use of natural resources by maximizing recycling and preventing waste wherever possible;

WHEREAS, this Administration is determined to strengthen the role of the Federal Government as an enlightened, environmentally conscious and concerned consumer;

WHEREAS, the Federal Government should—through cost-effective waste prevention and recycling activities—work to conserve disposal capacity, and serve as a model in this regard for private and other public institutions; and

WHEREAS, the use of recycled and environmentally preferable products and services by the Federal Government can spur private sector development of new technologies and use of such products, thereby creating business and employment opportunities and enhancing regional and local economies and the national economy;

NOW, THEREFORE, I, WILLIAM J. CLINTON, by the authority vested in me as President by the Constitution and the laws of the United States of America, including the Solid Waste Disposal Act, Public Law 89–272, 79 Stat. 997, as amended by the Resource Conservation and Recovery Act ("RCRA"), Public Law 94–580, 90 Stat. 2795 as amended (42 U.S.C. 6901–6907), and section 301 of title 3, United States Code, hereby order as follows:

PART 1—PREAMBLE

Section 101. Consistent with the demands of efficiency and cost effectiveness, the head of each Executive agency shall incorporate waste prevention and recycling in the agency's daily operations and work to increase and expand markets for recovered materials through greater Federal Government preference and demand for such products.

Sec. 102. Consistent with policies established by Office of Federal Procurement Policy ("OFPP") Policy Letter 92–4, agencies shall comply with executive branch policies for the acquisition and use of environmentally preferable products and services and implement cost-effective procurement preference programs favoring the purchase of these products and services.

Sec. 103. This order creates a Federal Environmental Executive and establishes high-level Environmental Executive positions within each agency to be responsible for expediting the implementation of this order and statutes that pertain to this order.

PART 2—DEFINITIONS

For purposes of this order:

Sec. 201. "Environmentally preferable" means products or services that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product or service.

Sec. 202. "Executive agency" or "agency" means an Executive agency as defined in 5 U.S.C. 105. For the purpose of this order, military departments, as defined in 5 U.S.C. 102, are covered under the auspices of the Department of Defense.

Sec. 203. "Postconsumer material" means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. "Postconsumer material" is a part of the broader category of "recovered material".

Sec. 204. "Acquisition" means the acquiring by contract with appropriated funds for supplies or services (including construction) by and for the use of the Federal Government through purchase or lease, whether the supplies or services are already in existence or must be created, developed, demonstrated and evaluated. Acquisition begins at the point when agency needs are established and includes the description of requirements to satisfy agency needs, solicitation and selection of sources, award of contracts, contract financing, contract performance, contract administration and those technical and management functions directly related to the process of fulfilling agency needs by contract.

Sec. 205. "Recovered materials" means waste materials and by-products which have been recovered or diverted from solid waste, but such term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process (42 U.S.C. 6903 (19)).

Sec. 206. "Recyclability" means the ability of a product or material to be recovered from, or otherwise diverted from, the solid waste stream for the purpose of recycling.

Sec. 207. "Recycling" means the series of activities, including collection, separation, and processing, by which products or other materials are recovered from the solid waste stream for use in the form of raw materials in the manufacture of new products other than fuel for producing heat or power by combustion.

Sec. 208. "Waste prevention," also known as "source reduction," means any change in the design, manufacturing, purchase or use of materials or products (including packaging) to reduce their amount or toxicity before they become municipal solid waste. Waste prevention also refers to the reuse of products or materials.

Sec. 209. "Waste reduction" means preventing or decreasing the amount of waste being generated through waste prevention, recycling, or purchasing recycled and environmentally preferable products.

Sec. 210. "Life Cycle Cost" means the amortized annual cost of a product, including capital costs, installation costs, operating costs, maintenance costs and disposal costs discounted over the lifetime of the product.

Sec. 211. "Life Cycle Analysis" means the comprehensive examination of a product's environmental and economic effects throughout its lifetime including new material extraction, transportation, manufacturing, use, and disposal.

PART 3—THE ROLE OF THE FEDERAL ENVIRONMENTAL EXECUTIVE AND AGENCY ENVIRONMENTAL EXECUTIVES

Sec. 301. *Federal Environmental Executive.* (a) A Federal Environmental Executive shall be designated by the President and shall be located within the Environmental Protection Agency ("EPA"). The Federal Environmental Executive shall take all actions necessary to ensure that the agencies comply with the requirements of this order and shall generate an annual report to the Office of Management and Budget ("OMB"), at the time of agency budget submissions, on the actions taken by the agencies to comply with the requirements of this order. In carrying out his or her functions, the

Federal Environmental Executive shall consult with the Director of the White House Office on Environmental Policy.

(b) *Staffing.* A minimum of four (4) full time staff persons are to be provided by the agencies listed below to assist the Federal Environmental Executive, one of whom shall have experience in specification review and program requirements, one of whom shall have experience in procurement practices, and one of whom shall have experience in solid waste prevention and recycling. These four staff persons shall be appointed and replaced as follows:

(1) a representative from the Department of Defense shall be detailed for not less than one year and no more than two years;

(2) a representative from the General Services Administration ("GSA") shall be detailed for not less than one year and no more than two years;

(3) a representative from EPA shall be detailed for not less than one year and no more than two years; and

(4) a representative from one other agency determined by the Federal Environmental Executive shall be detailed on a rotational basis for not more than one year.

(c) *Administration.* Agencies are requested to make their services, personnel and facilities available to the Federal Environmental Executive to the maximum extent practicable for the performance of functions under this order.

(d) *Committees and Work Groups.* The Federal Environmental Executive shall establish committees and work groups to identify, assess, and recommend actions to be taken to fulfill the goals, responsibilities, and initiatives of the Federal Environmental Executive. As these committees and work groups are created, agencies are requested to designate appropriate personnel in the areas of procurement and acquisition, standards and specifications, electronic commerce, facilities management, waste prevention, and recycling, and others as needed to staff and work on the initiatives of the Executive.

(e) *Duties.* The Federal Environmental Executive, in consultation with the Agency Environmental Executives, shall:

(1) identify and recommend initiatives for government-wide implementation that will promote the purposes of this order, including:

(A) the development of a federal plan for agency implementation of this order and appropriate incentives to encourage the acquisition of recycled and environmentally preferable products by the Federal Government;

(B) the development of a federal implementation plan and guidance for instituting economically efficient federal waste prevention, energy and water efficiency programs, and recycling programs within each agency; and

(C) the development of a plan for making maximum use of available funding assistance programs;

(2) collect and disseminate information electronically concerning methods to reduce waste, materials that can be recycled, costs and savings associated with waste prevention and recycling, and current market sources of products that are environmentally preferable or produced with recovered materials;

(3) provide guidance and assistance to the agencies in setting up and reporting on agency programs and monitoring their effectiveness; and

(4) coordinate appropriate government-wide education and training programs for agencies.

Sec. 302. *Agency Environmental Executives.* Within 90 days after the effective date of this order, the head of each Executive department and major procuring agency shall designate an Agency Environmental Executive from among his or her staff, who serves at a level no lower than at the Deputy Assistant

Secretary level or equivalent. The Agency Environmental Executive will be responsible for:

(a) coordinating all environmental programs in the areas of procurement and acquisition, standards and specification review, facilities management, waste prevention and recycling, and logistics;

(b) participating in the interagency development of a Federal plan to:

(1) create an awareness and outreach program for the private sector to facilitate markets for environmentally preferable and recycled products and services, promote new technologies, improve awareness about federal efforts in this area, and expedite agency efforts to procure new products identified under this order;

(2) establish incentives, provide guidance and coordinate appropriate educational programs for agency employees; and

(3) coordinate the development of standard agency reports required by this order;

(c) reviewing agency programs and acquisitions to ensure compliance with this order.

PART 4—ACQUISITION PLANNING AND AFFIRMATIVE PROCUREMENT PROGRAMS

Sec. 401. *Acquisition Planning.* In developing plans, drawings, work statements, specifications, or other product descriptions, agencies shall consider the following factors: elimination of virgin material requirements; use of recovered materials; reuse of product; life cycle cost; recyclability; use of environmentally preferable products; waste prevention (including toxicity reduction or elimination); and ultimate disposal, as appropriate. These factors should be considered in acquisition planning for all procurements and in the evaluation and award of contracts, as appropriate. Program and acquisition managers should take an active role in these activities.

Sec. 402. *Affirmative Procurement Programs.* The head of each Executive agency shall develop and implement affirmative procurement programs in accordance with RCRA section 6002 (42 U.S.C. 6962) and this order. Agencies shall ensure that responsibilities for preparation, implementation and monitoring of affirmative procurement programs are shared between the program personnel and procurement personnel. For the purposes of all purchases made pursuant to this order, EPA, in consultation with such other Federal agencies as appropriate, shall endeavor to maximize environmental benefits, consistent with price, performance and availability considerations, and shall adjust bid solicitation guidelines as necessary in order to accomplish this goal.

(a) Agencies shall establish affirmative procurement programs for all designated EPA guideline items purchased by their agency. For newly designated items, agencies shall revise their internal programs within one year from the date EPA designated the new items.

(b) For the currently designated EPA guideline items, which are: (i) concrete and cement containing fly ash; (ii) recycled paper products; (iii) re-refined lubricating oil; (iv) retread tires; and (v) insulation containing recovered materials; and for all future guideline items, agencies shall ensure that their affirmative procurement programs require that 100 percent of their purchases of products meet or exceed the EPA guideline standards unless written justification is provided that a product is not available competitively within a reasonable time frame, does not meet appropriate performance standards, or is only available at an unreasonable price.

(c) The Agency Environmental Executives will track agencies' purchases of designated EPA guideline items and report agencies' purchases of such guideline items to the Federal Environmental Executive. Agency Environmental Executives will be required to justify to the Federal Environmental Executive as to why the item(s) have not been purchased or submit a

plan for how the agencies intend to increase their purchases of the designated item(s).

(d) Agency affirmative procurement programs, to the maximum extent practicable, shall encourage that:

(1) documents be transferred electronically,

(2) all government documents printed internally be printed double-sided, and

(3) contracts, grants, and cooperative agreements issued after the effective date of this order include provisions that require documents to be printed double-sided on recycled paper meeting or exceeding the standards established in this order or in future EPA guidelines.

Sec. 403. *Procurement of Existing Guideline Items.* Within 90 days after the effective date of this order, the head of each Executive agency that has not implemented an affirmative procurement program shall ensure that the affirmative procurement program has been established and is being implemented to the maximum extent practicable.

Sec. 404. *Electronic Acquisition System.* To reduce waste by eliminating unnecessary paper transactions in the acquisition process and to foster accurate data collection and reporting of agencies' purchases of recycled content and environmentally preferred products, the executive branch will implement an electronic commerce system consistent with the recommendations adopted as a result of the National Performance Review.

PART 5—STANDARDS, SPECIFICATIONS AND DESIGNATION OF ITEMS

Sec. 501. *Specifications, Product Descriptions and Standards.* Where applicable, Executive agencies shall review and revise federal and military specifications, product descriptions and standards to enhance Federal procurement of products made from recovered materials or that are environmentally preferable. When converting to a Commercial Item Description (CID), agencies shall ensure that environmental factors have been considered and that the CID meets or exceeds the environmentally preferable criteria of the government specification or product description. Agencies shall report annually on their compliance with this section to the Federal Environmental Executive for incorporation into the annual report to OMB referred to in section 301 of this order.

(a) If an inconsistency with RCRA Section 6002 or this order is identified in a specification, standard, or product description, the Federal Environmental Executive shall request that the Environmental Executive of the pertinent agency advise the Federal Environmental Executive as to why the specification cannot be revised or submit a plan for revising it within 60 days.

(b) If an agency is able to revise an inconsistent specification but cannot do so within 60 days, it is the responsibility of that agency's Environmental Executive to monitor and implement the plan for revising it.

Sec. 502. *Designation of Items that Contain Recovered Materials.* In order to expedite the process of designating items that are or can be made with recovered materials, EPA shall institute a new process for designating these items in accordance with RCRA section 6002(e) as follows. (a) EPA shall issue a Comprehensive Procurement Guideline containing designated items that are or can be made with recovered materials.

(1) The proposed guideline shall be published for public comment in the **Federal Register** within 180 days after the effective date of this order and shall be updated annually after publication for comment to include additional items.

(2) Once items containing recovered materials have been designated by EPA through the new process established pursuant to this section and in compliance with RCRA section 6002, agencies shall modify their affirma-

tive procurement programs to require that, to the maximum extent practicable, their purchases of products meet or exceed the EPA guideline standards unless written justification is provided that a product is not available competitively, not available within a reasonable time frame, does not meet appropriate performance standards, or is only available at an unreasonable price.

(b) Concurrent with the issuance of the Comprehensive Procurement Guideline required by section 502(a) of this order, EPA shall publish for public comment in the **Federal Register** Recovered Material Advisory Notice(s) that present the range of recovered material content levels within which the designated recycled items are currently available. These levels shall be updated periodically after publication for comment to reflect changes in market conditions.

Sec. 503. *Guidance for Environmentally Preferable Products.* In accordance with this order, EPA shall issue guidance that recommends principles that Executive agencies should use in making determinations for the preference and purchase of environmentally preferable products.

(a) Proposed guidance shall be published for public comment in the **Federal Register** within 180 days after the effective date of this order, and may be updated after public comment, as necessary, thereafter. To the extent necessary, EPA may issue additional guidance for public comment on how the principles can be applied to specific product categories.

(b) Once final guidance for environmentally preferable products has been issued by EPA, Executive agencies shall use these principles, to the maximum extent practicable, in identifying and purchasing environmentally preferable products and shall modify their procurement programs by reviewing and revising specifications, solicitation procedures, and policies as appropriate.

Sec. 504. *Minimum Content Standard for Printing and Writing Paper.* Executive agency heads shall ensure that agencies shall meet or exceed the following minimum materials content standards when purchasing or causing the purchase of printing and writing paper:

(a) For high speed copier paper, offset paper, forms bond, computer printout paper, carbonless paper, file folders, and white woven envelopes, the minimum content standard shall be no less than 20 percent postconsumer materials beginning December 31, 1994. This minimum content standard shall be increased to 30 percent beginning on December 31, 1998.

(b) For other uncoated printing and writing paper, such as writing and office paper, book paper, cotton fiber paper, and cover stock, the minimum content standard shall be 50 percent recovered materials, including 20 percent postconsumer materials beginning on December 31, 1994. This standard shall be increased to 30 percent beginning on December 31, 1998.

(c) As an alternative to meeting the standards in sections 504(a) and (b), for all printing and writing papers, the minimum content standard shall be no less than 50 percent recovered materials that are a waste material byproduct of a finished product other than a paper or textile product which would otherwise be disposed of in a landfill, as determined by the State in which the facility is located.

(1) The decision not to procure recycled content printing and writing paper meeting the standards specified in this section shall be based solely on a determination by the contracting officer that a satisfactory level of competition does not exist, that the items are not available within a reasonable time period, or that the available items fail to meet reasonable performance standards established by the agency or are only available at an unreasonable price.

(2) Each agency should implement waste prevention techniques, as specified in section 402(d) of this order, so that total annual expenditures for recycled content printing and writing paper do not exceed current annual budgets for paper products as measured by average annual expenditures, adjusted for inflation based on the Consumer Price Index or other suitable

indices. In determining a target budget for printing and writing paper, agencies may take into account such factors as employee increases or decreases, new agency or statutory initiatives, and episodic or unique requirements (e.g., census).

(3) Effective immediately, all agencies making solicitations for the purchase of printing and writing paper shall seek bids for paper with postconsumer material or recovered waste material as described in section 504(c).

Sec. 505. *Revision of Brightness Specifications and Standards.* The General Services Administration and other Federal agencies are directed to identify, evaluate and revise or eliminate any standards or specifications unrelated to performance that present barriers to the purchase of paper or paper products made by production processes that minimize emissions of harmful byproducts. This evaluation shall include a review of unnecessary brightness and stock clause provisions, such as lignin content and chemical pulp requirements. The GSA shall complete the review and revision of such specifications within six months after the effective date of this order, and shall consult closely with the Joint Committee on Printing during such process. The GSA shall also compile any information or market studies that may be necessary to accomplish the objectives of this provision.

Sec. 506. *Procurement of Re-refined Lubricating Oil and Retread Tires.* Within 180 days after the effective date of this order, agencies shall implement the EPA procurement guidelines for re-refined lubricating oil and retread tires.

(a) Commodity managers shall finalize revisions to specifications for re-refined oil and retread tires, and develop and issue specifications for tire retreading services, as commodity managers shall take affirmative steps to procure these items in accordance with RCRA section 6002.

(b) Once these items become available, fleet managers shall take affirmative steps to procure these items in accordance with RCRA section 6002.

Sec. 507. *Product Testing.* The Secretary of Commerce, through the National Institute of Standards and Technology ("NIST"), shall establish a program for testing the performance of products containing recovered materials or deemed to be environmentally preferable. NIST shall work with EPA, GSA and other public and private sector organizations that conduct appropriate life cycle analyses to gather information that will assist agencies in making selections of products and services that are environmentally preferable.

(a) NIST shall publish appropriate reports describing testing programs, their results, and recommendations for testing methods and related specifications for use by Executive agencies and other interested parties.

(b) NIST shall coordinate with other Executive and State agencies to avoid duplication with existing testing programs.

PART 6—AGENCY GOALS AND REPORTING REQUIREMENTS

Sec. 601. *Goals for Waste Reduction.* Each agency shall establish a goal for solid waste prevention and a goal for recycling to be achieved by the year 1995. These goals shall be submitted to the Federal Environmental Executive within 180 days after the effective date of this order. Progress on attaining these goals shall be reported by the agencies to the Federal Environmental Executive for the annual report specified in section 301 of this order.

Sec. 602. *Goal for Increasing the Procurement of Recycled and Other Environmentally Preferable Products.* Agencies shall strive to increase the procurement of products that are environmentally preferable or that are made with recovered materials and set annual goals to maximize the number of recycled products purchased, relative to non-recycled alternatives.

Sec. 603. *Review of Implementation.* The President's Council on Integrity and Efficiency ("PCIE") will request that the Inspectors General periodically review agencies' affirmative procurement programs and reporting procedures to ensure their compliance with this order.

PART 7—APPLICABILITY AND OTHER REQUIREMENTS

Sec. 701. *Contractor Operated Facilities.* Contracts that provide for contractor operation of a government-owned or leased facility, awarded after the effective date of this order, shall include provisions that obligate the contractor to comply with the requirements of this order within the scope of its operations. In addition, to the extent permitted by law and where economically feasible, existing contracts should be modified.

Sec. 702. *Real Property Acquisition and Management.* Within 90 days after the effective date of this order, and to the extent permitted by law and where economically feasible, Executive agencies shall ensure compliance with the provisions of this order in the acquisition and management of federally owned and leased space. GSA and other Executive agencies shall also include environmental and recycling provisions in the acquisition of all leased space and in the construction of new federal buildings.

Sec. 703. *Retention of Funds.* Within 90 days after the effective date of this order, the Administrator of GSA shall develop a legislative proposal providing authority for Executive agencies to retain a share of the proceeds from the sale of materials recovered through recycling or waste prevention programs and specifying the eligibility requirements for the materials being recycled.

Sec. 704. *Model Facility Programs.* Each Executive department and major procuring agency shall establish model facility demonstration programs that include comprehensive waste prevention and recycling programs and emphasize the procurement of recycled and environmentally preferable products and services using an electronic data interchange (EDI) system.

Sec. 705. *Recycling Programs.* Each Executive agency that has not already done so shall initiate a program to promote cost effective waste prevention and recycling of reusable materials in all of its facilities. The recycling programs implemented pursuant to this section must be compatible with applicable State and local recycling requirements. Federal agencies shall also consider cooperative ventures with State and local governments to promote recycling and waste reduction in the community.

PART 8—AWARENESS

Sec. 801. *Agency Awards Program.* A government-wide award will be presented annually by the White House to the best, most innovative program implementing the objectives of this order to give greater visibility to these efforts so that they can be incorporated government-wide.

Sec. 802. *Internal Agency Awards Programs.* Each agency shall develop an internal agency-wide awards program, as appropriate, to reward its most innovative environmental programs. Winners of agency-wide awards will be eligible for the White House award program.

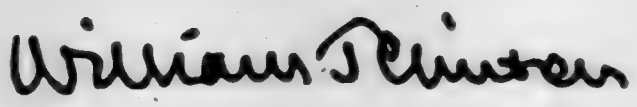
PART 9—REVOCATION, LIMITATION AND IMPLEMENTATION

Sec. 901. Executive Order No. 12780, dated October 31, 1991, is hereby revoked.

Sec. 902. This order is intended only to improve the internal management of the executive branch and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any other person.

Sec. 903. The policies expressed in this order, including the requirements and elements for effective agency affirmative procurement programs, shall be implemented and incorporated in the Federal Acquisition Regulation (FAR) within 180 days after the effective date of this order. The implementation language shall consist of providing specific direction and guidance on agency programs for preference, promotion, estimation, certification, reviewing and monitoring.

Sec. 904. This order shall be effective immediately.



THE WHITE HOUSE,
October 20, 1993.

[FR Doc. 93-26280
Filed 10-21-93; 11:24 am]
Billing code 3195-01-P

Presidential Documents

Executive Order 12874 of October 20, 1993

Establishing an Emergency Board To Investigate a Dispute Between The Long Island Rail Road and Certain of Its Employees Represented by the United Transportation Union

A dispute exists between The Long Island Rail Road and certain of its employees represented by the United Transportation Union.

The dispute has not heretofore been adjusted under the provisions of the Railway Labor Act, as amended (the "Act").

A party empowered by the Act has requested that the President establish an emergency board pursuant to section 9A of the Act (45 U.S.C. 159a).

Section 9A(c) of the Act provides that the President, upon such request, shall appoint an emergency board to investigate and report on the dispute.

NOW, THEREFORE, by the authority vested in me by section 9A of the Act, it is hereby ordered as follows:

Section 1. *Establishment of Board.* There is established, effective October 20, 1993, a board of three members to be appointed by the President to investigate this dispute. No member shall be pecuniarily or otherwise interested in any organization of railroad employees or any carrier. The board shall perform its functions subject to the availability of funds.

Sec. 2. *Report.* The Board shall report its findings to the President with respect to the dispute within 30 days after the date of its creation.

Sec. 3. *Maintaining Conditions.* As provided by section 9A(c) of the Act, from the date of the creation of the board and for 120 days thereafter, no change, except by agreement of the parties, shall be made by the carrier or the employees in the conditions out of which the dispute arose.

Sec. 4. *Expiration.* The board shall terminate upon the submission of the report provided for in Section 2 of this order.

THE WHITE HOUSE,
October 20, 1993.

[FR Doc. 93–26281
Filed 10–21–93; 11:22 am]
Billing code 3195–01–P

L
8
S
C
2
93
MI

federal register

Friday
October 22, 1993

Part XII

Federal Communications Commission

Alaska Federal-State Joint Board to Convene an Open Meeting; Notice

FEDERAL COMMUNICATIONS COMMISSION

Alaska Federal-State Joint Board to Convene an Open Meeting, Tuesday, October 26, 1993

[CC Docket No. 83–1376]

Released: October 19, 1993.

The Alaska Federal-State Joint Board in CC Docket 83–1376 will convene an open public meeting on Tuesday, October 26, 1993, at 9:30 a.m. at the Federal Communications Commission, 1919 M St. NW., Washington, DC in room 856. The meeting will be held to consider a Joint Board Final Recommendation addressing interstate telecommunications market structure issues for Alaska. Interested persons may attend the meeting.

Additional information concerning this meeting may be obtained from Rose Crellin, Common Carrier Bureau, FCC, at (202) 632–1292, or Kent Nilsson, Common Carrier Bureau, FCC, at (202) 632–1302.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–26141 Filed 10–21–93; 11:50 am]

BILLING CODE 6712–01–M

Reader Aids

Federal Register

Vol. 58, No. 203

Friday, October 22, 1993

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202–523–5227
Public inspection desk	523–5215
Corrections to published documents	523–5237
Document drafting information	523–3187
Machine readable documents	523–3447

Code of Federal Regulations

Index, finding aids & general information	523–5227
Printing schedules	523–3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523–6641
Additional information	523–5230

Presidential Documents

Executive orders and proclamations	523–5230
Public Papers of the Presidents	523–5230
Weekly Compilation of Presidential Documents	523–5230

The United States Government Manual

General information	523–5230

Other Services

Data base and machine readable specifications	523–3447
Guide to Record Retention Requirements	523–3187
Legal staff	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (PLUS)	523–6641
TDD for the hearing impaired	523–5229

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FEDERAL REGISTER PAGES AND DATES, OCTOBER

51211–51664.....1
51665–51756.....4
51757–51972.....5
51973–52206.....6
52207–52396.....7
52397–52628.....8
52629–52874.....12
52675–53096.....13
53097–53392.....14
53393–53634.....15
53635–53832.....18
53833–54024.....19
54025–54270.....20
54271–54484.....21
54485–54924.....22

CFR PARTS AFFECTED DURING OCTOBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR

305.....54271
310.....54271

3 CFR

Proclamations:

6598.....51559
6599.....51561
6600.....51721
6601.....51723
6602.....52205
6603.....52387
6604.....52389
6605.....52627
6606.....52875
6607.....53097
6608.....53099
6609.....53101
6610.....53103
6611.....53831
6612.....53833
6613.....54025
6614.....54027
6615.....54269
6616.....54909

Executive Orders:

July 9, 1910 (Revoked in part by PLO 7004).....53429
3053 (Revoked in part by PLO 7004).....53429
3406 (Revoked in part by PLO 7001).....52683
5327 (Revoked in part by PLO 7002).....52684
8578 (See PLO 7005).....54049
11145 (Continued by EO 12869).....51751
11183 (Continued by EO 12869).....51751
11287 (Continued by EO 12869).....51751
11776 (Continued by EO 12869).....51751
12002 (See EO 12867).....51747
12131 (Continued by EO 12869).....51751
12197 (Continued by EO 12869).....51751
12214 (See EO 12867).....51747
12216 (Continued by EO 12869).....51751
12291 (Revoked by EO 12866).....51735
12345 (Continued by EO 12869).....51751
12367 (Continued by EO 12869).....51751
12382 (Continued by EO 12869).....51751
12498 (Revoked by EO 12866).....51735
12675 (Revoked in part EO 12869).....51751
12687 (Revoked by EO 12869).....51751
12696 (Revoked by EO 12869).....51751
12700 (See EO 12869).....51751
12720 (Revoked by EO 12869).....51751
12730 (See EOs 12867, 12868).....51747, 51749
12735 (Revoked by EO 12867; See EO 12868).....51747, 51749
12774 (Superseded by EO 12869).....51751
12775 (See notice of September 30).....51563
12775 (See EO 12872).....54029
12775 (See DOT rule of Oct. 15).....54024
12779 (See EO 12872).....54029
12779 (See notice of September 30).....51563
12779 (See DOT rule of Oct. 15).....54024
12792 (Revoked by EO 12869).....51751
12780 (Revoked by EO 12873).....54911
12813 (Revoked by EO 12869).....51751
12853 (See notice of September 30).....51563
12853 (See EO 12872).....54029
12853 (See DOT rule of Oct. 15).....54024
12866.....51735
12867.....51747
12868.....51749
12869.....51751
12870.....51753
12871.....52201
12872.....54029
12873.....54911
12874.....54921

Administrative Orders:

Memorandums:

August 19, 1993.....52397
September 30, 1993.....52391
October 1, 1993.....52393

Notices:

September 30, 1993.....51563

Presidential Determinations:

No. 93–39 of

September 17, 1993.....51973
No. 93–40 of September 28, 1993.....51975
No. 93–41 of September 29, 1993.....51977
No. 93–42 of September 30, 1993.....52629
No. 93–43 of September 30, 1993.....52207
No. 93–44 of September 30, 1993.....52209
No. 93–45 of September 30, 1993.....52211
No. 94–1 of October 1, 1993.....52213

5 CFR

Ch. XLI.....52637
294.....52877
532.....51211
591.....51565
831.....52877
838.....52877
842.....52877
890.....52877
2429.....53105
2471.....53105
2472.....53105
Proposed Rules:
2502.....51255
2504.....51256

7 CFR

2.....51211
246.....51566
300.....52399
301.....51979, 51982, 53105
400.....53109
401.....53393
906.....52400, 53111
907.....53112, 53114
908.....53112, 53114
910.....52401
928.....53117
931.....53119
967.....52402
1002.....51982
1004.....52404, 52405
1205.....52215
1211.....51568
1427.....51982
1477.....51757
1478.....51757
1717.....53835
1744.....52639
1900.....52644
1910.....52644
1940.....54485
1951.....52644
1955.....52644
1972.....52644
1975.....52644
Proposed Rules:
400.....53150
1007.....53436
1093.....53436
1094.....53436
1096.....53436, 54530
1099.....53436
1106.....53438
1108.....53436
1124.....53439
1135.....53439
1413.....51934, 52686, 52928
1703.....52688
1955.....53891
1965.....53891
3408.....53153

9 CFR

201.....52884
203.....52884
317.....52856
381.....52856
Proposed Rules:
82.....52240
301.....54012
312.....54012
317.....51581
318.....51581
322.....54012
350.....54012
362.....54012
381.....54012
391.....54012

10 CFR

19.....52406, 54646
30.....52406, 54646
40.....52406, 54646
50.....52406, 54646
60.....52406, 54646
61.....52406, 54646
70.....52406, 54646
72.....51762, 52406, 54646
150.....52406, 54646
Proposed Rules:
20.....54071, 54531
21.....53159, 54531
30.....54531
31.....54531
32.....53670, 54531
35.....54531
40.....54531
61.....54531
73.....52035
602.....53671

11 CFR

Proposed Rules:
100.....52040
107.....52700
113.....52040
114.....52700
9008.....52700

12 CFR

265.....53393
574.....52140
611.....52888
613.....52888
614.....52888
618.....51993
620.....52888
621.....52888
627.....52888
933.....52808
Proposed Rules:
3.....52808
208.....52808
325.....52808
615.....52701
650.....53161

13 CFR

101.....53120
121.....52415
Proposed Rules:
121.....52452, 52929

14 CFR

23.....51970
39.....51212, 51215, 51770, 51771, 52220, 52889, 53120, 53635, 53636, 53852, 53853, 53855, 53857, 54031, 54032, 54034
71.....51773, 52140, 52808, 53122, 53123, 53394, 53395, 53859
73.....52890, 54486
91.....51976, 52140
95.....53860
97.....51774, 51776, 53863, 54487
1260.....53638
Proposed Rules:
23.....52702
39.....51583, 51585, 51587, 51589, 51793, 52041, 52240, 52243, 52714, 52717, 52929, 52931, 52932, 53457, 53678, 53893, 54072, 54310, 54312
71.....51256, 51257, 53164, 53166, 53167, 53459, 54073
73.....54531
91.....51938
121.....51938, 51944, 54478
125.....51938
127.....54478
129.....51944
135.....51938, 51944, 54478
145.....54478

15 CFR

773.....52166, 52168
778.....52166
799.....52166, 52169
806.....53124
940.....53865
Proposed Rules:
Ch. VII.....54074

17 CFR

140.....52656
200.....52416, 52891
203.....52416
240.....52416, 52891
250.....51488
259.....51488
Proposed Rules:
240.....52934
250.....51508

18 CFR

11.....54035
35.....51217, 51777
38.....51777
141.....52420
284.....52660
292.....51777
293.....51777
346.....53654
375.....51222
381.....53654
382.....51777
1301.....53656
Proposed Rules:
35.....51259
284.....53895

19 CFR

4.....54271
24.....54271
111.....54271
122.....54271
123.....54271
145.....54271
178.....54271
Proposed Rules:
7.....52246
10.....52246
148.....52246

20 CFR

229.....53396
404.....52346
416.....52346, 52909
422.....52914
Proposed Rules:
404.....54532
416.....52458, 52464, 52943, 54532
655.....52152

21 CFR

172.....52221
176.....51994
310.....54450, 54458
341.....54232, 54238
347.....54458
522.....52222
558.....53882, 54286
821.....52440
864.....51570
1308.....53404
Proposed Rules:
5.....52719
25.....52719
101.....53254, 53296, 54539
103.....52042
136.....53305
137.....53305
139.....53305
170.....52719
171.....52719
172.....53312
174.....52719
201.....54224, 54228
328.....54466
352.....53460
700.....53460
740.....53460
812.....52142, 52144, 53245
813.....52142
814.....52729
1301.....52246
1304.....53680
1311.....52246

23 CFR

650.....52663
659.....54812
1260.....54812
Proposed Rules:
660.....51794
1260.....54832

24 CFR

203.....54244
291.....54244
511.....52566
888.....51410
905.....51952
965.....51952
3280.....54484
Proposed Rules:
92.....52560

135 52534
215 53461
219 52560
221 53461
236 53461
570 52560
572 52560
574 52560
576 52560
583 52560
700 52560
880 53461
881 53461
882 53461
883 53461
884 53461
885 53461
886 53461
889 ..... 52560, 53461
890 ..... 52560, 53461
905 ..... 51281, 52560, 53461
960 53461
961 52560
963 52560
990 51281

25 CFR

11 54006

Proposed Rules:

294 53026

26 CFR

1 ..... 51571, 53125, 53656, 54037, 54489
602 ..... 51571, 54037

Proposed Rules:

1 ..... 53168, 53682, 54075, 54077
602 54077

27 CFR

Proposed Rules:

5 53682
24 52222

28 CFR

1 53658
2 51779
11 51223
51 51225

29 CFR

2610 53406
2619 53407
2622 53406
2644 53410
2676 53407

Proposed Rules:

507 52152
1609 51266
2530 54444

30 CFR

901 54287
917 51225
946 52666
950 52232

Proposed Rules:

230 53470
250 52731
253 52059
256 52731
280 52731
281 52731
700 52374
701 52374
705 52374
706 52374
715 52374
716 52374
785 52374
825 52374
870 52374
901 54313
925 ..... 53683, 53686
950 54540

31 CFR

580 54024

Proposed Rules:

103 51280

32 CFR

40 51730
80 51996
86 52010
185 52867
199 ..... 51227, 53411
706 51241
725 53883

33 CFR

2 51726
3 51726
100 ..... 51242, 52440
117 ..... 52441, 54289
165 ..... 51243, 52442, 53884
175 51576
181 51576
334 ..... 53426, 53427

Proposed Rules:

117 ..... 52466, 53896
126 51906
127 51906
155 54315
156 54315
157 54870
187 ..... 51920, 53624

34 CFR

642 51516
645 51516
646 51516
668 52194
674 52194
675 52194
676 52194
682 52194
690 52194

Proposed Rules:

370 52414
386 52606
668 ..... 51712, 54902

35 CFR

Proposed Rules:

10 53897

36 CFR

Proposed Rules:

1252 54540
1254 54540
1260 54540

37 CFR

1 ..... 54494, 54504
2 54494
5 54504
10 ..... 54494, 54504
301 53822
311 53822

38 CFR

3 ..... 52017, 53659
4 52017
21 ..... 51780, 51781

Proposed Rules:

3 51798
17 51799

39 CFR

3001 54511

40 CFR

52 ..... 52237, 53885, 54041, 54041, 54291, 54513, 54516
61 51784
81 ..... 53886, 53888
82 54692
180 ..... 54043, 54294, 54296
258 ..... 51536, 53136
271 ..... 51244, 54044
272 ..... 52674, 52677, 52679
300 ..... 52018, 54297
372 51785
721 ..... 51672, 51694

Proposed Rules:

Ch. 1 53668
35 53668
51 54548
52 ..... 51591, 51593, 52467, 53693, 54081, 54096, 54099, 54548
60 54548
61 54548
63 ..... 53478, 53900
64 54548
68 54190
80 54547
89 51595
117 54836
122 53168
123 53168
131 53168
132 53168
180 ..... 54092, 54094, 54316
185 ..... 54094, 54316
186 ..... 54094, 54316
195 54474
300 ..... 53688, 54702
302 54836
355 54836

41 CFR

101–17 52917
101–37 53660
101–40 53889
302–6 53137

42 CFR

52e 54297
403 54045
435 51408
436 51408
440 51408

Proposed Rules:

431 53481
440 ..... 51288, 53481
441 ..... 51288, 53481
447 53481
1003 054096

43 CFR

37 51550

Proposed Rules:

4700 51297

Public Land Orders:

4522 (Revoked in part by PLO 7002) 52684
6998 52238
6999 52238
7000 52682
7001 52683
7002 52684
7003 53428
7004 53429
7005 54049

44 CFR

64 ..... 51578, 52019

Proposed Rules:

67 51598

45 CFR

670 54522
671 54522
672 54522
1802 52918

46 CFR

160 51576

Proposed Rules:

10 51406
12 51406
30 52598
31 52598
32 52598
67 51298
585 52248

47 CFR

1 51246
15 51247
64 53663
73 ..... 51250, 51578, 51579, 53664, 53665, 54522
74 51250
76 53429
87 52021
90 ..... 51251, 53245, 53431
97 ..... 51787, 53138

Proposed Rules:

1 53489
15 51299
22 53169
25 53169
36 52254
73 ..... 51603, 51799, 52733, 52734, 52735, 53902
74 52256
76 53696
80 53169
87 53169
90 ..... 51299, 53169
95 53169
99 53169

48 CFR

501 52442
503 52442
507 52442
508 52442
509 52442
511 52442
514 52442
515 52442
519 52442
522 52442
525 52442
526 52442
529 52442
532 52442

536.....52442
538.....54523
542.....52442
543.....52442
552.....52442, 54523
570.....52442
1815.....54299
1816.....52446
1828.....54050
1833.....53138
1852.....52446, 54050
1870.....54299
1871.....54300

Proposed Rules:

837.....54548
852.....54548

49 CFR

107.....51524, 53626
171.....51524, 53626
172.....51524
173.....51524, 53626
174.....51524
175.....51524
176.....51524
177.....51524
178.....51524, 53626
179.....51524
180.....51524, 53626
192.....54524
571.....51788, 52021, 52922, 53666
604.....52684
1002.....52027
1017.....52027
1018.....52027
1039.....53433
1145.....53667
1312.....52027
1313.....52027
1314.....52027

Proposed Rules:

23.....52050
37.....52735
172.....52574
173.....52574
179.....52574
390.....51800
571.....54099
572.....54099
821.....54102
1039.....54317, 54318, 54320, 54321, 54323
1063.....51603
1105.....51800
1121.....51800
1152.....51800

50 CFR

17.....52027, 52031, 53800, 53804, 54053
217.....54066
227.....53138, 54066
229.....51788
285.....53434, 53668
301.....51253
371.....54307
625.....52685
642.....51579, 51789
661.....53143
663.....52031
669.....53145
672.....51791, 52032, 53138, 53148, 53668
675.....51253, 52033, 52451, 53138, 53148, 54529

Proposed Rules:

17.....51302, 51604, 52058, 52059, 52063, 52740, 53696, 53702, 53904, 54549
32.....53703
52.....51270, 51279
215.....53320
216.....53320
222.....53220, 53703
227.....53703
228.....53491
622.....53172
625.....53172
628.....53172
641.....52063, 52073, 52474
642.....54108
648.....53183
649.....53172
650.....53172
651.....52073, 53172
652.....53172
655.....53172
675.....53497

LIST OF PUBLIC LAWS

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H.J. Res. 218/P.L. 103–108

Designating October 16, 1993, and October 16, 1994, each as World Food Day. (Oct. 18, 1993; 107 Stat. 1034; 2 pages)

H.J. Res. 265/P.L. 103–109

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Last List October 15, 1993

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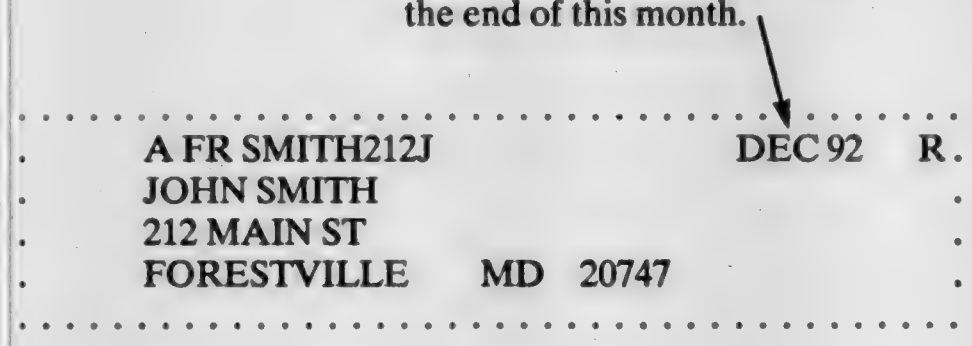

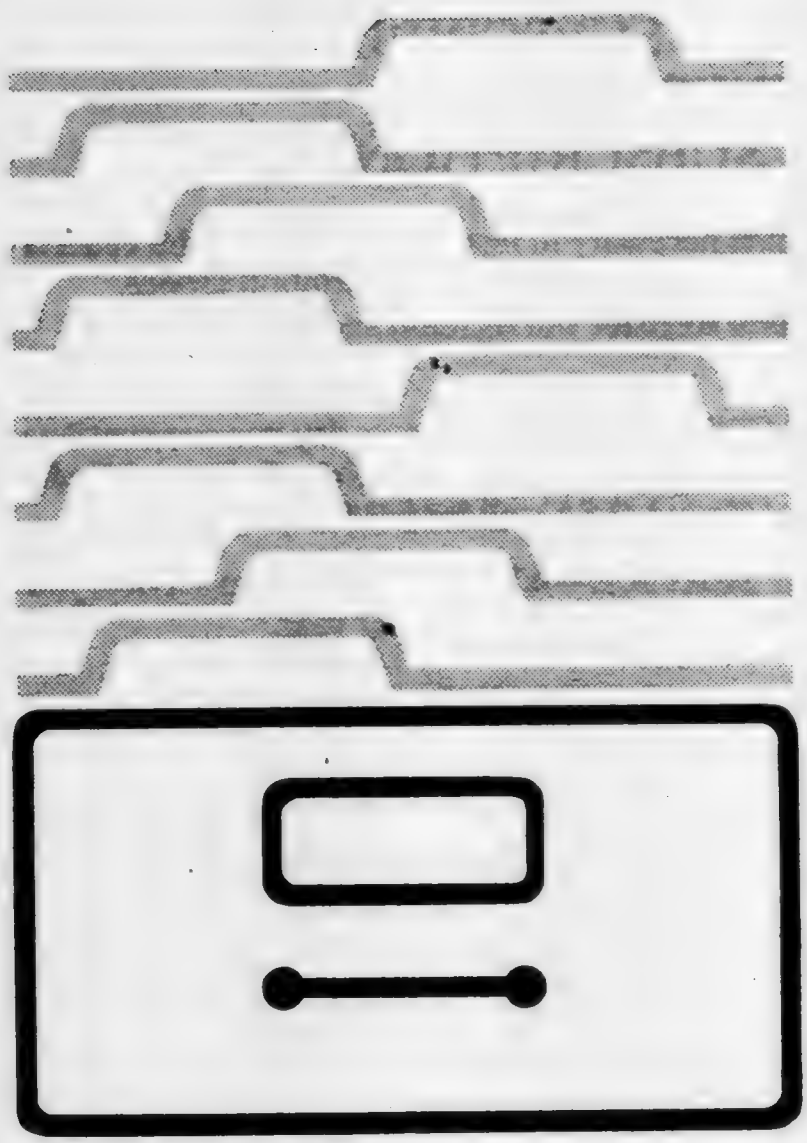

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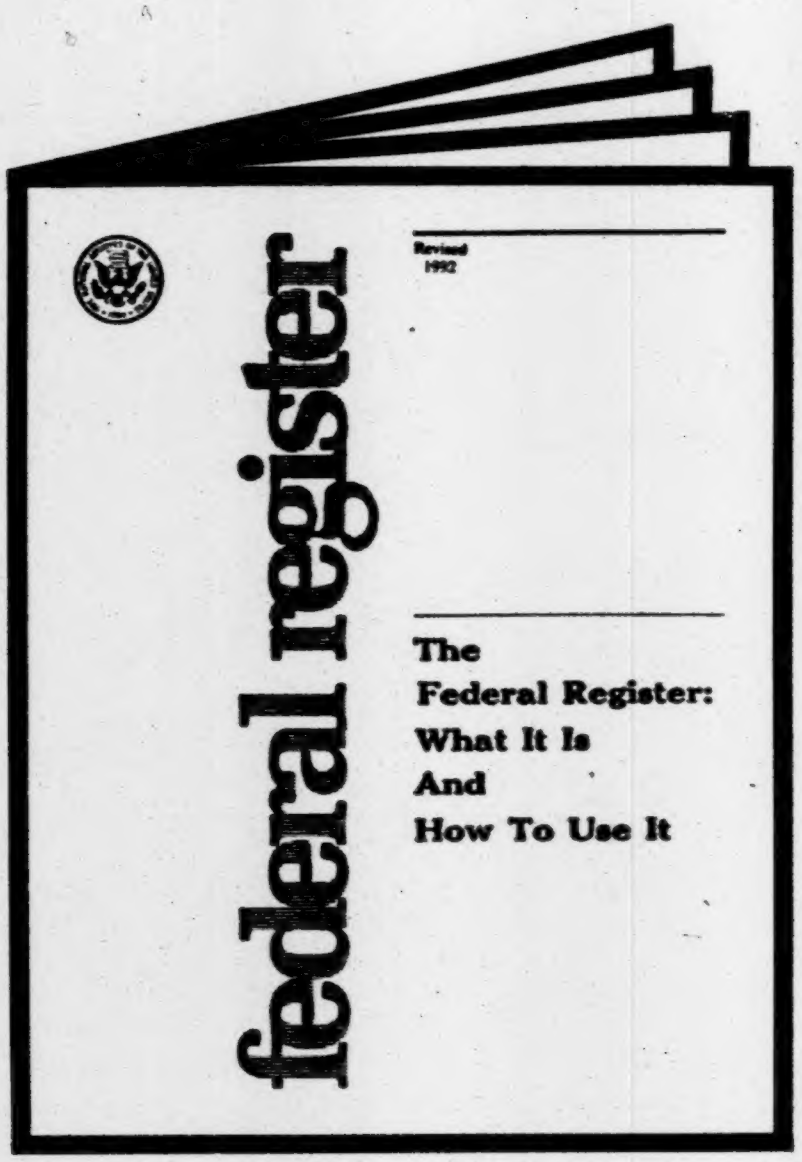

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